

M

M. This letter, used as a Roman numeral, stands for one thousand.

It was also, in old English law, a brand or stigma impressed upon the brawn of the thumb of a person convicted of manslaughter and admitted to the benefit of clergy.

This letter was sometimes put on the face of treasury notes of the United States, and signifies that the treasury note bears interest at the rate of one mill per centum, and not one per centum interest. *U. S. v. Hardyman*, 13 Pet. 176, 10 L. Ed. 113.

M. also stands as an abbreviation for several words of which it is the initial letter; as "Mary," (the English queen of that name,) "Michaelmas," "master," "middle."

M. D. An abbreviation for "Middle District," in reference to the division of the United States into judicial districts. Also an abbreviation for "Doctor of Medicine."

M. R. An abbreviation for "Master of the Rolls."

M. T. An abbreviation for "Michaelmas Term."

MACE. A large staff, made of the precious metals, and highly ornamented. It is used as an emblem of authority, and carried before certain public functionaries by a mace-bearer. In many legislative bodies, the mace is employed as a visible symbol of the dignity and collective authority of the house. In the house of lords and house of commons of the British parliament, it is laid upon the table when the house is in session. In the United States house of representatives, it is borne upright by the sergeant-at-arms on extraordinary occasions, as when it is necessary to quell a disturbance or bring refractory members to order.

—**Mace-bearer.** In English law. One who carries the mace before certain functionaries. In Scotland, an officer attending the court of session, and usually called a "macer."

—**Mace-proof.** Secure against arrest.

—**Macer.** A mace-bearer; an officer attending the court of session in Scotland.

MACE-GREFF. In old English law. One who buys stolen goods, particularly food, knowing it to have been stolen.

MACEDONIAN DECREE. In Roman law. This was the *Senatus-consultum Macedonianum*, a decree of the Roman senate, first given under Claudius, and renewed under Vespasian by which it was declared that no action should be maintained to recover a loan of money made to a child who was under the *patria potestas*. It was intended to strike at the practice of usurers in making loans, on

unconscionable terms, to family heirs who would mortgage their future expectations from the paternal estate. The law is said to have derived its name from that of a notorious usurer. See Mackeld. Rom. Law, § 432; Inst. 4, 7, 1; Dig. 14, 6.

MACHECOLLARE. To make a warlike device over a gate or other passage like to a grate, through which scalding water or ponderous or offensive things may be cast upon the assailants. *Co. Litt. 5a.*

MACHINATION. The act of planning or contriving a scheme for executing some purpose, particularly an evil purpose; an artful design formed with deliberation.

MACHINE. In patent law. Any contrivance used to regulate or augment force or motion; more properly, a complex structure, consisting of a combination, or peculiar modification, of mechanical powers to perform some function. *Simon, Buhler & Baumann v. U. S.*, 8 Ct. Cust. App. 273, 277; *Lumatz v. American Car & Foundry Co.*, 217 Mo. App. 94, 273 S. W. 1089, 1092; *Ball v. Coker (C. C. A.)* 210 F. 278, 281. Any contrivance composed of co-operating elements which act under the law imposed upon them to regulate or modify the relations between force, motion, and weight.

The term "machine," in patent law, includes every mechanical device, or combination of mechanical powers and devices, to perform some function and produce a certain effect or result. But where the result or effect is produced by chemical action, by the operation or application of some element or power of nature, or of one substance to another, such modes, methods, or operations are called "processes." A new process is usually the result of discovery; a machine, of invention. *Corning v. Burden*, 15 How. 252, 267, 14 L. Ed. 683. And see *Pittsburgh Reduction Co. v. Cowles Electric Co. (C. C.)* 55 F. 316; *Westinghouse v. Boyden Power Brake Co.*, 18 S. Ct. 707, 170 U. S. 537, 42 L. Ed. 1136; *Burr v. Duryee*, 1 Wall. 570, 17 L. Ed. 650; *Stearns v. Russell*, 29 C. C. A. 121, 85 F. 225; *Wintermute v. Redington*, 30 Fed. Cas. 370.

A machine differs from an art in that the act or series of acts which constitute the art become, in the machine, inseparably connected with a specific physical feature. The art is the primary conception, the machine the secondary. A machine differs from all other mechanical instruments in that its rule of action resides within itself. The structural law of a machine is its one enduring and essential characteristic. *Rob. Pat. § 175*; *Parker v. Hulme*, 1 Fish. 44, Fed. Cas. No. 10,740.

Dangerous Machine

A machine is "dangerous" in such sense that the employer is required to guard it, if, in the ordinary course of human affairs, danger may be reasonably anticipated from the use of it without protection. *Simon v. St. Louis Brass Mfg. Co.*, 298 Mo. 70, 250 S. W. 74, 76.

Perfect Machine

In patent law. A perfected invention; not a perfectly constructed machine, but a machine so constructed as to embody all the essential elements of the invention, in a form that would make them practical and operative so as to accomplish the result. But it is not necessary that it should accomplish that result in the most perfect manner, and be in a condition where it was not susceptible of a higher degree of perfection in its mere mechanical construction. *American Hide, etc., Co. v. American Tool, etc., Co.*, 4 Fish. Pat. Cas. 299, 1 Fed. Cas. 647.

MACHINERY. A more comprehensive term than "machine"; including the appurtenances necessary to the working of a machine. *Seavey v. Central Mut. F. Ins. Co.*, 111 Mass. 540; *Shaleen v. Central Coal & Coke Co.*, 127 Ark. 397, 192 S. W. 225, 227, Ann. Cas. 1918E, 198. Parts of a machine considered collectively; also the combination of mechanical means to a given end. *Haddad v. Commercial Motor Truck Co.*, 146 La. 897, 84 So. 197, 198, 9 A. L. R. 1380; *Cleveland v. Hightower*, 108 Okl. 84, 234 P. 614, 616. A part of a machine designed to work with other parts, etc. *National Enameling & Stamping Co. v. Zirkovics (C. C. A.)* 251 F. 184, 187.

MACHOLUM. In old English law. A barn or granary open at the top; a rick or stack of corn. Spelman.

MACTATOR. L. Lat. In old European law. A murderer.

MACULARE. In old European law. To wound. Spelman.

MAD PARLIAMENT. Henry III, in 1258, at the desire of the Great Council in Parliament, consented to the appointment of a committee of twenty-four, of whom twelve were appointed by the Barons and twelve by the King, in a parliament which was stigmatized as the "Mad Parliament." Unlimited power was given to it to carry out all necessary reforms. It drew up the Provisions of Oxford.

MAD POINT. A term used to designate the idea or subject to which is confined the derangement of the mental faculties of one suffering from monomania. *Owing's Case*, 1 Bland (Md.) 388, 17 Am. Dec. 311. See *Insanity*.

MADE KNOWN. Where a writ of *scire facias* has been actually served upon a defendant, the proper return is that its contents have been "made known" to him.

MADMAN. An insane person, particularly one suffering from mania in any of its forms. Said to be inapplicable to idiots (*Com. v. Haskell*, 2 Brewst. [Pa.] 497); *Bensberg v. Washington University*, 251 Mo. 641, 158 S. W. 330, 336, but it is not a technical term either of medicine or the law, and is incap-

ble of being applied with scientific precision. See *Insanity*.

MADNESS. See *Insanity*.

MADRAS REGULATIONS. Certain regulations prescribed for the government of the Madras presidency. *Mozley & Whitley*.

MÆC-BURGH. In Saxon law. Kindred; family.

MÆG. A kinsman. 2 Poll. & Maitl. 241.

MÆGBOTE. In Saxon law. A recompense or satisfaction for the slaying or murder of a kinsman. Spelman.

MÆRE. Famous; great; noted; as *Ælmerc*, all famous. *Gibs. Camd.*

MÆREMIUM. Timber; wood suitable for building purposes.

MAGIC. In English statutes. Witch-craft and sorcery.

MAGIS. Lat. More; more fully; more in number; rather.

Magis de bono quam de malo lex intendit. Co. Litt. 78b. The law favors a good rather than a bad construction. Where the words used in an agreement are susceptible of two meanings, the one agreeable to, the other against, the law, the former is adopted. Thus, a bond conditioned "to assign all offices" will be construed to apply to such offices only as are assignable. *Chit. Cont.* 78.

Magis dignum trahit ad se minus dignum. The more worthy draws to itself the less worthy. *Yearb.* 20 Hen. VI. 2, arg.

MAGISTER. Lat.

In English Law

A master or ruler; a person who has attained to some eminent degree in science. *Cowell*.

In the Civil Law

A title of several offices under the Roman Empire.

MAGISTER AD FACULTATES. In English ecclesiastical law. The title of an officer who grants dispensations; as to marry, to eat flesh on days prohibited, and the like. *Bac. Abr.* "Ecclesiastical Courts," A, 5.

MAGISTER BONORUM VENDENDORUM. In Roman law, a person appointed by judicial authority to inventory, collect, and sell the property of an absent or absconding debtor for the benefit of his creditors; he was generally one of the creditors, and his functions corresponded generally to those of a receiver or an assignee for the benefit of creditors under modern practice. See *Mackeld. Rom. Law*, § 521.

MAGISTER CANCELLARIÆ. In old English law. Master of the chancery; master in

chancery. These officers were said to be called "*magistri*," because they were priests. Latch. 133.

MAGISTER EQUITUM. Master of the horse. A title of office under the Roman Empire.

MAGISTER LIBELLORUM. Master of requests. A title of office under the Roman Empire.

MAGISTER LITIS. Master of the suit; the person who controls the suit or its prosecution, or has the right so to do.

MAGISTER NAVIS. In the civil law. The master of a ship or vessel. He to whom the care of the whole vessel is committed. Dig. 14, 1, 1, 5.

MAGISTER PALATII. Master of the palace or of the offices. An officer under the Roman Empire bearing some resemblance to the modern lord chamberlain. Tayl. Civil Law, 37.

Magister rerum usus. Use is the master of things. Co. Litt. 229b. Usage is a principal guide in practice.

Magister rerum usus; magistra rerum experientia. Use is the master of things; experience is the mistress of things. Co. Litt. 69, 229; Wing Max. 752.

MAGISTER SOCIETATIS. In the civil law. The master or manager of a partnership; a managing partner or general agent; a manager specially chosen by a firm to administer the affairs of the partnership. Story Partn. § 95.

MAGISTERIAL. Relating or pertaining to the character, office, powers, or duties of a magistrate or of the magistracy.

MAGISTERIAL PRECINCT. In some American states, a local subdivision of a county, defining the territorial jurisdiction of justices of the peace and constables, Breckinridge Co. v. McCracken, 61 F. 194, 9 C. C. A. 442; also called magisterial district. State v. Mingo County Court, 97 W. Va. 615, 125 S. E. 576, 577.

MAGISTRACY. This term may have a more or less extensive signification according to the use and connection in which it occurs. In its widest sense it includes the whole body of public functionaries, whether their offices be legislative, judicial, executive, or administrative. In a more restricted (and more usual) meaning, it denotes the class of officers who are charged with the application and execution of the laws. In a still more confined use, it designates the body of judicial officers of the lowest rank, and more especially those who have jurisdiction for the trial and punishment of petty misdemeanors or the preliminary steps of a criminal prosecution, such as police judges and justices of the

peace. The term also denotes the office of a magistrate.

MAGISTRALIA BREVIA. In old English practice. Magisterial writs; writs adapted to special cases, and so called from being framed by the *masters* or principal clerks of the chancery. Bract. fol. 413b; Crabb, Com. Law, 547, 548.

MAGISTRATE. A public officer belonging to the civil organization of the state, and invested with powers and functions which may be either judicial, legislative, or executive. But the term is commonly used in a narrower sense, designating, in England, a person intrusted with the commission of the peace, and, in America, one of the class of inferior judicial officers, such as justices of the peace and police justices. Martin v. State, 32 Ark. 124; Scanlan v. Wright, 13 Pick. (Mass.) 528, 25 Am. Dec. 344; Ex parte White, 15 Nev. 146, 37 Am. Rep. 466; Kurtz v. State, 22 Fla. 44, 1 Am. St. Rep. 173; State v. Allen, 83 Fla. 655, 92 So. 155, 156; Merritt v. Merritt, 193 Iowa, 899, 188 N. W. 32, 34.

A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense. Pen. Code Cal. § 807.

The word "magistrate" does not necessarily imply an officer exercising any judicial functions, and might very well be held to embrace notaries and commissioners of deeds. Schultz v. Merchants' Ins. Co., 57 Mo. 336.

Chief Magistrate

The highest or principal executive officer of a state (the governor) or of the United States (the president.)

Committing Magistrate

An inferior judicial officer who is invested with authority to conduct the preliminary hearing of persons charged with crime, and either to discharge them for lack of sufficient prima facie evidence or to commit them to jail to await trial or (in some jurisdictions) to accept bail and release them thereon. The term is said to be synonymous with "examining court." State v. Rogers, 31 N. M. 485, 247 P. 828, 833.

Police Magistrate

An inferior judicial officer having jurisdiction of minor criminal offenses, breaches of police regulations, and the like; so called to distinguish them from magistrates who have jurisdiction in civil cases also, as justices of the peace. People v. Curley, 5 Colo. 416; McDermond v. Dinnie, 6 N. D. 278, 69 N. W. 295.

Stipendiary Magistrates

In Great Britain, the magistrates or police judges sitting in the cities and large towns, and appointed by the home secretary, are so called, as distinguished from the justices of the peace in the counties who have the authority of magistrates.

MAGISTRATE'S COURT. In American law. Courts in the state of South Carolina, having exclusive jurisdiction in matters of contract of and under twenty dollars.

A local court in the city of Philadelphia, possessing the criminal jurisdiction of a police court and civil jurisdiction in actions involving not more than one hundred dollars. It is not a court of record. See Const. Pa. art. 4, § 12.

MAGISTRATUS. Lat. In the civil law. A magistrate. Calvin. A judicial officer who had the power of hearing and determining causes, but whose office properly was to inquire into matters of law, as distinguished from fact. Hallifax, Civil Law, b. 3, c. 8.

MAGNA ASSISA. In old English law. The grand assize. Glanv. lib. 2, cc. 11, 12.

MAGNA ASSISA ELIGENDA. An ancient writ to summon four lawful knights before the justices of assize, there to choose twelve others, with themselves to constitute the *grand assize* or great jury, to try the matter of right. The trial by grand assize was instituted by Henry II. in parliament, as an alternative to the duel in a writ of right. Abolished by 3 & 4 Wm. IV. c. 27. Wharton.

MAGNA AVERIA. In old pleading. Great beasts, as horses, oxen, etc. Cro. Jac. 580.

MAGNA CENTUM. The great hundred, or six score. Wharton.

MAGNA CHARTA. The great charter. The name of a charter (or constitutional enactment) granted by King John of England to the barons, at Runnymede, on June 15, 1215, and afterwards, with some alterations, confirmed in parliament by Henry III. and Edward I. This charter is justly regarded as the foundation of English constitutional liberty. Among its thirty-eight chapters are found provisions for regulating the administration of justice, defining the temporal and ecclesiastical jurisdictions, securing the personal liberty of the subject and his rights of property, and the limits of taxation, and for preserving the liberties and privileges of the church. *Magna Charta* is so called, partly to distinguish it from the *Charta de Foresta*, which was granted about the same time, and partly by reason of its own transcendent importance.

Magna Charta et Charta de Foresta sont apelés les "deux grandes charters." 2 Inst. 570. *Magna Charta* and the Charter of the Forest are called the "two great charters."

MAGNA COMPONERE PARVIS. To compare great things with small things.

MAGNA CULPA. Great fault; gross negligence.

MAGNA NEGLIGENTIA. In the civil law. Great or gross negligence.

Magna negligentia culpa est; magna culpa dolus est. Gross negligence is fault; gross fault is fraud. Dig. 50, 16, 226.

MAGNA PRECARIA. In old English law. A great or general reape-day. Cowell; Blount.

MAGNA SERJEANTIA. In old English law. Grand serjeanty. Fleta, lib. 2, c. 4, § 1.

MAGNUM CAPE. In old practice. Great or grand *cape*. 1 Reeve, Eng. Law, 418. See Grand Cape.

MAGNUM CONCILIUM. In old English law. The great council; the general council of the realm; afterwards called "parliament." 1 Bl. Comm. 148; 1 Reeve, Eng. Law, 62; Spelman.

The king's great council of barons and prelates. Spelman; Crabb, Com. Law 228.

MAGNUS ROTULUS STATUTORUM. The great statute roll. The first of the English statute rolls, beginning with *Magna Charta*, and ending with Edward III. Hale, Com. Law, 16, 17.

MAHA-GEN. In Hindu law. A banker or any great shop-keeper.

MAHAL. In Hindu law. Any land or public fund producing a revenue to the government of Hindostan. "*Mahalaat*" is the plural.

MAHLBRIEF. In maritime law. The German name for the contract for the building of a vessel. This contract contains a specification of the kind of vessel intended, her dimensions, the time within which she is to be completed, the price and times of payment, etc., with reservation generally that the contractor or his agent (usually the master of a vessel) may reject uncontractworthy materials, and oblige the builder to supply others. Jac. Sea Laws 2-8.

MAIDEN. A young unmarried woman. In an indictment for adultery, not necessarily a virgin. State v. Shedrick, 69 Vt. 428, 38 A. 75.

In Scotch law. An instrument formerly used in beheading criminals. It resembled the French guillotine, of which it is said to have been the prototype. Wharton.

MAIDEN ASSIZE. In English law. Originally an assize at which no person was condemned to die. Now a session of a criminal court at which there are no prisoners to be tried.

MAIDEN RENTS.

In Old English Law

A fine paid to lords of some manors, on the marriage of tenants, originally given in consideration of the lord's relinquishing his customary right of lying the first night with the bride of a tenant. Cowell.

MAIGNAGIUM. A brasier's shop, or, perhaps, a house. Cowell.

MAIHEM. See *Mayhem*; *Maim*.

MAIHEMATUS. Maimed or wounded.

MAIHEMIUM. In old English law. *Mayhem*, (*q. v.*)

Maihemium est homicidium inchoatum. 3 Inst. 118. *Mayhem* is incipient homicide.

Maihemium est inter crimina majora minimum, et inter minora maximum. Co. Litt. 127. *Mayhem* is the least of great crimes, and the greatest of small.

Maihemium est membri mutilatio, et dici poterit, ubi aliquis in aliqua parte sui corporis effectus sit inutilis ad pugnandum. Co. Litt. 126. *Mayhem* is the mutilation of a member, and can be said to take place when a man is injured in any part of his body so as to be useless in fight.

MAIL. As applied to the post-office, the carriage of letters, whether applied to the bag into which they are put, the coach or vehicle by means of which they are transported, or any other means employed for their carriage and delivery by public authority. *Wynen v. Schappert*, 6 Daly (N. Y.) 560. It may also denote the letters or other matter so carried.

The term "mail," as used in Rev. St. U. S. § 5469 (18 USCA § 317) relative to robbing the mails, may mean either the whole body of matter transported by the postal agents, or any letter or package forming a component part of it. *U. S. v. Inabnet* (D. C.) 41 Fed. 130.

Mail also denotes armor, as in the phrase a "coat of mail."

In Scotch Law

Rent; a rent or tribute. A tenant who pays a rent is called a "mail-payer," "mailer," or "mail-man." Skene.

MAIL MATTER. This term includes letters, packets, etc., received for transmission, and to be transmitted by post to the person to whom such matter is directed. *U. S. v. Huggett* (C. C.) 40 Fed. 641; *U. S. v. Rapp* (C. C.) 30 Fed. 820.

MAILABLE. Suitable or admissible for transmission by the mail; belonging to the classes of articles which, by the laws and postal regulations, may be sent by post.

MAILE. In old English law. A kind of ancient money, or silver half-pence; a small rent.

MAILED. This word, as applied to a letter, means that the letter was properly prepared for transmission by the postal department, and that it was put in the custody of the officer charged with the duty of forwarding the mail. *Pier v. Heinrichshoffen*, 67 Mo. 163, 29

Am. Rep. 501, and testimony that a letter was "mailed" to the addressee implies that it was properly addressed, stamped, and deposited in a proper place for the receipt of mail. *J. L. Price Brokerage Co. v. Chicago, R. I. & P. R. Co.*, 230 S. W. 374, 376, 207 Mo. App. 8; *Model Mill Co. v. Webb*, 80 S. E. 232, 233, 164 N. C. 87. But some courts limit this implication. See *W. T. Rawleigh Medical Co. v. Burney*, 102 S. E. 358, 25 Ga. App. 20; *Feder Silberberg Co. v. McNeil*, 133 P. 975, 18 N. M. 44, 49 L. R. A. (N. S.) 458.

MAILS AND DUTIES. In Scotch law. The rents of an estate. Bell.

MAIM. At common law, to deprive a person of a member or part of the body, the loss of which renders him less capable of fighting; or of defending himself; to commit *mayhem*, (*q. v.*) *State v. Johnson*, 58 Ohio St. 417, 51 N. E. 40, 65 Am. St. Rep. 769.

But both in common speech and as the word is now used in statutes and in the criminal law generally, *maim* signifies to cripple or mutilate in any way, to inflict upon a person any injury which deprives him of the use of any limb or member of the body, or renders him lame or defective in bodily vigor; to inflict any serious bodily injury. See *Regina v. Jeans*, 1 Car. & K. 540; *High v. State*, 26 Tex. App. 545, 10 S. W. 238, 8 Am. St. Rep. 488; *Baker v. State*, 4 Ark. 56; *Turman v. State*, 4 Tex. App. 588; *Com. v. Newell*, 7 Mass. 249; *Roddie v. State*, 198 P. 342, 349, 19 Okl. Cr. 63; *State v. Foster*, 220 S. W. 958, 960, 281 Mo. 618; *State v. McDonie*, 109 S. E. 710, 714, 89 W. Va. 185.

The word "maim," as applied to animals implies the infliction of some injury which deprives the animal of, or renders useless or partially useless, some useful organ or member. And such injury must be permanent. *Spaulding v. State*, 25 Ga. App. 194, 102 S. E. 907; *Miller v. Prough*, 203 Mo. App. 413, 221 S. W. 159, 163.

MAIN. L. Fr. A hand. More commonly written "*meyn*."

—**Main-a-main.** Immediately. Kelham.

MAIN. Principal, chief, most important in size, extent, or utility.

MAIN CHANNEL. The main channel of a river is that bed over which the principal volume of water flows. See *St. Louis, etc., Packet Co. v. Keokuk & H. Bridge Co.* (C. C.) 31 Fed. 757; *Cessill v. State*, 40 Ark. 504; *Dunlieth & D. Bridge Co. v. Dubuque County*, 55 Iowa 558, 8 N. W. 443.

MAIN-RENT. Vassalage.

MAIN SEA. See *Sea*.

MAINAD. In old English law. A false oath; perjury. Cowell. Probably from Sax. "*man-ath*" or "*mainath*" a false or deceitful oath.

MAINE-PORT. A small tribute, commonly of loaves of bread, which in some places the parishioners paid to the rector in lieu of small tithes. Cowell.

MAINOUR. In criminal law. An article stolen, when found in the hands of the thief. A thief caught with the stolen goods in his possession is said to be taken "with the mainour," that is, with the property *in manu*, in his hands. 4 Bl. Comm. 307.

The word seems to have corresponded with the Saxon "*handhabend*," (*q. v.*) In modern law it has sometimes been written as an English word "manner," and the expression "taken in the manner" occurs in the books. Crabb, Eng. Law, 154.

MAINOVRE, or MAINCEUVRE. A trespass committed by hand. See 7 Rich. II, c. 4.

MAINPERNABLE. Capable of being bailed; bailable; admissible to bail on giving surety by mainpernors.

MAINPERNOR. In old practice. A surety for the appearance of a person under arrest, who is delivered out of custody into the hands of his bail. "Mainpernors" differ from "bail" in that a man's bail may imprison or surrender him up before the stipulated day of appearance; mainpernors can do neither, but are barely sureties for his appearance at the day. Bail are only sureties that the party be answerable for the special matter for which they stipulate; mainpernors are bound to produce him to answer all charges whatsoever. 3 Bl. Comm. 128. Other distinctions are made in the old books. See Cowell.

MAINPRISE. The delivery of a person into the custody of *mainpernors*, (*q. v.*) Also the name of a writ (now obsolete) commanding the sheriff to take the security of mainpernors and set the party at liberty.

MAINSWORN. Forsworn, by making false oath with *hand (main)* on book. Used in the north of England. Brownl. 4; Hob. 125.

MAINTAIN. To keep up, preserve, bear the cost of, keep unimpaired, keep in good order, repair. Huffman v. State Roads Commission of Maryland, 137 A. 358, 364, 152 Md. 566; Plimpton v. New York, N. H. & H. R. R. Co., 109 N. E. 732, 733, 221 Mass. 548; Chambers v. North River Line, 102 S. E. 198, 179 N. C. 199; Kitsock v. Chicago, B. & Q. R. Co. (Mo. App.) 226 S. W. 269, 271; Weiher v. Phillips, 133 N. E. 67, 68, 103 Ohio St. 249; St. Louis Southwestern Ry. Co. of Texas v. Davy Burnt Clay Ballast Co. (Tex. Civ. App.) 273 S. W. 630, 633.

To support; to supply with means of support; provide for; sustain. State v. Board of Trust of Vanderbilt University, 164 S. W. 1151, 1170, 129 Tenn. 279; State v. Tie-mann (Mo. App.) 253 S. W. 453.

To maintain an action or suit may mean to commence or institute it; the term imports

the existence of a cause of action. *Boutiller v. The Milwaukee*, 8 Minn. 105, (Gil. 80, 81). Maintain, however, is applied to actions already brought, but not yet reduced to judgment, *Bruenn v. North Yakima School Dist. No. 7, Yakima County*, 172 P. 569, 571, 101 Wash. 374; *Smallwood v. Gallardo*, 48 S. Ct. 23, 275 U. S. 56, 72 L. Ed. 152. In this connection it means to continue or preserve in or with; to carry on. In re *Charles Nelson Co.* (D. C.) 294 F. 926, 928; *Roullard v. Gray*, 175 P. 479, 480, 38 Cal. App. 79.

The words "maintains" and "maintaining" in statutes denouncing maintenance of a liquor nuisance denote continuous or recurrent acts approaching permanence. *Keeth v. State*, 193 Ind. 549, 139 N. E. 589, 590; *Webb v. U. S.* (C. C. A.) 14 F.(2d) 574, 576; *United States v. Dowling* (D. C.) 278 F. 630, 642.

"Maintain" means to keep up, to keep from change, to preserve, to hold or keep in any particular state or condition, though it is in some instances synonymous with "construct" when it must be inclusive thereof to make it reasonable or effective. *State v. Olympia Light & Power Co.*, 91 Wash. 519, 158 P. 85, 89, and the word as applied to bridges, fences, etc. includes rebuilding in case of destruction, *State v. Chicago, M. & St. P. Ry. Co.*, 164 Wis. 304, 159 N. W. 919, 921; *Ponsler v. Union Traction Co. of Indiana*, 76 Ind. App. 616, 132 N. E. 708, 709.

MAINTAINED. In pleading. A technical word indispensable in an indictment for maintenance. 1 Wils. 325.

MAINTAINOR. In criminal law. One that maintains or seconds a cause depending in suit between others, either by disbursing money or making friends for either party towards his help. *Blount*. One who is guilty of *maintenance* (*q. v.*)

MAINTENANCE. The upkeep, or preserving the condition of property to be operated. *San Francisco & P. S. S. Co. v. Scott* (D. C.) 253 F. 854; *Grand Rapids & I. Ry. Co. v. Doyle* (D. C.) 245 F. 792, 797; *Orleans Parish School Board v. Murphy*, 101 So. 268, 269, 156 La. 925.

Sustenance; support; assistance. The furnishing by one person to another, for his support, of the means of living, or food, clothing, shelter, etc., particularly where the legal relation of the parties is such that one is bound to support the other, as between father and child, or husband and wife. *Wall v. Williams*, 93 N. C. 330, 53 Am. Rep. 458; *Winthrop Co. v. Clinton*, 196 Pa. 472, 46 Atl. 435, 79 Am. St. Rep. 729; *Regina v. Grave-send*, 5 El. & Bl. 466; *State v. Beatty*, 61 Iowa 307, 16 N. W. 149; In re *Warren Insane Hospital*, 3 Pa. Dist. R. 223; *Moore v. McKenzie*, 92 A. 296, 297, 112 Me. 356.

"Maintenance" within rule entitling seaman to "maintenance" and cure if he falls sick or is wounded in service of ship includes food and lodging at expense of ship. *The Bouker No. 2* (C. C. A.) 241 F. 831, 835.

In Criminal Law

An unauthorized and officious interference in a suit in which the offender has no interest, to assist one of the parties to it, against the other, with money or advice to prosecute or defend the action. 1 Russ. Crimes, 254; Co. Litt. 368b; Hawk. P. C. 393; Wickham v. Conklin, 8 Johns. (N. Y.) 220.

Maintenance exists where one officiously intermeddles in a suit which in no way belongs to him. The term does not include all kinds of aid in the prosecution or defense of another's cause. It does not extend to persons having an interest in the thing in controversy, nor to persons of kin or affinity to either party, nor to counsel or attorneys, for their acts are not officious, nor unlawful. The distinction between "champerty" and "maintenance" is that maintenance is the promoting, or undertaking to promote, a suit by one who has no lawful cause to do so, and champerty is an agreement for a division of the thing in controversy, in the event of success, as a reward for the unlawful assistance. Bayard v. McLane, 3 Har. (Del.) 208.

In "maintenance" no personal profit is expected or stipulated, the motive being simply to aid a party, with money or otherwise, to prosecute or defend his suit; while in "champerty" there is a bargain by which the champertor is to carry on the suit at his own expense, and is to derive some profit out of the thing sued for, if he prevails. *Sampliner v. Motion Picture Patents Co.* (C. C. A.) 255 F. 242, 247; *Whisman v. Wells*, 206 Ky. 59, 266 S. W. 897, 899.

"Maintenance," at common law, signifies an unlawful taking in hand or upholding of quarrels or sides, to the disturbance or hindrance of common right. The maintaining of one side, in consideration of some bargain to have part of the thing in dispute, is called "champerty." Champerty, therefore, is a species of maintenance. *Richardson v. Rowland*, 40 Conn. 570.

And see also, *Gilman v. Jones*, 37 Ala. 691, 5 So. 785, 4 L. R. A. 113; *Brown v. Beauchamp*, 5 T. B. Mon. (Ky.) 413, 17 Am. Dec. 81; *Gowen v. Nowell*, 1 Me. 292; *Vaughan v. Marable*, 64 Ala. 66; *Thurston v. Percival*, 1 Pick. (Mass.) 415; *Hovey v. Hobson*, 51 Me. 62; *Quigley v. Thompson*, 53 Ind. 320.

MAIOR. An old form of "mayor."

MAIRE.

In Old Scotch Law

An officer to whom process was directed. Otherwise called "mair of fie" (fee), and classed with the "serjand." Skene.

In French Law

A mayor.

MAIRIE. In French law. The government building of each commune. It contains the record office of all civil acts and the list of voters; and it is there that political and municipal elections take place. Arg. Fr. Merc. Law, 566.

MAISON DE DIEU. Fr. A hospital; an almshouse; a monastery. St. 39 Eliz. c. 5. Literally, "house of God."

MAISTER. An old form of "master."

MAISURA. A house, mansion, or farm. Cowell.

MAÎTRE. Fr. In French maritime law. Master; the master or captain of a vessel. Ord. Mar. liv. 2, tit. 1, art. 1.

MAJESTAS. Lat. In Roman law. The majesty, sovereign authority, or supreme prerogative of the state or prince. Also a shorter form of the expression "*crimen majestatis*," or "*crimen læsæ majestatis*," an offense against sovereignty, or against the safety or organic life of the Roman people; *i. e.*, high treason.

MAJESTY. Royal dignity. A term used of kings and emperors as a title of honor.

MAJOR. A person of full age; one who is no longer a minor; one who has attained the management of his own concerns and the enjoyment of his civic rights.

In Military Law

The officer next in rank above a captain.

MAJOR ANNUS. The greater year; the bissextile year, consisting of 366 days. Bract. fol. 359b.

Major continet in se minus. The greater includes the less. 19 Vin. Abr. 379.

MAJOR GENERAL. In military law. An officer next in rank above a brigadier general, and next below a lieutenant general, and who usually commands a division or an army corps.

Major hæreditas venit unicuique nostrum a jure et legibus quam a parentibus. 2 Inst. 56. A greater inheritance comes to every one of us from right and the laws than from parents.

Major numerus in se continet minorem. Bract. fol. 16. The greater number contains in itself the less.

MAJORA REGALIA. The king's dignity, power, and royal prerogative, as opposed to his revenue, which is comprised in the *minora* regalia. 2 Steph. Comm. 475; 1 Bl. Comm. 240.

Majore pœna affectus quam legibus statuta est, non est infamis. One affected with a greater punishment than is provided by law is not infamous. 4 Inst. 66.

MAJORES.

In Roman Law and Genealogical Tables

The male ascendants beyond the sixth degree.

In Old English Law

Greater persons; persons of higher condition or estate.

Majori summæ minor inest. In the greater sum the less is included. 2 Kent, Comm. 618; Story, Ag. § 172.

MAJORITY. Full age; the age at which, by law, a person is entitled to the management of his own affairs and to the enjoyment of civic rights. The opposite of minority. Also the *status* of a person who is a major in age.

The greater number.

In the Law of Elections

Majority signifies the greater number of votes. When there are only two candidates, he who receives the greater number of the votes cast is said to have a majority; when there are more than two competitors for the same office, the person who receives the greatest number of votes has a *plurality*, but he has not a majority unless he receives a greater number of votes than those cast for all his competitors combined.

In Military Affairs

Majority denotes the rank and commission of a major.

MAJORITY OF QUALIFIED ELECTORS.

In special elections, this term generally means a majority of those voting, and not a majority of the persons entitled to vote. *People v. Edvander*, 136 N. E. 693, 695, 304 Ill. 400; *Harrison v. Barksdale*, 102 S. E. 789, 793, 127 Va. 180; *Williams v. City of Norman*, 205 P. 144, 150, 85 Okl. 230; *Bradshaw v. Marmon (Tex. Civ. App.)* 188 S.W. 973, 975; *In re Validation of East Bay Municipal Utility Dist. Water Bonds of 1925*, 239 P. 38, 46, 196 Cal. 725, but see *contra*, *Clayton v. Hill City*, 207 P. 770, 111 Kan. 595; *Williams v. County Com'rs and Board of Education of Polk County*, 97 S. E. 478, 479, 176 N. C. 554.

MAJORITY OF STOCKHOLDERS. A majority in interest of the stockholders, and not a majority in number only. *Bank of Los Banos v. Jordan*, 139 P. 691, 167 Cal. 327. "Majority of stockholders" means majority per capita when the right to vote is per capita, and a majority of stock when each share of stock is entitled to a vote, each particular case being determined by provisions of charter regulating voting. *Simon Borg & Co. v. New Orleans City R. Co. (D. C.)* 244 F. 617, 619.

Majus dignum trahit ad se minus dignum. The more worthy draws to itself the less worthy. *Co. Litt.* 43, 355*b*; *Bract. fol.* 175; *Noy, Max.* p. 6, max. 18.

Majus est delictum seipsum occidere quam alium. It is a greater crime to kill one's self than another. *Bart. Max.* 108. See *Suicide*.

MAJUS JUS. In old practice. Greater right or more right. A plea in the old real actions.

1 *Reeve, Eng. Law*, 476. *Majus jus merum*, more mere right. *Bract. fol.* 31.

A writ proceeding in some customary manners to try a right to land. *Cow*.

MAKE. To cause to exist; to form, fashion, or produce; to do, perform, or execute; as to make an issue, to make oath, to make a presentment.

To do in form of law; to perform with due formalities; to execute in legal form; as to make answer, to make a return or report. *Ex parte Lockhart*, 232 P. 183, 185, 72 Mont. 136.

To execute as one's act or obligation; to prepare and sign; to issue; to sign, execute, and deliver; as to make a conveyance, to make a note. *Heinbach v. Heinbach*, 202 S. W. 1123, 1130, 274 Mo. 301; *State v. O'Neil*, 135 P. 60, 63, 24 Idaho, 582; *Spaulding v. First Nat. Bank*, 205 N. Y. S. 492, 493, 210 App. Div. 216.

To conclude, determine upon, agree to, or execute; as to make a contract. *MacIntyre v. McLean*, 133 S. E. 471, 475, 162 Ga. 280; *Price v. Supreme Home of the Ancient Order of Pilgrims (Tex. Com. App.)* 285 S. W. 310, 312; *Tourtrott v. West Bangor & Hermon Mut. Fire Ins. Co.*, 136 A. 481, 482, 126 Me. 118.

To cause to happen by one's neglect or omission; as to make default.

To make acquisition of; to procure; to collect; as to make the money on an execution or to make a loan. *Fidelity Trust Co. v. Fowler (Tex. Civ. App.)* 217 S. W. 953, 954.

To have authority or influence; to support or sustain; as in the phrase, "This precedent makes for the plaintiff."

MAKE AN ASSIGNMENT. To transfer one's property to an assignee for the benefit of one's creditors.

MAKE AN AWARD. To form and publish a judgment on the facts. *Hoff v. Taylor*, 5 N. J. Law, 833.

MAKE A CONTRACT. To agree upon, and conclude or adopt, a contract. In case of a written contract, to reduce it to writing, execute it in due form, and deliver it as binding.

MAKE DEFAULT. To fail or be wanting in some legal duty; particularly to omit the entering of an appearance when duly summoned in an action at law or other judicial proceeding, to neglect to obey the command of a subpoena, etc.

MAKE ONE'S FAITH. A Scotch phrase, equivalent to the old English phrase, "to make one's law."

MAKER. One who makes, frames, or ordains; as a "law-maker." One who makes or executes; as the maker of a promissory note. See *Aud v. Magruder*, 10 Cal. 290; *Sawyers v. Campbell*, 107 Iowa, 397, 78 N. W. 56.

Accommodation Maker

See Accommodation.

MAKING LAW. In old practice. The formality of denying a plaintiff's charge under oath, in open court, with compurgators. One of the ancient methods of trial, frequently, though inaccurately, termed "waging law," or "wager of law." 3 Bl. Comm. 341.

MAL. A prefix meaning bad, wrong, fraudulent; as maladministration, malpractice, malversation, etc.

MAL GREE. L. Fr. Against the will; without the consent. Hence the single word "*malgre*," and more modern "*maugre*," (*q. v.*).

MAL-TOLTE. Fr. In old French law. A term said to have arisen from the usurious gains of the Jews and Lombards in their management of the public revenue. Steph. Lect. 372.

MALTÔTE. In French history, an oppressive tax levied in 1292 and later. Cassell's New Fr. Dict.

MALA. Lat. Bad; evil; wrongful.

MALA FIDES. Bad faith. The opposite of *bona fides* (*q. v.*). *Malâ fide*, in bad faith. *Malæ fidei possessor*, a possessor in bad faith. Mackeld. Rom. Law, § 297.

Mala grammatica non vitiat chartam. Sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est. Bad grammar does not vitiate a deed. But in the exposition of instruments, bad grammar, as far as it can be done, is to be avoided. 6 Coke, 39; Broom, Max. 686.

MALA IN SE. Wrongs in themselves; acts morally wrong; offenses against conscience. 1 Bl. Comm. 57, 58; 4 Bl. Comm. 8; Com. v. Adams, 114 Mass. 323, 19 Am. Rep. 362; Turner v. Merchants' Bank, 126 Ala. 397, 28 So. 469.

MALA PRAXIS. Malpractice; unskillful management or treatment. Particularly applied to the neglect or unskillful management of a physician, surgeon, or apothecary. 3 Bl. Comm. 122.

MALA PROHIBITA. Prohibited wrongs or offenses; acts which are made *offenses* by positive laws, and *prohibited* as such. 1 Bl. Comm. 57, 58; 4 Bl. Comm. 8.

MALADMINISTRATION. This term is used, in the law-books, interchangeably with *misadministration*, and both words mean "wrong administration." Minkler v. State, 14 Neb. 183, 15 N. W. 331.

MALANDRINUS. In old English law. A thief or pirate. Wals. 338.

MALARY. In Hindu law. Judicial; belonging to a judge or magistrate.

MALBERGE. A hill where the people assembled at a court, like the English assizes; which by the Scotch and Irish were called "parley hills." Du Cange.

MALCONNA. In Hindu law. A treasury or store-house.

MALE. Of the masculine sex; of the sex that begets young.

MALE CREDITUS. In old English law. Unfavorably thought of; in bad repute or credit. Bract. fols. 116, 154.

Maledicta est expositio quæ corrumpit textum. That is a cursed interpretation which corrupts the text. 4 Coke, 35a; Broom, Max. 622.

MALEDICTION. A curse, which was anciently annexed to donations of lands made to churches or religious houses, against those who should violate their rights. Cowell.

MALEFACTION. A crime; an offense.

MALEFACTOR. He who is guilty, or has been convicted, of some crime or offense.

Maleficia non debent remanere impunita; et impunitas continuum affectum tribuit delinquenti. 4 Coke, 45. Evil deeds ought not to remain unpunished; and impunity affords continual incitement to the delinquent.

Maleficia propositis distinguuntur. Jenk. Cent. 290. Evil deeds are distinguished from evil purposes, or *by* their purposes.

MALEFICIUM. In the civil law. Waste; damage; tort; injury. Dig. 5, 18, 1.

MALESON, or MALISON. A curse.

MALESWORN, or MALSWORN. Forsworn. Cowell.

MALFEASANCE. The wrongful or unjust doing of some act which the doer has no right to perform, or which he has stipulated by contract not to do. It differs from "misfeasance" and "non-feasance," (which titles see.) See 1 Chit. Pr. 9; 1 Chit. Pl. 134; Dudley v. Flemingsburg, 115 Ky. 5, 72 S. W. 327, 60 L. R. A. 575, 103 Am. St. Rep. 253; Coite v. Lynes, 33 Conn. 115; Bell v. Josselyn, 3 Gray (Mass.) 311, 63 Am. Dec. 741; Southern Ry. Co. v. Sewell, 18 Ga. App. 544, 90 S. E. 94, 96; Glisson v. Biggio, 141 La. 209, 74 So. 907, 909; Rising v. Ferris, 216 Ill. App. 252, 256.

MALFETRIA. In Spanish law. Offense. White, New Recop. b. 2, tit. 19, c. 1, § 1.

MALICE. The doing of a wrongful act intentionally, without just cause or excuse. Bromage v. Prosser, 4 Barn. & C. 255; Sorenson v. Chevrolet Motor Co., 171 Minn. 260, 214 N. W. 754, 755; Nunn v. Driehorg, 235 Mich. 383, 209 N. W. 89, 90; Nelson v. Nelson (C. C. A.) 296 F. 369, 375; Weaver v. Ficke, 174 Ky.

432, 192 S. W. 515, 516; *Webb v. Cooks', Waiters' and Waitresses' Union*, No. 748 (Tex. Civ. App.) 205 S. W. 465, 468; *Cottle v. Johnson*, 179 N. C. 426, 102 S. E. 769, 770.

A conscious violation of the law (or the prompting of the mind to commit it) which operates to the prejudice of another person. *Seaboard Air Line Ry. Co. v. Glenn*, 213 Ala. 284, 104 So. 548, 549.

"A condition of the mind which shows a heart regardless of social duty and fatally bent on mischief, the existence of which is inferred from acts committed or words spoken." *Harris v. State*, 8 Tex. App. 109; *State v. Naylor*, 5 Boyce (Del.) 99, 90 A. 880, 889; *John B. Stetson University v. Hunt*, 88 Fla. 510, 102 So. 637, 639.

Malice in the law of murder, means that condition of mind which prompts one to take the life of another without just cause or provocation. *State v. Smith*, 26 N. M. 482, 194 P. 869, 870; *State v. Moynihan*, 93 N. J. Law, 253, 106 A. 817, 818; *Caudle v. State*, 7 Ga. App. 848(1), 68 S. E. 343; *State v. Young*, 314 Mo. 612, 286 S. W. 29, 34.

"Malice," in its common acceptation, means ill will towards some person. In its legal sense, it applies to a wrongful act done intentionally, without legal justification or excuse. *Dunn v. Hall*, 1 Ind. 344.

A man may do an act willfully, and yet be free of malice. But he cannot do an act maliciously without at the same time doing it willfully. The malicious doing of an act includes the willful doing of it. Malice includes intent and will. *State v. Robbins*, 66 Me. 328.

For other definitions see *Shannon v. Jones*, 76 Tex. 141, 13 S. W. 477; *Williams v. Williams*, 20 Colo. 51, 37 P. 614; *Smith v. Railroad Co.*, 87 Md. 48, 38 A. 1072; *In re Freche* (D. C.) 109 F. 621; *Craft v. State*, 3 Kan. 486; *Lewis v. Chapman*, 16 N. Y. 369; *State v. Avery*, 113 Mo. 475, 21 S. W. 193; *State v. Witt*, 34 Kan. 488, 8 P. 769; *State v. Walker*, 9 Houst. (Del.) 464, 33 A. 227; *Cotton v. State*, 32 Tex. 614; *Com. v. Chance*, 174 Mass. 245, 54 N. E. 551, 75 Am. St. Rep. 306.

In the Law of Libel and Slander

As to privileged communications "malice" involves an evil intent or motive arising from spite or ill will; personal hatred or ill will; or culpable recklessness or a willful and wanton disregard of the rights and interests of the person defamed. *McDonald v. Brown*, 23 R. I. 546, 51 A. 213, 58 L. R. A. 768, 91 Am. St. Rep. 659; *Hearne v. De Young*, 132 Cal. 357, 64 P. 576; *Cherry v. Des Moines Leader*, 114 Iowa, 298, 86 N. W. 323, 54 L. R. A. 855, 89 Am. St. Rep. 365; *Minter v. Bradstreet Co.*, 174 Mo. 444, 73 S. W. 668; *Pecue v. West*, 233 N. Y. 316, 135 N. E. 515, 517; *Houston Chronicle Pub. Co. v. Bowen* (Tex. Civ. App.) 132 S. W. 61, 64; *Peterson v. Cleaver*, 105 Neb. 438, 181 N. W. 187, 189, 15 A. L. R. 447.

In General

—**Actual malice.** Express malice, or malice in fact. *Gee v. Culver*, 13 Or. 598, 11 P. 302; *Eteenpain Co-op. Soc. v. Lillback* (C. C. A.) 18 F.(2d) 912, 917; *Bresslin v. Star Co.*, 166 App. Div. 89, 151 N. Y. S. 660; *Swain v. Oakey*, 190 N. C. 113, 129 S. E. 151, 152.

—**Constructive malice.** Implied malice; malice inferred from acts; malice imputed by law; malice which is not shown by direct proof of an intention to do injury, (express malice,) but which is inferentially established by the necessarily injurious results of the acts shown to have been committed. *State v. Harrigan*, 9 Houst. (Del.) 369, 31 Atl. 1052; *Hogan v. State*, 36 Wis. 238; *Caldwell v. Raymond*, 2 Abb. Prac. (N. Y.) 196.

—**Express malice.** Actual malice; malice in fact; ill will or wrongful motive; a deliberate intention to commit an injury, evidenced by external circumstances. *Sparf v. U. S.*, 156 U. S. 51, 15 Sup. Ct. 273, 39 L. Ed. 343; *Farrer v. State*, 42 Tex. 271; *Singleton v. State*, 1 Tex. App. 507; *Jones v. State*, 29 Ga. 594; *Wynne v. Parsons*, 57 Conn. 73, 17 Atl. 362; *Howard v. Sexton*, 4 N. Y. 161; *Herbener v. Crossan*, 4 Pennewill (Del.) 38, 55 Atl. 224; *Weir v. McEwan*, 94 N. J. Law, 92, 109 A. 355, 356; *People v. Scalisi*, 324 Ill. 131, 154 N. E. 715, 722.

—**General malice.** General malice is wickedness, a disposition to do wrong, a "black and diabolical heart, regardless of social duty and fatally bent on mischief." *Neal v. Nelson*, 117 N. C. 393, 23 S. E. 428, 53 Am. St. Rep. 590; *Brooks v. Jones*, 33 N. C. 260.

—**Implied malice.** Malice inferred by legal reasoning and necessary deduction from the *res gesta* or the conduct of the party. Malice inferred from any deliberate cruel act committed by one person against another, however sudden. *Whart. Hom.* 38. What is called "general malice" is often thus inferred. *Sparf v. U. S.*, 156 U. S. 51, 15 Sup. Ct. 273, 39 L. Ed. 343; *Hotema v. U. S.*, 186 U. S. 413, 22 Sup. Ct. 895, 46 L. Ed. 1225; *Darry v. People*, 10 N. Y. 120; *State v. Mason*, 54 S. C. 240, 32 S. E. 357; *State v. Neal*, 37 Me. 469; *State v. Harrigan*, 9 Houst. (Del.) 369, 31 Atl. 1052; *Gusman v. State*, 72 Tex. Cr. R. 258, 171 S. W. 770, 775.

—**Legal malice.** An expression used as the equivalent of "constructive malice," or "malice in law." *Humphries v. Parker*, 52 Me. 502.

—**Malice aforethought.** In the definition of "murder," malice aforethought exists where the person doing the act which causes death has an intention to cause death or grievous bodily harm to any person, (whether the person is actually killed or not) or to commit any felony whatever, or has the knowledge that the act will probably cause the death of

or grievous bodily harm to some person, although he does not desire it, or even wishes that it may not be caused. Steph. Crim. Dig. 144; 1 Russ. Crimes, 641. The words "malice aforethought" long ago acquired in law a settled meaning, somewhat different from the popular one. In their legal sense they do not import an actual intention to kill the deceased. The idea is not spite or malevolence to the deceased in particular, but evil design in general, the dictate of a wicked, depraved, and malignant heart; not premeditated personal hatred or revenge towards the person killed, but that kind of unlawful purpose which, if persevered in, must produce mischief. *State v. Pike*, 49 N. H. 399, 6 Am. Rep. 533. And see *Thiede v. Utah*, 159 U. S. 510, 16 Sup. Ct. 62, 40 L. Ed. 237; *State v. Fiske*, 63 Conn. 388, 28 Atl. 572; *Nye v. People*, 35 Mich. 19; *People v. Borgetto*, 99 Mich. 336, 58 N. W. 328; *Darry v. People*, 10 N. Y. 120; *Allen v. U. S.* 164 U. S. 492, 17 Sup. Ct. 154, 41 L. Ed. 528; *Kota v. People*, 136 Ill. 655, 27 N. E. 53; *Hogan v. State*, 36 Wis. 242; *People v. Watts*, 198 Cal. 776, 247 P. 884, 893; *Huddleston v. State*, 134 Miss. 382, 98 So. 839, 841; *Hall v. Commonwealth*, 207 Ky. 718, 270 S. W. 5, 9.

—**Malice in fact.** Express or actual malice. *Railway Co. v. Behee*, 2 Tex. Civ. App. 107, 21 S. W. 384; *Hotchkiss v. Porter*, 30 Conn. 414.

—**Malice in law.** Implied, inferred, or legal malice. See *Smith v. Rodecap*, 5 Ind. App. 78, 31 N. E. 479; *Bacon v. Railroad Co.*, 66 Mich. 166, 33 N. W. 181.

