N

N. An abbreviation of "*Novellæ*," the Novels of Justinian, used in citing them. Tayl. Civil Law, 24.

In English, a common and familiar abbreviation for the word "north," as used in maps, charts, conveyances, etc. See Burr v. Broadway Ins. Co., 16 N. Y. 271; Village of Bradley v. New York Cent. R. Co., 296 Ill. 383, 129 N. E. 744, 746.

N. A. An abbreviation for "*non allocatur*," it is not allowed.

N. B. An abbreviation for "*nota bene*," mark well, observe; also "*nulla bona*," no goods.

N. C. D. *Nemine contra dicente.* No one dissenting.

N. D. An abbreviation for "Northern District."

N. E. I. An abbreviation for "*non est inventus*," he is not found.

N. L. An abbreviation of "*non liquet*," (which see.)

N. O. V. See Non Obstante Veredicto.

N. P. An abbreviation for "notary public," (Rowley v. Berrian, 12 Ill. 200;) also for "*nisi prius*," (*q. v.*).

N. R. An abbreviation for "New Reports;" also for "not reported," and for "nonresident."

N. S. An abbreviation for "New Series;" also for "New Style."

NAAM. Sax. The attaching or taking of movable goods and chattels, called "*vif*" or "*mort*" according as the chattels were living or dead. Termes de la Ley.

NABOB. Originally the governor of a province under the Mogul government of Hindostan, whence it became a mere title of any man of high rank, upon whom it was conferred without any office being attached to it. Wils. Indian Gloss.

NAIF. L. Fr. A villein; a born slave; a bondwoman.

NAIL. A lineal measure of two inches and a quarter.

NAKED. Bare; wanting in necessary conditions; incomplete, as a naked contract, (*nudum pactum,*) *i. e.*, a contract devoid of consideration, and therefore invalid; or simple, unilateral, comprising but a single element, as a naked authority, *i. e.*, one which is not coupled with any interest in the agent, but subsists for the benefit of the principal alone.

As to naked "Confession," "Deposit," "Possession," "Possibility," "Power," "Promise," and "Trust," see those titles.

NAM. In old English law. A distress or seizure of chattels.

As a Latin conjunction, for; because. Often used by the old writers in introducing the quotation of a Latin maxim.

NAMARE. L. Lat. In old records. To take, seize, or distrain.

NAMATIO. L. Lat. In old English and Scotch law. A distraining or taking of a distress; an impounding. Spelman.

NAME. The designation of an individual person, or of a firm or corporation. Riley v. Litchfield, 168 Iowa, 187, 150 N. W. 81, 83, Ann. Cas. 1917B, 172; Bacon v. Dawson, 53 Okl. 689, 157 P. 1033, 1034; Badger Lumber Co. v. Collinson, 97 Kan. 791, 156 P. 724, 725; O'Brien v. Board of Election Com'rs of City of Boston, 257 Mass. 332, 153 N. E. 553, 557; Evans v. Brendle, 173 N. C. 149, 91 S. E. 723, 724. In law a man cannot have more than one Christian name. Rex v. Newman, 1 Ld. Raym. 562. As to the history of Christian names and surnames and their use and relative importance in law, see In re Snook, 2 Hilt. (N. Y.) 566.

Distinctive Name

As used in regulation of United States Department of Agriculture. A trade, arbitrary, or fancy name which clearly distinguishes a food product, mixture, or compound from any other food product, mixture, or compound. Crescent Mfg. Co. v. Wilson (D. C.) 233 F. 282, 285; U. S. v. Forty Barrels and Twenty Kegs of Coca Cola, 241 U. S. 265, 36 S. Ct. 573, 580, 60 L. Ed. 995, Ann. Cas. 1917C, 487.

Name and Arms Clause

The popular name in English law for the clause, sometimes inserted in a will or settlement by which property is given to a person, for the purpose of imposing on him the condition that he shall assume the surname and arms of the testator or settlor, with a direction that, if he neglects to assume or discontinues the use of them, the estate shall devolve on the next person in remainder, and a provision for preserving contingent remainders. 3 Dav. Prec. Conv. 277; Sweet.

NAMELY. A difference, in grammatical sense, in strictness exists between the words namely and including. Namely imports interpretation, *i. e.*, indicates what is included in the previous term; but including imports addition, *i. e.*, indicates something not included. 2 Jarm. Wills 222.

NAMIUM. L. Lat. In old English law. A taking; a distress. Spelman. Things, goods, or animals taken by way of distress. *Simplex namium*, a simple taking or pledge. Bract. fol. 205b.

NAMIUM VETITUM. An unjust taking of the cattle of another and driving them to an unlawful place, pretending damage done by them. 3 Bl. Comm. 149.

NANTES, EDICT OF. A celebrated law for the security of Protestants, made by Henry IV. of France, and revoked by Louis XIV., October 2, 1685.

NANTISSEMENT. In French law, is the contract of pledge; if of a movable, it is called "*gage*;" and if of an immovable, it is called "*antichrèse*." Brown.

NARR. A common abbreviation of "*narratio*," (*q. v.*). A declaration in an action. Jacob.

NARRATIO. Lat. One of the common law names for a plaintiff's count or declaration, as being a narrative of the facts on which he relies.

NARRATIVE. In Scotch conveyancing. That part of a deed which describes the grantor, and person in whose favor the deed is granted, and states the cause (consideration) of granting. Bell.

NARRATOR. A countor; a pleader who draws *narrs*. *Serviens narrator*, a serjeant at law. Fleta, l. 2, c. 37.

NARROW SEAS. Those seas which run between two coasts not far apart. The term is sometimes applied to the English channel. Wharton.

NASCITURUS. Lat. That shall hereafter be born. A term used in marriage settlements to designate the future issue of the marriage, as distinguished from "*natus*," a child already born.

NATALE. The state and condition of a man acquired by birth.

NATI ET NASCITURI. Born and to be born. All heirs, near and remote.

NATIO. In old records. A native place, Cowell.

NATION. A people, or aggregation of men, existing in the form of an organized jural society, usually inhabiting a distinct portion of the earth, speaking the same language, using the same customs, possessing historic continuity, and distinguished from other like groups by their racial origin and characteristics, and generally, but not necessarily, living under the same government and sovereignty. See Montoya v. U. S., 180 U. S. 261, 21 S. Ct. 358, 45 L. Ed. 521; Worcester v. Georgia, 6 Pet. 539, 8 L. Ed. 483; Republic of Honduras v. Soto, 112 N. Y. 310, 19 N. E. 845, 2 L. R. A. 642, 8 Am. St. Rep. 744.

Besides the element of autonomy or self-government, that is, the independence of the community as a whole from the interference of any foreign power in its affairs or any subjection to such power, it is further necessary to the constitution of a nation that it should be an organized jural society, that is, both governing its own members by regular laws, and defining and protecting their rights, and respecting the rights and duties which attach to it as a constitutent member of the family of nations. Such a society, says Vattel, has her affairs and her interests; she deliberates and takes resolutions in common; thus becoming a moral person, who possesses an understanding and will peculiar to herself, and is susceptible of obligations and rights. Vattel, §§ 1, 2.

The words "nation" and "people" are frequently used as synonyms, but there is a great difference between them. A nation is an aggregation of men speaking the same language, having the same customs, and endowed with certain moral qualities which distinguish them from other groups of a like nature. It would follow from this definition that a nation is destined to form only one *state*, and that it constitutes one indivisible whole. Nevertheless, the history of every age presents us with nations divided into several states. Thus, Italy was for centuries divided among several different governments. The *people* is the collection of all citizens without distinction of rank or order. All men living under the same *government* compose the *people* of the *state*. In relation to the state, the citizens constitute the people; in relation to the human race, they constitute the nation. A free nation is one not subject to a foreign government, whatever be the constitution of the state; a *people* is free when all the citizens can participate in a certain measure in the direction and in the examination of public affairs. The people is the political body brought into existence by community of laws, and the people may perish with these laws. The nation is the moral body, independent of political revolutions, because it is constituted by inborn qualities which render it indissoluble. The *state* is the people organized into a political body. Lalor, Pol. Enc. *s. v.*

In American constitutional law the word "state" is applied to the several members of the American Union, while the word "nation" is applied to the whole body of the people embraced within the jurisdiction of the federal government. Cooley, Const. Lim. 1. See Texas v. White, 7 Wall. 720, 19 L. Ed. 227.

NATIONAL. Pertaining or relating to a nation as a whole; commonly applied in American law to institutions, laws, or affairs of the United States or its government, as opposed to those of the several states.

NATIONAL BANK. A bank incorporated and doing business under the laws of the United States, as distinguished from a *state* bank, which derives its powers from the authority of a particular state.

NATIONAL CURRENCY. Notes issued by national banks, and by the United States government.

NATIONAL DEBT. The money owing by government to some of the public, the interest of which is paid out of the taxes raised by the whole of the public.

NATIONAL DOMAIN. See Domain.

NATIONAL DOMICILE. See Domicile.

NATIONAL GOVERNMENT. The government of a whole nation, as distinguished from

that of a local or territorial division of the nation, and also as distinguished from that of a league or confederation. "A *national* government is a government of the people of a single state or nation, united as a community by what is termed the 'social compact,' and possessing complete and perfect supremacy over persons and things, so far as they can be made the lawful objects of civil government. A *federal* government is distinguished from a national government, by its being the government of a community of independent and sovereign states, united by compact." Piqua Branch Bank v. Knoup, 6 Ohio St. 393.

NATIONALITY. That quality or character which arises from the fact of a person's belonging to a nation or state. Nationality determines the political *status* of the individual, especially with reference to allegiance; while domicile determines his civil *status*. Nationality arises either by birth or by naturalization. According to Savigny, "nationality" is also used as opposed to "territoriality," for the purpose of distinguishing the case of a nation having no national territory; *e. g.*, the Jews. 8 Sav. Syst. § 346; Westl. Priv. Int. Law, 5.

NATIONALIZACION. In Spanish and Mexican law. Nationalization. "The nationalization of property is an act which denotes that it has become that of the nation by some process of law, whereby private individuals or corporations have been for specified reasons deprived thereof." Hall, Mex. Law, § 749.

NATIONS, LAW OF. See International Law.

NATIVE. A natural-born subject or citizen; a denizen by birth; one who owes his domicile or citizenship to the fact of his birth within the country referred to. The term may also include one born abroad, if his parents were then citizens of the country, and not permanently residing in foreign parts. See U. S. v. Wong Kim Ark, 169 U. S. 649, 18 S. Ct. 456, 42 L. Ed. 890; New Hartford v. Canaan, 54 Conn. 39, 5 A. 360; Oken v. Johnson, 160 Minn. 217, 199 N. W. 910; Ex parte Gilroy (D. C.) 257 F. 110, 127; Minotto v. Bradley (D. C.) 252 F. 600, 602.

NATIVUS. Lat. In old English law, a native; specifically, one born into a condition of servitude; a born serf or villein.

—Nativa. A niefe or female villein. So called because for the most part bond by nativity. Co. Litt. 122*b*.

—Nativi conventionarii. Villeins or bondmen by contract or agreement.

—Nativi de stipite. Villeins or bondmen by birth or stock. Cowell.

—Nativitas. Villenage; that state in which men were born slaves. 2 Mon. Angl. 643.

—Nativo habendo. A writ which lay for a lord when his villein had run away from him. It was directed to the sheriff, and commanded him to apprehend the villein, and to restore him together with his goods to the lord. Brown.

Natura appetit perfectum; ita et lex. Nature covets perfection; so does law also. Hob. 144.

NATURA BREVIUM. The name of an ancient collection of original writs, accompanied with brief comments and explanations, compiled in the time of Edward III. This is commonly called "*Old* Natura Brevium," (or "O. N. B.,") to distinguish it from Fitzherbert's Natura Brevium, a later work, cited as "F. N. B.," or "Fitzh. Nat. Brev."

Natura fide jussionis sit strictissimi juris et non durat vel extendatur de re ad rem, de persona ad personam, de tempore ad tempus. The nature of the contract of suretyship is *strictissimi juris*, and cannot endure nor be extended from thing to thing, from person to person, or from time to time. Burge, Sur. 40.

Natura non facit saltum; ita nec lex. Nature makes no leap, [no sudden or irregular movement;] so neither does law. Co. Litt. 238. Applied in old practice to the regular observance of the degrees in writs of entry, which could not be passed over *per saltum*.

Natura non facit vacuum, nec lex supervacuum. Nature makes no vacuum, the law nothing purposeless. Co. Litt. 79.

Naturæ vis maxima; natura bis maxima. The force of nature is greatest; nature is doubly great. 2 Inst. 564.

NATURAL. The juristic meaning of this term does not differ from the vernacular, except in the cases where it is used in opposition to the term "legal;" and then it means proceeding from or determined by physical causes or conditions, as distinguished from positive enactments of law, or attributable to the nature of man rather than to the commands of law, or based upon moral rather than legal considerations or sanctions.

—Natural affection. Such as naturally subsists between near relatives, as a father and child, brother and sister, husband and wife. This is regarded in law as a good consideration.

—Natural-born subject. In English law. One born within the dominions, or rather within the allegiance, of the king of England.

—Natural fool. A person born without understanding; a born fool or idiot. Sometimes called, in the old books, a "natural." In re Anderson, 132 N. C. 243, 43 S. E. 649.

—Natural life. The period between birth and natural death, as distinguished from civil death, (*q. v.*).

As to natural "Allegiance," "Boundary," "Channel," "Child," "Day," "Death," "Domi-

cile," "Equity," "Fruits," "Guardian," "Heir," "Infancy," "Liberty," "Obligation," "Person," "Possession," "Presumption," "Rights," "Succession," "Water-course," and "Year," see those titles.

NATURAL LAW. This expression, "natural law," or *jus naturale*, was largely used in the philosophical speculations of the Roman jurists of the Antonine age, and was intended to denote a system of rules and principles for the guidance of human conduct which, independently of enacted law or of the systems peculiar to any one people, might be discovered by the rational intelligence of man, and would be found to grow out of and conform to his *nature*, meaning by that word his whole mental, moral, and physical constitution. The point of departure for this conception was the Stoic doctrine of a life ordered "according to nature," which in its turn rested upon the purely supposititious existence, in primitive times, of a "state of nature;" that is, a condition of society in which men universally were governed solely by a rational and consistent obedience to the needs, impulses, and promptings of their true nature, such nature being as yet undefaced by dishonesty, falsehood, or indulgence of the baser passions. See Maine, Anc. Law, 50, et seq. See Jus Naturale.

Naturale est quidlibet dissolvi eo modo quo ligatur. It is natural for a thing to be unbound in the same way in which it was bound. Jenk. Cent. 66; Broom, Max. 877.

NATURALEZA. In Spanish law. The state of a natural-born subject. White, New Recop. b. 1, tit. 5, c. 2.

NATURALIZATION. The act of adopting an alien into a nation and clothing him with all the rights possessed by a natural-born citizen. Boyd v. Nebraska, 143 U. S. 135, 12 S. Ct. 375, 36 L. Ed. 103.

Collective Naturalization

Takes place where a government, by treaty or cession, acquires the whole or part of the territory of a foreign nation and takes to itself the inhabitants thereof, clothing them with the rights of citizenship either by the terms of the treaty or by subsequent legislation. State v. Boyd, 31 Neb. 682, 48 N. W. 739; People v. Board of Inspectors, 32 Misc. Rep. 584, 67 N. Y. S. 236; Opinion of Justices, 68 Me. 589.

NATURALIZE. To confer citizenship upon an alien; to make a foreigner the same, in respect to rights and privileges, as if he were a native citizen or subject.

NATURALIZED CITIZEN. One who, being an alien by birth, has received citizenship under the laws of the state or nation.

NATUS. Lat. Born, as distinguished from *nasciturus*, about to be born. *Ante natus*, one born before a particular person or event, *e. g.*, before the death of his father, before a political revolution, etc. *Post natus*, one born after a particular person or event.

NAUCLERUS. Lat. In the civil law. The master or owner of a merchant vessel. Calvin.

NAUFRAGE. In French maritime law. Shipwreck. "The violent agitation of the waves, the impetuous force of the winds, storm, or lightning, may swallow up the vessel, or shatter it, in such a manner that nothing remains of it but the wreck; this is called 'making shipwreck,' (*faire naufrage.*) The vessel may also strike or run aground upon a bank, where it remains grounded, which is called '*échouement;*' it may be dashed against the coast or a rock, which is called '*bris;*' an accident of any kind may sink it in the sea, where it is swallowed up, which is called '*sombrer.*'" 3 Pard. Droit Commer, § 643.

NAUFRAGIUM. Lat. Shipwreck.

NAUGHT. In old practice. Bad; defective. "The bar is *naught.*" 1 Leon. 77. "The avowry is *naught.*" 5 Mod. 73. "The plea is undoubtedly *naught.*" 10 Mod. 329. See 11 Mod. 179.

NAULAGE. The freight of passengers in a ship. Johnson; Webster.

NAULUM. In the civil law. The freight or fare paid for the transportation of cargo or passengers over the sea in a vessel. This is a Latinized form of a Greek word.

NAUTA. Lat. In the civil and maritime law. A sailor; one who works a ship. Calvin.

Any one who is on board a ship for the purpose of navigating her.

The employer of a ship. Dig. 4, 9, 1, 2.

NAUTICA PECUNIA. A loan to a shipowner, to be repaid only upon the successful termination of the voyage, and therefore allowed to be made at an extraordinary rate of interest (*nauticum fœnus*). Holland, Jurispr. 250.

NAUTICAL. Pertaining to ships or to the art of navigation or the business of carriage by sea.

NAUTICAL ASSESSORS. Experienced shipmasters, or other persons having special knowledge of navigation and nautical affairs, who are called to the assistance of a court of admiralty, in difficult cases involving questions of negligence, and who sit with the judge during the argument, and give their advice upon questions of seamanship or the weight of testimony. The Empire (D. C.) 19 F. 559; The Clement, 2 Curt. 369, Fed. Cas. No. 2,879.

NAUTICAL MILE. See Mile.

NAUTICUM FŒNUS. Lat. In the civil law. Nautical or maritime interest; an extraordinary rate of interest agreed to be paid for the loan of money on the hazard of a voyage; corresponding to interest on contracts of bottomry or respondentia in English and American maritime law. See Mackeld. Rom. Law, § 433; 2 Bl. Comm. 458.

NAVAGIUM. In old English law. A duty on certain tenants to carry their lord's goods in a ship.

NAVAL. Appertaining to the navy, (*q. v.*).

NAVAL COURTS. Courts held abroad in certain cases to inquire into complaints by the master or seamen of a British ship, or as to the wreck or abandonment of a British ship. A naval court consists of three, four, or five members, being officers in her majesty's navy, consular officers, masters of British merchant ships, or British merchants. It has power to supersede the master of the ship with reference to which the inquiry is held, to discharge any of the seamen, to decide questions as to wages, send home offenders for trial, or try certain offenses in a summary manner. Sweet.

NAVAL COURTS-MARTIAL. Tribunals for the trial of offenses arising in the management of public war vessels.

NAVAL LAW. The system of regulations and principles for the government of the navy.

NAVAL OFFICER. An officer in the navy. Also an important functionary in the United States custom-houses, who estimates duties, signs permits and clearances, certifies the collectors' returns, etc.

NAVARCHUS. In the civil law. The master or commander of a ship; the captain of a man-of-war.

NAVICULARIUS. In the civil law. The master or captain of a ship. Calvin.

NAVIGABLE. Capable of being navigated; that may be navigated or passed over in ships or vessels. But the term is generally understood in a more restricted sense, viz., subject to the ebb and flow of the tide.

"The doctrine of the common law as to the navigability of waters has no application in this country. Here the ebb and flow of the tide do not constitute the usual test, as in England, or any test at all, of the navigability of waters. There no waters are navigable in fact, or at least to any considerable extent, which are not subject to the tide, and from this circumstance tide-water and navigable water there signify substantially the same thing. But in this country the case is widely different. Some of our rivers are as navigable for many hundreds of miles above as they are below the limits of tide-water, and some of them are navigable for great distances by large vessels, which are not even affected by the tide at any point during their entire length. A different test must therefore be applied to determine the navigability of our rivers, and that is found in their navigable capacity. Those rivers must be regarded as public navigable rivers, in law, which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. And they constitute navigable waters of the United States, within the meaning of the acts of congress, in contradistinction from the navigable waters of the states, when they form, in their ordinary condition, by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water." The Daniel Ball, 10 Wall. 563, 19 L. Ed. 999. And see Packer v. Bird, 11 S. Ct. 210, 137 U. S. 661, 34 L. Ed. 819; The Genesee Chief, 12 How. 455, 13 L. Ed. 1058; Illinois Cent. R. Co. v. State, 13 S. Ct. 110, 146 U. S. 387, 36 L. Ed. 1018.

It is true that the flow and ebb of the tide is not regarded, in this country, as the usual, or any real, test of navigability; and it only operates to impress, *prima facie*, the character of being public and navigable, and to place the *onus* of proof on the party affirming the contrary. But the navigability of tide-waters does not materially depend upon past or present actual public use. Such use may establish navigability, but it is not essential to give the character. Otherwise, streams in new and unsettled sections of the country, or where the increase, growth, and development have not been sufficient to call them into public use, would be excluded, though navigable in fact, thus making the character of being a navigable stream dependent on the occurrence of the necessity of public use. Capability of being used for useful purposes of navigation, of trade and travel, in the usual and ordinary modes, and not the extent and manner of the use, is the test of navigability. Sullivan v. Spotswood, 82 Ala. 166, 2 So. 716.

NAVIGABLE RIVER OR STREAM. At common law, a river or stream in which the tide ebbs and flows, or as far as the tide ebbs and flows. 3 Kent, Comm. 412, 414, 417, 418; 2 Hil. Real Prop. 90, 91. But as to the definition in American law, see Navigable, *supra.*

NAVIGABLE WATERS. Those waters which afford a channel for useful commerce. The Montello, 20 Wall. 430, 22 L. Ed. 391. In several states so long as a stream or body of water may be put to public use it is "navigable" whether it can be used for commercial navigation or not. U. S. v. Holt State Bank (C. C. A.) 294 F. 161, 166; State v. Korrer, 127 Minn. 60, 148 N. W. 617, 618, L. R. A. 1916C, 139; State v. Akers, 92 Kan. 169, 140 P. 637, 640, Ann. Cas. 1916B, 543; Collins v. Gerhardt, 237 Mich. 38, 211 N. W. 115, 116; Sumner Lumber & Shingle Co. v. Pacific Coast Power Co., 72 Wash. 631, 131 P. 220, 222.

See, also, Navigable, supra.

NAVIGATE. To conduct vessels through navigable waters; to use the waters as a means of communication. Ryan v. Hook, 34 Hun (N. Y.) 185.

NAVIGATION. The act or the science or the business of traversing the sea or other waters

in ships or vessels. Pollock v. Cleveland Ship Building Co., 56 Ohio St. 655, 47 N. E. 582; The Silvia, 171 U. S. 462, 19 S. Ct. 7, 43 L. Ed. 241; Laurie v. Douglass, 15 Mees. & W. 746.

Navigation Acts

In English law, were various enactments passed for the protection of British shipping and commerce as against foreign countries. For a sketch of their history and operation, see 3 Steph. Comm. They are now repealed. See 16 & 17 Vict. c. 107, and 17 & 18 Vict. cc. 5, 120. Wharton.

Navigation, Rules of

Rules and regulations adopted by commercial nations to govern the steering and management of vessels approaching each other at sea so as to avoid the danger of collision or fouling.

Regular Navigation

In this phrase, the word "regular" may be used in contradistinction to "occasional," rather than to "unlawful," and refer to vessels that, alone or with others, constitute lines, and not merely to such as are regular in the sense of being properly documented under the laws of the country to which they belong. The Steamer Smidt, 16 Op. Attys. Gen. 276.

NAVIRE. Fr. In French law. A ship. Emerig. Traité des Assur. c. 6, § 1.

NAVIS. Lat. A ship; a vessel.

NAVIS BONA. A good ship; one that was staunch and strong, well caulked, and stiffened to bear the sea, obedient to her helm, swift, and not unduly affected by the wind. Calvin.

NAVY. A fleet of ships; the aggregate of vessels of war belonging to an independent nation. In a broader sense, and as equivalent to "naval forces," the entire corps of officers and men enlisted in the naval service and who man the public ships of war, including in this sense, in the United States, the officers and men of the Marine Corps. See Wilkes v. Dinsman, 7 How. 124, 12 L. Ed. 618; U. S. v. Dunn, 120 U. S. 249, 7 S. Ct. 507, 30 L. Ed. 667.

NAVY BILLS. Bills drawn by officers of the English navy for their pay, etc.

NAVY DEPARTMENT. One of the executive departments of the United States, presided over by the secretary of the navy, and having in charge the defense of the country by sea, by means of ships of war and other naval appliances.

NAVY PENSION. A pecuniary allowance made in consideration of past services of some one in the navy.

NAZERANNA. A sum paid to government as an acknowledgment for a grant of lands, or any public office. Enc. Lond.

NAZIM. In Hindu law. Composer, arranger, adjuster. The first officer of a province, and minister of the department of criminal justice.

NE ADMITTAS. Lat. In ecclesiastical law. The name of a prohibitory writ, directed to the bishop, at the request of the plaintiff or defendant, where a *quare impedit* is pending, when either party fears that the bishop will admit the other's clerk pending the suit between them. Fitzh. Nat. Brev. 37.

NE BAILA PAS. L. Fr. He did not deliver. A plea in detinue, denying the delivery to the defendant of the thing sued for.

NE DISTURBA PAS. L. Fr. (Does or did not disturb.) In English practice. The general issue or general plea in *quare impedit.* 3 Steph. Comm. 663.

NE DONA PAS, or NON DEDIT. The general issue in a formedon, now abolished. It denied the gift in tail to have been made in manner and form as alleged; and was therefore the proper plea, if the tenant meant to dispute the fact of the gift, but did not apply to any other case. 5 East, 289.

NE EXEAT REGNO. Lat. In English practice. A writ which issues to restrain a person from leaving the kingdom. It was formerly used for political purposes, but is now only resorted to in equity when the defendant is about to leave the kingdom; it is only in cases where the intention of the party to leave can be shown that the writ is granted.

NE EXEAT REPUBLICA. Lat. In American practice. A writ similar to that of *ne exeat regno, (q. v.,)* available to the plaintiff in a civil suit, under some circumstances, when the defendant is about to leave the state. See Dean v. Smith, 23 Wis. 483, 99 Am. Dec. 198; Adams v. Whitcomb, 46 Vt. 712; Cable v. Alvord, 27 Ohio St. 664.

NE GIST PAS EN BOUCHE. L. Fr. It does not lie in the mouth. A common phrase in the old books. Yearb. M. 3 Edw. II. 50.

NE INJUSTE VEXES. Lat. In old English practice. A prohibitory writ, commanding a lord not to demand from the tenant more services than were justly due by the tenure under which his ancestors held.

NE LUMINIBUS OFFICIATUR. Lat. In the civil law. The name of a servitude which restrains the owner of a house from making such erections as obstruct the light of the adjoining house. Dig. 8, 4, 15, 17.

NE QUID IN LOCO PUBLICO VEL ITINERE FIAT. Lat. That nothing shall be done (put or erected) in a public place or way. The title of an interdict in the Roman law. Dig. 43, 8.

NE RECIPIATUR. Lat. That it be not received. A *caveat* or warning given to a law

officer, by a party in a cause, not to receive the next proceedings of his opponent. 1 Sell. Pr. 8.

NE RECTOR PROSTERNET ARBORES. L. Lat. The statute 35 Edw. I. § 2, prohibiting rectors, *i. e.*, parsons, from cutting down the trees in church-yards. In Rutland v. Green, 1 Keb. 557, it was extended to prohibit them from opening new mines and working the minerals therein. Brown.

NE RELESSA PAS. L. Fr. Did not release. Where the defendant had pleaded a release, this was the proper replication by way of traverse.

NE UNQUES ACCOUPLE. L. Fr. Never married. More fully, *ne unques accouple en loiall matrimonie*, never joined in lawful marriage. The name of a plea in the action of dower *unde nihil habet*, by which the tenant denied that the dowress was ever lawfully married to the decedent.

NE UNQUES EXECUTOR. L. Fr. Never executor. The name of a plea by which the defendant denies that he is an executor, as he is alleged to be; or that the plaintiff is an executor, as he claims to be.

NE UNQUES SEISE QUE DOWER. L. Fr. (Never seised of a dowable estate.) In pleading. The general issue in the action of dower *unde nil habet*, by which the tenant denies that the demandant's husband was *ever seised* of an estate of which dower might be had. Rosc. Real Act. 219, 220.

NE UNQUES SON RECEIVER. L. Fr. In pleading. The name of a plea in an action of account-render, by which the defendant denies that he ever was receiver of the plaintiff. 12 Vin. Abr. 183.

NE VARIETUR. Lat. It must not be altered. A phrase sometimes written by a notary upon a bill or note, for the purpose of establishing its identity, which, however, does not affect its negotiability. Fleckner v. Bank of United States, 8 Wheat. 338, 5 L. Ed. 631.

NEAP TIDES. Those tides which happen between the full and change of the moon, twice in every twenty-four hours. Teschemacher v. Thompson, 18 Cal. 21, 79 Am. Dec. 151.

NEAR. This word, as applied to space, can have no positive or precise meaning. It is a relative term, depending for its signification on the subject-matter in relation to which it is used and the circumstances under which it becomes necessary to apply it to surrounding objects. Barrett v. Schuyler County Court, 44 Mo. 197; People v. Collins, 19 Wend. (N. Y.) 60; Boston & P. R. Corp. v. Midland R. Co., 1 Gray (Mass.) 367; Indianapolis & V. R. Co. v. Newsom, 54 Ind. 125; Holcomb v. Danby, 51 Vt. 428.

