

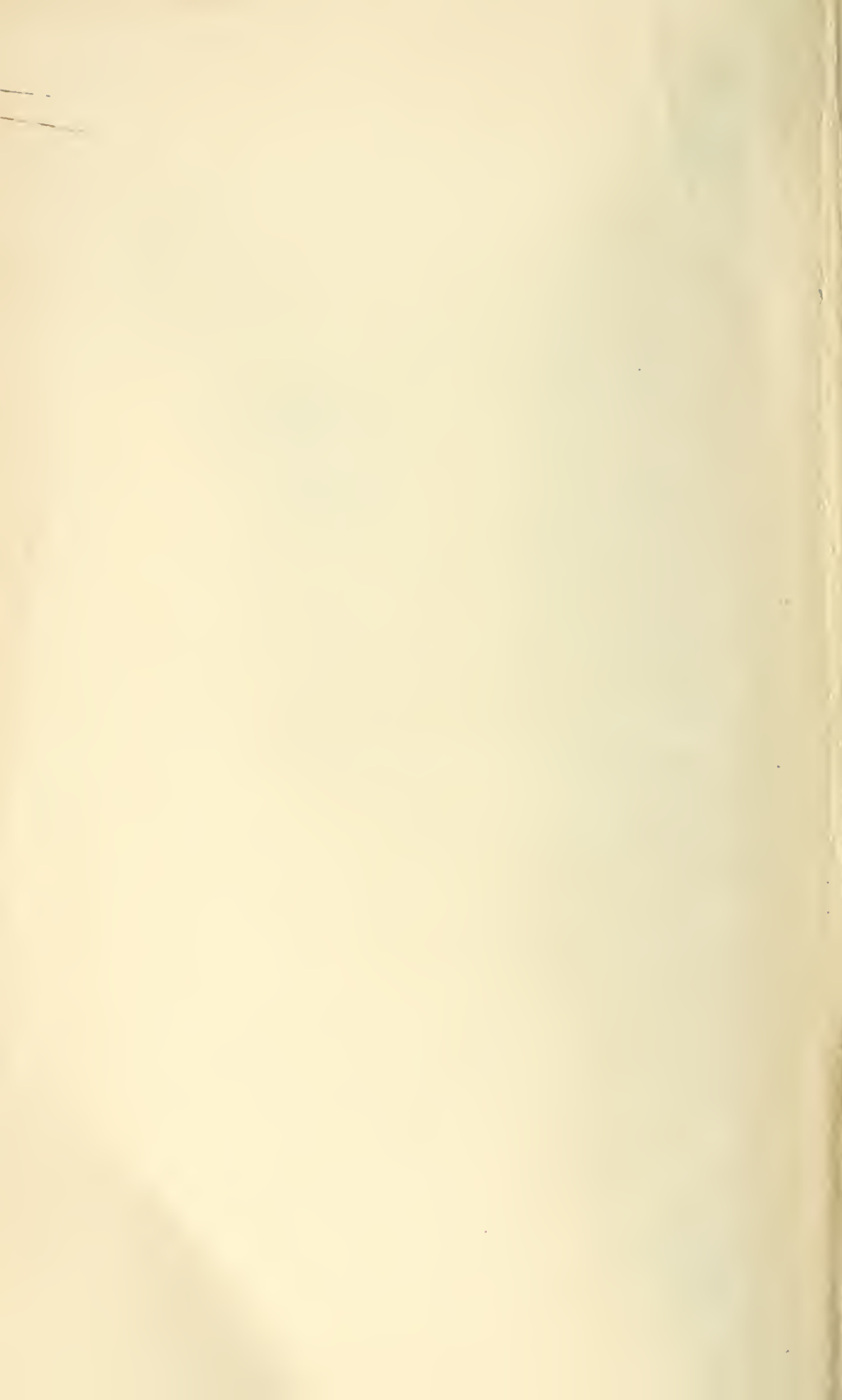
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THE  
JUDICIAL DICTIONARY.

“Words are wise men’s counters, they do but reckon by them; it they are the money of fools.”

HOBBS’ *LEVIATHAN* t. 1, ch. 4.

“How necessary it is to know the signification of words.”

COIT. 325 a.

“Is not the judge bound to know the meaning of all words in the English Language?”

PER MARTIN, B., *H. s v. London Ga Co.*, 27 L. Ex. 63.

“Definition is always periculosæ plenum opus alex.”

PER WILLS, J., *Swansea Imp. Co. v. Swansea Urban Authority*, 61 L. J. C. 125.

“It is not necessary to go into the derivation of words, for that sort of reasoning would not assist in the administration of justice.”

PER KINDERSLEY, V. C., *Barrett v. Wite*, 24 L. J. 726.

“Legal definitions are, for the most part, inductive generalizations derived from judicial experience.”

*Mickle v. Miles*, 1 Grat’s Cases (Pt. 328).

“Neither is a Dictionary a bad book to read. There is no ant in it, nor cess of explanation, and it is full of suggestion.”

EMERSON.

“When I use a word,” — Humpty Dumpty said, in rather a scornful tone, — “it means just what I choose it to mean, neither more nor less.”

“The question is,” said Alice, — “whether you can make words mean so many different things?”

“The question is,” said Humpty Dumpty, — “which is to be the master? That’s all.”

THROUGH THE LOOKING GLASS, ch. 6.

“It is of the utmost importance that in all parts of the Empire where English Law prevails, Interpretation should be, as nearly as possible, the same.”

PER PRIVY COUNCIL, *Trimble v. Hill*, 5 App. Ca. 345; 49 L. J. P. C. 51.

THE  
**Judicial Dictionary,**

OF

*WORDS AND PHRASES JUDICIALLY INTERPRETED,*

TO WHICH HAS BEEN ADDED

*STATUTORY DEFINITIONS.*

BY

**F. STROUD,**

OF LINCOLN'S INN, BARRISTER-AT-LAW,  
RECORDER OF TEWKESBURY.

**SECOND EDITION.**

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1723

To the Cherished Memory of

H. S.,

Friend and Wife,

Ever, and in all things, full of wise counsel and steadfast courage,

Who took an affectionate interest in this enterprise,

But whose too early death has taken away its charm,

This Book

is reverently and lovingly

Dedicated.

Easter, 1890.



# P R E F A C E

## TO THE SECOND EDITION.

---

GOOD, or bad, it is believed that this book is unique. It had no predecessor and has no rival. Its Idea is, not only that it may be of frequent practical utility to the English-speaking lawyer but, that it may become the authoritative Interpreter of the English of Affairs for the British Empire; and, incidentally, forge a link in the golden chain of common interest and community of feeling which binds together its various peoples.

The decisions of the English Judges are, and will remain, the central source whence this authoritative exposition must come, though Irish, Scotch, and Colonial, decisions should harmonize and amplify. To formulate the English judicial interpretations from the earliest times down to the end of the Nineteenth Century and therewith to blend the statutory definitions of the High Court of Parliament has been the endeavour of this edition; incorporating a not inconsiderable treatment of Irish decisions, and some from Scotland and the United States.

To Lord Lindley sincerest thanks are tendered for the use so kindly allowed of his MS. Word-Book, containing a list of many words and phrases judicially interpreted, with the names of the cases in which such interpretations were to be found; also to Mr. Justice Gainsford-Bruce for a like courtesy; also to Mr. J. H. Redman for the MS. Word-Book of the late Mr. W. R. Cole, and to Mr. A. R. Rudall for his MS. Word-Book.

To the late Sir Henry Jenkyns, K.C.B., and to Sir Courtenay P. Ilbert, K.C.S.I., warm thanks are due for their great aid in reference to the statutory interpretations, — aid so kindly obtained by the Lord Chancellor.

A deep obligation has also been incurred to many Members of the Bar for their criticisms, suggestions, and notes of cases, to all of whom grateful thanks are tendered, especially mentioning, Mr. J. B. Matthews, Mr. E. A. Scratchley, Mr. G. Broke Freeman, Mr. F. B. Palmer, Mr. P. F. Wheeler, and Mr. R. A. McCall, K.C. To the first two named and to the Author's sons, Mr. Lewis Stroud, and Mr. Herbert Stroud, the work is exceptionally indebted for their care in revising the proof sheets.

It is in contemplation to issue periodical Supplements, so as to keep the book up to date and further develop its Idea. To this end, aid and suggestions from those intimately acquainted with the judicial literature and decisions of Scotland, of Ireland, and of the British Dominions beyond the Seas, would be highly esteemed.

The Preface to the First Edition is here reprinted, the explanations in which are adopted, except that Statutory Definitions are now brought within the scope of the work. It is not pretended that every such definition is cited, still less that they are all set out at length; but it is believed that, approximately, all of practical utility, down to the end of the Nineteenth Century, are referred to, whilst many are given fully or blended with judicial interpretations.

The principle of cross references (by simply printing words referred to in SMALL CAPITALS) previously adopted, has been, in this edition, very extensively and carefully elaborated.

To make conciseness still more brief a number of grammalogues have been invented. These are purposely bizarre, for their better remembrance; their explanation will be found in the Table of Abbreviations.

Again hearty thanks are given to Mr. R. Riches, Librarian of the Inns of Court Bar Library, for his numerous suggestions; and also

to Mr. R. A. Riches, Assistant Librarian, for his careful verification of the many thousands of references herein contained.

A sincere acknowledgement is also recorded of the diligent services rendered by the Author's clerk, Mr. E. T. Osborne, especially in getting the "copy" ready for the printer.

One further word in sending off this endeavour: — the ambition of the book is that it may be a living entity to business people in the various societies forming the British Empire. The first edition obtained considerable success; that the work, in its varied and much extended form, may prove a much nearer approach to its primal motive, is the earnest hope of one who has laboured strenuously for the accomplishment of its Idea.

2, NEW COURT, LINCOLN'S INN,  
*Easter, 1903.*



## PREFACE

### TO THE FIRST EDITION.

---

THIS work in no sense competes with, nor does it cover the same ground as, the Law Lexicons of Jacob, Tomlin, Wharton, or Sweet. As its name imports, it is a Dictionary of the English Language (in its phrases as well as single words), so far as that language has received interpretation by the Judges.

Its chief aim is that it may be a practical companion to the English-speaking lawyer, not only in the Mother Country, but also in the Colonies and Dependencies of the Queen. The hope is also indulged that it may be not without utility to the man of business, nor without interest to the student of word-lore.

Its few archaisms will, possibly, be excused; for "Of all these you shall read in ancient bookes, charters, deeds and records: and to the end that our student should not be discouraged for want of knowledge when he meeteth with them, we have armed him with the signification of them, to the end he may proceed in his reading with alacrity, and set upon and know how to worke into with delight these rough mines of hidden treasure" (Co. Litt. 5 b, 6 a).

Interpretation Clauses in Acts of Parliament are not, as a rule, within its scope, unless when themselves judicially interpreted. But in some few instances of general importance this rule has been departed from, whilst the important Interpretation Act of 1889 is given *in extenso* in the Appendix.

In many instances where a word, or phrase, has been determined in a special sense, or brevity seemed preferable to a lengthy definition, only a reference to the authorities has been given.





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<sup>1</sup> At pp. 149, 204, this case is erroneously printed as *Walker v. Lane*.

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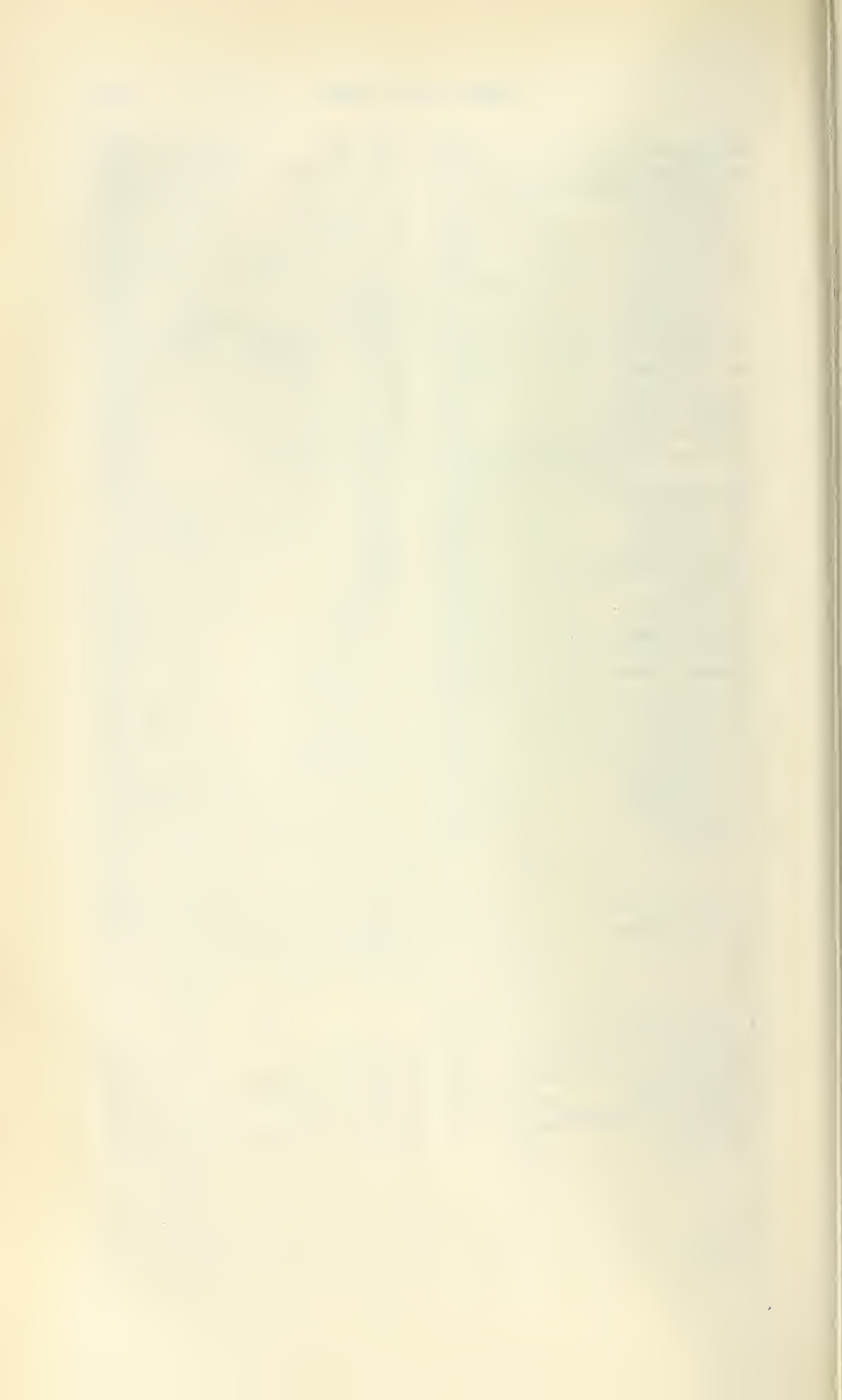
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<sup>1</sup> At this page the Act is erroneously printed as of 1882.

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Sch, s. 1 . . . . .	113, 383, 421, 454, 509, 556, 609, 621, 807, 976, 1136, 1492, 1525, 1646, 1837, 1913, 2020, 2033, 2086	s. 78 . . . . .	2077
Sch, s. 8 . . . . .	1050	s. 111 . . . . .	2211
Sch, s. 18 . . . . .	609, 801, 2220	c. 50 . . . . .	62
c. 22, s. 3 . . . . .	691	s. 3 . . . . .	1057
c. 23, s. 5 . . . . .	2039	c. 51, s. 6 . . . . .	1219
s. 7 . . . . .	2039	c. 56, s. 2 . . . . .	1613
s. 8 . . . . .	2039	c. 58, s. 8 . . . . .	1781
s. 9 . . . . .	2039	c. 59 . . . . .	2268
		c. 63, s. 3 . . . . .	1070

<sup>1</sup> At this page the Act is erroneously printed as Comp. Act, 1890.

## TABLE OF ABBREVIATIONS, SIGNS, &c.

*Note:* the use of SMALL CAPITALS throughout the book, suggests a reference to the Word or Phrase so printed.

*Where Dates are given in the last column of this Table, that indicates that the item against which it appears is a Series, or Volume, of Reports of Cases, and these Dates also indicate the period covered by such Reports.*

### A.

ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Abbott . . . . .	Abbott (afterwards <i>Ld Tenterden, C. J.</i> ) on Merchant Ships and Seamen, 13th ed.	
Abb. . . . .	Abbott's United States Circuit Court Reports.	
Addams . . . . .	Addams' Ecclesiastical Reports . . . . .	1822-1826
Add. C. . . . .	Addison on Contracts, 9th ed.	
Add. T. . . . .	Addison on Torts, 7th ed.	
Admon . . . . .	Administration.	
Ads, or Admors . . . . .	Administrators.	
A. & E. . . . .	Adolphus and Ellis . . . . .	1834-1841
Affd . . . . .	Affirmed.	
Ala. . . . .	Alabama Reports.	
Al. & N. . . . .	Alcock and Napier . . . . .	1831-1833
Aleyn . . . . .	Aleyn . . . . .	1646-1649
Allen . . . . .	Allen's Massachusetts Reports.	
Amb. . . . .	Ambler . . . . .	1737-1783
And. . . . .	Anderson . . . . .	1558-1603
Ann. Co. Co. Pr. . . . .	Annual County Court Practice.	
Ann. Pr. . . . .	Annual Practice; the reference is usually to the Order and Rule of Court, and is applicable to any Edition.	
Anstr. . . . .	Anstruther . . . . .	1792-1796
App. Ca. . . . .	Law Reports, Appeal Cases . . . . .	1875-1890
	<i>Note, in and since 1891 these Reports are cited by the year. c. g. 1891, A. C.</i>	
Appurts . . . . .	Appurtenances.	
Arb Act, 1889 . . . . .	Arbitration Act, 1889, 52 & 53 V. c. 49.	
Arch. Bank. . . . .	Archbold on Bankruptcy, 11th ed.	
Arch. Cr. . . . .	Archbold's Pleading and Evidence in Criminal Cases, 22nd ed.	
Arch. P. L. . . . .	Archbold's Poor Law, 15th ed.	
Arnold . . . . .	Arnold . . . . .	1828-1839

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ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Arn. . . . .	Arnould on Marine Insurance, 7th ed.	
Art. . . . .	Article.	
Asp. . . . .	Aspinall . . . . .	1871, and in progress
Assn . . . . .	Association, chiefly in names of cases.	
Assrce . . . . .	Assurance, chiefly in names of cases.	
Atk. . . . .	Atkyns . . . . .	1736-1755
A-G. . . . .	Attorney-General, — in names of cases.	

B.

Bac. Ab. . . . .	Bacon's Abridgment.	
Bail C. C. . . . .	Bail Court Cases (sometimes called Lowndes & Maxwell) . . . . .	1852-1854
Baldwin . . . . .	Baldwin on Bankruptcy, 8th ed.	
Ball & Beatty . . . . .	Ball and Beatty . . . . .	1807-1814
Bankry . . . . .	Bankruptcy.	
Bankry Act, 1849 . . . . .	Bankrupt Law Consolidation Act, 1849, 12 & 13 V. c. 106.	
„ „ 1861 . . . . .	Bankruptcy Act, 1861, 24 & 25 V. c. 134.	
„ „ 1869 . . . . .	Bankruptcy Act, 1869, 32 & 33 V. c. 71.	
„ „ 1883 . . . . .	Bankruptcy Act, 1883, 46 & 47 V. c. 52.	
„ „ 1890 . . . . .	Bankruptcy Act, 1890, 53 & 54 V. c. 71.	
„ „ (Ir), 1872 . . . . .	Bankruptcy (Ireland) Amendment Act, 1872, 35 & 36 V. c. 58.	
Barb. (N. Y.) . . . . .	Barbour's New York Supreme Court Reports.	
Barnardiston Ch. Ca. . . . .	Barnardiston's Chancery Cases . . . . .	1740-1741
Barnes . . . . .	Barnes' Notes of Cases . . . . .	1732-1760
B. & Ad. . . . .	Barnewall and Adolphus . . . . .	1830-1834
B. & Ald. . . . .	Barnewall and Alderson . . . . .	1817-1822
B. & C. . . . .	Barnewall and Cresswell . . . . .	1822-1830
B. & Aust. . . . .	Barron and Austin . . . . .	1842
Baxter . . . . .	Baxter's Tennessee Reports	
Beatty . . . . .	Beatty . . . . .	1814-1830
Bea. . . . .	Beavan . . . . .	1838-1866
Bell C. C. . . . .	Bell, Crown Cases . . . . .	1858-1860
Benedict . . . . .	Benedict's United States District Court Reports.	
Benj. . . . .	Benjamin on Sales of Personal Property, 3rd ed.	
B. & S. . . . .	Best & Smith . . . . .	1861-1870
Beven . . . . .	Beven on Negligence in Law, being 2nd ed. of Beven's Principles of the Law of Negligence.	
Bills of Ex. Act, 1882 . . . . .	Bills of Exchange Act, 1882, 45 & 46 V. c. 61.	
Bills of S. Act, 1854 . . . . .	Bills of Sale Act, 1854, 17 & 18 V. c. 36.	
„ „ 1878 . . . . .	Bills of Sale Act, 1878, 41 & 42 V. c. 31.	
„ „ 1882 . . . . .	Bills of Sale Act (1878) Amendment Act, 1882, 45 & 46 V. c. 43.	
Bing. . . . .	Bingham . . . . .	1822-1834
Bing. N. C. . . . .	Bingham, New Cases . . . . .	1834-1840
Blackb. . . . .	Blackburn on Sales, 2nd ed.	



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Bl. Com. . . . .	Blackstone's Commentaries, the paging being that of the 5th ed.; the edition chiefly used being the 12th by Christian, wherein Blackstone's last paging is preserved in the margin.	
Bl. H. . . . .	Blackstone, Henry . . . . .	1788-1796
Bl. W. . . . .	Blackstone, William . . . . .	1746-1780
Bligh . . . . .	Bligh's Reports of Cases in the House of Lords . . . . .	1819-1821
Bligh, N. S. . . . .	Bligh, New Series . . . . .	1827-1837
Bd . . . . .	Board.	
B. & P. . . . .	Bosanquet and Puller . . . . .	1796-1804
B. & P. N. R. . . . .	Bosanquet and Puller, New Reports . . . . .	1804-1807
Bott . . . . .	Bott . . . . .	1768-1827
Brod. & B. . . . .	Broderip and Bingham . . . . .	1819-1822
B. & F. . . . .	Brodrick and Fremantle . . . . .	1840-1865
Bro. C. C. . . . .	Brown's Chancery Cases . . . . .	1778-1794
Brown P. C. . . . .	Brown's Parliamentary Cases . . . . .	1702-1800
Brownl. & Gold. . . . .	Brownlow and Goldesborough . . . . .	1538-1625
Brown. & Lush. . . . .	Browning and Lushington . . . . .	1863-1866
B. & Macn. . . . .	Browne and Macnamara; but generally herein cited as Ry & Can Traffic Ca. . . . .	1881, & i. p.
Buckl. . . . .	Buckley on the Companies Acts, 7th ed.	
Bg . . . . .	Building.	
Bg Socy Act, 1836 . . . . .	Building Societies Act, 1836, 6 & 7 W. 4, c. 32.	
„ „ 1874 . . . . .	Building Societies Act, 1874, 37 & 38 V. c. 42.	
„ „ 1884 . . . . .	Building Societies Act, 1884, 47 & 48 V. c. 41.	
„ „ 1894 . . . . .	Building Societies Act, 1894, 57 & 58 V. c. 47.	
Bulst. . . . .	Bulstrode . . . . .	1603-1649
Bunb. . . . .	Bunbury . . . . .	1713-1742
Burr. . . . .	Burrow . . . . .	1756-1772
Burr. S. C. . . . .	Burrow's Settlement Cases . . . . .	1732-1776
Byles . . . . .	Byles on Bills of Exchange and Promissory Notes, 16th ed.	

C.

Cab. & El. . . . .	Cababé and Ellis . . . . .	1882-1885
Cald. . . . .	Caldecott's Settlement Cases . . . . .	1776-1785
Cal. . . . .	California Reports.	
Callis . . . . .	The Reading of Robert Callis on the Statute of Sewers, 23 H. 8, c. 5, delivered by him at Gray's Inn, August, 1622.	
Camp. . . . .	Campbell . . . . .	1807-1816
Carp. . . . .	Carpmael's Patent Cases . . . . .	1602-1842
C. & K. . . . .	Carrington and Kirwan . . . . .	1843-1853
C. & M. . . . .	Carrington and Marshman . . . . .	1841-1842
C. & P. . . . .	Carrington and Payne . . . . .	1823-1841
Carter . . . . .	Carter . . . . .	1664-1676
Carth. . . . .	Carthew . . . . .	1688-1701
Carver . . . . .	Carver on Carriage of Goods by Sea, 3rd ed.	
Ca. t. Hard. . . . .	Cases, temp. Hardwicke . . . . .	1733-1737

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Ca. t. Talb. . . . .	Cases in Equity, temp. Talbot . . . . .	1733-1737
Ch. Ca. . . . .	Cases in Chancery . . . . .	1660-1693
Challis . . . . .	Challis on Real Property, 2nd ed.	
Chalmers . . . . .	Chalmers on Bills of Exchange, 5th ed.	
Ch. D. . . . .	Law Reports, Chancery Division . . . . .	1875-1890
	<i>Note, in and since 1891 these Reports are cited by the year and volume, e.g. 1891, 1 Ch.</i>	
Ch. Rep. . . . .	Reports in Chancery . . . . .	1625-1710
Ch. . . . .	Law Reports, Chancery Appeals . . . . .	1865-1875
Chaney (Mich.) . . . . .	Chaney's Michigan Reports.	
Ch. . . . .	Chapter.	
Chitty . . . . .	Chitty . . . . .	{ vol. i., 1819, vol. ii., 1770- 1822
Chitty Eq. Ind. . . . .	Chitty's Equity Index, 4th ed.	
Cl. & F. . . . .	Clark and Finnely . . . . .	1831-1846
Co. Litt. . . . .	Coke upon Littleton, the edition here used being the 18th by Hargrave & Butler.	
Coll. . . . .	Collyer . . . . .	1844-1846
Col. . . . .	Colorado Reports.	
Colt, Reg. Ca. . . . .	Coltman, Registration Cases . . . . .	1879-1885
Com. Ca. . . . .	Commercial Cases . . . . .	1895, & i. p.
Commrs . . . . .	Commissioners, — chiefly in names of cases.	
C. B. . . . .	Common Bench Reports . . . . .	1845-1856
C. B. N. S. . . . .	Common Bench Reports, New Series . . . . .	1856-1865
Com. L. Pro. Act, 1852 . . . . .	Common Law Procedure Act, 1852, 15 & 16 V. c. 76.	
„ „ 1854. . . . .	Common Law Procedure Act, 1854, 17 & 18 V. c. 125.	
„ „ 1860. . . . .	Common Law Procedure Act, 1860, 23 & 24 V. c. 126.	
Com. L. R. . . . .	Common Law Reports . . . . .	1854-1855
C. P. D. . . . .	Law Reports, Common Pleas Division . . . . .	1875-1880
Co . . . . .	Company.	
Comp Act, 1862 . . . . .	Companies Act, 1862, 25 & 26 V. c. 89.	
„ „ 1867 . . . . .	Companies Act, 1867, 30 & 31 V. c. 131.	
„ „ 1877 . . . . .	Companies Act, 1877, 40 & 41 V. c. 26.	
„ „ 1879 . . . . .	Companies Act, 1879, 42 & 43 V. c. 76.	
„ „ 1880 . . . . .	Companies Act, 1880, 43 V. c. 19.	
„ „ 1898 . . . . .	Companies Act, 1898, 61 & 62 V. c. 26.	
„ „ 1900 . . . . .	Companies Act, 1900, 63 & 64 V. c. 48.	
Comp Mem of Assn Act, 1890 . . . . .	Companies (Memorandum of Association) Act, 1890, 53 & 54 V. c. 62.	
Comp Winding-up Act, 1890 . . . . .	Companies (Winding-up) Act, 1890, 53 & 54 V. c. 63.	
Comp C. C. Act, 1845 . . . . .	Companies Clauses Consolidation Act, 1845, 8 V. c. 16.	
Comp C. Act, 1863 . . . . .	Companies Clauses Act, 1863, 26 & 27 V. c. 118.	
Com. . . . .	Comyn . . . . .	1696-1740
Com. Dig. . . . .	Comyn's Digest.	
Con. & L. . . . .	Connor and Lawson . . . . .	1841-1843
Conv & L. P. Act, 1881 . . . . .	Conveyancing and Law of Property Act, 1881, 44 & 45 V. c. 41.	

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Conv Act, 1882 . . . . .	Conveyancing Act, 1882, 45 & 46 V. c. 39.	
Conv & L. P. Act, 1892 . . . . .	Conveyancing and Law of Property Act, 1892, 55 & 56 V. c. 13.	
Cooper C. P. . . . .	Cooper, Charles Purton . . . . .	1867-1898
Cooper t. Brougham . . . . .	Cooper, Charles Purton, temp. Brougham . . . . .	1833-1834
Cooper t. Cott. . . . .	Cooper, Charles Purton, temp. Cottenham . . . . .	1846-1848
Cooper G. . . . .	Cooper, George . . . . .	1815, with a few earlier cases in and from 1792.
Coote . . . . .	Coote on Mortgages, 5th ed.	
Corp . . . . .	Corporation.	
Co. Co. . . . .	County Court, or (especially in names of cases) County Council.	
Co. Co. Act, 1888 . . . . .	County Courts Act, 1888, 51 & 52 V. c. 43.	
Co. Co. R. . . . .	County Court Rules, 1889.	
Cowel . . . . .	Cowel's Interpreter by Tho. Manley, 1672.	
Cowen . . . . .	Cowen's New York Reports.	
Cowp. . . . .	Cowper . . . . .	1774-1778
Cox Ch. . . . .	Cox's Chancery Cases . . . . .	1745-1797
Cox C. C. . . . .	Cox's Criminal Cases . . . . .	1843, & i. p.
Cr. & Ph. . . . .	Craig and Phillip . . . . .	1810-1811
Cranch . . . . .	Cranch's United States Supreme Court Reports.	
Cr. & Dix . . . . .	Crawford and Dix . . . . .	1839-1846
Cr. & Dix Ab. Ca. . . . .	Crawford and Dix, Abridged Notes of Cases	1837-1838
Cr. . . . .	Creditor.	
Crim. Ev. Act, 1898 . . . . .	Criminal Evidence Act, 1898, 61 & 62 V. c. 36.	
Cro. Eliz. . . . .	} Croke, temp. Elizabeth, James I., and } } Charles I. . . . . }	1581-1641
Cro. Jac. . . . .		
Cro. Car. . . . .		
Cr. & J. . . . .	Crompton and Jervis . . . . .	1830-1832
Cr. & M. . . . .	Crompton and Meeson . . . . .	1832-1834
Cr. M. & R. . . . .	Crompton, Meeson, and Roscoe . . . . .	1834-1835
Cru. Dig. . . . .	Cruise's Digest of the Laws of England respecting Real Property, 4th ed.	
Cunningham . . . . .	Cunningham's K. B. Cases, 3rd ed. . . . .	1734-1735
Curt. . . . .	Curteis . . . . .	1834-1844
Cushl. . . . .	Cushing's Massachusetts Reports.	
Cp . . . . .	Compare.	

D.

Daly . . . . .	Daly's New York Common Pleas Reports.	
Dan. Ch. Pr. . . . .	Daniell's Chancery Practice, 7th ed.	
Dart . . . . .	Dart on Vendors and Purchasers, 6th ed.	
D. & M. . . . .	Davison and Merivale . . . . .	1843-1844
Deacon . . . . .	Deacon . . . . .	1835-1840
Dea. & C. . . . .	Deacon and Chitty . . . . .	1832-1835
D. & Sw. . . . .	Deane and Swabey . . . . .	1855-1857
Dears. . . . .	Dearsley, Crown Cases . . . . .	1852-1856
Dears. & B. . . . .	Dearsley and Bell . . . . .	1856-1858
Debtors Act, 1869 . . . . .	Debtors Act, 1869, 32 & 33 V. c. 62.	
Def't . . . . .	Defendant.	

ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Def . . . . .	Definition.	
D. G. . . . .	De Gex . . . . .	1844-1848
D. G. F. & J. . . . .	De Gex, Fisher, and Jones . . . . .	1859-1862
D. G. & J. . . . .	De Gex and Jones . . . . .	1856-1859
D. G. J. & S. . . . .	De Gex, Jones, and Smith . . . . .	1862-1865
D. G. M. & G. . . . .	De Gex, Macnaghten, and Gordon . . . . .	1851-1857
D. G. & S. . . . .	De Gex and Smale . . . . .	1846-1852
Den. . . . .	Denison . . . . .	1844-1852
Dick. . . . .	Dickens . . . . .	1559-1792
Dillon . . . . .	Dillon's United States Circuit Court Reports.	
Distd . . . . .	Distinguished.	
Doug. . . . .	Douglas . . . . .	1778-1785
Dow . . . . .	Dow . . . . .	1812-1818
Dow & Cl. . . . .	Dow and Clark . . . . .	1827-1831
Dowl. . . . .	Dowling, Practice Cases . . . . .	1830-1841
Dowl. N. S. . . . .	Dowling, Practice Cases, New Series . . . . .	1841-1843
Dowl. & L. . . . .	Dowling and Lowndes . . . . .	1843-1849
D. & R. . . . .	Dowling and Ryland . . . . .	1822-1827
Drew. . . . .	Drewry . . . . .	1852-1859
Dr. & Sm. . . . .	Drewry and Smale . . . . .	1859-1865
Dru. . . . .	Drury, temp. Sugden . . . . .	1843-1844
Dr. & Wal. . . . .	Drury and Walsh . . . . .	1837-1841
Dr. & War. . . . .	Drury and Warren . . . . .	1841-1843
Durnford & East . . . . .	V. T. R.	
Dwar. . . . .	Dwarris on Statutes, 2nd ed.	
Dyer, or Dy. . . . .	Dyer . . . . .	1513-1582

## E.

East . . . . .	East . . . . .	1800-1812
East P. C. . . . .	East's Pleas of the Crown.	
Eden . . . . .	Eden . . . . .	1757-1766
E. & B. . . . .	Ellis and Blackburn . . . . .	1852-1858
E. B. & E. . . . .	Ellis, Blackburn, and Ellis . . . . .	1858
E. & E. . . . .	Ellis and Ellis . . . . .	1858-1861
Elph. . . . .	Elphinstone, Norton, and Clark on the Interpretation of Deeds.	
Encyc. . . . .	Encyclopædia of the Laws of England.	
Eq. Ca. Ab. . . . .	Equity Cases Abridged, 5th ed.	
Eq. Rep. . . . .	Equity Reports . . . . .	1853-1855
Esp. . . . .	Espinasse . . . . .	1793-1810
Espy . . . . .	Especially.	
Ex. . . . .	Exchequer Reports . . . . .	1847-1856
Ex. D. . . . .	Law Reports, Exchequer Division . . . . .	1875-1880
Exon . . . . .	Execution.	
Exs, or Exors . . . . .	Executors.	

## F.

Farwell . . . . .	Farwell on Powers, 2nd ed.	
Fawcett . . . . .	Fawcett on Landlord and Tenant, 2nd ed.	

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ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Fearne Cont. Rem. . . . .	Fearne on Contingent Remainders and Executory Devises, 9th ed., by Charles Butler.	
Fed. Rep. . . . .	Federal Reporter.	
Fineh . . . . .	Finch, Heneage . . . . .	1673-1680
Fisher . . . . .	Fisher on Mortgages, 5th ed.	
F. N. B. . . . .	Fitz-Herbert, Natura Brevium.	
Florida . . . . .	Florida Reports.	
Fon. B. C. . . . .	Fonblanque, Bankruptcy Cases . . . . .	1849-1852
Fort. . . . .	Fortescue . . . . .	1695-1738
Forrest . . . . .	Forrest's Exchequer Reports . . . . .	1800-1801
Foster . . . . .	Foster's Crown Law Cases . . . . .	1708-1760
F. & F. . . . .	Foster and Finlason . . . . .	1856-1867
Fox & Smith . . . . .	Fox and Smith . . . . .	1822-1824
Friendly Soc. Act, 1858 . . . . .	Friendly Societies Act, 1858, 21 & 22 V. c. 101.	
"    "    1875 . . . . .	Friendly Societies Act, 1875, 38 & 39 V. c. 60.	
"    "    1895 . . . . .	Friendly Societies Act, 1895, 58 & 59 V. c. 26.	
"    "    1896 . . . . .	Friendly Societies Act, 1896, 59 & 60 V. c. 25.	
Fry . . . . .	Fry on Specific Performance of Contracts, 3rd ed.	

G.

Gale . . . . .	Gale on Easements, 7th ed.	
G. & D. . . . .	Gale and Davison . . . . .	1811-1843
Gallison . . . . .	Gallison's United States Circuit Court Reports.	
Georgia . . . . .	Georgia Reports.	
Giff. . . . .	Giffard . . . . .	1857-1865
Gilb. Eq. Rep. . . . .	Gilbert's Equity Reports . . . . .	1706-1727
Godb. . . . .	Godbolt . . . . .	1575-1642
Goddard . . . . .	Goddard on Easements, 5th ed.	
Godefroi . . . . .	Godefroi on Trusts and Trustees, 2nd ed.	
Goodeve . . . . .	Goodeve on Real Property, 4th ed.	
Gould. . . . .	Gouldsborough . . . . .	1586-1602
Gow . . . . .	Gow . . . . .	1818-1820
Gray . . . . .	Gray's Massachusetts Reports.	
G. N. Ry . . . . .	Great Northern Railway.	
G. W. Ry . . . . .	Great Western Railway.	

H.

Hagg. Adm. . . . .	Haggard, Admiralty Cases . . . . .	1822-1838
Hagg. Con. . . . .	Haggard, Consistory Cases . . . . .	1789-1802
Hagg. Ecc. . . . .	Haggard, Ecclesiastical Cases . . . . .	1827-1833
Hale P. C. . . . .	Hale's Pleas of the Crown.	
H. & Tw. . . . .	Hall and Twells . . . . .	1819-1850
Hamilton . . . . .	Hamilton on Company Law, 2nd ed.	
Hard. . . . .	Hardres . . . . .	1655-1660
Hare . . . . .	Hare . . . . .	1841-1853
H. & R. . . . .	Harrison and Rutherford . . . . .	1865-1866

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Hawk. . . . .	Hawkins on the Construction of Wills.	
Hawk. P. C. . . . .	Hawkins' Pleas of the Crown.	
Hayes . . . . .	Hayes . . . . .	1830-1832
H. & M. . . . .	Hemming and Miller . . . . .	1862-1865
H. Bl. . . . .	Henry Blackstone . . . . .	1788-1796
Hereditis . . . . .	Hereditaments.	
Hetley . . . . .	Hetley . . . . .	1627-1631
Hill . . . . .	Hill's New York Reports.	
Hob. . . . .	Hobart . . . . .	1603-1625
Hodges . . . . .	Hodges . . . . .	1835-1837
Hogan . . . . .	Hogan . . . . .	1816-1834
Holt . . . . .	Holt . . . . .	1688-1710
Holt N. P. . . . .	Holt, Nisi Prius Cases . . . . .	1815-1817
Hop. & Colt. . . . .	Hopwood and Coltman . . . . .	1868-1878
H. & P. . . . .	Hopwood and Philbrick . . . . .	1863-1867
H. L. . . . .	House of Lords.	
H. L. Ca. . . . .	House of Lords Cases . . . . .	1847-1866
Hudson . . . . .	Hudson on Building Contracts, 2nd ed.	
Hud. & Bro. . . . .	Hudson and Brooke . . . . .	1827-1831
Hump. . . . .	Humphrey's Tennessee Reports.	
H. & C. . . . .	Hurlstone and Coltman . . . . .	1862-1866
H. & N. . . . .	Hurlstone and Norman . . . . .	1856-1862
<i>Hi</i> . . . . .	Herein, or hereon.	

## I.

Ill. . . . .	Illinois Reports.	
Inl. Rev. . . . .	Inland Revenue, — chiefly in names of cases or statutes.	
Inst. . . . .	Coke's Institutes.	
Insree . . . . .	Insurance, — chiefly in names of cases.	
Interp . . . . .	Interpretation.	
Interp Act, 1889 . . . . .	Interpretation Act, 1889, 52 & 53 V. c. 63, given <i>in extenso</i> in the Appendix.	
Iowa . . . . .	Iowa Reports.	
Ir . . . . .	Ireland.	
Ir. L. R. . . . .	Irish Law Reports . . . . .	1838-1850
Ir. Eq. Rep. . . . .	Irish Equity Reports . . . . .	1838-1850
Ir. Com. Law Rep. . . . .	Irish Common Law Reports . . . . .	1850-1866
Ir. Ch. Rep. . . . .	Irish Chancery Reports . . . . .	1850-1866
Ir. Rep. C. L. . . . .	Irish Reports, Common Law . . . . .	1867-1877
Ir. Rep. Eq. . . . . .	Irish Reports, Equity . . . . .	1867-1877
L. R. Ir. . . . .	Law Reports, Ireland . . . . .	1878-1893

*Note*, in and since 1894 these Reports are cited by the year, *e.g.* 1894, 1 I. R.; since 1877, and still, the odd-numbered volume reports Equity cases and the even-numbered volume Common Law cases.

## J.

Jac. . . . .	Jacob . . . . .	1821-1822
Jac. & W. . . . .	Jacob and Walker . . . . .	1819-1821

TABLE OF ABBREVIATIONS, SIGNS, &c.

ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Jacob . . . . .	Jacob's Law Dictionary "enlarged and improved" by Tomlins and brought by him "to the end of the reign of our late venerated Sovereign George the Third," 3rd quarto ed. Sometimes this book is cited as Tomlins, or Tomlins' Law Diet.	
Jarm. . . . .	Jarman on Wills, 4th ed.	
Jebb & B. . . . .	Jebb and Bourke . . . . .	1841-1842
Jebb & Sy. . . . .	Jebb and Symes . . . . .	1838-1841
Johns. . . . .	Johnson . . . . .	1858-1860
J. & H. . . . .	Johnson and Hemming . . . . .	1859-1862
John. N. Y. . . . .	Johnson's New York Reports.	
Johns. Cas. . . . .	Johnson's New York Cases.	
Johnson . . . . .	Johnson's Maryland Reports.	
Jo. T. . . . .	Jones, T. . . . .	1667-1684
Jo. W. . . . .	Jones, William . . . . .	1620-1640
Jones & Carey . . . . .	Jones and Carey . . . . .	1838-1839
J. & La T. . . . .	Jones and La Touche . . . . .	1844-1846
Jdgmt . . . . .	Judgment.	
Jud. Act, 1873 . . . . .	Supreme Court of Judicature Act, 1873, 36 & 37 V. c. 66.	
"    "    1875 . . . . .	Supreme Court of Judicature Act, 1875, 38 & 39 V. c. 77.	
"    "    1881 . . . . .	Supreme Court of Judicature Act, 1881, 44 & 45 V. c. 68.	
"    "    1884 . . . . .	Supreme Court of Judicature Act, 1884, 47 & 48 V. c. 61.	
"    "    1890 . . . . .	Supreme Court of Judicature Act, 1890, 53 & 54 V. c. 44.	
"    "    1894 . . . . .	Supreme Court of Judicature Act, 1894, 57 & 58 V. c. 16.	
"    "    (Ir) 1877 . . . . .	Supreme Court of Judicature (Ireland) Act, 1877, 40 & 41 V. c. 57.	
"    "    "    1887 . . . . .	Supreme Court of Judicature (Ireland) Act, 1887, 50 & 51 V. c. 6.	
Jud. T. Act, 1896 . . . . .	Judicial Trustees Act, 1896, 59 & 60 V. c. 35.	
Jur. . . . .	Jurist . . . . .	1837-1854
Jur. N. S. . . . .	Jurist, New Series . . . . .	1854-1866
J. P. . . . .	Justice of the Peace . . . . .	1837, & i. p.
Juta . . . . .	Juta's Cape Colony Reports.	

K.

Kay . . . . .	Kay . . . . .	1853-1854
K. & J. . . . .	Kay and Johnson . . . . .	1854-1858
Keble . . . . .	Keble . . . . .	1661-1679
Keen . . . . .	Keen . . . . .	1836-1838
Keilwey . . . . .	Keilwey, ed. of 1688 . . . . .	1496-1578
Kelynge W. . . . .	Kelynge, William . . . . .	1730-1734
Keyes . . . . .	Keyes' New York Court of Appeal Reports.	
Knapp P. C. . . . .	Knapp's Privy Council Cases . . . . .	1829-1836

## L.

ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Lanc. & Y. Ry . . . . .	Lancashire & Yorkshire Railway.	
Lands C. C. Act, 1845 . . . . .	Lands Clauses Consolidation Act, 1845, 8 V. c. 18.	
Lands C. C. (Scot) Act, 1845 . . . . .	Lands Clauses Consolidation (Scotland) Act, 1845, 8 V. c. 19.	
Latch . . . . .	Latch . . . . .	1624-1627
L. J. O. S. Ch. . . . .	Law Journal, Old Series, Chancery . . . . .	1822-1831
L. J. O. S. K. B. . . . .	„ „ King's Bench . . . . .	1822-1831
L. J. O. S. C. P. . . . .	„ „ Common Pleas . . . . .	1822-1831
L. J. O. S. Ex. . . . .	„ „ Exchequer . . . . .	1830-1831
L. J. O. S. M. C. . . . .	„ „ Magistrates' Cases . . . . .	1826-1831
L. J. Bank. . . . .	„ „ New Series, Bankruptcy . . . . .	1832, & i. p. ①
L. J. Ch. . . . .	„ „ Chancery . . . . .	1831, & i. p.
L. J. K. B., or Q. B. . . . .	„ „ King's, or Queen's, Bench (in and from 1876, Queen's, or King's, Bench Division) . . . . .	1831, & i. p.
L. J. C. P. . . . .	„ „ Common Pleas (in and from 1876 to 1880, Common Pleas Division) . . . . .	1831-1880
L. J. Ex. . . . .	„ „ Exchequer (in and from 1876 to 1880, Exchequer Division) . . . . .	1831-1880
L. J. M. C. . . . .	„ „ Magistrates' Cases . . . . .	1831-1896
L. J. P. C. . . . .	„ „ Privy Council . . . . .	1865, & i. p.
L. J. P. & M. . . . .	Law Journal, New Series, Probate and Matrimonial . . . . .	{ 1858-1859 1866-1875
L. J. P. M. & A. . . . .	„ „ Probate, Matrimonial, and Admiralty . . . . .	1860-1865
L. J. Adm. . . . .	„ „ Admiralty . . . . .	1866-1875
L. J. Ecc. . . . .	„ „ Ecclesiastical . . . . .	1865-1875
L. J. P. D. & A. . . . .	„ „ Probate, Divorce, and Admiralty . . . . .	1876, & i. p.
Law Jour. . . . .	Law Journal Newspaper.	
L. J. N. C. . . . .	Law Journal Notes of Cases.	
L. Q. Rev. . . . .	Law Quarterly Review.	
L. R. A. & E. . . . .	Law Reports, Admiralty and Ecclesiastical . . . . .	1865-1875
L. R. C. C. R. . . . .	„ „ Crown Cases Reserved . . . . .	1865-1875

① *The New Series of the Law Journal, having the longest continuity of any series of reports, the endeavour has been to refer thereto quâ every case herein cited and there reported which has been decided in or since 1831; as much as practicable the contemporaneous reports have been referred to, but where that is not done the addition of 1831 to the number of the volume of the Law Journal will approximately give the A.D. of the case, so that, if reported in any other series of reports, it will be readily found there.*



TABLE OF ABBREVIATIONS, SIGNS, &c. ccvii

ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
L. R. C. P. . . . .	Law Reports, Common Pleas . . . . .	1865-1875
L. R. Eq. . . . . .	„ Equity . . . . .	1865-1875
L. R. Ex. . . . .	„ Exchequer . . . . .	1865-1875
L. R. H. L. . . . .	„ House of Lords, English and Irish Appeals . . . . .	1866-1875
L. R. Ind. App. . . . .	„ Indian Appeals . . . . .	1873, & i. p
L. R. Sc. & D. App. . . . .	„ Scotch and Divorce Appeals . . . . .	1866-1875
L. R. P. C. . . . .	„ Privy Council . . . . .	1865-1875
L. R. P. & D. . . . .	„ Probate and Divorce . . . . .	1865-1875
L. R. Q. B. . . . .	„ Queen's Bench . . . . .	1865-1875
<i>Vj</i> , App. Ca.: Ch. D.: Ch.: C. P. D.: Ex. D.: P. D.: Q. B. D.		
L. R. Ir. . . . .	Law Reports, Ireland . . . . .	1878-1893
L. T. O. S. . . . .	Law Times Reports, Old Series . . . . .	1843-1859
L. T. . . . .	„ „ New Series . . . . .	1859, & i. p.
Law Times . . . . .	Law Times Newspaper.	
Lea . . . . .	Lea's Tennessee Reports.	
Leach . . . . .	Leach, Crown Cases . . . . .	1730-1814
Leake . . . . .	Leake on Contracts, 3rd ed.	
Lee Ecc. . . . .	Lee, Ecclesiastical Cases . . . . .	1752-1758
L. & C. . . . .	Leigh and Cave . . . . .	1861-1865
Leon. . . . .	Leonard . . . . .	1540-1615
Lev. . . . .	Levinz . . . . .	1660-1697
Lewin . . . . .	Lewin on Trusts, 10th ed.	
Lewin C. C. . . . .	Lewin, Crown Cases . . . . .	1822-1833
Lindley Comp. . . . .	Lindley on Companies, 5th ed.	
Lindley P. . . . .	Lindley on Partnership, 6th ed.	
Litt. . . . .	Littleton's Tenures, the version used being that in the edition of Co. Litt. here used.	
Litt. Rep. . . . .	Littleton . . . . .	1626-1632
L. & G. t. Plunk. . . . .	Lloyd and Goold, temp. Plunkett . . . . .	1833-1839
L. & G. t. Sug. . . . .	Lloyd and Goold, temp. Sugden . . . . .	1835
Loc Gov Act, 1858 . . . . .	Local Government Act, 1858, 21 & 22 V. c. 98.	
„ „ 1888 . . . . .	Local Government Act, 1888, 51 & 52 V. c. 41.	
„ „ 1894 . . . . .	Local Government Act, 1894, 56 & 57 V. c. 73.	
„ (Ir) Act, 1871 . . . . .	Local Government (Ireland) Act, 1871, 34 & 35 V. c. 109.	
„ „ 1898 . . . . .	Local Government (Ireland) Act, 1898, 61 & 62 V. c. 37.	
„ (Scot) Act, 1889 . . . . .	Local Government (Scotland) Act, 1889, 52 & 53 V. c. 50.	
„ „ 1894 . . . . .	Local Government (Scotland) Act, 1894, 57 & 58 V. c. 58.	
Loc Gov Bd . . . . .	Local Government Board.	
Lofft . . . . .	Lofft . . . . .	1772-1774
L. B. & S. Ry . . . . .	London Brighton & South Coast Railway.	
L. C. & D. Ry . . . . .	London Chatham & Dover Railway.	
Lond. & N. W. Ry . . . . .	London & North Western Railway.	
Lond. & S. W. Ry . . . . .	London & South Western Railway.	
London Bg Act, 1894 . . . . .	London Building Act, 1894, 57 & 58 V. c. cexiii	
London Co. Co. . . . .	London County Council.	
London Gov Act, 1899 . . . . .	London Government Act, 1899, 62 & 63 V. c. 14.	

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ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Long. & Town.	Longfield and Townsend . . . . .	1841-1842
Lowndes & Maxwell.	See Bail C. C.	
L. M. & P.	Lowndes, Maxwell, and Pollock . . . . .	1850-1851
Lush.	Lushington . . . . .	1850-1862
Lutw.	Lutwyche, Registration Cases . . . . .	1843-1853
Lutw. E.	Lutwyche, Edward . . . . .	1683-1704

M.

McL.	McLean's United States Circuit Court Reports.	
Mac. & G.	Macnaghten and Gordon . . . . .	1849-1852
Macq.	Macqueen, Scotch Appeals . . . . .	1851-1865
MacS.	MacSwinney on Mines Quarries and Minerals, 1st ed.	
Mad.	Maddock . . . . .	1815-1822
Maine	Maine Reports.	
Manchester S. & L. Ry.	Manchester Sheffield & Lincolnshire Railway.	
M. & G.	Manning and Granger . . . . .	1840-1844
M. & R.	Manning and Ryland . . . . .	1827-1830
Manson	Manson's Bankruptcy and Winding-up Cases	1894, & i. p.
Manwood	Manwood's Forest Laws.	
Mar. Ca.	Maritime Cases by Crockford and Cox . . . . .	1860-1871
M. W. P. Act, 1870	Married Women's Property Act, 1870, 33 & 34 V. c. 93.	
" "	Married Women's Property Act (1870) Amendment Act, 1874, 37 & 38 V. c. 50.	
" "	Married Women's Property Act, 1882, 45 & 46 V. c. 75.	
" "	Married Women's Property Act, 1893, 56 & 57 V. c. 63.	
Marsh.	Marshall . . . . .	1813-1816
Mass.	Massachusetts Reports.	
Maude & P.	Maude and Pollock on Merchant Shipping, 4th ed.	
M. & S.	Maule and Selwyn . . . . .	1813-1817
Maxwell	Maxwell on the Interpretation of Statutes, 2nd ed.	
M'Cle.	M'Cleland . . . . .	1824
M'Cle. & Y.	M'Cleland and Younge . . . . .	1824-1825
M. & W.	Meeson and Welsby . . . . .	1836-1847
Mem	Memorandum.	
Mer Law Amend. Act, 1856	Mercantile Law Amendment Act, 1856, 19 & 20 V. c. 97.	
Mer Shipping Act, 1854	Merchant Shipping Act, 1854, 17 & 18 V. c. 104.	
" "	Merchant Shipping Act, 1862, 25 & 26 V. c. 63.	
" "	Merchant Shipping Act, 1876, 39 & 40 V. c. 80.	
" "	Merchant Shipping Act, 1889, 52 & 53 V. c. 46.	

TABLE OF ABBREVIATIONS, SIGNS, &c.

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ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Mer Shipping Act, 1894 . . . . .	Merchant Shipping Act, 1894, 57 & 58 V. c. 60.	
Mer. . . . .	Merivale . . . . .	1815-1817
Met. . . . .	Metcalfe's Massachusetts Reports.	
Metrop Bg Act, 1855 . . . . .	Metropolitan Building Act, 1855, 18 & 19 V. c. 122.	
Metrop Man. Act, 1855 . . . . .	Metropolis Management Act, 1855, 18 & 19 V. c. 120.	
„ „ 1858 . . . . .	Metropolis Management Amendment Act, 1858, 21 & 22 V. c. 104.	
„ „ 1862 . . . . .	Metropolis Management Amendment Act, 1862, 25 & 26 V. c. 102.	
„ „ 1878 . . . . .	Metropolis Management and Building Acts Amendment Act, 1878, 41 & 42 V. c. 32.	
„ „ 1882 . . . . .	Metropolis Management and Building Acts Amendment Act, 1882, 45 & 46 V. c. 14.	
„ „ 1890 . . . . .	Metropolis Management Amendment Act, 1890, 53 & 54 V. c. 66.	
Metrop Ry . . . . .	Metropolitan Railway.	
Mid. Ry . . . . .	Midland Railway.	
Mid. G. W. Ry . . . . .	Midland Great Western Railway of Ireland	
Minn. . . . .	Minnesota Reports.	
Miss. . . . .	Mississippi Reports.	
Mo. . . . .	Missouri Reports.	
Mod. . . . .	Modern . . . . .	1669-1732
Moll. . . . .	Molloy . . . . .	1827-1828
Mont. . . . .	Montagu . . . . .	1829-1832
Mont. & Ayr. . . . .	Montagu and Ayrton . . . . .	1833-1838
Mont. & B. . . . .	Montagu and Bligh . . . . .	1832-1833
Mont. & Chitt. . . . .	Montagu and Chitty . . . . .	1838-1840
Mont. D. & D. . . . .	Montagu, Deacon, and De Gex . . . . .	1840-1844
Mont. & M'A. . . . .	Montagu and Macarthur . . . . .	1826-1830
Moody . . . . .	Moody's Crown Cases . . . . .	1824-1844
Moo. & M. . . . .	Moody and Malkin . . . . .	1826-1830
Moo. & R. . . . .	Moody and Robinson . . . . .	1830-1844
Moore . . . . .	Moore, Francis . . . . .	1512-1621
Moore C. P. . . . .	Moore, J. B., Common Pleas and Exchequer Chamber Cases . . . . .	1817-1827
Moore Ind. App. . . . .	Moore, Indian Appeals . . . . .	1836-1872
Moore P. C. . . . .	Moore, Privy Council Appeals . . . . .	1836-1862
Moore P. C. N. S. . . . .	Moore, Privy Council Appeals, New Series . . . . .	1862-1873
Moore & P. . . . .	Moore and Payne . . . . .	1827-1831
Moore & S. . . . .	Moore and Scott . . . . .	1831-1834
Morr. . . . .	Morrell, Bankruptcy Cases . . . . .	1884-1893
Mtge . . . . .	Mortgage.	
Mtgee . . . . .	Mortgagee.	
Mtgor . . . . .	Mortgagor.	
Moseley . . . . .	Moseley . . . . .	1726-1730
Mun Corp Act, 1882 . . . . .	Municipal Corporations Act, 1882, 45 & 46 V. c. 50.	
„ „ 1883 . . . . .	Municipal Corporations Act, 1883, 46 & 47 V. c. 18.	
My. & C. . . . .	Mylne and Craig . . . . .	1835-1841
Mv. & K. . . . .	Mylne and Keen . . . . .	1832-1835

## N.

ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
N. & M. . . . .	Neville and Manning . . . . .	1832-1836
N. & P. . . . .	Neville and Perry . . . . .	1836-1838
N. Hamp. . . . .	New Hampshire Reports.	
N. R. . . . .	New Reports . . . . .	1862-1865
N. Y. . . . .	New York Reports.	
N. Z. L. . . . .	New Zealand Law Reports.	
Newb. . . . .	Newberry's United States Admiralty Reports.	
Nolan . . . . .	Nolan on the Poor Laws.	
N. B. Ry . . . . .	North British Railway.	
N. E. Ry . . . . .	North Eastern Railway.	
Notes of Ca. . . . .	Notes of Cases . . . . .	1841-1850
Noy . . . . .	Noy . . . . .	1559-1649
n . . . . .	Note.	

## O.

Obs . . . . .	Observation, or Observations.	
Odgers . . . . .	Odgers on Libel and Slander, 3rd ed.	
Ohio . . . . .	Ohio Reports.	
Ohio St. . . . .	Ohio State Reports.	
O'M. & H. . . . .	O'Malley and Hardeastle . . . . .	1869, & i.p.
Ord. . . . .	Order.	
Orl. Bridg. . . . .	Orlando Bridgman . . . . .	1660-1667
Owen . . . . .	Owen . . . . .	1556-1615

## P.

Palm. . . . .	Palmer . . . . .	1619-1629
Palmer Co. Prec. . . . .	Palmer's Company Precedents, Vol. 1, 7th ed.; Vol. 2, 8th ed.; Vol. 3, 8th ed.	
Par. . . . .	Paragraph.	
Park . . . . .	Park on Marine Insurance, 8th ed.	
Parker . . . . .	Parker . . . . .	1743-1767
Pat. Ca. . . . .	Patent Cases, by Cutler . . . . .	1884, & i.p.
Paterson . . . . .	Paterson's Scotch Appeals . . . . .	1851-1873
Peake . . . . .	Peake . . . . .	1790-1812
Peake Add. Ca. . . . .	Peake, Additional Cases . . . . .	1795-1812
P. Wms. . . . .	Peere Williams . . . . .	1695-1735
Penn. St. . . . .	Pennsylvania State Reports.	
P. & D. . . . .	Perry and Davison . . . . .	1838-1841
Phil. Ecc. . . . .	Phillimore . . . . .	1809-1821
Phil. Ecc. Law . . . . .	Phillimore's Ecclesiastical Law, 2nd ed.	
Phill. . . . .	Phillips . . . . .	1841-1849
Pickering . . . . .	Pickering's Massachusetts Reports.	
Plt . . . . .	Plaintiff.	
Platt . . . . .	Platt on Leases.	

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ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Platt Cov. . . . .	Platt on Covenants.	
Plowd. . . . .	Plowden . . . . .	1550-1580
Poll. . . . .	Polluxfen . . . . .	1660-1685
Pop. . . . .	Popham . . . . .	1592-1627
Pr. Ch. . . . .	Precedents in Chancery, Finch . . . . .	1689-1722
Price . . . . .	Price . . . . .	1814-1824
P. D. . . . .	Law Reports, Probate Divorce and Admiralty Division . . . . .	1875-1890
	<i>Note, in and since 1891 these Reports are cited by the year, e. g. 1891, P.</i>	
P. H. Act, 1848 . . . . .	Public Health Act, 1848, 11 & 12 V. c. 63.	
” ” 1872 . . . . .	Public Health Act, 1872, 35 & 36 V. c. 79.	
” ” 1875 . . . . .	Public Health Act, 1875, 38 & 39 V. c. 55.	
” ” 1890 . . . . .	Public Health Acts Amendment Act, 1890, 53 & 54 V. c. 59.	
” Ireland Act, 1878 . . . . .	Public Health (Ireland) Act, 1878, 41 & 42 V. c. 52.	
” ” ” 1896 . . . . .	Public Health (Ireland) Act, 1896, 59 & 60 V. c. 54.	
” London Act, 1891 . . . . .	Public Health (London) Act, 1891, 54 & 55 V. c. 76.	
” Scotland Act, 1867 . . . . .	Public Health (Scotland) Act, 1867, 30 & 31 V. c. 101.	
” ” ” 1897 . . . . .	Public Health (Scotland) Act, 1897, 60 & 61 V. c. 38.	

Q.

Quà . . . . .	“As regards,” “in relation to,” “for the purpose of,” or “within the meaning of.”	
Q. B. . . . .	Queen’s Bench Reports . . . . .	1841-1852
Q. B. D. . . . .	Law Reports, Queen’s Bench Division . . . . .	1875-1890
	<i>Note, in and since 1891 these Reports are cited by the year and volume, e. g. 1891, 1 Q. B.</i>	

R.

Ry . . . . .	Railway,—chiefly in names of cases, and then signifying Railway Company.	
Ry & Canal Traffic Act, 1854 . . . . .	Railway and Canal Traffic Act, 1854, 17 & 18 V. c. 31.	
” ” 1888 . . . . .	Railway and Canal Traffic Act, 1888, 51 & 52 V. c. 25.	
” ” 1894 . . . . .	Railway and Canal Traffic Act, 1894, 57 & 58 V. c. 54.	
Ry Ca., or Rail. Ca. . . . .	Railway and Canal Cases . . . . .	1835-1854
Ry & Can Traffic Ca. . . . .	Railway and Canal Traffic Cases: <i>Cp. B. &amp; Macn.</i> . . . . .	1855, & i. p.
Ry C. C. Act, 1845 . . . . .	Railway Clauses Consolidation Act, 1845, 8 V. c. 20.	

ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Ry C. C. (Scot) Act, 1845 . . . . .	Railway Clauses Consolidation (Scotland) Act, 1845, 8 V. c. 33.	
Ry C. Act, 1863 . . . . .	Railway Clauses Act, 1863, 26 & 27 V. c. 92.	
Ry Comp. Act, 1867 . . . . .	Railway Companies Act, 1867, 30 & 31 V. c. 127.	
Raym. T. . . . .	T. Raymond . . . . .	1660-1684
Raym. Ld . . . . .	Lord Raymond . . . . .	1694-1732
Redman . . . . .	Redman on Landlord & Tenant, 5th ed.	
Reed . . . . .	Reed on Bills of Sale, 11th ed.	
Regn . . . . .	Regulation.	
Repld . . . . .	Replaced by, — <i>i.e.</i> a statute or section replaced by the one following this abbreviation.	
Rep. . . . .	Coke's Reports . . . . .	1572-1617
Rep People Act, 1832 . . . . .	Representation of the People Act, 1832, 2 & 3 W. 4, c. 45.	
"    "    1867 . . . . .	Representation of the People Act, 1867, 30 & 31 V. c. 102.	
"    "    1884 . . . . .	Representation of the People Act, 1884, 48 & 49 V. c. 3.	
"    (Ir) Act, 1832 . . . . .	Representation of the People (Ireland) Act, 1832, 2 & 3 W. 4, c. 88.	
"    "    1850 . . . . .	Representation of the People (Ireland) Act, 1850, 13 & 14 V. c. 69.	
"    "    1868 . . . . .	Representation of the People (Ireland) Act, 1868, 31 & 32 V. c. 49.	
"    (Scot) Act, 1832 . . . . .	Representation of the People (Scotland) Act, 1832, 2 & 3 W. 4, c. 65.	
"    "    1868 . . . . .	Representation of the People (Scotland) Act, 1868, 31 & 32 V. c. 48.	
Rettie . . . . .	The same as Sessions Cases, Scotch, 4th Series.	
Revd . . . . .	Reversed.	
Rice . . . . .	Rice's South Carolina Reports.	
Rob. Ecc. . . . .	Robertson, Ecclesiastical Cases . . . . .	1844-1853
Robt. N. Y. . . . .	Robertson's New York Superior Court Reports.	
Rob. C. . . . .	Robinson, Christopher . . . . .	1798-1808
Rob. W. . . . .	Robinson, William . . . . .	1838-1850
Robson . . . . .	Robson on Bankruptcy, 7th ed.	
Rogers . . . . .	Rogers on Elections, Vol. 1, 16th ed.; Vols. 2 and 3, 17th ed.	
Rolle . . . . .	Rolle . . . . .	1614-1625
Rol. Ab. . . . .	Rolle's Abridgment.	
Rop. . . . .	Roper on Legacies, 4th ed.	
Rosc. Cr. . . . .	Roscoe's Digest of the Law of Evidence in Criminal Cases, 12th ed.	
Rosc. N. P. . . . .	Roscoe's Digest of the Law of Evidence at Nisi Prius, 17th ed.	
Rose . . . . .	Rose . . . . .	1810-1816
R. . . . .	Rule, or Rules.	
R. S. C. . . . .	Rules of the Supreme Court, 1883.	
Russ. . . . .	Russell . . . . .	1823-1829
Russ. Cr. . . . .	Russell on Crimes and Misdemeanours, 6th ed.	

TABLE OF ABBREVIATIONS, SIGNS, &c. ccxiii

ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Russ. & My.	Russell and Mylne	1829-1833
Russ. & Ry.	Russell and Ryan	1800-1823
Ry. & Moo.	Ryan and Moody	1823-1826

S.

Salk.	Salkeld	1689-1712
S. C.	Same Case.	
Saund.	Saunders ( <i>V. Wms. Saund.</i> )	1666-1672
Savile	Savile	1580-1594
Sayer	Sayer	1751-1756
Sch.	Schedule.	
Sch. & Lef.	Schoales and Lefroy	1802-1807
Scot	Scotland.	
Sc.	Scott	1834-1840
Sc. N. R.	Scott, New Reports	1840-1845
Sc. L. R.	Scottish Law Reporter	1865, & i. p.
Scrutton	Scrutton on Charter-Parties and Bills of Lading, 4th ed.	
Selwyn N. P.	Selwyn's Nisi Prius, 12th ed.	
Sess. Ca. 4th Ser.	Sessions Cases, Scotch, 4th Series	1874-1898
Seton	Seton on Decrees, 6th ed.	
S. L. Act, 1882	Settled Land Act, 1882, 45 & 46 V. c. 38.	
" "	Settled Land Act, 1884, 47 & 48 V. c. 18.	
" "	Settled Land Acts (Amendment) Act, 1887, 50 & 51 V. c. 30.	
" "	Settled Land Act, 1890, 53 & 54 V. c. 69.	
Show.	Showers	1678-1694
Sid.	Siderfin	1657-1670
Sim.	Simons	1826-1852
Sim. N. S.	Simons, New Series	1850-1852
Sim. & St.	Simons and Stuart	1822-1826
Skinner	Skinner	1681-1697
Sm. & G.	Smale and Giffard	1852-1858
Sm. L. C.	Smith's Leading Cases, 9th ed.	
Smythe	Smythe	1839-1840
Sneed	Sneed's Tennessee Reports.	
Soc'y	Society, — chiefly in names of cases.	
Solr.	Solicitor.	
Solrs Act, 1843	Solicitors Act, 1843, 6 & 7 V. c. 73.	
" "	Solicitors Act, 1860, 23 & 24 V. c. 127.	
" "	Attorneys and Solicitors Act, 1870, 33 & 34 V. c. 28.	
Solrs Rem Act, 1881	Solicitors Remuneration Act, 1881, 44 & 45 V. c. 44.	
Solrs Rem Ord	General Order made under Solicitors Remuneration Act, 1881.	
S. J.	Solicitors' Journal.	
S. E. Ry	South Eastern Railway.	
S. W. Ry	South Wales Railway.	
Spelm.	Spelman's Glossarium Archaologicum.	
Spinks	Spinks, Ecclesiastical and Admiralty	1855-1855

CCXIV TABLE OF ABBREVIATIONS, SIGNS, &c.

ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Stat. . . . .	Statute.	
Stat. Def. . . . .	Statutory definition, or definitions: this abbreviation generally indicates that the word or phrase under consideration has received interpretation by the section cited or stated.	
Starkie . . . . .	Starkie . . . . .	1815-1823
Steph. Cr. . . . .	Stephen's Digest of the Criminal Law, 3rd ed.	
Stone . . . . .	Stone's Justices' Manual.	
Story . . . . .	Story on Equitable Jurisprudence.	
Stra. . . . .	Strange . . . . .	1715-1748
Sty., or Style . . . . .	Style . . . . .	1646-1655
Suen Dy Act, 1853 . . . . .	Succession Duty Act, 1853, 16 & 17 V. c. 51.	
Sug. Pow. . . . .	Sugden on Powers, 8th ed.	
Sug. Prop. . . . .	Sugden on the Law of Property as administered by the House of Lords.	
Sug. V. & P. . . . .	Sugden on Vendors and Purchasers, 14th ed.	
Sum Jur Act, 1848 . . . . .	Summary Jurisdiction Act, 1848, 11 & 12 V. c. 43.	
"    "    1857 . . . . .	Summary Jurisdiction Act, 1857, 20 & 21 V. c. 43.	
"    "    1879 . . . . .	Summary Jurisdiction Act, 1879, 42 & 43 V. c. 49.	
"    "    1881 . . . . .	Summary Jurisdiction (Process) Act, 1881, 44 & 45 V. c. 24.	
"    "    1884 . . . . .	Summary Jurisdiction Act, 1884, 47 & 48 V. c. 43.	
"    "    1895 . . . . .	Summary Jurisdiction (Married Women) Act, 1895, 58 & 59 V. c. 39.	
"    "    1899 . . . . .	Summary Jurisdiction Act, 1899, 62 & 63 V. c. 22.	
"    (Ir) Act, 1851 . . . . .	Summary Jurisdiction (Ireland) Act, 1851, 14 & 15 V. c. 92.	
Sumner . . . . .	Sumner's United States Circuit Court Reports.	
Swabey . . . . .	Swabey . . . . .	1855-1859
Sw. & Tr. . . . .	Swabey & Tristram . . . . .	1858-1865
Swanst. . . . .	Swanston . . . . .	1818-1819
<i>Sthc</i> . . . . .	But that case.	
<i>Stlhc</i> . . . . .	But that last, or latter, case.	
<i>Sr</i> . . . . .	But see, or See however, or But consider, or Compare.	
<i>Sh</i> . . . . .	But see hereon.	
<i>Sth</i> . . . . .	But see thereon.	
<i>Svthc</i> . . . . .	But see that, or as to that or this, case, or those cases.	
<i>Svthlc</i> . . . . .	But see the, or as to the, last or latter case.	
T.		
Taunt. . . . .	Taunton . . . . .	1807-1819
Tax Cases . . . . .	Cases on Customs and Inland Revenue Acts . . . . .	1875, & i. p.



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ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
T. & M. . . . .	Temple and Mews, Criminal Cases . . . . .	1848-1851
T. R. . . . .	Term Reports, same as Durnford and East . . . . .	1785-1800
Termes de la Ley . . . . .	Termes de la Ley, — the edition used being that published in London and "printed by Jo. Beale & Ric. Hearne for the benefit of all that are studious in the Common Laws of this Realme, 1641"; "a book of great antiquity and accuracy" (per Bayley, J., 5 B. & C. 229). If the word is not found in the edition mentioned, then refer to that of 1721.	
Texas . . . . .	Texas Reports.	
Theobald . . . . .	Theobald on Wills, 5th ed.	
Times Rep. . . . .	Times Law Reports . . . . .	1884, & i. p.
Tomlins . . . . .	V. Jacob.	
Touch. . . . .	The Touch-Stone, commonly cited as Shep. Touch.	
Tudor Char. Trusts . . . . .	Tudor on Charitable Trusts, 3rd ed.	
Tudor's L. C. M. L. . . . .	Tudor's Leading Cases on Mercantile Law, 3rd ed.	
Tudor's L. C. R. P. . . . .	Tudor's Leading Cases in Real Property, 4th ed.	
T. & R. . . . .	Turner and Russell . . . . .	1822-1825
Tyr. . . . .	Tyrwhitt . . . . .	1830-1835
Tyr. & G. . . . .	Tyrwhitt and Granger . . . . .	1835-1836
Th . . . . .	Thereon.	
Thc . . . . .	That case, or those cases.	
Thlc . . . . .	That last, or latter, case.	

U.

U. S. . . . .	United States Supreme Court Reports.
U. S. Dig. . . . .	United States Digest.

V.

Vaizey . . . . .	Vaizey on Settlements.	
Vaugh. . . . .	Vaughan . . . . .	1665-1674
V. & P. . . . .	Vendor and Purchaser.	
V. & P. Act, 1874 . . . . .	Vendor and Purchaser Act, 1874, 37 & 38 V. c. 78.	
Ventr. . . . .	Ventris . . . . .	1668-1684
Vern. . . . .	Vernon . . . . .	1681-1719
Vern. & S. . . . .	Vernon and Scriven . . . . .	1786-1788
Ves. . . . .	Vesey, junior . . . . .	1754-1817
Ves. sen. . . . .	Vesey, senior . . . . .	1746-1755
V. & B. . . . .	Vesey and Beames . . . . .	1812-1814
Vin. Ab. . . . .	Viner's Abridgment.	
V . . . . .	See.	
V̄a . . . . .	See also.	

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ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
<i>Vf</i> . . . . .	See further.	
<i>Vh</i> . . . . .	See hereon.	
<i>Vth</i> . . . . .	See thereon.	
<i>Vlhc</i> . . . . .	See that, or as to that or this, case or those cases.	
<i>Vthlc</i> . . . . .	See the, or as to the, last or latter case.	

W.

Wallace, or Wall. . . . .	Wallace's United States Supreme Court Reports.	
W. W. . . . .	Water Works, — chiefly in names of cases.	
W. W. C. Act, 1847 . . . . .	Water Works Clauses Act, 1847, 10 & 11 V. c. 17.	
Watson Eq. . . . . .	Watson's Practical Compendium of Equity, 2nd ed.	
Webster . . . . .	Webster, Patent Cases . . . . .	1601-1855
W. N. . . . .	Weekly Notes . . . . .	1866, & i. p.
W. R. . . . .	Weekly Reporter . . . . .	1852, & i. p.
Wend. . . . .	Wendell's New York Reports.	
Wheaton . . . . .	Wheaton's United States Supreme Court Reports.	
White & Tudor . . . . .	White & Tudor's Leading Cases in Equity, 7th ed.	
Wight. . . . .	Wightwick . . . . .	1810-1811
Wilberforce . . . . .	Wilberforce on Statute Law.	
Willes . . . . .	Willes . . . . .	1737-1758
W. Bl. . . . .	William Blackstone . . . . .	1746-1780
Wms. Bank. . . . .	Williams on Bankruptcy, 7th ed.	
Wms. Exs. . . . .	Williams on Executors and Administrators, 9th ed.	
Wms. P. P. . . . .	Williams on Personal Property.	
Wms. R. P. . . . .	Williams on Real Property.	
Wms. & Bruce . . . . .	Williams and Bruce's Admiralty Practice, 2nd ed.	
Wms. Saund. . . . .	Saunders' Reports, with notes by Williams, 6th ed. . . . .	1666-1672
Wils. Ch. . . . .	Wilson's Chancery Reports . . . . .	1818-1819
Wils. Ex. . . . .	Wilson's Exchequer Reports . . . . .	1805-1817
Wils. K. B. . . . .	Wilson's King's Bench Reports . . . . .	1742-1774
Wilson & Shaw . . . . .	Wilson and Shaw's Scotch Appeals . . . . .	1825-1834
Winch . . . . .	Winch . . . . .	1621-1625
Wis. . . . .	Wisconsin Reports.	
W. & D. . . . .	Wolferstan and Dew's Election Cases . . . . .	1856-1858
Wood . . . . .	Wood on Mercantile Agreements.	
Wood . . . . .	Wood, Tithe Cases . . . . .	1650-1798
Woodf. . . . .	Woodfall on Landlord and Tenant, 16th ed.	
Workmen's Comp Act, 1897 . . . . .	Workmen's Compensation Act, 1897, 60 & 61 V. c. 37.	
„ „ 1900 . . . . .	Workmen's Compensation Act, 1900, 63 & 64 V. c. 22.	

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ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
<i>Whc</i> . . . . .	Which case, or cases.	
<i>Whcv</i> . . . . .	Which case see.	
<i>Whcvf</i> . . . . .	Which case see further.	
<i>Whl</i> . . . . .	Which last or latter.	
<i>Whlc</i> . . . . .	Which last or latter case.	
<i>Whlcv</i> . . . . .	Which last or latter case see.	
<i>Whv</i> . . . . .	Which see.	
<i>Whva</i> . . . . .	Which see also.	
<i>Whvf</i> . . . . .	Which see further.	
<i>Whvh</i> . . . . .	Which see hereon.	

Y.

Yate Lee . . . . .	Yate Lee, on Bankruptcy, 2nd ed.	
Y. B. . . . .	Year Books of Reports of Cases . . . . .	1307-1537
Yelv. . . . .	Yelverton . . . . .	1602-1613
Younge . . . . .	Younge . . . . .	1830-1832
Y. & C. Ch. . . . .	Younge and Collier, Chancery Cases . . . . .	1841-1843
Y. & C. Ex. . . . .	Younge and Collier, Exchequer Cases . . . . .	1834-1842
Y. & J. . . . .	Younge and Jervis . . . . .	1826-1830



# INTRODUCTORY CHAPTER

ON THE

## CONSTRUCTION OF DOCUMENTS.

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THE documents whereby conclusions or directions are recorded are various in kind, and the rules for their interpretation must somewhat vary.

But underlying the special rules for construing the different classes of documents, there are two fundamental rules.

### I. Every Document must be read in its true light.

Bearing that Rule in mind we get the full and proper meaning of the doctrine enunciated by Lord Wensleydale in *Grey v. Pearson*,<sup>1</sup> that;—

II. “In construing Wills, and, indeed, Statutes and all Written Instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to absurdity, or some repugnance or inconsistency with the rest of the instrument; in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity, repugnancy, or inconsistency, but no further.”

In repeating this latter canon in *Abbott v. Middleton*,<sup>2</sup> Lord Wensleydale said, — “This rule was in substance laid down by Mr. Justice Burton in *Warburton v. Loveland*.<sup>3</sup> It had previously been

<sup>1</sup> 26 L. J. Ch. 481; 6 H. L. Ca. 106.

<sup>2</sup> 28 L. J. Ch. 114; 7 H. L. Ca. 114, 115.

<sup>3</sup> 1 Hud. & Bro. 648.

described by Lord Ellenborough in *Doe v. Jessep*,<sup>4</sup> as ‘a rule of common sense as strong as can be.’ It had been stated (by Lord Cranworth when Chancellor) as ‘a Cardinal Rule,’ from which, if we departed, we should launch into a sea of difficulties not easy to fathom;<sup>5</sup> and as the **Golden Rule** when applied to Acts of Parliament, by Chief Justice Jervis, in *Mattison v. Hart*,<sup>6</sup> and by Mr. Justice Maule as ‘the most general of rules, a general rule of great utility,’ in *Gether v. Capper*.<sup>7</sup>

But a little reflection will show that this Golden Rule cannot be properly applied until the document under discussion has been put in its true light. How otherwise can the “Ordinary Sense” of the words employed be rightly determined? A word ordinarily employed in one sense in the time of Queen Elizabeth, may have quite another ordinary sense now. So that in construing statutes regard must be had to the time of their enactment,<sup>8</sup> and old deeds and other instruments must be construed as they would have been at their date.<sup>9</sup> So of a Will, the circumstances which the testator would, or ought to, consider when making it, must be borne in mind.<sup>10</sup> So in construing a Mercantile Document before you can begin to read it in its ordinary sense, you have to know somewhat of the trade to which it relates, and it is often required to know the sense in which the phrases employed are used in that trade. That is to say, you must put the document in its true mercantile light. So again a word sometimes has a legal meaning, different from its popular meaning; and then the circumstances at the inception of the document have to be attended to in order that it may be seen whether the word in question is a phrase of art, and so to receive its ordinary legal meaning, or whether it has been used as the language of common life, and, therefore, to receive its ordinary popular meaning. In such a case either meaning would be the ordinary meaning; and what would have, in the first instance, to be determined would be,— which ordinary meaning ought to be adopted? That could

<sup>4</sup> 12 East, 293.

<sup>5</sup> *Gundry v. Pinniger*, 1 D. G. M. & G. 502; 21 L. J. Ch. 405.

<sup>6</sup> 23 L. J. C. P. 108; 14 C. B. 385.

<sup>7</sup> 24 L. J. C. P. 71; 15 C. B. 706; *Va, Rhodes v. Rhodes*, 51 L. J. P. C. 53; 7 App. Cal. 92; and per Halsbury, C., *Leader v. Duffy*, 58 L. J. P. C. 16; 13 App. Ca. 301.

<sup>8</sup> *Vth, Ward v. Folkestone W. W. Co*, 24 Q. B. D. 334. Historical works may be used to elucidate ancient statutes (*Read v. Lincoln, Bp.*, 1892, A. C. 644; 62 L. J. P. C. 1).

<sup>9</sup> *Sutherland v. Heathcote*, 1892, 1 Ch. 475; 61 L. J. Ch. 248.

<sup>10</sup> Per Ld Blackburn, *Bowen v. Lewis*, 54 L. J. Q. B. 67; 9 App. Ca. 913.

only be done by, first of all, putting the document in its true light, — by considering the circumstances out of which the document arose.

Written documents cannot dispense with extrinsic illumination. Indeed many documents need the aid of parol evidence.<sup>11</sup> And though the general rule of law prevents the admissibility of extrinsic evidence to vary a written document; yet it is conceived that that rule (to which there are many exceptions) only shuts out evidence of extrinsic facts directly and specially relating to the document in question, and never prohibits the consideration of the circumstances that are general to the class of documents of which that in question is one or out of which the document itself sprang. In other words, there is no rule of law which prevents any document being read, as it ought to be read, in its true light. "The law is not so unreasonable as to deny to the reader of any instrument the same light which the writer enjoyed."<sup>12</sup>

The law indeed interposes to determine what extrinsic circumstances may be employed by the light of which particular classes of documents may be read. Hereon the reader is referred to the works which will be found enumerated at the close of this chapter.

It is, however, safe to say that it is better (where possible) to gather the circumstances out of which the document under consideration arose from the document itself. This can mostly be done by considering its recitals and general structure; whilst the meaning of individual phrases is sometimes shown by the document itself furnishing a dictionary,<sup>13</sup> and more frequently, even if not generally, such meaning is shown by the context, on the principle that words, like men, are known by the company they keep (*Noscitur a sociis*), — in truth "every possible expression a man can use may be explained away by the context."<sup>14</sup>

It may possibly be objected that the first canon here proposed

<sup>11</sup> *V. Obs of Jessel, M. R., Shardlow v. Cotterill*, 51 L. J. Ch. 356; 20 Ch. D. 93.

<sup>12</sup> Wigram on Extrinsic Evidence, 4 ed., 86, Example 5 to Proposition 5, cited by Lindley, L. J., *Dashwood v. Magniac*, 1891, 3 Ch. 355; 60 L. J. Ch. 817: "I must, to construe this Will, sit down in the testatrix's chair and know all she knew"; per Kekewich, J., *Re Plant*, 43 S. J. 63: "Some extrinsic evidence is necessary for the explanation of every Will"; per Coleridge, J., *Doe v. Holtom*, 4 A. & E. 82; *Vf; Leigh v. Leigh*, 15 Ves. 103, 104; *Re Hodgson*, 1898, 2 Ch. 545; 67 L. J. Ch. 591; *Plant v. Bourne*, cited *MY*, at end.

<sup>13</sup> Per *Ld Cairns, Hill v. Crook*, cited *CULLD*, p. 303.

<sup>14</sup> Per Wood, V. C., *Holmes v. Prescott*, 33 L. J. Ch. 271.

is only a part of that so firmly laid down by Lord Wensleydale. But though the two canons are intimately associated, yet the first is quite distinct from the second. The first is the intimate preface of the second. By applying the first a knowledge is obtained about a document; the second then guides to its true interpretation. As to this second canon of construction, those who say a document is not to be read literally must show some reason why.<sup>15</sup> Not so very long ago one used to hear something about the Equity of a Statute,<sup>16</sup> about Strict and Lenient Construction,<sup>17</sup> and about construing private documents on their Broad Principle. But though narrow technicalities are not now favoured by the Courts, yet it is perhaps not too much to say that the principle laid down in *Grey v. Pearson* is universally applied so as to hold all documents to mean what they say, — the question now being, What *does* the document say? If it speaks plainly, that plain meaning is to be followed; if it speaks ambiguously, or doubtfully, the meaning of what it says must be ascertained in a natural and grammatical manner, and by such aids as the law allows; if it speaks so as to lead to absurdity, repugnancy, or inconsistency, that absurd repugnant or inconsistent conclusion is rejected because it could not have been meant.<sup>18</sup> In every case, therefore, what has to be sought is, What does the document say? — *e.g.*, a case must be within the words of a statute; it is not enough to say that it is within the mischief intended to be prevented.<sup>19</sup> And so of private documents. Thus, for example, in an assignment to creditors an ultimate trust for the debtor can only arise by express pro-

<sup>15</sup> Per Jessel, M. R., *Sutton v. Sutton*, 52 L. J. Ch. 336; 22 Ch. D. 516; per Knight Bruce, V. C., *Parker v. Marchant*, 1 Y. & C. N. R. 300, adopted by Esher, M. R., *Anderson v. Anderson*, 1895, 1 Q. B. 753; *Vh, Re Tredwell*, 1891, 2 Ch. 640; 60 L. J. Ch. 657.

<sup>16</sup> This is sometimes sought to be revived under the new name of Legislation by Construction; *V. per Williams, J., Re English Scottish and Australian Bank*, 62 L. J. Ch. 828.

<sup>17</sup> "I cannot concur in the contention that because these Acts (the adulteration Acts) impose penalties, therefore their construction should necessarily be strict. I think that neither greater nor less strictness should be applied to those than to any other statutes"; per Day, J., *Newby v. Sims*, 63 L. J. M. C. 229; "A liberal interpretation means no more than that the document should receive its *true* construction according to its language, object, and intent"; per Russell, C. J., *Re Arton*, 65 L. J. M. C. 54; *Vj*; per Halsbury, C., *Tennant v. Smith*, 1892, A. C. 154; 61 L. J. P. C. 13; per Russell, C. J., *A-G. v. Carlton Bank*, cited RECEIPT, p. 1677; *London Co. Co. v. Aylesbury Dairy Co.*, cited FORECOURT.

<sup>18</sup> Per Parke, B., *Miller v. Salomons*, 21 L. J. Ex. 191; 7 Ex. 546.

<sup>19</sup> *Scott v. Leggy*, 2 Ex. D. 39; 46 L. J. M. C. 267; *Vj*; per Pollock, C. B., and Martin, B., *Nicholson v. Fields*, 31 L. J. Ex. 233; 7 H. & N. 810.



vision, and it is not enough to say that the debtor ought to have what surplus remains after his debts have been paid in full.<sup>20</sup>

Sweeping general words often present a difficulty. Their wide terms induce the doubt as to whether they were employed in their absolutely literal sense, and whether so to construe them would not conduct to absurdity. In such cases it has been said, "One of the safest guides to the construction of sweeping general words, which it is difficult to apply in their full literal sense, is to examine other words of like import in the same instrument, and to see what limitations must be imposed on them. If it is found that a number of such expressions have to be subjected to limitations or qualifications, and that such limitations or qualifications are of the same nature, that forms a strong argument for subjecting the expression in dispute to a like limitation or qualification."<sup>21</sup> So, wide words may be controlled to a reasonable particularity and compass, by the recitals and other antecedent matter,<sup>22</sup> or by the main purpose of the document.<sup>23</sup>

But, probably, it is not possible to formulate any rule that would guide safely to the conclusion that the literal meaning of any given phrase is to be set aside on the ground of its leading to absurdity, repugnancy, or inconsistency; and still less as to what should be the reading in lieu of that so set aside. Each case of that kind, unless covered by authority, would have to take care for itself, subject to this one general principle, which would probably be of universal acceptation, that the argument of convenience ought not to prevail except as a last resource.<sup>24</sup>

To say, as even eminent judges have said, that documents are to be construed by the light of Common Sense does not seem to render verbal problems more easy of solution. Common Sense, as here applied, is a term of the pumpkin order. It is round, smooth, and fair to view—but hollow. It was Common Sense which proved to the wise men of antiquity that there could be no antipodes; for how could people walk with their heads downwards like flies from a ceiling?<sup>25</sup>

<sup>20</sup> *Smith v. Cooke*, 1891, A. C. 297; 60 L. J. Ch. 607.

<sup>21</sup> *Blackwood v. The Queen*, 52 L. J. P. C. 14; 8 App. Ca. 94.

<sup>22</sup> *Arlington v. Merricke*, 2 Wms. Saund. 411; *Esdaile v. La Nauze*, 1 Y. & C. 394; 4 L. J. Ex. Eq. 46; *Danby v. Coutts*, 54 L. J. Ch. 577; 29 Ch. D. 500.

<sup>23</sup> *Glynn v. Margetson*, 62 L. J. Q. B. 466.

<sup>24</sup> Per Jessel, M. R., *Spencer v. Metrop Bd of Works*, 52 L. J. Ch. 255; 22 Ch. D. 167.

<sup>25</sup> *Vf*; per Ld Macnaghten, *Keighley v. Durant*, 1901, A. C. 246; 70 L. J. K. B. 665.

It is, perhaps, more to the purpose to say that "Popular language should be expounded popularly."<sup>25</sup> But before that rule can be brought into operation it must be ascertained whether the words in question are popular ones or not. To this end the first canon here stated may, possibly, be useful. Thus, Acts of Parliament, as proceeding from a popular assembly, frequently,<sup>27</sup> and Mercantile Contracts, as employing the language of the market, generally, will be interpreted in a popular sense and in accordance with the trade usage applicable to the particular contract;<sup>28</sup> whilst Deeds, Wills professionally prepared, and such-like solemn and formal documents, are usually couched in the language of conveyancers, and the "Ordinary Sense" of such language would be its technical meaning.

But irrespective of the distinction between technical and popular meanings, a word may have different meanings, and then we get this Rule, — "Where we find a term which is used in more than one sense, which has a primary, secondary, and tertiary, meaning the rule of construction is this — The law has settled which of its several meanings is the primary one, and then you require a context to give it one of its other meanings."<sup>29</sup> To say that the law "has" settled the primary meaning of words is only true in a very limited measure indeed. The primary legal meaning of a word can never be absolutely predicated until the authorities on that word are duly considered; and then not always. When, however, such primary meaning is known (and it is hoped that this Dictionary may to some degree help in that knowledge), then the rule as stated in *Pigg v. Clarke* guides to the "Ordinary Sense" of a word having more than one meaning. But when the primary legal meaning has not been settled by decision, then it is necessary to remember that the legal primary meaning would not, necessarily, be the primary etymological meaning, but would be collected from the ordinary import of the word as used in ordinary conversation.<sup>30</sup>

In the uncertainty arising from the different meanings of words

<sup>25</sup> Per Pollock, C. B., *Aggs v. Nicholson*, 25 L. J. Ex. 350; 1 H. & N. 165.

<sup>27</sup> *Stradling v. Morgan*, Plowd. 205 a, cited by Halsbury, C., *Bell-Cox v. Hakes*, 60 L. J. Q. B. 94; 15 App. Ca. 518, and by Bowen, L. J., *Re Standard Manufacturing Co*, 60 L. J. Ch. 300; 1891, 1 Ch. 646.

<sup>28</sup> V. per Esher, M. R., on Charter-Parties, *Nottebohm v. Richter*, 56 L. J. Q. B. 34.

<sup>29</sup> Per Jessel, M. R., *Pigg v. Clarke*, 45 L. J. Ch. 850; 3 Ch. D. 674.

<sup>30</sup> *Re Terry*, 19 Bea. 580; Elph. 48.

there is some help frequently to be derived from the rule that, — When it can be seen that a word is clearly used in a particular sense in one part of a document, that will, generally, be its meaning throughout the document.<sup>31</sup> But even this rule is not of universal application; for the same word may be used in different senses in different parts of the same document.<sup>32</sup>

One other general rule may be added, viz., — Such a construction of doubtful words and phrases should be adopted as will give a reasonable meaning to every word and phrase in the document.

The time in relation to which a document is to be construed is the time when it comes into life. That is to say: —

An *Act of Parliament*, when it comes into operation (s. 36, Interp Act, 1889):

A *Contract*, its date:

A *Deed*, its delivery: <sup>33</sup>

A *Will* “shall be construed, with reference to the Real Estate and Personal Estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the Will.” <sup>34</sup>

There remains to bear in mind, in concluding these remarks on the fundamental canons of construction, and also in the use of the Dictionary, that cases on construction help the Court in determining the true meaning of words and phrases: but they lay down no absolute rule which prevents the Court of Construction arriving at

<sup>31</sup> *Courtauld v. Legh*, 38 L. J. Ex. 49; L. R. 4 Ex. 130: *Fermoy's Case*, 5 H. L. Ca. 745: *Blackwood v. The Queen*, ante: 2 Jarm. 842: *Foster v. Wybrants*, Ir. Rep. 11 Eq. 40.

<sup>32</sup> *Courtauld v. Legh*, sup: *Carter v. Bentall*, cited ISSUE, p. 1011: *Doe d. Angell v. Angell*, 15 L. J. Q. B. 193; 9 Q. B. 328, cited RENT, p. 1712: *Gill v. Barrett*, 29 Bea. 372: *R. v. Allen*, L. R. 1 C. C. R. 371, 373, 374; 41 L. J. M. C. 99, 100; per Bowen, L. J. *Cooke v. New River Co*, 57 L. J. Ch. 389; 38 Ch. D. 56; 58 L. T. 830; affd 14 App. Ca. 698.

<sup>33</sup> Co. Litt. 35 b: *Clayton's Case*, 5 Rep. 1: Touch. 72: Elph. 119.

<sup>34</sup> s. 24, 1 V. c. 26, on *whv* CONTRARY INTENTION. Probably, a Will, quâ its legal operation is, generally, to be read according to the law existing at its date: *V. Jones v. Ogle*, 8 Ch. 195; 42 L. J. Ch. 334: *Re March*, 27 Ch. D. 168; 54 L. J. Ch. 143: See, on the contrary, *Hasluck v. Pedley*, L. R. 19 Eq. 271; 44 L. J. Ch. 143, followed in *Constable v. Constable*, 11 Ch. D. 681; 48 L. J. Ch. 621: *Vj. Lawrence v. Lawrence*, 25 Ch. D. 795; 53 L. J. Ch. 982: *Re Bridger*, 1894, 1 Ch. 297; 63 L. J. Ch. 186. 17, 37 S. J. 42.

its own conclusion in the absence of decision upon the same instrument, or on the same word or phrase.<sup>35</sup>

The Rules of Construction of the several classes of documents will be found fully treated and illustrated in the following works:—

### Acts of Parliament.

Dwarris on Statutes.  
 \*Maxwell on the Interpretation of Statutes.  
 Wilberforce on Statute Law.  
 Broom's Maxims, Ch. 1, sect. 2.  
 Bacon's Maxims, Reg. 10, 16, 19.  
 Barrington on Statutes.

### Contracts.

Addison on Contracts, Book I., Ch. 2.  
 Chitty on Contracts, Ch. 5.  
 Leake on Contracts, Part 1, Ch. 4, sects  
 2 and 3.  
 Anson on Contracts, Part 4.  
 Pollock on Contracts, 7th ed., Ch. 6.  
 2 Smith's Leading Cases, *Roe v. Tramarr*.  
 Broom's Maxims, Ch. 8.  
 Lindley on Partnership, Book 3, Ch. 9.  
 1 Maude & Pollock on Shipping, Ch. 6.  
 Abbott on Shipping, p. 307 *et seq.*  
 MacLachlan on Shipping.  
 Scrutton on Charter-Parties and Bills of  
 Lading.  
 Carver on Carriage of Goods by Sea.  
 Wood on Mercantile Agreements.

### Deeds.

Elphinstone Norton and Clark on the  
 Rules for the Interpretation of Deeds;  
 with a Glossary.  
 Platt on Covenants.  
 Platt on Leases, Part 5.  
 Hamilton on Covenants.  
 Broom's Maxims, Ch. 8.  
 Co. Litt. 36 a.  
 Bacon's Maxims, Reg. 21.  
 The Touch-Stone, Ch. 5.

<sup>35</sup> Per Jessel, M.R., *Athill v. Athill*, 50 L. J. Ch. 126; 16 Ch. D. 223, 224.

**Wills.**

Hawkins on the Construction of Wills.  
 Jarman on Wills, *passim*, but especially  
 Ch. 51.  
 Williams on Executors, Part 3, Book 3,  
 Ch. 2.  
 Theobald on Wills.  
 Wigram on Extrinsic Evidence.  
 Tudor's Leading Cases on Real Property.  
 Tudor on Charitable Trusts, Ch. 5.  
 Gilbert on Wills.

**Miscellaneous Writings.**

Broom's Maxims, Ch. 8.  
 Bacon's Maxims, Reg. 3, 4, 8, 10, 13, 16,  
 19, 20, 23.  
 Beal's Cardinal Rules of Legal Interpre-  
 tation.



THE

# JUDICIAL DICTIONARY.

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A

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**A.** — “A” is sometimes read as “the”; e.g. an act done “with a view” of giving a creditor a fraudulent preference (Bankry Act, 1869, s. 92; and now s. 48, Bankry Act, 1883), means with *the* view. — the real, effectual, substantial, dominant view of giving a preference (*Ex p. Hill, Re Bird*, 52 L. J. Ch. 903; 23 Ch. D. 695: *Ex p. Taylor*, 18 Q. B. D. 295: *Vh. Re Mills*, 58 L. T. 871; 4 Times Rep. 284: *Re Tweedale*, 1892, 2 Q. B. 216; 61 L. J. Q. B. 505; 66 L. T. 233: *New’s Trustee v. Hunting*, and *Sharp v. Jackson*, cited VIEW: *Re Clay*, 3 Manson, 31, *Vhce, Re Eaton*, 66 L. J. Q. B. 491; 1897, 2 Q. B. 16; *Srthlc, Re Laurie*, 46 W. R. 491; 67 L. J. Q. B. 431). V. MOTIVE.

So “an Attorney acting generally in the action” may appear for a party in a County Court, s. 10, 15 & 16 V. c. 54, means *the* attorney (*Bookham v. Potter*, 37 L. J. C. P. 276; L. R. 3 C. P. 490; 16 W. R. 806; 18 L. T. 479); and a like interpretation was given to the like phrase in s. 72, Co. Co. Act, 1888 (*R. v. Snagge*, 1894, 2 Q. B. 440; 63 L. J. Q. B. 689; 70 L. T. 874; 42 W. R. 603). *Cp. Ex p. Pratt*, cited AN.

“A” may sometimes be read as “some,” e.g. in an Order under s. 28 (5), 47 & 48 V. c. 70, directing a prosecution for “a” Corrupt Practice (*R. v. Riley*, cited CORRUPT PRACTICE). But more frequently “a” is the equivalent of “any”; and therefore where by s. 52, Agricultural Holdings (England) Act, 1883 (46 & 47 V. c. 61 extended to distresses generally, s. 7, 51 & 52 V. c. 21), BAILIFFS for levying a distress on an agricultural holding are to be appointed in writing “by the judge of a County Court,” that does not mean “of *the* County Court in the district of which the holding is,” but means “of *any* County Court”; so that a bailiff appointed by any County Court judge may levy an agricultural distress anywhere (*Re Sanders, Ex p. Sergeant*, 54 L. J. Q. B. 331). So, Recognizances on an appeal to Quarter Sessions, “before a Court of Summary Jurisdiction,” s. 31 (3), 42 & 43 V. c. 49, may be before *any* such Court (*R. v. Durham Jus.*, 1895, 1 Q. B. 801; 64 L. J. M. C. 189; 72 L. T. 465; 43 W. R. 423; 59 J. P. 264). So, “Notice to appoint an Arbitrator,” s. 5, Arb. Act, 1889, does not require that an Arbitrator be named in the Notice (per Esher, M. R., *Re Eyre and Leicester*, cited APPOINT, at end). So, *semble*, “a Solr” producing a deed is thereby

authorized to receive its consideration, s. 56, Conv. & L. P. Act, 1881, means *any* Solr (*King v. Smith*, 1900, 2 Ch. 425; 69 L. J. Ch. 598; 82 L. T. 815, commenting on *Day v. Woolwich Bg. Socy.*, 58 L. J. Ch. 280; 40 Ch. D. 491; 60 L. T. 752; 37 W. R. 461).

But "on, or in, or about *a* Railway, Factory," &c, s. 7 (1), Workmen's Comp. Act, 1897, does not mean "any" Ry, &c, but means *the* Ry &c of the Employer of the Workman (*Francis v. Turner*, 1900, 1 Q. B. 478; 69 L. J. Q. B. 182; 81 L. T. 770; 48 W. R. 228; 64 J. P. 53).

It is difficult to read "a" as "all": — the phrase "*a* LESSEE includes an Original or Derivative Under-lessee," s. 14 (3), Conv. & L. P. Act, 1881, does not include all Under-lessees, *e.g.* it does not include an Under-lessee of part of the demised property (*Burt v. Gray*, 1891, 2 Q. B. 98; 60 L. J. Q. B. 664; 65 L. T. 229; 39 W. R. 429).

A grant of "a" Right of Sporting on land, gives only a concurrent right; but "the" right would give it exclusively (*Graham v. Ewart*, 25 L. J. Ex. 47; 26 Ib. 97; nom. *Ewart v. Graham*, 29 Ib. 88; 7 H. L. Ca. 331; *Vthe Devonshire v. O'Connor*, cited FREEHOLD: *Vf. Sutherland v. Heathcote*, cited LIBERTY OF WORKING). *V. FISHERY: EXCLUSIVE RIGHT: HUNTING.*

So a clergyman may be "a" Minister of a Church, without being "the" minister. *V. MINISTER.*

"A Share"; *V. Re Fickus*, cited SHARE.

A License to fish "with *a* ROD AND LINE," does not justify the use of more than one Rod and Line (*Combridge v. Harrison*, 72 L. T. 592; 64 L. J. M. C. 175; 59 J. P. 198). By a covenant not to erect any building "except *a* PRIVATE DWELLING-HOUSE," not merely the class of building is defined in the exception but only ONE of that class is permitted thereby (per Denman, J., *Smith v. Standing*, 32 S. J. 734). *Vf. Kimber v. Admans*, and *Rogers v. Hosegood*, cited HOUSE.

So, the provision for issuing a Bankry Notice against a Debtor, "if a Creditor has obtained *a* FINAL JUDGMENT against him," s. 4 (1 *g*), Bankry Act, 1883, means *one* jdgmt, and two or more jdgmts cannot be included in any one Notice (*Re Low*, 1891, 1 Q. B. 147; 60 L. J. Q. B. 265; 63 L. T. 694; 39 W. R. 181).

The provision in s. 1, Exors Act, 1830, 11 G. 4 & 1 W. 4, c. 40, that an exor is to be deemed "*a* Trustee" for the Next-of-kin, quâ an undisposed of residue of personalty, does not make him an "EXPRESS Trustee" (*Re Lacy*, 1899, 2 Ch. 149; 68 L. J. Ch. 488; 80 L. T. 706; 47 W. R. 664).

*Vh.* s. 30, Sum. Jur. Act, 1879, as doubted and expounded by s. 8, Sum. Jur. Act, 1884.

*V. AN: EVERY: ONE: THE.*

**ABANDON.** — "Abandon or expose" a child under two years of age, s. 27, 24 & 25 V. c. 100: — These words "include a wilful omission to take charge of the child on the part of a person legally bound to do so,



and any mode of dealing with it calculated to leave it exposed to risk without protection" (Steph. Cr. 196, citing *R. v. White*, L. R. 1 C. C. R. 311; 40 L. J. M. C. 134; *R. v. Fulkingham*, L. R. 1 C. C. R. 222; 39 L. J. M. C. 47). *Vf.* Arch. Cr. 839, 840; Rose. Cr. 348.

A creditor does not "abandon the excess" of his claim. s. 81. Co. Co. Act, 1888, by merely suing for part of his demand (*Vines v. Arnold*, 8 C. B. 632; 19 L. J. C. P. 98).

Abandoned Lands; *V.* SUPERFLUOUS LAND, at end.

Abandon Salvage; *V.* SALVAGE.

**ABANDONMENT.** — In a policy of *Marine Insurance*, Abandonment is of the essence of a claim for constructive TOTAL LOSS.

"The word 'abandon' is one in ordinary and common use, and in its natural sense well understood; but there is not a word in the English language used in a more highly artificial and technical sense than the word 'abandon'; in reference to constructive total loss, it is defined to be a cession or transfer of the ship from the owner to the under-writer, and of all his property and interest in it, with all the claims that may arise from its ownership, and all the profits that may arise from it, including the freight then being earned" (per Martin, B., *Rankin v. Potter*, 42 L. J. C. P. 200; L. R. 6 H. L. 139; *Vh.* Park. ch. 9). In a Notice of Abandonment it is not necessary to use the word "abandon"; an equivalent expression suffices (*Currie v. Bombay Insree*, L. R. 3 P. C. 78, 79). *Vf.* 8 Encyc. 192-195.

What is an Abandonment of a WRECK, so as to avoid liability respecting it; *V.* *The Snark*, 1899, P. 74; 68 L. J. P. D. & A. 22; 80 L. T. 25; 47 W. R. 398, and cases there cited; affd. 1900, P. 105; 69 L. J. P. D. & A. 41; 82 L. T. 42; 48 W. R. 279. *V.* OWNER, towards end.

"The surrender of a Child to an adopted parent as an act of prudence or necessity under the pressure of present inability to maintain it, and if done in the interests of the Child, cannot be regarded as an Abandonment or DESERTION, or even as unmindfulness of parental duty," within s. 3, Custody of Children Act, 1891, 54 V. c. 3 (per Fitz-Gibbon, L. J., *Re O'Hara*, 1900, 2 I. R. 244).

An Abandonment of POSSESSION, by a Sheriff in an Execution, or by a Bailiff in a Distress, is always one of fact, to be determined on the facts and circumstances of each case (*Bagshawes v. Deacon*, 1898, 2 Q. B. 173; 67 L. J. Q. B. 658; 78 L. T. 776; 46 W. R. 618; wch reviewed, amongst other authorities, *Swan v. Falmouth*, 6 L. J. O. S. K. B. 374; 8 B. & C. 456; *Ackland v. Paynter*, 8 Price, 95, and *Eldridge v. Stacey*, 15 C. B. N. S. 458; 33 L. J. C. P. 31; 9 L. T. 291; 12 W. R. 51. *Vf.* *Lumsden v. Burnett*, 1898, 2 Q. B. 177; 67 L. J. Q. B. 661; 78 L. T. 778; 46 W. R. 664; *Bannister v. Hyde*, and *Jones v. Beirnstein*, cited POSSESSION).

As to WAIVER, or Abandonment, of a RIGHT. "it is necessary to under-

stand precisely what is the qualification which has been introduced by the case of *Freeman v. Cooke* (18 L. J. Ex. 114: 2 Ex. 654) into the doctrine of law as it was laid down by Ld. Denman in *Pickard v. Sears* (6 A. & E. 469-474), — ‘The rule of law is clear, that where one by his words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.’ In *Freeman v. Cooke*, Parke, B., in delivering the judgment of the Court of Exchequer, qualified that proposition by saying, — ‘In most cases the doctrine in *Pickard v. Sears* is not to be applied, unless the representation is such as to amount to the CONTRACT, or LICENSE, of the party making it.’ So that, I apprehend, where there is a Vested Right or Interest in any party, the principle of law, as now firmly established, is that he cannot waive or abandon that right except by acts which are equivalent to an Agreement or to a License” (per Chelmsford, C., *Clarke v. Hart*, 6 H. L. Ca. 655, 656; 27 L. J. Ch. 618, 619). *V. Palmer v. Moore*, 1900, A. C. 293; 69 L. J. P. C. 64; 82 L. T. 166, in whc, on that principle, it was held that there had been an Abandonment of a Share in a Lease. *Cp.* “Discontinuance of Possession,” sub DISCONTINUANCE: DISPOSSESSION.

To constitute Abandonment of a *Trade-Mark* an intention to abandon must be shown: mere evidence of non-user is insufficient (*Mouson v. Boehm*, 53 L. J. Ch. 932; 26 Ch. D. 398). *V. COMMENCEMENT.*

Abandonment of an Undertaking, *e.g.* a Ry; *V. Re Hull, Barnsley, & W. Riding Ry*, 37 S. J. 477: *Re Manchester, &c. Trams Co*, 62 L. J. Ch. 752: COMMENCEMENT.

Abandonment of a WAY is not shown by mere non-user (*Ward v. Ward*, 7 Ex. 839; 21 L. J. Ex. 334: *Cook v. Bath*, L. R. 6 Eq. 177: *James v. Stevenson*, 1893, A. C. 162; 62 L. J. P. C. 51; 68 L. T. 539); so, of a Right to Light (*Newsom v. Pender*, 27 Ch. D. 43: *Smith v. Baxter*, cited INTERRUPTION).

*Cp.* RELINQUISH.

**ABATE.** — “‘Abate’ is both an English and French word, and signifieth, in his proper sense, to diminish or take away, as here (s. 475, Litt.) by his entrie he diminisheth and taketh away the freehold in law descended to the heire: and so it is said, to abate an account, signifying subtraction or withdrawing, &c, and to abate the courage of a man. In another sense it signifieth to prostrate, beat downe, or overthrow, as to abate castles, houses, and the like, and to abate a writ; and hereof commeth a word of art, *abatamentum*, which is an entrie by interposition.” “A DISSEISIN, is a wrongful putting out of him that is actually seised of a freehold. An Abatement is when a man died seised of an estate of inheritance, and betweene the death and the entrie of the heire, an estranger

doth interpose himselfe and abate." (Co. Litt. 277 a; *Vf. Ib.* 134 b).  
*Vh. Cowel*: 3 Bla. Com. 167.

**ABATEMENT.** — *V. ABATE*: DEDUCTIONS. *Vh.* 1 Encyc. 15–20.

**ABDICATE.** — “ ‘Abdication,’ is a disinheriting, or rather a voluntary act of renouncing, disowning, &c.” (*Termes de la Ley*).

**ABDUCTION.** — *V. Steph. Cr.* 191–194, stating 24 & 25 V. c. 100, ss. 53, 54, as explained by the authorities there cited. *Vf. Arch. Cr.* 854: *Rosc. Cr.* 232–238: 1 Encyc. 21: *Vf. KNOWINGLY*.

**Earl of ABERDEEN’S ACT.** — The Entail Provisions Act, 1824, 5 G. 4, c. 87.

**ABET.** — *V. AID OR ABET*.

“Abettor”; *V. Termes de la Ley*: 1 Encyc. 23, 24.

**ABEYANCE.** — “ ‘In abeyance’; That is, in expectation, of the French word *bayer*, to expect. For when a parson dieth, wee say that the freehold is in abeyance, because a successor is in expectation to take it” (Co. Litt. 342 b). “So, it is a maxim in law, That of every land there is Fee Simple in some man, or else it lies in abeyance” (Cowel). *Vf. Termes de la Ley*: 1 Encyc. 25.

**ABIDE.** — “Abide the Event”; *V. EVENT*: RESULT.

Deposit “to abide the event” of a Wager; *V. DEPOSIT*: COVER.

**ABILITY.** — In the sense of being ABLE to pay, as used in 9 G. 4, c. 14, s. 6; *V. Lyde v. Barnard*, 1 M. & W. 101; 5 L. J. Ex. 117; 1 Sm. L. C. 195–197. Accordingly, a Certification of Shares is not a representation of the “Credit,” or “Ability” of the intended Transferor, within the section (*Bishop v. Balkis Co.*, cited *CERTIFICATION*).

*Vf. LEGAL DISABILITY*.

**ABJURATION.** — Is a voluntary BANISHMENT, “a renouncing by oath, or forswearing of the realm” (Cowel: *Termes de la Ley*): but, *semble*, it cannot be partial, it is “a deportation *for ever* into a forreine land” (Co. Litt. 133 a): it is “a civil death,” like to one PROFESSED IN RELIGION (*Ib.*). *Vh. Newsome v. Bowyer*, 3 P. Wins. 38: 1 Encyc. 26.

*Cp. RELEGATION*: TRANSPORTATION.

**ABLE.** — A gift of residue to an infant “if he shall be *able* to discharge the executors” is good, because, by action in Ch. D. he is “able” to discharge the executors (*Ledward v. Hassells*, 25 L. J. Ch. 311; 2 K. & J. 370).

An acknowledgment to pay “*when able*” or “as soon as I can,” throws the onus of proving the debtor’s ABILITY to pay on the creditor (*Davies v. Smith*, 4 Esp. 36: *Besford v. Saunders*, 2 Bl. H. 116: *Tanner v. Smart*, 6 B. & C. 603: *Philips v. Philips*, 3 Hare, 281, 299: *Smith v. Thorne*,

18 Q. B. 139; 21 L. J. Q. B. 199: *Meyerhoff v. Froehlich*, 4 C. P. D. 63; 48 L. J. C. P. 43; and the Statute of Limitations, on such an acknowledgment, runs from the time when, in fact, the debtor is able, whether that state of things be known to the creditor or not (*Waters v. Thanet*, 2 Q. B. 757: *Hammond v. Smith*, 33 Bea. 452).

“Able, Practical Surveyor, or Valuer”; *V.* SURVEYOR.

“Chargeable” is not the equivalent of Poor Person “not able to work,” in s. 26, 59 G. 3, c. 12 (*Re Morten*, 5 Q. B. 591).

**ABODE.** — “Abode,” “Place of Abode”; *V.* PLACE: *Va.* USUAL PLACE OF ABODE: LAST.

**ABORTION.** — Procuring Abortion, s. 58, 24 & 25 V. c. 100; *Vh.* ADMINISTER: CAUSE TO BE TAKEN: NOXIOUS: POISON. *Vf.* Arch. Cr. 793: Rosc. Cr. 239: 1 Encyc. 29, 30.

**ABORTIVE.** — An “Abortive Trial” is when the case has gone off without a verdict, without the fault, contrivance, or management of the parties; but not when there has been a verdict, though that has been set aside (*Croker v. Orpen*, *Jebb & B.* 43).

**ABOUT.** — *V. Bourne v. Seymour*, 24 L. J. C. P. 202; 16 C. B. 337: *Alcock v. Leeuw*, 1 Cab. & El. 98. *Va.* MORE OR LESS: SAY: THEREABOUTS.

*Vf.* IN OR ABOUT.

In a Charter-Party, the phrase “now sailed, or *about to sail*,” imports, in its latter clause, that the ship is just ready to sail (per Esher. M. R., *Bentsen v. Taylor*, 1893, 2 Q. B. 274; 63 L. J. Q. B. 15; 69 L. T. 487; 42 W. R. 8). *Vf.* NOW.

“About to suspend payment”; *V.* SUSPEND: NOTICE.

**ABOVE.** — “At the above *date*”; *V.* ATTEST.

**ABROAD.** — A Trustee resident in Normandy, though he has attended in England most of the meetings of trustees and is still willing to act, is “abroad,” *quà* vacating his trust and a power to appoint new trustees (*Re Stamford*, 1896, 1 Ch. 288; 65 L. J. Ch. 134). In each case it is a question of fact; *Vh.* *Re Moravian Socy.*, 26 Bea. 101; 6 W. R. 851; *O'Reilly v. Alderson*, 8 Hare, 101.

“Resident abroad”; *V.* RESIDE, at end.

**ABSCOND.** — An Absconding *Debtor*, is, *semble*, an Insolvent Debtor who “departs for distant countries before the necessary proceedings can be taken to make him a bankrupt” (Preamble to 33 & 34 V. c. 76). That statute was repealed by the Bankry Act, 1883, by s. 4 (1 *d*) of which the phrase for “absconding” seems to be, a Debtor who, with intent to defeat, or delay, his Crs. “departs out of England, or, being out of England, remains out of England.” *Vf.* ABSENT; DEPART.

Bankrupt "has absconded, or is about to abscond" (s. 7, Bankry Act, 1890, amending s. 25, Bankry Act, 1883), are words "without limitation as to time, and mean, has absconded before, or is about to abscond after, the Notice or Petition" (per Smith, L. J., *R. v. Northallerton Co. Co. Judge*, 68 L. J. Q. B. 26; 47 W. R. 68; affd. in H. L., 68 L. J. Q. B. 896; 1899, A. C. 439; 80 L. T. 814).

Absconding *Deft*; *V. Jopling v. Stuart*, 4 Ves. 619; *Graver v. Temple*, 9 Sim. 523; 8 L. J. Ch. 213; *Hele v. Ogle*, 2 Hare, 623; *Hamilton v. Hamilton*, Ir. Rep. 6 Eq. 48.

**ABSENCE.** — Judicial Separation obtained in the "Absence" of the respondent, s. 23, 20 & 21 V. c. 85. means, his or her non-appearance in the suit (*Phillips v. Phillips*, L. R. 1 P. & D. 169; 35 L. J. P. & M. 70; 14 L. T. 604; 14 W. R. 902).

**ABSENT.** — "Absent" does not connote that the person referred to was ever previously present; its ordinary sense is, to describe a person or persons as not being in a particular place at the time referred to (*Ashbury v. Ellis*, 1893, A. C. 339; 62 L. J. P. C. 107; 69 L. T. 159).  
*Cp.* RETURN.

S. 4 (1d) Bankry Act, 1883: — "The result of the cases is that a man's intentionally keeping away from any place, where he would in the ordinary course of things be, is absenting himself, though it is not an act of Bankry unless it be with intent to defeat or delay his creditors" (Yate Lee, citing *Ex p. Meyer, Re Stephany*, 41 L. J. Bank. 33; L. R. 7 Ch. 188); but the absenting need not be "from a particular place by physical bodily absence" (per Williams, J., *Re Alderson*, 1895, 1 Q. B. 183; 64 L. J. Q. B. 190). *Vf. Re Worsley*, W. N. (1900), 269; Yate Lee, 47-50; Wms. Bank. 20; Robson, 137; Baldwin, 84. *V.* DEPART. *Cp.* ABSCOND.

To "absent himself" from his service within s. 3, 4 G. 4, c. 34 (repealed), meant absent himself without lawful excuse (*Re Turner*, 9 Q. B. 80; 15 L. J. M. C. 140; *Re Geswood*, 23 L. J. M. C. 35; 2 E. & B. 952), and knowing he had no such excuse (*Rider v. Wood*, 29 L. J. M. C. 1). *Vf. Willett v. Boole*, 30 L. J. M. C. 6; 6 H. & N. 26; *Ashmore v. Horton*, 29 L. J. M. C. 13.

Generally, a WORKMAN who refuses to avail himself of the convenient access to his work at the time and in the manner required by his Employer, "absents" himself from his work, and gives his employer a claim for damages for breach of contract (*Press v. Bowes*, 62 L. J. M. C. 145; affd. nom. *Bowes v. Press*, 1894, 1 Q. B. 202; 63 L. J. Q. B. 165; 70 L. T. 116; 42 W. R. 340; 58 J. P. 280); so, if the workman is late at his work (*Tomlinson v. Ashworth*, 50 J. P. 165).

A Disqualification of a Member of a Board who "absents" himself for a stated period, is not saved by his merely casually looking in at a meeting of the directors or other governing body and taking no part

therein; but if the Minutes record his presence at a meeting, and adds, he "remained neutral," he could not have been "absent" (*Richardson v. Methley School Bd.*, 62 L. J. Ch. 943; 1893, 3 Ch. 510; 69 L. T. 308; 42 W. R. 27).

**ABSOLUTE.** — *V.* ABSOLUTE ASSIGNMENT: ABSOLUTE DAMAGE: ABSOLUTE OWNER: DISCRETION: DISPOSAL: FULL AND ABSOLUTE.

**ABSOLUTE AND INDEFEASIBLE.** — As used in ss. 2, 3, Prescription Act, 1832; *V.* per Lindley, L. J., *Wheaton v. Maple*, cited EASEMENT.

**ABSOLUTE ASSIGNMENT.** — An "Absolute Assignment" which (after "Express Notice in writing" to the debtor) entitles an assignee to sue in his own name for a CHOSE IN ACTION under s. 25 (6), Jud. Act, 1873, need not, necessarily, be an assignment equivalent to a sale out-and-out; it may be only an Equitable Assignment, and of only a part of the debt or fund (*Durham v. Robertson*, inf.: *Sv. Bence v. Shearman*, 47 W. R. 350; 1898, 2 Ch. 582; 67 L. J. Ch. 513; 78 L. T. 804; *Whle*, as to NOTICE, *V.* PAYMENT: the Notice must, if it gives date, give it accurately, *Stanley v. English Fibres, Lim*, 68 L. J. Q. B. 839).

An assignment by way of mortgage is "absolute" if in terms it is so; and though such an assignment is for the purpose of securing payment of a debt, yet it is not "by way of charge only," for a "Charge" is a mere appropriation of a particular fund to a particular debt (*Burlinson v. Hall*, 53 L. J. Q. B. 222; 12 Q. B. D. 347). But the assignment must purport to be absolute; it will not suffice if it purport to be by way of charge only (*Durham v. Robertson*, 1898, 1 Q. B. 765; 67 L. J. Q. B. 484; 78 L. T. 438). It has been said, that if a mortgage assignment, absolute in its terms, contains a proviso for reconveyance, it is not "absolute" within the section (*Nat. Prov. Bank v. Harle*, 50 L. J. Q. B. 437; 6 Q. B. D. 626). But can this latter distinction be maintained? *Seamble*, not (*Tancred v. Delagoa Bay Ry*, 23 Q. B. D. 239; 58 L. J. Q. B. 459; 38 W. R. 15; 61 L. T. 229; 5 Times Rep. 587; and *Vhle*, per Smith, L. J., *Mercantile Bank v. Evans*, inf.).

An Assignment to a Debt Collector by the Crs of a person of their respective debts against such person, in trust for collection and rateably distributing what may be collected, is "Absolute," within the provision, if it is so in terms (*Comfort v. Betts*, 1891, 1 Q. B. 737; 60 L. J. Q. B. 656; 64 L. T. 685; 39 W. R. 595); but, "I hereby assign the whole of my rights under Agreement A as security for (a sum stated), and appoint you my attorney to exercise such rights either in my name or your own," is not an "Absolute Assignment" (*Mercantile Bank of London v. Evans*, 1899, 2 Q. B. 613; 68 L. J. Q. B. 921; 81 L. T. 376).

An authority from A. to B., to pay C. so much periodically "until

further order," is an "Absolute Assignment" (*Knill v. Prowse*, 33 W. R. 163); but a cheque is not (*Schroeder v. Central Bank*, 24 W. R. 710; 34 L. T. 735: *V* CHARGE).

**ABSOLUTE DAMAGE.**—As to the phrase, in a Marine Insurance, "Absolute Damage caused by the Perils insured against"; *V. Forwood v. North Wales Mut. Mar. Insrce*, 9 Q. B. D. 732; 49 L. J. Q. B. 243, 593.

**ABSOLUTE OWNER.**—A Power to Trustees to sell or lease and manage "as if Absolute Owners"; held, to enable them to sell the real and leasehold property in consideration in whole, or in part, of a FEE FARM Rent, or to grant Leases thereof for 999 years, or any less term, in consideration, in whole or in part, of RENT-CHARGES or Ground Rents (*Re Jackson*, 44 S. J. 573).

Quà Agricultural Holdings (Scotland) Act, 1883, 46 & 47 V. c. 62, "Absolute Owner," means the owner or person capable of disposing, by Disposition or otherwise, of the Fee Simple, or Dominium Utile of the whole interest, of or in land, although the land, or his interest therein, is burdened, charged, or incumbered" (s. 42); a similar definition was provided for England by s. 4, 38 & 39 V. c. 92 (repealed).

**ABSOLUTELY.**—"If any independent meaning can be given to 'absolutely,' it must be 'unconditionally'" (per Rigby, L. J., *Re Pickworth*, cited EITHER).

As to the value of this word (added to a Testamentary Gift) for the purpose of preventing a PRECATORY TRUST, *V. Re Sanson*, 12 Times Rep. 142: *Re Williams*, 1897, 2 Ch. 12; 66 L. J. Ch. 485; 76 L. T. 600; 45 W. R. 519:—or to prevent an execution of a Special POWER, *V. Re Sharland*, 68 L. J. Ch. 747; 1899, 2 Ch. 536; 81 L. T. 384: *Sv.* to the contrary, *Re Milner*, 1899, 1 Ch. 563; 63 L. J. Ch. 255; 80 L. T. 151; 47 W. R. 369.

As to whether "Absolutely," in a Use in a Deed, will operate in lieu of Words of LIMITATION, so as to give a Fee Simple, *V. Lysaght v. M'Grath*, 11 L. R. Ir. 142.

**ABSOLUTELY ENTITLED.**—Trustees for sale, having now power to give a complete discharge for the purchase money, are parties or persons "absolutely entitled" within s. 69, Lands C. C. Act, 1845. and s. 23, 19 & 20 V. c. 23 (*Re Gooch*, 3 Ch. D. 742: *Re Hobson*, 47 L. J. Ch. 310; 7 Ch. D. 708: *Re Thomas*, W. N. (82) 7; 30 W. R. 244: but *Re Hobson* was doubted in *Re Smith*, 40 Ch. D. 386; 58 L. J. Ch. 108, yet followed in *Re Morgan*, 1900, 2 Ch. 474; 69 L. J. Ch. 735; 48 W. R. 670), even though the power of sale has not become exercisable (*Re Evans*, 14 Ch. D. 511: *Re St. Luke's, Middlesex*, W. N. (80) 58); and so (when acting jointly with a Tenant for Life) are Trustees who hold upon trust for sale on request of the Tenant for

Life (*Re Word*, 54 L. J. Ch. 231; 28 Ch. D. 719). But a Tenant for Life, though unimpeachable for WASTE, is not within the phrase (*Re Robinson*, 1891, 3 Ch. 129; 60 L. J. Ch. 776; 65 L. T. 244; 39 W. R. 632). *Vh. Ex p. Haberdashers' Co*, 31 S. J. 126; 55 L. T. 758; *Re Curwen*, W. N. (80) 83.

A Tenant for Life is not a person "absolutely entitled" within s. 23, Trustee Act, 1850, 13 & 14 V. c. 60, except for the purpose of an application limited to the income only; nor is one of two or more trustees (*Mackenzie v. Mackenzie*, 21 L. J. Ch. 385; 5 D. G. & S. 338; 16 Jur. 723). But persons duly appointed new trustees are so "absolutely entitled" (*Re Russell*, 20 L. J. Ch. 196; 1 Sim. N. S. 404; *Re Baxter*, 2 Sm. & G. App. v.: *Re Ellis*, 24 Bea. 426; Lewin, 813, 814).

**ABSOLUTELY SELL.** — A conveyance, made by a Railway Co selling SUPERFLUOUS LAND, provided that the purchase-money should not be payable until two years after the statutory period for such a sale: held, that whether the company did "absolutely sell and dispose of" the land, within s. 127, Lands C. C. Act, 1845, was too doubtful for the title to be forced on a subsequent purchaser (*Re Thackwray and Young*, 58 L. J. Ch. 72; 40 Ch. D. 34; 59 L. T. 815, on consideration of judicial dicta in *Lond. & S. W. Ry v. Gomm*, 51 L. J. Ch. 530; 20 Ch. D. 562; *Vf. Ray v. Walker*, 1892, 2 Q. B. 88; 61 L. J. Q. B. 718).

**ABSOLUTION.** — *V. CONFESSION.*

**ABSTRACT.** — An "Abstract of Title," within the meaning of a Condition of Sale restrictive of requirements, means a *perfect* abstract, — *i.e.* perfect so far as the vendor *ought* to make it, and that condition will (in the absence of patent and substantial errors or omissions) be generally fulfilled if the vendor honestly makes the abstract as perfect as he can, having regard to the materials within his control (Dart, 321). Copies of plans on abstracted deeds. — at any rate when the plans are of the essence of the description, — should be delivered with the Abstract to make it "perfect" (Dart, 345: *V. 30 S. J. 796*). *Sv. Bluckburn v. Smith* (18 L. J. Ex. 187; 2 Ex. 783), in which Parke, B., in delivering the judgment of the court said, — "We are not aware that a map or plan is ever deemed to be necessary as a part of an Abstract." *Vf. DELIVERY.*

"Abstract," as used in s. 3 (6), Conv. & L. P. Act, 1881, is to be distinguished from "Abstract of Title" (*Re Johnson*, 54 L. J. Ch. 889; 30 Ch. D. 42).

**ABSTRACTION.** — "As to what constitutes an Abstraction," — of part of an Article of FOOD, within s. 9, Sale of Food and Drugs Act, 1875, — "I feel considerable difficulty in realizing, if, — dealing with a commodity of this kind (MILK) in the usual and ordinary way, and not



omitting to observe any reasonable or customary method of equalizing the distribution of the fatty particles of the milk, — it so happened that a portion of the milk sold in the evening contained a percentage less than that sold earlier, that that is an ‘Abstraction’ under the first or latter part of the section” (per Russell, C. J., *Spiers & Pond v. Bennett*, 1896, 2 Q. B. 65; 65 L. J. M. C. 144; 74 L. T. 697; 44 W. R. 510; 60 J. P. 437). *V. DISCLOSE: SKIMMED MILK.*

**ABUSE.** — “I am not aware that the word ‘abuse,’ applied to a Woman, is ever used except with reference to sexual intercourse. Certainly, in more than one Act of Parliament, the word ‘abuse’ has had that meaning applied to it, and, in my opinion, it always imports some offence of that nature” (per Pollock, C. B., *Re Thompson*, 6 H. & N. 200; 30 L. J. M. C. 24; 3 L. T. 409; 9 W. R. 203), but, in the same case, Bramwell, B., differed, and said, “To my mind, the word ‘abused’ conveys no definite meaning; it is not a Word of Art; in popular language, it means, calling names — abusing by words”: from which latter view Channell, B., dissented, whilst Wilde, B., was “not prepared” to agree with Pollock, C. B.

Words of mere abuse are not SLANDER.

*V. CRUELTY to Animals.*

**ABUT.** — Where two or more properties, with entrances from two or more streets, are occupied for one purpose, they are one entity, quâ an Improvement Area, and “abut” on all the streets (*The Oxford v. London Co. Co.*, 1898, 2 Ch. 491; 67 L. J. Ch. 655; 79 L. T. 22).

If a Conveyance of Land, either in terms or by a plan, describes the parcels as “abutting” on a Road or Street, an implied Right of Way is granted and the grantor is estopped from saying that the land on which the property abuts is not a Road or Street (*Roberts v. Karr*, 1 Taunt. 495; *Espley v. Wilkes*, L. R. 7 Ex. 298; 26 L. T. 918; *Furness Ry v. Cumberland Bg. Socy*, 52 L. T. 144; *Roe v. Siddons*, 22 Q. B. D. 228; 60 L. T. 345; 37 W. R. 228).

*V. ADJOIN: BOUNDING: FRONTING: FORMING.*

**&c.** — *V. ET CETERA.*

**ACCELERATION.** — *V. EXTINCTION.*

As to Acceleration of Estates, Benefits, and Powers: *V. Theobald*, 693. 694.

**ACCEPTANCE.** — “‘Acceptance,’ is a taking in good part, and as it were an agreeing unto, some act done before, — which might have bin undone and avroyded (if such acceptance had not bin) by him or them that so accepted” (*Termes de la Ley*).

For definition and requisites of, and liabilities on, “Acceptance” of a BILL OF EXCHANGE, *V. ss. 2, 17, 18, 19, and 54. Bills of Exchange Act.*

1882; *Vth. Meyer v. Decroix*, 1891, A. C. 520; 61 L. J. Q. B. 205, cited FAVOUR: *Edwards v. Walters*, cited MATURE: "Acceptance for Honour, supra protest," ss. 65, 66, 67, *Ib.*: LOCAL ACCEPTANCE.

As to duty of Acceptor, *V. Scholfield v. Londesborough*, 1896, A. C. 514; 65 L. J. Q. B. 593; 75 L. T. 254; 45 W. R. 124.

Acceptance made; *V. MADE.*

*Vth. Chalmers*, 3, 8, 40 et seq.: Byles, 255-278.

As to the difference between "Acceptance" and "Receipt" of Goods under the Statute of Frauds, repld s. 4, Sale of Goods Act, 1893; *V. Blackb.* 30, citing *Boulter v. Arnott*, 1 Cr. & M. 333; *Va. Taylor v. Smith*, 61 L. J. Q. B. 331; 67 L. T. 39; 40 W. R. 486. *Vf.*, as to "Acceptance," under s. 4 (1, 3), Sale of Goods Act, 1893, *Howe v. Palmer*, 3 B. & Ald. 321; *Hanson v. Armitage*, 5 *Ib.* 557; *Edan v. Dudfield*, 1 Q. B. 302; *Castle v. Sworder*, 6 H. & N. 833; 29 L. J. Ex. 235; 30 *Ib.* 310; *Marrin v. Wallace*, 25 L. J. Q. B. 369; *Gardiner v. Grout*, 29 L. T. O. S. 110; *Hart v. Bush*, 27 L. J. Q. B. 271; E. B. & E. 494; *Nicholson v. Bower*, 28 L. J. Q. B. 97; *Holmes v. Hoskins*, 9 Ex. 753; *Currie v. Anderson*, 29 L. J. Q. B. 87; *Cusack v. Robinson*, 30 L. J. Q. B. 261; 1 B. & S. 299; *Smith v. Hudson*, 34 L. J. Q. B. 145; *Farrer v. Kirkby*, 4 Times Rep. 543; *Abbott v. Wolsey*, 1895, 2 Q. B. 97; 64 L. J. Q. B. 587; 72 L. T. 581; 43 W. R. 513: ACCEPTED: DELIVERY.

As to what is an Acceptance of Goods, generally, *V. Add. C.* 517; *Perkins v. Bell*, 1893, 1 Q. B. 193; 62 L. J. Q. B. 91; 67 L. T. 792.

Acceptance of Offer; *V. Leake*, 16-27: SUBJECT TO.

Acceptance of Shares in a Co; *V. Bog Lead Mining Co. v. Montague*, 30 L. J. C. P. 380; 10 C. B. N. S. 481; *Re London & Northern Bank*, cited *By Posr.*

**ACCEPTED.** — Goods sold are "accepted" by the buyer, within s. 17, Stat. of Frauds, repld s. 4, Sale of Goods Act, 1893, when they, or a part of them, have been, actually or constructively, received by him under such circumstances as import a recognition of the contract, or, as it is now expressed by subs. 3 of the latter section, "there is an Acceptance of Goods when the buyer does any act in relation to the goods which RECOGNIZES a pre-existing contract of sale, — whether there be an acceptance in performance of the contract or not": *Vf.* s. 35. Acceptance of goods sold in order to examine their quality, is none the less an acceptance within the section (*Page v. Morgan*, 54 L. J. Q. B. 434; 15 Q. B. D. 228; 33 W. R. 793; *Kibble v. Gough*, 38 L. T. 204; *Sethle, Taylor v. Smith*, 61 L. J. Q. B. 331; 67 L. T. 39; 40 W. R. 486). As to constructive acceptance, *V. Add. C.* 921: ACCEPTANCE.

Guarantee of all Bills of Ex. "accepted" by A., construed by Pollock, C. B., and Martin, B. (diss. Bramwell, B.), as referring to future Bills (*Broom v. Batchelor*, 25 L. J. Ex. 299; 1 H. & N. 255). *V. GIVEN.*

"Accepted Office" — *e.g.* of Town Councillor — has a colloquial, as

well as a technical meaning; and whether a person has "accepted" is a conclusion to be collected from all the circumstances (*R. v. Slatter*, 9 L. J. Q. B. 115; 11 A. & E. 507; 3 P. & D. 263). *Cp.* APPOINTED.

**ACCEPTOR.** — Of a Bill of Exchange; *V.* ACCEPTANCE: RENUNCIATION.

**ACCESS.** — "In my judgment, the word 'Access' as used in s. 3, Prescription Act, 1832, 2 & 3 W. 4, c. 71 — 'access and use of Light' — does not refer to the access through the orifice, through the aperture, through the window, but to the freedom of passage over the servient tenement, and I think some confusion has arisen from supposing that the access referred to there, is the access through the window of the dominant tenement. Undoubtedly the two are closely connected together, because the right acquired under this section of the statute by the dominant tenement is governed and measured by the access to the dominant tenement, and therefore the aperture which lets the light into the dominant tenement defines in a manner familiar to us all the area which must be kept free over the servient tenement. The two things are closely connected together; the one is the measure of the other; but they are not the same thing" (per Fry, L. J., *Scott v. Pape*, 55 L. J. Ch. 432: 31 Ch. D. 554; 54 L. T. 399; 34 W. R. 465. *Vf.* *Greenwood v. Hornsey*, 55 L. J. Ch. 917; 33 Ch. D. 471; 55 L. T. 135; 35 W. R. 163: *Cooper v. Straker*, 58 L. J. Ch. 29; 40 Ch. D. 20).

*V.* ACTUALLY ENJOYED.

"Access" to Children, in a Deed of Separation, does not include Custody (*Evershed v. Evershed*, 30 W. R. 732; 46 L. T. 690); nor does a covenant to give "Access" bind the covenantor to keep the children in a place where the covenantee can conveniently have access to them (*Hunt v. Hunt*, 28 Ch. D. 606; 54 L. J. Ch. 289).

**ACCESSORY.** — "An Accessory *Before the Fact* is one who directly or indirectly counsels, procures, or commands any person to commit any felony or piracy which is committed in consequence of such counselling, procuring, or commandment. Knowledge that a person intends to commit a crime, and conduct connected with and influenced by such knowledge, is not enough to make the person who possesses such knowledge, or so conducts himself, an accessory before the fact to any such crime, unless he does something to encourage its commission actively" (Steph. Cr. 32: *Vf. Ib.* Art. 40-44). *Vf.* Arch. Cr. 15-20: 24 & 25 V. c. 94.

"Every one is an Accessory *After the Fact* to felony who, knowing a felony to have been committed by another, receives, comforts, or assists him, in order to enable him to escape from punishment; or rescues him from an arrest for the felony; or having him in custody for the felony, intentionally and voluntarily suffers him to escape; or opposes his apprehension: — Provided that a married woman who receives, comforts, or

relieves her husband knowing him to have committed a felony, does not thereby become an accessory after the fact" (Steph. Cr. 35). *Vf.* Arch. Cr. 1227: Rose. Cr. 157-164: Termes de la Ley: Cowel: 1 Encyc. 58-60. 24 & 25 V. c. 94.

*I.* ACCOMPLICE.

"Accessory to or Conniving at" Adultery, s. 30, 20 & 21 V. c. 85; *I.* CONNIVANCE.

"Accessories" to GUNS; held, not to include duplicates of their parts, which, accordingly, had to be paid for as "guns" (*Armstrong & Co v. Hotchkiss Co*, 13 Times Rep. 188).

**ACCIDENT.** — "An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it" (Steph. Cr. 143).

"The idea of something fortuitous and unexpected is involved in both words, 'Peril' or 'Accident'" (per Halsbury, C., *Hamilton v. Pandorf*, 57 L. J. Q. B. 27; 12 App. Ca. 524; 57 L. T. 726; 36 W. R. 369). "Suppose a man were to go blind-fold along the street and to run against something, — Could any one say, he met with an Accident? He would do an act that would be very likely to lead to a mischief. It is different with the person who might suffer by such act; *he* might fairly say that he met with an Accident, — a Peril which is liable to every man who goes out in the road and meets with negligent people" (per Bramwell, B. *Lloyd v. Gen. Iron Screw Collier Co*, cited PERILS OF THE SEA).

"The word 'Accident' may be used in either of two ways. An Accident may be spoken of (1) as occurring to a person, — or (2) as occurring to a train, or vehicle, or bridge. In the latter case, though several persons were injured who were in the train, or vehicle, or on the bridge, it would be *an* Accident to the train, or vehicle, or bridge. There might, however, be said to be *several* Accidents to the several persons injured" (per Bowen, L. J., *South Staffordshire Tramways Co v. Sickness & Accident Assuree*, cited ONE ACCIDENT).

*Cp.* MISFORTUNE: ADVENTURE, at end.

An Exception in a Charter-Party against "Riots, Strikes, or any other Accident," does not include a snow-storm. "An accident is not an ordinary occurrence, but something which happens out of the ordinary course of things. A snow-storm, however, is one of the ordinary operations of nature, and may be described rather as an Incident than an Accident" (per Willes, J., *Fenwick v. Schmalz*, 37 L. J. C. P. 80; L. R. 3 C. P. 313; *Vf.* 1 Maude & P. 357: *Laurie v. Douglas*, 15 M. & W. 746).

"Accidents," or "Dangers," "Of the Sea," are synonymous with "Perils of the Sea." (*V.* DANGERS: PERILS OF THE SEA.) *Cp.* ACT OF GOD.

"Accidents to Railways and to Mines or Piers," in an Exception to a Charter-Party; held, to include accidents preventing the cargo from being brought to the place of shipment, as well as those preventing the shipment (*Furness v. Forwood*, 2 Com. Ca. 223; 13 Times Rep. 500).  
*Cp.* DETENTION BY ICE.

Delay through "Accidents to Railway" in such an Exception; *V. Re Richardson and Samuel*, cited CONTROL.

Death by drowning (*Trew v. Ry Insrce*, 30 L. J. Ex. 317; 6 H. & N. 839), even if the insured were drowned in shallow water whilst in a state of insensibility (*Reynolds v. Accidental Insrce*, 22 L. T. 820), is an "Accident" within a Policy against accidents. So of a Fright (*Pugh v. L. B. & S. Ry*, 1896, 2 Q. B. 248; 65 L. J. Q. B. 521; 74 L. T. 724), though injuries from fright may be too remote in an action for Negligence (*Victorian Ry v. Coultas*, 57 L. J. P. C. 69; 13 App. Ca. 222; 58 L. T. 390; *Sthe* not followed in *Dulieu v. White*, 1901, 2 K. B. 669; *Vf. Sneesby v. Lancashire & Y. Ry*, 45 L. J. Q. B. 1; 1 Q. B. D. 42; 33 L. T. 372; 24 W. R. 99; *Wilkinson v. Downton*, 1897, 2 Q. B. 57; 66 L. J. Q. B. 493; 76 L. T. 493; 45 W. R. 525). But Sun-stroke is not an Accident within a Policy (*Sinclair v. Maritime Assrce*, 30 L. J. Q. B. 77; 3 E. & E. 478).  
*V.* SECONDARY: CAUSED BY: ONE ACCIDENT.

"Accident," s. 22, Factories Act, 7 V. c. 15; *V. Lakeman v. Stephenson*, 37 L. J. M. C. 57; L. R. 3 Q. B. 192; 9 B. & S. 54. "Accident," s. 15, Peak Forest Canal Act, 34 G. 3, c. 26; *V. Evans v. Manchester, S. & L. Ry*, 3 Times Rep. 691.

There is no "Accident," — nothing "fortuitous and unexpected," — within s. 1 (1), Workmen's Comp. Act, 1897, if injury or death ensues from the rupturing of a blood-vessel through internal weakness (*Hensley v. White*, 1900, 1 Q. B. 481; 69 L. J. Q. B. 188; 81 L. T. 767; 48 W. R. 257; 63 J. P. 804; but *Cp. Timmins v. Leeds Forge Co*, inf.), or from a strain caused by unusual exertion (*Roper v. Greenwood*, 83 L. T. 471), or from something poisonous getting into a blistered finger (*Walker v. Lilleshall Co*, 1900, 1 Q. B. 481; 69 L. J. Q. B. 192; 81 L. T. 769; 48 W. R. 257; 64 J. P. 85); but if an unexpected occurrence itself causes damage, it is none the less an "Accident" because the resultant damage is increased by a bodily weakness (*Lloyd v. Sugg*, 1900, 1 Q. B. 481; 69 L. J. Q. B. 190; 81 L. T. 768; 48 W. R. 257); and, *semble*, if work be rendered harder by something unforeseen supervening, *e.g.* a frost, and the workman, continuing his work, gets ruptured through the work being harder, that is an "Accident" (*Timmins v. Leeds Forge Co*, 83 L. T. 120).

As of general acceptance there can be no Accident "in the discharge of Duties" if the injury arises through disobedience of lawful orders (*Vickery v. G. E. Ry*, 79 L. T. 121). *Vf.* "In the course of his employment," sub EMPLOYMENT.

Stoppage of an Apprentice's Wages when a stand-still is caused through "Accident"; *V. TURN-OUT.*

"Policy of Insurance against Accident," quæ the Penny Duty by Stamp Act, 1891, "means, a Policy of Insrce for any payment agreed to be made *upon* the death of any person, only from Accident or Violence or otherwise than from a Natural Cause, or as compensation for Personal Injury; and includes any Notice or Advertisement, in a newspaper or other publication, which purports to insure" such payment (s. 98). That definition does not include an Insrce to an EMPLOYER against his liability under the Employers' Liability Act, 1880, or the Workmen's Comp. Act, 1897, because that liability itself lies at the very root of the matter, — it springs out of the workman's employment, and that employment is the Condition "UPON" which the liability of the insurer depends; therefore, a Policy of such an Insrce must be stamped as a Deed, if under seal, or, if not, as an Agreement (*Lancashire Insrce v. Inl. Rev.*, 1899, 1 Q. B. 353; 68 L. J. Q. B. 143; 79 L. T. 731; 47 W. R. 396; 63 J. P. 21).

On Accident Insurance, generally, *V. 1 Encyc. 61.*

*V. INADVERTENCE: INEVITABLE: FATAL: POISON.*

**ACCIDENTAL.** — *V. EXTERNAL* in the case there cited (*Hamlyn v. Crown Insrce*) Esher, M. R., defined "Accidental" as an "unexpected result," whilst Lopes, L. J., said, the word meant "something unforeseen and unexpected and casual."

Omission, to file Contract, "Accidental or due to Inadvertence"; *V. INADVERTENCE.*

"Accidental Slip, or OMISSION," in Matters of Practice; *V. Read v. Purcell*, Ir. Rep. 9 Eq. 591; *Hatton v. Harris*, 29 L. R. Ir. 303.

**ACCIDENTALLY.** — By s. 86, 14 G. 3, c. 78, a person in whose premises a fire "*accidentally* begins" is exonerated from liability to his neighbour for damage occasioned by such fire: — "Accidentally" there is not used in contradistinction to "wilfully," but means, "a fire produced by mere chance, or incapable of being traced to any cause"; and does not mean a fire arising from negligence (*Filliter v. Phippard*, 17 L. J. Q. B. 89; 11 Q. B. 347; *17. Add. T. 341*, and cases there cited). As to the common law responsibility for damage caused by fires, see *Add. T. 339*, and obs. at commencement of Lord Lyndhurst's judgment in *Canterbury v. The Queen*, 12 L. J. Eq. 281; 1 Phill. 318.

"Carelessly, or Accidentally," break a Street Lamp; *V. CARELESSLY.*

**ACCLIMATIZE.** — Machines are "acclimatized" when, after having been SET UP in the rough, they are worked for a little time to be smoothed and put into gear, so as to be made true and work smoothly (*Armitage v. Haigh*, 9 Times Rep. 287).

**ACCOMMODATION.** — "An 'Accommodation Bill' has been defined to be a Bill on which the Drawer has no right to sue the Acceptor"

(per Pollock, C. B., *King v. Phillips*, 13 L. J. Ex. 332; 12 M. & W. 705), because it is given by the Acceptor for the Drawer's accommodation.

"An Accommodation Party to a Bill is a person who has signed a Bill, as Drawer, Acceptor, or Indorser, without receiving Value therefor, and for the purpose of lending his name to some other person.

"(2) An Accommodation Party is liable on the Bill to a Holder for Value, and it is immaterial whether, when such Holder took the bill, he knew such party to be an Accommodation Party or not" (s. 28, Bills of Ex. Act, 1882): and so of an Accommodation Party to a Note (s. 89, *Ib.*).

"Works for the Accommodation of Lands adjoining the Ry." s. 68, Ry. C. C. Act, 1845, do not, *semble*, comprise matters beneath the surface of the land, *e.g.* Drains (*R. v. Fisher*, 32 L. J. M. C. 12; 3 B. & S. 191; 7 L. T. 325). Observe, that the Accommodation is to be for the use of "lands adjoining the Ry," not for outside lands (*Rhondda, &c. Ry v. Talbot*, 1897, 2 Ch. 131; 66 L. J. Ch. 570; 76 L. T. 694); and it must be for the use of such adjoining lands in the condition and circumstances thereof when the Ry was made (*R. v. Brown*, 36 L. J. Q. B. 322; L. R. 2 Q. B. 630; 16 L. T. 827; 15 W. R. 988: *Rhondda Ry v. Talbot*, *sup.*): regard must be had to that rule in determining what Accommodation Works are "Insufficient," within s. 71, *Ib.* (*Rhondda Ry v. Talbot*).  
V. WORKS.

#### V. PROPER LODGING.

**ACCOMPANY.** — Things "accompanying," or "to accompany," each other, should, as nearly as possible, be simultaneous. Therefore, an Agreement, referring to, and confirming, a previous Deposit of Deeds, is not "accompanied with" the deposit, so as to be liable to Duty as a MORTGAGE, within Sch. tit. "Mortgage," 55 G. 3, c. 184: s. 105, Stamp Act, 1870: s. 88, Stamp Act, 1891 (*Pyle v. Partridge*, 15 L. J. Ex. 129; 15 M. & W. 20). *Cp.* Ar.

#### ACCOMPLICE. — V. ACCESSORY.

As to evidence of an Accomplice; *V. Russ. Cr.*, Bk. 5, Ch. 5, s. 6: *Rosc. Cr.* 113-118: *Arch. Cr.* 360: 1 *Encyc.* 68.

**ACCOMPLISH.** — "One of these Bills of Lading being *accomplished*, the others shall stand void"; — which I understand to mean, that if upon one of them the shipowner acts in Good Faith he will have 'accomplished' his contract, will have fulfilled it and will not be liable or answerable upon any of the others" (per *Ld. Cairns, Glyn v. E. & W. India Dock Co*, 7 App. Ca. 599; 52 L. J. Q. B. 146; 47 L. T. 301: 31 W. R. 201).

**ACCORD.** — An Accord, or an Accord and Satisfaction, "is an Agreement betweene two at the least to satisfie an offence that the one hath made to the other, when a man hath done a trespasse, or such like.

unto another for the which hee hath agreed with him to satisfie and content him with some recompence, which, if it be executed and performed, then, because that this recompence is a full Satisfaction for the offence, it shall be a good barre in the law, if the other, after the Accord performed, should sue againe any action for the same trespasse" (Termes de la Ley), "and, generally, in all actions, where Damages only are to be recovered, Arbitrament, or Accord with Satisfaction, is a good Plea" (*Blake's Case*, 6 Rep. 44).

*Vh.* Add. C. 1232: Add. T. 46: *Rosc. N. P.* 653: *Leake*, 755: 1 *Encyc.* 69-71. *Cp.* CONCORD: GREE.

**ACCORDANCE.** — *V.* IN ACCORDANCE WITH THE FORM: IN ACCORDANCE WITH THE JUDGMENT.

**ACCORDING.** — Discharge of Cargo "according to the *Custom*" of the Port; *V. The Nifa*, 1892, P. 411; 62 L. J. P. D. & A. 12: *Vf.* CUSTOMARY.

A conveyance by A. "according to his *Estate and Interest*," may be narrowed by the context to less than the whole of A.'s Estate and Interest (*Williams v. Pinckney*, cited ESTATE).

"According to the *Rate Book*"; *V. Palmer v. Balrothery*, 1895, 2 I. R. 586.

"According to their *Respective Powers*," s. 2, Ry & Canal Traffic Act, 1854, does not refer to Powers restricted by any private agreements with individuals (*Rishton v. Lanc. & Y. Ry*, 8 Ry. & Can. Traffic Ca. 74).

"According to the *Statute*"; *V. Frost v. Williams*, 7 A. & E. 773.

"According to the *Stocks*"; *V. PER STIRPES.*

"According to the *Terms*"; *V. TERMS.*

**ACCORDINGLY.** — Agreeably; conformably; or in that capacity (*Lindley v. Girdler*, 13 L. J. Q. B. 53).

"Accordingly," s. 13, Ry. C. C. Act, 1845, means not only that the Ry. to be carried on an arch, shall be in the place described (*Little v. Newport Ry*, 12 C. B. 752, 761; 22 L. J. C. P. 39), but also that it shall be according to the Plans and Sections (*A.-G. v. Tewkesbury Ry*, 32 L. J. Ch. 482).

**ACCOUNT.** — "By the Common Law an ACTION of Account for the rents and profits may be maintained by the Heir, after he has attained the age of 14 years, against the Guardian in Socage; so, at the Common Law, Account will lie against the Bailiff or Receiver, and (in favour of trade and commerce) by one Merchant against another" (*Selwyn*, N. P., tit. "Account," quoted by Tindal, C. J., *Cottam v. Partridge*, cited MERCHANT). "The limited notion I attach to the Action of Account, is, that it lies only where there has been a privity



between the parties; not to the case of ordinary dealing between one tradesman and another" (per Tindal, C. J., *ib.*).

"An Action for an Account is not a series of actions for damages for breach of contract on which you get separate judgments. The Account is taken and you get judgment for the balance" (per Lindley, M. R., *Manners v. Pearson*, 67 L. J. Ch. 306; 1898, 1 Ch. 581; 78 L. T. 432; 46 W. R. 498). *Vf.* MERCHANT'S ACCOUNTS.

"Suits for such Accounts as concern the trade of merchandize between merchant and merchant," s. 9, Mer. Law Amend. Act, 1856, means, Suits in Courts of Equity (per Stirling, J., *Re Friend*, 1897, 2 Ch. 421; 66 L. J. Ch. 737; 78 L. T. 222; 46 W. R. 139, referring hereon to *Knox v. Gye*, 42 L. J. Ch. 234; L. R. 5 H. L. 656).

"I hereby GUARANTEE A.'s account with you, to the amount of £100," "is an undertaking merely to be answerable for some *existing* account" (per Tindal, C. J., *Allnut v. Ashenden*, 5 M. & G. 397; 12 L. J. C. P. 124), although the existing account is considerably under £100: the guarantee was accordingly held void because based on a past consideration. At the end of the report in M. & G. the reporter adds this note, — "Had mercantile witnesses been examined at the trial, it is probable that they would have concurred in stating that the word 'account' in this guarantee would be understood, in the commercial world, as equivalent to the word 'dealings.'" *Vf.* CONTINUING GUARANTEE.

"Wholly or in part matters of *Mere Account*," s. 3, Com. L. Pro. Act, 1854; — The meaning of the power of ordering a Compulsory Arbitration under these words is, "that where the matter in dispute consists, either wholly or in part, of matters of *Mere Account*, the compulsory reference may be either of the whole, or of part only, of the matter in dispute, as the Court or Judge may think fit" (per Jervis, C. J., delivering judgment of the Court in *Browne v. Emerson*, 25 L. J. C. P. 105, 106; 17 C. B. 361). In *Clow v. Harper* (47 L. J. Ex. 393; 3 Ex. D. 198), Cockburn, C. J., said that "when the matter in dispute involves mere matter of account, then it is competent to the Court to send the whole matter for the decision of the arbitrator. But when it is only *in part* a matter of account, and quoad the rest a matter of fact or law, the latter part is not a proper subject of the Order, but the Order must be limited to the questions of account." Brett, L. J., concurred in that opinion; Bramwell, L. J., doubted. But the section cited is now replaced by s. 14 (c), Arb. Act, 1889, which omits the word "mere," and, under it, the Court can compulsorily refer an action when part of the dispute is substantially a matter of account (*Hurlbatt v. Barnett*, 1893, 1 Q. B. 77; 62 L. J. Q. B. 1; 67 L. T. 818; 41 W. R. 33, displacing *Wood v. Ward*, cited QUESTION). *Vf.* Ann. Pr.

An action for Dilapidations, or for breach of covenant to Repair "is one of *Mere Account*" where only the quantum is in dispute (*Cummins v. Birkett*, 27 L. J. Ex. 216; 3 H. & N. 156; *Angell v. Filgate*, 31 L. J.

Ex. 41; 7 H. & N. 396); *secus* if the liability is disputed (*Clow v. Harper*, sup.).

*Wh.*, as to reluctance to limit the Judge's discretion in making the Order, *Sheard v. Learoyd*, 2 Times Rep. 632; *Knight v. Coales*, 19 Q. B. D. 296; 56 L. J. Q. B. 486; 35 W. R. 679; *Hurlbutt v. Barnett*, sup.

"Accounts, &c. which circumstances may require"; *V. REQUIRE.*

An Account *Stated* is, "an agreement by both parties that all the articles are true" (per Mansfield, C. J., *Trueman v. Hurst*, 1 T. R. 42). *Wh. Rose*. N. P. 619.

*V. ACCOUNTS: BOOKS OF ACCOUNT: ON THE ACCOUNT: MERCHANT'S ACCOUNTS: MUTUAL ACCOUNTS: DEBT, CLAIM OR DEMAND.*

**ACCOUNTABLE.** — *V. NOT LIABLE.*

"Accountable Officer," quâ Part 2, Customs and Inl. Rev. Act, 1885, 48 & 49 V. c. 51; *V. s. 12.*

"Accountable Receipt"; *V. RECEIPT.*

**ACCOUNTANT.** — A person who carried on business as Agent to an Accountant, and was employed as accountant by other persons, was held to be properly described as "Accountant," for the purposes of the Bills of Sale Acts (*Briggs v. Boss*, 37 L. J. Q. B. 101; L. R. 3 Q. B. 268); but a clerk in the Accountant's Office of a Railway, who occasionally works for other people after office hours, is not properly described as "Accountant" (*Larchin v. North Western Deposit Bank*, 44 L. J. Ex. 71; L. R. 10 Ex. 64). In the latter case, Mellor, J., said, "I think in *Briggs v. Boss* we went to the extreme limit."

*V. GOVERNMENT ACCOUNTANT: PUBLIC ACCOUNTANT.*

Stat. Def., *Scot.* 19 & 20 V. c. 79, s. 4: — Accountant of the Court of Session, 43 & 44 V. c. 4, s. 3.

**ACCOUNTANT GENERAL.** — Stat. Def., 33 & 34 V. c. 71, s. 3; 53 & 54 V. c. 21, s. 39. — *Ir.* 20 & 21 V. c. 79, s. 2.

**ACCOUNTS.** — As used in the power of reference given by s. 57, Jud. Act, 1873, "Accounts" is widely interpreted, so as to include questions requiring scientific investigation (*Rowcliff v. Leigh*, 3 Ch. D. 292; *Va. Hoch v. Boor*, 43 L. T. 425; 49 L. J. Q. B. 665).

*V. ACCOUNT: KEEP ACCOUNTS.*

**ACCRETION.** — *V. INCREASE: 1 Encyc. 81.*

**ACCRUE.** — "RENT accrues when it becomes due, and at no other time. If, however, there be no demise, and an action be brought merely for Use and Occupation, then the compensation due for such Actual Occupation 'accrues,' like Interest, *de die in diem*" (per Patteson, J., *Slack v. Sharpe*, 8 A. & E. 373). But when a tenant becomes bankrupt

during the currency of a quarter, or other period, the current rent is apportionable under the Apportionment Act, 1870, and the proportionate part up to the bankry is "Rent *accrued due*, prior to the date of adjudication," for which the landlord, after the expiry of such quarter or other period, may distrain under s. 42 (1), Bankry Act, 1883 (*Re Howell*, 1895, 1 Q. B. 844; 64 L. J. Q. B. 454; 72 L. T. 472; 43 W. R. 417. *Cp. Re Lucas*, cited DUE.

A TITLE "accrues" when the instrument creating it, or the fact constituting it, first becomes operative; therefore s. 5, M. W. P. Act, 1882, applies only to property of a married woman her original title to which accrued after the commencement of the Act, and it does not embrace property in Remainder at the time of, but which comes into possession after, the commencement of the Act (*Reid v. Reid*, 55 L. J. Ch. 294; 31 Ch. D. 402; 34 W. R. 332: *Vf. Re Parsons*, cited CONTINGENT: *Re Beupre*, 21 L. R. Ir. 397). *Cp. ACQUIRE*.

Covenants to settle property which may "accrue"; *V. Hoare v. Hornby*, 2 Y. & C. Ch. 121; 12 L. J. Ch. 151; *Maclurean v. Lane*, 7 W. R. 135; 5 Jur. N. S. 56. In *Hoare v. Hornby*, Knight-Bruce, V. C., said, "'Accrue' must be intended as meaning that which might come by a fresh and new Title." *Cp. ENTITLED*.

A cause of action for a Tort "accrues" when it becomes effective, *i.e.* when the resulting damage manifests itself. *V. CAUSE OF ACTION*.

"Accruing Debt"; *V. DEBT*.

"Accruing DIVIDEND," in a Public Co, is a dividend in process of being earned, but not yet declared; and a testamentary declaration that a bequeathed Share in a Co "shall carry the dividend accruing thereon" at the testator's death, passes to the legatee the dividend declared thereon after his death for the period then current; and the legatee takes it without apportionment, because by those words it is "EXPRESSLY STIPULATED" that there shall be no apportionment (*Re Lysaght*, 1898, 1 Ch. 115; 67 L. J. Ch. 65; 77 L. T. 637).

Commission, "on all moneys *accruing from Engagements*," is only payable on what is actually earned, and not on what ought to have been earned (*Didcott v. Friesner*, 11 Times Rep. 187).

"Rights accrued"; *V. RIGHTS*.

"Accruing *Share and Interest*"; *V. Greenwood v. Sutcliffe*, 23 L. J. C. P. 98; 14 C. B. 226. *Vf. SHARE*.

"Arising or Accruing"; *V. ARISING*; by Cesser; *V. CESSER*.

*V. FIRST ACCRUED*: *Cp. ARISE*.

**ACCUMULATION.**—Bequest of a sum to be invested, "and all Bonuses and Accumulations thereof"; *V. Re Oram*, 16 L. T. 376.

"It cannot, perhaps, be considered as quite settled whether an Accumulation which arises, not by the *direction* of the settlor, but by *operation of law*, is within the THELLUSSON ACT," 39 & 40 G. 3. c. 98 (Watson,

Eq. 5, *whv* for consideration of cases thereon). The word "accumulate" is not necessary; a direction to "invest," or the like, for a period prohibited is within the Act (*Matthews v. Keble*, 37 L. J. Ch. 8, 657; L. R. 4 Eq. 467; 3 Ch. 691; *Re Mason*, 1891, 3 Ch. 467; 61 L. J. Ch. 25; *Sr*, *Re Pope*, 45 S. J. 45; 70 L. J. Ch. 26). As to the exception from the Act, of a provision for Debts, *V. Varlo v. Faden*, cited DEBTS:—As to a similar exception of Portions, *V. PORTION*:—*quà* Repairs and Improvements, *V. Vine v. Ruleigh*, 1891, 2 Ch. 13; 60 L. J. Ch. 675; 63 L. T. 573; *Re Mason*, *sup.*

*Vf.* hereon generally, Watson, Eq. 4, 'tit. "Accumulations": 1 Encyc. 82: Accumulations Act, 1892, 55 & 56 V. c. 58, on *whv Re Danson*, cited LAND.

The legislation hereon applies to a CHARITY, as well as to an individual (*Wharton v. Masterman*, 1895, A. C. 186; 64 L. J. Ch. 369; 72 L. T. 431; 43 W. R. 449).

In the phrase "Accumulation, or DEPOSIT, which is a NUISANCE, or injurious to health," s. 107, P. H. (Ir.) Act, 1878, "Accumulation" and "Deposit" are used in their natural sense:—" 'Accumulation' implies some gradual accretion, a heaping up of matter increasing from day to day; and 'Deposit' means something that is put down in some place and left there. Both these words involve the idea of a certain degree of permanency, and cannot be held to touch the case of loading and unloading manure from the Company's waggons at a Ry Station, for the purpose of its delivery to farmers who come to take it" (*G. N. Ry v. Lurgan*, 1897, 2 I. R. 351).

**ACCUSATION.**—"Accusation," s. 49, 24 & 25 V. c. 96, means allegation of misconduct; but in s. 46 it is confined to an allegation charging crime as therein specified (*R. v. Tomlinson*, 1895, 1 Q. B. 706; 64 L. J. M. C. 97; 72 L. T. 155; 43 W. R. 544; 18 Cox C. C. 75).  
*V. ACCUSE*: MENACE: INFAMOUS CRIME.

**ACCUSE.**—To "accuse, or threaten to accuse" of a Crime, s. 47, 24 & 25 V. c. 96, is not restricted to the narrow meaning of accuse by course of law, but means, to allege, or threaten to allege, before any third person (per Patteson, J., *R. v. Robinson*, 2 Moo. & R. 16), whether the prosecutor be really guilty of the crime or not, if the object be extortion (*R. v. Gardner*, 1 C. & P. 479). *Vf. R. v. Redman*, L. R. 1 C. C. R. 12; 35 L. J. M. C. 89; 14 L. T. 303; 14 W. R. 56: ACCUSATION.

**ACCUSED PERSON.**—Stat. Def., 33 & 34 V. c. 52, s. 26.

**ACCUSTOMABLY.**—*V. USUALLY.*

**ACCUSTOMED RENT.**—"Old and Accustomed Rent"; *V. Mountjoy's Case*, 5 Rep. 3 b.

"Accustomed Rent"; *V. Doe d. Douglas v. Lock*, 4 L. J. Q. B. 113; 2 A. & E. 705; 4 N. & M. 807.

“Ancient and Accustomed Rent”; *V. Doe d. Biddulph v. Holt*, 20 L. J. Q. B. 57; 15 Q. B. 848.

“Yearly Ferm or Rent . . . accustomedly yielden or paid,” s. 2, 32 H. 8, c. 28; 13 Eliz. c. 10; *V. Doe d. Tennyson v. Yarborough*, 7 Moore C. P. 258; 1 Bing. 24.

*Vh. Sug. Pow.* 793; Farwell, 625.

V. ANCIENT RENT.

**ACKNOWLEDGE.**—“I acknowledge A. B. to be my heir-at-law”; held to pass the testator’s lands in fee (*Parker v. Nickson*, 32 L. J. Ch. 397; 1 D. G. J. & S. 177). In giving judgment in that case Westbury, C., said, — “Nothing is better settled in our law than that the words ‘I make A. B. my heir,’ or ‘I declare A. B. to be my heir,’ or even the words ‘A. B. is my heir,’ amount to a devise to A. B. in fee of all the inheritable lands of the testator”; for as “Jermain, J., said (*Taylor v. Web*, Styles, 301, 319), ‘the word *Heir* implies two things: first, that he shall have the lands; secondly, that he shall have them in fee simple.’” So of a nomination of an heir by such expressions as “I appoint” or “I nominate” (*Spark v. Purnell*, Hob. 75). So where a testator constituted his dearly-beloved wife sole executrix and “Heiress of all his lands and real and personal estate,” to sell same at pleasure and to pay debts and legacies, she was held entitled to retain the surplus proceeds after payment of debts and legacies, and that there was no resulting trust in favour of the heir as regards such surplus (*Rogers v. Rogers*, 3 P. Wms. 193, stated 1 Jarm. 570). V. SOLE HEIR.

V. ACKNOWLEDGMENT.

**ACKNOWLEDGMENT.**—An Acknowledgment, in writing, of a DEBT, s. 1, 9 G. 4, c. 14, and s. 13, Mer. Law Amend. Act, 1856, so as to take such debt out of the Limitation Act, 1623, 21 Jac. 1, c. 16. must, — (1) admit that the debt is due, and (2) promise, or justify the inference of a promise, of payment unconditionally, or (if conditionally) it must be shown that the condition has been accomplished: — For the cases laying down and illustrating this interp. *V. Rose*, N. P. 676 et seq.; Add. C. 1259 et seq.: 45 S. J. 443–445. An Acknowledgment by one of several Exors suffices (*Re Muedonald*, 1897, 2 Ch. 181; 66 L. J. Ch. 630; 76 L. T. 713; 45 W. R. 628, distinguishing *Tulloch v. Dunn*, Ry. & Moo. 416, and *Scholey v. Walton*, 13 L. J. Ex. 122; 12 M. & W. 510: *Va. Astbury v. Astbury*, inf.). *Vf.* ATTENDED TO: ONLY.

An Acknowledgment of a DEED, or SPECIALTY, by writing or part payment or part satisfaction, s. 5, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42, will suffice if it contains a clear admission of the Specialty Debt (Add. C. 1258: *Vf. Moodie v. Bannister*, 28 L. J. Ch. 881; 4 Drew. 432: *Howcutt v. Bonser*, 18 L. J. Ex. 262; 3 Ex. 499; *Forsyth v. Bristowe*, 8 Ex. 721; 22 L. J. Ex. 255).

Quà, s. 40, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27. repld

s. 8, 37 & 38 V. c. 57; *V. Chinnery v. Evans*, 11 H. L. Ca. 115; 4 N. R. 520; *Toft v. Stephenson*, 21 L. J. Ch. 129; 1 D. G. M. & G. 28; 7 Hare, 1; *St. John v. Boughton*, 7 L. J. Ch. 208; 9 Sim. 219; *Barrett v. Birmingham*, 4 Ir. Eq. 537; *Blair v. Nugent*, 3 J. & La T. 658; *Milington v. Thompson*, 3 Ir. Ch. Rep. 236; *Hill v. Stawell*, 2 Ir. L. R. 302, on *whlev*, *Barrett v. Birmingham*, *sup.*, *Morrogh v. Power*, 5 Ir. L. R. 494, and *Hannan v. Power*, 8 Ib. 505. *Vf.* PAYMENT.

Quà RENT (not reserved by a formal Lease, as to *whc* s. 3, 3 & 4 W. 4, c. 42), and INTEREST ON MONEY CHARGED UPON land, or Interest on Legacy, s. 42, 3 & 4 W. 4, c. 27; *V. Holland v. Clark*, 1 Y. & C. Ch. 151; *Jortin v. S. E. Ry.*, 6 D. G. M. & G. 291; *Bolding v. Lane*, 1 D. G. J. & S. 122; 32 L. J. Ch. 219; *Astbury v. Astbury*, 1898, 2 Ch. 111; 67 L. J. Ch. 471; 46 W. R. 536; 78 L. T. 494; *Re West*, 3 L. R. Ir. 77; *Grenfell v. Girdlestone*, 2 Y. & C. Ex. 662; 7 L. J. Ex. Eq. 42; *Re Fitzmaurice*, 15 Ir. Ch. Rep. 445. *Vf.* PAYABLE.

Acknowledgment of TITLE, s. 14, Real Property Limitation Act, 1833; *V. Curzon v. Edmonds*, 6 M. & W. 295; *Dublin Socy v. Richards*, 1 Dr. & War. 258; *Dublin Corp v. Judge*, 11 Ir. L. R. 8; *Spencer v. Beckett*, 4 Q. B. 601; *Fursdon v. Clogg*, 10 M. & W. 572; *Jayne v. Hughes*, 10 Ex. 430; 24 L. J. Ex. 115; *Ley v. Peter*, 3 H. & N. 101; 27 L. J. Ex. 239; *Goode v. Job*, 1 E. & E. 6; 28 L. J. Q. B. 1; *Phillipson v. Gibbon*, 6 Ch. 434; 40 L. J. Ch. 406; 24 L. T. 602; 19 W. R. 661.

Quà Mtgee in Possession, s. 28, Real Property Limitation Act, 1833, repld s. 7, 37 & 38 V. c. 57; *V. Trulock v. Roby*, 12 Sim. 402; *Stansfield v. Hobson*, 3 D. G. M. & G. 620; 22 L. J. Ch. 657; *Thompson v. Bowyer*, 11 W. R. 975; 2 N. R. 504; *Batchelor v. Middleton*, 6 Hare, 75.

Note. The cases in the last four preceding pars may be referred to as regards each.

#### V. PAYMENT.

*Vh.* Darby & Bosanquet on Stat. of Limitations, 2nd Ed. 266 et seq.

At p. 108, 1 Jarm., the following rules are deduced from the cases, there cited, as to what is an Acknowledgment by a testator of the signature to his Will:—

“(a) The signature to be acknowledged may be made by the testator, or by another for him.

“(b) A testator, whether speechless or not, may acknowledge his signature by gestures.

“(c) There is no sufficient acknowledgment unless the witnesses either saw, or might have seen, the signature, not even though the testator should expressly declare that the paper to be attested by them is his Will.”

Note: This proposition cited and approved by Jessel, M. R., *Blake v. Blake*, 51 L. J. P. D. & A. 36; 7 P. D. 102; which case upholds Dr. Lushington's ruling hereon in *Hudson v. Parker*, 1 Robert. 14; but overrules that of Sir Cresswell Cresswell in *Gwillim v. Gwillim*, 3 Sw. &

Tr. 200, and of Ld. Penzance in *Beckett v. Howe*, L. R. 2 P. & D. 1; 39 L. J. P. & M. 1.

“(d) When the witnesses either saw or might have seen the signature, an express acknowledgment of the signature itself is not necessary, a mere statement that the paper is his Will, or a direction to them to put their names under his, or even a request by the testator, or by some person in his presence, to sign the paper is sufficient.” *Vh. Daintree v. Pasul*, 57 L. J. P. D. & A. 76; 13 P. D. 102; 58 L. T. 661.

“(e) When the signature is seen or expressly acknowledged, it is not material that the witnesses are not told that the instrument is a Will, or are deceived into thinking that it is a deed.

“(f) It is sufficient, on a re-execution, merely to acknowledge the signature made on a former execution.”

**ACOLYTE.** — “The Acolyte is he who bears the lighted candle whilst the Gospel is in reading, or whilst the Priest consecrates the Host” (Phil. Ecc. Law, 89).

**ACQUIESCENCE.** — This word does not mean simply an active intelligent consent, but will be implied if a person is content not to oppose irregular acts which he knows are being done (per Cairns, C., *Evans v. Smallcombe*, 37 L. J. Ch. 793; L. R. 3 H. L. 249).

“If a person having a right, and seeing another person about to commit, or in the course of committing, an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. This, as Ld Cottenham said in *Leeds v. Amherst* (2 Phill. 117; 16 L. J. Ch. 5; 10 Jur. 956), is the proper sense of the term ‘Acquiescence,’ and in that sense may be defined as quiescence under such circumstances as that assent may be reasonably inferred from it, and is no more than an instance of the law of ESTOPPEL by words or conduct” (per Thesiger, L. J., *De Bussche v. Alt*, 8 Ch. D. 314; 47 L. J. Ch. 389; 38 L. T. 370). But “‘Acquiescence’ imports full knowledge” (per Turner, L. J., *Life Assn. of Scotland v. Siddal*, 3 D. G. F. & J. 58, 74). *Vf. Redgrave v. Hurd*, 20 Ch. D. 1; 51 L. J. Ch. 113; 45 L. T. 485; 30 W. R. 251; Buckl. 501–508. *Vf. STANDING BY.*

It is not necessary to bring an action in order to show that a person has not “submitted to or acquiesced in” an INTERRUPTION of an Easement within s. 4. Prescription Act, 1832, 2 & 3 W. 4. c. 71; “Acquiescence” under that section is a question of fact (*Bennison v. Cartwright*, 33 L. J. Q. B. 137; 5 B. & S. 1; *Glover v. Coleman*, L. R. 10 C. P. 108; 44 L. J. C. P. 66).

*Vh.* 1 Encyc. 90–96.

**ACQUIRE.** — Moneys of a deserted wife, not reduced into possession by her husband before desertion, and payable after desertion, are

"acquired" by the wife after the desertion within s. 21, 20 & 21 V. c. 85 (*Nicholson v. Drury Building Co.*, 47 L. J. Ch. 192; 7 Ch. D. 48; *Jf. Cooke v. Fuller*, 26 Bea. 99); but rents of the wife's leaseholds received after her desertion by an agent appointed by her before the marriage, are not within the word (*Kingsman v. Kingsman*, 50 L. J. Q. B. 81; 6 Q. B. D. 122; 29 W. R. 207; 44 L. T. 124; 45 J. P. 357).

Property which a wife, after a judicial separation, "may acquire, or which may come to or devolve upon her," s. 25, 20 & 21 V. c. 85; *V. Re Insole*, 35 L. J. Ch. 177; 35 Bea. 92; L. R. 1 Eq. 470; *Re Coward and Adams*, L. R. 20 Eq. 179; 44 L. J. Ch. 384; *Waite v. Morland*, 38 Ch. D. 135; 59 L. T. 185; 57 L. J. Ch. 655; 36 W. R. 484; *Hill v. Cooper*, 1893, 2 Q. B. 85; 62 L. J. Q. B. 423; 41 W. R. 500; 69 L. T. 216; *Re Hughes*, 1898, 1 Ch. 529; 67 L. J. Ch. 279; 46 W. R. 502; 78 L. T. 432.

V. COME TO: CONQUEST. Cp. ACCRUE: DEVOLVE.

Damages awarded to a Wife, in an action brought in the joint names of herself and husband, is Money or Property "acquired" by her, within s. 5 M. W. P. Act, 1882 (*Beasley v. Roney*, 1891, 1 Q. B. 509; 60 L. J. Q. B. 408; 65 L. T. 153; 39 W. R. 415; 55 J. P. 566).

After-acquired Property, Settlement of; V. ENTITLED.

"Acquire Qualification"; V. QUALIFICATION.

Saving of RIGHT, &c, "acquired, ACCRUED, or INCURRED," s. 215 (2), London Bg. Act, 1894; *V. R. v. Chur*, 67 L. J. Q. B. 36.

A "Right acquired," which is saved by s. 27, Patents, &c. Act, 1888, "means some specific Right which, in one way or another, has been acquired by an individual, and which some persons have got and others have not got, — e.g. every one has a right to wear spectacles, but he does not 'acquire a Right' to wear them by the fact that he does wear them" (per Channell, J., *Starey v. Graham*, 1899, 1 Q. B. 411); therefore, a man who, prior to the Act, had been accustomed to call himself a "Patent Agent" did not thereby "acquire" any Right to continue that title without registration under the Act (*S. C.*, 1899, 1 Q. B. 406; 68 L. J. Q. B. 257; 80 L. T. 185).

"Right acquired," s. 104, 23 & 24 V. c. 154; *V. Foley v. Gallagher*, 2 L. R. Ir. 389.

The right of a Solicitor (who has neglected to renew his Certificate) to apply for a fresh one, is not a "Right acquired or accrued," within proviso (B), s. 23, 40 & 41 V. c. 25 (*Re Chaffers*, 15 Q. B. D. 467).

ACQUISITION OF GAIN.— V. GAIN.

ACQUITTAL.— " 'To acquite him': acquite is compounded of *ad*, and the old verbe *quietare*, and signifieth in law to discharge, or keepe in quiet, and to see that the tenant be safely kept from any entries, or other molestation for any manner of service issuing out of the land to any lord that is above the mesne. And hereof commeth Acquittall, and *quietus*



*est*, (that is) that he is discharged; and he that is discharged of a felony, &c, by judgment, is said to be acquitted of the felony, *acquietatus de felonîâ*; and if he be drawne in question againe, he may plead *auterfoits acquite*" (Co. Litt. 100 a).

"The word 'Acquittal' is *verbum equivocum*, and may in ordinary language be used to express either the verdict of a jury, or the formal judgment of the Court, that the prisoner go thereof without day" (per Tindal, C. J., *Burgess v. Boetefeur*, 13 L. J. M. C. 126; 7 M. & G. 481: *Vf. Cowel, Acquittal*). (*p. CONVICTED.*)

"*Acquitted on the Indictment*," in a Recognizance under s. 5, 16 & 17 V. c. 30, means, acquitted on every Count, and if the deft is acquitted on some of the Counts but Convicted on one, he is not entitled to the Costs provided by the section (*R. v. Bayard*, 1892, 2 Q. B. 181; 67 L. T. 313; 40 W. R. 525; 56 J. P. 650).

**ACQUITTANCE.** — " 'Acquittance' is a discharge in writing of a summe of money, or other duty which ought to be payed or done" (*Termes de la Ley*). *Vf. Cowel.*

A "Clearance" Certificate from one branch of a Friendly Society to another, is not an "Acquittance" within s. 23, 24 & 25 V. c. 98 (*R. v. French*, 39 L. J. M. C. 58; L. R. 1 C. C. R. 217).

Acquittance or Receipt; *V. R. v. West*, cited RECEIPT.

**ACQUITTED.** — *V. ACQUITTAL.*

**ACRE.** — The statute *De Mensurandis Terris*, 34 Edw. 1. c. 1, defined an Acre as 10 perches in length and 16 in breadth, and so on, or, as expressed in *Termes de la Ley*, " 'Acre' containeth in length 40 perches and in breadth 4 perches," but it adds, there were "divers Customes of severall countries" varying this admeasurement. *Vf. Co. Litt. 5 b.*

"By the grant of an Acre of land, doth pass so much as is an acre by measure in that country, by the ordinary account and measure of the country" (*Touch. 95*). But in *Wing v. Earle* (Cro. Eliz. 267) Gawdy, J., said, "If one sells land and is obliged that it containeth 20 acres, this shall be according to the Law and not according to the Custome of the country." *Seemle*, in cases of question it was for the jury to say which acre was meant (*Waddy v. Newton*, 8 Mod. 275). But 5 G. 4, c. 74, s. 2, provided, "that the Acre of land shall contain 4840 Square Yards," — an enactment replaced and re-enacted by s. 12, Weights and Measures Act, 1878, and which, apart from a context, is of general application, whether "Acre" is used in a Contract, Will, or other Instrument (*O'Donnell v. O'Donnell*, 13 L. R. 1r. 226).

Quà Landlord and Tenant Law Amendment Act, 1r. 1860. " 'Acre, shall mean. Statute Acre" (s. 1).

*Vf. Elph. 558: Portman v. Mill*, 2 Russ. 570.

**ACROSS.** — *V. S. E. Ry v. European, &c. Telegraph Co*, 9 Ex. 363; 23 L. J. Ex. 113.

Nets "stretched across" a River, s. 27, Fisheries (Ir.) Act. 1842, 5 & 6 V. c. 106; *V. Wilson v. Moy Fisheries Co*, 19 L. R. Ir. 270.

*V. THROUGH.*

**ACROSS COUNTRY.** — *V. Evans v. Pratt*, 11 L. J. C. P. 87; 3 M. & G. 759.

**ACT.** — Continuing a thing in its former condition, is not an act *done* (*Wordsworth v. Harley*, 1 B. & Ad. 391). *Sv. DONE.*

An Order to pay costs, is not an Order "to do an *act*," within R. 5, Ord. 41, R. S. C. (*Re Deakin*, 1900, 2 Q. B. 478; 69 L. J. Q. B. 797; 83 L. T. 39).

"Act, or Operation of Law"; *V. SURRENDER.*

"Appear, act, or behave"; *V. KEEPER.*

"Act" which recognizes Contract; *V. RECOGNIZE.*

Appeal "against any act of any Justice," s. 27, Alehouse Act, 1828; *V. comparison between "Act" and "ORDER,"* per Ld Herschell, *Boulter v. Kent Jus.*, cited COURT OF SUMMARY JURISDICTION.

"Act as a Broker"; *V. BROKER.*

"Act as a Solr"; *V. Re Simmons*, 15 Q. B. D. 348: SOLICITOR: PRACTISE.

Will "act exclusively for" A.; *V. Mutual Reserve Assn. v. New York Insree*, cited WHOLE.

"Called on to act"; *V. CALLED.*

*V. BY WHOSE: PURPOSES: ACTS: IMMORAL.*

**ACT JUSTLY.** — *V. PRECATORY TRUST.*

**ACT OF BANKRUPTCY.** — *V. Wms. Bank*, 2 et seq: Baldwin, 65 et seq: *Yate Lee*, 11 et seq: BANKRUPTCY.

**ACT OF GOD.** — "Act of God" means not a mere misfortune, but something overwhelming (per Martin, B., *Oakley v. Portsmouth Steam Packet Co*, 25 L. J. Ex. 101; 11 Ex. 623), such as storms, lightning, and tempests, which could not happen by the intervention of man (*Forward v. Pittard*, 1 T. R. 33), and loss from which could not have been prevented, or avoided, by any reasonable amount of foresight, pains, or care (*Nugent v. Smith*, 45 L. J. C. P. 697, 708; 1 C. P. D. 441, 444). Therefore, damage from an escape of water from a frost-burst pipe, the bursting being caused by negligently leaving the boiler filled with cold water in frosty weather, is not an Act of God (*Siordet v. Hall*, 1 Moore & P. 561; 4 Bing. 607).

"By the 'Act of God,' is meant a natural, not merely an inevitable, Accident" (per Mansfield, C. J., *Trent Nav. v. Wood*, cited in *Forward*

v. *Pittard*, 1 T. R. 28. In the report of *Trent Nav. v. Wood*, in 4 Doug. 290, Lord Mansfield's words are, "The 'Act of God' is natural necessity, as wind and storms, which arise from natural causes, and is distinct from inevitable accident"; but in 3 Esp. 131, the words are, "The 'Act of God' is a natural necessity *and* inevitably such, e.g. winds, storms, &c").

"In the older, simpler, days I have myself never had any doubt but that this phrase does not mean Act of God in the Biblical sense of the term, under which everything almost is said to be the Act of God; but that, in a mercantile sense, it means an extraordinary circumstance which could not be foreseen, and which could not be guarded against" (per Esher, M. R., *Pandorf v. Hamilton*, 55 L. J. Q. B. 548; 17 Q. B. D. 675). — *Vf. Nichols v. Marsland*, 46 L. J. Ex. 174; L. R. 10 Ex. 255; 2 Ex. D. 1: *Nitro-phosphate Co v. L. & S. Katherine's Dock Co*, 9 Ch. D. 503; 1 Maude & P. 350; Benj. 551; Carver, 8-12: *R. v. Essex Commrs of Sewers*, 14 Q. B. D. 561; 11 App. Ca. 449.

By s. 727, New York Civil Code, an "Act of God" is defined as "irresistible super-human cause."

Permanent Illness is an "Act of God," excusing the performance of a Contract for Personal Services (*Boast v. Firth*, 38 L. J. C. P. 1; L. R. 4 C. P. 1: *Vf. Leake*, 607); *secus*, of a Contract to Marry (*Hall v. Wright*, 29 L. J. Q. B. 43; E. B. & E. 746, 765).

If a BAILMENT, e.g. a horse, dies or falls sick, "sans ascune default ou negligence" of the bailee, it is an "Act of God" and excuses him (*Williams v. Lloyd*, Jo. W. 179). *Sv. Beatson v. Schank*, cited INABILITY.

*Cp.* ACCIDENT: CHANCE: INEVITABLE ACCIDENT.

**ACT OF PARLIAMENT.** — *V.* LOCAL ACT OF PARLIAMENT.

"Act of Parliament," s. 2 (1), S. L. Act, 1882, is not confined to Private Acts but includes General Acts, e.g. the Accumulations Act, 1800 (*Vine v. Raleigh*, 1896, 1 Ch. 37).

"Co incorporated by Act of Parliament"; *V.* COMPANY.

"Instrument, not being an Act of Parliament"; *V.* DEED OF SETTLEMENT.

Stat. Def. — 29 & 30 V. c. 108, s. 2; 41 & 42 V. c. 76, s. 2; 51 & 52 V. c. 51, s. 4; Interp. Act, 1889, s. 39; 56 & 57 V. c. 38, s. 5; 59 & 60 V. c. 48, s. 25. — *Scot.* 27 & 28 V. c. 53, s. 2; 60 & 61 V. c. 38, s. 145 (15).

**ACT OF STATE.** — A Foreign Patent is an "Act of State," within s. 7. 14 & 15 V. c. 99 (*Re Betts*, 1 Moore, P. C. N. S. 49).

**ACT OR DEFAULT.** — "Wrongful Act or Default"; *V.* DEFAULT.

**ACT OR PRACTISE.** — *V.* PRACTISE.

**ACTED.** — *V.* INNOCENTLY ACTED.

**ACTING.**—“The person acting in the Administration,” s. 32, 44 V. c. 12, does not mean the person who has acted by taking Probate but means the person who is really acting at the time when the question of further Duty arises, and, therefore, an Exor who has fully administered is not liable under the section (*A.-G. v. Smith*, 1893, 1 Q. B. 239; 62 L. J. Q. B. 288; 68 L. T. 6; 41 W. R. 245).

Justices “acting UNDER the Summary Jurisdiction Acts,” s. 13 (11), Interp. Act, 1889, means, Justices exercising summary jurisdiction (per *Ld Davey*, *Boulter v. Kent Jus.*, cited COURT OF SUMMARY JURISDICTION).

Acting in the Ordinary Course of business; *V. MERCANTILE AGENT.*

**ACTING TRUSTEE.**—An “acting” Trustee is one who has taken upon himself to perform some of the trusts; the phrase does not include one who, *in limine*, has refused to act (*Sharp v. Sharp*, 2 B. & Ald. 405, stated *Lewin*, 776: *Vf. Lewin*, 278. *Cp. CONTINUING TRUSTEE.*

A person who, pursuant to a Power, appoints a New Trustee but has not otherwise acted in the Trust, is an “Acting Trustee” (*Re Cunningham and Frayling*, 1891, 2 Ch. 567; 60 L. J. Ch. 591; 64 L. T. 558; 39 W. R. 469).

*Cp. BARE TRUSTEE.*

**ACTION.**—This is a generic term, and means a litigation in a civil court for the recovery of individual right or redress of individual wrong, inclusive, in its proper legal sense, of suits by the Crown (*Bradlaugh v. Clarke*, 52 L. J. Q. B. 505; 8 App. Ca. 354; 48 L. T. 681: *Va. jdgmt of Brett, M. R.*, in *A.-G. v. Bradlaugh*, 54 L. J. Q. B. 214; 14 Q. B. D. 667; 52 L. T. 589; 33 W. R. 673). “*Action, n'est autre chose que loyall demande de son droit*” (Co. Litt. 285 a). Even before the Jud. Acts, “Action” included a Suit in Equity (*Pennell v. Smith*, 5 D. G. M. & G. 187). As used in s. 3, Limitation Act, 1623, it includes a Set-Off (*Remington v. Stevens*, 2 Stra. 1271). *Cp. DECREE.*

For the purpose of the Jud. Acts, “Action” means “a *Civil Proceeding* commenced by Writ or in such other manner as may be prescribed by Rules of Court; and shall not include a Criminal Proceeding by the Crown” (s. 100, Jud. Act, 1873). An ORIGINATING SUMMONS is within this definition (*Re r'awsitt, Galland v. Burton*, 54 L. J. Ch. 1131; 30 Ch. D. 231; 34 W. R. 26, 158: *Re Vardon*, 55 L. J. Ch. 259; 31 Ch. D. 275; 53 L. T. 895; 34 W. R. 185); but as used in the Third-Party procedure, R. 48, Ord. 16, R. S. C., “action” does not include an Originating Summons (*Re Wilson*, 60 L. J. Ch. 101; 45 Ch. D. 266; 63 L. T. 100; 39 W. R. 58): *Vf. WRIT OF SUMMONS.* An Interpleader Issue is not such an Action (*Hamlyn v. Betteley*, 6 Q. B. D. 63; 50 L. J. Q. B. 1: 29 W. R. 275; 43 L. T. 790), nor are Garnishee proceedings (*Mason v. Wirral*, 4 Q. B. D. 459), nor proceedings on a Petition

(*Re Wallis*, 23 L. R. Ir. 7: *Sc. SUIT*); nor is a Company Summons an Action (*V. TRIAL*); nor a Summons under s. 14 (2), Conv. & L. P. Act, 1881 (*Lock v. Pearce*, 1893, 2 Ch. 271; 62 L. J. Ch. 582; 68 L. T. 569; 41 W. R. 369).

A *Counter-Claim* is not an "Action," within s. 66, Co. Co. Act, 1888, not even when (the original action being at an end) it happens to be the sole matter in issue; and, therefore, it cannot be remitted for trial under that section (*Delobel-Flipo v. Varty*, 1893, 1 Q. B. 663; 62 L. J. Q. B. 398).

Admiralty Causes are not included in "Actions," as that word is used in s. 101, Co. Co. Act, 1888 (*The Tynwald*, 1895, P. 142; 64 L. J. P. D. & A. 1; 71 L. T. 731; 43 W. R. 509; *The Theodora*, 1897, P. 279; 66 L. J. P. D. & A. 50; 76 L. T. 627).

"Action," in ss. 53, 54, Co. Co. Act, 1888, does not include a Motion by a Trustee in Bankry to recover property of the bankrupt (*Re Lock*, 63 L. T. 320; 39 W. R. 15).

"Action" is used in s. 1, Public Authorities Protection Act, 1893, in its wide generality (*Harrop v. Ossett*, and *Pielden v. Morley*, cited PURSUANCE).

*V. CAUSE: SUIT: WRIT OF SUMMONS.*

An action *in rem*, apart from statutory definition, is not generally included in the word "Action," *e.g.* in a provision requiring notice before action (*The Longford*, 58 L. J. P. D. & A. 33; 14 P. D. 34).

Action on the Case; *V. CASE.*

Action on Contract; *V. CONTRACT.*

"Action founded on Contract or Tort"; *V. FOUNDED ON: CONTRACT: TORT.*

Extra costs for "conducting Actions or Suits"; *V. CONDUCTING.*

*Cp. CAUSE OF ACTION. V. MAINTAIN: PERSONAL ACTION: REAL ACTION: POPULAR ACTION.*

Other Stat. Def. — 15 & 16 V. c. 76, s. 227; 17 & 18 V. c. 125, s. 99; 22 & 23 V. c. 63, s. 5; 23 & 24 V. c. 126, s. 39; 24 V. c. 11, s. 4; 30 & 31 V. c. 127, s. 3; 39 & 40 V. c. 17, s. 2; 45 & 46 V. c. 31, s. 2. c. 61. s. 2; 51 & 52 V. c. 43, s. 186; 56 & 57 V. c. 71, s. 62. — *Scot.* 39 & 40 V. c. 70, s. 3. — *Ir.* 16 & 17 V. c. 113, s. 4; 40 & 41 V. c. 57, s. 3; (Action or Suit), 11 & 12 V. c. 28, s. 18.

**ACTIONS.** — "Where one releases to another all 'Actions,' not only actions depending, but also causes of actions are released" (*Altham's Case*, 8 Rep. 153 a, 153 b); "but within a submission of all actions to arbitrament, causes of action are not contained" (Co. Litt. 285 a). *V. SUIT.*

**ACTIVE.** — *V. ON ACTIVE SERVICE.*

**ACTON BURNEL.** — The statute of Acton Burnel "is a statute made 13 Edw. 1, ordaining the STATUTE-MERCHANT; and was so called

because it was made at Acton Burnel, a Castle in Shropshire, anciently belonging to the family of Burnel" (*Termes de la Ley*).

**ACTS.** — "The covenant (*i.e.* for Quiet Enjoyment) is that the lessee should hold the premises without any lawful eviction, interruption, &c, by or from the lessor, or by or through her 'Acts, Means, Right, Title, Forfeiture, Privity or Procurement.' Now the word 'Acts,' means something done by the person against whose acts the covenant is made; and the word 'Means' has a similar meaning, something proceeding from the person covenanting." (*Per cur.*, *Spencer v. Marriott*, 1 B. & C. 459; 2 D. & R. 665. *Vf. Dennett v. Atherton*, L. R. 7 Q. B. 316; 41 L. J. Q. B. 165; 20 W. R. 442; *Stevenson v. Powell*, 1 Bulstr. 182; Dart, 884; Sug. V. & P. 602; Elph. 487, 488; 2 Platt, 310).

But " 'Means and Procurement' have a large extent" (*Palm*. 340): and where a husband procured a conveyance to himself, remainder to his wife, the wife was held as claiming by "means" of her husband, "although she claims by title derived from another" (*Butler v. Swinerton*, *Palm*. 339; 2 Rol. Rep. 286; Cro. Jac. 657).

All "Reasonable Acts," in a covenant for Further Assurance, means such as the law requires; but do not include an unnecessary act (*per Wood, B.*, *Warn v. Bickford*, 9 Price 51. *V. Pudsey v. Newsam*, *Yelv.* 44; Dart, 887; Sug. V. & P. 613), or one that is impracticable (*Elph.* 493).

**ACTUAL.** — The word "actual" does not, usually, advance the meaning. Speaking generally a thing is not more itself because it is spoken of as "actual," nor is an act more done or enjoined because it is said, or required, to be "actually" done. Thus the phrase "Actual Seizure" in s. 1, Mer. Law Amend. Act, 1856, means no more than "Seizure" (*Gladstone v. Padwick*, 40 L. J. Ex. 154; L. R. 6 Ex. 203).  
V. SEIZURE.

But where a word has a constructive legal meaning not completely corresponding to the fact it indicates, then the addition of "actual" will intensify that word, so that it will not be fully satisfied by such legal meaning (*V. R. v. St. Nicholas, Rochester*, cited OCCUPATION). Thus where, as in s. 26, Rep. People Act, 1832, a freeholder, &c, must, in order to qualify for his vote, have been "in the actual Possession" or receipt of the rents and profits of his tenement for six months before the last day of July, that means a possession in fact as distinguished from merely a possession in law; and therefore the owner of a Rent-charge is not in such possession or receipt until he has had "the manual receipt of the rent itself, or some part of it, or something in lieu of it" (*per Tindal, C. J.*, *Murray v. Thorniley*, 15 L. J. C. P. 155; 2 C. B. 217; the decision in which was followed in *Hayden v. Tiverton*, 16 L. J. C. P. 88; 4 C. B. 1, and *Webster v. Ashton-under-Lyne*; *Orme's Case*, 42 L. J. C. P. 38; L. R. 8 C. P. 281. *Va. Anelay v. Lewis*, 17 C. B. 316, on the

like phrase in s. 74, 6 & 7 V. c. 18). But where a conveyance of a Rent-charge is framed so as to operate under the Statute of Uses, 27 H. 8, c. 19, then for the purposes of the Rep. People Act, the Rent-charge is in "actual possession" of the grantee from the date of the conveyance, because a long course of authority and practice has established that the "possession" into which Uses are converted by that Statute is equivalent to "actual possession" (*Heelis v. Blain*, 34 L. J. C. P. 88; 18 C. B. N. S. 90; *Webster v. Ashton-under-Lyne*; *Hadfield's Case*, 42 L. J. C. P. 146; L. R. 8 C. P. 306).

But from the doubting way in which the Court (especially Bovill, C. J.) followed in *Hadfield's Case*, the authority of *Heelis v. Blain*, it may be questioned whether a ruling similar to that in the two last-named cases would be adopted for the interpretation of any Act except the one then under consideration. *V. POSSESSION: OCCUPATION.*

Where two or more are in possession, the "Actual Possession" is that of the one who has the title (Litt. s. 701; per Maule, J., *Jones v. Chapman*, 18 L. J. Ex. 460; 2 Ex. 821; *Ramsay v. Margrett*, 1894, 2 Q. B. 18; 63 L. J. Q. B. 513; 70 L. T. 788).

Actual or Physical Possession of Goods, e.g. for a PLEDGE, does not require that the goods be grasped by the hand; the idea is satisfied if the goods are so placed that the possessor, or his agent, has the dominion and control over the goods so as to be able to prevent any one else from removing or interfering with them (per Halsbury, C., *Charlesworth v. Mills*, 1892, A. C. 231; 61 L. J. Q. B. 830).

HEIRLOOM to the person for the time being "in the actual *Enjoyment and Possession*" of an estate; *V. Hogg v. Jones*, 32 L. J. Ch. 361; 32 Bea. 45. *Vf. ACTUAL FREEHOLD.*

"Entitled to the Actual Possession"; *V. Re Varley*, 62 L. J. Ch. 652; 68 L. T. 665.

"Actual, forcible, and violent entry"; *V. VIOLENT.*

**ACTUAL ANNUAL INCOME.** — A testator bequeathed all his real and personal estate to trustees Upon Trust for his wife with directions to sell and convert the same into money, and declared that his real estate, directed to be sold, should, in Equity, be considered as converted into personalty as from the time of his decease, and that the "Actual Annual Income" for the time being of his unconverted real and personal estate should be considered income for the purposes of his Will, and be applied accordingly; held, that the widow was entitled to the actual dividends becoming due after the testator's death in the case of all the securities, except such as in their nature bore interest *de die in diem* (*Umwyn v. Elykym*, W. N. (66) 268).

**ACTUAL ARRIVAL.** — "Actual Arrival in Dock," s. 237, Mer. Shipping Act, 1854; *V. Attwood v. Case*, 45 L. J. M. C. 20; 1 Q. B. D. 134. *Vf. ARRIVE.*

**ACTUAL BODILY HARM.** — *V.* INFLECT.

**ACTUAL CAPTURE.** — *V.* *Bandu & Kirwee Booty*, cited CO-OPERATION.

**ACTUAL COSTS AND EXPENSES.** — When an Order, for an account on the wrongful taking of Minerals, directs allowance to be made for "Actual Costs and Expenses" or "Disbursements," profit or trade allowances will not be included (*Re United Merthyr Co*, L. R. 15 Eq. 46: *V.* MacS. 538).

**ACTUAL CUSTODY.** — "Actual Custody" of Documents of Title to Goods, s. 1 (2), Factors Act, 1889; *V.* *Cahn v. Pocketts Co*, cited CONSENT.

**ACTUAL DELIVERY.** — *V.* DELIVERED IN EXECUTION.

**ACTUAL ENJOYMENT.** — *V.* ACTUALLY ENJOYED.

**ACTUAL ENTRY.** — *V.* ACTUAL: VIOLENT.

**ACTUAL FAULT.** — The protection given to an Owner of a Ship by ss. 502, 503, Mer. Shipping Act, 1894, where the occurrences therein mentioned happen "without his Actual Fault, or Privity," connotes his own Fault, &c, as distinguished from that of a Co-Owner, even though he be the MASTER (*The Obey*, L. R. 1 A. & E. 102: *The Spirit of the Ocean*, 12 L. T. 239: *Wilson v. Dickson*, 2 B. & Ald. 2: *Vthle* on what is "Fault," and *The Obey* on "Privity").

**ACTUAL FRAUD.** — In *Battison v. Hobson* (1896, 2 Ch. 403; 65 L. J. Ch. 695; nom. *Re Hobson*, 44 W. R. 615), Stirling, J., had under consideration "Actual Fraud" as used in s. 14, Yorkshire Registries Act, 1884, and said, — "I understand that term to mean, Fraud in the ordinary, popular, acceptation of the term, and not what has sometimes been called 'Legal Fraud,' or 'Constructive' Fraud, or 'Fraud in the eye of a Court of Law or Equity.'" But in view of *Peek v. Derry* (cited LEGAL FRAUD), it is difficult to see the distinction between "Fraud" and "Legal, or Constructive Fraud." *Vf.* FRAUD.

**ACTUAL FREEHOLD.** — In limitations relating to HEIRLOOMS, the person entitled to the "Actual Freehold" of an estate, is the person in possession, or in the receipt of the rents and profits (*Scarsdale v. Curzon*, 29 L. J. Ch. 249; 1 J. & H. 40); so, if the phrase be "Actual Possession" (*Re Angerstein*, 1895, 2 Ch. 883; 65 L. J. Ch. 57; 73 L. T. 500; 44 W. R. 152). But if the phrase be, entitled "In Possession," then the Heirlooms vest absolutely in the first Tenant in Tail at birth, whether he comes into possession or not (*Ib.*). *V.* ACTUAL.

**ACTUAL MILITARY SERVICE.** — The privilege of making NUNCUPATIVE Wills given to "ANY Soldier being in actual military service" (Stat. of Frauds, s. 22; Wills Act, 1837, s. 11) is limited, by the words



italicised, "to those who are *on an expedition*: And consequently that the Will of a soldier made while he was quartered in barracks, either at home (*Drummond v. Parish*, 3 Curt. 522; 7 Jur. 538: *Vthc, Re Hiscox*, inf.) or in the Colonies (*White v. Repton*, 3 Curt. 818: *Se. Re Phipps*, 2 Curt. 368: *Re Johnson*, 2 Curt. 341: *Re Pery*, 2 L. T. O. S. 335). is not privileged. The same was held of the Will of a soldier made at Bangalore, whilst in command of the Mysore Division of the army there stationed, and who died whilst on a tour of inspection of the troops under his command (*Re Hill*, 1 Rob. 276)": Wms. Exs. 104. So of a sergeant with his regiment at Malta, *under orders* for the West Indies (*Re Norris*, 3 Notes of Ecc. Cases, 197: *Va. Bowles v. Jackson*, 1 Spinks, 294).

But a soldier passing from one regiment to another, — both regiments being in active service against the enemy (*Herbert v. Herbert*, D. & Sw. 10; 4 W. R. 182), — or joining a regiment with the view of marching against the enemy (*Re Thorne*, 34 L. J. P. M. & A. 131; 4 Sw. & Tr. 36; 11 Jur. N. S. 569: *Re Hiscock*, 17 Times Rep. 110; 1901, P. 78; 70 L. J. P. D. & A. 22; 84 L. T. 61), is within the privilege. So is one who has received a *mortal wound* on the battle-field (*Re Farquhar*, 4 Notes of Ecc. Cases, 651: *Re Churchill*, Ib. 47: *Re Prendergast*, 5 Ib. 92).

*Vf. TESTAMENT*, last par.

Quà Army Act, 1881, Yeomanry and Volunteers, when "on Actual Military Service," are Soldiers (subss. 7, 8, s. 176): *Vh. Marks v. Frogley*, cited SOLDIER. *Vf. TRAINING*.

*V. MILITARY SERVICE: ON ACTIVE SERVICE.*

**ACTUAL OCCUPIER.** — *V. OCCUPIER.*

**ACTUAL POSSESSION.** — *V. ACTUAL: ACTUAL FREEHOLD: POSSESSION.*

**ACTUAL SEIZIN.** — *V. Tuthill v. Rogers*, 1 J. & La T. 36; 6 Ir. Eq. Rep. 429, on *whcv Re Maxwell*, cited IN CHARGE. *V. SEIZED.*

**ACTUAL SEIZURE.** — *V. ACTUAL: SEIZURE.*

**ACTUAL TENANT IN TAIL.** — Quà Fines and Recoveries Act, 1833, "Actual TENANT IN TAIL," shall mean exclusively, the Tenant of an Estate Tail which shall not have been barred; and such Tenant shall be deemed an Actual Tenant in Tail although the Estate Tail may have been divested or turned to a right" (s. 1).

**ACTUAL TOTAL LOSS.** — *V. TOTAL LOSS.*

**ACTUAL VALUE.** — *V. VALUE*, towards end.

**ACTUAL WEIGHT.** — "Actual Weight gotten." s. 12 (1), 50 & 51 V. c. 58; *V. Brace v. Abercarn Co*, cited MINERAL GOTTEN.

**ACTUALLY ARRIVED.** — *V. ACTUAL ARRIVAL.*

**ACTUALLY CHARGEABLE.** — *V.* CHARGEABLE.

**ACTUALLY DELIVERED.** — *V.* DELIVERED IN EXECUTION.

**ACTUALLY ENJOYED.** — The words “actually enjoyed,” for 20 years, in s. 3, Prescription Act, 1832, 2 & 3 W. 4, c. 71, are satisfied where a house exists with ordinary windows through which Light and Air have in fact passed, although there has been no occupation in the sense of personal occupation (*Courtauld v. Legh*, 38 L. J. Ex. 45; L. R. 4 Ex. 126; *Collis v. Laugher*, 1894, 3 Ch. 659; 63 L. J. Ch. 851). “Enjoying the use cannot mean shall have *continuously* used. If that had been the intention of the statute some such word as ‘continuously’ would be found in this section. I take ‘enjoyed’ to mean, ‘having had the amenity or advantage of using’ the access of light. That is nearly equivalent to ‘having had the use,’ the intention being that the owner of a house may acquire the right to have the access of light over adjoining land to an opening which he has used in such manner as suited his convenience for the passage of light during 20 years” (per Kay, J., *Cooper v. Straker*, 58 L. J. Ch. 29; 40 Ch. D. 21; cited and applied by Stirling, J., *Smith v. Baxter*, cited INTERRUPTION). A similar rule applies as to what is an Actual Enjoyment of a Right of Way, &c, under s. 2 (*Hollins v. Verney*, 53 L. J. Q. B. 430; 13 Q. B. D. 304; *Smith v. Baxter*, sup.). But the enjoyment must be “as of RIGHT”; and the right to a Right of Way under s. 2 may be defeated by evidence even of a parol license, if the enjoyment has been for 20 years; but if it has been for 40 years then it will be absolute unless “enjoyed by some Consent or Agreement, expressly given or made for that purpose by DEED or WRITING” (s. 2; *vtb Gardner v. Hodgson's Co*, 1900, 1 Ch. 592; 69 L. J. Ch. 368; 82 L. T. 455; 48 W. R. 469; revd. on the inference from the facts, 1901, 2 Ch. 198). *V.* ACCESS: INTERRUPTION.

*Note*: — The Crown is not named in, and therefore is not bound by, s. 3 (*Perry v. Eames*, cited EASEMENT).

**ACTUALLY OCCUPIED.** — *V.* *R. v. St. Nicholas, Rochester*, cited OCCUPATION: *Va.* ACTUAL.

**ACTUALLY PAID.** — As to the meaning of the phrase “Rent actually paid,” in an Act authorising rating assessments; *V.* *Bristol W. W. Co. v. Uren*, 54 L. J. M. C. 97; 15 Q. B. D. 637.

“Valuable Consideration actually paid”; *V.* VALUABLE.

**ACTUALLY PENDING.** — *V.* PENDING.

**ACTUALLY PRODUCING INCOME.** — *V.* *Re Hubbuck*, 1896, 1 Ch. 754; 65 L. J. Ch. 271.

**ACTUALLY RECEIVED.** — Gift over on death “without having actually received” legacy; *V.* *Martin v. Martin*, L. R. 2 Eq. 404; 35

L. J. Ch. 679: *Johnson v. Crook*, 48 L. J. Ch. 777; 12 Ch. D. 629: *Bubb v. Padwick*, 49 L. J. Ch. 178; 13 Ch. D. 519.

“Actually receive” Goods, s. 4, Sale of Goods Act, 1893; *V. ACCEPTANCE.*

*V. RECEIVABLE: RECEIVED.*

**ADAPT.** — “Adapted to be inhabited”; *V. INHABITED.*

“Constructed or adapted”; *V. CONSTRUCTED.*

**ADDITION.** — “‘Addition,’ signifieth a TITLE given to a man besides his Christian and Sir-name, shewing his Estate, Degree, Mystery, Trade, Place of Dwelling, &c.” (Cowel: *Vf. Termes de la Ley*).

Quà Registration of Assurances (Ir) Act, 1850, 13 & 14 V. c. 72. “the word ‘Addition,’ — where the addition of any person whose name is required by this Act to be entered in any Index to be kept at the said Register Office is hereby directed to be entered with such name, — shall mean the description as to Residence, Title, Rank, Profession, or Occupation” (s. 64).

A legacy “in addition to,” or “substitution for,” or “instead of,” another, will *primâ facie* be taken on the same conditions, out of the same funds, and with the same privileges as that other (1 Jarm. 185). — a meaning, however, which may be varied by a context (Ib. n.; 2 Ib. 603). *Vf. Thomas v. Nurse*, W. N. (68) 181; *Re Benyon*, 53 L. J. Ch. 1165; *Lee v. Pain*, 4 Hare, 218. *Cp. ONE MAN: V. LIEU AND SUBSTITUTION.*

A legacy to A., “in addition to the sums owing to him,” may, on the facts, be a gift, not only of the legacy itself but also of sums not legally due to him, e.g. a sum named in an I. O. U. to him that was given without consideration (*Re Rowe*, 1898, 1 Ch. 153; 67 L. J. Ch. 87; 77 L. T. 475).

An “Addition to an existing BUILDING,” within an Act requiring Notice of it to a Local Authority, is a matter to be determined on the whole of the circumstances: — to substitute a brick-built bedroom for a conservatory, may well be an “Addition” to a house, although it occupy no greater space than the conservatory did (*Meadows v. Taylor*, 59 L. J. M. C. 99; 24 Q. B. D. 717; 62 L. T. 658; 54 J. P. 757).

Putting into a house heating-apparatus so as to make the house more lettable, is not an “Addition to, or ALTERATION *in buildings*,” within s. 13 (ii), S. L. Act, 1890; *secus*, of altering main entrance and providing an entirely new roof (*Re Gaskell*, 1894, 1 Ch. 485; 63 L. J. Ch. 243; 70 L. T. 554; 42 W. R. 219). *V. LET: Cp. REBUILDING.*

“Addition” to a TRADE-MARK, s. 74 (1), 46 & 47 V. c. 57; *V. Re Smokeless Powder Co.*, 1892, 1 Ch. 590; 61 L. J. Ch. 391; *Re Clement*, 1900, 1 Ch. 114; 69 L. J. Ch. 52; 81 L. T. 400; 48 W. R. 67.

**ADDRESS.** — “Name and Address”; *V. NAME.*

“The Address of the plt,” in an Indorsement of a Writ R. I. Ord. 4. R. S. C., must be his ordinary RESIDENCE, as distinguished from his

Place of Business (*Stoy v. Rees*, 59 L. J. Q. B. 310; 24 Q. B. D. 748; 63 L. T. 49; 38 W. R. 683).

But the "Address" of a Witness to a Bill of Sale, as prescribed in the form given in s. 9, Bills of S. Act, 1882, means the same as "Residence" in the earlier Acts; therefore, where a Bank Clerk gave his Address as at the Bank where he was employed, that sufficed (*Simmons v. Woodward*, 1892, A. C. 100; 61 L. J. Ch. 252; 66 L. T. 534; 40 W. R. 641). — *Note.* The Address and DESCRIPTION of each witness must be on the Bill of S. itself (*Blankenstein v. Robertson*, 59 L. J. Q. B. 315; 24 Q. B. D. 543; *Parsons v. Brand*, 59 L. J. Q. B. 189; 25 Q. B. D. 110; 62 L. T. 479; 38 W. R. 388); but if a witness signs two attestations, one of which gives the A & D and the other does not, the former may be looked at to see that the same person has signed both, and if that can be seen on the face of the document the omission to put the A & D to the second attestation is not material (*Bird v. Davey*, 1891, 1 Q. B. 29; 60 L. J. Q. B. 8).

*Cp.* "Place of Abode," sub PLACE.

A Club Address, generally, is insufficient (*Re Stogdon*, 1895, 2 Q. B. 534; 65 L. J. Q. B. 47; 11 Times Rep. 589).

As to what is a breach of a stipulation that "no Artiste shall address the Audience"; *V. Coborn v. Paluce Theatre*, 11 Times Rep. 227.

**ADEMPTION.** — Where there is a Specific legacy, and the subject-matter does not remain in specie, or does not remain the property of the testator at his death, the legacy is said to be Adeemed; *i.e.* the subject-matter being gone from the testator's estate, the gift also is gone; so, there is an Ademption when the purpose for which the specific legacy was given has been otherwise provided for by the testator.

It has been said, in America, that "Ademption" is synonymous with "SATISFACTION," when applied to Specific legacies (*Clark v. Jetton*, 5 Sneed, 234).

*Vh.* Wms. Exs. 1183 *et seq.*: Theobald, 122, 139-145, 675-684: 1 Encyc. 119-121.

**ADEQUATE.** — "Adequate and Sufficient Load": *V. Lanc. & Y. Ry v. Gidlow*, 45 L. J. Ex. 625; L. R. 7 H. L. 517.

"Adequate Ventilation"; *V. Knowles v. Dickinson*, 29 L. J. M. C. 135; 2 E. & E. 705.

**ADHERING TO THE QUEEN'S ENEMIES.** — "Every one commits High Treason who, either in the Realm or without it, actively assists a public enemy at war with the Queen. Rebels may be public enemies within the meaning of this definition" (Steph. Cr. 42). *Vf.* Arch. Cr. 883-899. *V.* QUEEN'S ENEMIES.

**ADJACENT.** — "Adjacent or Neighbouring Lands"; *V. Birmingham v. Allen*, 46 L. J. Ch. 673; 6 Ch. D. 284; *Darley Main Co v. Mitchell*, 11 App. Ca. 142: ADJOINING PROPERTY: NEIGHBOURING.

“Adjacent” MINES, even in the wide region of South Africa, does not include a Mine 4 miles distant (*Kimberley W. W. Co v. De Beers Mines*, 1897, A. C. 515; 66 L. J. P. C. 108; 77 L. T. 117).

“Adjacent to” a Mine; *V. Turnbull v. Lambton Co*, cited IN OR ABOUT.

Adjacent and Subjacent support to land; *V. Rose*, N. P. 798-802.

**ADJOIN: ADJOINING.** — This word, in a penal statute, means “absolutely CONTIGUOUS, without anything between” (per Parke, J., *E. v. Hodges*, Moo. & M. 343), and it was there held that ground, separated from a house by a narrow walk and a paling with a gate in it, was not “adjoining” the house within s. 38, 7 & 8 G. 4, c. 29. Adopting that def Cozens-Hardy, J., held, that a Lessor’s covenant not to allow a specified trade to be carried on in the “adjoining” premises, was confined to the two houses immediately contiguous on either side of the demised premises (*Vale v. Moorgate Street Co*, 80 L. T. 487). But a purchaser’s covenant that he would not, “in the erection of buildings *adjoining*” his vendor’s other property, permit any over-looking Lights, was held broken by such lights being in houses whose gardens did not touch but reached to within 6 yards of that other property (*Ind, Coope & Co v. Hamblin*, 81 L. T. 779; 48 W. R. 238; W. N. (1900) 270).

A covenant by a Lessor (or, *semble*, a Vendor) as to User of “adjoining” premises, *primâ facie*, only binds adjoining premises belonging to him at the time of the contract (*Buckell v. King*, 40 S. J. 50). It is suggested that a wider covenant should, in terms, embrace premises “now or hereafter” belonging to the covenantor; or, better still, drop “adjoining” and make the covenant extend to all property “now or hereafter” belonging to the covenantor within the defined distance.

Not so strict as in *R. v. Hodges* (sup.) is the meaning of “adjoining” and “adjoin” in ss. 127, 128, Lands C. C. Act, 1845 (*Lond. & S. W. Ry v. Blackmore*, 39 L. J. Ch. 713; L. R. 4 H. L. 610; and *V. obs* of Manisty, J., *Hobbs v. Mid. Ry*, 51 L. J. Ch. 324; *Moody v. Corbett*, 35 L. J. Q. B. 161; 7 B. & S. 544; L. R. 1 Q. B. 510); nor in s. 150, P. H. Act, 1875 (*V. FRONTING*). So, a plot of ground, separated from a church-yard by a highway, is “ground adjoining” the church-yard, within s. 1, 30 & 31 V. c. 133 (*Re Bateman and Parker*, 1899, 1 Ch. 599; 68 L. J. Ch. 330; 80 L. T. 469; 47 W. R. 516).

As to the meaning of a Devise of a house “with the piece of land *thereto adjoining*”; *V. Josh v. Josh*, 28 L. J. C. P. 100; 5 C. B. N. S. 454, stated, 1 Jarm. 784.

*V. ADJACENT: CONTIGUOUS: ABUT: FRONTING: ANNEX.*

**ADJOINING LAND.** — *V. OCCUPIER.*

**ADJOINING OCCUPIER.** — Quâ London Bg Act, 1894, “Adjoining Occupier,” “means the OCCUPIER, or one of the occupiers, of land,

buildings, storeys, or rooms adjoining those of the BUILDING OWNER" (s. 5, subs. 32).

**ADJOINING OWNER.** — The owner of land, which land is separated from surplus lands of a Railway by only a private road over which such owner has a right of way, is an Adjoining Owner within s. 128, Lands C. C. Act, 1845 (*Coventry v. L. B. & S. Ry*, 37 L. J. Ch. 90; L. R. 5 Eq. 104; 16 W. R. 267), and a person may be an "Adjoining Owner" within the section, although he purchased such adjoining lands from the Company itself against which he claims pre-emption (*Lond. & S. W. Ry v. Blackmore*, 39 L. J. Ch. 713; L. R. 4 H. L. 610). (Cp. ADJOIN.

"The Adjoining Owner' is *primâ facie* the person to whom the soil belongs: e.g. the lord of the manor as opposed to the persons entitled to a right of herbage (*Hooper v. Bourne*, 3 Q. B. D. 258; 5 App. Ca. 1; 47 L. J. Q. B. 437; 37 L. T. 594; 42 Ib. 97; 26 W. R. 295; 28 Ib. 493), and in connection with the expression 'Adjoining Owner' it must be clearly understood that there is a plain obvious distinction between the person in whom, under s. 127, the superfluous lands are, in default of sale, to vest, and the persons to whom the option of purchase is to be given under s. 128 (*Hobbs v. Mid. Ry*, 20 Ch. D. 418; 51 L. J. Ch. 320; 46 L. T. 270; 30 W. R. 516)": Dart, 861.

Quâ London Bg Act, 1894, "Adjoining Owner,' means the Owner, or one of the owners, of land, buildings, storeys, or rooms adjoining those of the BUILDING OWNER" (s. 5, subs. 32): *Vh. List v. Tharpe*, cited OWNER. That section is larger and more precise than s. 85, Metrop. Bg Act, 1855 (which it replaces), under which an Owner of only an Equitable Interest could be an Adjoining Owner (*Coven v. Phillips*, 11 W. R. 706; 8 L. T. 622; 33 Bea. 18); so, of a Tenant in Possession of a part only of a house, if his interest was greater than from YEAR TO YEAR (*Fillingham v. Wood*, 1891, 1 Ch. 51; 60 L. J. Ch. 232; 64 L. T. 46; 39 W. R. 282).

V. FRONTING: OCCUPIER: OWNER.

**ADJOINING PROPERTY.** — As to this phrase in a covenant giving protection from annoyance; *V. Harrison v. Good*, 40 L. J. Ch. 295; L. R. 11 Eq. 338: ANNOYANCE: NEIGHBOURING.

"Adjoining or Neighbouring" Colliery; *V. NEIGHBOURING.*

V. ADJACENT: ADJOIN.

**ADJOURN.** — "The word 'adjourn' must be construed with reference to the object of the context, and with reference to the object of the enquiry. What might, in certain Acts of Parliament, require a technical interpretation where adjournments are well understood, e.g. relating to Courts of Justice, does not apply to enquiries of this nature (under s. 4, Election Commissioners Act, 1852. 15 & 16 V. c. 57). Enquiries of this nature cannot be performed without holding meetings from time to time;

and when the power of holding those meetings is given, 'adjourn' must be taken as used in the popular sense of deferring or postponing the enquiry to a future day" (per Mellor, J., *Fitzgerald's Case*, L. R. 5 Q. B. 10).

*Vf.* 1 Encyc. 129-133.

**ADJUDGED.** — *V.* SUM ADJUDGED.

*Quà* Bankry Frauds & Disabilities (Scot.) Act, 1884, 47 & 48 V. c. 16, "Adjudged Bankrupt" includes "a person whose estate has been sequestrated, or with respect to whom a Decree of *cessio bonorum* has been pronounced by a competent court in Scotland" (s. 5); and by s. 6, *Ib.*, that def applies, in Scotland, to ss. 33, 34, Bankry Act, 1883.

**ADJUDGER.** — Stat. Def., *Scot.*, V. 31 & 32 V. c. 101, s. 3.

**ADJUDICATION.** — *V.* ORDER OF ADJUDICATION.

**ADJUST.** — "Adjustment," is a word in common use. It is commonly applied to the settlement among various parties of their several shares in respect of claims, liabilities, or payments relating to a GENERAL AVERAGE claim. That is not its only application; it is a word which is applied to other matters in the same manner in which it is commonly applied in Marine Insrce. When there are matters which require re-arranging, regulating, or equalizing, so as to restore the true balance, the process of so re-arranging, setting right, regulating, or equalizing may be described as 'adjusting'" (per Bruce, J., *Re Buckinghamshire Co. Co. and Hertfordshire Co. Co.*, 68 L. J. Q. B. 423); therefore, the loss by one County and the gain by another of an AREA which contributes towards, without in itself augmenting, the County's expenditure upon bridges and main-roads, is a matter for "Adjustment" under s. 62, *Loc. Gov. Act, 1888 (S. C. 1899, 1 Q. B. 515; 68 L. J. Q. B. 417; 80 L. T. 85; 63 J. P. 356)*; so, where a portion of a Township is detached from one Poor Law Union and included in another, that is a matter for "Adjustment" under s. 68, *Loc. Gov. Act, 1894 (Re Rochdale and Haslingden, 1899, 1 Q. B. 540; 68 L. J. Q. B. 531; 80 L. T. 146; 47 W. R. 322)*.

There is no DIFFERENCE as to "adjustment of Loss," within a Fire Policy, when the only question is as to whether the policy has been violated by a breach of one of its conditions (*O'Connor v. Norwich Union Insrce, 1894, 2 I. R. 723*).

*Cp.* DIRECT.

**ADMEASUREMENT.** — A Condition of Sale that provides that "the Admeasurements are presumed to be correct," and negating allowance for errors, does not imply that there has been an actual admeasurement prior to sale, and the Condition means, — if the quantity stated is incorrect neither party is to have any claim (*Cordingley v. Cheesebrough, 31 L. J. Ch. 617; 3 Giff. 496*). *V.* ERROR: *Cp.* ESTIMATED.

*V.* MEASUREMENT.

**ADMINISTER.** — To “administer” a Poison or a Drug, embraces every mode of giving it, or causing it to be taken (*La Beau v. People*, 34 N. Y. 233).

A person who supplies a woman with a drug, for her to take and which she takes in his absence, “administers” it, within s. 58, 24 & 25 V. c. 100 (*R. v. Wilson*, 26 L. J. M. C. 18; *Dears. & B.* 127: followed in *R. v. Farrow*, *Dears. & B.* 164). “If I call in a physician and he writes his prescription, and I take the medicine, is that not an administering by him?” (per Park, J., *R. v. Harley*, 4 C. & P. 369). *Vf. Arch. Cr.* 793; *Rosc. Cr.* 239. *V. CAUSE TO BE TAKEN.*

“Administer Poison or other Destructive Thing”; *V. POISON.*

A CONSPIRACY to administer, is none the less a crime because, — the woman being in fact not pregnant, — the administration of the drug would not be a crime if committed by the woman alone (*R. v. Whitechurch*, 59 L. J. M. C. 77; 24 Q. B. D. 420; 62 L. T. 124; 38 W. R. 336; 54 J. P. 472).

A woman who administers to herself an innocent thing but thinking it capable of procuring ABORTION, is guilty of the ATTEMPT to commit the crime; though another person who incites her to take it, but who knows it is innocent, is not guilty of inciting her to such an Attempt (*R. v. Brown*, 63 J. P. 790).

To “administer” a deceased’s estate, as that phrase is used in an Administration Bond, includes the duty of keeping the estate intact after it has been collected and got in, until it is duly administered; and the words “well and truly administer” are not cut down by the words following the scilicet, for such words are only an illustration of what a due Administration is (*Dobbs v. Brain*, 1892, 2 Q. B. 207; 61 L. J. Q. B. 749; 67 L. T. 371; 41 W. R. 7; 57 J. P. 22: *Vf. Canterbury, Archbp. v. Robertson*, 3 L. J. Ex. 101; 1 Cr. & M. 690).

“Take possession of and administer Personal Estate.” s. 37, Stamp Act, 1815; *V. A.-G. v. New York Breweries Co*, cited POSSESSION.

**ADMINISTRATION.** — *V. ADMINISTER: ORDER OF ADJUDICATION.*

“Administration of Justice”: — English “Laws and Statutes” which are to be “applied in the Administration of Justice,” in a Colony, are not confined to those having relation to Procedure, and “certainly include a limitation of the time within which Actions can be brought.” *e.g.* the Nullum Tempus Act, 9 G. 3, c. 16 (*A.-G. New South Wales v. Lore*, 1898, A. C. 679; 67 L. J. P. C. 84; 78 L. T. 601; 47 W. R. 81).

*V. BANKRUPTCY AND INSOLVENCY.*

“Management and Administration”; *V. MANAGEMENT.*

“Person acting in the Administration”; *V. ACTING.*

Stat. Def. (quà a deceased’s estate). 20 & 21 V. c. 77, s. 2; 20 & 21 V. c. 79, s. 2; 39 & 40 V. c. 18, s. 7.



As applied to Scotland, "Administration" means "Confirmation," quâ Industrial and Provident Societies Act, 1876, 39 & 40 V. c. 45 (s. 3), and quâ Friendly Societies Act, 1896 (s. 102).

**ADMINISTRATIVE.** — "Administrative *Business of Justices*," s. 3, Loc. Gov. Act, 1888; *V. Royal Aquarium v. Parkinson*, 1892, 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. 513; 40 W. R. 450; 56 J. P. 404; *Re Local Government Act, 1888*, 1892, 1 Q. B. 33; 61 L. J. Q. B. 27; 65 L. T. 614; 56 J. F. 279. Quâ s. 46 of the Act, " 'Administrative Business' means such business as is by this Act transferred from Quarter Sessions or Justices, or any Committee thereof, to County Councils."

Quâ same Act, " 'Administrative *County*,' means the area for which a County Council is elected in pursuance of this Act; but does not (except where expressly mentioned) include a COUNTY BOROUGH" (s. 100).

"Administrative County of London"; *V. LONDON*.

"Administrative *Vestry*"; *V. London Gov. Act, 1899*, s. 34.

**ADMINISTRATORS.** — *V. EXECUTORS.*

Administrators of Police; *V. 27 & 28 V. c. 53*, s. 2.

Administrators of a Prison; *V. 23 & 24 V. c. 105*, s. 4.

**ADMIRALTY.** — *V. s. 12 (4)*, Interp. Act, 1889.

**ADMIRALTY CAUSE.** — An action against a Pilot for Collision-damage caused by a vessel under his charge, is not an "Admiralty Cause" within ss. 3, 5, 31 & 32 V. c. 71, and 32 & 33 V. c. 51 (*Flower v. Bradley*, 44 L. J. Ex. 1; 23 W. R. 74, *whc.* for prior authorities; *Scovell v. Bevan*, 56 L. J. Q. B. 604; 19 Q. B. D. 428; *R. v. City of London Court*, 1892, 1 Q. B. 273; 40 W. R. 215; 61 L. J. Q. B. 337. *cthle.* for a vast array of learning hereon). So, of an action against a Dock Co for damage occasioned by the state of the dock (*Turner v. Mersey Docks*, 1892, P. 285; 61 L. J. P. D. & A. 100; 40 W. R. 535). *Vf. The Ruby*, cited SEAMAN: *R. v. Essex Co. Co.*, 53 L. J. Q. B. 423; 13 Q. B. D. 142: SHIP: DAMAGE BY COLLISION.

**ADMISSION.** — " 'Admission & institution.' In proprietic of speech, admission is, when the bishop upon examination admitteth him (*i.e.* a Clerk) to be able and saith *Admitto te habilem*. Institution is, when the bishop saith *Instituo te rectorem talis ecclesie cum cura animarum, & accipe curam tuam & meam*. But sometimes in a more large sense *admissus* doth include *institutus* also: *cujus presentatus sit admissus, (i.e.) institutus*" (Co. Litt. 344 a). *Vh. London v. Derry, Smythe*, 517, 518: Phil. Ecc. Law, 350. *Cp. COLLATION.*

"Upon Admission," 9 G. 4, c. 17, s. 2; *V. R. v. Humphrey*, cited UPON.

"Admissions of fact," "on the Pleadings or otherwise"; *V. OTHERWISE.*

*Vf.* as to Admissions of fact, 1 Encyc. 147-152.

Admission of Solicitors; *V.* Cordery on Solrs, 3rd Ed. 25.

**ADMIT.** — *V.* LIABILITY.

"Admit the truth"; *V.* TRUTH.

"Admit or enrol"; *V.* Copyhold Act, 1887, 50 & 51 V. c. 73, s. 49; 57 & 58 V. c. 46, s. 94.

**ADMITTED.** — "Admitted" a Member of the Court of a City Company is equivalent to being "elected" (*R. v. Saddlers Co*, 32 L. J. Q. B. 337; 10 H. L. Ca. 404).

Persons are not "admitted" to a Sunday ENTERTAINMENT by payment, s. 3, 21 G. 3, c. 49, if they go in free, but who, when they are in, can only get reserved seats by payment (*Williams v. Wright*, 41 S. J. 671).

"Admitted or Proved"; *V.* PROVE.

*V.* FULL INTEREST ADMITTED.

**ADMITTED SET-OFF.** — "An Admitted Set-Off," s. 57, Co. Co. Act, 1888, does not require any previous assent by the deft; the phrase is satisfied if the Set-Off be admitted by the plt in his writ or summons (*Lovejoy v. Cole*, 1894, 2 Q. B. 861; 64 L. J. Q. B. 120; 43 W. R. 48; 71 L. T. 374, approving *Percival v. Pedley*, 18 Q. B. D. 635, and disapproving *Hubbard v. Goodley*, 59 L. J. Q. B. 285; 25 Q. B. D. 156).

*V.* OTHERWISE: REDUCED BY PAYMENT.

**ADMIXTURE.** — *V.* DECLARE.

**ADOPT.** — "Act adopting the transaction"; *V.* SALE ON TRIAL.

To "adopt" the receipt of stolen goods does not make the adopter a Receiver, for he may have merely acquiesced without taking any active part in the receipt (*R. v. Dring*, 30 L. T. O. S. 158; 7 Cox C. C. 382).

**ADULT.** — Quà Sum. Jur. Act, 1879, "The expression 'Adult,' means a person who, in the opinion of the Court before whom he is brought, is of the age of 16 years, or upwards" (s. 49).

*Cp.* STATUTE ADULT: FULL AGE: MAJORITY.

**ADULTERATION.** — "Adulteration" means the infusion of some foreign substance" (per Cockburn, C. J., *Francis v. Maas*, 47 L. J. M. C. 84; 3 Q. B. D. 341). *V.* DYE.

An article of food is "adulterated" when any substance, other than that which the article purports to be, is mixed with, or added to, or placed upon it, either to increase the bulk or weight or apparent size of the article, or to give it a deceptive appearance (*Fitzpatrick v. Kelly*, 42 L. J. M. C. 132; L. R. S Q. B. 337; *Roberts v. Egerton*, 43 L. J. M. C. 135; L. R. 9 Q. B. 494). But "MILK from which the cream had been

extracted would, probably, not fall within the designation of 'not pure' (Maxwell, 400, 401).

V. AS UNADULTERATED: ARTICLE DEMANDED: PREJUDICE OF PURCHASER: DILUTE: 1 Encyc. 153-156.

**ADULTERER.** — V. ALLEGED.

**ADULTERY.** — Is "the offence of Incontinence by married persons" (1 Encyc. 156). Cp. FORNICATION.

**ADVANCE.** — A power to "advance" money, e.g. in a Co's Mem. of Association, does not exclusively mean to lend: "'advancing' and 'lending' may each have a different signification. Money may be 'advanced' without being 'lent.' The relation of Borrower and Lender does not exist in a great variety of the transactions which are here distinctly authorized" (per Bacon, V. C., *London Financial Assn. v. Kell*, 53 L. J. Ch. 1037; 26 Ch. D. 136).

In an *Advance Note*, "advance" does not mean an advance in money only; an advance in money and goods suffices (*M'Kune v. Joynson*, 5 C. B. N. S. 218; 28 L. J. C. P. 133: Va. s. 4, 5 & 6 V. c. 39).

For restrictions on Advance Notes to SEAMEN, V. s. 140, Mer. Shipping Act, 1894, but that section is confined to Seamen in the United Kingdom (*Ritchie v. Larsen*, 1899, 1 Q. B. 727; 68 L. J. Q. B. 335; 80 L. T. 259: *Rowlands v. Miller*, 68 L. J. Q. B. 338; 1899, 1 Q. B. 735; 80 L. T. 290; 47 W. R. 687).

"In consideration of your being *in Advance* to A." (*Haigh v. Brooks*, 10 A. & E. 309), or "having this day advanced" to A. (*Goldshede v. Swan*, 1 Ex. 154), in an INDEMNITY, may be explained by parol not to refer to a past consideration. So, "the terms 'advanced or to be advanced,' in a certain state of facts, might fairly admit of the construction that they apply to future, as well as to past, advances" (per Wilde, C. J., *Bell v. Welch*, 19 L. J. C. P. 189). V. *Grahame v. Grahame*, 19 L. R. Ir. 249: *Hibernian Bank v. Gilbert*, 23 Ib. 321. Cp. GIVEN: HAVING, at end: SECURE.

Advance FREIGHT is payable at the stipulated time, and the loss of the Ship is immaterial (*Oriental S. S. Co v. Tylor*, 1893, 2 Q. B. 518; 63 L. J. Q. B. 128; 69 L. T. 577; 42 W. R. 89); but if the Advance Freight is so payable "if required," then the demand for it comes too late after the ship is lost (*Smith v. Pyman*, 1891, 1 Q. B. 742; 60 L. J. Q. B. 621; 64 L. T. 436; 39 W. R. 466).

If Freight is payable "Monthly in advance," the charterer is bound to pay the full monthly payment at the beginning of each month, — an obligation which applies even to a time when it is probable that the hire will not continue for a whole month (*Tonnellier v. Smith*, 77 L. T. 277; 2 Com. Ca. 258; 13 Times Rep. 560, diss. Smith, L. J.).

V. *quà* Advance Freight, *Allison v. Bristol Mar. Insree*, 1 App. Ca.

209: *Weir v. Girvin*, 1900, 1 Q. B. 45; 69 L. J. Q. B. 168; 81 L. T. 687; 48 W. R. 179; 5 Com. Ca. 40.

A reservation of RENT by periodical payments, "and always, if REQUIRED, in advance," means that the rent is payable in advance at the commencement of each period, but only so on reasonable notice being given by the lessor, — what is such notice being a question of fact, but it may be immediate when the goods on the premises are in peril (*London & Westminster Loan Co v. Lond. & N. W. Ry*, 1893, 2 Q. B. 49: 62 L. J. Q. B. 370; 69 L. T. 320; 41 W. R. 670).

Distress, as against the Liquidator of a Company, cannot be made for rent in advance under a provision that it should be "always due and payable in advance, if required" (*Shackell v. Chorlton*, 1895, 1 Ch. 378; 64 L. J. Ch. 353; 72 L. T. 188; 43 W. R. 394).

Annuity "in advance," not apportionable; *V. PERIODICAL*.

Abatement from Portions if A. should "advance or pay" any sum to Beneficiaries, will not apply to a benefit given by A.'s Will (*Cooper v. Cooper*, 43 L. J. Ch. 158; 8 Ch. 813).

#### V. ADVANCEMENT.

**ADVANCED.** — In a devise containing a direction that "any moneys which might have been advanced to my children, or any of them, or to my sons-in-law in my life, and also any sums of money which might be owing from them, or any of them to me at my death," it was held that the word "advanced" was not used by the testator in a technical sense, and that money lent by the testator to one of his sons-in-law, though by reason of his bankruptcy it was not owing to the testator at his death, must be brought into hotchpot (*Astbury v. Beasley*, W. N. (69), 96). *V. ADVANCEMENT: UNADVANCED.*

#### V. ADVANCE.

**ADVANCEMENT.** — A Power to apply money for a person's "Advancement" in the world, "is to be read as a word appropriate to an early period of life" (per Kennedy, J., *Molyneux v. Fletcher*, 1898, 1 Q. B. 648; 67 L. J. Q. B. 392, citing *Re Kershaw*, inf.). It is, frequently, a payment to persons before they become absolutely entitled to, but who are presumably entitled to, or have a vested or contingent interest in, an estate or legacy (*V. per Cotton, L. J., Abram v. Aldridge*, 55 L. T. 556).

In such a Power the words "Advancement," "Preferment," or "Establishment in the World," seem very nearly synonymous (*Luard v. Pease*, 22 L. J. Ch. 1069; *Lowther v. Bentinck*, L. R. 19 Eq. 166; 44 L. J. Ch. 197; 32 L. T. 156); but if such phrases be followed by "otherwise for the BENEFIT" of the person or class, then you get "the largest terms of all," — terms not to be cut down by the *Ejusdem generis* canon (per Jessel, M. R., *Lowther v. Bentinck*, sup.: *Va. Re Brittlebank*, 30 W. R. 99; *Re Kershaw*, L. R. 6 Eq. 322; 37 L. J. Ch. 751).

Such a Power, if confined to "Advancement, Preferment, or Establishment in the World," does *not* authorize a payment to a Tenant for Life after he has been married many years and has become poor (*Luard v. Pease*, sup.: *Sv. Talbot v. Marshfield*, 3 Ch. 622; 37 L. J. Ch. 52), or to provide for debts (*Lowther v. Bentinck*, sup.: *Talbot v. Marshfield*, sup.), or to set up a husband in business (*Talbot v. Marshfield*).

But it *does* authorize a payment to enable a married woman to carry on business separately from her husband (*Talbot v. Marshfield*, sup.: *Vf. Simpson v. Brown*, 13 W. R. 312; 11 L. T. 593; *Re Brittlebank*, sup.), or to provide a marriage portion (*Lloyd v. Cocker*, 27 Bea. 645; 24 L. J. Ch. 84), or marriage outfit (*Pride v. Fooks*, 2 Bea. 430; 9 L. J. Ch. 234), or passage money for children and their parents who, on account of the children's ill health, have to go abroad (*Re Long*, 38 L. J. Ch. 125; 19 L. T. 672; 17 W. R. 218), or even, in exceptional cases, for maintenance (*Roper-Curzon v. Roper-Curzon*, L. R. 11 Eq. 452; 19 W. R. 519; 24 L. T. 406; *Re Breed*, 1 Ch. D. 226; 45 L. J. Ch. 191). *Vf. Re Gosset*, 19 Bea. 529; Vaizey, 1049-1056.

UNDER THE STATUTE OF DISTRIBUTION. — By the Statute of Distribution, 22 & 23 Car. 2, c. 10, s. 5, a child "advanced by the intestate in his lifetime by PORTION," has to bring the amount of the advancement into NOTCHPOT, if claiming to participate in the distribution of the intestate's personal estate. This provision only applies to the estates of intestate *fathers* (*Holt v. Frederick*, 2 P. Wms. 357); and generally speaking it relates to gifts to children early in life (per Jessel, M. R., *Taylor v. Taylor*, 44 L. J. Ch. 720; L. R. 20 Eq. 155); and it means that "Wherever a sum is paid for a particular purpose, which is thought good and right by the father, and which the child desires, if it be money which is drawn out in considerable amount, and not a small sum (V. Wms. Exs. 1369), it must be treated as an advance. The payment of the money is the important thing, the Court does not look to the application" (per Wood, V. C., *Boyd v. Boyd*, L. R. 4 Eq. 305; 36 L. J. Ch. 877). In that case it was accordingly held that a sum given by a father for the payment of his son's debts was an Advancement, — a decision followed by Pearson, J., in *Re Blockley* (54 L. J. Ch. 722; 29 Ch. D. 250; 33 W. L. 777), wherein he refused to follow the opposite view of Jessel, M. R., in *Taylor v. Taylor* (sup.).

Though it seems that apprenticing a child not such an Advancement (note to *Pusey v. Desbouvrie*, 3 P. Wms. 317); yet beyond doubt articling a young man to a solicitor is (*Boyd v. Boyd*, sup.). So the payment of a son's entrance fees to an Inn of Court is an Advancement within the statute; but not so the dues of the Inn, or the son's fees on entering the chambers of a Special Pleader (*Taylor v. Taylor*, sup.).

Voluntary periodical allowances which may or may not vary are not Advancements (*Taylor v. Taylor*, sup.); but a fixed and agreed annuity is. — *viz.*, its value at the date of the grant (Wms. Exs. 1374).

A Settlement, whether voluntary, or for a *good* consideration (as that of marriage), is an Advancement within the statute (*Edwards v. Freeman*, 2 P. Wms. 410: *Phiney v. Phiney*, 2 Vern. 638).

*Vf.* and as to when Advancement presumed, Wms. Exs. 1369-1377.

*V.* BENEFIT.

**ADVANTAGE.** — *V.* UNDUE PREFERENCE: DIVENT.

Quà Public Bodies Corrupt Practices Act, 1889, 52 & 53 V. c. 69, " 'Advantage' includes, any office, or dignity, and any forbearance to demand any money or money's worth or valuable thing, — and includes any aid, vote, consent, or influence, or pretended aid, vote, consent, or influence, — and also includes any promise or procurement of, or agreement or endeavour to procure, or the holding-out of any expectation of, any gift, loan, fee, reward, or advantage as before defined " (s. 7).

**ADVANTAGEOUSLY.** — *V.* CONVENIENTLY: EFFICIENTLY.

**ADVANTAGES.** — " Commodities, Emoluments, Profits and Advantages . . . all of which four words are of one sense and nature, implying things gainful " (*London v. Southwell*, Hob. 304). *Vf.* EMOLUMENT.

" Advantages " of Shares and Interest in a Co; *V.* SHARE.

**ADVENTURE.** — " 'Adventure' (in questions relating to Marine Insurance) means, either one of the perils insured against, as in the clause in a policy commencing 'Touching the adventures and perils'; or the liability or risk undertaken by the insurers, as in the clause in a policy commencing 'Beginning the adventure upon the said goods and merchandizes'; or the speculation or undertaking to protect which the assured effected the insurance (*Fenwick v. Robinson*, 3 C. & P. 324: *Jenkins v. Power*, 6 M. & S. 289); or a subject of insurance which has been exposed to the risks insured against (*Inglis v. Stock*, 10 App. Ca. 269: 54 L. J. Q. B. 582) " : Wood, 348.

*V.* HEREAFTER VALUED AND DECLARED.

" Trade, Adventure, or Concern," Income Tax Act, 1842; *V.* TRADE.

" 'Adventure,' but more properly 'Adventure,' is a Mischance causing the death of a man, without Felony; as when he is suddenly drowned or burnt, falling into the water or fire, or kill'd by any disease or mischance; Britton, cap. 7, where you may see how it differs from MISADVENTURE " (Cowel). *Cp.* ACCIDENT.

**ADVENTURER.** — To impute that a person is an " Adventurer," if supported by a proved innuendo, is Libel (*Wakley v. Healey*, 18 L. J. C. P. 241; 7 C. B. 591).

**ADVERSE.** — " Adverse claims " ; *V.* OPPOSING.

An " Adverse INTEREST " in land, entitling its claimant to priority over an unregistered Conveyance, s. 38, Ceylon Land Registration Ordinance, viii. of 1863, includes an Interest created by a Mortgage Bond

(*Gauder v. Dassenaiké*, 1897, A. C. 547; 66 L. J. P. C. 103; 77 L. T. 321).

"Adverse *Litigation*," s. 80, Lands C. C. Act, 1845; *V. lie Clergy Orphan Corp.*, 1894, 3 Ch. 145; 64 L. J. Ch. 66; 71 L. T. 450; 43 W. R. 150; *Haynes v. Barton*, L. R. 1 Eq. 422; 35 L. J. Ch. 233; 13 L. T. 787; 14 W. R. 257; *Henniker v. Chafy*, 28 Bea. 621; *Re Longworth*, 1 K. & J. 1; 23 L. J. Ch. 104; 22 L. T. O. S. 197; 2 W. R. 124; *Askew v. Woodhead*, 14 Ch. D. 27, 36; 49 L. J. Ch. 320; 42 L. T. 567; 28 W. R. 874; 44 J. P. 570; *Re Bareham*, 17 Ch. D. 329; 29 W. R. 525; *Re Fenton, Armitage v. Askham*, 3 W. R. 331; 1 Jur. N. S. 227; *Loud. & S. W. Ry v. Bridger*, 4 N. R. 261; 12 W. R. 948; 10 L. T. 689; 10 Jur. N. S. 650; *Re Catling*, 34 S. J. 364; Dart, 809, 1263; Dan. Ch. Pr. 1850.

"Adverse POSSESSION" designates a possession in opposition to the true title and real owner; and implies that it commenced in wrong and is maintained against right (*Alexander v. Polk*, 39 Miss. 755).

As to what acts constitute "Adverse Possession"; *Vf. MacS.* 524-526, 532; 1 Encyc. 160.

"A TITLE to Registered Land adverse to, or in derogation of, the title of the Registered Proprietor, shall not be acquired by any length of Possession" (s. 12, Land Transfer Act, 1897; *See* the provisoes to the section).

An "Adverse *Witness*," within s. 22, Com. L. Pro. Act, 1854, is one who, *in the opinion of the presiding judge*, is hostile (*Greenough v. Eccles*, 28 L. J. C. P. 160; 5 C. B. N. S. 786; 7 W. R. 341. *Va. Martin v. Travellers' Insrce*, 1 F. & F. 505; *Pound v. Wilson*, 4 F. & F. 301; *Rice v. Howard*, 16 Q. B. D. 681; 55 L. J. Q. B. 311; 34 W. R. 532). *Vf. Price v. Manning*, 58 L. J. Ch. 649.

"Adversely to any Charity"; *V. Tudor*, Char. Trusts, 474, 482.

#### ADVERTISEMENT. — *V. PUBLIC NOTICE.*

"Circulars, Advertisement, or otherwise": *V. CIRCULARS.*

Picture, Print, &c, carried or distributed "by Way of Advertisement," s. 9, Metropolitan Streets Act, 1867, 30 & 31 V. c. 134, means that the thing itself must be an Advertisement; the distribution of the Contents Bill of a Newspaper, to gain notoriety for the newspaper, is not within the phrase (*Gage v. Breuley*, 67 L. J. Q. B. 457; 46 W. R. 415).

*V. FOREIGN.*

#### ADVISE. — *V. PRECATORY TRUST.*

ADVISEDLY. — "Advisedly," 13 Eliz. c. 12, s. 2, means not intentionally, or avowedly, but deliberately (*Heath v. Burder*, 1 B. & F. 212; 10 W. R. 673; 6 L. T. 562).

ADVOWSON : ADVOCATION. — "The right of PRESENTATION or COLLATION to a church" (Elph. 558, citing Co. Litt. 119 b. 17.

Co. Litt. 17 b, on *whc A-G. v. Ewelme Hosp*, 17 Bea. 383: Spelm.: 1 Burn's Ecc. Law, *Advowson*: Termes de la Ley: Phil. Ecc. Law, 260: 1 Encyc. 173-179). *V. NEGLIGENCE: DONATIVE: LIVING.*

A Royal Grant of the "Advowson" of A., does not convey a present Avoidance (Dyer, 300, cited *R. v. Dover*, 4 L. J. Ex. 98).

"Advowsons" and "Rectories," in s. 13, 1 & 2 V. c. 110, only embrace Advowsons in lay hands (*Hawkins v. Gathercole*, 24 L. J. Ch. 332; 6 D. G. M. & G. 1; 1 Sim. N. S. 63; 1 Drew. 12).

An Advowson may be "in" a place (*Crompton v. Jarratt*, and *Re Hodgson*, cited IN).

A gift for the purchase of Advowsons and Presentations, is a good CHARITY; but to be so the Will must declare the Trusts on which they are to be held when purchased (*Hunter v. A-G.*, cited OR).

Stat. Def. — 19 & 20 V. c. 50, s. 1; 26 & 27 V. c. 120, s. 37; 40 & 41 V. c. 48, s. 2.

**AFFAIRS.** — "Affairs of the Church"; *V. CHURCH.*

"Civil Affairs"; *V. MANAGEMENT.*

The "Conduct and Affairs" of a bankrupt which, under s. 28 (2), Bankry Act, 1883, repld, s. 8 (2), Bankry Act, 1890, have to be considered on his application for Discharge, cover a wide area of matters, especially under the word "affairs," which embraces even such things as the expectation that the bankrupt will, probably, soon be a substantial beneficiary "under the Will of his father, or uncle, or some other wealthy relative" (*Re Barker*, cited CONDUCT).

**AFFECT.** — "Shall not affect" any estate, &c (proviso to s. 2, 33 V. c. 14, Naturalization Act, 1870), — "I.e. — Shall not validate or invalidate" (1 Jarm. 41, citing *Sharp v. St. Sauveur*, 41 L. J. Ch. 576; 7 Ch. 343. *Vf.* 2 Jarm. 651, where it is said "*primâ facie* 'Affect' is neutral.") *V. INTERFERE.*

"Affect or deteriorate" water; *V. FILTHY WATER.*

A covenant in a lease of a Public-house that the lessee will do nothing that can or may "*affect, lessen, or make void*" the License, is not broken by a Conviction which might have been, but was not, indorsed on the license (*Wooler v. Knott*, 1 Ex. D. 265; 45 L. J. Ex. 884; 34 L. T. 362; 24 W. R. 1004). But a covenant not to do or suffer anything whereby the License "may be forfeited, or the Renewal thereof withheld," is broken by two indorsed convictions, although the License has not actually been forfeited. — "MAY," in such a connection, is not to be read as "SHALL" (*Harmann v. Powell*, 60 L. J. Q. B. 628; 65 L. T. 255). *Cp.* DANGER: IMPERIL.

*V. AFFECTED: AFFECTING: DIRECTLY AFFECT: IMPEACHED.*

**AFFECTED.** — *V. DIRECTLY AFFECT: INJURIOUSLY AFFECTED: PREJUDICIALLY.*

"'Affected,' is, like 'adjusted,' not a Word of Art but, a word of



ordinary English. It is capable of a very large meaning, and was, I think, purposely used for that reason" in s. 62, Loc. Gov. Act, 1888, which gives Authorities "affected" by the Act power to make Adjusting Agreements (per Wills, J., *Re Buckinghamshire Co. Co. and Hertfordshire Co. Co.*, cited ADJUST, and *V.* same jdgmt for obs as to how an Authority may be "affected" by the Act).

Under 8 G. 2, c. 6, s. 1, a BENEFICE is not "affected" by a Sequestration, because the jdgmt does not bind the lands (*Cottle v. Warrington*, 5 B. & Ad. 452).