—**Malice prepense.** Malice aforethought; deliberate, predetermined malice. 2 Rolle, 461.

—**Particular malice.** Malice directed against a particular individual; ill will; a grudge; a desire to be revenged on a particular person. *Brooks v. Jones*, 33 N. C. 261; *State v. Long*, 117 N. C. 791, 23 S. E. 431.

—**Preconceived malice.** Malice prepense or aforethought. See *State v. Reidell*, 9 Houst. (Del.) 470, 14 Atl. 550.

—**Premeditated malice.** An intention to kill unlawfully, deliberately formed in the mind as the result of a determination meditated upon and fixed before the act. *State v. Gin Pon*, 16 Wash. 425, 47 Pac. 961; *Milton v. State*, 6 Neb. 143; *State v. Rutten*, 13 Wash. 211, 43 Pac. 30.

—**Special malice.** Particular or personal malice; that is, hatred, ill will, or a vindictive disposition against a particular individual.

—**Universal malice.** By this term is not meant a malicious purpose to take the life of all persons, but it is that depravity of the human heart which determines to take life upon slight or insufficient provocation, without

knowing or caring who may be the victim. *Mitchell v. State*, 60 Ala. 30.

MALICIOUS. Evincing malice; done with malice and an evil design; willful.

MALICIOUS ABANDONMENT. In criminal law. The desertion of a wife or husband without just cause.

MALICIOUS ABUSE OF PROCESS. The willful misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ; the malicious perversion of a regularly issued process, whereby a result not lawfully or properly obtained on a writ is secured; not including cases where the process was procured maliciously but not abused or misused after its issuance. *Bartlett v. Christhilf*, 69 Md. 219, 14 Atl. 521; *Mayer v. Walter*, 64 Pa. 283; *Humphreys v. Sutcliffe*, 192 Pa. 336, 43 Atl. 954, 73 Am. St. Rep. 819; *Kline v. Hibbard*, 80 Hun, 50, 29 N. Y. Supp. 807; *Kashdan v. Wilker Realty Co.*, 197 App. Div. 659, 189 N. Y. S. 138, 139; *King v. Yarbray*, 136 Ga. 212 (1), 71 S. E. 131.

MALICIOUS ACCUSATION. Procuring accusation or prosecution of another from improper motive and without probable cause. *McKenzie v. State*, 113 Neb. 576, 204 N. W. 60, 63.

MALICIOUS ACT. A wrongful act intentionally done without legal justification or excuse; an unlawful act done wilfully or purposely to injure another. *Bowers v. State*, 24 Tex. App. 542, 7 S. W. 247, 5 Am. St. Rep. 901; *Payne v. Western & A. R. Co.*, 13 Lea (Tenn.) 526, 49 Am. Rep. 666; *Brandt v. Morning Journal Ass'n*, 81 App. Div. 183, 80 N. Y. Supp. 1002; *Tucker v. Bartlett*, 97 Kan. 163, 155 P. 1, 2; *Hutton v. Watters*, 132 Tenn. 527, 179 S. W. 134, 135, L. R. A. 1916B, 1238, Ann. Cas. 1916C, 433; *Harris v. Rich*, 104 Okl. 120, 229 P. 1080, 1082.

MALICIOUS ARREST. An arrest made willfully and without probable cause, but in the course of a regular proceeding.

MALICIOUS INJURY. An injury committed against a person at the prompting of malice or hatred towards him, or done spitefully or wantonly. *State v. Huegin*, 110 Wis. 189, 85 N. W. 1046, 62 L. R. A. 700; *Wing v. Wing*, 66 Me. 62, 22 Am. Rep. 548.

The willful doing of an act with knowledge it is liable to injure another and regardless of consequences. In re *Kalk* (D. C.) 270 F. 627, 629.

MALICIOUS MISCHIEF. A term applied to the willful destruction of personal property, from actual ill will or resentment towards its owner or possessor. *People v. Petheram*, 64 Mich. 252, 31 N. W. 188; *First Nat. Bank v. Burkett*, 101 Ill. 394, 40 Am. Rep. 209; *State v. Robinson*, 20 N. C. 130, 32 Am. Dec. 661;

Thomas v. State, 30 Ark. 435; State v. Waltz, 158 Iowa, 191, 139 N. W. 458, 459. Malicious mischief or damage is a species of injury to private property, which the law considers as a public crime. This is such as is done, not *animo furandi*, or with an intent of gaining by another's loss, but either out of a spirit of wanton cruelty or wicked revenge. In this latter light it bears a near relation to the crime of arson, for, as that affects the habitation, so does this the property, of individuals; and therefore any damage arising from this mischievous disposition, though only a trespass at the common law, is now, by several statutes, made severely penal. Jacob.

MALICIOUS PROSECUTION. A judicial proceeding regularly instituted against a person out of the prosecutor's malice and ill will, with the intention of injuring him and without probable cause which terminates in favor of the person prosecuted. For this injury an action on the case lies, called the "action of malicious prosecution." *Hicks v. Brantley, 102 Ga. 264, 29 S. E. 459; Eggett v. Allen, 119 Wis. 625, 96 N. W. 803; Harpham v. Whitney, 77 Ill. 38; Lauzon v. Charroux, 18 R. I. 467, 28 Atl. 975; Frisbie v. Morris, 75 Conn. 637, 55 Atl. 9; Wilson v. Lapham, 196 Iowa, 745, 195 N. W. 235, 237; Thomas v. Bush, 200 Mich. 224, 166 N. W. 894, 895; Finney v. Zingale, 82 W. Va. 422, 95 S. E. 1046, 1047, L. R. A. 1918F, 1130; Graziani v. Ernst, 169 Ky. 751, 185 S. W. 99, 100.*

MALICIOUS TRESPASS. The act of one who maliciously or mischievously injures or causes to be injured any property of another or any public property. *State v. McKee, 109 Ind. 497, 10 N. E. 405; Hannel v. State, 4 Ind. App. 485, 30 N. E. 1118.*

MALICIOUS USE OF PROCESS. "Malicious use of process" occurs where plaintiff employs court's process to execute object which law intends process to subserve, but proceeds maliciously and without probable cause. *Robinson v. Commercial Credit Co., 37 Ga. App. 291, 139 S. E. 915, 916.*

MALIGNARE. To malign or slander; also to maim.

MALINGER. To feign sickness or any physical disablement or mental lapse or derangement, especially for the purpose of escaping the performance of a task, duty, or work.

MALITIA. Lat. Actual evil design; express malice.

Malitia est acida; est mali animi affectus. Malice is sour; it is the quality of a bad mind. 2 Bulst. 49.

MALITIA PRÆCOGITATA. Malice aforethought.

Malitia supplet ætatem. Malice supplies [the want of] age. *Dyer, 104b; Broom Max. 316.*

Malitia hominum est obviandum. The wicked or malicious designs of men must be thwarted. 4 Coke, 15b.

MALLEABLE. Capable of being drawn out and extended by beating; capable of extension by hammering; reducible to laminated form by beating. *Farris v. Magone (C. C.) 46 F. 845.*

MALLUM. In old European law. A court of the higher kind in which the more important business of the county was dispatched by the count or earl. Spelman. A public national assembly.

MALO ANIMO. Lat. With an evil mind; with a bad purpose or wrongful intention; with malice.

MALO GRATO; Lat. In spite; unwillingly.

MALO SENSU. Lat. In an evil sense or meaning; with an evil signification.

MALPRACTICE. Any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice, or illegal or immoral conduct. *Gregory v. McInnis, 140 S. C. 52, 134 S. E. 527, 529.* As applied to physicians and surgeons, this term means, generally, professional misconduct towards a patient which is considered reprehensible either because immoral in itself or because contrary to law or expressly forbidden by law.

In a more specific sense, it means bad, wrong, or injudicious treatment of a patient, professionally and in respect to the particular disease or injury, resulting in injury, unnecessary suffering, or death to the patient, and proceeding from ignorance, carelessness, want of proper professional skill, disregard of established rules or principles, neglect, or a malicious or criminal intent. See *Rodgers v. Kline, 56 Miss. 816, 31 Am. Rep. 389; Tucker v. Gillette, 22 Ohio Cir. Ct. R. 669; Abbott v. Mayfield, 8 Kan. App. 387, 56 P. 327; Hibbard v. Thompson, 109 Mass. 288; Napier v. Greenzweig (C. C. A.) 256 F. 196, 197.*

The term is occasionally applied to lawyers, and then means generally any evil practice in a professional capacity, but rather with reference to the court and its practice and process than to the client. See *In re Baum, 55 Hun, 611, 8 N. Y. S. 771; In re Silkman, 88 App. Div. 102, 84 N. Y. S. 1025; Cowley v. O'Connell, 174 Mass. 253, 54 N. E. 558; In re Smith, 84 N. J. Eq. 252, 94 A. 39, 42.*

MALT. A substance produced from barley or other grain by a process of steeping in water until germination begins and then drying in a kiln, thus converting the starch into saccharine matter. See *Hollender v. Magone (C. C.) 38 F. 915; U. S. v. Cohn, 2 Ind. T. 474, 52 S. W. 38.*

MALT LIQUOR. A general term including all alcoholic beverages prepared essentially by

the fermentation of an infusion of malt (as distinguished from such liquors as are produced by the process of distillation), and particularly such beverages as are made from malt and hops, like beer, ale, and porter. See *Allred v. State*, 89 Ala. 112, 8 So. 56; *State v. Gill*, 89 Minn. 502, 95 N. W. 449; U. S. v. *Ducournau* (C. C.) 54 F. 138; *State v. Stapp*, 29 Iowa, 552; *Sarlls v. U. S.*, 152 U. S. 570, 14 S. Ct. 720, 38 L. Ed. 556; *Logi v. State*, 153 Ark. 317, 240 S. W. 400, 401; *Claunch v. State*, 82 Tex. Cr. 355, 199 S. W. 483, 484.

MALT MULNA. A quern or malt-mill.

MALT-SHOT, or MALT-SCOT. A certain payment for making malt. *Sommer*.

MALT-TAX. An excise duty upon malt in England. 1 Bl. Comm. 313; 2 Steph. Comm. 581.

MALTREATMENT. In reference to the treatment of his patient by a surgeon, this term signifies improper or unskillful treatment; it may result either from ignorance, neglect, or willfulness; but the word does not necessarily imply that the conduct of the surgeon, in his treatment of the patient, is either willfully or grossly careless. *Com. v. Hackett*, 2 Allen (Mass.) 142.

MALUM, n. Lat. In Roman law. A mast; the mast of a ship. Dig. 50, 17, 242, pr. Held to be part of the ship. *Id.*

MALUM, adj. Lat. Wrong; evil; wicked; reprehensible.

MALUM IN SE. A wrong in itself; an act or case involving illegality from the very nature of the transaction, upon principles of natural, moral, and public law. *Story, Ag. § 346*; *State v. Trent*, 122 Or. 444, 259 P. 893, 898. An act is said to be *malum in se* when it is inherently and essentially evil, that is, immoral in its nature and injurious in its consequences, without any regard to the fact of its being noticed or punished by the law of the state. Such are most or all of the offenses cognizable at common law, (without the denouncement of a statute;) as murder, larceny, etc.

Malum non habet efficientem, sed deficientem, causam. 3 Inst. Proem. Evil has not an efficient, but a deficient, cause.

Malum non præsuntur. Wickedness is not presumed. *Branch, Princ.*; 4 *Coke*, 72a.

MALUM PROHIBITUM. A wrong prohibited; a thing which is wrong *because* prohibited; an act which is not inherently immoral, but becomes so because its commission is expressly forbidden by positive law; an act involving an illegality resulting from positive law. Contrasted with *malum in se*. *Story, Ag. § 346*; *People v. Pavlic*, 227 Mich. 562, 199 N. W. 373, 374, 35 A. L. R. 741.

Malum quo communius eo pejus. The more common an evil is, the worse it is. *Branch, Princ.*

Malus usus abolendus est. A bad or invalid custom is [ought] to be abolished. *Litt. § 212*; *Co. Litt. 141*; 1 Bl. Comm. 76; *Broom, Max.* 921.

MALVEILLES. In old English law. Ill will; crimes and misdemeanors; malicious practices. *Cowell*.

MALVEIS PROCURORS. L. Fr. Such as used to pack juries, by the nomination of either party in a cause, or other practice. *Cowell*.

MALVEISA. A warlike engine to batter and beat down walls.

MALVERSATION. In French law. This word is applied to all grave and punishable faults committed in the exercise of a charge or commission, (office,) such as corruption, extortion, concussion, larceny. *Merl. Répert.*

MAN. A human being. A person of the male sex. A male of the human species above the age of puberty.

In its most extended sense the term includes not only the adult male sex of the human species, but women and children.

In Feudal Law

A vassal; a tenant or feudatory. The Anglo-Saxon relation of *lord and man* was originally purely personal, and founded on mutual contract. 1 *Spence*, Ch. 37.

MAN OF STRAW. See *Men of Straw*.

MANACLES. Chain for the hands; shackles.

MANAGE. To conduct; to carry on; to have under control; to administer; to direct the concerns of a business or establishment. Generally applied to affairs that are somewhat complicated and that involve skill and judgment. *Com. v. Johnson*, 144 Pa. 377, 22 A. 703; *Roberts v. State*, 26 Fla. 360, 7 So. 861; *Ure v. Ure*, 185 Ill. 216, 56 N. E. 1087; *Youngworth v. Jewell*, 15 Nev. 48; *Watson v. Cleveland*, 21 Conn. 541; *The Silvia*, 171 U. S. 462, 19 S. Ct. 7, 43 L. Ed. 241; *City of Newburgh v. Dickey*, 164 App. Div. 791, 150 N. Y. S. 175, 177; *Neilson v. Alberty*, 36 Okl. 490, 129 P. 847, 849.

MANAGEMENT. Control, discretionary power of direction; *J. T. Camp Transfer Co. v. Davenport*, 74 So. 156, 159, 15 Ala. App. 507; *Browne v. City of New York*, 210 N. Y. S. 786, 795, 125 Misc. 1.

"Management" of an estate necessarily implies the power to invest the income and collections, and to "manage" money means to employ or invest it, *Keyes v. Metropolitan Trust Co. of City of New York*, 115 N. E. 455, 456, 220 N. Y. 237; while word "management" as applied to a vessel includes control during

voyage of everything with which vessel is equipped to protect her and her cargo against inroad of the seas, *Jay Wai Nam v. Anglo-American Oil Co.* (C. C. A.) 202 F. 822, 827.

MANAGER. A person chosen or appointed to manage, direct, or administer the affairs of another person or of a corporation or company. *Com. v. Johnson*, 144 Pa. 377, 22 A. 703; *Oro Min. & Mill. Co. v. Kaiser*, 4 Colo. App. 219, 35 P. 677; *Saunders v. United States Marble Co.*, 65 P. 782, 25 Wash. 475; *Robinson v. Moark-Nemo Consol. Mining Co.*, 178 Mo. App. 531, 163 S. W. 885, 887; *Kelly v. Newark Shoe Stores Co.*, 190 N. C. 406, 130 S. E. 32, 34; *Sullivan v. Evans-Morris-Whitney Co.*, 54 Utah, 293, 180 P. 435, 438. Also one of the persons appointed on the part of the house of representatives to prosecute impeachments before the senate.

MANAGERS OF A CONFERENCE. Members of the houses of parliament appointed to represent each house at a conference between the two houses. It is an ancient rule that the number of commons named for a conference should be double those of the lords. *May, Parl. Pr. c. 16.*

MANAGING AGENT. See Agent.

MANAGING OWNER OF SHIP. The managing owner of a ship is one of several co-owners, to whom the others, or those of them who join in the adventure, have delegated the management of the ship. He has authority to do all things usual and necessary in the management of the ship and the delivery of the cargo, to enable her to prosecute her voyage and earn freight, with the right to appoint an agent for the purpose. 6 Q. B. Div. 93; *Sweet.*

MANAGIUM. A mansion-house or dwelling-place. *Cowell.*

MANAS MEDIÆ. Men of a mean condition, or of the lowest degree.

MANBOTE. In Saxon law. A compensation or recompense for homicide, particularly due to the lord for killing his man or vassal, the amount of which was regulated by that of the *were*.

MANCA, MANCUS, or MANCUSA. A square piece of gold coin, commonly valued at thirty pence. *Cowell.*

MANCEPS. Lat. In Roman law. A purchaser; one who took the article sold in his hand; a formality observed in certain sales. *Calvin.* A farmer of the public taxes.

MANCHE-PRESENT. A bribe; a present from the donor's own hand.

MANCIPARE. Lat. In Roman law. To sell, alienate, or make over to another; to sell with certain formalities; to sell a person;

one of the forms observed in the process of emancipation.

MANCIPATE. To enslave; to bind; to tie.

MANCIPIATIO. Lat. In Roman law. A certain ceremony or formal process anciently required to be performed, to perfect the sale or conveyance of *res Mancipi*, (land, houses, slaves, horses, or cattle.) The parties were present, (vendor and vendee,) with five witnesses and a person called "*libripens*," who held a balance or scales. A set form of words was repeated on either side, indicative of transfer of ownership, and certain prescribed gestures made, and the vendee then struck the scales with a piece of copper, thereby symbolizing the payment, or weighing out, of the stipulated price.

The ceremony of *mancipatio* was used, in later times, in one of the forms of making a will. The testator acted as vendor, and the heir (or *familia emptor*) as purchaser, the latter symbolically *buying* the whole estate or succession, of the former. The ceremony was also used by a father in making a fictitious sale of his son, which sale, when three times repeated, effectuated the emancipation of the son.

MANCIPI RES. Lat. In Roman law. Certain classes of things which could not be alienated or transferred except by means of a certain formal ceremony of conveyance called "*mancipatio*," (*q. v.*) These included land, houses, slaves, horses, and cattle. All other things were called "*res nec Mancipi*." The distinction was abolished by Justinian. The distinction corresponded as nearly as may be to the early distinction of English law into real and personal property; *res Mancipi* being objects of a military or agricultural character, and *res nec Mancipi* being all other subjects of property. Like personal estate, *res nec Mancipi* were not originally either valuable *in se* or valued. *Brown.*

MANCIPIUM. Lat. In Roman law. The momentary condition in which a *filius*, etc., might be when in course of emancipation from the *potestas*, and before that emancipation was absolutely complete. The condition was not like the *dominica potestas* over slaves, but slaves are frequently called "*mancipia*" in the non-legal Roman authors. *Brown.*

To form a clear conception of the true import of the word in the Roman jurisprudence, it is necessary to advert to the four distinct powers which were exercised by the *pater familias*, viz.: the *manus*, or martial power; the *mancipium*, resulting from the *mancipatio*, or *alienatio per æs et libram*, of a freeman; the *dominica potestas*, the power of the master over his slaves, and the *patria potestas*, the paternal power. When the *pater familias* sold his son, *venum dare, mancipare*, the paternal power was succeeded by the *mancipium*, or the power acquired by the purchaser over the person whom he held in *mancipio*, and whose condition was assimilated to that of a slave. What is most re-

markable is, that on the emancipation from the *mancipium* he fell back into the paternal power, which was not entirely exhausted until he had been sold three times by the *pater familias*. *Si pater filium ter venum dat, filius a patre liber esto*. Gaius speaks of the *mancipatio* as *imaginary quaedam venditio*, because in his times it was only resorted to for the purpose of adoption or emancipation. See 1 Ortolan 112; Morey, Rom. L. 23, 32; Sohm, Inst. R. L. 124, 390.

MANCIPLE. A clerk of the kitchen, or caterer, especially in colleges. Cowell.

MANCOMUNAL. In Spanish law. An obligation in said to be *mancomunal* when one person assumes the contract or debt of another, and makes himself liable to pay or fulfill it. Schm. Civil Law, 120.

MANDAMIENTO. In Spanish law. Commission; authority or power of attorney. A contract of good faith, by which one person commits to the gratuitous charge of another his affairs, and the latter accepts the charge. White, New Recop. b. 2, tit. 12, c. 1.

MANDAMUS. Lat. We command. This is the name of a writ (formerly a high prerogative writ) which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived. See Lahiff v. St. Joseph, etc., Soc., 76 Conn. 648, 57 A. 692, 65 L. R. A. 92, 100 Am. St. Rep. 1012; Milster v. Spartanburg, 68 S. C. 243, 47 S. E. 141; State v. Carpenter, 51 Ohio St. 83, 37 N. E. 261, 46 Am. St. Rep. 556; Chicago & N. W. R. Co. v. Crane, 113 U. S. 424, 5 Sup. Ct. 578, 28 L. Ed. 1064; Arnold v. Kennebec County, 93 Me. 117, 44 A. 364; Placard v. State, 148 Ind. 305, 47 N. E. 623; Atlanta v. Wright, 119 Ga. 207, 45 S. E. 994; State v. Lewis, 76 Mo. 370; Ex parte Crane, 5 Pet. 190, 8 L. Ed. 92; Marbury v. Madison, 1 Cranch, 158, 2 L. Ed. 60; U. S. v. Butterworth, 169 U. S. 600, 18 Sup. Ct. 441, 42 L. Ed. 873; Bernert v. Multnomah Lumber & Box Co., 247 P. 155, 157, 119 Or. 44.

The action of *mandamus* is one, brought in a court of competent jurisdiction, to obtain an order of such court commanding an inferior tribunal, board, corporation, or person to do or not to do an act the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station. Where discretion is left to the inferior tribunal or person, the *mandamus* can only compel it to act, but cannot control such discretion. Rev. Code Iowa, 1880, § 3373 (Code 1931, § 12440).

A writ of *mandamus* is a summary writ issuing from the proper court, commanding the official board to whom it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed. Chi-

cago, R. I. & G. Ry. Co. v. State (Tex. Civ. App.) 241 S. W. 255, 258.

Classification

The writ of *mandamus* is either *peremptory* or *alternative*, according as it requires the defendant absolutely to obey its behest, or gives him an opportunity to show cause to the contrary. It is the usual practice to issue the alternative writ first. This commands the defendant to do the particular act, or else to appear and show cause against it at a day named. If he neglects to obey the writ, and either makes default in his appearance or fails to show good cause against the application, the peremptory *mandamus* issues, which commands him absolutely and without qualification to do the act.

MANDANS. Lat. In the civil law. The employing party in a contract of mandate. One who gives a thing in charge to another; one who requires, requests, or employs another to do some act for him. Inst. 3, 27, 1, et seq.

MANDANT. In French and Scotch law. The employing party in the contract of *mandatum*, or mandate. Story, Bailm. § 138.

Mandata licita recipiunt strictam interpretationem, sed illicita latam ex extensam. Lawful commands receive a strict interpretation, but unlawful commands a broad and extended one. Bac. Max. reg. 16.

MANDATAIRE. Fr. In French law. A person employed by another to do some act for him; a mandatary.

Mandatarius terminos sibi positos transgredi non potest. A mandatary cannot exceed the limits assigned him. Jenk. Cent. 53.

MANDATARY. He to whom a mandate, charge, or commandment is given; also, he that obtains a benefice by *mandamus*. Briggs v. Spaulding, 141 U. S. 132, 11 Sup. Ct. 924, 35 L. Ed. 662.

MANDATE.

In Practice

A judicial command or precept proceeding from a court or judicial officer, directing the proper officer to enforce a judgment, sentence, or decree. Seaman v. Clarke, 60 App. Div. 416, 69 N. Y. Supp. 1002; Horton v. State, 63 Neb. 34, 88 N. W. 146.

In the practice of the supreme court of the United States, the mandate is a precept or order issued upon the decision of an appeal or writ of error, directing the action to be taken, or disposition to be made of the case, by the inferior court. Egbert v. St. Louis & S. F. R. Co., 151 P. 228, 230, 50 Okl. 623; State v. Casey, 217 P. 632, 633, 108 Or. 386; Fisher v. Burks, 120 N. E. 768, 769, 285 Ill. 290.

In some of the state jurisdictions, the name "mandate" has been substituted for "*mandamus*" as the formal title of that writ. *Chrisman v. Superior Court* in and for Fresno County, 219 P. 85, 86, 63 Cal. App. 477; *State v. Debaun*, 198 Ind. 661, 154 N. E. 492, 494; *Davies v. Board of Com'rs of Nez Perce County*, 143 P. 945, 946, 26 Idaho, 450.

In Contracts

A bailment of property in regard to which the bailee engages to do some act without reward. *Story, Bailm.* § 137; *Maddock v. Riggs*, 190 P. 12, 16, 106 Kan. 808, 12 A. L. R. 216.

A mandate is a contract by which a lawful business is committed to the management of another, and by him undertaken to be performed gratuitously. The mandatary is bound to the exercise of slight diligence, and is responsible for gross neglect. The fact that the mandator derives no benefit from the acts of the mandatary is not of itself evidence of gross negligence. *Richardson v. Futrell*, 42 Miss. 525; *Williams v. Conger*, 8 S. Ct. 933, 125 U. S. 397, 31 L. Ed. 778. A mandate, procuration, or letter of attorney is an act by which one person gives power to another to transact for him and in his name one or several affairs. The mandate may take place in five different manners,—for the interest of the person granting it only; for the joint interest of both parties; for the interest of a third person; for the interest of a third person and that of the party granting it; and, finally, for the interest of the mandatary and a third person. *Civ. Code La. arts.* 2985, 2986.

Mandates and deposits closely resemble each other; the distinction being that in mandates the care and service are the principal, and the custody the accessory, while in deposits the custody is the principal thing, and the care and service are merely accessory. *Story, Bailm.* § 140.

The word may also denote a request or direction. Thus, a check is a *mandate* by the drawer to his banker to pay the amount to the transferee or holder of the check. 1 Q. B. Div. 33.

In the Civil Law

The instructions which the emperor addressed to a public functionary, and which were rules for his conduct. These mandates resembled those of the proconsuls, the *mandata jurisdictionis*, and were ordinarily binding on the legates or lieutenants of the emperor in the imperial provinces and there they had the authority of the principal edicts. *Sav. Dr. Rom. c. 3, § 24, no. 4.*

MANDATO. In Spanish law. The contract of mandate. *Escruche.*

MANDATO, PANES DE. Loaves of bread given to the poor upon Maundy Thursday.

MANDATOR. The person employing another to perform a mandate.

MANDATORY, adj. Containing a command; preceptive; imperative; peremptory. A provision in a statute is *mandatory* when disobedience to it will make the act done un-

der the statute absolutely void; if the provision is such that disregard of it will constitute an irregularity, but one not necessarily fatal, it is said to be *directory*. So, the mandatory part of a writ is that which commands the person to do the act specified. *State v. Barnell*, 142 N. E. 611, 613, 109 Ohio St. 246; *Williams v. Sherwood*, 200 N. W. 782, 784, 51 N. D. 520; *State v. Kozer*, 217 P. 827, 832, 108 Or. 550; *Ex parte Brown* (Mo. App.) 297 S. W. 445, 447; *State v. Alderson*, 142 P. 210, 215, 49 Mont. 387, *Ann. Cas.* 1916B, 39; *City of Enid v. Champlin Refining Co.*, 240 P. 604, 608, 112 Okl. 168; *In re Opinion of the Justices*, 126 A. 354, 363, 124 Me. 453; *Hudgins v. Mooresville Consol. School Dist.*, 278 S. W. 769, 770, 312 Mo. 1; *Ex parte Brown* (Mo. App.) 297 S. W. 445, 447; *Alabama Pine Co. v. Merchants' & Farmers' Bank of Aliceville*, 109 So. 358, 359, 215 Ala. 66; *State v. Hager*, 136 S. E. 263, 264, 102 W. Va. 689; *In re Thompson*, 144 N. W. 243, 244, 94 Neb. 658.

It is also said that when the provision of a statute is the essence of the thing required to be done, it is mandatory; *Norwegian Street*, 81 Pa. 349; otherwise, when it relates to form and manner; and where an act is incident, or after jurisdiction acquired, it is directory merely; *Davis v. Smith*, 58 N. H. 17.

MANDATORY, n. One to whom a mandate is given; one who undertakes without compensation to perform certain duties. *Swords v. Simineo*, 216 P. 806, 809, 68 Mont. 164; *Smith v. State*, 199 Ind. 217, 156 N. E. 513, 515; *Billings Bench Water Ass'n v. Yellowstone County*, 225 P. 996, 999, 70 Mont. 401.

MANDATORY INJUNCTION. See *Injunction*.

MANDATUM. Lat. In the civil law. The contract of mandate, (*q. v.*)

Mandatum nisi gratuitum nullum est. Unless a mandate is gratuitous, it is not a mandate. *Dig. 17. 1. 1. 4*; *Inst. 3, 27*; 1 *Bouv. Inst. n.* 1070.

MANDAVI BALLIVO. (I have commanded or made my mandate to the bailiff.) In English practice. The return made by a sheriff, where the bailiff of a liberty has the execution of a writ, that he has commanded the bailiff to execute it. 1 *Tidd, Pr.* 309; 2 *Tidd, Pr.* 1025.

MANENTES. Tenants. Obsolete. *Cowell.*

MANERA. In Spanish law. Manner or mode. *Las Partidas*, pt. 4, tit. 4, l. 2.

MANERIUM. In old English law. A manor.

Manerium dicitur a manendo, secundum excellentiam, sedes magna, fixa, et stabilis. *Co. Litt.* 58. A manor is so called from *manendo*, according to its excellence, a seat, great, fixed, and firm.

MANGONARE. In old English law. To buy in a market.

MANGONELLUS. A warlike instrument for casting stones against the walls of a castle. Cowell.

MANHOOD. In feudal law. A term denoting the ceremony of doing homage by the vassal to his lord. The formula used was, "*Devenio vester homo*," I become your man. 2 Bl. Comm. 54.

To arrive at manhood means to arrive at twenty-one years of age. Felton v. Billups, 21 N. C. 585.

MANIA. As to "mania a potu" and "mania fanatica," see Insanity.

MANIFEST.

In Maritime Law

A sea-letter; a written document required to be carried by merchant vessels, containing an account of the cargo, with other particulars, for the facility of the customs officers. See New York & Cuba S. S. Co. v. U. S. (D. C.) 125 Fed. 320.

In Evidence

That which is clear and requires no proof; that which is notorious.

Manifesta probatione non indigent. 7 Coke, 40. Things manifest do not require proof.

MANIFESTO. A formal written declaration, promulgated by a prince, or by the executive authority of a state or nation, proclaiming its reasons and motives for declaring a war, or for any other important international action.

MANIPULUS. In canon law. A handkerchief, which the priest always had in his left hand. Blount.

MANKIND. The race or species of human beings. In law, females, as well as males, may be included under this term. Fortesc. 91.

MANNER. This is a word of large signification, but cannot exceed the subject to which it belongs. The incident cannot be extended beyond its principal. Wells v. Bain, 75 Pa. 39, 54, 15 Am. Rep. 563.

Manner does not necessarily include time. Thus, a statutory requirement that a mining tax shall be "enforced in the same manner" as certain annual taxes need not imply an annual collection. State v. Eureka Consol. Min. Co., 8 Nev. 15, 29.

Also a thing stolen, in the hand of the thief; a corruption of "*mainour*," (q. v.)

MANNER AND FORM; MODO ET FORMA. Formal words introduced at the conclusion of a traverse. Their object is to put the party whose pleading is traversed not only to the proof that the matter of fact denied is, in its general effect, true as alleged, but also that

the manner and form in which the fact or facts are set forth are also capable of proof. Brown.

MANNING. A day's work of a man. Cowell. A summoning to court. Spelman.

MANNIRE. To cite any person to appear in court and stand in judgment there. It is different from *bannire*; for, though both of them are citations, this is by the adverse party, and that is by the judge. Du Cange.

MANNOPUS. In old English law. Goods taken in the hands of an apprehended thief. The same as "*mainour*," (q. v.)

MANNUS. A horse. Cowell.

MANOR. A house, dwelling, seat, or residence.

In English Law

The manor was originally a tract of land granted out by the king to a lord or other great person, in fee. It was otherwise called a "barony" or "lordship," and appendant to it was the right to hold a court, called the "court-baron." The lands comprised in the manor were divided into *terre tenementales* (tenemental lands or bocland) and *terre dominicales*, or demesne lands. The former were given by the lord of the manor to his followers or retainers in freehold. The latter were such as he reserved for his own use; but of these part were held by tenants in copyhold, *i. e.*, those holding by a copy of the record in the lord's court; and part, under the name of the "lord's waste," served for public roads and commons of pasture for the lord and tenants. The tenants, considered in their relation to the court-baron and to each other, were called "*pares curie*." The word also signified the franchise of having a manor, with jurisdiction for a court-baron and the right to the rents and services of copyholders.

In American Law

A manor is a tract held of a proprietor by a fee-farm rent in money or in kind, and descending to the oldest son of the proprietor, who in New York is called a "patroon." People v. Van Rensselaer, 9 N. Y. 291.

In General

—**Reputed Manor.** Whenever the demesne lands and the services become absolutely separated, the manor ceases to be a manor in reality, although it may (and usually does) continue to be a manor in reputation, and is then called a "reputed manor," and it is also sometimes called a "seigniorship in gross." Brown.

MANQUELLER. In Saxon law. A murderer.

MANRENT. In Scotch law. The service of a man or vassal. A bond of manrent was an

instrument by which a person, in order to secure the protection of some powerful lord, bound himself to such lord for the performance of certain services.

MANSE. In old English law. A habitation or dwelling, generally with land attached. Spelman.

A residence or dwelling-house for the parish priest; a parsonage or vicarage house. Cowell. Still used in Scotch law in this sense.

MANSER. A bastard. Cowell.

MANSIO. In Anglo-Saxon times the amount of land which would support a man and his family, called by various names: Mansio, familia, hide. 2 Holdsw. Hist. E. L. 54.

MANSION. A dwelling-house or place of residence, including its appurtenant outbuildings. Thompson v. People, 3 Parker, Cr. R. (N. Y.) 214; Comm. v. Pennock, 3 Serg. & R. (Pa.) 199; Armour v. State, 3 Humph. (Tenn.) 385; Devoe v. Comm., 3 Metc. (Mass.) 325.

The mansion includes not only the dwelling-house, but also the outhouses, such as barns, stables, cow-houses, dairy houses, and the like, if they are parcel of the message (that is, within the curtilage or protection of the dwelling-house) though not under the same roof nor contiguous to it. 2 East, P. C. 492; State v. Brooks, 4 Conn. 448; Bryant v. State, 60 Ga. 358; Fletcher v. State, 10 Lea (Tenn.) 339.

In Old English Law

Residence; dwelling.

MANSION-HOUSE. In the law of burglary, etc., any species of dwelling-house. 3 Inst. 64.

MANSLAUGHTER. In criminal law. The unlawful killing of another without malice, either express or implied; which may be either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act. 1 Hale, P. C. 466; 4 Bl. Comm. 191.

Manslaughter is the unlawful killing of a human creature without malice, either express or implied, and without any mixture of deliberation whatever; which may be voluntary, upon a sudden heat of passion, or involuntary, in the commission of an unlawful act, or a lawful act without due caution and circumspection. Code Ga. 1882, § 4324 (Pen. Code 1910, § 64); Pen. Code Cal. § 192. And see Wallace v. U. S., 162 U. S. 466, 16 Sup. Ct. 859, 40 L. Ed. 1039; Stokes v. State, 18 Ga. 35; Clarke v. State, 117 Ala. 1, 23 So. 671, 67 Am. St. Rep. 157; U. S. v. King (C. C.) 34 F. 309; People v. Maine, 51 App. Div. 142, 64 N. Y. Supp. 579; High v. State, 26 Tex. App. 545, 10 S. W. 238, 8 Am. St. Rep. 488; State v. Workman, 39 S. C. 151, 17 S. E. 694; State v. Brown, 2 Marv. (Del.) 380, 36 A. 458; U. S. v. Lewis (C. C.) 111 F. 632; State v. Zellers, 7 N. J. Law, 243.

The distinction between "manslaughter" and "murder" consists in the following: In the former, though the act which occasions the death be unlawful or likely to be attended with bodily mischief, yet the malice, either express or implied, which is the very essence of murder, is presumed to be wanting in manslaughter. 1 East, P. C. 218; Comm. v. Webster, 5 Cush. (Mass.) 304, 52 Am. Dec. 711. It also differs from "murder" in this: that there can be no accessories before the fact, there having been no time for premeditation. 1 Hale, P. C. 437; 1 Russ. Crimes, 485; 1 Bish. Crim. Law, 678; Forrest v. State, 172 Ark. 1176, 288 S. W. 925, 926; State v. McKinney, 5 Boyce (Del.) 128, 90 A. 1067; State v. Wilson, 95 W. Va. 525, 121 S. E. 726, 729; State v. Vial, 153 La. 833, 96 So. 796, 800; People v. Crenshaw, 198 Ill. 412, 131 N. E. 576, 577, 15 A. L. R. 671; State v. Fenik, 45 R. I. 309, 121 A. 218, 221; State v. Wilson, 104 S. C. 351, 89 S. E. 301.

The statutes and decisions vary as to what constitutes manslaughter. Twyman v. State, 258 S. W. 480, 482, 96 Tex. Cr. R. 439; State v. Palmer, 176 P. 547, 548, 104 Wash. 396; Pippin v. State, 97 So. 615, 617, 19 Ala. App. 384; Paramore v. State, 129 S. E. 772, 777, 161 Ga. 166; State v. Budge, 137 A. 244, 246, 126 Me. 223, 53 A. L. R. 241; State v. Pond, 134 A. 572, 573, 125 Me. 453; Commonwealth v. Principatti, 104 A. 53, 57, 260 Pa. 587; People v. Sellar, 207 P. 396, 398, 57 Cal. App. 195; State v. Dean, 122 A. 448, 450, 2 W. W. Harr. (Del.) 290; State v. Agnesi, 104 A. 299, 301, 92 N. J. Law, 53; State v. White, 94 S. E. 972, 973, 81 W. Va. 516.

There are various degrees of manslaughter recognized by different states, viz.: First degree: Roohano v. State, 167 N. W. 741, 742, 167 Wis. 500; Savage v. State, 100 So. 919, 921, 20 Ala. App. 97; and People v. Koerber, 155 N. E. 79, 82, 244 N. Y. 147. Second degree: State v. Staples, 148 N. W. 283, 126 Minn. 396; and see, also, People v. Koerber, 155 N. E. 79, 82, 244 N. Y. 147; Jones v. State, 109 So. 189, 191, 21 Ala. App. 234; section 1745, Comp. Stats. Okl. 1921; Clark v. State (Okl. Cr. App.) 224 P. 738, 740. Third degree: State v. Prince, 167 S. W. 535, 538, 258 Mo. 315; State v. Constitino (Mo. Sup.) 181 S. W. 1155, 1157. Fourth degree: State v. Schwenk, 167 P. 743, 744, 101 Kan. 408; State v. Horner, 180 S. W. 873, 874, 266 Mo. 109; State v. Abrams, 223 P. 301, 303, 115 Kan. 520; Roohana v. State, 167 N. W. 741, 742, 167 Wis. 500; Rev. St. Mo. 1909, § 4468.

Voluntary Manslaughter

In criminal law. Manslaughter committed voluntarily upon a sudden heat of the passions; as if, upon a sudden quarrel, two persons fight, and one of them kills the other. 4 Bl. Comm. 190, 191; State v. Disalvo, 121 A. 661, 663, 2 W. W. Harr. (Del.) 232; Miller v. Commonwealth, 173 S. W. 761, 763, 163 Ky. 246; People v. Ryzcek, 194 N. W. 609, 611, 224 Mich. 106; Henwood v. State, 129 P. 1010, 1012, 54 Colo. 188; Commonwealth v. Croson, 92 A. 754, 756, 246 Pa. 536; State v. Lewis, 154 S. W. 716, 719, 248 Mo. 498; State v. McGarrity, 71 So. 730, 732, 139

La. 430; *Shiflett v. Commonwealth*, 130 S. E. 784, 143 Va. 609; *Wiley v. State*, 170 P. 869, 873, 19 Ariz. 346, L. R. A. 1918D, 373. Voluntary manslaughter is unlawful taking of human life under circumstances falling short of willful or deliberate intent to kill and approaching too near thereto to be justifiable homicide. *State v. McVay*, 132 A. 436, 438, 47 R. I. 292, 44 A. L. R. 572. The absence of intention to kill or to commit any unlawful act which might reasonably produce death or great bodily harm is the distinguishing feature between voluntary and involuntary homicide. *State v. Weisengoff*, 101 S. E. 450, 455, 85 W. Va. 271; *Harding v. State*, 225 P. 482, 484, 26 Ariz. 334; *State v. Pond*, 134 A. 572, 573, 125 Me. 453; *Alexander v. State*, 129 S. E. 102, 160 Ga. 769.

Involuntary Manslaughter

"Involuntary manslaughter" is where a person in committing an unlawful act not felonious or tending to great bodily harm, or in committing a lawful act without proper caution or requisite skill, unguardedly or undesignedly kills another. *State v. Disalvo*, 121 A. 661, 663, 2 W. W. Harr. (Del.) 232; *State v. McIvor*, 111 A. 616, 617, 1 W. W. Harr. (Del.) 123; *State v. McVay*, 132 A. 436, 437, 47 R. I. 292, 44 A. L. R. 572; *State v. Whaley*, 132 S. E. 6, 8, 191 N. C. 387; *Jones v. Commonwealth*, 281 S. W. 164, 167, 213 Ky. 356; *State v. Dean* (Del.) 122 A. 448, 449, 2 W. W. Harr. 290; *Cox v. Commonwealth*, 165 S. W. 411, 412, 158 Ky. 435; *Mundy v. Commonwealth*, 131 S. E. 242, 244, 144 Va. 609; *People v. Ryczek*, 194 N. W. 609, 611, 224 Mich. 106; *Madding v. State*, 177 S. W. 410, 412, 118 Ark. 506; *Commonwealth v. Mayberry*, 138 A. 686, 687, 290 Pa. 195; *Craford v. State*, 273 S. W. 13, 14, 169 Ark. 225; *State v. Weisengoff*, 101 S. E. 450, 455, 85 W. Va. 271.

MANSO, or MANSUM. In old English law. A mansion or house. *Spelman*.

MANSTEALING. A word sometimes used synonymously with "kidnapping," (*q. v.*)

MANSUETUS. Lat. Tame; as though accustomed to come to the hand. 2 Bl. Comm. 391.

MANSUM CAPITALE. The manor-house or lord's court. *Paroch. Antiq.* 150.

MANTEA. In old records. A long robe or mantle.

MANTHEOFF. In Saxon law. A horse-stealer.

MANTICULATE. To pick pockets.

MANTLE CHILDREN. See *Pallio Cooperire*.

MAN-TRAPS. Engines to catch trespassers, now unlawful unless set in a dwelling-house for defense between sunset and sunrise. 24 & 25 Vict. c. 100, § 31.

MANU BREVI. Lat. With a short hand. A term used in the civil law, signifying shortly; directly; by the shortest course; without circuituity.

MANU FORTI. Lat. With strong hand. A term used in old writs of trespass. *Manu forti et cum multitudine gentium*, with strong hand and multitude of people. *Reg. Orig.* 183.

MANU LONGA. Lat. With a long hand. A term used in the civil law, signifying indirectly or circuitously. *Calvin*.

MANU OPERA. Lat. Cattle or implements of husbandry; also stolen goods taken from a thief caught in the fact. *Cowell*.

MANUAL. Performed by the hand; used or employed by the hand; held in the hand. Thus, a distress cannot be made of tools in the "manual occupation" of the debtor.

MANUAL DELIVERY. Delivery of personal property sold, donated, mortgaged, etc., by passing it into the "hand" of the purchaser or transferee, that is, by an actual and corporeal change of possession.

MANUAL GIFT. The manual gift, that is, the giving of corporeal movable effects, accompanied by a real delivery, is not subject to any formality. *Civil Code La. art.* 1539.

MANUAL LABOR. Labor performed by hand or by the exercise of physical force, with or without the aid of tools and of horses or other beasts of burden, but depending for its effectiveness chiefly upon personal muscular exertion rather than upon skill, intelligence, or adroitness. See *Lew Jim v. U. S.*, 66 F. 954, 14 C. C. A. 281; *Martin v. Wakefield*, 42 Minn. 176, 43 N. W. 966, 6 L. R. A. 362; *Breault v. Archambault*, 64 Minn. 420, 67 N. W. 348, 58 Am. St. Rep. 545.

MANUALIA BENEFICIA. The daily distributions of meat and drink to the canons and other members of cathedral churches for their present subsistence. *Cowell*.

MANUALIS OBEDIENTIA. Sworn obedience or submission upon oath. *Cowell*.

MANUCAPTIO. In old English practice. A writ which lay for a man taken on suspicion of felony, and the like, who could not be admitted to bail by the sheriff, or others having power to let to mainprise. *Fitzh. Nat. Brev.* 249.

MANUCAPTORS. The same as mainperners, (*q. v.*)

MANUFACTORY. A building, the main or principal design or use of which is to be a place for producing articles as products of labor; not merely a place where something may be made by hand or machinery, but what in common understanding is known as a "factory." *Halpin v. Insurance Co.*, 120 N. Y. 73,

23 N. E. 989, 8 L. R. A. 79; Schott v. Harvey, 105 Pa. 227, 51 Am. Rep. 201; Franklin F. Ins. Co. v. Brock, 57 Pa. 82; In re I. Rhein-
strom & Sons Co. (D. C.) 207 F. 119, 134; City
of Louisville Tin & Stove Co., 186 S. W. 124,
170 Ky. 557.

MANUFACTURE, v. The primary meaning of this word is "making with the hand," but this definition is too narrow for its present use. Its meaning has expanded as workmanship and art have advanced, so that now nearly all artificial products of human industry, nearly all such materials as have acquired changed conditions or new and specific combinations, whether from the direct action of the human hand, from chemical processes devised and directed by human skill, or by the employment of machinery, are now commonly designated as "manufactured." Carlin v. Western Assur. Co., 57 Md. 526, 40 Am. Rep. 440; Evening Journal Ass'n v. State Board of Assessors, 47 N. J. Law, 36, 54 Am. Rep. 114; Attorney General v. Lorman, 59 Mich. 157, 26 N. W. 311, 60 Am. Rep. 287; Kidd v. Pearson, 128 U. S. 1, 9 S. Ct. 6, 32 L. Ed. 346; State v. Crouse, 105 Neb. 672, 181 N. W. 562, 563, 16 A. L. R. 533; United States v. Basic Products Co. (D. C.) 260 F. 472, 481; Patterson v. State, 140 Ark. 236, 215 S. W. 629, 631; Ellis v. State, 198 Ind. 679, 154 N. E. 489, 490; Warren v. Renault Freres Selling Branch, 195 Ill. App. 117, 118; Henderson v. Shreveport Gas, Electric Light & Power Co., 134 La. 39, 63 So. 616, 619, 51 L. R. A. (N. S.) 448; Hadfield-Penfield Steel Co. v. Sheller, 108 Ohio St. 106, 141 N. E. 89, 91; State v. Hennessy Co., 71 Mont. 301, 230 P. 64, 65; Hotchkiss v. District of Columbia, 44 App. D. C. 73, 78; Pardy v. Boomhower Grocery Co., 178 App. Div. 347, 164 N. Y. S. 775, 776.

MANUFACTURE, n. In patent law. Any useful product made directly by human labor, or by the aid of machinery directed and controlled by human power, and either from raw materials, or from materials worked up into a new form. Also the process by which such products are made or fashioned. Turner v. Quincy Market Cold Storage & Warehouse Co. (C. C. A.) 225 F. 41; Thacher v. City of Baltimore (D. C.) 219 F. 909, 912; International Mausoleum Co. v. Sievert (C. C. A.) 213 F. 225, 227; Aiken v. Riter & Conley Mfg. Co. (D. C.) 205 F. 531, 533; Riter-Conley Mfg. Co. v. Aiken (C. C. A.) 203 F. 699, 702; Cincinnati Traction Co. v. Pope (C. C. A.) 210 F. 443, 446.

An instrument created by the exercise of mechanical forces and designed for the production of mechanical effects, but not capable, when set in motion, of attaining, by its own operation, to any predetermined results. It receives its rule of action from the external source which furnishes its motive power.

A manufacture requires the constant guidance and control of some separate intelligent agent; a machine operates under the direction of that intelligence with which it was endowed by its inventor

when he imposed on it its structural law. The parts of a machine, considered separately from the machine itself, all kinds of tools and fabrics, and every other vendible substance, which is neither a complete machine nor produced by the mere union of ingredients, is included under the title "manufacture." Rob. Pat. § 182.

Domestic Manufactures

This term in a state statute is used, generally, of manufactures within its jurisdiction. Com. v. Giltinan, 64 Pa. 100.

MANUFACTURING CORPORATION. A corporation engaged in the production of some article, thing, or object, by skill or labor, out of raw material, or from matter which has already been subjected to artificial forces, or to which something has been added to change its natural condition. People v. Knickerbocker Ice Co., 99 N. Y. 181, 1 N. E. 669. The term does not include a mining corporation. Byers v. Franklin Coal Co., 106 Mass. 135.

MANUMISSION. The act of liberating a slave from bondage and giving him freedom. In a wider sense, releasing or delivering one person from the power or control of another. See Fenwick v. Chapman, 9 Pet. 472, 9 L. Ed. 193; State v. Prall, 1 N. J. Law, 4.

Manumittere idem est quod extra manum vel potestatem ponere. Co. Litt. 137. To manumit is the same as to place beyond hand and power.

MANUNG, or MONUNG. In old English law. The district within the jurisdiction of a reeve, apparently so called from his power to exercise therein one of his chief functions, viz., to exact (*amanian*) all fines.

MANUPES. In old English law. A foot of full and legal measure.

MANUPRETIIUM. Lat. In Roman law. The hire or wages of labor; compensation for labor or services performed. See Mackeld. Rom. Law, § 413.

MANURABLE. In old English law. Capable of being had or held in hand; capable of manual occupation; capable of being cultivated; capable of being touched; tangible; corporeal. Hale, Anal. § 24.

MANURE. In old English law. To occupy; to use or cultivate; to have in manual occupation; to bestow manual labor upon. Cowell.

MANUS. Lat. A hand.

In the Civil Law

This word signified power, control, authority, the right of physical coercion, and was often used as synonymous with "*potestas*."

In Old English Law

It signified an oath or the person taking an oath; a compurgator.

MANUS MORTUA. A dead hand; mortmain. Spelman.

MANUSCRIPT. A writing; a paper written with the hand; a writing that has not been printed. *Parton v. Prang*, 18 Fed. Cas. 1275; *Leon Loan & Abstract Co. v. Equalization Board*, 86 Iowa, 127, 53 N. W. 94, 17 L. R. A. 199, 41 Am. St. Rep. 486.

MANUTENENTIA. The old writ of maintenance. Reg. Orig. 182.

MANWORTH. In old English law. The price or value of a man's life or head. Cowell.

MANY. This term denotes a multitude, not merely a number greater than that denoted by the word "few." *Louisville & N. R. Co. v. Hall*, 87 Ala. 708, 6 So. 277, 4 L. R. A. 710, 13 Am. St. Rep. 84. But compare *Hilton Bridge Const. Co. v. Foster*, 26 Misc. Rep. 338, 57 N. Y. S. 140, holding that three persons may be "many."

MANZIE. In old Scotch law. Mayhem; mutilation of the body of a person. Skene.

MAP. A representation of the earth's surface, or of some portion of it, showing the relative position of the parts represented, usually on a flat surface. Webster. "A map is but a transcript of the region which it portrays, narrowed in compass so as to facilitate an understanding of the original." *Banker v. Caldwell*, 3 Minn. 103 (Gil. 55).