NEAT, NET. The clear weight or quantity of an article, without the bag, box, keg, or other thing in which it may be enveloped.

NEAT CATTLE. Oxen or heifers. "Beeves" may include neat stock, but all neat stock are not beeves. Castello v. State, 36 Tex. 324; Hubotter v. State, 32 Tex. 479. Straight-backed, domesticated animals of the bovine genus regardless of sex, and is not generally but may be, taken to mean calves, or animals younger than yearlings. It includes cows, bulls, and steers, but not horses, mares, geldings, colts, mules, jacks, or jennies, goats, hogs, sheep, shoats, or pigs. State v. District Court of Fifth Judicial Dist. in and for Nye County, 42 Nev. 218, 174 P. 1023, 1025; State v. Swager, 110 Wash. 431, 188 P. 504, 506.

NEAT-LAND. Land let out to the yeomanry. Cowell.

NEATNESS. In pleading. The statement in apt and appropriate words of all the necessary facts, and no more. Lawes, Pl. 62.

Nec curia deficeret in justitia exhibenda. Nor should the court be deficient in showing justice. 4 Inst. 63.

NEC NON. A clause so called which was used as a fiction to give jurisdiction to the common pleas in connection with the writ of *quare clausum fregit*. 1 Holdsw. Hist. E. L. 89, note. See Bill of Middlesex.

Nec tempus nec locus occurrit regi. Jenk. Cent. 190. Neither time nor place affects the king.

Nec veniam effuso sanguine casus habet. Where blood is spilled, the case is unpardonable. 3 Inst. 57.

Nec veniam, læso numine, casus habet. Where the Divinity is insulted the case is unpardonable. Jenk. Cent. 167.

NECATION. The act of killing.

NECESSARIES. Things indispensable, or things proper and useful, for the sustenance of human life. This is a relative term, and its meaning will contract or expand according to the situation and social condition of the person referred to. Megraw v. Woods, 93 Mo. App. 647, 67 S. W. 709; Warner v. Heiden, 28 Wis. 517, 9 Am. Rep. 515; Artz v. Robertson, 50 Ill. App. 27; Conant v. Burnham, 133 Mass. 505, 43 Am. Rep. 532.

In reference to the contracts of infants, this term is not used in its strictest sense, nor limited to that which is required to sustain life. Those things which are proper and suitable to each individual, according to his circumstances and condition in life, are necessaries, if not supplied from some other source. See Hamilton v. Lane, 138 Mass. 360; Jordan v. Coffield, 70 N. C. 113; Middlebury College v. Chandler, 16 Vt. 685, 42 Am. Dec. 537; Breed v. Judd, 1 Gray (Mass.) 458.

In the case of ships the term "necessaries" means such things as are fit and proper for the service in which the ship is engaged, and such as the owner, being a prudent man, would have ordered if present; *e. g.*, anchors, rigging, repairs, victuals. Maude & P. Shipp. 71, 113. The master may hypothecate the ship for necessaries supplied abroad so as to bind the owner. Sweet. See The Plymouth Rock, 19 Fed. Cas. 898; Hubbard v. Roach (C. C.) 2 F. 394; The Gustavia, 11 Fed. Cas. 126.

Necessarium est quod non potest aliter se habere. That is necessary which cannot be otherwise.

NECESSARIUS. Lat. Necessary; unavoidable; indispensable; not admitting of choice or the action of the will; needful.

NECESSARY. As used in jurisprudence, the word "necessary" does not always import an absolute physical necessity, so strong that one thing, to which another may be termed "necessary," cannot exist without that other. It frequently imports no more than that one thing is convenient or useful or essential to another. To employ the means *necessary* to an end is generally understood as employing any means calculated to produce the end, and not as being confined to those single means without which the end would be entirely unattainable. McCulloch v. Maryland, 4 Wheat. 316, 413, 4 L. Ed. 579.

As to necessary "Damages," "Deposit," "Domicile," "Implication," "Intromission," "Parties," "Repairs," and "Way," see those titles.

NECESSITAS. Lat. Necessity; a force, power, or influence which compels one to act against his will. Calvin.

Necessitas Culpabilis

Culpable necessity; unfortunate necessity; necessity which, while it excuses the act done under its compulsion, does not leave the doer entirely free from blame. The necessity which compels a man to kill another in self-defense is thus distinguished from that which requires the killing of a felon. See 4 Bl. Comm. 187.

Trinoda Necessitas

In Saxon law. The threefold necessity or burden; a term used to denote the three things from contributing to the performance of which no lands were exempted, viz., the repair of bridges, the building of castles, and military service against an enemy. 1 Bl. Comm. 263, 357.

Necessitas est lex temporis et loci. Necessity is the law of time and of place. 1 Hale, P. C. 54.

Necessitas excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. Necessity excuses or extenuates a delinquency in capital cases, which has not the same operation in civil cases. Bac. Max.

Necessitas facit licitum quod alias non est licitum. 10 Coke, 61. Necessity makes that lawful which otherwise is not lawful.

Necessitas inducit privilegium quoad jura privata. Bac. Max. 25. Necessity gives a privilege with reference to private rights. The necessity involved in this maxim is of three kinds, viz.: (1) Necessity of self-preservation; (2) of obedience; and (3) necessity resulting from the act of God, or of a stranger. Noy, Max. 32.

Necessitas non habet legem. Necessity has no law. Plowd. 18*a*. "Necessity shall be a good excuse in our law, and in every other law." Id.

Necessitas publica major est quam privata. Public necessity is greater than private. "Death," it has been observed, "is the last and furthest point of particular necessity, and the law imposes it upon every subject that he prefer the urgent service of his king and country before the safety of his life." Noy, Max. 34; Broom, Max. 18.

Necessitas quod cogit, defendit. Necessity defends or justifies what it compels. 1 Hale, P. C. 54. Applied to the acts of a sheriff, or ministerial officer, in the execution of his office. Broom, Max. 14.

Necessitas sub lege non continetur, quia quod alias non est licitum necessitas facit licitum. 2 Inst. 326. Necessity is not restrained by law; since what otherwise is not lawful necessity makes lawful.

Necessitas vincit legem. Necessity overrules the law. Hob. 144; Cooley, Const. Lim. (4th Ed.) 747.

Necessitas vincit legem; legum vincula irridet. Hob. 144. Necessity overcomes law; it derides the fetters of laws.

NECESSITOUS CIRCUMSTANCES. In the civil code of Louisiana the words are used relative to the fortune of the deceased and to the condition in which the claimant lived during the marriage. Smith v. Smith, 43 La. Ann. 1140, 10 So. 248.

Needing the necessaries of life, which cover not only primitive physical needs, things absolutely indispensable to human existence and decency, but those things, also, which are in fact necessary to the particular person left without support. State v. Waller, 90 Kan. 829, 136 P. 215, 216, 49 L. R. A. (N. S.) 588.

NECESSITUDO. Lat. In the civil law. An obligation; a close connection; relationship by blood. Calvin.

NECESSITY. Controlling force; irresistible compulsion; a power or impulse so great that it admits no choice of conduct. When it is said that an act is done "under necessity," it

may be, in law, either of three kinds of necessity: (1) The necessity of preserving one's own life, which will excuse a homicide; (2) the necessity of obedience, as to the laws, or the obedience of one not *sui juris* to his superior; (3) the necessity caused by the act of God or a stranger. See Jacob; Mozley & Whitley.

That which makes the contrary of a thing impossible.

The quality or state of being necessary, in its primary sense signifying that which makes an act or event unavoidable. Spreckels v. City and County of San Francisco, 76 Cal. App. 267, 244 P. 919, 922; In re Washington Ave. in Borough of Chatham, 5 N. J. Misc. 858, 139 A. 239, 240.

A constraint upon the will whereby a person is urged to do that which his judgment disapproves, and which, it is to be presumed, his will (if left to itself) would reject. A man, therefore, is excused for those actions which are done through unavoidable force and compulsion. Wharton.

In determining what is a work of "necessity" excepted from the operation of the Sunday law, the necessity meant is not a physical or absolute necessity, but a moral fitness or propriety of the work and labor done under the circumstances of the particular case, and whether or not the act is morally fit and proper is usually a question of fact for the jury under proper instructions. Lakeside Inn Corporation v. Commonwealth, 134 Va. 696, 114 S. E. 769, 771; Natural Gas Products Co. v. Thurman, 205 Ky. 100, 265 S. W. 475, 477; Hunt v. State, 19 Ga. App. 448, 91 S. E. 879; Stellhorn v. Board of Com'rs of Allen County, 60 Ind. App. 14, 110 N. E. 89, 91. The term "necessity" means an economical and moral necessity, rather than an unavoidable physical necessity. Rosenbaum v. State, 131 Ark. 251, 199 S. W. 388, 392, L. R. A. 1918B, 1109. The necessity which must exist depends on what the general public in its ordinary modes of doing business regards as necessary. Gray v. Commonwealth, 171 Ky. 269, 188 S. W. 354, 355, L. R. A. 1917B, 93. "Works of necessity" include whatever is needful for the good health, order, or comfort of the community. State v. Dean, 149 Minn. 410, 184 N. W. 275.

"Necessity," as used in statutes requiring certificate of public convenience and necessity, means a public need and not an indispensable necessity. Wabash, C. & W. Ry. Co. v. Commerce Commission, 309 Ill. 412, 141 N. E. 212, 214; Abbott v. Public Utilities Commission, 48 R. I. 196, 136 A. 490, 491; Chicago, R. I. & P. Ry. Co. v. State, 126 Okl. 48, 258 P. 874, 876.

"Necessity," as applied to implied grants of rights of way and easements, is not a physical or absolute necessity, but a reasonable and practical necessity. Smith v. Virginia Iron, Coal & Coke Co., 143 Va. 159, 129 S. E. 274, 276; Davis v. Sikes, 254 Mass. 540, 151 N. E. 291, 294.

"Necessity" justifying condemnation of land need not be an absolute necessity, but only a reasonable necessity of a corporation in the discharge of its duty to the public. Oneonta Light & Power Co. v. Schwarzenbach, 164 App. Div. 548, 150 N. Y. S. 76, 83.

The "necessity" of and appurtenance for the beneficial use of leased premises, which will entitle the lessee thereto, is not an absolute necessity in the sense that it must be completely indispensable, but is a real necessity and not a mere convenience or advantage. Raynes v. Stevens, 219 Mass. 556, 107 N. E. 398, 399.

Homicide by Necessity

A species of justifiable homicide, because it arises from some unavoidable necessity, without any will, intention, or desire, and without any inadvertence or negligence in the party killing, and therefore without any shadow of blame. As, for instance, by virtue of such an office as obliges one, in the execution of public justice, to put a malefactor to death who has forfeited his life to the laws of his country. But the law must require it, otherwise it is not justifiable. 4 Bl. Comm. 178.

Public Necessity

Of a municipal improvement, needed for reasonable convenience, facility, and completeness in accomplishing a public purpose. In re Washington Ave. in Borough of Chatham, 5 N. J. Misc. 858, 139 A. 239, 240. With reference to common carriers, great or urgent public convenience. Delaware, L. & W. R. Co. v. Van Santvoord (D. C.) 232 F. 978, 983.

NECK-VERSE. The Latin sentence, "*Miserere mei, Deus*," was so called, because the reading of it was made a test for those who claimed benefit of clergy.

NECROPHILISM. See Insanity.

NECROPSY. An autopsy, or *post-mortem* examination of a human body.

NEED. Urgent want or necessity. Sawyer v. Dearstyne (Sup.) 139 N. Y. S. 955, 956.

NEEDFUL. Necessary, requisite, essential, indispensable. Riddell v. Pennsylvania R. Co., 262 Pa. 582, 106 A. 80, 81.

NEEDLESS. In a statute against "needless" killing or mutilation of any animal, this term denotes an act done without any useful motive, in a spirit of wanton cruelty, or for the mere pleasure of destruction. Grise v. State, 37 Ark. 460; Hunt v. State, 3 Ind. App. 383, 29 N. E. 933; State v. Bogardus, 4 Mo. App. 215.

NEFAS. Lat. That which is against right or the divine law. A wicked or impious thing or act. Calvin.

NEFASTUS. Lat. Inauspicious. Applied, in the Roman law, to a day on which it was unlawful to open the courts or administer justice.

Negatio conclusionis est error in lege. Wing. 268. The denial of a conclusion is error in law.

Negatio destruit negationem, et ambæ faciunt affirmationem. A negative destroys a negative, and both make an affirmative. Co. Litt. 146*b*. Lord Coke cites this as a rule of grammatical construction, not always applying in law.

Negatio duplex est affirmatio. A double negative is an affirmative.

NEGATIVE. A denial; a proposition by which something is denied; a statement in the form of denial. Two negatives do not make a good issue. Steph. Pl. 386, 387.

As to negative "Covenant," "Easement," "Servitude," "Statute," and "Testimony," see those titles.

NEGATIVE AVERMENT. As opposed to the traverse or simple denial of an affirmative allegation, a negative averment is an allegation of some substantive fact, *e. g.*, that premises are not in repair, which, although negative in form, is really affirmative in substance, and the party alleging the fact of non-repair must prove it. Brown. An averment in some of the pleadings in a case in which a negative is asserted. U. S. v. Eisenminger (D. C.) 16 F.(2d) 816, 819.

NEGATIVE CONDITION. One by which it is stipulated that a given thing shall not happen.

NEGATIVE HEAD. As used in connection with a filtration plant it means the force that comes into play when a partial vacuum is created either within or below the filter bed. City of Harrisburg v. New York Continental Jewell Filtration Co. (C. C. A.) 217 F. 366, 368.

NEGATIVE PREGNANT. In pleading. A negative implying also an affirmative. Cowell. Such a form of negative expression as may imply or carry within it an affirmative. Steph. Pl. 318; Fields v. State, 134 Ind. 46, 32 N. E. 780; Stone v. Quaal, 36 Minn. 46, 29 N. W. 326. As if a man be said to have alienated land *in fee*, and he says *he has not aliened in fee*, this is a negative pregnant; for, though it be true that he has not aliened in fee, yet it may be that he has made an estate *in tail*. Cowell. A "negative pregnant," is a denial in form, but is in fact an admission, as where the denial in hæc verba includes the time and place, which are usually immaterial. Hall & Lyon Furniture Co. v. Torrey, 196 App. Div. 804, 188 N. Y. S. 486, 487; Green v. Commercial Bank & Trust Co. (D. C.) 277 F. 527, 528; McIntosh Livestock Co. v. Buffington, 108 Or. 358, 217 P. 635, 636.

NEGGILDARE. To claim kindred. Jac. L. Dict.

NEGLECT. Omission or failure to do an act or perform a duty, or an omission or failure due to want of due care or attention. Bishop v. Tax Assessors of City of Newport, 47 R. I. 351, 133 A. 342, 344; Foye v. Lilley Coal & Coke Co., 251 Pa. 409, 96 A. 987, 990. Being remiss in attention or duty toward. Norman v. State, 109 Ohio St. 213, 142 N. E. 234, 236.

The term is used in the law of bailment as synonymous with "negligence." But the latter word is the closer translation of the Latin *"negligentia."*

As used in respect to the payment of money, refusal is the failure to pay money when demanded; neglect is the failure to pay money which the party is bound to pay without demand. Kimball v. Rowland, 6 Gray (Mass.) 224.

The term means to omit, as to neglect business or payment or duty or work, and is generally used in this sense. It does not generally imply carelessness or imprudence, but simply an omission to do or perform some work, duty, or act. Rosenplaenter v. Roessle, 54 N. Y. 262.

When "neglect" to comply with an order is ground for imprisonment until the order is complied with, it is generally held to mean a careless omission of duty, and not an omission from necessity. Brown v. Hendricks, 102 Neb. 100, 165 N. W. 1075.

Culpable Neglect

In this phrase, the word "culpable" means not criminal, but censurable; and, when the term is applied to the omission by a person to preserve the means of enforcing his own rights, censurable is more nearly an equivalent. As he has merely lost a right of action which he might voluntarily relinquish, and has wronged nobody but himself, culpable neglect conveys the idea of neglect which exists where the loss can fairly be ascribed to the party's own carelessness, improvidence, or folly. Bank v. Wright, 8 Allen (Mass.) 121; Bennett v. Bennett, 93 Me. 241, 44 A. 894; Haven v. Smith, 250 Mass. 546, 146 N. E. 18, 19.

Willful Neglect

Willful neglect is the neglect of the husband to provide for his wife the common necessaries of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation. Civil Code Cal. § 105.

NEGLECTED MINOR. One suffering from neglect and in state of want. People v. De Pue, 217 App. Div. 321, 217 N. Y. S. 205, 206.

NEGLIGENCE. The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do. Schneeweisz v. Illinois Cent. R. Co., 196 Ill. App. 248, 253; Schneider v. C. H. Little Co., 184 Mich. 315, 151 N. W. 587, 588; Campbell v. Model Steam Laundry, 190 N. C. 649, 130 S. E. 638, 640; State v. Dean, 154 La. 671, 98 So. 82, 83; Lancaster v. Carter (Tex. Com. App.) 255 S. W. 392, 394; Blazic v. Franzwa, 179 Wis. 260, 191 N. W. 572, 574; Gummerson v. Kansas City Bolt & Nut Co., 185 Mo. App. 7, 171 S. W. 959, 961; Hulley v. Moosbrugger, 88 N. J. Law, 161, 95 A. 1007, 1010, L. R. A. 1916C, 1203.

The failure to do that which a person of ordinary prudence, Ottenheimer v. Molohan, 126 A. 97, 100, 146 Md. 175; Coca-Cola Bottling Co. v. Shipp, 174 Ark. 130, 297 S. W. 856, 861; an ordinarily prudent person, Wichita Valley Ry. Co. v. Meyers (Tex. Civ. App.) 248 S. W. 444, 447; Birmingham Ry., Light & Power Co. v. Bason, 191 Ala. 618, 68 So. 49, 51; Illinois Cent. R. Co. v. Cash's Adm'x, 221 Ky. 655, 299 S. W. 590, 593; Kelch's Adm'r v. National Contract Co., 178 Ky. 632, 199 S. W. 796, 798; a reasonable and prudent person, Chickasha Cotton Oil Co. v. Brown, 39 Okl. 245, 134 P. 850; Electric Supply Co. v. Rosser, 88 Okl. 220, 214 P. 1068, 1069; Chicago, R. I. & P. Ry. Co. v. Palmer, 55 Okl. 227, 154 P. 1163, 1164; St. Louis & S. F. R. Co. v. Model Laundry, 42 Okl. 501, 141 P. 970, 976; Chicago, R. I. & P. Ry. Co. v. Nagle, 55 Okl. 235, 154 P. 667, 672; Hutchins v. Inhabitants of Penobscot, 120 Me. 281, 113 A. 618, 620; Baltimore & P. R. Co. v. Jones, 95 U. S. 441, 24 L. Ed. 506; a person of ordinary care, Citizens' Nat. Bank of Jasper v. Ratcliff & Lanier (Tex. Civ. App.) 238 S. W. 362, 365; a reasonable, prudent person, Boswell v. Whitehead Hosiery Mills, 191 N. C. 549, 132 S. E. 598, 602; a person of ordinary prudence and care, Illinois Cent. R. Co. v. Nelson (C. C. A.) 203 F. 956, 959; an ordinarily reasonable, careful, and prudent person, Johnson v. Omaha & Council Bluffs Street Ry. Co., 194 Iowa, 1230, 190 N. W. 977, 978; or a reasonably prudent person, guided by those considerations which ordinarily regulate conduct of human affairs, would do, or doing something which such a person would not do, under like or similar circumstances. McKee v. Iowa Ry. & Light Co., 204 Iowa, 44, 214 N. W. 564, 565; Bowers v. J. D. Halstead Lumber Co., 28 Ariz. 122, 236 P. 124, 125; Indianapolis Traction & Terminal Co. v. Hensley, 186 Ind. 479, 115 N. E. 934, 938; Quanah, A. & P. Ry. Co. v. Hogland (Tex. Civ. App.) 297 S. W. 761, 763; Helms v. Citizens' Light & Power Co., 192 N. C. 784, 136 S. E. 9, 10; Gilbert v. Hilliard (Mo. App.) 222 S. W. 1027, 1029; Paul v. Consolidated Fireworks Co. of America, 177 App. Div. 85, 163 N. Y. S. 953, 954; Leahy v. Detroit, M. & T. Short Line Ry. (C. C. A.) 240 F. 82, 83; Standard Oil Co. of New Jersey v. DeVries (C. C. A.) 3 F.(2d) 852, 853; Knott v. Pepper, 74 Mont. 236, 239 P. 1037, 1039.

The failure to use ordinary care, Curtis v. Mauger, 186 Ind. 118, 114 N. E. 408, 409; reasonable care, Crowley v. Chicago, B. & Q. R. Co., 204 Iowa, 1385, 213 N. W. 403, 407, 53 A. L. R. 964; Alagna v. Roman Baths Co., 169 N. Y. S. 995, 996; or ordinary or reasonable care under the circumstances, Thrasher v. St. Louis & S. F. Ry. Co., 826 Okl. 88, 206 P. 212, 214.

The failure to exercise that degree of care which a prudent person, Getsinger v. Corbell, 188 N. C. 553, 125 S. E. 180, 181; an ordinarily prudent person, Faulk v. Kansas City Rys. Co. (Mo. App.) 247 S. W. 253; H. J. Keith Co. v. Booth Fisheries Co., 87 A. 715, 720, 4 Boyce (Del.) 218; Rogers v. Tegarden Packing Co., 185 Mo. App. 99, 170 S. W. 675, 677; Gulf, C. & S. F. Ry. Co. v. Drahn (Tex. Civ. App.) 163 S. W. 330, 331; Saunders v. Southern Ry. Co., 167 N. C. 375, 83 S. E. 573, 576; a reasonably prudent person, Moir v. Hart, 189 Ill. App. 566, 567; Walls v. Windsor, 5 Boyce (Del.) 265, 92 A. 989, 991; City of Decatur v. Eady, 186 Ind. 205, 115 N. E. 577, 579, L. R. A. 1917E, 242; a reasonable and prudent person, Heller v. New York, N. H. & H. R. Co. (C. C. A.) 265 F. 192, 198, 17 A. L. R. 823; Chesapeake & O. Ry. Co. v. Crum, 140 Va. 333, 125 S. E. 301, 304; a reasonably careful person, Behen v. Philadelphia, B. & W. R. Co., 93 A. 903, 904, 5 Boyce (Del.) 389; an ordinary prudent person, Donahue v. R. A. Sherman's Sons Co., 39 R. I. 373, 98 A. 109, 114, L. R. A. 1917A, 76; a reasonably prudent, careful person, Gray v. Pennsylvania R. Co., 3 W. W. Harr. (Del.) 450, 139 A. 66, 75; a reasonably prudent and careful person, Lemmon v. Broadwater, 108 A. 273, 274, 7 Boyce (Del.) 472; Morgan Millwork Co. v. Dover Garage Co., 108 A. 62, 64, 7 Boyce (Del.) 383; Reynolds v. Clark, 92 A. 873, 875, 5 Boyce (Del.) 250; Cecil v. Mundy, 92 A. 850, 852, 5 Boyce (Del.) 291; Johnston v. Director General of Railroads, 109 A. 581, 584, 7 Boyce (Del.) 565; Wollaston v. Stiltz, 114 A. 198, 200, 1 W. W. Harr. (Del.) 273; Neely v. People's Ry. Co., 89 A. 211, 212, 4 Boyce (Del.) 457; Igle v. People's Ry. Co., 93 A. 666, 668, 5 Boyce (Del.) 376; Girardo v. Wilmington & Philadelphia Traction Co., 90 A. 476, 478, 5 Boyce (Del.) 25; or an ordinarily prudent and careful person would exercise under like circumstances, Clayton v. Philadelphia, B. & W. R. Co., 106 A. 577, 579, 7 Boyce (Del.) 343.

The failure to exercise ordinary care. Anderson v. Atlantic Coast Line R. Co., 161 N. C. 462, 77 S. E. 402, 404; Woods v. Chalmers Motor Co., 207 Mich. 556, 175 N. W. 449, 453; Simpson v. Louisville, H. & St. L. R. Co., 207 Ky. 623, 269 S. W. 749, 750. Ordinary or reasonable care being that care which ordinarily prudent persons, Travis v. Louisville & N. R. Co., 183 Ala. 415, 62 So. 851, 854; Galveston, H. & S. A. Ry. Co. v. Harris Bros. (Tex. Civ. App.) 211 S. W. 255, 259; Bayne v. Kansas City (Mo. App.) 253 S. W. 116, 119; reasonably prudent persons, Burns v. Polar Wave Ice & Fuel Co. (Mo. App.) 187 S. W. 145, 148; persons of ordinary prudence, Shirley Hill Coal Co. v. Moore, 181 Ind. 513, 103 N. E. 802, 804; Louisville, & N. R. Co. v. Woodford, 152 Ky. 398, 153 S. W. 722, 726; Galveston, H. & S. A. Ry. Co. v. Ford (Tex. Civ. App.) 275 S. W. 463, 467; ordinary careful, prudent persons. Yellow Pine Paper Mill Co. v. Wright (Tex.) 154 S. W. 1168, 1171; Liberty Highway Co. v. Callahan, 24 Ohio App. 374, 157 N. E. 708, 713; or ordinarily careful or prudent persons would exercise under like or similar circumstances. Loverage v. Carmichael, 164 Minn. 76, 204 N. W. 921, 922.

"Negligence" is the breach of a legal duty. Taylor v. Neuse Lumber Co., 173 N. C. 112, 91 S. E. 719, 720; Jones v. Atchison, T. & S. F. Ry. Co., 98 Kan. 133, 157 P. 399, 400; Stevens v. City of Manchester, 81 N. H. 369, 127 A. 873; Union Pac. R. Co. v. Marone (C. C. A.) 246 F. 916, 919; Lancaster v. Hall (Tex. Civ. App.) 277 S. W. 776, 779; Glover's Adm'r v. James, 217 Ky. 506, 290 S. W. 344, 345; Prescott v. Central Contracting Co., 162 La. 885, 111 So. 269, 270; Bernabeo v. Kaulback, 226 Mass. 128, 115 N. E. 279, 280; Proctor v. Dillon, 235 Mass. 538, 129 N. E. 265, 270; Pickett v. Waldorf System, 241 Mass. 569, 136 N. E. 64, 65, 23 A. L. R. 1014; Bergeron v. Forest, 233 Mass. 392, 124 N. E. 74, 84; New York & Porto Rico S. S. Co. v. Guanica Centrale (C. C. A.) 231 F. 820, 826; Schell v. Du Bois, 94 Ohio St. 93, 113 N. E. 664, 668, L. R. A. 1917A, 710.

Negligence usually consists in the "involuntary and casual"—that is, "accidental"—doing or omission to do something which results in an injury, Root v. Topeka Ry. Co., 96 Kan. 694, 153 P. 550; and is synonymous with heedlessness, carelessness, thoughtlessness, disregard, inattention, inadvertence, remissness and oversight, Payne v. Vance, 103 Ohio St. 59, 133 N. E. 85, 87.

See Care.

"Negligence" in official conduct is ordinarily the failure to use such reasonable care and caution as would be expected of a prudent man. Hamrick v. McCutcheon, 101 W. Va. 485, 133 S. E. 127, 129.

Negligence is any culpable omission of a positive duty. It differs from heedlessness, in that heedlessness is the doing of an act in violation of a negative duty, without adverting to its possible consequences. In both cases there is inadvertence, and there is breach of duty. Aust. Jur. § 630.

Negligence or carelessness signifies want of care, caution, attention, diligence, or discretion in one having no positive intention to injure the person complaining thereof. The words "reckless," "indifferent," "careless," and "wanton" are never understood to signify positive will or intention, unless when joined with other words which show that they are to receive an artificial or unusual, if not an unnatural, interpretation. Lexington v. Lewis, 10 Bush (Ky.) 677.

"Negligence" is not synonymous with "incompetency," since the competent may be negligent. Alabama City, G. & A. Ry. Co. v. Bessiere, 190 Ala. 59, 66 So. 805, 806; Barclay v. Wetmore & Morse Granite Co., 92 Vt. 195, 102 A. 493, 495.

Actionable Negligence

See Actionable.

Collateral Negligence

In the law relating to the responsibility of an employer or principal for the negligent acts or omissions of his employee, the term "collateral" negligence is sometimes used to describe negligence attributable to a contractor employed by the principal and for which the latter is not responsible, though he would be responsible for the same thing if done by his servant. Weber v. Railway Co., 20 App. Div. 292, 47 N. Y. Supp. 11.

Comparative Negligence

See Comparative.