The License of a PUBLIC-HOUSE is not "indorsed, or otherwise affected," within a V. & P. contract if it be not indorsed in fact and nothing has happened rendering it liable to be indorsed, though the Justices may, on some other ground, refuse an interim protection and transfer (*Tudcaster Co v. Wilson*, 1897, 1 Ch. 705; 66 L. J. Ch. 402; 76 L. T. 459; 45 W. R. 428; 61 J. P. 360). *V.* AFFECT.

**AFFECTING.** — "Any act, &c, affecting *land* within the jurisdiction," R. 1 (b), Ord. 11, R. S. C., means something physically, and not merely incidentally, affecting land (*Casey v. Arnott*, 46 L. J. C. P. 3; 2 C. P. D. 24; 35 L. T. 424; 25 W. R. 46); Slander of Title does not so "affect" (Ib.), nor an action for Rent (*Agnew v. Usher*, 54 L. J. Q. B. 371; 14 Q. B. D. 78; 51 L. T. 576; 33 W. R. 126); but an action on the Custom of the Country (*Kaye v. Sutherland*, 57 L. J. Q. B. 68; 20 Q. B. D. 147; 58 L. T. 56; 36 W. R. 508), or to recover Possession, or damages for breach of covenant to Repair (*Tassell v. Hallen*, 1892, 1 Q. B. 321; 61 L. J. Q. B. 159; 40 W. R. 221; 66 L. T. 196), does "affect" the land.

"A Tax which affects everybody who occupies and enjoys a given property, in respect of that property, may be justly said to 'affect' the property" (per Kindersley, V. C., *Lovat v. Leeds*, 2 Dr. & Sm. 72; 31 L. J. Ch. 503); and it was there held that Income Tax was included in a direction to trustees to pay all Taxes "affecting" the hereditis devised for life. *Vf.* DEDUCTIONS: DEBT, at end.

Document "affecting the proprietorship of a Patent"; *V. Re Casey*, cited ASSIGNMENT.

*V.* INCUMBRANCES.

**AFFIDAVIT.** — *V.* OATH.

Stat. Def. — 46 & 47 V. c. 52, s. 168; Interp. Act, 1889, s. 3.

**AFFILIATION.** — Quà Universities (Scot) Act, 1889, 52 & 53 V. c. 55, " 'Affiliation' . . . means such a connexion between an existing University and a College as shall be entered into by their mutual consent, under conditions approved by the Commissioners, or, after the determination of their powers, by the Universities Committee " (s. 3).

An Order of Affiliation, is a Justices' Order adjudging a man to be the putative father of a bastard child, and ordering him to pay not

exceeding 5s. per week towards its maintenance and education, but not longer than till the child attains 16; *17h.* 35 & 36 V. c. 65; 36 V. c. 9.

**AFFIXED.** — *V.* WINDOW: FIXED AND FASTENED: FIXTURES.

**AFFLICTED.** — To be “afflicted” with, *e.g.* gout, connotes having the malady in a sensible and appreciable form (*Fowkes v. Manchester Insree*, 3 F. & F. 440). *Vf. Geach v. Ingull*, 14 M. & W. 95. *Cp.* SUBJECT TO, at end.

**AFFOREST.** — “ ‘Afforest,’ is to turn ground into FOREST ” (*Termes de la Ley*). .

**AFFRAY.** — “ An Affray is the fighting of two or more persons in a public place to the terror of Her Majesty’s subjects ” (*Steph. Cr.* 48). *Vf. Arch. Cr.* 1052. “ If the fighting be in private, it is not an Affray, but an ASSAULT ” (*Rosc. Cr.* 241). *Vf. Termes de la Ley: Jacob.*

**AFFREIGHTMENT.** — “ ‘Affreightment,’ is a contract by which a Shipowner undertakes to carry goods in his ship for reward. The person for whom the goods are carried is called the *Freighter*, and the sum which he pays for their carriage is called the FREIGHT ” (*1 Encyc.* 184, *whc* to 192). *Vh. Carver*, 614, 763: *Abbott, Index, Affreightment.*

**AFLOAT.** — *V.* ALWAYS AFLOAT.

**AFORE.** — “ Afore Execution had ”; *V.* EXECUTION.

**AFORESAID.** — When this word is used as an adjective it can hardly create much difficulty. The man, or premises, “aforesaid.” can mean nothing else than the man or premises which has been before indicated (*R. v. Albert*, 5 Q. B. 37; 12 L. J. M. C. 117), and, like “SAID,” has, generally, reference to the last antecedent. *Vf. inf.*

But when used, — *e.g.* in Wills, — adverbially, as in the expressions “ as aforesaid,” “ in MANNER aforesaid,” — phrases of equal import with “ as before,” “ in like manner,” “ on the same terms and conditions,” and such like, — then difficulty may very easily arise. Generally speaking, such referential expressions indicate the manner in, or conditions on which, not the persons by whom, benefits are to be taken. Thus where a Will, having contemplated the possibility of the death of testator’s daughter under 21 without leaving a husband, gave certain directions “ in case of the death of his daughter under age *as aforesaid.*” that meant, under age and not leaving a husband (*Weddell v. Mundy*, 6 Ves. 341). So, a successive gift “ in manner aforesaid,” following a prior gift for life, is also a gift for life (*Doe d. Woodall v. Woodall*, 16 L. J. C. P. 28; 3 C. B. 349). So if there were a gift to a class living at testator’s death *as tenants in common*, and that was followed by a gift to another class “ *in the same manner,*” that would rather indicate that such other class would

take as tenants in common, than that its members were to be ascertained by the fact of being alive at the testator's death (1 Jarm. 746, *ante secus*, if the words were "at the same time and in the same manner" (*Swift v. Swift*, 32 L. J. Ch. 479). So, where a Will contained a legacy to "brothers and sisters now living," with a direction against lapse by their deaths in testator's lifetime, and was followed by a Codicil which contained another legacy to "my brothers and sisters *in like manner* as I have directed by my Will"; held, that "in like manner" referred to the mode in which the Codicil class was to take, but that such class was not the same as that in the Will, and, therefore, that the direction against lapse did not apply to the Codicil class (*Re Wilder*, 27 Bea. 418). So, in a "general survivorship clause, the words 'in manner aforesaid,' or similar terms, will have the effect of subjecting all the accrued shares to the same terms, restrictions, and limitations over, as the original shares" (2 Jarm. 717, citing *Milson v. Awdry*, 5 Ves. 465; *Giles v. Melsom*, L. R. 5 C. P. 614; L. R. 6 C. P. 532; L. R. 6 H. L. 24; 42 L. J. C. P. 122; *nom. Melsom v. Giles*, 40 L. J. C. P. 233; 39 Ib. 325. *V. Bessant v. Noble*, 26 L. J. Ch. 236; *Surtees v. Hopkinson*, 36 L. J. Ch. 305; L. R. 4 Eq. 98; LIKE.

Sometimes "as aforesaid" means "such" (*Walker v. Petchell*, 14 L. J. C. P. 211; 1 C. B. 652).

Covenant in a Lease to do works "in MANNER aforesaid"; *V. Beer v. Sauter*, 10 C. B. N. S. 435.

In a gift to testator's "aforesaid nephews and nieces," none having been mentioned, "aforesaid" was rejected, and all the nephews and nieces were held to be included (*Campbell v. Bouskell*, 27 Bea. 325, cited 1 Jarm. 370).

"Damage done by foresaid operations"; *V. Dixon v. White*, 8 App. Ca. 833.

To assist in baiting Animals "as aforesaid," s. 3, 12 & 13 V. c. 92, refers back to all the conditions mentioned in the preceding part of the section, and therefore only created the offence of assisting when the baiting is in a place kept for the purpose (*Clarke v. Hague*, 29 L. J. M. C. 105; 2 E. & E. 281). *V. PLACE.*

"As aforesaid," s. 6, Metrop. Man. Act, 1855; *V. R. v. Soutter*, cited RATED OR ASSESSED.

It has been said that "the 'aforesaid' will, in an Indictment (if not in a Civil Action), refer to the last Count" (per Bliss, arg. *Ryalls v. The Queen*, 11 Q. B. 791, citing *R. v. Richards*, 1 Moo. & R. 177; *R. v. Rhodes*, Raym. Id. 886; *Sutton v. Fenn*, 3 Wils. 339; *Ross v. Morris*, Cro. Eliz. 436; *Childe v. Towers*, Ib. 311; *Campbell v. The Queen*, 11 Q. B. 799).

"Aforesaid," naturally refers to its immediate antecedent (per Denman, C. J., *Peake v. Screech*, 7 Q. B. 610).

*Vl.* 10 Rep. 138, 107; 8 Ib. 47.

For distinction between “*in formâ prædictâ*” and “*in eadem formâ*”; *V. Co. Litt.* 20 b.

**AFT.** — *V. WIND AFT.*

**AFTER.** — Where an act has to be done WITHIN so many days “after” a given event, the day of such event is not to be reckoned, and the party to do the act has the whole of the last day of the prescribed time in which to do it (*Williams v. Burgess*, 10 L. J. Q. B. 10; 12 A. & E. 635; *Robinson v. Waddington*, 18 L. J. Q. B. 250); and if a time “after” an event has to expire before something else is done, that means clear time (*Blunt v. Heslop*, 7 L. J. Q. B. 216; 8 A. & E. 577).

*V. AT: BEFORE: FROM: OF: ON: UPON: PASSING: THEREAFTER: TIME.*

A Devise “after,” or “from and after,” a previous interest is not, by such words, postponed in vesting (1 Jarm. 806, 816).

“It was at one period doubted whether a devise to a person ‘after’ Payment of Debts was not contingent until the debts were paid; but it is now well established that such a devise confers an immediately Vested Interest,—the words of apparent postponement being considered only as creating a Charge” (1 Jarm. 820: *Vf.* 2 Ib. 585, 587, 600).

Devise to A.. “and after” him to B.; *V. Donn v. Penny*, 19 Ves. 545.

As to effect of testamentary gift “after” *death*; *V.* 2 Jarm. 517, 522: *ON: BEFORE OR AFTER.*

“After default”; *V. DEFAULT.*

After Determination of Partnership; *V. Daw v. Herring*, cited DURING. at end.

Recognizance or Deposit for Costs of Appeal to Quarter Sessions, s. 31 (3), 42 & 43 V. c. 49, “after” the Notice, means after, for the Justices cannot fix the amount till they see the Grounds of the appeal; therefore, an appeal is not in order when Justices have allowed a deposit before notice of appeal given (*R. v. Anglesey Jus.*, 1892, 2 Q. B. 29; 61 L. J. M. C. 143; 67 L. T. 322; 56 J. P. 552).

“After the fact committed”; *V. FACT.*

After-acquired Property, — in a Covenant to Settle; *V. ENTITLED: ACQUIRE: AGREED AND DECLARED: ALREADY.*

**AFTERNOON.** — “The usual hours of the Morning and Afternoon Divine Service,” in the form of an Alehouse License given in Sch. C, Alehouse Act, 1828, refers to those hours as commonly understood, and, quâ Afternoon, they mean from 3 P. M. to about 5 P. M., and are not extended by a usual Evening Service in the Parish Church (*R. v. Knapp*, 2 E. & B. 447; 22 L. J. M. C. 139); In *the Erle, J.*, said, “‘Afternoon’ has two senses. It may mean the whole time from Noon to Midnight;

or, it may mean the earlier part of that time, as distinguished from the Evening."

**AFTERWARDS.** — *V. Chalmers v. North*, 28 Bea. 175: but that case disapproved *Druitt v. Seaward*, 31 Ch. D. 234.

*V. THEREAFTER TO BE BORN.*

**AGAINST.** — In a devise on marrying *with* consent followed by a gift over on marrying "against" consent, the latter word was construed as "without," to effect the alternative (*Long v. Ricketts*, 2 Sim. & St. 179. *Vf. Creagh v. Wilson*, 2 Vern. 573).

To assert anything "against" another has, probably, a *prima facie* meaning of a contradiction of him; but the context or circumstances may show that it connotes a criminatory charge (*Hughes v. Rees*, 7 L. J. Ex. 268; 4 M. & W. 204). *(P. ACCUSE.*

"Party decided against," s. 34. Com. L. Pro. Act, 1854; *V. Abbott v. Feary*, 6 H. & N. 113; 29 L. J. Ex. 475. *Vf, PARTY.*

A PROCEEDING "against" a Co, s. 87, Comp. Act, 1862, includes an application under s. 35, *Ib.* (*Re Onward Bg Socy*, 1891, 2 Q. B. 463; 60 L. J. Q. B. 752; 65 L. T. 516; 40 W. R. 26).

*V. BROUGHT AGAINST: PURSUANCE.*

**AGE.** — *V. FULL AGE: DISCRETION*, at end.

Age of Nurture; *V. NURTURE.*

**AGED.** — *V. SICK.*

**AGENCY TERMS.** — *V. CLIENT: USUAL AGENCY TERMS: 1 Encyc.* 199.

**AGENT.** — "No word is more commonly and constantly abused than 'agent'" (per Ld Herschell, *Kennedy v. De Trafford*, 66 L. J. Ch. 417; 1897. A. C. 180). *Semble*, it is sometimes used as meaning, one who has no Principal, but who, on his own account, offers for sale some particular article having a special name (*Wheeler & Wilson v. Shakespear*, 39 L. J. Ch. 36).

Where the witness to a Claim for the Lodger Franchise described himself therein as "Agent," he being in fact a registration agent, and the Revising Barrister amended accordingly, although holding the original description sufficient; held, that the description of "Agent" was sufficient (*Campbell v. Chambers*, 22 L. R. Ir. 460).

"Agent," in an Order for Inspection of Documents; *V. Deaper v. Manchester, S. & L. Ry*, 30 L. J. Ch. 236; 3 D. G. F. & J. 23; *Bonnardet v. Taylor*, 30 L. J. Ch. 523; 1 J. & H. 383; 9 W. R. 452; 3 L. T. 884; *Gibney v. Clayton*, 27 L. R. Ir. 75.

The Managing Director of a Colliery Co. is its "Agent," quâ Coal Mines Regn Act. 1887, as defined by s. 75 (*Stokes v. Checkland*, 68 L. T. 457; 57 J. P. 232; 17 Cox C. C. 631). *V. INSPECTOR.*

"OTHER Agent," s. 75, Larceny Act, 1861, is to be read *ajus em*

*generis* with the immediately preceding words, "Banker, Merchant, Broker, Attorney," and only includes an Agent whose business or profession it is to receive money, securities, or chattels for safe custody, or other special purpose (*R. v. Portugal*, 16 Q. B. D. 487; 55 L. J. Q. B. 567; 34 W. R. 42; 50 J. P. 501; *R. v. Kane*, 17 Times Rep. 181).  
*Note*: that this section and s. 76 are replaced by 1 Edw. 7, c. 10.

House Agent's authority; *V. PROCURE.*

A clause exonerating a Trustee from the acts of an Agent, only applies to acts within the legitimate scope of the Agency (*Wyman v. Paterson*, cited REASONABLY NECESSARY).

"Agent," ss. 41, 44, Income Tax Act, 1842; *V. Grainger v. Gough*, 1895, 1 Q. B. 71; 64 L. J. Q. B. 193; 71 L. T. 802; 43 W. R. 184; *St. S. C.* in H. L., 1896, A. C. 325; 65 L. J. Q. B. 410; 74 L. T. 435; 44 W. R. 561.

Agent to make payment so as to avoid Statute of Limitations; *V. PAYMENT.*

"Agent in England," s. 21 (2), Co. Co. Admiralty Jurisdiction Act, 1868, means, Agent *quà* the particular Vessel to which the cause relates (*The City of Agra*, cited VESSEL).

Agent of Necessity; *V. NECESSITY.*

Other Stat. Def. — 1 & 2 V. c. 74, s. 7; 5 & 6 V. c. 99, s. 14; 7 & 8 V. c. 15, s. 73; 8 & 9 V. c. 29, s. 2, c. 77, s. 9; 9 & 10 V. c. 95, s. 142; 10 & 11 V. c. 38, s. 20; 13 & 14 V. c. 100, s. 9; 18 & 19 V. c. 108, s. 17; 23 & 24 V. c. 151, s. 7; 24 & 25 V. c. 117, s. 4; 30 & 31 V. c. 48, s. 3; 35 & 36 V. c. 76, s. 72, c. 77, s. 41; 36 & 37 V. c. 67, s. 4. — *Scot.* 39 & 40 V. c. 70, s. 3; 62 & 63 V. c. 47, s. 18. — *Ir.* 30 & 31 V. c. 44, s. 2; 45 & 46 V. c. 24, s. 1.

"Agents"; *V.* 41 & 42 V. c. 76, s. 2.

"Agents of the Candidates"; *V.* 35 & 36 V. c. 33, 1st Sch.

*V. MERCANTILE AGENT: DEL CREDERE: SOLE AGENT: BANKER: PARTNER: OWN CONSENT: SIGNATURE.*

*Note.* As to implying an obligation on a Principal to supply his Agent with the things necessary for fulfilling the duties of the Agency; *V. Turner v. Goldsmith*, 1891, 1 Q. B. 544; 60 L. J. Q. B. 247; 64 L. T. 301; 39 W. R. 547: *Vf.* SOLE AGENT.

**AGENT INTRUSTED.** — "Agent Intrusted" with goods or documents of title, within the Factors Act, 1877; *V. Monk v. Whittenbury*, 2 B. & Ad. 484; *Baines v. Swainson*, 32 L. J. Q. B. 281; 4 B. & S. 270; *Heyman v. Flewker*, 32 L. J. C. P. 132; 13 C. B. N. S. 519; *Cole v. North Western Bank*, 44 L. J. C. P. 233; L. R. 10 C. P. 354; *Tremoille v. Christie*, 69 L. T. 338; Seton, 4th Ed. 1097, 1098. — *Vf.* INTRUSTED: FACTOR: MERCANTILE AGENT.

**AGENT AND PATIENT.** — "Agent and Patient, is, when a man is the doer of a thing *and* the party to whom it is done; as, where a

woman endoweth herselfe of the fairest possession of her husband; also, if a man bee indebted to another, and afterward he maketh the party to whom he is so indebted his exor, and dyeth, the exor may retain so much of the goods of the dead in his hands as his owne debt amounteth unto, and by this Retainer hee is the Agent and the Patient, — that is to say, the party to whom the debt is due *and* the party that payeth the same” (Termes de la Ley).

**AGER.** — “An acre, a hide: Spelm. Seebohm says (Eng. Vill. Com. 167), that ager, agellus, or agellulus, was the word used by the ecclesiastical writers in the charters for the land belonging to a ‘ham’” (Elph. 559).

**AGGRAVATED.** — “Aggravated *assault*”; *V. Holden v. King*, 46 L. J. Ex. 75: *R. v. Sparrow*, 8 Cox C. C. 393; 30 L. J. M. C. 43; 3 L. T. 445: 1 Encyc. 201.

“Aggravated offence of *Drunkenness*”; *V. Army Discipline and Regn* (Annual) Act, 1881, s. 4 (3).

As to what amounts to “Aggravated *Misconduct*” on the part of a husband, disentitling him to participate in a fund to which his wife has an Equity to a Settlement; *V. Reid v. Reid*, 55 L. J. Ch. 756; 33 Ch. D. 220; 55 L. T. 153; 34 W. R. 715.

Quà Prevention of Crime (Ir) Act, 1882, 45 & 46 V. c. 25, “‘Aggravated Act of *Violence* against the person,’ means, an ASSAULT which either causes actual bodily harm, or GRIEVOUS BODILY HARM, or is committed with intent to cause grievous bodily harm” (s. 35).

**AGGREGATE.** — “Corporation Aggregate”; *V. CORPORATION*.

**AGGRIEVE.** — *V. INJURE*.

**AGGRIEVED.** — A person who has consented to a thing cannot be “aggrieved” by it (*Harrop v. Bayley*, 25 L. J. M. C. 107; 6 E. & B. 218: but *Cp. Ex p. Poulton*, inf.).

As to meaning of “person aggrieved” within R. 33, *Trade Marks Rules*, Feb. 1883; *V. Re Ralph*, 53 L. J. Ch. 188; 25 Ch. D. 194: *Re Palmer*, 51 L. J. Ch. 673; 24 Ch. D. 504. It means there a person injured or damaged in a legal sense; but a person carrying on business out of England is not necessarily excluded (*Re Riviere*, 53 L. J. Ch. 455, 578; 26 Ch. D. 48). So, in s. 90, *Patents, &c Act*, 1883, a “person aggrieved” by the registration of a Trade-Mark, is one who would be prevented by its registration from doing that which he otherwise lawfully could do, *e.g.* one in the same trade, whether he intends to compete quà the particular article or not (*Re Trade Mark. Normal*, 35 Ch. D. 231: *Re Gianolis*, 58 L. J. Ch. 782: *Re Apollinaris Co.*, 1891, 2 Ch. 186; 61 L. J. Ch. 625; 65 L. T. 6; 8 Pat. Ca. 137: *Re European Blair Camera Co.*, 75 L. T. 63: *Powell v. Birmingham Vinegar Co.*, 1894, A. C. 8; 63 L. J. Ch. 152: *Re Talbot*, 63 L. J. Ch.

264: *Re Verreries de l'Etoile Socy*, 1894, 2 Ch. 26; 63 L. J. Ch. 381).

As to a similar expression in s. 14, *Copyright Act*, 1842, 5 & 6 V. c. 45; *V. Ex p. Hutchings and Romer*, 48 L. J. Q. B. 505; 4 Q. B. D. 483; *Chappell v. Punday*, 13 L. J. Ex. 7; 12 M. & W. 303; *Ex p. Walker, Re Graves*, 39 L. J. Q. B. 31; 10 B. & S. 680; L. R. 4 Q. B. 715. In *Ex p. Poulton* (53 L. J. Q. B. 320) it was held that a person who himself has made a wrongful entry, is entitled under the section just cited to apply for its rectification as one "aggrieved" thereby.

For the purposes of an *Appeal* under the *Intoxicating Liquor Laws*, a person "aggrieved" must be one who is "immediately aggrieved"; and a rival innkeeper is not such a person by reason of a new license being granted within a short distance of his premises (*R. v. Middlesex*, 3 B. & Ad. 938: that decision is inapplicable in Ireland, per Gibson, J., *R. v. Armagh Jus.*, 1897, 2 L. R. 75): *secus*, probably, of a person who (at the same sessions?) has been refused a license (per Littledale, J., *R. v. Middlesex*, *sup.*, cited *R. v. Deane*, 2 Q. B. 100). A mortgagee is a person "aggrieved" by a refusal of a renewal license to his mortgagor, especially when he is the irrevocable attorney of the mortgagor to keep alive the license (*Garrett v. Marylebone*, 53 L. J. M. C. 81; 12 Q. B. D. 620; 32 W. R. 646; 48 J. P. 358); but an owner is not a person "aggrieved" by the indorsement of his tenant's license (*R. v. Andover*, 55 L. J. M. C. 143; 16 Q. B. D. 711; 55 L. T. 23; 34 W. R. 456; 50 J. P. 549).

For the purpose of an *Appeal in Bankruptcy* (s. 104 (2), Bankry Act, 1883), a Trustee of a Deed of Arrangement may be a "person aggrieved" by a Receiving Order (*Re Batten, Ex p. Milne*, 58 L. J. Q. B. 333). A Creditor is a "person aggrieved" by an Order of Discharge, or Scheme of Arrangement (*Re Payne*, 56 L. J. Q. B. 625; 18 Q. B. D. 154; 35 W. R. 89; *Re Langtry*, 70 L. T. 736; 63 L. J. Q. B. 570; 42 W. R. 496), even before the proof of his debt is completed (*Re Langtry*). So the Official Receiver, or the Board of Trade, may be a "person aggrieved" (*Re Reed & Co.* 19 Q. B. D. 174; 56 L. J. Q. B. 447; 56 L. T. 876; 35 W. R. 660; *Re Lamb*, 1894, 2 Q. B. 805; 64 L. J. Q. B. 71; 71 L. T. 312; *Re Stainton*, 19 Q. B. D. 182; 57 L. T. 202; 35 W. R. 667. *Va. Re Sidebotham*, 49 L. J. Bank. 41; 14 Ch. D. 458); so is a Bill of Sale holder when his document is the alleged act of bankruptcy (*Re Ellis*, 45 L. J. Bank. 64. 159; 2 Ch. D. 229, 797), or a third person whose title to property is affected by the adjudication (*Ex p. Learoyd, Re Foulds*, 48 L. J. Bank. 17; 10 Ch. D. 3: Is *Re Whelan*, 48 L. J. Bank. 43, an authority under the present Bankry Act?) But a competing petitioning creditor cannot well be "aggrieved" by an adjudication, even though it be effected by collusion with the debtor (*Re White, Ex p. Mason*. 49 L. J. Bank. 56; 14 Ch. D. 71).

Persons "aggrieved" by a *Pauper Settlement Order*, s. 2, 13 & 14 Car. 2, c. 12, include the pauper as well as the parish (*R. v. Hartfield*,



Carth. 222; 2 Bott. 940); but not mere ratepayers (*R. v. Colbeck*, 12 A. & E. 161; 9 L. J. M. C. 61: *R. v. Bishop Wearmouth*, 5 B. & Ad. 942), unless there be no officers of their parish (*R. v. Westmoreland*, 12 L. J. M. C. 113; 1 Dowl. & L. 178).

A person "aggrieved" by diverting or stopping a *Highway*, s. 88, 5 & 6 W. 4, c. 50, does not include one who only uses the road as one of the general public; to bring a person within this phrase he must be living in the neighbourhood of the Highway, and in the habit of using it (*R. v. Taunton, St. Mary*, 3 M. & S. 465: *R. v. Incedon*, 1 Ib. 268: *R. v. Williamson*, 7 T. R. 32: *R. v. Townsend*, 5 B. & Ald. 420: *Vf. Glen on Highways*, 2nd ed. 436). A Prosecutor whose Complaint is dismissed, cannot be a person "aggrieved," within s. 105 of that Act (*R. v. London Jus.*, cited DETERMINATION).

"Person aggrieved" by a Disallowance or Sur-Charge of an Auditor, s. 12, Loc. Gov. (Ir) Act, 1871, 34 & 35 V. c. 109; *V. R. v. Drury*, 1894, 2 I. R. 489.

As to who is "a party aggrieved," within s. 253, *P. II. Act*, 1875, by fabricating voting papers: *V. Verdin v. Wray*, 46 L. J. M. C. 170; 2 Q. B. D. 608; 41 J. P. 484. The Clerk to a Local Board, who, fearing dismissal, resigns, is not, within that section, "a party aggrieved" by a disqualified person acting on the Board (*Rochfort v. Atherley*, 1 Ex. D. 511). The servant of a Market Association is a "party aggrieved" within that section, quâ penalties prescribed in s. 13, *Markets and Fairs Clauses Act*, 1847 (*Ross v. Taylerson*, 62 J. P. 181).

A "person aggrieved," within s. 33, *Sum. Jur. Act*, 1879, does not include one who is merely the owner of the soil on which the alleged offence, e.g. an Obstruction of a Street, has been committed by some one else (*Drapers' Co v. Haddon*, 9 Times Rep. 36).

The London Co. Co. are not entitled to "feel aggrieved," by a Parish Valuation of particular hereditals, within s. 32, *Valuation Metrop. Act*, 1869, 32 & 33 V. c. 67 (*London Co. Co. v. St. George's Assessment Committee*, 1894, A. C. 600; 64 L. J. Q. B. 48; 71 L. T. 409). A person who has objected to a Rateable value only, cannot under this section be "aggrieved" by the Assessment Committee not entertaining an objection quâ Gross Value (*R. v. London Jus.*, 1897, 1 Q. B. 433; 66 L. J. Q. B. 262; 45 W. R. 247; 61 J. P. 228).

"Whether the near relations of a person whose body has been disinterred for dissection, are 'parties aggrieved' is doubtful" (*Dwar*, 689, 690, citing *R. v. Toole*, 1 M. & R. 728).

As regards a QUI TAM action; *V. Boyce v. Higgins*, 23 L. J. C. P. 5; 14 C. B. 1: *Hollis v. Marshall*, 27 L. J. Ex. 235; 2 H. & N. 755; *R. v. Blanchard*, 30 J. P. 280: *Robinson v. Curry*, 50 L. J. Q. B. 561; 7 Q. B. D. 465.

Penalties, &c, to "party grieved," s. 3, Civil Procedure Act, 1833, 3 & 4 W. 4. c. 42; *V. PENALTY*.

*Vh.* 51 J. P. 705. (*Cp.* PERSON INTERESTED.)

A person claiming to be "aggrieved," s. 105, P. H. Act, 1875, must show that the nuisance was operative on the day alleged (*Hilton v. Hopwood*, 44 S. J. 90).

**AGIST.** — " 'Agist,' signifieth in our Common Law, to take in and feed the Cattel of Strangers in the King's FOREST, and to gather the money due for the same to the King's use, *Charta de Foresta*, 9 H. 3, c. 9. The officers that do this are called *Agistors*, in English, Guest-takers, *Cromp. Jur. fol. 146*. This word 'agist' is also used for the taking in of other men's Cattel into any ground at a certain rate per week" (Cowel). In that secondary sense (omitting that the payment has to be "per week") the word is now generally used (*R. v. Croft*, 3 B. & Ald. 177). It is paraphrased in s. 45, Agricultural Holdings (England) Act, 1883, which (without using the word) describes an Agistment as, "Where LIVE STOCK belonging to another person has been taken in by the Tenant of a HOLDING to be fed at a FAIR PRICE agreed to be paid for such feeding by the owner of such stock to the tenant."

The conditional exemption from DISTRESS given by that section, does not apply to an Agreement from the tenant giving to another person "the exclusive right to feed the grass on the land for 4 weeks"; for, in that case, the tenant does not "take in" the cattle, and he certainly does not take them in "to be fed," — the consideration he receives being in the nature of rent for use and occupation (*Masters v. Green*, 20 Q. B. D. 807; 36 W. R. 591; 59 L. T. 476).

*Note.* Cowel's def is taken from *Termes de la Ley*, where it is said that "the feed or herbage of the cattell is called Agistment."

*Vh.* 1 Encyc. 204, 205.

**AGREE.** — "Covenant, grant, and agree"; *V.* COVENANT.

*V.* AGREEMENT.

**AGREEABLY.** — "Agreeably to my wishes"; *V.* PRECATORY TRUST.

**AGREED.** — In an Agreement the phrase "it is agreed," "makes the words of the agreement those of both parties" (per Parke, B., *Emmens v. Elderton*, 13 C. B. 531; 4 H. L. Ca. 667).

"Agreed to buy"; *V.* BUY.

"Agreed COSTS," as to when this phrase amounts to an Agreement IN WRITING between Solr and Client, *V. Re Frape*, 1893, 2 Ch. 284; 62 L. J. Ch. 473; and when not, *V. Re Baylis*, 1896, 2 Ch. 107; 65 L. J. Ch. 612; 74 L. T. 506.

" 'As if the debtor had agreed to charge.' s. 13, Jdgmts Act, 1838, is only a method of expressing that the Charging Order is to affect the debtor's beneficial interest in the properties charged, — but nothing more (*Scott v. Hastings*, 4 K. & J. 633). The words define the extent and priority of the Charge, but have no reference to the capacity of the Jdgmt Debtor" (per Lindley, L. J., *Re Leavesley*, cited DISPOSING POWER).

**AGREED AND DECLARED.** — “The rule is that where you have such words as ‘It is hereby agreed and declared between and by the parties to these presents,’ that some one will do an act or make a payment, — and that some one is a party to the deed, — it is a covenant by him with the others, not a covenant by all of them. Anything more absurd than to hold it a covenant by all of them could not be imagined. Suppose you had these words; ‘Provided always it is hereby agreed and declared between and by the parties to these presents that the said A. B. shall pay £5000 to the said C. D. on the 6th of January next,’ it would be absurd to say that this amounts to a covenant by C. D., the recipient of the money, that A. B. shall pay him, as well as a covenant by A. B. that he will pay him. If, therefore, we find that no act is to be done except by one of the parties, these words only amount to a covenant by that one party with the others” (per Jessel, M. R., *Dawes v. Tredwell*, 18 Ch. D. 359; cited and applied by Kay, J., in *Re De Ros*, 55 L. J. Ch. 73; 31 Ch. D. 81, and in *the* it was held, on the construction of the deed, that, the wife being an executing party, her after-acquired separate estate was bound, although the direct covenant to settle same was only entered into by the husband. *Vf.* Elph. 426, 502: *Ramsden v. Smith*, 23 L. J. Ch. 757; 2 Drew. 298: *Butcher v. Butcher*, 14 Bea. 222: *Re D’Estampes*, 53 L. J. Ch. 1117; 32 W. R. 978; 51 L. T. 502: *the* was also decided by Kay, J., and in his judgment he reviews the previous authorities). In *Re Haden* (1898, 2 Ch. 220; 67 L. J. Ch. 428), carried the construction a little farther, for there the wife’s after-acquired property was bound by her Marriage Settlement, to which she was an executing party, although the only words to bind it was a covenant by her (intended) husband that it “shall be settled,” not saying by whom.

**AGREEMENT.** — “*Agreementum* is a word compounded of two words, — viz., of *aggregatio* and *mentium*, so that *agreementum est aggregatio mentium in re aliqua facta vel facienda*. And so by the contraction of the two words, and by the short pronunciation of them, they are made one word, viz., *agreementum*, which is no other than an union, collection, copulation, and conjunction of two or more minds in anything done or to be done” (*Reniger v. Fogossa*, Plowd. 17 a. *Va.* Com. Dig. “Agreement”: per Ellenborough, C. J., *Wain v. Wurlters*, 5 East, 16; 2 Sm. L. C. 266; per Kekewich, J., *Foster v. Wheeler*, 57 L. J. Ch. 151; 36 Ch. D. 698). In *Wain v. Wurlters*, it was held that “Agreement,” in the Statute of Frauds, meant the whole agreement, including the consideration for it: *Va.* obs of Cockburn, C. J., *Williams v. Lake* (29 L. J. Q. B. 1). But “the Agreement or Contract” justifying a stoppage out of wages under the Truck Act, 1831, s. 23, need not specify the amounts to be deducted (*Cutts v. Ward*, cited CONTRACT TO SUPPLY).

As to the distinction between “Agreement” in s. 4, Stat. of Frauds, and “Bargain” in s. 17 *Ib.*; *V. Benj.* 193, 194. *Va.* BARGAIN.

"Agreement" contrasted with "Conveyance"; *V. Inl. Rec. v. Angus*, 23 Q. B. D. 579. *Vh.* ASSURANCE: CONVEYANCE.

The "Agreement" prescribed by s. 162, Comp. Act, 1862, must be between the Dissident Shareholder and the Liquidator, or the Co (*De Rosaz v. Anglo-Italian Bank*, 38 L. J. Q. B. 161; L. R. 4 Q. B. 462); the Articles of Assn do not constitute such an agreement, as they are only a contract between Shareholders, *inter se* (*Eley v. Positive Assree*, 45 L. Q. B. 58, 451; 1 Ex. D. 20, 88; *Browne v. La Trinidad*, 57 L. J. Ch. 292; 37 Ch. D. 1; *Baring-Gould v. Sharpington Synd.*, cited CALLED).

Quà Stamp Act, 1891; *V.* EVIDENCE OF A CONTRACT: RELATING.

*V.* BUY: CONTRACT: COVENANT.

"Agreement to the contrary," s. 58, Landlord and Tenant (Ir) Act, 1870, 33 & 34 V. c. 46, means an EXPRESS agreement (*Shearman v. Kelly*, Ir. Rep. 10 C. L. 326; 2 L. R. Ir. 415).

Agreement to pay Interest; *V. Williams v. Trench*, cited DEMAND.

Agreement for Lease; *V.* LEASE.

"Agreement for Sale"; *V.* SALE.

Stat. Def. — 11 & 12 V. c. 29, s. 7. — *Ir.* 23 & 24 V. c. 154, s. 1.

"Agreement in Writing"; quà Solr's Costs; "Contract in Writing"; "Consent or Agreement"; *V.* IN WRITING.

**AGRICULTURAL.** — An "Agricultural" HOLDING, s. 54, Agricultural Holdings (England) Act, 1883, "I take it refers only to land cultivated for profit in some way and not to natural grass land"; a "Pastoral" holding refers to grass land (per Stephen, Co. Co. J., *Morley v. Jones*, 32 S. J. 630. *Vf.* per Ld Fitzgerald, *Westropp v. Elligott*, 9 App. Ca. 815; 52 L. T. 153; 14 L. R. Ir. 319). But a holding may be "wholly agricultural" or "wholly pastoral," within the section, though it include a house, if such house be merely auxiliary to the land with which it is held; *secus*, where such house is independent of the land, and, *à fortiori*, if the house be the chief part of the holding (*Morley v. Jones*, sup.: *Vf.* TILLAGE: PASTURE). *Cp.* SERVANT IN HUSBANDRY. *Vh.* Agricultural Holdings Act, 1900.

Holding "not substantially either Agricultural or Pastoral in its character, or partly agricultural and partly pastoral," s. 5 (1a, 2), Land Law (Ir) Act, 1896, 59 & 60 V. c. 47; *V. Re Ryan and O'Brien*, 1900, 2 L. R. 539; and as to the similar phrase in s. 40 (1g), same Act; *V. Re Harrison*, 1900, 1 L. R. 139.

"Agricultural," s. 9, Land Law (Ir) Act, 1887, 50 & 51 V. c. 33, means "agricultural or pastoral, or partly agricultural and partly pastoral" (s. 6, 59 & 60 V. c. 47); on wh def. *V. Doyne v. Campbell*, Ir. Rep. 9 C. L. 95; *Boyle v. Foster*, 30 L. R. Ir. 623; *Bradley v. Johnston*, Ib. 632; *Wall v. Eyre*, 32 Ib. 475; *Allen v. Grogan*, Ib. 179.

"Used as an Ordinary Agricultural FARM," s. 9, Land Law (Ir) Act.

1887; *V. Macnamara v. Macnamara*, 32 L. R. Ir. 1: *Daly v. Wright*, Ib. 9.

#### V. FULL AGRICULTURAL RENT.

Quà Agricultural Rates Act, 1896, 59 & 60 V. c. 16, " 'Agricultural LAND,' means any Land used as arable, meadow, or PASTURE ground only, Cottage Gardens exceeding  $\frac{1}{4}$  of an acre, Market Gardens, Nursery Grounds, Orchards, or Allotments;—but does not include land occupied together with a house as a PARK, GARDENS (other than as aforesaid), PLEASURE Grounds, or any land kept or preserved mainly or exclusively for purposes of Sport, or Recreation, or land used as a Race-Course" (s. 9). "Agricultural Land," is in that Act contrasted with "Buildings," and therefore the exemption of one half of the Rates given by the Act applies only to land without any Buildings whatsoever upon it (*Smith v. Richmond*, cited MARKET GARDEN).

Quà Finance Act, 1894, " 'Agricultural PROPERTY,' means, Agricultural Land, Pasture, and Wood Land; and also includes such Cottages, Farm Buildings, Farm-houses, and Mansion-houses (together with the lands occupied therewith) as are of a character appropriate to the property" (subs. 1g, s. 22).

"Agricultural Lands and Heritages in Scotland"; Stat. Def. 59 & 60 V. c. 37, s. 1.

"Agricultural GANG"; Stat. Def. 30 & 31 V. c. 130, s. 3.

Quà Labourers (Ir) Act, 1883, 46 & 47 V. c. 60, " 'Agricultural LABOURER,' means a person who habitually works for HIRE in Agricultural Work, upon the land of some other person, and whose principal means of living is such hire; and includes a Herdsman. The term does not include any person who is not paid for his labour by WAGES" (s. 21); by s. 23, 48 & 49 V. c. 77, that def was narrowed and qualified, but this was repealed by s. 4, 49 & 50 V. c. 59, which also provided that, " 'Agricultural Labourer' in the said Acts and in this Act shall mean, a man or woman who does Agricultural Work for hire, at any season of the year, on the land of some other person or persons; and shall include Handloom Weavers and Fishermen doing agricultural work as aforesaid, and shall also include Herdsmen."

"Workmen in Agriculture"; J. AGRICULTURE.

"Agricultural LOCOMOTIVE"; Stat. Def. 61 & 62 V. c. 29, s. 17 (1).

A steam engine let and used for hauling straw and manure for farming operations, and no other purpose, is within s. 32, Highway Act, 1878, as being a "LOCOMOTIVE used solely for Agricultural Purposes" (*Ellis v. Hulse*, 23 Q. B. D. 24).

**AGRICULTURE.**—In the Board of Agriculture Act, 1889, 52 & 53 V. c. 30, " 'Agriculture,' includes 'Horticulture'" (s. 12); in the Small Holdings Act, 1892, 55 & 56 V. c. 31, " 'Agriculture' and 'Cultivation,' shall include Horticulture, and the use of land for any purpose of

husbandry, inclusive of the keeping or breeding of Live Stock, Poultry, or Bees, and the growth of Fruit, Vegetables, and the like" (s. 20). *Va. quà Workmen in "Agriculture," Workmen's Comp. Act, 1900, 63 & 64 V. c. 22, s. 1 (3).*

**AID.**— *V.* IN AID.

**AID OR ABET.**— "To constitute an aider or abettor, some active steps must be taken, by word or action, with intent to instigate the principal or principals. Encouragement does not, *of necessity*, amount to aiding and abetting. It may be intentional or unintentional. A man may unwittingly encourage another in fact by his presence, by misinterpreted words or gestures, or by his silence or non-interference;— or he may encourage intentionally by expressions, gestures, or actions, intended to signify approval. In the latter case he aids and abets; in the former he does not. It is no criminal offence to stand by a mere passive spectator of a crime, even of a murder. Non-interference to prevent a crime is not itself a crime. But the fact that a person was voluntarily and purposely present witnessing the commission of a crime, and offered no opposition to it, though he might reasonably be expected to prevent it, and had the power so to do or at least to express his dissent, might, under some circumstances, afford cogent evidence upon which a jury would be justified in finding that he wilfully encouraged, and so aided and abetted. But it would be purely a question for the jury whether he did so or not" (per Hawkins, J., *R. v. Coney*, 51 L. J. M. C. 78). In accordance with those principles the majority of the Court held, in the case cited, that the mere voluntary presence of persons at a prize-fight does not make them guilty of aiding or abetting an assault (51 L. J. M. C. 66; 8 Q. B. D. 534). *Vh. Ex p. Whiteley*, 39 J. P. 70; *R. v. Cheshire Jus.*, 40 J. P. 148; *Barratt v. Burden*, 63 L. J. M. C. 33.

Aiding and abetting breach of s. 3, Licensing Act, 1872; *V. Owen v. Langford*, 55 J. P. 484.

To aid or abet a Breach of an Injunction is CONTEMPT OF COURT (*Seaward v. Paterson*, 1897, 1 Ch. 545; 66 L. J. Ch. 267; 76 L. T. 215; 45 W. R. 610). *V. S. C.*, cited CLUB.

*Cp.* COUNSEL OR PROCURE.

**AIDED.**— "Aided" Police Force, s. 25 (1), 53 & 54 V. c. 45; *V. R. v. W. Riding Co. Co.*, 1895, 1 Q. B. 805; 64 L. J. M. C. 95, 145; 72 L. T. 520; 43 W. R. 386; 59 J. P. 340; 11 Times Rep. 311.

**AIM.**— "With the aim of"; *V.* VIEW.

**AIR SPACE.**— *V.* VENTILATION.

**AIT.**— *V.* HATH.

**ALDERMAN.**— *V.* OUTGOING ALDERMAN: SENIOR.

**ALE.** — *V.* BEER: SPIRITUOUS LIQUORS.

**ALEHOUSE.** — An "Alehouse" is a place (licensed under the Alehouse Act, 1828, and the Acts amending the same) where excisable liquors are sold, by retail, to be consumed on the premises. The word is, probably, synonymous with "Public-house" and "Tavern," which latter words were employed in the covenants under discussion in *London and Suburban Land Co v. Field* (50 L. J. Ch. 549; 16 Ch. D. 645; 41 L. T. 444) and *Holt v. Collyer* (50 L. J. Ch. 311; 16 Ch. D. 718; 44 L. T. 214; 29 W. R. 502).

A covenant in a Lease prohibiting the user of the premises "as a Public-house or Alehouse," will comprise a Beer-house (1 W. 4, c. 64, s. 31).

*V.* PUBLIC-HOUSE: BEER-HOUSE: INN.

**ALIEN.** — "To Alien"; *V.* ALIENATION: ASSIGN: CHARGE OR INCUMBER.

An Alien, is one who "is born out of the ligeance of our sovereign lord the King" (Litt. s. 198; *Vth. Co. Litt.* 128 b, 129 a). *Vh. Calcin's Case*, 7 Rep. 1: *Collingwood v. Pace*, 1 Ventr. 422; *Doe d. Thomas v. Acklam*, 2 B. & C. 779; *Isaacson v. Durant*, 55 L. J. Q. B. 331; 17 Q. B. D. 54; 54 L. T. 684; 34 W. R. 547; 1 Encyc. 216, 217.

"Aliens," s. 3, 13 G. 3, c. 21, is to be read as in the Genitive Case, and not as a separate word (*Barrow v. Wadkin*, 24 Bea. 327).

A Co domiciled in an Alien State at War with us, is an Alien ENEMY, though the majority of its shareholders are subjects of the British Crown (per Mathew, J., *Driefontein Mines v. Janson*, cited WAR, following *Sory for Propagation of the Gospel v. Wheeler*, 2 Gallison, 105).

**ALIENATION.** — " 'Alienation,' is as much to say, as to make a thing another mans; or to alter or put the possession of lands, or other things, from one man to another" (Termes de la Ley).

To "alienate," or "ANTICIPATE," property, within a Clause of Forfeiture on Alienation, does not mean the doing something which will accomplish an ACTUAL alienation, for that is prevented by the thing working a Forfeiture; but it means, the doing that the purport and intent of which is Alienation, and which would effect that object but for the Forfeiture (*Barnett v. Blake*, 2 Dr. & Sm. 124; nom. *Blake v. Barnett*, 31 L. J. Ch. 901). But if the person be not *sui juris*, — e.g. a Married Woman restrained from alienation, — then the execution of a Deed of Alienation works no Forfeiture, because the person has no disposing power over the property at all (*Re Wormald*, 59 L. J. Ch. 404; 45 Ch. D. 630; 38 W. R. 425; 62 L. T. 423).

A clause of Forfeiture on "Alienation" "will extend only to a disposition by the Act of the Party, and not to a transfer by Operation of Law; unless it can be collected from the context that the term was in-

tended by the settlor to have so wide a signification" (Lewin, 109, citing *Dommett v. Bedford*, 6 T. R. 684; *Cooper v. Wyatt*, 5 Mad. 482; *Ex p. Eyston*, 47 L. J. Bank. 62; 7 Ch. D. 145; *Vf. ASSIGNMENT*). Therefore bankruptcy *at the suit of creditors* is not such an alienation (*Lear v. Leggett*, 2 Sim. 479, and other cases cited, Lewin, 109); *secus*, if the bankruptcy, or other *cessio bonorum*, be on the petition of the beneficiary (*Re Amherst*, 41 L. J. Ch. 222; L. R. 13 Eq. 464; *Se. Ex p. Dawes, Re Moon*, 17 Q. B. D. 275; *Vf. Lewin*, 111: 2 Jarm. 33, 34). A mere Declaration of Insolvency is not an alienation or ATTEMPT at alienation (*Graham v. Lee*, 26 L. J. Ch. 395; 23 Bea. 388), nor is Seizure under a Judicial Process (*R. v. Robinson*, Wight. 386).

A general alienation *in futuro*, — *e.g.* a covenant to SETTLE, — will not embrace an Interest which would be forfeited thereby (*Re Crawshaw*, 1891, 3 Ch. 176; 60 L. J. Ch. 583; 39 W. R. 682).

As to a Warrant of Attorney, or Marriage, being an alienation; *V. Lewin*, 109.

Until the forfeiture has become actually operative, — *e.g.* by income becoming due after its occurrence, — it may be avoided by the annulment of its cause (*White v. Chitty*, 35 L. J. Ch. 343; L. R. 1 Eq. 372; *Lloyd v. Lloyd*, L. R. 2 Eq. 722; *Ancona v. Waddell*, 48 L. J. Ch. 115; 10 Ch. D. 157; *Re Parnham*, 46 L. J. Ch. 80; *Vf. BANKRUPTCY*); *secus*, when it has become actually operative (*Robertson v. Richardson*, 30 Ch. D. 623; 55 L. J. Ch. 275; *Re Parnham*, 41 L. J. Ch. 292; L. R. 13 Eq. 413; *Trappes v. Meredith*, 41 L. J. Ch. 237; 7 Ch. 248; *Re Metcalfe*, 1891, 3 Ch. 1; 60 L. J. Ch. 647; *Re Loftus-Otway*, 1895, 2 Ch. 235; 64 L. J. Ch. 529; 43 W. R. 501). A forfeiture is not avoided because the fact creating it occurred before the defeasible interest was created (*Manning v. Chambers*, 16 L. J. Ch. 245; 1 D. G. & S. 282. *V. SHALL*).

*Vh. Co. Litt. 118 b. V. ANTICIPATION: ASSIGN: DISPONE: TRANSFER: PERMIT: SUFFER: WOULD: RESTRAINT ON ALIENATION: FORFEITURE: LEGAL DISABILITY: Godefroi*, ch. 42.

"By Alienation, or by any title not conferring a New Succession," s. 15, 16 & 17 V. c. 51, — there, "Alienation" is at large, and stands unqualified by the words "not conferring a New Succession" (per Lds Herschell and Macnaghten, *Wolverton v. A-G.*, cited NEW SUCCESSION, dissenting from Jessel, M. R., *Re Cooper and Allen*, 46 L. J. Ch. 133; 4 Ch. D. 802).

**ALIKE.** — A testamentary gift to two or more "alike," or "to be enjoyed alike," is synonymous with its being given EQUALLY, and creates a tenancy in common (per Mansfield, C. J., *Loceacres v. Blight*, Cowp. 357. *Vf. Thorowgood v. Collins*, Cro. Car. 75; *Page v. Page*, 2 P. Wms. 489, cited 2 Jarm. 258. In *Thorowgood v. Collins*, the words to be construed were "part and part-like"). *V. SHARE AND SHARE ALIKE.*



**ALIMONY.**—“ ‘Alimony,’ signifies that allowance which a married woman sues for on separation from her husband ” (Cowel).

As to construction and force of Covenants in a Separation Deed, *quâ* Alimony; *V. Gundy v. Gundy*, 51 L. J. P. D. & A. 41; 7 P. D. 77, 168; 54 L. J. Ch. 1154; 30 Ch. D. 57; *Bishop v. Bishop*, 1897, P. 138; 66 L. J. P. D. & A. 69; 76 L. T. 409; 45 W. R. 567; *Judkins v. Judkins*, 66 L. J. P. D. & A. 76.

Alimony *quâ* Divorce; *V. Dixon on Divorce*, ch. 8: 1 Encyc. 218-221.

**ALIVE.**—Born alive; *V. BORN*, at end.

*V. IF ALIVE: LIVING.*

**ALKALI WORK.**—Stat. Def., 26 & 27 V. c. 124, s. 3; 44 & 45 V. c. 37, s. 29.

**ALL.**—“ *Qui omne dicit, nihil excludit*”; therefore, *omnes videtur*, Statute of MERTON, c. 2, included all kinds of Dower, though there were five (2 Inst. 81).

“All” is equivalent to “each and every” (*V. jdgmt of Id Fitzgerald, Burnett v. G. N. of Scotland Ry*, 54 L. J. Q. B. 539); but by a context, it may mean “any” (1 Jarm. 504).

And “All” will sometimes mean “any of them” (*Jarman v. Vye*, 35 L. J. Ch. 821; L. R. 2 Eq. 784).

A testamentary gift of “All,” without more; held, indefinite and void (*Bowman v. Milbanke*, 1 Lev. 130; Sid. 191; Raym. T. 97; cited and commented on, 1 Jarm. 357, 358); “however, such a decision as that cannot be considered an authority now” (per Malins, V. C., *Smyth v. Smyth*, 8 Ch. D. 567).

“The words ‘All his Estate’ will pass everything a man has” (per Mansfield, C. J., *Hogan v. Jackson*, 1 Cowp. 306). So of the words “All I am worth” (*Huxstep v. Brooman*, 1 Bro. C. C. 437, cited and commented on, 1 Jarm. 738, 739), or “All I have” (per Bayley, J., *Doe v. Morgan*, 6 B. & C. 518; 9 D. & R. 633).

“But if the word ‘All’ is coupled with the word ‘Personal,’ or a local description, there, the gift will pass only personalty, or the specific estate particularly described” (per Mansfield, C. J., *Hogan v. Jackson*, *sup.*). Thus “All my Effects” will not pass realty (*Henderson v. Farbridge*, 1 Russ. 479; cited 1 Jarm. 742: *Vf. EFFECTS*). Qy. will such words as “All that I possess” or “all that I am or may die possessed of” pass Realty? *Cp. Noel v. Hoy*, 5 Mad. 38; *Thomas v. Phelps*, 4 Russ. 348; *Wilce v. Wilce*, 5 Moore & P. 682; 7 Bing. 664; 9 L. J. O. S. C. P. 197; *Evans v. Jones*, 46 L. J. Ex. 280; *Day v. Dareron*, 12 Sim. 200; 10 L. J. Ch. 349, and *Davenport v. Coltman*, 11 L. J. Ch. 262; 12 Sim. 588; 9 M. & W. 481; with *Monk v. Mawdsley*, 1 Sim. 286; and *Cook v. Jaggard*, 35 L. J. Ex. 76; L. R. 1 Ex. 125; and *V. these cases stated*

1 Jarm. 730, 731, 739-742: *Vf. Wilde v. Holtzmeyer*, cited POSSESSED OF.

Where a testator made a specific devise of part of his realty and, by a subsequent part of the same Will, made another devise of "all his real and personal estate";—held, that "all" meant "all the Residue" (*Doe d. Snape v. Nerell*, 17 L. J. Q. B. 119; 11 Q. B. 466). So the generality of a devise of "all my Lands" may be restricted by the context (*Re Portal and Lamb*, 54 L. J. Ch. 1012; 30 Ch. D. 50). But in *King v. George* (4 Ch. D. 435; 5 Ib. 627; 46 L. J. Ch. 670) a bequest of "All that I have power over, namely, plate, linen," &c, was an unlimited residuary gift, and not restricted to the classes of goods enumerated: so, a bequest of "All my MONEY, £40, in the Exeter Land Socy," passed all the property the testatrix had in the Socy (*Lane v. Way*, W. N. (71) 117; 19 W. R. 842). *Va. Sidgreaves v. Brewer*, 49 L. J. Ch. 514; 15 Ch. D. 594.

"All Property not specifically hereinbefore mentioned"; *V. Archbold v. Austin-Gourlay*, 5 L. R. Ir. 214.

"All Rent and Arrears of Rent"; *V. RENT*, towards end.

"All the Rest"; *V. REST*.

As to the efficacy of "All the Rest" to pass lapsed legacies; *V. Re Pringle*, 17 Ch. D. 819; 50 L. J. Ch. 689. *V. REST*.

When "all" is found in conjunction with specified property, — *e.g.* "all my property in the Funds,"—the bequest is specific (*Hayes v. Hayes*, 5 L. J. Ch. 243; 1 Keen, 97; *Vincent v. Newcombe*, Younge, 599); so, of the phrase "all my Shares and Stock" (*Bothamley v. Sherson*, cited SPECIFIC).

*V. ESTATE AND INTEREST.*

"All my PROPERTY, Leaschold and Freehold"; held, to pass all the Personalty, as well as all the Realty (*Re Roberts, Kiff v. Roberts*, 55 L. J. Ch. 628; 54 L. T. 386; 34 W. R. 626; affd. 55 L. T. 498; 35 W. R. 176). "All my Property, Brewery, &c"; *V. Waite v. Morland*, cited BREWERY. *Vf. PROPERTY: MY.*

"All my Just Debts"; *V. DEBTS.*

"The question must always be one of intention, but the rule is, — that the presumption is against an intention to charge lands SPECIFICALLY devised, and that a mere CHARGE 'on all my lands,' is not sufficient to rebut that presumption" (per Ld Cranworth, *Convon v. Convon*, 7 H. L. Ca. 168, cited by Ld Herschell, *Bank of Ireland v. McCarthy*, 1898, A. C. 181; 67 L. J. P. C. 13; 77 L. T. 777, his lordship adding that the rule is founded on *Spong v. Spong*, 3 Bligh, N. S. 84; 1 Dow & Cl. 365).

"All my Land at S."; *V. MY.*

"All my Moneys"; *V. MONEY.*

As to effect of Revocation of "All Wills, &c"; *V. Re Kingdon*, 55 L. J. Ch. 598; 32 Ch. D. 604: REVOKE.

As to the once held invalidity on account of vagueness through the unqualified use of "All," especially in an Assignment of future things; *V. Belding v. Read*, 34 L. J. Ex. 212; 3 H. & C. 955; 11 Jur. N. S. 547; but that case is overruled by *Tailby v. Official Receiver*, 58 L. J. Q. B. 75; 13 App. Ca. 523. *Va. Re Clarke*, 56 L. J. Ch. 981; 36 Ch. D. 348; *Re Kelcey*, 1899, 2 Ch. 530; 68 L. J. Ch. 742; 81 L. T. 351; 48 W. R. 59: VAGUE: FUTURE.

A Power of Attorney to receive "all" Debts, does not authorize the endorsement of Negotiable Securities (*Hogg v. Snaith*, 1 Taunt. 349; *Murray v. East India Co*, 5 B. & Ald. 204), not even if there is added power "to transact all Business" (*Hay v. Goldsmidt*, referred to in *Hogg v. Snaith*, sup.).

"All other CONDITIONS AS PER CHARTER-PARTY"; *V. OTHER.*

An Agreement by one of several debtors to pay the COSTS of "all the debts," means, "of all or any of the debts" (*Vesey v. Mantell*, 11 L. J. Ex. 99; 9 M. & W. 323).

"All Notes," 3 & 4 Anne, c. 9; *V. Milne v. Graham*, 1 B. & C. 192.

"All Powers" enabling; *V. ENABLING.*

"All PROCEEDINGS" in R. 1, Ord. 65, R. S. C., means all proceedings in respect of which there is an existing jurisdiction as to Costs (*Re Mills*, 56 L. J. Ch. 60).

The generality of "all CRIMINAL PROCEEDINGS," s. 6, Crim. Ev. Act, 1898, over-rides special provisions of prior Acts, and applies all the provisions of the Act to every kind of criminal trial (*Charnock v. Merchant*, 1900, 1 Q. B. 474; 69 L. J. Q. B. 221; 82 L. T. 89; 48 W. R. 334; 64 J. P. 183).

"All Purposes"; *V. PURPOSES.*

"All Rates made for the relief of the Poor," which are to be paid to qualify for the parliamentary franchise, s. 3 (3), 30 & 31 V. c. 102, means only those made since the 5th January of the year preceding the qualifying year (*Cull v. Austin*, *Austin v. Cull*, 41 L. J. C. P. 153; L. R. 7 C. P. 227).

An Agreement to pay "all DAMAGES," quâ Ships, overrides the limits of damages prescribed by s. 54, 25 & 26 V. c. 63 (*The Satanita*, 1895, P. 248; 64 L. J. P. D. & A. 96; 72 L. T. 316; 43 W. R. 498; affd. in H. L. 1897, A. C. 59; 66 L. J. P. D. & A. 1; 75 L. T. 337).

A stipulation to accept a cargo on receipt of "all the Shipping Documents," will be satisfied by production of three, of the five, parts of the Bill of Lading, if the sellers are unable to supply more (*Cederberg v. Borries*, 2 Times Rep. 201).

*V. ENGAGEMENT: INTEREST: MONEY: REAL AND PERSONAL ESTATE: WAYS: WHOLE.*

**ALL AND EVERY.** — For an illustration of effect of this phrase, *V. Re Sibley*, 46 L. J. Ch. 387; 5 Ch. D. 494; *See* that decision as based

on this phrase, criticised by Kay, J., in *Re Webster*, 52 L. J. Ch. 768; 23 Ch. D. 737.

A bequest to A. and after her decease to "all and every her child and children, and his, her and their exs, ads and assigns, for his, her and their own absolute use and benefit"; held, to create a joint tenancy in the children (*Morgan v. Britten*, L. R. 13 Eq. 28; 41 L. J. Ch. 70; *Billing v. Billing*, 11 Times Rep. 502; nom. *Binning v. Binning*, W. N. (95) 116).

A Power to appoint to "all and every" of a CLASS, means, that each member must have a share (*Kemp v. Kemp*, 5 Ves. 857, 858). *Va. AMONG; SUCH.*

**ALL FAULTS.**—*V. FAULTS.*

**ALL I AM WORTH.**—*V. WORTH: ALL.*

**ALL INTENTS AND PURPOSES.**—An act disgavelling lands to "all intents and purposes," and declaring that they should be "descendible as lands at Common Law," was held only to disgavel *quâ* descent (*Wiseman v. Cotton*, 1 Lev. 80).

*Vh. Daulton v. Wood*, cited DISTRESS.

*V. VOID.*

**ALL MATTERS IN DIFFERENCE.**—*V. CAUSE: CONSENT.*

**ALL THE ESTATE.**—*V. ESTATE*, towards end.

**ALL THE REST.**—*V. REST: ALL.*

**ALL TIMES.**—*V. AT ALL TIMES: AT ALL TIMES OF TIDE.*

**ALLEGE.**—"Alleged *adulterer*," s. 28, Matrimonial Causes Act, 1857; R. 4, Divorce Rules, 1865,—means only the person alleged *by the husband* to be an adulterer with his wife; not a person against whom that allegation has been made (even though by the wife) on evidence which the husband may reasonably regard as insufficient (*Saunders v. Saunders*, 1897, P. 89; 66 L. J. P. D. & A. 57; 76 L. T. 330; 45 W. R. 583, overruling *Jones v. Jones*, 1896, P. 165; 65 L. J. P. D. & A. 101).

"Alleging himself a Candidate"; *V. CANDIDATE.*

"Alleged CONTRIBUTORY"; Stat. Def., 20 & 21 V. c. 78, s. 15.

"Alleged LUNATIC"; Stat. Def., 34 & 35 V. c. 22, s. 2.

*V. AS ALLEGED: SUPPOSED.*

**ALLEGIANCE.**—" 'Allegiance' is such natural or legal obedience which every Subject owes to his Prince" (*Termes de la Ley*).

**ALLODIAL.**—Allodial, or "Allodian," Lands, "are free lands which pay no Fines or Services" (*Cowel*). *Vf. Jacob*: 2 Bl. Com. 47, 60; 1 Encyc. 225; ALODIUM.

**ALLOT.**— ‘Set out, allot, and award’; *V. SET OUT.*

**ALLOTMENT.**—“Allotments from time to time *held* by the Trustees” in a Land Socy; *V. Hill v. Crank*, 68 L. T. 551; 62 L. J. Q. B. 115.

“Allotment,” *quà* Inclosure; *V. R. v. Pitt*, 5 B. & Ad. 565; *Doce d. Harris v. Saunder*, 5 A. & E. 664.

For the legislation as to Allotments, *V. 1 Encye.* 226–231.

Stat. Def. — 50 & 51 V. c. 26, s. 4, c. 48, s. 17; 54 & 55 V. c. 33, s. 2; 56 & 57 V. c. 73, s. 9 (16). — *Scot.* 55 & 56 V. c. 51, s. 16.

“Allotment Trustees”; *V. 36 & 37 V. c. 19, s. 1.*

*V. GARDEN: HOLDING: ON ALLOTMENT.*

**ALLOW.**—To “allow” a thing to be done or omitted, there must be some direct, or indirect, sanction of it;—unlike the mere responsibility of an Innkeeper if he “**SUFFER**” things contrary to the Licensing Acts, an innocent Owner of a Ship does not “allow” her “to be so loaded as to submerge in salt water the centre of the disc,” s. 28, 39 & 40 V. c. 80, by the mere fact that the Master knew of such overloading, even though the Master was appointed by the Owner (*Massey v. Morris*, 1894, 2 Q. B. 412; 63 L. J. M. C. 185; 70 L. T. 873; 58 J. P. 673). So, a Surveyor does not “allow” an obstruction on a Highway “to remain there,” s. 56, Highway Act, 1835, when he has no knowledge of it, or, at any rate, when he has no means of knowing it (*Hardcastle v. Bielby*, 1892, 1 Q. B. 709; 61 L. J. M. C. 101; 66 L. T. 343; 56 J. P. 549). *Vf.* per Cockburn, C. J., *Hipkins v. Birmingham Gas Co*, 6 H. & N. 253. *Cp.* **PERMIT: SUFFER: OBSTRUCT.**

The power to “allow Costs,” s. 116 (2), Co. Co. Act, 1888, “means not only that the Court may give Costs, but may also say on what Scale they are to be” (per Field, J., *Bazett v. Morgan*, 59 L. J. Q. B. 44; 24 Q. B. D. 48; 61 L. T. 434; 38 W. R. 108, applying *Neaves v. Spooner*, 36 W. R. 257; 58 L. T. 164); and such an Order is unappealable, unless with leave, because it is in the “**DISCRETION**” of the Court under s. 49, Jud. Act, 1873 (*Bazett v. Morgan*).

The provision in s. 118 of that Act, which prohibits a Solr from recovering from his Client Costs in a Co. Co. action “unless they shall have been *allowed on taxation*,” does not apply where no application to tax has been made (*Cubison v. Mayo*, 1896, 1 Q. B. 246; 65 L. J. Q. B. 267; 44 W. R. 473; 74 L. T. 65; *Vf.* *Boydell v. Millar*, 60 L. J. Q. B. 251; 64 L. T. 299; 39 W. R. 335).

Where an Officer of a Local Authority is to be “allowed,” “**NOT EXCEEDING**” a stated time for a vacation, that does not, necessarily, mean that he is “entitled to” that much time for holiday (*Henry v. Antrim*, 1900, 2 I. R. 547).

“First allow my lawful Debts to be paid,” in a Will disposing of

Realty and Personalty, creates a CHARGE of the debts on the Realty (*Elliott v. Montgomery*, 1r. Rep. 5 Eq. 214).

**ALLOWANCE.** — A mere "Allowance," agreed to by a Lessor by a memorandum on the lease, does not operate as a reduction of the rent reserved, but only as an independent agreement (*Daries v. Stacey*, 9 L. J. Q. B. 393; 12 A. & E. 506; 4 P. & D. 157).

**ALLOWANCES.** — "Allowances," s. 189, P. H. Act, 1875; *V. Burgess v. Clark*, 14 Q. B. D. 735; *Edwards v. Salmon*, 58 L. J. Q. B. 571; 23 Q. B. D. 531; 38 W. R. 166; *Whiteley v. Barley*, 57 L. J. Q. B. 643; 21 Q. B. D. 154; 36 W. R. 823; 52 J. P. 595; *R. v. Ramsgate*, 58 L. J. Q. B. 352; 23 Q. B. D. 66.

*V. JUST ALLOWANCES.*

**ALLOWING.** — *V. BEING.*

**ALLOWS.** — *V. SO FAR AS.*

"Where the Context allows"; *V. Birmingham Breweries v. Jamieson*, cited SPIRITUOUS LIQUORS.

**ALLUVION.** — *V. IMPERCEPTIBLE INCREASE*: 1 Encyc. 231.

**ALMANAC.** — The Almanac of which the Court has to take notice for determining on which Day of the Week a given day of the month falls (*R. v. Dyer*, 6 Mod. 41), or, when a Feast, or SUNDAY, happens (*Harrey v. Broud*, *Ib.* 159, 160, 196), is that which is annexed to the Book of Common Prayer (*Brough v. Perkins*, *Ib.* 80, 81). *Vf.* Calendar (New Style) Act, 1750, 24 G. 2, c. 23; Phil. Ecc. Law, 781: MICHAELMAS.

**ALMOIN.** — *V. AUMONE.*

**ALMS.** — The disqualification to be enrolled as a Burgess of an Incorporated Borough arising from the receipt of "parochial relief or other Alms" (5 & 6 W. 4, c. 76, s. 9, and now by 32 & 33 V. c. 55, s. 1), applies only to such alms as are parochial (*R. v. Lichfield*, 11 L. J. Q. B. 122; 2 Q. B. 693; 2 G. & D. 10). But as regards the Parliamentary franchise, the disqualification arises from the receipt of "parochial relief or other alms, which by law of parliament now disqualify from voting" (Rep. People Act, 1832, s. 36); and that amplification differentiates the parliamentary from the municipal disqualification, and alms which will disqualify for the parliamentary franchise are not confined to those that are parochial: but any alms of a precarious tenure to persons so indigent that they are dependent on the charity, will work the latter disqualification (*Smith v. Hall*, 33 L. J. C. P. 59; 15 C. B. N. S. 485; 12 W. R. 172; *Harrison v. Carter*, 46 L. J. C. P. 57; 2 C. P. D. 26; 25 W. R. 182; *Baker v. Monmouth*, 34 W. R. 64; 53 L. T. 668; *Dis v. Kent*, 63 L. T.

641; 7 Times Rep. 46; *Edwards v. Lloyd*, 57 L. J. Q. B. 121; 20 Q. B. D. 302; 58 L. T. 409; 52 J. P. 519; *Cowen v. Kingston-upon-Hull*, 1897, 1 Q. B. 273; 66 L. J. Q. B. 185; 75 L. T. 593; 45 W. R. 413. *Smith v. Hall* and *Cowen v. Kingston*, were cases in each of which the charity was held not disqualifying Alms). *Jf. Rogers*, 196-200: PAROCHIAL RELIEF.

*Cp.* CHARITY: DIVINE SERVICE.

**ALMSHOUSE.** — *V.* HOSPITAL: 1 Encyc. 233.

**ALNETUM.** — “A wood of elders” (*Touch*, 95: *Va. Co. Litt.* 4 b).

**ALODIUM.** — “In Domesday, *alodium* (in a large sense) signifieth a free mannor, and *alodiarii* or *alodarii*, lords of the same; and *launmanni* there signifie lords of a mannor, having *socum et socam de tenentibus et hominibus suis*” (*Co. Lit.* 5 a). “The old translation of the Saxon laws, useth this word for BOCLAND” (*Cowel*). *V.* ALLODIAL.

**ALONE.** — “Alone, or TOGETHER WITH,” in Name and Arms clause; *V.* NAME.

**ALONG.** — *V.* THROUGH.

**ALONG WITH.** — “Along with any other Persons,” R. 11. Ord. 21, R. S. C.; *V. Deur v. Sworder*, 4 Ch. D. 482; 46 L. J. Ch. 100: *17. Ann. Pr.*

“Along with other Sums” construed “in addition to,” not as “including” (*Pilkington v. Myers*, 8 L. T. 720).

**ALONGSIDE.** — Cargo “shall be Brought Alongside” for shipment, in a Charter-party, means that the charterer is to bring the cargo as near to the ship as practicable, and it is for the jury to say whether that has been done (*Holman v. Dasnières*, 2 Times Rep. 480, 607). *Vh. Fletcher v. Gillespie*, 3 Bing. 635; *Trindale v. Lery*, 2 F. & F. 441; *Stephens v. Wintringham*, 3 Com. Ca. 169; *Isis S. S. Co v. Bahr*, 1899, 2 Q. B. 364; 68 L. J. Q. B. 930; *affd. in II. L.* 1900, A. C. 340; 69 L. J. Q. B. 660; 5 Com. Ca. 277: AT: CARGO: *Se. Carver*, 283.

Consignee to TAKE Cargo “from alongside Ship,” means, a joint operation between the Owners and Consignee, and, if either be unready, the other is not called on to begin; but this provision in a Charter-party does not exclude a custom in the Wood Trade in the Port of London which imposes on the ship Owner the obligation to discharge a cargo of Long Lengths of Timber into lighters (*Aktieselskab-Helios v. Ekman*, 1897, 2 Q. B. 83; 66 L. J. Q. B. 539; 76 L. T. 537; 2 Com. Ca. 163). But cargo (of Timber) “to be taken from alongside the Steamer, at Charterer’s Risk and Expense, any custom of the Port to the contrary notwithstanding,” excludes that custom, and the shipowners

perform their duty when they (according to the general meaning of "alongside") deliver the cargo over the ship's rail (*Brenda S. S. Co v. Green*, 1900, 1 Q. B. 518; 69 L. J. Q. B. 445; 82 L. T. 66; 48 W. R. 321; 5 Com. Ca. 195).

F. FREE ALONGSIDE.

**ALREADY.** — "Already," — *e.g.* "already in PRACTICE." s. 14. 55 G. 3, c. 194, — does not mean at some time previously but, means at the time stated and immediately preceding thereto (*Apothecaries Co v. Roby*, 5 B. & Ald. 949).

A Second Series of a Co's Debentures made subject to the "Debentures already issued, or such of them as are now OUTSTANDING," will be postponed to the whole of the First Series, whenever issued, that are for the time being "outstanding," — *i.e.* not paid off (*Lister v. Lister*, 62 L. J. Ch. 568; 68 L. T. 826; 41 W. R. 330).

A Covenant by husband and wife to settle all the wife's after-acquired property "not being already settled for her Separate Use," does not bind property subsequently bequeathed to her for her separate use (*Coventry v. Coventry*, 32 Bea. 612). *Vf.* *Kane v. Kane*, cited SETTLED: *Va.* SETTLE.

"Already defined"; *V.* *Shanghai Corp. v. McMurray*, cited EXTENSION.

"Will, already made"; *V.* WILL.

"Already built"; Stat. Def., 7 & 8 V. c. 84, s. 2.

**ALSO.** — "Also," or "And Also," may be (1) the beginning of an entirely independent sentence, or (2) a copulative carrying on the sense of the immediately preceding words into those immediately succeeding. If the latter, the conditions of the preceding words would be read into those succeeding. Thus, "I give Blackacre to C. and his heirs, *and also* Whiteacre," gave C. the fee in Whiteacre (per Levinz, J., 1 Jarm. 497, *n.*: *Vf.* *Hopewell v. Ackland*, 1 Salk. 239; *Willis v. Curtois*, 1 Bea. 189; 8 L. J. Ch. 105). Of course no such construction obtains when "Also" is the commencement of an independent sentence (*Doe d. Ellam v. Westley*, 4 B. & C. 667; 7 D. & R. 112; on *whv* Wms. Exs., 8th Ed., 1087; 1 Jarm. 497).

Words importing a tenancy in common in one bequest will not be extended by implication to another bequest which is merely connected with the former by "also" (2 Jarm. 256, citing *Cookson v. Bingham*, 17 Bea. 262; 23 L. J. Ch. 127).

A general description of property introduced by "And also" or the like, and following a particular description, will usually receive an *ejusdem generis* interpretation (*Elph. 173 et seq.*).

"Also," s. 8, Clergy Discipline Act, 1892, means that the Bishop may depose the offending Clergyman "in addition to" the original sentence



(per Esher, M. R., *R. v. Durham, Bp.*, 1897, 2 Q. B. 414; 66 L. J. Q. B. 826; 77 L. T. 190; 46 W. R. 36).

V. LIKEWISE.

**ALTAR.** — *V. Faulkner v. Litchfield*, 1 Rob. Ecc. 213-230, 243-255: COMMUNION TABLE.

**ALTARAGIUM.** — “Properly, that which is offered on the altar, and the profit which arises to the priest by reason of the altar; Spelm. It is sometimes said to include all vicarial or small tithes; but this construction will not be adopted unless the word occurs in an old endowment, and is supported by usage; *Franklin v. St. Cross*, Bumb. 79” (Elph. 560).

**ALTER.** — The power to “*alter, modify, or extend*” a pt’s claim by his Statement of Claim, R. 4, Ord. 20, R. S. C., does not authorize a totally different case from that set up by the Writ (*Ker v. Williams*, 30 S. J. 238; *Cave v. Crew*, 41 W. R. 359; 62 L. J. Ch. 530; 68 L. T. 254). or the joining of a cause of action not mentioned in the writ (*United Telephone Co v. Tasker*, 59 L. T. 852). *Vf. DELIVERED: Ann. Pr.*

**ALTERATION.** — *V. ADDITION: APPARENT: CLEANSE: MATERIAL ALTERATION.*

Probably, an Alteration in Premises, which will discharge an Insurer, means, generally, a permanent alteration or user, and not something merely casual and temporary (*Dobson v. Sotheby*, Moo. & M. 90; *Shaw v. Robberds*, 6 A. & E. 83; *Pim v. Reid*, 6 Sc. N. R. 982; 6 M. & G. 1; *Barrett v. Jermy*, 3 Ex. 545. *Sr. Glen v. Lewis*, 22 L. J. Ex. 228; 8 Ex. 617; *Stokes v. Cox*, 26 L. J. Ex. 113; 1 H. & N. 533). *Vh. Add. C. 732, 733.*

Alteration of Status; *V. STATUS.*

The Alteration in *Value* of a heredit, — justifying its insertion in a Metropolitan Provisional List because such Value has been “increased by the Addition to the heredit, or erection thereon, of any building, or is from any CAUSE increased or reduced in value,” s. 47, Valuation (Metropolis) Act, 1869, — is not confined to a STRUCTURAL alteration of the heredit, but yet “any Cause,” though a wide phrase, is coloured by the words with which it is in association, and the Alteration must be one arising from a definable Cause directly affecting the heredit, and not from general economic change, or from appreciation of the particular class of property to which the heredit belongs (*Camberwell v. Ellis*, 1900, A. C. 510; 69 L. J. Q. B. 828; 83 L. T. 201).

Quà Telegraph Act, 1878, 41 & 42 V. c. 76, “‘Alteration,’ ‘Alter,’ and ‘Altering,’ in respect of a Telegraphic Line, include the substitution of any new line, or portion of a line, either in the same place or in some other place; also any removal of, or other dealing with, any telegraphic line, or any part of such line” (s. 2).

**ALTERED.** — “Altered state” of Food, s. 9, Sale of Food and Drugs Act, 1875; *V. Spiers & Pond v. Bennett*, cited ABSTRACTION.

*V. MATERIALLY ALTERED.*

**ALTOGETHER.** — Sale “altogether out of Court,” R. 1 a, Ord. 51. R. S. C.; *V. Cumberland Union Bank v. Maryport Co*, 1892, 1 Ch. 92; 61 L. J. Ch. 335; 66 L. T. 103.

“Wound up altogether,” s. 161, Companies Act, 1862; *V. Re Hafod Hotel Co*, W. N. (68), 86.

**ALWAYS AFLOAT.** — “So NEAR THERETO AS SHE MAY SAFELY GET at all times of tide, *and always afloat*,” in a Charter-Party: *V. Dahl v. Nelson*, 50 L. J. Ch. 411; 6 App. Ca. 38; *Horsley v. Price*, 52 L. J. Q. B. 603; 11 Q. B. D. 244; *Caffarini v. Walker*, Ir. Rep. 9 C. L. 431; 10 Ib. 250; *Nielsen v. Wait*, 14 Q. B. D. 516; *Carlton S. S. Co v. Castle Co*, 1897, 2 Q. B. 485; 1898, A. C. 486; 66 L. J. Q. B. 819; 67 Ib. 795; 47 W. R. 65; *Treglia v. Smith's Timber Co*, 1 Com. Ca. 360; 12 Times Rep. 363. In *The Curfew* (1891, P. 131; 60 L. J. P. D. & A. 53; 64 L. T. 330; 39 W. R. 367) evidence was admitted to explain “Always afloat.” *Vf.* Carver, 506.

**AM.** — In a devise, “such an expression as, ‘all the lands of which I *am* seized in A.,’ must be read as if written just before the testator’s death: *Doe v. Walker*, 13 L. J. Ex. 153; 12 M. & W. 591” (per Kay, J., *Re Portal to Lamb*, 53 L. J. Ch. 1163). The decision in *this* was reversed (54 L. J. Ch. 1012; 30 Ch. D. 50). without, however, affecting the proposition above cited. *Vf.* 1 Jarm. 333, 334: Now.

**AMALGAMATE.** — A power to a Co to “amalgamate” with any other Co, does not enable the directors to compel a shareholder to become a member of any such other Co (*Re Empire Assree*, L. R. 4 Eq. 341; 36 L. J. Ch. 663; 15 W. R. 889). *Vh.* 1 Palm. Co. Prec. 1155–1161: *Vf.* next word.

**AMALGAMATION.** — “Amalgamation” of Ry Companies, quâ Part 5, Ry C. Act, 1863, is (by s. 36) “where two or more Ry Companies, respectively incorporated either by or after the passing of this Act, are amalgamated by a Special Act hereafter passed and incorporating this Part of this Act.”

Quâ Companies incorporated under Comp. Act, 1862, “Amalgamation,” signifies the transfer of all or some part of the Assets and Liabilities of one, or more than one, existing Co to another existing Co, — or of two or more existing Cos to a new Co, — of which transferee Co all the members of the transferor Co or Cos become, or have the right of becoming, Members; and, generally, such Amalgamation is accomplished by a Voluntary Winding-up of the transferor Co or Cos (1 Palm. Co. Prec. 1155, adopted in *Hooper v. Western Counties & S. W. Telephone*

(Co, 41 W. R. 84, wherein "Amalgamation" was contrasted with "RECONSTRUCTION"). To a somewhat similar effect is *Wall v. London & Northern Assets Corp* (1898, 2 Ch. 469; 67 L. J. Ch. 596; 79 L. T. 249), in *which*, however, Lindley, L. J., said, — "There is no very precise meaning to be given to 'AMALGAMATE.' When 'amalgamating' a Co with another Co or persons or firms is spoken of, I am not prepared to put a sharp definition upon it. I have no doubt that it includes the case put by Ld Hatherley in *Higgs' Case* (2 H. & M. 657), and more recently by Ld Davey in *New Zealand & Gold Extraction Co v. Peacock* (cited UNDER-TAKING). I do not think it, necessarily, involves the formation of a new Co to carry on the business of an old Co, though I have no doubt it includes that. I do not see how a Co, as a business transaction, can practically 'amalgamate' with persons or companies carrying on business unless the Co does, in some way or other, sell its assets as a whole."

**AMBASSADOR.** — Quà Foreign Marriage Act, 1892, 55 & 56 V. c. 23, " 'Ambassador,' includes a Minister and a Chargé d'Affaires" (s. 24).

**AMBIDEXTER.** — It is Slander, without special damage, to say of a Solr that he is an "Ambidexter," for that imputes that he takes a fee from both sides and betrays his client's secrets (*Annison v. Blofield, Carter*, 214; 1 Rol. Ab. 55).

**AMBIGUITY.** — *V.* PATENT AMBIGUITY.

**AMELIORATING WASTE.** — *V.* WASTE.

**AMENDMENT.** — *V.* CLEANSE.

"Amendment of Rule"; Stat. Def., 38 & 39 V. c. 60, s. 4; 39 & 40 V. c. 45, s. 3; 56 & 57 V. c. 39, s. 79; 59 & 60 V. c. 25, s. 106.

**AMERCIAMENT.** — "Amerciament, *Amerciamentum*," — in *Termes de la Ley* and old Charters written "Amercement," — "signifieth the pecuniary punishment of an Offender against the King, or other Lord, in his Court, that is found to be in *misericordia*, that is, to have offended, and to stand at the Mercy of the King, or Lord" (Cowel). Cowel further says that "there *seems* to be a difference between Amerciaments and Fines," obviously basing that difference on the following passage in *Termes de la Ley*, — "And there is a difference between Amerciaments and Fines (Kitchen, 214), for Fines are punishments certaine which grow expressly from some statute, and Amerciaments are such which are arbitrarily imposed by the Affeerors, the which Master Kitchen seemeth to confirme (fol. 78) in these words, 'The Amerciament is affeered by Equals.' Also it appeareth (Coke, Lib. 8, fol. 39) that a Fine is alwayes imposed and assessed by the Court, but Amerciament, which is called in Latin *misericordia*, is assessed by the Country." The statement that Fines are "punishments *certaine*," *semble*, does not accord with what was held to be a FINE in *Re Nottingham Corp.*, inf. *Cp.* RANSOM.

Amerciament "explained and distinguished from a Fine; *Beecher's*

*Case*, 8 Rep. 58 a : *Godfrey's Case*, 11 Rep. 42 a ; Co. Litt. 126 b. *et seq* : Spelm. gives an explanation differing from that of Coke. The reason why an unsuccessful defendant was said in old time 'to be in merey, &c,' was that he was liable to be amerced for not having obeyed the King's writ immediately" (Elph. 560, *whv* for further references). So, of an unsuccessful plt, for making a false claim (Select Civil Pleas, Selden Soc. 77).

"There is a manifest diversity between a Ransome and an Amerciament ; for ransome is ever when the law inflicteth a corporal punishment by imprisonment (and so is also a Fine) ; but otherwise it is of an amerciament" (Co. Litt. 127 a).

For examples of Amerciaments, *V. BOTE: FRANKPLEDGE: WERE: WITE.*

A Charter granting "Amercements," does not include money payable on Estreated RECOGNIZANCES (*Re Nottingham Corp.*, 1897, 2 Q. B. 502; 66 L. J. Q. B. 883; 77 L. T. 210; 61 J. P. 725) : *V. BAIL.*

"'Amercement *Royal*,' is when a Sheriffe, Coroner, or such like Officer of the King, is amerced by the Justices for his abuse in the Office" (Termes de la Ley).

**AMIABLES COMPOSITEURS.** — "What is the force and meaning of that expression, 'Amiables Compositeurs,' by Canadian law? We find it in the 1346th Article of the Code of Civil Procedure: 'Arbitrators must hear the parties, and their respective proofs, or establish default against them, and decide according to the rules of law, unless they are dispensed from so doing by the terms of the submission, or unless they have been appointed as Amiables Compositeurs.' That is to say, if they are Amiables Compositeurs, they are to be exempt at all events from the strictness of the obligations expressed in the previous words. Their lordships would, no doubt, hesitate much before they held that to entitle arbitrators named as Amiables Compositeurs to disregard all law, and to be arbitrary in their dealings with the parties ; but the distinction must have some reasonable effect given to it, and the least effect which can reasonably be given to the words is, that they dispense with the strict observance of those rules of law the non-observance of which, as applied to awards, results in no more than irregularity" (per Ld Selborne, *Rolland v. Cassidy*, 57 L. J. P. C. 100 ; 13 App. Ca. 770).

**AMIDSHIPS.** — By (and quâ) s. 437, Mer Shipping Act, 1894, " 'Amidships,' means the middle of the length of the Load Water-line, as measured from the fore side of the stem to the aft side of the stern-post," — a def adopted from s. 5, 53 & 54 V. c. 9.

**AMMUNITION.** — The "Ammunition" for a gun, "includes the whole charge (per Esher, M. R., *Armstrong Co v. Hotchkiss Co*, 13 Times Rep. 188).

Stat. Def. — 44 & 45 V. c. 5, s. 6 ; 45 & 46 V. c. 25, s. 35.

**AMNESTY.** — *V.* PARDON.

**AMONG.** — A testamentary gift to two or more “among,” or “amongst,” them creates a tenancy in common (2 Jarm. 257: Hawk. 112). *V.* BETWEEN.

A gift “amongst the CHILDREN of A.,” *primâ facie*, means all his children (*Pigott v. Wilder*, 26 Bea. 93). So, generally speaking, a Power to appoint “amongst” a Class, means that each member must have a share (*Stolworthy v. Saneroft*, 33 L. J. Ch. 708); so, “‘to and amongst’ have a strict technical sense, and where those words are used, each child must have some share assigned to him” (per Bayley, J., *Doe d. Willmett v. Alehin*, 2 B. & Ald. 125): but “to and amongst” a Class, “in such parts shares and proportions” as the Donee of the Power shall think proper, gives a power of selection (*Spring v. Biles*, 1 T. R. 435, *n.*: *Re Veale*, 46 L. J. Ch. 799; 5 Ch. D. 623). *Cp.* ALL AND EVERY.

**AMORTIZATION.** — Is to grant lands in MORTMAIN (Cowel: Jacob).

**AMOUNT.** — “Rated to the amount of”; *V.* RATE.

Covenant to SETTLE a sum or property “not amounting to”; *V.* LESS.  
“Amount realized”; *V.* *Re Christie*, cited REALIZED.

“Amount recovered”; *V.* RECOVER.

“Amount secured,” s. 15 (2), Bg Socy Act, 1874, is not confined to principal money; but includes all moneys secured, whether for Principal, Interest, Fines, or otherwise, and also all Instalments secured though not presently payable (per Chitty, J., *Re Neath Bg Socy*, 59 L. J. Ch. 3; 43 Ch. D. 158; 6 Times Rep. 13).

Amount “secured” by a MORTGAGE, quâ Stamp Act, may not be the same as a like amount “secured” by a Marketable Security: *e.g.* a Co’s Debenture for the sum advanced plus a premium, secures, quâ the ad val. stamp, the premium as well as the sum advanced if it is a fixed obligation, as distinct from a mere option to the Co to pay off plus the premium; whereas, if it were a mtge, the ad val. duty would, probably, be only assessable on the sum advanced, — *V.* s. 86, Stamp Act, 1891 (*Rowell v. Inl. Rev.*, cited MARKETABLE SECURITY). But even, quâ a Debenture, if there be only an option to pay off at a premium, the “amount secured,” on which ad val. duty is payable, does not include the premium, because the obligor need never exercise his option (*Knight’s Deep v. Inl. Rev.*, 1900, 1 Q. B. 217; 69 L. J. Q. B. 66; 81 L. T. 625; 48 W. R. 198).

**AMPLE.** — “As Full and Ample a manner”; *V.* FULL.

**AMPLY.** — “Amplly secured”; *V.* SECURED.

**AMUSEMENT.** — *V.* ENTERTAINMENT.

**AN.** — “An” is sometimes read in the most absolute sense as meaning “ANY. — whatsoever.” “I am of opinion that the expression, ‘an Act of Bankruptcy,’ s. 5, Bankry Act, 1883, includes everything which by legislative enactment is made to be an act of bankruptcy, whether by this Act itself or by some other Act passed before it came into operation” (per Cotton, L. J., *Ex p. Pratt*, 53 L. J. Ch. 614). *Cp. R. v. Snagge*, cited A.

**ANANIAS.** — To write of a Person that he is an “Ananias” could hardly be other than libellous; *secus*, of a Newspaper, for it may be libellous, or, on the contrary, may import no more than the innocent publication of false news (*Australian Newspaper Co v. Bennett*, 1894, A. C. 284; 63 L. J. P. C. 105; 70 L. T. 597; 58 J. P. 604).

**ANCESTOR.** — “Ancestor is derived of the *Latine* word *antecessor*, and in law there is a difference between *antecessor* and *predecessor*. For *antecessor* is applied to a natural person; but *predecessor* is applied to a body politique or corporate” (Co. Litt. 78b).

“The word ‘Ancestor’ does not mean, either etymologically or technically, a lineal ancestor only; in illustration of which proposition I may refer to a passage in Com. Dig., Vol. I., 5th Ed., 705, as to the English writ of ‘Mort d’Ancestor’; which (it is said) ‘does not lie upon the death of any Ancestor, except a father, mother, brother, sister, uncle, aunt, nephew, or niece; for upon the death of another Ancestor, an *aiel*, *besaiel*, or *cosinage* lies’” (per Selborne, C., *Zelland v. Ld Advocate*, 3 App. Ca. 520). And per Ld Hatherley (*Ib.*) the word “Ancestor,” as used in the Sucn Dy Act, 1853 (*I. Succession*), is properly assignable to the person who really preceded in the estate, although that person may not be the progenitor of the Successor.

**ANCESTRAL.** — “Ancestral Property,” does not, necessarily, mean property which has been a long time in a family; it rather means, property derived from the proprietor’s father, and, at least, immovable property (*Gossain v. Gossain*, 8 W. R. 196, 198).

**ANCHOR.** — Quà Anchors and Chain Cables Act, 1899, 62 & 63 V. c. 23, “‘Anchor,’ and ‘Chain Cable,’ include any shackle attached to, or intended to be used in connexion with, the anchor or chain cable” (s. 19).

*I. AT ANCHOR.*

**ANCHORAGE TOLL.** — An Anchorage Toll is a Toll for every anchor — (and sometimes in respect of a vessel having no anchor), — cast in a PORT, or on anchorage ground proved, or legally presumed, to have once formed part of a Port (*Foreman v. Free Fishers of Whitstable*, 38 L. J. C. P. 345; L. R. 4 H. L. 266; explaining *Gann v. Free Fishers of*

*Whitstable*, 35 L. J. C. P. 29; 11 H. L. Ca. 192). *Vf.* Hale, *De Portibus Maris*, Ch. 6.

*V.* TOLL.

**ANCHORITE.** — *V.* RECLUSE.

**ANCIENT DEMESNE.** — “Those lands which were in the possession of Edward the Confessor are called Ancient Demesne, . . . and the Tenants which hold any of those lands are called, Tenants in Ancient Demesne” (*Termes de la Ley*, *Demaines*). Cowel’s def is fuller; he says, “‘Ancient Demeasne,’ or ‘Demayn,’ is a certain Tenure whereby all the Mannors belonging to the Crown in the dayes of Saint Edward, or William the Conqueror, were held. The numbers and names of which Mannors, as of all others belonging to common persons, are written in *Doomsday*. And those which by that Book appear to have at that time belonged to the Crown and are contained under the title *Terra Regis*, are called Ancient Demesne.” *Vf.* DEMESNE: SOCHEMANS: TALLAGE: *Elph.* 560: *Jacob:* 1 *Eucyc.* 252.

**ANCIENT DOCUMENT.** — It is, probably, impossible to define what is an “Ancient Document” to which the doctrine of *Contemporanea Expositio* may be applied. *Seem*, it should be, at least, “one or two Centuries” old (*V.* per *Ld* Watson, *Clyde Nav. v. Laird*, 8 *App.* Ca. 673); one 45 years old is much too young (*Hastings v. N. E. Ry.*, 1899, 1 *Ch.* 656; 68 *L. J. Ch.* 315; 80 *L. T.* 217; *affd* nom. *N. E. Ry. v. Hastings*, 1900, *A. C.* 260; 69 *L. J. Ch.* 516; 82 *L. T.* 429). A statute of 1858 is not “ancient” (*Clyde Nav. v. Laird*, *sup.*): *Vf.* *Dodd. Kinglake v. Beviss*, 18 *L. J. C. P.* 128; 7 *C. B.* 456, and cases there cited. As to the doctrine itself, *V.* *Elph.* Ch. 5.

**ANCIENT INCLOSURE.** — *Quà* Inclosure Act, 1836, 6 & 7 *W.* 4, c. 15, “Ancient Inclosures,” means, “lands which shall have been inclosed from the Open Fields, or any of them, for more than 20 years next preceding the date of the Agreement for Inclosure” (s. 22). *V.* OLD INCLOSURE.

**ANCIENT LIGHT.** — An Ancient Light is a defined aperture in a BUILDING, through which (as of Right, and not by “Consent or Agreement by Deed or Writing,” *V.* IN WRITING) there has been ACTUALLY ENJOYED an ACCESS and use of light “for the full period of 20 years, without INTERRUPTION” (s. 3, 2 & 3 *W.* 4, c. 71). *Vf.* Gale, Part 3, ch. 2: *Goddard on Easements*, 5th Ed., 49–57. At p. 51 of latter book. it is pointed out “that the phrase ‘Ancient Window’ is to be found nowhere.”

As to construction of a Covenant to rebuild so as to preserve Ancient Lights, *V.* *Low v. Innes*, cited REBUILD.

**ANCIENT MEADOW.** — Meadow not broken up for 20 years (*Murphy v. Daly*, 13 Ir. Ch. Rep. 239): "Ancient PASTURE" is synonymous (*Pulmer v. M<sup>r</sup> Cormick*, 25 L. R. Ir. 110). *Note.* Breaking-up Ancient Meadow or Pasture is, *primâ facie*, WASTE (*Simmons v. Norton*, 7 Bing. 640: *Se. St. Alban's v. Skipwith*, 8 Bea. 354; 14 L. J. Ch. 247). *V. MEADOWS.*

**ANCIENT MONUMENT.** — Stat. Def., 45 & 46 V. c. 73, s. 11.  
*V. MAINTAIN: MONUMENT.*

**ANCIENT RENT.** — Where a Power of Leasing "is in the form (which, however, is now uncommon), that the 'Ancient Rents' shall be reserved, this would seem to mean, the rent reserved under the latest lease (if any) granted before the creation of the power. But subsequent leases may be looked at; and the question, where the leases vary, is one of fact for the jury" (*Watson, Eq.* 869, 870, citing *Doe d. Douglas v. Lock*, 2 A. & E. 705; 4 L. J. K. B. 113; 4 N. & M. 807: *Doe d. Egremont v. Stephens*, 6 Q. B. 208: *Doe d. Biddulph v. Hole*, 15 Q. B. 848; 20 L. J. Q. B. 57). But in *thle* it was held that if the ancient custom is uniform, and the single lease varying therefrom is granted just before the creation of the Power, such exceptional lease cannot be taken as evidence of the custom.

On the construction of "Ancient," "Accustomed," or "Usual" rent, *V. Sug. Pow.* 790: *Farwell*, 494: 1 *Platt*, 414-423.

The phrase generally employed now is BEST RENT, *whv.*

**ANCIENT ROYALTY.** — "Ancient and extended Royalties"; Stat. Def., 24 & 25 V. c. 27, s. 2.

**ANCIENT USAGE.** — "Warranted by Ancient Usage," s. 95, 5 & 6 W. 4, c. 76, repld s. 110. *Mun. Corp. Act*, 1882; *V. A.-G. v. Yarmouth*, 21 Bea. 625; 3 W. R. 309; 25 L. T. O. S. 5. *V. PRACTICE: RENEWAL.*

**ANCIENT WINDOW.** — *V. ANCIENT LIGHT.*

**ANCILLARY.** — A work is "ancillary or INCIDENTAL" to a Trade or Business when it is not necessary thereto or a primary part thereof, *e.g.* the business of a Ry Co is primarily that of Carriage of passengers or goods, and it is not responsible (as an "UNDERTAKER," within *Workmen's Comp. Act*, 1897) for a Contractor it employs to build, repair, and paint its Stations, because such work (within s. 4) is "merely ancillary, or incidental to, and is no part of." its business (*Pearce v. Lond. & S. W. Ry*, 1900, 2 Q. B. 100; 69 L. J. Q. B. 683; 82 L. T. 487; 48 W. R. 599). *V. RAILWAY: INCIDENTAL OR CONDUCTIVE.*

**AND.** — "And" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of OR. Sometimes, however, even in such a connection, it is,



by force of a context, read as "Or." Thus where a lessee underlet, with a proviso, on breach of covenant, enabling him *and* his lessor to re-enter; held, that he *or* his lessor might re-enter on breach (*Doe d. Bedford v. White*, 4 Bing. 276). So, a power to apply corpus of trust money for the "BENEFIT *and* ADVANCEMENT" of a Tenant for Life, "and" may be read "or" (*Re Brittlebank*, 30 W. R. 99). On the other hand, s. 17, 59 G. 3, c. 12, makes "Churchwardens *and* Overseers" a quasi Corporation for holding and dealing with property BELONGING to a Parish; that means that, in order to create such a corp officers of both descriptions must be appointed, and, until that is done, nothing vests (*Woodcock v. Gibson*, 4 B. & C. 462). *Vf.* OR READ AS AND, and *vice versâ*.

"And" may be relative as well as copulative (Dwar. 681).

Where there is a string of *adjectives* between the last two of which there is the conjunction "and," each adjective is, generally speaking, independent of its fellows. Thus a bequest for "Benevolent, Charitable, and Religious" purposes, means that it may be applied in either of those ways, and, as some are too indefinite, the bequest is bad (*Williams v. Kershaw*, 5 Cl. & F. 111, *n.*). But sometimes the first adjective (especially when there are only two) is the controlling word of the enumeration which is merely qualified by that which follows. Thus in *Re Sutton* (54 L. J. Ch. 613; 28 Ch. D. 464; 33 W. R. 519), Pearson, J., held that a bequest for "Charitable and Deserving" objects was good, because such a collocation only contemplated one class of objects, — "the word 'Charitable' governs the whole sentence." In that case the learned judge gave the following illustration, — "Instead of giving to young persons 'under 21' you might add the words 'and unmarried,' and those words would undoubtedly restrict the meaning of the former words." *Vf. Re Seovercroft*, 1898, 2 Ch. 638; 67 L. J. Ch. 697: CHARITABLE PURPOSE: OR.

"And," sometimes gives a distinct sense to the word it precedes (*Michell v. Michell*, cited EFFECTS).

As to the construction and apportionment where charitable and other *ascertained* objects are coupled in a bequest, *V. 1* Jarm. 217, 218 *Crafton v. Frith*, 20 L. J. Ch. 198.

*V. EXECUTORS.*

**AND read as BUT.** — For an instance of this, *V. jdgmt Coleridge*, C. J., *R. v. Barclay*, 51 L. J. M. C. 48; 8 Q. B. D. 486.

**AND read as OR.** — *V. OR.*

**AND**  
**OR**. — Where statements or stipulations are coupled by "and" they are "to be read, either disjunctively, or conjunctively" (per Cairns, C., *Stanton v. Richardson*, 45 L. J. C. P. 82), *e.g.* "The contract on the face of the Charter-Party was that the parties were to 'load a full and

complete Cargo of sugar, molasses,  $\frac{\text{and}}{\text{or}}$  other lawful produce'; so that, according to the contract, the parties were either to load 'a full and complete cargo of sugar and molasses *and* other lawful produce,' — or, 'a full cargo of sugar and molasses, *or* a full cargo of other lawful produce,' leaving it open in every way by reason of the words ' $\frac{\text{and}}{\text{or}}$ ', being introduced into the Charter-Party" (per Alderson, B., *Cuthbert v. Cumming*, 24 L. J. Ex. 198; affd *Ib.* 310; 11 Ex. 405). *Vf. Furness v. Tennant*, 8 Times Rep. 336.

**AND ALSO.** — *V. ALSO.*

**ANIMAL.** — A Domestic Fowl is an "Animal," within s. 61, 24 & 25 V. c. 100 (*R. v. Brown*, 59 L. J. M. C. 47; 24 Q. B. D. 357; 61 L. T. 594; 38 W. R. 95; 54 J. P. 408). *V. DOMESTIC ANIMAL.*

Stat. Def. — 12 & 13 V. c. 92, s. 29; 29 & 30 V. c. 2, s. 3; 32 & 33 V. c. 70, s. 6; 41 & 42 V. c. 74, s. 5; 57 & 58 V. c. 57, s. 59; 63 & 64 V. c. 33, s. 1. — *Scot.* 13 & 14 V. c. 92, s. 11; 58 & 59 V. c. 13, s. 2. — *Ir.* 33 & 34 V. c. 36, s. 11; 39 & 40 V. c. 51, s. 2.

"Noisy Animal"; *V. NOISY.*

**ANNATS.** — "'Annats or Annates'; the FIRST FRUITS of an ecclesiastical BENEFICE; *V.* 25 H. 8, c. 20; 26 H. 8, c. 3: 12 Rep. 45: Spelm." (*Elph.* 560). *Va. Termes de la Ley: Phil. Ecc. Law, 1355.*

**ANNEX.** — "Annexed to the Freehold," connotes fastening; mere juxtaposition to, or the lying of a thing on, the freehold, does not amount to annexation (*Merritt v. Judd*, 14 Cal. 64). *Cp. ADJOIN.*

Deed "as an Annex" to a previous Deed; *V.* s. 53, Conv. & L. P. Act, 1881. *Cp. SUPPLEMENTAL.*

Schedule "annexed" to a Will; *V. Watson v. Arundel*, *Ir. Rep.* 10 Eq. 299; 11 *Ib.* 53.

**ANNOY.** — *V. INJURE.*

**ANNOYANCE.** — A covenant against doing anything which may be a "Nuisance or Annoyance" to a neighbourhood, is broken by a Sanatorium for the reception of six boys affected with infectious disease (*Watson v. Leamington College*, 25 S. J. 30). In that case, Jessel, M. R., said it might perhaps be difficult to appreciate the difference between "Nuisance" and "Annoyance," but as both words were used, "annoyance," evidently, meant something less than "nuisance." And in *Tod-Heatley v. Benham* (58 L. J. Ch. 83; 40 Ch. D. 80), it was held that "Annoyance" has, in this connection, a wider meaning than "Nuisance," though it was there doubted whether it was not too much to say that no "Nuisance" would be within such a covenant, unless it amounts to an indictable nuisance. *V. NUISANCE: OFFENSIVE.*

In *Bramwell v. Lacy* (48 L. J. Ch. 339; 10 Ch. D. 691), the words were "Annoyance, Damage, Injury, Prejudice, or Inconvenience"; whilst in *Tod-Heatley v. Benham* (sup) they were "Annoyance, Nuisance, Grievance, or Damage"; and in the first of these cases an out-patient Branch of a Hospital for throat and chest diseases was held to be an "Annoyance, Inconvenience, and Injury"; whilst in the latter, a Hospital for throat, nose, ear, skin, and eye diseases, and diseases of the rectum, was held an "Annoyance or Grievance," those two words being, apparently, bracketed as synonymous.

"I think an act which is an interference with the pleasurable enjoyment, in reason, of a house is an 'Annoyance or Grievance.' It is not necessary, in order to bring the case within the words, that the plaintiff should show that any particular man may object to it; but we must be satisfied by argument and by evidence, that reasonable people, having regard to the ordinary use of a house for pleasurable enjoyment, would be annoyed or aggrieved by what is being done there. It is not necessary, in order to show that there has been reasonable ground for annoyance or grievance, to show that, in fact, there is danger or risk of infection. A reasonable apprehension of nuisance from acts done by the defendant will produce such interference with the pleasurable and reasonable enjoyment of the adjoining houses as to come within the words 'Annoyance and Grievance'" (per Cotton, L. J., *Tod-Heatley v. Benham*, sup). "The expression 'Annoyance' is wider than 'Nuisance'; and a thing that reasonably troubles the mind and pleasure, — not of a fanciful person or of a skilled person who knows the truth, but, — of the ordinary sensible English inhabitant of a house, seems to me to be an 'Annoyance,' although it may not appear to amount to physical detriment to comfort" (per Bowen, L. J., *Ib.*), — e.g. a high trellis-work fence which substantially interferes with one's access of light (*Wood v. Cooper*, 1894, 3 Ch. 671; 63 L. J. Ch. 845; 71 L. T. 222; 43 W. R. 201). Intermittent pranks by the boys of a private school (especially when efforts are made to repress them) do not constitute "Annoyance or Disturbance" (*Everett v. Remington*, Times, 24th May, 1892; 67 L. T. 80; S. C. cited ASSIGNS). But "Annoyance" (within a Residential covenant) may be caused by singing, or piano, lessons in an adjoining house (*Eyre v. Landi*, Times, 1st June, 1895), and much more by bad practice (*Wilson v. Barnes*, *Ib.*). V. DISAGREEABLE.

In *Our Boys Clothing Co v. Holborn Viaduct Co* (40 S. J. 561), Romer, J., held that a big, ugly, obtrusive, and vulgar advertisement, announcing "An Eccentric and Startling Stock-taking Sale," was not a breach by a Lessee (even as against his Lessor) of his covenant not to do "anything which might cause Annoyance, or Inconvenience to the lessors, or their other tenants, or to their neighbours."

An "Annoyance," &c caused by a business, is none the less within a covenant, because the business is such as would not be prohibited by

accompanying words levelled against certain specified businesses (*Tod-Heatley v. Benham*, sup). *Alexander v. Wolsey* (Times, 4th Feb. 1891), was a case of that kind, wherein Romer, J., held that the trade of a Fishmonger, as carried on by deft, was "Annoyance and Damage," within lessee's covenant against "Annoyance, Damage, or Disturbance."

*Vf.* hereon *Davis v. Cavey*, 58 L. J. Ch. 143; 40 Ch. D. 601.

A finding by the Court of Session that burning refuse "would cause Material Discomfort, and Annoyance," is one of fact, and not of law, within s. 40, 6 G. 4, c. 120 (*Fleming v. Hislop*, 11 App. Ca. 686).

Annoyance to Inhabitants; *V.* INHABITANTS, at end.

.. Annoyance or Obstruction in any Thoroughfare"; *V.* OBSTRUCTION.

*V.* MOLEST.

**ANNUAL BALANCE SHEET.** — *V.* LAST.

**ANNUAL CLOSE SEASON.** — Stat. Def., Salmon Fishery Act, 1873, 36 & 37 V. c. 71, s. 4, *whca* for "Weekly Close Season." *V.* CLOSE SEASON.

**ANNUAL EMOLUMENT.** — Compensation for loss of office calculated on two-thirds of "Annual Emolument," s. 8 (7), 31 & 32 V. c. 110; *V. R. v. Postmaster-Gen.*, cited EMOLUMENT.

**ANNUAL GENERAL LICENSING MEETING.** — *V. R. v. Anglesey Jus.*, cited BEFORE.

**ANNUAL INCOME.** — *V.* ACTUAL ANNUAL INCOME.

**ANNUAL LICENSE FEE.** — *V.* PASTORAL LEASE.

**ANNUAL NET VALUE.** — *V.* ANNUAL VALUE: NET.

**ANNUAL PAY.** — *V.* PAY.

**ANNUAL PAYMENT.** — "Annual Payment towards the costs of Maintenance and Repair," s. 11 (2), Loc. Gov. Act, 1888, means, a payment to be made annually in respect of the expenditure of the particular year; not a fixed sum ascertained by the average expenditure of a series of years (*Sandgate v. Kent Co. Co.*, 79 L. T. 425).

**ANNUAL PROCEEDS.** — "Rents, Dividends, and Annual Proceeds," held, on the context, equivalent to "Annual Rents, Dividends, and Proceeds" (*Re Green*, 40 Ch. D. 610).

**ANNUAL PROFITS.** — *V.* PROFITS.

**ANNUAL RACK-RENT.** — *V.* RACK-RENT.

**ANNUAL RENT.** — *V. Smith v. Birmingham*, 52 L. J. M. C. 81; 11 Q. B. D. 195: ANNUAL VALUE. *Va.* RENTAL.

**ANNUAL VALUE.** — "Value means NET value" (per Ld Bramwell, *Dobbs v. Grand Junction W. W. Co*, 53 L. J. Q. B. 52). And on the au-

thority of the same noble and learned lord in the same case, and on that of *Re Elwes* (28 L. J. Ex. 46; 3 H. & N. 719), it may be laid down that the general *primâ facie* meaning of "Annual Value" of property is that provided for "Net Annual Value" by s. 1, Parochial Assessments Act, 1836 (6 & 7 W. 4, c. 96, the history of which is traced by Grantham, J., *Walker v. Brisley*, inf.) viz. — "The rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the Repairs, Insurance, and other Expenses (if any) NECESSARY to maintain them in a state to command such rent"; and to that def it may now be added that in estimating such lettable value regard is to be had to the worth of the premises as used for the purposes for which, or in the manner in which, they are, for the time being, occupied (*West Middlesex W. W. Co v. Coleman*, 54 L. J. M. C. 70; 14 Q. B. D. 529; *Grand Junction W. W. Co v. Davies*, 1897, 2 Q. B. 209; 66 L. J. Q. B. 633; 76 L. T. 833; 45 W. R. 687; 61 J. P. 484; *Bradford v. White*, 1898, 2 Q. B. 630; 67 L. J. Q. B. 643. As to what "expenses" may be deducted, *V. R. v. Gainsborough*, 41 L. J. M. C. 1; L. R. 7 Q. B. 64; *R. v. Smith*, 55 L. J. M. C. 49; 54 L. T. 431; 50 J. P. 215; *Stevens v. Bishop*, 19 Q. B. D. 442; 56 L. J. Q. B. 454; 57 L. T. 482; 35 W. R. 839). *Cp.* "Net Rent," sub NET.

Quâ the valuation of property in the Metropolis the principle of the above def has been adopted, but the phrase is altered to "*Rateable Value*," the precise def of which is, — "The term 'Rateable Value,' means the GROSS VALUE, after deducting therefrom the probable annual average cost of the Repairs, Insurance, and other Expenses" necessary to maintain the heredit in a state to command the annual rent which a tenant might reasonably be expected to pay (s. 4, 32 & 33 V. c. 67).

V. Arch. P. L., Part 5: Boyle & Davies, Principles of Rating.

The principle above stated is that which the Metropolitan Waterworks Companies must adopt in making their charges on "Annual Value" (*Dobbs v. Grand Junc. W. W. Co*, 53 L. J. Q. B. 50; 9 App. Ca. 49; 49 L. T. 541; 32 W. R. 432). But such a phrase may be enlarged by a context, e.g. "gross" (*Bristol W. W. Co v. Uren*, 54 L. J. M. C. 102; 15 Q. B. D. 637); or "rack-rent" (*Stevens v. Barnet Water Co*, 57 L. J. M. C. 82; 36 W. R. 924). *Vf.* RENT.

So, too, where a Waterworks Co are empowered to charge "on the annual value at which the premises are assessed to the Poor-Rate." that means the annual *rateable* value (*Warrington W. W. Co v. Longshaw*, 51 L. J. Q. B. 498; 9 Q. B. D. 145).

*Note.* "Where an Act gives power to a Co to impose a Toll or Rate upon the PUBLIC and it is left ambiguous which of two Tolls they have a right to impose, the Court must decide in favor of that which is the least onerous or burdensome to the public" (per ESHER, M. R., *South*

*Staffordshire W. W. Co v. Barrow*, 61 J. P. 662, citing *Stourbridge Canal Co v. Wheeley*, 2 B. & Ad. 792).

In cases of Small Tenements let at weekly rents, — the landlord doing the repairs and paying the rates and taxes, — the proper way of assessing the “annual value” or “annual rent” on which the Water-Rate is to be charged, is to multiply the weekly rent by 52, and deduct from the gross amount so ascertained a fair allowance for the average of empty houses and also the actual amount paid for poor and borough rates (*Smith v. Birmingham*, 52 L. J. M. C. 81; 11 Q. B. D. 195); and as to mode of assessing annual value of such tenements for the Poor-Rate; *V. Smith v. Birmingham*, 58 L. J. M. C. 33, 161; 22 Q. B. D. 211.

As to mode of calculating Annual Value of the buildings of a School Board; *V. R. v. West Bromwich School Bd.*, 53 L. J. M. C. 153; 13 Q. B. D. 929; *R. v. London School Bd.*, 55 L. J. M. C. 169; 17 Q. B. D. 738; 55 L. T. 384; 34 W. R. 583; 50 J. P. 419: and as to Exemption where the owners and occupiers are prohibited from selling or leasing, — e.g. *Owen's College, Manchester*; *V. Owen's College v. Chorlton-upon-Medlock*, 56 L. J. M. C. 29; 18 Q. B. D. 403; 56 L. T. 373; 35 W. R. 236; 51 J. P. 356: *Sr. Burton-on-Trent v. Egginton*, 59 L. J. M. C. 1; 24 Q. B. D. 197: *V. BENEFICIAL*. — As to mode of calculating, *quà Docks and Harbours*, *V. Mersey Docks v. Birkenhead*, 1900, 1 Q. B. 143; 69 L. J. Q. B. 260; 81 L. T. 798; 48 W. R. 259; 64 J. P. 36. — *Quà Mines*, *V. Brown v. Rotherham*, 83 L. T. 193. — *Quà Plantations*, *V. PLANTATION*. — *Quà Public-houses*, *V. Dodds v. South Shields*, 1895, 2 Q. B. 133; 64 L. J. Q. B. 508; 72 L. T. 645; 43 W. R. 532; 59 J. P. 452: *Cartwright v. Sculcoates*, 1899, 1 Q. B. 667; 68 L. J. Q. B. 455; 80 L. T. 450; *affd in H. L.*, 1900, A. C. 150; 69 L. J. Q. B. 403; 82 L. T. 157; 48 W. R. 394; 64 J. P. 229. — *Quà Water-Works*, *V. Liverpool v. Llanfyllin*, 1899, 2 Q. B. 14; 68 L. J. Q. B. 762; 80 L. T. 667; 63 J. P. 452.

In a case under ss. 21, 22 Suen Dy Act, 1853, *Watson, B.*, in delivering the judgment of the Court of Exchequer, said, — “The words ‘annual value of the land’ are not Words of Art; but mean, in common parlance, a rack-rent, or the value of the gross produce of the land, minus all payments, expenses, interest, labour, and charges on the land or on the tenant” (*Re Elwes*, 28 L. J. Ex. 47).

So also the “Value” “By the Year” of lands, &c, for the purpose of giving County Courts jurisdiction in Ejectment (Co. Co. Act, 1888, s. 59), is the market value of the property, — the convenient mode for ascertaining which is prescribed by s. 1, Parochial Assessments Act, 1836 (*Elston v. Rose*, L. R. 4 Q. B. 4; 38 L. J. Q. B. 6: *V. RENT PAYABLE*): but the premises to be valued are those actually in dispute, — e.g. if there be a dispute over a party-wall, it is the wall, and not the premises of which it is part, that has to be valued (*Stolworthy v. Powell*, 55 L. J. Q. B. 228; *Srthc per Russell, C. J.*, *Bassano v.*

*Bradley*, 1896, 1 Q. B. 645; 65 L. J. Q. B. 479; 74 L. T. 553; 41 W. R. 576).

Rule 1, s. 60, Income Tax Act, 1842, provides that for the purposes of that Act the "Annual Value" of lands, &c, shall be the RACK-RENT; but the subsequent Rules of the Act would seem to bring this definition nearly identical with that in the Parochial Assessments Act, 1836: *Vf. Re Elwes*, sup: *Coltness Co v. Black*, 6 App. Ca. 315; 51 L. J. Q. B. 626; 29 W. R. 717; 45 L. T. 145.

The Land Tax "Annual Value" is to be ascertained in the same manner as the Income Tax Annual Value (s. 35, 59 & 60 V. c. 28).

But the def of "Annual Value" provided by the Parochial Assessments Act is not applicable to the Inhabited House Duty payable under the House Tax Act, 1851, 14 & 15 V. c. 36; in that Act the phrase means, the full and just yearly rent which the premises would ordinarily command, and without making any deduction therefrom (*Walker v. Brisley*, 1900, 2 Q. B. 735; 69 L. J. Q. B. 875; 83 L. T. 347; 49 W. R. 23; 64 J. P. 709).

The meaning of "Annual Value" of a resigned BENEFICE, as used in s. 8, Incumbents' Resignation Act, 1871 (34 & 35 V. c. 44: *Vh. s. 11*), is its Net Annual Value at the time it is resigned; and the pension based on such value is not subject to diminution because the value of the Benefice afterwards declines (*Robinson v. Dand*, 55 L. J. Q. B. 585).

"Clear Yearly Value," Rep. People Act, 1832; *V. CLEAR*.

"Net Annual Value"; *V. NET*.

*V. FULL ANNUAL VALUE*.

Stat. Def. — *Ir.* 40 & 41 V. c. 56, s. 31; "Annual Value of the Holding," 54 & 55 V. c. 48, s. 42.

**ANNUALLY.** — "Profits and Gains received annually," 6th case, Sch. D., s. 100, Income Tax Act, 1842, — *i.e.* for the current year; *V. Ryhope Co v. Foyer*, 7 Q. B. D. 485; 45 L. T. 404.

*V. YEARLY: PER ANNUM.*

**ANNUITY.** — "An annuity is a yearly payment of a certaine summe of money granted to another in fee, for life, or yeares, charging the person of the grantor onely" (Co. Litt. 144 b: *Vf. Wms. Exs.* 718).

The gift of an "Annuity" generally means an annual sum during the life of the annuitant (*Re Taber*, 51 L. J. Ch. 721). "and nothing more" (per Fry, J., *Blight v. Hartnoll*, 51 L. J. Ch. 163; 19 Ch. D. 294; affd 52 L. J. Ch. 672; 23 Ch. D. 218: *Vf. Re Foster*, 23 L. R. Ir. 269: *Re Morgan*, 1893, 3 Ch. 222; 62 L. J. Ch. 789); but where there is a direction to purchase an annuity, or a dedication of a fund out of which it is to be purchased, or where the annuity is dealt with as being in existence and operative beyond the life of the first annuitant and no other period can be fixed for such further duration short of making it perpetual, the

annuity will be in perpetuity, — *i.e.* it is a bequest of such a sum as will produce the income intended for the legatee, who may (notwithstanding a direction to the contrary) elect to take that sum or have the annuity; and, in the event of his death before the annuity is purchased, the sum which would have been needed for its purchase will go to his representatives (Wms. Exs. 1061 and cases there cited: *Stokes v. Heron*, 2 Dr. & War. 89; 12 Cl. & F. 161: *Ross v. Borer*, 31 L. J. Ch. 709; 2 J. & H. 469: *Bent v. Cullen*, 40 L. J. Ch. 250; 6 Ch. 235, not followed in *Re Morgan*, sup: *Stokes v. Cheek*, 29 L. J. Ch. 922; 28 Bea. 620: *Blight v. Hartnoll*, sup: *Hicks v. Ross*, 41 L. J. Ch. 677; L. R. 14 Eq. 141: BRITISH FUNDS). That sum is such a sum as, at the price of the day (excluding brokerage), would purchase sufficient 2½ per cent Consols to produce the Annuity (*Hicks v. Ross*, 1891, 3 Ch. 499; 60 L. J. Ch. 853; 65 L. T. 200; 40 W. R. 172).

As to the right of an Annuitant to have the Capitalized Value of his Life Annuity, instead of the annuity; *V. Re Mabbett*, 1891, 1 Ch. 707; 60 L. J. Ch. 279; 67 L. T. 447; 39 W. R. 537, and cases there cited.

As to an Annuity (charged on a REMAINDER) running during a Life Tenancy; *V. Re Williams*, 64 L. J. Ch. 349; 72 L. T. 324; 43 W. R. 375, following *Jackson v. Hamilton*, 9 Ir. Eq. Rep. 430; 3 J. & La T. 702, and distinguishing *Re Bywater*, 18 Ch. D. 17.

As to when charged on Corpus; *V. Re Mason*, 8 Ch. D. 411; 47 L. J. Ch. 660.

“Annuity,” s. 8, Legacy Duty Act, 1796, 36 G. 3, c. 52; *V. Crow v. Robinson*, 31 L. J. Ch. 516.

*V. LEGACY: PECUNIARY LEGACY: GOVERNMENT ANNUITIES: PERPETUAL ANNUITY: PURCHASE ANNUITY: SAVINGS.*

“Annuity,” s. 175, Bankry Act, 1849; *V. Parker v. Ince*, 4 H. & N. 53; 28 L. J. Ex. 189.

“Annuities or Periodical Sums,” “Annuity,” or Sum payable “at stated periods”; *V. PERIODICAL.*

Stat. Def. — 33 & 34 V. c. 35, s. 5; 36 & 37 V. c. 57, s. 7. — *Scot.* 39 & 40 V. c. 49, s. 3.

*Vh.* 1 Encyc. 258-262; 10 *Ib.* 34.

**ANNUL.** — *V. NULL.*

“Annulling” a Bankry generally includes “superseding” (Bankry Act, 1849, s. 276; Bankry Act, 1861, s. 229; 20 & 21 V. c. 60, s. 4).

**ANNUM.** — *V. PER ANNUM.*

**ANOTHER.** — A promise “To answer for Another,” s. 4, Statute of Frauds, means that the promise is to be made to the original Creditor (*Eastwood v. Kenyon*, 9 L. J. Q. B. 409; 11 A. & E. 438; 3 P. & D. 276: *Reader v. Kingham*, 32 L. J. C. P. 108; 13 C. B. N. S. 344: *Cripps v. Hartnoll*, 32 L. J. Q. B. 381; 4 B. & S. 414), by a person having no interest in the transaction. Accordingly, under this latter branch,



of the def, the obligation on a DEL CREDERE commission, is not such a promise (*Couturier v. Hastie*, 8 Ex. 40, adopting *Wolff v. Koppel*, 5 Hill N. Y. Rep. 458; *Wickham v. Wickham*, 2 K. & J. 478), nor is an Agreement the office of which is to regulate the terms of the promisor's employment (*Sutton v. Grey*, 1894, 1 Q. B. 285; 63 L. J. Q. B. 633; 69 L. T. 673; 42 W. R. 195), or which relates to property in which he is interested (*Fitzgerald v. Dressler*, 7 C. B. N. S. 374; 29 L. J. C. P. 113), or which, as distinguished from a GUARANTEE, creates an original INDEMNITY by the promisor (*Re Hoyle*, cited NOTE: *Guild v. Conrad*, 1894, 2 Q. B. 885; 63 L. J. Q. B. 721; 71 L. T. 140; 42 W. R. 642).

V. DEBT DEFAULT OR MISCARRIAGE: I WILL SEE YOU PAID.

A Male Person procuring any Male Person to commit with himself gross indecency, has procured it "with Another Male Person," within s. 11, 48 & 49 V. c. 69; for this phrase is not equivalent to "with Another Male Person other than himself" (*R. v. Jones*, 1896, 1 Q. B. 4; 65 L. J. M. C. 28; 44 W. R. 110; 73 L. T. 584; 60 J. P. 89; *Jf. Anon.*, cited PROCURE). Cp. APPOINT.

**ANSWER.** — A certificate of indemnity to which a witness is entitled who shall "answer" questions, means that he shall "truly answer" (*R. v. Hulme*, 39 L. J. Q. B. 149; L. R. 5 Q. B. 377). In that case Lush, J., said, "Wherever the legislature speaks of 'answering' questions, it means that which is intended by the words 'true answer,' — 'answer' in the sense in which the word is ordinarily and popularly used."

"A Party who obtains an Order for time 'to answer' (nothing further being specified), is at liberty to plead, whether the matter of the plea be the disability of the plt, or any other head of defence" (per Cottenham, C., *Hunter v. Nockolds*, 2 Phill. 543; 17 L. J. Ch. 253).

"'Presently answer,' held, in *Plowden*, only presently become debtor, not presently pay" (*Dwar.* 690).

"Promise to answer for Another," s. 4, Stat. of Frauds; V. ANOTHER.

**ANSWERABLE.** — V. INDEMNIFY.

"Answerable" is an equivalent for "LIABLE" (per Ld Gordon, *Wear Commrs v. Adamson*, 2 App. Ca. 775).

"Answerable in damages," s. 54. Mer. Shipping Act, 1862; *V. Stoomvaart Maatschappij Nederland v. P. & O. Nar. Co.*, 7 App. Ca. 795; 52 L. J. P. D. & A. 1, over-ruling *Chapman v. Royal Netherlands Co.*, 48 L. J. Ch. 449; 4 P. D. 157. The first of these cases decides that in a COLLISION where both ships are in fault, only one of them is really "answerable," or, to use the other phrase, "liable" in damages, viz., the one who sustains the lesser damage, "such damages representing the moiety of the difference of the aggregate loss beyond the point at which the one loss balances the other"; there is but one compulsory payment. Therefore, the owner of the ship which suffers the greater loss, cannot

recover on a Protection Policy assuring him against what he may "become liable to pay" in respect of a Collision, because he does not become liable to pay anything (*London S. S. Owners Insree v. Grampian S. S. Co.*, 59 L. J. Q. B. 549; 24 Q. B. D. 663; 62 L. T. 784; 38 W. R. 651).

**ANTECEDENT.** — "Antecedent Debt," s. 3, 5 & 6 V. c. 39; *V. Macnee v. Gorst*, 15 W. R. 1197.

**ANTICIPATE.** — Where there is a gift for life to a married woman, subject to a Restraint on Alienation, and on her "anticipating" the same, then over; the gift over will not take effect on her executing during coverture what professes to be a mtge of her life estate, because she has no power to mtge; "anticipating" will not be construed "attempting to anticipate" (*Re Wormald*, cited ALIENATION).

**ANTICIPATION.** — A restraint on "Anticipation" is equivalent to a restraint on ALIENATION (*Re Currey*, 55 L. J. Ch. 906; 32 Ch. D. 361; *Re Grey*, 56 L. J. Ch. 207).

As to Restraint on Anticipation by a married woman; *V. Godefroi*, 585 *et seq.* — As to what words will create such Restraint; *V. RESTRAINT ON ALIENATION*: — As to removing such Restraint; *V. BENEFIT*.

There is an Anticipation of an INVENTION, if there has been (1) Prior PUBLICATION; or (2) Prior USE of it: *17l. Edmunds on Patents*, ch. 4, s. 3; *Frost on Patents*, ch. 3; as to Prior Use, *Vf. Heath v. Smith*, 3 E. & B. 256; 23 L. J. Q. B. 166; *Harwood v. G. N. Ry*, 11 H. L. Ca. 654.

**ANTIENENT.** — *V. ANCIENT*.

**ANTIQUITY.** — *V. LAW LIBRARY*.

**ANY.** — "Any," is not confined to a plural sense (*Eaton v. Lyon*, 3 Ves. 694).

"Any" is a word which excludes limitation or qualification (per Fry, L. J., *Duck v. Bates*, 53 L. J. Q. B. 344; 12 Q. B. D. 79); "as wide as possible" (per Chitty, J., *Beckett v. Sutton*, 51 L. J. Ch. 433). A remarkable instance of this wide generality is furnished in *Re Farquhar* (4 Notes of Ecc. Cases, 651, 652, cited Wms. Exs. 106), wherein the words "any Soldier," &c, in s. 11, Wills Act, 1837, were construed as including minors, so that soldiers and seamen, within that section, can make NUNCUPATIVE Wills though under age. So, a power in a Lease, enabling the Lessor to resume "possession of any Portion of the premises demised," enables him to resume all (*Liddy v. Kennedy*, L. R. 5 H. L. 134). So, a Notice of an Extraordinary Meeting, under s. 70, Comp. C. C. Act, 1845, "to remove any of the present Directors," justifies a Resolution to remove them all (*Isle of Wight Ry v. Tahourdin*, 25 Ch.

D. 332; 53 L. J. Ch. 359; 50 L. T. 132; 32 W. R. 297). *Vf. AN: PORTULAR ACTION.*

So, "under a Devise to three persons as tenants in common in tail, and in default of such issue 'of any of them,' over; Cross Remainders were implied, and 'any,' in effect, read 'all'" (Watson, Eq. 1410, citing *Powell v. Howell*, L. R. 3 Q. B. 654; 37 L. J. Q. B. 294; 9 B. & S. 704: *V. Holmes v. Meynell*, Raym. T. 452).

But its generality may be restricted by the subject matter or the context. Thus, "Any ACTION," s. 36, Co. Co. Act, 1856, meant any Co. Co. Action (*Re Copp*, 6 Q. B. D. 607; 50 L. J. Q. B. 233). So, under R. 295, Bankry R. 1870, "any CREDITOR" might oppose registration of resolutions; but that meant "any creditor who had previously proved his debt" (*Ex p. Bagster*, 53 L. J. Ch. 124; 24 Ch. D. 477: *Cp. Wells v. Greenhill*, 5 B. & Ald. 869). So, "any other PERSON," in R. 32, Ord. 42, R. S. C., means, by the context, any Officer of a judgment-debtor Corporation (*Irwell v. Eden*, 18 Q. B. D. 588; 56 L. J. Q. B. 446; 56 L. T. 620; 35 W. R. 511); and by a context "any person" may mean any eligible person (*Tobacco Pipe Makers v. Woodroffe*, 7 B. & C. 838: *Vf. Metrop. Bd. Works v. Lond. & N. W. Ry*, 49 L. J. Ch. 355; 14 Ch. D. 521). So, under Romilly's Act, 52 G. 3, c. 101, "any two or more Persons" to present a petition, means persons having an interest (*Re Bedford Charity*, 2 Swanst. 518). *Vf. R. v. Comptroller of Patents*, *inf.*

So, in *Weston v. Barton* (6 Taunt. 673) a Bond for all advances made by Bankers (named, and so described) "or any or either of them." was controlled by the context as not securing advances by the survivors after the death of one of them.

But the words "any Person," s. 13 (3), Debtors' Act, 1869, is not restricted to cases of bankruptcy, and applies to any person whether bankrupt or not (*R. v. Rowlands*, 51 L. J. M. C. 51; 8 Q. B. D. 530). *Va. Ex p. Harper*, *Re Tait*, 52 L. J. Ch. 117, and *Ex p. Norris*, *Re Sadler*, 56 L. J. Q. B. 93; 17 Q. B. D. 728; 35 W. R. 19, as to the phrase, "at any Time" in the Bankry Act.

As to the phrase "any PARTY," R. S. C.; *V. Show v. Smith*, 56 L. J. Q. B. 174; 18 Q. B. D. 193; 56 L. T. 40; 35 W. R. 188, explaining *Brown v. Watkins*, 55 L. J. Q. B. 126; 16 Q. B. D. 125.

A local Harbour Act which imposed a penalty on "any person" who placed articles "on any quay, wharf, or landing place, within 10 feet of the quay head, or on any space of ground immediately adjoining the said haven, within 10 feet from high-water mark," so as to obstruct the free passage, was held inapplicable to private property over which there was no public right of way (*Harrod v. Worship*, 30 L. J. M. C. 165; 1 B. & S. 381).

"Any Carriage"; *V. CARRIAGE*, at end.

"Any Cause"; *V. ALTERATION.*

The usual clause in conditions of Sale giving interest, if from "any

*Cause whatever*” the purchase be delayed, may, *semble*, be modified by the Court, and does not include the vendor’s own avoidable default (*Kershaw v. Kershaw*, L. R. 9 Eq. 56; 21 L. T. 651; 18 W. R. 477; *Monckton to Gilzean*, 54 L. J. Ch. 257; 27 Ch. D. 555; 51 L. T. 320; 32 W. R. 973; *De Visme v. De Visme*, 1 Mac. & G. 336, on *whlev* per Romilly. M. R., *Vickers v. Hand*, 26 Bea. 633, citing *Sherwin v. Shakspear*, 5 D. G. M. & G. 517; *Sv. Dart*, 143, 144, 719-723; *Jf. Re Gold and Norton*, W. N. (85) 6; 52 L. T. 321; 33 W. R. 333; *Sthlc* not followed in *Re Riley to Streetfield*, 34 Ch. D. 386). The stringency of such a clause is increased by an exception of “other than the WILFUL DEFAULT of the Vendor” (*Dart*. 723).

“Any *other Cause whatever*”; *V. Sun Insrce v. Hart*, 58 L. J. P. C. 69.

“Any *Company*”; Stat. Def., 31 & 32 V. c. 110, s. 3.

“Any *Court of Record*”; Stat. Def., 41 & 42 V. c. 49, s. 74.

“Any *Damage*”; *V. FULL COMPENSATION*.

“Any *DECREE or Order*.” s. 1, 15 & 16 V. c. 55; *V. Beckett v. Sutton*, 19 Ch. D. 646; 46 L. T. 481; 51 L. J. Ch. 432.

“In any *Direction*”; *V. DIRECTION*.

“Any *ESTATE, or Interest*,” includes an Equitable Estate (per Best, J., *R. v. Geddington*, 2 B. & C. 135).

“Any *Bird of Game*”; *V. GAME, Animals*.

“Any *Gaming*,” s. 17 (1), 35 & 36 V. c. 94, prohibits a licensed person from allowing even lawful games on his premises, if played for money or money’s worth (*Foot v. Baker*, 6 Sc. N. R. 306; 5 M. & G. 335; 11 J. P. 444; *Danford v. Taylor*, 33 J. P. 277; *Luff v. Leaper*, 36 J. P. 54; *R. v. Ashton*, 22 L. J. M. C. 1; 1 E. & B. 286; *Bew v. Hurston*, 47 L. J. M. C. 121; 3 Q. B. D. 454; 26 W. R. 915; 42 J. P. 808; *Dyson v. Mason*, 58 L. J. M. C. 55; 22 Q. B. D. 351).

“Any of the *Inhabitants*”; *V. INHABITANTS*.

“Any *Land*,” s. 8, Real Property Limitation Act, 1874, includes only land within the jurisdiction (*Sutton v. Sutton*, W. N. (83) 88; *V. S. C.*, cited CHARGED UPON, for “any *Sum* secured by mortgage”).

“Any *Lawful Purpose*”; *V. LAWFUL PURPOSE*.

“In any *Manner* he may think proper,” s. 27, Wills Act, 1837; *V. GENERAL POWER*.

“In any *Manner* vest”; *V. Re De Ros*, 31 Ch. D. 81; 55 L. J. Ch. 73; 53 L. T. 524; 34 W. R. 36.

“Any *Misdemeanour*”; *V. MISDEMEANOUR*.

“On any *Money received*”; *V. Fisher v. Drewitt*. W. N. (78) 151.

“Any *Officer*”; *V. OFFICER*: Stat. Def., 23 & 24 V. c. 114, s. 1.

“Any *One* accident”; *V. ONE ACCIDENT*.

The penalty for an unauthorized representation of “any *PART*” of a *DRAMATIC* Piece, s. 2, 3 & 4 W. 4, c. 15, is not incurred unless a material and substantial part of it be given (*Planchè v. Braham*, 7 L. J.

C. P. 25; 4 Bing. N. C. 17: *Chatterton v. Cave*, 47 L. J. C. P. 545; 3 App. Ca. 483).

A Power of SALE of "any Part" of an Estate would, probably, authorize the sale of the whole of it (*Rendlesham v. Meux*, 14 Sim. 249; *Cooke v. Farrand*, 7 Taunt. 122); and a Power to Appoint, or a Bequest of, "any Part" of a testator's estate, enables the donee to take or appoint it all (1 Jarm. 361, 362, citing *Cooke v. Farrand*, sup: *Arthur v. Mackinnon*, 48 L. J. Ch. 534; 11 Ch. D. 385: *Vf. APPROPRIATE*). But the power to sell "any Part" of mortgaged property, s. 19 (1), Conv. & L. P. Act, 1881, means, "a separable part of the mortgaged property in the state in which it was subjected to the mtge" (per Bowen, L. J., *Re Yates, Batcheldor v. Yates*, 57 L. J. Ch. 705); and the power does not enable a mtgee to break up, or dismantle, the property, — *e.g.* by selling fixtures separately from the building to which they are affixed (*S. C.*, 57 L. J. Ch. 697; 38 Ch. D. 112; 59 L. T. 47; 36 W. R. 563: *Re Brooke*, 1894, 2 Ch. 600; 64 L. J. Ch. 21); yet it does enable him to sell "any part" so as to carry with it all legal incidents ordinarily accompanying a grant, *e.g.* Rights of Way, or Light (*Born v. Turner*, 1900, 2 Ch. 211; 69 L. T. Ch. 593; 83 L. T. 148; 48 W. R. 697).

A Power to LEASE "any Part" of Land, given by Deed or Will, does not authorize a Lease of the land, or any part of it, with a reservation of Sporting Rights or Minerals, — "Part," in such a connection, means, the whole of so much of the land as is divided from the rest vertically, and not horizontally (*Dayrell v. Hoare*, 9 L. J. Q. B. 299; 12 A. & E. 356); because, in a private and limited Power of that kind, its donee cannot, whilst exercising it quâ one "part" of the property, impose a burden on another part (per Rigby, L. J., *Re Gladstone*, 69 L. J. Ch. 457). But, in any view, *Dayrell v. Hoare*, is no authority for the construction of the large general Powers of Leasing given by s. 6, S. L. Act, 1882, or those given by s. 18, Conv. and L. P. Act, 1881, each of which sets of Powers is over "LAND," in the wide meaning of that word which those Acts provide (and which includes "Incorporeal Heredits"); accordingly, a TENANT FOR LIFE has power, under the first of those sections, to grant a BUILDING LEASE of Settled Land with a reservation of Mines and Minerals (*Re Gladstone*, 1900, 2 Ch. 101; 82 L. T. 515; 69 L. J. Ch. 455; 48 W. R. 531, over-ruling *Re Nevill and Newell*, 1900, 1 Ch. 90: *Vf. Re Rutland*, 69 L. J. Ch. 603: s. 17, S. L. Act, 1882); and a Mtgor in Possession has power, under s. 18, Conv. and L. P. Act, 1881, to grant an Occupation Lease of a House and its Furniture, together with Sporting Rights over the land comprised in the mtge, especially if those Rights had been severed from the land before the mtge (*Browne v. Peto*, cited OCCUPATION LEASE).

As to effect of "any Part" in a stipulation against sub-letting; *Vf. ASSIGN: UNDERLEASE.*

"Any Part" of a BOROUGH, within 7 miles of which a man must

reside as a condition of the Parliamentary Franchise, s. 27, Rep. People Act, 1832, means, the *nearest* part (*Oldham Case*, 1 O'M. & H. 158).

Costs of an Uncertificated Solr are not "recoverable in any Action, Suit, or Matter, by any PERSON," s. 12, 37 & 38 V. c. 68; *V. MAINTAIN*.

Deposit in hands of "any Person," s. 18, Gaming Act, 1845; *V. per Kay*, L. J., *Strachan v. Universal Stock Exchange* (No. 2), 65 L. J. Q. B. 181: DEPOSIT.

"Any Person," riotous, &c, in a Churchyard, or Burial Ground, s. 2, 23 & 24 V. c. 32, includes a Clergyman (*Vallaneey v. Fletcher*, 1897, 1 Q. B. 265; 66 L. J. Q. B. 297; 76 L. T. 201; 45 W. R. 367; 61 J. P. 183).

"Any Person," s. 11 (1), Patents, &c, Act, 1883, means, any person having an interest in the particular Patent (*R. v. Comptroller of Patents*, 1899, 1 Q. B. 909; 68 L. J. Q. B. 568; 80 L. T. 777). *Vf. Re Bedford Charity*, sup: AGGRIEVED.

"Any other Person," s. 13, 54 & 55 V. c. 37; *V. Pollock v. Moses*, 63 L. J. M. C. 116; 70 L. T. 378; 58 J. P. 527.

"Any Person not named as Deft," R. 25, Ord. 12, R. S. C.; *V. LANDLORD*.

Profits accruing to "Any Person . . . from any kind of *Property* whatever," s. 2, Sch. D., Income Tax Act, 1853, 16 & 17 V. c. 34; *V. Colquhoun v. Brooks*, 57 L. J. Q. B. 439; 21 Q. B. D. 52; 59 L. T. 661; 36 W. R. 657; affd 59 L. J. Q. B. 53; 14 App. Ca. 493; 61 L. T. 518; 38 W. R. 289.

"Any *Place*"; *V. PLY: PLACE*.

"Any *PORT*"; *V. LIBERTY TO CALL*.

"Any *Power*," &c, 997, Code of Civil Procedure, Lower Canada; *V. Cusgrain v. Atlantic & N. W. Ry*, 1895, A. C. 282; 64 L. J. P. C. 88.

"Any other *Purpose*"; *V. Re Norris*, W. N. (83) 35, 65.

Judge to make Note of "any *Question of Law*," s. 120, Co. Co. Act, 1888, means of *each* Question (*R. v. Kerr*, 70 L. T. 595).

"Any *Settlement*"; *V. SETTLEMENT*.

"Any *Ship*"; *V. SHIP*.

"At any *Stage* of the Proceedings," R. 11, Ord. 16, R. S. C.; *V. STAGE*.

"Any *Time*"; *V. AT ANY TIME*.

"Any *Trade* or *Business*"; *V. TRADE*.

"Any *Trust*"; *V. TRUST*.

"In any *Way*"; *V. Mills v. Dunham*, cited CUSTOMER.

"Any *Woman* he may marry"; *V. WOMAN*.

*Vf. Harrison v. Cornwall Minerals Ry*, 51 L. J. Ch. 98; 18 Ch. D. 334; *Fletcher v. Hudson*, 49 L. J. Ex. 793; 5 Ex. D. 287; 45 J. P. 5.

*V. ONE: PROCEEDING*.

**ANYTHING.** — “If anything remaining”; *V. DISPOSE OF.*

**APART.** — *V. LIVING APART: SEPARATE: NEGLECT: SET APART.*

**APOLOGY.** — *V. FULL APOLOGY.*

**APOTHECARY.** — “An Apothecary is a person who professes to judge of internal disease by its symptoms, and applies himself to cure that disease by medicines” (per Cresswell, J., *Apothecaries Co v. Lotingu*, 2 Moo. & R. 499); “a Chymist may prepare and vend, but not prescribe or administer, medicine” (per Best, C. J., *Allison v. Haydon*, 4 Bing. 621; *Vf.*, on this distinction, *Apothecaries Co v. Greenough*, inf.).

A person advising patients, and compounding and selling his own medicines, but not making up physicians' prescriptions, is acting as an “Apothecary” within s. 20, 55 G. 3, c. 194 (*Apothecaries Co v. Allen*, 4 B. & Ad. 625; 1 N. & M. 413; *ib. v. Greenough*, 1 Q. B. 799; 11 L. J. Q. B. 156; 1 G. & D. 378); so, of a Chemist who habitually advises the medicines he sells (*ib. v. Nottingham*, 34 L. T. 76). But acting as a Surgeon or Accoucheur, is not practising as an Apothecary, nor is the supplying of medicines gratis (*Woodward v. Ball*, 6 C. & P. 577). *Vf. Apothecaries Co v. Warburton*, 3 B. & Ald. 43, 44, where it is stated that the “most important part of the duty of an Apothecary is to make up the prescriptions of physicians.”

A person acts as an Apothecary within s. 20, if he selects and supplies medicines for the purpose of individual cure, even though he may also be an Herbalist, and, as such, protected by 34 & 35 H. 8, c. 8 (*Apothecaries Co v. Welch*, Times, 21st March, 1890).

An “Apothecary,” within the late Bankry def of “Trader,” included a man (*e.g.* Palmer, the Rugeley murderer) who carried on the business of Surgeon and Apothecary, and made up medicines for his patients, but did not make them up from other persons' prescriptions, or sell drugs to the public (*Ex p. Crabb, Re Palmer*, 25 L. J. Bank. 45; S D. G. M. & G. 277).

A bequest to “the Surgeon and Resident Apothecary” of the S. Dispensary “or any who may hold the like situations”; held, to include the two Surgeons to the Dispensary and also the Dispenser, there being no Resident Apothecary (*Ellis v. Bartrum*, 25 Bea. 109).

Stat. Def. — 16 & 17 V. c. 97, s. 132.

*Note.* James I. incorporated the Apothecaries of London (6 & 7 W. 3, c. 4, s. 1); and it has been contended that that statute was the first recognition of the right of Apothecaries to attend patients, as well as to make up and sell medicines, though *Rose v. College of Physicians* (5 Brown, P. C. 553) is sometimes cited as having first established such right (1 Q. B. 805, *n*).

*V. PRACTICE: SURGEON: CHEMIST: 1 Eneyc. 267.*

**APPAREL.** — *V.* TACKLE : WEARING APPAREL : PARAPHERNALIA.

**APPARENT.** — By s. 64, Bills of Ex. Act, 1882, an alteration in a Bill which is not “apparent” will not affect a HOLDER IN DUE COURSE. “By the word ‘apparent’ I do not think it is meant that the holder only should not have had the means of detecting the alteration. If *the party sought to be bound* can at once discern by some incongruity on the face of the (Bill or) Note and point out to the holder that it is not what it was — that is to say, that it has been materially and fraudulently altered — I think the alteration is an ‘apparent’ one, even if it is not an obvious one to all mankind” (per Denman, J., *Leeds Bank v. Walker*, 52 L. J. Q. B. 594; 11 Q. B. D. 84: *Vf. Scholfield v. Londesborough*, cited ACCEPTANCE).

*V.* OBVIOUS : APPARENT POSSESSION.

“Apparent,” s. 21, Wills Act, 1837, means, apparent on the face of the instrument in the condition in which it is left by the testator (*Re Horsford*, 44 L. J. P. & M. 9; L. R. 3 P. & D. 211); but, though no physical interference with the document is allowable, yet it may be examined with magnifying glasses and held up to the light and the alteration may be framed with an opaque substance so as to exclude superfluous light; and if an expert, after such an examination, can decipher the original words and can satisfy the Court thereof, then they remain “apparent,” within the section (*Ffneh v. Combe*, 1894, P. 191; 63 L. J. P. D. & A. 113; 70 L. T. 695).

*V.* HEIR APPARENT.

**APPARENT EASEMENT.** — Apparent Easements are “not only those which must necessarily be seen, but those which may be seen and known on a careful inspection by a person ordinarily conversant with the subject” (Gale, 21, 139, adopted, *Pyer v. Carter*, 26 L. J. Ex. 261; 1 H. & N. 922).

*V.* NECESSARY.

**APPARENT POSSESSION.** — Quà Bill of Sale; Stat. Def., 41 & 42 V. c. 31, s. 4; (1r.) 42 & 43 V. c. 50, s. 4, taken from 17 & 18 V. cc. 36, 55. *V.* POSSESSION.

**APPARITOR.** — “Apparitors,” are officers appointed to execute the proper Orders and Decrees of the Ecclesiastical Court (Phil. Ecc. Law, 951, 952).

**APPEAL.** — The right of Appeal is only by statute. It is not in itself a necessary part of the procedure in an action, but “is the right of entering a Superior Court and invoking its aid and interposition to redress the error of the Court below. It seems absurd to denominate this paramount right, part of the practice of the inferior tribunal” (per Westbury, C., *A-G. v. Sillem*, 33 L. J. Ex. 209; 10 H. L. Ca. 704).



*V. PRACTICE*: As to the various Appeals, *V. 1* Encyc. 269-283.

A motion before a Judge in Court to discharge or vary an Order made by him in Chambers is, not an Appeal but, a Re-Hearing (per Cotton, L. J., *Re Giles*, 43 Ch. D. 395; 59 L. J. Ch. 226; 62 L. T. 375; 38 W. R. 273; *Boake v. Stevenson*, 1895, 1 Ch. 358; 64 L. J. Ch. 261; 71 L. T. 722; 43 W. R. 189). So, an Application to the Court of Appeal to discharge or vary an Order, made by one of its members under s. 52, Jud. Act, 1873, is not an Appeal within s. 1, Jud. Act. 1894 (*Boyd v. Bischoffsheim*, 1895, 1 Ch. 1; 64 L. J. Ch. 148); but an application to vary the Findings of an Official Referee, is such an Appeal (*Daglish v. Barton*, 81 L. T. 551; 48 W. R. 50; 68 L. J. Q. B. 1044).

"NOTICE of Appeal," Sch. C. s. 14, Petty Sessions Clerk (Ir) Act, 1858, 21 & 22 V. c. 100, does not include the Notice to be given by the Appellant under s. 24, 14 & 15 V. c. 93 (*R. v. Cork Jus.*, 30 L. R. Ir. 679).

Stat. Def. — 53 & 54 V. c. 27, s. 15. — *Ir.* 59 & 60 V. c. 47, s. 22.

"Appeale of felonie" (Litt. s. 500); — "*Appellum* signifieth *accusatio*, an accusation, and therefore to appeale a man is as much as to accuse him; and in ancient bookes he that doth appeale is called *accusator*, and is peculiarly in legall signification applyed to appeales of three sorts," — *i.e.* (1) Wrong to Ancestor; (2) Wrong to Husband; (3) Wrong to self. "The word *appellum* is derived of *appeller*, to call, because *appellans vocat reum in iudicium*, he calleth the defendant to judgment, and the plaintife is called the appellant" (Co. Litt. 287 b).

**APPEAL COURT.** — *V.* s. 13 (2), Interp. Act, 1889.

**APPEAR.** — A Condition of a Legacy, that legatee "personally appear before exors" and prove identity, is performed by delivering such proof to two of the exors and to the agent of the third (*Tanner v. Tebbutt*, 12 L. J. Ch. 216).

"Appear, act, or behave"; *V. KEEPER.*

A statutory power enabling a Body to "appear" by, *e.g.* their Clerk, does not entitle it *to be heard* in that way (*R. v. London Jus.*, 1896, 1 Q. B. 659; 65 L. J. M. C. 120; 74 L. T. 523; 44 W. R. 485; 60 J. P. 420).

A state of things, "made to appear"; *V. Stanley v. Fielden*, 5 B. & Ald. 431, 433, 437. *Semble*, the phrase is nearly, if not quite, synonymous with "proved."

But where the phrase is, — *e.g.* s. 36, P. H. Act, 1875. — if a state of things shall "appear" to a Local Authority, "that is obviously for the purpose of making the Local Authority the judge." — *i.e.* it is their opinion, and not the actual fact, which is predicated (per Channell, J., *Robinson v. Sunderland*, cited SUFFICIENT CAUSE).

**APPEARANCE.** — The actual "Appearance" of the parent is not a condition precedent to making an order for Vaccination under s. 31, 30

& 31 V. c. 84 (*R. v. Cinque Ports Jus.*, 55 L. J. M. C. 157; 17 Q. B. D. 191; *Dutton v. Atkins*, 40 L. J. M. C. 157; L. R. 6 Q. B. 373); and a similar rule was laid down as regards the power, under an old Act, to discharge an Indenture of Apprenticeship "on the Master's appearance" (*Ditton's Case*, 2 Salk. 489).

**APPENDAGES AND APPURTENANCES.** — An assignment of "all the Appendages and Appurtenances" of a Ship, includes her chronometer (1 Maude & P. 53, citing *Langton v. Horton*, 11 L. J. Ch. 299).

"The case upon the ship *Dundee* (1 Hagg. Adm. 121), upon which we have a judgment by Ld Stowell and by Ld Tenterden, has only gone to the extent of establishing that, under 53 G. 3, c. 159, in the expression 'Ship and her appurtenances,' the word 'Appurtenances' must be construed to extend to anything belonging to the owners which is on board a ship for the *accomplishment* of the object of the voyage and adventure on which she is engaged; but the CARGO itself is the object and purpose of the adventure, and not something provided as a means for the attainment of the object" (per Langdale, M. R., *Langton v. Horton*, 11 L. J. Ch. 238; 5 Bea. 9); and it was accordingly there held that a cargo of oil, though acquired by a whaler during her adventure, was not included in an assignment of her "Appurtenances." V. APPURTENANCES, at end.

**APPENDANT.** — "Appendant, is any inheritance belonging to another that is superior or more worthy. In law it is called *pertinens*, *quasi invicem tenens*, holding one another; a word indifferent both to things appendant, and things appurtenant. The quality and nature of the things do make the difference. Appendants are ever by prescription; but appurtenants may be created in some cases at this day" (Co. Litt. 121 b). V. APPURTENANCES: INCORPOREAL HEREDIT.

Common Appendant; V. COMMON. Cp. In Gross, sub GROSS.  
Vh. 1 Eneye. 284.

**APPERTAINING.** — The primary sense of "Appertaining" is much the same as APPURTENANCES, *whv.*

"There is, however, a difference between the devise of a house *and the appurts*, and of a house *with the lands appertaining thereto*. It is clear that by the latter expression *some lands* are intended, and therefore the primary sense of the word 'appertaining' is excluded" (1 Jarm. 782, and cases there cited).

Vf. *Williams v. Phillips*, 51 L. J. Q. B. 102; 8 Q. B. D. 437; *Townsend v. Champenoun*, 1 Y. & J. 538: BELONGING.

**APPLICABLE.** — British laws prescribed for a Colony "In so far as applicable"; V. *Sex v. McKinney*, 58 L. J. P. C. 67.

Adoption by a Special Act of a General Act, "so far as applicable to, and not inconsistent with, the provisions" of the Special Act; V. *R. v. G. W. Ry*, 1 E. & B. 253; 22 L. J. Q. B. 65: Cp. EXPRESSLY VARIED.

**APPLICATION.**—“Application,” in R. 15, Ord. 58, R. S. C., includes the hearing of the action as well as an interlocutory proceeding (*International Financial Socy v. Moscow Gas Co*, 47 L. J. Ch. 258; 7 Ch. D. 241; 37 L. T. 736; 36 W. R. 272). *Vf.* REFUSAL.

Notice of Motion to set aside an Award, is a commencement of an “Application” under R. 14, Ord. 64, R. S. C. (*Re Gallop and Central Queensland Meat Co*, 59 L. J. Q. B. 460; 25 Q. B. D. 230; 62 L. T. 834; 38 W. R. 621).

“Application,” s. 60, Land Law (Ir) Act, 1881; *V. Chaine v. Nelson*, 12 L. R. Ir. 272.

“Special Application”; *V.* SPECIAL.

*V.* UNIVERSAL APPLICATION.

**APPLIED.**—*V.* PRODUCTIVE CAPITAL.

“Capital Money to be applied,” s. 15, S. L. Act, 1890; *V. Re Bristol*, cited CAPITAL MONEY.

Money “to be applied” for Maintenance; *V. Williams v. Papworth*, cited MAINTENANCE.

“Appropriated and applied”; *V.* APPROPRIATED.

**APLOT.**—Quà Grand Jury (Ir) Act, 1856, 19 & 20 V. c. 63, “‘Applot’ and ‘Applotment,’ shall include ‘Assess’ and ‘Assessment’” (s. 19).

**APPLY.**—Though a discretionary Trust “to PAY TO” A. income which has been forfeited by his bankruptcy, is bad (as being in derogation of the bankruptcy), yet such a Trust “to *apply*” the income for A.’s “BENEFIT during the remainder of his life” is good, and the trustees may spend the whole, or any part, of the income in A.’s MAINTENANCE, in the widest and most general sense of that word (*Re Bullock, Good v. Lickorish*, 60 L. J. Ch. 341; 64 L. T. 736; 39 W. R. 472).

“Before he applies”; *V.* BEFORE.

“Applies” a Trade Description to Goods; *V.* TRADE DESCRIPTION.

**APPOINT.**—A power “to appoint” to such persons as the donee may think fit enables him to appoint to himself or wife (Sug. Pow. 25).

So, under a power “to appoint” an Executor to a Will, the donee may appoint himself (*Re Ryder*, 31 L. J. P. M. & A. 215; 2 Sw. & T. 127): but, *semble*, a person nominated to appoint a New Trustee cannot appoint himself (*Re Skeats*, 58 L. J. Ch. 656; 42 Ch. D. 522: *Re Newen*, 1894, 2 Ch. 297; 63 L. J. Ch. 763; 43 W. R. 58), but in those cases the decision proceeded also on the ground that the power was given to appoint “any other person.” *Cp.* ANOTHER.

“Appoint,” in a general bequest, may be sufficient to execute a Special Power of Appointment (*Pidgely v. Pidgely*, 1 Coll. 255: *Sv. Re Richardson*, 17 L. R. Ir. 436).

*V.* GENERAL POWER: POWER: EXPRESSLY REFER; LIMIT.

Where there is a SINGLE ARBITRATOR, "Notice to appoint an arbitrator," s. 5, Arb. Act, 1889, means, Notice to concur in appointing (per Esher, M. R., *Re Eyre and Leicester*, 1892, 1 Q. B. 136; 61 L. J. Q. B. 438; 65 L. T. 733; 40 W. R. 203).

V. ACKNOWLEDGE.

**APPOINTED.** — When a statute declares that a Class of persons shall exercise a certain function, — *e.g.* shall be Improvement Commrs, — each member of that class is "appointed" to exercise the function (*Nicholson v. Fields*, 31 L. J. Ex. 233; 7 H. & N. 810).

The regular employment of a person in a particular function, is equivalent to his being "appointed" to it, unless some special mode of appointment is prescribed (*Frost v. Bolland*, 5 B. & C. 611). V. TREASURER: *R. v. Slatter*, cited ACCEPTED.

"Appointed Day"; Stat. Def., Loc Gov Act, 1894, s. 84 (4).

**APPOINTEE.** — "Appointee," s. 1, Real Property Limitation Act, 1833; *V. Re Deron*, 1896, 2 Ch. 562; 65 L. J. Ch. 810; 75 L. T. 178; 45 W. R. 25.

**APPOINTMENT.** — A Power to appoint "by Will or Appointment," to be signed and sealed in the presence of one or more witnesses, may be exercised by Deed (Sug. Pow. 211).

A Clause of Cesser, if no "Appointment" of a specified fund is made, means, if no *part* of the fund is appointed (*Arnott v. Tyrrell*, 21 Bea. 49).

As to execution of Power of Appointment; V. GENERAL POWER: SPECIAL.

V. APPOINT: APPOINTED.

The "appointment" by a Justice of a Select Vestryman, s. 1, 59 G. 3, c. 12. was merely a ministerial authentication of the latter's nomination and election (*R. v. Adams*, 2 A. & E. 413).

Quà Volunteer Act, 1863, 26 & 27 V. c. 65. " 'Appointments,' includes Accoutrements and Equipments of every kind, other than Clothing" (s. 49); — a def adopted for the Naval Artillery Volunteer Act, 1873, 36 & 37 V. c. 77 (s. 43).

**APPORTION.** — "Apportion signifieth a division or partition of a rent, common, &c. or a making of it into parts" (Co. Litt. 147 b). "This definition seems incomplete. 'Apportionment,' frequently denotes, not division but, distribution; and, in its ordinary technical sense, the distribution of one subject in proportion to another previously distributed" (1 Swanst. 338. *u*). *Cp.* DIVIDE.

"To apportion," — *e.g.* expenses. — does not, *per se*, mean equally to divide; and, therefore, the apportionment of expenses of street-paving, s. 77, Metrop Man Act, 1862, need not be made on any uniform principle, but is in the discretion of the Council, and can only be challenged for *mala fides* (*Stotesbury v. St. Giles, Camberwell*, 57 L. J.

M. C. 114; 59 L. T. 473; 53 J. P. 5. *Vh. R. v. Marsham*, 1892, 1 Q. B. 371; 61 L. J. M. C. 52; *Derby v. Grudgings*, 1894, 2 Q. B. 496; 63 L. J. M. C. 170; 43 W. R. 74; *Metrop. District Ry v. Fulham*, 1895, 2 Q. B. 443; 65 L. J. Q. B. 29; 73 L. T. 330; 44 W. R. 53; 59 J. P. 679; *Clacton v. Young*, 1895, 1 Q. B. 395; 64 L. J. M. C. 124; 71 L. T. 877; 43 W. R. 219; 59 J. P. 581, *while distinguished Wakefield v. Mander*, 5 C. P. D. 248. *Cp. Sheffield v. Anderson*, cited UNREASONABLE). So, when it is said that County Court costs "shall be paid by or apportioned between the parties" as the judge shall think just, s. 113, Co. Co. Act, 1888, obviously no equal division is meant. *Vf. INCURRED.*

As to disputing Apportionment under s. 150, P. H. Act, 1875 or, where adopted, 55 & 56 V. c. 57; *V. DISPUTE.*

*Note.* An Apportionment under Metrop Man Acts, or P. H. Acts, does not, necessarily, preclude the Local Authority from re-considering it and making another apportionment (*Bishop v. Wandsworth*, 69 L. J. Q. B. 632; 82 L. T. 766; 64 J. P. 630).

Final apportionment; *V. Stock v. Meakin*, cited OUTGOING.

Apportionment Acts; *V. DUE: FIXED PERIOD: PERIODICAL: DIVIDEND: 1 Encyc. 286-288.*

**APPRAISEMENT.** — An Appraisement, or VALUATION, is in the nature of an Award (*Perkins v. Potts*, 2 Chitty, 399); but in some respects differs therefrom (*Leeds v. Burrows*, 12 East, 1; *Vf. ARBITRATION*).

Commission of Appraisement, in an Admiralty Action; *V. Wms. & Bruce*, Part 2, ch. 1, s. 8.

**APPRAISER.** — Quà Stamp Acts, an "Appraiser is a person who shall value or appraise any estate or property, real or personal, or any interest in possession or reversion, remainder or contingency, in any estate or property, real or personal, — or any goods, merchandize, or effects of whatsoever kind or description the same may be, — for or in expectation of any Hire, Gain, Fee, or Reward, or Valuable Consideration to be therefor paid him" (s. 4, 46 G. 3, c. 43).

*V. SWORN APPRAISER.*

**APPRECIATE.** — *V. INAPPRECIABLE.*

**APPRECIATION.** — *V. Bishop v. Smyrna Ry*, cited PROFITS.

**APPREHENDED.** — "Apprehended Injury." s. 25, W. W. C. Act, 1847; *V. per Halsbury, C., Holliday v. Wakefield*, cited LAND.

**APPREHENSION.** — "Apprehension," s. 8, Extradition Act, 1870, 33 & 34 V. c. 52, includes detention (*R. v. Weil*, 53 L. J. M. C. 74; 9 Q. B. D. 701; 47 L. T. 630; 31 W. R. 60; 15 Cox, C. C. 189).

"Reasonable Apprehension"; *V. IMPOSSIBLE.*

**APPRENTICE.** — “ In legal acceptation, an Apprentice is a person bound to another for the purpose of learning his TRADE, or CALLING; the contract being of that nature that the master teaches and the other serves the master with the intention of learning ” (per Cockburn, C. J., *Clapham v. St. Pancras*, 29 L. J. M. C. 143, 144; nom. *St. Pancras v. Clapham*, 2 E. & E. 742), *who* decided that an Articled Clerk to a Solr (then called an Attorney), was an “ Apprentice ” entitled to gain a Poor Law Settlement under s. 8, 3 W. & M. c. 11. But in *Ex p. Prideaux* (7 L. J. Ch. 202; 3 My. & C. 327) Cottenham, C., held that such an Articled Clerk was not an “ Apprentice,” within s. 49, 6 G. 4, c. 16, which discharged an Apprentice from his Indentures on his master becoming bankrupt; but at that time a Solr (or Attorney), as such, could not become a bankrupt.

Again, in *R. v. Doncaster* (7 B. & C. 630), the question was whether an Articled Clerk to an Attorney had been an Apprentice to a Trade, so as to be entitled to the Freedom of the Borough of Doncaster; held, he was not; Tenterden, C. J., saying, — “ A person who serves an attorney under Articles of Clerkship can hardly be said to be an ‘ Apprentice ’ within the popular meaning of that term. Here, however, the right is confined to such persons as have served an apprenticeship to a Trade. An attorney exercises a Profession, and not a Trade.”

If the definition of Cockburn, C. J. (sup), is to be accepted as exact, the word “ Calling ” must have a wide meaning, for it has been held that a Girl, who bound herself to a Man to learn housewifery business, and such other business as her master should have to do (there being no Art or Trade for her to learn), was an Apprentice (*R. v. St. Petros*, Burr. S. C. 248).

V. 1 Encyc. 289-294: SEAMAN.

Quà 1 V. c. 19, amending Slavery Abolition Act, 1833, 3 & 4 W. 4, c. 73, “ Apprentice ” and “ Apprenticed Labourer,” mean “ such persons as, having been formerly held in slavery, are now apprentices ” subject to the Act of 1833, or any Order in Council, Ordinance, or Act of Assembly thereunder (s. 29, 1 V. c. 19).

**APPROACH.** — V. IMMEDIATE APPROACH: BRIDGE.

“ Approaching Ship ”; V. *The Franconia*, cited OVERTAKING SHIP.

“ Means of Approach,” s. 74 (2), London Bg Act, 1894; V. *Carritt v. Godson*, cited PART.

3. **APPROBATION.** — V. CONSENT.

**APPROPRIATE.** — A power in a Will enabling a person to “ Appropriate ” or “ Select,” for his own use, such parts of testator’s property as he may desire, has been held to intimate a confidence that a reasonable selection, and not the whole, will be taken; and though the exact extent

to which the donee may go in benefiting himself could not, in the nature of things, be laid down beforehand, yet, possibly, the Court would find a mode of restraining any palpably unreasonable exercise of the power (*Kennedy v. Kennedy*, 10 Hare, 438: *Vf. Davis v. Davis*, 1 H. & M. 255: *Reid v. Reid*, 30 Bea. 388). But where the power extends over only a small class of property, — *e.g.* testator's plate, — and the donee be his widow, she may take the whole of it (*Arthur v. Mackinnon*, 48 L. J. Ch. 534; 11 Ch. D. 385; 27 W. R. 704). And even where there were no such circumstances, but the gift empowered the donee "to choose *everything* he might desire" from the Furniture, except some specified articles; the Court of Appeal (hereon affg North, J.) held that he might take all, or as much as he liked, other than the excepted articles (*Re Sharland*, 74 L. T. 664). So, a gift of (say) Wines to A., but with a direction that B. may "consume" as much of them as he "cares to do" during his life, enables B. to consume the whole of them; but, on his death, the unconsumed part will go to A., not indeed by way of succession but, as an independent gift which then becomes ascertained (*Re Colyer*, 55 L. T. 344; W. N. (86) 159: *V. CONSUMABLE*). *Vf. APPROPRIATION: PART: SUCH: Liddy v. Kennedy*, cited ANY: 1 Jarm. 362.

An executed Parliamentary Power to "*Appropriate and use*" the Subsoil of a Public Roadway for a Ry Tunnel, creates an HEREDIT, not a mere EASEMENT (*Metrop. Ry v. Fowler*, 1893, A. C. 416; 62 L. J. Q. B. 553; 69 L. T. 390; 42 W. R. 270; 57 J. P. 756). Under such a power, subsoil under private land cannot be appropriated and used until the Compulsory Purchase Provisions of the Lands C. C. Act, 1845, have been complied with (*Farmer v. Waterloo & City Ry*, 1895, 1 Ch. 527; 64 L. J. Ch. 338; 72 L. T. 225; 43 W. R. 363).

"How can you 'appropriate' Under-ground Water?" (per Smith, L. J., *Bradford v. Pickles*, 64 L. J. Ch. 103, affd in H. L. 1895, A. C. 587; 64 L. J. Ch. 759).

#### V. TAKE AND APPROPRIATE.

**APPROPRIATED.** — In a general testamentary gift of all property of whatever description that testator might die possessed of, to be "appropriated" as donee might think fit, Leach, V. C., thought a criticism founded upon the words "possessed of" and "appropriated" too nice to exclude Realty (*Noel v. Hoy*, 5 Mad. 38; stated 1 Jarm. 730).

Property "appropriated and applied," s. 11 (2), Customs and Inl. Rev. Act, 1885, must be actually applied, as well as appropriated, in order to obtain the Exemption thereunder (*Inl. Rev. v. Scott*, cited MANNER: *Vf. Re Royal Coll. Surgeons*, cited SCIENCE).

#### V. LEGALLY APPROPRIATED.

**APPROPRIATION.** — "The word 'Appropriation' may be understood in different senses. It may mean a selection on the part of the

vendor, where he has a right to choose the article which he has to supply in performance of the contract; and the contract will show when the word is used in that sense. Or, the word may mean that both parties have agreed that certain articles shall be delivered in pursuance of the contract, and yet the property may not pass in either case. 'Appropriation' may also be used in another sense, viz., where both parties agree upon the specific article in which the property is to pass, and nothing remains to be done in order to pass it" (per Parke, B., *Wait v. Baker*, 2 Ex. 8, 9; 17 L. J. Ex. 310, 311).

Appropriation of Goods; *V. Blackb.* 128, *n*, citing *Laidler v. Burlinson*, 2 M. & W. 602; 6 L. J. Ex. 160; *Atkinson v. Bell*, 8 B. & C. 277; *Anderson v. Morice*, L. R. 10 C. P. 58, 609; 1 App. Ca. 713; 44 L. J. C. P. 10, 341; 46 *Ib.* 11; *Caleutta v. De Mattos*, 32 L. J. Q. B. 322; 33 *Ib.* 214. *Vf. Colonial Insrce v. Adelaide Insrce*, 12 App. Ca. 128.

Appropriation of Payments; "Where the purchaser owes more than one debt to the vendor, and makes a payment, it is his right to apply (or in technical language 'appropriate') the payment to whichever debt he pleases" (Benj. 726). *Vh. Clayton's Case*, 1 Mer. 608; *Re Friend*, 1897, 2 Ch. 421; 66 L. J. Ch. 737; 77 L. T. 50; 46 W. R. 139, and cases there cited.

"'Appropriation'; the annexing of an Ecclesiastical BENEFICE to the proper and perpetual use of a spiritual corporation or college" (Elph. 561; *whv*). *Vf. per Crampton, J., Shaw v. Woods*, 5 Ir. Com. Law Rep. 165; *Termes de la Ley*: Cowel: Phil. Ecc. Law, 219, 220: ENDOWMENT.

"Special Application or Appropriation"; *V. SPECIAL.*

*V. APPROPRIATE: PROFITS.*

**APPROVAL.** — A thing done with the "Approval" of A., means that, and only that, which he has, *with full knowledge*, approved; and, therefore, where the Treasury, under ss. 108, 109, Mun Corp Act, 1882, had approved a conveyance of Corporation Property which (in fact, but without the knowledge of the Treasury) had been sold as part of a Building Scheme; held, that the Treasury had not given "Approval" to the implied Vendor's Conditions arising from such Scheme, and that, accordingly, the Grantee was not entitled to the benefit of such Conditions (*Davis v. Leicester*, 1894, 2 Ch. 208; 63 L. J. Ch. 440).

Sale on Approval; *V. SALE ON TRIAL.*

Acts of Vestry Committee needing "Approval" of the Vestry, s. 58, Metrop Man Act, 1855, — *e.g.* Notice under s. 85. — do not need *previous approval*; if Vestry RATIFY, that suffices (*Firth v. Staines*, 1897, 2 Q. B. 70; 66 L. J. Q. B. 510; 76 L. T. 496; 45 W. R. 575; 61 J. P. 452). *Cp. SANCTION.*

*V. SUBJECT TO.*



**APPROVE.** — A Statutory Direction that the Court is to “refuse to approve,” — *e.g.* a Scheme of arrangement, s. 3 (9), Bankry Act, 1890, unless 7s. 6d. in the £ is secured, — does not mean that the Court is bound to approve if the Condition is complied with, it only means that such compliance is a *sine qua non* to the matter being considered (*Re Barr*, 1892, 2 Q. B. 467; 61 L. J. Q. B. 591; 66 L. T. 553).

V. APPROVAL: SANCTION.

**APPROVED.** — When one of the parties to a bargain writes “approved” at the end of the draft of the agreement and adds his signature, he thereby makes the draft a binding contract, and does not merely express approval of its form after the manner of conveyancers (*Brogden v. Metrop. Ry*, 2 App. Ca. 666).

**APPROVED AGREEMENT.** — A sale “subject to an Approved Agreement”; held, not a concluded transaction (per Brett, J., *Harman v. Homer*, 32 S. J. 752; *Sc*, per Wright, J., *Chipperfield v. Carter*: both cited SUBJECT TO).

**APPROVED BILL.** — “I think the phrase ‘Approved Bill’ could only mean a Bill to which no reasonable objection could be made, and which ought to be approved” (per Ellenborough, C. J., *Hodgson v. Davies*, 2 Camp. 531: V. Benj. 721). V. PROVE.

“Approved Bankers’ Bill”; *V. Smith v. Mercer*, L. R. 3 Ex. 51.

**APPROVED PLAN.** — An “Approved Plan,” by a Local Authority, means, one which the Authority has *lawfully* approved, and not merely one it has actually approved if such approval was in contravention of the General Law or its own Bye Laws (*Yabbicom v. King*, 1899, 1 Q. B. 444; 68 L. J. Q. B. 560; 80 L. T. 159; 47 W. R. 318; 63 J. P. 149: *Re McIntosh and Pontypridd Improvement Co*, 61 L. J. Q. B. 164).

**APPROVED SECURITIES.** — “A power to lend on ‘Approved Securities,’ though it will justify an investment on an ordinary Mortgage, might not be held to extend to Railway Securities (*Re Simson*, 1 J. & H. 89). And where trustees are empowered to lend ‘on such securities as they may approve,’ they are still bound to make enquiries, and exercise a sound discretion whether the securities are of sufficient value; and if in such a case the trustees lend on any irregular securities, the onus lies on the trustees to show the sufficiency of the security (*Stretton v. Ashmall*, 3 Drew. 9; 24 L. J. Ch. 277: *Va Zambao v. Cassavetti*, L. R. 11 Eq. 439: *New London & Brazilian Bank v. Brocklebank*, 51 L. J. Ch. 711; 21 Ch. D. 302).” (Lewin, 330).

V. SECURITY.

**APPROVED SERVICE.** — Stat. Def., Police Act, 1890, 53 & 54 V. c. 45, s. 4 (1).

**APPROVEMENT.** — An Approvement of a COMMON is an enclosure (*V. 20 H. 3, c. 4*) by a Lord of part of the Waste, or WASTE GROUND, of his Manor, “leaving nevertheless sufficient Common, with egress and regress for the Commoners” (*Termes de la Ley*). *17 Wms. on Rights of Common, 103 et seq*: *Elph. 561*: SUFFICIENT PASTURE.

A Custom for the Lord, with consent of the HOMAGE, to enclose, without leaving Sufficient Pasture, is good (*Ramsay v. Cruddas, 1893, 1 Q. B. 228*; *62 L. J. Q. B. 269*; *68 L. T. 364*; *57 J. P. 406*).

*Note.* The consent of the Board of Agriculture is now necessary to the validity of an Enclosure, or Approvement, of any part of a Common (*56 & 57 V. c. 57, s. 2*).

**APPROVER.** — “‘Approver,’ or ‘Appellor,’ is he who hath committed some FELONY which he confesseth, and now appealeth or approveth; that is to say, accuseth others which were coadjutors or helpers with him in doing the same or other Felonies, which thing he will approve” (*Termes de la Ley*). *If Cowel*: *Jacob*: INFORMER.

“The ‘Kings Approvers,’ are those that have the letting of the Kings Demeanes in small Mannors for the Kings greater advantage” (*Termes de la Ley*).

**APPURTENANCES.** — “By the grant of a messuage, or a messuage *with the appurtenances*, doth pass no more than the dwellinghouse, barn, dovehouse, and buildings adjoining, orchard, garden, and curtilage, *i.e.* a little garden, yard, field, or piece of void ground, lying near and BELONGING to the messuage, and houses adjoining to the dwellinghouse, and the close upon which the dwellinghouse is built, at the most. And so much also may pass by the grant of a house. So that the quantity of an acre of ground, or thereabouts, in orchard, garden, and out-let, may pass by either of these names, but more than this will not pass by the grant that is made in either of these words, albeit more have been occupied with it, and albeit more be intended to be passed by the grant. And therefore if there be a messuage or dwellinghouse, and divers acres of land thereunto belonging, called altogether by the name of Hedges, and a grant is made by these words of, All that messuage with the appurtenances commonly called by the name Hedges; by this grant nothing shall pass but the messuage, garden, and curtilage, and yet if a manor, or farm, be commonly called by the name of a messuage, there by the grant of a messuage the whole manor, or farm, may pass” (*Touch. 94*). In this latter case it is not the word “appurts” that has to be construed, but rather the extent and meaning of the *name* of the messuage (*V. Lister v. Pickford, inf*).

The Touchstone, after the extract given above, goes on to say, “and by the grant of a messuage, or house, and all lands thereunto *appertaining*, will pass all the land usually occupied *THEREWITH*.” This, however, is incorrect. A thing may be “USED and ENJOYED” or “OCCUPIED” with

something else, without "belonging or appertaining" thereto; and if these latter words, or "with the appurts," only were used they would only cover such things as are appurtenant to and form part of the property which is the principal subject of the instrument (*Buck v. Nurton*, 1 B. & P. 53; *Barlow v. Rhodes*, 2 L. J. Ex. 91; 1 Cr. & M. 439; 3 Tyr. 280; *Wardle v. Brocklehurst*, 29 L. J. Q. B. 145; *Maitland v. Mackinnon*, 32 L. J. Ex. 49; *Bolton v. Bolton*, and *Peck v. London School Bd.*, cited WAYS). *Secus*, where the words are "used," "enjoyed," or "occupied" (*James v. Plant*, 6 L. J. Ex. 260; 4 A. & E. 749; 6 N. & M. 282; *Vthe* followed and distd *Worthington v. Gimson*, 29 L. J. Q. B. 116). Thus, where there are two tenements in one ownership, there can be no Easement over the one which is "appurtenant" to the other; and even if these tenements were formerly in different ownerships, and, whilst in such different ownerships, the one had acquired an easement against the other, yet, if they become united in ownership, all subordinate rights and easements are extinguished; and if the owner of both devises the tenement which formerly had the easement, with its "appurtenances," the easement does not pass, though its use has continued, — for the Right to it was extinguished by the unity of ownership, and the word "appurtenances" is insufficient to create or renew the right (*Whalley v. Tompson*, 1 B. & P. 371); *secus*, had the devise been, "with the easement now used" (per Eyre, C. J., *Ib.*).

But the word "appurtenant" may be used in a secondary sense as equivalent to such a phrase as "usually enjoyed with" (Elph. 188; *Bayley v. G. W. Ry.*, 26 Ch. D. 434; 51 L. T. 337. *Vth*, and generally hereon, Dart, 609, 610). *V. RIGHT.*

Contract to sell land "with the appurts"; *V. WAYS.*

In *Lister v. Pickford* (34 L. J. Ch. 582; 34 Bea. 576). Romilly, M. R., said, — "It is settled by the earliest authority, and acted upon and confirmed without contradiction down to the latest, that *Land cannot be appurtenant to Land*: and that the word 'Appurtenances' includes incorporeal hereditaments, such as rights of way, of common, of piscary, and the like; but does not include land to be added to that which was granted": *Vh, Hill v. Grange*, Plowd. 170; *Buck v. Nurton*, sup: per Willes, J., *Simpson v. Dendy*, 8 C. B. N. S. 468.

But though *Lister v. Pickford*, and *Erans v. Angell* (26 Bea. 202), were especially pressed on Kay, J., in *Cuthbert v. Robinson* (51 L. J. Ch. 238), he there, after briefly reviewing the authorities, said, — "The law seems to be clearly this: Neither in a Deed nor in a Will does the word 'Appurtenances' include land, if the principal subject of gift is land or a messuage. But if, from the circumstances at the date of the Will and the whole context, it is clear that land is intended to pass as appurtenant, the word 'Appurtenant' is flexible enough to carry it." *Va Cary*, 24, per Bromley, C.: and in the early case of *Hill v. Grange* (sup) it was held that "appertaining," as there used, had a wider mean-

ing than its strict signification, and was used, as it is commonly used, in the sense of "occupied with," or "lying to." *Vf*, *Boocher v. Samford*, Cro. Eliz. 113: *Ongley v. Chambers*, inf.

So, a gift of "my freehold messuage or Mansion-house, with the offices, garden, lawn and Appurtenances thereto, now in my occupation," was held, by force of the word "Appurtenances," to pass meadows without which the house would be no better than a suburban villa (*Leach v. Leach*, W. N. (78) 79: *Vf. Re Otley and Ilkley*, cited Now). But it may, probably, be affirmed that the burden of proof lies on those who contend for this enlarged meaning (1 Jarm. 781, 782: *Evans v. Angell*, sup), and for an example in which the enlarged meaning was not given, *V. Smith v. Ridgway*, L. R. 1 Ex. 46.

A Pew in the Aisle of a church, may be prescribed for as "Appurtenant" to a house not situate in the Parish (*Davis v. Witts*, Forrest 14).

It is sometimes said that the phrase "with the appurtenances," adds but little, if anything, to the meaning, as the principal carries the accessory (Touss. 89; *Vth*, Elph. 186-189). Still some weight will frequently be attachable to the phrase; and "it is construed more strictly in a Deed than in a Will" (Elph. 189, citing *Ongley v. Chambers*, 8 Moore C. P. 665: 1 Bing. 483). In a Conveyance executed since the Conv. and L. P. Act, 1881, the phrase could scarcely add anything to the wide General Words which, by s. 6 of that Act, are implied; on the contrary, it would rather narrow those words (*V. WAYS*). In a Lease it is flexible (*Dobbyn v. Somers*, 13 L. R. Ir. 592).

In a Testamentary Gift of an Indigo Factory in India, "with the zemindari, villages, and lands therewith held and used, and the Appurts"; held, that the Outstandings of the factory business did not pass, although they were part of the concern and without the arrangements respecting them the business could not have been carried on (*Finch v. Finch*, 35 L. T. 235).

*Vf*, as to the meaning of "Appurtenances," Woodf. 149, 150: 2 Platt, 33: *Pheysey v. Vicary*, 16 M. & W. 484: *Ackroyd v. Smith*, 19 L. J. C. P. 315: *Thomas v. Owen*, 57 L. J. Q. B. 198; 20 Q. B. D. 225; 58 L. T. 162; 36 W. R. 440; 52 J. P. 516: *Roe v. Siddons*, 22 Q. B. D. 224: *Smith v. Martin*, 2 Saund. 400 a, on *whlev* notes in Wms. Saund.

#### V. APPERTAINING: APPENDAGES: APPENDANT.

"Appurtenances" of a SHIP, "as used in a Bill of Sale, passes everything belonging to the ship which is necessary for her as a ship; in any other Contract of Sale it would have the same meaning with the addition that if a ship be sold as of a particular Class, or as engaged in or suitable for a particular Employment, everything belonging to her which is necessary for a ship of that class or for that employment passes to the purchaser" (Abbott 27, *Vf* cases there cited).

"Appurtenances" of a Ship must be such things as are appropriated to her exclusively; and do not include such things as she uses indiscrimi-

nately with other ships (*Re Salmon & Woods, Ex p. Gould*, 2 Morr. 137; *Vthe*, also cited SHIP).

**APPURTENANT.** — *V.* APPENDANT.

Common Appurtenant; *V.* COMMON.

**APT.** — “ Apt and Fit to execute ” an Office; *V.* FIT.

**AQUA.** — *V.* WATERS.

Aquatiles; *V.* FOWL.

**ARABANT.** — “ Are they that held by Tenure of Ploughing or Tilling ground ” (Cowel).

**ARABLE.** — *V.* LAND: MOUNTAIN.

In a Deed, “ arable ’ does not only mean land actually ploughed up or in tillage, but also land capable or fit to be so ” (per Chatterton, *V. C. Palmer v. M’Cormick*, 25 L. R. Ir. 119).

**ARBITRARILY.** — *V.* UNREASONABLY.

**ARBITRARY.** — “ Arbitrary FINE,” s. 95, 5 & 6 W. 4, c. 76, repld. s. 110, Mun Corp Act, 1882; *V. A.-G. v. Yarmouth*, 21 Bea. 632.

Arbitrary Fine on Copyholds; *V.* Scriven, 6 Ed. 155.

**ARBITRATION.** — “ An arbitration is a reference to the decision of one or more persons, either with or without an umpire, of a particular matter in difference between the parties ” (per Romilly, M. R., *Collins v. Collins*, 28 L. J. Ch. 186; 26 Bea. 309; *Termes de la Ley, Arbitrement*). Accordingly if parties sell and buy, and leave the price or compensation for errors to be fixed by VALUATION, any question that may arise respecting such valuation is not such a difference as will make the case one of “ Arbitration ” within ss. 11, 12, Com. L. Pro. Act, 1854. or s. 27, Arb Act, 1889 (*Collins v. Collins*, 28 L. J. Ch. 184; 26 Bea. 306; *Boss v. Helsham*, 36 L. J. Ex. 20; L. R. 2 Ex. 72; *Re Dawdy*, 54 L. J. Q. B. 574; 15 Q. B. D. 426: but though in *Boss v. Helsham* the Court rejected the award of an arbitrator on a question of compensation under Conditions of Sale, Jessel, M. R., gave effect to such an award in *Re Turner & Skelton*, 49 L. J. Ch. 114; 13 Ch. D. 130). The object of the valuation in such a case is to prevent differences and is a mere APPRAISEMENT valuation. “ If,” however, “ two persons enter into an agreement for the sale of property, and try to settle the terms, but cannot agree, and after dispute and discussion respecting the price, say, we will refer the question of price to A. B., he shall settle it, and they agree that the matter shall be referred to his arbitration, that would appear to be ‘ Arbitration ’ in the proper sense of the term within the meaning of the Act ” (per Romilly, M. R., *Collins v. Collins*, sup). And so, if there be a distinct agreement providing for the appointment of an umpire to deter-

mine differences between valuers, that would be an "Arbitration" (*Re Hopper*, 36 L. J. Q. B. 97; L. R. 2 Q. B. 367; *Re Dawdy*, sup); but the differences must be such as involve the consideration of Evidence, and which differences must be determined judicially; for if all that has to be done is to fix a price by the exercise of personal knowledge and skill, then that is a Valuation, not an Arbitration, and it is not made an Arbitration by reason merely of an umpire being provided for and appointed to adjust the price as between the valuers (*Re Hammond and Waterton*, 62 L. T. 808; explaining *Re Hopper*, and reconciling it with *Re Carus-Wilson and Greene*, 56 L. J. Q. B. 530; 18 Q. B. D. 7; 55 L. T. 846; 35 W. R. 43). *V. VALUATION.*

A reference of possible disputes to a Foreign Court is an agreement for "Arbitration" within the sections cited (*Law v. Garrett*, 8 Ch. D. 26).

The sections cited from the Com. L. Pro. Act were repealed, and similar but wider provisions made, by the Arb Act, 1889: *Vth*, DISPUTE: EVERY.

A Clause to arbitrate disputes will not prevent an Action for a completed CAUSE OF ACTION; *secus*, if arbitration is a Condition Precedent to liability (Add. C. 77: *Viney v. Norwich Insree*, cited ENTITLED).

A clause for arbitration, in Partnership Articles, does not include a question of Dissolution (*Joplin v. Postlethwaite*, 61 L. T. 629; *Turnell v. Sanderson*, 60 L. J. Ch. 703).

An arbitration under Lands C. C. Act, 1845 (*Re Dare Valley Ry*, and *Rhodes v. Airedale Co*, cited CONSENT), or under s. 180, P. H. Act, 1875 (*Knowles v. Bolton*, 1900, 2 Q. B. 253; 69 L. J. Q. B. 481; 82 L. T. 229; 48 W. R. 433), is subject to the power of the Court to enlarge the time for the Award given by s. 9, Arb Act, 1889.

Whilst the cases cited show the distinction between an Arbitration and a Valuation, we get under the Arb Act, 1889, a decision showing the difference between an Arbitration and a TRIAL: thus, the reference of an action "to be tried" by an Official Referee under s. 14, Arb Act, 1889, is a reference for Trial, and is not a "Compulsory Reference to Arbitration." within s. 8, Jud. Act, 1884 (*Munday v. Norton*, 1892, 1 Q. B. 403; 61 L. J. Q. B. 456; 66 L. T. 173; 40 W. R. 355).

So, when a whole cause is referred to a Special Referee under Ord. 36, R. S. C., that is a Trial (*Patten v. West of England Iron Co*, 1894, 2 Q. B. 159; 63 L. J. Q. B. 757; 70 L. T. 908; 42 W. R. 522).

An Agreement that disputes shall be referred to "Arbitration," without prescribing the number of arbitrators, is a submission to a *Single Arbitrator*, quâ s. 5, Arb Act, 1889 (*Re Eyre and Leicester*, cited UMPIRE).

#### *V. AWARD: SUBMISSION: EQUIVALENT.*

In interp clauses, "Arbitrator" generally includes an Umpire, and "Arbitrators" a single Arbitrator, *e.g.* 11 & 12 V. c. 63, s. 2; *Ib.* c. 112, s. 147.

**ARCHBISHOP.** — An Archbishop is a Metropolitan BISHOP, and resembles the Primus in the Scotch Church (Phil. Ecc. Law, 20). He has the general Overseership of the Bishops and Clergy of his Province (1 Bl. Com. 380).

Stat. Def. — 37 & 38 V. c. 77, s. 14. — *Ir* (Archbishop of Armagh; Archbishop of Dublin) 27 & 28 V. c. 54, s. 4.

**ARCHDEACON.** — An Archdeacon holds a DIGNITY (Phil. Ecc. Law, 128) in the Church of England, working next to a BISHOP. He is usually appointed by a Bishop by COLLATION; but an Archdeaconry may be in the gift of a Layman, who presents his nominee to the Bishop who gives that nominee ADMISSION (Phil. Ecc. Law, 198). *Quare impedit* lies for an Archdeaconry (*Smalwood v. Coventry Bp.*, Cro. Eliz. 141, 207). An Archdeacon's function is to assist the Bishop in his Overseership. "In general, the Archdeacon's jurisdiction is founded on Immemorial Custom, in subordination to the Bishop's; and he is to be regulated as to his Dignity, Office, and Power according to the law, usage, and custom of his own Church and Diocese" (Phil. Ecc. Law, 200). *Vl* Phil. Ecc. Law, Part 2, ch. 5, wh contains a statement of the Modern Statutes affecting this Dignity. *Cp.* RURAL DEAN.

Stat. Def. — (Archdeacon) 34 & 35 V. c. 43, s. 3; (Archdeaconry) 55 & 56 V. c. 32, s. 12.

**ARE.** — "Now are"; *V.* NOW.

"Are," will sometimes be read in a future sense (*Re Bayliss*, 17 Sim. 178). *Vf* Is.

**AREA.** — Quà London Bg Act, 1894, " 'Area,' applied to a BUILDING, means the Superficies of a horizontal section thereof made at the point of its greatest surface, inclusive of the EXTERNAL WALLS and of such portions of the PARTY WALLS as belong to the building" (subs. 22, s. 5; adopting the def in Metrop Bg Act, 1855, s. 3, except its concluding words, "but excluding any attached building the height of which does not exceed the height of the ground-story").

Quà Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19. " 'Area of Supply,' means, the Area within which the Undertakers are, for the time being, authorized to supply Energy under the Special Order" (Sch. s. 1).

"Area of User" of a STREET, by a Public Authority, is the surface, — and also the soil beneath and the space over to such a depth and height as is reasonably necessary to enable such authority to execute and perform its duties (*Fareham v. Smith*, and other cases, cited VEST).

"Betterment area"; *V.* TRADE INTEREST.

"Bridge area"; *V.* BRIDGE.

"Exchange Area"; *V.* EXCHANGE.

"Improvement area"; *V.* ABUT.

*V.* LEASEHOLD AREA: LIGHTHOUSE: LOCAL AREA: HIGHWAY.

"Special areas"; *V.* SPECIAL.

**ARGENTUM DEI.** — Is "God's Money, — *i.e.* money given in EARNEST upon the making of any bargain" (Cowel).

**ARISE.** — *V.* BY WHOSE ACT.

The "Matter of COMPLAINT," s. 11, Sum Jur Act, 1848, *arises* when the thing complained of is complete, as distinguished from mere matters of delimitation or procedure; *e.g.* the time from which the infringement of a BUILDING LINE is to be reckoned, is the day when the bg is erected above the ground so that the bg projects beyond that Line, and not from the date of the Superintending Architect's Certificate, although the Line must be delimited by such Certificate and without it proceedings must fail (*London Co. Co. v. Cross*, 61 L. J. M. C. 160; 66 L. T. 731, reconciling *Paddington v. Snow*, 45 L. T. 475, with *Spackman v. Plumstead*, cited GENERAL LINE OF BUILDING). So, of the erection of an Encroachment (*Ranking v. Forbes*, 34 J. P. 486), or of a Party Wall contrary to a Bye Law (*Marshall v. Smith*, 42 L. J. M. C. 108; L. R. 8 C. P. 416; 28 L. T. 538).

But when a DEMAND has to be made (*Labalmondriere v. Addison*, 28 L. J. M. C. 25; 1 E. & E. 41; 23 J. P. 261; *Greece v. Hunt*, 46 L. J. M. C. 203; 2 Q. B. D. 389; 41 J. P. 261), or a Time has to expire (*Jacomb v. Dodgson*, 32 L. J. M. C. 113; 3 B. & S. 461; 27 J. P. 68; *Mayer v. Harding*, L. R. 2 Q. B. 410; 9 B. & S. 27, n. a; 17 L. T. 140; 32 J. P. 421), before the thing complained of is complete, the time runs from the demand, or the expiry of the time. *Vf* *Morant v. Taylor*, cited OTHERWISE.

Of course, where the OFFENCE is a continuing one, — *e.g.* a Smoke Nuisance (*Higgins v. Northwich*, 22 L. T. 752), or unlawfully detaining a Rate Book (*Mayer v. Harding*, sup), the Matter of Complaint also continues, and s. 11 does not apply. *Vf* CONTINUING OFFENCE.

As to what is a Special Limitation of s. 11, *V. Morris v. Duncan*, cited RECOVER.

*Cp.* ACCRUE.

**ARISING.** — "Arising from"; *V.* CAUSED BY.

"TRAFFIC arising and terminating on the Ry," in a Ry Act; held, "Traffic that does not pass over any other Ry" (*Distington Iron Co v. Lond. & N. W. Ry*, 6 Ry & Can Traffic Ca. 111).

Loss "Arising off their Lines"; *V. Kent v. Mid. Ry*, L. R. 10 Q. B. 1.

"Arising out of the Bankruptcy," s. 102, Bankry Act, 1883; *V. Re Hawke, Ex p. Scott*, 55 L. J. Q. B. 302; 16 Q. B. D. 503; 54 L. T. 54; 34 W. R. 167.

"Arising out of the Employment"; *V.* EMPLOYMENT.

PROFITS "arising or accruing" in the United Kingdom, s. 2, Sch D, Income Tax Act, 1853, mean Profits coming to the person's hands or received by him in the United Kingdom (*Colquhoun v. Brooks*, 59 L. J. Q. B. 53; 14 App. Ca. 493; 61 L. T. 518; 38 W. R. 289; 54 J. P. 277:



*The, London Bank of Mexico v. Apthorpe, and San Paulo Ry v. Carter*, cited CARRY ON). Cp. DERIVE, last par.

“Question arising”; V. QUESTION.

Exception in an Accidental Insurance of Death from causes “arising within the system of the insured”; *V. Smith v. Accident Insrce.* L. R. 5 EX. 302; 39 L. J. EX. 211; *Fitton v. Accidental Death Insrce.* 34 L. J. C. P. 28; 17 C. B. N. S. 122.

**ARM.** — “Armed with an Offensive Weapon”; V. OFFENSIVE.

“Arm of the Sea”; V. CREEK.

V. ARMS: LOADED ARM.

**ARMAMENT.** — Quà Naval Defence Act, 1889, 52 & 53 V. c. 8, “‘Armament,’ includes Reserves as well as Outfit” (s. 8).

**ARMIGER.** — V. ESQUIRE.

**ARMORIAL BEARINGS.** — Quà Revenue Act, 1869, 32 & 33 V. c. 14, and by s. 19 (13) thereof, — “‘Armorial Bearings,’ means and includes, any Armorial Bearing, Crest, or Ensign, by whatever name the same shall be called, and whether such Armorial Bearing, Crest, or Ensign shall be registered in the College of Arms or not”; but a Public Stage or Hackney Carriage is exempt (subs. 15).

**ARMS.** — V. ARM: FORCE.

“Armour and Arms”; V. JACOB.

Name and Arms Clause; V. NAME.

Quà Peace Preservation (Ir) Act, 1881, 44 & 45 V. c. 5. “‘Arms,’ includes any Cannon, Gun, Revolver, Pistol, and any description of Fire Arms; also any Sword, Cutlass, Pike, and Bayonet; also any part of any Arms as so defined” (s. 6), — a def in great part taken from s. 4, 33 & 34 V. c. 9, and adopted for Prevention of Crime (Ir) Act, 1882, 45 & 46 V. c. 25 (s. 35). Cp. 6 & 7 V. c. 74, s. 62.

Quà Military Manœuvres Act, 1882, 45 & 46 V. c. 10, “‘Arms. Munitions of War, and Stores,’ includes, all matters and things required for the use of the Forces to whom this Act applies, or any part thereof, and all Animals and Conveyances used for the conveyance of such matters or things; also all Animals used for the food of the Forces, or any part thereof” (s. 11), adopted from 34 & 35 V. c. 97, s. 11; 35 & 36 V. c. 64, s. 13; 36 & 37 V. c. 58, s. 12.

**ARMY.** — “Army Chaplain”; Stat. Def., 31 & 32 V. c. 83, s. 2.

“Army Reserve Force”; Stat. Def., 34 & 35 V. c. 86, s. 19; 42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 58, s. 190 (10); 45 & 46 V. c. 48, s. 28.

“Army School”; Stat. Def., 54 & 55 V. c. 16, s. 1.

**AROSE.** — *V.* **ARISE.**

**AROUND.** — “An agreement to furnish granite for a mason to set by delivering it ‘on and around the site’ of the building, is not performed by delivering it at a corner of the site: *McGowan v. United States*, 21 Ct. of Cl. 476; U. S. Dig. 125” (1 Hudson, 138).

**ARPENS.** — “‘Arpens,’ or ‘Arpen,’ — an ACRE” (Cowel).

**ARRAIGN.** — “‘Arraine,’ is to put a thing in order, or in his place; as a Prisoner is said to be arraigned when he is indicted and put to his trial” (*Termes de la Ley*). “No man is said to be arraigned, but merely at the suit of the King, upon an enditement found against him, or other record wherewith he is charged. And there the Arraignment of the prisoner is to take order that he appeare, and, for the certainty of the person, to hold up his hand, and to plead a sufficient plea to the enditement or other record, whereupon they which follow for the King may orderly proceed” (Co. Litt. 263 a). Holding up the hand is now dispensed with: *Vh* 1 Encyc. 327.

**ARRANGE.** — *V.* **NEGOTIATE.**

“Arrange Loans”; *V.* **LOAN.**

**ARRANGEMENT.** — “The term ‘Arrangement’ is a very wide and indefinite one” (per Parke, B., *Manning v. Eastern Counties Ry*, 13 L. J. Ex. 265; 12 M. & W. 237); in *whc* it was held that a verdict of a jury, on a claim for compensation against a Ry Co and receipt of compensation under such verdict, was an “Arrangement with” the Co.

“Arrangement,” identical with Agreement in writing (*Cave v. Hastings*, 50 L. J. Q. B. 575; 7 Q. B. D. 125). *V.* **BALANCE.**

“The natural meaning of ‘Arrangement’ is, setting in order”; but it comprehends COMPOSITION with Crs (per Jervis, C. J., *Tetley v. Taylor*, 1 E. & B. 540).

A testamentary power enabling Trustees to wind-up testator’s affairs “and in so doing to make any Sales and Arrangements they shall judge expedient,” authorizes them to give a mortgage on the realty (*Re Jones, Dutton v. Brookfield*, 59 L. J. Ch. 31; 38 W. R. 90; 61 L. T. 661).

“Arrangement for using, &c, Steam Vessels”; *V.* **USING.**

*V.* **COMPOSITION: COMPROMISE: SCHEME: FAMILY ARRANGEMENT: DEED.**

Stat. Def. — 31 & 32 V. c. 68, s. 2. — *Ir* (Arranging Debtor) 35 & 36 V. c. 58, s. 4.

**ARRAY.** — “And herein you shall understand, that the jurors’ names are ranked in the pannel one under another; which order or ranking the jurie is called the Array, and the verbe, to array the jurie; and so we say in common speech, *battaile array* for the order of the *battaile*” (Co. Litt. 156 a). *Vf* *Termes de la Ley*.

**ARREARS.** — The bequest of “Arrears” of a Debt, will only pass the interest in arrear, and not the principal (Wms. Exs. 1064, citing *Hamilton v. Lloyd*, 2 Ves. 416).

Bequest of “Arrears” of Rents, will not pass rents which, at the death, are in the hands of testator’s Agent (per Smith, L. J., *Re Cleveland*, 1894, 1 Ch. 172; 63 L. J. Ch. 119).

“Arrears of Rent and Interest”; *V. Hele v. Gilbert*, 2 Ves. 430.

**ARREST.** — “‘Arrest,’ is when one is taken and restrained from his liberty” (Termes de la Ley). *Vh* 1 Encyc. 328–331.

“Arrest of Goods,” in a Marine Policy, “is a taking with the intention of restoring them at one time or another” (per Brett, J., *Rodocanachi v. Elliott*, L. R. 8 C. P. 659; 42 L. J. C. P. 254; *Vh* 1 Maude & P. 488); and is equivalent to SEIZURE (*Johnston v. Hogg*, 52 L. J. Q. B. 343).

Arrest of *Ship*, “is the method of enforcing the Admiralty process *in rem*, whether that process be founded on a Maritime LIEN, or a Claim against the Ship” (1 Encyc. 331). *Vf* Wms. & Bruce, Part 2, ch. 1.

Vessel “Under Arrest”; *V. The Normandy*, 18 W. R. 903; *The Northumbria*, *Ib.* 356; L. R. 3 A. & E. 24; 39 L. J. A. & E. 24; 21 L. T. 683.

#### V. RESTRAINTS OF KINGS.

An Arrest of a Person, by a duly authorized Officer, is accomplished if the Officer lawfully touch him; the power of effecting actual Capture is not essential (*Sandon v. Jervis*, 6 W. R. 690; 31 L. T. O. S. 235).

“To move or plead in *Arrest of Judgment*, is to shew cause why judgment should be stayed, though there be a verdict in the case” (Cowel).

“Arresting Authority”; Stat. Def., Mail Ships Act, 1891, 54 & 55 V. c. 31, s. 9.

**ARRIVE.** — *Condition of Legacy*, that legatee “arrive” at a place; *V. Burgess v. Robinson*, cited RETURN.

“It appears on a review of the result of the decisions on *Contracts of Sales* ‘to arrive’:

“1st. Where the language is that goods are sold ‘on arrival’ per ship A, or ex ship A, or *to arrive* per ship A, or ex ship A (for these two expressions mean precisely the same thing) it imports a *double Condition Precedent*, viz., that the ship named shall arrive, *and* that the goods sold shall be on board on her arrival.

“2nd. Where the language asserts the goods to be on board of the vessel named, as ‘1170 bales now on passage, and expected to arrive per ship A,’ or other terms of like import, there is a Warranty that the goods are on board, and a *single Condition Precedent*, to wit the arrival of the vessel. *V. EXPECTED TO ARRIVE.*

“3rd. The Condition Precedent that the goods shall arrive by the vessel will not be fulfilled by the arrival of goods answering the description of those sold, but not consigned to the vendor, and with which he did not

affect to deal; but, *semble*, the condition will be fulfilled if the goods which arrive are the same that the vendor intended to sell, in the expectation, which turns out to be unfounded, that they would be consigned to him." (Benj. 566, 567, citing *Neill v. Whitworth*, 18 C. B. N. S. 435; 34 L. J. C. P. 155).

"When goods are to be sold on a Condition to take effect at some future time, I agree in thinking that it is more rational to construe the words 'to arrive' in the light of a Condition than as amounting to a Warranty" (per Alderson, B., *Johnson v. Macdonald*, 9 M. & W. 606; 12 L. J. Ex. 99).

A Ship is an "Arrived SHIP," and "Ready" to discharge, so that LAY DAYS begin to run; — (1) Where the Place named for Discharge is a PORT. — when she is at the usual place of discharge in the Port (*Brereton v. Chapman*, 7 Bing. 559; *Kell v. Anderson*, 12 L. J. Ex. 101; 10 M. & W. 498): — (2) Where the Place of Discharge is a DOCK, — when she is anywhere in that Dock (*Monsen v. Macfarlane*, 1895, 2 Q. B. 562; 65 L. J. Q. B. 57; 73 L. T. 548): — (3) Where she is to discharge from a named Berth, or a Berth is to be named by the Charterers e.g. "as ordered"; *Vh* ORDER, towards end), — when she reaches such Berth (*Tapscott v. Balfour*, 42 L. J. C. P. 16; L. R. 8 C. P. 46; *Dahl v. Nelson*, 50 L. J. Ch. 411; 6 App. Ca. 38; 44 L. T. 381; 29 W. R. 543; *Thursis Co v. Morel Co*, 1891, 2 Q. B. 647; 61 L. J. Q. B. 11; 40 W. R. 58; *Sanders v. Jenkins*, 1897, 1 Q. B. 93; 66 L. J. Q. B. 40; 2 Com. Ca. 12; 13 Times Rep. 24). *Vf* Abbott, 278 *et seq*: CONVOY: LIVERPOOL.

"On arrival" and "to arrive" mean the same thing (per Parke, B., *Johnson v. Macdonald*, 9 M. & W. 601; 12 L. J. Ex. 99).

"After Arrival"; *V. Lindsay v. Janson*, 28 L. J. Ex. 315; 4 H. & N. 699; *Lidgett v. Secretan*, L. R. 5 C. P. 190; 39 L. J. C. P. 196; L. R. 6 C. P. 616; 40 L. J. C. P. 257.

*Vf* Blackb. 230, 239; Benj. 560; *Montgomery v. Middleton*, 13 Ir. C. L. Rep. 173: NON-ARRIVAL: ACTUAL ARRIVAL.

**ARSENIC.** — Quà Arsenic Act, 1851, 14 & 15 V. c. 13, "Arsenic" includes "Arsenious Acid and the Arsenites, Arsenic Acid and the Arseniates, and all other colourless, poisonous, preparations of Arsenic" (s. 6).

**ARSON.** — For a statement of the Stat. Def. of Arson in 24 & 25 V. c. 97, *V. Steph. Cr.* 318 *et seq.* *Vf* Arch. Cr. 616: Rosc. Cr. 248-259: 1 Encyc. 332-334.

*V. SET FIRE: INCENDIARISM.*

**ART.** — An "Art, Mystery, or MANUAL OCCUPATION," which, by s. 31, 5 Eliz. c. 4, could not be "used or exercised" without a prior apprenticeship, comprised the TRADE of a Brewer; for though a Brewer was not a HANDICRAFTSMAN, within 22 H. 8, c. 13, yet " 'Art, or Mys-

tery,' is more general than 'Handicraft,' for that is restrained to Manufactures," and the intent of 5 Eliz. was "that none should take upon him any Art, Mystery, or Manual Occupation but such in which he had skill and knowledge; and it is very necessary that Brewers should have skill and knowledge in brewing good and wholesome beer, for that doth much conduce to men's health" (*City of London Case*, 8 Rep. 129, 130). But he who baked or brewed &c for his own use, did not require apprenticeship, "because every housewife brews for her private use" (*Ib.*). An unapprenticed Sleeping Partner in a Brewery conducted by his apprenticed partner, was not within the Act, because the trade was not "EXERCISED" by him (*Raynard v. Chase*, 1 Burr. 2, — a decision always adhered to, *V. n. to R. v. Kilderby*, 1 Wms. Saund. 312). The work of a Tailor was an "Art" within the Act (*Ipswich Tailors Case*, 11 Rep. 53); *secus*, that of a Hemp-Dresser (*R. v. Fredland*, Cro. Car. 499). Note. By s. 1, 54 G. 3, c. 96, s. 31, 5 Eliz. c. 4, was repealed as from 1st May, 1815. V. TRADE: SCIENCE: USE.

**ARTICLE.** — A horse is an "Article" within s. 25, Llandaff and Canton District Markets Act, 1858, 21 & 22 V. c. cv. (*Llandaff Market Co v. Lyndon*, 30 L. J. M. C. 105; 8 C. B. N. S. 515).

Stock in the funds, held not included in a bequest of "every other Article belonging to me both in and out of my house and which may not be herein mentioned" (*Collier v. Squire*, 3 Russ. 467).

"Any other Article or Thing," in s. 37, Prison Act, 1865, is not to be read *ejusdem generis* with the preceding enumeration, but means any other Article or Thing of any other kind, sort, or description whatsoever, e.g. a crowbar (*R. v. Payne*, 35 L. J. M. C. 170; L. R. 1 C. C. R. 27).

*Semble*, a ship is not an "Article" within the def in s. 3 (7), 30 & 31 V. c. 103, by which "Manufacturing Process" is defined to mean any MANUAL LABOUR exercised by way of trade, or for purposes of gain, in or incidental to the *making of any Article*, or part of an article, or in or incidental to the altering, repairing, ornamenting, finishing, or otherwise adapting for sale any Article (*Palmer Shipbuilding Co v. Chaytor*, 38 L. J. M. C. 63; 10 B. & S. 177; L. R. 4 Q. B. 209).

Article of Food; V. ARTICLE DEMANDED: FOOD. Stat. Def., (Article of Food, or Drink) 23 & 24 V. c. 84, s. 14.

"Article of Manufacture"; *V. Heywood v. Potter*, 22 L. J. Q. B. 133; 1 E. & B. 439; *Gillespie v. Cheney*, inf. Stat. Def., 2 & 3 V. c. 17, s. 1.

"Article of Sculpture"; Stat. Def., 7 & 8 V. c. 12, s. 20.

"Articles"; V. COVENANT.

"Articles of Clerkship"; Stat. Def., 51 & 52 V. c. 65, s. 4.

"Articles of War"; Stat. Def., 30 & 31 V. c. 111, s. 2; 38 & 39 V. c. 69, s. 2.

"Articles, Matters, and Things," in a Lease, "indicate Moveable

Chattels" (per Erle, C. J., *Garton v. Gregory*, 31 L. J. Q. B. 302; 3 B. & S. 90).

"Specified Article, under its Patent or other Trade Name," proviso to s. 14 (1), Sale of Goods Act, 1893, "does not apply to raw commodities, or materials, but to Manufactured Articles" (per Russell, C. J., *Gillespie v. Cheney*, 1896, 2 Q. B. 59; 65 L. J. Q. B. 552; 1 Com. Ca. 373).

**ARTICLE DEMANDED.** — "The 'Article demanded,' — s. 6, Sale of Food and Drugs Act, 1875, 38 & 39 V. c. 63, — must be held to be, the Article meant by an ordinary purchaser to be obtained, — not in any scientific definition" (*Morton v. Green*, 4 Couper's Justiciary Rep. 469; *White v. Bywater*, 19 Q. B. D. 582; 51 J. P. 821; 3 Times Rep. 631). But the section is not limited in its application to adulterated articles (*Knight v. Bowers*, 14 Q. B. D. 845; 54 L. J. M. C. 108).

*Vh.* Coffee Case, *Higgins v. Hall*, 50 J. P. 788: MILK Case, *Lane v. Collins*, 54 L. J. M. C. 76; 14 Q. B. D. 193; 33 W. R. 365; 49 J. P. 88; 52 L. T. 257: Mustard Case, *Horder v. Grainger*, 44 J. P. 188: Tincture of Opium Case, *White v. Bywater*, sup.

*Note.* The "Article" to be divided, under s. 14 of the Act cited, must be the very one purchased; the purchaser cannot mix up several lots and divide the aggregate, even though the lots be in small bottles of apparently identical stuff (*Mason v. Cowdury*, 1900, 2 Q. B. 419; 69 L. J. Q. B. 667; 82 L. T. 402; 49 W. R. 28; 64 J. P. 662).

V. SAMPLE.

V. NATURE: PREJUDICE OF PURCHASER.

**ARTIFICER.** — "An 'Artificer' is a skilled workman" (per Brett, L. J., *Morgan v. Lond. Gen. Omnibus Co*, 53 L. J. Q. B. 352; 13 Q. B. D. 832): one who *makes* something, as distinguished from one who only *does* something, e.g. a Hairdresser is not an artificer, because he only *does* something (*Palmer v. Snow*, cited TRADE). V. HANDICRAFTSMAN: LABOURER: MECHANIC: WORKMAN: MERCHANT.

A designer of patterns for a calico-printer was held an "Artificer" within the repealed statute, 4 G. 4, c. 34, s. 3 (*Ex p. Ormerod*, 13 L. J. M. C. 73; 1 Dowl. & L. 825). In that case Williams, J. (as reported in Dowl. & L.), said, — "I cannot conceive that the word 'Artificer' only applies to persons engaged in such occupations as require *merely* MANUAL LABOUR. The party who makes this application to the court, himself states that he is a 'pattern designer,' a person in fact who makes the drawing of the pattern, which is then engraved on the printing rollers, and, subsequently, transferred in colours to the fabric itself. He is therefore the party who sets all in motion. He contributes in the most material degree to the printing of calico, and may therefore, I think, be properly included under the term 'Artificer.'" As reported in the *Law Journal*, Williams, J., commenced these observations thus: — "I cannot conceive that the term 'Artificer,' used in the statute, is confined to those

instances only in which *great* Manual Labour is required." But whether "merely," or "great," were the word used by that learned judge, there can be little doubt that the personal exercise of some manual labour, and that of a skilled kind, is essential to the term "Artificer." And under the statute last cited, a Journeyman Tailor (*Ex p. Gordon*, 25 L. J. M. C. 12) was an "Artificer." Nor would an "Artificer or Handicraftsman" be less so, under that statute, because at liberty to employ other workmen under him (*Lawrence v. Todd*, 32 L. J. M. C. 238; 14 C. B. N. S. 554; *Whiteley v. Armitage*, 13 W. R. 144).

But though Erle, J., said (in *Lawrence v. Todd*, sup), that the Truck Act, 1831, was *in pari materiâ* with 4 G. 4, c. 34, and though, of course, the kind of work which would make a man an "Artificer" would be the same for the purposes of each Act, yet — (notwithstanding such cases as that of the Butty colliers, *Bowers v. Lovelock*, 25 L. J. Q. B. 371; 6 E. & B. 584; 4 W. R. 600; 27 L. T. O. S. 168; or of the Collier having liberty to employ others under him, *Weaver v. Floyd*, 21 L. J. Q. B. 151), — the principle of *Lawrence v. Todd* is not, generally, applicable to the Truck Act, and an "Artificer," labourer, or other person within that Act must be one who contracts for his own labour exclusively, as distinguished from one who contracts to supply the *result* of the labour of others, or of himself and others (*Ingram v. Barnes*, 26 L. J. Q. B. 82, 319; 7 E. & B. 132; 5 W. R. 232, 726; 29 L. T. O. S. 297; 21 J. P. 822; *Sleeman v. Barrett*, 33 L. J. Ex. 153; 2 H. & C. 934; 12 W. R. 411; 9 L. T. 834; 28 J. P. 232; establishing *Riley v. Warden*, 18 L. J. Ex. 120; 2 Ex. 59; 10 L. T. O. S. 420, and *Sharman v. Sanders*, 22 L. J. C. P. 86; 13 C. B. 166; 1 W. R. 152; 20 L. T. O. S. 247; *Vh. Chawner v. Cummings*, 15 L. J. Q. B. 161; 8 Q. B. 311); but if the contract does not contemplate the sub-employment of others, but enables the employer whenever he chooses to require the employee to devote his own labour to the work, such an employee may be an "Artificer" within the Truck Act though he may have the opportunity (*e.g.* by taking the work home) of being assisted in his work by others (*Pillar v. Llynvi Co*, 38 L. J. C. P. 294; L. R. 4 C. P. 752; 17 W. R. 1123; 20 L. T. 923).

"All Workmen, Labourers, and other persons, in any manner engaged in the performance of any Employment, or Operation, of what nature soever, in or about the Hosiery Manufacture, shall be, and be deemed, 'Artificers,' " within the Hosiery Manufacture (Wages) Act, 1874. 37 & 38 V. c. 48 (s. 7).

**ARTIFICIAL.** — "Artificial raising of temperature"; Stat. Def., 52 & 53 V. c. 62, s. 4.

**ARTIZAN.** — Is, probably, a synonym for ARTIFICER.

An Estate Agent is not an "Artizan," within s. 25 (10), S. L. Act. 1882 (per Lopes, L. J., *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23).

**ARUNDINETUM.** — "Where reeds grow" (Co. Litt. 4 b).

**AS.** — *V.* AS AND WHEN: WHEN.

This word is sometimes used as an *exempli gratia* (*V.* 1 Jarm. 753, *n*), or, as Ld Coke phrases it, as “similitudinary” (Co. Litt. 43 b); but sometimes it is to be understood positively (*Ib.* 17 b).

But frequently “as” means, as if something was that which it is not, *e. g.* a Hall or Office shall be subject to House Duty “as,” — *i.e.* as if it were, — an INHABITED House, Sch B. R. 5, House Tax Act, 1808 (*Styles v. Middle Temple*, cited HALL).

**AS A TRADER.** — Notwithstanding what Bacon, *V. C.*, is reported to have said in *The Colonial Bank v. Whinney* (51 L. T. 354), this phrase is not identical with “in the course of his trade or business” (*Re Jenkinson*, 54 L. J. Q. B. 602).

*V.* IN HIS TRADE OR BUSINESS.

**AS AFORESAID.** — *V.* AFORESAID.

**AS ALLEGED.** — A pleading denying terms of agreement “as alleged” is evasive (*Thorp v. Holdsworth*, 3 Ch. D. 637; 45 L. J. Ch. 406).

**AS AND WHEN.** — Gift to or for Children, to be paid “as and when” attaining 21; — “the words ‘as and when’ are ambiguous, and are not to be treated, as indeed grammatically they could not be treated, as equivalent to a gift to such of the children as should attain the age of 21 years, in which case the attainment of that age would be made a Condition Precedent to the acquisition of the right to the legacy” (per Romilly, *M. R.*, *Pearman v. Pearman*, 33 Bea. 396). But if there be no direct gift to the Children, then “as and when,” or “when and as,” will, generally, connote a Condition Precedent (*Gardiner v. Slater*, 25 Bea. 509).

“‘When and as’ means ‘as soon as,’” *quà* time for executing a Power (per Monroe, *J.*, *Re Creugh*, 25 L. R. Ir. 142).

**AS BEFORE.** — *V.* AFORESAID.

**AS COUNSEL SHALL ADVISE.** — A covenant for Further Assurance “as Counsel shall advise,” refers to the Counsel of the covenantee (*Higginbottom’s Case*, 5 Rep. 19), but not the covenantee himself “although he be learned in the law” (*Rosewell’s Case*, *Ib.*): *Vf* Elph. 493, 494.

“A Direction to Settle ‘as Counsel shall advise,’ affords a strong indication that the trusts are executory” (Elph. 533, citing *White v. Carter*, 2 Amb. 670; 2 Eden, 366: *Vh* obs by Sugden, *C.*, *Rochfort v. Fitzmaurice*, 2 Dr. & War. 21, quoted Elph. 534).

**AS CROW FLIES.** — *V.* DISTANCE.



**AS CUSTOMARY.** — *V. CUSTOMARY.*

**AS DESCRIBED.** — *V. Noseworthy v. Buckland*, 43 L. J. C. P. 27; L. R. 9 C. P. 233; *Hinks v. Safety Lighting Co*, 4 Ch. D. 607.

Invention “as herein described”; *V. Thomas v. Welch*, L. R. 1 C. P. 192.

**AS DEVISED.** — *V. Cooch v. Walden*, 46 L. J. Ch. 639.

**AS FAR AS.** — *V. SO FAR AS: APPLICABLE: POSSIBLE.*

**AS FAST AS.** — *V. CUSTOMARY.*

**AS FOLLOWS.** — *V. Re Hunt and Pennington*, 57 L. T. 874.

**AS HELD.** — Agreement to sell property “as I hold the same”; *V. Spratt v. Jeffery*, 10 B. & C. 249.

**AS IF.** — “As if this Act had not been made”; *V. NOTWITHSTANDING.*

“As if he had agreed”; *V. AGREED.*

“As if he was naturally dead”; *V. DEAD.*

“As if she were a Feme Sole”; *V. FEME.*

**AS IN OTHER CASES.** — R. 31, Ord. 16, R. S. C.; *Vh Ann. Pr.*

**AS IT STANDS.** — A contract to take, *e.g.* a Cargo, “as it stands” (though it specify a quantity), means that the cargo is “to be taken by the purchaser for better for worse, for less or for more” (per Campbell, C. J., *Covas v. Bingham*, 23 L. J. Q. B. 29; 2 E. & B. 836; *Vth Benj.* 565).

**AS LONG AS.** — *V. QUAMDIU.*

**AS MAY BE PAID.** — *V. PAID: PAY.*

**AS NEAR AS.** — *V. SO FAR AS.*

**AS NEAR THERETO.** — *V. NEAR THERETO AS SHE MAY SAFELY GET.*

**AS NEARLY AS POSSIBLE.** — *V. NEARLY AS POSSIBLE.*

**AS OCCUPIED.** — *V. OCCUPATION.*

**AS OF.** — “In, or as of” a Term; *e.g.* in a Warrant of Attorney to sign judgment; *V. Alcock v. Sutcliffe*, 16 L. J. Q. B. 129.

“As of Fee”; *V. Elph.* 572, *n.*

“As of Right”; *V. RIGHT.*

**AS OFTEN AS.** — As to the value of this phrase in a covenant for renewal of a Lease, and as to its inefficiency to give the right to a perpetual renewal; *V. Swinburne v. Milburn*, cited RENEWAL.

**AS ORDERED.** — Deliver cargo “as ordered”; *V. Tapscott v. Balfour, Dahl v. Nelson, and Tharsis Co v. Morell Co*, cited ARRIVE: *Dobell v. Green*, 1900, 1 Q. B. 526; 69 L. J. Q. B. 454; 82 L. T. 314; 5 Com. Ca. 161. *Vf* ORDER, towards end.

**AS PER CHARTER-PARTY.** — *V. Smidt v. Tiden*, cited FREIGHT, at end.

**AS REQUIRED.** — “It was held no defence to an action by the buyer for non-delivery ‘as REQUIRED,’ that he had not requested delivery within a reasonable time” (Benj. 691, citing *Jones v. Gibbons*, 8 Ex. 920; 22 L. J. Ex. 347).

**AS SECRETARY.** — *V. SECRETARY.*

**AS SOLICITOR.** — An Undertaking in this form, — “We, as solicitors to A, undertake to pay” &c, binds the signatory personally; for many persons will deal with Solrs who will not deal with the Client, and besides Solrs have no power, as Solrs, to pledge the credit of their Clients, and the term “as Solrs” is merely descriptive of the character they fill (*Burrell v. Jones*, 3 B. & Ald. 47).

**AS SOON AS.** — *V. AS AND WHEN: ABLE: IMMEDIATELY: POSSIBLE: WHEN.*

**AS SUCH.** — Notice of a prejudicial instrument, &c, to counsel, solicitor or agent “as such,” s. 3, Conv. Act, 1882, means notice to counsel, &c, in and during the transaction sought to be affected (*Re Cousins*, cited COME TO).

Leascholds, though specifically bequeathed, “pass to the Exor, as such,” ss. 9 (1), 14 (1), Finance Act, 1894; and, therefore, Estate Duty thereon is payable out of Residue, and not by the Specific Legatees (*Re Culverhouse*, 1896, 2 Ch. 251; 65 L. J. Ch. 484; 74 L. T. 347; 45 W. R. 10). An Appointed Fund, though it does not pass to the Exor “as such,” will escape the Duty as a “Testamentary Expense” if the Exor is directed to pay such expenses (*Re Treasure*, cited TESTAMENTARY EXPENSES).

*V. BY VIRTUE: ECCLESIASTICAL CHARITY.*

**AS TENANT.** — *V. TENANT.*

**AS THE CASE REQUIRES.** — *V. per Esher, M. R., Hanfstaengl v. American Tobacco Co*, 1895, 1 Q. B. 347; 64 L. J. Q. B. 280; 71 L. T. 864; 43 W. R. 261: PRODUCED.

*V. IN CASE.*

**AS THE CROW FLIES.** — *V. DISTANCE.*

**AS THE LAW DIRECTS.** — *V. Fielden v. Ashworth*, cited RELATIONS.

**AS THE QUEEN DIRECTS.** — Quà South Africa Act, 1877, 40 & 41 V. c. 47, “ ‘As the Queen may direct’ ; means, as Her Majesty may direct by any Order in Council issued in pursuance of s. 3 of this Act, but not otherwise ” (s. 61).

**AS THEY SHALL THINK FIT.** — *V.* IF THEY SHALL THINK FIT.

**AS TO.** — “As to” does not necessarily mark the commencement of an independent sentence (*Gordon v. Gordon*, L. R. 5 H. L. 254).

**AS UNADULTERATED.** — The offence of selling Food or Drink “as unadulterated,” s. 2, 35 & 36 V. c. 74, does not need an express representation for its completion; to supply on sale an article, *e.g.* Butter, which ought to be unadulterated, is to sell it “as unadulterated” (*Fitzpatrick v. Kelly*, 42 L. J. M. C. 132; L. R. 8 Q. B. 337).

**ASCERTAINED.** — This word has two meanings, (1) “known,” (2) “made certain” (*Sidebottom v. Sidebottom*, L. R. 2 P. & D. 365; 41 L. J. P. & M. 23). In that case, as used in a Residuary Clause, it was construed “made certain.”

Where money to be paid, or service to be rendered, has “to be ascertained” in a certain way, “the words ‘to be ascertained’ are very strong words, and they look very like a Condition Precedent” (per Crompton, J., *Braunstein v. Accidental Insrce*, 31 L. J. Q. B. 24).

*V.* CANNOT.

**ASHES.** — *V.* DUST: RUBBISH: REFUSE.

**ASHPIT.** — Quà the Public Health Acts for England, “Ashpit,” “includes any ashtub, or other receptacle for the deposit of ashes, faecal matter, or refuse” (s. 11 (1), 53 & 54 V. c. 59); quà P. H. (London) Act, 1891, it “means any ashpit, dustbin, ashtub, or other receptacle for the deposit of ashes or refuse matter” (s. 141); quà the P. H. (Scotland) Act, 1897, it “means any receptacle for the deposit of ashes or refuse matter” (s. 3).

**ASPORTATION.** — An Asportation is a carrying away; and is, generally, spoken of the carrying away of goods feloniously taken (4 Bl. Com. 231). *Vf* TAKE AND CARRY AWAY.

**ASS.** — *V.* BEETLE-HEADED: FOOL.

**ASSART.** — “Grubbing woods in a man’s own lands in a FOREST, so as to make the same arable” (Elph. 561, *whv*).

When *Termes de la Ley* was written this was a sad business, for there we read, — “This Assart of the Forest, is the greatest Offence or Tres-passe of all others that can be done in the Forest to Vert or Venison, containing in it WASTE, or more.” *Cp* DISBOSCATIO.

**ASSAULT.**—“An Assault is (a) an attempt unlawfully to apply any the least actual force to the person of another directly or indirectly; (b) the act of using a gesture towards another, giving him reasonable grounds to believe that the person using that gesture meant to apply such actual force to his person as aforesaid; (c) the act of depriving another of his liberty: in either case, without the consent of the person assaulted, or with such consent if it is obtained by fraud” (Steph. Cr. 177: *Cp* SMITE). But free consent will not always relieve a case of being a criminal assault, for the combatants at a Prize Fight, and all persons aiding or abetting therein, are guilty of an indictable Assault (*R. v. Coney*, 51 L. J. M. C. 66; 8 Q. B. D. 534; *whcv* for a very full citation of authorities).

“A *Battery* is an assault whereby any the least actual force is actually applied to the person of another, or to the dress worn by him, directly or indirectly.

“Provided that such Acts as are reasonably necessary for the common intercourse of life, are not Assaults or Batteries, if they are done for the purpose of such intercourse only and with no greater force than the occasion requires. *V. DISCIPLINE.*

“No mere words can in any case amount to an Assault” (Steph. Cr. 177: *Meade's and Belt's Case*, 1 Lewin C. C. 184).

*Vf* Arch. Cr. 796, 800: Rosc. Cr. 260, 264: INDECENT.

The above definitions are applicable to *Civil* Assaults and Batteries, except that no Civil Action can be maintained if the plt consented. *Vh* Rosc. N. P. 899.

“Assault occasioning Actual Bodily Harm”; *V. INFLICT.*

*Vf* Cowel: 1 Encyc. 342. “Battery,” 2 Encyc. 35, 36: *Termes de la Ley.*

**ASSEMBLE.**—The offence of knowingly suffering prostitutes or persons of bad character “to assemble and meet together,” or “to assemble,” or “to meet together,” in an Inn or Beerhouse, means allowing them to be there as prostitutes or in their other evil character; but does not include a case of allowing them to be there merely to get refreshments and for no longer time than reasonably necessary for such refreshments to be consumed (*Greig v. Bendeno*, 27 L. J. M. C. 294; E. B. & E. 133; 22 J. P. 816: *Belasco v. Hannant*, 31 L. J. M. C. 225; 3 B. & S. 13; 6 L. T. 577: *Vf. Parker v. Green*, 6 L. T. 46: *Marshall v. Fox*, 24 L. T. 751). *Cp.* s. 14, 35 & 36 V. c. 94.

The deft stood in a street talking to another man, and whilst so talking received a number of packages from several persons; he then entered a house, the other following, to whom he transferred something. Both then came out of the house, and the other went away, but the deft remained in the street and received more packages from more persons. Deft was then arrested and on him were found several packages contain-

ing money and a local newspaper containing the programme of local Races, and a number of slips of paper on which were written the names of horses running that day; held, that this infringed a Bye Law which provided that, "a person shall not together with any other person or persons, *assemble* in any Street or Public Place for the purpose of Betting" (*Godwin v. Walker*, 40 S. J. 481; 12 Times Rep. 367). *V. GAMING.*

*Cp* HARBOUR.

**ASSEMBLED.** — A power to do anything by a majority of persons "assembled," must be exercised by a majority of those actually present, whether all vote or not (*R. v. Christchurch*, 7 E. & B. 409; 27 L. J. M. C. 23). *V. MEETING.*

**ASSEMBLEMENT.** — Crown Rents in Jersey "by Assemblément," or "par Assemblage"; *V. A-G. Jersey v. Le Moignan*, 1892, A. C. 402; 61 L. J. P. C. 53; 66 L. T. 803.

**ASSEMBLY.** — An "Assembly" of persons would seem to mean three or more; *V. UNLAWFUL ASSEMBLY: Cp* MULTITUDE: *Godwin v. Walker*, cited ASSEMBLE.

**ASSERT.** — "Assert against"; *V. AGAINST.*

**ASSESSABLE VALUE.** — *V. RATEABLE VALUE: ANNUAL VALUE.*

**ASSESSED.** — As used in a Covenant to pay Rates &c, " 'assessed,' means, 'reckoned on the value'" (per Rigby, L. J., *Floyd v. Lyons*, 66 L. J. Ch. 353; 1897, 1 Ch. 633; 76 L. T. 251; 45 W. R. 435), and, accordingly, it was there held, that a special Water Rate for trade purposes, *e.g.* a supply of water to a Restaurant, was not a Water Rate "IMPOSED, or assessed" upon the premises, within a Lessor's covenant.

*V. CHARGED: RATED OR ASSESSED.*

**ASSESSMENT.** — "Assessments," in the collocation in a lessee's covenant to pay "Taxes, Rates, and Assessments," means, Assessments of a nature similar to that of Taxes and Rates, and does not comprise an exceptional burden imposed by a local authority and ordinarily to be borne by the landlord (*Tidswell v. Whitworth*, 36 L. J. C. P. 103; L. R. 2 C. P. 326; *Hartley v. Hudson*, 48 L. J. Q. B. 751; 4 C. P. D. 367; *Allum v. Dickinson*, 52 L. J. Q. B. 190; 9 Q. B. D. 632; *Wilkinson v. Collyer*, 53 L. J. Q. B. 278; 13 Q. B. D. 1; *Baylis v. Jiggins*, cited TAXES), nor does it comprise Tithe Rent Charge (*Jeffrey v. Neale*, 40 L. J. C. P. 191; L. R. 6 C. P. 240).

*V. TAXES: OUTGOING: IMPOSITION: RATED OR ASSESSED: SCOT.*

"Assessment Committee"; Stat. Def., Rating Act, 1874. 37 & 38 V. c. 54, s. 15.

**ASSESSOR.** — Stat. Def., Taxes Management Act, 1880, 43 & 44 V. c. 19, s. 5. — *Scot.*, Lands Valuation (Scot) Act, 1854. 17 & 18 V.

c. 91, s. 42; Burgh Voters Registration (Scot) Act, 1856, 19 & 20 V. c. 58, s. 48; County Voters Registration (Scot) Act, 1861, 24 & 25 V. c. 83, s. 2; Rep. People (Scot) Act, 1868, 31 & 32 V. c. 48, s. 59; 33 & 34 V. c. 92, s. 2; Sporting Lands Rating (Scot) Act, 1886, 49 & 50 V. c. 15, s. 2; Loc Gov (Scot) Act, 1889, 52 & 53 V. c. 50, s. 105.

**ASSETS.** — “*Assets* in the hands of the executor or administrator, that is, — ‘sufficient,’ from the French *assez*, to make him chargeable to a creditor, and a legatee or party in distribution, so far as such property extends” (Wms. Exs. 1517; and as to Assets generally, *V. Ib. Pt. 4, Bk. 1, ch. 1: 1 Encyc. 349–352*).

“Assets” of a Partnership, “is a compendious expression for the aggregate of the several items of property belonging to the partnership” (per Stirling, J., *Jennings v. Jennings*, 1898, 1 Ch. 378; 67 L. J. Ch. 190; 77 L. T. 786; 46 W. R. 344); therefore, an agreement between partners that one shall have the partnership “Assets,” will generally include the GOODWILL (*Ib.*). *Cp* WITHDRAW.

“Assets,” R. 176, Stock Exchange Rules, means the whole of the Defaulter’s property; and when the Rule comes into operation, there is a *cessio bonorum* and assignment of all the Defaulter’s property to the Official Assignees of the Stock Exchange (*Tomkins v. Saffery*, 47 L. J. Bank. 11; 3 App. Ca. 213; *Richardson v. Stormont*, 1900, 1 Q. B. 701; 69 L. J. Q. B. 369; 82 L. T. 316; 48 W. R. 451).

“Property, Assets, and Revenues,” of a Co; *V. REVENUES*.

“Assets,” are something in a Liquidation; it is incorrect to speak of the Property of a solvent person or Co as “Assets” (per Chitty, J., *Re Hull, Barnsley & W. Riding Ry*, 37 S. J. 477). *Sv* UNDERTAKING.

“Surplus Assets”; *V. SURPLUS*.

“Undistributed Assets”; *V. UNDISTRIBUTED*.

“Assets,” s. 9, Dividend Duty Act, 1890 (Queensland); *V. Walsh v. The Queen*, 1894, A. C. 144; 63 L. J. P. C. 52.

*V. EFFECTS*.

**ASSIGN.** — As to when this word is effectual to revive a merged term; *V. Elph. 45*.

“A covenant not to assign or otherwise part with the premises, or any part thereof, for the whole or *any part of the term*, is broken by a sub-lease (*Doe d. Holland v. Worsley*, 1 Camp. 20; Cole, Ejec. 435); but a covenant ‘not to assign, transfer, set over, or otherwise do or put away the lease or premises’ is not (*Crusoe d. Blencowe v. Bugby*, 2 Bl. W. 766; 3 Wils. 234; *Kinnerley v. Orpe*, 1 Doug. 56; *Church v. Brown*, 15 Ves. 258). A covenant against sub-letting will restrain an Assignment (*Greenaway v. Adams*, 12 Ves. 395; *Sethe, Re Doyle and O’Hara*, 1899, 1 I. R. 113)”; Woodf. 699. *V. SET*.

In *Crusoe d. Blencowe v. Bugby* (sup) the Court said “‘Assign, TRANSFER, and set over,’ are mere words of assignment. ‘Otherwise do, or put

away,' signifies any other mode of getting rid of the premises *entirely*"; and, therefore, an Underlease was not prohibited. But an Underlease (as well as an Assignment) is prohibited by a covenant not to "LET, set, or assign over" the premises or any part thereof (*Roe v. Harrison*, 2 T. R. 425; 1 Doug. 57, *n*).

V. UNDERLEASE: PUT AWAY.

*Seemle*, a covenant not to "Assign" is not broken by a License to use the premises for a temporary purpose, — *e.g.* a Travelling Show (*Mashiter v. Smith*, 3 Times Rep. 673).

"A covenant 'not to alien, sell, assign, transfer, set over, or otherwise part with the lease or premises' was ruled, before the Jud. Act, not to be broken by a Deposit of the Lease as a security for a loan (*Doe d. Pitt v. Hogg*, 1 C. & P. 160; 4 D. & R. 226; cited and approved in *Greenslade v. Tapscott*, 3 L. J. Ex. 328; 1 Cr. M. & R. 59; 4 Tyr. 566); but the effect of s. 24 of that Act would seem to be to alter the law in this respect"; (Woodf. 13 Ed. 660). *Sq.* As to this inference *Va M'Kay v. M'Nally* (cited MORTGAGE, at end), *whc* was decided since the Jud. Act.

And it now seems clear that, quâ a clause of Forfeiture, the section referred to does not convert a non-legal assignment into a legal one, and that the meaning of a covenant not to assign a Lease "is not to execute a *Legal Assignment*," which a Declaration of Trust is not (*Gentle v. Faulkner*, 1900, 2 Q. B. 267; 69 L. J. Q. B. 777; 82 L. T. 708, *V. espy* jdgmt of Smith, L. J., who pointed out that the covenant in *the* "does not relate to the parting with the possession of the demised premises"). *Cp Matthews v. Usher*, cited ASSIGNS: *Re Hughes*, cited CONVEYANCE.

A covenant by *Joint Lessees*, not to assign, is broken if one assigns; for the covenant "means that neither of them shall assign" (per Willes, J., *Varley v. Coppard*, L. R. 7 C. P. 505). *Vh LESSEES: FORFEITURE.*

A covenant, or condition, not to assign, is not broken by giving a Warrant of Attorney (*Doe d. Mitchinson v. Carter*, 8 T. R. 57), unless it be expressly given for the purpose of enabling the judgment creditor to take the term in execution (*Ib.*, 8 T. R. 300; *Vth Croft v. Lumley*, 6 H. L. Ca. 739); nor is it broken by a seizure under a judicial process (*R. v. Robinson*, Wight. 386), or by passing to a trustee under a bankry (*V. ALIENATION*).

Not "to grant away, assign, or let, charge, or dispose of"; *V. Croft v. Lumley*, 25 L. J. Q. B. 73, 223; 27 *Ib.* 321; 6 H. L. Ca. 672.

Not "to assign, demise, or otherwise part with"; *V. Daly v. Edwardes*, 83 L. T. 548; 16 Times Rep. 288. *Cp SUFFER: PERMIT. If ASSIGN.*

For an exposition of the object of the covenant against Assignment of a Lease, and the DAMAGES recoverable for its breach; *V. per Hawkins, J., Leplu v. Rogers*, 1893, 1 Q. B. 31; 68 L. T. 584.

S. 14 (6), Conv. & L. P. Act, 1881, which provides that the section shall not extend "to a covenant against the Assigning, Underletting, Parting with the Possession, or DISPOSING of the land leased," does not

comprise an Assignment for the Benefit of Crs excepting leaseholds but declaring a trust of them; and if such an Assignment &c be the Forfeiture relied on, Notice must be given under the section (*Gentle v. Faulkner*, sup).

An Assign is synonymous with ASSIGNEE; *V.* ASSIGNS.  
*V.* NEGOTIATE: UNREASONABLY.

**ASSIGNATION.** — Quà Transmission of Moveable Property (Scot) Act, 1862, 25 & 26 V. c. 85, "Assignment," includes, "Translations and Retrocessions, and Probative Extracts thereof" (s. 4).

**ASSIGNED.** — "Legally assigned"; *V.* LEGALLY.

**ASSIGNEE.** — "When a statute speaks of an 'Assignee,' it is to be intended of such complete Assignee as has all the ceremonies and incidents requisite by the law to such character; not taking away any form or circumstance which the law requires. Therefore, Assignee by Fine shall not, under 32 H. 8, c. 34, take advantage of a Condition without attornment" (Dwar. 683, citing *Mallory's Case*, 5 Rep. 112). *Vf*, on the first sentence of this par, 13 & 14 V. c. 60, s. 2.

The word "Assignee," in the phrase "executor, administrator, or assignee," s. 37, Solrs Act, 1843, is not confined to a person resembling a personal representative of a deceased person; but is equivalent to an "Assign" (*Ingle v. McCutchan*, 53 L. J. Q. B. 311; 12 Q. B. D. 518: *Penley v. Anstruther*, 52 L. J. Ch. 367. *Vf Re Ward*, 28 Ch. D. 719). *Cp* "Assignee" as used in s. 25 (6), Jud. Act, 1873.

"Assignee for value," s. 50 (3), S. L. Act, 1882, s. 4 (1), S. L. Act, 1890; *V. Re Ailesbury*, 62 L. J. Ch. 1012; 69 L. T. 493; 42 W. R. 45.  
*V.* ASSIGNS.

**ASSIGNING.** — *V.* BEING.

**ASSIGNMENT.** — *V.* ASSIGN: TRANSFER: UNDERLEASE: CHOSE IN ACTION: PLACE OUT.

A written direction to trustees of a Will by a beneficiary thereunder to pay to a third person money due to the beneficiary, is an "Assignment" of the money within s. 25 (6), Jud. Act, 1873 (*Harding v. Harding*, 55 L. J. Q. B. 462; 17 Q. B. D. 442; 34 W. R. 775. *Va Brice v. Bannister*, 47 L. J. Q. B. 722; 3 Q. B. D. 569).

*Note.* As to *Brice v. Bannister*, *V. Western Wagon Co v. West*, 1892, 1 Ch. 271; 61 L. J. Ch. 244; 66 L. T. 402; 40 W. R. 182, and *Durham v. Robertson*, cited ABSOLUTE ASSIGNMENT.

"Conveyance or Assignment"; *V.* CONVEYANCE.

"Assignment," s. 10, Landlord and Tenant Law Amendment Act (Ir) 1860, 23 & 24 V. c. 154, does not include a transmission by Opera-



tion of Law, *e.g.* a Conveyance by a Sheriff (*Kenelly v. Enright*, 8 L. R. Ir. 33), or a Deed of Partition by joint tenants (*Foley v. Gallagher*, 2 L. R. Ir. 35, 389). *Cp* ALIENATION: ASSIGNS.

"Assignment for Benefit of Crs" is, generally, not a BILL OF SALE; *V. Hadley v. Beedon*, 1895, 1 Q. B. 646; 64 L. J. Q. B. 240; 72 L. T. 493; 43 W. R. 218.

The proper mode of assigning a PATENT is by Deed; and, *semble*, an "Assignment" of the legal proprietorship of a Patent, to be registered under s. 87, Patents & Act, 1883, must be by Deed; but an "Assignment . . . affecting the proprietorship," s. 23, may be an EQUITABLE Assignment, which may be registered under R. 65, 68, Patent Rules, 1883 (*Re Casey*, 1892, 1 Ch. 104; 61 L. J. Ch. 61; 66 L. T. 93; 40 W. R. 180).

Quà Land Law (Ir) Act, 1888, 51 & 52 V. c. 13, " 'Assignment' shall include an Equitable Assignment" (s. 1).

**ASSIGNS.** — "Assignee cometh of the verb *assigno*. And note there by assignes in deed, and assignes in law: whereof see more in the Chapter of Warrantie, Sect. 733" (Co. Litt. 8 b: *Vf* Termes de la Ley, *Assignee*).  
V. ASSIGN: ASSIGNEE.

" 'Assign,' does not mean 'Heir'; it means a person substituted for another by an act of some kind or other" (per Parke, B., *Doe d. Lewis v. Lewis*, 9 M. & W. 664). An Heir takes *vi legis*; but every one who takes by an act, — *e.g.* a Deed or Will, — of a prior owner is his Assign (Wms. R. P. 58). An Exor of a Lessee is, however, not his "Assign" of the Term until Entry (*Rendall v. Andrewæ*, 61 L. J. Q. B. 630).

"Assigns" in a LEASE, means voluntary assigns, and does not comprise assigns by Operation of Law, — *e.g.* a Trustee in Bankry, or persons claiming under him (*Doe d. Goodbehere v. Bevan*, 3 M. & S. 353; *Va Bailey v. De Crespigny*, *inf*: ASSIGNMENT).

An Appointee is not an Assign (*Skeeles v. Shearly*, 8 Sim. 157), nor, generally, is an Under-Tenant (*Bryant v. Hancock*, 1898, 1 Q. B. 716; 67 L. J. Q. B. 507; *affd* in H. L. 1899, A. C. 442; 68 L. J. Q. B. 889); but an Under-Lessee who is in Possession with notice of a covenant, is bound by a covenant in the head-lease (*Hall v. Ewin*, cited RUN WITH THE LAND: *John v. Holmes*, 1900, 1 Ch. 188; 69 L. J. Ch. 149; 81 L. T. 771; 48 W. R. 236).

A Licensee may justify as an Assign (*Mitcalfe v. Westaway*, *inf*).

The meaning, indeed, of a *Lessee's* Assigns, is, "the person entitled to the Term, as between him and the Lessor, and bound by, and entitled to the benefit of, the covenants entered into by the Lessee and Lessor, respectively, which RUN WITH THE LAND demised" (per Romer, J., *Friary v. Singleton*, 1899, 1 Ch. 86; 68 L. J. Ch. 13; 69 L. T. 465; 47 W. R. 93; *affd*, though conclusion on the facts dissented from, 1899, 2 Ch. 261; 68 L. J. Ch. 622; 81 L. T. 101). In this connection, *Walsh*

v. *Lonsdale* (52 L. J. Ch. 2; 21 Ch. D. 9; 46 L. T. 858; 31 W. R. 109) has no bearing; for a Lessor has no right, even in Equity, to sue an Equitable Lessee on the Lessee's covenants, nor *vice versa* (*Friary v. Singleton*, sup, citing *Moore v. Greg*, 18 L. J. Ch. 15; 2 D. G. & S. 304; *Cor v. Bishop*, 26 L. J. Ch. 389; 8 D. G. M. & G. 815). Accordingly, a merely equitable transferee of a lease cannot insist on an OPTION to purchase the freehold which the lease gives to the lessee his exs, ads, or "assigns" (*Friary v. Singleton*, sup); but a lessee holding only under an Agreement for a Lease, is bound, by the terms of such agreement, to the person whom he has acknowledged as his landlord thereunder, e.g. to purchase his goods from "the Successors in Business" of the person from whom he took the agreement (*Manchester Brewery Co v. Coombs*, 82 L. T. 347, cited SPIRITUOUS LIQUOR).

A Lessor's "Assigns," quâ s. 14 (3), Conv. & L. P. Act, 1881, "means Legal Assigns, as ASSIGNMENT was held in *Gentle v. Faulkner* (cited ASSIGN) to mean Legal Assignment" (per Smith, L. J., *Matthews v. Usher*, 1900, 2 Q. B. 535; 69 L. J. Q. B. 856; 83 L. T. 353; 49 W. R. 40); and, notwithstanding subs. 5, s. 25, Jud. Act, 1873, a Mtgor, or other owner of the Equity of Redemption, is not entitled, as an "Assign" of the Lessor, to give the NOTICE required by the firstly mentioned section (S. C.).

"Where a discretionary legal power is expressly limited to 'A. and his assigns,' the grantee or devisee of A., and even a claimant under him by Operation of Law (as an heir or executor), may exercise the power (*How v. Whitfield*, 1 Vent. 338, 339; 1 Freem. 476); but in a trust, if an estate be vested in a trustee upon trust that he, his heirs, exors, admors, or assigns, shall sell, &c, the introduction of the word 'assigns' will not authorize the trustee to assign the estate to a stranger, nor, if the assignment be made, will a stranger be capable of exercising the power" (*Lewin*, 717).

Where a trust for sale, or otherwise involving discretion, is limited to a person, his heirs and assigns, such trust may be executed by a devisee of the trustee (*Titley v. Wolstenholme*, 13 L. J. Ch. 410; 7 Bea. 425; *Hall v. May*, 26 L. J. Ch. 791; 3 K. & J. 585; 30 L. T. O. S. 64; 17 1 Jarm. 711; *Lewin*, 248). But now, since 31st Dec, 1881, V. s. 30, Conv. & L. P. Act, 1881, on *whv* HEIRS AND ASSIGNS.

*Note.* As to omission of "assigns" in a trust or power of sale, V. *Re Osborne and Rowlett*, 13 Ch. D. 774, on *whcv*, *Cooke v. Crawford*, and *Re Morton and Hallett*, inf, and *Re Ingleby, & Co*, 13 L. R. Ir. 326.

As to value of "Assigns" in a Mortgage power of sale; V. *Saloway v. Strawbridge*, 24 L. J. Ch. 393; 1 K. & J. 371.

Apart from the Conv. & L. P. Act, 1881, s. 21 (4), a Mtge power of sale is not exerciseable by an Assign if not so expressed (*Re Rumney and Smith*, 1897, 2 Ch. 351; 66 L. J. Ch. 482, 641; 76 L. T. 800; 45 W. R. 678; following *Bradford v. Belfield*, 2 Sim. 264, and distinguishing

*Cooke v. Crawford*, 11 L. J. Ch. 406; 13 Sim. 91: *Vthlc, Re Morton and Hallett*, 15 Ch. D. 143; 49 L. J. Ch. 559).

*Semble*, — where in a Will “assigns” is subjoined to “exors and admors,” the phrase is always one of limitation, and does not designate next of kin (2 Jarm. 115: LEGAL REPRESENTATIVES); and when the word “assigns” is used in association with “exors and admors,” it will not make an interest assignable which otherwise is not transferable (*Gathercole v. Smith*, 50 L. J. Ch. 671: 17 Ch. D. 1; 29 W. R. 434).

Covenants relating to land of inheritance and made since 31st Dec, 1881, extend to heirs and assigns though not named (s. 58, Conv. & L. P. Act, 1881).

So, sometimes a contract relating to Leaseholds, — *e.g.* to reduce rent of a public-house, if the liquors therein consumed are bought of the lessor, — will run with the term though the lessee’s “assigns” be not named (*White v. Southend Hotel Co*, cited SPIRITUOUS LIQUOR).

A covenant incurring liability for one’s “Assigns” will not comprise a compulsory assign, — *e.g.* a Railway Company taking under compulsory powers (*Baily v. De Crespigny*, 38 L. J. Q. B. 98; 10 B. & S. 1; L. R. 4 Q. B. 180). *Va Doe d. Goodbehere v. Bevan*, sup.

A limitation to A. “and his assigns” for life, “until he make or attempt to make assignment, or charge, or incumber,” is not sufficient to render nugatory the clause of forfeiture (*Craven v. Brady*, 4 Ch. 296; 38 L. J. Ch. 345; 17 W. R. 505: *Re Kelly, West v. Turner*, 33 S. J. 234).

“In preparing Covenants which are intended to RUN WITH THE LAND, the ‘Assigns’ should always be mentioned, for though some covenants will bind them although not mentioned, and others will not bind them although mentioned, yet there is a middle class, in which assignees are bound if mentioned, but not otherwise; and it is prudent to provide for the possibility of a covenant being held to belong to this class” (Woodf. 172: *V. SPIRITUOUS LIQUOR*). And where the owner conveys part of a Building Estate, reserving power to waive Restrictive Covenants, the words of such reservation should be to him “his heirs or assigns”; and “assigns,” in that connection, means the owner for the time being of the unsold portion of the estate (*Everett v. Remington*, 1892, 3 Ch. 148; 61 L. J. Ch. 574; 67 L. T. 80).

#### I. HEIRS AND ASSIGNS: HUNTING.

“Assigns” in a *Bill of Lading* refers to the Bill itself, not to the goods (*Glyn v. E. & W. India Dock Co*, 50 L. J. Q. B. 62; 52 Ib. 156; 6 Q. B. D. 475; 7 App. Ca. 610); and, *semble*, if no such word as, to the Consignee’s “Order,” or to the Consignee “or his Assigns,” be used, the Bill of Lading is not NEGOTIABLE (*Lickbarrow v. Mason*, 5 T. R. 685: *Henderson v. Comptoir D’Escompte*, 42 L. J. P. C. 62; L. R. 5 P. C. 259, 260).

*Vf Mitcalfe v. Westaway*, 34 L. J. C. P. 113; 17 C. B. N. S. 658 (that "assigns" may include "licensees"): *Saloway v. Strawbridge*, 25 L. J. Ch. 121; 7 D. G. M. & G. 594; *Greenaway v. Hart*, 23 L. J. C. P. 115; 14 C. B. 340; *Taite v. Gosling*, 11 Ch. D. 273; 48 L. J. Ch. 397 (that "assigns" held to include lessee of covenantee): *Sythle, Bryant v. Hancock*, sup.