MAR. To make defective; to do serious injury to; to damage greatly; to impair, spoil, ruin; to do physical injury to, especially by cutting off or defacing a part; to mutilate; mangle, disfigure; deface. *Maxwell v. City of Buhl*, 40 Idaho, 644, 236 P. 122, 123; *Borden v. Hirsh*, 249 Mass. 205, 143 N. E. 912, 914, 33 A. L. R. 526.

MARA. In old records. A mere or moor; a lake, pool, or pond; a bog or marsh that cannot be drained. Cowell; Blount; Spelman.

MARAUDER. "A marauder is defined in the law to be 'one who, while employed in the army as a soldier, commits larceny or robbery in the neighborhood of the camp, or while wandering away from the army.' But in the modern and metaphorical sense of the word, as now sometimes used in common speech, it seems to be applied to a class of persons who are not a part of any regular army, and are not answerable to any military discipline, but who are mere lawless banditti, engaged in plundering, robbery, murder, and all conceivable crimes." *Curry v. Collins*, 37 Mo. 328.

MARC-BANCO. The name of a piece of money formerly coined at Hamburg. Its value was thirty-five cents.

MARCA. A mark; a coin of the value of 13s. 4d. Spelman.

MARCATUS. The rent of a mark by the year anciently reserved in leases, etc.

MARCH. In Scotch law. A boundary line or border. Bell. The word is also used in composition; as *march-dike*, *march-stone*.

MARCHANDISES AVARIÉES. In French mercantile law. Damaged goods.

MARCHERS. In old English law. Noblemen who lived on the marches of Wales or Scotland, and who, according to Camden, had their private laws, as if they had been petty kings; which were abolished by the statute 27 Hen. VIII. c. 26. Called also "lords marchers." Cowell.

MARCHES. An old English term for boundaries or frontiers, particularly the boundaries and limits between England and Wales, or between England and Scotland, or the borders of the dominions of the crown, or the boundaries of properties in Scotland. *Mozley & Whitley*.

MARCHES, COURT OF. An abolished tribunal in Wales, where pleas of debt or damages, not above the value of £50, were tried and determined. Cro. Car. 384.

MARCHETA.

In Old Scotch Law

A custom for the lord of a fee to lie the first night with the bride of his tenant. Abolished by Malcolm III. *Spelman*; 2 Bl. Comm. 83.

A fine paid by the tenant for the remission of such right, originally a mark or half a mark of silver. *Spelman*.

In Old English Law

A fine paid for leave to marry, or to bestow a daughter in marriage. Cowell.

MARCHIONESS. A dignity in a woman answerable to that of marquis in a man, conferred either by creation or by marriage with a marquis. Wharton.

MARE. Lat. The sea.

MARE CLAUSUM. The sea closed; that is, not open or free. The title of Selden's great work, intended as an answer to the *Mare Liberum* of Grotius; in which he undertakes to prove the sea to be capable of private dominion. 1 Kent, Comm. 27.

MARE LIBERUM. The sea free. The title of a work written by Grotius against the Portuguese claim to an exclusive trade to the Indies, through the South Atlantic and Indian oceans; showing that the sea was not capable of private dominion. 1 Kent, Comm. 27.

MARESCALLUS. In old English law. A marshal; a master of the stables; an officer of the exchequer; a military officer of high rank, having powers and duties similar to those of a constable. Du Cange. See *Marshal*.

MARESCHAL. L. Fr. Marshal; a high officer of the royal household. Britt. fol. 1b.

MARETTUM. Marshy ground overflowed by the sea or great rivers. Co. Litt. 5.

MARGIN. The edge or border; the edge of a body of water where it meets the land. As applied to a boundary line of land, the "margin" of a river, creek, or other water-course means the center of the stream. Ex parte Jennings, 6 Cow. (N. Y.) 527, 16 Am. Dec. 447; Varick v. Smith, 9 Paige (N. Y.) 551. But in the case of a lake, bay, or natural pond, the "margin" means the line where land and water meet. Fowler v. Vreeland, 44 N. J. Eq. 268, 14 A. 116; Lembeck v. Andrews, 47 Ohio St. 336, 24 N. E. 686, 8 L. R. A. 578.

A sum of money, or its equivalent, placed in the hands of a stockbroker by the principal or person on whose account a purchase or sale is to be made, as a security to the former against losses to which he may be exposed by subsequent fluctuations in the market value of the stock. Markham v. Jaudon, 49 Barb. (N. Y.) 468; Sheehy v. Shinn, 103 Cal. 325, 37 P. 393; Memphis Brokerage Ass'n v. Cullen, 11 Lea (Tenn.) 77; Fortenbury v. State, 47 Ark. 188, 1 S. W. 58; Allen's Ex'x v. Virginia Trust Co., 116 Va. 319, 82 S. E. 104, 105; West v. Satterfield, 190 N. C. 89, 129 S. E. 177, 180.

MARGINAL NOTE. In Scotch law. A note inserted on the margin of a deed, embodying either some clause which was omitted in transcribing or some change in the agreement of the parties. Bell.

An abstract of a reported case, a summary of the facts, or brief statement of the principle decided, which is prefixed to the report of the case, sometimes in the margin, is also spoken of by this name.

MARINARIUS. An ancient word which signified a mariner or seaman. In England, *marinarius capitaneus* was the admiral or warden of the ports.

MARINE. Naval; relating or pertaining to the sea; transacted at sea; doing duty or service on the sea.

This is also a general name for the navy of a kingdom or state; as also the whole economy of naval affairs, or whatever respects the building, rigging, arming, equipping, navigating, and fighting ships. It comprehends also the government of naval armaments, and the state of all the persons employed therein, whether civil or military. Also one of the marines. Wharton. See Doughten v. Vandever, 5 Del. Ch. 73.

MARINE BELT. That portion of the main or open sea, adjacent to the shores of a given country, over which the jurisdiction of its municipal laws and local authorities extends; defined by international law as extending out three miles from the shore. See The Alexander (D. C.) 60 F. 918.

MARINE CARRIER. By statutes of several states this term is applied to carriers plying upon the ocean, arms of the sea, the Great Lakes, and other navigable waters within the jurisdiction of the United States. Civ. Code Cal. § 2087; Rev. Codes N. D. 1899, § 4176 (Comp. Laws 1913, § 6187).

MARINE CONTRACT. One relating to maritime affairs, shipping, navigation, marine insurance, affreightment, maritime loans, or other business to be done upon the sea or in connection with navigation.

MARINE CORPS. A body of soldiers enlisted and equipped for service on board vessels of war; also the naval forces of the nation. U. S. v. Dunn, 7 S. Ct. 507, 120 U. S. 249, 30 L. Ed. 667.

MARINE COURT IN THE CITY OF NEW YORK. Formerly, a local court of New York City, originally created as a tribunal for the settlement of causes between seamen. It was the predecessor of the present city court of the city of New York. 15 C. J. 1003. The history of this court may be found in McAdam, Mar. Ct. Pr. (2d Ed. 1872).

MARINE INSURANCE. See Insurance.

MARINE INTEREST. Interest, allowed to be stipulated for at an extraordinary rate, for the use and risk of money loaned on *respondentia* and bottomry bonds.

MARINE LEAGUE. A measure of distance commonly employed at sea, being equal to one-twentieth part of a degree of latitude, or three geographical or nautical miles. See Rockland, etc., S. Co. v. Fessenden, 79 Me. 140, 8 A. 552.

MARINE RISK. The perils of the sea; the perils necessarily incident to navigation.

MARINE SOCIETY. In English law. A charitable institution for the purpose of apprenticing boys to the naval service, etc., incorporated by 12 Geo. III. c. 67.

MARINER. A seaman or sailor; one engaged in navigating vessels upon the sea; every person employed aboard ships or vessels. Pacific Mail S. S. Co. v. Schmidt (C. C. A.) 214 F. 513, 518.

MARINES. A body of infantry soldiers, trained to serve on board of vessels of war when in commission and to fight in naval engagements. See Marine Corps.

Maris et fœminæ conjunctio est de jure naturæ. 7 Coke, 13. The connection of male and female is by the law of nature.

MARISCHAL. An officer in Scotland, who, with the lord high constable, possessed a supreme itinerant jurisdiction in all crimes committed within a certain space of the court, wherever it might happen to be. Wharton.

MARISCUS. A marshy or fenny ground. Co. Litt. 5a.

MARITAGIO AMISSO PER DEFALTAM. An obsolete writ for the tenant in frank-marriage to recover lands, etc., of which he was deformed.

MARITAGIUM. The portion which is given with a daughter in marriage. Also the power which the lord or guardian in chivalry had of disposing of his infant ward in matrimony.

Maritagiū est aut liberum aut servitio obligatum; liberum maritagiū dicitur ubi donator vult quod terra sic data quietā sit et libera ab omni seculari servitio. Co. Litt. 21. A marriage portion is either free or bound to service; it is called "frank-marriage" when the giver wills that land thus given be exempt from all secular service.

MARITAGIUM HABERE. To have the free disposal of an heiress in marriage.

MARITAL. Relating to, or connected with, the *status* of marriage; pertaining to a husband; incident to a husband.

MARITAL COERCION. Coercion of the wife by the husband.

MARITAL PORTION. In Louisiana. The name given to that part of a deceased husband's estate to which the widow is entitled. Civ. Code La. art. 55 (Civ. Code, art. 2382); *Abercrombie v. Caffray*, 3 Mart. N. S. (La.) 1.

MARITAL RIGHTS. The rights of a husband. *Kilburn v. Kilburn*, 89 Cal. 46, 26 P. 636, 23 Am. St. Rep. 447; *McCown v. Owens*, 15 Tex. Civ. App. 346, 40 S. W. 336.

MARITIMA ANGLIÆ. In old English law. The emolument or revenue coming to the king from the sea, which the sheriffs anciently collected, but which was afterwards granted to the admiral. *Spelman*.

MARITIMA INCREMENTA. In old English law. Marine increases. Lands gained from the sea. *Hale, de Jure Mar.* pt. 1, c. 4.

MARITIME. Pertaining to the sea or ocean or the navigation thereof; or to commerce conducted by navigation of the sea or (in America) of the great lakes and rivers.

It is nearly equivalent to "marine" in many connections and uses; in others, the two words are used as quite distinct.

MARITIME BELT. That part of the sea which, in contradistinction to the open sea, is under the sway of the riparian states. *Louisiana v. Mississippi*, 26 S. Ct. 408, 571, 202 U. S. 1, 50 L. Ed. 913.

MARITIME CAUSE. A cause of action originating on the high seas, or growing out of a maritime contract. 1 Kent, Comm. 367, *et seq.*

MARITIME CONTRACT. A contract whose subject-matter has relation to the navigation of the seas or to trade or commerce to be conducted by navigation or to be done upon the sea or in ports. Over such contracts the admiralty has concurrent jurisdiction with the common-law courts. *Edwards v. Elliott*, 21 Wall. 553, 22 L. Ed. 487; *Doolittle v. Knobloch* (D. C.) 39 F. 40; *Holt v. Cummings*, 102 Pa. 215, 48 Am. Rep. 199; *De Lovio v. Boit*, 7 Fed. Cas. 435; *Freights of The Kate* (D. C.) 63 F. 720; *Rounds v. Cloverport Foundry & Machine Co.*, 159 Ky. 414, 167 S. W. 384, 387, Ann. Cas. 1915D, 40; *State v. Duffy*, 113 Ohio St. 96, 148 N. E. 572, 574; *Jones v. Crescent City Ice Mfg. Co.*, 162 La. 151, 110 So. 182, 184; *The W. T. Blunt* (D. C.) 291 F. 899, 901; *Johnson v. Swonder*, 84 Ind. App. 155, 150 N. E. 615, 616; *Eadie v. North Pacific S. S. Co.* (D. C.) 217 F. 662, 663; *Lamborn & Co. v. Compania Maritima Del Nervion* (D. C.) 19 F.(2d) 155, 156; *Terminal Shipping Co. v. Hamberg* (D. C.) 222 F. 1020; *North Alaska Salmon Co. v. Larsen* (C. C. A.) 220 F. 93, 94; *Larsen v. Newburgh Shipyards*, 199 App. Div. 797, 192 N. Y. S. 888; *The Francis L. Skinner* (D. C.) 248 F. 818, 822; *The Mountaineer* (C. C. A.) 286 F. 913, 914; *Reichert Towing Line v. Long Island Machine & Marine Const. Co.* (D. C.) 287 F. 269, 270; *Gowanus Storage Co. v. U. S. Shipping Board Emergency Fleet Corporation* (D. C.) 271 F. 528, 530; *The Schuylkill* (D. C.) 249 F. 781; *The Jack-O-Lantern*, 42 S. Ct. 243, 244, 258 U. S. 96, 66 L. Ed. 482; *The Gulfport* (C. C. A.) 250 F. 577, 579; *North Pac. S. S. Co. v. Hall Bros. Marine Ry. & Shipbuilding Co.*, 39 S. Ct. 221, 223, 249 U. S. 119, 63 L. Ed. 510; *The Dredge A* (D. C.) 217 F. 617, 629; *Siler Mill Co. v. Charles Nelson Co.*, 94 Wash. 477, 162 P. 590, 591; *Millers' Indemnity Underwriters v. Boudreaux* (Tex. Com. App.) 261 S. W. 137, 138.

MARITIME COURT. A court exercising jurisdiction in maritime causes; one which possesses the powers and jurisdiction of a court of admiralty.

MARITIME INTEREST. An expression equivalent to marine interest, (*q. v.*)

MARITIME JURISDICTION. Jurisdiction in maritime causes; such jurisdiction as belongs to a court of admiralty on the instance side.

MARITIME LAW. That system of law which particularly relates to commerce and navigation, to business transacted at sea or relating to navigation, to ships and shipping, to seamen, to the transportation of persons and property by sea, and to marine affairs generally. The law relating to harbors, ships, and seamen. An important branch of the commercial law of maritime nations; divided into a variety of departments, such as those about harbors, property of ships, duties and rights of masters and seamen, contracts of affreightment, average, salvage, etc. *Whar-*

ton; *The Lottawanna*, 21 Wall. 572, 22 L. Ed. 654; *The Unadilla* (D. C.) 73 F. 351; *Jervey v. The Carolina* (D. C.) 66 F. 1013.

MARITIME LIEN. A lien arising out of damage done by a ship in the course of navigation, as by collision, which attaches to the vessel and freight, and is to be enforced by an action *in rem* in the admiralty courts. *The Underwriter* (D. C.) 119 Fed. 715; *Ste-Cunningham*, 63 Fed. 134, 11 C. C. A. 111; *The Underwriter* (D.C.) 119 Fed. 715; *Stephenson v. The Francis* (D. C.) 21 Fed. 719. Maritime liens do not include or require possession. The word "lien" is used in maritime law not in the strict legal sense in which we understand it in courts of common law, in which case there could be no lien where there was no possession, actual or constructive, but to express, as if by analogy, the nature of claims which neither presuppose nor originate in possession. 22 Eng. Law & Eq. 62. A distinction is sometimes made, however, between qualified maritime liens, which depend upon possession, and absolute maritime liens, which do not require nor depend upon possession. *Cutler v. Rae*, 7 How. 729, 12 L. Ed. 890; 21 Am. Law Reg. 1. A "maritime lien" is a special property right in a ship given to a creditor by law as security for a debt or claim subsisting from the moment the debt arises with right to have the ship sold and debt paid out of proceeds. *The Poznan* (C. C. A.) 9 F.(2d) 838, 842. Such a lien is a proprietary interest or right of property in the vessel itself, and not a cause of action or demand for personal judgment against the owner. *The Theodore Roosevelt* (D. C.) 291 F. 453, 461; *The Rupert City* (D. C.) 213 F. 263, 267; *The River Queen* (D. C.) 8 F.(2d) 426, 427.

MARITIME LOAN. A contract or agreement by which one, who is the lender, lends to another, who is the borrower, a certain sum of money, upon condition that if the thing upon which the loan has been made should be lost by any peril of the sea, or *vis major*, the lender shall not be repaid unless what remains shall be equal to the sum borrowed; and if the thing arrive in safety, or in case it shall not have been injured but by its own defects or the fault of the master or mariners, the borrower shall be bound to return the sum borrowed, together with a certain sum agreed upon as the price of the hazard incurred. *Emerig. Mar. Loans*, c. 1, s. 2. And see *The Draco*, 7 Fed. Cas. 1,042.

MARITIME PROFIT. A term used by French writers to signify any profit derived from a maritime loan.

MARITIME SERVICE. In admiralty law. A service rendered upon the high seas or a navigable river, and which has some relation to commerce or navigation,—some connection with a vessel employed in trade, with her equipment, her preservation, or the preserva-

tion of her cargo or crew. *Thackarey v. The Farmer*, 23 Fed. Cas. 877; *The Atlantic* (D. C.) 53 Fed. 609; *Cope v. Vallette Dry-Dock Co.* (C. C.) 16 F. 925; *Newham v. Chile Exploration Co.*, 133 N. E. 120, 232 N. Y. 37, 25 A. L. R. 1018; *Madderns v. Fox Film Corporation*, 200 N. Y. S. 344, 345, 205 App. Div. 791; *The Canadian Farmer* (D. C.) 290 F. 601, 602; *Riedel v. Mallory S. S. Co.*, 188 N. Y. S. 649, 652, 196 App. Div. 794; *McNamara v. McHarg-Barton Co.*, 192 N. Y. S. 741, 743, 200 App. Div. 188; *Blosky v. Overseas Shipping Co.*, 220 N. Y. S. 95, 100, 219 App. Div. 438.

MARITIME STATE, in English law, consists of the officers and mariners of the British navy, who are governed by express and permanent laws, or the articles of the navy, established by act of parliament.

MARITIME TORT. A tort committed upon the high seas, or upon a navigable river or other navigable water, and hence falling within the jurisdiction of a court of admiralty. The term is never applied to a tort committed upon land, though relating to maritime matters. See *The Plymouth*, 3 Wall. 33, 18 L. Ed. 125; *Holmes v. Oregon & C. Ry. Co.* (D. C.) 5 Fed. 77; *In re Long Island, etc.*, *Transp. Co.* (D. C.) 5 Fed. 606; *U. S. v. Burlington, etc.*, *Ferry Co.* (D. C.) 21 Fed. 336; *The Chiswick* (C. C. A.) 231 F. 452; *Egan v. Morse Dry Dock & Repair Co.*, 212 N. Y. S. 56, 59, 214 App. Div. 226; *Butler v. Robins Dry Dock & Repair Co.*, 147 N. E. 235, 236, 240 N. Y. 23; *Stamp v. Union Stevedoring Corporation* (D. C.) 11 F.(2d) 172, 175; *Kuhlman v. W. & A. Fletcher Co.* (C. C. A.) 20 F. (2d) 465, 466.

MARITUS. Lat. A husband; a married man. Calvin.

MARK. A character, usually in the form of a cross, made as a substitute for his signature by a person who cannot write, in executing a conveyance or other legal document. It is commonly made as follows: A third person writes the name of the marksman, leaving a blank space between the Christian name and surname; in this space the latter traces the mark, or crossed lines, and above the mark is written "his," (or "her,") and below it, "mark."

The sign, writing, or ticket put upon manufactured goods to distinguish them from others, appearing thus in the compound, "trade-mark."

A token, evidence, or proof; as in the phrase "a mark of fraud."

A weight used in several parts of Europe, and for several commodities, especially gold and silver. When gold and silver are sold by the mark, it is divided into twenty-four carats.

A money of accounts in England, and in some other countries a coin. The English mark is two-thirds of a pound sterling, or 13s.

4d.; and the Scotch mark is of equal value in Scotch money of account. Enc. Amer.

The word is sometimes used as another form of "*marque*," a license of reprisals.

In Early Teutonic and English law. A species of village community, being the lowest unit in the political system; one of the forms of the *gens* or clan, variously known as the "*mark*," "*gemeinde*," "*commune*," or "*parish*." Also the land held in common by such a community. The union of several such village communities and their *marks*, or common lands, forms the next higher political union, the hundred. Freem. Compar. Politics, 116, 117.

In General

—**Demi-mark.** Half a mark; a sum of money which was anciently required to be tendered in a writ of right, the effect of such tender being to put the demandant, in the first instance, upon proof of the seisin as stated in his count; that is, to prove that the seisin was in the king's reign there stated. Rosc. Real Act. 216.

—**High and low water-mark.** See Water-Mark.

—**Mark banco.** See Marc Banco.

MARKEPENNY. A penny anciently paid at the town of Maldon by those who had gutters laid or made out of their houses into the streets. Wharton.

MARKET. A public time and appointed place of buying and selling; also purchase and sale. Caldwell v. Alton, 33 Ill. 419, 75 Am. Dec. 282; Taggart v. Detroit, 71 Mich. 92, 38 N. W. 714; Strickland v. Pennsylvania R. Co., 154 Pa. 348, 26 Atl. 431, 21 L. R. A. 224; State v. Burkett, 87 A. 514, 518, 119 Md. 609, Ann. Cas. 1914D, 345. It differs from the *forum*, or market of antiquity, which was a public market-place on one side only, or during one part of the day only, the other sides being occupied by temples, theaters, courts of justice, and other public buildings. Wharton.

The liberty, privilege, or franchise by which a town holds a market, which can only be by royal grant or immemorial usage. In re Certain Lands on North Shore of Harlem River in City of New York, 217 N. Y. S. 544, 557, 127 Misc. Rep. 710.

By the term "market" is also understood the demand there is for any particular article; as, "the cotton market in Europe is dull."

Clerk of the Market

See Clerk.

Market Geld

The toll of a market.

Market Overt

In English law. An open and public market. The market-place or spot of ground set apart by custom for the sale of particular

goods is, in the country, the only market *overt*; but in London every shop in which goods are exposed publicly to sale is market *overt*, for such things only as the owner professes to trade in. 2 Bl. Comm. 449; Godb. 131; 5 Coke, 83. See Fawcett v. Osborn, 32 Ill. 426, 83 Am. Dec. 278.

Market Price

The actual price at which the given commodity is currently sold, or has recently been sold, in the open market, that is, not at a forced sale, but in the usual and ordinary course of trade and competition, between sellers and buyers equally free to bargain, as established by records of late sales. See Lovejoy v. Michels, 88 Mich. 15, 49 N. W. 901, 13 L. R. A. 770; Sanford v. Peck, 63 Conn. 486, 27 A. 1057; Douglas v. Merceles, 25 N. J. Eq. 147; Parmenter v. Fitzpatrick, 135 N. Y. 190, 31 N. E. 1032; Walter v. Duffy (C. C. A.) 287 F. 41, 45; Peninsular Naval Stores Co. v. State, 20 Ga. App. 501, 93 S. E. 159, 161; Weed v. Lyons Petroleum Co. (D. C.) 294 F. 725, 734; Sun Co. v. Burruss, 139 Va. 279, 123 S. E. 347, 349; McGilvra v. Minneapolis, St. P. & S. S. M. Ry. Co., 35 N. D. 275, 159 N. W. 854, 857; McGarry v. Superior Portland Cement Co., 95 Wash. 412, 163 P. 928, 929, Ann. Cas. 1918A, 572; Hoff v. Lodi Canning Co., 51 Cal. App. 299, 196 P. 779, 780; Ford v. Norton (N. M.) 260 P. 411, 414; American Refining Co. v. Sims Oil Co. (Tex. Civ. App.) 282 S. W. 894, 896; The Cushing (D. C. 1922) 285 F. 617. The term also means, when price at the place of exportation is in view, the price at which articles are sold and purchased, clear of every charge but such as is laid upon it at the time of sale. Goodwin v. United States, 2 Wash. C. C. 493, Fed. Cas. No. 5,554.

Market Towns

Those towns which are entitled to hold markets. 1 Steph. Comm. (7th Ed.) 130.

Market Value

The market value of an article or piece of property is the price which it might be expected to bring if offered for sale in a fair market; not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would be fixed by negotiation and mutual agreement, after ample time to find a purchaser, as between a vendor who is willing (but not compelled) to sell and a purchaser who desires to buy but is not compelled to take the particular article or piece of property. See Winnipiseogee Lake, etc., Co. v. Gilford, 67 N. H. 514, 35 A. 945; Muser v. Magone, 155 U. S. 240, 15 S. Ct. 77, 39 L. Ed. 135; Esch v. Railroad Co., 72 Wis. 229, 39 N. W. 129; Sharpe v. U. S., 112 F. 898, 50 C. C. A. 597, 57 L. R. A. 932; Little Rock Junction Ry. v. Woodruff, 49 Ark. 381, 5 S. W. 792, 4 Am. St. Rep. 51; Lowe v. Omaha, 33 Neb. 587, 50 N. W. 763; San Diego Land Co. v. Neale, 78 Cal. 63, 20 P. 372, 3 L. R. A. 83; Consolidated Gas, Electric

Light & Power Co. of Baltimore v. City of Baltimore, 130 Md. 20, 99 A. 968, 972; People ex rel. Brown v. Purdy, 186 App. Div. 54, 173 N. Y. S. 782, 784; Tyson Creek R. Co. v. Empire Mill Co., 31 Idaho, 580, 174 P. 1004, 1006; Merchants' Cotton Oil Co. v. Acme Gin Co. (Tex. Civ. App.) 284 S. W. 680, 682; William H. Lowe Estate Co. v. Lederer Realty Corporation, 35 R. I. 352, 86 A. 881, 883, Ann. Cas. 1916A, 341; Stanley v. Sumrell (Tex. Civ. App.) 163 S. W. 697, 698; Illinois Power & Light Corporation v. Parks, 322 Ill. 313, 153 N. E. 483, 486.

Same meaning as "reasonable market value," or "fair market value." Sanders v. Pinney, 103 Wash. 162, 174 P. 471, 472; Haden v. Imperial Assur. Co., 197 Mo. App. 574, 198 S. W. 72; Hubbell v. City of Des Moines, 166 Iowa, 581, 147 N. W. 908, 910, Ann. Cas. 1916E, 592; Hoffman v. State, 24 Okl. Cr. 236, 218 P. 176, 177; Letcher County Fiscal Court v. State Tax Commission, 211 Ky. 609, 277 S. W. 988, 991; Eastern Coal & Export Corporation v. Norfolk & W. Ry. Co., 133 Va. 125, 113 S. E. 857, 859; Appeal by Pennsylvania Co. for Insurance on Lives and Granting Annuities, 282 Pa. 69, 127 A. 441, 443; John Moodie Dry Goods Co. v. Gilruth, 35 S. D. 567, 153 N. W. 383, 384; In re Matthews' Will, 174 Wis. 220, 182 N. W. 744, 745; In re Dupignac's Estate, 123 Misc. 21, 204 N. Y. S. 273, 276; Phillips v. U. S. (D. C.) 12 F.(2d) 598, 601.

Market Zeld

Properly *market geld*. In old records. The toll of a market. Cowell.

Public Market

A market which is not only open to the resort of the general public as purchasers, but also available to all who wish to offer their wares for sale, stalls, stands, or places being allotted to those who apply, to the limits of the capacity of the market, on payment of fixed rents or fees. See American Live Stock Commission Co. v. Chicago Live Stock Exchange, 143 Ill. 210, 32 N. E. 274, 18 L. R. A. 190, 36 Am. St. Rep. 385; State v. Fernandez, 39 La. Ann. 538, 2 So. 233; Cincinnati v. Buckingham, 10 Ohio, 257.

MARKETABLE. Such things as may be sold in the market; those for which a buyer may be found; merchantable. Hinton v. Martin, 151 Ark. 343, 236 S. W. 267, 268; Yontz v. McVean, 202 Mo. App. 377, 217 S. W. 1000, 1002; Pryor v. Fruit Distributors' Service Co., 73 Cal. App. 467, 238 P. 825, 827; Bier v. Walbaum, 102 N. J. Law, 368, 131 A. 888, 889.

MARKETABLE TITLE. A "marketable title" to land is such a title as a court of equity, when asked to decree specific performance of the contract of sale, will compel the vendee to accept as sufficient. It is said to be not merely a defensible title, but a title which is free from plausible or reasonable objections. Austin v. Barnum, 52 Minn. 136, 53 N. W.

1132; Vought v. Williams, 46 Hun (N. Y.) 642; Brokaw v. Duffy, 165 N. Y. 391, 59 N. E. 196; Todd v. Union Dime Sav. Inst., 128 N. Y. 636, 28 N. E. 504; Knudson v. Trebesch, 152 Minn. 6, 187 N. W. 613, 614; Charles Somers Co. v. Pix, 75 Wash. 233, 134 P. 932, 933; Bess Mar Realty Co. v. Capell, 164 N. Y. S. 803; Hershorn v. Rubenstein (Mass.) 156 N. E. 251, 253; Austin v. Carter (Tex. Civ. App.) 296 S. W. 649, 651; Willingham Loan & Trust Co. v. Moore, 160 Ga. 550, 128 S. E. 751, 753; Adkins v. Gillespie (Tex. Civ. App.) 189 S. W. 275, 281; Hennig v. Smith, 151 N. Y. S. 444, 446; Wilson v. Korte, 91 Wash. 30, 157 P. 47, 48; Herman v. Engstrom (Iowa) 214 N. W. 588, 589.

MARKSMAN. In practice and conveyancing. One who makes his mark; a person who cannot write, and only makes his mark in executing instruments. Arch. N. Pr. 13; 2 Chit. 92.

MARLBIDGE, STATUTE OF. An English statute enacted in 1267 (52 Hen. III.) at Marlbridge, (now called "Marlborough,") where parliament was then sitting. It related to land tenures, and to procedure, and to unlawful and excessive distresses.

MARQUE AND REPRISAL, LETTERS OF.

These words, "marque" and "reprisal," are frequently used as synonymous, but, taken in their strict etymological sense, the latter signifies a "taking in return;" the former, the passing the frontiers (*marches*) in order to such taking. Letters of marque and reprisal are grantable, by the law of nations, whenever the subjects of one state are oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs; and the party to whom these letters are granted may then seize the bodies or the goods of the subjects of the state to which the offender belongs, until satisfaction be made, wherever they happen to be found. Reprisals are to be granted only in case of a clear and open denial of justice. At the present day, in consequence partly of treaties and partly of the practice of nations, the making of reprisals is confined to the seizure of commercial property on the high seas by public cruisers, or by private cruisers specially authorized thereto. Brown.

MARQUIS, or MARQUESS. In English law. One of the second order of nobility; next in order to a duke.

MARQUISATE. The seigniorship of a marquis.

MARRIAGE. Marriage, as distinguished from the agreement to marry and from the act of becoming married, is the civil *status* of one man and one woman united in law for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex. 1 Bish. Mar. & Div. § 3. And see State v. Fry, 4 Mo. 126; Mott v. Mott, 82 Cal. 413, 22 Pac. 1140; Reynolds v. U. S.,

98 U. S. 165, 25 L. Ed. 244; *Maynard v. Hill*, 125 U. S. 190, 8 S. Ct. 723, 31 L. Ed. 654; *Wade v. Kalbfleisch*, 58 N. Y. 284, 17 Am. Rep. 250; *State v. Bittick*, 103 Mo. 183, 15 S. W. 325, 11 L. R. A. 587; 23 Am. St. Rep. 869; *Allen v. Allen*, 73 Conn. 54, 46 Atl. 242, 49 L. R. A. 142, 84 Am. St. Rep. 135; *Richardson v. Richardson*, 140 N. E. 73, 246 Mass. 353, 31 A. L. R. 146; *Bobbitt v. Bobbitt* (Tex. Civ. App.) 223 S. W. 478, 482; *Oswald v. Oswald*, 126 A. 81, 146 Md. 313; *Grant v. Grant* (Tex. Civ. App.) 286 S. W. 647, 650; *In re Moorehead's Estate*, 137 A. 802, 806, 289 Pa. 542, 52 A. L. R. 1251.

A contract, according to the form prescribed by law, by which a man and woman, capable of entering into such contract, mutually engage with each other to live their whole lives together in the state of union which ought to exist between a husband and wife. *Shelf. Mar. & Div. 1.*

Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties, or obligations. *Civil Code Cal. § 55.*

Marriage is a union of one man and one woman, "so long as they both shall live," to the exclusion of all others, by an obligation which, during that time, the parties cannot of their own volition and act dissolve, but which can be dissolved only by authority of the state. *Roche v. Washington*, 19 Ind. 53, 81 Am. Dec. 376.

The word also signifies the act, ceremony, or formal proceeding by which persons take each other for husband and wife.

In Old English Law

Marriage is used in the sense of "*maritimum*," (*q. v.*) or the feudal right enjoyed by the lord or guardian in chivalry of disposing of his ward in marriage.

In General

—**Avail of marriage.** See that title.

—**Common-law marriage.** See *Common Law*.

—**Jactitation of marriage.** See *Jactitation*.

—**Marriage articles.** Articles of agreement between parties contemplating marriage, intended as preliminary to a formal marriage settlement, to be drawn after marriage. *Ath. Mar. Sett. 92.*

—**Marriage brokerage.** The act by which a third person, for a consideration, negotiates a marriage between a man and woman. The money paid for such services is also known by this name. *Hellen v. Anderson*, 83 Ill. App. 509; *White v. Equitable Nuptial Ben. Union*, 76 Ala. 251, 52 Am. Rep. 325.

—**Marriage ceremony.** The form, religious or civil, for the solemnization of a marriage.

—**Marriage certificate.** An instrument which certifies a marriage, and is executed by the

person officiating at the marriage; it is not intended to be signed by the parties. *Spencer v. Spencer*, 147 N. Y. S. 111, 113, 84 Misc. Rep. 264.

—**Marriage consideration.** The consideration furnished by an intended marriage of two persons. It is the highest consideration known to the law.

—**Marriage license.** A license or permission granted by public authority to persons who intend to intermarry. By statute in some jurisdictions, it is made an essential prerequisite to the lawful solemnization of the marriage.

—**Marriage-notice book.** A book kept, in England, by the registrar, in which applications for and issue of registrar's licenses to marry are recorded.

—**Marriage portion.** Dowry; a sum of money or other property which is given to or settled on a woman on her marriage. *In re Croft*, 162 Mass. 22, 37 N. E. 784.

—**Marriage promise.** Betrothal; engagement to intermarry with another. *Perry v. Orr*, 35 N. J. Law, 296.

—**Marriage settlement.** A written agreement in the nature of a conveyance, called a "settlement," which is made in contemplation of a proposed marriage and in consideration thereof, either by the parties about to intermarry, or one of them, or by a parent or relation on their behalf, by which the title to certain property is settled, *i. e.*, fixed or limited to a prescribed course of succession; the object being, usually, to provide for the wife and children. Thus, the estate might be limited to the husband and issue, or to the wife and issue, or to husband and wife for their joint lives, remainder to the survivor for life, remainder over to the issue, or otherwise. Such settlements may also be made after marriage, in which case they are called "post-nuptial."

—**Fleet marriages.** There were in the neighborhood of the Fleet prison about sixty marriage houses, some of which were public houses and others not. They were known by having a sign-board, with joined hands, in addition to the public house sign. At the doors of these houses persons called *Pliers* solicited the passers-by to come in and be married, and in these houses persons who were, or pretended to be, clergymen performed the marriage ceremony and made entries in registers that were kept at the respective houses. There is little doubt that many entries had false dates, that persons who were married personated others, and that women who wished to plead a plea of *cóverture* or hide their shame were married to men who, for a trifling gratuity, married any woman who would pay them, though they had previously married others. Such marriages also

took place in the neighborhood of the King's Bench prison, at the Savoy, in the Mint, in the Borough, and at the Mayfair Chapel. It is said in 1 Peake N. P. C. 303, that a marriage in the Fleet was considered *at that time* good and legal. In 8 Carr. & P. 581 (34 E. C. L. R.), Patteson, J., said: "I shall not receive the Fleet Registry in evidence for any purpose whatever." They were refused in 1 Peake N. P. C. 303. A collection of over a thousand Fleet registers have been deposited in the Registry of the Bishop of London.

See Extracts from these registers and a historical note in 34 E. C. L. R. 534; Burns, Fleet Registers.

—**Manus marriage.** A form of marriage in early Rome; it formed a relation called *manus* (hand) and brought the wife into the husband's power, placing her as to legal rights in the position of a daughter. Bryce, Marr. & Divorce, in 3 Sel. Essays in Anglo-Amer. L. H. 787.

—**Mixed marriage.** A marriage between persons of different nationalities; or, more particularly, between persons of different racial origin; as between a white person and a negro or an Indian.

—**Morganatic marriage.** The lawful and inseparable conjunction of a man, of noble or illustrious birth, with a woman of inferior station, upon condition that neither the wife nor her children shall partake of the titles, arms, or dignity of the husband, or succeed to his inheritance, but be contented with a certain allowed rank assigned to them by the morganatic contract. But since these restrictions relate only to the rank of the parties and succession to property, without affecting the nature of a matrimonial engagement, it must be considered as a just marriage. The marriage ceremony was regularly performed; the union was indissoluble; the children legitimate. Wharton.

—**Plural marriage.** In general, any bigamous or polygamous union, but particularly, a second or subsequent marriage of a man who already has one wife living, under the system of polygamy as practised by Mormons. See Freil v. Wood, 1 Utah, 165.

—**Scotch marriage.** A marriage contracted without any formal solemnization or religious ceremony, by the mere mutual agreement of the parties *per verba de presenti* in the presence of witnesses, recognized as valid by the Scottish law.

MARRIAGE ACT, ROYAL. An act of 12 Geo. III, c. 1 (1772), by which members of the royal family are forbidden to marry without the king's consent, or except on certain onerous conditions.

MARRIED WOMAN. A woman who has a husband living and not divorced; a *feme covert*.

MARSHAL.

In Old English Law

The title borne by several officers of state and of the law, of whom the most important were the following: (1) The earl-marshal, who presided in the court of chivalry; (2) the marshal of the king's house, or knight-marshal, whose special authority was in the king's palace, to hear causes between members of the household, and punish faults committed within the verge; (3) the marshal of the king's bench prison, who had the custody of that jail; (4) the marshal of the exchequer, who had the custody of the king's debtors; (5) the marshal of the judge of assize, whose duty was to swear in the grand jury.

In American Law

An officer pertaining to the organization of the federal judicial system, whose duties are similar to those of a sheriff. He is to execute the process of the United States courts within the district for which he is appointed, etc.

Also, in some of the states, this is the name of an officer of police, in a city or borough, having powers and duties corresponding generally to those of a constable or sheriff.

MARSHAL OF THE QUEEN'S BENCH. An officer who had the custody of the queen's bench prison. The St. 5 & 6 Vict. c. 22, abolished this office, and substituted an officer called "keeper of the queen's prison."

MARSHALING. Arranging, ranking, or disposing in order; particularly, in the case of a group or series of conflicting claims or interests, arranging them in such an order of sequence, or so directing the manner of their satisfaction, as shall secure justice to all persons concerned and the largest possible measure of satisfaction to each. See sub-titles *infra*.

MARSHALING ASSETS. In equity. The arranging or ranking of assets in the due order of administration. Such an arrangement of the different funds under administration as shall enable all the parties having equities therein to receive their due proportions, notwithstanding any intervening interests, liens, or other claims of particular persons to prior satisfaction out of a portion of these funds. The arrangement or ranking of assets in a certain order towards the payment of debts. 1 Story, Eq. Jur. § 558; 4 Kent, Comm. 421. The arrangement of assets or claims so as to secure the proper application of the assets to the various claims; especially when there are two classes of assets, and some creditors can enforce their claims against both, and others against only one, and the creditors of the former class are compelled to exhaust the assets against which they alone have a claim before having recourse to other assets, thus providing for the settlement of as many claims as possible. Pub. St. Mass. p. 1292.

MARSHALING LIENS. The ranking or ordering of several estates or parcels of land, for the satisfaction of a judgment or mortgage to which they are all liable, though successively conveyed away by the debtor. The rule is that, where lands subject to the lien of a judgment or mortgage have been sold or incumbered by the owner at different times to different purchasers, the various tracts are liable to the satisfaction of the lien in the inverse order of their alienation or incumbrance, the land last sold being first chargeable. 1 Black, Judgm. § 440.

MARSHALING SECURITIES. An equitable practice, which consists in so ranking or arranging classes of creditors, with respect to the assets of the common debtor, as to provide for satisfaction of the greatest number of claims. The process is this: Where one class of creditors have liens or securities on two funds, while another class of creditors can resort to only one of those funds, equity will compel the doubly-secured creditors to first exhaust that fund which will leave the single security of the other creditors intact. See 1 Story, Eq. Jur. § 633.

MARSHALSEA. In English law. A prison belonging to the king's bench. It has now been consolidated with others, under the name of the "King's Prison."

MARSHALSEA, COURT OF. The court of the Marshalsea had jurisdiction in actions of debt or torts, the cause of which arose within the verge of the royal court. It was abolished by St. 12 & 13 Vict. c. 101. 4 Steph. Comm. 317, note d.

MART. A place of public traffic or sale.

MARTE SUO DECURRERE. Lat. To run by its own force. A term applied in the civil law to a suit when it ran its course to the end without any impediment. Calvin.

MARTIAL LAW. A system of law, obtaining only in time of actual war and growing out of the exigencies thereof, arbitrary in its character, and depending only on the will of the commander of an army, which is established and administered in a place or district of hostile territory held in belligerent possession, or, sometimes, in places occupied or pervaded by insurgents or mobs, and which suspends all existing civil laws, as well as the civil authority and the ordinary administration of justice. See *In re Ezeta* (D.C.) 62 Fed. 972; *Diekelman v. U. S.*, 11 Ct. Cl. 439; *Com. v. Shortall*, 206 Pa. 165, 55 Atl. 952, 65 L. R. A. 193, 98 Am. St. Rep. 759; *Griffin v. Wilcox*, 21 Ind. 377. See, also, *Military Law*.

"Martial law, which is built upon no settled principles, but is entirely arbitrary in its decisions, is in truth and reality no law, but something indulged rather than allowed as a law. The necessity of order and discipline in an army is the only thing which can give it countenance, and therefore it ought not to be permitted in time of peace, when the king's

courts are open for all persons to receive justice according to the laws of the land." 1 Bl. Comm. 413.

Martial law is neither more nor less than the will of the general who commands the army. It overrides and suppresses all existing civil laws, civil officers, and civil authorities, by the arbitrary exercise of military power; and every citizen or subject—in other words, the entire population of the country, within the confines of its power—is subjected to the mere will or caprice of the commander. He holds the lives, liberty, and property of all in the palm of his hand. Martial law is regulated by no known or established system or code of laws, as it is over and above all of them. The commander is the legislator, judge, and executioner. *In re Egan*, 5 Blatchf. 321, Fed. Cas. No. 4,303.

Martial law is not the same thing as *military law*. The latter applies only to persons connected with the military forces of the country or to affairs connected with the army or with war, but is permanent in its nature, specific in its rules, and a recognized part of the law of the land. The former applies, when in existence, to all persons alike who are within the territory covered, but is transient in its nature, existing only in time of war or insurrection, is not specific or always the same, as it depends on the will and discretion of the military commander, and is no part of the law of the land. *U. S. v. McDonald* (D. C.) 265 F. 754, 761; *Bishop v. Vandercook*, 200 N. W. 278, 280, 228 Mich. 299.

MARTINMAS. The feast of St. Martin of Tours, on the 11th of November; sometimes corrupted into "Martilmas" or "Martlemas." It is the third of the four cross quarter-days of the year. Wharton.

MARUS. In old Scotch law. A maire; an officer or executor of summons. Otherwise called "*præco regis*." Skene.

MASAGIUM. L. Lat. A message.

MASOCHISM. [From Leopold von Sacher-Masoch, a nineteenth-century Austrian novelist and historian.] A form of perversion in which sexual pleasure is heightened when one is beaten and maltreated at the hands of the other party; the opposite of sadism. *Stedman's Med. Dict.* (11th Ed. 1930). Sexual perversion, in which a member of one sex takes delight in being dominated, even to the extent of violence or cruelty, by one of the other sex. *Dunglison's Med. Dict.* (1893), quoted in *Murray's (Oxford) New English Dict.*

MASON AND DIXON'S LINE. The boundary line between Pennsylvania on the north and Maryland on the south, celebrated before the extinction of slavery as the line of demarcation between the slave and the free states. It was run by Charles Mason and Jeremiah Dixon, commissioners in a dispute between the Penn Proprietors and Lord Baltimore. The line was carried 244 miles from the Delaware river where it was stopped by Indians. A resurvey was made in 1849, and

in 1900 a new survey was authorized by the two states.

MASS STRIKE. The striking or ceasing to work by concerted action of all working classes, thus paralyzing and bringing to an end government and its functions. *People v. Gitlow*, 136 N. E. 317, 320, 234 N. Y. 132.

MASSA. In the civil law. A mass; an unwrought substance, such as gold or silver, before it is wrought into cups or other articles. Dig. 47, 2, 52, 14; *Fleta*, lib. 2, c. 60, §§ 17, 22.

MASSACHISM. See Masochism.

MASSSES. Religious ceremonials or observances of the Roman Catholic Church.

A bequest for masses comes within the religious uses which are upheld as public charities; in *re Schouler*, 134 Mass. 427; *Selbert's Appeal*, 13 W. N. C. (Pa.) 276, 6 A. 105; *Obrecht v. Pujos*, 206 Ky. 751, 268 S. W. 564, 565; *Ackerman v. Fichter*, 179 Ind. 392, 101 N. S. 493, 496, 46 L. R. A. (N. S.) 221, Ann. Cas. 1915D, 1117. *Contra*, *Holland v. Alcock*, 108 N. Y. 316, 16 N. E. 305, 2 Am. St. Rep. 420; in England, such a bequest has been held to be void; 15 Ch. D. 596; to the same effect, *Pestorazzi v. Catholic Church*, 104 Ala. 327, 18 So. 394, 25 L. R. A. 360, 53 Am. St. Rep. 48. In Ireland, if the trustee is willing to comply with the testator's direction, no one can interfere to prevent him; *Ames*, Lect. in Leg. Hist. 294, citing 7 Ir. Eq. 34, n.

MAST. To fatten with mast, (acorns, etc.) 1 Leon. 186.

MAST-SELLING. In old English law. The practice of selling the goods of dead seamen at the mast. Held void. 7 Mod. 141.

MASTER. One having authority; one who rules, directs, instructs, or superintends; a head or chief; an instructor; an employer. Applied to several judicial officers. See *infra*.

In Scotland, the title of the eldest son of a viscount or baron. Cent. Diet.

—**Master and servant.** The relation of master and servant exists where one person, for pay or other valuable consideration, enters into the service of another and devotes to him his personal labor for an agreed period. Sweet.

—**Master at common law.** The title of officers of the English superior courts of common law appointed to record the proceedings of the court to which they belong; to superintend the issue of writs and the formal proceedings in an action; to receive and account for the fees charged on legal proceedings, and moneys paid into court. There are five to each court. They are appointed under St. 7 Wm. IV. and 1 Vict. c. 30, passed in 1837. *Mozley & Whitley*.

—**Master in chancery.** An officer of a court of chancery who acts as an assistant to the judge or chancellor. His office is to inquire into such matters as may be referred to him by the court, examine causes, take testimony, take accounts, compute damages, etc., report-

ing his findings to the court in such shape that a decree may be made; also to take oaths and affidavits and acknowledgments of deeds. In modern practice, many of the functions of a master are performed by clerks, commissioners, auditors, and referees, and in some jurisdictions the office has been superseded. See *Kimberly v. Arms*, 129 U. S. 512, 9 Sup. Ct. 355, 32 L. Ed. 764; *Schuchardt v. People*, 99 Ill. 501, 39 Am. Rep. 34.

—**Master in lunacy.** In English law. The masters in lunacy are judicial officers appointed by the lord chancellor for the purpose of conducting inquiries into the state of mind of persons alleged to be lunatics. Such inquiries usually take place before a jury. 2 Steph. Comm. 511-513.

—**Master of a ship.** In maritime law. The commander of a merchant vessel, who has the chief charge of her government and navigation and the command of the crew, as well as the general care and control of the vessel and cargo, as the representative and confidential agent of the owner. He is commonly called the "captain." See *Martin v. Farnsworth*, 33 N. Y. Super. Ct. 260; *Hubbell v. Denison*, 20 Wend. (N. Y.) 181.

—**Master of the crown office.** The king's coroner and attorney in the criminal department of the court of king's bench, who prosecutes at the relation of some private person or common informer, the crown being the nominal prosecutor. St. 6 & 7 Vict. c. 20; *Wharton*.

—**Master of the faculties.** In English law. An officer under the archbishop, who grants licenses and dispensations, etc.

—**Master of the horse.** In English law. The third great officer of the royal household, being next to the lord steward and lord chamberlain. He has the privilege of making use of any horses, footmen, or pages belonging to the royal stables.

—**Master of the mint.** In English law. An officer who receives bullion for coinage, and pays for it, and superintends everything belonging to the mint. He is usually called the "warden of the mint." It is provided by St. 33 Vict. c. 10, § 14, that the chancellor of the exchequer for the time being shall be the master of the mint.

—**Master of the ordnance.** In English law. A great officer, to whose care all the royal ordnance and artillery were committed.

—**Master of the rolls.** In English law. An assistant judge of the court of chancery, who holds a separate court ranking next to that of the lord chancellor, and has the keeping of the rolls and grants which pass the great seal, and the records of the chancery. He was originally appointed only for the superintendence of the writs and records appertaining to the common-law department of the court, and

is still properly the chief of the masters in chancery. 3 Steph. Comm. 417. Under the act constituting the supreme court of judicature, the master of the rolls becomes a judge of the high court of justice and *ex officio* a member of the court of appeal. The same act, however, provides for the abolition of this office, under certain conditions, when the next vacancy occurs. See 36 & 37 Vict. c. 66, §§ 5, 31, 32.

—**Masters of the supreme court.** In English law. Officials deriving their title from Jud. (Officers') Act 1879, and being, or filling the places of, the sixteen masters of the common-law courts, the queen's coroner and attorney, the master of the crown office, the two record and writ clerks, and the three associates. Wharton.

—**Master of the Temple.** The chief ecclesiastical functionary of the Temple Church.

—**Master's report.** The formal report or statement made by a master in chancery of his decision on any question referred to him, or of any facts or action he has been directed to ascertain or take.

—**Special master.** A master in chancery appointed to act as the representative of the court in some particular act or transaction, as, to make a sale of property under a decree. Guaranty Trust, etc., Co. v. Delta & Pine Land Co., 104 Fed. 5, 43 C. C. A. 396; Pe-wabic Min. Co. v. Mason, 145 U. S. 349, 12 Sup. Ct. 887, 36 L. Ed. 732.

—**Taxing masters.** Officers of the English supreme court, who examine and allow or disallow items in bills of costs.

MASURA. In old records. A decayed house; a wall; the ruins of a building; a certain quantity of land about four oxgangs.

MATE. The officer second in command on a merchant vessel. Ely v. Peck, 7 Conn. 242; Millaudon v. Martin, 6 Rob. (La.) 539.

MATELOTAGE. In French law. The hire of a ship or boat.

Seamanship; seaman's wages, pay.

MATER-FAMILIAS. Lat. In the civil law. The mother or mistress of a family. A chaste woman, married or single. Calvin.

MATERIA. Lat.

In the Civil Law

Materials; as distinguished from *species*, or the *form* given by labor and skill. Dig. 41, 1, 7, 7-12; Fleta. lib. 3, c. 2, § 14.