Contributory Negligence

Contributory negligence, when set up as a defense to an action for injuries alleged to have been caused by the defendant's negligence, means any want of ordinary care on the part of the person injured, (or on the part of another whose negligence is imputable to him,) which combined and concurred with the defendant's negligence, and contributed to the injury as a proximate cause thereof, and as an element without which the injury would not have occurred. Railroad Co. v. Young, 153 Ind. 163, 54 N. E. 791; Dell v. Glass Co., 169 Pa. 549, 32 A. 601; Barton v. Railroad Co., 52 Mo. 253, 14 Am. Rep. 418; Plant Inv. Co. v. Cook, 74 F. 503, 20 C. C. A. 625; McLaughlin v. Electric Light Co., 100 Ky. 173, 37 S. W. 851, 34 L. R. A. 812; Riley v. Railway Co., 27 W. Va. 164; Lutz v. Davis, 195 Iowa, 1049, 192 N. W. 15, 17; San Antonio Brewing Ass'n v. Wolfshohl (Tex. Civ. App.) 155 S. W. 644, 647; Chickasha Cotton Oil Co. v. Brown, 39 Okl. 245, 134 P. 850; Texas Midland R. R. v. Monroe (Tex. Civ. App.) 155 S. W. 973, 975; Bryning v. Missouri, K. & T. Ry. Co. of Texas (Tex. Civ. App.) 167 S. W. 826, 828; De Honey v. Harding (C. C. A.) 300 F. 696, 699; St. Louis & S. F. R. Co. v. Model Laundry, 42 Okl. 501, 141 P. 970, 976; 29 Cyc. 505; Varela v. Reid, 23 Ariz. 414, 204 P. 1017, 1019; West Const. Co. v. Atlantic Coast Line Ry. Co., 185 N. C. 43, 116 S. E. 3, 5; Theiler v. Tillamook County, 81 Or. 277, 158 P. 804; Chicago, Rock Island & P. Ry. Co. v. Barton, 59 Okl. 109, 159 P. 250, 252; Chicago, M. & St. P. Ry. Co. v. Youngers (C. C. A.) 5 F.(2d) 784, 787; Townsend v. Missouri Pac. R. Co., 163 La. 872, 113 So. 130, 132, 54 A. L. R. 538; Missouri, K. & T. R. Co. v. Smith, 97 Okl. 152, 223 P. 373, 376; Richardson v. Reap, 173 Ark. 96, 291 S. W. 987, 988; Murray v. Southern Pac. Co. (C. C. A.) 236 F. 704, 706; Texas & N. O. Ry. Co. v. Rooks (Tex. Com. App.) 293 S. W. 554, 556; Koons v. Rook (Tex. Com. App.) 295 S. W. 592, 597; Gaster v. Hinkley, 85 Cal. App. 55, 258 P. 988, 991.

The negligent act of plaintiff which, concurring and co-operating with negligent act of defendant, becomes real, efficient, and proximate cause of injury, or cause without which the injury would not have occurred. Elder v. Plaza Ry., 194 N. C. 617, 140 S. E. 298, 299; James v. Delaware, L. & W. R. Co., 92 N. J. Law, 149, 104 A. 328, 333; Smith v. Paducah Traction Co., 179 Ky. 322, 200 S. W. 460.

"Assumption of risk" and "contributory negligence" are not synonymous. Chicago, R. I. & P. R. Co. v. Rogers, 60 Okl. 249, 159 P. 1132, 1136; Dolese Bros. Co. v. Kahl (C. C. A.) 203 F. 627, 630; Nodland v. Kreutzer & Wasem, 184 Iowa, 476, 168 N. W. 889, 890.

Mutual Contributory Negligence

"Mutual contributory negligence" exists when injury would not have happened but for

negligence of both parties. Alexander v. Missouri, K. & T. R. Co. of Texas (Tex. Civ. App.) 287 S. W. 153, 155.

Concurrent Contributory Negligence

"Concurrent contributory negligence" is knowledge of specific danger and negligent failure to avoid it. Sprinkle v. St. Louis & S. F. R. Co., 215 Ala. 191, 110 So. 137, 140.

Concurrent Negligence

"Concurrent negligence" arises where the injury is approximately caused by the concurrent wrongful acts or omissions of two or more persons acting independently. Carr v. St. Louis Auto Supply Co., 293 Mo. 562, 239 S. W. 827, 828.

Criminal Negligence

Criminal negligence which will render killing a person manslaughter is the omission on the part of the person to do some act which an ordinarily careful and prudent man would do under like circumstances, or the doing of some act which an ordinarily careful, prudent man under like circumstances would not do by reason of which another person is endangered in life or bodily safety; the word "ordinary" being synonymous with "reasonable" in this connection. State v. Coulter (Mo. Sup.) 204 S. W. 5. Negligence of such a character, or occurring under such circumstances, as to be punishable as a crime by statute; or (at common law) such a flagrant and reckless disregard of the safety of others, or wilful indifference to the injury liable to follow, as to convert an act otherwise lawful into a crime when it results in personal injury or death. 4 Bl. Comm. 192, note; Cook v. Railroad Co., 72 Ga. 48; Rankin v. Transportation Co., 73 Ga. 229, 54 Am. Rep. 874; Railroad Co. v. Chollette, 33 Neb. 143, 49 N. W. 1114.

Culpable Negligence

Failure to exercise that degree of care rendered appropriate by the particular circumstances, and which a man of ordinary prudence in the same situation and with equal experience would not have omitted. Carter v. Lumber Co., 129 N. C. 203, 39 S. E. 828; Railroad Co. v. Newman, 36 Ark. 611; Woodman v. Nottingham, 49 N. H. 387, 6 Am. Rep. 526; Kimball v. Palmer, 80 F. 240, 25 C. C. A. 394; Railway Co. v. Brown, 44 Kan. 384, 24 P. 497; Railroad Co. v. Plaskett, 47 Kan. 107, 26 P. 401; Clark v. State (Okl.) 224 P. 738, 740; State v. Pauly (Mo.) 267 S. W. 799, 801; Nail v. State (Okl.) 242 P. 270, 272.

Gross Negligence

In the law of bailment. The want of slight diligence. The want of that care which every man of common sense, how inattentive soever, takes of his own property. The omission of that care which even inattentive and thoughtless men never fail to take of their own property. Litchfield v. White, 7 N. Y. 442, 57 Am. Dec. 534; Lycoming Ins. Co. v. Barringer, 73 Ill. 235; Seybel v. National Currency Bank, 54 N. Y. 299, 13 Am. Rep. 583; Bannon v. Baltimore & O. R. Co., 24 Md. 124; Briggs v. Spaulding, 141 U. S. 132, 11 S. Ct. 925, 35 L. Ed. 662; Preston v. Prather, 137 U. S. 604, 11 S. Ct. 162, 34 L. Ed. 788. The want of ordinary diligence and care which usually prudent man takes of his own property of like description. Dalton v. Hamilton Hotel Operating Co., 242 N. Y. 481, 152 N. E. 268, 270. In the law of torts (and especially with reference to personal injury cases), the term means such negligence as evidences a reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or that entire want of care which would raise the presumption of a conscious indifference to the rights of others which is equivalent to an intentional violation of them. McDonald v. Railroad Co. (Tex. Civ. App.) 21 S. W. 775; Railroad Co. v. Robinson, 4 Bush (Ky.) 509; Railroad Co. v. Bodemer, 139 Ill. 596, 29 N. E. 692, 32 Am. St. Rep. 218; Denman v. Johnston, 85 Mich. 387, 48 N. W. 565; Railroad Co. v. Orr, 121 Ala. 489, 26 So. 35; Coit v. Western Union Tel. Co., 130 Cal. 657, 63 P. 83, 53 L. R. A. 678, 80 Am. St. Rep. 153; People v. Barnes, 182 Mich. 179, 148 N. W. 400, 406; State v. Disalvo, 2 W. W. Harr. (Del.) 232, 121 A. 661, 663; Foster v. State, 102 Tex. Cr. R. 602, 279 S. W. 270; Patton v. Grand Trunk Western Ry. Co., 236 Mich. 173, 210 N. W. 309, 311; Wexel v. Grand Rapids & I. Ry. Co., 190 Mich. 469, 157 N. W. 15, 17; Simon v. Detroit United Ry., 196 Mich. 586, 162 N. W. 1012, 1013; Helme v. Great Western Milling Co., 43 Cal. App. 416, 185 P. 510, 512; Kennedy v. Atchison, T. & S. F. Ry. Co., 104 Kan. 368, 179 P. 314, 316; Bremer v. Lake Erie & W. R. Co., 318 Ill. 11, 148 N. E. 862, 866, 41 A. L. R. 1345; Dillon v. Stewart (Tex. Civ. App.) 180 S. W. 648, 649. Indifference to present legal duty and utter forgetfulness of legal obligations, so far as other persons may be affected, and a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence. Burke v. Cook, 246 Mass. 518, 141 N. E. 585, 586. Negligence bordering on recklessness. People v. Adams, 289 Ill. 339, 124 N. E. 575, 577.

The failure to exercise slight care. Jones v. Atchison, T. & S. F. Ry. Co., 98 Kan. 133, 157 P. 399, 400; Burton Const. Co. v. Metcalfe, 162 Ky. 366, 172 S. W. 698, 701; W. T. Sistrunk & Co. v. Meisenheimer, 205 Ky. 254, 265 S. W. 467, 468; Nebo Coal Co. v. Barnett, 167 Ky. 170, 180 S. W. 79, 80; Saxe v. Terry, 140 Wash. 503, 250 P. 27, 28; Weld v. Postal Telegraph Cable Co., 210 N. Y. 59, 103 N. E. 957, 961; Peavy v. Peavy, 36 Ga. App. 202, 136 S. E. 96, 97; Hanes v. Shapiro & Smith, 168 N. C. 24, 84 S. E. 33, 36; Farmers' Mercantile Co. v. Northern Pac. Ry. Co., 27 N. D. 302, 146 N. W. 550, 552.

"Gross negligence," is substantially higher in magnitude than simple inadvertence, but

falls short of intentional wrong. Young v. City of Worcester, 253 Mass. 481, 149 N. E. 204, 205.

Words "gross negligence," are equivalent to words "reckless and wanton." Jones v. Commonwealth, 213 Ky. 356, 281 S. W. 164, 167.

"Gross negligence" is synonymous for willful and wanton injury. Bouchard v. Dirigo Mut. Fire Ins. Co., 114 Me. 361, 96 A. 244, 246.

Hazardous Negligence

Such careless or reckless conduct as exposes one to very great danger of injury or to imminent peril. See Riggs v. Standard Oil Co. (C. C.) 130 F. 204.

Legal Negligence

Negligence per se; the omission of such care as ordinarily prudent persons exercise and deem adequate to the circumstances of the case. In cases where the common experience of mankind and the common judgment of prudent persons have recognized that to do or omit certain acts is prolific of danger, the doing or omission of them is "legal negligence." Carrico v. Railway Co., 35 W. Va. 389, 14 S. E. 12; Drake v. Wild, 70 Vt. 52, 39 A. 248; Johnson v. Railway Co., 49 Wis. 529, 5 N. W. 886.

Negligence Per Se

Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. See Missouri Pac. Ry. Co. v. Lee, 70 Tex. 496, 7 S. W. 857; Central R. & B. Co. v. Smith, 78 Ga. 694, 3 S. E. 397; Murray v. Missouri Pac. R. Co., 101 Mo. 236, 13 S. W. 817, 20 Am. St. Rep. 601; Moser v. Union Traction Co., 205 Pa. 481, 55 A. 15. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, constitutes "negligence per se." Chicago, R. I. & P. Ry. Co. v. Pitchford, 44 Okl. 197, 143 P. 1146, 1150; Kavanagh v. New York, O. & W. Ry. Co., 196 App. Div. 384, 187 N. Y. S. 859, 860.

Ordinary Negligence

The omission of that care which a man of common prudence usually takes of his own concerns. Ouderkirk v. Central Nat. Bank, 119 N. Y. 263, 23 N. E. 875; Scott v. Depeyster, 1 Edw. Ch. (N. Y.) 543; Tyler v. Nelson, 109 Mich. 37, 66 N. W. 671; Toncray v. Dodge County, 33 Neb. 802, 51 N. W. 235; Briggs v. Spaulding, 141 U. S. 132, 11 Sup. Ct. 924, 35 L. Ed. 662; Lake Shore, etc., Ry. Co. v. Murphy, 50 Ohio St. 135, 33 N. E. 403; Woodward v. Stewart, 149 Ga. 620, 101 S. E. 749, 750; Ford v. Engleman, 118 Va. 89, 86 S. E. 852, 855. Failure to exercise care of an ordinary prudent person in same situation. Avery v. Thompson, 117 Me. 120, 103 A. 4, 5, L. R. A. 1918D, 205, Ann. Cas. 1918E, 1122; Burton Const. Co. v. Metcalfe, 162 Ky. 366, 172 S. W. 698, 701. A want of that care and prudence that the great majority of mankind exercise under the same or similar circumstances. Clemens v. State, 176 Wis. 289, 185 N. W. 209, 212, 21 A. L. R. 1490. Wherever distinctions between gross, ordinary and slight negligence are observed, "ordinary negligence" is said to be the want of ordinary care. Saxe v. Terry, 140 Wash. 503, 250 P. 27, 28. "Ordinary negligence" is based on fact that one ought to have known results of his acts, while "gross negligence" rests on assumption that one knew results of his acts, but was recklessly or wantonly indifferent to results. All negligence below that called gross by courts and text-book writers is "slight negligence" and "ordinary negligence." People v. Campbell, 237 Mich. 424, 212 N. W. 97, 99. Two degrees of negligence are now recognized in Kentucky: "Ordinary negligence," or the failure to exercise that care which ordinarily prudent persons would exercise in like or similar circumstances; and "gross negligence," which is the absence of slight care. Louisville & N. R. Co. v. Brown, 186 Ky. 435, 217 S. W. 686. The distinction between "ordinary negligence" and "gross negligence" is that the former lies in the field of inadvertence and the latter in the field of actual or constructive intent to injure. Bentson v. Brown, 191 Wis. 460, 211 N. W. 132, 133.

Slight Negligence

Under the common law, the rule of comparative negligence did not obtain, and any negligence on the part of the plaintiff which, taken in connection with the negligence of the defendant contributed to the proximate cause of the injury would bar a recovery. Under that rule the degrees of the plaintiff's negligence were not considered, but "slight negligence" was taken to mean "a slight want of ordinary care." 7 A. & E. Enc. Law (2d Ed.) 373(2), 375(4), 377(5); Macon & Western R. Co. v. Davis, 13 Ga. 68(10). Slight negligence is not slight want of ordinary care contributing to the injury, which would defeat an action for negligence. Slight negligence is defined to be only an absence of that degree of care and vigilance which persons of extraordinary prudence and foresight are accustomed to use. Briggs v. Spaulding, 141 U. S. 132, 11 Sup. Ct. 924, 35 L. Ed. 662; French v. Buffalo, etc., R. Co., *43 N. Y. 108; Litchfield v. White, 7 N. Y. 438, 57 Am. Dec. 534; Griffin v. Willow, 43 Wis. 512.

Wanton Negligence

Reckless indifference to the consequences of an act or omission, where the party acting or failing to act is conscious of his conduct and, without any actual intent to injure, is

aware, from his knowledge of existing circumstances and conditions, that his conduct will inevitably or probably result in injury to another. Louisville & N. R. Co. v. Webb, 97 Ala. 308, 12 So. 374; Alabama G. S. R. Co. v. Hall, 105 Ala. 599, 17 So. 176.

Willful Negligence

Though rejected by some courts and writers as involving a contradiction of terms, this phrase is occasionally used to describe a higher or more aggravated form of negligence than "gross." It then means a willful determination not to perform a known duty, or a reckless disregard of the safety or the rights of others, as manifested by the conscious and intentional omission of the care proper under the circumstances. See Victor Coal Co. v. Muir, 20 Colo. 320, 38 P. 378, 26 L. R. A. 435, 46 Am. St. Rep. 299; Holwerson v. Railway Co., 157 Mo. 216, 57 S. W. 770, 50 L. R. A. 850; Lockwood v. Railway Co., 92 Wis. 97, 65 N. W. 866; Kentucky Cent. R. Co. v. Carr (Ky.) 43 S. W. 193, 19 Ky. Law Rep. 1172; Florida Southern Ry. v. Hirst, 30 Fla. 1, 11 So. 506, 16 L. R. A. 631, 32 Am. St. Rep. 17; Lexington v. Lewis, 10 Bush (Ky.) 680; Illinois Cent. R. Co. v. Leiner, 202 Ill. 624, 67 N. E. 398, 95 Am. St. Rep. 266. The failure to exercise ordinary care after discovering a person to be in a position of peril. Cowan v. Minneapolis, St. P. & S. S. M. Ry. Co., 42 N. D. 170, 172 N. W. 322, 323. It involves deliberation and malice. Schwartz v. Johnson, 152 Tenn. 586, 280 S. W. 32, 33, 47 A. L. R. 323. "Willful negligence" implies an act intentionally done in disregard of another's rights, or omission to do something to protect the rights of another after having had such notice of those rights as would put a prudent man on his guard to use ordinary care to avoid injury. Covert v. Rockford & I. Ry. Co., 299 Ill. 288, 132 N. E. 504, 505. There is no proof of what is called "willful negligence," unless it is shown that defendant discovered plaintiff's peril at such a time and under such circumstances as offered an opportunity, and in consequence imposed a duty on defendant, to take some step to prevent the injury. It is the failure in such a duty that is willful negligence, so called. Westerberg v. Motor Truck Service Co., 158 Minn. 202, 197 N. W. 98, 99. A charge of "willful and wanton negligence" does not signify degrees of negligence, but the words have reference to the intent, which must have been to do the wrongful act, but not to inflict the resulting injury; otherwise, it would be a willful and not a negligent injury. Westre v. Chicago, M. & St. P. Ry. Co. (C. C. A.) 2 F.(2d) 227, 229. See, also, Brown v. Illinois Terminal Co., 319 Ill. 326, 150 N. E. 242, 244; Houston Chronicle Pub. Co. v. McDavid (Tex. Civ. App.) 173 S. W. 467, 469; Keystone Mfg. Co. v. Hines, 85 W. Va. 405, 102 S. E. 106, 110.

NEGLIGENT. Synonymous with "careless." Delmore v. Kansas City Hardwood Flooring Co., 90 Kan. 29, 133 P. 151, 47 L. R. A. (N. S.) 1220. Sometimes regarded as synonymous with "wrongful." Belmont v. City of New York, 191 App. Div. 717, 182 N. Y. S. 173, 175.

NEGLIGENT ESCAPE. An escape from confinement effected by the prisoner without the knowledge or connivance of the keeper of the prison, but which was made possible or practicable by the latter's negligence, or by his omission of such care and vigilance as he was legally bound to exercise in the safekeeping of the prisoner.

Where a party arrested or imprisoned escapes against the will of him who arrests or imprisons him, and is not freshly pursued and taken again before he has been lost sight of. State v. Wedin, 85 N. J. Law, 399, 89 A. 753, 754.

NEGLIGENT OFFENSE. One which ensues from a defective discharge of a duty, which defect could have been avoided by the exercise of that care which is usual, under similar circumstances, with prudent persons of the same class. People v. Gaydica, 122 Misc. Rep. 31, 203 N. Y. S. 243, 258.

NEGLIGENT VIOLATION OF STATUTE. One occasioned by or accompanied with negligent conduct. Such conduct must be established by the evidence, and will not be presumed because the statute is violated. Hamrick v. McCutcheon, 101 W. Va. 485, 133 S. E. 127, 128.

NEGLIGENTIA. Lat. In the civil law. Carelessness; inattention; the omission of proper care or forethought. The term is not exactly equivalent to our "negligence," inasmuch as it was not any *negligentia*, but only a high or gross degree of it, that amounted to *culpa*, (actionable or punishable fault.)

Negligentia semper habet infortunium comitem. Negligence always has misfortune for a companion. Co. Litt. 246*b*; Shep. Touch. 476.

NEGLIGENTLY. "Negligently" means the absence of ordinary care, which is such care as an ordinarily prudent person would exercise for his own protection. Jones v. Commonwealth, 213 Ky. 356, 281 S. W. 164, 167. Equivalent of improperly. Cairnes v. Hillman Drug Co., 214 Ala. 545, 108 So. 362, 364. "Inadvertently" and "negligently" are synonymous. Meyerstein v. Burke, 193 Cal. 105, 222 P. 810.

NEGLIGENTLY DONE. The doing of an act where ordinary care required that it should not have been done at all, or that it should have been done in some other way, and where the doing of the act was not consistent with the exercise of ordinary care under the circumstances. Curtis v. Mauger, 186 Ind. 118, 114 N. E. 408, 409.

NEGOCE. Fr. Business; trade; management of affairs.

NEGOTIABILITY. In mercantile law. Transferable quality. That quality of bills of exchange and promissory notes which renders them transferable from one person to another, and from possessing which they are emphatically termed "negotiable paper." 3 Kent, Comm. 74, 77, 89, et seq. See Story, Bills, § 60.

NEGOTIABLE. An instrument embodying an obligation for the payment of money is called "negotiable" when the legal title to the instrument itself and to the whole amount of money expressed upon its face, with the right to sue therefor in his own name, may be transferred from one person to another without a formal assignment, but by mere indorsement and delivery by the holder or by delivery only. See 1 Daniel, Nego. Inst. § 1; Walker v. Ocean Bank, 19 Ind. 247; Robinson v. Wilkinson, 38 Mich. 299; Odell v. Gray, 15 Mo. 337, 55 Am. Dec. 147; Vietor v. Johnson, 148 Pa. 583, 24 Atl. 173.

Quasi Negotiable

"Quasi negotiable" describes the nature of instruments which, while not negotiable, in sense of law merchant, are so framed and dealt with as frequently to convey as good title to transferee as if they were negotiable. A bill of lading is a quasi negotiable instrument. National Bank of Savannah v. Kershaw Oil Mill (C. C. A.) 202 F. 90, 94.

NEGOTIABLE INSTRUMENTS. A general name for bills, First Nat. Bank v. Rochamora, 193 N. C. 1, 136 S. E. 259, 261; notes, checks, Kansas City Casualty Co. v. Westport Ave. Bank, 191 Mo. App. 287, 177 S. W. 1092, 1094; Santa Marina Co. v. Canadian Bank of Commerce (C. C. A.) 254 F. 391, 393; trade acceptances, Federal Commercial & Savings Bank v. International Clay Machinery Co., 230 Mich. 33, 203 N. W. 166, 43 A. L. R. 1245; certain bonds, Grosfield v. First Nat. Bank, 73 Mont. 219, 236 P. 250, 254; Stevens v. Berkshire St. Ry. Co., 247 Mass. 399, 142 N. E. 59, 60; Higgins v. Hocking Valley Ry. Co., 188 App. Div. 684, 177 N. Y. S. 444, 451; Citizens' State Bank of Greenup v. Johnson County, 182 Ky. 531, 207 S. W. 8, 10; letters of credit, and other negotiable written securities. Any written securities which may be transferred by indorsement and delivery or by delivery merely, so as to vest in the indorsee the legal title, and thus enable him to sue thereon in his own name. Or, more technically, those instruments which not only carry the legal title with them by indorsement or delivery, but carry as well, when transferred before maturity, the right of the transferee to demand the full amounts which their faces call for. Daniel, Neg. Inst. § 1*a*. A negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer. Civ. Code Cal. § 3087.

Under the Uniform Negotiable Instruments Act, an instrument, to be negotiable, must be in writing and signed; must contain an unconditional promise or order to pay a certain sum of money on demand, or at a fixed and determinable future time; it must be payable to order or to bearer, and where it is addressed to the drawee, he must be named or otherwise indicated with reasonable certainty; its negotiability is not affected by the fact that it is not dated, or that it bears a seal, or that it does not specify the value given or that any value was given.

NEGOTIABLE WORDS. Words and phrases which impart the character of negotiability to bills, notes, checks, etc., in which they are inserted; for instance, a direction to pay to A. "or order" or "bearer."

NEGOTIATE. To transact business, to treat with another respecting a purchase and sale, to hold intercourse, to bargain or trade, to conduct communication or conferences. It is that which passes between parties or their agents in the course of or incident to the making of a contract; it is also conversation in arranging terms of contract. People v. Augustine, 232 Mich. 29, 204 N. W. 747, 748.

To discuss or arrange a sale or bargain; to arrange the preliminaries of a business transaction. Also to sell or discount negotiable paper, or assign or transfer it by indorsement and delivery. Palmer v. Ferry, 6 Gray (Mass.) 420; Newport Nat. Bank v. Board of Education, 114 Ky. 87, 70 S. W. 186; Odell v. Clyde, 23 Misc. 734, 53 N. Y. Supp. 61; Blakiston v. Dudley, 5 Duer (N. Y.) 377.

An instrument is "negotiated," when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. Pan-American Bank & Trust Co. v. National City Bank of New York (C. C. A.) 6 F.(2d) 762, 767; Merchants' Nat. Bank of Billings v. Smith, 59 Mont. 280, 196 P. 523, 526, 15 A. L. R. 430.

NEGOTIATION. The deliberation, discussion, or conference upon the terms of a proposed agreement; the act of settling or arranging the terms and conditions of a bargain, sale, or other business transaction.

The act by which a bill of exchange or promissory note is put into circulation by being passed by one of the original parties to another person.

NEGOTIORUM GESTIO. Lat. In the civil law. Literally, a doing of business or businesses. A species of spontaneous agency, or an interference by one in the affairs of another, in his absence, from benevolence or friendship, and without authority. 2 Kent, Comm. 616, note; Inst. 3, 28, 1.

NEGOTIORUM GESTOR. Lat. In the civil law. A transacter or manager or business;

a person voluntarily constituting himself agent for another; one who, without any mandate or authority, assumes to take charge of an affair or concern for another person, in the latter's absence, but for his interest.

One who spontaneously, and without the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, etc. Story, Bailm. § 189.

NEGRO. The word "negro" means a black man, one descended from the African race, and does not commonly include a mulatto. Felix v. State, 18 Ala. 720. But the laws of the different states are not uniform in this respect, some including in the description "negro" one who has one-eighth or more of African blood.

Term "negro" means necessarily person of color, but not every person of color is "negro." Rice v. Gong Lum, 139 Miss. 760, 104 So. 105, 109.

NEIFE, NAIF, NATIVUS. In old English law. A woman who was born a villein, or a bond-woman. 1 Steph. Com. 133.

NEIGHBOR. One who lives in close proximity to another. In a grant relating to the use of water by neighbors, it was limited to the next adjoining farm; 1 A. C., 22 (So. Africa).

NEIGHBORHOOD. A place near; an adjoining or surrounding district; a more immediate vicinity; vicinage. See Langley v. Barnstead, 63 N. H. 246; Madison v. Morristown Gaslight Co., 65 N. J. Eq. 356, 54 Atl. 439; Rice v. Sims, 3 Hill (S. C.) 5; Lindsay Irr. Co. v. Mehrtens, 97 Cal. 676, 32 Pac. 802; State v. Henderson, 29 W. Va. 147, 1 S. E. 225; Peters v. Bourneau, 22 Ill. App. 177; Connally v. General Const. Co., 269 U. S. 385, 46 S. Ct. 126, 129, 70 L. Ed. 322; City of Charleston v. Coker, 195 Mo. App. 159, 184 S. W. 1181.

It is not synonymous with territory or district, but is a collective noun, with the suggestion of proximity, and refers to the units which make up its whole, as well as to the region which comprehends those units. A district or locality, especially when considered with relation to its inhabitants or their interests. Lindsay Irr. Co. v. Mehrtens, 97 Cal. 676, 32 Pac. 803.

As used with reference to a person's reputation, "neighborhood" means in general any community or society where person is well known and has established a reputation. Craven v. State, 22 Ala. App. 39, 111 So. 767, 769.

NEITHER PARTY. An abbreviated form of docket entry, meaning that, by agreement, neither of the parties will further appear in court in that suit. Gendron v. Hovey, 98 Me. 139, 56 A. 583; White v. Beverly Bldg. Ass'n, 221 Mass. 15, 108 N. E. 921, 922; Means v. Hoar, 110 Me. 409, 86 A. 772, 773.

NEMBDA. In Swedish and Gothic law. A jury. 3 Bl. Comm. 349, 359.

NEMINE CONTRADICENTE. Lat. No one dissenting; no one voting in the negative. A phrase used to indicate the unanimous consent of a court or legislative body to a judgment, resolution, vote, or motion. Commonly abbreviated *"nem. con."*

Neminem lædit qui jure suo utitur. He who stands on his own rights injures no one.

Neminem oportet esse sapientiorem legibus. Co. Litt. 97*b*. No man ought to be wiser than the laws.

NEMO. Lat. No one; no man. The initial word of many Latin phrases and maxims, among which are the following:

Nemo admittendus est inhabilitare seipsum. Jenk. Cent. 40. No man is to be admitted to incapacitate himself.

Nemo agit in seipsum. No man acts against himself. Jenk. Cent. p. 40, case 76. A man cannot be a judge and a party in his own cause. Id.; Broom, Max. 216*n*.

Nemo alienæ rei, sine satisdatione, defensor idoneus intelligitur. No man is considered a competent defender of another's property, without security. A rule of the Roman law, applied in part in admiralty cases. 1 Curt. 202.

Nemo alieno nomine lege agere potest. No one can sue in the name of another. Dig. 50, 17, 123.

Nemo aliquam partem recte intelligere potest, antequam totum iterum atque iterum perlegerit. No one can properly understand any part of a thing till he has read through the whole again and again. 3 Co. 59; Broom, Max. 593.

Nemo allegans suam turpitudinem audien dus est. No one alleging his own turpitude is to be heard as a witness. 4 Inst. 279; 12 Pick. (Mass.) 567. This is not a rule of evidence, but applies to a party seeking to enforce a right founded on an illegal consideration; 94 U. S. 426, 24 L. Ed. 204.

Nemo bis punitur pro eodem delicto. No man is punished twice for the same offense. 4 Bl. Comm. 315; 2 Hawk. P. C. 377.

Nemo cogitationis pœnam patitur. No one suffers punishment on account of his thoughts. Tray. Lat. Max. 362.

Nemo cogitur rem suam vendere, etiam justo pretio. No man is compelled to sell his own property, even for a just price. 4 Inst. 275.

Nemo contra factum suum venire potest. No man can contravene or contradict his own deed. 2 Inst. 66. The principle of estoppel by deed. Best, Ev. p. 408, § 370.

Nemo damnum facit, nisi qui id fecit quod facere jus non habet. No one is considered

as doing damage, unless he who is doing what he has no right to do. Dig. 50, 17, 151.

Nemo dare potest quod non habet. No man can give that which he has not. Fleta, lib. 3, c. 15, § 8.