Quà Copyright Act, 1842, 5 & 6 V. c. 45, " 'Assigns' shall be construed to mean and include every person in whom the interest of an AUTHOR in Copyright shall be vested, — whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law, or otherwise " (s. 2).

**ASSIST.** — *V. UNSHIPPING.*

"Liberty to assist"; *V. LIBERTY TO TOW.*

"Assist" in erection or use of Competing Works; *V. ERECT.*

**ASSISTANT.** — "Assistant Barrister"; Stat. Def., *Ir.* 6 & 7 W. 4, c. 75, s. 63; 7 W. 4 & 1 V. c. 43, s. 8; 9 & 10 V. c. 111, s. 22; 11 & 12 V. c. 28, s. 18; 13 & 14 V. c. 69, s. 117; 14 & 15 V. c. 57, s. 162; 16 & 17 V. c. 107, s. 357; 17 & 18 V. c. 103, s. 1; 27 & 28 V. c. 22, s. 20.

"Assistant Commissioner"; Stat. Def., 8 & 9 V. c. 118, s. 167; 29 & 30 V. c. 122, s. 3.

"Assistant Registrar"; Stat. Def., 56 & 57 V. c. 39, s. 79. — *Scot.* 17 & 18 V. c. 80, s. 76.

"Assistant Teacher in State Schools," as used in the Colony of Victoria; *V. Main v. Stark*, 59 L. J. P. C. 68; 15 App. Ca. 385.

Where power is given to a Corp, or other Body, to appoint "Clerks, Treasurers, Collectors, and such other *Officers or Assistants*" as it may think fit, that does not enable it to make a substantive appointment of *e.g.* an Assistant Treasurer; in such a collocation "Officers" and "Assistants" are synonymous (*Hawkings v. Newman*, 8 L. J. Ex. 82; 4 M. & W. 613).

**ASSISUS.** — *Terra Assisa* was land rented or farmed out "for certain assessed rent in money or provisions. *Terra Assisa* was commonly opposed to *Terra Dominica* (*V. DEMESNE*); this last being held in domain, and occupied by the lord, — the other let out to inferior tenants" (Jacob).

**ASSIZE.** — "*Assisa* properly commeth of the Latin word *assideo*, which is to associate or set together; so as properly assise is an association or sitting together" (Co. Litt. 153 b).

"Court of Assize"; *V.* s. 13 (4), Interp Act, 1889.

"Rent of Assize"; *V. QUIT RENT.*

**ASSIZES.** — *V. s.* 13 (5), Interp Act, 1889.

*Quà* Purchase of Land (Ir) Acts, “ ‘ Assizes ’ includes a Presenting Term ” (54 & 55 *V. c.* 48, s. 42).

For an account of the ancient remedial “ Assizes,” *V. Pollock & Maitland’s Hist. of Eng. Law.*

**ASSOCIATE.** — A forfeiture of a wife’s Annuity, if she shall “ associate, continue to keep company with, or cohabit, or criminally correspond with ” F., is worked if F. calls at her house and leaves his card like any other visitor, and still more if he is sometimes admitted; the meaning of such a Condition is “ that there should be no communication whatever between the parties ” (per Mansfield, C. J.), “ the receiving a man’s visits, whenever he chuses to call, is ‘ associating with ’ him ” (per Cur. *Dormer v. Knight*, 1 Taunt. 417, 418).

*Cp* COHABITATION.

**ASSOCIATION.** — *V. COMPANY.*

“ Association,” for purposes of Booty, must be military; political Association is not within the phrase (*Banda and Kirwee Booty*, cited CO-OPERATION). *Cp* JOINT CAPTORS.

*Quà* Criminal Law and Procedure (Ir) Act, 1887, 50 & 51 *V. c.* 20, “ ‘ Association,’ includes any Combination of Persons, whether the same be known by any distinctive name or not ” (s. 7).

**ASSOIL.** — “ ‘ Assoile,’ comes either from the Latine, *absolvere*, or from the French, *absouldre*, and signifies to deliver or discharge a man of an Excommunication, and so it is used by Staunford in his Pleas of the Crowne, 2nd Bk, 13 ch. 71 b ” (Termes de la Ley), or to deliver from one’s Sins, as used in 1 H. 4, c. 10, which enacted, that nothing should be adjudged Treason but what was so ordained by the statute of “ King Edward the Third, *whom God assoil.*”

**ASSUMPSIT.** — “ ‘ Assumpsit,’ is a voluntary promise made by word, by which a man assumeth and taketh upon him to performe, or pay, anything to another ” (Termes de la Ley).

The old “ Action of Assumpsit, is an action of trespass on the CASE, whereby a compensation in damages, may be recovered for an injury sustained by the non-performance of a *parol* agreement ” (Selwyn, N. P. 42, *whv*). *Cp* COVENANT.

*Vh* Jacob: 1 Encyc. 364.

**ASSURANCE.** — “ An Assurance is something which operates as a transfer of Property ” (per Kay, L. J., *Re Ray*, 65 L. J. Ch. 320: 1896. 1 Ch. 468). In the old Statutes against Usury (13 Eliz. c. 8. s. 3; 21 Jac. 1, c. 17; 12 Car. 2, c. 13; 12 Anne, St. 2, c. 16), “ Assurance,” in the phrase “ all Bonds, Contracts, and Assurances ” for payment of

money lent upon Usury, meant an Assurance of LAND, "as is the proper legal signification of it" (per Hardwicke, C. J., *Bush v. Gower*, Ca. t. Hard. 237). *Vf Rodger v. Harrison*, cited CONVEYANCE.

"Assurance," ss. 40, 41, Fines and Recoveries Act, 1833, 3 & 4 W. 4, c. 74, "does not mean that which constitutes a complete DISPOSITION of property," — "the deed might be either the whole assurance, or the evidence only of the assurance" (per Romilly, M. R., *Re London Dock Act*, 20 Bea. 497, 498; affd 7 D. G. M. & G. 627).

Where, in any given set of circumstances, the only thing which validates a Contract for the Sale of GOODS is an entry in the auctioneer's book, such entry is an "Assurance" of the goods within s. 4, Bills of Sale Act, 1878 (*Re Roberts, Evans v. Roberts*, 36 Ch. D. 196; 56 L. J. Ch. 952; 57 L. T. 79; 35 W. R. 684; 51 J. P. 757; 3 Times Rep. 678); but a mere receipt, or other recording document, not intended to contain and not containing the contract between the parties, is not such an Assurance (*Newlove v. Shrewsbury*, 57 L. J. Q. B. 476; 21 Q. B. D. 41; 36 W. R. 835; *Grigg v. National Guardian Co.*, 1891, 3 Ch. 206; 61 L. J. Ch. 11; *London and Yorkshire Bank v. White*, 11 Times Rep. 570; *Woodgate v. Godfrey*, L. R. 4 Ex. 59, 5 Ib. 24; *Charlesworth v. Mills*, 1892, A. C. 231; 61 L. J. Q. B. 830; 66 L. T. 690; 41 W. R. 129; 56 J. P. 628; *Ramsay v. Margrett*, 1894, 2 Q. B. 18; 63 L. J. Q. B. 513; 70 L. T. 788. *V. RECEIPT*). A mortgage of Freeholds having Trade Fixtures thereto annexed which pass by such mortgage, is not an "Assurance" of the Fixtures within that section (*Re Yates, Batchelder v. Yates*, 57 L. J. Ch. 697; 38 Ch. D. 112; 59 L. T. 47; 36 W. R. 563; *Re Brooke*, 1894, 2 Ch. 600; 64 L. J. Ch. 21; 71 L. T. 398. *Sv Climpson v. Coles*, cited LICENSE).

*If Coburn v. Collins*, 35 Ch. D. 373; 56 L. J. Ch. 504; 56 L. T. 431; 35 W. R. 610, where an Agreement for sale of business effects by trustees, reserving a lien for the purchase money, was held an "Assurance" by the purchaser requiring registration; *Vthe* distinguished from a Hire-Purchase Agreement in *McEntire v. Crossley*, 1895, A. C. 457; 64 L. J. P. C. 129; 72 L. T. 731.

*V. CONVEYANCE.*

"Upon any Representation or Assurance"; *V. UPON.*

Stat. Def. — 47 & 48 V. c. 54, s. 3; 51 & 52 V. c. 42, s. 10; 54 & 55 V. c. 73, s. 4; 55 & 56 V. c. 11, s. 2. — *Ir.* 13 & 14 V. c. 72, s. 64.

**ASSURANCE COMPANY.** — A Friendly Society is not an "Assurance Co" (*Coppinger v. Gubbins*, 3 J. & La T. 397).

Stat. Def. — 7 & 8 V. c. 110, s. 3; 30 & 31 V. c. 144, s. 7.

*V. INSURANCE COMPANY.*

**ASSURANCE MEMBER.** — *V. Re Albion Life Assree*, 18 Ch. D. 639.

**ASSURED : HAVE FULL ASSURANCE. — V. PRECATORY TRUST.**

If in executing a Power of Appointment, the appointor adds that the appointee "will, I am assured" do something outside the limits of the Power, that does not, necessarily, mean that there has been a bargain for that outside thing between appointor and appointee, so as to void the appointment; the phrase may only mean, "I feel certain he will do it" (*Re Crawshaw*, 59 L. J. Ch. 395; 43 Ch. D. 615).

"Assured," in a Marine Policy; *V. Gt. Britain Steamship Assn v. Wyllie*, 58 L. J. Q. B. 614.

**ASTRARIUS.** — "*Hæres astrarius*, so called of *astre*, an harth of a house; because the aunccestor by conveyance hath set his heire apparent, and his family, in a house and living in his life-time" (Co. Litt. 8 b).

**ASYLUM.** — "'Asylum,' according to its original derivation and in its widest meaning, simply signifies a Refuge, — a place of retreat and security. In its English acceptation, the word is most commonly used to denote an Establishment for the detention and cure of persons suffering from Mental Disease, — and also a place for the reception and up-bringing of destitute ORPHANS. The fact that *some* of its inmates are to be Orphans, will not impart to the Institution generally the character of an Orphan Asylum" (per Ld Watson, *Dilworth v. Commrs of Stamps*, 1899, A. C. 107, 108; 68 L. J. P. C. 4, 5).

Criminal seeking an "Asylum," s. 1, 6 & 7 V. c. 76, means, going to a place where the matter may not be tried (per Crompton, J., *Re Tivnan*, 5 B. & S. 683).

Stat. Def. — 8 & 9 V. c. 100, s. 114, c. 126, s. 84; 16 & 17 V. c. 97, s. 132; 25 & 26 V. c. 111, s. 1; 47 & 48 V. c. 64, s. 16; 53 & 54 V. c. 5, s. 341. — *Ir.* 19 & 20 V. c. 99, s. 2; 31 & 32 V. c. 97, s. 4.

**AT.** — Where there is a bequest to several in common for life with a gift over "at," or "after," or "from," or "from and after," their decease to their children or other issue, — the gift over is to be read distributively and as a gift of the share of each to his children or other issue **RESPECTIVELY** (*Arrow v. Mellish*, 1 D. G. & S. 355; *Willes v. Douglas*, 10 Bea. 47; *Wills v. Wills*, 44 L. J. Ch. 582; L. R. 20 Eq. 342; *Turner v. Whittaker*, 23 Bea. 196; *Abrey v. Newman*, 22 L. J. Ch. 627; 16 Bea. 431; *Alt v. Gregory*, 8 D. G. M. & G. 221; *Waldron v. Boulter*, 22 Bea. 284; *Re Hutchinson*, 51 L. J. Ch. 924; 21 Ch. D. 811; *Vthlc*, per Ld Davey, *Van Gratten v. Foxwell*, 66 L. J. Q. B. 759). *Vf* as to effect of testamentary gift "at" death, 2 Jarm. 517, 524; **DEATH: ON.**

A legacy given "at," "on," or "upon," a particular age or time, confers a contingent interest, such word, in such a context, being equivalent to "if" the event shall happen (*Parker v. Hodgson*, 30 L. J. Ch. 590; 1 Dr. & Sm. 568; Wms. Exs. 1093; *Watson Eq.* 1218).

Power to be executed "at" Marriage; *V. Re Creagh*, cited PREVIOUSLY.

The 38 G. 3, c. 87, s. 1, as extended by 21 & 22 V. c. 95, s. 18, gives power to the Probate Court in cases where the exor or adnor to whom probate or administration has been granted is out of the jurisdiction "at the EXPIRATION of twelve months" from testator's death, to grant special administration to a creditor, legatee, or next of kin; "At," there, means "at or after" (*Re Ruddy*, 41 L. J. P. & M. 63; L. R. 2 P. & M. 330: *Re Colclough*, 19 L. R. Ir. 235); and a like interpretation applies to such a phrase as "at an interval" of a given period (*Re Railway Sleepers Co.*, 54 L. J. Ch. 720; 29 Ch. D. 204: *Vh Re Miller's Dale Co.*, 31 Ch. D. 211).

So, in a Charter-Party, "a Statement shall be furnished to the Merchants at the Expiration of this Charter," means, within a reasonable time after (*Beard v. Rhodes*, 28 L. T. 168).

Where, under Rules of Court, an application to deprive a plaintiff of costs had to be made "at" the Trial, it was held in time when made an hour after the trial was over (*Kynaston v. Mackinder*, 47 L. J. Q. B. 76); but an amendment which may be made "at" the Trial means (*semble*) before verdict (*Wickens v. Steel*, 26 L. J. C. P. 241; 2 C. B. N. S. 488).

A request to a Co. Co. Judge to take a Note of a Question of Law, has to be made "at the Trial," s. 120, Co. Co. Act, 1888, — *i.e.* during, or at the end of, the trial; and a request made an hour and a half after the trial is too late (*Pierpoint v. Cartwright*, 5 C. P. D. 139; 28 W. R. 583). Such request is a Condition Precedent to an Appeal (*McGrah v. Cartwright*, 58 L. J. Q. B. 331; 23 Q. B. D. 3; 60 L. T. 537; 37 W. R. 619; *Cook v. Gordon*, 61 L. J. Q. B. 445).

Under s. 3, 20 & 21 V. c. 43, Recognizances are entered into "at the time of the application" for a Case, if entered into within the 3 days given for applying (*Chapman v. Robinson*, 28 L. J. M. C. 30; 1 E. & E. 25).

Under s. 25, Comp Act, 1867, repld s. 7, Comp Act, 1900, a contract for paid-up shares simultaneously issued would have been registered "at" the Issue of the shares, if registered as soon as practically possible after the completion of the transaction (*Re Tunnel Mining Co.*, 56 L. J. Ch. 1049; 35 Ch. D. 579; 3 Times Rep. 584: *Re Anglo-Colonial Syndicate*, 65 L. T. 847. *Cp* ACCOMPANY). But a lengthened omission to register might be rectified on terms (*Re Darlington Forge Co.*, 56 L. J. Ch. 730; 34 Ch. D. 522: *Re Preservation Syndicate*, 1895, 2 Ch. 768; 64 L. J. Ch. 723; 73 L. T. 341).

As to a requirement that a deposit is to be paid "at or before" entering an Appeal; *V. Ex p. Rosenthal*, *Re Dickinson*, 51 L. J. Ch. 736; 20 Ch. D. 315: *Ex p. Luxon*, *Re Pidsley*, 51 L. J. Ch. 928; 20 Ch. D. 701.

A statement that the consideration of a Bill of Sale was paid "at or before" its execution (though such a phrase is somewhat elastic) is not



true if not paid till 7 days afterwards (*Ex p. Kolph*, W. N. (81) 136).  
*Vf* TRULY SET FORTH.

In *Lloyd v. Gregory* (Cro. Car. 502) a reversionary lease to commence "at" a stated Feast Day, was construed as "from" such day.

*V.* AFTER: FROM: ON: UPON.

When "at" is used as denoting a PLACE, it refers to some fixed and definite place; *e.g.*, therefore, a Marine Policy on pumps whilst engaged "at the wreck" of a vessel, will not cover the loss of the pumps when "on" the vessel after she has been got away from the scene of her wreck, and is moving about from place to place in an endeavour to get her into port (*Difiori v. Adams*, 53 L. J. Q. B. 437: *Vf Wingate v. Foster*, 47 L. J. Q. B. 525; 3 Q. B. D. 582). "At as above" in such a Policy; *V.* *Joyce v. Realm Mar Insrce*, 41 L. J. Q. B. 356; L. R. 7 Q. B. 580.

To unload "at" a stated Wharf, in a Charter-Party, connotes ALONG-SIDE (*Bastifele v. Lloyd*, cited NEAR THERETO AS SHE MAY SAFELY GET).

When "at" is used in a Will or Deed as descriptive of the situation or locality of property, its meaning is synonymous with IN. But in such a phrase as "at or within," the word "at" is rather used in the sense of "near to," or "adjacent to" (*Homer v. Homer*, 47 L. J. Ch. 635; 8 Ch. D. 758, cited 1 Jarm. 796: *Sv, Doe d. Browne v. Greening*, 3 M. & S. 171: *Evans v. Angell*, 26 Bea. 202).

"My Property at R.'s Bank"; *V. Re Prater*, cited *My*.

"All my Land at S."; *V. Re Portal and Lamb*, cited *My*.

An Advowson cannot properly be said to be "at" a place; and, *primâ facie*, a devise of hereditaments "at" a place will not pass an Advowson (*Crompton v. Jarvatt*, 54 L. J. Ch. 1109; 30 Ch. D. 298). *Cp* IN, *whva* as to Debts.

"At, in, or near"; *V.* 1 Jarm. 794: AT OR NEAR.

**AT A FAIR VALUATION.** — *V.* FAIR VALUATION.

**AT ALL TIMES.** — A covenant in a Mining Lease to work the Mine "at all Times," is frequently incapable of literal performance (*Abinger v. Ashton*, L. R. 17 Eq. 358: *Vth, Strelley v. Pearson*, 15 Ch. D. 113).

**AT ALL TIMES OF TIDE.** — Where a Charter-party provides for delivery of the cargo at a Port or as near thereto as the vessel may safely get "at all times of tide," even though it be added "always afloat," the phrase "at all times of tide" is in relief of the ship-owner, so that when the vessel is as near to the port as she can safely get, though from the state of the tide it is not near enough to unload, the LAY DAYS will begin to run, as the voyage will then be terminated (*Horsley v. Price*, 52 L. J. Q. B. 603; 11 Q. B. D. 244). The insertion of this phrase in

a Charter-Party will accordingly materially qualify the usual phrase of, as NEAR THERETO AS SHE MAY SAFELY GET.

**AT ANCHOR.** — *Seemle*, a Vessel held by her anchor is not UNDERWAY, even though that be in the course of her being towed; and being so held she need only exhibit her Anchor Light (*The Romance*, 83 L. T. 488).

**AT AND FROM.** — The risk on a Marine Policy begins at, and as soon as the ship is within, the port when the words are “At and From” (*Palmer v. Marshall*, 8 Bing. 79, 317; *Haughton v. Empire Mar Insree*, 35 L. J. Ex. 117; L. R. 1 Ex. 206; 4 H. & C. 44; *Foley v. United Insree*, L. R. 5 C. P. 155; *Vf, The Copernicus*, 1896, P. 237; 65 L. J. P. D. & A. 108; 74 L. T. 757); but at the commencement of the voyage, when only “FROM” is used (*Small v. Gibson*, 20 L. J. Q. B. 152; 16 Q. B. 156). *Vh, Colonial Insree v. Adelaide Insree* (12 App. Ca. 128; 56 L. J. P. C. 19; 56 L. T. 173; 35 W. R. 636) in which a proposal “at and from,” was accepted “from” a port; and in which, on the construction of the Letter of Acceptance, it was held that parties were *ad idem* and the proposal accepted.

*Vj, Wingate v. Foster*, 3 Q. B. D. 582; 47 L. J. Q. B. 525; *Hydarnes Co v. Indemnity Assree*, 1895, 1 Q. B. 500; 64 L. J. Q. B. 353; 72 L. T. 103; 8 Encyc. 173-177.

As to meaning when this phrase relates to Time, *V. FROM: ON.*

**AT ANY ONE TIME.** — *V. ONE TIME.*

**AT ANY TIME.** — A Power to do a thing, *e.g.* to Revoke Uses, “at any time,” is not confined to one execution; the words are equivalent to “FROM TIME TO TIME, as often as the Donee of the Power shall think good” (*Digges’ Case*, 1 Rep. 173).

In a *Mining Lease*, a Power to surrender “at any Time,” on giving a specified notice, is literally construed as meaning “at any time of any year of the tenancy”; and does not mean that the notice is to expire at the end of any year (*Bridges v. Potts*, 33 L. J. C. P. 338; 17 C. B. N. S. 314). *V. ANY.*

Power to Amend “at any time,” must have some limitation put on it, but it has a wide meaning (*Ex p. Norris*, 56 L. J. Q. B. 93; 17 Q. B. D. 728; *Re Newton*, 1896, 2 Q. B. 403; 65 L. J. Q. B. 686).

Quà an agreement in RESTRAINT OF TRADE, “at any time” *primâ facie* connotes the stipulator’s life (*Hastings v. Whitley*, 2 Ex. 611).

“At any time previously”; *V. PREVIOUSLY.*

*V. ONE TIME.*

**AT DISCRETION.** — Where an Officer is removable “at the DISCRETION” of the persons or body appointing him, that justifies an appointment “during the Pleasure” of the Appointors, — “at Discretion” and “during PLEASURE,” connoting the same thing (*Delea v. Cork*, 19 W. R. 471). *Cp CONVENIENCE.*

**AT HIS DEATH.**—“At his death,” read “from and after his death” (*Thebwall v. Finney*, W. N. (68) 313).

**AT HIS WILL OR PLEASURE.**—*V.* AT DISCRETION: CONVENIENCE.

**AT HOME.**—As to when property is said to be “at home,” and the effect thereof; *V.* Lewin, 720: *Watson Eq.* 112.

**AT INTEREST.**—*V.* MONEY OUT AT INTEREST.

**AT LARGE.**—“Inhabitants at Large”; *V.* REPAIRABLE.  
“Verdict at Large”; *V.* Litt. ss. 367, 368: *Co. Litt.* 228 a.

**AT LAW.**—*V.* RIGHT IN EQUITY: BY LAW.

**AT LEAST.**—Where time is to be computed as so many days “at least,” that means clear days (*R. v. Sulop*, 7 L. J. M. C. 56; 8 A. & E. 173: *Mitchell v. Forster*, 9 Dowl. P. C. 527; 12 A. & E. 472; 9 L. J. M. C. 95: *Young v. Higgon*, 9 L. J. M. C. 29; 6 M. & W. 49: *Norton v. Salisbury*, 16 L. J. C. P. 9; 4 C. B. 32: *Freeman v. Reald*, cited CALENDAR MONTH: *Robinson v. Robinson*, 30 L. J. P. M. & A. 189: *Howes v. Turner*, 45 L. J. C. P. 550; 1 C. P. D. 670: *Mercantile Trust v. International Co.*, 1893, 1 Ch. 484, n, 489: *Cp R. v. St. Mary, Warwick*, cited YEAR). But in *Re Ry Sleepers Co* (54 L. J. Ch. 722; 29 Ch. D. 204), Chitty, J., said, “I do not see any distinction between ‘14 days’ and ‘at least 14 days.’”

*Note.* In this computation, a Notice in a Newspaper appears on the Day of its Date, though the newspaper may be partially published previously (*R. v. Aberdare Canal Co.*, 19 L. J. Q. B. 251; 14 Q. B. 853).

*V.* CLEAR: INTERVAL: WITHIN.

As to value of “at least” in making a prayer or claim alternative, *V.* *La Banque D'Hochelaga v. Murray*, cited NULL.

**AT MATURITY.**—*V.* MATURE.

**AT MERCHANT'S RISK.**—*V.* MERCHANT'S RISK.

**AT ONCE.**—A Commercial Traveller whose duty is to remit the moneys he receives “at once,” should remit each sum received “by the next post” (per Huddleston, B., *R. v. Rogers*, 47 L. J. M. C. 14; 3 Q. B. D. 33).

**AT ONE TIME.**—*V.* ONE TIME.

**AT OR NEAR.**—Anchor Light to be carried “at or near the Stern,” Art. 11, Regns for the Prevention of Collisions at Sea; *V.* *The Gannet*, 1899, P. 230; 68 L. J. P. D. & A. 99; 1900, A. C. 234; 69 L. J. P. D. & A. 49.

**AT OR WITHIN.** — *V.* AT, towards end.

**AT OWNER'S RISK.** — *V.* OWNER'S RISK.

**AT SEA.** — “In a policy of marine insurance where the vessel was described as ‘At Sea’ it was held by the Supreme Colony of Victoria that the condition was complied with, as she had then left port, although she was in a navigable river which had at its mouth a bar difficult to cross” (Wood, 241, citing *Fisher v. Adelaide Insrce*, 2 Victorian Rep. 90).

“Mariner at Sea”; *V.* MARINER.

**AT SHIP'S RISK.** — *V.* SHIP'S RISK.

**AT SIGHT.** — “A Note payable at Sight, by the terms of the contract, must be shown before action brought: that was the case of *Holmes v. Kerrison*, 2 Taunt. 323” (per Parke, B., *Norton v. Ellam*, 6 L. J. Ex. 121; 2 M. & W. 461). But *V.* s. 10, Bills of Ex. Act, 1882.

*Va.* ON DEMAND.

“Sight” and “DATE” of a Bill or Note are not synonymous, — “Sight” connotes when the document is presented (*Sturdy v. Henderson*, 4 B. & Ald. 592).

As to what is a “Sight”; *V.* *Way v. Bassett*, 15 L. J. Ch. 1; 5 Hare, 55.

**AT THE END.** — *V.* END.

**AT THE EXPIRATION.** — *V.* AT: EXPIRATION.

**AT THE KING'S PLEASURE.** — When a punishment is to be imposed “at the King's pleasure,” this is to be done in his Courts and by his Justices (1 Hale, 375; Dwar. 675; Maxwell, 427).

**AT THE KING'S WILL.** — *V.* FELONY.

**AT THE LEAST.** — *V.* AT LEAST.

**AT THE PLEASURE.** — *V.* PLEASURE: AT DISCRETION.

**AT THE PRESENT TIME.** — “The business at the Present Time returns a net profit of 17% on the capital employed”; *V.* *Glasier v. Rolls*, 58 L. J. Ch. 331.

*V.* CAPITAL EMPLOYED.

**AT THE RATE OF.** — *V.* RATE: PER ANNUM: YEAR.

**AT THE TIME OF.** — *V.* *Brown v. Wilkinson*, 16 L. J. Ex. 34; 15 M. & W. 391.

**AT THE TRIAL.** — *V.* AT.

**AT THEIR DEATH.** — Bequest to two or more, and “at their death” to their children, read “at their respective deaths” (*Wills v. Wills*, L. R. 20 Eq. 342; 44 L. J. Ch. 582).

**AT VARIANCE.** — *V. VARIANCE.*

**AT WAR.** — *V. WAR.*

**AT WILL.** — *V. TENANT AT WILL.*

**ATTACH.** — “ ‘Attach,’ is a taking or apprehending by Command or Writ ” (*Termes de la Ley*).

As to the Writ of Attachment, *V. Ord.* 44, R. S. C. and notes thereon in *Ann. Pr.*

**ATTACHED.** — This word does not always mean physically fastened ; it may also mean, superincumbent upon. Thus in citing from the judgment of Cockburn, C. J., *Laing v. Bishopswearmouth* (47 L. J. M. C. 41; 3 Q. B. D. 299), that whatever is “attached” to premises has to be estimated for the purpose of ascertaining its rating value, Esher, M. R., said: —

“ Now does the word ‘attached’ there, mean attached by some physical fastening such as screws or bolts? If it does, a thing weighing tons, which cannot be and never was intended to be lifted, would not be taken into account if not fastened to some part of the building; whereas if it were fastened it would. That, as it seems to my mind, would be a monstrous consequence. I do not think the word ‘attached’ does there mean ‘physically fastened,’ so as to determine whether the thing is to be taken into account or not ” (*Tyne Boiler Works Co v. Longbenton*, 56 L. J. M. C. 12). It was held in that case that heavy machinery kept *in situ* by its own weight had to be taken into account in assessing the rateable value of the premises.

Shop or Warehouse “attached” to a DWELLINGHOUSE, R. 3, Sch B., House Tax Act, 1808, does not mean, mere contact of some part of the two structures, but means attached for use with the Dwellinghouse (per Lord Brampton, *Grant v. Langston*, cited HOUSE).

“ Expenses attaching to the Meeting ” ; *V. MEETING.*

**ATTACHES.** — “ When the liability of the underwriter commences under the contract, the technical mode of expressing this is by saying that ‘the policy attaches,’ or ‘the risk begins to run’ from that time ” (*Arn.* 2).

**ATTACHMENT.** — *V. ATTACH.*

Quà “ Execution or Attachment,” 2 & 3 V. c. 29, — “ Does not ‘ Attachment ’ virtually include a Distress? It is a holding of the goods in PLEDGE ” (per Tindal, C. J., *Lackington v. Elliott*, 7 M. & G. 541).

**ATTACHMENT FOR DEBT.** — A committal under Debtors’ Act, 1869, for non-payment of a Judgment debt, being punitive, though it may be got rid of by payment, is not an “ Attachment for Debt ” within s. 14, Sheriff’s Act, 1887, 50 & 51 V. c. 55 (*Mitchell v.*

*Simpson*, 59 L. J. Q. B. 355; 25 Q. B. D. 183). That section is a re-enactment of s. 1, 32 G. 3, c. 28, under which "Attachment" only applied to persons arrested on Mesne process (*Evans v. Atkins*, 4 T. R. 555). Arrest upon Mesne process "in any action" is abolished (s. 6, 32 & 33 V. c. 62); but the same section enacts "in substance a new form of Mesne process" (*V. note* by Fry, L. J., 59 L. J. Q. B. 359), to which, probably, "Attachment for Debt" applies; and "I think it is applicable to Crown Debts and, at all events, to writs *ne exeat regno*" (per Lopes, L. J., *Mitchell v. Simpson*, sup).

V. IMPRISONMENT.

ATTACHMENT OF DEBT.—*V. DEBT.*

ATTACHMENT OF PLEAS OF THE CROWN.—*V. Jewierson v. Dyson*, 9 M. & W. 540; 11 L. J. Ex. 401; 2 M. & R. 377.

ATTACK.—There is a clear difference between an "Attack" on and an "Engagement" with Pirates (s. 2, Piracy Act, 1850, 13 & 14 V. c. 26). "I take an Attack to be, the use of, or the attempt to use, Force or Violence. It is not necessary to constitute an Attack that there should be any resistance or any actual combat or any blood spilt. 'Engagement' is a different word, and seems, necessarily, to imply that there was something of a combat or fight" (per Dr. Lushington, *The Magellan Pirates*, 1 Spink, 87; 18 Jur. 20). Held in *the*, that an Intimidation by a demonstration of force, was an "Attack" within the section cited.

Quà Prevention of Crime (Ir) Act, 1882, 45 & 46 V. c. 25, "Attack on a DWELLINGHOUSE" means, any crime, cognisable by law, involving the breaking into, firing at, or otherwise assaulting or injuring, a dwellinghouse" (s. 35).

ATTAIN.—A limitation to those "who attain," or "such as attain" a particular age, or marry, creates a Condition Precedent (*Duffield v. Duffield*, 3 Bligh, N. S. 260); but, in some cases the estate would vest at once, subject to be divested on the event not happening (*Muskett v. Eaton*, 45 L. J. Ch. 22; 1 Ch. D. 435); *V.* the cases cited Watson Eq. 1219. *Vf* WHEN.

Devise to T. for life, remainder to his second son, "on his attaining 21. but in default of there being a second son" then over, does not give, to a second son dying under 21, an estate in fee with an executory devise over, but only a remainder contingent on his attaining 21 (*Alexander v. Alexander*, 24 L. J. C. P. 150; 16 C. B. 59).

ATTAINDER.—"Is when a man hath committed FELONY, or Treason, and judgment is passed upon him" (Cowel). *Vf* Termes de la Ley: 1 Encyc. 402.

ATTEMPT.—A mere offer to give security on property if it can be effectually done, is not an "attempt" to ANTICIPATE or incumber the

property within a clause of FORFEITURE (*Graham v. Lee*, 26 L. J. Ch. 395; 23 Bea. 388; 29 L. T. O. S. 46; *Re Amherst*, L. R. 13 Eq. 468); but an Alienation, by one who is *sui juris*, which is in itself void, is an "attempt" to alienate (*Re Porter*, 1892, 3 Ch. 481; 61 L. J. Ch. 688; 41 W. R. 38). Within such a clause the filing by the beneficiary of a Petition under the old Insolvent Debtors Act, was an "attempt" to sell, or dispose of, his interest (*Martin v. Margham*, 14 Sim. 230; approved by Turner, L. J., *Rochford v. Hackman*, 9 Hare, 475); *secus*, of a mere Declaration of Insolvency (*Graham v. Lee*, *sup*), or a Seizure under a judicial process (*R. v. Robinson*, cited ALIENATION).

Within such a clause, it is an Attempt "to intermeddle or interfere in the management" of the estate, to bring an action against the trustees relating thereto without any "probabilis causa litigandi" (*Powell v. Morgan*, 2 Vern. 90), *e.g.* a frivolous action for a Receiver (*Adams v. Adams*, 1892, 1 Ch. 369; 61 L. J. Ch. 237; 66 L. T. 98; 40 W. R. 261); so, of "attempting to interfere with the tenants, annoying them, and so on" (per Lindley, L. J., *Ib.*).

"An Attempt to commit a CRIME is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. *See, R. v. Ring*, *inf.*

"The point at which such a series of acts begins cannot be defined; but depends upon the circumstances of each particular case.

"An act done with INTENT to commit a crime, the commission of which in the manner proposed was, in fact, impossible, is not an attempt to commit that crime.

"The offence of attempting to commit a crime may be committed in cases in which the offender voluntarily desists from the actual commission of the crime itself" (Steph. Cr. 37, 38; *Vf, R. v. Cheeseman*, L. & C. 140; 31 L. J. M. C. 89).

Attempts to procure *Abortion*; *V. ADMINISTER.*

"Attempt to discharge any kind of Loaded Arms," s. 18, 24 & 25 V. c. 100; *V. LOADED ARM.* Probably, a person cannot "attempt" to discharge a Fire Arm which, in fact, cannot possibly be discharged (*R. v. Lewis*, 9 C. & P. 523; *Suthe, R. v. Brown*, *inf.*); but where A. (who had previously threatened B.) pointed a loaded pistol at B., but, before he could discharge it, his hands were seized and the pistol taken from him, A. was guilty of the "attempt" (*R. v. Duckworth*, 1892. 2 Q. B. 83; 40 W. R. 448; 66 L. T. 302, *whc* overrules *R. v. St. George*, 9 C. & P. 483).

Attempts to Murder, ss. 11 to 15, 24 & 25 V. c. 100; *V. R. v. Brown*, 10 Q. B. D. 381; 52 L. J. M. C. 49; 31 W. R. 460; 48 L. T. 270.

There may be an Attempt at THEFT by feloniously trying to pick an empty pocket (*R. v. Ring*, 61 L. J. M. C. 116; 66 L. T. 300; 56 J. P. 552).

**ATTENDANCE.** — “Attendance” (41 V. c. 16, s. 23) means “attendance of a child at a morning or afternoon meeting of a school during not less than 2 hours of instruction in secular subjects” (Lond. Gaz. 31 Dec 1878).

“Non-attendance”; *V.* ABSENTS.

*V.* IN ATTENDANCE.

“Ordinary” and “Extraordinary” Attendances by a Solr; *V. Re Mahon and Sayer*, 1893, 1 Ch. 507; 62 L. J. Ch. 65, 448; 41 W. R. 257.

**ATTENDANT.** — “Attendant,” is where one oweth a duty or service to another, or, as it were, dependeth upon another” (Termes de la Ley). *Cp* DEPENDANT.

Stat. Def. — 16 & 17 V. c. 96, s. 36.

An Attendant Term in Land, is one the original purpose of which is satisfied but which is kept alive to protect the inheritance from incumbrances; the Assignment of such a Term is rendered unnecessary by the Satisfied Terms Act, 1845, 8 & 9 V. c. 112. *Vh* Wms. R. P. Part 4, ch. 1.

**ATTENDED TO.** — Replying to a letter requesting payment of a debt, the debtor wrote, — “I will see that it is attended to”; held, a sufficient ACKNOWLEDGMENT to take the debt out of the Limitation Act, 1623 (*Bartley v. Lees*, Times, 19 Feb 1895). *Cp* I WILL SEE YOU PAID.

But “your Bill shall have Attention,” is ambiguous and does not amount to an ACCEPTANCE of the Bill (*Rees v. Warwick*, 2 B. & Ald. 113).

**ATTENDING.** — *V.* GOING TO.

Costs “attending”; *V.* COSTS.

“Attending on subpœna before a Court of Record”; Stat. Def., 35 & 36 V. c. 76, s. 73; 38 & 39 V. c. 17, s. 109; 50 & 51 V. c. 58, s. 76.

**ATTENTAT.** — “An Attentat, in the language of the Civil and Canon Laws, is anything whatsoever wrongfully innovated or attempted in the suit by the Judge *à quo*, pending an Appeal” (1 Addams, 22, *n*).

**ATTENTION.** — *V.* ATTENDED TO.

**ATTEST : ATTESTATION.** — Where an INSTRUMENT is required to be “attested,” the meaning is, that a witness shall be present at its execution and shall testify on it that it has been executed by the proper person (*Freshfield v. Reed*, 11 L. J. Ex. 193; 9 M. & W. 404).

To “attest” an instrument is not merely to subscribe one’s name to it as having been present at its execution, but includes also, essentially, the presence, in fact, at its execution of some disinterested person capable of giving evidence as to what took place (*Roberts v. Phillips*, 24 L. J. Q. B. 171; 4 E. & B. 450; *Bryan v. White*, 2 Rob.



Ecc. 315: *Seal v. Claridge*, 7 Q. B. D. 516; 50 L. J. Q. B. 316; 29 W. R. 598; 44 L. T. 501: *Sharp v. Birch*, 51 L. J. Q. B. 64; 8 Q. B. D. 111; 30 W. R. 428; 45 L. T. 760: *Ford v. Kettle*, 51 L. J. Q. B. 558; 9 Q. B. D. 139; 30 W. R. 741; 46 L. T. 667: *So*, as to the two latter cases, *Cooper v. Zeffert*, 32 W. R. 402. *Va*, *Wright v. Wakeford*, 4 Taunt. 223: *Doe d. Spilsbury v. Burdett*, 4 A. & E. 1; 9 A. & E. 936; 1 P. & D. 670; 10 Cl. & F. 340). An instrument required to be "witnessed" "at the above date," can only be witnessed by one who is an actual eye-witness (*Body v. Halse*, 1892, 1 Q. B. 203; 61 L. J. Q. B. 57; 66 L. T. 499; 40 W. R. 206).

"'To Attest' is to bear witness to a fact. Take a common example: a notary public attests a Protest; he bears witness not to the statements in that protest, but to the fact of the making of those statements; so, I conceive, the witnesses in a Will bear witness to all that the statute requires attesting witnesses to attest, namely that the signature was made or acknowledged in their presence" (per Dr. Lushington, *Hudson v. Parker*, 1 Rob. Ecc. 26: *Vf* 1 Jarm. 109).

"Attest and Subscribe" a Will; *V. Griffiths v. Griffiths*, L. R. 2 P. & M. 300: *Re Maddock*, 3 Ib. 169: *Roberts v. Phillips*, sup.

"The word 'attestation' is there, — *i.e.* in s. 10, Bills of Sale Act, 1878, — used for 'attestation clause'" (per Jessel, M. R., *Ex p. Bolland*, 52 L. J. Ch. 116; 21 Ch. D. 543).

V. SUBSCRIBE: *Cp* SIGNED.

**ATTORNEY.** — "'Attorney' is an ancient English word, and signifieth one that is set in the turne, stead, or place of another; and of these some be private (whereof our author here speaketh, Litt. s. 66), and some be publike, as attorneys at law, whose warrant from his master is, *ponit loco suo talem attorney suum*, which setteth in his turne or place such a man to be his attorney" (Co. Litt. 51 b). As applied to this second branch of the definition, the title of "Attorney" was abolished by the Jud. Act, 1873, by s. 87 of which "Solicitors, Attorneys, or Proctors" are thenceforth "to be called SOLICITORS of the Supreme Court." *Vf*, as to the title of Solicitor superseding that of Proctor, s. 20, 33 & 34 V. c. 28; s. 17, 40 & 41 V. c. 25.

Attorney "expressly named"; *V. EXPRESSLY NAMED.*

V. POWER OF ATTORNEY: BANKER.

Stat. Def. — 23 & 24 V. c. 127, s. 1; 33 & 34 V. c. 28, s. 3; 61 & 62 V. c. 17, s. 59; (Attorney at Law) 9 & 10 V. c. 95, s. 142. — *lr*. 24 & 25 V. c. 68, s. 1; 29 & 30 V. c. 84, s. 1.

**ATTORNEY GENERAL.** — Stat. Def., 16 & 17 V. c. 107, s. 357; 39 & 40 V. c. 36, s. 284; 42 & 43 Vict. c. 22, s. 9; 46 & 47 V. c. 3, s. 9, c. 51, s. 64; 52 & 53 V. c. 52, s. 7; 55 & 56 V. c. 23, s. 24. — *Scot*. 35 & 36 V. c. 76, s. 73; 50 & 51 V. c. 58, s. 76. — *lr*. 36 & 37 V. c. 69, s. 4; 45 & 46 V. c. 25, s. 35; 50 & 51 V. c. 20, s. 19. c. 58, s. 77.

**ATTORNMEN.** — “ ‘Attornment’ signifies the Tenant’s acknowledgment of a new Lord ” (Cowel). “ ‘Attornment’ is an agreement of the tenant to the grant of the seigniorie, or of a rent, or of the donee in taylor, or tenant for life or yeeres, to a grant of a reversion or remainder made to another ” (Co. Litt. 309 a: Touch. 253: *Vh*, Woodf. 278: Redman, 13: 1 Eneye. 409–413: Termes de la Ley).

An Attornment Clause in a Mortgage, is an “Attornment” within s. 6, Bills of Sale Act, 1878, and is a BILL OF SALE (*Re Willis, Ex p. Kennedy*, 57 L. J. Q. B. 634; 21 Q. B. D. 384; 36 W. R. 793; over-ruling *Hall v. Comfort*, 18 Q. B. D. 11; 56 L. J. Q. B. 185: *V. Green v. Marsh*, 1892, 2 Q. B. 330; 61 L. J. Q. B. 442; 66 L. T. 480: DEEMED). But though the mtge be unregistered, the attornment clause is good for the purpose of creating the relationship of Landlord and Tenant (*Mumford v. Collier*, 25 Q. B. D. 279; 59 L. J. Q. B. 552; 38 W. R. 716: *Vf Kemp v. Lester*, 1896, 2 Q. B. 162; 65 L. J. Q. B. 532: *Sv Scobie v. Collins*, 1895, 1 Q. B. 375; 64 L. J. Q. B. 10; 71 L. T. 775).

*Vf*, AUTHORITY OR LICENSE: NOTICE TO QUIT: EXPIRATION.

**ATTRITION.** — *V. CONFESSION.*

**AUCTION.** — Quà Sale of Goods Act, 1893, “ a Sale by Auction is complete when the Auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any Bidder may retract his bid ” (subs. 2, s. 58): *V. same section for general rules respecting Auctions. Vf*, BIDDING: RESERVED BIDDING: WITHOUT RESERVE: RETRACT.

A covenant not to “ permit any sale by Public Auction ” to take place on the premises, is broken by the covenantor giving a Bill of Sale which enables the grantee, on default, to sell the goods on the premises “ by private contract or public auction ” (*Toleman v. Portbury*, 41 L. J. Q. B. 98; L. R. 7 Q. B. 344; 26 L. T. 292; 20 W. R. 441).

“ Public Auction Rooms ”; *V. Brown v. Arundell*, 10 C. B. 55, 56.

**AUCTIONEER.** — Quà Sale of Land by Auction Act, 1867, 30 & 31 V. c. 48, “ ‘Auctioneer’ shall mean, any person selling by Public Auction any Land, whether in lots or otherwise ” (s. 3).

As to origin of this word, and whether an Auctioneer is a BROKER; *V. Wilkes v. Ellis*, 2 Bl. H. 555.

**AUDITOR.** — Quà Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, “ ‘Auditor’ shall be construed to mean and include every person (other than Justices of the Peace, acting in virtue of their Office) appointed or empowered to audit, controul, examine, allow, or disallow the accounts of any Guardian, Overseer, or Vestryman relating to the receipt or expenditure of the Poor Rate ” (s. 109).

**AUMONE.** — “Tenure by DIVINE SERVICE, as distinguished from FRANKALMOIGNE; Co. Litt. 96 b, 97 a; V. 2 Inst. 460; Britton, 164; Cowel” (Elph. 561).

**AUSTRALIA.** — Insurance on Goods “at and from London to any PORTS OR PLACES in Australia;” *V. Neale v. Rose*, 3 Com. Ca. 236.

Quà the Passengers Australian Colonies Act, 24 & 25 V. c. 52, “Australasia” signified and included “New Zealand and Tasmania, as well as Australia proper” (s. 4).

Quà Kidnapping Act, 1872, 35 & 36 V. c. 19, “ ‘Australasian Colonies,’ shall mean and include the Colonies of New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, and Western Australia” (s. 2); quà 38 & 39 V. c. 51, the phrase means and includes Fiji (s. 8).

“Australian Colonies”; Stat. Def., 5 & 6 V. c. 36, s. 22. Quà Australian Colonies Duties Act, 1873, 36 & 37 V. c. 22, this latter phrase means, “New South Wales, Victoria, South Australia, Queensland, Western Australia, and Tasmania” (s. 2).

“The Commonwealth of Australia”; V. COMMONWEALTH.

**AUTHOR.** — The Adaptor of a foreign drama who introduces into his version material alterations, is an “Author” of a DRAMATIC Piece, within s. 1, 3 & 4 W. 4, c. 15 (*Tree v. Bowkett*, 74 L. T. 77; 12 Times Rep. 181). But a person who employs another to adapt a foreign drama for representation in England and who merely suggests the subject, is not the “Author” of the adaptation within the section (*Shepherd v. Conquest*, 25 L. J. C. P. 127; 17 C. B. 427); and to constitute a person a joint author he must co-operate in the production of the drama itself, and merely touching it up so as to make it more attractive on the stage does not constitute a joint authorship (*Levy v. Rutley*, 40 L. J. C. P. 244; L. R. 6 C. P. 523). *Vf, Hatton v. Kean*, 29 L. J. C. P. 20; 7 C. B. N. S. 268; *Wallerstein v. Herbert*, 16 L. T. 453.

“Author” of a Book, 5 & 6 V. c. 45, includes Alien authors (*Low v. Routledge*, 35 L. J. Ch. 114; 1 Ch. 42): under 8 Anne, c. 19, this was not so (*Jefferys v. Boosey*, 24 L. J. Ex. 81; 4 H. L. Ca. 815).

Within 5 & 6 V. c. 45, the Reporter of a Speech verbatim is the “Author” of the report, if the speaker claims no rights in the speech (*Walker v. Lane*, 1900, A. C. 539; 69 L. J. Ch. 699; 83 L. T. 289; 49 W. R. 95; 16 Times Rep. 27).

Author or Composer of a Musical Composition, 7 V. c. 12; *V. Wood v. Boosey*, L. R. 3 Q. B. 223; 37 L. J. Q. B. 84. *Vf* COMPOSE.

Not the PROPRIETOR of the business, as such, but the actual Operator who takes (or superintends the taking of) the negative is the “Author” of a Photograph within Fine Arts Copyright Act, 1862, s. 1 (*Nottage v. Jackson*, 52 L. J. Q. B. 760; 11 Q. B. D. 627). To use the language of Brett, M. R., in the last case, the superintending operator is “the

person who effectively is, as near as he can be, the cause of the picture which is produced": *Vf*, *Kenrick v. Lawrence*, 25 Q. B. D. 99; 38 W. R. 779; *Melville v. Mirror of Life Co*, 1895, 2 Ch. 531; 65 L. J. Ch. 41. *Note*. — A photographic portrait, taken at a customer's cost, cannot be published without his authority (*Pollard v. Photographic Co*, 58 L. J. Ch. 251; 40 Ch. D. 345; *Cp*, *Ellis v. Ogden*, 11 Times Rep. 50). *Vf*, GOOD: FOR: PERSON.

Stat. Def. — International Copyright Act, 1886, 49 & 50 V. c. 33, s. 11.

Qua P. H. (Scot) Act, 1897, " 'Author of a NUISANCE,' means the person through whose act or default, the Nuisance is caused, exists, or is continued, — whether he be the Owner or Occupier, or both " (s. 3); a def adopted from 19 & 20 V. c. 103, s. 3; 30 & 31 V. c. 101, s. 3.

**AUTHORITY.** — *V*. BY AUTHORITY. *Cp*. BURGH: CONFIRMING: CONSERVANCY AUTHORITY: COUNTY AUTHORITY: DIRECT: HARBOUR: HIGHWAY: LICENSING: LIGHTHOUSE: LOCAL AUTHORITY: METROPOLITAN: PILOTAGE: POLICE: PRISON: PUBLIC AUTHORITY: RATING: RIPARIAN: ROAD: RURAL: SANITARY: SAVINGS: SEWER: SPEND: URBAN.

Stat. Def. — 51 & 52 V. c. 41, s. 78. — *l*. 61 & 62 V. c. 37, s. 109 (1); 62 & 63 V. c. 50, s. 29 (2).

" Authority acting under the Public Libraries Acts "; Stat. Def., 47 & 48 V. c. 37, s. 4. *V*. LIBRARY.

**AUTHORITY OR LICENSE.** — An Agreement authorizing a Brewer to distrain for goods supplied to a tied house, is an " Authority or License to take possession of personal chattels as SECURITY FOR DEBT," s. 4, Bills of Sale Act, 1878, and requires registration (*Pulbrook v. Ashby*, 56 L. J. Q. B. 376; 35 W. R. 779); " Debt," in that connection, is not confined to a debt existing at the time of the Agreement (*l*. and *v*the approved *Stevens v. Marston*, 60 L. J. Q. B. 192; 39 W. R. 129; 64 L. T. 274). But, *semble*, the ruling in those cases does not apply to a power of Distress in a LEASE (and certainly not in a Mining Lease, s. 6) enabling the lessor to distrain elsewhere than on the demised premises (*Re Roundwood Colliery Co*, 1897, 1 Ch. 373; 66 L. J. Ch. 186; 75 L. T. 641; 45 W. R. 324). *Cp* ATTORNMENT. *Vf* LICENSE.

**AUTHORITY OR REQUEST.** — " Warrant, Order, Authority, or Request," ss. 23, 24, 24 & 25 V. c. 98; — a paper merely describing the goods; — *e.g.* " One quart kettle, James Haywod," — amounts to a " Request " (*R. v. Pulbrook*, 9 C. & P. 37); a Deposit Receipt of a Building Society may be a " Warrant, Authority, or Request " (*R. v. Kay*, 39 L. J. M. C. 118; L. R. 1 C. C. R. 257; 22 L. T. 557).

*Vf*. *R. v. James*, 8 C. & P. 292; *R. v. Taylor*, 1 C. & K. 213.

**AUTHORIZE.** — Where a Will directs a fund to be appropriated to provide, *e.g.* an Annuity, from such Investments as are " hereby authorized," the investments are confined to those authorized by the Will, and recourse cannot be had to the powers of the Trustee Act, 1893 (*Re Outhwaite*, 1891; 3 Ch. 494; 60 L. J. Ch. 854; 65 L. T. 144; 40 W. R. 38).

“Person making or *authorizing*” an Illegal Payment, s. 12, Loc Gov (Ir) Act, 1871, 34 & 35 V. c. 109; *V. R. v. Calvert*, 1898, 2 I. R. 266.  
*CP* BY WHOSE.

“Authorize and empower”; *V. PRECATORY TRUST.*

*V. REQUIRED.*

“Authorized PRISON”; Stat. Def., 42 & 43 V. c. 33, ss. 61, 64; 44 & 45 V. c. 58, ss. 62, 65.

**AUTRES HÉRITIERS.**—*V. HÉRITIER.*

**AUXILIARY.**—*V. COLLATERAL: INCIDENTAL OR CONDUCTIVE.*

Quà Army Act, 1881, 44 & 45 V. c. 58, “‘Auxiliary Forces.’ means the Militia, the Yeomanry, and the Volunteers” (subs. 12, s. 190),—a def adopted from 42 & 43 V. c. 33, s. 181. *V. MILITARY FORCES.*

**AVAILABLE.**—An Act of Bankruptcy “available against him (the bankrupt) for *adjudication*” (s. 94 (3), Bankry Act, 1869) was one which might have been acted upon by anybody at the date of the Order for adjudication (*Hood v. Newby*, 52 L. J. Ch. 204; 21 Ch. D. 605; *Re Bedell*, 47 L. J. Bank. 19; 7 Ch. D. 123). “Available” is used in a similar connection in the present Bankry Act, 1883, s. 49 (2); and by s. 168, *Ib.*, “‘Available Act of Bankruptcy,’ means any act of bankruptcy available for a Bankry Petition at the date of the Presentation of the Petition on which the Receiving Order is made.”

S. 198, Bankry Act, 1861, prescribed that after registration of an Arrangement Deed, under s. 192, no process should be “available” against the debtor; held, that “available” meant “put in force,”—*e.g.* that caption, not detention, was meant (per Holroyd, Commr., *Re Chauindy*, 5 L. T. 526), but that case was cited to no purpose in *Marks v. Hall* (36 L. J. Q. B. 40; 7 B. & S. 839; L. R. 2 Q. B. 31), where it was ruled that this phrase meant, “shall not have, and shall cease to have, effect against the debtor.” *Vf Ewart v. Jones*, 15 L. J. Ex. 18; 14 M. & W. 774.

Capital “lost” or “unrepresented by Available ASSETS”; *V. CAPITAL.*

“Available Capital of the Co,” is not a true, but is a deceptive, description of capital which may be raised under Borrowing Powers (*Venezuela Ry v. Kisch*, 36 L. J. Ch. 849; L. R. 2 H. L. 99).

“PROFITS available for DIVIDEND,” in a Co’s Mem, mean those which are reasonably applicable for dividend; and where the Articles adopt Art. 74, Table A, or have an equivalent provision, the Directors are justified in setting aside a considerable amount to Reserve, even though that course may disappoint the holders of Founders’ Shares who are entitled to dividend after the payment of a prescribed dividend to the Ordinary shareholders (*Fisher v. Black & White Co*, 17 Times Rep. 146; 1901, 1 Ch. 174; 70 L. J. Ch. 175; 49 W. R. 310).

“Available Balance in Hand,” within rules regulating Withdrawal of

Deposits in a Building Socy, means not only "money in the coffers of the Socy, but also money which, without undue loss or undue delay, they could realize, — e.g. Consols, or any other Security capable of being readily realized" (per Lopes, L. J., Esher, M. R., concurring, *Brett v. Monarch Socy*, 1894, 1 Q. B. 367; 63 L. J. Q. B. 237; 70 L. T. 146; 42 W. R. 209; 58 J. P. 367). *Cp* PROVIDED THE FUNDS PERMIT.

A document merely put into a witness' hands to challenge his recollection, is not thereby made "Available"; and, therefore, an unstamped Bill of Ex., or Promissory Note, may be so used, although s. 38 (1), Stamp Act, 1891, says it shall not be "available for any purpose whatever" (*Birchall v. Bullough*, 1896, 1 Q. B. 325; 65 L. J. Q. B. 252; 74 L. T. 27; 44 W. R. 300); but it cannot be used as evidence of the receipt of the money (*Ashling v. Boon*, 1891, 1 Ch. 568; 60 L. J. Ch. 306; 64 L. T. 193; *Green v. Davies*, 3 L. J. O. S. K. B. 185; 4 B. & C. 235). *Cp* *Evans v. Prothero*, cited EVIDENCE OF A CONTRACT, at end.

Average available width; *V.* WIDTH.

**AVENTURE.** — *V.* ADVENTURE.

**AVENUE.** — "Avenue to a house," 5 & 6 W. 4, c. 5, s. 54; *V.* *Ramsden v. Yeates*, 50 L. J. M. C. 135; 6 Q. B. D. 583; 29 W. R. 628; 44 L. T. 612.

**AVERA.** — *V.* AVERAGE, at end.

**AVERAGE.** — Quà Shipping Business, "the doctrine of 'Average,' is derived from the Maritime Law of Rhodes" (per Halsbury, C., *Kuabon S. S. Co v. London Assree*, 1900, A. C. 10; 69 L. J. Q. B. 89). "The word 'Average' is from the Italian, 'Averia,' damage" (1 Maude & P. 491). It is used in 32 H. 8, c. 14, and there, and generally, it means the "CONTRIBUTION which Merchants and others pay proportionably towards their losses that have their goods cast out in a tempest for the saving of the Ship, or of the Goods or Lives of them that are therein" (Termes de la Ley). *Vf* Park, ch. 7.

"The word 'Average,' far from being a Term of Art — (except in so far as, according to the evidence, usage may have limited its meaning to loss or damage to the goods themselves), — or a word with a rigid or unchanging signification, necessarily including expenses in the defence or safeguard of the subject-matter insured, is a word used in a great variety of phrases, as applicable to different subject-matters, and not with any fixed or settled application" (per Willes, J., *Kidston v. Empire Mar Insree*, 35 L. J. C. P. 256; L. R. 1 C. P. 535).

As to the meaning of "Average" in the Contract of Affreightment; *V.* 1 Maude & P. 426: Carver, Part 2, ch. 12.

As to the meaning of "Average" in a Marine Insurance; *V.* 1 Maude & P. 491: Arn. 6th Ed. 919–926. Maclachlan on Merchant Shipping: *Kidston v. Empire Insree*, sup.

“Average due on the Salvage”; *V. Broomfield v. Southern Insrce*, L. R. 5 Ex. 192; 39 L. J. Ex. 186.

“Warranted free from all Average”; *V. Asfar v. Blundell*, cited PROFIT: *General Insrce of Trieste v. Royal Ex. Assrce*, 2 Com. Ca. 144: WARRANTED FREE FROM AVERAGE.

An exception in a Marine Time Policy thus, — “‘free from average’ under (say) 3 per cent.,” means that the losses are to be settled at the end of each voyage, — and not that the losses on all the voyages made by the ship during the time covered by the Policy are to be added together, — and only the damage exceeding the agreed percentage on each distinct voyage is recoverable under the Policy (*Stewart v. Merchants’ Mar Insrce*, 55 L. J. Q. B. 81; reversing Stephen, J., 54 L. J. Q. B. 387; 16 Q. B. D. 619, and commenting on *Bluckett v. Royal Ex. Assrce*, 1 L. J. Ex. 101; 2 Cr. & J. 244, and *Donnell v. Columbian Insrce*, 2 Sumner, 366: *Brooks v. Oriental Insrce*, 7 Pickering, 258).

*Vf, Marine Insrce v. China Transpacific Co*, 56 L. J. Q. B. 100; 11 App. Ca. 573; 55 L. T. 491; 35 W. R. 169; 6 Asp. 68: *Price v. Al. Ships Small Damage Insrce*, 57 L. J. Q. B. 459; 58 Ib. 269: Rose. N. P. 442: Abbott, Part 3, ch. 8: Lowndes, 21: 1 Encyc. 426-440: GENERAL AVERAGE: PARTICULAR AVERAGE: F. P. A.: PRIMAGE: LIBERTY TO AVERAGE.

“‘Average,’ *avera*, *averia*, *averii*, *affri*; — beasts of burden, oxen, farm horses: *Averagium*, the work done by them; particularly where it was done as a service due to the lord; Spelm. Gloss. *Avera*: 1 Ellis. Introd. Domesday, 263: Seebohm, Eng. Vill. Comm. 67, 297. *Averum* means revenue, effects, goods; Spelm.: Hale, Domesday of St. Paul’s (Camd. Soc.), Introd. lxvi” (Elph. 561). “By grant *de omnibus averiis suis*, Deer shall not pass” (14 Vin. Ab. 108, citing 18 E. 4, 14 b). Cowel says, “‘Avera’ is found in Domesday Book, and signifies a days-work of a Ploughman, that is eight pence.”

**AVERAGE ATTENDANCE.** — Quà Elementary Education Act, 1891, 54 & 55 V. c. 56, “‘Average attendance,’ shall, for the purposes of the Fee Grant, mean, average attendance calculated in accordance with the Minutes in force at the commencement of this Act” (s. 10).

**AVERAGE QUALITY.** — *V. FAIR AVERAGE QUALITY.*

**AVERAGE UNION RATE.** — S. 5, Poor Law Rating (Ir) Act, 1876, 39 & 40 V. c. 50, prescribes that, quà that section, “Average Union Rate” means “the Poundage Rate upon the several hereditals rated to the relief of the poor in such Union which would be necessary for raising the amount then required to defray the Indoor Relief expenses chargeable against the several Electoral Divisions constituting such Union, if the same, instead of being so chargeable as aforesaid, were charged against the whole Union.”

**AVERAGE WEEKLY EARNINGS.**—“EMPLOYMENT,” throughout s. 1, Workmen’s Comp Act, 1897, means, “Continuous Employment,” and, therefore, the “Average Weekly EARNINGS,” mentioned in the Sch to the Act have to be calculated on the basis of the weekly earnings during the one period of continuous employment immediately preceding the injury (*Jones v. Ocean Coal Co.*, 1899, 2 Q. B. 124; 68 L. J. Q. B. 731; 80 L. T. 582; 47 W. R. 484; *Appleby v. Horseley Co.*, 1899, 2 Q. B. 521; 68 L. J. Q. B. 892; 80 L. T. 853; 47 W. R. 614). The Court of Appeal unanimously held that there can be no compensation given to a workman who has not been in the employment at least two weeks, for on less than that no weekly “average” can be struck (*Lysons v. Knowles*, 1900, 1 Q. B. 780; 69 L. J. Q. B. 449; 82 L. T. 189; 48 W. R. 408; *Stuart v. Nixon*, 1900, 2 Q. B. 95; 69 L. J. Q. B. 598); but this ruling was unanimously reversed in H. L., their lordships holding that the idea in this Act of the word “Average” is simply to direct that one week shall be taken with another, not as restrictive of the right of compensation given to all workmen who are within the Act, but only as a guide with respect to Scale and Amount (*Ib.*, 17 Times Rep. 156; 70 L. J. Q. B. 170; 1901. A. C. 79; 84 L. T. 65).

In order to ascertain these “Average Weekly Earnings during the previous 12 months” of a Workman, the total actual amount earned by him during that time should be added together and divided by 52 (*Keast v. Barrow Hematite Co.* 63 J. P. 56; 15 Times Rep. 141); — the words “if he has been so long employed,” in Sch 1 (1*b*), have nothing to do with employment in different grades, the phrase simply meaning, “employed by the same employer” (*Price v. Marsden*, 1899, 1 Q. B. 493; 68 L. J. Q. B. 307; 80 L. T. 15; 47 W. R. 274). S. 2 of the same Sch directs that in fixing the weekly payment to the workman “regard shall be had” to his “Average Weekly Earnings” before, and his average wage-earning power after, the accident; but that does not, as a matter of law, cut down the limit of 50 per cent of his Average Weekly Earnings on the basis of which the weekly payment is to be awarded under s. 1*b* (*Illingworth v. Walmsley*, 1900, 2 Q. B. 142; 69 L. J. Q. B. 519; 82 L. T. 647).

*V.* DISABLE: EARNINGS: PERSONAL LABOUR.

**AVERMENT: AVER.**—*V.* Co. Litt. 362*b*: Cowel: Elph. 105, *n.*

**AVOID.**—“To avoid sale,” s. 11 (2), Bankry Act, 1890; *V.* UNDER.  
*V.* VOID.

**AVOIDABLE.**—Avoidable Damages; *V.* DAMAGE.

**AVOIDANCE.**—“Is when a BENEFICE becomes void of an Incumbent” (Cowel). *Vh.* Phil. Ecc. Law, Part 2, ch. 12. *V.* NEXT AVOIDANCE. *Cp.* LAPSE.



Plea of Confession and Avoidance, is where the matter alleged is admitted, but some other thing is set up to justify or excuse it: *Vh*, 1 Encyc. 441, 442.

**AVOUÉ.** — An Avoüé, in Canada, can bind his Client (until désaven) by any PROCEEDING in the Cause, though taken without his client's authority, or even in defiance of his prohibition (*King v. Pinsonneault*, L. R. 6 P. C. 245; 44 L. J. P. C. 42; 32 L. T. 174; 23 W. R. 576, *whva* as to *Avocat*). A Canadian Avoüé is the equivalent of an English SOLICITOR.

**AVOWTERER.** — “Avowterer,” is an adulterer with whom a married woman continues in adultery” (Termes de la Ley).

**AWAITING.** — By its subs. 4, “awaiting his Trial,” in s. 6, Prevention of Crime (Ir) Act, 1882, “means, Committed for Trial, or charged with any Indictable Offence by Indictment or Inquisition.”

**AWARD.** — “Award on a Submission,” s. 12, Arb Act, 1889; *V*. ARBITRATION: SUBMISSION.

The finding of an Official Referee to whom an action has been sent for TRIAL, under s. 14, Arb Act, 1889, is not an “Award, or Certificate,” within s. 8, Jud. Act, 1884 (per Fry, L. J., *Munday v. Norton*, cited ARBITRATION).

“Set out, allot, and award”; *V*. SET OUT.

Stat. Def. — “Award of Coal Mines,” “Award of Iron Mines,” 34 & 35 V. c. 85, s. 2. “Award of the Land Commrs,” 47 & 48 V. c. 54, s. 3.

*V*. FINAL AWARD.

**AWAY.** — *V*. LEAD AWAY: TAKE AWAY.

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## BACCARAT — BAC

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**BACCARAT.** — “Baccarat, as ordinarily understood in England in 1894, comprised Baccarat in both forms,” *i.e.* (1) Baccarat *Chemin de Fer*, and (2) Baccarat *Banque*, — and either is a breach of an agreement prohibiting “Baccarat” (*Fairtlough v. Whitmore*, 64 L. J. Ch. 386; 72 L. T. 354; 43 W. R. 421).

**BACK.** — *V.* SEE BACK.

**BACKBARE.** — An offender against the Forest Laws taken “with the Manner,” *e.g.* “Back-Bare,” was “where a man hath killed a Wild-Beast in the Forest and is found carrying him away” (*Manwood, Hunting*).

**BACK FREIGHT.** — *V.* *The Cargo ex Argos*, L. R. 5 P. C. 134; 42 L. J. Adm. 1. *Vth*, 1 Maude & P. 364, *n* (c): *Gunnsstad v. Price*, L. R. 10 Ex. 65.

**BACK STREET.** — *V.* *Shiel v. Sunderland*, 30 L. J. M. C. 215; 6 H. & N. 796.

**BACKBERIND.** — “‘Backberind Theefe,’ is a Theefe that is taken with the Manner, *i.e.* having that found upon him (being followed with the HUE AND CRIE) which he hath stolen, whether it be mony, linnen, woollen, or stufte” (*Termes de la Ley*). *Vf*, Cowel.

**BACKWARDATION.** — The opposite of CONTINUATION.

**BACKWARDS.** — “Forwards and Backwards”; *V.* FORWARDS.

**BAD.** — “When you say a TITLE is bad, the expression is ambiguous, and must be contrasted with what is called a GOOD TITLE. I understand a Good Title to be one which an unwilling purchaser can be compelled to take. Contrasted with that, any Title which an unwilling purchaser cannot be forced to take is a Bad one. But there are Bad Titles and Bad Titles, — Bad Titles which are good holding titles, although they may be open to objections which are not serious, are bad titles in a Conveyancer’s point of view but good in a Business Man’s point of view. I do not know of any case in which a Court of Equity has decreed Specific Performance and compelled the purchaser to pay his money for nothing at all, when he shows the Court that the title he is asked to have forced on him is bad, in that sense that he can be turned out of possession to-morrow” (per Lindley, L. J., *Scott v. Alvarez*, cited INVESTIGATING).

**BAG.** — Quà Hop (Prevention of Frauds) Act, 1866, 29 & 30 V. c. 37, a “Bag,” or “Pocket,” of Hops, includes “any package used for contain-

ing hops, or in which hops are packed and sent from the grower or producer to any FACTOR, MERCHANT, or BREWER, or other person, either before or after a sale thereof" (s. 1).

**BAGGAGE.** — Baggage, means such articles of Necessity, or Personal Convenience, as are usually carried by passengers for their personal use (*Boman v. Maxwell*, 9 Humph. 624) and is, *semble*, synonymous with PERSONAL LUGGAGE, and, in the United States, is the word generally used for what in England is more frequently called Personal Luggage. "By 'LUGGAGE' we are to understand such articles of Necessity or Personal Convenience as are usually carried by passengers for their personal use; and not merchandize or other valuables, although carried in the trunks of passengers, which are not designed for any such use but for other purposes, such as sale and the like" (Story on Bailments, s. 499, *whv* acutely examined by E. H. Bennett in a note to the 5th Ed., wh note is appended to *Phelps v. Lond. & N. W. Ry*, 19 C. B. N. S. 326-330, where and at p. 475 of 9th Ed. of Story the American decisions on "Baggage" will be found).

**BAIL.** — " 'Baile,' is when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by Law baileable, offereth surety to those which have authority to baile him, which Sureties are bound for him to the Kings use in a certaine summe of money, or body for body, that he shall appeare before the Justices of Gaole-delivery at the next Sessions, &c. Then upon the Bonds of these Sureties, as is aforesaid, he is bailed, — that is to say, set at liberty untill the day appointed for his appearance.

"Master Manwood (Part 1, of his Forest Law, p. 167), maketh a great difference between Baile and Mainprise, in these words, — 'And note, that there is a great diversity betweene Baile and Mainprise, for hee that is mainprised is alwayes said to be at large and to goe at his owne liberty out of ward, after hee is put to Mainprise, untill the day of his appearance, by reason of common Summons, or otherwise. But it is not so where a man is put to Bayle by foure or two men, . . . for there hee is alwayes accounted by the law to bee in their ward and custody for the time: and they may, if they will, hold him in ward or in prison till that time, or otherwise at their will: so that he that is bayled shall not be said, by the law, to be at large or at his owne liberty'" (Termes de la Ley). *Vf*, 2 Hale's Pleas of the Crown, c. 15. *Cp*, MAINPRIZE.

The foregoing authorities were cited by Pollock, B., in *Re Nottingham Corp* (cited AMERCIAMENT), and he ruled that an Estreated RECOGNIZANCE, being for a Certain Sum and a Debt of Record to the Crown, is not an "Amerciament"; but that that word is "clearly applicable to the case of Mainpernors who fail to produce the body of the person for whom they have made themselves liable."

*Note.* — An agreement to indemnify one who “bails” another is invalid (*Consolidated Exploration Co v. Musgrave*, 1900, 1 Ch. 37; 69 L. J. Ch. 11).

*17*, 1 Encyc. 443-447; and, as to Admiralty Bail, *Ib.* 447-449. *Cp.*, BAILIFF.

Stat. Def. — 32 & 33 V. c. 38, s. 2.

**BAILLEE.** — “Bailee” is the receiver of a BAILMENT. *Quà Sale of Goods Act*, 1893, “‘Bailee,’ in Scotland, includes Custodian” (s. 62).

Larceny by Bailee; *V.* cases BAILMENT, 3rd par.

**BAILIFF.** — “‘Baylife,’ is an Officer that belongeth to a Manor, to order the husbandrie; and hath authority to pay Quit Rents issuing out of the Manor, fell trees, repair houses, make pales, hedges, distrain beasts doing hurt upon the ground, and divers such like. This Officer is he whom the ancient Saxons called a Reeve” (*Termes de la Ley*).

“‘*To the bailife* (a le baily),’ s. 79, *Litt.* This word bailie, as some say, commeth of the *French* word *baylife*, in *Latin*, *ballivus*; but in truth baily is an old *Saxon* word, and signifieth a safe keeper or protector, and *baile* or *ballium* is safe keeping or protection: and thereupon we say, when a man upon surety is delivered out of prison, *traditur in ballium*, he is delivered into bayle, that is, into their safe keeping or protection from prison: and the sherife that hath *custodiam comitatús* is called *ballivus*, and the county *balliva sua*” (*Co. Litt.* 61 b). *V.* BAIL: Cowel: Jacob.

“Bailiff” of a Court, s. 8, 7 & 8 V. c. 19, means, one who receives his appointment from the Judge of the Court (*Tarrant v. Baker*, 14 C. B. 199; 23 L. J. C. P. 21).

In another sense, similar to its primary meaning, “Bailiff” means, a person having the care of property and accountable for the uncertain profits thereof (*Co. Litt.* 172 a: *Com. Dig.* “Accompt” A 3, E 4).

Bailiff to Distrain for Rent must now be authorized by a Certificate of a Co. Co. Judge (s. 7, 51 & 52 V. c. 21, on *whv Hogarth v. Jennings*, 1892, 1 Q. B. 907; 61 L. J. Q. B. 601). *Ij*, A.

*Ij*, 1 Encyc. 450.

Stat. Def. — *Co. Co. Act*, 1888, s. 186. — *Ir.* 27 & 28 V. c. 99, s. 3.

**BAILMENT.** — “‘Bailement,’ is a DELIVERY of things, whether it be of Writings, Goods, or Stuffle to another, — sometimes to be delivered backe to the baylor, *i.e.* to him that so delivered it, — sometimes to the use of the baylee, *i.e.* of him to whom it is delivered; and sometimes also it is delivered to a third person” (*Termes de la Ley*).

“When one person delivers, or causes to be delivered, to another any moveable thing in order that it may be kept for the person making the delivery, or that it may be used, gratuitously or otherwise, by the per-

son to whom the delivery is made, or that it may be kept as a pledge by the person to whom delivery is made, or that it may be carried, or that work may be done upon it by the person to whom delivery is made gratuitously or not, and when it is the intention of the parties that the specific thing so delivered, or the article into which it is to be made shall be delivered either to the person making the delivery or to some other person appointed by him to receive it, the person making the delivery is said to bail the thing delivered; the act of delivery is called a Bailment; the person making the delivery is called the Bailor; the person to whom it is made is called the Bailee" (Steph. Cr. 215).

The term "Bailment," according to its ordinary legal sense, "relates to something which is in the hands of a person who is to return it in specie," e.g., *quà* Larceny, by a Bailee (per Cockburn, C. J., *R. v. Hassall*, 30 L. J. M. C. 175; L. & C. 58; *R. v. Ashwell*, 16 Q. B. D. 190; 55 L. J. M. C. 65; 53 L. T. 773; 34 W. R. 297; 50 J. P. 181. *See, R. v. Flowers*, 16 Q. B. D. 643; 55 L. J. M. C. 179; 54 L. T. 547; 34 W. R. 367; 50 J. P. 648; *R. v. De Banks*, 53 L. J. M. C. 132; 13 Q. B. D. 29; *R. v. Holloway*, 66 L. J. Q. B. 830; 77 L. T. 247). *Vh*, Arch. Cr. 418; *Rosc. Cr.* 560.

As to the distinction between a Bailment and a Sale; *V. South Australian Insree v. Randell*, L. R. 3 P. C. 101.

*Vf*, *Coggs v. Bernard*, 1 Sm. L. C. 201; Add. C. 343-382; 1 Encyc. 451-465.

**BAINES' ACTS.** — The Criminal Procedure Act, 1848, 11 & 12 V. c. 46:

The Quarter Sessions Act, 1849, 12 & 13 V. c. 45.

**BAITING.** — Coursing rabbits with dogs in an inclosure from which they cannot escape, is not "Baiting" within s. 3, 12 & 13 V. c. 92 (*Pitts v. Millar*, 43 L. J. M. C. 96; L. R. 9 Q. B. 380; 38 J. P. 615). In that case, Cockburn, C. J., said, "The word has usually been understood to apply to the case of an animal which is tied to a stake or peg, or so confined as not to be able to get away."

**BAKEHOUSE.** — *Quà* Bakehouse Regn Act, 1863, 26 & 27 V. c. 40. " 'Bakehouse,' shall mean any place in which are baked Bread, Biscuits, or Confectionery, from the baking or selling of which a Profit is derived" (s. 2); — a def adopted in Sch 4, Part 2, 41 V. c. 16, and in s. 141, P. H. (London) Act, 1891. *Vh*, 1 Encyc. 465. *Va*, NON TEXTILE FACTORIES: RETAIL BAKEHOUSE: UNDERGROUND.

**BAKER.** — A Covenant not to carry on the business of a "Baker or Confectioner" on specified premises, is broken by selling bread or confectionery there, though it be not made there (*Hodgson v. Coppard*, 30 L. J. Ch. 20; 29 Bea. 4). *Cp*, BUTCHER.

**BALANCE.** — “Balance,” R. 17, Ord. 21, R. S. C.; *Vth*, Ann. Pr.

“Balance,” in a letter, held to couple with it a previous receipt, so that both documents constituted a sufficient mem within the Statute of Frauds (*Studds v. Watson*, 28 Ch. D. 305). For a similar purpose, “Purchase” was held to mean “Agreement to Purchase” (*Long v. Millar*, 4 C. P. D. 450). *Vf. Care v. Hastings*, cited ARRANGEMENT.

*Cp.* “Property purchased,” sub PURCHASE.

Where a BILL OF SALE prescribes payment by stated instalments up to a certain date, and “then the Balance is to be paid,” that latter phrase accurately describes the amount that would be due at the end of the period (per Kay, L. J., *Edwards v. Marston*, cited STIPULATED).

An acceptance of an Order to pay “the Balance” due to A., does not preclude the acceptor from retaining his own claim on the Balance (*Ex p. Garrard, Re Lewer*, 5 Ch. D. 61; 46 L. J. Bank. 70; 25 W. R. 364; 36 L. T. 42).

“Balance of Account”; *V. Pope v. Banyard*, 3 M. & W. 424; 7 L. J. Ex. 182; *Townson v. Jackson*, 13 M. & W. 374; 14 L. J. Ex. 57; *Belford Union v. Pattison*, 11 Ex. 623; 1 H. & N. 523; 26 L. J. Ex. 115; and as to the same phrase in s. 56, Co. Co. Act, 1888, *V. Avards v. Rhodes*, 22 L. J. Ex. 106; 8 Ex. 312, 316; Ann. Co. Co. Pr., Part 2, ch. 1.

“Available Balance”; *V. AVAILABLE*.

“Balance in Hand”; *V. IN HAND*.

“Balance Order”; *V. Re Sanders*, 1 Morr. 185; *Re Tennant*, 3 Ib. 166; *Westmoreland Slate Co v. Feilden*, 1891, 3 Ch. 15; 60 L. J. Ch. 680; *while* rules it is not a JUDGMENT. “A Balance Order, is merely an Order for the collection of Assets” (per Lindley, M. R., *Pritchett v. English & Colonial Syndicate*, 1899, 2 Q. B. 434). *Vf.*, 1 Encyc. 468.

“Last annual Balance Sheet”; *V. LAST*.

Bequest of “Balance,” *V. Hill v. Mason*, 2 Jac. & W. 248; of “Small Balance,” *V. Page v. Young*, L. R. 19 Eq. 501; 23 W. R. 479.

As to effect of “Balance” in a context to cut down a testamentary gift to Personalty; *V. Coard v. Holderness*, 20 Bea. 147. *Vh.* REMAIN.

**BALE.** — “Bale,” “is an ambiguous word which may mean many things, and therefore it is for a jury to say what it means in a Mercantile Contract” (per Crosswell, J., *Gorrissen v. Perrin*, 27 L. J. C. P. 32); and in that case the jury were supported in finding that a Bale of Gambier, meant a compressed package weighing about 2 cwt. (27 L. J. C. P. 29; 2 C. B. N. S. 681).

“In the Cotton Trade at Alexandria, Surat, and Calcutta, — a Bale means, a compressed bale” (Wood, 369, citing *Taylor v. Briggs*, 2 C. & P. 525). “In the cotton trade at Charlestown a ‘Round Bale’ of cotton means, an uncompressed bale; and a ‘Square Bale’ a compressed one” (Wood, 372, citing *Benson v. Schneider*, 7 Taunt. 271).

**BALK.** — “The unploughed strip between two *selions*; Seebohm, Eng. Vill. Comm. 2, 20” (Elph. 562, *who*).

**BALL.** — *V.* PUBLIC BALL.

**BALLAST.** — Stat. Def., Thames Conservancy Act, 1894, s. 3.

**BALLASTAGE.** — Ballastage of ships, is “a TOLL for liberty to take up Ballast out of the bottom of a PORT” (Hale, De Portibus Maris, ch. 6). “Ballastage Rates”; Stat. Def., 16 & 17 V. c. 131, s. 1.

**BALLET.** — Ballets are of two kinds, “(1) Ballets *divertissement*, where there is no train of ideas or story, but only an agreeable entertainment; and (2) Ballet *of Action*, which has a story, and which may contain all the emotions of Tragedy or Comedy” (per Erle, C. J., *Wigan v. Strange*, cited STAGE PLAY).

**BALTIC.** — In a Marine Insurance on a voyage “to any port in the *Baltic*,” evidence is admissible to prove that the Gulf of Finland is within the Baltic, although the two seas are treated as separate and distinct by geographers (*Uhde v. Walters*, 3 Camp. 15).

“London Baltic printed Rates”; *V. Southampton Colliery Co v. Clarke*, 40 L. J. Ex. 8; L. R. 6 Ex. 53.

“Negligence Clause, as per *Baltic Bill of Lading*”; *V. Serraino v. Campbell*, cited CONDITIONS AS PER CHARTER-PARTY.

**BANISHMENT.** — Banishment and Exilement are synonyms, and import a compulsory loss of one’s country; but “no subject can be exiled or banished his country, whereby he shall *perdere patriam*, but by authority of Parliament” (Co. Litt. 133 a: *Newsome v. Bowyer*, 3 P. Wms. 38: *Vf*; Cowel: 1 Encyc. 475, 5 Ib. 239, 252–254). *Cp*, ABJURATION.

**BANK.** — “Bank” of a Canal, includes its towing-paths (*Mon. Ry & Can Co v. Hill*, 28 L. J. Ex. 283; 4 H. & N. 421).

“The Bank of the SEA, is the utmost border of dry land” (Callis, 73, *i.e.* it begins where the land side of the SHORE ceases); “and is of the same materials with the grounds wherein and whereon it standeth: it is sometimes Natural and in some places Artificial. Natural, as mountains raised higher than other grounds adjoining; Artificial, when it is cast by man’s hand” (Ib.). A Sea WALL differs from a Bank, in that it is Artificial only, and also as to its ownership, for “the ownership and property of a Wall doth appertain to him who is bound to repair the same, though his ground lie not next thereto; but of a Bank, the property and ownership is his whose grounds adjoin thereto” (Callis. 74). *Vf*. FRONTING.

“The Bank,” in a modern Act, is generally, by the Act’s interp clause, defined as, the BANK OF ENGLAND, or BANK OF IRELAND, as the

case may require; *e.g.* Lands C. C. Act, 1845, s. 3; 8 & 9 V. c. 19, s. 3; 45 & 46 V. c. 51, s. 13 (7); 55 & 56 V. c. 39, s. 9; National Debt Redemption Act, 1893, 56 & 57 V. c. 64, s. 7.

Bequest of property at testator's Bank; *V. MY.*

"Bank," or "Bench," as used in the phrases King's Bench, Common Bench; *V. Co. Litt.* 71 b.

*V. LOCAL BANK: SAVINGS.*

**BANK CHARGES.**— This phrase, in an action on a Bill of Ex., is equivalent to "Expenses of NOTING," and may be specially endorsed as a LIQUIDATED DEMAND (*Dando v. Boden*, 1893, 1 Q. B. 318; 62 L. J. Q. B. 339; 68 L. T. 90; 41 W. R. 285).

**BANK HOLIDAYS.**— *V.* 34 & 35 V. c. 17; 38 & 39 V. c. 13.

**BANK NOTE.**— Stat. Def., Bank Charter Act, 1844, 7 & 8 V. c. 32, s. 28; Stamp Act, 1891, s. 29.

"The Bank Notes Acts, 1826 to 1852"; "The Bank Notes (Scot) Acts, 1765 to 1854"; "The Bank Notes (Ir) Acts, 1825 to 1864"; *V. Sch* 2, Short Titles Act, 1896.

Part of a Bank Note; *V. PART.*

**BANK OF ENGLAND.**— *V.* s. 12 (18), Interp Act, 1889.

"The Bank of England Acts, 1694 to 1892"; *V. Sch* 2, Short Titles Act, 1896.

**BANK OF IRELAND.**— *V.* s. 12 (19), Interp Act, 1889.

"The Bank of Ireland Acts, 1808 to 1892"; *V. Sch* 2, Short Titles Act, 1896.

**BANK STOCK.**— Bequest of; *V. Bignall v. Rose*, 24 L. J. Ch. 27. In *Drake v. Martin* (23 Bea. 89; 26 L. J. Ch. 786) a bequest of "all MY Bank Stock," was held to pass the Consols of the testator, he having nothing else that would answer the description: *See Beahan v. Beahan*, Ir. Rep. 3 Eq. 427. *V. FUNDS: STOCK.*

**BANKER.**— "BANKING is not strictly a TRADE" (per Jessel, M. R., *Smith v. Anderson*, 15 Ch. D. 259).

A "Banker," within the late Bankruptcy definition of "Trader," included a person acting as a Banker, though keeping no open banking-house nor usual bankers' books (*Ex p. Wilson*, 1 Atk. 218); also a member of a Joint Stock Banking Co (*Ex p. Hall*, 3 Deacon, 405; *Ex p. Wyndham*, 1 Mont. D. & D. 146; *See, Ex p. Brundrett*, 2 Deacon, 219): but not an Army or Navy Agent (*Ex p. Wilson*, sup; *Richardson v. Bradshaw*, 1 Atk. 129).

It is for the jury to say whether a person is a "Banker, MERCHANT, BROKER, ATTORNEY, or other AGENT," within ss. 75, 76, Larceny Act, 1861 (*R. v. Bowerman*, cited SECURITY FOR MONEY).



Stat. Def. — Bank Charter Act, 1844, 7 & 8 V. c. 32, s. 28; 19 & 20 V. c. 25, s. 3; 21 & 22 V. c. 79, s. 5; Crossed Cheques Act, 1876, 39 & 40 V. c. 81, s. 3; Bankers' Books Evidence Act, 1879, 42 & 43 V. c. 11, s. 9; 45 & 46 V. c. 61, s. 2, c. 72, s. 11 (2); Stamp Act, 1891, s. 29. — Bankers (Ir) Act, 1845, 8 & 9 V. c. 37, s. 32. — Bank Notes (Scot) Act, 1845, 8 & 9 V. c. 38, s. 22.

*Vf*, as to meaning of "Banker" and his business, *n.* 6 M. & G. 671: *Re Kennedy*, Ir. Rep. 1 Eq. 425: *Copland v. Davies*, L. R. 5 H. L. 358. 1 Encyc. 479-482: Grant on Banking.

Quà Bankers' Books Evidence Act, 1879, " 'Bankers' Books,' include Ledgers, Day Books, Cash Books, Account Books, and all other books used in the ordinary business of the bank " (s. 9). *Cp.* BOOK.

Money &c "at my Bankers"; *V.* Mv.

**BANKING.** — The British North America Act, 1867, s. 91, gives to the Parliament of Canada EXCLUSIVE legislative authority over matters relating to "Banking" in the Dominion; that "expression is wide enough to embrace every transaction coming within the legitimate business of a banker," — *e.g.* lending money on security of goods or documents (*Tennant v. Union Bank of Canada*, 1894, A. C. 31; 63 L. J. P. C. 31; 69 L. T. 774).

**BANKRUPT.** — Quà Bills of Exchange Act, 1882, " 'Bankrupt,' includes any person whose estate is vested in a Trustee or Assignee under the law for the time being in force relating to BANKRUPTCY " (s. 2) — a def which, probably, is of general acceptance. *Cp.* INSOLVENT.

Quà Trustee Act, 1893, "Bankrupt," in Ireland, includes Insolvent (s. 50).

Other Stat. Def. — *Ir.* 20 & 21 V. c. 60, s. 4. — *Scot.* 2 & 3 V. c. 41, s. 3; 19 & 20 V. c. 79, s. 4.

**BANKRUPTCY.** — "Bankruptcy," probably, means the commission of an ACT OF BANKRUPTCY followed by an adjudication (*Ex p. Attwater*, 5 Ch. D. 30: *Va*, BECOME); but quà the Title of a Trustee in Bankry, "Bankruptcy," or even "the Time of the Bankruptcy," means, when the Act of Bankry was committed to which (*V.* s. 43, Bankry Act, 1883) such title may relate back (*Ex p. Attwater*, 5 Ch. D. 27; 46 L. J. Bank. 41; 35 L. T. 917: *Ex p. Payne*, *Re Cross*, 11 Ch. D. 539; 40 L. T. 563; 27 W. R. 808).

*Vh*, Wms. Bank: Baldwin: Robson.

Bankry Law; *V.* CRIME.

Bankry Petition; *V.* PETITION.

There is no "bankruptcy," within the meaning of a clause of FORFEITURE, if it be annulled before income is payable (*White v. Chitty*, 35 L. J. Ch. 343; L. R. 1 Eq. 372: *Lloyd v. Lloyd*, L. R. 2 Eq. 722:

*Robins v. Rose*, 43 L. J. Ch. 334. *Sr, Samuel v. Samuel*, 12 Ch. D. 152, in *the White v. Chitty* was questioned: *Va, Smallcombe v. Olivier*, 13 L. J. Ex. 305; 13 M. & W. 77). So, a Colonial Bankry, of a person domiciled in England, does not work such forfeiture (*Re Blithman*, 35 L. J. Ch. 255; L. R. 2 Eq. 23; *Re Hayward*, 1897, 1 Ch. 905; 66 L. J. Ch. 392; 76 L. T. 383; 45 W. R. 439).

V. ALIENATION: DEATH: SUFFICIENT CAUSE.

Forfeiture of a LEASE, if "the Lessee his exs ads or assigns shall become bankrupt," connotes that a rightful assign takes the same estate as the Lessee, and that the bankry referred to is (before assignment) that of the Lessee his exs or ads, and (after assignment) that of the assign, — in other words the bankry is that of the person for the time being legally entitled to the term (*Smith v. Gronow*, 1891, 2 Q. B. 394; 60 L. J. Q. B. 776; 65 L. T. 117; 40 W. R. 46). V. BECOME: LIQUIDATION.

Stat. Def. — Conv. & L. P. Act, 1881, s. 2 (xv); Mer Shipping Act, 1894, s. 742; Friendly Societies Act, 1896, s. 35 (2).

"The Bankry Acts, 1883 to 1890"; "The Bankry (Scot) Acts, 1856 to 1881"; V. Sch 2, Short Titles Act, 1896.

**BANKRUPTCY AND INSOLVENCY.** — The British North America Act, 1867, s. 91, gives to the Parliament of Canada EXCLUSIVE legislative authority over matters relating to "Bankruptcy and Insolvency" in the Dominion; that, by a necessary implication, includes power to interfere with "Property and CIVIL RIGHTS," and the "Administration of Justice" (matters reserved to the Provincial Legislatures by s. 92), so far as such matters may be affected by a General Law relating to Bankry and Insolvency (*Cushing v. Dupuy*, 49 L. J. P. C. 63; 5 App. Ca. 409). But a Provincial Law affecting assignments and property of Insolvents, is valid because falling within "Property and Civil Rights," and "not within 'Bankry and Insolvency,' in the sense in which those words are used in s. 91" (*A-G. Canada v. A-G. Ontario*, cited EXCLUSIVE, stating *A-G. Canada v. A-G. Ontario*, 1894, A. C. 189; 63 L. J. P. C. 59).

**BANNER.** — The primary meaning of "Banner," is, probably, a small flag bearing a device or symbol, and intended to be carried (*Termes de la Ley, Banneret*), or to be waved or carried (*Martin v. Mackonochie*, L. R. 2 P. C. 387). But canvas, parti-coloured or bearing party words, fixed and stretched across a street, is a "Banner," within s. 16 (1), Corrupt and Illegal Practices Prevention Act, 1883 (*Stepney*, Times, 22 Dec 1892; 4 O'M. & H. 179. *Vf, Pontefract*, Ib. 200); yet it is not illegal, within that section, for a Parliamentary Candidate to accept the gratuitous loan or gift of such a Banner (*Kennington*, 4 O'M. & H. 93). V. MARK.

**BANNs.** — “ ‘Bans,’ signifies a proclamation, or any Publike Notice that is given of anything ” (Termes de la Ley).

“ Banns of Marriage ”; *V. Phil. Ecc. Law*, 580: 2 *Encyc.* 1-3.

**BANNUM.** — “ ‘Bannum,’ or ‘Banleuga,’ the utmost bounds of Manor or Town ” (Cowel).

**BANQUE.** — *V. BACCARAT.*

**BAPTIZED.** — *V. UNBAPTIZED.*

**BAR.** — “ ‘Barred’ is a word common as well to the English as to the French, of which cometh the nowne, a Bar, *barro*. It signifieth legally a destruction for ever, or taking away for a time of the action of him that right hath ” (Co. Litt. 372 a). *Vf, Termes de la Ley, Barre*: 2 *Encyc.* 8.

*V. BARRISTER.*

**BARBED WIRE.** — Quà Barbed Wire Act, 1893, 56 & 57 V. c. 32. “ ‘Barbed Wire,’ means, any wire with spikes or jagged projections ” (s. 2).

**BARCARIA.** — *V. BERCARIA.*

**BARE TRUSTEE.** — A “Bare Trustee” is a TRUSTEE who has no duty to perform, and who, on request, would be compellable to convey or transfer to his cestui que trust (*Christie v. Orington*, 1 Ch. D. 279; *Re Cunningham and Frayling*, 60 L. J. Ch. 591; 1891, 2 Ch. 567; 64 L. T. 558; 39 W. R. 469).

Quà Fines and Recoveries Act, 1833, a husband is not a “Bare Trustee” of lands settled to the Separate Use of his wife (*Keer v. Brown*, 28 L. J. Ch. 477; Johns. 152-154).

After a judgment for sale in an action, a married woman trustee, beneficially interested, is a “Bare Trustee,” within s. 6, V. & P. Act. 1874, and can convey real estate without Acknowledgment (*Re Dorra*, 54 L. J. Ch. 1121; 29 Ch. D. 693). An unpaid Vendor, or any other person having a beneficial interest, is not a “Bare Trustee” within s. 48, Land Transfer Act, 1875 (*Morgan v. Swansea*, 9 Ch. D. 582; 27 W. R. 283; *Sethe, Re Cunningham and Frayling*, sup).

An unpaid Vendor of Realty “is something between a Naked, or Bare, Trustee (*i.e.* a person without beneficial interest) and a Mortgagee ” (per Jessel, M. R., *Lysaght v. Edwards*, 45 L. J. Ch. 559).

“Bare Trustee,” s. 16, Trustee Act, 1893, means, “a Trustee without any beneficial interest ” (per North, J., *London and County Bank v. Goddard*, cited TRUST).

*V. ACTING TRUSTEE.*

**BARGAIN.** — “A ‘Bargain’ is only another name for a ‘Contract’ ” (per Hawkins, J., in delivering jdgmt of the court in *Crossman v. The*

*Queen*, 56 L. J. Q. B. 245); and, as used in s. 17, Statute of Frauds, "Bargain," means the terms on which the parties contract (*Kenworthy v. Schofield*, 2 B. & C. 947; *Archer v. Baynes*, 20 L. J. Ex. 54; 5 Ex. 625; *Goodman v. Griffiths*, 26 L. J. Ex. 145). V. AGREEMENT.

As to this word in Sch 2, R. 64, P. H. Act, 1875; *V. Fletcher v. Hudson*, 51 L. J. Q. B. 48; 7 Q. B. D. 611: The sale of a shilling's worth of stationery would be within the meaning of the word (per Bramwell, B., *Lewis v. Carr*, 46 L. J. Ex. 314; 1 Ex. D. 484). *Su*, BARGAIN OR CONTRACT.

#### V. TIME BARGAIN.

**BARGAIN AND SALE.** — "Bargain and Sale, is when a recompense is given by both the parties to the bargain: as if one bargain and sell his land to another for money, here the land is a recompense to him for the money, and the money is a recompense to the other for the land" (*Termes de la Ley*). *Vf*, *Jacob*: 2 *Encyc.* 16.

"A 'Bargain and Sale' was an expression of very definite meaning in use in the old forms of pleading; it stands for what is sometimes called an 'Executed Contract,' that is, one where the property has passed" (*Blackb.* 124: *Vt*, *Benj.* 1).

"Bargain and Sale," 27 H. 8, c. 16, originated the disused form of conveyance of freeholds by Lease and Release:—*Vh*, 4 V. c. 21: *Watkins* on Conveyancing, *Bargain and Sale*: *Wms.* R. P. 151.

**BARGAIN OR CONTRACT.** — "BARGAIN," and "CONTRACT," are convertible terms. Therefore, the "Bargain or Contract" an interest in which disqualifies and penalizes a Member of a Local Board (s. 193, P. H. Act, 1875; R. 64, Sch 2, *Ib.*) *semble*, means no more than the "Contract" an interest in which disqualifies and penalizes a Municipal Councillor (ss. 12, 41, 45 & 46 V. c. 50).

It has been said, in this connection, that if "a shilling's worth of stationery" were bought by a Mun. Corp of one of its members, "there would be a 'Contract' between the Corp and that Member" (per Bramwell, B., *Lewis v. Carr*, 46 L. J. Ex. 315; 1 Ex. D. 484); but it may be gathered from *Nicholson v. Fields* (31 L. J. Ex. 233; 7 H. & N. 810), that a mere casual, over-the-counter, dealing would not be such a "Contract." *Vf*, per Bramwell, B., *Woolley v. Kay*, 25 L. J. Ex. 351; 1 H. & N. 307. In *Nicholson v. Fields*, however, it was held that an invoice addressed to a Local Bd by, and receipted by, one of its Members, charging for goods supplied at four different times, was evidence of a "Contract" between that Member and the Board, although the items were of trifling amount. *Vf*, *Fletcher v. Hudson*, cited BARGAIN.

Letting Rooms to a Local Authority by one of its officers is a "Bargain or Contract," within s. 193, P. H. Act, 1875 (*Burgess v. Clark*, 14 Q. B. D. 735); *secus*, of a Sale of Land to improve a Street (*Woolley v. Kay*, *sup.*).

Supplying materials to a Corporation Contractor, is not being interested in the contract (*Le Fleuve v. Lankester*, 23 L. J. Q. B. 254; 3 E. & B. 530).

*Vf*, *Melliss v. Shirley*, 16 Q. B. D. 446; 55 L. J. Q. B. 143; *Whiteley v. Barley*, cited ALLOWANCES.

V. CONTRACT: CONCERNED IN: INTERESTED IN.

**BARGE.** — *V.* SHIP: VESSEL: WHERRY.

**BARLEY.** — In the Corn Trade “fine” barley is different from, and superior to, “good” barley (*Hutchinson v. Bowker*, 5 M. & W. 535; 9 L. J. Ex. 24).

“Seed Barley”; “Chevalier Seed Barley”; *V. Carter v. Crick*, 28 L. J. Ex. 238; 4 H. & N. 412.

**BARN.** — *V.* outhouse.

**BARNARD’S ACT.** — 7 G. 2, c. 8.

**BARON.** — In the old phrase “Baron and Feme,” “Baron” means HUSBAND. *Vf*, FEME.

Court Baron; *V.* COURT.

**BARONIA.** — *V.* Elph. 562.

**BARONIAL.** — “In the Irish Education Act, 1892, ‘Baronial Council’ shall mean Rural District Council” (61 & 62 V. c. 37, s. 74).

Quà the County Works (Ir) Act, 1846, 9 & 10 V. c. 2, “‘Baronial Sessions’ shall, in the case of a County of a City or County of a Town, mean and include such Extraordinary Presentment Sessions” therefor, “or the adjournment thereof, hereby provided” (s. 23).

**BARONY.** — “Barony”; *V.* Cowel.

In Ireland, the word means a district: Stat. Def., 12 & 13 V. c. 36, s. 6; 13 & 14 V. c. 1, s. 3, c. 68, s. 24, c. 69, s. 117; 15 & 16 V. c. 63, s. 45; 18 & 19 V. c. 69, s. 2; 20 & 21 V. c. 16, s. 2; 34 & 35 V. c. 65, s. 3; 36 & 37 V. c. 30, s. 6; 46 & 47 V. c. 43, s. 25.

**BARRATRY.** — “The word ‘Barratry’ is derived from the Italian *barratrare*, to cheat. Any illegal, fraudulent, or knavish conduct of the master or mariners of a ship by which the freighters or owners are injured, is, by our law, Barratry. . . . In order to constitute Barratry, the act must, generally, be done fraudulently and with a criminal intent; and it is not sufficient that it is merely against the interest of the owner” (1 Maude & P. 145: *Vf*, *Taylor v. Liverpool & Gl. Wn. Steam Co.*, cited INSURANCE). Negligence in steering, though in breach of a statutory rule, is not Barratry (*Grill v. General Iron Screw Collier Co.*, 35 L. J. C. P. 321; 37 Ib. 205; L. R. 1 C. P. 600; 3 Ib. 476: *Cp.* WILFUL DEFAULT): but wilful illegal trading involving condemnation of the ship is Barratry, though, if successful, the trading would have been profitable

to the owner (*Havelock v. Hancill*, 3 T. R. 277; *Earle v. Rowcroft*, 8 East, 126; *Goldschmidt v. Whitmore*, 3 Taunt. 508); and so is the carrying of prohibited persons if involving forfeiture of the ship (*Australasian Insree v. Jackson*, 33 L. T. 286).

There may be Barratry by one Co-Owner as against another (*Jones v. Nicholson*, 23 L. J. Ex. 330; 10 Ex. 28), or by a Mtgor as against his Mtgee (*Small v. United Kingdom Insree*, 1897, 2 Q. B. 311; 66 L. J. Q. B. 736).

*Vj*, 1 Maude & P. 146; Abbott, 185; Arn. 838; 2 Encyc. 23 *et seq.*

**BARREL.** — A Barrel of Beer, “according to the custom of the Brewing Trade, is a vessel holding 36 gallons” (per Pollock, B., *Budd v. Lucas*, cited TRADE DESCRIPTION). *Vj*, Cowel.

**BARRETOR.** — “‘*Barrettors.*’ A barretor is a common moover and exciter, or maintainer of suits, quarrels, or parts, either in courts, or elsewhere in the country” (Co. Litt. 368 a). *Vj*, Jacob.

“‘Barretor’ is derived of this word (*barret*) which signifieth not only a wrangling suit, but also such brawles and quarrels in the country as are aforesaid” (Co. Litt. 368 b: *Sr*, Cowel for other derivations).

**BARRISTER.** — Quà Indian High Courts Act, 1861, 24 & 25 V. c. 104, “‘Barrister,’ shall be deemed to include, Barristers of England or Ireland, or Members of the Faculty of Advocates in Scotland” (s. 19); quà Public Worship Regn Act, 1874, 37 & 38 V. c. 85, the word *includes* Advocate, in the Isle of Man (s. 6), and *means* Advocate in Scotland, quà Corrupt and Illegal Practices Prevention Act. 1883 (s. 68).

“Prosecuting Barrister”; *V. PROSECUTING.*

“Revising Barrister”; Stat. Def., 17 & 18 V. c. 102, s. 38. — *Ir.* 48 & 49 V. c. 17, s. 32; 61 & 62 V. c. 37, s. 109 (1).

**BARTER.** — “This word is used by us for the exchange of wares for wares” (*Termes de la Ley*: Cowel).

**BASE.** — Quà London Bg Act, 1894, “‘Base,’ applied to a WALL, means, the under-side of the course immediately above the footings, if any, or, in the case of a Wall carried by a BRESSUMMER, above such Bressummer” (subs. 10, s. 5): *V.* s. 3, Metrop Bg Act, 1855. *Cp.* FOUNDATION.

A Base FEE, “is a Tenure in Fee at the Will of the Lord, distinguished from Socage free tenure; but Ld Coke says that a Base Fee, or qualified fee, is what may be defeated by limitation, or on entry &c; Co. Litt. 1, 18” (Jacob). Thus, *e.g.*, a Disentailing Deed without the consent of the PROTECTOR OF THE SETTLEMENT (where there is one), gives only a Base Fee; because the Fee thereby created, though good

against the Issue of the Tenant in Tail, is not good against the Remainders and Reversion (s. 34, Fines and Recoveries Act, 1833). *Vf. Good-eve*, 68, 70, 81: 2 *Encyc.* 28. For a list of Base Fees, *V. Challis on Real Property*, 2nd Ed., 297 *et seq.*

Quà Fines and Recoveries Act, 1833, " 'Base Fee,' shall mean exclusively, that Estate in Fee Simple into which an Estate Tail is converted where the Issue in Tail are barred. but persons claiming Estates by way of Remainder, or otherwise, are not barred " (s. 1).

*Vh. Re Drummond and Davies*, cited PROPERTY.

" *Bassa tenura*, or Base Tenure, was a holding by villenage, or other customary service, opposed to *Alta tenura*, the higher tenure in capite or by military service &c " (Jacob). *Vf. Cowel, Base Estate.*

Quà Gold and Silver Wares Act, 1844, 7 & 8 V. c. 22, " 'Base Metal' shall mean, any metal whatsoever, other than Gold or Silver of the respective standards required by law " (s. 14).

**BASEMENT STOREY.** — *V. STOREY.*

**BASS' ACT.** — The Clerks of the Peace Removal Act, 1864, 27 & 28 V. c. 65.

**BASTARD.** — A "Bastard" is a person "that be borne out of lawful marriage" (Co. Litt. 244 a: *Vf. Termes de la Ley: Cowel: Jacob: 2 Bl. Com.* 247). And the husband of a woman being "within the foure seas" (Ib.), is not now conclusive to legitimize her offspring; proof, positive or presumptive, of non-access may be given (*Pendrell v. Pendrell*, 2 Stra. 925: *R. v. Luff*, 8 East, 204: *Goodright d. Tompson v. Saul*, 4 T. R. 356: *Morris v. Davies*, 5 Cl. & F. 163: *Hawes v. Dracger*, 23 Ch. D. 173; 52 L. J. Ch. 449: *Aylesford Peerage*, 11 App. Ca. 1), even though there has been opportunity of access (*Cope v. Cope*, 1 Moo. & R. 269: *R. v. Mansfield*, 1 Q. B. 450, 452; 10 L. J. M. C. 97; 1 G. & D. 7: *Bosrille v. A.-G.*, 12 P. D. 177: *Barnoby v. Baillie*, 58 L. J. Ch. 842). But where husband and wife are living together, the presumption of the legitimacy of the wife's offspring is so strong, that it can only be rebutted by evidence absolutely irresistible (*Head v. Head*, 1 Sim. & St. 152; T. & R. 138: *Banbury Peerage*, 1 Sim. & St. 153: *Morris v. Davies*, sup: *Legge v. Edmonds*, 25 L. J. Ch. 125).

If the husband was under the age of procreation (Co. Litt. 243 a), or if his habit of body was such as to make his begetting children an impossibility (*Lomax v. Holmden*, 2 Stra. 940), the children of the wife would be bastardized.

*Vh.*, 2 *Encyc.* 30-33: and, quà Slander, *Odgers*, 149, 150. *Va.*  
**AFFILIATION.**

**BATH.** — In the frequent clause in the Acts of Water Works Com-  
excepting (inter alia) "Baths" from being a DOMESTIC Purpose, an ordi-

nary moveable bath is not within such exception (*Weaver v. Cardiff*, 48 L. T. 906; *Bingham v. Sheffield W. W. Co.* cited in *Walker v. Lambeth W. W. Co.*, 63 L. J. Ch. 876). And if the clause excepts "Baths, Wash-houses, or PUBLIC PURPOSES," then "Baths" (read with its context) means Public Baths, and even the ordinary fixed household bath remains a Domestic Purpose (*Weaver v. Cardiff*, sup); *secus*, if the phrase is, "Baths, Horses, Cattle, or for washing carriages, or for any Trade or Business whatsoever" (*Walker v. Lambeth W. W. Co.*, 63 L. J. Ch. 874; 71 L. T. 75; 58 J. P. 736).

"The Baths and Wash-houses Acts, 1846 to 1882"; V. Sch 2, Short Titles Act, 1896.

**BATTALION.** — Quà Regn of the Forces Act, 1881, 44 & 45 V. c. 57, "Battalion," in its application to Cavalry, Artillery, or Engineers, means, "Regiment, Brigade, or other Body into which Her Majesty may have been pleased to divide such Cavalry, Artillery, or Engineers" (subs. 2, s. 49).

**BATTERY.** — V. ASSAULT: BEAT.

**BATTLE.** — Trial by Battle; V. 2 Encyc. 37; Termes de la Ley, *Battaile*: Jacob, *Battel*: 3 Bl. Com. 341, 342. Abolished by 59 G. 3, c. 46.

**BAWDY HOUSE.** — V. BROTHEL.

**BAY.** — V. ESTUARY.

**BAY WINDOW.** — V. BUILDING.

**BE.** — To "be" at a place, is wider than to "RESIDE," *e.g.* in the requirement, s. 27, 43 G. 3, c. 161, to make a Return for Assessed Taxes where the person "shall reside, *or be*," which latter clearly includes his place of business (*A-G. v. McLean*, 1 H. & C. 750; 32 L. J. Ex. 101; 11 W. R. 292; 8 L. T. 113). V. BEING.

**BEACHING.** — Beaching of Fishing Boats in winter; V. per Ld O'Hagan, *Aiton v. Stephen*, 1 App. Ca. 462.

**BEACON.** — V. BUOY.

**BEADLE.** — "Bedell" is derived of the French word *Beadeau*, which signifies a messenger of the court, or under baylife, in *Latine, Bedellus*" (Co. Litt. 234 b). V. f, Termes de la Ley: 2 Encyc. 38.

**BEADSMAN.** — "Beadsmen," according to the definitions given by the authors to whom we have been referred, seem to have been in antient times, persons who devoted themselves to Prayer, — not merely on their own account, but for the benefit also of others" (per Cockburn, C. J., *Faulkner v. Boddington*, cited OFFICE).



**BEAM TRAWL.** — Stat. Def., 44 & 45 V. c. 11, s. 9.

**BEAR.** — The use of "Bear" in collocation with "Pay," — *e.g.* in a tenant's covenant to "bear and pay" taxes, rates, duties, &c — has "the effect of more distinctly developing its very comprehensive character" (per Baggallay, L. J., *Budd v. Marshall*, 50 L. J. Q. B. 29). *V. TAXES.*

*Semble*, there is a difference between a gift to descendants who "bear" a particular NAME, and a gift to Descendants "of" such Name (*Re Roberts*, 50 L. J. Ch. 265; *S. C.* on App. 19 Ch. D. 520).

**BEARER.** — The "Bearer," of a Bill or Note, "means the person in possession of a Bill or Note which is payable to Bearer" (s. 2, Bills of Ex. Act, 1882). *Vth, Good v. Walker*. 61 L. J. Q. B. 736; *Day v. Longhurst*, 62 L. J. Ch. 334; 68 L. T. 17; 41 W. R. 283.

A Debenture payable "to Bearer" is, in effect, a Promissory Note, and passes from hand to hand free from any equities which might have attached to it as between the Company and the original holder (*Re Marselles Imperial Land Co*, 40 L. J. Ch. 93; L. R. 11 Eq. 478).

Note to "Bearer on Demand"; *V. Cheetham v. Butler*, 5 B. & Ad. 837.

*V. NEGOTIABLE.*

**BEARING.** — "Bearing Even Date" (Sch 55 G. 3. c. 184, *Bond*), "ties down the operation of that clause of the Sch to the date written on the Instrument" (per Tenterden, C. J., *Wood v. Norton*, 9 B. & C. 887).

When a Bill of Ex. or Promissory Note expressly made interest payable, but without defining the date from which interest was to run. — *e.g.* by simply saying "bearing INTEREST." — it carried interest from its date, and not merely from its maturity (*Kennerly v. Nash*, 1 Starkie, 452); and is not this still so notwithstanding s. 57, Bills of Ex. Act, 1882? *See*, Byles, 440.

**BEAST GATE.** — *V. CATTLE GATE.*

**BEASTS.** — "The Beasts of *Parque* or *Chase*, properly extend to the Bucke, the Doe, the Foxe, the Marten, the Roe; but, in a common and legall sense, to all the Beasts of the Forrest" (Co. Litt. 233 a). *V. PARK: CHASE.*

"Beasts of *Forrests* be properly Hart, Hinde, Bueke, Hare, Bear, and Wolfe; but legally all wild beasts of ventry" (Ib.). *V. FOREST.*

Beasts of the *Warren* are "Hares, Conies, and Roes" (Ib.). *V. WARREN.* Fowls of the Warren; *V. FOWL.*

*Vf*, As to all the above, *Barrington's Case*, 8 Rep. 138.

Beasts of the *Plough*; *V. Co. Litt. 47 a, b: Woodf. 483.*

"Beasts that gain his land," 51 H. 3. stat. 4, does not include cart

Colts and young Steers, unbroken to harness or the plough (*Keen v. Priest*, 4 H. & N. 236; 28 L. J. Ex. 157).

V. HORSE: CATTLE.

**BEAT.** — A mere technical Battery (*V. ASSAULT*), is not a "Beating." within s. 29. 7 & 8 G. 4, c. 29; — "unlawfully beat," as there used, connotes a "beating" in the popular sense of that word, which pulling a man to the ground and holding him there is not (per Maule, J., *R. v. Hale*, 2 C. & K. 326).

**BECOME.** — A person "becomes bankrupt," quâ the Bankry Laws, when he commits the ACT OF BANKRUPTCY on which his adjudication is founded; not only at Adjudication (*Fawcett v. Fearn*, 6 Q. B. 20: *Ex p. Harris*, 44 L. J. Bank. 31; L. R. 19 Eq. 253). *Va*, BANKRUPTCY.

"Become a Bankrupt," s. 7 (2), Bills of Sale Act, 1882; *V. Ex p. Allam, Re Munday*, 14 Q. B. D. 43; 33 W. R. 231.

A Co's Articles disqualifying a Director "if he become bankrupt," does not prevent the election of one who is already an undischarged bankrupt (*Dawson v. African & Co*, 1898, 1 Ch. 6; 67 L. J. Ch. 47; 77 L. T. 392; 46 W. R. 132).

"Become Insolvent"; *V. HEREAFTER: INSOLVENT.*

FORFEITURE if demised premises shall "become vested" in another; *V. VESTED.*

"Becoming after the passing of this Act an Urban Sanitary Authority"; *V. Kennedy v. Great Southern & W. Ry*, 30 L. R. Ir. 685.

*V. ENTITLED: ELDEST.*

**BED.** — "I will cite a passage from the jdgmt in an American case (*State of Alabama v. State of Georgia*, 64 U. S. 505), for it exactly conveys what I understand to be the meaning of 'Bed of a RIVER,' — 'The Bed of the River is that portion of its soil which is alternately covered and left bare, as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average and mean stage during the entire year, without reference to the extraordinary freshets of the Winter or Spring or the extreme droughts of the Summer or Autumn.' This, when applied to a Tidal River, means, without reference to Extraordinary Tides at any time of the year" (per Smith, L. J., *Thames Conservators v. Smeed*, 1897, 2 Q. B. 338; 66 L. J. Q. B. 716; 77 L. T. 325; 45 W. R. 691; 61 J. P. 612). In accordance with that def, and on the authority of *Goolden v. Thames Conservators* (1891, in H. L., but not reported), it was held, in *Thames Conservators v. Smeed*, that "Bed of the THAMES," s. 87, Thames Conservancy Act, 1894, includes the FORESHORE between High and Low Water-Mark at Ordinary Tides, although the soil belongs to private owners. *Vj*; SEVERAL FISHERY, n: 2 Encyc. 44-47.

*V. IRON*

**BEDDING.** — “All must agree, I think, that ‘Bedding’ is used more often than not as describing something which does not include a Bedstead” (per Channell, J., *Davis v. Harris*, 1900, 1 Q. B. 729; 69 L. J. Q. B. 232; 81 L. T. 780; 48 W. R. 445; 64 J. P. 136); but in the exception from Execution, s. 147, Co. Co. Act, 1888, “Bedding” means, whatever the Exon Debtor “has for the purposes of sleeping accommodation,” — *e.g.* a Mattress laid on the floor, or a Bedstead (*S. C.*). *Note.* The exception in that section applies to a Distress for Rent (s. 4, 51 & 52 V. c. 21).

**BEEN.** — *V.* HAVE BEEN.

**BEER.** — Summer’s Botanic Beer, manufactured from fermented sugar and water, and flavoured with herbs, is “Beer” within the meaning of the Customs and Inl. Rev. Act, 1885; and to retail it necessitates the holding of an Excise license (*Howorth v. Minns*, 56 L. T. 316; 51 J. P. 181). The effect of such a ruling would seem to be that no kind of “Beer” containing over 2% of Proof Spirit can be sold without a license; *Vf*, inf.

Quà Beerhouse Act, 1830 (*V.* s. 32), and Wine and Beerhouse Act, 1869 (*V.* s. 2), “Beer,” includes Ale and Porter.

Quà Inl. Rev. Act, 1880, “‘Beer,’ includes Ale, Porter, Spruce Beer, and Black Beer, and any other description of Beer” (s. 2), — a def extended to include “any Liquor which is made or sold as a description of Beer, or as a Substitute for beer, and which, on analysis of a sample thereof at any time, shall be found to contain more than 2% of Proof Spirit” (subs. 1, s. 4, 48 & 49 V. c. 51); and, by subs. 2 of the last section, the meaning of “Beer,” as amplified by subs. 1, is applied to all Acts “relating to Excise Licenses for the sale of Beer, unless there is something in the subject or context inconsistent therewith.”

Quà Part 3, Inl. Rev. Act, 1880, “‘Beer,’ includes CIDER” (s. 40).

Stat. Def. — *lv.* s. 3, 34 & 35 V. c. 111.

*V.* EXCISEABLE LIQUOR: INTOXICATING LIQUOR: SPIRITS: SPIRIT-  
VOUS LIQUOR: WINE.

**BEER-HOUSE.** — “Beer-house” means a place where beer is sold to be consumed *on* the premises; but a “Beer-shop” means a place where Beer is sold by retail, and it is immaterial whether it is to be consumed on the premises or not (*London and Suburban Land Co v. Field*, 50 L. J. Ch. 549; 16 Ch. D. 645; 44 L. T. 444; *Custance v. Wilkinson*, 95 Law Times, 157; *Holt v. Collyer*, 50 L. J. Ch. 311; 16 Ch. D. 718; 44 L. T. 214; 29 W. R. 502; *St. Alban’s v. Battersby*, 47 L. J. Q. B. 571; 3 Q. B. D. 359; 26 W. R. 679; 38 L. T. 685; *Nicoll v. Fanning*, 51 L. J. Ch. 166; 19 Ch. D. 258; 30 W. R. 95; 45 L. T. 738). Therefore a covenant against a “Beer-Shop” will prohibit a “Beer-House”: not

so, *vice versa* (*Lond. & N. W. Ry v. Garnett*, 39 L. J. Ch. 25; L. R. 9 Eq. 26; 21 L. T. 352; 18 W. R. 246; *Holt v. Collyer*, sup). *Vf. Devonshire v. Simmons* (39 S. J. 60), where the point was raised, but not decided, as to whether the sale of beer in a Private Hotel to Guests only, would make the place a Beer-Shop.

V. ALE-HOUSE: PUBLIC-HOUSE: INN: SHOP.

**BEER-SHOP.** — V. BEER-HOUSE.

**BEETLE-HEADED.** — It is not Slander, *per se*, to say of a Justice of the Peace that “he is a Fool, an Ass, and a Beetle-headed Justice” (*Bill v. Neal*, 1 Lev. 52). Indeed, evil-speaking of Justices may go a long way; *V. Hollis v. Briscoe*, Cro. Jac. 58: *R. v. Farre*, 1 Keble. 629: — “Blood Sucker” seems almost a verbal amenity (*V. BLOOD*).

**BEFORE.** — “WITHIN 3 months before” the Petition, s. 6 (1*c*), Bankry Act, 1883; *V. Ex p. Forster*, 35 W. R. 456; 56 L. T. 573: *Ex p. Townend*, 40 W. R. 47; 64 L. T. 743.

“Before,” s. 40 (*b*), Bankry Act, 1883, means “NEXT before” (*Re Smith*, 55 L. J. Q. B. 288; 17 Q. B. D. 4; 54 L. T. 307; 34 W. R. 535).

The 21 days notice to be given by Applicant for a License “before he applies,” — s. 7, 32 & 33 V. c. 27; s. 40, 35 & 36 V. c. 94, — is not, necessarily, computed from the first day of the Annual General Licensing Meeting, but from the day on which the Application is to be taken (*R. v. W. Riding Jus.*, 39 L. J. M. C. 17; L. R. 5 Q. B. 33: *R. v. Pownall*, 1893, 2 Q. B. 158; 62 L. J. M. C. 174; 57 J. P. 424). *Cp.*, s. 42 (2), 35 & 36 V. c. 94, on *whv R. v. Anglesey Jus.*, 1892, 1 Q. B. 850; 61 L. J. M. C. 149; 56 J. P. 440.

“Devolve before”; V. DEVOLVE.

V. AFORESAID: AFTER: ACT: NOT BEFORE: ON OR BEFORE: WITHIN.

**BEFORE MARRIAGE.** — Debts contracted by a Married Woman “before Marriage,” — s. 19, M. W. P. Act, 1882, *Va.* s. 13 — “do not mean ‘before she was ever married,’ but mean, before the marriage existing at the time when the provisions of the sections have to be applied” (per Esher, M. R., *Jay v. Robinson*, 59 L. J. Q. B. 367; 25 Q. B. D. 467; 63 L. T. 174; 38 W. R. 550).

**BEFORE OR AFTER.** — “Dying before or after”; *V. Kendall v. Burt*, W. N. (73) 151.

V. THEREAFTER TO BE BORN.

**BEFORE PAYABLE.** — Gift over “before payable”; *V. Chitty*, Eq. Ind. 7412: “before becoming entitled”; *V. lb.* 7415.

**BEFORE THE PEOPLE.** — “Their Lordships are of opinion that the words ‘Before the People’ (Rubric preceding Prayer of Consecra-

tion in Communion Office) coupled with the direction as to the manual acts, are meant to be equivalent to 'In the Sight of the People.' They have no doubt that the Rubric requires the manual acts to be so done that, in a reasonable and practical sense, the communicants, especially if they are conveniently placed for receiving the Holy Sacrament, as is pre-supposed in the Office, may be witnesses of, *i.e.* may see them. What is ordered to be done 'Before the People,' when it is the subject of the sense, not of hearing, but of sight, cannot be done 'Before' them unless those of them who are properly placed for that purpose can see it. It was contended that 'Before the People,' meant nothing more than 'In the Church,' to guard against an anterior and secret consecration of the elements. But if the words 'Before the People' were absent, the manual acts, and the rest of the Service, could not be performed elsewhere than in the Church and in that sense *coram populo*, nor could the sacrament be distributed except in the place and at the time of its consecration; this argument would, therefore, reduce to silence the words 'Before the People,' which are an emphatic part of the declaration of the purpose for which the preparatory acts are to be done. That declaration applies not to the Service as a whole, nor to the consecration of the elements as a whole, but to the manual acts separately and specifically" (per Cairns, C., delivering judgment of *P. C. Ridsdale v. Clifton*, 46 L. J. P. C. 61; 2 P. D. 276).

**BEG.** — *V.* PRECATORY TRUST.

**BEGIN.** — "Begin to Demolish"; *V.* DEMOLISH.

Person entitled to a Legacy in succession who shall "begin to Enjoy the Benefit thereof," s. 12, Legacy Duty Act, 1796, 36 G. 3. c. 52; *V. Kenlis v. Hodgson*, 1895, 2 Ch. 458; 64 L. J. Ch. 585; 72 L. T. 866, distinguishing *Re Haygarth*, 22 Ch. D. 545; 52 L. J. Ch. 416.

"Begin to Form a New Street"; *V.* NEW STREET.

"Begin to Keep House"; *V.* KEEP HOUSE.

Where proper Notices and Plans had been given and lodged under s. 72, P. H. Act, 1848, it was a "MATTER or Thing *begun or made.*" within s. 9, 21 & 22 V. c. 98, although little or nothing had been done towards the actual work (*Felkin v. Berridge*, 15 C. B. N. S. 257; *Vj. Heston & Isleworth v. Grout*, cited DONE). *Cp.* COMMENCEMENT.

**BEGOTTEN.** — *V.* Co. Litt. 20 b: BORN: TO BE BORN.

**BEHALF.** — *V.* IN THAT BEHALF: ON BEHALF: FOR.

**BEHAVE.** — "Appear, act, or behave"; *V.* KEEPER.

**BEHAVIOUR.** — *V.* GOOD BEHAVIOUR.

**BEHIND.** — As to the phrase "Leaving no Issue *behind him*"; *V.* 2 Jarm. 509.

**BEING.** — “Being,” as used in a sense similar to that of the ablative absolute, has sometimes been translated as, “having been”; but it properly denotes a State or Condition existent at the time when the conclusion of law or fact has to be ascertained.

Thus the phrase, “*being a Trader*,” in the Bankry Act, 1869, meant, “carrying on trade at the time when the act in question is committed” (per Jessel, M. R., *Ex p. McGeorge*, 51 L. J. Ch. 910; 20 Ch. D. 697: *See*, CARRY ON, towards end). Therefore a trader who had absolutely ceased trading was not liable to the consequences of a Trader-Debtor’s Summons under s. 6 (b) of that Act (*Ex p. Schomberg*, 10 Ch. 172; 23 W. R. 204), nor to be adjudicated bankrupt for departing from his dwelling under subs. 3, s. 6 (*Ex p. McGeorge*, sup); but if he had the intention to resume trading he was still a trader (*Ex p. Salaman*, 21 Ch. D. 394; 47 L. T. 495; 31 W. R. 282).

But “any two or more persons *being Partners*” (who may proceed, or be proceeded against, in the partnership name, s. 115, Bankry Act, 1883), does not connote that they must be partners at the time of the proceedings, but rather means, persons “who *have had* the relationship of partners for the purpose of the liability which is sought to be enforced” (per Alverstone, M. R., *Re Wenham*, 69 L. J. Q. B. 807; 1900, 2 Q. B. 698; 83 L. T. 94).

“Being in *England*”; *V.* LIVING.

“Being in advance”; *V.* ADVANCE.

*V.* BE: ENTERING OR BEING: TIME BEING: IS: PRESENT TENSE.

Machinery, &c, “standing or being”; *V.* ERECTED.

“Being,” may create a Covenant, — *e.g.* in a lessee’s covenant to repair premises, “the same *being* first put in repair by the lessor,” these latter words create a covenant by the lessor (*Cannock v. Jones*, 3 Ex. 233; 5 Ib. 713; 18 L. J. Ex. 204); and so, probably, in such a covenant, do the words “being allowed sufficient rough timber” (*Martyn v. Clue*, 22 L. J. Q. B. 147; 18 Q. B. 661: *Va.*, *Mucklestone v. Thomas*, Willes, 146), but in the way *Martyn v. Clue* was presented, it was only necessary to regard the phrase as creating a Condition Precedent, on which latter point *Vf.*, *Neale v. Ratcliff*, 20 L. J. Q. B. 130; 15 Q. B. 916: *Coward v. Gregory*, 36 L. J. C. P. 1; L. R. 2 C. P. 153, 172. So, in such a covenant, lessor “*Finding, Allowing and Assigning* timber sufficient” was held to create a Condition Precedent (*Thomas v. Cadwallader*, Willes, 496); but “*Having or Taking*” BOTE, was held only to amount to a license to the lessee (*Bristol v. Jones*, 28 L. J. Q. B. 201; 1 E. & E. 484). *V.* FINDING.

“Being,” may be used in the sense of a direct Averment (per Campbell, C. J., *R. v. Waverton*, 17 Q. B. 565, 568).

“Lawfully being”; *V.* LAWFULLY.

**BELIEF.** — “Best of his Belief”; *V.* BEST BELIEF: BONÂ FIDE.

“In the Full Belief”; *V.* PRECATORY TRUST.

**BELLIGERENT.** — *V.* 2 Encyc. 52-55.

**BELLOWS.** — *V.* MECHANICAL MEANS.

**BELONG.** — An under-bailiff sending unwholesome meat to market, is not a "person to whom the same belongs," within s. 117, P. H. Act, 1875 (*Newton v. Monkcom*, 58 L. T. 231; 4 Times Rep. 205); but, *semble*, the phrase includes a FACTOR (*Billing v. Prebble*, 66 L. J. Q. B. 180; 45 W. R. 187; 61 J. P. 86, — a case on s. 47 (2), P. H. (London) Act, 1891, which subs. Wills, J., said was "an enlarged edition" of s. 117, P. H. Act, 1875).

**BELONGING.** — Property "belonging" to a person, has two general meanings, — (1) Ownership; (2) the Absolute Right of User: "A Road may be said, with perfect propriety, to belong to a man who has the right to use it as of Right, although the soil does not belong to him" (per Martin, B., *A.-G. v. Oxford & Ry*, 31 L. J. Ex. 227; 7 H. & N. 810).

By the Poor Relief Act, 1819, 59 G. 3, c. 12, s. 17, Churchwardens AND Overseers are to hold, as a Body Corporate, all buildings &c "belonging" to the PARISH; — That phrase is to be taken in its popular sense (*Doe v. Terry*, 5 L. J. M. C. 27; 4 A. & E. 274; 5 N. & M. 556); but it applies only "where the rents are applicable solely to Parochial Purposes which are under the control of the Parish Officers" (per Parke, B., *Uthwatt v. Elkins*, 13 M. & W. 777; 14 L. J. Ex. 131). In *Doe v. Hiley* (10 B. & C. 885), it was held, that the phrase comprised property the profits of which were to be applied to Church Repair, because that was in aid of the Church Rate (*the* followed in *Alderman v. Neate*, 8 L. J. Ex. 89; 4 M. & W. 704; but questioned in *Allison v. Stark*, 8 L. J. M. C. 13; 9 A. & E. 255, and *Gouldsworth v. Knights*, 12 L. J. Ex. 282; 11 M. & W. 343). Since the Compulsory Church Rate Abolition Act, 1868, 31 & 32 V. c. 109, it may, probably, be said that property the profits of which are to be applied in Church Repair is not within the phrase, for such repair can hardly now be regarded as a PAROCHIAL PURPOSE. Property, though applicable to general parochial purposes, is not within the phrase if the Legal Estate therein be vested in known existing Trustees (*St. Nicholas, Deptford v. Sketchley*, 17 L. J. M. C. 17; 8 Q. B. 394; over-ruling *Rumball v. Munt*, 15 L. J. Q. B. 180; 8 Q. B. 382). *Vf*, Tudor Char. Trusts, 240-243.

Churchyard "belonging to" a District Church, s. 10, 19 & 20 V. c. 104; *V. Champneys v. Arrowsmith*, 36 L. J. C. P. 265; 15 W. R. 1011; 16 L. T. 589.

*V.* OUTLET.

**SALVAGE** for saving the lives of "persons belonging to" a SHIP, s. 458 (2), Mer Shipping Act, 1854, comprises passengers as well as the crew (*The Fusilier*, 34 L. J. P. M. & A. 25; 3 Moore P. C. N. S. 51). In that case Dr. Lushington said, "I think that nothing is more common

than to say of passengers by a ship, that they are passengers 'belonging' to the ship, and would be included under the expression 'persons.'

As to the phrase "*Belonging or appertaining*"; *V. Williams v. Phillips*, 51 L. J. Q. B. 102; 8 Q. B. D. 437. These "are not Words of Art" (per Pollock, C. B., *Maitland v. Mackinnon*, 32 L. J. Ex. 49; 1 H. & C. 607). *Vf*, as to their interpretation, and as to the phrase "*Thereunto Belonging*," *Maitland v. Mackinnon*, sup: *Bodenham v. Pritchard*, cited ENJOYED: *Doe d. Gore v. Langton*, 2 B. & Ad. 680: 1 Jarm. 782: 2 Platt, 34: *Kingsmill v. Millard*, 11 Ex. 313: COMMON: MILL. "The words 'thereto belonging' may, perhaps, *primâ facie*, be considered to mean something held under the same title as and *occupied* with the subject-matter of the devise to which they are annexed" (Watson Eq. 1322).

"If a man grant his Saddle with all things 'thereunto belonging,' — stirrups, girths, and the like do pass. So, if a man grant his Viol, the strings and bow will pass" (Bac. Ab. *Grant*, I, 4, citing *Price v. Braham*, Vaugh. 109). So, a grant of Looms "and other Effects and Things belonging thereto," will pass healds, reeds, weft, and waste cans (*Cort v. Sagar*, 27 L. J. Ex. 378; 3 H. & N. 370). But a lease of a "House and PREMISES with the gardens, pleasure-grounds, coach-house, and stabling thereto belonging," will not pass an adjoining meadow (*Minton v. Geiger*, 28 L. T. 449).

Bequest of "Effects belonging to the BUSINESS," includes the Fixtures (*Pinder v. Pinder*, 18 W. R. 309).

Money or Property "belonging to" a Friendly Socy; *V. per Esher*, M. R., *Re Miller*, cited POSSESSION: PREFERENCE.

Premises "belonging to and OCCUPIED with" a DWELLINGHOUSE, Sch B, R. 2, House Tax Act, 1808, 48 G. 3, c. 55, means, those premises which are adjuncts to the Dwghouse and are used therewith for a common purpose, — *e.g.* the Stables of an Inn, though such stables are separated from the Inn and are let to the innkeeper by separate landlords and at separate rents (*Young v. Douglas*, 17 Sc. L. R. 119: *Smith v. Petrie*, 29 Ib. 342: *Phillips v. Lord Advocate*, 36 Ib. 336: *Swain v. Fleming*, 81 L. T. 202), so, Hunt Kennels are adjuncts to the Dwghouse of Hunt Servants (*Cheape v. Kinmont*, 16 Sess. Ca., 4th Ser., 144), so, are Horse Trainer's Stables to the Head Lad's house (*Lambton v. Kerr*, 1895, 2 Q. B. 233; 64 L. J. Q. B. 749; 43 W. R. 541); but the Chapel, Classroom, Gymnasium, Racket Courts, and other buildings necessary for the purposes of a Public School, *e.g.* Clifton College, are not adjuncts to the Head Master's house (*Clifton Coll. v. Tompson*, 1896, 1 Q. B. 432; 65 L. J. Q. B. 231; 74 L. T. 168; 44 W. R. 410; 60 J. P. 599).

*V. APPERTAINING: APPURTENANCES: MILL: PURPOSES.*

**BELONGINGS.** — A testator, at his death, owned and occupied a country house called Torfrey; by his Will he said, — "I give to T. G. M. (my grandson) Torfrey and all the Belongings thereto"; held, by North,



J., that the gift comprised Torfrey as it stood at the testator's death, including the furniture, pictures, and household effects therein, its gardens, green-houses, conservatories, stables, coach-houses, outhouses, and farm buildings, and about 27 acres of land and orchard, together with the horses, carriages, agricultural and other implements, and all the live and dead stock in and about the premises (*Re Gundry*, 28th July, 1898).

**BELOVED WIFE.** — “A bequest by a husband to his ‘beloved wife,’ not mentioning her by name, applies exclusively to the individual who answers the description at the date of the Will, and is not to be extended to an after-taken wife” (Wms. Exs. 960, citing *Garratt v. Niblock*, 1 Russ. & My. 629). In the note, however, it is added, “this point cannot arise since the new Wills Act; for the second marriage would revoke the Will. But a similar question may occur in respect of a bequest by a testator to the wife of another person: *V. Borcham v. Bignall*, 8 Hare, 131; 19 L. J. Ch. 461; *Re Lynw*, L. R. 8 Eq. 65; 38 L. J. Ch. 471.” *Vf*, *Re Morrisson*, W. N. (88) 212.

A bequest to “my dearly beloved,” of all testator's property, even though coupled with an appointment of “her” as sole executrix, was held uncertain and did not give the property to the wife (*Sullivan v. Sullivan*, 4 Ir. Rep. Eq. 457).

#### V. WIFE.

**BENEFICE.** — This word occurs in cap. 14, Magna Carta. It is “a large word, and is taken for any Ecclesiasticall Promotion or Spirituall Living whatsoever” (2 Inst. 29: *Vf*, 3 Ib. 155: Elph. 562). As to what is a “Benefice with Cure,” within 13 Eliz. c. 20; *V. M'Bean v. Deane*, 30 Ch. D. 520; 55 L. J. Ch. 19; 33 W. R. 924; 1 Times Rep. 624: *Shaw v. Woods*, 5 Ir. Com. Law Rep. 156.

It seems doubtful whether a Wesleyan minister holds a “Benefice,” within s. 14, Rep. People (Ir) Act, 1850, 13 & 14 V. c. 69 (*Foster v. Mulhall*, 10 Ir. Com. Law Rep. 532); but the negative seems clear, quâ Rep. People Act, 1832, for though s. 18 (like the Act for Ireland) speaks simply of “Benefice,” yet s. 26 amplifies this to “Benefice in a Church.”

Quâ Ecclesiastical Dilapidations Act, 1871, 34 & 35 V. c. 43, “Benefice” shall comprehend all Rectories with Cure of Souls, Vicarages, Perpetual Curacies, Donatives, Endowed Public Chapels, and Parochial Chapelries, and Chapelries or Districts belonging or reputed to belong, or annexed or reputed to be annexed, to any Church or Chapel” (s. 3). — a def substantially followed in 34 & 35 V. c. 44, s. 2; 51 & 52 V. c. 20, s. 12; 60 & 61 V. c. 65, s. 15 (4); 61 & 62 V. c. 48, s. 13 (1); 62 & 63 V. c. 17, s. 2 (1b).

Other Stat. Def. — 6 & 7 W. 4, c. 115, s. 56; 1 & 2 V. c. 23, s. 16,

c. 106, s. 124; 2 & 3 V. c. 49, s. 21; 5 & 6 V. c. 27, s. 15, c. 108, s. 31; 20 & 21 V. c. 13, s. 6; 26 & 27 V. c. 120, s. 37. — *Ir.* 10 & 11 V. c. 32, s. 66; 14 & 15 V. c. 73, s. 1; 23 & 24 V. c. 72, s. 2; 32 & 33 V. c. 42, s. 72.

**BENEFICIAL.** — “Beneficial” and “Profitable” are not convertible terms (Dwar. 683).

To determine whether a Sale of Lands is “more beneficial for the parties interested” than a Division, s. 3, Partition Act, 1868, regard must be had to what in a monetary (and unsentimental) sense will be most profitable to the parties generally (*Drinkwater v. Ratcliffe*, L. R. 20 Eq. 533; 44 L. J. Ch. 607; *Fleming v. Crouch*, W. N. (84) 111).

A testamentary appointment of all property over which the testator has “any beneficial *Disposing Power*” is not confined to a POWER exercisable for the benefit of the testator or his estate (per Pearson, J., *Von Brockdorff v. Malcolm*, 55 L. J. Ch. 121; 30 Ch. D. 172; 53 L. T. 263; 33 W. R. 934); but the contrary was held by Fry, J., in *Ames v. Cadogan* (48 L. J. Ch. 762; 12 Ch. D. 868). *Vh.*, Theobald, 223.

The “Beneficial *Enjoyment*” of property by a Successor, s. 21, Suedy Act, 1853, “means no more than in his own right, and for his own benefit, not as a trustee for another” (per Ld Wensleydale, *A.-G. v. Sefton*, 34 L. J. Ex. 104. *V.* BENEFICIALLY ENTITLED). So, also, “beneficial *Interest*,” s. 2, same Act, means “a beneficial enjoyment in contradistinction to holding as trustee” (per Ld Chelmsford, *ib.* 106).

A direction in a Will that a Solicitor Trustee shall have his profit Costs, is a “beneficial *Gift* or *Interest*” within s. 15, Wills Act, 1837 (*Re Barber*, 55 L. J. Ch. 373; 31 Ch. D. 665; 54 L. T. 375; 34 W. R. 395; *Re Pooley*, 40 Ch. D. 1).

“Beneficial *Interest*” quâ Part 2, Mer Shipping Act, 1894; *V.* s. 57, replacing s. 3, Mer Shipping Act, 1862; *Vth.*, 1 Maude & P. 55, 56; *Batthyany v. Bouch*, 50 L. J. Q. B. 421.

“Beneficial *Interest*” in a Telegraph, s. 7, 31 & 32 V. c. 110; *V. R.* v. *Coleridge*, 45 L. J. Q. B. 649.

“Beneficial *Interest*,” s. 2 (1 *d*), Finance Act, 1894; *V. A.-G. v. Dobree*, cited PURCHASE.

There must be a “Beneficial OCCUPATION” of a tenement to make the occupier assessable to Poor Rate under the Statute of Elizabeth. The word “beneficial” in that connection is not the same as “profitable” to the person or corporation rated (*V.* per Denman, C. J., *R. v. Vange*, 3 Q. B. 254, 255, and the cases hereon collected, 3 Chitt. Stat., 3rd Ed., *Poor*, 1019 *et seq.*). The border-line of these cases was set by *Gambier v. Lydford* (23 L. J. M. C. 69; 3 E. & B. 346; confirmed by *Martin v. West Derby*, 11 Q. B. D. 145; 52 L. J. M. C. 66: *Vf. Mersey Docks v. Llancluan*, 54 L. J. Q. B. 49; 14 Q. B. D. 770; *Deursbury W. Works*

*Bd v. Penistone*, 55 L. J. M. C. 121; 50 J. P. 611; 17 Q. B. D. 381; 54 L. T. 592; 34 W. R. 622, and cases there cited). As a general rule, where a tenement is *capable* of beneficial occupation it is rateable, unless occupied by the Crown or its servants for Crown purposes. (*Mersey Docks v. Cameron*, alias, *Jones v. Mersey Docks*, 11 H. L. Ca. 443; 35 L. J. M. C. 1; 13 W. R. 1069). *Note*: As to what are Crown Purposes, *V. Coomber v. Berks Jus.*, 53 L. J. Q. B. 239; 9 App. Ca. 61; *Mid-dlesex Co. Co. v. St. George's, Hanover Sq.*, 1897, 1 Q. B. 64; 66 L. J. Q. B. 101; *Worcestershire Co. Co. v. Worcester*, 1897, 1 Q. B. 480; 66 L. J. Q. B. 323; 76 L. T. 138; 45 W. R. 309; 61 J. P. 214; *Leicester Co. Co. v. Leicester Assessment Committee*, cited *POLICE: St. Margaret's v. Hoskins*, 1899, 2 Q. B. 474; 68 L. J. Q. B. 840; 81 L. T. 390; 47 W. R. 649; 63 J. P. 725.

A Reformatory School is rateable (*Tunnicliffe v. Birkdale*, 56 L. J. M. C. 109; 20 Q. B. D. 450; 36 W. R. 360; 52 J. P. 452; overruling *Sheppard v. Bradford*, 33 L. J. M. C. 182; 16 C. B. N. S. 369; 12 W. R. 867), so, is an Industrial School (*Durham Co. Co. v. Chester-le-Street*, 1891, 1 Q. B. 330; 60 L. J. M. C. 9), so, are School Board premises (*R. v. West Bromwich*, 53 L. J. M. C. 153; 13 Q. B. D. 929; *R. v. London School Bd*, 55 L. J. M. C. 169; 17 Q. B. D. 738; 55 L. T. 384; 34 W. R. 583; 50 J. P. 419), and so is a Sewage Farm worked by a Local Authority (obliged to sewer) and worked by them at an inevitable loss (*Burton-on-Trent v. Egginton*, 59 L. J. M. C. 1; 24 Q. B. D. 197; 62 L. T. 412; 38 W. R. 181; 54 J. P. 453; *London Co. Co. v. Erith*, 1893, A. C. 562; 63 L. J. M. C. 9; 42 W. R. 330; 69 L. T. 725; 57 J. P. 821; *Va, Metrop Bd of Works v. West Ham*, 40 L. J. M. C. 30; L. R. 6 Q. B. 193), even though the tenement cannot be sold or let (*London Co. Co. v. Erith*, sup; overruling *Owen's College v. Chorlton-upon-Medlock*, 56 L. J. M. C. 29; 18 Q. B. D. 403; 56 L. T. 373; 35 W. R. 236; 51 J. P. 356; *Vf, Hull Dock Co v. Sealcoates Union*, 1895, A. C. 136; 64 L. J. M. C. 49): — *Secus*, if the tenement, — *e.g.* a Public Park, — is one which the Local Authority is not bound to acquire, and which is maintained at a loss, and which (as a matter of law) cannot be a beneficial occupation (*London Co. Co. v. Lambeth*, 1896, 2 Q. B. 25; 65 L. J. M. C. 148; 74 L. T. 605; 44 W. R. 621; 60 J. P. 470; in H. L. nom. *Lambeth v. London Co. Co.*, 1897, A. C. 625; 66 L. J. Q. B. 806; 76 L. T. 795; 46 W. R. 79; 61 J. P. 580, adopting *Hare v. Putney*, 50 L. J. M. C. 81; 7 Q. B. D. 223). *Quà* property of a Co in a Winding-up; *V. Re National Arms Co*, 54 L. J. Ch. 673; 28 Ch. D. 474; *Re Blazer Co*, 1895, 1 Ch. 402; 64 L. J. Ch. 161.

F. EXCLUSIVE OCCUPATION: LEASE: NEW OCCUPIER: SEWER.

“Beneficial Owner”; *V. Re Roulston*, 21 L. R. 1r. 503.

An Assignment “as Beneficial Owner,” does not by the covenants thereby implied (s. 7, Conv. & L. P. Act, 1881), enlarge the subject-matter from a defeasible into an indefeasible interest (*lic Greenwood*,

40 W. R. 357; 66 L. T. 101). *Vf*, As to those implied covenants, *David v. Sabin*, cited TITLE.

A BILL OF SALE from the grantor "as Beneficial Owner," is void, because that phrase does imply those covenants (*Re Barber, Ex p. Stanford*, cited IN ACCORDANCE WITH THE FORM).

"Beneficial Owner," s. 1, Larceny Act, 1868, 31 & 32 V. c. 116, "is not a Term of Art. It is a popular expression, and ought to receive a liberal construction" (per Wills, J., *R. v. Neat*, 69 L. J. Q. B. 121); therefore, one who has the control of money, or the power of appropriating it to the purposes of enjoyment and amusement in which he only participates to a small degree, is such a "Beneficial Owner" (*S. C.* 69 L. J. Q. B. 118; 81 L. T. 682; 64 J. P. 39).

"Beneficial POWER"; *V.* "Beneficial Disposing Power," sup.

"Beneficial *Winding-up*" of a Co, s. 131, Comp Act, 1862; *V. Hire Purchase Co v. Richens*, 20 Q. B. D. 387; 58 L. T. 460; 36 W. R. 365; 4 Times Rep. 184. "Just and Beneficial" application in a *Winding-up*; *V. JUST*.

**BENEFICIALLY ENTITLED.** — "Beneficially entitled to possession," s. 2 (5), S. L. Act, 1882, "does not mean entitled and deriving a benefit from possession, but beneficially entitled in the sense of being entitled for one's own benefit, if there is any benefit to be derived from the estate, and not simply as trustee for others" (per Cotton, L. J., *Re Jones*, 53 L. J. Ch. 811; 26 Ch. D. 736). *Vf*, *Re Clitheroe*, 31 Ch. D. 135; *Re Atkinson*, lb. 577; *Re Strangways*, 34 Ch. D. 423. A Tenant for Life is "beneficially entitled to possession," although his actual enjoyment is intercepted by a Trust for accumulation to raise a fund to pay debts and legacies (*Annesley v. Woodhouse*, 1898, 1 I. R. 69).

Property to which, quà a SUCCESSION, a person becomes "beneficially entitled . . . UPON the death" of another, means, property to which he so becomes entitled by reason only of such death; therefore, a gratuitous Assignee of a Life Policy, who has for years kept up the Policy out of his own moneys, does not become entitled to the policy moneys "upon" the death of the insured, for he gets such moneys by reason, among other things, of his own payments (*Lord Advocate v. Fleming*, 1897, A. C. 145; 66 L. J. P. C. 41; 76 L. T. 125; 45 W. R. 674).

*V.* BENEFICIARY: ENTITLED.

**BENEFICIALLY INTERESTED.** — "A person having a contingent interest in real estate (*Re Sheppard*, 4 D. G. F. & J. 423; 9 Jur. N. S. 59) is a person 'Beneficially Interested' within s. 37, Trustee Act, 1850; and so is a creditor who has obtained a decree for the administration and sale of real estate (*Re Wragg*, 1 D. G. J. & S. 356); and also, it seems, a purchaser under a decree who has paid his purchase money into Court (*Ayles v. Cox*, 17 Bea. 584). The committee of lunatic

*cestui que trusts* is not a person 'Beneficially Interested' within this section (*Re Bourke*, 2 D. G. J. & S. 426)": Dan. Ch. Pr. 1787.

**BENEFICIARY.**—A Beneficiary is "one who is BENEFICIALLY ENTITLED to, or interested in, property; *i.e.* entitled to it for his own benefit, and not merely as TRUSTEE, or EXOR, holding it for others. The word is nearly equivalent to 'CESTUI que trust,' which, on account of its cumbersomeness and inexpressiveness, 'Beneficiary' has begun to supersede in modern law" (2 Encyc. 58).

**BENEFIT.**—A Power to Trustees to make advances for a person's "Benefit," enables them to make advances to set up in business that person's husband (*Re Kershaw*, 37 L. J. Ch. 751; L. R. 6 Eq. 322); or to pay the person's debts (*Lowther v. Bentinck*, 44 L. J. Ch. 197; L. R. 19 Eq. 167: *Re Stanger*, cited WHOLE: *See, Re Price*, 34 Ch. D. 603). *Vf, Re Hargreaves*, W. N. (85) 174. "Benefit" is much wider than "ADVANCEMENT"; *V. M'Mahon v. Gaussen*, 1896, 1 I. R. 147.

But a discretionary trust to apply income forfeited by bankruptcy, for the "benefit" of the bankrupt beneficiary, would seem to be confined to allowing it to be spent on his MAINTENANCE, in the widest and most general sense of that word (*Re Bullock, Good v. Lickorish*, cited APPLY).

The "benefit" of a *Married Woman*, justifying the Court in removing a Restraint on ANTICIPATION under s. 39, Conv. & L. P. Act, 1881, is not confined to her pecuniary benefit (*Re Pollard*, 1896, 2 Ch. 552; 65 L. J. Ch. 796; 75 L. T. 116; 45 W. R. 18); it means, such benefit as the Court (on each particular application, *Re Warren*, 52 L. J. Ch. 928) shall cautiously consider to be for her own advantage, having regard to all the circumstances of her case (*Re Currey*, 56 L. J. Ch. 389: *Re Little*, 58 Ib. 233; 40 Ch. D. 418; 37 W. R. 289: *Re Radcliffe*, 1892, 1 Ch. 227; 61 L. J. Ch. 186; 66 L. T. 363; 40 W. R. 323: *Re Somes*, 40 S. J. 210: *Re Wilson-Stewart*, 75 L. T. 381: *Re Pollard*, sup: *Paget v. Paget*, 67 L. J. Ch. 1, 266: 1898, 1 Ch. 470). Sometimes a wife's property may be so affected by marital rights that it may be for her "benefit" to remove restraint, so that her husband's creditors may be settled with (*Re Stewart*, 41 S. J. 80). *Note.* A wife's claim to Indemnity from her husband quâ the Order, will be prejudiced unless it be expressly given by the Order (*Paget v. Paget*, sup).

"Benefit of Children"; *V. Re Pocock*, 6 Ch. 445: *Scotney v. Lomer*, 29 Ch. D. 535; 31 Ib. 380: *Urquhart v. Butterfield*, 36 Ch. D. 55; 37 Ib. 358.

A bequest "for the Benefit of Wife and her Children," *semble*, means to the Wife for life, with remainder to her children; in any case, the children, *inter se*, take as JOINT TENANTS (*Armstrong v. Armstrong*, 38 L. J. Ch. 463; L. R. 7 Eq. 518).

A Policy under s. 10, M. W. P. Act, 1870, repled s. 11, M. W. P. Act,

1882, "for the Benefit of the assured's Wife and Children," gives the policy moneys to the Wife and Children as Joint Tenants (*Re Seyton*, 56 L. J. Ch. 775; 34 Ch. D. 511; *Re Davies*, 1892, 1 Ch. 90; 61 L. J. Ch. 650; 66 L. T. 104). *Vh*, *Re Turnbull*, 1897, 2 Ch. 415; 66 L. J. Ch. 719.

"Benefit," s. 5, 22 & 23 *V. c.* 61; *V. Thomson v. Thomson*, cited PARENT.

"Benefit by cesser of interest"; *V. CESSER*.

Where the "Benefit" of a BUSINESS is given up, — *e.g.* under Partnership Articles, — the person giving it up will be restrained from soliciting and obtaining the custom of the business to the detriment of the person taking the business (*Burrows v. Foster*, cited *Clark v. Leach*, 32 Bea. 23; 32 L. J. Ch. 293). *If*, GOODWILL.

Assignment of COPYRIGHT with all "Property and Benefit"; *V. Ex p. Hutchins and Romer*, 4 Q. B. D. 90, 483; 48 L. J. Q. B. 505.

Deed for "the Benefit of CREDITORS generally"; *V. GENERALLY*.

"Benefit" to Donor "by Contract or otherwise," s. 11 (1), 52 & 53 *V. c.* 7; *V. A-G. v. Worrall*, 1895, 1 Q. B. 99; 64 L. J. Q. B. 141; 71 L. T. 807.

"Benefit," s. 2 (1*b*), Finance Act, 1894, is not to be cut down to "Benefit in Income" (per Williams, J., *A-G. v. Wood*, 1897, 2 Q. B. 102; 66 L. J. Q. B. 522; 76 L. T. 654; 45 W. R. 663).

"Benefit" of an Ecclesiastical Charity, s. 75, Loc Gov Act, 1894, includes temporal, as well as spiritual or religious, benefit (per Chitty, L. J., *Re Ross* and *Re Perry Almshouses*, cited ECCLESIASTICAL CHARITY).

"Benefit of the Grantor," Mortmain Act, 9 G. 2, c. 36, s. 1, "means, something given collusively, and making the deed inconsistent with that which it professes to be" (per Patteson, J., *Doe d. Graham v. Hawkins*, cited REVOKE).

**BENEFIT OF CLERGY.** — "Benefit of Clergy," was a privilege which a Clergyman, or one who could "read as a Clerke in such a booke and place as the Judge" should appoint, had to "pray his Clergie" when arraigned for Felony, and thereupon "to bee delivered to the Ordinary to purge himselfe of the same offence" (*Termes de la Ley*). The privilege was abolished (except as to Peers) by 7 & 8 G. 4, c. 28, s. 6; and, as to Peers, by 4 & 5 V. c. 22. *Vh*, Jacob, *Clergy*: 2 Encyc. 59-61.

**BENEFIT OF SURVIVORSHIP.** — "There is a difference between a gift over of the shares of any prior legatees to the survivors, and a gift to several 'with Benefit of Survivorship.' The latter expression is very general, and may without impropriety be held to pervade the whole fund, so as to carry accrued as well as original shares" (2 Jarm. 714, citing *Re Crawhall*, 8 D. G. M. & G. 480; *Sr*, *Vorley v. Richardson*, Ib. 126; 25 L. J. Ch. 335).

As to this phrase giving a Vested Interest; *V. Corneck v. Wadman*, L. R. 7 Eq. 80, wherein *Donald v. Bryce*, 16 Bea. 581, was doubted: *Va, Daniel v. Gosset*, 19 Bea. 478; *Re Smaling*, W. N. (77) 236; *Wilby v. Chantepedrix*, 1894, 1 I. R. 209.

**BENERTH.** — “*Benerth* signifieth the service of the plough and cart” (Co. Litt. 86 a). “*Ben-erth* was precarious tillage service with horse and cart: *gavel-erth* was tillage service certain: *ben-rip* is a precarious service of reaping: *gavel-rip* was the same service only certain” (Elton, Ten. Kent, 34). *Va, Spelm.*: Cowel: PRECARIE.

**BENEVOLENCE: BENEVOLENT.** — A bequest for objects of “Benevolence and Liberality” (*Morice v. Durham, Bp.*, 9 Ves. 399; 10 Ib. 522), or for “Benevolent Purposes” (*James v. Allen*, 3 Mer. 17; *Re Jarman*, 47 L. J. Ch. 675; 8 Ch. D. 584) is not good: *See, Re Lloyd*, cited RELIGIOUS.

*V. CHARITY: PHILANTHROPIC.*

“I think there is some fund for providing oysters at one of the Inns of Court for the Benchers. This, however benevolent, would hardly be called charitable” (per Ld Bramwell, *Income Tax Commrs v. Pousel*, cited CHARITABLE PURPOSE).

“Benevolent Asylum”; *V. Dilworth v. Commr of Stamps*, cited ASYLUM.

“Benevolent Society”; *V. FRIENDLY SOCIETY.*

**BENEFIT.** — *V. PRECARIE.*

**BEN-RIP.** — *V. BENERTH.*

Ld Geo. **BENTINCK'S ACT.** — The Gaming Act, 1845, 8 & 9 V. c. 109.

**BEQUEATH.** — *V. DEVISE.*

**BEQUEATHED.** — The word “Bequeathed” (though perhaps not in itself a technical word) is primarily applicable only to property passing under a testamentary disposition (*Re Armstrong*, 49 L. J. Ch. 53; 42 L. T. 823); and would, ordinarily, connote Personal Property; but, on a context, it may easily include Realty (*V. DEVISE*).

“Specifically bequeathed,” may be construed, “bequeathed expressly and not by reference” (*Jackson v. Hosié*, 27 L. R. Ir. 450).

**BERCARIA.** — “*Berquarium* or *bercaria*, commeth of *berc*, an old Saxon word, used at this day for barks and rindes of trees, and signifieth a tan-house, or a heath-house, where barks or rindes of trees are laid to tan withal: and *berquarii* are mentioned in Domesday. It signifieth also, and more legally, a sheep-cote, of the French word *bergerie*” (Co. Litt. 5 b). *Vf, Cowel, Barcaria: Touch. 95.*

**BEREWICA.** — “*Berewica*, or *berewit*, in Domesday, signifieth a townne” (Co. Litt. 116 a). But it is also said to mean “a manor, or rather a detached member of a manor, a town, a hamlet, a sub-manor, a corn farm” (Elph. 563, citing Spelm.: Cowel, *Berwica*: 1 Ellis, Intro. Domesday, 240).

**BERMONEY BOAT.** — *V. NET.*

**BERTH.** — *V. OFF.*

As to the effect of a Berth-Note, *V. Rotherfield S. S. Co v. Tweedy*, 2 Com. Ca. 84.

**BESEECH.** — *V. PRECATORY TRUST.*

**BESET.** — “Picketing” workmen is, obviously, to “Watch or Beset” them, within s. 7 (4), Conspiracy and Protection of Property Act, 1875, 38 & 39 V. c. 86; but the section provides that “attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, *in order merely to obtain or communicate information*, shall not be deemed a ‘Watching or Besetting,’ within the meaning of this section.” That proviso does not legalise picketing to induce men not to work for, or others not to deal with, the person picketed, — conduct which may be restrained by Injunction (*Lyons v. Wilkins*, 1896, 1 Ch. 811; 65 L. J. Ch. 601; 45 W. R. 19; 74 L. T. 358; *S. C.* No. 2, cited *MALICE: Charnock v. Court*, 1899, 2 Ch. 35; 68 L. J. Ch. 550; 80 L. T. 564; 47 W. R. 633; 63 J. P. 456; *Walters v. Green*, 1899, 2 Ch. 696; 68 L. J. Ch. 730; 81 L. T. 151; 48 W. R. 23; 63 J. P. 742). Those cases show that “House, or other PLACE,” in the section, includes “ANY” place where the workman happens to be; and that the “watching or besetting” need not be for any lengthened time. *Vh, Farmer v. Wilson*, 82 L. T. 566; 69 L. J. Q. B. 496; 64 J. P. 486.

*Cp.* INTIMIDATE: MOLEST.

**BESIDES.** — When provisions are made for children “besides” an eldest son, no children take unless there be a son; *secus*, if the phrase is “OTHER THAN” (*Walcott v. Bloomfield*, 4 Dr. & War. 235; 6 Ir. Eq. Rep. 227; *Vhe, Simpson v. Frew*, 5 Ir. Ch. 517. On both cases *V. Re Flemingy*, 15 L. R. Ir. 369, 370).

**BEST BELIEF.** — A person who swears to the “Best of his Belief,” “imports that he is entitled to entertain the belief he expresses” (per Pollock, C. B., *Roe v. Bradshaw*, L. R. 1 Ex. 108; 35 L. J. Ex. 71). *Cp.* “Information and Belief,” sub INFORMATION.

**BEST ENDEAVOURS.** — *V. UTMOST.*



**BEST LUMBER.** — “A Contract to erect a building of ‘the Best Lumber’; construed to mean the best lumber of which bgs were ordinarily constructed at that place: *McIntire v. Barnes*, 4 Col. 285” (Hudson, 138).

**BEST OIL.** — A contract for “Best Oil” may be explained, by oral evidence, to mean that the contract will be satisfied if the oil delivered contain a substantial portion of “best” oil (*Lucas v. Bristow*, 27 L. J. Q. B. 364; E. B. & E. 907).

**BEST PRICE.** — The “Best Price” that can be gotten for goods distrained, 2 W. & M. c. 5, s. 2, is *primâ facie* evidenced if the goods are sold at their appraised value (*Walter v. Rumbal*, 1 Raym. Ld. 55); but that presumption may be rebutted by evidence (*Cook v. Corbett*, 24 W. R. 181; *Poynter v. Buckley*, 5 C. & P. 512). Restrictive conditions, e.g. that the purchaser must consume hay, or unthreshed corn, on the premises, cannot be imposed (*Hawkins v. Walron*d, cited PURCHASER).

Best Price to be obtained by Mtgee, when selling; *V. Coote*, 276.

As regards “Best Price” of Settled Land, when sold for dwellings of the WORKING CLASSES; *V. s. 74 (1 a)*, 53 & 54 V. c. 70.

*V. FAIR PRICE: PRICE.*

**BEST RENT.** — The “Best Rent” means the most RACK-RENT that can reasonably be gotten for the whole term of the lease to be granted, having regard to the solvency of the proposed tenants and what may fairly be considered for the permanent benefit of the property; and when a Power to grant a lease at the “Best Rent” be exercised fairly and honestly, a reasonable latitude will be allowed to the donee of the power, so that when he has to choose between two or more responsible offers, not widely differing in amount, he is not bound to accept the highest offer (1 Platt, 483-489; Woodf. 415, 416; Farwell, ch. 17; Copinger & Munro, on Rents, 152-154). “Unless otherwise authorised by the Power, a uniform rent must be reserved throughout the term” (Redman, 34, citing *Doe d. Sutton v. Harvey*, 1 B. & C. 426).

*V. s. 18 (6)*, Conv. & L. P. Act, 1881.

The Settled Land Act, 1882, enabling Tenants for Life to grant Leases, provides (s. 2, subs. 7), that “Every Lease shall reserve the *Best Rent* that can reasonably be obtained, regard being had to any Fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.” The value of a contemporaneously surrendered Lease may be taken into consideration in determining such “Best Rent” (*Re Rawlins*, L. R. 1 Eq. 286); but not Buildings already erected and not part of the transaction (*Re Chawner*, cited CONSIDERATION). As to Inadequacy of the rent reserved, *V. Sutherland v. Sutherland*, 1893, 3 Ch. 169; 62 L. J. Ch. 954. When a Tenant for Life takes an undisclosed payment for granting a lease, that is *primâ facie* proof that the “Best Rent” has not been obtained (*Chandler v.*

*Bradley*, 1897, 1 Ch. 315; 66 L. J. Ch. 214; 75 L. T. 581; 45 W. R. 296). *Vh*, *Harold v. Daly*, 30 L. R. Ir. 697.

As regards "Best Rent" of Settled Land, when *leased* for dwellings of the WORKING CLASSES, *V*. s. 74 (1 *a*), 53 & 54 V. c. 70.

*V*. ANCIENT RENT.

**BEST TITLE.** — "The provision that the purchaser is to accept the 'Best Title' that the vendor can give, certainly does not take away the purchaser's right" to insist on having the deeds handed over on Completion (per Romer, *J.*, *Re Duthy and Jesson*, cited INFORMATION).

**BET.** — Issuing Coupons in connection with a Sporting Newspaper and offering prizes for naming winners of races on such coupons, is not inviting a "Bet, or Wager," within s. 3 (3), 37 V. c. 15 (*Caminada v. Hulton*, 60 L. J. M. C. 116; 64 L. T. 572; 39 W. R. 540; 55 J. P. 727; *Sc. R. v. Stoddart*, 83 L. T. 538). *Vf*, LOTTERY: WAGER: GAMING CONTRACT.

"To bet," "Betting," ss. 1 and 3, 16 & 17 V. c. 119, does not include the mere payment of a bet that has been made and lost (*Bradford v. Dawson*, 1897, 1 Q. B. 307; 66 L. J. Q. B. 191; 76 L. T. 54; 45 W. R. 347; 61 J. P. 134).

Betting, within s. 3, 36 & 37 V. c. 38, must be at, or on, a "Game, or pretended GAME OF CHANCE" (*Ridgeway v. Farndale*, 1892, 2 Q. B. 309; 61 L. J. M. C. 199; 67 L. T. 318; 41 W. R. 128; 56 J. P. 697).

**BETTERMENT.** — *V*. TRADE INTEREST.

**BETTING HOUSE.** — *V*. COMMON BETTING HOUSE: COMMON GAMING HOUSE.

**BETWEEN.** — A testamentary gift to two or more "between," or "between or amongst" them, creates a tenancy in common (*Lushbrook v. Cook*, 2 Mer. 70; Wms. Exs. 1327; 2 Jarm. 257; *A-G. v. Fletcher*, L. R. 13 Eq. 128; 41 L. J. Ch. 167); and so, though the phrase be "jointly and between them" (*Perkins v. Baynton*, 1 Bro. C. C. 118; *Richardson v. Richardson*, 14 Sim. 526). *V*. AMONG.

It is submitted that where a Time has to elapse, or a Thing is to be done, "between" two Dates, both dates are excluded; herein resembling CLEAR. and INTERVAL. *Vh*, *Agnew v. Fowler*, 1 Ir. Com. Law Rep. 462.

So "between" two Places is exclusive of both (*R. v. Fisher*, 8 C. & P. 613).

Quà Post Office (Offences) Act, 1837, 1 V. c. 36, "whenever the term 'between' is used in reference to the transmission of letters, newspapers, parliamentary proceedings, or other things between one place and another, it shall apply equally to the transmission from either place to the other" (s. 47).

As to an agreement and declaration "between and by the parties hereto"; *V. AGREED AND DECLARED.*

"Plies between"; *V. PLY.*

**BEYOND.** — "Beyond their Control"; *V. CONTROL.*

**BEYOND SEAS.** — By the Mer Law Amend. Act, 1856, 19 & 20 V. c. 97, s. 12, no part of the UNITED KINGDOM of Great Britain and Ireland, nor the islands of Man, Guernsey, Jersey, Alderney, and Sark, or any islands adjacent to any of them are to be deemed to be "Beyond Seas" within the meaning of the Statute of Limitation, 4 & 5 Anne, c. 16. (Prior to the Act of 1856, Ireland was "beyond seas" quâ 4 & 5 Anne, *Lane v. Bennett*, 1 M. & W. 70, for "beyond seas" had been held "out of Great Britain," *King v. Walker*, 1 Bl. W. 286).

The def in 19 & 20 V. c. 97 was, in substance, the same as that provided for the Com. L. Pro. Act, 1852 (s. 227), and for the Com. L. Pro. Act (Ir), 1853 (s. 4); and afterwards for the Army Discipline and Regn Act, 1879 (s. 181), and Army Act, 1881 (subs. 25, s. 190). Quâ 26 V. c. 10, "no part of the United Kingdom," is "beyond seas" (s. 2).

For some purposes, the words "Beyond Seas" are not to be construed literally, but are synonymous with "out of the realm or territories," so that India may not be "beyond seas" (Add. T. 68, citing *Rucknaboye v. Lulloobhoy Mottichund*, 8 Moore P. C. 4). *V. REALM.*

Goods shipped from a Foreign Port under a Through Bill of Lading to Liverpool, landed in London and sent thence to Liverpool in another ship, are IMPORTED into Liverpool "from parts Beyond Seas," within s. 234, Mersey Dock Acts, Consolidation Act, 1858 (*Mersey Dock v. Twigge*, 67 L. J. Q. B. 604; 3 Com. Ca. 176). *V. TRADING.*

"Offences committed on *Land beyond the Seas*, for which an Indictment may legally be preferred in England or Wales," s. 2, 11 & 12 V. c. 42; *V. R. v. Eyre*, 37 L. J. M. C. 159; L. R. 3 Q. B. 487.

*Note.* "Absence beyond seas," s. 16, 3 & 4 W. 4, c. 27, does not, on and since 1st Jan 1879, prevent the Statute of Limitations from running quâ Distress or Ejectment (ss. 3 and 12, Real Property Limitation Act, 1874).

**BIDDING.** — A Bidding Prayer, is when the Minister moves the people to join with him in prayer on topics which he mentions, but for which he provides no form of words. For the Bidding Prayer in the Church of England, *V. 55th of the Canons Ecclesiastical, 1603.*

Vendor's right of bidding at an AUCTION of Goods, is curtailed by s. 58, Sale of Goods Act, 1893.

**BIGAMY.** — "Every one commits the felony called Bigamy, who, being married, marries any other person during the life of his or her wife or husband.

"The expression 'being married' means, legally married. The word

'marries' means, go through a form of marriage which the law of the place where such form is used recognizes as binding, whether the parties are by that law competent to contract marriage or not, and although, by their fraud, the form employed may, apart from the Bigamy, have been insufficient to constitute a binding marriage.

"Provided that this definition does not extend (a) to a second marriage contracted elsewhere than in England and Ireland by any other than a subject of Her Majesty; nor (b) to any person marrying a second time, whose husband or wife has been continually absent from such person for seven years then last past, and has not been known by such person to be living within that time (or whose husband or wife is reasonably believed to be dead, *R. v. Tolson*, 58 L. J. M. C. 97; 23 Q. B. D. 168; 60 L. T. 899); nor (c) to any person who at the time of such second marriage was divorced from the bond of the first marriage, nor to any person whose first marriage has been declared void by the sentence of any Court of competent jurisdiction.

"A *Divorce à vinculo matrimonii* pronounced by a foreign Court between persons who have contracted marriage in England and who continue to be domiciled in England, on grounds which would not justify such a Divorce in England, is not a Divorce within the meaning of this clause" (*Steph. Cr.* 188, 189, citing 24 & 25 V. c. 100, s. 57, as explained by the authorities there also cited. *V. espy R. v. Allen*, 41 L. J. M. C. 97; L. R. 1 C. C. R. 367, disapproving *R. v. Fanning*, 17 Ir. Rep. C. L. 289, 10 Cox C. C. 411).

*Vf*, Arch. Cr. 1110-1121: *Rosc. Cr.* 284-296: 2 *Encyc.* 73-78.

**BILL.** — "The word 'Bill' is one of the most general that can be used wherever it is not confined by other terms, *e.g.* a Bill in Parliament, a Bill in Chancery. In every kind of business the word 'Bill' occurs as representing any WRITING, — a Bill of Lading, a Bill of Parcels, a Play Bill, a Bill of Fare, a Bill of Divorcement, and so on" (*per Maule*, arg. *Bank of England v. Anderson*, 3 Bing. N. C. 601).

A Solr's Bill of Costs, not debiting any one by name but enclosed in an envelope addressed to the client, is a good "Bill," within s. 37, 6 & 7 V. c. 73 (*Roberts v. Lucas*, 11 Ex. 41; 24 L. J. Ex. 227: *Vf*, *Champ v. Stokes*, 6 H. & N. 683; 30 L. J. Ex. 242). Whether items of charge are delivered as a "Bill," within the section, is a question of fact in each particular case (*Re Romer*, 1893, 2 Q. B. 286; 62 L. J. Q. B. 610). Without items, there can be no proper "Bill," even though the Solr delivers his claim as for an agreed gross sum (*Philby v. Hazle*, 29 L. J. C. P. 370; 8 C. B. N. S. 647: *Wilkinson v. Smart*, 33 L. T. 573; *Vtch*, *Blake v. Hummell*, 51 L. T. 430).

"Bill, Placard, or Poster," s. 18, 46 & 47 V. c. 51, s. 14, 47 & 48 V. c. 70; *V. Barstow Case*, 5 Times Rep. 159: *Denbigh and Flint Case*, *Ib.* 160: *Shrewsbury Case*, *Ib.* 160.

**BILL OF COMPLAINT.** — Stat. Def., 15 & 16 V. c. 86, s. 66. — *Ir.* 30 & 31 V. c. 44, s. 2.

**BILL OF CREDIT.** — “A Letter whereby one person requests another to advance money to a third person named therein for a certain amount, and promises to reimburse the person making the advance. It is more usually termed a Letter of Credit” (2 Encyc. 87). *Vf. Letter of Credit*, 7 *Ib.* 369: *Circular Note*, 3 *Ib.* 34.

**BILL OF EXCHANGE.** — “A Bill of Exchange is an UNCONDITIONAL Order in Writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, ON DEMAND, or at a fixed or DETERMINABLE FUTURE TIME, a SUM CERTAIN in money to, or to the order of, a specified person, or to bearer” (s. 3, Bills of Ex. Act, 1882). That section further provides that.

“An Order to pay out of a particular fund is not Unconditional within the meaning of this section; but an unqualified Order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the Bill, is unconditional.” And further that

“A Bill is not invalid by reason —

- (a) That it is not dated;
- (b) That it does not specify the value given, or that any value has been given therefor;
- (c) That it does not specify the place where it is drawn, or the place where it is payable.”

*Note.* The Bills of Ex. Act, 1882, is a Code of Law relating to NEGOTIABLE Instruments, and is to be construed according to the natural meaning of its language, uninfluenced by prior decisions except upon some special ground, *e.g.* where its words are of doubtful import, or have acquired a technical or special meaning (per *Ld. Herschell. Bank of England v. Vagliano*, 1891, A. C. 107; 60 L. J. Q. B. 164; per *Chitty, J., Re English Bank of River Plate*, 1893, 2 Ch. 438; 62 L. J. Ch. 578; 69 L. T. 14; 41 W. R. 521). A similar rule was applied by the P. C. to the construction of the Civil Code of Lower Canada, in *Robinson v. Canadian Pacific Ry*, 1892, A. C. 481; 61 L. J. P. C. 79; 67 L. T. 505.

V. APPROVED BILL: CHEQUE: ORDER, at end: PART. *Cp.* PROMISSORY NOTE.

*Vh.* Byles: Chalmers: *Rosc. N. P.* 350: 2 Encyc. 94–109.

*Quà* Stamp Act, 1891, s. 32: *V. REMIT.*

A promise to deliver up a Bill of Ex., means the whole Set, if drawn in Sets (*Kearney v. West Granada Co.*, 1 H. & N. 412; 26 L. J. Ex. 15).

A document otherwise in the form of a Bill of Exchange but having no drawer's name to it, is not a Bill of Exchange within s. 22, 24 & 25 V. c. 98 (*R. v. Harper*, 50 L. J. M. C. 90; 7 Q. B. D. 78).

**BILL OF LADING.**—“A Bill of Lading is the written evidence of a Contract for the Carriage and Delivery of goods sent by Sea for certain FREIGHT. The contract, in legal language, is a contract of BAILMENT (2 Raym. Ld. 912). In the usual form of the contract, the undertaking is to deliver to the Order, or Assigns, of the Shipper. By the delivery on board, the Ship-master acquires a *special* property to support that possession which he holds in right of another, and to enable him to perform his undertaking. The *general* property remains with the Shipper of the goods until he has disposed of it by some act, sufficient in law, to transfer property. The Indorsement of the Bill of Lading is simply a direction of the delivery of the goods” (per Loughborough, C. J., *Lickbarrow v. Mason*, in Error, *Mason v. Lickbarrow*, 1 Bl. H. 359). A Bill of Lading is for a separate parcel or parcels of goods; a CHARTER-PARTY is a contract for the whole ship or some principal part thereof. *Vh*, 2 Encyc. 110–127: Abbott, Part 3, ch. 2: Carver, Part 1, ch. 3. 5: Scrutton on Charter-Parties and Bills of Lading. *V*. CLEAN BILL OF LADING.

Indorsement of; *V*. PASS: THE: SANS RECOURS.

Stat. Def. — Customs Tariff Amendment Act, 1860, 23 & 24 V. c. 22, s. 21.

**BILL OF QUANTITIES.** — *V*. QUANTITY SURVEYOR.

**BILL OF RIGHTS.** — 1 W. & M. sess. 2, c. 2, — the full title of which is “An Act declaring the Rights and Liberties of the Subject, and Settling the Succession to the Crown.”

*Cp*, “Petition of Right,” sub PETITION. *V*. SETTLEMENT, at end.

**BILL OF SALE.** — A Bill of Sale is an Assignment of chattels, whereby the property in such chattels is intended to pass, but without possession of them being given (per Esher, M. R., *Johnson v. Diprose*, 1893, 1 Q. B. 512; 62 L. J. Q. B. 291; 68 L. T. 485; 41 W. R. 371).

An Agreement for sale of furniture on the ordinary Hire and Purchase System is not a Bill of Sale by the vendee (*Ex p. Crawcour*, 9 Ch. D. 419; nom. *Re Robertson*, 47 L. J. Bank. 94: *Vf*, BUY), unless, on consideration of all the facts, it can be seen that the true nature of the transaction was that the document should be a security for money (*Muddell v. Thomas*, 1891, 1 Q. B. 230; 60 L. J. Q. B. 227; 64 L. T. 9; 39 W. R. 280: *Re Watson*, 59 L. J. Q. B. 394; 25 Q. B. D. 27). So, a Building Agreement, which provides that all materials brought by the builder on the land shall become the property of the freeholder, is not a Bill of Sale (*Reeves v. Barlow*, 12 Q. B. D. 436; 53 L. J. Q. B. 192: *Vj*); RIGHT IN EQUITY: *Re Hall, Ex p. Close*, 54 L. J. Q. B. 43; 14 Q. B. D. 386; 51 L. T. 795; 33 W. R. 228: *Church v. Sage*, 67 L. T. 800; 41 W. R. 175: *Sc. Climpson v. Coles*, cited LICENSE); nor is a Co’s DEBENTURE (*Re Standard Manufacturing Co*, 1891, 1 Ch. 627;

60 L. J. Ch. 292: *Richards v. Kidderminster*, 1896, 2 Ch. 212; 65 L. J. Ch. 502: *Vf*, COMPANY: *So*, now, s. 14, Comp Act, 1900); nor is a "Letter of Hypothecation accompanying a deposit of goods by merchants or factors, or Pawn-Tickets given by pawnbrokers, or in fact any case where the object and effect of the transaction are immediately to transfer the possession from the grantor to the grantee" (per Cave, J., *Re Hall, Ex p. Close*, sup: *Va*, TRANSFER: *Hilton v. Tucker*, 57 L. J. Ch. 973; 39 Ch. D. 669; 59 L. T. 172; 36 W. R. 762: *Ex p. Hubbard, Re Hardwick*, 55 L. J. Q. B. 490; 17 Q. B. D. 690; 35 W. R. 2). *Vf*, *Manchester S. & L. Ry v. North Central Wagon Co*, 58 L. J. Ch. 219; 13 App. Ca. 554: *Grigg v. National Guardian Co*, 1891, 3 Ch. 206; 61 L. J. Ch. 11: *Spencer v. Mid. Ry*, 11 Times Rep. 542: *Redhead v. Westwood*, 59 L. T. 293: *Re Yarrow, Collins v. Weymouth*, 59 L. J. Q. B. 18; 61 L. T. 642; 38 W. R. 175: — And as to when a document is not a Bill of S., but is a PLEDGE, *V. Charlesworth v. Mills*, 1892, A. C. 231; 61 L. J. Q. B. 830; 66 L. T. 690; 41 W. R. 129; but *Cp, Re Townsend, Ex p. Parsons*, cited LICENSE.

The def of a Bill of Sale, for the purposes of the Bills of S. Acts, 1878 and 1882, is given in s. 4 of the Act of 1878. But whilst this def has been adopted for the Act of 1882 by s. 3 of the latter, that same section provides that the peculiar provisions of the Act of 1882 shall not apply to a Bill of S. *not* given "by way of security for the payment of money."

As to what is an ASSURANCE; AUTHORITY OR LICENSE; LICENSE; RECEIPT; TRANSFER (including Assignment); ASSIGNMENT; ORDINARY COURSE, within that def, or MARRIAGE SETTLEMENT, or VESSEL, within its exception: *V. those words respectively*. But it should always be borne in mind that "the Bills of S. Acts strike, not at Transactions but, at Documents" (per Kekewich, J., *Grigg v. National Guardian Co*, sup, and per Russell, C. J., *London & Yorkshire Bank v. White*, 11 Times Rep. 570; *Sr*, per North, J., *Jarris v. Jarris*, 63 L. J. Ch. 10); and a document, not apparently a Bill of S., may, on the circumstances, be treated as one (*Beckett v. Tower Assets Co*, 1891, 1 Q. B. 638; 60 L. J. Q. B. 493; 64 L. T. 497; 39 W. R. 438: *Re Watson*, sup).

Attornments are Bills of Sale, s. 6, Act, 1878; *Vth. Re Willis*, 67 L. J. Q. B. 634; 21 Q. B. D. 384; 36 W. R. 793: *Mumford v. Collier*, 59 L. J. Q. B. 552; 25 Q. B. D. 279; 38 W. R. 716: *Scobie v. Collins*, 1895, 1 Q. B. 375; 64 L. J. Q. B. 10; 71 L. T. 775. *Vf*, ATTORNMENT.

Letters of Hypothecation of *imported* goods are exempted from the Act of 1882 (54 & 55 V. c. 35, amending 53 & 54 V. c. 53).

Other Stat. Def. — 17 & 18 V. c. 36, s. 7. — *Id.* 17 & 18 V. c. 55, s. 7; 42 & 43 V. c. 50, s. 4; 46 & 47 V. c. 7, s. 3.

*Vth*, IN ACCORDANCE WITH THE FORM: SPECIFIC: SEPARATELY: *Reed*, 43: *Rose*. N. P. 1180: 2 *Encyc.* 127-147: DEFEASANCE: OCCUPATION.

A "Bill of Sale" of a SHIP, s. 55, 17 & 18 V. c. 104, means an actual TRANSFER, as distinguished from an Agreement to transfer (*Batthyany v. Bouch*, 50 L. J. Q. B. 421).

As to "Bill of Sale" in s. 11, Trinidad Ordinance, No. 15, 1884; *V. Tennant v. Howatson*, 57 L. J. P. C. 110; 13 App. Ca. 489; 58 L. T. 646.

**BILL WITH OPTION OF CASH.** — *V.* CASH WITH OPTION OF BILL.

**BILLA VERA.** — *V.* TRUE BILL.

**BIND.** — By s. 62, Com. L. Pro. Act, 1854, a Garnishee Order *nisi* shall "bind" the DEBT in the garnishee's hands. That means, "that the debtor, or those claiming under him, shall not have power to convey or do any act as against the right of a party in whose favour the debt is bound; and we construe it as not giving any property in the debt in the nature of a mortgage or lien, but a mere right to have the security enforced" (per Campbell, C. J., in delivering the judgment of the Q. B., *Holmes v. Tutton*, 24 L. J. Q. B. 351; 5 E. & B. 67; *Vth, Ex p. Joselyne*, 47 L. J. Bank. 91; 8 Ch. D. 327; 26 W. R. 645; 38 L. T. 661; *Rylands v. Reardon*, 8 L. R. Ir. 1).

But in construing an obligation whereby a Joint Stock Co did "Bind" themselves and their undertaking, James, L. J., said, — "It seems to me that the word 'Charge,' that the word 'Bind,' and the word 'Oblige' (whatever may be the ordinary use by conveyancers of one or the other of them), in point of English language and of legal language, mean the same. 'To Bind' means 'to Charge,' and 'to Charge' means 'to Bind,' and 'Oblige' means to charge or bind. All these words are in my opinion absolutely synonymous" (*Re Florence Land Co*, 48 L. J. Ch. 145; 10 Ch. D. 530: *See*, judgment of Jessel, M. R., in *the*). Yet it seems clear that "to Charge" property is to create a LIEN on it (*V.* CHARGE); whilst in *Holmes v. Tutton* (sup) that was held to be a quality which did not inhere in the word "Bind," at least in the section there being construed.

*V.* BOUND.

**BIND OVER.** — Where power is given to Justices to "bind over," or to cause a person to do a certain thing, and such person being present, shall refuse to be bound or to do such thing, a power is implied to commit to prison until compliance (*Dwar. 672*). *Vf, R. v. Dunn*, 12 Q. B. 1026; 18 L. J. M. C. 41; 2 Encyc. 148. *Cp.*, RECOGNIZANCE.

**BINDING.** — "Made Binding"; *V.* REQUIRED: OBLIGATORY.  
 "Binding and Conclusive"; *V.* INCONSISTENT.  
 "Valid and Binding"; *V.* VALID.



**BIRD.** — Bird of Game; *V. GAME, Animals.*

Bird of Warren; *V. FOWL.*

*V. DOMESTIC ANIMAL: WILD BIRD.*

**BIRTH.** — “The Births and Deaths Registration Acts, 1836 to 1874”; “The Births, Deaths, and Marriages (Scot) Acts, 1854 to 1860”; “The Births and Deaths Registration (Ir) Acts, 1863 to 1880”; — *I. Sch 2, Short Titles Act, 1896.*

**BISHOP.** — “A Bishop, is a minister of God unto whom, with permanent continuance, there is given (not only power of administering the Word and Sacraments which power other Presbyters have, but also) a further power to Ordain ecclesiastical persons, and a power of chiefly in Government over presbyters, as well as laymen, a power to be by way of jurisdiction, — a Pastor even to Pastors themselves. So that this Office, as he is a Presbyter or Pastor, consisteth in those things which are common unto him with other pastors, as in ministering the Word and Sacraments: but those things incident unto his Office which do properly make him a Bishop, cannot be common unto him with other Pastors. Now, even as Pastors, so likewise Bishops, being principal pastors, are either (1) at Large, or (2) with Restraint: — At Large, when the subject of their regiment is indefinite, and not tied to any certain place: Bishops with Restraint, are they whose regiment over the Church is contained with some definite, local compass, beyond which compass their jurisdiction reacheth not. Such, therefore, we alway mean when we speak of that regiment by Bishops, — which we hold a thing most lawful, divine, and holy in the Church of Christ” (Hooker, *Ecc. Polity*, Bk. vii, cited *Phil. Ecc. Law*, 22, 23). A Bishop may reform the manners of his People and Clergy by Ecclesiastical Censures; and it is also his business “to institute and direct INDUCTION to all ecclesiastical livings in his diocese” (1 *Bl. Com.* 382). *Vf, ORDINARY: Natal Bp. v. Gladstone*, cited *DIocese: Merriman v. Williams*, 7 *App. Ca.* 484; 51 *L. J. P. C.* 95.

“Bishop,” in a modern Act is, generally, by the Act’s interp clause, made to include ARCHBISHOP, *e.g.* — 3 & 4 *V. c.* 86, s. 2; 14 & 15 *V. c.* 97, s. 29; 19 & 20 *V. c.* 104, s. 33; 33 & 34 *V. c.* 91, s. 2; 34 & 35 *V. c.* 44, s. 2; 35 & 36 *V. c.* 8, s. 2; 37 & 38 *V. c.* 77, s. 14, c. 85, s. 6; 50 & 51 *V. c.* 12, s. 2, c. 68, s. 1; 51 & 52 *V. c.* 20, s. 12. — *Ir.* 14 & 15 *V. c.* 72, s. 1, c. 73, s. 1; 27 & 28 *V. c.* 54, s. 4.

“Bishop of the said Church”; *Stat. Def.*, 33 & 34 *V. c.* 110, s. 4.

**BITCH.** — In an Indictment for Bestiality, “Bitch” sufficiently denotes a female Dog, though the female of the Fox, the Otter, and other animals is also called a Bitch (*R. v. Allen*, 1 *C. & K.* 495).

**BLACK: BLACK-LEG, &c.** — It was said by counsel, *arg.*, in *Barnett v. Allen* (27 *L. J. Ex.* 412; 3 *H. & N.* 376; 31 *L. T. O. S.* 217).

that the prefix "Black" has always a bad meaning in such terms as "Blackguard," "Black-leg," "Black-sheep." Either word would probably be Libel if written; but neither, probably, would, *per se*, be Slander.

"Black-leg": "Black-sheep." — In *Barnett v. Allen* (sup) the Court was equally divided as to whether calling a man a "Black-leg," as meaning a disreputable gambler, was actionable Slander. But to write of a person that he is a "Black-leg," or "Black-sheep," with an innuendo that the phrase imputed that the person was of a bad character, would be Libel (*McGregor v. Gregory*, 12 L. J. Ex. 204; 11 M. & W. 289; 2 Dowl. P. C. 769; *O'Brien v. Clement*, 16 L. J. Ex. 77; 16 M. & W. 159). In *Barnett v. Allen*, Pollock, C. B., said that the sense in which he had always understood "Black-leg" was "a professed gambler, a person who makes a business of betting — not necessarily dishonest, though disreputable." Watson, B., thought the word had no precise signification; but Martin and Bramwell, BB., thought it imputed the indictable offence of cheating at cards, within s. 17, 8 & 9 V. c. 109.

V. CHEAT: PROFESSED GAMBLER.

"Black-leg" is often used by Trade Unionists to signify Non-Unionist workmen who do not conform to the rules of their Union. *Vh*, BSEER.

**BLACK ACT.** — 9 G. 1, c. 22, repealed by one of Peel's Acts, 7 & 8 G. 4, c. 27; "commonly called the Waltham Black Act, occasioned by the devastations committed near Waltham in Hampshire, by persons in disguise or with their faces blacked" (4 Bl. Com. 246).

**BLACK BEER.** — *V*. BEER.

**BLACKMAIL.** — "Blackmaile," is a word used in 43 Eliz. c. 13, and it signifies a certainty of money, corn, cattell, or other consideration, given by the poore people in the North parts of England, unto men of great name and aliance in those parts, to be by them protected from such as usually robbe and steale there" (Termes de la Ley). "These Robbers are of late years called *Moss-troopers*" (Cowel). *Vf*, 2 Encyc. 164: Jacob.

To impute "blackmailing" is Libel, needing no Innuendo (*Edsall v. Brooks*, 2 Robt. N. Y. 29; 3 Ib. 284).

**Ld BLANDFORD'S ACT.** — New Parishes Act, 1856, 19 & 20 V. c. 104.

**BLANKS.** — As to Blanks, in Deeds; *V*. Elph. 26: —

In Debentures of a Co; *V. Re Queensland Land Co*, 1894, 3 Ch. 181; 63 L. J. Ch. 810; 71 L. T. 115; 42 W. R. 600: —

In Transfers of Shares &c; *V*. Elph. 28-30: Hamilton, 199-201: *France v. Clark*, 53 L. J. Ch. 588; 26 Ch. D. 257; *Colonial Bank v. Cady*, 60 L. J. Ch. 131; 15 App. Ca. 267; 63 L. T. 27; 39 W. R. 17:

*Fox v. Martin*, 64 L. J. Ch. 473: *Powell v. Lond. & Prov. Bank*, 1893, 2 Ch. 555; 62 L. J. Ch. 795: —

In Wills; *F.* 1 Jarm. 18, 144, 441: Theobald, 33, 241, 271: *Re Harrison*, 55 L. J. Ch. 799; 30 Ch. D. 390: *Illingworth v. Cooke*, 20 L. J. Ch. 512; 9 Hare, 37: *Greig v. Martin*, 7 W. R. 315: *Gill v. Bagshaw*, 35 L. J. Ch. 842; L. R. 2 Eq. 746: *Re White*, 1893, 2 Ch. 41; 62 L. J. Ch. 342; 68 L. T. 187; 41 W. R. 683: *Asten v. Asten*, 1894, 3 Ch. 260; 63 L. J. Ch. 834; 71 L. T. 228: *Re Macduff*, 1896, 2 Ch. 451; 65 L. J. Ch. 700; 74 L. T. 706; 45 W. R. 154.

*Va*, NEXT.

**BLASPHEMY.** — “Every publication is said to be blasphemous which contains matter relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, intended to wound the feelings of mankind, or to excite contempt and hatred against the Church by law established, or to promote immorality.

“Publications intended in good faith to propagate opinions on religious subjects, which the person who publishes them regards as true, are not blasphemous (within the meaning of this definition) merely because their publication is likely to wound the feelings of those who believe such opinions to be false, or because their general adoption might tend by lawful means to alterations in the constitution of the Church by law established” (Steph. Cr. 108, 109; *whv*, for an alternative and stricter definition, which as there pointed out would probably not be now adopted: *Vf*, Jacob).

*Vh*, Arch. Cr. 970-972: Rosc. Cr. 595: Odgers, ch. 17: HERETIC: HERETICO COMBURENDO: *Cp*, CHRISTIAN RELIGION.

**BLAST FURNACE.** — *V.* NON-TEXTILE FACTORIES.

**BLEACHING.** — “Bleaching Works”; Stat. Def., 23 & 24 V. c. 78, s. 7; 26 & 27 V. c. 38, s. 1; 27 & 28 V. c. 98, s. 1.

“Bleaching and Dyeing Works”; Stat. Def., Sch 4, Part 1, 41 V. c. 16: *Vth*, *Rogers v. Manchester Packing Co*, 1898, 1 Q. B. 344; 67 L. J. Q. B. 310. *Vf*, NON-TEXTILE FACTORIES.

**BLENCH.** — *V.* FEU.

**BLIND.** — Quà 56 & 57 V. c. 42, “‘Blind,’ means, too blind to be able to read the ordinary school books used by children” (s. 15).

**BLOCKADE.** — “A Blockade may be more or less rigorous, either, (1) for the single purpose of watching the military operations of the enemy and preventing the egress of their fleet; or (2) to cut off all access of neutral vessels to the interdicted place: the latter is strictly and properly a Blockade; for the other is, in truth, no Blockade at all as far as neutrals are concerned.” The right to impose this latter is “of a severe

nature, and not to be aggravated by mere construction. . . . If the ships stationed on the spot to keep up the Blockade will not use their force for the purpose, it is impossible for a Court of Justice to say there was a Blockade actually existing at that time so as to bind a neutral vessel" (per *Ld Stowell*, *The Juffrow Maria*, 3 Rob. C. 154, 156). *Vf*, *The Frederick Molke*, 1 Rob. C. 86, and *The Betsey*, *Ib.* 93, and notes on the *Tudor's* L. C. M. L. 1011.

*Ih.* Deane, Law of Blockade: Macqueen: Westlake: Polson.

As to effect of a Blockade on a Contract; *V.* Abbott, 763-769.

**BLOOD.** — "If a man devise land to a man *et sanguini suo*, that is a FEE SIMPLE; but if it be *semini suo*, it is an ESTATE TAIL" (Co. Litt. 9 b: *Vf*, 1 Rol. Ab. 834: s. 28, Wills Act, 1837).

"'Blood Relations,' cannot embrace a larger class than 'RELATIONS.' No doubt, all men are Blood Relations of all other men, if they are descended from a Common Ancestor, however remote; and we are told that the nations of the earth are made of 'One Blood.' But, for manifest convenience, the word 'Relations,' in legal import, is limited to Nearest of Kin, and now to NEXT OF KIN under the statute" (per Porter, M. R., *Dunlop v. Greer*, 1899, 1 I. R. 335).

"Blood Sucker": It is not Slander, per se, to say of a Justice of the Peace, "he is a Blood-Sucker, and sucketh blood," — "for it cannot be intended what blood he sucked" (*Hilliard v. Constable*, Cro. Eliz. 306). *Cp.* BEETLE-HEADED.

*V.* HALF-BLOOD: NAME: IN BLOOD: SPITTING OF BLOOD.

**BLOODWIT.** — *V.* WITE.

**BLOODY HAND.** — "'Bloody hand,' is the apprehension of a trespassor in the FOREST against Venison, with his hands, or other parts of him, bloody, although he be not chasing or hunting" (*Termes de la Ley*, citing *Manwood*, c. 18, s. 9, fo. 133 b). *Cp.* "Found committing," sub FOUND: "Taken with the Manner," sub MANNER.

**BOARD.** — *V.* FIRE ON BOARD: F. O. B.: ON BOARD.

"The Board" in a modern Act, is generally defined by the Act's inter-*terp* clause, according to the subject-matter of the Act, *e.g.* — 14 & 15 V. c. 34, s. 3; 16 & 17 V. c. 96, s. 36; Public Libraries Act, 1855, 18 & 19 V. c. 70, s. 3; 25 & 26 V. c. 93, s. 3; 32 & 33 V. c. 102, s. 2; 41 & 42 V. c. 29, s. 2; Taxes Management Act, 1880, 43 & 44 V. c. 19, s. 5; 48 & 49 V. c. 72, s. 1 (4 *e*); 54 & 55 V. c. 17, s. 2, — *Scot.* 19 & 20 V. c. 103, s. 3; 20 & 21 V. c. 71, s. 3; Lunacy (Scot) Act, 1862, 25 & 26 V. c. 54, s. 1; Public Libraries Act (Scot), 1867, 30 & 31 V. c. 37, s. 2, c. 101, s. 3; Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, s. 3; Public Libraries Consolidation (Scot) Act, 1887, 50 & 51 V. c. 42, s. 2; P. H. (Scot) Act, 1897, 60 & 61 V. c. 38, s. 3; Poor Law (Scot) Act, 1898, 61 & 62 V. c. 21, s. 9. — *Ir.* 34 & 35 V. c. 100, s. 2.

"Bd of Agriculture"; Stat. Def., 52 & 53 V. c. 30, s. 1.

"Burial Board"; Stat. Def., 19 & 20 V. c. 98, ss. 3, 35; 20 & 21 V. c. 81, s. 28.

"Bd of Control for Lunatic Asylums," in Ireland; Stat. Def., 61 & 62 V. c. 37, s. 109.

Bd of Directors; *V.* DIRECTOR.

"Drainage Bd"; Stat. Def., 51 & 52 V. c. 39, s. 6.

"Bd of Education," in Scotland; Stat. Def., 35 & 36 V. c. 62, s. 1.

"Bd of Guardians"; Stat. Def., Interp Act, 1889, s. 16 (1, 3).

*V.* CONGESTED: HARBOUR: HIGHWAY.

"Local Board"; Stat. Def., 26 & 27 V. c. 97, s. 2; 28 & 29 V. c. 75, s. 3.

"Local Board of Health"; Stat. Def., 11 & 12 V. c. 63, s. 2.

"Local Government Bd"; Established, constituted, and defined by 34 & 35 V. c. 70. Stat. Def., *Scot.* 49 & 50 V. c. 32, s. 9; 52 & 53 V. c. 72, s. 17; 55 & 56 V. c. 43, s. 25; 61 & 62 V. c. 21, s. 9. — *Ir.* 39 & 40 V. c. 75, s. 22; 42 & 43 V. c. 25, s. 2; 48 & 49 V. c. 41, s. 17; 51 & 52 V. c. 53, s. 2; 52 & 53 V. c. 64, s. 3, c. 72, s. 18; 54 & 55 V. c. 48, s. 42; 57 & 58 V. c. 38, s. 12; 58 & 59 V. c. 2, s. 14.

"Metropolitan Bd"; Stat. Def., 44 & 45 V. c. 34, s. 1.

"Bd of Superintendence"; Stat. Def., 19 & 20 V. c. 68, s. 2.

"Bd of Supervision," in Scotland; Stat. Def., 26 & 27 V. c. 108, s. 30; 38 & 39 V. c. 74, s. 2; 55 & 56 V. c. 55, s. 4.

"Bd of Trade"; Stat. Def., Interp Act, 1889, s. 12 (8).

"Bd of Works," in Ireland, is usually defined as "the Commsrs of Public Works in Ireland," *e.g.* 44 & 45 V. c. 49, s. 57; 46 & 47 V. c. 60, s. 21; 54 V. c. 1, s. 13; 55 & 56 V. c. 65, s. 12; 58 & 59 V. c. 2, s. 14.

*Cp.* COMMISSIONERS.

**BOARDER.** — A GUEST is a Wayfarer; but a Sojourner in an INN, on a special contract to stay and board, is a Boarder (*Chamberlain v. Masterson*, 26 Ala. 377).

**BOAT.** — "Boat" includes a Steamboat (*Tisdell v. Combe*, 7 L. J. M. C. 48; 7 A. & E. 788).

*V.* FISHING BOAT: HOUSE BOAT: CRAFT: WHERRY: MINE.

A contract to carry a "Boat," may be explained, by a practice, to mean a Boat from which its deck, if it have one, is removed (*Haynes v. Halliday*, 9 L. J. O. S. C. P. 179; 7 Bing. 587).

Stat. Def. — 30 & 31 V. c. 82, s. 20; 38 & 39 V. c. 17, s. 108. — *Scot.* 49 & 50 V. c. 53, s. 17.

**BOCLAND.** — Land held by Deed or Charter (*Jacob*). *V.* CHARTER-LAND: Co. Litt. 6 a, 58 a; Spelm.: 1 Stubbs, Constit. Hist. ch. 5: 1 Ellis, Introd. Domesday, 230 n.

**BODILY HARM.** — *V.* GRIEVOUS BODILY HARM: INFLECT: MAIM: 2 Encyc. 204-206.

**BODILY INJURY.** — *V. INVOLVE.*

"Other Offence involving Bodily Injury to a Child under 16," Sch, 57 & 58 V. c. 41, applies only when the injured child is under 16 (*R. v. Roberts*, 18 Cox C. C. 530).

**BODY.** — Heirs of the Body; *V. HEIRS: HEIRS OF THE BODY: TAIL.*

"Body," as indicating a governing body; Stat. Def., 26 & 27 V. c. 112, s. 3; so, of "Body or Person," 14 & 15 V. c. 97, s. 29; 19 & 20 V. c. 104, s. 33. *Vf*; LEGISLATIVE ASSEMBLY: LEGISLATIVE BODY.

**BODY CORPORATE.** — "Every Body Politic, or Corporate, and person and persons," s. 65, 4 G. 4, c. 95; held to include Parishes (*R. v. Barton*, 9 L. J. M. C. 23; 11 A. & E. 343; 3 P. & D. 190).

The entrance fees and subscriptions of a Social Club are not "funds voluntarily contributed to any Body Corporate or Unincorporate" within 48 & 49 V. c. 51, s. 11 (6); and the Club is, therefore, not exempt from the duty imposed by that Act (*Re New University Club*, 18 Q. B. D. 720; 56 L. J. Q. B. 462; 56 L. T. 909; 35 W. R. 774).

For a reading of "Body Corporate" in an Investment Clause; *V. Wood v. Middleton*, 79 L. T. 155.

Stat. Def. — Mun. Corp. Ir. Act, 1840, 3 & 4 V. c. 108, s. 215.

**BODY UNINCORPORATE.** — Stat. Def., Customs and Inl. Rev. Act, 1885, 48 & 49 V. c. 51, s. 12.

**BOG.** — "Bog" adjudged, temp. Car. 1, to be a well-known term in Ireland (*Mulcurry v. Eyles*, Cro. Car. 511). *Vf*, TURF MOSS.

**BOILER.** — "Boiler" (ss. 3 and 4, 45 & 46 V. c. 22; *Vth*, s. 2, 53 & 54 V. c. 35) includes the boiler proper in which steam is generated, and also the conveying pipe and the receiver, *i.e.* the whole machine in which the steam is held until liberated for some other purpose (*R. v. Boiler Explosions Act Commrs*, 1891, 1 Q. B. 703; 60 L. J. Q. B. 544; 64 L. T. 674; 39 W. R. 440). *V. CLOSED VESSEL: DOMESTIC.*

**BOILLOURIE.** — *V. SALIVA: Cowel, Boilary.*

**BOLT.** — To accuse a man of having "bolted," means, *semble*, to accuse him of leaving the place suddenly with the intention of defrauding his creditors (*O'Brien v. Bryant*, 16 L. J. Ex. 77; 16 M. & W. 168).

**BONA.** — " 'Bona Notabilia' is where a man dies having goods to the value of £5 in divers diocesses" (Termes de la Ley). *Vh*, Wms. Exs. 237; *Comms of Stamps v. Hope*, 1891, A. C. 476; 60 L. J. P. C. 44; 65 L. T. 268; following *Blackwood v. Regina*, cited PERSONAL ESTATE.

*Bona Peritura*; *V. PERISHABLE.*

Bona *Vacantia*; *V.* VACANT.

Bona *Waviata*; *V.* WAIF.

**BONÂ FIDE.**—The equivalent of this phrase is “honestly” (per Bramwell, L. J., *R. v. Holl*, 50 L. J. Q. B. 766; 7 Q. B. D. 575). The correct province of this phrase is, therefore, to qualify things or actions that have relation to the mind or motive of the individual; and it has no meaning when joined to things or actions common to all mankind, though sometimes it is thus used in a figurative, but inaccurate, sense. A fact completely within physical apprehension can neither be *bonâ*, nor *malâ*, *fide*: a mental fact may be either.

Thus the phrase “*bonâ fide Traveller*” in s. 1, 17 & 18 V. c. 79, it is submitted, means the same thing as “Traveller”; for, as Williams, J., asked, “Can a man be said to be a *malâ fide* traveller?” The question is,—Was he a traveller?” (*Atkinson v. Sellers*, 28 L. J. M. C. 13; and *Vh*, TRAVELLER). Yet in *Penn v. Alexander* (1893, 1 Q. B. 522; 62 L. J. M. C. 65; 68 L. T. 355; 57 J. P. 118; 41 W. R. 392) the majority of a Court of five Judges held, that if a person journeys the prescribed distance of 3 miles, but only *for the purpose* of getting a drink during prohibited hours, he is not a “*bonâ fide*” traveller; but, it may perhaps be asked, if the journey had been to fetch a bottle of medicine would it not have been “*bonâ fide*”? and what is there in one drink more than another, that can affect the quality of the journey taken to procure it? *Va*, *Williams v. McDonald*, cited TRAVELLER. But *Penn v. Alexander* has been adopted in Ireland (*Parker v. The Queen*, 1896, 2 I. R. 404).

So, “*bonâ fide*” in the phrase, “the actual and *bonâ fide Occupation*” of lands or tenements in s. 18, Rep. People Act, 1832, would seem surplusage,—for how could an “actual” occupation be *malâ fide*?

“I suppose anybody would have a difficulty in defining the difference between a ‘*Parishioner*’ and a ‘*bonâ fide Parishioner*.’ I do not know what difference there is between them” (per Bramwell, B., *Etherington v. Wilson*, 45 L. J. Ch. 158; 1 Ch. D. 160).

Nor can there be a *malâ fide* exercise of a person’s Legal Rights in his own land (*Bradford v. Pickles*, 1895, A. C. 587; 64 L. J. Ch. 759; 73 L. T. 353; 44 W. R. 190; 60 J. P. 3), or a *malâ fide* Co, duly registered under the Comp Act, 1862 (*Re Salomon*, 1897, A. C. 22; 66 L. J. Ch. 35; 75 L. T. 426; 45 W. R. 193).

But there may be a *Bonâ fide* Act, Belief, Intention, Claim, Objection, or Mistake; or a person’s Conduct may be *bonâ fide*. Each of these is, so to speak, a mental fact having its origin in the individual.

As to a *Conveyance* being *bonâ fide* within 13 Eliz. c. 5, or 27 Eliz. c. 4, or the corresponding Irish Statute 10 Car. 1, sess. 2, c. 3; *V. Twynne’s Case*, 3 Rep. 81; 1 Sm. L. C. 1: *Wood v. Dixie*, 7 Q. B. 892; 9 Jur. 798; *Darvill v. Terry*, 30 L. J. Ex. 355; 6 H. & N. 807; *Lynch v. Copinger*, 14 W. R. 863; *Re Moroney*, cited FRAUDULENT ASSURANCE: GOOD:

VALUABLE: PURCHASE FOR VALUE. For the cases on "Bonâ fide" as used in the old Bankry Acts, and on "Good Faith" as used in the Act of 1869, *V. Yate Lee*, 436: May on Fraudulent Conveyances.

"Bonâ fide *Charitable Gift*"; *V. Fulham v. Thanet*, 7 Q. B. D. 539; 50 L. J. M. C. 42.

Bonâ fide *Charter-Party*; *V. Newberry v. Colvin*, 7 Bing. 206.

Debt "bonâ fide *contracted*," s. 2, 48 G. 3, c. 138, is one not collusively contracted (*Robinson v. Vale*, 2 B. & C. 762).

Bonâ fide *Interest in a Life Policy*; *V. Moore v. Woolsey*, cited SATISFACTORY.

Bonâ fide *Lease*, s. 2, 12 & 13 V. c. 26; *V. Moffett v. Gough*, 1 L. R. Ir. 331: by a Tenant for Life, *V. Sutherland v. Sutherland*, 1893, 3 Ch. 169; 62 L. J. Ch. 953; 69 L. T. 186; 42 W. R. 13.

Bonâ fide *Payment of Calls on Directors' Shares*; *V. Syke's Case*, L. R. 13 Eq. 255; *Svthe, Re Wood's Co*, 62 L. T. 760. *Cp.*, *Gibson v. Muskett*, inf.

"Bonâ fide called upon to pay"; *V. CALLED*.

"Bonâ fide *Residence*" of a Selector of Land, within s. 18 (New South Wales) Crown Lands Alienation Act, 1861; *V. Tooth v. Power*, 1891, A. C. 284; 60 L. J. P. C. 39; 64 L. T. 698.

#### V. SUBSCRIBER.

As to the bonâ fide *Belief* that a first wife or husband is dead so as to excuse from BIGAMY; *V. R. v. Tolson*, 58 L. J. M. C. 97; 23 Q. B. D. 168; 60 L. T. 899: Steph. Cr. 27, n. 4. — Bonâ fide belief by a Constable that an Offence has been committed: *V. Ballinger v. Ferris*, 5 L. J. M. C. 133; 1 M. & W. 628. — Bonâ fide belief in statements made in a Co Prospectus; *V. Derry v. Peek*, 58 L. J. Ch. 864; 14 App. Ca. 337; 38 W. R. 33; 61 L. T. 265; 5 Times Rep. 625.

"*Payments really and bonâ fide made*," s. 82, 6 G. 4. c. 16, mean payments which the party does not intend to reclaim (*Gibson v. Muskett*, 11 L. J. C. P. 225; 3 Sc. N. S. 419).

A "bonâ fide *Purchaser*," s. 26, 3 & 4 W. 4, c. 27 (and as it should seem, as a general phrase), means, one who is "really a purchaser, and not merely a donee taking a gift under the form of a purchase" (per James. L. J., *Vane v. Vane*, 42 L. J. Ch. 299; 8 Ch. 383). A Judgment Creditor is not a purchaser within 27 Eliz. c. 4 (*Beavan v. Oxford*, cited DISPOSING POWER); nor though he has taken out a garnishee summons is he "a bonâ fide purchaser" within s. 28, 23 & 24 V. c. 127 (*Dallow v. Garrold*, 14 Q. B. D. 543; 54 L. J. Q. B. 76; 52 L. T. 240; 33 W. R. 219).

"Bonâ fide *Purchaser for Value, without Notice*," s. 28, 23 & 24 V. c. 127; *V. NOTICE*.

"Bonâ fide *Purchase*," s. 3 (1), Finance Act, 1894; *V. A-G. v. Dobree*, cited PURCHASE.

"Bonâ fide *Rented*"; *V. RENTED*.



Party taking beneficially under an instrument "bonâ fide," and for "VALUABLE Consideration," s. 11, 7 V. No. 16 (New South Wales), s. 18; 22 V. No. 1 (Ib.); *V. Sydney Bg Assn v. Lyons*, 1894, A. C. 260; 63 L. J. P. C. 108.

The phrase "*bonâ fide*" is employed in several sections of Lord St. Leonards' Law of Property Amendment Act, 1859, 22 & 23 V. c. 35.

As to what will constitute a *bonâ fide Claim of Right* so as to oust the jurisdiction of inferior tribunals; *V. Lovesey v. Stallard*, 38 J. P. 391; 30 L. T. 792; *White v. Feast*, 41 L. J. M. C. 81; L. R. 7 Q. B. 353; *Cole v. Miles*, 57 L. J. M. C. 133; 36 W. R. 784; *Leicester v. Holland*, 57 L. J. M. C. 75; *Thompson v. Ingham*, 19 L. J. Q. B. 189; 1 L. M. & P. 216; *R. v. Cridland*, 27 L. J. M. C. 28; 7 E. & B. 853; *Hudson v. McKae*, 33 L. J. M. C. 65; 12 W. R. 80; *Williams v. Adams*, 31 L. J. M. C. 109; 2 B. & S. 312; *Scott v. Baring*, 64 L. J. M. C. 200; 72 L. T. 495; 11 Times Rep. 175. There can be no such Claim in mere personal matters (*Carter v. Thomas*, 1893, 1 Q. B. 673; 62 L. J. M. C. 104; 69 L. T. 436; 41 W. R. 510; 57 J. P. 438). VI. FAIR AND REASONABLE.

As to what is a *bonâ fide Objection to Church Rates*, within s. 7, 53 G. 3, c. 127, so as to oust justices' jurisdiction; *V. Pease v. Chaytor*, 31 L. J. M. C. 1; 1 B. & S. 658; *R. v. Blackburn*, 32 L. J. M. C. 41; and as to Quakers under s. 4, 7 & 8 W. 3, c. 34, *Backhouse v. Bishopwearmouth*, 30 L. J. M. C. 118.

A "*bonâ fide Mistake*" under R. 2, Ord. 16, R. S. C., includes a mistake of law as well as of fact (*Duckett v. Gover*, 46 L. J. Ch. 407; 6 Ch. D. 82; 25 W. R. 455; *Mason v. Harris*, 11 Ch. D. 106; *Tryon v. National Provident Inst.*, 16 Q. B. D. 678); but it must be a genuine mistake, and not an erroneous view of the law which has been deliberately adopted (*Cloves v. Hilliard*, 46 L. J. Ch. 271; 4 Ch. D. 413; 25 W. R. 224). *Vf*, Ann. Pr.

#### VI. MISTAKE.

*Execution* "*bonâ fide executed and levied.*" 2 & 3 V. c. 29, s. 1, meant "*bona fides of the creditor who caused execution to issue and of the sheriff who is his minister*" (per Abinger, C. B., *Belcher v. Magnay*, 13 L. J. Ex. 52; 12 M. & W. 109; *Vf*, *Hall v. Wallace*, 10 L. J. Ex. 133; 7 M. & W. 358).

To take a *Negotiable Instrument* "*bonâ fide.*" means "*really and truly for value*" (per Cresswell, J., *Raphael v. Bank of England*, 17 C. B. 172).

The modern phrase for a *bonâ fide holder for value of a Bill or Note* without notice of any imperfection, is "*HOLDER IN DUE COURSE*" (s. 29, Bills of Ex. Act, 1882); *Va*, *HOLDER FOR VALUE*.

As to a *bonâ fide holder for value of Bonds, &c*; *V. London & County Bank v. London & River Plate Bank*, 21 Q. B. D. 535; 57 L. J. Q. B. 601.

#### VI. GOOD FAITH.

**BOND.** — A Bond is an OBLIGATION by DEED. *Vh*, Jacob: Add. C. 189: Leake, 123.

“Bond, Covenant, or Instrument”; *V. INSTRUMENT: PERIODICAL.*

“Bond.” s. 8, 8 & 9 W. 3, c. 11; *V. Gerard v. Clowes*, 1892, 2 Q. B. 11; 61 L. J. Q. B. 487; 67 L. T. 204: *Strickland v. Williams*, 1899, 1 Q. B. 382; 68 L. J. Q. B. 241; 80 L. T. 4.

“Bond”; Stat. Def., *Scot.* 25 & 26 V. c. 85, s. 4; 54 & 55 V. c. 34, s. 4.

Gift of Bonds; *V. Hudleston v. Gouldsbury*, 10 Bea. 547: *Mercer v. Mercer*, 10 Ir. Ch. 505: *Kent v. Tapley*, 11 Jur. 940: *Roberts v. Kuffin*, 2 Atk. 112.

“Mtges or Bonds,” in an Investment Clause; *V. MORTGAGE: DEBENTURE.*

“Bonds and Specialties”; *V. SPECIALTY.*

**BONIS.** — Trespass *de bonis asportatis*; *V. TROVER.*

**BONUS.** — In *Re Eddystone Mar Insree* (W. N. (94) 30) Stirling, J., adopted the def of “Bonus” as given in the New English Dictionary, viz. “a Boon, or Gift, over and above what is nominally due as remuneration to the receiver, and which is, therefore, something wholly to the good”; and, therefore, that a Certificate for Shares crossed with the word “Bonus,” was notice to a Transferee for Value that they had been issued gratis; and, in a Liquidation, he must be settled on the List of Contributories.

“Bonus in money”; *V. DIVIDEND.*

**BOOK: BOOKS.** — By the Copyright Act, 1842, s. 2, a “Book” is to be construed to mean “every volume, part or division of a volume, pamphlet, SHEET OF LETTER-PRESS, sheet of music, map, chart or plan separately published.” *Semble*, this includes a NEWSPAPER (*V. Cox v. Land and Water Journal Co*, L. R. 9 Eq. 324; 39 L. J. Ch. 152: *Walter v. Howe*, 17 Ch. D. 708: *Cate v. Devon & Exeter Newspaper Co*, 40 Ch. D. 500: *Walker v. Lane*, cited AUTHOR); *Punch* is such a “Book” (*Bradbury v. Hotten*, 42 L. J. Ex. 28; L. R. 8 Ex. 1); so is a Periodical (*Henderson v. Maxwell*, 4 Ch. D. 163; 46 L. J. Ch. 59) if actually published at the date of registration (*S. C.* 5 Ch. D. 892; 46 L. J. Ch. 891). A Directory is a “Book” (*Kelly v. Morris*, 35 L. J. Ch. 423; L. R. 1 Eq. 697); so, of Trade Lists (*Exchange Telegraph Co v. Gregory*, 1896, 1 Q. B. 147; 65 L. J. Q. B. 262: *Trade Auxiliary Co v. Middlesborough Assn*, 58 L. J. Ch. 293; 40 Ch. D. 425), or Time Tables (*Leslie v. Young*, 1894, A. C. 335), or Law Reports (*Butterworth v. Robinson*, 5 Ves. 709: *Sweet v. Maugham*, 9 L. J. Ch. 323; 11 Sim. 51: *Hodges v. Smith*, 2 Ir. Eq. Rep. 266), or the Head-Notes of Law Cases (*Sweet v. Benning*, 24 L. J. C. P. 175; 16 C. B. 459), or Printed Music (*D’Almaine v. Boosey*, 1 Y. & C. Ex. 299). Prints of all kinds

(qy, also photographs) published together in a volume, form a "book," whether there be letter-press or not; or "there may be such things as picture-books for those who cannot read letter-press" (per Jessel. M. R., *Maple v. Junior Army and Navy Stores*, 52 L. J. Ch. 71; 21 Ch. D. 369; 31 W. R. 70: *Vf*, *Comyns v. Hyde*, 43 W. R. 266; 72 L. T. 250; 11 Times Rep. 167: but *cp*, *Schore v. Schmincke*, inf); and prints bound in a volume are none the less a "book" entitled to copyright because they are bound up with letter-press or with other prints not so entitled; and so also of bound letter-press, for a "book" includes every part of a book (*Bogue v. Houlston*, 5 D. G. & S. 267; 21 L. J. Ch. 470, *wher* explained in *Maple v. Junior A. & N. Stores*, sup); and so also, of each one of a series of literary compositions, if clearly distinguishable, although in one volume and under one general title (*Johnson v. Newnes*, 63 L. J. Ch. 786; 43 W. R. 572). Nor is a "book," whether composed of letter-press or prints only, or of both combined, less within the protection of the Copyright Act because it is used as an advertisement distributed gratis, — *e.g.* a Trade Catalogue, whether illustrated or not (*Hotten v. Arthur*, 1 H. & M. 603; 32 L. J. Ch. 771: *Grace v. Newman*, L. R. 19 Eq. 623; 44 L. J. Ch. 298; *Vthlc*, *Petty v. Taylor*, 1897, 1 Ch. 465; 66 L. J. Ch. 209; 75 L. T. 545; 45 W. R. 299: *Maple v. Junior A. & N. Stores*, sup, *whlc* definitely overrules *Cobbett v. Woodward*, L. R. 14 Eq. 407; 41 L. J. Ch. 656: *Vf*, *Lamb v. Evans*, cited LITERARY: *Collis v. Carter*, 78 L. T. 613). *V. PERIODICAL: VOLUME.*

But an envelope with the following words printed on the outside, — "Entered at Stationers' Hall. Key enclosed. The Christograph: The Christian's Puzzle. Suitable for all sects and denominations. Every family should have it. Price, with key, 6d.," and containing inside a piece of card-board which, when held up to the light, cast a shadow resembling the well-known picture "Ecce Homo," and a slip of paper on which was printed an extract from Longfellow, was held not to be a "Book" within the Copyright Act (*Cable v. Marks*, 52 L. J. Ch. 107); nor is the printed face of a Forecast Barometer such a "book" (*Davis v. Committi*, 54 L. J. Ch. 419; 52 L. T. 539; 1 Times Rep. 216); nor a Cricket Scoring Sheet (*Page v. Wisden*, 20 L. T. 435); nor an illustrated Album (*Schore v. Schmincke*, 55 L. J. Ch. 892; 33 Ch. D. 546; 55 L. T. 212; 34 W. R. 700). *V. CHART.*

A New EDITION is a new "Book," if, in substance, it is the result of new labour, as distinguished from a mere reprint (*Black v. Murray*, 9 Sess. Ca., 3rd Ser., 341; *Hedderwick v. Griffin*, 3 Sess. Ca., 2nd Ser., 383; *Thomas v. Turner*, 56 L. J. Ch. 56; 33 Ch. D. 292; 55 L. T. 534; 35 W. R. 177). *Vf*, Copinger on Copyright, 2 ed., 102-105.

Other Stat. Def. — 1 & 2 V. c. 59, s. 16; 7 & 8 V. c. 12, s. 20; 38 & 39 V. c. 53, s. 2.

*V. AUTHOR: FIRST PUBLICATION: COPY.*

"Book published in Numbers"; Stat. Def., International Copyright Act, 1886, 49 & 50 V. c. 33, s. 11.

*Bound Manuscript Notes* will sometimes (generally ?) pass under a Bequest of "Books" (*Willis v. Curtois*, 8 L. J. Ch. 105; 1 Bea. 189; Wms. Exs. 1049, 1065).

"Books of the Bank"; Stat. Def., 32 & 33 V. c. 102, s. 16; 48 & 49 V. c. 50, s. 27. *Cp.*, "Bankers' Books," sub BANKER.

**TO BOOK.** — "To any place to which they book," s. 14, Regn of Railways Act, 1873, *semble*, means, place "to which they quote a Rate" (*Jones v. N. E. Ry*, 2 Ry & Can Traffic Ca. 208. *Vf.*, *Pelsall Co v. Lond. & N. W. Ry*, 7 Ib. 11).

#### BOOK BINDING WORKS. — *V.* NON-TEXTILE FACTORIES.

**BOOK DEBTS.** — Include all such debts as, in the ordinary course of carrying on business, would be entered in books, although not actually entered (*Shipley v. Marshall*, 32 L. J. C. P. 258; 14 C. B. N. S. 566; *Va*, per Esher, M. R., *Offl. Rec. v. Tailby*, 56 L. J. Q. B. 33; *Re Stevens*, W. N. (88) 110, 116).

An Assignment of "all" Book Debts "due and owing or which, during the continuance of this security, may become due and owing" to the grantor, is not too vague to include future debts (*Tailby v. Official Rec.*, 58 L. J. Q. B. 75; 13 App. Ca. 523; 60 L. T. 162; 37 W. R. 513, over-ruling *Belding v. Read*, 3 H. & C. 955; 34 L. J. Ex. 212; 11 Jur. N. S. 547, and *Tudman v. D'Epineuil*, 20 Ch. D. 758).

A Bequest of "Book Debts," held to include the testator's share of trade debts of a Partnership (*Toplis v. Vanderheyde*, 9 L. J. Ex. Eq. 27; 4 Y. & C. 173). *Vf.*, *Terry v. Terry*, 33 Bea. 232; 12 W. R. 66; 9 L. T. 469. On a Sale of "Book Debts," the vendee takes them subject to SET-OFFS (*Chick v. Blackmore*, 23 L. J. Ch. 622; 2 Sm. & G. 274; 2 W. R. 488).

**BOOK OF ACCOUNTS.** — The "Books of Accounts" mentioned in R. 259, Bankry Rules, 1883, repld R. 349, Bankry Rules, 1886, mean such books of account as are usual in the bankrupt's business, and do not extend to "letters, cheques, and vouchers from which books of account can be made up" (per Cave, J., *Re Winslow*, 55 L. J. Q. B. 238; 16 Q. B. D. 696; 54 L. T. 306; 34 W. R. 534; 3 Morr. 60).

#### BOOK OF ANTIQUITY. — *V.* LAW LIBRARY.

**BOOK OF COMMON PRAYER.** — Quà Public Worship Regulation Act, 1874 (and, probably, as of general acceptance), the "Book of Common Prayer," means (*V.* s. 6) the Book annexed to 14 Car. 2, c. 4; *Iff.*, 35 & 36 V. c. 35, s. 1.

**BOOK OF PUBLIC NATURE.** — S. 14, 14 & 15 V. c. 99; *V.* PUBLIC BOOK.

**BOOKING UP.** — *V. Walsh v. Walley*, 43 L. J. Q. B. 102; L. R. 9 Q. B. 367.

**BOOKLAND.** — *V. BOCLAND.*

**BOOKMAKER.** — *V. per Esher, M. R., Powell v. Kempton Park Co.*, cited **PLACE**. The business of a Sporting "Bookmaker" is not in itself illegal (*Thwaites v. Coulthwaite*, 1896, 1 Ch. 496: 65 L. J. Ch. 238). *Vf*, **VOCATION**.

**BOONS.** — In a Power to Lease reserving accustomed "Rents, Boons, Heriots, and Services," — "Boons" means covenants (*Cardigan v. Montague*, Sug. Pow. 832. 918).

**BOONWORK.** — *V. PRECARLE.*

**BOOT.** — *V. BOTE.*

**BOOTY.** — "Booty consists in whatever can be seized upon *land* by a Belligerent Force irrespectively of its own requirements, and simply because the object seized is the property of the Enemy. In common use the word is applied to Arms and Munitions in possession of an Enemy Force, which are confiscable as booty although they may be private property; but rightly, the term includes also all property which is susceptible of appropriation" (Hall's International Law, 4 ed., 153. *Cp.* **PRIZE**. *Vh*, *Banda and Kirwee Booty*, cited **CO-OPERATION: IN TRUST**).

**BORDARII.** — "In Domesday there be often named *bordarii seu borduanni, cosces, coscet, cotucami, cotarii*, who are all in effect bores or husbandmen, or cottagers, saving that *bordarii*, which commeth of the French word *borde* for a cottage, signifieth there bores holding a little house, with some land of husbandry bigger than a cottage; and *coterelli* are meere cottagers, *qui cotagia et curtilugia tenent*" (Co. Litt. 5 b). *V. VILLANI*.

*Cp*, **COTTAGE**.

**BORLANDS.** — " 'Bordlands,' signifie the **DEMESNES**, which lords keep in their hands for the maintenance of their Bord or Table" (Cowel). *Vf*, *Elph.* 563, citing *Termes de la Ley*, and other authorities.

**BORE.** — *V. BORDARII: SEARCH*.

**BORN.** — The word "Born" or "Begotten," in gifts to children as a class, does not exclude after-born children (2 *Jarm.* 183: *Vf*, *Elph.* 236: **LAWFULLY BEGOTTEN**).

In such a connection, the word "Born" or "Living," is synonymous with *procreated*, so as to include a child *en ventre* (2 *Jarm.* 185). But the fiction, or indulgence, of the law which treats a child *en ventre* as actually born, applies only for the purpose of enabling a child to take a

*benefit* to which if actually born it would have been entitled; in all other cases the word "Born" must have its natural interpretation (*Blasson v. Blasson*, 34 L. J. Ch. 18; 2 D. G. J. & S. 665; *Pearce v. Carrington*, 42 L. J. Ch. 516, 900; 8 Ch. 969: it seems otherwise, *quà* "Living"). In *Blasson v. Blasson*, the words were "born *and* living"; and "it was necessary there that the child should be both born and living" (per Chitty, J., *Re Burrows*, cited LIVING). V. DUE TIME.

If, "Born," "To be born," Watson, Eq. 1381-3: TO BE BORN: *Tarbock v. Tarbock*, 4 L. J. Ch. 129; *Brookman v. Smith*, L. R. 6 Ex. 291; 7 Ib. 271; 40 L. J. Ex. 161; 41 Ib. 114.

"If A. shall not *have had* a child," embraces a child *en ventre* (*Pearce v. Carrington*, *sup*).

*Quà* MURDER, for a child to be "born *alive*" the whole body must be brought into the world alive; it is not sufficient that the child respire in the progress of the birth (per Littledale, J., *R. v. Poulton*, 5 C. & P. 330).

**BORNE.** — "Borne on the Books of one of Her Majesty's Ships in Commission," s. 87, 29 & 30 V. c. 109; *V. Hearson v. Churchill*, 1892, 2 Q. B. 144; 61 L. J. Q. B. 569; 66 L. T. 843; 40 W. R. 615; 56 J. P. 820.

**BOROUGH.** — In very early days "Borough" meant a Castle, or Fortified Town (2 Kemble, *Anglo-Saxons in England*, 171, 328: *Va*, *Burgh-bote*, sub BORE); then it got to mean a TOWN returning a burgess or burgesses to Parliament (Co. Litt. 115b: Cowel: Jacob), and therefore it was said "Every Borough is a Town, but every Town is not a Borough" (*Linne Regis Case*, 10 Rep. 123 b). *Vf*, 2 Encyc. 213.

In modern times Boroughs are, broadly speaking, divided into (1) Parliamentary Boroughs, *i.e.* returning Members to Parliament; and (2) Municipal Boroughs, *i.e.* urban communities for municipal government, — the latter being subdivided into (a) those having a Commission of the Peace, and (b) those without such a Commission.

For a list of Parliamentary Boroughs, *V. Rep People Act, 1832*, as amended by *Rep People Act, 1867*, and *Redistribution of Seats Act, 1885*: For Municipal Boroughs in 1835, *V. 5 & 6 W. 4*, c. 76, which, with much subsequent municipal legislation, was replaced by *Mun Corp Act, 1882*.

"Borough," has been variously expounded by interp clauses: The Stat. Def. connotes,

Sometimes, a Parliamentary Borough, merely, — *e.g.* 31 & 32 V. c. 125, ss. 3, 58; 38 & 39 V. c. 17, s. 109, c. 63, s. 33:

Sometimes, a Municipal Borough, merely, — *e.g.* 18 & 19 V. c. 57, s. 7; 19 & 20 V. c. 69, s. 30:

Sometimes, a Municipal Borough, or a Town or Place having a separate Police Establishment, — *e.g.* 32 & 33 V. c. 70, s. 7; 41 & 42 V. c. 74, s. 7:

Sometimes, a Municipal Borough in England; any Royal Burgh or Parliamentary Burgh or Town, in Scotland; or, Municipal Corp, in Ireland, — *e.g.* 23 & 24 V. c. 139, s. 37; 25 & 26 V. c. 66, s. 1:

Sometimes, a Borough Town and City Corporate, having a Commission of the Peace, — *e.g.* 16 & 17 V. c. 97, s. 132; *Vith, Faversham v. Thanet*, 2 B. & S. 292:

Sometimes, any Borough, not being a County of a City or County of a Town having a Commission of the Peace, *e.g.* 40 & 41 V. c. 56, s. 7:

Sometimes a City, County of a City or Town, and Town Incorporate, — *e.g.* 18 & 19 V. c. 126, s. 23; 36 & 37 V. c. 33, s. 5:

Sometimes, "a County of a City, County of a Town, City, Municipal Borough, Cinque Ports and its Liberties, Town Corporate, or other Place, in which a General Annual Licensing Meeting is held in pursuance of the Intoxicating Liquors (Licensing) Act, 1828, exclusive of a petty sessional division of a county," — *e.g.* 35 & 36 V. c. 94, s. 74.

Other Stat. Def. — 45 & 46 V. c. 50, s. 77; 47 & 48 V. c. 70, s. 35. — *Ir.* 13 & 14 V. c. 69, s. 117; 31 & 32 V. c. 49, s. 25, c. 112, s. 40; 40 & 41 V. c. 56, s. 7.

In all Acts passed after 31st Dec 1889, "Borough," "Parliamentary Borough," and "Municipal Borough" having the meanings prescribed by s. 15, Interp Act, 1889.

*Cp*, BURGH: CORPORATE: COUNTY BOROUGH: DISTRICT: METROPOLITAN BOROUGHS.

"Borough, or Place," s. 31, 11 & 12 V. c. 43, means a place having a Commission of the Peace (*R. v. Dale*, 22 L. J. M. C. 44; *Dears.* 37: 17 J. P. 68; *Winn v. Mossman*, 38 L. J. Ex. 200; L. R. 4 Ex. 292; 33 J. P. 743; *Reigate v. Hunt*, 37 L. J. M. C. 70; 32 J. P. 342. *Cp*, *R. v. Yorkshire Jus.*, cited PLACE, at end). So, "Town Corporate," probably, usually connotes a place having a Commission of the Peace (s. 4, 24 & 25 V. c. 75; s. 246, Mun Corp Act, 1882); but, a Borough may be a "Town Corporate," s. 1, 9 G. 4, c. 61, though it has no separate Commission of the Peace (*Brown v. Nicholson*, 5 C. B. N. S. 468; 28 L. J. M. C. 49; 7 W. R. 88; 32 L. T. O. S. 160).

"Borough Business"; Stat. Def., 17 & 18 V. c. 20, s. 2.

"Borough Civil Court"; Stat. Def., 45 & 46 V. c. 50, s. 7.

"Borough Council"; Stat. Def., 51 & 52 V. c. 54, s. 14.

"Borough Justices"; Stat. Def., 17 & 18 V. c. 20, s. 2.

"Borough Occupation Franchise"; Stat. Def., 48 & 49 V. c. 3, s. 7 (7).

"Quarter Sessions Borough"; *Q. QUARTER SESSIONS.*

"Borough Rate," or "Borough Fund"; Stat. Def., 8 & 9 V. c. 100, s. 114, c. 126, s. 84; 14 & 15 V. c. 28, s. 2; 16 & 17 V. c. 97, s. 132; 18 & 19 V. c. 57, s. 4, c. 121, s. 2. — *Scot.* 55 & 56 V. c. 43, s. 25; 56 & 57 V. c. 67, s. 3. — *Ir.* 19 & 20 V. c. 98, s. 2; 29 & 30 V. c. 90, s. 57; 35 & 36 V. c. 60, s. 28.

**BOROUGH ENGLISH.** — “Some Boroughs have such a Custome, that if a man have issue many sommes and dyeth, the Youngest Son shall inherit all the tenements which were his father’s within the same Borough, as Heire unto his father by force of the Custome; the which is called Borough English” (Litt. s. 165); and, failing sons, some Customs give the land to the Youngest Brother (Co. Litt. 110: Cowel). The Custom is called Borough English, “because it was the first (as some hold) in England” (Co. Litt. 110 b: *Sc.*, 2 Encyc. 216, 217). *Vh.*, Wms. R. P. 107: Goodeve, 3, n.

**BORROW.** — What is “to borrow and raise upon the Credit of the Rates,” s. 59, 58 G. 3, c. 45; *V. R. v. St. Michael*, 6 E. & B. 807; 25 L. J. Q. B. 379.

A power “to borrow, or take up money at interest,” gives power to raise money on any kind of security for its repayment at a future date (*Bank of England v. Anderson*, 6 L. J. C. P. 158; 3 Bing. N. C. 589; *Booth v. Bank of England*, 7 Cl. & F. 509; 6 Bing. N. C. 415).

V. HEREAFTER BORROW: LOAN.

**BOSCUS.** — *V. WOOD.*

**BOTE.** — “Bote,” or “‘Boot,’ is an old word, and signifieth helpe, succour, ayde, or advantage, and is commonly joined with another word whose signification it doth augment” (Termes de la Ley); it is synonymous with ESTOVERS (2 Bl. Com. 35).

“*House-Bote*, is a sufficient allowance of wood to build or repair the house, or to burn in it, which latter is sometimes called *Fire-Bote*. *Plough-Bote* and *Cart-Bote*, are wood to be employed in making and repairing all instruments of husbandry, as ploughs, carts, harrows, rakes, forks, &c. *Hay-Bote* or *Hedge-Bote* is wood for repairing hedges or fences, as pales, stiles, and gates to secure enclosures” (Woodf. 737). “*Common of Estovers*, is the right to cut wood for these purposes in another man’s land” (Elph. 564, citing Spelm. *Bota: Estovarium*: Wms. on Settlements, 230; Wms. on Rights of Common, *pass.*).

“*Bote* is an ancient Saxon word, and sometimes signifieth AMERCIAMENT or Compensation, as *Theftbote*, *Manbote*; or freedome from the same, as *Brighote*, *Castlebote*, *Burghbote*” (Co. Litt. 127 a): The following are *Amerciaments*. —

*Dolg-bote*; “A Recompense made for a scar or wound” (Cowel).

*Feud-bote*; “A Recompense for engaging in a feud or faction, and the contingent damages: it having been the custome of ancient times for all the kindred to engage in the kinsmans quarrel” (Cowel).

*God-bote*; “A Fine, or Amerciament for crimes and offences against God; an Ecclesiastical or Church Fine” (Cowel).

*Had-bote*; “A Recompense made for the violation of Holy-Orders, or violence offer’d to persons in Holy Orders” (Cowel).



*Hloth-bote*; "A Mulet set on him who is in a Riot" (Jacob).

*Mag-bote*, or *Moeg-bote*; "A Recompense for the slaying or murder of ones kinsman" (Cowel: *Vj*; Jacob).

*Man-bote*; "A Compensation or Recompense for homicide; particularly due to the lord for killing his man or vassal" (Jacob: *Vj*; Cowel).

*Theft-bote*; "Is when a man taketh any goods of a thiefe to favour and maintaine him, and not when a man taketh his owne goods that were stollen from him" (Termes de la Ley: *Vj*; Cowel: Jacob). *V.* COMPOUND.

The following are *Freedoms*, or *Quittances*, —

*Brig-bote*, or *Brug-bote*, or *Bridg-bote*; "Is to be quit of giving ayde to the repairing of Bridges" (Termes de la Ley). Jacob says, it was a Contribution for this purpose: *Va*, Cowel, *Bruck-bote*: but Co. Litt., sup, treats it as a Quittance.

*Burgh-bote*; "Is to be quit of giving ayde to make a Borough, Castle, Citie, or Walles throwne downe" (Termes de la Ley): Cowel and Jacob say, it was a Contribution for these purposes: but Co. Litt., sup, treats it as a Quittance.

*Castle-bote*; *V.* preceding par.

*Park-bote*; "Is to be quit of enclosing a PARK, or any part thereof" (4 Inst. 308).

**BOTH.** — "Both," as inaccurately used in s. 2, 6 G. 4, c. 57; *V. R. v. Tadeaster*, 4 B. & Ad. 703; 2 L. J. M. C. 63.

"Both Eyes"; *V.* SIGHT.

"Both Sides"; *V.* NEPHEW.

*V.* EITHER.

**BOTTOMRY BILL.** — Form of, *V.* Abbott, 1246.

**BOTTOMRY BOND.** — A Bottomry Bond, "is a contract by which, in consideration of money advanced for the NECESSARIES of the Ship to enable it to proceed on its voyage, the keel or bottom of the ship, *pars pro toto*, is made liable for the repayment of the money in the event of the safe arrival of the ship at its destination" (per Id Stowell, *The Atlas*, 2 Hagg. Adm. 53). "A contract similar to this upon the Cargo of the ship, is called Respondentia, but it is of rare occurrence" (Ib. 57). The Master has no authority to hypothecate the vessel in any other manner (*Stainbank v. Fenning*, 11 C. B. 51; 20 L. J. C. P. 226).

*Vh*, Park, ch. 22: Abbott, 152-179, 882, 1245: Carver, Part 2, ch. 10: Add. C. 760 *et seq*: 2 Encyc. 220-227.

*Cp*, Maritime Lien, sub LIEN.

**BOUGHT.** — Where a commission is payable on all goods "bought," it becomes payable on all orders accepted, even though the person accepting is ultimately unable to deliver the goods ordered (*Lockwood v. Lerrick*, 8 C. B. N. S. 603; 29 L. J. C. P. 340). *Cp.* SALE.

Corn "bought," or "purchased," within s. 27 of the Act authorising the importation of Foreign Corn on paying duties in proportion to the price of British Corn (Peel's Sliding Scale Act, 9 G. 4, c. 60), means, corn "bought" in the popular sense of the word, irrespective of the contract therefor being valid in law as being in compliance with the Statute of Frauds or otherwise; because the object of the Returns of Sales required by the section was to ascertain the average price of British corn (*R. v. Townrow*, 1 B. & Ad. 465).

Quà Corn Returns Act, 1882, 45 & 46 V. c. 37, " 'Bought,' means the agreement to buy; whether made by sale-note or otherwise, and irrespective of actual delivery in pursuance thereof" (s. 18). *Vf*, BRITISH CORN.

An agreement to give drafts against produce "bought *and paid for*," means, actually bought and paid for;—"to be" cannot be read into the expression (*Chartered Bank of India, &c v. Macfayden*, 64 L. J. Q. B. 367; 72 L. T. 428; 43 W. R. 397).

"Bought or agreed to buy," s. 9, Factors Act, 1889; *V*. BUY.

"Bought and Sold" Notes; *V*. Add. C. 493: Leake, 226, 227: *Fisenden v. Levy*, 3 F. & F. 477.

**BOUND.** — *V*. BIND.

"To be bound"; *V. Re Frappe*, cited IN WRITING.

"Bound to conform"; *V*. CONFORM.

A Treaty provision that the government shall "not be bound" to extradite, implies that they may (*Re Galvey*, 1896, 1 Q. B. 230; 65 L. J. M. C. 38; 73 L. T. 756; 44 W. R. 313; 60 J. P. 87).

"Bound to relinquish"; *V*. RELINQUISH.

A statement (amounting to a Warranty) in a Charter-Party, that the ship is "now in Finland *bound to London*," means, that the ship is in some place in Finland from which place she is under engagement to proceed direct to London; not that she is at liberty to go to some other place in Finland so long as she comes direct from Finland to London without calling at a port in any other country (*Engman v. Palgrave*, 4 Com. Ca. 75).

*V*. LEGALLY BOUND. *Cp*, CONCERNED.

**BOUNDARY.** — Place having a known, or defined Boundary; *V. R. v. Northoram, &c*, cited PLACE.

"Boundary of ANY Lands," s. 45, Tithe Act, 1836, did not enable Tithe Commrs to settle the Boundary of Parishes (*Re Ystradgunlais Commrs*, 8 Q. B. 32).

**BOUNDING.** — "Bounding or abutting" on a New Street within s. 77, 25 & 26 V. c. 102; *V. Williams v. Wandsworth*, 53 L. J. M. C. 187; 13 Q. B. D. 211: *Hackney v. G. E. Ry*, 51 L. J. M. C. 57; 52 *Ib*. 105; 8 App. Ca. 687: *L. B. & S. Ry v. St. Giles*, 48 L. J. M. C. 184; 4 Ex. D. 239.

"Bounding or abutting," on a Street where footway made, s. 1, 53 & 54 V. c. 54; *V. Puddington v. North Metrop Ry*, 1894, 1 Q. B. 633; 63 L. J. Q. B. 316; 58 J. P. 419.

*V. FORMING: FRONTING: ABUT.*

**BOUNDS.** — *V. BANNUM.*

**BOURNE.** — *V. STURGES BOURNE'S ACT.*

**BOVATA TERRÆ.** — *V. OXGANGE.*

**BOVERIA.** — "An Ox-house, or Ox-stall" (Cowel).

**BOVILL'S ACTS.** — The Petitions of Right Act, 1860, 23 & 24 V. c. 34:

The Lunacy Regn Act, 1862, 25 & 26 V. c. 86, repealed by the Lunacy Act, 1890:

To amend law of Partnership, 28 & 29 V. c. 86, replaced by ss. 2 (3), 3, Partnership Act, 1890.

**BOW WINDOW.** — *V. BUILDING.*

**BOX.** — *V. Hodgson v. Little*, cited **FISHERY**.

"Boxes," held not to include Rollers in a Patent Specification (*Barber v. Grace*, 1 Ex. 339; 17 L. J. Ex. 122).

**BOY.** — *V. PUER: GIRL.*

Quà Coal Mines Regn Act, 1887, 50 & 51 V. c. 58, "'Boy,' means a male under the age of 16 years" (s. 75).

"Boys on the FOUNDATION," quà Public Schools Act, 1868, 31 & 32 V. c. 118; *V. s. 4.*

**BOYCOTT.** — To "boycott" a person, is the offence defined in s. 2 (1), Criminal Law and Procedure (Ir) Act, 1887, 50 & 51 V. c. 20, on *whc, Re Heaphy*, 22 L. R. Ir. 500. To declare a person "boycotted," or to threaten to "boycott" him, is to excite an Unlawful CONFEDERACY against him, within s. 3, Tumultuous Risings (Ir) Act, 1831, 1 & 2 W. 4, c. 44 (*R. v. Barrett*, 18 L. R. Ir. 430); though, possibly, it ought to be left to the jury to say whether the word, as used in the case under trial, bears such meaning (*R. v. Coady*, 10 lb. 205).

To allege of another that he has been guilty of a "Boycott," is Libel (*Pink v. Federation of Trades Unions*, 67 L. T. 258; *Trollope v. London Bg Trades Federation*, 72 L. T. 342; 11 Times Rep. 280).

*Cp, INTIMIDATE.*

**BRANCH.** — Branch of a FRIENDLY SOCIETY; Stat. Def., Friendly Soc. Act, 1896, s. 106.

*V. FIRST HEIR MALE: YOUNGER.*

**BRAND.** — “Brand” (introduced into the description of what may be a TRADE-MARK by s. 64, 46 & 47 V. c. 57, repld s. 10, 51 & 52 V. c. 50) does not, necessarily, mean something burnt into an article; and, probably, an incorporation, *e.g.* by a water-mark, would suffice (*Pirie v. Goodall*, 1892, 1 Ch. 35; 61 L. J. Ch. 79; 65 L. T. 640; 40 W. R. 81); but it cannot consist of mere words in common use (*S. C.*). *V. HEADING.*

**BRANDY.** — “Brandy,” sold simply as such, must not be reduced more than 25 degrees under proof (Sale of Food and Drugs Act Amendment Act, 1879, 42 & 43 V. c. 30, s. 6). *See*, GIN, and the case there cited.

**BRAWLING.** — *V. s.* 2, 23 & 24 V. c. 32, and *Vth*, *Asher v. Calcraft*, 56 L. J. M. C. 57; 18 Q. B. D. 607; 56 L. T. 490; 35 W. R. 651; 51 J. P. 598: *Vallancey v. Fletcher*, cited *ANY*.

“Chiding and Brawling” in Church, 5 & 6 Edw. 6, c. 4; *V. Clinton v. Hatchard*, 1 Addams, 96: *Dawe v. Williams*, 2 Ib. 138: *Jenkins v. Barrett*, 1 Hagg. Ecc. 18.

**BREACH OF CONDITION.** — *V. FORFEITURE.*

**BREACH OF CONTRACT OR DUTY.** — These words, in s. 6, Admiralty Court Act, 1861, 24 V. c. 10, “have been held to be limited to a breach of contract contained in a Bill of Lading (*The Piece Superiore*, L. R. 5 P. C. 482; 43 L. J. Adm. 20), and they do not give jurisdiction in respect of a breach of Charter-Party committed before the goods were put on board (*The Dannebrog*, L. R. 4 A. & E. 386; 44 L. J. Adm. 21)”: 1 Maude & P. 400.

Action “founded on” breach of contract; *V. FOUNDED ON.*

**BREACH OF COVENANT.** — *V. Goodhand v. Ayscough*, 52 L. J. Q. B. 97; 10 Q. B. D. 71.

*V. PARTICULAR BREACH.*

**BREACH OF TRUST.** — Liability incurred by means of “Fraud or Breach of Trust,” s. 49, Bankry Act, 1869; *V. Emma Co v. Grant*, 50 L. J. Ch. 449; 17 Ch. D. 122: *Ramskill v. Edwards*, 55 L. J. Ch. 81; 31 Ch. D. 100; 53 L. T. 949; 34 W. R. 96. *Note*: The corresponding phrase in s. 30, Bankry Act, 1883, and in s. 28 (3 *h*), *Ib.* (the latter section repld s. 8 (3 *l*), Bankry Act, 1890) is “Fraud, or *fraudulent* Breach of Trust”: Is the sense altered? *Vh*, *Re Smith*, 1893, 2 Ch. 1; 62 L. J. Ch. 336; 68 L. T. 337; 41 W. R. 289; 57 J. P. 516: *Re Parker, Ex p. Sheppard*, 19 Q. B. D. 84.

Costs ordered against a Trustee in an action relating to a fraudulent breach of trust, are not incurred “*by means of*” such breach, within s. 30 (1), Bankry Act, 1883, though consequential upon it (*Re Greer*,

1895, 2 Ch. 217; 64 L. J. Ch. 620; 72 L. T. 865; 43 W. R. 547; 59 J. P. 441).

Breach of Trust quâ s. 8 (1), Trustee Act, 1888; *V. Re Swain*, 1891, 3 Ch. 233; 61 L. J. Ch. 20; 65 L. T. 296: *Re Bouden*, cited MONEY.

A "Breach of Trust" which, when done at the INSTIGATION, &c, of a Beneficiary, gives a Trustee a claim to be indemnified under s. 6, Trustee Act, 1888 (repld s. 45, Trustee Act, 1893), must be "some act or omission which is itself a breach of trust, and not some act or omission which only becomes a breach of trust by reason of want of care on the part of the trustees" (per Lindley, L. J., *Re Somerset*, 1894, 1 Ch. 231; 63 L. J. Ch. 41; *Mara v. Browne*, 1895, 2 Ch. 69; 64 L. J. Ch. 594; 72 L. T. 765, revd on another point, 1896, 1 Ch. 199; 65 L. J. Ch. 225; 73 L. T. 638). *Note.* As to mode of obtaining this indemnity, *V. Re Holt*, 1897, 2 Ch. 525; 66 L. J. Ch. 734; 76 L. T. 776; 45 W. R. 650:—and as to recoupment by assenting Beneficiary independently of the statute, *V. Raby v. Ridehalgh*, 24 L. J. Ch. 528; 7 D. G. M. & G. 104; *Sawyer v. Sawyer*, 54 L. J. Ch. 444; 28 Ch. D. 595.

As to Relief or Excusal for Breach of Trust; *V. REASONABLY.*

"Fraud, or Fraudulent Breach of Trust," in 1st Exception to s. 8, Trustee Act, 1888 (enabling Trustees to plead Statute of Limitations), connotes fraud to which a trustee is "party or privy," *i.e.* one in which "he has personally in some way participated" (per Lindley, L. J., *Thorne v. Heard*, 63 L. J. Ch. 360; affd 64 *Ib.* 652; 1895, A. C. 495). *V. How v. Winterton*, 1896, 2 Ch. 626; 65 L. J. Ch. 832; 75 L. T. 40; 45 W. R. 103.

*V. TRUST: TRUSTEE.*

**BREAD.**—*V. FRENCH BREAD.*

**BREAK.**—A burglarious breaking is effected by breaking, or further breaking, any part of a DWELLING-HOUSE, or unloosing or forcing any of its fastenings; or by feloniously obtaining admission by a trick or threat, or by getting down the chimney (for the cases, *V. Arch. Cr.* 600; *Rosc. Cr.* 314; and for another definition, *V. Steph. Cr.* 248).

**BREAK BULK.**—To "break bulk" is not now necessary to constitute Larceny by a Bailee (s. 3, 24 & 25 V. c. 96, re-enacting s. 4, 20 & 21 V. c. 54). The cases were very numerous, and turned on nice distinctions, as to what amounted to "breaking bulk" (*V. 2 Russ. Cr.* 131, 153, 320).

**BREAK DOWN.**—Break-down of Machinery; *V. Hogarth v. Miller*, cited EFFICIENT.

**BREAK GROUND.**—A Ry Co "breaks ground," within an agreement relating to the construction of a line of railway, only when such construction really begins; not when, as preparatory to such construc-

tion, they merely remove some rails to take the angles of certain lines which they will have to cross at a level (*Bristol & Exeter Ry v. Somerset & Dorset Ry*, 2 Ry & Can Traffic Ca. 82).

**BREAK OUT.**—“The expression ‘Breaks out’ (in the offence of Breaking Prison) means an actual breaking of the place in which the party is confined, whether intentional or not” (Steph. Cr. 102. *Vf*, Rosc. Cr. 373, 392).

“Break Prison”; *V. PRISON*: Jacob, *Gaol and Gaoler*: 10 Encyc. 404.

**BREAKAGE.**—*V. LEAKAGE AND BREAKAGE.*

“Breakage during removal,” in an Exception to a Plate-glass Insree; *V. Marsden v. City and County Assree*, 35 L. J. C. P. 60; L. R. 1 C. P. 232.

**BRED.**—As to where Fish are “bred, kept, or preserved,” s. 1, 5 G. 3, c. 14; *V. R. v. Carradice*, Russ. & Ry. 205.

**BRESSUMMER.**—Quà London Bg Act, 1894, “‘Bressummer,’ means a wooden beam, or a metallic girder, which carries a wall” (subs. 7. s. 5). *V. FOUNDATION: BASE.*

**BREST.**—“Brest, or any Port in Europe north and east of Brest,” s. 625, Mer Shipping Act, 1894; *V. The Rutland*, and *The Columbus*, cited *TRADING.*

**BREWER.**—“Brewer,” generally, connotes a Brewer of BEER, *e.g.* 43 & 44 V. c. 20, s. 2. *Vf*, *ART.*

**BREWERY.**—A testamentary option to purchase at  $\frac{3}{4}$ ths its value, all the testator’s “Property, Brewery, &c,” held, on the context and the circumstances, that “Brewery” included, not only the place where the brewing was done and the business carried on but also, the business connexion, including the Tied Houses (*Waite v. Morland*, 14 W. R. 746; 14 L. T. 649).