Materials (wood) for building, as distinguished from "*ignum*." Dig. 32, 55, pr.

In English Law

Matter; substance; subject-matter. 3 Bl. Comm. 322.

MATERIAL. Important; more or less necessary; having influence or effect; going to the merits; having to do with matter, as distinguished from form. An allegation is said to be material when it forms a substantive part of the case presented by the pleading. Evidence offered in a cause, or a question propounded, is material when it is relevant and goes to the substantial matters in dispute, or has a legitimate and effective influence or bearing on the decision of the case. Connecticut Fire Ins. Co. of Hartford, Conn., v. George, 52 Okl. 432, 153 P. 116, 119.

MATERIAL ALLEGATION. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient. Lusk v. Perkins, 48 Ark. 247, 2 S. W. 847; Gillson v. Price, 18 Nev. 109, 1 P. 459; Wheeler v. Hurley, 49 Nev. 70, 236 P. 559, 560. A material alteration in any written instrument is one which changes its tenor, or its legal meaning and effect; one which causes it to speak a language different in effect from that which it originally spoke. White v. Harris, 69 S. C. 65, 48 S. E. 41, 104 Am. St. Rep. 791; Foxworthy v. Colby, 64 Neb. 216, 89 N. W. 800, 62 L. R. A. 393; Organ v. Allison, 9 Baxt. (Tenn.) 462.

MATERIAL FACT. See Fact.

MATERIAL-MAN. A person who has furnished materials used in the construction or repair of a building, structure, or vessel. See Curlett v. Aaron, 6 Houst. (Del.) 478; Hihn-Hammond Lumber Co. v. Elsom, 171 Cal. 570, 154 P. 12, 13, Ann. Cas. 1917C, 798; Russell v. Pitchler, 198 N. Y. S. 702, 704; Edward E. Buhler Co. v. New York Dock Co., 170 App. Div. 486, 156 N. Y. S. 457, 459; Royal Indemnity Co. v. Day & Maddock Co., 114 Ohio St. 58, 150 N. E. 426, 427, 44 A. L. R. 374; Pugh v. Moxley, 164 Cal. 374, 128 P. 1037, 1038.

The property or character of being material. See Material.

MATERIALS. The substance or matter of which anything is made; matter furnished for the erection of a house, ship, or other structure which enters into and becomes a part thereof. See Moyer v. Pennsylvania Slate Co., 71 Pa. 293; Standard Oil Co. v. Detroit Fidelity & Surety Co., 24 Ohio App. 237, 157 N. E. 418, 420; Travelers' Ins. Co. v. Village of Ilion, 126 Misc. 275, 213 N. Y. S. 206, 207; Ramsey v. Hawkins, 78 Fla. 189, 82 So. 823, 826; Road Supply & Metal Co. v. Bechtelheimer, 119 Kan. 560, 240 P. 846, 847; Royal Indemnity Co. v. Day & Maddock Co., 114 Ohio St. 58, 150 N. E. 426, 427, 44 A. L. R. 374; Commonwealth v. National Surety Co., 253 Pa. 5, 97 A. 1034, 1037; Fay v. Bankers' Surety Co., 125 Minn. 211, 146 N. W. 359, 360, Ann. Cas. 1915C, 688; U. S. Fidelity & Guaranty Co. v. California-Arizona Const. Co., 21 Ariz. 172, 186 P. 502, 506.

The authorities are in conflict as to whether oil and gasoline used in operation of machinery are "materials." Standard Oil Co. v. National Surety Co., 143 Miss. 841, 107 So. 559, 560; Overman & Co. v. Maryland Casualty Co., 193 N. C. 86, 136 S. E. 250, 252; Gill v. Mullan, 140 Md. 1, 116 A. 563, 564; Bartles Scott Oil Co. v. Western Surety Co., 161 Minn. 169, 200 N. W. 937, 938; Fidelity & Deposit Co. of Maryland v. Metropolitan Sewerage Commission of Milwaukee County, 191 Wis. 499, 210 N. W. 713, 716. Likewise with respect to whether provisions and commissary supplies furnished to contractor are "materials." Baker City Mercantile Co. v. Idaho Glazed Cement Pipe Co., 67 Or. 372, 136 P. 23, 25; Overman & Co. v. Maryland Casualty Co., 193 N. C. 86, 136 S. E. 250, 252; Westling v. Republic Casualty Co. of Pittsburgh, 157 Minn. 193, 195 N. W. 796, 797; Westling v. Republic Cas. Co., 157 Minn. 193, 195 N. W. 796; Standard Oil Co. v. Remer, 170 Minn. 293, 212 N. W. 460, 461; Monona County v. O'Connor (Iowa) 215 N. W. 803, 804; Early & Daniel Co. v. American Surety Co. of New York (C. C. A.) 5 F.(2d) 670, 671; Federal Paving Co. v. Raschka, 32 Ind. App. 416, 141 N. E. 644, 645; U. S. Fidelity & Guaranty Co. v. Henderson County (Tex. Com. App.) 276 S. W. 203, 206; City of Portland v. New England Casualty Co., 96 Or. 48, 189 P. 211; United States, for Use of Samuel Hastings Co. v. Lowrance (C. C. A.) 252 F. 122, 123. That gas used in operating drill and electric power furnished street railroad are "materials," see Crown Central Petroleum Corporation v. Frick-Reid Supply Co., 173 Ark. 983, 293 S. W. 1012, 1014; Westinghouse Electric Mfg. Co. v. Barre & Montpelier Traction & Power Co., 98 Vt. 130, 126 A. 594, 602. That rent for a steam shovel is not "material" furnished, see Troy Public Works Co. v. City of Yonkers, 207 N. Y. 81, 100 N. E. 700, 701, 44 L. R. A. (N. S.) 311.

MATERNA MATERNIS. Lat. A maxim of the French law, signifying that property of a decedent acquired by him through his mother descends to the relations on the mother's side.

MATERNAL. That which belongs to, or comes from, the mother; as maternal authority, maternal relation, maternal estate, maternal line.

MATERNAL PROPERTY. That which comes from the mother of the party, and other ascendants of the maternal stock. Dom. Liv. Prél. t. 3, s. 2, no. 12.

MATERNITY. The character, relation, state, or condition of a mother.

MATERTERA. Lat. In the civil law. A maternal aunt; a mother's sister. Inst. 3, 6, 1; Bract. fol. 68b.

MATERTERA MAGNA. A great aunt; a grandmother's sister, (*avie soror.*) Dig. 38, 10, 10, 15.

MATERTERA MAJOR. A greater aunt; a great-grandmother's sister, (*proavie soror.*;) a father's or mother's great-aunt, (*patris vel matris matertera magna.*) Dig. 38, 10, 10, 16.

MATERTERA MAXIMA. A greatest aunt; a great-great-grandmother's sister, (*abavie soror.*;) a father's or mother's greater aunt,

(*patris vel matris matertera major.*) Dig. 38, 10, 10, 17.

MATHEMATICAL EVIDENCE. See Evidence.

MATIMA. A godmother.

MATRICIDE. The murder of a mother; or one who has slain his mother.

MATRICULA. In the civil and old English law. A register of the admission of officers and persons entered into any body or society, whereof a list was made. Hence those who are admitted to a college or university are said to be "matriculated." Also a kind of almshouse, which had revenues appropriated to it, and was usually built near the church, whence the name was given to the church itself. Wharton.

MATRICULATE. To enter as a student in a university.

Matrimonia debent esse libera. Marriages ought to be free. A maxim of the civil law. 2 Kent, Comm. 102.

MATRIMONIAL. Of or pertaining to matrimony or the estate of marriage.

MATRIMONIAL ACTIONS. Actions for divorce. In re Neuman, 169 App. Div. 638, 155 N. Y. S. 428, 429; Johnson v. Johnson, 206 N. Y. 561, 100 N. E. 408, Ann. Cas. 1914B, 407; Stoddard v. Stoddard, 187 App. Div. 258, 175 N. Y. S. 636, 641.

MATRIMONIAL CAUSES. In English ecclesiastical law. Causes of action or injuries respecting the rights of marriage. One of the three divisions of causes or injuries cognizable by the ecclesiastical courts, comprising suits for jactitation of marriage, and for restitution of conjugal rights, divorces, and suits for alimony. 3 Bl. Comm. 92-94; 3 Steph. Comm. 712-714.

MATRIMONIAL COHABITATION. The living together of a man and woman ostensibly as husband and wife. Cox v. State, 117 Ala. 103, 23 So. 806, 41 L. R. A. 760, 67 Am. St. Rep. 166; Wilcox v. Wilcox, 46 Hun (N. Y.) 37. Also the living together of those who are legally husband and wife, the term carrying with it, in this sense, an implication of mutual rights and duties as to sharing the same habitation. Forster v. Forster, 1 Hagg. Consist. 144; U. S. v. Cannon, 4 Utah, 122, 7 P. 369.

MATRIMONIUM. Lat. In Roman law. A legal marriage, contracted in strict accordance with the forms of the older Roman law, *i. e.*, either with the *farreum*, the *coemptio*, or by *usus*. This was allowed only to Roman citizens and to those neighboring peoples to whom the right of *connubium* had been conceded. The effect of such a marriage was to bring the wife into the *manus*, or marital power, of the husband, and to create the *patria potestas* over the children.

Matrimonium subsequens tollit peccatum præcedens. Subsequent marriage cures preceding criminality.

MATRIMONY. Marriage, (*q. v.*) in the sense of the relation or *status*, not of the ceremony.

MATRIX. In the civil law. The protocol or first draft of a legal instrument, from which all copies must be taken. See *Downing v. Diaz*, 80 Tex. 436, 16 S. W. 53.

MATRIX ECCLESIA. Lat. A mother church. This term was anciently applied to a cathedral, in relation to the other churches in the same see, or to a parochial church, in relation to the chapels or minor churches attached to it or depending on it. Blount.

MATRON. A married woman; an elderly woman. The female superintendent of an establishment or institution, such as a hospital, an orphan asylum, etc., is often so called. *Fisher v. Gardnier*, 183 Mich. 660, 150 N. W. 358.

MATRONS, JURY OF. Such a jury is impaneled to try if a woman condemned to death be with child.

MATTER. Substantial facts forming basis of claim or defense; facts material to issue; substance as distinguished from form; transaction, event, occurrence; subject-matter of controversy; special proceeding. *Parker v. Bowen*, 98 Vt. 115, 126 A. 522, 523; *Bishop v. Shurly*, 237 Mich. 76, 211 N. W. 75, 78; *Rubin v. Sheldon*, 130 Misc. 588, 224 N. Y. S. 340, 341; *John Diebold & Sons Stone Co. v. Tatterson*, 115 Va. 766, 80 S. E. 585, 586; *People v. Anderson*, 62 Cal. App. 222, 216 P. 401, 402; *Davis v. Seaward*, 85 Misc. 210, 146 N. Y. S. 981, 985; *Franklin Buggy Co. v. Carter*, 21 Ga. App. 576, 94 S. E. 820; *Carter v. Dunham*, 104 Kan. 59, 177 P. 533, 534.

MATTER IN CONTROVERSY, or IN DISPUTE. The subject of litigation; the matter for which a suit is brought and upon which issue is joined. *Lee v. Watson*, 1 Wall. 337, 17 L. Ed. 557; *Bee Hive Mining Co. v. Ford*, 144 Va. 21, 131 S. E. 203.

MATTER IN DEED. Such matter as may be proved or established by a deed or specialty. Matter of fact, in contradistinction to matter of law. Co. Litt. 320; Steph. Pl. 197.

MATTER IN ISSUE. That upon which the plaintiff proceeds in his action, and which the defendant controverts by his pleadings, not including facts offered in evidence to establish the matters in issue. *King v. Chase*, 15 N. H. 9, 41 Am. Dec. 675. That ultimate fact or state of facts in dispute upon which the verdict or finding is predicated. *Smith v. Ontario (C. C.)* 4 F. 386; *Clark v. Arizona Mut. Savings & Loan Ass'n (D. C.)* 217 F. 640, 644; *Chesley v. Dunklee*, 77 N. H. 263, 90 A. 965, 966; *State v. District Court of Sixth Judicial Dist. in and for Park County*, 73

Mont. 297, 236 P. 553, 554; *Burleigh v. Wong Sung Leon (N. H.)* 139 A. 184, 187. See 2 Black, Judgm. § 614, and cases cited.

Matter in ley ne serra mise in bouche del jurors. Jenk. Cent. 180. Matter of law shall not be put into the mouth of the jurors.

MATTER IN PAIS. Matter of fact that is not in writing; thus distinguished from matter in deed and matter of record; matter that must be proved by parol evidence.

MATTER OF COURSE. Anything done or taken in the course of routine or usual procedure, which is permissible and valid without being specially applied for and allowed.

MATTER OF FACT. That which is to be ascertained by the senses, or by the testimony of witnesses describing what they have perceived. Distinguished from matter of law and matter of opinion. *Moses v. United States (C. C. A.)* 221 F. 863, 871.

MATTER OF FORM. See Form.

MATTER OF LAW. Whatever is to be ascertained or decided by the application of statutory rules or the principles and determinations of the law, as distinguished from the investigation of particular facts, is called "matter of law."

MATTER OF RECORD. Any judicial matter or proceeding entered on the records of a court, and to be proved by the production of such record. It differs from matter in deed, which consists of facts which may be proved by specialty.

MATTER OF SUBSTANCE. That which goes to the merits. The opposite of matter of form.

MATTERS OF SUBSISTENCE FOR MAN. This phrase comprehends all articles or things, whether animal or vegetable, living or dead, which are used for food, and whether they are consumed in the form in which they are bought from the producer or are only consumed after undergoing a process of preparation, which is greater or less, according to the character of the article. *Sledd v. Com.*, 19 Grat. (Va.) 813.

Maturiora sunt vota mulierum quam virorum. 6 Coke, 71. The desires of women are more mature than those of men; *i. e.*, women arrive at maturity earlier than men.

MATURITY. In mercantile law. The time when a bill of exchange or promissory note becomes due. Story, Bills, § 329. *Gilbert v. Sprague*, 88 Ill. App. 508; *Wheless v. Williams*, 62 Miss. 371, 52 Am. Rep. 190; *Patterson v. Reddish*, 56 Cal. App. 197, 204 P. 565, 567; *Ardmore State Bank v. Lee*, 61 Okl. 169, 159 P. 903, 905; *United States Nat. Bank of Red Lodge v. Shupak*, 54 Mont. 542, 172 P. 324, 325.

MAUGRE. L. Fr. In spite of; against the will of. Litt. § 672.

MAUNDY THURSDAY. The day preceding Good Friday, on which princes gave alms.

MAXIM. An established principle or proposition. A principle of law universally admitted, as being a correct statement of the law, or as agreeable to reason.

Coke defines a maxim to be "conclusion of reason," and says that it is so called "*quia maxima ejus dignitas et certissima auctoritas, et quod maxime omnibus probetur.*" Co. Litt. 11a. He says in another place: "A maxim is a proposition to be of all men confessed and granted without prooffe, argument, or discourse." Id. 67a.

The maxims of the law, in Latin, French, and English, will be found distributed through this book in their proper alphabetical order.

Maxime paci sunt contraria vis et injuria. The greatest enemies to peace are force and wrong. Co. Litt. 161b.

MAXIMUM. The greatest quantity or highest in degree attainable or attained, or the greatest or highest allowed by law or authority. Poolman v. Langdon, 94 Wash. 448, 162 P. 578, 580; Taylor v. Williams, 169 Ark. 52, 272 S. W. 852, 853.

Maximus erroris populus magister. Bacon. The people is the greatest master of error.

MAY. An auxiliary verb qualifying the meaning of another verb by expressing ability, competency, liberty, permission, possibility, probability or contingency. U. S. v. Lexington Mill & E. Co., 232 U. S. 399, 34 S. Ct. 337, 340, 58 L. Ed. 658, L. R. A. 1915B, 774; Carson v. Turrish, 140 Minn. 445, 168 N. W. 349, 352, L. R. A. 1918F, 154; McMullin v. Commonwealth Title Ins. & Trust Co., 261 Pa. 574, 104 A. 760, 761; Mitchell v. Hancock (Tex. Civ. App.) 196 S. W. 694, 700; Henry v. Postal Telegraph Co., 100 Or. 179, 197 P. 258, 260. Regardless of the instrument, however, whether constitution, statute, deed, contract or whatnot, courts not infrequently construe "may" as "shall" or "must" to the end that justice may not be the slave of grammar. Minor v. Mechanics' Bank, 1 Pet. 46, 64, 7 L. Ed. 47; New York v. Furze, 3 Hill (N. Y.) 612, 615; Appeal of Burnap, 94 Conn. 286, 108 A. 802, 804; Stapler v. El Dora Oil Co., 27 Cal. App. 516, 150 P. 643, 645; Los Angeles County v. State, 64 Cal. App. 290, 222 P. 153, 156; Simpson v. Winegar (Or.) 258 P. 562, 563; State v. Starr, 24 N. M. 180, 173 P. 674, 679; McMillan v. Barnard Free Skin & Cancer Hospital, 304 Mo. 635, 264 S. W. 410, 414; Arizona Corp. Commission v. Heralds of Liberty, 17 Ariz. 462, 154 P. 202, 205; State v. Hall, 44 N. D. 536, 173 N. W. 763, 765; State v. Reeves, 112 S. C. 383, 99 S. E. 841, 842; Rubin v. Lipson, 96 Conn. 281, 114 A. 86, 87; Farmers' & Merchants' Bank of Monroe, N. C., v. Federal Reserve Bank of Richmond, Va., 262 U. S. 649, 43 S. Ct. 651, 67 L. Ed. 1157, 30

A. L. R. 635; Board of Education of Rockdale County v. Gresham, 21 Ga. App. 440, 94 S. E. 641; McDonald v. Board of Chosen Freeholders of Hudson Co., 99 N. J. Law, 170, 122 A. 801, 802; U. S. ex rel. Stayton v. Paschall (D. C.) 9 F.(2d) 109, 112; Friend v. Scottish Union & Nat. Ins. Co., 103 N. J. Law, 290, 136 A. 718, 719. State v. Bartholomew, 103 Conn. 607, 132 A. 30, 33; Whalen Paper & Pulp Mills v. Davis, 53 App. D. C. 84, 288 F. 438, 440; Empire Mills Co. v. Burrell Engineering & Const. Co., 18 Ga. App. 253, 89 S. E. 530.

MAYHEM. In criminal law. The act of unlawfully and violently depriving another of the use of such of his members as may render him less able, in fighting, either to defend himself or annoy his adversary. 4 Bl. Comm. 205. Foster v. People, 50 N. Y. 604; Terrell v. State, 86 Tenn. 523, 8 S. W. 212; Adams v. Barrett, 5 Ga. 412; Foster v. People, 1 Colo. 294; State v. Enkhhouse, 40 Nev. 1, 160 P. 23, 24; State v. Martin (N. M.) 250 P. 842, 844; People v. Nunes, 47 Cal. App. 346, 190 P. 486, 487; State v. Foster, 156 La. 891, 101 So. 255, 257.

Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem. Pen. Code Cal. § 203.

MAYHEMAVIT. Maimed. This is a term of art which cannot be supplied in pleading by any other word, as *mutilavit*, *truncavit*, etc. 3 Thom. Co. Litt. 548; Com. v. Newell, 7 Mass. 247.

MAYN. L. Fr. A hand; handwriting. Britt. c. 28.

MAYNOVER. L. Fr. A work of the hand; a thing produced by manual labor. Yearb. M. 4 Edw. III. 38.

MAYOR. The executive head of a municipal corporation; the governor or chief magistrate of a city. Waldo v. Wallace, 12 Ind. 577; People v. New York, 25 Wend. (N. Y.) 36; Crovatt v. Mason, 101 Ga. 246, 28 S. E. 891.

MAYOR'S COURT. A court established in some cities, in which the mayor sits with the powers of a police judge or committing magistrate in respect to offenses committed within the city, and sometimes with civil jurisdiction in small causes, or other special statutory powers.

MAYOR'S COURT OF LONDON. An inferior court having jurisdiction in civil cases where the whole cause of action arises within the city of London.

MAYORALTY. The office or dignity of a mayor.

MAYORAZGO. In Spanish law. The right to the enjoyment of certain aggregate property, left with the condition thereon imposed that they are to pass in their integrity, perpetually, successively to the eldest son. Schm. Civil Law, 62.

MAYORESS. The wife of a mayor.

MEAD. Ground somewhat watery, not plowed, but covered with grass and flowers. Enc. Lond.

MEADOW. A tract of low or level land producing grass which is mown for hay. Webster.

A tract which lies above the shore, and is overflowed by spring and extraordinary tides only, and yields grasses which are good for hay. *Church v. Meeker*, 34 Conn. 429. See *State v. Crook*, 132 N. C. 1053, 44 S. E. 32; *Scott v. Willson*, 3 N. H. 322; *Barrows v. McDermott*, 73 Me. 441.

MEAL-RENT. A rent formerly paid in meal.

MEAN LOW TIDE. As applied to Puget Sound, signifies the mean or average level of the low tides, including both the long and short daily runout. "Mean lower low tide" signifies the mean level of the daily extreme low tides. "Harmonic plane" is the zero adopted by the United States Coast and Geodetic Survey of the Department of Commerce upon which its tidal tables, charts, and maps are based. It is an arbitrary plane, and is the lowest plane of the tide in the Sound recognized by that department, being approximately two feet lower than mean lower low tide, and approximately four feet lower than mean low tide. *State v. Scott*, 154 P. 165, 168, 89 Wash. 63.

MEAN, or MESNE. A middle between two extremes, whether applied to persons, things, or time.

MEANDER. To meander means to follow a winding or flexuous course; and when it is said, in a description of land, "thence with the meander of the river," it must mean a meandered line,—a line which follows the sinuosities of the river,—or, in other words, that the river is the boundary between the points indicated. *Turner v. Parker*, 14 Or. 341, 12 P. 495; *Schurmeier v. St. Paul & P. R. Co.*, 10 Minn. 100 (Gil. 75), 88 Am. Dec. 59.

This term is used in some jurisdictions with the meaning of surveying and mapping a stream according to its meanderings, or windings and turnings. See *Jones v. Pettibone*, 2 Wis. 317.

MEANDER LINES. Lines run in surveying particular portions of the public lands which border on navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of land in the fraction subject to sale, and

which is to be paid for by the purchaser. In preparing the official plat from the field notes, the meander line is represented as the border line of the stream, and shows that the water-course, and not the meander line as naturally run on the ground, is the boundary. *St. Paul & P. R. Co. v. Schurmeier*, 7 Wall. 286, 19 L. Ed. 74; *Niles v. Cedar Point Club*, 175 U. S. 300, 20 Sup. Ct. 124, 44 L. Ed. 171; *Producers' Oil Co. v. Hanszen*, 61 So. 754, 132 La. 691; *In re Tucker*, 148 N. W. 60, 126 Minn. 214; *Payne v. Hall*, 185 N. W. 912; 914, 192 Iowa 780; *United States v. Mackey* (D. C.) 214 F. 137, 147; *Rue v. Oregon & W. R. Co.*, 186 P. 1074, 1077, 109 Wash. 436; *City of Cedar Rapids v. Marshall*, 203 N. W. 932, 933, 199 Iowa 1262.

MEANING. That which is, or is intended to be, signified or denoted by act or language; signification; sense; import. Webster, Dict.

Secondary Meaning

While generic names, geographical names, and names composed of words which are merely descriptive are incapable of exclusive appropriation, words or names, which have a primary meaning of their own, such as words descriptive of the goods, service, or place where they are made, or the name of the maker, may nevertheless, by long use in connection with the business of the particular trade, come to be understood by the public as designating the goods, service, or business of a particular trader. This is what is known as the doctrine of "secondary meaning"; and is the origin of the law of unfair competition, as distinguished from technical trademarks or trade-names. *Saunders System Atlanta Co. v. Drive It Yourself Co.*, 123 S. E. 132, 135, 158 Ga. 1; *Richmond Remedies Co. v. Dr. Miles Medical Co.* (C. C. A.) 16 F.(2d) 598, 602.

MEANS. 1. The instrument or agency through which an end or purpose is accomplished.

2. Resources; available property; money or property, as an available instrumentality for effecting a purpose, furnishing a livelihood, paying a debt, or the like.

MEASURE. That by which extent or dimension is ascertained, either length, breadth, thickness, capacity, or amount. Webster. The rule by which anything is adjusted or proportioned.

MEASURE OF DAMAGES. The rule, or rather the system of rules, governing the adjustment or apportionment of damages as a compensation for injuries in actions at law.

MEASURE OF VALUE. In the ordinary sense of the word, "measure" would mean something by comparison with which we may ascertain what is the value of anything. When we consider, further, that value itself is relative, and that two things are necessary to constitute it, independently of the third

thing, which is to measure it, we may define a "measure of value" to be something by comparing with which any two other things we may infer their value in relation to one another. 2 Mill, Pol. Econ. 101.

MEASURER, or METER. An officer in the city of London, who measured woolen clothes, coals, etc.

MEASURING MONEY. In old English law. A duty which some persons exacted, by letters patent, for every piece of cloth made, besides alnage. Now abolished.

MEAT. Specifically, animal flesh, though in one sense, the word includes other foods. Gardner v. State, 108 N. E. 230, 183 Ind. 101. Food in general; anything eaten for nourishment, either by man or beast; especially, solid food; hence, the edible part of anything. Webster, Dict.

MECHANIC. A workman employed in shaping and uniting materials, such as wood, metal, etc., into some kind of structure, machine, or other object, requiring the use of tools. Story v. Walker, 11 Lea (Tenn.) 517, 47 Am. Rep. 305; In re Osborn (D. C.) 104 Fed. 781; Savannah & C. R. Co. v. Callahan, 49 Ga. 511; Berks County v. Bertolet, 13 Pa. 524; Devney v. City of Boston, 111 N. E. 788, 789, 223 Mass. 270; Baker v. Maxwell, 168 N. W. 160, 183 Iowa 1192, 2 A. L. R. 814; Mack v. Boots, 239 P. 794, 795, 29 Ariz. 116.

MECHANIC'S LIEN. A species of lien created by statute in most of the states, which exists in favor of persons who have performed work or furnished material in and for the erection of a building. Their lien attaches to the land as well as the building, and is intended to secure for them a priority of payment.

In a strict sense, a lien for labor only; in a broader sense, a lien covering both material and labor. Dilworth & Green v. Ed Steves & Sons (Tex. Civ. App.) 169 S. W. 630, 631.

The lien of a mechanic is created by law, and is intended to be a security for the price and value of work performed and materials furnished, and as such it attaches to and exists on the land and the building erected thereon, from the commencement of the time that the labor is being performed and the materials furnished; and the mechanic has an actual and positive interest in the building anterior to the time of its recognition by the court, or the reducing of the amount due to a judgment. First Nat. Bank v. Campbell, 24 Tex. Civ. App. 160, 58 S. W. 630; Carter v. Humboldt F. Ins. Co., 12 Iowa, 292; Barrows v. Baughman, 9 Mich. 217.

MECHANICAL. Having relation to, or produced or accomplished by, the use of mechanism or machinery. Used chiefly in patent law. Of, pertaining to, or concerned with, manual labor; engaged in manual labor; of

the artisan class; of, pertaining to, or concerned with, machinery or mechanism; made or formed by a machine or with tools. State v. Crounse, 181 N. W. 562, 563, 105 Neb. 672, 16 A. L. R. 533; Coast & Lakes Contracting Corp. v. Martin, 101 A. 502, 503, 92 Conn. 11.

MECHANICAL ARM. In the artificial limb trade. An arm provided with fingers which can be moved by some mechanical contrivance, together with mechanism for rotating the wrist, simulating, as nearly as possible the motion of the human wrist, hand, and fingers. Carnes Artificial Limb Co. v. Dilworth Arm Co. (D. C.) 273 F. 838, 839.

MECHANICAL EQUIVALENT. A device which may be substituted or adopted, instead of another, by any person skilled in the particular art from his knowledge of the art, and which is competent to perform the same functions or produce the same result, without introducing an original idea or changing the general idea of means. Johnson v. Root, 13 Fed. Cas. 823; Smith v. Marshall, 22 Fed. Cas. 595; Alaska Packers' Ass'n v. Letson (C. C.) 119 F. 611; Jensen Can-Filling Mach. Co. v. Norton, 67 F. 239, 14 C. C. A. 383; Adams Electric R. Co. v. Lindell R. Co., 77 F. 440, 23 C. C. A. 223; American Hoist & Derrick Co. v. Nancy Hanks Hay Press & Foundry Co. (D. C.) 216 F. 785, 788; Yancey v. Enright (C. C. A.) 230 F. 641, 646; Whitney v. New York Scaffolding Co. (C. C. A.) 243 F. 180, 186; Broadway Towel Supply Co. v. Brown-Meyer Co. (C. C. A.) 245 F. 659, 661. The test of equivalency is whether the substituted element operates in substantially the same way to produce substantially the same result. Palmer v. Mach. Co., 186 F. 496.

MECHANICAL MOVEMENT. A mechanism transmitting power or motion from a driving part to a part to be driven; a combination and arrangement of mechanical parts intended for the translation or transformation of motion. Campbell Printing Press Co. v. Miehle Printing Press Co., 102 F. 159, 42 C. C. A. 235.

MECHANICAL PROCESS. See Process.

MECHANICAL SKILL. As distinguished from invention or inventive capacity, this term means such skill, intelligence, ingenuity, or constructive ability in the adaptation of means to ends as would be possessed and exhibited by an ordinarily clever mechanic in the practice of his particular art or trade. See Hollister v. Benedict & B. Mfg. Co., 113 U. S. 59, 5 Sup. Ct. 717, 28 L. Ed. 901; Johnson Co. v. Pennsylvania Steel Co., 67 F. 942; Perfection Window Cleaner Co. v. Bosley, 2 F. 577; Stimpson v. Woodman, 10 Wall. 117, 19 L. Ed. 866.

MEDERIA. In old records. A house or place where metheglin, or mead, was made.

MEDFEE. In old English law. A bribe or reward; a compensation given in exchange,

where the things exchanged were not of equal value. Cowell.

MEDIA ANNATA. In Spanish law. Half-yearly profits of land. *McMullen v. Hodge*, 5 Tex. 34, 79.

MEDIA CONCLUDENDI. The steps of an argument. Thus "a judgment is conclusive as to all the *media concludendi*." *Fauntleroy v. Lum*, 210 U. S. 230, 28 Sup. Ct. 641, 52 L. Ed. 1039. See *U. S. v. Land Co.*, 192 U. S. 358, 24 Sup. Ct. 266, 48 L. Ed. 476. The theory or basis of facts upon which a legal conclusion is reached, per *Holmes, C. J.*, in *Hoseason v. Keegen*, 178 Mass. 250, 59 N. E. 627.

MEDIA NOX. In old English law. Midnight. *Ad mediam noctem*, at midnight. *Fleta*, lib. 5, c. 5, § 31.

MEDIÆ ET INFIRMÆ MANUS HOMINES. Men of a middle and base condition. *Blount*.

MEDIANUS HOMO. A man of middle fortune.

MEDIATE DESCENT. See *Descent*.

MEDIATE POWERS. Those incident to primary powers given by a principal to his agent. For example, the general authority given to collect, receive, and pay debts due by or to the principal is a primary power. In order to accomplish this, it is frequently required to settle accounts, adjust disputed claims, resist those which are unjust, and answer and defend suits. These subordinate powers are sometimes called "mediate powers." *Story, Ag. § 58*.

MEDIATE TESTIMONY. Secondary evidence, (*q. v.*)

MEDIATION. Intervention; interposition; the act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their dispute. In international law and diplomacy, the word denotes the friendly interference of a state in the controversies of others, for the purpose, by its influence and by adjusting their difficulties, of keeping the peace in the family of nations.

MEDIATOR. One who interposes between parties at variance for the purpose of reconciling them.

MEDIATORS OF QUESTIONS. In English law. Six persons authorized by statute, (27 Edw. III. St. 2, c. 24,) who, upon any question arising among merchants relating to unmerchantable wool, or undue packing, etc., might, before the mayor and officers of the staple upon their oath certify and settle the same; to whose determination therein the parties concerned were to submit. *Cowell*.

MEDICAL. Pertaining, relating, or belonging to the study and practice of medicine, or the

science and art of the investigation, prevention, cure, and alleviation of disease.

MEDICAL EVIDENCE. Evidence furnished by medical men, testifying in their professional capacity as experts, or by standard treatises on medicine or surgery.

MEDICAL JURISPRUDENCE. See *Jurisprudence*.

MEDICINE. "Medicine" is a science and art dealing with the prevention, cure, and alleviation of diseases; in a narrower sense, that part of the science and art of restoring and preserving health which is the province of the physician as distinguished from the surgeon and obstetrician regardless of whether he is considered as practicing medicine; in a still narrower sense, an agent used or administered by a physician, surgeon or obstetrician. *Waldo v. Poe (D. C.)* 14 F.(2d) 749, 753; *Ex parte Crane*, 151 P. 1006, 1012, 27 Idaho, 671, L. R. A. 1918A, 942; *State v. Morrison*, 127 S. E. 75, 78, 98 W. Va. 289; *Commonwealth v. Seibert*, 105 A. 507, 508, 262 Pa. 345; *State v. Hanchette*, 129 P. 1184, 1185, 88 Kan. 864; *Smith v. Lane*, 24 Hun (N. Y.) 633.

Forensic Medicine

Another name for medical jurisprudence. See *Jurisprudence*.

Schools of Medicine

See *Osteopathy*; *Psychotherapy*.

MEDICINE-CHEST. A box containing an assortment of medicines, required by statute to be carried by all vessels above a certain tonnage.

MEDICO-LEGAL. Relating to the law concerning medical questions.

MEDIETAS LINGUÆ. In old practice. Molety of tongue; half-tongue. Applied to a jury impaneled in a cause consisting the one half of natives, and the other half of foreigners. See *De Medietate Linguae*.

MEDIO ACQUIETANDO. A judicial writ to distrain a lord for the acquitting of a mesne lord from a rent, which he had acknowledged in court not to belong to him. *Reg. Jur.* 129.

MEDITATIO FUGÆ. In Scotch law. Contemplation of flight; intention to abscond. 2 *Kames, Eq.* 14, 15.

MEDITERRANEAN PASSPORT. A pass issued by the admiralty of Great Britain under various treaties with the Barbary States in the eighteenth century. They were granted to British built ships and were respected by the Barbary pirates. See 2 *Halleck, Int. L., Baker's ed.* 100. They were also issued by the United States. The term is still retained in *R. S. § 4191 (act of Mar. 2, 1803 [46 USCA § 62])*.

MEDIUM TEMPUS. In old English law. Meantime; mesne profits. Cowell.

MEDLETUM. In old English law. A mixing together; a medley or *mêlée*; an affray or sudden encounter. An offense suddenly committed in an affray. The English word "medley" is preserved in the term "chance-medley." An intermeddling, without violence, in any matter of business. Spelman.

MEDLEY. An affray; a sudden or casual fighting; a hand to hand battle; a *mêlée*. See Chance-Medley; Chaud-Medley.

MEDSCEAT. In old English law. A bribe; hush money.

MEDSYPP. A harvest supper or entertainment given to laborers at harvest-home. Cowell.

MEETING. A coming together of persons; an assembly. Particularly, in law, an assembling of a number of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest.

Called Meeting

In the law of corporations, a meeting not held at a time specially appointed for it by the charter or by-laws, but assembled in pursuance of a "call" or summons proceeding from some officer, committee or group of stockholders, or other persons having authority in that behalf.

Family Meeting

See Family.

General Meeting

A meeting of all the stockholders of a corporation, all the creditors of a bankrupt, etc. In *re Bonnaffe*, 23 N. Y. 177; *Mutual F. Ins. Co. v. Farquhar*, 86 Md. 668, 39 A. 527.

Regular Meeting

In the law of public and private corporations, a meeting (of directors, trustees, stockholders, etc.) held at the time and place appointed for it by statute, by-law, charter or other positive direction. See *State v. Wilkesville Tp.*, 20 Ohio St. 293.

Special Meeting

In the law of corporations. A meeting called for special purposes; one limited to particular business; a meeting for those purposes of which the parties have had special notice. *Mutual F. Ins. Co. v. Farquhar*, 86 Md. 668, 39 Atl. 527; *Warren v. Mower*, 11 Vt. 385.

Stated Meeting

A meeting held at a stated or duly appointed time and place; a regular meeting, (*q. v.*)

Town Meeting

See Town.

MEGALOMANIA. See Insanity.

MEGBOTE. In Saxon law. A recompense for the murder of a relation.

MEIGNE, or MAISNADER. In old English law. A family.

MEINDRE AGE. L. Fr. Minority; lesser age. Kelham.

MEINY, MEINE, or MEINIE. In old English law. A household; staff or suite of attendants; a retinue; particularly, the royal household.

MEJORADO. In Spanish law. Preferred; advanced. White, *New Recop. l. 3, tit. 10, c. 1, § 4.*

MELANCHOLIA. In medical jurisprudence. A kind of mental unsoundness characterized by extreme depression of spirits, ill-grounded fears, delusions, and brooding over one particular subject or train of ideas. Webster. See Insanity.

MELDFEON. In Saxon law. The recompense due and given to him who made discovery of any breach of penal laws committed by another person, called the "promoter's [*i. e.*, informer's] fee." Wharton.

MELIOR. Lat. Better; the better. *Meliores*, the better (best) thing or chattel. Bract. fol. 60.

Melior est causa possidentis. The cause of the possessor is preferable. Dig. 50. 17. 126. 2.

Melior est conditio defendentis. The condition of the party in possession is the better one, *i. e.*, where the right of the parties is equal. Broom, Max. 715, 719.

Melior est conditio possidentis, et rei quam actoris. The condition of the possessor is the better, and the condition of the defendant is better than that of the plaintiff. 4 Inst. 180; Broom, Max. 714, 719.

Melior est conditio possidentis ubi neuter jus habet. Jenk. Cent. 118. The condition of the possessor is the better where neither of the two has a right.

Melior est justitia vere præveniens quam severe puniens. That justice which absolutely prevents [a crime] is better than that which severely punishes it. 3 Inst. Epil.

MELIORATIONS. In Scotch law. Improvements of an estate, other than mere repairs; betterments. 1 Bell, Comm. 73. Occasionally used in English and American law in the sense of valuable and lasting improvements or betterments. See *Green v. Biddle*, 8 Wheat. 84, 5 L. Ed. 547.

Meliorem conditionem ecclesiæ suæ facere potest prælatus, deteriores nequaquam. Co. Litt. 101. A bishop can make the condition

of his own church better, but by no means worse.

Meliorem conditionem suam facere potest minor, deteriorem nequaquam. Co. Litt. 337. A minor can make his own condition better, but by no means worse.

Melius est in tempore occurrere, quam post causam vulneratum remedium quærere. 2 Inst. 299. It is better to meet a thing in time than after an injury inflicted to seek a remedy.

Melius est jus deficiens quam jus incertum. Law that is deficient is better than law that is uncertain. Lofft, 395.

Melius est omnia mala pati quam malo consentire. 3 Inst. 23. It is better to suffer every ill than to consent to ill.

Melius est petere fontes quam sectari rivulos. It is better to go to the fountain head than to follow little streamlets.

Melius est recurrere quam male currere. It is better to run back than to run badly; it is better to retrace one's steps than to proceed improperly. 4 Inst. 176.

MELIUS INQUIRENDUM. To be better inquired into.

In Old English Law

The name of a writ commanding a further inquiry respecting a matter; as, after an imperfect inquisition in proceedings in outlawry, to have a new inquest as to the value of lands.

MEMBER. One of the persons constituting a partnership, association, corporation, guild, etc.

One of the persons constituting a court, a legislative assembly, etc.

One of the limbs or portions of the body capable of being used in fighting in self-defense.

MEMBER OF CONGRESS. A member of the senate or house of representatives of the United States. In popular usage, particularly the latter.

MEMBER OF PARLIAMENT. One having the right to sit in either house of the British parliament.

MEMBERS. In English law. Places where a custom-house has been kept of old time, with officers or deputies in attendance; and they are lawful places of exportation or importation. 1 Chit. Com. Law, 726.

MEMBRANA. Lat.

In the Civil Law

Parchment. Dig. 32, 52.

In Old English Law

A skin of parchment. The ancient rolls usually consist of several of these skins, and the word "*membrana*" is used, in citations to them, in the same way as "page" or "folio," to distinguish the particular skin referred to.

MEMBRUM. A slip or small piece of land.

MÉMOIRE. In French law. A document in the form of a petition, by which appeals to the court of cassation are initiated.

MEMORANDUM. Lat. To be remembered; be it remembered. A formal word with which the body of a record in the court of king's bench anciently commenced. Townsh. Pl. 486; 2 Tidd, Pr. 719. The whole clause is now, in practice, termed, from this initial word, the "memorandum," and its use is supposed to have originated from the circumstance that proceedings "by bill" (in which alone it has been employed) were formerly considered as the by-business of the court. Gilb. Com. Pl. 47, 48.

Also an informal note or instrument embodying something that the parties desire to fix in memory by the aid of written evidence, or that is to serve as the basis of a future formal contract or deed.

This word is used in the statute of frauds as the designation of the written agreement, or note or evidence thereof, which must exist in order to bind the parties in the cases provided. The memorandum must be such as to disclose the parties, the nature and substance of the contract, the consideration and promise, and be signed by the party to be bound or his authorized agent. See 2 Kent, Comm. 510.

MEMORANDUM ARTICLES. In the law of marine insurance, this phrase designates the articles of merchandise which are usually mentioned in the memorandum clause, (*q. v.*) and for which the underwriter's liability is thereby limited. See *Wain v. Thompson*, 9 Serg. & R. (Pa.) 120, 11 Am. Dec. 675.

MEMORANDUM CHECK. See Check.

MEMORANDUM CLAUSE. In a policy of marine insurance the memorandum clause is a clause inserted to prevent the underwriters from being liable for injury to goods of a peculiarly perishable nature, and for minor damages. It begins as follows: "N. B. Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded,"—meaning that the underwriters are not to be liable for damage to these articles caused by seawater or the like. Maude & P. Shipp. 371; Sweet.

MEMORANDUM IN ERROR. A document alleging error in fact, accompanied by an affidavit of such matter of fact.

MEMORANDUM OF ALTERATION. Formerly, in England, where a patent was grant-

ed for two inventions, one of which was not new or not useful, the whole patent was bad, and the same rule applied when a material part of a patent for a single invention had either of those defects. To remedy this the statute 5 & 6 Wm. IV. c. 83, empowers a patentee (with the fiat of the attorney general) to enter a disclaimer (*q. v.*) or a memorandum of an alteration in the title or specification of the patent, not being of such a nature as to extend the exclusive right granted by the patent, and thereupon the memorandum is deemed to be part of the letters patent or the specification. Sweet.

MEMORANDUM OF ASSOCIATION. A document to be subscribed by seven or more persons associated for a lawful purpose, by subscribing which, and otherwise complying with the requisitions of the companies' acts in respect of registration, they may form themselves into an incorporated company, with or without limited liability. 3 Steph. Comm. 20.

MEMORANDUM SALE. See Sale.

MEMORIAL. A document presented to a legislative body, or to the executive, by one or more individuals, containing a petition or a representation of facts.

In English Law

That which contains the particulars of a deed, etc., and is the instrument registered, as in the case of an annuity which must be registered. Wharton.

In Practice

A short note, abstract, memorandum, or rough draft of the orders of the court, from which the records thereof may at any time be fully made up. *State v. Shaw*, 73 Vt. 149, 50 Atl. 863.

MEMORITER. Lat. From memory; by or from recollection. Thus, *memoriter* proof of a written instrument is such as is furnished by the recollection of a witness who had seen and known it.

MEMORIZATION. Committing anything to memory. Used to describe the act of one who listens to a public representation of a play or drama, and then, from his recollection of its scenes, incidents, or language, reproduces it, substantially or in part, in derogation of the rights of the author. See 5 Term R. 245; 14 Amer. Law Reg. (N. S.) 207.

MEMORY. Mental capacity; the mental power to review and recognize the successive states of consciousness in their consecutive order. This word, as used in jurisprudence to denote one of the psychological elements necessary in the making of a valid will or contract or the commission of a crime, implies the mental power to conduct a consecutive train of thought, or an orderly planning of affairs, by recalling correctly the past states

of the mind and past events, and arranging them in their due order of sequence and in their logical relations with the events and mental states of the present.

The phrase "sound and disposing mind and memory" means not merely distinct recollection of the items of one's property and the persons among whom it may be given, but entire power of mind to dispose of property by will. Abbott.

Also the reputation and name, good or bad, which a man leaves at his death.

Legal Memory

An ancient usage, custom, supposed grant (as a foundation for prescription) and the like, are said to be immemorial when they are really or fictitiously of such an ancient date that "the memory of man runneth not to the contrary," or, in other words, "beyond legal memory." And legal memory or "time out of mind," according to the rule of the common law, commenced from the reign of Richard I., A. D. 1189. But under the statute of limitation of 32 Hen. VIII. this was reduced to 60 years, and again by that of 2 & 3 Wm. IV. c. 71, to 20 years. In the American states, by statute, the time of legal memory is generally fixed at a period corresponding to that prescribed for actions for the recovery of real property, usually about 20 years. See 2 Bl. Comm. 31; *Miller v. Garlock*, 8 Barb. (N. Y.) 153.

MEN OF STRAW. Men who used in former days to ply about courts of law, so called from their manner of making known their occupation, (*i. e.*, by a straw in one of their shoes,) recognized by the name of "straw-shoes." An advocate or lawyer who wanted a convenient witness knew by these signs where to meet with one, and the colloquy between the parties was brief. "Don't you remember?" said the advocate; to which the ready answer was, "To be sure I do." "Then come into court and swear it." And straw-shoes went into court and swore. Athens abounded in straw-shoes. *Quart. Rev.* vol. 33, p. 344.

MENACE. A threat; the declaration or show of a disposition or determination to inflict an evil or injury upon another. *Cumming v. State*, 99 Ga. 662, 27 S. E. 177; *Morrill v. Nightingale*, 93 Cal. 452, 28 Pac. 1068, 27 Am. St. Rep. 207.

MENETUM. In old Scotch law. A stock-horn; a horn made of wood, "with circles and girds of the same." Skene.

MENIAL. A servant of the lowest order; more strictly, a domestic servant living under his master's roof. *Boniface v. Scott*, 3 Serg. & R. (Pa.) 354.

MENS. Lat. Mind; intention; meaning; understanding; will.

MENS LEGIS. The mind of the law; that is, the purpose, spirit, or intention of a law or the law generally.

MENS LEGISLATORIS. The intention of the law-maker.

MENS REA. A guilty mind; a guilty or wrongful purpose; a criminal intent.

Mens testatoris in testamentis spectanda est. Jenk. Cent. 277. The intention of the testator is to be regarded in wills.

MENSA. Lat. Patrimony or goods and necessary things for livelihood. Jacob. A table; the table of a money-changer. Dig. 2, 14, 47.

MENSA ET THORO. From bed and board. See Divorce.

MENSALIA. Parsonages or spiritual livings united to the tables of religious houses, and called "mensal benefices" amongst the canonists. Cowell.

MENSIS. Lat. In the civil and old English law. A month. *Mensis vetitus*, the prohibited month; fence-month, (*q. v.*).

MENSOR. In the civil law. A measurer of land; a surveyor. Dig. 11, 6; Id. 50, 6, 6; Cod. 12, 28.

MENSULARIUS. In the civil law. A money-changer or dealer in money. Dig. 2, 14, 47, 1.

MENSURA. In old English law. A measure.

MENSURA DOMINI REGIS. "The measure of our lord the king," being the weights and measures established under King Richard I. in his parliament at Westminster, 1197. 1 Bl. Comm. 275; Mozley & Whitley.

MENTAL. Relating to or existing in the mind; intellectual, emotional, or psychic, as distinguished from bodily or physical.

MENTAL ALIENATION. A phrase sometimes used to describe insanity, (*q. v.*).

MENTAL ANGUISH. When connected with a physical injury, this term includes both the resultant mental sensation of pain and also the accompanying feelings of distress, fright, and anxiety. See *Railway Co. v. Corley* (Tex.) 26 S. W. 904; *Railway Co. v. Miller*, 25 Tex. Civ. App. 460, 61 S. W. 978; *Keyes v. Railway Co.*, 36 Minn. 290, 30 N. W. 888. In other connections, and as a ground for damages or an element of damages, it includes the mental suffering resulting from the excitation of the more poignant and painful emotions, such as grief, severe disappointment, indignation, wounded pride, shame, public humiliation, despair, etc. *Western Union Telegraph Co. v. Taylor* (Fla.) 114 So. 529, 532; *Western Union Telegraph Co. v. Chamberlain* (Tex. Civ. App.) 169 S. W. 370, 371; *Western Union Telegraph Co. v. Coleman* (Tex. Civ. App.) 284

S. W. 279, 282; *Illinois Cent. R. Co. v. Williams*, 144 Miss. 804, 110 So. 510, 512.

MENTAL CAPACITY OR COMPETENCE.

Such a measure of intelligence, understanding, memory, and judgment (relative to the particular transaction) as will enable the person to understand the nature of his act. *Eaton v. Eaton*, 37 N. J. Law, 113, 18 Am. Rep. 716; *Davren v. White*, 42 N. J. Eq. 569, 7 A. 682; *Conley v. Nailor*, 118 U. S. 127, 6 S. Ct. 1001, 30 L. Ed. 112; *Magness v. Ditmars*, 81 Or. 598, 160 P. 527, 528; *Lamb v. Perry*, 169 N. C. 436, 86 S. E. 179, 183; *Masterson v. Sheahan* (Mo. Sup.) 186 S. W. 524, 526; *Shelton v. Shelton* (Tex. Civ. App.) 281 S. W. 331, 334; *Fish v. Deaver*, 71 Okl. 177, 176 P. 251, 253; *In re Keiser*, 113 Neb. 645, 204 N. W. 394, 396; *Blackhurst v. James*, 293 Ill. 11, 127 N. E. 226; *In re Winnett's Guardianship*, 112 Okl. 43, 239 P. 603, 605; *Lewis v. Lewis*, 194 Ky. 172, 238 S. W. 410, 411; *Wathens v. Skaggs*, 161 Ky. 600, 171 S. W. 193, 195; *Beaty v. Swift*, 123 Ark. 166, 184 S. W. 442, 446.

MENTAL DEFECT. As applied to the qualification of a juror, this term must be understood to embrace either such gross ignorance or imbecility as practically disqualifies any person from performing the duties of a juror. *Caldwell v. State*, 41 Tex. 94.

MENTAL RESERVATION. A silent exception to the general words of a promise or agreement not expressed, on account of a general understanding on the subject. But the word has been applied to an exception existing in the mind of the one party only, and has been degraded to signify a dishonest excuse for evading or infringing a promise. *Wharton*.

MENTIRI. Lat. To lie; to assert a falsehood. *Calvin*; 3 Bulst. 260.

MENTITION. The act of lying; a falsehood.

MENU, LAWS OF. A collection or institute of the earliest laws of ancient Indian. The work is of very remote antiquity.

MER, or MERE. A fenny place. Cowell.

MERA NOCTIS. Midnight. Cowell.

MERANNUM. In old records. Timbers; wood for building.