Nemo dat qui non habet. He who hath not cannot give. Jenk. Cent. 250; Broom, Max. 499*n*; 6 C. B. (N. S.) 478.

Nemo de domo sua extrahi potest. No one can be dragged out of his own house. In other words, every man's house is his castle. Dig. 50, 17, 103.

Memo debet aliena jactura locupletari. No one ought to gain by another's loss. 2 Kent. 336.

Nemo debet bis puniri pro uno delicto. No man ought to be punished twice for one offense. 4 Coke, 43*a*; 11 Coke, 59*b*. No man shall be placed in peril of legal penalties more than once upon the same accusation. Broom, Max. 348.

Nemo debet bis vexari pro eadem causa. No one should be twice harassed for the same cause. 2 Johns. (N. Y.) 182; 13 Johns. (N. Y.) 153; 6 Hill (N. Y.) 133; 2 Barb. (N. Y.) 285; 6 Barb. (N. Y.) 32.

Nemo debet bis vexari [si constet curiæ quod sit] pro una et eadem causa. No man ought to be twice troubled or harassed [if it appear to the court that it is] for one and the same cause. 5 Coke, 61*a*; 5 Pet. 61, 8 L. Ed. 25; 2 Mass. 355; 17 Mass. 425. No man can be sued a second time for the same cause of action, if once judgment has been rendered. See Broom, Max. 327, 348. No man can be held to bail a second time at the suit of the same plaintiff for the same cause of action. 1 Chit. Archb. Pr. 476.

Nemo debet esse judex in propria causa. No man ought to be a judge in his own cause. 12 Coke, 114*a*. A maxim derived from the civil law. Cod. 3, 5. Called a "fundamental rule of reason and of natural justice." Burrows, Sett. Cas. 194, 197.

Nemo debet immiscere se rei ad se nihil pertinenti. No one should intermeddle with a thing that in no respect concerns him. Jenk. Cent. p. 18, case 32.

Nemo debet in communione invitus teneri. No one should be retained in a partnership against his will. Selden v. Vermilya, 2 Sandf. (N. Y.) 568, 593; United Ins. Co. v. Scott, 1 Johns. (N. Y.) 106, 114.

Nemo debet locupletari aliena jactura. No one ought to be enriched by another's loss. Dig. 6, 1, 48, 65; 2 Kent, Comm. 336; 1 Kames, Eq. 331.

Nemo debet locupletari ex alterius incommodo. No one ought to be made rich out of another's loss. Jenk. Cent. 4; Taylor v. Baldwin, 10 Barb. (N. Y.) 626, 633.

Nemo debet rem suam sine facto aut defectu suo amittere. No man ought to lose his property without his own act or default. Co. Litt. 263*a*.

Nemo duobus utatur officiis. 4 Inst. 100. No one should hold two offices, *i. e.*, at the same time.

Nemo ejusdem tenementi simul potest esse hæres et dominus. No one can at the same time be the heir and the owner of the same tenement. See 1 Reeve, Eng. Law, 106.

Nemo enim aliquam partem recte intelligere possit antequam totum iterum atque iterum perlegerit. No one is able rightly to understand one part before he has again and again read through the whole. Broom, Max. 593.

Nemo est hæres viventis. No one is the heir of a living person. Co. Litt. 8*a*, 22*b*. No one can be heir during the life of his ancestor. Broom, Max. 522, 523; 7 Allen (Mass.) 75; 99 Mass. 456; 118 Mass. 345. No person can be the actual complete heir of another till the ancestor is previously dead. 2 Bl. Comm. 208.

Nemo est supra leges. No one is above the law. Lofft, 142.

Nemo ex alterius facto prægravari debet. No man ought to be burdened in consequence of another's act. 2 Kent, Comm. 646.

Nemo ex consilio obligatur. No man is bound in consequence of his advice. Mere advice will not create the obligation of a mandate. Story, Bailm. § 155.

Nemo ex dolo suo proprio relevetur, aut auxilium capiat. Let no one be relieved or gain an advantage by his own fraud. A civil law maxim.

Nemo ex proprio dolo consequitur actionem. No one maintains an action arising out of his own wrong. Broom, Max. 297.

Nemo ex suo delicto meliorem suam conditionem facere potest. No one can make his condition better by his own misdeed. Dig. 50, 17, 134, 1.

Nemo in propria causa testis esse debet. No one ought to be a witness in his own cause. 3 Bl. Comm. 371.

Nemo inauditus condemnari debet si non sit contumax. No man ought to be condemned without being heard unless he be contumacious. Jenk. Cent. p. 18, case 12, in marg.

Nemo jus sibi dicere potest. No one can declare the law for himself. No one is entitled to take the law into his own hands. Tray. Lat. Max. 366.

Nemo militans Deo implicetur secularibus negotiis. No man who is warring for [in the

service of] God should be involved in secular matters. Co. Litt. 70*b*. A principle of the old law that men of religion were not bound to go in person with the king to war.

Nemo nascitur artifex. Co. Litt. 97. No one is born an artificer.

Nemo patriam in qua natus est exuere, nec ligeantiæ debitum ejurare possit. No man can renounce the country in which he was born, nor abjure the obligation of his allegiance. Co. Litt. 129*a;* Broom, Max. 75; Fost. Cr. Law, 184.

Nemo plus commodi hæredi suo relinquit quam ipse habuit. No one leaves a greater benefit to his heir than he had himself. Dig. 50, 17, 120.

Nemo plus juris ad alium transferre potest quam ipse habet. No one can transfer more right to another than he has himself. Dig. 50, 17, 54; Broom, Max. 467, 469; 2 Kent 324; 5 Co. 113; 10 Pet. 161, 175, 9 L. Ed. 382.

Nemo potest contra recordum verificare per patriam. No one can verify by the country against a record. 2 Inst. 380. The issue upon matter of record cannot be to the jury. A maxim of old practice.

Nemo potest esse dominus et hæres. No man can be both owner and heir. Hale, Com. Law, c. 7.

Nemo potest esse simul actor et judex. No one can be at once suitor and judge. Broom, Max. 117.

Nemo potest esse tenens et dominus. No man can be both tenant and lord [of the same tenement.] Gilb. Ten. 142.

Nemo potest exuere patriam. No man can renounce his own country. 18 L. Q. R. 51.

Nemo potest facere per alium quod per se non potest. No one can do that by another which he cannot do of himself. Jenk. Cent. p. 237, case 14. A rule said to hold in original grants, but not in descents; as where an office descended to a woman, in which case, though she could not exercise the office in person, she might by deputy. Id.

Nemo potest facere per obliquum quod non potest facere per directum. No man can do that indirectly which he cannot do directly. 1 Eden, 512.

Nemo potest mutare consilium suum in alterius injuriam. No man can change his purpose to another's injury. Dig. 50, 17, 75; Broom, Max. 34.

Nemo potest nisi quod de jure potest. No one is able to do a thing, unless he can do it lawfully. 67 Ill. App. 80.

Nemo potest plus juris ad alium transferre quam ipse habet. Co. Litt. 309; Wing. Max. 56. No one can transfer a greater right to another than he himself has.

Nemo potest sibi debere. No one can owe to himself.

Nemo præsens nisi intelligat. One is not present unless he understands.

Nemo præsumitur alienam posteritatem suæ prætulisse. No man is presumed to have preferred another's posterity to his own. Wing. Max. p. 285, max. 79.

Nemo præsumitur donare. No one is presumed to give. Haren v. Foster, 9 Pick. (Mass.) 128, 19 Am. Dec. 353.

Nemo præsumitur esse immemor suæ æternæ salutis, et maxime in articulo mortis. 6 Coke, 76. No one is presumed to be forgetful of his own eternal welfare, and particularly at the point of death.

Nemo præsumitur ludere in extremis. No one is presumed to trifle at the point of death.

Nemo præsumitur malus. No one is presumed to be bad.

Nemo prohibetur plures negotiationes sive artes exercere. No one is prohibited from following several kinds of business or several arts. 11 Coke, 54*a*. The common law doth not prohibit any person from using several arts or mysteries at his pleasure. Id.

Nemo prohibetur pluribus defensionibus uti. Co. Litt. 304*a*. No one is prohibited from making use of several defenses.

Nemo prudens punit ut præterita revocentur, sed ut futura præveniantur. No wise man punishes in order that past things may be recalled, but that future wrongs may be prevented. 2 Bulst. 173.

Nemo punitur pro alieno delicto. Wing. Max. 336. No one is punished for another's wrong.

Nemo punitur sine injuria, facto, seu defalta. No one is punished unless for some wrong, act, or default. 2 Inst. 287.

Nemo qui condemnare potest, absolvere non potest. No one who may condemn is unable to acquit. Dig. 50, 17, 37.

Nemo sibi esse judex vel suis jus dicere debet. No man ought to be his own judge, or to administer justice in cases where his relations are concerned. 12 Co. 113; Cod. 3, 5, 1; Broom, Max. 116, 124.

Nemo sine actione experitur, et hoc non sine breve sive libello conventionali. No one goes to law without an action, and no one can bring an action without a writ or bill. Bract. fol. 112.

Nemo tenetur ad impossibile. No one is bound to an impossibility. Jenk. Cent. 7; Broom, Max. 244.

Nemo tenetur armare adversarium contra se. Wing. Max. 665. No one is bound to arm his adversary against himself.

Nemo tenetur divinare. No man is bound to divine, or to have foreknowledge of, a future event. 10 Coke, 55*a*.

Nemo tenetur edere instrumenta contra se. No man is bound to produce writings against himself. A rule of the Roman law, adhered to in criminal prosecutions, but departed from in civil questions. Bell.

Nemo tenetur informare qui nescit, sed quisquis scire quod informat. Branch, Princ. No one is bound to give information about things he is ignorant of, but every one is bound to know that which he gives information about.

Nemo tenetur jurare in suam turpitudinem. No one is bound to swear to the fact of his own criminality; no one can be forced to give his own oath in evidence of his guilt. Bell; Halk. 100.

Nemo tenetur prodere seipsum. No one is bound to betray himself. In other words, no one can be compelled to criminate himself. Broom, Max. 968.

Nemo tenetur seipsum accusare. Wing. Max. 486. No one is bound to accuse himself; 14 M. & W. 286; 107 Mass. 181.

Nemo tenetur seipsum infortuniis et periculis exponere. No one is bound to expose himself to misfortunes and dangers. Co. Litt. 253*b*.

Nemo tenetur seipsum prodere. No one is bound to betray himself. 10 N. Y. 10; 7 How. Prac. (N. Y.) 57, 58; Broom, Max. 968.

Nemo unquam judicet in se. No one can ever be a judge in his own cause.

Nemo unquam vir magnus fuit, sine aliquo divino afflatu. No one was ever a great man without some divine inspiration. Cicero.

Nemo videtur fraudare eos qui sciunt et consentiunt. No one seems [is supposed] to defraud those who know and assent [to his acts.] Dig. 50, 17, 145.

NEMY. L. Fr. Not. Litt. § 3.

NEPHEW. The son of a brother or sister. But the term, as used in wills and other documents, may include the children of half brothers and sisters and also grandnephews, if such be the apparent intention, but not the nephew of a husband or wife, and not (presumptively) a nephew who is illegitimate. See Shephard v. Shephard, 57 Conn. 24, 17 A. 173; Lyon v. Lyon, 88 Me. 395, 34 A. 180; Brower v. Bowers, 1 Abb. Dec. (N. Y.) 214; Green's Appeal, 42 Pa. 25; In re Van Riempst, 99 Misc. 169, 165 N. Y. S. 538, 539; In re Logan, 131 N. Y. 456, 30 N. E. 485.

NEPOS. Lat. A grandson.

NEPTIS. Lat. A granddaughter; sometimes great-granddaughter.

NEPUOY. In Scotch law. A grandson. Skene.

NERVINE. The word "nervine" is a descriptive word meaning a nerve tonic or a remedy for disorder of the nerves. Richmond Remedies Co. v. Dr. Miles Medical Co. (C. C. A.) 16 F.(2d) 598, 601.

NERVOUSNESS. A species of mental suffering. Southern Ry. in Kentucky v. Owen, 156 Ky. 827, 162 S. W. 110, 111.

NET. Clear of anything extraneous; with all deductions, such as charges, expenses, discounts, commissions, taxes, etc.; free from expenses. St. John v. Erie R. Co., 22 Wall. 148, 22 L. Ed. 743; Scott v. Hartley, 126 Ind. 239, 25 N. E. 826; Gibbs v. People's Nat. Bank, 198 Ill. 307, 64 N. E. 1060; Overshiner v. Palmer (Tex. Civ. App.) 185 S. W. 387; Pascagoula Nat. Bank v. Federal Reserve Bank of Atlanta (D. C.) 3 F.(2d) 465, 467; Smith v. Toth, 61 Ind. App. 42, 111 N. E. 442, 444; Castillo v. J. S. Frank, Inc. (City Ct. N. Y.) 194 N. Y. S. 418, 419; Sandbrook v. W. L. Morrison Inv. Co., 209 Mo. App. 600, 239 S. W. 543, 546.

NET BALANCE. The proceeds of sale, after deducting expenses. Evans v. Waln, 71 Pa. 69; Meserve v. Smith Bros., 56 Cal. App. 683, 206 P. 105.

NET EARNINGS. See Earnings.

NET INCOME. The profit or income accruing from a business, fund, estate, etc., after deducting all necessary charges and expenses of every kind. Jones & Nimick Mfg. Co. v. Com., 69 Pa. 137; In re Young, 15 App. Div. 285, 44 N. Y. S. 585; Fickett v. Cohn (Com. Pl.) 1 N. Y. S. 436.

NET PREMIUM. In the business of life insurance, this term is used to designate that portion of the premium which is intended to meet the cost of the insurance, both current and future; its amount is calculated upon the basis of the mortality tables and upon the assumption that the company will receive a certain rate of interest upon all its assets; it does not include the entire premium paid by the assured, but does include a certain sum for expenses. Fuller v. Metropolitan L. Ins. Co., 70 Conn. 647, 41 A. 4.

NET PRICE. The lowest price, after deducting all discounts.

NET PROFITS. This term does not mean what is made over the losses, expenses, and interest on the amount invested. It includes the gain that accrues on the investment, after deducting simply the losses and expenses of the business. Tutt v. Land, 50 Ga. 350.

NET TONNAGE. The net tonnage of a vessel is the difference between the entire cubic contents of the interior of the vessel numbered in tons and the space occupied by the crew and

by propelling machinery. The Thomas Melville, 62 F. 749, 10 C. C. A. 619.

NET WEIGHT. The weight of an article or collection of articles, after deducting from the gross weight the weight of the boxes, coverings, casks, etc., containing the same. The weight of an animal dressed for sale, after rejecting hide, offal, etc.

NETHER HOUSE OF PARLIAMENT. A name given to the English house of commons in the time of Henry VIII.

NEURASTHENIA. In medical jurisprudence. A condition of weakness or exhaustion of the general nervous system, giving rise to various forms of mental and bodily inefficiency.

NEUTRAL. In international law. Indifferent; impartial; not engaged on either side; not taking an active part with either of the contending states. In an international war, the principal hostile powers are called "belligerents;" those actively co-operating with and assisting them, their "allies;" and those taking no part whatever, "neutrals."

NEUTRAL PROPERTY. Property which belongs to citizens of neutral powers, and is used, treated, and accompanied by proper *insignia* as such.

NEUTRALITY. The state of a nation which takes no part between two or more other nations at war. U. S. v. The Three Friends, 166 U. S. 1, 17 S. Ct. 495, 41 L. Ed. 897; O'Neill v. Central Leather Co., 87 N. J. Law, 552, 94 A. 789, 790, L. R. A. 1917A, 276.

NEUTRALITY LAWS. Acts of congress which forbid the fitting out and equipping of armed vessels, or the enlisting of troops, for the aid of either of two belligerent powers with which the United States is at peace.

NEUTRALITY PROCLAMATION. A proclamation by the president of the United States, issued on the outbreak of a war between two powers with both of which the United States is at peace, announcing the neutrality of the United States and warning all citizens to refrain from any breach of the neutrality laws.

NEVER INDEBTED, PLEA OF. A species of traverse which occurs in actions of debt on simple contract, and is resorted to when the defendant means to deny in point of fact the existence of any express contract to the effect alleged in the declaration, or to deny the matters of fact from which such contract would by law be implied. Steph. Pl. 153, 156; Wharton.

NEW. As an element in numerous compound terms and phrases of the law, this word may denote novelty, or the condition of being previously unknown or of recent or fresh origin, but ordinarily it is a purely relative term and is employed in contrasting the date, origin, or character of one thing with the corresponding attributes of another thing of the same kind or class.

New and Useful

The phrase used in the patent laws to describe the two qualities of an invention or discovery which are essential to make it patentable, viz., novelty, or the condition of having been previously unknown, and practical utility. See In re Gould, 1 MacArthur (D. C.) 410; Adams v. Turner, 73 Conn. 38, 46 A. 247; Lowell v. Lewis, 1 Mason, 182, Fed. Cas. No. 8,568. To accomplish a new and useful result within meaning of Rev. St. § 4886 (35 USCA § 31), it is not necessary that result before unknown should be brought about, but it is sufficient if an old result is accomplished in a new and more effective way. Hirschy v. Wisconsin-Minnesota Gas & Electric Household Appliances Co. (D. C.) 18 F.(2d) 347, 354. An invention achieves a new result, where a function which had been performed by other means was performed to an efficient degree by an association of means never before combined, though all of them were old, and some of the changes seemed to be only in degree. American Ball Bearing Co. v. Finch (C. C. A.) 239 F. 885, 889.

New Assets

In the law governing the administration of estates, this term denotes assets coming into the hands of an executor or administrator after the expiration of the time when, by statute, claims against the estate are barred so far as regards recourse against the assets with which he was originally charged. See Littlefield v. Eaton, 74 Me. 521; Chenery v. Webster, 8 Allen (Mass.) 77; Robinson v. Hodge, 117 Mass. 222; Veazie v. Marrett, 6 Allen (Mass.) 372.

New Assignment

Under the common-law practice, where the declaration in an action is ambiguous, and the defendant pleads facts which are literally an answer to it, but not to the real claim set up by the plaintiff, the plaintiff's course is to reply by way of new assignment; *i. e.*, allege that he brought his action not for the cause supposed by the defendant, but for some other cause to which the plea has no application. 3 Steph. Comm. 507; Sweet. See Bishop v. Travis, 51 Minn. 183, 53 N. W. 461.

New Cause of Action

With reference to the amendment of pleadings, this term may refer to a new state of facts out of which liability is claimed to arise, or it may refer to parties who are alleged to be entitled under the same state of facts, or it may embrace both features. Love v. Southern R. Co., 108 Tenn. 104, 65 S. W. 475, 55 L. R. A. 471. See Nelson v. First Nat. Bank, 139 Ala. 578, 36 So. 707, 101 Am. St. Rep. 52.

New For Old

In making an adjustment of a partial loss under a policy of marine insurance, the rule

is to apply the old materials towards the payment of the new, by deducting the value of them from the gross amount of the expenses for repairs, and to allow the deduction of one-third *new for old* upon the balance. 3 Kent, Comm. 339.

New Inn

An inn of chancery. See Inns of Chancery.

New Matter

In pleading. Matter of fact not previously alleged by either party in the pleadings. Walters v. Battenfield, 21 N. M. 413, 155 P. 721, 723; Continental Gin Co. v. Arnold, 52 Okl. 569, 153 P. 160, 163; Hubbard v. Olsen-Roe Transfer Co., 110 Or. 618, 224 P. 636, 639; Smith v. Marley, 39 Idaho, 779, 230 P. 769, 770; Dixon v. Pruett, 42 Nev. 345, 177 P. 11, 12.

New Promise

See Promise.

New Style

The modern system of computing time was introduced into Great Britain A. D. 1752, the 3d of September of that year being reckoned as the 14th.

New Trial

See Trial.

New Works

In the civil law. By a new work is understood every sort of edifice or other work which is newly commenced on any ground whatever. When the ancient form of work is changed, either by an addition being made to it or by some part of the ancient work being taken away, it is styled also a "new work." Civ. Code La. art. 856.

New Year's Day

The first day of January. The 25th of March was the civil and legal New Year's Day, till the alteration of the style in 1752, when it was permanently fixed at the 1st of January. In Scotland the year was, by a proclamation, which bears date 27th of November, 1599, ordered thenceforth to commence in that kingdom on the 1st of January instead of the 25th of March. Enc. Lond.

Of New

See that title.

NEWGATE. The name of a prison in London, said to have existed as early as 1207. It was three times destroyed and rebuilt. For centuries the condition of the place was horrible, but it has been greatly improved since 1808. Since 1815, debtors have not been committed to this prison.

NEWLY-DISCOVERED EVIDENCE. See Evidence.

NEWSPAPER. According to the usage of the commercial world, a newspaper is defined to be a publication in numbers, consisting commonly of single sheets, and published at short and stated intervals, conveying intelligence of passing events. 4 Op. Attys. Gen. 10. And see Crowell v. Parker, 22 R. I. 51, 46 A. 35, 84 Am. St. Rep. 815; Hanscom v. Meyer, 60 Neb. 68, 82 N. W. 114, 48 L. R. A. 409, 83 Am. St. Rep. 507; Williams v. Colwell, 18 Misc. Rep. 399, 43 N. Y. S. 720; Kellogg v. Carrico, 47 Mo. 157; Kerr v. Hitt, 75 Ill. 51; Culclasure v. Consolidated Bond and Mortgage Co., 94 Fla. 764, 114 So. 540, 541; White v. Multnomah County, 74 Or. 96, 144 P. 1193, 1195.

Official Newspaper

One designated by a state or municipal legislative body, or agents empowered by them, in which the public acts, resolves, advertisements, and notices are required to be published. Albany County v. Chaplin, 5 Wyo. 74, 37 P. 370.

NEXI. Lat. In Roman law. Bound; bound persons. A term applied to such insolvent debtors as were delivered up to their creditors, by whom they might be held in bondage until their debts were discharged. Calvin.; Adams, Rom. Ant. 49.

NEXT. Nearest; closest; immediately following. See Green v. McLaren, 7 Ga. 107; State v. Asbell, 57 Kan. 398, 46 P. 770; German Security Bank v. McGarry, 106 Ala. 633, 17 So. 704; State v. McLeish, 59 Mont. 527, 198 P. 357, 359; In re Park (D. C.) 8 F.(2d) 544; U. S. Trust Co. of New York v. Perry, 193 App. Div. 153, 183 N. Y. S. 426, 429.

Nearest or nighest, not in the sense of propinquity alone, as, for example, three persons on three chairs, one in the midst, those on each side of the middle one are equally near, each "next" to the middle one; but it signifies also order, or succession, or relation as well as propinquity. 27 L. J. Ch. 654. See 3 Q. B. 723; Couch v. Turnpike Co., 4 Johns. Ch. (N. Y.) 26.

NEXT DEVISEE. By the term "first devisee" is understood the person to whom the estate is first given by the will, while the term "next devisee" refers to the person to whom the remainder is given. Young v. Robinson, 5 N. J. Law, 689.

NEXT FRIEND. The legal designation of the person by whom an infant or other person disabled from suing in his own name brings and prosecutes an action either at law or in equity; usually a relative. Strictly speaking, a next friend (or "*prochein amy*") is not appointed by the court to bring or maintain the suit, but is simply one who volunteers for that purpose, and is merely admitted or permitted to sue in behalf of the infant; but the practice of suing by a next friend has now been almost entirely superseded by the practice of appointing a guardian ad litem. See McKinney v. Jones, 55 Wis. 39, 11 N. W. 606; Guild v. Cranston, 8 Cush. (Mass.) 506; Tucker v. Dabbs, 12 Heisk. (Tenn.) 18; Leopold v. Meyer, 10 Abb. Prac. (N. Y.) 40; Zazove v. Minneapolis, St. P. &

S. S. M. Ry. Co., 218 Ill. App. 534, 538; Hyatt v. Hyatt, 100 W. Va. 193, 130 S. E. 107, 110; Watts v. Hicks, 119 Ark. 621, 178 S. W. 924, 925; Chase v. Ulster & D. R. Co., 214 N. Y. S. 615, 620, 215 App. Div. 581; Walter v. Walter, 156 N. Y. S. 713, 715, 170 App. Div. 870; Slafter v. Savage, 89 Vt. 352, 95 A. 790, 791.

NEXT OF KIN. In the law of descent and distribution. This term properly denotes the persons nearest of kindred to the decedent, that is, those who are most nearly related to him by blood; but it is sometimes construed to mean only those who are entitled to take under the statute of distributions, and sometimes to include other persons. 2 Story, Eq. Jur. § 1065*b*; Barrett v. Egbertson, 92 N. J. Eq. 118, 111 A. 326, 327; Godfrey v. Epple, 100 Ohio St. 447, 126 N. E. 886, 11 A. L. R. 317; In re White's Estate, 211 N. Y. S. 519, 520, 125 Misc. Rep. 348; Close v. Benham, 97 Conn. 102, 115 A. 626, 627, 20 A. L. R. 351; Makller v. Independent Workmen's Circle of America, 255 Mass. 252, 151 N. E. 69; Mid-Coal Petroleum Co. v. Allen, 110 Okl. 101, 236 P. 426, 427; Hamilton v. Erie R. Co., 219 N. Y. 343, 114 N. E. 399, 403, Ann. Cas. 1918A, 928; Wallace v. Wallace, 181 N. C. 158, 106 S. E. 501, 504; Morse v. White, 182 Mich. 607, 148 N. W. 970, 971; Fields v. Rollins, 186 N. C. 221, 119 S. E. 207, 208; U. S. Trust Co. of New York v. Hoyt, 190 N. Y. S. 166, 169, 115 Misc. Rep. 663; Lewis v. Palmer, 167 N. Y. S. 1053, 1055; Arnold v. O'Connor, 94 A. 145, 37 R. I. 557, L. R. A. 1916C, 898; Wallace v. Wallace, 181 N. C. 158, 106 S. E. 501, 504; In re Friedleben's Estate, 171 N. Y. S. 761, 762, 103 Misc. Rep. 558; In re Ziesenitz's Estate, 218 N. Y. S. 233, 128 Misc. Rep. 100; In re Ross' Estate, 187 Cal. 454, 202 P. 641, 642; Heller v. Teale (D. C.) 216 F. 387, 400; Sanders v. Buenger, 311 Ill. 572, 143 N. E. 431, 433; Whitehead Coal Mining Co. v. Pinkston, 71 Okl. 124, 175 P. 364, 365; National Power Const. Co. v. Rouleau, 81 Ind. App. 585, 144 N. E. 557, 558; In re Scott's Will (Sur.) 204 N. Y. S. 478, 494; Mostenbocker v. Shawnee Gas & Electric Co., 49 Okl. 304, 152 P. 82, 83, L. R. A. 1916B, 910; In re Garrett's Estate, 249 Pa. 249, 94 A. 927, 928. The words "next of kin," used *simpliciter* in a deed or will, mean, not nearest of kindred, but those relatives who share in the estate according to the statute of distributions, including those claiming *per stirpes* or by representation. Slosson v. Lynch, 43 Barb. (N. Y.) 147.

NEXT PRESENTATION. In the law of advowsons. The right of next presentation is the right to present to the first vacancy of a benefice.

NEXUM. Lat. In Roman law. In ancient times the *nexum* seems to have been a species of formal contract, involving a loan of money, and attended with peculiar consequences, solemnized with the "copper and balance." Later, it appears to have been used as a general term for any contract struck with those ceremonies, and hence to have included the special form of conveyance called *"mancipatio."* In a general sense it means the obligation or *bond* between contracting parties. See Maine, Anc. Law, 305, *et seq.;* Hadl. Rom. Law, 247.

In Roman law, this word expressed the tie or obligation involved in the old conveyance by *mancipatio;* and came latterly to be used interchangeably with (but less frequently than) the word *"obligatio"* itself. Brown.

NICHILLS. In English practice. Debts due to the exchequer which the sheriff could not levy, and as to which he returned *nil.* These sums were transcribed once a year by the clerk of the nichills, and sent to the treasurer's remembrancer's office, whence process was issued to recover the "nichill" debts. Both of these offices were abolished in 1833. Mozley & Whitley.

NICKNAME. A short name; one *nicked* or cut off for the sake of brevity, without conveying an idea of opprobrium, and frequently evincing the strongest affection or the most perfect familiarity. North Carolina Inst. v. Norwood, 45 N. C. 74.

NIDERLING, NIDERING, or NITHING. A vile, base person, or sluggard; chicken-hearted. Spelman.

NIECE. The daughter of one's brother or sister. Ambl. 514. Capps v. State, 87 Fla. 388, 100 So. 172, 173.

NIEFE. In old English law. A woman born in vassalage; a bondwoman.

NIENT. L. Fr. Nothing; not.

NIENT COMPRISE. Not comprised; not included. An exception taken to a petition because the thing desired is not contained in that deed or proceeding whereon the petition is founded. Tomlins.

NIENT CULPABLE. Not guilty. The name in law French of the general issue in tort or in a criminal action.

NIENT DEDIRE. To say nothing; to deny nothing; to suffer judgment by default.

NIENT LE FAIT. In pleading. Not the deed; not his deed. The same as the plea of *non est factum.*

NIENT SEISI. In old pleading. Not seised. The general plea in the writ of annuity. Crabb, Eng. Law, 424.

NIGER LIBER. The black book or register in the exchequer; chartularies of abbeys, cathedrals, etc.