**BRIBERY.**—“‘Bribery’ is a high offence, viz., when any man in Judicial place or any great Officer takes any fee, pension, gift, or reward for doing his Office, save from the King onely” (Cowel): *Vf*, 4 Bl. Com. 139.

As between *Principal and Agent.*—“If a gift be made to a Confidential Agent with the view of inducing the agent to act in favour of the Donor in relation to transactions between the Donor and the agent’s Principal, and that gift is secret as between the Donor and the Agent, — *i.e.* is without the knowledge and consent of the Principal, — then the gift is a Bribe in the view of the law. Then these rules apply, — (1) The Court will not enquire into the Donor’s motive in giving the bribe,

nor allow evidence to be gone into as to the motive;—(2) The Court will presume, in favour of the Principal and as against the Briber and the agent bribed, that the agent was influenced by the bribe, and this presumption is irrebuttable;—(3) If the Agent be a confidential buyer of goods for his Principal from the Briber, the Court will assume, as against the Briber, that the true price of the goods, as between him and the Purchaser, must be taken to be less than the price paid to or charged by the Briber by, at any rate, the amount or value of the Bribe, but if the Purchaser alleges loss or damage beyond this he must prove it" (per Romer, L. J., *Hovenden v. Millhoff*, 83 L. T. 43).

For the def of Bribery at Parliamentary Elections, *V.* Corrupt Practices Prevention Act, 1854, 17 & 18 V. c. 102, ss. 2, 3; Rep People Act, 1867, s. 49; Rep People (Scot) Act, 1868, s. 49; 44 & 45 V. c. 40, s. 2; 46 & 47 V. c. 51, s. 3, and Sch 3, Part 3:—at Municipal Elections, *V.* 47 & 48 V. c. 70, s. 2, and Sch 3, Part 1; 45 & 46 V. c. 50, s. 77; 53 & 54 V. c. 55, s. 2. *Vh*, Leigh & Le Marchant, 4 ed., 3-25; Mattinson & Macaskie, 2 ed., 4-39; Rogers, ch. 11. *Cp*, CORRUPT PRACTICE.

*If*, Arch. Cr. 1187, 1193; Rosc. Cr. 297-303; 2 Encyc. 245-247.

**BRICK-BUILT.**—“A house described as ‘brick-built,’ is understood to be brick-built in the ordinary sense of the words; not composed externally partly of brick and partly of timber, and lath and plaster” (Dart. 137, 155, citing *Powell v. Double*, Sug. V. & P. 29; *Arnold v. Arnold*, 14 Ch. D. 270; 42 L. T. 705; 28 W. R. 635; *English v. Murray*, 49 L. T. 35; 32 W. R. 84).

**BRICKWORK.** — *V.* NEW BRICKWORK.

**BRIDGE.**—As to what is a Bridge and whether an Arch, or a number of Arches, constructed over *stagnant* water may be considered a Bridge; *V. R. v. Derbyshire*, 11 L. J. M. C. 51; 2 G. & D. 97.

In *Nottingham Co. Co. v. Manchester S. & L. Ry* (71 L. T. 430). “Bridge,” held, to include APPROACHES of the length of 180 feet on either side of the bridge in question. So, quæ Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, “Bridge,” includes “the accesses thereof”; but not any bridge which a person is bound to maintain (s. 3).

“Bridge hereafter to be *erected or built*,” s. 5, 43 G. 3, c. 59; *V. R. v. Lancashire*, cited ERECTED.

As to the phrase, “Bridge broken in a Highway,” Statute of Bridges, 22 H. 8, c. 5; *V. R. v. Southampton*, No. 1, 55 L. J. M. C. 158; 17 Q. B. D. 424; 55 L. T. 322; 35 W. R. 10; 50 J. P. 773; *St. S. C.*, No. 2, 19 Q. B. D. 590; 56 L. J. M. C. 112; 57 L. T. 261: and as to “Bridges” in Statute of Sewers, *V.* Callis, 85 *et seq.*

A Bridge may be a “STREET” (*Beaver v. Manchester*, 26 L. J. Q. B. 311).

“Bridge,” in s. 46, Ry C. C. Act, 1845, includes the roadway over a bridge as well as the structure of the bridge itself, and therefore the cost

of metalling and paving such roadway is payable by the Railway Company (*Bury v. Lancashire & Yorkshire Ry*, 57 L. J. Q. B. 280; 20 Q. B. D. 485; 59 L. T. 193; 36 W. R. 491; 52 J. P. 341; affd in H. L. nom. *Lancashire & Yorkshire Ry v. Bury*, 59 L. J. Q. B. 85; 14 App. Ca. 417; 61 L. T. 417; 54 J. P. 197).

The Mutiny Act exemption of soldiers from toll on crossing "Bridges," does not extend to a steam ferry boat, though it be called a floating bridge (*Ward v. Gray*, 34 L. J. M. C. 146; 6 B. & S. 345).

Power to open soil of Bridges; *V.* OPEN.

"Bridge Tax," "Bridge Rate," "Bridge Area," quâ Loc Gov (Ir) Act, 1898, 61 & 62 V. c. 37; *V.* s. 66 (9).

"The Bridges Acts, 1740 to 1815"; "The Bridges (Ir) Acts, 1813 to 1875"; *V.* Sch. 2, Short Titles Act, 1896.

*V.* COUNTY BRIDGE: PRIVATE BRIDGE: PUBLIC BRIDGE: OVER.

*Vh.* Woolrych on Ways, ch. 8.

**BRIDLE-PATH.** — "A Bridle-path, or Horse-way, is a WAY along which a man has a right to ride or lead a horse, although he owns no estate or interest in the soil. Such right may be either public or private. And, as a rider must occasionally dismount, a Horse-way includes a Foot-way" (2 Encyc. 247, 248). *Cp.* DRIFTWAY: FOOTWAY.

**BRIG-BOTE.** — *V.* BOTE.

**BRINE.** — *V.* MINE.

"Brine Pumper," quâ 54 & 55 V. c. 40, "means a person or company who pumps or raises brine from shafts, wells, springs, or mines" (s. 52).

**BRING FORWARD.** — The prohibition against "Bringing Forward" a house or building beyond the front wall of the building on either side of it, s. 156, P. H. Act, 1875, does not apply to a new house or building on a new site (*Williams v. Wallasey*, 55 L. J. M. C. 133; 16 Q. B. D. 718; 34 W. R. 517).

**BRINGING UP.** — Trust for, *V.* MAINTENANCE.

**BRITAIN.** — *V.* GREAT BRITAIN.

**BRITISH COIN.** — "British Coin." "British Money"; Stat. Def., 52 & 53 V. c. 42, s. 2 (4).

**BRITISH COLONY.** — "British Colony"; Stat. Def., 14 & 15 V. c. 99, s. 19.

"British Colony and Possession"; Stat. Def., 31 & 32 V. c. 37, s. 5.

**BRITISH COMPOUNDS.** — Stat. Def., Spirits Act, 1880, 43 & 44 V. c. 24, s. 3. *Cp.* BRITISH WINE.



**BRITISH CONSULAR OFFICER.** — Quà Foreign Marriage Act, 1891, 54 & 55 V. c. 74, includes “a Pro-Consul and an Acting Consular Agent” (s. 11).

**BRITISH CORN.** — Quà Corn Returns Act, 1882, 45 & 46 V. c. 37, “‘British Corn,’ means Wheat, Barley, and Oats, the produce of the United Kingdom, the Channel Islands, or the Isle of Man” (s. 18).

**BRITISH COURT.** — “British Court in a Foreign Country”; Stat. Def., 53 & 54 V. c. 37, s. 16; 55 & 56 V. c. 6, s. 6.

**BRITISH CUSTOM.** — “AVERAGE, if any, to be adjusted according to British Custom,” means, that only such General Average contribution is to be made as would be made according to the practice of British adjusters (*Stewart v. W. India & Pacific S. S. Co.*, L. R. 8 Q. B. 88, 362; 42 L. J. Q. B. 191; 28 L. T. 742; 21 W. R. 953). For the rules regulating such practice, *V. Abbott*, App. 1253.

**BRITISH DOMINIONS.** — For the purposes of the Copyright Act, 1842, “the words ‘British Dominions’ shall be construed to mean and include all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the Colonies, Settlements and Possessions of the Crown which now are or hereafter may be acquired” (s. 2). That extends to Canada (*Low v. Routledge*, 35 L. J. Ch. 114; 1 Ch. 42).

**BRITISH FUNDS.** — “British Funds” is a synonym for “Funds”; — and a direction to purchase an ANNUITY in “the British Funds,” means, not that a British Government Annuity is to be purchased for the life of the beneficiary but, that British Funds are to be purchased sufficient to pay the amount annually, and therefore the Annuity is perpetual (*Kerr v. Middlesex Hosp.*, 22 L. J. Ch. 355; 17 Jur. 49; 1 W. R. 93; 20 L. T. O. S. 160).

**BRITISH INDIA.** — In all Acts of Parliament passed after the 31st Dec. 1889, “‘British India’ shall mean all territories and places within Her Majesty’s dominions which are for the time being governed by Her Majesty through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India” (s. 18 (4), Interp. Act, 1889); and,

“‘INDIA’ shall mean British India together with any territories of any native prince or chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India” (s. 18 (5), *Ib.*).

**BRITISH ISLANDS.** — In all Acts of Parliament passed after 31st Dec 1889, “‘British Islands,’ shall mean the UNITED KINGDOM, the

Channel Islands, and the Isle of Man" (s. 18 (1), Interp Act, 1889). In Lloyd's Signal Stations Act, 1888, 51 & 52 V. c. 29, the phrase, "means the United Kingdom and the Channel Islands" (s. 19).

*Cp.*, def in Bills of Ex. Act, 1882, quâ Inland Bills; *I.* INLAND: "British Isles," 5 & 6 V. c. 12, s. 56.

**BRITISH LAW.** — "British Law," or "Law of Great Britain," in Treaties and Protocols; *I.* Hall on the Foreign Jurisdiction of the British Crown, 165, *n.*, 166.

**BRITISH LETTER.** — Quâ Post Office (Offences) Act, 1837, 7 W. 4 & 1 V. c. 36, " 'British Letter' shall mean a letter transmitted within the UNITED KINGDOM " (s. 47).

**BRITISH NEWSPAPER.** — Quâ Post Office (Offences) Act, 1837, " 'British Newspapers,' shall mean NEWSPAPER printed and published in the UNITED KINGDOM " (s. 47, the additional words as to Stamp Duty not now being operative): quâ Post Office (Duties) Act, 1840, 3 & 4 V. c. 96, the phrase means "newspapers printed and published in the UNITED KINGDOM, and also newspapers printed in the Islands of Guernsey, Jersey, Alderney, Sark, or Man" (s. 71).

**BRITISH PORT.** — Quâ Sea Fisheries Act, 1843, 6 & 7 V. c. 79, "British Port," means, any PORT in the United Kingdom or the Channel Islands (s. 18).

**BRITISH POSSESSION.** — In all Acts of Parliament passed after 31st Dec. 1889, " 'British Possession,' shall mean any part of Her Majesty's dominions exclusive of the United Kingdom; and where parts of such dominions are under both a central and local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British Possession" (s. 18 (2), Interp Act, 1889).

Prior Stat. Def. — 26 & 27 V. c. 24, s. 2; 32 & 33 V. c. 11, s. 2; 33 & 34 V. c. 52, s. 26; 45 & 46 V. c. 74, s. 17, c. 76, s. 3; 46 & 47 V. c. 57, s. 117; 47 & 48 V. c. 31, s. 18.

*I.* BRITISH COLONY: BRITISH SETTLEMENT.

**BRITISH POSTAGE.** — Stat. Def., 7 W. 4 & 1 V. c. 36, s. 47.

**BRITISH SEAMAN.** — " 'British Seaman,' may mean, one who, whatever his nationality, is serving on board a British ship" (per Blackburn, J., *R. v. Anderson*, L. R. 1 C. C. R. 162). *Cp.*, ENGLISH MARRIAGE. *I.* SEAMAN.

**BRITISH SETTLEMENT.** — Quâ British Settlements Act, 1887, 50 & 51 V. c. 54, " 'British Settlement,' means, any BRITISH POSSESSION which has not been acquired by cession or conquest, and is not for

the time being within the jurisdiction of the Legislature (constituted otherwise than by virtue of this Act, or of any Act repealed by this Act) of any British Possession" (s. 6).

**BRITISH SHIP.**—The phrase "British" Ships or Vessels, has three meanings:—

1. All ships or vessels, properly so called, according to our Municipal Law;

2. All ships or vessels under the British Flag, though perhaps not strictly entitled thereto, because, by the Law of Nations, the carrying the British Flag stamps on them, as to other nations, the British national character;

3. All ships or vessels, — though this is a much more doubtful point, — under neutral flags, but owned by BRITISH SUBJECTS (per Dr. Lushington, *The Leucade*, 1 Jur. N. S. 553).

"British Ship," quâ Mer Shipping Act, 1894; *V.* s. 1.

A ship built in England for a foreign owner and not registered, or intended to be registered, as a British Ship, is not a British Ship within Mer Shipping Act, 1854, repld Mer Shipping Act, 1894 (*Union Bank of London v. Lenanton*, 47 L. J. C. P. 409; 3 C. P. D. 243).

"British Vessel"; Stat. Def., 6 & 7 V. c. 79, s. 18.

*V.* SHIP: RECOGNIZED BRITISH SHIP.

**BRITISH SLAVE COURT.**—Stat. Def., Slave Trade Act, 1873, 36 & 37 V. c. 88, s. 2.

**BRITISH SPIRITS.**—Stat. Def., 32 & 33 V. c. 103, s. 3; 43 & 44 V. c. 24, s. 3. *Cp.* BRITISH WINE.

**BRITISH SUBJECT.**—"British Subject," s. 2, 24 & 25 V. c. 114, includes a naturalized British subject (*Re Gally*, 45 L. J. P. D. & A. 107; 1 P. D. 438: *Vh.* *Re Keller*, 61 L. J. P. D. & A. 39).

Stat. Def.—Liberated Africans Act, 1853, 16 & 17 V. c. 86, s. 2.

"The British Subjects Acts, 1708 to 1772"; *V.* Sch. 2, Short Titles Act, 1896.

*Vh.* The Report to Parliament, of the Inter-Departmental Committee on the Naturalization Laws, 24th July 1901 (Cd. 723).

**BRITISH WINE.**—"British Wine" is synonymous with "MADE WINE"; *V. Harris v. Jenns*, cited WINE. *Cp.* BRITISH COMPOUNDS: BRITISH SPIRITS.

**BROAD.**—*V.* MESH.

**BROCAGE.**—"The wages or hire of a Broker" (Cowel).

**BROKER.**—Brokers "are those that contrive, make, and conclude bargains and contracts between merchants and tradesmen, in matters of

money and merchandize, for which they have a fee or reward" (Jacob, cited by Best, C. J., *Gibbons v. Rule*, 4 Bing. 306: this def is derived from 1 Jac. 1, c. 21, cited FRIPERER: *Vf*, 8 & 9 W. 3, c. 20, s. 60, where the def is, those who "make or drive" bargains). A Broker is not put into possession of the property to be sold, as a Factor is (*Baring v. Corrie*, cited FACTOR). *Vf*, Statuta Civitas London, 13 Edw. 1, stat. 5: Termes de la Ley: Cowel: 2 Encyc. 262-272: Evans, on Agency: Story, on Agency.

As to meaning of "Broker" in 6 Anne, c. 16, and 6 G. 1, c. 18; *V. Wilkes v. Ellis*, 2 Bl. H. 555; *Clark v. Powell*, 2 L. J. K. B. 145; 4 B. & Ad. 846; *Smith v. Lindo*, 27 L. J. C. P. 196, 335; 4 C. B. N. S. 395; *Milford v. Hughes*, 16 L. J. Ex. 40; 16 M. & W. 174. In the last case Rolfe, B., said that a case of brokerage "must relate to goods and money, and not merely to personal contracts for work and labour." A Stock-broker is within these enactments (*Janssen v. Green*, 4 Burr. 2103). *Cp*, JOBBER.

*Note*. — As to what is "acting as a Broker," within 57 G. 3, c. 1x, *V. Scott v. North*, L. R. 2 C. P. 270; *Scott v. Cousins*, L. R. 4 C. P. 177; 38 L. J. C. P. 156. If a contracting party merely adds "Broker," and not "as Broker," to his signature, he is personally bound (*Hutcheson v. Eaton*, 13 Q. B. D. 865; 51 L. T. 846).

"Broker," as used in the late Bankry def of "Trader," included not only barterers of merchandise, but also assurance-brokers (*Ex p. Stevens*, 4 Mad. 256), Bill-brokers (*Ex p. Phipps*, 2 Dea. 487), Pawn-brokers (*Rawlinson v. Pearson*, 5 B. & Ald. 124), Ship-brokers (*Pott v. Turner*, 4 Moore & P. 551; 6 Bing. 702), and Stock-brokers (Cullen, on Bankry, 12, Note 2, 48).

"Broker" is a sufficient description of a Ship-broker, for the purposes of the Bills of Sale Acts (*Gugen v. Sumpson*, 4 F. & F. 974); though a Ship-broker is not within the Acts regulating Brokers (*Gibbons v. Rule*, sup).

Stat. Def. — *Scot*. 25 & 26 V. c. 101, s. 3; 55 & 56 V. c. 55, s. 4.

V. PASSAGE BROKER: EXCAMBIATOR: BANKER.

**BROOD.** — *V. FRY*.

**BROTHEL.** — "Brothel," "Bawdy-house," or "Common Bawdy-house," are synonyms (*Singleton v. Ellison*, 1895, 1 Q. B. 607; 64 L. J. M. C. 123; 72 L. T. 236; 43 W. R. 426; 59 J. P. 119).

NUISANCE, is or no Nuisance, is not an element in the definition of "Brothel" (*R. v. Holland Jus.*, 46 J. P. 312).

"Brothel," or "Bawdy-house," is "a PLACE where people of opposite sexes are allowed to RESORT for prostitution" (per Wills, J., *Singleton v. Ellison*, sup).

But the Occupier of the place has the entrée for all purposes, and,

accordingly, does not need to be "allowed" there for any special purpose; therefore, a place occupied by a woman, who permits no other woman but herself to be there for sexual purposes but who herself is accustomed to receive men for such purposes, is not a "Brothel" within s. 13, 48 & 49 V. c. 69 (*Singleton v. Ellison*, sup). The *ratio decidendi* of *the* seems to show that if, instead of one, there are two or more women who are joint occupiers of a Place where they (but only they) respectively receive men for sexual intercourse, such place would not be a Brothel. *VJ, KEEP.*

A Brothel involves the idea of a Place of Resort; therefore, the allowance of an isolated act of prostitution, even by strangers to the occupancy, would not make the place a Brothel; but the one proved instance may, itself, prove it to be, not solitary but, one of many instances (*R. v. Holland Jus.*, sup).

*Cp*, "Disorderly House," sub DISORDERLY. *V. WHORE: ELIGIBLE.*

*Vh*, 1 Encyc. 272 *et seq*: Jacob, *Bawdy-house*.

**BROTHER: SISTER.** — A gift to "Brothers"; "Sisters," — includes the HALF-BLOOD; "and so with regard to every other degree of relationship" (2 Jarm. 154). "I think that, in general, when a man speaks of his brothers and sisters he speaks of them, not with reference to the definition of the word in the dictionary, but as a class standing in the same relation to *one or both* of his parents in which he himself stands. Though the half-blood are not descended from both the same parents, they are, — as it is said in *Termes de la Ley*, *Demy Sangue*, — 'after a sort, brothers,' 'brothers by the father's side,' 'brothers by one mother'; and however others might describe them or they might designate themselves, I think that, if required to give a precise description of the nature and degree of the relation subsisting between them, they, in ordinary parlance, would be called and would call themselves, Brothers and Sisters" (per Turner, V. C., *Grievess v. Rawley*, 22 L. J. Ch. 625; 10 Hare, 63). But this construction may be varied by a context (*Re Reed*, 57 L. J. Ch. 790; 36 W. R. 682).

The widow of a sister is not a "Brother," nor is the widow of a brother a "Sister," there being no blood relationship (*Hussey v. Berkeley*, 2 Eden, 194).

A gift to "Brothers and Sisters," the testator knowing himself to be illegitimate, imports his putative brothers and sisters (*Re Cameron*, 91 Law Times, 176: RELATIONS).

*V. NEPIEW.*

**Lord BROUGHAM'S ACTS.** — The Beerhouse Act, 1830. 11 G. 4 & 1 W. 4, c. 64:

For shortening language of Acts, 13 & 14 V. c. 21, repealed and replaced by Interp Act, 1889:

The Evidence Acts, 1845, 8 & 9 V. c. 113; 1851, 14 & 15 V. c. 99; 1853, 16 & 17 V. c. 83:

The Marriage (Scotland) Act, 1856, 19 & 20 V. c. 96.

*Vf*, Brougham's Acts and Bills, by Eardley Wilmot.

**BROUGHT.** — An enactment that “no Action shall be brought,” *e. g.* s. 4, Statute of Frauds, is not RETROSPECTIVE (*Gillmore v. Shooter*, 2 Mod. 310); so, of “brought or maintained” in the Gaming Acts, 1845, 1892 (*Moon v. Durdan*, 2 Ex. 22; *Knight v. Lee*, 1893, 1 Q. B. 41; 62 L. J. Q. B. 28; 67 L. T. 688; 41 W. R. 125; 57 J. P. 117. *Vf*, MAINTAIN). “Properly brought”; *V. PROPERLY.*

**BROUGHT AGAINST.** — There is no Action “brought against” a deft against whom no relief is sought; and who might more properly have been made a plt; — the presence of such a deft does not justify an Order for service out of the Jurisdiction under R. 1 (*g*), Ord. 11, R. S. C. (*Deutsche National Bank v. Paul*, 1898, 1 Ch. 283; 67 L. J. Ch. 156; 78 L. T. 35; 46 W. R. 243).

*V. PURSUANCE.*

**BROUGHT ALONGSIDE.** — *V. ALONGSIDE.*

**BROUGHT BEFORE.** — A person is sufficiently “brought before” a magistrate, s. 24, 2 & 3 V. c. 71, if he appear in answer to a summons; and it is not necessary that he should have been actually arrested and brought in custody (*Hadley v. Perks*, 35 L. J. M. C. 177; L. R. 1 Q. B. 444; 7 B. & S. 375). *Vf*, *R. v. Wilcox*, 37 W. R. 686.

**BROUGHT INTO QUESTION.** — *V. jdgmt of Willes, J., Cooper v. Hubbuck*, 31 L. J. C. P. 326; 12 C. B. N. S. 456. *Vf*, QUESTION.

**BROUGHT UPON.** — Fixtures, &c, “brought upon” any land, &c, s. 6 (2), Bills of Sale Act, 1882, means, brought upon the premises for the purpose of being USED there (*London & Eastern Counties Loan Co v. Creasy*, cited PLANT).

**BRUERA.** — “A man grants *omnes brueras suas*; the soile where heath doth growe passeth. It is derived from bruyer, a French word for heath; and it is called *ros* in the British tongue” (Co. Litt. 4 b, 5 a: *V. Touch.* 95: JUNCARIA).

South Sea BUBBLE ACT. — 6 G. 1, c. 18.

**BUGGERY.** — This is synonymous with SODOMY (Jacob, *whv*).

**BUILD.** — *V. ERECT: PUT.*

A contract to supply stones and marle and burn lime for the “building” of houses, does not include, in that word, the plastering and tile-

pointing of the houses (per Cresswell, J., *Charlton v. Gibson*, 1 C. & K. 541).

Covenant not to "build" any Dwellinghouse; *V. Domicile v. Colville*, cited DWELLINGHOUSE.

**BUILDER.** — A "Builder," within the late Bankry def of "Trader," was one who built houses for sale, whether on land purchased or leased by him for that purpose, or who built for other persons by hire or contract (*Ex p. Neirinckx*, 4 L. J. Bank. 73; 2 Mont. & Ayr. 384). But the purchasing land with unfinished houses thereon and employing persons to complete the houses, was not trading as a "Builder" (*Ex p. Edwards*, 9 L. J. Bank. 11; 4 Jur. 153; 1 Mont. D. & D. 3). *Vf, Ex p. Stewart*, 18 L. J. Bank. 14; 13 Jur. 581; 3 Ex. 700; 3 D. G. & S. 557; *Re Fowler*, Fon. B. C. 201.

Structure "erected by a Builder for use"; *I. USE.*

Quà London Bg Act, 1894, "Builder," means the person who is employed to build, or to execute work on, a BUILDING or STRUCTURE, or (where no person is so employed) the OWNER of the building or structure" (subs. 33, s. 5).

**BUILDING.** — What is a "Building" must always be a question of degree, and circumstances: its "ordinary and usual meaning is, a block of brick or stone work, covered in by a roof" (per Esher, M. R., *Moir v. Williams*, 1892, 1 Q. B. 264; 61 L. J. M. C. 33). *Vf, STRUCTURE.*

"The masonry on the sides of a Canal is not sufficient to constitute it a 'building.' A London street, though paved and faced with stonework, would yet be 'land'; whilst the Holborn Viaduct would be a 'Building'" (per Blackburn, J., *R. v. Neath Canal Nav.*, 40 L. J. M. C. 197).

In a Covenant to REPAIR, "the repairing or re-instating of 'Buildings' would include a Garden Wall, or a Wall enclosing or defining some portion of a field" (per James, V. C., *Bowes v. Law*, L. R. 9 Eq. 641).

But in a Covenant restricting USER, "Building" does not include a Boundary Wall of reasonable height (*Child v. Douglas*, Kay, 560; 5 D. G. M. & G. 739; *Bowes v. Law*, L. R. 9 Eq. 636; 39 J. Ch. 483; 22 L. T. 267; 18 W. R. 640): — In *Child v. Douglas*, Wood, V. C., thought a Boundary wall 5 ft. high, projecting at right angles to the street beyond the prescribed Building Line, might be doubtful, and that one of 15 ft. was too high; *Sethe* on appeal. In *Bowes v. Law*, James, V. C., held that a Front Boundary Wall alongside the road 8 ft. 6 in. high, was not a breach of a covenant that "no Buildings except Dwellinghouses" should be erected, but that it was a breach of that covenant to erect part of that wall to a height of 11 ft., against which was to be a glazed lean-to roof for the purpose of a Vinery. *Vf, PRIVATE DWELLINGHOUSE.*

It may, probably, be said that "Building," by itself, will not include a

WALL (per Parke, B., *R. v. Gregory*, 5 B. & Ad. 555); and, à fortiori, when in such a collocation as "House or Building" (*Brown v. Holyhead*, 7 L. T. 332). *Vf*, inf.

A Bay or Bow Window is a "Building," and its ADDITION to a house will be a breach of a covenant not to erect "any building" in advance of the house (*Western v. M'Dermot*, 36 L. J. Ch. 76; 2 Ch. 72: *Manners v. Johnson*, 45 L. J. Ch. 404; 1 Ch. D. 673: *Vth, Chitty v. Bray*, 48 L. T. 860: *Vf*, *R. v. Gregory*, inf); *secus*, of a projection of 2 inches to a height of 1 ft. 6 in. in the front basement wall, or of a projection of 1 foot in a brick porch (*Child v. Douglas*, sup).

So, a wooden Advertisement HOARDING is a contravention of a covenant not to erect a "Building or ERECTION" on the premises (per Mathew, J., *Pocock v. Gilham*, 1 Cab. & El. 104); but where the covenant was not prohibitive and rather regulative of "any Building" to be erected, and the regulations were inapplicable to an advertisement hoarding, it was held that such a hoarding, though prejudicial, was not prohibited (*Foster v. Fraser*, 1893, 3 Ch. 158; 63 L. J. Ch. 91; 69 L. T. 136; 42 W. R. 11; 57 J. P. 646: *Cp*, *Lary v. London Co. Co.*, inf). A Trellis-work Screen has been held a "Building" other than a Stable or Coach-house, within a restrictive covenant (per Romer, J., *Wood v. Cooper*, 1894, 3 Ch. 671; 63 L. J. Ch. 845).

A WALL with a covered way on the inside of a Church-yard as a protection from the weather, is not such a "Building" as is prohibited on a Disused BURIAL Ground, by the Disused Burial Grounds Act, 1884, or the Open Spaces Act, 1887 (*St. Botolph, Vicar, v. Parishioners of Same*, 1900, P. 69). *Va*, sup.

A Wheel of a Water-Mill is within the phrase "Messuages and Buildings," as used in a Tenant's covenant to repair (*Openshaw v. Evans*, 50 L. T. 156).

Where a statute prohibits a "Building," that will, generally, include any ADDITION to a bg, *e.g.* a prohibition against a "building" within a stated distance from a road, will be offended by an open shop thrown out from, and connected by a roof with, a house outside that distance, and so of a portico or shelter (*R. v. Gregory*, 5 B. & Ad. 555: *Coburg Hotel v. London Co. Co.*, 81 L. T. 450; 63 J. P. 805: *Cp*, *Manners v. Johnson*, sup).

"Possibly a 'Silo' may be called a 'Building' within the meaning of S. L. Act, 1882, s. 25 (xi)" (per Cotton, L. J., *Re Broadwater*, 54 L. J. Ch. 1105).

A "Building, STRUCTURE or ERECTION," s. 75, 25 & 26 V. c. 102, must be one on a space theretofore VACANT; and a new building, &c, erected on the site of an old one recently pulled down, is not within the section (*Auckland v. Westminster*, 41 L. J. Ch. 723; 7 Ch. 597: *Vf*, *Barlow v. St. Mary Abbotts*, 55 L. J. Ch. 680; 11 App. Ca. 257; 55 L. T. 221; 34 W. R. 521; 50 J. P. 691). A magisterial finding that a small



conservatory over a projecting shop-front is not within this section was not over-ruled (*St. George, Hanover Sq., v. Sparrow*, 33 L. J. M. C. 118; 16 C. B. N. S. 209). But though the mere raising an existing Frontage Wall is not within the section, yet it is otherwise if the space between the top of such raised wall and the house it encloses is roofed over (*Clark v. St. Pancras*, 34 J. P. 181). A fence, if merely a reasonable delimitation of property, is not within the section; *secus*, if it is (or is made) more than that and has the character of a building, structure, or erection (*Ellis v. Plumstead*, 68 L. T. 291; 57 J. P. 359; 41 W. R. 496). A mere WALL, is not a building, structure, or erection, within the section (*Wendon v. London Co. Co.*, 1894, 1 Q. B. 812; 63 L. J. M. C. 117; 70 L. T. 440; 42 W. R. 370; 58 J. P. 606); but, even as regards a Wall, it is a question of degree, and if it be used, or intended, for an Advertisement-station, it is within the section (*Lary v. London Co. Co.*, 1895, 2 Q. B. 577; 64 L. J. M. C. 262; 73 L. T. 106; 43 W. R. 677; 59 J. P. 630: *Cp.* *Foster v. Fraser*, *sup.*, and *Slaughter v. Sunderland*, *inf.*).

A Conservatory which projects from a dwellinghouse is not a "Building" within a Bye-Law under the P. H. Act, 1875 (*Hibbert v. Acton*, 5 Times Rep. 274). *Vh.* *Adams v. Bromley*, 36 J. P. 743.

"Building," within London Bg Act, 1894, and other Acts relating to the Metropolis; *V. Stecens v. Gourley*, 29 L. J. C. P. 1; 7 C. B. N. S. 99; *Hall v. Smallpiece*, 59 L. J. M. C. 97; *London Co. Co. v. Pearce*, 1892, 2 Q. B. 109; 66 L. T. 685; 40 W. R. 543; 56 J. P. 790; *Cobury Hotel v. London Co. Co.*, *sup.*: STRUCTURE.

The Fee given by Part 1, Sch 2, Metrop Bg Act, 1855, to District Surveyors for "EVERY Building," means, for every bg covered in by a roof; therefore, a structure consisting of (say) 14 separate sets of chambers, having a common staircase and covered by one roof, is only one building (not 14), and the Surveyor is only entitled to fees as for one bg only (*Moir v. Williams*, 1892, 1 Q. B. 264; 61 L. J. M. C. 33; 66 L. T. 215; 40 W. R. 69; 56 J. P. 197). *Cp.* DISTINCT.

"Building," s. 157, P. H. Act, 1875, means, a structure roofed in and capable of affording protection or shelter; therefore, mere roofless advertisement-boards which surround a piece of land, though stayed and tied together, are not a "building" within this section (*Slaughter v. Sunderland*, 60 L. J. M. C. 91; 65 L. T. 250; 55 J. P. 519: *Cp.* *Foster v. Fraser*, and *Lary v. London Co. Co.*, *sup.*); *secus*, of a Pig-stye, or Hen-house (*Walker v. Baildon*, 37 S. J. 217). *Vf.* *Hibbert v. Acton*, *sup.*: NEW BUILDING.

Quà P. H. (London) Act, 1891, " 'Building,' and 'House,' respectively, include the CURTILAGE of a building or house, and include a building or house wholly or partly erected under statutory authority " (s. 141).

Quà Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, " 'Building' shall include any Structure or Erection of what kind and nature soever, and every part thereof " (subs. 3, s. 4).

A wooden structure (let into the ground by posts) 9 ft. 6 in. long, 3 ft. deep, and 7 ft. high, roofed, glazed in front, and with a door at one end, used only for exhibiting photographs, but with no public approach; held, by the Justices as a "Building" within s. 3, P. H. (Building in Streets) Act, 1888, 51 & 52 V. c. 52, and, per Pollock, B., they were right, and, per Hawkins, J., that it was a question of fact concluded in that case by the Justices' finding (*Leicester v. Brown*, 62 L. J. M. C. 22; 67 L. T. 686; 41 W. R. 78).

Though a house is in Separate Flats, all of it that is under the one roof is a "Building," within Rules 28, 29, Dairies, Cowsheds, and Milkshops Order, 1885 (*London Co. Co. v. Edwards*, 1898, 2 Q. B. 75; 67 L. J. Q. B. 648; 78 L. T. 558; 62 J. P. 377).

Sheds for protecting Mine Engines, held, within a Local Act authorising a Rate on all "Buildings" (*Brown v. Granville*, 10 Bing. 69).

"House, Warehouse, Counting House, Shop, or other Building," to confer the franchise under s. 27, Rep People Act, 1832, includes, in its last term, only buildings of a permanent character used for residentiary or commercial purposes (*Pownall v. Dawson*, 21 L. J. C. P. 14; 11 C. B. 9); and does not include a tool shed (*Powell v. Boraston*, 34 L. J. C. P. 73; 18 C. B. N. S. 175). *St. Morrish v. Harris*, L. R. 1 C. P. 155. Is a Pig-stye such a "Building"? (*Powell v. Farmer*, 34 L. J. C. P. 71; 18 C. B. N. S. 168). A Cow-house may be (*Whitmore v. Wenlock*, 13 L. J. C. P. 55; 5 M. & G. 9). *If, Toms v. Luckett*, cited LODGER.

"Dwelling-house, Workshop, or other Building," s. 3, Prescription Act, 1832, 2 & 3 W. 4, c. 71, means quæ "Building," one analogous to those mentioned (*Harris v. De Pinna*, 33 Ch. D. 238; 54 L. T. 38), e.g. a Green-house (*Clifford v. Holt*, 1899, 1 Ch. 698; 68 L. J. Ch. 332; 80 L. T. 48). So, "House, Shop, or other Building whaterer," s. 38, 57 G. 3, c. 19, does not include a temporary booth, e.g. *Hustings (Allen v. Ayre*, 1 L. J. O. S. K. B. 204).

"Sewer, Drain, Privy, Cesspool, Ashpit, Building," in a Local Act relating to public health, held to include in its last term a Dwelling-house (*Pearson v. Kingston*, 35 L. J. M. C. 36; 3 H. & C. 921).

"House or other Bg," s. 92, Lands C. C. Act, 1845; *V. HOUSE*.

An Arch used as a store-house is a "Building" within s. 7, Gas Works Clauses Act, 1847 (*Thompson v. Sunderland Gas Co*, 46 L. J. Ex. 710; 2 Ex. D. 429).

An unfinished house is a "Building" within s. 6, 24 & 25 V. c. 97 (*R. v. Manning*, L. R. 1 C. C. R. 338; 41 L. J. M. C. 11; 25 L. T. 573).

"Corporate Buildings," s. 92, 5 & 6 W. 4, c. 76; *Semble*, a Corporation Pew is within this phrase (*R. v. Warwick*, 15 L. J. Q. B. 306; 8 Q. B. 926). *If, NECESSARILY*.

"Building, Erection, or Thing," within a Local Act prohibition; *V. Colbran v. Barnes*, 11 C. B. N. S. 246: *THING*.

"Building of the Warehouse Class"; *V. WAREHOUSE*.

A BYE-LAW relating to the construction of Cesspools in connection with Buildings, may apply as well to old as to new bgs (*Simmons v. Mulling*, 1897, 2 Q. B. 433; 66 L. J. Q. B. 585; 77 L. T. 341; 45 W. R. 603; 61 J. P. 502).

“Buildings, Lands, and Heredits”; *V. HEREDITAMENT.*

“Bg, &c, vested in, and in the occupation of, Her Majesty”; *V. VESTED.*

*V. ADDITION: NEW BUILDING: OLD BUILDING: PUBLIC BUILDING: STRUCTURE: DWELLINGHOUSE: HOUSE: ERECT: ERECTION: FACTORY: REBUILDING: CANAL: PROPERTY OTHER THAN LAND: MARKET GARDEN: HEIGHT.*

Quà Foreign Enlistment Act, 1870, 33 & 34 V. c. 90, “‘Building,’ in relation to a SHIP, shall include the doing any act towards, or incidental to, the construction of a ship” (s. 30).

**BUILDING LAND.**—“‘Building Land’ is a term frequently used for land capable of being built on — land suitable for being built on in the judgment of those who come to that conclusion” (per Hatherley, C., *Lond. & S. W. Ry v. Blackmore*, 39 L. J. Ch. 716; L. R. 4 H. L. 610). *Vf. Dougherty v. Oates*, cited FREEHOLD. *Cp.* BUILDING PURPOSES.

*V. Broomfield v. Williams*, cited CONTRARY INTENTION.

**BUILDING LEASE.**—A Building LEASE as distinguished from a REPAIRING LEASE, involves the idea of either erecting a building on vacant land, or of pulling down old buildings and erecting new ones on the site (*London v. Nash*, 3 Atk. 513, 514). It must contain a covenant by the lessee to build (*Jones v. Verney*, Willes, 169; *Re Hallett*, 52 L. J. Ch. 804; 24 Ch. D. 624). *Cp.* OCCUPATION LEASE.

For the purposes of the Conv. & L. P. Act, 1881, a Building Lease “is a Lease for BUILDING PURPOSES, or purposes connected therewith.” s. 2 (x). A similar definition is provided for the S. L. Act, 1882; *V. s. 2 (10, iii)*. This includes a Lease whereby the lessee covenants to spend a substantial sum on specified repairs; but if the leave of the Court be required, — *e.g.* under s. 63, S. L. Act, 1882, by s. 7, S. L. Act, 1884, — that leave will not be given where the Court thinks the repairs are of such a kind that the Tenant for Life ought to pay for them (*Re Daniell*, 1894, 3 Ch. 503; 64 L. J. Ch. 173; 71 L. T. 563; 43 W. R. 133).

A Building Lease, under S. L. Act, must be in GOOD FAITH (*Sutherland v. Sutherland*, 1893, 3 Ch. 169; 62 L. J. Ch. 946; 69 L. T. 186; 42 W. R. 12).

In determining whether a Lease is, or is not, a Building Lease, within the Solrs Rem Ord, regard must be had, — (1) to the circumstances of the contract; (2) the subject-matter of the demise; and (3) the nature and extent of the expenditure to be made; *e.g.* a lease to a Race Committee of 135 acres with a cottage thereon for 99 years at a RACK-RENT, the lessees covenanting to spend £1000 within 12 months in good and

sufficient improvements of a substantial and permanent character, is not a Building Lease, for there is no stipulation, or manifest necessity, that the money is to be spent in building; but a similar lease of a large house with about 1 acre of ground attached, the house being much out of repair, and the lessee covenanting to spend £300 on similar improvements, is a Bg Lease (*Re Hogan*, 1894, 1 L. R. 503). *Vf*; *Re Hall to Sutton*, 1900, 1 L. R. 137.

Quà Part 2, 23 & 24 V. c. 153, "Building Leases" includes "Repairing Leases" (s. 25): *Va*, 21 & 22 V. c. 77, s. 2.

**BUILDING LINE.** — *V. Barlow v. St. Mary Abbots*, 11 App. Ca. 257; 55 L. J. Ch. 680; 55 L. T. 221; 34 W. R. 521; 50 J. P. 691: *Worley v. St. Mary Abbots*, 1892, 2 Ch. 404; 61 L. J. Ch. 601: *Newhaven Loc. Bd v. Newhaven School Bd*, 30 Ch. D. 350.

*V. GENERAL LINE OF BUILDINGS: ARISE.*

**BUILDING OWNER.** — Quà London Bg Act, 1894, "Building Owner," "means such one of the OWNERS of adjoining land as is desirous of building, or such one of the OWNERS of buildings, storeys, or rooms, separated from one another by a party-wall or party-structure, as does, or is desirous of doing, a work affecting that party-wall or party-structure" (subs. 31, s. 5), — this def is an amplification of s. 82, 18 & 19 V. c. 122.

*V. ADJOINING OWNER.*

**BUILDING PURPOSES.** — The phrase, land "used for Building Purposes," s. 128, Lands C. C. Act, 1845, does not mean what is ordinarily called "BUILDING LAND"; but means "land actually used for building purposes, not land contemplated to be used for building purposes, or intended to be used for building purposes, or suitable for building purposes" (per Hatherley, C., *Lond. & S. W. Ry v. Blackmore*, 39 L. J. Ch. 717; L. R. 4 H. L. 610: *Va*, *Coventry v. L. B. & S. Ry*, 37 L. J. Ch. 90; L. R. 5 Eq. 104; 16 W. R. 267: *Carington v. Wycombe Ry*, cited TOWN).

Quà Conv & L. P. Act, 1881, "Building Purposes," include the erecting, and the improving of, and the adding to, and the repairing of, Buildings" (s. 2, subs. 10): a like def is provided for the S. L. Act, 1882 (s. 2, subs. 10, iii). *Vh*, *Re Daniell*, cited BUILDING LEASE: *Re Ellesmere*, W. N. (98) 18.

**BUILDING SOCIETY.** — "The Building Societies Acts, 1874 to 1894"; *V. Sch* 2, Short Titles Act, 1896.

*Vh*, Wurtzburg, on Building Societies.

**BUILT.** — "Erected or built"; *V. ERECTED.*

A Covenant, in a Conveyance, that "no Hotel, Tavern, Public-house, Beer-house, Shop, or other bg," for the sale of intoxicants, "shall be

built" upon the land conveyed, means that the prohibited businesses "shall not be" on the land; and, therefore, the User of any bg on the land for either of such businesses will be restrained, though such user was not in contemplation when the bg was "built" (*Webb v. Fayotti*, 79 L. T. 683).

**BUILT UPON.** — As to this phrase as used in s. 128, Lands C. C. Act, 1845; *V. jdgmt of Hatherley, C., Lond. & S. W. Ry v. Blackmore*, 39 L. J. Ch. 713; L. R. 4 H. L. 610: *Curington v. Wycombe Ry*, cited TOWN.

*Vf, Arnell v. Regent's Canal Co*, cited PASSAGE.

**BULK.** — *V. BREAK BULK: LEFT.*

**BULLER'S ACTS.** — The Poor Law Acts of 1848, 11 & 12 V. cc. 82, 91, and 110.

**BUNGLER.** — To say of an ARTIFICER that he is a "Bungler" in his work, is Slander, *per se* (*Redman v. Pyne*, 1 Mod. 19). (*p*, COBBLER.

**BUOY.** — Quà Mer Shipping Act, 1894, " 'Buoys and Beacons,' includes all other marks and signs of the Sea" (s. 742).

**BURDEN.** — The Exemption from Tolls given by s. 19 (6), 32 & 33 V. c. 14, for vehicles used for the conveyance "of any Goods or Burden," does not extend to such things as a travelling show. Neither does "Burden" include persons. "I cannot think that if a tradesman deals in an article, and sends his traveller out in a gig, the gig would be exempt on the ground that the traveller could be said to be a Burden" (per Kelly, C. B., *Speak v. Powell*, 43 L. J. M. C. 19; L. R. 9 Ex. 25).

Upon the construction of the Act for establishing a Ferry across the Tyne, "Burthen" held to mean capacity for carrying, not register ad-measurement (*North Shields Ferry Co v. Barker*, 2 Ex. 136). And, ordinarily speaking, so many Tons Burden connotes a capacity to carry; but in the legislation relating to the Registration of British Vessels prior to Mer Shipping Act, 1894, and in that Act (*V. ss. 3, 90, 622, 625*) " 'Tons Burden' is used with a meaning which is the same as that of a Tonnage of a Vessel ascertained in the manner directed by the Act for the time being in force, — *i.e.* the Registered Tonnage" (*The Brunel*, 1899, P. 45; 1900, P. 24; 68 L. J. P. D. & A. 1; 69 *Ib.* 8; 81 L. T. 500). *Vf, 53 & 54 V. c. 56, s. 3.*

Quà Lessee's Covenant in a LEASE to bear Burdens, it has been said that "perhaps, the most inclusive word is 'Burdens'" (Redman, 300, citing *Sweet v. Seuger* and *Tilswell v. Whitworth*, for *whv* TAXES). *Se*, OUTGOINGS: IMPOSITIONS.

**BURGAGE.** — " 'Burgage,' is a Tenure proper to Cities, Borows, and Towns, whereby the Burgers, Citizens, or Townsmen hold their lands or

tenements of the King, or other lord, for a certain yearly rent" (Cowel). *Vf*, Co. Litt. 108 b-116 a: *Termes de la Ley*: Jacob: 2 Encyc. 302.

*Note.* The right of "Burgage Tenants" "in every City or Town, being a County of itself" to vote for a Member of Parliament, was retained by s. 31, Rep People Act, 1832, on *whc* Rogers, Part 1.

"By Burgage Tenure" "Held Burgage"; Stat. Def., *Scot.* 23 & 24 V. c. 143, s. 2.

**BURGESS.** — "*Burgensis*, is a man of trade" (Co. Litt. 80 a). — " 'Burgesses, *Burgenses*, ' are properly the inhabitants of a Borow or Town, driving a trade there" (Cowel). *Vf*, Jacob.

"Burgess" is sometimes used to designate a Registered Parliamentary Voter, but more generally a Registered Municipal Voter: *V.* 31 & 32 V. c. 41, s. 2; 41 & 42 V. c. 26, s. 4; Mun Corp Act, 1882, ss. 7, 9; 47 & 48 V. c. 70, s. 35; 48 & 49 V. c. 9, s. 3. When applied to a City "Burgess" has been made to include "Citizen": *V.* 3 & 4 V. c. 108, s. 215; 12 & 13 V. c. 94, s. 10. *V.* FREEMAN.

*V.* ENTITLED TO BE ON BURGESS LIST.

**BURGH.** — "Burgh" in Scotland has affinity to "BOROUGH" in England.

"Burghs," are Parliamentary; — Royal; — Police.

A "*Parliamentary* Burgh" is, probably, generally understood as a TOWN returning, or contributing to return, a Member to Parliament (31 & 32 V. c. 108, s. 2; 55 & 56 V. c. 55, s. 4, subs. 23); but in other Acts it is defined as "a Burgh or Town to which Magistrates and Councils were provided by 3 & 4 W. 4, c. 77" (17 & 18 V. c. 64, s. 1; 25 & 26 V. c. 101, s. 3).

A "*Royal* Burgh" is a Town whose Common Council and Magistrates are elected under 3 & 4 W. 4, c. 76: *V.* 25 & 26 V. c. 101, s. 3. 3 & 4 W. 4, c. 76, divides these Burghs into two classes, *i.e.* Sch C. Edinburgh, Glasgow, Aberdeen, Dundee, Perth, Dunfermline, Dumfries, and Inverness: — Sch F. Dornoch, New Galloway, Culross, Lochmaben, Bervie, Wester Anstruther, Kilreny, Kinghorn, and Kintore.

A "*Police* Burgh" is a TOWN or POPULOUS PLACE whose Municipal Government is constituted, and the boundaries whereof are fixed, under the General Police Acts for Scotland, or under any Local Police Act: *Vh*, 55 & 56 V. c. 55, s. 4 (25); 58 & 59 V. c. 6, s. 3; 52 & 53 V. c. 50, s. 105; 53 & 54 V. c. 60, s. 6, c. 67, s. 30; 54 & 55 V. c. 32, s. 7; 57 & 58 V. c. 58, s. 54.

As regards Municipal Government, there are also Burghs of Regality, and Burghs of Barony.

Whether all, or only some or one, of the foregoing are included in "Burgh" as used in any one of the many Acts relating to "Burghs" will be ascertained by its interp clause: — *e.g.* quâ 55 & 56 V. c. 55, its s. 4 (4) provides that " 'Burgh' when used alone (unless otherwise expressed, or inconsistent with the context), shall include Royal Burgh, Parlia-

mentary Burgh, Burgh incorporated by Act of Parliament, Burgh of Regality, Burgh of Barony, and any Populous Place or Police Burgh administered in whole or in part under any General or Local Police Act"; — But, quà 52 & 53 V. c. 50, its s. 105 provides that " 'Burgh' means, any Royal, or Parliamentary, Burgh."

"Burgh *General Assessment*"; Stat. Def., 50 & 51 V. c. 42, s. 2.

"Burgh *Local Authority*"; Stat. Def., 41 & 42 V. c. 51, s. 3.

"Burgh *School*"; Stat. Def., 24 & 25 V. c. 107, s. 1; 35 & 36 V. c. 62, s. 1.

"Burghal *Parish*," "Burghal Part of a Parish"; Stat. Def., 57 & 58 V. c. 58, s. 54.

#### BURGH-BOTE. — *V.* BOTE.

**BURGLARY.** — "Burglary" is a Term of Art (*Holford v. Bailey*, 18 L. J. Q. B. 109; 13 Q. B. 426; *R. v. Gray*, 33 L. J. M. C. 78; L. & C. 365), and means the breaking and entering by NIGHT of the DWELLING-HOUSE (*Va*, MANSION) of another with intent to commit a felony therein (3 Inst. 63; 4 Bl. Com. 224); "or, being in such dwelling-house, shall commit any felony therein, and shall in either case break out of the said dwelling-house in the night" (24 & 25 V. c. 96, s. 51). *Vf*, Arch. Cr. 591-615; Rosc. Cr. 313-336; Termes de la Ley; 2 Encyc. 304-309; Jacob: BREAK: ENTER.

**BURIAL.** — Quà P. H. (Scot) Act, 1897, " 'Burial' includes Cremation" (s. 3). *V.* CHRISTIAN BURIAL: INTERMENT.

"The Burial Acts, 1852 to 1885"; "The Burial (Ir) Acts, 1824 to 1868"; "The Burial Grounds (Scot) Acts, 1855 to 1886"; *V.* Sch 2, Short Titles Act, 1896.

"Burial Board"; *V.* BOARD.

"Burial *Ground*," s. 1, Metropolitan Open Spaces Act, 1881; ss. 2, 4, Open Spaces Act, 1887; Disused Burial Grounds Act, 1884; — includes ground in which no interment has taken place, and whether consecrated or not, which has been at any time SET APART for the purposes of interment; and "Disused Burial Ground," means, such a Burial Ground which is not used for interments, whether or not it is closed for that purpose by an Order in Council or is otherwise disused (*Re Pongford and Newport School Bd*, 1894, 1 Ch. 454; 63 L. J. Ch. 278; 70 L. T. 502; 42 W. R. 358). *Cp*, CEMETERY. *Vf*: UNDER.

"Burial Ground"; Other Stat. Def., 27 & 28 V. c. 97, s. 7; 30 & 31 V. c. 38, s. 1; 37 & 38 V. c. 85, s. 6.

"New Burial Ground," s. 7, 16 & 17 V. c. 134, s. 12; 20 & 21 V. c. 81, includes an addition to an old one (*R. v. Basingstoke*, 41 S. J. 30). *Vh*. PROVIDED.

Burial Ground "of" a Parish; *V.* OF.

"PLACES of Burial," s. 23, 20 & 21 V. c. 81, "are those which may be

called Public Burial Places, and have that permanent impress upon them by reason of their having been devoted (either by Consecration, Trust Deed, or otherwise) to the purpose of interment, and which are kept and taken care of as such" (per Lush, J., *Foster v. Dodd*, 7 B. & S. 169).

**BURKE'S ACT.**—The Civil List and Secret Service Money Act, 1782, 22 G. 3, c. 82.

**BURN: BURNING.**—The singeing of the cover is not a "burning" of a Will so as to REVOKE it; nor is a fraudulent burning of something else instead of the Will, which the testator has directed to be burnt, a revocation (*Doe d. Reed v. Harris*, 6 A. & E. 209; 6 L. J. K. B. 84; stated 1 Jarm. 131). "A strong intention to burn is not a burning. There must be, at all events, a partial burning of the instrument itself; I do not say that a quantity of words must be burnt; but there must be a burning of the paper on which the Will is" (per Patteson, J., *Ib.*). Coleridge, J., whilst agreeing that a total destruction was not necessary, added,—"but there should be such a burning as destroys the entirety of the Will, for in such a case the Will of the testator no longer exists as he framed it." (*If, Doe d. Perks v. Perks*, cited TEAR). But, *semble*, a slight singeing of the Will itself, is a "burning," if the Will was thrown on the fire by the testator with intent to burn it, although it fell off the fire and was saved from further destruction by a person picking it up and preserving it without the testator's knowledge (*Bibb v. Thomas*, 2 Bl. W. 1043). *V.* DESTROY.

So, if a Marine Policy contains a warranty against AVERAGE, "unless the SHIP is stranded, sunk, or burnt," the Ship is not "burnt" if she merely receives a small injury by fire, *e.g.* damage to the plating of the bunker (*The Glenlivet*, 1894, P. 48; 63 L. J. P. D. & A. 45; 69 L. T. 706; 42 W. R. 97; 7 Asp. 395). *V.* SINK: STRANDING.

*V.* FIRE.

Quà Arson; *V.* SET FIRE.

Burning of Heretics; *V.* HERETICO COMBURENDO.

**BURST.**—Bursting; *V.* FLOOD.

**BURTHEN.**—*V.* BURDEN.

**BUSHEL.**—A Bushel is 8 GALLONS (s. 15, 41 & 42 V. c. 49). As to Lime, Fish, Potatoes, Fruit, or any other Goods and Things which, prior to 9th Sept. 1835, were sold by Heaped Measure; *V.* s. 16, Ib.

"'Bushel,' taken by itself and without reference to any Custom or particular Agreement, means a Statute Bushel" (*Hockin v. Cooke*, 4 T. R. 314; *St. Cross Hosp. v. Howard de Walden*, 6 Ib. 338).

**BUSINESS.**—Companies, for the acquisition of gain, of more than 20 persons for "carrying on any other business" (*i.e.* other than BANKING) must be registered (s. 4, Comp Act, 1862).



“ ‘Business’ has a more extensive meaning than the word ‘TRADE’ ” (per Willes, J., *Harris v. Amery*, 35 L. J. C. P. 92; L. R. 1 C. P. 148); on the other hand, it has been said that “ordinarily speaking, Business is synonymous with ‘Trade’ ” (per Chatterton, V. C., *Delany v. Delany*, 15 L. R. Ir. 67).

In *Smith v. Anderson* (50 L. J. Ch. 43; 15 Ch. D. 258), Jessel, M. R., after citing definitions of “Business” from several dictionaries, said, “anything which occupies the time and attention and labour of a man, for the purpose of profit (*Sr*, inf), is business.” Further on he remarks, — “There are many things which in common colloquial English would not be called a Business, when carried on by a single person, which would be so called when carried on by a number of persons. For instance, a man who is the owner of a house divided into several floors and used for commercial purposes, *e.g.* offices, would not be said to carry on a business because he let the offices as such. But suppose a Company was formed for the purpose of buying a building, or leasing a house, to be divided into offices and to be let out, — should not we say, if that was the object of the Co, that the Co was carrying on business for the purpose of letting offices? The same observation may be made as regards a single individual buying or selling land, with this addition, that he may make it a business, and then it is a question of continuity. When you come to an Association or Company formed for a purpose, you would say at once that it is a business, because there you have that from which you would infer continuity. So in the ordinary case of investments, a man who has money to invest, the object being to obtain his income, invests his money, and he may occasionally sell the investments and buy others, but he is not carrying on a business.” The decision, of which the observations just quoted were the preface, was reversed on appeal; without, however, as it would seem, affecting the value of those observations in regard to its use in s. 4 of the Comp Act. Within that section a mutual Marine Insurance Association is a “Business” (*Re Padstow Assree*, 51 L. J. Ch. 344; 20 Ch. D. 137); so is Farming though it could not properly be called a trade (*Harris v. Amery*, *sup*): and so is a Mutual Benefit Society the object of which is to lend money to its members only (*Shaw v. Benson*, 52 L. J. Q. B. 575; 11 Q. B. D. 563); or a Land Society one of whose objects is to win minerals (*Crowther v. Thorley*, 31 W. R. 564; 32 *Ib.* 330; 48 L. T. 644; 50 *Ib.* 43). Such transactions, however, as were contemplated by the Government and Guaranteed Permanent Trust, or by the Submarine Cables Trust, are not a “Business”; the Trustees being such, in deed as well as in name, and not being agents with power to enter into contracts (*Smith v. Anderson*, *sup*; over-ruling *Sykes v. Beadon*, 48 L. J. Ch. 522; 11 Ch. D. 170). So, a Literary Socy is not such a Business (*Re Bristol Athenæum*, cited JOINT STOCK COMPANY).

But though the contemplation of making profit was stated by Jessel,

M. R., in *Smith v. Anderson*, to be an ingredient in determining whether a sequence of things done would form a "Business," and though that idea runs through the other cases just cited, yet that portion of the definition would seem to be confined to cases under the Comp Act, or those of a like kind. It is indeed clear law that there may be a "Business" offending against a prohibitory covenant, without pecuniary profit being at all contemplated. In such a connection, especially, "Business" is a very much larger word than "Trade": and the word "Business" is employed in order to include occupations which would not strictly come within the meaning of the word "Trade," — the larger word not being limited by association with the lesser (per Pearson, J., *Rolls v. Miller*, 53 L. J. Ch. 101). Therefore, a covenant not to permit the carrying on of any "Trade or Business" is broken by allowing the premises to be used as an Out-Patient Branch of a Hospital (*Bramwell v. Lucy*, 48 L. J. Ch. 339; 10 Ch. D. 691; 40 L. T. 361; 27 W. R. 463; *Tod-Heatley v. Benham*, 40 Ch. D. 80; 58 L. J. Ch. 83; 37 W. R. 38); or as a Home for working girls (*Rolls v. Miller*, 53 L. J. Ch. 99, 510, 682; 25 Ch. D. 206; 27 Ib. 71). And the Council of Law Reporting carry on (probably) a Trade and certainly a Business within the phrase "Trade or Business" in s. 11 (5), Customs & Inl. Rev. Act, 1885, 48 & 49 V. c. 51 (*Re Law Reporting Council*, 58 L. J. Q. B. 90).

On the other hand there may be a sequence of acts from which profit is anticipated without a "Business" being constituted. Thus where a Barrister, occupying a house and 79 acres of land as a private residence which he had originally taken for pleasure, used some of the land for breeding cattle and horses and raising vegetables, fruits and flowers, which he sold, and he also occasionally bought and sold cattle and horses; it was held, on the evidence, that he did not carry on "Business" within s. 44, Bankry Act, 1883, and therefore that his Trustee was not entitled to claim, as against a Bill of Sale holder, by virtue of that section (*Re Wallis, Ex p. Sully*, 14 Q. B. D. 950; 33 W. R. 733; 52 L. T. 625).

#### Vf. IN HIS TRADE OR BUSINESS.

But again, and in another view, there may be a "Business" without any sequence of acts, for "if an isolated transaction which, if repeated, would be a transaction in a Business, is proved to have been undertaken with the intent that it should be the first of several transactions in the carrying on a business, then it is a first transaction in an *existing* Business; . . . and if the business is one in which it is proper to keep books, then books ought to be kept from the commencement of the first transaction"; and their non-keeping is a ground for refusing &c a Bankrupt's Order of Discharge, within s. 28 (3 a), Bankry Act, 1883 (*Re Griffin*, 60 L. J. Q. B. 235; 39 W. R. 156). Vf, BUSINESS TRANSACTIONS.

A Boys-School (*Doe d. Bish v. Keeling*, 1 M. & S. 95: Vf, DISAGREEMENTABLE), or a Girls-School (*Kemp v. Sober*, 20 L. J. Ch. 602; 1 Sim. N. S. 517), is a "Business or Calling," or a "PUBLIC TRADE OR BUSINESS"

(*Wickenden v. Webster*, 25 L. J. Q. B. 264; 6 E. & B. 387; 27 L. T. O. S. 122) within a restrictive covenant. So is a Pay-Hospital (*Portman v. Home Hospitals Assn*, 27 Ch. D. 81, *n*; 50 L. T. 599; *Vn. Bramwell v. Lacy* and *Rolls v. Miller*, *sup*). It is questioned whether keeping a Lodging House is a "Business" within such a covenant (*Woodf.* 706); but surely it is a "Business" (per Lindley, L. J., *Rolls v. Miller*, 27 Ch. D. 88), though not a "Trade."

Quà Partnership Act, 1890, " 'Business,' includes every Trade, OCCUPATION, or PROFESSION " (s. 45).

*Note.* The mere description in a Lease of the demised premises being of a particular Business Character, *e.g.* an Hotel, does not create an implied covenant for carrying on that business (*Grand Canal Co v. McNamee*, 29 L. R. Ir. 131); nor does a covenant that no other than a specified business shall be carried on, imply, affirmatively, that such business shall be carried on (*Doc v. Guest*, 15 M. & W. 160).

V. TRADE: CALLING: ORDINARY CALLING: CARRY ON: PROFITS: TRANSACT BUSINESS: SOLELY: PURPOSES.

"Business," the conducting of which is punishable under 16 & 17 V. c. 119, ss. 1, 3, does not mean the general, or any part of the, business of a place in which betting may be carried on, but means, "the Business of a Betting-house Keeper" in that place (per Hawkins, J., *R. v. Cook*, 13 Q. B. D. 384; 51 L. T. 21; 32 W. R. 796; 48 J. P. 694). *Jy. Davis v. Stephenson*, cited USE.

It seems that a Patentee is engaged in a "Business" within R. 4, Trades Marks Rules, Feb. 1883, so long as he receives royalties under his patent, even though he does not himself manufacture (*Re Ralph*, 53 L. J. Ch. 188; 25 Ch. D. 194).

Filling up vacancies in a Local Board of Health, is "Business" within Sch 1, Part 1, R. 2, P. H. Act, 1875 (*Newhaven Loc. Bd v. Newhaven School Bd*, 30 Ch. D. 350).

"Business in any Action," &c, in R. 2, Solrs Rem Ord, does not include conveyancing business (*Re Merchant Tailors' Co*, 54 L. J. Ch. 867; 30 Ch. D. 28; *Vh. Re Atkinson*, 24 L. R. Ir. 182). "Business" in R. 6 of the Order means, any part of the business which would be covered by the Scale Fee (*Re Allen*, 56 L. J. Ch. 487; 34 Ch. D. 433; 56 L. T. 6; 35 W. R. 218; *Hester v. Hester*, 56 L. J. Ch. 247; 34 Ch. D. 607; 55 L. T. 862; 35 W. R. 233; 51 J. P. 438; *Re Metcalf*, 57 L. J. Ch. 82; 57 L. T. 925; 36 W. R. 137). V. BUSINESS CONDUCTED WITH: UNDERTAKING.

"Business of the Co"; *V. Re Foreign & Colonial Government Trust*, cited CONVENIENTLY.

"Business of any Mine." s. 29, 24 & 25 V. c. 97; V. ERECTION.

V. OUT OF THE BUSINESS.

A Bequest of a "Business," does not include a freehold shop in which the Business is carried on (*Re Henton*, 30 W. R. 702).

So, a bequest, by a Corn and Wool Factor, of "my said Business, and the GOODWILL thereof, with the premises in which the same shall be carried on," was held not to pass the testator's Capital in his business, nor his Book-Debts (which were regarded as part of Capital), nor his Stock-in-Trade; but that sacks, horses, and drays, "forming, as it were, part of the implements of trade," did pass (*Delany v. Delany*, 15 L. R. Ir. 55: as to Book Debts, *Id.*; *Re Deller*, W. N. (88), 62). Nor does a bequest of "Goodwill and Fixtures," pass the STOCK-IN-TRADE (*Re Presley*, 92 Law Times, 391).

Power to advance to set-up in business; *V.* SET UP.

Contract not to do "Business" for A.'s clients; *V.* CLIENT.

"Place of Business"; *V.* PLACE.

"Similar Business"; *V.* SIMILAR.

**BUSINESS CONNECTED WITH.** — The negotiations (*Re Field*, 54 L. J. Ch. 661; 29 Ch. D. 608; 33 W. R. 553), and a preliminary agreement (*Re Emanuel and Simmonds*, 55 L. J. Ch. 710; 33 Ch. D. 40; 34 W. R. 613), are "Business connected with" a Lease, within Rule 2, Solrs Rem Ord and as such comprised within the work for which the *ad val.* remuneration is provided by the Order (*Savery v. Enfield*, 1893, A. C. 218; 62 L. J. Ch. 674). But abortive negotiations with persons other than the actual lessee is not such Business (*Re Martin*, 41 Ch. D. 381; 5 Times Rep. 426). *Vf.* LEASE.

*V.* BUSINESS.

**BUSINESS DAYS.** — "Non-business Days" for the purposes of Bills of Ex. Act, 1882, mean —

(a) Sunday, Good Friday, Christmas Day:

(b) A Bank Holiday, under the Bank Holidays Act, 1871, or Acts amending it:

(c) A day appointed by Royal Proclamation as a Public Fast or Thanksgiving Day.

Any other day is a Business Day" (s. 92, Bills of Ex. Act, 1882).

**BUSINESS HOURS.** — If a thing is to be done by A. "during Business Hours," *semble* that means, during A.'s business, and not during the business hours of other persons (*V.* per Smith, L. J., *Re Kent Coalfields Syndicate*, 67 L. J. Q. B. 503).

**BUSINESS PREMISES.** — As to effect of a description in Particulars of Sale of property as "Business Premises"; *V.* *Re Davis and Cavey*, 58 L. J. Ch. 143; 40 Ch. D. 601.

**BUSINESS PURPOSES.** — *Seemble*, a remittance to a clerk to be employed for "Business Purposes," is not misapplied if out of it he pays his own salary (*Smith v. Thompson*, 8 C. B. 44; 18 L. J. C. P. 314).

**BUSINESS TRANSACTIONS.** — The “usual and proper” Books of Account sufficiently disclosing a person’s “Business Transactions and Financial Position” the omission to keep which is a Bankrupt offence (46 & 47 V. c. 52, s. 28, subs. 3, a), need only disclose a Bankrupt’s Transactions and Position “in the business carried on by him,” and need not disclose matters outside such business, — e.g. a building speculation, the Bankrupt not being a builder (*Re Mutton*, 19 Q. B. D. 102; 56 L. J. Q. B. 395; 56 L. T. 802; 35 W. R. 561). *Vf, Re Griffin*, cited BUSINESS.

**BUT.** — “Where gifts are intended to be cut down, the words cutting them down are generally introduced by some stronger word than ‘But’; and there must, therefore, be a distinction made between cases where gifts are properly cut down and those where such a result is only to be inferred from imperfect statements of the event on which the testator intended to found the gift over” (per Ld St. Leonards, *Abbott v. Middleton*, 28 L. J. Ch. 113; 7 H. L. Ca. 68; *Sr*, judgment of Ld Wensleydale in *the*).

The word “But” following a covenant “suggests a qualification,” but is insufficient to create an independent covenant (per Hall, V. C., *Sear v. House Property Co*, 50 L. J. Ch. 77; 16 Ch. D. 387), in which case a lessee’s covenant not to assign without lessor’s consent, was held to be only qualified by the added phrase “but such consent not to be UNREASONABLY withheld,” and that such phrase did not amount to a covenant by the lessor on which a breach could be assigned; *Vf, Broughton v. Conway*, Moore, 58; Dy. 240 a; *Gerris v. Peade*, Cro. Eliz. 615; Dy. 240 a; Elph. 469.

“But on the contrary,” may render an allegation specific which before was general and uncertain (*Edge v. Pemberton*, 12 M. & W. 189); the phrase “should never be used” in a Pleading statement (per Willes, J., *Carpenter v. Parker*, 3 C. B. N. S. 243; *Vh, Harris v. Mantle*, 3 T. R. 307).

**BUTCHER.** — The business of a “Butcher” is carried on, within the meaning of a restrictive covenant, if raw meat be sold on the premises though the animals be slaughtered elsewhere (*Doe d. Gaskell v. Spry*, 1 B. & Ald. 617); and so the exposure of pork-meat for sale is carrying on the business of a “Pork-Butcher” (*Doe d. Davis v. Elsam*, Moo. & M. 189). But in *Clearer v. Bacon* (4 Times Rep. 27), Kekewich, J., cited from the Imperial Dictionary the definition of “Butcher” as, “One who slaughters animals for market; or one whose occupation is to kill animals for the table”; and the learned judge added, “One who simply sells meat does not seem to enter into that definition”; but that was an *obiter dictum*, yet still the case involved the construction of a restrictive covenant; *V. OFFENSIVE: BAKER: CARRY ON.*

**BUTT.** — “A piece of land; e.g. Register of Worcester Priory, fol. 49 b (Cam. Soc.). Where a selio abruptly meets others, or abuts upon a

boundary at right angles, it is sometimes called a Butt; Seebohm, 6" (Elph. 564). *V. SELION.*

**BUTTER.** — "Butter," quâ Margarine Act, 1887, means, "the substance usually known as Butter, made exclusively from Milk or Cream or both, with or without Salt or other Preservative, and with or without the addition of Colouring Matter" (s. 3). *Vf, MARGARINE.*

**BUTTY COLLIER.** — "Butty Colliers are two or more working colliers who join together, and enter into an agreement with a mine owner to get coal or iron-stone from the mine at so much a yard or so much a ton, and sometimes at so much a day. They are not allowed to underlet the work or leave it; but they employ other workmen under them; and they are responsible for their wages. They usually work manually themselves; and they may bind themselves to the mine owner to do so; *V. Bowers v. Lorekin*, 6 E. & B. 584; 25 L. J. Q. B. 371; 4 W. R. 600; 27 L. T. O. S. 168; *Sleeman v. Barrett*, 2 H. & C. 934; 33 L. J. Ex. 153; 12 W. R. 411; 9 L. T. 834"; MacS. 520, n 4. *Bowers v. Lorekin* laid down that a Butty Collier is an "Artificer" within the Truck Act, 1831; *Sc. ARTIFICER:* — "We cannot take judicial notice of what a Butty-man is; the position may be very different in different collieries" (per Rigby, L. J., *Marrow v. Flimby, &c Co*, cited EMPLOYER).

**BUY.** — A Hire-Purchase agreement is not an agreement to "buy" Goods within s. 9, Factors Act, 1889, 52 & 53 V. c. 45 (*Helby v. Matthews*, 1895, A. C. 471; 64 L. J. Q. B. 465; 72 L. T. 841; 43 W. R. 561); unless it contains an obligation whereby the hirer is bound to buy (*Lee v. Butler*, 1893, 2 Q. B. 318; 62 L. J. Q. B. 591; 69 L. T. 370; 42 W. R. 88; *Hull Ropes Co v. Adams*, 73 L. T. 446; 65 L. J. Q. B. 114; 44 W. R. 108). *Vf, Shenstone v. Hilton*, 1894, 2 Q. B. 452; 63 L. J. Q. B. 584; *McEntire v. Crossley*, 1895, A. C. 457; 64 L. J. P. C. 129; 72 L. T. 731.

**BUYER.** — Quâ Sale of Goods Act, 1893, "Buyer," means a person who buys, or agrees to buy, Goods" (s. 62).

**BY.** — An injury or damage is not "done by" a person or thing if he or it be impelled thereunto by the ACT OF GOD (*Weir Commrs v. Adamson*, 47 L. J. Q. B. 193; 2 App. Ca. 743).

On the other hand, a Commission on an Auction is "paid by the Client," R. 11, Sch 1, Part 1, Solrs Rem Ord, if the Purchaser pays a fee to the Auctioneer (*Cholditch v. Jones*, 1896, 1 Ch. 42; 65 L. J. Ch. 83; 73 L. T. 528; 44 W. R. 124). *Vf, CONDUCTING.*

A Co "incorporated by Act of Parliament," means one which "by" an Act is brought into existence, and does not include a Co incorporated "under" an Act; therefore, a Power to Invest in the shares &c of a Co incorporated "by" Act, does not include the shares &c of a Co registered

under the Comp Act, 1862 (*Re Smith*, 1896, 2 Ch. 590; 65 L. J. Ch. 761; 74 L. T. 810: *Vf, Elre v. Boyton*, cited COMPANY).

The difference between "By" and "In" is exemplified in *Edmunds v. Waugh* (35 L. J. Ch. 234; L. R. 1 Eq. 418; 14 W. R. 257). There the question arose on the Real Property Limitation Act, 1833, s. 42, which prohibits the recovery of more than six years' arrears of rent or interest "by any Distress, Action, or Suit." In giving judgment, Kindersley, V. C., pointed out that the word was "by" not "in"; and, accordingly, it was held that though a mortgagee's estate is being administered "in" an action, yet the section does not prevent him or his representatives from retaining more than 6 years' arrears of interest out of the proceeds in their hands arising from the sale of the mortgaged property (*Vf, Re Marshfield*, 56 L. J. Ch. 599; 34 Ch. D. 721; 56 L. T. 691; 35 W. R. 491; distinguishing *Mason v. Broadbent*, 33 Bea. 296: *V. RECOVER: CHARGED UPON*).

"By, from, or under"; *V. CLAIMING UNDER*.

As to difference between property passing "By" as contrasted with "Under," or "Under or By Virtue of" an Instrument; *V. A-G. v. Chapman*, and per Williams, J., *A-G. v. Dodington*, cited UNDER.

Easement "enjoyed by" some Consent IN WRITING, s. 2, 2 & 3 W. 4. c. 71; *V. Simpson v. Godmanchester*, 1897, A. C. 696; 64 L. J. Ch. 843; 65 Ib. 154; 66 Ib. 770.

"By whose order"; *V. EXTRAORDINARY TRAFFIC*.

**BY AND BETWEEN.** — *V. AGREED AND DECLARED*.

**BY AUTHORITY.** — A GAZETTE which merely purports to be printed "By Authority," does not purport to be printed "by the Queen's Printers," or "by the Queen's Authority" (*R. v. Wallace*, 14 W. R. 462).

**BY DAY.** — Quà Canal Boats Acts, 1877, and 1884, "By Day," shall be deemed to include the hours between 6 o'clock in the morning and 9 o'clock at night" (s. 9, 47 & 48 V. c. 75). *V. DAY*.

**BY BILL.** — Payment to be made "By Bill" does not mean, and parol evidence cannot be received to shew it to mean, "By Approved Bill" (*Hodgson v. Davies*, 2 Camp. 530: *V. Benj. 721*). *V. APPROVED BILL*.

**BY CONSENT.** — *V. CONSENT*.

**BY DEED OR WRITING.** — *V. IN WRITING*.

**BY DEFAULT.** — *V. DEFAULT*.

**BY DIRECTION OF THE EXECUTORS.** — *V. PROPRIETOR*.

**BY FORCE.** — “By force of the statutes in that case made and provided,” in an Indictment, is surplusage (*A-G. v. Le Revert*, 9 L. J. Ex. 163; 6 M. & W. 405).

“By Force or Fraud”; *V. FRAUD.*

**BY HIMSELF.** — *V. HIMSELF.*

**BY INHERITANCE.** — *V. INHERITANCE.*

**BY LAW.** — This phrase means, by IMPLICATION of Law, as distinguished from Stipulation by Contract; and therefore on a contract providing a specified notice to quit, s. 33, Agricultural Holdings (England) Act, 1883 (prescribing a year's in lieu of a half-year's notice), has no application (*Barlow v. Teal*, 54 L. J. Q. B. 564; 15 Q. B. D. 501; 1 Times Rep. 491). *V. LEGAL NOTICE: LEGAL DISABILITY: SIX MONTHS.*

So, “Debts payable *by law* out of Personal Estate,” s. 23, 5 & 6 V. c. 79, means such debts as, in themselves and in their own nature and character, are payable out of personal estate; and has no relation to any testamentary provision (*Percival v. The Queen*, 33 L. J. Ex. 289; 3 H. & C. 217).

But, *semble*, “By Law” has no such meaning, but rather a contractual meaning, as used in s. 210, Com. L. Pro. Act, 1852, which relates to proceedings for the forfeiture of a lease when a half-year's rent is in arrear and the landlord “hath Right *by law* to re-enter for the non-payment thereof”; that phrase, by analogy to a similar one in s. 2, 4 G. 2, c. 28, probably, means, “a right to re-enter reserved to the lessor *by the lease*” (*V. per Mansfield, C. J., Brewer v. Eaton*, 3 Doug. 230: *Doe d. Dixon v. Roe*, 7 C. B. 134: *Doe d. Darke v. Bowditch*, 8 Q. B. 973; 15 L. J. Q. B. 266). So, by s. 28, 3 & 4 V. c. 42, Interest on Debts is “payable in all cases in which it is now *payable* by Law,” “which includes Interest payable under a contract” (*per Chitty, J., Re Reliance By Socy*, 61 L. J. Ch. 455).

*Cp.* RIGHT IN EQUITY.

Testamentary gift of what “may by Law be given for Charitable Purposes”; *V. Re Bridger*, 1894, 1 Ch. 297; 63 L. J. Ch. 186; 70 L. T. 204; 42 W. R. 179.

“Devolution by Law”; *V. DEVOLUTION: DISPOSITION.*

*V. PARTY BY LAW ENABLED TO DECLARE SUCH TRUST.*

“By Operation of Law”; *V. DEVOLUTION: SURRENDER.* On a Change of Name, — *e.g.* by a Co, or by a Woman on her marriage, — a registered PROPRIETOR of a TRADE-MARK becomes “entitled by Operation of Law” to be registered in the new name under s. 87, Patents, & Act, 1883 (*Re New Ormonde Cycle Co*, 1896, 2 Ch. 520; 65 L. J. Ch. 785; 75 L. T. 50).



“Constituted by Law”; *V.* CONSTITUTED.

“Incapacitated by Law”; *V.* INCAPACITATED.

“Prohibited by Law”; *V.* PROHIBITED.

Right or Privilege “by Law or Practice”; *V.* PRACTICE, at end.  
*V.* BYE-LAW.

**BY MEANS OF.** — *V.* BREACH OF TRUST.

**BY NIGHT.** — *V.* NIGHT.

**BY PAYMENT.** — *V.* REDUCED BY PAYMENT.

**BY POISON.** — *V.* POISON.

**BY POST.** — Service of a Notice of Objection to a Parliamentary Vote by sending it “by Post” in manner prescribed by s. 100, 6 V. c. 18, is “Sufficient” proof of the service and is Conclusive (*Bishop v. Helps*, 2 C. B. 45; 15 L. J. C. P. 43). *Cp.* SUFFICIENT EVIDENCE.

Where an Act passed after 31st Dec 1889, “authorizes or requires any Document to be served ‘By Post’ (whether the expression ‘Serve,’ ‘Give,’ or ‘Send,’ or any other expression is used) then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, pre-paying, and posting a letter containing the Document, and (unless the contrary is proved) to have been effected at the time at which the letter would be delivered in the ordinary course of post” (s. 26, Interp Act, 1889). *Vh.* ORDINARY COURSE: SEND: SERVE.

Notices under P. H. Act, 1875, may be served “by Post, by a *pre-paid Letter*” (s. 267); — proof of posting a Notice which does not show it was by a prepaid letter, is insufficient, although the section, further on, says that, “in proving such service it shall be sufficient to prove that the Notice, Order, or other Document was properly addressed and put into the post” (*Walthamstow v. Henwood*, 1897, 1 Ch. 41; 66 L. J. Ch. 31; 75 L. T. 375; 45 W. R. 124).

“It is settled law that an OFFER is to be deemed accepted when the LETTER of acceptance is ‘posted’; the reason being that the Post Office is considered the common agent of both parties” (per Cozens-Hardy, J., *Re London & Northern Bank*, 69 L. J. Ch. 26; citing *Re Imperial Land Co of Marseilles*, 41 L. J. Ch. 621; 7 Ch. 587); but handing a letter to a postman for him to post, is not “posting” it; and, consequently, the delivery to him of a Letter of Acceptance of an Application for Shares is not a posting, *quà* fixing the time of Acceptance (*Re London & Northern Bank*, 1900, 1 Ch. 220; 69 L. J. Ch. 24; 81 L. T. 512).

“By the Post”; Stat. Def., 3 & 4 V. c. 96, s. 71; 10 & 11 V. c. 85, s. 20.

**BY PROMOTION.** — *V.* PROMOTION.

**BY PURCHASE.** — As to the effect of this phrase in a Limitation to prevent application of rule against PERPETUITIES; *V. Watson, Eq.* 245, 246. *V. PURCHASE.*

A covenant to settle such future property as may be acquired "by purchase," will include a subsequently effected Life Policy and the moneys payable thereunder (*Re Turcan*, 58 L. J. Ch. 101; 40 Ch. D. 5).

**BY REASON.** — "Costs sustained by the defendant by reason of" an Indictment or Information for Libel, s. 8, 6 & 7 V. c. 96, includes the costs of unsuccessfully showing cause against the Rule *nisi* for filing the Information (*R. v. Steel*, 45 L. J. Q. B. 391; 1 Q. B. D. 485; disapproving *R. v. Cavendish*, 12 Ir. L. R. 230).

*V. CONTRACT: COLOUR.*

**BY RETAIL.** — *V. RETAIL.*

**BY SEX.** — *V. SEX.*

**BY THE YEAR.** — *V. PER ANNUM: VALUE.*

**BY THIS MY WILL.** — *V. HEREIN.*

**BY VIRTUE.** — A Fire Escape built pursuant to s. 7, Factory and Workshop Act, 1891, though an Imposition or OUTGOING within a lessee's covenant, is an expense which the lessor is called upon to pay "by virtue of an Act of Parliament" (*Arding v. Economic Printing Co.*, 79 L. T. 622, 420).

"By virtue or in pursuance of"; *V. PURSUANCE: UNDER.*

"By virtue of the Statute of Distribution"; *V. Re Sturge and G. W. Ry.*, 19 Ch. D. 444.

Money in "his Possession by virtue of his Office"; *V. OFFICE: COLOUR.*

Occupation "by virtue of Service"; *V. SERVE.*

*V. AS SUCH: TAKE IN EXECUTION: DUTIES.*

**BY WAY OF.** — "By way of *Advertisement*"; *V. ADVERTISEMENT.*

"By way of *Gaming*"; *V. GAMING CONTRACT.*

"By way of *Jointure*"; *V. JOINTURE.*

"By way of *Mortgage* or *Equitable Charge*"; *V. MORTGAGE OR CHARGE.*

"Duties incident to an estate conveyed by way of mtge"; *V. TRUST.*

"By way of *Succession*"; *V. SETTLEMENT: SUCCESSION.*

**BY WEIGHT.** — To sell Bread "By Weight," s. 4, Bread Act, 1836, § & 7 W. 4, c. 37, the Bread, after it is baked, must be weighed; it is not enough to weigh the dough before baking and make an allowance for loss of weight in the oven (*Jones v. Huatable*, 36 L. J. M. C. 122; L. R.

2 Q. B. 460; 15 W. R. 900; 31 J. P. 534; 8 B. & S. 433: *Hill v. Brown-ing*, L. R. 5 Q. B. 453; 22 L. T. 584; 34 J. P. 774); but, *semble*, if a fair sample of a few loaves from each batch are weighed after the batch has been baked, and as a test of the weight of all the loaves in the batch, that would suffice (*Webb v. Maulers*, 12 S. J. 1020). The point is, that in some fair way the *baked* Bread must be weighed shortly before sale. "I do not say that it is strictly the duty of the seller to weigh a loaf *at the time of sale*; but unless the loaf were weighed then, or shortly before, that would be evidence of a sale otherwise than 'By Weight'" (per Blackburn, J., *Jones v. Huxtable*, sup).

In *Williams v. Deggan* (31 J. P. 807) Cockburn, C. J., is reported to have said that a baker ought to weigh his bread in the presence of his customer; and so he ought, and he runs risk if he do not; but there would seem no compulsion that he must (*Jones v. Huxtable*, sup: *R. v. Kennet*, L. R. 4 Q. B. 565; 33 J. P. 824: *Mitton v. Troke*, 20 L. T. 563; 33 J. P. 821).

It is no answer to a charge of not selling "By Weight," that the buyer asked for a loaf of a specified price (*London Co. Co. v. Read*, 1900, 1 Q. B. 288; 69 L. J. Q. B. 39; 81 L. T. 452; 48 W. R. 393; 63 J. P. 775).

#### V. FRENCH BREAD.

Selling Coals by Weight, 1 & 2 W. 4, c. lxxvi, s. 57; *V. Smith v. Wood*, 59 L. J. Q. B. 5; 24 Q. B. D. 23; approving *Meredith v. Holman*, 16 L. J. Ex. 126; 16 M. & W. 798, *whle* was on s. 54.

**BY WHOSE.** — "Person by whose Act, Default, Permission, or Sufferance, the Nuisance arises," s. 12, 18 & 19 V. c. 121, s. 94, P. H. Act, 1875, s. 4, P. H. (London) Act, 1891; *V. Brown v. Bussell*, 37 L. J. M. C. 65; 9 B. & S. 1; L. R. 3 Q. B. 251: *Barnett v. Laskey*, cited CLEANSE: *Fordom v. Parsons*, 1894, 2 Q. B. 780; 64 L. J. M. C. 22; 71 L. T. 428; 58 J. P. 765: *R. v. Mead*, 64 L. J. M. C. 169; 59 J. P. 150: PERMISSION.

"By whose Order"; V. EXTRAORDINARY TRAFFIC.

F. AUTHORIZE.

**BY WILL.** — V. WRITING: PURCHASE.

**BY WRITING.** — V. WRITING.

**BYE.** — "*Bye* signifieth a dwelling, *bye*, an habitation, and *byan* to dwell" (Co. Litt. 5 b).

**BYE LAW.** — "Is not a Bye Law, a law governing the Corporate Body, and which they are authorized to make?" (per Alderson, B., *Hopkins v. Swansea*, 8 L. J. Ex. 125; 4 M. & W. 621). *Vh* 5 Rep. 63: *Termes de la Ley*: Cowel, *Bilawes*: *James v. Tutney*, Cro. Car. 497, 498: *Collman v. Mills*, cited PERMIT: *London Assn of Shipowners v. London & India Docks*, 1892, 3 Ch. 242; 67 L. T. 238: PEACE: REGU-

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LATE: NEW BUILDING: Selwyn, N. P. 1187-1191: Lumley, on Bye Laws: 2 Encyc. 315-319.

By a Stat. Def., "Bye Law" is sometimes made to include Rule, Order, or Regulation, *e.g.* 25 & 26 V. c. 97, s. 2; 27 & 28 V. c. 113, s. 3; 48 & 49 V. c. 76, s. 29; 49 & 50 V. c. 32, s. 9.

**BYRES.**—*V. CATTLE SHED.*

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## C. F. I.—CÆTERIS PARIBUS

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**C. F. I.**—COST, FREIGHT, AND INSURANCE; *whv.*

**C. O. D.**—Collect on Delivery, or Cash on Delivery.

**CAB.**—Quà Dublin Amended Carriage Act, 1854, 17 & 18 V. c. 45 (V. s. 10), “ ‘Cabriolet’ shall include every carriage known as Hansom’s Patent Safety Cab; and every carriage constructed with four wheels used for passengers (except a STAGE CARRIAGE, or a carriage drawn or impelled by the power of steam) which shall be used for the purpose of standing or plying for HIRE in any street or road, or other place within the limits of ” the Dublin Carriage Act, 1853. *V. PLY. Cp. CARRIAGE.*

Quà London Cab Act, 1896, 59 & 60 V. c. 27 (V. s. 3), “ ‘Cab’ shall mean any HACKNEY CARRIAGE,” within 32 & 33 V. c. 115.

**CABIN OR OTHER ALLOWANCES.**—In *Best v. Saunders* (MOO. & M. 268), Lord Tenterden was of opinion these words did not apply to an allowance in the nature of PRIMAGE. *Vh* 1 Maule & P. 121, 122.

**CABIN PASSENGER.**—*V. STEERAGE PASSENGER.*

**CABLISH.**—“Brushwood, or, more properly, windfalls; Spelm.; browsewood; 4 Inst. 308” (Elph. 564). *Vf* Cowel.

**CAD.**—*V. CONDUCTOR.*

**CADAVER.**—A dead human body.—the word being said to be formed of the first syllables of the words *caro data vermibus* (flesh given to the worms).—“The burial of the *Cadaver* (that is, *caro data vermibus*) is *nullius in bonis*, and belongs to ecclesiastical cognizance” (3 Inst. 203, cited by Holroyd, J., *R. v. Coleridge*, 2 B. & Ald. 809). There is no property in a Cadaver (*Williams v. Williams*, 51 L. J. Ch. 385; 20 Ch. D. 659, and authorities there cited: *R. v. Price*, cited CHRISTIAN BURIAL).

**CÆTERIS PARIBUS.**—A statutory power to appoint to a Living was vested in trustees who were to appoint a fit and proper person duly qualified, provided that in such appointment such person should be preferred, “*cæteris paribus*,” who should belong to a certain class:—held, that “*cæteris paribus*” referred to the being fit and proper and duly qualified, and not to the general qualifications of a clergyman (*A-G. v. Powis*, 24 L. J. Ch. 218; Kay, 186).

**CAIRNS' ACTS.** — Chancery Amendment Act, 1858, 21 & 22 V. c. 27, repealed by 46 & 47 V. c. 49:  
Partition Act, 1868, 31 & 32 V. c. 40.

**CALAMITY.** — *V. UNFORESEEN.*

**CALCEY.** — A Calsey, or Calsway, or Causey, 23 H. 8, c. 5, is a FOOTPATH, and “is a passage, made by art of earth gravel stones and such like, on or over some High or Common Way leading through surrounding grounds, for the safe passage of the King’s liege people” (Callis, 90). *Vh, Chester Mill Case*, 10 Rep. 137. Cowel gives the word as “Calcetum,” or “Calceata,” and defines that word as, CAUSEWAY.

**CALCULATED TO BENEFIT.** — Scheme of Arrangement not “REASONABLE,” or “calculated to benefit the general body of Creditors,” s. 18 (6), Bankry Act, 1883; *V. Re Aylmer*, 19 Q. B. D. 33; 56 L. J. Q. B. 460; 56 L. T. 801; 35 W. R. 532; 20 Q. B. D. 258; 57 L. J. Q. B. 168; 36 W. R. 231: *Re Burr*, cited APPROVE: *Re Thurlow*, 1895, 1 Q. B. 724; 64 L. J. Q. B. 479; 72 L. T. 642.

**CALCULATED TO DECEIVE.** — Name of Co so nearly resembling that of an already registered Co “as to be calculated to deceive,” s. 20, Comp Act, 1862; *V. Manchester Brewery Co v. North Cheshire & Manchester Brewery Co*, 1898, 1 Ch. 539; 67 L. J. Ch. 351; 78 L. T. 537; 46 W. R. 515, and cases there cited.

The prohibition in s. 6, Trade Marks Registration Act, 1875, 38 & 39 V. c. 91, against registering, in connection with a trade mark, words “calculated to deceive,” refers to deceptiveness inherent in the words themselves, and not as arising from similarity to words comprised in other trade marks (*Re Horsburgh*, 53 L. J. Ch. 237).

As to the same phrase in Patents, Designs and Trade Marks Act, 1883, ss. 72 (2), 73; *V. Re Speer*, W. N. (87) 8; 55 L. T. 880: *Re Australian Wine Importers and Mason*, 58 L. J. Ch. 380; 41 Ch. D. 278: *Eno v. Down*, 15 App. Ca. 252; 63 L. T. 6; 39 W. R. 161: *Re Smokeless Powder Co*, 1892, 1 Ch. 590; 61 L. J. Ch. 391; 66 L. T. 407; 40 W. R. 507: *Re Dexter*, 1893, 2 Ch. 262; 62 L. J. Ch. 545; 68 L. T. 793: *Paine v. Daniell*, 1893, 2 Ch. 567; 62 L. J. Ch. 732; 68 L. T. 801; 42 W. R. 40: *Re Loftus*, 1894, 1 Ch. 193; 63 L. J. Ch. 52; 69 L. T. 690; 42 W. R. 251: *Re Verreries de l'Étoile Socy*, 1894, 2 Ch. 26; 63 L. J. Ch. 381; 70 L. T. 295; 42 W. R. 420: *Re Dewhurst*, 1896, 2 Ch. 137; 65 L. J. Ch. 618; 74 L. T. 388; 44 W. R. 672: *Saxlehner v. Apollinaris Co*, 1897, 1 Ch. 893; 66 L. J. Ch. 533; 76 L. T. 617.

As to the Evidence of what is “calculated to deceive,” quâ an alleged Infringement of a Trade-Mark; *V. Baker v. Rawson*, 60 L. J. Ch. 49; 45 Ch. D. 519.

**CALCUTTA LINSEED.** — *V. Wieler v. Schilizzi*, 25 L. J. C. P. 89; 17 C. B. 619.

CALENDAR. — *V.* ALMANACK.

**CALENDAR MONTH.** — “A ‘Calendar Month’ is a legal and technical term; and in computing time by calendar months, the time must be reckoned by looking at the calendar and not by counting days” (per Brett, L. J., *Migotti v. Colville*, 48 L. J. C. P. 695; 4 C. P. D. 233; 27 W. R. 744; 43 J. P. 620). Therefore, *e.g.*, “one calendar month’s Imprisonment is to be calculated from the day of imprisonment to the day numerically corresponding to that day in the following month, less one” (Ib.). When there is no such corresponding day in the last month of the imprisonment, the prisoner’s term will be up on the last day of such last month. Thus a prisoner “sentenced to a calendar month’s imprisonment will never be imprisoned for a greater number of days than there are in the month in which he was sentenced” (per Cotton, L. J., *Migotti v. Colville*, sup). So, as regards the requirement of a calendar month’s Notice of Action, — “in considering what is the length of a Calendar month, it is sufficient, when the months are broken whatever be the length of either, to go from one day in one month to the corresponding day in the other” (per Cockburn, C. J., *Freeman v. Read*, 11 W. R. 802; 32 L. J. M. C. 226; 8 L. T. 458; 4 B. & S. 184).

So, of a COMPLAINT, which has to be made “WITHIN 1 calendar month after” its cause; and, therefore, where in such a case the alleged Offence be on the 30th May, the complaint is in time on the 30th June (*Radcliffe v. Bartholomew*, 1892, 1 Q. B. 161; 61 L. J. M. C. 63; 65 L. T. 677; 40 W. R. 63; 56 J. P. 262). *Vf* TIME.

*V.* MONTH: SIX MONTHS.

**CALL.** — A “Call” on a Co’s Shares is used in two senses, — (1) the Application to the Shareholders to pay; (2) the Amount to be paid (per Parke, B., *Newry, & Ry v. Edmunds*, 2 Ex. 121).

A Circular to Shareholders informing them that the Directors have resolved on making a “Call” of Capital, constitutes a Call (per Parke, B., *Shaw v. Rowley*, 16 M. & W. 810), for “Notice of a thing implies that it exists” (per Coleridge, J., *R. v. Londonderry, & Ry*, 13 Q. B. 1003); but a Call is made, in point of time, when the Resolution is passed, and not when the Notice is given (*S. C.*). *Va* OWING. *Vh* Hamilton, ch. 11.

Instalments by which a Share is payable, are not “Calls” (per Kelly, C. B., *Hubbersty v. Manchester S. & L. Ry*, 8 B. & S. 421, 423).

Probably, it is of general acceptance in the Winding-up of a Co, to define a “Call” as, “a demand or requisition upon Contributories of the Co, made or to be made for a CONTRIBUTORY Payment towards the funds or assets thereof, or for or towards the payment or discharge of any of the debts, liabilities, or losses of such Co” (s. 3, 11 & 12 V. c. 45).

“To ‘call’ at a PORT is a well-known sea-term; it means to call for

the purposes of business, — generally, to take in or unload Cargo, or to receive orders. It must mean that the vessel may stop at the Port of Call for a time, or else the liberty to call would be idle" (per Esher, M. R., *Leduc v. Ward*, cited LIBERTY TO CALL).

TOLL for using pier or landing-stage "every Time of Call," s. 165, Thames Conservancy Act, 1894, will not (in the absence of contract) authorise a higher charge than the prescribed toll on the ground of the stay being longer than a mere "Call" would require (*Queen of the River S. S. Co v. Thames Conservators*, 47 W. R. 685).

**CALL UPON.** — An agreement not to "call upon, or directly or indirectly solicit orders from," a person's customers, prohibits only business calls in the way of the trade or business of the person whose customers are referred to (*Mills v. Dunham*, cited CUSTOMER).

Arbitrators are "called on to act," Sch 1 (c), Arb Act, 1889, when called on to do some specific thing connected with the arbitration, e.g. if they receive a Notice requiring them to appoint an Umpire (*Baring-Gould v. Sharpington Syndicate*, 1899, 2 Ch. 91; 68 L. J. Ch. 434). Cp, *Baker v. Stephens*, cited ENTER.

A person is "bonâ fide called upon to pay" Rates, s. 5, 6 & 7 V. c. 18, if his name is inserted as the rate-payer in the Rate Book (*Cook v. Luckett*, 2 C. B. 168; 15 L. J. C. P. 78).

**CALLED.** — "My estate called A." is a general description, not confined to a particular locality, and therefore extrinsic evidence may be given of what is included in such a devise; *secus*, if there were a description of lands "at" or "in" a particular locality (*Ricketts v. Turquand*, 1 H. L. Ca. 472; cited 1 Jarm. 427, 428). V. OF.

**CALLING.** — Carrying on a School is a "Calling," within a restrictive covenant (*Doe d. Bish v. Keeling*, 1 M. & S. 95; *Kemp v. Sober*, 20 L. J. Ch. 602; 1 Sim. N. S. 517); and "the Profession of Teaching is a 'Calling,' notwithstanding the fact that that teaching is carried on under the directions of a Society regarded by law as an illegal organization" (per Porter, M. R., *Galwey v. Bardon*, 1899, 1 I. R. 514), in *which* it was held that a Member of the Order of Jesuits who was a teacher in a Jesuit College, was entitled to a legacy conditioned on his entering a "Profession, Trade, or Calling," although his appointment in the College involved his being at the service of the Socy, and though there was no doubt that he intended to dedicate the legacy to the use of the Socy. V. BUSINESS.

Cp APPRENTICE: ORDINARY CALLING: VOCATION.

**CALSWAY.** — V. CALCEY.

**CALUMNIATOR.** — V. CHALLENGE.



**Lord CAMPBELL'S ACTS.** — Libel Act, 1843, 6 & 7 V. c. 96:

Fatal Accidents Act, 1846, 9 & 10 V. c. 93:

Obscene Publications Act, 1857, 20 & 21 V. c. 83:

Vexatious Indictments Act, 1859, 22 & 23 V. c. 17.

**CAN.** — To engage to do anything “as fast as it *can*” be done, means no more than, as fast as POSSIBLE: *Vh* CUSTOMARY.

“Can be,” means, “can reasonably be” (per Knight-Bruce, L. J., *Whicker v. Hume*, 21 L. J. Ch. 406; 1 D. G. M. & G. 506; 14 Bea. 509; adopted by P. C. in *Jex v. McKinney*, 58 L. J. P. C. 69; 14 App. Ca. 77).

Such sum as “can be procured”; *V. Llewellyn v. Rutherford*, cited GOODWILL.

**CAN TRANSFER.** — *V.* LEFT.

**CANADA.** — The re-union of Upper and Lower Canada became “Canada” by the British North America Act, 1840, 3 & 4 V. c. 35, by s. 61 of which it was enacted that “the words ‘Act of the Legislature of the Province of Canada,’ are to be understood to mean, ‘Act of Her Majesty her heirs or successors enacted by Her Majesty or by the Governor on behalf of Her Majesty, with the advice and consent of the Legislative Council and Assembly of the Province of Canada.’” In 3 & 4 V. c. 78 (*V.* s. 12) “Province of Canada” was defined, “Canada as constituted under” the Act of 1840.

**CANAL.** — *Seemle*, The River Bourne, at Bournemouth, is canalized so as to be a “Canal,” within s. 17, P. H. Act, 1875 (per Lindley, L. J., *Durrant v. Branksome*, cited FILTHY WATER).

Quà Ry and Canal Traffic Act, 1854, “‘Canal’ shall include any NAVIGATION whereon Tolls are levied by authority of Parliament, and also the Wharves and Landing Places of and belonging to such Canal or Navigation and used for the purposes of PUBLIC TRAFFIC” (s. 1), — a def adopted for Regn of Railways Act, 1873 (*V.* s. 3).

Other Stat. Def. — 26 & 27 V. c. 112, s. 3; 38 & 39 V. c. 17, s. 108; 40 & 41 V. c. 60, s. 14.

Building “used for the purposes of a Canal”; *V.* PURPOSES.

“Land used only as a Canal”; *V.* ONLY: RAILWAY.

“Canal *Bout*”; Stat. Def., 40 & 41 V. c. 60, s. 14.

“Canal *Company*”; Stat. Def., Ry & Canal Traffic Act, 1854, s. 1; Regn of Railways Act, 1873, s. 3; 38 & 39 V. c. 17, s. 108; Ry & Canal Traffic Act, 1888, ss. 37, 46; 61 & 62 V. c. 16, s. 8.

“Canal *Interest*”; Stat. Def., Ry & Canal Traffic Act, 1888, s. 42 (3).

**CANCEL.** — To “cancel” a document, is to put an end to it by drawing lines over it, or over its signatures, “in the form of lattice-work, or *cancelli*; though the phrase is now used, figuratively, for any

manner of obliteration or defacing it" (2 Bl. Com. 308, 309) *e.g.* by tearing the seals off a DEED (*Ward v. Lumley*, 29 L. J. Ex. 322; 5 H. & N. 87. *whv* as to utility of document after Cancellation). But an intention to destroy must accompany the act of cancellation (*Raper v. Birkbeck*, 15 East, 17: *Wilkinson v. Johnson*, 3 B. & C. 428; per Maule, J., *Bamberger v. Commercial Credit*, 15 C. B. 693). *Vf* Touch. by Preston, 70, 56, *n.* *Cp* BURN.

But a document may be made void under a power to "cancel" without the manual act of cancellation (*Bamberger v. Commercial Credit*, 15 C. B. 676; 24 L. J. C. P. 115).

In a Marine Insree, or Charter-Party, "Cancel," sometimes means, to become void:— thus a Mem on a Charter-Party provided that the Charter should be "cancelled" on either of certain events happening, and that was held to mean, that if either event happened the Charter should become void (*Adamson v. Newcastle S. S. Insree*, 48 L. J. Q. B. 670; 4 Q. B. D. 462). But where a Policy on Freight provided that "no claim arising from the *cancelling* of any Charter" should be allowed; held, that frustration of the adventure did not amount to cancellation (*Re Jamieson and Newcastle S. S. Insree*, 1895, 2 Q. B. 90; 64 L. J. Q. B. 560; 72 L. T. 648; 43 W. R. 530).

Not every Tearing of a Will is a Cancellation of it (per Best, J., *Doe d. Perkes v. Perkes*, cited TEAR).

V. TO BE CANCELLED: DESTROY: REVOKE.

**CANDIDATE.** — "The correct sense of the word 'Candidate' is, a person offering himself to the suffrages of the people" (per Ld Ellenborough, *Morris v. Burdett*, 2 M. & S. 217). But on this the question arises. when does a person so offer himself? This question, according to the purpose for which it is asked, will vary in its answer.

A person who, with his consent, received a parliamentary nomination, but who declined to go to the poll, was not a "Candidate" liable to expenses of polling booths &c, within s. 71, Rep People Act, 1832 (*Muntz v. Sturge*, 10 L. J. Ex. 234; 8 M. & W. 302). But a candidate cannot withdraw from nomination, except "during the time appointed for the election" (35 & 36 V. c. 33, s. 1), — *i.e.* the hours for nomination, — or by neglecting, on request, to find security for the returning officer's expenses within one hour afterwards (38 & 39 V. c. 84, s. 3). How far then would *Muntz v. Sturge*, be now operative in case no request for security be made within the time prescribed by the section last cited, and yet the candidate, before the expenses of the polling had been incurred, repudiated his candidature and consequent liability? Such a person would not be a "Candidate" within s. 71, Rep People Act, 1832. and on the other hand the returning officer would not have availed himself of s. 3, 38 & 39 V. c. 84. How then could he claim for services repudiated before rendered? If it be said that the time for withdrawing the nomi-

nation being past, the nominee remains a "Candidate" in spite of himself, and all the machinery of an election must go on, and that that would be the nominee's fault; it may be replied, that the fault is equally the returning officer's for not having required the security, which request would have at once settled the matter. It would seem, therefore, that in the case supposed the returning officer would be without remedy (but see a contrary opinion, Cunningham on Elections, 66, 67).

A person who, with his consent, received a parliamentary nomination, but declined to go to the poll, was held to be a "Candidate" within 17 & 18 V. c. 102 (V. s. 38), and the 21 & 22 V. c. 87 (V. s. 3); and as such liable to the fee of £10 to the election auditor, an office abolished by 26 & 27 V. c. 29 (*Edwards v. Whitehurst*, 29 L. J. Ex. 329; 5 H. & N. 131).

But the most important aspect in which the question can be put, of when and how a person becomes a Parliamentary Candidate, is as it affects his return or the liability of himself or agents for Corrupt Practices. In this view, the Stat. Def. is given in s. 63, Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, as follows:—

"Candidate at an Election," and "Candidate," mean "unless the context otherwise requires, (1) any person elected to serve in parliament at such election, and (2) any person who is nominated as a candidate at such election, or is declared by himself or by others to be a candidate *on or after the day of the issue of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued.*

"Provided that where a person has been nominated as a candidate or declared to be a candidate, by others, then,—

- (a) If he was so nominated or declared without his consent, nothing in this Act shall be construed to impose any liability on such person, unless he has afterwards given his assent to such nomination or declaration, or has been elected; and
- (b) If he was so nominated or declared, either without his consent or in his absence, and he takes no part in the election, he may, if he thinks fit, make the Declaration respecting election expenses contained in the 2nd Part of the 2nd Sch to this Act, and the election agent shall, so far as circumstances admit, comply with the provisions of this Act with respect to expenses incurred on account of or in respect of the conduct or management of the election in like manner as if the candidate had been nominated or declared with his consent."

This definition establishes two classes of candidates:—

1. Successful:
2. Unsuccessful.

1. As regards successful candidates, a person "*elected*" is a candidate, and is responsible for all the acts of himself or his agents for the time

being, that bear upon his election (*Youghal*, 21 L. T. 306; 1 O'M. & H. 291). There is no limitation of time. A successful candidate is a "candidate" as soon as he begins to operate with a view to his election; and thenceforward all the liabilities, disqualifications, and penalties of a "candidate" attach to him (*Boston*, 1874, 2 O'M. & H. 161, was a memorable instance: *Vf*, *Malcolm v. Ingram*, L. R. 10 C. P. 168; 44 L. J. C. P. 121).

2. As regards unsuccessful candidates, the difference is indicated above by italics. An unsuccessful candidate would not be a "candidate," pecuniarily responsible, except for acts done on or after the day of the issuing of the writ or after the dissolution or vacancy.

Other Stat. Def. — 31 & 32 V. c. 125, s. 3; 35 & 36 V. c. 60, s. 2; 45 & 46 V. c. 50, s. 77. — *Scot*. 53 & 54 V. c. 55, s. 2.

A person disqualified for Election and therefore disqualified for Nomination, if regularly nominated in point of form for election as a Municipal Councillor, can properly "allege himself to have been a Candidate," s. 88 (1), Mun Corp Act, 1882, and is entitled to petition under that section (*Harford v. Lynskey*, 1899, 1 Q. B. 852; 68 L. J. Q. B. 599; 80 L. T. 417; 47 W. R. 653; 63 J. P. 263).

**CANDLE.** — Quà the Duties imposed by 24 G. 3, c. 11 (repealed), "Candles" did not include small Rush-lights made at home and "only once dipped in, or once drawn through, grease or kitchen stuff, and not at all through any tallow, melted or refined" (s. 5). *Vth*, *A-G. v. Barrell*, 1 Y. & J. 495.

The goods of the East India Co had to be "sold openly and publicly by Inch of Candle" (s. 69, 9 & 10 W. 3, c. 44), on *whv* *Eagleton v. East India Co*, 3 B. & P. 63-66.

**CANISTER.** — *V. CASE OR CANISTER.*

**CANNEL.** — *V. IRON.*

Quà Metropolis Gas Act, 1860, 23 & 24 V. c. 125, "Cannel Gas," means, Gas of an Illuminating Power (*V. s. 25*) of "not less than 20 candles" (s. 4).

**CANNOT.** — "Cannot," includes a legal inability, as well as a physical impossibility (*The Newbottle*, 54 L. J. P. D. & A. 16; 10 P. D. 33).

Where, on an inquiry before Justices, the Settlement of an Insane Person "cannot be ascertained," s. 41, 9 G. 4, c. 40, means, "not a permanent and perpetual disability to ascertain it but, only a disability to decide upon it at the time" (per Coleridge, J., *R. v. Heyop*, 8 Q. B. 560; 15 L. J. M. C. 70).

Substituted Service of a notice if the person to be served "cannot be FOUND," s. 15 (2), 14 & 15 V. c. 92, means, cannot be found after due

diligence has been used to effect personal service (*Blue v. Fullerton*, Ir. Rep. 10 C. L. 233).

**CANON.** — A Canon of the Church, is a Member of a CHAPTER (2 Bl. Com. 383), who has no Cure of Souls (Phil. Ecc. Law, 140), and whose chief duty is not only to preach, “in his own person, so often as he is bound by law, statute, ordinance, or custom, but shall likewise preach in other churches of the same diocese where he is resident, and especially in those places, whence he or his Church receive any yearly rents or profits” (No. 43, Canons Ecc. 1604). *Vf*, 3 & 4 V. c. 113, s. 93; 35 & 36 V. c. 8, s. 2.

Minor Canon; *V*. 3 & 4 V. c. 113, s. 93.

*Vh*, *Randolph v. Milman*, 38 L. J. C. P. 81; L. R. 4 C. P. 107.

**CANONRY.** — *V. Walrond v. Pollard*, 3 Dy. 294 a: *Ecc. Commrs v. Kildare*, 8 Ir. Ch. Rep. 100.

**CANTARIA.** — *V. CHAUNTRY.*

**CANVASSER.** — Quà Municipal Elections, a “Canvasser,” “means any person who solicits, or persuades, or attempts to persuade, any person to vote, or to abstain from voting, at an Election, or to vote, or to abstain from voting, for any CANDIDATE at an Election” (s. 2, 35 & 36 V. c. 60; s. 77, 45 & 46 V. c. 50).

It is submitted that that def is good for “Canvasser” at any Election.

**CAPABLE.** — “Capable of being covered by Insree”; *V. INSURANCE.*  
“Capable of taking effect”; *V. SUBSISTING.*

“Capable forthwith of exercising all the functions of an Incorporated Co,” s. 18, Comp Act, 1862; — “Those are strong words. The Co attains maturity on its birth” (per Ld Macnaghten, *Re Salomon*, 66 L. J. Ch. 49; 1897, A. C. 22).

A child under 7 is not capable of CRIME; between 7 and 14 there is only a presumption against such capability (1 Bl. Com. 464, 465); but a boy under 14 cannot be guilty of RAPE (1 Hale, P. C. 630: *R. v. Groombridge*, 7 C. & P. 583).

*V. INCAPABLE.*

**CAPACITY.** — Capacity is “an ability or fitness to receive: In law, it signifies when a man or body politick is able to give, or take, lands or other things, or to sue actions” (Cowel). *Vf* Termes de la Ley.

A claim arising in respect of moneys improperly received and retained by a Director of a Building Socy, is not a Dispute “in his Capacity of a Member of the Society” within s. 2, Bg Societies Act, 1884, so that it ought to be referred to arbitration (*Municipal Permanent Bg Socy v. Richards*, 39 Ch. D. 372; 58 L. J. Ch. S: *Cp. CHARACTER*); the phrase refers “to disputes arising out of the social contract that binds the mem-

bers of the Socy together" (per Fry, L. J., *Western Suburban, &c Socy v. Martin*, cited DISPUTE).

**CAPITA.** — *V. PER CAPITA.*

**CAPITAL.** — The "Capital" of a Joint-Stock Co, "means, the money subscribed pursuant to the Mem of Assn, or what is represented by that money" (per Lindley, L. J., *Verner v. Gen. & Commercial Trust*, 1894, 2 Ch. 239; 63 L. J. Ch. 462).

"The word 'Capital' for the purposes of a Joint Stock Co, may have any one of at least three meanings, viz. : —

"(1.) Nominal Capital : — the amount named in the Memorandum of Association, say, £100,000 in 10,000 shares of £10 each.

"(2.) Issued Capital : — say 5,000 shares of £10 each, part of the above nominal capital.

"(3.) Paid-up Capital : — say £25,000, being £5 per share on each of the above 5,000 shares.

"In which one of these meanings it is used in the Acts, it is very difficult to say: probably it is used sometimes in one and sometimes in another. In the *Dronfield Co* (17 Ch. D. 76, 86; 50 L. J. Ch. 387), Jessel, M. R., pointed out that in s. 12 of the Comp Act, 1862, and s. 9 of the Comp Act, 1867, it must mean not merely 'Nominal Capital' but 'Issued Capital' or 'Trading Capital.' By s. 3 of the Comp Act, 1877, the word as used in the Comp Act, 1867, is to 'include' paid-up capital; and looking at s. 5 of the Comp Act, 1877, it must include unissued capital, for that section gives power to reduce capital by cancelling unissued shares. The result, therefore, would seem to be that the Acts of 1867 and 1877 in fact cover all three meanings" (Buckl. 583).

"Available Capital"; *V. AVAILABLE.*

Capital "lost," or "unrepresented by available assets," s. 3, Comp Act, 1877, does not comprise Capital that has been expended in preliminary expenses (*Re Abstainers Insree Co*, 1891, 2 Ch. 124; 60 L. J. Ch. 510; 64 L. T. 256; 39 W. R. 574). *Note* : — where Capital is so lost, &c, the Court has jurisdiction to sanction any scheme for Reduction of Capital (*British & American Corp v. Couper*, 1894, A. C. 399; 63 L. J. Ch. 425; 70 L. T. 882; 42 W. R. 652; *Re Floating Dock Co*, 1895, 1 Ch. 691; 64 L. J. Ch. 361; 43 W. R. 344; *Re National Dwellings Socy*. 78 L. T. 144).

Outlay out of Capital; *V. OUTLAY.*

Capital "raised" or "issued" from which preliminary expenses to be paid; *V. Nichols v. Regent's Canal Co*, 63 L. J. Q. B. 641; 71 L. T. 249.

Bequest of "Capital"; *V. Enohin v. Wylie*, 10 H. L. Ca. 1; 31 L. J. Ch. 402.

BOOK DEBTS are part of a Tradesman's Capital (*Delany v. Delany*, cited BUSINESS, towards end).

F. INCOME: PROFITS: PRODUCTIVE CAPITAL: UNSCALLED CAPITAL: NOMINAL: LOAN.

**CAPITAL EMPLOYED.** — On the sale of a business, a representation as to the "Capital employed" therein by the vendor, means, "the amount in pounds, shillings, and pence which he has invested therein, and which, if not so invested, might be in his pocket, or otherwise expended on his account" (per Kekewich, J., *Glazier v. Rolls*, 58 L. J. Ch. 330; 37 W. R. 430; 60 L. T. 591; revd on a ground not affecting above def, 5 Times Rep. 691; 62 L. T. 133).

"Sum employed as Capital"; See D., 1st Case, R. 3. Income Tax Act, 1842; *V. Reid's Brewery Co v. Male*, cited PROFITS: *Royal Insuree v. Watson*, 1897, A. C. 1; 66 L. J. Q. B. 1; 75 L. T. 334; 61 J. P. 404: — quâ Cost-Book Mines, *Morant v. Wheel Grenville Co*, 71 L. T. 758; 11 Times Rep. 67.

V. AT THE PRESENT TIME.

**CAPITAL LOST.** — F. CAPITAL.

**CAPITAL MONEY.** — The def of "Capital Money" in s. 2 (9), S. L. Act, 1882, should be transposed thus, — "Capital Money arising under this Act and receivable for the trusts and purposes of the Settlement, is, in this Act referred to as Capital Money arising under this Act" (per Esher, M. R., *Marlborough v. Majoribanks*, 32 Ch. D. 5; 55 L. J. Ch. 339; 34 W. R. 377; 54 L. T. 914). The phrase means, Capital Money capable of being applied, — *i.e.* money in hand, as distinguished from probable future receipts (*Re Bristol*, 1893, 3 Ch. 161; 62 L. J. Ch. 901; 69 L. T. 304; 42 W. R. 46, and cases there cited). *See, Re Norfolk*, cited IMPROVEMENT.

Proceeds from sale of Heir-looms (*Marlborough v. Majoribanks*, sup), a Fine on granting a Lease (s. 4, 47 & 48 V. c. 18), Money required for Enfranchisement or for Equality of Exchange or Partition (s. 18, S. L. Act, 1882), Money in Court, or in the hands of trustees, LIABLE to be laid out in purchase of lands (ss. 32, 33, *ib.*: *Re Byron*, 23 Ch. D. 171; 53 L. J. Ch. 152; 48 L. T. 515; 31 W. R. 517; *Ex p. Castle Bythow*, 1895, 1 Ch. 348; 64 L. J. Ch. 116; 43 W. R. 156; *Re Mackenzie*, 23 Ch. D. 759; 52 L. J. Ch. 726; 48 L. T. 936; *Re Tennant*, 58 L. J. Ch. 457; *Re Mundy*, cited OPTION: *Clarke v. Thornton*, 35 Ch. D. 314; 56 L. J. Ch. 302; 35 W. R. 603; 56 L. T. 294; *Sethle, Burke v. Gore*, 13 L. R. Ir. 367) are "Capital Money" within the S. L. Act, 1882; but accumulations of surplus rents are not (*Re Newcastle*, 24 Ch. D. 129; 52 L. J. Ch. 645; 48 L. T. 779; 31 W. R. 782).

Money liable to be laid out in the purchase of LAND that may be invested or applied as "Capital Money," s. 33, S. L. Act, 1882, includes

money to be laid out in Freehold Ground Rents having a prescribed relative value and a prescribed term (*Re Thomas*, cited IMPROVEMENT).

"Capital Money," quâ s. 69, Loc Gov Act, 1888, is defined in subs. 3 of that section.

*V. Tudor*, Char. Trusts, 280, 281.

**CAPITAL NOT CALLED UP.** — Includes unissued Shares (*English Channel Steamship Co v. Rolt*, 17 Ch. D. 715).

**CAPITAL WORKS.** — Stat. Def., Loc Gov (Scot) Act, 1889, 52 & 53 V. c. 50, s. 18 (7).

**CAPITE.** — A Tenant *in Capite*, was one who held "immediately of the King, as of his Crowne, be it by Knight's Service or Socage; and not of any Honor, Castle, or Manor" (Termes de la Ley). *V. f* Cowel: Jacob.

**CAPTAIN.** — Quâ Militia (Voluntary Enlistment) Act, 1875, 38 & 39 V. c. 69, " 'Captain,' includes any other COMMANDING OFFICER of a company" (s. 2).

"Captain or Commanding Officer"; *V. 26 & 27 V. c. 116*, s. 3.

**CAPTIVES.** — *V. PRISONER.*

**CAPTORS.** — *V. JOINT CAPTORS.*

**CAPTURE.** — Capture is "a Taking, an Arrest, a Seizure, 14 Car. 2, c. 14" (Cowel).

"Capture," in a Marine Insurance, and generally, means a hostile seizure by one country of the Ships or Goods of the subjects of another country with which it is in a state of WAR, with intent to keep or to deprive the owner of the thing seized (*Park*, ch. 4: *Johnston v. Hogg*, 52 L. J. Q. B. 343; 10 Q. B. D. 432, and dicta there cited). In *Cory v. Burr* (52 L. J. Q. B. 659; 8 App. Ca. 393), which was also a case on a Marine Policy and contained the usual warranty against "Capture and Seizure," Selborne, C., said, — "I am disposed to agree that if the word 'Capture' had stood alone it might have appeared to point to a *belligerent* capture."

Though a Ship is the more easily captured because she was driven by stress of weather on the shore, that is none the less a Capture (*Green v. Elmslie*, Peake, 212); *secus*, if she be a TOTAL LOSS before seizure, for then the loss is already a PERIL OF THE SEA (*Hahn v. Corbett*, 2 Bing. 205). *V. f* CONSEQUENCES.

*V. SEIZURE: ACTUAL CAPTURE.*

**CAPUT PORTUS.** — *V. PORT.*

**CARCASE.** — Quâ Contagious Diseases (Animals) Act, 1878, 41 & 42 V. c. 74, " 'Carcase' means the carcase of an animal; and includes,



part of a carcase, and the meat, bones, hide, skin, hoofs, horns, offal, or other part of an animal, separately or otherwise, or any portion thereof " (s. 5, subs. 1, vi), — a def which (by s. 59) is adopted for 57 & 58 V. c. 57.

**CARDS.** — Quà Revenue Act, 1862, 25 & 26 V. c. 22, "Cards," means Playing Cards charged with Stamp Duty; and "Pack of Cards" means "any quantity or number of cards not exceeding 52" (s. 28).

**CARDWELL'S ACT.** — Ry & Canal Traffic Act, 1854.

**CARE: CUSTODY.** — "Whether the custody be domestic or not, if a person, — no matter who he is or in what relation he stands, — has the care and custody of a Lunatic, and during the course of that care or custody abuses, ill-treats, or wilfully neglects a Lunatic he is within" s. 9, 16 & 17 V. c. 96, and liable to its penalty (per Coleridge, C. J., *Buchanan v. Hardy*, 56 L. J. M. C. 45; 18 Q. B. D. 486; 35 W. R. 453; 51 J. P. 741). In that case it was, accordingly, held that a parent is within the section; and the decision in *R. v. Rundle* (24 L. J. M. C. 129; 1 Dears. 482), that a husband is not, was adversely criticised. A brother is within the section (*R. v. Porter*, 33 L. J. M. C. 126).

"Custody, Charge, or Care" of a CHILD, quà Prevention of Cruelty to Children Act, 1894, 57 & 58 V. c. 41; *V. s. 23* (3). A woman's paramour is not (as a cohabiting husband is) *ipso facto* within this phrase, because he is not its "PARENT"; to convict him it must be shown that, in fact, he had the custody of, and did neglect, her child (*Ottley v. Fern*, 109 Law Times, 175, 176).

"Care or Management" of a PLACE kept for Betting, ss. 1 and 3, 16 & 17 V. c. 119; *V. R. v. Cook*, and *Davis v. Stephenson*, cited USE.

"Care, Government, or Management" of a House, &c, s. 2, 21 G. 3. c. 49; *V. KEEPER*.

Servants having "the Care" of property, s. 8, Black Act, 9 G. 1, c. 22, s. 4, 52 G. 3, c. 130; *V. Nesham v. Armstrong*, 1 B. & Ald. 146; *Somerset v. Merc*, 4 B. & C. 167.

**CARELESSLY.** — As to effect of a jury's finding that a PRIVILEGED COMMUNICATION was made honestly, but "carelessly"; *V. Pittard v. Oliver*, 89 Law Times, 119.

"Carelessly, or Accidentally" break or damage a Street Lamp, s. 207, Metrop Man. Act, 1855; the liability under this section may, under the word "accidentally," be incurred though the damage resulted in great measure through the lamp being in an improper and unsafe position (*Burgess v. Morris*, 77 L. T. 97; 61 J. P. 553).

**CARE-TAKER.** — A "Care-taker" is one whose only business is to guard the premises against injury; and does not include one who may create danger (*Quin v. National Assree*, Jones & Carey, 330); therefore, a carpenter having charge of an unfinished house in which he also carries

on his business as a carpenter, is not properly described as a "Care-taker" quà a Fire Policy (*S. C.*).

**CARGO.** — "The word 'Cargo,' as referred to a Ship, is very intelligible, and must mean the whole **LOADING**. It may as well be said that the word 'Ship' is uncertain, one being much bigger than another" (per *Cur. Sargent v. Reed*, 2 *Stra.* 1228); "Cargo," and, generally, "FREIGHT," are terms applicable to Goods only (*Lewis v. Marshall*, 13 *L. J. C. P.* 193; 7 *M. & G.* 729).

"Generally speaking, the term 'Cargo,' unless there is something in the context to give it a different signification, means the entire load of the ship which carries it" (per Mellish, *L. J.*, *Borrowman v. Drayton*, 2 *Ex. D.* 19; 46 *L. J. Q. B.* 276: for such a context, *V. Caffin v. Aldridge*, cited *PORT*). So when a contract shews that the buyer of a "Cargo" is to have complete control over the destination of the vessel, "Cargo" means the entire ship-load and not a shipment, and the buyer of, *e.g.* "a Cargo of from 2,500 to 3,000 Barrels (seller's option)," may reject a tender of 3,000 Barrels on the ground that other Barrels had been shipped by the same vessel and therefore that a "Cargo" was not tendered (*Borrowman v. Drayton*, *sup*: *Va. Kreuger v. Blanck*, *L. R.* 5 *Ex.* 179; 39 *L. J. Ex.* 190: *Vf* 1 *Maude & P.* 313). And, on the other hand, the buyer of a "Cargo," the quantity being mentioned, is bound to take the Cargo, whatever its quantity, unless the contrary is very plainly shewn (*Levi v. Berk*, 2 *Times Rep.* 898). *V. MORE OR LESS.*

Where, however, the question is on a Policy of Insurance, "Cargo" does not necessarily mean the whole loading (*Houghton v. Gilbert*, 7 *C. & P.* 701: *Vthe* contrasted with *Sargent v. Reed*, *sup*, in *judgmt* of Cleasby, *B.*, *Kreuger v. Blanck*, *sup*). *Vh.* *Anderson v. Morice*, 1 *App. Ca.* 713; 46 *L. J. C. P.* 11; 25 *W. R.* 14; 35 *L. T.* 566: *Colonial Insree v. Adelaide Insree*, 12 *App. Ca.* 128; 56 *L. J. P. C.* 19; 35 *W. R.* 636; 56 *L. T.* 173.

As to the meaning of "Full and Complete Cargo"; *V. Southampton Steam Co. v. Clarke*, *L. R.* 4 *Ex.* 73; 6 *Ib.* 53; 38 *L. J. Ex.* 54; 40 *Ib.* 8: *Duckett v. Satterfield*, *L. R.* 3 *C. P.* 227; 37 *L. J. C. P.* 144: *Morris v. Levison*, 1 *C. P. D.* 155; 45 *L. J. C. P.* 409; 34 *L. T.* 576; 24 *W. R.* 517; *Vthle.* *Carnegie v. Conner*, 59 *L. J. Q. B.* 122; 24 *Q. B. D.* 45; 61 *L. T.* 691; 6 *Asp.* 447: *Miller v. Borner*, 1900, 1 *Q. B.* 691; 69 *L. J. Q. B.* 429; 82 *L. T.* 258: *Vf.* *Caffin v. Aldridge*, cited *PORT*: *Heathfield S. S. Co. v. Rodenacher*, 2 *Com. Ca.* 55. And as to the effect of custom on the mode of loading a "full and complete cargo" of Sugar; *V. Cuthbert v. Cumming*, 10 *Ex.* 809; 11 *Ib.* 405: *Vth* 1 *Maude & P.* 294. *V. WET.*

"Cargo to be brought to and taken from **ALONGSIDE** free of expense and risk to the ship": *V.* 1 *Maude & P.* 291, citing *Wright v. New Zealand Shipping Co.*, 4 *Ex. D.* 165.

"Cargo is to be discharged with all despatch according to the custom of the Port"; *V. 1 Maude & P. 292*, citing *Postlethwaite v. Free-land*, 4 Ex. D. 155; 5 App. Ca. 599; 48 L. J. Ex. 353; 49 Ib. 630: CUSTOMARY.

"Cargo expected to arrive"; *V. EXPECTED TO ARRIVE.*

*Vh Benj. 684, 688: Blackb. 217, 223.*

**CARNAL KNOWLEDGE.** — In the crime of RAPE, " 'Carnal Knowledge,' means the penetration to any the slightest degree of the organ known, by the male organ of generation" (*Steph. Cr. 186: s. 63, 24 & 25 V. c. 100*). *Vf Arch. Cr. 862; Rose. Cr. 767.*

**CARNO.** — Is an Immunity (*Termes de la Ley*).

**CARPENTER.** — A "Carpenter," within the late Bankry definition of "Trader," meant "a person who purchases timber and other materials which he works up as a Carpenter, and not a person who merely works at the trade" (*Arch. Bankry, 11 ed., 35*, citing *Chapman v. Lamphier*, 3 Mod. 155; 1 Cooke, B. L. 49).

**CARRIAGE.** — Speaking generally a "Carriage" includes anything on which men or goods are carried: therefore a Bicycle is a "Carriage" within s. 78, Highway Act, 1835, although bicycles were not in vogue when the Act passed (*Taylor v. Goodwin*, 4 Q. B. D. 228; 48 L. J. M. C. 104; 27 W. R. 489; 43 J. P. 653; *M'Kee v. M'Grath*, 30 L. R. Ir. 41). "A carriage need not be necessarily on wheels; for instance, it may be drawn as a sledge, so as to facilitate its use on a road" (*Taylor v. Goodwin*, sup); and, *semble*, a Wheel-barrow is not a Carriage (*Brunton v. Hall*, 1 Q. B. 792; 10 L. J. Q. B. 258; 1 G. & D. 207). "Bicycles, Tricycles, Velocipedes, and other similar Machines," are now expressly declared to be "Carriages" within the Highway Acts (s. 85, *Loc Gov Act, 1888*); but that section does not incorporate s. 78, Highway Act, 1835, and a Constable has no right, without warrant, to apprehend a Bicyclist travelling at night without a lamp (*Hatton v. Treoby*, 1897, 2 Q. B. 452; 66 L. J. Q. B. 729; 77 L. T. 309; 46 W. R. 6; 61 J. P. 586).

But where a private Turnpike Act imposed a toll "for every Carriage of whatever description and for whatever purpose which shall be drawn or impelled or set or kept in motion by steam or any other power or agency than being drawn by any horse or beast"; it was held that a Bicycle was *not* included, and that those words applied "only to carriages of a heavy description which both wear the road and are impelled by some mechanical power" (*Williams v. Ellis*, 5 Q. B. D. 175; 49 L. J. M. C. 47; 28 W. R. 416; 44 J. P. 394; distinguishing *Taylor v. Goodwin*, sup); but *Williams v. Ellis* is not of general application, and was cited in vain in *Ellis v. Nott Bower* (13 Times Rep. 35); *Vo COACH.*

Quà the Revenue Act, 1869, 32 & 33 V. c. 14, and by s. 19 (6) thereof,

“the term ‘Carriage,’ means and includes, any Vehicle drawn by a horse or mule, or horses or mules; — except a Waggon, Cart, or other Vehicle, used solely for the conveyance of any Goods or BURDEN, in the course of TRADE or Husbandry, and whereon the Christian Name and Surname and Place of Abode or Place of Business of the Owner, or the Name or Style and Principal or only Place of Business of the Co or Firm owning the same, shall be visibly and legibly painted in letters of not less than one inch in length.” That def is substantially adopted in s. 4 (3), 51 & 52 V. c. 8, but there a HACKNEY CARRIAGE is excepted, and, on the other hand, the def is enlarged so as to include a Carriage propelled by steam, electricity, or other mechanical power.

Other Stat. Def. — 38 & 39 V. c. 17, s. 108; 44 & 45 V. c. 67, s. 6. — *Scot.* 25 & 26 V. c. 110, s. 3; 55 & 56 V. c. 55, s. 4.

“Any Carriage,” in the latter part as well as the first part of s. 45. Town Police Clauses Act, 1847, means, a Hackney Carriage (*Jones v. Short*, cited *STREET*). In ss. 37, 40 to 52, 54, 58, and 60 to 67, of that Act, “Carriage” includes an OMNIBUS (s. 4 (1), 52 & 53 V. c. 14).

V. VEHICLE: STAGE CARRIAGE: WHEELED CARRIAGE: LOCOMOTIVE: LOCOMOTIVE ENGINE: CAB: CART: COACH: JOB.

Carriage Traffic; V. TRAFFIC.

**CARRIED.** — “Goods carried into any Port in England or Wales in any SHIP.” s. 6, 24 V. c. 10: *V. Dupueto v. Wyllie*, 43 L. J. Adm. 20; L. R. 5 P. C. 482; *The Pieve Superiore*, 43 L. J. Adm. 20; L. R. 5 P. C. 482.

The transfer to the Mersey Docks and Harbour Bd of the Town Dues on all goods “carried or conveyed upon, over, or along any part of the Upper Mersey,” is to be read in its literal sense and applies to the Dues on goods carried over any part of the river in the ordinary course of a voyage (*Mersey Docks & Harbour Bd v. Hunter*, 80 L. T. 96; 4 Com. Ca. 142).

**CARRIER.** — A “Carrier.” 3 Car. 1, c. 1, means a Carrier of Goods (per Counsel in *Sandiman v. Breach*, 7 B. & C. 97; *Va. Ex p. Middleton*, 3 B. & C. 164).

Qua Carriage and Deposit of Dangerous Goods Act, 1866, 29 & 30 V. c. 69, and by s. 7 thereof, “Carrier,” includes “all persons or bodies carrying Goods or Passengers for Hire, by Land or Water”: *Cp* 38 & 39 V. c. 17, s. 108.

“Carrier, or Forwarder”; Stat. Def., Customs Tariff Amendment Act, 1860, 23 & 24 V. c. 22, s. 24.

V. COMMON CARRIER: NOT AS COMMON CARRIERS.

**CARRY.** — “To carry” a person, includes putting him in a position to be carried, and therefore placing a debtor on a coach for the purpose of conveying him to prison, was a “carrying” within s. 1, 32 G. 2, c. 28

(*Dewhurst v. Pearson*, 2 L. J. Ex. 143; 1 Cr. & M. 365; 3 Tyr. 242; 1 Dowl. 664).

“Carry to sell,” as a HAWKER; *V. R. v. McKnight*, 10 B. & C. 731.

**CARRY AWAY.** — *V. ASPORTATION*; TAKE AND CARRY AWAY.

**CARRY ON.** — “The phrase ‘Carrying on’ implies a repetition or series of acts” (per Brett, L. J., *Smith v. Anderson*, 50 L. J. Ch. 52; 15 Ch. D. 247; *Vthc, Re Government’s Stock Investment Co*, 60 L. J. Ch. 479; *Vf, Re Siddall*, 54 L. J. Ch. 682; 29 Ch. D. 1; *Crowth v. Thorley*, 50 L. T. 43; 32 W. R. 350; *Re Thomas*, 14 Q. B. D. 379; *England v. Webb*, 1898, A. C. 758; 67 L. J. P. C. 120; 79 L. T. 131; *Re Griffin*, cited BUSINESS.

A Railroad Company “carries on BUSINESS,” ss. 60 and 128, 9 & 10 V. c. 95, repld s. 74, Co. Co. Act, 1888, only at its PRINCIPAL OFFICE where the directors meet and the general business of the Co is transacted (*Minor v. Lond. & N. W. Ry*, 26 L. J. C. P. 39; 1 C. B. N. S. 325; *Shiels v. G. N. Ry*, 30 L. J. Q. B. 331; 9 W. R. 739; *Brown v. Lond. & N. W. Ry*, 32 L. J. Q. B. 318; 4 B. & S. 326; *Le Tailleur v. S. E. Ry*, 3 C. P. D. 18; *Va DWELL*: RESIDE). So, of a Pier Co (*Aberystwith Pier Co v. Cooper*, 35 L. J. Q. B. 44; 14 W. R. 28; 13 L. T. 273). But a Manufacturing Co “dwells and carries on business” at its place of manufacture and sale, and not at its Registered Office (*Keynsham Lime Co v. Baker*, 33 L. J. Ex. 41; 2 H. & C. 729; 12 W. R. 156; 9 L. T. 418; *Oldham Co. v. Heald*, 33 L. J. Ex. 236; 3 H. & C. 132). A Building Contractor “carries on business” where his general place of business is, and not at the locality where particular contracts are being executed (*Gorslett v. Harris*, 29 L. T. O. S. 75). But if the nature of a man’s business be such that he must be personally moving about within a particular district, — e.g. an Apothecary, — that is carrying on business within that district (*Mitchell v. Hender*, 23 L. J. Q. B. 273).

To “carry on” a business, means, primarily, to carry on one’s *own* business; therefore, a salaried clerk does not “carry on business” at the office of his employer within s. 12, Mayor’s Court Procedure Act, 1857 (*Lewis v. Graham*, 20 Q. B. D. 784; 22 Ib. 1; 57 L. J. Q. B. 376; 58 Ib. 117; 36 W. R. 574; 37 Ib. 73; 59 L. T. 35). *Vh. Le Tailleur v. S. E. Ry* (sup): *Re Sax*, cited CEASE.

A clerk in the Admiralty does not “carry on business” at his office within s. 40, London Small Debts Act, 10 & 11 V. c. lxxi (*Buckley v. Hann*, 19 L. J. Ex. 151; 5 Ex. 43); nor does a Deputy Sealer of the Court of Chancery (*Rolfe v. Learmouth*, 19 L. J. Q. B. 10; 14 Q. B. 196), nor a clerk in the Privy Council Office (*Sangster v. Cave*, 19 L. J. Ex. 313; nom. *Sangster v. Kay*, 5 Ex. 386), nor a partner in a mine on the Cost-Book principle, the business of which mine is wholly conducted by an agent (*Mitchell v. Hender*, sup), quâ s. 128, 9 & 10 V. c. 95: — for

the principle in these cases would seem to be that neither of the persons carried on "business" at all: *Va, Glennie v. Delmar*, 1 L. M. & P. 402.

But as a place where a Debtor's Summons could be served (R. 17, Bankry Rules, 1870), it was held that a clerk "carried on business" at his employer's office (*Re Bowie, Ex p. Breull*, 50 L. J. Ch. 384; 16 Ch. D. 484; 29 W. R. 299).

Having an Agency is not a carrying on business by the Principal (*Corbett v. Gen. Steam Nav. Co*, 28 L. J. Ex. 214; 4 H. & N. 482; *Baillie v. Goodwin*, 33 Ch. D. 605; 55 L. J. Ch. 849; 55 L. T. 56; 34 W. R. 787; *Grant v. Anderson*, 1892, 1 Q. B. 108; 61 L. J. Q. B. 107; 66 L. T. 79; *Cp, Clarke v. Watkins*, inf); *secus*, of a Branch business (*Weatherley v. Calder*, 61 L. T. 508).

Quà R. S. C., — *e.g.* Ord. 9, R. 8; Ord. 48 a, R. 1, 3, — a Foreign Co carries on business in England if it has a place of business there (*Haggin v. Comptoir d'Escompte*, 58 L. J. Q. B. 508; 23 Q. B. D. 519; 37 W. R. 703; 61 L. T. 748; *La Bourgogne*, 1899, P. 1; 68 L. J. P. D. & A. 9, 104; 79 L. T. 331); *secus*, of an individual or private firm (*Russell v. Cambefort*, 58 L. J. Q. B. 498; 23 Q. B. D. 526; 37 W. R. 701; 61 L. T. 751; *Vthe, Grant v. Anderson*, sup). *Vf* Ann. Pr.

#### I. DWELL.

But none of the foregoing cases (except, probably, those in the 2nd par) apply when the question is, where a business is "carried on" so that it may be seen where the PROFITS are earned on which Income Tax is payable under 5 & 6 V. c. 35, s. 100, Case 1, R. 2, and 16 & 17 V. c. 34, s. 2, Sch D. (*Erichsen v. Last*, 51 L. J. Q. B. 86; 8 Q. B. D. 414). In that case Jessel, M. R., said in his jdgmt; — "There is no principle of law which decides what 'carrying on' TRADE is — a multitude of circumstances make up what is called 'carrying on' a Trade; for it is a compound fact made up of a variety of things. Now the facts of this case show that this is a Co with stations in this kingdom, with the ends of cables in this kingdom, and these cables are worked from here by the staff of the Co. There is an office in London, and the Co takes messages and sends them to foreign parts. There is, as it appears to me, a perfectly plain case of 'carrying on' trade here. A Co in this country which regularly undertakes the carrying of goods abroad for money as part of its ordinary business, 'carries on' trade in this country, even though the whole of the carriage is done abroad. The mere fact that the Co enters into contracts in this country with English subjects for the right of carriage appears to me to be the same thing as if it made similar contracts for the sale of goods. Whether the contract is for carriage or for the right to transmit messages, makes no difference. So if a Railway Company, with a station at Dover and another at Calais, carries passengers from Dover to Calais as a regular practice, that would be a trading at Dover."

Indeed, in this connection, it may be said that, where the Brain Power is, there (and, *semble*, there only) a Trade or Business is "carried on"

(*San Paulo Ry v. Carter*, 1895, 1 Q. B. 580; 1896, A. C. 31; 64 L. J. Q. B. 379; 65 Ib. 161; distinguishing *Colquhoun v. Brooks*, 59 L. J. Q. B. 53; 14 App. Ca. 493, and *Bartholomay Co v. Wyatt*, 1893, 2 Q. B. 499; 62 L. J. Q. B. 525, and following *London Bank of Mexico v. Apthorpe*, 1891, 2 Q. B. 378; 60 L. J. Q. B. 653; *Vu, Sully v. A-G.*, 29 L. J. Ex. 464; 5 H. & N. 711). It may, probably, be said that *Bartholomay Co v. Wyatt* is no longer an authority, for Wright, J. (one of the judges who decided it), has abandoned it, on the ground that its *ratio decidendi* was destroyed by the *San Paulo* decision (*Apthorpe v. Peter Schoenhofen Co*, 79 L. T. 98). Those two latter cases, and *St. Louis Breweries v. Apthorpe* (79 L. T. 551; 47 W. R. 334; 63 J. P. 135) seem to warrant this remarkable development of the *San Paulo* decision that, — even where all the practical operations of a business are carried on abroad, and the Undertaking and its assets are legally vested in a Foreign Co, yet, if nearly all the shares in such Co are held, and its financial affairs are controlled, by an English Co located in England, the business is “carried on” in England; and Income Tax has to be paid on the whole of its Profits, and not merely on so much of such profits as may be remitted to England. But *Cp, Grainger v. Gough*, 1896, A. C. 325; 65 L. J. Q. B. 410; 74 L. T. 435; 44 W. R. 561.

*If, Tischler v. Apthorpe*, 33 W. R. 548; 52 L. T. 814; 1 Times Rep. 344; *Pomeroy v. Apthorpe*, 56 L. J. Q. B. 155; *Wrele v. Colquhoun*, 57 L. J. Q. B. 326; 20 Q. B. D. 753. F. ELSEWHERE: RESIDE: RECEIVED. Cp. EXERCISE: DERIVE: ARISING.

As to place where a Business is carried on, quâ Probate Duty in Australia; *V. Beaver v. Victoria Master in Eq.*, 1895, A. C. 251; 72 L. T. 127; 64 L. J. P. C. 126.

A Cape of Good Hope statute, taxing a Co whose business is “described as to be carried on IN this Colony,” does not apply to a Co whose Registered Office is in England and whose object is to carry on business “in any part of the world,” even though the Co has an Agency in the Colony; for “to say that a business is to be IN a place named is one thing; but to say that it may be carried on anywhere is a totally different thing” (*Marshall v. Orpen*, 1895, A. C. 606; 64 L. J. P. C. 177; 72 L. T. 783; approving *Colonial Government v. British S. Africa Co*, 9 Juta, 280).

The exemption in s. 7 of the Victorian Income Tax Act, 1895, of Trusts, &c, “not carrying any Trade, or not being engaged in any Trade, for the purposes of GAIN,” *semble*, applies only to such Bodies as are localised in the Colony (*England v. Webb*, 1898, A. C. 758; 67 L. J. P. C. 120; 79 L. T. 131).

As regards Covenants and Agreements in RESTRAINT OF TRADE, the cases run a little fine.

An Agreement by A. not to “carry on” a Business “either in his own name or for his own benefit, or in the name or names, or for the benefit of any person,” &c, is not broken by A. becoming an Agent for another

person within the prescribed district (*Clarke v. Watkins*, 11 W. R. 319; *Allen v. Taylor*, 39 L. J. Ch. 627; 19 W. R. 556; 24 L. T. 249; *Cp, Corbett v. Gen. Steam Nav. Co.*, sup). If, however, the agreement relates to a *Profession*, — e.g. a Surgeon's, — the rule would be different, for the word "Profession" is much more emphatic than "Business": carrying on a Trade, implies sharing in the profit or loss, but a person carries on a Profession when only acting as an Assistant to another (per Cotton, L. J., *Palmer v. Mallett*, 36 Ch. D. 411; 57 L. J. Ch. 226; 58 L. T. 64; 36 W. R. 460: it is however to be observed that in *the*, the words were shall not "directly or indirectly, and either alone or in partnership with, or as assistant of, any person . . . carry on the profession." &c: *Vf, Rawlinson v. Clarke*, 14 L. J. Ex. 364; 14 M. & W. 187).

But if instead of, or in addition to, using the words "carry on" the restriction extends to "engage in" (*Rolfe v. Rolfe*, 15 Sim. 88: *Vf ENGAGE IN*), or "concerned or interested in" (*Newling v. Dobell*, 38 L. J. Ch. 111), or "concerned in" (*Jones v. Harrison*, 4 Ch. D. 636), then, though only relating to a Business, it will be broken by the agreeing party acting for another within the prescribed area, either as Assistant or Journeyman, and the same rule would obtain if the words of prohibition are, shall not "carry on either as master or servant" (*Proctor v. Sargent*, 10 L. J. C. P. 34; 2 M. & G. 20: *Benwell v. Inns*, 26 L. J. Ch. 663; 24 Bea. 307). *Vf CONCERNED IN: INTERESTED IN*.

Soliciting and supplying customers, or attending to patients, within the defined district, even without having any place of residence or business therein, is "carrying on" business there within a prohibiting agreement (*Turner v. Evans*, 22 L. J. Q. B. 412; 2 E. & B. 512; 2 D. G. M. & G. 740: *Brampton v. Beddoes*, 13 C. B. N. S. 538; 11 W. R. 268; 7 L. T. 679: *Mitchell v. Hender*, sup: *Vf, Palmer v. Mallett*, sup). *V. PRACTISE: SOLICIT: SET UP*.

"*Stuart v. Diplock* (cited *LADIES' OUTFITTER*) seems to show that to carry on a PART, is not to carry on the business" (per Channell, J., *Bailey v. Skinner*, 42 S. J. 780; 105 Law Times, 473). *Cp BUTCHER*.

Where a Co is in Liquidation and its business is being carried on thereunder with a view to its sale as a going concern, that is not a "carrying on" the business by the Co, within a contract by A., with the Co, that no similar business should be carried on by A. so long as the Co carried on such a business (*Shorthorn Dairy Co v. Hall*, 31 S. J. 479). *Sethe, Matthews on Restraint of Trade*, 239.

For the principles on which Injunction is granted for Breach of Agreement not to carry on business, and which involves personal conduct, *V. Robinson v. Heuer*, 1898, 2 Ch. 451; 67 L. J. Ch. 644; 79 L. T. 281; 47 W. R. 34.

A Married Woman who *has* traded, is still "carrying on a Trade," s. 1 (5), M. W. P. Act, 1882, so long as any of her Trade Debts remain



undischarged, because till then her trading is not completed (*Re Dagnall*, 1896, 2 Q. B. 407; 65 L. J. Q. B. 666; 75 L. T. 142; 45 W. R. 79; applying *Ex p. Bamford*, cited USING, and distinguishing *Mr George* and *Ex p. Schomberg*, cited BEING: *Re Dagnall* followed in *Re Worsley*, 17 Times Rep. 122; W. N. (1900) 269). In *Re Dagnall* (65 L. J. Q. B. 667), Glenn, arg., said, but without citing authority, — “Under the P. H. Acts and the Adulteration Acts, it has been held, upon the words ‘carrying on’ a Trade occurring in those Acts, that a person cannot escape liability to the penalties thereby imposed by ceasing to trade.”

“Ceases” to carry on business; *V. CEASE.*

*V. BUSINESS: PRACTISE.*

**CARRY OUT.** — The penalty imposed by the Bread Act, 1836, 6 & 7 W. 4, c. 37, s. 7, if any seller of bread shall “carry out or deliver” bread without being provided with scales and weights, “refers only to a carrying out or delivery of bread by a person who is therein acting as a baker or seller of bread; and not to a carrying out or delivery by a person who, though in fact a baker or seller of bread, is, in carrying out or delivering the bread, acting merely from friendliness or the like, and not as such baker or seller of bread” (per Field, J., *Daniel v. Whitfield*, 54 L. J. M. C. 134; 15 Q. B. D. 408; 53 L. T. 471; 33 W. R. 905; 49 J. P. 694; 1 Times Rep. 574).

*V. FOR SALE.*

**CARRY OVER.** — To “Carry over” a Stock Exchange transaction is where the buyer, not wishing to pay for what he has bought on the day appointed, gets the settlement “carried over,” or adjourned, to a subsequent settling-day; *Vh, Sachs v. Spielman*, W. N. (89) 103; 5 Times Rep. 487; *Bongiovanni v. La Société Générale*, cited CONTINUATION, of which “Carry over” is a synonym (Brodhurst’s Law of Stock Exchange, 16, 17).

**CARRYING INTO EXECUTION.** — An agreement compromising an action to which a Local Board is Party, is not “a Contract necessary for carrying the Act into execution,” within s. 173, P. H. Act, 1875 (*A-G. v. Gaskill*, 52 L. J. Ch. 163; 22 Ch. D. 537).

*CP PERSUANCE.*

**CART.** — “Waggon, Cart, or other such carriage,” s. 7, Highway Act, 1835; — “I think that this is a description of vehicles which carry heavy goods, and go slowly along the road. It cannot, in my opinion, extend to gigs, dog-carts, or gentlemen’s carriages” (per Lush. J., *Danby v. Hunter*, 49 L. J. M. C. 16; 5 Q. B. D. 20; 44 J. P. 283). In that case it was held that a light spring cart used by the maker of agricultural implements for taking his wares to market, and in which he also drove

out himself and family, and on which he paid tax under s. 18, 32 & 33 V. c. 14, was not a "Cart" within s. 7 of the Highway Act.

Quà Markets and Fairs Clauses Act, 1847, 10 & 11 V. c. 14, and by s. 3 thereof, " 'Cart,' shall include Waggon, and also any Carriage used wholly or chiefly for the conveyance of goods."

Other Stat Def. — Dublin Carriage Act, 1853, 16 & 17 V. c. 112, s. 80.

V. LIGHT CART: TAXED CART: CARRIAGE: VEHICLE.

**CART-BOTE.** — V. BOTE.

**CART ROAD.** — A. conveyed the surface of lands reserving a "Waggon or Cart Road," 18 feet wide, to be at all times kept in repair at his own cost; held, that this reservation did not authorize A. to lay down a Railroad or Tramway (*Bidder v. N. Staffordshire Ry*, 4 Q. B. D. 412).

**CARTRIDGE.** — "Cartridge Works"; V. NON-TEXTILE FACTORIES.

**CARUCATA.** — "*Carucata terre*, a ploughland, may containe houses, milles, pasture, medow, wood, &c" (Co. Litt. 86 b; *Va Ib.* 5 a). V. CARVE: PLOW-LAND: HIDE: OXGANGE: FAMILIA.

**CARVE.** — A Carve of land is synonymous with CARUCATA (Cowel, *Carucata: Termes de la Ley, Carve de terre*).

**CASE.** — "Actions upon the Case," s. 3, Limitation Act, 1623, may, probably, be defined as, those in which a plt sues for damages for any wrong or cause of complaint to which the old action of COVENANT or TRESPASS would not apply (Stephen on Pleading, ch. 1), — e.g. ASSUMPSIT, LIBEL, SLANDER (specially provided for by the section), Deceit, &c.

As to when an action for money sought to be recovered under a Statute, is an Action on the Case within the Limitation Act, 1623, and not one on a SPECIALTY within s. 3, Civil Procedure Act, 1833; *I. Salford v. Lancashire Co. Co.*, 59 L. J. Q. B. 576; 25 Q. B. D. 384.

The action of "Trespass on the Case" (abbreviated to "Case"). "originated in the power given by the Statute of Westminster 2nd to the Clerks of the Chancery to frame new writs *in consimili casu* with writs already known. Under this power they constructed many writs for different injuries which were considered as bearing a certain analogy to a Trespass. The new writs, invented for the cases supposed to bear such analogy, received accordingly the appellation of writs of *Trespass on the Case*, as being founded on the particular circumstances of the case thus requiring a remedy, and to distinguish them from the old writ of Trespass; and the injuries themselves, which are the subject of such writs, were not called *trespasses*, but had the general names of *torts, wrongs, or*

*grievances.* The writs of Trespass on the Case, though invented thus pro re natâ in various forms according to the nature of the different wrongs which respectively called them forth, began nevertheless to be viewed as constituting collectively a new, individual, *form of action*; and this new genus took its place by the name of 'Trespass on the Case' among the more ancient actions of Debt, Covenant, Trespass, &c. Such being the nature of this action, it comprises, of course, many different species. There is one, however, of more frequent use than any other species of this kind of action, which is TROVER" (Stephen on Pleading, ch. 1). Actual damage was a necessary ingredient in Trespass on the Case.

*Note.* Forms of Action are now discontinued (s. 3, Com. L. Pro. Act, 1852); but most of their names survive as titles of branches of the law, and in statutes and legal phraseology still have practical meanings.

*Vf* Termes de la Ley, *Casu Consimili*: 3 Bl. Com. 51: 1 Encyc. 109.

"In case of the Death", *V. DIE.*

*V. AS THE CASE REQUIRES.*

**CASE OR CANISTER.** — A linen or calico Bag is not "a Case or Canister" within s. 23 (2*b*), Metalliferous Mines Regn Act, 1872, 35 & 36 V. c. 77 (*Foster v. Diphwys Casson Co*, 56 L. J. M. C. 21; 18 Q. B. D. 428; 51 J. P. 470; 3 Times Rep. 301). "We should be violating the rules of construction if we were not to say that the words 'Case or Canister' explained one another (*Sv* OR), and that 'Case' meant something in the nature of a 'Canister,' — something that is solid, substantial, covered over, and calculated to prevent the escape of its contents and to resist their accidental ignition. The whole end and object of the Act is to preserve human life, and in placing the construction we do upon the rule in question, and holding that 'Case' must be something in the nature of a 'Canister,' we are construing it in accordance with its manifest intention and giving effect to the spirit of the Act" (per Coleridge, C. J., *Ib.*). "I confess it never occurred to me that 'Case' could mean a Bag. I always thought until the quotation of the definition in Dr. Johnson's Dictionary, that 'Case' meant something solid; but according to that definition a Net might be a 'Case'" (per Grove, J., *Ib.*).

**CASH.** — This is a stricter term than "Money." In *Beales v. Crisford* (13 L. J. Ch. 26; 13 Sim. 592), it was held that neither a Promissory Note payable to order, nor Long Annuities, nor Columbian Bonds came within "Cash or monies so called" (1 Jarm. 769, *n*: *Vf* Wms. Exs. 1052, *n*). Bank of England Notes, and it would seem other Bank Notes, would pass under a bequest of "Cash" (*Miller v. Race*, 1 Burr. 452; 1 Sm. L. C. 491: *Sr*, *Francis v. Nash*, cited CHOSE IN ACTION).

*V. MONEY: IN CASH.*

"Net Cash"; *V. Boden v. French*, cited NET.

**CASH AGAINST BILL OF LADING.** — *V. Ogy v. Shuter*, 44 L. J. C. P. 161; L. R. 10 C. P. 159.

**CASH UNDER THE CONTROL OF THE COURT.** — These words, occurring in s. 10, Law of Property Amendment Act, 1860, 23 & 24 V. c. 38, mean cash standing in the name of the Accountant-General in any cause or matter; and therefore include moneys paid into Court under the Lands C. C. Act, 1845, or under the Settled Estates Acts (*Ex p. St. John Baptist College*, 52 L. J. Ch. 268; 22 Ch. D. 93; overruling *Re Boyd*, 42 L. J. Ch. 506; 21 W. R. 667, and *Ex p. Rector of Kirkmeaton*, 51 L. J. Ch. 581; 20 Ch. D. 203; *Vf, Re Brown*, 59 L. J. Ch. 530; 38 W. R. 529; 63 L. T. 131); or money paid into Court under a Private Act and invested in Exchequer Bills (*Jackson v. Tyas*, 52 L. J. Ch. 830). *Vf*, Dan. Ch. Pr. 1514: *Re Wedderburn*, 47 L. J. Ch. 743; 9 Ch. D. 112; *whic* not followed in *Re Ovey*, cited SECURITIES: R. 17, Ord. 22, R. S. C.

**CASH WITH OPTION OF BILL.** — “ ‘Cash less discount at a fixed rate, with option of Bill,’ or *vice versâ*, ‘Bill, with option of Cash less discount’; — in the former case, the seller can sue for the price of goods sold and delivered immediately on the buyer’s refusal to accept at the date fixed. In the latter, the seller cannot sue for the price of the goods sold and delivered until the due date of the bill drawn by him, even although the buyer has refused to accept it; but he may bring a special action against the buyer for non-acceptance of the bill ” (*Benj. 697*, citing *Anderson v. Carlisle Horse Clothing Co*, 21 L. T. 760).

**CASTA.** — *Dum casta* clause; *V. DUM*: USUAL.

**CASTAWAY.** — *Semble*, a Vessel “castaway” is one lost and irrecoverable by ordinary means (*United States v. Johns*, 1 Wash. 372).

*V. DERELICT*: TOTAL LOSS.

**CASTLE.** — “By the name of a *castle* one or more manors may be conveyed: *et è converso*, by the name of a manor, &c, a castle may passe ” (*Co. Litt. 5a*). “A Castle contains land, for in the Castle of Dover, and in some other Castles, there are 4 or 5 acres of land, and land may be parcel of the castle ” (*Hill v. Grange*, *Plowd.* 168). “But by a Castle most commonly is signified no more but the house or building, and the parcel of ground inclosed wherein it doth stand ” (*Touch. 92: Vf, 2 Inst. 31: Mad. Baron. Anglic. 17*). *V. MANORS*.

*Note*: — “No subject can build a Castle or house of strength im-battled ” without license from the Crown (*Co. Litt. 5a*).

**CASTLE-BOTE.** — *V. BOTE*.

**CASUAL.** — Quà 34 & 35 V. c. 108, and by s. 3 thereof, “ ‘Casual *Pauper*,’ means, any destitute WAYFARER or Wanderer, applying for, or

receiving, RELIEF"; and " 'Casual *Ward*,' means, any ward or wards, building, or premises, set apart or provided for the reception and relief of destitute wayfarers and wanderers."

"Casual *Vacancy*" on the Board, as used in the Articles of a Co, "is any vacancy in the office of Directors arising otherwise than by retirement in rotation" (per Fry, J., *Munster v. Cammell Co*, 51 L. J. Ch. 731; 21 Ch. D. 183; 47 L. T. 44; 30 W. R. 812: *Vf*, *Dawson v. African, &c Co*, cited BECOME). Note: — In the marginal note to s. 89, Comp. C. C. Act, 1845, the phrase is "Occasional Vacancies."

#### CASUALTY. — *V. FIRE.*

"Casualties," are payments to be made on certain successions to Realty in Scotland: Stat. Def., 37 & 38 V. c. 94, s. 3.

#### CATALOGUE. — *V. INVENTORY.*

**CATCH.** — It is good evidence that a person has been "catching" fish, s. 11, 41 & 42 V. c. 39, if he is seen fishing and any of that river's fish is found upon him (*Swanwick v. Varney*, 30 W. R. 79; 45 L. T. 716).

#### CATHEDRAL. — "Cathedral"; Stat. Def., 35 & 36 V. c. 35, s. 1.

##### *V. CHAPTER.*

"Cathedral *Corporation*"; Stat. Def., Irish Church Act, 1869, 32 & 33 V. c. 42, s. 72.

Quà the Pluralities Act, 1838, 1 & 2 V. c. 106, "Cathedral *Preferment*," unless it otherwise appears from the context, comprehends "every Deanery, Archdeaconry, Prebend, Canonry, office of Minor Canon, Priest Vicar, or Vicar choral, having any prebend or endowment belonging thereto, or belonging to any body corporate consisting of persons holding any such office; and also every Precentorship, Treasurership, Sub-deanery, Chancellorship of the church, and other Dignity and Office in any Cathedral or Collegiate Church, and every Mastership, Wardenship, and Fellowship in any Collegiate Church" (s. 124): *Va* 32 & 33 V. c. 42, s. 72.

"Cathedral" or "Collegiate" *School*, s. 62, 16 & 17 V. c. 137; *V. Re St. John Street Chapel*, 1893, 2 Ch. 631; 62 L. J. Ch. 932: *Re Stockport Schools*, 1898, 2 Ch. 687; 68 L. J. Ch. 41; 47 W. R. 166.

**CATTLE.** — Bulls, Cows, Oxen, Steers, Bullocks, Heifers, Calves, SHEEP, and Lambs are "Cattle" (*Vh* 14 G. 2, c. 1; 15 G. 2, c. 34). "The Legislature by the last Act says that it was not to be extended to Horses, Pigs, or Goats, although all these are 'Cattle' (*Fletcher v. Sondes*, 3 Bing. 581). Yet Horses are 'Cattle' within the Black Act, 9 G. 1, c. 22 (*R. v. Paty*, 2 Bl. W. 721); and Bulls are not 'Cattle' within 3 G. 4, c. 71 (*Ex p. Hill*, 3 C. & P. 225)." Dwar. 636.

"Cattle," in s. 1, *Dogs Act*, 1865, 28 & 29 V. c. 60, includes horses

(*Wright v. Pearson*, 38 L. J. Q. B. 312; L. R. 4 Q. B. 582; 33 J. P. 534), and, *semble*, pigs (*Child v. Hearn*, L. R. 9 Ex. 176; 43 L. J. Ex. 100). The latter case shows that "Cattle," as used in s. 68, 8 V. c. 20, includes pigs; and so of "Cattle" in the Black Act (*R. v. Chapple*, Russ. & Ry. 77). *Note*. — The liability under the Dogs Act, is none the less because the Cattle or Sheep may be trespassing (*Grange v. Silcock*, 77 L. T. 340; 61 J. P. 709).

Quà *Knackers Act*, 1844, 7 & 8 V. c. 87, "Cattle," includes, "Bull, Ox, Cow, Steer, Heifer, Calf, Ass, Sheep, Lamb, Goat, Pig, or any other DOMESTIC ANIMAL" (s. 10).

Quà *Markets and Fairs Clauses Act*, 1847, 10 & 11 V. c. 14, "Cattle," includes, "Horse, Ass, Mule, Ram, Ewe, Wether, Lamb, Goat, Kid, or Swine" (s. 3).

Quà *Towns Improvement Clauses Act*, 1847, 10 & 11 V. c. 34, "Cattle" includes, "Horses, Asses, Mules, Sheep, Goats, and Swine" (s. 3), — a def adopted for *Town Police Clauses Act*, 1847, 10 & 11 V. c. 89 (V. s. 3).

Quà *Metropolitan Market Act*, 1851, 14 & 15 V. c. 61, "Cattle," includes, "Sheep, Lambs, and Swine" (s. 44), — a def adopted for the *Metrop Mau Acts* (s. 112, 25 & 26 V. c. 102); but quà P. H. (London) Act, 1891, the def is "Sheep, Goats, and Swine" (s. 141).

Quà P. H. (Scotland) Act, 1897, " 'Cattle,' means, Bulls, Cows, Oxen, Heifers, and Calves, and includes Sheep, Goats, and Swine" (s. 3).

Quà *Diseases of Animals Act*, 1894, 57 & 58 V. c. 57, " 'Cattle,' means, Bulls, Cows, Oxen, Heifers, and Calves" (s. 59): 17 29 & 30 V. c. 2, s. 3; 32 & 33 V. c. 70, s. 6; 41 & 42 V. c. 74, s. 5; 55 & 56 V. c. 47, s. 3.

Other Stat. Def., 50 & 51 V. c. 27, s. 3; 56 & 57 V. c. 56, s. 8. — *Scot.* 13 & 14 V. c. 33, s. 2; 25 & 26 V. c. 101, s. 3; 55 & 56 V. c. 55, s. 4. — *Ir.* 17 & 18 V. c. 103, s. 1; 33 & 34 V. c. 36, s. 11.

V. KNACKER: SLAUGHTERER.

**CATTLE DEALER.** — V. CATTLE SALESMAN.

**CATTLE GATE.** — " 'Cattlegate,' also called 'Beastgate.' — Sometimes the soil is vested in the owners as tenants in common in fee; *R. v. Whitley*, 1 T. R. 137: *Va, Mellington v. Goodtitle*, And. 106, and on app. nom. *Bennington v. Goodtitle*, 2 Stra. 1084; a dictum in *Barnes v. Peterson*, 2 Stra. 1063: *R. v. Watson*, 5 East, 480; where the beasts were turned out by such burgesses as chose to do so, according to a stint by a leet jury. Sometimes it is a mere right of pasture, the soil remaining in the lord of the manor; *Lonsdale v. Rigg*, 11 Ex. 654; 1 H. & N. 923; 25 L. J. Ex. 73; 26 Ib. 196: V. Wms., on Rights of Common, 81 *et seq*: Hall, on Profits à Prendre, 23 *et seq*" (Elph. 565).

**CATTLE INSURANCE SOCIETY.** — V. FRIENDLY SOCIETY.

**CATTLE PLAGUE.**—Quà the Acts relating to Diseases of Animals, "Cattle Plague," means the Rinderpest (29 & 30 V. c. 2, s. 3; 32 & 33 V. c. 70, s. 6).

**CATTLE SALESMAN.**—A Farmer accustomed, for profit, to buy and sell more sheep than necessary to stock his farm, was held a "Cattle or Sheep Salesman" within the late Bankry definition of "Trader" (*Ex p. Newall*, 3 Deacon, 333). So, in a Bankry Petition a Farmer was held to be sufficiently described as a "Cattle Dealer" (*Ex p. Kirkwood*, *Re Mason*, 11 Ch. D. 724; 27 W. R. 806; 40 L. T. 566).

**CATTLE SHED.**—"Cattle Sheds," "Cowhouses," and "Byres"; Stat. Def., 29 & 30 V. c. 17, s. 2.

**CAUSA CAUSANS.**—Is the "real effective cause of damage" (per Esher, M. R., *Pandorf v. Hamilton*, 55 L. J. Q. B. 548). *Vh. Singleton v. Williamson*, 31 L. J. Ex. 139. **V. To CAUSE: CAUSED BY.**

*V. Causa causans* contrasted with a *causa sine qua non* by Lindley, L. J., *Cullerne v. London & Suburban By Soey*, 59 L. J. Q. B. 525; 25 Q. B. D. 485; 39 W. R. 88; 63 L. T. 511.

**CAUSE.**—"Cause," "is not a technical word signifying one kind or another, it is *causa jurisdictionis*, any suit, action, matter, or other similar proceeding competently brought before, and litigated in, a Court" (per Selborne, C., *Re Green*, 51 L. J. Q. B. 41; nom. *Green v. Penzance*, 6 App. Ca. 657); so, of the phrase "Ordinary Civil Cause," s. 10, 31 & 32 V. c. 71 (*The Tynwald*, cited ACTION).

For the purposes of the Jud. Acts, "Cause," includes "any Action, SUIT, or other Original Proceeding between a plaintiff and defendant and any Criminal proceeding by the Crown" (s. 100, Jud. Act, 1873; s. 3, Jud. Act (Ir), 1877).

Other Stat. Def.—24 & 25 V. c. 10, s. 2; 26 & 27 V. c. 24, s. 2.—*Ir.* 30 & 31 V. c. 114, s. 2.—*Scot.* 19 & 20 V. c. 56, s. 47; 38 & 39 V. c. 62, s. 2.

**V. ACTION: Cp. DECREE.**

A *Rule Nisi* against a Police Magistrate to hear an application for a Summons, is "a Cause or Matter *for Trial or Hearing*" within Sch 52. Order as to Supreme Court Fees. 1884, and therefore the fee of £2 is payable on entering it at the Crown Office (*Ex p. Hasker*, 54 L. J. M. C. 94; 14 Q. B. D. 82); but an Appeal from Chambers is not such a Cause or Matter (*Ex p. Dudley*, 33 W. R. 751).

"Cause or Matter," R. 1, Ord. 31, R. S. C.; *V. Ann. Pr.*—R. 15, Ord. 31, *V. Re Fenner and Lord*, 1897, 1 Q. B. 667; 66 L. J. Q. B. 498; 76 L. T. 376; 45 W. R. 486:—R. 1-4, Ord. 39, *V. Mathews v. Ovey*, 53 L. J. Q. B. 439; 13 Q. B. D. 403; 50 L. T. 776; *Mason v. Wirral*, 4 Q. B. D. 459.

"Cause or Matter relating to Real Estate," R. 1, Ord. 51, R. S. C.; *V. Staines v. Staines*, 30 S. J. 502; W. N. (86) 113: *IF MATTER*.

A REFERENCE by Consent Order, not only of the subject-matter of an action but also, of "all Matters in DIFFERENCE," is not a reference of a "Cause or Matter," within s. 14 or s. 15, Arb Act, 1889 (*Darlington Wagon Co v. Harding*, cited EQUIVALENT).

The "Cause" that under s. 83 (4), Bankry Act, 1869, had to be "shown" for the Removal of a Trustee, need not necessarily have amounted to dishonesty; unfitness, in the opinion of the Court, sufficed (*Ex p. Newitt*, 54 L. J. Q. B. 245; 14 Q. B. D. 177; 1 Times Rep. 98); but sexual immorality is not "DUE CAUSE" within s. 93, Comp Act, 1862 (*Re Urmston Grange S. S. Co*, 17 Times Rep. 553).

"Any Cause whatever"; *V. ANY: ALTERATION*.

"Just Cause"; *V. JUST*.

"Lawfull Cawse" to reject from the Communion, 1 Edw. 6, c. 1, s. 8; *V. Jenkins v. Cook*, 45 L. J. P. C. 1; 1 P. D. 80.

"Cause," "REASONABLE CAUSE," and "REASONABLE EXCUSE," for Matrimonial Desertion, all mean the same thing (per Barnes, J., *Oldroyd v. Oldroyd*, 65 L. J. P. D. & A. 115; referring to *Yeatman v. Yeatman*, and adopted in *Synge v. Synge*, both cited DESERTION).

*V. REASONABLE AND PROBABLE CAUSE: SUFFICIENT CAUSE*.

The "Reasonable or Sufficient Cause," s. 1, 27 & 28 V. c. 55, for requiring a Street Musician to move on, must be stated to him (*Shields v. Howard*, 1897, 1 Q. B. 84; 66 L. J. Q. B. 105; 45 W. R. 138; 60 J. P. 727).

"Reasonable Cause" is synonymous with "Just Cause" (per Hatherley, C., *Osgood v. Nelson*, L. R. 5 H. L. 649; 41 L. J. Q. B. 337).

"For the *Same Cause*," s. 45, 24 & 25 V. c. 100; "The word 'Cause' may undoubtedly mean 'Act,' but it is ambiguous, and it may also, and perhaps with greater propriety, be held to mean 'Cause for the Accusation'" (per Byles, J., *R. v. Morris*, 36 L. J. M. C. 84; L. R. 1 C. C. R. 90): and, in accordance with that view, it was there held that a previous summary conviction for an Assault under s. 42, was not for the "Same Cause" as a subsequent indictment for Manslaughter arising from the same assault. So, such a conviction would be no answer to a charge of Rape (per Hawkins, J., *R. v. Miles*, 59 L. J. M. C. 56; 24 Q. B. D. 423); but it would be an answer to a charge of Unlawfully and Maliciously Wounding or Inflicting Grievous Bodily Harm (*S. C.*). An action for damages for an assault is for the "Same Cause," — *i.e.* Same Offence, — as a previous conviction for the same assault (*Masper v. Brown*, 45 L. J. C. P. 203; 1 C. P. D. 97; *Holden v. King*, 46 L. J. Ex. 75).

Notice of Action, "and of the Cause thereof.": *V. NOTICE*.

*V. CAUSE OF ACTION: CRIMINAL CAUSE: GOOD CAUSE: LAWFUL CAUSE: SHOW CAUSE.*



**To CAUSE.** — “To Cause” a thing to be done is, it is submitted, the same thing as to be its CAUSA CAUSANS.

“Suppose the case of a keeper of ready-furnished lodgings let to a lodger: the keeper of the house has servants whose duty it is to attend upon the lodger; the lodger gives a dinner party; the dinner is cooked by the cook of the lodging-house keeper, his servants attend at the dinner; plates and the necessary furniture of the table are provided; — but no one could say that the lodging-house keeper either gave the dinner, or ‘caused’ it to be given” (per Blackburn, J., *Lyon v. Knowles*, 32 L. J. Q. B. 74).

“Cause” a Wife “to leave and live separately”; *V. NEGLECT.*

*V. INFLECT: CAUSED BY: CAUSE OR PROCURE.* (*Cp. COUNSEL OR PROCURE.*)

To cause Sewage Matter to fall or flow into a Stream; *V. FALL.*

A mere Shareholder does not “cause” any of the acts or omissions of the Co or its Agents (*Macnee v. Persian Investment Corp.*, cited FOREIGN LOTTERY).

“Cause to be imported”; *V. IMPORTER.*

**CAUSE AND EFFECT.** — *V. EFFECT.*

**CAUSE AND MATTER.** — Stating in an Appeal Notice its “Cause and Matter.” 49 G. 3, c. 68, s. 5; *V. R. v. Oxfordshire Jus.*, 1 B. & C. 279. *Vf CAUSE.*

**CAUSE AND PROCURE.** — *V. CAUSE OR PROCURE.*

**CAUSE OF ACTION.** — A “Cause of ACTION” is the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment (per Esher, M. R., *Reul v. Brown*, 58 L. J. Q. B. 120; 22 Q. B. D. 128).

Therefore, as used in s. 60 of the Act establishing the modern County Courts (9 & 10 V. c. 95) and as used in subsequent Co. Co. Acts, this phrase, according to its natural construction, meant, and means the WHOLE cause of action; *e.g.* the order or other contract for, as well as the delivery of, the goods, in a claim for goods sold and delivered; or the doing of the work, in a claim for work done; or the doing the wrong, in an action of tort (*Boothwick v. Walton*, 24 L. J. C. P. 83; 15 C. B. 501; 24 L. T. O. S. 271; *Aris v. Orchard*, 30 L. J. Ex. 21; 6 H. & N. 160; *Neucombe v. De Roos*, 29 L. J. Q. B. 4; 2 E. & E. 273). *Va. Hernaman v. Smith*, 24 L. J. Ex. 175; 10 Ex. 659: (quâ Bill of Exchange) *Wilde v. Sheridan*, 16 Jur. 426: (quâ Contract with Carrier) *Barnes v. Marshall*, 21 L. J. Q. B. 388.

In an action by Exors or Admors, Probate or Letters of Administration is an essential part of the “Cause of Action” (*Fuller v. Mockay*, 22

L. J. Q. B. 415; 2 E. & B. 573). *Vf*, *Cary v. Stephenson* and cognate cases inf.

A plt must not "DIVIDE any Cause of Action for the purpose of bringing two or more actions" in a Co. Co. (s. 81, Co. Co. Act, 1888); that means, Cause of ONE Action; and whilst it applies to separate items of a continuous and entire demand, *e.g.* an ordinary bill of a tradesman (*Grimbly v. Ackroyd*, 17 L. J. Ex. 157; 1 Ex. 479), yet it does not apply to distinctly separate claims although of a kind which might be sued for in one action, *e.g.* a claim for (1) Goods and (2) Money lent (*Brunskill v. Powell*, 19 L. J. Ex. 362; 1 L. M. & P. 550; *Kimpton v. Willey*, 9 C. B. 719), or (1) Rent and (2) Double Value for holding over (*Wickham v. Leë*, 18 L. J. Q. B. 21; 12 Q. B. 521; *Neale v. Ellis*, 12 L. J. Q. B. 329; 1 Dowl. & L. 163). So, of damages to (1) Goods and (2) the Person, though occasioned by the same occurrence (*Brunsdon v. Humphrey*, inf). *Note*. Suing for part only of a Cause of Action (if unobjected to) does not bar the recovery of its residue (*Vines v. Arnold*, 19 L. J. C. P. 98; 8 C. B. 632; *Adkin v. Friend*, 38 L. T. 393; *Jones v. Jones*, 22 W. R. 577).

*Vf*, Ann. Co. Co. Pr. Part 2, ch. 3, s. 4.

Therefore "PART" of a Cause of Action, s. 74, Co. Co. Act, 1888, means any one of those material things that go to make up the Cause of Action.

So, "Cause of Action" in Mayor's Court Procedure Act, 1857, 20 & 21 V. c. clvii., means the whole Cause of Action (*Cooke v. Gill*, L. R. 8 C. P. 107; *Gold v. Turner*, 10 Ib. 149). And when the plaintiff is an assignee from the original creditor, the Assignment to him is part of his Cause of Action; therefore, where a debt was entirely contracted outside the City of London, but an assignment of it to the plaintiff had been made in the City, it was held that Part of the Cause of Action arose in the City, and that (under s. 12) the Mayor's Court had jurisdiction (*Read v. Brown*, sup). It seems a little difficult to reconcile that decision with a previous decision under the same section, where it was held that the whole Cause of Action on a written agreement under the Statute of Frauds arises as soon as the defendant has signed it (*Alderton v. Archer*, 54 L. J. Q. B. 12; 14 Q. B. D. 1). *Vf*, *Cowan v. O'Connor*, 57 L. J. Q. B. 401; 20 Q. B. D. 640; 58 L. T. 857; 36 W. R. 895; *R. v. Ld. Mayor*, 61 L. J. Q. B. 329.

So, of "Cause of Action," s. 7, Salford Hundred Court of Record Act, 1868 (*Payne v. Hogg*, 1900, 2 Q. B. 43; 69 L. J. Q. B. 579; 82 L. T. 584; 48 W. R. 417).

But "Cause of Action" differs materially from "ACTION"; the "Cause" of an Action is that which forms or relates to its basis, as distinct from matter of procedure prior to Action being brought, — *e.g.* a Solr cannot sue his client for his Bill of Costs until one month after its delivery (s. 37, Solrs Act, 1843), but the "Cause" of such an action is

the work done; therefore, the Limitation Act, 1623, s. 3, runs from the date of the conclusion of the work, and not from the expiration of a month after the delivery of the Bill (*Coburn v. Colledge*, 1897, 1 Q. B. 702; 66 L. J. Q. B. 462; 76 L. T. 608; 45 W. R. 488). But it requires some thinking entirely to reconcile that ruling with the ruling stated in the next par.

“Cause of Action,” s. 3, Limitation Act, 1623 (and, *semble*, s. 3, Civil Procedure Act, 1833), “means the time at which the debt or money might have been recovered by action” (per Lindley, L. J., *Reeves v. Butcher*, 1891, 2 Q. B. 509; 60 L. J. Q. B. 619; 65 L. T. 329; 39 W. R. 626; following *Hemp v. Garland*, 12 L. J. Q. B. 134; 4 Q. B. 519); therefore, the statute begins to run from the *first* time (where there are more times than one) at which the action might have been brought. Thus where a deft, in an action for Conversion, has committed two acts each of which would sustain the action, the first, and not the second, act must be regarded (*Wilkinson v. Verity*, 40 L. J. C. P. 141; L. R. 6 C. P. 206). But where goods or deeds are wrongfully abstracted and get into innocent hands, the action against the latter does not accrue until there has been a Conversion by him. — *i.e.* a demand on and refusal by him (*Spackman v. Foster*, 52 L. J. Q. B. 418; 11 Q. B. D. 99; *Miller v. Dell*, 1891, 1 Q. B. 468; 60 L. J. Q. B. 404; 63 L. T. 693).  
*Vf* TROVER.

And so, the “Cause of Action” for an Arbitrary Fine on a Copyhold Admittance is complete on the Admittance; not when the Fine is assessed (*Monckton v. Payne*, 1899, 2 Q. B. 603; 68 L. J. Q. B. 951; 81 L. T. 204; 48 W. R. 44).

The Cause of Action under the Directors Liability Act, 1890, arises when the plt’s shares are subscribed for (*Thomson v. Clunmorris*, cited PENALTY).

A “Cause of Action” does not arise out of a TORT causing damage, or out of a tort not actionable without special damage, until damage done; and accordingly, the Limitation Act, 1623, does not begin to run for such a tort until damage happens; and each recurrence of a distinctly new damage (as distinguished from a development of an old one, *Fetter v. Beal*, 1 Raym. Ld. 339; 1 Salk. 11; *Va*, *Clarke v. Yorke*, 52 L. J. Ch. 32), gives rise to a fresh cause of action (*Bonomi v. Backhouse*, 28 L. J. Q. B. 378; 34 *Ib.* 181; E. B. & E. 622; 9 H. L. Ca. 503; 9 W. R. 769; *Whitehouse v. Fellowes*, 30 L. J. C. P. 305; 10 C. B. N. S. 765; 9 W. R. 556; *Darley Main Colly Co v. Mitchell*, 53 L. J. Q. B. 471; 55 *Ib.* 529; 14 Q. B. D. 125; 11 App. Ca. 127; 32 W. R. 947; from *while* it would seem that *Nicklin v. Williams*, 10 Ex. 227, is now of but little authority, whilst *Lamb v. Walker*, 47 L. J. Q. B. 451; 3 Q. B. D. 389, is over-ruled. *Va* Add. T. 39, 80); yet it is the actual doer of the damage-causing Tort who is liable, — *e.g.* for a Subsidence caused by working a Mine, the action is against him who did that working, and

not against the innocent succeeding owner of the property (*Greenwell v. Low Beechburn Co*, 1897, 2 Q. B. 165; 66 L. J. Q. B. 643; *Hall v. Norfolk*, 1900, 2 Ch. 493; 69 L. J. Ch. 571; 82 L. T. 836; 48 W. R. 565).

*Cp. Markey v. Tolworth*, cited CONTINUANCE.

Where the owner of a vehicle was himself injured in a Collision, he was held not estopped from bringing an action for his Personal Injuries, by reason of having recovered judgment from the same defendant for the damage the collision had caused to the Vehicle (the personal injuries were unknown at the time action was brought for the damage to the vehicle); for each class of injuries and damage, in such a case, forms, with its common cause, a "Cause of Action" (*Brunsdon v. Humphrey*, 53 L. J. Q. B. 476; 14 Q. B. D. 141; 51 L. T. 529; 32 W. R. 944).

So, following and explaining the *Darley Main Case*, there is no "accruing" of a Cause of Action, within s. 264, P. H. Act, 1875, until damage happens (*Crumbie v. Wallsend*, 1891, 1 Q. B. 503; 60 L. J. Q. B. 392). *V. ACCRUE.*

*Seemle*, to complete a Cause of Action a person capable of suing on it must be in existence; and if such cause is inchoate at the death of the person entitled to the action but becomes consummate after such death, then the Cause of Action is complete only when a Legal Representative of such person is constituted, *e.g.* the time under the Limitation Act, on a Bill of Exchange current at the death of the payee, does not begin to run until Probate of his Will or Letters of Admon be granted (*Cary v. Stephenson*, 2 Salk. 421; *Murray v. East India Co*, 5 B. & Ald. 214; *Perry v. Jenkins*, 1 My. & C. 118; *Pratt v. Swaine*, 8 B. & C. 285; 2 M. & R. 350; *Fuller v. Mackay*, sup: per Hatherley, C., *Burdick v. Garrick*, 5 Ch. 241; 39 L. J. Ch. 372). But, observe, that by s. 6, 3 & 4 W. 4, c. 27. time runs against an *Admor* from the death of the deceased person for the purposes of that Act, and as regards the chattels he is appointed to administer.

The power of issuing a writ for Service out of the Jurisdiction when the "Cause of Action" arose within the Jurisdiction (s. 18, Com. L. Pro. Act, 1852), has been superseded by R. 1 (e), Ord. 11, R. 4, Ord. 2, R. S. C.; but it may be useful, as a matter of construction, to observe that after a singular conflict of decision between the old Common Law Courts, the rule laid down by the C. P. in *Jackson v. Spittle* (39 L. J. C. P. 321; L. R. 5 C. P. 542; 18 W. R. 1162) was ultimately adopted, — viz. that "Cause of Action," in the section, did *not* mean the *whole* cause of action but meant, "the act on the part of the deft which gave the plt his cause of complaint" (*Vaughan v. Weldon*, 44 L. J. C. P. 64; L. R. 10 C. P. 47), or, in other words, the act or omission constituting the violation of duty complained of (per Fitzgerald, J., *Macken v. Ellis*, Ir. Rep. 8 C. L. 151).

CAUSE OF APPEAL. — *V.* DECISION.

CAUSE OF COMPLAINT. — *V. R. v. Lancashire*, 8 B. & C. 593; *R. v. Devon*, 1 M. & S. 411; *R. v. Salop*, 2 B. & Ad. 149.

CAUSE OR MATTER. — *V.* CAUSE: CAUSE AND MATTER: MATTER.

CAUSE OR PERMIT. — A proprietor of a music-hall who engages a singer, but does not control what songs are to be sung, nevertheless “causes or permits” the singing of what songs are sung, within s. 20. Copyright Act, 1842 (*Monaghan v. Taylor*, 2 Times Rep. 685; *Va. Marsh v. Conquest*, 17 C. B. N. S. 418; 33 L. J. C. P. 319). *V.* PERMIT.

“Causes to fall or flow, or knowingly permits to fall or flow or to be carried, into any Stream,” sewage matter, s. 3, Rivers Pollution Prevention Act, 1876, 39 & 40 V. c. 75; *V. West Riding v. Holmfirth*, 1891, 2 Q. B. 842; 63 L. J. Q. B. 485; 71 L. T. 217. *Cp.* WILFULLY SUFFER.

CAUSE OR PROCURE. — The words in a covenant “do and execute, or cause or procure to be done or executed,” all such acts as may be necessary for vesting property in trustees, “only mean that the covenantor would procure persons who were bound to obey his orders. — e.g. trustees, — to do such acts as were necessary” (per Kay, J., *Re De Ros*, 55 L. J. Ch. 75; 31 Ch. D. 81; 53 L. T. 524; 34 W. R. 36).

You “cause or procure” a legal consequence, e.g. an Adjudication in bankruptcy, if that consequence follows from your putting the law in motion, even though, on the evidence produced, the consequence could not have been supported (*Farley v. Danks*, 4 E. & B. 493; 24 L. J. Q. B. 244).

*V.* COUNSEL OR PROCURE: PROCURE.

CAUSE OR SUFFER. — *V.* SUFFER

CAUSE SHEWN. — *V.* CAUSE.

CAUSE TO BE APPLIED. — s. 7, 5 & 6 V. c. 100; *V. Mallet v. Howitt*, W. N. (79) 107.

CAUSE TO BE IMPORTED. — *V.* IMPORTER.

CAUSE TO BE TAKEN. — A person who supplies a woman with a drug, which is taken and intended to be taken by her in the absence of the person supplying it, “causes it to be taken” within s. 6, 1 V. c. 85, repld s. 58, 24 & 25 V. c. 100 (*R. v. Wilson*, 26 L. J. M. C. 18; *Dears. & B.* 127; followed in *R. v. Farrow*, *Dears. & B.* 164).

*V.* ADMINISTER.

**CAUSED BY.** — *In jure non remota causa sed proxima spectatur.* This maxim is paraphrased by Lord Bacon thus, — “It were infinite for the law to judge the causes of causes, and their impulsions one of another: therefore it contenteth itself with the *immediate* cause, and judgeth of acts by that; without looking to any further degree” (Bac. Max. reg. 1: *Vf* Broom’s Maxims). Accordingly, a Policy against ACCIDENT other than those “*Caused by or Arising from* natural disease or weakness, or exhaustion consequent upon disease,” will cover death by drowning, though the insured’s fall into the water was the consequence of an epileptic fit; for the cause of death was drowning, — the fit was at most merely a *causa sine quâ non* (*Wiuspear v. Accident Insree*, 50 L. J. Q. B. 292; 6 Q. B. D. 42; followed in *Lawrence v. Accident Insree*, 50 L. J. Q. B. 522; 7 Q. B. D. 216, in *whc* the words of exception were “Death arising from FITS, or any disease”). So, in a case on a similar Policy, Huddleston, B., said, “‘Caused by Accident,’ — that is to say, immediately caused by accident” (*Re Isitt & Railway Passengers’ Assree*, 58 L. J. Q. B. 195; 22 Q. B. D. 504). So, quâ a Marine Policy, an injury to a Ship causes her loss if, before that injury can be repaired, she is lost by reason of the existence of that injury (*Reischer v. Borwick*, 1894, 2 Q. B. 548; 63 L. J. Q. B. 753; 71 L. T. 238).

So, of the words, “Occasioned by,” or, “in Consequence of” (*Walker v. London & Provincial Insree*, 22 L. R. Ir. 572), or damage “Received in,” *e.g.* a Collision (*Reischer v. Borwick*, sup).

A killing or bodily injury “in Consequence of” want of fence to Machinery, s. 82, Factory and Workshop Act, 1878, is none the less such a Consequence because, in great measure, brought about by the negligence of the injured person (*Blenkinsop v. Ogden*, 1898, 1 Q. B. 783; 67 L. J. Q. B. 537; 78 L. T. 554; 46 W. R. 542).

Commission to be paid to A. if sale effected “in Consequence of Mention or Publication” by him; *V. Bayley v. Chudwick*, 39 L. T. 429.

**V. TO CAUSE: CAUSA CAUSANS: CAUSING: DONE BY: OCCASIONED: ARISING. C<sub>D</sub>. EFFECT.**

**CAUSEWAY.** — “Causeway” seems synonymous with FOOTPATH (*V. CALCEY*); but in s. 24, Highway Act, 1835, provision is made for “Horse Causeways and Foot Causeways.” That section only applies to such Causeways as are by the *side* of Carriage Ways, and imposes no duty on the Surveyor to fortify the mouth or entrance of a Causeway from violence by carts or carriages (*Ellis v. Woodbridge*, 29 L. J. M. C. 183). Probably, it will be correct to say that a Causeway is a Sideway, counting the same as a Footpath, except when expressed to be a Horse causeway.

“Causeway-mail”; Stat. Def., Roads and Bridges (Scot) Act. 1878, 41 & 42 V. c. 51, s. 3.

**CAUSING.** — A Railway Company carrying animals on their road to a place within a district prohibited under the Contagious Diseases (Animals) Act, 1878, with knowledge of their destination, are guilty of "causing the Movement" of the animals, although they do not carry the animals further than a point outside the district, and do no act within it (*Mid. Ry v. Freeman*, 53 L. J. M. C. 79; 12 Q. B. D. 629).

V. CAUSED BY.

**CAUTION.** — Where a testator directed his trustees to use "great caution" in realizing his estate, it was held that the tenant for life was entitled to the income until conversion (*Scholefield v. Redfern*, 2 Dr. & Sm. 173; *Va, Mackie v. Mackie*, 5 Hare, 70). But where the direction was "to sail my ships for the benefit of the estate until they can be satisfactorily sold," the tenant for life was only entitled to 4 per cent on the estimated value of the ships at the testator's death, the rest of their profits being carried to residue (*Brown v. Gellatly*, 2 Ch. 751).

V. RECOGNIZANCE.

**CAUTIONARY OBLIGATION.** — V. ss. 6, 7, Mercantile Law Amendment Act (Scot), 1856, 19 & 20 V. c. 60, on *whv Wallace v. Gibson*, 1895, A. C. 354.

**CEASE.** — "To 'cease,' does not, necessarily, import an act of free will. The East India Co has 'ceased' to employ a military force because it has no longer any necessity for its employment" (per Ld Chelmsford, *Walsh v. Secretary for India*, 10 H. L. Ca. 396; 32 L. J. Ch. 598).

"Ceased" is a strictly proper word to apply to the case where the *entire thing* has "ceased to be" — *e.g.* as used in the phrase "any road which has . . . ceased to be a Turnpike Road" in s. 13. 41 & 42 V. c. 77 (*Lancashire Jus. v. Rochdale*, 53 L. J. M. C. 5; 8 App. Ca. 494 — and esp'y jdgmt of Ld Bramwell. *Vf, West Riding Jus. v. The Queen*, 53 L. J. M. C. 41; 8 App. Ca. 781; *Newton-in-Makerfield v. Lancashire Jus.*, 54 L. J. M. C. 1; 13 Q. B. D. 623; *Derby Co. Co. v. Matlock*, 1896, A. C. 315; 65 L. J. Q. B. 419; 74 L. T. 595; 60 J. P. 676). V. MAIN ROAD.

"Cease, determine, and be void to all intents and purposes": V. VOID.

Forfeiture if Income "cease to be payable" to donee; V. *Re Brewer*, cited WOULD.

A donee ceases "to CARRY ON" a Business, quâ a gift over, if he converts the business into a Co, even though he be its Managing Director and practically own all its shares (*Re Sax* 68 L. T. 849; 62 L. J. Ch. 688; 41 W. R. 584).

"Cease to carry on the business of a BANKER," s. 12, Bank Charter Act, 1844, 7 & 8 V. c. 32; V. *A-G. v. Birkbeck*, 53 L. J. Q. B. 378; 12 Q. B. D. 605; 32 W. R. 905; 51 L. T. 199; *Pruscott v. Bank of Eng-*

*land*, 1894, 1 Q. B. 351; 63 L. J. Q. B. 332; 70 L. T. 7: *Capital & Counties Bank v. Same*, 61 L. T. 516.

Where a Co's Articles provide that a Director shall be disqualified if he "cease to HOLD" a stated number of Shares, that "contemplates the case of a Qualification once possessed and subsequently lost; but not the case of qualification never possessed" (per Cozens-Hardy, J., *Salton v. New Beeston Co*, 1899, 1 Ch. 775; 68 L. J. Ch. 370; 80 L. T. 521; 47 W. R. 462); "if a Director is named in the Articles and never had a qualification, he cannot be said to 'cease' to hold it" (per Selborne, C., *Forbes' Case*, 8 Ch. 775).

"Cease to INHABIT," in a CONDITION; *V. Doe d. Shaw v. Steward*, 3 L. J. K. B. 141; 1 A. & E. 300; 3 N. & M. 372.

Quà a Poor Law Settlement, s. 68, 4 & 5 W. 4, c. 76, a person "ceased to inhabit" when his inhabitancy was at an end, whether that was by his own voluntary act or not (*R. v. Whissendine*, 11 L. J. M. C. 42; 2 Q. B. 450).

"Charterer's LIABILITY TO CEASE"; — The Cesser Clause in a Charter-Party (if not absolute) is to be construed so as to avoid leaving the Shipowner without remedy for a breach of the Charter (*Clink v. Radford*, 1891, 1 Q. B. 625; 60 L. J. Q. B. 388; 64 L. T. 491; 39 W. R. 355; *Hansen v. Harrold*, 1894, 1 Q. B. 612; 63 L. J. Q. B. 744; 70 L. T. 475; *Dunlop v. Balfour*, cited DEMURRAGE). As to the construction of the Clause, generally, *V. Carver*, s. 645 *et seq*: *Abbott*, 226 *et seq*.

A Mtgor "ceases to OCCUPY," s. 16, Poor Rate Assessment and Collection Act, 1869, when a Receiver appointed by the Mtgee enters, even though the appointment be under s. 24, Conv. & L. P. Act, 1881, and though the mtge provides that the Receiver shall be deemed the Agent of the Mtgor for all purposes (*Richards v. Kidderminster*, 1896, 2 Ch. 212; 65 L. J. Ch. 502; 74 L. T. 483). But a Co in Liquidation does not so "cease to occupy" on the appointment of a Receiver and Manager by an Order which does not direct the Co to give up possession; and on non-payment of the rates made on the Co, the Co will be the "Offender" (s. 4, 43 Eliz. c. 2), whose goods may be distrained notwithstanding that there may be an equitable charge on them in favour of Debentures (*Re Marriage & Co*, 1896, 2 Ch. 663; 65 L. J. Ch. 839; 75 L. T. 169; 45 W. R. 42). *Cp.* NEW OCCUPIER.

Putative father "ceased to RESIDE in England within the 12 months next after the birth," s. 3, 35 & 36 V. c. 65; *V. R. v. Evans*, 1896, 1 Q. B. 228; 65 L. J. M. C. 29; 44 W. R. 271; 60 J. P. 39.

*V.* DETERMINE.

**CELEBRATE.** — *V. Cope v. Barber*, cited DIVINE SERVICE.

**CELL: CELLA.** — "A monastery appertaining to a larger; Spelm." (Elph. 565).



“Cell Accommodation for a Prisoner”; Stat. Def., 40 & 41 V. c. 21, s. 57. — *Scot.* 40 & 41 V. c. 53, s. 70.

**CELLAR.** — “Cellar,” s. 102, Metrop Man. Act, 1855, means, an underground structure complete in itself, arched over with a roof independently of the pavement; a foot-pavement which also forms the roof of such a structure is not within the enactment (*Hamilton v. St. George, Hanover Sq.*, L. R. 9 Q. B. 42; 43 L. J. M. C. 41; 22 W. R. 86; 29 L. T. 428).

**CEMETERY.** — “‘Cemetery,’ both in its original meaning and as commonly used, is quite sufficient to comprehend all Christian BURIAL grounds” (per Campbell, C. J., *R. v. Manchester*, 5 E. & B. 707).

Stat. Def. — Cemeteries Clauses Act, 1847, 10 & 11 V. c. 65, s. 3.

**CENSURE.** — *V. ECCLESIASTICAL CENSURE.*

**CENTRAL AUTHORITY.** — The “Central Authority” quâ 44 & 45 V. c. 37, is, in England, the Loc Gov Bd; in Ireland, the Loc Gov Bd for Ir.; in Scotland, the Secretary for Scotland (s. 29); — quâ 53 & 54 V. c. 60, it is, in England, the Loc Gov Bd; in Ireland, the Lord Lieutenant; in Scotland, the Secretary for Scotland (s. 6).

**CENTRAL CRIMINAL COURT.** — Established and the “Central Criminal Court District” delimited by Central Criminal Court Act, 1834, 4 & 5 W. 4, c. 36: *Uf.* 39 & 40 V. c. 57, s. 6; 44 & 45 V. c. 64, s. 3.

**CENTRE.** — “Centre of the Roadway”; Stat. Def., Metrop Man. Act, 1878, s. 4; London Bg Act, 1894, s. 5 (4).

**CEREMONIES.** — *V. ORNAMENT: RITE.*

**CERTAIN.** — “*Preston v. Butcher* (1 Starkie, 3) shows that ‘certain’ means ‘DEFINITE’” (per Jervis, C. J., *Harris v. Phillips*, 20 L. J. C. P. 121).

“Definite and Certain Principal Sum.” “Definite and Certain Amount of Stock”; *V. SETTLEMENT.*

*V. CERTAIN RENT: CERTAIN TIME: SUM CERTAIN: YEAR CERTAIN: TWELVE-MONTH.*

**CERTAIN RENT.** — “‘*Certaine rent.*’ A tenant holdeth of his lord *certaine* lands in socage, to pay yearely a paire of gilt spurs or five shillings in money at the feast of *Easter*. In this case the rent is *uncertaine*, and the tenant may pay which of them he will at the said feast” (Co. Litt. 90 b).

A Rent, the amount of which may fluctuate according to the happening of certain events, is not “uncertain,” but is distrainable as RENT.

even in case of bankruptcy (*Ex p. Voisey. Re Knight*, 21 Ch. D. 442; 52 L. J. Ch. 121).

**CERTAIN SUM.** — *V.* CERTAIN: DEFINITE: SUM CERTAIN.

**CERTAIN TIME.** — The "Certain Time" from which interest on a SUM CERTAIN may (without DEMAND) be given under s. 28, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42, must be fixed by, or definitely ascertainable from, the written instrument itself, — without reference to any future contingent event the time of which the instrument does not fix (*Juggomohun Ghose v. Manickchund*, 7 Moore, Ind. App. 263; *Merchant Shipping Co v. Armitage*, L. R. 9 Q. B. 99; 43 L. J. Q. B. 24; 22 W. R. 11; *Harper v. Williams*, 4 Q. B. 219; 12 L. J. Q. B. 227; *L. C. & D. Ry v. S. E. Ry*, 1893, A. C. 429; 63 L. J. Ch. 93; 69 L. T. 637; 58 J. P. 36; in *whole* Lindley, L. J., — 1892, 1 Ch. 141, 142; 61 L. J. Ch. 300, — said that *Duncombe v. Brighton Club Co*, 44 L. J. Q. B. 216; L. R. 10 Q. B. 371, was incorrectly decided: *Seth* jdgmts in H. L., sup). A sum payable within a definite time after a person's death, is payable at a "Certain Time," because death is not a contingency but a certainty (*Re Horner*, 65 L. J. Ch. 694; 44 W. R. 556; *Knapp v. Burnaby*, 9 W. R. 765).

A Petitioning Cr's Debt in bankry, "is a liquidated sum payable either Immediately, or at some Certain Future Time," s. 6 (1 b), Bankry Act, 1883; *Vth, Re Barr*, 1896, 1 Q. B. 616; 65 L. J. Q. B. 504; 74 L. T. 555; 44 W. R. 586.

*Vf, Mackintosh v. G. W. Ry*, 4 Giff. 698: *Re Blackburn Bg Socy*, 30 S. J. 254: INSTRUMENT.

**CERTAINTY.** — "Certainty is the Mother of Repose, and Incertainty is the Mother of Contention" (per Pollard, arg., *Colthirst v. Bejushin*, Plowd. 25).

**CERTIFICATE.** — "A 'Certificate,' ex vi termini, imports that the party certifying knows the fact that he certifies" (per Kenyon, C. J., *Farmer v. Legg*, 7 T. R. 191). *Cp.* CERTIFICATION.

Architect's "Certificate"; *V.* CERTIFY. *Note:* If the Certificate be wrongfully obtained it discharges neither the Contractor nor his Surety (*Kingston v. Harding*, 1892, 2 Q. B. 494; 62 L. J. Q. B. 55; 67 L. T. 539; 41 W. R. 19); *Vth*, Add. C., 8 ed., 394; Hudson, 276-333: PROGRESS CERTIFICATE.

A sufficient "Certificate" by a Burial Bd or Churchwarden, s. 18, 18 & 19 V. c. 128, is given by a letter, or requisition in writing, containing a detailed account of the expenses to be paid (*R. v. St. Mary, Islington*, cited REPAIR).

Certificate of Dismissal; *V.* HEAR: MERITS.

Stat. Def. — 61 & 62 V. c. 57, s. 11. — *Scot.* 16 & 17 V. c. 67, s. 17;

25 & 26 V. c. 35, s. 37; 50 & 51 V. c. 38, s. 2; *V. NEW CERTIFICATE.* —  
*Ir.* 28 & 29 V. c. 88, s. 2, c. 101, s. 3.

**CERTIFICATED.** — “Certificated *Child*”; Stat. Def., 36 & 37 V. c. 67, s. 4.

“Certificated *Teacher*”; Stat. Def., 45 & 46 V. c. 18, s. 2; 61 & 62 V. c. 57, s. 11.

**CERTIFICATION.** — Certification of Shares in a Co; *V. Shaw v. Port Philip Co*, 53 L. J. Q. B. 369; 13 Q. B. D. 103; 50 L. T. 685; 32 W. R. 771; *British Mutual Banking Co v. Charnwood Forest Ry*, 56 L. J. Q. B. 449; 18 Q. B. D. 714; *Bishop v. Balkis Co*, 59 L. J. Q. B. 565; 25 Q. B. D. 512; *Re Concessions Trust*, 1896, 2 Ch. 757; 65 L. J. Ch. 909; 75 L. T. 298.

“A ‘Certification’ and a ‘CERTIFICATE’ are totally different things. A ‘Certification’ amounts to a representation that the transferor has produced, to the person certifying, such documents as on the face of them show a *primâ facie* title in the Transferor to transfer the shares mentioned in the transfer. He does not warrant the title of the transferor, nor the validity in point of law of the various documents which together establish his title” (per Lindley, L. J., *Bishop v. Balkis Co*, sup); but the Co is not estopped by its Secretary’s Certification if given *quâ* Certificates of shares which have not been lodged with him (*Whitechurch Lim. v. Cavanagh*, 71 L. J. K. B. 400; 1902, A. C. 117).

*Vh.* Buckl. 107; Hamilton, 209; Palmer, Co. Prec. 403.

**CERTIFIED.** — Certified Copy, 14 & 15 V. c. 99; *V. R. v. Weaver*, 43 L. J. M. C. 13; L. R. 2 C. C. R. 85; *Reed v. Lamb*, 29 L. J. Ex. 452; 6 H. & N. 75; *Vh.* and generally as to Certified Copies, Rose. N. P. 99–102.

“Certified *Efficient School*”; Stat. Def., 39 & 40 V. c. 79, s. 48; 41 & 42 V. c. 16, ss. 95, 105, 106; 1 Edw. 7, c. 22, s. 159 (1), 160 (1).

“Certified *Industrial School*,” s. 7, 29 & 30 V. c. 118; *V. R. v. West Derby*, L. R. 10 Q. B. 283; 44 L. J. M. C. 98.

“Certified *Prison*”; Stat. Def., 37 & 38 V. c. 21, s. 3.

“Certified *under the Regulations*,” s. 503 (2 a), Mer Shipping Act, 1894; *V. The Cathay*, 82 L. T. 823; 69 L. J. P. D. & A. 89.

**CERTIFY.** — “Power to Certify” amount of Costs; *V. INCURRED.*

“The usual meaning of ‘Certify’ does not require anything written: otherwise why should parties ever expressly stipulate as to certifying in writing?” (per Byles, J., *Roberts v. Watkins*, 32 L. J. C. P. 291; 14 C. B. N. S. 592; 11 W. R. 783; 8 L. T. 460); it was there held that an Architect’s Certificate need not be in writing unless so stipulated.

**CERTIORARI.** — *Certiorari* is a Writ out of the High Court “to an Inferior Court to call up the records of a Cause therein depending, that

conscionable justice may be therein administered" (Cowel: *Termes de la Ley*). *Th*, Short & Mellor's *Crown Office Practice*: 2 *Encyc.* 421.

**CESSER.** — Cesser of Life Interest on Alienation, &c; *V.* ALIENATION: BANKRUPTCY: DEATH: SHALL.

Benefit by Cesser of Interest, s. 2 (1 *b*), s. 7 (7), Finance Act, 1894; *V. Re Courley*, 1898, 1 Q. B. 355; 67 L. J. Q. B. 256; *revd* in H. L., 1899, A. C. 198; 68 L. J. Q. B. 435; 80 L. T. 361; 47 W. R. 525; 63 J. P. 436.

Cesser Clause in Charter-Party; *V.* CEASE: DEMURRAGE: LOADING: Carver. 739-750.

**CESSION.** — "Is when an Ecclesiastical Person is created Bishop, or when a Parson taketh another BENEFICE without Dispensation or otherwise not qualified, &c; in both cases their first benefices are become void, and be said to become void, by Cession" (*Termes de la Ley*).

*Cessio Bonorum*, is a giving up of his property by a Debtor to his Creditors: *V.* 2 Bl. Com. 472; Story's *Conflict of Laws*, 8 ed., 483; SCHEME.

**CESTUI.** — *Cestui que Trust*; *V.* BENEFICIARY. The phrase, "*primâ facie*, includes an implied trust just as much as an express trust," and, as used in the proviso to s. 7, Real Property Limitation Act, 1833, it includes an Implied Trust, because it is not restricted to an EXPRESS Trust, as in s. 25 (per Kay, L. J., *Warren v. Murray*, 1894, 2 Q. B. 648; 64 L. J. Q. B. 42; 71 L. T. 458; 43 W. R. 3). Therefore, though a person be, at Law, merely a TENANT AT WILL, yet if, in Equity, he holds for his Lessor, or by an agreement under which he can claim a Lease for years from his Lessor, he is a "Cestui que Trust" to his Lessor, within the proviso, and (during the continuance of that relationship) the Statute of Limitation does not run (*Drummond v. Sant*, 41 L. J. Q. B. 21; L. R. 6 Q. B. 763; *Warren v. Murray*, *sup*: *Vf*, *Lister v. Pickford*, 13 W. R. 827). Nor does the statute run as against the true owner (claiming against one who has received rents in an assumed FIDUCIARY CAPACITY), if, within a reasonable time, having regard to the circumstances, he ratifies the acts of such a receiver as being the acts of his trustee or agent (*Lyell v. Kennedy*, cited WRONGFULLY CLAIMING). *Cp.*, RATIFICATION. *V.* CREDITOR.

*Cestui que Use*, is he to whose Use land is held (Jacob). *V.* USE, at end: PEKNOR.

*Cestui que Vie*, is he for whose life land is granted (Jacob).

**CHAIN.** — A Chain in length is 22 Imperial Standard Yards (s. 11. 41 & 42 V. c. 49). *V.* YARD.

"Chain Cable"; *V.* ANCHOR.

**CHAIR.** — "Chair of Theology"; Stat. Def., Universities (Scot) Act, 1853. 16 & 17 V. c. 89, s. 6.

**CHAIRMAN.** — “Chairman”; Stat. Def., 33 & 34 V. c. 61, s. 2; 61 & 62 V. c. 29, s. 17.

Signature of Minutes by Chairman of Directors; *V. Southampton Dock Co v. Richards*, 1 M. & G. 448; *West London Ry v. Bernard*, 13 L. J. Q. B. 68; 3 Q. B. 873.

“Chairman of Quarter Sessions,” in the application of an Act to Scotland, is thereby generally defined to mean “the SHERIFF of the County.” *e.g.* 35 & 36 V. c. 76, s. 73, c. 77, s. 42; 38 & 39 V. c. 17, s. 109; 50 & 51 V. c. 58, s. 76.

“Chairman,” and “Chairman of Quarter Sessions,” in Acts relating to Ireland; Stat. Def., 13 & 14 V. c. 18, s. 51; 23 & 24 V. c. 153, s. 5, c. 154, s. 1; 27 & 28 V. c. 99, s. 3; 35 & 36 V. c. 33, s. 18; 40 & 41 V. c. 56, s. 7; 41 & 42 V. c. 52, s. 2; 50 & 51 V. c. 58, s. 77.

**CHALDRON.** — IS 36 BUSHELS (s. 15, 41 & 42 V. c. 49), *i.e.* 288 GALLONS. *Vf*, Cowel.

**CHALLENGE.** — “*Challenge* is a word common as well to the English as to the French, and sometimes signifieth to CLAIME, and the Latine word is *vendicare*: sometime in respect of revenge to challenge into the field, and then it is called in Latine *vindicare* or *provocare*: sometime in respect of partiality or insufficiency, to challenge in court persons returned on a jury. And seeing there is no proper Latin word to signify this particuler kind of challenge, they have framed a word anciently written, *chalumniare*, and *columpiare*, and *calumpniare*, and now written *calumniare*: and hath no affinity with the verbe *calumniar*, or *calumnia*, which is derived of that, for that is of a quite other sense, signifying a false accuser, and in that sense Bracton useth *calumniatur* to be a false accuser: but it is derived of the old word *caloir* or *chaloir*, which in one signification is to care for or foresee. And for that to challenge jurors is the meane to care for or foresee, that an indifferent triall be had, it is called *calumniare*. to challenge, that is, to except against them that are returned to be jurors: and this is his proper signification” (Co. Litt. 155 b). *Vf*, Termes de la Ley: Arch. Cr. 178; Rose. Cr. 184: 7 Encyc. 149, 150.

**CHAMPERTY.** — “Champerly is MAINTENANCE in which the motive of the maintainer is an agreement that if the proceeding in which the maintenance takes place succeeds, the subject matter of the suit shall be divided between the plaintiff and the maintainer” (Steph. Cr. 97; *Vf*, 1b. 355, 356; Co. Litt. 368 b; Termes de la Ley: Cowel, *Champerly*: *Guy v. Churchill*, 58 L. J. Ch. 345; 40 Ch. D. 481; *James v. Kerr*, 58 L. J. Ch. 355; 40 Ch. D. 449).

A contract may be void for Champerly, though not strictly within the criminal offence so called (*Rees v. De Bernardy*, 1896, 2 Ch. 437; 65 L. J. Ch. 656; 74 L. T. 585).

**CHANCE.** — It has been said that, — “Chance, is but the pseudonyme of God, for those particular cases which He does not choose to subscribe openly with His own Sign Manual.” *V.* ACT OF GOD: LOTTERY: GAME OF CHANCE: BET.

**CHANCELLOR.** — Quà Clergy Discipline Act, 1892, 55 & 56 V. c. 32, “ ‘Chancellor,’ means the Judge of the Consistory Court, by whatever name known ” (s. 12).

“ Lord Chancellor ”; Stat. Def., s. 12 (1), Interp Act, 1889; 5 & 6 V. c. 84, s. 17; 11 & 12 V. c. 94, s. 46; 12 & 13 V. c. 109, s. 50; 16 & 17 V. c. 70, s. 2; 54 & 55 V. c. 66, s. 95; 61 & 62 V. c. 17, s. 4.

**CHANCE-MEDLEY.** — “Chance-medley, or *per infortunium*, is when one is slaine casually, and by misadventure, without the will of him that doth the act, whereupon death ensueth ” (Co. Litt. 287 b). *Va* Termes de la Ley. Cowel says, “ ‘Chance-medley,’ signifies the casual killing of a Man, not altogether without the killer’s fault, though without an evil intent.” *If*, 2 Encyc. 435: MISADVENTURE: HOMICIDE.

**CHANCERY.** — *V.* COURT OF CHANCERY.

**CHANDOS.** — The Chandos Clause of the Reform Act; *V.* KNIGHT OF THE SHIRE.

**CHANGE.** — “A Change of VOYAGE,” in a Marine Insree, “takes place when, either before or after the commencement of the risk, the assured abandons all thought of proceeding to the Port of Destination originally prescribed ” (Arn. 456); but, in a clause covering the assured at an extra premium.

“Change of Voyage ” only applies where the Policy, having attached by the starting of the goods on the insured voyage, a change of voyage is subsequently made (*Simon v. Sedgwick*, 1893, 1 Q. B. 303; 62 L. J. Q. B. 163). *Cp.* DEVIATION.

“Change or Transmission of Interest ”; *V.* TRANSMISSION.

**CHANNEL ISLANDS.** — Quà the Customs, “Channel Islands,” means, “the Islands of Guernsey, Jersey, Alderney, and Sark, and their respective dependencies ” (s. 284, 39 & 40 V. c. 36, enlarging, by the addition of the last four words, the def in s. 357, 16 & 17 V. c. 107).

*V.* UNITED KINGDOM: ENGLAND.

**CHAPEL.** — “The legal meaning of the word ‘Chapel ’ is a chapel of the Church of England ” (per Grove, J., *Caiger v. St. Mary, Islington*. 50 L. J. M. C. 64; *thc* also cited HOUSE: *Va* 32 & 33 V. c. 94, s. 14). *Vf*, PAROCHIAL CHURCH: PROPRIETARY: *Hornsey v. Brewis*, cited INCUMBENT: Cowel: Jacob. *Cp.* CHURCH.

As to diverting funds for purposes of, and trusts for maintaining, a Chapel; *V. Lewin*, 603, 607.

**CHAPELRY.** — “ ‘Chapelry,’ *Capellania*, is the same thing to a Chapel as a Parish is to a Church; 14 Car. 2, c. 9” (Cowel). A Parochial Chapelry must have been co-eval with the Parish, *i.e.* immemorial; but, in the absence of evidence to the contrary, its existence may be inferred from modern usage; “ ‘Chapelry,” s. 14. Church Building Act, 1831, 1 & 2 W. 4, c. 38, means, a Parochial Chapelry strictly so called, not merely a District recently treated as a Parochial Chapelry (*Carr v. Mostyn*, 5 Ex. 69; 19 L. J. Ex. 249).

**CHAPTER.** — “ ‘Chapter,’ in Latine, is defined to be, an Assembly of Clerkes in a Church Cathedral, — conventual, regular, or collegiat; and in another signification, a place wherein common tracts of men collegiat are made. . . . And it may be said that this collegiat companie is termed ‘Chapter’ metaphorically, the word originally implying, a little head, for this company or corporation is as a head, not onely to rule and govern the Diocese in the Vacation of the Bishopricke but also, in many things to advise the Bishop when the See is full ” (Termes de la Ley).

*Vh*, Phil. Ecc. Law, Part 2, ch. 4: DEAN.

“Chapter” of Chichester, Exeter, Hereford, Salisbury, and Wells, s. 25, 3 & 4 V. c. 113; *V. R. v. Hereford Dean & Chapter*, 39 L. J. Q. B. 97; L. R. 5 Q. B. 196; 10 B. & S. 996; *Re Stockport Schools*, cited CATHEDRAL.

**CHARACTER.** — Fees and expenses voted to a Director of a Co. is a sum due to him “in his *Character* of a Member” within s. 38 (7). Comp Act, 1862 (*Re Leicester Racecourse Co*, 55 L. J. Ch. 206; 30 Ch. D. 629; *Cp* CAPACITY); *secus*, of a fixed remuneration definitely prescribed by the Articles (*Re New British Iron Co*, 1898, 1 Ch. 324; 67 L. J. Ch. 164; 78 L. T. 155; 46 W. R. 376). A Managing Director’s salary would not be within the phrase, nor the Costs of a Solicitor who was also a Director (*Re Dale & Plant*, 59 L. J. Ch. 180; 43 Ch. D. 255).

A Word “having no reference to the Character or Quality” of Goods, quâ TRADE-MARK, *semble*, does not include “John Bull” (*Re Paine*, 61 L. J. Ch. 365; 66 L. T. 642; 9 Pat. Ca. 130): *Vh*, *Re Magnolia Metal Co*, cited FANCY WORD. The phrase includes “Typograph,” as applied to Metals (*Re Linotype Co*, 42 S. J. 13).

*V. GOOD CHARACTER.*

**CHARGE.** — “The word ‘Charge’ has a wider meaning than the words ‘MORTGAGE’ or ‘LIEN’”: *e.g.*, in the definition of a SECURED CREDITOR in the Bankry Act, 1869 (per Cur. *Emanuel v. Bridger*, 43 L. J. Q. B. 99; L. R. 9 Q. B. 286; 22 W. R. 404; 30 L. T. 195: *Cp*. corresponding phrase in s. 168, Bankry Act, 1883). To “charge” prop-

erty you must BIND it; therefore, a mere Receivership (at the instance of a Jdgmt Cr) of Goods or a Chose in Action, does not create a "Charge," within that definition (*Re Dickenson, Ex p. Charrington*, and *Re Potts*, cited SECURED CREDITOR). Cp. PLEDGE. But "Incumbrance" is wide enough to include 'Charge and Lien,' e.g. as used in s. 1, Fines and Recoveries Act, 1833 (per Lindley, L. J., *Miller v. Collins*, cited INCUMBRANCE). *Vj*; MORTGAGE OR CHARGE.

Quà Record of Title Act (1r), 1865, 28 & 29 V. c. 88, "the word 'Charge' or 'Incumber,' shall include any legacy, portion, lien, or other charge, whereby a sum of money is secured to be paid; and also any annual or periodical charge; and also any charge hereafter to be imposed on land under any PUBLIC ACT for promoting Drainage or Land Improvement; and also every other charge upon land which is deemed an Incumbrance in a Court of Equity" (s. 2). *V*. CHARGE OR INCUMBER.

In *Emanuel v. Bridger*, sup, it was held that a Garnishee Order absolute was a "Charge" within s. 16 (5), Bankry Act, 1869, repld, s. 168, Bankry Act, 1883; and that was so even if the Order were only *nisi* (*Lowe v. Blackmore*, 44 L. J. Q. B. 155; L. R. 10 Q. B. 485; 23 W. R. 856: *Vj*, *Ex p. Jocelyn*, 47 L. J. Bank. 91; 8 Ch. D. 327; 26 W. R. 645; 38 L. T. 661: *Hall v. Pritchett*, 47 L. J. Q. B. 15; 3 Q. B. D. 215; 26 W. R. 95: *Re Stanhope Collieries Co*, 48 L. J. Ch. 409; 11 Ch. D. 160; 27 W. R. 561; 40 L. T. 204). But to be now available in bankruptcy, an attachment of a debt must be completed by RECEIPT of the money (s. 45, Bankry Act, 1883). *Vj*; LIEN: MORTGAGE OR CHARGE.

Money paid into Court to ABIDE the event, creates such a "Charge" in favour of the other litigant; *V*. cases cited SECURITY.

"Agreed to charge"; *V*. AGREED.

"Memorandum of Charge"; *V*. CONVEYANCE.

"Priority of Charge"; *V*. PRIORITY.

"Charge on Premises," s. 257, P. H. Act, 1875; *V*. *Sunderland v. Alcock*, 51 L. J. Ch. 546: PREMISES: OWNER. This is "a present existing Charge as from the time of the completion of the Works" (per Lindley, L. J., *Hornsey v. Monarch Bg Socy*, 59 L. J. Q. B. 107; 24 Q. B. D. 1; citing *Tottenham v. Rowell*, 50 L. J. Ch. 99; 15 Ch. D. 378, and *Re Bettesworth and Richer*, 57 L. J. Ch. 749; 37 Ch. D. 535); a rule which applies to a similar "Charge" under s. 13, Private Street Works Act, 1892 (*Stock v. Meakin*, cited OUTGOING). This is not a "LAND CHARGE" requiring registration under 51 & 52 V. c. 51, Part IV (*R. v. Holt*, 59 L. J. Q. B. 113; 24 Q. B. D. 178; 62 L. T. 117; 38 W. R. 236; 6 Times Rep. 104). *Vj*; CHARGED UPON.

*V*. ABSOLUTE ASSIGNMENT: CHARGES: TOLL: IN CHARGE: CARE.

"Other Charges"; *V*. *Willis v. Thorp*, cited OTHER.

"To Charge"; *V*. BIND. *Va* ACCUSE.

A *eriminal* "Charge" is made when the accused answers an accusation



against him before a competent Court, even though he be informally brought before it (*R. v. Hughes*, 48 L. J. M. C. 151; 4 Q. B. D. 614; *Re Maltby*, 50 L. J. Q. B. 429; 7 Q. B. D. 18).'

A Coroner's Inquisition is a "Charge" of Murder (*R. v. Maynard*, Russ. & Ry. 240).

**CHARGE OF DEBTS.**—As to what words will create a *Charge of Debts on Real Estate*; *V. 2 Jarm.* 582-601; and as to *Legacies*, *Ib.*, 602-609. *Va*, ALL: DIRECT: IN THE FIRST PLACE.

Charge of Debts, or Legacy, or Specific Sum of money on Realty, for testator's "whole Estate or Interest therein," s. 14, Law of Property Amendment Act, 1859, 22 & 23 V. c. 35; *V. Greville v. Browne*, 7 H. L. Ca. 689; *Re Adams and Perry*, 1899, 1 Ch. 554; 68 L. J. Ch. 259; 80 L. T. 149; 47 W. R. 326.

**CHARGE OF FRAUD.**—A clause in a Building Contract that the Architect's decisions shall not be set aside "for any Pretence, Suggestion, Charge, or Insinuation, of Fraud, Collusion, or Confederacy," is valid, and not against PUBLIC POLICY (*Tullis v. Jackson*, 1892, 3 Ch. 441; 61 L. J. Ch. 655; 67 L. T. 340; 41 W. R. 11).

**CHARGE OR CONDUCT.**—Of a Vessel, 6 G. 4, c. 125, s. 70; *V. Beilby v. Scott*, 7 M. & W. 93; 10 L. J. Ex. 149.

**CHARGE OR CONTROL.**—Person having "the charge or control" of "Points" upon a Ry, s. 1 (5), Employers' Liability Act, 1880, 43 & 44 V. c. 42; *V. Gibbs v. G. W. Ry*, 53 L. J. Q. B. 543; 12 Q. B. D. 208:—of "TRAIN"; *V. McCord v. Cammell*, 1896, A. C. 57; 65 L. J. Q. B. 202; 73 L. T. 634; 60 J. P. 180.

*V. PERSON IN CHARGE: CONTROL.*

**CHARGE OR INCUMBER.**—A covenant or condition not to "Charge or Incumber," prohibits a *direct* Charge or Incumbrance, and does not embrace something, — *e.g.* a Warrant of Attorney, — which may obliquely so operate (*Croft v. Lumley*, 25 L. J. Q. B. 73, 223; 27 *Ib.* 321; 6 H. L. Ca. 672); unless, indeed, that something be a mere contrivance to charge the property, and then it will be within the covenant or condition (*Doe d. Mitchinson v. Carter*, S T. R. 57, 300; *Croft v. Lumley*, *sup*) *Croft v. Lumley* was a case on a Lease, and the prohibitive words of the covenant there were, "nor charge or incumber the said theatre . . . by mortgaging the same, or granting any rent-charges or any other incumbrance or incumbrances whatsoever"; and it was held that a *bonâ fide* Warrant of Attorney, on which judgment had been entered up (1 & 2 V. c. 110, ss. 13, 19), was not a breach.

"Charge or Incumber" may sometimes be read "attempt to charge," &c (*Blake v. Barnett*, 31 L. J. Ch. 898; *nom. Barnett v. Blake*, 2 Dr. &

Sm. 117; cited for this proposition by Fry, J., *Hurst v. Hurst*, 51 L. J. Ch. 421, on app, but not on this point, Ib. 729; 21 Ch. D. 278).

*I. CHARGE: MORTGAGE OR CHARGE: RESTRAINT ON ALIENATION.*

**CHARGE OR LIABILITY.** — A Legacy “free from any Charge or Liability in respect thereof,” is duty free (*Warbrick v. Varley*, 30 Bea. 241).

**CHARGEABLE.** — This word has, quâ Rates and Taxes, substantially the same meaning as “payable” (per Hawkins, J., *Direct Spanish Telegraph Co v. Shepherd*, 53 L. J. Q. B. 420; 13 Q. B. D. 202).

In a Covenant relating to Rates, “chargeable” has a future meaning (*Seovell v. Gardiner*, 16 Ir. C. L. Rep. 318).

A Pauper is “chargeable” to his parish, s. 56, 7 & 8 V. c. 101, as soon as he is entitled to relief therefrom, but not “actually chargeable” till he gets such relief (*R. v. St. Clement Danes*, 32 L. J. M. C. 25; 3 B. & S. 143). *Cp, Re Morten*, cited **ABLE**.

Rogue leaving wife “chargeable,” s. 4, 5 G. 4, c. 83; *V. Heath v. Heape*, 26 L. J. M. C. 49.

**CHARGED.** — The power, given by s 29, 2 & 3 V. c. 71, to order restitution of “goods or money charged to be stolen or fraudulently obtained,” relates only to goods or money respecting which such a charge has been specifically made (*R. v. D'Eyncourt*, 4 Times Rep. 455).

A Charge by a Local Authority for Structural Work, is “taxed, charged, rated, assessed, or imposed,” within a covenant in a Lease (*F. TAXES*), as soon as the Authority has formally charged and apportioned the amount in respect of the premises (*Wix v. Rutson*, cited **TAXES**). *Va CHARGES.* *Note.* If the covenant only extends to payments taxed &c “on” the premises, then the liability will depend on the terms of the particular statute and what has been done thereunder.

*I. CHARGED UPON: CHARGING ORDER.*

**CHARGED UPON.** — Sums “charged upon” land, s. 1, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; *V. Payne v. Esdaile*, 58 L. J. Ch. 299; 13 App. Ca. 613; 37 W. R. 273; 59 L. T. 568: *Purcell v. Purcell*, 2 Dr. & War. 217.

Quâ same phrase, ss. 42, 40, Ib. (the latter section, repld s. 8, Real Property Limitation Act, 1874); *V. Roddam v. Morley*, 1 D. G. & J. 1; 26 L. J. Ch. 438: *Morley v. Morley*, 5 D. G. M. & G. 610: *Hornsey v. Monarch Bg Socy*, cited **PRESENT RIGHT TO RECEIVE: Sutton v. Sutton**, 52 L. J. Ch. 333; 22 Ch. D. 511: *Fearnside v. Flint*, 52 L. J. Ch. 479; 22 Ch. D. 579; 31 W. R. 318; 48 L. T. 154: *M'Donnell v. Fitzgerald*, 1897, 1 I. R. 556: *Lindsell v. Phillips*, 30 Ch. D. 291: *Bowyer v. Woodman*, L. R. 3 Eq. 313: *Re Stead*, 2 Ch. D. 713; 45 L. J. Ch. 634: *Re Slater*, 11 Ch. D. 227; 48 L. J. Ch. 473: *Edmunds v. Waugh*, L. R.

1 Eq. 418; 35 L. J. Ch. 234: *Re Marshfield*, 34 Ch. D. 721; 56 L. J. Ch. 599: *Smith v. Hill*, 47 L. J. Ch. 788; 9 Ch. D. 143: *Re Nugent*, 19 L. R. Ir. 140: *Carroll v. Hargrave*, I. R. 5 Eq. 123: *Baldwin v. Baldwin*, 4 Ir. Ch. Rep. 501: *M'Carthy v. Daunt*, 11 Ir. Eq. Rep. 29: *Carbery v. Preston*, 13 Ir. Eq. Rep. 455. *Vf*, ACKNOWLEDGMENT: BY: PAYMENT.

"Sum charged on such property," s. 14 (1), Finance Act, 1894; *V. Re Orford*, 1896, 1 Ch. 257, 65 L. J. Ch. 253; 73 L. T. 681; 44 W. R. 383.

"Charge on Premises"; *V. CHARGE: CHARGED.*

**CHARGED WITH.** — *V. SUBJECT TO: CHARGE.*

"Charged with the execution of the writ"; *V. SHERIFF.*

**CHARGES.** — An exceptional burden for Structural Works imposed by a Local Authority and ordinarily borne by the landlord pursuant to the P. H. Act, was held to be comprised in a covenant by a tenant to pay "all rates, taxes, charges, and assessments whatsoever, which now are or may be charged or assessed upon the said premises or any part thereof or upon any person or persons in respect thereof, land tax and property tax excepted" (*Hartley v. Hudson*, 48 L. J. Q. B. 751; 4 C. P. D. 367; *Smith v. Robinson*, cited *TAXES: But Cp. Rawlings v. Biggs*, 47 L. J. Q. B. 487; 3 C. P. D. 368). Where, however, the words of the covenant by the lessee were to pay "the sewer and main drainage rates . . . and other district rates and assessments whatsoever whether parliamentary, parochial, or otherwise, which now are or which at any time during the said term shall be taxed, rated, CHARGED, assessed, or imposed upon the said demised premises, or any part thereof, or upon or payable by the occupier or tenant in respect thereof"; — held, that such an exceptional burden made under the Metrop Man. Act was not comprised (*Allum v. Dickinson*, 52 L. J. Q. B. 190; 9 Q. B. D. 632). *Hartley v. Hudson* was cited in *Allum v. Dickinson*, yet in the latter case the same judge (Lindley, L. J.) who decided *Hartley v. Hudson* said, that such an exceptional burden was "not a Rate, Charge, or Assessment imposed on the premises or on the occupier or tenant." *Vf*, *TAXES: OUTGOINGS.*

"Charges or Costs." R. 2 (a), Ord. 57, R. S. C.; *V. Attenborough v. St. Katharine's Docks*, and *De Rothschild v. Morrison*, cited *MATTER.*

A Freehold of 40s. per annum "above all Charges," S H. 6, c. 7 (giving the County Franchise), connotes that a Mtge is a "Charge" (*V. 28 G. 3, c. 36*), and monthly payments to a Building Socy in respect of a mtge to it are "Charges" (*Copland v. Bartlett*, 18 L. J. C. P. 50; 6 C. B. 26). *Vf*, *Lee v. Hutchinson*, 20 L. J. C. P. 4; 8 C. B. 16.

*V. COSTS AND CHARGES: PROFESSIONAL CHARGES: TOLL.*

**CHARGES AND ALLOWANCES.** — *V. 1 Maude & P. 121, n (o).*

**CHARGING ORDER.**—*V.* ss. 14–16, Jdgmts Act, 1838; s. 1, 3 & 4 V. c. 82: *Brown v. Bamford*, 9 M. & W. 42; 11 L. J. Ex. 53; *Fowler v. Churchill*, 11 M. & W. 57; 12 L. J. Ex. 230, 233: DISPOSING POWER: AGREED: RECOVERED OR PRESERVED.

**CHARIOT.**—*V.* COACH.

**CHARITABLE CONTRIBUTION.**—*V. R. v. Manchester*, cited HOSPITAL, towards end.

**CHARITABLE PURPOSE.**—A bequest for “Charitable” purposes, or for “Charities and other Public Purposes,” is good (*Re Sutton*, 54 L. J. Ch. 613; 28 Ch. D. 464; 33 W. R. 519: *Dolan v. Macdermot*, 3 Ch. 676); but a bequest for “Charitable or Benevolent Purposes,” or where “Charitable” is disjunctively associated with any other purpose not good as a CHARITY, the gift is bad, because the money may be applied to purposes not legally Charitable (*Re Macduff*, cited PHILANTHROPIC:—*V.*, AND: OR). A bequest “to be given in Private Charity” is not good (*Ommaney v. Butcher*, 1 T. & R. 260). *V.* Tudor, Char. Trusts.

A bequest to an Anti-Vivisection Socy is a good exercise of a Power to appoint “for some Charitable Purpose” (*Re Foreaux*, 1895, 2 Ch. 501; 64 L. J. Ch. 856; 73 L. T. 202; 43 W. R. 661).

*V.* CHARITY: DESERVING: HUMANE: PURPOSE.

In all English statutes, where there is no controlling context, “a technical meaning is attached to the word ‘CHARITY,’” and synonymous therewith is “the word ‘Charitable,’ in such expressions as ‘CHARITABLE USES,’ ‘CHARITABLE TRUSTS,’ or ‘Charitable Purposes’” (per Ld Macnaghten, *Income Tax Commrs v. Pemsel*, 1891, A. C. 580; 61 L. J. Q. B. 289). In accordance with that view, it was there held by the majority of the H. L. (Halsbury, C., and Ld Bramwell, diss.) that the Exemption from Income Tax of property devoted to “Charitable Purposes,”—Income Tax Act, 1842, s. 61, Sch A, vi,—does not require the ingredient of Poverty in the objects of those Purposes, and that the exemption extends to the income of the property devoted to Moravian Missions (1891, A. C. 531; 61 L. J. Q. B. 265; 55 J. P. 805; 65 L. T. 621).

That the Scotch meaning of “Charitable,” in such a connection, connotes the same, or very nearly the same, technical meaning as in England was, in the case just cited, stoutly contended for by Ld Watson and urged by Ld Macnaghten; but whether that be so or not, *semble*, that *Pemsel's Case* over-rules the Scotch decision in *Baird's Trustees v. Lord Advocate* (15 Sess. Ca., 4th Ser., 682).

As to whether Poverty is a necessary ingredient in a “Charitable Purpose,” even in its popular meaning, *Cp* jdgmts of Lds Watson, Herschell, and Macnaghten with those of Halsbury, C., and Ld Bramwell,

in *Pemsel's Case*; *Va* the jdgmts in *S. C.* when in the Court of Appeal (58 L. J. Q. B. 200; 22 Q. B. D. 296).

"Charitable Purpose," s. 16, Suen Dy Act, 1853, is used in the technical sense of CHARITY (per Lds Watson and Macnaghten, *Pemsel's Case*, sup).

For an example of "Charitable Purpose" receiving a less extended meaning than its technical one; *V. Int. Rev. v. Scott*, 1892, 2 Q. B. 152; 61 L. J. Q. B. 432; 67 L. T. 173; 40 W. R. 632. That was a decision on "Charitable Purpose," as used in s. 11 (3), Customs and Int. Rev. Act, 1885, on *wharf, Re Linen & Woollen Drapers Institution*, 58 L. T. 949; *Glasgow Tailors v. Int. Rev.*, 24 Scotch L. R. 516; 14 Sess. Ca., 4th Ser., 729.

"Public or Charitable Purpose"; *V. PUBLIC PURPOSE: PUBLIC CHARITY.*

*V. GODLY.*

**CHARITABLE TRUST.** — *V. A-G. v. Webster*, 44 L. J. Ch. 766; L. R. 20 Eq. 483; *Fell v. Official Trustee of Charity Lands*, cited MORTGAGE OR CHARGE.

"Charitable Trusts Acts, 1853 to 1894"; *V. Sch 2, Short Titles Act, 1896. Vth Tudor, Char. Trusts.*

**CHARITABLE USE.** — As to what is a "Charitable Use" within the Mortmain and Charitable Uses Act, 1888, 51 & 52 V. c. 42; *V. Wms. Exs. 916 et seq; Tudor, Char. Trusts, ch. vi. Cp SUPERSTITIOUS.*

Land demised for a long term of years for the erection of a parish Workhouse, is demised for a "Charitable Use" (*Webster v. Southey*, 36 Ch. D. 9; 56 L. J. Ch. 785; 56 L. T. 879; 35 W. R. 622; 3 Times Rep. 628); so, of a Conveyance of land in aid of the Poor Rate (*Doe d. Preece v. Howells*, cited VALUABLE).

**CHARITY.** — This "word, in its widest sense, denotes all the good affections men ought to bear towards each other; in its most restricted and common sense, Relief of the Poor. In neither of these senses is it employed in this (Chancery) Court. Here its signification is derived chiefly from the Statute of Elizabeth (43 Eliz. c. 4). Those purposes are considered charitable which that statute enumerates, or which by analogies are deemed within its spirit and intendment" (per Grant, *M. R., Morice v. Durham Bp.*, 9 Ves. 405), e.g. a bequest for keeping Chimes in repair (*Turner v. Ogden*, 1 Cox, Ch. 316), or for the use of a Vegetarian Socy (*Webb v. Oldfield*, 1898, 1 L. R. 431), or of a Socy for the protection of animals liable to vivisection (*Re Douglas*, 35 Ch. D. 472; 56 L. J. Ch. 913). The purposes enumerated by the Statute of Eliz. are "reliefe of aged IMPOTENT and POORE people, some for maintenance of sicke and maymed souldiers and marriners, schooles of learninge, free schooles and schollers in universities, some for repaire of bridges,

portes, havens, causwaies, churches, seabankes and highewaies, some for educaçōn and pfermente of orphans, some for or towards reliefe stocke or maintenance for howses of correcçōn, some for mariages of poore maides, some for supportaçōn ayde and helpe of younge tradesmen, handiecraftesmen and psons decayed, and others for reliefe or redemption of prisoners or captives, and for aide or ease of any poore inhabitant conēninge paymente of fifteenes, settinge out of souldiers (*V. SET OUT*) and other taxes." Though the Act is repealed, this enumeration is continued by the Mortmain Act of 1888 (s. 13 (2), 51 & 52 V. c. 42). It comprises four principal divisions; — (1) Relief of Poverty; (2) Advancement of Education; (3) Promotion of Religion; (4) Other purposes beneficial to the community (per *Ld Macnaghten, Income Tax Commrs v. Pemsel*, 1891, A. C. 542; 61 L. J. Q. B. 290: *Re Foveaux*, 1895, 2 Ch. 501; 64 L. J. Ch. 856; 73 L. T. 202; 43 W. R. 661). *Vh*, Tudor, Char. Trusts, 371: 1 Jarm. 205-250: Wms. Exs. 897 *et seq*, for collection of cases hereon: *Va, Beaumont v. Oliveira*, 38 L. J. Ch. 62, 239; 4 Ch. 309; 20 L. T. 53; 17 W. R. 269: SERVICE OF GOD.

A legacy for mere Sport or Game, is not a good Charity (*Re Nottage*, 1895, 2 Ch. 649; 64 L. J. Ch. 695; 73 L. T. 269; 44 W. R. 22).

It has been said that the Inns of Chancery were all Charities (*A-G. v. Bowyer*, 3 Ves. 714); and though "some have been dealt with as private property," yet the conveyance (dated 29th March, 1618) from *Ld Clifford* of the property called Clifford's Inn, shows that that property is a Charity (*Smith v. Kerr*, 1900, 2 Ch. 511; 69 L. J. Ch. 755; 82 L. T. 795).

It has been held that Poverty in the recipient is not necessary to enable him to receive the benefits of a Charity (*Pease v. Pattinson*, 55 L. J. Ch. 617; 32 Ch. D. 154; 54 L. T. 209; 34 W. R. 361: *Pemsel's Case*, cited CHARITABLE PURPOSE). *Sr, Cunnuck v. Edwards* and *Re Buck*, cited PUBLIC CHARITY.

Property purchased by a City Ward out of its own moneys and for its own purposes, is not a "Charity" within s. 66, Charitable Trusts Act, 1853 (*Finnis to Forbes*, 53 L. J. Ch. 140, 141; 24 Ch. D. 587; 48 L. T. 813; 32 W. R. 55). But where there is a "Charity," it is within this section if its foundation and institution be in England or Wales, although its revenues are applied abroad (*Re Duncan*, 2 Ch. 356; 36 L. J. Ch. 513).

Other Stat. Def. — 18 & 19 V. c. 124, s. 48; 23 & 24 V. c. 134, s. 8.

As to mode of construing a gift for Charitable Purposes; *V. Moggridge v. Thackwell*, 7 Ves. 36: *Mills v. Farmer*, 19 Ves. 482: *Biscoe v. Jackson*, 35 Ch. D. 460; 56 L. J. Ch. 540: *Re White*, 1893, 2 Ch. 41; 62 L. J. Ch. 342: *Re Macduff*, cited PHILANTHROPIC: — And as to such a gift being void for Uncertainty, *V. OR*.

*V. ALMS: CHARITABLE PURPOSE: BENEVOLENCE: ENDOWMENT: EVANGELICAL: GENERAL UTILITY: GOSPEL: GREAT BRITAIN: RELIGIOUS: ECCLESIASTICAL CHARITY: PAROCHIAL CHARITY: PRISON: PUBLIC CHARITY.*

One who from "Charity" helps another in an action, is not guilty of MAINTENANCE, even though his "charity" be indiscreet; wisdom is not an ingredient of the word (*Harris v. Brisco*, 55 L. J. Q. B. 423; 17 Q. B. D. 504; 55 L. T. 14; 34 W. R. 729).

"Charity," in a United States Sunday Act, includes everything which proceeds from a sense of moral duty, or kindness, or humanity, for the relief or comfort of another, and without any regard to one's own benefit or pleasure (*Doyle v. L. & B. R. R.*, 118 Mass. 197).

Shaving is not a "Work of Charity," within the English Sunday Observance Acts (*Phillips v. Inns*, cited HOLIDAY); like MERCY, there is no Work of "Charity" when the worker's object is gain (*It.*).

**CHARITY COMMISSIONERS.** — Stat. Def., s. 12 (14), Interp Act, 1889.

**CHARITY ESTATE.** — As to meaning of this phrase in s. 29. Charitable Trusts Amendment Act, 1855, 18 & 19 V. c. 124; *V. Corporation of Sons of Clergy v. Sutton*, 29 L. J. Ch. 393, nom. *Corporation for Relief of Widows and Children of Clergy v. Sutton*, 27 Bea. 651; *Re Royal Socy and Thompson*, 17 Ch. D. 407; 50 L. J. Ch. 341, 44 L. T. 274; 29 W. R. 838; *Finnis to Forbes*, cited CHARITY.

**CHARITY PROPERTY.** — The purposes to which, not the source from which, property is derived will determine whether or not it is "Charity Property," either generally, or within ss. 5, 10, 11, City of London Parochial Charities Act, 1883, 46 & 47 V. c. 36 (*Re St. Botolph Without*, 56 L. J. Ch. 691; 35 Ch. D. 142; 56 L. T. 884; 35 W. R. 688; 3 Times Rep. 522, 553; *A-G. v. Eastlake*, 11 Hare, 205). An Advowson, or other property not producing income, may be "Charity Property" within those sections (*Re St. Stephen's*, 57 L. J. Ch. 917; 39 Ch. D. 492; 59 L. T. 393; 36 W. R. 837). *Vf. Re St. Nicholas Acons*, 60 L. T. 532.

**CHARITY SCHOOL.** — A "Charity School," is "a SCHOOL primarily intended for the supply of gratuitous education" (per Charles, J., *Southwell v. Holloway College*, 1895, 2 Q. B. 487; 64 L. J. Q. B. 791; 73 L. T. 183; 59 J. P. 503): it may, probably, be in some measure self-supporting, but primarily and practically it must be eleemosynary; and, when partly self-supporting, each case — like a PUBLIC SCHOOL — will depend on its own facts. Charterhouse is not a "Charity School," within the Exemption from Inhabited House Duty of "any HOSPITAL, Charity School, or House provided for the reception or relief of Poor Persons," Case 4, Sch B., 48 G. 3, c. 55; s. 2, 14 & 15 V. c. 36 (*Charterhouse School v. Lamarque*, 59 L. J. Q. B. 495; 25 Q. B. D. 121; 62 L. T. 907; 38 W. R. 776; 54 J. P. 790), nor is the Royal Holloway College at Eggham (*Southwell v. Holloway College*, sup).

CHARMS. — *V.* CONJURATION.

**CHART.** — A special Design for cutting-out the sleeves of ladies' dresses is not a "Map, Chart, or Plan," within the stat. def. of "Book," s. 2. Copyright Act, 1842 (*Hollinrake v. Truswell*, 1894, 3 Ch. 420; 63 L. J. Ch. 719; 71 L. T. 419). In that case, Davey, L. J., said, — "There may, no doubt, be an anatomical or physiological Plan showing the structure and distribution of the muscles and bones of the human arm, or any other part of the human frame, which would be protected by the Copyright Act."

**CHARTER.** — Stat. Def., *Scot.* 10 & 11 V. c. 48, s. 22; 31 & 32 V. c. 101, s. 3.

**CHARTERED.** — "FREIGHT chartered, or as if chartered"; *V. Brankelow S. S. Co v. Canton Insree*, 4 Com. Ca. 239; 68 L. J. Q. B. 811; 1899, 2 Q. B. 178; 81 L. T. 6; 47 W. R. 611.

**CHARTER-LAND.** — " 'Charter-Land,' is such as a man holdeth by Charter, that is to say, by evidence in writing, which otherwise is called FREEHOLD. COPYHOLD Lands, before the Conquest, were, by the Saxons, called Folkeland, and the Charter-lands Bockland" (*Termes de la Ley*). *Vf*, Cowel: BOCLAND: FOLK-LAND.

**CHARTER-PARTY.** — " 'Charter-Partie,' is an Indenture of Covenants and Agreements made between Merchants and Mariners concerning their Sea affaires; and of this you may read in the statute now out of use that was made in 32 H. 8, c. 14" (*Termes de la Ley*). *Vf* BILL OF LADING.

*Vf*, Abbott, Part 3, ch. 1: Carver, Part 1, ch. 4: Scrutton, on Charter Parties: 2 Encyc. 475 *et seq.*

Quà Stamp Act, 1891; *V.* s. 49.

*V.* CONDITIONS AS PER CHARTER-PARTY.

**CHASE.** — "A Chase differs from a Forest, chiefly in that it is not subject to the forest laws (*Chitty*, Prerog. 137).

"If the King, seised of a Forest, grants it to another in fee; the grantee has no Forest, because he has not power to create judges or officers to hold forest courts; but he has a Chase (*4th Inst.* 314).

"By the grant, by a subject, of a Chase in his own land, not only the privilege but the land itself passes (*Co. Litt.* 5 b: *V. Wms.* on Rights of Commons, 236 *et seq.*: *Hall* on Profits à Prendre, 325: 3 *Cruise*, Dig. tit. 27, s. 10 *et seq.*)." *Elph.* 565, 566.

A Chase "is of a middle nature between a FOREST and a PARK, — being, commonly, lesse than a Forest and not endued with so many Lib-



erties, and yet of a larger compass, and having greater diversity of keepers and game, than a Park" (Termes de la Ley).

Beasts of Chase; *V.* BEASTS.

**CHATELS.** — "Chattels" is a French word and signifies Goods, which by a Word of Art we call *catalla*. Now Goods, or Chattels, are either personall or reall. Personall, as horse and other beasts, household stuffe, bowes, weapons, and such like; called personall, because for the most part they belong to the person of a man, or else for that they are to be recovered by personall actions. Reall, because they concerne the reality, as tearmes for yeares of lands or tenements, wardships, the interest of tenant by statute staple, by statute merchant, by elegit and such like" (Co. Litt. 118 b).

*Chattels Real*, as to what are; *V.* Wms. Exs. 592 *et seq*, Pt. 2, Bk. 2, ch. 1: ESTATE.

*Chattels Personal* are (1) Chattels Animate, (2) Chattels Vegetable, (3) Chattels Inanimate (Wms. Exs. 617); and *Vth* at length Wms. Exs. 632 *et seq*, Pt. 2, Bk. 2, ch. 2. *V.* PERSONAL CHATELS.

"If one devise to J. S. all his 'Goods,' or all his 'Chattels,' by either of these is devised as much as by both of them" (Touch. 417: *Vj* Wms. Exs. 1040).

"Chattels," in a Bequest includes Debts (*Ford's Case*, 12 Rep. 1: *Ryall v. Rowles*, 1 Ves. sen. 362, 363, 367, 369); *secus*, in an Indictment (*Calye's Case*, 8 Rep. 33 a: *Chanel v. Robotham*, Yelv. 68: *R. v. Powell*, 2 Den. 403; 21 L. J. M. C. 78; 16 Jur. 177). Kitchen (tit. *Chattels*) says, "Money, is not Goods and Chattels," and he is cited for that proposition in Termes de la Ley, *Catals*, and by Cowel, *Catalls*; but, *semble*, the proposition must be accepted, if at all, with much qualification; *V.* GOODS AND CHATELS.

A bequest of "All other Chattels" may pass the residue (*Re Sharman*, 38 L. J. P. & M. 47; L. R. 1 P. & D. 661). *Vj*, *M'Cormick v. Patten*. Ir. Rep. 5 Eq. 295: OTHER.

*V.* ESTATE: *Cp*, CHOSE IN ACTION.

A Bill of Exchange, is a "Chattel," quâ a Fraudulent Transfer by a bankrupt (*Cumming v. Baily*, 6 Bing. 363).

A Dog is not a "Chattel," within s. 88, Larceny Act, 1861, because, at Common Law, it is not the subject of Larceny (*R. v. Robinson*, 28 L. J. M. C. 58; Bell, C. C. 34: *Vh*, *Ireland v. Higgins*, Cro. Eliz. 125); but a dog is "Goods," within s. 40, 2 & 3 V. c. 71 (*R. v. Slade*, 21 Q. B. D. 433). *Vj*, s. 18, Larceny Act, 1861.

"Chattel or Valuable Security," s. 75, Larceny Act, 1861; *V.* VALUABLE.

Waste of Metal Ore, piled on the land with the intention that it should again form part of the land, remains part of the land, and is not a Chattel (*Boileau v. Heath*, cited IRON).

On the other hand, Machinery, *e.g.* a Switchback Ry erected on land and removable without causing injury to the soil, is a "Chattel," and is within a covenant prohibiting the erection of any "Hut, Tent, Shed, Caravan, House on Wheels, or OTHER Chattel" (*Chamberlayne v. Collins*, 70 L. T. 217). *Cp* FIXTURES.

**CHAUNTRY: CANTARIA.** — "A foundation for the maintenance of priests to say mass for the souls of the founder and his relations; also a chapel or altar endowed for that purpose (*Adams & Lambert's Case*, 4 Rep. 104 b: Ducange: Spelm.). In a grant by Henry 8th to the Earl of Arundel, the words *ecclesia collegiata*, *collegium*, and *cantaria* are used as synonyms; *V. Norfolk v. Arbutnot*, 4 C. P. D. 302; 48 L. J. C. P. 743" (Elph. 566).

**CHEAP TRAIN.** — "Cheap Train," ss. 6-10, 7 & 8 V. c. 85; *V. North London Ry v. A-G.*, 45 L. J. Ex. 315; 1 App. Ca. 148: *A-G. v. Metrop. Ry.*, 50 L. J. Q. B. 573.

**CHEAT.** — A Cheat, is a deceitful device for defrauding another of his known right, contrary to the plain rules of common honesty (1 Hawk. P. C. ch. 71, 8 ed., ch. 23: Jacob); *e.g.* passing off a spurious copy as the original painting (*R. v. Closs*, 27 L. J. M. C. 54; 6 W. R. 109; 7 Cox, C. C. 494; *Dears. & B.* 460). *Cp* DECEIT. *Vf* 2 Encyc. 495.

To call a man a "Cheat," "Rascal," "Scoundrel," "SWINDLER," or "Villain," is not actionable, *per se* (per Pollock, C. B., *Barnett v. Allen*, 27 L. J. Ex. 412; 3 H. & N. 376; 31 L. T. O. S. 217: *Vf*, *Savile v. Jardine*, 2 Bl. H. 531, 532: *Stanhope v. Blith*, 4 Rep. 15); but to print of a man that he is a "Swindler" &c, is actionable (*J'Anson v. Stuart*, 1 T. R. 748). *Va*, BLACK: PROFESSED GAMBLER.

**CHEATING.** — "Every one commits the misdemeanor called Cheating, who fraudulently obtains the property of another by any deceitful practice not amounting to felony, which practice is of such a nature that it directly affects, or may directly affect, the public at large. But it is not Cheating, within the meaning of this Article, to deceive any person in any contract or private dealing by lies, unaccompanied by such practices as aforesaid" (Steph. Cr. 272). *Vf*, Arch. Cr. 562-586: Rosc. Cr. 340-342.

**CHEESE.** — Quà Sale of Food and Drugs Acts, "'Cheese' means, the substance usually known as Cheese, containing no Fat derived otherwise than from Milk" (s. 25, 62 & 63 V. c. 51). *V.* MARGARINE.

**Lord CHELMSFORD'S ACTS.** — Agricultural Gangs Act, 1867, 30 & 31 V. c. 130:

Promissory Oaths Act, 1868, 31 & 32 V. c. 72.

**CHEMIN DE FER.** — *V.* BACCARAT.

**CHEMIST.** — As distinguished from APOTHECARY, “a Chemist is one who sells medicines which are asked for”; he does not select the medicines (per Cresswell, J., *Apothecaries Co v. Loring*, 2 Moo. & R. 500); “a Chymist may prepare and vend, but not prescribe or administer, medicine” (per Best, C. J., *Allison v. Haydon*, 4 Bing. 621).