MERCABLE. Merchantable; to be sold or bought.

MERCANTANT. A foreign trader.

MERCANTILE. Pertaining to merchants or their business; having to do with trade and commerce or the buying and selling of commodities. See *In re San Gabriel Sanatorium* (D. C.) 95 F. 273; *In re Pacific Coast Warehouse Co.* (C. C.) 123 F. 750; *Graham v. Hendricks*, 22 La. Ann. 524; *Hotchkiss v. District of Columbia*, 44 App. D. C. 73, 79; *Bacon v. Cannady*, 144 Ga. 298, 86 S. E. 1083, 1084.

MERCANTILE AGENCIES. Establishments which make a business of collecting information relating to the credit, character, responsibility and reputation of merchants, for the purpose of furnishing the information to subscribers. *Brookfield v. Kitchen*, 163 Mo. 546, 63 S. W. 825; *State v. Morgan*, 2 S. D. 32, 48 N. W. 314; *Eaton, etc., Co. v. Avery*, 83 N. Y. 34, 38 Am. Rep. 389; *Genesee Sav. Bank v. Michigan Barge Co.*, 52 Mich. 164, 17 N. W. 790.

MERCANTILE LAW. An expression substantially equivalent to the law-merchant or commercial law. It designates the system of rules, customs, and usages generally recognized and adopted by merchants and traders, and which, either in its simplicity or as modified by common law or statutes, constitutes the law for the regulation of their transactions and the solution of their controversies.

MERCANTILE LAW AMENDMENT ACTS. The statutes 19 & 20 Vict. cc. 60, 97, passed mainly for the purpose of assimilating the mercantile law of England, Scotland, and Ireland.

MERCANTILE PAPER. Commercial paper; such negotiable paper (bills, notes, checks, etc.) as is made or transferred by and between merchants or traders, and is governed by the usages of the business world and the law-merchant.

MERCANTILE PARTNERSHIP. One which habitually buys and sells; one which buys for the purpose of afterwards selling. *Com. v. Natural Gas Co.*, 32 Pittsb. Leg. J. (O. S.) 310.

MERCAT. A market. An old form of the latter word common in Scotch law, formed from the Latin "*mercatum*."

MERCATIVE. Belonging to trade.

MERCATUM. Lat. A market. A contract of sale. Supplies for an army, (*commeatus*.)

MERCATURE. The practice of buying and selling.

MERCEDARY. A hirer; one that hires.

MERCEN-LAGE. The law of the Mercians. One of the three principal systems of laws which prevailed in England about the beginning of the eleventh century. It was observed in many of the midland counties, and those bordering on the principality of Wales. 1 Bl. Comm. 65.

MERCENARIUS. A hireling or servant. *Jacob*.

MERCES. Lat. In the civil law. Reward of labor in money or other things. As distinguished from "*pensio*," it means the rent of farms, (*prædia rustici*.) *Calvin*.

MERCHANDISE. All commodities which merchants usually buy and sell, whether at wholesale or retail; wares and commodities

such as are ordinarily the objects of trade and commerce. But the term is never understood as including real estate, and is rarely applied to provisions such as are purchased day by day, or to such other articles as are required for immediate consumption. See *Passaic Mfg. Co. v. Hoffman*, 3 Daly (N. Y.) 512; *Hein v. O'Connor* (Tex. App.) 15 S. W. 414; *Elliott v. Swartwout*, 10 Pet. 137, 9 L. Ed. 373; *Pickett v. State*, 60 Ala. 78; *The Marine City* (D. C.) 6 Fed. 415; *Lautman v. City of New York*, 157 App. Div. 219, 141 N. Y. S. 1042, 1043; *Smith v. Boyer*, 119 S. C. 176, 112 S. E. 71, 74, 41 A. L. R. 1466.

Merchandise Marks Act, 1862

The statute 25 & 26 Vict. c. 88, designed to prevent the fraudulent marking of merchandise and the fraudulent sale of merchandise falsely marked.

Stock of Merchandise

See Stock.

MERCHANT. A man who traffics or carries on trade with foreign countries, or who exports and imports goods and sells them by wholesale. *Webster*. Merchants of this description are commonly known by the name of "shipping merchants."

A trader; one who, as a business, buys and sells wares and merchandise. See *White v. Com.*, 78 Va. 485; *Rosenbaum v. Newbern*, 118 N. C. 83, 24 S. E. 1, 32 L. R. A. 123; *Galveston County v. Gorham*, 49 Tex. 285; *In re Cameron, etc.*, *Ins. Co.* (D. C.) 96 F. 757; *State v. Smith*, 5 Humph. (Tenn.) 395; *U. S. v. Wong Ah Gah* (D. C.) 94 F. 832; *Farmers' & Drovers' Nat. Bank v. Hannaman*, 115 Kan. 370, 223 P. 478, 479; *Bacon v. Cannady*, 144 Ga. 293, 86 S. E. 1083, 1084; *State v. Fleming*, 24 N. D. 593, 140 N. W. 674, 675; *In re Jupp* (D. C.) 274 F. 494, 495.

Commission Merchant

See Commission.

Law Merchant

See Mercantile.

Merchant Appraiser

See Appraiser.

Merchant Seaman

A sailor employed in a private vessel, as distinguished from one employed in the navy or public ships. *U. S. v. Sullivan* (C. C.) 43 F. 604; *The Ben Flint*, 3 Fed. Cas. 184.

Merchant Shipping Acts

Certain English statutes, beginning with the St. 16 & 17 Vict. c. 131, whereby a general superintendence of merchant shipping is vested in the board of trade.

Merchants' Accounts

Accounts between merchant and merchant, which must be current, mutual, and unset-

tled, consisting of debts and credits for merchandise. *Fox v. Fisk*, 6 How. (Miss.) 328.

Merchants, Statute of

The English statute 13 Edw. I. St. 3, repealed by 26 & 27 Vict. c. 125.

Statute Merchant

See Statute.

MERCHANTABLE. Fit for sale; vendible in market; of a quality such as will bring the ordinary market price. *Riggs v. Armstrong*, 23 W. Va. 773; *Pacific Coast Elevator Co. v. Bravinder*, 14 Wash. 315, 44 Pac. 544; *Wallace v. L. D. Clark & Son*, 74 Okl. 208, 174 P. 557, 558, 21 A. L. R. 361; *Keenan v. Cherry & Webb*, 47 R. I. 125, 131 A. 309, 311; *Raney & Hamon v. Hamilton & White* (Tex. Civ. App.) 234 S. W. 229, 230; *Big Vein Pocahontas Co. v. Browning*, 137 Va. 34, 120 S. E. 247, 253; *Ellis v. Cricket Coal Co.*, 166 Iowa, 656, 148 N. W. 887, 888; *Ely v. Wichita Natural Gas Co.*, 99 Kan. 236, 161 P. 649, 652; *Foote v. Wilson*, 104 Kan. 191, 178 P. 430; *McNeil & Higgins Co. v. Czarnikow-Rienda Co.* (D. C.) 274 F. 397, 399; *Stevens Tank & Tower Co. v. Berlin Mills Co.*, 112 Me. 336, 92 A. 180, 181; *Adolph Goldmark & Sons v. Simon Bros. Co.*, 110 Neb. 614, 194 N. W. 686, 688; *Nielsen v. Woodruff*, 133 Wash. 174, 233 P. 1, 3; *Mathieu v. George A. Moore & Co.* (D. C.) 4 F.(2d) 251, 254; *Robertson v. H. Weston Lumber Co.*, 124 Miss. 606, 87 So. 120, 124; *McChesney v. Oppek*, 156 Minn. 260, 194 N. W. 882; *Billick v. Davenport*, 164 Iowa, 105, 145 N. W. 470, 471; *Kurtz v. Gramenz*, 198 Iowa, 222, 198 N. W. 325, 327; *San Mateo Land Co. v. Elem* (C. C. A.) 293 F. 869, 874; *Pearce v. Freeman*, 122 Okl. 285, 254 P. 719, 720; *Cappel v. Potts*, 192 Iowa, 661, 185 N. W. 148, 151; *Hess v. Bowen* (D. C.) 237 F. 510, 512.

MERCHANTMAN. A ship or vessel employed in foreign or domestic commerce or in the merchant service.

MERCHET. In feudal law. A fine or composition paid by inferior tenants to the lord for liberty to dispose of their daughters in marriage. *Cowell*. The same as *marcheta* (*q. v.*)

MERCIAMENT. An amerciament, penalty, or fine, (*q. v.*)

MERCIAN LAW. One of the main bodies of customs (with the Dane law and the West Saxon law and perhaps an admixture of Norman laws and customs) which composed the law in the early Norman days. 1 Holdsw. Hist. E. L. 3. See *Mercen-Lage*.

MERCIMONIA. In old writs. Wares. *Mercimonia et merchandizas*, wares and merchandises. Reg. Brev. Append. 10.

MERCIMONINATUS ANGLIÆ. In old records. The impost of England upon merchandise. *Cowell*.

Mercis appellatio ad res mobiles tantum pertinet. The term "merchandise" belongs to movable things only. Dig. 50, 16, 66.

Mercis appellatione homines non contineri. Men are not included under the denomination of "merchandise." Dig. 50, 16, 207.

MERCY.

In Practice

The arbitrament of the king or judge in punishing offenses not directly censured by law. *Jacob*. So, "to be in mercy" signifies to be amerced or fined for bringing or defending an unjust suit, or to be liable to punishment in the discretion of the court.

In Criminal Law

The discretion of a judge, within the limits prescribed by positive law, to remit altogether the punishment to which a convicted person is liable, or to mitigate the severity of his sentence; as when a jury recommends the prisoner to the *mercy* of the court.

MERE. Sax. A marsh. *Spelman*.

MERE. L. Fr. Mother. *Ele, mere, fille*, grandmother, mother, daughter. *Britt.* c. 89. *En ventre sa mere*, in its mother's womb.

MERE MOTION. The free and voluntary act of a party himself, done without the suggestion or influence of another person, is said to be done of his mere motion, *ex mero motu*, (*q. v.*) *Brown*.

The phrase is used of an interference of the courts of law, who will, under some circumstances, of their own motion, object to an irregularity in the proceedings, though no objection has been taken to the informality by the plaintiff or defendant in the suit. 3 *Chit. Gen. Pr.* 430.

MERE RIGHT. The mere right of property in land; the *jus proprietatis*, without either possession or even the right of possession. 2 *Bl. Comm.* 197. The abstract right of property.

MERE-STONE. In old English law. A stone for bounding or dividing lands. *Yearb.* P. 18 Hen. VI. 5.

MERELY. Only, purely, solely. *Twist v. Mullinix*, 126 Ark. 427, 190 S. W. 851, 855; *Hercules Powder Co. v. Newton* (C. C. A.) 266 F. 169, 172; *Globe Furniture Co. v. Gately*, 51 App. D. C. 367, 279 F. 1005, 1007.

MERENNium. In old records. Timber. *Cowell*.

MERETRIOUS. Of the nature of unlawful sexual connection. The term is descriptive of the relation sustained by persons who contract a marriage that is void by reason of legal incapacity. 1 *Bl. Comm.* 436.

MERGER. The fusion or absorption of one thing or right into another; generally spoken

of a case where one of the subjects is of less dignity or importance than the other. Here the less important ceases to have an independent existence. *Marfield v. Cincinnati, D. & T. Traction Co.*, 111 Ohio St. 139, 144 N. E. 689, 696, 40 A. L. R. 357.

In Real-Property Law

It is a general principle of law that where a greater estate and a less coincide and meet in one and the same person, without any intermediate estate, the less is immediately annihilated, or, in the law phrase, is said to be *merged*, that is, sunk or drowned, in the greater. Thus, if there be tenant for years, and the reversion in fee-simple descends to or is purchased by him, the term of years is *merged* in the inheritance, and shall never exist any more. 2 Bl. Comm. 177; 1 Steph. Comm. 293; 4 Kent, Comm. 99. *James v. Morey*, 2 Cow. (N. Y.) 300, 14 Am. Dec. 475; *Duncan v. Smith*, 31 N. J. Law, 327; *City Savings Bank & Trust Co. of Vicksburg v. Cortright*, 122 Miss. 75, 84 So. 136, 138; *Willis v. Robinson*, 291 Mo. 650, 237 S. W. 1030, 1036; *Kidd v. Cruse*, 200 Ala. 293, 76 So. 59, 62; *Smith v. Cooley* (Tex. Civ. App.) 164 S. W. 1050, 1052; *Washington Furniture Co. v. Potter*, 188 N. C. 145, 124 S. E. 122, 123; *Cooper v. Goble*, 77 Mont. 580, 252 P. 362, 366; *Abernathy v. McCoy*, 91 Ind. App. 574, 154 N. E. 682, 685; *Mugg v. Fenn*, 198 Ind. 372, 153 N. E. 776, 777.

Of Rights

This term, as applied to rights, is equivalent to "*confusio*" in the Roman law, and indicates that where the qualities of debtor and creditor become united in the same individual, there arises a confusion of rights which extinguishes both qualities; whence, also, merger is often called "extinguishment." Brown.

Rights Of Action

In the law relating to rights of action, when a person takes or acquires a remedy or security of a higher nature, in legal estimation, than the one which he already possesses for the same right, then his remedies in respect of the minor right or security merge in those attaching to the higher one. *Leake*, Cont. 506; 10 C. B. 561. As where a claim is merged in the judgment recovered upon it. *Frost v. Thompson*, 219 Mass. 360, 106 N. E. 1009, 1010.

In Criminal Law

When a man commits a great crime which includes a lesser, or commits a felony which includes a tort against a private person, the latter is merged in the former. 1 East, P. C. 411.

Of Corporations

A merger of corporations consist in the uniting of two or more corporations by the transfer of property of all to one of them, which continues in existence, the others being swallowed up or merged therein. In re-

gard to the survivorship of one of the constituent corporations, it differs from a "consolidation," wherein all the consolidating companies surrender their separate existence and become parts of a new corporation. *Adams v. Yazoo & M. V. R. Co.*, 77 Miss. 194, 24 South. 200, 60 L. R. A. 33; *Vicksburg & Y. C. Tel. Co. v. Citizens' Tel. Co.*, 79 Miss. 341, 30 So. 725, 89 Am. St. Rep. 656; *State v. Atlantic Coast Line R. Co.*, 202 Ala. 558, 81 So. 60, 62; *Collinsville Nat. Bank v. Esau*, 74 Okl. 45, 176 P. 514, 515; *Union Indemnity Co. v. Railroad Commission*, 187 Wis. 528, 205 N. W. 492, 495.

MERIDIES. In old English law. Noon. *Fleta*, lib. 5, c. 5, § 31.

MERINO. A fine long staple wool, which commands the highest price. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, 42 S. Ct. 384, 385, 66 L. Ed. 729.

MERITORIOUS. Possessing or characterized by "merit" in the legal sense of the word. See Merits.

MERITORIOUS CAUSE OF ACTION. This description is sometimes applied to a person with whom the ground of action, or the consideration, originated or from whom it moved. For example, where a cause of action accrues to a woman while sole, and is sued for, after her marriage, by her husband and herself jointly, she is called the "meritorious cause of action."

MERITORIOUS CONSIDERATION. One founded upon some moral obligation; a valuable consideration in the second degree.

MERITORIOUS DEFENSE. See Defense.

MERITS. In practice. Matter of substance in law, as distinguished from matter of mere form; a substantial ground of defense in law. A defendant is said "to swear to *merits*" or "to make affidavit of *merits*" when he makes affidavit that he has a good and sufficient or substantial defense to the action on the merits. 3 Chit. Gen. Pr. 543, 544. "Merits," in this application of it, has the technical sense of merits *in law*, and is not confined to a strictly moral and conscientious defense. *Id.* 545; 1 Burrill, Pr. 214; *Rahn v. Gunnison*, 12 Wis. 529; *Bolton v. Donovan*, 9 N. D. 575, 84 N. W. 357; *Ordway v. Boston & M. R. Co.*, 69 N. H. 429, 45 A. 243; *Blakely v. Frazier*, 11 S. C. 134; *Rogers v. Rogers*, 37 W. Va. 407, 16 S. E. 633; *Oatman v. Bond*, 15 Wis. 26.

A "defense upon the merits" is one which depends upon the inherent justice of the defendant's contention, as shown by the substantial facts of the case, as distinguished from one which rests upon technical objections or some collateral matter. Thus there may be a *good* defense growing out of an error in the plaintiff's pleadings, but there is not a defense upon the merits unless the

real nature of the transaction in controversy shows the defendant to be in the right.

MERO MOTU. See *Ex Mero Motu*; *Mere Motion*.

MERSCUM. A lake; also a marsh or fenland.

MERTLAGE. A church calendar or rubric. Cowell.

MERTON, STATUTE OF. An old English statute, relating to dower, legitimacy, wardships, procedure, inclosure of common, and usury. It was passed in 1235, (20 Hen. III.) and was named from Merton, in Surrey, where parliament sat that year. See *Barring. St.* 41, 46.

MERUM. In old English law. *Mere*; naked or abstract. *Merum jus*, mere right. *Bract. fol.* 31.

MERX. Lat. Merchandise; movable articles that are bought and sold; articles of trade.

Merx est quicquid vendi potest. Merchandise is whatever can be sold. *Com.* 355; 3 *Wood. Lect.* 263.

MESCREAUNTES. L. Fr. Apostates; unbelievers.

MESCROYANT. A term used in the ancient books to designate an infidel or unbeliever.

MESE. A house and its appurtenance. Cowell.

MESNALTY, or MESNALITY. A manor held under a superior lord. The estate of a mesne.

MESNE. Intermediate; intervening; the middle between two extremes, especially of rank or time.

An intermediate lord; a lord who stood between a tenant and the chief lord; a lord who was also a tenant. "Lord, *mesne*, and tenant; the tenant holdeth by four pence, and the mesne by twelve pence." *Co. Litt.* 23a.

As to mesne "Conveyance," "Process," and "Profits," see those titles.

MESNE ASSIGNMENT. If A. grant a lease of land to B., and B. assign his interest to C., and C. in his turn assign his interest therein to D., in this case the assignments so made by B. and C. would be termed "mesne assignments;" that is, they would be assignments intervening between A.'s original grant and the vesting of D.'s interest in the land under the last assignment. *Brown.*

MESNE INCUMBRANCE. An intermediate charge, burden, or liability; an incumbrance which has been created or has attached to property between two given periods.

MESNE LORD. In old English law. A middle or intermediate lord; a lord who held of

a superior lord. 2 *Bl. Comm.* 59. More commonly termed a "*mesne*," (*q. v.*)

MESNE, WRIT OF. An ancient and abolished writ, which lay when the lord paramount distrained on the tenant paravail. The latter had a writ of mesne against the mesne lord.

MESS BRIEF. In Danish sea law. One of a ship's papers; a certificate of admeasurement granted at the home port of a vessel by the government or by some other competent authority. *Jac. Sea Laws*, 51.

MESSAGE. Any notice, word, or communication, written or oral, sent from one person to another. *Webster, Dict.*

—**Message from the crown.** In English law. The method of communicating between the sovereign and the house of parliament. A written message under the royal sign-manual is brought by a member of the house, being a minister of the crown or one of the royal household. Verbal messages are also sometimes delivered. *May, Parl. Pr. c.* 17.

—**President's message.** An annual communication from the president of the United States to congress, made at or near the beginning of each session, embodying his views on the state and exigencies of national affairs, suggestions and recommendations for legislation, and other matters. *Const. U. S. art.* 2, § 3.

—**Repeated message.** Within the meaning of restricted liability clauses printed on the back of blank telegraph forms, one telegraphed back to the sending office for comparison; the object being to guard against mistakes in transmission. *Dettis v. Western Union Telegraph Co., 170 N. W.* 334, 338, 141 *Minn.* 361.

MESSARIUS. In old English law. A chief servant in husbandry; a bailiff.

MESSE THANE. One who said mass; a priest. Cowell.

MESSENGER. One who bears messages or errands; a ministerial officer employed by executive officers, legislative bodies, and courts of justice, whose service consists principally in carrying verbal or written communications or executing other orders. In Scotland there are officers attached to the courts, called "messengers at arms."

An officer attached to a bankruptcy court, whose duty consists, among other things, in seizing and taking possession of the bankrupt's estate during the proceedings in bankruptcy.

The messenger of the English court of chancery has the duty of attending on the great seal, either in person or by deputy, and must be ready to execute all such orders as he shall receive from the lord chan-

cellor, lord keeper, or lords commissioners. Brown.

Messis sementem sequitur. The crop belongs to [follows] the sower. A maxim in Scotch law. Where a person is in possession of land which he has reason to believe is his own, and sows that land, he will have a right to the crops, although before it is cut down it should be discovered that another has a preferable title to the land. Bell.

MESSUAGE. This term is now synonymous with "dwelling-house," but had once a more extended signification. It is frequently used in deeds, in describing the premises. *Marmet Co. v. Archibald*, 37 W. Va. 778, 17 S. E. 300; *Grimes v. Wilson*, 4 Blackf. (Ind.) 333; *Derby v. Jones*, 27 Me. 360; *Davis v. Lowden*, 56 N. J. Eq. 126, 38 Atl. 648. Dwelling-house with the adjacent buildings and curtilage. *Hall v. Philadelphia Co.*, 78 S. E. 755, 757, 72 W. Va. 573; *State v. Cooper* (Mo. Sup.) 246 S. W. 892, 893.

Although the word "messuage" may, there is no necessity that it must, import more than the word "dwelling-house," with which word it is frequently put in apposition and used synonymously. 2 Bing. N. C. 617.

In Scotland

The principal dwelling-house within a barony. Bell.

MESTIZO. A mongrel or person of mixed blood; sometimes used as equivalent to "oc-toroon," that is, the child of a white person and a quadroon, sometimes as denoting a person one of whose parents was a Spaniard and the other an American Indian.

META. Lat. A goal, bound, or turning-point. In old English law, the term was used to denote a bound or boundary line of land; a landmark; a material object, as a tree or a pillar, marking the position or beginning of a boundary line.

METACHRONISM. An error in computation of time.

METALLIC. "Consisting of or having the characters of a metal. * * * Having one or more properties resembling those of metals." *Trussell Mfg. Co. v. S. E. & M. Vernon, Inc.* (D. C.) 11 F.(2d) 289, 290, 291.

METALLUM. Lat. In Roman law. Metal; a mine. Labor in mines, as a punishment for crime. Dig. 40, 5, 24, 5; Calvin.

METAPHYSICS. The science of being; the science which deals with ultimate reality. *Vineland Trust Co. v. Westendorf*, 98 A. 314, 86 N. J. Eq. 343.

METATUS. In old European law. A dwelling; a seat; a station; quarters; the place where one lives or stays. Spelman.

METAYER SYSTEM. A system of agricultural holdings, under which the land is divided, in small farms, among single families, the landlord generally supplying the stock which the agricultural system of the country is considered to require, and receiving, in lieu of rent and profit, a fixed proportion of the produce. This proportion, which is generally paid in kind, is usually one-half. 1 Mill, Pol. Econ. 296, 363; and 2 Smith, Wealth Nat. 3, c. ii. The system prevails in some parts of France and Italy.

METECORN. A measure or portion of corn, given by a lord to customary tenants as a reward and encouragement for labor. Cowell.

METEGAVEL. A tribute or rent paid in vic-tuals. Cowell.

METER. An instrument of measurement; as a coal-meter, a gas-meter, a land-meter. Also see Metre.

METES AND BOUNDS. In conveyancing. The boundary lines of lands, with their terminating points or angles. *People v. Guthrie*, 46 Ill. App. 128; *Rollins v. Mooers*, 25 Me. 196; *Moore v. Walsh*, 93 A. 355, 356, 37 R. I. 436.

METEWARD, or METEYARD. A staff of a certain length wherewith measures are taken.

METHEL. Sax. Speech; discourse. *Math-elian*, to speak; to harangue. Anc. Inst. Eng.

METHOD. The mode of operating, or the means of attaining an object. In patent law. "Engine" and "method" mean the same thing, and may be the subject of a patent. Method, properly speaking, is only placing several things, or performing several operations, in the most convenient order, but it may signify a contrivance or device. *Fessen. Pat.* 127; *Hornblower v. Boulton*, 8 Term R. 106.

METHOMANIA. See Insanity.

METRE. The unit of measure in the "metric system" of weights and measures. It is a measure of length, being the ten-millionth part of the distance from the equator to the north pole, and equivalent to 39.37 inches. From this unit all the other denominations of measure, as well as of weight, are derived. The metric system was first adopted in France in 1795.

METRIC SYSTEM. A system of measures for length, surface, weight, and capacity, founded on the *metre* as a unit. It originated in France, has been established by law there and in some other countries, and is recommended for general use by other governments.

METROPOLIS. A mother city; one from which a colony was sent out. The capital of a province. Calvin.

METROPOLITAN. In English law. One of the titles of an archbishop. Derived from the circumstance that archbishops were consecrated at first in the metropolis of a province. 4 Inst. 94.

In England, the word is frequently used to designate a statute, institution, governmental agency, etc., relating exclusively or especially to the city of London; *e. g.*, the metropolitan board of works, metropolitan buildings act, etc.

METROPOLITAN BOARD OF WORKS. A board constituted in 1855 by St. 18 & 19 Vict. c. 120, for the better sewerage, draining, paving, cleansing, lighting, and improving the metropolis (London.) The board is elected by vestries and district boards, who in their turn are elected by the rate-payers. Wharton.

METROPOLITAN POLICE DISTRICT. A region composed of New York city and some adjacent territory, which was, for police purposes, organized as one district, and provided with a police force common to the whole.

METTESHEP, or METTENSCHEP. In old records. An acknowledgment paid in a certain measure of corn; or a fine or penalty imposed on tenants for default in not doing their customary service in cutting the lord's corn.

METUS. Lat. Fear; terror. In a technical sense, a reasonable and well-grounded apprehension of some great evil, such as death or mayhem, and not arising out of mere timidity, but such as might fall upon a man of courage. Fear must be of this description in order to amount to duress avoiding a contract. See Bract. lib. 2, c. 5; 1 Bl. Comm. 131; Calvin.

MEUBLES. In French law. The movables of English law. Things are *meubles* from either of two causes: (1) From their own nature, *e. g.*, tables, chairs; or (2) from the determination of the law, *e. g.*, obligations.

MEUBLES MEUBLANS. In French law. The utensils and articles of ornament usual in a dwelling-house. Brown.

Meum est promittere, non dimittere. It is mine to promise, not to discharge. 2 Rolle, 39.

MICHAELMAS. The feast of the Archangel Michael, celebrated in England on the 29th of September, and one of the usual quarter days.

MICHAELMAS HEAD COURT. A meeting of the heritors of Scotland, at which the roll of freeholders used to be revised. See Bell.

MICHAELMAS TERM. One of the four terms of the English courts of common law, beginning on the 2d day of November and ending on the 25th. 3 Steph. Comm. 562.

MICHE, or MICH. O. Eng. To practice crimes requiring concealment or secrecy; to pilfer articles secretly. *Micher*, one who practices secret crime. Webster.

MICHEL-GEMOT. One of the names of the general council immemorially held in England. The *Witenagemote*.

One of the great councils of king and noblemen in Saxon times. Jacob.

MICHEL-SYNOTH. Great council. One of the names of the general council of the kingdom in the times of the Saxons. 1 Bl. Comm. 147.

MICHERY. In old English law. Theft; cheating.

MIDDLE LINE OF MAIN CHANNEL. The equidistant point in the main channel of the river between the well-defined banks on either shore. *Hearne v. State*, 121 Ark. 460, 181 S. W. 291, 295.

MIDDLE OF THE RIVER. The phrases "middle of the river" and "middle of the main channel" are equivalent expressions, and both mean the main line of the channel or the middle thread of the current. *Western Union Tel. Co. of Illinois v. Louisville & N. R. Co.*, 270 Ill. 399, 110 N. E. 583, 591, Ann. Cas. 1917B, 670.

MIDDLE TERM. A phrase used in logic to denote the term which occurs in both of the premises in the syllogism, being the means of bringing together the two terms in the conclusion.

MIDDLE THREAD. The middle thread of a stream is an imaginary line drawn lengthwise through the middle of its current.

MIDDLEMAN. An agent between two parties, an intermediary who performs the office of a broker or factor between seller and buyer, producer and consumer, land-owner and tenant, etc. *Southack v. Lane*, 32 Misc. Rep. 141, 65 N. Y. Supp. 629; *Synnott v. Shaughnessy*, 2 Idaho, 122, 7 Pac. 89. Brokers are "middlemen" only where, without having undertaken to act as agents for either party, or to exercise their skill, knowledge, or influence, they merely bring the parties together to deal for themselves, and stand indifferent between them. *Geddes v. Rhee*, 126 Minn. 517, 148 N. W. 549, 550; *King v. Reed*, 24 Cal. App. 229, 141 P. 41, 48; *Stapp v. Godfrey*, 158 Iowa, 376, 139 N. W. 893, 894.

One who has been employed as an agent by a principal, and who has employed a sub-agent under him by authority of the principal, either express or implied.

A person who is employed both by the seller and purchaser of goods, or by the purchaser alone, to receive them into his possession, for the purpose of doing something in or about them.

A middleman, in Ireland, is a person who takes land in large tracts from the proprietors, and then rents it out to the peasantry in small portions at a greatly enhanced price. Wharton.

MIDDLESEX, BILL OF. See Bill.

MIDSHIPMAN. In ships of war, a kind of naval cadet, whose business is to second or transmit the orders of the superior officers and assist in the necessary business of the vessel, but understood to be in training for a commission. A *passed* midshipman is one who has passed an examination and is a candidate for promotion to the rank of lieutenant. See *U. S. v. Cook*, 128 U. S. 254, 9 Sup. Ct. 108, 32 L. Ed. 464.

MIDSUMMER-DAY. The summer solstice, which is on the 24th day of June, and the feast of St. John the Baptist, a festival first mentioned by Maximus Tauricensis, A. D. 400. It is generally a quarter-day for the payment of rents, etc. Wharton.

MIDWIFE. In medical jurisprudence. A woman who assists at childbirth; an *accoucheuse*.

MIESES. In Spanish law. Crops of grain. White, New Recop. b. 1, tit. 7, c. 5, § 2.

MIGHT, v. Had power or was possible. *Lewiston Milling Co. v. Cardiff* (C. C. A.) 266 F. 753, 758.

Migrans jura amittat ac privilegia et immunitates domicilii prioris. One who emigrates will lose the rights, privileges, and immunities of his former domicile. Voet, Com. ad. Pand. tom. i. 347; 1 Kent, Comm. 76.

MILE. A measure of length or distance, containing 8 furlongs, or 1,760 yards, or 5,280 feet. This is the measure of an ordinary or statute mile; but the nautical or geographical mile contains 6,080 feet.

MILEAGE. A payment or charge, at a fixed rate per mile, allowed as a compensation for traveling expenses to members of legislative bodies, witnesses, sheriffs, and bailiffs. *Richardson v. State*, 66 Ohio St. 108, 63 N. E. 593; *Howes v. Abbott*, 78 Cal. 270, 20 Pac. 572; *State v. Clausen*, 142 Wash. 450, 253 P. 805, 807.

MILES. Lat.

In the Civil Law

A soldier.

In Old English Law

A knight, because military service was part of the feudal tenure. Also a tenant by military service, not a knight. 1 Bl. Comm. 404; Seld. Tit. Hon. 334.

MILESTONES. Stones set up to mark the miles on a road or railway.

MILITARE. To be knighted.

BL.LAW DICT. (3D ED.)—75

MILITARY. Pertaining to war or to the army; concerned with war. Also the whole body of soldiers; an army.

MILITARY BOUNTY LAND. See Bounty.

MILITARY CAUSES. In English law. Causes of action or injuries cognizable in the court military, or court of chivalry. 3 Bl. Comm. 103.

MILITARY COMMISSIONS. Courts whose procedure and composition are modeled upon courts-martial, being the tribunals by which alleged violations of martial law are tried and determined. The membership of such commissions is commonly made up of civilians and army officers. They are probably not known outside of the United States, and were first used by General Scott during the Mexican war. 15 Amer. & Eng. Enc. Law, 473.

MILITARY COURTS. In England the court of chivalry and courts-martial, in America courts-martial and courts of inquiry, are called by this general name.

MILITARY FEUDS. See Feud.

MILITARY FORCES. Espionage Act June 15, 1917, prohibiting attempts to cause disloyalty, insubordination, mutiny, and refusal of duty in the military forces of the United States, includes in the term "military forces" persons subject to be called into active service under Selective Service Act May 18, 1917. *Anderson v. U. S.* (C. C. A.) 264 F. 75, 76; *White v. United States* (C. C. A.) 263 F. 17, 19, but see contra, *United States v. Hall* (D. C.) 248 F. 150, 152.

MILITARY GOVERNMENT. The dominion exercised by a general over a conquered state or province. It is a mere application or extension of the force by which the conquest was effected, to the end of keeping the vanquished in subjection; and being derived from war, is incompatible with a state of peace. Com. v. Shortall, 206 Pa. 165, 55 Atl. 952, 65 L. R. A. 193, 98 Am. St. Rep. 759.

MILITARY JURISDICTION. "There are, under the constitution, three kinds of military jurisdiction,—one to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states or districts occupied by rebels treated as belligerents; and a third to be exercised in time of invasion or insurrection within the limits of the United States, or during rebellion within the limits of states maintaining adhesion to the national government, when the public danger requires its exercise. The first of these may be called 'jurisdiction under military law,' and is found in acts of congress prescribing rules and articles of war, or otherwise providing for the government of the national forces; the second may be distinguished as 'military govern-

ment,' superseding, as far as may be deemed expedient, the local law, and exercised by the military commander under the direction of the president, with the express or implied sanction of congress; while the third may be denominated 'martial law proper,' and is called into action by congress, or temporarily, when the action of congress cannot be invited, and in the case of justifying or excusing peril, by the president, in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights." Per Chase, C. J., in *Ex parte Milligan*, 4 Wall. 141, 18 L. Ed. 281.

MILITARY LAW. A system of regulations for the government of an army. 1 Kent, Comm. 341, note. That branch of the laws which respects military discipline and the government of persons employed in the military service. De Hart, *Mil. Law*, 16. *State v. Rankin*, 4 Cold. (Tenn.) 156; *Johnson v. Jones*, 44 Ill. 153, 92 Am. Dec. 159; In re *Bogart*, 3 Fed. Cas. 801; *Neall v. U. S.*, 118 Fed. 704, 56 C. C. A. 31. Military is distinct from martial law, in that it applies only to persons in the military or naval service of the government; whereas, martial law, when once established, applies alike to citizens and soldiers and supersedes civil law. *U. S. v. McDonald* (D. C.) 265 F. 754, 761; *Bishop v. Vandercook*, 228 Mich. 299, 200 N. W. 278, 280.

MILITARY OFFENSES. Those offenses which are cognizable by the courts military, as insubordination, sleeping on guard, desertion, etc.

MILITARY OFFICE. See Office.

MILITARY OFFICER. See Officer.

MILITARY SERVICE. Every branch of service in either the armies or navies of the United States. *Maclean v. Brodigan*, 41 Nev. 468, 172 P. 375, 377; In re *Opinion to the Governor*, 41 R. I. 118, 102 A. 913. "Active military service" within exemption provision of life policy is service in garrison or at sea in time of peace or before an enemy in time of war. *Redd v. American Cent. Life Ins. Co.*, 200 Mo. App. 383, 207 S. W. 74, 75. See also *Rex Health & Accident Ins. Co. v. Pettiford*, 74 Ind. App. 507, 129 N. E. 248; *Benham v. American Central Life Ins. Co.*, 140 Ark. 612, 217 S. W. 462, 463; *Ruddock v. Detroit Life Ins. Co.*, 209 Mich. 638, 177 N. W. 242, 247.

MILITARY STATE. The soldiery of the kingdom of Great Britain.

MILITARY TENURES. The various tenures by knight-service, grand-serjeanty, cornage, etc., are frequently called "military tenures," from the nature of the services which they involved. 1 Steph. Comm. 204.

MILITARY TESTAMENT. See Testament.

MILITES. Lat. Knights; and, in Scotch law, freeholders.

MILITIA. The body of citizens in a state, enrolled for discipline as a military force, but not engaged in actual service except in emergencies, as distinguished from regular troops or a standing army. See *Ex parte McCants*, 39 Ala. 112; *Worth v. Craven County*, 118 N. C. 112, 24 S. E. 778; *Brown v. Newark*, 29 N. J. Law, 238; *Story v. Perkins* (D. C.) 243 F. 997, 999.

MILK. In England milk means, commercially speaking, skimmed milk.

MILL. 1. A complicated engine or machine for grinding and reducing to fine particles grain, fruit, or other substance, or for performing other operations by means of wheels and a circular motion; also the building containing such machinery. *State v. Livermore*, 44 N. H. 387; *Lamborn v. Bell*, 18 Colo. 346, 32 P. 989, 20 L. R. A. 241; *Home Mut. Ins. Co. v. Roe*, 71 Wis. 33, 36 N. W. 594; *Halpin v. Insurance Co.*, 120 N. Y. 73, 23 N. E. 989; *Southwest Missouri Light Co. v. Schuerich*, 174 Mo. 235, 73 S. W. 496; *Casey v. Barber Asphalt Paving Co.* (C. C. A.) 202 F. 1, 5.

The word as used in Employers' Liability Act has been extended to include not only the building in which the business of manufacturing is carried on, but the dam, flume, and ways which the master provides for the use of those employes. *Boody v. K. & C. Mfg. Co.*, 77 N. H. 208, 90 A. 859, 860, L. R. A. 1916A, 10, Ann. Cas. 1914D, 1280.

2. An American money of account, of the value of the tenth part of a cent.

MILL-HOLMS. Low meadows and other fields in the vicinity of mills, or watery places about mill-dams. Enc. Lond.

MILL OATS. A species of wild oats of volunteer growth with a dark brown or almost black kernel incased in hard cover with stiff beard, having low food value. *Gibson v. State*, 214 Ala. 38, 106 So. 231, 238.

MILL PRIVILEGE. The right of a riparian proprietor to erect a mill on his land and to use the power furnished by the stream for the purpose of operating the mill, with due regard to the rights of other owners above and below him on the stream. *Gould v. Boston Duck Co.*, 13 Gray (Mass.) 452; *Hutchinson v. Chase*, 39 Me. 511, 63 Am. Dec. 645; *Moore v. Fletcher*, 16 Me. 65, 33 Am. Dec. 633; *Whitney v. Wheeler Cotton Mills*, 151 Mass. 396, 24 N. E. 774, 7 L. R. A. 613; *Rome Ry. & Light Co. v. Loeb*, 141 Ga. 202, 80 S. E. 785, 787, Ann. Cas. 1915C, 1023.

MILL RUN. The lumber that comes from the mill in the ordinary process of its operation. *Pye v. Eagle Lake Lumber Co.*, 66 Cal. App. 584, 227 P. 193, 194.

MILL SITE. In general, a parcel of land on or contiguous to a water-course, suitable for the erection and operation of a mill operated by the power furnished by the stream. See *Occum Co. v. Sprague Mfg. Co.*, 35 Conn. 512; *Hasbrouct v. Vermilyea*, 6 Cow. (N. Y.) 681; *Mandeville v. Comstock*, 9 Mich. 537. Specifically, in American mining law, a parcel of land constituting a portion of the public domain, located and claimed by the owner of a mining claim under the laws of the United States (or purchased by him from the government and patented,) not exceeding five acres in extent, not including any mineral land, not contiguous to the vein or lode, and occupied and used for the purpose of a mill or for other uses directly connected with the operation of the mine; or a similar parcel of land located and actually used for the purpose of a mill or reduction plant, but not by the owner of an existing mine nor in connection with any particular mining claim. See U. S. Rev. St. § 2337 (30 USCA § 42).

MILLBANK PRISON. Formerly called the "Penitentiary at Millbank." A prison at Westminster, for convicts under sentence of transportation, until the sentence or order shall be executed, or the convict be entitled to freedom, or be removed to some other place of confinement. This prison is placed under the inspectors of prisons appointed by the secretary of state, who are a body corporate, "The Inspectors of the Millbank Prison." The inspectors make regulations for the government thereof, subject to the approbation of the secretary of state, and yearly reports to him, to be laid before parliament. The secretary also appoints a governor, chaplain, medical officer, matron, etc. Wharton.

MILLEATE, or MILL-LEAT. A trench to convey water to or from a mill. St. 7 Jac. I. c. 19.

MILLED MONEY. This term means merely coined money; and it is not necessary that it should be marked or rolled on the edges. Leach, 708.

MILLING IN TRANSIT. A special privilege allowable at certain designated points, whereby the carrier, having transported grain to a shipper's mill, agrees that the shipper may re-ship the meal without charge and for which extra compensation is usually exacted by interstate carriers under control of the Interstate Commerce Commission. *Priebe v. Southern Ry. Co.*, 189 Ala. 427, 66 So. 573, 574.

MIL-REIS. The name of a piece of money in the coinage of Portugal, and the Azores and Madeira islands. Its value at the customhouse, according as it is coined in the first, second, or third of the places named, is \$1.12, or 83½ cents, or \$1.

MINA. In old English law. A measure of corn or grain. Cowell; Spelman.

MINABLE COAL. Coal that could be profitably mined by judicious methods. *Auxier Coal Co. v. Big Sandy & Millers Creek Coal Co.*, 194 Ky. 14, 238 S. W. 189, 191.

MINAGE. A toll or duty paid for selling corn by the mina. Cowell.

MINARE. In old records. To mine or dig mines. *Minator*, a miner. Cowell.

MINATOR CARUCÆ. A plowman. Cowell.

Minatur innocentibus qui parcit nocentibus. 4 Coke, 45. He threatens the innocent who spares the guilty.

MIND. In its legal sense, "mind" means only the ability to will, to direct, to permit, or to assent. In this sense, a corporation has a mind, and exerts its mind each time that it assents to the terms of a contract. *McDermott v. Evening Journal Ass'n*, 43 N. J. Law, 492, 39 Am. Rep. 606.

MIND AND MEMORY. A phrase applied to testators, denoting the possession of mental capacity to make a will. In order to make a valid will, the testator must have a sound and disposing *mind and memory*. In other words, he ought to be capable of making his will, with an understanding of the nature of the business in which he is engaged, a recollection of the property he means to dispose of, of the persons who are the objects of his bounty, and the manner in which it is to be distributed between them. *Harrison v. Rowan*, 3 Wash. C. C. 585, Fed. Cas. No. 6,141.

MINE. A pit or excavation in the earth, from which metallic ores or other mineral substances are taken by digging. Webster; *Marvel v. Merritt*, 116 U. S. 11, 6 S. Ct. 207, 29 L. Ed. 550; *Murray v. Allred*, 100 Tenn. 100, 43 S. W. 355, 39 L. R. A. 249, 66 Am. St. Rep. 740; *Barton v. Wichita River Oil Co.* (Tex. Civ. App.) 187 S. W. 1043, 1046; *Sovereign Camp, W. O. W. v. Arthur*, 144 Ark. 114, 222 S. W. 729, 731; *Richards v. Fleming Coal Co.*, 104 Kan. 330, 179 P. 380, 381, 382.

A "mine," within the meaning of Anthracite Mining Act includes the underground workings, excavations, and shafts connected below the surface by tunnels and other ways and openings and operated by one general haulage, ventilation, and mine railroad system, but it does not include separate and distinct underground operations disconnected or operated by separate and distinct mining systems, whether such separate workings are under a common ownership or not. *Janosky v. Lehigh Valley Coal Co.*, 241 Pa. 190, 88 A. 419, 420.

Within constitutional provision relative to taxation "mine" is said to be a mineral deposit, metallic or nonmetallic, developed so as to produce and actually be capable of yielding proceeds. *Northern Pac. Ry. Co. v. Mjelde*, 48 Mont. 287, 137 P. 386, 387.

MINE RUN COAL. Fine broken coal and dust obtained by removing lumps and using fine coal underneath. *Brodmeier v. Lamb*, 170 Minn. 143, 212 N. W. 187, 188.

MINER. One who mines; a digger for metals and other minerals. While men of scientific attainments, or of experience in the use of machinery, are to be found in this class, yet the word by which the class is designated imports neither learning nor skill. *Watson v. Lederer*, 11 Colo. 577, 19 P. 604, 1 L. R. A. 854, 7 Am. St. Rep. 263; *Barton v. Wichita River Oil Co.* (Tex.Civ.App.) 187 S. W. 1043, 1046.

MINER'S INCH. See Inch.

MINERAL, *adj.* Relating to minerals or the process and business of mining; bearing or producing valuable minerals.

MINERAL, *n.* Any valuable inert or lifeless substance formed or deposited in its present position through natural agencies alone, and which is found either in or upon the soil of the earth or in the rocks beneath the soil. *Barringer & Adams, Mines*, p. lxxvi.

Any natural constituent of the crust of the earth, inorganic or fossil, homogeneous in structure, having a definite chemical composition and known crystallization. See Webster; Cent. Dict.

The term includes all fossil bodies or matters dug out of mines or quarries, whence anything may be dug, such as beds of stone which may be quarried. *Earl of Rosse v. Wainman*, 14 Mees. & W. 872.

In its common acceptation, the term may be said to include those parts of the earth which are capable of being mined or extracted from beneath the surface, and which have a commercial value. *Williams v. South Penn Oil Co.*, 52 W. Va. 181, 43 S. E. 214, 60 L. R. A. 795. But, in its widest sense, "minerals" may be described as comprising all the substances which now form or which once formed a part of the solid body of the earth, both external and internal, and which are now destitute of or incapable of supporting animal or vegetable life. In this sense, the word includes not only the various ores of the precious metals, but also coal, clay, marble, stone of various sorts, slate, salt, sand, natural gas, petroleum, and water. See *Northern Pac. R. Co. v. Soderberg*, 43 C. C. A. 620, 104 F. 425; *Murray v. Allred*, 100 Tenn. 100, 43 S. W. 355, 39 L. R. A. 249, 66 Am. St. Rep. 740; *Gibson v. Tyson*, 5 Watts (Pa.) 38; *Henry v. Lowe*, 73 Mo. 99; *Westmoreland, etc., Gas Co. v. De Witt*, 130 Pa. 235, 18 A. 724, 5 L. R. A. 731; *Marvel v. Merritt*, 6 S. Ct. 207, 116 U. S. 11, 29 L. Ed. 550; *State v. Parker*, 61 Tex. 268; *Ridgway Light, etc., Co. v. Elk County*, 191 Pa. 465, 43 A. 323; *Robinson v. Wheeling Steel & Iron Co.*, 99 W. Va. 435, 129 S. E. 311, 312. Thus oil and gas are minerals. *Hamilton v. Foster*, 272 Pa. 95, 116 A. 50, 52; *Ferguson v. Steen* (Tex. Civ. App.) 293 S. W. 318, 320; *Barker v. Campbell-Ratcliff Land Co.*, 64 Okl. 249, 167 P. 468, 469, L. R. A. 1918A, 487; *Kentucky Coke Co. v. Keystone Gas Co.* (C. C. A.) 296 F. 320, 323.

MINERAL DISTRICT. A term occasionally used in acts of congress, designating in a general way those portions or regions of the country where valuable minerals are mostly found, or where the business of mining is chiefly carried on, but carrying no very precise meaning and not a known term of the law. See *U. S. v. Smith* (C. C.) 11 F. 490.

MINERAL LAND ENTRY. See Entry.

MINERAL LANDS. See Land.

MINERAL LODE. A mineral bed of rock with definite boundaries in a general mass of the mountain and also any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock. *Duffield v. San Francisco Chemical Co.* (C. C. A.) 205 F. 480, 484.

MINERATOR. In old records. A miner.

Minima pœna corporalis est major qualibet pecuniaria. The smallest corporal punishment is greater than any pecuniary one. 2 Inst. 220.

Minime mutanda sunt quæ certam habuerunt interpretationem. Things which have had a certain interpretation [whose interpretation has been settled, as by common opinion] are not to be altered. Co. Litt. 365; Wing. Max. p. 748, max. 202.

MINIMENT. An old form of *muniment*, (*q. v.*) Blount.

MINIMUM CHARGE. A "minimum charge" in connection with public utilities rate-fixing means the minimum monthly bill which will be rendered regardless of whether or not a customer has used sufficient of the commodity to make up that sum at the agreed rate. *Ash-tabula Gas Co. v. Public Utilities Commission*, 102 Ohio St. 678, 133 N. E. 915, 916, 20 A. L. R. 217.

Minimum est nihilo proximum. The smallest is next to nothing.

MINIMUM WAGE. Such an amount as will maintain a normal standard of living, including the preservation of the health and efficiency of the worker.

MINING. The process or business of extracting from the earth the precious or valuable metals, either in their native state or in their ores. In re *Rollins Gold Min. Co.* (D. C.) 102 F. 985. As ordinarily used, the term does not include the extraction from the earth of rock, marble, or slate, which is commonly described as "quarrying," although coal and salt are "mined;" nor does it include sinking wells or shafts for petroleum or natural gas, unless expressly so declared by statute, as is the case in Indiana. See *State v. Indiana, etc., Min. Co.*, 120 Ind. 575, 22 N. E. 778, 6 L. R. A. 579; *Williams v. Citizens' Enterprise Co.*, 153 Ind. 496, 55 N. E. 425.

MINING CLAIM. A parcel of land, containing precious metal in its soil or rock, and appropriated by an individual, according to established rules, by the process of "location." *St. Louis Smelting & Refining Co. v. Kemp*, 104 U. S. 649, 26 L. Ed. 875; *Northern Pac. R. Co. v. Sanders*, 49 F. 135, 1 C. C. A. 192; *Gleeson v. Mining Co.*, 13 Nev. 470; *Lockhard v. Asher Lumber Co.* (C. C.) 123 F. 493.

MINING COMPANIES. This designation was formerly applied in England to the associations formed in London in 1825 for working mines in Mexico and South America; but at present it comprises, both in England and America, all mining projects carried on by joint-stock associations or corporations. *Rapalje & Lawrence.*

MINING DISTRICT. A section of country usually designated by name and described or understood as being confined within certain natural boundaries, in which the precious metals (or their ores) are found in paying quantities, and which is worked therefor, under rules and regulations prescribed or agreed upon by the miners therein. *U. S. v. Smith (C. C.) 11 F. 490.*

MINING LEASE. A lease of a mine or mining claim or a portion thereof, to be worked by the lessee, usually under conditions as to the amount and character of work to be done, and reserving compensation to the lessor either in the form of a fixed rent or a royalty on the tonnage of ore mined, and which (as distinguished from a license) conveys to the lessee an interest or estate in the land, and (as distinguished from an ordinary lease) conveys not merely the temporary use and occupation of the land, but a portion of the land itself, that is, the ore in place and unsevered and to be extracted by the lessee. See *Austin v. Huntsville Min. Co., 72 Mo. 541, 37 Am. Rep. 446; Buchanan v. Cole, 57 Mo. App. 11; Knight v. Indiana Coal Co., 47 Ind. 113, 17 Am. Rep. 692; Sanderson v. Scranton, 105 Pa. 473.*

MINING LOCATION. The act of appropriating and claiming, according to certain established rules and local customs, a parcel of land of defined area, upon or in which one or more of the precious metals or their ores have been discovered, and which constitutes a portion of the public domain, with the declared intention to occupy and work it for mining purposes under the implied license of the United States. Also the parcel of land so occupied and appropriated. See *Poire v. Wells, 6 Colo. 412; St. Louis Smelting & Refining Co. v. Kemp, 104 U. S. 649, 26 L. Ed. 875; Golden Fleece, etc., Min. Co. v. Cable, etc., Min. Co., 12 Nev. 328; Gleeson v. Martin White Min. Co., 13 Nev. 456; Walrath v. Champion Min. Co. (C. C.) 63 F. 556.*

MINING PARTNERSHIP. An association of several owners of a mine for co-operation in working the mine. A mining partnership is governed by many of the rules relating to ordinary partnerships, but also by some rules peculiar to itself, one of which is that one person may convey his interest in the mine and business without dissolving the partnership. *Kahn v. Central Smelting Co., 102 U. S. 645, 26 L. Ed. 266; Higgins v. Armstrong, 9 Colo. 38, 10 P. 232; Skillman v. Lachman, 23 Cal. 203, 83 Am. Dec. 96; Kimberly v. Arms,*

129 U. S. 512, 9 S. Ct. 355, 32 L. Ed. 764; Sturm v. Ulrich (C. C. A.) 10 F.(2d) 9, 12; Kennedy v. Beets Oil Co., 105 Okl. 1, 231 P. 508, 511.