NIGHT. As to what, by the common law, is reckoned night and what day, it seems to be the general opinion that, if there be daylight,

or *crepusculum*, enough begun or left to discern a man's face, that is considered day; and night is when it is so dark that the countenance of a man cannot be discerned. 1 Hale, P. C. 350. However, the limit of 9 p. m. to 6 a. m. has been fixed by statute, in England, as the period of night, in prosecutions for burglary and larceny. St. 24 & 25 Vict. c. 96, § 1; Brown. In American law, the common-law definition is still adhered to in some states, but in others "night" has been defined by statute. U. S. v. Lepper (D. C.) 288 F. 136, 137; Weatherred v. State, 101 Tex. Cr. R. 520, 276 S. W. 436, 437; Wilson v. State, 103 Tex. Cr. R. 403, 281 S. W. 844, 847; Port Huron & Sarnia Ferry Co. v. Lawson (D. C.) 292 F. 216, 219; U. S. v. Boston & M. R. R. (C. C. A.) 269 F. 89, 90.

NIGHT MAGISTRATE. A constable of the night; the head of a watch-house.

NIGHT WALKERS. Described in the statute 5 Edw. III. c. 14, as persons who sleep by day and walk by night. Persons who prowl about at night, and are of a suspicious appearance and behavior. Persons whose habit is to be abroad at night for the purpose of committing some crime or nuisance or mischief or disturbing the peace; not now generally subject to the criminal laws except in respect to misdemeanors actually committed, or in the character of vagrants or suspicious persons. See Thomas v. State, 55 Ala. 260, 261; State v. Dowers, 45 N. H. 543. In a narrower sense, a night walker is a prostitute who walks the streets at night for the purpose of soliciting men for lewd purposes. Stokes v. State, 92 Ala. 73, 9 So. 400, 25 Am. St. Rep. 22; Thomas v. State, 55 Ala. 260; People v. Berger (Gen. Sess.) 169 N. Y. S. 319, 321.

Nigrum nunquam excedere debet rubrum. The black should never go beyond the red, [*i. e.*, the text of a statute should never be read in a sense more comprehensive than the rubric, or title.] Tray. Lat. Max. 373.

NIHIL. Lat. Nothing. Often contracted to "*nil.*" The word standing alone is the name of an abbreviated form of return to a writ made by a sheriff or constable, the fuller form of which would be "*nihil est*" or "*nihil habet,*" according to circumstances.

Nihil aliud potest rex quam quod de jure potest. 11 Coke, 74. The king can do nothing except what he can by law do.

NIHIL CAPIAT PER BREVE. In practice. That he take nothing by his writ. The form of judgment against the plaintiff in an action, either in bar or in abatement. When the plaintiff has commenced his proceedings by bill, the judgment is *nihil capiat per billam.* Co. Litt. 363.

Nihil consensui tam contrarium est quam vis atque metus. Nothing is so opposed to consent as force and fear. Dig. 50, 17, 116.

Nihil dat qui non habet. He gives nothing who has nothing.

Nihil de re accrescit ei qui nihil in re quando jus accresceret habet. Co. Litt. 188. Nothing of a matter accrues to him who, when the right accrues, has nothing in that matter.

NIHIL DICIT. He says nothing. This is the name of the judgment which may be taken as of course against a defendant who omits to plead or answer the plaintiff's declaration or complaint within the time limited. In some jurisdictions it is otherwise known as judgment "for want of a plea." See Gilder v. McIntyre, 29 Tex. 91; Falken v. Housatonic R. Co., 63 Conn. 258, 27 A. 1117; Wilbur v. Maynard, 6 Colo. 486.

Nihil dictum quod non dictum prius. Nothing is said which was not said before. Said of a case where former arguments were repeated. Hardr. 464.

NIHIL EST. There is nothing. A form of return made by a sheriff when he has been unable to serve the writ. "Although *non est inventus* is the more frequent return in such a case, yet it is by no means as full an answer to the command of the writ as is the return of *nihil.* That amounts to an averment that the defendant has nothing in the bailiwick, no dwelling-house, no family, no residence, and no personal presence to enable the officer to make the service required by the act of assembly. It is therefore a full answer to the exigency of the writ." Sherer v. Easton Bank, 33 Pa. 139.

Nihil est enim liberale quod non idem justum. For there is nothing generous which is not at the same time just. 2 Kent, Comm. 441, note *a.*

Nihil est magis rationi consentaneum quam eodem modo quodque dissolvere quo conflatum est. Nothing is more consonant to reason than that a thing should be dissolved or discharged in the same way in which it was created. Shep. Touch. 323.

Nihil facit error nominis cum de corpore constat. 11 Coke, 21. An error as to a name is nothing when there is certainty as to the person.

NIHIL HABET. He has nothing. The name of a return made by a sheriff to a *scire facias* or other writ which he has been unable to serve on the defendant.

Nihil habet forum ex scena. The court has nothing to do with what is not before it. Bac. Max.

Nihil in lege intolerabilius est [quam] eandem rem diverso jure censeri. Nothing is more intolerable in law than that the same matter, thing, or case should be subject to different views of law. 4 Coke, 93*a.* Applied to the difference of opinion entertained by different courts, as to the law of a particular case. Id.

Nihil infra regnum subditos magis conservat in tranquilitate et concordia quam debita legum administratio. Nothing preserves in tranquillity and concord those who are subjected to the same government better than a due administration of the laws. 2 Inst. 158.

Nihil iniquius quam æquitatem nimis intendere. Nothing is more unjust than to extend equity too far. Halk. 103.

Nihil magis justum est quam quod necessarium est. Nothing is more just than that which is necessary. Dav. Ir. K. B. 12; Branch, Princ.

Nihil nequam est præsumendum. Nothing wicked is to be presumed. 2 P. Wms. 583.

Nihil perfectum est dum aliquid restat agendum. Nothing is perfect while anything remains to be done. 9 Coke, 9*b*.

Nihil peti potest ante id tempus quo per rerum naturam persolvi possit. Nothing can be demanded before the time when, by the nature of things, it can be paid. Dig. 50, 17, 186.

Nihil possumus contra veritatem. We can do nothing against truth. Doct. & Stud. dial. 2, c. 6.

Nihil præscribitur nisi quod possidetur. There is no prescription for that which is not possessed. 5 Barn. & Ald. 277.

Nihil quod est contra rationem est licitum. Nothing that is against reason is lawful. Co. Litt. 97*b*.

Nihil quod est inconveniens est licitum. Nothing that is inconvenient is lawful. Co. Litt. 66*a*, 97*b*. A maxim very frequently quoted by Lord Coke, but to be taken in modern law with some qualification. Broom, Max. 186, 366.

Nihil simul inventum est et perfectum. Co. Litt. 230. Nothing is invented and perfected at the same moment.

Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est. Nothing is so consonant to natural equity as that a thing should be dissolved by the same means by which it was bound. 2 Inst. 359; Broom, Max. 877.

Nihil tam conveniens est naturali æquitati quam voluntatem domini rem suam in alium transferre ratam habere. 1 Coke, 100. Nothing is so consonant to natural equity as to regard the intention of the owner in transferring his own property to another.

Nihil tam naturale est, quam eo genere quidque dissolvere, quo colligatum est; ideo verborum obligatio verbis tollitur; nudi consensus obligatio contrario consensu dissolvitur. Nothing is so natural as to dissolve anything in the way in which it was bound together; therefore the obligation of words is taken away by words; the obligation of mere consent is dissolved by the contrary consent. Dig. 50, 17, 35; Broom, Max. 887.

Nihil tam proprium imperio quam legibus vivere. Nothing is so becoming to authority as to live in accordance with the laws. Fleta, lib. 1, c. 17, § 11.

NIHILIST. A member of a secret association, (especially in Russia,) which is devoted to the destruction of the present political, religious, and social institutions. Webster.

NIL. Lat. Nothing. A contracted form of "*nihil*," which see.

Nil agit exemplum litem quod lite resolvit. An example does no good which settles one question by another. Hatch v. Mann, 15 Wend. (N. Y.) 44, 49.

Nil consensui tam contrarium est quam vis atque metus. Nothing is so opposed to consent as force and fear. Dig. 50, 17, 116.

NIL DEBET. He owes nothing. The form of the general issue in all actions of debt on simple contract.

Nil facit error nominis cum de corpore vel persona constat. A mistake in the name does not matter when the body or person is manifest. 11 Coke, 21; Broom, Max. 634.

NIL HABUIT IN TENEMENTIS. He had nothing [no interest] in the tenements. A plea in debt on a lease indented, by which the defendant sets up that the person claiming to be landlord had no title or interest.

NIL LIGATUM. Nothing bound; that is, no obligation has been incurred. Tray, Lat. Max.

Nil sine prudenti fecit ratione vetustas. Antiquity did nothing without a good reason. Co. Litt. 65.

Nil temere novandum. Nothing should be rashly changed. Jenk. Cent. 163.

Nimia certitudo certitudinem ipsam destruit. Too great certainty destroys certainty itself. Lofft, 244.

Nimia subtilitas in jure reprobatur. Wing. Max. 26. Too much subtlety in law is discountenanced.

Nimium altercando veritas amittitur. Hob. 344. By too much altercation truth is lost.

NIMMER. A thief; a pilferer.

NISI. Lat. Unless. The word is often affixed, as a kind of elliptical expression, to the words "rule," "order," "decree," "judgment," or "confirmation," to indicate that the adjudication spoken of is one which is to stand as valid and operative *unless* the party affected by it shall appear and show cause against it, or take some other appropriate

step to avoid it or procure its revocation. Thus a "decree *nisi*" is one which will definitely conclude the defendant's rights unless, within the prescribed time, he shows cause to set it aside or successfully appeals. The word, in this sense, is opposed to "absolute." And when a rule *nisi* is finally confirmed, for the defendant's failure to show cause against it, it is said to be "made absolute."

NISI FECERIS. The name of a clause commonly occurring in the old manorial writs, commanding that, if the lords failed to do justice, the king's court or officer should do it. By virtue of this clause, the king's court usurped the jurisdiction of the private, manorial, or local courts. Stim. Law Gloss.

NISI PRIUS. The *nisi prius* courts are such as are held for the trial of issues of fact before a jury and one presiding judge. In America the phrase is familiarly used to denote the forum (whatever may be its statutory name) in which the cause was tried to a jury, as distinguished from the appellate court. See 3 Bl. Comm. 58.

NISI PRIUS CLAUSE. In practice. A clause entered on the record in an action at law, authorizing the trial of the cause at *nisi prius* in the particular county designated. It was first used by way of continuance.

NISI PRIUS ROLL. In practice. The roll or record containing the pleadings, issue, and jury process of an action, made up for use in the *nisi prius* court.

NISI PRIUS WRIT. The old name of the writ of *venire*, which originally, in pursuance of the statute of Westminster 2, contained the *nisi prius* clause. Reg. Jud. 28, 75. Cowell.

NIVICOLLINI BRITONES. In old English law. Welshmen, because they live near high mountains covered with snow. Du Cange.

NO ARRIVAL NO SALE. In contract for sale of goods to be imported. If the goods do not arrive at destination buyer acquires no property in them and is not liable for the price. Wessel v. Seminole Phosphate Co. (C. C. A.) 13 F.(2d) 999, 1003.

NO AWARD. The name of a plea in an action on an award, by which the defendant traverses the allegation that an award was made.

NO BILL. This phrase, when indorsed by a grand jury on an indictment, is equivalent to "not found," "not a true bill," or "*ignoramus*."

NO FUNDS. See Fund.

NO GOODS. This is the English equivalent of the Latin term "*nulla bona*," being the form of the return made by a sheriff or constable, charged with an execution, when he has found no property of the debtor on which to levy.

No man can hold the same land immediately of two several landlords. Co. Litt. 152.

No man is presumed to do anything against nature. 22 Vin. Abr. 154.

No man may be judge in his own cause.

No man shall set up his infamy as a defense. 2 W. Bl. 364.

No man shall take by deed but parties, unless in remainder.

No one can grant or convey what he does not own. Seymour v. Canandaigua & N. F. R. Co., 25 Barb. (N. Y.) 284, 301. See Saltus v. Everett, 20 Wend. (N. Y.) 267, 32 Am. Dec. 541; Fassett v. Smith, 23 N. Y. 252; Brower v. Peabody, 13 N. Y. 121; Beavers v. Lane, 6 Duer (N. Y.) 232.

No one will be permitted to take the benefit under a will and at the same time defeat its provisions. 25 Wash. L. Rep. 50.

NOBILE OFFICIUM. In Scotch law. An equitable power of the court of session, to give relief when none is possible at law. Ersk. Inst. 1, 3, 22; Bell.

Nobiles magis plectuntur pecunia; plebes vero in corpore. 3 Inst. 220. The higher classes are more punished in money; but the lower in person.

Nobiles sunt, qui arma gentilitia antecessorum suorum proferre possunt. 2 Inst. 595. The gentry are those who are able to produce armorial bearings derived by descent from their own ancestors.

Nobiliores et benigniores præsumptiones in dubiis sunt præferendæ. In cases of doubt, the more generous and more benign presumptions are to be preferred. A civil-law maxim.

Nobilitas est duplex, superior et inferior. 2 Inst. 583. There are two sorts of nobility, the higher and the lower.

NOBILITY. In English law. A division of the people, comprehending dukes, marquises, earls, viscounts, and barons. These had anciently duties annexed to their respective honors. They are created either by writ, *i. e.*, by royal summons to attend the house of peers, or by letters patent, *i. e.*, by royal grant of any dignity and degree of peerage; and they enjoy many privileges, exclusive of their senatorial capacity. 1 Bl. Comm. 396.

NOCENT. From Latin "*nocere*." Guilty. "The *nocent* person." 1 Vern. 429.

NOCTANTER. By night. An abolished writ which issued out of chancery, and returned to the queen's bench, for the prostration of inclosures, etc.

NOCTES and NOCTEM DE FIRMA. Entertainment of meat and drink for so many nights. Domesday.

NOCUMENTUM. Lat. In old English law. A nuisance. *Nocumentum damnosum*, a nuisance occasioning loss or damage. *Nocumentum injuriosum*, an injurious nuisance. For the latter only a remedy was given. Bract. fol. 221.

NOLENS VOLENS. Lat. Whether willing or unwilling; consenting or not.

NOLIS. Fr. In French law. Freight. The same with "*fret*." Ord. Mar. liv. 3, tit. 3.

NOLISSEMENT. Fr. In French marine law. Affreightment. Ord. Mar. liv. 3, tit. 1.

NOLLE PROSEQUI. Lat. In practice. A formal entry upon the record, by the plaintiff in a civil suit or the prosecuting officer in a criminal action, by which he declares that he "will no further prosecute" the case, either as to some of the counts, or some of the defendants, or altogether. State v. Primm, 61 Mo. 171; Com. v. Casey, 12 Allen (Mass.) 214; Davenport v. Newton, 71 Vt. 11, 42 A. 1087; Commonwealth v. Dascalakis, 246 Mass. 12, 140 N. E. 470, 473; State v. Coster, 141 Tenn. 539, 213 S. W. 910, 911; State v. Kopelow, 126 Me. 384, 138 A. 625, 626; Denham v. Robinson, 72 W. Va. 243, 77 S. E. 970, 971, 45 L. R. A. (N. S.) 1123, Ann. Cas. 1915D, 997; Scheibler v. Steinburg, 129 Tenn. 614, 167 S. W. 866, Ann. Cas. 1915D, 1162.

A *nolle prosequi* is in the nature of an acknowledgment or undertaking by the plaintiff in an action to forbear to proceed any further either in the action altogether, or as to some part of it, or as to some of the defendants; and is different from a *non pros.*, by which the plaintiff is put out of court with respect to all the defendants. Brown.

NOLO CONTENDERE. Lat. I will not contest it. The name of a plea in a criminal action, having the same legal effect as a plea of guilty, so far as regards all proceedings on the indictment, and on which the defendant may be sentenced. U. S. v. Hartwell, 3 Cliff. 221, Fed. Cas. No. 15,318. Like a demurrer this plea admits, for the purposes of the case, all the facts which are well pleaded, but is not to be used as an admission elsewhere. Com. v. Tilton, 8 Metc. (Mass.) 232. Not available as an estoppel in a civil action. Com. v. Horton, 9 Pick. (Mass.) 206; Olszewski v. Goldberg, 223 Mass. 27, 111 N. E. 404; Chester v. State, 107 Miss. 459, 65 So. 510; Hudson v. U. S., 272 U. S. 451, 47 S. Ct. 127, 129, 71 L. Ed. 347; Schad v. McNinch, 103 W. Va. 44, 136 S. E. 865, 866.

NOMEN. Lat. In the civil law. A name; the name, style, or designation of a person. Properly, the name showing to what *gens* or tribe he belonged, as distinguished from his own individual name, (*the prænomen,*) from his surname or family name, (*cognomen,*) and from any name added by way of a descriptive title, (*agnomen.*)

The name or style of a class or genus of persons or objects.

A debt or a debtor. Ainsworth; Calvin.

NOMEN COLLECTIVUM. A collective name or term; a term expressive of a class; a term including several of the same kind; a term expressive of the plural, as well as singular, number.

Nomen est quasi rei notamen. A name is, as it were, the note of a thing. 11 Coke, 20.

NOMEN GENERALE. A general name; the name of a *genus*. Fleta, lib. 4, c. 19, § 1.

NOMEN GENERALISSIMUM. A name of the most general kind; a name or term of the most general meaning. By the name of "land," which is *nomen generalissimum*, everything terrestrial will pass. 2 Bl. Comm. 19; 3 Bl. Comm. 172.

NOMEN JURIS. A name of the law; a technical legal term.

Nomen non sufficit, si res non sit de jure aut de facto. A name is not sufficient if there be not a thing [or subject for it] *de jure* or *de facto*. 4 Coke, 107*b*.

NOMEN TRANSCRIPTITIUM. See Nomina Transcriptitia.

Nomina mutabilia sunt, res autem immobiles. Names are mutable, but things are immovable, [immutable.] A name may be true or false, or may change, but the thing itself always maintains its identity. 6 Coke, 66.

Nomina si nescis perit cognitio rerum; et nomina si perdas, certe distinctio rerum perditur. Co. Litt. 86. If you know not the names of things, the knowledge of things themselves perishes; and, if you lose the names, the distinction of the things is certainly lost.

Nomina sunt notæ rerum. 11 Coke, 20. Names are the notes of things.

Nomina sunt symbola rerum. Godb. Names are the symbols of things.

NOMINA TRANSCRIPTITIA. In Roman law. Obligations contracted by *literæ* (*i. e.*, *literis obligationes*) were so called because they arose from a peculiar *transfer* (*transcriptio*) from the creditor's day-book (*adversaria*) into his ledger, (*codex.*)

NOMINA VILLARUM. In English law. An account of the names of all the villages and the possessors thereof, in each county, drawn up by several sheriffs, (9 Edw. II.,) and returned by them into the exchequer, where it is still preserved. Wharton.

NOMINAL. Titular; existing in name only; not real or substantial; connected with the transaction or proceeding in name only, not

in interest. Park Amusement Co. v. McCaughn (D. C.) 14 F.(2d) 553, 556.

NOMINAL CONSIDERATION. See Consideration.

NOMINAL DAMAGES. See Damages.

NOMINAL DEFENDANT. A person who is joined as defendant in an action, not because he is immediately liable in damages or because any specific relief is demanded as against him, but because his connection with the subject-matter is such that the plaintiff's action would be defective, under the technical rules of practice, if he were not joined.

NOMINAL PARTNER. A person who appears to be a partner in a firm, or is so represented to persons dealing with the firm, or who allows his name to appear in the style of the firm or to be used in its business, in the character of a partner, but who has no actual interest in the firm or business. Story, Partn. § 80.

NOMINAL PLAINTIFF. One who has no interest in the subject-matter of the action, having assigned the same to another, (the real plaintiff in interest, or "use plaintiff,") but who must be joined as plaintiff, because, under technical rules of practice, the suit cannot be brought directly in the name of the assignee.

NOMINATE. To propose for an appointment; to designate for an office, a privilege, a living, etc.

NOMINATE CONTRACTS. In the civil law. Contracts having a proper or peculiar name and form, and which were divided into four kinds, expressive of the ways in which they were formed, viz.: (1) Real, which arose *ex re*, from something done; (2) verbal, *ex verbis*, from something said; (3) literal, *ex literis*, from something written; and (4) consensual, *ex consensu*, from something agreed to. Calvin.

NOMINATIM. Lat. By name; expressed one by one.

NOMINATING AND REDUCING. A mode of obtaining a panel of special jurors in England, from which to select the jury to try a particular action. The proceeding takes place before the under-sheriff or secondary, and in the presence of the parties' solicitors. Numbers denoting the persons on the sheriff's list are put into a box and drawn until forty-eight unchallenged persons have been nominated. Each party strikes off twelve, and the remaining twenty-four are returned as the "panel," (*q. v.*). This practice is now only employed by order of the court or judge. (Sm. Ac. 130; Juries Act 1870, § 17.) Sweet.

NOMINATIO AUCTORIS. Lat. In Roman law. A form of plea or defense in an action for the recovery of real estate, by which the defendant, sued as the person apparently in possession, alleges that he holds only in the name or for the benefit of another, whose name he discloses by the plea, in order that the plaintiff may bring his action against such other. See Mackeld. Rom. Law, § 297.

NOMINATION. An appointment or designation of a person to fill an office or discharge a duty. The act of suggesting or proposing a person by name as a candidate for an office.

NOMINATION TO A LIVING. In English ecclesiastical law. The rights of nominating and of presenting to a living are distinct, and may reside in different persons. Presentation is the offering a clerk to the bishop. Nomination is the offering a clerk to the person who has the right of presentation. Brown.

NOMINATIVUS PENDENS. Lat. A nominative case grammatically unconnected with the rest of the sentence in which it stands. The opening words in the ordinary form of a deed *inter partes*, "This indenture," etc., down to "whereas," though an intelligible and convenient part of the deed, are of this kind. Wharton.

NOMINE. Lat. By name; by the name of; under the name or designation of.

NOMINE PŒNÆ. In the name of a penalty. In the civil law, a legacy was said to be left *nomine pœnæ* where it was left for the purpose of coercing the heir to do or not to do something. Inst. 2, 20, 36.

The term has also been applied, in English law, to some kinds of covenants, such as a covenant inserted in a lease that the lessee shall forfeit a certain sum on non-payment of rent, or on doing certain things, as plowing up ancient meadow, and the like. 1 Crabb, Real Prop. p. 171, § 155.

NOMINEE. One who has been nominated or proposed for an office.

NOMOCANON. (1) A collection of canons and imperial laws relative or conformable thereto. The first nomocanon was made by Johannes Scholasticus in 554. Photius, patriarch of Constantinople, in 883, compiled another nomocanon, or collation of the civil laws with the canons; this is the most celebrated. Balsamon wrote a commentary upon it in 1180. (2) A collection of the ancient canons of the apostles, councils, and fathers, without any regard to imperial constitutions. Such is the nomocanon by M. Cotelier. Enc. Lond.

NOMOGRAPHER. One who writes on the subject of laws.

NOMOGRAPHY. A treatise or description of laws.

NOMOTHETA. A lawgiver; such as Solon and Lycurgus among the Greeks, and Cæsar,

Pompey, and Sylla among the Romans. Calvin.

NON. Lat. Not. The common prefix of negation. Geronime v. German Roman Catholic Aid Ass'n of America, 127 Minn. 247, 149 N. W. 291, 292.

NON-ABILITY. Want of ability to do an act in law, as to sue. A plea founded upon such cause. Cowell.

NON-ACCEPTANCE. The refusal to accept anything.

NON ACCEPTAVIT. In pleading. The name of a plea to an action of *assumpsit* brought against the drawee of a bill of exchange by which he denies that he *accepted* the same.

NON-ACCESS. Absence of opportunities for sexual intercourse between husband and wife; or the absence of such intercourse.

Non accipi debent verba in demonstrationem falsam, quæ competunt in limitationem veram. Words ought not to be taken to import a false demonstration which may have effect by way of true limitation. Bac. Max. p. 59, reg. 13; Broom, Max. 642.

NON ACCREVIT INFRA SEX ANNOS. It did not accrue within six years. The name of a plea by which the defendant sets up the statute of limitations against a cause of action which is barred after six years.

NON-ADMISSION. The refusal of admission.

NON-AGE. Lack of requisite legal age. The condition of a person who is under twenty-one years of age, in some cases, and under fourteen or twelve in others; minority.

Non alio modo puniatur aliquis quam secundum quod se habet condemnatio. 3 Inst. 217. A person may not be punished differently than according to what the sentence enjoins.

Non aliter a significatione verborum recedi oportet quam cum manifestum est, aliud sensisse testatorem. We must never depart from the signification of words, unless it is evident that they are not conformable to the will of the testator. Dig. 32, 69, pr.; Broom, Max. 568.

NON-ANCESTRAL ESTATE. One acquired by purchase or by act or agreement of the parties, as distinguished from one acquired by descent or by operation of law. Gray v. Chapman, 122 Okl. 130, 243 P. 522, 524.

NON-APPARENT EASEMENT. A non-continuous or discontinuous easement. Fetters v. Humphreys, 18 N. J. Eq. 262. See Easement.

NON-APPEARANCE. A failure of appearance; the omission of the defendant to appear within the time limited.

NON-ASSESSABLE. This word, placed upon a certificate of stock, does not cancel or impair the obligation to pay the amount due upon the shares created by the acceptance and holding of such certificate. At most its legal effect is a stipulation against liability from further assessment or taxation after the entire subscription of one hundred per cent. shall have been paid. Upton v. Tribilcock, 91 U. S. 45, 23 L. Ed. 203; Porter v. Northern Fire & Marine Ins. Co., 36 N. D. 199, 161 N. W. 1012, 1014.

NON ASSUMPSIT. The general issue in the action of *assumpsit;* being a plea by which the defendant avers that "he did not undertake" or promise as alleged. Standard Fashion Co. v. Morgan, 48 Okl. 217, 149 P. 1160.

NON ASSUMPSIT INFRA SEX ANNOS. He did not undertake within six years. The name of the plea of the statute of limitations, in the action of *assumpsit.*

Non auditur perire volens. He who is desirous to perish is not heard. Best, Ev. 423, § 385. He who confesses himself guilty of a crime, with the view of meeting death, will not be heard. A maxim of the foreign law of evidence. Id.

NON-BAILABLE. Not admitting of bail; not requiring bail.

NON BIS IN IDEM. Not twice for the same; that is, a man shall not be twice tried for the same crime. This maxim of the civil law (Code 9, 2, 9, 11) expresses the same principle as the familiar rule of our law that a man shall not be twice "put in jeopardy" for the same offense.

NON CEPIT. He did not take. The general issue in replevin, where the action is for the wrongful *taking* of the property; putting in issue not only the taking, but the *place* in which the taking is stated to have been made. Steph. Pl. 157, 167.

NON-CLAIM. The omission or neglect of him who ought to claim his right within the time limited by law; as within a year and a day where a continual claim was required, or within five years after a fine had been levied. Termes de la Ley.

Covenant of Non-Claim

See Covenant.

NON-COMBATANT. A person connected with an army or navy, but for purposes other than fighting; such as the surgeons and chaplains. Also a neutral.

NON-COMMISSIONED. A non-commissioned officer of the army or militia is a subordinate officer who holds his rank, not by commission from the executive authority of the state or nation, but by appointment by a superior officer.

NON COMPOS MENTIS. Lat. Not sound of mind; insane. This is a very general term, embracing all varieties of mental derangement. See Insanity.

Coke has enumerated four different classes of persons who are deemed in law to be *non compotes mentis*: *First*, an idiot, or fool natural; *second*, he who was of good and sound mind and memory, but by the act of God has lost it; *third*, a lunatic, *lunaticus qui gaudet lucidis intervallis*, who sometimes is of good sound mind and memory, and sometimes *non compos mentis; fourth*, one who is *non compos mentis* by his own act, as a drunkard. Co. Litt. 247*a*; 4 Coke, 124.

Non concedantur citationes priusquam exprimatur super qua re fieri debet citatio. 12 Coke, 47. Summonses should not be granted before it is expressed on what matter the summons ought to be made.

NON CONCESSIT. Lat. He did not grant. The name of a plea denying a grant, which could be made only by a stranger.

NON-CONFORMIST. In English law. One who refuses to comply with others; one who refuses to join in the established forms of worship.

Non-conformists are of two sorts: (1) Such as absent themselves from divine worship in the Established Church through total irreligion, and attend the service of no other persuasion; (2) such as attend the religious service of another persuasion. Wharton.

Non consentit qui errat. Bract. fol. 44. He who mistakes does not consent.

NON CONSTAT. Lat. It does not appear; it is not clear or evident. A phrase used in general to state some conclusion as not necessarily following although it may appear on its face to follow.

NON-CONTINUOUS EASEMENT. A non-apparent or discontinuous easement. Fetters v. Humphreys, 18 N. J. Eq. 262. See Easement.

NON CULPABILIS. Lat. In pleading. Not guilty. It is usually abbreviated "*non cul.*"

NON DAMNIFICATUS. Lat. Not injured. This is a plea in an action of debt on an indemnity bond, or bond conditioned "to keep the plaintiff harmless and indemnified," etc. It is in the nature of a plea of performance, being used where the defendant means to allege that the plaintiff has been kept harmless and indemnified, according to the tenor of the condition. Steph. Pl. (7th Ed.) 300, 301. State Bank v. Chetwood, 8 N. J. Law, 25.

Non dat qui non habet. He who has not does not give. Lofft, 258; Broom, Max. 467.

Non debeo melioris conditionis esse, quam auctor meus a quo jus in me transit. I ought not to be in better condition than he to whose rights I succeed. Dig. 50, 17, 175, 1.

Non deberet alli nocere quod inter alios actum esset. No one ought to be injured by that which has taken place between other parties. Dig. 12, 2, 10.

Non debet actori licere quod reo non permittitur. A plaintiff ought not to be allowed what is not permitted to a defendant. A rule of the civil law. Dig. 50, 17, 41.