Quà the Pharmacy Acts, a “Chemist and Druggist,” is one who keeps “OPEN shop for the compounding of the prescriptions of duly qualified Medical Practitioners,” and who, since the Act of 1868, is duly registered; including registered Assistants and Associates (31 & 32 V. c. 121, s. 3; 61 & 62 V. c. 25, s. 1). *V.* KEEP OPEN.

**CHEQUE.** — “A Cheque is a BILL OF EXCHANGE drawn on a Banker, payable on demand” (s. 73, Bills of Ex. Act, 1882); so, prior to and independently of that def (*Eyre v. Waller*, 29 L. J. Ex. 246; 5 H. & N. 460; *Lynn v. Bell*, Ir. Rep. 10 C. L. 487).

The statement that a payment has been made, or an agreement that it is to be made, “by cheque,” imports that the cheque was or is to be payable on its DATE, “for every cheque properly purports to be drawn on the day of its date” (*Doe d. Church v. Pontifex*, 9 C. B. 248).

*V.* PAYMENT.

A post-dated cheque taken before its date is valid (s. 13 (2), Bills of Ex. Act, 1882: *Royal Bank of Scotland v. Tottenham*, 1894, 2 Q. B. 715; 64 L. J. Q. B. 99).

“Cheques,” s. 12, 1 & 2 V. c. 110; *V. Watts v. Jefferyes*, 3 Mac. & G. 373; 20 L. J. Ch. 659; *Courtoy v. Vincent*, 21 L. J. Ch. 291; 15 Bea. 486.

Quà Crossed Cheques Act, 1876. 39 & 40 V. c. 81, “‘Cheque,’ means a Draft or Order on a Banker, payable to bearer or to order on demand; and includes a Warrant for payment of dividend on stock, sent by post by the Governor and Company of the Bank of England, or of Ireland, under the authority of any Act of Parliament for the time being in force” (s. 3).

**Lord CHESTERFIELD’S ACT.** — The Calendar (New Style) Act, 1750, 24 G. 2, c. 23: *V.* ALMANAC.

**CHEVISANCE.** — “Dealing by ‘Chevisance’ was the same thing as the business of a SCRIVENER, so far as a dealing in money was the object of the trade of the Scrivener” (*Re Warren*, 2 Sch. & Lef. 423).

**CHICHORY.** — *V.* DRIED CHICORY.

**CHIDING.** — *V.* BRAWLING.

**CHIEF.** — “Chief Clerk”; *V.* CLERK.

“Chief Constable”; Stat. Def., 50 & 51 V. c. 9, s. 2. — *Ir.* 17 & 18 V. c. 89, s. 12. *V.* CONSTABLE.

"Chief *Magistrate*"; Stat. Def., *Scot.* 50 & 51 V. c. 42, s. 2; 55 & 56 V. c. 55, s. 4.

"Chief *Medical Officer*"; Stat. Def., Contagious Diseases Act, 1866, 29 & 30 V. c. 35, s. 2.

"Chief *Officer of Customs*," quâ Mer Shipping Act, 1894, "includes the Collector, Superintendent, Principal Coast Officer, or other Chief Officer of Customs at each Port" (s. 742).

"Chief *Officer of Police*"; Stat. Def., 32 & 33 V. c. 99, s. 2; 33 & 34 V. c. 72, s. 3; 34 & 35 V. c. 87, s. 2, c. 96, s. 22, c. 112, s. 20; 38 & 39 V. c. 17, s. 107; 47 & 48 V. c. 58, s. 4; 53 & 54 V. c. 45, s. 33, c. 59, s. 51; 57 & 58 V. c. 27, s. 19, c. 41, s. 25; 60 & 61 V. c. 52, s. 2. — *Scot.* 38 & 39 V. c. 17, s. 109; 53 & 54 V. c. 67, s. 30; 57 & 58 V. c. 41, s. 26. — *Ir.* 33 & 34 V. c. 9, s. 3; 38 & 39 V. c. 17, s. 120; 57 & 58 V. c. 41, s. 27.

"Chief *Remembrancer*"; Stat. Def., 6 & 7 V. c. 56, s. 38.

"Chief *Rent*." — "The phrase 'Chief Rent' is now often, but erroneously, used to denote, not a species of Rent Service but, a RENT-CHARGE, especially in the North of England, where it is customary to grant land in FEE for building purposes subject to the payment of an annual rent in perpetuity" (Copinger & Munro, on Rents, 18). *Vh*, Harrison, on Chief Rents and other Rent-Charges. *Cp*, FEE FARM: QUIT RENT. Stat. Def., *Ir.* 5 & 6 V. c. 89, s. 159; 10 & 11 V. c. 32, s. 66.

"Chief *Secretary*"; Stat. Def., s. 12 (10), Interp Act, 1889.

**CHIEFEST AND DISCREETEST.** — "Where the election (for a CHARITY) was given to the inhabitants and parishioners, or the major part of the '*chiefest and discreetest* of them,' it was held that, by '*chiefest*' was to be understood those who paid the church and poor rates; and by '*discreetest*' those who had attained the age of 21" (Lewin, 89, citing *Fearon v. Webb*, 14 Ves. 13). *Vf* PARISHIONER.

**CHILD, CHILDREN.** — A "Child" is ordinarily a synonym for INFANT, a person under the age of 21 years, *e.g.* "Poor Child," 56 G. 3, c. 139 (*R. v. St. John, Bedwardine*, 5 B. & Ad. 169). So, "Children" in the Matrimonial Causes Acts (s. 35, 20 & 21 V. c. 85; s. 4, 22 & 23 V. c. 61) means, children until they attain 21; though an Order for Custody (as distinguished from one for Maintenance or Education) would only in very special circumstances be made against the wishes of a child who has attained years of discretion (*Thomasset v. Thomasset*, 1894, P. 295; 63 L. J. P. D. & A. 140, cited also MAINTENANCE).

But though the idea that a "Child" is one who has not reached FULL AGE runs through all the statutory definitions, yet, generally, the period of Childhood is made to terminate *before* the age of 21; *e.g.* quâ Factory and Workshop Act, 1901, " 'Child' means a person who is under the age

of 14 years, and who has not (being of the age of 13 years) obtained the Certificate of Proficiency or Attendance at School mentioned in Part 3 of this Act" (s. 156).

Other Stat. Def. — 20 & 21 V. c. 48, s. 2; 30 & 31 V. c. 130, s. 3; 35 & 36 V. c. 76, s. 72; 36 & 37 V. c. 67, s. 4; 42 & 43 V. c. 49, s. 49. — *Tr.* 47 & 48 V. c. 19, s. 9; 55 & 56 V. c. 42, s. 18 (5).

V. BOY: GIRL: CERTIFICATED: YOUNG PERSON.

"The word 'Child' in an Act of Parliament always applies exclusively to a Legitimate child" (per Pollock, C. B., *Dickinson v. N. E. Ry.*, 12 W. R. 52; 33 L. J. Ex. 91; 2 H. & C. 735: *Vf. R. v. Maude*, 6 Jur. 646; 2 Dowl. N. S. 58: *R. v. Totley*, 7 Q. B. 598: *Sr. R. v. Hodnett*, 1 T. R. 96: jdgmt of Cotton, L. J., *Northwich v. St. Pancras*, 58 L. J. M. C. 73; 22 Q. B. D. 164).

So in a Will, or Deed (or other document, *R. v. Birmingham*, 8 Q. B. 410), Illegitimate children are not included in the word "Children"; unless, when the surrounding facts are ascertained and applied, some repugnancy or inconsistency, and not merely some violation of a moral obligation or of a probable intention, would result from their exclusion (*Dorin v. Dorin*, L. R. 7 H. L. 568; 45 L. J. Ch. 652; 23 W. R. 570: *V.* the rule stated in other, but similar, terms, 2 Jarm. 234, and *Vh. Cartwright v. Vawdry*, 5 Ves. 530: *Godfrey v. Davis*, 6 Ves. 43: *Re Ayle*, 1 Ch. D. 282; 45 L. J. Ch. 223: *Ellis v. Houston*, 10 Ch. D. 236: *Vthc* as to the inadmissibility of extrinsic evidence in such cases, which however was admitted in *Gill v. Shelley*, 2 Russ. & My. 336; 9 L. J. O. S. Ch. 68: *Re Haseldine*, 31 Ch. D. 511; 34 W. R. 327: in *Swaine v. Kennerley*, 1 V. & B. 469, Eldon, C., said, — "the Will must prove that Illegitimate children are intended; and extrinsic evidence can be received only for the purpose of collecting who had acquired the reputation of being children of the person named in the Will": *Vj. Woodhouselee v. Dalrymple*, 2 Mer. 419).

Speaking generally, an Illegitimate child will only be comprised in "Children" when there is a *designatio personarum* (*Beuchcroft v. Beachcroft*, 1 Mad. 430, stated 2 Jarm. 234: *Wilkinson v. Adam*, 1 V. & B. 422; 12 Price, 470: *Re Herbert*, 29 L. J. Ch. 870; 1 J. & H. 121: *Re Humphries*, 24 Ch. D. 691: *Milne v. Wood*, 42 L. J. Ch. 545: *Hill v. Crook*, *Ib.* 702; L. R. 6 H. L. 265; 22 W. R. 137: *Re Brown*, 43 L. J. Ch. 84; L. R. 16 Eq. 239: *Megson v. Hindle*, 15 Ch. D. 198: *Re Bryon*, 55 L. J. Ch. 30; 30 Ch. D. 110: *Bagley v. Mollard*, 1 Russ. & My. 581: *Re Hall*, 35 Ch. D. 551: *Re Parker*, 1897, 2 Ch. 208: *Re Brown*, 58 L. J. Ch. 420). Thus, in the Will of a Bachelor, "children" means his illegitimate children, for he can have no other (*Clifton v. Goodhun*, L. R. 6 Eq. 278; *Vth* 2 Jarm. 237: *Vf. Woodhouselee v. Dalrymple*, *sup.*): so, of Step-children when testator has no child of his own (*Re Jeans*, 72 L. T. 835; W. N. (95) 98); so, if the document furnishes a Dictionary from which an extended meaning of "Child" or "Children" may be

gathered (per Ld Cairns, *Hill v. Crook*, sup: *Re Lowe*, 61 L. J. Ch. 415; *Re Walker*, 1897, 2 Ch. 238; 66 L. J. Ch. 622; 77 L. T. 94; 45 W. R. 647; *Re Plant*, 47 W. R. 183; *Re Birks*, cited ISSUE: *Re De Wilton*, cited MARRIAGE). *Vf*, RELATIONS: NEPHEW.

As to *after-born* Illegitimate children the rule was thus stated by Ld Chelmsford in *Hill v. Crook* (sup); — “No gift, however express, to unborn illegitimate children is allowed by law; nor under a gift, good as to illegitimate children as a class, will after-born illegitimate children be permitted to take.” But in applying that rule there is “the essential distinction between a Deed and a Will for this purpose, in that a Deed operates from its execution and a Will from the death of the testator” (per Mellish, L. J., *Occleston v. Fullalove*, 43 L. J. Ch. 310; 9 Ch. 147; 22 W. R. 305); and (dissenting from *Howarth v. Mills*, cited LEGITIMATE) it was accordingly held by the majority of the Court in *Occleston v. Fullalove* (Selborne, C., diss.), that illegitimate children, sufficiently designated, born between the date of the Will and the death of the testator, could take (*Va*, *Re Horner*, *Eagleton v. Horner*, 57 L. J. Ch. 211; 37 Ch. D. 695; 36 W. R. 348; 58 L. T. 103; *Re Harrison*, 1894, 1 Ch. 561; 63 L. J. Ch. 385; *Re Hastie*, 35 Ch. D. 728; 56 L. J. Ch. 792; 57 L. T. 168; 35 W. R. 692; *See*, *Re Lowe*, sup, in *who* North, J., held, that an illegitimate child born after the date of the Will, could not take as a member of a CLASS). The statement of the effect of *Occleston v. Fullalove*, by Jessel, M. R., in *Re Goodwin* (43 L. J. Ch. 258; L. R. 17 Eq. 345), is not correct (*Re Bolton*, 55 L. J. Ch. 398; 31 Ch. D. 542; 34 W. R. 325), for “the law is clear that, however a man may wish to provide for illegitimate children he cannot do so by any means which involves an enquiry into the paternity, of which the law accepts no evidence except the fact of marriage” (per Bowen, L. J., *Re Bolton*); and, therefore, it was held in that case that the child of a reputed wife, *en ventre* at the testator’s death, could not take under a bequest to his “child or children.” So, of a limitation in a Deed containing no better designation than “Child or Children” (*Re Shaw*, 1894, 2 Ch. 573; 63 L. J. Ch. 770; 71 L. T. 79; 43 W. R. 43); but a child *en ventre* has a legal existence, and, though illegitimate, the Will may be so framed as to designate such child as a person to be benefitted (*Crook v. Hill*, 46 L. J. Ch. 119; 3 Ch. D. 773; commented on *Re Bolton*, sup). *Vf*, as to testamentary gifts to Illegitimate Children, 2 Jarm. ch. 31: Wms. Exs. 953 *et seq.*

What constitutes legitimacy is, however, rather a question of *status* than of construction. And it would seem to be now “settled that any person legitimate according to the law of the domicile of his father at his birth, is legitimate everywhere within the range of international law for the purpose of succeeding to Personal property” (per Kay, J., *Re Andros*, 52 L. J. Ch. 794; 24 Ch. D. 637; 32 W. R. 30; *whew* for discussion of the previous authorities and especially *Boyes v. Bedale*, 33

L. J. Ch. 283; 1 H. & M. 798, and *Re Goodman*, 50 L. J. Ch. 425; 17 Ch. D. 266; 29 W. R. 586: *Vf*, *Re Grey*, 1892, 3 Ch. 88; 61 L. J. Ch. 622; 41 W. R. 60). So also persons who have the legal status of children by virtue of a foreign law applicable to their case, are "children" for the purpose of assessment to Legacy Duty (*V. STRANGERS IN BLOOD*). But a foreign status will not aid a person claiming to inherit LAND in England (*Doe d. Birtwhistle v. Vardill*, 4 L. J. O. S. K. B. 190; 5 B. & C. 438; 2 Cl. & F. 571; 7 Ib. 895; 6 Bligh, N. S. 479; 9 Ib. 32; 6 Bing. N. C. 385: *V. HEIR*); on the other hand, a child, legitimated by the law of the domicile of his father, is entitled to participate in a devise to "children" of land in England or its proceeds (*Re Grey*, sup.).

"The words 'Child or Children' primarily mean, issue in the first generation only — Sons and Daughters — to the exclusion of grandchildren or other remoter descendants" (per Ld Blackburn, *Boven v. Lewis*, 54 L. J. Q. B. 68; 9 App. C'a. 890: *Vf*, *Martin v. Lee*, 14 Moore, P. C. 142: *Galliers v. Ryecroft*, inf: *Radeliffe v. Buckley*, 10 Ves. 195: *Oldham Case*, 1 O'M. & H. 160: *Brudenell v. Elwes*, 1 East, 442; 7 Ves. 382: *Maund v. Mason*, L. R. 9 Q. B. 254; 43 L. J. M. C. 62; 38 J. P. 84, *wherf* inf: *Moor v. Raisbeck*, 12 Sim. 123: *Pride v. Fooks*, 28 L. J. Ch. 81; 3 D. G. & J. 252: *Muthews v. Gardiner*, 17 Bea. 254: *Loring v. Thomas*, 30 L. J. Ch. 789; 1 Dr. & Sm. 497: *Nicholson v. Kirk*, 29 S. J. 205; Wms. Exs. 952). But the context may show that these words have been used, by mistake, for "DESCENDANTS," or something else, and so they would sometimes receive another construction than their ordinary one (*Morgan v. Thomas*, 51 L. J. Q. B. 556: *Harley v. Mitford*, 21 Bea. 280: *Re Smith*, 56 L. J. Ch. 771; 35 Ch. D. 558; 56 L. T. 878; 35 W. R. 663). So, if there be no child, grand-children may take under a bequest to "Children" (*Crooke v. Brookeing*, 2 Vern. 108). But the mere fact that the word would be otherwise inoperative is not sufficient to widen its interpretation (*Nicholson v. Kirk*, sup); *Vf*, as to testamentary gifts to Children, 2 Jarm. ch. 30: Wms. Exs. 952 *et seq*.

The rule of Roman Law (in force in Natal) is that, — Where a parent has appointed Children (or remoter Descendants) as Heirs, and has directed that, upon their death, their share shall go over to another, such substitution is subject to the tacit condition that a deceased child has left no Issue, the words "si sine liberis" being read into the substitutionary clause as a Condition of it; but that rule is only applicable to cases where the Instituted Heirs are burthened with a *Fidei-commissum* to restore the property to a third person, and does not apply to cases where they take absolutely, if at all. Therefore, a gift in a Natal Will, to a testator's Widow for life, and after her death "to be equally divided among my Children, or such of them as may be then alive," confers no benefit on the wife or issue of a Child who has pre-deceased the Widow (*Galliers v. Ryecroft*, 69 L. J. P. C. 124; 83 L. T. 179; 16 Times Rep. 482).

"Children," s. 14, M. W. P. Act, 1870, did not include Grand-children (*Coleman v. Birmingham*, cited MOTHER: *Cp Maund v. Mason*, inf); but that section is replaced by s. 21, M. W. P. Act, 1882, which, in terms, extends the liability of a married woman to "Children and Grand-children."

Quà Fatal Accidents Act, 1846, 9 & 10 V. c. 93, "'Child,' shall include Son and Daughter, and Grand-son and Grand-daughter, and Step-son and Step-daughter" (s. 5).

"Child," or "Children," generally includes a child *en ventre sa mère*:  
 V. BORN: LAWFULLY BEGOTTEN: NEPHEW.

Though the word "child" or "children," in its primary sense, is to be read as a word of PURCHASE—as a designation of a person or persons (per Ld Cairns, *Bowen v. Lewis*, 54 L. J. Q. B. 63)—and to be confined to issue in the first degree, yet, as regards REAL ESTATE, the context may convert it into a word of LIMITATION and render it equivalent to "heirs of the body" and so create an Entail (*Byng v. Byng*, 31 L. J. Ch. 470; 10 H. L. Ca. 171; *Clifford v. Koe*, 5 App. Ca. 447; *Broadhurst v. Morris*, 2 B. & Ad. 1; *Doe d. Jones v. Davies*, 4 B. & Ad. 43; *Voller v. Carter*, 4 E. & B. 173; 24 L. J. Q. B. 56; *Doe d. Blesard v. Simpson*, 3 M. & G. 929; 7 L. J. C. P. 156; *whic* was cited by North, J., in *Pemberton v. Barnes*, 1899, 1 Ch. 548; 68 L. J. Ch. 195); and if the devise be to "A. and his children," *he having none at the time of the devise*, the word "children" must be taken as a word of limitation, and A. would take an Entail (*Wild's Case*, 6 Rep. 17; reported also as *Anon.* in *Gouldsbrough*, 139, pl. 47, and as *Richardson v. Yardley* in *Moore*, 397, pl. 519. For collection of cases on and discussion of *the Rule in Wild's Case*; *V. 2 Jarm. ch. 38*; *Wms. Exs. 946 et seq*; *Hawk. 198*; *Va. Bowen v. Lewis*, 54 L. J. Q. B. 55; 9 App. Ca. 890; 52 L. T. 189).

The principle of *Wild's Case* applies even where there is a child of A. *en ventre sa mère* at the death of the testator (*Roper v. Roper*, 36 L. J. C. P. 270; 37 Ib. 7; *Sr, Griere v. Griere*, 36 L. J. Ch. 932; L. R. 4 Eq. 180).

*Note.* The Rule in *Wild's Case* has no application to PERSONAL ESTATE (*Audsley v. Horn*, 1 D. G. F. & J. 226; 29 L. J. Ch. 201).

In *Doe d. Smith v. Webber* (1 B. & Ald. 713) "Child or Children," was held as synonymous with "ISSUE"; not as creating an Entail but, as giving an Estate in Fee with an Executory Devise over.

"Children," means one child, if there be only one (*Crooke v. Brooke-ing*, 2 Vern. 108); so, if the phrase is "SURVIVING CHILDREN" (*Re Brown*, W. N. (96) 164). *Vf SURVIVOR.*

"Their children"; *V. THEIR.*

"Under a gift of *Personalty* to 'A., and his Children,' the Parent and Children take, *primâ facie*, concurrently as JOINT TENANTS; but slight circumstances have been laid hold of by the Courts as enabling them to come to the conclusion that a gift for Life to A., with Remainder to his



Children, was intended, *V. Newill v. Newill*, 7 Ch. 253; 41 L. J. Ch. 432" (per Stirling, J., *Re Wilmot*, 76 L. T. 417; 45 W. R. 493). *Cp* ISSUE.

As to when gifts for Children create a Joint Tenancy; *V. BENEFIT*, towards end.

If property be given to A., if B. (a woman) have no children (so that B.'s possible child is the only person who can prevent A. having the property) the Court will order funds under its control to be paid to A. when satisfied that B. (owing to her age) can have no child; but if the gift be to A., if B. *have* children, A. has an interest in the property during the life of B., though the latter be past child-bearing (*Re Hocking*, 1898, 2 Ch. 567; 67 L. J. Ch. 662). *V. PRESUMPTION*.

A gift to the "Widows and Children" of a Class of persons, is a good CHARITY (*Powell v. A-G.*, 3 Mer. 48).

*V. ISSUE: OFFSPRING: BORN: POSTHUMOUS CHILD: NATURAL CHILDREN: PARENT.*

*Note*: — Property given to Illegitimate children will be comprised in a *gift over* of property given to "Children" (*Smith v. Jobson*, 32 S. J. 662; 59 L. T. 397).

In the Acts relating to Maintenance of Poor Relations (43 Eliz. c. 2, s. 7; 59 G. 3, c. 12, s. 26), "Children" does not include Grandchildren, who, accordingly, are not liable thereunder to maintain their Grand-parents (*Maund v. Mason*, *sup.* *Cp.* *Coleman v. Birmingham*, *sup.*) *Vf* FATHER.

"Child under the age of 16," s. 35, 39 & 40 V. c. 61, means a child under that age at the time his parochial Settlement is being enquired into (*R. v. St. Mary, Islington*, 54 L. J. M. C. 110, 146; 15 Q. B. D. 95, 339; following *Madeley v. Bridgnorth*, 52 L. J. M. C. 71; 11 Q. B. D. 314: *Va. Reigate v. Croydon*, 14 App. Ca. 465; 59 L. J. M. C. 29; 53 J. P. 580; 5 Times Rep. 716: *Bath v. Berwick-on-Tweed*, 1892, 1 Q. B. 731; 61 L. J. M. C. 137; *West Derby v. Atcham*, 59 L. J. M. C. 17; 24 Q. B. D. 117; *Mitford v. Wayland*, 59 L. J. M. C. 86; 25 Q. B. D. 164; *Northwich v. St. Pancras*, 58 L. J. M. C. 73; 22 Q. B. D. 164; *St. Pancras v. Norwich*, 56 L. J. M. C. 37; 18 Q. B. D. 521; 56 L. T. 311; 35 W. R. 547; 51 J. P. 343: *V. WIFE*). As to the concluding words "and shall retain the Settlement," &c; *V. Dorchester v. Poplar*, 57 L. J. M. C. 78; 21 Q. B. D. 88; 59 L. T. 689; 36 W. R. 706; 52 J. P. 435; following *Highworth v. Westbury-on-Severn*, 57 L. J. M. C. 33; 20 Q. B. D. 597, and on these words, over-ruling *R. v. St. Mary, Islington*, *sup.*: But *Highworth v. Westbury-on-Severn* was afterwards reversed by H. L., 59 L. J. M. C. 29; 14 App. Ca. 465; 53 J. P. 580; 5 Times Rep. 716. As to an Illegitimate Pauper, under this section; *V. Plymouth v. Arminster*, 1898, A. C. 586; 67 L. J. Q. B. 871; 47 W. R. 33; 62 J. P. 612.

"Child," in s. 60, Offences against the Person Act, 1861, 24 & 25 V.

c. 100, does not include a foetus not matured enough to be born alive (*R. v. Berriman*, 6 Cox, C. C. 388).

"Children," quæ FRIENDLY SOCIETY; *V. WIDOW: WIFE.*

*Vh Chitty*, Eq. Ind. 7675-7678, 7710.

**CHILDREN'S CHILDREN.** — "I read the words 'Children's Children' (in Statute of Distribution) as meaning 'Issue of Children'" (per North, J., *Re Natt, Walker v. Gammage*, 57 L. J. Ch. 798; 37 Ch. D. 517; 58 L. T. 722; 36 W. R. 548).

In a limitation of Realty; *V. Hampton v. Holman*, 5 Ch. D. 183.

**CHILDREN OF A. AND B.** — *V. 2 Jarm.* 194; Hawk. 113: *Re Featherstone*, 22 Ch. D. 111; 52 L. J. Ch. 75.

"Children of A. and B. respectively"; *V. Fletcher v. Fletcher*, 9 L. R. Ir. 301.

**CHILDREN OF THE WIFE.** — This phrase in a Marriage Settlement of a husband's property, means children of the wife by that husband (*Dafforne v. Goodman*, 2 Vern. 362).

**CHILD'S SHARE.** — *V. EQUAL.*

**CHILDWIT.** — " 'Childwit,' that is, that you may take a fine of your bond woman, defiled and begotten with childe without your license" (*Termes de la Ley: Vf Cowel*). *V. WITE.*

**CHIMIN.** — Chimin, Chiminage; *V. WAY.*

**CHIMNEY SWEEPER.** — Quæ the Chimney Sweepers and Chimneys Regn Acts, 1840, and 1864, " 'Chimney Sweeper,' means a person using the TRADE or BUSINESS of a Chimney Sweeper" (s. 3, 27 & 28 *V. c.* 37). *Vf*, 38 & 39 *V. c.* 70; 57 & 58 *V. c.* 51.

**CHINA.** — *V. PLATE.*

"Laws of China"; *V. CRIME.*

"Chinese Passenger Ship"; Stat. Def., 18 & 19 *V. c.* 104, s. 1.

**CHIROGRAPH.** — *V. Co. Litt.* 143 b, and Hargrave's note thereto.

**CHIVALRY.** — Chivalry was a Tenure of Land by KNIGHT SERVICE (*Termes de la Ley*). *Vf Cowel*.

**CHOLERA.** — Quæ Diseases Prevention (Metropolis) Act, 1883, 46 & 47 *V. c.* 35, " 'Cholera' includes Choleraic Diarrhoea" (s. 12).

**CHOSE IN ACTION.** — *Chose in Action* is the antithesis of *Chose in Possession*.

" 'Things in Action,' is when a man hath cause, or may bring an action, for some duty due to him; . . . and because that they are things

whereof a man is not possessed but for recovery of them is driven to his Action, they are called 'Things in Action'" (*Termes de la Ley*).

"According to my view, all personal things are either in Possession or in Action. The law knows no *tertium quid* between the two. 'No chattel,' says Lord Coke in *Fulwood's Case* (4 Rep. 65 a), 'either in action or possession shall go in succession,' as if the two alternatives were the only possible ones. 'Property in chattels personal,' says Blackstone, 'may be either in possession, which is when a man hath not only the right to enjoy, but hath the actual enjoyment of the thing; or else it is in action, where a man hath only a bare right without any occupation or enjoyment' (2 Com. 396); and so Lord Hardwicke in the great case of *Ryall v. Rowles* (1 Atk. 384; 1 Ves. sen. 362), speaks of personal property, whether in possession or action, only as equivalent to all kinds of personal property. The expression *Choses in Suspense* is found in *Brooke's Abr.* in conjunction with *Choses in Action*; but, so far as I can understand, the two expressions are synonymous. It has been suggested that the expression *Choses in Action* was originally only applicable to Debts; and that by a lax usage it has acquired a secondary and wider significance. I am not able to adopt this view. The article '*Choses in Action and Choses in Suspense*' in *Brooke's Abr.*, fo. 140, seems to show that as early as 5 Edw. 4 the expression was held to include the king's right to the marriage of his ward; in 9 Hen. 6, the property in deeds in the hands of a third person was considered as a Chose in Action; and in the 33 Hen. 8, the classification of *Choses in Action* into Real, Personal, and Mixed was recognized" (per Fry, L. J., *Colonial Bank v. Whinney*, 55 L. J. Ch. 593; 30 Ch. D. 261, a def adopted by the H. L.). Accordingly, it was held in that case that Shares in a Co are "Things in Action" within s. 44 (iii), Bankry Act, 1883 (56 L. J. Ch. 43; 11 App. Ca. 426; 55 L. T. 362; 34 W. R. 705; over-ruling *Ex p. Union Bank of Manchester, Re Jackson*, 40 L. J. Bank. 57; L. R. 12 Eq. 354; 19 W. R. 872; and jdgmt of Lindley, L. J., in *Société Générale de Paris v. Tramways Co*, 54 L. J. Q. B. 185; 14 Q. B. D. 424). *A fortiori* property in the Funds (*Dundas v. Dutens*, 1 Ves. 196; *R. v. Copper*, 5 Price, 217, 263), a Life Policy (*Ex p. Ibbetson*, 8 Ch. D. 519), and a Debenture in a Co (*Ex p. Ransberg, Re Pryce*, 4 Ch. D. 685), are Choses in Action; so also is a Hire-Purchase agreement (*Re Isaacson*, 1895, 1 Q. B. 333; 64 L. J. Q. B. 191; 43 W. R. 278); *seus*, of a Hiring of Goods which, on his bankry, ceases to be the property of the lender (*Wilmot v. Alton*, 1897, 1 Q. B. 17; 66 L. J. Q. B. 42; 45 W. R. 12, 113). An undivided Share in a Partnership is a Chose in Action (*Ex p. Fletcher, Re Bainbridge*, 47 L. J. Bank. 70; 8 Ch. D. 218); so, of a Sweep-Stakes Ticket (*Jones v. Carter*, 15 L. J. Q. B. 96; 8 Q. B. 134); and so, in some measure, is a Bank Note (*Francis v. Nash*, Cunningham, 86).

"Things in Action," s. 95, Comp Act, 1862, includes Claims by the

Liquidator against Directors for malpractices in reference to the property of a Co (*Re Park Gate Waggon Co*, 17 Ch. D. 234).

An Assignment of "all moneys now or hereafter standing to the credit of" A. at his banking account, is an assignment of a "debt or other LEGAL Chose in Action" within s. 25 (6), Jnd. Act, 1873 (*Walker v. Bradford Bank*, 53 L. J. Q. B. 280; 12 Q. B. D. 511). So of a sum payable so many days after demand (*Mercantile Bank of London v. Evans*, 43 S. J. 97; *Vthe* revd on another point, 1899, 2 Q. B. 613; 68 L. J. Q. B. 921). But "legal chose in action," being there used in association with "debt," does not include an agreement to lend money, or a right to damages for breach of contract or for a tort (*May v. Lane*, 64 L. J. Q. B. 236; 71 L. T. 869; 43 W. R. 193). *Vh*, *King v. Victoria Insree*, 1896, A. C. 250; 65 L. J. P. C. 38; 74 L. T. 206; 44 W. R. 592: *Manchester Brewery Co v. Coombs*, cited ASSIGNS.

*V. ASSIGNMENT: ABSOLUTE ASSIGNMENT: NOTICE: 1 ENCYC. 352-362.*

It is submitted that the definition established in *Colonial Bank v. Whinney* (sup) may, in some cases and when not otherwise affected by a context, be wide enough to embrace a claim to Damages for a Tort. Such a claim is surely property, — conceivably it may be a very valuable property, e.g. an Infringement of a Patent. It is not in possession; and therefore, accepting the postulate in the definition of Fry, L. J., in *Colonial Bank v. Whinney*, it must be a Chose in Action. Yet, on the other hand, Blackstone says, "All property in action depends entirely upon contracts express or implied; which are the only regular means of acquiring a *Chose in Action*" (2 Com. 397).

*If*, as to the various meanings of "Chose in Action," Elphinstone's Intro. Conv. 2 ed. 200 *et seq.* and *V. the subject of Choses in Action considered at large*, Wms. Exs. 693 *et seq.*, Pt. 2, Bk. 3: Warren, on Choses in Action: 10 Law Quarterly, 303: *Va*, POSSESSION: *Cp* CHATELS.

**CHOSE IN SUSPENSE.** — *V. CHOSE IN ACTION.*

**CHRISTIAN BROTHERS.** — Gift for, is a good CHARITY (*Hogan v. Byrne*, 13 Ir. Com. Law Rep. 166: *Re Brown*, 1898, 1 I. R. 423: *Sr*, *Murphy v. Cheevers*, 17 L. R. Ir. 205, and *Heron v. Donellan* therein cited). *Vh* 3 Encyc. 8.

**CHRISTIAN BURIAL.** — "There appears to be no clear authority as to what is meant by 'Christian Burial'; and as Bowen, J. held there was no evidence to go to the jury, the point was left undecided (Stafford Winter Assizes, 1879-80: 24 S. J. 245)." Stone, 180. *Vh*, per Stephen, J., *R. v. Price*, 53 L. J. M. C. 51; 12 Q. B. D. 247, deciding that cremation is lawful: *Sr*, *Williams v. Williams*, cited CADAVER.

**CHRISTIAN MARRIAGE.** — *V. MARRIAGE.*

**CHRISTIAN NAME.** — Where a document has to be authenticated by the Christian NAME of its signatory, a well known abbreviation, — *e.g.* Wm. for William, — will suffice (*R. v. Bradley*, 30 L. J. Q. B. 180; 3 E. & E. 634; *Henry v. Armitage*, 53 L. J. Q. B. 111; 12 Q. B. D. 257). In *R. v. Bradley*, Hill, J., whilst holding with the rest of the Court that a well-known contraction suffices for a Christian Name, also said, — “I think that an INITIAL cannot be regarded as a Christian Name”; but in *R. v. Plenty* (L. R. 4 Q. B. 346; 38 L. J. Q. B. 205; 9 B. & S. 386) it was pointed out that that dictum was not necessary to the decision; still it, probably, remains valid, unless where there is a provision saving such an imperfect form of a Christian Name as being a MISSOMER. *Vf*, *Lindsay v. Wells*, 3 Bing. N. C. 777; 4 Sc. 471.

**CHRISTIAN RELIGION.** — “Christianity is parcel of the Laws of England” (per Hale, C. J., *Taylor’s Case*, Vent. 293, a case in which the words as regards our Lord and Saviour Jesus Christ were very gross and shameful, and for which the punishment was, — the Pillory in three several places, a Fine of 1000 Marks, and to find Sureties for Good Behaviour during life). *Vf*, *R. v. Woolston*, 2 Stra. 834; per Kelly, C. B., *Cowan v. Milbourn*, L. R. 2 Ex. 234; 36 L. J. Ex. 124. In *this* it was held that, lectures showing that the character of Christ was defective, His teaching erroneous, and that the Bible is no more inspired than any other book, is “to deny the Christian Religion to be true,” and contrary to s. 1, 9 & 10 W. 3, c. 32: *Sc*, per Coleridge, C. J., *R. v. Ramsay*, 48 L. T. 733. *V*. BLASPHEMY.

**CHRISTIAN SERVICE.** — For (and by) s. 6, Burial Laws Amendment Act, 1880, 43 & 44 V. c. 41, “‘Christian Service.’ shall include every religious service used by any Church, Denomination, or Person, professing to be Christian.” *Cp*, DIVINE SERVICE.

**CHRISTMAS DAY.** — *V*. MICHAELMAS.

**CHURCH.** — *Seemle*, the test as to whether a building is a “Church.” is, Is it of Right that the SACRAMENTS are administered there? (*Cowel Ecclesia*).

“Church,” s. 1, 5 G. 4, c. 36, includes the Chancel (*Rippin v. Bastin*, L. R. 2 A. & E. 386; 38 L. J. Ecc. 33); and quâ s. 50, 24 & 25 V. c. 96, the VESTRY “is as much a part of the Church as the Altar or the Nave” (per Coleridge, J., *R. v. Evans*, C. & M. 298).

Stat. Def. — 8 & 9 V. c. 118, s. 167; 14 & 15 V. c. 97, s. 29; 32 & 33 V. c. 94, s. 14; 35 & 36 V. c. 35, s. 1; 37 & 38 V. c. 77, s. 14, c. 85, s. 6. — *Ip*. 32 & 33 V. c. 42, s. 72. — *Scot*. 31 & 32 V. c. 96, s. 1.

*V*. CHAPEL.

“Whatever legal difficulty there may be in giving a strict legal definition of what constitutes legal *Membership of the Church of England*, —

I think that a person who has been baptized, has been confirmed (or is ready and desirous so to be), and is an actual communicant, does hold the status of a Member of that Church, and would be ordinarily regarded and spoken of as such" (per Stirling, J., *Re Perry Almshouses*, 67 L. J. Ch. 210). An Eleemosynary Charity for persons who are, (1) Regular attendants at the Parish Church, (2) Partakers of the Holy Communion, and (3) have lived "a godly, righteous, and sober, life to the glory of God's Holy Name" (the latter words being taken from the Book of Common Prayer), is an ECCLESIASTICAL CHARITY, within s. 75 (2), Loc Gov Act, 1894; for the recipients are (espy having regard to the 2nd qualification) exclusively Members of a "Particular Church," "as such,"—*i.e.* the Church of England (*S. C.* 1898, 1 Ch. 391; 67 L. J. Ch. 206; affd 1899, 1 Ch. 21; 68 L. J. Ch. 66; 79 L. T. 366; 47 W. R. 197; 63 J. P. 52).

"Church," in the phrase "any Particular Church, or Denomination," in the section just cited, "does not mean Building; it means a Religious Society of some sort" (per Smith, L. J., *S. C.*). *Inf*, Phil. Ecc. Law, 1; *Ib.* Part 6, ch. 2.

So, quà 27 & 28 V. c. 54, "The Church" denotes "the United Church of England and Ireland" (s. 4); and quà Clerical Disabilities Act, 1870, "'Church of England' means the Church of England as by law established."

"*Affairs of the Church*," quà Loc Gov Act, 1894, includes "the Distribution of Offertories or other Collections made in any Church" (s. 75).

Rob a Church; *V. ROB.* "Service of the Church"; *V. SERVICE.*

*V. COLLEGIATE CHURCH: DISTRICT: PAROCHIAL CHURCH: INCUMBENT.*

**CHURCH BUILDING.** — "The Church Building Acts, 1818 to 1884"; *V. Sch* 2, Short Titles Act, 1896.

**CHURCH OFFICES.** — Quà 28 & 29 V. c. 82, "'Church Offices,' shall mean Marriages, Burials, and Churchings" (s. 2).

**CHURCH LEASE.** — "Church or College Lease"; *Stat. Def.*, 12 & 13 V. c. 77, s. 54.

**CHURCH RATE.** — *V. Compulsory Church Rate Abolition Act*, 1868, 31 & 32 V. c. 109; *Phil. Ecc. Law*, 1445.

**CHURCHWARDEN.** — "'Churchwardens,' are officers yearly chosen by the consent of the Minister and the Parishioners, according to the custome of every severall place, to see to the Church, Churchyard, and such things as belong to both; and to marke the behaviour of the parishioners for such faults as appertain to the jurisdiction or censure of the Ecclesiasticall Court. These are a kinde of Corporation, and are enabled

by law to sue for any thing belonging to their Church or the Poor of the parish" (Termes de la Ley: *Vf* Jacob).

As to the transfer of the powers, duties, and liabilities, of Churchwardens in matters other than Ecclesiastical; *V. s.* 6 (1), Loc Gov Act, 1894: ECCLESIASTICAL CHARITY.

The word "Churchwardens," in modern Acts, is generally defined to include "Chapelwardens, or other persons discharging the duties of Churchwardens," *e.g.* — 9 & 10 V. c. 74, s. 2; 10 & 11 V. c. 38, s. 20; 13 & 14 V. c. 57, s. 10; 14 & 15 V. c. 34, s. 3, c. 97, s. 29; 15 & 16 V. c. 85, s. 52.

*Vh*, Phil. Ecc. Law, Part 6, ch. 4: Prideaux's Churchwarden's Guide: Shaw's Parish Law: Steer's Parish Law: Grant, on Corporations, 600: 3 Encyc. 16-21.

**CHURCHYARD.** — Tombs in a churchyard are not within the word "Churchyard" as used in the Church Building Act, 1809, 49 G. 3, c. 108, s. 1; and a bequest for their repair is not saved by that Act (*Re Rigley*, 36 L. J. Ch. 147). *Vh*, *Re Vaughan*, 33 Ch. D. 187; 55 L. T. 517; 39 W. R. 104: Phil. Ecc. Law, Part 6, ch. 2.

**CIDER.** — If so understood at the place where the Contract is made, "Cider," probably, means the juice of apples as soon as expressed (*Studdy v. Sanders*, 5 B. & C. 628).

Quà Beerhouse Acts, and Inl. Rev. License, "Cider" includes Perry (s. 32, Beerhouse Act, 1830; s. 2, 32 & 33 V. c. 27; s. 40, Inl. Rev. Act, 1880).

*V.* BEER.

**CINDERS.** — *V.* COAL.

**CINQUE PORTS.** — The Cinque Ports, are Hastings, Sandwich, Dover, Hythe, and Rye (18 & 19 V. c. 48). "The District of Romney Marsh" is treated as distinct therefrom (s. 2, 27 & 28 V. c. 80).

"The Cinque Ports Acts, 1811 to 1872"; *V.* Sch 2, Short Titles Act, 1896.

Quà 16 & 17 V. c. 129, " 'Cinque Port Pilots' shall mean, the Pilots of the Society or Fellowship of the Trinity House of Dover, Deal, and the Isle of Thanet" (s. 26).

**CIRCULARS.** — "Circulars, Advertisements, or otherwise," s. 32, Patents, Designs, and Trade Marks Act, 1883, 46 & 47 V. c. 57, include a letter (*Driffield Co v. Waterloo Mills Co*, 55 L. J. Ch. 391; 31 Ch. D. 638; 54 L. T. 210; 34 W. R. 360; *Barrett v. Day*, 59 L. J. Ch. 464; 43 Ch. D. 435; *Skinner v. Shew*, 1893, 1 Ch. 413; 62 L. J. Ch. 496; 67 L. T. 696; 41 W. R. 217). *V.* THREAT.

**CIRCULATION.** — A Bank-note "In Circulation," means, a Note which is passing from hand to hand as a NEGOTIABLE instrument; and

when returned to the Bank (or any of its branches), it ceases to be "In Circulation" or "Outstanding" (*Bank of Africa v. Colonial Government*, 57 L. J. P. C. 66; 13 App. Ca. 215; 58 L. T. 427).

**CIRCUMSPECTE AGATIS.** — "Is the title of a statute made (13 Edw. 1, A. D. 1268), prescribing some cases to the Judges wherein the King's Prohibition lies not" (Termes de la Ley).

**CIRCUMSTANCES.** — *V.* SAME: SPECIAL: INSOLVENT CIRCUMSTANCES: LIKE.

"As Circumstances may require"; *V.* REQUIRE.

In taxing Costs, the "Other Circumstances" referred to by R. 20, Ord. 50 a, Co. Co. R. 1889, include the insolvency of the estate (*Pain v. Bowden*, 1896, 2 Q. B. 301; 65 L. J. Q. B. 530; 75 L. T. 102; 45 W. R. 48).

"When the statute s. 9, Public Worship Regn Act, 1874, prescribes that the Bishop's Opinion is to be formed 'after considering the Whole Circumstances of the case,' I think it must mean that the Bishop is to consider *all* the circumstances which appear to him, honestly exercising his judgment, to bear upon the particular case, and upon the question whether he ought in that case to prevent proceedings being taken. I dissent entirely from the view that it is for the Court, or your Lordships, to determine what are the considerations which ought to govern the Bishop's Opinion" (per Ld Herschell, *Allcroft v. London Bp*, cited OPINION). "The enquiry into all the circumstances of the case is one which may justly include considerations of the good to be done by, or the mischief involved in, proceedings which, unless they obtain the Bishop's sanction, cannot proceed" (per Halsbury, C., *Ib.*). *See*, per Ld Bramwell, *S. C.*

A similar rule obtains where Justices, or others, have to exercise a general discretion, after enquiring into all the Circumstances of a case (*R. v. Mills*, 2 B. & Ad. 578; *R. v. Treasury*, 10 A. & E. 179; 8 L. J. Q. B. 249).

**CIRCUMSTANTIBUS.** — "Is a Word of Art," indicating a supply of Jurors when a TALES is prayed (Termes de la Ley).

**CISTERN.** — Quà P. H. London Act, 1891, "'Cistern,' includes a Water-butt" (s. 141).

**CITY.** — "Every borough incorporate, that had a bishop within time of memory, is a citie, albeit the bishopricke be dissolved" (Co. Litt. 109 b). *Vf* Termes de la Ley.

Stat. Def. — *lr.* 13 & 14 V. c. 68, s. 24, c. 69, s. 117; 31 & 32 V. c. 49, s. 25.

"City or Borough"; Stat. Def., 6 & 7 V. c. 18, s. 101; 17 & 18 V. c. 102, s. 38.



"City or PLACE"; Stat. Def., 26 & 27 V. c. 97, s. 2.

"City of *Dublin*"; Stat. Def., 12 & 13 V. c. 91, s. 89, c. 97, s. 133.

"City of *London*"; *V.* LONDON.

"City of London Police Rate"; Stat. Def., 49 & 50 V. c. 11, s. 7.

**CIVIL AFFAIRS.** — *V.* MANAGEMENT.

**CIVIL CAPACITY.** — Stat. Def., 39 & 40 V. c. 43, s. 1.

**CIVIL CAUSE.** — *V.* CAUSE: CIVIL PROCEEDING: CRIMINAL CAUSE.

**CIVIL CODE OF LOWER CANADA.** — *V.* BILL OF EXCHANGE, *n.*

**CIVIL COMMOTION.** — A "Civil Commotion," within an Exception to a Fire Policy, means "an Insurrection of the people for general purposes, though it may not amount to a Rebellion, where there is an Usurped Power" (per Mansfield, C. J., *Langdale v. Mason*, Park, 968); agreeably to his lordship's directions, the jury found that the *Ld George Gordon Riots of June, 1780*, were a "Civil Commotion." But there must be something more than a mere general civil disturbance of a transient character; and, therefore, an Exception of "Civil Commotion," in a Charter-Party, is not established by a general and vague proof of a disturbed state of the Place of Loading which may have interrupted or impeded, but did not actually prevent, the loading of the ship (*The Village Belle*, 2 Asp. 228; 30 L. T. 232).

*Cp.* CIVIL WAR: RIOT: USURPED POWER: REBELLION: LEVY WAR.

**CIVIL CUSTODY.** — Stat. Def., 42 & 43 V. c. 33, s. 59; 44 & 45 V. c. 58, s. 60 (5).

**CIVIL DEATH.** — *V.* *Bullock v. Dudds*, 2 B. & Ald. 275; *Coombes v. Queen's Proctor*, 16 Jur. 820.

**CIVIL DEBT.** — A "Civil Debt" within s. 6, Sum Jur Act, 1879, is "a sum of money claimed to be due" before the commencement of the proceedings to recover it, and does not include a fine or penalty not due to anybody until the magistrate has adjudged its amount (*R. v. Paget*, 51 L. J. M. C. 9; 8 Q. B. D. 151. *Vj.* *Mellor v. Denham*, 49 L. J. M. C. 89; 5 Q. B. D. 467; *R. v. Stewart*, cited SHIP). *V.* CLAIMED. *Cp.* JUDGMENT DEBT.

**CIVIL ENGINEER.** — *V.* *judgmt of Halsbury, C., Int. Rev. v. Forrest*, 15 App. Ca. 342; 63 L. T. 36; 39 W. R. 33.

**CIVIL PRISONER.** — Quà 2 & 3 V. c. 42 (to improve prisons in Scotland), "'Civil Prisoner.' shall include all persons imprisoned for CIVIL DEBT, or *ad factum præstandum*, or generally at the instance of

a (creditor for performance of Civil Obligation" (s. 63), — a def expanded by 23 & 24 V. c. 105, s. 4; 40 & 41 V. c. 53, s. 71. Cp CRIMINAL PRISONER.

**CIVIL PROCEEDING.** — Is a process for the recovery of individual right or redress of individual wrong; inclusive, in its proper legal sense, of suits by the Crown (*Bradlaugh v. Clarke*, 52 L. J. Q. B. 505; 8 App. Ca. 354).

"Civil Proceeding." s. 1, Bankry Act, 1890, includes everything which can fairly be so called, *e.g.* a Summons for leave to enforce an Award (*Re B, Ex p. Caucasian Trading Corp*, 1896, 1 Q. B. 368; 65 L. J. Q. B. 346; 74 L. T. 47; 44 W. R. 439).

"Civil Proceeding," R. 2, Ord. 68, R. S. C.; V. Ann. Pr.

A Quo Warranto is now a "Civil Proceeding" (s. 15, Jud. Act, 1884).

V. ACTION: CAUSE: CRIMINAL CAUSE: CRIMINAL SUIT.

**CIVIL RIGHTS.** — The "Property and Civil Rights," which by s. 92, British North America Act, 1867, 30 V. c. 3, are to be regulated by the Provincial Legislature, include rights arising from contract, *e.g.* Fire Insurance Policies; and such a contract is not a matter relating to "*Trade or Commerce*" within s. 91, and therefore to be regulated by the Dominion Legislature (*Citizens' Insree v. Parsons*, 51 L. J. P. C. 11; 7 App. Ca. 96: *VJ*, as to "*Trade or Commerce*," *Severn v. The Queen*, 2 Sup. Ct. Can. Ca. 90). But an Act for the regulation of the sale of intoxicants relates to public order, and is not within the phrase "Property and Civil Rights," and is, therefore, within the competency of the Dominion Legislature. Such an Act "has in its legal aspect an obvious and close similarity to laws which place restrictions on the sale or custody of poisonous drugs or of dangerously explosive substances. These things, as well as intoxicating liquors, can, of course, be held as property; but a law placing restrictions on their sale, custody, or removal, on the ground that the free sale or use of them is dangerous to public safety, and making it a criminal offence punishable by fine or imprisonment to violate these restrictions, cannot properly be deemed a law in relation to property in the sense in which these words are used in the 92nd section. . . . Laws which make it a criminal offence for a man wilfully to set fire to his own house on the ground that such an act endangers the public safety, or to over-work his horse on the ground of cruelty to the animal, though affecting in some sense property and the right of a man to do as he pleases with his own, cannot properly be regarded as legislation in relation to Property or to Civil Rights. Nor could a law which prohibited or restricted the sale or exposure of cattle having a contagious disease be so regarded. Laws of this nature designed for the promotion of public order, safety, or morals, and which subject those who contravene them to criminal procedure and punishment, belong to

the subject of Public Wrongs rather than to that of Civil Rights" (*Russell v. The Queen*, 51 L. J. P. C. 81; 7 App. Ca. 829). F. PEACE.

V. BANKRUPTCY AND INSOLVENCY: DIRECT TAXATION: RIGHTS.

**CIVIL SERVANT.** — Quà SUPERANNUATION Acts, " 'Civil Servant,' means, a person who has served in an established capacity in the Permanent Civil Service of the State, within the meaning of s. 17 of the Superannuation Act, 1859" (50 & 51 V. c. 67, s. 12).

**CIVIL WAR.** — Civil War is when a Party arises in a State which no longer obeys the Sovereign, and is sufficiently strong to make head against him; or when, in a Republic, the nation is divided into two opposite Factions and both sides take up arms (*Brown v. Hiatt*, 1 Dillon, 379). Cp CIVIL COMMOTION.

**CLAIM.** — V. DEBT, CLAIM, OR DEMAND: DEMAND: INCUMBRANCE.

" 'Claime,' is a CHALLENGE by any man of the propertie or ownership of a thing which hee hath not in possession, but is withholden from him wrongfully" (Termes de la Ley, which adopts def of Dyer, C. J., *Stowell v. Zouch*, Plowd. 359). Vf Cowel.

" 'Claim against the Crown for damages or compensation' (Crown Suits, Ordinance, 1876, s. 18, ii), is an apt expression to include Claims arising out of Torts" (*A-G. Straits Settlements v. Wemyss*, 57 L. J. P. C. 64; 13 App. Ca. 192; 58 L. T. 358).

R. 5, Ord. 57, R. S. C., does not mean that there should be a vague statement, but the "Claim" therein referred to should be precise and definite (*Hockey v. Evans*, 18 Q. B. D. 390; 56 L. J. Q. B. 253).

"Claim for COMPENSATION," s. 2 (1), Workmen's Comp Act, 1897, includes a Notice of Claim, as well as the initiation of proceedings (*Powell v. Main Colliery Co*, 1900, A. C. 366; 69 L. J. Q. B. 758; 83 L. T. 85; 49 W. R. 50).

Note. V. *Wright v. Bagnall*, 1900, 2 Q. B. 240; 69 L. J. Q. B. 551; 82 L. T. 346; 48 W. R. 533; 64 J. P. 420, as to Waiver of Notice by Conduct: *whc* Cp with *Randall v. Hill's Dry Dock Co*, 1900, 2 Q. B. 245; 69 L. J. Q. B. 554; 82 L. T. 521; 48 W. R. 530; 64 J. P. 451.

The Declaration is a part of the statutory "Claim" to the LONGER Franchise (*Ainsley v. Nicholson*, 24 Q. B. D. 144; 59 L. J. Q. B. 102).

"Claims of which Exor has NOTICE," s. 29, Ld St. Leonards' Act, 22 & 23 V. c. 35, include those which a Cr has a right to make and which are known to the Exor, as well as those actually sent in: for "Notice" there, means knowledge (*Markwell's Case*, 21 W. R. 135; *Scottish Eq. Assree v. Beatty*, 29 L. R. Ir. 290).

"Claims and Contingent Liabilities," against which, under their articles, Directors of a Co have to retain a Reserve Fund, mean, such

things as outstanding debts and possible adverse verdicts, but not possible depreciation of the Co's securities (*Lever v. Land Securities Co*, 8 Times Rep. 94).

Claim or Demand in respect of Illness; *V. ILLNESS.*

A Power to recover "Claims or Demands," includes the power to sue for a Libel (*Williams v. Beaumont*, 10 Bing. 260).

"Claim indorsed"; *V. INDORSED.*

*V. CLAIMED: SUM CLAIMED.*

**CLAIMANT.** — "Creditor or Claimant," s. 22, 14 & 15 V. c. cv., means, only a person having a debt or liquidated demand against the Copper Miners' Co; the phrase does not include a person having a right of action for breach of covenant (*Wood v. Copper Miners' Co*, 14 C. B. 428; 23 L. J. C. P. 209).

**CLAIMED.** — *V. ADMITTED SET-OFF.*

"Claimed or Recoverable," s. 57, Co. Co. Act, 1888; *V. Lovejoy v. Cole*, 64 L. J. Q. B. 122; 1894, 2 Q. B. 861; 71 L. T. 374; 43 W. R. 48.

A Cab Fare is "a sum of money *claimed to be due*," and "is recoverable on Complaint to a Court of Summary Jurisdiction," within s. 6, 42 & 43 V. c. 49, and can (apart from fraud, 59 & 60 V. c. 27) only be enforced as a "CIVIL DEBT" under s. 35 (*R. v. Kerswill*, 1895, 1 Q. B. 1; 64 L. J. M. C. 70; 71 L. T. 574; 43 W. R. 59; 59 J. P. 342); so, of a weekly sum claimed by Guardians for Maintenance of a pauper father (*Re Gamble*, 1899, 1 Q. B. 305; 68 L. J. Q. B. 195; 79 L. T. 642; 63 J. P. 101); so, of a General District Rate (*Southwark & Vauxhall W. W. Co v. Hampton*, 1899, 1 Q. B. 273; 68 L. J. Q. B. 207; 79 L. T. 512; 63 J. P. 100): *Secus*, of a Poor Rate (*Seaman v. Burley*, cited CRIMINAL CAUSE), or Costs on an Order to vaccinate (*R. v. Burrows*, 77 L. T. 338; 46 W. R. 29; 61 J. P. 724).

**CLAIMING RIGHT.** — *V. RIGHT: BONÂ FIDE.*

**CLAIMING UNDER.** — As to who are persons "claiming by, from, THROUGH, or under," a Covenantor; *V. QUIET ENJOYMENT: Elph.* 491, 492; Redman, ch. 5, s. 1: Dart, 884; Woodf. 728; Touch. 170-172: *Stanley v. Hayes*, 3 Q. B. 105, approved and applied in *Kelly v. Rogers*, 1892, 1 Q. B. 910; 61 L. J. Q. B. 604; 40 W. R. 516: *whlc* distd *Cohen v. Tannar*, 1900, 2 Q. B. 609; 69 L. J. Q. B. 904; 83 L. T. 64; 48 W. R. 642.

*V. PRETENDING TO CLAIM: UNDER.*

*Semble*, that a Trustee in Bankruptcy is not a person "Claiming through or under" the Bankrupt, within s. 11, Com. L. Pro. Act, 1854 (*Pennell v. Walker*, 26 L. J. C. P. 9; 18 C. B. 651: *Piercey v. Young*, 14 Ch. D. 200).

Where a person is "Claiming under any MORTGAGE of land," 1 V. c. 28, "the mtgce must be a continuing or subsisting mtgce" (*Thornton v. France*, 66 L. J. Q. B. 711, stating one of the rulings in *Heath v. Pugh*, cited FIRST ACCRUED); and *Doe d. Baddeley v. Massey* (20 L. J. Q. B. 434; 17 Q. B. 373) is, "open to some question as being inconsistent with that jdgmt" (*Ib.*). An owner of an Equity of Redemption whose Equity is barred by s. 24, Real Property Limitation Act, 1833, does not, by paying off the mtgce and taking a Conveyance from the mtgee, "claim under the mtgce" within the section (*Thornton v. France*, 1897, 2 Q. B. 143; 66 L. J. Q. B. 705; 77 L. T. 38; 46 W. R. 56). *Vf, Doe d. Palmer v. Eyre*, 20 L. J. Q. B. 431; 17 Q. B. 366.

"Parties claiming under the SETTLEMENT," s. 47 (1), Bankry Act, 1883, does not include a PURCHASER for Value acquiring title under the Settlement (*Ex p. Brown, Re Vansittart, Re Brall, Ex p. Norton, Re Carter and Kenderdine; Sv, Re Briggs and Spieer*, all cited VOID).

**CLAM.** — V. VI, CLAM, PRECARIO.

**CLASS.** — "A gift is said to be to a 'Class' of persons when it is to all those who shall come within a certain category or description defined by a general or collective formula, and who, if they take at all, are to take one divisible subject in certain proportionate shares" (per Selborne, C., *Pearks v. Moseley*, 5 App. Ca. 723; 50 L. J. Ch. 61).

"A number of persons are popularly said to form a 'Class' when they can be designated by some general name as 'Children,' 'Grand-children,' 'Nephews'; but in legal language the question whether a gift is one to a Class depends not upon these considerations, but upon the mode of gift itself, namely, — that it is a gift of an aggregate sum to a body of persons uncertain in number at the time of the gift, to be ascertained at a future time, and who are all to take in equal, or in some other definite, proportions, the share of each being dependent for its amount upon the ultimate number of persons" (1 Jarm. 268, 269).

If only one person answers the designation, still that one takes as a Class (*Re Harvey*, 1893, 1 Ch. 567; 62 L. J. Ch. 328; 68 L. T. 562; 41 W. R. 293); and, again, a Class may be formed by a named individual together with a body of persons uncertain in number (*Re Moss*, 1899, 2 Ch. 314; 68 L. J. Ch. 598; 81 L. T. 139; 47 W. R. 642).

As to time for ascertaining a Class, *V. Andrews v. Partington*, 3 Bro. C. C. 403; *Re Knapp*, 1895, 1 Ch. 91; 64 L. J. Ch. 112; 71 L. T. 625; 43 W. R. 279; *Re Merrin*, cited PERPETUITY; 2 Jarm. 159, 160, ch. 49; Hawk. 61, ch. 7. The latter learned writer was cited and approved by Kekewich, J., *Re Powell* (1898, 1 Ch. 227; 67 L. J. Ch. 148; 77 L. T. 649; 46 W. R. 231; distinguishing *Re Wenthmoth*, 57 L. J. Ch. 649; 37 Ch. D. 266). The general rule is, — The period indicated for the distribution of a fund, is the period when the

Class to take such fund is to be ascertained; when no such period is indicated, then the Class should be ascertained as early as possible:— Therefore, (1) An unconditioned gift, whether of Corpus or Income, to a defined Class, — *e.g.* Children, Grand-Children, Issue, Brothers, Sisters, Nephews, or Cousins, of the testator, or any other person, — comprises only such persons as answer the description and as are *in existence at the testator's death*, if any such are then living; and (2), If the gift is to each member of the Class on attaining a stated age, or marriage, the time for ascertaining the Class is the time when the first member of it becomes entitled to receive his share. This second rule, however, is not applicable to gifts of Income; and any person answering the class description who at any time complies with the condition of the gift “is entitled to come in and share in the Income” (*Re Wenmoth*, sup), and whether the limitations be legal or equitable (*Re Averill*, 1898, 1 Ch. 523; 67 L. J. Ch. 233; 78 L. T. 320; 46 W. R. 460).

“Class of CREDITORS,” s. 2, 33 & 34 V. c. 104; *V. Sovereign Life Assree v. Dodd*, 1892, 2 Q. B. 573; 62 L. J. Q. B. 19; 67 L. T. 396; 41 W. R. 4.

“Class” of Persons having rights in Administrations, and Execution of Trusts, R. 32, Ord. 16, R. S. C.; *V. Ann. Pr.*

“Classes of *Prisoners* for which a Prison is legal”; Stat. Def., 23 & 24 V. c. 105, s. 4.

**CLASSED.** — Quà National School Teachers (Ir) Act, 1879, 42 & 43 V. c. 74, “‘Classed *Teachers*,’ means, such principal and assistant teachers of model or ordinary National Schools as receive salaries from, and are classed according to the regulations of, the Commrs of Education” (s. 2).

**CLAUSE.** — A testator (obit 1836), devised realty to “E. Eley, her heirs and assigns for ever”; subsequently he obliterated “Eley, her heirs and assigns for ever,” and re-wrote “Eley”: held, a revocation of a “Clause” in the Will within s. 6, Statute of Frauds (*Swinton v. Baily*, 48 L. J. Ex. 57; 4 App. Ca. 70).

**CLAWA.** — “A close, or small measure of land” (Jacob).

**CLAY.** — *V. MINE.*

**CLAY'S ACT.** — The Compound Householders Act, 1851, 14 & 15 V. c. 14.

**CLEAN BILL OF LADING.** — “In *Restitution S. S. Co v. Pirie* (6 Asp. N. S. 428; 61 L. T. 330; 6 Times Rep. 50) Cave, J. (adopting a statement in Pollock & Bruce’s Law of Mer Shipping, p. 341, 4 ed.), held, that an agreement to give a ‘Clean Bill of Lading,’ meant, a **BILL OF LADING** which contained nothing in the Margin qualifying the words

in the Bill of Lading itself. His lordship added, 'But where, for instance, you insert in the Margin the Weight, or Quality, or QUANTITY UNKNOWN, that is not a Clean Bill of Lading; because that contains a qualification. Where, on the other hand, there is no such qualification inserted in the Margin, there the Bill of Lading is a Clean one' (Abbott, 368). *Vf* CONTENTS UNKNOWN.

*Vh*, *Stephens v. Australasian Insree*, L. R. 8 C. P. 18; 42 L. J. C. P. 12; *Lishman v. Christie*, 56 L. J. Q. B. 538; 19 Q. B. D. 333; (for various Scotch readings) *Arrospe v. Barr*, 8 Sess. Ca., 4th Ser., 602; 1 Maude & P. 341.

**CLEANSE.**—Is a Structural Improvement, a "Cleansing, Alteration, or Amendment," within s. 41 (2), P. H. London Act, 1891? *V*, per Kennedy, J., *Fulham v. Solomon*, 1896, 1 Q. B. 198; 65 L. J. M. C. 33.

"The cleansing of Earth-closets, Privies, Ash-pits, and Cess-pools," s. 42, P. H. Act, 1875, "has a wide meaning, and includes removal of all matter which causes a NUISANCE" (per Russell, C. J., *Burnett v. Lasky*, 68 L. J. Q. B. 57); and if a Local Authority undertakes a "Cleansing" which does not remove, but which, if properly done, would have removed, the cause of a nuisance, they cannot, under s. 91, get the STRUCTURAL CONVENIENCE abolished and another substituted (*S. C.* 68 L. J. Q. B. 55; 79 L. T. 408; 63 J. P. 5).

**CLEAR.**—The gift of a "Clear" annuity or legacy exonerates it from *Legacy Duty* (*Louch v. Peters*, 1 My. & K. 489; 3 L. J. Ch. 167; *Gude v. Mumford*, 2 Y. & C. 448; *Baily v. Boulton*, 14 Bea. 595; *Lethbridge v. Thurlow*, 21 L. J. Ch. 538; 15 Bea. 334; *Haynes v. Haynes*, 3 D. G. M. & G. 590; *Banks v. Braithwaite*, 32 L. J. Ch. 35; 10 W. R. 612; 7 L. T. 149; *Re Coles*, 22 L. T. 221; *Vf*, 1 Jarm. 187, n; Seton, 1636; *Watson*, Eq. 1345); so, if the words are "Clear of Property Tax, and all EXPENSES attending the same" (*Courtroy v. Vincent*, T. & R. 433). And this construction is not altered by a special direction that one annuity is to be "free of legacy duty," which direction is omitted as regards another annuity in the same Will (*Re Robins*, W. N. (88) 41; 32 S. J. 273). And even where an appointment of a residue of a fund would be regarded as a gift of a definite sum, a preceding appointment of part of such fund "of the Clear Value" of so much, will exempt that amount from liability to contribute to probate and legacy duty and testamentary expenses (*Re Currie*, 57 L. J. Ch. 743; 59 L. T. 200; 36 W. R. 752).

But in *Banks v. Braithwaite* (sup), the direction was to retain so much consols "as should be sufficient to realize the Clear Yearly Income of £150"; and the V. C. decided that this income was *not* free of Legacy duty; for he said, "the amount (to be retained) having been arrived at, the dividends are then directed to be paid to the petitioner. The word

'clear' does not apply to that direction." *Va, Sanders v. Kiddell*, 5 L. J. Ch. 29; 7 Sim. 536; *Pridie v. Field*, 19 Bea. 497.— It has, however, been said that "this distinction does not seem to be tenable on principle" (1 Jarm. 187, citing *Wilks v. Groom*, 2 Jur. N. S. 798; *Harper v. Morley*, 2 Jur. 653. *Va, Re Cole*, L. R. 8 Eq. 271).

Quà *Succession Duty*, *Banks v. Braithwaite* was followed by Stirling, J., on similar words, but in which a "NET" sum was to be realized (*Re Saunders*, 1897, 1 Ch. 888; 66 L. J. Ch. 503), that decision, however, was reversed on appeal, and it was held that a direction that so much of the trust property "as should be sufficient to raise the Net sum of £2,000" for A., entitled A. to have the *Succn Duty* on that sum paid out of the unappointed part of the trust property; *Banks v. Braithwaite*, was questioned by Lindley, M. R., and Chitty, L. J. (1898, 1 Ch. 17; 67 L. J. Ch. 55; 77 L. T. 450; 46 W. R. 180).

The word "clear," alone, will scarcely exempt even a testamentary annuity from *Income Tax* (*Lethbridge v. Thurlow*, sup); but coupled with other apt words (in a Will, but not in a Deed) it would do so. *V. DEDUCTIONS.*

"Clear Annual Income," R. 126, Lunacy Rules, 1892; *V. Re Grehan*, 1895, 2 Ch. 12; 64 L. J. Ch. 505; 72 L. T. 383; 43 W. R. 433; 59 J. P. 325.

A V. & P. contract which stipulates that the price for the land shall be paid "Clear of all EXPENSES," means, that the Purchaser is to bear the expense of making out the Vendor's Title, as well as paying for the Conveyance which is an expense the law imposes on him (*Stratford v. Bosworth*, 2 V. & B. 241).

#### V. FREE.

"Clear Profits" of a Company; *V. Re Alexandra Palace, Goodson's Case*, 51 L. J. Ch. 655; 21 Ch. D. 149.

"Clear Sum"; *V. Re Currie*, W. N. (88) 154; 57 L. J. Ch. 743; 59 L. T. 200; 36 W. R. 752.

"By 'Clear Yearly Rent' is understood, a RENT clear of all outgoings, &c usually borne by the tenant; but subject to such (e.g. Land Tax) as are borne by the landlord" (Dart, 137, citing *Tyrconnell v. Ancaster*, 2 Ves. sen. 500; *Vf, R. v. Tomlinson*, cited NET). *V. YEARLY.*

"Fair Clear Annual Rent," in lieu of "Net Value" of Tithes, does not exonerate from Highway Rate on such Rent (*R. v. Lacy*, 5 B. & C. 702). *Cp, R. v. Shaw*, and *Chatfield v. Ruston*, cited OUTGOING.

The "Clear Yearly Value" of a tenement within s. 27, Rep. People Act, 1832 (repld s. 5, Rep. People Act, 1884), means the annual amount which the tenement would ordinarily let at, deducting such rates, taxes, and charges, as may be payable by the landlord, but which generally are payable by a tenant; but without deducting landlord's insurance or repairs (*Coogan v. Luckett*, 15 L. J. C. P. 159; 2 C. B. 182; 1 Lutw. 447; *Colwill v. Wood*, 15 L. J. C. P. 160; 2 C. B. 210; 1 Lutw. 487). But for



the purpose of a County Vote the value of a freehold would be lessened by what the landlord would have to pay to keep it in repair under the letting, or in order to obtain a tenant at the amount of the agreed rent (*Hamilton v. Bass*, 22 L. J. C. P. 29; 12 C. B. 631). Indeed, in *Dobbs v. Grand Junc. W. W. Co* (53 L. J. Q. B. 50), *Colvill v. Wood* was treated as an exceptional decision on the particular statute to which it related; and Lord Blackburn there said that as *Colvill v. Wood* had been acted upon so long it was too late to cast any doubt upon it. As to the meaning of "Clear Yearly Value" in Scotland and Ireland, quæ electoral qualification; V. 48 V. c. 3, s. 11. *Vf*, NET: ANNUAL VALUE.

Freehold County Qualification of the Clear Yearly Value of 40s., "above all Charges"; V. CHARGES.

The phrase "Clear Days," means that the time is to be reckoned exclusive of both the first and last days (*R. v. Herefordshire Jus.*, 3 B. & Ald. 581; *Liffin v. Pitcher*, 1 Dowl. N. S. 767; R. 12, Ord. 64, R. S. C.). V. AT LEAST: BETWEEN: INTERVAL.

Refreshers to Counsel may be allowed "for every clear day" subsequent to the first or other day or days of the trial of 5 hours each (R. 27 (48), Ord. 65, R. S. C.), — that means every clear substantial portion of a day beyond a completed day or days of 5 hours each (per Grantham, J., at Chambers, in *Gibbs v. Barrow*, 30 S. J. 538; *Collins v. Worley*, 60 L. T. 748; *Wicksteed v. Biggs*, 52 L. T. 428; 54 L. J. Ch. 967; *Boswell v. Coaks*, 36 Ch. D. 444; 58 L. T. 97; 36 W. R. 209; *The Courier*, 1891, P. 355; 61 L. J. P. D. & A. 11; 66 L. T. 386; 40 W. R. 336; *O'Hara v. Elliott*, 1893, 1 Q. B. 362; 62 L. J. Q. B. 317; 68 L. T. 166; 41 W. R. 248; *See Walker v. Crystal Palace Gas Co*, 1891, 2 Q. B. 300; 60 L. J. Q. B. 781; 65 L. T. 86; 39 W. R. 716).

Vessel to be placed by Shipowner "with Clear Holds, at the disposal of the Charterers, they having the whole Reach or Burthen of the vessel"; such a clause in a Charter-Party does not relieve the owner of his ordinary liability to provide Ballast (*Weir v. Union S. S. Co*, 1900; 1 Q. B. 28; 69 L. J. Q. B. 193, 809; 83 L. T. 91).

"Clear and Positive Proof," means such evidence as leaves no reasonable doubt as to the matter required to be proved (*Gopeekishen Goshamer v. Brindabunchunder Sircar Chowdhry*, 19 Sutherland's Weekly Rep. 41).

For (and by) s. 436, Mer Shipping Act, 1894. "Clear Side" of a Sea-going Ship, means, "the height from the water to the upper side of the plank of the deck from which the depth of hold as stated in the Register is measured; and the measurement of the Clear Side is to be taken at the lowest part of the Side."

**CLEARANCE.** — "Clearance" of a Vessel, *c.g.* in a contract for the consignment of goods, "has a well-known and definite meaning. It is a Certificate issued by the Customs showing that the Vessel named in it has complied with the Customs' requirements and is authorised to proceed

to Sea: and the acts which have to be done at the Customs to procure such a Certificate constitute the process of 'Clearing' the Vessel. . . . It is customary to obtain the Clearance before the loading is actually complete, so that there need be no delay in putting out to sea," and the Captain obtains it "as soon as his Cargo is in such a position as to enable him to make out his Manifest for use of the Customs" (per Bigham, J., *Thalman v. Texas Star Flour Mills*, 4 Com. Ca. 265). That meaning is not varied in the United States by the statutory provision there that the Manifest is to be of the Cargo "ON BOARD," for, quà that provision, "the authority treats Cargo 'on Board,' if in fact it is already ALONGSIDE the ship in such circumstances that it must, in the ordinary course of business, find its way on board" (*Ib.*: *Thalman's Case*, affd 82 L. T. 833; 5 Com. Ca. 321; 16 Times Rep. 460).

**CLEARLY.** — Where a statute requires that Notice of Action shall "clearly and explicitly" state the CAUSE of action, both time and place of the occurrence must be stated (*Martins v. Upcher*, cited NOTICE).

**CLERGY.** — Quà 33 & 34 V. c. 110, "Clergy and Laity" of the Irish Church, includes "Clergy and Laity in communion with Bishops of the said Church" (s. 4).

Benefit of Clergy; *V.* BENEFIT.

**CLERGYMAN.** — A clergyman of the Church of England would undoubtedly come within the meaning of the word "Clergyman"; but "there are various authorities to show that a Roman Catholic Priest is, also, a Clergyman in Holy Orders" (per Stephen, J., *R. v. Haslehurst*, 53 L. J. M. C. 129; 13 Q. B. D. 253).

"Rector, Vicar, or *Curate*, going to, or returning from, visiting any sick parishioner, or on other his parochial duty, *within his Parish*," quà exemption from Toll, s. 32, Turnpike Roads Act, 1822, 3 G. 4, c. 126, includes a Curate temporarily acting, with the permission of the Bishop, though without his license (*Temple v. Dickinson*, 28 L. J. M. C. 10; 1 E. & E. 34); *secus*, if without the Bishop's permission (*Brunskill v. Watson*, L. R. 3 Q. B. 418; 37 L. J. M. C. 103; 32 J. P. 324, 692). "*Within his Parish*," defines the ambit of the clergyman's duties, not that of his exemption (*Temple v. Dickinson*, sup). The exemption is not lost by the clergyman being accompanied by his wife and daughters (*Layard v. Ovey*, 37 L. J. M. C. 148; L. R. 3 Q. B. 415; 32 J. P. 293).

Notwithstanding Disestablishment, a Clergyman of the present Church of Ireland is a "Rector, Vicar, or Curate" who, under s. 65, Marriages (Ir) Act, 1844, 7 & 8 V. c. 81, has to make quarterly Returns of Marriages (*R. v. Magee*, 32 L. R. Ir. 87); he is the "SUCCESSOR" to the Minister of the Church prior to its disestablishment (*R. v. Runciman*, 28 L. R. Ir. 527).

Quà Clergy Discipline Act, 1892, 55 & 56 V. c. 32, "Clergyman, means, a Clergyman, not being a Bishop of a Diocese, who is in Holy Orders in the Church of England, or who, though ordained by a Bishop of another Church, is permitted to officiate as a Priest or Deacon of the Church of England" (s. 12).

F. PARSON: PAID OFFICER.

**CLERK.** — "'Clarke (clerke).' *Clericus* is twofold: *ecclesiasticus* (which Littleton here, s. 189, intendeth), and he is either secular or regular, so called because he is *servus et hereditas domini* (F. CLERGYMAN): and *laicus*, and in this sense is signified a pen-man, who getteth his living in some Court or otherwise by the use of his pen" (Co. Litt. 120 a). *Vu* Termes de la Ley.

The priority given in Bankruptcy and Winding-up for payment of salary to a "Clerk or Servant" (s. 40 (b), Bankry Act, 1883; s. 1 (b), 51 & 52 V. c. 62; *Vf* 60 & 61 V. c. 19), is not confined to trade clerks; it includes, e.g. an Architect's clerk (*Ex p. Gough*, Mont. & B. 117; 3 Dea. & C. 189), but not a Managing Director of a Co (*Re Newspaper Syndicate*, 1900, 2 Ch. 349; 69 L. J. Ch. 578).

A Banker's Clerk is properly described as "Clerk," for the purposes of the Bills of Sale Acts (*Lamb v. Bruce*, 45 L. J. Q. B. 538). F. GOVERNMENT CLERK.

The London Agent of a foreign Company is not its "Clerk" within R. 8, Ord. 9, R. S. C.; the expression there, "the Clerk or Secretary," points to some definite individual whose knowledge may be taken to be the knowledge of the Corporation (*Nutter v. Messageries Maritimes*, 54 L. J. Q. B. 527; *The Princess Clementine*, 1897, P. 18; 66 L. J. P. D. & A. 23; 75 L. T. 695). *Vh. La Bourgogne*, 79 L. T. 310, 331, also cited CARRY ON.

"A 'Clerk or Servant' (quà Embezzlement), is a person bound either by express contract of service, or by conduct implying such a contract, to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as such clerk or servant to transact" (Steph. Cr. 237, *V. Ib.* to p. 240 for cases in illustration). Hereon a Director of a Co, may be its "Clerk or Servant" (*R. v. Stuart*, 1894, 1 Q. B. 310; 63 L. J. M. C. 63; 70 L. T. 44; 42 W. R. 303; 58 J. P. 299). An Assistant Overseer appointed by a Parish Council is the "Servant" of the inhabitants of the parish (*R. v. Smallman*, 1897, 1 Q. B. 4; 66 L. J. Q. B. 82; 75 L. T. 394; 61 J. P. 312; 45 W. R. 249). V. EMPLOYED.

Whatever called, a Clerk at the head of his department in a Bank, is a "Chief Clerk," s. 7, Bank Notes Act, 1828, 9 G. 4, c. 23 (*R. v. Greenland*, 36 L. J. M. C. 37; L. R. 1 C. C. R. 65).

An Election Agent's permanent clerk who, without extra emolument, helps such Agent at an Election, e.g. by addressing envelopes, is not a

"Clerk" engaged in the election, within Sch 1, Part 1, 46 & 47 V. c. 51 (*Buckrose Case*, 4 O'M. & H. 110).

V. PARISH CLERK: PARTNER.

Sometimes "Clerk," by an Interp Clause, includes Secretary, e.g. 10 & 11 V. c. 16, s. 3; 12 & 13 V. c. 93, s. 15; 25 & 26 V. c. 102, s. 112.

Other Stat. Def. — 53 & 54 V. c. 5, s. 341. — *Ir.* 9 & 10 V. c. 87, s. 2; 18 & 19 V. c. 40, s. 3; 21 & 22 V. c. 100, s. 3. — *Scot.* 24 & 25 V. c. 69, s. 2; 25 & 26 V. c. 97, s. 2, c. 101, s. 3; 39 & 40 V. c. 49, s. 3; 41 & 42 V. c. 51, s. 3; 55 & 56 V. c. 55, s. 4; 60 & 61 V. c. 38, s. 3.

"Clerk of Assize"; V. 32 & 33 V. c. 89, s. 8.

For (and by) s. 78, Loc Gov Act, 1888, "'Clerk of an Authority' includes, in relation to any Quarter Sessions or Justices, the Clerk of the Peace or the Clerk to a Justice, as the case requires."

"Clerk of Court"; V. 27 & 28 V. c. 53, s. 2; 38 & 39 V. c. 62, s. 2; 58 & 59 V. c. 19, s. 17.

"Clerk of the Crown"; V. 35 & 36 V. c. 33, s. 17, and Sch; 54 & 55 V. c. 66, s. 95.

"Clerk of the Guardians"; V. 8 & 9 V. c. 126, s. 84; 16 & 17 V. c. 97, s. 132. — *Ir.* 9 & 10 V. c. 110, s. 8; 15 & 16 V. c. 63, s. 45.

"Clerk of Judiciary"; V. 50 & 51 V. c. 35, s. 1.

"Clerk of the Licensing Justices"; V. 35 & 36 V. c. 94, ss. 74, 77; 37 & 38 V. c. 69, s. 37; 53 & 54 V. c. 59, ss. 12 (9), 51 (13).

"Clerk of Local Authority"; V. 29 & 30 V. c. 2, s. 4; 31 & 32 V. c. 130, s. 2; 37 & 38 V. c. 67, s. 12; 38 & 39 V. c. 36, s. 31; 41 & 42 V. c. 63, s. 5; 42 & 43 V. c. 64, s. 2. — *Ir.* 52 & 53 V. c. 72, s. 18; 59 & 60 V. c. 54, s. 23.

"Clerk of the Peace"; V. 4 & 5 V. c. 30, s. 15; 6 & 7 V. c. 18, s. 101; 7 & 8 V. c. 101, s. 74; 8 & 9 V. c. 18, s. 3, c. 20, s. 3, c. 100, s. 114, c. 126, s. 84; 16 & 17 V. c. 97, s. 132; 27 & 28 V. c. 65, s. 4; 28 & 29 V. c. 126, s. 4; 51 & 52 V. c. 10, s. 14. — *Ir.* 6 & 7 W. 4, c. 75, s. 63; 6 & 7 V. c. 74, s. 62; 13 & 14 V. c. 69, s. 117; 14 & 15 V. c. 57, s. 162; 23 & 24 V. c. 153, s. 4, c. 154, s. 1; 27 & 28 V. c. 22, s. 20, c. 99, s. 3; 33 & 34 V. c. 109, s. 7; 40 & 41 V. c. 56, s. 7; 52 & 53 V. c. 48, s. 19. — *Scot.* 41 & 42 V. c. 16, s. 105.

"Clerk of Session"; V. 13 & 14 V. c. 36, s. 53; 2 & 3 V. c. 41, s. 3; 19 & 20 V. c. 79, s. 4.

Clerk of the Signet; V. 27 H. 8, c. 11, repealed by 47 & 48 V. c. 30.

"Clerk of Supply"; V. 20 & 21 V. c. 72, s. 78.

Management of Taxes Clerk; V. 43 & 44 V. c. 19, s. 5.

"War Office Clerk"; V. 41 & 42 V. c. 53, s. 10.

**CLIENT.** — Quà Solrs Act, 1870, "'Client' includes any person who, as a Principal or on behalf of another person, retains or employs, or

is about to retain or employ, a Solicitor; and any person who is or may be liable to pay the Bill of a Solr, for any services, fees, costs, charges, or disbursements" (s. 3). This does not, quâ s 17, comprise the relationship between Country Solrs and their London Agents (*Ward v. Egro*, 49 L. J. Ch. 657; 15 Ch. D. 130). Generally speaking, however, the Country Solr is the Client of, and liable to, his London Agent, e.g. the latter's bill is taxable (*Ostle v. Christian*, T. & R. 324; *Jones v. Roberts*, 7 L. J. Ch. 156; 8 Sim. 397; *Smith v. Dimes*, 19 L. J. Ex. 60; 4 Ex. 32; *Storer v. Johnson*, 60 L. J. Ch. 31; 15 App. Ca. 203; 62 L. T. 710; 38 W. R. 756), and he has no claim at all against the lay client (per Cotton, L. J., *Ward v. Lawson*, 59 L. J. Ch. 325, 326; *W. Rose*, N. P. 505), and the Country Solr is within a covenant not to transact business with the London Agent's "Clients" (*Reid v. Burrows*, 1892, 2 Ch. 413; 61 L. J. Ch. 418; 67 L. J. 183; 40 W. R. 620). Note. The English custom recognized in *Ward v. Lawson* (sup), does not obtain between English and Irish Solrs, and the one instructed by the other may hold the lay client responsible as the principal in the matter (*Hyndham v. Ward*, 43 S. J. 246). V. ORIGINAL CLIENTS.

Quâ Solrs Rem Act, 1881, " 'Client' includes any person who, as a principal or on behalf of another, or as trustee or exor or in any other capacity has power express or implied to retain or employ and, retains or employs, or is about to retain or employ, a Solr; and any person for the time being liable to pay to a Solr, for his services, any costs, remuneration, charges, expenses, or disbursements" (s. 1). Save as regards the words italicized the def (sup) in the Act of 1870 is substantially followed in this latter def, on *whv Re Palmer*, 59 L. J. Ch. 575; 45 Ch. D. 291; 62 L. T. 778; 38 W. R. 673.

As to Agreements respecting Costs between Solrs and Clients; V. IN WRITING: FAIR AND REASONABLE.

Doing business for "Clients," means, acting for them *as a Solr* (*Hayne v. Burchell*, 7 Times Rep. 116; 35 S. J. 88). Vthe as to interpretation of a Contract "not to take away or do business for 'Clients'": — as to remedy for a Breach, V. *Howard v. Woodward*, 34 L. J. Ch. 47.

In R. 6, Solrs Rem Ord, "Client" means, *all* the clients (if more than one) for whom the solicitor is undertaking business (per Stirling, J., obiter, *Re Metcalfe*, 32 S. J. 60; 36 W. R. 137).

In a V. & P. contract, "my Client," or "your Client," does not sufficiently indicate the Vendor: V. PROPRIETOR.

**CLOCK.** — V. OF THE CLOCK.

**CLOG.** — "Clogging the Equity"; V. MORTGAGE.

**CLOSE.** — "Close," in its ordinary sense, denotes an inclosure (*Richardson v. Watson*, 4 B. & Ad. 787; 2 L. J. K. B. 134). "Close" is ambiguous, and may mean the quality or description of land, as well as

the land itself (*Heath v. Milward*, 4 L. J. C. P. 292; 2 Bing. N. C. 98; 2 Sc. 160). *Vh* F. N. B. 128, *n*.

“Close or Curtilage” of a FACTORY; *V. Taylor v. Hickes*, 31 L. J. M. C. 242; 12 C. B. N. S. 152.

“Close,” in a Declaration in Trespass, included the subsoil as well as the surface (*Cox v. Glue*, 17 L. J. C. P. 162; 5 C. B. 533).

“Close of the Pleadings”; R. 5, Ord. 23, R. 13, Ord. 27, R. S. C.; *V. Robinson v. Caldwell*, 1893, 1 Q. B. 519; 62 L. J. Q. B. 252: Ann. Pr.

To close Licensed Premises; *V. R. v. Pelly*, cited FOUND: KEEP OPEN.

“The Local Authority may close any Communication between a Drain and a Sewer,” &c, s. 21, P. H. Act, 1875; *V. Ainley v. Kirkheaton*, cited FILTHY WATER.

**CLOSE-HAULED.** — “‘Close-hauled’ (in the Regns for Preventing Collisions at Sea, 1879) is not confined to a vessel sailing as close as possible to the wind; it may be applied to a vessel on a wind, although she may be able to luff a point or more without losing steerage-way” (1 Maude & P. 599, 600, citing *Chadwick v. Dublin Steam Packet Co*, 6 E. & B. 771). *Vf*, *The Earl Wemyss*, 61 L. T. 289; 6 Asp. 407; *The Privateer*, 9 L. R. Ir. 105; Abbott, 847.

**CLOSE SEASON.** — The “Close Season,” or, in other words, “Close Time,” of Fishing or Sporting, is the time during which, for the time being, it is prohibited to fish for, take, or destroy, the particular thing intended to be protected; *Vh*, 8 & 9 V. c. 108, s. 25; 13 & 14 V. c. 88, s. 1; 36 & 37 V. c. 71, s. 4: ANNUAL CLOSE SEASON.

**CLOSED VESSEL.** — “Closed Vessel used for generating steam,” s. 3, 45 & 46 V. c. 22, does not mean a vessel hermetically sealed but means, one so closed that steam explosion might happen (*R. v. Boiler Explosions Act Commrs*, 1891, 1 Q. B. 703; 60 L. J. Q. B. 544; 64 L. T. 674; 39 W. R. 440).

**CLOSELY ENTAILED.** — A devise followed by a direction that the property should be “closely entailed,” was cut down to a tenancy for life, remainder to the issue; but the tenant for life was made unimpeachable for waste (*Woolmore v. Burrows*, 1 Sim. 512).

*V.* STRICT SETTLEMENT.

**CLOSING ORDER.** — Quà Part 2, Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, “‘Closing Order,’ means, an Order, prohibiting the use of premises for human habitation, made under the enactments set out in the 3rd Sch” of the Act (s. 29).

**CLOTHES.** — *V.* LINEN.

**CLOUGH.** — A Valley (Co. Litt. 4 b).

**CLUB.** — Artiste shall “not perform at any Club”; *V. Kelly v. London Pavilion*, cited PERFORM.

A Members' Club, which needs no License for the sale of Intoxicating Liquors, is one composed exclusively of Members, who alone can be supplied and who among themselves have for their common advantage whatever profit is thence derived: it may be just possible that an Incorporated Co may be such a Club (*Nerell v. Hemingway*, 60 L. T. 544), but the accidents of death &c will, in most cases, soon create a state of things in which the Members of the Co will not be identically the same as the Members of the Club, and then the Co will be no longer a Members' Club but will be a Proprietary Club (*National Sporting Club Co v. Cope*, 82 L. T. 352), which must be licensed like an individual (*Bouryer v. Percy Supper Club*, 1893, 2 Q. B. 154; 69 L. T. 447; 42 W. R. 29; 57 J. P. 470).

“A stipulation that premises are to be used as a ‘Private Club,’ is broken by using them for Boxing Contests to which strangers are admitted on payment” (Redman, 268, citing *Seaward v. Paterson*. 12 Times Rep. 525; *whc* also cited AID OR ABET).

V. PUBLIC-HOUSE.

**COACH.** — Is a Cab a “Coach,” or “Chariot,” within s. 65. Michael Angelo TAYLOR'S ACT? *V. Frost v. Williams*, 7 A. & E. 773.

A Tram-car is a “Coach,” quâ a Bridge Toll under a Local Act of 7 G. 3 (*Plymouth Tramways Co v. General Tolls Co*. 13 Times Rep. 74; 14 Ib. 531; 75 L. T. 467); and a Bicycle is a “Carriage,” within the same Act (*Cannan v. Abington*, 1900, 2 Q. B. 66; 69 L. J. Q. B. 517; 82 L. T. 382; 48 W. R. 470).

“Hackney Coach”; V. HACKNEY CARRIAGE.

**COAL.** — Fuel for fire composed of coal dust mixed with pitch and lime, is not “Coal,” quâ an Import Duty, although its only or chief use is as a substitute for Coal (*London v. Parkinson*, 10 C. B. 228).

“Coal is Coal, whether it be large or small, — whether it be round or slack” (per Ld Macnaghten, *Netherscal Co v. Bourne*, cited MINERAL GOTTEN).

“Coal,” s. 15, 30 & 31 V. c. 134. (or, *semble*, generally) does not include Cinders or Coke (*Fletcher v. Fields*, 1891, 1 Q. B. 790; 60 L. J. M. C. 102; 64 L. T. 472; 39 W. R. 655; 55 J. P. 502); but by its interp clause (s. 48) “Coals” includes Cinders and Culm. quâ Coal-whippers' (Port of London) Act, 1851, 14 & 15 V. c. 78.

Coal Mines; V. MINE: PROPERTY OTHER THAN LAND: 23 & 24 V. c. 151, s. 7.

“Coal Seams, workable as Coal Seams”; V. WORKABLE.

“Coals and Coal Mines”; *V.* SUBSOIL.

“Coals and Produce of any other Mines,” includes Coke (*Bowes v. Ravensworth*, cited PRODUCE OF MINES).

“Coals exported”; *V.* EXPORTED.

Coals, &c to be “sold by Weight, and not by Measure,” s. 9, 5 & 6 W. 4 c. 63; *V.* BY WEIGHT.

**COAST.** — *V.* SEA COAST.

Quà Herring Fisheries (Scot) Act, 1867, 30 & 31 V. c. 52, “‘the Coasts of Scotland,’ shall mean and include, all Bays, Estuaries, Arms of the Sea, and all Tidal Waters within the distance of 3 miles from the mainland or adjacent islands” (s. 11).

“Coast-Guard”; *V.* 19 & 20 V. c. 83, s. 2.

**COASTING SHIP.** — “Coasting Ship,” s. 142, 39 & 40 V. c. 36, s. 9, 42 & 43 V. c. 21, has the same meaning as “Ship employed in the COASTING TRADE,” s. 379 (1), Mer Shipping Act, 1854 (per Bruce, J., *The Winestead*, 1895, P. 170; 64 L. J. P. D. & A. 53; 72 L. T. 91; 11 Times Rep. 220).

**COASTING TRADE.** — “Ships employed in the *Coasting Trade* of the UNITED KINGDOM” (s. 379, Mer Shipping Act, 1854, repled, s. 625, Mer Shipping Act, 1894), means, ships continually or ordinarily so employed (*The Agricola*, 2 Rob. W. 10; *The Lloyds*, otherwise *The Sea Queen*, 32 L. J. P. M. & A. 197; Brown. & Lush. 359; *Vf*, 1 Maude & P. 277), and which, for the time being, are only so employed and are not partly employed in Foreign Trade (*The Winestead*, cited COASTING SHIP: *The Glanystwyth*, 1899, P. 118; 68 L. J. P. D. & A. 37; 80 L. T. 204; 8 Asp. 513). *Cp.* COASTING VESSEL: TRADING: EUROPE.

As used in the United States; *V.* *Steamboat Co v. Livingstone*, 3 Cowen, 713, 747; *United States v. The James Morrison*, 1 Newb. 241; *United States v. The William Pope*, *Ib.* 259.

**COASTING VESSEL.** — “A ‘Coasting Vessel’ would seem to mean a vessel that goes along the coast” (per Alderson, B., *Shepherd v. Hills*, 25 L. J. Ex. 9). But an Irish vessel trading between Belfast and London is not a Coasting Vessel, within 52 G. 3, c. 39, s. 2 (*Darison v. Mekibben*, 6 Moody, 387); nor are vessels trading between England, and Guernsey and Jersey, “Coasting Vessels” within the meaning of the Customs Acts, or of a Harbour Act (*Shepherd v. Hills*, 25 L. J. Ex. 6; 11 Ex. 55). *Cp.* COASTING TRADE.

**COASTWISE.** — Goods brought from an Irish port to Bristol, are not brought “Coastwise” (*Battersby v. Kirk*, 5 L. J. C. P. 166; 2 Bing. N. C. 584). *Vf*, *San Francisco v. Steam Nav. Co*, 10 Cal. 507.



**COBBLER.** — “ I remember a Shoemaker brought an action against a man for saying that he was a ‘Cobler’: and though a Cobler be a trade of itself yet, held, that the action lay ” (per Twisden, J., *Redman v. Pyne*, cited BUNGLER).

**COBLE.** — *V. NET.*

**COCK OF HAY.** — An Indictment for setting fire to a “Cock” of Hay, held, not sustainable under an Act making it an offence to set fire to a “STACK” of hay. “ We know that, popularly, a Cock of Hay, differs from a Rick or Stack. The small conical heap into which hay is formed temporarily in the field, to protect it from rain before it is completely saved, is commonly called a Cock of Hay; and in some districts it is called a lap cock, in others a field cock; while in other places it receives a different name. A Cock of hay may, therefore, be any small heap of hay in the field, saved, or not completely saved; and may differ essentially from a stack or rick. A Stack of hay, on the contrary, means a large heap of hay saved and made up, and protected from the weather, and the term is generally applied to that which has been drawn home from the field. Webster defines a Cock of Hay to be, ‘a small conical pile, so shaped for shedding the rain, and called in England a Cop; whilst a Stack is a large conical pile, sometimes covered with thatch ’ ” (per Fitzgerald, J., *R. v. McKeever*, Ir. Rep. 5 C. L. 90, 91).

**COCKADE.** — A party Card worn and intended to be worn on the hat, is a “Cockade,” within s. 16 (1), Corrupt and Illegal Practices Prevention Act, 1883 (*Walsall*, 4 O’M. & H. 123). *V. MARK.*

**COCKBURN’S ACT.** — The Betting Act, 1853, 16 & 17 V. c. 119.

**CODE.** — As to construing Codifying Statutes; *V. BILL OF EXCHANGE*, Note towards end.

**CODICIL.** — A Codicil is “an addition or supplement added unto a Will or Testament after the finishing of it, for the supply of something which the testator had forgotten, or to helpe some defect in the Will” (*Termes de la Ley*). *Vf*; Cowel: 3 Encyc. 63: *Re Elcom*, cited TESTAMENT: WILL: HEREIN.

**COERCION.** — *V. per* Ld Watson, *Allen v. Flood*, 1898, A. C. 98-105; 67 L. J. Q. B. 171-174: per Cranworth, C., *Boyse v. Rosborough*, cited UNDUE INFLUENCE.

**COFFEE-HOUSE.** — A covenant not to use premises as a “Coffee-house,” is broken by carrying on a “Tee-to-tum” of the second class in which cups of tea and coffee and light eatables are supplied, although

such refreshments bear only a small proportion to the sale of dry goods across the counter, and are only auxiliary to the counter trade (*Fitz v. Hes*, 1893, 1 Ch. 77; 62 L. J. Ch. 258; 68 L. T. 108: on *wher Ashby v. Wilson*, 1900, 1 Ch. 66; 69 L. J. Ch. 47; 48 W. R. 105; 81 L. T. 480. Cp. *Buckle v. Fredericks*, cited RETAIL).

**COHABITATION.** — Cohabitation of Husband and Wife is, their living conjugally; which is usually evidenced by their living under the same roof, but that is not essential to Cohabitation, *e.g.* “married Domestic Servants who cannot live day and night under the same roof, may yet cohabit together in the wider sense of the term”; and a wrongful abandonment by the Husband of such a cohabitation, is “Desertion,” within s. 4, 58 & 59 V. c. 39 (*Bradshaw v. Bradshaw*, 66 L. J. P. D. & A. 31; 75 L. T. 391; 45 W. R. 142; explaining and distinguishing *Fitzgerald v. Fitzgerald* and *R. v. Leresche*, cited DESERTION: *Vf*, *Huxtable v. Huxtable*, 68 L. J. P. D. & A. 83). *Vf* SEPARATE.

Cp ASSOCIATE.

**COIF.** — *V.* NIGHTCAP.

**COIN.** — Quà Bankers (Ir) Act, 1845, 8 & 9 V. c. 37, “Coin,” means, “Coin of the Realm” (s. 32); so, quà Bank Notes (Scot) Act, 1845, 8 & 9 V. c. 38 (s. 22). *V.* BRITISH COIN: CURRENT: FALSE COIN.

Quà Weights and Measures Act, 1878, 41 & 42 V. c. 49, “‘Coin Weight,’” means, a WEIGHT used or intended to be used for weighing Coin” (s. 70).

*V.* ILLEGALLY: MONEY.

**COKE.** — *V.* COAL.

**COLEBERTI.** — “*Coleberti*, often named in Domesday, signifieth tenants in free socage by free rent; and so it is expounded of record. *Radmans* and *radchemistres* (*rad*, or *rede* signifieth firme and stable) there also often named, these are *liberi tenentes qui arabant et herciebant ad curiam domini, seu falcabant, aut metebant*, because their estates are firme and stable; and they are many times called *sochemans* and *soke-manni*, because of their plough service” (Co. Litt. 5 b). *Vf* SOCHEMANS.

**COLLABORATEUR.** — *V.* COMMON EMPLOYMENT.

**COLLATERAL.** — “‘Collaterall,’ is that which cometh in or adhereth to the side of anything; as Collaterall Assurance, is that which is made over and beside the Deed itself” (Termes de la Ley).

The word “Collateral,” *e.g.* Collateral Security, means, side by side, “parallel,” and, taken by itself, has no such meaning as “secondary,” “auxiliary,” “subsidiary,” or “only to be made use of in aid” (*Early v. Early*, 49 L. J. Ch. 826, *n*; 16 Ch. D. 214, *n*; *Athill v. Athill*, 49 L. J. Ch. 821; 50 Ib. 123; 16 Ch. D. 211; 43 L. T. 581; 29 W. R. 309: *Bute*

*v. Cunningham*, 2 Russ. 275; *Leonino v. Leonino*, 48 L. J. Ch. 217; 10 Ch. D. 460. 17h Dart, 921, 922).

Mtge of Land as "Collateral Security," or held "for the purpose of Re-imbursment and not for Profit," in New South Wales Bank Act, 1864; *V. Bank of N. S. Wales v. Campbell*, 55 L. J. P. C. 31; 11 App. Ca. 192.

"Collateral, or Auxiliary, or Additional, or Substituted, Security," in Stamp Act; *V. SUBSTITUTED*.

Collateral PURPOSE; *V. jdgmt of Alderson, B., A-G. v. Walker*, cited NECESSARY.

For instances of Collateral Agreements between Landlord and Tenant. *V. Woodf.* 93, 170.

**COLLATION.** — " 'Collation,' is, properly, the bestowing of a BENEFICE by the Bishop that hath it in his owne gift or patronage; and differeth from INSTITUTION in this, for that Institution into a Benefice is performed by the Bishop at the motion and PRESENTATION of another who is Patron of the same church, or hath the Patron's right for that time: yet, Collation, is used for Presentation in 25 Edw. 3. stat. 6" (Termes de la Ley). 17, Phil. Ecc. Law, 277: ADMISSION: ADVOWSON.

Collative Advowson, is one of Collation (2 Bl. Com. 22.)

" 'Collatio bonorum,' is where a Portion, or money advanced by a father to a son or daughter, is brought into HOTCHPOT," under 22 & 23 Car. 2, c. 10, s. 5 (Jacob).

**COLLECT.** — A direction in a Will to "collect and get in" the property given, is not sufficient to limit the gift to Personalty (*D'Almaine v. Moseley*, 1 Drew. 629; 22 L. J. Ch. 971; *Hamilton v. Buckmaster*, L. R. 3 Eq. 323; 36 L. J. Ch. 58; 15 W. R. 149; 15 L. T. 177).

**COLLECTED.** — "Levied or Collected"; *V. LEVY*.

**COLLECTOR.** — A Cashier who deducts and forwards the contributions of members of a Friendly Society from their wages he has to pay, is a "Collector" of the Contributions within ss. 30, 4, Friendly Soc. Act, 1875 (*Joyce v. Northumberland Miners' Socy.* 4 Times Rep. 525).

Stat. Def., quæ Collecting Societies &c Act, 59 & 60 V. c. 26; *V. s. 17*: — Excise; 23 & 24 V. c. 114, s. 1: — Inland Revenue; 43 & 44 V. c. 19, s. 5, 53 & 54 V. c. 21, s. 39: — Markets and Fairs Clauses Act, 1847; *V. s. 3*: — Tithe Act, 1891; *V. s. 6* (4).

"Collector and Comptroller" of Customs; 8 & 9 V. c. 86, s. 127; 16 & 17 V. c. 107, s. 357.

Other Stat. Def. — 10 & 11 V. c. 27, s. 3; 38 & 39 V. c. 60, s. 4; 43 & 44 V. c. 20, s. 2, c. 24, s. 3. — *Scot.* 13 & 14 V. c. 33, s. 2; 25 & 26 V. c. 101, s. 3; 39 & 40 V. c. 49, s. 3; 41 & 42 V. c. 51, s. 3; 49 & 50 V. c. 53, s. 17; 55 & 56 V. c. 55, s. 4. — *Ir.* 9 & 10 V. c. 107, s. 19.

**COLLEGE.** — A College, “always supposeth a Corporation” (per Holt, C. J., *Philips v. Bury*, cited HOSPITAL, *whv*).

“A ‘College,’ to be such in more than vulgar reputation, must have the ‘countenance of a legal commencement’; a lawful erection and foundation. And it should seem that no one can found or incorporate a College within this realm, or assign, or license others to assign, temporal livings to it, but only the King himself. And reputative Colleges which had no lawful foundation, were held not to be given to the King by the Stat. 1 Edw. 6. unless they had the countenance of the King’s Letters Patent, or might have had a legal commencement but for some error or imperfection in the penning or proceedings” (Dwar. 683, 684, citing *Adams and Lambert’s Case*, 4 Rep. 108). *Vh*, 3 Encyc. 83: UNIVERSITY.

Stat. Def., quā Universities Tests Act, 1871, 34 & 35 V. c. 26; *V*. s. 2: — Universities of Oxford and Cambridge Act, 1877, 40 & 41 V. c. 48; *V*. s. 2: — Universities (Scot) Act, 1889, 52 & 53 V. c. 55; *V*. s. 3.

**COLLEGIATE CHURCH.** — A “Collegiate CHURCH,” “is that which consists of a Dean and Secular Canons; or, more largely, it is a Church built and endowed for a Society or Body Corporate of a Dean, or other President, and Secular Priests, as Canons or Prebendaries in the said Church” (Jacob). *Vf*, Phil. Ecc. Law, 125: 3 Encyc. 84.

**COLLEGIATE SCHOOL.** — *V*. CATHEDRAL.

**COLLIER’S ACTS.** — The Debtor’s Act, 1869, 32 & 33 V. c. 62: The Bankry Act, 1869, 32 & 33 V. c. 71.

**COLLIERY.** — Besides its obvious meaning of a place where Coals are dug, “Colliery” “is a word sufficiently wide to include all contiguous and connected veins and seams of coal which are worked as one concern, without regard to the closes and pieces of ground under which they are carried (*V. Hodgson v. Field*, 7 East, 620). Indeed, it is apparently wide enough to include the engines and machinery in the contiguous and connected veins, as well as those veins themselves” (MacS. 25).

**COLLIERY GUARANTEE.** — Cargo of coal to be loaded as Customary, “but subject in all respects to the Colliery Guarantee”; *V. Do-bell v. Green*, cited AS ORDERED. *Vf* USUAL COLLIERY GUARANTEE.

**COLLIERY WORKING DAY.** — DEMURRAGE to be payable “per Colliery Working Day,” *primâ facie*, does not mean a day upon which the particular Colliery is working but, means, “the ordinary working days in normal times and under normal conditions” (per Russell, C. J., *Saxon S. S. Co v. Union S. S. Co*, 68 L. J. Q. B. 58); but, contextually, it may exclude ordinary working days on which work is stopped by a strike (*S. C.* 68 L. J. Q. B. 914; 81 L. T. 246: *Vf*, *Clink v. Hickie*,

4 Com. Ca. 292); but in the *Saxon S. S. Co Case*, the H. L. revd the C. A. on the question as to whether, in that case, there was any such context (69 L. J. Q. B. 907; 83 L. T. 106; 5 Com. Ca. 382).

**COLLISION.**—In a Marine Policy “Collision,” or “Risk of Collision, as per clause attached,” without more, refers to collision with other *Ships* (per Lindley and Lopes, L.J.J., *Reischer v. Borwick*, 1894, 2 Q. B. 548; 63 L. J. Q. B. 753; 71 L. T. 238), or things capable of being navigated (*Chandler v. Blogg*, 1898, 1 Q. B. 32; 67 L. J. Q. B. 336; 3 Com. Ca. 18; per Grove, J., *Hough v. Head*, 54 L. J. Q. B. 298). But, of course, “Collision with any *Object*” is not so confined; and so, where a Bill of Lading exonerated the ship-owners from damage arising from “Collision and accidents, loss or damage from any act, neglect, or default, whatsoever of the pilots, master or mariners or other servants of the company, in navigating the ship”; it was held that “Collision” meant every collision however caused (*Chartered Bank of India v. Netherlands Steam Nav. Co*, 52 L. J. Q. B. 220; 10 Q. B. D. 521).

So, where a Policy insures against “Collision with any other Ship or Vessel, or Ice, or sunken or floating Wreck, or any other floating Substances, or Harbours, or Wharves, or Piers, or Stages, or similar structures,” it covers a striking of the upper parts of the ship: “but it would be equally Collision if some portion of the hull below the water-line, or even the keel itself, were to strike something under water” (per Mathew, J., *Union Mar Insrce v. Borwick*, 1895, 2 Q. B. 279; 64 L. J. Q. B. 679; 73 L. T. 156). *Vf* CAUSED BY.

*V.* DAMAGE BY COLLISION: RISK OF COLLISION: ANSWERABLE: 3 Encyc. 85-107.

**COLLUSION.**—“‘Collusion’ only signifies, agreeing together” (per Bramwell, B., *Gill v. Continental Gas Co*, L. R. 7 Ex. 337). So, of s. 1, c. 51, Consolidated Statutes of British Columbia, which nullities judgments, &c of Insolvents obtained “by Collusion,” which means, “by agreement, or acting in concert” (*Edison Co v. Westminster, &c Tramway Co*, 1897, A. C. 193; 66 L. J. P. C. 36; 75 L. T. 438; approving *Martin v. McAlpine*, 8 Ontario App. 675). So, as regards Interpleader, R. 2 b, Ord. 57, R. S. C. “Collusion” does not connote anything morally wrong; the Applicant must not be “playing the same game” as either of the Claimants; that is the literal meaning of “colluding” (per Wills, J., *Murietta v. South American Co*, 62 L. J. Q. B. 396: *Vf* Ann. Pr.).

But not infrequently “Collusion” is, “a deceitful agreement, or compact, between two or more, for the one Party to bring an action against the other for some evil purpose” (Cowel). *Va*, Termes de la Ley: Jacob. *Cp* CONFEDERACY.

“Collusion,” s. 30, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85, and s. 7, 23 & 24 V. c. 144, is either, — (1) Positive, or (2) Negative.

*Positive* Collusion, is an agreement between the litigants "to put forward true facts in support of a false case, or false facts in support of a true case" (per Jeune, P., *Churchward v. Churchward*, 1895, P. 16; 64 L. J. P. D. & A. 23), e.g. "for one to commit, or appear to commit, an act of adultery, in order that the other may obtain a remedy at law as for a real injury" (per Ld Stowell, *Crewe v. Crewe*, 3 Hagg. Ecc. 123). *Negative* Collusion means, in its more obvious sense, an agreement between the parties wrongfully to withhold relevant facts from the Court (*Hunt v. Hunt*, 47 L. J. P. D. & A. 22; 39 L. T. 45; *Barnes v. Barnes*, L. R. 1 P. & D. 507; 37 L. J. P. & M. 4; *Bacon v. Bacon*, 25 W. R. 560; *Alexandre v. Alexandre*, L. R. 2 P. & D. 164; 39 L. J. P. & M. 84; *Butler v. Butler*, 59 L. J. P. D. & A. 25; 15 P. D. 66; 62 L. T. 344; 38 W. R. 390); but it also includes an agreement whereby the initiation of a suit is procured, or its conduct (espy if abstention from defence be a term) is provided for (*Churchward v. Churchward*, 1895, P. 7; 64 L. J. P. D. & A. 18; 71 L. T. 782; 43 W. R. 380; *Vf, Rogers v. Rogers*, 1894, P. 161; 63 L. J. P. D. & A. 97; 70 L. T. 699).  
 V. CONNIVANCE.

So, a statement that an Architect neglects to give his Certificate to a Building Contractor "in Collusion, and with the Procurement" of the Building Owner, imports an allegation of fraud (*Batterbury v. Vyse*, 32 L. J. Ex. 177; 2 H. & C. 44).

**COLONIAL.** — Colonial *Court of Admiralty*; V. 53 & 54 V. c. 27; Mer Shipping Act, 1894, s. 742.

"Colonial" *Goods*, even in a Colonial Statute or Regulation, e.g. "Colonial Wine" in a New South Wales tariff of Railway Rates, means the goods of any Colony (*Comms of Railways v. Hyland*, 56 L. J. P. C. 76; 56 L. T. 896).

Quà 53 & 54 V. c. 27, " 'Colonial Law,' means, any Act, Ordinance, or other Law, having the force of legislative enactment in a BRITISH POSSESSION, and made by any authority (other than the Imperial Parliament or Her Majesty in Council) competent to make laws for such Possession" (s. 15). Other Stat. Def., 28 & 29 V. c. 63, s. 1.

In all Acts of Parliament passed after the 31st Dec 1889, "the expression 'Colonial Legislature,' and the expression 'Legislature,' when used with reference to a BRITISH POSSESSION, shall respectively mean the authority (other than the Imperial Parliament of Her Majesty the Queen in Council) competent to make laws for a British Possession" (s. 18 (7). Interp Act. 1889). Former Stat. Def., 26 & 27 V. c. 84, s. 1; 28 & 29 V. c. 63, s. 1; 31 & 32 V. c. 29, s. 2.

"Colonial *Letter*"; V. 7 W. 4 & 1 V. c. 36, s. 47; 7 & 8 V. c. 49, s. 8.

"Colonial *Lights*"; V. 61 & 62 V. c. 44, s. 7.

"Colonial *Newspapers*"; V. 7 W. 4 & 1 V. c. 36, s. 47.

"Colonial *Postage*"; V. 7 & 8 V. c. 49, s. 10.

"Colonial *Secretary*"; *V.* 47 & 48 *V. c.* 31, s. 18.

"Colonial *Stock*"; *V.* 40 & 41 *V. c.* 59, s. 26.

Quà Part 3, Mer Shipping Act, 1894, "a Colonial *Voyage*," means, a voyage from any Port in a BRITISH POSSESSION (other than British India and Hong Kong) to any Port whatever, where the distance between such Ports exceeds 400 miles, or the duration of the voyage, as determined under this Part of this Act, exceeds 3 days" (s. 270). This def is adapted from 18 & 19 *V. c.* 119, s. 95.

**COLONY.** — "The word 'Colonies' in the statute — 5 & 6 *V. c.* 49, s. 2 — must extend to all Colonies, in the absence of a context to control it; and I can find here no such context" (per Turner, L. J., *Low v. Routledge*, 35 *L. J. Ch.* 116; 1 *Ch.* 42).

In all Acts of Parliament passed after the 31st Dec 1889, " 'Colony' shall mean any part of Her Majesty's Dominions, exclusive of the BRITISH ISLANDS, and of BRITISH INDIA; and where parts of such Dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one Colony" (s. 18 (3), Interp Act, 1889).

This def condenses, and makes more precise, those in 40 & 41 *V. c.* 59, s. 26; 42 & 43 *V. c.* 33, s. 181; 44 & 45 *V. c.* 58, s. 190 (23).

Other Stat. Def. — 23 & 24 *V. c.* 88, s. 1; 31 & 32 *V. c.* 29, s. 2; 32 & 33 *V. c.* 10, s. 2; 37 & 38 *V. c.* 27, s. 2; 46 & 47 *V. c.* 30, s. 2.

"Colonies," quà Federal Council of Australasia Act, 1885. 48 & 49 *V. c.* 60; *V.* s. 1.

*V. BRITISH COLONY: CROWN: ISLE OF MAN: MAJESTY: SELF.*

**Lord COLONSAY'S ACT.** — The Writs Registration (Scot) Act, 1868, 31 & 32 *V. c.* 34.

**COLOUR.** — " 'Colour of OFFICE,' is always taken in the worst part, and signifies an act evil done by the countenance of an Office, and it bears a dissembling face of the right of the Office, whereas the Office is but a veil to the falshood, and the thing is grounded upon Vice, and the Office is as a shadow to it. But 'BY REASON of the Office' and 'BY VIRTUE of the Office' are taken always in the best part" (*Termes de la Ley*).

Colour in Pleading; *7th* Stephen on Pleading, 4 ed. 228: "Express Colour no longer necessary in any pleading" (s. 64, *Com. L. Pro. Act.* 1852).

**COLOURABLE.** — Is the reverse of *BONA FIDE*; *v. jdgmt* of James, L. J., *Etherington v. Wilson*, 45 *L. J. Ch.* 156; 1 *Ch. D.* 160.

**COLOURABLY IMITATE.** — *V. COPY.*

**COLT.** — *V. HORSE.*

**COMBE.**—“*Combe, hope, denc, glyn, hawgh, hough*, signifieth a valley” (Co. Litt. 5 b): *V. DENE: HOPCOMBE.*

**COMBINATION.**—“‘Combination of Machinery,’ which has become a favourite form of words with Patentees, is nothing but an extended expression of the word ‘Machine.’ It is ‘machine’ writ large” (per Westbury, C., *Foxwell v. Bostock*, 4 D. G. J. & S. 311).

Trade Combination to prevent competition not actionable (*Mogul Co. v. McGregor*, cited *MALICE*). *V. TRADE UNION: CONSPIRACY.*

**COMBUSTIBLE.**—*V. INCOMBUSTIBLE.*

“Gunpowder or other Combustible Matter,” in a Patent Specification; *V. Bickford v. Skewes*, 1 Q. B. 938.

**COME TO.**—An instrument, fact, or thing, does not “Come to the Knowledge” of counsel, &c, within s. 3 (ii), Conv. Act, 1882, simply because he knew it on a former occasion (*Re Cousins*, 55 L. J. Ch. 662; 31 Ch. D. 671; 54 L. T. 376; 34 W. R. 393).

“Come to,” as used in a Covenant to Settle after-acquired property, includes property of which the possession is future although the right thereafter to possess it is then vested (per Romilly, M. R., *Exp. Blake*, 16 Bea. 470); and it was there held that the phrase included proceeds of realty taken by a Public Co which realty was vested in remainder at the time of the Settlement. *Vf. Blythe v. Granville*, 13 Sim 190, on *wher* Vaizey, 242, *n*: *ENTITLED: VEST.*

A legacy to a married woman, unpaid before her *DESERTION*, “comes to” her after her desertion within s. 25, 20 & 21 V. c. 85 (*Re Coward and Adams*, 44 L. J. Ch. 384; L. R. 20 Eq. 179). *V. ACQUIRE.*

“In case A. should come to the Possession of the said estate”; held as not creating a Condition (*Edgeworth v. Edgeworth*, L. R. 4 H. L. 35): come to an estate “in Possession,” *V. Hill v. Broughton*, 3 Bro. C. C. 180. *Vf. POSSESSION.*

**COMFORT.**—In a direction to apply Income for a person’s “Comfort.” that is a “very large word” (per Wood, V. C., *Re Sanderson*, cited *WHOLE*). In America it has been held that the word embraces whatever is requisite to give security from want, or furnish reasonable physical, mental, or spiritual, enjoyment (*Forman v. Whitney*, 2 Keyes, 168). *Cp. MAINTENANCE.*

**COMFORTABLE MAINTENANCE.**—These words, in a provision by deed for the widows of officers in the East India Company coupled with a restriction on alienation, were held to vest the provision for the *SEPARATE USE* of the beneficiaries (*Re Peacock*, 48 L. J. Ch. 265; 10 Ch. D. 490). *Vf. MAINTENANCE: SEPARATE MAINTENANCE.*



**COMING.** — “Coming to settle,” 13 & 14 Car. 2, c. 12; *V. R. v. Bowness*, 4 M. & S. 210; *R. v. Kenardington*, 6 B. & C. 70; *R. v. Nacton*, 3 B. & Ad. 543; *R. v. Woolpit*, 5 L. J. M. C. 14; 4 A. & E. 205; 5 N. & M. 526; *R. v. St. Giles*, 11 L. J. M. C. 18; 2 Q. B. 446.

Moneys “coming to the hands of the Commsr.,” s. 60, Commsr. Clauses Act, 1847, are not confined to moneys actually received, but also include moneys receivable for Toll or Rents (*Batten v. Dartmouth Harbour Commsr.*, cited COMMISSIONERS).

**COMMAND.** — A Steamship, though partially disabled yet, able to proceed at 4 or 5 knots an hour, is not within the phrase “not under Command,” Art. 5 (a), Regns of 1884 for Preventing Collisions at Sea (*P. Caland Owners v. Glamorgan S. S. Co.*, 1893, A. C. 207; 62 L. J. P. D. & A. 41; 68 L. T. 469).

When that case was in the Court of Appeal, Esher, M. R., said (1892, P. 196), — “Now, looking at the words of the statute, the first part of the clause which speaks of her not being under Command, and the second of her not being under Command so that she can keep out of the way, — taking these two together, it seems to me that the real construction of the rule is, that she must, through some accident, be in such a position that she is not ‘under Command’ in this sense that she cannot keep out of the way of another vessel coming near her.” But “if she can be steered, and if she can be stopped, and can go ahead which is necessary in order that she may be steered, then she is ‘under Command’; and the apprehension, however well founded, of her being likely in a few moments to be out of Command, does not show that she is out of Command at the moment spoken of.” Quoting that passage, Herschell, C., in the H. L., said, — “I cannot but think that this construction is somewhat too narrow”; but the decision of the Court of Appeal was affd.

A Vessel hard-and-fast aground, is not a Vessel “not under Command,” within Art. 4 (a), Regns of 1897 for Preventing Collisions at Sea (*The Carlotta*, 1899, P. 223; 68 L. J. P. D. & A. 87; 80 L. T. 664; 47 W. R. 702).

“Under Command.” R. 18, Thames Rules, 1880, as amended by Order in Council 29th Dec 1887; *V. The Wega*, 1895, P. 156; 64 L. J. P. D. & A. 68; 72 L. T. 332.

*Cp.* CONTROL: UNDER-WAY.

**COMMANDER IN CHIEF.** — Stat. Def., 33 & 34 V. c. 7, s. 103, 42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 58, s. 190.

**COMMANDING OFFICER.** — Stat. Def., 38 & 39 V. c. 69, s. 2, (of a Corps) 36 & 37 V. c. 77, s. 43.

**COMMENCE.** — *V.* COMMENCEMENT.

**COMMENCED.** — An action is “commenced” by Writ or Originating Summons, and as soon as the same is sealed (*Galland v. Burton*, 30 Ch. D. 231; 54 L. J. Ch. 1131; *Clarke v. Bradlaugh*, 51 L. J. Q. B. 1; 8 Q. B. D. 63).

“Any Action commenced,” &c, s. 5, Co. Co. Act, 1867, meant “Any action commenced in the High Court, and which could have been commenced in the County Court” (*Parsons v. Tintling*, 46 L. J. C. P. 230; 2 C. P. D. 119).

“Any Court in which the action *might have been* commenced,” s. 65, Co. Co. Act, 1888, includes a County Court in which the action might be brought by leave (*Burkill v. Thomas*, 1892, 1 Q. B. 99, 312; 61 L. J. Q. B. 322; 66 L. T. 150; 40 W. R. 250).

A clause in a Separation Deed, that “no PROCEEDINGS shall be commenced, or prosecuted” for any prior cause of complaint, is not broken by one of the parties using such prior cause as a *Defence* to a matrimonial suit brought by the other party (*Gooch v. Gooch*, 1893, P. 99; 62 L. J. P. D. & A. 72; 68 L. T. 462; 41 W. R. 655). *Note.* A covenant not to sue for a Divorce grounded on *future* misconduct, is, probably, invalid (*Bishop v. Bishop*, 66 L. J. P. D. & A. 75). *V. CONDONATION.*

#### V. SET UP.

**COMMENCEMENT.** — The “Commencement” of every Act of Parliament, means “the time at which the Act comes into operation” (s. 36 (1), Interp Act, 1889). *Cp* PASSING. *V.* DAY.

“Commencement of the Bankry,” s. 42 (1), Bankry Act, 1883, means, the ACT OF BANKRY on which the bankry is founded (*Re Griffith*, 66 L. J. Q. B. 763).

“Commence to form or lay out a STREET,” quâ Part 2, London Bg Act, 1894; *V.* s. 8. *Vth*, *London Co. Co. v. Dixon*, 1899, 1 Q. B. 496; 68 L. J. Q. B. 526; 80 L. T. 232; 47 W. R. 521; 63 J. P. 390; *Armstrong v. Loudon Co. Co.*, 1900, 1 Q. B. 416; 69 L. J. Q. B. 267; 81 L. T. 638; 48 W. R. 367; 64 J. P. 197. *Cp* NEW STREET.

“Commence to execute a Work”; *V.* s. 10 (3), London Bg Act, 1894.

As to the common clause in Railway Acts giving compensation to land-owners out of deposits (when the line is not opened in a certain time) for damages occasioned “by the Commencement, Construction, or Abandonment,” of the railway; *V. Re Potteries, Shrewsbury & N. Wales Ry*, 53 L. J. Ch. 556; 25 Ch. D. 251. That case lays it down that this phrase is to be read disjunctively, and that the damages are to be ascertained by comparing the value of the land immediately before such commencement or construction or abandonment, with its value immediately after the happening of any of those three events. *Vf* ABANDONMENT: BEGIN.

An application to tax costs of an Appeal to Quarter Sessions, is not a “Commencement” of Proceedings, within s. 4, 22 & 23 V. c. 49 (*Mid*).

*Ry v. Edmonton*, 1895, A. C. 485; 64 L. J. Q. B. 710; 72 L. T. 811; 60 J. P. 68).

"Commencement" of Prosecution, under s. 5, 48 & 49 V. c. 69; *V. R. v. West*, 1898, 1 Q. B. 174; 67 L. J. Q. B. 62; 77 L. T. 536; 46 W. R. 316.

"Commencement of Proof in Writing," Art. 1233 (7), Civil Code of Quebec, so as to let in Proof "by Testimony"; *V. Forget v. Baxter*, cited TESTIMONY.

"At the Commencement," s. 2, 23 H. 8, c. 15; *V. Doe d. Ellis v. Owens*, 11 L. J. Ex. 120; 9 M. & W. 455.

*Cp* INSTITUTED.

**COMMENDAM.** — "Is a BENEFICE that being voyde is commended to the care of some sufficient Clerke, to bee supplied untill it may bee conveniently provided of a Pastor" (Termes de la Ley). A Rector by merely accepting another Benefice does not vacate the Rectory; and, continuing to hold it, he does not hold it "In Commendam" (*King v. Alston*, 12 Q. B. 971; 18 L. J. Q. B. 59). Bishops may not now hold Commendams (6 & 7 W. 4, c. 77, s. 18).

*Vh, Colt & Glover v. Coventry & Lichfield Bp*, Hob. 140; Godolphin's Abr. Ecc. Law, ch. 21: 4 Bl. Com. 107; Phil. Ecc. Law, 380, 503.

**COMMENT.** — *V. FAIR COMMENT.*

A person charged not becoming a Witness, "shall not be made the subject of any Comment by the Prosecution," s. 1 b, Criminal Evidence Act, 1898; that does not prevent the presiding Judge or Chairman from making such comment (*R. v. Rhodes*, cited STAGE).

**COMMERCE.** — Commerce is "Traffick, Trade, or Merchandize, in buying and selling of goods. There is a distinction between Commerce and TRADE; the former relates to our dealings with Foreign Nations or our Colonies, &c abroad, — the other to our mutual traffick and dealings among ourselves at Home" (Jacob: *People v. Fisher*, 14 Wend. 15: *Va MERCHANT*). But this distinction may be questioned.

"Trade or Commerce"; *V. CIVIL RIGHTS.*

**COMMERCIAL.** — "Commercial Causes," within the Order for prompt trial, includes causes arising out of the ordinary transactions of Merchants and Traders; amongst others, those relating to the Construction of Mercantile Documents, Export or Import of Merchandize, Afreightment, Insurance, Banking, and Mercantile Agency and Usages (par 1, Notice 25th June 1896). A question of International Law as to whether a seizure of goods was justified under a Proclamation by a Foreign Sovereign, is not such a "Commercial Cause" (*Sea Insree v. Carr*, 69 L. J. Q. B. 954; 83 L. T. 517; 49 W. R. 55; 1901. 1 Q. B. 7).

"Wherever Capital is to be laid out on any work and a risk run of

profit or loss, it is a Commercial *Venture*" (per Campbell, C., *McKay v. Rutherford*, 6 Moore P. C. 425; 13 Jur. 23); accordingly, it was there held that a contract with the Government Commissioner in Canada to supply stone for making a canal, was not a mere Building Contract but, was a "Commercial *Matter*," within the Canadian Act, 25 G. 3, c. 2. Buying and selling Shares by Stock-brokers for a client who is not himself a Dealer, are "Commercial *Matters*" provable by Testimony, under the Quebec Civil Code (*Forget v. Baxter*, cited TESTIMONY).

An Incorporated Canal Co. whose profits arose from Tolls, was held a "Commercial Co.," or a Co associated for "Commercial Purposes," and, as such, liable to become bankrupt under s. 1, 7 & 8 V. c. 111 (*Re Warwick & Napton Canal Co*, 7 D. G. M. & G. 199, *n*).

Commercial Traveller; *V.* TRAVELLER.

**COMMISSARY.** — "Commissary," or "Commissary Clerk," is frequently made to include Commissary Clerk Depute, *e.g.* 16 & 17 V. c. 27, s. 1; 21 & 22 V. c. 56, s. 20; 38 & 39 V. c. 41, s. 6.

**COMMISSION.** — " 'Commission,' is taken for the Warrant or Letters Patents which all men using Jurisdiction, either ordinarie or extraordinarie, have for their power to heare or determine any matter or action" (*Termes de la Ley*).

"Land Commission"; Stat. Def. (Ir), 48 & 49 V. c. 73, s. 26; 54 & 55 V. c. 66, s. 95.

"The word 'Commission' is one of equivocal meaning. It is used to denote a Trust or Authority exercised, or the Instrument by which the Authority is exercised, or the Persons by whom the Trust or Authority is exercised" (per Abbott, C. J., *R. v. Dudman*, 4 B. & C. 854).

"Office, Commission, Place, or Employment"; *V.* OFFICE.

"In Trust, or on Commission"; *V.* IN TRUST.

*V.* ACCRUING: BRIBERY: CONDUCTING: FREE OF COMMISSION: INTERVENTION: INTRODUCE: SALEABLE COMMISSION.

**COMMISSIONER.** — Quà *Inl. Rev. Regn Act*, 1890, 53 & 54 V. c. 21, " 'Commissioner,' means Commr of *Inl. Rev.*" (s. 39).

"Debt Commr"; *V.* 41 & 42 V. c. 51, s. 3.

"Commr for Oaths," quà *Mer Shipping Act*, 1894; *V.* s. 742.

"Commr of Police"; *V.* 30 & 31 V. c. 134, s. 3.

"Commr of Valuation"; *V.* *Loc Gov (Ir) Act*, 1898, s. 109.

"Lord Commr of Justiciary," in Scotland; *V.* 50 & 51 V. c. 35, s. 1.

"Lord High Commr"; *V.* 23 & 24 V. c. 86, s. 12; 27 & 28 V. c. 77, s. 17.

**COMMISSIONERS.** — In a modern Act the meaning of "The Commissioners" will generally be ascertained by referring to its *Interp Clause*, which usually defines the phrase according to the subject-matter

of the Act; e.g. quâ Finance Act, 1894, " 'the Commrs,' means, the Commrs of Inl. Rev." (s. 22).

"Commrs of *Assessed Taxes*"; V. 9 & 10 V. c. 56, s. 3.

"*Charity Commrs*"; V. s. 12 (14), Interp Act, 1889.

"Commrs of *Customs*"; V. 16 & 17 V. c. 107, s. 357; 19 & 20 V. c. 83, s. 2.

V. ECCLESIASTICAL COMMISSIONERS.

"Commrs of *Education*," in Ireland; V. 38 & 39 V. c. 96, s. 2; 42 & 43 V. c. 74, s. 2.

"*Election Commrs*"; V. ELECTION.

"*Endowed Schools Commrs*"; V. 37 & 38 V. c. 87, s. 9.

"Commrs of *Excise*"; V. 53 & 54 V. c. 21, s. 37.

"*Exhibition Commrs*"; V. 26 & 27 V. c. 119, s. 3.

"*Galway Harbour Commrs*"; V. 30 & 31 V. c. 56, s. 3.

"*Gas Commrs*," in Scotland; V. 53 & 54 V. c. 13, s. 4.

"*General Commrs*," of Taxes; V. 43 & 44 V. c. 19, s. 5.

"*Improvement Commrs*"; V. 35 & 36 V. c. 79, s. 60; P. H. Act, 1875, s. 4.

"Commrs of *Inland Revenue*"; V. 53 & 54 V. c. 21, s. 1.

"*Ipswich Dock Commrs*"; V. 26 & 27 V. c. 71, s. 2.

"*Irish Fishery Commrs*"; V. 31 & 32 V. c. 45, s. 5.

"Commrs of *Irish Lights*"; V. Mer Shipping Act, 1894, s. 742.

"*Land Commrs*"; V. Settled Land Act, 1882, s. 2; 51 & 52 V. c. 20, s. 12.

"*Land Tax Commrs*"; V. 43 & 44 V. c. 19, s. 5.

"*National Debt Commrs*"; V. NATIONAL DEBT.

"Commrs of *Northern Lighthouses*"; V. 16 & 17 V. c. 131, s. 1.

"Commrs for *Oaths*"; V. Commrs for Oaths Act, 1889, 52 & 53 V. c. 10.

"Commrs for *Offices*"; V. 9 & 10 V. c. 56, s. 3.

"*Police Commrs*," in Scotland; V. 53 & 54 V. c. 13, s. 4, c. 60, s. 6; — "*Commrs of Police*," in Ireland; V. 5 & 6 V. c. 24, s. 79; 6 & 7 V. c. 56, s. 38; 16 & 17 V. c. 112, s. 80; 22 & 23 V. c. 52, s. 1.

"Commrs of the Police of the METROPOLIS," when applied to Ireland, means the Dublin Commrs of Police; V. 8 & 9 V. c. 109, s. 24; 16 & 17 V. c. 119, s. 18.

"*Poor Law Commrs*"; V. Poor Relief (Ir) Act, 1838, 1 & 2 V. c. 56, s. 118.

"Commrs of *Public Works*," in Ireland; V. 2 & 3 V. c. 50, s. 10; 6 & 7 V. c. 44, s. 18; 29 & 30 V. c. 44, s. 2; 30 & 31 V. c. 53, s. 3. c. 56, s. 3; 42 & 43 V. c. 25, s. 2.

"Commrs of the *Property and Income Tax*"; V. 9 & 10 V. c. 56, s. 3: — "*Additional Commrs*" and "*Special Commrs*," of same; V. 9 & 10 V. c. 56, s. 3; 43 & 44 V. c. 19, s. 5.

"METROPOLITAN Commrs of *Sewers*"; V. 11 & 12 V. c. 112, s. 3.

"Commsrs of *Stamps and Taxes*"; 53 & 54 V. c. 21, s. 37.

"Commsrs of *Supply*," in Scotland; *V.* 20 & 21 V. c. 72, s. 78.

"*Town Commsrs*"; *V.* 10 & 11 V. c. 17, s. 3. — *Tr.* 9 & 10 V. c. 87, s. 2; 18 & 19 V. c. 40, s. 3; 29 & 30 V. c. 44, s. 2; 46 & 47 V. c. 33, s. 8.

"Commsrs of *Woods and Forests*"; *V.* s. 12 (12), Interp Act, 1889.

"Commsrs of *Works*"; *V.* 12 (13), Interp Act, 1889.

"Commsrs, Trustees, or other Authorities," s. 112, Metrop Man. Act, 1862, does not include TURNPIKE ROAD Trustees but, means Authorities who have the general control of highways within their district (*Davis v. Greenwich*, 1895, 2 Q. B. 219; 64 L. J. M. C. 257; 72 L. T. 674; 59 J. P. 517).

"Commsrs," entitled to indemnity under s. 60, Commsrs Clauses Act, 1847, includes an Incorporated Body as well as individuals (*Batten v. Dartmouth Harbour Commsrs*, 59 L. J. Ch. 700; 45 Ch. D. 612).

**COMMIT.** — In dealing with the phrase "commit SUICIDE," Pollock, C. B., in *Clift v. Schwabe* (17 L. J. C. P. 14; 3 C. B. 437), said, "The meaning of 'commit' in *Johnson* (with reference to this use of the word) is 'to perpetrate' — to do a fault — to be guilty of a crime"; and " 'perpetrate' is to commit, to act, — always in an ill sense." In the same case (p. 9, L. J.), Patteson, J., said, — "The word 'commit' is said always to be used in a bad sense — be it so"; but he proceeded to show that it is not always used in a *criminal* sense, and that view accords with the judgment of the majority of the Ex. Cham. in the case cited: indeed, the state of a person's mind is immaterial, and, therefore, an Insane Person can commit suicide (*Dufaur v. Professional Life Assrce*, cited SUICIDE).

Commit Injury; *V.* INJURY.

**COMMITTS.** — This word in the Bankry Act, 1883, is used in the present tense, not in relation to time, but as the present tense of logic, and means "shall have committed" an Act of Bankruptcy (*Ex p. Pratt*, 53 L. J. Ch. 613; 12 Q. B. D. 334; *V.* espy jdgmts by Bowen and Fry, L. JJ.).

**COMMITTED: COMMITMENT: COMMITTAL.** — The words "commitment," "committed," or "committal to prison," do not mean, as was held by Lush, J., "received into prison"; but mean "when the order is made under which the person is to be kept in prison" (per Ld Blackburn, *Mullins v. Surrey*, 51 L. J. Q. B. 149; and per Ld Penzance, *Ib.* 152); and the words "Period of Committal," s. 57, Prison Act, 1877, 40 & 41 V. c. 21, mean that the expenses which (by the joint operation of that section and s. 4) are to be defrayed out of moneys to be provided by Parliament, are to be so paid from the time of the making out of the Order of Committal (*Mullins v. Surrey*, 51 L. J. Q. B. 145;

7 App. Ca. 1: *Mews v. The Queen*, 52 L. J. M. C. 57; 8 App. Ca. 339).

V. IMPRISONMENT: MAINTENANCE.

"Committed" will sometimes include an act of OMISSION, *e.g.* as regards Notice of Action within a certain time "next after the fact committed," s. 109, Highway Act, 1835 (*Holland v. Northwich*, 40 J. P. 517; 34 L. T. 137). *Sv* DONE.

**COMMITTED FOR TRIAL.** — In all Acts of Parliament passed after the 31st Dec 1889, " 'Committed for Trial,' used in relation to any person shall, unless the contrary intention appears, *mean*, as respects England and Wales, committed to prison with the view of being tried before a judge and jury, whether the person is committed in pursuance of s. 22 or of s. 25, Indictable Offences Act, 1848, or is committed by a Court, Judge, Coroner, or other authority having power to commit a person to any prison with a view to his trial; and shall *include* a person who is admitted to bail upon a recognizance to appear and take his trial before a judge and jury" (s. 27, Interp Act, 1889).

Other Stat. Def. — 52 & 53 V. c. 44, s. 17. — *Ir.* 45 & 46 V. c. 25, s. 35; 57 & 58 V. c. 27, s. 19, c. 41, s. 27.

"Committed for trial at the Assizes"; *V. R. v. Johnson*, 10 A. & E. 740; 8 L. J. M. C. 99; 2 P. & D. 610.

**COMMITTED TO PRISON.** — *V.* COMMITTED.

**COMMITTEE.** — " 'Committee,' is hee to whom the consideration or ordering of any matter is referred either by some Court, or Consent of the Parties to whom it appertains" (*Termes de la Ley*).

"The term 'Committee' means an individual, or body to which others have committed or delegated a particular duty, or who have taken on themselves to perform it, in the expectation of their act being confirmed by the body they profess to represent or act for" (per Pollock, C. B., *Reynell v. Lewis*, 16 L. J. Ex. 30; 15 M. & W. 526).

"I observed in the argument that, according to one's ordinary idea of the meaning of the word, a 'Committee' consists of more persons than one. But I was not right in saying that; because that is not *ex vi termini* the necessary meaning of the word 'Committee,' which simply means a person or persons to whom anything is committed" (per Kay, J., *Re Scottish Petroleum Co.*, 51 L. J. Ch. 845). *Vf*, *Re Taurine Co.*, 25 Ch. D. 118; 53 L. J. Ch. 271.

V. PROVISIONAL COMMITTEE.

Quà Friendly Soc. Act, 1896, 'Committee' means, "the Committee of Management or other Directing Body of a Society or Branch" (s. 106); omitting "or Branch," a like def is provided for Industrial Societies (56 & 57 V. c. 39, s. 79).

"Committee of Council"; *V.* 46 & 47 V. c. 18, s. 27.

"Committee of Council on Education"; *V.* 32 & 33 V. c. 56, s. 7.

“Committee” of a Public Library in Scotland; *V.* 50 & 51 *V. c.* 42, s. 2.

“Union Assessment Committee”; *V.* 25 & 26 *V. c.* 103.

“Committee” of an Idiot or LUNATIC; *V.* 9 & 10 *V. c.* 75, s. 3.

“Committee Room”; Corrupt and Illegal Practices Prevention Act, 1883, s. 64.

**COMMITTING.** — “Found committing”; *V.* FOUND.

**COMMODITIES.** — *V.* ADVANTAGES: GOODS OR COMMODITIES.

**COMMON.** — “‘Common and USUAL’ *Covenants*, must mean, *Covenants incidental to*,” *e.g.* a Lease (per Thurlow, *C.*, *Henderson v. Hay*, 3 Bro. C. C. 632); but, probably, there is no distinction between “Common” and “Usual” covenants, nor does “INCIDENTAL” furnish an explanation or carry the meaning further (*Church v. Brown*, 12 Ves. 260, 264).

“‘Common of Pasture’ — *Communia*, it cometh of the English word common, because it is common to many; and thereupon and accordingly is here (s. 184) called by *Littleton* Common of Pasture, for that the feeding of beasts in the land wherein the common is to be had belongs to many” (*Co. Litt.* 122 a).

“‘Common in *Grosse*,’ is where I, by my Deed, grant to another that he shall have Common in my land.

“‘Common *Appendant*,’ is where a man is seized of certaine land to the which he hath Common in another’s ground, and all they that shall bee seized of the land have the said Common onely for those Beasts which compast the land to which it is appendant, excepting Geese, Goats, and Hogges.

“‘Common *Appurtenant*.’ is in the same manner as Common Appendant. But it is with all manner of Beasts, as well Hogs, Goats, and such like as Horses, Kine, Oxen, Sheepe, and such as compast the ground.

“‘Common *pur Cause de Vicinage*,’ is where the Tenants of two Lords which be seized of two Townes where one lyeth nigh another, and every of them have used, from the time whereof no minde runneth, to have Common in the other Towne with all manner of Beasts commonable” (*Termes de la Ley*).

A Grant, by general words in a Conveyance of DEMESNE land from a Lord of a Manor, of “Commons” “belonging to” or “held, used, and enjoyed with,” the tenement conveyed, will not create a Right of Common (*Baring v. Abingdon*, 1892, 2 Ch. 374; 62 L. J. Ch. 105; 67 L. T. 6; 41 W. R. 22; *Hall v. Byron*, 46 L. J. Ch. 297; 4 Ch. D. 667), unless the grantee, from his existing position, *e.g.* as lessee of the grantor, is already in the enjoyment of such a Right (*Doidge v. Carpenter*, 6 M. & S. 17). *Note.* Where Common, whether Appendant or Appurtenant,



exists at the time of the grant, then, on the grant of a part of the tenement, there will be a due apportionment of the Right of Common (*Sacheverell v. Porter*, Jo. W. 396; *Wyat Wild's Case*, 8 Rep. 78 b).  
*Vf* BELONGING.

*Vh*, Elph. 607-615: LEVANT AND COUCHANT: PASTURES: PASTURAGE.

Quà Part 1, Commons Act, 1899, 62 & 63 V. c. 30, "Common" includes, "any land subject to be inclosed under the Inclosure Acts, 1845 to 1882; and any town or village Green" (s. 15; extending def in 39 & 40 V. c. 56, s. 37). This def is adopted for Light Railways Act, 1896 (s. 21).

Quà Metropolitan Commons; *V*. 29 & 30 V. c. 122, s. 3, extended by 32 & 33 V. c. 107, s. 2.

"There be also divers other commons, as of Estovers, of Turbary, of Pischary, of digging for coles, minerals and the like" (Co. Litt. 122 a).  
*V*. FISHERY.

"Common of Faldage"; *V*. FOLDCOURSE.

The Statute of MERTON, authorising APPROVEMENT of Commons when SUFFICIENT PASTURE is left to satisfy "Common of Pasture," does not give power to enclose against other kinds of Common, *e.g.* Turbary. Estovers (2 Inst. 87; *Fawcett v. Strickland*, Willes, 57; *Grant v. Gunner*, 1 Taunt. 435), nor as against rights to dig gravel (*Duberley v. Page*, 2 T. R. 391); though a CUSTOM to approve against such rights may be valid (*Arlett v. Ellis*, 7 B. & C. 346).

Generally as to Commons; *V*. Wms. on Rights of Common: Elton on Commons: 3 Cru. Dig. 65; Add. T. 284-289; Jacob: 3 Encyc. 135-140.

"The word 'Commons' means as often lands where rights of common are exercised, as common unenclosed open land where there are no commonable rights" (per Watson, B., *A-G. v. Hammer*, 27 L. J. Ch. 841).

"Common" land, esp'y when the word is used in a modern document, may mean simply, land for Public Enjoyment: *V*. PERMANENT.

*V*. RIGHT OF COMMON.

**COMMON AND NOTORIOUS.** — A person is not a "Common and Notorious" Depraver of the Common Prayer (Canons, 1603, No. 27) who, at solicitation, sends a friendly and private letter wherein the Common Prayer is depraved (*Jenkins v. Cook*, 45 L. J. P. C. 1; 1 P. D. 80).  
*V*. DEPRAVE: EVIL LIVER.

**COMMON BAWDY HOUSE.** — *V*. BROTHEL.

*Vh*, Arch. Cr. 1139; Rose. Cr. 704.

**COMMON BETTING HOUSE.** — *V*. 16 & 17 V. c. 119, s. 1, on *whv Caminada v. Hulton*, cited BET. Every Common Betting House is a COMMON GAMING HOUSE (1b. s. 2). *Vf*, Arch. Cr. 1136; 2 Encyc. 67-70.

**COMMON CARRIER.** — “Any one who undertakes to carry the Goods of all persons indifferently, for HIRE, is a Common CARRIER” (*Gisbourne v. Hurst*, 1 Salk. 249), a definition which may include Hoy-men, Bargemen, Lightermen, and Masters of Ships or Vessels (*Morse v. Slue*, Ventr. 190, 238; *Ingate v. Christie*, 3 C. & K. 61; *Maving v. Todd*, 1 Stark. 72; *Rich v. Kneeland*, Cro. Jac. 330; *Liver Alkali Co v. Johnson*, L. R. 7 Ex. 267; 41 L. J. Ex. 110; 20 W. R. 633; 26 L. T. 805; *Laveroni v. Drury*, 8 Ex. 166; 22 L. J. Ex. 2).

“The criterion is, whether he carries for particular persons only, or whether he carries for every one” (per Alderson, B., *Ingate v. Christie*, sup) between stated places. Therefore, a Town Carman (*Brind v. Dale*, 8 C. & P. 207; 2 Moo. & R. 80), a jobbing Furniture Remover (*Scuife v. Farrant*, L. R. 10 Ex. 358; 44 L. J. Ex. 234), a Cab Driver (*Ross v. Hill*, 15 L. J. C. P. 182; 2 C. B. 877) are not Common Carriers; as to Lightermen, *V. Chattock v. Bellamy*, 64 L. J. Q. B. 250; *Thomas v. Brown*, 4 Com. Ca. 186.

A Carrier of PASSENGERS is not, as such, a Common Carrier (*Sharp v. Grey*, 9 Bing. 457; *Redhead v. Mid Ry*, L. R. 4 Q. B. 379; 38 L. J. Q. B. 169; *Daniel v. Metrop Ry*, L. R. 5 H. L. 45; *Pounder v. N. E. Ry*, 1892, 1 Q. B. 385; 61 L. J. Q. B. 136; 65 L. T. 679; 40 W. R. 189; 56 J. P. 247; *Cobb v. G. W. Ry*, 1894, A. C. 419; 63 L. J. Q. B. 629; 71 L. T. 161; 58 J. P. 636). Where, however, a Carrier of Passengers also holds himself out as a Carrier of Goods (even though he take no specific payment for the latter service) he is a Common Carrier quâ the Goods; e.g. Hackney Coachmen (*Ross v. Hill*, sup; *Case v. Storey*, L. R. 4 Ex. 319), Ferrymen (*Willoughby v. Horridge*, 12 C. B. 742; 22 L. J. C. P. 90), Railway Companies (8 & 9 V. c. 20, ss. 86, 89; *Johnson v. Mid Ry*, 4 Ex. 367; 18 L. J. Ex. 366; *Dickson v. G. N. Ry*, 18 Q. B. D. 184).

As to Canal Companies; F. 8 & 9 V. c. 42, ss. 5, 6.

Vf, Macnamara on Carriers, ch. 3: Rose. N. P. 622 Add. C. 931 et seq; Carver, 4-8; 2 Encyc. 385-395; Jacob.

V. NOT AS COMMON CARRIERS.

**COMMON COUNCIL.** — Quâ Public Libraries Act, 1892, 55 & 56 V. c. 53 (and, probably, generally) “Common Council,” means, in relation to the City of London, the Mayor, Commonalty, and Citizens, acting by the Mayor, Aldermen, and Commons, in Common Council assembled” (s. 27).

**COMMON EMPLOYMENT.** — As to when employees are engaged in a “Common Employment”; V. *Priestly v. Fowler*, 3 M. & W. 1; 7 L. J. Ex. 42; *Farwell v. Boston Railroad*, 4 Metcalf, 49; 3 Macq. H. L. 316; *Bartonshill Coat Co. v. McGuire*, 3 Macq. H. L. 300; *Johnson v. Lindsay*, 1891, A. C. 371; 61 L. J. Q. B. 90; 65 L. T. 97;

40 W. R. 405; 55 J. P. 644: *Cameron v. Nystrom*, 1893, A. C. 308; 62 L. J. P. C. 85; 68 L. T. 772; 57 J. P. 550: *The Petrel*, 1893, P. 320; 62 L. J. P. D. & A. 92; *whicv* for review of previous authorities. *Vf*, Rose. N. P. 790: Beven, Bk. 4, ch. 5. The common employees need not both labour with their hands as Collaborateurs (*Johnson v. Lindsay*, sup).

**COMMON FIELDS.** — *V.* Elph. 566, 567.

**COMMON FISHERY.** — *V.* FISHERY.

**COMMON FORM BUSINESS.** — Quà Court of Probate Act, 1857, 20 & 21 V. c. 77, "Common Form Business," means "the business of obtaining Probate and Administration where there is no contention as to the right thereto; — including the passing of Probates and Administrations through the Court of Probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the Court in matters of testacy and intestacy not being proceedings in any suit, and also the business of lodging Caveats against the grant of probate or administration" (s. 2). *V.* TESTE.

**COMMON FUND.** — Stat. Def., 36 & 37 V. c. 86, s. 27; 37 & 38 V. c. 88, s. 48; 43 & 44 V. c. 7, s. 2.

"Common Fund of the District"; *V.* 32 & 33 V. c. 63, s. 23.

"Common Fund of the Union"; *V.* 59 & 60 V. c. 50, s. 19.

**COMMON GAMING HOUSE.** — "Is a house in which a large number of persons are invited (whether publicly or privately) habitually to congregate for the purpose of gaming" (per Hawkins, J., *Jenks v. Turpin*, 53 L. J. M. C. 166; 13 Q. B. D. 505: *Vthc* for a collection of the authorities on this word. As to what is sufficient proof of a Common Gaming House, *V.* s. 2, 8 & 9 V. c. 109). A Betting House "shall be taken and deemed to be a Common Gaming House," within 8 & 9 V. c. 109 (s. 2, 16 & 17 V. c. 119). *Vf*, COMMON BETTING HOUSE: USE.

"A Common Gaming House is a house kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which (a) a bank is kept by one or more of the players, exclusively of the others; or (b) in which any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet" (Steph. Cr. 122, 123). *Vh* 6 Encyc. 52-55.

**COMMON GAS.** — Quà Metropolis Gas Act, 1860, 23 & 24 V. c. 125, "Common Gas," means, Gas of an Illuminating Power as defined by s. 25, "of not less than 12 Candles" (s. 4). *Cp* CANNEL GAS.

**COMMON INFORMER.** — *V.* INFORMER.

**COMMON INTEREST.** — As to what is a "Common Interest" in the subject-matter of an Action justifying its Maintenance, *V. Alabaster v. Harness*, cited MAINTENANCE: and what will justify the Joinder of Defts, *V. Temperton v. Russell*, cited SAME, sub "Same Interest."

**COMMON LAND.** — The natural meaning of "Common, or Waste, Land" is, Land belonging to the Lord of the Manor but over which other persons have incorporeal rights; the phrase does not, of itself, include Open Fields, *e.g.* Lammas Lands, over which divers persons have rights in severalty (*Grand Union Canal Co. v. Ashby*, 6 H. & N. 394; 30 L. J. Ex. 203).

**COMMON LAW.** — The Common Law of England is, that Body of Law which has been judicially evolved from the general Custom of the Realm. *Vh*, Termes de la Ley, *Common Ley*: Cowel: Jacob: 3 Encyc. 140-142.

**COMMON LODGING HOUSE.** — The phrase "Common Lodging House," ss. 76-89, P. H. Act, 1875, held to include a house in which hawkers and other persons of an itinerant character were received at 6*d.* a night, and eating their meals at a common table in the kitchen (*Langdon v. Broadbent*, 42 J. P. 56, 67; 37 L. T. 434; 47 L. J. Q. B. 275, *n* 11).

But it has been said that a "Common" Lodging House is one kept for Gain and which all classes of persons may use, — "Common Lodging House," "in its ordinary sense, means, a Lodging House kept for purposes of Profit and open to all comers, whether of a certain class or not" (per Mathew, J., *Booth v. Ferrett*, 25 Q. B. D. 89; 59 L. J. M. C. 137): and, accordingly, it was held, that a house kept only for the reception of men, and of such men only, as the Manager might think eligible and some of whom were allowed in at a less rate than the ordinary charge of 4*d.* a night and some of whom were admitted free, and the house was carried on partly with a charitable and religious object, was not a "Common Lodging House," within s. 3, Common Lodging Houses Act, 1853, 16 & 17 V. c. 41 (*S. C.* 25 Q. B. D. 87; 59 L. J. M. C. 136); but that conclusion was over-ruled by *Legsdon v. Booth*, 1900, 1 Q. B. 401; 69 L. J. Q. B. 131; 81 L. T. 602; 48 W. R. 266; 64 J. P. 165: *while* was followed in *Legsdon v. Trotter*, 1900, 1 Q. B. 617; 69 L. J. Q. B. 312; 82 L. T. 151; 48 W. R. 365; 64 J. P. 421.

Quà P. H. Scotland Act, 1897, " 'Common Lodging House,' means, a house or part thereof where LODGERS are housed at an amount not exceeding 4*d.* per night, or such other sum as shall be fixed under the provisions of this Act, for each person, whether the same be payable

nightly or weekly or for any period not longer than a fortnight; and shall include any place where Emigrants are lodged, and all boarding-houses for Seamen, irrespective of the rate charged for lodging or boarding" (s. 3). *Cp.*, the previous def 19 & 20 V. c. 103, s. 3; 30 & 31 V. c. 101, s. 3.

Quà P. H. Ireland Act, 1878, " 'Common Lodging House,' means, a house in which, or in any part of which, persons are harboured or lodged, for HIRE, for a single night, or for less than a week at a time" (s. 2).

V. LODGING HOUSE.

**COMMON NUISANCE.** — " A Common Nuisance is an act not warranted by law, or an omission to discharge a legal duty, which act or omission obstructs or causes inconvenience or damage to the PUBLIC in the exercise of rights common to all Her Majesty's subjects. It is immaterial whether the act complained of is convenient to a larger number of the public than it inconveniences; but the fact that the act complained of facilitates the lawful exercise of their rights by part of the public, may show that it is not a nuisance to any of the public" (Steph. Cr. ch. 19, *whv* for instances of Common Nuisances). *Vf.*, Arch. Cr. 1121-1173: Rose. Cr. 697.

V. PUBLIC NUISANCE: NUISANCE.

**COMMON OF SHACK.** — V. SHACK.

**COMMON PRAYER.** — V. BOOK OF COMMON PRAYER: COMMON AND NOTORIOUS.

**COMMON RECOVERY.** — A Common Recovery was a fictitious suit for barring an Entail. It received its first judicial sanction by *Taltarum's Case* (Y. B. 12 Ed. 4, 19), and was only abolished by the Fines and Recoveries Act, 1833. *Vh.*, 2 Bl. Com. 357 *et seq.* Wms. R. P. ch. 2: Jacob, *Recovery*.

**COMMON SEWER.** — V. SEWER.

**COMMON,** Tenancy in. — V. TENANCY IN COMMON.

**COMMON TO THE TRADE.** — This phrase in s. 74 (1 *b*), Patents, Designs, and Trade Marks Act, 1883, means, "Open to the Trade" (*Re Wragg*, 29 Ch. D. 551; 54 L. J. Ch. 391; *Burland v. Broxburn Co.*, 58 L. J. Ch. 816; 42 Ch. D. 274; 61 L. T. 618; 6 Pat. Ca. 482: *Re Apollinaris Co.*, cited AGGRIEVED). "In Common Use"; *V.* Ib

V. TRADE-MARK.

**COMMON WAY.** — V. HIGHWAY: CALCEY.

**COMMONLY UNDERSTOOD.** — "Commonly understood." s. 241, 45 & 46 V. c. 50, means, "Commonly understood by any person

comparing the Nomination Paper and the Burgess Roll" (*Moorhouse v. Linney*, 15 Q. B. D. 273; *Vf*; *R. v. Gregory*, 22 L. J. Q. B. 120; 1 E. & B. 600).

**COMMONS.** — *V.* COMMON: HOUSE OF COMMONS.

In such a phrase as that in *Scales v. Pickering* (*V.* FOOTPATH), "Commons", "evidently refers to those small patches of Waste land sometimes lying by the side of a road, the property of which belongs to the Lord of the Manor" (per Best, C. J., *Ib.*).

**COMMONWEALTH.** — "The Commonwealth of AUSTRALIA," as a phrase, sprang into the Republic of Letters, and itself, as a fact, came into existence, by the Act of 1900, The Commonwealth of Australia Constitution Act, 63 & 64 V. c. 12, *whv* hereon.

**COMMOTE** or **CONMOTE.** — "A Commote is a great seignior, and may include one or divers mannors" (Co. Litt. 5 a: *Vf*; Touch. 92: Elph. 567, 568).

**COMMOTION.** — *V.* CIVIL COMMOTION.

**COMMUNICANT.** — A "Communicant" of the Church of England is, in its proper and primary meaning, one who actually communes; in its secondary sense, it may mean, every person whom the Church in ancient times regarded as under an obligation to commune (*R. v. Hall*, 35 L. J. M. C. 251; L. R. 1 Q. B. 632; 7 B. & S. 642).

**COMMUNICATION.** — *V.* MESSAGE: OMIT.

"Communication" of State Documents, &c; *V.* Official Secrets Act, 1889. 52 & 53 V. c. 52, s. 8.

**COMMUNION.** — Holy Communion; *V.* CHURCH: KNEELING.

"Communion Table" in the Church of England, — Can it "mean anything but that 'table' at which meals are usually eaten?" (per Sir H. J. Fust, *Faulkner v. Litchfield*, 1 Rob. Ecc. 220); an immovable structure is not a Communion Table (*S. C.*), such a "Table" must be one in the ordinary sense of the word, *i.e.* movable, made of wood, flat, and capable of being covered with a cloth, and having no Cross attached (*Liddell v. Westerton*, 5 W. R. 470). *Vf*, *Liddell v. Beal*, 14 Moore P. C. 7; 8 W. R. 569; 3 L. T. 218: NORTH SIDE.

**COMMUNITY.** — *V.* CONVENT.

**COMMUTATION.** — A "Commutation," *e.g.* of TITHES, s. 42, 6 & 7 W. 4, c. 71, is to substitute one liability for another; therefore, lands which were waste at the time of a Tithe Commutation Award but which were afterwards enclosed and so would have become titheable but for the Award, became liable to the per-acreage Tithe Commutation Rent Charge

fixed by the award (*Trimmer v. Walsh*, 32 L. J. Q. B. 364; 4 B. & S. 40). In that case Cockburn, C. J., pointed out that "Commutation" was not to be confounded with "Apportionment," and Blackburn, J., distinguished it from "Compensation." (Cp COMPOSITION.)

**COMPANY.** — An Obligation given to Trustees for an Unincorporated "Company" is valid; "Company," in that connection, means the fluctuating or successive body of persons who, from time to time, form the Co (*Metcalfe v. Bruin*, 12 East, 400).

Referring to the phrase "Company, Association, or Partnership," s. 4. Comp Act, 1862, James, L. J., said, "I believe the difference which was meant, as the difference according to the vernacular we use in these things between a Company or Association and an ordinary Partnership, is this: An ordinary *Partnership*, is a partnership composed of definite individuals bound together by contract between themselves to continue for some joint object either during pleasure or during a limited time; but the partnership is essentially composed of the persons originally entering into the contract with one another. A *Company* or *Association* — and I take the terms to be really synonymous — is an arrangement by which parties intend to have a partnership which will be constantly changing, that is to say, to have a succession of partnerships, a partnership to-day consisting of certain members, and to-morrow of some of those members only and some others who have come in; so that there will be a constant shifting of the partnership, a determination of the old and a creation of a new partnership, and always formed with the intention that, so far as they could by agreement between themselves, the new partnership should take upon itself the assets and liabilities of the old partnership — an object which as regards liability could not be effected in point of law by any arrangement between the persons themselves, unless the persons contracting with them by a *novatio* authorised the change, or unless by special provisions in the Acts of Parliament, sanction was given to such an arrangement. That is the sole distinction between Association and Partnership" (*Smith v. Anderson*, 50 L. J. Ch. 49; 15 Ch. D. 273; *See* per Brett and Cotton, L.J.J., who suggested distinctions between "Company" and "Association"). *Va. R. v. Registrar of Joint Stock Companies*, 1891, 2 Q. B. 598; 61 L. J. Q. B. 3; 65 L. T. 392; 39 W. R. 708; *while* was on "Company," s. 180, Comp Act, 1862.

The other "Co" to which a Co's property may be transferred under s. 161, Comp Act, 1862, may be a Foreign Co (*Ex p. Fox*, 40 L. J. Ch. 433; 6 Ch. 176).

"Company" may include a Municipal Corporation (*Wolverhampton v. Bilston*, cited WATER COMPANY).

In a Modern Act the meaning of "Company," or "the Company," will generally be ascertained by referring to its Interp Clause, which usually defines the phrase according to the subject-matter of the Act, *e.g.*

quâ Forged Transfers Act, 1891, 54 & 55 V. c. 43, " 'Company,' shall mean, any Company incorporated by, or in pursuance of, any Act of Parliament. or by Royal Charter " (s. 2).

" Co incorporated *by Act of Parliament,*" within a Trustee's Investment Clause, does not include a Co formed under the Comp Act, 1862, or 1 V. c. 73; but the phrase does include a Co created by a Charter specially authorised by Parliament, and which Charter the Crown could not grant without statutory power (*Elve v. Boyton*, 1891, 1 Ch. 501; 60 L. J. Ch. 383: *Vf, Re Smith*, cited Bx). *Vf* INCORPORATED.

Debentures of a " Mortgage, Loan, or other Incorporated Co," s. 17, Bills of Sale Act, 1882; in this phrase " *other Incorporated Co*" is not to be read as *ejusdem generis* with the preceding words (*Re Standard Manufacturing Co*, 1891, 1 Ch. 627; 60 L. J. Ch. 292; 39 W. R. 369; over-ruling *Jenkinson v. Brandley Co*, 19 Q. B. D. 568; 35 W. R. 834); but even if the rule were applied, any Incorporated Co authorised to raise money on loan or mtge, *i.e.* having Borrowing Powers, is within the section (*lb.*: *Sv* now s. 14, Comp Act, 1900). But a Debenture by an Industrial and Provident Socy is not within the section, because such a Socy is not a Co at all (*G. N. Ry v. Coal Co-operative Socy*, 1896, 1 Ch. 187; 65 L. J. Ch. 214; 73 L. T. 443; 44 W. R. 252). *Vf*, DEBENTURE: BILL OF SALE.

" The Companies Acts, 1862 to 1893 "; *V.* Sch 2, Short Titles Act, 1896.

" The Companies Clauses Acts, 1845 to 1889 "; *V.* *Ib.*

*V.* BUSINESS: INSURANCE COMPANY: JOINT STOCK COMPANY: RAILWAY COMPANY: TRADING AND OTHER PUBLIC COMPANIES.

" Company's Funds "; *V.* Ry and Canal Traffic Act, 1888, s. 42 (3).

Proceedings of a Co; *V.* PROCEEDING.

**COMPASSIONATE ALLOWANCE.** — A " Compassionate Allowance " is a voluntary bounty, and not Income (*Re Webber*, *V.* INCOME).

**COMPELLABLE.** — An enactment that an accused person shall be " competent, *but not compellable*" to give evidence on the charge against him, does not, even under the latter branch of the phrase, import that the Judge is not to make comments to the Jury on the absence from the witness-box of the accused (*Kops v. The Queen*, 1894, A. C. 650; 64 L. J. P. C. 34; 70 L. T. 890; 58 J. P. 668). *Vf*, *R. v. Rhodes*, cited COMMENT.

**COMPENSATION.** — " Compensation " in Conditions of Sale; *V.* *Cordingley v. Cheesebrough*, 31 L. J. Ch. 617; 3 Giff. 496.

" Claim for Compensation," s. 9, V. & P. Act, 1874, includes claim for non-delivery of Possession, or for removal of loose chattels (*Re Laitwood*, 36 S. J. 255). *Cp* QUESTION.

" Fair and Reasonable Compensation," " Reasonable Compensation "; *V.* REASONABLE.

*V.* FULL COMPENSATION.



"Making Compensation"; *V. SATISFACTION.*

Compensation under Lands C. C. Act, 1845; *V. HOUSE: HEREDITAMENT: TENEMENT: INJURIOUSLY AFFECTED: Re Bailey and Isle of Thanet Ry*, 1900, 1 Q. B. 722; 69 L. J. Q. B. 442; 82 L. T. 713; 48 W. R. 589; Browne and Allan on Compensation: Cripps, *Ib.*

"Compensation Allowances"; *V. Courts of Justice Building Act*, 1865, 28 & 29 V. c. 48, s. 2.

"Compensation for Loss or Damage," Mer Shipping Act, 1876, s. 10, is not the equivalent of DAMAGES therefor (*Dixon v. Culcraft*, 1892, 1 Q. B. 458; 61 L. J. Q. B. 529; 66 L. T. 554; 40 W. R. 598; 56 J. P. 388).

*V. COMMUTATION.*

**COMPETE.** — An agreement "not directly or indirectly to enter into Competition" in a business, is not confined to *active* competition; and a physician, having entered into such contract on the sale of his practice, is guilty of a breach if he attend a patient within the prohibited district, even though he was called in without any solicitation on his part, and though he recommended that some one else should be called in, and though it be proved that his vendee would not have been called in (*Rogers v. Drury*, 36 W. R. 496; 57 L. J. Ch. 504; 4 Times Rep. 98). *V. RESTRAINT OF TRADE.*

**COMPETENT.** — "Competent to dispose by Will of a Continuing Interest," s. 21, *Such Dy Act*, 1853, means the quantity of the successor's interest in the property subject to duty, and does not refer to his mental capacity (*A-G. v. Hallett*, 27 L. J. Ex. 89; 2 H. & N. 368); and the phrase includes the power (if executed) of a Tenant in Tail in possession to enlarge his estate to a Fee Simple (*Lilford v. A-G.*, 36 L. J. Ex. 116; L. R. 2 H. L. 63).

"Competent to dispose" of property, *quà Finance Act*, 1894; *V. s. 22 (2 a)*: "A Child or other Issue" (of a testator) whose estate becomes entitled to property under s. 33, *Wills Act*, 1837, is "at the time of his death Competent to dispose" of such property, within s. 2 (1 a), *Finance Act*, and, accordingly, it is "property PASSING on the death" of the Child or Issue and liable to Estate Duty (*Re Scott*, 1900, 1 Q. B. 372; 69 L. J. Q. B. 121; *affd* 70 L. J. Q. B. 66): As used at end of s. 5 (2), *Finance Act*, *V. A-G. v. Hay*, 1899, 2 Q. B. 245; 68 L. J. Q. B. 557; 80 L. T. 712.

Parties "Competent" to make admissions, s. 7, 21 & 22 V. c. 27, include Assignees in Bankruptcy, and Married Women (*Churchill v. Coller*, 1 N. R. 82); but not Infants (*Wilkinson v. Beal*, 4 Mad. 408).

"Competent but not compellable"; *V. COMPELLABLE.*

"Competent COURT," s. 5 (2), *Debtors Act*, 1869; *V. Washer v. Elliott*, 1 C. P. D. 173, 174.

"Competent *Magistrate*" in Scotland, Ireland, and the Channel Islands, quâ Indictable Offences Act Amendment Act, 1868, 31 & 32 V. c. 107; I. s. 5.

Competent *Surveyor*; I. SURVEYOR.

Culprit a Competent *Witness*; I. STAGE: COMMENT.

**COMPETITION.** — I. COMPETE.

**COMPETITIVE.** — "Competitive PLACE"; I. *Distington Iron Co v. Lond. & N. W. Ry*, 6 Ry & Can Traffic Ca. 110.

"Competitive STATION"; I. *Mid Ry v. G. W. Ry*, 2 Ry & Can Traffic Ca. 88.

**COMPLAINANT.** — Quâ Petty Sessions (Ir) Act, 1851, 14 & 15 V. c. 93. "Complainant" includes "Informant, or Prosecutor" (s. 44).

I. in Scotland, 38 & 39 V. c. 90. s. 14.

**COMPLAINT.** — Quâ Magistrates, "where proceedings are taken by way of 'Information,' or 'Complaint,' which end, or may end, in a CONVICTION or ORDER, there are always two parties, — the person initiating the proceedings, and the person against whom the proceedings are taken" (per Ld Herschell, *Boulter v. Kent Jus.*, cited COURT OF SUMMARY JURISDICTION). "Information" is the initiatory step in proceedings of a Criminal nature which are to be disposed of summarily, — while, I apprehend, the term 'Complaint' designates the initiatory step in summary proceedings of a Civil nature; but equally in both cases there is contemplated the existence of a matter in controversy between two parties" (per Hayes, J., *Re Dillon*, 11 Ir. Com. Law Rep. 238).

An application to justices to settle COMPENSATION under s. 22, Lands C. C. Act, 1845, is not a "Complaint" within Jervis' Act, 11 & 12 V. c. 43 (*R. v. Hannay*, 44 L. J. M. C. 27; *R. v. Edwards*, 53 L. J. M. C. 149; 13 Q. B. D. 586; *whle* over-rules *Re Edmundson*, 21 L. J. M. C. 193; 17 Q. B. 67); nor are proceedings for enforcing a Public Rate a "Complaint" (*Sweetman v. Guest*, 37 L. J. M. C. 59; L. R. 3 Q. B. 262; 32 J. P. 212; *R. v. Price*, 5 Q. B. D. 300; 49 L. J. M. C. 49; 28 W. R. 615; 42 L. T. 539; 44 J. P. 248); but a Justice's Summons for a Water Rate under, s. 74, 10 & 11 V. c. 17, is a "Complaint" (*East London W. W. Co v. Charles*, 1894, 2 Q. B. 730; 63 L. J. M. C. 209; 71 L. T. 200; 42 W. R. 702; 58 J. P. 764).

Quâ Petty Sessions (Ir) Act, 1851, "Complaint" includes "Information" (s. 44).

V. INFORMATION: ARISE.

The filing an affidavit in support of a notice of motion to set aside an Award is a "Complaint," within 9 & 10 W. 3, c. 15, s. 2 (*Re Huddersfield and Jacomb*, 44 L. J. Ch. 96; 10 Ch. 92; *Smith v. Parkside Co*, 50 L. J. Ex. 144; 6 Q. B. D. 67).

"Matter of Complaint"; I. DEFACE.

**COMPLETE.** — *V.* PERFECT.

Complete *Discharge*; *V. Re Molyneux*, cited **SOLE**.

Complete *Cargo*; *V.* **CARGO**.

Complete *Contract*; *V.* **SUBJECT TO**.

Complete *Repair*; *V. Jolliffe v. Twyford*, cited **KEEP: REPAIR**.

**COMPLETED.** — Execution completed; *V.* **EXECUTION**.

Sales, &c "completed," Ord. 2 (*v*), Solrs Rem Ord. and Sch 1, Part 1, *Ib.*; *V.* **MORTGAGE**.

Scale Fee, for Completing Conveyance; *V. Grey v. Curtice*, cited **CONVEYANCE**, at end.

**COMPLETION.** — Where a contract for sale stipulates that interest on the unpaid purchase money shall be paid until "Completion," that means, that interest shall be payable until the purchase money is paid (*Lewis v. S. W. Ry*, 22 L. J. Ch. 209; 10 Hare, 113). In delivering judgment in that case, Turner, V. C., said: — "The question is, what is the meaning of the words 'until the Completion of the Purchase' ? Those words may no doubt import, and generally perhaps would be construed to refer to, the complete conveyance of the estate and final settlement of the business. But I do not think that is the only or necessary meaning of the words. They may mean, until the completion of the purchase by the purchaser, on whose part the purchase is completed, on the payment of the purchase money by him. . . . Is it reasonable to construe the words as importing that interest is to be paid on the purchase money until the final completion of the purchase, although the purchase money itself might be paid long before? I think it would be unreasonable to put such a construction on the words, the more so when it is considered that interest is the compensation for the delay in the payment of the principal. That an agreement might be so expressed as to make interest on the purchase money payable up to the final completion of the purchase by the conveyance of the estate, although the purchase money itself was sooner paid, need not be denied; but I think very strong words would be required for the purpose, and that the terms of this agreement do not warrant such a construction."

Commission "on Completion of the Purchase," means, completion of the purchase of the whole subject-matter of the contract; failing which the commission will not be payable unless that full completion be hindered by the default of him by whom it is to be paid (*Lott v. Outhwaite*, 10 Times Rep. 76).

Where a builder is to be paid on the "Completion" of a Building, such completion is, generally, a question of fact, independent of the Architect's Certificate, unless such certificate is clearly made a Condition Precedent to the payment (*Lewis v. Hoare*, 44 L. T. 66; *Th. Scott v. Liverpool*, 28 L. J. Ch. 230; 3 D. G. & J. 334; 1 Hudson. 140, 287).

But, generally, in Bg Contracts, when an Architect or Surveyor is employed, it will be found that "Completion," means "Certified Completion" (*Cunliffe v. Hampton Wick*, cited SEVERAL).

Where the contract price for a Chattel is to be paid within a stated time from its "Completion," that means, its substantial completion; and the time will not be extended by mere alterations and improvements to the chattel made in the hope of satisfying the purchaser (per Erle, J., *Parsons v. Saxter*, 2 C. & K. 266).

Salary of Manager "to commence from Completion" of the contract, by his employer, for the property or business to be managed; *V. Brown- ing v. Great Central Mining Co*, 5 H. & N. 856; 29 L. J. Ex. 399.

Commission "on the Completion of the LOADING, or should the Vessel be lost"; *V. Ward v. Weir*, 4 Com. Ca. 216; distinguishing *Sibson v. Barcraig Co*, 24 Sess. Ca. 4th Ser. 91.

Completion of Works; *V. WORKS*.

**COMPOSE.** — To "Compose" a Book, Copyright Act, 1842, does not mean to "copy or write from dictation, it obviously means, Compose in the sense of being the Author" (*Walter v. Lane*, cited AUTHOR).

**COMPOSER.** — *V. AUTHOR*.

**COMPOSITEURS.** — *V. AMIABLES COMPOSITEURS*.

**COMPOSITION.** — A "Composition with Creditors" is an ARRANGEMENT between a Debtor and his Creditors (or some of them, *Sharp v. Cosserat*, 20 Bea. 470; 3 W. R. 473), whereby the latter agree with the Debtor (and mutually amongst themselves) to receive, and the Debtor agrees to pay, an agreed proportion less than 20s. in the £, in satisfaction of the debts due or accruing due from the Debtor to the Creditors. *Cp* COMPOUND.

A *cessio bonorum* is not a "Composition with Creditors" disqualifying a member of a Local Board under R. 5, Sch 2. P. H. Act, 1875 (*R. v. Cooban*, 56 L. J. M. C. 33). In that case Denman, J. (obiter), was of opinion that the "Composition" struck at by the Rule was one effected under the Bankry Act, 1869; whilst Hawkins, J., was "inclined to think that this disqualifying Rule would include not only Compositions under the Bankry Act, 1869, but also Private Compositions with Creditors by deed."

A "Composition" of a *Poor Rate* (proviso (1), s. 7, Rep People Act, 1867), includes not only the case of an Owner paying less than the full amount by agreement, but also where he pays a less amount by Vestry Order under the Small Tenements Act (*Trotter v. Trevor*, 38 L. J. C. P. 51; L. R. 4 C. P. 502). *Vf*, *Mason v. Bennett*, 38 L. J. C. P. 48; L. R. 4 C. P. 502.

Composition for *Tithes*, is an agreement to pay money in lieu, of

Tithes: *V. Jacob, Composition*. "Compositions for Tithes." "Persons entitled to Compositions for Tithes"; *V. Tithe Rent Charge (1r) Act, 1838, 1 & 2 V. c. 109, s. 54. Cp COMMUTATION.*

"Compositions," in exception to definition of "*Rent*," s. 1, 3 & 4 W. 4, c. 27; *V. Irish Land Commission v. Grant*, cited RENT.

**COMPOUND.** — To "Compound" a DEBT, is to abate a part on receiving the residue (*Haskins v. Newcomb, 2 Johns. 408*). "If there is a binding arrangement for discharge of the debt from which neither party can recede and with which the creditor is satisfied, it is a compounding, though something still remains to be done" (per Patteson, J., *Pennell v. Rhodes, 9 Q. B. 129; 15 L. J. Q. B. 355*). *Cp, COMPOSITION: COMPROMISE.*

"'Compounding FELONY, or Theft-Bote,' is where the party robbed, not only knows the Felon but also, takes his goods again, or other amends, upon agreement not to prosecute" (Jacob). But it can hardly be correct to say that this Offence is the same as Theft-Bote, for that ancient Offence was not committed where a man took back his own goods (*V. BOTE, "Theft-Bote"*).

Compounded DRUG; *V. Beardsley v. Walton, 1900, 2 Q. B. 1; 69 L. J. Q. B. 344; 82 L. T. 119; 64 J. P. 436.*

Compound Settlement; *V. SETTLEMENT.*

**COMPREHENSIVENESS.** — *V. GENERALITY.*

**COMPRISE.** — *V. INCLUDE.*

Other Claim "Comprised in the same Account," s. 9, 19 & 20 V. c. 97, means, "'that would have been comprehended' in it; *i.e.* that would have been an item in the account demanded" (per Ld Westbury, *Knorr v. Gye, L. R. 5 H. L. 673; 42 L. J. Ch. 238*).

**COMPRISING.** — "Comprising" imports interpretation, like NAMELY, or THAT IS TO SAY, *e.g.* "All my farming stock, Comprising," so many horses &c (*Jones v. Roberts, 34 S. J. 254*).

**COMPROMISE.** — "'Compromise,' is a mutual promise of two or more parties that are at controversie" (*Termes de la Ley*).

"A Compromise takes place when there is a question of doubt, and the parties agree not to try it out but to settle it between themselves by a give-and-take arrangement" (per Kay, L. J., *Huddersfield Bank v. Lister, 1895, 2 Ch. 285*).

"Modification or Compromise" of rights; *V. MODIFICATION: COMPOUND.*

"Compromise or ARRANGEMENT," s. 2, 33 & 34 V. c. 104; *17 Buckl. 630.*

**COMPTABLE.** — *V. Exchange Bank of Canada v. The Queen, 55 L. J. P. C. 5; 41 App. Ca. 157; 54 L. T. 802.*

**COMPTROLLER.** — Stat. Def., Patents, &c Act, 1883, 46 & 47 V. c. 57, s. 117.

“Comptroller and Auditor General”; *V.* 40 & 41 V. c. 2, s. 2, c. 45, s. 6; 42 & 43 V. c. 45, s. 5.

**COMPULSORY POWERS.** — “Injury or Loss in consequence of any Compulsory Powers of taking property,” s. 1 (1), 55 & 56 V. c. 27, means, in consequence of the EXERCISE of such powers, which a mere Notice to Treat (though followed by a Contract) is not (*Guest v. Poole, &c Ry.*, 39 L. J. C. P. 329; L. R. 5 C. P. 553; *Re Uxbridge, &c Ry.*, 59 L. J. Ch. 409; 43 Ch. D. 536; 62 L. T. 347; 38 W. R. 644); nor are the charges of a landowner’s Solr or Surveyor (incurred in consequence of such Notice) “Injury or Loss” within the phrase (*Re Uxbridge, &c Ry.*, sup). *Cp* “Reasonable Compensation,” sub REASONABLE.

Where a Ry or Canal Co have power, on notice, to take the Mines under the Ry or Canal, but failing the exercise of such power the Owner may work the Mines, provided that in such working “No Injury” be done to the Ry or Canal. — the words “No Injury” are “to be construed with some qualification, and as meaning (1) That the party working the mines is to do no unnecessary damage or injury, or (2) No extraordinary damage or injury by working them out of the ordinary and usual mode” (*Dudley Canal Co v. Grazebrook*, 1 B. & Ad. 59; approved in *G. W. Ry v. Bennett*, 36 L. J. Q. B. 133; L. R. 2 H. L. 27, and distd in *Knowles v. Lauc. & Y. Ry.*, 59 L. J. Q. B. 39; 14 App. Ca. 248; on *whlcr*, *Chamber Colliery Co v. Rochdale Canal Co*, 1895, A. C. 564; 64 L. J. Q. B. 645, and *New Moss Colliery Co v. Manchester S. & L. Ry.*, 1897, 1 Ch. 725; 66 L. J. Ch. 381; 76 L. T. 231; 45 W. R. 493). *If* DAMAGE.

**COMPULSORY REFERENCE.** — A reference for Trial to an Official Referee, under R. 7 (a), Ord. 36, R. S. C., is not a “Compulsory Reference to Arbitration,” within s. 8, Jud. Act, 1884 (*Munday v. Norton*, cited ARBITRATION).

**CONCEAL.** — Quà the Contract of INSURANCE, “CONCEALMENT,” properly so called, means, Non-disclosure of a fact which it is a man’s duty to disclose” (per Jessel, M. R., *London Assree v. Mansel*, 11 Ch. D. 370; 48 L. J. Ch. 334).

**CONCEALED FRAUD.** — “Concealed Fraud,” s. 26, Real Property Limitation Act, 1833, “does not mean the case of a party entering wrongfully into Possession; it means, a case of designed fraud by which a party, knowing to whom the Right belongs, conceals the circumstances giving that right, and, by means of such concealment, enables himself to enter and hold” (per Kindersley, V. C., *Petre v. Petre*, 1 Drew. 397; *If, Vane v. Vane*, 8 Ch. 383; 21 W. R. 66; 27 L. T. 534; *Re McCullum*, 49 W. R. 129): — As to what particular acts amount to such

"Concealed Fraud," *V. Sturgis v. Morse*, 24 Bea. 541; 3 D. G. & J. 1; *Vane v. Vane*, sup: *Trerelgan v. Charter*, 11 Gl. & F. 714; 4 L. J. Ch. 209; *Metropolitan Bank v. Heiron*, 5 Ex. D. 319; 29 W. R. 370; 43 L. T. 675; *Price v. Berrington*, 3 M. & G. 486; *Molton v. Camroux*, 2 Ex. 487; 4 Ib. 17; *Lewis v. Thomas*, 3 Hare. 26; *Manby v. Bewick*, 3 K. & J. 343; *Dartmouth v. Spittle*, 19 W. R. 444; 24 L. T. 67; *Dean v. Thraite*, 21 Bea. 621 (on *whole Ecclesiastical Commrs v. N. E. Ry*, 4 Ch. D. 845; 36 L. T. 174, *Ashton v. Stock*, 25 W. R. 862, and *Williams v. Ruggett*, 46 L. J. Ch. 849); *Trotter v. Maclean*, 13 Ch. D. 574; 49 L. J. Ch. 256; 28 W. R. 244; 42 L. T. 118; *Chatham v. Hoare*, L. R. 9 Eq. 571; 39 L. J. Ch. 376; 22 L. T. 57; *Willis v. Howe*, 1893, 2 Ch. 545; 62 L. J. Ch. 690; 69 L. T. 358; 41 W. R. 433; *Thorne v. Heard*, 1895, A. C. 495; 63 L. J. Ch. 356; 64 Ib. 652; 73 L. T. 291; 44 W. R. 155; *Re Lounds Allotment Co*, 1894, 1 Ch. 616; 63 L. J. Ch. 291; 70 L. T. 286; 42 W. R. 404; *Re Lacy*, cited A: *Re Astley & Tyldesley Co*, 68 L. J. Q. B. 252, in *whole Ecclesiastical Commrs v. N. E. Ry*, sup, was not followed.

V. REASONABLE DILIGENCE: FRAUD.

**CONCEALMENT.** — A Policy of Marine Insree "is always said to be *uberrimæ fidei*" (per Cleasby, B. *Harrouer v. Hutchinson*, L. R. 5 Q. B. 595). "Concealment," in such a contract, "is the suppression of, or neglect to communicate, a MATERIAL FACT within the knowledge of one of the parties which the other has not the means of knowing, or is not presumed to know. A 'Material Fact,' is one which is calculated, if communicated to the other of the parties, to induce him either to refrain altogether from the contract, or not to enter into it except on more favourable terms" (Arn. 658, citing per Tindal, C. J., *Eltou v. Larkins*, 5 C. & P. 392; *Vf, Carter v. Boehm*, 3 Burr. 1909; *Harrouer v. Hutchinson*, L. R. 5 Q. B. 584; 39 L. J. Q. B. 229; 10 B. & S. 469; 22 L. T. 684). V. CONCEAL.

"Suppression or Concealment"; V. SUPPRESS.

**CONCERN.** — "Trade, Manufacture, Adventure, or Concern." Income Tax Act; V. TRADE.

**CONCERNED.** — "Concerned as Officer to prosecute," s. 3, 5 & 6 W. & M. c. 11, does not mean BOUND to prosecute; those are "concerned to prosecute" "whose duty it is to do so, though the duty be only one of imperfect obligation" (per Campbell, C. J., *R. v. —*, 15 Q. B. 1066). *e.g.* that of Guardians to prosecute for ill-usage of a Child received into their Workhouse. *Vf, R. v. Waldegrave*, 2 Q. B. 341.

V. PARTY CONCERNED.

**CONCERNED IN.** — A Shareholder in a Co, which Co has a contract with a Local Authority, would seem *not* to be "concerned in" that

contract within s. 193, P. H. Act. 1875 (per Brett, M. R., *Todd v. Robinson*, 54 L. J. Q. B. 47; 14 Q. B. D. 739; 52 L. T. 120; 49 J. P. 278). But to do part of a work, or to supply part of the materials for a work, for another, knowing that that other has contracted with a Local Authority to do the work, is to be "concerned in" the bargain or contract for the work within R. 64, Sch 2, of the Act just cited, or s. 34, 33 & 34 V. c. 75 (*Nutton v. Wilson*, 58 L. J. Q. B. 443; 22 Q. B. D. 744; 37 W. R. 522; 53 J. P. 644; *Barnacle v. Clark*, 1900, 1 Q. B. 279; 69 L. J. Q. B. 15; 81 L. T. 484; 64 J. P. 87). So, of a Retiring Partner who, notwithstanding his retirement, remains liable on a contract that his firm had entered into with the Local Authority (*Cox v. Ambrose*, 60 L. J. Q. B. 114; 55 J. P. 23; 7 Times Rep. 59). *Cp*, INTERESTED IN: ENGAGE IN.

*V.* BARGAIN OR CONTRACT.

Acting as a salaried servant, is being "concerned in" a business within a Covenant not to be concerned in such a business (*Hill v. Hill*, 55 L. T. 769; 35 W. R. 137; 51 J. P. 246; 3 Times Rep. 144; *Jones v. Heavens*, 4 Ch. D. 636). *V.* RESTRAINT OF TRADE.

The owner of a vessel who knowingly lets it to be employed in Smuggling, is "concerned in" the illegally unshipping of the goods, within s. 46, 8 & 9 V. c. 87 (*A-G. v. Robson*, 20 L. J. Ex. 188; 5 Ex. 790). *V.* UNSHIPPIING.

"Concerned in" sale of Steerage Passages; *V. Morriss v. Howden*, cited PASSAGE BROKER.

*V.* CARRY ON.

**CONCERNING.** — *V.* OF AND CONCERNING.

**CONCLUSIVE.** — *V.* FINAL AND CONCLUSIVE.

"Binding and Conclusive"; *V.* INCONSISTENT.

**CONCLUSIVE EVIDENCE.** — Anything which is duly prescribed as "Conclusive Evidence" of a fact, is absolute evidence of such fact, as well criminally as civilly, for all purposes for which it is so made evidence (*R. v. Levi*, 34 L. J. M. C. 174; *R. v. Robinson*, L. R. 1 C. C. R. 80).

The phrase is also used in its large sense in s. 51, Comp Act, 1862, quâ the declaration by a Chairman of the result of a voting at a meeting (*Brynmawr Coal Co. W. N. (77) 45*, cited Buckl. 212); and such a declaration cannot be challenged by contradictory evidence (per James, L. J., *Re Gold Co*, 48 L. J. Ch. 286; per Cozens-Hardy, J., *Re Hadleigh Castle Co*, 1900, 2 Ch. 419; 69 L. J. Ch. 631; not following *Young v. S. African Co*, 1896, 2 Ch. 268; 65 L. J. Ch. 638; 44 W. R. 509, *whic* is, *semble*, over-ruled by *Arnot v. United African Lands*, 1901, 1 Ch. 518. *Vf*, *Re Horbury Bridge Co*, 48 L. J. Ch. 341; 11 Ch. D. 109). *Cp*, *Barractough v. Greenhough*, cited SUFFICIENT EVIDENCE.



By the last sentence of s. 18, Comp Act, 1862, the Certificate of Incorporation of a Co was "Conclusive Evidence" of its due Registration, *i.e.* "that the only evidence of the Incorporation which the Court can receive is the Certificate," a ruling which seems also applicable to the Notice from the Board of Trade of the Abandonment of a Tramway under s. 18, 33 & 34 V. c. 78 (per Kekewich, J., *Re Dudley Trams Co*, 69 L. T. 711; 42 W. R. 126; 63 L. J. Ch. 108). But, *semble*, a Certificate of Incorporation might be challenged (*Re National Debenture Corp*, 1891, 2 Ch. 505; 60 L. J. Ch. 533; *Ladies Dress Assn v. Pulbrook*, 68 L. J. Q. B. 871; *Sv, Peel's Case*, 2 Ch. 674; 36 L. J. Ch. 757; *Re Salomon*, cited BONÂ FIDE); *scus*, of a Certificate of the Registration of a resolution for Reduction of Capital, under s. 15, Comp Act, 1867 (*Ladies Dress Assn v. Pulbrook*, 1900, 2 Q. B. 376; 69 L. J. Q. B. 705; 49 W. R. 6) *Note*. The last sentence of s. 18, Comp Act, 1862, is repealed by Comp Act, 1890, and is replaced by s. 1 (1) of that latter Act.

Conclusive Evidence of right to Vote at a Co's Meeting; *J. Wall v. London & Northern Assets Corp*, 1899, 1 Ch. 550; 68 L. J. Ch. 248; 80 L. T. 70.

A BILL OF LADING is not, under s. 3, 18 & 19 V. c. 111, "Conclusive Evidence" "as to the statement of Marks upon the goods shipped, where those Marks do not affect, or denote, Substance, Quality, or Commercial Value" (per Kennedy, J., *Parsons v. New Zealand Co*, 69 L. J. Q. B. 422; 1900, 1 Q. B. 714; 82 L. T. 327).

*Cp*, PRIMÂ FACIE EVIDENCE: SUFFICIENT EVIDENCE: FINAL AND CONCLUSIVE.

**CONCLUSIVE PROOF.** — *F*. PROOF: "Clear and Positive Proof," sub CLEAR.

**CONCORD.** — *Seemble*, a Concord is synonymous with an ACCORD (*F*. Termes de la Ley, *Concord*). It also specially indicated the agreement on levying a FINE, "as to how and in what manner the lands should be passed" (Ib.).

**CONDEMNATION.** — "A Ship warranted 'free from American Condemnation,' was driven on the American shore, and there seized and condemned; held, the Underwriters were discharged" (Park, 137, citing *Livie v. Janson*, 12 East, 648). *Cp*, CAPTURE: CONSEQUENCES.

**CONDITION.** — " 'Condition,' is a restraint or bridle annexed and joynted to a thing, so that by the not performance or not doing thereof the partie to the condition shall receive prejudice and losse, and, by the performance and doing of the same, commoditie and advantage" (Termes de la Ley). All Conditions are, (1) Conditions *in Dred*, *i.e.* actual and expressed; or (2) Conditions *in Law*, *i.e.* implied: and, again, all Conditions are (*a*) Conditions *Precedent*, *i.e.* the *sine qua non* to getting the

thing; or (b) Conditions *Subsequent*, which keep and continue the thing (Ib., *whr*). *Vf*; Jacob, *Condition*: 2 Cru. Dig. Title 14: 3 Encyc. 250. As to when Conditions are Precedent or Subsequent, *V*. 30 Law Jour. 686; *Porter v. Shephard*, 6 T. R. 665; *Morton v. Lamb*, 7 Ib. 125; *London Guarantie Co v. Fearnley*, 5 App. Ca. 911; 43 L. T. 390; 28 W. R. 893; 45 J. P. 4; *Cooper v. L. B. & S. Ry*, 48 L. J. Ex. 434; 4 Ex. D. 88; *Barnard v. Faber*, cited WARRANTY: *IF*.

"A Condition is a clause of restraint in a deed, or a bridle annexed and joined to an estate," — or transaction, — "staying and suspending the same, and making it uncertain whether it shall take effect or no" (Touch. 81, 117; *Colthirst v. Bejushin*, Plowd. 32 a, 33 a), and it may be by parol. Thus an antecedent, — or, as it would seem, a contemporaneous, — parol agreement to repay by instalments a loan secured by a BILL OF SALE, and thereby made otherwise payable, is a "Condition" within the words "Defeasance, Condition, or Declaration of Trust" in the Bills of S. Acts (s. 2. Act 1854, s. 10 (3), Act 1878), and as such must be written on the same paper or parchment as the Bill of Sale and registered with it (*Ex p. Southam*, 43 L. J. Bank. 39; L. R. 17 Eq. 578). So, of a collateral document which shows that the true and entire bargain (with its rights, liabilities, and consequences) is not expressed by the Bill of S. (*Counsell v. London & Westminster Loan Co*, 56 L. J. Q. B. 622; 19 Q. B. D. 512; *Edwards v. Marcus*, 1894, 1 Q. B. 587; 63 L. J. Q. B. 363; 70 L. T. 182; 1 Manson, 70; disapproving *Ex p. Collins*, 44 L. J. Bank. 78; 10 Ch. 367. *Vf*, *Linfoot v. Pockett*, 1895, 2 Ch. 835; 64 L. J. Ch. 752; 73 L. T. 197; 44 W. R. 66).

But an agreement not to register, is not such a "Condition" (*Ex p. Poppewell*, 52 L. J. Ch. 39; 21 Ch. D. 73); nor, *semble*, a contemporary agreement letting on hire the goods to the grantor (*Ex p. McShane*, 29 S. J. 70); nor an understanding that the grantor is to pay off forthwith a Bill of S. which the grantee already holds (*Thomas v. Searles*, cited TRUE OWNER).

A Condition Repugnant, can hardly be called a Condition at all, because it is void. *Vh*, *Bradley v. Peixoto*, 3 Ves. 324; *Re Dugdale*, 57 L. J. Ch. 634; 38 Ch. D. 176.

#### *V*. DEFEASANCE: RESERVATION: PROVIDED ALWAYS.

Condition in a CHARTER-PARTY; *V*. WARRANTY: "Now in the Port of A.." sub NOW: Carver. 160-172.

As to Devises and Bequests, on Condition; *V*. 2 Jarm. ch. 27: Wms. Exs. 1122 *et seq*.

Sometimes a Devise upon an "EXPRESS Condition" may connote no more than a Trust enforceable against the devisee, and not a Condition the breach of which the heir may take advantage of by way of FORFEITURE (*Wright v. Wilkin*, 31 L. J. Q. B. 196; 2 B. & S. 259).

As to Estates upon Condition; *V*. Co. Litt. 1. 3, ch. 5: Touch. ch. 6: *IF*. Apt words may create both a Condition and a Covenant (*Doe d.*

*Henniker v. Watt*, 8 B. & C. 308, and authorities there cited). *Vj*; PROVIDED ALWAYS: STIPULATED.

As to Conditions in Deeds; *V*. Elph. ch. 29.

In a gift for a CHARITY, little use can be made of "Condition"; it may mean, "Intent and Purpose," and as creating a Trust and nothing more (*A-G. v. War Chandlers Co*, L. R. 6 H. L. 1: 42 L. J. Ch. 425; 28 L. T. 681; 21 W. R. 361).

A Lease "upon Condition that" the lessee shall do certain things, amounts to a covenant by the lessee to do them (Elph. 411). "Conditions are most properly created by using the word 'Condition,' or the words 'On Condition'; but the word commonly and as effectually made use of, is, that of 'provided' (Touch. 122: Co. Litt. 146 b: *V*. PROVISIO). The words 'Covenant' and 'Condition,' when used in an agreement, do not necessarily mean a Covenant under seal, or a Condition in the strict legal sense of the word, but may, in order to effectuate the intention of the parties, be construed to mean, 'Contract or Stipulation'" (Woodf. 192, citing *Hayne v. Cummings*, 16 C. B. N. S. 421). *Cp* COVENANT.

Condition excusing non-performance of Contract; *V*. DEMURRAGE, at end.

"Condition," of House as reasonably fit for Habitation, Housing of the Working Classes Act, 1885, 48 & 49 V. c. 72, s. 12; *V. Walker v. Hobbs*, 59 L. J. Q. B. 93; 23 Q. B. D. 458; 38 W. R. 63; 61 L. T. 688; 54 J. P. 199. *Cp*, GOOD CONDITION.

"Condition" of Machinery; *V*. DEFECT.

**CONDITIONAL.** — Conditional ACCEPTANCE, is one "which makes payment by the Acceptor dependent on the fulfilment of a Condition therein stated" (s. 19 (2 a), Bills of Exchange Act, 1882): *e.g.* *Smith v. Vertue*, 30 L. J. C. P. 56.

Conditional Will; *V*. TESTAMENT.

**CONDITIONS.** — "Privileges and Conditions"; *V*. PRIVILEGE.

Reasonable Conditions; *V*. REASONABLE.

Conditions of Sale; for examples of, Stringent ones, *V. Corvall v. Cattell*, 8 L. J. Ex. 225; 4 M. & W. 734: *Scott v. Alvarez*, cited INVESTIGATING: — Misleading ones, *V. Rhodes v. Ibbetson*, 23 L. J. Ch. 459; 4 D. G. M. & G. 787: *Cruse v. Nowell*, 25 L. J. Ch. 709: *Heywood v. Mallalieu*, 53 L. J. Ch. 492; 25 Ch. D. 357: *Re Marsh and Granville*, 53 L. J. Ch. 81; 24 Ch. D. 11: *Nottingham Brick Co. v. Butler*, 55 L. J. Q. B. 280; 16 Q. B. D. 778: *Re Sandbach and Edmondson*, 1891, 1 Ch. 99; 60 L. J. Ch. 60. *Vh*, Webster, on Conditions of Sale: 3 Encyc. 256-263.

**CONDITIONS AS PER CHARTER-PARTY.** — "Other Conditions as per Charter-Party": This phrase in a Bill of Lading does not

bring in those clauses of the Charter-Party which are inconsistent with the Bill of Lading (*Gardner v. Trechmann*, 15 Q. B. D. 154; 54 L. J. Q. B. 515). The effect of the phrase, "Freight and other Conditions, as per Charter-Party" "has been considered more than once: it has been considered in *Serraino v. Campbell* (1891, 1 Q. B. 283; 60 L. J. Q. B. 303), and also in *Fry v. Chartered Mercantile Bank of India* (35 L. J. C. P. 306; L. R. 1 C. P. 689); and the effect of the reference is to incorporate so much of the Charter-Party as relates to the payment of freight and other conditions to be performed on the delivery of the cargo. But there is no authority whatever for incorporating more than that" (per Lindley, L. J., *Manchester Trust v. Furness*, 1895, 2 Q. B. 545; 64 L. J. Q. B. 769, 770, cited and adopted by Smith, L. J., *Diederichsen v. Farquharson*, 1898, 1 Q. B. 150; 2 Com. Ca. 87; 67 L. J. Q. B. 103; 77 L. T. 543; 46 W. R. 162), e.g. the phrase does not throw on the Consignee a liability for Demurrage at the Port of Loading over which he had no control (*County of Lancaster S. S. v. Sharpe*, 59 L. J. Q. B. 22; 24 Q. B. D. 158; *Smith v. Sieveking*, 5 E. & B. 589); *secus*, "for Demurrage accruing from his own delay in the Port of Discharge" (per Jervis, C. J., *Smith v. Sieveking*, referring to *Jesson v. Solly*, 4 Taunt. 52, and *Wegener v. Smith*, 24 L. J. C. P. 25; 15 C. B. 285). *Vf*, "Paying Freight," sub PAYING: OTHER: Abbott, 347-349.

**CONDONATION.** — "Condonation," is a conclusion of fact, not of law; and means the complete forgiveness and blotting out (even to the extent of surrendering all claim for damages against the adulterer, *Bernstein v. B.*, inf) of a conjugal offence, followed by COHABITATION, — the whole being done with the full knowledge of all the circumstances of the particular offence forgiven (*Peacock v. Peacock*, 27 L. J. P. & M. 71; 1 Sw. & Tr. 184; *Keats v. Keats*, 28 L. J. P. & M. 57; *Seller v. Seller*, lb. 99); — an unknown conjugal offence, neither affects nor is affected by such a Condonation (*Bernstein v. Bernstein*, 1893, P. 292; 63 L. J. P. D. & A. 3; 69 L. T. 513). Once accomplished, it has been said that Condonation is final (*Gandy v. Gandy*, 51 L. J. P. D. & A. 41; 7 P. D. 168; *Rose v. Rose*, 52 L. J. P. D. & A. 25; 8 P. D. 98; *Vthle, Dowling v. Dowling*, 1898, P. 228; 68 L. J. P. D. & A. 8). In *Rose v. Rose*, Jessel, M. R., said. — "I think that the notion of by-gones being by-gones is as important between husband and wife as between any other persons"; and he scouted what he called "the old monkish doctrine" of Condonation being conditional on future fidelity; but, almost simultaneously, the President of the P. D. & A. Div. laid it down that "the legal definition of Condonation is Forgiveness upon Condition that no matrimonial offence shall be committed in the future" (*Blandford v. Blandford*, 52 L. J. P. D. & A. 17; 8 P. D. 19; *Vf*, *Curtis v. Curtis*, 28 L. J. P. & M. 55; 1 Sw. & Tr. 192; 31 L. T. O. S. 272; *Norris v. Norris*, 30 L. J. P. & M. 111; *Dent v. Dent*, 34 L. J. P. & M. 118; 4 Sw. &

Tr. 105: *Moore v. Moore*, 1892, P. 382; 62 L. J. P. D. & A. 10: *Rogers v. Rogers*, 63 L. J. P. D. & A. 103: *Armstrong v. Armstrong*, 32 Miss. 289).

Husband and Wife sleeping together in the same bed is strong evidence of, but of itself does not constitute, Condonation; the real fact to be got at is, Forgiveness, — which may be absent although the parties sleep together (*Hall v. Hall*, 1891, P. 302; 60 L. J. P. D. & A. 73).

For clause in *Separation Deed* giving Condonation, *V. Rose v. Rose*, sup: *Cp, Gooch v. Gooch*, cited COMMENCED.

However precise the Condonation, it does not prevent the forgiven act from being set up as a *Defence* to the Court granting a claimed relief; for though the parties “may contract themselves out of their rights, they cannot contract the Court out of its duty” (per Jeune, P., *Gooch v. Gooch*, sup); therefore, Condonation is no answer to the King’s Proctor’s intervention (*Goode v. Goode*, 30 L. J. P. M. & A. 105; 2 Sw. & Tr. 253: *McCord v. McCord*, 44 L. J. P. & M. 38; L. R. 3 P. & D. 237: *Boucher v. Boucher*, 9 Times Rep. 70).

**CONDUCE.** — “According to the received meaning of the word ‘conduce,’ I think that what has conduced an effect must in some sense have caused it, or contributed to it; and the concurring cause must be such as, if not directly at least indirectly, might at the time be contemplated as likely somehow to contribute to” that effect (per Campbell, C. J., *Cumington v. Cumington*, 28 L. J. P. & M. 102; 1 Sw. & Tr. 475); and, accordingly, it was held in that case that “WILFUL NEGLECT or MISCONDUCT” concurring to adultery, s. 31, Matrimonial Causes Act, 1857, means, marital neglect or misconduct, and not such compulsory absence as is occasioned by a term of imprisonment. It means also such neglect or misconduct as has led up to the respondent’s fall from virtue, — i.e. the first lapse (*St. Paul v. St. Paul*, 38 J. L. P. & M. 57; L. R. 1 P. & D. 739: *Millard v. Millard*, 78 L. T. 471).

Vf, on the phrase cited, *Allen v. Allen*, 28 L. J. P. & M. 81: *Badcock v. Badcock*, 31 L. T. O. S. 268: *Proctor v. Proctor*, 34 L. J. P. & M. 99: *Dering v. Dering*, L. R. 1 P. & D. 531: *Darries v. Darries*, 32 L. J. P. & M. 111: *Hawkins v. Hawkins*, 54 L. J. P. D. & A. 94; 10 P. D. 177: *Synge v. Synge*, cited DESERTION: *Burdon v. Burdon*, 69 L. J. P. D. & A. 118. As to the exercise by the Court of the discretion given by the section, *V. Starbuck v. Starbuck*, 59 L. J. P. D. & A. 20: *Parry v. Parry*, 1896, P. 37; 65 L. J. P. D. & A. 35; 73 L. T. 759: *Symons v. Symons*, 1897, P. 167; 66 L. J. P. D. & A. 81; 77 L. T. 142.

**CONDUCTIVE.** — *V. INCIDENTAL: INCIDENTAL OR CONDUCTIVE.*

**CONDUCT.** — The “Conduct” of a Bankrupt which, under s. 28, Bankry Act, 1883, repld s. 8, Bankry Act, 1890, has to be considered on his application for an Order of Discharge, is such as has had something

to do with producing his bankruptcy; therefore, his refusal to be medically examined, in order that a policy might be effected on his life so as to add value to a reversionary contingent interest dependent on his life, is not "Conduct" which can be so considered (*Re Betts*, 56 L. J. Q. B. 370; 19 Q. B. D. 39; 35 W. R. 530), for the Court has no power to order him to submit to such an examination (*Re Garnett*, 55 L. J. Q. B. 77), and "the word 'Conduct' in s. 28 does not include general misconduct, not, for example, immoral conduct such as a breach of promise of marriage" (per Lopes, L. J., *Re Betts*, sup), unless such conduct, e.g. damages in an action for Breach of Promise of Marriage, has caused the bankruptcy (*Re Betts*, nom. *Board of Trade v. Block*, affd in H. L., 58 L. J. Q. B. 113; 13 App. Ca. 570; 4 Times Rep. 770; *Re Barker*, 59 L. J. Q. B. 331; 25 Q. B. D. 285; 38 W. R. 609). *U*f AFFAIRS.

But s. 32, Bankruptcy Act, 1883, which provides for the removal of a Bankrupt's Disqualifications, is not affected by ss. 24, 28; and in order to obtain a certificate that his bankruptcy "was caused by *misfortune*, without any *misconduct* on his part," the Bankrupt must show that it was caused by "misfortune," — i.e. something unforeseen which could not ordinarily be guarded against; and was not attributable to "misconduct," — i.e. conduct either legally or morally blameworthy (*Re Burgess*, 35 W. R. 702; 57 L. T. 200). In that case the bankruptcy had arisen through the bankrupt having been convicted of Libel, and sentenced to 3 months' imprisonment and to pay the costs of the prosecution.

"Conduct." s. 17 (1), Bankruptcy Act, 1883, relates to matters referred to in s. 28 (per Russell, C. J., *R. v. Erdheim*, 1896, 2 Q. B. 260; 65 L. J. M. C. 179; 74 L. T. 734; 44 W. R. 607). The phrase in that section is, "Conduct, DEALINGS, and Property," and, "unless 'Conduct' and 'Dealings' mean exactly the same thing, 'Dealings' are matters connected with the debtor's bankruptcy and 'Conduct' is the man's general conduct; and there seems to be nothing at all improper or unfair in saying, that a man of good character who becomes a bankrupt may be dealt with by the Court in one way, and that a man of bad character, guilty of long antecedent fraud and so forth, may be treated very differently. The word 'Conduct' seems to me to be used with great accuracy to enlarge the scope of the enquiry and to make the General Conduct of a bankrupt a part of the materials which are before the Court when the Court has to consider what, upon the whole, is the just way of dealing with the bankrupt after the adjudication proceedings" (per Coleridge, C. J., *Re Sankey*, 59 L. J. Q. B. 243; 25 Q. B. D. 25).

"Conduct" *complained of*, s. 88 (2), 45 & 46 V. c. 50, means, Misconduct; an honest decision of a RETURNING OFFICER, though erroneous, is not "Conduct" justifying the joining him as a Respondent in an Election Petition (*Harmon v. Park*, 50 L. J. Q. B. 227; 6 Q. B. D. 323).

"Conduct conducting"; *V*. CONDUCE.

“Conduct or MANAGEMENT” of an Election, ss. 8, 28, Corrupt and Illegal Practices Prevention Act, 1883, does not include payment for mere Registration purposes, nor the cost of founding and carrying on a newspaper to advocate party views (*Kennington*, 4 O’M. & H. 93).

V. IMMORAL: IMPROPER: INFAMOUS CONDUCT: MISCONDUCT: SHAMEFUL CONDUCT: WILFUL MISCONDUCT: CONDUCTING: IN THE CONDUCT OF A SUIT: CHARGE OR CONDUCT.

**CONDUCTED.**—V. PEACEABLE.

“By whose order conducted”; V. EXTRAORDINARY TRAFFIC.

**CONDUCTING.**—The Scale Fee to a Solr for “Conducting” a sale by Public Auction, Sch 1, Part 1, Solrs Rem Ord, is only payable where he does, or provides for doing, *all* the work (*Re Wilson*, 55 L. J. Ch. 627; 29 Ch. D. 790; *Re Sykes*, 56 L. J. Ch. 238; *Re Faulkner*, 56 L. J. Ch. 1011; *Newbould v. Bailward*, *Parker v. Blenkhorn*, 14 App. Ca. 1; 58 L. J. Q. B. 209; 37 W. R. 401; 59 L. T. 906; *Mawdsley v. Beesley*, 36 S. J. 63). A lump sum, or fixed fee, paid to an Auctioneer for actually selling, is as much a “Commission” to him, under R. 11, of that Sch as a pro ratâ payment (*Newbould v. Bailward*, sup; *Burd v. Burd*, 58 L. J. Ch. 170; 40 Ch. D. 628; 37 W. R. 428; 60 L. T. 228; *Drielsma v. Manifold*, 1894, 3 Ch. 100; 63 L. J. Ch. 653; 71 L. T. 62; 42 W. R. 578), though, under the Conditions of Sale, such fixed fee be paid by the purchaser; for, indirectly, the burden of such a payment is on the vendor (*Cholditch v. Jones*, 1896, 1 Ch. 42; 65 L. J. Ch. 83; 73 L. T. 528; 44 W. R. 124. *Vf By*). So, a Commission to an Agent in a Negotiation for a Private Contract, is not less a Commission under the Rule by being partly a remuneration for other services (*Re Withall*, 1891, 3 Ch. 8; 61 L. J. Ch. 14; 64 L. T. 704; 39 W. R. 529); but a mere Valuation Fee is not such a Commission (*Re MacGowan*, 1891, 1 Ch. 105; 60 L. J. Ch. 118; 39 W. R. 227; 63 L. T. 793). V. NEGOTIATE. *Note*: Where the Auction comprises more lots than one and they are all sold, the Fee is to be calculated on the aggregate of the purchase moneys (*Re Onward By Socy*, 1893, 1 Q. B. 16; 62 L. J. Q. B. 80; 68 L. T. 443; 41 W. R. 107).

Extra Costs beyond Salary to a Town Clerk for “conducting Actions or Suits, &c,” are payable for services for warding off threatened litigation, whether litigation in fact results or not (*R. v. Prest*, 20 L. J. Q. B. 17; 16 Q. B. 44).

Conveying calves in a van, is not “Conducting or Driving” them, within the prohibition against doing so on the Lord’s Day contained in the Islington Parish Act (*Triggs v. Lester*, L. R. 1 Q. B. 259: V. DRIVING).

“Managing or Conducting” an ENTERTAINMENT; V. KEEPER.

Conducting a PUBLIC HOUSE; V. PEACEABLE.

**CONDUCTOR.** — Quà London Hackney Carriages, “Conductor” included “every director, cad, or other person (except the driver) who shall be attendant upon or with any metropolitan Stage Carriage” (1 & 2 V. c. 79, s. 1), — a def replaced by that in s. 2, London Hackney Carriages Act, 1843, 6 & 7 V. c. 86, which is substantially the same, except that “cad” is dropped out.

**CONFECTIONER.** — *V.* BAKER.

**CONFEDERACY.** — “‘Confederacie.’ is when two or more men confederate themselves to doe any hurt or damage to another, or to doe any unlawfull thing” (Termes de la Ley), *e.g.* to BOYCOTT. *Vf*, Cowel: Jacob. *Cp*, COLLUSION: CONJURATION: CONSPIRACY.

**CONFERENCE.** — “Conference” of the Primitive Wesleyan Methodists of Ireland; *V.* 34 & 35 V. c. 40, s. 1.

**CONFESSION.** — A Judge’s Order by consent, held to be a judgment by “Confession” within the proviso to 6 G. 4, c. 16, s. 108 (*Andrews v. Deeks*, 20 L. J. Ex. 127).

Plea of Confession and Avoidance; *V.* AVOIDANCE.

Free and Voluntary Confession, Admissible in Evidence; *V. R. v. Thompson*, 62 L. J. M. C. 93; 1893, 2 Q. B. 12; 69 L. T. 22; 41 W. R. 525; 57 J. P. 312.

“The sorrow for the consequences of sin which divines call Attrition, is distinct from the sorrow for the sin itself which they call Contrition. This latter penitence naturally leads to Confession, and thence or thereby to Reconciliation with God, which Reconciliation the Church pronounces by the sentence called Absolution” (Phil. Ecc. Law, 538). *Vh* 3 Encyc. 265.

**CONFIDE: CONFIDENCE.** — *V.* PRECATORY TRUST.

“Trust or Confidence”; *V.* TRUST.

**CONFIGURATION.** — *V.* SHAPE: DESIGN.

**CONFINE.** — *V.* IMPOUND.

**CONFIRM.** — To “confirm” a WILL is an apt word for its revival, “and expresses the meaning, and has the operation of. the word ‘revive.’” as used in the Revised Statutes of Nova Scotia, 5th Series, c. 89, which provision is copied from s. 22, Wills Act, 1837 (*McLeod v. McNab*, 1891, A. C. 471; 60 L. J. P. C. 70). For an example of the vigour of “confirm” to revive a revoked Will, *V. Re Van Cutsem*, 63 L. T. 252.

So, *semble*, to “confirm” a Document will frequently mean, to give it life which previously it never had, *e.g.* if the document is invalid, either intrinsically or extrinsically, and is subsequently “confirmed” by another document which would have validly accomplished the objects of the



prior document, such prior document will be revived and its professed objects will be made effectual (*Carrer v. Richards*, 29 L. J. Ch. 357; 1 D. G. F. & J. 548; *Morgan v. Gronow*, 42 L. J. Ch. 410; L. R. 16 Eq. 1).

But, generally, "a 'Confirmation' is the conveyance of an estate or right that one hath in or unto lands or tenements to another that hath the possession thereof, or some estate therein; whereby a Voidable estate is made sure and unavoidable, or whereby a Particular estate is increased and enlarged" (Touch. 311, citing *Termes de la Ley*, and Co. Litt. 295 b. in which latter place it is said, "a Confirmation doth not strengthen a void estate"). *Vf* Jacob.

Sometimes, "confirm" "means merely 'verify': it is commonly used in that sense at the meetings of public bodies who 'confirm' the Minutes of their last meeting, not meaning thereby that they give them force, but merely that they declare them accurate" (per Campbell, C. J., *R. v. York*, 1 E. & B. 594).

Sometimes "confirm" means "approve," and involves a discretionary act and not one merely ministerial, *e.g.* in s. 38, 7 W. 4 & 1 V. c. 78 (*S. C.*).

*Vf* RATIFY.

#### CONFIRMATION. — *V.* CONFIRM: LETTER.

"'Confirmation' is the Rite of the Church whereby the faith of the baptized person is confirmed, and grace given to him to remain steadfast in that faith" (Phil. Ecc. Law, 515).

Confirmation is one of the tests of Membership in the Church of England (*Re Perry Almshouses*, cited CHURCH).

#### CONFIRMED. — *V.* OBLIGATORY: REQUIRED.

CONFIRMING. — "Confirming Act," "Confirming Authority"; Stat. Def., 59 & 60 V. c. 53. s. 3 (2), c. 54, s. 8 (2); "Confirming Authority," 47 & 48 V. c. 12. s. 2.

CONFISCATION. — "Confiscation must be an act done in some way on the part of the government of the country where it takes place, and in some way beneficial to that government; though the proceeds may not, strictly speaking, be brought into its treasury" (per Ellenborough. C. J., *Lerin v. Allnutt*, 15 East, 269). *Vf*, *Termes de la Ley*, *Confiscate*: Cowel: 3 Encyc. 266.

CONFLICT. — It seems that a difference between the provisions of a Settlement and those of the Settled Land Act, 1882, with respect to the person who is to exercise a particular power, is not a "Conflict" between the provisions of the Settlement and those of the Act, within s. 56 (2) of the Act (*Re Newcastle*, 52 L. J. Ch. 645; 24 Ch. D. 138).

*Note*, this subs. relates to the exercise of Powers, and not to the results of such exercise (*Lonsdale v. Crawford*, cited IN EXERCISE).

“Conflicting Claims”; *V. OPPOSING*.

**CONFORM.** — Person “to whose orders . . . Workman was bound to ‘conform,” s. 1 (3), Employers’ Liability Act, 1880, “means, that the relative position of the parties was such that the one owed obedience to the other, and that the order was such that it could not be declined without contumacy” (per *Ld Young, McManus v. Hay*, 9 *Rettie*, 429), in other words, the orderer must be a person who had authority, within the area of his employment, to give the order; he must have received the mandate of his employer for that purpose; and the workman ordered must have been, by reason of his employment contract, bound to obey (per *Mathew, J., Hooper v. Holme*, 40 *S. J.* 742, 743; 12 *Times Rep.* 537; *affd* 13 *Times Rep.* 6). It is immaterial whether the person authorised to give the order occupied a high or a humble position in the Works (per *Ld Craighill, Dolan v. Anderson*, 12 *Rettie*, 808). *Vf. Bunker v. Mid Ry*, 31 *W. R.* 231; 47 *L. T.* 476; *Snowden v. Baynes*, 59 *L. J. Q. B.* 325; 25 *Q. B. D.* 193; 38 *W. R.* 744; *Wild v. Waygood*, 1892, 1 *Q. B.* 783; 61 *L. J. Q. B.* 391; 66 *L. T.* 309; 40 *W. R.* 501; 56 *J. P.* 389; *Beven*, 853. *Cp SUPERINTENDENCE*.

**CONFORMITY.** — Scheme “in Conformity with” Endowed Schools Acts, s. 39 (3), 32 & 33 *V. c.* 56; *V. Re Christ’s Hospital* (*Appeals B and D*), cited *EDUCATIONAL ENDOWMENT*.

**CONGESTED.** — “Congested District.” *quà* Congested Districts (*Scot*) Act, 1897, 60 & 61 *V. c.* 53; *V. s.* 10.

“The Congested Districts Board (*Ir*) Acts”; *V. Sch* 2, Short Titles Act, 1896.

**CONGREGATION.** — *V. PUBLIC READING*.

*Quà* Church Patronage (*Scot*) Act, 1874, 37 & 38 *V. c.* 82; *V. s.* 9.

**CONJOINTLY.** — By a Canadian Will there was a devise to A. for life, remainder to B., C., and D. “*conjointly and in equal shares*, to be enjoyed by them during their natural life, and after their decease to their children”; — “the word ‘conjointly’ is not inapplicable to a gift of property in equal shares, so long as the property remains undivided. It might, perhaps, be inferred, from the use of the word in the gift to the three, and its absence in the gift to their children, that the testator desired to indicate that there was to be no partition before the property reached its final destination. However that may be, the word ‘conjointly’ cannot neutralize or control the plain meaning of the words ‘in equal shares’ by which it is immediately followed” (per *Ld Macnaghten*, in delivering *judgmt* of *P. C.*, *De Hertel v. Goddard*, 66 *L. J. P. C.* 90; 77 *L. T.* 113). *Vf, EQUALLY: JOINTLY*.

**CONJUNCTION.** — *V.* RUX.

**CONJURATION.** — “ ‘Conjuration,’ is a compact or plot made by men combining themselves together by oath or promise to doe any publike harme. But it is more commonly used for such as have personall conference with the Devill or Evill Spirit to know any secret or to effect any purpose, 5 Eliz. c. 16. And the difference betweene Conjuration and Witchcraft may be said to be this, because that the one seemeth, by prayers and invocation upon the powerful name of God, to compel the Devill to say or doe what hee commandeth, and the other doth rather, by a friendly and voluntarie conference or agreement betweene him or her and the Devill or Familiar, to have his or her desires and purposes effected, in stead of bloud or other gift offered unto him, especially of his or her soule: And both these differ from Enchantments or Sorceries, because that they are personall conferences with the Devill, as is said: but these are but medicines and ceremonial formes of words, commonly called charmes, without apparition ” (Termes de la Ley). *Cp* EXORCIST.

“ ‘Conjurors,’ are those, who, by force of certain magic words endeavour to raise the Devil and oblige him to execute their commands: ‘Witches’ are such who, by way of conference, bargain with an Evil Spirit to do what they desire of him; and ‘Sorcerers’ are those who, by the use of certain superstitious words, or by the means of images, &c. are said to produce strange effects above the ordinary course of nature ” (Jacob, *Conjuration*, citing Hawk. P. C. lib. 1, ch. 3). *Vf* SORCERY.

*Note.* All these offenders might formerly be condemned to the Pillory, or be otherwise dealt with by the Church. The statutes (33 H. 8, c. 8; 1 Jac. 1, c. 12), against Witchcraft, &c. were repealed by 9 G. 2, c. 5. The successor to the legal Conjuror and Witch is a ROGUE AND VAGABOND: *V.* FORTUNES: WITCH.

*Cp*, CONFEDERACY: CONSPIRACY.

**CONMOTE.** — *V.* COMMOTE.

**CONNECTED WITH.** — *V.* BUSINESS CONNECTED WITH.

“Connected with” “the business of the employer,” s. 1 (1), Employers’ Liability Act, 1880; *V. Bradley v. Gas Light & Coke Co*, 36 S. J. 526.

“In connection with”; *V. Lawson v. Wallasey*, 52 L. J. Q. B. 302; 11 Q. B. D. 229; affd 48 L. T. 507. *Cp* USED.

Misdemeanour or Felony “connected with” a debtor’s Bankry, s. 8 (2), Bankry Act, 1890, must be such as “brought about, or resulted in, or committed in view of, bankry” (per Williams, J., *Re Hedley*, 1895, 1 Q. B. 923; 64 L. J. Q. B. 460; 72 L. T. 470; 43 W. R. 464).

Chargeable Services rendered by a Ry Co, “at, or in connection with, Sidings not belonging to the Co,” may be such as are involved in the delivery of goods, and which the trader could not himself perform (*Manchester S. & L. Ry v. Pidecock*, cited CONVEYANCE).

In a Railway Arrangement Act, "any Ry connected with" those therein mentioned; held, to mean, connected for the purposes of management or working, and not merely physically connected (*G. W. Ry v. Central Wales Ry*, 5 Ry & Can Traffic Ca. 1).

Tramways "worked in connection therewith"; *V. Edinburgh Tramways Co. v. Torbain*, 3 App. Ca. 58; 37 L. T. 288.

Works "contracted for, and connected with" contract works; *V. Goodgear v. Weymouth*, 35 L. J. C. P. 12; H. & R. 67; *Connor v. Belfast Water Commrs*, Ir. Rep. 5 C. L. 55. *Cp.*, IMMEDIATELY CONNECTED.

**CONNIVANCE.** — "Connivance," s. 30, 20 & 21 V. c. 85, is the willing consent to a conjugal offence (in the sense of being an ACCESSORY before the fact), or a culpable ACQUIESCENCE in a course of conduct reasonably likely to lead to the offence being committed (*Phillips v. Phillips*, 1 Rob. Ecc. 157-164; *Allen v. Allen*, 30 L. J. P. M. & A. 2; *Glennie v. Glennie*, 32 L. J. P. M. & A. 17; *Boulting v. Boulting*, 3 Sw. & Tr. 329; 12 W. R. 389; *Gipps v. Gipps*, 33 L. J. P. M. & A. 161; 11 H. L. Ca. 1). *Vh.*, Brown on Divorce, 3 ed., 88; Dixon on Divorce, 181. *V.* ACCESSORY: COLLUSION: CONDUCE.

**CONQUEST.** — "Conquest," when used as a verb active and not as a noun, has a wide and flexible signification. Where a lady, by antenuptial Settlement, had conveyed to trustees whatever she might "conquest or acquire" during her marriage; held, that those words passed property of every kind which came to her during the marriage by succession (*Diggens v. Gordon*, L. R. 1 H. L. Sc. 136). *V.* ACQUIRE.

**CONSANGUINITY.** — This word imports the same as KINDRED (*Leigh v. Leigh*, 15 Ves. 107).

**CONSCIENCE.** — *V.* EQUITY.

**CONSECRATION.** — "This term is employed in relation to both persons and things, and means, the setting apart for sacred purposes" (3 Encyc. 275).

**CONSENT.** — "'Consent,' is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side" (Story, s. 222).

Where an act is to be done by A. with the "Consent" of B., the act is A.'s which B. may prevent by withholding Consent, but which he cannot compel A. to do, *e.g.* when a Co's Articles provide that the Chairman with "consent" of a Meeting may adjourn, the Meeting cannot compel its own adjournment (*Salisbury Co v. Hathorn*, 1897, A. C. 268; 66 L. J. P. C. 62; 76 L. T. 212; 45 W. R. 591).

"Every 'Consent' to an act, involves a SUBMISSION; but it by no means follows that a mere Submission involves Consent," *e.g.* the mere

submission of a girl to a carnal assault, she being in the power of a strong man, is not Consent (per Coleridge, J., *R. v. Day*, 9 C. & P. 724).  
*Vf* RAPE.

“Consent or Agreement by Deed or Writing,” ss. 2 and 3, 2 & 3 W. 4, c. 71, “Consent in Writing”; *V. IN WRITING: OWN CONSENT.*

A Reference under the Lands C. C. Act, 1845, is, *semble*, not a reference by “Consent” within s. 5, or s. 17, Com. L. Pro. Act, 1854 (*Ex p. Harper*, L. R. 18 Eq. 539: *Re Davy Valley Ry.* 4 Ch. 554: *Rhodes v. Airedale Drainage Co.*, 43 L. J. C. P. 323; 45 *Ib.* 861: L. R. 9 C. P. 508; 1 C. P. D. 402: *Re Harper and G. E. Ry.* L. R. 20 Eq. 39: *Berley v. W. Kent Sewerage Bd.*, 51 L. J. Q. B. 456; 9 Q. B. D. 518).

*Vf*, as to what is a Reference by “Consent,” *Gulatti v. Wakefield*, 48 L. J. Q. B. 70; 4 Ex. D. 249: *Street v. Street*, cited REFERENCE: ARBITRATION.

A Reference by Consent Order not only of a “Cause or Matter” but also of “all Matters in Difference,” is not a Reference within either s. 14, or s. 15, Arb Act, 1889 (*Darlington Wagon Co v. Harding*, cited EQUIVALENT).

“It seems to be clear, that approbation subsequent to a marriage is not, in general, a sufficient compliance with a Condition requiring ‘Consent’; but *Ld Hardwicke*, in *Burleton v. Humfrey* (Amb. 256), took a distinction between the words ‘Consent’ and ‘Approbation,’ holding the latter to admit subsequent approval, where coupled with the former disjunctively; but he decided the case principally on another ground;—and in regard to the admission of subsequent consent the authority of the case has been questioned. *V. Clarke v. Parker*, 19 Ves. 21” (2 Jarm. 55; *Vf* *Watson Eq.* 1239). “Consent of PARENTS” means, parents *if any* (*Ib.*: *Sv*, where Consent of Guardian to an Infant’s Marriage is required, *Re Brown*, 50 L. J. Ch. 507). In this connection, however, “where a Consent is given substantially, the Court does not look very minutely into the form in which it is given” (per *Stirling, J.*, *Re Smith*, 59 L. J. Ch. 284; 44 Ch. D. 654); and, where no formalities are prescribed, Consent will be implied if the persons whose consent is required express no disapproval of, and by their conduct induce, the marriage (*Daley v. Desbouverie*, 2 Atk. 261: *Berkley v. Ryder*, 2 Ves. sen. 533: *Clarke v. Parker*, *sup.* last par of *judgmt*: *Re Smith*, *sup.*). *Note*: As to when such a Condition as to Consent is operative, *V. Re Nourse*, 79 L. T. 376; 47 W. R. 116, and cases there cited.

Where there is a direction or agreement for the Conversion of Money into Land, and the Uses are exclusively applicable to realty, “the direction or agreement will be regarded as imperative though the Settlement require the purchase to be made *at the Request* of a person; for the insertion of such a clause has been taken to mean, not that a conversion may not be effected *before*, but that it shall certainly be effected *after*, request. And the construction is the same, though the purchase be directed to be

made with a person's *Consent and Approbation*" (Lewin, 1159, 1160, and cases there cited).

V. INSTIGATION.

"Consent" of a TRUE OWNER to the possession of goods by a REPUTED OWNER, is none the less "Consent" by reason of the retention of the goods by such latter owner being consistent with a BILL OF SALE given by him (*Spackman v. Miller*, 31 L. J. C. P. 309; 12 C. B. N. S. 659; *Re Ginger*, 1897, 2 Q. B. 461; 66 L. J. Q. B. 777; 76 L. T. 808; 46 W. R. 144). Such "Consent" is given as regards a CHOSE IN ACTION so long as no Notice is given to the payer (*Bartlett v. Bartlett*, 26 L. J. Ch. 577; 1 D. G. & J. 127; *Rutter v. Everett*, 1895, 2 Ch. 872; 64 L. J. Ch. 845; *Re Goetz*, 1898, 1 Q. B. 787; 67 L. J. Q. B. 577; 78 L. T. 399; 46 W. R. 469); but, *semble*, the mere posting of Notice is enough to put an end to such Consent (*Re Hickey*, Ir. Rep. 10 Eq. 117). Consent cannot be given if the True Owner be under disability, *e.g.* by Infancy (*Re Mills*, 1895, 2 Ch. 564; 64 L. J. Ch. 708). *Vf* POSSESSION ORDER OR DISPOSITION.

Possession of Goods or Documents of Title to Goods, "with the Consent of the SELLER," s. 25 (2), Sale of Goods Act, 1893; *V. Cahn v. Pockets Co*, 68 L. J. Q. B. 515; 1899, 1 Q. B. 643; 80 L. T. 269; 47 W. R. 422.

As to the like phrase in s. 9, Factors Act, 1889; *V. Robinson v. Restell*, 12 Times Rep. 174.

The "*Free and Voluntary Consent*" (32 G. 2, c. 28, s. 1), necessary to authorise a Sheriff, &c, to carry a debtor to a tavern, &c, must have been an active consent, as distinguished from that consent which is said to be implied by silence (*Dewhurst v. Pearson*, 2 L. J. Ex. 143; 1 C. & M. 365; 3 Tyr. 242; 1 Dowl. 664); and where the officer was illegally carrying a debtor to gaol, and the debtor, to avoid being taken to gaol, consented to go to a tavern and there drew up a discharge agreement, the "Consent" so obtained was not "free and voluntary" (*Barsham v. Bullock*, 10 A. & E. 23; 2 P. & D. 241). *V.* VOLUNTARILY.

Covenant by Lessor not to "consent" to a certain trade on his other property; *V. Stuart v. Diplock*, 43 Ch. D. 343; 59 L. J. Ch. 142; 38 W. R. 223.

Mere silent acquiescence by a Lessor respecting a trade forbidden by the Lease, raises no inference that he has given "Consent" to the Lessee's carrying on any other forbidden trade (*Macher v. Foundling Hosp*, 1 V. & B. 188).

"Consent" to Assigning or Underletting not to be "unreasonably" or "vexatiously" withheld; *V.* UNREASONABLY.

Auction on demised premises not to be "without Consent"; *V. Toleman v. Portbury*, cited AUCTION.

An adult who "consents to be dealt with summarily," s. 12, Sum

Jur Act, 1879, thereby deprives himself of power to appeal (*R. v. London Jus.*, cited PAST).

Stat. Def. — 37 & 38 V. c. 89, s. 57; 48 & 49 V. c. 76, s. 29.

V. WRITTEN CONSENT: IN WRITING: OWN CONSENT: SANCTION.

**CONSEQUENCE.** — “In consequence of”; V. CAUSED BY.

“In consequence of whose order”; V. EXTRAORDINARY TRAFFIC, towards end.

**CONSEQUENCES.** — The phrase in a Marine Insurance “Warranted free from all Consequences” of, *e.g.* Hostilities or Warlike Operations, extends only to the direct consequences of the excepted causes (*Ionides v. Universal Marine Insree*, 32 L. J. C. P. 170; 14 C. B. N. S. 259; *Nickels v. London & Proc. Mar Insree*, 17 Times Rep. 54; 70 L. J. Q. B. 29). Cp CAPTURE.

**CONSEQUENT.** — “Consequent,” means, traceable to, directly or indirectly: “Damage consequent upon COLLISION,” in a Marine Policy, means, damage immediately consequent upon collision, or leakage caused by collision; therefore, the damage to lemons and oranges occasioned by delay in transit and by an unloading and re-loading necessitated by a collision, is not “consequent” upon the collision, because the collision is not the proximate cause of the damage (*Pink v. Flewing*, 59 L. J. Q. B. 559; 25 Q. B. D. 396; 63 L. T. 413). *See, The City of Lincoln*, 59 L. J. P. D. & A. 1; 15 P. D. 15; 62 L. T. 49; 38 W. R. 345. *Vf* DAMAGE BY COLLISION.

Claim “Consequent on Loss of Time”; V. LOSS.

Costs “Consequent”; V. COSTS.

**CONSERVANCY AUTHORITY.** — Quà Mer Shipping Act, 1894, “Conservancy Authority,” includes all persons or bodies of persons, corporate or unincorporate, intrusted with the duty, or invested with the power, of conserving, maintaining, or improving, the navigation of a TIDAL WATER” (s. 742).

For other but similar def, *V.* 40 & 41 V. c. 16, s. 3; 51 & 52 V. c. 25, s. 55; 54 & 55 V. c. 43, s. 4.

Thames Conservancy; *V.* CONSERVATOR.

**CONSERVATIVE.** — A gift for the furtherance of “Conservative Principles and Religious and Mental Improvement” is a good CHARITY (*Re Scowcroft*, cited AND).

**CONSERVATOR.** — “Conservators of the River THAMES”; as to their name, establishment, and powers. *V.* Thames Conservancy Acts of 1857, 1864, 1878, and 1894, Thames Navigation Acts, 1866 and 1870, Thames Act, 1883, and Thames Preservation Act, 1885. 48 & 49 V. c. 76.

“Salmon Conservators”; Stat. Def., 51 & 52 V. c. 54, s. 14.

**CONSIDERATION.** — “ ‘Consideration’ is the materiall cause of a CONTRACT, without the which no contract can binde the partie. This Consideration is either Expressed, as when a man bargaineth to give 20s. for a horse, — or, is Implied, as when the Law it selfe enforceth a Consideration, as if a man comes into a Common Inne and, there staying some time, takes meat or lodging or either for himselfe or for his horse, the Law presumeth that he intendeth to pay for both, notwithstanding that nothing bee further covenanted betweene him and his host ” (Termes de la Ley).

“ The definition of ‘Consideration’ given in Selwyn, N. P., 8 ed., 47, which is cited and adopted by Tindal, C. J., in *Laythoarp v. Bryant* (3 Sc. 250; 2 Bing. N. C. 735; 5 L. J. C. P. 220), is, — ‘Any act of the plt from which the deft derives a benefit or advantage, or any labour, detriment, or inconvenience, sustained by the plt, provided such act is performed, or such inconvenience suffered, by the plt with the CONSENT, either express or implied, of the deft ’ ” (per Bowen, L. J., *Carlill v. Carbolic Smoke Ball Co*, 1893, 1 Q. B. 271; 62 L. J. Q. B. 264). In the 12 ed. of Selwyn, p. 43, the def is, — “Any act of the plt from which the deft derives (or expects to derive, *Haigh v. Brooks*, 10 A. & E. 309) a benefit or advantage, or any labour, detriment, or inconvenience, sustained by the plt, *however small the benefit or inconvenience may be*, is a sufficient Consideration, if such act is performed, or such inconvenience suffered, by the plt *at the request*, or with the consent, either express or implied, of the deft.”

“ A VALUABLE Consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit, accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other. — Com. Dig. *Action on the Case, Assumpsit*, B. 1–15 ” (per Lush. J., *Currie v. Misa*, 44 L. J. Ex. 99; L. R. 10 Ex. 153; affd 45 L. J. Ex. 852; 1 App. Ca. 554: cited and adopted, *Fleming v. New Zealand Bank*, 1900, A. C. 577; 69 L. J. P. C. 120; 83 L. T. 1).  
*Vj*, *Thomas v. Thomas*, 2 Q. B. 851; 11 L. J. Q. B. 104.

“ In Consideration ”; *V*. PRECATORY TRUST: PREMISES.

“ In Consideration, ” s. 8 (1), Settled Land Act, 1882, has the technical legal meaning of a present inducement for a present transaction, and will not permit of a past voluntary expenditure being considered in granting a Bg Lease under the section (*Re Chawner*, 1892, 2 Ch. 192; 61 L. J. Ch. 331).

“ Contract made, ” or “ Consideration given ”; *V*. CONTRACT.

*V*. GOOD: VALUABLE: FULL CONSIDERATION: TRULY SET FORTH.

**CONSIGN.** — *V*. *Phillipps v. Briard*, 25 L. J. Ex. 235, 236.

To “consign.” ordinarily means, to send or transmit goods to a Merchant, or Factor, for sale (*Gillespie v. Winberg*, 4 Daly, Com. Pl. 320).



**CONSIGNATION.** — Stat. Def., 56 & 57 V. c. 44, s. 2; 58 & 59 V. c. 19, s. 2.

**CONSIGNEE.** — A Consignee of Cargo, “is a person residing at the Port of Delivery to whom the goods are to be delivered when they arrive there” (per Buller, J., *Wolff v. Horncastle*, 1 B. & P. 322).

**CONSIGNEE PAYS CARRIAGE.** — These words in a Consignment Note, do not relieve the consignor from his liability to the Carrier which the circumstances show he had contracted (*G. W. Ry v. Bagge*, 54 L. J. Q. B. 599; 15 Q. B. D. 625).

**CONSIGNMENT.** — “A ‘Consignment,’ is a species of Mercantile Conveyance operating upon the particular effects consigned, which, though it may be defeasible, may operate in the meantime and enable the Consignee by his acts to bind the Consignor” (per Chambre, J., *Lucena v. Craufurd*, 2 B. & P. N. S. 299).

**CONSIMILI CASU.** — *V. CASE.*

**CONSISTING.** — This word in s. 4, Comp Act, 1862, means, “for the time being consisting” (*Re Thomas, Ex p. Poppleton*, 54 L. J. Q. B. 336; 14 Q. B. D. 379).

“Consisting of more than 7 MEMBERS.” s. 199. *Ib.*, means, consisting of, &c, “at the time when the Court is asked to make the Winding-up Order” (per Lindley, L. J., *Re Bowling and Wilby*, 1895, 1 Ch. 663; 64 L. J. Ch. 430).

“Consisting of”; *V. THAT IS TO SAY.*

**CONSISTORIAL ACTION.** — Stat. Def., 24 & 25 V. c. 86, s. 19.

**CONSOLIDATE.** — Actions “may be consolidated,” R. 8, Ord. 48, R. S. C.; *Vh Ann. Pr.*

“Consolidated Annuities”; Stat. Def., 54 & 55 V. c. 48, s. 42.

“Consolidated Fund,” usually means, the Consolidated Fund of the UNITED KINGDOM, *V.* 33 & 34 V. c. 71, s. 3; 38 & 39 V. c. 45, s. 9; 51 & 52 V. c. 32, s. 11; 52 & 53 V. c. 8, s. 8; 54 & 55 V. c. 48, s. 42.

Consolidation of Mortgages; *V.* s. 17, Conv & L. P. Act, 1881; Fisher. 1210-1225; Coote, ch. 68.

**CONSOLS.** — A Bequest of “Consols” will pass Three per Cents, if testator had no Consols (*Barbey v. Barbey*, 15 W. R. 479; *V. Rowlatt v. Easton*, 11 W. R. 767). *V. FUNDS.*

**CONSPICUOUS PLACE.** — *V. PUBLIC PLACE: PUBLIC SITUATION.*

**CONSPIRACY.** — “When two or more persons agree to commit any CRIME, they are guilty of the misdemeanour called Conspiracy whether

the crime is committed or not" (Steph. Cr. 37: *Vf*; Termes de la Ley: Jacob: Arch. Cr. 1208-1223: Rose. Cr. 367-385: Wright on Conspiracy: 3 Encyc. 289-301: *R. v. Whitechurch*, cited ADMINISTER. That def. accurate as far as it goes, is hardly wide enough, for "It is sufficient to constitute a Conspiracy if two or more persons combine by fraud and false pretences to INJURE another. It is not necessary, in order to constitute a Conspiracy, that the acts agreed to be done should be acts which, if done, would be criminal. It is enough if the acts agreed to be done, although not criminal, are wrongful, *i.e.* amount to a Civil Wrong" (per Cockburn, C. J., *R. v. Warburton*, L. R. 1 C. C. R. 276; 40 L. J. M. C. 24: *Vf*, *Kearney v. Lloyd*, 26 L. R. Ir. 268: *Huttley v. Simmons*, 1898, 1 Q. B. 181; 67 L. J. Q. B. 213: *Allen v. Flood*, cited MALICE). In view of these late decisions, some of the older cases could hardly be supported now, *e.g.* that a combination "to steal the person of a lady for the sake of her fortune" (per Eldon, C., *Wade v. Broughton*, 3 V. & B. 173: *Va*, *R. v. Thorp*, 5 Mod. 221), or to get a woman to become a man's kept mistress (*R. v. Delaval*, 3 Burr. 1438, 1439; 1 Bl. W. 439), is an indictable Conspiracy.

*Cp.* COMBINATION: CONFEDERACY: TRADE UNION.

**CONSTABLE.** — "A constable is often taken in the law for a warder or keeper, as *Constabularius castris de Dover et 5 portuum*" (Co. Litt. 234 a. b). *Vf* 3 Encyc. 301-303.

In modern times and modern Acts, "Constable" has some such meaning as that given in s. 29, Cruelty to Animals Act, 1849, 12 & 13 V. c. 92, *viz.* — "Headborough, Parish Beadle, Peace Officer, Special Constable, or any person belonging to the City of London Police Forces or any Constabulary Force in any part of the United Kingdom": *V.* 5 & 6 V. c. 12, s. 56; 7 & 8 V. c. 87, s. 10; 14 & 15 V. c. 38, s. 4; 31 & 32 V. c. 107, s. 5; 35 & 36 V. c. 92, s. 14, e. 93, s. 5; 42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 58, s. 190 (38), e. 69, s. 39; 50 & 51 V. c. 9, s. 2. — *Scot.* 13 & 14 V. c. 92, s. 11; 20 & 21 V. c. 72, s. 78; 25 & 26 V. c. 35, s. 37; 53 & 54 V. c. 67, s. 30. — *Ir.* 10 & 11 V. c. 84, s. 8; 12 & 13 V. c. 91, s. 89; 35 & 36 V. c. 94, s. 77.

"Constables of the Aided Force"; *V.* PURPOSES.

"Constable of the Metropolitan Force"; *V.* 25 & 26 V. c. 64, s. 3.

"Chief Constable"; *V.* CHIEF.

"High Constable"; *V.* 24 & 25 V. c. 75, s. 4; 32 & 33 V. c. 47, s. 1, 45 & 46 V. c. 50, s. 246. — *Ir.* 13 & 14 V. c. 69, s. 117; 61 & 62 V. c. 37, s. 109 (1).

*V.* POLICE.

**CONSTABULARY.** — Quà Constabulary (Ir) Act, 1874, 37 & 38 V. c. 80, "'Constabulary Force' means, the Royal Irish Constabulary" (s. 1). *Vf*, MEMBER.

Quà the Peace Preservation (Ir) Acts, "Constabulary" or "Royal Irish Constabulary," includes the Dublin Metropolitan Police (33 & 34 V. c. 9, s. 3).

"The Constabulary (Ir) Acts, 1836 to 1885": *V. Sch 2, Short Titles Act, 1896.*

"Constabulary Station"; *V. 32 & 33 V. c. 99, s. 13.*

**CONSTANTLY.** — Means. CONTINUOUSLY, *V. WORKED.*

**CONSTITUTED.** — If a Company, having a statutory constitution, has conferred on it, either by its special or a subsequent Act or series of Acts, power of constructing or working a railway, it is "a Company constituted by Act of Parliament . . . for the PURPOSE of constructing . . . a Railway" within s. 3, Ry Comp Act, 1867, although the Ry made by the Co was not one of its fundamental objects and forms but a very small portion of its undertaking (*Re East and West India Dock Co*, 57 L. J. Ch. 1053; 38 Ch. D. 576; 59 L. T. 237; 36 W. R. 849). *V. MAIN PURPOSE: RAILWAY COMPANY.*

Company "DULY constituted BY LAW," s. 180, Comp Act, 1862; *V. R. v. Registrar of Joint Stock Cos.*, cited COMPANY.

"Constitution of a Co"; *V. 11 & 12 V. c. 45, s. 3.*

**CONSTRUCT.** — "Construct Water Works," s. 52, P. H. Act, 1875; *V. WATER WORKS.*

**CONSTRUCTED.** — Works "constructed," mean, Works really constructed so as to be of use (*Bull v. Ventnor Harbour Co*, W. N. (69) 12).

Buildings "constructed or adapted" to be in one OCCUPATION, s. 77, London Bg Act, 1894; *V. Woodthorp v. Spencer*, 63 J. P. 246.

A Building already constructed and not needing repair and which is merely being altered or added to, *e.g.* by adding girders and stays to prevent vibration, is, nevertheless, being "constructed or repaired," within s. 7 (1), Workmen's Comp Act, 1897 (*Hoddinott v. Newton*, 1901, A. C. 49; 70 L. J. Q. B. 150); so, the ordinary painting of a house is a repairing within the section (*Dredge v. Conway*, cited REPAIR). Where there is such a Construction or REPAIR, it continues until the SCAFFOLDING is removed (*Frid v. Fenton*, 69 L. J. Q. B. 436; 82 L. T. 193).

**CONSTRUCTION.** — Of a NEW STREET; *V. Hendon v. Pounce*, 42 Ch. D. 602; 61 L. T. 465; *Vthe, Bromley v. Lloyd*, 66 L. T. 462, 56 J. P. 278.

Construction of a RAILWAY, may include works made after the line is opened (*Sadd v. Maldon Ry*, 6 Ex. 143; 20 L. J. Ex. 102). *V. COMMENCEMENT.*

"Construction and Maintenance of a Telegraphic Line along a Street": *V. 55 & 56 V. c. 59, s. 9.*

**CONSTRUCTIVE.** — “Constructive Corruption”; *V.* CORRUPTION.

Constructive CRIME; *V.* 3 Encyc. 306.

Constructive Notice; *V.* NOTICE: COME TO.

Constructive Occupation; *V.* OCCUPATION.

The phrase “Constructive RESIDENCE” is, probably, not different in meaning from “Residence.” “When a person is physically absent from his place of residence for a time, if he has *animus revertendi*, his residence continues” (per Blackburn, J., *R. v. Abingdon*, L. R. 5 Q. B. 409).

Constructive Total Loss; *V.* TOTAL LOSS.

A “Constructive TRUST” is raised by a Court of Equity wherever a person clothed with a Fiduciary Character, gains some personal advantage by availing himself of his situation as Trustee” (Lewin, ch. 10). *Vf* Godefroi, ch. 13.

**CONSUETUDO.** — *V.* CUSTOM.

**CONSUL.** — Quà Foreign Marriage Act, 1892, 55 & 56 V. c. 23, “‘Consul,’ means, a Consul-General, Consul, Vice-Consul, Pro-Consul, or Consular Agent” (s. 24).

**CONSULAR OFFICER.** — *V.* s. 12 (20), Interp Act, 1889.

Quà Mer Shipping Act, 1894, “‘Consular Officer,’ when used in relation to a Foreign Country, means, the Officer recognized by Her Majesty as a Consular Officer of that Foreign Country” (s. 742).

**CONSUMABLE.** — “Consumable Stores”; — The doctrine that things *quæ ipso usu consumuntur* cannot be limited in succession and therefore that a gift of them for life confers an absolute interest, applies only to those things which are for personal use and exhausted by their personal use (per Wood, V. C., *Groves v. Wright*, 2 K. & J. 351), *e.g.* Food, Wines (*Phillips v. Beal*, 32 Bea. 25) and other Drink, Coals, and such like; “and there was a case in which Carriage Horses were held to come within the same rule; but there the tenant for life had actually used them” (per Wood, V. C., *Groves v. Wright*). Wearing apparel is not such Consumable Stores (per Wood, V. C., *Re Hall*, 1 Jur. N. S. 974). Consumable Articles, *e.g.* Farming Stock, or a Wine Merchant’s Stock, are not within the rule when given in connection with a business, if they are such as are necessary for carrying it on (*Groves v. Wright*, *sup*: *Cockayne v. Harrison*, 41 L. J. Ch. 509; L. R. 13 Eq. 432; 20 W. R. 504; *Sr*, *Breton v. Mockett*, 47 L. J. Ch. 754; 9 Ch. D. 95; 26 W. R. 850, *while* turned on a special direction). *Vh* 44 S. J. 324.

**CONSUME.** — Power to “consume” as much as A. “cares to do”: *V.* APPROPRIATE. *Cp* “Make use of.” sub MAKE.

**CONSUMED.** — *V.* ON THE PREMISES.

**CONSUMER.** — Quà Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, “ ‘Consumer,’ means, any body or person supplied, or entitled to be supplied, with Energy by the Undertakers ” (s. 1, Sch; *whra* for “Consumer’s Terminals,” *Va* TERMINAL).

A “Consumer” of Gas, quà Metropolis Gas Act, 1860, 23 & 24 V. c. 125, “means, a person receiving, or entitled in accordance with this Act to receive, a supply of gas from any Gas Company” (s. 4).

A “Consumer of Water,” quà a Water Works Act, is “a person who either actually enjoys or is consuming water, or is entitled so to do and has intimated his intention so to do” (per Cotton, L. J., *Cooke v. New River Co*, 57 L. J. Ch. 386; 38 Ch. D. 56; 58 L. T. 830; *affd* H. L. 14 App. Ca. 698; 59 L. J. Ch. 333).

“Water Consumer,” quà Metropolis Water Act, 1897, 60 & 61 V. c. 56; *V. s.* 5.

**CONTAGIOUS.** — Quà Contagious Diseases Act, 1866, 29 & 30 V. c. 35, “ ‘Contagious Disease,’ means, Venereal Disease, including Gonorrhœa ” (s. 2). *Cp* INFECTIOUS.

“Contagious, or Infectious Disease,” of Animals; *V.* 32 & 33 V. c. 70, s. 6. — *Ir.* 33 & 34 V. c. 36, s. 12. *V.* CATTLE PLAGUE.

**CONTAINING.** — “The word ‘containing’ may easily admit of being construed as meaning ‘inclusive of’; and not as in diminution of a general bequest” (*Henfrey v. Henfrey*, 6 Jur. 356; 2 Curt. 468; 4 Moore, P. C. 29; stated 1 Jarm. 175).

**CONTANGO.** — *V.* *Bongiovanni v. La Société Générale*, cited CONTINUATION, the payment for which accommodation is called a “Contango.” *Cp* BACKWARDATION.

**CONTEMPLATION.** — “A Settlement in ‘Contemplation’ of marriage, is obviously an ante-nuptial Settlement” (per Selborne, C., *Re Sampson and Wall*, 53 L. J. Ch. 460; 25 Ch. D. 482: *Va*, *Re Leigh*, 58 L. J. Ch. 306; 40 Ch. D. 290) *V.* UPON.

**CONTEMPT.** — A charter granting “Contempts,” does not include money payable on Estreated RECOGNIZANCES (*R. v. Dover*, 4 L. J. Ex. 94; 1 Cr. M. & R. 726).

**CONTEMPT OF COURT.** — *V.* per Blackburn, J., *Skipwith’s Case*, L. R. 9 Q. B. 232: CRIMINAL CAUSE: CRIMINAL PRISONER: Oswald on Contempt of Court.

**CONTENTIOUS.** — Contentious Business, is the opposite of COMMON FORM BUSINESS.

**CONTENTS.** — A legacy of the “Contents of my house” is equivalent to a legacy of the goods “*in* my house.” *V.* IN.

As regards CHOSSES IN ACTION (and, probably, also of small valuables, *e.g.* jewellery) there is an obvious distinction between a gift of the "Contents" of a House and one of the "Contents" of a Desk or Box; people do not, ordinarily, speak of keeping such things in a House (*Re Miller*, 61 L. T. 365), but they keep, and speak of keeping, their securities and valuables in a Desk or Box: accordingly, a bequest of the "Contents" of a House will, generally, pass only the Household Furniture and Effects, and not Choses in Action; but a bequest of the "Contents" of a DESK, or BOX, will pass Choses in Action in such Desk or Box, *e.g.* Banker's Deposit Receipts, Cheques, Bills, and Notes, though unindorsed, — but not the accessories of other property, *e.g.* the key of another box, or title deeds (*Re Robson*, 1891, 2 Ch. 559; 60 L. J. Ch. 851; 65 L. T. 173). *Cp.* EFFECTS: LOCALLY SITUATE.