MINISTER.

In Public Law

One of the highest functionaries in the organization of civil government, standing next to the sovereign or executive head, acting as his immediate auxiliary, and being generally charged with the administration of one of the great bureaus or departments of the executive branch of government. Otherwise called a "cabinet minister," "secretary of state," or "secretary of a department."

In International Law

An officer appointed by the government of one nation as a mediator or arbitrator between two other nations who are engaged in a controversy, with their consent, with a view to effecting an amicable adjustment of the dispute.

A general name given to the diplomatic representatives sent by one state to another, including ambassadors, envoys, and residents.

In Ecclesiastical Law

A person ordained according to the usages of some church or associated body of Christians for the preaching of the gospel and filling the pastoral office.

In Practice

An officer of justice, charged with the execution of the law, and hence termed a "ministerial officer;" such as a sheriff, bailiff, coroner, sheriff's officer. *Britt. c. 21.*

An agent; one who acts not by any inherent authority, but under another.

In General

—**Foreign minister.** An ambassador, minister, or envoy from a foreign government. *Cherokee Nation v. Georgia, 5 Pet. 56, 8 L. Ed. 25.*

—**Ministers plenipotentiary.** *Ministers plenipotentiary*, possess full powers, and are of much greater distinction than simple ministers. These are without any particular attribution of rank and character, but by custom are now placed immediately below the ambassador, or on a level with the envoy extraordinary; *Vattel, liv. 4, c. 5, § 74; 1 Kent 48; Merlin, Répert.*

—**Public minister.** In international law. A general term comprehending all the higher classes of diplomatic representatives,—as ambassadors, envoys, residents,—but not including the commercial representatives, such as consuls.

MINISTERIAL. That which is done under the authority of a superior; opposed to *judicial*; that which involves obedience to instructions, but demands no special discretion, judgment, or skill.

MINISTERIAL ACT. One which a person performs in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety of the act being done. *Pennington v. Streight*, 54 Ind. 376; *Bair v. Struck*, 29 Mont. 45, 74 P. 69, 63 L. R. A. 481; *State v. Nash*, 66 Ohio St. 612, 64 N. E. 558; *Grider v. Tally*, 77 Ala. 424, 54 Am. Rep. 65; *In re Press Printers & Publishers (C. C. A.)* 12 F.(2d) 660, 662; *State v. Bartholomew*, 103 Conn. 607, 132 A. 30, 34; *First Nat. Bank v. Hayes*, 186 Iowa, 892, 171 N. W. 715, 718; *Boynton v. Brown (Tex. Civ. App.)* 164 S. W. 893, 895.

MINISTERIAL DUTY. A ministerial duty, the performance of which may in proper cases be required of a public officer by judicial proceedings, is one in respect to which nothing is left to discretion; it is a simple, definite duty arising under circumstances admitted or proved to exist and imposed by law. *State v. McGrath*, 92 Mo. 355, 5 S. W. 29; *Mississippi v. Johnson*, 4 Wall. 498, 18 L. Ed. 437; *People v. Jerome*, 36 Misc. 256, 73 N. Y. S. 306; *Duvall v. Swann*, 94 Md. 608, 51 A. 617; *Gledhill v. Governor*, 25 N. J. Law, 351; *Houston v. Boltz*, 169 Ky. 640, 185 S. W. 76, 80; *Mott v. Hull*, 51 Okl. 602, 152 P. 92, L. R. A. 1916B, 1184; *Ham v. Los Angeles County*, 46 Cal. App. 148, 189 P. 462, 468. A ministerial duty arises when an individual has such a legal interest in its performance that neglect of performance becomes a wrong to such individual. *Morton v. Comptroller General*, 4 S. C. 473.

MINISTERIAL OFFICE. See Office.

MINISTERIAL OFFICER. One whose duties are purely ministerial, as distinguished from executive, legislative, or judicial functions, requiring obedience to the mandates of superiors and not involving the exercise of judgment or discretion. See U. S. v. Bell (C. C.) 127 F. 1002; *Waldoe v. Wallace*, 12 Ind. 572; *State v. Loechner*, 65 Neb. 814, 91 N. W. 874, 59 L. R. A. 915; *Reid v. Hood*, 2 Nott & McC. (S. C.) 169, 10 Am. Dec. 582.

MINISTERIAL POWER. See Power.

MINISTERIAL TRUST. See Trust.

MINISTRANT. The party cross-examining a witness was so called, under the old system of the ecclesiastical courts.

MINISTRI REGIS. Lat. In old English law. Ministers of the king, applied to the judges of the realm, and to all those who hold ministerial offices in the government. 2 Inst. 208.

MINISTRY. The term as used in England is wider than Cabinet and includes all the holders of public office who come in and go out with the Prime Minister. In this respect it may be contrasted with the Permanent Civil Service, whose tenure is independent of pub-

lic changes. The first English Ministry as now understood was formed after the general election of 1696. Macaulay, *Hist. Engl.*, ch. 24.

"Ecclesiastical functions," or "duties." Rector, etc., of St. George's Church in City of New York v. Morgan, 88 Misc. 702, 152 N. Y. S. 497, 498.

MINOR. An infant or person who is under the age of legal competence. One under twenty-one. A term derived from the civil law, which described a person under a certain age as *less than* so many years. *Minor viginti quinque annis*, one less than twenty-five years of age. Inst. 1, 14, 2; *Audsley v. Hale*, 303 Mo. 451, 261 S. W. 117, 123.

Also, less; of less consideration; lower; a person of inferior condition. *Fleta*, 2, 47, 13, 15; Calvin.

MINOR ÆTAS. Lat. Minority or infancy. Cro. Car. 516. Literally, lesser age.

MINOR FACT. In the law of evidence. A relative, collateral, or subordinate fact; a circumstance. *Wills*, Circ. Ev. 27; *Burrill*, Circ. Ev. p. 121, note, 582:

Minor ante tempus agere non potest in casu proprietatis nec etiam convenire; differetur usque ætatem; sed non cadit breve. 2 Inst. 291. A minor before majority cannot act in a case of property, nor even agree; it should be deferred until majority; but the writ does not fail.

Minor minorem custodire non debet, alios enim præsumitur male regere qui seipsum regere nescit. A minor ought not to be guardian to a minor, for he who knows not how to govern himself is presumed to be unfit to govern others. *Fleta*, lib. 1, c. 10; *Co. Litt.* 88b.

Minor jurare non potest. A minor cannot make oath. *Co. Litt.* 172b. An infant cannot be sworn on a jury. *Litt.* 289.

Minor non tenetur respondere durante minori ætate, nisi in causa dotis, propter favorem. 3 Bulst. 143. A minor is not bound to reply during his minority, except as a matter of favor in a cause of dower.

Minor qui infra ætatem 12 annorum fuerit ul-tagari non potest, nec extra legem poni, quia ante talem ætatem, non est sub lege aliqua, nec in decenna. *Co. Litt.* 128. A minor who is under twelve years of age cannot be outlawed, nor placed without the law, because before such age he is not under any law, nor in a decennary.

Minor septemdecim annis non admittitur fore executorem. A person under seventeen years is not admitted to be an executor. 6 Coke, 67. A rule of ecclesiastical law.

MINORA REGALIA. In English law. The lesser prerogatives of the crown, including the rights of the revenue. 1 Bl. Comm. 241.

MINORITY. The state or condition of a minor; infancy.

The smaller number of votes of a deliberative assembly; opposed to majority, (which see.)

MINT. The place designated by law where bullion is coined into money under authority of the government.

Also a place of privilege, in Southwark, near the king's prison, where persons formerly sheltered themselves from justice under the pretext that it was an ancient palace of the crown. The privilege is now abolished. Wharton.

MINT-MARK. The masters and workers of the English mint, in the indentures made with them, agree "to make a privy mark in the money they make, of gold and silver, so that they may know which moneys were of their own making." After every trial of the *pix*, having proved their moneys to be lawful, they are entitled to their *quietus* under the great seal, and to be discharged from all suits or actions. Wharton.

MINT-MASTER. One who manages the coinage.

MINTAGE. The charge or commission taken by the mint as a consideration for coining into money the bullion which is brought to it for that purpose; the same as "seigniorage."

Also that which is coined or stamped as money; the product of the mint.

MINUS. Lat. In the civil law. Less; less than. The word had also, in some connections, the sense of "not at all." For example, a debt remaining wholly unpaid was described as "*minus solutum*."

Minus solvit, qui tardius solvit. He does not pay who pays too late. Dig. 50, 16, 12, 1.

MINUTE. In measures of time or circumference, a minute is the sixtieth part of an hour or degree.

In Practice

A memorandum of what takes place in court, made by authority of the court. Moore v. State, 3 Heisk. (Tenn.) 509.

MINUTE-BOOK. A book kept by the clerk or prothonotary of a court for entering memoranda of its proceedings.

MINUTE TITHES. Small tithes, usually belonging to the vicar; *e. g.* eggs, honey, wax, etc. 3 Burn, Eccl. Law 630; 6 & 7 Will. IV. c. 71, §§ 17, 18, 27.

MINUTES.

In Scotch Practice

A pleading put into writing before the lord ordinary, as the ground of his judgment. Bell.

In Business Law

Memoranda or notes of a transaction or proceeding. Thus, the record of the proceedings at a meeting of directors or shareholders of a company is called the "minutes."

MINUTIO. Lat. In the civil law. A lessening; diminution or reduction. Dig. 4, 5, 1.

MIRROR. The Mirror of Justice, or of the Justices, commonly spoken of as the "Mirror," is an ancient treatise on the laws of England, supposedly written during the reign of Edward II., and attributed to one Andrew Horne. But it has been thought that the germ of it was written before the Conquest and that Horne only made additions to it.

MIS. An inseparable particle used in composition, to mark an ill sense or deprivation of the meaning; as "miscomputation" or "misaccounting," *i. e.*, false reckoning. Several of the words following are illustrations of the force of this monosyllable.

MISA.

In Old English Law

The mise or issue in a writ of right. Spelman.

In Old Records

A compact or agreement; a form of compromise. Cowell.

MISADVENTURE. A mischance or accident; a casualty caused by the act of one person inflicting injury upon another. Homicide "by misadventure" occurs where a man, doing a lawful act, without any intention of hurt, unfortunately kills another. 4 Bl. Comm. 182; Williamson v. State, 2 Ohio Cir. Ct. R. 292; Johnson v. State, 94 Ala. 35, 10 So. 667; Gaunce v. State, 22 Okl. Cr. 361, 211 P. 517, 518.

MISALLEGE. To cite falsely as a proof or argument.

MISAPPLICATION. Improper, illegal, wrongful, or corrupt use or application of funds, property, etc. Jewett v. U. S., 100 F. 840, 41 C. C. A. 88; U. S. v. Youtsey (C. C.) 91 F. 867; U. S. v. Taintor, 28 Fed. Cas. 9; Kingsbury v. State, 27 Ariz. 289, 232 P. 887, 890; Kansas Flour Mills Co. v. American Surety Co. of New York, 98 Kan. 618, 158 P. 1118.

MISAPPROPRIATION. This is not a technical term of law, but it is sometimes applied to the misdemeanor which is committed by a banker, factor, agent, trustee, etc., who fraudulently deals with money, goods, securities, etc., intrusted to him, or by a director or public officer of a corporation or company who fraudulently misapplies any of its property. Steph. Crim. Dig. 257, *et seq.*; Sweet. And see Winchester v. Howard, 136 Cal. 432, 64 P. 692, 89 Am. St. Rep. 153; Frey v. Torrey, 70 App. Div. 166, 75 N. Y. S. 40; Morris v. Board of Com'rs of Adams County, 25 Colo. App. 416, 139 P. 582, 583.

MISBEHAVIOR. Ill conduct; improper or unlawful behavior. Verdicts are sometimes set aside on the ground of misbehavior of jurors. *Smith v. Cutler*, 10 Wend. (N. Y.) 590, 25 Am. Dec. 580; *Turnbull v. Martin*, 2 Daly (N. Y.) 430; *State v. Arnold*, 100 Tenn. 307, 47 S. W. 221.

MISCARRIAGE.

In Medical Jurisprudence

The expulsion of the *ovum* or embryo from the *uterus* within the first six weeks after conception. Between that time, and before the expiration of the sixth month, when the child may possibly live, it is termed "abortion." When the delivery takes place soon after the sixth month, it is denominated "premature labor." But the criminal act of destroying or bringing forth prematurely the *fœtus* or unborn offspring of a pregnant woman, at any time before birth, is termed, in law, "procuring miscarriage." *Chit. Med. Jur.* 410. See *Smith v. State*, 33 Me. 59, 54 Am. Dec. 607; *State v. Howard*, 32 Vt. 402; *Mills v. Com.*, 13 Pa. 632; *State v. Crook*, 16 Utah, 212, 51 P. 1091; *State v. Brown*, 3 Boyce (Del.) 499, 85 A. 797, 802.

The failure of a woman, from causes beyond her control to carry a fetus to maturity. *Flory v. Supreme Tribe of Ben Hur*, 98 Neb. 160, 152 N. W. 295.

In Practice

As used in the statute of frauds, ("debt, default, or miscarriage of another,") this term means any species of unlawful conduct or wrongful act for which the doer could be held liable in a civil action. *Gansey v. Orr*, 173 Mo. 532, 73 S. W. 477.

MISCARRIAGE OF JUSTICE. Under laws providing that a judgment shall not be reversed for error which has not resulted in a miscarriage of justice, the words "miscarriage of justice" mean no more than that the substantial rights of a party have been prejudiced. *State v. Cluff*, 48 Utah, 102, 158 P. 701, 703; *State v. Nell*, 117 Wash. 142, 202 P. 7, 8.

MISCASTING. An error in auditing and numbering. It does not include any pretended miscasting or misvaluing. 4 *Bouvier, Inst.* n. 4128.

MISCEGENATION. Mixture of races; marriage between persons of different races; as between a white person and a negro.

MISCHARGE. An erroneous charge; a charge, given by a court to a jury, which involves errors for which the judgment may be reversed.

MISCHIEF. In legislative parlance, the word is often used to signify the evil or danger which a statute is intended to cure or avoid.

In the phrase "malicious mischief," (which see,) it imports a wanton or reckless injury to persons or property.

MISCOGNISANT. Ignorant; uninformed. The word is obsolete.

MISCONDUCT. Any unlawful conduct on the part of a person concerned in the administration of justice which is prejudicial to the rights of parties or to the right determination of the cause; as "misconduct of jurors," "misconduct of an arbitrator." The term is also used to express a dereliction from duty, injurious to another, on the part of one employed in a professional capacity, as an attorney at law, (*Stage v. Stevens*, 1 Denio [N. Y.] 267,) or a public officer, (*State v. Leach*, 60 Me. 58, 11 Am. Rep. 172.)

Within rule as to self-defense, defendant's "misconduct," provoking an assault, is not confined to physical acts, but contemplates and includes such violent and indecent language as is calculated to provoke a breach of the peace. *Scott v. Commonwealth*, 143 Va. 510, 129 S. E. 360, 362.

MISCONDUCT IN OFFICE. Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. *Kesling v. Moore*, 135 S. E. 246, 102 W. Va. 251; *State v. Young*, 203 P. 489, 490, 20 Okl. Cr. 397.

MISCONTINUANCE. In practice. An improper continuance; want of proper form in a continuance; the same with "discontinuance." *Cowell*.

MISCREANT. In old English law. An apostate; an unbeliever; one who totally renounced Christianity. 4 *Bl. Comm.* 44.

MISDATE. A false or erroneous date affixed to a paper or document.

MISDELIVERY. The delivery of property by a carrier or warehouseman to a person not authorized by the owner or person to whom the carrier or warehouseman is bound by his contract to deliver it. *Cleveland, etc., R. Co. v. Potts*, 33 Ind. App. 564, 71 N. E. 689; *Forbes v. Boston & L. R. Co.*, 133 Mass. 156.

MISDEMEANANT. A person guilty of a misdemeanor; one sentenced to punishment upon conviction of a misdemeanor. See *First-Class Misdemeanant*.

MISDEMEANOR. In criminal law. A general name for criminal offenses of every sort, punishable by indictment or special proceedings, which do not in law amount to the grade of felony.

A misdemeanor is an act committed or omitted in violation of a public law either forbidding or commanding it. *State v. Magee Pub. Co.*, 224 P. 1028, 1031, 29 N. M. 455, 38 A. L. R. 142; *State v. Jackson*, 77 So. 196, 197, 142 La. 540, L. R. A. 1918B, 1178. This general definition, however, comprehends both "crimes" and "misdemeanors," which, properly speaking, are mere synonymous terms; though, in common usage, the word

"crimes" is made to denote such offenses as are of a deeper and more atrocious dye; while smaller faults and omissions of less consequence are comprised under the milder term of "misdemeanors" only. In the English law, "misdemeanor" is generally used in contradistinction to "felony," and misdemeanors comprehend all indictable offenses which do not amount to felony, as libels, conspiracies, attempts, and solicitations to commit felonies, etc. Brown. And see *People v. Upson*, 79 Hun, 87, 29 N. Y. Supp. 615; *In re Bergin*, 31 Wis. 386; *Kelly v. People*, 132 Ill. 363, 24 N. E. 56; *State v. Hunter*, 67 Ala. 83; *Walsh v. People*, 65 Ill. 65, 16 Am. Rep. 569.

Under modern statutes the distinction between felonies and misdemeanors is not whether the offense is infamous, but whether it is punishable by imprisonment in the penitentiary or capitally, in which case it is a "felony"; otherwise a "misdemeanor." *Jones v. Brinkley*, 174 N. C. 23, 93 S. E. 372, 373; *Lee Lewis, Inc., v. Dosch*, 193 Ky. 163, 235 S. W. 355, 356; *Jackson v. State*, 10 Okl. Cr. 549, 139 P. 704. The grade of the offense is determined by the kind and extent of the punishment which may be inflicted, and not by the actual sentence. *People v. Hayman*, 159 N. Y. S. 981, 982, 94 Misc. Rep. 624.

MISDESCRIPTION. An error or falsity in the description of the subject-matter of a contract which deceives one of the parties to his injury, or is misleading in a material or substantial point.

MISDIRECTION. In practice. An error made by a judge in instructing the jury upon the trial of a cause.

MISE. The issue in a writ of right. When the tenant in a writ of right pleads that his title is better than the demandant's, he is said to join the *mise* on the mere right.

Also expenses; costs; disbursements in an action.

MISE-MONEY. Money paid by way of contract or composition to purchase any liberty, etc. Blount.

Misera est servitus, ubi jus est vagum aut incertum. It is a wretched state of slavery which subsists where the law is vague or uncertain. 4 Inst. 245; Broom, Max. 150.

MISERABLE DEPOSITUM. Lat. In the civil law. The name of an involuntary deposit, made under pressing necessity; as, for instance, shipwreck, fire, or other inevitable calamity. Poth. Proc. Civile, pt. 5, c. 1, § 1; Code La. art. 2935 (Civ. Code, art. 2964).

MISERERE. The name and first word of one of the penitential psalms, being that which was commonly used to be given by the ordinary to such condemned malefactors as were allowed the benefit of clergy; whence it is also called the "psalm of mercy." Wharton.

MISERICORDIA. Lat. Mercy; a fine or amerciamint; an arbitrary or discretionary amercement.

MISERICORDIA COMMUNIS. In old English law. A fine set on a whole county or hundred.

MISFEASANCE. A misdeed or trespass. The improper performance of some act which a man may lawfully do. 3 Steph. Comm. 460; And see *Bell v. Josselyn*, 3 Gray (Mass.) 309, 63 Am. Dec. 741; *Illinois Cent. R. Co. v. Foulks*, 191 Ill. 57, 60 N. E. 890; *Dudley v. Flemingsburg*, 115 Ky. 5, 72 S. W. 327, 60 L. R. A. 575, 103 Am. St. Rep. 253; *Maddock v. Riggs*, 190 P. 12, 14, 106 Kan. 808, 12 A. L. R. 216; *Owens v. Nichols*, 77 S. E. 635, 636, 139 Ga. 475.

Misfeasance, strictly, is the failure to do a lawful act in a proper manner, omitting to do it as it should be done; while malfeasance is the doing an act wholly wrongful; and nonfeasance is an omission to perform a duty, or a total neglect of duty. *State v. Dean*, 98 W. Va. 88, 126 S. E. 411; *Carlisle v. Burke*, 82 Misc. 282, 144 N. Y. S. 163, 164. But "misfeasance" is often used in the sense of "malfeasance." *Coite v. Lynes*, 33 Conn. 109; *Brooks v. Hornbeck* (Tex. Civ. App.) 274 S. W. 162, 163.

MISFEAZANCE. See Misfeasance.

MISFORTUNE. An adverse event, calamity, or evil fortune, arising by accident, (or without the will or concurrence of him who suffers from it,) and not to be foreseen or guarded against by care or prudence. See 20 Q. B. Div. 816. *Swetland v. Swetland*, 100 N. J. Eq. 196, 134 A. 822, 829. In its application to the law of homicide, this term always involves the further idea that the person causing the death is not at the time engaged in any unlawful act. 4 Bl. Comm. 182. *Gaunce v. State*, 211 P. 517, 518, 22 Okl. Cr. 361.

MISJOINDER. See Joinder.

MISKENNING. In Saxon and old English law. An unjust or irregular summoning to court; to speak unsteadily in court; to vary in one's plea. Cowell; Blount; Spelman.

MISLAY. To deposit in a place not afterwards recollected; to lose anything by forgetfulness of the place where it was laid. *Shehane v. State*, 13 Tex. App. 535.

MISLEADING. Delusive; calculated to lead astray or to lead into error. *Diamond Drill Contracting Co. v. International Diamond Drill Contracting Co.*, 179 P. 120, 122, 106 Wash. 72. Instructions which are of such a nature as to be misunderstood by the jury, or to give them a wrong impression, are said to be "misleading."

MISNOMER. Mistake in name; the giving an incorrect name to a person in a pleading, deed, or other instrument.

MISPLEADING. Pleading incorrectly, or omitting anything in pleading which is essential to the support or defense of an action, is so called; as in the case of a plaintiff not merely stating his title in a defective manner, but setting forth a title which is essentially defective in itself; or if, to an action of debt, the defendant pleads "not guilty" instead of *nil debet*. Brown. See Lovett v. Pell, 22 Wend. (N. Y.) 376; Chicago & A. R. Co. v. Murphy, 198 Ill. 462, 64 N. E. 1011; State ex rel. Smith v. Trimble, 285 S. W. 729, 731, 315 Mo. 166.

MISPRISION.

In Criminal Law

A term used to signify every considerable misdemeanor which has not a certain name given to it by law. 3 Inst. 36. But more particularly and properly the term denotes either (1) a contempt against the sovereign, the government, or the courts of justice, including not only contempts of court, properly so called, but also all forms of seditious or disloyal conduct and leze-majesty; (2) maladministration of high public office, including peculation of the public funds; (3) neglect or light account made of a crime, that is, failure in the duty of a citizen to endeavor to prevent the commission of a crime, or, having knowledge of its commission, to reveal it to the proper authorities. See 4 Bl. Comm. 119-126; State v. Biddle, 124 A. 804, 805, 2 W. W. Harr. (Del.) 401.

—**Misprision of felony.** The offense of concealing a felony committed by another, but without such previous concert with or subsequent assistance to the felon as would make the party concealing an accessory before or after the fact. 4 Steph. Comm. 260; 4 Bl. Comm. 121; Carpenter v. State, 62 Ark. 286, 36 S. W. 900.

—**Misprision of treason.** The bare knowledge and concealment of an act of treason or treasonable plot, that is, without any assent or participation therein, for if the latter elements be present the party becomes a principal. 4 Bl. Comm. 120; Pen. Code Cal. § 38.

—**Negative misprision.** The concealment of something which ought to be revealed; that is, misprision in the third of the specific meanings given above.

—**Positive misprision.** The commission of something which ought not to be done; that is, misprision in the first and second of the specific meanings given above.

In Practice

A clerical error or mistake made by a clerk or other judicial or ministerial officer in writing or keeping records. See Merrill v. Miller, 28 Mont. 134, 72 Pac. 427.

MISREADING. Reading a deed or other instrument to an illiterate or blind man (who

is a party to it) in a false or deceitful manner, so that he conceives a wrong idea of its tenor or contents. See 5 Coke, 19; 6 East, 309; Hallenbeck v. Dewitt, 2 Johns. (N. Y.) 404.

MISRECITAL. The erroneous or incorrect recital of a matter of fact, either in an agreement, deed, or pleading.

MISREPRESENTATION. An untrue statement of fact. An incorrect or false representation. That which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists. Colloquially it is understood to mean a statement made to deceive or mislead. Haigh v. White Way Laundry Co., 164 Iowa, 143, 145 N. W. 473, 474, 50 L. R. A. (N. S.) 1091; Zackwik v. Hanover Fire Ins. Co. (Mo. App.) 225 S. W. 135, 138.

In a limited sense, an intentional false statement respecting a matter of fact, made by one of the parties to a contract, which is material to the contract and influential in producing it. Wise v. Fuller, 29 N. J. Eq. 262; Hicks v. Wynn, 137 Va. 186, 119 S. E. 133, 135.

A "misrepresentation," which justifies the rescission of a contract, is a false statement of a substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead. Rhodes v. Uhl, 189 Iowa, 408, 178 N. W. 394, 400.

Misrepresentation such as will amount to false pretense is not confined to mere oral misstatements of fact but includes distribution of printed matter, or a course of conduct, manifestly intended to deceive as to conditions actually existing. Commonwealth v. Dougherty, 84 Pa. Super. Ct. 319, 321.

False or *fraudulent* misrepresentation is a representation contrary to the fact, made by a person with a knowledge of its falsehood, and being the cause of the other party's entering into the contract. 6 Clark & F. 232.

Negligent misrepresentation is a false representation made by a person who has no reasonable grounds for believing it to be true, though he does not know that it is untrue, or even believes it to be true. L. R. 4 H. L. 79.

Innocent misrepresentation occurs where the person making the representation had reasonable grounds for believing it to be true. L. R. 2 Q. B. 580.

In Insurance Law

A statement of something as a fact which is untrue and material to the risk, and which the insured states, knowing it to be untrue, in an attempt to deceive, or which he states positively is true without knowing it to be true, and which has a tendency to mislead. Hancock v. National Council of The Knights and Ladies of Security, 303 Ill. 66, 135 N. E. 33, 35; Ebner v. Ohio State Life Ins. Co., 69 Ind. App. 32, 121 N. E. 315, 322; Zackwik v. Hanover Fire Ins. Co. (Mo. App.) 225 S. W. 135, 138; Franklin Life Ins. Co. v. Dossett (Tex. Civ. App.) 265 S. W. 259, 261.

—**Material misrepresentation.** In insurance law, one that would influence a prudent in-

surer in determining whether or not to accept the risk, or in fixing the amount of the premium in the event of such acceptance. *Sovereign Camp, W. O. W., v. Parker*, 36 Ga. App. 695, 138 S. E. 86, 87.

MISSA. Lat. The mass.

MISSÆ PRESBYTER. A priest in orders. Blount.

MISSAL. The mass-book.

MISSILIA. In Roman law. Gifts or liberalities, which the prætors and consuls were in the habit of throwing among the people. Inst. 2, 1, 45.

MISSING SHIP. In maritime law. A vessel is so called when, computed from her known day of sailing, the time that has elapsed exceeds the average duration of similar voyages at the same season of the year. 2 Duer, Ins. 469.

MISSIONARIES. The term "missionaries," as used in the liquor trade, applies to men employed to visit saloons throughout the country and puff liquors of particular manufacture, so that salesmen of wholesalers and jobbers will find the way prepared for them. *Giram Walker & Sons v. Corning & Co.* (D. C.) 255 F. 129, 130.

MISSIONS. In church parlance, the establishment of churches and schools and relief depots through which are taught the principles of Christianity, the afflicted cared for, and the needy supplied. *Hitchcock v. Board of Home Missions*, 259 Ill. 288, 102 N. E. 741, 744, Ann. Cas. 1915B, 1.

MISSIVES. In Scotch law. Writings passed between parties as evidence of a transaction. Bell.

MISSTAICUS. In old records. A messenger.

MISSURA. The ceremonies used in a Roman Catholic church to recommend and dismiss a dying person.

MISTAKE. Some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence. Code Ga. § 3117 (Civ. Code 1910, § 4570); 1 Story, Eq. Jur. § 110.

A mistake exists when a person, under some erroneous conviction of law or fact, does, or omits to do, some act which, but for the erroneous conviction, he would not have done or omitted. *Jeremy, Eq. Jur.* 358. It may arise either from unconsciousness, ignorance, forgetfulness, imposition, or misplaced confidence. *Bisph. Eq.* § 185. And see *Allen v. Elder*, 76 Ga. 677, 2 Am. St. Rep. 63; *Russell v. Colyar*, 4 Heisk. (Tenn.) 154; *Peasley v. McFadden*, 68 Cal. 611, 10 P. 179; *Cummins v. Bulgin*, 37 N. J. Eq. 476; *Chicago, etc., R. Co. v. Hay*, 119 Ill. 493, 10 N. E. 29; *McLoney v. Edgar*, 7 Pa. Co. Ct. R. 29; *Burton v. American Bonding & Trust Co.*, 182 Ky. 637, 206 S.

W. 884, 886; *Alterac v. Bushko*, 132 A. 511, 512, 99 N. J. Eq. 213; *National Loan & Investment Co. v. Bleasdale*, 159 Iowa, 529, 141 N. W. 456, 458.

Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in (1) an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or (2) belief in the present existence of a thing material to the contract which does not exist, or in the past existence of such a thing which has not existed. *Civ. Code Cal.* § 1577. *Beasley v. Beasley*, 206 Ala. 480, 90 So. 347, 348; *Brackett's Case*, 126 Me. 365, 138 A. 557, 558.

A *mistake of law* happens when a party, having full knowledge of the facts, comes to an erroneous conclusion as to their legal effect. It is a mistaken opinion or inference, arising from an imperfect or incorrect exercise of the judgment, upon facts; and necessarily presupposes that the person forming it is in full possession of the facts. The facts precede the law, and the true and false opinion alike imply an acquaintance with them. The one is the result of a correct application of legal principles, which every man is presumed to know, and is called "law;" the other, the result of a faulty application, and is called a "mistake of law." *Hurd v. Hall*, 12 Wis. 124; *Barnett v. Douglas*, 102 Okl. 85, 226 P. 1035, 1037, 39 A. L. R. 138; *Dampskibs Aktieselskabet Thor v. Tropical Fruit Co.* (C. C. A.) 281 F. 740, 743; *O'Brien v. Det Forende Damphibs Selskab*, 94 N. J. Law, 244, 109 A. 517, 518.

Mutual mistake is where the parties have a common intention, but it is induced by a common or mutual mistake. See *Paine-Fishburn Granite Co. v. Reynoldson*, 115 Neb. 520, 213 N. W. 750, 751; *Northwest Thresher Co. v. McNinch*, 42 Okl. 155, 140 P. 1170, 1172; *Hemphill v. New York Life Ins. Co.*, 195 Ky. 783, 243 S. W. 1040, 1042; *O'Reilly's Case*, 258 Mass. 205, 154 N. E. 851, 853; *New Departure Mfg. Co. v. Rockwell-Drake Corp.* (C. C. A.) 287 F. 328, 332; *Zuspann v. Roy*, 102 Kan. 188, 170 P. 387, 389; *Jentzsch v. Roenfanzen*, 185 Wis. 189, 201 N. W. 504, 505; *Universal Sec. Co. v. American Pipe & Construction Co.*, 95 N. J. Eq. 752, 123 A. 618, 619. "Mutual" as used in the expression mutual mistake of fact expresses a thought of reciprocity and distinguishes it from a mistake which is a common mistake of both parties. There is something of the thought of a common mistake because it must affect both parties. Mistake of fact as ground for relief may be neither "mutual" nor common in the strict sense because it may be wholly the mistake of one of the parties, the other being wholly ignorant both of the fact upon the faith of which the other has mistakenly acted and that the other has acted upon such an understanding of the fact situation. *United States Fidelity & Guaranty Co. v. Heller* (D. C.) 259 F. 885, 890. See, also, *Litteral v. Bevins*, 186 Ky. 514, 217 S. W. 369, 370; *Parchen v. Chessman*, 53 Mont. 430, 164 P. 531, 532.

MISTERY. A trade or calling. Cowell.

MISTRESS. The proper style of the wife of an esquire or a gentleman in England.

MISTRIAL. An erroneous, invalid, or nugatory trial; a trial of an action which cannot stand in law because of want of jurisdiction, or a wrong drawing of jurors, or disregard of some other fundamental requisite. *C. W. Hunt Co. v. Boston Elevated Ry. Co.*, 217

Mass. 319, 104 N. E. 728, 729; Illinois Oil Co. v. Grandstaff, 118 Okl. 101, 246 P. 832, 833.

MISUSER. An unlawful use of a right. Abuse of an office or franchise. 2 Bl. Comm. 153.

MITIGATION. Alleviation; abatement or diminution of a penalty or punishment imposed by law. "Mitigating circumstances" are such as do not constitute a justification or excuse of the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability. See *Heaton v. Wright*, 10 How. Prac. (N. Y.) 82; *Wandell v. Edwards*, 25 Hun (N. Y.) 500; *Hess v. New York Press Co.*, 49 N. Y. S. 894, 26 App. Div. 73.

MITIGATION OF DAMAGES. A reduction of the amount of damages, not by proof of facts which are a bar to a part of the plaintiff's cause of action, or a justification, nor yet of facts which constitute a cause of action in favor of the defendant, but rather facts which show that the plaintiff's conceded cause of action does not entitle him to so large an amount as the showing on his side would otherwise justify the jury in allowing him. 1 Suth. Dam. 226.

MITIOR SENSUS. Lat. The more favorable acceptance.

Mitius imperanti melius paretur. The more mildly one commands, the better is he obeyed. 3 Inst. 24.

MITOYENNETÉ. In French law. The joint ownership of two neighbors in a wall, ditch, or hedge which separates their estates.

MITTENDO MANUSCRIPTUM PEDIS FINIS. An abolished judicial writ addressed to the treasurer and chamberlain of the exchequer to search for and transmit the foot of a fine acknowledged before justices in eyre into the common pleas. Reg. Orig. 14.

MITTER. L. Fr. To put, to send, or to pass; as, *mitter Vestate*, to pass the estate; *mitter le droit*, to pass a right. These words are used to distinguish different kinds of releases.

MITTER AVANT. L. Fr. In old practice. To put before; to present before a court; to produce in court.

MITTIMUS.

In Old English Law

A writ enclosing a record sent to be tried in a county palatine; it derives its name from the Latin word *mittimus*, "we send." It is the jury process of these counties, and commands the proper officer of the county palatine to command the sheriff to summon the jury for the trial of the cause, and to return the record, etc. *Territory v. Hattick*, 2 Mart. O. S. (La.) 88.

In Criminal Practice

The name of a precept in writing, issuing from a court or magistrate, directed to the sheriff or other officer, commanding him to convey to the prison the person named therein, and to the jailer, commanding him to receive and safely keep such person until he shall be delivered by due course of law. Pub. St. Mass. 1882, p. 1293. *Connolly v. Anderson*, 112 Mass. 62; *Saunders v. U. S.* (D. C.) 73 F. 786; *Scott v. Spiegel*, 67 Conn. 349, 35 A. 262.

MIXED. Formed by admixture or commingling; partaking of the nature, character, or legal attributes of two or more distinct kinds or classes.

MIXED LAWS. A name sometimes given to those which concern both persons and property.

MIXED QUESTION OF LAW AND FACT. A question depending for solution on questions of both law and fact, but is really a question of either law or fact to be decided by either judge or jury. *State v. Hayes*, 162 La. 917, 111 So. 327, 329.

MIXED QUESTIONS. This phrase may mean either those which arise from the conflict of foreign and domestic laws, or questions arising on a trial involving both law and fact. See *Bennett v. Eddy*, 120 Mich. 300, 79 N. W. 481.

MIXED SUBJECTS OF PROPERTY. Such as fall within the definition of things real, but which are attended, nevertheless, with some of the legal qualities of things personal, as emblements, fixtures, and shares in public undertakings, connected with land. Besides these, there are others which, though things personal in point of definition, are, in respect of some of their legal qualities, of the nature of things real; such are animals *feræ naturæ*, charters and deeds, court rolls, and other evidences of the land, together with the chests in which they are contained, ancient family pictures, ornaments, tombstones, coats of armor, with pennons and other ensigns, and especially heir-looms. Wharton.

MIXED TRAIN. "Mixed train" is one carrying both passengers and freight. *State v. Chicago, St. P., M. & O. Ry. Co.*, 115 Neb. 306, 212 N. W. 535, 536; *Arizona Eastern R. Co. v. State*, 29 Ariz. 446, 242 P. 870, 871.

MIXED TRIBUNALS. A name given to an international jurisdiction introduced into Egypt in 1878, after negotiations with the various Christian Powers of Europe. This tribunal made the administration of civil justice quite independent of the government of Egypt. They have jurisdiction over cases between persons of different nationalities, whether native or European, but criminal charges against natives are heard in the native criminal courts and those against Europeans in the proper consular courts. There are three first instance courts, one at Alexandria with

eighteen judges, of whom twelve are foreign, one at Cairo with nineteen judges, of whom thirteen are foreign, and one at Mansurah with nine judges, of whom six are foreign, and a Court of Appeal sitting at Alexandria, composed of fifteen judges. The jurisdiction cannot be invoked unless one party is a foreigner, but it is said to be not uncommon for Egyptian merchants to assign their claims to foreigners, so as to get them into these courts. See Ann. Bull. of Comp. Law Bureau, 1911, p. 43. The judges are subjects of various European states, and of the United States and Brazil. They are appointed by their respective governments; Milner, England in Egypt.

These courts were instituted for a period of five years only, and have been renewed at various times. Bonfils, Manual of Int. Law 460; 23 L. Q. R. 409; and see 8 Encyc. Laws of Eng. 445.

As to mixed "Action," "Blood," "Contract," "Government," "Jury," "Larceny," "Marriage," "Nuisance," "Policy," "Presumption," "Property," "Tithes," and "War," see those titles.

MIXTION. The mixture or confusion of goods or chattels belonging severally to different owners, in such a way that they can no longer be separated or distinguished; as where two measures of wine belonging to different persons are poured together into the same cask.

MIXTUM IMPERIUM. Lat. In old English law. Mixed authority; a kind of civil power. A term applied by Lord Hale to the "power" of certain subordinate civil magistrates as distinct from "jurisdiction." Hale, Anal. § 11.

MOB. An assemblage of many people, acting in a violent and disorderly manner, defying the law, and committing, or threatening to commit, depredations upon property or violence to persons. Alexander v. State, 40 Tex. Cr. R. 395, 50 S. W. 716; Marshall v. Buffalo, 50 App. Div. 149, 64 N. Y. S. 411; Champaign County v. Church, 62 Ohio St. 318, 57 N. E. 50, 48 L. R. A. 738, 78 Am. St. Rep. 718; Board of Com'rs of Butler County v. Beaty, 11 Ohio App. 111, 112; Cantey v. Clarendon County, 101 S. C. 141, 85 S. E. 228, 229.

The word, in legal use, is practically synonymous with "riot," but the latter is the more correct term. Koska v. Kansas City, 123 Kan. 362, 255 P. 57, 58; Moore v. City of Wichita, 106 Kan. 636, 189 P. 372, 276; Blakeman v. City of Wichita, 93 Kan. 444, 144 P. 816, L. R. A. 1915C, 578, Ann. Cas. 1916D, 188.

MOBBING AND RIOTING. In Scotch law. A general term including all those convocations of the lieges for violent and unlawful purposes, which are attended with injury to the persons or property of the lieges, or terror and alarm to the neighborhood in which it takes place. The two phrases are usually placed together; but, nevertheless, they have

distinct meanings, and are sometimes used separately in legal language, the word "mobbing" being peculiarly applicable to the unlawful assemblage and violence of a number of persons, and that of "rioting" to the outrageous behavior of a single individual. Alis. Crim. Law, c. 23, p. 509.

MOBILIA. Lat. Movables; movable things; otherwise called "*res mobiles*."

Mobilia non habent situm. Movables have no *situs* or local habitation. Holmes v. Remsen, 4 Johns. (N. Y.) Ch. 472, 8 Am. Dec. 581.

Mobilia sequuntur personam. Movables follow the [law of the] person. Story, Conf. Law, § 378; Broom, Max. 522.

MOCK. To deride, to laugh at, to ridicule, to treat with scorn and contempt. State v. Warner, 34 Conn. 279.

MOCKADOES. A kind of cloth made in England, mentioned in St. 23 Eliz. c. 9.

MODE. The manner in which a thing is done; as the mode of proceeding, the mode of process. Anderson's L. Dict.

MODEL. A pattern or representation of something to be made. A *fac simile* of something invented, made on a reduced scale, in compliance with the patent laws. See State v. Fox, 25 N. J. Law, 566; Montana Ore Purchasing Co. v. Boston, etc., Min. Co., 27 Mont. 288, 70 P. 1126.

MODERAMEN INCULPATÆ TUTELÆ. Lat. In Roman law. The regulation of justifiable defense. A term used to express that degree of force in defense of the person or property which a person might safely use, although it should occasion the death of the aggressor. Calvin; Bell.

MODERATA MISERICORDIA. A writ founded on *Magna Charta*, which lies for him who is amerced in a court, not of record, for any transgression beyond the quality or quantity of the offense. It is addressed to the lord of the court, or his bailiff, commanding him to take a moderate amerement of the parties. New Nat. Brev. 167; Fitzh. Nat. Brev. 76.

MODERATE CASTIGAVIT. Lat. In pleading. He moderately chastised. The name of a plea in trespass which justifies an alleged battery on the ground that it consisted in a moderate chastisement of the plaintiff by the defendant, which, from their relations, the latter had a legal right to inflict.

MODERATE SPEED. In admiralty law. As applied to a steam-vessel, "such speed only is moderate as will permit the steamer reasonably and effectually to avoid a collision by slackening speed, or by stopping and reversing, within the distance at which an approaching vessel can be seen." The City of New

York (C. C.) 35 F. 609; The Allianca (D. C.) 39 F. 480; The State of Alabama (D. C.) 17 F. 952; The City of Norfolk (C. C. A.) 266 F. 641, 645; The Pemaquid (D. C.) 255 F. 709, 712; New York & Cuba Mail S. S. Co. v. U. S. (D. C.) 300 F. 827, 830; The City of Richmond (D. C.) 265 F. 722, 723. As to sailing vessel, see The Robert M. Thompson (C. C. A.) 244 F. 662, 671.

MODERATOR. A chairman or president of an assembly. A person appointed to preside at a popular meeting. The presiding officer of town-meetings in New England is so called. See Wheeler v. Carter, 180 Mass. 382, 62 N. E. 471.

MODIATIO. In old English law. A certain duty paid for every tierce of wine.

Modica circumstantia facti jus mutat. A small circumstance attending an act may change the law.

MODIFICATION. A change; an alteration which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject-matter intact. Wiley v. Corporation of Bluffton, 111 Ind. 152, 12 N. E. 165; State v. Tucker, 36 Or. 291, 61 P. 894, 51 L. R. A. 246; Astor v. L'Amoreux, 4 Sandf. (N. Y.) 538; Knights of Pythias of North America v. Long, 117 Ark. 136, 174 S. W. 1197, 1199.

"Modification" is not exactly synonymous with "amendment," for the former term denotes some minor change in the substance of the thing, without reference to its improvement or deterioration thereby, while the latter word imports an amelioration of the thing (as by changing the phraseology of an instrument, so as to make it more distinct or specific) without involving the idea of any change in substance or essence.

In Scotch Law

The term usually applied to the decree of the teind court, awarding a suitable stipend to the minister of a parish. Bell.

MODIFY. To alter; to change in incidental or subordinate features; enlarge, extend; limit, reduce. State v. Lincoln, 133 Minn. 178, 158 N. W. 50, 52; U. S. v. Felder (D. C.) 13 F.(2d) 527, 528. See Modification.

MODIUS. Lat. A measure. Specifically, a Roman dry measure having a capacity of about 550 cubic inches; but in medieval English law used as an approximate translation of the word "bushel."

MODIUS TERRÆ VEL AGRI. In old English law. A quantity of ground containing in length and breadth 100 feet.

MODO ET FORMA. Lat. In manner and form. Words used in the old Latin forms of pleadings by way of traverse, and literally translated in the modern precedents, importing that the party traversing denies the al-

legation of the other party, not only in its general effect, but in the exact *manner and form* in which it is made. Steph. Pl. 189, 190.

MODUS. Lat.

In the Civil Law

Manner; means; way.

In Old Conveyancing

Mode; manner; the arrangement or expression of the terms of a contract or conveyance.

Also a consideration; the consideration of a conveyance, technically expressed by the word "*ut*."

A qualification, involving the idea of variance or departure from some general rule or form, either by way of restriction or enlargement, according to the circumstances of a particular case, the will of a donor, the particular agreement of parties, and the like.

Burrill.

In Criminal Pleading

The *modus* of an indictment is that part of it which contains the narrative of the commission of the crime; the statement of the mode or manner in which the offense was committed. Tray. Lat. Max.

In Ecclesiastical Law

A peculiar manner of tithing, growing out of custom.

In General

—**Modus de non decimando.** In ecclesiastical law. A custom or prescription of entire exemption from the payment of tithes; this is not valid, unless in the case of abbey-lands.

—**Modus decimandi.** In ecclesiastical law. A manner of tithing; a partial exemption from tithes, or a pecuniary composition prescribed by immemorial usage, and of reasonable amount; for it will be invalid as a *rank modus* if greater than the value of the tithes in the time of Richard I. Stim. Law Gloss.

—**Modus habilis.** A valid manner.

—**Modus levandi fines.** The manner of levying fines. The title of a short statute in French passed in the eighteenth year of Edward I. 2 Inst. 510; 2 Bl. Comm. 349.

—**Modus tenendi.** The manner of holding; *i. e.*, the different species of tenures by which estates are held.

—**Modus transferrendi.** The manner of transferring.

—**Modus vacandi.** The manner of vacating. How and why an estate has been relinquished or surrendered by a vassal to his lord might well be referred to by this phrase. See Tray. Lat. Max. *s. v.*

—**Rank modus.** One that is too large. Rankness is a mere rule of evidence, drawn from

the improbability of the fact, rather than a rule of law. 2 Steph. Comm. 729.

Modus de non decimando non valet. A *modus* (prescription) not to pay tithes is void. Lofft, 427; Cro. Eliz. 511; 2 Shars. Bl. Comm. 31.

Modus et conventio vincunt legem. Custom and agreement overrule law. This maxim forms one of the first principles relative to the law of contracts. The exceptions to the rule here laid down are in cases against public policy, morality, etc. 2 Coke, 73; Broom, Max. 689, 691-695.

Modus legem dat donationi. Custom gives law to the gift. Co. Litt. 19; Broom, Max. 459.

MOEBLE. L. Fr. Movable. *Biens meubles*, movable goods. Britt. c. 11.

MOERDA. The secret killing of another; murder. 4 Bl. Comm. 194.

MOFUSSIL. In Hindu law. Separated; particularized; the subordinate divisions of a district in contradistinction to *Sadder* or *Sudder*, which implies the chief seat of government. Wharton.

MOHAMMEDAN LAW. A system of native law prevailing among the Mohammedans in India, and administered there by the British government.

MOHATRA. In French law. A transaction covering a fraudulent device to evade the laws against usury.

It takes place where an individual buys merchandise from another on a credit at a high price, to sell it immediately to the first seller, or to a third person who acts as his agent, at a much less price for cash. 16 Toul-lier, no. 44.

MOIDORE. A gold coin of Portugal, valued at twenty-seven English shillings.

MOIETY. The half of anything. Joint tenants are said to hold by moieties. Litt. 125; 3 C. B. 274, 283; Young v. Smithers, 181 Ky. 847, 205 S. W. 949, 950.

MOIETY ACTS. A name sometimes applied to penal and criminal statutes which provide that half the penalty or fine shall inure to the benefit of the informer.

MOLENDINUM. In old records. A mill.

MOLENDUM. A grist; a certain quantity of corn sent to a mill to be ground.

MOLESTATION. In Scotch law. A possessory action calculated for continuing proprietors of landed estates in the lawful possession of them till the point of right be determined against all who shall attempt to disturb their possession. It is chiefly used in questions of commonry or of controverted marches. Ersk. Inst. 4, 1, 48.

MOLITURA. The toll or multure paid for grinding corn at a mill. Jacob.

MOLITURA LIBERA. Free grinding; a liberty to have a mill without paying tolls to the lord. Jacob.

MOLLITER MANUS IMPOSUIT. Lat. He gently laid hands upon. Formal words in the old Latin pleas in actions of trespass and assault where a defendant justified laying hands upon the plaintiff, as where it was done to keep the peace, etc. The phrase is literally translated in the modern precedents, and the original is retained as the name of the plea in such cases. 3 Bl. Comm. 21; 1 Chit. Pl. 501, 502; Id. 1071.

MOLMUTIAN LAWS. The laws of Dunvallo Molmutuis, a legendary or mythical king of the Britons, who is supposed to have begun his reign about 400 B. C. These laws were famous in the land till the Conquest. Tomlins; Mozley & Whitley.

MOMENTUM. In the civil law. An instant; an indivisible portion of time. Calvin.

A portion of time that might be measured; a division or subdivision of an hour; answering in some degree to the modern *minute*, but of longer duration. Calvin.

MONACHISM. The state of monks.

MONARCHY. A government in which the supreme power is vested in a single person. Where a monarch is invested with absolute power, the monarchy is termed "despotic;" where the supreme power is virtually in the laws, though the majesty of government and the administration are vested in a single person, it is a "limited" or "constitutional" monarchy. It is hereditary where the regal power descends immediately from the possessor to the next heir by blood, as in England; or elective, as was formerly the case in Poland. Wharton.

MONASTERIUM. A monastery; a church. Spelman.

MONASTICON. A book giving an account of monasteries, convents, and religious houses.

MONETA. Lat. Money, (*q. v.*)

Moneta est justum medium et mensura rerum commutabilium, nam per medium monetæ fit omnium rerum conveniens et justa æstimatio. Dav. Ir. K. B. 18. Money is the just medium and measure of commutable things, for by the medium of money a convenient and just estimation of all things is made.