Non debet adduci exceptio ejus rei cujus petitur dissolutio. A plea of the same matter the dissolution of which is sought [by the action] ought not to be brought forward. Broom, Max. 166.

Non debet alii nocere, quod inter alios actum est. A person ought not to be prejudiced by what has been done between others. Dig. 12, 2, 10.

Non debet alteri per alterum iniqua conditio inferri. A burdensome condition ought not to be brought upon one man by the act of another. Dig. 50, 17, 74.

Non debet cui plus licet, quod minus est non licere. He to whom the greater is lawful ought not to be debarred from the less as unlawful. Dig. 50, 17, 21; Broom, Max. 176.

Non debet dici tendere in præjudicium ecclesiasticæ liberatatis quod pro rege et republica necessarium videtur. 2 Inst. 625. That which seems necessary for the king and the state ought not to be said to tend to the prejudice of spiritual liberty.

Non decet homines dedere causa non cognita. It is unbecoming to surrender men when no cause is shown. In re Washburn, 4 Johns. Ch. (N. Y.) 106, 114, 8 Am. Dec. 548; Id., 3 Wheeler, Cr. Cas. (N. Y.) 473, 482.

NON DECIMANDO. See De Non Decimando.

Non decipitur qui scit se decipi. 5 Coke, 60. He is not deceived who knows himself to be deceived.

NON DEDIT. Lat. In pleading. He did not grant. The general issue in formedon.

Non definitur in jure quid sit conatus. What an attempt is, is not defined in law. 6 Co. 43. See Attempt.

NON-DELIVERY. Neglect, failure, or refusal to deliver goods, on the part of a carrier, vendor, bailee, etc.

NON DEMISIT (Lat. he did not demise). A plea proper to be pleaded to an action of debt for rent, when the plaintiff declares on a parol lease. Gilb. Debt 436; Bull. N. P. 177; 1 Chitty, Pl. 477. A plea in bar, in replevin, to an avowry for arrears of rent, that the avowant did not demise. Morris, Repl. 179. It cannot be pleaded when the demise is

stated to have been by indenture; 12 Viner, Abr. 178; Com. Dig. *Pleader* (2 W 48).

NON DETINET. Lat. He does not detain. The name of the general issue in the action of detinue. 1 Tidd, Pr. 645; Berlin Mach. Works v. Alabama City Furniture Co., 112 Ala. 488, 20 So. 418.

The general issue in the action of replevin, where the action is for the wrongful detention only. 2 Burrill, Pr. 14.

Non differunt quæ concordant re, tametsi non in verbis iisdem. Those things do not differ which agree in substance, though not in the same words. Jenk. Cent. p. 70, case 32.

NON DIMISIT. L. Lat. He did not demise. A plea resorted to where a plaintiff declared upon a demise without stating the indenture in an action of debt for rent. Also, a plea in bar, in replevin, to an avowry for arrears of rent, that the avowant did not demise.

NON-DIRECTION. Omission on the part of a judge to properly instruct the jury upon a necessary conclusion of law.

NON DISTRINGENDO. A writ not to distrain.

Non dubitatur, etsi specialiter venditor evictionem non promiserit, re evicta, ex empto competere actionem. It is certain that, although the vendor has not given a special guaranty, an action *ex empto* lies against him, if the purchaser is evicted. Code, 8, 45, 6; Broom, Max. 768.

Non efficit affectus nisi sequatur effectus. The intention amounts to nothing unless the effect follow. 1 Rolle, 226.

NON-ENUMERATED DAY. A motion day in New York on which the court hears motions classified as "non-enumerated motions." Jackson v. ———, 2 Caines (N. Y.) 259. For a collection of cases holding particular motions to be either enumerated or non-enumerated motions, see 46 C. J. 489, note 8 [b, c].

Non erit alia lex Romæ, alia Athænis; alia nunc, alia posthac; sed et omnes gentes, et omni tempore, una lex, et sempiterna, et immortalis continebit. There will not be one law at Rome, another at Athens; one law now, another hereafter; but one eternal and immortal law shall bind together all nations throughout all time. Cic. Frag. de Repub. lib. 3; 3 Kent, Comm. 1.

Non est arctius vinculum inter homines quam jusjurandum. There is no closer [or firmer] bond between men than an oath. Jenk. Cent. p. 126, case 54.

Non est certandum de regulis juris. There is no disputing about rules of law.

Non est consonum rationi, quod cognitio accessorii in curia christianitatis impediatur, ubi cognitio causæ principalis ad forum ecclesiasticum noscitur pertinere. 12 Coke, 65. It is unreasonable that the cognizance of an accessory matter should be impeded in an ecclesiastical court, when the cognizance of the principal cause is admitted to appertain to an ecclesiastical court.

Non est disputandum contra principia negantem. Co. Litt. 343. We cannot dispute against a man who denies first principles.

NON EST FACTUM. Lat. A plea by way of traverse, which occurs in debt on bond or other specialty, and also in covenant. It denies that the deed mentioned in the declaration is the defendant's deed. Under this, the defendant may contend at the trial that the deed was never executed in point of fact; but he cannot deny its validity in point of law. Wharton; Haggart v. Morgan, 5 N. Y. 422, 55 Am. Dec. 350; Evans v. Southern Turnpike Co., 18 Ind. 101.

The plea of *non est factum* is a denial of the execution of the instrument sued upon, and applies to notes or other instruments, as well as deeds, and applies only when the execution of the instrument is alleged to be the act of the party filing the plea, or adopted by him. Code Ga. 1882, § 3472 (Civ. Code 1910, § 5676).

Special Non Est Factum

A form of the plea of *non est factum*, in debt on a specialty, by which the defendant alleges that, although he executed the deed, yet it is in law "not his deed," because of certain special circumstances which he proceeds to set out; as, where he delivered the deed as an escrow, and it was turned over to the plaintiff prematurely or without performance of the condition.

NON EST INVENTUS. Lat. He is not found. The sheriff's return to process requiring him to arrest the body of the defendant, when the latter is not found within his jurisdiction. It is often abbreviated "*n. e. i.*," or written, in English, "not found." The Bremena v. Card (D. C.) 38 Fed. 144.

Non est justum aliquem antenatum post mortem facere bastardum qui toto tempore vitæ suæ pro legitimo habebatur. It is not just to make an elder-born a bastard after his death, who during his lifetime was accounted legitimate. 12 Coke, 44.

Non est novum ut priores leges ad posteriores trahantur. It is no new thing that prior statutes should give place to later ones. Dig. 1, 3, 36; Broom, Max. 28.

Non est recedendum a communi observantia. There should be no departure from a common observance. 2 Co. 74.

Non est regula quin fallet. There is no rule but what may fail. Off. Exec. 212.

Non est reus nisi mens sit rea. One is not guilty unless his intention be guilty. This maxim is much criticised. See *actus non reum facit*, etc.; Mens Rea.

Non est singulis concedendum, quod per magistratum publice possit fieri, ne occasio sit majoris tumultus faciendi. That is not to be conceded to private persons which can be publicly done by the magistrate, lest it be the occasion of greater tumults. Dig. 50, 17, 176.

Non ex opinionibus singulorum, sed ex communi usi, nomina exaudiri debent. The names of things ought to be understood, not according to the opinions of individuals, but according to common usage. Dig. 33, 10, 7, 2.

Non exemplis sed legibus judicandum est. Not by the facts of the case, but by the law must judgment be made. Dig. 7. 45. 13. (called by Albericus Gentilis *lex aurea*).

Non facias malum, ut inde fiat bonum. You are not to do evil, that good may be or result therefrom. 11 Coke, 74*a*; 5 Coke, 30*b*.

NON FECIT. Lat. He did not make it. A plea in an action of *assumpsit* on a promissory note. 3 Man. & G. 446.

NON FECIT VASTUM CONTRA PROHIBITIONEM. He did not commit waste against the prohibition. A plea to an action founded on a writ of estrepement for waste. 3 Bl. Comm. 226, 227.

NON HÆC IN FŒDERA VENI. I did not agree to these terms.

Non impedit clausula derogatoria quo minus ad eadem potestate res dissolvantur a qua constituuntur. A derogatory clause does not impede things from being dissolved by the same power by which they are created. Broom, Max. 27.

NON IMPEDIVIT. Lat. He did not impede. The plea of the general issue in *quare impedit*. The Latin form of the law French *"ne disturba pas."*

NON IMPLACITANDO ALIQUEM DE LIBERO TENEMENTO SINE BREVI. A writ to prohibit bailiffs, etc., from distraining or impleading any man touching his freehold without the king's writ. Reg. Orig. 171.

Non in legendo sed in intelligendo legis consistunt. The laws consist not in being read, but in being understood. 8 Coke, 167*a*.

NON INFREGIT CONVENTIONEM. Lat. He did not break the contract. The name of a plea sometimes pleaded in the action of covenant, and intended as a general issue, but held to be a bad plea; there being, properly speaking, no general issue in that action. 1 Tidd, Pr. 356.

NON-INTERCOURSE. The refusal of one state or nation to have commercial dealings with another; similar to an embargo (*q. v.*). The absence of access, communication, or sexual relations between husband and wife.

NON INTERFUI. I was not present. A reporter's note. T. Jones, 10.

NON-INTERVENTION WILL. A term sometimes applied to a will which authorizes the executor to settle and distribute the estate without the intervention of the court and without giving bond. In re Macdonald's Estate, 29 Wash. 422, 69 P. 1111.

NON INTROMITTANT CLAUSE. In English law. A clause of a charter of a municipal borough, whereby the borough is exempted from the jurisdiction of the justices of the peace for the county.

NON INTROMITTENDO, QUANDO BREVE PRÆCIPE IN CAPITE SUBDOLE IMPETRATUR. A writ addressed to the justices of the bench, or in eyre, commanding them not to give one who, under color of entitling the king to land, etc., as holding of him *in capite*, had deceitfully obtained the writ called *"præcipe in capite,"* any benefit thereof, but to put him to his writ of right. Reg. Orig. 4.

NON-ISSUABLE PLEAS. Those upon which a decision would not determine the action upon the merits, as a plea in abatement. 1 Chit. Archb. Pr. (12th Ed.) 249.

NON-JOINDER. See Joinder.

NON JURIDICUS. Not judicial; not legal. *Dies non juridicus* is a day on which legal proceedings cannot be had.

NON-JURORS. In English law. Persons who refuse to take the oaths, required by law, to support the government.

Non jus ex regula, sed regula ex jure. The law does not arise from the rule (or maxim,) but the rule from the law. Tray. Lat. Max. 384.

Non jus, sed seisina, facit stipitem. Not right, but seisin, makes a stock. Fleta lib. 6, c. 2, § 2. It is not a mere *right* to enter on lands, but actual *seisin*, which makes a person the root or *stock* from which all future inheritance by right of blood must be derived. 2 Bl. Comm. 209, 312. See Broom, Max. 525, 527.

NON-LEVIABLE. Not subject to be levied upon. Non-leviable assets are assets upon which an execution cannot be levied. Farmers' F. Ins. Co. v. Conrad, 102 Wis. 387, 78 N. W. 582.

Non licet quod dispendio licet. That which may be [done only] at a loss is not allowed [to be done.] The law does not permit or require the doing of an act which will result only in loss. The law forbids such recoveries whose ends are vain, chargeable, and unprofitable. Co. Litt. 127*b*.

NON LIQUET. Lat. It is not clear. In the Roman courts, when any of the judges, after the hearing of a cause, were not satisfied that the case was made clear enough for them to pronounce a verdict, they were privileged to signify this opinion by casting a ballot inscribed with the letters "N. L.," the abbreviated form of the phrase *"non liquet."*

NON-MAILABLE. A term applied to all letters and parcels which are by law excluded from transportation in the United States mails, whether on account of the size of the package, the nature of its contents, its obscene character, or for other reasons. See U. S. v. Nathan (D. C.) 61 F. 936.

NON MERCHANDIZANDA VICTUALIA. An ancient writ addressed to justices of assize, to inquire whether the magistrates of a town sold victuals in gross or by retail during the time of their being in office, which was contrary to an obsolete statute; and to punish them if they did. Reg. Orig. 184.

NON MOLESTANDO. A writ that lay for a person who was molested contrary to the king's protection granted to him. Reg. Orig. 184.

Non nasci, et natum mori, paria sunt. Not to be born, and to be dead-born, are the same.

NON-NEGOTIABLE. Not negotiable; not capable of passing title or property by indorsement and delivery.

Non obligat lex nisi promulgata. A law is not obligatory unless it be promulgated.

Non observata forma, infertur adnullatio actus. Where form is not observed, an annulling of the act is inferred or follows. 12 Coke, 7.

NON OBSTANTE. Lat. Notwithstanding. Words anciently used in public and private instruments, intended to preclude, in advance, any interpretation contrary to certain declared objects or purposes. Burrill.

A clause frequent in old English statutes and letters patent, (so termed from its initial words,) importing a license from the crown to do a thing which otherwise a person would be restrained by act of parliament from doing. Crabb, Com. Law, 570; Plowd. 501; Cowell.

A power in the crown to dispense with the laws in any particular case. This was abolished by the bill of rights at the Revolution. 1 Bl. Comm. 342.

NON OBSTANTE VEREDICTO. Notwithstanding the verdict. A judgment entered by order of court for the plaintiff, although there has been a verdict for the defendant, is so called. German Ins. Co. v. Frederick, 58 F. 144, 7 C. C. A. 122; Wentworth v. Wentworth, 2 Minn. 282 (Gil. 238), 72 Am. Dec. 97; Hill v. Ragland, 114 Ky. 209, 70 S. W. 634. See Judgment n. o. v.

Non officit conatus nisi sequatur effectus. An attempt does not harm unless a consequence follow. 11 Coke, 98.

NON OMITTAS. A clause usually inserted in writs of execution, in England, directing the sheriff "not to omit" to execute the writ by reason of any liberty, because there are many liberties or districts in which the sheriff has no power to execute process unless he has special authority. 2 Steph. Comm. 630.

Non omne damnum inducit injuriam. It is not every loss that produces an injury. Bract. fol. 45*b*.

Non omne quod licet honestum est. It is not everything which is permitted that is honorable. Dig. 50, 17, 144; Howell v. Baker, 4 Johns. Ch. (N. Y.) 121.

Non omnium quæ a majoribus nostris constituta sunt ratio reddi potest. There cannot be given a reason for all the things which have been established by our ancestors. Branch, Princ.; 4 Coke, 78; Broom, Max. 157.

NON-PERFORMANCE. Neglect, failure, or refusal to do or perform an act stipulated to be done. Failure to keep the terms of a contract or covenant, in respect to acts or doings agreed upon.

Non pertinet ad judicem secularem cognoscere de iis quæ sunt mere spiritualia annexa. 2 Inst. 488. It belongs not to the secular judge to take cognizance of things which are merely spiritual.

NON-PLEVIN. In old English law. Default in not replevying land in due time, when the same was taken by the king upon a default. The consequence thereof (loss of seisin) was abrogated by St. 9 Edw. III. c. 2.

NON PONENDIS IN ASSISIS ET JURATIS. A writ formerly granted for freeing and discharging persons from serving on assizes and juries. Fitzh. Nat. Brev. 165.

Non possessori incumbit necessitas probandi possessiones ad se pertinere. A person in possession is not bound to prove that the possessions belong to him. Broom, Max. 714.

Non potest adduci exceptio ejus rei cujus petitur dissolutio. An exception of the same thing whose avoidance is sought cannot be made. Broom, Max. 166.

Non potest probari quod probatum non relevat. 1 Exch. 91, 92. That cannot be proved which, if proved, is immaterial.

Non potest quis sine brevi agere. No one can sue without a writ. Fleta. lib. 2, c. 13, § 4. A fundamental rule of old practice.

Non potest rex gratiam facere cum injuria et damno aliorum. The king cannot confer a favor on one subject which occasions injury

and loss to others. 3 Inst. 236; Broom, Max. 63.

Non potest rex subditum renitentem onerare impositionibus. The king cannot load a subject with imposition against his consent. 2 Inst. 61.

Non potest videri desisse habere qui nunquam habuit. He cannot be considered as having ceased to have a thing who never had it. Dig. 50, 17, 208.

Non præstat impedimentum quod de jure non sortitur effectum. A thing which has no effect in law is not an impediment. Jenk. Cent. 162; Wing. Max. 727.

NON PROCEDENDO AD ASSISSAM REGE INCONSULTO. A writ to put a stop to the trial of a cause appertaining unto one who is in the king's service, etc., until the king's pleasure respecting the same be known. Cowell.

NON PROSEQUITUR. Lat. If, in the proceedings in an action at law, the plaintiff neglects to take any of those steps which he ought to take within the time prescribed by the practice of the court for that purpose, the defendant may enter judgment of *non pros.* against him, whereby it is adjudged that the plaintiff does not follow up (*non prosequitur*) his suit as he ought to do, and therefore the defendant ought to have judgment against him. Smith, Act. 96; Com. v. Casey, 12 Allen (Mass.) 218; Davenport v. Newton, 71 Vt. 11, 42 A. 1087; Buena Vista Freestone Co. v. Parrish, 34 W. Va. 652, 12 S. E. 817.

NON QUIETA MOVERE. Lat. Not to disturb what is settled. A rule expressing the same principle as that of *stare decisis*, (*q. v.*)

Non quod dictum est, sed quod factum est inspicitur. Not what is said, but what is done, is regarded. Co. Litt. 36*a*.

Non refert an quis assensum suum præfert verbis, aut rebus ipsis et factis. 10 Coke, 52. It matters not whether a man gives his assent by his words or by his acts and deeds.

Non refert quid ex æquipollentibus fiat. 5 Coke, 122. It matters not which of [two] equivalents happen.

Non refert quid notum sit judici, si notum non sit in forma judicii. It matters not what is known to a judge, if it be not known in judicial form. 3 Bulst. 115. A leading maxim of modern law and practice. Best, Ev. Introd. 31, § 38.

Non refert verbis an factis fit revocatio. Cro. Car. 49. It matters not whether a revocation is made by words or deeds.

NON-RESIDENCE. Residence beyond the limits of the particular jurisdiction.

In Ecclesiastical Law

The absence of spiritual persons from their benefices.

NON-RESIDENT. One who is not a dweller within jurisdiction in question; not an inhabitant of the state of the forum. Gardner v. Meeker, 169 Ill. 40, 48 N. E. 307; Nagel v. Loomis, 33 Neb. 499, 50 N. W. 441; Morgan v. Nunes, 54 Miss. 310. For the distinction between "residence" and "domicile," see Domicile.

NON-RESIDENTIO PRO CLERICO REGIS. A writ, addressed to a bishop, charging him not to molest a clerk employed in the royal service, by reason of his nonresidence; in which case he is to be discharged. Reg. Orig. 58.

Non respondebit minor nisi in causa dotis, et hoc pro favore doti. 4 Coke, 71. A minor shall not answer unless in a case of dower, and this in favor of dower.

NON SANÆ MENTIS. Lat. Of unsound mind. Fleta, lib. 6, c. 40, § 1.

NON-SANE. As "sane," when applied to the mind, means whole, sound, in a healthful state, "non-sane" must mean not whole, not sound, not in a healthful state; that is, broken, impaired, shattered, infirm, weak, diseased, unable, either from nature or accident, to perform the rational functions common to man upon the objects presented to it. Den v. Vancleve, 5 N. J. Law, 589, 661.

NON-SANE MEMORY. Unsound memory; unsound mind. In re Beaumont, 1 Whart. (Pa.) 52, 29 Am. Dec. 33; In re Forman's Will, 54 Barb. (N. Y.) 286.

NON SEQUITUR. Lat. It does not follow.

Non solent quæ abundant vitiare scripturas. Superfluities [things which abound] do not usually vitiate writings. Dig. 50, 17, 94.

Non solum quid licet, sed quid est conveniens, est considerandum; quia nihil quod est inconveniens est licitum. Not only what is lawful, but what is proper or convenient, is to be considered; because nothing that is inconvenient is lawful. Co. Litt. 66*a*.

NON SOLVENDO PECUNIAM AD QUAM CLERICUS MULCTATUR PRO NON-RESIDENTIA. A writ prohibiting an ordinary to take a pecuniary mulct imposed on a clerk of the sovereign for nonresidence. Reg. Writ. 59.

NON SUBMISSIT. Lat. He did not submit. A plea to an action of debt, on a bond to perform an award, to the effect that the defendant did not submit to the arbitration.

NON SUI JURIS. Lat. Not his own master. The opposite of *sui juris* (*q. v.*).

NON SUM INFORMATUS. Lat. I am not informed; I have not been instructed. The name of a species of judgment by default, which is entered when the defendant's attorney announces that he is not informed of any answer to be given by him; usually in pursuance of a previous arrangement between the parties.

NON-SUMMONS, WAGER OF LAW OF. The mode in which a tenant or defendant in a real action pleaded, when the summons which followed the original was not served within the proper time.

Non sunt longa ubi nihil est quod demere possis. There is no prolixity where there is nothing that can be omitted. Vaugh. 138.

Non temere credere est nervus sapientiæ. 5 Coke, 114. Not to believe rashly is the nerve of wisdom.

NON TENENT INSIMUL. Lat. In pleading. A plea to an action in partition, by which the defendant denies that he and the plaintiff are joint tenants of the estate in question.

NON TENUIT. Lat. He did not hold. A plea in bar in replevin, by which the plaintiff alleges that he did not hold in manner and form as averred, being given in answer to an avowry for rent in arrear. See Rosc. Real Act. 638.

NON-TENURE. A plea in a real action, by which the defendant asserts, either as to the whole or as to some part of the land mentioned in the plaintiff's declaration, that he does not hold it. Pub. St. Mass. 1882, p. 1293.

NON-TERM. The vacation between two terms of a court.

NON-TERMINUS. The vacation between term and term, formerly called the time or days of the king's peace.

NON-USER. Neglect to use. Neglect to use a franchise; neglect to exercise an office. 2 Bl. Comm. 153. Neglect or omission to use an easement or other right. 3 Kent, Comm. 448. A right acquired by use may be lost by *non-user*.

NON USURPAVIT. Lat. He has not usurped. A form of traverse, in an action or proceeding against one alleged to have usurped an office or franchise, denying the usurpation charged. See Com. v. Cross Cut R. Co., 53 Pa. 62.

Non valebit felonis generatio, nec ad hæreditatem paternam vel maternam; si autem ante feloniam generationem fecerit, talis generatio succedit in hæreditate patris vel matris a quo non fuerit felonia perpetrata. 3 Coke, 41. The offspring of a felon cannot succeed either to a maternal or paternal inheritance; but, if he had offspring before the felony, such offspring may succeed as to the inheritance of the father or mother by whom the felony was not committed.

NON VALENTIA AGERE. Inability to sue. 5 Bell, App. Cas. 172.

Non valet confirmatio, nisi ille, qui confirmat, sit in possessione rei vel juris unde fieri debet confirmatio; et eodem modo, nisi ille cui confirmatio fit sit in possessione. Co. Litt. 295. Confirmation is not valid unless he who confirms is either in possession of the thing itself or of the right of which confirmation is to be made, and, in like manner, unless he to whom confirmation is made is in possession.

Non valet donatio nisi subsequatur traditio. A gift is not valid unless accompanied by possession. Bract. 39 *b*.

Non valet exceptio ejusdem rei cujus petitur dissolutio. A plea of the same matter the dissolution of which is sought, is not valid. Called a "maxim of law and common sense." 2 Eden, 134.

Non valet impedimentum quod de jure non sortitur effectum. 4 Coke, 31*a*. An impediment which does not derive its effect from law is of no force.

Non verbis, sed ipsis rebus, leges imponimus. Cod. 6, 43, 2. We impose laws, not upon words, but upon things themselves.

Non videntur qui errant consentire. They are not considered to consent who commit a mistake. Dig. 50, 17, 116, § 2; Broom, Max. 262.

Non videntur rem amittere quious propria non fuit. They are not considered as losing a thing whose own it was not. Dig. 50, 17, 85.

Non videtur consensum retinuisse si quis ex præscripto minantis aliquid immutavit. He does not appear to have retained consent, who has changed anything through menaces. Broom, Max. 278.

Non videtur perfecte cujusque id esse, quod ex casu auferri potest. That does not seem to be completely one's own which can be taken from him on occasion. Dig. 50, 17, 139, 1.

Non videtur quisquam id capere quod ei necesse est alii restitutere. Dig. 50, 17, 51. No one is considered entitled to recover that which he must give up to another.

Non videtur vim facere, qui jure suo utitur et ordinaria actione experitur. He is not deemed to use force who exercises his own right, and proceeds by ordinary action. Dig. 50, 17, 155, 1.

NON VULT CONTENDERE. Lat. He (the defendant in a criminal case) will not contest it. A plea legally equivalent to that of guilty, being a variation of the form "*nolo contendere*," (*q. v.*,) and sometimes abbreviated "*non vult*."

NONÆ ET DECIMÆ. Payments made to the church, by those who were tenants of church-farms. The first was a rent or duty for things belonging to husbandry; the second was claimed in right of the church. Wharton.

NONAGIUM, or NONAGE. A ninth part of movables which was paid to the clergy on the death of persons in their parish, and claimed on pretense of being distributed to pious uses. Blount.

NONES. In the Roman calendar. The fifth and, in March, May, July, and October, the seventh day of the month. So called because, counting inclusively, they were *nine* days from the ides. Adams, Rom. Ant. 355, 357.

NONFEASANCE. The neglect or failure of a person to do some act which he ought to do. The term is not generally used to denote a breach of contract, but rather the failure to perform a duty towards the public whereby some individual sustains special damage, as where a sheriff fails to execute a writ. Sweet. See Coite v. Lines, 33 Conn. 115; Gregor v. Cady, 82 Me. 131, 19 A. 108, 17 Am. St. Rep. 466; Carr v. Kansas City (C. C.) 87 F. 1; Minkler v. State, 14 Neb. 181, 15 N. W. 330; Illinois Cent. R. Co. v. Foulks, 191 Ill. 57, 60 N. E. 890.

There is a distinction between "nonfeasance" and "misfeasance" or "malfeasance"; and this distinction is often of great importance in determining an agent's liability to third persons. "Nonfeasance" means the total omission or failure of an agent to enter upon the performance of some distinct duty or undertaking which he has agreed with his principal to do; "misfeasance" means the improper doing of an act which the agent might lawfully do, or, in other words, it is the performing of his duty to his principal in such a manner as to infringe upon the rights and privileges of third persons; and "malfeasance" is a doing of an act which he ought not to do at all. Southern Ry. Co. v. Sewell, 18 Ga. App. 544, 90 S. E. 94, 96; Owens v. Nichols, 139 Ga. 475, 77 S. E. 635, 636; Maddock v. Riggs, 106 Kan. 808, 190 P. 12, 14, 12 A. L. R. 216; Richards v. Stratton, 112 Ohio St. 476, 147 N. E. 645, 646; Condon v. Exton-Hall Brokerage & Vessel Agency, 80 Misc. 369, 142 N. Y. S. 548, 549; Kimmons v. Crawford, 92 Fla. 652, 109 So. 585, 587.

NONNA. In old ecclesiastical law. A nun. *Nonnus*, a monk. Spelman.

NONPAYMENT. The neglect, failure, or refusal of payment of a debt or evidence of debt when due.

NONSENSE. Unintelligible matter in a written agreement or will.

NONSUIT. A judgment given against the plaintiff when he is unable to prove a case, or when he refuses or neglects to proceed to the trial of a cause after it has been put at issue. Galvin v. Birch, 98 Conn. 228, 118 A. 826, 827; Coleman v. Forsythe, 137 La. 1092, 69 So. 849, 850.

A *voluntary* nonsuit is one incurred by the act or omission of the plaintiff himself, who allows a judgment for costs to be entered against him as a consequence of his abandoning or not following up his cause, or being absent when his presence is required. Sandoval v. Rosser, 86 Tex. 682, 26 S. W. 933; Deeley v. Heintz, 169 N. Y. 129, 62 N. E. 158; Boyce v. Snow, 88 Ill. App. 405; Southern Cotton Oil Co. v. S. Breen & Co., 171 N. C. 51, 87 S. E. 938, 939.

An *involuntary* nonsuit is one which takes place when the plaintiff fails to appear when his case is before the court for trial or at the time when the jury are to deliver their verdict, or when he has given no evidence on which a jury may find a verdict, or when his case is put out of court by some adverse ruling which precludes a recovery. Boyce v. Snow, 187 Ill. 181, 58 N. E. 403; Deeley v. Heintz, 169 N. Y. 129, 62 N. E. 158; Stults v. Forst, 135 Ind. 297, 34 N. E. 1125; Williams v. Finks, 156 Mo. 597, 57 S. W. 732.

A *peremptory* nonsuit is a compulsory or involuntary nonsuit, ordered by the court upon a total failure of the plaintiff to substantiate his claim by evidence. Jacques v. Fourthman, 137 Pa. 428, 20 A. 802.

Motion for Nonsuit

A motion in the nature of a demurrer to the evidence. Woods v. Wikstrom, 67 Or. 581, 135 P. 192, 195; Biurrun v. Elizalde, 75 Cal. App. 44, 242 P. 109, 113.

NOOK OF LAND. In English law. Twelve acres and a half.

NORI TSUKUDANI. Seaweed. When dried, cut up, cooked with shoyu and sugar, and canned it is classifiable under paragraph 200, Tariff Act 1913, as "prepared vegetables." Togasaki & Co. v. U. S., 12 Ct. Cust. App. 463, 465.

NORMAL. According to, constituting, or not deviating from an established norm, rule, or principle; conformed to a type, standard or regular form; performing the proper functions; regular; natural. Webster.

NORMAL LAW. A term employed by modern writers on jurisprudence to denote the law as it affects persons who are in a normal condition; *i. e., sui juris* and sound in mind.