**CONTENTS UNKNOWN.** — "When there is a closed package and a representation as to its contents, the shipowner may accept the Bill of Lading, or may alter it, and if he adds, '*Contents Unknown*,' then, according to *Parsons on Shipping* (p. 198), the cases there cited, and *Jessel v. Bath* (36 L. J. Ex. 149; L. R. 2 Ex. 267), the meaning is, that he declines to accept the representation, and merely accepts the package as it appears on the outside, but not the statement as to what is inside, — and he contracts to carry what really is inside" (per Brett, J., *Lebeau v. Gen. Steam Nav.*, 42 L. J. C. P. 1; L. R. 8 C. P. 88: *Vf*, *The Peter der Grosse*, 1 P. D. 414; 34 L. T. 749). The usual phrase in such a case is, "Weight, Contents, and Value Unknown." *Va*, CLEAN BILL OF LADING: QUALITY AND QUANTITY UNKNOWN: WEIGHT UNKNOWN. *Vh* 1 Maude & P. 153, 154, 341, 342.

*Cp.* GOOD ORDER.

**CONTESTED ELECTION.** — "When a poll is demanded, the election commences with it, as being the regular mode of popular election; the show of hands being only a rude and imperfect declaration of the sentiments of the electors" (per Sir Wm. Scott, *Anthony v. Seger*, 1 Hagg. Con. 13). The phrase "contested election" in s. 68, Rep People Act, 1832, also means an election carried to a poll (*Muntz v. Sturge*, 10 L. J. Ex. 234; 8 M. & W. 302). But now, for parliamentary or municipal honours, the hours appointed for the nomination are the time for the "election"; which election is adjourned for a poll when more candidates are nominated than there are vacancies to be filled (35 & 36 V. c. 33, s. 1; Sch 1, Part 1, Rule 1).

*Vh*, Rogers, 415: 4 Encyc. 442-473: ELECTION.

**CONTEXT.** — "Where the Context allows"; *V. Birmingham Breweries v. Jameson*, cited SPIRITUOUS LIQUOR.

"Unless the Context otherwise requires, 'Court.' in this section, means, the Court within the jurisdiction of which the Debtor resided,

or carried on business, for the greater part of the 6 months immediately prior to his decease" (subs. 10, s. 125, Bankry Act, 1883); — "Context" there, is not limited to the section but embraces the whole Act: therefore, if a Debtor, a domiciled Englishman, was not resident in England at the time of his death but had resided for the greater part of the preceding 6 months abroad, a Bankry Administration under the section may be ordered by the High Court (*i.e.* the Bankry Court) under s. 95 (*Re Evans*, 1891, 1 Q. B. 143; 60 L. J. Q. B. 143; 64 L. T. 242; 39 W. R. 98).

**CONTIGUOUS.** — "Contiguous," means, touching, and is as nearly as possible the synonym of "ADJOINING." Therefore, where a Lease reserves power to the lessor to do certain acts on any premises "adjoining or contiguous," that means, "adjoining or *near to*," so as to give "contiguous" a cognate, but not identical, meaning with "adjoining" (*Haynes v. King*, 1893, 3 Ch. 439; 63 L. J. Ch. 21; 69 L. T. 855; 42 W. R. 56). In that case, however, it was further held that two houses opposite to one another and a street going between them, are strictly "contiguous," because each would include the soil of the street *ad medium filum*. *Vf*, *Micklethwait v. Newlay Bridge Co*, 33 Ch. D. 133, on *wher Re White's Charities*, 1898, 1 Ch. 659; 67 L. J. Ch. 430; 78 L. T. 550; 46 W. R. 479.

V. WATER AND SOIL.

**CONTINGENCY.** — Liability on a Contingency; *V.* LIABILITY.

"Contingency" of a Building Socy; *V. Durham. & Cg Socy v. Davidson*, 61 L. J. Q. B. 473; 67 L. T. 269; 56 J. P. 660.

"Event or Contingency"; *V.* EVENT.

"Contingency with a Double Aspect"; *V. Egerton v. Massey*, 3 C. B. N. S. 351; *Doe d. Davy v. Burnsall*, 6 T. R. 30; *Crump v. Norwood*, 7 Taunt. 372, 373; *Evers v. Challis*, 7 H. L. Ca. 531, on *whlee Watson v. Young*, 28 Ch. D. 436, and *Re Bence*, 1891, 3 Ch. 242; 60 L. J. Ch. 636; 65 L. T. 530.

**CONTINGENT.** — Anything is "Contingent" when it is liable to failure on the happening or non-happening of an event, condition, or state of things, *e.g.* a Contingent Gift, on *whv* Theobald, 576.

A Contingent DEBT, is one the time for the payment of which may or may not arrive; a Debt payable after notice, is not contingent, for it is to be supposed that it will be payable at some time (per Abbott, C. J., *Clayton v. Gosling*, 5 B. & C. 362). "A 'Contingent Debt' refers to a case where there is a doubt if there will be any debt at all" (per Mellish, L. J., *Ex p. Ruffle*, 8 Ch. 1001). "The term 'Contingent Debt,' or Debt payable on a Contingency, has been long in common use. In the Bankry Act, 6 G. 4, c. 16, 'Contingent Debts' upon which a value

can be set are made the subject of Proof; and we think that ‘any Mtge, or other Debt,’ s. 10, 16 & 17 V. c. 59, includes contingent debts as well as absolute ones” (*Mortimore v. Inl. Rev.*, cited DEFINITE). *Vf*  
 LIABILITY.

“A Contingent REMAINDER, is a Remainder limited so as to depend on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate” (Ferne, Cont. Rem. 3). *Vh*, Wms. R. P., Part 2, ch. 2: Goodeve, 241: 3 Encyc. 320–328. *Note*. Every Contingent Remainder (created by an Instrument executed after 2nd Aug 1877) which would fail through the particular estate determining before it vests, shall “be capable of taking effect in all respects as if the Contingent Remainder had originally been created as a SPRINGING or Shifting Use, or EXECUTORY Devise, or other Executory Limitation” (40 & 41 V. c. 33). As to such a construction, quâ Instruments before the Act, *V. Blackman v. Fysh*, 60 L. J. Ch. 666; 64 L. T. 590; 39 W. R. 520. *Cp* “Contingent Use,” inf.

*V. VEST: THEREAFTER TO BE BORN.*

Quâ Trustee Act, 1893, “‘Contingent RIGHT,’ as applied to Land, includes a Contingent or Executory Interest, a Possibility coupled with an Interest (whether the object of the gift or limitation of the Interest or Possibility is, or is not, ascertained); also a Right of Entry, whether immediate or future and whether vested or contingent” (s. 50); — a def applied to the Lunacy Laws (53 & 54 V. c. 5, s. 341), and taken from s. 2, Trustee Act, 1850.

“In a note at p. 219, Watkins on Conveyancing, 8 ed., it is said in effect that there are two classes of Possibilities, — (1) Possibilities coupled with an Interest, *e.g.* ‘Contingent Remainders, Executory Devises, Springing or Shifting Uses; (2) Bare or Naked Possibilities, *e.g.* the hope of inheritance entertained by the Heir.’ . . . ‘The former class may, perhaps, with more propriety be denominated Contingent Interests, and the latter mere Expectancies; for a Possibility coupled with an Interest, is more than a Possibility, — it is a present Interest and may be devised (*Perry v. Phelps*, 17 Ves. 173, 182). On the other hand the Expectancy of an Heir Apparent during the lifetime of his ancestor, is less than a possibility, being but a mere hope or anticipation” (per Kay, J., *Re Parsons*, 59 L. J. Ch. 666; 45 Ch. D. 51). Adopting this dictum, it was there held that a bequest to “Next of Kin,” — as contradistinguished from one to “Children,” or “Nephews,” or even “Kin-dred,” — after an Estate for Life is, during the life of the tenant for life, only a *spes successionis*, and is not a “Contingent TITLE,” within s. 5, M. W. P. Act, 1882. Citing the same dictum, and adopting its second clause, and considering *Re Parsons*, North, J., held that an Interest under the Will of a living person is “Property in EXPECTANCY,” — at least, as that phrase is used in s. 1, Infant Settlements



Act, 1855 (*Re Johnson*, 1891, 3 Ch. 48; 60 L. J. Ch. 499; 61 L. T. 696; 39 W. R. 509). *V.* INTEREST: POSSIBILITY.

A Contingent Use, "is such a Use as, by the limitation, may or may not happen to vest" (Cowel). *Cp* "Springing Use," sup.

"Claims and Contingent Liabilities"; *V.* CLAIM: LIABILITY.

**CONTINUAL CLAIM.** — "Is a Claim made from time to time within every year and day to Land, or other Thing, which in some respect we cannot attain without danger" (Cowel: *Vf* Termes de la Ley). "No continual, or other, claim upon or near any land shall preserve any right of making an ENTRY or DISTRESS or of bringing an ACTION" (s. 11, 3 & 4 W. 4, c. 27).

**CONTINUANCE.** — "The continuance of INJURY, or Damage" which will extend the time within which an action may be brought for something done by a Public Body, s. 1 (*a*), 56 & 57 V. c. 61, means, the continuance of the Cause of Injury or Damage, and not the continuance of the injurious Result of a completed Cause (*Markey v. Tolworth*, 1900, 2 Q. B. 454; 69 L. J. Q. B. 738; 83 L. T. 28; 64 J. P. 647): "*Darley Main Co v. Mitchell*, and *Crumbie v. Wallsend* (cited CAUSE) are inapplicable, except as showing that if (say) a Drug had been negligently given and had been a slow poison, the fatal or otherwise injurious effects of which had not occurred for some time afterwards, the time for bringing the action would have commenced to run, not on the giving of the drug but, on the occurrence of its injurious effects" (per Darling, J., *Ib.*). *Cp* CONTINUING CAUSE OF ACTION.

Power to Lease, reserving rent "during the Continuance of the TERM," enables the Donee of the Power to reserve the last quarter's rent in advance (*Rutland v. Doe*, cited YEARLY).

"If a power be given to trustees to be exercised 'during the continuance of the TRUST,' it cannot be exercised after the time when the trust ought to have been completed, though, from the delay of the trustees, it happens that the trust has not in fact been executed" (Lewin, 719, citing *Wood v. White*, 2 Keen, 664; 4 My. & C. 460; 7 L. J. Ch. 203; 8 Ib. 209: *V.* 2 Jarm. 299: and *Vf* Lewin, 719, as to this word).

As to the divesting effect of the phrase, if Legatee "shall die during the Continuance of the Trusts hereinbefore declared"; *V.* *Re Teale*, 34 W. R. 248.

**CONTINUATION.** — This word is used in a technical sense on the Stock Exchange. It means to sell and to agree to re-buy the same amount of Stock at a future day at the same price, plus a sum for the accommodation. It is not a loan; but is a sale and an agreement for repurchase. The original seller may perform his contract to re-buy, and if the Stock be not delivered to him he is entitled to damages for such non-delivery. On the other hand, he may make default, and then would

be liable for such breach; but if the Stock has gone up in value there would be no damages; if, however, the value has gone down, the measure of damages would be the difference between the market value of the Stock at the time when the original seller ought to have re-bought it and the price at which, at the time of the sale, he agreed to re-buy it. In all these transactions the Stock remains the property of the original buyer until the original seller has completed the agreed re-purchase (*Bongioranni v. La Société Générale*, 54 L. T. 320; 2 Times Rep. 247; *Bentinck v. London Joint Stock Bank*, 1893, 2 Ch. 120; 62 L. J. Ch. 358; 42 W. R. 140; 68 L. T. 315). *Vf*, *Re Overrey*, 1900, 1 Ch. 209; 69 L. J. Ch. 255; 81 L. T. 776: CONTANGO. *Cp* CARRY OVER.

**CONTINUE.** — SLAUGHTERHOUSE “used . . . and continued to be USED,” s. 126, Towns Improvement Clauses Act, 1847; *V. Hides v. Littlejohn*, 74 L. T. 24.

“Provided the INTEREST of the Lessor in the premises should so long continue,” occurring in a Lease made by a lessor holding under a College Lease for years renewable by custom, is to be taken as intending to guard against the risk of non-renewal, and not to limit the lessee’s interest to the term of the lessor’s life (*Re Conolly*, Ir. Rep. 3 Eq. 339). The “Interest,” however, is not to be extended by the subsequent acquisition by the lessor of some larger interest than that which he had or anticipated when granting the Lease (*Re O’Brien*, *Ib.* 77).

To “Continue,” in Stock Exchange phraseology; *V.* CONTINUATION.

“Continue” as an equivalent of “Tarry”; *V.* ELOPE.

**CONTINUE IN OFFICE.** — An Officer “continues in Office,” qua a Bond for the due discharge of his duties, if his functions and duties are continued, though the tenure by which he holds office may be changed (*Oswald v. Berwick-upon-Tweed*, 5 H. L. Ca. 856; 25 L. J. Q. B. 383; 4 W. R. 738).

**CONTINUE TO HOLD.** — “Where trustees are authorised to ‘continue to hold’ special Investments, the power must, *primâ facie*, be held to apply to such of the trusts as are continuous; and the trustees may appropriate to a special continuous trust any of the investments which the settlor has authorised to be held” (Lewin, 368, citing *Fraser v. Murdoch*, 6 App. Ca. 855).

**CONTINUING CAUSE OF ACTION.** — R. 58, Ord. 36, R. S. C.; *V. Hole v. Chard*, 1894, 1 Ch. 293; 63 L. J. Ch. 469; 70 L. T. 52.

*Cp* CONTINUANCE.

**CONTINUING GUARANTEE.** — *V.* 1 Key & Elphinstone, Precedents, 6 ed., 40; De Colyar, on Guarantees, 2 ed., 210-246; *Hitchcock v. Humphrey*, 12 L. J. C. P. 235; 5 M. & G. 559; *Ellis v.*

*Emanuel*, 46 L. J. Ex. 25; 1 Ex. D. 157: *Part's Bank v. Yates*, 1898, 2 Q. B. 460; 67 L. J. Q. B. 851: GUARANTEE: ACCOUNT: CREDIT: MADE.

**CONTINUING INTEREST.**—“Continuing Interest,” “Continuing charge on such Interest,” s. 21, Such Dy Act, 1853; *V. Lilford v. A-G.*, 36 L. J. Ex. 116; L. R. 2 H. L. 63.

**CONTINUING OFFENCE.**—“Continuing Offence,” s. 115, P. H. Act, 1848, means only, an OFFENCE which is from its nature susceptible of continuance (*Marshall v. Smith*, 42 L. J. M. C. 108; L. R. 8 C. P. 416; 28 L. T. 538).

“Continuing Offence,” ss. 85, 107, Metrop Man. Act, 1862; *V. London Co. Co. v. Worley*, 1894, 2 Q. B. 826; 63 L. J. M. C. 218: *Vf. R. v. Slade*, 64 L. J. M. C. 232; 1895, 2 Q. B. 247.

*Vh, R. v. Portsmouth or Pink*, 1892, 1 Q. B. 491; 61 L. J. M. C. 126: *Daw v. London Co. Co.*, cited NEW STREET: *Heard v. Heard*, cited DESERTEED: 3 Encyc. 328, 329.

**CONTINUING POLICY.**—*V. Stokell v. Heywood*, 74 L. T. 781; 65 L. J. Ch. 721.

**CONTINUING TRUSTEE.**—This is a phrase the meaning of which is hardly settled. Bacon, V. C., decided that the term “Continuing Trustee” is not confined to one who remains after another has retired; but includes one who has made up his mind to retire, but who has not, as yet, executed a Deed evidencing his retirement (*Re Glenny*, 53 L. J. Ch. 417; 25 Ch. D. 611; 32 W. R. 457). But in so deciding, the decision of Kindersley, V. C., in *Travis v. Illingworth* (34 L. J. Ch. 665; 2 Dr. & Sm. 344), was dissented from; a decision, however, which, notwithstanding *Re Glenny*, was adhered to by Pearson, J., in *Allen v. Norris* (53 L. J. Ch. 913; 27 Ch. D. 333), and per North, J., *Re Coates to Parsons* (56 L. J. Ch. 242; *Va* Lewin, 779, 785). The weight of judicial authority would, therefore, seem to be in favour of the proposition, that a retiring trustee is not a continuing trustee: *Vf, Stones v. Rowton*, 17 Bea. 308; 22 L. J. Ch. 975. But *Vh*, s. 31 (6), Conv & L. P. Act, 1881, repld s. 10 (4), Trustee Act, 1893; but even under that enactment a retiring trustee is not a “continuing” trustee unless it is shown that he is competent and willing to act within its provisions (*Re Coates to Parsons*, sup).

A trustee who has never acted and has declined to act is not a “surviving or continuing” trustee (*Nicholson v. Wright*, 26 L. J. Ch. 312; 5 W. R. 431). But it has been said that the decision in that case was a “narrow construction” (Sug. Pow. 886); and in *Pell v. De Winton*, (2 D. G. & J. 13) Ld Cranworth said he was not prepared to follow it. In *Re Glenny*, sup, however, it was cited by Bacon, V. C., apparently

with approval. *Cp*, ACTING TRUSTEE: DECLINING TRUSTEE: SURVIVING TRUSTEE.

*V*. LAST: TRUSTEE.

**CONTINUOUS OCCUPATION.** — *J. Timmis v. Albiston*, 1895, 2 Q. B. 58; 64 L. J. Q. B. 564: 59 J. P. 663.

**CONTINUOUSLY.** — To discharge a Vessel “continuously,” means, “no more than the merchant binds himself to do his work in a REASONABLE time and with a reasonable amount of exertion” (per Mathew, J., *Maclay v. Baker*, 16 Times Rep. 401).

*V*. CONSTANTLY.

**CONTRABAND.** — “‘Contrabanded Goods’ are such as are prohibited by Act of Parliament, or Proclamation, to be imported into, or exported out of, this into other nations” (Cowel).

“Contraband of War,” it is submitted, means, all those things which by International Law (or, as in practice it would seem, by a Belligerent Power, when it is strong enough) may be deemed, directly or indirectly, useful to an Enemy for the purposes of an existing War: *Vh*, 3 Encyc. 330–334: *The Jonge Margaretha*, 1 Rob. C. 189, and notes thereon: Tudor. L. C. M. L., 3 ed., 981.

**CONTRACT.** — *V*. AGREEMENT.

“In every Contract there must be *quid pro quo*, for *contractus est quasi actus contra actum*” (Co. Litt. 47 b). “A Contract is a deliberate engagement between competent parties, upon a legal CONSIDERATION, to do or to abstain from doing some act” (Story on Contracts, s. 1, cited by Brett. L. J., *Wilson v. Bury*, 50 L. J. Q. B. 98; 5 Q. B. D. 518). *Vf*. Add. C. ch. 1, s. 1: Leake, 1: 3 Encyc. 335–351: PROMISE: EVIDENCE OF A CONTRACT.

An enabling Act of Parliament, — *e.g.* a Railway, or Local, Act, — is not a Contract (*York & N. Mid Ry v. The Queen*, 1 E. & B. 864; 22 L. J. Q. B. 230: *R. v. New Sarum*, 2 E. & B. 654: *Vf* MAX). *Cp*, *Roths v. Kirkcaldy W. W.*, inf.

As to what was a sufficient “Contract,” within s. 25, Comp Act, 1867, repld s. 7, Comp Act. 1900; *V. Hartley's Case*, 44 L. J. Ch. 240; 10 Ch. 157; 32 L. T. 106; 23 W. R. 203: per Mellish, L. J., *Crickmers' Case*, 10 Ch. 614; 46 L. J. Ch. 870; 24 W. R. 219: *Anderson's Case*, 7 Ch. D. 104; 47 L. J. Ch. 273; 37 L. T. 560; 26 W. R. 442: *Pritchard's Case*, 8 Ch. 956; 42 L. J. Ch. 768; 29 L. T. 363: *Melhado v. Porto Alegre Ry*, 43 L. J. C. P. 253; L. R. 9 C. P. 503; 31 L. T. 57; 23 W. R. 57: *Re Hereford Waggon Co*, 2 Ch. D. 621; 45 L. J. Ch. 461; 33 L. T. 40; 24 W. R. 953: *Eley v. Positive Assve*, 45 L. J. Ex. 451; 1 Ex. D. 88; 34 L. T. 190; 24 W. R. 338: *Firmstone's Case*, 44 L. J. Ch. 617; L. R. 20 Eq. 524: *Re Kharaskhoma Syndicate*, 1897, 2 Ch. 451; 66

L. J. Ch. 675; 46 W. R. 37: *Re Maynards*, 1898, 1 Ch. 515; 67 L. J. Ch. 186, *sthlc* not followed in *Re Frost*, 1898, 2 Ch. 556; 68 L. J. Ch. 544; 47 W. R. 27: *Re African Gold Co*, 1899, 2 Ch. 480; 68 L. J. Ch. 215, 724: *Re Watson*, 68 L. J. Ch. 660, distinguishing *Re Frost*, *sup*: *Re Jackson*, cited INADVERTENCE: *Re Transvaal Exploring Co*, 1899, 2 Ch. 370; 48 W. R. 108; 68 L. J. Ch. 670: IN WRITING: OTHERWISE. *Vh*, Buckl. 605: Hamilton, 180. On a similar provision in a Colonial Statute, *V. Smith v. Brown*, 1896, A. C. 614; 65 L. J. P. C. 89.

*Note*. By Comp Act, 1898, the Court was empowered to grant relief for non-compliance with s. 25, Comp Act, 1867; *Vth*, *Re May's Syndicate*, 68 L. J. Ch. 46; 79 L. T. 663: *Re Northern Creosoting Co*, 79 L. T. 407: INADVERTENCE.

As to what contracts must be disclosed in a Company Prospectus so as to satisfy s. 38, Comp Act, 1867; *V*. notes on the section in Buckl. 617: Palmer, Co. Prec. 125. *Va* s. 10 Comp Act, 1900.

#### V. BARGAIN OR CONTRACT: CONDITION: COVENANT.

The "Contract made," or the GOOD or VALUABLE Consideration given" which will preserve *Church Rates* enacted by a Private Act, s. 5, 31 & 32 V. c. 109, must be found in, or gathered from, the Act (*R. v. St. Mary-lebone*, 1895, 1 Q. B. 771; 64 L. J. Q. B. 622; 72 L. T. 11).

"Contract" for BUILDING, s. 212, London Bg Act, 1894, is not limited to a specific bg or bgs but, includes a contract for the erection of a number of unspecified bgs many of which were not to be commenced until after the Act came into operation (*Tanner v. Oldham*, 1896, 1 Q. B. 60; 65 L. J. M. C. 10; 73 L. T. 404).

"Contract for sale of Equitable Estate or Interest"; *V*. EQUITABLE.

"Contract, *Dealing, or Transaction*," s. 49 (*d*), Bankry Act, 1883; *V. Turquand v. Vanderplank*, 10 M. & W. 180; *Graham v. Furber*, 14 C. B. 134; 23 L. J. C. P. 10: *Brewin v. Short*, 24 L. J. Q. B. 297; 5 E. & B. 227; 1 Jur. N. S. 798: *Krehl v. Great Central Gas Co*, 39 L. J. Ex. 197; L. R. 5 Ex. 289: *Ex p. Arnold, Re Wright*, 45 L. J. Bank. 130; 3 Ch. D. 71: *Stansfield v. Cbitt*, 27 L. J. Ch. 266; 2 D. G. & J. 222: *Re Curtoys*, 50 L. J. Ch. 691; 17 Ch. D. 653; 44 L. T. 691: *Hance v. Harding*, 57 L. J. Q. B. 403; 20 Q. B. D. 732; 59 L. T. 659; 36 W. R. 629: *Re O'Shea*, 1895, 1 Ch. 325; 64 L. J. Ch. 263; 71 L. T. 827; 43 W. R. 232: *Wild v. Southwood*, 1897, 1 Q. B. 317; 66 L. J. Q. B. 166; 75 L. T. 388: *Re Seaman*, 1896, 1 Q. B. 412; 65 L. J. Q. B. 348: *Shears v. Goddard*, 1896, 1 Q. B. 406; 65 L. J. Q. B. 151. In *Lackington v. Elliott* (7 M. & G. 538; 13 L. J. C. P. 153), the question was raised, but not determined, as to whether a DISTRESS was a "Transaction" within this phrase. *Vh* Wms. Bank. 245.

"Contract. *Promise, or Agreement*," s. 204, Bankry Act, 1849, included a Bond (*Kidson v. Turner*, 3 H. & N. 581; 27 L. J. Ex. 492).

A "Contract or EMPLOYMENT," with a Mun Corp (disqualifying a Councillor, s. 28, Mun Corp Act, 1835), includes a Lease from the

Corporation to a Councillor, the generality of "Contract," not, in this connection, being restricted by its association with "Employment" (*R. v. York*, 2 Q. B. 847; 11 L. J. Q. B. 127; 2 G. & D. 105). Such a contract is none the less disqualifying though, not being under Seal, it is not enforceable against the Corp (*R. v. Francis*, 21 L. J. Q. B. 304; 18 Q. B. 526). *Vf* OFFICE.

"Demands . . . arising otherwise than BY REASON of a contract," s. 31, Bankry Act, 1869, includes a sum found due from a Promoter of a Co, in respect of a secret profit (*Emma Co v. Grant*, 50 L. J. Ch. 449; 17 Ch. D. 122; *Vf, Re Parkers*, 19 Q. B. D. 84).

"Action FOUNDED ON *Contract*," s. 5, Co. Co. Act, 1867, repld s. 116, Co. Co. Act, 1888; — an action is "founded on contract" when not arising out of a breach of a general duty, and when there would be no liability but for a contract (*Legge v. Tucker*, 26 L. J. Ex. 71; 1 H. & N. 500), and when it is directly, and not remotely, founded on such contract (*Pontifex v. Mid Ry*, 47 L. J. Q. B. 28; 3 Q. B. D. 23). Therefore, an action against a Carrier for negligent loss of goods is "founded on Contract" (*Fleming v. Manchester, S. & L. Ry*, 4 Q. B. D. 81; disapproving *Tattan v. G. W. Ry*, 29 L. J. Q. B. 184; 2 E. & E. 844; *Sc, Turner v. Stallbrass*, cited TORT); but an action against a Carrier for delivering goods to an insolvent consignee after notice of a stoppage *in transitu*, is founded on Tort and not on Contract, because the stoppage had put an end to the original contract of carrying (*Pontifex v. Mid Ry*, sup); and so of an action for Personal Injuries to his passenger occasioned by Negligence (*Taylor v. Manchester, S. & L. Ry*, 1895, 1 Q. B. 134; 64 L. J. Q. B. 6; 43 W. R. 120; 71 L. T. 596; *Kelly v. Metrop Ry*, 1895, 1 Q. B. 944; 64 L. J. Q. B. 568; 72 L. T. 551; 43 W. R. 497). But negligent loss by a Cabman of his fare's luggage (*Baylis v. Lintott*, 42 L. J. C. P. 119; L. R. 8 C. P. 345), or negligent treatment of his customer's horse by a Livery-stable keeper (*Legge v. Tucker*, sup), gives right to an action "founded on Contract." *Cp* TORT.

A Mtgee's action claiming a Charge on property, for Foreclosure, for Account and Enquiries, and other relief, is not "founded on any Breach of Contract," within R. 1 (e), Ord. 11, R. S. C. (*Deutsche National Bank v. Paul*, cited BROUGHT AGAINST).

A Penalty under a Bye Law of a Co founded by Charter under the Great Seal, is a "Debt *grounded upon* a Contract without SPECIALTY," within s. 3, Limitation Act, 1623; for the liability thereto springs out of the Member's implied consent to obey the Bye Laws, which is, in effect, a Contract independent of the Charter (*Tobacco Pipe Co v. Loder*, 20 L. J. Q. B. 414; 16 Q. B. 765).

It has been said that, frequently, "statutory provisions, occurring in a Local and Personal Act, must be regarded as a Contract between the parties, whether made by their mutual agreement or forced upon them by the Legislature" (per Ld Watson, *Roths v. Kirkcaldy W. W.*, 7 App.

Ca. 707; *Sr, York & N. Mid Ry v. The Queen*, sup) but, probably, that does not mean that even such enactments constitute Contracts for all purposes (*V. per Stirling, J., Re Manchester & Milford Ry*, 1897, 1 Ch. 276; 66 L. J. Ch. 142; 75 L. T. 416; 45 W. R. 331), in which case it was held that an arrangement made by three Ry Companies as to constructing and maintaining Ry Works, does not give rise to an "Action on a Contract," within s. 4. Ry Comp Act, 1867. In that case the learned judge also said, that "under the terms 'Action on a Contract' and 'Action not on a Contract,' as used in that section, every kind of action is included."

"All Contracts" by an INFANT, s. 1, Infants Relief Act, 1874, 37 & 38 V. c. 62, does not extend to Marriage Settlements; therefore, a Marriage Settlement by an Infant remains only voidable and is not void (*Duncan v. Dixon*, 44 Ch. D. 211; 59 L. J. Ch. 437; 62 L. T. 319; 38 W. R. 700). Notwithstanding this wide generality of "ALL Contracts," *semble*, this Act only relates to (1) Contracts for the repayment of money lent; (2) Contracts for goods supplied; and (3) Accounts stated (*Il.*).

"Contract," quâ Hosiery Manufacture (Wages) Act, 1874, 37 & 38 V. c. 48; *V. s. 7.*

"Contract," quâ M. W. P. Act, 1882; *V. s. 24.*

"Contract," s. 3, Partnership Act, 1890, is not confined to a Contract in writing (*Re Fort*, 1897, 2 Q. B. 495; 66 L. J. Q. B. 824; 77 L. T. 274; 46 W. R. 147).

"Complete," or "Formal," Contract, and making contract by correspondence; *V. SUBJECT TO.*

Notice of a Contract; *V. NOTICE.*

"To contract a Marriage," read, "to marry" (*Re M. Loughlin*, 1 L. R. Ir. 421).

*V. RESTRAINT OF TRADE: MADE.*

### CONTRACT IN WRITING. — *V. IN WRITING.*

**CONTRACT NOTE.** — Quâ Customs and Inl. Rev. Acts; *V. s. 17 (1), 51 & 52 V. c. 8*, on *whc, Learoyd v. Bracken*, 1894, 1 Q. B. 114; 63 L. J. Q. B. 96.

Quâ Stamp Act, 1891; *V. s. 52.*

**CONTRACT OF SALE.** — Quâ Sale of Goods Act, 1893, " 'Contract of Sale,' includes an Agreement to sell as well as a Sale" (subs. 1. s. 62).

**CONTRACT OF SERVICE.** — "Contract of Service, or a Contract personally to execute any *Work or Labour*," s. 10, Employers and Workmen Act, 1875, 38 & 39 V. c. 90; — "I should say that the former employment would apply to the case of an employment for a certain *time*, and the latter to an employment for the performance of some

specific work" (per Lopes, J., *Granger v. Agusley*, 50 L. J. M. C. 51; 6 Q. B. D. 182; 29 W. R. 242; 45 J. P. 142).

**CONTRACT OF TENANCY.**—*V. YEAR TO YEAR.*

**CONTRACT TO SUPPLY.**—An employer who retains out of his employees' wages so much a week for club-money, in consideration of which he is to supply MEDICINE and medical attendance to his employees, "contracts to supply" such medicine, &c, within s. 23, Truck Act, 1831 (*Cutts v. Ward*, 36 L. J. Q. B. 161; L. R. 2 Q. B. 357; 15 W. R. 445; 15 L. T. 614; *Lamb v. G. N. Ry*, 1891, 2 Q. B. 281; 60 L. J. Q. B. 489; 65 L. T. 225; 39 W. R. 475; 56 J. P. 22). *Vh Add. C. 105.*

**CONTRACTED.**—A DEBT is "contracted" when the liability thereto *in posse* is undertaken, though the actual obligation therefor *in esse* arises at a subsequent time, e.g. the liability to a CALL on a Share in a Co is not "contracted" when the Call is made, but when the Contract for the Share is completed (*Williams v. Harding*, L. R. 1 H. L. 9; 35 L. J. Bank. 25). *Vf, Re Marquess*, Ir. Rep. 9 Eq. 93; *Conlon v. Moore*, Ir. Rep. 9 C. L. 190; *Parker v. McHugo*, Ib. 265; *Kirby v. Smyth*, Ir. Rep. 10 Eq. 417.

**CONTRACTED TO SELL.**—A devise of an estate "which I have lately contracted to sell," has been held to pass merely the legal estate so as to enable the devisee to carry out the contract, but not to pass the purchase-money (*Knollys v. Shepherd*, 1 Jarm. 692). In view, however, of s. 30, Conv & L. P. Act, 1881, it would be difficult to see how that ruling could be now supported; because the testator-vendor would, it is submitted, hold the estate as a trustee for the vendee, and if so the legal estate would, under the section cited, pass to the personal representatives of the vendor; and if that be so, then such a devise as that in *Knollys v. Shepherd* would now have no operation unless it be held to pass the vendor's beneficial interest in the contract, and with it the purchase-money.

**CONTRACTOR.**—A "Contractor" is a person who, in the pursuit of an independent business, undertakes to do specific jobs of work for other persons, without submitting himself to their control in respect to the details of the work (*Iron Co v. Dodson*, 7 Lea, 373).

As a description of Occupation quâ Bills of Sale Act; *V. Sharp v. McHenry*, 38 Ch. D. 428; 57 L. J. Ch. 961; 57 L. T. 606.

*V. GENERAL CONTRACTORS.*

**CONTRARY.**—"But on the contrary"; *V. BUT.*

"Agreement to the contrary"; *V. AGREEMENT.*

A conviction for doing something "contrary to the Bye Laws," is bad



for uncertainty (*Cotterill v. Leupriere*, 59 L. J. M. C. 133; 24 Q. B. D. 634; 62 L. T. 695; 54 J. P. 583).

**CONTRARY INTENTION.** — Many modern Acts provide certain rules of construction unless a "Contrary Intention" be expressed.

*V.* as to this phrase: —

In s. 2, Arb Act, 1889, *Re Wilson and Eastern Counties Nav Co*, cited SUBMISSION: *Re Stephens and Liverpool, &c Insree*, 36 S. J. 464:

In s. 43, Conv & L. P. Act, 1881, jdgmt of Fry, L. J., *Re Dickson, Hill v. Grant*, 29 Ch. D. 331; 54 L. J. Ch. 510; 52 L. T. 707; 33 W. R. 511: *Re Thatcher*, 53 L. J. Ch. 1050; 26 Ch. D. 426; 32 W. R. 679: *Re Wells*, 59 L. J. Ch. 113; 43 Ch. D. 281: *Re Humphreys*, 1893, 3 Ch. 1; 62 L. J. Ch. 498; 41 W. R. 519. In s. 6 (4), same Act, *Broomfield v. Williams*, 1897, 1 Ch. 602; 66 L. J. Ch. 305. In s. 31 (7), same Act, repld s. 10 (5), Trustee Act, 1893, *Cecil v. Langdon*, 54 L. J. Ch. 313; 28 Ch. D. 1:

In s. 2 (1), Interp Act, 1889, *St. Helen's Tramways Co v. Wood*, 56 J. P. 71. In s. 38, same Act, *Ex p. Raison*, 60 L. J. Q. B. 206:

In LOCKE KING'S ACTS, Dart, 922, 923: *Eno v. Tatham*, 3 D. G. J. & S. 443; 32 L. J. Ch. 311: *Coote v. Lowndes*, L. R. 10 Eq. 376: *Re Newmarch*, 9 Ch. D. 12; 48 L. J. Ch. 28: *Buckley v. Buckley*, 19 L. R. Ir. 544: *Rawson v. M'Causland*, Ir. Rep. 8 Eq. 617: *Corballis v. Corballis*, 9 L. R. Ir. 309: *Reynolds v. M'Gloughlin*, Ib. 405: *Given v. Massey*, 31 L. R. Ir. 126: *Re Fleck, Colton v. Roberts*, 57 L. J. Ch. 943; 37 Ch. D. 677; 58 L. T. 624; 36 W. R. 663: *Re Nevill*, 59 L. J. Ch. 511: *Re Hooper*, W. N. (92) 151: *Re Campbell*, 1893, 2 Ch. 206; 62 L. J. Ch. 594: *Lewis v. Lewis*, 41 L. J. Ch. 195; L. R. 13 Eq. 218, on *whlev*, *Re Bennett*, 1899, 1 Ch. 316; 68 L. J. Ch. 104; 47 W. R. 406:

In M. W. P. Act, 1882, *Harrison v. Harrison*, 58 L. J. P. D. & A. 28:

In s. 24, Wills Act, 1837, *Murphy v. Cheerers*, 17 L. R. Ir. 205: *Re Portal to Lamb*, 54 L. J. Ch. 1012; 30 Ch. D. 50; 33 W. R. 71, 859: *Re Wells*, 42 Ch. D. 646: *Doyle v. Coyle*, 1895, 1 I. R. 205. In s. 26, same Act, *Wilson v. Eden*, 21 L. J. Q. B. 385; 5 Ex. 752, espy jdgmt of Campbell, C. J.: *Anon.*, 41 S. J. 75. In s. 27, same Act, *Re Marsh*, 57 L. J. Ch. 639; 38 Ch. D. 630; 59 L. T. 595; 37 W. R. 10: *Re Phillips*, 41 Ch. D. 417: *Re Tarrant*, W. N. (89) 146: *Phillips v. Cayley*, 43 Ch. D. 222; 59 L. J. Ch. 177: *Doyle v. Coyle*, sup. In s. 28, same Act, *Quarm v. Quarm*, cited SURVIVOR: *Martin v. Martin*, 19 L. R. Ir. 72. In s. 29, same Act, *Steen v. Steen*, Ir. Rep. 6 C. L. 8: *Re Chinnery*, 1 L. R. Ir. 296: *Neville v. Thacker*, 23 L. R. Ir. 359. *Vf.* qua this Act generally, note to Introductory Chap. ante, towards end: MY: NOW: HAVE.

*V.* FEMALE.

**CONTRIBUTE.** — Preference Shareholders “shall not be liable to contribute to the Expenses or Losses of the Socy”; *V. Re Reliance By Socy*, 61 L. J. Ch. 453.

**CONTRIBUTING.** — “Inhabitants contributing” to a Rate, “does not mean only those who have contributed or already are assessed to a Rate already made but, includes all who are liable to be assessed to a Rate if one were now made” (per Campbell, C. J., *R. v. Kershaw*, 6 E. & B. 1005; 26 L. J. M. C. 21).

**CONTRIBUTION.** — *V. SUBSCRIPTION OR CONTRIBUTION: VOLUNTARY CONTRIBUTIONS: INDEMNIFY: INDEMNITY.*

“The principle established in *Dering v. Winchelsea* (1 Cox, 318; 2 B. & P. 270; 2 White & Tudor, 535) is universal, that the right and duty of Contribution is founded in doctrines of Equity; it does not depend upon contract. If several persons are indebted and one makes the payment, the Creditor is bound, in conscience if not by contract, to give to the party paying the debt all his remedies against the other Debtors. The cases of AVERAGE, in Equity, rest upon the same principle. . . . So, in the case of land descending to Co-Parceners subject to a debt, if the creditor proceeds against one of the co-parceners, the others must contribute. If the creditor discharges one of the co-parceners, he cannot proceed for the whole debt against the others; at the most, they are only bound to pay their proportions” (per Ld Redesdale, *Stirling v. Forrester*, 3 Blyth, 590, 591, cited by Halsbury, C., *Ruabon S. S. Co v. London Assree*, 1900, A. C. 11, 12; 69 L. J. Q. B. 90; 81 L. T. 585; 48 W. R. 225; 9 Asp. 2).

Generally there is no right of Contribution between Wrong-doers (*Merryweather v. Nivan*, 8 T. R. 186; *Palmer v. Wick S. S. Co*, 1894, A. C. 318). *Vh*, *Burrows v. Rhodes*, 1899, 1 Q. B. 816; 68 L. J. Q. B. 545.

**CONTRIBUTORY.** — Quà Comp Act, 1862, “Contributory” means, “every person liable to contribute to the assets of a Co, under this Act, in the event of the same being wound-up” (s. 74, which refers to s. 38). A holder of fully paid-up Shares is within that def and may petition for a Winding-up under s. 82 (*Re Anglesea Colliery Co*, 1 Ch. 555; 35 L. J. Ch. 809; *Re National Savings Bank Assn.* 1 Ch. 547; 35 L. J. Ch. 808). For a discussion as to this def *V. Buckl.* 224. *Vf*, *Re Macdonald*, 1894, 1 Ch. 89; 63 L. J. Q. B. 193; *Norris v. Cottle*, 2 II. L. Ca. 647; *Bright v. Hutton*, 3 Ib. 341.

Contributory Mortgage; *V. MORTGAGE.*

Contributory Negligence; *V. NEGLIGENCE.*

“Contributory PLACE” quà P. H. Act, 1875; *V. s. 229*, on *wher Horn v. Sleaford*, 1898, 2 Q. B. 358; 67 L. J. Q. B. 724; 78 L. T. 722; 46 W. R. 555; 62 J. P. 502. The phrase has the same meaning as in that

section quâ Isolation Hospitals Act, 1893, 56 & 57 V. c. 68 (s. 26); and (in England) quâ Housing of Working Classes Act, 1890, 53 & 54 V. c. 70 (s. 93), but (in Scotland) it "means a Parish" (subs. 9, s. 96).

"Contributory Union"; Stat. Def., 38 & 39 V. c. 96, s. 2.

**CONTRITION.** — *V.* CONFESSION.

**CONTRIVANCE.** — A "Contrivance" to obstruct an Election, s. 21, Metrop Man. Act, 1855, includes an open and violent obstruction by one person, if it be intentional (*Buckmaster v. Reynolds*, 13 C. B. N. S. 62).

**CONTROL.** — To give or refuse assent to a certain proposed course, is to exercise a "Control," within s. 33, Tramways Act, 1870, 33 & 34 V. c. 78 (per Esher, M. R., *R. v. Croydon Tramways Co*, 56 L. J. Q. B. 125; 18 Q. B. D. 39; 56 L. T. 78; 35 W. R. 299; 51 J. P. 420; 3 Times Rep. 32). "Control," s. 41, Regn Ry Act, 1868, "is confined to the control of the proceedings in the issue so long as they are actually going on, and does not extend to proceedings after judgment" (per Deaman, J., *Birmingham Land Co v. Lond. & N. W. Ry*, 58 L. J. Q. B. 588).

Local Authority having "Control of the STREETS," s. 57, P. H. Act, 1875; *V. Hill v. Wallusey*, 1894, 1 Ch. 133; 63 L. J. Ch. 1; 69 L. T. 641; 42 W. R. 81.

LAND under the "Control" of a Local Authority; *V. Baird v. Tunbridge Wells*, 1896, A. C. 434; 64 L. J. Q. B. 145; 65 Ib. 451.

The power given to the Sanitary Commrs of Gibraltar by s. 160, Order in Council, 19 July 1883, to "control, manage, and maintain" the Public Highways, and also all such culverts and water-channels as may be necessary to carry off the surface water therefrom, and also all walls, retaining-walls, parapet-walls situate thereon or pertaining thereto and which are necessary for their support or for the safety of passengers or ordinary traffic," does not VEST the property in the Highways, &c in the Commrs, for the Government remains the principal, and the Commrs are only an administrative body (*Gibraltar Sanitary Commrs v. Orfila*, 59 L. J. P. C. 95).

A Lease of a house together with "the Control of the Plantation on the other side of the water, for the purpose of preventing trespassers thereon"; held, to mean that what was then a Plantation should continue a Plantation, and that the Lessor could not cut it down (*Nicholson v. Rose*, 4 D. G. & J. 10).

A TRAIN is not "under the Control" of the Ry Co running it, if in the matter complained of the Co are prevented by *vis major*, e.g. the Postmaster General acting under statutory powers (*Phillips v. G. W. Ry*, 7 Ch. 409; 41 L. J. Ch. 614). *V.* CHARGE OR CONTROL. *Cp* Vessel "under Command," sub COMMAND.

Whether a DOG is "under the control of any person" within the Dogs

Act, 1871, 34 & 35 V. c. 56, is a question of fact to be determined in each case by the justices; but as a general rule a dog is not under such control unless muzzled or led (*Wren v. Pooock*, 34 L. T. 697; *Re Hay*, 31 S. J. 29; 3 Times Rep. 24).

"Under Proper Control or Destroyed," s. 2, Dogs Act, 1871: under this a dangerous dog may be ordered to be destroyed (*Pickering v. Marsh*, 43 L. J. M. C. 143).

Money under Trustee's "Control"; *V. POSSESSION.*

"Control or Management of Partnership Business," R. 3. Ord. 48 (a), R. S. C.; *V. Grant v. Anderson*, 1892, 1 Q. B. 108; 61 L. J. Q. B. 107; 66 L. T. 79.

A Receiver appointed by the Court is not a person having "the Control or MANAGEMENT" of a Partnership Business, within R. 260, Bankry Rules, 1886 (*Re Flowers*, 1897, 1 Q. B. 14; 65 L. J. Q. B. 679; 75 L. T. 306; 45 W. R. 118).

An Exception in a Charter-Party of "Causes *beyond* their Control" is to be read *eiusdem generis* with those that precede it, and does not cover "a want of business capacity" in the person to whom the Exception relates, *e.g.* the Charterer's Agent (in his own interest) dismissing his men so that when wanted there are not enough to properly load the ship (*Re Richardsons and Samuel*, 1898, 1 Q. B. 261; 66 L. J. Q. B. 579, 868; 77 L. T. 479), or by "chancing it" and not taking proper precautions in advance to have cargo ready so that when wanted it cannot be got by reason of a Strike (*Gardiner v. Macfarlane*, 20 Sess. Ca. 4th Ser. 427). *Cp* "Unavoidable Hindrance," sub UNAVOIDABLE.

*V. CHARGE OR CONTROL: CUSTODY: NAME.*

### CONTROVERSIES. — *V. QUARRELS.*

**CONVENE.** — "There is an obvious difference between 'convened' and 'summoned' . . . 'convened' is applied, properly, not to individuals but, to aggregate bodies. A Board is 'convened'; an Assembly is 'convened'; a Senate is 'convened': but A. is not 'convened,' he is 'summoned, warned, or noticed'" (*R. v. Smith*, 1 Jebb & Sy. 634).

**CONVENIENCE.** — A contract to pay at a person's "Convenience," means that the obligation to pay arises when he or his representatives are reasonably able to pay; the phrase is not equivalent to "at his will" or "pleasure" (*Crayshay v. Hornstedt*, 3 Times Rep. 426). *Cp* AT DISCRETION.

A contract to do a thing, *e.g.* exhibit Advertising Frames in an Hotel, at the contractor's "Convenience," does not mean within a reasonable time; it only means that he is to exhibit the frames whilst he is alive and remains the occupier of the hotel (*Hotel & Gen. Advertising Co v. Wickenden*, 14 Times Rep. 480; 15 Ib. 302).

A Corn Exchange is a "Convenience" proper for a MARKET (*A-G. v. Cambridge*, L. R. 6 H. L. 316).

"Proper Works and Conveniences" connected with a Tramway; *V. Rapier v. London Tramways Co*, 1893, 2 Ch. 588; 63 L. J. Ch. 36; 69 L. T. 361; 42 W. R. 21.

"Sanitary Convenience"; *V. SANITARY.*

"Temporary Convenience"; *V. TEMPORARY.*

**CONVENIENT.** — "Convenient," as employed in the rubric at the end of the Anglican Marriage Service, should be construed in its strict and primary sense of "fit" or "proper," — the secondary sense being a more modern one (*Blunt's Annotated Book of Common Prayer*, 6 ed., 274: *Va, Mant's Prayer Book*, 468: 7 M. & G. 41). *Cp, R. v. Sharp*, cited CONVENIENTLY.

"Any Court convenient thereto," s. 65, Co. Co. Act, 1888, does not mean one that must be *near* to the Court of the district in which the defendant dwells, &c, but one which is "convenient" having regard to its facility to the parties (*Parsons v. Lakenheath School Bd*, 58 L. J. Q. B. 371; 87 L. T. 71; 5 Times Rep. 497: *Burkill v. Thomas*, 1892, 1 Q. B. 99, 312; 61 L. J. Q. B. 322; 66 L. T. 150; 40 W. R. 250). *V. COMMENCED.*

A power to Governors of a Hospital to remove INMATES "so often as it shall seem *convenient* to them," confers a wide discretion on the Governors, preventing the Inmates from taking an Estate for Life in the property enjoyed by them as Inmates (*Davis v. Waddington*, 14 L. J. C. P. 45; 7 M. & G. 37).

A power to do things which are "necessary <sup>and</sup> convenient" for a stated object, is well exercised if done in such a way as a person of reasonable and ordinary skill might have chosen, though it be not the ideally best way (*Abson v. Fenton*, 1 B. & C. 195). *Vf, Harris v. Lond. & S. W. Ry*, cited NECESSARY.

*V. JUST: SUBSTANTIAL.*

**CONVENIENT PLACE.** — A place where the works of one person are carried on which cause an actionable injury to another is not a "Convenient Place" (*St. Helen's Smelting Co v. Tipping*, 11 H. L. Ca. 642; 35 L. J. Q. B. 66).

**CONVENIENT SPEED.** — Trustees for sale are allowed a reasonable time for selling the property; "and though the instrument creating the trust, direct them to sell '*with all convenient speed*,' that is no more than is implied by law, and does not render an immediate sale imperative" (Lewin, 485, citing *Buxton v. Buxton*, 1 My. & C. 80: *Garrett v. Noble*, 3 L. J. Ch. 159; 6 Sim. 504: *Fry v. Fry*, 28 L. J. Ch. 591; 27 Bea. 144: *Va, Fitzgerald v. Jerroise*, 5 Mad. 25: *Vickers v. Scott*, 3 My. & K. 500: *Sculthorpe v. Tipper*, 41 L. J. Ch. 266; L. R. 13 Eq. 232: *Turner v. Buck*, 43 L. J. Ch. 583; L. R. 18 Eq. 301, on

*whler Re Waters*, 42 Ch. D. 517): and the construction is not different if the direction be to sell "with all convenient speed, *and within 5 years*,"—the direction in the words italicised being directory only (Lewin, 486, citing *Pearce v. Gardner*, 10 Hare, 287; *Va, Cuff v. Hall*, 1 Jur. N. S. 973; *De La Salle v. Moorat*, 40 L. J. Ch. 41; L. R. 11 Eq. 8; *Edwards v. Edmunds*, 34 L. T. 522). But trustees directed to sell "with all convenient speed," or "so soon as conveniently may be," are not arbitrarily to postpone the sale for an indefinite period (Dart, 63: *Vh, Grayburn v. Clarkson*, 15 L. T. 559). Where property was directed to be sold "with all convenient speed," and proceeds to be paid to A., and no sale took place for 7 years, and A. had done acts of ownership in respect of the property; held, that A. had elected to take it as real estate (*Re Davidson, Martin v. Trimmer*, 11 Ch. D. 341).

A Charter-Party contained a clause that the ship should "with all Convenient Speed (on being ready), having liberty to take an outward cargo for owners' benefit direct or on the way, proceed to E., and there load a full cargo of cotton." The ship deviated to C. and arrived at E. a few days later than she would have done if she had gone there direct. The ship had not been taken up for any particular cargo, and a small loss in freight was the only result of this delay; held, in an action against the freighter for not loading a Cargo, that the above clause was a Stipulation and not a Condition Precedent, and that the delay afforded no justification to the freighter for refusing to load a cargo (*MacAndrew v. Chapple*, L. R. 1 C. P. 643; 35 L. J. C. P. 281; H. & R. 745). "It seems to be now settled that delay by deviation is the same as a delay in starting; and it is also settled, at any rate in this Court, that a delay or deviation which, as it has been said, goes to the whole root of the matter, deprives the charterer of the whole benefit of the contract, or entirely frustrates the object of the charterer in chartering the ship, is an answer to an action for not loading a cargo; but that loss, delay, or deviation, short of that, gives an action for damages, but does not defeat the charter" (per Willes, J., *S. C.*, L. R. 1 C. P. 648). *Vf ON OR BEFORE.*

*V. IMMEDIATELY.*

**CONVENIENT TIME.**—Where, under a Lease, the lessor is at liberty to view the premises at "Convenient Times," "I think he ought to give notice that he is coming; and if he does not give notice, it is not to be considered a 'Convenient Time,' as it cannot be expected that where any business is carried on, they can allow the landlord to go all over the premises without they have previous notice of his coming" (per Denman, C. J., *Doe d. Wetherell v. Bird*, 6 C. & P. 200).

**CONVENIENT WAY.**—*V. WAY.*

**CONVENIENTLY.**—Where a Company has to erect, *e.g.* an Arch in a Street at a particular angle, "Conveniently," that does not mean

merely the Convenience of the Co but pre-eminently that of the public (per Alderson, B., *R. v. Sharp*, cited 2 Q. B. 573). Cp CONVENIENT.

As to what, in a Co's Mem of Assn, will enable it to carry on some BUSINESS, "which, under existing circumstances, may Conveniently or advantageously be combined with THE business of the Co," s. 1 (5, d) Comp Mem of Assn Act, 1890; *V. Re Foreign and Colonial Government Trust*, 1891, 2 Ch. 395: *Re Governments Stock Investment Co*, cited EFFICIENTLY: *Re Alliance Marine Insree*, 1892, 1 Ch. 300; 61 L. J. Ch. 176; 65 L. T. 554; 40 W. R. 329.

**CONVENT.** — A bequest in trust "for the Community of the Convent" at A., is one for the Members for the time being of that Convent, and is not a PERPETUITY (*Bradshaw v. Jackman*, 21 L. R. Ir. 12).

**CONVENTICLE.** — "Conventicle" is "A private assembly of a few folks under pretence of exercise of Religion; first given to the meetings of Wickliffe in this nation above 200 years past, but now applied to the illegal meetings of the present Non-conformists. It is mentioned 1 H. 6, c. 3" (Cowel).

The Statutes against Conventicles (16 Car. 2, c. 4; 22 Car. 2, c. 1; 10 Anne, c. 2) and the one exempting PROTESTANT Dissenters (1 W. & M. c. 18), were repealed by 52 G. 3, c. 155. *Ij'3 Encyc.* 359, 360.

**CONVENTION.** — "Convention Posts" are "Posts established by the Postmaster General under agreements with the inhabitants of any places" (1 V. c. 36, s. 47).

**CONVENTIONARY.** — "Conventionary Tenements," "Conventionary Tenants," of the ancient Assessionable Manors of the Duchy of Cornwall; *V. 7 & 8 V. c. 105*, passim, and s. 92.

**CONVERSION.** — As to what words work a constructive conversion of Property; *V. 1 Jarm.* 584-597: 1 White & Tudor, 327-389: 3 Encyc. 362-365: VALID CONTRACT.

Conversion of Goods; *V. TROVER.*

**CONVERT.** — It is stated that "a covenant not 'to convert' a Dwelling-house into a Shop, means a structural conversion, and not merely exposing goods for sale" (Woodf. 708-709, citing *Wilkinson v. Rogers*, 2 D. G. J. & S. 62; 12 W. R. 119, 284). But it would seem that that case supports the reverse of the proposition stated in Woodfall. It is only reported on an application for an interim injunction; and in dissolving an injunction which had been granted by the M. R., the L. J. expressly reserved an actual decision till the hearing; but they also intimated their opinion that the conversion into a shop might be effected without any structural change. Turner, L. J., said, "I think the prem-

ises may be 'converted' either by user, or by an alteration of structure." *V. SHOP.*

"Converted into Arable Ground or Meadow"; *V. IMPROVE.*

Trust Property by Trustee "converted to his Use," s. 8 (1), Trustee Act, 1888, does not include property which, *bonâ fide*, he has parted with, though in parting with it he may have acted negligently (*Thorne v. Heard*, 1895, A. C. 495; 64 L. J. Ch. 652), or without strict lawful authority (*Re Page*, 1893, 1 Ch. 304; 62 L. J. Ch. 592; 41 W. R. 357). *Vj*, STILL.

**CONVEY.**—A devise to A. to "sell," or "convey," gives A. the LEGAL ESTATE; *secus*, if the direction be unaccompanied by words of devise (2 Jarm. 295: *Vth*, per Esher, M. R., *Richardson v. Harrison*, 16 Q. B. D. 85; 55 L. J. Q. B. 60). *Cp* PERMIT.

"The case of *Ex p. Shorland*, 7 Ves. 88, decided that a mere *gift by way of Advancement* to a son, was not void by 1 Jac. 1, c. 15, s. 5, where the words used are, 'convey, or procure or cause to be conveyed'" (per Cave, J., *Re Player*, No. 2, 54 L. J. Q. B. 556).

*V. CONVEYANCE: HAVE OR CONVEY.*

Goods "carried or conveyed"; *V. CARRIED.*

The Postmaster General's "Exclusive Privilege" of "conveying" Letters, s. 2, 1 V. c. 33, does not prevent a person from carrying his own letter to its destination (*A-G. v. Edison Telephone Co*, 50 L. J. Q. B. 153; 6 Q. B. D. 244).

Convey Coals; *V. WAY.*

**CONVEYANCE.**—By 2 & 3 Anne, c. 4, 5 & 6 Anne, c. 18 (quâ West Riding), 6 Anne, c. 35 (quâ East Riding), and 8 G. 2, c. 6 (quâ North Riding), Registries were established for Deeds, *Conveyances*, and Wills relating to lands in Yorkshire; and by 7 Anne, c. 20, a Register was established for Deeds, *Conveyances*, and Wills relating to lands in Middlesex, which latter Registry was (by 54 & 55 V. c. 64) transferred to the Land Registry. A simple *deposit of deeds* for the purpose of creating a charge, there being no writing at all accompanying, was not a "Conveyance" within these provisions (*Sumpter v. Cooper*, 9 L. J. O. S. K. B. 226; 2 B. & Ad. 223: *Sethe* LIEN); because there was "nothing to register" (per Wood, V. C., *Neve v. Pennell*, 33 L. J. Ch. 23); so, of a Vendor's Lien for unpaid purchase-money (*Kettlewell v. Watson*, 53 L. J. Ch. 717; 26 Ch. D. 501). As to the Yorkshire Registry, *Vj*, inf.

But an Agreement to execute a MORTGAGE, is a "Conveyance" within these provisions (*Re Wight's Mortgage Trust*, 43 L. J. Ch. 66; L. R. 16 Eq. 41: *Neve v. Pennell*, 33 L. J. Ch. 19; 2 H. & M. 170); and so also is a Further Charge, though not under seal and though ancillary to a legal mortgage duly registered (*Moore v. Culverhouse*, 29 L. J. Ch. 419; 27 Bea. 639: *Credland v. Potter*, 44 L. J. Ch. 169; 10 Ch. 8). In the last



named case, Cairns, C., in giving judgment, said, — "There is no magic in the word 'Conveyance.' It means an Instrument conveying from one person to another person an interest in land. By a FURTHER CHARGE an interest is conveyed from one person to another. It gives the person who already has a mortgage a further interest in the land. Therefore a Further Charge is a Conveyance within the meaning of the Act." But an Order under s. 121, Bankry Act, 1883, vesting a small bankry estate in the Official Receiver, is not such a "Conveyance" (*Re Calcott and Elvin*, 1898, 2 Ch. 460; 67 L. J. Ch. 553); *secus*, of a Certificate of Appointment of a Trustee under s. 54 (4) of the same Act (*Ib.*). An Enfranchisement Deed is not a Conveyance of Copyholds, within the exception in s. 17, 7 Anne, and ought, if of copyholds in Middlesex, to be registered (*R. v. Truro*, 57 L. J. Q. B. 577; 21 Q. B. D. 555; 59 L. T. 242; 36 W. R. 775). As to a Vesting Declaration on the Appointment of a New Trustee, *V. s. 12 (4)*, Trustee Act, 1893. As to a FORECLOSURE Order, *V. Burrows v. Holley*, cited JUDGMENT.

All the Yorkshire Registry Acts were repealed and consolidated by the Yorkshire Registries Act, 1884, 47 & 48 V. c. 54, under which all ASSURANCES and WILLS affecting land in Yorkshire are to be registered as from 31st Dec 1884; by s. 3 "Assurance" includes (int. al.) "Conveyance . . . Memorandum or Charge"; neither "Assurance," nor "Conveyance," nor "Memorandum or Charge" (as therein defined) includes an Agreement by which (in consideration of a present payment by A.) the owner of land agrees to finish certain buildings in course of erection thereon, and on their completion A. agrees to buy the land and buildings at a price less the present payment (*Rodger v. Harrison*, 1893, 1 Q. B. 161; 62 L. J. Q. B. 213; 68 L. T. 66; 41 W. R. 291). *Vf* ASSURANCE. *Sv*, *quà* Lien, *Battison v. Hobson*, cited LIEN.

A "Conveyance or ASSIGNMENT" by a Debtor of his PROPERTY, within s. 4 (1 a), Bankry Act, 1883, must be by DEED; a Declaration of Trust, or a mere Agreement, is not within the section (*Re Spackman*, 24 Q. B. D. 728; 59 L. J. Q. B. 306; 38 W. R. 497). But if there be a Deed, and it deals with the different classes of all the debtor's property in the appropriate way, — *e.g.* grants his freeholds, covenants to surrender his copyholds, assigns his unonerous personalty, and contains a trust or covenant binding his leaseholds, shares liable to calls, and other onerous personalty, — such a Deed would be a "Conveyance or Assignment" within the section (*Re Hughes*, 1893, 1 Q. B. 595; 62 L. J. Q. B. 358; 68 L. T. 629; 41 W. R. 466). *Cp.* *Gentle v. Faulkner*, cited ASSIGN.

By s. 6 (2), Bankry Act, 1869, a fraudulent "Conveyance, Gift, Delivery, or Transfer," by a debtor of his property was an act of bankry; — a verbal charge on goods which are already in the hands of the chargee was not within either of these words (*Philips v. Hornstedt*, 42 L. J. Ex. 12; L. R. 8 Ex. 26; 1 Ex. D. 62); but if the charge were accomplished by a Deed (or other writing?) it would be within them (*Woodhouse v. Mus*

ray, 36 L. J. Q. B. 289; 38 Ib. 28; L. R. 2 Q. B. 634; 4 Ib. 27; 8 B. & S. 466; 9 Ib. 720). *V.* FRAUDULENT ASSURANCE.

"Conveyance," Sch 1, Part 2, Solrs Rem Ord. means, "Conveyance in FEE, or for any other FREEHOLD estate" (*V.* heading of Scale 2, of Sch); A sale of Leaseholds, effected by an Under-lease, is not a "Conveyance," neither is it a "Lease" within R. 5, Part 2 of the Sch (*Re Webb*, 1897, 1 Ch. 144; 66 L. J. Ch. 163; 75 L. T. 478; 45 W. R. 170).

*V.* PROPERTY. The Scale Fee, in Part 1 of the Sch, to a Purchaser's Solr for "preparing and completing Conveyance," includes his trouble in registering it, where the property is in a Register County (*Grey v. Curtice*, 1899, 1 Ch. 121; 68 L. J. Ch. 60; 79 L. T. 713; 47 W. R. 294).

#### *V.* COST OF CONVEYANCE.

As to what "Conveyance" and "Convey" mean for the purposes of the Conv & L. P. Acts; *V.* s. 2 (v), Act, 1881. A Declaration vesting a Trust Estate is, for purposes of registration, a Conveyance (s. 34 (4), *Ib.*, repld, s. 12 (4), Trustee Act, 1893).

"Convey," "Conveyance," in Trustee Acts; *V.* Trustee Act, 1850, s. 2, adopted with small emendations in s. 50, Trustee Act, 1893.

Other Stat. Def.—33 & 34 V. c. 34, s. 3; 38 & 39 V. c. 89, s. 51; 53 & 54 V. c. 5, s. 341; 56 & 57 V. c. 21, s. 4.—*Scot.* 31 & 32 V. c. 101, s. 3; 37 & 38 V. c. 94, s. 3; 57 & 58 V. c. 44, s. 18; 25 & 26 V. c. 85, s. 4.—*Ir.* 34 & 35 V. c. 22, s. 2; 54 & 55 V. c. 66, s. 95.

For meaning of "Conveyance on Sale," or "Conveyance," quâ *Stamp Duty*; *V.* ss. 54, 59, Stamp Act, 1891; s. 6, 61 & 62 V. c. 10, on *who*, *Christie v. Inl. Rev.*, L. R. 2 Ex. 46; 36 L. J. Ex. 11; and *Phillips v. Inl. Rev.*, L. R. 2 Ex. 399; 36 L. J. Ex. 199, distd in *McLeod v. Inl. Rev.*, 12 Sess. Ca. 4th Ser. 1045; *Thames Conservators v. Inl. Rev.*, 56 L. J. Q. B. 181; 18 Q. B. D. 279; 56 L. T. 198; 35 W. R. 274; *Inl. Rev. v. Angus*, 23 Q. B. D. 579; 5 Times Rep. 697; *Lewis v. Inl. Rev.*, 37 W. R. 509; *Foster v. Inl. Rev.*, 1894, 1 Q. B. 516; 63 L. J. Q. B. 173; *G. N. Ry v. Inl. Rev.*, 68 L. J. Q. B. 978; 48 W. R. 170; *G. W. Ry v. Inl. Rev.*, 1894, 1 Q. B. 507; 63 L. J. Q. B. 405; 70 L. T. 86; 42 W. R. 211; *Huntington v. Inl. Rev.*, 1896, 1 Q. B. 422; 65 L. J. Q. B. 297; 44 W. R. 300; 74 L. T. 28; *Coats v. Inl. Rev.*, 1897, 2 Q. B. 423; 66 L. J. Q. B. 434, 732; 77 L. T. 270; 46 W. R. 1; *Mersey Docks v. Inl. Rev.*, 1897, 2 Q. B. 316; 66 L. J. Q. B. 480, 697; 77 L. T. 120; *Scottish Equitable Assn v. Inl. Rev.*, 22 Rettie, 85. *Cp* EXCHANGE. Where there is a Declaration of Trust which effects a TRANSFER of a right to property, that is within s. 54, and is a "Conveyance on Sale" (per *Wills, J.*, *Chesterfield Brewery Co v. Inl. Rev.*, 1899, 2 Q. B. 7; 68 L. J. Q. B. 204; 79 L. T. 559; 47 W. R. 320). *Vf* RELEASE.

*Note.*—That a Family Arrangement is not a "Sale" requiring payment of ad val. Stamp Duty, though there be a money consideration (*Doe d. Manifold v. Diamond*, 4 B. & C. 243; 6 D. & R. 328; *Massy v. Nanny*,

3 Bing. N. C. 478: *Wigram v. Joyce*, 13 Ir. L. R. 164). Nor is a Partition such a Sale (*Henniker v. Henniker*, 22 L. J. Q. B. 94; 1 E. & B. 54); nor a Redemption, pursuant to a prescribed option, of a Ground Annual or Feu Duty, or, *semble*, of a Fee Farm Rent (*Belch v. Int. Rev.*, 4 Rettie, 4th Ser. 592: *Gibb v. Int. Rev.*, 8 Ib. 120).

"Conveyance on Sale," quâ Land Transfer Act, 1897, "means, an Instrument executed *on Sale*, by virtue whereof there is conferred, or completed, a Title under which an Application for Registration as First Proprietor of Land may be made under" the Land Transfer Act, 1875 (s. 20 (2), L. T. Act, 1897); extended to Leaseholds by R. 60, Land Transfer Rules, 1898.

"Deed or Conveyance"; *V. DEED*.

#### *V. GRANT.*

As used in the Ry Companies Rates and Charges Order Confirmation Acts, "Conveyance" of GOODS, means, "Conveyance by Merchandize Train, and this will include any work which is incidental to such conveyance and for the performance of which it is reasonable to use the Train Engine, *e.g.* (when, at a Junction with the Main Line of either a Station Siding or a Private Siding, the Train has to pick up or throw off trucks) the work of hauling or shunting the trucks over the points at the junction and over so much of the siding as the keeping of the main line clear of obstruction may require. But conveyance other than this off the Main Line would be giving the word 'Conveyance' a meaning beyond its ordinary sense in the language of Ry Acts according to *Hall v. L. B. & S. Ry* (cited INCIDENTAL), where it was defined, as comprehending such work only as, in the early days of Railways, was performed by a Ry Co acting as Conveyers only (and not as Carriers as well), and as was capable of being measured by a reference to distance travelled" (*Manchester S. & L. Ry v. Pidcock*, 10 Ry & Can Traffic Ca. 157, 158: *Vf, Pelsall Coal Co v. Lond. & N. W. Ry*, 7 Ib. 1).

**CONVEYANCING.** — "Sales, Purchases, Leases, Mortgages, Settlements, and other Matters of Conveyancing," s. 2, Solrs Rem Act, 1881; *Vth* "Other Documents," sub OTHER, *ejusdem generis*.

"The Conveyancing Acts, 1881 to 1892"; *V. Sch* 2, Short Titles Act, 1896.

**CONVICT.** — Quâ Forfeiture Act, 1870, 33 & 34 V. c. 23, a "Convict," "shall be deemed to mean any person against whom, after the passing of this Act, judgment of Death or of Penal Servitude shall have been pronounced or recorded by any COURT of competent jurisdiction in England, Wales, or Ireland, upon any charge of Treason or Felony" (s. 6).

"Convict PRISON"; *V. 40 & 41 V. c. 49, s. 3*.

**CONVICTED.** — The word "convicted," or the "conviction" of a person accused, is equivocal. "In common parlance no doubt it is taken to mean, the verdict at the time of trial; but in strict legal sense it is

used to denote the judgment of the Court" (per Tindal, C. J., *Burgess v. Boetefeur*, cited ACQUITTAL), and, accordingly, it was there held that a person who pleaded guilty to keeping a brothel, on an indictment instituted under s. 5. 25 G. 2, c. 36, and who at a subsequent Sessions came up for judgment, was not "convicted" when he pleaded, but when judgment was pronounced. But if, under the same section, the plea of guilty be followed by an Order that defendant enter into recognizances to come up for judgment if called upon, he is then "convicted" (per Stephen, J., *Jephson v. Barker*, 3 Times Rep. 40); and that is a ruling of general application (*R. v. Blaby*, 1894, 2 Q. B. 170; 63 L. J. M. C. 133; 70 L. T. 879; 42 W. R. 511; 58 J. P. 576). Jacob, tit. *Convict*, says, "Judgment amounts to Conviction"; but in an earlier time a wider meaning was given to the word, for it was said that "Conviction" is either when a man is outlawed, or appeareth and confesseth, or else is found guilty by the inquest (Crompton, Justice of the Peace, 9 a, citing Dyer, 275 b, pl. 48). *Vf*, *Sutton v. Bishop*, 1 Bl. W. 665; 4 Burr. 2283; *Lee v. Gansel*, Cowp. 1: CRIME.

"'Convicted' has been often, according to many cases in the books, taken for 'attainted,' and therefore extends to a judgment upon demurrer; which in *Foster's Case* was held to be a 'Conviction' within 23 Eliz." (Dwar. 683, citing *Foster's Case*, 11 Rep. 59).

"Upon Conviction," s. 91, Elementary Education Act, 1870, 33 & 34 V. c. 75, means, "upon Summary Conviction" (*R. v. Gaunt*, 50 L. J. M. C. 32; 29 W. R. 289; 45 J. P. 222).

"*Convicted of Felony*," s. 14, 33 & 34 V. c. 29; this expression describes a class of persons against whom the public ought to be guarded, and who ought not to be licensed to sell intoxicants, and means, a person who shall be, or shall have been, "Convicted of Felony," and is equivalent to "Convicted Felon" (*R. v. Vine*, 44 L. J. M. C. 60; L. R. 10 Q. B. 195; nom. *Vine v. Leeds*, 39 J. P. 130, 213. *Sv* FELON). A FREE PARDON purges the Conviction, and after it the man is no longer "Convicted of Felony," within this section (*Hay v. Tower Jus.*, 59 L. J. M. C. 79; 24 Q. B. D. 561; 62 L. T. 290; 38 W. R. 414; 54 J. P. 500). *Cp* PROHIBITED.

A person against whom a penalty has been recovered under s. 193, P. H. Act, 1875, is not a "Convicted Offender" within 22 V. c. 32 (*Todd v. Robinson*, 53 L. J. Q. B. 251; 12 Q. B. D. 530).

"Convicted," "Conviction," quâ Extradition Act, 1870, 33 & 34 V. c. 52; *V*. s. 26.

**CONVICTION.**—*V*. ORDER: CONVICTED: DETERMINATION.

"On Conviction"; *V*. RECOVERY.

"Under the firm Conviction"; *V*. PRECATORY TRUST.

**CONVOCATION.**—"Convocation," is commonly taken for the Assembly of all the Clergie to consult of ecclesiasticall matters, in time

of Parliament: and, as there are two Houses of Parliament, so there are two places called Convocation Houses, — the one called, the Higher Convocation House, where the Archbishops and Bishops sit severally by themselves; the other, the Lower Convocation House, where all the rest of the Clergie are bestowed" (Termes de la Ley). *Vh* 3 Encyc. 375-377.

**CONVOY.** — "A Convoy is a naval force, appointed by the Government, or by the commander of a station, to escort and protect merchant ships proceeding to certain parts" (1 Maude & P. 502 *et seq* as to the phrase "To Sail with Convoy"). *Vf*, Park, ch. 18, 693-713: Arn. 752.

"Depart with Convoy," means to sail with Convoy throughout the whole voyage unless prevented by stress of weather (*Jeffery v. Legender*, 3 Lev. 321: *Lilly v. Ewer*, Doug. 72. *Va*, *Warwick v. Scott*, 4 Camp. 62), or, unless there be a usage to the contrary and Convoy for only part of the distance be provided (*D'Equino v. Bewicke*, 2 Bl. H. 551).

"Sails with Convoy *and arrives*"; means that the ship is bound to sail with Convoy, but not to arrive with Convoy; and it is sufficient if the goods arrive, although they do not arrive safely, there being no warranty as to their condition. "Arrived" means "at the ultimate port of Destination" (1 Maude & P. 559, citing *Kellaer v. Le Mesurier*, 4 East, 396: *Va*, *Dalglish v. Brooke*, 15 East, 295: *Leevin v. Cornac*, 4 Taunt. 483). *V. ARRIVE.*

"Wait for Convoy"; — "Where a ship was to sail with convoy, and demurrage was to be paid for every day beyond a certain number of days that she should 'wait for Convoy,' this was construed to mean that it was to be paid until the convoy was ready to sail, and not that the freighter was to be discharged on the arrival of the convoy at the port where the ship lay" (1 Maude & P. 409, citing *Launey v. Werry*, 4 Brown P. C. 630).

*Vf* Abbott, 397-405.

**COOPATURA.** — "A thicket of wood: 4 Inst. 307: Spelm. *Cooperatum*" (Elph. 568).

**CO-OPERATION.** — "Co-operation," which will give a title to BOOTY, must directly tend to produce the Capture in question (*Banda and Kirwee Booty*, L. R. 1 A. & E. 109; 35 L. J. Adm. 17; *V. these references for plan of the Operations*). *Cp*, ASSOCIATION: JOINT CAPTORS.

**COPARCENERS.** — *V. PARCENERS.*

**COPARTNERSHIP.** — "Lord Hale and older writers use 'Co-partnership' in the sense of 'Co-ownership,' but this is no longer customary" (Lindley, P. 25). "Copartnership" is now synonymous with

**PARTNERSHIP**; and therefore a member of an association which contemplates spiritual benefits, and not a division of profits, cannot be convicted, under s. 1, 31 & 32 V. c. 116, of embezzling the funds of a "Copartnership" (*R. v. Robson*, 55 L. J. M. C. 55; 16 Q. B. D. 137; 34 W. R. 276; 50 J. P. 488; 53 L. T. 823).

**COPE.** — *V. HOWE: LOT AND COPE.*

**COPPER.** — " 'Copper' applied to Coin, includes bronze or mixed metal, and every other kind of coin inferior in value to silver " (Steph. Cr. 310, stating s. 1, 24 & 25 V. c. 99).

*Vf Arch. Cr. 911.*

**COPPICE.** — " Coppice," has, probably the same meaning as **UNDERWOOD**. " Properly speaking, it means Oak, Ash, or other wood, cut at intervals of less than 20 years so that it springs again from the same stool, or stub " (per Kay, L. J., *Dashwood v. Magniac*, cited **TIMBER**). When that case was before Chitty, J., he said, — " Etymologically, 'Coppice' is derived from the French word *couper*, to cut " (60 L. J. Ch. 215).

**COPROLITES.** — *V. MINE.*

**COPY.** — A served copy of the old writ of *Capias* which omitted the description of the defendant contained in the writ, was not a "Copy" of the writ within 2 W. 4, c. 39, s. 4 (*Cooke v. Vuughan*, 7 L. J. Ex. 219; 4 M. & W. 69).

The unintentional omission of the word "act" after "wilful" in an Innkeeper's copy of s. 1, 26 & 27 V. c. 41, renders it not a "copy" of that section, and its exhibition does not protect the innkeeper (*Spice v. Bacon*, 46 L. J. Ex. 713; 2 Ex. D. 463). *Seem*, an immaterial clerical error would be excused (*Ib.*).

Copy of a **BOOK**, s. 2, Copyright Act, 1842; *V. Warne v. Seebohm*, 57 L. J. Ch. 689; 39 Ch. D. 73; 58 L. T. 928; 36 W. R. 686, and cases there cited.

Copy of Court Roll; *V. COPYHOLD.*

Copy of a **DOCUMENT**, quâ a Solr's charge therefor; *V. PRINT.*

A copy of a *Pictorial Work* "is that which comes so near to the original as to give to every person seeing it the idea created by the original" (per Bayley, J., *West v. Francis*, 5 B. & Ald. 743, adopted by all the L. J. J. in *Hanfstaengl v. Empire Palace*, 1894, 3 Ch. 109; 63 L. J. Ch. 681; 70 L. T. 854; 42 W. R. 681; affd in H. L. 1895, A. C. 20; 64 L. J. Ch. 81; 72 L. T. 1).

A Photograph is a copy of an *Engraving* within 8 G. 2, c. 13; 7 G. 3, c. 38; 17 G. 3, c. 57 (*Gambart v. Ball*, 32 L. J. C. P. 166; 14 C. B. N. S. 306; *Graves v. Ashford*, 36 L. J. C. P. 139; L. R. 2 C. P. 410); but a Pattern for Woolwork, though taken closely from, is not a copy of

an Engraving within those statutes (*Dicks v. Brooks*, 49 L. Ch. 812; 15 Ch. D. 22).

“Copy or Colourably imitate” any PAINTING, *Drawing, or PHOTOGRAPH*, s. 6, Fine Arts Copyright Act, 1862; this includes a Photograph of an Engraving of a painting (*Ex p. Beal*, 37 L. J. Q. B. 161; L. R. 3 Q. B. 387; 9 B. & S. 395), or, a copy of a picture taken from any other Representation, — *e.g.* a living group, — which itself is not an infringement (*Hanfstaengl v. Empire Palace*, sup); but, in determining what is a “Copy,” the absence of an intention to copy, and the impossibility of injury by competition, are material elements in doubtful cases (*Ib.*), — “the amusing sketches in *Punch* of the pictures in the Royal Academy are not infringements of the copyrights in those pictures, although probably made from the pictures themselves” (per Lindley, L. J., *Ib.*). *Vf*, *Bolton v. Aldin*, 65 L. J. Q. B. 120: MULTIPLY: REPRODUCTION. *Cp*, EXACT.

Copy of “*Sheet of Music*,” s. 2, Copyright Act, 1842; *V. Boosey v. Whight*, 1900, 1 Ch. 122; 69 L. J. Ch. 66; 81 L. T. 571; 48 W. R. 228.

*V.* DUPLICATE: OFFICE: TRUE COPY: PRINT.

#### COPYHOLD. — *V.* CHARTER-LAND.

“‘Copyhold,’ is a Tenure for which the Tenant hath nothing to shew but the Copies of the Rolles made by the Steward of his Lord’s Court” (*Termes de la Ley*). *Vh*, Litt. ss. 73–84: Co. Litt. 57 b–63 a: 1 Cru. Dig. Title 10: Wms. R. P. Part 3: Goodeve, 320: Scriven on Copyholds, 14: Elton on Copyholds, 1: 3 Encyc. 379–392.

A devise of “Copyholds” will pass CUSTOMARY FREEHOLDS (*Roe d. Conolly v. Vernon*, 5 East, 83: *Doe d. Cook v. Danvers*, 7 East, 299: 1 Jarm. 798).

It has been held a fatal misdescription in a V. & P. Contract to describe Freeholds as “Copyhold” (*Ayles v. Cox*, 16 Bea. 23; 20 L. T. O. S. 4: *Sv*, *Twining v. Morrice*, 2 Bro. C. C. 331: Webster on Conditions of Sale, 106). *V.* FREEHOLD.

The provision in the Middlesex Registry Act, 1708, 7 Anne, c. 20, s. 17, that it shall not extend to “any Copyhold Estates” does not extend to an Enfranchisement of Copyholds (*R. v. Truro*, 57 L. J. Q. B. 577; 21 Q. B. D. 555; 59 L. T. 242; 36 W. R. 775).

“Copyhold Ground Rent”; *V.* GROUND RENT.

**COPYRIGHT.** — “Copyright,” is “the sole and exclusive liberty of printing, or otherwise multiplying copies” of an Original Work or Composition (s. 2, 5 & 6 V. c. 45: per Parke, B., *Jefferys v. Boosey*, 4 H. L. Ca. 920), and consequently of preventing others from so doing (*Chappell v. Purday*, 14 M. & W. 316), even gratuitously (*Novello v. Sudlow*, 21 L. J. C. P. 169; 12 C. B. 177). *Vf*, per Mansfield, C. J., *Millar v. Taylor*, 4 Burr. 2396. *V.* AUTHOR: COPY.

Quà the Canada Copyright Act, 1875, 38 & 39 V. c. 53, and by s. 2 thereof, "Book" and "Copyright," have the same meanings as in 5 & 6 V. c. 45.

"Copyright,"—herein distinguished from a PATENT,—“does not extend to ideas, or schemes, or systems, or methods; it is confined to their expression” (per Lindley, L. J., *Hollinrake v. Truswell*, 1894, 3 Ch. 420; 63 L. J. Ch. 722); therefore, there can be no Copyright in a Single Word, even though it be the name of a book, or other work (*Maxwell v. Hogg*, 36 L. J. Ch. 433; 2 Ch. 307).

But quà Patents, Designs, and Trade Marks Act, 1883, “‘Copyright,’ means, the exclusive right to apply a DESIGN to any article of manufacture, or to any such substance as aforesaid, in the class or classes in which the Design is registered” (s. 60).

“The Copyright Acts, 1734 to 1888”; *V. Sch 2*, Short Titles Act, 1896.

*V. INTERNATIONAL.*

*Vh*, Copinger on Copyright: Scrutton Ib.: 3 Encyc. 392-408.

**CORN.**—“It has been held that the word ‘Corn,’ in the Memorandum of a Policy of Marine Insurance, includes Malt, and also Peas and Beans, but not Rice” (1 Maude & P. 492: *V. Moody v. Surridge*, 2 Esp. 633: *Scott v. Bourlillion*, 2 B. & P. N. R. 213).

Agricultural Seeds are not included in “Corn or GRAIN,” within a Ry Co’s Act relating to Tolls (*Sowerby v. G. N. Ry*, 65 L. T. 546; 7 Ry & Can Traffic Ca. 158, 159, 166, 167).

“Corn, Grain, Meal, and Flour, and articles of the like character”; *V. s. 4*, Revenue Act, 1869.

*V. BRITISH CORN.*

**CORNAGE.**—“Is a kinde of Grand SERJEANTIE, the Service of which Tenure is to blow an Horn when any invasion of the Northerne Enemy is perceived” (Termes de la Ley). *Vf* HEIR-LOOM. *Cp* ESCUAGE.

**CORONER.**—*V. Davis v. Pembrokeshire Jus.*, 7 Q. B. D. 513.

“The Coroners (Ir) Acts, 1829 to 1881”; *V. Sch 2*, Short Titles Act, 1896.

*V. FRANCHISE.*

**CORPORATE.**—*V. CORPORATION.*

“Corporate BOROUGH,” quà modern Acts, has been defined to “mean any Corporate Borough mentioned in the Schedules annexed to 5 & 6 W. 4, c. 76, intituled ‘An Act for the Regulation of Municipal Corporations in England and Wales’; and any Borough incorporated by Charter granted, or to be granted, in pursuance of that, or any subsequent Act” (11 & 12 V. c. 63, s. 2: *Vf*. 12 & 13 V. c. 94, s. 10; 21 & 22 V. c. 98, s. 2).

Corporate Buildings; *V. BUILDING.*



“Corporate DISTRICT”; *V.* 11 & 12 V. c. 63, s. 2.

“Corporate LAND,” quæ Municipal Corporations, “means, land belonging to, or held in trust for, a Municipal Corporation” (Mun Corp Act, 1882, s. 7).

“Corporate OFFICE”; *V.* Mun Corp Act, 1882, s. 7; 47 & 48 V. c. 70, s. 35 (1). — *Scot.* 53 & 54 V. c. 55, s. 2.

“‘Corporate Seal,’ means, the Common Seal of a Municipal Corporation” (Mun Corp Act, 1882, s. 7).

CORPORATE TOWN; *V.* BOROUGH OR PLACE.

*V.* INCORPORATED.

**CORPORATION.** — “‘Corporation,’ is that which the Civilians call *Universitatem*, or *Collegium*, and is a Body Politick authorised to take and grant, having a Common Seal, &c. These are constituted either by PRESCRIPTION, by Letters Patent, or by Act of Parliament” (Cowel: *Vf. Termes de la Ley*: Jacob). They are either (1) Spiritual, *e.g.* Bishops, Deans with their Chapters, Parsons and Vicars; or (2) Temporal, *e.g.* Municipal Corporations, and Companies incorporated by Charter or Act of Parliament; or (3) Mixed, *i.e.* composed of Spiritual and Temporal Persons, as in some Colleges and Hospitals. Again, they are either (1) Sole, *e.g.* Bishops, Parsons, and Vicars; or (2) Aggregate, *e.g.* Deans with their Chapters, Municipal Corporations, and Incorporated Railway, Water, Gas, or Trading, Companies.

*Vh.* Grant on Corporations: 3 Encyc. 436–438: 4 Ib. 387.

“Corporation,” defined according to the subject-matter of the Act: *V.* 6 & 7 W. 4, c. 79, s. 64; 30 & 31 V. c. 38, s. 1; 37 & 38 V. c. 59, s. 3; 44 & 45 V. c. 34, s. 1. — *Tr.* 24 & 25 V. c. 26, s. 3.

“Corporation *Aggregate*,” R. 8, Ord. 9, R. S. C., includes a Corporation established by Foreign law but having a residence in England (*Haggiu v. Comptoir d’Escompte*, 58 L. J. Q. B. 508; 23 Q. B. D. 523); the Governor and Government of New Zealand are not such a Corp (*Sloman v. New Zealand*, 1 C. P. D. 563; 46 L. J. C. P. 185; 35 L. T. 454; 25 W. R. 86). *V.* FOREIGN CORPORATION.

**CORPOREAL.** — “‘Corporeal Hereditaments,’ consist wholly of substantial and permanent objects, all which may be comprehended under the general denomination of LAND only” (2 Bl. Com. 17: *17h.* Wms. R. P., Part 1: Goodeve, 12).

“Corporeal Heredit,” s. 56, Co. Co. Act, 1888; *V.* *Williams v. Jones*. 15 W. R. 133: HEREDITAMENT.

“Equitable Interest in Corporeal Heredit”; *V.* EQUITABLE.

*Cp.* INCORPOREAL HEREDITAMENT.

**CORPS.** — Army “Corps”; Stat. Def., 35 & 36 V. c. 3, s. 104; 42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 57, s. 49, c. 58, s. 190.

“Corps of Volunteer Artillery”; *V.* 25 & 26 V. c. 41, s. 1.

**CORRECT.** — A Weight, &c “Incorrect, or otherwise Unjust,” s. 28, 5 & 6 W. 4, c. 63, “need not be morally wrong”; the words are satisfied if the thing does not, of itself and without making pre-ordered allowances, perform its function correctly (*G. W. Ry v. Baillie*, 5 B. & S. 928; 34 L. J. M. C. 31).

A Coal Ticket which erroneously states the weight, yet if the error is in favour of the purchaser, states the “Correct Weight,” within s. 22 (2), 52 & 53 V. c. 21 (*Knowles v. Sinclair*, 1898, 1 Q. B. 170; 67 L. J. Q. B. 67; 77 L. T. 624; 62 J. P. 102). *Vf* ON OR NEAR.

Declaration that statements for a Life Policy are “correct and true,” and if “untrue,” the Policy to be void; *V. Fowkes v. Manchester Assree*, 3 B. & S. 917; 32 L. J. Q. B. 153: TRUE.

Certifying an Account as “correct and satisfactory”; held, not a RATIFICATION of an Infant’s debt (*Rowe v. Hopwood*, 38 L. J. Q. B. 1; L. R. 4 Q. B. 1).

**CORRECTION.** — What is an amendment of a Patent Specification “by way of Correction or Explanation,” s. 18 (1), Patents, Designs, and Trade Marks Act, 1883; *V. Kelly v. Heathman*, 60 L. J. Ch. 22: *Vf, Re Owen*, cited DISCLAIMER.

**CORRESPOND.** — Property was directed to be settled “in a Course of Entail to *correspond*, as far as may be practicable” with the limitations of a newly created Peerage; “‘To correspond’ does not, usually or properly, mean, ‘to be identical with,’ but ‘to harmonize with,’ or ‘to be suitable to’; and the words ‘as far as may be PRACTICABLE,’ although they may include a reference to the difference to be observed in the limitation of Real and Leasehold or Personal Property, appear to me to find their much fuller and more appropriate explanation when read as a recognition of the difference which must always exist in substance, between the limitation of a Dignity and the limitation of Property of any and every tenure” (per Ld Cairns, *Sackville-West v. Holmesdale*, 39 L. J. Ch. 520; L. R. 4 H. L. 576; *Sc.*, on “correspond,” per Hatherley, C., *S. C.* 39 L. J. Ch. 509; L. R. 4 H. L. 557). *Cp* LIKE.

*V.* ASSOCIATE.

**CORRESPONDENCE.** — As to Contract by Correspondence; *V.* SUBJECT TO.

**CORRESPONDING.** — *V.* CORRESPOND.

“Corresponding Expenses of leaving” a ship’s place of loading; *V.* LEAVING, at end.

**CORROBORATED.** — “Corroborated in some Material Particular,” s. 4, Bastardy Laws Amendment Act, 1872, 35 & 36 V. c. 65: In an application in Bastardy the evidence of the mother is so corroborated if, by other evidence than hers, it is proved that the putative father was silent when taxed with the paternity, or said, that rather than pay he

would go to America (*R. v. Piercey*, 18 L. T. O. S. 238), or if it is so proved that there had been acts of familiarity even though long antecedent, and having no direct relation to the actual begetting of the child (*Cole v. Manning*, 46 L. J. M. C. 175; 2 Q. B. D. 611; 41 J. P. 469), or that admissions had been made or money paid for the child by the putative father (*R. v. Berry*, 23 J. P. 81, 86).

Promise of Marriage to be corroborated; *V. MATERIAL EVIDENCE.*

Child's Evidence to be corroborated by "some other Material Evidence"; *V. s. 15, Prevention of Cruelty to Children Act, 1894, 57 & 58 V. c. 41.*

Witness is to be corroborated "in some Material Particular" in cases under ss. 2, 3, 4, Criminal Law Amendment Act, 1885.

*Cp* "Essential Particular," sub ESSENTIAL. *I f* 3 Encyc. 447-449.

**CORRODY.** — *V. 3 Encyc. 410.*

**CORRUPT, CORRUPTLY.** — "To corrupt" a voter within the meaning of 2 G. 2, c. 24, meant to do an act of BRIBERY which was completed by acceptance of the bribe, whether subsequently the voter voted or not (*Henslow v. Fawcett*, 3 A. & E. 51; 4 L. J. K. B. 147; 4 N. & M. 585).

To "corruptly" treat or do any other thing contrary to the Corrupt Practices Prevention Act, 1854, 17 & 18 V. c. 102, does not mean to do it "wickedly, or immorally, or dishonestly, or anything of that sort, but with the object and intention of doing that which the legislature plainly means to forbid" (per Blackburn, J., *Bewdley*, 1 O'M. & H. 19; 19 L. T. 676: *Vh* 2 Rogers, 299 *et seq.*).

As to what is a Simoniacally "corrupt" bargain. 31 Eliz. c. 6. s. 5; *V. Young v. Jones*, 3 Doug. 97; *Fletcher v. Sondes*, 3 Bing. 501; *Barret v. Glubb*, 2 Bl. W. 1053; *Mosse v. Killick*, 50 L. J. C. P. 300; *Newman v. Newman*, 4 M. & S. 66. *Vh* IMMORAL.

**CORRUPT PRACTICE.** — For def of Corrupt Practices:

(a) At Parliamentary Elections, *V. Parl Elec Act, 1868, 31 & 32 V. c. 125, s. 3; Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, ss. 3 and 33 (7), Sch 3, Part 3.*

(b) At Municipal Elections, *V. Municipal Elections (C. & I. P.) Act, 1884, 47 & 48 V. c. 70, s. 2, Sch 3, Part 1. — Scot. 53 & 54 V. c. 55, s. 2.*

*Vh*, Leigh & Le Marchant, ch. 1: Mattinson & Macaskie, on Corrupt Practices, 2 ed.: Arch. Cr. 1187: Rose. Cr. 297: 3 Encyc. 449-467.

A "Corrupt Practice," in an Order under s. 28 (5), 47 & 48 V. c. 70, directing a prosecution, may be construed as, a Repetition of corrupt actions constituting a corrupt habit or course of conduct (*R. v. Riley*, 59 L. J. M. C. 122; 63 L. T. 119). *Vh* EVIDENCE.

*V. CORRUPT. Cp* BRIBERY.

**CORRUPTION.** — “Corruption” in an Arbitrator, — *e.g.* 9 & 10 W. 3, c. 15; s. 25, Scotch Act of Regulations, 1695, — means, moral obliquity; it is a false and misleading metaphor to speak of an Arbitrator’s honest mistake, whether it be of excess or defect, as “Constructive Corruption” (*Adams v. Great North of Scotland Ry*, 1891, A. C. 31).

“Corruption of Blood”; *V.* 4 Bl. Com. 388, 389.

**COSCES.** — *V.* BORDARIH.

**COSENING.** — “Is an Offence unnamed, whereby any thing is done guilefully, in or out of Contracts, which cannot be fitly termed by any special name” (Cowel). *Cp* DECEIT.

**COST BOOK.** — “Cost Book,” quæ the Stannaries of Devon and Cornwall; *V.* 32 & 33 V. c. 19, s. 2; 50 & 51 V. c. 43, s. 2.

**COST FREIGHT AND INSURANCE.** — “The terms at a price ‘to cover Cost, Freight, and Insurance,’ payment by acceptance ‘on receiving shipping documents,’ are very usual, and are perfectly well understood in practice. The invoice is made out debiting the consignee with the agreed price (or the actual cost and commission, with the premiums of insurance, and the freight, as the case may be) and giving him credit for the amount of the freight which he will have to pay to the shipowner on actual delivery, and for the balance a draft is drawn on the consignee, which he is bound to accept (if the shipment be in conformity with his contract) on having handed to him the charter-party, bill of lading and policy of insurance. Should the ship arrive with the goods on board he will have to pay the freight, which will make up the amount he has engaged to pay. Should the goods not be delivered in consequence of a PERIL OF THE SEA, he is not called on to pay the freight and he will recover the amount of his interest in the goods under the policy. If the non-delivery is, in consequence of some misconduct on the part of the master or mariners, not covered by the policy, he will recover it from the shipowner. In substance, therefore, the consignee pays, though in a different manner, the same price as if the goods had been brought and shipped to him in the ordinary way” (per Blackburn, J., *Ireland v. Livingston*, L. R. 5 H. L. 406; 41 L. J. Q. B. 204). *Vf.* *Delaurier v. Wyllie*, 17 Sess. Ca. 4th Ser. 167.

Under a C. F. I. contract there is an absolute duty on the Vendor to procure the shipment of the goods under such a Bill of Lading as will, subject to its Exceptions, ensure their delivery at the Port of Destination (*Lecky v. Ogiley*, 3 Com. Ca. 29).

A price C. F. I. does not necessarily include everything up to delivery; and if the contract stipulates that the goods are “to be shipped,” those are important words to show that the goods are at the buyer’s risk

as soon as placed on board, even though the price be quoted C. F. I. (*Wanke v. Wingren*, 58 L. J. Q. B. 519).

**COST OF RELIEF.** — “Cost of the Relief of the Wife,” s. 33, 31 & 32 V. c. 122; *V. Dinning v. South Shields*, 13 Q. B. D. 25; 53 L. J. M. C. 90; 50 L. T. 446.

**COSTS.** — *V.* TAXED COSTS: DAMAGES.

Neither “Costs ONLY,” s. 49, Jud. Act, 1873, nor its synonym “Costs of and incident to all proceedings,” R. 1, Ord. 65, R. S. C., includes Costs to which a person is entitled, as of right, by virtue of a contract or relationship; e.g. Mtgee or Trustee Costs (*Cotterell v. Stratton*, 8 Ch. 295; 42 L. J. Ch. 417; 28 L. T. 218; 21 W. R. 234; *Turner v. Hancock*, 20 Ch. D. 303; 51 L. J. Ch. 517; 46 L. T. 750; 30 W. R. 480; *Re Chennell*, 8 Ch. D. 492; 47 L. J. Ch. 583; 38 L. T. 494; 26 W. R. 595; *Ex p. Wainwright*, 19 Ch. D. 140, 153; 51 L. J. Ch. 67; 45 L. T. 562; 30 W. R. 125; *Re Beddoes*, 1893, 1 Ch. 547; 62 L. J. Ch. 233 68 L. T. 595; *Re Isaac*, 1897, 1 Ch. 251; 66 L. J. Ch. 160). Such Costs are not, properly speaking, Costs at all; they are Charges and Expenses, and can only be forfeited by misconduct, and their allowance or disallowance is appealable (*Re Chennell*, sup; *Re Beddoes*, sup; *whic* explains *Charles v. Jones*, 33 Ch. D. 80; 56 L. J. Ch. 161; 55 L. T. 331; 35 W. R. 88. *Vf*, as to *Charles v. Jones* and *Re Chennell*, *Bew v. Bew*, 1899, 2 Ch. 467; 68 L. J. Ch. 657). *V.* PROPERLY: Ann. Pr. sub R. 1, Ord. 65. *Sv* No ORDER.

“All PROPER Costs and Charges incident to and recoverable under” a Petition, means, Party and Party costs (*Re Grundy*, 17 Ch. D. 108; 50 L. J. Ch. 467; 44 L. T. 541; 29 W. R. 581). *Vf* FULL COSTS.

Costs, as between Solr and Client, to Local Authorities; *V.* PURSUANCE.

An Agreement as to “Costs” of proceedings before the Irish Land Judges, includes the expenses of Survey (*Re Orme*, 25 L. R. Ir. 104).

Quà Corrupt and Illegal Practices Prevention Act, 1883, “‘Costs,’ includes Costs, Charges, and Expenses” (s. 64); so, quà Loc Gov Act, 1888, “‘Costs,’ includes Charges and Expenses” (s. 100), and in Loc Gov (Scot) Act, 1889, it “includes Expenses” (s. 105).

Costs “ATTENDING” Application under s. 2, 5 & 6 W. 4, c. 69, held, to include the costs attending the re-investment of the purchase-money which was the subject-matter of the application (*Re Byron*, 4 D. G. M. & G. 694); “but it was on the peculiar circumstances, and the L. JJ. strained the words to meet that case” (per Kindersley, V. C., *Re Eastern Counties Ry*, 6 W. R. 492). In that latter case it was held that Costs “CONSEQUENT” on a Conveyance of land compulsorily taken, did not include Fines on Copyholds which had to be purchased for the re-investment of the money paid on the conveyance

Costs to abide (or follow) the Event; *V.* EVENT.

"Judgment with Costs"; *V.* JUDGMENT.

"Costs and all other Matters"; *V.* MATTER.

"Costs of Assizes and of Quarter and Petty Sessions"; *V.* Loc Gov Act, 1888, s. 100.

"Costs of Maintenance," of Criminal Lunatic; *V.* 47 & 48 V. c. 64, s. 16.

*V.* as to Costs generally Ord. 65, R. S. C., on *whv* Ann. Pr.: Chitty's Practice, ch. 23: Ann. Co. Co. Pr. Part 5, ch. 4: Morgan & Wurtzburg on Costs: Gray on Costs: Cordery on Solicitors, 259: Incorporated Law Society's Digest of Decisions and Opinions under Solicitors Remuneration Order, 1898: 3 Encyc. 468-517.

**COSTS AND CHARGES.**—The "Costs and Charges of executing" a Will, do not include Fines payable by devisees of copyholds (*Cole v. Jealous*, 5 Hare, 51).

In the phrase "Costs, Charges, and Expenses," "Charges and Expenses" are obviously wider than technical "Costs":—As the phrase is used in ss. 21 (10), 46 (6), Settled Land Act, 1882; *V. Re Smith*, 1891, 3 Ch. 65; 60 L. J. Ch. 613; 64 L. T. 821; 39 W. R. 590:—As to what is included in the phrase generally; *V. Harvey v. Olliver*, 57 L. T. 239; *Re Mansel*, 33 W. R. 727; 54 L. J. Ch. 883; 52 L. T. 806; *Re Bennett*, 1896, 1 Ch. 778; 65 L. J. Ch. 422; 74 L. T. 157; 44 W. R. 419.

*V.* COSTS: MONEY, COSTS, CHARGES, AND EXPENSES: INCIDENTAL: PROPERLY: IN THE CONDUCT OF A SUIT: PROFESSIONAL CHARGES.

**COSTS IN THE CAUSE.**—" 'Costs in the Cause,' properly so called, are those costs only which the successful party in the suit would be entitled to on taxation in the absence of an Order to the contrary in the particular proceeding; and this, necessarily, excludes costs incurred subsequently to final judgment" (*Thompson v. Parish*, 5 C. B. N. S. 691, *n*).

*Vf, Pugh v. Kerr*, 6 M. & W. 17; 9 L. J. Ex. 255: COSTS OF THE CAUSE.

**COSTS OF CONVEYANCE.**—"Costs of Conveyances," s. 82, Lands C. C. Act, 1845, includes the costs of registering the Vendor's title pursuant to the Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66 (*Re Belfast & N. Counties Ry*, 1895, 1 I. R. 297).

**COSTS OF EXECUTION.**—*V.* EXECUTION.

**COSTS OF LEASE.**—The Lessor's Solr prepares the Lease, and the Lessee pays for it (*Grissell v. Robinson*, 3 Sc. 329; 5 L. J. C. P. 313; 3 Bing. N. C. 10). But neither on that general custom, nor on a

specific agreement by the lessee to pay the costs of the lease, is the lessee liable for the costs of the Counterpart, because that is "for the security of the lessor" (*Jennings v. Major*, 8 C. & P. 61). But, would the ruling in the latter case apply to the Counterpart of a lease by a Tenant for Life under s. 6, Settled Land Act, 1882, seeing that by subs. 4 "a counterpart of every lease shall be executed by the lessee and delivered to the tenant for life"?

**COSTS OF REALIZATION.**—*V.* REALIZATION.

**COSTS OF SUIT.**—*V.* SUIT.

**COSTS OF SUMMONING JURY.**—"Costs of summoning jury and expenses of witnesses" to be payable by a Railway on a Compensation Assessment, *semble*, does not include the general costs of the enquiry (*R. v. Gardner*, 6 L. J. K. B. 130; 6 A. & E. 112; 1 N. & P. 308).

**COSTS OF THE CAUSE.**—*V.* *Rigby v. Okell*, 7 B. & C. 57; *Baines v. Bromley*, 50 L. J. Q. B. 465; 6 Q. B. D. 691; 44 L. T. 915; 29 W. R. 706; *Sparrow v. Hill*, 29 W. R. 705; 44 L. T. 917: COSTS IN THE CAUSE.

**COSTS OF THE REFERENCE.**—*V.* REFERENCE.

**COSTS ONLY.**—S. 49, Jud. Act, 1873; *V.* COSTS: Ann. Pr., Ord. 65, R. 1.

**COTTAGE.**—"‘Cottage,’ is a little house for habitation of poore men, without any land belonging unto it; whereof mention is made in 4 Edw. 1, c. 1" (Termes de la Ley). "Cottage, *cotagium*, is a little house without land to it" (Co. Litt. 56 b). "By the grant of a cottage, doth pass a little DWELLING-HOUSE that hath no land belonging to it" (Touch. 94); with which agrees the definition in *Doe v. Sotheron* (2 B. & Ad. 638), that, "A cottage is a small dwelling-house." *Cp* BORDARI. In *Doe d. Hubbard v. Hubbard* (20 L. J. Q. B. 61; 15 Q. B. 227), it was held that the word "Cottage" was satisfied by a tenement partitioned off from a larger cottage and having a separate entrance, though not including an upper room under the same roof (1 Jarm. 781).

Devise of "Cottage with the Garden"; *V.* GARDEN.

By 31 Eliz. c. 7, a lawful cottage must have had 4 acres of land attached to it, consequently Levaney and Couchaney was well alleged of a "Cottage," without more (*Emerton v. Selby*, 2 Ld Raym. 1015; Salk. 169; *Vth, Scholes v. Hargreaves*, 5 T. R. 46). But that statute was repealed by 15 G. 3, c. 32.

Quà Part 3, Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, "‘Cottage’ may include a Garden of not more than half an acre,

provided that the estimated ANNUAL VALUE of such garden shall not exceed £3" (s. 53 (2), replacing a similar def in s. 13, 48 & 49 V. c. 72).

Quà Agricultural Rates Act, 1896, 59 & 60 V. c. 16, " 'Cottage,' means, a house occupied as a Dwelling by a person of the LABOURING CLASSES " (s. 9). *V.* WORKING CLASSES.

**COTTAGE GARDEN.** — Quà Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 V. c. 26, " 'Cottage Garden' means, an Allotment attached to a COTTAGE " (s. 4). *V.* GARDEN.

**COTTAR.** — Quà Crofter's Holdings (Scot) Act, 1886, 49 & 50 V. c. 29; *V.* s. 34. *Cp* CROFTER.

**Lord COTTENHAM'S ACTS.** — 10 & 11 V. c. 96; 12 & 13 V. c. 74: repealed and replaced by the Trustee Act. 1893.

**COTTON.** — " Cotton Cloth Factory "; Stat. Def., 52 & 53 V. c. 62, s. 4.

Cotton Fabric; *V.* *Whymper v. Harney*, 18 C. B. N. S. 243; 34 L. J. M. C. 113.

**COTUCAMI: COTARII: COTERELLI.** — *V.* BORDARII.

**COUCHANCY.** — *V.* LEVANT AND COUCHANT.

**COUGH.** — " Cough," in a Life Insrce Proposal, means, " a Cough proceeding from the Lungs " (per Alderson, B., *Geach v. Ingall*, 14 M. & W. 101).

**COULD.** — Action which " could have been commenced in a County Action," s. 116, Co. Co. Act, 1888; *V.* ss. 56-60 *Ib.*, on *whv* PERSONAL ACTION: DEBT: DAMAGE: TITLE: TOLL: FAIR: FRANCHISE: LIBEL: ADMITTED SET OFF: CLAIMED: LEGACY: ANNUAL VALUE: VALUE: RENT: Ann. Pr., sub Co. Co. Act, 1888: Ann. Co. Co. Pr., Part 2, ch. 1. The words mean, " could have been *properly* commenced, both as regards Quality and Amount," irrespective of the plt's Indorsement on his Writ (*Solomon v. Mulliner*, 83 L. T. 493).

**COUNCIL.** — " Council " defined according to the subject-matter of the Act; *V.* 7 & 8 V. c. 31, s. 36; 18 & 19 V. c. 57, s. 4, c. 121, s. 2; 29 & 30 V. c. 90, s. 57; 48 & 49 V. c. 60, s. 1; 53 & 54 V. c. 66, s. 2. — *Scot.* 15 & 16 V. c. 32, s. 1. — *Ir.* 15 & 16 V. c. 30, s. 14; 19 & 20 V. c. 98, s. 2; 29 & 30 V. c. 44, s. 2; 53 & 54 V. c. 48, s. 3.

" The Council of a BOROUGH," in s. 310, P. H. Act, 1875, as in other sections of the Act. means, " The Mayor, Aldermen, and Burgesses acting by the Council " (*Hyde v. Bank of Eng.*, 51 L. J. Ch. 747; 21 Ch. D. 176). *Vf.* *R. v. York*, 2 Q. B. 850; 11 L. J. Q. B. 127; 2 G. & D.



105. Stat. Def., 20 & 21 V. c. 81, s. 29. — *Ir.* 35 & 36 V. c. 33, Sch; 51 & 52 V. c. 25, s. 55.

“Council of a COUNTY”; “County Council,” *V.* 61 & 62 V. c. 29, s. 17. *Note*: County Councils were established by *Loc Gov Act*, 1888.

“Council of a County, or Borough”; *V.* 55 & 56 V. c. 43, s. 25; 56 & 57 V. c. 67, s. 3.

“Council of any County Borough”; *V.* 56 & 57 V. c. 56, s. 9.

“Council of DISTRICT”; *V.* 60 & 61 V. c. 43, s. 8.

*V.* GENERAL COUNCIL: PARISH COUNCIL.

**COUNCILLOR.** — In some Acts relating to Ireland, “Councillor” is made to include an Alderman, *e.g.* 42 & 43 V. c. 53, s. 2; 47 & 48 V. c. 34, s. 2.

**COUNSEL.** — *V.* AS COUNSEL SHALL ADVISE.

Qua Criminal Procedure Act, 1865, 28 & 29 V. c. 18, “‘Counsel’ shall be construed to apply to ATTORNEYS in all cases where attorneys are allowed by law, or by the practice of any Court, to appear as advocates” (s. 9).

*V.* BARRISTER.

**COUNSEL OR PROCURE.** — “Fagin (ch. 47, *Oliver Twist*) after getting Sikes to say he would murder any one who should betray him, wakes up Noah Claypole and makes him tell Sikes that the girl Nancy had betrayed him, and, as Sikes rushes out in a passion, says, ‘You won’t be too violent, Bill; I mean not too violent for safety.’ I think that the whole conversation taken together would be evidence to go to a jury, that Fagin did ‘counsel’ or ‘procure’ the murder committed by Sikes, which would make him an ACCESSORY before the Fact; but if he had confined himself to merely telling Sikes what Claypole said he had heard, it would not have been enough” (Steph. Cr. 152, *n*). *Vf*, *Howells v. Wyne*, 32 L. J. M. C. 241; 15 C. B. N. S. 3; Arch. Cr. 15–18.

“Aid, abet, counsel, or procure” an Offence, s. 5. *Sum Jur Act*, 1848; *V. Benford v. Sims*, 1898, 2 Q. B. 641; 67 L. J. Q. B. 655; 47 W. R. 46; 78 L. T. 718. In that case Ridley, J., said that, probably, that phrase was used in a less strict sense than “CAUSE, or procure” in s. 2, *Cruelty to Animals Act*, 1849. *Vf* CAUSE OR PROCURE. “There may be an Offence which would justify the use of all those four words” (per Channell, B., *Re Smith*, 3 H. & N. 238).

*Cp* AID OR ABET.

**COUNT.** — “Count, *i.e.* *narratio*, cometh of the French word *conte*, which in *Latyne* is *narratio*, and is vulgarly called a declaration” (Co. Litt. 17 a). *Vf*, *Termes de la Ley*: *Gell v. Burgess*, 18 L. J. C. P. 153; 7 C. B. 16.

**COUNTER-CLAIM.** — *V.* SET-OFF.

**COUNTERFEIT COIN.** — “ ‘Counterfeit COIN’ means coin not genuine, but resembling or apparently intended to resemble, or pass for genuine coin; and includes genuine coin prepared or altered so as to resemble or pass for a coin of a higher denomination ” (Steph. Cr. 310, stating the definition in s. 1, 24 & 25 V. c. 99). A genuine coin, fraudulently reduced in weight by the removal of the milling and which has received a new milling in order to restore its appearance, is a counterfeit coin (*R. v. Hermann*, 48 L. J. M. C. 106; 4 Q. B. D. 284; 27 W. R. 475; 40 L. T. 263). *Vf*, Arch. Cr. 914: FALSE COIN.

**COUNTERPART.** — *V.* DUPLICATE: COSTS OF LEASE.

**COUNTING-HOUSE.** — A Solr's Office is a “Counting-House,” within s. 9, 5 & 6 W. 4, c. 76 (*Re Creek*, 3 B. & S. 459; 32 L. J. Q. B. 89; 11 W. R. 234). *Cp*, OFFICE.

A “Counting-House,” to qualify for the Parliamentary Franchise, s. 27, Rep People Act, 1832, need not be an entire building, or be structurally severed from the rest of the building of which it forms part (*Piercy v. Muclean*, L. R. 5 C. P. 252; 39 L. J. C. P. 115). But “I should be inclined to confine the operation of the word to places used as such by Mercantile Men” (per Pennefather, B., *Re Armstrong*, 1 Cr. & Dix, 274, 275, on the word as used in s. 5, Rep People (Ir) Act, 1832). *Note*: s. 27, Rep People Act, 1832, repealed by 48 & 49 V. c. 3.

**COUNTRY.** — “Foreign Country”; *V.* FOREIGN.

“Country of Origin”; *V.* PRODUCED.

“Country,” defined according to the subject-matter of the Act; *V.* 36 & 37 V. c. 22, s. 2; 38 & 39 V. c. 60, s. 4; 39 & 40 V. c. 22, s. 6, c. 45, s. 3.

**COUNTY.** — “*Countie* is fetched from the French, and *shire* from the Saxon. For *scyran* in the Saxon tongue signifieth *partiri*, because everie countie or shire is divided and parted by certaine metes and bounds from another, and in *Latine* is called *comitatus à comitando*, for accompanying together” (Co. Litt. 50 a). *Vf* Termes de la Ley, *Countie*, *Hundred*.

In Acts of Parliament passed after 1850 and before 1st Jan 1890, “ ‘County’ shall, unless the contrary intention appears, be construed as including a County of a City, and a County of a Town ” (s. 4, Interp Act, 1889; *Vf* s. 4, 13 & 14 V. c. 21). “County” has this extended meaning in s. 38, 4 & 5 W. 4, c. 76 (*R. v. Pearce*, 49 L. J. M. C. 81; 5 Q. B. D. 386).

In every Act relating to Scotland, “Shire” or “County” includes a Stewartry (s. 7, Interp Act, 1889).

The word "County" is used in s. 13, Highways and Locomotives Amendment Act, 1878, 41 & 42 V. c. 77, in its ordinary geographical sense; and is not narrowed by the definition of "County" in s. 2, Highway Act, 1862, 25 & 26 V. c. 61 (*Over Darwen v. Lancashire*, 54 L. J. M. C. 51; 15 Q. B. D. 20; 51 L. T. 739). "County," s. 51, 15 & 16 V. c. 81; *V. R. v. East Looe*, 31 L. J. M. C. 245; 3 B. & S. 20.

"Counties, Ridings, and Divisions"; *V. Evans v. Stevens*, 4 T. R. 459; *R. v. Isle of Ely*, 15 Q. B. 827; 19 L. J. M. C. 223.

Notwithstanding the general def of "County" in s. 4, 13 & 14 V. c. 21, verbally varied and concluded by the Interp Act, 1889, as above stated, the statutory definitions of the word are very numerous. The particular def will generally be found in the Interp Clause of the Act in which the word occurs and varying according to the subject-matter of the Act. The definitions vary widely: thus, in the Geological Survey Act, 1845, 8 & 9 V. c. 63, "'County' shall be taken to include Hundred, City, Borough, Town, Town-land, Parish, Burghs, Royal Parliamentary Burghs, Burghs of Regality and Barony, Extra-parochial and other Places, Districts, and Divisions, by whatsoever denomination the same respectively shall be known or called" (s. 6); on the other hand in the Licensing Act, 1872, "'County,' does not include a County of a City or a County of a Town but, means any County, Riding, Parts, Division, or Liberty of a County, having a separate Commission of the Peace and a separate Court of Quarter Sessions" (s. 74).

"Administrative County"; *V. ADMINISTRATIVE.*

"County, City, Borough, or Place"; *V. 3 & 4 V. c. 54, s. 8.*

"County COUNCIL"; *V. 51 & 52 V. c. 54, s. 14; 52 & 53 V. c. 40, s. 16; 54 & 55 V. c. 40, s. 52, c. 76, s. 141; 55 & 56 V. c. 31, s. 20; 56 & 57 V. c. 73, s. 75; 58 & 59 V. c. 32, s. 1 (2); 60 & 61 V. c. 65, s. 20 (11); 61 & 62 V. c. 29, s. 17 (1), c. 37; 62 & 63 V. c. 19, Sch.*

"County DISTRICT"; *V. Loc Gov Act, 1888, s. 100; Loc Gov Act, 1894, s. 21 (3); Loc Gov (Ir) Act, 1898, s. 22 (3).*

"County ELECTOR"; *V. 53 & 54 V. c. 68, s. 10; 55 & 56 V. c. 31, s. 20. — Scot. 55 & 56 V. c. 31, s. 21, c. 54, s. 16. Cp, PARLIAMENTARY.*

"County FUND"; *V. 61 & 62 V. c. 29, s. 17 (1). — Scot. 55 & 56 V. c. 43, s. 25; 56 & 57 V. c. 67, s. 3.*

"County Gaol"; *V. 19 & 20 V. c. 68, s. 2.*

County Infirmaries;—"The County Infirmaries (Ir) Acts, 1805 to 1833"; *V. Sch 2, Short Titles Act, 1896.*

"County Lunatic Asylum"; *V. Loc Gov Act, 1888, s. 86 (5).*

"County Occupation Franchise"; *V. Rep People Act, 1884, s. 7 (6): Cp, OCCUPATION VOTER.*

"County of a CITY," "County of a TOWN"; *Ir. 13 & 14 V. c. 69, s. 117; 31 & 32 V. c. 49, s. 25.*

"County of Cornwall"; *V. 21 & 22 V. c. 109, s. 8.*

"County of Dublin"; *V. 7 & 8 V. c. 106, s. 156.*

"County of *Durham*"; *V.* 21 & 22 *V.* c. 45, s. 1.

"County of *LONDON*"; *V.* 53 & 54 *V.* c. 70, s. 93.

"County OFFICER"; 36 & 37 *V.* c. 35, s. 3. — *Scot.* 23 & 24 *V.* c. 45, s. 9.

"County *Palatine Court*"; *V.* 13 & 14 *V.* c. 43, s. 36.

"County PETTY SESSIONAL Division"; *V.* 48 & 49 *V.* c. 23, s. 23.

"County Purpose"; *V.* GENERAL COUNTY PURPOSE.

"County *Quarter Sessional Area*"; *V.* 48 & 49 *V.* c. 15, s. 19.

"County RATES"; *V.* 8 & 9 *V.* c. 100, s. 114, c. 111, s. 24, c. 126, s. 84; 16 & 17 *V.* c. 97, s. 132; 34 & 35 *V.* c. 105, s. 2; 36 & 37 *V.* c. 35, s. 3; 47 & 48 *V.* c. 54, s. 3; 55 & 56 *V.* c. 31, s. 20. — *Scot.* 45 & 46 *V.* c. 49, s. 52; 55 & 56 *V.* c. 31, s. 21. — *Ir.* 20 & 21 *V.* c. 16, s. 2.

"County Cess and Rates"; *V.* 20 & 21 *V.* c. 11, s. 2.

"County Surveyor"; *Ir.* 11 & 12 *V.* c. 1, s. 21; 14 & 15 *V.* c. 92, s. 25; 39 & 40 *V.* c. 65, s. 6.

"County Treasurer"; *Ir.* 54 & 55 *V.* c. 48, s. 42.

*Vf.* COUNTY AUTHORITY: COUNTY BOROUGH: COUNTY BRIDGE: COUNTY COURT: COUNTY SOLICITOR: PARLIAMENTARY: SPECIAL.

*V.* Glen on County Government.

**COUNTY AUTHORITY.** — The Recorder of a Borough when in session, is the "County Authority" over the roads extending from the County into the Borough, within s. 13, 41 & 42 *V.* c. 77 (*R. v. Dover*, 32 *W. R.* 876; 49 *J. P.* 86).

Prior to the *Loc Gov Act*, 1888, "County Authority," was generally defined as, the Justices of a County in General or Quarter Sessions assembled; *V.* 36 & 37 *V.* c. 35, s. 3; 41 & 42 *V.* c. 77, s. 38; 44 & 45 *V.* c. 14, s. 6; 47 & 48 *V.* c. 54, s. 3. Since the *Loc Gov Act*, 1888, and by virtue of s. 3 thereof, the phrase means, the County Council.

**COUNTY BOROUGH.** — Quà *Loc Gov Act*, 1888, a "County Borough" is one of those mentioned in Sch 3 of the Act, if, on 1st June 1888, it "either had a population of not less than 50,000, or was a COUNTY of itself"; and it is an "ADMINISTRATIVE County" (s. 31). Boroughs not mentioned in that Sch "having a population of not less than 50,000" may be constituted a County Borough by a Provisional Order of *Loc Gov Board*, confirmed by Parliament (subss. 1, 3, s. 54).

Other Stat. Def. — *Lunacy Act*, 1890, s. 341.

**COUNTY BRIDGE.** — "County Bridge" is not a legal term"; "in reality it is only a compendious term for a PUBLIC BRIDGE" (*per*

Bovill, C. J., *R. v. Chart*, 39 L. J. M. C. 109; L. R. 1 C. U. R. 237; *Vf*, Glen on Highways, 2 ed., 111; Woolrych on Ways, 2 ed., 341-346: BRIDGE.

**COUNTY COURT.** — “ ‘County Court,’ *Curia Comitatus*, by Lambert is otherwise called *Conventus*, in his Explication of Saxon words, and divided into two sorts; one retaining the general name as the County Court, held every moneth by the Sheriff, or his deputy the Under-sheriff, whereof you may read in Crompt. Juris. fol. 231: the other called the Turn, held twice every year” (Cowel). *Vf*, *Re Flint*, cited “Court of Law,” sub COURT. In Acts of Parliament passed since 1846, “the expression ‘County Court’ shall, unless the contrary intention appears, mean, as respects England and Wales, a Court under the County Courts Act, 1888” (s. 6, Interp Act, 1889).

In all Acts passed after the 31st Dec 1889, “ ‘County Court,’ shall, as respects Ireland, mean a Civil Bill Court within the meaning of the County Officers and Courts (Ireland) Act, 1877” (s. 29, *Ib.*); prior to that date, *V*. 35 & 36 V. c. 33, Sch s. 66; c. 60, s. 28; 38 & 39 V. c. 90, s. 15.

“County Court,” as used in s. 36, Solrs Act, 1843, means, the ancient County Court (*R. v. Brompton Co. Co. Judge*, 1893, 2 Q. B. 195; 62 L. J. Q. B. 606).

But usually in modern Acts “County Court” is defined to mean the modern Co. Co., including also the City of London Court, and the Judge and Registrar of the Court; *V*. Co. Co. Act, 1888, s. 186; 46 & 47 V. c. 61, s. 61; 30 & 31 V. c. 142, s. 35. In Scotland it, usually, means the Sheriff Court; *V*. 35 & 36 V. c. 33, Sch s. 65; 38 & 39 V. c. 60, s. 4, c. 90, s. 14; 39 & 40 V. c. 45, s. 3, c. 75, s. 21; 41 & 42 V. c. 16, s. 105; 59 & 60 V. c. 25, s. 102. *Vf* COURT.

“The County Courts (Ir) Acts, 1851 to 1889”; *V*. Sch 2, Short Titles Act, 1896.

“County Court *Judge*,” quâ the Army Discipline Acts, means, in Scotland, the Sheriff or Sheriff Substitute; in Ireland, the Judge of the Civil Bill Court (42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 58, s. 190, subs. 37). *Vf*, quâ Scotland, 39 & 40 V. c. 80, s. 41; 50 & 51 V. c. 58, s. 76; Mer Shipping Act, 1894, s. 487 (6):— quâ Ireland, Mer Shipping Act, 1894, s. 610 (9); 39 & 40 V. c. 75, s. 22:— quâ Isle of Man, Mer Shipping Act, 1894, s. 487 (8). *Vf* JUDGE.

“County Court *Registrar*”: *V*. quâ Scotland, Mer Shipping Act, 1894, s. 487 (6); 39 & 40 V. c. 80, s. 41; 50 & 51 V. c. 58, s. 76:— quâ Ireland, 36 & 37 V. c. 52, s. 7; 39 & 40 V. c. 80, s. 42; 50 & 51 V. c. 58, s. 77.

**COUNTY SOLICITOR.**—There is no official in Ireland who is called the “County Solicitor”; but that phrase is used in s. 115, Loc

Gov (Ir) Act, 1898 (taken from s. 118 (13), Loc Gov Act, 1888), and there it means, the Solr for the Grand Jury of a County (*R. v. Wicklow Co. Co.*, 1900, 2 I. R. 351).

**COURSE.** — “Of course legatee will give”; *V. PRECATORY TRUST.*

“In a Course of Entail to CORRESPOND”; *V. Sackville-West v. Holmesdale*, L. R. 4 H. L. 543; 39 L. J. Ch. 505.

*V. IN THE COURSE.*

“Keep her Course,” Art. 22, Sailing Rules, refers to the direction of the vessel’s head, and not to her speed (*The Beryl*, 9 P. D. 4; 53 L. J. P. D. & A. 75; *Vthe, The Oporto*, 1897, P. 249; 66 L. J. P. D. & A. 49); *Vf*, Abbott, 856, 857. As to “Keep her Course” in a winding River, *V. The Velocity*, 39 L. J. Adm. 20; L. R. 3 P. C. 44; 21 L. T. 686; 18 W. R. 264.

**COURT.** — “*Curia*, Court, is a place where justice is judicially ministered, and is derived à *cura, quia in curiis publicis curas gerebant*” (Co. Litt. 58 a); therefore, Justices at a Licensing Meeting are not a “Court” at all (*Boulter v. Kent Jus.*, 1897, A. C. 556; 66 L. J. Q. B. 787; 77 L. T. 288; 61 J. P. 532; 46 W. R. 114). *Vf* LEGAL PROCEEDINGS. A Poor Rate Assessment Committee is not a “Court” and cannot refuse to hear the Agent of a ratepayer (*R. v. St. Mary Abbots*, 1891, 1 Q. B. 378; 60 L. J. M. C. 52; 64 L. T. 240; 55 J. P. 502; *Cp*, HIMSELF). Is a Borough Court, established by Charter for recovery of debts and damages in personal actions and for ejections, a “Court” within 7 & 8 V. c. 19? — *V. Tarrant v. Baker*, 14 C. B. 199; 23 L. J. C. P. 21.

Quà the Absolute Privilege for Slander, “Court” is not confined to “a Place where justice is judicially ministered.” “A Court may perform various functions. The Court of Parliament is a Court, although many of its functions are not judicial. The Members are, however, entitled to absolute immunity for words there spoken. There are other Courts which are not Courts of Justice, but which are rather Courts of Investigation, e.g. a Coroner’s Court. The question does not, therefore, depend upon whether the TRIBUNAL is a Court of Justice, but upon whether it is a Court. If it is a Court, the absolute immunity exists” (per Fry, L. J., *Royal Aquarium v. Parkinson*, 1892, 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. 513; 40 W. R. 450; 56 J. P. 404). The London County Council, when hearing applications for Music and Dancing Licenses (and, *semble*, Justices when dealing with merely administrative business) are not a Court, quà this privilege (*S. C.*); but a Court Martial is such a Court (*Dawkins v. Rokoby*, 45 L. J. Q. B. 8; L. R. 7 H. L. 744). *Vf* JUDICIAL PROCEEDING.

Court *Baron*; *V.* 4 Rep. 26; 2 Bl. Com. 90; Court *Leet*; *V. LEET.*

A power appertaining to the High Court and which is exerciseable only

by "the Court," must be exercised by the Court in Banc, and not by a Judge at Chambers (*Baker v. Oakes*, cited COURT OR JUDGE).

The "Court," quâ Building Societies Acts, is (in England), the County Court; in Scotland, the Sheriff's Court; in Ireland, the Civil Bill Court (s. 4, 37 & 38 V. c. 42). The "Court," quâ the Dissolution of Industrial and Provident Societies, is the Co. Co. (s. 17 (1), 39 & 40 V. c. 45). In neither case is there any power to remove the proceedings to the High Court (*Re Real Estates Co*, 1893, 1 Ch. 398; 62 L. J. Ch. 213; 68 L. T. 24; 41 W. R. 157; *Re London & Suburban Bank*, 1892, 1 Ch. 604; 61 L. J. Ch. 316; 66 L. T. 716; 40 W. R. 326).

"Court" to which Transfer may be made of a Co's Winding-up, s. 3 (1), 53 & 54 V. c. 63, "must, necessarily, mean, a Court having jurisdiction under the Act to wind-up" (per Williams. J., *Re Real Estates Co*, sup). *Vf* PROCEEDING.

"Court," s. 125, Bankry Act, 1883; *V.* CONTEXT.

"Court," s. 7 (5), Comp Act, 1880; *V.* *Re City Lands Corp*, W. N. (97) 162.

The Justices' "Court," to which application is to be made for a Special Case, s. 33, Sum Jur Act, 1879, means, all the Justices who took part in the decision to be questioned (*South Staffordshire W. W. Co v. Stone, Lockhart v. St. Albans*, and *Westmore v. Paine*, all cited COURT OF SUMMARY JURISDICTION).

The "Court," as defined in s. 4, Parliamentary Elections (Returning Officers) Act, 1875, 38 & 39 V. c. 84, does not exclusively mean the Judge, but includes also the Registrar, or other proper officer in daily attendance, whose duty it is to bring the matter before the Judge (*R. v. Bloomsbury Co. Co.*, 55 L. J. Q. B. 443; 17 Q. B. D. 788; 54 L. T. 616).

In the Victorian Acts there are upwards of 80 definitions of "The Court," each being in accordance with the subject-matter of the Act, and each, in almost all cases, to be found in the Act's Interp Clause, — *e.g.* "The Court,' means, the Court having jurisdiction in Bankruptcy under this Act" (s. 168, Bankry Act, 1883); " 'The Court,' means, the Court, Judge, Arbitrator, Persons or Person, before whom a Legal proceeding is held or taken" (s. 10, Bankers' Books Evidence Act, 1879, 42 & 43 V. c. 11); " 'The Court,' in relation to any Proceeding, includes any Magistrate, or Justice, having jurisdiction in the matter to which the Proceeding relates" (s. 742, Mer Shipping Act, 1894).

"Court of Admiralty"; *V.* 26 & 27 V. c. 116, s. 3; 32 & 33 V. c. 91, s. 3; 33 & 34 V. c. 90, s. 30. — *Ir.* 30 & 31 V. c. 114, s. 2. "Vice-Admiralty Court," 17 & 18 V. c. 18, s. 3, c. 19, s. 3; 26 & 27 V. c. 24, s. 2; 36 & 37 V. c. 88, s. 2. "Vice-Admiralty Prize Court," 27 & 28 V. c. 25, s. 3.

"Court of Appeal"; *V.* Interp Act, 1889, s. 13 (2).

"Court of Appeal in Chancery"; *V.* Jud. Act, 1873, s. 100; Land Transfer Act, 1875, 38 & 39 V. c. 87, s. 4.

"Court of Assize"; *V.* Interp Act, 1889, s. 13 (4).

"Court of Bankruptcy"; *V. sup.* — *Ir.* 40 & 41 V. c. 57, s. 3; 51 & 52 V. c. 44, s. 3.

"British Slave Court"; *V.* 36 & 37 V. c. 88, s. 2.

Court of Chancery; *V.* 11 & 12 V. c. 94, s. 46; 12 & 13 V. c. 109, s. 50; 16 & 17 V. c. 137, s. 27; 23 & 24 V. c. 83, s. 1; 30 & 31 V. c. 127, s. 3; 32 & 33 V. c. 91, s. 3; 33 & 34 V. c. 71, s. 3; 35 & 36 V. c. 44, s. 3; 38 & 39 V. c. 87, s. 4. — *Ir.* 20 & 21 V. c. 79, s. 2; 25 & 26 V. c. 46, s. 2; 40 & 41 V. c. 56, s. 7: *Re McClintock*, 10 *Ir. Ch. Rep.* 469.

"Civil Court," quæ Army Acts, "means, with respect to any Crime or Offence, a Court of ordinary Criminal jurisdiction, and includes a Court of Summary Jurisdiction" (s. 190 (31), 44 & 45 V. c. 58; s. 181, 42 & 43 V. c. 33).

"Civil Bill Court"; *Ir.* 27 & 28 V. c. 99, s. 3; 40 & 41 V. c. 56, s. 7. *Vf*; COUNTY COURT.

"Court of Common Pleas"; *Ir.* 40 & 41 V. c. 57, s. 3.

"Court of Competent Jurisdiction"; *V.* 34 & 35 V. c. 41, s. 4; 42 & 43 V. c. 64, s. 9. *Vf* COMPETENT.

*V.* COUNTY COURT: ECCLESIASTICAL COURT: ELECTION.

"Court of Exchequer"; *Ir.* 40 & 41 V. c. 57, s. 3.

"Court of Justice"; *V.* 33 & 34 V. c. 49, s. 1.

"Landed Estates Court"; *Ir.* 40 & 41 V. c. 57, s. 3.

"Court of Law"; *V.* Army Act, 1881, s. 190 (3). The Ancient County Court was a "Court of Law or Equity," within s. 9, 12 G. 2, c. 13 (*Re Flint*, 1 B. & C. 254).

"Court for Matrimonial Causes"; *Ir.* 40 & 41 V. c. 57, s. 3.

"Prerogative Court"; *Ir.* 20 & 21 V. c. 79, s. 2.

"Court of Probate"; *V.* 55 & 56 V. c. 6, s. 6. — *Ir.* 36 & 37 V. c. 52, s. 7; 40 & 41 V. c. 57, s. 3.

"Court of Quarter Sessions"; *V.* QUARTER SESSIONS.

"Court of Queen's Bench"; *V.* 20 & 21 V. c. 43, s. 1. — *Ir.* 40 & 41 V. c. 57, s. 3.

"Court for Relief of Insolvent Debtors"; *V.* Indian Insolvency Act, 1848, 11 & 12 V. c. 21, s. 92.

"Court of Session"; *Scot.* 9 & 10 V. c. 101, s. 49; 16 & 17 V. c. 94, s. 25; 25 & 26 V. c. 63, s. 51; 30 & 31 V. c. 126, s. 3; 31 & 32 V. c. 84, s. 2; 38 & 39 V. c. 49, s. 30; 40 & 41 V. c. 22, s. 3; 41 & 42 V. c. 8, s. 27; 45 & 46 V. c. 59, s. 1; 49 & 50 V. c. 27, s. 9; 55 & 56 V. c. 55, s. 4.

"Court of Session Acts, 1808 to 1895"; *V.* Sch 2, Short Titles Act, 1896.

"Sheriffs Small Debt Court"; *Scot.* 40 & 41 V. c. 28, s. 3.

"Court of Superior Jurisdiction"; *V.* Army Acts, 42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 58, s. 190 (30).

"Court of Teinds"; *Scot.* 39 & 40 V. c. 11, s. 2.



“Court House”; *Scot.* 23 & 24 V. c. 79, s. 2. *V.* OCCASIONAL.

*Vf*, COURT OF RECORD: COURT OF SUMMARY JURISDICTION: COURT OR JUDGE: HIGH COURT: INFERIOR COURT: STANNARIES: SUPERIOR COURT: SUPREME COURT: JUDGE: CONVENIENT.

**COURT OF RECORD.** — “When a case is made triable, or a penalty recoverable in a ‘Court of Record,’ the Supreme Court of Judicature alone, but not the Quarter Sessions, is intended” (Maxwell, 427, citing *Gregory’s Case*, 6 Rep. 19 b; 2 Hale, 29; Jenk. 228; *Vf*, Co. Litt. 117 b, 118 a, 260 a: 11 Encyc. 109).

As to what makes a Court of Record; *V. Kemp v. Neville*, 31 L. J. C. P. 158; 10 C. B. N. S. 523.

*V.* RECORD.

**COURT OF SUMMARY JURISDICTION.** — “The Court of Summary Jurisdiction” to whom (s. 52 (2), Licensing Act, 1872) Notice of Appeal to Quarter Sessions had to be given, meant the Convicting Justices; and a Notice directed to the Justices of the Division collectively, and served on their Clerk at his private residence, was not a compliance (*Ex p. Curtis*, 47 L. J. M. C. 35; 3 Q. B. D. 13); and the principle of that case is still applicable to a Demand for a Special Case under s. 33 (1), Sum Jur Act, 1879, and the Rule thereunder (*South Staffordshire W. W. Co v. Stone*, 56 L. J. M. C. 122; 19 Q. B. D. 168; 57 L. T. 368; 36 W. R. 76; 51 J. P. 662; *Lockhart v. St. Albans*, 57 L. J. M. C. 118; 21 Q. B. D. 188; 36 W. R. 800; 52 J. P. 420; *Westmore v. Paine*, 1891, 1 Q. B. 482; 60 L. J. M. C. 89). *Note*, that, generally, Notice of Appeal (other than from Licensing Justices, *Boulter v. Kent Jus.*, cited COURT, over-ruling *R. v. Glamorganshire Jus.*, 1892, 1 Q. B. 621; 61 L. J. M. C. 169) is now to be served on the Clerk to the Justices (s. 31 (2), Sum Jur Act, 1879; s. 6, Sum Jur Act, 1884), and on the “Other PARTY”; but the service on the Other Party need not be personal (*R. v. Somersetshire Jus.*, 64 J. P. 341; 69 L. J. Q. B. 311).

For Stat. Def., *V. Interp Act*, 1889, s. 13 (11), consolidating, s. 50, Sum Jur Act, 1879, as amended by s. 7, Sum Jur Act, 1884: — Licensing Justices are not a “Court of Sum Jur” within this def (*Boulter v. Kent Jus.*, cited COURT). *Vf*, *Leicester Freeman v. Hewitt*, 62 L. J. M. C. 51; 68 L. T. 201; 57 J. P. 344.

Observe that the def in the Interp Act does not embrace Scotland, as regards which country, *V.* the following definitions: 38 & 39 V. c. 17, s. 109, c. 90, s. 14; 39 & 40 V. c. 45, s. 3; 41 & 42 V. c. 16, s. 105; 48 & 49 V. c. 36, s. 7; 50 & 51 V. c. 28, s. 21; 52 & 53 V. c. 44, s. 17; 53 & 54 V. c. 70, s. 96; 55 & 56 V. c. 43, s. 25, c. 64, s. 6; 56 & 57 V. c. 15, s. 3, c. 32, s. 2, c. 48, s. 3; 57 & 58 V. c. 28, s. 7, c. 41, s. 26; 59 & 60 V. c. 25, s. 102.

*Vh*, SUMMARY JURISDICTION: COMPLAINT: INFORMATION: CONVICTION: ORDER: ACT.

**COURT OR JUDGE.**—“When the R. S. C. say ‘the Court or a Judge,’ it is understood that ‘the Court’ means, a Judge or Judges in Open Court, and ‘a Judge’ means, a Judge sitting in Chambers” (per Kay, L. J., *Re Bathe*, 1892, 1 Ch. 463; 61 L. J. Ch. 446). “It is well recognized that that phrase always includes a Judge at Chambers, unless there is some express enactment limiting the meaning of the phrase” (per Brett, M. R., *Dallow v. Garrold*, 54 L. J. Q. B. 78; 14 Q. B. D. 543; *Vf; Baker v. Oakes*, 46 L. J. Q. B. 246; 2 Q. B. D. 171; 35 L. T. 832; 25 W. R. 220; *Ex p. Norris*, 17 Q. B. D. 731; *Frea-son v. Loe*, 26 W. R. 138); but the phrase does not *per se* include a Master or District Registrar (*Lambton v. Parkinson*, 35 W. R. 545; *See*, R. 12 and 12 a, Ord. 54, R. S. C., and *Lloyd’s Bank v. Princess Royal Co*, 82 L. T. 559; 48 W. R. 427, on R. 1, Ord. 26), or a Judge at *Nisi Prius* (*Robson v. Lees*, 30 L. J. Ex. 235; 6 H. & N. 258); for, in this connection, “‘Judge’ must mean one who in himself constitutes the Court, and not a Judge sitting at *Nisi Prius*” (per Bramwell, B., *Wilson v. Hood*, 3 H. & C. 152; 33 L. J. Ex. 204).

Though by virtue of R. 12, Ord. 54, R. S. C., a Master may exercise the function of “the Court or a Judge” and decide an Interpleader in a summary manner under R. 8, Ord. 57; yet a Master is not included in the phrase “Court or a Judge” in R. 11 of the same Order (57), and accordingly there is an appeal from his decision under R. 21, Ord. 54 (*Bryant v. Reading*, 55 L. J. Q. B. 253; 17 Q. B. D. 128; 54 L. T. 524; *Webb v. Shaw*, 55 L. J. Q. B. 249; 16 Q. B. D. 658; *Cp, Re Bathe*, sup).

The “Court or Judge” to make a Charging Order on property RECOVERED OR PRESERVED, s. 28, Solrs Act, 1860, includes any Judge of the Division in which the property has been recovered or preserved (*Dallow v. Garrold*, sup); and, *semble*, a Judge sitting in Bankry (*Re Deakin*, 1900, 2 Q. B. 489; 69 L. J. Q. B. 725; 82 L. T. 776; 48 W. R. 678).

“Court or Judge,” ss. 8, 10, Solrs Act, 1870. means, the High Court or a Judge thereof, even if the agreement as to Costs relates to matters done in Petty, or Quarter, Sessions (*Re Jones*, 1896, 1 Ch. 222; 65 L. J. Ch. 191; 73 L. T. 543; 44 W. R. 146; 60 J. P. 7).

Quà Deeds of Arrangement Act, 1887, 50 & 51 V. c. 57, “‘Court, or a Judge,’ means, the High Court of Justice, and any Judge thereof” (s. 19).

V. COURT: JUDGE.

**COURT OR PERSON.**—V. PERSON.

**COURSE.**—V. IN COURSE.

**COUSIN.**—The word “Cousin,” without a controlling context, means FIRST COUSIN (*Stoddart v. Nelson*, 25 L. J. Ch. 116; 6 D. G. M. & G. 68; *Stevenson v. Abington*, 31 Bea. 305; *Burbey v. Burbey*, 6 L. T.

573; 2 Jarm. 152; Wms. Exs. 964). In *Caldecott v. Harrison* (9 L. J. Ch. 331; 9 Sim. 457), Shadwell, V. C., said, "I am quite willing to admit that the word 'Cousins' is sufficiently extensive to comprehend Cousins of every description, whether they are first cousins of any degree, or second cousins, or third cousins. That is the general meaning of the word 'Cousin.'" But that dictum was *obiter*; and the actual decision in the case was that on the construction of the Will then before the Court, only first cousins were comprehended under the word "Cousins." It is therefore submitted that in view of the decisions in *Stoddart v. Nelson* and *Stevenson v. Abingdon*, sup, the dictum of V. C. Shadwell cannot be relied on: *Va*, obs. of Kay, J., *Wilks v. Bannister*, 54 L. J. Ch. 1141; 30 Ch. D. 512.

"Cousin," imports consanguinity. Yet, in a secondary sense, "Cousin" is often used to designate the husband or wife of a cousin (*Re Taylor, Cloak v. Hammond*, 56 L. J. Ch. 173; 34 Ch. D. 255; 55 L. T. 649; 35 W. R. 186; *Cp* NEPHEW). And as to the degree of kindred, *V. Wms. Exs. 355*.

For a context on which "Cousins" included those illegitimate as well as legitimate; *V. Scale-Hayne v. Jodrell*, cited RELATIONS.

#### V. SECOND COUSIN.

**COUSIN GERMAN.** — This is a synonym for FIRST COUSIN (*Saunderson v. Bailey*, 8 L. J. Ch. 18; 4 My. & C. 56).

**COVENANT.** — A "Covenant" is an Agreement by DEED between two or more persons to do one or more thing or things, or to do, or give, or to prevent, or refrain from somewhat; and it is either, (1) a Covenant *in Law* implied from the terms employed; or, (2) a Covenant *in Fact*, *i.e.* that which is expressly agreed between the parties (*Termes de la Ley*: Cowel: *Noke's Case*, 4 Rep. 80 b; *Spencer's Case*, 5 Rep. 17 a). "Although the word 'Covenant,' in its strict sense, means an Agreement *under seal*, that something has or has not already been done, or shall or shall not be done hereafter (*Touch. 160, 162*); it is sometimes, especially in Agreements, applied to any promise or stipulation, whether under seal or not (*Hayne v. Cummings*, 16 C. B. N. S. 421; 10 L. T. 341: *Va, Brookes v. Drysdale*, 3 C. P. D. 52, where the word 'Covenant,' in an Agreement, was held to include a Proviso: *Serern and Clerke's Case*, 1 Leon. 122, where 'Covenants, Articles, and Agreements,' in a Bond, included a Recital)" *Elph. 407, 408: Vj, Holles v. Carr*, 3 Swanst. 647. *Cp* CONDITION.

The old Action of Covenant lay "where a party claimed damages for breach of Covenant, *i.e.* of a promise under seal" (*Stephen on Pleading*, ch. 1). *Cp* ASSUMPSIT.

"The words 'Covenant, Grant, and Agree' that A. should have the land for so many years, are apt words to make a Lease for years, and

enure as a Lease" (*Whitlock v. Horton*, Cro. Jac. 91); so the word "Covenant" will of itself have a like effect (*Richards v. Sely*, 2 Mod. 80).

In the phrase, "Covenant, Grant, and Agree," the covenantor "covenants and agrees" for the thing he "grants" (per Ld Wensleydale, *Monypenny v. Monypenny*, 9 H. L. Ca. 147; *St*, per Ld St. Leonards, lb. 137).

"Bond, Covenant, or Instrument"; *V.* INSTRUMENT.

Covenant not to sue; *V.* RELEASE.

*V.* COMMON: USUAL: DECLARE: JOINTLY AND SEVERALLY: SEPARATE COVENANT: SIMILAR: RUN WITH THE LAND.

**COVENTRY ACT.** — 22 & 23 Car. 2, c. 1 (repealed, 9 G. 4, c. 31) — so called "from the circumstance of its having passed on the occasion of an assault made on Sir John Coventry in the street, and slitting his nose, by persons who lay in wait for him for that purpose; in revenge (as was supposed) for some obnoxious words uttered by him in Parliament" (East P. C. 394; *Vf* 4 Bl. Com. 207). *V.* SLIT.

**COVER.** — "Cover," according to its usually accepted meaning in Stock Exchange dealings, "is a DEPOSIT made with a Broker to secure him from being out of pocket in the event of the Stocks falling against his client and the client not paying the difference" (per Smith, L. J., *Re Crommire*, 67 L. J. Q. B. 623; 1898, 2 Q. B. 383); it is not deposited "to Abide the Event" of a Wager (s. 18, 8 & 9 V. c. 109), but as Security against a Debt which may arise from a GAMING CONTRACT (*Universal Stock Exchange v. Strachan*, 1896, A. C. 166; 65 L. J. Q. B. 429, *V.* judgment of Ld Herschell), and may be recovered back, if unappropriated (*Re Crommire*, sup). *Vf*, *Mundella v. Shaw*, 4 Times Rep. 253.

*V.* OPEN: INFAMOUS CONDUCT.

**COVERED.** — *V.* LAND COVERED WITH WATER.

Covered Space; *V.* SPACE.

"Covered Swimming Bath," quâ 41 & 42 V. c. 14, means, "a swimming bath protected by a roof, or other covering, from the weather" (s. 1).

**COVERING.** — Quâ Merchandize Marks Act, 1887, 50 & 51 V. c. 28, "Covering," includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper" (s. 5, subs. 2).

Covering Deed; *V.* DEBENTURE.

"Covering Note" is a phrase sometimes applied to a SLIP.

**COVERS.** — In a Clause in a Railway Act enabling the Co to charge "for providing Covers for minerals, goods, articles, or animals," "pro-

viding covers" includes not only the supply of sheets, but the cost of the labour of covering the waggons with them (*Coron v. N. E. Ry*, 4 B. & Macn. 284). *Vf*, *Hull v. L. B. & S. Ry*, cited INCIDENTAL.

**COVERT.**—Feme Covert; *V. FEME: COVERTURE.*

*V. POUND: OVERT.*

**COVERTURE.**—“‘Coverture’ is when a man and a woman are married together; now whatsoever is done concerning the Wife in the time of the continuance of this marriage betweene them is said to be done ‘during the Coverture,’ and the Wife is called, a Woman Covert” (Termes de la Ley). *Vh*, *Hooker v. Boggs*, 63 Ill. 162.

*V. DURING: DISCOVER: FEME.*

**COVINE.**—“‘Covine,’ *corina*, commeth of the French word, *covrine*, and is a secret assent determined in the hearts of two or more to the defrauding and prejudice of another” (Co. Litt. 357 a, b: *Vf*, Termes de la Ley: *Wimbish v. Tailbois*, Plowd. 54: *Girdlestone v. Brighton Aquarrium*, 3 Ex D. 142; 4 Ib. 107; 48 L. J. Ex. 373). *Cp* DECEIT.

“Fraudulent, or Covinous,” Conveyance, within Statutes of Eliz.; *V. GOOD: VALUABLE.*

**COWHOUSE.**—*V. CATTLE-SHED.*

**COWKEEPER.**—A. had a farm of 104 acres cultivated so that no live stock was required to be kept by him on it; he kept 4 cows solely for the purpose of making a profit by their milk and calves; held, he was not a “Cowkeeper” within the late Bankruptcy definition of “Trader” (*Exp. Dering, Re Cramp*, 16 L. J. Bank. 3; 1 D. G. 398: *Vf*, *Bell v. Young*, 24 L. J. C. P. 66; 15 C. B. 524). *V. DAIRY.*

**CRAFT.**—*V. Tisdell v. Combe*, 7 L. J. M. C. 48; 7 A. & E. 788; *Blanford v. Morrison*, 15 Q. B. 724; 19 L. J. Q. B. 533; *Reed v. Ingham*, 23 L. J. M. C. 156; 3 E. & B. 889; *Russell & Erwin Co v. Lodge*, 6 Times Rep. 353.

*V. BOAT: WHERRY: RISK OF CRAFT.*

**CRANAGE.**—Is a customary due “for the taking up or lading on a Ship any goods or merchandize by” a Crane (Hale, de Portibus Maris, ch. 6). *Vf* Termes de la Ley.

**Lord CRANWORTH'S ACTS.**—Court of Probate Act, 1857, 20 & 21 V. c. 77:

Endowed Schools Act, 1860, 23 V. c. 11:

For giving powers to Trustees and Mtgees, 23 & 24 V. c. 145, repealed and replaced, as to Parts 2 and 3, by Conv & L. P. Act, 1881, and, as to Parts 1 and 4, by S. L. Act, 1882.

**CRAVE LEAVE TO REFER.** — A Pleading which “craves leave to refer” to a document when produced, *semble*, does not admit the document (*Barnard v. Wieland*, 30 W. R. 947: *Vf*, *Smith v. Buchan*, 36 W. R. 631).

**CREATE.** — An INSTRUMENT may “create” a Trust without conveying the corpus of the trust to the trustee (*R. v. Fletcher*, L. & C. 193, 199, 205).

The “Creation” of Debenture Stock, s. 30, Comp C. Act, 1863, occurs when the Resolution authorising its issue and prescribing its conditions is passed; not at the time of its actual issue (*Re Burry Port Ry*, 54 L. J. Ch. 710; 33 W. R. 741; 52 L. T. 842).

**CREDIBLE WITNESS.** — The person to whom a bail-bond was assigned was not a “Credible Witness” of the assignment within 4 & 5 Anne, c. 16, s. 20 (*White v. Barrack*, 5 L. J. Ex. 167; 1 M. & W. 424).

A person to whom an estate is appointed, even though by way of Remainder; held, not a “Credible Witness” to the execution of the appointment (*Doe d. Daniel v. Keir*, 4 M. & R. 101: *Vf*, *Smith v. Blackham*, 1 Salk. 283); but a person who is appointed Guardian, is a “Credible Witness” to the appointment, within s. 8, 12 Car. 2, c. 24 (*Morgan v. Hatchell*, 24 L. J. Ch. 135; 19 Bea. 86; 3 W. R. 126; 24 L. T. O. S. 167).

As to who was a “Credible Witness” to the alteration of a Will within the Statute of Frauds; *V. Hilliard v. Jennings*, Raym. Ld. 505; *Holdfast v. Dowsing*, 2 Stra. 1253; *Wyndham v. Chetwynd*, 1 Bl. W. 95.

V. WITNESS.

**CREDIT.** — A Guarantee that “if you give A. *credit*, we will be responsible that his payments shall be *regularly made*,” is a CONTINUING GUARANTEE, and means, “if you trust” him, the “credit” to be given him is to be a fair and reasonable credit as between the parties, and not such as is merely customary in the trade (*Simpson v. Manley*, 2 Cr. & J. 12), in *which* Bolland, J., said that the Guarantee was for “the payment for such goods as should be advanced on credit”; “regularly made” means, “regularly made according to the terms to be agreed upon, and not according to the terms of the trade” (per Lyndhurst, C. B., *ib.*).

*Vf*, *Martin v. Wright*, 6 Q. B. 917; 14 L. J. Q. B. 142: GIVEN.

The chief ingredient in the offence of a Bankrupt who “has obtained any property on Credit, and has not paid for the same,” s. 11 (13), Debtors Act, 1869, is obtaining the property; for though the subs. provides that it is to be “by False Representation, or other Fraud,” yet (per Wills, J.) such False Representation or other Fraud is “a mere piece of the evidence necessary to constitute the offence”; and, whether that be so or no, it is not necessary that the false representation or fraud should have been made or done within the jurisdiction (*R. v. Ellis*, 1899, 1 Q. B.

230; 68 L. J. Q. B. 103; 79 L. T. 532; 47 W. R. 188; 62 J. P. 838).  
*Vf*, s. 13 (1) of same Act, on *who* inf.

An undischarged bankrupt "Obtains Credit" for goods, within s. 31, Bankry Act, 1883, when he obtains them and does not pay their price; although nothing may be said about credit, or any term of credit, at the time of the transaction (*R. v. Peters*, 55 L. J. M. C. 173; 16 Q. B. D. 636; 54 L. T. 545; 34 W. R. 399; 50 J. P. 631; 16 Cox, C. C. 36; *R. v. Jubby*, 3 Times Rep. 211). The intent to defraud is immaterial (*R. v. Dyson*, 1894, 2 Q. B. 176; 63 L. J. M. C. 124).

So, a customer at a Restaurant who having had his meal is without money to pay for it, does not obtain the meal by a FALSE PRETENCE, but, if there be fraud, he "has obtained Credit under False Pretences," within s. 13 (1), Debtors Act, 1869 (*R. v. Jones*, 1898, 1 Q. B. 119; 67 L. J. Q. B. 41; 77 L. T. 503; 46 W. R. 191; *Vf*, *R. v. Edwards*, 42 S. J. 472).

"Amount Standing to the Credit" of a Member in a Building Socy; *V. Durham, &c By Socy v. Davidson*, 61 L. J. Q. B. 473.

Mutual Credits; *V. MUTUAL*.

*V. ABILITY: BILL OF CREDIT*.

**CREDIT IN CASH.** — "The words 'Credit in Cash,' mean 'hold at his command,' or 'pay to him'" (per Wilde, C. J., *Eddison v. Collingridge*, 19 L. J. C. P. 268).

**CREDITOR.** — "'Creditor' signifies him that trusts another with any Debt, bee it money, wares, or other things" (Termes de la Ley); but now it is, probably, more correct to say that the general meaning of "Creditor" is, a person to whom a DEBT is payable.

In Bankry, "Creditor," generally, means a person entitled to prove in the bankry (*Grace v. Bishop*, 25 L. J. Ex. 58; 11 Ex. 424; *Re Poland*, 35 L. J. Bank. 19; 1 Ch. 356; *Woods v. De Mattos*, 35 L. J. Ex. 64; L. R. 1 Ex. 91; *Sothe, Hoggarth v. Taylor*, 36 L. J. Ex. 61; L. R. 2 Ex. 105); and does not include a mere Receiver (*Re Sucker*, 58 L. J. Q. B. 4; 22 Q. B. D. 179); *secus*, of a Sequestrator (*Re Hastings*, inf), or of a Divorce Petitioner to whom damages from a Co-Respondent have been given, although such damages may be subject to appropriation by the Court (*Re O'Gorman*, 1899, 2 Q. B. 62; 68 L. J. Q. B. 650; 80 L. T. 501; 47 W. R. 543). *Vf*, DEBT OR LIABILITY: FRAUDULENT PREFERENCE; SECURED CREDITOR.

A person claiming Unliquidated Damages was not a "Creditor," within ss. 192, 197, Bankry Act, 1861 (*Ex p. Wilmot, Re Thompson*, 2 Ch. 795; 36 L. J. Bank. 17; *Vf*, *R. v. Hopkins*, inf).

"His Crs generally," s. 4 (a), Bankry Act, 1883; *V. GENERALLY*, at end.

"The word 'Creditor,' as used in s. 4 (g), Bankry Act, 1883, is not

confined to persons who are creditors before they begin their action, but means Judgment Creditors" (per Selborne, C., *Re Faithfull, Ex p. Moore*, 54 L. J. Q. B. 190; 14 Q. B. D. 627). An Executor of the Judgment Creditor (who has obtained leave to issue execution) may serve a Bankry Notice under that section (*Re Woodall*, 53 L. J. Ch. 966; 13 Q. B. D. 479). *Vf* OBTAINED. By s. 1, Bankry Act, 1890, "any person who is, for the time being, entitled to ENFORCE a Final Jdgmt" is a "Creditor" within s. 4, just cited, on *who Re Clements*, 45 S. J. 81; 70 L. J. Q. B. 58.

A mere Equitable Assignment of a jdgmt debt does not prevent the Jdgmt Cr from issuing the Notice (*Re Palmer*, 1898, 1 Q. B. 419; 67 L. J. Q. B. 316; 77 L. T. 709; 46 W. R. 342). *Vf* FINAL JUDGMENT.

A Sequestrator is a "Creditor" within s. 9, Bankry Act, 1883 (*Re Hastings*, 61 L. J. Q. B. 654; 67 L. T. 234).

"Creditor," who has completed his Execution or Attachment, s. 45, Bankry Act, 1883; *V. EXECUTION.*

In s. 48, Bankry Act, 1883, "Creditor" includes, any person who, at the date of the preferential act, would have had to come in and prove and rank with the other Crs in the bankry of the person making the preference, *e.g.* the latter's surety (*Re Puine*, 1897, 1 Q. B. 122; 66 L. J. Q. B. 71; 75 L. T. 316; 45 W. R. 190); but that conclusion was not followed in *Re Warren* (cited FRAUDULENT PREFERENCE, *who*).

A plt in an action for Damages, is not a "Creditor," within s. 13 (2), Debtors Act, 1869, until jdgmt is signed (*R. v. Hopkins*, 1896, 1 Q. B. 652; 65 L. J. M. C. 125; *Vf, Ex p. Wilmot*, sup). *V. JUDGMENT CREDITOR.*

"A *cestui que trust* is not a Creditor of his trustee, nor is a Trustee a creditor of his Co-trustee" (per Lindley, L. J., *Re Goldswid, Ex p. Taylor*, 56 L. J. Q. B. 197; 18 Q. B. D. 295; 35 W. R. 148; citing *Re Wilkinson, Ex p. Stubbins*, 50 L. J. Ch. 547; 17 Ch. D. 58, and *Sinclair v. Wilson*, 24 L. J. Ch. 537; 20 Bea. 324).

The assignee of a debt rightfully using the name of his assignor is (*semble*) a "Creditor" for the purpose of presenting a petition for Winding-up a Co under s. 82, Comp Act, 1862 (*Re Lond. & Birmin. Flint Glass & Alkali Co*, 28 L. J. Bank. 17; 1 D. G. F. & J. 257; *Re Paris Skating Rink Co*, 5 Ch. D. 959).

But a person whose debt is secured by a Bill not mature, though he have notice that it will not be met (*Re Powell*, W. N. (92) 94), or whose debt has been attached, is not a "Creditor" within such section (*Re European Bankry Co, Ex p. Baylis*, 35 L. J. Ch. 690; L. R. 2 Eq. 521); nor is a garnishee (*Re Combined Weighing Co*, 59 L. J. Ch. 26; 43 Ch. D. 99); nor is a claimant for unliquidated damages (*Re Pen-y-van Colly Co*, 46 L. J. Ch. 390; 6 Ch. D. 477); nor an unpaid vendor of land, compulsorily taken, whose title remains unaccepted (*Re Milford Docks Co, Ex p. Lister*, 52 L. J. Ch. 774; 23 Ch. D. 292); nor will the un-



taxed costs of an arbitration constitute such a vendor a "Creditor" (*Ib.*). *Note.* The holder of a current Life Policy can petition under this section (ss. 2, 21, 33 & 34 V. c. 61). *Vf* Buckl. 250.

A Lessor, quâ *future* rent under his lease, is a "Creditor" within ss. 13, 14, Comp Act, 1867, and, as such, entitled to object to a proposal for reducing a Co's Capital (*Re Telegraph Construction Co*, L. R. 10 Eq. 384; 18 W. R. 729; 22 L. T. 649).

"Creditor," s. 2, Joint Stock Companies Arrangement Act, 1870, 33 & 34 V. c. 104, which enlarges ss. 159, 160, Comp Act, 1862, means, any person having any pecuniary claim against a Co (*Re Midland Coal Co*, 1895, 1 Ch. 267; 64 L. J. Ch. 279; 71 L. T. 705; 43 W. R. 244), *e.g.* Debenture holders (*Re Alabama, &c Ry*, 1891, 1 Ch. 213; 60 L. J. Ch. 221; approving *Re Empire Mining Co*, 44 Ch. D. 402; 59 L. J. Ch. 345).

"Creditors and others," 13 Eliz. c. 5;—"It is conceived that the words 'creditors and others' are wide enough to include any person who has a *legal* demand against the settlor, so that he may rank as a Creditor, although at the date of the settlement he may have no legal right to enforce it. The character of the claim, so long as it is a legal one, seems immaterial" (May on Fraudulent Conv., 2 ed., 163). A mortgagee, fully secured, is not such creditor (*Lister v. Turner*, 5 Hare. 281; *Dolphin v. Aylward*, L. R. 4 H. L. 486; 23 L. T. 636), unless he relinquish (*Lister v. Turner*, *sup*); but he is such creditor as regards so much of his debt as the mortgage does not cover (*Harman v. Richards*, 10 Hare, 81). *Vf*, May on Fraudulent Conv. Part 2, ch. 8.

Since the Parliamentary Deposits and Bonds Act, 1892, 55 & 56 V. c. 27, the distinction between Meritorious and Non-meritorious Crs, quâ sharing in a Parliamentary Deposit, has ceased; "Creditors," s. 1 (2) of the Act, means, all Crs, and is not limited to those of the particular abandoned Undertaking (*Ex p. Bradford Trams*, 1893, 3 Ch. 463; 62 L. J. Ch. 668; 69 L. T. 131).

"Creditor or Claimant"; *V. CLAIMANT.*

Stat. Def.—11 & 12 V. c. 45, s. 3; Bankry Act, 1861, s. 229. — *Scot.* 2 & 3 V. c. 41, s. 3; 8 & 9 V. c. 31, s. 12; 10 & 11 V. c. 50, s. 14; 11 & 12 V. c. 36, s. 52; 19 & 20 V. c. 79, s. 4; 31 & 32 V. c. 101, s. 3; 38 & 39 V. c. 61, s. 3; 57 & 58 V. c. 44, s. 18. — *Ir.* 12 & 13 V. c. 107, s. 118; 20 & 21 V. c. 60, s. 4; 21 & 22 V. c. 105, s. 3.

**CREDITS.**—*V. RIGHTS AND CREDITS: MUTUAL.*

**CREEK.**—"A Creek is of two kinds, viz. Creeks of the Sea, and Creeks of Ports. The former sort are such little inlets of the SEA, whether within the precinct or extent of a PORT or without, which are narrow little passages, and have SHORE of either side of them. Creeks of Ports, are by a kind of civil denomination such. They are such that, though possibly for their extent and situation they might be Ports yet,

they are either members of, or dependent upon, other Ports" (Hale, de Portibus Maris, ch. 2).

An Arm or Creek of the Sea is "where the Sea flows and reflows, and so far only as the Sea so flows and reflows; so that the River of Thames above Kingston, and the River of Severn above Tewkesbury, &c, though there they are Public Rivers yet, are not Arms of the Sea. But it seems that, although the water be fresh at high-water yet, the denomination of an Arm of the Sea continues if it flow and reflow, as in Thames above the Bridge" (Hale, de Jure Maris, ch. 4). *Vf*, Callis, 56, where an "Arm of the Sea" is used not quite synonymously with "Creek of the Sea."

*V*. HAVEN.

**CREMATION.** — *V*. BURIAL: CHRISTIAN BURIAL.

**CREW.** — "The Crew" does not always mean the whole crew (*Frazer v. Hatton*, 2 C. B. N. S. 512; 26 L. J. C. P. 227).

The Cattle-men of a Cargo Owner are not part of the "Crew," though they may help to work the ship (*Anglo-Argentine Agency v. Temperley Co*, cited GENERAL AVERAGE). *Cp* SEAMAN. *V*. OFFICER.

**CRIME.** — "A Crime or Misdemesnor is an act committed, or omitted, in violation of a Public Law either forbidding or commanding it. This general definition comprehends both Crimes and Misdemesnors which, properly speaking, are mere synonymous terms; though, in common usage, the word 'Crimes' is made to denote such offences are of a deeper and more atrocious dye; while smaller faults and omissions of less consequence are comprised under the gentler names of 'Misdemesnors' only" (4 Bl. Com. 5: *Va*, per Bayley, J., *Mann v. Owen*, 9 B. & C. 599, 600: per Bowen, L. J., *R. v. Tyler*, 1891, 2 Q. B. 594). *Cp* MISDEMEANOR.

"A Crime I would define as an Offence against the Crown for which an Indictment will lie" (per Day, J., *Conybeare v. London School Bd*, 1891, 1 Q. B. 118; 60 L. J. Q. B. 44); but an Offence punishable by Indictment, — e.g. a Conspiracy to interfere with the administration of Justice, — is none the less a Crime because a statute is passed whereby it may be punished SUMMARILY; and a person so "punished with imprisonment" for such a "Crime," is disqualified for being a Member of a School Board, under 33 & 34 V. c. 75, Sch 2, Part 1, R. 14 (*S. C.*). On the general meaning of "Crime" it is submitted that the words italicised are too narrowing, and that the general interpretation of "Crime" is, an Offence against the Crown punishable by Fine or Imprisonment. Thus, a power to a Colonial Governor to pardon any offender "CONVICTED of any Crime," and to "remit any Fines, Penalties, or Forfeitures," enables him to pardon Contempt of Court and to remit its punishment (*Re Moseley*, 1893, A. C. 138; 62 L. J. P. C. 79).

On the other hand, an act or omission, — *e.g.* an Overseer not paying over moneys in his hands for which he may be charged by the Auditor, s. 32, 7 & 8 V. c. 101, — may be indictable without being a Crime (*R. v. Tucker*, 5 M. & S. 508; *R. v. Master*, cited OFFENCE: in *this*, Mellor, J., said, “In *Bancroft v. Mitchell*, L. R. 2 Q. B. 519, that an Indictment would lie, was said not to be the test whether the act was criminal or not”).

Quà Prevention of Crimes Act, 1871, 34 & 35 V. c. 112, “Crime” means, in *England and Ireland*, any FELONY, or the offence of Uttering False or Counterfeit Coin, or of possessing Counterfeit Gold or Silver Coin, or the offence of Obtaining Goods or Money by False Pretences, or the offence of Conspiracy to defraud, or any Misdemeanor under s. 58, 24 & 25 V. c. 96; and, in *Scotland*, any of the Pleas of the Crown, any Theft which (in respect of any aggravation, or of the amount in value of the money, goods, or thing stolen) may be punished with Penal Servitude, any Forgery, and any Uttering of any Forged Writing, Falsehood, Fraud and Wilful Imposition, Uttering Base Coin, or the possession of such Coin with intent to utter the same” (s. 20).

Other Stat. Def. — *Scot.* 35 & 36 V. c. 33, s. 16, c. 38, s. 14; 50 & 51 V. c. 35, s. 1; 51 & 52 V. c. 36, s. 9. — *Ir.* 45 & 46 V. c. 25, s. 34; 50 & 51 V. c. 20, s. 6.

#### V. OFFENCE.

“Crimes by bankrupts *against Bankry Law*,” in an Extradition Treaty, connotes such crimes by the bankrupt, and does not include an accomplice (*Re Counhaye*, L. R. 8 Q. B. 410; 42 L. J. Q. B. 217; *St. Ex p. Terraz*, 4 Ex. D. 63; 48 L. J. Ex. 214).

“Crimes and Offences *against the Laws of China*”; *V. A-G. of Hong Kong v. Kwok-a-Sing*, 42 L. J. P. C. 64; L. R. 5 P. C. 179.

**CRIMINAL CAUSE.** — A Judgment in a “Criminal Cause or Matter,” means “any decision by way of judicial determination of any question with regard to proceedings the subject-matter of which is criminal, at whatever stage it arises” (per Escher, M. R., *Re Woodhall*, inf), *e.g.* proceedings before Justices which *may* terminate in the imprisonment of defendant (*Seaman v. Burley*, 1896, 2 Q. B. 344; 65 L. J. M. C. 208; 45 W. R. 1; 75 L. T. 91).

A Commission of Rebellion for Contempt, is not a “Criminal Matter,” within s. 9, Habeas Corpus Act, 31 Car. 2, c. 2 (*Cobbett v. Slowman*, 9 Ex. 633; 23 L. J. Ex. 144).

A Certiorari to quash a conviction for trespassing in pursuit of game on the ground that the justices’ jurisdiction was ousted by a *bonâ fide* Claim of Right, is a “Criminal Cause or Matter” within s. 47, Jud. Act, 1873 (*R. v. Fletcher*, 46 L. J. M. C. 4; 2 Q. B. D. 43; 35 L. T. 538); so is a Conviction under a Bye-Law which is alleged to be *ultra vires* (*Burnett v. Berry*, 12 Times Rep. 464); so is an Order discharging a rule nisi

for a Certiorari to bring up an Order, under s. 100, Larceny Act, 1861, to RESTORE property (*R. v. Central Crim. Court*, 56 L. J. M. C. 25; 18 Q. B. D. 314); so is an application for a Mandamus to Justices to state a Case on a Criminal INFORMATION (*Brosman v. Roche*, 22 L. R. Ir. 334; *Ex p. Schofield*, 1891, 2 Q. B. 428; 60 L. J. M. C. 157; 39 W. R. 580; 56 J. P. 4; *R. v. Tyler*, 1891, 2 Q. B. 588; 61 L. J. M. C. 38), or to hear a Summons in a Criminal Cause (*R. v. Young*, 61 L. J. M. C. 42; 66 L. T. 16); so is an Order for a Criminal Prosecution for Libel, under s. 8, 51 & 52 V. c. 64 (*Ex p. Pulbrook*, 1892, 1 Q. B. 86; 61 L. J. M. C. 91; 66 L. T. 159; 40 W. R. 175; 56 J. P. 293), or a Q. B. D. Order attaching a constable for refusing to aid a sheriff in the execution of a writ (*A-G. v. Kissane*, inf); so is a Taxation of the Costs of a successful defendant in a criminal information for Libel (*R. v. Steel*, 46 L. J. M. C. 1; 2 Q. B. D. 37; 25 W. R. 34; 35 L. T. 534); or proceedings to enforce Poor Rate (*Seaman v. Burley*, sup: but *Cp. Southwark & Vauxhall W. W. Co v. Hampton*, cited CLAIMED); or an Information for contravening Bye-Laws of a School Board (*Mellor v. Denham*, 49 L. J. M. C. 89; 5 Q. B. D. 467; 42 L. T. 493); or an Order to abate Nuisance under P. H. Act, 1875 (*Ex p. Whitechurch*, 50 L. J. M. C. 99; 7 Q. B. D. 534); and so, generally, of a Justices' Order disobedience to which may afterwards be enforced by a penalty (*Payne v. Wright*, 61 L. J. M. C. 114; 66 L. T. 148; 56 J. P. 564), *seens*, if the Order does not result in either Fine or Imprisonment (*Loughborough v. Curzon*, 55 L. J. M. C. 122; 17 Q. B. D. 344; 55 L. T. 50; 34 W. R. 621; 50 J. P. 788). The proceedings, if against a Corporation, are none the less a "Criminal Cause or Matter" if a penalty is sought thereby, or if imprisonment might follow if they were against an individual (*Southport v. Birkdale*, 76 L. T. 318; 18 Cox, C. C. 537). A refusal of Bail is a "Criminal Cause or Matter" (*R. v. Foote*, 52 L. J. Q. B. 528; 10 Q. B. D. 378); or an application for a Certiorari under s. 3, Palmer Act. 19 & 20 V. c. 16 (*R. v. Rudge*, 55 L. J. M. C. 112; 16 Q. B. D. 459; 34 W. R. 207); or, *à fortiori*, an Information for keeping a dog without a License (*R. v. Sulliran*, 8 Ir. Rep. C. L. 404; 19 S. J. 235). *Vf. Cattel v. Ireson*, 27 L. J. M. C. 167; E. B. & E. 91; *Parker v. Green*, 31 L. J. M. C. 133; 2 B. & S. 299; *R. v. Hawkhurst*, 26 J. P. 772; 7 L. T. 268; *Blake v. Beech*, 45 L. J. M. C. 111; 2 Ex. D. 335; *Re Dean of York*, 2 Q. B. 1.

But an application for a *mandamus* to Election Commissioners to grant a witness a Certificate of Indemnity is *not* a "Criminal Cause" within s. 47, Jud. Act. 1873 (*R. v. Holl*, 7 Q. B. D. 575; 50 L. J. Q. B. 763); nor is an application for Excusal from an electoral Illegal Practice (*Ex p. Walker*, 58 L. J. Q. B. 190; 22 Q. B. D. 384); nor a *habeas corpus* in an Ecclesiastical Suit (*Cox v. Hakes*, 15 App. Ca. 506; 60 L. J. Q. B. 89; 63 L. T. 392; 39 W. R. 145; 54 J. P. 820), *seens*, if the subject-matter of the proceedings against the prisoner be criminal

(*Re Woodhall*, 57 L. J. M. C. 71; 20 Q. B. D. 832; 36 W. R. 655; *Sv, Re Keller*, 22 L. R. Ir. 158). A committal to prison for non-payment of Poor, or Highway, Rates is a civil, and not a criminal, process (*R. v. Whitecross Street Prison*, 34 L. J. M. C. 193; 6 B. & S. 371). An application to strike a Solicitor off the Rolls on the ground of misconduct is not a "Criminal Cause or Matter" (*Re Hardwick*, 53 L. J. Q. B. 64; 12 Q. B. D. 148; 32 W. R. 191; *Re Eede*, 59 L. J. Q. B. 376; 25 Q. B. D. 228; 38 W. R. 683. *Vh* CRIMINAL PRISONER). *secus*, of an imprisonment of an unqualified person for acting as a Solicitor (*Re Wall*, 32 S. J. 693). An Information for penalties on the revenue side of the old Court of Exchequer was not a "Criminal Cause" (*A-G. v. Radloff*, 23 L. J. Ex. 240; 10 Ex. 84; 28 & 29 V. c. 104; per Brett, M. R., *A-G. v. Bradlaugh*, 54 L. J. Q. B. 215; 14 Q. B. D. 690; *Vf, Howes v. Int. Rev.*, 1 Ex. D. 385; 46 L. J. M. C. 15; *A-G. v. Moore*, 3 Ex. D. 276; 47 L. J. M. C. 103); nor is an action to recover a penalty under 1 G. 1, st. 2, c. 13, s. 17, for voting in parliament without having taken the oath (*Miller v. Salomons*, 21 L. J. Ex. 161; 22 *Ib.* 169; 7 Ex. 475; 8 *Ib.* 778); nor an Information by the Attorney-General to recover penalties under the Parliamentary Oaths Act, 1866 (*A-G. v. Bradlaugh*, 54 L. J. Q. B. 205; 14 Q. B. D. 667). *Vf*, CIVIL DEBT: CLAIMED.

An appeal lies to the Court of Appeal against an Order of the High Court committing a Bankrupt under s. 24 (4), Bankry Act, 1883, for wilfully failing to deliver up possession of his property, not because it is not a "Criminal Cause or Matter" but, because s. 104 (2), *Ib.* (which, note, is subsequent in date to Jud. Act, 1873), gives the appeal from Bankry Orders (*Re Ashwin*, 59 L. J. Q. B. 417; 25 Q. B. D. 271).

*Cp*, CRIMINAL SUIT: OFFENCE: FORFEIT.

By s. 15, Jud. Act, 1884, *Quo Warranto* is a Civil proceeding, "whether for purposes of appeal or otherwise."

*Contempt of Court* in doing or not doing something in a Civil Action, is not a "Criminal Cause or Matter" (*Re Evans*, 1893, 1 Ch. 252; 62 L. J. Ch. 413; *R. v. Bernardo*, 58 L. J. Q. B. 553; 23 Q. B. D. 305; 61 L. T. 547; 37 W. R. 789; *Vf*, Ann. Pr. under s. 47, Jud. Act, 1873); *secus*, where the contempt is of a criminal nature, *e.g.* publishing comments calculated to prejudice a trial (*O'Shea v. O'Shea*, 59 L. J. P. D. & A. 47; 15 P. D. 59; 62 L. T. 713; 38 W. R. 374), or a constable refusing to aid a sheriff (*A-G. v. Kissane*, 32 L. R. Ir. 220).

**CRIMINAL LETTER.** — *V.* INDICTMENT, towards end.

**CRIMINAL LUNATIC.** — *V.* LUNATIC.

**CRIMINAL PRISONER.** — A person summarily committed to prison for acting as a SOLICITOR without being qualified (s. 32, 6 & 7 V. c. 73), is a "Criminal Prisoner" within s. 4, Prison Act, 1865; and is not a person "imprisoned under any Rule, Order, or Attachment,

for *Contempt of Court*" within s. 41, Prison Act, 1877 (*Osborne v. Milman*, 56 L. J. Q. B. 263; 18 Q. B. D. 471; 56 L. T. 808; 35 W. R. 397; 51 J. P. 437; 3 Times Rep. 452).

*Note.* The present County Court has no power to commit as for "Contempt of Court" (s. 36, 6 & 7 V. c. 73; s. 26, 23 & 24 V. c. 127) an unqualified person who practises in such Co. Co. as a Solr (*R. v. Brompton Co. Co. Judge*, 1893, 2 Q. B. 195; 62 L. J. Q. B. 604; 68 L. T. 829; 41 W. R. 648; 57 J. P. 648); nor, indeed, for any other cause than those specified in ss. 162, 167, Co. Co. Act, 1888 (*R. v. Lefroy, Ex p. Jolliffe*, 42 L. J. Q. B. 121; L. R. 8 Q. B. 134), and in those cases where Orders may be enforced by Attachment.

*V.* CRIME: OFFENCE. *Cp.* CIVIL PRISONER: PRISONER.

Stat. Def. — *Scot.* 2 & 3 V. c. 42, s. 63; 23 & 24 V. c. 105, s. 4; 40 & 41 V. c. 53, s. 71.

**CRIMINAL PROCEEDING.** — *V.* PROCEEDING: PROSECUTION: CRIMINAL CAUSE: CRIMINAL SUIT.

**CRIMINAL PROSECUTION.** — *V.* PROSECUTION.

**CRIMINAL SUIT.** — A proceeding to recover penalties for Non-Residence (under 1 & 2 V. c. 106, ss. 32, 114) is not a "Criminal Suit" within the Church Discipline Act, 1840, 3 & 4 V. c. 86, s. 23 (*Rackham v. Bluck*, 16 L. J. Q. B. 82; 9 Q. B. 691); nor is a proceeding under the Public Worship Act, 1874 (*Harris v. Perkins*, 51 L. J. P. C. 83; 7 P. D. 31, 161): *Secus*, as regards proceedings to examine the proofs of an ecclesiastical offence, for the purpose of deprivation (*Re Dean of York*, 2 Q. B. 1). *Cp.* CRIMINAL CAUSE.

**CROFT.** — "A Croft is a little close, or pightle, adjoining to a house, used either for pasture or arable, as the owner pleases. In many places such close is called a Ham" (Preston's addns. to p. 95, Touch.). *Va* Termes de la Ley.

**CROFTER.** — Quà Crofters Holdings (*Scot*) Act, 1886, 49 & 50 V. c. 29, " 'Crofter,' means, any person who, at the passing of this Act, is tenant of a HOLDING from year to year, who resides on his holding the annual rent of which does not exceed £30 in money, and which is situate in a CROFTING PARISH; and the successors of such person in the holding being his heirs or legatees" (s. 34: *Va* 60 & 61 V. c. 53, s. 10). *Cp.* COTTAR.

**CROFTING PARISH.** — Quà same Act, " 'Crofting Parish,' means, a Parish in which there are, at the commencement of this Act, or have been within eighty years prior thereto, Holdings consisting of arable land held with a right of pasturage in common with others, and in which there still are tenants of holdings from year to year who reside on their

holdings, the annual rent of which respectively does not exceed £30 in money, at the commencement of this Act" (s. 34: *Va*, 60 & 61 V. c. 53, s. 10).

**CROP.** — "Crops," s. 5 (*a*), 50 & 51 V. c. 26; *F. Cooper v. Pearse*, 1896, 1 Q. B. 562; 65 L. J. M. C. 95; 74 L. T. 495; 44 W. R. 494; 60 J. P. 282.

Quà Game Laws Amendment (Scot) Act, 1877, 40 & 41 V. c. 28, " 'Crop,' shall include Grass, whether intended for hay or pasture, except where grown upon Muirlands" (s. 3).

**CROSS.** — "Cross Cause"; *F. PRINCIPAL CAUSE.*

*Cross Remainders*; "When lands are given in undivided shares to two or more for Particular Estates, so as that, upon the determination of the particular estates in any of those shares, they remain over to the other grantees, — and the Reversioner or Remainder-man is not let in till the determination of all the Particular Estates, — the grantees take their original shares as Tenants in Common, and the Remainders limited among them on the failure of the particular estates are known by the appellation of 'Cross Remainders'" (Butler's *n*, Co. Litt. 195 b). *Vh*, Elph. 289–294; Jarm. ch. 42; Theobald, 649; 4 Encyc. 42, 43. *Cp* REMAINDER.

Quà London Bg Act, 1894, "Cross WALL," "means a Wall used, or constructed to be used, in any part of its height as an Inner wall of a BUILDING for separation of one part from another part of the building, that building being wholly in, or being constructed or adapted to be wholly in, one occupation" (subs. 17, s. 5, expanding def in Metrop Bg Act, 1855, s. 3).

**CROSSING.** — "Crossing" a CHEQUE generally and specially; *F.* ss. 76, 77, 78, Bills of Ex. Act, 1882: NOT NEGOTIABLE. *Vf*, 19 & 20 V. c. 25; 21 & 22 V. c. 79, ss. 1, 3.

"Crossing of ROADS, or other interference therewith." Preamble to ss. 46–62, Ry C. C. Act, 1845; *Vh*, *Tanner v. South Wales Ry*, 5 E. & B. 618; 25 L. J. Q. B. 7.

SHIPS "Crossing," Sailing Rules, No. 14, repld Regns for Preventing Collisions at Sea, 1884, Art. 16; *F. Gen. Steam Nav. Co v. Hedley*, 39 L. J. Adm. 20; L. R. 3 P. C. 44; *The Molière*, 1893, P. 217; 62 L. J. P. D. & A. 102; 69 L. T. 263; *The Leverington*, 55 L. J. P. D. & A. 78; 11 P. D. 117; *The Pekin*, 1897, A. C. 532; 66 L. J. P. C. 97; 77 L. T. 443; OVERTAKING SHIP. It is a question of fact in each case whether a Steamer turning round in the River Thames is, or is not, a "Steam Vessel crossing from one side of the river towards the other." within No. 48, Thames Bye Laws (*The John Holloway*, 1900, P. 37; 69 L. J. P. D. & A. 15; 81 L. T. 726; 48 W. R. 416; *Vf*, *The River Derwent*, 62 L. T. 45; 7 Asp. 37).

**CROWN.** — In every Act of Parliament, “ references to the Sovereign reigning at the time of the passing of the Act or to *the Crown* shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being; and this Act shall be binding on the Crown ” (s. 30, Interp Act, 1889). *V. QUEEN.*

Other Stat. Def. — 31 & 32 V. c. 101, s. 3.

*Note.* The PREROGATIVE of the Crown is as extensive in the Colonies as in Great Britain (*Maritime Bank of Canada v. Receiver-Gen. New Brunswick*, 1892, A. C. 437; 61 L. J. P. C. 75; 67 L. T. 126).

“ Crown or Government ”; *V. GOVERNMENT.*

“ Crown Cases Reserved,” quâ Jud. Acts, means, “ such questions of law reserved in Criminal Trials as are mentioned in ” 11 & 12 V. c. 78 (Jud. Act, 1873, s. 100; Jud. Act (Ir), 1877, s. 3).

“ Crown COLONY,” quâ Federal Council of Australia Act, 1885, 48 & 49 V. c. 60, means, “ any Colony in which the control of Public Officers is retained by ” the Imperial Government (s. 1): that def is, probably, of general acceptance.

“ Crown Lands,” quâ Queensland Goldfields Act, 1874; *V. Osborne v. Morgan*, 57 L. J. P. C. 52; 13 App. Ca. 227: — quâ New South Wales Crown Lands Act, 1884; *V. Tearle v. Edols*, 57 L. J. P. C. 58; 13 App. Ca. 183.

“ The Crown Lands Acts, 1829 to 1894 ”; *V. Sch 2, Short Titles Act, 1896.*

“ ‘ Crown OFFICE,’ means, the Office of the Clerk of the Crown in Chancery ” (s. 7, 40 & 41 V. c. 41).

Crown Prosecutor; *V. PROSECUTING.*

Crown Purposes; *V. “ Beneficial Occupation,”* sub BENEFICIAL.

“ Crown Writ ”; *Scot.* 31 & 32 V. c. 101, s. 3.

*V. CLAIM.*

**CRUELLY.** — “ Cruelly ill-treat ”; *V. CRUELTY, to Animals.*

**CRUELTY.** — *Matrimonial Cruelty:* “ Lord Stowell’s judgment in *Evans v. Evans* (1 Hagg. Con. 35) is the great authority on questions of legal cruelty. That very eminent judge, whom I may in some sense consider as a predecessor of my own, remarks on the mischiefs which would ensue from giving the sanction of law to the separation of man and wife too easily, or on the mere disinclination of one or both of the parties to live together. ‘ When people,’ he continues, ‘ understand that they must live together, except for a very few reasons known to the law, they learn to soften by mutual accommodation that yoke which they know they cannot shake off; they become good husbands and good wives from the necessity of remaining husbands and wives; for necessity is a powerful master in teaching the duties which it imposes.’ Lord Stowell refused to give any strict definition of cruelty. The causes which



warrant separation 'must be grave and weighty, and such as show an absolute impossibility that the duties of the married life can be discharged. In a state of personal danger no duties can be discharged, for the duties of self-preservation must take place before the duties of marriage. What merely wounds the mental feelings is in few cases to be admitted, where it is not accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, if they do not threaten bodily harm, do not amount to legal cruelty; they are high moral offences in the marriage state undoubtedly, not innocent surely in any state of life, but still they are not that cruelty against which the law can relieve. Under such misconduct of either of the parties, for it may exist on one side as well as on the other, the suffering party must bear in some degree the consequences of an injudicious connection, must subdue by decent resistance, or by prudent conciliation, and if this cannot be done, both must suffer in silence. In the older cases of this sort, which I have had an opportunity of looking into, I have observed that the danger of life, limb, or health is usually inserted as the ground upon which the Court has proceeded to a separation. The Court has never been driven off this ground; it has always been jealous of the inconvenience of departing from it, and I have heard no one case cited in which the Court has granted a divorce without proof given of a reasonable apprehension of bodily hurt. I say an apprehension, because assuredly the Court is not to wait till the hurt is actually done; but the apprehension must be reasonable, it must not be an apprehension arising merely from an exquisite or diseased sensibility of mind.' Danger of life, limb, or health has continued in substance the rule upon which the Courts have acted; the phrase has sometimes been varied. Sir John Nicholl has used the expression, 'injury to person or to health'; which I am inclined to take in conjunction with Lord Stowell's expression, for there might be a great deal of suffering and brutal usage without coming strictly within the terms of the latter. There must, however, be bodily hurt (not trifling or temporary pain), or a reasonable apprehension of bodily hurt" (per Cresswell, J. O., *Tomkins v. Tomkins*, 1 Sw. & Tr. 170).

Referring firstly and chiefly to *Evans v. Evans* (sup) but also on a full review of the subsequent cases, Lopes and Lindley, L.J.J., in *Russell v. Russell* (1895. P. 315; 64 L. J. P. D. & A. 108; affd in H. L. 1897, A. C. 395; 66 L. J. P. D. & A. 122) defined Matrimonial Cruelty thus. — "There must be danger to life, limb, or health, bodily or mental, or a reasonable apprehension of it, to constitute legal cruelty": *Vth IMPOSSIBLE*. So, in the United States (*Gordon v. Gordon*, 48 Penn. St. 238).

The following are acts of matrimonial cruelty:—Duress, or threats, or habitual insult and studied unkindness, tending to injury to health

(*Kelly v. Kelly*, 39 L. J. P. & M. 28; L. R. 2 P. & D. 59; 21 L. T. 564; *Bethune v. Bethune*, 1891, P. 205; 60 L. J. P. D. & A. 18; *Vf*, *Beauclerk v. Beauclerk*, 1891, P. 189; 60 L. J. P. D. & A. 20; 64 L. T. 35); or terrifying a wife into immorality (*Coleman v. Coleman*, 35 L. J. P. & M. 37); publicly outraging a wife's feelings by insulting language and assaulting her, even though no personal injury be inflicted (*Milner v. Milner*, 31 L. J. P. & M. 159); a violently intended, but futile, assault, or spitting on a wife (*D'Aguilar v. D'Aguilar*, 1 Hagg. Ecc. Supp. 776); habitual insult and violence of temper, inducing quarrels and producing physical suffering (*Knight v. Knight*, 34 L. J. P. & M. 112); knowingly or recklessly imparting a venereal disease (*Boardman v. Boardman*, L. R. 1 P. & D. 233; *Brown v. Brown*, *Ib.* 46; 35 L. J. P. & M. 13; as to cutaneous disease, *V. Chesnutt v. Chesnutt*, 1 Spinks, 205); unreasonable denial of usual necessities and comforts so as to affect health (*Dysart v. Dysart*, 3 N. C. 340; *Orme v. Orme*, 2 Addams, 382); cruelty to children in the mother's presence, in order to wound her feelings, and to such an extent as probably to be injurious to her health (*Suggate v. Suggate*, 28 L. J. P. & M. 46; *Birch v. Birch*, 42 L. J. P. & M. 23).

But the following are *not* acts of Matrimonial Cruelty:

Drunkenness (*Scott v. Scott*, 29 L. J. P. & M. 64); debauching household servants (*Cousen v. Cousen*, 34 L. J. P. & M. 139); bad language (*Dysart v. Dysart*, *sup.*), even to the extent of falsely, maliciously, and persistently accusing the spouse of an unnatural offence (*Russell v. Russell*, *sup.*); debarring a wife from intercourse with her family (*Neeld v. Neeld*, 4 Hagg. Ecc. 269); sleeping in a separate bed (*D'Aguilar v. D'Aguilar*, *sup.*).

*Vf*, Dixon on Divorce, 98 *et seq.*: Brown & Powles on Divorce, 129.

Cruelty is not excused by drunkenness or *delirium tremens* (*Marsh v. Marsh*, 28 L. J. P. & M. 13; 1 Sw. & Tr. 312; 7 W. R. 129); or ungovernable passion (*Curtis v. Curtis*, 27 L. J. P. & M. 73; 1 Sw. & Tr. 192); but insanity excuses (*Hall v. Hall*, 33 L. J. P. & M. 65; 3 Sw. & Tr. 349; *White v. White*, 1 Sw. & Tr. 591).

"Cruelty or Neglect," causing a Wife to leave, s. 4, 58 & 59 V. c. 39; *V. NEGLECT.*

"Persistent Cruelty"; *V. PERSISTENT.*

*Cruelty to Children*: *V.* 4 Eneye. 53-56.

*Cruelty to Animals*: If any person "cruelly beat, ill-treat, over drive, abuse, or torture," any DOMESTIC ANIMAL, that is an offence under s. 2, 12 & 13 V. c. 92. The cruelty under that section means, unreasonably inflicting unnecessary pain; and, therefore, involving a guilty knowledge that pain will be inflicted (*Elliott v. Osborn*, 65 L. T. 378). Incensing Cocks to fight (*Bridge v. Parsons*, 32 L. J. M. C. 95; 3 B. & S. 382; 11 W. R. 424; 7 L. T. 784; 25 W. R. 540; 27 J. P. 117, 231), or cutting a Cock's comb in order to exhibit him as a Gamecock (*Murphy v.*

*Manning*, 46 L. J. M. C. 211; 2 Ex. D. 311; 41 J. P. 130) is such cruelty, and so of docking a Horse's tail (40 S. J. 473, 474); and so it may be such cruelty to turn an animal, which is already suffering, into a field to graze when it can only do so by giving itself additional pain (*Everitt v. Davies*, 26 W. R. 332; 42 J. P. 248; 38 L. T. 360). But the mere omission to kill a suffering animal is not such cruelty (*Ib.*); nor does the section include the merely unlawful killing an animal, or shooting it intending to kill it but leaving it to die in pain (*Powell v. Knight*, 26 W. R. 721; 42 J. P. 597; 38 L. T. 607), nor the sending parrots a ten-hours' railway journey without water (*Swan v. Sanders*, 50 L. J. M. C. 67; 29 W. R. 538; 45 J. P. 522; 44 L. T. 424), nor a painful operation *bonâ fide* believed to be proper, *e.g.* spaying sows, as they do in Sussex, to improve the flesh as human food (*Lewis v. Fermor*, 56 L. J. M. C. 45; 18 Q. B. D. 532; 56 L. T. 236; 35 W. R. 378; 51 J. P. 371). But in *Ford v. Wiley* (58 L. J. M. C. 145; 23 Q. B. D. 203) the principle of *Lewis v. Fermor* was questioned, and it was held that dishorning cattle was within the section, although it might prevent them from goring each other, and make them graze better and fatten more quickly; but the Scotch and Irish Courts refuse to follow *Ford v. Wiley*; — *V. R. v. M'Donagh*, 28 L. R. Ir. 204, and cases there cited.

What a person intends to do is no part of the offence of Cruelty under s. 2, 12 & 13 V. c. 92; the simple question is, Was there cruelty in fact? (*Duncan v. Pope*, 80 L. T. 120).

**CRY.** — *V. HUE AND CRY.*

**CUBIC.** — Cubic Feet; *V. DELIVERED.*

Cubic Yard; *V. YARD.*

**CUBICAL.** — Quâ London Bg Act, 1894, " 'Cubical Extent,' applied to the measurement of a BUILDING, means, the space contained within the external surfaces of its walls and roof and the upper surface of the floor of its lowest STOREY " (subs. 24, s. 5).

**CUBICLE.** — *V. Barwell v. Hickmott*, cited DWELLING-HOUSE.

**CUCKING-STOOL.** — Was the same as, and was in old times called, a TUMBRELL (Termes de la Ley).

**CUCKOLD.** — *V. WHORE.*

**CUL DE SAC.** — *V. HIGHWAY: STREET.*

**CULPABLE.** — Culpable Negligence; *V. GROSS.*

**CULPRIT.** — Is a person on his trial for a criminal offence (4 Bl. Com. 339).

**CULTIVATION.** — *V.* AGRICULTURE.

**CUM DIV.** — *V.* DIVIDEND.

**CUMULATIVE.** — A Preference Dividend is, *primâ facie*, cumulative; so that failure of profits wherewith to pay it in any one year will be made good out of any profits that may be made in a subsequent year (*V.* DIVIDEND); and if a "Cumulative Preference Dividend" is prescribed, doubt hereon is avoided (*Vh, Webb v. Earle*, L. R. 20 Eq. 557; 44 L. J. Ch. 608; 24 W. R. 46; *Palmer Co. Prec.* 359, 482). But a Pref. Div. payable out of the profits "of EACH year" is non-cumulative (*Staples v. Eastman Co*, 1896, 2 Ch. 303; 65 L. J. Ch. 682; 74 L. T. 479).

LEGACIES of equal amount, given by the same instrument to the same person, are merely Repetitions: of equal, less, or greater. amount, given by different instruments, *e.g.* Will and Codicil to the same person, are, *primâ facie*, Cumulative; but the one by the later instrument may, contextually, be Substitutional (*Theobald*, ch. 16).

**CURATE.** — A Curate is "he who represents the Incumbent of a Church, Parson, or Vicar, and takes care of Divine Service in his stead" (*Jacob*). *Vh Phil. Ecc. Law*, Part 2, ch. 10.

Quâ Irish Church Act, 1869, 32 & 33 V. c. 42, "Curate" includes "Residentiary Preacher or Reader" (s. 72).

*V.* CLERGYMAN: PERPETUAL CURATE: DEACON.

**CURRENCY.** — A clause in a Time Marine Policy for return of part of premium if the ship should be employed in *e.g.* "the Eastern Trade during the whole currency of the policy," becomes operative not only if she is actually so employed, but also if she is lost, during the period over which the policy extends; for then the risk no longer exists, "the Policy is no longer in any sense CURRENT" (*per Bigham, J., Gorsedd S S Co v. Forbes*, 5 Com. Ca. 413; 16 Times Rep. 566).

**CURRENT.** — "Current" applied to COIN, means, coin coined in any of Her Majesty's mints, or lawfully current by virtue of any proclamation, or otherwise, in any part of Her Majesty's dominions, whether within the United Kingdom or without" (*Steph. Cr.* 310, abridging the def in s. 1, 24 & 25 V. c. 99). *Vf*, 46 & 47 V. c. 45, s. 3: *Arch. Cr.* 911: FALSE COIN. *Note*: Current Coin may be treated as a curiosity (*Moss v. Hancock*, cited MONEY).

"Current Coin," in Truck Act, 1831; *V.* PAYMENT.

"Current Financial Year"; *V.* FINANCIAL YEAR.

"Current Outgoings," quâ Government Annuities Act, 1882, 45 & 46 V. c. 51; *V.* s. 13 (6).

The "Current Rate" of INTEREST payable under s. 28, 3 & 4 W. 4, c. 42 (*V.* DEMAND), though frequently assessed at 5 per cent is not,

necessarily, that rate, and may be the current rate for the time being (*L. C. & D. Ry v. S. E. Ry*, 1892, 1 Ch. 120), either, as it would seem, more or less than 5. In *Re Horner* (1896, 2 Ch. 188; 65 L. J. Ch. 694) 5 per cent was allowed. *Note*: Interest against Trustees guilty of Breach of Trust, and cognate matters, has in recent years been allowed at 3 per cent (*Re Goodenough*, 1895, 2 Ch. 537; 65 L. J. Ch. 71; *Re Cleveland*, 1895, 2 Ch. 542; 65 L. J. Ch. 29; *Re Lambert*, 1897, 2 Ch. 169; 66 L. J. Ch. 624); so, quâ the rule in *Re Chesterfield* (52 L. J. Ch. 958; 24 Ch. D. 643) in apportioning a fund between a Tenant for Life and Remainder-man (*Rowlls v. Bebb*, cited PRODUCE).

“Current Year”; *V. Doe d. Robinson v. Dobell*, 1 Q. B. 806; 10 L. J. Q. B. 242; *Doe d. Richmond v. Morphett*, 7 Q. B. 578; 14 L. J. Q. B. 345; *Wride v. Dyer*, 1900, 1 Q. B. 23; 69 L. J. Q. B. 17; 81 L. T. 453; 48 W. R. 73; 64 J. P. 118.

**CURRY.** — “Curry or solicit” custom; *V. SOLICIT*.

**CURTESY.** — “Tenant by the Curtesy of England, is where a man marries a woman seized of an Estate of Inheritance, — *i.e.* lands or tenements in Fee Simple or Fee Tail, — and has by her issue born alive which was capable of inheriting her estate. In this case he shall, on the death of his wife, hold the lands or tenements for his life as Tenant by the Curtesy of England” (2 Bl. Com. 125). *I*7, Litt. s. 35; Co. Litt. 29a-30a: *Termes de la Ley*: Jacob: 1 Cru. Dig. 139-150; Wms. R. P., Part 1, ch. 11: Goodeve, 141: 4 Encyc. 58-60. The right exists in New South Wales (*Plomley v. Shepherd*, 1891, A. C. 244; 60 L. J. P. C. 18).

The M. W. P. Act, 1882, has not affected this right quâ the wife’s undisposed-of realty (*Hope v. Hope*, 1892, 2 Ch. 336; 61 L. J. Ch. 441).

Quâ S. L. Act, 1882, “the estate of a Tenant by the Curtesy is to be deemed an estate arising under a SETTLEMENT made by his wife” (s. 8, S. L. Act, 1884).

**CURTILAGE.** — “A garden, yard, field, or peece of voide ground, lying neare and belonging to the messuage” (*Termes de la Ley*). *I*7, Touch. 94: Cowel: Jacob.

“‘A little croft or court or place of easement to put in cattle for a time, or to lay in wood, coal, or timber, or such other things necessary for household’ (Fitzherbert on Surveying, ch. 1). Spelman considers it to be ‘the yard not the garden’; see *Curtilagium*, *Curtillum*; though it may be used for garden, he says: *V.* per Fairfax, 21 Edw. 4. 52, pl. 15; and per Frowike, Keilw. 57, pl. 7” (Elph. 569).

For an example of what, in modern times, has been held to be part of the Curtilage of a house, *V. Marson v. L. C. & D. Ry*, 37 L. J. Ch. 483; L. R. 6 Eq. 101. *Va.* on this word, in s. 7, 33 & 34 V. c. 57. *Commrs Int. Rev. v. Goodfellow*, 45 J. P. 588; — in def of DRAIN, s. 250,

Metrop Man. Act, 1855, and s. 4, P. II. Act, 1875, *Pilbrow v. St. Leonard, Shoreditch*, 1 Q. B. 33, 433; 64 L. J. M. C. 29, 130; 59 J. P. 68; 72 L. T. 135; 43 W. R. 342; *St. Martin's in the Fields v. Bird*, 1895, 1 Q. B. 428; 64 L. J. Q. B. 230; 71 L. T. 868; 43 W. R. 194.

*Ij*, Arch. Cr. 589, 590, 614; Rose. Cr. 313, 317. *V. CLOSE.*

*Note.* "We do not use that expression, — 'Curtilage,' — in Scotland" (per Ald Watson, *Caledonian Ry v. Turcan*, 67 L. J. P. C. 73).

**CUSTODY.** — "Custody or Control," s. 2, 36 V. c. 12, is large enough to enable the Court to commit the Religious Education of an Infant to the mother (*Condon v. Follum*, 31 S. J. 575; 57 L. T. 154).

"Custody or Control" of Documents; *V. London & Yorksh. Bank v. Cooper*, 54 L. J. Q. B. 495; 15 Q. B. D. 7.

"Custody or Possession" of any matter, quæ Coinage Offences Act, 1861, 24 & 25 V. c. 99, "includes, not only the having of it by himself in his personal custody or possession but also, the KNOWINGLY and WILFULLY having it in the actual custody or possession of any other person, and also the knowingly and wilfully having it in any Dwelling-house or other Building, Lodging, Apartment, Field, or other Place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or benefit or for that of any other person" (s. 1).

*V. CARE: CONTROL: POSSESSION: ACTUAL CUSTODY: CIVIL CUSTODY: MILITARY CUSTODY: PROPER CUSTODY: SAFE CUSTODY.*

**CUSTOM.** — " 'Custome' may be defined to be a Law or Right not written, which, being established by long use and the consent of our ancestors, hath bin and daily is put in practice" (*Termes de la Ley*). *Ij*; Cowel; Jacob: 4 Encyc. 61-72.

"*Consuetudo* is one of the maine triangles of the lawes of England; those lawes being divided into Common Law, Statute Law, and Custome" (Co. Litt. 110 b, 115 b). "The phrase 'By the Custom of the Realm' is, in truth, only a paraphrase for 'By the Common Law'" (per Brett, J., *Nugent v. Smith*, 1 C. P. D. 23).

"This word *consuetudo* hath in law divers significations; 1. For the Common Law, as *consuetudo Anglie*; 2. For Statute Law, as *contra consuetudinem communi concilio regni edit.*; 3. For Particular Customs, as Gavelkind, Borough English, and the like; 4. For Rents, Services, &c, due to the Lord, as *consuetudines et serritia*; 5. For Customs, Tributes, or Impositions, &c, as *de novis consuetudinibus levatis in regno sive in terrâ sive in aquâ*; 6. Subsidies or Customs granted by common consent, that is, by authority of Parliament *pro bono publico*' (2 Inst. 58). *Consuetudo* signifies also Tolls, Murage, Frontage, Paviage, and such like

newly granted by the King (Co. Litt. 58b). *V.* on this latter point, *Egremont v. Saul*, 6 A. & E. 924; 6 L. J. K. B. 205, and the cases there cited" (Elph. 569). In *Egremont v. Saul*, though the above passage from Co. Litt. was cited, it was held that "consuetudo" does not necessarily, or it should seem *primâ facie*, signify toll: *V.* TOLL.

"A Custom is Local Common Law. It is Common Law because it is not Statute Law; it is Local Law because it is the law of a particular place, as distinguished from the general Common Law. Local Common Law is the law of the country (*i.e.* particular place) as it existed before the time of legal MEMORY" (per Jessel, M. R., *Hammerton v. Honey*, 24 W. R. 603). "'Custom,' is something that has the effect of Local Law" (per Cleasby, B., *Hall v. Nottingham*, 1 Ex. D. 3; 45 L. J. Ex. 52). *Vf.* *Fitch v. Rawling*, 2 Bl. H. 394.

A legal origin will be presumed in favour of an uninterrupted practice for a long series of years, even though it be shown that such practice began in modern times (*Lond. & N. W. Ry v. Fobbing Levels Commrs*, 75 L. T. 629; 66 L. J. Q. B. 127).

As to *Particular* Customs; *V.* 1 Bl. Com. 74: Browne's Law of Usages and Customs. In *Lanchbury v. Bode* (1898, 2 Ch. 120; 67 L. J. Ch. 196), the Custom was for the owner of the Rectorial Tithes to provide a Common Bull and a Common Boar for the parish: the reporter in the L. J. adds this note,—"A similar Custom is stated in Vin. Ab., 2 ed., Vol. 7, p. 181, and alluded to in *King Henry IV.*, Part 2, Act 2, Scene 2, and in Sterne's *Tristram Shandy*, ch. xciii." *Vf* WHORE.

As to *Manorial* Customs; *V.* Elton on Copyholds: Williams on Rights of Common: FREEBENCH.

#### *V.* BRITISH CUSTOM: LAW MERCHANT.

A *Trade* Custom, sufficient to displace the Bankry doctrine of Reputed Ownership, must be notorious to traders generally (*Re Goetz*, cited CONSENT). So, generally, in Business Matters,—*e.g.* the length of a Notice of Dismissal,—a Custom must be "a uniform and universal Practice so well-defined and recognized that contracting parties must be assumed to have had it in their minds when they contracted. The fact that in a large percentage of cases there are special agreements, shows that no such universal Custom exists": a PRACTICE is less stringent in its connotation (per Russell, C. J., *Fox-Bourne v. Vernon*, 10 Times Rep. 649).

#### *V.* PRESCRIPTION: USAGE: USAGE OF TRADE.

"In 22 Edw. 1, 364 (Record Publ.) Customs are distinguished from Services as follows:—'Customs are things which are done, and demanded by reason of bodily service; Services are things which are demanded of the tenant by reason of the tenement which he holds of the demandant, to wit, rent, and things of that kind, or suit demanded by reason of the tenement'" (Elph. 569). *V.* SERVICE.

The word "Custom" in s. 2, Municipal Corporations Act, 5 & 6 W. 4, c. 76, is not used in a technical sense, but is there equivalent to "Usage" (*Prestney v. Colchester*, 51 L. J. Ch. 805; 21 Ch. D. 111).  
*Vf* PRACTICE.

**CUSTOM OF THE COUNTRY.** — "The word 'Custom' as here used, does not mean a CUSTOM in the strict legal signification of it; for that must be taken with reference to some defined limit or space, which is essential to every custom properly so called; but which does not exist here. What shall be considered in farming as a good and husbandlike manner must vary exceedingly according to soil, climate, and situation. And, therefore, the 'Custom of the Country,' with reference to good husbandry, must be applied to the approved habits of husbandry in the neighbourhood, under circumstances of the like nature" (2 Platt, 279, citing *Legh v. Hewitt*, 4 East, 154). *Vf*, *Meux v. Copley*, 1892, 2 Ch. 253; 61 L. J. Ch. 449; Woodf. 646, 795 *et seq.*

**CUSTOM OF THE PORT.** — In a Charter-Party, "Custom of the Port," means, the settled Practice of the Port (*Postlethwaite v. Free-land*, cited REASONABLE). *Va* BRITISH CUSTOM.

**CUSTOMARY.** — Discharge of Cargo "as fast as steamer can deliver, as Customary," or "as fast as she can deliver," means, as fast as reasonably POSSIBLE, in a business sense (*Wyllie v. Harrison*, 13 Sess. Ca. 4th Ser. 92; *Good v. Isaacs*, 1892, 2 Q. B. 555; 61 L. J. Q. B. 649; 67 L. T. 450; 40 W. R. 629; *The Jaederen*, 1892, P. 351; 61 L. J. P. D. & A. 89). *Vf* ACCORDING.

"To be discharged with all DESPATCH, as Customary," means, REASONABLE despatch having regard to the actual circumstances, *e.g.* a STRIKE, at the time of the discharge, and the custom of the Port of Discharge (*Castlegate S. S. Co v. Dempsey*, 1892, 1 Q. B. 854; 61 L. J. Q. B. 620; *Lyle Co v. Cardiff Corp.*, 1900, 2 Q. B. 638; 69 L. J. Q. B. 889; 83 L. T. 329); and that reasonable despatch "the Consignee is bound to satisfy *de die in diem*: he cannot, by working extra hard on one day, entitle himself to idle on another day; and, if he has done more than an average quantity at the beginning, he cannot relax the measure of reasonable diligence towards the end" (per FitzGibbon, L. J., *The Benwick*, cited and repeated in *The Gairloch*, 1899, 2 I. R. 13). *Vf* USUAL AND CUSTOMARY MANNER.

"To be loaded as Customary, as per Guarantee" incorporates the Guarantee (*Monsen v. Macfarlane*, 1895, 2 Q. B. 562; 65 L. J. Q. B. 57; 73 L. T. 548).

By themselves, "the words 'to be loaded as Customary,' refer only to the mode, and not to the time, of loading" (per Fry, L. J., *Dunlop v. Balfour*, cited DEMURRAGE).



**CUSTOMARY EMPLOYMENT.** — What is a person's "Customary Employment," quæ a Friendly Society's Rules; *V. Manchester Law Clerks Society v. Wilson*, 4 Times Rep. 465; 52 J. P. 276.

**CUSTOMARY FINES.** — "Customary Fines, Fees, and other Dues and Payments," s. 20 (3), Settled Land Act, 1882; *V. Re Naglor and Spendla*, 34 Ch. D. 217; 56 L. J. Ch. 453; 56 L. T. 132; 35 W. R. 219.

**CUSTOMARY FREEHOLD.** — Where lands are held "by the Custom of the Manor only, and not at the Will of the Lord, it is, properly, Customary Freehold" (*Lingwood v. Gyle*, 15 W. R. 313; 36 L. J. C. P. 15; L. R. 2 C. P. 78; 16 L. T. 229). *Vh*, *Easton v. Penny*, 67 L. T. 290; 41 W. R. 72. *V. COPYHOLD: FREEHOLD.*

**CUSTOMARY MANNER.** — *V. USUAL AND CUSTOMARY MANNER.*

**CUSTOMARY MEASURE.** — *V. MEASURE.*

**CUSTOMARY RENT.** — "I understand a 'Customary Rent' to mean, a RENT which, by force of legal CUSTOM, enables the tenant to hold the land at a fixed rent" (per Fry, J., *Virian v. Moat*, 50 L. J. Ch. 332; 16 Ch. D. 733).

**CUSTOMARY RIGHTS.** — A reservation in an agreement for a Lease of "all Customary Rights and Reservations" does not render the agreement void for uncertainty (*Parker v. Taswell*, 2 D. G. & J. 559; 6 W. R. 608; 31 L. T. O. S. 226).

**CUSTOMARY TENANTS.** — Copyholders (Cowel). *V. COPYHOLD.*

**CUSTOMER.** — A business "Customer" is one who has the use and habit of resorting to the same person or place to do business; therefore, a stranger who goes into a Bank to get a cheque collected, is not a "Customer" of the Bank, within s. 82, Bills of Ex. Act, 1882 (*Mathews v. Brown*, 63 L. J. Q. B. 494; 10 Times Rep. 386; *La Cave v. Credit Lyonnais*, 1897, 1 Q. B. 148; 66 L. J. Q. B. 226; 75 L. T. 514; 13 Times Rep. 60). *Vf*, as to the section, *Clarke v. London and County Bank*, cited PAYMENT: *G. W. Ry v. London and County Bank*, 1900, 2 Q. B. 464; 69 L. J. Q. B. 741; 82 L. T. 746; 48 W. R. 662.

A contract restraining the contracting party from "in any way dealing, or transacting business, with the Customers" of the contractee, means, dealing or business "of the same, or a similar, kind to that which has been carried on by" the contractee (per Chitty, J., *Mills v. Dunham*, 1891, 1 Ch. 576; 60 L. J. Ch. 362; 64 L. T. 712; 39 W. R. 289; *See* per Kay, L. J., *S. C.*).

*Vf*, *McLean v. Dunn*, 39 Upper Canada Rep. Q. B. 551; TRADERS.

**CUSTOMS.** — H. M. Customs; *V.* 4 Encyc. 72-89.

Customs and Services; *V.* CUSTOM: SERVICE.

"Customs Warehouse"; Stat. Def., 32 & 33 V. c. 103, s. 3; 43 & 44 V. c. 24, s. 3.

**CUT.** — *V.* SLIT: TEAR: WOUND.

It was not the less a "Cutting" within 43 G. 3, c. 58, because inflicted with an instrument not ordinarily used for cutting (*R. v. Hayward*, Russ. & Ry. 78; *R. v. Atkinson*, *Id.* 104); but a stab was not a "cut," because the Act uses the words "stab or cut" so as to distinguish between them (*R. v. McDermot*, *Id.* 356).

"Cut as Underwood"; *V. Dashwood v. Magniac*, cited TIMBER.

Maliciously to "cut down, or otherwise destroy," any tree, s. 2, 9 G. 1, c. 22, was an offence that was committed by cutting down without totally destroying the tree (*R. v. Taylor*, Russ. & Ry. 373).

The Water Supply to an Inhabited Dwelling-house is not "cut off," s. 49, P. H. London Act, 1891, by the water being temporarily stopped from flowing into the house, if this be done for good cause, e.g. a leak in the service-pipe (*Young v. Southwark and Vauxhall W. W. Co.*, 37 S. J. 509).

**CWT.** — "A Hundredweight shall consist of 8 STONES" (s. 14, 41 & 42 V. c. 49), *i.e.* 112 lbs.

*V.* HUNDRED, PER: PER CWT.

**CY-PRÈS.** — The *Cy-près* doctrine is one of construction, and is this, — Where there is a gift or trust for a CHARITY which can be substantially, but not literally, fulfilled it will be effectuated by moulding it so that, as nearly as practicable, the intention of the benefactor may be carried out.

"I consider it now established, that, — although the mode in which a legacy is to take effect is, in many cases with regard to an individual legatee, considered as of the substance of the legacy, — where a legacy is given so as to denote that CHARITY is the legatee, the Court does not hold that the mode is of the substance of the legacy; but will effectuate the gift to Charity, as the substance, providing a mode for that legatee to take, which is not provided for any other legatee" (per Eldon, C., *Mills v. Farmer*, 19 Ves. 486). "As to the doctrine of *Cy-près* as applied to Charities, this sensible distinction has prevailed: The Court will not decree execution of a trust to a Charity in a manner different from that intended, except so far as they see that the intention cannot be executed literally: but another mode may be adopted, consistent with his general intention, so as to execute it, although not in mode, in substance. If the mode becomes by subsequent circumstances impossible, the general object is not to be defeated if it can be attained" (per Arden,

M. R., *A-G. v. Boulbee*, 2 Ves. 387). Both these cases were cited and applied by KAY, J., in *Biscoe v. Jackson*, 56 L. J. Ch. 95.

*Vh*, 1 Jarm. 243-250; Theobald, 333.

Speaking strictly, the rule is, probably, peculiar to gifts to a Charity (1 Jarm. 243), but "in many cases, limitations of Real Estate, in themselves void for PERPETUITY, have been made good by the application of the so-called doctrine of *Cy-près*" (Theobald, 532, *whc* for cases in illustration: *Vj*, 1 Jarm. 297-302).

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## DAILY LABOUR — DAMAGE

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**DAILY LABOUR.** — *I.* PERSONAL LABOUR: JOURNEYMAN: WAGES.

**DAILY PENALTY.** — Quà the Public Health Acts, “ ‘Daily Penalty.’ means, a Penalty for each day on which any Offence is continued after CONVICTION therefor ” (s. 11 (3), 53 & 54 V. c. 59); so, quà Electric Lighting Clauses Act, 1899, 62 & 63 V. c. 19 (Sch s. 1), and Thames Conservancy Act, 1894 (s. 3).

**DAIRY.** — Quà Infectious Disease (Prevention) Act, 1890, 53 & 54 V. c. 34, “ Dairy,” “ includes any farm, farmhouse, cowshed, milk-store, milk-shop, or other place from which milk is supplied, or in which milk is kept, for purposes of sale ” (s. 2); so, quà P. H. London Act, 1891 (s. 141), and P. H. Scotland Act, 1897 (s. 3).

“ *Dairyman*,” quà the same Acts and by the same sections, “ includes any cowkeeper, purveyor of milk, or occupier of a Dairy.” A FARMER who keeps cows as incidental to his farming business, is not a “ Cowkeeper ” within that def (*Umfreville v. London Co. Co.*, 66 L. J. Q. B. 177; 75 L. T. 550; 61 J. P. 84; 13 Times Rep. 109). In that case Wills, J., adopted a dictionary def of “ Cowkeeper ” as, “ one whose business it is to keep cows,” and added, “ the business of a COWKEEPER is a special business of its own.”

**Lord DALHOUSIE’S ACT.** — 9 & 10 V. c. 28.

**DAM.** — Quà SALMON Fisheries Acts, “ Dam,” “ means all weirs, and other fixed obstructions, used for the purpose of damming up water ” (s. 4, 24 & 25 V. c. 109). *Cp* FIXED ENGINE.

**DAMAGE.** — “ Neither in common parlance, nor in legal phraseology, is the word ‘Damage’ used as applicable to injuries done to the *person*; but solely as applicable to mischief done to *property*. We speak indeed of ‘damages’ as compensation for injury done to the person; but the term ‘damages’ is not employed interchangeably with the term ‘injury’ with reference to mischief wrongfully occasioned to the person ” (per Cockburn, C. J., *Smith v. Brown*, 40 L. J. Q. B. 218). This definition, which reads so simple and clear, is nothing more than the central bone of contention in a series of cases distinguished by a remarkable conflict of judicial opinion, the last word in which has, at last, been spoken.

That conflict was over the very short words of s. 7, Admiralty Court Act, 1861, 24 V. c. 10. which says. — “ The High Court of Admiralty shall have jurisdiction over *any claim for Damage* done by any Ship.”

The question as to the meaning of "damage," unembarrassed by context, could hardly be presented in a more absolute way.

The Common Law Courts persistently (Blackburn, J., *hesitantly*) held that "Damage" in the section just quoted did not include injury to the person, or, still less, claims by surviving relatives for loss of life (*Smith v. Brown*, 40 L. J. Q. B. 214; L. R. 6 Q. B. 729; *James v. Lond. & S. W. Ry*, 41 L. J. Ex. 89, 186; L. R. 7 Ex. 187, 287; *Simpson v. Blues*, 41 L. J. C. P. 128; L. R. 7 C. P. 290).

The exact contrary was, as persistently, held by the Admiralty Court and Privy Council (*The Sylph*, 37 L. J. Adm. 14; L. R. 2 A. & E. 24; *The Guldface*, 38 L. J. Adm. 12; L. R. 2 A. & E. 325; *The Beta*, 38 L. J. Adm. 50; L. R. 2 P. C. 447; *The Explorer*, 40 L. J. Adm. 41; L. R. 3 A. & E. 289; *The Franconia*, 46 L. J. P. D. & A. 71; 2 P. D. 8).

When the point came before the Court of Appeal, the Equity members of the Court (James and Baggallay, L. J.J.) held that "Damage" did include personal injury and claims for loss of life; whilst their two brethren (Bramwell and Brett, L. J.J.), whose experience was at the Common Law Bar, went the other way (*Jeffrey v. Franconia*, 46 L. J. P. D. & A. 33; 2 P. D. 163; *Vf, The Alina*, 5 Ex. D. 227, on *wher* per Esher, M. R., *Pugsley v. Ropkins*, 1892, 2 Q. B. 192; 61 L. J. Q. B. 647).

But the definition at the commencement of this article has now been authoritatively established by the House of Lords,—their lordships holding that a claim for loss of life under Lord Campbell's Act, is *not* a claim for "Damage" within s. 7, Admiralty Court Act, 1861 (*Seward v. The Vera Cruz*, 54 L. J. P. D. & A. 9; 10 App. Ca. 59). *Note*: in view of that decision it seems difficult to justify the first part of the judgment of Bruce, J., in *The Theta*, 1894, P. 280; 63 L. J. P. D. & A. 160; 71 L. T. 25; 43 W. R. 160.

It may perhaps be added that "Damage" did, at one time at any rate, in common parlance, include injury to the person; for St. Paul when on his voyage to carry his Appeal to Cæsar said,—"Sirs, I perceive that this voyage will be with hurt, and much *Damage*, not only of the lading and ship, *but also of our lives*" (Acts, xxvii. 10).

"Compensation for any Loss or Damage" sustained by Detention or Survey of a Ship, s. 10, Mer Shipping Act, 1876, does not include injury to the reputation of the shipowner by reason of a ship's seizure (*Dixon v. Calcraft*, 1892, 1 Q. B. 458; 61 L. J. Q. B. 529; 66 L. T. 554; 40 W. R. 598; 56 J. P. 388).

"Damage" may be controlled by the context and "*can* certainly mean Personal Injury"; and, therefore, where a packet company issued a passenger's ticket containing a special provision respecting loss, damage, or detention of luggage, and then, by a separate clause dealing with passengers personally, obtained exemption for "Loss or Damage" from certain specified causes; it was held that that included injury to

limb or life from the causes enumerated (*Haigh v. Royal Mail Steam Packet Co*, 52 L. J. Q. B. 395; 1b. 640).

"Damage done by any SHIP," s. 7, Admiralty Act (sup), means, "Damage done by some one, with a Ship as the noxious instrument" (per Bowen, L. J., *The Vera Cruz*, 53 L. J. P. D. & A. 41: *Vf*, *The Theta*, 63 L. J. P. D. & A. 160).

"Damage done by" Vessel or Float of Timber, s. 74, Harbours, Docks, and Piers, Clauses Act, 1847, 10 & 11 V. c. 27, does not include damage caused by the ACT OF GOD dashing a Vessel against the thing damaged (*Weir Commrs v. Adamson*, 47 L. J. Q. B. 193; 2 App. Ca. 743).

"Damage" deductible from FREIGHT; *V. The Barcore*, 1896, P. 294; 65 L. J. P. D. & A. 97; 75 L. T. 168.

V. DAMAGE BY COLLISION: DAMAGES TO CARGO: DAMAGE TO GOODS.

"ANY Damage"; *V. FULL COMPENSATION*.

"Damage" occasioned by the erection of a Urinal, &c, s. 88, Metrop Man. Act, 1855, means only direct damage caused by the structure itself; not consequential damage by reason of its being so erected as to cause a NUISANCE (*Vernon v. St. James, Westminster*, cited URINAL).

"Making good all Damage," s. 83 (6), Metrop Bg Act, 1855, provides for, and therefore only empowers, *structural* damage, not the invasion of a right of light (*Crofts v. Haldane*, 36 L. J. Q. B. 85; 8 B. & S. 194; L. R. 2 Q. B. 194). *Cp FULL COMPENSATION*.

"Satisfaction for all Damage"; *V. SATISFACTION*.

"The feeling of anxiety is Damage" (per Cranworth, V. C.) in reference to a covenant quâ user (*Kemp v. Sober*, 1 Sim. N. S. 520); and so is invasion of privacy (*Manners v. Johnson*, 45 L. J. Ch. 404; 1 Ch. D. 673), or the deprivation of the power of user, though such power has not theretofore been of one farthing benefit (*Trent-Stoughton v. Barbados Water Co*, 1893, A. C. 502; 62 L. J. P. C. 123; 69 L. T. 164, in *wh*e the words were "Damage or Loss"). *V. ANNOYANCE*.

The "Damage" for which compensation is to be given under s. 68, Lands C. C. Act, 1845, for lands "INJURIOUSLY AFFECTED," is such damage as would have given a right of compensation independently of that statute (*Caledonian Ry v. Ogilvy*, 2 Macq. 229); and so of a Private Act incorporating the Lands C. C. Act (*Rhodes v. Airedale Commrs*, 45 L. J. C. P. 861; 1 C. P. D. 402); and a similar construction was placed on the word "Damage" as used in s. 144, P. H. Act, 1848 (*Hall v. Bristol*, 36 L. J. C. P. 110; L. R. 2 C. P. 322).

As to this word in ss. 6, 16, Ry C. C. Act, 1845; *V. per Fry*, L. J., *R. v. Poulter*, 57 L. J. Q. B. 138; 20 Q. B. D. 132; 58 L. T. 534; 36 W. R. 117; 52 J. P. 244; and as used in s. 308, P. H. Act, 1875; *V. per Selborne*, C., *Brierley Hill v. Pearsall*, 54 L. J. Q. B. 25; 9 App. Ca. 595: *FULL COMPENSATION*.

"Damage," in an Enclosure Act giving compensation for the Working

of Mines, includes damage caused by subsidence (*Bell v. Dudley*, 1895, 1 Ch. 182; 64 L. J. Ch. 291; 72 L. T. 14; 43 W. R. 122; 59 J. P. 199).

Working Mines so as "to endanger or damage the further working"; *V. Knowles v. Lane & Y. Ry*, 59 L. J. Q. B. 39; 14 App. Ca. 248; *Chamber Colliery Co v. Rochdale Canal Co*, 1895, A. C. 564; 64 L. J. Q. B. 645; 73 L. T. 258; *New Moss Colliery Co v. Manchester S. & L. Ry*, 1897, 1 Ch. 725; 66 L. J. Ch. 381; 76 L. T. 231; 45 W. R. 493. *Vf* COMPULSORY POWERS.

"Damage . . . to the Road or Highway," s. 27, 41 & 42 V. c. 77, is not confined to "damage measurable in money"; nominal damages, — *e.g.* for subsidence creating no actual damage, — may be recovered under the phrase (per Collins, J., *A-G. v. Conduit Co*, 1895, 1 Q. B. 301; 64 L. J. Q. B. 213; 71 L. T. 771; 43 W. R. 366; 59 J. P. 70).

"Damage," s. 32, 24 & 25 V. c. 96, means direct, not consequential, injury (*R. v. Whiteman*, 23 L. J. M. C. 120).

You "damage" a thing if you render it imperfect or inoperative, *e.g.* a frame was "damaged," within s. 4, 28 G. 3, c. 55, by taking away a necessary part of it, although that part was not injured and if replaced the frame would be perfect (*R. v. Tacey*, Russ. & Ry. 452). So, if a steam-engine is rendered temporarily useless, by, *e.g.* a plugging (though removable) of one of its pipes, that is to "damage with intent to destroy or to render useless" the engine, within s. 15, 24 & 25 V. c. 97 (*R. v. Fisher*, 35 L. J. M. C. 57; L. R. 1 C. C. R. 7). You also "damage" a thing, *e.g.* a steam-engine, if you wrongfully set it going whereby it works its own injury (*R. v. Norris*, 9 C. & P. 241).

"Damage" is often used in contracts of Guarantee, *e.g.* where one undertakes to shield another against the "costs, damages, and expenses" of actions that may be brought by third parties. If the verb of the guarantee is appropriate, an action may be brought on the guarantee before actual payment, for a liability to pay is, generally speaking, "damage" (*Spark v. Heslop*, 28 L. J. Q. B. 197; 1 E. & E. 563; *Randall v. Roper*, 27 L. J. Q. B. 266; E. B. & E. 84). *V. DAMAGES: INDEMNIFY.*

The phrase "*as little Damage as can be*" in the working clause of the Ry C. C. Act, 1845, applies not to what is done, but to the manner of doing it — the *modus operandi* (*R. v. E. & W. India Docks Co*, 22 L. J. Q. B. 384; 2 E. & B. 474; *Fenwick v. E. Loud. Ry*, 44 L. J. Ch. 602; L. R. 20 Eq. 544; *Biscoe v. G. E. Ry*, L. R. 16 Eq. 636; *Pugh v. Golden Valley Ry*, 12 Ch. D. 274). *Vf* COMPULSORY POWERS.

"Doing no Avoidable Damage"; *V. Elliot v. N. E. Ry*, 32 L. J. Ch. 402; 10 H. L. Ca. 333.

"Continuance of Injury or Damage"; *V. CONTINUANCE.*

"Special Damage"; *V. SPECIAL.*

*V. INJURY: LOSS: DAMAGE BY COLLISION: WILFUL AND MALICIOUS.*

**DAMAGE BY COLLISION.** — The jurisdiction given to County Courts, by Co. Co. Admiralty Jurisdiction Act, 1868, s. 3 (3), as extended by 32 & 33 V. c. 51, s. 4, in cases of "Damage by Collision or otherwise," includes damage by a ship coming into contact with a Fixed Object, as well as damage by collision of Ships (*Mersey Docks v. Turner*, 1893, A. C. 468; 63 L. J. P. D. & A. 17; 69 L. T. 630; 57 J. P. 660; overruling *Eccerard v. Kendall*, 39 L. J. C. P. 234; L. R. 5 C. P. 428, and *Robson v. Owners of "Kate,"* 57 L. J. Q. B. 546; 21 Q. B. D. 13; 59 L. T. 557; 36 W. R. 910). *Va*, COLLISION: ADMIRALTY CAUSE: DAMAGE.

Damages to be paid by the owner of one vessel to the owner of another vessel injured by a Collision, include Loss of Profit through detention for repairs, as well in respect of a specific engagement of the vessel as of its user generally (*The Argentino*, 59 L. J. P. D. & A. 17; 14 App. Ca. 519). Not so as regards an Insrce against "Loss or Damage by reason of Collision"; for the loss of profits is a consequence of the repairs rather than of the collision, and especially would this be the reading if the Policy goes on to say that the insurer "may make good the loss or damage instead of paying the amount thereof," for that shows that "Loss or Damage" is confined to the injury done to the vessel (*Shelbourne v. Law Investment Corp*, 1898, 2 Q. B. 626; 67 L. J. Q. B. 944; 79 L. T. 278). So, damage to fruit by its unloading, so that repairs to the vessel might be effected, and by its reloading, after the repairs were effected, is not "damage consequent upon Collision," within a policy on the fruit (*Pink v. Fleming*, cited CONSEQUENT). *Vf*, *Heard v. Holman*, cited SHIP.

As to the Measure of Damages by Collision; *V. The Mediana*, 1900, A. C. 113; 69 L. J. P. D. & A. 35; 82 L. T. 95; 48 W. R. 398.

**DAMAGE BY FIRE EXCEPTED.** — *V. REPAIR.*

**DAMAGE FEASANT.** — " 'Damage Feasant,' is when a stranger's beasts are in another man's ground, without lawfull authority or license of the tenant of the ground, and there doe feed, tread, or otherwise spoile, the Corn, Grasse, Woods, or such like: In which case the tenant, whom they hurt, may therefore take, distraine, and impound them, as well in the night as in the day" (Termes de la Ley). *Vh*, Bullen on Distress, 2 ed., 257-276: *Boden v. Roscoe*, 1894, 1 Q. B. 608; 63 L. J. Q. B. 767. *Va* DISTRESS.

**DAMAGE IN FACT.** — *V. "Special Damage,"* sub SPECIAL.

**DAMAGE TO CARGO.** — "The words 'Damage to Cargo,' s. 3 (3), 32 & 33 V. c. 51, I think, obviously refer to cargo damaged whilst on board ship" (per Grantham, J., *Robson v. Owners of "Kate,"* cited DAMAGE BY COLLISION).



**DAMAGE TO GOODS.** — “Damage to any goods which is capable of being covered by Insurance,” in an Exception in a Bill of Lading, includes a total loss or destruction, but not an abstraction, of the goods (*Taylor v. Liverpool & Gt. Wn. Steam Co.*, cited INSURANCE).

**DAMAGE TO LANDS.** — “Damage to Lands” by Military Manœuvres; Stat. Def., 34 & 35 V. c. 97, s. 11; 35 & 36 V. c. 64, s. 13; 36 & 37 V. c. 58, s. 12; 45 & 46 V. c. 10, s. 11.

**DAMAGES.** — “‘*Dammages.*’ *Damna* in the common law hath a speciall signification for the recompense that is given by the jury to the plaintife or defendant (qy, demandant? *V. Ritso’s Intr.* 119), for the wrong the defendant hath done unto him” (Co. Litt. 257 a: *Vf*, Jacob: 4 Encyc. 93–109). Costs are parcel of the Damages (Co. Litt. 257 a: *O’Loughlin v. Fogarty*, 5 Ir. L. R. 54).

Compensation under the Lands C. C. Act, 1845, for lands INJURIOUSLY AFFECTED is not “Damages” within s. 140, Ry. C. C. Act, 1845 (*R. v. Edwards*, 53 L. J. M. C. 149; 13 Q. B. D. 586). *V. COMPENSATION.*

A Patentee’s right to an Account of Profits made by an Infringer, is not one for “Damages,” *e.g.* under s. 37, Bankry Act, 1883; it is “more like an equitable claim for Money had and received”: *secus*, of Damages caused by the infringement (*Watson v. Holliday*, 52 L. J. Ch. 543; 31 W. R. 536; 43 L. T. 545; 20 Ch. D. 780). *Vf* LIQUIDATED DAMAGES.

Damages to “Party Grieved,” s. 3, Civil Procedure Act, 1833; *V. PENAL. Cp*, *Adams v. Batley*, cited OFFENCE.

“All Damages,” *quâ* Ships; *V. The Saronita*, cited ALL.

*V. DAMAGE: CREDITOR: DEBTS: Vf*, Mayne on Damages: Sedgwick on the Measure of Damages.

**DAMNUM ABSQUE INJURIA.** *V. INJURY.*

**DANCING.** — *V. PUBLIC DANCING.*

**DANGER.** — A lessee’s covenant, in a Lease of a Public-house, that he will not do or suffer anything whereby the License “may be in any Danger of being suspended, discontinued, or forfeited,” is not broken by his being convicted of selling drink after hours, if the conviction is not endorsed on the License (per Charles, J., *Fleetwood v. Hull*, 58 L. J. Q. B. 341; 23 Q. B. D. 35): the learned judge added, — “If the conviction had been endorsed on the License, a question might have arisen whether the License was or was not endangered. If two convictions had been endorsed, then the Licensee would no doubt have been in danger, because a third conviction would, by s. 30, Licensing Act, 1872, forfeit the License.”

*V. AFFECT: IMPERIL.* For a Form for this covenant, *V. 1 Key & Elph. Precedents*, 6 ed., 750. *Cp* “Liable to be deprived,” sub LIABLE.

*V. DANGERS: DAMAGE: IMPOSSIBLE.*

**DANGEROUS.** — *V. OFFENSIVE: EXTRAORDINARILY.*

"Dangerous," ss. 69, 72, 73, Metrop Bg Act, 1855, applies to all Structures which are in a dangerous state; the word is not confined to structures which are dangerous to Passengers using a public way (*R. v. Herring*, 63 L. J. M. C. 230).

*V.*; STRUCTURE.

Quà Part 5, Mer Shipping Act, 1894, " 'Dangerous Goods,' means, aqua fortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitro-glycerine, petroleum, any EXPLOSIVES within the meaning of the Explosives Act, 1875, and any other goods which are of a dangerous nature " (s. 446).

"All dangerous *Parts of the Machinery*," s. 6 (2), 54 & 55 V. c. 75, is to be read unrestrictedly, and not *ejusdem generis* with s. 5, 41 V. c. 16 (*Redgrave v. Lloyd*, 1895, 1 Q. B. 876; 64 L. J. M. C. 155; 72 L. T. 565; 43 W. R. 527; 59 J. P. 293); the phrase is not confined to Parts which are in themselves dangerous, but applies to all Machinery from which, in the ordinary course of working it, danger may be reasonably anticipated, although such danger may arise only through careless working or external causes (*Birtwhistle v. Hindle*, 1897, 1 Q. B. 192; 66 L. J. Q. B. 173; 76 L. T. 159; 45 W. R. 207; 61 J. P. 70).

"Dangerous LUNATIC"; *V. R. v. Barnsley*, 12 Q. B. 198.

Dangerous Performances Acts, 1879 and 1897, 42 & 43 V. c. 34, 60 & 61 V. c. 52.

**DANGERS.** — "It has been held long ago that the words 'Dangers of the Seas' are synonymous with PERILS OF THE SEAS" (per Esher, M. R., *Pandorf v. Hamilton*, 55 L. J. Q. B. 548). " 'Dangers and Accidents of the Sea' cannot have a narrower interpretation than 'Perils of the Sea' " (per Ld Herschell, *Wilson v. The Xantho*, 56 L. J. P. D. & A. 118; 12 App. Ca. 506; 57 L. T. 701; 36 W. R. 353; 6 Asp. 207).

The clause in a Charter-party excepting "Dangers and Accidents of the Sea," &c, applies only to the voyage and not to the whole Charter-party (*Smith v. Dart*, 54 L. J. Q. B. 121; 14 Q. B. D. 105; 52 L. T. 218; 33 W. R. 455). — Such an exception in a Bill of Lading does not limit the owner's implied warranty of seaworthiness (*The Glenfruin*, 54 L. J. P. D. & A. 49; 10 P. D. 103; 52 L. T. 769; 33 W. R. 826). *Vf. SEAWORTHY: 1 Maude & P. 353.*

*V.* NAVIGATION: RISKS OF THE SEA.

In a Contract of Affreightment, "the Court said that the words 'Dangers of Roads' might be explained, by the context, to refer to Marine Roads where vessels lie at anchor, but that even supposing them to extend to roads on land, they could apply to such dangers only as were immediately caused by the condition of the roads; such for instance as the over-turning of carriages" (1 Maude & P. 353, citing *Rothschild v. Royal Mail Steam Packet Co*, 7 Ex. 734; 21 L. J. Ex. 273).

**DATE.** — “Where a deed bears no date, or an impossible date, and in the deed reference is made to the ‘Date,’ that word must be construed ‘DELIVERY’; but if the deed bears a sensible date, the word ‘Date,’ occurring in the deed, means the Day of the Date, and not that of the delivery” (Elph. 123, citing *Styles v. Wardle*, 4 B. & C. 908; 7 D. & R. 507; *Vf*; HABENDUM: LAST PART: Co. Litt. 46 b and Hargrave’s note (8) thereon: Woodf. 160).

“Date,” though sometimes used as the shortened form of “Day of the Date,” is not its synonym; but means, the particular time on which an instrument is given, executed, or delivered (*Howard’s Case*, 1 Raym. Ld. 480; 2 Salk. 625: *Armitt v. Breame*, 2 Raym. Ld. 1076: *Peatress v. Annan*, 9 Dowl. 828, 834, 835). *See*, FROM THE DAY OF THE DATE.

The “date” of a Bill of Ex., or Note, is the date expressed on its face; not the time when it is actually issued (*Williams v. Jarrett*, 5 B. & Ad. 32). *Vf* AT SIGHT.

**DAUGHTER.** — May be construed as a word of limitation: *V*. 2 Jarm. 400 *et seq.*

“It cannot be said that the word ‘Daughters’ is at all more appropriate to describe illegitimate daughters, than the word ‘Children’ would be to describe illegitimate children” (per Wood, V. C., *Re Herbert*, 29 L. J. Ch. 870; 1 J. & H. 123). And though in *Laker v. Hordern* (45 L. J. Ch. 315; 1 Ch. D. 644) Bacon, V. C., held that a gift to “my daughters” meant existing illegitimate daughters, inasmuch as testator had always treated them as his daughters and had no legitimate children; yet it has been submitted that that case cannot be supported and is undistinguishable from *Dorin v. Dorin* (2 Jarm. 234, *n* (o)): *Va*, *Kelly v. Hammond*, 26 Bea. 36. For *Dorin v. Dorin*, *V*. CHILDREN). *V*. SON: NEPHEW.

*V*. GRAND-DAUGHTER: OTHER DAUGHTERS.

**DAY.** — “The *Jewes*, the *Chaldeans*, and *Babylonians*, begin the day at the rising of the sun; the *Athenians* at the fall; the *Umbri* in *Italy* beginne at midday; the *Aegyptians* and *Romanes* from midnight; and so doth the law of *England* in many cases” (Co. Litt. 135 a: *Vf*. 1b. 134 b). The English Day begins as soon as the clock begins to strike twelve p. m. of the preceding day (*Williams v. Nash*, 28 L. J. Ch. 886; 28 Bea. 93: s. 36 (2), Interp Act, 1889). *See*, LAY DAYS: RUNNING DAYS.

Quà s. 9 and by its subs. 4, Housing of the Working Classes Act, 1885, “‘Day,’ means, the period between 6 A. M. and the succeeding 9 P. M.”; so, of P. H. London Act, 1891 (s. 141); but quà P. H. Scotland Act, 1897, “‘Day’ and ‘Daytime,’ mean between 9 A. M. and 6 P. M.” (s. 3).

Sometimes “Day” is defined as from 6 A. M. to 10 P. M. (8 & 9 V c. 29, s. 2).

*Vh* 4 Encyc. 111.

"Daytime, within which DISTRESS for Rent must be made, is from Sunrise to Sunset (*Tutton v. Dorke*, 5 H. & N. 647; 29 L. J. Ex. 271; 36 L. T. O. S. 361); but the Court declined to define "Sunrise" or "SUNSET"; *Srth* obs of Pollock, C. B., 5 H. & N. 654. *Vf*, BY DAY: NIGHT.

A legal day sometimes comprehends several natural days, — *e.g.* an Assize Day, Quarter Sessions Day, Term Day, Session Day of Parliament (*Doe d. Wrangham v. Hersey*, 3 Wils. 274; *Whitaker v. Wisbey*, 12 C. B. 44; 21 L. J. C. P. 116; 16 Jur. 411). *Vf* Beerhouse Act, 1830, s. 32.

Though, generally, Fractions of a day are not regarded (*Marks v. Frogley*, cited SOLDIER), yet for some purposes this may be done; *V. Combe v. Pitt*, 3 Burr. 1434; *Thomas v. Desanges*, 2 B. & Ald. 586; *Godson v. Sanctuary*, 4 B. & Ad. 263, 264; *Chick v. Smith*, 8 Dowl. 340; *Campbell v. Strangeways*, 3 C. P. D. 105; 47 L. J. M. C. 6; *Clarke v. Bradlaugh*, 50 L. J. Q. B. 678; 7 Q. B. D. 151.

A contract to receive a Cargo, *e.g.* of Coals, at the rate of so much "per Day," does not connote a greater exigency than WORKING DAY (*Harper v. McCarthy*, 2 B. & P. N. R. 258); but in that case a wet day was excluded from computation.

V. CLEAR: DAYS: NIGHT: LAWFUL DAY: ONE DAY: TIME: WITHOUT DAY: PASSING: PEREMPTORY.

**DAY OF DATE.** — V. DATE: FROM THE DAY OF THE DATE.

**DAY OF HEARING.** — This phrase in R. 104, Co. Co. Rules, 1867, which formerly regulated a demand for a jury, meant the day originally appointed for the hearing (*Fletcher v. Baker*, 43 L. J. Q. B. 112; L. R. 9 Q. B. 370; *R. v. Leeds Co. Co.*, 16 Q. B. D. 691).

V. RETURN DAY.

**DAY OF NOMINATION.** — "In relation to the election of County Councillors, the 'Day of Nomination' shall be deemed to be the day on which the names of the persons nominated are fixed on the Town Hall, or other conspicuous place" (Loc Gov Act, 1888, s. 100).

**DAYS.** — "The general rule of law is, that 'Days' mean, consecutive days, *except Sunday is the first or last day*; but in mercantile cases it is sometimes otherwise, because mercantile contracts are to be construed with reference to mercantile usage" (per Alderson, B., *Brown v. Johnson*, C. & M. 444). *Vf*, *Morris v. Barrett*, 29 L. J. C. P. 102; 7 C. B. N. S. 139; *R. v. Middlesex Jus.*, 17 L. J. M. C. 111.

"Where a certain number of days is to be allowed for the delivery of goods under a *Contract of Sale*, they are to be counted as consecutive days and *include Sundays*, unless the contrary be expressed, or an usage to that effect be shown. Extra day in Leap Year counts by itself and is not reckoned as one with the previous day: 42 & 43 V. c. 59" (*Benj.* 674, citing *Brown v. Johnson*, 10 M. & W. 331; 11 L. J. Ex. 373:

*Cochran v. Retberg*, 3 Esp. 121: *Vf, Hodgins v. Hancock*, 14 M. & W. 121. Note. — The statute cited repeals 40 H. 3, which provided that the extra day in Leap Year and the day preceding should be reckoned as one day).

There is no absolute rule, — except where the phrase is “CLEAR Days,” — in computing time from an act or event that the day is to be inclusive or exclusive; it depends on the reason of the thing according to circumstances (*Lester v. Garland*, 15 Ves. 248); but the general rule may, probably, be stated to be that where anything is to be done so many days before or after something else, one day is reckoned inclusively and one exclusively (*R. v. West Riding Jus.*, 4 B. & Ad. 685). *Cp* FROM.

An Act of Bankry by goods seized under a *fi. fa.* being “held by the sheriff for 21 days,” s. 1, Bankry Act, 1890, means, 21 whole days, and the day of seizure is excluded (*Re North*, 1895, 2 Q. B. 264; 64 L. J. Q. B. 694; 72 L. T. 854).

Application for a Case, s. 2, 20 & 21 V. c. 43, had to be made “within 3 days” after the Justices’ decision (now 7 days, by the Rules under s. 33, Sum Jur Act, 1879); in that matter, though the last day is a Sunday it has to be counted (*Peacock v. The Queen*, 27 L. J. C. P. 224; 4 C. B. N. S. 264; — does the rule in *the* apply to the Transmission of the case? *V. TRANSMIT*). So, where Recognizance had to be entered into “within 2 days” after Notice of Appeal, Sunday, though the last day, was counted (*Ex p. Simpkin*, 29 L. J. M. C. 23). *Sr, Wynne v. Ronaldson*, 12 L. T. 711: *R. v. Middlesex Jus.*, 17 L. J. M. C. 111; 7 Jur. 396: WITHIN.

#### V. AT LEAST: CLEAR.

When Sunday, Christmas-day, &c are to be “excluded,” — *e.g.* Parliamentary Elections Act, 1868, s. 49; Corrupt and Illegal Prae. Prev. Act, 1883, s. 40 (5); R. 3, Addl. Gen. Rules (Parliamentary), 1875. — all the Sundays, &c of a prescribed sequence of days are to be eliminated in computing them (*Southampton Case, Pegler v. Guruey*, 19 L. T. 647; L. R. 4 C. P. 237, 238). So, of Municipal Elections (*Howes v. Turner*, 45 L. J. C. P. 550; 1 C. P. D. 670).

Where by the Bills of Ex. Act, 1882, “the time limited for doing any act or thing is less than 3 days, Non-business days are excluded” (s. 92).  
V. BUSINESS DAYS.

In a Charter-Party providing for Lay-days, “the word ‘Days’ alone, would mean days as reckoned in each particular port” (per Esher, M. R., *Neilson v. Wait*, 55 L. J. Q. B. 89; 16 Q. B. D. 70).  
V. DEMURRAGE DAYS: LAY DAYS: RUNNING DAYS: WORKING DAY: WEATHER WORKING DAY.

**DAYS OF GRACE.** — “Where a Bill (of Exchange) is not payable On Demand the day on which it falls due is determined as follows:

- (1) Three days, called *Days of Grace*, are, in every case where the Bill itself does not otherwise provide, added to the time of payment

as fixed by the Bill, and the Bill is due and payable on the last Day of Grace: Provided that

- (a) When the last Day of Grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a Public Fast or Thanksgiving Day, the Bill is, except in the case hereinafter provided for, due and payable on the preceding business day;
  - (b) When the last Day of Grace is a Bank Holiday (other than Christmas Day or Good Friday), under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last Day of Grace is a Sunday and the second Day of Grace is a Bank Holiday, the Bill is due and payable on the succeeding business day.
- (2) Where a Bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.
- (3) Where a Bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the Bill be accepted, and from the date of noting or protest if the Bill be noted or protested for non-acceptance, or for non-delivery.”
- (s. 14, Bills of Ex. Act, 1882): these provisions as to “Days of Grace” relate also to Promissory Notes (s. 89, *Ib.*).

A Right of Action does not accrue until after the expiration of the whole of the last Day of Grace, although a right to PROTEST and to give Notice of Dishonour accrues immediately on refusal of payment (*Keenedy v. Thomas*, 1894, 2 Q. B. 759; 63 L. J. Q. B. 761; 71 L. T. 144; 42 W. R. 641). *V. DISHONOURED.*

#### DAYTIME. *V. DAY.*

**DE BENE ESSE.** — “To take or do a thing *de bene esse*, is to allow or accept for the present till it comes to be more fully examined, and then to stand or fall according to the merit of the thing in its own nature, so that *valeat quantum valere potest*” (Cowel).

**DE DONIS.** — Statute de Donis; *V. WESTMINSTER.*

**DE INJURIÂ.** — The Replication *De Injuriâ* (more fully, *De injuriâ suâ propriâ absque tali causâ*, — “of his own wrong, and without the cause in the said last-mentioned plea alleged”), was a General Replication putting in issue, in general terms, all the material averments of the Plea. *Vh.* and as to its use, *Crogate's Case*, 8 Rep. 66 b, and notes thereto by Fraser, in his edition of the Reports, 1826: *Selby v.*

*Bardons*, 3 B. & Ad. 2: for an example of the Replication, *V. Stephen on Pleading*, 3 ed., 162-164.

This Replication has become obsolete since s. 79, Com. L. Pro. Act, 1852, and its utility is now supplied by the Joinder of Issue.

**DEACON.** — “It appertaineth to the office of a Deacon (in the Church where he shall be appointed to serve) to assist the Priest in Divine Service, and specially when he ministereth the Holy Communion and to help him in the distribution thereof, and to read Holy Scriptures and Homilies in the church; and to instruct the youth in the Catechism; in the absence of the Priest, to baptize infants; and to preach if he be admitted thereto by the Bishop. And furthermore, it is his office (where provision is so made) to search for the Sick, Poor, and Impotent people of the parish, and to intimate their estates, names, and places where they dwell unto the CURATE, that by his exhortation they may be relieved with the alms of the parishioners or others” (Church of Eng., Ordination Service): “Curate” here means the Rector, or Vicar, who has the Cure of Souls (Phil. Ecc. Law, 109, *whrf* hereon). *Cp* SUBDEACON.

**DEAD.** — Where there is a gift over to a prescribed CLASS on the death of a Tenant for Life, and that is followed by a gift over to the same Class — on the bankruptcy of the tenant for life “in the same manner as if he was *naturally* dead,” — this divesting would, it seems, rather apply to the Tenant for Life than to the Class, so that the period for ascertaining the Class would not be accelerated, and members of the Class coming into being after the bankruptcy would be entitled to participate (*Re Bedson*, 54 L. J. Ch. 644; 28 Ch. D. 523: *Vthe, Blackman v. Fyish*, 60 L. J. Ch. 671).

*V.* DEATH: DIE: DECEASED.

**DEAD BODY.** — Leaving a living child in a secret place to die from exposure or want, is not a “SECRET DISPOSITION of the *Dead Body*” of the Child within s. 60, 24 & 25 V. c. 100 (*R. v. May*, 31 J. P. 356). *V.* DISPOSE OF, at end.

*V.* CADAVER.

**DEAD FREIGHT.** — “The term ‘Dead FREIGHT’ denotes an agreed sum to be paid in respect of space not filled according to charter, or damages provided for by a charter, in the event of the freighter not loading a full cargo” (1 Maude & P. 389, citing *Birley v. Gladstone*, 3 M. & S. 205; *Phillips v. Rodie*, 15 East, 547; *Pearson v. Göschen*, 17 C. B. N. S. 352; 33 L. J. C. P. 265; *Vf, McLean v. Fleming*, L. R. 2 Sc. & D. App. 128, considered in, *Gray v. Carr*, 40 L. J. Q. B. 257; L. R. 6 Q. B. 522: *Clink v. Radford*, cited CEASE).

**DEAD RENT.** — Dead RENT in a mining lease is “a rent payable whether the mines be worked or not” (Woodf. 411). *V. Copinger & Munro on Rents*, 19, 20.

**DEAD STOCK.** — *V. LIVE AND DEAD STOCK.*

**DEAD WALL.** — “Where a WALL is without any house or building behind it and is merely intended to fence off or separate the road from the space of ground by the side of it having no windows or doors, that, I think, is a ‘Dead Wall,’ within the meaning of the Act” (per Maule, J., *Arnell v. Lond. & N. W. Ry.*, 12 C. B. 718; the Act was a Local Paving Act in which “Dead Wall” was scarcely, if at all, affected by its context).