MONETAGIUM. Mintage, or the right of coining money. Cowell. Hence, anciently, a tribute payable to a lord who had the prerogative of coining money, by his tenants, in consideration of his refraining from changing the coinage.

Monetandi jus comprehenditur in regalibus quæ nunquam a regio scepro abdicantur. The right of coining money is comprehended among those royal prerogatives which are never relinquished by the royal scepter. Dav. Ir. K. B. 18.

MONEY. A general, indefinite term for the measure and representative of value; currency; the circulating medium; cash.

"Money" is a generic term, and embraces every description of coin or bank-notes recognized by common consent as a representative of value in effecting exchanges of property or payment of debts. *Hopson v. Fountain*, 5 Humph. (Tenn.) 140.

Money is used in a specific and also in a general and more comprehensive sense. In its specific sense, it means what is coined or stamped by public authority, and has its determinate value fixed by governments. In its more comprehensive and general sense, it means wealth,—the representative of commodities of all kinds, of lands, and of everything that can be transferred in commerce. *Paul v. Ball*, 31 Tex. 10.

In its strict technical sense, "money" means coined metal, usually gold or silver, upon which the government stamp has been impressed to indicate its value. In its more popular sense, "money" means any currency, tokens, bank-notes, or other circulating medium in general use as the representative of value. *Kennedy v. Briere*, 45 Tex. 305; *Cook v. State*, 130 Ark. 90, 196 S. W. 922, 924; *Grice v. Anderson*, 109 S. C. 388, 96 S. E. 222, 224; *United States v. Williams* (D. C.) 282 F. 324, 325; *McCullen v. Daughtry*, 190 N. C. 215, 129 S. E. 611, 613; *Bennett v. Bank of Commerce & Trust Co.* (D. C.) 220 F. 950, 953; *Kent v. State*, 143 Ark. 439, 220 S. W. 814, 816; *Stephens v. Commonwealth*, 188 Ky. 824, 224 S. W. 364, 368; *McGovern v. U. S.* (C. C. A.) 272 F. 262, 263; *Ferrell v. State*, 68 Tex. Cr. R. 487, 152 S. W. 901, 905; *Vick v. Howard*, 136 Va. 101, 116 S. E. 465, 467, 31 A. L. R. 240; *Alderman v. State*, 88 Fla. 375, 102 So. 737, 738; *Millikan v. Security Trust Co.*, 187 Ind. 307, 118 N. E. 568, 570; *W. J. Howey Co. v. Cole*, 219 Mo. App. 34, 269 S. W. 955, 958; *Cook v. State*, 130 Ark. 90, 196 S. W. 922, 924.

The term "moneys" is not of more extensive signification than "money," and means only cash, and not things in action. *Mann v. Mann*, 14 Johns. (N. Y.) 1, 7 Am. Dec. 416.

Money-Bill

In parliamentary language, an act by which revenue is directed to be raised, for any purpose or in any shape whatsoever, either for governmental purposes, and collected from the whole people generally, or for the benefit of a particular district, and collected in that district, or for making appropriations. *Opinion of Justices*, 126 Mass. 547; *Northern Counties Inv. Trust v. Sears*, 30 Or. 388, 41 Pac. 931, 35 L. R. A. 188.

Money Claims

In English practice. Under the judicature act of 1875, claims for the price of goods sold, for money lent, for arrears of rent, etc., and other claims where money is directly payable on a contract express or implied, as opposed to the cases where money is claimed by way of damages for some independent wrong, whether by breach of contract or otherwise. These "money claims" correspond very nearly to the "money counts" hitherto in use. *Mozley & Whitley*.

Money Demand

A claim for a fixed and liquidated amount of money, or for a sum which can be ascertained by mere calculation; in this sense, distinguished from a claim which must be passed upon and liquidated by a jury, called "damages." *Roberts v. Nodwift*, 8 Ind. 341; *Mills v. Long*, 58 Ala. 460.

Money Had and Received

In pleading. The technical designation of a form of declaration in *assumpsit*, wherein the plaintiff declares that the defendant *had and received* certain money, etc.

The action for "money had and received" is comprehensive in its scope, equitable in spirit, although legal in form, and is favored by the courts, and is maintainable when the defendant has money which in equity and good conscience belongs to plaintiff. *Dow v. Bradbury*, 110 Me. 249, 85 A. 896, 897, 44 L. R. A. (N. S.) 1041; *Pirpo v. Pacific Mut. Life Ins. Co.*, 80 Cal. App. 122, 251 P. 657, 658; *Lakeport Nat. Bank v. McDonald*, 80 N. H. 337, 116 A. 638, 640; *Bridgeport Hydraulic Co. v. City of Bridgeport*, 103 Conn. 249, 130 A. 164, 168.

Money Land

A phrase descriptive of money which is held upon a trust to convert it into land.

Money Lent

In pleading. The technical name of a declaration in an action of *assumpsit* for that the defendant promised to pay the plaintiff for money lent.

Money Made

The return made by a sheriff to a writ of execution, signifying that he has collected the sum of money required by the writ.

Money of Adieu

In French law. Earnest money; so called because given at parting in completion of the bargain. *Arrhes* is the usual French word for earnest money; "money of adieu" is a provincialism found in the province of Orleans. *Poth. Cont.* 507.

Money Order

Under the postal regulations of the United States, a money order is a species of draft drawn by one post-office upon another for

an amount of money deposited at the first office by the person purchasing the money order, and payable at the second office to a payee named in the order. See *U. S. v. Long* (C. C.) 30 F. 679.

Money-Order Office

One of the post-offices authorized to draw or pay money orders.

Money Paid

In pleading. The technical name of a declaration in *assumpsit*, in which the plaintiff declares for money paid for the use of the defendant.

Moneyed Capital

This term has a more limited meaning than the term "personal property," and applies to such capital as is readily solvable in money. *Mercantile Nat. Bank v. New York*, 121 U. S. 138, 7 Sup. Ct. 826, 30 L. Ed. 895.

Moneyed Corporation

See Corporation.

Public Money

Revenue. *Hays v. State*, 22 Okl. Cr. 99, 210 P. 728, 730. Money received by officers of the state in the ordinary processes of taxation, etc. *Beaumont S. L. & W. Ry. Co. v. State* (Tex. Civ. App.) 173 S. W. 641, 642. But see *Wardell v. Town of Killingly*, 97 Conn. 423, 117 A. 520, 522. Under a municipal charter, money or funds belonging to a city; moneys which are owing or payable to the city in its corporate capacity, such as assessments, license fees, or moneys derived from the sales of property, wharfage charges, and such like, *City of Sacramento v. Simmons*, 66 Cal. App. 18, 225 P. 36, 39. Under a statute, all money which by law the sheriff in his capacity as such and as treasurer of the county and district is authorized to collect, receive, and disburse for public purposes. *Bunch v. Short*, 78 W. Va. 764, 90 S. E. 810, 812. As used in the United States statutes, the money of the federal government received from the public revenues, or intrusted to its fiscal officers, wherever it may be. See *Branch v. U. S.*, 12 Ct. Cl. 281.

As to money "Broker," "Count," "Judgment," and "Scrivener," see those titles.

MONGER. A dealer or seller. It is seldom or never used alone, or otherwise than after the name of any commodity, to express a seller of such commodity.

MONIERS, or MONEYEERS. Ministers of the mint; also bankers. Cowell.

MONIMENT. A memorial, superscription, or record.

MONITION.

In Practice

A monition is a formal order of the court commanding something to be done by the per-

son to whom it is directed, and who is called the "person monished." Thus, when money is decreed to be paid, a monition may be obtained commanding its payment. In ecclesiastical procedure, a monition is an order monishing or warning the party complained against to do or not to do a certain act "under pain of the law and contempt thereof." A monition may also be appended to a sentence inflicting a punishment for a past offense; in that case the monition forbids the repetition of the offense. Sweet.

In Admiralty Practice

The summons to appear and answer, issued on filing the libel; which is either a simple monition *in personam* or an attachment and monition *in rem*. Ben. Adm. 228, 239. It is sometimes termed "monition *vis et modis*," and has been supposed to be derived from the old Roman practice of summoning a defendant. *Manro v. Almeida*, 10 Wheat. 490, 6 L. Ed. 369.

The monition, in American admiralty practice, is, in effect, a summons, citation, or notice, though in form a command to the marshal to cite and admonish the defendant to appear and answer, and not a summons addressed to the party. 2 Conk. Adm. (2d Ed.) 147.

In General

—**General Monition.** In civil law and admiralty practice. A monition or summons to all parties in interest to appear and show cause against the decree prayed for.

MONITORY LETTERS. Communications of warning and admonition sent from an ecclesiastical judge, upon information of scandal and abuses within the cognizance of his court.

MONOCRACY. A government by one person.

MONOCRAT. A monarch who governs alone; an absolute governor.

MONOGAMY. The marriage of one wife only, or the state of such as are restrained to a single wife. Webster.

A marriage contracted between one man and one woman, in exclusion of all the rest of mankind. The term is used in opposition to "bigamy" and "polygamy." Wolff, *Dr. de la Nat.* § 857.

MONOGRAM. A character or cipher composed of one or more letters interwoven, being an abbreviation of a name.

MONOGRAPH. A special treatise upon a particular subject of limited range; a treatise or commentary upon a particular branch or division of a general subject.

MONOMACHY. A duel; a single combat.

It was anciently allowed by law for the trial or proof of crimes. It was even permitted in pecuniary causes, but it is now forbidden both by the civil law and canon laws.

MONOMANIA. In medical jurisprudence. Derangement of a single faculty of the mind, or with regard to a particular subject, the other faculties being in regular exercise. See Insanity.

Monopolia dicitur, cum unus solus aliquod genus mercaturæ universum emit, pretium ad suum libitum statuens. 11 Coke, 86. It is said to be a monopoly when one person alone buys up the whole of one kind of commodity, fixing a price at his own pleasure.

MONOPOLIUM. The sole power, right, or privilege of sale; monopoly; a monopoly. Calvin.

MONOPOLY. In commercial law. A privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right (or power) to carry on a particular business or trade, manufacture a particular article, or control the sale of the whole supply of a particular commodity.

Defined in English law to be "a license or privilege allowed by the king for the sole buying and selling, making, working, or using, of anything whatsoever; whereby the subject in general is restrained from that liberty of manufacturing or trading which he had before." 4 Bl. Comm. 159; 4 Steph. Comm. 291. And see *State v. Duluth Board of Trade*, 107 Minn. 506, 121 N. W. 395, 23 L. R. A. (N. S.) 1260.

A monopoly consists in the ownership or control of so large a part of the market-supply or output of a given commodity as to stifle competition, restrict the freedom of commerce, and give the monopolist control over prices. See *State v. Eastern Coal Co.*, 29 R. I. 254, 70 A. 1, 132 Am. St. Rep. 817; *Over v. Byram Foundry Co.*, 37 Ind. App. 452, 77 N. E. 302, 117 Am. St. Rep. 327; *State v. Haworth*, 122 Ind. 462, 23 N. E. 946, 7 L. R. A. 240; *Davenport v. Kleinschmidt*, 6 Mont. 502, 13 Pac. 249; *Ex parte Levy*, 43 Ark. 42, 51 Am. Rep. 550; *Case of Monopolies*, 11 Coke, 84; *Laredo v. International Bridge, etc., Co.*, 66 F. 246, 14 C. C. A. 1; *International Tooth Crown Co. v. Hanks Dental Ass'n (C. C.)* 111 F. 916; *Queen Ins. Co. v. State*, 86 Tex. 250, 24 S. W. 397, 22 L. R. A. 483; *Herriman v. Menzies*, 115 Cal. 16, 46 P. 730, 35 L. R. A. 318, 56 Am. St. Rep. 81.

MONSTER. A prodigious birth; a human birth or offspring not having the shape of mankind, which cannot be heir to any land, albeit it be brought forth in marriage. Bract. fol. 5; Co. Litt. 7, 8; 2 Bl. Comm. 246.

MONSTRANS DE DROIT. L. Fr. In English law. A showing or manifestation of right; one of the common law methods of obtaining possession or restitution from the crown, of either real or personal property. It is the proper proceeding when the right of the party, as well as the right of the crown,

appears upon record, and consists in putting in a claim of right grounded on facts already acknowledged and established, and praying the judgment of the court whether upon these facts the king or the subject has the right. 3 Bl. Comm. 256; 4 Coke, 54b.

MONSTRANS DE FAITS. L. Fr. In old English practice. A showing of deeds; a species of profert. Cowell.

MONSTRAVERUNT, WRIT OF. In English law. A writ which lies for the tenants of ancient demesne who hold by free charter, and not for those tenants who hold by copy of court roll, or by the rod, according to the custom of the manor. Fitzh. Nat. Brev. 14.

MONSTRUM. A box in which relics are kept; also a muster of soldiers. Cowell.

MONTES. In Spanish law. Forests or woods. White, New Recop. b. 2, tit. 1, c. 6, § 1.

MONTES PIETATIS. Public pawnbroking establishments; institutions established by government, in some European countries, for lending small sums of money on pledges of personal property. In France they are called "*monts de piété.*"

MONTH. One of the divisions of a year. The space of time denoted by this term varies according as one or another of the following varieties of months is intended:

Astronomical, containing one-twelfth of the time occupied by the sun in passing through the entire zodiac.

Calender, civil, or solar, which is one of the months in the Gregorian calendar,—January, February, March, etc.,—which are of unequal length.

Lunar, being the period of one revolution of the moon, or twenty-eight days.

The word "month," when used in a statute or contract without qualification, meant at common law a lunar month of 28 days. *State v. White*, 73 Fla. 426, 74 So. 486, 487.

The matter is generally regulated by statute now. In *re McNamara's Estate*, 181 Cal. 82, 183 P. 552, 556, 7 A. L. R. 313; *Salios v. Swift*, 25 Ga. App. 96, 102 S. E. 869, 870; *Cochran v. Commonwealth*, 122 Va. 801, 94 S. E. 329, 332; *Barrack v. Commonwealth*, 142 Va. 596, 128 S. E. 638, 639; *Bohles v. Prudential Ins. Co. of America*, 84 N. J. Law, 315, 86 A. 438, 439; In *re Standard Cafeteria Co.*, 68 Or. 550, 137 P. 774, 776; *Barbee v. Young*, 79 Cal. App. 119, 249 P. 15, 16.

MONUMENT. 1. Anything by which the memory of a person, thing, idea, art, science or event is preserved or perpetuated. A tomb where a dead body has been deposited. *Mead v. Case*, 33 Barb. (N. Y.) 202; In *re Ogden*, 25 R. I. 373, 55 A. 933; *Rhode Island Hospital Trust Co. v. Benedict*, 41 R. I. 143, 103 A. 146, 147.

2. In real-property law and surveying, monuments are visible marks or indications left on natural or other objects indicating the lines and boundaries of a survey. In this sense the term includes not only posts, pillars, stone markers, cairns, and the like, but also fixed natural objects, blazed trees, and even a watercourse. See *Grier v. Pennsylvania Coal Co.*, 128 Pa. 79, 18 A. 480; *Cox v. Freedley*, 33 Pa. 124, 75 Am. Dec. 584; Rem. Comp. Stat. § 8622; *Ninemire v. Nelson*, 140 Wash. 511, 249 P. 990, 991; *Cornelious v. State*, 22 Ala. App. 150, 113 So. 475, 476; *Perich v. Maurer*, 29 Cal. App. 293, 155 P. 471, 472; *Burnham v. Hoyt*, 216 Mass. 278, 104 N. E. 62, 63.

Monumenta quæ nos recorda vocamus sunt veritatis et vetustatis vestigia. Co. Litt. 118. Monuments, which we call "records," are the vestiges of truth and antiquity.

MONYA. In Norman law. Moneyage. A tax or tribute of one shilling on every hearth, payable to the duke every three years, in consideration that he should not alter the coin. Hale, Com. Law, 148, and note.

MOOKTAR. In Hindu law. An agent or attorney.

MOOKTARNAMA. In Hindu law. A written authority constituting an agent; a power of attorney.

MOONSHINE. Although an adjective used to qualify whisky, "moonshine" is often used in common speech as a noun. In either case it means a distilled, alcoholic liquor, illegally produced, or smuggled into community. Whether it was made of rye, corn or other material is immaterial. *State v. Sedlacek*, 74 Mont. 201, 239 P. 1002, 1005; *Chaney v. State*, 21 Ala. App. 625, 111 So. 188; *State v. Edwards*, 106 Or. 58, 210 P. 1079, 1081; *State v. Morris* (Mo. Sup.) 279 S. W. 141, 144; *Weinstein v. U. S.* (C. C. A.) 11 F.(2d) 505, 508, 509; *State v. Charette*, 242 P. 343, 75 Mont. 78; *State v. Wright*, 312 Mo. 626, 280 S. W. 703, 706; *State v. Bogdon*, 140 Wash. 68, 248 P. 66; *Kenny v. Commonwealth*, 211 Ky. 349, 277 S. W. 480, 481; *Kannenber v. State*, 193 Wis. 476, 214 N. W. 365, 366; *State v. Martin* (Mo. Sup.) 292 S. W. 39, 41; *Jakula v. Starkey*, 161 Minn. 58, 200 N. W. 811, 812.

MOOR. An officer in the Isle of Man, who summons the courts for the several sheadings. The office is similar to the English bailiff of a hundred.

MOORAGE. A sum due by law or usage for mooring or fastening of ships to trees or posts at the shore, or to a wharf. *Wharf Case*, 3 Bland (Md.) 373.

MOORING. In maritime law. Anchoring or making fast to the shore or dock; the securing or confining a vessel in a particular station, as by cables and anchors or by a

line or chain run to the wharf. A vessel is "moored in safety," within the meaning of a policy of marine insurance, when she is thus moored to a wharf or dock, free from any immediate danger from any of the perils insured against. See 1 Phil. Ins. 968; *Walsh v. New York Floating Dry Dock Co.*, 8 Daly (N. Y.) 387; *Flandreau v. Elsworth*, 9 Misc. 340, 29 N. Y. S. 694; *Bramhall v. Sun Mut. Ins. Co.*, 104 Mass. 516, 6 Am. Rep. 261.

MOOT, n.

In English Law

Moots are exercises in pleading, and in arguing doubtful cases and questions, by the students of an inn of court before the benches of the inn. Sweet.

In Saxon Law

A meeting or assemblage of people, particularly for governmental or judicial purposes. The more usual forms of the word were "mote" and "gemot." See those titles.

In General

—**Moot hill.** Hill of meeting, (*gemot*), on which the Britons used to hold their courts, the judge sitting on the eminence; the parties, etc., on an elevated platform below. Enc. Lond.

MOOT, adj. A subject for argument; unsettled; undecided. A moot point is one not settled by judicial decisions. A moot case is one which seeks to determine an abstract question which does not arise upon existing facts or rights. *Adams v. Union R. Co.*, 21 R. I. 134, 42 A. 515, 44 L. R. A. 273.

In General

—**Moot court.** A court held for the arguing of moot cases or questions.

—**Moot hall.** The place where moot cases were argued. Also a council-chamber, hall of judgment, or town-hall.

—**Moot man.** One of those who used to argue the reader's cases in the inns of court.

MOOTA CANUM. In old English law. A pack of dogs. Cowell.

MOOTING. The exercise of arguing questions of law or equity, raised for the purpose. See Moot.

MORA. Lat. In the civil law. Delay; default; neglect; culpable delay or default. Calvin.

MORA. Sax. A moor; barren or unprofitable ground; marsh; a heath; a watery bog or moor. Co. Litt. 5; *Fleta*, 1, 2, c. 71.

MORA MUSSA. A watery or boggy moor; a morass.

Mora reprobatur in lege. Delay is reprobated in law. *Jenk. Cent. p. 51, case 97.*

MORAL. 1. Pertaining or relating to the conscience or moral sense or to the general principles of right conduct.

2. Cognizable or enforceable only by the conscience or by the principles of right conduct, as distinguished from positive law.

3. Depending upon or resulting from probability; raising a belief or conviction in the mind independent of strict or logical proof:

4. Involving or affecting the moral sense; as in the phrase "moral insanity."

MORAL ACTIONS. Those only in which men have knowledge to guide them, and a will to choose for themselves. Ruth. Inst. lib. 1, c. i.

MORAL CERTAINTY. In the law of criminal evidence. That degree of assurance which induces a man of sound mind to act, without doubt, upon the conclusions to which it leads. Wills, Circ. Ev. 7. A certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. State v. Orr, 64 Mo. 339; Bradley v. State, 31 Ind. 492; Ross v. Montana Union Ry. Co. (C. C.) 45 F. 425; Pharr v. State, 10 Tex. App. 485; Territory v. McAndrews, 3 Mont. 158. A high degree of impression of the truth of a fact, falling short of absolute certainty, but sufficient to justify a verdict of guilty, even in a capital case. See Burrill. Circ. Ev. 198-200. Beyond a reasonable doubt. State v. Norman, 103 Ohio St. 541, 134 N. E. 474, 475; State v. Cassill, 71 Mont. 274, 229 P. 716, 719; Odeneal v. State, 128 Tenn. 60, 157 S. W. 419; Austin v. State, 6 Ga. App. 211 (1), 64 S. E. 670; Thomas v. State, 19 Ga. App. 105 (4-a), 91 S. E. 247; Bivins v. State, 29 Ga. App. 49, 113 S. E. 57; Murray v. State, 29 Ga. App. 207, 114 S. E. 907; State v. Koski, 100 W. Va. 98, 130 S. E. 100, 101; State v. Charlie Mun, 76 Mont. 278, 246 P. 257, 258. The phrase "moral certainty" has been introduced into our jurisprudence from the publicists and metaphysicians, and signifies only a very high degree of probability. It was observed by Puffendorf that, "when we declare such a thing to be morally certain, because it has been confirmed by credible witnesses, this moral certitude is nothing else but a strong presumption grounded on probable reasons, and which very seldom fails and deceives us." "Probable evidence," says Bishop Butler, in the opening sentence of his Analogy, "is essentially distinguished from demonstrative by this: that it admits of degrees, and of all variety of them, from the highest moral certainty to the very lowest presumption." Com. v. Costley, 118 Mass. 23.

MORAL EVIDENCE. See Evidence.

MORAL FRAUD. This phrase is one of the less usual designations of "actual" or "positive" fraud or "fraud in fact," as distinguished from "constructive" fraud or "fraud in law." It means fraud which involves actual guilt, a wrongful purpose, or moral obliquity.

MORAL HAZARD. See Hazard.

MORAL INSANITY. See Insanity.

MORAL LAW. The law of conscience; the aggregate of those rules and principles of ethics which relate to right and wrong conduct and prescribe the standards to which the actions of men should conform in their dealings with each other. See Moore v. Strickling, 46 W. Va. 515, 33 S. E. 274, 50 L. R. A. 279.

MORAL OBLIGATION. See Obligation.

MORANDÆ SOLUTIONIS CAUSA. Lat. For the purpose of delaying or postponing payment or performance.

MORATORIUM. A term designating a suspension of all, or of certain, legal remedies against debtors, sometimes authorized by law during times of financial distress.

MORATUR IN LEGE. Lat. He delays in law. The phrase describes the action of one who demurs, because the party does not proceed in pleading, but rests or abides upon the judgment of the court on a certain point, as to the legal sufficiency of his opponent's pleading. The court deliberate and determine thereupon.

MORAVIANS. Otherwise called "Herrnhuters" or "United Brethren." A sect of Christians whose social polity is particular and conspicuous. It sprung up in Moravia and Bohemia, on the opening of that reformation which stripped the chair of St. Peter of so many votaries; and gave birth to so many denominations of Christians. They give evidence on their solemn affirmation. 2 Steph. Comm. 338*n*.

MORBUS SONTICUS. Lat. In the civil law. A sickness which rendered a man incapable of attending to business.

MORE COLONICO. Lat. In old pleading. In husband-like manner. Townsh. Pl. 198.

MORE OR LESS. Approximately; about; without substantial variation. Nickel v. Zeitz, 154 N. E. 769, 770, 258 Mass. 282; Mosby v. Smith, 194 Mo. App. 20, 186 S. W. 49, 58; Mahyt v. Mann, 203 Iowa, 880, 210 N. W. 566, 567; Holland v. Rock, 50 Nev. 340, 259 P. 415; Hill v. Johnson, 214 Ala. 194, 106 So. 814, 816; United States v. Republic Bag & Paper Co. (C. C. A.) 250 F. 79, 80; Weinman v. Fellman, 162 N. Y. S. 131, 132; Wetzler v. Patterson, 73 Cal. App. 527, 238 P. 1077, 1080; Russo v. Corideo, 102 Conn. 663, 129 A. 849, 853; Barton v. Jones, 206 Ky. 238, 267 S. W. 214, 215; Kite v. Pittman, (Mo. App.) 278 S. W. 830, 831; Arrowsmith v. Nelson, 73 Wash. 658, 132 P. 743, 746; Andrews v. Sercombe, 82 Or. 616, 162 P. 836, 837; Smart v. Huckins, 82 N. H. 342, 134 A. 520, 522; Frey v. Etsel, 160 Wis. 311, 151 N. W. 807, 808, Ann. Cas. 1917D, 153; Scott v. Dunckel Box & Lumber Co., 106 Ark. 83, 152 S. W. 1025, 1027.

MOREOVER. In addition thereto, also, furthermore, likewise, beyond this, besides this. *Pagano v. Cerri*, 93 Ohio St. 345, 112 N. E. 1037, 1040, L. R. A. 1917A, 486; *Aldersley v. McCloud*, 35 Cal. App. 17, 168 P. 1153, 1155.

MORGANATIC-MARRIAGE. See Marriage.

MORGANGINA, or MORGANGIVA. A gift on the morning after the wedding; dowry; the husband's gift to his wife on the day after the wedding. *Du Cange*; *Cowell*.

MORGEN. Anglo-Dutch. In old New York law. A measure of land, equal to about two acres.

MORGUE. A place where the bodies of persons found dead are kept for a limited time and exposed to view, to the end that their friends may identify them.

MORMONISM. A social and religious system prevailing in the territory of Utah, a distinctive feature of which is the practice of polygamy. These plural marriages are not recognized by law, but are indictable offenses under the statutes of the United States and of Utah.

MORON. One whose intellectual development proceeds normally up to about the 8th year of age, then is arrested, and never exceeds that of a normal child of about 12 years. *People v. Joyce*, 233 N. Y. 61, 134 N. E. 836, 840.

MORPHINOMANIA, or MORPHINISM. The opium habit. An excessive desire for morphia.

MORS. Lat. Death.

Mors dicitur ultimum supplicium. Death is called the "last punishment," the "extremity of punishment." 3 Inst. 212.

Mors omnia solvit. Death dissolves all things. *Jenk. Cent.* p. 160, case 2. Applied to the case of the death of a party to an action.

MORSELLUM, or MORSELLUS, TERRÆ. In old English law. A small parcel or bit of land.

MORT CIVILE. In French law. Civil death, as upon conviction for felony. It was nominally abolished by a law of the 31st of May, 1854, but something very similar to it, in effect at least, still remains. Thus, the property of the condemned, possessed by him at the date of his conviction, goes and belongs to his successors, (*héritiers*), as in case of an intestacy; and his future acquired property goes to the state by right of its prerogative, (*par droit de déshérence*), but the state may, as a matter of grace, make it over in whole or in part to the widow and children. *Brown*.

MORT D'ANCESTOR. An ancient and now almost obsolete remedy in the English law. An assize of *mort d'ancestor* was a writ which lay for a person whose ancestor died seised of lands in fee-simple, and after his death a stranger abated; and this writ directed the

sheriff to summon a jury or assize, who should view the land in question and recognize whether such ancestor were seised thereof on the day of his death, and whether the demandant were the next heir.

MORTAL. Destructive to life, causing or occasioning death; terminating life; exposing to or deserving death; deadly, as mortal wound, mortal sin; of or pertaining to time of death. *State v. Baker*, 122 Kan. 552, 253 P. 221, 223.

MORTALITY. This word, in its ordinary sense, never means violent death, but death arising from natural causes. *Lawrence v. Aberdeen*, 5 Barn. & Ald. 110.

MORTGAGE. An estate created by a conveyance absolute in its form, but intended to secure the performance of some act, such as the payment of money, and the like, by the grantor or some other person, and to become void if the act is performed agreeably to the terms prescribed at the time of making such conveyance. 1 Washb. Real Prop. *475.

A conditional conveyance of land, designed as a security for the payment of money, the fulfillment of some contract, or the performance of some act, and to be void upon such payment, fulfillment, or performance. *Mitchell v. Burnham*, 44 Me. 299.

A debt by specialty, secured by a pledge of lands, of which the legal ownership is vested in the creditor, but of which, in equity, the debtor and those claiming under him remain the actual owners, until debarred by judicial sentence or their own laches. *Coote, Mortg.* 1.

The foregoing definitions are applicable to the common-law conception of a mortgage. But in many states in modern times, it is regarded as a mere lien, and not as creating a title or estate. It is a pledge or security of particular property for the payment of a debt or the performance of some other obligation, whatever form the transaction may take, but is not now regarded as a conveyance in effect, though it may be cast in the form of a conveyance. See *Muth v. Goddard*, 28 Mont. 237, 72 P. 621, 98 Am. St. Rep. 553; *Johnson v. Robinson*, 68 Tex. 399, 4 S. W. 625; *In re McConnell's Estate*, 74 Cal. 217, 15 P. 746; *Killebrew v. Hines*, 104 N. C. 182, 10 S. E. 159, 17 Am. St. Rep. 672; *Bryan v. Boyd*, 100 S. C. 397, 84 S. E. 992, 993; *Williams v. Purcell*, 45 Okl. 489, 145 P. 1151, 1154; *Union Machinery & Supply Co. v. Darnell*, 89 Wash. 226, 154 P. 183, 186; *West v. Middlesex Banking Co.*, 33 S. D. 465, 146 N. W. 598, 603; *Shirey v. All Night and Day Bank*, 166 Cal. 50, 134 P. 1001, 1003; *Holmberg v. Hardee*, 90 Fla. 787, 108 So. 211, 221; *Bell v. Koontz*, 172 Ark. 870, 290 S. W. 597, 598; *Lane v. Smart*, 21 Ga. App. 292, 94 S. E. 325, 326; *Parks v. Watson*, 51 Okl. 19, 151 P. 447, 478; *Watkins v. Wallace*, 206 Ky. 264, 267 S. W. 183, 185; *Cramer v. Remmel*, 132 Ark. 158, 200 S. W. 811, 812; *Angus v. Holbrooke*, 87 Or. 543, 170 P. 1179, 1180; *Southwick v. Bigelow*, 237

Mass. 299, 129 N. E. 452, 453; *Gibson v. Hopkins*, 80 W. Va. 756, 93 S. E. 826, 827. To the same purport are also the following statutory definitions:

Mortgage is a right granted to the creditor over the property of the debtor for the security of his debt, and gives him the power of having the property seized and sold in default of payment. Civ. Code La. art. 3278.

Mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession. Civ. Code Cal. § 2920.

Chattel Mortgage

A mortgage of goods, chattels, or personal property. See Chattel Mortgage.

Conventional Mortgage

The conventional mortgage is a contract by which a person binds the whole of his property, or a portion of it only, in favor of another, to secure the execution of some engagement, but without divesting himself of possession. Civ. Code La. art. 3290; Succession of Benjamin, 39 La. Ann. 612, 2 So. 187. It is distinguished from the "legal" mortgage, which is a privilege which the law alone in certain cases gives to a creditor over the property of his debtor, without stipulation of the parties. This last is very much like a general lien at common law, created by the law rather than by the act of the parties, such as a judgment lien.

Equitable Mortgage

A specific lien upon real property to secure the payment of money or the performance of some other obligation, which a court of equity will recognize and enforce, in accordance with the clearly ascertained intent of the parties to that effect, but which lacks the essential features of a legal mortgage, either because it grows out of the transactions of the parties without any deed or express contract to give a lien, or because the instrument used for that purpose is wanting in some of the characteristics of a common-law mortgage, or, being absolute in form, is accompanied by a collateral reservation of a right to redeem, or because an explicit agreement to give a mortgage has not been carried into effect. See 4 Kent. Comm. 150; 2 Story, Eq. Jur. § 1018; *Ketchum v. St. Louis*, 101 U. S. 306, 25 L. Ed. 999; *Payne v. Wilson*, 74 N. Y. 348; *Gessner v. Palmateer*, 89 Cal. 89, 26 P. 789, 13 L. R. A. 187; *Cummings v. Jackson*, 55 N. J. Eq. 805, 38 A. 763; *Hall v. Railroad Co.*, 58 Ala. 23; *Bradley v. Merrill*, 88 Me. 319, 34 A. 160; *Carter v. Holman*, 60 Mo. 504. In English law, the following mortgages are equitable: (1) Where the subject of a mortgage is trust property, which security is effected either by a formal deed or a written memorandum, notice being given to the trustees in order to preserve the priority. (2) Where it is an equity of redemption, which is merely a right to bring an action in the chan-

cery division to redeem the estate. (3) Where there is a written agreement only to make a mortgage, which creates an equitable lien on the land. (4) Where a debtor deposits the title-deeds of his estate with his creditor or some person on his behalf, without even a verbal communication. The deposit itself is deemed evidence of an executed agreement or contract for a mortgage for such estate. *Wharton*.

First Mortgage

The first (in time or right) of a series of two or more mortgages covering the same property and successively attaching as liens upon it; also, in a more particular sense, a mortgage which is a first lien on the property, not only as against other mortgages, but as against any other charges or incumbrances. *Green's Appeal*, 97 Pa. 347.

First Mortgage Bonds

Bonds the payment of which is secured by a first mortgage on property. *Bank of Atchison County v. Byers*, 139 Mo. 627, 41 S. W. 325; *Minnesota & P. R. Co. v. Sibley*, 2 Minn. 18 (Gil. 1); *Com. v. Williamstown*, 156 Mass. 70, 30 N. E. 472.

Second Mortgage

One which takes rank immediately after a first mortgage on the same property, without any intervening liens, and is next entitled to satisfaction out of the proceeds of the property. *Green's Appeal*, 97 Pa. 347. Properly speaking, however, the term designates the second of a series of mortgages, not necessarily the second lien. For instance, the lien of a judgment might intervene between the first and second mortgages; in which case, the second mortgage would be the third lien.

General Mortgage

Mortgages are sometimes classified as general and special, a mortgage of the former class being one which binds all property, present and future, of the debtor (sometimes called a "blanket" mortgage); while a special mortgage is limited to certain particular and specified property. *Barnard v. Erwin*, 2 Rob. (La.) 415.

Judicial Mortgage

In the law of Louisiana. The lien resulting from judgments, whether rendered on contested cases or by default, whether final or provisional, in favor of the person obtaining them. Civ. Code La. art. 3321.

Legal Mortgage

A term used in Louisiana. The law alone in certain cases gives to the creditor a mortgage on the property of his debtor, without it being requisite that the parties should stipulate it. This is called "legal mortgage." Civ. Code La. art. 3311.

Mortgage of Goods

A conveyance of goods in gage or mortgage by which the whole legal title passes condi-

tionally to the mortgagee; and, if the goods are not redeemed at the time stipulated, the title becomes absolute in law, although equity will interfere to compel a redemption. It is distinguished from a "pledge" by the circumstance that possession by the mortgagee is not or may not be essential to create or to support the title. Story, Bailm. § 287. See Chattel Mortgage.

Purchase-Money Mortgage

A mortgage given, concurrently with a conveyance of land, by the vendee to the vendor, on the same land, to secure the unpaid balance of the purchase price. See Baker v. Clepper, 26 Tex. 629, 84 Am. Dec. 591; Keefe v. Cropper, 196 Iowa, 1179, 194 N. W. 305, 306; Ely Sav. Bank v. Graham, 201 Iowa, 840, 208 N. W. 312, 314; Ladd & Tilton Bank v. Mitchell, 93 Or. 668, 184 P. 282, 284, 6 A. L. R. 1420; Lapoint v. Sage, 90 Vt. 560, 99 A. 233, 235.

Tacit Mortgage

In Louisiana. The same as a "legal" mortgage. See *supra*.

Welsh Mortgage

In English law. A species of security which partakes of the nature of a mortgage, as there is a debt due, and an estate is given as security for the repayment, but differs from it in the circumstances that the rents and profits are to be received without account till the principal money is paid off, and there is no remedy to enforce payment, while the mortgagor has a perpetual power of redemption. It is now rarely used. 1 Pow. Mortg. 373a. See O'Neill v. Gray, 39 Hun (N. Y.) 566; Bentley v. Phelps, 3 Fed. Cas. 250.

MORTGAGEE. He that takes or receives a mortgage.

MORTGAGEE IN POSSESSION. A mortgagee of real property who is in possession of it with the agreement or assent of the mortgagor, express or implied, and in recognition of his mortgage and because of it, and under such circumstances as to make the satisfaction of his lien an equitable prerequisite to his being dispossessed. See Rogers v. Benton, 39 Minn. 39, 38 N. W. 765, 12 Am. St. Rep. 613; Kelso v. Norton, 65 Kan. 778, 70 P. 896, 93 Am. St. Rep. 308; Stouffer v. Harlan, 68 Kan. 135, 74 P. 610, 64 L. R. A. 320, 104 Am. St. Rep. 396; Freeman v. Campbell, 109 Cal. 360, 42 P. 35.

MORTGAGOR. He that gives a mortgage.

MORTH. Sax. Murder, answering exactly to the French "*assassinat*" or "*meurtre de guet-apens*."

MORTHLAGA. A murderer. Cowell.

MORTHLAGE. Murder. Cowell.

MORTIFICATION. In Scotch law. A term nearly synonymous with "mortmain." Bell.

Lands are said to be *mortified* for a charitable purpose.

MORTIS CAUSA. Lat. By reason of death; in contemplation of death. Thus used in the phrase "*Donatio mortis causa*," (*q. v.*).

Mortis momentum est ultimum vitæ momentum. The last moment of life is the moment of death. Terrill v. Public Adm'r, 4 Bradf. Sur. (N. Y.) 245, 250.

MORTMAIN. A term applied to denote the alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal. These purchases having been chiefly made by religious houses, in consequence of which lands became perpetually inherent in one dead hand, this has occasioned the general appellation of "mortmain" to be applied to such alienations. 2 Bl. Comm. 268; Co. Litt. 2b; Perin v. Carey, 24 How. 495, 16 L. Ed. 701.

MORTMAIN ACTS. These acts had for their object to prevent lands getting into the possession or control of religious corporations, or, as the name indicates, *in mortua manu*. After numerous prior acts dating from the reign of Edward I., it was enacted by the statute 9 Geo. II. c. 36, (called the "Mortmain Act" *par excellence*), that no lands should be given to charities unless certain requisites should be observed. Brown. Yates v. Yates, 9 Barb. (N. Y.) 324.

MORTON TOE. "Morton toe" is neuralgia of the fourth toe. State v. Armstrong, 38 Idaho, 493, 225 P. 491, 493, 33 A. L. R. 835.

MORTUARY. In ecclesiastical law. A burial-place. A kind of ecclesiastical heriot, being a customary gift of the second best living animal belonging to the deceased, claimed by and due to the minister in many parishes, on the death of his parishioners, whether buried in the church-yard or not. 2 Bl. Comm. 425. Ayrton v. Abbott, 14 Q. B. 19.

It has been sometimes used in a civil as well as in an ecclesiastical sense, and applied to a payment to the lord of the fee. Paroch. Antiq. 470.

MORTUARY TABLES. Tables for estimating the probable duration of the life of a party at a given age. Gallagher v. Market St. Ry. Co., 67 Cal. 16, 6 P. 871, 51 Am. Rep. 680.

MORTUUM VADIUM. A dead pledge; a mortgage (*q. v.*); a pledge where the profits or rents of the thing pledged are not applied to the payment of the debt.

MORTUUS. Lat. Dead. So in sheriff's return, *mortuus est*, he is dead.

MORTUUS CIVILITER. Civil death. This incident attended every attainder of treason or other felony, whereby in the language of Lord Coke the attainted person "is disabled to bring any action, for he is *extra legem*

mortuus"; Co. Litt. 199. He could be heard in court only for the direct purpose of reversing the attainder, and not in prosecution of a civil right; 1 B. & A. 159. He could be grantor or grantee after attainder, and the grant would be good against all persons except the king; Shepard, Touch. 231.

Mortuus exitus non est exitus. A dead issue is no issue. Co. Litt. 29. A child born dead is not considered as issue.

—**Mortuus sine prole.** Dead without issue. In genealogical tables often abbreviated to "*m. s. p.*"

Mos retinendus est fidelissimæ vetustatis. 4 Coke, 78. A custom of the truest antiquity is to be retained.

MOSLEM LAW. One of the two great systems of customary law which the English found in India. It regulated the life and relations of all Moslems, and parts of it, especially its penal provisions, were applied to both Moslems and Hindus. Bryce, Extension of the Law.

MOST FAVORED NATION CLAUSE. A clause found in most treaties providing that the citizens or subjects of the contracting states may enjoy the privileges accorded by either party to those of the most favored nations. It is said that the general design of such clauses is to establish the principle of equality of international treatment. The test of whether this principle is violated by the concession of advantages to a particular nation is, not the form in which such concession is made, but the condition on which it is granted; whether it is given for a price, or whether this price is in the nature of a substantial equivalent, and not of a mere evasion. The United States has always taken the stand that reciprocal commercial concessions are given for a valuable consideration and are not within the scope of this clause. Bartram v. Robertson, 122 U. S. 116, 7 S. Ct. 1115, 30 L. Ed. 1118; Whitney v. Robertson, 124 U. S. 190, 8 S. Ct. 456, 31 L. Ed. 386. Great Britain has taken the opposite position.

See Consular Treaty Rights and Comments on the "Most Favored Nation" Clause, by Ernest Ludwig; 3 Amer. Journ. Int. L. 57; Herod, Most Favored Nation Treatment; Moore's Dig. Int. Law; 3 Amer. Journ. Int. Law 395.

MOSTRENCOS. In Spanish law. Strayed goods; estrays. White, New Recop. b. 2, tit. 2, c. 6.

MOTE. Sax. A meeting; an assembly. Used in composition, as *burgmote*, *folkmote*, etc.

MOTE-BELL. The bell which was used by the Saxons to summon people to the court. Cowell.

MOTEER. A customary service or payment at the mote or court of the lord, from which some were exempted by charter or privilege. Cowell.

MOTHER. A woman who has borne a child; a female parent; correlative to "son" or "daughter." The term may also include a woman who is pregnant. See Howard v. People, 185 Ill. 552, 57 N. E. 441; Latschaw v. State, 156 Ind. 194, 59 N. E. 471.

MOTHER-IN-LAW. The mother of one's wife or of one's husband.

MOTION.

In Practice

An occasional application to a court by the parties or their counsel, in order to obtain some rule or order, which becomes necessary either in the progress of a cause, or summarily and wholly unconnected with plenary proceedings. Citizens' St. R. Co. v. Reed, 28 Ind. App. 629, 63 N. E. 770; Low v. Cheney, 3 How. Prac. (N. Y.) 287; People v. Ah Sam, 41 Cal. 645; In re Jetter, 78 N. Y. 601.

A motion is a written application for an order addressed to the court or to a judge in vacation by any party to a suit or proceeding, or by any one interested therein. Rev. Code Iowa 1880, § 2911 (Code 1931, § 11229).

In legal proceedings, a "motion" is an application, either written or made viva voce, by a party to an action or a suit for some kind of relief. State v. Warner Valley Stock Co., 68 Or. 466, 137 P. 746, 747; O'Hanion v. Great Northern Ry. Co., 76 Mont. 128, 245 P. 518, 520; Vande Veegaete v. Vande Veegaete, 79 Mont. 68, 255 P. 348, 349; Genardini v. Kline, 21 Ariz. 523, 190 P. 568, 570; Hammer v. Campbell Automatic Safety Gas Burner Co. 74 Or. 126, 144 P. 396, 398; Hall Oil Co. v. Barquin, 33 Wyo. 92, 237 P. 255, 258; Harris v. Chicago House-Wrecking Co., 314 Ill. 500, 145 N. E. 666, 669.

In Parliamentary Law

The formal mode in which a member submits a proposed measure or resolve for the consideration and action of the meeting.

In General

—**Motion for decree.** Under the chancery practice, the most usual mode of bringing on a suit for hearing when the defendant has answered is by motion for decree. To do this the plaintiff serves on the defendant a notice of his intention to move for a decree. Hunter, Suit Eq. 59; Daniell, Ch. Pr. 722.

—**Motion for judgment.** In English practice. A proceeding whereby a party to an action moves for the judgment of the court in his favor. See Sup. Ct. Rules 1883, ord. 40.

—**Motion in error.** A motion in error stands on the same footing as a writ of error; the only difference is that, on a motion in error, no service is required to be made on the opposite

party, because, being before the court when the motion is filed, he is bound to take notice of it at his peril. *Treadway v. Coe*, 21 Conn. 283.

—**Motion to set aside judgment.** This is a step taken by a party in an action who is dissatisfied with the judgment directed to be entered at the trial of the action.

—**Special motion.** A motion addressed to the discretion of the court, and which must be heard and determined; as distinguished from one which may be granted of course. *Merchants' Bank v. Crysler*, 67 F. 390, 14 C. C. A. 444.

MOTIVE. The inducement, cause, or reason why a thing is done. An act legal in itself, and which violates no right, is not actionable on account of the motive which actuated it. *Chatfield v. Wilson*, 5 Am. Law Reg. (O. S.) 528.

"Motive" and "intent" are not identical, and an intent may exist where a motive is wanting. Motive is the moving power which impels to action for a definite result; intent is the purpose to use a particular mind to effect such result. In the popular mind intent and motive are often regarded as the same thing; but in law there is a clear distinction between them. When a crime is clearly proved to have been committed by a person charged therewith, the question of motive may be of little or no importance, but criminal intent is always essential to the commission of a crime. *People v. Molineux*, 168 N. Y. 264, 61 N. E. 286, 62 L. R. A. 193; *Warren v. Tenth Nat. Bank*, 29 Fed. Cas. 287; *Williams v. State*, 113 Neb. 606, 204 N. W. 64, 66; *State v. Santino* (Mo. Sup.) 186 S. W. 976, 977; *Harden v. State*, 211 Ala. 656, 101 So. 442, 444; *People v. Kuhn*, 232 Mich. 310, 205 N. W. 188, 189; *Jones v. State*, 13 Ala. App. 10, 68 So. 690, 694. But motive is often an important subject of inquiry in criminal prosecutions, particularly where the case depends mainly or entirely on circumstantial evidence, the combination of motive and opportunity (for the commission of the particular crime by the person accused) being generally considered essential links in a chain of such evidence, while the absence of all motive on the part of the prisoner is an admissible and important item of evidence in his favor.

MOTORCYCLE. A bicycle propelled by a gasoline engine located in the frame between the wheels. *Ellett v. Klein* (C. C. A.) 252 F. 805, 806; *Bonds v. State*, 16 Ga. App. 401, 85 S. E. 629, 630.

A motorcycle is a "motor vehicle" within the meaning of registration laws. *People v. Smith*, 156 Mich. 173, 120 N. W. 581, 21 L. R. A. (N. S.) 41, 16 Ann. Cas. 607.

MOTU PROPRIO. Lat. Of his own motion. The commencing words of a certain kind of papal rescript.

MOUNTINGS. Used in the Tariff Act of 1913, in connection with optical instruments such as the microscope and polariscope, in the sense of accessories, adjuncts, or parts there-

of. *U. S. v. International Forwarding Co.*, 9 Ct. Cust. App. 156, 159.

MOURNING. The dress or apparel worn by mourners at a funeral and for a time afterwards. Also the expenses paid for such apparel.

MOUTH OF RIVER. By statute in some states, the mouth of a river or creek, which empties into another river or creek, is defined as the point where the middle of the channel of each intersects the other. *Pol. Code Cal.* § 3908; *Rev. St. Ariz.* 1901, par. 931 (*Rev. Code* 1928, § 742).

MOVABLE. That which can be changed in place, as movable property; or in time, as movable feasts or terms of court. See *Wood v. George*, 6 Dana (Ky.) 343; *Strong v. White*, 19 Conn. 245; *Goddard v. Winchell*, 86 Iowa, 71, 52 N. W. 1124, 17 L. R. A. 788, 41 Am. St. Rep. 481.

MOVABLE ESTATE. A term equivalent to "personal estate" or "personal property." *Den v. Sayre*, 3 N. J. Law, 187.

MOVABLE FREEHOLD. A term applied by Lord Coke to real property which is capable of being increased or diminished by natural causes; as where the owner of seashore acquires or loses land as the waters recede or approach. See *Holman v. Hodges*, 112 Iowa, 714, 84 N. W. 950, 58 L. R. A. 673, 84 Am. St. Rep. 367.

MOVABLES. Things movable; movable or personal chattels which may be annexed to or attendant on the person of the owner, and carried about with him from one part of the world to another. 2 Bl. Comm. 387. *Movables* consist—*First*, of inanimate things, as goods, plate, money, jewels, implements of war, garments, and the like or vegetable productions, as the fruit or other parts of a plant when severed from the body of it or the whole plant itself when severed from the ground; *secondly*, of animals, which have in themselves a principle and power of motion. 2 Steph. Comm. 67.

Movables are further distinguished into such as are in possession, or which are in the power of the owner, as a horse in actual use, a piece of furniture in a man's own house; and such as are in the possession of another, and can only be recovered by action, which are therefore said to be in action, as a debt.

But it has been held that movable property, in a legacy, strictly includes only such as is corporeal and tangible; not, therefore, rights in action, as judgment or bond debts; *Strong v. White*, 19 Conn. 238, 245; 1 Wm. Jones 225; but see *Penniman v. French*, 17 Pick. (Mass.) 404, 28 Am. Dec. 309; and that, in a will, "movables" is used in its largest sense, but will not pass growing crops, nor building materials on ground; *Humble v. Humble*, 3 A. K. Marsh. (Ky.) 123; *Jackson v. Vandersprengle*, 2 Dall. 142, 1 L. Ed. 323.

In The Civil Law

Movables (*mobilia*), properly denoted inanimate things; animals being distinguished as *moventia*, things moving. Calvin. But these words *mobilia* and *moventia* are also used synonymously, and in the general sense of "movables." *Id.*

In Scotch Law

"Movables" are opposed to "heritage." So that every species of property, and every right a man can hold, is by that law either heritable or movable. Bell.

MOVE. To make an application to a court for a rule or order, or to take action in any matter. To ask. *Harris v. Chicago House-Wrecking Co.*, 314 Ill. 500, 145 N. E. 666, 669. The term comprehends all things necessary to be done by a litigant to obtain an order of the court directing the relief sought. *O'Hanion v. Great Northern Ry. Co.*, 76 Mont. 128, 245 P. 518, 519.

To propose a resolution, or recommend action in a deliberate body.

To pass over; to be transferred; as when the consideration of a contract is said to "move" from one party to the other.

To occasion; to contribute to; to tend or lead to. The forewheel of a wagon was said "to move to the death of a man." Sayer, 249.

MOVE OUT. To vacate; to yield up possession. *Polich v. Severson*, 68 Mont. 225, 216 P. 785, 787.

MOVENT. One who moves; one who makes a motion before a court; the applicant for a rule or order.