NORMAL MIND. One which in strength and capacity ranks reasonably well with the average of the great body of men and women who make up organized human society in general and are by common consent recognized as sane and competent to perform the ordinary duties and assume the ordinary responsibilities of life. State v. Haner, 186 Iowa, 2159, 173 N. W. 225, 226.

NORMAL SCHOOL. See School.

NORMALLY. As a rule; regularly; according to rule, general custom, etc. Palmer v. Jordan Mach. Co. (C. C.) 186 F. 504.

NORMAN FRENCH. The tongue in which several formal proceedings of state in England are still carried on. The language, having remained the same since the date of the Conquest, at which it was introduced into England, is very different from the French of this day, retaining all the peculiarities which at that time distinguished every province from the rest. A peculiar mode of pronunciation (considered authentic) is handed down and preserved by the officials who have, on particular occasions, to speak the tongue. Norman French was the language of English legal procedure till the 36 Edw. III. (A. D. 1362). Wharton.

NORROY. In English law. The title of the third of the three kings-at-arms, or provincial heralds.

NORTH. In a description in a deed, unless qualified or controlled by other words, it means due north. Northerly in a grant, where there is no object to direct its inclination to the east or west, must be construed to mean north. Brandt v. Ogden, 1 Johns. (N. Y.) 156; Currier v. Nelson, 96 Cal. 505, 31 P. 531, 746, 31 Am. St. Rep. 239; Green v. Palmer, 68 Cal. App. 393, 229 P. 876, 879.

NORTHAMPTON TABLES. Longevity and annuity tables compiled from bills of mortality kept in All Saints parish, England, in 1735–1780.

NORTHAMPTON, ASSIZE OF. An assize held in 1176; in it, the king confirmed and perfected the judicial legislation which he had begun ten years before in the Assize of Clarendon. Stephen, Cr. Proc. in 2 Essays in Anglo-Amer. L. H. 445; Mrs. J. R. Green in 1 *id.*

NORTHWEST TERRITORY. A name formerly applied to the territory northwest of the Ohio river.

Noscitur a sociis. It is known from its associates. 1 Vent. 225. The meaning of a word is or may be known from the accompanying words. 3 Term R. 87; Broom, Max. 588. Under this rule general and specific words, capable of analogous meaning, when associated together, take color from each other, so that general words are restricted to a sense analogous to less general. Ex parte Amos, 93 Fla. 5, 112 So. 289, 293; Curtis & Hill Gravel & Sand Co. v. State Highway Commission, 91 N. J. Eq. 421, 111 A. 16, 19; State v. Western Union Telegraph Co., 196 Ala. 570, 72 So. 99, 100.

Noscitur ex socio, qui non cognoscitur ex se. Moore, 817. He who cannot be known from himself may be known from his associate.

NOSOCOMI. In the civil law. Persons who have the management and care of hospitals for paupers.

NOSTRUM. A quack, patent, or proprietary medicine recommended by its proprietor, or one the ingredients of which are kept secret for the purpose of restricting the profits of sale to the inventor or proprietor. World's Dispensary Medical Ass'n v. Collier, 86 Misc. 217, 148 N. Y. S. 405, 409.

NOT EXCEEDING. Usually a term of limitation only, denoting uncertainty of amount. Stuyvesant Ins. Co. v. Jacksonville Oil Mill (C. C. A.) 10 F.(2d) 54, 56.

NOT FOUND. These words, indorsed on a bill of indictment by a grand jury, have the same effect as the indorsement "Not a true bill" or "*Ignoramus.*"

See, also, Non Est Inventus.

NOT GUILTY. A plea of the general issue in the actions of trespass and case and in criminal prosecutions.

The form of the verdict in criminal cases, where the jury acquit the prisoner. 4 Bl. Comm. 361.

NOT GUILTY BY STATUTE. In English practice. A plea of the general issue by a defendant in a civil action, when he intends to give special matter in evidence by virtue of some act or acts of parliament, in which case he must add the reference to such act or acts, and state whether such acts are public or otherwise. But, if a defendant so plead, he will not be allowed to plead any other defense, without the leave of the court or a judge. Mozley & Whitley.

NOT LATER THAN. "Within" or "not beyond" time specified. Hansen v. Bacher (Tex. Com. App.) 299 S. W. 225, 227.

NOT LESS THAN. The words "not less than" signify in the smallest or lowest degree, at the lowest estimate; at least. Watson v. City of Salem, 84 Or. 666, 164 P. 567, 568; Miller v. Rodd, 285 Pa. 16, 131 A. 482, 483.

NOT POSSESSED. A special traverse used in an action of trover, alleging that defendant was not possessed, at the time of action brought, of the chattels alleged to have been converted by him.

NOT PROVEN. A verdict in a Scotch criminal trial, to the effect that the guilt of the accused is not made out, though his innocence is not clear.

NOT SATISFIED. A return sometimes made by sheriffs or constables to a writ of execution; but it is not a technical formula, and is condemned by the courts as ambiguous and insufficient. See Martin v. Martin, 50 N. C. 346; Langford v. Few, 146 Mo. 142, 47 S. W. 927, 69 Am. St. Rep. 606; Merrick v. Carter, 205 Ill. 73, 68 N. E. 750.

NOT TO BE PERFORMED WITHIN ONE YEAR. The clause "not to be performed within one year" includes any agreement which by

a reasonable interpretation in view of all the circumstances does not admit of its performance, according to its language and intention, within one year from the time of its making. Mrs. K. Edwards & Sons v. Farve, 110 Miss. 864, 71 So. 12, 13.

NOT TRANSFERABLE. These words, when written across the face of a negotiable instrument, operate to destroy its negotiability. Durr v. State, 59 Ala. 24.

NOTA. Lat. In the civil law. A mark or brand put upon a person by the law. Mackeld. Rom. Law, § 135.

NOTÆ. In civil and old European law. Short-hand characters or marks of contraction, in which the emperors' secretaries took down what they dictated. Spelman; Calvin.

NOTARIAL. Taken by a notary; performed by a notary in his official capacity; belonging to a notary and evidencing his official character, as, a notarial seal.

NOTARIAL WILL. A will executed by the testator in the presence of a Notary Public and two witnesses.

NOTARIUS. Lat.

In Roman Law

A draughtsman; an amanuensis; a short-hand writer; one who took notes of the proceedings in the senate or a court, or of what was dictated to him by another; one who prepared draughts of wills, conveyances, etc.

In Old English Law

A scribe or scrivener who made short draughts of writings and other instruments; a notary. Cowell.

NOTARY PUBLIC. A public officer whose function is to administer oaths; to attest and certify, by his hand and official seal, certain classes of documents, in order to give them credit and authenticity in foreign jurisdictions; to take acknowledgments of deeds and other conveyances, and certify the same; and to perform certain official acts, chiefly in commercial matters, such as the protesting of notes and bills, the noting of foreign drafts, and marine protests in cases of loss or damage. See Kirksey v. Bates, 7 Port. (Ala.) 531, 31 Am. Dec. 722; First Nat. Bank v. German Bank, 107 Iowa, 543, 78 N. W. 195, 44 L. R. A. 133, 70 Am. St. Rep. 216; In re Huron, 58 Kan. 152, 48 P. 574, 36 L. R. A. 822, 62 Am. St. Rep. 614; Bettman v. Warwick, 108 F. 46, 47 C. C. A. 185; Patterson v. United States, 120 C. C. A. 650, 202 F. 208, 210.

NOTATION. In English probate practice, the act of making a memorandum of some special circumstance on a probate or letters of administration. Thus, where a grant is made for the whole personal estate of the deceased within the United Kingdom, which can only be done in the case of a person dying domiciled in England, the fact of his having been so domiciled is noted on the grant. Coote, Prob. Pr. 36; Sweet.

NOTCHELL, or NOCHELL. "Crying the wife's Notchell" seems to have been a means of preventing her running up debts against her husband. See 20 Law Mag. & Rev. 280.

It is the custom in Lancashire for a man to advertise that he will not be responsible for debts contracted by her [his wife] after that date. He is thus said to *notchel* her, and the advertisement is termed a notchel notice. N. and Q., 7th ser., VIII, 268, quoted in Cent. Dict.

NOTE, *v.* To make a brief written statement; to enter a memorandum; as to note an exception.

—Note a bill. When a foreign bill has been dishonored, it is usual for a notary public to present it again on the same day, and, if it be not then paid, to make a minute, consisting of his initials, the day, month, and year, and reason, if assigned, of non-payment. The making of this minute is called "noting the bill." Wharton.

NOTE, *n.* An abstract, a memorandum; an informal statement in writing. Also a negotiable promissory note. Road Improvement Dist. No. 4 of Cleveland County v. Southern Trust Co., 152 Ark. 422, 239 S. W. 8, 11; American Nat. Bank v. Marshall, 122 Kan. 793, 253 P. 214, 215. See Bought Note; Notes; Judgment Note; Promissory Note; Sold Note.

—Note of a fine. In old conveyancing. One of the parts of a fine of lands, being an abstract of the writ of covenant, and the concord; naming the parties, the parcels of land, and the agreement. 2 Bl. Comm. 351.

—Note of allowance. In English practice. A note delivered by a master to a party to a cause, who alleged that there was error in law in the record and proceedings, allowing him to bring error.

—Note of hand. A popular name for a promissory note. Perry v. Maxwell, 17 N. C. 496; Hopkins v. Holt, 9 Wis. 230.

—Note of protest. A memorandum of the fact of protest, indorsed by the notary upon the bill, at the time, to be afterwards written out at length.

—Note or memorandum. The statute of frauds requires a "note or memorandum" of the particular transaction to be made in writing and signed, etc. By this is generally understood an informal minute or memorandum made on the spot. See Clason v. Bailey, 14 Johns. (N. Y.) 492.

NOTES. In practice. Memoranda made by a judge on a trial, as to the evidence adduced, and the points reserved, etc. A copy of the judge's notes may be obtained from his clerk.

NOTHUS. Lat. In Roman law. A natural child or a person of spurious birth.

NOTICE. Information; the result of observation, whether by the senses or the mind; knowledge of the existence of a fact or state of affairs; the means of knowledge. Used in this sense in such phrases as "A. had notice of the conversion," "a purchaser without notice of fraud," etc. See Abercrombie v. Virginia-Carolina Chemical Co., 206 Ala. 615, 91 So. 311, 312; Knights and Ladies of Security v. Bell, 93 Okl. 272, 220 P. 594, 597.

Knowledge of facts which would naturally lead an honest and prudent person to make inquiry constitutes "notice" of everything which such inquiry pursued in good faith would disclose. Twitchell v. Nelson, 131 Minn. 375, 155 N. W. 621, 624; German-American Nat. Bank of Lincoln v. Martin, 277 Ill. 629, 115 N. E. 721, 729; Commercial Credit Corporation v. Coover, 101 N. J. Law, 530, 129 A. 187, 188; United States v. Booth-Kelly Lumber Co. (D. C.) 246 F. 970, 972.

Notice is either (1) statutory, *i. e.*, made so by legislative enactment; (2) actual, which brings the knowledge of a fact directly home to the party; or (3) constructive. Constructive notice may be subdivided into: (*a*) Where there exists actual notice of matter, to which equity has added constructive notice of facts, which an inquiry after such matter would have elicited; and (*b*) where there has been a designed abstinence from inquiry for the very purpose of escaping notice. Wharton.

In another sense, "notice" means information of an act *to be done* or *required to be* done; as of a motion to be made, a trial to be had, a plea or answer to be put in, costs to be taxed, etc. In this sense, "notice" means an advice, or written warning, in more or less formal shape, intended to apprise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate.

Under the Negotiable Instrument Law "notice" of infirmity of instrument is actual knowledge or knowledge of such facts that taking note amounts to bad faith. Glendo State Bank v. Abbott, 30 Wyo. 98, 216 P. 700, 702, 34 A. L. R. 294; Price Real Estate & Insurance Co. v. Jones, 191 N. C. 176, 131 S. E. 587, 589; Johanna v. Lennon, 32 N. D. 71, 155 N. W. 685, 686.

Classification

Notice is *actual* or *constructive*. Actual notice has been defined as notice expressly and actually given, and brought home to the party directly. Jordan v. Pollock, 14 Ga. 145; McCray v. Clar, 82 Pa. 457; Morey v. Milliken, 86 Me. 464, 30 A. 102. The term "actual notice," however, is generally given a wider meaning as embracing two classes, express and implied; the former includes all knowledge of a degree above that which depends upon collateral inference, or which imposes upon the party the further duty of inquiry; the latter imputes knowledge to the party because he is shown to be conscious of having the means of knowledge. In this sense actual notice is such notice as is positively proved to have been given to a party directly and personally, or such as he is presumed to have received personally because the evidence within his knowledge was sufficient to put him upon inquiry. Picklesimer v. Smith, 164 Ga. 600, 139 S. E. 72, 74; Brinkman v. Jones, 44 Wis. 498; White v. Fisher, 77 Ind. 65, 40 Am. Rep. 287; Clark v. Lambert, 55 W. Va. 512, 47 S. E. 312; Hopkins v. McCarthy, 121 Me. 27, 115 A. 513, 515; Rector v. Wildrick, 59 Okl. 172, 158 P. 610, 613; Citizens' State Bank of Greenup v. Johnson County, 182 Ky. 531, 207 S. W. 8, 11. Constructive notice is information or knowledge of a fact imputed by law to a person, (although he may not actually have it,) because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it. Baltimore v. Whittington, 78 Md. 231, 27 A. 984; Wells v. Sheerer, 78 Ala. 142; Jordan v. Pollock, 14 Ga. 145; Jackson v. Waldstein (Tex. Civ. App.) 27 S. W. 26; Acer v. Westcott, 46 N. Y. 384, 7 Am. Rep. 355; Charles v. Roxana Petroleum Corporation (C. C. A.) 282 F. 983, 988; City of Dallas v. Rutledge (Tex. Civ. App.) 258 S. W. 534, 538. Further as to the distinction between actual and constructive notice, see Baltimore v. Whittington, 78 Md. 231, 27 A. 984; Thomas v. Flint, 123 Mich. 10, 81 N. W. 936, 47 L. R. A. 499; Vaughn v. Tracy, 22 Mo. 420; Peterson v. Harper, 13 Ga. App. 112, 78 S. E. 942, 944.

Notice is also further classified as *express* or *implied*. Express notice embraces not only knowledge, but also that which is communicated by direct information, either written or oral, from those who are cognizant of the fact communicated. Baltimore v. Whittington, 78 Md. 231, 27 A. 984. Implied notice is one of the varieties of actual notice (not constructive) and is distinguished from "express" actual notice. It is notice inferred or imputed to a party by reason of his knowledge of facts or circumstances collateral to the main fact, of such a character as to put him upon inquiry, and which, if the inquiry were followed up with due diligence, would lead him definitely to the knowledge of the main fact. Rhodes v. Outcalt, 48 Mo. 370; Baltimore v. Whittington, 78 Md. 231, 27 A. 984; Wells v. Sheerer, 78 Ala. 147.

"Constructive notice" is a presumption of law, making it impossible for one to deny the matter concerning which notice is given, while "implied notice" is a presumption of fact, relating to what one can learn by reasonable inquiry, and arises from actual notice of circumstances, and not from constructive notice. Charles v. Roxana Petroleum Corporation (C. C. A.) 282 F. 983, 988. Or as otherwise defined, implied notice may be said to exist where the fact in question lies open to the knowledge of the party, so that the exercise of reasonable observation and watchfulness would not fail to apprise him of it, although

no one has told him of it in so many words. See Philadelphia v. Smith (Pa.) 16 A. 493.

Other Compound and Descriptive Terms

—Averment of Notice. The statement in a pleading that notice has been given.

—Immediate notice. "Immediate notice" of loss under an insurance policy means notice within reasonable time under circumstances of case. National Surety Co. v. Western Pac. Ry. Co., 200 F. 675, 687, 119 C. C. A. 91; Southern States Fire Ins. Co. v. Hand-Jordan Co., 112 Miss. 565, 73 So. 578, 579; Woodlock v. Ætna Life Ins. Co. (Mo. Sup.) 225 S. W. 994, 998; Piedmont Grocery Co. v. Hawkins, 87 W. Va. 38, 104 S. E. 736, 738; Frommelt v. Travelers' Ins. Co., 150 Minn. 66, 184 N. W. 565, 566.

—Judicial notice. The act by which a court, in conducting a trial, or framing its decision, will, of its own motion, and without the production of evidence, recognize the existence and truth of certain facts, having a bearing on the controversy at bar, which, from their nature, are not properly the subject of testimony, or which are universally regarded as established by common notoriety, *e. g.*, the laws of the state, international law, historical events, the constitution and course of nature, main geographical features, etc. North Hempstead v. Gregory, 53 App. Div. 350, 65 N. Y. S. 867; State v. Main, 69 Conn. 123, 37 A. 80, 36 L. R. A. 623, 61 Am. St. Rep. 30. The cognizance of certain facts which judges and jurors may properly take and act upon without proof, because they already known them. United States v. Hammers (D. C.) 241 F. 542, 543. The true conception of what is "judicially known" is that of something which is not, or rather need not be, unless the tribunal wishes it, the subject of either evidence or argument. Chiulla de Luca v. Board of Park Com'rs of City of Hartford, 94 Conn. 7, 107 A. 611, 612. The limits of "judicial notice" cannot be prescribed with exactness, but notoriety is, generally speaking, the ultimate test of facts sought to be brought within the realm of judicial notice; in general, it covers matters so notorious that a production of evidence would be unnecessary, matters which the judicial function supposes the judge to be acquainted with actually or theoretically, and matters not strictly included under either of such heads. Gottstein v. Lister, 88 Wash. 462, 153 P. 595, 602, Ann. Cas. 1917D, 1008.

—Legal notice. Such notice as is adequate in point of law; such notice as the law requires to be given for the specific purpose or in the particular case. See Sanborn v. Piper, 64 N. H. 335, 10 A. 680; People's Bank v. Etting, 17 Phila. (Pa.) 235.

—Notice in lieu of service. In lieu of personally serving a writ of summons (or other legal process,) in English practice, the court occasionally allows the plaintiff (or other party) to give notice in lieu of service, such notice being such as will in all probability reach the party. This notice is peculiarly appropriate in the case of a foreigner out of the jurisdiction, whom it is desired to serve with a writ of summons. Sweet.

—Notice of action. When it is intended to sue certain particular individuals, as in the case of actions against justices of the peace, it is necessary in some jurisdictions to give them notice of the action some time before.

—Notice of appearance. See Appearance.

—Notice of dishonor. See Dishonor.

—Notice of lis pendens. See Lis Pendens.

—Notice of protest. See Protest.

—Notice of judgment. It is required by statute in several of the states that the party for whom the verdict in an action has been given shall serve upon the other party or his attorney a written notice of the time when judgment is entered. The time allowed for taking an appeal runs from such notice.

—Notice of motion. A notice in writing, entitled in a cause, stating that, on a certain day designated, a motion will be made to the court for the purpose or object stated. Field v. Park, 20 Johns. (N. Y.) 140.

—Notice of trial. A notice given by one of the parties in an action to the other, after an issue has been reached, that he intends to bring the cause forward for trial at the next term of the court.

—Notice to admit. In the practice of the English high court, either party to an action may call on the other party by notice to admit the existence and execution of any document, in order to save the expense of proving it at the trial; and the party refusing to admit must bear the costs of proving it unless the judge certifies that the refusal to admit was reasonable. No costs of proving a document will in general be allowed, unless such a notice is given. Rules of Court, xxxii. 2; Sweet.

—Notice to plead. This is a notice which, in the practice of some states, is prerequisite to the taking judgment by default. It proceeds from the plaintiff, and warns the defendant that he must plead to the declaration or complaint within a prescribed time.

—Notice to produce. In practice. A notice in writing, given in an action at law, requiring the opposite party to produce a certain described paper or document at the trial. Chit. Archb. Pr. 230; 3 Chit. Gen. Pr. 834.

—Notice to quit. A written notice given by a landlord to his tenant, stating that the former desires to repossess himself of the demised

premises, and that the latter is required to quit and remove from the same at a time designated, either at the expiration of the term, if the tenant is in under a lease, or immediately, if the tenancy is at will or by sufferance. The term is also sometimes applied to a written notice given by the tenant to the landlord, to the effect that he intends to quit the demised premises and deliver possession of the same on a day named. Garner v. Hannah, 6 Duer (N. Y.) 270; Oakes v. Munroe, 8 Cush. (Mass.) 287.

—Personal notice. Communication of notice orally or in writing (according to the circumstances) directly to the person affected or to be charged, as distinguished from constructive or implied notice, and also from notice imputed to him because given to his agent or representative. See Loeb v. Huddleston, 105 Ala. 257, 16 So. 714; Pearson v. Lovejoy, 53 Barb. (N. Y.) 407.

—Presumptive notice. Implied actual notice. The difference between "presumptive" and "constructive" notice is that the former is an inference of fact which is capable of being explained or contradicted, while the latter is a conclusion of law which cannot be contradicted. Brown v. Baldwin, 121 Mo. 106, 25 S. W. 858; Drey v. Doyle, 99 Mo. 459, 12 S. W. 287; Brush v. Ware, 15 Pet. 98, 10 L. Ed. 672.

—Public notice. Notice given to the public generally, or to the entire community, or to all whom it may concern. See Pennsylvania Training School v. Independent Mut. F. Ins. Co., 127 Pa. 559, 18 A. 392.

—Reasonable notice. Such notice or information of a fact as may fairly and properly be expected or required in the particular circumstances. Sterling Mfg. Co. v. Hough, 49 Neb. 618, 68 N. W. 1019; Mallory v. Leiby, 1 Kan. 102; Commonwealth v. Central Dist. Telephone Co., 243 Pa. 586, 90 A. 338, 340.

NOTIFY. To make known. In legal proceedings, and in respect to public matters, this word is generally, if not universally, used as importing a notice *given* by some person, whose duty it was to give it, in some manner prescribed, and to some person entitled to receive it, or be notified. Appeal of Potwine, 31 Conn. 384. And see Home Benefit Ass'n of Angelina County v. Jordan (Tex. Civ. App.) 191 S. W. 725, 728.

NOTING. The act of a notary in minuting on a bill of exchange, after it has been presented for acceptance or payment, the initials of his name, the date of the day, month, and year when such presentment was made, and the reason, if any has been assigned, for non-acceptance or non-payment, together with his charge. The noting is not indispensable, it being only a part of the protest; it will not supply the protest; 4 Term 175.

NOTIO. Lat. In the civil law. The power of hearing and trying a matter of fact; the power or authority of a *judex*; the power of hearing causes and of pronouncing sentence, without any degree of jurisdiction. Calvin.

NOTITIA. Lat. Knowledge; information; intelligence; notice.

Notitia dicitur a noscendo; et notitia non debet claudicare. Notice is named from a knowledge being had; and notice ought not to halt, [*i. e.*, be imperfect.] 6 Coke, 29.

NOTORIAL. The Scotch form of "notarial," (*q. v.*) Bell.

NOTORIETY. The state of being notorious or universally well known.

Proof by Notoriety

In Scotch law, dispensing with positive testimony as to matters of common knowledge or general notoriety, the same as the "judicial notice" of English and American law. See Notice.

NOTORIOUS. Open; generally or commonly known and spoken of. McNeill v. McNeill, 166 Iowa, 680, 148 N. W. 643, 651; Record v. Ellis, 97 Kan. 754, 156 P. 712, 713, L. R. A. 1916E, 654, Ann. Cas. 1917C, 822; Spicer v. Spicer, 249 Mo. 582, 155 S. W. 832, 835, Ann. Cas. 1914D, 238.

In the law of evidence, matters deemed notorious do not require to be proved. There does not seem to be any recognized rule as to what matters are deemed notorious. Cases have occurred in which the state of society or public feeling has been treated as notorious; *e. g.*, during times of sedition. Best, Ev. 354; Sweet.

NOTORIOUS INSOLVENCY. A condition of insolvency which is generally known throughout the community or known to the general class of persons with whom the insolvent has business relations.

NOTORIOUS POSSESSION. In the rule that a prescriptive title must be founded on open and "notorious" adverse possession, this term means that the possession or character of the holding must in its nature possess such elements of notoriety that the owner may be presumed to have notice of it and of its extent. Watrous v. Morrison, 33 Fla. 261, 14 So. 805, 39 Am. St. Rep. 139.

NOTOUR. In Scotch law. Open; notorious. A *notour* bankrupt is a debtor who, being under diligence by horning and caption of his creditor, retires to sanctuary or absconds or defends by force, and is afterwards found insolvent by the court of session. Bell.

Nova constitutio futuris formam imponere debet non præteritis. A new state of the law ought to affect the future, not the past. 2 Inst. 292; Broom, Max. 34, 37.

NOVA CUSTUMA. The name of an imposition or duty. See Antiqua Custuma.

NOVA STATUTA. New statutes. An appellation sometimes given to the statutes which have been passed since the beginning of the reign of Edward III. 1 Steph. Comm. 68.

NOVÆ NARRATIONES. New counts. The collection called "*Novæ Narrationes*" contains pleadings in actions during the reign of Edward III. It consists principally of declarations, as the title imports; but there are sometimes pleas and subsequent pleadings. The *Articuli od Novas Narrationes* is usually subjoined to this little book, and is a small treatise on the method of pleading. It first treats of actions and courts, and then goes through each particular writ, and the declaration upon it, accompanied with directions, and illustrated by precedents. 3 Reeve, Eng. Law, 152; Wharton.

NOVALE. Land newly plowed and converted into tillage, and which has not been tilled before within the memory of man; also fallow land.

NOVALIS. In the civil law. Land that rested a year after the first plowing. Dig. 50, 16, 30, 2.

Novatio non præsumitur. Novation is not presumed. Halk. Lat. Max. 109.

NOVATION. The substitution of a new debt or obligation for an existing one. Civ. Code Cal. § 1530; Civ. Code Dak. § 863 (Comp. Laws N. D. 1913, § 5829; Rev. Code S. D. 1919, § 788); Hard v. Burton, 62 Vt. 314, 20 A. 269; McCartney v. Kipp, 171 Pa. 644, 33 A. 233; McDonnell v. Alabama Gold L. Ins. Co., 85 Ala. 401, 5 So. 120; Shafer's Appeal, 99 Pa. 246.

The substitution by mutual agreement of one debtor for another or of one creditor for another, whereby the old debt is extinguished, or the substitution of a new debt or obligation for an existing one, which is thereby extinguished. Pierce Fordyce Oil Ass'n v. Woods (Tex. Civ. App.) 180 S. W. 1181, 1183; Martin v. Breckenridge (C. C. A.) 14 F.(2d) 260, 262; Peters v. Poro's Estate, 96 Vt. 95, 117 A. 244, 249, 25 A. L. R. 615; Russell v. Centers, 153 Ky. 469, 155 S. W. 1149, 1151.

Essentials of "novation" are: a previous valid obligation; agreement of all parties to a new contract; extinguishment of the old contract; and validity of the new one. Hannan v. Murphy, 198 Iowa, 827, 200 N. W. 418, 419; McPike Drug Co. v. Williams, 104 Okl. 244, 230 P. 904; In re Tagliabue's Estate, 206 N. Y. S. 222, 223, 123 Misc. 666; Ceabuske v. Smolarz, 229 Mich. 100, 200 N. W. 945; District Nat. Bank of Washington v. Mordecai, 133 Md. 419, 105 A. 586; Cox v. Baltimore & O. S. W. R. Co., 180 Ind. 495, 103 N. E. 337, 342, 50 L. R. A. (N. S.) 453.

Novation is a contract, consisting of two stipulations,—one to extinguish an existing obligation; the other to substitute a new one in its place. Civ. Code La. art. 2185. The term was originally a technical term of the civil law, but is now in very general use in English and American jurisprudence.

In the civil law, there are three kinds of novation: (1) Where the debtor and creditor remain the same, but a new debt takes the place of the old one; (2) where the debt remains the same, but a new debtor is substituted; (3) where the debt and debtor remain, but a new creditor is substituted. Adams v. Power, 48 Miss. 451.

Every novation embraces, necessarily, an accord and satisfaction; the principal distinguishing feature between them being that a novation implies the extinguishment of an existing debt by the parties thereto and its transition into a new existence between the same or different parties, whereas, an "accord and satisfaction" relates solely to the extinguishment of the debt or obligation. Cooke v. McAdoo, 85 N. J. Law, 692, 90 A. 302, 303.

NOVEL ASSIGNMENT. See New Assignment.

NOVEL DISSEISIN. See Assise of Novel Disseisin.

NOVELLÆ (or NOVELLÆ CONSTITUTIONES.) New constitutions; generally translated in English, "Novels." The Latin name of those constitutions which were issued by Justinian after the publication of his Code; most of them being originally written in Greek. After his death, a collection of 168 Novels was made, 154 of which had been issued by Justinian, and the rest by his successors. These were afterwards included in the *Corpus Juris Civilis*, (*q. v.*,) and now constitute one of its four principal divisions. Mackeld. Rom. Law, § 80; 1 Kent, Comm. 541.

NOVELLÆ LEONIS. The ordinances of the Emperor Leo, which were made from the year 887 till the year 893, are so called. These Novels changed many rules of the Justinian law. This collection contains 113 Novels, written originally in Greek, and afterwards, in 1560, translated into Latin by Agilæus. Mackeld. Rom. Law, § 84.

NOVELS. The title given in English to the New Constitutions (*Novellæ Constitutiones*) of Justinian and his successors, now forming a part of the *Corpus Juris Civilis*. See Novellæ.

NOVELTY. An objection to a patent or claim for a patent on the ground that the invention is not new or original is called an objection "for want of novelty."

NOVERCA. Lat. In the civil law. A stepmother.

NOVERINT UNIVERSI PER PRÆSENTES. Know all men by these presents. Formal

words used at the commencement of deeds of release in the Latin forms.