**DEAD WEIGHT.** — A guarantee by a Shipowner of a Ship’s carrying capacity being so much “Dead WEIGHT,” is a guarantee of the vessel’s carrying capacity with reference to the contemplated VOYAGE, and the description of the CARGO proposed to be shipped, so far as that description was made known to the owner” (per Ld Macnaghten, *Mackill v. Wright*, 14 App. Ca. 120: *See, Carnegie v. Conner*, cited CARGO).

Oral evidence may be received to show the force of this phrase (*Cunningham v. Dunn*, 3 C. P. D. 443; 48 L. J. C. P. 62).

**DEAD YEAR.** — *V. YEAR.*

**DEAF.** — Quâ Elementary Education (Blind and Deaf Children) Act, 1893, 56 & 57 V. c. 42, “‘Deaf,’ means, too deaf to be taught in a class of hearing children in an elementary school” (s. 15).

**DEAL IN.** — “Shall have dealt in”; *V. PREVIOUSLY.*

**DEAL WITH.** — Where Tonnage was imposed upon coals brought into a district and was payable before the owner “sells, delivers, or deals with” them; held, that coals brought into the district for the owner’s own use were liable to the tax (*N. E. Ry v. Kingston-upon-Hull*, 55 J. P. 518; 7 Times Rep. 302; following *Wilson v. Kingston-upon-Hull*, 14 W. R. 638).

“In any way deal, or transact business, with”; *V. Mills v. Dunham*, cited CUSTOMER.

Where a consequence follows on an alleged Offence being “dealt with” by a competent tribunal, that provision does not only apply when there has been a Conviction, it equally applies if the charge is dismissed (*Ex p. Brown*, 37 S. J. 27). *V. SUMMARILY.*

**DEALER.** — *V. DEALING.*

“Dealer in Gold, or Silver, Wares”; Stat. Def., s. 14, 7 & 8 V. c. 22.

“Dealer in Marine Stores,” “Dealer in Old Metals”; *V. s. 3, 25 & 26 V. c. 64; s. 3, 27 & 28 V. c. 91; s. 3, 30 & 31 V. c. 119; s. 3, 30 &*



31 V. c. 128. The first def of "Dealer in Old Metals" is given in s. 3, Old Metal Dealers Act, 1861, 24 & 25 V. c. 110, to which the subsequent defs refer, and which also defines "Old Metals" as the articles therein enumerated. *Vf*, s. 538, Mer Shipping Act, 1894.

"Dealer in Tobacco"; *V*. RETAILER.

**DEALING.**—"I take it that the strict definition of 'dealing' is 'distributing.' A Dealer is one who distributes" (per Alderson, B., *Allen v. Sharp*, 17 L. J. Ex. 212), or, in other words, one who trades, buys, or sells (*Berks v. Bertolet*, 13 Penn. St. 524).

Any person on unlicensed premises "for the purpose of *illegally dealing in Intoxicating Liquor*," s. 17, 37 & 38 V. c. 49, includes a Buyer as well as a Seller (*McKenzie v. Day*, 1893, 1 Q. B. 289; 62 L. J. M. C. 49; 68 L. T. 345; 41 W. R. 384; 57 J. P. 216).

"Conduct, Dealings, and Property"; *V*. CONDUCT.

*V*. CONTRACT: TRADE: MUTUAL: ORDINARY COURSE.

**DEAN.**—A Dean holds a DIGNITY in the Church without Cure of Souls, and may sometimes be a Corporation Sole (1 Bl. Com. 469): he is generally the head of a Corporation Aggregate with a CHAPTER (*Ib.*). "A Dean and Chapter are the council of the Bishop, to assist him with their advice in the affairs of religion, and also in the temporal concerns of his See" (*Ib.* 382). *Vf*, Phil. Ecc. Law, Part 2, ch. 4: Grant on Corporations, 581. *Cp* RURAL DEAN.

Stat. Def., 35 & 36 V. c. 8, s. 2.

"Dean and Chapter of Truro"; *V*. 50 & 51 V. c. 12, s. 2.

"Dean of Guild"; *Scot.* 18 & 19 V. c. 88, s. 36.

**DEAR: DEARLY-BELOVED.**—As to the value of these expressions in devises, for the purpose of preventing a Resulting Trust to the heir; *V*. 1 Jarm. 570.

*V*. BELOVED WIFE.

**DEAR SIR.**—"Dear Sir," at the commencement of a letter sent to one of the contracting parties and which letter contains the terms of a Contract, will be read as the Name of that party so as to be a good NOTE of the Contract if the letter is enclosed in an envelope addressed to such party (*Pearce v. Gardner*, 1897, 1 Q. B. 688; 66 L. J. Q. B. 457; 76 L. T. 441; 45 W. R. 518).

**DEATH.**—Where a life interest is to cease on the re-marriage or re-cohabitation, or bankry, of the Tenant for Life, or other event, and there is a gift over which (by an imperfection of language) is expressed to take effect on the happening of one or more of those events, the gift over is read as taking effect at the termination of the life interest by either event, or by the death of the tenant for life (*Luxford v. Checke*, 3 Lev.

125: *Jones v. Westcomb*, 1 Eq. Ca. Ab. 245; Pr. Ch. 316: *Bainbridge v. Cream*, 16 Bea. 25: *Joel v. Mills*, 3 K. & J. 467: *Brown v. Hammond*, Johns. 210: *Wardroper v. Cutfield*, 33 L. J. Ch. 605; 12 W. R. 458: *Euton v. Hewitt*, 2 Dr. & Sm. 184; 7 L. T. 496: *Underhill v. Roden*, 45 L. J. Ch. 266; 2 Ch. D. 494: *Re Stanford*, 56 L. J. Ch. 273; 34 Ch. D. 362; 55 L. T. 765; 35 W. R. 191: 1 Jarm. 802-804). *Note*. — These cases were followed doubtingly by Stirling, J., in *Re Tucker*, 56 L. J. Ch. 449; 56 L. T. 118; 35 W. R. 344; and, willingly, by Kay, J., in *Re Dear*, 58 L. J. Ch. 659, and *Re Cane*, 60 L. J. Ch. 36: — *Seemle*, the application of the rule (itself a strong step originally) depends on each context, *V. Re Tredwell*, 1891, 2 Ch. 640; 60 L. J. Ch. 657; 65 L. T. 399; *Sethe, Jackson v. Battley*, 36 S. J. 516, 521. *Vf, Re Ake-royd*, 1893, 3 Ch. 363; 63 L. J. Ch. 32. *Scarborough v. Scarborough* (58 L. T. 851) shows that *Pile v. Salter* (5 Sim. 411) is now of very little authority.

#### V. WIDOW.

A gift to two or more equally for life and “*on their deaths*,” over; means, that the gift over does not take effect till the death of the survivor of the life beneficiaries; and that, on the death of either of them, the income thereby set free goes to the survivors or survivor until the death of the last survivor (*Re Buller*, 74 L. T. 406: *Pearce v. Edmeades*, 3 Y. & C. 246).

Presumption of Death; *V. PRESUMPTION.*

“In case of death”; *V. Chitty*, Eq. Ind. 8055, 8056.

Death “by Poison”; *V. POISON.*

*V. DEAD: DIE: DIE WITHOUT ISSUE: AT: AT HIS DEATH: AT THEIR DEATH: CIVIL DEATH: MORTALITY: PASSING: VENIAL.*

**DEATH DUTIES.** — Stat. Def., Finance Act, 1894, s. 13 (3).

**DEBATES.** — *V. QUARRELS.*

**DEBENTURE.** — This word seems to have originated from “*Debentur mihi*,” with which various old forms of Acknowledgments commenced (per Chitty, J., *Levy v. Abercrombie Co*, 57 L. J. Ch. 204; 37 Ch. D. 260; 36 W. R. 411). In a previous case (*Edmonds v. Blain Co*, 56 L. J. Ch. 817; 36 Ch. D. 215; 57 L. T. 139; 35 W. R. 798), the same learned judge said, “So far as I am aware, the term ‘*Debenture*’ has never received any precise legal definition. It is, comparatively speaking, a new term. I do not mean a new term in the English language, because there is a passage in Swift (quoted in Latham’s Dictionary), where the term ‘*Debenture*’ is used.” “*Debentures*” were, on the 24th Dec 1647, ordered to be given to the “*Souldiery*” of the Parliament for the arrears of their pay (cap. 113, Ordinances of the Long Parliament, printed in Scobell’s Collection, p. 148, where, in the *Title* to the Ordinance, the word is spelt “*Debentures*”). “*Debenture*” is also used in the Act of Oblivion, 12 Car. 2, c. 11, s. 15, and in 41 G. 3, c. 75,

s. 7. *Vf*, for still earlier use of this word, *Palmer Co. Prec. Part 3, p. 1 et seq.*

“No one seems to know exactly what ‘Debenture’ means” (Buckl. 192, citing *British India Steam Nav. Co v. Ind. Rev.*, 50 L. J. Q. B. 517; 7 Q. B. D. 165, in *whc* Grove, J., said, — this is “a word which has no definite signification in the present state of the English language”: *Re Florence Land Co, Ex p. Moor*, 48 L. J. Ch. 137; 10 Ch. D. 530). It should rather be said that no one has yet laid down an exhaustive definition of a Debenture. The *British India Steam Nav. Co’s* case shows that it is not true to say that a Debenture is necessarily an obligation under seal, or a charge on any property. *Faute de mieux*, it is suggested that, a Debenture is a written Obligation or Acknowledgment in an impersonal form, and with conditions more elaborate than those of a Promissory Note, given by or for a Corporation or a Company to secure a sum of money. Thus, in the *British India Steam Nav. Co’s* case, Lindley, J., said, — “Now, what the exact meaning of ‘Debenture’ is I do not know. I do not find any particular definition of it, and we know that there are various classes of instruments called ‘Debentures.’ You may have Mortgage Debentures, which are charges of some kind on property; you may have Debentures which are Bonds; you may have a Debenture which is nothing more than an Acknowledgment of debt; you may have an instrument, like this, which is something more — it is a statement by two Directors that a Company will pay. I think any instruments of that sort may be Debentures.” So, in *Brown v. Ind. Rev.* (64 L. J. M. C. 211), Charles, J., said, — “A Debenture, though never, I believe, legally defined, is included under one or other of the three descriptions laid down by Bowen, L. J., in *English & Scottish Trust v. Brunton* (1892, 2 Q. B. 700; 62 L. J. Q. B. 136), as, — ‘(1) a simple Acknowledgment under Seal of the debt; (2) an Instrument acknowledging the debt and charging the property of the Co with repayment; (3) an Instrument acknowledging the debt, charging the property of the Co with repayment, and further restricting the Co from giving any prior charge.’”

A Covering Deed by a Co would seem to be a “Debenture” within the exception in s. 17, Bills of Sale Act, 1882 (per Kay, J., *Ross v. Army & Navy Hotel Co*, 55 L. J. Ch. 697; 34 Ch. D. 43; 35 W. R. 40: dissenting from decision of Field, J., in *Brookhurst v. Railway Printing Co*, W. N. (84) 71: *Va*, per North, J., *Richards v. Kidderminster*, 1896, 2 Ch. 212; 65 L. J. Ch. 502; 44 W. R. 505); and the Debentures based on such a deed would be within the section (*Ross v. A. & N. H. Co. sup*). An Agreement charging *the Undertaking* in favour of certain therein-named persons *pari passu* (*Edmonds v. Blaina Co*, 56 L. J. Ch. 815; 36 Ch. D. 215; 35 W. R. 798), or in favour of an individual (*Lecy v. Abercorris Co*, 57 L. J. Ch 202; 37 Ch. D. 260; 36 W. R. 411), is within the exception. *Edmonds v. Blaina Co* and *Lecy v. Abercorris*

Co were approved in *Re Standard Manufacturing Co* (1891, 1 Ch. 627; 60 L. J. Ch. 292), which also over-ruled *Jenkinson v. Brandley Co* (19 Q. B. D. 568), and determined that s. 17, Bills of S. Act, 1882, is not restricted to Debentures of a Co *ejusdem generis* with "Mortgage, or Loan" Companies, but includes the Debentures of any Incorporated Co. *Va, Welsted v. Swansea Bank*, 5 Times Rep. 332; *Keed v. Joannon*, 59 L. J. Q. B. 544; 25 Q. B. D. 500. A Charge on specific goods is not a Debenture (*Re Cunningham*, 28 Ch. D. 682; 33 W. R. 387).

*Vj, Topham v. Greenside Co*, 57 L. J. Ch. 583; 36 W. R. 464; 37 Ch. D. 281; 58 L. T. 274: BILL OF SALE: COMPANY.

*Note.* For present provisions as to registration of a Co's Debentures, *V. Comp Act, 1900, s. 14.*

Quà Land Debentures (Tr) Act, 1865, 28 & 29 V. c. 101. "Debenture," means, a Debenture charged upon land under this Act" (s. 3).

*Vh, Manson on Debentures: Cavanagh on Money Securities, ch. 27: 4 Encyc. 142-153: INTEREST IN LAND.*

In Ireland it has been held that a Policy on the life of a debtor would pass, under a Will, as a "Debenture" (*Phillips v. Eastwood*, L. & G. t. Sug. 270; 1 Jarm. 770); but, in England, Debenture Stock (into which Debentures had, since the Will, been converted) was held not to pass under bequest of "all MY Debentures in the A. Ry" (*Re Lane*, 49 L. J. Ch. 768; 14 Ch. D. 856; cited with approval by Kay, J., *Re Gray*, 36 Ch. D. 210; but not regarded as satisfactory by FitzGibbon, L. J., in *Dillon v. Arkins*, 17 L. R. Ir. 639). *Vf SHARE.*

A Trustee's Power of Investment in "Debentures or Debenture Stock" of any Ry or other Co, includes "any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875" (s. 5 (3), Trustee Act, 1893). By subs. 5 of that section, a Power of Investment in the "Shares, Stock, Mortgages, Bonds, or Debentures," of any Incorporated Co, includes Mortgage Debentures "duly issued under, and in accordance with, the provisions of the Mortgage Debenture Act, 1865." *V. MORTGAGE.*

**DEBENTURE STOCK.** — *V. Part III., Comp C. Act, 1863, 26 & 27 V. c. 118: Vh, per James, L. J., Attree v. Hauce*, 47 L. J. Ch. 866; 9 Ch. D. 349, explained *Re Bodman*, 1891, 3 Ch. 135; 61 L. J. Ch. 31; 65 L. T. 522; 40 W. R. 60: *Re Mersey Ry*, 1895, 2 Ch. 287; 64 L. J. Ch. 625; 72 L. T. 735.

Quà Ry Comp Securities Act, 1866, 29 & 30 V. c. 108, "Debenture Stock," includes, Mortgage Preference Stock and Funded Debt, and any Stock or Shares representing Loan Capital of a Ry Co, by whatever name called" (s. 2).

Under a bequest of "Debenture Stock or Shares" in a Co, Debentures will pass if the testator has no Debenture Stock (*Re Nottage*, 1895, 2 Ch. 657; 64 L. J. Ch. 695; 73 L. T. 265; 44 W. R. 22).

*V. SHARE: STOCK.*

**DEBT.**—A “Debt” is a sum payable in respect of a Liquidated Money Demand, recoverable by action (*Rowley v. Rowley*, 1 Q. B. D. 460; 45 L. J. Q. B. 675): the word can but seldom be construed to include Damages for Breach of Covenant (*Wilson v. Knubley*, cited SPECIALTY: *Sr*, *Varlo v. Faden*, cited DEBTS: *Westcott v. Hodges*, 5 B. & Ald. 12). *V. LIQUIDATED DEMAND.*

But in s. 4, Bills of Sale Act, 1878, “Debt” is not confined to an existing debt; *V. AUTHORITY OR LICENSE.* So, a CONTINGENT Debt may be included in the word “debt” (*Mortimore v. Inl. Rev.*, cited DEFINITE).

A JUDGMENT DEBT “is the highest of all Debts” (per Watson, B., *Hodgson v. Baxter*, E. B. & E. 885), and may be specially indorsed on a Writ (*Grant v. Euston*, 13 Q. B. D. 302; 53 L. J. Q. B. 68).

Money payable under an Order of the Court of Chancery, was held a “Debt,” within s. 113, Bankry Act, 1849 (*Lees v. Newton*, L. R. 1 C. P. 658; 35 L. J. C. P. 285).

A Married Woman’s “debts contracted by her BEFORE MARRIAGE.” s. 19, M. W. P. Act, 1882, are not confined to Common Law debts but, include debts contracted by her during a previous coverture, and for which only her then Separate Estate was liable (*Jay v. Robinson*, 59 L. J. Q. B. 367; 25 Q. B. D. 467; 63 L. T. 174; 38 W. R. 550).

A CALL on Shares is not a Debt until actually made (*Re Kershaw*, 45 Ch. D. 320; 60 L. J. Ch. 9; 63 L. T. 203; 39 W. R. 23).

A DIVIDEND declared by a Co, is, after its due date, a Debt from the Co to the Shareholder (*Re Severn, &c Ry*, 1896, 1 Ch. 559; 65 L. J. Ch. 400; 74 L. T. 219; 44 W. R. 347).

Interest which could only be given by way of Damages, is not a “Debt” within s. 92, 1 & 2 V. c. 110 (*Ex p. Charman*, W. N. (87) 184: *Sr*, *Birmingham v. Burke*, 9 Ir. Eq. Rep. 86).

Costs of Execution are not part of “the Debt owing” within s. 6 (1 *a*), Bankry Act, 1883 (*Salisbury v. Ray*, 8 C. B. N. S. 193; 29 L. J. C. P. 225; *Re Long*, 57 L. J. Q. B. 360; 20 Q. B. D. 316; 58 L. T. 664; 36 W. R. 346).

“Debts due, or growing due, to the bankrupt IN THE COURSE of his Trade or Business,” s. 44 (2, iii), Bankry Act, 1883; *V. Wilmot v. Alton*, cited DEBTS DUE.

“Debt *provable* in Bankruptcy”: *V. Hardy v. Fothergill*, 13 App. Ca. 351; 58 L. J. Q. B. 44; 37 W. R. 177; 59 L. T. 273; *V. the, Re Midland Coal Co*, 1895; 1 Ch. 267; 64 L. J. Ch. 279; 71 L. T. 705; 43 W. R. 244; *Seaton v. Deerhurst*, 1895, 1 Q. B. 853; 64 L. J. Q. B. 430; 72 L. T. 453; 43 W. R. 436. *V. Buckwell v. Norman*, 1898, 1 Q. B. 622; 67 L. J. Q. B. 435; 78 L. T. 248; 46 W. R. 339; DEBT OR LIABILITY: LIABILITY: CERTAIN TIME: Bankry Act, 1883, s. 168.

“All Debts *Owing or Accruing.*” s. 61, Com. L. Pro. Act. 1854.—R. 1, Ord. 45, R. S. C.;—to obtain a Garnishee Order under this phrase

there must be (1) a "Debt"; but (2) it may be either "Owing or Accruing."

1. *Johnson v. Diamond* (24 L. J. Ex. 217; 11 Ex. 73) is the first case on this phrase; and it was there held that money that might become payable under a Bond of Indemnity is not a "Debt." This case well illustrates the principle of what is a "Debt" within the phrase, viz. a liquidated money obligation for which, speaking generally, an action will lie (*Webster v. Webster*, 31 Bea. 393), but which obligation may be either legal or equitable (per Lindley, L. J., *Webb v. Stenton*, 52 L. J. Q. B. 588; 11 Q. B. D. 518; 48 L. T. 268); but for a Debt to be garnished it must be due to the judgment debtor alone, and not to him jointly with some other person (*Macdonald v. Tacquah Co*, 53 L. J. Q. B. 376; 13 Q. B. D. 535; 32 W. R. 760).

Therefore, neither of the following is a "Debt" within the phrase;— Damages, though after verdict, until judgment obtained (*Jones v. Thompson*, 27 L. J. Q. B. 234; E. B. & E. 63): verdict on a Marine Policy (*Dresser v. Johns*, 28 L. J. C. P. 281; 6 C. B. N. S. 429): amount of a Presentment allowed by a Grand Jury in Ireland (*Cassin v. Shortall*, Ir. Rep. 11 C. L. 157): unascertained claim on a Fire Policy (*Randall v. Lithgow*, 53 L. J. Q. B. 518; 12 Q. B. D. 525), or on a Notice to Treat under Lands C. C. Act, 1845 (*Richardson v. Elmit*, 2 C. P. D. 9): Moneys in the hands of a County Court Registrar (*Dolphin v. Layton*, 48 L. J. C. P. 426; 4 C. P. D. 130), or of a Clerk of the Peace (*D'Arvy v. Carragher*, 18 L. R. Ir. 317; *See*, 20 *Ib.* 189), or of the Police (*Jervis v. Peel*, 1 Times Rep. 206), or of a Trustee in Bankruptcy (*Boyse v. Simpson*, 8 Ir. Com. Law Rep. 523: *Hunter v. Greensill*, 42 L. J. C. P. 55; L. R. 8 C. P. 24), or of a Trustee for the benefit of the debtor's Crs (*Roberts v. Jones*, 61 L. J. Q. B. 523; 66 L. T. 617; 40 W. R. 573), or of a Liquidator (*Mack v. Ward*, W. N. (84) 16), or of a Mortgagee as the surplus of a sale of the mortgaged property (*Chatterton v. Watney*, 50 L. J. Ch. 535; 17 Ch. D. 259; 44 L. T. 391): Moneys payable on a contingency (*Howell v. Metrop. Dist. Ry*, 51 L. J. Ch. 158; 19 Ch. D. 508; 45 L. T. 707: *Richardson v. Elmit*, *sup*): Rent, or instalments of an Annuity, not yet due (*Jones v. Thompson*, *sup*; *See*, as to Annuities, *Nash v. Pease*, 47 L. J. Q. B. 766): Trust income not in the hands of the Trustees (*Webb v. Stenton*, *sup*: *V. espy* jdgmt Lindley, L. J., over-ruling *Re Cowan*, 49 L. J. Ch. 402; 14 Ch. D. 638): an Apportioned Part of current Rent (*Barnett v. Eastman*, 67 L. J. Q. B. 517): Salary or Pension not yet payable (*Hall v. Pritchett*, 47 L. J. Q. B. 15; 3 Q. B. D. 215: *Booth v. Trail*, 53 L. J. Q. B. 24; 12 Q. B. D. 8; 49 L. T. 471; 32 W. R. 122). The Half-pay of an Army Officer (*Birch v. Birch*, 52 L. J. P. D. & A. 88; 8 P. D. 163: *Lucas v. Harris*, 18 Q. B. D. 127), or an Annual Gratuity from the East India Company under s. 93, 53 G. 3, c. 155 (*Innes v. East India Co*, 25 L. J. C. P. 154; 17 C. B. 351), or a Custom-house or Revenue Officer's Superannuation (45 & 46 V. c. 72, s. 3), or the Wages of Seamen (17 &

18 V. c. 104, s. 233), or Workmen (33 & 34 V. c. 30), are not attachable at all; nor are moneys held for a married woman who is restrained from anticipation (*Chapman v. Biggs*, W. N. (83) 92).

But, speaking generally, "money in the hands of a man who cannot refuse to pay it somehow or another, is a 'Debt,' and if so, it can be attached" (per Coleridge, C. J., *Booth v. Trail*, sup). Therefore, the over-due Superannuation allowance of a retired Police Constable (*Booth v. Trail*), or County Court Judge (*Willcock v. Terrell*, 3 Ex. D. 323), or Civil Servant (*Sansom v. Sansom*, 48 L. J. P. D. & A. 25; 4 P. D. 69), or a commutation of a pension (*Croue v. Price*, 22 Q. B. D. 429), are "Debts" and attachable. So is over-due Rent (*Mitchell v. Lee*, 36 L. J. Q. B. 154; L. R. 2 Q. B. 259); or an ascertained amount due on a Guarantee (*Bouch v. Sevenoaks, &c Ry*, 48 L. J. Ex. 338; 4 Ex. D. 138); or proceeds of a Call on Shareholders, when made to provide for a debt due to the judgment debtor (*Ex p. Turner*, 2 D. G. F. & J. 354). So, money deposited for a special purpose is, after the death of the depositor, a Debt owing to his exors, even though the depositee have an independent cross-claim against the depositor (*Stumore v. Campbell*, 1892, 1 Q. B. 314; 61 L. J. Q. B. 463; 66 L. T. 218; 40 W. R. 101).

But a Garnishee Order does not make the Garnishor a "Creditor" of the Garnishee (*Re Combined Weighing Co*, cited CREDITOR), and therefore the amount garnished is not a "Debt" due to the garnishor which, in his hands, may be garnished (*Cooper v. Laucson*, 6 Times Rep. 34).

As to whether a Legacy can be attached, *V. Vyse v. Brown*, 13 Q. B. D. 199; Chitty's Arch., 14 ed., 929; and *V. Ib.* 930 as to whether money in the hands of a Sheriff can be attached, but *Cp.* *Dolphin v. Layton*, sup. As to when cheque has been given for the debt sought to be attached. *V. Cohen v. Hale*, 3 Q. B. D. 371; 47 L. J. Q. B. 496; *Elwell v. Jackson*, 1 Times Rep. 454.

2. The phrase an "Accruing" Debt, was much discussed in *Webb v. Stenton* (sup: *V. espy* jdgmt Brett, M. R.). That case and *Jones v. Thompson*, much referred to in it, show that an "Accruing" does not mean a future debt, or one that very probably will soon arise. "It must be something which the law recognizes as a 'Debt'" (per Brett, M. R., *Webb v. Stenton*). It must therefore be "debitum in præsentia"; but it may be "solvendum in futuro," and then it is an "Accruing" debt. Accordingly an actually existing debt, payable by instalments, not yet due, is an "Accruing Debt" and attachable (*Tapp v. Jones*, 44 L. J. Q. B. 127; L. R. 10 Q. B. 591). It seems a little difficult to reconcile with the reasoning of that case, the Irish decision that money secured by a current Promissory Note is not attachable as an "Accruing Debt" (*Pyne v. Kinna*, 11 Ir. Rep. C. L. 40).

*Vh.* Ann. Pr.: 1 Encyc. 398-400.

"Action for the recovery of any Debt," s. 6, 7 & 8 V. c. 96; *V. Thomas v. Hudson*, 14 L. J. Ex. 283; 14 M. & W. 353.

“Debt or Incumbrance AFFECTING the land,” in respect of which money paid in under s. 69. Lands C. C. Act, 1845; *V. Re Derby Municipal Estates*, 3 Ch. D. 289.

“Debt contracted after the PASSING” of the Act; *V. CONTRACTED*. Stat. Def., Debtors Act (1r), 1872, 35 & 36 V. c. 57, s. 4, *whva* for “Debt contracted before the Passing.”

“Debt incurred by Fraud or Breach of Trust”; *V. BREACH OF TRUST*.

“Debt of Honour”; *V. HONOUR*.

*V. DEBTS: DEBTS DUE: DUE: SUM CERTAIN: CERTAIN TIME: ATTACHMENT FOR DEBT: AUTHORITY OR LICENSE: INCOME: CREDITOR: CIVIL DEBT: OFFENCE.*

**DEBT, CLAIM, OR DEMAND.**—S. 1, 22 & 23 V. c. 49; *V. R. v. Stepney*, 43 L. J. M. C. 145; L. R. 9 Q. B. 383; *West Ham v. St. Matthew, Bethnal Green*, 1896, A. C. 477; 65 L. J. M. C. 201; *Manchester S. & L. Ry v. Doncaster*, 1897, 1 Q. B. 117; 66 L. J. Q. B. 75; 75 L. T. 472; 45 W. R. 82; 62 J. P. 819:—S. 4, *Ib.*, *V. COMMENCEMENT*.

A Receipt for any “Debt, Account, Claim, or Demand,” quâ Stamp Act, 1815, did not include a legal claim for Unliquidated Damages (*Boyle v. Brandon*, 13 M. & W. 738).

**DEBT, DEFAULT, OR MISCARRIAGE.**—A special promise “to answer for the Debt, Default, or Miscarriage, of ANOTHER,” to be binding, has to be in writing (s. 4, Statute of Frauds). It is submitted that these words, “(1) Debt, (2) Default, or (3) Miscarriage,” mean, (1) Actual Present Debt, (2) Default in the performance of a present or future Duty, whether contractual or otherwise, or (3) Wrongful Act, entailing civil responsibility.

1. “Debt,” means, a DEBT already contracted (*Read v. Nash*, 1 Wils. 305: per Ellenborough, C. J., *Castling v. Aubert*, 2 East, 330, 331) by the other person.

2. “Default,” means, Default in the performance of a present or future Duty, whether contractual or otherwise. “If there was a contract with reference to a liability, — not existing at the time by reason of the debt not being due at the time but being payable *in futuro*, — that would come under the word ‘Default,’ and there would be no difficulty about that” (per Willes, J., *Mountstephen v. Lakeman*, L. R. 7 Q. B. 202; 41 L. J. Q. B. 75; on app. L. R. 7 H. L. 17; 43 L. J. Q. B. 188). But “default,” in the section, also applies “to a promise to answer for another with respect to the non-performance of a Duty, though not founded upon a contract” (per Holroyd, J., *Kirkham v. Marter*, 2 B. & Ald. 617), *e.g.* a promise to indemnify one who has become bail for a third person (*Green v. Cresswell*, 10 A. & E. 453; 9 L. J. Q. B. 63):



*Va, Birkmyr v. Darnell*, 1 Salk. 27; 1 Sm. L. C. 334; nom. *Bourkmire v. Darnell*, 3 Salk. 15; nom. *Buckmyr v. Darnall*, 2 Raym. Id. 1085; nom. *Burkmire v. Darnel*, Holt, 606; nom. *Buckmire v. Darnell*, 6 Mod., 5 ed., 248: DEFAULT.

3. "Miscarriage," means, a Wrongful Act, entailing civil responsibility. In the extract from the judgment of Holroyd, J., in *Kirkham v. Marter* (sup) he classed "Miscarriage" with "Default"; but it is submitted that that reading tends to make "Miscarriage" redundant, whereas the full phrase seems to appropriate each of its three substantives to its separate meaning. This is brought out in the judgment of Abbott, C. J., in *Kirkham v. Marter*, as follows,—"The word 'Miscarriage' has not the same meaning as the word 'Debt' or 'Default'; it seems to me to comprehend that species of wrongful act for the consequence of which the law would make the party civilly responsible. The wrongful riding the horse of another without his leave and thereby causing its death, is clearly an act for which the party is responsible in damages; and, therefore, in my judgment falls within the meaning of 'Miscarriage.'"

*Vh*, generally, 1 Sm. L. C. 334: De Colyar on Guarantees, ch. 2: Add. C. Book 2, ch. 4, s. 1: Chitty on Contracts, ch. 17: Leake, 209: Rosc. N. P. 476-482: GUARANTEE: I WILL SEE YOU PAID.

**DEBT OR LIABILITY.**—Alimony is not a "Debt or Liability" within s. 37, Bankry Act, 1883 (*Liuton v. Liuton*, 54 L. J. Q. B. 529; 15 Q. B. D. 239: *Re Hawkins*, 1894, 1 Q. B. 25). *Vj*, DEBT: LIABILITY: CREDITOR.

Giving a Bill or Note for an existing debt, or giving a new Bill or Note for an old one, is "incurring" a "Debt or Liability" within s. 13 (1), Debtors Act, 1869 (*R. v. Pierce*, 56 L. J. M. C. 85; 56 L. T. 532; 51 J. P. 790).

Married Woman's "Debts and other Liabilities." s. 4, M. W. P. Act, 1882; *V. Re Ann*, 1894, 1 Ch. 549; 63 L. J. Ch. 334; *Vthe*, per Keke-wich, J., *Re Hughes*, cited FEME.

*V. INCAPABLE.*

**DEBT UPON RECORD.**—Crown Dues recoverable "as a Debt upon Record," *e.g.* Assessed Taxes under 5 & 6 W. 4, c. 20, s. 13, must be recovered by Scire Facias, Extent, or Information; not in a popular action of Debt (*A-G. v. Sewell*, 4 M. & W. 77; 7 L. J. Ex. 245).

**DEBTOR.**—The power to examine a "Debtor" as to what debts were due to him (s. 60, Com. L. Pro. Act, 1854) did not extend to a Corporation, to which, obviously, an oath could not be administered (*Dickson v. Neath & Brecon Ry*, 38 L. J. Ex. 57; L. R. 4 Ex. 87. But now, *V. R.* 32, Ord. 42, R. S. C.).

"Debtor," s. 4, Bankry Act, 1883; *V. Ex p. Blain*, 5 Morr. 111: *Re Pearson*, 1892, 2 Q. B. 263; 61 L. J. Q. B. 585; 67 L. T. 367: *Re A. B. & Co*, 1900, 1 Q. B. 541; 69 L. J. Q. B. 375; 82 L. T. 169; affd in H. L. nom. *Cooke v. Vogeler*, 70 L. J. Q. B. 181: *Re Clark*, 1896, 2 Q. B. 476; 65 L. J. Q. B. 684: Wms. Bank. 2. Probably, not only quâ that section but throughout the Act, "Debtor," means, a Debtor subject to the Bankry Laws in England. Thus, neither the doctrine of Reputed Ownership (*Gorringe v. Irwell Works*, 56 L. J. Ch. 85; 34 Ch. D. 128), nor the direction in s. 46 (2), that the Sheriff is to retain the proceeds of a *fi. fa.* for fourteen days (*Re Withernsea Brickworks*, 50 L. J. Ch. 185; 16 Ch. D. 337; 43 L. T. 713: *CP PUT IN FORCE*), is applicable to a Co incorporated under Comp Act, 1862.

"Debtor," R. 52, Ord. 25, Co. Co. Rules, 1889, includes a married woman (*Aylesford v. G. W. Ry*, 1892, 2 Q. B. 626; 41 W. R. 42).

Stat. Def.—Judgments Act, 1864, 27 & 28 V. c. 112, s. 2.—*Scot.* 2 & 3 V. c. 41, s. 3; 10 & 11 V. c. 50, s. 14; 19 & 20 V. c. 79, s. 4; 31 & 32 V. c. 101, s. 3; 57 & 58 V. c. 44, s. 18.

"Deceased Debtor's Estate"; *V. DECEASED*.

"Goods of a Debtor" taken in execution, s. 11, Bankry Act, 1890, does not include the goods of a debtor which, by s. 1, Landlord and Tenant Act, 1709, 8 Anne, c. 18, are impounded until the landlord is paid, and whose claim the sheriff is justified in paying (*Re Mackenzie*, 1899, 2 Q. B. 566; 68 L. J. Q. B. 1003; 81 L. T. 214).

**DEBTS.**—"The expression in a Will, 'all my just Debts,' includes all the testator's debts whenever and wherever contracted, and therefore includes a debt contracted by him after the making of the Will, and contracted in a country other than that of his domicil, and secured upon property in that country" (Wms. Exs. 1584, citing *Maxwell v. Maxwell*, L. R. 4 H. L. 506; 39 L. J. Ch. 698). It also includes all Liabilities which the testator's personal estate would be liable to discharge (*V. Lomas v. Wright*, 2 My. & K. 769; 3 L. J. Ch. 68: *Stone v. Parker*, 1 Dr. & Sm. 212; 29 L. J. Ch. 874: *Alsop v. Bell*, 24 Bea. 469), including unliquidated damages for a breach of covenant (*Birmingham v. Burke*, 9 Ir. Eq. Rep. 86). And would not the construction be the same if the word "just" were omitted?

"Debts," directed by a testator to be paid out of Residue, do not include rent of, or damages for dilapidations to, Leaseholds specifically bequeathed (*Hawkins v. Hawkins*, 13 Ch. D. 470).

"Just Debts," in a Will of a woman married before M. W. P. Act, 1882; *V. Re De Burgh Lawson*, 41 Ch. D. 568; 58 L. J. Ch. 561; 37 W. R. 797.

The term "Debts," or "Just Debts," includes a Mortgage Debt; and therefore a testamentary direction to pay "Debts," or "Just Debts,"

would include a mortgage debt in exoneration of the mortgaged property but for s. 1, 30 & 31 V. c. 69, which section has entirely done away with that reasoning (*Re Newmarch*, 48 L. J. Ch. 28; 9 Ch. D. 12, esp. jdgmt of Jessel, M. R.). V. SUBJECT TO.

"Debts," in Finance Act, 1894; V. MONEY'S WORTH.

Under a bequest of "Debts," a Bank Balance, and a Bill of Exchange deposited at the bankers, will pass (*Carr v. Carr*, 1 Mer. 541, n; *Parker v. Marchant*, 12 L. J. Ch. 387; 1 Phill. 356); and so will an unascertained residuary personal estate to which the testator may be entitled at his decease (*Bainbridge v. Bainbridge*, 7 L. J. Ch. 4; 9 Sim. 16). The reasoning of the last case would seem to support the statement, that a share of a residuary estate, or a legacy, to which a testator may be entitled at his decease, would pass under a bequest by him of "Debts." The bequest of a debt due on a particular security will pass only the principal, not arrears of interest (*Hamilton v. Lloyd*, 2 Ves. 416). V. Wms. Exs. 1064.

Although Damages recovered for breach of covenant are not a DEBT, within 3 & 4 W. & M. c. 14 (*Wilson v. Knubley*, 7 East, 128), yet such damages are within a testamentary charge of "Debts" on Realty (*Morse v. Tucker*, 5 Hare, 79; 15 L. J. Ch. 162). So, the liability to such damages has to be provided for in an Administration Action (*Fletcher v. Stevenson*, 3 Hare, 360; 13 L. J. Ch. 202), and such a liability is within 3 & 4 W. 4, c. 104, charging realty of a deceased person with his "Debts" (*Ex p. Hamer*, 2 D. G. M. & G. 366; 21 L. J. Ch. 832), and is also within the exception from the Accumulations Act, 1800, 39 & 40 G. 3, c. 98, by s. 2 whereof Accumulations may be made for payment of "Debts" (*Varlo v. Fuden*, 1 D. G. F. & J. 211; 29 L. J. Ch. 230; 27 Bea. 255), and which exception applies as well to the debts of the grantor as to those of third persons (*Barrington v. Liddell*, 2 D. G. M. & G. 480; 22 L. J. Ch. 1).

"The expression 'Debts due' is sometimes used in bankry proceedings to include all demands which can be proved against a bankrupt's estate, although some of them may not be strictly debts at all" (per Mellish, L. J., *Ex p. Kempe*, 43 L. J. Bank. 52; 9 Ch. 383). V. DEBTS DUE: IN THE COURSE.

The Preferential payments in Bankry over "all other Debts," s. 1, 51 & 52 V. c. 62, have not priority over a bankrupt's property comprised in a security, because the security prevents the property from being assets in the bankry until the creditor's claim thereon has been satisfied (*Richards v. Kidderminster*, 1896, 2 Ch. 212; 65 L. J. Ch. 502; 74 L. T. 483; 44 W. R. 505).

"Debts," s. 97, Administration and Probate Act (Victoria), 1890; V. *Master in Equity, Victoria v. Pearson*, 13 Times Rep. 105: REAL ESTATE, last par.

V. BOOK DEBTS: DEBT: MUTUAL.

**DEBTS DUE.** — This phrase in s. 18 (1, 8), Bankry Act, 1883, means, all claims to which a debtor is liable and which are provable in his bankry (*Flint v. Barnard*, 58 L. J. Q. B. 53; 22 Q. B. D. 90: *Vh. Ex p. Kempe*, 9 Ch. 383; 43 L. J. Bank. 50). *V.* DEBTS: LIABILITY: FAIRLY ESTIMATED.

“Debts due, or growing due,” s. 44 (iii), Bankry Act, 1883, do not include a Claim which is not yet a DEBT but may become a debt (per Russell, C. J., *Wilmot v. Alton*, 45 W. R. 12, 113; 65 L. J. Q. B. 669; 66 Ib. 42; 1896. 2 Q. B. 254; 1897, 1 Q. B. 17).

Bequest of “Debts Due”; *V. Essington v. Fashion*, 3 Mer. 434: *Williams v. Williams*, 2 Bro. C. C. 87: *Decagnes v. Noble*, 1 Mer. 541: *Maybery v. Brooking*, 25 L. J. Ch. 87; 7 D. G. M. & G. 673; 4 W. R. 155: Theobald, 179.

Sale of “Debts due”; *V.* PAYMENT.

*V.* DUE: PAYABLE.

**DECEASE.** — *V.* DIE.

**DECEASED.** — “Deceased person,” or “The deceased,” quâ Part 1, Finance Act, 1894, means, a person dying after 1st Aug 1894 (ss. 22 (1 a), 24). “The deceased,” s. 19, Finance Act, 1896, means the same as “deceased person” in s. 24, i.e. a person dying after 1st July 1896 (*Re Gibbs*, 1898, 1 Ch. 625; 67 L. J. Ch. 282; 78 L. T. 289; 46 W. R. 477).

A “Deceased Debtor’s Estate,” s. 125 (5), Bankry Act, 1883, comprises only such property as was his at the time of his death; therefore, it does not comprise property which the debtor has voluntarily settled and which, if he were a living bankrupt, might be avoided under s. 47 (*Re Gould*, 56 L. J. Q. B. 333; 19 Q. B. D. 92), nor the proceeds of an execution retained by the sheriff under s. 11 (2), Bankry Act, 1890 (*Watkins v. Barnard*, 1897, 2 Q. B. 521; 66 L. J. Q. B. 771; 46 W. R. 156); nor does s. 45, Bankry Act, 1883, apply to aid such an Estate (*Hosluck v. Clark*, 1899, 1 Q. B. 699; 68 L. J. Q. B. 486; 80 L. T. 454; 47 W. R. 471).

*V.* DEAD.

**DECEIT.** — “‘Deceit,’ *deceptio, fraus, dolus*, Is a subtle, wily shift or device, having no other name: hereto may be drawn all manner of craft, subtilly, guile, fraud, wilnesse, slight, cunning, covin, collusion, practice, and offence used to deceive another man by any means, which hath none other proper or particular name but OFFENCE” (Cowel: *Vf*, *Posley v. Freeman*, cited NAKED). *Cp.* COSENING: COVINE: FRAUD: CHEAT.

**DECEIVE.** — It is hardly possible for any one now-a-days, to tell FORTUNES for money, without also intending “to deceive or impose,”

within s. 4, 5 G. 4, c. 83 (*Penny v. Hanson*, 18 Q. B. D. 478; 56 L. J. M. C. 41; 56 L. T. 235; 35 W. R. 379; 51 J. P. 167; 16 Cox C. C. 173; 3 Times Rep. 409).

*V.* CALCULATED TO DECEIVE.

**DECERN.** — A Scotch equivalent for “DECREE” (30 & 31 V. c. 101, s. 3; 60 & 61 V. c. 38, s. 3).

**DECIDE.** — “If my Trustees shall decide” to sell; *V. Minors v. Battison*, 1 App. Ca. 428; 46 L. J. Ch. 2.

An Appeal may be “decided,” quâ an Order for Costs, though dismissed for want of jurisdiction (*R. v. Podwick*, 8 E. & B. 704; 27 L. J. M. C. 113).

“To be decided”; *V.* GENERAL LINE OF BUILDINGS.

Party “decided against”; *V. Tobin v. Cleury*, Ir. Rep. 8 C. L. 366.

**DECISION.** — The “Decision” of a Local Authority, referred to in s. 268, P. H. Act, 1875, means its demand for payment of the expenses therein referred to (*R. v. Loc Gov Bd*, 52 L. J. M. C. 4; 10 Q. B. D. 309). *Vf.*, as to this section, Note to 2nd par. DISPUTE.

“Cause of Appeal,” s. 269 (2), P. H. Act, 1875, has the same meaning as “Decision of the Court” in subs. 1 of the same section (*R. v. Barnet*, 45 L. J. M. C. 105; 1 Q. B. D. 558).

“Decision or Order” of a Co. Co. in Bankry, R. 143, Bankry Rules, 1870, was perfect, quâ Appeal, when pronounced (*Ex p. Hooker*, 4 D. G. F. & J. 456; *Ex p. Whitton, Re Greaves*, 13 Ch. D. 881; 49 L. J. Bank. 31).

“Decision” is a popular, and not a technical, word, and means little more than a concluded opinion. It does not, by itself, amount to JUDGMENT, or ORDER (s. 19, Jud. Act, 1873); as used in s. 29, Loc Gov Act, 1888, a “Decision” is an exercise of a consultative jurisdiction, and is not appealable (*Re Dorer and Kent Co. Co.*, 1891, 1 Q. B. 725; 60 L. J. Q. B. 435; 65 L. T. 213; 39 W. R. 465; 55 J. P. 647).

A decision by Friendly Socy Arbitrators, until set aside, remains a “Decision” within s. 22 (d), 38 & 39 V. c. 60, notwithstanding misconduct by the arbitrators (*Bache v. Billingham*, 1894, 1 Q. B. 107; 63 L. J. M. C. 1; 69 L. T. 648; 42 W. R. 217; 58 J. P. 181). *V.* DISPUTE.

**DECK.** — *V.* FROM THE DECK.

“Deck Cargo at Merchant’s Risk”; *V. Diederichsen v. Farquharson*, cited CONDITIONS AS PER CHARTER-PARTY.

Quâ Part 3, Mer Shipping Act, 1894 (unless the context otherwise requires), “‘Upper Passenger Deck,’ shall mean and include, the Deck immediately beneath the Upper Deck, or the Poop or Round-house and Deck-house when the number of passengers, whether cabin or

STEERAGE PASSENGERS, carried in the Poop Round-house or Deck-house exceeds one third of the total number of steerage passengers which the ship can lawfully carry on the deck next below; and

“ ‘Lower Passenger Deck,’ shall mean and include, the Deck next beneath the Upper Passenger Deck, not being an Orlop Deck ” (s. 268, subss. 5, 6).

**DECLARATION.** — In all Acts of Parliament, “ ‘Statutory Declaration,’ shall, unless the contrary intention appears, mean a Declaration made by virtue of the Statutory Declarations Act, 1835 ” (s. 21, Interp Act, 1889). *Cp.* OATH.

“Declarations,” s. 3 (6), Conv & L. P. Act, 1881, means, Statutory Declarations (per Kay, L. J., *Re Stuart and Seadon*, 1896, 2 Ch. 328; 65 L. J. Ch. 576).

“Declaration,” *quâ* Drainage (Ir) Act, 1846, 9 & 10 V. c. 4, means, “the declaration required to be made by the Commrs previously to the commencement of any Works under” 5 & 6 V. c. 89, 8 & 9 V. c. 69, or that Act (s. 44). *V.* DRAINAGE.

“Declaration of TRUST,” “is usually taken to include any form of words, — whether spoken or written, and, if written, whether under hand only or under seal, — whereby an intention is effectually manifested, by the person or persons entitled to give effect to such intention, that certain specified property, whether real or personal, shall be held and used or applied by the person or persons in whom the title thereto at Law is vested, for the benefit, — either simply and absolutely, or in a specified and restricted manner, — of some other person or persons ” (4 Encyc. 158). *Cp.* DISPOSITION: GIFT.

“Declaration of USE,” “in its common acceptation, differs in two respects from the closely analogous phrase ‘Declaration of Trust’: (1) The word ‘Use’ is restricted to refer only to Real Estate, whereas ‘Trust’ is extended to all kinds of property; and (2) ‘Use’ was of common occurrence in times when there existed no method by which the moral rights and claims of the CESTUI que Use could be enforced, whereas the word ‘Trust,’ when employed *in pari materiâ* with ‘Use,’ has always contained within it a necessary implication that the rights and claims of the Cestui que Trust would be enforced in Courts of Equity, and now, since the coming into operation of the Jud. Act, 1873, in Courts of Law also. Moreover, since the Statute of Uses, the word ‘Use’ has been commonly restricted to denote Uses which are capable of being executed into Legal Estates by the statute ” (4 Encyc. 159, 160). *Vf* 4 Cru. Dig. 118.

**DECLARE.** — In order to “declare such Admixture,” s. 3, 35 & 36 V. c. 74, it is sufficient to state that the article, *e.g.* mustard, is not sold as pure; it is not necessary to specify the nature and proportion of

the substances admixed (*Pope v. Tearle*, 43 L. J. M. C. 129; L. R. 9 C. P. 499).

“Where a person by deed ‘declares’ that he will do a thing, it amounts to a covenant by him to do it” (Elph. 426, citing *Richardson v. Jenkins*, 1 Drew. 477).

Where a Co’s Articles prohibit a Director from being INTERESTED IN a contract unless he “declare *his* interest” therein, that means, that he must declare, “not merely the existence of *an* interest but, the nature of that interest” (per Ld Chelmsford, *Imperial Credit Assn v. Coleman*, L. R. 6 H. L. 200; 42 L. J. Ch. 644).

V. AGREED AND DECLARED: ACKNOWLEDGE: PRECATORY TRUST.

**DECLARED.** — V. HEREAFTER VALUED AND DECLARED: HEREIN.

**DECLARING THE RIGHTS.** — “Judgment or Order Declaring the Rights,” R. 2 (1), Ord. 55, R. S. C.; — V. *Rolls v. Rolls*, 30 S. J. 201; *Re Brandram*, 25 Ch. D. 369; 53 L. J. Ch. 331; *Re Rhodes*, 31 Ch. D. 499; *Bates v. Moor*, 38 Ch. D. 381; *Re Evans*, 54 L. T. 527.

**DECLINING TRUSTEE.** — A person may be a “Declining Trustee” as well after having acted as if he has never accepted the trust (*Travis v. Illingworth*, 34 L. J. Ch. 664; 2 Dr. & Sm. 344; *Vh Lewin*, 777). And the better opinion is that the phrase “if any Trustee shall *refuse or decline*” includes also one who disclaims (Lewin, 777; *See* *Ib.* 766, 767). Cp CONTINUING TRUSTEE.

It has been held that a payment of the trust money into Court under the Trustee Relief Act, stamps the trustee with the character of a “Refusing or Declining Trustee” (Lewin, 777, citing *Re Williams*, 4 K. & J. 87); *Va* RETIRING TRUSTEE.

**DECORATION.** — V. MILITARY DECORATION.

**DECORATIVE REPAIR.** — V. TENANTABLE REPAIR.

**DECREE.** — A Decree is the final ORDER of a Court in a Suit, *e.g.* prior to the Jud. Act, 1873, a Chancery Decree. “Decree” closely resembles, but is not identical with, “JUDGMENT.” “The final decision of a Divorce proceeding is termed a ‘Decree’; the proceeding itself is usually styled a ‘CAUSE,’ or ‘SUIT.’” . . . “In strict language the Decree is not called a ‘Judgment,’ nor is the Suit called an ‘ACTION’” (per Kay, L. J., *Re Binstead*, cited FINAL JUDGMENT). *Vf* 4 Encyc. 167-171.

Stat. Def. — *Scot.* 19 & 20 V. c. 56, s. 47; 30 & 31 V. c. 126, s. 3; 55 & 56 V. c. 17, s. 3; 60 & 61 V. c. 38, s. 3. — *Ir.* 11 & 12 V. c. 28, s. 18; 27 & 28 V. c. 99, s. 3.

“Decree or Order” whereby property, “upon the SALE thereof, is

transferred to, or vested in, a Purchaser," — and therefore liable to *ad val.* Duty "as a CONVEYANCE on Sale," s. 54, Stamp Act, 1891, — includes an Extract of Decree, within s. 8, Heritable Securities (Scot) Act, 1894, 57 & 58 V. c. 44, because such a Decree transfers or vests the property irredeemably in the Creditor having security thereon; and it does so in the prescribed mode which is equivalent to a Sale (*Inl. Rev. v. Tod*, 1898, A. C. 399; 67 L. J. P. C. 42; 78 L. T. 571). In that case counsel stated that *ad val.* Duty on a Foreclosure Decree had never been demanded, but Ld Macnaghten replied that there was no analogy between an English Foreclosure Decree and a Scotch Extract of Decree, and added, in his judgment, "I think it better, at present, to say nothing about it." Now, by s. 6, Finance Act, 1898, "Conveyance on Sale" includes a Foreclosure Order, the *ad val.* Duty being on the value of the property as stated in the Order.

No Appeal unless amount "decreed or ordered" exceeds £50, s. 31, 31 & 32 V. c. 71; *V. The Fyenoord*, 34 L. T. 918.

**DEDICATION.** — As to what is a sufficient Dedication of a HIGHWAY; *V. R. v. Hawkhurst*, 7 L. T. 268; 26 J. P. 724.

**DEDUCE.** — "If we are to examine the word critically, it is quite clear that when you speak of deducing a TITLE, as meaning to express either the delivery of the abstract or showing the deeds, it is not altogether an appropriate expression or strictly correct. *The deducing the Title*; — the appropriate use of that expression would be this: I deduce my title from my great-grandfather; I do not deduce my title by sending you a document or by showing you the deeds. By sending you the abstract and showing you the deeds, I show you *how* I deduce my title; but according to the strict meaning of the words 'Deducing the Title,' it is stating from whom or from what source the party draws forth his Title" (per Kindersley, V. C., *Oakden v. Pike*, 34 L. J. Ch. 622; 13 W. R. 673). But the practical meaning of the phrase is, to draw out and exhibit the Title by an abstract, and to prove the abstract by showing the documents (*Southby v. Hutt*, 2 My. & C. 213). **V. ABSTRACT.**

The *ad val.* fee to Solicitors for "Deducing Title," and perusing and completing conveyance (Sch 1, Part 1, Solrs Rem Ord) is payable if those three things are done, although the Solicitor may not have prepared the contract (per Fry, L. J., *Re Lacey*, 53 L. J. Ch. 289; 25 Ch. D. 301; 32 W. R. 233; 49 L. T. 755: *Vf, Re Real*, 1894, 3 Ch. 238; 63 L. J. Ch. 831; 71 L. T. 189; 42 W. R. 601). There is no "Deducing Title" where purchaser gives notice that he requires no Abstract and accepts the vendor's title (*Re Lacey*, sup), or where in fact no title is shown to the purchaser (*Re Harris, Powell v. Goodale*, 56 L. T. 477; 31 S. J. 365); e.g. where, on a sale of Leaseholds by the original lessee, there is a short statement of the dates and particulars of the leases with



a reference to a general form containing the covenants (*Welby v. Still*, 1894, 3 Ch. 641; 63 L. J. Ch. 931; 71 L. T. 426; 43 W. R. 73).

*Cp* INVESTIGATING TITLE.

**DEDUCTION.** — “The Court always holds that *Income Tax* is not a Deduction” (per Wood, V. C., *Turner v. Mullineux*, 1 J. & H. 334). In a contract touching the payment of taxes charged on premises, the incidence of the *Income Tax* cannot be shifted, not even in the case of an annuity which is payable “clear of all taxes and assessments” (ss. 73, 103, *Income Tax Act*, 1842: *A-G. v. Shield*, 28 L. J. Ex. 49; 3 H. & N. 834). But Wills are not mentioned in the sections just mentioned; and therefore in a Will it is competent, by apt words, to exonerate income from *Income Tax* (*Festing v. Taylor*, 32 L. J. Q. B. 41). *Note.* By some such cumbersome machinery as that indicated by Kekewich, J., *Re Parker-Jervis* (1898, 2 Ch. 652; 67 L. J. Ch. 686), provision, even in a Settlement, may be made for an Annuity to be paid clear of *Income Tax*.

There are 2 classes of cases in reference to the question as to when a phrase in a Will, or an Act of Parliament, giving an annuity without “deduction,” will exonerate the annuitant from *Income Tax*: —

1. When the word “Deduction” is associated and construed with the word “Taxes”:

2. When not.

1. A devise of a life interest in real estate accompanied with a direction to the Trustees “to pay and defray all taxes, parliamentary, parochial, or otherwise, affecting” the same; held, that the Trustees were bound to pay the *Income Tax* (*Lovat v. Leeds*, 31 L. J. Ch. 503; 2 Dr. & Sm. 62). *V. AFFECTING.*

So a rent-charge payable to A. B. “without any deduction or abatement whatsoever on account of any taxes, charges, or assessments, already or to be hereafter taxed, charged, assessed, or imposed on the hereditaments or the said rent-charge, or the said A. B. in respect thereof by the authority of Parliament or otherwise however,” is payable free of *Income Tax* (*Festing v. Taylor*, 3 B. & S. 217, 235; 31 L. J. Q. B. 36; 32 *Ib.* 41; 10 W. R. 246; 11 *Ib.* 70).

So too of an annuity or CLEAR yearly sum given “free from all deductions in respect of any present or future taxes, charges, assessments, or impositions, or other matter, cause, or thing, whatsoever” (*Re Bannerman*, 51 L. J. Ch. 449; 21 Ch. D. 105).

So, too, Bacon, V. C., held that a testamentary gift of “a clear annual income” from which “no deduction shall be made for the legacy tax or any other matter, cause, or thing, whatsoever,” was payable free of *Income Tax* (*Pearth v. Marriott*, 51 L. J. Ch. 821: *Sethe* considered *inf.*).

Yet, where a Charity was incorporated by a special Act at a time when

Income Tax was not payable, which Act directed an annual salary to be paid to the Chaplain "without deduction or abatement for taxes," Byrne, J., held that the Wardens of the Charity were bound to deduct the Income Tax subsequently imposed by the Income Tax Act, 1842 (*Lund v. Liverpool School for Indigent Blind*, 1898, 2 Ch. 669; 67 L. J. Ch. 680; 79 L. T. 68; 47 W. R. 6; 62 J. P. 728).

2. But as was observed by Kay, J., in *Gleadow v. Leetham* (inf), in all the three first named cases "the word 'deduction' was construed by the word 'taxes' which was associated with it." It is difficult to understand how that principle, or the case of *Wall v. Wall* (inf) can be reconciled with *Peareth v. Marriott*, (sup); for the only mention of taxes in *Peareth v. Marriott* was "Legacy Tax," which is scarcely *ejusdem generis* with Income Tax, and was moreover there used in reference not only to the annuity but also to ordinary legacies; whilst in *Wall v. Wall*, "Taxes" was the controlling word in the clause. With the exception, however, of *Peareth v. Marriott*, the cases on this subject seem well to branch out into the two classes laid down in *Gleadow v. Leetham*. When *Peareth v. Marriott* went before the Court of Appeal on another point, the determination of which precluded the necessity of deciding the point now under discussion, at the end of his judgment Jessel, M. R., threw out a dictum from which it may be gathered that he considered the words in the Will in that case did *not* exonerate from income tax (52 L. J. Ch. 221; 22 Ch. D. 182). Assuming that dictum to be correct, *Peareth v. Marriott* would no longer form an exception, but would range amongst the cases here grouped in Class 2.

In *Wall v. Wall* (15 Sim. 513; 16 L. J. Ch. 305) a gift of an annuity to testator's widow "CLEAR of all taxes and deductions," was held not exonerated from income tax, the maxim of the V. C. being "the thing that is given is the thing that is to pay the tax."

So, too, of an annuity to testator's widow "free from legacy duty and other deductions" (*Sadler v. Rickards*, 4 K. & J. 302).

So, too, of an annuity "clear of every deduction," or "clear of legacy duty and every other deduction whatsoever," or "without any deduction for legacy duty or otherwise" (*Lethbridge v. Thurlow*, 15 Bea. 334; 21 L. J. Ch. 538).

So, too, of an annuity "payable without any deduction whatsoever" (*Abadam v. Abadam*, 33 Bea. 475; 33 L. J. Ch. 593; 12 W. R. 615).

So, too, of an annuity to testator's widow of a "clear yearly sum," "to be paid free from all deductions and abatements whatsoever" (*Gleadow v. Leetham*, 22 Ch. D. 269; 52 L. J. Ch. 102).

But an exception to the principle of the cases in Class 2 is where the testator has used the word "deduction," or a similar expression, with an obvious meaning that it should include and exonerate an annuitant from Income Tax, in which case the annuity would be exonerated (*Turner v. Mullineux*, sup; *wher* explained in *Gleadow v. Leetham*, sup: *Vf, Re*

*Buckle*, 1894, 1 Ch. 286; 63 L. J. Ch. 330; 70 L. T. 115; 42 W. R. 229).

*Legacy Duty* is a Deduction (36 G. 3, c. 52, s. 6: *Barksdale v. Gilliat*, 1 Swanst. 562: *Smith v. Anderson*, 4 Russ. 352; 6 L. J. O. S. Ch. 105: *Vf, Stow v. Davenport*, 5 B. & Ad. 359: *Re De Hoghton*, 1896, 1 Ch. 855; 64 L. J. Ch. 590; 65 Ib. 528), and so is a rateable part of ESTATE DUTY under s. 14 (1), Finance Act, 1894 (*Re Parker-Jervis*, 1898, 2 Ch. 643; 67 L. J. Ch. 682; 79 L. T. 403: *Re Maryon-Wilson*, 1900, 1 Ch. 565; 69 L. J. Ch. 310; 82 L. T. 171; 48 W. R. 338): but

*Succession Duty* is not. And therefore where a person covenanted to pay, within twelve months after his death, £10,000 "free from all deductions whatsoever," only that sum was payable, and the payees, if any one, had to provide for the Succession Duty (*Re Higgins*, 55 L. J. Ch. 235; 31 Ch. D. 142; 54 L. T. 199; 34 W. R. 81). V. FREE FROM INCUMBRANCES.

As to what expressions will exempt Legatees from payment of Legacy Duty, *Vf, CLEAR: n (p)*, 1 Jarm. 186, 187: *Watson Eq.* 1345, 1346.

A JOINTURE "free from all Taxes and Deductions, except Property Tax and Legacy or Succession Duty," exempts the Jointress from an apportionment of Estate Duty under s. 14, Finance Act, 1894. — the phrase being an "EXPRESS Provision" exonerating her within that section, for it contains an exhaustive description of the taxes and deductions to which the jointure would be liable (*Fitzhardinge v. Jenkinson*, 80 L. T. 376); and the same conclusion was reached where a Settlement (dated 1861) provided for a Jointure "without any deduction whatsoever, except in respect of Income Tax" (*Re Parker-Jervis, sup.*).

"Free from all Deductions whatsoever, except Land Tax," in an Inclosure Act, did not include Corn Rent (*Mitchell v. Fardham*, 6 B. & C. 274: *Sp, Chatfield v. Ruston*, cited OUTGOING).

What are allowable "Deductions" under s. 17, Coal Mines Regn Act, 1872, 35 & 36 V. c. 76; *V. Bourne v. Netherscal Co.*, 57 L. J. Q. B. 306; 20 Q. B. D. 606; 36 W. R. 405; 52 J. P. 453; affd 14 App. Ca. 228.

Reducing a Seaman's wages because he has been disgraced for misconduct, is not a "Deduction" within s. 171, Mer Shipping Act, 1854, repld s. 132, Mer S. Act, 1894 (*The Highland Chief*, 1892, P. 76; 61 L. J. P. D. & A. 51; 66 L. T. 468).

Deductions from Wages, quâ the Truck Acts: V. PAYMENT: MATERIALS: CONTRACT TO SUPPLY: *Willis v. Thorp.* cited OTHER: and hereon, Truck Act, 1896, ss. 1, 2, 3.

V. TAXES: OUTGOING: LEGACY: SPECIFIC: INCUMBRANCE.

**DEED.** — "A Deed," *factum*. This word (deed) in the understanding of the Common Law is an instrument written in parchment or paper, whereunto ten things are necessarily incident, viz. First, writing. Secondly, in parchment or paper. Thirdly, a person able to contract.

Fourthly, by a sufficient name. Fifthly, a person able to be contracted with. Sixthly, by a sufficient name. Seventhly, a thing to be contracted for. Eighthly, apt words required by law. Ninthly, sealing. And tenthly, DELIVERY. A deed cannot be written upon wood, leather, cloath, or the like, but onely upon parchement or paper, for the writing upon them can be least vitiated, altered, or corrupted" (Co. Litt. 35 b). As to the 9th of the above requirements (Sealing) it would seem that wax or a wafer must be used (*Vh, National Prov. Bank of England v. Jackson*, 33 Ch. D. 1); a mere circle enclosing the words "L. S." (place for Seal) is insufficient (*Re Balkis Co*, 36 W. R. 392; 58 L. T. 300; 4 Times Rep. 204). To a Deed Poll, the 5th and 6th of the above requirements would not be applicable; indeed in *Goddard's Case* (2 Rep. 5) it is laid down that "there are but three things of the essence and substance of a Deed. — (1) Writing, on paper or parchement, (2) Sealing, and (3) Delivery" (*Va Termes de la Ley, Fait*). And so in old Pleading "Deed" "implies the ensembling and delivery" (*Maidwell v. Andrews*, 1 Leon. 310). A Deed imports a CONSIDERATION; *V. Broom's Maxims*, 7 ed., 570.

A Contract is not essential to a Deed; and, therefore, a Power of Attorney under Seal to transfer government stock is a "Deed" within 2 G. 2. c. 25 (*R. v. Lyon*, 2 Russ. Cr. 745; *R. v. Fountleroy*, 2 Bing. 413). "Deed" "is clearly not confined to Contracts" (per Bovill, C. J., *R. v. Morton*. L. R. 2 C. C. R. 27); but, observe, that in that case, and on the same page of the report, Blackburn, J., said, "The definition of a Deed cited from Spelman seems to me the best," i.e. "*Scriptum solemnne quo firmatur donum, concessio, pactum, contractus, et hujusmodi*" (Spelm. *Factum*). At any rate, where the phrase is "any Deed, Bond, or Writing Obligatory," s. 20, Forgery Act, 1861, it does not include a Letter of Orders under the seal of a Bishop, but is limited to something which passes a pecuniary interest (*S. C. L. R. 2 C. C. R. 22*; 42 L. J. M. C. 58; 21 W. R. 629; 28 L. T. 452).

As to the difference between an INDENTURE and a Deed POLL, *V. Co. Litt.* 229 a, *Vh.* 2 Bl. Com. 295; *Wms. R. P.* 125; 8 & 9 V. c. 106, s. 5. *Vh.* 4 Cru. Dig.: 4 Encyc. 171-175. *Cp.* INSTRUMENT.

"Deed," in Scotch Conveyancing; Stat. Def., 8 & 9 V. c. 35, s. 10; 21 & 22 V. c. 76, s. 36; 23 & 24 V. c. 143, s. 2; 31 & 32 V. c. 101, s. 3; 37 & 38 V. c. 94, s. 3.

"*Deed or Conveyance*," e.g. in a clause prescribing mode of transfer of shares, is probably a synonym for the same thing, so that the transfer would have to be effected by deed (*Hibblewhite v. M'Morine*, 6 M. & W. 200; 9 L. J. Ex. 217; *Société Générale de Paris v. Walker*, 13 App. Ca. 20).

Deed "not otherwise charged"; *V. Clayton v. Burtenshaw*, 5 B. & C. 41; 7 D. & R. 800; *Wilson v. Smith*, 12 M. & W. 401; 13 L. J. Ex. 113.

"Deed or Writing." "Deed, or Note in Writing"; *V. IN WRITING: INSTRUMENT IN WRITING.*

"Deed of Arrangement"; Stat. Def., Deeds of Arrangement Act, 1887, 50 & 51 V. c. 57, s. 4; 51 & 52 V. c. 51, s. 4; 53 & 54 V. c. 24, s. 4.

*Cp* SCHEME.

"Deed of Entail"; *Scot.* 31 & 32 V. c. 101, s. 3.

"Deed of Settlement," quâ Comp (Mem of Assn) Act, 1890, "includes any Contract of Copartnery, or other instrument, constituting or regulating the company, and not being an Act of Parliament, a Royal Charter, or Letters Patent" (s. 3). A Deed of Settlement constituting a Co, though modified by Act of Parliament, remains an instrument "not being an Act of Parliament" within that def (*Re Reversionary Interest Socy*, 1892, 1 Ch. 615; 61 L. J. Ch. 379; 66 L. T. 460; 40 W. R. 389).

*Note.* — A Deed or other Writing, except a TESTAMENT, speaks from its EXECUTION (*V. FROM HENCEFORTH*).

**DEEMED.** — *V. De Beauvoir v. Welch*, 7 B. & C. 278.

Chairman's declaration of result of voting "shall be deemed" conclusive, s. 51, Comp Act, 1862; *V. Young v. S. African Co*, cited CONCLUSIVE EVIDENCE.

When a thing is to be "deemed" something else, it is to be treated as that something else with the attendant consequences, but it is not that something else (per Cave, J., *R. v. Norfolk Co. Co.*, 60 L. J. Q. B. 380); therefore, an ATTORNMENT, within s. 6, Bills of Sale Act, 1878, and which thereby "shall be deemed to be a BILL OF SALE," requires registration to perfect its validity as though it were a Bill of S., but it is not a Bill of S. and, therefore, need not be (indeed it could not be) IN ACCORDANCE WITH THE FORM prescribed by s. 9, Bills of S. Act, 1882 (*Green v. Marsh*, 1892, 2 Q. B. 330; 61 L. J. Q. B. 442; 66 L. T. 480; 40 W. R. 449; 56 J. P. 839).

"Deemed to be Liquidated Damages"; *V. Lawrence v. Willcocks*, cited LIQUIDATED DAMAGES.

"When a statute enacts that something should be 'deemed' to have been done which, in fact and truth, was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to" (per James, L. J., *Ex p. Walton*, 50 L. J. Ch. 662; 17 Ch. D. 756); and, therefore, where s. 23, Bankry Act, 1869, provided that on Disclaimer in bankry of an ONEROUS Lease it should "be DEEMED TO HAVE BEEN SURRENDERED," the meaning was that, such "deemed surrender" was only operative as between the Lessor and the Bankrupt and his estate, without prejudice to the Lessor's rights against any other person under or by virtue of the Lease (*S. C.*).

**DEEMED TO BELONG.** — *V. jdgmt of Coleridge, C. J., Milnes v. Huddersfield*, 53 L. J. Q. B. 12; 12 Q. B. D. 443.

**DEEMED TO HAVE BEEN SURRENDERED.**—S. 23, Bankry Act, 1869; *V. DEEMED: Hill v. E. & W. India Dock Co*, 9 App. Ca. 448; 53 L. J. Ch. 842; 51 L. T. 163; 32 W. R. 925; 48 J. P. 788; *Vth, Re Cook, Ex p. Shilson*, 20 Q. B. D. 346.

**DEEMED TO PASS.**—*V. PASSING.*

**DEFACE.**—If a cab-driver's employer (or any one else) writes on the driver's License anything, whether true or false, other than the particulars required by s. 8, 6 & 7 V. c. 86, he "defaces" the license within that section (*Hurrell v. Ellis*, 15 L. J. C. P. 18; 2 C. B. 295; *Rogers v. Macnamara*, 23 L. J. C. P. 1; 14 C. B. 27; *Norris v. Birch*, 1895, 1 Q. B. 639; 64 L. J. M. C. 91; 72 L. T. 491; 43 W. R. 271; 11 Times Rep. 172); and, if prejudicial and done by the employer, it is a "Matter of Complaint" within s. 22 (*Norris v. Birch*, sup).

**DEFAMATION.**—*V. LIBEL: SLANDER.*

*Note.* The jurisdiction of the Ecclesiastical Courts in suits for Defamation was taken away by PHILLIMORE'S ACT.

**DEFAULT.**—"Default is a French word, and *defalta* is legally taken for non-appearance in Court" (Co. Litt. 259 b). *Vf, DEPARTURE.*

"I do not know a larger or looser word than 'Default.' Abstracted from other words, What does it mean? In the expressions 'Judgment by Default,' and 'a Juror making Default,' we understand it differently. In its largest and most general sense it seems to mean, 'Failing'" (per Eyre, C. J., *Doe d. Davre v. Davre*, 1 B. & P. 258, in *whc* that large sense was adopted quâ "In default of such Sons," on *whr. Andrew v. Andrew*, inf).

"'Default' would seem to embrace every failure by the defendant to perform his contract unless prevented by superior force over which he had no control, such as stress of weather" (per Fitzgerald, J., *Caffarini v. Walker*, 9 Ir. Rep. C. L. 437), or unless hindered by the plaintiff's non-performance of some condition precedent (*Randall v. Thorn*, W. N. (78) 150), or unless there has been a waiver of performance, which waiver (in the case of an obligation to pay money) may be by parol though the obligation be under seal (*Albert v. Grosvenor Investment Co*, 37 L. J. Q. B. 24; L. R. 3 Q. B. 123; 8 B. & S. 664; *Sethe, Williams v. Stern*, cited **DEFAULT IN PAYMENT.** As to other cases, *V. Littler v. Holland*, 3 T. R. 590; *Gwynne v. Davy*, 1 Mac. & G. 857).

"Default, is a purely relative term, just like Negligence. It means nothing more, nothing less, than not doing what is reasonable under the circumstances;—not doing something which you ought to do, having regard to the relations which you occupy towards the other persons interested in the transaction" (per Bowen, L. J., *Re Young and Harston*, 31 Ch. D. 174; 53 L. T. 837; 34 W. R. 84; 50 J. P. 245; approved by

Collins, L. J., *Re Woods and Lewis*, 1898, 2 Ch. 211; 67 L. J. Ch. 475) There is, therefore, no "default" in a Vendor if delay in COMPLETION arises through an obscure blot on his Title (*Re Woods and Lewis*, sup); nor is there any longer a "default," by a Trustee in Bankry (s. 102 (5), Bankry Act, 1883) in paying money found due from him, if and when the money is paid, even though it be paid for him by a third party (*Re Tatum, Ex p. Harker*, 5 Times Rep. 574).

"Default by a Trustee," &c, s. 4 (3), Debtors Act, 1869; *V. FIDUCIARY CAPACITY: POSSESSION.*

"Make default in performance"; *V. Doe d. Palk v. Marchetti*, cited DONE.

*V. DEBT, DEFAULT, OR MISCARRIAGE: WILFUL DEFAULT.*

"Act, Default, Permission, or Sufferance"; *V. PERMISSION: BY WHOSE.*

JUDGMENT "by Default," means, one obtained by non-resistance (per Jervis, C. J., *Prew v. Squire*, 10 C. B. 915); therefore, a Jdgmt on Demurrer was not by Default (*Taylor v. Rolf*, 5 Q. B. 337; 13 L. J. Q. B. 39; *Prew v. Squire*, 10 C. B. 912; 20 L. J. C. P. 175).

"Wrongful Act or Default," s. 242, Mer Shipping Act, 1854, does not include a mere error in judgment (*The Famenoth*, 7 P. D. 207).

A Covenant by a mortgagor for Quiet Enjoyment "after Default," means only that, before default, the mortgagee is to rest on his own title as against strangers; and the Statute of Limitations runs as against the mortgagee from the date of the mortgage (*Doe d. Roylance v. Lightfoot*, 11 L. J. Ex. 151; 8 M. & W. 553).

"A Covenant for Quiet Enjoyment against persons claiming 'by or THROUGH his Default,' would, it appears, be broken by an entry by parties whose title he had it in his own power to bar; — e.g. if he were tenant in tail in possession, and the entry were made by remainderman (*Cavan v. Pulteney*, 2 Ves. 544); — and such a covenant has been held to extend to claims in respect of arrears of Quit Rent, although they accrued due before he acquired the estate (*V. Howes v. Brushfield*, 3 East, 491): the decision, however, is disapproved by Ld St. Leonards (Sug. 602). But the omission by the covenantor to acquire from other parties a valid title, although he knew the defect, is not a 'Neglect or Default' within the meaning of such a covenant (*V. Woodhouse v. Jenkins*, 9 Bing. 431; 2 Moore & S. 599; *Ireland v. Birchem*, 2 Sc. 207; 2 Bing. N. C. 90)." Dart, 885: *Va*, Elph. 488-490; 2 Platt, 311: *Vf* NEGLECT OR DEFAULT.

"Negligence and Default," in a Bill of Lading or Contract for Towage; *V. NEGLECT OR DEFAULT: NEGLIGENCE.*

"For," or "In," "Default of Issue," or "In Default of" objects of preceding limitation: *V. Doe d. Daere v. Daere*, sup; *Biddulph v. Lees*, 28 L. J. Q. B. 211; E. B. & E. 289: DIE WITHOUT ISSUE.

“The words ‘in default of his having a Son,’ or words of precisely the same import, have been uniformly held to mean this, — That the estates are not to go over so long as there is any Male Issue, and that the estates are by NECESSARY Implication to go to the male issue in regular course of hereditary descent so long as there should be any left. To effectuate this purpose an Estate Tail is by Necessary Implication deemed to be given to the person whose Issue are so to take” (per James, L. J., *Andrew v. Andrew*, 45 L. J. Ch. 234; 1 Ch. D. 417).

“No Default of Election, or Vacancy,” in a Committee of Management, to prevent continuing members from acting; *V. Lane v. Norman*, 66 L. T. 83; 61 L. J. Ch. 149; 40 W. R. 268.

V. IN DEFAULT: MAKING DEFAULT: FAILURE.

**DEFAULT IN PAYMENT.** — This phrase means, non-payment at the due time and place (*Williams v. Stern*, 49 L. J. Q. B. 663; 5 Q. B. D. 409; *Thorn v. City Rice Mills*, 58 L. J. Ch. 297; 40 Ch. D. 357; 5 Times Rep. 172). F. PAYMENT: FIDUCIARY CAPACITY: SOLICITOR.

**DEFEASANCE.** — “‘Defeasance,’ *Defeasantia*, is fetched from the French word *defaire*, i.e. to defeat or undoe” (Co. Litt. 236 b). “A Defeasance is a CONDITION relating to a deed, or to an obligation, recognizance, statute, or the like, which being performed by the obligor, or recognisor, the act is disabled and made void as if it had never been done; which differeth from a Condition only in this, that this (a Condition) is always made at the same time and annexed to or inserted in the same deed; but that (a Defeasance) is always made in a deed by itself, and for the most part made after the deed whereunto it hath relation” (Touch. 396: *Vf*, 2 Bl. Com. 327, 342; *Termes de la Ley*: 4 Cru. Dig. 89, 90, 96; *Colthirst v. Bejushin*, Plowd. 33 a). “As I have always understood, a ‘Defeasance’ is something which defeats the operation of a deed or document. If it is contained in the same deed, it is called a ‘Condition’” (per Jessel, M. R., *Re Storey, Ex p. Popplewell*, 52 L. J. Ch. 42; 21 Ch. D. 73; cited with approval by Esher, M. R., *Blauberg v. Beckett*, 56 L. J. Q. B. 36; 18 Q. B. D. 96; 55 L. T. 876; 35 W. R. 34).

Read strictly, the extracts just given from the *Touchstone* and from the judgment of Sir Geo. Jessel, would seem to show that a Defeasance differs only from a Condition in the mode and manner of its creation. But that can hardly be so. A Defeasance defeats or puts an end to an instrument; a Condition restrains or qualifies it. And thus in the case cited, *Ex p. Popplewell*, Lindley, L. J., said: “The agreement, — i.e. a parol agreement not to register a Bill of Sale, — was obviously not a Defeasance. Was it a Condition?” A Defeasance therefore may, in the language of the *Touchstone*, be said to be a Condition; but it is a Condition of a special sort, — drastic but narrow in its operation.



A Policy deposited as a collateral security to a Bill of Sale, is not a "Defeasance or Condition" requiring registration under s. 10 (3), Bills of S. Act, 1878 (*Carpenter v. Deen*, 23 Q. B. D. 566).

"Defeasance," in the prescribed form of a BILL OF SALE (s. 9, Bills of S. Act, 1882), means, the putting an end to the security by realizing the goods for the benefit of the mortgagee, — *e.g.* powers of lawful seizure and sale and reasonable appropriation of the proceeds (*Consolidated Credit Corp v. Gosney*, 55 L. J. Q. B. 61; 16 Q. B. D. 24; *Lumley v. Simmons*, 55 L. J. Ch. 759; 34 W. R. 759). It "is not strictly a Defeasance, because the stipulation is in the same deed; it means a Condition in the nature of a Defeasance" (per Esher, M. R., *Blaiberg v. Beckett*, sup, *whr*). But a security is not defeated by payment of the debt; and, therefore, an agreement to exhaust all other remedies before enforcing a Bill of S. is not a "Defeasance" (*Heseltine v. Simmons*, 1892, 2 Q. B. 547; 62 L. J. Q. B. 5; 67 L. T. 611; 41 W. R. 67). *Cp* MAINTENANCE, at end.

The *Touchstone*, in the passage already cited, says that a Defeasance "is always made *in a Deed* by itself." But it would seem that a Defeasance may be made without a deed. The Defeasance endorsed on a Warrant of Attorney to enter up judgment was generally under hand only (*Chitty's Forms*, 9 ed., 490). But it would seem that there cannot be a Defeasance without a separate document (per Esher, M. R., *Blaiberg v. Beckett*, sup). And so in *Ex p. Popplewell* (sup), the Master of the Rolls said: "The agreement in question was a parol agreement. It cannot therefore be a Defeasance." But a Condition may be by parol (*Ex p. Southam*, 43 L. J. Bank. 39; L. R. 17 Eq. 578).

Estate in "Defeasance of" an ESTATE TAIL, s. 15, Fines and Recoveries Act, 1833; *V. Milbank v. Vane*, 1893, 3 Ch. 79; 62 L. J. Ch. 629; 68 L. T. 735.

V. CONDITION: FORFEITURE.

**DEFEAT.** — Intent to defeat or delay Creditors; *V. INTENT*: *Morris v. Cook's Estate*, 1895, A. C. 625; 64 L. J. P. C. 136; *Vaizey*, ch. 21, s. 4: *Wms. Bank*. 19.

**DEFECT.** — " 'Defect,' means a lack or absence of something essential to completeness" (per Bruce, J., *Tute v. Latham*, 66 L. J. Q. B. 351).

"Defects in an Estate may be either —

- a. *Patent*, — that is, such as may be discovered by ordinary vigilance on the part of a purchaser; *e.g.* the existence of an open footpath over the property (*Bowles v. Round*, 5 Ves. 508), or the ruinous state of buildings (*Grant v. Munt*, Cooper, G. 177; *Keates v. Cadogan*, 10 C. B. 591; 20 L. J. C. P. 76; 16 L. T. O. S. 367); or,

- b. *Latent*, — that is, such as the greatest attention (Sug. 333) would not enable him to discover; *e.g.* the existence of defects in a ship's bottom when sold afloat (*V. Mellish v. Motteux*, Peake, 156).<sup>7</sup> Dart, 101, 102.

Unfitness or inadequacy for the purpose for which it is used, is a "Defect in the Condition" of MACHINERY within s. 1, Employers' Liability Act, 1880, 43 & 44 V. c. 42, though the machinery may be, in itself, perfect (*Heske v. Samuelson*, 53 L. J. Q. B. 45; 12 Q. B. D. 30; 49 L. T. 474), *e.g.* if, being dangerous, it is unguarded (*Morgan v. Hutchins*, 59 L. J. Q. B. 197; 6 Times Rep. 219; *Tate v. Latham*, 1897, 1 Q. B. 502; 66 L. J. Q. B. 349; 76 L. T. 336; 45 W. R. 400). So is an unsound combination of sound PLANT (*Cripps v. Judge*, 51 L. T. 182; 33 W. R. 35; 53 L. J. Q. B. 517; 13 Q. B. D. 583; *Weblin v. Ballard*, 55 L. J. Q. B. 395; 17 Q. B. D. 122; 54 L. T. 532; 34 W. R. 455; 50 J. P. 597), or a negligent system or mode of using, or want of proper safeguards in using, sound machinery (*Smith v. Baker*, 1891, A. C. 325; 60 L. J. Q. B. 683; 40 W. R. 392; 65 L. T. 467; 55 J. P. 660; *Stanton v. Scrutton*, 62 L. J. Q. B. 405). But not a mere temporary obstruction, *e.g.* a substance negligently placed on a roadway (*McGiffen v. Palmer's Ship Building Co*, 52 L. J. Q. B. 25; 10 Q. B. D. 5; *Thomas v. Quartermaine*, 55 L. J. Q. B. 439; 17 Q. B. D. 414; 55 L. T. 360; 34 W. R. 741; *Pegram v. Dixon*, 55 L. J. Q. B. 447); nor mere dangerousness when not used with ordinary care (*Walsh v. Whiteley*, 57 L. J. Q. B. 586; 21 Q. B. D. 371; 36 W. R. 876), nor dangerousness caused by the unauthorised and unknown removal of a sufficient protection, such as a removable trap-door or cover (*Penton v. Cosh*, Times, 4th Feb 1891), or the removal of such a protection in and for carrying on the business (*Willets v. Watts*, 1892, 2 Q. B. 92; 61 L. J. Q. B. 540; 66 L. T. 818; 40 W. R. 497; 56 J. P. 772; *vtlic*, *Tate v. Latham*, sup); nor insufficient packing of goods on a trolley (*Corcoran v. East Surrey Ironworks Co*, 58 L. J. Q. B. 145). *Th*, WAYS: WORKS.

The omission of the date of an accident from Notice of injury under the Employers' Liability Act, 1880, is a "defect or inaccuracy" within s. 7 (*Carter v. Drysdale*, 53 L. J. Q. B. 557; 12 Q. B. D. 91; 32 W. R. 171), so also is the omission to state the cause of the injury if such omission be not misleading (*Stour v. Hyde*, 51 L. J. Q. B. 452; 9 Q. B. D. 76).

As to construction of a Co's Article validating acts of Directors notwithstanding "defect" in their Appointment; *V. Dawson v. African. & Co*, 1898, 1 Ch. 6; 67 L. J. Ch. 47; 77 L. T. 392; 46 W. R. 132.

"Defects latent on beginning of VOYAGE, or otherwise"; *V. Wai-kato v. New Zealand Shipping Co*, cited OTHERWISE.

Latent Defect in an Exception limiting warranty that a Ship is SEA-

WORTHY; *V. The Cargo ex Luertes*, 56 L. J. P. D. & A. 108; 12 P. D. 187; 57 L. T. 502; 36 W. R. 111.

"Defect in Substance"; *V. SUBSTANCE.*

*V. FORMAL: FAULTS: HOLDER IN DUE COURSE.*

**DEFENCE.** — "'Defence' commeth of the word *defendo*" (Co. Litt. 127 b); and as applied to a PLEADING it does not mean a "JUSTIFICATION," which is the ordinary signification, but a "denial" (3 Bl. Com. 296, cited in Hargrave's note to Co. Litt. 127 b). *V. R. v. Rhodes.* cited STAGE.

"Any Defence," s. 1, 31 & 32 V. c. 86; *V. Pellas v. Neptune Mar. Insree*, 48 L. J. C. P. 370; 5 C. P. D. 34.

"Last Defence"; *V. LAST.*

"Statutory Defence"; *V. STATUTORY.*

"The Defence Acts, 1842 to 1873"; *V. Sch 2, Short Titles Act, 1896.*

**DEFEND.** — "'Defend,' signifies, in our ancient laws and statutes, as much as to forbid and prohibit" (Cowel). *V. SUE.*

**DEFENDANT.** — Notwithstanding that s. 100, Jud. Act, 1873, enacts that "Defendant," includes a person "served with notice of, or entitled to attend, any PROCEEDINGS," — the word does not include a person merely brought in as a Third-Party (*Eden v. Weardale Co*, 54 L. J. Ch. 384; 28 Ch. D. 333; 33 W. R. 241; *Street v. Gover*, 46 L. J. Q. B. 582; 2 Q. B. D. 498). But when the Third-Party has been treated as an "Opposite Party" and has been ordered, at plaintiff's instance, to answer Interrogatories, he becomes a Defendant and entitled to an Order to interrogate the Plaintiff under R. 1, Ord. 31 (*Eden v. Weardale Co*, 35 Ch. D. 287): *V. OPPOSITE PARTY.*

Other Stat. Defs., generally, define "Defendant," as a person against whom Proceedings are instituted, or directed, *V. 6 & 7 W. 4, c. 106, s. 44; 26 & 27 V. c. 119, s. 3; 45 & 46 V. c. 31, s. 2.*

Quà Scotland, the def is, DEFENDER or Respondent. *V. 38 & 39 V. c. 17, s. 109, c. 63, s. 33; 41 & 42 V. c. 16, s. 105, c. 49, s. 74, c. 74, s. 74; 45 & 46 V. c. 49, s. 52; 53 & 54 V. c. 21, s. 39; or, more fully, quà Sale of Goods Act, 1893 (s. 62), "Defender, Respondent, and Claimant in a Multiplepoinding," or, in criminal matters. "Panel, Respondent, or person charged," 57 & 58 V. c. 27, s. 21, c. 41, s. 26.*

Quà Jud. Act (Ir) 1877, "Defendant" includes "every person served with any Writ of Summons or Process, or served with notice of, or entitled to attend, any Proceedings" (s. 3); quà 27 & 28 V. c. 99, "Defendant," means, "also the person or party whose body, goods, or chattels. may be liable to be taken under any decree, dismiss, renewal, or order. of the Civil Bill Courts" (s. 3).

**DEFENDER.** — Is the Scotch equivalent for DEFENDANT, and, generally, includes a Respondent; *V. 13 & 14 V. c. 36, s. 53; 31 & 32 V.*

c. 100, s. 2. Quà Citation Amendment (Scot) Act, 34 & 35 V. c. 42, the word "means and includes, the person or persons named in, and called upon to answer, any summons, complaint, decree, and warrant, or other order or writ or proceeding, in the Small Debt Courts" (s. 5).

**DEFICIENCY.** — As used in s. 133, Lands C. C. Act, 1845; *V. WORKS.*

**DEFINED BOUNDARY.** — *V. R. v. Northowram*, cited PLACE.

**DEFINED CHANNEL.** — Subterranean waters can only be the subject of riparian rights when flowing in Defined and Known Channels. "Defined," means a contracted and bounded channel, although the course of the stream may be undefined by human knowledge. "Known" means the Knowledge, by reasonable inference, from existing and observed facts in the natural or pre-existing condition of the surface of the ground. "Known" in this rule of law is not synonymous with "Visible," nor is it restricted to knowledge derived from exposure of the channel by excavation (*Bluck v. Ballymena Commrs*, 17 L. R. Ir. 459).

*V. J.* As to Subterranean Waters, *Acton v. Blundell*, 12 M. & W. 324; 13 L. J. Ex. 289; *Chasemore v. Richards*, 29 L. J. Ex. 81; 7 H. L. Ca. 349, 389; *Bradford v. Pickles*, cited ILLEGALLY.

**DEFINITE.** — "Definite and Certain Principal Sum," "Definite and Certain amount of Stock"; *V. SETTLEMENT. Cp., CERTAIN: SUM CERTAIN.*

"Definite and Certain Sum of Money," quà *ad val.* Stamp on Mtge, means, moneys numbered; it has no relation to certainty or uncertainty of obligation. Therefore, a security to pay £100 if something happens, is for the "definite and certain" sum of £100, though it is only payable on a contingency (*Mortimore v. Inl. Rev.*, 2 H. & C. 838; 33 L. J. Ex. 263; 10 L. T. 655); so, a security to pay £100 if something happens or £200 if something else happens, is one for £200 (*Maxwell v. Inl. Rev.*, 4 Rettie, 1121); so, of a security indemnifying a surety, though he may never be called upon to pay (*Canning v. Raper*, 22 L. J. Q. B. 87; 1 E. & B. 164). But *none of the following* are included in the phrase, — Interest (*Barker v. Smark*, 10 L. J. Ex. 200; 7 M. & W. 590); Expenses, not even though for the purpose of obtaining a renewal of a lease (*Doe d. Scrutton v. Snaith*, 8 Bing. 146; *Wroughton v. Turtle*, 13 L. J. Ex. 57; 11 M. & W. 561); Costs (*Lysaght v. Warren*, 10 Ir. L. R. 269); Banker's Commission (*Frith v. Rotherham*, 15 L. J. Ex. 133); Policy Premiums (*Lawrence v. Boston*, 21 L. J. Ex. 49; 7 Ex. 28).

**DEFINITION.** — *V. MEAN.*

**DEFINITIVE.** — "Definitive Publication" of an Order of the Charity Commrs, s. 8, 23 & 24 V. c. 136; *V. Ex p. Nicholls*, 34 L. J. Ch. 169.

"Definitive Sentence"; *V. Esnouf v. A-G. Jersey*, 52 L. J. P. C. 26; 8 App. Ca. 304.

**DEFORCEMENT.** — “ ‘ *By wrong him deforces.*’ *Deforcere* is a Word of Art, and cannot be expressed by any other word; for it signifieth. to withhold lands or tenements from the right owner” (Co. Litt. 331 b; *Va*, 1b. 277 b; Jacob: 3 Bl. Com. 172). *Vf* DEFORCEOR. *Cp*, DISSEISIN: INTRUSION.

**DEFORCEOR.** — “Is hee that overcommeth and casteth out with force; and he differeth from a Disseisor, first, in this, that a man may disseise another without force, which act is called simple DISSEISIN, Britton, cap. 53; — then because a man may deforce another that never was in possession, as if many have right to lands as common heires and one keepeth them out, the law saith, that he deforceth them, although that he never disseised them. . . . And a Deforceor differeth from an Intrudor, because that a deforceor keeps out the right heire as aforesaid, and a man is made an intrudor by a wrongfull entrie onely in lands or tenements void of a possessor” (Termes de la Ley). *Vf* DEFORCEMENT.

**DEFRAUD.** — *V*. INTENT.

**DEGRADE.** — *V*. DISGRADE.

**DEGREE.** — Quà Customs, “Degree” of Proof Spirit, “does not include a fraction of the next higher Degree” (62 & 63 V. c. 9, s. 2, c. 39, s. 1).

**DE JURE.** — De jure, — De facto; *V*. *A-G. v. Evelme Hosp.*, 17 Bea. 388, 389; 22 L. J. Ch. 854, 855.

**DEL CREDERE.** — “A *Del Credere* Agent, like any other AGENT, is to sell according to the instructions of his Principal, and to make such contracts as he is authorised to make for his Principal; and he is distinguished from other agents simply in this, — That he guarantees that those persons to whom he sells shall perform the contracts which he makes with them; and, therefore, if he sells at the price at which he is authorised by his Principal to sell, and upon the credit which he is authorized by his Principal to give, and the customer pays him according to his contract, then, no doubt, he is bound, like any other agent, as soon as he receives the money, to hand it over to the Principal” (per Mellish, L. J., *Ex p. White, Re Nevill*, 6 Ch. 403; 40 L. J. Bank. 73; 24 L. T. 45; 19 W. R. 488). Notwithstanding the decision of Mansfield, C. J., in *Grôre v. Dubois* (1 T. R. 112), and what, on that authority, was said in *Houghton v. Matthews* (3 B. & P. 489), it is now settled that a *Del Credere* Agent is not responsible to his Principal for the customers *in the first instance*; his special liability only imports, that if the customer does not pay he (the agent) will (*Hornby v. Lacy*, 6 M. & S. 166; *Morris v. Cleasby*, 4 Ib. 574, 575; *Bramwell v. Spiller*, 21 L. T. 672, espy judgment of Smith, J.). This last case shows that the Agent

cannot, in his own name, sue the customer, merely because he has assumed special liability to his principal.

*Vh.* Add. C. 869: Leake, 441: 4 Encyc. 200.

**DELAY.** — Intent to defeat or delay Creditors; *V.* DEFEAT.

“Prosecute without delay”; *V.* PROSECUTE.

Where a Shareholder has a right to have a Transfer of his Shares registered “without Delay,” he cannot call for such registration if there be an unpaid Call on the Shares disentitling him to transfer (*Re Phoenix Insrce*, 7 W. R. 440).

*V.* UNREASONABLE DELAY: WILFUL DELAY.

**DELAY IN TRANSIT.** — A delay by a carrier in not starting goods on their destination, is a “delay in transit” (*Brown v. Manchester S. & L. Ry*, 51 L. J. Q. B. 599; 53 *Ib.* 124; 9 Q. B. D. 230; 8 App. Ca. 703: *Vh.* *Sheridan v. Mid. G. W. Ry*, 24 L. R. Ir. 146). *Cp* OWNER’S RISK.

**DELEGATE.** — To “delegate” to another, is not to denude yourself. “In my opinion the word, in its general sense and as generally used, does not imply, or point to, a giving up of authority, but rather the conferring of authority upon some one else” (per Wills, J., *Huth v. Clarke*, 59 L. J. M. C. 120; 25 Q. B. D. 391, referring also to the use of the word in s. 201, P. H. Act, 1875).

**DELEGATION.** — *V.* SUBROGATION.

**DELF.** — “‘Delfe,’ is a QUARRY or Mine where Stone or Coal is digged” (Cowel); but Cowel adds that, “Camden mentions a Charter of Edw. 4 wherein mention is made of a Mine or Delfe of Copper.”

“The word ‘Delfs’ probably means open pits or diggings” (*A-G. Isle of Man v. Mylchreest*, 48 L. J. P. C. 44; 4 App. Ca. 308).

*V.* ORDELF.

**DELINEATED.** — In *Dowling v. Pontypool Ry* (43 L. J. Ch. 761; L. R. 18 Eq. 714) the words “lands delineated upon the Deposited Plans,” in the usual clause for compulsory acquirement of land, were considered at great length; and it was held that they were not limited to lands surrounded by lines on every side, but included lands so sketched, represented, or shown, that the owners would have notice that their property might be taken: *Vthc.* approved *Finek v. Lond. & S. W. Ry*, 59 L. J. Ch. 458; 44 Ch. D. 330. But the interpretation of “delineated” given by Hall, V. C., in *Dowling v. Pontypool Ry* was “as wide as it could possibly bear” (per Fry, L. J., *Protheroe v. Tottenham Ry*, 1891, 3 Ch. 290), in *whic* it was held that when a Co seek to obtain power to acquire a limited portion only of land not broken up into closes, they must clearly “delineate,” *i.e.* show on their plans, the portion they mean to acquire.

**DELIVER.** — *V. DELIVERY: CARRY OUT: SET UP.*

"An Award may be 'delivered' without being in writing" (*Blundell v. Brettargh*, 17 Ves. 240); "for a man is said to *deliver* a message as well as a letter, and there is an oral, as well as a manual, tradition" (*Oates v. Bromil*, 1 Salk. 75; 6 Mod. 160). In the latter case the words were, so that the Award should be "made and *ready to be delivered* to the parties," and yet (herein following *Cocks v. Macclefield*, Dyer, 218. pl. 5) the Court held that the Award might be by parol. *Cp SERVED. Vh Russell on Arb.*, 7 ed., 248.

"Deliver Notice *unto*" a person; *V. SERVED.*

"Send out, deliver," &c Spirits; *V. SEND.*

When a passenger has to "*deliver up*" his ticket on demand, or pay his fare, he is not released from that duty by having inadvertently torn up his ticket (*Hanks v. Bridgman*, 1896, 1 Q. B. 253; 65 L. J. M. C. 41; 74 L. T. 26).

**DELIVERABLE STATE.** — *Quà Sale of Goods Act, 1893.* "Goods are in a 'Deliverable State,' when they are in such a state that the Buyer would, under the contract, be bound to take Delivery of them" (subs. 4, s. 62).

**DELIVERANCE.** — *Quà Scotch Bankry Acts,* "Deliverance," includes "any Order, Warrant, Jdgmt, Decision, Interlocutor, or Decree" (19 & 20 V. c. 79, s. 4).

**DELIVERED.** — *FREIGHT*, on goods, *e.g.* cotton, at so much per cubic feet "delivered," is to be calculated on the measurement of the goods as put on board, and not when unloaded (*Gibson v. Sturge*, 10 Ex. 622; 24 L. J. Ex. 121; *Buckle v. Knoop*, 36 L. J. Ex. 223; L. R. 2 Ex. 333); *semble*, otherwise where the phrase is "Net Weight delivered" (*Coulthurst v. Sweet*, L. R. 1 C. P. 649).

"Whenever a Statement of Claim is delivered," R. 4, Ord. 20, R. S. C., — that means, where Statement of Claim is *actually* delivered, as distinguished from being filed under R. 10, Ord. 19 (per North. J., *Gee v. Bell*, 35 Ch. D. 160; 56 L. J. Ch. 718; 56 L. T. 305; 35 W. R. 805; *Kingdon v. Kirk*, 37 Ch. D. 141; 57 L. J. Ch. 328; 58 L. T. 383; 36 W. R. 430; *Vh Ann. Pr.*). *V. ALTER.*

**DELIVERED IN EXECUTION.** — Land is "actually delivered in execution," within s. 1, 27 & 28 V. c. 112, as soon as a sheriff under an *elegit* delivers it to the execution creditor (*Re Hobson*, 55 L. J. Ch. 754; 33 Ch. D. 493; 55 L. T. 255; 34 W. R. 786; *Vf, Champneys v. Burland*, 19 W. R. 148; 23 L. T. 584), or as soon as a Receiver is appointed (*Hatton v. Haywood*, 43 L. J. Ch. 372; 9 Ch. 229; 30 L. T. 279; 22 W. R. 356; *Anglo-Italian Bank v. Davies*, 47 L. J. Ch. 833; 9 Ch. D. 275; 27 W. R. 3; 39 L. T. 244; *Ex p. Frans, Re Watkins*. 49 L. J.

Bank. 7; 13 Ch. D. 252; 41 L. T. 565; 28 W. R. 127: *Re Pope*, 55 L. J. Q. B. 522; 17 Q. B. D. 743; 55 L. T. 369; 34 W. R. 654, 693), or a Sequestrator is in the receipt of the rents and profits (*Re Rush*, 39 L. J. Ch. 759; L. R. 10 Eq. 442). *V. SEIZURE.*

A REVERSION, or REMAINDER, though legal, cannot be "delivered in exon" so as to authorise an Order for Sale (*Re Harrison and Bottomley*, 1899, 1 Ch. 465; 68 L. J. Ch. 208; 80 L. T. 29; 47 W. R. 307).

An Equitable Leasehold Interest cannot be "actually delivered in exon" (*Re Newcastle*, L. R. 8 Eq. 700).

A Judgment entered up under s. 13, 1 & 2 V. c. 110. creates no Charge on land until the land has been "actually delivered in exon" (*Hood-Barrs v. Cathcart*, 1895, 2 Ch. 411; 64 L. J. Ch. 461; 43 W. R. 586).

*Vth*, Dan. Ch. Pr. 745: Fisher, 486.

**DELIVERY.**—The "Delivery" of an ABSTRACT of Title does not need, to make it complete, any offer of the deeds for examination. "An abstract is delivered whenever a number of sheets of paper (call it what you will) is delivered to the purchaser, which contains, with sufficient clearness and sufficient fulness, the effect of every instrument which constitutes part of the title of the vendor" (per Kindersley, V. C., *Oakden v. Pike*, 34 L. J. Ch. 622; 13 W. R. 673).

Delivery of a BILL OF EXCHANGE; *V. s.* 21, Bills of Ex. Act, 1882, and (of a Note) ss. 84, 89, *Ib.* Speaking generally, "Delivery," of a Bill or Note, "means transfer of possession, actual or constructive, from one person to another" (s. 2, *Ib.*).

Fraudulent "Conveyance, Gift, Delivery, or Transfer"; *V. CONVEYANCE.*

"As a DEED may be delivered to the partie without words, so may a Deed be delivered by words without any act of deliverie, — as if the writing sealed lyeth upon the table and the Feoffor or Obligor saith to the Feoffee or Obligee 'Goe and take up the said writing, it is sufficient for you,' or 'it will serve the turne,' or, 'Take it as my Deed,' or the like words, — it is a sufficient delivery" (Co. Litt. 36a; *Vth*, Hargrave's note: Touch. 58, 59). "The mere affixing the seal does not render the document a Deed; but as soon as there are acts or words sufficient to show that it is intended by the party to be executed as his deed presently binding on him, it is sufficient. The most apt and expressive mode of indicating such an intention is to hand it over, saying, 'I deliver this as my Deed'; but any other words. or acts, that sufficiently show that it was intended to be finally executed will do as well" (per Blackburn, J., *Xenos v. Wickham*, L. R. 2 H. L. 312; 36 L. J. C. P. 313; 16 L. T. 800; 16 W. R. 38). *Note:* As to what is a good Delivery of a Deed, or evidence of it, *Vf*, *Doe d. Garnons v. Knight*, 5 B. & C. 671; *Hudson v. Revett*, 7 L. J. O. S. C. P. 145; 5 Bing. 368; *Tupper v. Foulkes*, 30 L. J. C. P. 214; 9 C. B. N. S. 809; *R. v. Longnor*, 2 L. J. M. C.



62; 4 B. & Ad. 647: — On the contrary, *V. Greendit v. Baker*, Yelv. 7: *Powell v. Lond. & Prov. Bank*, 37 S. J. 476. In *Goodright v. Straphan* (Cowp. 201), mere acknowledgment of the rights of the parties under the deed was held sufficient.

Delivery of a Deed as an *Escrow*, is where a Deed is delivered on a CONDITION; if the CONDITION is performed, the Deed becomes absolute; but until then it is an *Escrow*, *i.e.* in suspense (*Watkins v. Nash*, 44 L. J. Ch. 505; L. R. 20 Eq. 262, and cases there cited). *Vf*, Touch. 58. 59: Co. Litt. 36 a: 4 Cru. Dig. 29–31: per St. Leonards, C., *Nash v. Flyn*, 1 J. & La T. 175: per Williams, J., *Kidner v. Keith*, 15 C. B. N. S. 43: *Whelan v. Palmer*, 39 Ch. D. 655, 656; 57 L. J. Ch. 787: *London Freehold Co v. Suffield*, 1897, 2 Ch. 621; 66 L. J. Ch. 790: 77 L. T. 445; 46 W. R. 102.

Deposit of Shares “*in Escrow*”; *V. Spitzel v. Chinese Corp*, 80 L. T. 349, 351.

Delivery of GOODS to a tradesman so as to be exempt from DISTRESS: *V. Clarke v. Milwall Dock Co*, 55 L. J. Q. B. 378; 17 Q. B. D. 494: 54 L. T. 814; 34 W. R. 698: and as to what is “*Delivery*” of goods on a Contract for Sale, *V. Add. C. 522–525*: Rose. N. P. 547–564: what to perfect a gift, *V. GIFT*.

Quà Sale of Goods, the rule, — ever since the elaborate jdgmt of Parke, J., in *Dixon v. Yates* (5 B. & Ad. 339) — is “*that the delivery of a part may be a delivery of the whole if it is so intended; but that it is not such a delivery unless it is so intended, and I rather think that the onus is upon those who say it was so intended*” (per Ld Blackburn, *Kemp v. Falk*, 7 App. Ca. 586; 52 L. J. Ch. 174). *V. ACCEPTANCE*.

Quà Sale of Goods Act, 1893, “*‘Delivery,’ means, voluntary transfer of possession from one person to another*” (subs. 1, s. 62).

“*Delivery or Transfer . . . of Goods or Documents of Title.*” s. 25 (1), Sale of Goods Act, 1893, connotes an actual, physical, transfer, as distinguished from a mere continuance in possession (*Nicholson v. Harper*, 1895, 2 Ch. 415; 64 L. J. Ch. 672; 73 L. T. 19; 43 W. R. 550). So, of the same expression in s. 9, Factors Act, 1889 (*Kitto v. Bilbie*, 72 L. T. 266; 11 Times Rep. 214; on which latter section, *Vf*, *Shenstone v. Hilton*, cited BUY: *Hull Ropes Co v. Adams*, 73 L. T. 446; 44 W. R. 108; 65 L. J. Q. B. 114).

Delivery of LANDS; *V. LIVERY*.

“*Delivery ORDER.*” quà Stamp Act, 1891; *V. s. 69*.

“*Delivery which is essential to a PLEDGE may be effected without a physical change of possession*” (per Kekewich, J., *Grigg v. National Guardian Co*, 1891, 3 Ch. 206; 61 L. J. Ch. 13. citing *Mills v. Charlesworth*, 59 L. J. Q. B. 530; 25 Q. B. D. 421; revd in H. L. nom. *Charlesworth v. Mills*, 1892, A. C. 231; 61 L. J. Q. B. 830, without affecting this point). *Vf* ACTUAL.

“*Personal Delivery*” of Voting Papers; *V. PERSONAL DELIVERY*.

"The PLACE of Delivery" of MILK, s. 3, 42 & 43 V. c. 30, is where the seller delivers, or has agreed to deliver, it, even though it be sent from a distance and the purchaser has agreed to pay all the carriage (*Filshie v. Erington*, 1892, 2 Q. B. 200; 66 L. T. 199; 40 W. R. 380; 56 J. P. 312; 8 Times Rep. 306).

"Delivery of a WILL, means the same as PUBLICATION; and consists in executing it in the presence of two witnesses, and declaring it to be your Will. That is sufficient for the execution (by Will) of a Power requiring an instrument 'delivered'" (per Romilly, M. R., *Smith v. Adkins*, 41 L. J. Ch. 628; L. R. 14 Eq. 402: *Va, Mason v. Heywood*, 7 L. J. Ch. 145: *Curteis v. Kenrick*, 7 L. J. Ex. 169; 3 M. & W. 461; *Mackinley v. Sison*, 8 Sim. 568). V. SIGNED, SEALED, AND DELIVERED.  
V. DELIVER.

**DEMAND.** — "If a man release to another all manner of demands, this is the best release to him to whom the release is made, that he can have" (Litt. s. 508; *Vth, Termes de la Ley, Demaund*).

"'Demand,' Demandum, is a Word of Art, and in the understanding of the Common Law is of so large an extent, as no other one word in the law is, unlesse it be *clameum*, whereof Littleton maketh mention, Sect. 445" (Co. Litt. 291 b). But in *Parkins v. Hinde* (Cro. Eliz. 161), it was held that a lease by a parson at a rent to include "all Exactions and Demands" did not preclude the lessor from recovering his tithes; and the Court said, "that the words shall discharge the lessee of all rents and services, but not of suit at court, or such things as are not then in demand." *Vf, Stiles v. Miller*, Owen, 39; 1 Leon. 300: Jacob.

Mere delivery of a Solicitor's Bill is a sufficient "Demand," entitling him to Interest thereon under R. 7, Solrs Rem Ord (*Blair v. Cordner*, 56 L. J. Q. B. 642; 19 Q. B. D. 516); but it must be to the "Person LIABLE," which a person who has merely the conduct of an action for the Administration of the client's estate is not, — the "Person Liable" to pay a deceased client's Bill of Costs is his Personal Representative (*Re McMurdo*, 1897, 1 Ch. 119; 66 L. J. Ch. 67; 75 L. T. 576; 45 W. R. 244).

A Demand "IN WRITING" for a SUM CERTAIN, under the latter part of s. 28, 3 & 4 W. 4, c. 42 (or, *semble*, under R. 20, Sch 2, Bankry Act, 1883), need not be in any particular form, or specify the exact sum due, so long as it contains a distinct demand of payment (*Mowatt v. Londesborough*, 4 E. & B. 1; 23 L. J. Q. B. 38, 177: *Geake v. Ross*, 44 L. J. C. P. 315: *semble, thlc* over-rules hereon *Hill v. South Staffordshire Ry*, 43 L. J. Ch. 556; L. R. 8 Eq. 154, although approved by Jessel, M. R., *Ward v. Eyre*, 49 L. J. Ch. 659). But a general notice on an Invoice of goods that interest on the price will be charged after a stated period, is not a "Demand" within the section (*Williams v. Trench*, 61 L. J. Ch. 22: *Vf, L. C. & D. Ry v. S. E. Ry*, 1893, A. C. 429; 63 L. J. Ch. 93; 69

L. T. 637: *Tautz v. Archdale*, 11 Times Rep. 452: INSTRUMENT). A claim for interest which is made for the first time on a Writ, is not such a Demand (*Rhymney Ry v. Rhymney Iron Co*, 59 L. J. Q. B. 414; 25 Q. B. D. 146). *Vf* CURRENT.

V. CLAIM: DEBT, CLAIM, OR DEMAND: INCUMBRANCE: ON DEMAND; TAKE OR DEMAND.

A "Demand" of Money, &c, within the BLACK ACT (and, *semble*, within the Acts replacing it, *e.g.* s. 45, 24 & 25 V. c. 96), "must be something more than asking: it is a requisition in the shape of forcing" (per Eyre, C. J., *R. v. Robinson*, East P. C. 1114), or, as one of the other judges in that case said, "Holding out a threat at the same time to enforce it," or, as was held in *R. v. Walton* (32 L. J. M. C. 79), something to unsettle the mind, and take away the free will of the demandee. But, *semble*, if money is demanded which the demander knows the demandee does not possess, there is no such criminal "Demand" (*R. v. Edwards*, 6 C. & P. 515).

"Demand" of RENT, in a Re-Entry Clause in a Lease, or of Rates; V. LAWFULLY DEMANDED.

**DEMERIT.**—A power to punish according to a person's "Demerit," imports only that he shall be punished in the ordinary course of justice, by Indictment (4 Inst. 171: Dwar. 673).

**DEMESNE.**— "Demains, according to the common speech, are the Lord's chief MANOR place with the lands thereto belonging; *terra dominicales*, which he and his ancestors have from time to time kept in their own manual occupation for the maintenance of themselves and their families; and all the parts of a Manor, except what is in the hands of freeholders, are said to be demains. Copyhold lands have been accounted *demains*, because they that are the tenants hereof are judged in law to have no other estate but at the will of the lord; so that it is still reputed to be, in a manner, in the lord's hands; but this word is oftentimes used for a distinction between those lands that the lord of the manor hath in his own hands, or in the hands of his lessees demised at a rack-rent, and such other land appertaining to the Manor which belongeth to free or copyholders; Bract. lib. 4, tract. 3, c. 9: Fleta, lib. 5, c. 5' (Jacob, where it is said to be derived from *dominium*, and not, as some have supposed, from *de manu*. *Cp* the Eng., 'in hand,' and Lat. *in manu* as used in the Civil Law). *Cp* 'Terra Assisa,' sub ASSISSUS.

"Britton, 205 b (Bk. III. ch. 15), says, 'Demejne proprement est tenement qe chescun tient severalment en fee.'

"The Demesnes pass by a conveyance of the Manor of which they form part (Touch. 92). It is therefore of importance on the sale of a Manor to except any lands belonging to the vendor within the Manor, which are not intended to be sold. as they may be demesne land.

"Kelham, Dict., gives *Demeigue, demenic, demevine*, meaning 'own,' a sense in which the word *demesne* (or some other form of the same word) is frequently used in the Year Books and other early documents. Prof. Skeat (Etym. Eng. Dict.) connects it with *dominium*, and says '*demesne*' is a false spelling, probably due to confusion with old Fr. *mesnee*, or *maisonie*, a household" (Elph. 570, 571). *Vf*; Termes de la Ley. *Demaines*: Cowel, *Demaine*.

"Demesne Lands," properly signifies, lands of a Manor which the lord either has, or potentially may have, *in propriis manibus* (*A-G. v. Parsons*, 1 L. J. Ex. 103; 2 Cr. & J. 279). *Vh*, *Carnarvon v. Villebois*, 14 L. J. Ex. 233; 13 M. & W. 313.

An Exception, in a Power to Lease, of the Demesnes of a Manor, includes its Copyholds (*Winter v. Loveday*, Carth. 428: *Vth*, Sug. Pow. 736).

"Tenant in Demesne," s. 1, 32 H. 8, c. 37, means only, Tenant in OCCUPATION (per Burrough, J., *Meriton v. Gilbee*, 8 Taunt. 162).

"Demesne Land," in Ireland and especially quâ s. 58 (2), Land Law (Ir) Act, 1881; *V. Griffin v. Taylor*, 16 L. R. Ir. 197: *Re Moore and Batt*, 32 Ib. 68: *Re Maguer and Hawkes*, 32 Ib. 285: *Re Hewson and Listowel*, 32 Ib. 700.

"Land which when first demised was Demesne," s. 5 (1 b, ii), 59 & 60 V. c. 47; *V. Re Maguer and Hawkes*, 1900, 2 I. R. 465.

"*In his demesne as of fee*"; as to the force of this expression, *V. Co.* Litt. 17 a.

#### V. ANCIENT DEMESNE.

"Son ASSAULT demesne," is a justifying Defence to an action for Assault, whereby the deft alleges that the assault was the plaintiff's "own," "de son tort demesne"; *V. Cowel*.

**DEMISE.** — "Here," Westm. 2, c. 48, "as in many other places, 'demise' is applied either to an estate in Fee Simple, Fee Tail, or for Term of Life, and so commonly it is taken in many writs" (2 Inst. 483; continuing, Coke uses "Demise" and "Conveyance" as synonymous). Referring thereto counsel (*Greenaway v. Adams*, 12 Ves. 397) said, — "The strict technical import of 'Demise,' from the verb '*dimitto*,' is any transfer or conveyance; though by habit it is generally used to denote a partial transfer by way of lease."

"By the word 'demise' everything is inferred that is necessary to constitute an actual demise" (per Perrin, J., *Knox v. Gildea*, 11 Ir. L. R. 482).

This word in a LEASE implies a covenant by the Lessor for TITLE and one for QUIET ENJOYMENT, unless there be an express qualifying covenant (Touch. 165: per Ld St. Leonards, *Mouypenny v. Mouypenny*, 9 H. L. Ca. 139: *Line v. Stephenson*, 5 Bing. N. C. 183; 7 L. J. C. P. 263: *Williams v. Burrell*, 14 L. J. C. P. 98; 1 C. B. 402: Add. C. 603: Woodf. 183: Dart, 636: Elph. 422, 424). So also even of a Parol

Tenancy quâ the covenant for Quiet Enjoyment (*Bandy v. Cartwright*, 22 L. J. Ex. 285; 8 Ex. 913; *Hall v. London Brewery*, 31 L. J. Q. B. 257; 2 B. & S. 737; *Baynes v. Lloyd*, 1895, 1 Q. B. 820; 64 L. J. Q. B. 411; *Sethle*, on app., 1895, 2 Q. B. 610; 64 L. J. Q. B. 787).

But, at least in the case of a lease or letting of Leaseholds, this implied covenant for Quiet Enjoyment is limited to the duration of the Lessor's interest (*Swan v. Stranham*, Dyer, 257 a; *Adams v. Gibney*, 6 Bing. 656; *Penfold v. Abbot*, 32 L. J. Q. B. 67; 11 W. R. 169; *Schwartz v. Lockett*, 34 S. J. 80, 73; *Baynes v. Lloyd*, sup).

As regards the implied covenant for Title, this word "imports a Power of letting" (*Holder v. Taylor*, Hob. 12); i.e. it is distinct from the covenant for Quiet Enjoyment (per Russell, C. J., *Baynes v. Lloyd*, sup), and means only that the Lessor can grant *some* lease under which the Lessee can enter (*Vh* 39 S. J. 444). But the authorities are in conflict as to whether this covenant for Title can be implied by any other word than "demise," still less under a mere parol tenancy. "*Hart v. Windsor* (12 M. & W. 68, 85) is an authority that the word 'let' has the same effect as 'demise'; and that any other equivalent word would have the same effect" (per Brett, J., *Mostyn v. West Mostyn Coal Co.*, 1 C. P. D. 152; 45 L. J. C. P. 405): but a directly contrary opinion was expressed by Russell, C. J., in *Baynes v. Lloyd*, and therein, *semble*, he was supported by the Court of Appeal, though their actual decision was that, assuming a covenant in the absence of the word "demise" yet, it would be limited to the duration of the Lessor's interest. 17' LET.

"On the demise of a brewery, with the exclusive privilege of supplying ale, it would seem that no covenant can be implied with respect to such a privilege from the word 'demise'" (Woodf. 187, citing *Hinde v. Gray*, 1 M. & G. 195; 1 Sc. N. R. 123; 9 L. J. C. P. 253).

An instrument is not a Demise or Lease, although it contain the usual words of demise, if its contents show that such was not the intention of the parties (*Taylor v. Caldwell*, 32 L. J. Q. B. 164; 3 B. & S. 826); and, on the other hand, an Agreement only may sometimes be a Lease (*V. LEASE*).

**DEMISED.** — A covenant to repair "the demised," or "the said." Buildings, does not extend to buildings subsequently erected (*Cornish v. Cleife*, 34 L. J. Ex. 19; 3 H. & C. 446).

**DEMOLISH.** — "Demolish or Pull Down or Destroy, or Begin to demolish pull down or destroy," s. 11, 24 & 25 V. c. 97; — this phrase means a total destruction, "or the commencement of a demolition or destruction, the purpose being to effect a complete demolition and destruction if there is no interruption" (per Lindley, J., *Drake v. Foottit*, 50 L. J. M. C. 143; 7 Q. B. D. 201, citing *R. v. Thomas*, 4 C. & P. 237; *R. v. Price*, 5 Ib. 510; *R. v. Batt*, 6 Ib. 329; *R. v.*

*Howell*, 9 Ib. 437: *R. v. Adams*, C. & M. 299). And a like meaning is to be given to "feloniously demolished pulled down or destroyed, wholly or in part," in s. 2, 7 & 8 G. 4, c. 31 (*Drake v. Footitt*, sup). A substantial destruction is a demolition, even though a small part of the building be left uninjured (*R. v. Langford*, C. & M. 602); and that it was effected by fire is immaterial (*R. v. Harris*, Ib. 661).

S. 11, 24 & 25 V. c. 97 amplifies, and takes the place of, s. 2, 52 G. 3, c. 130, where the offence prescribed is if any one "shall unlawfully and with force demolish or pull down, or begin to demolish or pull down, any Erection and Building or Engine" used in any Trade or Manufactory; on which it was held that "Engine" must there be held as *ejusdem generis* with "Erection and Building," and that "demolish or pull down" could only hyperbolically be applied to minute things, *e.g.* factory frames, and that "begin to demolish or pull down" "denotes that, to complete the act would require a continuance of force operating upon the subject-matter" (per Abbott, J., *Orgill v. Smith*, cited ENGINE).

V. DESTROY: TAKE DOWN: UNNECESSARY INCONVENIENCE.

**DEMONSTRATIVE.** — A Demonstrative Legacy, is General in its phrase but SPECIFIC in its fund, *e.g.* £10 out of a Bank balance, or 10 lambs of a named flock (Wms. Exs. 1021: Theobald, 15).

**DEMURRAGE.** — The strict meaning of "Demurrage" is the agreed amount to be paid by the Charterer of a Ship for each day taken in loading or discharging beyond the respective times fixed for those operations: "the word 'Demurrage' appears to me to be more applicable to delay in time after the expiration of a *fixed* time than to delay after the expiration of a reasonable time. That is the principle which underlies the authorities; it is that upon which *Lockhart v. Falk* (44 L. J. Ex. 105; L. R. 10 Ex. 132) proceeded; and it appears to me to be a reasonable one. I do not think that the term can be easily applied to time after the expiration of a reasonable time" (per Fry, L. J., *Dunlop v. Balfour*, 1892, 1 Q. B. 507; 61 L. J. Q. B. 363), *e.g.* where the Loading or Discharge is to be "in the CUSTOMARY manner." But sometimes, — *e.g.* where a CESSER Clause (exonerating the Charterer) is accompanied by a Lien on Cargo for "freight, dead freight, *demurrage*, and average," or such like. — "Demurrage" will include DETENTION other than that which is technically demurrage (*V.* per Brett, J., *Kish v. Cory*, L. R. 10 Q. B. 559, 560; 44 L. J. Q. B. 207; 32 L. T. 670; 23 W. R. 880; per Bowen, L. J., *Clink v. Radford*, cited CEASE: Carver, ss. 648, 649). On the other hand, where the lien is not co-extensive with the Charterer's liability, the Cesser Clause will not, under "Demurrage," include damages for a Detention not covered by the lien (*Lockhart v. Falk*, *Dunlop v. Balfour*, sup).

“A Demurrage Contract in which the days are fixed, is a contract by the Freighter that if the ship is detained beyond the specified number of days allowed as RUNNING DAYS and DEMURRAGE DAYS, he will pay demurrage in respect of any days during which the ship is detained over and above the days mentioned. The only CONDITION which is to exist before the freighter is bound to pay demurrage is that the days allowed.” *e.g.* for the Discharge of the Cargo, “should have commenced to run and should have run out” (per Esher, M. R., *Budgett v. Binnington*, 1891, 1 Q. B. 35; 60 L. J. Q. B. 1: *Vf, Tiis v. Byers*, 45 L. J. Q. B. 511; 1 Q. B. D. 244: *Porteous v. Watney*, 47 L. J. Q. B. 643; 3 Q. B. D. 543: *Straker v. Kidd*, 47 L. J. Q. B. 365; 3 Q. B. D. 223). Anything to excuse the Freighter after the Days have run out must be by way of Confession and Avoidance; and he cannot avoid his liability unless he proves that the delay arose from the Shipowner’s fault, — *i.e.* fault by himself or his servants, or by circumstances over which he had CONTROL (*Budgett v. Binnington*, *sup*). That principle is applicable for determining what is a sufficient excusal to a Contractor for the non-performance by him of his contractual obligation under every kind of contract (per Lindley, L. J., *ib.*).

*Vh*, Abbott, 268–307: Carver, ss. 608–651: 4 Encyc. 205–213: DAYS: LAY DAYS: RUNNING DAYS: WORKING DAY: TURN: USUAL AND CUSTOMARY MANNER.

**DEMURRAGE DAYS.** — “Days are sometimes given in favour of the charterer which are called ‘Demurrage Days.’ Those are days beyond the ‘Lay Days,’ but during which the amount that he has to pay for the use of the ship is a fixed sum” (per Esher, M. R., *Neilson v. Wait*, 16 Q. B. D. 70; 55 L. J. Q. B. 89).

*V.* DEMURRAGE: DAYS.

**DEMURRANT.** — Means, residing; *V.* ROYAL PALACE.

**DEMURRER.** — “‘Demurrer,’ is when any Action is brought and the Defendant pleadeth a plee to which the plaintife answereth That hee will not answer for that it is not a sufficient plee in the law, and the defendant saith to the contrary That it is a sufficient plee; and thereupon both parties doe submit the cause to the judgement of the Court. — then it is called a Demurrer, for that they goe not forward in pleading, but abide upon the judgement of that point, and is said, in the Latine used in the Records, *Moratur in Lege*” (Termes de la Ley). *Vf*, Jacob: 4 Encyc. 213.

*Note.* Demurrers in the High Court were abolished and proceedings in lieu thereof provided by Ord. 25, R. S. C.: *V.* ISSUE OF FACT.

**DEMY SANGUE.** — Demy Sanke, or Demy Sangue; *V.* HALF-BLOOD.

**DENARIATA TERRÆ.** — An acre (Elph. 572, citing Spelm. *Fardella*); *Sr*, Elph. 598.

**DENE.** — “Some say that *deue* or *denne*, whereof *dena* commeth, is properly a valley or dale. *Dena silva*, and the like, as *drofden*, or *drufden*, or *druden*, signifieth a thicket of wood in a valley; for *druf*, or *dru*, signifieth a thicket of wood, and is often mentioned in Domesday. And sometimes *dena* or *dennu* signifieth, as *villa* and *denne*, a Towne” (Co. Litt. 4 b: *V. COMBE*).

**DENIZEN.** — “‘Denizen,’ or ‘Donaison,’ is where an ALIEN borne becommeth the Kings subject, and obtaineth the Kings Letters Patent for to enjoy all priviledges as an Englishman” (Termes de la Ley). *Vf*, Co. Litt. 129 a: *Calvin’s Case*, 7 Rep. 25: *Collingwood v. Pace*, 1 Vent. 422: *Anthony v. Seger*, 1 Hagg. Con. 9: Cowel: NATURALIZATION.

**DENMAN.** — Lord Denman’s Acts, — The Chimney Sweepers and Chimneys Regulation Act, 1840, 3 & 4 V. c. 85: The Evidence Act, 1843, 6 & 7 V. c. 85.

Mr. Denman’s Acts, — The Criminal Procedure Act, 1865, 28 & 29 V. c. 18: The Evidence Further Amendment Act, 1869, 32 & 33 V. c. 68.

**DENOMINATIONAL FOUNDATION.** — An ENDOWED school, having no instrument of foundation or statutes or written regulations, is not a Denominational Foundation within 32 & 33 V. c. 56, s. 19, or 36 & 37 V. c. 87, s. 7 (*St. Leonards’ Trustees v. Charity Commrs*, 54 L. J. P. C. 30; 10 App. Ca. 304).

**DENY.** — *V. CHRISTIAN RELIGION.*

**DEODAND.** — “‘Whatever personal chattel is the immediate occasion of the death of any reasonable creature, which is forfeited to the King, to be applied to pious uses, and distributed in alms by his high almoner’ (Jacob: *V. Spelm.*: Chitty, Prerog. 153: 3rd Inst. cap. 9). For two curious examples in which a horse and a tree were deodands, *V. Y. B.* 30 & 31 Edw. I.; Record Publ. App. II, 528, 529” (Elph. 572). *Vf*, *R. v. Brownlow*, 11 A. & E. 119: *R. v. Eastern Counties Ry*, 10 M. & W. 58: 1 Bl. Com. 300–302: Termes de la Ley. Cowel says, “‘Deodand’ is a thing given, or rather forfeited as it were, to God for the pacification of his wrath, in case of Misadventure whereby any Christian man cometh to a violent end, without the fault of any reasonable creature.”

Deodands were abolished by 9 & 10 V. c. 62.

**DEODORIZE.** — Quà Metrop Man. Act, 1858, 21 & 22 V. c. 104, “deodorize” includes “any process whereby the solid suspended matters in SEWAGE may be precipitated, or separated, from the liquid before the discharge thereof, — or whereby the noxious or offensive properties of Sewage may be neutralized” (s. 32).



**DEPART.** — “To Depart,” in a Marine Insurance, means that “the ship should not only have broken ground on the day named, but that she should then be out of the port, or at sea” (1 Maude & P. 502, citing *Moir v. Royal Exchange Assuree*, 4 Camp. 84; 3 M. & S. 461; 6 Taunt. 241). In *Van Baggan v. Baines* (23 L. J. Ex. 213; 9 Ex. 523), the case just cited was contrasted with that then under consideration in which the word used was “LEAVE.” *Vf*, SAIL: FINAL SAILING: DESPATCH.

“Depart with Convoy”; *V*. CONVOY.

“Departs *out of England*,” s. 4 (*d*), Bankry Act, 1883; *V*. Yate Lee, 44, 45: Wms. Bank. 19: Robson, 135: Baldwin, 83. *Cp*, ABSCOND: ABSENT.

“Departs *from his dwelling-house*,” s. 4 (*d*), Bankry Act, 1883; *V*. Yate Lee, 46: Wms. Bank. 19: Robson, 136: Baldwin, 83.

*V*. DEPARTING UNITED KINGDOM.

**DEPART THIS LIFE.** — *V*. DIE.

**DEPARTING UNITED KINGDOM.** — A disqualification of Trustees on “departing the UNITED KINGDOM from whatever cause or motive, or under whatsoever circumstances,” does not apply to a *temporary* absence abroad (*Re Moravian Socy*, 26 Bea. 101; 4 Jur. N. S. 703).

**DEPARTURE.** — “A Departure in Pleading is said to be when the second plea containeth matter not pursuant to his former, and which fortifieth not the same, and thereupon it is called *decessus*, because he departeth from his former plea” (Co. Litt. 304 a). *Vf* Termes de la Ley.

This Departure is now provided against by R. 16. Ord. 19, R. S. C., on *whv* Ann. Pr.

“Departure in despite of the Court”; *V*. Termes de la Ley: DEFAULT.

**DEPENDANT.** — Quà Workmen’s Comp Act, 1897. “‘Dependants,’ means (in England and Ireland) such members of the workman’s family, specified in the Fatal Accidents Act, 1846, 9 & 10 V. c. 93, as were wholly, or *in part*, dependent upon the earnings of the workman at the time of his death; and (in Scotland) such of the persons, entitled according to the law of Scotland to sue the Employer for damages or solatium in respect of the death of the Workman, as were wholly, or *in part*, dependent upon the earnings of the workman at the time of his death” (subs. 2, s. 7). As to who is so “dependent” is a question of fact for the jury (*Simmons v. White*, 1899, 1 Q. B. 1005; 68 L. J. Q. B. 507; 80 L. T. 344; 47 W. R. 513). A father is “*in part*” dependent on his child, however young, if the wages of the child form part of the common fund for keeping up, and are a help to maintain, the Home (*S. C.*: *Davies v. Main Colliery Co*, 80 L. T. 674; *affd* in H. L. *nom. Main Colliery Co*

v. *Davies*, 1900, A. C. 358; 69 L. J. Q. B. 755; 83 L. T. 83; 16 Times Rep. 460); but the Dependants "must be 'Dependants' in the proper sense of the word, and not merely persons who derive a benefit from the earnings of the deceased" (per Romer, L. J., *Simmons v. White*, sup).  
*Cp* ATTENDANT. *V.* CHILD, p. 306: PARENT.

*Note*: As to the Judge's power to apportion the Compensation, *V.* *Daniel v. Ocean Coal Co*, 1900, 2 Q. B. 250; 69 L. J. Q. B. 567; 82 L. T. 523; 48 W. R. 467.

#### DEPENDENCY. — *V.* REVENUE.

**DEPENDENT.** — "The doctrine of *Dependent Relative Revocation*, is based on the principle that all acts by which a Testator may physically destroy or mutilate a Testamentary Instrument are, in their nature, equivocal. They may be the result of accident, or, if intentional, of various intentions. It is, therefore, necessary in each case to study the act done by the light of the circumstances under which it occurred and the declarations of the testator with which it may have been accompanied; for unless it be done *animo revocandi* it is no Revocation. What, then, if the act of destruction be done with the sole intention of setting up and establishing some other Testamentary Paper for which the destruction of the Paper in question was only designed to make way? It is clear that, in such a case, the *animus revocandi* had only a conditional existence, the Condition being the validity of the Paper intended to be substituted" (per Wilde, J. O., *Powell v. Powell*, cited DESTROY). *V.* REVOKE.

#### DEPENDING. — *V.* PENDING.

**DEPOSIT.** — A "Deposit" is equivalent to an EARNEST, and is forfeited on breach by depositor of his agreement; even when the word is found in the following common collocation, — "as a Deposit and in part payment of the purchase money"; so that, on the contract going off, by reason of such breach, the deposit cannot be recovered back, unless there be circumstances which render it inequitable for the deposit to be retained by the depositee (*Howe v. Smith*, 53 L. J. Ch. 1055; 27 Ch. D. 89, *whc*—together with *Cornwall v. Henson*, 1899, 2 Ch. 710; 68 L. J. Ch. 749; 81 L. T. 113; 48 W. R. 42, *revid* on the facts, 1900, 2 Ch. 298; 69 L. J. Ch. 581 — leaves *Palmer v. Temple*, 8 L. J. Q. B. 179; 9 A. & E. 508, of but little practical value. *Vf*, *Soper v. Arnold*, 14 App. Ca. 429: FORFEIT). *Note*: *V.* *judgmt* of Fry, L. J., *Howe v. Smith*, sup, for history and meaning of "Deposit."

An incurably BAD Title, precluding Specific Performance, will not entitle a Purchaser to recover his deposit, if the Conditions of Sale are such that the Vendor has committed no breach of contract (*Corrall v. Cattell*, 8 L. J. Ex. 225; 4 M. & W. 734; *Scott v. Alvarez*, 1895, 2 Ch. 603; 64 L. J. Ch. 821; 73 L. T. 43; 43 W. R. 694). *Note*: No action

lies against the Vendor's Solicitor to recover Deposit paid to him (*Ellis v. Goulton*, 1893, 1 Q. B. 350; 62 L. J. Q. B. 232). *V. INVESTIGATING.*

Money, or VALUABLE Thing, "deposited" "to abide the EVENT" of a GAMING CONTRACT, s. 18, 8 & 9 V. c. 109, means, Money, &c, won or lost on such a contract; therefore, a Depositor may repudiate and recover back his own deposit at any time before it has been actually appropriated to the contract (*Varney v. Hickman*, 5 C. B. 271; 17 L. J. C. P. 102; *Martin v. Hewson*, 10 Ex. 737; 24 L. J. Ex. 174), even though the Event has gone against him (*Hastelow v. Jackson*, 8 B. & C. 221; *Hampden v. Walsh*, 1 Q. B. D. 189; 45 L. J. Q. B. 238; *Diggle v. Higgs*, 2 Ex. D. 422; 46 L. J. Ex. 721; *Trimble v. Hill*, 5 App. Ca. 342; 49 L. J. P. C. 49; *Universal Stock Exchange v. Strachan*, 1896, A. C. 166; 65 L. J. Q. B. 429; 74 L. T. 468; 44 W. R. 497; 60 J. P. 468). But MONEY deposited with one of the parties to a Wager becomes appropriated immediately after the Event, and is irrecoverable whatever be the Event (*Strachan v. Universal Stock Exchange No. 2*, 1895, 2 Q. B. 697; 65 L. J. Q. B. 178; *Sv COVER*). *V. ILLEGAL: R. v. Hobbs*, cited EVENT.

*V. LOAN: PLEDGE.*

A statutory power authorizing a Trustee Company to "deposit" moneys in its control with any Banking Co, does not authorize a permanent deposit by way of investment (*Perpetual Exors Assn v. Swan*, 1898, A. C. 763; 67 L. J. P. C. 141).

A mere deposit of Deeds is not a CONVEYANCE.

"Accumulation or Deposit"; *V. ACCUMULATION.*

"Deposit" Offensive Matter; *V. L. B. & S. Ry v. Hayward's Heath*, 80 L. T. 266.

**DEPOSITED.** — *V. DEPOSIT: EXPOSE.*

*V. EXPRESSLY FOR SAFE CUSTODY.*

"Deposited Map"; Stat. Def., 62 & 63 V. c. 19, Sch s. 1. *V. DELINEATED: PLAN.*

**DEPOSITION.** — Quà Fugitive Offenders Act, 1881, 44 & 45 V. c. 69; V. s. 39.

**DEPRAVE.** — "Common and notorious Depravers of the Book of Common Prayer," Canons 1603, No. 27; "The terms 'deprave or depraver,' in their more ancient signification, are now little used; but their meaning in the 16th century may be well collected from 1 Edw. 6. c. 1, where we find these expressions applied to the sacrament of the Holy Communion:— 'Whatever person shall deprave, dispise, or contempne, the saide moste blessed Sacrament by any contemptuose wordes, or by anny wordes of depravinge dispisinge or reviling, shall suffer imprisonment'" (per Cairns, C., delivering jdgmt of P. C. in *Jenkins v. Cook*, 45 L. J. P. C. 8; 1 P. D. 80). It was in that case held that a person who had published "Selections from the Old and New Testa-

ment" (omitting chapters and parts of chapters), as appropriate for family devotions, was not a "Depraver" of the Common Prayer within the Canon. *V.* COMMON AND NOTORIOUS.

**DEPRECIATION.** — *V.* *Bishop v. Smyrna Ry*, cited PROFITS.

**DEPRIVATION.** — " 'Deprivation,' is when a Bishop, Parson, Vicar, Prebend, &c, is deprived or deposed from his Preferment for any matter in fact or in law " (Termes de la Ley). *Vf*, Jacob: Phil. Ecc. Law, 838, 1082: per Cockburn, C. J., *Martin v. Mackonochie*, 3 Q. B. D. 751. *Cp* DISGRADE.

**DEPRIVED.** — *V.* RELINQUISH.

" Liable to be deprived "; *V.* LIABLE.

**DEPUTY.** — " 'Deputie,' is hee that occupieth in another mans right, whether it bee OFFICE or any other thing; and his forfeiture or misdemeanour shall cause the Officer, or him whose Deputy he is, to lose his Office or thing " (Termes de la Ley). *Vf*, Cowel: Jacob.

**DERELICT.** — Derelict GOODS; *V.* FUGITIVE GOODS.

Derelict LAND; *V.* IMPERCEPTIBLE.

Derelict SHIP, is a Ship abandoned (*The Aquila*, 1 Rob. C. 40, 41): and where the Master and Crew leave a ship to save their lives, her legal character of Derelict is not affected by their intention, if they can, to obtain assistance to save her (*The Coromandel*, Swabey, 205). *Vh*, *The Magdalen*, 31 L. J. P. M. & A. 22: *The Amerique*, L. R. 6 P. C. 468: *The Cleopatra*, 47 L. J. P. D. & A. 72; 3 P. D. 145. *Vf*, 4 Encyc. 223-226: CASTAWAY: Derelict Vessels (Report) Act, 1896.

" Derelict becomes Wreck of the Sea when it is cast by the sea upon the land " (Maclachlan on Merchant Shipping, 3 ed., 640). *Note*, that " Derelict " is included in the definition of " WRECK " quâ Merchant Shipping Acts.

That a ship is " Derelict," generally increases the SALVAGE (*The Janet Court*, 1897. P. 59; 66 L. J. P. D. & A. 34).

**DERIVATIVE.** — *V.* PRIMARY.

**DERIVATIVE LEASE.** — As to whether " Derivative Lease " and " Underlease " are convertible terms; *V.* *Brumfit v. Morton*, 3 Jur. N. S. 1198; 30 L. T. O. S. 98. *V.* UNDERLEASE.

**DERIVE.** — In determining that the Sucn Dy Act, 1853 (*V.* SUCCESSION) does not apply to a *bonâ fide* sale, the vendor not being a Predecessor from whom the interest of the purchaser " is derived " (*V. s. 2*), Jessel, M. R., said: — " How can you say that the interest of the purchaser is ' derived from ' the vendor? He does not derive his interest from the vendor; he derives it from his own money which bought

the property. You would not say, if you were talking of a horse you had bought, that you derived your interest in that horse from the horse-dealer. You would say you bought it with your money" (*Fryer v. Morland*, 45 L. J. Ch. 820; 3 Ch. D. 675). In *Zetland v. Ld Advocate* (3 App. Ca. 515), Ld Hatherley said that "derived," in the section cited, "has somewhat of a metaphorical aspect. You have to say that the donor points to so many fountain heads, but he leaves it to the law to say which is to 'derive' the title to the interest under the settlement."

INCOME is "derived from lands of the Crown, held under Lease or License," s. 15 (iii), New South Wales Land and Income Tax Assessment Act, 1895, if either of the processes whereby the ultimate money income is made is derived from the lands, *e.g.* the extraction of ore from the soil (*Commrs of Taxation v. Kirk*, 1900, A. C. 588; 69 L. J. P. C. 87; 83 L. T. 4; over-ruling *Re Tindal*, 18 (N. S. W.) L. R. 378). In *Kirk's case*, the P. C. said, their lordships "attach no special meaning to the word 'derived,' which they treat as synonymous with 'ARISING or accruing.'" On the other hand, the cases on "CARRY ON" or "EXERCISE" a Business were distinguished.

"Derive a Revenue"; *V. REVENUE*.

**DESCEND.** — A devise of Fee Simple estates to testator's sons A. and B. equally, "to descend to the heirs of A. and B. for ever, but in the event of both dying without issue, then to be equally divided between my daughters"; held, that "descend" aptly controlled the devolution to the *lineal* heirs or descendants of A. and B., and therefore that A. and B. took Estates Tail with cross remainders between them, and not estates in fee with executory devises over (*Fay v. Fay*, 5 L. R. Ir. 274).

*V. DESCENT.*

**DESCENDANTS.** — " 'Descendants' mean children and their children and their children to any degree, and it is difficult to conceive any context by which the word 'Descendants' could be limited to mean children only" (per James, L. J., *Ralph v. Corrick*, 48 L. J. Ch. 808; 11 Ch. D. 873); and per Brett, L. J., in the same case, — "The *primâ facie* meaning of 'Descendants,' in ordinary parlance, is all descendants of any degree, and not only children, and I know of no authority for saying that in any legal document the word 'Descendants' is, merely because it is in collocation with the word 'parent,' to have any other meaning than it has in ordinary parlance." "Descendants" is, therefore, not in all respects an exact equivalent for ISSUE; though, generally speaking and when unaffected by the context, it is so (2 Jarm. 101: *Va. Re Eytou*, W. N. (76) 142: OFFSPRING).

Notwithstanding the strong observation of James, L. J., just quoted, it had been previously held, under a bequest to "Descendants" of A. "in such proportions as each may be entitled," under the Statute of

Distributions, that a child of A. took in exclusion of grand-children, "descendants" being there controlled by a context, a thing of which the L. J. thought it difficult to conceive (*Smith v. Pepper*, 27 Bea. 86, *where* was not cited in *Ralph v. Carrick. Va. Craik v. Lamb*, 14 L. J. Ch. 81; 1 Coll. 489: PERSONAL REPRESENTATIVES).

*Vf*, 2 Jarm. 98-100: Wms. Exs. 976: FAMILY: NAME: NEXT OF KIN.

In the absence of a controlling context,—“Where there is a gift to A. for life, remainder to the Descendants of A., it is clear that, if Real Estate, it is an Estate Tail; if Personal Estate, it gives him the absolute interest” (per Kindersley, V. C., *Bird v. Webster*, 1 Drew. 340; 22 L. J. Ch. 484). *Vf* ISSUE.

Under the circumstances in *Best v. Stonehewer* (34 L. J. Ch. 26, 349; 34 Bea. 66; 2 D. G. J. & S. 537) it was held (Knight-Bruce, L. J., diss.) that “Descendants” meant Collateral Descendants. *Cp* LINEAL.

**DESCENDIBLE FREEHOLD.**—This phrase suffices to include estates PUR AUTRE VIE (*Carroll v. Cooke*, 1 Jebb & Sy. 33).

**DESCENT.**—“‘Discents.’ This word commeth of the Latine word *discendere, id est, ex loco superiore in inferiorem movere*; and in legal understanding it is taken when land, &c, after the death of the ancestor, is cast by course of law upon the heire, which the law calleth a discent” (Co. Litt. 237 a; *Vf* Ib. 13 b).

*Note.* For the Rules of Descent of lands in FEE SIMPLE prior to 1834, *V.* 2 Bl. Com. ch. 14: Jacob, *Descent*:—In and since 1834, *V.* Inheritance Act, 1833, 3 & 4 W. 4, c. 106: Wms. R. P., Part 1, ch. 4: Goodeve, ch. 5: Challis on Real Property, ch. 16: 11 Encyc. 74. To these Rules, BOROUGH ENGLISH, and GAVELKIND, were and are exceptions. Consider also the effect of the establishment of the REAL REPRESENTATIVE.

“Descent” is not always used in its strict legal sense; it may mean “a single step in the scale of genealogy” (*Bickley v. Bickley*, L. R. 4 Eq. 216; 36 L. J. Ch. 817).

*V.* DESCEND: DEVOLUTION: PEDIGREE.

**DESCRIBE.**—A Provisional Specification of a Patent “must describe the NATURE of the Invention,” s. 5 (3), Patents, &c Act, 1883, but the complete specification “must *particularly* describe and ascertain the Nature of the Invention” (subs. 4, Ib.);—“It is obvious that the former may be much more general and less detailed in its terms than the latter” (per Ld Herschell, *Fickers v. Siddell*, 60 L. J. Ch. 105; 15 App. Ca. 496).

**DESCRIBED.**—*V.* AS DESCRIBED: SET FORTH.

**DESCRIPTION.**—*V.* LIKE: NATURE: TRADE DESCRIPTION.

“Every acknowledged dictionary in the English language would sanction as an accurate definition of ‘Description,’—a representation that

gives to another a view of the thing intended to be represented" (per Miller, J., *Re Fitzpatrick*, 19 L. R. Ir. 210). From that premiss the learned judge reasoned to the conclusion that, every OCCUPATION of the Grantor of a Bill of Sale must be stated.

The "Description" of a person is that which tells what he is; and where a statute requires that the name, place of abode, and description, of a person be given, and only the name and place of abode are given, there is a total omission of the "description," not an "inaccurate description" (*R. v. Tugwell*, L. R. 3 Q. B. 704; 37 L. J. Q. B. 275; 9 B. & S. 367); such an omission by an Attesting Witness to a Bill of Sale invalidates the document (*Sims v. Trollope*, 1897, 1 Q. B. 24; 66 L. J. Q. B. 11; 75 L. T. 351; 45 W. R. 97).

A grantee, whether under a Bill of Sale or any other document, may be described in any way which is capable of subsequent ascertainment (*Maughan v. Sharpe*, 34 L. J. C. P. 19; 17 C. B. N. S. 443; *Simmons v. Woodward*, 1892, A. C. 100; 61 L. J. Ch. 252). *Vf*; ADDRESS: RESIDENCE: ADDITION.

*Note.* The Bills of S. Act, 1878, has no provision requiring the name of the Grantor to be stated (*Central Bank of London v. Hawkins*, 62 L. T. 901; *Stokes v. Spence*, 1900, 2 Q. B. 483; 69 L. J. Q. B. 792; 83 L. T. 199; 49 W. R. 13); nor, where there is nothing to mislead, does the Bills of S. Act, 1882, require the full statement of the Grantor's Christian name (*Downs v. Salmon*, 57 L. J. Q. B. 454; 20 Q. B. D. 775).

As to the Description of the Vendor in a V. & P. contract, *V. PROPRIETOR*:—of the subject-matter, *V. ET CETERA*: *MY*: *NOTE*: *THE*.

"To limit description of his Workmen"; *V. THREAT*.

The "Description" of the "SITUATION" of the house or shop, *quâ* Notice under s. 7, Wine and Beerhouse Act, 1869, 32 & 33 V. c. 27, will suffice if it be given in such a way that the premises can be identified; it is very much a question of fact for the Justices. That particularity which is needed where the premises are in a large town, is not applicable to a small village (*R. v. Penkridge Jus.*, 61 L. J. M. C. 132; 66 L. T. 371; 56 J. P. 87).

The implied Condition (as distinct from a Collateral Warranty) on a "Sale of Goods by Description," s. 13, Sale of Goods Act, 1893, "applies in all cases where the purchaser has not seen the article sold, and relies on the description given to him by the vendor. I think it would most frequently apply to unascertained goods, but it does not follow that it may not, in some cases, apply to specific goods" (per Channell, J., *Varley v. Whipp*, 1900, 1 Q. B. 513; 69 L. J. Q. B. 333; 48 W. R. 363).

**DESCRIPTIVE.** — Descriptive Name; *V. FANCY WORD*.

**DESERTED: DESERTION: DESERT.** — These words in the Matrimonial Causes Act, 1857 (20 & 21 V. c. 85: and *V. ss.* 16, 27, 31),

mean continual absence from Cohabitation (or, *semble*, not commencing cohabitation, *De Laubenque v. De Laubenque*, 1899, P. 42; 68 L. J. P. D. & A. 20), contrary to the will, or without the consent, of the party charging it, and without reasonable CAUSE (*Ward v. Ward*, 27 L. J. P. & M. 63; 1 Sw. & Tr. 185; *Cudlipp v. Cudlipp*, 27 L. J. P. & M. 64; *Thompson v. Thompson*, *Ib.* 65; *Haviland v. Haviland*, 32 L. J. P. M. & A. 65; *Williams v. Williams*, 33 L. J. P. M. & A. 172; 3 Sw. & Tr. 547; *Yeatman v. Yeatman*, 37 L. J. P. M. & A. 37; L. R. 1 P. & D. 489): and there is no such consent if the separation be caused by ill-treatment (*Graves v. Graves*, 33 L. J. P. M. & A. 66; 3 Sw. & Tr. 350; *Mackenzie v. Mackenzie*, cited REASONABLE CAUSE), or the false and persistent accusation of an unnatural offence (*Russell v. Russell*, 1895, P. 315; 64 L. J. P. D. & A. 105; 73 L. T. 295; 44 W. R. 213), or adultery (*Farmer v. Farmer*, 53 L. J. P. D. & A. 113; 9 P. D. 245; *Garcia v. Garcia*, 57 L. J. P. D. & A. 101; 13 P. D. 216; 59 L. T. 524; 52 J. P. 584; *Edwards v. Edwards*, 62 L. J. P. D. & A. 33), or be obtained by fraud (*Crabb v. Crabb*, 37 L. J. P. & M. 42; L. R. 1 P. & D. 601; 16 W. R. 650); but merely living with another woman and introducing her as wife, but without ceasing cohabitation with the real wife, is not desertion by a husband (*Ward v. Ward*, sup; *Farmer v. Farmer*, sup); *secus*, if there is a separation caused by the husband's refusal to give up an adulterous liaison (*Pizzala v. Pizzala*, 68 L. J. P. D. & A. 91, n; 12 Times Rep. 451; *Koch v. Koch*, 1899, P. 221; 68 L. J. P. D. & A. 90; 81 L. T. 61). So absconding, with the wife's consent, to escape a criminal prosecution or other trouble, is not Desertion (*Townsend v. Townsend*, 42 L. J. P. & M. 71; L. R. 9 P. & D. 129); *secus*, where there is no such consent (*Drew v. Drew*, 57 L. J. P. D. & A. 64; 13 P. D. 97; 58 L. T. 923; 36 W. R. 927; *Wynne v. Wynne*, 1898, P. 18; 67 L. J. P. D. & A. 5). *Vf*, *Fitzgerald v. Fitzgerald*, L. R. 1 P. & D. 694; 38 L. J. P. & M. 14; 17 W. R. 264.

“ ‘Desertion’ is not to be tested by merely ascertaining which party left the matrimonial home first. The party who intends to bring the COHABITATION to an end and whose conduct in reality causes its termination, commits the act of Desertion; *e.g.* there is no substantial difference between the case of a husband who intends to put an end to the state of Cohabitation and does so by leaving his wife, and that of a husband who, with the like intent, obliges his wife to separate from him ” (per Barnes, J., *Sickert v. Sickert*, 1899, P. 278; 68 L. J. P. D. & A. 114; 81 L. T. 495; *Vf*, *Mellows v. Mellows*, 31 L. J. N. C. 441).

When husband and wife are living separate under an agreement to separate, there is no Desertion (*Crabb v. Crabb*, sup; *Buckmaster v. Buckmaster*, 38 L. J. P. & M. 73; L. R. 1 P. & D. 713; *Parkinson v. Parkinson*, 39 L. J. P. & M. 14; L. R. 2 P. & D. 25); but it must be a perfected agreement (*Nott v. Nott*, 36 L. J. P. & M. 10; L. R. 1 P. & D. 251), and with the real concurrence of the wife, and with some justifica-



tion (*Dagg v. Dagg*, 51 L. J. P. D. & A. 19; 7 P. D. 17; 30 W. R. 431). Non-payment of an allowance under such an agreement will not convert separation into desertion (*Pape v. Pape*, 20 Q. B. D. 76; 57 L. J. M. C. 3; 36 W. R. 125). This last case was on "deserted," as used in s. 1, 49 & 50 V. c. 52; and Stephen, J., said: — "Desertion,' at any rate, implies that the parties were living together at the time when the desertion took place."

Non-compliance with decree for Restitution of Conjugal Rights constitutes Desertion (47 & 48 V. c. 68: *Vth, Bigwood v. Bigwood*, 57 L. J. P. D. & A. 80; 13 P. D. 89; 58 L. T. 642; 36 W. R. 928; *Russell v. Russell*, sup).

A wife who, without a justifying cause, refuses sexual intercourse, and refuses to live with her husband unless he will undertake to refrain therefrom, is guilty of Desertion (*Synge v. Synge*, 1900, P. 180; 69 L. J. P. D. & A. 106; 83 L. T. 224; affd. 1901, P. 317; 70 L. J. P. D. & A. 97; 85 L. T. 83). V. REASONABLE EXCUSE.

A *bonâ fide* offer to resume cohabitation will put an end to "Desertion," if made before the statutory two years have expired, otherwise not (*Cargill v. Cargill*, 27 L. J. P. & M. 69; *Harris v. Harris*, 31 Ib. 6; 15 L. T. 448; *Basing v. Basing*, 33 L. J. P. M. & A. 150; 3 Sw. & Tr. 516); but such an offer is nugatory if the husband be actually cohabiting with another woman (*Edwards v. Edwards*, sup), *secus*, if such cohabiting has been discontinued (*Lodge v. Lodge*, 59 L. J. P. D. & A. 84; 15 P. D. 159). *Vf, Martin v. Martin*, 78 L. T. 568.

It was at one time suggested that "deserted," in s. 31, 20 & 21 V. c. 85, meant something equivalent to leaving the other party destitute (*Huswell v. Huswell*, 29 L. J. P. & M. 21; 1 Sw. & Tr. 502). That, quâ a conjugal offence, was obviously unsound, and has not been supported (*Yeatman v. Yeatman*, sup).

*Note. Semble*, "Desertion" by a Petitioner is no bar to his or her obtaining Judicial Separation (*Duplany v. Duplany*, 1892, P. 53; 61 L. J. P. D. & A. 49; *Synge v. Synge*, sup).

By s. 21, 20 & 21 V. c. 85, "a wife deserted," in order to obtain a Protection Order, was one who "is maintaining herself by her own industry or property." Desertion, in that connection, means "not only that the husband has absented himself, but has left his wife unprovided for, and such desertion must continue at the time of making the Order; and a *bonâ fide* offer of the husband to return and provide for his wife, would take away her right to have such an Order made" (per J. O., in *Cargill v. Cargill*, sup; *Jones v. Jones*, 43 W. R. 424; 11 Times Rep. 317), even (as it should seem) though the separation had been caused by the husband's cruelty (*Vf, Henty v. Henty*, 33 L. T. 263; *Stickland v. Stickland*, 25 W. R. 114). That ruling is, *semble*, applicable to "Desertion" in s. 1, 49 & 50 V. c. 52, repld s. 4, 58 & 59 V. c. 39. To these sections the doctrine of *Crabb v. Crabb* and *Pape v. Pape* (sup), is ap-

plicable (*R. v. Leresche*, 1891, 2 Q. B. 418; 60 L. J. M. C. 153; 40 W. R. 2; 65 L. T. 602: *Sr, Bradshaw v. Bradshaw*, cited COHABITATION). But if there has been an agreed temporary separation, — *e.g.* for the wife's confinement, — and afterwards the husband refuses cohabitation and support, that is "Desertion" within these sections (*Chudley v. Chudley*, 62 L. J. M. C. 97); *secus*, if the husband has offered such cohabitation as is within his means for the time being (*Jones v. Jones*, *sup.*). *Note*: It is not necessary to fix the actual date when the Desertion began (*Wilkinson v. Wilkinson*, 58 J. P. 415); and, so long as it continues, it is a CONTINUING OFFENCE, and the time for making the Complaint does not run from the day the husband left (*Heard v. Heard*, 1896, P. 188; 65 L. J. P. D. & A. 111; 60 J. P. 426). *V. RUNNING AWAY: Cp PERSISTENT.*

"Desertion," s. 1, 49 & 50 V. c. 52, is a question of fact for the Justices, having regard to the legal meaning of "Desertion" (*R. v. Birwistle*, 58 L. J. M. C. 158); who must enquire into all the facts, and not, *e.g.* accept proof of a husband's refusal to take in and provide for his wife, and shut out proof of previous facts (*Wassell v. Wassell*, 81 L. T. 496; 68 L. J. P. D. & A. 127).

"Desertion" of a wife, in the statutes relating to Poor Law Removal, means no more than living apart. The meaning of the word in s. 3, 24 & 25 V. c. 55, "is that where the wife has been residing in a different place from her husband for a prolonged period, she shall be considered for Poor Law purposes as not being bound by the marriage tie, and as living apart" (per Cockburn, C. J., *R. v. Maidstone*, 49 L. J. M. C. 26; 5 Q. B. D. 31). Accordingly a married woman is none the less "deserted" by her husband within that section, because he allows and pays her 2s. 6d. a week (*R. v. St. Mary, Islington*, 39 L. J. M. C. 137; L. R. 5 Q. B. 445; 34 J. P. 616); nor even if the separation be caused by the wife's adultery (*R. v. Maidstone*, *sup.*), unless she take herself off in her husband's absence and without his consent (*R. v. Cookham*, 9 Q. B. D. 522).

*Cp LIVING APART.*

Abandonment or Desertion of a Child; *V. ABANDONMENT.*

To "desert" a Ship "is used in the statute (s. 9, 7 & 8 V. c. 112) in a bad sense, and means abandoning the service without sufficient cause" (per Crompton, J., *Edward v. Trellick*, 24 L. J. Q. B. 12; 4 E. & B. 59). So, if a MARINER has permission to leave but refuses to return, that is a Desertion (*The Bulmer*, 1 Hagg. Adm. 163). *Vf, McDonald v. Jopling*, 7 L. J. Ex. 220; 4 M. & W. 285; *The Pearl*, 5 Rob. C. 224; *Neave v. Pratt*, 2 B. & P. N. R. 408; Abbott, 797-804. *V. WAGES.*

Military or Naval Desertion; *V. 4 Encyc.* 228-230.

**DESERVING.** — A bequest to "Deserving" objects is bad, as being too indefinite; but one to "Charitable and Deserving" objects is good,

the sentence being governed by "Charitable" (*Re Sutton*, 51 L. J. Ch. 613; 28 Ch. D. 464; 33 W. R. 519). *Vf*; as to "Deserving," *Re Wall, Pomeroy v. Willway*, 42 Ch. D. 510; 59 L. J. Ch. 172; 61 L. T. 357.

V. RELATIONS.

**DESIGN.**—Quà Patents, Designs, and Trade Marks Act, 1883, " 'Design,' means, any Design applicable to any article of manufacture, or to any substance (artificial or natural, or partly artificial and partly natural), whether the Design is applicable for the PATTERN, or for the SHAPE or Configuration, or for the Ornament, thereof, or for any two or more of such purposes,—and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined:—not being a Design for a Sculpture or other thing within the protection of the Sculpture Copyright Act of the year 1814, 54 G. 3, c. 56" (s. 60). "The object of that Interpretation Clause was to make the word 'Design' as extensive as it reasonably ought to be. It was not intended to draw a hard-and-fast distinction between the Design being 'applicable for the Pattern,' or 'for the Shape, or Configuration,' or 'for the Ornament.' I do not think you can say that 'Pattern' as it is used in that section, necessarily and always, excluded the 'Shape' or 'Configuration,' and that nothing could be included in 'Shape' or 'Configuration' which might not fail to be considered under 'Pattern'; or, again, that the 'Ornament thereof' might not be part of the Pattern and included under the word 'Pattern.' The words have not a sharply defined meaning, but the intention is to include 'any Design' applicable to any class of goods, and whether 'applicable for a Pattern,' or 'for the Shape, or Configuration, or Ornament,' or some or all of them" (per *Ld Herschell, Heath v. Rollason*, 1898, A. C. 499; 67 L. J. Ch. 565; 79 L. T. 1).

V. NEW DESIGN.

**DESIGNATION.**—"Designation of a Landlord"; *V. Gough v. Gough*, cited LANDLORD.

**DESIRABLE.**—V. OPINION.

The statement by a Vendor that the property offered for sale is let to a "Desirable Tenant," is "not a guarantee that the tenant will go on paying his rent, but it is a guarantee of a different sort and amounts, at least, to an assertion, as a specific fact, that nothing has occurred in the relations between the landlord and the tenant which can be considered to make the tenant an unsatisfactory one. A tenant who had paid his last quarter's rent by dribblets under pressure, must be regarded as an undesirable tenant" (per *Bowen, L. J., Smith v. Land, & Corp.*, 28 Ch. D. 15, 16; 51 L. T. 718; 49 J. P. 182).

**DESIRE.** — *V.* PRECATORY TRUST: APPROPRIATE.

Bequest of a fund to be distributed among Charitable Institutions, “*but I desire* that A. and B. shall benefit most largely”; the effect is that neither A. nor B. can be left out of the distribution, and that each must have more than any other of the Institutions, — though it is not necessary that A. and B. should have equal amounts (*Arcmitage v. Gordon*, 15 Times Rep. 453).

If a contracting party “shall desire” to terminate contract; *V. Sun Insree v. Hart*, 58 L. J. P. C. 69.

*V.* VIEW.

**DESIROUS OF BEING DISCHARGED.** — Trustees who have paid their trust fund into Court thereby retire (*V.* RETIRING TRUSTEE), and cannot afterwards be treated as “desirous of being discharged,” so as to execute a power of appointing new Trustees (*Re Bailey*, 3 W. R. 31).

**DESIROUS OF WORKING.** — An owner “desirous of working” minerals, s. 78, Ry C. C. Act, 1845, means, one who is really so desirous (*Mid. Ry v. Robinson*, cited MINE).

**DESK.** — In *Re Robson* (7 Times Rep. 512), it was conceded, without argument, that a bequest of “My old mahogany Desk,” passed the testator’s Bureau. *Vf* CONTENTS.

**DESPATCH.** — *V.* POSSIBLE: PROMPT DESPATCH: CUSTOMARY: USUAL DESPATCH: DUE DILIGENCE.

“Despatch Money,” means, “Money earned by the use of greater promptitude than the contract provided for” (per Kennedy, J., *Muccoy v. West*, 15 Times Rep. 84).

Despatch Money at so much per hour “for all time saved,” or “for every hour saved,” in a Discharge Clause of a Charter-Party; *V. Laing v. Holloway*, 47 L. J. Q. B. 512; 3 Q. B. D. 437; 26 W. R. 769; *The Glendevon*, 1893, P. 269; 62 L. J. P. D. & A. 123.

**DESPATCHED.** — “The Ship shall be despatched from” A.; — “despatched,” means, “really sailing on the voyage” (per Martin, B., *Sharp v. Gibbs*, 1 H. & N. 806). *Vf*, SAIL: DEPART.

**DESTINATION.** — “Now what is meant by sending goods ‘to their Destination’? It seems to me that it means sending them to a particular place, to a particular person who is to receive them there; and not, sending them to a particular place without saying to whom” (per Brett, M. R., *Ee p. Miles*, 15 Q. B. D. 43).

Ship’s “Place of Destination”; *V. Attwood v. Case*, 45 L. J. M. C. 20; 1 Q. B. D. 134.

**DESTITUTE.** — A man is not “destitute,” in the sense of being entitled to Poor Law Relief, simply because he has no food or money, if he is able-bodied and physically well and can get a sufficiency of work for his maintenance, — but will not work because he is on Strike (*J-G. v. Merthyr Tydvil*, cited **IDLE AND DISORDERLY PERSON**).

**DESTROY: DESTROYING.** — The phrase “otherwise destroying” a Will so as to revoke it, s. 20, Wills Act, 1837, has to be read as *ejusdem generis* with the words immediately preceding it, — “burning, tearing,” — that is, there must be “destruction, in the proper sense of the word, of the substance or contents of the Will, or, at least, *complete* effacement of the writing, *e.g.* by pasting over it a blank paper; and not a ‘destroying’ in a secondary sense, as by cancelling or incomplete obliteration. These, unless they prevent the words, as originally written, from being apparent, — that is, apparent by looking at the Will itself, — are plainly excluded by the statute. Glasses have been used for discovering what the words attempted to be obliterated originally were” (1 Jarm. 142. *Vh, Chese v. Lovejoy*, cited **REVOKE: Margary v. Robinson**, 56 L. J. P. D. & A. 44; 12 P. D. 8). *V. TEAR: Cp CANCEL.*

When a Will is executed in Duplicate, the destruction of one of them *animo revocandi*, is a destruction of both; but evidence of declarations by the testator that he has so destroyed one part is inadmissible (*Atkinson v. Morris*, 1897, P. 40; 66 L. J. P. D. & A. 17; 45 W. R. 293; 75 L. T. 440).

A Destruction by Mistake, may be cured by admitting the draft of the Will to probate (*Beardsley v. Lacey*, 78 L. T. 25; 67 L. J. P. D. & A. 35).

A Destruction solely with the view to **REVIVE** a previous Will, is not a Revocation of the Will destroyed (*Powell v. Powell*, 35 L. J. P. & M. 100; L. R. 1 P. & D. 209; *Cossey v. Cossey*, 82 L. T. 203; 69 L. J. P. D. & A. 17). *V. DEPENDENT.*

*V. DEMOLISH: SPOIL: CUT DOWN.*

**DESTRUCTION.** — To take **ESTOVERS** “without Destruction,” must have a “reasonable exposition,” so that the grantee may take Estovers conveniently and sufficiently for his necessary use (*Stampé v. Burgess*, 2 Rolle, 73, 74).

“Waste and Destruction”; *V. WASTE.*

*V. DESTROY.*

**DESTRUCTIVE.** — Boiling Water held to be “Destructive Matter” within s. 5, 1 V. c. 85, repealed (*R. v. Crauford*, 2 C. & K. 129); but not a “Destructive Substance” within s. 29, 24 & 25 V. c. 100 (*R. v. Martin*, 62 Law Times, 372).

“Poison, or other Destructive Thing”; *V. R. v. Cluicroy*, cited **POISON.**

**DETAIL.** — *V.* NATURE.

**DETAIN.** — “Detain”; in *DETINUE*, means that the defendant withholds the goods, and prevents plaintiff from having possession of them (*Clements v. Flight*, 16 M. & W. 42; 16 L. J. Ex. 11).

*V.* LAWFULLY DETAINED.**DETAINDER.** — *V.* FORCIBLE DETAINDER.**DETAINMENTS.** — *V.* RESTRAINTS OF KINGS.

**DETENTION.** — Hostile “Detention,” in a Marine Insurance, is equivalent to *SEIZURE* (*Johnston v. Hogg*, 52 L. J. Q. B. 343; 10 Q. B. D. 432).

Where a contract for carriage exempts the carrier from damage by reason of “detention” of the goods, that means something which prevents the carrier from delivering at the proper time; and does not cover a wrongful detention by him (*Gordon v. G. W. Ry*, 51 L. J. Q. B. 58; 8 Q. B. D. 44).

“Reasonable and Probable Cause” for detaining a Ship; *V.* REASONABLE CAUSE.

*V.* *DETINUE*: APPREHENSION: DEMURRAGE.**DETENTION BY DEFAULT.** — *V.* DEFAULT.

**DETENTION BY ICE, FROST, &c.** — “Detention by Ice not to be reckoned as Laying Days,” in a Charter-Party, means prevention of “access to the ship by reason of ice from any one of the storing places from which merchandize is to be conveyed direct to the ship” (per Willes, J., and adopted by Ex. Cham. in *Hudson v. Ede*, L. R. 3 Q. B. 415); and, therefore, where a ship was to proceed to Sulinah and there load grain or seed with a provision as to laying days for loading, “Detention by Ice not to be reckoned as laying days,” and the port itself and sea immediately outside were free from ice, yet the River Danube, down which the grain had to be brought, was impeded with ice; it was held that there was a “Detention by Ice” within the meaning of the Exception (*Hudson v. Ede*, 36 L. J. Q. B. 273; 37 Ib. 166; 8 B. & S. 639; 9 Ib. 480; L. R. 3 Q. B. 412; “it is no use to say that that was a very strong decision, — it has been recognized in H. L.,” per Esher, M. R., *Smith v. Rosario Nitrate Co*, 1894, 1 Q. B. 178: *Va, Furness v. Forwood*, cited ACCIDENT). But *Hudson v. Ede* rather lays down an exception than a general rule; for the general rule is, that the conveyance of goods to the place of loading is no part of the loading. Accordingly where a ship had to proceed to Cardiff East Bute Dock, and there load, “Detention by Frost,” &c, not to be reckoned as lay days; and the freighters’ agents were prevented from getting the goods to the East Bute Dock by reason of the freezing over of the canal from their wharf

to that dock, it was held that this time was to be reckoned as lay days (*Kay v. Field*, 52 L. J. Q. B. 17; 10 Q. B. D. 241; *Va, Grant v. Coverdale*, 53 L. J. Q. B. 462; 9 App. Ca. 470; *The Alce Holme*, 1893, P. 173; 62 L. J. P. D. & A. 51; 68 L. T. 862; 41 W. R. 572). (*CP STRIKE*.)

*F. ICE-BOUND.*

**DETENTION BY RAILWAYS.**—An Exception in a Charter-Party of “Detention by Railways,” connotes simply, whether, in point of fact, there has been such a Detention; its cause is immaterial, *e.g.* if it were imposed on the Charterer by a Ry Co as a legitimate punishment for his having kept unloaded at his works more of the Company’s trucks than their rules allowed (*Letricheux v. Dunlop*, 19 Sess. Ca. 4th Ser. 209).

**DETERIORATE.**—“Affect or deteriorate” Water; *F. FILTHY WATER.*

**DETERMINABLE.**—A DEMISE for, say, 3 years “determinable” on a prescribed Notice, means, that such notice may be given so as to expire at the end of any year of the tenancy; but if it be added “otherwise the tenancy to continue from year to year until the term shall cease by Notice to Quit at the usual times,” that connotes a demise for 3 years certain, determinable then or at the end of some subsequent year by the prescribed notice (*Jones v. Nixon*, 31 L. J. Ex. 505; 1 H. & C. 48).

Determinable at 7, 14, or 21 years; *F. OR.*

**DETERMINABLE FUTURE TIME.**—A Bill of Ex. (s. 11), or Promissory Note (s. 89), is payable at a “Determinable Future Time,” within the Bills of Ex. Act, 1882, “which is expressed to be payable—

- (1) At a fixed period after date or sight.
- (2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.”

**DETERMINATION.**—“Determination” of an ACTION; *F. Burnaby v. Earle*, 43 L. J. Q. B. 209; L. R. 9 Q. B. 490.

“Determination” of a COMPLAINT, s. 3, 20 & 21 V. c. 43; *F. Diss v. Aldrich*, 46 L. J. M. C. 183; 2 Q. B. D. 179; 41 J. P. 132; *West v. Potts*, 34 J. P. 760. *Vf*, Summary Jur Act, 1879, 42 & 43 V. c. 49, s. 33.

An Acquittal by Justices is not an “Order, Conviction, Judgment, or Determination” from which a “person who shall think himself AG-GRIEVED” thereby can appeal to Quarter Sessions, under s. 105, Highway Act, 1835 (*R. v. London Jus.*, 59 L. J. M. C. 146; 25 Q. B. D. 357).

A Letter from the Charity Commrs, to a parish Council, giving their

Opinion on a question submitted under s. 70 (2), Loc Gov Act, 1894, is a "Determination" by them under that provision (*A-G. v. Hughes*, 81 L. T. 679).

The "Determination" of a *Term or Estate* is the same thing as its "Termination"; and does not only mean premature extinction, but the coming to an end in any way whatever (*St. Aubyn v. St. Aubyn*, 30 L. J. Ch. 920; 1 Dr. & Sm. 611). To the same effect is the statutory interpretation of "Determination of Tenancy" for the purposes of the Agricultural Holdings (England) Act, 1882, which by s. 61, "means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause"; and where a custom authorizes the retention of part of the land of a farm for a period beyond the prescribed term of letting, the "Determination of the Tenancy," quâ that Act, is not accomplished till that further period has expired (*R. v. Maconochie*, 34 S. J. 64; *Re Paul*, 59 L. J. Q. B. 30; 24 Q. B. D. 247; 61 L. T. 835; 54 J. P. 644): But where such a custom only extends to the farm-house and buildings, the time for the Determination of the Tenancy under that Act is not extended (*Black v. Clay*, 1894, A. C. 368; 71 L. T. 446; *Morley v. Carter*, 1898, 1 Q. B. 8; 66 L. J. Q. B. 843; 77 L. T. 337; 46 W. R. 77). *Vh*, *Bevan v. Delahay*, 1 Bl. H. 5; *Knight v. Bennett*, 3 Bing. 366, 367. *V. END: EXPIRATION.*

"Determination of Tenancy"; Other Stat. Def., 50 & 51 V. c. 26, s. 4. — *Scot.* 46 & 47 V. c. 62, s. 42.

"Sooner Determination," rejected as insensible; *V. TERM.*

**DETERMINE.** — *V. DETERMINATION: HEAR.*

Notice of the death of the Obligor to a running GUARANTEE, is not a notice to "determine" the obligation, within a proviso enabling its determination (*Re Silvester*, 1895, 1 Ch. 573; 64 L. J. Ch. 390; 72 L. T. 283; 43 W. R. 443).

As to what is a sufficient Notice to determine a LEASE; *V. Bury v. Thompson*, 1895, 1 Q. B. 696; 64 L. J. Q. B. 500; 72 L. T. 187; 43 W. R. 338; 11 Times Rep. 267: and what sufficient quâ a mere Tenancy, *V. Farrance v. Elkington*, 2 Camp. 591; *Gardner v. Ingram*, 61 L. T. 729; *General Assree v. Worsley*, 64 L. J. Q. B. 253; 72 L. T. 358; *Redman*, 384-386.

*V. CEASE.*

**DETINUE.** — Detinue (now generally phrased, Detention of Goods) is an Action "that lies against him who having goods and chattels delivered to him to keep, refuses to re-deliver them: Fitz. Nat. Brev. 138" (*Termes de la Ley*). *V. DETAIN.*

*Vh* *Rosc. N. P.* 981-984. *Cp* TROVER.

*V. DETENTION.*

**DETRIMENT.** — *V. MATERIAL DETRIMENT.*



**DETRIMENTAL.** — Carrying on a BUSINESS which is only dangerous, is not a breach of a Lessee's covenant against carrying on a business which is "Detrimental or a NUISANCE to surrounding occupiers" (per Hawkins, J., *Leple v. Rogers*, 37 S. J. 11).

**DEVASTAVIT.** — A Devastavit is a Mismanagement of the Estate of a deceased person by his LEGAL REPRESENTATIVES "in squandering and misapplying the ASSETS, contrary to the duty imposed on them; for which they shall answer out of their own pockets as far as they had, or might have had, Assets of the deceased" (Wms. Exs. 1690 *et seq.* *whv.*).

**DEVELOP.** — Development of TRAFFIC; *V. Beman v. Rufford*, 1 Sim. N. S. 570.

"Convey Traffic in a proper and convenient manner, and so as fairly to develop the TRAFFIC of the District," in a contract between two Ry Companies; *V. Clonmel Traders v. Waterford & Limerick Ry*, 4 Ry & Can Traffic Ca. 92; *Mid. G. W. Ry v. Dublin & Meath Ry*, 1b. 145.

**DEVIATE.** — To "deviate in any respect" from the Certified PLAN of an old domestic building, s. 43 (ii), London Bg Act, 1894, is not confined to the Ground-plan of the building but includes any alteration in the character or outline of the building, and any alteration which will impose a greater burden upon anybody who is affected by the building. — *e.g.* an alteration of the height of the building, or of the cubic space or dimensions of its rooms (*Paynter v. Watson*, 1898, 2 Q. B. 31; 67 L. J. Q. B. 640; 46 W. R. 655; 62 J. P. 467).

"Deviation," as used in Railway Acts, means, shifting the work in its integrity from one site to another which may be deemed more suitable; it does not imply a right, not only to alter the situation of the work but in doing so, to dispense with a half or two-thirds of it (*Herron v. Rathmines Commrs*, 1892, A. C. 498). *V. LATERAL.*

Line of "Deviation," quâ Ry Acts, "and particularly 8 & 9 V. c. 20, s. 15, is to be taken with reference to the Line of Railway only, *i.e.* that the Line of Ry actually laid down shall not deviate more than 100 yards from the line laid down and DELINEATED in the parliamentary plans. — the *medium filum riev* of each being the commencement and termination in measuring those 100 yards" (*Doe d. Armistead v. N. Staffordshire Ry*, 16 Q. B. 537; 20 L. J. Q. B. 253, condensing and giving force to jdgmt of Alderson, B., in *Doe d. Payne v. Bristol & Exeter Ry*, 6 M. & W. 345, 346).

In a Marine Insurance, or Charter Party, "Deviation" is any unexcused departure from the usual course of proceeding towards the terminus of the voyage (1 Arn. 452); or, in other words, "a voluntary departure, without necessity or any reasonable cause, from the regular and usual course of the specific voyage" (Park, ch. 17). *Vh, Hammond*

v. *Reid*, 4 B. & Ald. 73, on *wher*, *Gambles v. Ocean Insree*, 1 Ex. D. 8, 141; 45 L. J. Ex. 366; *Solly v. Whitmore*, 5 B. & Ald. 45; *Harrower v. Hutchinson*, 10 B. & S. 469; 39 L. J. Q. B. 229; L. R. 5 Q. B. 584; 22 L. T. 684; *Glyn v. Margetson and Cuffin v. Aldridge* cited LIBERTY TO CALL: *The Dunbeth*, 1897, P. 133; 66 L. J. P. D. & A. 66; *Hyderabad Co v. Willoughby*, 1899, 2 Q. B. 530; 68 L. J. Q. B. 862; *Phelps v. Hill*, 1891, 1 Q. B. 605; 60 L. J. Q. B. 382; Abbott, 406-410; 4 Encyc. 243-247.

CHANGE of Voyage and Deviation, contrasted; *V. S Encyc.* 178.

**DEVICE.** — To catch fish; *V. TO PLACE: ROD AND LINE.*

*V. DISTINCTIVE.*

**DEVISE.** — “The words ‘Devise’ and ‘Bequeath’ are terms of known use in our law, the former from Glanville’s time and earlier. In their ordinary sense they signify the declaration of a man’s will concerning the succession to *his own property* after his death. Such a ‘devise’ or ‘bequest’ operates (on subjects which either by common, or statute, law or custom can so be disposed of) by virtue of the Will, and of that alone. On the other hand, an Appointment under a *Limited Power* operates by virtue of the instrument creating the Power; the execution, when valid, is read into, and derives its force from, that instrument. If the execution of the Power must, or may, be by Will, it must be a Will duly executed and attested as such according to law, and the word ‘Will’ in the statute (Wills Act, 1837) extends to such a testamentary appointment. But, that condition being complied with, the execution operates in the same way after the death of the appointor as if the instrument were not testamentary. Before the Wills Act, the law as to *General Powers* was the same. ‘A mere general devise or bequest, however unlimited in terms, would not comprehend the subject of the power unless it referred to the subject or the power itself, or generally to any power vested in the testator (1 Sug. Pow., 6 ed., 385).’

“It follows, we think, legitimately from these premises that the words ‘devise or bequest’ when used in the Wills Act without any indication of any intention that they should apply to Appointments under Powers, ought, *primâ facie*, to be understood in their ordinary sense, namely, as referring to a gift by Will of the testator’s *own property* and nothing else” (per Selborne, C., in delivering the judgment of the Court of App. in *Holyland v. Lewin*, 53 L. J. Ch. 530; 26 Ch. D. 266). It was accordingly held in that case (in approval of the rule in *Griffiths v. Gale*, 13 L. J. Ch. 286; 12 Sim. 354) that a testamentary exercise of a Limited Power of Appointment was not saved, by s. 33, Wills Act, 1837, from lapsing as regards children or issue of the appointor dying in his or her lifetime; but the Court pointed out that the case would have been different had the power been a general one, because s. 27 of the Wills Act

makes the subject of a testamentary execution of a General Power part of the property of the testator. *Vf, Eccles v. Cheyne*, 2 K. & J. 676; *Freme v. Clement*, 50 L. J. Ch. 801; 18 Ch. D. 499: but *Freme v. Clement* was disapproved in *Holyland v. Lewin*, 26 Ch. D. 266.

A " 'Devise' is where a man in his testament giveth or bequeatheth his goods or his lands to another after his decease " (Termes de la Ley). "A Devise, or LEGACY, is where a man in his testament doth give anything to another; the first of these terms is properly applied to the gift of lands and the last to the gift of goods or chattels; and therefore a devise strictly is said to be where a man in his testament doth give his lands to another after his decease; and a legacy is said to be where a man in his testament doth give any chattel to another to have after the death of the testator; but the word is promiscuously applied to the one and to the other " (Touch. 400. *Note*: The word "Bequeath" does not seem to have been in use when the Touchstone was written; and where we should now write "Bequest," the Touchstone gives the word "Legacy"). It is still true that "Devise" and "Bequeath" may be used promiscuously, and that if a testator "Devise" goods they will pass, and so he may "Bequeath" lands or houses: that is to say, where the property dealt with is clear, the intention will not be defeated because the wrong verb is used (*V. Whicker v. Hume*, 14 Bea. 518; 1 D. G. M. & G. 506; 21 L. J. Ch. 406; *Gyett v. Williams*, 2 J. & H. 436; *Barrington v. Liddell*, 2 D. G. M. & G. 500; *O'Toole v. Browne*, cited ESTATE: *Jackson v. Hosie*, 27 L. R. Ir. 450). But when the subject of the gift is expressed ambiguously the meaning will be aided by the verb. Thus, where a testator "gave, devised, and bequeathed" everything to A. for life, and after her death "gave, devised, and bequeathed the whole of his EFFECTS which might be then remaining" to B., it was held that the realty passed (*Phillips v. Beal*, 25 Bea. 25; *Hall v. Hall*, 1892, 1 Ch. 361; 61 L. J. Ch. 289; 40 W. R. 277. *Sr, Camfield v. Gilbert*, 3 East, 516; *Re Williams, Williams v. Acton*, 35 S. J. 24). And on the other hand, where the testator "gave, bequeathed, and disposed of" all his residuary "estate, effects, and property," — words large enough to comprise realty, — yet there it was held that the realty did not pass, and in arriving at that conclusion the Court (*int. al.*) strongly relied on the absence of the word "devise" from the operative words (*Courd v. Holderness*, 24 L. J. Ch. 388; 20 Bea. 147; *V. 1 Jarm.* 736, 737).

#### V. BEQUEATHED.

Quà Small Holdings Act, 1892, 55 & 56 V. c. 31, "Devise," in Scotland, "means. Mortis causa disposition" (s. 21).

#### DEVISED. — V. AS DEVISED.

DEVISEE. — Ordinarily, a Devisee is one to whom Realty is given by Will; and LEGATEE is one to whom Personality is so given.

Quà Trustee Act, 1850, " 'Devisee' shall, in addition to its ordinary signification, mean the heir of a devisee, and the devisee of an heir, and generally any person claiming an interest in the lands of a deceased person, not as heir of such deceased person but, by a title dependent solely upon the operation of the laws concerning Devise and Descent " (s. 2).

Quà Trustee Act, 1893, " 'Devisee' includes the heir of a devisee, and the devisee of an heir, and any person who may claim right by devolution of title of a similar description " (s. 50).

**DEVOIRE.** — " 'Devoire,' is as much to say as a DUTY " (Termes de la Ley, referring to its use in 2 Rich. 2, c. 3).

**DEVOLUTION.** — " Devolution of estate by operation of law," R. 2, Ord. 17, R. S. C.; *V. Wallis v. Smith*, 51 L. J. Ch. 577; 46 L. T. 473.

" Devolution by Law," in Sucn Dy Act, 1853; *V. DISPOSITION.*

*V. DEVOLVE: DESCENT.*

**DEVOLVE.** — " To 'devolve' means to pass from a person dying to a person living; the etymology of the word shews its meaning " (per Leach, M. R., *Parr v. Parr*, 1 My. & K. 648; 2 L. J. Ch. 167). *Vh, Swan v. Holmes*, 19 Bea. 476; *Fuzakerley v. Ford*, 1 A. & E. 897; 2 L. J. O. S. K. B. 111; 4 Sim. 390; *Cope v. De la Warr*, 42 L. J. Ch. 870; 8 Ch. 982.

" To devolve to her ISSUE at her death "; *V. Stonor v. Curwen*, 5 Sim. 261.

A Bankrupt's discharge was suspended until he had paid the Trustee enough to pay his Crs 5s. in the £, on which being done his Discharge to become operative; before such payment he, as a residuary legatee, became entitled to a sum more than enough to pay the balance then unpaid of the composition; held, that the Trustee was entitled to the whole of such sum for the benefit of the Crs, because even that portion of it which was in excess of the balance of the composition had " devolved " upon the bankrupt " before his Discharge," within s. 44 (i), Bankry Act, 1883 (*Re Hawkins*, 1892, 1 Q. B. 890; 61 L. J. Q. B. 458; 66 L. T. 737; 40 W. R. 484, Fry, L. J., diss.).

*V. DEVOLUTION.*

" Devolve upon "; *V. ACQUIRE.*

**DIAGONAL.** — " Diagonal Line "; *V. s. 41, London Bg Act, 1894.*

**DICTIONARY.** — As to a document furnishing its own dictionary, *V. Hill v. Crook*, and other cases, cited CHILD.

**DIE.** — In the leading case of *Edwards v. Edwards* (21 L. J. Ch. 324; 15 Bea. 357), Romilly, M. R., propounded, from the prior decisions, four rules of construction for determining the meaning of a gift over in case of death: —

1. Where there is an immediate gift, — (as to a future gift, *V. 2 Jarm. 756*), — to A., and if he shall die, then to B., — that means, if A. shall die during the life of the testator (*Va, Re Luddy, 53 L. J. Ch. 21; 25 Ch. D. 394; Re Ross, 32 S. J. 289*): and the consequence is, that on surviving the testator, A. will take an absolute interest, and not a life interest with remainder to B.

2. Where there is a gift to A., and if he shall die *without leaving a child* or *without leaving issue* (as the case may be) then to B., — that means, if *at any time*, whether before or after the death of the testator, A. shall die without leaving a child, &c, the gift over to B. will take effect.

3. Where there is a gift to A. for life, and after his decease to B., and if B. shall die, then to C., — that means, if B. shall die before the death of A., the tenant for life, the gift over to C. will take effect, otherwise not: and if the tenant for life and B. should have died in testator's lifetime, then it would seem to follow that the gift over to C. will take effect on the death of the testator.

4. Where there is a gift to A. for life, and after his decease to B., and if B. shall die *without leaving a child*, or *without leaving issue* (as the case may be) then to C., — that also means, if B. shall die before the death of A., the tenant for life, the gift over to C. will take effect, otherwise not.

These canons of construction, after having been followed for upwards of 20 years in a number of cases and pronounced by so high an authority as Lord Justice James as "very simple, intelligible, and beneficial," came under review in the H. L. in *O'Mahoney v. Burdett* (44 L. J. Ch. 56 n; L. R. 7 H. L. 388), and in *Ingram v. Soutten* (44 L. J. Ch. 55; L. R. 7 H. L. 408). Their Lordships practically confirmed the first three propositions of *Edwards v. Edwards*, but disapproved of the fourth. Lord Hatherley in *O'Mahoney v. Burdett*, said, — "It seems to me that there is no reason for distinguishing the fourth rule from the second." That sentence, when the reasoning is closely followed, seems to sum up the *ratio decidendi* of the two cases in the House of Lords, with the result that the 2nd and 4th Rules of *Edwards v. Edwards* should be blended together into the following proposition: —

Where there is a gift to A. (whether preceded or not by a life estate) and if he shall die *without leaving a child* or *without leaving issue* (as the case may be), then to B., — that means, if, *at any time*, A. should die without leaving a child, &c, the gift over to B. will take effect.

*Vf, DIE WITHOUT ISSUE: Ollivant v. Wright, 1 Ch. D. 346; Besant v. Cox, 6 Ch. D. 604; Re Hayward, 51 L. J. Ch. 513; 19 Ch. D. 470; Re Parry, 55 L. J. Ch. 237; 31 Ch. D. 130; 54 L. T. 229; 34 W. R. 353; and as to Rule No. 1, Re Elliott, 22 Ch. D. 236; 52 L. J. Ch. 222; Wms. Exs. 1125; 2 Jarm. ch. 48; and as to the Rules relating to*

words referring to Death coupled with a contingency, 2 Jarm. ch. 49  
*Cp* PAYABLE.

As to supplying the complement to such elliptical phrases as "If I die," "If A. dies," or "In the event of A. dying"; *V. Abbott v. Middleton*, 28 L. J. Ch. 110; 7 H. L. Ca. 68; 21 Bea. 143: *Eastwood v. Lockwood*, 36 L. J. Ch. 573; L. R. 3 Eq. 487: 1 Jarm. 488; 2 Ib. 21.

Annuity to wife, and "in the event of her death" to be continued to the children; the wife died in testator's lifetime; held, that the phrase did not only provide against a lapse, but also that the annuity was payable to the children, — *i.e.* the phrase meant, "if she shall be dead at my decease, or on her death afterwards" (*Wilkins v. Jodrell*, cited MAINTENANCE).

In the event of A. (a woman) "*not marrying or dying*," means if she shall die unmarried (*Hawkins v. Hawkins*, 4 L. J. Ch. 9).

"Dying," held not to import futurity; *secus*, of "shall die" (*Coulthurst v. Carter*, 15 Bea. 421; 21 L. J. Ch. 555).

#### V. DEAD: DEATH.

As to what is a "Die," quâ Gold and Silver Wares Act, 1844; 7 & 8 V. c. 22, *V. s.* 14; — quâ Stamp Duties Management Act, 1891, 54 & 55 V. c. 38, *V. s.* 27.

**DIE BY HIS OWN HANDS.** — A life policy contained a proviso avoiding it (*int. al.*) in case the assured should "die by his own hands." The assured threw himself into the Thames and was drowned. The jury found that he intended to destroy his life and knew that he should thereby do so, but that, at the time of committing the act, he was not capable of judging between right and wrong; held, that he had died by his own hands, and that the policy was avoided (*Borrodaile v. Hunter*, 12 L. J. C. P. 225; 5 M. & G. 639).

#### V. SUICIDE.

**DIE WITHOUT CHILDREN.** — Read "without *having had* a child" (*Re Humbleton*, W. N. (84) 157); but in *Re Booth* (1900, 1 Ch. 768; 69 L. J. Ch. 474; 48 W. R. 566) a gift to a married woman "for her own absolute use, but should she die *without* child or children," then over; "without" was construed "without LEAVING," so that, the devisee, instead of taking absolutely on her giving birth to a child, took absolutely subject to the Executory Gift over, in the event of her not having any child who should survive her or (*V. s.* 10 (1), Conv Act, 1882) who should attain 21 in her lifetime. *Vf* DIE WITHOUT ISSUE.

**DIE WITHOUT HAVING BEEN MARRIED.** — *V.* WITHOUT HAVING BEEN MARRIED.

**DIE WITHOUT ISSUE.** — "In any Devise, or Bequest, of Real or Personal Estate the words '*Die without Issue*,' or '*Die without leav-*

*ing Issue,*' or '*Have no Issue,*' or any other words which may import either a want, or failure, of Issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person; and not an indefinite failure of his issue, unless a contrary intention shall appear by the Will, by reason of such person having a prior estate tail, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: Provided that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue" (s. 29, Wills Act, 1837, which Act came into operation on 1st Jan 1838).

"Thus, if (in a Will since 1837) Real Estate be devised to A. and his heirs, or to A. indefinitely, with a limitation over to take effect on the death of A. without issue, or without having or leaving issue, — A. will not (as before) take an estate tail with remainder over, but an estate in fee, with an executory devise over in the event of his death without issue *living at his death*.

"So, if the devise be to A. for life, with a limitation over on his death without issue, — A. will not (as before) take an estate tail but an estate for life only, with the like executory devise over.

"Again, if Personal Estate be given to A., with a bequest over to B. upon the death of A. without issue, — the gift over will not (as before) be void for remoteness, but will take effect as a contingent executory bequest upon the death of A. without issue living at his death" (Hawk. 215; *V. p. 216, Ib.*, as to whether such expressions as "*In Default,*" or "*On Failure of Issue*" are within s. 29, Wills Act: *Va, Neville v. Thacker*, 23 L. R. Ir. 344, 359. *Vf*, as to effect of the section, 2 Jarm. 493-496, 532-535).

S. 29 of the Wills Act includes the phrase "die without leaving MALE ISSUE" (*Upton v. Hardman*, Ir. Rep. 9 Eq. 157: *Re Edwards*, 1894, 3 Ch. 644; 64 L. J. Ch. 179; 43 W. R. 169: *Vh Theobald*, 620).

Prior to the Wills Act, just cited, the words "Die without issue" did not for all purposes mean the same as "Die without *leaving* issue." As applied to *Real Estate* these phrases were synonymous; and imported an indefinite failure of issue (Hawk. 205, 213, and cases there cited), and were "exactly equivalent to 'on the extinction of the heirs of his body,' and that is held by implication to express an intention that the heirs of the body of the devisee for life shall take, and therefore these words give the devisee for life an Estate Tail" (per *Ld Blackburn*, *Bowen v. Lewis*, 54 L. J. Q. B. 68; 9 App. Ca. 890, *whr* as to the susceptibility of this construction to contextual variation, and for an application of such rule of construction). *Vf*, *Andrew v. Andrew*, cited *DEFAULT*.

But in regard to *Personal Estate* a wide practical difference obtains, in Wills made prior to the Wills Act, as regards the phrases under consideration. Thus if in such a Will, Personalty be given to A. with a limitation over in the event of A. dying "Without Issue," that would mean an indefinite failure of issue, and A. would take the absolute interest, the gift over being void for remoteness (*Candy v. Campbell*, 2 Cl. & F. 421; 8 Bligh, N. S. 469; Hawk. 206); whilst if the words were "without leaving Issue" they would import a failure of issue *at the death of the person spoken of* and A. would take, subject to a contingent executory bequest over in the event of his dying without issue living at his death (*Forth v. Chapman*, 1 P. Wms. 663, and notes thereon, Tudor, L. C. R. P., 3 ed., 682).

For a minute discussion of the construction of words importing failure of issue; *V. Jarm.* chs. 40, 41; Theobald, chs. 41, 42. *Va* Watson Eq. 1400.

*V. DIE: DIE WITHOUT CHILDREN: LEAVING: ON.*

"Where a *Remainder* is limited in 'default,' or 'for want' of the object or objects of the preceding limitation, these words mean, 'on the failure or determination of the prior estate or estates'; and do not (as literally construed they would) render the ulterior estate contingent on the event of such prior object or objects not coming into existence. In short they signify all that is comprehended in the word 'Remainder,'—being merely an expression employed by the testator in carrying on the series of limitations" (1 *Jarm.* 800).

Observe that s. 29, Wills Act, stated at length at the commencement of this definition, relates only to *Wills*. As regards *Deeds*, and documents other than Wills, the following are the rules, —

1. "The words 'Die without Issue' are construed to mean, the death of the Propositus, and the failure of his Issue, *at any time, either before, at, or after his death*":—

2. "A limitation 'to A. and his heirs,' followed by a gift over if A. dies 'without Issue,' or 'without Heirs of his Body,' confers an ESTATE TAIL on A.":—

3. "An estate in FEE SIMPLE is not cut down to an Estate Tail by a gift over 'in default of such Issue,' or 'without LEAVING Issue'" (*Elph.* 247-250, *who* for the authorities: *Va*, *Arthur v. Walker*, 1897, 1 I. R. 83, where the last two rules are adopted, and the last one applied).

*Vz.* Chitty Eq. Ind. 8056-8077.

**DIFFERENCE.** — A "Difference," in a contract, is a contention over a question of truth or fact or law, as distinguished from a non-agreement over a question of valuation (*Collins v. Collins*, 28 L. J. Ch. 184; 26 Bea. 306; *Boss v. Helsham*, 36 L. J. Ex. 20; L. R. 2 Ex. 72; 4 H. & C. 645: *V. ARBITRATION: ADJUSTMENT*).

A question of construction is a "Difference," within Arb Act, 1889



(*Van Eeghen v. Jones*, Times, 22nd Feb 1890). So, a refusal *in toto* to pay a Ry Co's charge on the ground that it is unjust, is a "Difference," within an Arbitration clause (*Lond. & N. W. Ry v. Donellan*, 1898, 2 Q. B. 7; 67 L. J. Q. B. 681; 78 L. T. 575; *Mid. Ry v. Loschy*, 1899, A. C. 133; 68 L. J. Q. B. 326; 80 L. T. 93); but in order to oust the jurisdiction of the Court to enforce such a charge, there must have been a real dispute before action brought (*Lond. & N. W. Ry v. Billington*, 1899, A. C. 79; 68 L. J. Q. B. 162; 79 L. T. 503). *Vf*, REQUIRED.

"Differences," s. 11, Com L. Pro Act, 1854, includes a question of law (*Randegger v. Holmes*, L. R. 1 C. P. 679; *Seligman v. Le Boutillier*, Ib. 681). *Vh*, *Randell v. Thompson*, 1 Q. B. D. 748; 45 L. J. Q. B. 713; *Deutsche Springstoff Gesellschaft v. Briscoe*, 57 L. J. Q. B. 4.

Consent Order of Reference of "all Matters in Difference"; *V. Durlington Wagon Co v. Hardiny*, cited EQUIVALENT.

*Vf*, CAUSE: CONSENT.

"Difference," s. 33, Tramways Act, 1870, 33 & 34 V. c. 78; *V. R. v. Croydon Tramways Co*, 56 L. J. Q. B. 125; 18 Q. B. D. 39; 56 L. T. 78; 35 W. R. 299; 51 J. P. 420; 3 Times Rep. 32; *Bristol Trams Co v. Bristol*, 59 L. J. Q. B. 411; 25 Q. B. D. 427; 63 L. T. 177; 38 W. R. 693; 55 J. P. 53.

"Difference" whereby the making an Award is "hindered"; *V. HINDER*.

"Difference . . . or any other Question": *V. QUESTION*.

*V. DISPUTE*.

Stock Exchange "Differences"; *V. GAMING CONTRACT*.

**DIFFERENT.** — "Different Tenements"; *V. DIVIDE*.

**DIFFERENTIAL DUES.** — Harbour "Differential Dues" are defined by s. 2, 24 & 25 V. c. 47; by s. 10 Ib. they were abolished on and after 1st January 1862.

**DIFFICULT.** — *V. INEXPEDIENT: IMPARTIALITY*.

"Difficult point of law," s. 119, Co. Co. Act, 1888; *V. Hunt v. Goldby*, 40 S. J. 405.

**DIFFICULTY.** — "In case any difficulty shall arise in the execution" of a Resolution for an Insolvent's Arrangement with Creditors, s. 351, 20 & 21 V. c. 60; — such a clause does not include an Impossibility, *e.g.* where a proposal for arrangement is rendered abortive by the death of the Insolvent (*Re M.*, 1r. Rep. 11 Eq. 46).

"Financial Difficulty"; *V. Notice of Suspension*, sub NOTICE.

**DIG.** — *V. SEARCH*.

**DIGNITY.** — Dignity means, "Honour and Authority: reputation, &c. Dignities may be divided into Superior and Inferior: as the titles

of Duke, Earl, Baron, &c, are the highest names of dignity; and those of Baronet, Knight, Serjeant at Law, &c, the lowest" (Jacob). *Vh*, 3 Cru. Dig. Title 26: Cruise on Dignities.

An hereditary dignity is an INCORPOREAL HEREDITAMENT. *V*. HONOUR.

A Dignity in the Church is where a Spiritual Person hath a Function which hath also a Jurisdiction, *e.g.* Bishop, Dean, &c (*Boughton v. Gousley*, Cro. Eliz. 663). Therefore, neither a Parson, Vicar, Chaplain, Provost, Precentor, or a Gospeller holds a Dignity (*Ib.*). In that case it was said that "an Archdeacon is not a name of Dignity": *Sv* ARCH-DEACON.

*V*. TENEMENT.

**DILAPIDATION.** — Dilapidation is "a wastful destroying, or letting of Building run to ruine and decay, for want of reparation" (Cowel).

An Ecclesiastical Dilapidation "is where an Incumbent of a BENEFICE suffers the Parsonage House or Outhouses to fall down, or be in decay, for want of necessary reparation; or, it is the pulling down, or destroying, any of the houses or buildings belonging to a Spiritual Living, or destroying of the Woods, trees, &c, appertaining to the same; for it is said to extend to the committing, or suffering, any WILFUL WASTE in or upon the Inheritance of the Church" (Jacob, citing Degge's Parson's Counsellor, 89). *Vh*, Phil. Ecc. Law, Part 5, ch. 5: Cripps Law of the Church and Clergy, Book 2, ch. 1, s. 7: 4 Eneye. 249-251.

Dilapidations as between Landlord and Tenant; *V*. Woodf. ch. 16, s. 9: Gibbons on Dilapidations.

**DILIGENCE.** — *V*. DUE DILIGENCE: REASONABLE DILIGENCE.

**DILIGENTLY.** — *V*. FAIRLY.

**DILUTE.** — To "dilute" a drink means to make it less strong, whether by adding thereto a weaker drink or by adding water; and therefore a Beer Retailer is (under s. 8 (2), 48 & 49 V. c. 51) guilty of "diluting" strong beer by mixing therewith a weaker beer (*Crofts v. Taylor*, 56 L. J. M. C. 137; 19 Q. B. D. 524; 57 L. T. 310; 36 W. R. 47: 51 J. P. 532, 789). *Cp.* ADULTERATION.

**DINNER.** — "Public Dinner"; *V*. PUBLIC BALL.

**DIOCESE.** — A Diocese is the limited territorial space assigned to a BISHOP, as especially that in which he is to exercise his functions: "probably, the word 'See' has strictly a more confined meaning than 'Diocese.' The primary reason why a Diocese, — in other words, a limited territorial space, — was originally assigned to a Bishop was, not because his functions or duties were confined to that space but, because as the superintendence of the Bishop was found to be more effectual when exercised principally over a limited extent, a territorial district (termed

a Diocese) was assigned to him as the limits within which he should principally exercise his authority" (per Romilly, M. R., *Natal Bp. v. Gladstone*, L. R. 3 Eq. 30; nom. *Colenso v. Gladstone*, 36 L. J. Ch. 16).

Stat. Def. — Church Discipline Act, 1840, 3 & 4 V. c. 86, s. 2 (on *whv R. v. Canterbury, Archbp.*, 25 L. J. Q. B. 346; 6 E. & B. 516); Church Building Act, 1851, 14 & 15 V. c. 97, s. 29; 33 & 34 V. c. 91, s. 2; Public Worship Regn Act, 1874, 37 & 38 V. c. 85, s. 6.

**DIPLOMA.** — Medical "Diploma"; Stat. Def., 49 & 50 V. c. 48, s. 27.

**DIRECT.** — *V. PRECATORY TRUST.*

"Where a testator *directs* his debts to be paid, that imposes upon his Exors or Trustees a Duty to pay them, which enables them to sell the Real Estate for that purpose" (per Cotton, L. J., *Re Head and Macdonald*, 59 L. J. Ch. 606, 607); *secus*, if the words are "to adjust and pay all claims made upon my estate" (*S. C.* 59 L. J. Ch. 604; 45 Ch. D. 310; 63 L. T. 21; 38 W. R. 657). *If*, CHARGE OF DEBTS.

A limitation to A., her heirs, exs, ads, and assigns "for her own use and benefit, or *otherwise as she shall direct*," does not give A., a Power of appointment distinct from the ordinary power of disposition incidental to ownership (*Foxwell v. Van Grutten*, 44 S. J. 377). *If*, *Crockett v. Crockett*, 5 Hare, 326; 2 Phill. 553; *Goodtitle v. Otway*, 2 Wils. K. B. 6.

By s. 18, Transfer of Land Act, 1874 (Western Australia), the Commr of Titles, on an application, "shall direct" the Registrar to register a Certificate of Title if he (the Commr) finds no transaction affecting the land on the Register, and thereupon s. 19, provides that the Commr "shall direct" Notice of Application to be advertised, and, if there be no Caveat within the time prescribed in the advertisement, the land is to be brought under the operation of the Act; — Admittedly, under s. 18, the Commr must have some power of enquiry respecting, and some discretion as to accepting or rejecting, an Application; a similar rule applies as to s. 19, for the Commr is "not a mere Machine, as the literal force of the words would make him" (*Manning v. Commr of Titles*, 59 L. J. P. C. 59; 15 App. Ca. 195). *If*, SHALL.

**DIRECT COMMUNICATION.** — The question whether a proposed NEW STREET will "afford Direct Communication" between two streets, s. 9 (4), London Bg Act, 1894, is one of fact for the London County Council whose determination, unless perverse, will not be overruled (*Woodham v. Loudon Co. Co.*, 1898, 1 Q. B. 863; 67 L. J. Q. B. 707; 78 L. T. 553; 62 J. P. 342).

**DIRECT TAXATION.** — If, at the time of payment, the ultimate incidence of a tax is uncertain, the imposition is not "direct," but indi-

rect taxation; and therefore a Stamp Duty on exhibits to be used in an action, is not "Direct Taxation" within s. 92 (2), British North America Act, 1867, and its imposition, by Act of Quebec, 44 V. c. 9, is *ultra vires* (*A-G. Quebec v. Reed*, 51 L. J. P. C. 12; 10 App. Ca. 141). But a tax on Banks and Insurance Companies situate out of, but carrying on business in, the Province, is "Direct Taxation" (*Toronto Bank v. Lambe*, 12 App. Ca. 575; 56 L. J. P. C. 87); so, of a License Fee on Brewers or Distillers (*Brewers Assn. v. A-G. Ontario*, 1897, A. C. 231; 66 L. J. P. C. 34; 76 L. T. 61; 13 Times Rep. 197). In the two latter cases the P. C. adopted the following definition by John Stuart Mill, — "A *Direct Tax*, is one which is demanded from the very person who it is intended or desired should pay it. *Indirect Taxes* are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another; such as the Excise, or Customs."

V. CIVIL RIGHTS.

**DIRECTED.** — "Directed and required"; V. REQUIRED.

"Duly directed"; V. DULY.

**DIRECTION.** — "By his direction"; V. REFUSAL.

Quà Notice of Action, a Contractor executing works under, and having to Conform to, the orders of a Surveyor to a Local Authority, is "acting under the Direction" of such Authority (*Newton v. Ellis*, 24 L. J. Q. B. 337; 5 E. & B. 115).

"Special Directions"; V. SPECIAL.

Policy on Ship to "sail to and touch and stay at any Ports in any Direction"; V. *Leathly v. Hunter*, 7 Bing. 517; 9 L. J. O. S. Ex. 118. Cp., LIBERTY TO CALL.

**DIRECTION IN WRITING.** — As used in s. 75, 24 & 25 V. c. 96; V. *R. v. Christian*, 43 L. J. M. C. 1; L. R. 2 C. C. R. 94; *R. v. Brownlow*, 39 L. T. 479. Note: the section is repealed by Larceny Act, 1901.

**DIRECTLY.** — This word, as applied to the time of doing an act, would seem synonymous with IMMEDIATELY; — "It does not mean *instantly*" (per Cresswell, J., *Duncan v. Topham*, 8 C. B. 231; 18 L. J. C. P. 310; but "directly" clearly means something different from a contract to be performed within a reasonable time" (per Coltman, J., *Ib.*, 8 C. B. 230). *Va.*, Add. C. 125; Benj. 678; Blackb. 226; FORTHWITH; POSSIBLE.

The addition or omission of the words "Directly or Indirectly," to the offence of an Officer of a Corporation being "INTERESTED IN" a contract with his Corporation, seems to be immaterial (*Todd v. Robinson*, 54 L. J. Q. B. 47; 14 Q. B. D. 739).

"Directly or Indirectly" carry on Business; V. CARRY ON.

**DIRECTLY AFFECT.** — An Agreement “not to trade, act, or deal in any way, so as either directly or indirectly to affect” A., is personal to A. and cannot be assigned (*Davies v. Davies*, 36 Ch. D. 359; 56 L. J. Ch. 962; 36 W. R. 86).

“Parties directly affected by the Appeal.” R. 2, Ord. 58, R. S. C.; *J. Re Salmon, Priest v. Uppleby*, 42 Ch. D. 351; 61 L. T. 146; 38 W. R. 150; 5 Times Rep. 478. It is doubtful whether an Official Receiver is a party “directly affected” by a Bankry Appeal (*Re Webber*, 59 L. J. Q. B. 581; 24 Q. B. D. 313; 62 L. T. 485; 38 W. R. 195).

Person or Body Corporate “directly affected” who may appeal under s. 39, Endowed Schools Act, 1869, 32 & 33 V. c. 56; *V. Re Shafton's Charity*, 3 App. Ca. 872; 47 L. J. P. C. 98; 38 L. T. 793; *Re Haydon Bridge School*, 3 App. Ca. 872; *Re Sutton Coldfield Grammar School*, 7 App. Ca. 91; 51 L. J. P. C. 8; 45 L. T. 631; 30 W. R. 311; *Re Hensworth Grammar School*, 12 App. Ca. 444; 56 L. T. 212; 35 W. R. 118; 3 Times Rep. 439; *Re Christ's Hosp.*; 15 App. Ca. 172; 59 L. J. P. C. 52; *Re Colchester Grammar School*, 1898, A. C. 477; 67 L. J. P. C. 86; 78 L. T. 509. *Vf*, Tudor Char. Trusts, 628-630: EDUCATIONAL ENDOWMENT.

#### V. AFFECT.

**DIRECTOR.** — The Directors of a Co. are “the persons having the direction, conduct, management, or superintendence,” of its affairs (7 & 8 V. c. 110, s. 3). “The term ‘Board’ has two meanings: — the ‘Board’ consisting of all the members; or, a ‘Board’ consisting of a Quorum” (*Barker v. Allan*, 5 H. & N. 72). In *Norman v. Mitchell* (2 W. R. 447) “Board of Directors” was held to include a provisional board.

“A Director is simply a person appointed to act as one of a Board, with power to bind the Co when acting as a Board, — but having otherwise no power to bind them” (per Mellish, L. J., *Re Marseilles Extension Ry*, 41 L. J. Ch. 348; 7 Ch. 161; 25 L. T. 858; 20 W. R. 251). Therefore a Company’s Articles, providing that “the Directors, whenever they may think fit, may call an extraordinary general meeting,” do not authorise any of the directors, of their own authority, to call such a meeting; but mean that the Directors at a Board Meeting may do so (*Browne v. La Trinidad*, 57 L. J. Ch. 292; 37 Ch. D. 1; 58 L. T. 137; 36 W. R. 289; *Vf*, *Re Hayercraft Co*, 1900, 2 Ch. 230; 69 L. J. Ch. 497; 83 L. T. 166; following *D’Arcy v. Tamar Ry*, 36 L. J. Ex. 37; L. R. 2 Ex. 158; 4 H. & C. 463). *V. QUORUM.*

As to a Co being estopped from saying that transactions were not done by the “Board”; *V. Bargate v. Shortridge*, 5 H. L. Ca. 297.

A Promissory Note by “We, the Directors,” &c. binds the makers personally (*Dutton v. Marsh*, L. R. 6 Q. B. 361; 40 L. J. Q. B. 175); so

of a Building Society Deposit Note (*Richardson v. Williamson*, L. R. 6 Q. B. 276; 40 L. J. Q. B. 145). *Cp*, SECRETARY.

A Director is hardly a TRUSTEE; *V*. TRUST.

"Director," s. 7, Comp Winding-up Act, 1890; *V. Re New Par Consols*, 1898, 1 Q. B. 573; 67 L. J. Q. B. 595.

"Any Directors"; *V. Isle of Wight Ry v. Tahourdin*, cited *ANY*.

"Vacating Directors," Art. 62, Table A, Comp Act, 1862, refers to Directors validly appointed, as distinguished from merely *de facto* Directors (*John Morley Bg Co v. Barras*, 1891, 2 Ch. 386; 60 L. J. Ch. 496; 64 L. T. 856; 39 W. R. 619). *V*. CASUAL.

Stat. Def. — Comp C. C. Act, 1845, s. 3; 30 & 31 V. c. 108, s. 1; 46 & 47 V. c. 47, s. 2. — *Scot*. 8 & 9 V. c. 17, s. 3.

**DISABILITY.** — " 'Disabilitie' is when a man by any act or thing, by himself or his ancestor done or committed, or for or by any other cause, is disabled or made incapable to doe, to inherit, or to take benefit or advantage of, a thing which otherwise he might have had or done " (Termes de la Ley). *Vj*, Cowel; Jacob: LEGAL DISABILITY: CANNOT.

Quà Naturalization Act, 1870, 33 & 34 V. c. 14, "Disability," means, "the status of being an Infant, Lunatic, Idiot, or Married Woman" (s. 17).

**DISABLE.** — In an indictment for shooting, wounding, &c, "with intent to MAIM, disfigure, or disable," " 'disable' is to do something which creates a permanent disability, and not merely a temporary injury " (Arch. Cr. 806: *R. v. Boyce*, 1 Moody, 29). *Cp*, DISFIGURE.

"Wholly disabled"; *V*. WHOLLY.

"Injury which does not disable" Workman from earning *Full Wages*, s. 1 (2*a*), Workmen's Comp Act, 1897; *V. Chandler v. Smith*, 1899, 2 Q. B. 506; 68 L. J. Q. B. 909; 81 L. T. 317; 47 W. R. 677: *Pomphrey v. Southwark Press*, cited PARTIAL INCAPACITY.

**DISABLED FROM ACTING.** — A Member of a Local Board who ceases to be a Member for either of the causes mentioned in R. 64, Sch 2, P. H. Act, 1875, will, until his re-election, remain "disabled from acting," within R. 70 of the same Sch (*Fletcher v. Hudson*, 51 L. J. Q. B. 48; 7 Q. B. D. 611).

But acting after becoming "disqualified" (s. 53, Mun Corp Act, 1835; s. 41, Mun Corp Act, 1882), does not comprise a case where a Member had been concerned in a contract with his Board but which Contract has come to an end at the time of his acting (*Lewis v. Carr*, 46 L. J. Ex. 314; 1 Ex. D. 484; herein, *semble*, over-ruling *Nicholson v. Fields*, 31 L. J. Ex. 233; 7 H. & N. 810, — *V*. jdgmt Bramwell, L. J., *Fletcher v. Hudson*, sup). *Lewis v. Carr* seems, however, one of those cases which when cited are distinguished; *V. Fletcher v. Hudson*.

*V*. DISQUALIFIED. *Cp*, INCAPABLE: INCAPACITATED.

**DISADVANTAGE.** — *V.* UNDUE PREFERENCE.

**DISAFFOREST.** — To disafforest is to deprive a FOREST of its peculiar character and privileges. *Vh.* 4 Encyc. 265.

**DISAGREEABLE.** — A Boys' School is likely to cause a "disagreeable" noise, even if not an "injurious or offensive" noise or a NUISANCE, within a restrictive covenant as to user (*Wauton v. Coppard*, 1899, 1 Ch. 92; 68 L. J. Ch. 8; 79 L. T. 467; 47 W. R. 72). *Vj*; *Doe d. Bish v. Keeling*, cited BUSINESS: ANNOYANCE.

**DISBOSCATIO.** — "A conversion of Wood Grounds into Arable or Pasture; an Assarting" (Cowel). *V.* ASSART.

**DISBURSEMENTS.** — An unpaid liability, for NECESSARIES, incurred by a master of a *Ship*, is a "Disbursement" within s. 10. Admiralty Court Act, 1861, 24 V. c. 10 (*The Fairport*, 52 L. J. P. D. & A. 21; 8 P. D. 48); for which "Disbursement" he had no maritime LIEN (*The Sara*, 58 L. J. P. D. & A. 57; 14 App. Ca. 209; over-ruling *The Mary Ann*, 35 L. J. Adm. 6; L. R. 1 A. & E. 8, and the cases following it), but that ruling was rectified by s. 1, Mer Shipping Act, 1889, on *whw*, *Morgan v. Castlegate S. S. Co*, cited LIEN, sub "Maritime Lien."

The Disbursements referred to in s. 1, Mer Shipping Act, 1889, 52 & 53 V. c. 46 (repld s. 167, Mer Shipping Act, 1894), mean, "Disbursements which the Master makes in respect of things necessary for the ship for the purpose of the Voyage which he as Master is bound to carry out, where the owner is not present and cannot be communicated with, and which the Master therefore is, necessarily, himself obliged to procure in order to discharge his duty" (per Esher, M.R., *The Orienta*, 1895, P. 49; 64 L. J. P. D. & A. 33; 71 L. T. 711; 7 Asp. 529; *Vh*, *Morgan v. Castlegate S. S. Co*, sup: *The Ripon City*, 1897, P. 226; 66 L. J. P. D. & A. 110; 77 L. T. 98).

"Disbursements" in a Marine Policy, frequently means, OUTFIT (*Roddick v. Indemnity Insree*, 1895, 2 Q. B. 380; 64 L. J. Q. B. 733; 72 L. T. 860). "'Disbursements,' is well understood at Lloyd's to be a compendious term used to describe any interest which is outside the ordinary and well-known interests of 'Hull,' 'Machinery,' 'Cargo,' and 'Freight'" (per Bigham, J., *Buchanan v. Faber*, 4 Com. Ca. 226, 227).

"Disbursements warranted free from all AVERAGE"; *V.* *Lawther v. Black*, 17 Times Rep. 8.

A payment of Probate Duty, and *à fortiori* one of Estate Duty, is not a "Disbursement" by a SOLICITOR within s. 37, Solrs Act, 1843 (*Re Kingdon & Wilson*, 46 S. J. 502, over-ruling *Re Lamb*, 23 Q. B. D. 5; 58 L. J. Q. B. 455); but a payment as an agent, — *e.g.* hostile Costs, — is not (*Re Remnant*, 11 Bea. 603; 18 L. J. Ch. 374). The principles for determining what are a Solicitor's "Disbursements" were admirably laid

down in the joint certificate of the Taxing Masters in *Re Riemnant* (sup), as follows:—

1. "Such payments as the Solicitor, in due discharge of the duty that he has undertaken, is bound to make so long as he continues to act as Solicitor, whether his client furnishes him with money for the purpose or with money on account, or not, as,—*e.g.* Fees of the Officers of the Court, Fees of Counsel, Expenses of Witnesses,—And also such payments in general business, not in suits, as the Solicitor is looked upon as the person bound by custom and practice to make, as,—*e.g.* Counsel's Fees on Abstracts and Conveyances, Payments for Registers in proving pedigree, Stamp Duty on Conveyances and Mortgages, Charges of Agents, Stationers or Printers employed by him—are by practice, and we think properly, introduced into the Solicitor's Bill of Fees and Disbursements.

2. "But payments which the Solicitor is not either by law bound to make, or by custom looked upon as the person to make, as,—*e.g.* Purchase-Moneys, or Interest thereon, Moneys paid into Court, Damages or Costs paid to Opponent parties, Bills due to the Solicitors of Trustees Mortgagees or other parties, Legacy or Residuary Duties (*Va, Re Haigh*, 12 Bea. 307; 19 L. J. Ch. 79),—or other payments of a like description, which the Solicitor makes *as Agent* on the order of the client and not in discharge of his own duty or liability *as Solicitor*, are by practice, and we think properly, charged in the Cash Account.

3. "We also think that the question, whether such payments are Professional Disbursements or otherwise, is not affected by the state of the cash account between the solicitor and the client, and that, for instance, Counsel's Fees would not the less properly be introduced into the Bill of Costs as a Professional Disbursement, because the client may have given money expressly for paying them; and that Purchase-Money or Damages would not be properly so introduced, notwithstanding the Solicitor may have advanced the money out of his own funds."

The charges of a Country Solr's *London Agent* for work done in London are not Disbursements; quà the client, the work done by the London Agent is as though it was done by the Country Solicitor himself, and must be set forth in detail in the Bill (*Re Pomeroy and Tauner*, 1897, 1 Ch. 284; 66 L. J. Ch. 158; 75 L. T. 625; 45 W. R. 245).

#### V. ACTUAL COSTS AND EXPENSES.

#### DISCENT. — V. DESCENT.

**DISCHARGE.** — Master or Mistress is not, without Justices' consent, to PUT AWAY or "in any way to *discharge*" a Parish Apprentice, s. 9, 56 G. 3, c. 139; but a mere agreement to discharge the Indentures on payment of a sum of money, is not a "Discharge" within the section.



until actual payment (*R. v. Gwinear*, 3 L. J. M. C. 81; 1 A. & E. 152; 3 N. & M. 297).

"In Discharge"; *V. FOR: IN DISCHARGE.*

Discharge of CARGO; *V. CARVER*, Part 3, ch. 13; CUSTOMARY.

Port of Discharge; *V. PORT: FINAL PORT.*

"Discharge of Duties"; *V. ACCIDENT.*

"Attempt to discharge LOADED ARMS"; *V. ATTEMPT.*

*V. RELEASE: PREVENT: FULL DISCHARGE.*

**DISCHARGED.** — Seaman "discharged," s. 167, Mer Shipping Act, 1854, repld s. 162, Mer Shipping Act, 1891; *V. Tindle v. Davison*, 61 L. J. M. C. 107; 66 L. T. 372.

Quà s. 10, Militia Act, 1882, 45 & 46 V. c. 49 (by its subs. 3), "*discharged with Disgrace*," means, discharged with ignominy, discharged as incorrigible and worthless, or discharged on account of a conviction for felony or a sentence of penal servitude."

**DISCHARGING.** — *V. LOAD.*

**DISCIPLINE.** — The discipline of School Children is not confined to school hours; therefore, a schoolmaster's delegated power to administer reasonable corporal punishment, extends to act done by a pupil out of school (*Cleary v. Booth*, 1893, 1 Q. B. 465; 62 L. J. M. C. 87; 68 L. T. 349; 41 W. R. 39). *V. ASSAULT.*

Quà Grammar Schools Act, 1840, 3 & 4 V. c. 77, "Discipline" or "Management" of a School, shall mean and include, all matters respecting the conduct of the Masters or Scholars, the method and times of Teaching, the Examination into the proficiency of the Scholars, of any school; and the ordering of Returns or Reports with reference to such particulars, or any of them" (s. 25).

**DISCLAIMER.** — "*Disclame, disclamare*, is compounded of *de* and *clamo*, and signifieth utterly to renounce" (Co. Litt. 102 a): *V. Termes de la Ley: Doe d. Gray v. Stanton*, 5 L. J. Ex. 253; 1 M. & W. 695.

The conduct of the parties may (even quà the LEGAL ESTATE in realty) work a Disclaimer, though a Deed is, generally, desirable (*Re Gordon*, 46 L. J. Ch. 794; 6 Ch. D. 531; *Re Birchall*, 40 Ch. D. 436); so of a release though it could not convey any interest (*Wellesley v. Withers*, cited RELEASE).

A Trustee's Disclaimer cannot be partial, — he must accept for all in all or not at all; e.g. he cannot accept quà land in America and disclaim quà land in England (*Re Lord and Fullerton*, 1896, 1 Ch. 228; 65 L. J. Ch. 184).

To amend Specification of a Patent "by way of Disclaimer," connotes its renunciation; therefore, in an action for Infringement or Revocation of a Patent, there cannot be a "CORRECTION or Explanation" by way

of Disclaimer, for those words (which are in subs. 1, s. 18) are absent from s. 19, Patents, &c Act, 1883, which, quâ such an action, is the section applicable (*Re Owen*, 1899, 1 Ch. 157; 68 L. J. Ch. 63; 79 L. T. 458; 47 W. R. 180).

*V. 4 Encyc.* 272-275.

**DISCLOSE: DISCLOSURE.**—To “disclose” an Offence, s. 6, 5 & 6 V. c. 39, is not to state it or confess to it; but to make the offence known for the first time (*R. v. Skeen*, 28 L. J. M. C. 91; Bell, C. C. 97; *R. v. Gunnell*, 16 Cox, C. C. 157; 55 L. T. 786; 51 J. P. 279).

“Disclose a Defence upon the merits,” s. 27, Com. L. Pro. Act, 1852, means not merely to say there is a Defence, but to show what the nature of it is (*Whiley v. Wiley*, 27 L. J. C. P. 305; 4 C. B. N. S. 653; *Warrington v. Leake*, 25 L. J. Ex. 27; 11 Ex. 304).

*V. FULL DISCLOSURE.*

“A Disclosure of the Alteration” in an article of FOOD, s. 9, Sale of Food and Drugs Act, 1875, need not “disclose the precise character or extent of the alteration” (per Russell, C. J., *Spiers & Pond v. Bennett*, 1896, 2 Q. B. 65; 65 L. J. M. C. 144; 74 L. T. 697; 44 W. R. 510; 60 J. P. 437: *V. the*, for an example of a sufficient Disclosure). *V. ABSTRACTION: SKIMMED MILK.*

**DISCOMFORT.**—A covenant against doing anything to the “Discomfort” of a neighbourhood, *semble*, connotes the same as “ANNOYANCE”: *V. per O'Brien, C. J., Pembroke v. Warren*, cited OFFENSIVE.

**DISCONTINUE.**—Lessee’s covenant to afford no ground for “discontinuing” the License of the premises; *V. Bryant v. Hancock*, 1899, A. C. 442; 68 L. J. Q. B. 889.

**DISCONTINUANCE.**—“‘Discontinuance’ is an ancient word in the law” (Litt. s. 592). “A discontinuance of estates in lands or tenements is properly (in legall understanding) an alienation made or suffered by tenant in taile, or by any that is seized *in anter droit*, whereby the issue in taile, or the heire or successor, or those in reversion or remainder, are driven to their action, and cannot enter” (Co. Litt. 325 a). *V. Termes de la Ley: 3 Bl. Com. 171.*

“Discontinuance” of an ACTION, had, at one time, a much more limited meaning than as used in Ord. 26, R. S. C., where the word is used in a broad sense; under R. 1 of that Ord. a plt is not entitled, as of right, to take a NON-SUIT at any time before verdict, but must “discontinue” as there provided, and, if he goes to trial, he will have to submit to jdgmt against him, and can only bring a new action by leave of the Judge (*Fox v. Star Newspaper*, 1898, 1 Q. B. 636; 67 L. J. Q. B. 454; 78 L. T. 311; 46 W. R. 340; affd in H. L., 1900, A. C. 19; 69 L. J. Q. B. 117; 81 L. T. 562; 48 W. R. 321). *V. WITHOUT DAY.*

*Note:* That in the County Court it is, in the power of the Judge to direct a Non-suit (ss. 88, 90, 93, Co. Co. Act, 1888).

"Discontinuance of Possession," s. 3, 3 & 4 W. 4, c. 27; *V. Leigh v. Jack*, 5 Ex. D. 264; 49 L. J. Ex. 220; *Littledale v. Liverpool College*, 1900, 1 Ch. 19; 69 L. J. Ch. 87; 81 L. T. 564; 48 W. R. 177.

V. DISPOSSESSION.

**DISCOUNT.**— In an agreement to "underwrite" Shares at so much "Discount," "Discount" means "Commission," and the agreement does not mean that the shares are to be issued at a discount (*Re Licensed Victuallers' Assn.*, 58 L. J. Ch. 467; 42 Ch. D. 1; 5 Times Rep. 369).

V. UNDERWRITE: OTHERWISE.

A Commercial arrangement to accept a pre-payment "under Discount" at so much per cent per annum, means a rebate of Interest at that rate, and not a true or mathematical discount (*Re Lunds Securities Co*, 1896, 2 Ch. 320; 65 L. J. Ch. 587; 44 W. R. 514; 74 L. T. 400).

**DISCOVERED.**— "Discovered or Opened," in a Lease of Mines; *V. Quarrington v. Arthur*, 11 L. J. Ex. 418; 10 M. & W. 335.

**DISCOVERT.**— For the purposes of the Statute of Limitations respecting a personal tort, married women became "discovert" (s. 7, 21 Jac. 1, c. 16) by the operation of the M. W. P. Act, 1882 (*Lowe v. Fox*, 15 Q. B. D. 667; 54 L. J. Q. B. 561; affd 12 App. Ca. 206; 56 L. J. Q. B. 480). *Vf*, as to the effect of this word as used in that section, *Richards v. Richards*, 2 B. & Ad. 447.

V. COVERTURE.

**DISCOVERY.**— *V. OFFENCE.*

Discovery of Documents, in the possession of the Opposite Party to an Action; *Vh*, Ord. 31, R. S. C., on *whv* Ann. Pr.: Bray on Discovery: 4 Encyc. 275-279.

**DISCREET.**— An "honest Discreet Person" for Weigh-master, s. 3, 4 Anne (Ir), c. 14, "means a person come to years of DISCRETION, in the legal sense of the term" (*Honau v. Vereker*, 10 Ir. L. R. 74).

**DISCREETEST.**— *V. CHIEFEST AND DISCREETEST.*

**DISCRETION.**— "Discretion, is the herb of grace that I could wish every Commissioner of Sewers well stored withal. But note that" (in 23 H. 8, c. 5) "the word 'Wisdom' is coupled with it, and the word 'Good' annexed to them both, as best shewing of what pure metal they should be made of, — *after your good wisdom and discretion.* There be several degrees of Discretion, — *Discretio generalis, Discretio legalis, Discretio specialis,* —

"*Discretio generalis*, is required of every one in everything that he is to do, or attempt;

"*Legalis Discretio*, is that which Sir E. Coke meaneth and setteth forth in *Rooke's* and *Keighley's Cases* (inf); and this is merely to administer justice according to the prescribed rules of the law;

"The third Discretion is where the laws have given no certain rule . . . and herein Discretion is the absolute judge of the cause, and gives the rule" (Callis, 112, 113).

"Discretion," as to the Fines under 23 H. 8. c. 5, is *Discretio legalis* (*Hetley v. Boyer*, 2 Bulst. 197, 198; Cro. Jac. 336).

"Where something is left to be done according to the Discretion of the authority on whom the power of doing it is conferred, the discretion must be exercised honestly and in the spirit of the statute, otherwise the act done would not fall within the statute. 'According to his Discretion,' means, it is said, according to the rules of reason and justice, not private opinion (*Rooke's Case*, 5 Rep. 100 a; *Keighley's Case*, 10 Rep. 140 b; *Eastwick v. City of London*, Style, 42, 43; per Willes, J., *Lee v. Bude Ry*, L. R. 6 C. P. 576; 40 L. J. C. P. 288); according to law and not humour; it is to be not arbitrary, vague, and fanciful, but legal and regular (per Ld Mansfield, *R. v. Wilkes*, 4 Burr. 2839); to be exercised not capriciously, but on judicial grounds and for substantial reasons (per Jessel, M. R., *Re Taylor*, 4 Ch. D. 160; 46 L. J. Ch. 400; and per Ld Blackburn, *Doherty v. Allman*, 3 App. Ca. 728). And it must be exercised within the limits to which an honest man competent to the discharge of his office ought to confine himself (per Ld Kenyon, *Wilson v. Rastall*, 4 T. R. 757): that is within the limits and for the objects intended by the legislature" (Maxwell, 147, 148, *whv* to 151 for cases in illustration). V. MAY: OPINION.

You cannot lay down a hard-and-fast rule as to the exercise of Judicial Discretion, for the moment you do that "the discretion of the Judge is fettered" (per Brett, M. R., *The Friedeberg*, 54 L. J. P. D. & A. 75; 10 P. D. 112: *Vf*, per Bowen, L. J., *Jones v. Curling*, 53 L. J. Q. B. 373; 13 Q. B. D. 262).

The wide "Discretion" as to *Costs* given by R. 1, Ord. 65, R. S. C., and to the Ry Commrs by s. 28, 36 & 37 V. c. 48, does not authorise an Order on the defendant to pay any part of the plaintiff's costs when the defendant has succeeded absolutely (*Foster v. G. W. Ry*, 51 L. J. Q. B. 233; 8 Q. B. D. 515; *Dicks v. Yates*, 50 L. J. Ch. 809; 18 Ch. D. 76; *Witt v. Corcoran*, 45 L. J. Ch. 603; 2 Ch. D. 69; *Vh*, notes to R. 1, Ord. 65, Ann. Pr.).

An Order to "allow Costs," under s. 116 (2), Co. Co. Act, 1888, is one which is "left to the Discretion of the Court," within s. 49, Jud. Act, 1873 (*Bazett v. Morgan*, cited ALLOW).

The "free and unqualified discretion" to refuse or grant *Licenses*, which is given to Justices by the Beer Dealers Retail Licences (Amend-

ment) Act, 1882, 45 & 46 V. c. 34, is absolute as well as regards the renewal of an old, as the grant of a new, license (*R. v. Kay*, 52 L. J. M. C. 90; 10 Q. B. D. 213); so of their "discretion" under the Alehouse Act, 1828, 9 G. 4, c. 61, s. 1 (*Sharpe v. Wakefield*, 1891. A. C. 173; 60 L. J. M. C. 73; 64 L. T. 180; 39 W. R. 561; 55 J. P. 197). *Vf.*  
LEGAL PROCEEDINGS.

V. AT DISCRETION: PLEASURE.

The Court will not, in the absence of misconduct, interfere with a "discretion" given to Trustees, as regards the mode of *Investment of Trust Funds* (*Brophy v. Bellamy*, 43 L. J. Ch. 183; 8 Ch. 798, and cases there cited: Lewin, 728); but during actual administration by the Court it may exercise a control (*Bethel v. Abraham*, 43 L. J. Ch. 180; L. R. 17 Eq. 24; *Brophy v. Bellamy*, sup: *Re Gadd*, 52 L. J. Ch. 396; 23 Ch. D. 134).

A mere "discretion" as to investments will not authorise an investment on personal security (*Pocock v. Reddington*, 5 Ves. 794; *Potts v. Britton*, L. R. 11 Eq. 433; *Bethel v. Abraham*, sup; Lewin, 335). Nor, *semble*, will a mere "discretion" justify Trustees in investing in unauthorised securities (*Bethel v. Abraham*, sup); *secus*, if the power were exercisable in their "uncontrolled discretion" (*Re Brown*, 54 L. J. Ch. 1134; 29 Ch. D. 889). Where the words authorised investments "in such stock, funds, or shares, as the trustees in their *absolute* discretion may think fit," the Court, acting for the protection of infants, refused to sanction an appropriation of securities for the satisfaction of a legacy, such securities being partly in Preference Stocks which were liable to be paid off, and were accordingly not of a permanent character (*Stewart v. Sanderson*, 39 L. J. Ch. 337; L. R. 10 Eq. 26).

*Income*, to be applied by Trustees, "in their *uncontrolled and irresponsible* discretion," for the Maintenance of a husband or wife, or one of them, may, in the absence of *mala fides*, be all paid by them to the husband, though the wife is unable to live with him in consequence of his intemperate habits (*Tabor v. Brooks*, 48 L. J. Ch. 130; 10 Ch. D. 273). So, where income was to be applied by trustees, "in their discretion, and of their *uncontrollable authority*," to or for the benefit of the testator's lunatic wife, the H. L. held that, in the absence of *mala fides*, the trustees had an absolute discretion as to whether or not they would so apply any, and if any what, part of the income; and that the Court could not interfere with, and ought not to express any opinion on, the exercise of such discretion (*Gisborne v. Gisborne*, 46 L. J. Ch. 556; 2 App. Ca. 300). *Vf.*, *Re Bullock*, cited *APPLY*.

*Cp.* THINK FIT.

A direction to Trustees to sell "at their *absolute and unfettered* discretion" "is not equivalent to a direction that the trustees may sell, or not, at their absolute discretion. In the first case, the time and mode of sale are in their discretion; but it is not open to them to take into consideration

the reduction in income of the Tenants for Life and to decide that they will abstain from following the directions, because the tenants for life will then get a better income" (per North, J., *Re Atkins*, 81 L. T. 421).

"A *Devise* of property to the discretion of A. passes the fee, and does not merely confer a power; so a devise at the disposition of A. carries the fee. It is equivalent to a devise to A. to give and sell at his pleasure. There is no difference between a devise that A. shall do with the land at his discretion, and a devise of the land to A. to do with it at his discretion" (Sug. Pow. 104).

"The Age of Discretion, is called the age of 14 yeares; for at this age the Infant which is married within such age to a woman may agree, or disagree, to such marriage" (Litt. s. 104).

*V.* DISCREET.

**DISEASE.** — For the purpose of furnishing an excuse for what would otherwise be a crime, "Voluntary Drunkenness is not regarded as a Disease affecting the mind; but Involuntary Drunkenness, and diseases caused by voluntary drunkenness, fall, so far as they affect the mind, within that term" (Steph. Cr. 22).

*I.* ILL: INFIRMITY: INJURY: SICKNESS: CONTAGIOUS: INFECTIOUS: CAUSED BY.

Stat. Def. — Diseases of Animals Act, 1894, 57 & 58 V. c. 57, s. 59.

**DISFIGURE.** — In an indictment for an assault (24 & 25 V. c. 100, s. 18), to "disfigure" is to do some external injury which may detract from the personal appearance (Arch. Cr. 804).

*Cp.* DISABLE: MAIM.

**DISFRANCHISEMENT.** — "Disfranchisement,' signifies taking a FRANCHISE from a man for some reasonable cause" (per Mansfield, C. J., *Symmers v. The King*, 2 Cowp. 502).

**DISGRACE.** — "Discharged with disgrace"; *V.* DISCHARGED.

**DISGRADE.** — "Disgrading,' is when a man having taken upon him a DIGNITY, Temporall or Spirituall, is afterwards thereof deprived" (Termes de la Ley). *Vh.* Phil. Ecc. Law, 1086. *Cp.* DEPRIVATION.

**DISHERISON.** — This is an old synonym for Disinheriting (Cowel: Jacob).

**DISHONESTY.** — *V.* FRAUD.

**DISHONoured.** — A BILL OF EXCHANGE is dishonoured by *Non-Acceptance* —

"(a) When it is duly presented for Acceptance, and such an Acceptance as is prescribed by this Act is refused, or cannot be obtained; or

- (b) When presentment for Acceptance is excused, and the Bill is not accepted”  
 (s. 43, Bills of Ex. Act, 1882).  
 A Bill, or Note, is dishonoured by *Non-Payment* —  
 “(a) When it is duly presented for payment, and payment is refused or cannot be obtained: or  
 (b) When presentment is excused and the Bill (or Note) is overdue and unpaid”  
 (ss. 47, 89, *Ib.*).

In a Notice of Dishonour to say that a Bill of Exchange has been “dishonoured,” implies a due presentment and that it has not been paid by the Acceptor (*Lewis v. Gompertz*, 9 L. J. Ex. 182; 6 M. & W. 399; *Shelton v. Braithwaite*, 7 M. & W. 438). *Cp.* HONoured.

For the Rules as to Notice of Dishonour; *V.* ss. 48, 49, 50, Bills of Ex. Act, 1882; and as to s. 49 (12 *b*), *V. Fielding v. Corry*, 1898, 1 Q. B. 268; 67 L. J. Q. B. 7; 77 L. T. 453; 46 W. R. 97.

*V.* DAYS OF GRACE.

**DISMES.** — “Dismes are Tithes” (*Elph.* 573).

**DISORDERLY.** — Disorderly *Houses*; — “The following houses are Disorderly Houses, that is to say, common bawdy houses, common gaming houses, common betting houses, disorderly places of entertainment” (*Steph. Cr.* 122). A house kept as a BROTHEL is none the less a Disorderly House because no indecency or disorderly conduct is perceptible from its exterior (*R. v. Rice*, 35 L. J. M. C. 93; L. R. 1 C. C. R. 21). *Vf.* Arch. Cr. 1138, 1139. *Vh.* ELIGIBLE.

In a Notice of Objection to the Renewal of an Alehouse License, “Disorderly House” refers to the character that has attached to the house, and not to that of the applicant who, if a new tenant, may be irreproachable (*R. v. Miskin Higher Jus.*, 1893, 1 Q. B. 275; 67 L. T. 680; 41 W. R. 252; 57 J. P. 263); and it is good proof that a house is of a “Disorderly” character that there are against it three convictions of former occupiers (*R. v. Glamorganshire Jus.*, 9 Times Rep. 81).

Disorderly *Inn*; — “A Disorderly Inn is an Inn kept in a disorderly manner and suffered to be resorted to by persons of bad character for any improper purpose” (*Steph. Cr.* 125). *Vf.* Rose. Cr. 702.

Disorderly *Person*; *V.* IDLE AND DISORDERLY PERSON.

Disorderly *Places of Entertainment*; *V.* 25 G. 2, c. 36, ss. 2, 4; 21 G. 3, c. 49, ss. 1, 2; stated *Steph. Cr.* 124, 125.

**DISPARAGEMENT.** — *Vh.* Co. Litt. 80 a; Termes de la Ley.

**DISPATCH.** — *V.* DESPATCH: DESPATCHED.

**DISPENSARY.** — “The main purpose of a ‘Dispensary’ is the distribution of MEDICINE” (per Ld Watson, *Dilworth v. Commr of Stamps*, 1899, A. C. 107; 68 L. J. P. C. 4). *V.* HOSPITAL.

Quà Dispensary Houses (Ir) Act, 1879, 42 & 43 V. c. 25, " 'Dispensary,' means, a dispensary house for the Medical Officer of any Dispensary District appointed under the Medical Charities Acts"; and " 'Dispensary Residence,' means, a dwellinghouse for any such Medical Officer" (s. 2).

**DISPENSE.** — Medicine dispensed; *V.* MEDICINE.

**DISPLACE.** — If a master agrees to make compensation if he "displace" his servant, he will be liable thereon if he voluntarily does anything that puts it out of his power to continue the employment, — *e.g.* transfers his business (*Stirling v. Maitland*, 34 L. J. Q. B. 1; 5 B. & S. 840).

**DISPONE.** — As to the importance of "dispone" in the operative words of a Scotch Conveyance; *V.* *Alexander v. Kirkpatrick*, L. R. 2 H. L. Sc. 397.

In the prohibitory clause of a Scotch Entail "dispone" has the same meaning as "alienate" (*Re Queensberry Leases*, 1 Bligh, 339). *V.* ALIENATION.

**DISPONEE.** — Stat. Def., *Scot.* 10 & 11 V. c. 48, s. 22; 31 & 32 V. c. 101, s. 3.

**DISPONER.** — *V.* SETTLOR.

Stat. Def. — *Scot.* 10 & 11 V. c. 48, s. 22, c. 49, s. 12; 31 & 32 V. c. 101, s. 3.

**DISPOSAL.** — "Disposal" frequently, if not generally, is used in the sense of regulating, ordering, conducting, and government (*Baggett v. Mew*, 13 L. J. Ch. 232).

A direction that a fund is to be at the "Disposal" of its donee, will generally negative the notion of a trust which might otherwise be gathered from the terms of the Will (*Lambe v. Eames*, 40 L. J. Ch. 447; 6 Ch. 597; *Re Adams and Kensington*, 54 L. J. Ch. 87; 27 Ch. D. 394; *Morrin v. Morrin*, 19 L. R. Ir. 37; but see these cases distinguished in *Re Italy*, 23 L. R. Ir. 130; *Vh*, 1 Jarm. 402). *Vf*, PRECATORY TRUST.

So, this word will sometimes cut down, or help to cut down, what, without it, might be an absolute gift. Thus where a testator gave his residue to his wife "for her own absolute use and benefit *and disposal*," with a gift over of what should "remain undisposed of" by her; it was held that the wife took a life interest with power of disposal by act *inter vivos* (*Re Pounder*, 56 L. J. Ch. 113; 56 L. T. 104). In the course of his judgment in that case, Kay, J., said, "If he meant her to take absolutely there was no use in referring to 'Disposal.'" But in *Re Jones* (1898, 1 Ch. 438; 67 L. J. Ch. 211; 78 L. T. 74; 46 W. R. 313), Byrne, J., distinguished the gift there from that in *Re Pounder*, and held, that a gift to a wife "for her absolute use and benefit, *so that*, during her lifetime for the purpose of her maintenance and support, she shall have the fullest



power to sell and dispose of my said estate absolutely." with a gift over of "such parts of my said estate as she shall not have disposed of, as aforesaid," was an absolute gift, and that the gift over failed. But can the two cases be distinguished? *Vf, Espinasse v. Luffingham*, 3 J. & La T. 186: *Anon.*, Kelynge, W. 6: DISPOSE OF: DISPOSITION: LEFT.

A bequest to a wife "to and for her own absolute use and disposal *during her life*," is an absolute gift and not one merely for life (*Re Bush*, W. N. (85) 61).

#### V. SOLE.

The "Disposal" of Chattels may be perfected by gift and manual delivery (*Farington v. Parker*, L. R. 4 Eq. 116).

**DISPOSE OF.**—A devise to A. "to dispose of," or "give," at pleasure passes the fee (*Jennor and Hardies' Case*, 1 Leon. 283: *Time-well v. Perkins*, 2 Atk. 103: *Bridgewater v. Bolton*, 6 Mod. 111: *Doed. Herbert v. Thomas*, 3 A. & E. 123).

A Power enabling a woman "to dispose of" property "as she thinks fit," when following a life interest to her which she is restrained from alienating, would seem only exercisable by Will and not by writing *inter vivos* (*Archibald v. Wright*, 7 L. J. Ch. 120; 9 Sim. 161).  
LEAVE.

But a gift of real and personal estate to a wife, "for the term of her natural life, *to be disposed of* as she may think proper for her own use and benefit, according to the nature and quality thereof," and "in the event of her decease, *should there be anything remaining* of the said property or any part thereof," then, as to "the said part or parts thereof." over; held, that the wife had no power of disposition by Will; and that on her death the gift over took effect: the Court of Appeal also expressed a strong opinion that the wife took only a life estate in the property, with the power of enjoying the property in specie (*Re Thomson, Herring v. Barrow*, 49 L. J. Ch. 622; 14 Ch. D. 263: *Sc, Re Mortlock*, 26 L. J. Ch. 671; 3 K. & J. 456; 30 L. T. O. S. 90).

Where there is a gift in fee, but in case the donee shall die "and shall not have disposed of *and parted with*" the property, then over; the limitation over is valid and will take effect in opposition to any testamentary disposition by the donee, because those words connote a conveyance that would have its complete effect and operation in his lifetime:—that would be so if "parted with" were the sole phrase used, and its apposition to "dispose of" colours that latter phrase which, probably, without such colouring, would mean, a perfect disposition in the donee's lifetime, especially when the phrase is "shall not have disposed of," which *semble*, means "shall not *already* have disposed of" (*Doed. Stevenson v. Glover*, 14 L. J. C. P. 169; 1 C. B. 448).

"Dispose of" lands, ss. 127, 128, Lands C. C. Act, 1845, means "TRANSFER"; and does not relate to the mere application of the lands

to a purpose other than that for which they were acquired (*Astley v. Manchester, S. & L. Ry*, 27 L. J. Ch. 478; 2 D. G. & J. 453).

*V.* NEGOTIATE.

Not "to grant away, assign, or let, charge, or dispose of," in a covenant in a Lease; *V. Croft v. Lumley*, 25 L. J. Q. B. 73, 223; 27 Ib. 321; 6 H. L. Ca. 672.

"Assigning . . . or disposing of the land leased"; *V.* ASSIGN.

"Absolutely sell and dispose of"; *V.* ABSOLUTELY SELL.

*V.* ALIENATION: DISPOSITION: HEREINBEFORE: TRANSFER.

Hiding the DEAD BODY of a child between the bed and the mattress, was to "dispose of" it, within s. 14, 9 G. 4, c. 31 (*R. v. Goldthorpe*, 2 Moody, 244).

Attempt to sell or dispose of; *V.* ATTEMPT.

**DISPOSING POWER.** — Where an obligation is CHARGED on property over which a person, *e.g.* a Jdgmt Debtor, has "any Disposing Power," (s. 13, Judgments Act, 1838), the meaning is that the property to be charged is confined to such as the person could honestly, and without breach of duty, have charged (*Kinderley v. Jerris*, 25 L. J. Ch. 538; 22 Bea. 1: *Beavan v. Oxford*, 25 L. J. Ch. 299; 6 D. G. M. & G. 492: per Kay, L. J., *Re Leavesley*, 1891, 2 Ch. 1; 60 L. J. Ch. 385; approving jdgmt of Erle, J., *Watts v. Porter*, 23 L. J. Q. B. 345; 3 E. & B. 743). Therefore, a CHARGING ORDER under the section cited "puts the Creditor who has obtained it precisely in the position of an ordinary Execution Cr. as defined in *Whitworth v. Gaugain*," 13 L. J. Ch. 288; 15 Ib. 433; 3 Hare, 416; 1 Phill. 728 (per Kay, L. J., *Re Leavesley*, sup), and his priority is not displaced by want of Notice to trustees or other holders of the property (*Beavan v. Oxford*, sup; *Kinderley v. Jerris*, sup; *Pickering v. Ilfracombe Ry*, 37 L. J. C. P. 118; L. R. 3 C. P. 235); nor is the Order invalidated by the lunacy of the person against whom it is obtained (*Re Leavesley*, sup).

The power which a settlor had to defeat his voluntary settlement by a sale, 27 Eliz. c. 4, was not a "Disposing Power" (*Beavan v. Oxford*, sup); such a power was taken away by 56 & 57 V. c. 21.

*V.* AGREED.

**DISPOSITION.** — "A devise *at the disposition* of A. carries the fee" (Sug. Pow. 104: *Vf* DISCRETION).

"Sale, Mortgage, or other Disposition" of heritable estate, so as to attract Legacy Duty under 48 G. 3. c. 149, Sch. Part 3; *V. A-G. v. Wyndham*, 1 H. & C. 563; 32 L. J. Ex. 1: *Cp. Denn v. Diamond*, cited SALE.

"Sale, Pledge, or other Disposition," s. 9, Factor's Act, 1889; *V. Kitto v. Bilbie*, cited DELIVERY: *Taylor v. Kymer*, 3 B. & Ad. 320; *Shenstone v. Hilton*, cited BUY.

A mere DECLARATION of Trust is not a "Disposition" within s. 40, Fines and Recoveries Act, 1833 (*Green v. Paterson*, 32 Ch. D. 95; 56 L. J. Ch. 181; 54 L. T. 738; 34 W. R. 724), because by that section a Disposition to bar an Entail must be one "effectual to pass a LEGAL ESTATE in fee simple" (per Stirling, J., *Carter v. Carter*, 65 L. J. Ch. 90; 1896, 1 Ch. 62). But a Declaration of Trust by a Married Woman, by deed acknowledged and her husband joining, is a sufficient Disposition to give her a Separate Estate in her Freeholds (*Pride v. Bubb*, 41 L. J. Ch. 105; 7 Ch. 64; 25 L. T. 890; 20 W. R. 220), and such a Declaration is a valid Disposition, in Equity, of Copyholds, under s. 77, Fines and Recoveries Act, 1833 (*Carter v. Carter*, sup.).

Generally, a Declaration of Trust is a Disposition of property, at least in Equity (per Jessel, M. R., *Richards v. Delbridge*, 43 L. J. Ch. 459; L. R. 18 Eq. 11). *V. DISPOSITIONS.*

"Disposition" and "Devolution by Law" are contrasted in s. 2, Succession Act, 1853 (*V. SUCCESSION*), and the Predecessor is determined by considering whether the Succession is by "Disposition" or by "Devolution by Law" (*Zetland v. Ld Advocate*, 3 App. Ca. 505), in which case (p. 520) Selborne, C., said, that "Devolution by Law, takes place whenever the title is such that an heir takes under it by descent from an 'Ancestor' according to the rules of law applicable to the descent of heritable estates." *Vf*, on "Disposition," *A-G. v. Sibthorp*, 28 L. J. Ex. 9; *Braybrooke v. A-G.*, 9 H. L. Ca. 150; 31 L. J. Ex. 177; *A-G. v. Montefiore*, 21 Q. B. D. 461; 59 L. T. 534; 4 Times Rep. 658.

"Disposition," s. 21 (1), Finance Act, 1894; *V. A-G. v. Dodington*, cited SETTLEMENT.

"Disposition of Property"; *V. DISPOSITIONS: EVASION.*

"Disposition" of Realty, s. 4, 6 Anne (1r), c. 2; *V. Re O'Byrne*, 15 L. R. Ir. 189, 373.

Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "Disposition," includes, Transfer and Charge" (s. 95).

*V. VOLUNTARY DISPOSITION: POSSESSION, ORDER, OR DISPOSITION.*

**DISPOSITIONS.** — As to meaning of "Dispositions" of property within s. 153, Comp Act, 1862; *V. Re Oriental Bank*, 54 L. J. Ch. 322; 28 Ch. D. 634; 52 L. T. 167.

"Dispositions of Lands," s. 47, Fines and Recoveries Act, 1833; *V. Bankes v. Small*, 36 Ch. D. 716; 56 L. J. Ch. 832; 57 L. T. 292; 35 W. R. 765; 3 Times Rep. 740: DISPOSITION.

**DISPOSSESSION.** — "Dispossession, or Discontinuance of Possession," s. 3, Real Property Limitation Act, 1833, means the ABANDONMENT of possession by one entitled to it (*Rimington v. Cannon*, 22 L. J. C. P. 153; 12 C. B. 18), followed by actual possession by another (*Smith v. Lloyd*, 23 L. J. Ex. 194; 9 Ex. 562; *McDonnell v. McKinty*, 10 Ir.