MOVEMENT. As used in the Hours of Service Law (Act Cong. March 4, 1907, c. 2939, 34 Stat. 1415 [45 USCA §§ 61-64]), defining the term "employé" to mean a person actually engaged in or connected with the movement of any train, the word "movement" is not restricted to the actual revolution of the wheels of a train or locomotive engaged in interstate commerce, but may apply to a train tied up on a siding. *Great Northern Ry. Co. v. United States (C. C. A.)* 211 F. 309, 312. Similarly, within the meaning of police regulations authorizing civic authorities to regulate the movement of vehicles, the term may comprehend the control and management of vehicles, including the power to require that the motor be closed down when a motor vehicle is left on the street. *White v. District of Columbia*, 4 F.(2d) 163, 164, 55 App. D. C. 197.

MOVING FOR AN ARGUMENT. Making a motion on a day which is not motion day, in virtue of having argued a special case; used in the exchequer after it became obsolete in the queen's bench. Wharton.

MOVING PAPERS. Such papers as are made the basis of some motion in court proceedings, *e. g.* a bill in equity with supporting affidavits.

MOVING PICTURE SHOW. A place where motion pictures are exhibited for the purpose of public amusement and entertainment. *State v. Morris*, 28 Idaho, 599, 155 P. 296, 297, L. R. A. 1916D, 573.

MRS. A term which, when used before the name of a woman, shows that she has at some time been married but which constitutes neither actual notice nor constructive notice that, at the time she receives a conveyance, she is a married woman. *Houston Oil Co. of Texas v. Griggs (Tex. Civ. App.)* 181 S. W. 833, 836.

MUCIANA CAUTIO. See *Cautio*.

MUEBLES. In Spanish law. Movables; all sorts of personal property. *White, New Rep. b. 1, tit. 3, c. 1, § 2.*

MUFFLER. Any of various devices to deaden the noise of escaping gases or vapors, such as a tube filled with obstructions, through which the exhaust gases of an internal combustion engine, as an automobile, are passed (called also a silencer), or an attachment usually consisting of a series of perforated baffles for a locomotive pop safety valve. *Hines v. Foreman (Tex. Com. App.)* 243 S. W. 479, 484.

MUIRBURN. In Scotch law. The offense of setting fire to a muir or moor. 1 Brown, Ch. 78, 116.

MULATTO. A person that is the offspring of a negress by a white man, or of a white woman by a negro. *Thurman v. State*, 18 Ala. 276; *McGoodwin v. Shelby*, 206 S. W. 625, 627, 182 Ky. 377; *Medway v. Natick*, 7 Mass. 88; *State v. Scott*, 1 Bailey (S. C.) 270. In a more general sense, a person of mixed Caucasian and negro blood, or Indian and negro blood. Webster, Dict. See, also, *Mustizo*.

Properly a mulatto is a person one of whose parents is wholly black and the other wholly white; but the word does not always, though perhaps it does generally, require so exactly even a mixture of blood, nor is its signification alike in all the states. 1 Bish. Mar. & D. § 308.

MULCT. A penalty or punishment imposed on a person guilty of some offense, tort, or misdemeanor, usually a pecuniary fine or condemnation in damages. See *Cook v. Marshall County*, 119 Iowa, 384, 93 N. W. 372, 104 Am. St. Rep. 283. A forfeit, fine, or penalty. *Kleinath, Schuster & Hudson v. Reed*, 137 P. 841, 844, 18 N. M. 358.

Formerly, an imposition laid on ships or goods by a company of trade for the maintenance of consuls and the like.

Mulcta damnum famæ non irrogat. Cod. 1, 54; Calvin. A fine does not involve loss of character.

MULE. A hybrid between the horse and the ass; especially, the offspring of a male ass

and a mare. Webster, Dict. A reward offered for the apprehension of a mare, horse, or gelding does not apply to a mule. Com. v. Davidson, 4 Pa. Dist. R. 172.

MULIER. Lat. A woman; a wife; a widow; a virgin; a legitimate child. 1 Inst. 243; Co. Litt. 170, 253; 2 Bla. Com. 248.

The term is used always in contradistinction to a bastard, *mulier* being always legitimate. Co. Litt. 243.

MULIER PUISNÉ. L. Fr. When a man has a bastard son, and afterwards marries the mother, and by her has also a legitimate son, the elder son is *bastard eigné*, and the younger son is *mulier puisné*.

MULIERATUS. A legitimate son. Glanvil.

MULIERTY. In old English law. The state or condition of a *mulier*, or lawful issue. Co. Litt. 352b. The opposite of bastardy. Blount.

MULTA. A fine or final satisfaction, anciently given to the king by the bishops, that they might have power to make their wills, and that they might have the probate of other men's wills, and the granting of administration. 2 Inst. 291. Called, also, *multura episcopi*.

A fine imposed *ex arbitrio* by magistrates on the *præsides provinciarum*. Inst. 4, 1.

Multa conceduntur per obliquum quæ non conceduntur de directo. Many things are allowed indirectly which are not allowed directly. 6 Coke, 47.

Multa fidem promissa levant. Many promises lessen confidence. Brown v. Castles, 11 Cush. (Mass.) 350.

Multa ignoramus quæ nobis non laterent si veterum lectio nobis fuit familiaris. 10 Coke, 73. We are ignorant from many things which would not be hidden from us if the reading of old authors was familiar to us.

Multa in jure communi contra rationem disputandi, pro communi utilitate introducta sunt. Many things have been introduced into the common law, with a view to the public good, which are inconsistent with sound reason. Co. Litt. 70b; Broom, Max. 158; 2 Co. 75. See 3 Term 146; 7 *id.* 252.

Multa multo exercitatione facilius quam regulis percipies. 4 Inst. 50. You will perceive many things much more easily by practice than by rules.

Multa non vetat lex, quæ tamen tacite damnavit. The law forbids not many things which yet it has silently condemned.

Multa transeunt cum universitate quæ non per se transeunt. Many things pass with the whole which do not pass separately. Co. Litt. 12a.

Multi multa, nemo omnia novit. 4 Inst. 348. Many men have known many things; no one has known everything.

MULTIFARIOUSNESS.

In Equity Pleading

The fault of improperly joining in one bill distinct and independent matters, and thereby confounding them; as, for example, the uniting in one bill of several matters perfectly distinct and unconnected against one defendant (more commonly called misjoinder of claims), or the demand of several matters of a distinct and independent nature against several defendants, in the same bill. Story, Eq. Pl. § 271. And see Harrison v. Perea, 168 U. S. 311, 18 Sup. Ct. 129, 42 L. Ed. 478; Wales v. Newbould, 9 Mich. 56; Bovaird v. Seyfang, 200 Pa. 261, 49 A. 958; Bolles v. Bolles, 44 N. J. Eq. 385, 14 A. 593; Perkins v. Baer, 95 Mo. App. 70, 68 S. W. 939; Thomas v. Mason, 8 Gill (Md.) 1; Barcus v. Gates, 89 F. 783, 32 C. C. A. 337; McGlothlin v. Hemery, 44 Mo. 350; Ford v. Borders, 200 Ala. 70, 75 So. 398, 400; Bertelmann v. Lucas (C. C. A.) 7 F.(2d) 325, 327, 328; Dennis v. Justus, 115 Va. 512, 79 S. E. 1077, 1078; Dollar v. Lockney Supply Co. (Tex. Civ. App.) 164 S. W. 1076, 1078; Crummett v. Crummett, 102 W. Va. 151, 135 S. E. 16, 18; Carter v. Kimbrough, 122 Miss. 543, 84 So. 251, 256. A bill is not multifarious which seeks alternative or inconsistent relief growing out of the same subject-matter or founded on the same contract or transaction, or relating to the same property between the same parties. Code Ala. § 3095 (Code 1923, § 6526); Szabo v. Speckman, 73 Fla. 374, 74 So. 411, 412, L. R. A. 1917D, 357; Lee v. Thornton, 171 N. C. 209, 88 S. E. 232, 234.

The joining of distinct and independent matters, each of which would constitute a cause of action. Otto F. Stifel's Union Brewing Co. v. Weber, 194 Mo. App. 605, 186 S. W. 1119, 1122; Johnson v. Benbow, 93 Fla. 124, 111 So. 504, 507; Bean v. County Court of McDowell County, 85 W. Va. 186, 101 S. E. 254, 255.

"Multifariousness" abstractly is incapable of an accurate definition, but includes those cases where a party is brought as a defendant on a record with a large portion of which, and, in the case made by which, he has no connection whatever. O'Neal v. Cooper, 191 Ala. 182, 67 So. 639, 691; First Nat. Bank v. Starkey, 268 Ill. 22, 198 N. E. 695, 696; Oliver v. Piatt, 3 How. 333, 11 L. Ed. 622; Shields v. Thomas, 18 How. 259, 15 L. Ed. 368.

The vice of multifariousness is the union of causes of action which, or of parties whose claims, it is either impractical or inconvenient to adjudicate in a single suit. Where it is as practical and convenient for court and parties to deal with the claims, and parties joined, in one suit as in many, there is no multifariousness. Westinghouse A. B. Co. v. R. Co., 71 C. C. A. 1, 137 F. 26; Schell v. Leander Clark College (C. C. A.) 2 F.(2d) 17, 21. And it is not essential that every defendant have an interest in or concern for all matters or phases of the controversy. Mitchell v. Cudd, 196 Ala. 162, 71 So. 660; Norfolk Southern R. Co. v. Stricklin (D. C.) 264 F. 546, 555.

In Legislation

The joining, in a single legislative act, of dissimilar and discordant subjects, which, by no fair intendment, can be considered as having a legitimate connection or relation to the subject of the act. *Boise City v. Baxter*, 238 P. 1029, 1033, 41 Idaho, 368.

MULTIPARTITE. Divided into many or several parts.

MULTIPLE EVIDENCE. That which is admissible for a specific purpose to which it must be confined and inadmissible to prove a different fact. *Green v. Atlantic Coast Line R. Co.*, 134 S. E. 385, 386, 136 S. C. 337.

MULTIPLE POINDING. In Scotch law. Double distress; a name given to an action, corresponding to proceedings by way of interpleader, which may be brought by a person in possession of goods claimed by different persons pretending a right thereto, calling the claimants and all others to settle their claims, so that the party who sues may be liable only "in once and single payment." Bell.

Multiplex et indistinctum parit confusionem; et questiones, quo simpliciores, eo lucidiores. Hob. 335. Multiplicity and indistinctness produce confusion; and questions, the more simple they are, the more lucid.

Multiplicata transgressione crescat pœnæ infictio. As transgression is multiplied, the infliction of punishment should increase. 2 Inst. 479.

MULTIPLICITY. A state of being many. That quality of a pleading which involves a variety of matters or particulars; undue variety. 2 Saund. 410. A multiplying or increasing. Story, Eq. Pl. § 287.

MULTIPLICITY OF ACTIONS, or SUITS. Numerous and unnecessary attempts to litigate the same right. A phrase descriptive of the state of affairs where several different suits or actions are brought upon the same issue. It is obviated in equity by a bill of peace; in courts of law, by a rule of court for the consolidation of different actions. *Williams v. Millington*, 1 H. Bl. 81; *Murphy v. Wilmington*, 6 Houst. (Del.) 138, 22 Am. St. Rep. 345. The actions must be against a single defendant. *Prospect Park & C. I. R. Co. v. Morey*, 140 N. Y. S. 380, 385, 155 App. Div. 347.

MULTITUDE. An assemblage of many people. According to Coke it is not a word of very precise meaning; for some authorities hold that there must be at least ten persons to make a multitude, while others maintain that no definite number is fixed by law. Co. Litt. 257. That two cannot constitute a multitude, see *Pike v. Witt*, 104 Mass. 595.

Multitudinem decem faciunt. Co. Litt. 257. Ten make a multitude.

Multitudo errantium non parit errori patrocium. The multitude of those who err furnishes no countenance or excuse for error. 11 Coke, 75a. It is no excuse for error that it is entertained by numbers.

Multitudo imperitorum perdit curiam. A great number of unskillful practitioners ruins a court. 2 Inst. 219.

MULTO. In old records. A wether sheep.

Multo utilius est pauca idonea effundere quam multis inutilibus homines gravari. 4 Coke, 20. It is more useful to pour forth a few useful things than to oppress men with many useless things.

MULTURE. In Scotch law. The quantity of grain or meal payable to the proprietor of a mill, or to the milturer, his tacksman, for manufacturing the corns. Ersk. Inst. 2, 9, 19.

MUMMIFICATION. In medical jurisprudence, the complete drying up of the body as the result of burial in a dry, hot soil, or the exposure of the body to a dry, cold atmosphere. 15 Amer. & Eng. Enc. Law, 261.

MUMMING. Antic diversions in the Christmas holidays, suppressed in Queen Anne's time.

MUND. In old English law. Peace; whence *mundbryc*, a breach of the peace.

MUNDBYRD, MUNDEBURDE. A receiving into favor and protection. Cowell.

MUNDIUM. In old French law. A tribute paid by a church or monastery to their seigniorial *avoués* and *vidames*, as the price of protecting them. Steph. Lect. 236.

MUNERA. In the early ages of the feudal law, the name given to the grants of land made by a king or chieftain to his followers, which were held by no certain tenure, but merely at the will of the lord. Afterwards they became life-estates, and then hereditary, and were called first "benefices," and then "feuds." See Wright, Ten. 19.

MUNICEPS. Lat. In Roman Law. Eligible to office. A provincial person; a countryman. This was the designation of one born in the provinces or in a city politically connected with Rome, who had come to Rome, and though a Roman citizen, yet was looked down upon as a provincial, and not allowed to hold the higher offices.

In the provinces the term seems to have been applied to the freemen of any city who were eligible to the municipal offices. Calvin.

MUNICIPAL. Relating to a city, town, or village. *Powder R. C. Co. v. Board*, 3 Wyo. 597, 29 P. 361, 31 P. 278. Sometimes, pertaining to a county; *Posch v. Lion Bonding & Surety Co.*, 137 Minn. 169, 163 N. W. 131, 132; *contra*, *Hersey v. Nelson*, 47 Mont. 132, 131 P.

30, 31, Ann. Cas. 1914C, 963; local, particular, independent; Horton v. Mobile School Com'rs, 43 Ala. 598; also, pertaining to local self-government in general; Woodward v. Livermore Falls Water Dist., 116 Me. 86, 100 A. 317, 319, L. R. A. 1917D, 678.

Relating to a state or nation, particularly when considered as an entity independent of other states or nations.

Among the Romans, cities were called *municipia*; these cities voluntarily joined the Roman republic in relation to their sovereignty only, retaining their laws, their liberties, and their magistrates, who were thence called *municipal magistrates*. With us this word has a more extensive meaning: for example, we call *municipal law* not the law of a city only, but the law of the state, 1 Bla. Comm. 44. "Municipal" is so used in opposition to "international," and denotes that which pertains or belongs properly to an individual state or separate community, as distinguished from that which is common to, or observed between, all nations. Thus, piracy is an "international offense," and is denounced by "international law," but smuggling is a "municipal offense," and cognizable by "municipal law." State v. Hagen, 136 La. 868, 67 So. 935; Montana Auto Finance Corporation v. British & Federal Underwriters of Norwich Union Fire Ins. Soc., 72 Mont. 69, 232 P. 198, 199, 36 A. L. R. 1495.

—**Municipal affairs.** A term referring to the internal business affairs of a municipality. Ex parte Hitchcock, 34 Cal. App. 111, 166 P. 849, 850. Frequently used in constitutional and statutory provisions concerning the power to legislate as to the concerns of municipalities. City of Los Angeles v. Central Trust Co. of New York, 173 Cal. 323, 159 P. 1169, 1171; Williams v. City of Vallejo, 36 Cal. App. 133, 171 P. 834, 836; State v. Cummings, 47 Okl. 44, 147 P. 161, 163. The term has come to include public service activities, such as supplying water to the inhabitants, the construction of a reservoir for their benefit, the sale and distribution of electrical energy, and the establishment and operation of transportation service, which were once regarded as being of a strictly private nature. In re Bonds of Orosi Public Utility Dist., 196 Cal. 43, 235 P. 1004, 1010.

—**Municipal aid.** A contribution or assistance granted by a municipal corporation towards the execution or progress of some enterprise, undertaken by private parties, but likely to be of benefit to the municipality; e. g., a railroad.

—**Municipal authorities.** As used in statutes contemplating the consent of such authorities, the term means the consent by the legislative authorities of the city acting by ordinance; Holland Realty & Power Co. v. City of St. Louis, 221 S. W. 51, 53, 282 Mo. 180; for example, in a town, the members of the town board; Farnsworth v. Boro Oil & Gas Co., 216 N. Y. 40, 109 N. E. 860.

—**Municipal bonds.** Negotiable bonds issued by a municipal corporation, to secure its indebtedness. Austin v. Nalle, 85 Tex. 520, 22

S. W. 668; Howard v. Kiowa County (C. C.) 73 F. 406.

—**Municipal charter.** A legislative enactment conferring governmental powers of the state upon its local agencies. State v. Thompson, 193 Ala. 561, 69 So. 461, 464.

—**Municipal claims.** In Pennsylvania law. Claims filed by a city against property owners therein, for taxes, rates, levies, or assessments for local improvements, such as the cost of grading, paving, or curbing the streets, or removing nuisances.

—**Municipal corporation.** See that title *infra*.

—**Municipal courts.** In the judicial organization of several states, courts are established under this name, whose territorial authority is confined to the city or community in which they are erected. Such courts usually have a criminal jurisdiction corresponding to that of a police court, and, in some cases, possess civil jurisdiction in small causes. For a statutory definition, see section 1, c. 147, Laws Okl. 1915; Ex parte Gownlock, 13 Okl. Cr. 293, 164 P. 130, 131.

—**Municipal domicile.** Sometimes used in contradistinction to "national domicile" and "quasi national domicile" to refer to residence in a county, township, or municipality; called also "domestic domicile." Hayward v. Hayward, 65 Ind. App. 440, 115 N. E. 966, 970.

—**Municipal election.** One at which municipal officers are chosen. Hutchins v. City of Des Moines, 176 Iowa, 189, 157 N. W. 881, 883. See, also, Watson v. Fouch, 55 Cal. App. 765, 205 P. 58, 61, with which compare Johnson v. Luers, 129 Md. 521, 99 A. 710, 714.

—**Municipal function.** One created or granted for the special benefit and advantage of the urban community embraced within the corporate boundaries;—sometimes called a private function, as distinguished from a public or governmental function, which is one conferred or imposed on the municipality as a local agency of limited and prescribed jurisdiction to be employed in administering the affairs of the state, and promoting the public welfare generally. Bryan v. City of West Palm Beach, 75 Fla. 19, 77 So. 627; Griffith v. City of Butte, 72 Mont. 552, 234 P. 829, 831.

—**Municipal government.** This term, in certain state constitutions, embraces the governmental affairs of counties; State v. Touchberry, 121 S. C. 5, 113 S. E. 345; and includes all forms of representative municipal government; In re Opinion of the Justices, 229 Mass. 601, 119 N. E. 778, 781.

—**Municipal law,** in contradistinction to international law, is the law of an individual state or nation. It is the rule or law by which a particular district, community, or nation is governed. 1 Bl. Comm. 44. That which pertains solely to the citizens and inhabitants

of a state, and is thus distinguished from political law, commercial law, and the law of nations. Wharton. And see Winspear v. Holman District Tp., 37 Iowa 544; Root v. Erdelmyer, Wils. (Ind.) 99; Cook v. Portland, 20 Or. 589, 27 P. 263, 13 L. R. A. 533; Flaherty v. Jackson, 152 La. 679, 94 So. 316, 317.

—**Municipal lien.** A lien or claim existing in favor of a municipal corporation against a property owner for his proportionate share of a public improvement, made by the municipality, whereby his property is specially and individually benefited.

—**Municipal officer.** An officer belonging to a municipality; that is, a city, town, or borough;—not including a county. State v. Cooney, 70 Mont. 355, 225 P. 1007, 1010. But the term often bears a special or limited sense, in which it may not apply even to members of the city council. Lambert v. Barrett, 115 Va. 136, 78 S. E. 586, 587, Ann. Cas. 1914D, 1226.

—**Municipal ordinance.** A law, rule, or ordinance enacted or adopted by a municipal corporation for the proper conduct of its affairs or the government of its inhabitants. Rutherford v. Swink, 96 Tenn. 564, 35 S. W. 554. Particularly a regulation under a delegation of power from the state. Harris v. City of Des Moines, 202 Iowa, 53, 209 N. W. 454, 456, 46 A. L. R. 1429.

—**Municipal purposes.** Public or governmental purposes as distinguished from private purposes; Georgia Ry. & Power Co. v. City of Atlanta, 154 Ga. 731, 115 S. E. 263, 271; for example, the taking of land for a school; Byfield v. City of Newton, 247 Mass. 46, 141 N. E. 658, 661; lighting the streets; City of Colorado Springs v. Pike's Peak Hydro-Electric Co., 57 Colo. 169, 140 P. 921, 927; supplying water to the inhabitants; Marin Water & Power Co. v. Town of Sausalito, 168 Cal. 587, 143 P. 767, 772; the collection and disposal of garbage and refuse; N. Ward Co. v. Board of Street Com'rs of City of Boston, 217 Mass. 381, 104 N. E. 965, 966; or the building of a subway; In re Montague Street in Borough of Brooklyn in City of New York, 87 Misc. 120, 150 N. Y. S. 382, 385.

—**Municipal securities.** The evidences of indebtedness issued by cities, towns, counties, townships, school-districts, and other such territorial divisions of a state. They are of two general classes: (1) Municipal warrants, orders, or certificates; (2) municipal negotiable bonds. 15 Amer. & Eng. Enc. Law, 1206.

—**Municipal tax.** This term may have reference to any tax collected by the city tax collector, including state, county, and city or town taxes. Boston Fish Market Corp. v. City of Boston, 224 Mass. 31, 112 N. E. 616.

—**Municipal warrants.** A municipal warrant or order is an instrument, generally in the

form of a bill of exchange, drawn by an officer of a municipality upon its treasurer, directing him to pay an amount of money specified therein to the person named or his order, or to bearer. 15 Amer. & Eng. Enc. Law, 1206.

MUNICIPAL CORPORATION. A public corporation, created by government for political purposes, and having subordinate and local powers of legislation. 2 Kent, Comm. 275; Bonaparte v. Camden & A. R. Co., Baldw. 222, Fed. Cas. No. 1617; People v. California Fish Co., 166 Cal. 576, 138 P. 79, 91.

An incorporation of persons, inhabitants of a particular place, or connected with a particular district, enabling them to conduct its local civil government. Glov. Mun. Corp. 1.

A body politic and corporate constituted by incorporation of the inhabitants of a region or community for purposes of local government. Trevino v. City of San Antonio (Tex. Civ. App.) 269 S. W. 1067, 1069; Bunting v. Oak Creek Drainage Dist., 99 Neb. 843, 157 N. W. 1023, 1029, L. R. A. 1918B, 1004; Rutledge v. Greater Greenville Sewer Dist., 139 S. C. 188, 137 S. E. 597, 600; Churchill v. City of Grants Pass, 70 Or. 283, 141 P. 164.

An independent corporate entity created by the state, not only for governmental purposes, but also to do acts not governmental in their scope, though they be for the common good of the inhabitants. In re Northern Bank of New York, 163 App. Div. 974, 148 N. Y. S. 70, 71.

A body corporate consisting of inhabitants of a designated area created by the Legislature with or without the consent of such inhabitants for governmental purposes possessing local legislative and administrative power, and power to exercise within such area so much of the administrative power of the state as may be delegated to it and possessing limited capacity to own and hold property, and to act in purveyance of public conveniences. Sutter v. Milwaukee Board of Fire Underwriters, 161 Wis. 615, 155 N. W. 127, Ann. Cas. 1917E, 682.

There is a well-defined and marked distinction between municipal corporations proper and political, public, or quasi municipal corporations. Honnold v. Board of Com'rs of Carter County, 71 Okl. 71, 177 P. 71, 74. Cities, towns, and villages are municipal corporations proper. Strickfaden v. Green Creek Highway Dist., 42 Idaho, 738, 248 P. 456, 458, 49 A. L. R. 1057. On the other hand, such term in many instances does not extend so far as to include counties; State ex rel. Barrett v. May, 290 Mo. 302, 235 S. W. 124; McPerson v. Board of Com'rs of Prowers County, 78 Colo. 354, 241 P. 733; Hersey v. Nelson, 47 Mont. 132, 131 P. 30, 31, Ann. Cas. 1914C, 963; or drainage districts; Sawyer v. Camden Run Drainage Dist., 179 N. C. 182, 102 S. E. 273, 274; Collins v. Hollis, 212 Ala. 294, 102 So. 379, 381; or irrigation districts; Crawford v. Imperial Irr. Dist., 200 Cal. 318, 253 P. 726, 729; Colburn v. Wilson, 23 Idaho, 337, 130 P. 331; Davy v. McNeill, 31 N. M. 7, 240 P. 482, 489; Thaunum v. Bynum Irr. Dist., 72 Mont. 221, 232 P. 528, 530; or road districts; William T. Joyce Co. v. Police Jury of Parish of Tangipahoa, 146 La. 322, 83 So. 587, 588; Bradley v. State, 210 Ala. 166, 97 So. 543, 544; or school districts; Dickson v. Brewer, 130 N. C. 403, 104 S. E. 887, 889; Brooks v. Wyman, 220 App. Div. 204, 220 N. Y. S. 615, 618; Kee v. Parks, 153 Tenn. 306, 283 S. W. 751; nor does it include the state; Herkimer Lumber Co. v. State, 196 App. Div. 708, 189 N. Y. S. 119, 122; but see *contra*, as to the

District of Columbia, *Stoutenburgh v. Hennick*, 9 S. Ct. 256, 129 U. S. 141, 32 L. Ed. 637. Nevertheless, it has been held in other cases, often under different circumstances or in different contexts, that the term may include counties; *Van Hess v. Board of Com'rs of St. Joseph County*, 190 Ind. 347, 129 N. E. 305, 307; *Bexar County v. Linden* (Tex. Civ. App.) 205 S. W. 478, 480; *Gadd v. McGuire*, 69 Cal. App. 347, 231 P. 754, 763; *Pierce County v. Thompson*, 82 Wash. 440, 144 P. 704, 705; and, in Louisiana, parishes; *State v. Hagen*, 136 La. 868, 67 So. 935; drainage districts; *State v. Little River Drainage Dist.*, 291 Mo. 267, 236 S. W. 848, 849; irrigation districts; *Peters v. Union Gap Irr. Dist.*, 98 Wash. 412, 167 P. 1085, 1086; road districts; *State ex rel. Little Prairie Special Road Dist. of Pemiscot County v. Thompson*, 315 Mo. 56, 235 S. W. 57, 61; school districts; *Waterman-Waterbury Co. v. School Dist. No. 4 of Cato Tp.*, 183 Mich. 168, 150 N. W. 104, 107; *Joint School Dist. No. 132 in Major County and Alfalfa County v. Dabney*, 127 Okl. 234, 260 P. 486, 488; *School Dist. No. 8, Twin Falls County, v. Twin Falls County Mut. Fire Ins. Co.*, 30 Idaho, 400, 164 P. 1174, 1175; *Vance v. Miller* (Tex. Civ. App.) 170 S. W. 838, 839; and the like; *Milheim v. Moffat-Tunnel Improvement Dist.*, 72 Colo. 268, 211 P. 649, 653; *Drum v. University Place Water Dist.*, 144 Wash. 535, 253 P. 505, 506.

In English Law

A body of persons in a town having the powers of acting as one person, of holding and transmitting property, and of regulating the government of the town. Such corporations existed in the chief towns of England (as of other countries) from very early times, deriving their authority from "incorporating" charters granted by the crown. *Wharton*.

In General

—**Municipal corporations act.** In English law. A general statute, (5 & 6 Wm. IV. c. 76,) passed in 1835, prescribing general regulations for the incorporation and government of boroughs.

—**Municipal corporation de facto.** One which exists when there is (1) some law under which a corporation with the powers assumed might lawfully have been created; (2) a colorable and bona fide attempt to perfect an organization under such a law; (3) user of the rights claimed to have been conferred by the law. *Evens v. Anderson*, 132 Minn. 59, 155 N. W. 1040, 1041.

—**Quasi municipal corporations.** Bodies politic and corporate, created for the sole purpose of performing one or more municipal functions. *Woodward v. Livermore Falls Water Dist.*, 116 Me. 86, 100 A. 317, 319, L. R. A. 1917D, 678. Public corporations organized for governmental purposes and having for most purposes the status and powers of municipal corporations (such as counties, townships, school districts, drainage districts, irrigation districts, etc.), but not municipal corporations proper, such as cities and incorporated towns. See *Snider v. St. Paul*, 51 Minn. 466, 53 N. W. 763, 18 L. R. A. 151; *Plumbing Supply Co. v. Board of Education of Independent School Dist. of City of Canton*, 32 S. D. 270, 142 N.

W. 1131, 1132; *Melin v. Community Consol. School Dist. No. 76*, 312 Ill. 376, 144 N. E. 13, 16; *Iverson v. Union Free High School Dist. of Towns of Springfield and Curran*, 186 Wis. 342, 202 N. W. 788, 792; *Malim v. Benthien*, 114 Wash. 533, 196 P. 7, 9; *Little Willow Irr. Dist. v. Haynes*, 24 Idaho, 317, 133 P. 905, 906.

MUNICIPALITY. A municipal corporation; a city, town, borough, or incorporated village. See *Gadd v. McGuire*, 69 Cal. App. 347, 231 P. 754, 763; *Pub. Laws N. C. 1921* (Ex. Sess.) c. 106; *Code Miss. 1906*, § 3299 (*Code 1930*, § 2369).

Though sometimes limited in its application to cities only; *City of Bangor v. Ridley*, 117 Me. 297, 104 A. 230, 232; it ordinarily includes towns as well as cities of all classes; *Goodman Warehouse Corporation v. Jersey City*, 102 N. J. Law, 294, 132 A. 503, 506; and may on occasion include townships; *Whittingham v. Milburn Tp.*, 90 N. J. Law, 344, 100 A. 854; counties; *Murphy v. Freeholders of Hudson*, 91 N. J. Law, 40, 102 A. 896; school districts; *Scobee v. Board of Education of Clark County*, 157 Ky. 510, 163 S. W. 472, 473; and every kind and character of public corporations which are created by statute or the Constitution of the state, and which are dependent for their support and maintenance from taxes imposed and collected; *Joint School Dist. No. 132 in Major County and Alfalfa County v. Dabney*, 127 Okl. 234, 260 P. 486, 487. But neither townships; *Petition of Herrington*, 266 Pa. 88, 109 A. 791, 793; nor school districts; *Long v. School Dist. of Cheltenham Tp.*, 269 Pa. 472, 112 A. 545, 546; nor drainage districts or the like are necessarily included; *Witty v. Ellsberry Drainage Dist.*, 126 Miss. 645, 89 So. 268, 270.

Also, the body of officers taken collectively, belonging to a city, who are appointed to manage its affairs and defend its interests.

MUNICIPIUM. In Roman law. A foreign town to which the freedom of the city of Rome was granted, and whose inhabitants had the privilege of enjoying offices and honors there. *Adams, Rom. Ant.* 47, 77. A free town which retained its original right of self-government, but whose inhabitants also acquired certain rights of Roman citizens. *Morey, Rom. L.* 51.

MUNIMENT-HOUSE, or MUNIMENT-ROOM. A house or room of strength, in cathedrals, collegiate churches, castles, colleges, public buildings, etc., purposely made for keeping deeds, charters, writings, etc. 3 *Inst.* 170; *Cowell*.

MUNIMENTS. Documentary evidence of title. *Merrill v. Rocky Mountain Cattle Co.*, 26 Wyo. 219, 181 P. 964, 971. The instruments of writing and written evidences which the owner of lands, possessions, or inheritances has, by which he is enabled to defend the title of his estate. *Termes de la Ley*; 3 *Inst.* 170.

MUNITIONS OF WAR. In international law and United States statutes, this term includes

not only ordnance, ammunition, and other material directly useful in the conduct of a war, but also whatever may contribute to its successful maintenance, such as military stores of all kinds and articles of food. See *U. S. v. Sheldon*, 2 Wheat. 119, 4 L. Ed. 199.

MUNUS. Lat. A gift; an office; a benefice or feud. A gladiatorial show or spectacle. Calvin.; Due Cange.

MURAGE. A toll formerly levied in England for repairing or building public walls.

MURAL MONUMENTS. Monuments made in walls.

MURDER. The crime committed where a person of sound mind and discretion (that is, of sufficient age to form and execute a criminal design and not legally "insane") kills any human creature in being (excluding quick but unborn children) and in the peace of the state or nation (including all persons except the military forces of the public enemy in time of war or battle) without any warrant, justification, or excuse in law, with malice aforethought, express or implied, that is, with a deliberate purpose or a design or determination distinctly formed in the mind before the commission of the act, provided that death results from the injury inflicted within one year and a day after its infliction. See *Kilpatrick v. Com.*, 31 Pa. 198; *Hotema v. U. S.*, 186 U. S. 413, 22 Sup. Ct. 895, 46 L. Ed. 1225; *Guiteau's Case (D. C.)* 10 F. 161; *Clarke v. State*, 117 Ala. 1, 23 So. 671, 67 Am. St. Rep. 157; *People v. Enoch*, 13 Wend. (N. Y.) 167, 27 Am. Dec. 197; *Kent v. People*, 8 Colo. 563, 9 Pac. 852; *Com. v. Webster*, 5 Cush. (Mass.) 295, 52 Am. Dec. 711; *Armstrong v. State*, 30 Fla. 170, 11 So. 618, 17 L. R. A. 484; *U. S. v. Lewis (C. C.)* 111 F. 632; *Nye v. People*, 35 Mich. 16. For the distinction between murder and manslaughter and other forms of homicide, see *Homicide*; *Manslaughter*.

The term implies a felonious homicide, while the word "kill" does not necessarily mean any more than to deprive of life, as a man may kill another by accident, or in self-defense, and in many other ways, without the imputation of crime. *Pilcher v. State*, 16 Ala. App. 237, 77 So. 75, 76.

Common-Law Definitions

The willful killing of any subject whatever, with malice aforethought, whether the person slain shall be an Englishman or a foreigner. *Hawk. P. C. b. 1, c. 13, § 3.* The killing of any person under the king's peace, with malice prepense or aforethought, either express, or implied by law. 1 *Russ. Crimes*, 421; *Com. v. Webster*, 5 Cush. (Mass.) 304, 52 Am. Dec. 711. When a person of sound mind and discretion unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought, either express or implied. 3 *Inst.* 47; *State v. Robinson*, 143 La. 543, 78 So. 933, 935.

Statutory Definitions

Murder is the unlawful killing of a human being with malice aforethought. *Pen. Code Cal. § 187*; *Pen. Code Ariz. 1901, § 172* (*Rev. Code 1928, § 4583*). Whoever kills any human being with malice aforethought, either express or implied, is guilty of murder. *Rev. Code Iowa 1880, § 3848.* Murder is the unlawful killing of a human being, in the peace of the state, by a person of sound memory and discretion, with malice aforethought, either express or implied. *Code Ga. 1882, § 4320* (*Pen. Code 1910, § 60*). The killing of a human being, without the authority of law, by any means, or in any manner, shall be murder in the following cases: When done with deliberate design to effect the death of the person killed, or of any human being; when done in the commission of an act eminently dangerous to others, and evincing a depraved heart, regardless of human life, although without any premeditated design to effect the death of any particular individual; when done without any design to effect death, by any person engaged in the commission of the crime of rape, burglary, arson, or robbery, or in any attempt to commit such felonies. *Rev. Code Miss. 1880, § 2875* (*Code 1930, § 985*). Every homicide, perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or the attempt to perpetrate, any arson, rape, robbery, or burglary; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed; or perpetrated by any act greatly dangerous to the lives of others, and evidencing a depraved mind, regardless of human life, although without any preconceived purpose to deprive any particular person of life,—is murder in the first degree; and every other homicide committed under such circumstances as would have constituted murder at common law is murder in the second degree. *Code Ala. 1886, § 3725* (*Code 1923, § 4454*).

Degrees of Murder

These were unknown at common law, but have been introduced in many states by statutes, the terms of which are too variant to be here discussed in detail. In general, however, it may be said that most states only divide the crime into "murder in the first degree" and "murder in the second degree," though in a few there are as many as five degrees; and that the general purport of these statutes is to confine murder in the first degree to homicide committed by poison, lying in wait, and other killings committed in pursuance of a deliberate and premeditated design, and to those which accompany the commission of some of the more atrocious felonies, such as burglary, arson, and rape; while murder in the second degree occurs where there is no such deliberately formed

design to take life or to perpetrate one of the enumerated felonies as is required for the first degree, but where, nevertheless, there was a purpose to kill (or at least a purpose to inflict the particular injury without caring whether it caused death or not) formed instantaneously in the mind, and where the killing was without justification or excuse, and without any such provocation as would reduce the crime to the grade of manslaughter. *State v. Nelson*, 148 Minn. 285, 181 N. W. 850, 851; *State v. Liolios*, 285 Mo. 1, 225 S. W. 941, 947; *Commonwealth v. Divomte*, 262 Pa. 504, 105 A. 821, 822; *Parker v. State*, 24 Wyo. 491, 161 P. 552, 554; *King v. State*, 117 Ark. 82, 173 S. W. 852, 854; *Montgomery v. State*, 178 Wis. 461, 190 N. W. 105, 107; *Boyet v. State*, 69 Fla. 648, 68 So. 931; *State v. Sanchez*, 27 N. M. 62, 196 P. 175. In a few states, there is a crime of "murder in the third degree," which is defined as the killing of a human being without any design to effect death by a person who is engaged in the commission of a felony. *Tillman v. State*, 81 Fla. 558, 88 So. 377, 378. The fourth and fifth degrees (in New Mexico) correspond to certain classifications of manslaughter elsewhere.

MURDRUM. In old English law. The killing of a man in a secret manner.

When a man was thus killed, and he was unknown, by the laws of Canute he was presumed to be a Dane, and the vill was compelled to pay forty marks to the king for his death. After the conquest, a similar law was made in favor of Normans, which was abolished by 3 Edw. III.

The fine formerly imposed in England upon a person who had committed homicide *per infortunium* or *se defendendo*. *Prin. Pen. Law* 219, note.

MURORUM OPERATIO. Lat. The service of work and labor done by inhabitants and adjoining tenants in building or repairing the walls of a city or castle; their personal service was commuted into *murage*, (*q. v.*) Cowell.

MURTHRUM. In old Scotch law. Murder or murder. Skene.

MUSEUM. A building or institution for the cultivation of science or the exhibition of curiosities or works of art. The term embraces not only collections of curiosities for the entertainment of the sight, but also such as would interest, amuse, and instruct the mind. *Bostick v. Purdy*, 5 Stew. & P. (Ala.) 109.

MUSICAL INSTRUMENT. As used in exemption statutes, this term may include not only the instrument itself, as a piano, but also a plush cover and piano stool needful to the enjoyment of the piano. *Thompson v. Peterson*, 122 Minn. 228, 142 N. W. 307, 310.

MUSICAL TABLOID. As distinguished from vaudeville, a condensation of a musical comedy in which the plot and the characters taken by different actors are preserved, to pro-

duce just one whole play by itself, without any special independent features brought into it; it classifies as vaudeville only when other features are put on during the intermissions between the scenes or acts. *Princess Amusement Co. v. Well* (C. C. A.) 271 F. 226, 231.

MUSSA. In old English law. A moss or marsh ground, or a place where sedges grow; a place overrun with moss. Cowell.

MUSSEL. A fresh water shellfish capable of locomotion, usually living in the bed of streams partially covered with mud; being a live animal, it cannot be deemed part of the realty within a statute allowing treble damages for digging up and carrying away a part of the realty. *Gratz v. McKee* (C. C. A.) 258 F. 335, 336.

MUST. This word, like the word "shall," is primarily of mandatory effect; *Patch v. Boards of Sup'rs of Osceola and Dickinson Counties*, 178 Iowa 283, 159 N. W. 694, 695; *Christensen v. Foster* (Tex. Civ. App.) 297 S. W. 657, 658; and in that sense is used in antithesis to "may"; *Emery v. First Nat. Bank*, 32 N. D. 575, 156 N. W. 105, 109; *Reinert Bros. Const. Co. v. Tootle*, 200 Mo. App. 284, 206 S. W. 422, 424; *Mitchell v. Hancock* (Tex. Civ. App.) 196 S. W. 694, 700; *Marshall v. Foote*, 81 Cal. App. 98, 252 P. 1075, 1076; *Berg v. Merchant* (C. C. A.) 15 F.(2d) 990, 991. But this meaning of the word is not the only one, and it is often used in a merely directory sense; *Munro v. State*, 223 N. Y. 208, 119 N. E. 444, 445; *State v. Barnell*, 109 Ohio St. 246, 142 N. E. 611, 614; *Hamblin v. State Board of Land Com'rs*, 55 Utah, 402, 187 P. 178, 179; *State v. Delaney*, 166 Wis. 141, 164 N. W. 825, 826; and consequently is a synonym for the word "may" not only in the permissive sense of that word; *Pleasant Grove Union School Dist. v. Algeo*, 61 Cal. App. 660, 215 P. 726; but also in the mandatory sense which it sometimes has; *People v. Highway Com'rs of Town of Anchor*, 279 Ill. 542, 117 N. E. 56, 57; *Ash v. Superior Court of San Bernardino County*, 33 Cal. App. 800, 166 P. 841, 842.

MUSTER. To assemble together troops and their arms, whether for inspection, drill, or service in the field. To take recruits into the service in the army and inscribe their names on the muster-roll or official record. To summon together; to enroll in service. *Bannister v. Soldiers' Bonus Board*, 43 R. I. 346, 112 A. 422, 423, 13 A. L. R. 589. In the latter sense the term implies that the persons mustered are not already in the service. *Tyler v. Pomeroy*, 8 Allen (Mass.) 480.

MUSTER-MASTER. One who superintended the muster to prevent frauds. *St. 35 Eliz. c. 4.*

MUSTER-BOOK. A book in which the forces are registered. *Termes de la Ley.*

MUSTER-ROLL. In maritime law. A list or account of a ship's company, required to be kept by the master or other person having care of the ship, containing the name, age, national character, and quality of every person employed in the ship. Abb. Shipp. 191, 192; Jac. Sea Laws, 161. It is of great use in ascertaining the ship's neutrality. Marsh. Ins. p. 407; Ketland v. Lebering, 2 Wash. C. C. 201, Fed. Cas. No. 7,744.

MUSTIZO. A name given in a South Carolina Act of 1740 to the issue of an Indian and a negro. Miller v. Dawson, Dudl. (S. C.) 174.

MUTA-CANUM. A kennel of hounds; one of the mortuaries to which the crown was entitled at a bishop's or abbot's decease. 2 Bl. Comm. 426.

MUTATIO NOMINIS. Lat. In the civil law. Change of name. Cod. 9, 25.

MUTATION. In French law. This term is synonymous with "change," and is especially applied to designate the change which takes place in the property of a thing in its transmission from one person to another. Mutation, therefore, happens when the owner of the thing sells, exchanges, or gives it. Merl. Répert.

MUTATION OF LIBEL. In practice. An amendment allowed to a libel, by which there is an alteration of the substance of the libel, as by propounding a new cause of action, or asking one thing instead of another. Dunl. Adm. Pr. 213; U. S. v. Four Part Pieces of the Woollen Cloth, 1 Paine 435, Fed. Cas. No. 15,150; The Harmony, 1 Gall. 123, Fed. Cas. No. 6,081.

MUTATIS MUTANDIS. Lat. With the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. Housman v. Waterhouse, 191 App. Div. 850, 182 N. Y. S. 249, 251.

MUTE. Speechless; dumb; that cannot or will not speak. In English criminal law, a prisoner is said to *stand mute* when, being arraigned for treason or felony, he either makes no answer at all, or answers foreign to the purpose or with such matter as is not allowable, and will not answer otherwise, or, upon having pleaded not guilty, refuses to put himself upon the country. 4 Bl. Comm. 324.

In consequence an act of congress of March 8, 1825, provided that if any person, in case of an offence not capital, shall stand mute, the trial shall proceed as upon a plea of not guilty. A similar provision is to be found in the laws of many states, and, in England, the same practice is adopted by the court.

MUTILATION. As applied to written documents, such as wills, court records, and the like, this term means rendering the document

imperfect by the subtraction from it of some essential part, as, by cutting, tearing, burning, or erasure, but without totally destroying it. See Woodfill v. Patton, 76 Ind. 583, 40 Am. Rep. 269. Also, the alteration in the writing, as in a negotiable instrument, so as to make it another and different instrument and no longer evidence of the contract which the parties made. Clem v. Chapman (Tex. Civ. App.) 262 S. W. 168, 171.

In Criminal Law

The depriving a man of the use of any of those limbs which may be useful to him in fight, the loss of which amounts to *mayhem*. 1 Bl. Comm. 130.

MUTINOUS. Insubordinate; disposed to mutiny; tending to incite or encourage mutiny.

MUTINY, v. To rise against lawful or constituted authority, particularly in the naval or military service. United States v. Krafft (C. C. A.) 249 F. 919, 925, L. R. A. 1918F, 402.

MUTINY, n. In criminal law. An insurrection of soldiers or seamen against the authority of their commanders; a sedition or revolt in the army or navy. See The Stacey Clarke (D. C.) 54 F. 533; McCargo v. New Orleans Ins. Co., 10 Rob. (La.) 313, 43 Am. Dec. 180; U. S. v. Smith, 1 Mas. 147, Fed. Cas. No. 16,337; U. S. v. Kelly, 4 Wash. C. C. 528, Fed. Cas. No. 15,516; U. S. v. Borden, 1 Spra. 376, Fed. Cas. No. 14,625; Rev. St. § 4596 (46 USCA § 701).

MUTINY ACT. In English law. An act of parliament annually passed to punish mutiny and desertion, and for the better payment of the army and their quarters. It was first passed April 12, 1689, and was the only provision for the payment of the army. 1 Bl. Comm. 415.

MUTUAL. Interchangeable; reciprocal; each acting in return or correspondence to the other; given and received;—spoken of an engagement or relation in which like duties and obligations are exchanged; *e. g.*, the marital relation. O'Malley v. O'Malley, 46 Mont. 549, 129 P. 501, 502, Ann. Cas. 1914B, 662. See, also, Canal-Commercial Trust & Savings Bank v. Brewer, 143 Miss. 146, 108 So. 424, 431, 47 A. L. R. 45; Hoover Commercial Co. v. Humphrey, 107 Miss. 810, 66 So. 214, 215; Wolfe v. Citizens' Bank of Dublin, 26 Ga. App. 510, 106 S. E. 605, 606; Gears v. Ryan, 6 Boyce (Del.) 66, 96 A. 756.

"Mutual" is not synonymous with "common." The latter word, in one of its meanings, denotes that which is shared, in the same or different degrees, by two or more persons; but the former implies reciprocal action or interdependent connection. This distinction, however, is often ignored, as in the title of Dickens' work, "Our Mutual Friend." And see Modern Order of Prætorians v. Bloom, 69 Okl. 219, 171 P. 917, 920; Naill v. Order of United Commercial Travelers of America, 103 Okl. 179, 229 P. 833, 837.

As to mutual "Accounts," "Assent," "Contract," "Conditions," "Contracts," "Covenants," "Credits," "Debts," "Insurance," "Insurance Company," "Mistake," "Promise," and "Testaments," see those titles.

MUTUALITY. Reciprocation; interchange. An acting by each of two parties; an acting in return.

In Contracts

Called, also, mutuality of obligation. *Warren v. Ray County Coal Co.*, 200 Mo. App. 442, 207 S. W. 883, 884. That quality of a contract which imposes an obligation on each to do, or permit to be done, something in consideration of the act or promise of the other. *Spear v. Orendorf*, 26 Md. 37; *King v. Prospect Point Fishing Club*, 126 Md. 213, 94 A. 780, 782; *Hudson v. Browning*, 264 Mo. 58, 174 S. W. 393, 395; *Dark Tobacco Growers Co-op. Ass'n v. Mason*, 150 Tenn. 228, 263 S. W. 60, 67; *Neola Elevator Co. v. Kruckman*, 185 Iowa, 1254, 171 N. W. 743, 744; *Nebraska Gas & Electric Co. v. City of Stromsburg, Neb.* (C. C. A.) 2 F.(2d) 518, 522.

"Mutuality" requires a contract to be of such a character that at the time it was entered into it might have been enforced by either of the parties against the other. *Barker v. Hauberg*, 325 Ill. 538, 156 N. E. 806, 808; *Townsend v. Milliken* (Tex. Civ. App.) 294 S. W. 938, 939.

"Mutuality" means something more than undertakings on the part of the parties; it may mean an undertaking on one side and an executed or supported consideration therefor on the other. *Paragon Oil Co. v. A. B. Hughes & Sons*, 193 Ky. 532, 236 S. W. 963; *Ullman v. Bee Hive Department Store*, 193 Wis. 350, 214 N. W. 349, 350, 53 A. L. R. 281. But see *C. G. Blake Co. v. W. R. Smith & Son*, 147 Va. 960, 133 S. E. 685, 688; *Ash v. Chas. F. Noble Oil & Gas Co.*, 96 Okl. 211, 223 P. 175, 179.

As to mutuality of "Assent," "Mistake," etc., see those titles.

MUTUANT. The person who lends chattels in the contract of *mutuum*, (*q. v.*).

MUTUARI. To borrow; *mutuatus*, a borrowing. 2 Arch. Pr. 25.

MUTUARY. A person who borrows personal chattels to be consumed by him and returned to the lender in kind and quantity; the borrower in a contract of *mutuum*.

MUTUATUS. A loan of money. See *Gilbert*, Com. Pleas 5.

MUTUS ET SURDUS. Lat. In civil and old English law. Dumb and deaf.

MUTUUM. Lat. A loan for consumption; a loan of chattels, upon an agreement that the borrower may consume them, returning to the lender an equivalent in kind and quantity; as, a loan of corn, wine, or money which is to be used or consumed, and is to be replaced by other corn, wine, or money. *Story*, Bailm. § 228; *Payne v. Gardiner*, 29 N. Y. 167; *Downes v. Phoenix Bank*, 6 Hill (N. Y.) 299; *Rahilly v. Wilson*, 20 Fed. Cas. 181. At common law, such a transaction is regarded as a sale or exchange, and not a bailment. *Hanes v. Shapiro & Smith*, 168 N. C. 24, 84 S. E. 33, 35; *New Domain Oil & Gas Co. v. Hayes*, 202 Ky. 377, 259 S. W. 715, 717, 38 A. L. R. 172.

MYNSTER-HAM. Monastic habitation; perhaps the part of a monastery set apart for purposes of hospitality, or as a sanctuary for criminals. *Anc. Inst. Eng.*

MYSTERY. A trade, art, or occupation. 2 Inst. 668. Masters frequently bind themselves in the indentures with their apprentices to teach them their art, trade, and *mystery*. *State v. Bishop*, 15 Me. 122; *Barger v. Caldwell*, 2 Dana (Ky.) 131.

MYSTIC TESTAMENT. In the law of Louisiana, a closed or sealed will, required by statute to be executed in a particular manner and to be signed (on the outside of the paper or of the envelope containing it) by a notary and seven witnesses as well as the testator. See *Civ. Code La. art. 1584*.