NOVI OPERIS NUNCIATIO. Lat. Denunciation of, or protest against, a new work. This was a species of remedy in the civil law, available to a person who thought his rights or his property were threatened with injury by the act of his neighbor in erecting or demolishing any structure, which was called a "new work." In such case, he might go upon the ground, while the work was in progress, and publicly protest against or forbid its completion, in the presence of the workmen or of the owner or his representative.

NOVIGILD. In Saxon law. A pecuniary satisfaction for an injury, amounting to nine times the value of the thing for which it was paid. Spelman.

NOVISSIMA RECOPILACION. (Latest Compilation.) The title of a collection of Spanish law compiled by order of Don Carlos IV. in 1805. 1 White, Recop. 355.

NOVITAS. Lat. Novelty; newness; a new thing.

Novitas non tam utilitate prodest quam novitate perturbat. A novelty does not benefit so much by its utility as it disturbs by its novelty. Jenk. Cent. p. 167, case 23.

NOVITER PERVENTA, or NOVITER AD NOTITIAM PERVENTA. In ecclesiastical procedure. Facts "newly come" to the knowledge of a party to a cause. Leave to plead facts *noviter perventa* is generally given, in a proper case, even after the pleadings are closed. Phillim. Ecc. Law, 1257; Rog. Ecc. Law, 723.

NOVODAMUS. In old Scotch law. (We give anew.) The name given to a charter, or clause in a charter, granting a renewal of a right. Bell.

Novum judicium non dat novum jus, sed declarat antiquum; quia judicium est juris dictum et per judicium jus est noviter revelatum quod diu fuit velatum. A new adjudication does not make a new law, but declares the old; because adjudication is the utterance of the law, and by adjudication the law is newly revealed which was for a long time hidden. 10 Coke, 42.

NOVUM OPUS. Lat. In the civil law. A new work. See Novi Operis Nunciatio.

NOVUS HOMO. Lat. A new man. This term is applied to a man who has been pardoned of a crime, and so made, as it were, a "new man."

NOW. At this time, or at the present moment; or at a time contemporaneous with something done. Pike v. Kennedy, 15 Or. 426, 15 P. 637. At the present time. Nutt v. U. S., 26 Ct. Cl. 15. Shubert v. Rosenberger (C. C. A.) 204 F. 934, 935; Walker v. Dwelle, 187 Iowa, 1384, 175 N. W. 957, 960.

"Now" as used in a statute ordinarily refers to the date of its taking effect, but the word is sometimes used, not with reference to the moment of speaking but to a time contemporaneous with something done, and may mean at the time spoken of or referred to as well as at the time of speaking. State v. City of St. Lawrence, 101 Kan. 225, 165 P. 826.

Word "now" used in will refers to time of testator's death, Tate v. Tate, 160 Ga. 449, 128 S. E. 393, 395; but, in light of context, may apply to date of will, Merrill v. Winchester, 120 Me. 203, 113 A. 261, 264; United States Trust Co. of New York v. Nathan, 187 N. Y. S. 649, 651, 196 App. Div. 126.

NOXA. Lat. In the civil law. Any damage or injury done to persons or property by an unlawful act committed by a man's slave or animal. An action for damages lay against the master or owner, who, however, might escape further responsibility by delivering up the offending agent to the party injured. "*Noxa*" was also used as the designation of the offense committed, and of its punishment, and sometimes of the slave or animal doing the damage.

Noxa sequitur caput. The injury [*i. e.*, liability to make good an injury caused by a slave] follows the head or person, [*i. e.*, attaches to his master.] Heinecc. Elem. l. 4, t. 8, § 1231.

NOXÆ DEDITIO. The surrender of a slave who has committed a misdeed. The master may elect whether he will pay the damages assessed or surrender the slave. Hunter, Rom. Law, 166.

NOXAL ACTION. An action for damage done by slaves or animals. Sandars, Just. Inst. (5th Ed.) 457.

NOXALIS ACTIO. Lat. In the civil law. An action which lay against the master of a slave, for some offense (as theft or robbery) committed or damage or injury done by the slave, which was called "*noxa.*" Usually translated "noxal action."

NOXIA. Lat. In the civil law. An offense committed or damage done by a slave. Inst. 4, 8, 1.

NOXIOUS. Hurtful; offensive; offensive to the smell. Rex v. White, 1 Burrows, 337. The word "noxious" includes the complex idea both of insalubrity and offensiveness. Id. That which causes or tends to cause injury, especially to health or morals. Moubray v. G. & M. Improvement Co., 178 App. Div. 737, 165 N. Y. S. 842, 843.

NUBILIS. Lat. In the civil law. Marriageable; one who is of a proper age to be married.

NUCES COLLIGERE. Lat. To collect nuts. This was formerly one of the works or servic-

es imposed by lords upon their inferior tenants. Paroch. Antiq. 495.

Nuda pactio obligationem non parit. A naked agreement [*i. e.*, without consideration] does not beget an obligation. Dig. 2, 14, 7, 4; Broom, Max. 746.

NUDA PATIENTIA. Lat. Mere sufferance.

NUDA POSSESSIO. Lat. Bare or mere possession.

Nuda ratio et nuda pactio non ligant aliquem debitorem. Naked reason and naked promise do not bind any debtor. Fleta, l. 2, c. 60, § 25.

NUDE. Naked. This word is applied metaphorically to a variety of subjects to indicate that they are lacking in some essential legal requisite.

NUDE CONTRACT. One made without any consideration; upon which no action will lie, in conformity with the maxim "*ex nudo pacto non oritur actio.*" 2 Bl. Comm. 445.

NUDE MATTER. A bare allegation of a thing done, unsupported by evidence.

NUDUM PACTUM.

In Roman Law

Informal agreements not coming within any of the privileged classes. They could not be sued on. The term was sometimes used with a special and rather different meaning to express the rule that a contract without delivery will not pass property. Pollock, Contracts 743. Salmond, Jurisprudence 640.

A naked pact; a bare agreement; a promise or undertaking made without any consideration for it. Justice v. Lang, 42 N. Y. 493, 1 Am. Rep. 576; Wardell v. Williams, 62 Mich. 50, 28 N. W. 800, 4 Am. St. Rep. 814.

Nudum pactum est ubi nulla subest causa præter conventionem; sed ubi subest causa, fit obligatio, et parit actionem. A naked contract is where there is no consideration except the agreement; but, where there is a consideration, it becomes an obligation and gives a right of action. Plowd. 309; Broom, Max. 745, 750.

Nudum pactum ex quo non oritur actio. *Nudum pactum* is that upon which no action arises. Cod. 2, 3, 10; Id. 5, 14, 1; Broom, Max. 676.

NUEVA RECOPILACION. (New Compilation.) The title of a code of Spanish law, promulgated in the year 1567. Schm. Civil Law, Introd. 79–81.

NUGATORY. Futile; ineffectual; invalid; destitute of constraining force or vitality. A legislative act may be "nugatory" because unconstitutional. Avery & Co. v. Sorrell, 157 Ga. 476, 121 S. E. 828, 829.

NUISANCE. Anything that unlawfully worketh hurt, inconvenience, or damage. 3 Bl. Comm. 216.

That class of wrongs that arise from the unreasonable, unwarrantable, or unlawful use by a person of his own property, either real or personal, or from his own improper, indecent, or unlawful personal conduct, working an obstruction of or injury to the right of another or of the public, and producing material annoyance, inconvenience, discomfort, or hurt. Wood, Nuis. § 1; District of Columbia v. Totten, 55 App. D. C. 312, 5 F. (2d) 374, 380, 40 A. L. R. 1461; Petroleum Refining Co. v. Commonwealth, 192 Ky. 272, 232 S. W. 421, 423.

Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or which unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance. Civ. Code Cal. § 3479. And see Veazie v. Dwinel, 50 Me. 479; People v. Metropolitan Tel. Co., 11 Abb. N. C. (N. Y.) 304; Bohan v. Port Jervis Gaslight Co., 122 N. Y. 18, 25 N. E. 246, 9 L. R. A. 711; Baltimore & P. R. Co. v. Fifth Baptist Church, 137 U. S. 568, 11 S. Ct. 185, 34 L. Ed. 784; Id., 108 U. S. 317, 2 S. Ct. 719, 27 L. Ed. 739; Cardington v. Frederick, 46 Ohio St. 442, 21 N. E. 766; Gifford v. Hulett, 62 Vt. 342, 19 A. 230; Ex parte Foote, 70 Ark. 12, 65 S. W. 706, 91 Am. St. Rep. 63; Carthage v. Munsell, 203 Ill. 474, 67 N. E. 831; Northern Pac. R. Co. v. Whalen, 149 U. S. 157, 13 S. Ct. 822, 37 L. Ed. 686; Phinizy v. City Council of Augusta, 47 Ga. 266; Allen v. Union Oil Co., 59 S. C. 571, 38 S. E. 274; Trueheart v. Parker (Tex. Civ. App.) 257 S. W. 640; Kroecker v. Camden Coke Co., 82 N. J. Eq. 373, 88 A. 955, 957.

In determining what constitutes a "nuisance," the question is whether the nuisance will or does produce such a condition of things as in the judgment of reasonable men is naturally productive of actual physical discomfort to persons of ordinary sensibility and ordinary tastes and habits. Meeks v. Wood, 66 Ind. App. 594, 118 N. E. 591, 592.

Classification

Nuisances are commonly classed as *public* and *private*, and *mixed*. A public nuisance is one which affects an indefinite number of persons, or all the residents of a particular locality, or all people coming within the extent of its range or operation, although the extent of the annoyance or damage inflicted upon individuals may be unequal. See Burnham v. Hotchkiss, 14 Conn. 317; Chesbrough v. Com'rs, 37 Ohio St. 508; Lansing v. Smith, 4 Wend. (N. Y.) 30, 21 Am. Dec. 89; Nolan v. New Britain, 69 Conn. 668, 38 A. 703; Kelley v. New York, 6 Misc. 516, 27 N. Y. S. 164; Kissel v. Lewis, 156 Ind. 233, 59

N. E. 478; Burlington v. Stockwell, 5 Kan. App. 569, 47 P. 988; Jones v. Chanute, 63 Kan. 243, 65 P. 243; Civ. Code Cal. § 3480; Lademan v. Lamb Const. Co. (Mo. App.) 297 S. W. 184, 186; Calkins v. Ponca City, 89 Okl. 100, 214 P. 188, 192. A private nuisance was originally defined as anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another. 3 Bl. Comm. 216. See, also, Whittemore v. Baxter Laundry Co., 181 Mich. 564, 148 N. W. 437, 52 L. R. A. (N. S.) 930, Ann. Cas. 1916C, 818; State v. Ringold, 102 Or. 401, 202 P. 734, 735. As distinguished from public nuisance, it includes any wrongful act which destroys or deteriorates the property of an individual or of a few persons or interferes with their lawful use or enjoyment thereof, or any act which unlawfully hinders them in the enjoyment of a common or public right and causes them a special injury different from that sustained by the general public. Therefore, although the ground of distinction between public and private nuisances is still the injury to the community at large or, on the other hand, to a single individual, it is evident that the same thing or act may constitute a public nuisance and at the same time a private nuisance. See Heeg v. Licht, 80 N. Y. 582, 36 Am. Rep. 654; Baltzeger v. Carolina Midland R. Co., 54 S. C. 242, 32 S. E. 358, 71 Am. St. Rep. 789; Kavanagh v. Barber, 131 N. Y. 211, 30 N. E. 235, 15 L. R. A. 689; Haggart v. Stehlin, 137 Ind. 43, 35 N. E. 997, 22 L. R. A. 577; Dorman v. Ames, 12 Minn. 461 (Gil. 347); Ackerman v. True, 175 N. Y. 353, 67 N. E. 629; Kissel v. Lewis, 156 Ind. 233, 59 N. E. 478; Willcox v. Hines, 100 Tenn. 538, 46 S. W. 297, 41 L. R. A. 278, 66 Am. St. Rep. 770; Harris v. Poulton, 99 W. Va. 20, 127 S. E. 647, 650, 651, 40 A. L. R. 334; City of Ft. Smith v. Western Hide & Fur Co., 153 Ark. 99, 239 S. W. 724, 725. A *mixed* nuisance is of the kind last described; that is, it is one which is both public and private in its effects,—public because it injures many persons or all the community, and private in that it also produces special injuries to private rights. Kelley v. New York, 6 Misc. 516, 27 N. Y. S. 164.

Other Compound and Descriptive Terms

—Abatement of a nuisance. The removal, prostration, or destruction of that which causes a nuisance, whether by breaking or pulling it down, or otherwise removing, disintegrating, or effacing it. Ruff v. Phillips, 50 Ga. 130.

The remedy which the law allows a party injured by a nuisance of destroying or removing it by his own act, so as he commits no riot in doing it, nor occasions (in the case of a private nuisance) any damage beyond what the removal of the inconvenience necessarily requires. 3 Bl. Comm. 5, 168; 3 Steph. Comm. 361; 2 Salk. 458.

—Actionable nuisance. See Actionable.

—Assize of nuisance. In old practice, this was a judicial writ directed to the sheriff of the county in which a nuisance existed, in which it was stated that the party injured complained of some particular fact done *ad nocumentum liberi tenementi sui*, (to the nuisance of his freehold,) and commanding the sheriff to summon an assize (that is, a jury) to view the premises, and have them at the next commission of assizes, that justice might be done, etc. 3 Bl. Comm. 221.

—Common nuisance. One which affects the public in general, and not merely some particular person; a public nuisance. 1 Hawk. P. C. 197; State v. Rodgers, 91 N. J. Law, 212, 102 A. 433, 434.

—Continuing nuisance. An uninterrupted or periodically recurring nuisance; not necessarily a constant or unceasing injury, but a nuisance which occurs so often and is so necessarily an incident of the use of property complained of that it can fairly be said to be continuous. Farley v. Gaslight Co., 105 Ga. 323, 31 S. E. 193; Kafka v. Bozio, 191 Cal. 746, 218 P. 753, 755, 29 A. L. R. 833.

—Nuisance per se. One which constitutes a nuisance at all times and under all circumstances, irrespective of locality or surroundings, as, things prejudicial to public morals or dangerous to life or injurious to public rights; distinguished from things declared to be nuisances by statute, and also from things which constitute nuisances only when considered with reference to their particular location or other individual circumstances. Hundley v. Harrison, 123 Ala. 292, 26 So. 294; Whitmore v. Paper Co., 91 Me. 297, 39 A. 1032, 40 L. R. A. 377, 64 Am. St. Rep. 229; Windfall Mfg. Co. v. Patterson, 148 Ind. 414, 47 N. E. 2, 37 L. R. A. 381, 62 Am. St. Rep. 532; Hardin v. Olympic Portland Cement Co., 89 Wash. 320, 154 P. 450, 451; Simpson v. Du Pont Powder Co., 143 Ga. 465, 85 S. E. 344, 345, L. R. A. 1915E, 430; Patterson v. Roxana Petroleum Co. of Oklahoma, 109 Okl. 89, 234 P. 713, 716.

—Permanent nuisance. A nuisance of such a character that its continuance is necessarily an injury which will continue without change. Norfolk & W. Ry. Co. v. Allen, 118 Va. 428, 87 S. E. 558, 560. One that cannot be readily abated at small expense. Cumberland Torpedo Co. v. Gaines, 201 Ky. 88, 255 S. W. 1046, 1048.

NUL. No; none. A law French negative particle commencing many phrases.

NUL AGARD. No award. The name of a plea in an action on an arbitration bond, by which the defendant traverses the making of any legal award.

Nul charter, nul vente, ne nul done vault perpetualment, si le donor n'est seise al temps de contracts de deux droits, sc. del droit de possession et del droit de propertie. Co. Litt. 266. No grant, no sale, no gift, is valid forever, un-

less the donor, at the time of the contract, is seised of two rights, namely, the right of possession, and the right of property.

NUL DISSEISIN. In pleading. No disseisin. A plea of the general issue in a real action, by which the defendant denies that there was any disseisin.

Nul ne doit s'enrichir aux depens des autres. No one ought to enrich himself at the expense of others.

Nul prendra advantage de son tort demesne. No one shall take advantage of his own wrong. 2 Inst. 713; Broom, Max. 290.

Nul sans damage avera error ou attaint. Jenk. Cent. 323. No one shall have error or attaint unless he has sustained damage.

NUL TIEL CORPORATION. No such corporation [exists]. The form of a plea denying the existence of an alleged corporation. Rialto Co. v. Miner, 183 Mo. App. 119, 166 S. W. 629, 632.

NUL TIEL RECORD. No such record. A plea denying the existence of any such record as that alleged by the plaintiff. It is the general plea in an action of debt on a judgment. Hoffheimer v. Stiefel, 17 Misc. 236, 39 N. Y. S. 714; Watters v. Freeman Bros., 16 Ga. App. 595, 85 S. E. 931.

NUL TORT. In pleading. A plea of the general issue to a real action, by which the defendant denies that he committed any wrong.

NUL WASTE. No waste. The name of a plea in an action of waste, denying the committing of waste, and forming the general issue.

NULL. Naught; of no validity or effect. Usually coupled with the word "void;" as "null and void." Forrester v. Boston, etc., Min. Co., 29 Mont. 397, 74 P. 1088; Hume v. Eagon, 73 Mo. App. 276. The words "null and void," when used in a contract or statute are often construed as meaning "voidable." Marshall v. Porter, 73 W. Va. 258, 80 S. E. 350, 351; Jones v. Williams, 94 Vt. 175, 109 A. 803, 807; Jones v. Hert, 192 Ala. 111, 68 So. 259, 260.

NULLA BONA. Lat. No goods. The name of the return made by the sheriff to a writ of execution, when he has not found any goods of the defendant within his jurisdiction on which he could levy. Woodward v. Harbin, 1 Ala. 108; Reed v. Lowe, 163 Mo. 519, 63 S. W. 687, 85 Am. St. Rep. 578; Langford v. Few, 146 Mo. 142, 47 S. W. 927, 69 Am. St. Rep. 606.

Nulla curia quæ recordum non habet potest imponere finem neque aliquem mandare carceri; quia ista spectant tantummodo ad curias de recordo. 8 Coke, 60. No court which has not a record can impose a fine or commit any person to prison; because those powers belong only to courts of record.

Nulla emptio sine pretio esse potest. There can be no sale without a price. Brown v. Bellows, 4 Pick. (Mass.) 189.

Nulla impossibilia aut inhonesta sunt præsumenda; vera autem et honesta et possibilia. No things that are impossible or dishonorable are to be presumed; but things that are true and honorable and possible. Co. Litt. 78*b*.

Nulla pactione effici potest ut dolus præstetur. By no agreement can it be effected that a fraud shall be practiced. Fraud will not be upheld, though it may seem to be authorized by express agreement. 5 Maule & S. 466; Broom, Max. 696.

Nulla virtus, nulla scientia, locum suum et dignitatem conservare potest sine modestia. Co. Litt. 394. Without modesty, no virtue, no knowledge, can preserve its place and dignity.

Nulle règle sans faute. There is no rule without a fault.

Nulle terre sans seigneur. No land without a lord. A maxim of feudal law. Guyot, Inst. Feod. c. 28.

Nulli enim res sua servit jure servitutis. No one can have a servitude over his own property. Dig. 8, 2, 26; 2 Bouv. Inst. no. 1600; Grant v. Chase, 17 Mass. 443, 9 Am. Dec. 161.

NULLITY. Nothing; no proceeding; an act or proceeding in a cause which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect. Salter v. Hilgen, 40 Wis. 363; Jenness v. Lapeer County Circuit Judge, 42 Mich. 469, 4 N. W. 220; Johnson v. Hines, 61 Md. 122.

Absolute Nullity

In Spanish law, nullity is either absolute or relative. The former is that which arises from the law, whether civil or criminal, the principal motive for which is the public interest, while the latter is that which affects one certain individual. Sunol v. Hepburn, 1 Cal. 281. No such distinction, however, is recognized in American law, and the term "absolute nullity" is used more for emphasis than as indicating a degree of invalidity. As to the ratification or subsequent validation of "absolute nullities," see Means v. Robinson, 7 Tex. 502, 516.

Nullity of Marriage

The entire invalidity of a supposed, pretended, or attempted marriage, by reason of relationship or incapacity of the parties or other diriment impediments. An action seeking a decree declaring such an assumed marriage to be null and void is called a suit of "nullity of marriage." It differs from an action for divorce, because the latter supposes the existence of a valid and lawful marriage. See 2 Bish. Mar. & Div. §§ 289–294.

NULLIUS FILIUS. Lat. The son of nobody; a bastard. A bastard is considered *nullius filius* as far as regards his right to inherit. But the rule of *nullius filius* does not apply in other respects, and has been changed by statute in most states so as to make him the child of his mother, in respect of inheritance.

Nullius hominis auctoritas apud nos valere debet, ut meliora non sequeremur si quis attulerit. The authority of no man ought to prevail with us, so far as to prevent our following better [opinions] if any one should present them. Co. Litt. 383*b*.

NULLIUS IN BONIS. Lat. Among the property of no person.

NULLIUS JURIS. Lat. In old English law. Of no legal force. Fleta, lib. 2, c. 60, § 24.

NULLUM ARBITRIUM. L. Lat. No award. The name of a plea in an action on an arbitration bond, for not fulfilling the award, by which the defendant traverses the allegation that there was an award made.

Nullum crimen majus est inobedientia. No crime is greater than disobedience. Jenk. Cent. p. 77, case 48. Applied to the refusal of an officer to return a writ.

Nullum exemplum est idem omnibus. No example is the same for all purposes. Co. Litt. 212*a*. No one precedent is adapted to all cases. A maxim in conveyancing.

NULLUM FECERUNT ARBITRIUM. L. Lat. In pleading. The name of a plea to an action of debt upon an obligation for the performance of an award, by which the defendant denies that he submitted to arbitration, etc. Bac. Abr. "*Arbitr.*" etc., G.

Nullum iniquum est præsumendum in jure. 7 Coke, 71. No iniquity is to be presumed in law.

Nullum matrimonium, ibi nulla dos. No marriage, no dower. Wait v. Wait, 4 Barb. (N. Y.) 192, 194.

Nullum simile est idem nisi quatuor pedibus currit. Co. Litt. 3. No like is identical, unless it run on all fours.

Nullum simile quatour pedibus currit. No simile runs upon four feet, (or *all fours*, as it is otherwise expressed.) No simile holds in everything. Co. Litt. 3*a*; Ex parte Foster, 2 Story, 143, Fed. Cas. No. 4960.

NULLUM TEMPUS ACT. In English law. A name given to the statute 3 Geo. III. c. 16, because that act, in contravention of the maxim "*Nullum tempus occurrit regi*," (no lapse of time bars the king,) limited the crown's right to sue, etc., to the period of sixty years.

Nullum tempus aut locus occurrit regi. No time or place affects the king. 2 Inst. 273; Jenk. Cent. 83; Broom, Max. 65.

Nullum tempus occurrit reipublicæ. No time runs [time does not run] against the commonwealth or state. Levasser v. Washburn, 11 Grat. (Va.) 572.

Nullus alius quam rex possit episcopo demandare inquisitionem faciendam. Co. Litt. 134. No other than the king can command the bishop to make an inquisition.

Nullus commodum capere potest de injuria sua propria. No one can obtain an advantage by his own wrong. Co. Litt. 148; Broom, Max. 279.

Nullus debet agere de dolo, ubi alia actio subest. Where another form of action is given, no one ought to sue in the action *de dolo*. 7 Coke, 92.

Nullus dicitur accessorius post feloniam, sed ille qui novit principalem feloniam fecisse, et illum receptavit et comfortavit. 3 Inst. 138. No one is called an "accessary" after the fact but he who knew the principal to have committed a felony, and received and comforted him.

Nullus dicitur felo principalis nisi actor, aut qui præsens est, abettans aut auxilians ad feloniam faciendam. No one is called a "principal felon" except the party actually committing the felony, or the party present aiding and abetting in its commission.

Nullus idoneus testis in re sua intelligitur. No person is understood to be a competent witness in his own cause. Dig. 22, 5, 10.

Nullus jus alienum forisfacere potest. No man can forfeit another's right. Fleta, lib. 1, c. 28, § 11.

Nullus recedat e curia cancellaria sine remedio. No person should depart from the court of chancery without a remedy. 4 Hen. VII. 4; Branch, Princ.

Nullus simile est idem, nisi quatuor pedibus currit. No like is exactly identical unless it runs on all fours.

Nullus videtur dolo facere qui suo jure utitur. No one is considered to act with guile who uses his own right. Dig. 50, 17, 55; Broom, Max. 130.

NUMERATA PECUNIA. Lat. In the civil law. Money told or counted; money paid by tale. Inst. 3, 24, 2; Bract. fol. 35.

NUMMATA. The price of anything in money, as *denariata* is the price of a thing by computation of pence, and *librata* of pounds. **NUMMATA TERRÆ.** An acre of land. Spelman.

NUN. A woman who lives in a convent under vows of poverty, chastity, and obedience. Scott Co. v. Roman Catholic Archbishop for Diocese of Oregon, A. Christie, 83 Or. 97, 163 P. 88, 91.

NUNC PRO TUNC. Lat. Now for then. A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, *i. e.*, with the same effect as if regularly done. Perkins v. Hayward, 132 Ind. 95, 31 N. E. 670; Secou v. Leroux, 1 N. M. 388; Rinehart v. Rinehart, 91 N. J. Eq. 354, 110 A. 29; Ex parte Schantz, 26 N. D. 380, 144 N. W. 445, 447.

A *nunc pro tunc* entry is an entry made now, of something which was actually previously done, to have effect as of the former date. Its office is not to supply omitted action by the court, but to supply an omission in the record of action really had where entry thereof was omitted through inadvertence or mistake. Perkins v. Perkins, 225 Mass. 392, 114 N. E. 713; People v. Rosenwald, 266 Ill. 548, 107 N. E. 854, 856, Ann. Cas. 1915D, 688; Grizzard v. Fite, 137 Tenn. 103, 191 S. W. 969, 971, L. R. A. 1917D, 652; Freeman v. Hulbert, 230 Mich. 455, 203 N. W. 158, 160.

NUNCIATIO. Lat. In the civil law. A solemn declaration, usually in prohibition of a thing; a protest.

NUNCIO. The permanent official representative of the pope at a foreign court or seat of government. Webster. They are called "ordinary" or "extraordinary," according as they are sent for general purposes or on a special mission.

NUNCIUS. In international law. A messenger; a minister; the pope's legate, commonly called a "nuncio."

NUNCUPARE. Lat. In the civil law. To name; to pronounce orally or in words without writing.

NUNCUPATE. To declare publicly and solemnly.

NUNCUPATIVE WILL. An oral will declared or dictated by the testator in his last sickness before a sufficient number of witnesses, and afterwards reduced to writing. Ex parte Thompson, 4 Bradf. Sur. (N. Y.) 154; Sykes v. Sykes, 2 Stew. (Ala.) 367, 20 Am. Dec. 40; Tally v. Butterworth, 10 Yerg. (Tenn.) 502; Ellington v. Dillard, 42 Ga. 379; Succession of Morales, 16 La. Ann. 268; Starks v. Lincoln, 316 Mo. 483, 291 S. W. 132, 134.

A will made by the verbal declaration of the testator, and usually dependent merely on oral testimony for proof. Cent. Dict.

NUNDINÆ. Lat. In the civil and old English law. A fair. *In nundinis et mercatis*, in fairs and markets. Bract. fol. 56.

NUNDINATION. Traffic at fairs and markets; any buying and selling.

Nunquam crescit ex postfacto præteriti delicti æstimatio. The character of a past offense is never aggravated by a subsequent act or matter. Dig. 50, 17, 139, 1; Bac. Max. p. 38, reg. 8; Broom, Max. 42.

Nunquam decurritur ad extraordinarium sed ubi deficit ordinarium. We are never to resort to what is extraordinary, but [until] what is ordinary fails. 4 Inst. 84.

Nunquam fictio sine lege. There is no fiction without law.

NUNQUAM INDEBITATUS. Lat. Never indebted. The name of a plea in an action of *indebitatus assumpsit*, by which the defendant alleges that he is not indebted to the plaintiff.

Nunquam nimis dicitur quod nunquam satis dicitur. What is never sufficiently said is never said too much. Co. Litt. 375.

Nunquam præscribitur in falso. There is never a prescription in case of falsehood or forgery. A maxim in Scotch law. Bell.

Nunquam res humanæ prospere succedunt ubi negliguntur divinæ. Co. Litt. 15. Human things never prosper where divine things are neglected.

NUNTIUS. In old English practice. A messenger. One who was sent to make an excuse for a party summoned, or one who explained as for a friend the reason of a party's absence. Bract. fol. 345. An officer of a court; a summoner, apparitor, or beadle. Cowell.

NUPER OBIIT. Lat. In practice. The name of a writ (now abolished) which, in the English law, lay for a sister coheiress dispossessed by her coparcener of lands and tenements whereof their father, brother, or any common ancestor died seised of an estate in fee-simple. Fitzh. Nat. Brev. 197.

NUPTIÆ SECUNDÆ. Lat. A second marriage. In the canon law, this term included any marriage subsequent to the first.

NUPTIAL. Pertaining to marriage; constituting marriage; used or done in marriage.

Nuptias non concubitus sed consensus facit. Co. Litt. 33. Not cohabitation but consent makes the marriage.

NURTURE. The act of taking care of children, bringing them up, and educating them. Regina v. Clarke, 7 El. & Bl. 193.

NURUS. Lat. In the civil law. A son's wife; a daughter-in-law. Calvin.

NYCTHEMERON. The whole natural day, or day and night, consisting of twenty-four hours. Enc. Lond.

NYMPHOMANIA. See Insanity.