L. R. 514); ignorance on the part of the rightful owner that such adverse possession has been taken making no difference (*Rains v. Buxton*, 49 L. J. Ch. 473; 14 Ch. D. 537; 28 W. R. 954).

Acts of user which do not interfere, and are consistent, with the purpose to which the owner intends to devote the land, do not amount to Discontinuance of Possession by him (*Leigh v. Jack*, 5 Ex. D. 264; 49 L. J. Ex. 220); Dispossession "involves an *animus possidendi* with the intention of excluding the owner as well as other people" (per Lindley, M. R., *Littledale v. Liverpool College*, 69 L. J. Ch. 89, cited DISCONTINUANCE).

Small acts by the rightful owner will disprove "Dispossession or Discontinuance," — e.g. small repairs (*Leigh v. Jack*, sup), or, as regards a boundary wall, an inscription claiming it (*Phillipson v. Gibbon*, 40 L. J. Ch. 406; 6 Ch. 428).

*Vh*, Watson, Eq. 574, 575; and for a full examination of the cases on "Dispossession" and "Discontinuance," *V*. 35 S. J. 715, 742, 750.

*V*. DISSEISIN: DISCONTINUANCE.

**DISPUTE.** — A clause providing for an ARBITRATION "should any Dispute arise," includes Disputes of law as well as of fact (*Forwood v. Watney*, 49 L. J. Q. B. 447); and also a non-feasance, e.g. the withholding a certificate (*Re Hohenzollern Co*, 54 L. T. 596; 2 Times Rep. 294, 470). So, in a contract of services, quā a claim for wrongful dismissal (*Renshaw v. Queen Anne Mansions Co*, 1897, 1 Q. B. 662; 66 L. J. Q. B. 496; 76 L. T. 611; 45 W. R. 487; explaining *Davis v. Starr*, 58 L. J. Ch. 808; 41 Ch. D. 242; *Renshaw v. Q. A. M.*, followed in *Parry v. Liverpool Malt Co*, 1900, 1 Q. B. 339; 69 L. J. Q. B. 161; 81 L. T. 621). *Vh*, s. 4, Arb Act, 1889.

So, the recovery by a Local Authority of Expenses summarily, "or (in case of dispute) by Arbitration," s. 150, P. H. Act, 1875, means that if there is a dispute of any kind (and it is duly notified) the Local Authority must go to arbitration and cannot otherwise recover the expenses (*Sandgate v. Keene*, 1892, 1 Q. B. 831; 61 L. J. Q. B. 775; *Vthe, West Hartlepool v. Robinson*, 77 L. T. 387; 46 W. R. 218; 62 J. P. 35); and the amount of the Award must be recovered summarily under s. 150, or (if under £50) in the Co. Co. under s. 261 (*Re Willesden and Wright*, 1896, 2 Q. B. 412; 65 L. J. Q. B. 567; 75 L. T. 13; 44 W. R. 676; 60 J. P. 708). *Note*: As to what is a sufficient written Notice of such Dispute, under s. 257, *V. Folkestone v. Brooks, Same v. Ladd*, 1893, 3 Ch. 22; 62 L. J. Ch. 863; 69 L. T. 403. S. 268, P. H. Act, 1875, gives Appeal against these Expenses to the Loc Gov Board, and thereon, and as to that being the only Appeal, *V. Derby v. Grudgings*, cited APPORTION: *Walthamstow v. Staines*, 1891, 2 Ch. 606; 60 L. J. Ch. 738; 65 L. T. 430.

A claim based on a non-agreement, as well as one based on an actual conflict *ad idem*, is a "Dispute" (*Clemson v. Hubbard*, 45 L. J. M. C.

69; 24 W. R. 312; 40 J. P. 725; followed in *Charles v. Plymouth Works Mtgees*, inf: *Gruinger v. Agusley*, 50 L. J. M. C. 51; 6 Q. B. D. 182; 29 W. R. 242; 45 J. P. 142: decided on ss. 3 and 4, 38 & 39 V. c. 90). Where such a "Dispute" relates to a WORKMAN absenting himself, the whole absence up to proceedings brought is but one Dispute and cannot be split up so as to recover before Justices two amounts of damages (*James v. Evans*, 1897, 2 Q. B. 180; 66 L. J. Q. B. 742; 77 L. T. 78; 45 W. R. 654; 61 J. P. 631).

As to meaning of "Dispute" for the purpose of the *Building Societies Acts*; *V. 47 & 48 V. c. 41*, s. 2, interpreted by *Western Suburban and Notting Hill By Socy v. Martin*, 55 L. J. Q. B. 382; 17 Q. B. D. 609, 54 L. T. 822; 34 W. R. 630; 2 Times Rep. 672: *Municipal Permanent By Socy v. Richards*, 39 Ch. D. 381; 58 L. J. Ch. S. J. CAPACITY.

For the Building Society cases apart from legislative interpretation; *V. as regards Societies Incorporated under the Act of 1874*, *Wright v. Monarch By Socy*, 46 L. J. Ch. 649; 5 Ch. D. 726: *Hack v. London Prov. By Socy*, 52 L. J. Ch. 541; 23 Ch. D. 106; 31 W. R. 392: *Municipal By Socy v. Kent*, 53 L. J. Q. B. 290; 9 App. Ca. 260: and, as regards *Unincorporated Societies*, *Mulkern v. Lord*, 48 L. J. Ch. 745; 4 App. Ca. 182; 27 W. R. 510: *Morrison v. Glover*, 19 L. J. Ex. 20; 4 Ex. 430: *R. v. Trafford*, 24 L. J. M. C. 20; 4 E. & B. 122: *Farmer v. Giles*, 30 L. J. Ex. 65; 5 H. & N. 753.

A "Dispute," within those Acts or the Friendly Societies Acts and a Society's Rules, must be one relating to the internal affairs of a Society arising between the Officers and its Members; and, therefore, does not include a controversy as to whether a person is a Member or not (*Prentice v. London*, L. R. 10 C. P. 679; 44 L. J. C. P. 353; 33 L. T. 251: *Willis v. Wells*, 1892, 2 Q. B. 225; 61 L. J. Q. B. 606; 67 L. T. 316; 41 W. R. 64; 56 J. P. 775: *Vthe, Stone v. Liverpool Marine Socy*, 63 L. J. Q. B. 471); in this respect s. 10 (1), Friendly Soc Act, 1895, repld s. 68, Friendly Soc Act, 1896, makes no difference (*Palliser v. Dale*, 1897, 1 Q. B. 257; 66 L. J. Q. B. 236; 76 L. T. 11; 45 W. R. 291).

"Dispute" seems not to have received any statutory interpretation for the purposes of the *Friendly Societies Acts*: *Vh, Re United Patriots Socy*, 48 L. J. M. C. 55; 4 Q. B. D. 29; 27 W. R. 339; 39 L. T. 622: *Huckle v. Wilson*, 2 C. P. D. 410; 26 W. R. 98; *Ex p. Wooldridge*, 26 J. P. 469; *Jones v. Slee*, 32 Ch. D. 585; 55 L. J. Ch. 908; 55 L. T. 129; 34 W. R. 692; 2 Times Rep. 625: *Stone v. Liverpool Marine Socy*, sup: *R. v. Richardson*, 1894, 2 Q. B. 323; 63 L. J. M. C. 212; 58 J. P. 640.

"Dispute," ss. 3, 4, Employers and Workmen's Act, 1875. 38 & 39 V. c. 90; *V. Charles v. Plymouth Works Mtgees*, 60 L. J. M. C. 20; 64 L. T. 466; 39 W. R. 122; 55 J. P. 469.

"Dispute," s. 48, *Savings Bank Act*, 1863, 26 & 27 V. c. 87; *V. Re Cardiff Savings Bank*, 4 Times Rep. 10.

"Sum in Dispute"; *V. SUM CLAIMED.*

*V. DIFFERENCE: DECISION.*

**DISPUTE AS TO THE AMOUNT.**—A statutory direction to refer to arbitration any "Dispute as to the Amount," will be confined to questions of amount only, and will not embrace a case where the liability is in dispute (*R. v. Metropolitan Commrs of Sewers*, 22 L. J. Q. B. 234; 1 E. & B. 694; *Bradby v. Southampton*, 24 L. J. Q. B. 239; 4 E. & B. 1014; *R. v. Burslem*, 29 L. J. Q. B. 242; 1 E. & E. 1077; and *V. per Willes, J.*, in *this* for obs on *Bradford v. Hopwood*, 6 W. R. 818).

**DISQUALIFICATION.**—*V. HOUSE OF COMMONS.*

*V. QUALIFICATION.*

**DISQUALIFIED.**—A person is "disqualified" for an Office if personally ineligible, or he may be so disqualified if some condition precedent to his election or appointment has not been fulfilled (*Howes v. Turner*, 45 L. J. C. P. 550; 1 C. P. D. 670).

"Become disqualified"; *V. DISABLED FROM ACTING.*

The Disqualifications of Municipal Councillors are prescribed by ss. 12 and 39, 45 & 46 V. c. 50; and as to Penalty, *V. s. 41, Ib.* A person disqualified for Election is Disqualified for Nomination (*Harford v. Lynskey*, cited *CANDIDATE*).

"Disqualified by Sex"; *V. SEX.*

*V. QUALIFIED TO ELECT: DULY.*

**DISRAELI'S ACT.**—The Representation of the People Act, 1867, 30 & 31 V. c. 102.

**DISSEISIN.**—"Disseisina is a putting out of a man out of seisin, and ever implyeth a wrong. But dispossessing or ejection, is a putting out of possession, and may be by right or by wrong" (Co. Litt. 153 b; *Va, Ib.* 181 a; 3 Bl. Com. 169; *Taylor v. Horde*, 1 Burr. 108-111; *Doe d. Atkyns v. Horde*, 2 Cowp. 701).

"Re-Disseisin" is a repetition of the offence (Cowel).

*Cp.*, *DEFORCEMENT: DISPOSSESSION: OUSTER: ABATE. V. RESTITUTION.*

**DISSENT.**—Notice of Dissent, s. 161, Comp Act, 1862; *V. NOTICE.*

**DISSENTER.**—*V. RECUSANT: PROTESTANT.*

**DISSOLUTE.**—Dissolute Person; *V. INFERIOR TRADESMAN.*

**DISSOLUTION.**—*V. INSTRUMENT OF DISSOLUTION.*

**DISTANCE.**—By the Parliamentary Voters Registration Act, 1843, 6 V. c. 18, s. 76, distances for the purposes of that Act are to be "measured

in a straight line on the horizontal plane." That rule is now applicable to all Acts of Parliament passed since the 31st Dec 1889 (s. 34, Interp Act, 1889). Indeed, without enactment, it would seem a universal rule for all Acts, without distinction (*Lake v. Butler*, 24 L. J. Q. B. 273; 25 L. T. O. S. 128; 19 J. P. 692; *Jewell v. Stead*, 25 L. J. Q. B. 294; 6 E. & B. 350).

A similar, though more amplified, rule obtains for the general measuring of distance. This rule was laid down by the Exchequer Chamber in *Mouflet v. Cole* (42 L. J. Ex. 8; L. R. 8 Ex. 32), wherein the prior authorities, somewhat conflicting, were cited; and it is now established that, where there are no special controlling words, distance is not to be measured by the nearest available mode of access, but "as the crow flies," *i.e.* by the shortest line that can be drawn from one place to another on a map without regard to the curvature or inequalities of the surface of the earth; and where the distance is to be ascertained between houses, the measurement is to be taken from the nearest point of the one house to the nearest point of the other, without regard to where the doors are situated. *Vf, Duignan v. Walker*, 28 L. J. Ch. 867; Johns. 446. *See, Myers v. Lond. & S. W. Ry*, cited MILE.

So, quà an Agreement not to practise as a Solicitor within a stated distance of a Town, the measurement has to be taken from the stipulator's office to the nearest part of the town, and not to its centre (*Catth v. Thorpe*, W. N. (1900) 83).

Where, in order to secure proper Ventilation of Buildings, a Distance from buildings is prescribed which is to be left clear, that means that every part of each bg must have that distance left clear, although in some other way an open space which might be regarded as sufficient may have been provided (*Anderton v. Birkenhead*, 32 L. J. M. C. 137; 13 C. B. N. S. 603).

For an example of a special provision for measuring distance; *V. Atkyns v. Kinnier*, 19 L. J. Ex. 132; 4 Ex. 776: TRAVELLER.

*V. PRESCRIBED.*

**DISTILLER.** — Stat. Def., Spirits Act, 1880, s. 3: " 'Distiller's Warehouse,' means an approved WAREHOUSE on the premises of a Distiller " (Ib.).

**DISTINCT.** — "Distinct Properties," quà Inhabited House Duty; *V. A-G. v. Westminster Chambers Assn*, cited HOUSE. Each Flat separately used as a dwelling, is a "Separate Dwelling" within the exemption provided by s. 26 (2), 53 & 54 V. c. 8, though its access is by a common front door, entrance hall, and staircase (*Seaman v. Lee*, 68 L. J. Q. B. 593; 63 J. P. 499). *Vf, Lee v. Gansel*, Cowp. 8; *Yorkshire Insce v. Clayton*, cited DIVIDE.

"Distinct" Trusts, s. 5, Conv Act, 1882; *V. Re Hetherington*, 56 L. J. Ch. 174; 34 Ch. D. 211; 55 L. T. 806; 35 W. R. 285.

"*Separate and Distinct Building*," 59 G. 3. c. 50; *V. R. v. Henley-upon-Thames*, 6 L. J. M. C. 76; 6 A. & E. 294; 1 N. & P. 445.  *Cp*, "Every Building," sub BUILDING.

"*Separate and Distinct Dwelling-House*," quâ Pauper Settlement, 6 G. 4. c. 57. s. 2; *V. R. v. Usworth*, 5 L. J. M. C. 139; 5 A. & E. 261; 6 N. & M. 811: *R. v. Wootton*, 3 L. J. M. C. 98; 1 A. & E. 232: *R. v. Ripon*, 14 L. J. M. C. 102; 7 Q. B. 225: *R. v. Husthwaite*, 21 L. J. M. C. 189: *R. v. Caverswall*, 8 L. J. M. C. 57; 10 A. & E. 270: *R. v. St. Lawrence*, 14 L. J. M. C. 56; 6 Q. B. 842: *R. v. Elswick*, 3 E. & E. 437; 30 L. J. M. C. 66.

"As a distinct Covenant"; *V. SEPARATE COVENANT*.

"Distinct Occasions," s. 503 (3), Mer Shipping Act, 1894; *V. The Schawan*, cited INEVITABLE.

#### DISTINCTION. — *V. MARK*.

**DISTINCTIVE.** — A "Distinctive" *Device*, Mark, &c, to constitute a TRADE-MARK (s. 10, Trade Marks Registration Act, 1875, 38 & 39 V. c. 91; *V. now Patents, Designs and Trade Marks Act, 1883*, ss. 64, 67, but s. 64 is amended by s. 10, 51 & 52 V. c. 50) "must be a Mark or Device of such kind as, in case of infringement, it shall be clear what it is that is being infringed, and that the mark is something distinct from all other marks used in the same class of goods" (per Lopes, L. J., *James v. Parry*, 55 L. J. Ch. 915; 33 Ch. D. 392; 55 L. T. 415; 35 W. R. 67); and that case establishes that a device or mark is none the less distinctive because it is a pictorial representation of the article; but Colour alone will not make a device "distinctive" (*Re Hanson*, 57 L. J. Ch. 173; 37 Ch. D. 112; 57 L. T. 859; 36 W. R. 134). So, a portrait of the owner of a Trade-Mark is "distinctive" (*Rowland v. Mitchell*, 1897, 1 Ch. 71; 66 L. J. Ch. 110); but a Word or combination of Letters is not a "Device" (*Ex p. Stephens*, cited FIGURES). *Vf*, *Re Anderson*, 54 L. J. Ch. 1084; 26 Ch. D. 409; *Re Hudson*, 55 L. J. Ch. 531; 32 Ch. D. 311: *Re Bryant and May*, 59 L. J. Ch. 763; *Re Wright & Co*, 1900, 2 Ch. 218; 69 L. J. Ch. 589; 83 L. T. 150.

"SPECIAL and Distinctive Word" in same sections; *V. Re Palmer*, 21 Ch. D. 47; 24 Ib. 504; 51 L. J. Ch. 673: *Re Leonard and Ellis*, 26 Ch. D. 288; 53 L. J. Ch. 603; 32 W. R. 530; *Re Wood*, 32 Ch. D. 247; 55 L. J. Ch. 377: *Burland v. Broxburn Co*, 58 L. J. Ch. 816; 42 Ch. D. 274; 61 L. T. 618; 6 Pat. Ca. 482: *Bodega Co v. Owens*, 23 L. R. Ir. 371: per Lds Halsbury and Morris, *Perry-Davis v. Harbord*, 15 App. Ca. 316; 60 L. J. Ch. 16: *Richards v. Butcher*, 1891, 2 Ch. 522; 60 L. J. Ch. 530: *Re Hopkinson*, 1892, 2 Ch. 116; 61 L. J. Ch. 387: *Re Smokeless Powder Co*, 1892, 1 Ch. 590; 61 L. J. Ch. 391; 40 W. R. 507.

*V. FANCY WORD: WORD: NAME: INDIVIDUAL.*

Name printed, &c "in some Particular and Distinctive MANNER,"



s. 64 (1*a*), Patents, &c Act, 1883, amended as above, does not connote that it is to be done in a precise and distinct manner; the manner indicated is one that is distinctively peculiar (*Re Holt*, 1896, 1 Ch. 711; 65 L. J. Ch. 142, 410; 74 L. T. 225; 44 W. R. 369).

**DISTRESS.**—"A distress is one of the most ancient and effectual remedies for the recovery of rent. It is the taking, without legal process, cattle or goods as a pledge to compel the satisfaction of a demand, the performance of a duty, or the redress of an injury. The act of taking, the thing taken, and the remedy generally, having been called a Distress; an inaccuracy which the older text-writers usually avoided" (Woodf. 442): *Vh*, Bullen on Distress: Redman ch. 6: Fawcett 217 *et seq*: 4 Encyc. 290-309: DAMAGE FEASANT: DAY: LEVV: OUTER DOOR.

A power in gross (apart from statute) to recover interest, gas rent, or other sum by "Distress" will not confer the peculiar powers of a Landlord's Distress, which, in bargains *inter partes*, must be based on a tenancy (*Jolly v. Arbuthnot*, 28 L. J. Ch. 547; 4 D. G. & J. 224). And if a statute merely gives power to levy, *e.g.* gas or water rent, by "Distress," that will not give a Landlord's Distress (*Ex p. Hill*, 46 L. J. Bank. 116; 6 Ch. D. 63); *secus*, if the statutory power is to levy "by the same means as landlords may recover rent in arrear" (*Ex p. Birmingham and Staffordshire Gas Co*, 40 L. J. Bank. 52; L. R. 11 Eq. 615; *Re Peake*, 53 L. J. Ch. 977; 13 Q. B. D. 753), or if a like phrase is made applicable to a RENT CHARGE (*Johnson v. Faulkner*, 2 Q. B. 925; 11 L. J. Q. B. 193).

In the power to levy for Poor Rate "by Distress and sale of the offender's goods" (43 Eliz. c. 2, s. 4), "Distress" means "Execution"; and accordingly Beasts of the Plough may be taken thereunder (*Hutchins v. Chambers*, 1 Burr. 579); but the postponement of a Bill of Sale to a "Distress under a warrant for the recovery of TAXES, and Poor and other PAROCHIAL RATES," s. 14, Bills of S. Act, 1882, does not apply to an Execution under a jdgmt for a General District Rate, *e.g.* under s. 261, P. H. Act, 1875 (*Wimbledon v. Underwood*, 1892, 1 Q. B. 836; 61 L. J. Q. B. 484; 67 L. T. 55; 40 W. R. 640; 56 J. P. 633).

The bailiff, and not the landlord, is the "person making any Distress" within s. 49, Agricultural Holdings (England) Act, 1883, 46 & 47 V. c. 61, and is therefore entitled to the percentage prescribed by the statute (*Phillips v. Rees*, 59 L. J. Q. B. 1; 24 Q. B. D. 17; 38 W. R. 53; overruling *Coode v. Johns*, 55 L. J. Q. B. 475; 17 Q. B. D. 714; 55 L. T. 290; 35 W. R. 47). *V. AGIST.*

"By any Distress, Action, or Suit," s. 42, 3 & 4 W. 4, c. 27; *V. BY.*

The power to recover Tithe Rent Charge under a contract made prior to the Tithe Act, 1891, "by Distress and *not otherwise*" (subs. 3, s. 1), is by distress alone; no action therefor can be maintained (*Church v. Maxsted*, 67 L. J. Q. B. 823).

The New South Wales statute, 5 V. No. 17, s. 41, which provides that "no Distress for rent shall be made, or levied, or proceeded in," after an Insolvency Order or Sequestration, only applies quâ the assets in the Insolvency, and not to goods belonging to third parties, *e.g.* goods in a Bill of Sale given by the Insolvent and claimed by the Holder (*Railton v. Wood*, 59 L. J. P. C. 84; 15 App. Ca. 363; over-ruling *Cohen v. Slade*, 12 New S. Wales Rep. 88). *Cp.* ALL INTENTS AND PURPOSES.

*V.* PUBLIC TRADE: SUFFICIENT DISTRESS.

Stat. Def. — *Scot.* 37 & 38 V. c. 15, s. 4. — *Ir.* 51 & 52 V. c. 47, s. 3; 56 & 57 V. c. 36, s. 3.

**DISTRESSED.** — Where the rules of a FRIENDLY SOCIETY limit its benefits to members who are in "Distressed CIRCUMSTANCES," that phrase, though capable of many interpretations, means, that a recipient must be one who has no sufficient independent means of livelihood (*Re Buck*, 1896, 2 Ch. 727; 65 L. J. Ch. 884; 75 L. T. 312; 45 W. R. 106). *Vf* PUBLIC CHARITY.

"Distressed *Seamen*"; *V.* PASSENGER.

**DISTRIBUTE.** — "Amount distributed in DIVIDEND," s. 72 (1), Bankry Act, 1883, *semble*, means, the amount distributed in dividend out of Assets realized by the trustee (per Wright, J., *Re Christie*, cited REALIZED).

"Distributing MAIN"; Stat. Def., Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, Sch s. 1.

**DISTRIBUTION.** — Period of Distribution; *V.* CLASS.

Statute of Distribution, 22 & 23 Car. 2, c. 10.

**DISTRICT.** — *V.* *Re Holton*, 31 L. T. O. S. 187; *Blackpool v. Bennett*, *V.* PLY.

"District," in a Pleading alleging a CUSTOM; *V.* *Edwards v. Jenkins*, 1896, 1 Ch. 308; 65 L. J. Ch. 222.

"District" in which Notices are to be posted pursuant to s. 7 (1), Land Law (Ir) Act, 1887, 50 & 51 V. c. 33, includes, but is not confined to, the Civil-Bill District (*Birmingham v. Turner*, 24 L. R. Ir. 336).

"District" in an Agreement between Railway Cos; — "We understand the word 'District,' — in the expressions 'Each Co's own District,' and 'the District of the other Co,' — to mean, the district adjacent to a Line from which Traffic is drawn to that line; and if both Cos draw a traffic from the same district, such a district belongs to them both, and is as much the district of one as it is of the other" (*Caledonian Ry v. N. B. Ry*, 2 Ry & Can Traffic Ca. 289, 290).

*V.* PARISH.

Stat. Def. — 12 & 13 V. c. 50, s. 10; 13 & 14 V. c. 52, s. 76; Metropolitan Gas Act, 1860, 23 & 24 V. c. 125, s. 4; 28 & 29 V. c. 42, s. 2;

29 & 30 V. c. 2, s. 4; 33 & 34 V. c. 70, s. 2, c. 78, s. 3; Metropolis Water Act, 1871, 34 & 35 V. c. 113, s. 3; 48 & 49 V. c. 23, s. 23, c. 72, s. 1 (4); 53 & 54 V. c. 70, s. 92; 54 & 55 V. c. 22, s. 14; 55 & 56 V. c. 57, s. 5; 57 & 58 V. c. 57, s. 59. — *Scot.* 26 & 27 V. c. 108, s. 30; 30 & 31 V. c. 37, s. 2; 41 & 42 V. c. 43, s. 1; Criminal Procedure (Scot) Act, 1887, 50 & 51 V. c. 35, s. 1; 55 & 56 V. c. 54, s. 16; 60 & 61 V. c. 38, s. 3. — *Ir.* 26 & 27 V. c. 88, s. 3; 30 & 31 V. c. 94, s. 2; 45 & 46 V. c. 25, s. 20; 51 & 52 V. c. 53, s. 2; 52 & 53 V. c. 72, s. 18.

“District ASSESSMENT”; Stat. Def., *Scot.* 25 & 26 V. c. 101, s. 3. — *Ir.* 17 & 18 V. c. 103, s. 1.

“District ASYLUM”; Stat. Def., Lunacy Act, 1890, s. 341. — *Scot.* 20 & 21 V. c. 71, s. 3. — *Ir.* 38 & 39 V. c. 67, s. 2. *V.* LUNATIC.

District Auditor; *V.* District Auditors Act, 1879, 42 V. c. 6; 50 & 51 V. c. 72, s. 2.

“District AUTHORITY”; Stat. Def., 53 & 54 V. c. 68, s. 10.

“District BOROUGH”; Stat. Def., 31 & 32 V. c. 46, s. 3; 35 & 36 V. c. 33, Sch.

*V.* CENTRAL CRIMINAL COURT.

“District CHURCH”; Stat. Def., 28 & 29 V. c. 42, s. 2.

“District COMMITTEE”; Stat. Def., *Scot.* 41 & 42 V. c. 51, s. 3; Loc Gov (Scot) Act, 1889, ss. 77–82; 55 & 56 V. c. 54, s. 16; 60 & 61 V. c. 38, s. 3.

Corporate District; *V.* CORPORATE.

“District COUNCIL”; Stat. Def., Loc Gov Act, 1888, s. 100. — *Scot.* 60 & 61 V. c. 43, s. 8. — *Ir.* 61 & 62 V. c. 37, s. 22 (3).

“County District”; *V.* COUNTY.

“District of England”; Wales is such, quâ the Endowed Schools Act, 1869 (*Re Meyricke*, 41 L. J. Ch. 187, 553; L. R. 13 Eq. 269; 7 Ch. 500). *V.* ENGLAND.

English Channel District; *V.* ENGLISH.

“HIGHWAY District”; Stat. Def., 25 & 26 V. c. 61, s. 3; 41 & 42 V. c. 77, s. 38.

“Improvement Act District”; Stat. Def., 35 & 36 V. c. 79, s. 60, c. 94, s. 74; 38 & 39 V. c. 55, s. 4; 39 & 40 V. c. 56, s. 37.

“LIBRARY District”; Stat. Def., 53 & 54 V. c. 68, s. 10.

*V.* LICENSING.

Local Government District; *V.* *R. v. Barnes*, 13 Times Rep. 25; *Middlesex Co. Co. v. Willesden*, 12 Ib. 437. Stat. Def., P. H. Act, 1875, s. 4; 39 & 40 V. c. 56, s. 37; 48 & 49 V. c. 23, s. 23.

*V.* LONDON DISTRICT: METROPOLITAN: MUNICIPAL.

“Non-Corporate District”; Stat. Def., 11 & 12 V. c. 63, s. 2.

“District Office,” and “District Registrar,” of Probate, in Ireland; *V.* 20 & 21 V. c. 79, s. 2.

*V.* PARLIAMENTARY: PETTY SESSIONS: POLICE: POLLING: PORT, at end: PRESCRIBED.

"Proclaimed District"; Stat. Def., *Ir.* 33 & 34 V. c. 9, s. 4.

"Riparian Nuisance District"; Stat. Def., *Ir.* 36 & 37 V. c. 78, s. 4, repld Part 1, P. H. Ireland Act, 1878, *V.* s. 8.

"Rural District"; Stat. Def., 50 & 51 V. c. 48, s. 17; 51 & 52 V. c. 10, s. 14.

"Rural Sanitary District"; Stat. Def., P. H. Act, 1875, s. 5; 41 & 42 V. c. 77, s. 38; 50 & 51 V. c. 32, s. 1; 53 & 54 V. c. 59, s. 11 (3); 55 & 56 V. c. 57, s. 5. — *Ir.* 46 & 47 V. c. 60, s. 21.

"SANITARY District"; Stat. Def., 48 & 49 V. c. 72, s. 13; 53 & 54 V. c. 70, s. 93. — *Ir.* 47 & 48 V. c. 59, s. 9; 48 & 49 V. c. 39, s. 9; 56 & 57 V. c. 13, s. 7.

District SURVEYOR; *V.* Part 13, London Bg Act, 1894.

"URBAN District"; Stat. Def., 50 & 51 V. c. 48, s. 17; 51 & 52 V. c. 10, s. 14; 55 & 56 V. c. 53, s. 27. — *Ir.* 57 & 58 V. c. 38, s. 12.

"Urban Sanitary District"; Stat. Def., 38 & 39 V. c. 17, s. 108; P. H. Act, 1875, s. 5; 41 & 42 V. c. 77, s. 38; 50 & 51 V. c. 32, s. 1; 53 & 54 V. c. 59, s. 11 (3); 55 & 56 V. c. 57, s. 5, c. 59, s. 9. — *Ir.* 37 & 38 V. c. 93, ss. 2, 3; 57 & 58 V. c. 38, s. 12.

"Ventilating District"; Stat. Def., Coal Mines Regn Act, 1887, s. 49, R. 12 (*k*).

**DISTRINGAS.** — *V.* Stop Order, sub STOP.

**DISTURB.** — *V.* MOLEST.

**DISTURBANCE.** — The "Disturbance" of a Right, *e.g.* of FISHERY, or of MARKET, "is a very general phrase," and may be effected "either by Trespass or by Nuisance, or in any other substantial manner" (per Rigby, L. J., *Fitzgerald v. Firbank*, 1897, 2 Ch. 96; 66 L. J. Ch. 529). *Vf.* *Holford v. Pritchard*, 18 L. J. Ex. 315; 3 Ex. 793.

*V.* INTERRUPTION: ANNOYANCE: POLITICAL.

**DISUSED BURIAL GROUND.** — *V.* BURIAL.

**DITCH.** — *V.* DRAIN: POND: POOL.

As used in 23 H. 8, c. 5, *semble*, a Ditch "is a kind of current of waters *in infimo gradu*," useable for small boats in winter, but generally dry in summer (Callis, 81). *Cp.* POND: POOL. *Vh.* FENCE: 4 Encyc. 319.

As to the ownership of ditches between fields; *V.* Redman, 240, 241: Woodf. 655: *Marshall v. Taylor*, 1895, 1 Ch. 641; 64 L. J. Ch. 416.

**DIVERT.** — *V.* ILLEGALLY.

**DIVES' COSTS.** — These were costs paid voluntarily by a successful plt suing *in formâ pauperis*, and which he was allowed to tax against his defeated opponent (*Carson v. Pickersgill*, 54 L. J. Q. B. 484; 14 Q. B. D. 859). Pauper Costs are now substituted: on *whv* R. 31, Ord. 16, R. S. C.

**DIVEST.** — “ ‘Devest,’ is a word contrary to ‘INVEST’; for as an Invest signifieth to deliver the possession of a thing, so Devest signifieth the taking away of the possession ” (*Termes de la Ley*). But, probably, it is more accurate to say that “Divest” is the antithesis of “VEST” when that latter word is used in the sense primarily of giving the property in the subject-matter, — such vesting attracting the possession, or, at least, the right of possession of the subject-matter; the change of possession, even coupled with the right to possession, not necessarily working a divesting. Thus, when a Sheriff seizes goods under a *fi. fa.*, the property in the goods remains in the Execution Debtor though the possession of them is held by the Sheriff; so, of a BAILMENT (per *Ld Tenterden, Giles v. Grover*, 9 Bing. 280); those observations being prefaced by this remark, — “Property cannot be divested out of one person without being vested in another.”

As to what is an Agreement to “divest or alienate” the right of the OCCUPIER to kill GROUND GAME, or to give him an “Advantage” for forbearing to exercise the right, s. 3, 43 & 44 V. c. 47; *V. Sherrard v. Gascoigne*, 1900, 2 Q. B. 279; 69 L. J. Q. B. 720; 82 L. T. 850; 48 W. R. 557: VOID, towards end.

**DIVIDE: DIVIDED.** — A testamentary gift “to be divided” between two or more, means an equal division and creates a Tenancy in Common (*Chapman v. Peat*, 1 Ves. sen. 542; *Ackerman v. Burrows*, 3 V. & B. 54), *à fortiori* of the phrase “EQUALLY to be divided” (*Rigden v. Vallier*, 2 Ves. sen. 252; 3 Atk. 731). The word “Divide” is so strong in this connection that where the direction was “to pay, assign, and divide” a sum to certain legatees “as joint tenants,” yet Stuart, V. C., held that a tenancy in common was created (*Booth v. Alington*, 27 L. J. Ch. 117; 5 W. R. 811). But for a consideration of the cases where the word “Divide” or “Divided” has itself been otherwise controlled by a context, *V. 2 Jarm.* 260–262. To be “divided” amongst CHARITIES, “by no means, necessarily, infers equality” (per *Eldon, C., Mills v. Farmer*, 19 Ves. 490).

“To be divided,” is of no value as a context to prevent “EFFECTS” from including Realty (per *Kay, L. J., Hall v. Hall*, 61 L. J. Ch. 293; 1892, 1 Ch. 361).

A testamentary direction to “divide” realty, does not *per se* give an implied power of sale (*Cornick v. Pearce*, 7 Hare, 477).

“To pay and divide”; *V. PAY*.

Shall not “divide any Cause of Action,” s. 81, Co. Co. Act, 1888; *V. CAUSE OF ACTION*.

“Divided PARISH”; *V. Roberts v. Aulton*, 2 H. & N. 432; nom. *Aulton v. Roberts*, 26 L. J. Ex. 380.

The qualified exemption from Inhabited House Duty, given by s. 13 (1), 41 V. c. 15, where a house is “divided into and let in different tenements,” is not affected by the fact that the house is divided into two or more parts, each of which is let to a different tenant.

ments," only applies where the house is structurally divided (*A-G. v. Westminster Chambers Assn*, on *whv Grant v. Langston*, both cases cited HOUSE: *Yorkshire Insrce v. Clayton*, 51 L. J. Q. B. 82; 8 Q. B. D. 421); but, *semble*, "a carpenter's division may be just as effectual as a bricklayer's" (per Wright, J., *Hoddinott v. Home & Colonial Stores*, 1896, 1 Q. B. 169; 65 L. J. Q. B. 294; 74 L. T. 79; 44 W. R. 285). The decision, however, in *thlc* was that "let in different tenements," means, wholly so let, and that the exemption does not apply where part of the house is retained by the general lessor for his own use, and certainly not to the part so retained. V. DWELLING-HOUSE: HOUSE.

**DIVIDEND.** — " 'Dividend,' is a word used in the Statute of Rutland, 10 Edw. 1, where it is provided that the Chamberlaines of the Exchequer shall not make to the Sheriffes, or any of their Baylifes, Dividends, — unlesse they first receive of them particulars, in which particulars he would have such Dividends parted " (Termes de la Ley).

"The word 'Dividend' carries no spell with it. Applicable to various subjects, it is not intelligible without knowing the matter to which it is meant as referring"; but its ordinary meaning is, share of profits (per Knight-Bruce, L. J., *Henry v. G. N. Ry*, 27 L. J. Ch. 1; 1 D. G. & J. 606). A "Preference" Dividend is substantially interest, to this extent, that the failure of profits wherewith to pay it in one year will *primá facie* be made good out of any profits that may be made in a subsequent year (*Henry v. G. N. Ry*, sup.: *Sturge v. Eastern Union Ry*, 7 D. G. M. & G. 158; *Crawford v. N. E. Ry*, 3 K. & J. 723; *Matthews v. G. N. Ry*, 28 L. J. Ch. 375; 5 Jur. N. S. 284; 7 W. R. 233; 32 L. T. O. S. 355; *Webb v. Earle*, L. R. 20 Eq. 556; 44 L. J. Ch. 608). V. CUMULATIVE: PROFITS.

Profits in a *private* trading partnership, the deed of which provides that "Dividends" shall be made from time to time as the managing partners shall direct, are not "Dividends" within the *Apportionment Act*, 1870, 33 & 34 V. c. 35, s. 5 (*Jones v. Ogle*, 42 L. J. Ch. 334; 8 Ch. 192; 21 W. R. 239). From the language of the L. C. in that case, it would seem that no profits, except those arising in respect of a PUBLIC COMPANY, can be "Dividends" within the meaning of the Act, or otherwise apportionable thereunder. *Vh*, the obs of Malins, V. C., in *Capron v. Capron*, 43 L. J. Ch. 677; L. R. 17 Eq. 288; *Va, Re Cox*, 47 L. J. Ch. 735; 9 Ch. D. 159; *Pollock v. Pollock*, 44 L. J. Ch. 168; L. R. 18 Eq. 329, correcting *Whitehead v. Whitehead*, L. R. 16 Eq. 528. Bonuses in a Public Co are "Dividends" within the Act, though only occasional and not strictly periodical (*Re Griffith*, 12 Ch. D. 655). Where on death of a Tenant for Life, Stock is sold "*Cum Div*," generally, there is no apportionment; to effect that, there must be special circumstances (*Bulkeley v. Stephens*,

1896, 2 Ch. 241; 65 L. J. Ch. 597; 74 L. T. 409; 44 W. R. 490). *Vf*,  
FIXED PERIOD: PERIODICAL: ACCRUE.

Stat. Def. — 32 & 33 V. c. 102, s. 46; 35 & 36 V. c. 44, s. 3; Lunacy  
Act, 1890, s. 341. — *Ir*. 34 & 35 V. c. 22, s. 2.

“Dividends”; *V*. ANNUAL PROCEEDS: RENTS AND PROFITS.

“An *indefinite* gift (by Will) of the Dividends, gives the absolute  
property of the Stock” (Wms. Exs, 1058, citing *Page v. Leapingwell*, 18  
Ves. 463: *Haig v. Swiney*, 1 Sim. & St. 487, 490: *Southouse v. Bate*,  
16 Bea. 132).

A Bequest, for life, of “Dividends” will not pass unreceived Divi-  
dends (*Shore v. Weekly*, 3 D. G. & Sm. 467; 18 L. J. Ch. 403: *Con-  
stable v. Bull*, 18 L. J. Ch. 302; 3 D. G. & S. 411); nor will “Dividends”  
pass capitalized Dividends (*Ricketts v. Harling*, 23 L. T. 760). *Vf*,  
*Archibald v. Hartley*, 21 L. J. Ch. 399.

Societies not making to its members “any Dividend, GIFT, Division,  
or BONUS in Money,” s. 1, 6 & 7 V. c. 36; *V*. *Royal Coll. of Music v.*  
*Westminster*, cited SCIENCE.

**DIVINE SERVICE.** — “Here note, that the almes and reliefe of  
poor people, being a worke of charity, is accounted in law divine service;  
for what herein is done to the poor for God’s sake, is done to God him-  
self” (Co. Litt. 96 b). *Cp*, ALMS: AUMONE: CHRISTIAN SERVICE.

But the Collection of the Offertory in Church, is not a “Divine Ser-  
vice, RITE, or Office,” for disturbing a Clergyman in which a person is  
punishable under s. 2, 23 & 24 V. c. 32 (*Cope v. Barber*, 41 L. J. M. C.  
137; L. R. 7 C. P. 393; 26 L. T. 891).

**DIVISION.** — Stat. Def., 34 & 35 V. c. 88, s. 2; 43 & 44 V. c. 19,  
s. 5. — *Ir*. 2 & 3 V. c. 74, s. 4; 21 & 22 V. c. 100, s. 3.

“County, Riding or Division”; *V*. *Evans v. Stevens*, 4 T. R. 224, 459.

“Division of a COUNTY,” “Divisions of Lincolnshire”; Stat. Def., Loc  
Gov Act, 1888, s. 100.

“Division of MANCHESTER”; Stat. Def., 17 & 18 V. c. 20, s. 2.

“Division or PLACE”; Stat. Def., Beerhouse Act, 1830, s. 32; Mun  
Corp Act, 1882, s. 246.

Gift over in case of death “before the division of my estate”; *V*.  
*Re Collison*, 12 Ch. D. 834; 48 L. J. Ch. 720.

*V*. DIVIDEND: PETTY SESSIONS.

**DIVISIONAL.** — “Provisional BUSINESS”; Stat. Def., 17 & 18 V.  
c. 20, s. 2.

“Divisional Justice”; *V*. 5 & 6 V. c. 24, s. 79; 6 & 7 V. c. 56, s. 38.

**DIVORCE.** — Divorce was (1) *à Vinculo*, or (2) *à Mensa et Thoro*:  
1 Bl. Com. 440. Since 20 & 21 V. c. 85, these are called (1) Divorce,  
or (2) JUDICIAL SEPARATION. *V*. BIGAMY.

DO.—*V.* DONE: PUT.

DO AWAY.—*V.* ASSIGN.

DO OR MAKE.—The words “Do or make WASTE,” Statute of Marlbridge, 52 H. 3, c. 23, s. 2, in legal understanding in this place, as well as in the Statute of Gloucester, 6 Edw. 1, c. 5, includes as well permissive Waste, which is waste by reason of omission or not doing, as Waste by reason of commission, as to cut down timber, trees, or prostrate houses, and the like; for he that suffereth a house to decay, which he ought to repair, doth the Waste (2 Inst. 300, cited *Woodhouse v. Walker*, 49 L. J. Q. B. 611; 5 Q. B. D. 404). *Cp.* DONE.

*V.* WITHOUT IMPEACHMENT OF WASTE.

DO OR SUFFER.—*V.* PERMIT.

DO THE NEEDFUL.—As to the authority conferred by these words; *V.* *Dawson v. Lawley*, 4 Esp. 65.

DOCK.—Was a Workman engaged “IN OR ABOUT” a “Dock” (within the def of “FACTORY,” s. 23, 58 & 59 V. c. 37; s. 7, Workmen’s Comp Act, 1897) if employed upon a Vessel in a Dock? *V.* *Flowers v. Chambers*, 1899, 2 Q. B. 142; 68 L. J. Q. B. 648; with *whc Cp Merrill v. Wilson*, 1901, 1 K. B. 35; 70 L. J. K. B. 97; *Raine v. Jobson*, 1901, A. C. 404; 70 L. J. K. B. 771. *Seemle*, the question is now answered in the affirmative by s. 104, 1 Edw. 7, c. 22.

He is so engaged if he be unloading a Vessel on to the Quay of a Dock (*Woodham v. Atlantic Transport Co*, 1899, 1 Q. B. 15; 68 L. J. Q. B. 17; 79 L. T. 395; 47 W. R. 106; *Lawson v. Atlantic Transport Co*, 82 L. T. 77; *Merrill v. Wilson*, sup). *Seemle*, it should be borne in mind that “Dock, Wharf, QUAY, WAREHOUSE” (in the def of “Factory” in Workmen’s Comp Act, 1897) only includes a locality of that kind which (not being, *per se*, a Factory) is affected by some of the provisions of the Factory Acts (*Hall v. Snowden*, 1899, 2 Q. B. 136; 68 L. J. Q. B. 645; 80 L. T. 554; 47 W. R. 486), *e.g.* one having dangerous machinery upon it (*Ib.*). Quà all those Acts, “Dock,” includes the land bounding the water, as well as the water itself (*Hennessy v. McCabe*, 1900, 1 Q. B. 491; 69 L. J. Q. B. 173; 81 L. T. 575; 48 W. R. 231; 64 J. P. 4). *Cp.* WHARF.

Quà the limitation of liability of a Harbour Conservancy Authority, “Dock,” includes, “wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing-places, and jetties” (s. 2 (4), 63 & 64 V. c. 32).

Running Powers over “Docks”; held, not to be a definition of the terminus *ad quem* but, as giving the right to run over and use the whole



of the railways in the Docks and all the appurtenances thereto (*G. N. Ry v. G. Central Ry*, 10 Ry & Can Traffic Ca. 266).

Building "used for the purposes" of a Dock; *V. PURPOSES.*

Arrival in Dock; *V. ACTUAL ARRIVAL.*

**DOCKYARD PORT.** — Stat. Def., 28 & 29 V. c. 125, s. 2.

**DOCUMENT.** — A Ledger, — including a Partnership Ledger, — is a "Document," within R. 191, Divorce Court Rules (*Carew v. Carew*, 1891, P. 360; 61 L. J. P. D. & A. 24; 65 L. T. 167).

An avouchment, whether written or printed, of the character or quality of a Chattel, is not a Document which, if false, would be a Forgery, — *e.g.* the false signature of an artist's name to a picture (*R. v. Cross, Dears. & B. 460*), or enclosing spurious goods in a wrapper imitating a trade-mark (*R. v. Smith*, 27 L. J. M. C. 225; *Dears. & B. 566*).

"Other Documents," Sch 2, Solrs Rem Ord; "Notice, Order, or other Document," s. 128, P. H. London Act, 1891; *V. OTHER*, sub *Ejusdem Generis*.

A Tithe Apportionment and Parish Map, are "Documents directed by Law to be kept with the public books, writings, and papers" of a Parish, within s. 17 (8), Loc Gov Act, 1894 (*Lewis v. Pool*, 1898, 1 Q. B. 164; 67 L. J. Q. B. 73).

Quà *Factors Act*, 1889, "Document of Title" is defined in s. 1 (4).

A PLEDGE of "Documents of Title to Goods," to be operative under s. 3, *Factors Act*, 1889, must be by a "Mercantile Agent" (*Inglis v. Robertson*, cited *MERCANTILE AGENT*).

Quà *Sale of Goods Act*, 1893, "Document of Title to Goods" has the same meaning as it has in the *Factors Acts*" (subs. 1, s. 62).

Quà *Larceny Act*, 1861, "Document of Title to Goods," and "Document of Title to Lands," are defined in s. 1.

As to "PERFECT" Documents of Title; *V. Re Salomon and Naudszus*, 81 L. T. 325.

*V. PUBLIC DOCUMENT: SHIPPING DOCUMENTS.*

**DOG.** — *V. GREYHOUND: SETTING DOG: CHATTELS: GOODS: CONTROL.*

To write of a person that he is a "Dog in the Manger," is, probably, actionable (per Denman, C. J., *Hoare v. Silverlock*, 12 Q. B. 628).

**DOG-DRAW.** — "Is an apparent deprehension of an Offender against Venison in the FOREST . . . where any man hath stricken or wounded a wild Beast by shooting at him either with Cross-bow, Long-bow, or otherwise, and is found with a hound, or other dog, drawing after him to recover the same" (Cowel, citing Manwood, c. 18).

**DOING.** — "Doing" may create a covenant, — *e.g.* "Doing suit" (*Vyryan v. Arthur*, 1 B. & C. 410), so of the phrase "Doing, Fulfilling, and Performing" (*Boone v. Eyre*, 2 Bl. W. 1312).

**DOLE.**—“ ‘Dole,’ a Saxon word signifying as much as *Parts*, or *Portio*, in Latine: it hath of old been attributed to a Meadow, and still so called as ‘Dole-Meadow,’ 4 Jac. c. 11, because divers persons had shares in it ” (Cowel). Again, “Dole” is defined as, “The share of any man in a lot meadow, or common meadow which is divided yearly and distributed by lots among the owners; *V. Co. Litt. 4 a: Spelm., Dolue: Pratt v. Groome*, 15 East, 235: *Elton on Commons*, 31: *Wms. on Rights of Commons*, 90. The owner of a dole may have a freehold in the soil (*Co. Litt. 4 a, 343 b*); or he may have only *vestura terræ* (*Tenants of Owning’s Case*, 4 Leon. 43). *Vu*, as to lot meads, *Wms. R. P., App. C*” (*Elph. 573*). ☞

“Doles” for the poor are a CHARITY, but the old administration of which is very liable to be varied by a Charity Commissioners’ Scheme; for they tend “to demoralize the poor, and benefit no one. The extension of Doles is simply the extension of mischief” (per Jessel, M. R., *Re Campden Charities*, 50 L. J. Ch. 650; 18 Ch. D. 327).

**DOLG-BOTE.**—*V. BOTE*.

**DOLI CAPAX.**—*V. CAPABLE*.

**DOMAIN.**—*V. DEMESNE*.

**DOMESTIC.**—A “Domestic” is one who resides in the house with the master he serves (*Wakefield v. The State*, 41 Texas, 558). *Cp.* DOMESTIC SERVANT: MENIAL SERVANT: SERVANT: WORKMAN.

Books are articles of “domestic Use and Enjoyment” (*Cornwall v. Cornwall*, 10 L. J. Ch. 364; 12 Sim. 303). Articles of “Domestic Use or Ornament”; *V. HOUSEHOLD*, towards end.

Watering private horses, or washing private carriages, is using the water for a “domestic Use or Purpose,” within a Water Rating Act (*Busby v. Chesterfield W. W. Co*, 27 L. J. M. C. 174; E. B. & E. 176). Indeed it may be broadly laid down that “water used for the amenities of the house, — e.g. watering a pleasure-garden attached to and occupied with the house, — may be legitimately held to be used for domestic purposes,” within the meaning of such an Act (per Smith, J., in delivering the judgment of the Court, *Bristol W. W. Co v. Uren*, 54 L. J. M. C. 103; 15 Q. B. D. 637: *Vf*, *Cooke v. New River Co*, 14 App. Ca. 698; 59 L. J. Ch. 333: *Walker v. Lambeth W. W. Co*, 63 L. J. Ch. 874; 71 L. T. 75; 58 J. P. 736: *West Middlesex W. W. Co v. Coleman*, and *Grand Junction W. W. Co v. Davies*, cited ANNUAL VALUE).

*V. BATH: WATER RATE*.

BOILER “used EXCLUSIVELY for Domestic Purposes,” s. 4, 45 & 46 V. c. 22, s. 2; 53 & 54 V. c. 35, includes one used partly for heating the Office of a non-resident merchant and partly for the Household Purposes of a resident care-taker (*Smith v. Muller*, 1894, 1 Q. B. 192; 70 L. T. 170; 58 J. P. 167).

**DOMESTIC ANIMAL.** — An ANIMAL (whether a quadruped or not, 17 & 18 V. c. 60, s. 3, and not absolutely *feræ nature*) which either by habit or special training lives in association with man, is a "Domestic Animal." Thus, linnets trained as decoy birds are domestic animals (*Colam v. Pagett*, 53 L. J. M. C. 64; 12 Q. B. D. 66; 48 J. P. 263; 32 W. R. 289), and so is a cock (*Bridge v. Parsons*, 32 L. J. M. C. 95; 3 B. & S. 382; 11 W. R. 424; 7 L. T. 784; 27 J. P. 231; *Bates v. McCormick*, 9 L. T. 175). Parrots may become, but young unacclimatized parrots are not, "Domestic Animals" (*Swan v. Sanders*, 50 L. J. M. C. 67; 29 W. R. 538; 45 J. P. 522; 44 L. T. 424); nor, *semble*, is a performing bear a "Domestic Animal" (28 S. J. 746). Neither a performing elephant (*Filburn v. People's Palace Co*, 59 L. J. Q. B. 471; 25 Q. B. D. 258), nor a caged lion (*Harper v. Marks*, 1894, 2 Q. B. 319; 63 L. J. M. C. 167; 42 W. R. 605; 70 L. T. 804; 58 J. P. 527), nor a bagged fox, or a rat, kept for the purpose of being destroyed, nor wild rabbits caught for coursing and confined and fed for 5 or 6 days before the coursing meeting (*Aplin v. Porritt*, 1893, 2 Q. B. 57; 62 L. J. M. C. 144; 69 L. T. 433; 42 W. R. 95; 57 J. P. 456), nor a tame sea-gull, used in a photographer's business (*Yates v. Higgins*, 1896, 1 Q. B. 166; 65 L. J. M. C. 31; 44 W. R. 335; 60 J. P. 88), is a "Domestic Animal." Is a monkey a "Domestic Animal"? *Vh, May v. Burdett*, 16 L. J. Q. B. 64; 9 Q. B. 101.

V. Wild Animals in Captivity Protection Act, 1900, 63 & 64 V. c. 33.

**DOMESTIC BUILDING.** — Quà London Bg Act, 1894, "Domestic Building" "includes a DWELLING-HOUSE, and any other BUILDING not being a PUBLIC BUILDING or of the WAREHOUSE class" (subs. 26, s. 5). *Cp*, s. 39, *Ib.*, quà Part 5 of the Act.

V. INHABITED.

**DOMESTIC ESTABLISHMENT.** — V. SERVANT.

**DOMESTIC FACTORY.** — "Domestic FACTORY" and "Domestic Workshop"; Stat. Def., Factory and Workshop Act, 1901, s. 115.

.DOMESTIC PURPOSES. — V. DOMESTIC.

**DOMESTIC REFUSE.** — V. REFUSE.

**DOMESTIC SERVANT.** — A "Domestic Servant" (*Faughan v. Booth*, 16 Jur. 808), or a Servant on testator's "Domestic Establishment" (*Ogle v. Morgan*, 14 Jur. 801; 16 *Ib.* 277; 1 D. G. M. & G. 359), is one who sleeps in the dwelling-house of his master; in other words, an Indoor Servant: a Gardener who gives his whole time to, and whose separate house and the furniture therein and whose house services are provided by, his master is *not* a Domestic Servant (*Ib.*). *Ff* HOUSEHOLD SERVANT.

An Hotel Page-boy, whose business is dusting the reception-rooms in the morning but who is principally employed as a messenger and in sending off telegrams and messages for the guests, is not "WHOLLY employed as a Domestic Servant," within s. 10, 55 & 56 V. c. 62 (*Savoy Hotel Co v. London Co. Co.*, cited SHOR).

A Custom-house Land Waiter, who is sometimes employed by an Ambassador as his messenger, is not "the Domestic, or Domestic Servant" of such Ambassador, within s. 3, Diplomatic Privileges Act, 1708, 7 Anne, c. 12 (*Masters v. Manby*, 1 Burr. 401).

A CONDITION, in defeasance of a gift, if the donee marries a Domestic Servant, is good (*Jenner v. Turner*, 50 L. J. Ch. 161; 16 Ch. D. 188; 43 L. T. 468; 29 W. R. 99; 45 J. P. 124).

V. DOMESTIC: MENIAL SERVANT: SERVANT: WORKMAN.

DOMESTIC WORKSHOP. — V. DOMESTIC FACTORY: WORKSHOP.

**DOMICIL: DOMICILED.** — A person's "Domicil" means, generally speaking, the place where he has his permanent home (*Whicker v. Hume*, 28 L. J. Ch. 396, 400; 7 H. L. Ca. 124: *A-G. v. Rowe*, 31 L. J. Ex. 314, 320; 1 H. & C. 31); and in that aspect "the Roman law still holds good that 'it is not by naked assertion but by deeds and acts that a Domicil is established'" (per P. C., *McMullen v. Wadsworth*, inf).

But "the word 'Domicil' has many meanings, according as it is used with reference to Succession, or for determining Rights of Belligerents, or ascertaining Trading Privileges" (per J. O., *Yelverton v. Yelverton*, 29 L. J. P. & M. 40; 1 Sw. & Tr. 574): *Vh*, Dicey on Domicil, App. Notes 1, 2, and 3: Phillimore on Domicil: Foote on Private International Jurisprudence, ch. 2: Westlake on Private International Law, ch. 14: 4 Encyc. 339-345: *Re Craignish*, 1892, 3 Ch. 180: *De Nicols v. Curlier*, 1900, A. C. 21; 69 L. J. Ch. 109: *Re Martin*, 1900, P. 211; 69 L. J. P. D. & A. 75.

"I would venture to suggest that the definition of an *acquired* Domicile might stand thus: — 'That place is properly the domicile of a person in which he has voluntarily fixed the habitation of himself and his family, not for a mere special and temporary purpose, but with a present intention of making it his permanent home, unless and until something (which is unexpected, or the happening of which is uncertain) shall occur to induce him to adopt some other permanent home'" (per Kindersley, V. C., *Lord v. Colvin*, 4 Drew. 376; 28 L. J. Ch. 366: *Vf*, per same learned judge, *Cockrell v. Cockrell*, 25 L. J. Ch. 732, cited by Stirling, J., *Re Grove*, 40 Ch. D. 226; 58 L. J. Ch. 60).

Art. 63, Civil Code of Lower Canada provides that a Marriage shall be solemnized at the place of the "Domicil," of one of the parties, to be established by a six months' residence; there "Domicil," means RESIDENCE, and does not refer to International Domicil (*McMullen v. Wadsworth*, 59 L. J. P. C. 7; 14 App. Ca. 631).

As to Domicil of an INFANT; *V. Potinger v. Wightman*, 3 Mer. 67; *Re Beaumont*, 1893, 3 Ch. 490; 62 L. J. Ch. 923.

The words "Domiciled in England," s. 6 (1 d), Bankry Act, 1883, mean, domiciled in England as distinguished from Scotland or Ireland as well as from foreign countries (*Ex p. Cunningham, Re Mitchell*, 53 L. J. Ch. 1067). *Vf*, ORDINARY RESIDENCE.

A Joint-Stock Company is only "Domiciled or ordinarily RESIDENT within the jurisdiction," R. 1, Ord. 11, R. S. C., where its head office is (*Jones v. Scottish Acc. Insree*, 55 L. J. Q. B. 415; 17 Q. B. D. 421). *Vf*, RESIDE. As to the Domicil of a Co, generally; *V. A-G. v. Jewish Colonization Assn*, 1900, 2 Q. B. 556; 69 L. J. Q. B. 692; *affd* 70 L. J. Q. B. 101.

**DOMINANT.** — Dominant Tenement; *V. EASEMENT*.

**DOMINICALES TERRÆ.** — *V. DEMESNE*.

**DOMINIONS.** — *V. BRITISH DOMINIONS*.

**DOMUS.** — *V. HOUSE*.

**DON.** — By the law of Quebec no gift beyond "Dons Modiques" is sustained from a Husband to a Wife. The Q. B. in Quebec held that gifts of jewels, and like personal matters, amounting in value to between \$5000 and \$6000 are "modest" ones when referable to a married life of more than 40 years' duration, and attended for a large portion of that time by great prosperity; — the P. C. refused to dissent from that conclusion, reached as it was by "those who dwell in the society which the law affects" (*Eddy v. Eddy*, 1900, A. C. 299; 69 L. J. P. C. 58).

**DONATIO MORTIS CAUSÂ.** — "A *Donatio Mortis Causâ* is thus defined in the Civil Law from which both the doctrine and the denomination are borrowed:—*Mortis causâ donatio est, quæ propter mortis fit suspicionem; cum quis ita donat, ut si quid humanitûs ei contigisset, haberet is, qui accepit; sin autem supervixisset is, qui donavit, reciperet; vel si eum donationis pœnituisset: aut prior decesserit is, cui donatum sit*" (Wms. Exs. 681, citing Inst. lib. 10, tit. 7); or, in other words, "Where a man lies in extremity, or being surprised with sickness, and not having an opportunity of making his Will, but, lest he should die before he could make it, he gives with his own hands his goods to his friends about him;—this, if he dies, shall operate as a legacy, but, if he recovers, then does the property thereof revert to him" (per Cowper, C., *Hedges v. Hedges*, Pr. Ch. 269).

Observe, (1) The Donor must be in his last illness (*Meredith v. Watson*, 23 L. J. Ch. 221): (2) The Gift must be (a) conditional on the donor's death by his existing disorder, (b) of GOODS, (c) delivered.

2 (b) The Goods which may be so given comprise, of course, ordinary CHATELS; but the phrase, in this connection, also includes a Bank Note (*Ashton v. Dawson*, 2 Coll. 363, n), a Bond (*ib.*: *Snellgrove v. Baily*, 3 Atk. 214; *Meredith v. Watson*, sup), an acknowledgment of indebtedness (*Moore v. Darton*, 20 L. J. Ch. 626; 4 D. G. & S. 517), a Mortgage Deed (*Duffield v. Elwes*, 1 Bligh, N. S. 497), a Life Policy (*Witt v. Amiss*, 30 L. J. Q. B. 318; 1 B. & S. 109), a Promissory Note, though not endorsed (*Veal v. Veal*, 29 L. J. Ch. 321; 27 Bea. 303), a Banker's Deposit Note (*Re Taylor*, 56 L. J. Ch. 597; *Re Farman*, 57 L. J. Ch. 637), even though such Note purports to be "not transferable" and the deposit has to be drawn by a cheque which is not presented until after the donor's death (*Re Dillon*, 59 L. J. Ch. 420; 44 Ch. D. 76; 38 W. R. 369; 62 L. T. 614). In *the* Lindley, L. J., said, "I think it may some day require consideration whether a man cannot make such a gift of his own cheque": *Vth*, *Bromley v. Bruntton*, 37 L. J. Ch. 902; L. R. 6 Eq. 275; 16 W. R. 1006; *Re Beaumont*, 50 W. R. 389; 46 S. J. 446.

2 (c) The Delivery may be antecedent to the gift (*Cain v. Moon*, 1896, 2 Q. B. 283; 74 L. T. 728; 65 L. J. Q. B. 587). But "there must be an actual tradition, or delivery, of the thing to the Donee himself, or to some one else for the Donee's use" (Wms. Exs. 684). Thus, a delivery to A. of the keys of a dressing-case with directions that, on donor's death, the keys and case are to be delivered to B., is not such a delivery as is required to make a Donatio Mortis Causâ (*Powell v. Helliar*, 28 L. J. Ch. 355; 26 Bea. 261). Yet, *semble*, that there may be symbolic delivery where the thing is not capable of immediate actual delivery (*V. GIFT*: *Mustapha v. Wedlake*, W. N. (91) 201). Still the delivery must not be of a kind as really to amount to a NUNCUPATIVE WILL (*Hills v. Hills*, 8 M. & W. 401; 10 L. J. Ex. 440; *Treasury Solr v. Lewis*, 69 L. J. Ch. 833; 1900, 2 Ch. 812; 48 W. R. 694).

*Note.*—Where there is a Donatio Mortis Causâ, the Real and Personal Representatives of the Donor are trustees for the Donee, and bound to complete the gift (*Duffield v. Elwes*, sup); "no doubt that is anomalous and would not be so in the case of a voluntary gift *inter vivos*. The Court does not give any assistance to mere volunteers in such latter cases, and would not compel either the donor or his representatives to perfect" an imperfect gift other than a Donatio Mortis Causâ (per Cotton, L. J., *Re Dillon*, sup). *V. VOLUNTEER.*

*Vf*, Wms. Exs., Pt. 11, Bk. 11, ch. 11, s. 4: 1 White & Tudor, 390-413; 4 Eneye. 347.

#### DONATION.—*V. VOLUNTARY CONTRIBUTIONS.*

**DONATIVE.**— " 'Donative,' is a BENEFICE merely given and collated by the Patron to a man without either a Presentation to the Ord-

nary, or Institution by his Ordinary, or Induction by his Commandment, F. N. B. 35 c." (Termes de la Ley). *If* Jacob.

"A Donative, is a Spiritual Preferment, — be it Church, Chapel, or Vicarage, — which is in the free gift, or collation, of the Patron, without making any Presentation to the Bishop; and without Admission, Institution, or Induction by any mandate from the Bishop, or other; but the donee may (by the Patron, or other authorised by him) be put into possession" (Phil. Ecc. Law, 252, 253: *If* Co. Litt. 344 a). *Wh, R. v. Foley*, 15 L. J. C. P. 108; 2 C. B. 664. *Cp* REPRESENTATIVE.

**DONE.** — "Act Done," s. 2, 35 G. 3, c. 101; *V. R. v. St. John, Hackney*, 4 L. J. M. C. 51; 4 N. & M. 336; 2 A. & E. 548.

The rejection of a Proof of Debt by a trustee in Bankry, is an "act done" by him, within s. 35 (2), Bankry Act, 1883, and, if unappealed, will bind the claimant even though, before the rejection, he have obtained a jdgmt for the amount of his claim (*Brandon v. McHenry*, 1891, 1 Q. B. 538; 60 L. J. Q. B. 448).

An omission to do something which ought to be done in order to complete performance of a duty imposed upon a public body under an Act of Parliament, or the continuing to leave any such duty unperformed, amounts to "an act done or intended to be done" within the meaning of a clause requiring a Notice of Action (*Jolliffe v. Wallasey*, 43 L. J. C. P. 41; L. R. 9 C. P. 62; cited by Privy Council as laying down above def, in *R. v. Williams*, 53 L. J. P. C. 71: *Va, Butler v. Bray*, Ir. Rep. 11 C. L. 181; *Wilson v. Halifax*, L. R. 3 Ex. 114; 37 L. J. Ex. 44; per Coleridge, J., *Newton v. Ellis*, 5 E. & B. 123; 24 L. J. Q. B. 337). *Sc, Act: Cp, Do OR MAKE.*

The distinction seems fine, but when a statute prescribes Notice of Action "for anything done" and that the action is to be brought within a stated time "after the fact committed" or (as in s. 8, 11 & 12 V. c. 44) "after the act complained of shall have been committed," then an action founded on an OMISSION to do something does not require previous Notice, "there must be some positive act done" to necessitate that (*Umphelby v. McLean*, 1 B. & Ald. 42; *Royal Aquarium v. Parkinson*, 1892, 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. 513; 40 W. R. 450; 56 J. P. 404). *Sv* COMMITTED.

Slandorous words are not "anything done" within such provisions (*Royal Aquarium v. Parkinson*, sup).

Observe, that the rule in *Jolliffe v. Wallasey* (sup) is not applicable to a clause of Forfeiture in a Lease; therefore, an OMISSION by a Lessee to repair, is not "an Act, Matter, or Thing done, or caused to be done," by him, within such a clause (*Doe d. Abdy v. Stevens*, 3 B. & Ad. 299); nor will the non-observance of negative covenants work a Forfeiture under the words "make default in PERFORMANCE" (*Doe d. Palk v. Marchetti*, 1 B. & Ad. 715; 9 L. J. O. S. K. B. 126).

A thing "done or suffered," working Forfeiture; *V. WOULD.*

As to what is "done or intended to be done" under P. H. Act, 1875, s. 264; *V. Ongley v. Chatham*, 3 Times Rep. 706; 4 Ib. 6:—under s. 106, Metrop Man. Act, 1862; *V. Edwards v. St. Mary, Islington*, 58 L. J. Q. B. 165.

Notice and proceedings by a Local Authority under s. 150, P. H. Act, 1875, to make-up a street, &c, is something "DULY done or suffered" under that enactment, within s. 38 (2*b*), Interp Act, 1889, even though no actual work have been done on the land by the Authority who, notwithstanding s. 25, 55 & 56 V. c. 57, may proceed with the work and recover the expenses under s. 150 (*Heston & Isleworth v. Grout*, 1897, 2 Ch. 306; 66 L. J. Ch. 647; 77 L. T. 118; 45 W. R. 697). *V. BEGIN.*

*V. PURSUANCE.*

**DONE BY.**— An act to be "done by" a person is, in general, well done by his agent (*R. v. Middlesex*, 20 L. J. M. C. 42; 1 L. M. & P. 621; *Charles v. Blackwell*, 46 L. J. C. P. 368; 2 C. P. D. 151), unless it has to be done by HIMSELF.

*V. BY: CAUSED BY: DAMAGE.*

**DONEC.**— *V. QUAMDIU.*

**DONEE.**— Is a person to whom property is given; Donor, the giver. "Donee," s. 11 (1), 52 & 53 V. c. 7; *V. per Channell, J., A-G. v. Dobree*, cited PURCHASE.

**DOSSER.**— *V. Logsdon v. Trotter*, cited COMMON LODGING-HOUSE.

**DOUBLE.**— Double COSTS; *V. Hasker v. Wood*, cited INDEMNITY.

In pre-Rowland Hill days when the use of envelopes for postal letters was costly, a "Double Letter," meant a letter consisting of two pieces of paper, e.g. "Double letters bring cash for the box" (*Hood's Miss Kilmansiegg*); and so in 1 V. c. 36, s. 47, it is defined as "a Letter having one enclosure."

Double PORTIONS; *V. PORTION: LOCO PARENTIS.*

Double RENT, s. 18, 11 G. 2. c. 19; *V. Redman*, 500: Fawcett, 517, 518.

Double VALUE, s. 1, 4 G. 2, c. 28; *V. Redman*, 498-500: Fawcett, 514-516.

**DOUBT.**— "I do not doubt"; *V. PRECATORY TRUST.*

**DOWAGER.**— "A Widow endowed: but chiefly an ADDITION, applied in general to the Widows of Princes, Dukes, Earls, and Persons of Honour" (Cowel).

**DOWER.**— "Tenant in Dower, is where a man is SEIZED of certaine lands or tenements in Fee Simple, Fee Taile Generall, or as Heire in



Special Taile, and taketh a wife and dieth, — the Wife, after the decease of her husband, shall be endowed of the third part of such lands and tenements as were her husband's at any time during the Coverture, for terme of her life, whether she hath issue by her husband or no, and of what age soever the wife be, so as she be past the age of 9 yeares at the time of the decease of her husband" (Litt. s. 36). *Vth, Co. Litt.* 30 b-41 a: per Lindley, M. R., *Re Hocking*, 1898, 2 Ch. 567; 67 L. J. Ch. 664: *Vf, Wms. R. P.* ch. 11: Goodeve, 135-141.

By s. 3, Dower Act, 1833, Seizin is not now necessary to give title to Dower, and, by s. 2, a Widow is dowable out of Equitable estates; but by s. 4 she is only dowable out of lands not "absolutely disposed of by her husband in his lifetime, or by his Will."

*Note.* As to how Dower might have been barred or prevented, *V.* 2 Bl. Com. 136: and for the Conveyancing device of Uses to Bar Dower, *V. Wms. R. P.* 252, 253.

*V. FREEBENCH: ELOPE: JOINTURE.*

**DOWN.** — *V. DUNUM: TAKE DOWN.*

**DRAIN.** — The power which a Highway Authority has, under s. 67, 5 & 6 W. 4, c. 50, to make and cleanse "Ditches, Gutters, *Drains, or Watercourses,*" does not extend to a dumbwell or shaft into which surface-water is conducted by pipes, and from which it percolates away through the subsoil (*Croft v. Rickmansworth*, 58 L. J. Ch. 14; 39 Ch. D. 272; 4 Times Rep. 706). It was there conceded that such a dumbwell was not a "Ditch" or "Gutter"; but the contention was that it was a "Drain or Watercourse"; but in deciding in the negative Cotton, L. J., said, "I do not think the verb 'to drain' has anything to do with it." Fry, L. J., said, "I think 'a Drain or Watercourse' is applied to that sort of conveyance by which you direct the course of the water, and where you can follow the course of the water, and where you can correct any mischief which arises from an impediment to a flow of the water, where you can do the repairs"; and Lopes, L. J., said, "I understand by a 'Drain' something conducting liquid away, and into and through which liquid may continuously pass"; *Vf, Croysdale v. Sunbury-on-Thames*, cited OWN PROFIT. *V. WATERCOURSE.*

Broadly speaking, "Drain," as contrasted with "SEWER," means, the duct that drains only one house; "Sewer" means the duct that serves more houses than one (*Holland v. Lazarus*, 66 L. J. Q. B. 285; 61 J. P. 262; *Green v. Newington*, 1898, 2 Q. B. 1; 67 L. J. Q. B. 557; 46 W. R. 624; 62 J. P. 564).

The definitions (adopted from the P. H. Act, 1848, s. 2) of the P. H. Act, 1875 (V. s. 4), are: —

"'Drain,' means, any drain of, and used for the drainage of, one building only, or premises within the same CURTILAGE, and made merely

for the purpose of communicating therefrom with a cess-pool, or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises, occupied by different persons, is conveyed:—

“‘Sewer,’ includes, sewers and drains of every description, except drains to which the word ‘Drain’ (interpreted as aforesaid) applies, and except drains vested (*V. VEST*) in or under the control of any Authority having the management of roads and not being a Local Authority under this Act.”

*Vh, Aeton v. Batten*, 54 L. J. Ch. 251; 28 Ch. D. 283; 52 L. T. 17; 49 J. P. 357; *Ferrand v. Hallas Bg Co*, 1893, 2 Q. B. 135; 62 L. J. Q. B. 479; 69 L. T. 8; 41 W. R. 580; 57 J. P. 692; *Travis v. Utley*, 1894, 1 Q. B. 233; 63 L. J. M. C. 48; 70 L. T. 242; 42 W. R. 461; 58 J. P. 85; *Lond. & N. W. Ry v. Runcorn*, 1898, 1 Ch. 561; 67 L. J. Ch. 28, 324; 78 L. T. 343; 46 W. R. 484; 62 J. P. 643.

For a DISTRICT which has adopted s. 19, P. H. Act, 1890, that section provides, —

“(1) Where two or more houses, *belonging to different owners*, are connected with a Public Sewer by a *Single Private Drain*, an application may be made under s. 41 of the P. H. Act, 1875 (relating to complaints as to nuisances from drains) and the Local Authority” may recover the expenses from the owner :

“(3) For the purposes of this section, the expression ‘Drain’ includes, a drain used for the drainage of more than one building.”

This alteration only applies to cases under s. 41, P. H. Act, 1875, “relating to complaints as to nuisances from drains” which arise in respect of houses “belonging to *different owners*” (*Eastbourne v. Bradford*, 1896, 2 Q. B. 205; 65 L. J. Q. B. 571; 74 L. T. 762; 45 W. R. 31; 60 J. P. 501; *n* 64 L. J. Q. B. 220). Where that state of things exists a “Single Private Drain,” means, one that does not serve the PUBLIC generally, and each of the “different owners” is liable to rectify nuisances arising from the drains to his house up to their junction with a Public Sewer (*Eastbourne v. Bradford*, *sup*; approving *Self v. Hove*, 1895, 1 Q. B. 685; 64 L. J. Q. B. 217; 72 L. T. 234; 43 W. R. 300; 59 J. P. 103, and disapproving *Hill v. Hair*, 1895, 1 Q. B. 906; 64 L. J. M. C. 164; 72 L. T. 629; 43 W. R. 651; 59 J. P. 374: *V.* these cases cited *R. v. Hastings*, 1897, 1 Q. B. 46; 66 L. J. Q. B. 80; 75 L. T. 377; 45 W. R. 109; 60 J. P. 759. In *Seal v. Merthyr Tydfil*, 1897, 2 Q. B. 543; 67 L. J. Q. B. 37; 77 L. T. 303; 61 J. P. 551, Cave, J., the senior judge who decided *Hill v. Hair*, practically abandoned it). *Note*: The Notice may be to the owners jointly (*Lancaster v. Barnes*, 1898, 1 Q. B. 855; 67 L. J. Q. B. 744; 78 L. T. 355; 46 W. R. 623; 62 J. P. 405).

With a slight addition to “Drain.” “Drain” and “Sewer” are defined in s. 250, Metrop Man. Act, 1855, in the same way as in s. 4, P. H. Act,

1875; *Vth, Bateman v. Poplar*, 56 L. J. Ch. 149; 33 Ch. D. 360; 55 L. T. 374; *Ferrand v. Hallas By Co*, sup: *Pilbrow v. St. Leonard, Shoreditch*, 1895, 1 Q. B. 33, 433; 64 L. J. M. C. 29, 130; 72 L. T. 135; 43 W. R. 342; 59 J. P. 68; *St. Martin in the Fields v. Bird*, 1895, 1 Q. B. 428; 64 L. J. Q. B. 230; 71 L. T. 868; 43 W. R. 191. As used in this section, "Drain" includes a rain-water pipe (*Holland v. Lazarus*, sup).

"Drain," s. 2 (1*b*), P. H. London Act, 1891, does not include a Public Sewer (*Fulham v. Lond. Co. Co*, cited NUISANCE).

Other Stat. Def. — Metrop Man. Act, 1862, s. 112; P. H. Act, 1890, ss. 11 (3), 19; 55 & 56 V. c. 57, s. 5. — *Ir.* 41 & 42 V. c. 52, s. 2.

V. PUBLIC DRAIN: SEWER: MAKE.

**DRAINAGE.** — "The Drainage and Improvement of Lands (Ir) Acts, 1863 to 1892," "The Drainage and Navigation (Ir) Acts, 1842 to 1857"; V. Sch 2, Short Titles Act, 1896.

"Drainage BOARD"; Stat. Def., 51 & 52 V. c. 39, s. 6 (4).

"Drainage CHARGE"; Stat. Def., 51 & 52 V. c. 39, s. 6 (4); Land Law (Ir) Act, 1887, 50 & 51 V. c. 33, s. 34; 54 & 55 V. c. 66, s. 95.

**DRAM.** — A Dram, Avoirdupois, is  $\frac{1}{16}$ th of an OUNCE (s. 14, 41 & 42 V. c. 49).

**DRAMATIC.** — By s. 2, Copyright Act, 1842, a "Dramatic Piece" means, "every tragedy, comedy, play, opera, farce, or other scenic, musical or dramatic entertainment." "These words comprehend any piece which could be called dramatic in its widest sense; any piece which, on being presented by any performer to an audience, would produce the emotions which are the purpose of the regular drama, and which constitute the entertainment of the audience" (per Denman, C. J., *Russell v. Smith*, 17 L. J. Q. B. 225; 12 Q. B. 217). Scenes and dresses are, perhaps, not absolutely essential to a "dramatic piece"; and such a composition as Mackay's Song of "The Ship on Fire" when sung with considerable expression was, in the case quoted, held to be a "dramatic piece." But in *Wall v. Taylor*, a composition called "Will o' the Wisp," the part of which that was called "dramatic" being a verse in which the performer departs from ordinary melody, and, in the words of the composition, "laughs, ha! ha! and laughs, ho! ho!" at which parts of the song some risibility by the performer ought to be indulged in, the learned judge (Day, J.), said that whether it was a "Dramatic Piece" was a question for the jury, but that that phrase would probably not include a performance where the performer merely exerted his vocal powers and did not resort to gesture or facial expression to endeavour to move the emotions of his audience: — there the jury found that "Will o' the Wisp" was not a "dramatic piece" (*Times*, 10 June 1882): But it was obviously a "MUSICAL COMPOSITION," and, being copyright, its unauthor-

ised performance gave a right to the penalty provided by s. 2, 3 & 4 W. 4, c. 15, though it was not performed at a "place of Dramatic Entertainment"; for that condition attaches only to the representation of a dramatic piece and not to the performance of a musical composition (*Wall v. Taylor*, 51 L. J. Q. B. 547; 52 Ib. 558; 11 Q. B. D. 102; *Duck v. Bates*, 53 L. J. Q. B. 97, 338; 12 Q. B. D. 79).

A *Song*, as generally understood, can, indeed, hardly ever be a "Dramatic Piece." In *Clark v. Bishop* (25 L. T. 908), "Come to Peckham Rye" was held a dramatic piece; and so in *Roberts v. Bignell* (3 Times Rep. 552) of "Oh! Jenny Dear." But in *Fuller v. Blackpool Winter Gardens Co* (1895, 2 Q. B. 429; 64 L. J. Q. B. 699; 73 L. T. 242), Kay, L. J., said, he could scarcely believe that the report of *Roberts v. Bignell* was accurate, and Smith, L. J., threw doubts on both *Clark v. Bishop* and *Roberts v. Bignell*. In *Fuller v. Blackpool Co* the Court of Appeal decided that "Daisy Bell" was *not* a dramatic piece, but was only a MUSICAL COMPOSITION, — Esher, M. R., observing that a thing may be "Dramatic" without being a "Dramatic Piece"; and said that if a Song is to be a "dramatic piece" it must, at its publication, be made dramatic by its author, and that that character cannot be given to it "by the mode in which the particular performer deals with it." The Song must be inherently "dramatic," — "I think that to constitute a Song a 'Dramatic Piece' it must be such a song as, for its proper representation, acting and, possibly, scenery form a necessary ingredient; and that if neither of these be requisite to the efficient representation of the song, it is not a 'dramatic piece.' It is an entire misnomer to call a mere common, ordinary, Music Hall Song, a 'dramatic piece'" (per Smith, L. J., *Ib.*).

"An *Opera* is a MUSICAL COMPOSITION, and is also a 'Dramatic Piece'" (per Esher, M. R., *Fuller v. Blackpool Co*, sup). It is, however (by s. 4), excluded from 51 & 52 V. c. 17.

A *Pantomime* is a "Dramatic Entertainment" within s. 2, 3 & 4 W. 4, c. 15 (*Lee v. Simpson*, 16 L. J. C. P. 105; 3 C. B. 871; 4 Dowl. & L. 666).

V. PLACE: ENTERTAINMENT: STAGE PLAY: PART.

**DRAPER.** — V. HOSIER; LADIES' OUTFITTER.

**DRAW OVER THE COUNTER.** — V. *Modlen v. Snowball*, 4 D. G. F. & J. 145; 31 L. J. Ch. 44.

**DRAWBACK.** — Quà Customs Consolidation Act, 1876, 39 & 40 V. c. 36, "Drawback," includes Bounty (s. 284).

**DRAWER.** — Drawer of a Bill of Exchange; V. BILL OF EXCHANGE: and as to the liability of a Drawer, V. s. 55 (1), Bills of Ex. Act, 1882.

**DRAWING.** — “A ‘Drawing’ (quà a Debenture Sinking Fund), properly so called, can only take place among several debentures of even date” (per Charles, J., *Finlay v. Mexican Investment Corp.*, 1897, 1 Q. B. 517; 66 L. J. Q. B. 151; 76 L. T. 257).

Drawings; *V.* BOOK: PROBATIONARY DRAWINGS.

**DRAWN.** — Guarantee of all Bills of Ex. “drawn” by A., construed by Pollock, C. B., and Martin, B. (diss. Bramwell, B.), as referring to future Bills (*Broom v. Batchelor*, 25 L. J. Ex. 299; 1 H. & N. 255).  
*V.* GIVEN.

**DREDGE.** — “Dredge,” s. 87, Thames Conservancy Act, 1894, “necessarily involves raising the gravel, sand, and other matter, dredged, — for otherwise, what is the use of dredging?” (per Smith, L. J., *Thames Conservators v. Smeed*, 66 L. J. Q. B. 721). *Cp* GET.

**DRENCH.** — “Drenchs,” in Domesday, “signifieth free tenants of a manor” (Co. Litt. 5 b).

**DRIED CHICORY.** — Quà Excise Act, 1860, 23 & 24 V. c. 113, “‘*Dried Chicory*,’ shall be construed to mean, Chicory which shall have been kiln-dried, or dried by any other means whatever, and not completely roasted to a state fit for grinding to powder; ‘*Roasted Chicory*,’ shall be construed to mean, Chicory which shall have been completely roasted to such state as last mentioned, whether the same shall have been ground or reduced to powder or not; ‘*Dryer of Chicory*,’ shall be construed to mean and include, Any person who shall kiln-dry, or dry by any other means, any Chicory, or other such vegetable matter as aforesaid; ‘*Roaster of Chicory*,’ shall be construed to mean and include, Any person who shall carry on, or continue, the process of drying Chicory, or other vegetable matter, to a state in which it shall be fit for grinding to powder” (s. 21).

**DRIFT.** — “‘Drift of the FOREST,’ is an exact view, — taken once, twice, or oftener, in a yeare as occasion shall require, — what Beasts there are in the Forest; to the intent that the Common in the Forest bee not overcharged, that the Beasts of Forreyners that have no Common there may bee avoided, and that Beasts that are not commonable may bee put out” (Termes de la Ley, citing 32 H. 8, c. 35; Manwood, c. 15).

Drift, or Hang, Net; *V.* NET.

**DRIFTWAY.** — A Drift Way is “a Right of Way, restricted to foot passengers, or restricted to foot passengers and horsemen or cattle” (per Jessel, M. R., *Cannon v. Villars*, 8 Ch. D. 421). *Vf*, WAY: BRIDLE PATH.

**DRINK** — “Article of Food or Drink”; *V.* FOOD: ARTICLE.

**DRIVE: DRIVER: DRIVING.** — To “drive” means “to make move”; *e.g.* to drive an ox, a steam-engine, or a nail (per arg. of counsel in *Taylor v. Goodwin*, inf), or a train (*McCord v. Cammell*, cited CHARGE OR CONTROL).

A “Rider” of a horse or beast is included in the word “Driver,” in the penal clause of the Highway Act, 1835, s. 78 (*Williams v. Evans*, 1 Ex. D. 277; 41 J. P. 151; 35 L. T. 864: over-ruling *R. v. Bacon*, 11 Cox C. C. 540). *Cp.*, RIDE: OVER-DRIVE.

The propulsion of a Bicycle by a person seated on, and carried by it, is “driving a Carriage” within the same section (*Taylor v. Goodwin*, 4 Q. B. D. 228; 48 L. J. M. C. 104; 27 W. R. 489; 43 J. P. 653).

Driving Cattle; *V.* CONDUCTING.

Quà Markets and Fairs Clauses Act, 1847, “Driver,” includes “the Carter, or other person having the care of any CART” (s. 3).

Quà Town Police Clauses Act, 1847, “Driver,” or “Drivers,” includes “every Conductor of any OMNIBUS” (s. 4 (2), 52 & 53 V. c. 14).

Quà Dublin Carriage Act, 1853, 16 & 17 V. c. 112, “Driver,” includes “PROPRIETOR or any person engaged at the time in driving a Hackney, Job, Stage Carriage, Cart or Job Horse” (s. 80).

**DRIVE AWAY.** — *V.* TAKE AND CARRY AWAY.

**DROG.** — Drog Fishing; *V.* *Aberdeen Arctic Co v. Sutter*, cited FAST AND LOOSE.

**DROITS.** — To constitute WRECK of the Sea, goods must have touched the ground though they need not have been left dry; goods afloat on the high sea (though within low water mark) if they have not touched the ground are Droits (*R. v. Forty-Nine Casks of Brandy*, 3 Hagg. Adm. 257: *Vf.* *R. v. Two Casks of Tallow*, Ib. 294). *Vf.* SEA-COAST.

**DROUGHT.** — “It has been held in America that an Exception of ‘Drought,’ in a Charter-Party for a Timber Cargo, does not excuse a charterer who has been prevented by want of water from bringing his timber down to the usual place of storage” (Carver, 292, 293, citing *Sorensen v. Keyser*, 52 Fed. Rep. 163).

**DROVER.** — A Drover, not only signifies a FACTOR of Cattle but, includes one who buys and sells cattle for himself (*Mills v. Hughes*, Willes, 588).

**DRUF, or DRU.** — *V.* DENE.

**DRUG.** — What is a “Drug,” within s. 6, Sale of Food and Drugs Act, 1875, is, to a great extent, a question of the circumstances, — *e.g.* Beeswax is sometimes used in the preparation of medicines, but when sold by a small country grocer, not as a drug but, in the ordinary way

or his trade, it is not a "drug" within the section (*Fowle v. Fowle*, 75 L. T. 514; 60 J. P. 758; 13 Times Rep. 12). By s. 2 of the Act " 'Drug,' shall include Medicine for internal or external use." *Cp.* POISON. Compounded Drug; *V.* COMPOUND.

**DRUGGIST.** — Chemist and Druggist; *V.* APOTHECARY: CHEMIST.

**DRUMMER.** — Quà 38 & 39 V. c. 69, " 'Drummer,' includes a Musician of any kind receiving pay in the Militia " (s. 2).

**DRUNK.** — *V.* DRUNKEN PERSON: ON THE PREMISES.

"Found drunk"; *V.* FOUND.

Drunkenness in a Sailor, justifying a forfeiture of wages, does not mean being on one or two occasions the worse for liquor but, means intoxication so repeated or in such excess as to disqualify him from the discharge of his duties (*The Ludy Campbell*, 2 Hagg. Adm. 5: *The Roebuck*, 31 L. T. 274; *The Muelcod*, 50 L. J. P. D. & A. 6; 5 P. D. 254; *Vh.* Abbott, 806: *The Highland Chief*, 1892, P. 76; 61 L. J. P. D. & A. 51).

**DRUNKEN PERSON.** — The offence of selling intoxicants to a "drunken person" under s. 13, Licensing Act, 1872, is committed by a sale to a person who is drunk, although he show no indications of insobriety, and neither the license-holder nor his servants notice that he is drunk (*Cundy v. Le Cocq*, 53 L. J. M. C. 125; 13 Q. B. D. 207; 32 W. R. 769; 51 L. T. 265; 48 J. P. 599; *See, Somerset v. Wade*, cited SUFFER); and, quà this offence, a publican is responsible for his barman, even though he have no knowledge of it and the barman has been expressly ordered not to sell to a drunken person (*Metrop Police v. Cartman*, 1896, 1 Q. B. 655; 65 L. J. M. C. 113; 44 W. R. 637; 74 L. T. 726; 60 J. P. 357). *Vf* KNOWINGLY.

Where two, — one sober and one drunk, — enter LICENSED PREMISES together and the sober man orders and pays for intoxicants for both, that is a SALE to a "drunken person," within the section (*Scatchard v. Johnson*, 57 L. J. M. C. 41; 52 J. P. 389).

"Habitual Drunkard"; *V.* HABITUAL.

**DRY.** — "Dry," *e.g.* "Dry Arsenic Acid." in a Patent Specification; *V. Simpson v. Holliday*, 5 N. R. 340; L. R. 1 H. L. 315; 35 L. J. Ch. 811.

"Dry Cleaning Works"; *V.* NON-TEXTILE FACTORIES.

**DRYER.** — "Dryer of Chicory"; *V.* DRIED CHICORY.

**DUBLIN.** — *V.* COUNTY.

Dublin Mean Time; *V.* TIME.

"Port of Dublin Corporation"; *V.* PORT, towards end.

**DUE.** — A DEBT is “due” when it is payable (per James, V. C., *Re European Life Assn*, 39 L. J. Ch. 326; L. R. 9 Eq. 122).

A debt is still “due” notwithstanding that the Statute of Limitations may have run against it, for that statute only bars the remedy and does not extinguish the debt; and in an Account asked for by the debtor he cannot avail himself of the statute (*Ex p. Cawley*, 34 S. J. 29).

Notwithstanding the Apportionment Act, 1870, 33 & 34 V. c. 35, s. 2, a testamentary direction to forgive a tenant “all rent or arrears of rent which may be due *and owing* from him at the time of my decease,” only extends to the rent due at the quarter-day immediately preceding the testator’s death (*Re Lucas*, 55 L. J. Ch. 101; 54 L. T. 30). *Cp.*, *Re Howell*, cited ACCRUE.

Gift over in event of death before a Share becomes “due *and payable*”; *V. Re Willmott*, 38 L. J. Ch. 275; L. R. 7 Eq. 532.

On a weekly hiring, wages are not “due” to a child, young person, or woman, within s. 11, Employers and Workmen Act, 1875, until the end of the week; *seems*, of piece-work to be paid for weekly: “due” in this section means “earned” (*Warburton v. Heyworth*, 50 L. J. Q. B. 137; 6 Q. B. D. 1; distinguishing *Gregson v. Watson*, 34 L. T. 143).

But where Articles give a Company a lien upon a shareholder’s shares for any moneys “due” from him, that means “presently payable,” and gives no lien for a current Bill (*Re Stockton Iron Co*, 45 L. J. Ch. 168; 2 Ch. D. 101); so the right to refuse transfer if shareholder is “*indebted*” to the Co, cannot be exercised quā a Call made after the receipt by the Co of the transfer instrument (*Re Cawley & Co*, 58 L. J. Ch. 633; 42 Ch. D. 209).

Policy insuring principal money “due under the Debentures” of a Co; *V. Finlay v. Mexican Investment Corp*, cited DRAWING.

RENT is “due” “at the beginning of the day on which it is payable, though the tenant has the whole of that day in which to pay it” (per Erle. J., *Dibble v. Bowater*, 2 E. & B. 570); therefore, a seizure by a landlord on that day to prevent a fraudulent removal of goods to avoid a Distress, is justified by s. 1, 11 G. 2, c. 19, because there is then rent “*reserved or due*,” although not then in arrear (*S. C.* 2 E. & B. 564; 22 L. J. Q. B. 396).

Rent “due and payable in advance, if required”; *V.* ADVANCE.

Bequest of “Rent, and Arrears of Rent, due”; *V.* RENT, towards end.

*V.* DEBT: DEBTS DUE: FOUND: MONEY DUE: OWING: PAYABLE: FINAL DISCHARGE: DUES: NOW.

**DUE ATTESTATION.** — *V.* ATTEST.

**DUE ALLOWANCE.** — An Agreement to make “a Due Allowance,” from interest on a loan, if there should be a deficiency of profits in the trade for which the loan is made, is so vague that it is inoperative



as a contract for "a Rate of Interest varying with the Profits," s. 1, 28 & 29 V. c. 86, repled s. 2 (3*d*), Partnership Act, 1890; and the Lender is not to be postponed to the other creditors of the Borrower (*Re Vinev*, 1892, 2 Q. B. 478; 61 L. J. Q. B. 836; 67 L. T. 70; 41 W. R. 138).

**DUE CAUSE.** — The "Due Cause" which has to be shown for the removal of an Official Liquidator (s. 93, Comp Act, 1862), is not *confined* to objections personal to the liquidator, but extends to any cause which renders it desirable, in the interest of the Company or the creditors, that the liquidator should be removed and another person substituted; and, therefore, a duly secured offer by a disputed creditor to pay in full the undisputed creditors of an insolvent Co if his nominee be appointed official liquidator, is "due cause" for removing an official liquidator already appointed, and appointing such nominee instead (*Re Adam Eyton, Lim.*, 36 Ch. D. 299; 57 L. J. Ch. 127; 3 Times Rep. 738; *Re British Nation Assree*, 20 W. R. 651).

And, probably, that rule would be applied to the interpretation of "due cause" as used in s. 141 of the same Act. No doubt *Sir John Moore Co.* (12 Ch. D. 325; 28 W. R. 203) decided that, under the latter section, "due cause shown" was not equivalent to "if the Court shall think," and pointed to some unfitness of the liquidator to be removed thereunder; yet the Court there said that they used the word "unfitness" "in a wide sense of the term." And as it seems difficult to read "due cause" differently in s. 141 from the way in which it is used in s. 93, it would seem that there would be an unfitness — a personal unfitness, — in retaining a liquidator under s. 141 if so doing would be inimical to the interests of the Co or its creditors. In that way, it is submitted, the two cases cited will stand together, and that both are applicable for determining what is "due cause" under each of the sections referred to (*See Buckl.* 358). *V. Re Sunlight Incandescent Co*, 69 L. J. Ch. 873; 1900, 2 Ch. 728.

V. CAUSE: GOOD CAUSE: SPECIAL.

**DUE COURSE.** — V. HOLDER IN DUE COURSE: PAYMENT IN DUE COURSE.

**DUE COURSE OF ADMINISTRATION.** — A direction in a Will that on the death of a life tenant without children, a fund is to be disposed of "in a Due Course of Administration" does not, on the event happening, give the fund to the next-of-kin according to the statute, but the fund falls into the residue (*Scott v. Moore*, 13 L. J. Ch. 283; 14 Sim. 35; Wms. Exs. 988, 989).

**DUE DILIGENCE.** — A covenant to do a thing "with all due and reasonable Diligence and Despatch," is not excused from performance if it can be done; even though the jury find that it cannot be done by

any reasonable application of labour, diligence, skill, money, or other means (*Jervis v. Tomkinson*, 26 L. J. Ex. 41; 1 H. & N. 195).

There is no general time rule as to what is "Due Diligence" in "commencing" litigation after a THREAT respecting a Patent, within the proviso to s. 32, 46 & 47 V. c. 57; each case will depend on its own circumstances (*Barrett v. Day*, 43 Ch. D. 435; 38 W. R. 362; *Colley v. Hart*, 59 L. J. Ch. 308; 44 Ch. D. 179; 62 L. T. 424; 38 W. R. 501); but an action is not commenced with "due diligence," within that proviso, if not commenced till 9 months after the threat (*Johnson v. Edge*, 1892, 2 Ch. 1; 61 L. J. Ch. 262; 66 L. T. 44; 40 W. R. 437). *V. PROSECUTE.*

"Shall with Due Diligence prosecute" proceedings to judgment, s. 4, Poor Law (Payment of Debts) Act, 1859, 22 & 23 V. c. 49; *V. Rhodes v. Pateley Bridge*, 51 L. T. 235; 48 J. P. 168.

"Due Diligence" by owner to make ship SEAWORTHY, connotes the obligation, not only on the owner, but also on his agents (*Dobell v. Rossmore Co*, 1895, 2 Q. B. 408; 64 L. J. Q. B. 777; 73 L. T. 74; 44 W. R. 37).

"Due Diligence" in transshipping, quâ a Bill of Lading; *V. Carali v. Xenos*, 2 F. & F. 740.

*V. REASONABLE DILIGENCE.*

**DUE INQUIRY.** — *V. INQUIRY.*

**DUE NOTICE.** — Quâ Thames Preservation Act, 1885, 48 & 49 V. c. 76, " 'Due Notice,' means, a Notice IN WRITING given by the Conservators, or any person duly authorised in Writing by them to act in their behalf" (s. 29).

*V. NOTICE.*

**DUE REGARD.** — "Due Regard" to educational interests of persons entitled to privileges, ss. 11, 39 (4), Endowed Schools Act, 1869, 32 & 33 V. c. 56; *V. Re Sutton Coldfield Grammar School*, 7 App. Ca. 91; 51 L. J. P. C. 8; 45 L. T. 631; 30 W. R. 341; *Re Hodgson's School*, 3 App. Ca. 857; 47 L. J. P. C. 101; 38 L. T. 790; *Ross v. Charity Comrs*, 7 App. Ca. 463; 51 L. J. P. C. 106; 47 L. T. 172; *Re Hemsworth Grammar School*, 12 App. Ca. 444; 56 L. T. 212; 35 W. R. 418; 3 Times Rep. 439; *Re Christ's Hospital*, cited EDUCATIONAL ENDOWMENT. *Vf*, Tudor Char. Trusts, 605, 606.

**DUE TIME.** — After consecration of the Elements and before and during their Reception (in the Communion Office), is a "Due Time" for singing a Hymn, within s. 7, 2 & 3 Edw. 6, c. 1 (*Read v. Lincoln Bp.*, 1892, A. C. 644; 62 L. J. P. C. 1; 67 L. T. 128).

Bequest to such of testator's Nephews and Nieces as should be living at his decease, "or BORN in Due Time thereafter, as and when they shall

severally attain the age of 21 years"; held, by Kay, J., that those to take were all his nephews and nieces (attaining 21) who were living at his decease, or should be born thereafter before any of them attained 21; and that, this being a case of a gift to children of third persons, "due" could not refer to the period of gestation, but had reference to the terms of the gift, and meant "born in time to participate in its benefit" (*Re Wass*, W. N. (82) 158).

**DUES.** — In a Lessee's covenant "Dues" has, probably, the same meaning as "DUTIES"; thus, where a lessee covenanted "to pay all Rates, Taxes, and Dues, whatsoever," he was held liable to the expense of curing defective drainage under P. II. London Act, 1891 (per Stonor, Co. Co. J., *Wuggett v. Armytage*, 100 Law Times, 40). *Vf* TAXES.

Quà, and by, s. 7, Rating Act, 1874, 37 & 38 V. c. 54, " 'Dues,' means, Dues, Royalty, or Toll, either in Money or partly in Money and partly in Kind; and the amount of Dues which are reserved in Kind, means the Value of such dues."

Shipping Dues; Stat. Def., 30 & 31 V. c. 15, s. 3. *Vf* PILOTAGE.

**DUFFING.** — To charge a Pawnbroker with "Duffing," *i.e.* replenishing or doing up damaged pledges, and re-pledging them, — is actionable (*Hickinbotham v. Leach*, 11 L. J. Ex. 341; 10 M. & W. 361; 2 Dowl. N. S. 270).

**DULLNESS.** — "Dullness of Intellect"; *Vf* UNSOUND MIND.

**DULY.** — The addition of the adverb "duly" to a verb will not, generally speaking, supply the omission of a material fact which ought to be stated, and which may or may not exist independently of that which is averred to be "duly" done (*R. v. Lyme Regis*, 1 Doug. 79; *Everard v. Paterson*, 6 Taunt. 645; 2 Marsh. 304; *Williams v. Germaine*, 7 B. & C. 468; *Brazier v. Jones*, 8 Ib. 124); but it does signify that the action has been done legally, in due course, and according to the provisions of the law (*Nightingale v. Wilcorson*, 10 B. & C. 202; *Dudlow v. Watchorn*, 16 East, 42).

"Duly administered"; *Vf* PERJURY.

"Duly and legally appointed"; *Vf* *R. v. Anderson*, cited SERVED.

Sheriff "duly Arrested," means that the Sheriff duly acted under authority enabling him, and was not a trespasser (*Butcher v. Stewart*, 12 L. J. Ex. 391; 11 M. & W. 857).

"Duly attested"; *Vf* ATTEST.

Company "duly constituted"; *Vf* CONSTITUTED.

"When the statute, 6 V. c. 18, s. 100, speaks of a Document to be transmitted by the Post 'duly directed' to the person to whom it is to be sent, it can only contemplate a direction in the ordinary way, *i.e.*

written on the outside" (per Coltman, J., *Birch v. Edwards*, cited DUPLICATE).

"Things duly *done*," within a saving clause of a repealing Act; *V. R. v. West Riding Jus.*, 45 L. J. M. C. 97; 1 Q. B. D. 220: DONE.

Will "duly EXECUTED"; *V. WRITING.*

A clause in a Lease provided for its forfeiture if the lessee should be "duly *found and declared a bankrupt*"; the lessee committed an act of bankruptcy and was found and declared a bankrupt, but the petitioning creditors were A. and B., whereas they should have been A., B., and C.; held, by Pollock, C. B., and Platt, B. (Parke, B., diss.), that the lessee was not "duly" found and declared bankrupt (*Doe d. Lloyd v. Ingleby*, 15 M. & W. 465).

"Duly *honoured*"; *V. HONOURED.*

Rents "duly *In Charge*"; *V. IN CHARGE.*

Person "duly *licensed*"; *V. LICENSED PERSON: RENEWAL.*

"Having first duly *paid* rent and *performed* covenants"; *V. HAVING.*

"Duly *paid*," is not the equivalent of "PUNCTUALLY paid"; the first phrase is satisfied if the payment is made soon enough to amount to a SATISFACTION (*Benabo v. James*, 109 Law Times, 408).

An applicant for an Off License under s. 8, 32 & 33 V. c. 27, need not reside in the premises and personally conduct the business there, in order that the house be "duly *qualified* as by law is required" within subs. 4, 1b. (*R. v. De Rutzen*, 1 Q. B. D. 55; 45 L. J. M. C. 57; 24 W. R. 343; 33 L. T. 726; 40 J. P. 150).

"Duly *qualified*"; *V. QUALIFIED: INFAMOUS CONDUCT.*

Apprentice to "duly and truly *serve*"; *V. SERVE.*

A Cheque is not "duly *stamped*," s. 54, Stamp Act, 1870, repld s. 30, Stamp Act, 1891, unless it is stamped when drawn; and if that be not done, no one else, except the Banker, can affix an adhesive stamp on it (*Hobbs v. Cathie*, 6 Times Rep. 292). "Properly stamped"; *V. PROPERLY.*

A Coroner's Inquisition "duly *taken*," s. 2, 25 G. 2, c. 29, "implies, not only care and diligence in the taking but, the taking under such circumstances as make it proper that it should be taken" (per Denman, C. J., *R. v. Carmarthenshire Jus.*, 10 Q. B. 800; *R. v. Gloucestershire Jus.*, 7 E. & B. 805; 27 L. J. M. C. 15).

**DUM.** — "*Dum* also maketh a limitation; as if a lease be made, *dum sola fuerit*, or *dum sola et casta vixerit*. *Dummodo* is also a word of limitation; as *dummodo solveret talem redditum*" (Co. Litt. 234 b).

As to the insertion, or not, of the *Dum sola et casta* Clause in Separation Deeds, or in an Order for Permanent Alimony in Divorce Proceedings; *V. USUAL*, towards end: *Wasteneys v. Wasteneys*, 1900, A. C. 446; 69 L. J. P. C. 83.

**DUNCE.**—To say of a lawyer that “he is a Dunce, and will get little by the Law,” is SLANDER; for “‘Dunce,’ in common intendment and speech, is taken for one of dull capacity and apprehension, and not fit for a Lawyer” (*Peard v. Johnes*, Cro. Car. 382).

**DUNUM.**—“*Dunum* or *duna* signifieth a hill or higher ground, and therefore commonly the townes that end in *dun*, have hills or higher grounds in them which we call downs. It commeth of the old French word *dun*” (Co. Litt. 4 b). *Vf* Cowel.

**DUPLICATE.**—A “Duplicate” is a document which is essentially the same as some other document, having precisely the like operation and effect (*Toms v. Cuming*, 7 M. & G. 88; 14 L. J. C. P. 67, espy jdgmt of Maule, J.); it was, accordingly, there held that an Examined Copy of a Notice of Objection to a Voter was not a “Duplicate” of the Notice, within s. 100, 6 V. c. 18. There is no Duplicate Notice within that section if it has not the external address of the person objected to (*Birch v. Edwards*, 5 C. B. 45; 17 L. J. C. P. 32: *Vf*, *Lewis v. Roberts*, 11 C. B. N. S. 29; 31 L. J. C. P. 52).

“The *Counterparts*, or *Counterpanes*, of an Indenture, are the two pieces of one entire parchment (or paper) on which the contract between the parties is engrossed *in duplicate*,—the piece sealed by one party being delivered to the other. The two parts put, or considered as put, together constitute the contract by deed. In common parlance, however, the *Counterpart* or *Counterpane*, sealed by the party from whom the estate, &c, moves, is called the *Original*, and the *Counterpart* or *Counterpane*, sealed by the party accepting the estate, &c, is called the *Counterpart*. When both *Counterparts*, or *Counterpanes*, are sealed and delivered by each party (which of late years has been frequently done) they are commonly spoken of as ‘Duplicate Originals’” (2 M. & G. 518, n b). *Vf* 3 Encyc. 521.

In the Schs to the Stamp Acts of 1870 and 1891, “Duplicate or Counterpart” of an Instrument is used as distinguished from the “Original.”

**DURESS.**—As to what is Duress at Common Law; *V. Cummings v. Ince*, 17 L. J. Q. B. 105; 11 Q. B. 117, and authorities there cited: *Edward v. Trevellick*, 4 E. & B. 63: *Biffin v. Bignell*, 31 L. J. Ex. 189; 7 H. & N. 877: *Williams v. Bayley*, L. R. 1 H. L. 200; 14 L. T. 802; 2 Inst. 482: *Termes de La Ley*: Jacob: 1 Bl. Com. 131: Dart, 1175. *Cp* INTIMIDATE: PRESSURE.

The Duress that will invalidate a Maritime SALVAGE Agreement is less than the Duress required at Common Law to Invalidate an ordinary agreement; if the remuneration demanded is so exorbitant as to be inequitable, that will be Duress sufficient to invalidate a Salvage agreement (*The Rialto*, 1891, P. 175; 60 L. J. P. D. & A. 71: *The Mark*

*Lane*, 15 P. D. 135; *The Medina*, 45 L. J. P. D. & A. 81; 1 P. D. 272; *The Silesia*, 50 L. J. P. D. & A. 9; 1 P. D. 177).

Marriage under Force, Fear, Terror, or Duress; *V. Clarke v. Clarke*, 65 L. J. P. D. & A. 13; 1896, P. 1; 73 L. T. 632; *Scott v. Sebright*, 56 L. J. P. D. & A. 11; 12 P. D. 21; 35 W. R. 258; *Cooper v. Crane*, 1891, P. 369; 61 L. J. P. D. & A. 35; 40 W. R. 127; *Rice v. Rice*, 72 L. T. 122.

**DURHAM.** — “The Durham County Palatine Acts, 1836 to 1889”; *V. Sch 2, Short Titles Act, 1896.*

**DURING.** — A contract for goods to be shipped “during” specified months, implies a continuous act of shipping (per *Ld Hatherley, Bowes v. Shand*, 46 L. J. Q. B. 561; 2 App. Ca. 455).

“If both or either of the parties happen during” the 6 months for commencing proceedings to be out of the Jurisdiction, s. 525 (1), *Mer Shipping Act, 1854*, repld s. 683 (2), *Mer Shipping Act, 1894*, “cannot mean during the whole of the time but, means, *during the currency of the 6 months*” (per *Blackburn, J., Austin v. Olsen*, 9 B. & S. 52; 37 L. J. M. C. 34); and “Parties” means, “the person committing the offence, and the person aggrieved” (*Ib.*).

As to meaning of “during” in s. 28, *Municipal Corp Act, 5 & 6 W. 4, c. 76*; *V. jdgmt of Bramwell, B., Lewis v. Carr*, 46 L. J. Ex. 314; 1 Ex. D. 484.

“During Business Hours”; *V. BUSINESS HOURS.*

“During the Continuance”; *V. CONTINUANCE.*

“‘During the COVERTURE’: That is, during the continuance of the marriage. For to cover in *English* is *tegere* in *Latine*; and it is so called, for that the wife is *sub potestate viri*” (*Co. Litt. 112 a; Va Ib. 32 a; 234 b*). A consideration of this reason seems to establish the proposition that coverture does not necessarily, and always, continue during the period that a wife retains her status of a married woman. She is only under Coverture whilst she is *sub potestate viri*. Thus a covenant to settle a wife’s property acquired “during the Coverture” is not operative upon property acquired after a *Judicial Separation* (*Re Insole*, 35 L. J. Ch. 177; L. R. 1 Eq. 470; *Re Coward and Adams*, 44 L. J. Ch. 384; L. R. 20 Eq. 179; *Dawes v. Creyke*, 54 L. J. Ch. 1096; 30 Ch. D. 500; 53 L. T. 292; 33 W. R. 869; *Waite v. Morland*, 38 Ch. D. 135; 57 L. J. Ch. 655; 59 L. T. 185; 36 W. R. 484); and on such a separation a restraint on alienation ceases, quā property acquired after it, but not quā property acquired before it (*Munt v. Glynes*, 41 L. J. Ch. 639; 20 W. R. 823; *Waite v. Morland*, sup), and the wife’s *choses in action*, unreduced into possession, revert to her (*Johnson v. Lander*, 38 L. J. Ch. 229; L. R. 7 Eq. 228). Similar results follow whilst a Protection Order, under s. 21, *Matrimonial Causes Act*,

1857, is in operation (*Cooke v. Fuller*, 26 Bea. 99; on *wher*, *Waite v. Morland*, sup. *Vf*, *Hill v. Cooper*, 1893, 2 Q. B. 85; 62 L. J. Q. B. 423). But it may be said that the results of the cases cited in this paragraph flow from the language employed in ss. 21, 25, Matrimonial Causes Act, 1857. *Vf* FEME.

There is frequently great difficulty in construing the words "*during the Coverture*" when those words occur in a covenant to settle contained in an ante-nuptial Marriage Settlement and the wife, *at the time of the marriage*, is possessed of other property than that mentioned in the Settlement. The question whether such other property is or is not comprised in the words is one the determination of which depends very much on the circumstances of each case and especially on the context. "The authorities seem to be such, upon the whole, as tend to show that the Settlement should be taken to apply only to property which should come *in futuro* to the wife, and not to that which was hers before" (per Ld Blackburn, *Williams v. Mercier*, 54 L. J. Q. B. 154; and his lordship there points out how easily a word or two may make all the difference). But in the same case (p. 152, *Ib.*) Selborne, C., makes the following observations: "Then — *i.e.* where the covenant comprises property which the husband shall become entitled to 'in her right' — the question would be, whether the words, 'at any time during her now intended coverture' would apply. Surely you cannot exclude from the duration of the coverture the first moment of its inception any more than you can the last moment of its continuance. The moment that the marriage is complete by the performance of that which makes the parties husband and wife, that moment the Coverture begins; and if at that moment he becomes entitled as her husband, in her right, I am totally unable to say that it is not *during* the intended coverture in a sense which the words will rightly, grammatically, and reasonably bear" (*Williams v. Mercier*, 54 L. J. Q. B. 148; 10 App. Ca. 1; 52 L. T. 662; 33 W. R. 373; 49 J. P. 484, *whv* for a discussion of the cases on this point; *V. Williams v. Mercier* distinguished, *Re Garnett*, 33 Ch. D. 300. *Vf*, *Re D'Estampes*, 53 L. J. Ch. 1117).

In *Re Edwards* (9 Ch. 97; 43 L. J. Ch. 265; *Va*, *Re Coghlan*, 1894, 3 Ch. 76; 63 L. J. Ch. 671; 71 L. T. 186; 42 W. R. 634) the phrase "during the said intended Coverture" was read into a covenant contained in a Marriage Settlement to settle all property to which the wife should become entitled after the marriage; herein adopting *Dickinson v. Dillwyn* (39 L. J. Ch. 266; L. R. 8 Eq. 546) and *Carter v. Carter* (39 L. J. Ch. 268; L. R. 8 Eq. 551), and over-ruling *Stecens v. Van Voorst* (17 Bea. 305).

"During ANY Coverture"; *V. Re Harrison*, 1894. 1 Ch. 561; 63 L. J. Ch. 385; 70 L. T. 868.

It is very difficult for a context to control "during *their Joint Lives*" to mean, "during the intended Coverture," in a Covenant to Settle

future property contained in a Marriage Settlement (*Hamilton v. Hamilton*, 1892, 1 Ch. 396; 61 L. J. Ch. 220; 66 L. T. 112; 40 W. R. 312, applying the principle of *Re Tredwell*, cited DEATH).

V. ENTITLED.

WILL "made during Coverture"; V. MADE.

It has been said that "a Lease to one generally during the Coverture of A. and B., would create but a tenancy at will, by reason of the uncertainty of the duration of the coverture" (Woodf. 167, citing Bac. Abr., *Leases*, L. 3: *Sq.*).

"During the Engagement"; V. *Kelly v. London Pavilion*, cited ENGAGEMENT.

"During her Life"; Where on a Separation Arrangement, property is settled on, or an allowance is made to, the Wife "during her life," that means, generally, during her life if the separation shall last so long (*Nicol v. Nicol*, 54 L. J. Ch. 1042; 55 Ib. 437; 31 Ch. D. 524; 54 L. T. 470; 34 W. R. 283; 50 J. P. 468; 2 Times Rep. 280; *whv* for a review of the previous cases, and especially for those in which the context has shown that the wife was to take during the whole period of her natural life, whether co-habitation be resumed or not). So of a Separation Order under s. 4, 41 & 42 V. c. 19 (*Haddon v. Haddon*, 18 Q. B. D. 778). But no such condition will be implied quâ a Separation Arrangement between a man and his Concubine (*Re Abdy*, 1895, 1 Ch. 455; 64 L. J. Ch. 465; 72 L. T. 178; 43 W. R. 323); and if such a condition were there expressed it would, probably, be void (*Ex p. Nuden*, 43 L. J. Bank. 121; 9 Ch. 670).

A bequest to a wife "during such time as she may live apart from her husband" is void altogether; for the words quoted are part of the limitation of the gift and fixes its duration in an illegal way (*Re Moore*, 57 L. J. Ch. 936; 39 Ch. D. 116; 59 L. T. 681; 37 W. R. 83).

"During their Lives"; The bequest of an annuity to more than one "During their natural lives" is joint, and does not LAPSE by the death of one in the lifetime of the testator, and the survivor will take the annuity for his own life (*Alder v. Lawless*, 32 Bea. 72: *Vf* JOINT LIVES).

A devise to "A. and his heirs, during their Lives," gives A. the Fee Simple, the words italicised being repugnant (*Doe d. Cotton v. Stenlake*, 12 East, 515).

A gift of Income of Residuary Estate "during the Lives of my Children"; construed as "so long as any of my children are alive" (per Kekewich, J., *Re Clayden*, 43 S. J. 76).

"During the Pleasure"; V. At DISCRETION.

Distress "during the Possession of the Tenant," where he holds over, s. 7. 8 Anne, c. 18; V. *Wilkinson v. Peel*, 1895, 1 Q. B. 516; 64 L. J. Q. B. 178; 72 L. T. 151; 43 W. R. 302; distinguishing *Nuttall v. Staunton*, 4 B. & C. 51.



Shipment "during the *Season*"; *V. SHIPMENT.*

"During the *Term*," *V. 2 Platt*, 91-95; *Woodf.* 627, 722, 167. In a covenant in a Lease, " 'During the said term' means, during the whole term expressed to be granted, and not merely during the actual continuance of the term (*Evans v. Vaughan*, 4 B. & C. 261; 3 L. J. O. S. K. B. 213; 6 D. & R. 349; *Williams v. Burrell*, 1 C. B. 402; 14 L. J. C. P. 98; 9 Jur. 282); although it is otherwise where the covenant is implied by law" (*Woodf.* 722).

An Annuity, charged on the testator's Leaseholds "during the Term of the said Lease," extends to, and is charged upon, every Renewal obtained by the legatee of the leaseholds (*Winslow v. Tighe*, 2 Ball & Beatty, 195); for "whoever has a Lease has an interest in the Renewal; and though the Lessors are not bound to renew yet, when done, it is a continuation of the old lease" (per Bathurst, C., *Rawe v. Chichester*, Amb. 719).

A covenant that lessee shall "during the Term" hold discharged from tithes and to recoup him if same "recovered against him during the term," covers tithes for which action is brought against the lessee *after* the term (*Lanning v. Lovering*, Cro. Eliz. 916).

Where Partnership Articles prescribe for events happening "during the Term," or "during the Partnership," that means, during the specified term, or (generally) during the time the partners may continue in partnership without coming to any fresh agreement (s. 27, Partnership Act, 1890: *Essex v. Essex*, 20 Bea. 442; *Neilson v. Mossend Iron Co.*, 11 App. Ca. 298; *Cox v. Willoughby*, 13 Ch. D. 863; 49 L. J. Ch. 237; *Wh. Clark v. Leach*, 32 Bea. 14; 32 L. J. Ch. 290; *Lindley*, P. 412). So, of something to be done within a specified time *after* the Expiration of the Partnership, if that thing be not inconsistent with a Partnership at Will (*Daw v. Herring*, 1892, 1 Ch. 284; 61 L. J. Ch. 5; 65 L. T. 782; 40 W. R. 61). But where the partnership has expired and is only continued for winding-up purposes, a clause providing for the purchase of a deceased partner's share is no longer binding (*Myers v. Myers*, 60 L. J. Ch. 311).

A statement that a person has SERVED an OFFICE, or resided in a PLACE, "during" a stated *Time*, does not mean that he has served or resided "in the course of" that time but, means "in strict legal language, 'throughout the whole' " time (per Denman, C. J., *R. v. Anderson*, 16 L. J. M. C. 26; 9 Q. B. 663).

During Vacation; *V. VACATION.*

An Exception in a Charter-Party of Restraint, &c, "during the said *Voyage*," was held not to apply at the *Loading Port* (*Crow v. Falk*, 15 L. J. Q. B. 183; 8 Q. B. 467); but that case was disapproved in *Bruce v. Nicolopulo* (24 L. J. Ex. 321; 11 Ex. 134), and, probably, it is now settled that, *quà* the Exception, a Ship's Voyage begins when she starts from her Berth to go to the Loading Port and continues during her pre-

liminary transit thither and whilst loading there (*The Carron Park*, 59 L. J. P. D. & A. 74; 15 P. D. 203), but, *semble*, does not continue whilst she is engaged in discharging her cargo (*The Accomac*, cited NAVIGATION). *Vf* VOYAGE.

**DUST.** — A power to make a Bye Law for the removal of "Dust, Ashes, Rubbish, Filth, Manure, Dung, and Soil," does not extend to untrodden and unsunned Snow (*R. v. Wood*, 5 E. & B. 49). *Semble*, that Snow may be "Filth" (*Ib.*). *Vf* RUBBISH.

#### DUTCH TERMS. — *V.* ON DUTCH TERMS.

**DUTIES.** — Where a lessee covenants to bear and pay all "Duties" respecting the premises demised, that word will comprise the expense of curing defective drainage, and such like work, under s. 96, P. H. Act, 1875 (*Thompson v. Lapworth*, *Budd v. Marshall*, and *Brett v. Rogers*, all cited TAXES). *Cp.* DUES: RATE: TAXES.

A direction in a Will to pay "all Estate and other Duties, other than Settlement Estate Duties," includes only Duties on Property passing under the Will; and does not include the duty on a gift made by a testator within twelve months of his death (*Re Baxter*, 42 S. J. 611).

The right to make Deduction from Income of "Duties, or other sums, payable or chargeable on the same BY VIRTUE of any Act of Parliament," s. 146, Sch E, R. 1, Income Tax Act, 1842, includes compulsory annual contributions to a Superannuation Fund under ss. 12 and 13, 59 & 60 V. c. 50 (*Beaumont v. Bowers*, 1900, 2 Q. B. 204; 69 L. J. Q. B. 600; 83 L. T. 126; 48 W. R. 557; 64 J. P. 552).

"If A. be accountable to B. and B. releaseth him all his Duties, this is no barre in an action of Account, for duties extend to things certaine, and what shall fall out upon the account is incertaine; and albeit the Latine word is *debita*, yet duties doe extend to all things due that are certaine, and therefore dischargeth judgments in personall actions, and executions also" (Co. Litt. 291 a).

"Duties," *quà* Taxes Management Act, 1880, 43 & 44 V. c. 19; *V.* s. 5.

*Quà* Loc Gov Act, 1888, "Duties," includes Responsibilities and Obligations" (s. 100), — a def adopted for the London Gov Act, 1899 (*V.* s. 34), for Loc Gov (Ir) Act, 1898 (*V.* s. 109), for 62 & 63 V. c. 50 (*V.* s. 30), and for Loc Gov (Scot) Act, 1889 (*V.* s. 105). *Cp.* POWER.

"Ecclesiastical Duties"; Stat. Def., 61 & 62 V. c. 48, s. 13 (2, 3).

*V.* DUTY.

**DUTY.** — "Duty," s. 22 (2), Coroner's Act, 1887, is not confined to a strict legal Duty; it also comprises a Duty of imperfect obligation, *e.g.* that of an Honorary Medical Officer (*Horner v. Lewis*, cited PUBLIC HOSPITAL).

*V.* STRICT DUTY: ACCIDENT.

Quà Stamp Duties Management Act, 1891, 54 & 55 V. c. 38, “ ‘Duty,’ means, any Stamp Duty for the time being chargeable by law ” (s. 27).

V. ESTATE DUTY: PROBATE DUTY: DUTIES.

**DWELL.** — To “dwell,” “dwelling,” are expressions nearly, but not quite, equivalent to “RESIDE,” “RESIDENCE”; for to “dwell” connotes, more definitely than “reside,” a place where a person lives and sleeps (*V. per Pollock, C. B., A-G. v. McLean, 1 H. & C. 761.*)

A person may “dwell” in two or more places (*Butler v. Ablewhite, 28 L. J. C. P. 292*); and a member of parliament residing in London for about 3 months in the year would “dwell” there, as well as at his country seat (*Bailey v. Bryant, 28 L. J. Q. B. 86; 1 E. & E. 340*). A man can, however, scarcely be said to “dwell” at his place of business (*Kerr v. Haynes, 29 L. J. Q. B. 70; Shields v. Rait, 18 L. J. C. P. 120; 7 C. B. 116*); still less in a prison in which he may be temporarily incarcerated (*Dunston v. Paterson, 28 L. J. C. P. 97; 5 C. B. N. S. 267*). But a Corporation can only “dwell” where it carries on business (*Taylor v. Crowland Gas Co, 24 L. J. Ex. 233; 11 Ex. 1; 3 W. R. 368*); but that means the *principal* place where the business of the Corporation is carried on, — *e.g.* the Great Western Ry Co “dwells” at Paddington, and not at every station on its lines of railway (*Adams v. G. W. Ry, 30 L. J. Ex. 124; 6 H. & N. 404; 9 W. R. 254. Va, Shiels v. G. N. Ry, 30 L. J. Q. B. 331; 9 W. R. 739: CARRY ON*); so, of a Pier Co (*Aberystwith Pier Co v. Cooper, 35 L. J. Q. B. 44; 14 W. R. 28; 13 L. T. 273*). But a *manufacturing* joint-stock Company “dwells and carries on business” within s. 74, Co. Co. Act, 1888, at its place of manufacture and sale, and not at the registered office of the company (*Keynsham Lime Co v. Baker, 33 L. J. Ex. 41; 2 H. & C. 729; Baillie v. Goodwin, 33 Ch. D. 605; 55 L. J. Ch. 849; 55 L. T. 56; 34 W. R. 787*).

A person having no permanent place of abode “dwells,” within the section just cited, at the place where he may temporarily be (*Alexander v. Jones, 35 L. J. Ex. 78; L. R. 1 Ex. 133*).

V. DWELLING-HOUSE: CARRY ON: INHABIT.

**DWELLING.** — “Occupied as a Dwelling”; V. DWELLING-HOUSE.

**DWELLING-HOUSE.** — A “Dwelling-house” is obviously a HOUSE with the super-added requirement that it is dwelt in or the dwellers in which are absent only temporarily, having *animus revertendi* and the legal ability to return (*Ford v. Barnes, 55 L. J. Q. B. 24: 17 OUTER DOOR*). “House” and “Dwelling-house” are used in their respective meanings in the Acts conferring the parliamentary franchise, — “House” in s. 27, Rep People Act, 1832, and “Dwelling-house” in s. 3 (2), Rep People Act, 1867. The latter Act gives the franchise to one who for the prescribed time has been an “inhabitant occupier, as owner or tenant, of

any Dwelling-house." The word "Inhabitant" here would seem to bring out more fully the meaning of the word "dwelling-house."

The difficulties experienced in determining the meaning of "Dwelling-house" as used in the Rep People Act, 1867 (*Ellis v. Burch, Thompson v. Ward*, 40 L. J. C. P. 169; L. R. 6 C. P. 327; *Boon v. Howard*, 43 L. J. C. P. 115; 9 C. P. 277), are now, to some extent at least, set at rest by s. 5 (2), 41 & 42 V. c. 26, which provides that "'Dwelling-house,' shall include, any Part of a House where that part is SEPARATELY occupied as a Dwelling." But even that does not include a Cubicle, — *e.g.* in a Police Station, — not completely severed from a Common Dormitory, and sharing in the light, air, warmth, or ventilation thereof (*Barnett v. Hickmott*, 1895, 1 Q. B. 691; 64 L. J. Q. B. 407; 72 L. T. 236; 43 W. R. 284; 59 J. P. 230). In that case Russell, C. J. (in opposition to *Stribling v. Halse*, 55 L. J. Q. B. 15; 16 Q. B. D. 246), said, he shared the doubt of Esher, M. R., as to "whether a person could be said to *separately* occupy a Bedroom as a Dwelling-house where he dwelt partly in the bedroom and partly in other rooms for recreation, for meals, and other purposes, in common." The learned C. J. also significantly remarked on the dissent to *Stribling v. Halse* expressed in the Irish case of *Hasson v. Chambers* (18 L. R. Ir. 68). *Barnett v. Hickmott* was affd by Esher, M. R., and Lopes, L. J. (Rigby, L. J., diss.), in *Clutterbuck v. Taylor* (1896, 1 Q. B. 395; 65 L. J. Q. B. 314; 74 L. T. 177; 44 W. R. 531; 60 J. P. 278), *while* was followed and applied to the case of Nuns in a Convent in *Bannon v. Hanrahan* (1900, 2 I. R. 455).

Premises used as a Corn-store and Kiln but in which the occupier occasionally slept and where he always kept a bed; held, to be a "Dwelling-house," within s. 25, Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, although the occupier's usual residence was just outside the boundary of the town (*Lawson v. Fraser*, 8 L. R. Ir. 55). *Cp.*, *R. v. Exeter*, cited INHABITANT.

"One Messuage or Dwelling-house"; *V. Rogers v. Hosegood*, cited HOUSE: — "A Private Dwelling-house"; *V. A.*

A Covenant prohibiting user otherwise than as a "private dwelling-house," would be broken by keeping the premises as an hotel or lodging-house; because although either would be a dwelling-house after a fashion, neither would be private (*Rolls v. Miller*, 53 L. J. Ch. 682, *espy* jdgmt of Lindley, L. J.). *V. PRIVATE DWELLING-HOUSE.*

Substantially to add to an existing dwelling-house, is a breach of a lessee's covenant not to build any dwelling-house, edifice, cabin, farm, or other building (*Domville v. Colville*, Ir. Rep. 7 C. L. 68).

In BURGLARY, a "Dwelling-house," means a permanent building in which the owner, or the tenant or any member of the family, habitually sleeps at night" (Steph. Cr. 247; for the cases, *V. Arch. Cr.* 593–596: *Va.* 24 & 25 V. c. 96, s. 53). Lord Coke thought that Burglary might be committed in a church, "for ecclesia est domus mansionalis omnipo-

tentis Dei" (3 Inst. 64); but Lord Hale thought—(he might possibly have spoken more decidedly)—that that opinion was only a quaint turn without any argument (1 Hale P. C. 556: *V. SACRILEGE*). *Vf* MANSION.

"Dwelling-house" in s. 9, 18 & 19 V. c. 128, means, the *building*, so that the 100 yards therein mentioned have to be measured from the walls of the dwelling-house itself (*Wright v. Wallasey*, 56 L. J. Q. B. 259; 18 Q. B. D. 783; 52 J. P. 4; 3 Times Rep. 525).

A Public-house in which a man has taken up his temporary abode (he having no other place of abode) is, *seuble*, his "Dwelling-house" within s. 6 (1 *d*), Bankry Act, 1883 (*Holroyd v. Gwynne*, 2 Taunt. 176), and certainly, for the purpose of this section, a "Dwelling-house" need not be an entire house, or a dwelling self-contained, or on a vertical plane as distinguished from a horizontal;—rooms which furnish a separate dwelling and are not mere lodgings, will suffice (*Re Heoquard*, 24 Q. B. D. 71). But if a man has abandoned his house as his residence, it is no longer his Dwelling-house (*Re Nordeufelt*, 1895, 1 Q. B. 151; 64 L. J. Q. B. 182). *Cp* DWELL.

In a case of old-fashioned Pleading, proof that plaintiff was a lodger occupying two rooms in a house, was held not to support the averment that he was possessed of a "Dwelling-house" (*Monks v. Dykes*, 4 M. & W. 567; 8 L. J. Ex. 73).

In Rule 1, to the First and Second Cases of s. 100, Income Tax Act, 1842, "Dwelling-house" means, a house in which the person liable to pay Income Tax personally dwells; and therefore though a servant,—*e.g.* a Bank Manager,—for the purposes of a business, lives in a part of the business premises, nevertheless the value of the whole premises may be deducted in ascertaining the profits of the business liable to tax (*Russell v. Town & County Bank*, 58 L. J. P. C. 8; 13 App. Ca. 418; *Vf*, *Tennant v. Smith*, cited INCOME). *V.* PROFITS.

But a Bank having a Care-Taker living in it, is an "Inhabited Dwelling-house" quâ House Duty, s. 1, 14 & 15 V. c. 36; s. 11, 32 & 33 V. c. 14; 48 G. 3, c. 55 (*Chartered Mercantile Bank of India v. Wilson*, 47 L. J. Ex. 153; nom. *Bank of India v. Wilson*, 3 Ex. D. 108); *secus*, of a Club not slept in at night (*Riley v. Read*, 48 L. J. Ex. 437; 4 Ex. D. 100), and so of School Buildings (*Clifton College v. Thompson*, 1896, 1 Q. B. 432; 65 L. J. Q. B. 231; 74 L. T. 168; 44 W. R. 410; 60 J. P. 599; disagreeing with *Glasgow v. Inl. Rev.*, 18 Sc. L. R. 1). *Clifton College* case was followed in *Charterhouse v. Gayler* (1896, 1 Q. B. 437; 65 L. J. Q. B. 233; 74 L. T. 171).

*V.* HOUSE: COTTAGE: DIVIDE: SERVANT, at end: OCCUPIED.

Quâ London Bg Act, 1894, "Dwelling-house," "means, a BUILDING used or constructed, or adapted to be used, WHOLLY or principally for HUMAN Habitation" (subs. 25, s. 5).

"Dwelling-house to be inhabited by the WORKING CLASS"; *V.* INHABITED.

" Dwelling-house " in New River Co's Act, 1852, s. 35, means " any house which is so far adapted for the purposes which a dwelling-house is usually adapted to, as to require water for domestic purposes; and it is not necessary that all the house should be so adapted " (per Cotton, L. J., *Cooke v. New River Co*, 57 L. J. Ch. 385; 38 Ch. D. 56; 58 L. T. 830; affd in H. L. 14 App. Ca. 698).

Goods of a LODGER may, quà an Insurance, be stated as in his " Dwelling-house " (*Friedlander v. London Assree*, 1 Moo. & R. 171).

" Dwelling-house, Workshop, or other Building "; *V. BUILDING.*

*V. DWELL: LIVE IN.*

" Dwelling-house," quà the last Census Act, *V.* 63 V. c. 4, s. 4 (4); quà Housing of the Working Classes, *V.* 53 & 54 V. c. 70, s. 29: — quà Rep. of People, in Scotland, *V.* 48 & 49 V. c. 3, s. 7 (4): — quà Land Law (Ir) Act, 1896, *V.* s. 48.

Other Stat. Def. — *Scot.* 44 & 45 V. c. 22, s. 13. — *Ir.* 29 & 30 V. c. 44, s. 2.

**DWELLING PLACE.** — " Own Dwelling-place or Shop," s. 13, Markets and Fairs Clauses Act, 1847, 10 V. c. 14; *V. Llandaff Co v. Lyndon*, 30 L. J. M. C. 105; 8 C. B. N. S. 515: *Ashworth v. Heyworth*, L. R. 4 Q. B. 316; 38 L. J. M. C. 91: *Fearon v. Mitchell*, 41 L. J. M. C. 170; L. R. 7 Q. B. 690: *McHole v. Davies*, 45 L. J. M. C. 30; 1 Q. B. D. 59: *Hooper v. Keshole*, 46 L. J. M. C. 160; 2 Q. B. D. 127. *V. SHOP.*

**DYE.** — " 'To dye Seeds,' means, to give to seeds, by any process of colouring, dyeing, sulphur-smoking, or other artificial means, the appearance of seeds of another *kind* " (s. 2, 32 & 33 V. c. 112); but that does not include sulphur-smoking old clover seeds so as to make them look like young clover seeds, for the seeds do not thereby resemble another " kind " of seeds: *seeus*, had the expression been " quality," or " kind, or sort " (*Francis v. Maas*, 47 L. J. M. C. 83; 3 Q. B. D. 341). *V. ADULTERATION: NATURE.*

**DYEING.** — " Bleaching and Dyeing Works "; *V. BLEACHING.*

**DYING.** — *V. DIE* and following phrases: *DEATH.*

" Dying after the passing of this Act," s. 9, Mortmain Act, 1891, makes the Act applicable to a Will made before the Act if the testator's death is after the Act (*Re Bridger*, 1894, 1 Ch. 297; 63 L. J. Ch. 186; 70 L. T. 204; 42 W. R. 179).

" Dying Intestate," s. 13, 23 & 24 V. c. 38; *V. Re Johnson*, cited *PRESENT RIGHT TO RECEIVE.*

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## EACH — EARNEST

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**EACH.** — A gift to “each” of two or more persons, or to “each of their respective heirs” (*Gordon v. Atkinson*, 1 D. G. & S. 478: *Cp, Doe d. Littlewood v. Green, Ex p. Tanner*, and *Re Atkinson* all cited RESPECTIVE: *Vf* 2 Jarm. 257), creates a Tenancy in Common. That proposition is not in controversy; but on another point *Gordon v. Atkinson* is hardly in agreement with the other cases. There the direction was “to pay, assign, and transfer,” moneys, &c, to four persons “and to each of their respective heirs, exs, ads, and assigns.” That, Knight-Bruce, V. C., held was an absolute Tenancy in Common; whereas on similar, but not identical, words in *Doe d. Littlewood v. Green* and *Ex p. Tanner*, the ruling was that the named donees took as Joint Tenants for life, with remainder to their heirs, &c, in Common. In *Re Atkinson*, North, J., followed these two latter cases and explained *Gordon v. Atkinson*, on its slight difference in language; for “if money is to be paid to persons who take no absolute interest, it is difficult to see how you can pay to them as Joint Tenants.” *Vf* PAY.

As to effect of “each” in a contract or bond; *V. Mathewson's Case*, 5 Rep. 22: *Collins v. Prosser*, 1 B. & C. 682: *Armstrong v. Cahill*, 6 L. R. Ir. 440: *Re Boulton and Cullingford*, 37 S. J. 25, 248.

The Scale Fee for Lease, Sch 1, Part 2, Solrs Rem Ord, of £2. 10. 0 “in respect of each subsequent £100 of rent,” applies only to every full £100 of rent, and nothing can be charged thereunder for an amount of rent less than £100; for the words “per cent” are omitted in this place (*Re McGarel*, 1897, 1 Ch. 400; 66 L. J. Ch. 185; 76 L. T. 70; 45 W. R. 321).

Preference Dividend “out of Profits in each Year”; *V. CUMULATIVE.*

Remuneration to Directors of so much “in each year”; *V. YEAR.*

*Cp, EITHER: EVERY.*

**EARNED.** — A Commission to be paid on all “Hire earned,” *e.g.* by a Ship, means only upon the Hire actually earned; and, if there be no Wilful Default by the person who is to pay the commission, he will not be liable if events happen which prevent hire from being earned (*White v. Turnbull*, 78 L. T. 727; 8 Asp. 406; 3 Com. Ca. 183).

*V. EARNINGS.*

**EARNEST.** — For the derivation, history, and effect of the “Earnest” of a Bargain; *V. jdgmt of Fry*, L. J., *Howe v. Smith*, 53 L. J. Ch.

1061; 27 Ch. D. 89. *Va* DEPOSIT. Giving an "Earnest" to bind a bargain, s. 17, Statute of Frauds, repld s. 4 (1), Sale of Goods Act, 1893, connotes an overt Act; resigning a debt, or verbally discharging a liability, is not such an Earnest, or Part Payment (*Walker v. Nussey*, 16 M. & W. 302; 16 L. J. Ex. 120; *Norton v. Davison*, 1899, 1 Q. B. 401; 68 L. J. Q. B. 265). *V.* ARGENTUM DEI.

"It is my Earnest Hope and I particularly request" non-alienation, when added to a devise in fee, does not qualify, but is repugnant to, the devise (*Hood v. Oglunder*, 34 L. J. Ch. 528; 34 Bea. 513).

**EARNINGS.** — "Earnings and property," s. 21, 20 & 21 V. c. 85, means honest earnings, not the wages of prostitution (*Mason v. Mitchell*, 34 L. J. Ex. 68; 3 H. & C. 528; 29 J. P. 119).

"Earnings," s. 3, Employers' Liability Act, 1880, means, money or MONEY'S WORTH, *e.g.* rent, food, and clothes, but not so vague a thing as an apprentice's tuition (*Noel v. Redruth Foundry Co*, 1896, 1 Q. B. 453; 65 L. J. Q. B. 330; 74 L. T. 196; 44 W. R. 407; *Pomphrey v. Southwark Press*, cited PARTIAL INCAPACITY). Deductions from wages, — *e.g.* 6d. a week from those of a Miner for the oil for his working lamp, — are not to be allowed in ascertaining "Earnings," quâ Workmen's Comp Act, 1897 (*Houghton v. Sutton Heath Co*, 83 L. T. 472). *Vf*, AVERAGE WEEKLY EARNINGS.

"Earnings," s. 2, M. W. P. Act, 1882; *V. Re Poole*, 46 L. J. Ch. 803; 6 Ch. D. 739.

*V.* EARNED: PERSONAL LABOUR: INCOME: PROFITS.

**EARTH.** — "As the Heavens are the habitation of Almighty God, so the Earth hath He appointed as the suburbs of heaven to be the habitation of man: *Cælum cæli domino terram autem dedit filiis hominum*, Psal. cxv. 16" (Co. Litt. 4 a).

**EARTH CLOSET.** — Quâ P. H. Ireland Act, 1878, "Earth Closet" includes any place for the reception and deodorization of fæcal matter, constructed to the satisfaction of the Sanitary Authority" (s. 46). *V.* SUFFICIENT PRIVY.

**EARTHENWARE.** — "Earthenware Works"; *V.* Sch 4, Part 1, 41 V. c. 16, repld, Sch 6, s. 3, Factory and Workshop Act, 1901: NON-TEXTILE FACTORIES.

**EASE.** — Chapel of Ease; *V. Cowel: Line v. Harris*, 1 Lee Ecc. 155.

**EASEMENT.** — "Easement," is a privilege that one neighbour hath of another, by Writing or Prescription, without profit; as a WAY, or Sink through his land or such like" (Termes de la Ley, cited by Bayley, J., *Hewlins v. Shippam*, 5 B. & C. 229, 230).

The strict sense and proper use of "Easement" implies "a Dominant Tenement in respect of which the easement is claimed and a Servient



Tenement upon which the right claimed is exercised" (per Coleridge, C. J., *Hawkins v. Rutter*, 1892, 1 Q. B. 671; 61 L. J. Q. B. 146; 40 W. R. 238: *Vf*, *Mounsey v. Ismay*, 34 L. J. Ex. 52; 3 H. & C. 486).

"Easements," s. 2, Prescription Act, 1832, has been said to be confined to easements analogous to rights of Way and Water (per Erle, C. J., *Webb v. Bird*, 30 L. J. C. P. 387); but that dictum was disapproved by Selborne, C., in *Dalton v. Angus* (50 L. J. Q. B. 733, 734: *Vf*, *Lemaitre v. Davis*, 51 L. J. Ch. 173; 19 Ch. D. 281; *Bass v. Gregory*, 59 L. J. Q. B. 574; 25 Q. B. D. 481; *Simpson v. Godmanchester*, 1896, 1 Ch. 214; 1897, A. C. 696; 64 L. J. Ch. 843; 65 Ib. 154; 66 Ib. 770); but as used in this section the word does not apply to *Light*, which is governed entirely by s. 3 and the subsequent sections which have to be read therewith (*Perry v. Eames*, 1891, 1 Ch. 658; 60 L. J. Ch. 345; 39 W. R. 602; *Wheaton v. Maple*, 1893, 3 Ch. 48; 62 L. J. Ch. 963; 41 W. R. 677: *Vf* OTHER). So an easement to be within the section must be one of Utility and Benefit, and not of mere Amenity, *e.g.* a Prospect, nor Indefinite, such as the access of air to a windmill, a chimney, or to an open structure for storing timber (*Webb v. Bird*, 30 L. J. C. P. 384; 31 Ib. 335; 10 C. B. N. S. 268; 13 Ib. 841; *Bryant v. Lefever*, 48 L. J. C. P. 380; 4 C. P. D. 172; *Dalton v. Angus*, 50 L. J. Q. B. 689; 6 App. Ca. 740; *Harris v. De Pinna*, 56 L. J. Ch. 344; 33 Ch. D. 238; 54 L. T. 770; 50 J. P. 486. *Vf*, Add. T. 299, 325; Rosc. N. P. 806), nor a CUSTOM (*Mounsey v. Ismay*, sup).

"Easement," s. 55, Landed Estates Court (Ir) Act, 1858, 21 & 22 V. c. 72, is used in a popular, and not in its strict, sense, and includes a PROFIT A PRENDRE, *e.g.* a Right to a Several Fishery (*Hamilton v. Musgrove*, Ir. Rep. 6 C. L. 129).

"Easements," s. 20, Artizans and Labourers Dwellings Improvement Act, 1875, 38 & 39 V. c. 36, means, easements of every kind (*Budham v. Marris*, 45 L. T. 579; 52 L. J. Ch. 237; *Swainston v. Finn*, 52 L. J. Ch. 235), including the right to *Light* (*Barlow v. Ross*, cited RIGHTS).

"Easement," s. 60, Co. Co. Act, 1888, is used in its strict sense, and does not include a public Right of Navigation (*Hawkins v. Rutter*, sup). *Vf*, *Howorth v. Sutcliffe*, 1895, 2 Q. B. 358; 64 L. J. Q. B. 729; 44 W. R. 33; 73 L. T. 277; 59 J. P. 678.

Parliamentary running powers over a railway, are not an "Easement" (per Jessel, M. R., *G. W. Ry v. Swindon Ry*, 52 L. J. Ch. 314, 317; *secus*, per Cotton, L. J., Ib. 320; *Va*, per Bowen, L. J., Ib. 321, 322; *Vthe* in H. L. 53 L. J. Ch. 1075; 9 App. Ca. 787).

A statutable authorised Ry Tunnel under a public street, is not a mere Easement but, is an HEREDITAMENT within s. 4, Land Tax Act, 1797, 38 G. 3, c. 5 (*Metrop Ry v. Fowler*, 1893, A. C. 416; 62 L. J. Q. B. 553; 69 L. T. 390; 42 W. R. 270); *secus*, of the Mains of a Water Co (*Chelsea W. W. Co v. Bowley*, 17 Q. B. 358; 20 L. J. Q. B. 520).

A limited right to use of Gaspipes for supply of gas to Customers, is an "Easement" and is not assessable to the Poor Rate (*Southport v. Ormskirk*, 1894, 1 Q. B. 196; 63 L. J. Q. B. 250; 69 L. T. 852; 42 W. R. 153; 58 J. P. 212). *Vf* EXCLUSIVE OCCUPATION.

Necessary Easement; *V.* NECESSARY.

Contract to sell land "subject to rights of Way and other Easements"; *V. Re Hughes and Ashley*, cited WAYS.

*Th.* Gale on Easements: Goddard on Easements: Watson Eq. 139 *et seq.*: 4 Encyc. 370-375. *Cp* LICENSE.

"Easement," in the application of Acts to Scotland, is sometimes interpreted to mean, "Servitude," *e.g.* 35 & 36 V. c. 68, s. 15; 55 & 56 V. c. 31, s. 21 (6).

**EAST AFRICAN COURTS.** — Stat. Def., 42 & 43 V. c. 38, s. 2.

**EAST INDIA.** — "The East India Company (Money) Acts, 1786 to 1858"; *V.* Sch 2, Short Titles Act, 1896.

"The East India Loans Acts, 1859 to 1893"; *V.* *Ib.*

"East India Stock," as used in s. 32, 22 & 23 V. c. 35, explained by s. 1, 30 & 31 V. c. 132: Other Stat. Def., 36 & 37 V. c. 17, s. 2. — *Scot.* 47 & 48 V. c. 63, s. 2. *V.* INDIA.

"Limits of East India Company's Charter"; *V.* 16 & 17 V. c. 107, s. 357.

**EAST INDIES.** — The Mauritius is not in the East Indies, nor is it an East Indian Island (*Robertson v. Clarke*, 1 Bing. 445).

Quà Post Office (Offences) Act, 1837, 1 V. c. 36, "East Indies," shall mean every port and place within the territorial acquisitions now vested in the East India Company in trust for Her Majesty, and every other port or place within the limits of the Charter of the said Company (China excepted), and shall also include the Cape of Good Hope" (s. 47).

**EASTER.** — *V.* MICHAELMAS.

**EASY TERMS.** — A representation that money will be lent on "Easy Terms" which in fact is lent on hard terms, throws on the lender the burden of showing that, before making the loan, he had removed from the borrower's mind the impression created by the representation, and had clearly explained to him the terms on which the loan would be made (*Moorhouse v. Wolfe*, 46 L. T. 374). In *Helsham v. Barnett* (21 W. R. 309), Malins, V. C., said, "Easy Terms" "meant not more than 10 per cent." *Cp.* *Gordon v. Street*, 1899, 2 Q. B. 641; 69 L. J. Q. B. 45; 81 L. T. 237; 48 W. R. 158; followed in *Levin v. O'Keefe*, 1900, 2 I. R. 628.

**EAVES-DROPPER.** — “ ‘Evesdroppers,’ are such as stand under wals or windowes, by night or by day, to heare news, and to carry them to others to make strife and debate amongst their neighbors ” (Termes de la Ley). *Cp* NIGHT-WALKER.

**EBB AND FLOW.** — *V. A-G. v. Chambers*, cited SHORE: *Ilchester v. Raishley*, cited NAVIGABLE.

**ECCLESIASTICAL APPEAL.** — *Quà* Judicial Committee Act, 1843, 6 & 7 V. c. 38, “ Ecclesiastical and Maritime Cause of Appeal ” extends to “ Causes appealed from Ecclesiastical Courts, and such Court as shall exercise the jurisdiction, or any part of the jurisdiction, exercised by any Ecclesiastical Court, or be substituted for the same ” (s. 17).

**ECCLESIASTICAL ASSESSMENT.** — In Scotland an “ ‘ Ecclesiastical Assessment,’ means, an Assessment for any of the purposes mentioned in s. 23, 31 & 32 V. c. 96 ” (s. 4, 63 & 64 V. c. 20).

**ECCLESIASTICAL CENSURE.** — The Ecclesiastical Censures are those, —

1. To which both Clergy and Laity are subject, *i.e.* Admonition or Monition; Penance; Suspension *ab ingressu ecclesie*; Excommunication;
2. To which only the Clergy are subject, *i.e.* Suspension from Office; Sequestration; Deprivation; Degradation.

*Vh* Phil. Ecc. Law, Part 4, ch. 12.

**ECCLESIASTICAL CHARITY.** — A CHARITY is not an “ Ecclesiastical Charity,” within s. 75 (2), *Loc Gov Act, 1894*, whose objects are Eleemosynary, though to be administered by the Churchwardens on the recurrence of a Church Festival, with simply a *preference* to be given to those “ most constant in their attendance on the Public Service of the Church ” (*Re Ross*, 1897, 2 Ch. 397; 66 L. J. Ch. 662; affd 1899, 1 Ch. 21; 68 L. J. Ch. 66; 79 L. T. 366; 47 W. R. 197; 63 J. P. 52). But where it can be gathered that the Members “ *As such*,” *i.e.* in their character of Members, of any “ Particular Church or Denomination ” (subs. *e*) are alone intended to have the eleemosynary benefit, then there is an “ Ecclesiastical Charity ” (*Re Perry Almshouses*, cited CHURCH; which case also adopted, but distinguished, the principles of interpretation of *Eleemosynary Charities* as laid down in *A-G. v. Calvert*, 26 L. J. Ch. 682; 23 Bea. 248). *Vf* FOUNDATION.

The section cited provides that, *quà* *Loc Gov Act, 1894*, “ the expression ‘ Ecclesiastical Charity.’ includes, a Charity the ENDOWMENT whereof is held for some one or more of the following purposes: —

- (a) For any SPIRITUAL Purpose which is a legal purpose: or
- (b) For the BENEFIT of any Spiritual Person, or Ecclesiastical Officer, as such; or

- (c) For use, if a BUILDING, as a Church, Chapel, Mission Room, or Sunday School, or otherwise, by any Particular CHURCH or Denomination; or
- (d) For the maintenance, repair, or improvement, of any such Building as aforesaid, or for the maintenance of DIVINE SERVICE therein; or
- (e) Otherwise for the Benefit of any Particular Church or Denomination, or of any Members thereof, as such.

“Provided that where any Endowment of a Charity (other than a Building held for any of the PURPOSES aforesaid) is held in part only for some of the purposes aforesaid, the Charity, so far as that Endowment is concerned, shall be an Ecclesiastical Charity, within the meaning of this Act.

“The expression shall also include any Building which, in the opinion of the Charity Commissioners, has been erected or provided within 40 years before the passing of this Act mainly by, or at the cost of, Members of any Particular Church or Denomination.”

All this “does not define, or profess to define, the meaning of ‘Ecclesiastical Charity,’ but says that, unless the context otherwise requires, that expression shall INCLUDE these various things” (per Smith, L. J., *Re Ross* and *Re Perry Almshouses*, sup).

*Vf*, as to the Distinction between an Ecclesiastical and an Eleemosynary Charity, *A-G. v. St. John's Hospital Bath*, 45 L. J. Ch. 420; 2 Ch. D. 554.

“Ecclesiastical Charity,” quâ Loc Gov (Scot) Act, 1894; *V. s.* 54.

**ECCLESIASTICAL COMMISSIONERS.** — *V. s.* 12 (15), Interp Act, 1889. As to their constitution and functions, *V. 4* Encyc. 377-386.

“The Ecclesiastical Commissioners Acts, 1840 to 1885”; *V. Sch* 2, Short Titles Act, 1896.

*V. COMMISSIONERS.*

**ECCLESIASTICAL CORPORATION.** — *V. CORPORATION.*  
Stat. Def. — 14 & 15 *V. c.* 104, s. 11; 57 & 58 *V. c.* 46, s. 94.

**ECCLESIASTICAL COURT.** — *V. Re Green*, 51 L. J. Q. B. 25; 7 Q. B. D. 273; nom. *Green v. Penzance*, 6 App. Ca. 657. Stat. Def., 6 & 7 *V. c.* 38, s. 17.

“The Ecclesiastical Courts Acts, 1787 to 1860”; *V. Sch* 2, Short Titles Act, 1896.

**ECCLESIASTICAL DUTIES.** — *V. DUTIES.*

**ECCLESIASTICAL PARISH.** — Stat. Def., 41 & 42 *V. c.* 68, s. 14.

**ECCLESIASTICAL PERSON.** — Quà Irish Church Act, 1869, 32 & 33 V. c. 42, “ ‘Ecclesiastical Person,’ shall mean and include, any Archbishop, or Bishop, or person holding any BENEFICE or CATHEDRAL PREFERMENT as hereinafter defined ” (s. 72); *Vf* 38 & 39 V. c. 42, s. 8. But quà Glebe Loan (Ir) Act, 1870, 33 & 34 V. c. 112, the phrase “ means and includes any Archbishop, Bishop, Clergyman, Priest, Curate, or Minister of any Religious Denomination whatsoever ” (s. 2).

In the Victorian Statutes for Ireland prior to 1869, the phrase was confined to a Spiritual Person in the Church as then by law established; *e.g.* 14 & 15 V. c. 73, s. 1; 20 & 21 V. c. 47, s. 2; 23 & 24 V. c. 72, s. 2.

**ECCLESIASTICAL PURPOSE.** — Marriage, when it takes place in a Church, is an Ecclesiastical Function; and the solemnization of marriages is an “ Ecclesiastical Purpose ” within the New Parishes Acts, 1843 and 1856, 6 & 7 V. c. 37, s. 15; 19 & 20 V. c. 104, s. 14 (*Fuller v. Alford*, 52 L. J. Q. B. 265; 10 Q. B. D. 418); so is Burial (*Hughes v. Lloyd*, 58 L. J. Q. B. 122; 22 Q. B. D. 157).

Paying off a mtge on the Vicarage and Glebe, and structural repairs to the Church, are “ Ecclesiastical Purposes ” within s. 34, Church Building Act, 1822, 3 G. 4, c. 72 and s. 19, Church Bg Act, 1840, 3 & 4 V. c. 60 (*Re Christ Church, East Greenwich*, 1896, 1 Ch. 520; 65 L. J. Ch. 331).

Stat. Def. — 31 & 32 V. c. 109, s. 10.

**ECONOMICALLY.** — *V.* EFFICIENTLY.

**EDITION.** — In a contract between an author and a publisher, an “ Edition ” consists of so many copies as are issued to the public at a time; and, where the work is stereotyped, every fresh issue is a new Edition (*Reade v. Bentley*, 27 L. J. Ch. 254; 4 K. & J. 656). In that case Wood, V. C., said (27 L. J. Ch. 259), “ I apprehend the meaning of the word ‘ Editions,’ is the putting forth the work *at successive periods*; and whether that is done by moveable type or by stereotype does not seem to me to make any substantial difference.” *If*, *Blackwood v. Breuster*, 23 Sess Ca. 2nd Ser. 142: Copinger on Copyright, 2 ed., 605: Book.

**EDUCATED.** — *V.* EDUCATION.

**EDUCATION.** — “ Education ” means training up the young in general learning (*V. Re Christ’s Hospital*, cited EDUCATIONAL ENDOWMENT); not teaching for a business or profession. Therefore the property of the Institution of Civil Engineers is not exempt (under s. 11 (3). Customs and Inl. Rev. Act, 1885) from assessment because used “ for the promotion of Education ”; but it is so exempt under the word “ SCIENCE ” (*Re Institution of Civil Engineers*, 19 Q. B. D. 610; 20 Ib. 621; 56 L. J. Q. B. 576; 57 Ib. 353; 36 W. R. 523, 598; 3 Times Rep. 729,

affd in H. L. nom. *Inl. Rev.* v. *Forrest*, 60 L. J. Q. B. 281; 15 Ap<sup>l</sup>. Ca. 334; 63 L. T. 36; 39 W. R. 33; 54 J. P. 772).

So a statutory exemption from rates for a building used for the "Education of the Poor," will not include a building where pauper children are clothed, maintained, and doctored, as well as instructed (*Hadfield v. Liverpool*, 80 L. T. 566).

"Education and Learning," in a Charitable Bequest, read "Education in Learning" (*Whicker v. Hume*, 7 H. L. Ca. 124; 21 L. J. Ch. 406; 28 Ib. 396; 1 D. G. M. & G. 506; 14 Bea. 509).

A FORFEITURE if the objects of a gift be not "educated in England, and in the Protestant Religion according to the rites of the Church of England" is uncertain; and, *semble*, could only have effect given to it in a plain case of adverse conduct (*Clavering v. Ellison*, 3 Drew. 451; 25 L. J. Ch. 274; 4 W. R. 330; 26 L. T. O. S. 319: *V.* the jdgmt for discussion as to what is meant by being "educated," either generally or in the Protestant Religion: jdgmt affd in H. L. 29 L. J. Ch. 761; 7 H. L. Ca. 707). *Cp.* LIVE AND RESIDE.

Trust, &c for "Maintenance and Education"; *V.* MAINTENANCE.

"The ELEMENTARY Education Acts, 1870 to 1893"; *V.* Sch 2, Short Titles Acts, 1896.

"The Education (Scotland) Acts, 1872 to 1893": *V.* Ib.

*V.* INTERMEDIATE: TECHNICAL: SCHOOL: PUBLIC EDUCATION.

**EDUCATION CODE.** — Quà 61 & 62 V. c. 57, and by s. 11, "Education Code," means in England, "such Minutes of the Education Department as are for the time being in force for the purpose of the Elementary Education Act, 1870"; in Scotland, it means "the Scotch Education Code" (s. 12).

**EDUCATION DEPARTMENT.** — *V.* s. 12 (6), Interp Act, 1889.

**EDUCATIONAL ENDOWMENT.** — Quà "the Endowed Schools Acts, 1869 to 1889" (*V.* Sch 2, Short Titles Act, 1896), " 'Educational Endowment,' means an ENDOWMENT, or any part of an Endowment, which or the income whereof has been made applicable, or is applied, for the purposes of Education at School (of boys and girls, or either of them), or of Exhibitions tenable at a School or an University or elsewhere, whether the same has been made so applicable by the Original Instrument of Foundation or by any subsequent Act of Parliament, Letters Patent, Decree, Scheme, Order, Instrument or other Authority, and whether it has been made applicable, or is applied, in the shape —

"Of Payment to the Governing Body of any School, or any Member thereof, or to any Teacher or Officer of any School, or to any person bound to teach, or to Scholars in any School, or their Parents, or

"Of Buildings, Houses, or School Apparatus for any school, or otherwise howsoever" (s. 5, 32 & 33 V. c. 56).

If that section stood alone there might be a doubt whether property given for no other purpose than that of Maintenance or Clothing would be comprised though it be attached to a School; but (as was ruled in *Re Christ's Hospital*, inf), "s. 29 is adapted to remove this doubt, and does not cut down the def of 'Educational Endowment' given in s. 5": — s. 29 is as follows, "Endowments attached to any School for the payment of Apprenticeship Fees, or for the Advancement in life, or for the Maintenance or Clothing or otherwise for the Benefit, of Children educated at such school, shall be deemed to be Educational Endowments."

*Re Christ's Hospital* elucidates the meaning of these definitions.

At the dissolution of the Monasteries Henry 8 appropriated the church and house of the Grey Friars in the City of London, together with some other property of theirs. This he conveyed to the City Corporation as a Foundation for Christ's Hospital, — the motive of the King (expressed under the deed in remarkable language) being to relieve and help "poore aged sick sore and impotent people, and for thadvoydinge of the great daunger and infeccion" occasioned by their "greate sicknesses and horrible diseases." By the deed the Corporation covenanted to maintain certain clergy and almspeople, and then to apply the whole profits of the property for the relief and sustentation of the poor.

In June, 1553, Edward 6 conveyed other property to the Corporation for the benefit of (1) Christ's Hospital; (2) St. Thomas' Hospital, Southwark; and (3) the Poor of Bridewell, — his motive being expressed thus, — "The King, of his mere mercy, having pity and compassion on the miserable estate of the poor fatherless and motherless children and sick sore and impotent people, and most graciously considering the good and godly endeavours of his most humble and obedient subjects the Mayor and Commonalty and Citizens of London who diligently by all ways and means do travail for the good provision of the said poor and every sort of them and that by such sort and means as neither the child in his infancy shall want virtuous education and bringing up neither when the same shall grow into full age shall lack matter whereon the same may virtuously occupy himself in good occupation or science profitable to the commonweal, neither the sore nor sick when they shall be healed shall be permitted nor suffered to wander as vagabonds in the commonweal but shall likewise be put to labour and good and wholesome exercise and so be made profitable members of the same."

Shortly afterwards, the Ordinances of the Corporation show that at Christ's Hospital there was a Grammar School in which "suche of the children as be pregnant and very apt to learninge be reserved and kept . . . in hope of preferment to the Universitie"; and a Minute of a General Court holden at Christ's Hospital on Sep. 27, 1557, records that the objects of the Foundations had been distributed thus. — Education, to Christ's Hospital; Medicine, to St. Thomas'; and Correction of Malefactors, to Bridewell.

The 22 G. 3. c. 77, established a statutory separate GOVERNING BODY for Christ's Hospital.

Almost immediately after its Foundation, and certainly ever since 1557, the Governors for the time being of Christ's Hospital, — dealing separately with its locality, property, and management, — have applied to Education its original property and the large gifts since made to it.

Held, — Although the grant of King Henry does not specifically contemplate Education but rather general eleemosynary objects, and although King Edward's grant only contemplates Education among other objects equally important, yet that all its Endowments of a General Character are "Educational" within s. 5, and those for Maintenance of Scholars are "Educational" within s. 29 (*Re Christ's Hospital*, 15 App. Ca. 172; 59 L. J. P. C. 52; 62 L. T. 10; 38 W. R. 758).

*Vf, Re Holgate's School*, 56 L. J. P. C. 52: *A-G. v. Christ Church, Oxford*, 1894, 3 Ch. 524; 63 L. J. Ch. 901; 71 L. T. 472; 43 W. R. 198: DIRECTLY AFFECTED: ENDOWED: ENDOWMENT.

Other Stat. Def. — Educational Endowments (Scot) Act, 1882, 45 & 46 V. c. 59, s. 1: — E. E. (Ir) Act, 1885, 48 & 49 V. c. 78, s. 1.

V. EDUCATION.

EELS. — V. FRESHWATER FISH.

**EFFECT.** — The "Effect" of a Cause, is anything which would not have happened but for that cause; and it is none the less an Effect of such a Cause, because it has been developed or accelerated by something supervening. Therefore where a Policy assured against "any injury caused by Accident or Violence . . . , and if the assured should die from the Effects of such injury," and the assured met with an accident and died from pneumonia resulting from a cold the catching of which and its fatal result were due to the bad condition of his health which was the consequence of the injury caused by the accident; — Held, that the death resulted from "the Effects" of the injury (*Re Isitt and Railway Passengers' Assree*, 58 L. J. Q. B. 191; 22 Q. B. D. 504; 5 Times Rep. 194). *Cp* CAUSED BY.

The "effect" of a Document; V. TENOR.

When a Saving Clause to a Repealing Act, — *e.g.* s. 71, Conv & L. P. Act, 1881, — preserves the "effect" of any instrument made prior to the Act, such "effect" may happen as well after, as before, the Act (*Re Solomon and Meayer*, 58 L. J. Ch. 339; 40 Ch. D. 508).

Effecting a Contract will sometimes (perhaps, generally) mean, obtaining it (*Earle v. Kingscote*, cited NEED NOT).

To prosecute a Replevin, within the condition of a Replevin Bond (or any other matter?) "with Effect," is to conduct it to a not unsuccessful termination (*Perreau v. Bevan*, 4 L. J. O. S. K. B. 177; 5 B. & C. 284; *Jackson v. Hanson*, 10 L. J. Ex. 396; 8 M. & W. 477; *Bently v. Hast-*



ings, cited PROSECUTE); and such is the meaning even where a replevin is removed by the Defendant (*Tummons v. Ogle*, 25 L. J. Q. B. 403; 6 E. & B. 571); so that in no case can the death of the plaintiff be a breach (*Ormond v. Bierly*, Carth. 519; *Morris v. Matthews*, 11 L. J. Q. B. 57; 2 Q. B. 293).

"Immaterial to the Effect," in the Specification of a Patent; *V. Neilson v. Harford*, 11 L. J. Ex. 20; 8 M. & W. 806.

"To the like Effect"; *V. LIKE: IN THE FORM.*

"No" or "None" Effect; *V. VOID.*

**EFFECTIVE.** — "Most proper and effective manner"; *V. WORKABLE.*

**EFFECTS.** — "Effects," used *simpliciter*, will carry the whole PERSONAL ESTATE, e.g. 'all my Effects,' without more. But it is frequently used in a restricted sense, meaning 'Goods and Moveables,' e.g. 'Furniture and Effects.' In every case the Court has to collect from the context the particular sense in which the testator has intended to use it. In *Campbell v. Prescott* (15 Ves. 500) there were added to the words 'Effects' 'of what nature and kind soever'; and this addition excluded its restricted sense. 'Effects,' in the present case, is followed by 'that he shall die possessed of,' which leads to the same conclusion" (per Leach, V. C., *Michell v. Michell*, 5 Mad. 72); the learned judge also observed that in that case the words were "Household Goods and Furniture and Effects," which, as he added, "imports a distinct sense in the word 'Effects.'" *Vf, Marshall v. Bentley*, 3 W. R. 566.

"The word 'Effects' (and even the word 'Goods' or 'Chattels') will, it seems, comprise the entire Personal Estate of the testator, unless restrained by the context within narrower limits" (1 Jarm. 751: *Va. Wms. Exs.* 1040; 3 Jur. 306: *Hodgson v. Jev*, 45 L. J. Ch. 388; 2 Ch. D. 122: *Re Shephard*, 48 L. J. P. D. & A. 62: *Re Jupp*, 1891, P. 300; 60 L. J. P. D. & A. 92; 65 L. T. 166: *Dunally v. Dunally*, 6 Ir. Ch. Rep. 540): — for examples of such a context, *V. Rawlings v. Jennings*, 13 Ves. 39, on *wher*, *Fleming v. Burrows*, 1 Russ. 280: *Borton v. Dunbar*, 30 L. J. Ch. 8. But generally such a context will not be furnished by a preceding enumeration of particular articles, "because a testator often throws in such specific words and then winds up the catalogue with some comprehensive expression for the very purpose of preventing the bequest from being restricted" (per Pepys, M. R., *Arnold v. Arnold*, 2 My. & K. 373, cited OTHER: *Vf, Lowry v. Patterson*, Ir. Rep. 8 Eq. 372); still, instances to the contrary are furnished by *Re Hammersley*, cited OTHER, and by *Hutchinson v. Rough*, 40 L. T. 289.

"Effects," standing alone, will not comprise Realty (1 Jarm. 724: Hawk. 55, cited by Lindley, L. J., *Hall v. Hall*, inf: *Doe d. Hick v. Dring*, 2 M. & S. 448: *Henderson v. Farbridge*, 1 Russ. 479, cited 1 Jarm. 742: *Cross v. Wilks*, 35 Bea. 562: *Doe d. Haw v. Earles*,

16 L. J. Ex. 242; 15 M. & W. 457; *Belaney v. Belaney*, 2 Ch. 138; 35 Bea. 469; 36 L. J. Ch. 265); *secus*, where there is a manifest intention to dispose of the whole of the testator's property (*Smyth v. Smyth*, 8 Ch. D. 561; *Re Turner, Arnold v. Blades*, 36 S. J. 28; *Hall v. Hall*, 1892, 1 Ch. 361; 61 L. J. Ch. 289; 66 L. T. 206; 40 W. R. 277). *Cp* THINGS.

In a case which came from British Honduras, the P. C. said, "Their Lordships think that the word 'Effects' would pass land; and that word is certainly sufficient to pass a privilege of cutting logwood on a definite piece of land" (*A-G. British Honduras v. Bristowe*, 50 L. J. P. C. 18; 6 App. Ca. 143).

"Effects" means Realty (and it should seem nothing else) in such a phrase as REAL EFFECTS; and "Effects" may include Realty if aided by a context: *e.g.* (possibly) if the operative word be "Devise" (*Hall v. Hall*, *sup*: *Phillips v. Beal*, 25 Bea. 25; *Titchfield v. Horncastle*, 7 L. J. Ch. 279; 2 Jur. 610; *Doe d. Chilcott v. White*, 1 East, 33; *Milsome v. Long*, 3 Jur. N. S. 1073; *Sr*, *contra*, *Camfield v. Gilbert*, 3 East, 516; *V. DEVISE: Va*, *Stelfox v. Stelfox*, W. N. (74) 161; *Glover v. Chancellor*, W. N. (76) 152, *whic* dissents from *Doe v. Dring*, 2 M. & S. 454; DIVIDE: PROPERTY: REST: SITUATE. For full discussion of the cases on this contextual construction, *V. 1 Jarm.* 744-747, 749; *Watson*, Eq. 1319-1322). That the Will is inartificially drawn is a circumstance to be considered (*V. jdgmt* of *Lindley*, L. J., *Hall v. Hall*, *sup*). *Vf* TEMPORAL.

Bequest, *inter alia*, of "Effects" may carry moneys and book debts (*Re Parrott*, 53 L. T. 12; W. N. (85) 127; *Sr*, *Hotham v. Sutton*, 15 Ves. 326, cited OTHER); but a bequest of "Household Furniture and Effects" does not pass jewellery (*Northey v. Paxton*, 60 L. T. 30; *V. HOUSEHOLD*); and a localized bequest, *e.g.* "Furniture and Effects at the testator's house," will not pass bank-notes, bonds, or personal jewellery (*Re Miller*, 61 L. T. 365; *Vf*, CONTENTS), or cash (*Campbell v. M'Grain*, Ir. Rep. 9 Eq. 397; *Watson v. Arundel*, 10 Ib. 299; *nom. Singleton v. Tomlinson*, 3 App. Ca. 404). *Cp*, "Household Effects," sub HOUSEHOLD.

Bequest of Stock in Trade, Goodwill, and "Effects," held to pass Trade Fixtures (*Pinder v. Pinder*, 18 W. R. 309).

Exchequer Bills, held "Effects," within 15 G. 2, c. 13, s. 12 (*R. v. Aslett*, Russ. & Ry. 67).

As to "Effects" in a Marine Insurance; *V. Duff v. Mackenzie*, 26 L. J. C. P. 313; 3 C. B. N. S. 16.

Quà Mer Shipping Act, 1894, "'Effects' includes Clothes and Documents" (s. 742).

"Effects, Stock, Books, and Book Debts," in an Assignment for the Benefit of Creditors by a Grocer and Farmer, will, under "Effects," convey the farm cattle (*Lewis v. Rogers*, 3 L. J. Ex. 326; 1 Cr. M. & R.

48; 4 Tyr. 872). In that case Lyndhurst, C. B., said, " 'Effects' is *nomen generalissimum*, and the rule that it ought to be limited does not apply, because it precedes, instead of following, the enumeration of specific things." And, apart from a controlling context, an assignment of "Effects" for the benefit of ers, includes a Contingent Interest under a Will (*Ivison v. Gassiot*, 3 D. G. M. & G. 958, in view of *whc*, Is such a controlling context discoverable in *Pope v. Whitcombe*, 3 Russ. 124, or in *Re Wright*, 15 Bea. 367?).

"Effects and Things," in Partnership Articles, held equivalent to "Assets," and to include GOODWILL (*Rolt v. Bolmer*, W. N. (78) 119; *Reynolds v. Bullock*, Ib. 122; *Hall v. Burrows*, 4 D. G. J. & S. 150; *V. THINGS*); so, of the phrase "other the Estate and Effects" (*Steuart v. Gladstone*, 47 L. J. Ch. 423; 10 Ch. D. 626; 40 L. T. 145); so, of "the Property, Stock, Goods, and Effects then employed or used in carrying on the said Business" (*Page v. Ratliff*, 76 L. T. 63).

"Property and Effects" in a Co's mortgaging powers; *V. PROPERTY*.

"Stores and other Effects," does not include Tap-Cinders (*Boileau v. Heath*, cited IRON).

*V. ESTATE AND EFFECTS: PROPERTY AND EFFECTS.*

**EFFECTUAL.** — "Valid and Effectual"; *V. VOID*.

**EFFECTUALLY.** — "Effectually repair"; *V. Doe d. Dymoke v. Withers*, cited REBUILD.

**EFFICIENT.** — A stipulation in a Charter-Party that the Ship shall be "Efficient" may easily have, at varying times, varying applications; it generally means "that the Ship shall be efficient to do what she is required to do when she is called upon to do it" (per Halsbury, C., *Hogarth v. Miller*, 1891, A. C. 48; 60 L. J. P. C. 1).

"Efficient School"; *V. CERTIFIED: RECOGNIZED*.

**EFFICIENTLY.** — *V. FAIRLY*.

A Covenant by a Lessee of a Ry to work it "efficiently," does not, necessarily, entail an obligation on him to work it with Passenger Trains as well as Goods Trains (*West London Ry v. Lond. & N. W. Ry*, 11 C. B. 254), nor to work it so as to produce the largest quantity of gross proceeds; but it does connote that the railway must, by all fairly possible means, be so worked as to secure the stipulated benefits to the covenantee (*Ib.* 327; 22 L. J. C. P. 117).

"What can be required of Ry Companies to work a Line 'efficiently' must vary according to their respective powers; and a mode of working which would be sufficient in one case would not be so in another" (*East London Ry v. L. B. & S. Ry*, cited TRAFFIC). *Cp POSSIBLE*.

As to what alteration in a Co's Mem of Assn will enable it "to carry on its business more economically, or more efficiently," s. 1 (5 a), Comp Mem of Assn Act, 1890; *V. Re Governments Stock Investment Co.*

1892, 1 Ch. 597; 61 L. J. Ch. 381; 66 L. T. 608; 40 W. R. 387; *wh ep* with the same Co's previous application, 1891, 1 Ch. 649; 60 L. J. Ch. 477; 64 L. T. 339; 39 W. R. 375: *Re Bernicia S. S. Co.*, 81 L. T. 816; 69 L. J. Ch. 194: *Cp*, CONVENIENTLY: MAIN PURPOSE.

**EFFLUXION OF TIME.** — *V.* DETERMINATION.

**EFFORTS.** — *V.* REASONABLE EFFORTS: UTMOST.

**EGRESS.** — *V.* INGRESS.

**EITHER.** — “Originally, ‘Either’ had much of the meaning of ‘Both.’ For some centuries, however, its normal meaning has been, ‘One or other,’ *V. Murray’s English Dictionary*. Certainly that is its *primâ facie* meaning at the present time” (per Rigby, L. J., *Re Pickworth*, 68 L. J. Ch. 328; *See*, per Williams, L. J., *Ib.*).

Where there is a Devise to two, “but in case *either one* of them should die without children that share to go to the other,” and both die without children, the property on the death of the one who died first goes to the other (*Drennan v. Andrew*, 36 L. J. Ch. 1). But where there was a gift for life to A., with a vested interest after her death to B. and C., “and if *either of them* shall be THEN dead, Upon trust for the SURVIVOR of them ABSOLUTELY,” and both died in the lifetime of A.; held (Rigby, L. J., *diss.*) that the vested interest of B. and C. was not divested, and that their representatives took equally (*Re Pickworth*, 1899, 1 Ch. 642; 68 L. J. Ch. 324; 80 L. T. 212, in *whc* were considered *Broune v. Kenyon*, 3 Mad. 410: *White v. Baker*, 29 L. J. Ch. 577; 2 D. G. F. & J. 55: *Harrison v. Foreman*, 5 Ves. 207: and *Scarfield v. Howes*, 3 Bro. C. C. 90). Observe, that the decision in *Re Pickworth* refused to read “Either” as “Both,” or “Survivor” as “Longest Liver.”

In *Re Hill to Chapman* the question turned on the following phrase in a Will, “in case of the death of *either* of them”; on which Brett, M. R., observed, “I think the word ‘either’ means ‘one,’ and not ‘the other’” (54 L. J. Ch. 597). So, in *Sharp v. Sharp* (2 B. & Ald. 405; stated, Lewin, 776), a power to appoint new Trustees “in case *either*” of the appointed Trustees should die, &c, “either” was held to mean “some one” of the Trustees, not “all” of them.

*V.* ANY: ONE.

“In either Case”; *V. Ireland v. Harris*, 14 M. & W. 432.

“On either Side,” s. 3 (1), 51 & 52 V. c. 52; *V. Warren v. Mustard*, cited *SIDE*. “‘On either side of the road,’ means, ‘on each side’” (per Lindley, M. R., *Re Pickworth*, *sup.*).

*Cp* EACH.

**EJECTMENT.** — “Ejectment,” generally means, an Action for the RECOVERY OF LAND; *V.* 44 & 45 V. c. 49, s. 57; 50 & 51 V. c. 33, s. 34. *Cp* EVICTION. *V.* REAL ACTION.

**EJUSDEM GENERIS.** — For examples of this Rule of Construction, *V. OTHER: OTHERWISE.* For criticism on it, *V. per Fry, L. J., Jersey v. Neath*, cited *WHATSOEVER*: “it ought to be applied with great caution” (*per Rigby, L. J., Smelting Co v. Inl. Rev., cited LOCALLY SITUATE*).

**ELDEST.** — The *primâ facie* meaning of “Eldest” is “Eldest, or First, born” (2 Jarm. 213: *Craven v. Errington, Bathurst v. Errington*, 46 L. J. Ch. 748; 2 App. Ca. 698: *Meredith v. Treffry*, 48 L. J. Ch. 337; 12 Ch. D. 170: *Locke v. Dunlop*, cited *OTHER SONS: Twite v. Bermingham*, L. R. 7 H. L. 634), and applies if there is only one (*Twite v. Bermingham*). It is, however, sometimes construed as meaning the person already provided for: *V. YOUNGER*.

Where provisions are made by any person, whether *in loco parentis* or not, for “Younger Children,” by an instrument that does not make provision, or does not refer to or is not shown by extrinsic evidence to be connected with provisions already made, for the “Eldest” child, the words “Younger” and “Eldest” are used in their primary meaning. On the other hand, where the provisions are made by a person *in loco parentis* for “Younger” children, by an instrument which limits an estate to, or refers to, or is shown by extrinsic evidence to be connected with, an instrument limiting an estate to the “Eldest” child, the word “Eldest” is a designation of the person succeeding to the estate, *i.e.* “provided for,” — and “Younger,” of the person not doing so, *i.e.* “unprovided for” (*Elph. ch. 24*, and cases there cited in illustration and exception: *Vf* 2 Jarm. 201). But “*Livesey v. Livesey* (2 H. L. Ca. 419) is a decision of the H. L. that where you cannot read ‘Eldest Son’ as meaning son entitled to a particular estate, the words must have their literal signification” (*per Kay, J., Domville v. Wimington*, 53 L. J. Ch. 786; 26 Ch. D. 382, in *whc* the phrase was construed literally). “And the rule is that, subject to any special terms in the settlement, the time for ascertaining the Class of Younger Children who are entitled to Portions is the time fixed by the settlement for the distribution of the portions fund” (*per Chitty, J., Re Fitzgerald*, cited *YOUNGER: Vf* 2 Jarm. 204–213: *Wms. Exs.* 947).

“An eldest or only son, *primâ facie*, means one individual and not a series of persons” (*per Kay, J., Domville v. Wimington*, *sup*); and it was accordingly held in that case that when once a clause of exclusion has had its application, it has become satisfied and its operation exhausted.

#### *V. ENTITLED IN POSSESSION.*

It requires a strong context to construe “Eldest Son” as words of limitation, and so giving an Estate Tail to the person whose eldest son is referred to (*V. discussion hereon*, 2 Jarm. 407–410); yet *Madden v. Ikin* (2 Dr. & Sm. 207; 32 L. J. Ch. 3) is, to some extent, an example of such a context. So, of “Eldest MALE ISSUE,” which describes an individual and *primâ facie* means, a first-born son who, if entitled in pos-

session after a tenancy for life, takes a vested interest at his birth (*Sheridan v. O'Reilly*, 1900, 1 I. R. 386).

In *Thellusson v. Rendlesham* (28 L. J. Ch. 948; 7 H. L. Ca. 429), a case on the celebrated Thellusson Will, "Eldest" — in the phrase "Eldest Male Lineal Descendant," — was construed prior in line, not senior by birth. In his judgment in that case, Lord Wensleydale said, — "The 'eldest' Magistrate, or Officer, might not mean him who had lived the greatest number of years, nor even him who had filled the office for the longest time, for it might indicate rank only, and the 'Eldest Earl of England' would not mean him who was most advanced in years, but the eldest in point of family origin, — The Premier Earl." For a statement of the prior litigation on Mr. Thellusson's Will, *V. Sug. Prop.* 263-271. *Vf* LINEAL.

"Eldest or Only Son entitled in possession or remainder"; *V. Carter v. Ducie*, W. N. (71) 236.

"Become Eldest Son"; *V. Craven v. Errington, Bathurst v. Errington*, sup. The character of "Eldest Son" is, in ordinary cases, to be ascertained at the period of vesting, and not of payment (*Adams v. Adams*, 25 Bea. 652).

*Vh* Chitty Eq. Ind. 7678, 7710. *V. PUER.*

**ELECTION.** — " 'Election,' is when a man is left to his owne free will to take or doe one thing *or* another which he pleaseth " (Termes de la Ley). Thus, Bauldwin, C. J., puts this case, "Home face lease reservant devaunt tiel feast un liber de pepper *ou* saffron, ore devant le feast est in le election del lessee quel de eux il voile paier" (Dyer, 18 a).

From this simple Common law rule has been evolved the Equitable doctrine of Election, of which the leading case is *Streatfield v. Streatfield* (Ca. t. Talb. 176; 1 White & Tudor, 416), and which doctrine, as stated at the beginning of White & Tudor's notes to that case, is this, — "Election, is the obligation imposed upon a party to choose between two inconsistent, or alternative, rights or claims, in cases where there is a clear intention of the person from whom he derives one that he should not enjoy both. Every case of Election, therefore, presupposes a plurality of gifts or rights, with an intention, expressed or implied, of the party who has a right to control one or both that one should be a substitute for the other. The party who is to take has a choice, but he cannot enjoy the benefit of both." Jarman, at the commencement of ch. 14, states the doctrine thus, — "He who accepts a benefit under a Deed or Will, must adopt the whole contents of the instrument, conforming to all its provisions, and renouncing every right inconsistent with it": in other words, he cannot approbate and reprobate the instrument. *Vh*, Story, s. 1075: Watson, Eq. 176: Vaizey, 40: Snell, Eq. ch. 11: 4 Encyc. 399-402: Flood on Election.

“Election,” in Acts relating to the Representation of the People, is usually defined as, the Election of a Member to serve in Parliament; *V.* 17 & 18 *V. c.* 102, s. 38; 30 & 31 *V. c.* 102, s. 61; 31 & 32 *V. c.* 125, s. 3; 46 & 47 *V. c.* 51, s. 64. In 35 & 36 *V. c.* 60, it “means an Election to an Office” (s. 2). In *Loc Gov Act*, 1894, “‘Election’ includes both the Nomination and the Poll” (s. 75). *Ij*, 45 & 46 *V. c.* 50, s. 77: 53 & 54 *V. c.* 55, s. 2: PARLIAMENTARY: MUNICIPAL: CONTESTED ELECTION.

Election *Agent*; *V.* 4 *Encyc.* 402-406.

Election *Commissioners*; *V.* 46 & 47 *V. c.* 51, s. 64: 4 *Encyc.* 406-409.

Election *Court*; *V.* 35 & 36 *V. c.* 60, s. 2; 45 & 46 *V. c.* 50, s. 77; 46 & 47 *V. c.* 51, s. 64. — *Scot.* 53 & 54 *V. c.* 55, s. 2. — *Ir.* 35 & 36 *V. c.* 60, s. 28. *Vf* MUNICIPAL.

Election *Expenses*; *V.* 4 *Encyc.* 410-415.

Election *Petition*; *V.* 45 & 46 *V. c.* 50, s. 77; 46 & 47 *V. c.* 51, s. 64. — *Scot.* 53 & 54 *V. c.* 55, s. 2. — *Ij* 4 *Encyc.* 415-442.

On all the last five preceding pars, *V.* Leigh & Le Marchant on Elections: Rogers.

**ELECTIVE.** — Quà *London Gov Act*, 1899, and by its s. 24, “‘Elective Vestry,’ means any Vestry elected under *Metrop Man. Act*, 1855.”

**ELECTOR.** — *Stat. Def.*, 46 & 47 *V. c.* 51, s. 64. — *Scot.* 39 & 40 *V. c.* 49, s. 3.

*V. COUNTY: PARLIAMENTARY: PAROCHIAL ELECTOR: VOTER.*

**ELECTORAL DIVISION.** — *Stat. Def.*, 55 & 56 *V. c.* 31, s. 20.

**ELECTRIC.** — The “fees and reasonable expenses of an Electric Inspector,” — which, under s. 47, *Electric Lighting Orders Confirmation (No. 15) Act*, 1890, are payable by the Undertakers of Electric Works, — are confined to the expenses of making tests and inspections, and do not include the Inspector’s salary or the expenses of his laboratory (*Crawford v. City of London Electric Lighting Co*, 67 *L. J. Q. B.* 942; 47 *W. R.* 45; 78 *L. T.* 841).

“*Electric Lighting Acts*”; *V.* 62 & 63 *V. c.* 19, s. 1.

“*Electric Line*”; *Stat. Def.*, 45 & 46 *V. c.* 56, s. 32.

“*Electric Supply Company*”; *Stat. Def.*, 62 & 63 *V. c.* 19, Sch s. 18 (6).

“*Electrical Stations*”; *V. NON-TEXTILE FACTORIES.*

“*Electricity*”; *Stat. Def.*, 45 & 46 *V. c.* 56, s. 32.

*V. ENERGY.*

**ELEEMOSYNARY CHARITY.** — *V. ECCLESIASTICAL CHARITY. CHARITY SCHOOL.*

**ELEMENTARY.** — Quà 48 & 49 *V. c.* 78, “‘Elementary Education,’ shall mean such education as may be given in the *National*

Schools which are aided by grants for the Commissioners of National Education in Ireland" (s. 11): quæ 56 & 57 V. c. 42, " 'Elementary Education,' may include Industrial Training, whether given in the school which the child attends or not" (s. 15).

"Elementary SCHOOL"; Stat. Def., 33 & 34 V. c. 75, s. 3; 34 & 35 V. c. 13, s. 3; 51 & 52 V. c. 42, s. 6; 56 & 57 V. c. 73, s. 75.

V. PUBLIC ELEMENTARY SCHOOL.

**ELIGIBLE.** — This word, as applied to the selection of persons, has two meanings, *i.e.* "legally qualified," or "fit to be chosen" (per Ld Chelmsford, *Baker v. Lee*, 30 L. J. Ch. 631; 8 H. L. Ca. 495).

"Eligible as a Director," "must mean, capable of being elected at some future election" (per Selborne, C., *Forbes' Case*, 8 Ch. 774).

A provision in the Articles of a Co that no person shall be "eligible" as a Director unless he holds a stated number of shares, applies only to persons to be elected, and not to persons appointed by the Articles (per Turner, L. J., *Ex p. Stock*, 33 L. J. Ch. 731; 4 D. G. J. & S. 426).

If a house is accurately described in a Contract for Sale with the addition that it is an "Eligible" property for *Investment*, that addition is ground for withholding specific performance if the house is used as a BROTHEL, though that be without the knowledge of the vendor (*Hope v. Walter*, 1900, 1 Ch. 257; 69 L. J. Ch. 166; 82 L. T. 30, distinguishing *Lucas v. James*, 18 L. J. Ch. 329; 7 Hare, 418).

V. FIT: QUALIFICATION: QUALIFIED.

Lord ELLENBOROUGH'S ACT. — 43 G. 3, c. 58.

**ELOPE.** — "If the wife elope from her husband, — that is, if the wife leave her husband, and goeth away and tarrieth with her adulterer, — she shall lose her DOWER until her husband, willingly without coercion ecclesiasticall, be reconciled unto her" (Co. Litt. 32 a, b: *Vf* Termes de la Ley, *Elopement*). "And if she goeth willingly with or to the avowtrer, this is a departure and a tarrying, albeit she remaineth not continually with the avowtrer" (Ib. 32 b). V. WILLINGLY.

"Elope" "is never used in any other sense than criminally" (per Best, C. J., *Hunt v. De Blacquiere*, 5 Bing. 557).

**ELSE.** — "What else"; V. WHAT IS LEFT.

**ELSEWHERE.** — "Elsewhere" is "the most significant, sensible, and comprehensive, word" that can be used in a testamentary gift of property; thus, a devise of "all my lands in A. and B. and elsewhere," is equivalent to a devise of all testator's land in A. and B. "or in any other place whatsoever" (*Chester v. Chester*, 3 P. Wms. 61). So, a testamentary gift of all in a certain locality, "or elsewhere," includes the residuary personal estate (*Re Scarborough*, 30 L. J. P. M. & A. 85).

In a devise of freeholds copyholds and leaseholds in the Counties of



Lincoln and Cambridge, and of leaseholds in the County of Dorset "and elsewhere," the "elsewhere" was extended to the whole of the sentence so that the devise passed freeholds in Norfolk, or wherever situate (*Pinney v. Marriott*, 32 Bea. 643).

"The words 'the UNITED KINGDOM or elsewhere' (s. 2, Sch D, Income Tax Act, 1853, 16 & 17 V. c. 34), by the alternative description, include the whole world" (per Fry, L. J., *Colquhoun v. Brooks*, 57 L. J. Q. B. 443; 21 Q. B. D. 52; 59 L. T. 661; 36 W. R. 657; 52 J. P. 645). But the decision of the majority of the Court of Appeal (affid 14 App. Ca. 493; 59 L. J. Q. B. 53) was the other way, and Esher, M. R., said, — "I do not think, when the Act is looked at, that 'Elsewhere' is meant to include every other part of the inhabited globe. There may be some outlying parts of the Queen's dominions which are not colonies, but over which the Queen exercises all sovereign rights, and therefore places in which Parliament has a right to exercise all its rights, and the words 'or elsewhere' may have been inserted by way of caution to include such places. I cannot think that they are meant to include all Colonies which have their own Parliaments, nor all Foreign Countries." *Vf CARRY ON*, p. 264, 265.

"Elsewhere in England," in a Co's Mem of Assn; *V. Re Silver Valley Mines*, 18 Ch. D. 472; *Re New Terras Co*, 63 L. J. Ch. 397; 1894, 2 Ch. 344; 70 L. T. 625; 42 W. R. 504. Where one of the Objects is to work mines "in West Australia, or elsewhere," a working in Victoria is not within it (*Re Coolgardie Gold Mines*, 76 L. T. 269).

As to an Assignment of Goods at A. "or elsewhere"; *V. Greenbirt v. Smee*, 35 L. T. 168: *Cp, Tailby v. Official Receiver*, cited ALL.

#### V. INSURED ELSEWHERE.

**Bishop of ELY'S ACT.**—The Liberties Act, 1836, 6 & 7 W. 4, c. 87: sometimes this is called the Archbishop of York's Act.

**EMANCIPATION.**—Quà a Pauper Settlement, "ordinarily speaking, one of these things must happen before a son can be said to be 'emancipated' from his father; either he must have obtained a Settlement for himself, — or have become the head of a family, — or at most he must have arrived at that age when he may set up in the world for himself" (per Kenyon, C. J., *R. v. Offchurch*, 3 T. R. 116: *Vf. R. v. Roach*, 6 Ib. 252: *R. v. Rothwell*, 7 Q. B. 576). In *the Denman*, C. J., said, "Ld Mansfield and Wilmot, J., might dislike the introduction of the word 'Emancipation' from the Roman into the English law; but it has been so introduced and is now well understood by Parish Officers and Justices."

**EMBARGO.**—"An Embargo is an ARREST laid on ships or merchandize by public authority, or an order prohibiting ships from putting to sea, and sometimes from entering ports" (Wood 353: *Vf, 4 Encyc.*

478: *Rodocanachi v. Elliott*, cited ARREST). It does not put an end to any subsisting contract relating to the ship affected, but is only a temporary suspension of such contract (*Hadley v. Clarke*, 8 T. R. 259; *Touteng v. Hubbard*, 3 B. & P. 291; *Vthe, Jackson v. Union Mar. Insree*, 42 L. J. C. P. 284; 44 Ib. 27; L. R. 8 C. P. 572; 10 Ib. 125). *Vf* Abbott, 761.

As to effect of Embargo on Wages; *V. Abbott*, 791.

**EMBARRASS.** — To “embarrass,” R. 27, Ord. 19, R. S. C., means to state, in a party’s pleading, matter that he is not entitled to make use of (per Jessel, M. R., *Hough v. Chamberlain*, 25 W. R. 742; W. N. (77) 128; *Va, Spurr v. Hall*, 46 L. J. Q. B. 693; 2 Q. B. D. 615; *Berdan v. Greenwood*, 47 L. J. Ex. 628; 3 Ex. D. 251). A Defence is not embarrassing by reason of alleging several inconsistent statements of fact (*Re Morgan*, 35 Ch. D. 492; 56 L. J. Ch. 603; 56 L. T. 503; 35 W. R. 705; *affd* 39 Ch. D. 316).

*Cp.* FRIVOLOUS OR VEXATIOUS.

**EMBEZZLE.** — “When a Clerk or a Servant, or person employed in the capacity of a clerk or servant, commits theft by converting any chattel, money, or valuable security, delivered to or received, or taken into possession by him for or in the name or on account of his master or employer, his offence is called Embezzlement” (Steph. Cr. ch. 36, *whv* hereon).

“The distinction between Embezzlement by a clerk or servant and other kinds of THEFT is, that in other kinds of theft the property stolen is taken out of the possession of the owner, whereas in Embezzlement by a clerk or servant the property embezzled is converted by the offender whilst it is in the offender’s possession on account of his master and before that possession has been changed into a mere custody” (Ib. 241).

*Vf*, Arch. Cr. 523–560: Rose. Cr. 397–414: 4 Encyc. 479–484: *Re Bellescontre*, 1891, 2 Q. B. 122; 60 L. J. M. C. 83; 64 L. T. 461; 39 W. R. 381.

“Purloin, embezzle”; *V. PURLOIN.*

**EMBLEMMENTS.** — “Emblemments” is the right which the occupier of land (or his personal representatives) has to reap in peace the crop which he sowed, when his occupation has been determined by his death or otherwise unexpectedly comes to an end from a cause beyond his control (Litt. s. 63; Co. Litt. 55 a–56 a). As to Emblemments as between Heir and Executor. *V. Wms. Exs. 622 et seq.*; and as between Landlord and Tenant, *V. Woodf. 789–791*; Redman, ch. 9, s. 2: Fawcett, 497. In the latter connection, *V. 14 & 15 V. c. 25*, which in most cases substitutes the right of continued occupation for Emblemments. *Va, Dart, 235*: Jacob.

**EMBRACE.** — “Embrace,” in an Interp Clause, may sometimes connote an exhaustive enumeration (*Marshall v. Orpen*, 1895, A. C. 606; 64 L. J. P. C. 177; 72 L. T. 733). Cp, EXTEND TO; INCLUDE.

**EMBRACERY.** — “Everyone commits the misdemeanor called Embracery who by any means whatever, except the production of evidence and argument in open Court, attempts to influence or instruct any jurymen, or to incline him to be more favourable to the one side than to the other in any judicial proceeding, whether any verdict is given or not, and whether such verdict, if given, is true or false” (Steph. Cr. 88, 89). *Vf*, Rose. Cr. 618: Co. Litt. 369 a: Termes de la Ley, *Embrasour*.

**EMENDALS.** — “Is an old word used in the Accounts of the Inner Temple where so much in Emendals at the Foot of an account signifies so much in bank in the stock of the House for the supply of all emergent occasions” (Cowel).

**EMIGRANT.** — “Emigrant *Labourer*”; *V.* LABOURER.

“Emigrant *Ship*,” quâ Part 3, Mer Shipping Act, 1894, — unless the context otherwise requires, — means, “every SEA-GOING Ship (whether British or Foreign, and whether or not conveying Mails) carrying, — upon any Voyage to which the provisions of this part of this Act respecting Emigrant Ships apply, — more than 50 STEERAGE PASSENGERS, or a greater number of Steerage Passengers than in the proportion

(a) If the Ship is a Sailing Ship, of one STATUTE ADULT to 33 tons of the ship’s registered tonnage; and

(b) If the Ship is a Steam Ship, of one Statute Adult to every 20 tons of the ship’s registered tonnage; and

includes a Ship which, having proceeded from a Port outside the BRITISH ISLANDS, takes on board at any Port in the British Islands such number of Steerage Passengers, whether British Subjects or Aliens resident in the British Islands, as would, either with or without the Steerage Passengers which she already has on board, constitute her an Emigrant Ship” (subs. 1, s. 268). *V.* SHIP: PASSENGER SHIP.

**EMOLUMENT.** — *V.* ADVANTAGES.

An “Emolument” is a Profit or Advantage, — anything by which a person is benefited, *e.g.* a person dispossessed of an OFFICE, or EMPLOYMENT, who is entitled to Compensation calculated according to his “Annual Emolument” derived therefrom, is entitled to have taken into consideration the profit he has made on the allowance made to him for travelling expenses (*R. v. Postmaster General*, 47 L. J. Q. B. 435; 3 Q. B. D. 428). The word has a wider meaning than “REMUNERATION” (per Quain, J., *Ib.* 1 Q. B. D. 665). Cp PAY.

Quâ Poor Law Officers’ Superannuation Act, 1896, 59 & 60 V. c. 50, “‘Emoluments,’ includes all fees, poundage, and other payments, made

to any Officer or Servant, AS SUCH, for his own use; also the money value of any apartments, rations, or other allowances in kind, appertaining to his office or employment" (s. 19).

"Emoluments," as used in R. 2, Case 2, Sch D, and R. 4, Sch E, Income Tax Act, 1842, "means some more tangible benefit than a servant's residence in his master's house, or a meal, or a suit of livery, supplied by the master" (per Ld Watson, *Tenant v. Smith*, cited INCOME).  
Cp PERQUISITE.

The share of revenues which Canons have immemorially received in common with the rest of a Chapter, is "Emoluments" within s. 1, 4 & 5 W. 4, c. 90 (*Ecc. Commrs v. Kildare*, 8 Ir. Ch. Rep. 93).

"Emoluments" of the Universities of Oxford and Cambridge; Stat. Def., 17 & 18 V. c. 81, s. 48; 19 & 20 V. c. 88, s. 50; 40 & 41 V. c. 48, s. 2; 43 & 44 V. c. 11, s. 2:—of Durham, 24 & 25 V. c. 82, s. 13.

**EMPANEL.**—*V.* PANEL.

**EMPIRIC.**—*V.* QUACK.

**EMPLOY.**—A contract "to employ" does not, generally, mean to find actual employment; it rather means, to retain and pay a person, whether employed or not, but if employed then to be employed in the work only in respect of which the contract is made. "Medical advisers may be employed at a salary to be ready in case of illness; members of theatrical establishments in case their labours should be needed; household servants in performance of their duty when their masters wish: in these and other similar cases the requirement of actual service is distinct from the employment by the party employing" (per Parke, B., delivering judgment of the Ex. Cham. in *Elderton v. Emmens*, 17 L. J. C. P. 309; 6 C. B. 176, 177; affd nom. *Emmens v. Elderton*, 13 C. B. 495; 4 H. L. Ca. 624). In an agreement to "*retain and employ*," "employ" means only to "retain" in the service "and is mere tautology" (per Parke, B., *ib.* 13 C. B. 532; 4 H. L. Ca. 668). *Vh*, *Whittle v. Frankland*, 2 B. & S. 49; *Turner v. Goldsmith*, cited AGENT: *thle distd Turner v. Sawdon*, 1901, 2 K. B. 653; 70 L. J. K. B. 897.

"In his employ"; *V.* SERVANT.

A person in the "employ" of a Creditor or his Solr, R. 154, Bankry Rules, 1886, may be one employed *pro hac vice* (*Ex p. Branfill, Re Blackman*, 40 W. R. 670).

*V.* EMPLOYED: EMPLOYMENT.

**EMPLOYED.**—"Person employed under the Post Office," s. 26, 7 W. 4 & 1 V. c. 36; "The term 'employed' in this statute, means 'engaged or occupied'" (per Parke, B., *R. v. Reason*, 23 L. J. M. C. 13; *Dears*. 226), and it was there held that a person who, at a post-master's request, gratuitously assisted him in sorting letters was within the section.

Buildings used by the City Lieutenancy for arms and stores of Militia, are "employed for Her Majesty's use or service," within s. 6, 18 & 19 V. c. 122 (*R. v. Jay*, 8 E. & B. 469; nom. *Jay v. Hammon*, 27 L. J. M. C. 25).

"Employed for the purpose or in the capacity of a CLERK or SERVANT," s. 68, 24 & 25 V. c. 96; a son who lived with and gratuitously assisted his father as Clerk to a Local Board, was held to have been "employed" by the father (*R. v. Foulkes*, 44 L. J. M. C. 65; L. R. 2 C. C. R. 150; 23 W. R. 696; 39 J. P. 501).

Solicitor "employed," s. 28, 23 & 24 V. c. 127; *V. Baile v. Baile*, L. R. 13 Eq. 497; 41 L. J. Ch. 300; 20 W. R. 534; 26 L. T. 283:  
RECOVERED OR PRESERVED.

The phrase "employed in a Mine," s. 18, Coal Mines Regn Act, 1872, means employed by the mine-owner (*Hopkinson v. Caunt*, 54 L. J. Q. B. 284; 14 Q. B. D. 592).

"Persons employed on or about" a Mine, as this phrase is used in a Special Rule for the due management of the Mine, include those so employed who have discharged themselves whilst in the Mine, and the character of being so employed attaches to such until they get out of the Mine or until a reasonable time has elapsed before they are let out (*Higham v. Wright*, 46 L. J. M. C. 223; 2 C. P. D. 397).

Stevadore "appointed by charterers, but employed and paid by the Ship-owners," is the servant of the latter to this extent. — they cannot recover DEMURRAGE if the Stevadore is in default (*Harris v. Best-Ryley*, 68 L. T. 76; 7 Asp. 276; 9 Times Rep. 149).

CHILD "employed" in PRINT-WORKS; *V. Hardcastle v. Jones*, 3 B. & S. 153; 32 L. J. M. C. 49; 7 L. T. 322; 11 W. R. 36; *Hogle v. Oram*, 12 C. B. N. S. 124; 31 L. J. M. C. 213.

Child "employed" in a WORKSHOP, or FACTORY; *V. Beudon v. Parrott*, 40 L. J. M. C. 200; L. R. 6 Q. B. 718; 19 W. R. 1144: WORK.

Stat. Def., — 7 & 8 V. c. 15, s. 73; 26 & 27 V. c. 40, s. 2; 30 & 31 V. c. 146, s. 4.

Seaman "employed or engaged on Board" ship; *V. SEAMAN*.

Contract to pay freight so long as SHIP "employed"; *V. Ripley v. Scaife*, 5 B. & C. 167.

The exemption from TURNPIKE Toll when a horse, &c. is "employed" in carrying Manure, s. 1, 5 & 6 W. 4, c. 18, applied whether the manure was for the land of the person for whom it was being carried or for sale (*R. v. Freke*, 5 E. & B. 944; 25 L. J. M. C. 64; 26 L. T. O. S. 236; 4 W. R. 264; *Foster v. Tucker*, 39 L. J. M. C. 72; L. R. 5 Q. B. 224). An Officer's Private Carriage which he chooses to use when on duty, is not "employed" in MILITARY SERVICE, within s. 143, Army Act, 1881 (*Craig v. Nicholas*, 1900, 2 Q. B. 444; 69 L. J. Q. B. 608; 82 L. T. 765; 49 W. R. 48; 64 J. P. 569).

*V. EMPLOY: EMPLOYER: EMPLOYMENT: ENGAGE: CAPITAL EMPLOYED: COASTING TRADE: HOWEVER: FOLLOW.*

**EMPLOYER.**— Stat. Def., 37 & 38 V. c. 48, s. 7; Employers' Liability Act, 1880, s. 8; Workmen's Comp Act, 1897, s. 7 (2).

As to who is the "Employer" under 38 & 39 V. c. 90, and Employers' Liability Act, 1880, *V. Marrow v. Flimby, &c Co*, 1898, 2 Q. B. 588; 67 L. J. Q. B. 976; 79 L. T. 397. In this connection, a man may serve two masters; *V. per Williams, L. J., Ib.*

An "Employer" under Agricultural Children Act, 1873, 36 & 37 V. c. 67, must occupy "not less than one acre of land" (s. 4).

**EMPLOYMENT.**— "Contract or Employment"; *V. CONTRACT.*

"Contract or Employment," "Office, Commission, Place, or Employment"; *V. OFFICE.*

"Public Office or Employment"; *V. PUBLIC OFFICE.*

"Employment" in Workmen's Comp Act, 1897; *V. EMPLOYER: AVERAGE WEEKLY EARNINGS.*

A Ry Ticket Collector, having collected all the tickets from the passengers, stood on the foot-board of the train, just as it was starting, to speak to a friend in the train; the train moved, and in getting off the foot-board the collector fell and was caught between the train and the platform and killed; held, that the accident did not "arise *out of and in the course of*" the Collector's "Employment," for what he was then doing was for his own pleasure (*Smith v. Lanc. & Y. Ry*, 1899, 1 Q. B. 141; 68 L. J. Q. B. 51; 79 L. T. 633; 47 W. R. 146: *Vf*; *Holness v. Mackay*, 1899, 2 Q. B. 319; 68 L. J. Q. B. 724; 80 L. T. 831; 47 W. R. 531); but an emergency service, though not in the scope of a workman's employ, is "in the Course of his Employment" (*Rees v. Thomas*, 1899, 1 Q. B. 1015; 68 L. J. Q. B. 539; 80 L. T. 578; 47 W. R. 504). So, a person's Employment may begin before, and continue after, his actual work, *e.g.* a collier's begins when he leaves the bank of the pit and does not end till he gets back there, or a Railway Servant's begins when he gets into the train by which his masters have agreed to carry him to his work, and, *semble*, does not end till he has finished his return journey (*Holmes v. G. N. Ry*, 1900, 2 Q. B. 409; 69 L. J. Q. B. 854; 83 L. T. 44; 48 W. R. 681; 64 J. P. 532: *Cp*, *Higham v. Wright*, cited EMPLOYED).

An accident caused by Disobedience to orders, cannot be "in the Course of" employment (*Lowe v. Pearson*, 1899, 1 Q. B. 261; 68 L. J. Q. B. 122; 79 L. T. 654; 47 W. R. 193: *Va* ACCIDENT).

*Vf*, *Harrison v. Whitaker*, 64 J. P. 54; *McNicholas v. Dawson*, 1899, 1 Q. B. 773; 68 L. J. Q. B. 470; 80 L. T. 317; 47 W. R. 500: WORKMAN.

Employment "for the purposes of Gain"; *V. GAIN.*

Employment and Working for Hire, quâ Factory and Workshop Act, 1901; *V. s.* 152.

*V. COMMON EMPLOYMENT: CUSTOMARY EMPLOYMENT: INDUSTRIAL EMPLOYMENT: SERIOUS.*

**EMPOWER.** — *V.* AUTHORISE: PRECATORY TRUST.

**EMPOWERED.** — *V.* MAY: SHALL AND LAWFULLY MAY.

**EMPTY.** — A Gale liable to be forfeited to the Crown for non-working, under s. 29, Dean Forest (Mines) Act, 1838, 1 & 2 V. c. 43, is not *empty* till the Officer of the Crown has exercised the option to forfeit the Gale (*James v. Young*, 53 L. J. Ch. 793 ; 27 Ch. D. 652).

*Cp* EXHAUSTED.

**ENABLE.** — To “enable” means, to give power to do something, but does not connote a compulsion to some one else to concur therein. “‘Enable,’ in itself, has the primary meaning, in the case of a person under any Disability as to dealing with another, of removing that disability ; not of conferring a compulsory power as against that other” (per Rigby, L. J., *West Derby v. Metrop. Life Assree*, 66 L. J. Ch. 208). Therefore, though s. 2, 34 V. c. 11, “enables” Poor Law Guardians to redeem current loans, it does not give them power to do so compulsorily as against the lenders (*S. C.* 1897, A. C. 647 ; 66 L. J. Ch. 726 ; 77 L. T. 284 ; 61 J. P. 820).

Gift to Trustees “in order to enable them” to bring-up Children ; *V.* *Pearman v. Pearman*, 33 Bea. 394.

**ENABLING.** — “IN EXERCISE of the power thereby reserved, and of all other powers enabling me in this behalf” ; as to the comprehensiveness of this phrase, *V.* *Southall v. Jones*, 28 L. J. P. & M. 112 ; 1 Sw. & Tr. 298 : *secus*, *Re Porter*, 59 L. J. Ch. 599 ; 45 Ch. D. 179 ; 63 L. T. 431.

**ENCHANTMENT.** — *V.* CONJURATION.

**ENCLOSE.** — *V.* INCLOSE.

**ENCLOSED LANDS.** — *V.* INCLOSED LANDS.

**ENCLOSING WALLS.** — *V.* INCLOSING WALLS.

**ENCLOSURE.** — A permission, — *e. g.* by a Lord of the Manor, — to occasionally erect a temporary circus on a small part of a Waste, is not an “Enclosure or ENCROACHMENT” on the Waste, within an Act for its free preservation (*Malvern Hill Conservators v. Foley*, 4 Times Rep. 672).

*V.* INCLOSURE: PARCEL: SURFACE.

**ENCROACHMENT.** — An Encroachment is “an unlawful gaining upon the right or possession of another man” (Jacob, cited by counsel, *Easton v. Richmond*, L. R. 7 Q. B. 73). Jacob’s def follows that in *Termes de la Ley*.

*V.* ENCLOSURE.

ENCUMBRANCE. — *V.* INCUMBRANCE.

**END.** — When a person has to do a thing “at the End” of a period of Time, — *e.g.* claim “at the end of the year,” repayment of Income Tax under s. 133, 5 & 6 V. c. 35, — that does not mean that he is to do it at any time, or within a reasonable time after such period; “but it is to be done in the shortest time a person can do it if he has made every exertion which (in the particular case) he ought to have made” (per Esher, M. R., *R. v. Income Tax Commrs*, 57 L. J. Q. B. 516; 21 Q. B. D. 313; 59 L. T. 455; 36 W. R. 776); so, *semble*, as to a Re-Arrangement of a Ry Working Agreement “at the end” of a stated period (*Eastern & Midlands Ry v. Mid. Ry*, 4 Ry & Can Traffic Ca. 344, 345).

The “End” of a TERM of years granted by a Lease, means its ceasing in any way in accordance with the provisions of the lease; but (probably) not including its abrupt DETERMINATION under a clause of Forfeiture. Thus, where a Lease for 21 years gave the Lessee an option (which he exercised) to determine it at the end of the 14th year, the Lessor was held liable to pay for specified tenant’s improvements which the lease provided he was to pay for “at the End” of the term, although there were other clauses in the lease which spoke of “the End, or other Sooner Determination” of the Term (*Bevan v. Chambers*, 12 Times Rep. 417).

“End of the Current Year,” in a Notice to Quit; *V. Wride v. Dyer*, cited CURRENT.

*V.* EXPIRATION.

The shorter sides of an oblong quadrilateral “would be commonly spoken of as ‘Ends’” (*Read v. Lincoln, Bp*, 1892, A. C. 644; 62 L. J. P. C. 1; 67 L. T. 128; 56 J. P. 725). *V.* SIDE.

“At the Foot or End”; *V.* FOOT.

“End of Highway,” s. 85, Highway Act, 1835; *V. R. v. Surrey Jus.*, cited HIGHWAY.

ENDANGER. — *V.* DANGER; IMPERIL.ENDEAVOURS. — *V.* UTMOST.

**ENDORSE.** — “‘Indorsement,’ is that that is written upon the backe of a Deed, as the Condition of an Obligation is said to bee indorsed, for that that is written on the backe of the obligation” (Termes de la Ley).

A direction to “endorse” anything on a document means, as a general rule, to write it on the *back* of the document (*Ackers v. Howard*, 55 L. J. Q. B. 278; 16 Q. B. D. 739; 54 L. T. 651; 34 W. R. 609; 50 J. P. 519: which was a decision on R. 36, Ballot Act, 1872).

But this definition is not of universal application; for it is not essential to the validity of an indorsement of a Bill of Exchange or Promissory Note that it should be on the back of the document; it may equally well



be on the face (Byles on Bills, 14 ed., 171, citing *R. v. Bigg*, 1 Stra. 18; 3 P. Wms. 419; *Ex p. Yates*, 27 L. J. Bank. 9; *Yarborough v. Bank of England*, 16 East, 12). So s. 32 (1), Bills of Ex. Act, 1882, says that an Indorsement "must be written on the Bill itself." *Vf*, as to the requisites of an Indorsement of a Bill or Note, ss. 32 to 37 of that Act; and as to liability of an Indorser, s. 55 (2): SANS RECOURS.

In *R. v. Fitzroy-Cowper* (cited SIGNED), "endorse" was held equivalent to "sign."

V. INDORSEMENT: NEGOTIATE.

**ENDOW.** — *V.* ENDOWMENT, for its primary meaning; *Vf* Exodus, xxii. 16. A bequest "to endow" an Institution does not offend the law of mortmain (*Edwards v. Hall*, 25 L. J. Ch. 82; 11 Hare, 1; 6 D. G. M. & G. 74; 4 W. R. 38). In that case Cranworth, C., in giving judgment said, — "By the Endowment of a School, an Hospital, or a Chapel, is commonly understood not the building, or providing a site for, a school or hospital or chapel; but the providing of a fixed revenue for the support of those by whom the Institutions are conducted": a def which applies whether the Institutions are present or future (*Sinnett v. Herbert*, 7 Ch. 232; *Chamberlayne v. Brockett*, 8 Ch. 206). *Vf*, *Kirkbank v. Hudson*, 7 Price, 212; *Re Robinson*, 1892, 1 Ch. 95; 61 L. J. Ch. 17; 66 L. T. 81; 40 W. R. 137; Tudor Char. Trusts, 110, 413; 1 Jarm. 228, 230: PROVIDE: FOUND: ERRECT. *Cp*, ESTABLISH.

**ENDOWED.** — "Endowed INSTITUTION." quâ Endowed Institutions (Scot) Act, 1878, 41 & 42 V. c. 48, "means a School, Hospital, or other Institution, WHOLLY or partly maintained by means of any ENDOWMENT; and includes a mortification or bequest for Educational or Charitable uses, or for uses partly educational and partly charitable, or for the establishment or maintenance of a PUBLIC LIBRARY" (s. 3). This Act repealed by Statute Law Revision Act, 1883.

"Endowed SCHOOL," quâ "The Endowed Schools Acts, 1869 to 1889" (*V. Sch. 2. Short Titles Act. 1896*), "means a School which is (or, if it were not in abeyance, would be) WHOLLY or partly maintained by means of any ENDOWMENT; provided that a School belonging to any person or body corporate shall not by reason only that Exhibitions are attached to such School be deemed to be an Endowed School" (s. 6, 32 & 33 V. c. 56). *Vh. 5* Encyc. 16-21.

"Endowed Schools Commrs"; *V.* COMMISSIONERS.

**ENDOWMENT.** — "Endowment," signifies properly the giving or assigning of DOWER to a woman. But it is sometimes, by a metaphor, used for the setting-out or severing of a sufficient part or portion to a Vicar for his perpetuall maintenance when the BENEFICE is appropriated. And so it is used in 15 Rich. 2, c. 6, and 4 H. 4, c. 12" (*Termes de la Ley*). In this latter sense "Endowment," properly means, the grant of

Lands or Tithes to a Spiritual Person or Body to enable him to discharge the spiritual functions of his cure" (per Crampton, J., *Shaw v. Woods*, 5 Ir. Com. Law Rep. 165). *Vf*, *Re St. John Street Chapel*, 62 L. J. Ch. 927; 1893, 2 Ch. 618.

Quà Charitable Trusts Act, 1853, 16 & 17 V. c. 137, " 'Endowment' shall mean and include all Lands and Real Estate whatsoever of any tenure, and any Charge thereon or Interest therein, and all Stock, Funds, Money, Securities, Investments, and Personal Estate whatsoever which shall, for the time, belong to or be held in trust for any CHARITY, or for all or any of the objects or purposes thereof " (s. 66). Those words " mean that all Property of every description belonging to, or held in trust for, a Charity (and whether held upon trusts or conditions which render it lawful to apply the Capital to the maintenance of the Charity, or upon trusts which confine that charitable application to the Income) is an 'Endowment,' within the meaning of the Act " (*Re Clergy Orphan Corp*, 1894, 3 Ch. 151; 64 L. J. Ch. 66; 71 L. T. 450; 43 W. R. 150; hereby giving a larger interp than that of Romilly, M. R., in *Corp for Relief of Widows and Children of the Clergy v. Sutton*, 27 Bea. 651; nom. *Corp of the Sons of Clergy v. Sutton*, 29 L. J. Ch. 393: *Vf*, *Sons of Clergy Corp v. Skinner*, 1893, 1 Ch. 178; 62 L. J. Ch. 148; 67 L. T. 751; 41 W. R. 461).

But applying that interpretation to the exemption from the Act contained in s. 62, these rules apply, —

(1) " Income arising from any endowment," *primâ facie* means, Income derived from any Invested Funds ;

(2) But that, — in the case of a Charity maintained " partly by VOLUNTARY SUBSCRIPTIONS and partly by Income " so arising, — bequests and donations for the general purposes of a Charity which may be lawfully applied as Income consistently with the terms of the gift, are exempt ;

(3) And such gifts and the income thereof are not brought within the jurisdiction of the Charity Commrs by being invested by the governing body (*Re Clergy Orphan Corp*, sup). *Vh* 39 S. J. 38.

Other Stat. Def. — quà ENDOWED Schools, 32 & 33 V. c. 56, s. 4; quà ENDOWED Institutions, 41 & 42 V. c. 48, s. 3; quà London Parochial Charities, 46 & 47 V. c. 36, s. 53.

An alternative bequest to " such other Charitable Endowment " as may be preferred, " must be taken to mean a *lawful* charitable endowment " and one not infringing the law of Mortmain (per Wood, V. C., *Salisbury v. Denton*, 26 L. J. Ch. 853; 3 K. & J. 529).

V. CHARITY: CHARITABLE TRUST: ENDOW: EDUCATIONAL ENDOWMENT: PRIVATE ENDOWMENT.

**ENEMY.** — PIRATES " are never recognized as Enemies, the word 'Enemy' applying to States " (1 Maude & P. 487): A State is an Enemy when we are at WAR with it.

Quà Army Act, 1881, " 'Enemy,' includes all Armed Mutineers, Armed Rebels, Armed Rioters, and Pirates " (subs. 20, s. 190).

The word "Enemies," or "King's Enemies," or "Queen's Enemies," in Bills of Lading and Charter Parties, is, probably, confined to the Enemies of the Sovereign of the stipulator; it certainly includes them; RESTRAINTS OF KINGS being generally added to comprise every other case of interruption by lawful authority (*Russell v. Niemann*, 34 L. J. C. P. 10; 17 C. B. N. S. 163). *Vf*, QUEEN'S ENEMIES: ALIEN.

**ENERGY.**—"Electrical Energy"; Stat. Def., 62 & 63 V. c. 19, Sch s. 1. *V*. ELECTRIC: POWER.

**ENFEOFF.**—*V*. FEOFFMENT.

**ENFORCE.**—To seek to "enforce" a Contract AFFECTING land, R. 1 (*b*), Ord. 11, R. S. C., means to seek its Specific Performance (per Smith, J., *Agnew v. Usher*, 54 L. J. Q. B. 371; 14 Q. B. D. 78; 51 L. T. 576; 33 W. R. 126). But this narrow construction was questioned by Charles, J., in *Kaye v. Sutherland* (20 Q. B. D. 151), and in *Tussell v. Hallen* (36 S. J. 202) Collins, J., said " 'enforced' must refer not merely to an action for specific performance, but also for breach of covenant."

To "enforce and put in execution" a Jdgmt; *V. Ex p. Holden*, 13 C. B. N. S. 641; 32 L. J. C. P. 111; 7 L. T. 791.

Order "may be enforced," R. 24, Ord. 42, R. S. C., "includes enforcing by Action as well as by Execution" (per Lindley, M. R., *Pritchett v. English & Colonial Syndicate*, 1899, 2 Q. B. 428; 68 L. J. Q. B. 801; 81 L. T. 206; 47 W. R. 577, citing *Re Boyd*, cited FINAL JUDGMENT: *Godfrey v. George*, 1896, 1 Q. B. 48; 65 L. J. Q. B. 249).

A Rule requiring a Court to "enforce Obedience" to its provisions, does not justify a committal without a previous Order requiring obedience (*Re Royle*, 50 L. J. Q. B. 656).

**ENFRANCHISEMENT.**—*V*. Litt. s. 204: Co. Litt. 137 a, b: Termes de la Ley.

Quà Copyhold Act, 1894, 57 & 58 V. c. 46, " 'Enfranchisement' includes the discharge of FREEHOLD lands from heriots and other manorial rights " (s. 94).

Compensation for loss "by the Enfranchisement" of Copyholds (end of s. 96, Lands C. C. Act, 1845), is not to be assessed as at the date of the execution of the Enfranchisement Deed, but as at the date when the Right to the Enfranchisement arose (*Lowther v. Caledonian Ry*, 61 L. J. Ch. 108; 1892, 1 Ch. 73).

**ENGAGE.**—To "engage" to do anything "has the same force as the word 'Covenant'" (per Parke, B., *Rigby v. G. W. Ry*, 15 L. J. Ex. 62; 14 M. & W. 816).

“Employed or Engaged”; *V. SEAMAN.*

A Patentee is, *semble*, “engaged in” business relating to the patented goods, so long as he receives royalties, even though he does not himself manufacture (*Re Ralph*, 53 L. J. Ch. 188; 25 Ch. D. 104). *V. CARRY ON: CONCERNED IN: INTERESTED IN.*

“Engaged in Working” a Mine, s. 81, Comp Act, 1862, means, is, or has been, engaged in working, or now or formerly engaged in working (*Re Silver Valley Mines*, 18 Ch. D. 472): *Vthc, Re New Terras Co* (1894, 2 Ch. 344; 63 L. J. Ch. 398), where it was pointed out that the phrase is replaced by “formed for Working,” s. 1 (4), 53 & 54 V. c. 63.

*V. EMPLOYED.*

**ENGAGEMENT.** — “All Engagements”; *V. Jones v. McCraw*, W. N. (71) 141.

“Money payable under any Engagement,” in def of “Personal Property,” s. 1, Sucn Dy Act, 1853; *V. A-G. v. Montefiore*, 21 Q. B. D. 461; 59 L. T. 534; 4 Times Rep. 658. *V. ACCRUING.*

Marine Policy “to cover Freight from the time of the Engagement of the Goods,” does not widen the risk covered if the Policy is “at and from” a place (*V. The Copernicus*, cited **AT AND FROM**).

Attack on, or Engagement with, Pirates; *V. ATTACK.*

The “Engagement” of an Actor leaves him his Sundays free (*Kelly v. London Pavilion*, cited **PERFORM**).

**ENGINE.** — This word, derived from *ingenium*, includes a **SNARE**; and a Snare is accordingly within s. 3, Game Act, 1831, 1 & 2 W. 4, c. 32 (*Allen v. Thompson*, 39 L. J. M. C. 102; L. R. 5 Q. B. 336: *Vthc, Jones v. Davies*, cited **OTHER**).

The word “Engine” is to be “found, for the first time, in 9 G. 3, c. 29, where it is confined to Engines for draining mines, or drawing coals out of coal-mines” (6 M. & S. 185). In 1812 the legislature used it in two different senses; — (1) As indicating a moveable **UTENSIL** (52 G. 3, c. 16, on *whv* 54 G. 3, c. 42), (2) As indicating a large structure for carrying on a manufactory, and, *ejusdem generis* with “Erection” or “Building,” and, therefore, as not including Frames for making Lace only fixed to the floor of a factory to keep them steady when at work (52 G. 3, c. 130, expounded by *Orgill v. Smith*, 6 M. & S. 182, cited also **DEMOLISH**).

Erect a Steam Engine; *V. ERECT.*

*V. FIXED ENGINE: LOCOMOTIVE ENGINE: MACHINE.*

**ENGINEER.** — *V. CIVIL ENGINEER: PRINCIPAL ENGINEER.*

**ENGINEERING WORK.** — A Bridge forming part of the Line of a Railway, is an “Engineering Work,” within s. 14, Ry C. C. Act, 1845 (*A-G. v. Tewkesbury Ry*, 32 L. J. Ch. 482).

"Engineering Work," s. 7 (1, 2), Workmen's Comp Act, 1897; *V. Chambers v. Whitehaven Harbour Commrs*, cited IN OR ABOUT: *Cosgrove v. Partington*, 64 J. P. 788; 17 Times Rep. 39.

**ENGLAND.** — "Except where the jurisdiction has been extended by an Act of Parliament, 'England,' and the sovereignty of the Queen, stop at Low-Water Mark" (per Coleridge, C. J., *Harris v. The Franconia*, 46 L. J. C. P. 363; 2 C. P. D. 173; thus interpreting the decision in *R. v. Keyn*, 46 L. J. M. C. 17; 2 Ex. D. 63). *V. REALM: SEA COAST.*

"England," includes Wales (7 H. 8, c. 26).

"England," in an Act of Parliament, includes Wales and Berwick-upon-Tweed (20 G. 2, c. 42, s. 3: *V. 6 & 7 W. 4, c. 79, s. 64; 5 & 6 V. c. 35, s. 192; 9 & 10 V. c. 56, s. 3*); but not Scotland or Ireland (*Ex p. Cunningham, Re Mitchell*, 53 L. J. Ch. 1067), unless by an Interp Clause, e.g. s. 17, 52 & 53 V. c. 72. *Cp. GREAT BRITAIN: UNITED KINGDOM: BRITISH ISLANDS.*

Quà Colonial Clergy Act, 1874, 37 & 38 V. c. 77, "England," includes, "the ISLE OF MAN and the CHANNEL ISLANDS" (s. 14).

An English SHIP on the HIGH SEAS is a part of England; therefore, an AFFILIATION Order may be obtained in respect of an illegitimate child born on such a ship (*Marshall v. Margatroyd*, 40 L. J. M. C. 7; L. R. 6 Q. B. 31). *V. Seagrove v. Parks*, 1891, 1 Q. B. 551; 60 L. J. Q. B. 355.

Church of England; *V. CHURCH.*

"District of England"; *V. DISTRICT.*

**ENGLISH.** — "The English Channel District," quà Mer Shipping Acts, comprises, "the Seas between Dungeness and the Isle of Wight" (s. 370 (2), 17 & 18 V. c. 104, repled s. 618 (1, ii), 57 & 58 V. c. 60). *Cp. LONDON DISTRICT.*

The words "'English MARRIAGE' are capable of two very different meanings, — (1) As signifying the substance of the contract or union between the parties out of which their rights as Spouses arise, or (2) As signifying the mere place of celebration" (per Ld Watson, *Harvey v. Farnie*, 52 L. J. P. D. & A. 33; 8 App. Ca. 43). *Cp. BRITISH SEAMAN.*

*Note.* — As to the inefficiency of a Foreign Divorce on a Marriage celebrated in England, *V. R. v. Lolley*, Russ. & Ry. 237; *Green v. Green*, 1893, P. 89; 62 L. J. P. D. & A. 112.

The "English *Wright*" of a Quarter of Barley is 400 lbs. (*Dreyfus v. Allen*, 9 Times Rep. 1).

**ENGRAVE.** — "Truly engraved with the name of the PROPRIETOR," s. 1, 8 G. 2, c. 13; *V. NAME.*

**ENGRAVING.** — *Seemle*, Prints and Coloured Prints are "Engravings," within the Carriers Act, 1830 (*Boys v. Pink*, 8 C. & P. 361). *V. PAINTING: PICTURE: COPY.*

**ENGROSSER.**—*V.* INGROSSER: REGRATOR.

**ENHERITANCE.**—*V.* INHERITANCE.

**ENJOINED.**—*V.* PRECATORY TRUST.

**ENJOY.**—*V.* BEGIN: PURCHASE: UNDERTAKE, 2nd par.

**ENJOYED.**—*V.* APPURTENANCES: PASTURAGE: RIGHT: WAYS: HELD: ACTUALLY ENJOYED.

Where a testator gives his Residence "with the lands thereunto BELONGING, as now enjoyed by me," he includes those lands which he has connected in enjoyment, although not connected in title (*Bodenham v. Pritchard*, 1 B. & C. 350: *Vthe, Polden v. Bastard*, cited OCCUPATION). In *Bodenham v. Pritchard*, Bayley, J., said that, "thereunto belonging" may, "in its popular and more comprehensive sense, include all that is united in occupation, although not connected in title."

Easement "enjoyed by"; *V.* BY.

**ENJOYMENT.**—As to the meaning of an Enjoyment under the Prescription Act, 1832, 2 & 3 W. 4, c. 71; *V.* RIGHT: ACTUALLY ENJOYED: *Cooper v. Hubbuck*, 12 C. B. N. S. 456; 31 L. J. C. P. 323: *Beytagh v. Cassidy*, 16 W. R. 403; *Battishill v. Reed*, 18 C. B. 696; 25 L. J. C. P. 290: *Onley v. Gardiner*, 4 M. & W. 496.

*V.* ACTUAL: BENEFICIAL: FULL ENJOYMENT: IMMEDIATE USE OR ENJOYMENT.

**ENLARGE.**—"For the purpose of enlarging a CHURCH," &c, s. 3, 47 & 48 V. c. 72; *V. Re St. James the Less, Bethnal Green*, 1899, P. 55.

To "enlarge" a MARKET, means "to increase the space in which the Market is held" (per Ld Chelmsford, *A-G. v. Cambridge*, L. R. 6 H. L. 310; 22 W. R. 38); it was there held that, under the power given by the Cambridge Market Act, 1850, to "enlarge" their Market, the Corporation were authorised to extend the Market to streets in the neighbourhood of the ordinary market-place.

"Enlargement of Term into Fee Simple"; Stat. Def., Yorkshire Registries Act, 1884, 47 & 48 V. c. 54, s. 3, applying s. 65, Conv & L. P. Act, 1881.

**ENLIST.**—To "enlist" is to accept or agree to accept a "commission or engagement in the Military or Naval Service" of the Crown (*V.* s. 4, Foreign Enlistment Act, 1870, 33 & 34 V. c. 90). *V.* MILITARY SERVICE: NAVAL SERVICE.

"Enlisted" in the Regular Forces; *V.* s. 80 (4 b), Army Act, 1881.

**ENQUIRY.**—*V.* INQUIRY: REQUISITION: INQUEST.

**ENROL.**—"Admit or enrol"; *V.* ADMIT.

"Enrolled Law Agent"; Stat. Def., 36 & 37 V. c. 63, s. 1; 59 & 60 V. c. 49, s. 1.

**ENTAIL.** — As to what words create an Entail; *V.* HEIRS; HEIRS OF THE BODY: TAIL: MALE: PROPER ENTAIL.

For an example of an Entail being construed from the general structure of a Will, *V.* *Crumpe v. Crumpe*, 1899, 1 L. R. 359; affd in H. L., 1900, A. C. 127; 69 L. J. P. C. 7.

“In a Course of Entail”; *V.* COURSE.

“Deed of Entail”; *V.* DEED.

“The Entail Acts”; *V.* Sch 2, Short Titles Act, 1896.

**ENTAILED.** — *V.* TO BE ENTAILED: TO BE SETTLED.

“Entailed Estate,” in Scotland; Stat. Def., 11 & 12 V. c. 36, s. 52; 16 & 17 V. c. 94, s. 25; 31 & 32 V. c. 84, s. 2; 38 & 39 V. c. 61, s. 3.

**ENTER.** — “The word ‘enter’ (quæ BURGLARY and HOUSEBREAKING), means, the entrance into the house of any part of the offender's body, or of any instrument held in his hand for the purpose of intimidating any person in the house, or of removing any goods; but does not include the entrance of part of an instrument used to break the house open” (Steph. Cr. 248). *V.* Arch. Cr. 601; Rose. Cr. 319.

“Enter into a RECOGNIZANCE,” quæ Application of Acts to Scotland, generally means, grant a Bond of Caution, *e.g.* 41 & 42 V. c. 49, s. 74; 52 & 53 V. c. 44, s. 17; 57 & 58 V. c. 41, s. 26. *V.* 35 & 36 V. c. 76, s. 61, c. 93, s. 56.

To “enter on a REFERENCE,” means, “not merely making an appointment to hear the parties but, actually beginning to hear them”; the time limit is “reckoned, — not from when the Arbitrator accepted the office or took upon himself the functions of arbitrator by giving notice of his intention to proceed but, — from when he entered into the matter of the Reference, either with both parties before him or under a peremptory appointment enabling him to proceed *ex parte*” (per Stirling, J., *Baring-Gould v. Sharpington Syndicate*, 1898, 2 Ch. 633; 67 L. J. Ch. 622; 79 L. T. 185; 47 W. R. 23, stating the effect of *Baker v. Stephens*, 36 L. J. Q. B. 236; L. R. 2 Q. B. 523; 15 W. R. 902; 8 B. & S. 438). *Cp.* “Called on to act,” sub CALLED.

*V.* ENTRY.

**ENTERED.** — *V.* SIGNED, ENTERED, OR OTHERWISE PERFECTED.

If Lessee “have entered,” s. 2, 12 & 13 V. c. 26; *V.* *Sutherland v. Sutherland*, 62 L. J. Ch. 953; 1893, 3 Ch. 169.

**ENTERED IN RELIGION.** — “‘Entered and professed in religion.’ It is to be observed, that a man doth enter into religion at his first comming, and liveth under obedience; but he is not professed, till a yeare be past, or some time of probation. And he is said to be professed, when he hath taken the habit of religion, and vowed three things,

obedience, wilfull poverty, and perpetual chastity. And therefore our author saith here (s. 200), *entred and professed*" (Co. Litt. 131 b, 132 a). Cp ABJURATION.

**ENTERING OR BEING.** — This phrase, in the Game Acts (1 & 2 W. 4, c. 32, s. 30; 9 G. 4, c. 69, s. 1), constitutes but one offence (*R. v. Mellor*, 2 Dowl. P. C. 173), and means, a personal and not a constructive entry, and does not include the mere sending a dog into a cover or firing into it (*R. v. Pratt*, 24 L. J. M. C. 113; *Mayhew v. Wardley*, 8 L. T. 504). V. SEARCH.

**ENTERTAINMENT.** — By 23 & 24 V. c. 27, s. 6, a REFRESHMENT-HOUSE requiring a license is a building "kept open for Public Refreshment, Resort, and *Entertainment*." "Entertainment" as there used, means, "not diversion or amusement but, the provision of food, drink, and whatever else might be reasonably required for the *personal* comfort of guests" (*Taylor v. Oram*, 31 L. J. M. C. 252; 1 H. & C. 370; 7 L. T. 68; 10 W. R. 800; 27 J. P. 8); e.g. cigars, coffee, ginger-beer or lemonade, the provision of which does not cease to be "Entertainment" because no seats are provided for their more comfortable consumption (*Muir v. Keay*, 44 L. J. M. C. 143; L. R. 10 Q. B. 594; *Howes v. Inl. Rev.*, 45 L. J. M. C. 86; 46 Ib. 15; 1 Ex. D. 385). A Temperance Hotel is a Refreshment-house within the section (*Kelleway v. Macdougall*, 45 J. P. 207).

In *Taylor v. Oram*, sup, Pollock, C. B., said that "Entertainment" in the section then being construed "refers to bodily not mental gratification"; but he also said that, "with reference to some other Acts of Parliament, I should be strongly disposed to think the word meant amusement and gratification of some sort, other than food, meat, and drink"; and accordingly the prohibition in Bishop Porteous' Act, i.e. the Sunday Observance Act, 1780, 21 G. 3, c. 49, against the opening of places "for Public Entertainment or Amusement" on Sunday, is offended by an Aquarium (without a band of music) in connection with which is a museum, a reading-room (without newspapers), and a restaurant (*Terry v. Brighton Aquarium Co*, 44 L. J. M. C. 173; L. R. 10 Q. B. 306; *Warner v. Brighton Aq. Co*, 44 L. J. M. C. 175; L. R. 10 Ex. 291), or by a Lecture (illustrated by limelight representations) on Art, Science, Literature, or Sociology, though not for profit (*Reil v. Wilson*, 1895, 1 Q. B. 315; 64 L. J. M. C. 60; 71 L. T. 739; 43 W. R. 161; 59 J. P. 516). But a place duly and honestly registered as a place of Public Worship, in which no music but sacred is performed or sung, where nothing dramatic is introduced, where the discourses delivered are intended to be instructive, and contain nothing hostile to religion, where the objects of the promoters may be either to advance their own views of religion or to make science the handmaid of religion, is not used for



“Public Entertainment or Amusement” within Porteous’ Act (*Barter v. Langley*, 38 L. J. M. C. 1; L. R. 4 C. P. 21). *V. KEEPER: ADMITTED.*

A Pantomime is a “DRAMATIC Entertainment” within s. 2, 3 & 4 W. 4, c. 15 (*Lee v. Simpson*, 16 L. J. C. P. 105; 3 C. B. 871; 4 Dowl. & L. 666).

“Public Entertainment”; *V. PUBLIC BALL: PUBLIC DANCING: PUBLIC SINGING.*

“Entertainment of the Stage,” 10 G. 2, c. 28; Tumbling was not comprised herein (*R. v. Handy*, 6 T. R. 286). “Pepper’s Ghost” is an “Entertainment of the Stage” within 6 & 7 V. c. 68, s. 23 (*Day v. Simpson*, 12 L. T. 386); so of a BALLET of Action, but (probably) a mere Dance on the stage is not (*Wigan v. Strange*, cited STAGE PLAY).

**ENTICE.** — *V. PROCURE.*

**ENTIRE.** — Medical Drugs “vended Entire,” Sch. Medicines Stamp Act, 1812, 52 G. 3, c. 150, *semble*, do not include a drug mixed with, or dissolved in, spirits of wine and sold in the form of a tincture (*Smith v. Mason*, 1894, 2 Q. B. 363; 70 L. T. 909; 63 L. J. M. C. 201; 58 J. P. 432).

Entire CONTRACT; *V. notes to Cutter v. Powell*, 2 Sm. L. C. 1; Hudson, 181.

“Entire COUNTY”; Stat. Def., Loc. Gov. Act. 1888, s. 100.

“To the Entire Exclusion of the Donor,” s. 11 (1), 52 & 53 V. c. 7; *V. A-G. v. Worrall*, 1895, 1 Q. B. 99; 64 L. J. Q. B. 141; 71 L. T. 807; 43 W. R. 118; 59 J. P. 467.

“Entire PROPERTY”; *V. Murphy v. Donnelly*, cited EXECUTOR.

A Contract to render a person’s “Entire SERVICES,” precludes the contractor from accepting any other employment (*Woodworth v. Sugden*, 32 S. J. 742). *V. EXCLUSIVELY.*

“‘Entire *Tenancie*’ is that which is contrary to Severall *Tenancie*, and signifieth, a sole possession in one man, — where the other signifieth, joynt or common in more” (*Termes de la Ley*).

**ENTITLED.** — The phrase “seized, or possessed of, or *entitled to*,” very frequently occurs in Settlements and Wills, and other instruments where undefined property is dealt with by general words. Let us take the words in their order: —

“*Seized*.” — When you use the word “seized” it is obvious that this is the verb correlative with the Anglo-Norman noun “seizin.” “SEIZIN” means the actual possession of an hereditament, and was that ceremony by which, in feudal times, the relationship of lord and vassal was consummated. A person acquires the seizin “either by his own entry, or by the possession of his own or his ancestor’s lessee for years, or by receiving rent from a lessee of the freehold, or what is equivalent to corporal seizin in hereditaments that are incorporeal, such as the receipt of rent,

a presentation to the church in case of an advowson, and the like" (2 Bl. Com. 209: *If SEIZED*). To speak, therefore, of an equitable seizin seems inaccurate, — seizin, by the force of the term, implying the LEGAL, immediate, and corporeal, possession of a corporeal hereditament, or the nearest approach thereto of an incorporeal hereditament.

"*Possessed of.*" — These words, when following "seized," as in the phrase under notice, seem to be coloured by that word so far as to be made to mean, having an interest in possession in the thing possessed. The action of the word "possessed" seems to be equivalent to that of "seized," the difference between the two consisting in the subjects on which they respectively operate. "Seized" applies to the legal interest in realty; "possessed of" applies to every other kind of property or interest in possession, e.g. an equitable interest in realty, or a legal or equitable interest in goods, chattels, money deposited or invested, and other property, respecting which no seizin can be had (*V. obs of Kindersley, V. C., Wilton v. Colvin, 25 L. J. Ch. 853, 854; 3 Drew. 617.*)

"*Entitled to.*" — These are the most comprehensive words of the phrase under notice. Under them will pass all kinds of property in which the person spoken of has any title at law or in equity; and this whether the property is in possession, reversion, or remainder (*Hughes v. Young, 32 L. J. Ch. 137: Va obs of Kindersley, V. C., Archer v. Kelly, 29 L. J. Ch. 912*); but it seems that a mere contingent interest dependent on the happening of some future event will not be comprised in the words "entitled to" (*Atcherley v. Du Moulin, 2 K. & J. 186, commented on by Wood, V. C., Hughes v. Young, sup.*). And where a person who, — being an object of a Power of Appointment is entitled to the property in default of appointment, — conveys all the interest to which he is "entitled" under the instrument creating the Power, and afterwards the Power is executed in his favour, nothing passes by the conveyance, because he takes by the Appointment, and was, therefore, not "entitled" at the time of the conveyance (*Sweetapple v. Horlock, 48 L. J. Ch. 660; 11 Ch. D. 745: Lovett v. Lovett, 1898, 1 Ch. 82; 67 L. J. Ch. 20; 46 W. R. 105; 77 L. T. 650.*)

Observe, that Seizin is a fact, and that its simple unqualified recital is one of fact (*Bolton v. London School Bd, cited FACT*); but a recital that A. is "seized of or otherwise well entitled to" a property, is ambiguous and creates no estoppel quâ the Legal Estate (*Heath v. Crealock, cited SEIZED*).

In *Turner v. Gosset* (34 Bea. 593) the phrase "become entitled" in a bequest was, under the circumstances of that case, held to mean "become ENTITLED IN POSSESSION." It was held otherwise in *Hunter v. Hawke, 29 S. J. 556. V. f 2 Jarm. 202, notes (b) and (g).* At p. 811, *Ib.*, it is stated that, in gifts over on death before becoming "entitled," "the word 'entitled,' like 'vested,' points *primâ facie* to the right, and not to the possession." But the cases there cited (*Commrs of Charitable*

*Donations v. Cotter*, 1 Dr. & War. 498; 2 Dr. & Wal. 615: *Henderson v. Kennicott*, 18 L. J. Ch. 40; 2 D. G. & S. 492) were distinguished in *Re Noyce* (55 L. J. Ch. 114; 31 Ch. D. 75; 53 L. T. 688; 34 W. R. 147); and under the circumstances of that latter case, Bacon, V. C., held that "entitled" meant "entitled in possession," and not "entitled in right"; but on a review of the foregoing cases, Kay, J., said he could extract no principle from *Turner v. Gossett* and *Re Noyce*, and held in the case before him that "entitled" did not mean "entitled in possession," and that "in case of A.'s death before he became entitled," meant "in case of his dying in the testator's lifetime" (*Re Crosland*, 54 L. T. 238). *Vf*, *Re Clinton*, L. R. 13 Eq. 295; 41 L. J. Ch. 191: *Jopp v. Wood*, 29 L. J. Ch. 406; 28 Bea. 53; 2 D. G. J. & S. 323: *Chorley v. Loveband*, 33 Bea. 189; 9 L. T. 596; 12 W. R. 187: *Umbers v. Jaggard*, L. R. 9 Eq. 200; 18 W. R. 283: *Beale v. Connolly*, Ir. Rep. 8 Eq. 412: *Watson* Eq. 1228-1230.

"Entitled," in s. 2, Sucn Dy Act, 1853, means "entitled in possession" (per Jessel, M. R., *Fryer v. Morland*, cited SUCCESSION: *Vh*, *De Rechberg v. Beeton*, 38 Ch. D. 192).

"Persons entitled," 19 & 20 V. c. 120, are those BENEFICIALLY ENTITLED (*Grey v. Jenkins*, 26 Bea. 351). *Cp*, ABSOLUTELY ENTITLED.

The privileges and educational advantages to which a Class of persons is "entitled," and which are to be considered in any scheme abolishing or modifying them (s. 11, Endowed Schools Act, 1869, 32 & 33 V. c. 56) are legal rights, and not benefits merely enjoyed by permission or bounty (*Re Sutton Coldfield Grammar School*, 51 L. J. P. C. 8; 7 App. Ca. 91; 45 L. T. 631; 30 W. R. 341: *Re Hemsworth Grammar School*, 12 App. Ca. 444; 56 L. T. 212; 35 W. R. 418; 3 Times Rep. 439).

The provision in s. 12, 11 G. 4 & 1 W. 4, c. 65, authorising the surrender of any Lease to which an Infant is "entitled," applies as well to a lease where the infant is beneficially entitled as to one in which the legal interest is vested in him (*Re Griffiths*, 54 L. J. Ch. 742; 29 Ch. D. 248; 53 L. T. 262; 33 W. R. 728).

"So entitled," in s. 2 (6), Settled Land Act, 1882, means entitled for life (*Re Atkinson*, 55 L. J. Ch. 49; affd 31 Ch. D. 577; 54 L. T. 403; 34 W. R. 445. *Vth*, *Re Horne*, 39 Ch. D. 89).

Separate property which married woman "entitled to," s. 1 (4), M. W. P. Act, 1882; *V*, SEPARATE PROPERTY.

"Entitled under"; *V*, UNDER.

When a party to a *Contract* is "not entitled" to maintain an action in respect of disputes thereon until after ARBITRATION, that means that no liability shall arise until after arbitration, which, therefore, is a Condition Precedent to an action (*Finey v. Norwich Union Insree*, 57 L. J. Q. B. 82).

In *Covenants to Settle*, the following canons have been extracted from the cases for the interpretation of such phrases as;—

I. "Is now entitled."

II. "Shall become entitled."

I. "Where the covenant includes property to which the wife 'is now entitled,' or 'at the time of the marriage shall be entitled,' all reversionary interests, whether vested or contingent, to which she is entitled at the date of the Settlement or Marriage, as the case may be, are bound." *17, Sweetapple v. Horlock*, sup.

II. — 1. "Property to which the wife is entitled in possession at the date of the Settlement is not bound by the covenant, where the subject-matter of the covenant is described by words of future acquisition only (e.g. 'shall become entitled'); *Re Clinton*, L. R. 13 Eq. 295; 41 L. J. Ch. 191": *Vf, Re Bendy*, 1895, 1 Ch. 109; 64 L. J. Ch. 170; 71 L. T. 750; 43 W. R. 345: *See, Williams v. Mercier*, cited DURING.

2. "In the absence of special words, a covenant to settle property to which the intended wife 'shall become entitled,' will be construed to mean 'shall become entitled DURING the coverture'; *Re Edwards*, 9 Ch. 97; 43 L. J. Ch. 265; 22 W. R. 144, approving *Carter v. Carter*, L. R. 8 Eq. 551; 39 L. J. Ch. 268; and *Dickinson v. Dillwyn*, L. R. 8 Eq. 546; 39 L. J. Ch. 266; and over-ruling on this point *Stevens v. Van Voorst*, 17 Bea. 305." *Note*. — But this is a somewhat forced interpretation; and where a reversion, belonging to the wife at the time of her marriage, fell into possession after her death, but during the husband's life, it was held to be bound by the husband's covenant, that covenant not, in terms, being confined to property coming to the wife "during the coverture" (*Fisher v. Shirley*, 59 L. J. Ch. 29; 43 Ch. D. 290; *Stirling, J.*, there said that the principle of *Re Edwards* was only applicable where the wife was the survivor).

3. "Property which the wife acquires in possession during coverture and to which she had no title of any kind at the date of the marriage, is bound by the covenant, where the subject-matter of the covenant is described by words of future acquisition only; *Re Clinton*, sup": and this will, according to some authorities, include permanent investments of income from the settled property (*Lewis v. Madocks*, 8 Ves. 149; 17 *Ib.* 48: *Re Turcan*, 58 L. J. Ch. 101; 40 Ch. D. 5: *Re Bendy*, 1895, 1 Ch. 109; 64 L. J. Ch. 170; 71 L. T. 750; 43 W. R. 345); but in *Finlay v. Darling* (1897, 1 Ch. 719; 66 L. J. Ch. 348; 76 L. T. 461; 45 W. R. 445), *Romer, J.* explained *Lewis v. Madocks* and declined to follow *Re Bendy*, and held that a wife's investments of accumulations of income is no more bound by such a covenant than the income itself when first to hand.

4. "Where a Vested Remainder or Reversionary Interest, to which the wife is entitled at the date of the Settlement, falls into possession during the coverture, it is bound by a covenant in which the property to be settled is described by words applicable to future acquisition only."

5. "Where a Vested Remainder or Reversionary Interest, to which the wife is entitled at the date of the settlement, does *not* fall into possession until after the determination of the coverture, it is not bound by a

covenant in which the property to be settled is described by words applicable to future acquisition only."

6. "If the property be described by words of future acquisition only, and during the coverture the wife 'become entitled' to a Vested Remainder or Reversionary Interest, even though it does not fall into possession till after the termination of the coverture, it will be bound by the covenant."

7. "Where the property included in the covenant is described by words applicable to future acquisition only, property in which the wife has a Contingent Interest at the date of the settlement or of the marriage, is bound by the covenant if it fall into possession during the coverture, but not otherwise—(Obs. There may possibly be some doubt whether the rule applies where the contingent interest to which the wife was entitled at the time of the marriage vests in interest, but not in possession, during the coverture; but probably the rule does apply)." (Elph. 510-523, *who* for the authorities in support and illustration of the above propositions). *Vf, Re Parsons*, cited CONTINGENT: Vaizey, ch. 4, s. 11: Watson, Eq. ch. 10, p. 660 *et seq*: DURING. *Cp*, COME TO: ACCRUE.

A Covenant to Settle a wife's present or future property, does not bind property over which she is deprived of the power of disposition (*Coventry v. Coventry*, 32 Bea. 612).

A Covenant to Settle After-acquired property, severs an after-acquired Joint Tenancy (*Brown v. Raindle*, 3 Ves. 256: *Re Hewett*, 1894, 1 Ch. 362; 63 L. J. Ch. 182; 70 L. T. 393; 42 W. R. 233).

As to the ordinary limitation of the amount or value to be settled; *F. LESS*.

Stat. Def. — *Ir.* 18 & 19 V. c. 39, s. 1: 44 & 45 V. c. 65, s. 1.

*V. NEXT ENTITLED: PERSON ENTITLED: PRESUMPTIVE: SETTLE: SETTLED.*

**ENTITLED FOR THE TIME BEING.** — This phrase in a power of Maintenance has been held to mean "absolutely or presumptively entitled" (*Sidney v. Wilmer*, 25 Bea. 260), and beneficially (*Wolley v. Jenkins*, 26 L. J. Ch. 385; 23 Bea. 60).

"Mortgagor entitled for the time being *to Possession*," s. 25 (5), Jud. Act, 1873; *V. Bennett v. Hughes*, 2 Times Rep. 715.

*V. TIME BEING.*

**ENTITLED IN IMMEDIATE EXPECTANCY.** — *V. Westcar v. Westcar*, 25 L. J. Ch. 866; 21 Bea. 328.

**ENTITLED IN POSSESSION.** — In a gift over on death before becoming "entitled in Possession" (*Re Yates*, 21 L. J. Ch. 281, — "a most remarkable authority," per Malins, V. C., *West v. Miller*, 37 L. J. Ch. 425), or "entitled to the Payment" (*Re Williams*, 19 L. J. Ch. 46, 12 Bea. 317), or "to the Receipt" (*Hayward v. James*, 29 L. J. Ch. 822; 28 Bea. 523); these phrases will generally mean "entitled *in Inter-*

*est*," and so receive a construction similar to that of PAYABLE; *Vf* 2 Jarm. 809.

"Entitled in Possession"; *V. Re Angerstein*, cited ACTUAL FREEHOLD.

"ELDEST, or only, SON," quâ a Settlement by a person *in loco parentis*, will, generally and as regards a clause of exclusion from a Portion Fund, mean, an Eldest Son who comes into Possession of the Settled Estate; but "Eldest or only Son, entitled to the Possession or Receipt of the Rents and Profits of" the settled estate, includes one originally entitled in Tail who has joined in disentailing the estate and re-settling it in a way by means of which he takes a benefit, although the estate has been sold before he could come into Possession (*Collingwood v. Stanhope*, cited YOUNGER: *Domville v. Winnington*, 53 L. J. Ch. 783; 26 Ch. D. 382): But where the settlor is not *in loco parentis*, *V. Shuttleworth v. Murray*, 1901, 1 Ch. 819; 70 L. J. Ch. 453.

*V. ENTITLED: POSSESSION: ACTUAL.*

**ENTITLED TO BE ON BURGESS LIST.** — S. 28, 5 & 6 W. 4, c. 76; *V. Ex p. Hindmarch*, L. R. 3 Q. B. 12; 37 L. J. Q. B. 58; 8 B. & S. 642.

"Entitled to be enrolled as a Burgess," s. 11 (2), Mun Corp Act, 1882; *V. Unwin v. McMullen*, 1891, 1 Q. B. 694; 60 L. J. Q. B. 400; 39 W. R. 712.

**ENTITLED TO REDEEM.** — S. 15, Conv & L. P. Act, 1881; *V. Teevon v. Smith*, cited MORTGAGOR ENTITLED TO REDEEM: LIEN.

"Persons for the time being entitled to the Equity of Redemption," s. 5, Bg Socy Act. 1836; *V. Hosking v. Smith*, 58 L. J. Ch. 367; 13 App. Ca. 582; 59 L. T. 565.

**ENTITLED TO VOTE.** — A dead man is not "entitled to vote"; and therefore to PERSONATE a dead elector is not Personation within s. 3, 14 & 15 V. c. 105 (*Whiteley v. Chappell*, 38 L. J. M. C. 51; L. R. 4 Q. B. 147; 32 J. P. 775); but if the words to be construed were "entitled, or supposed to be entitled" (54 G. 3, c. 93, s. 89), the case would be different (*R. v. Martin*, Russ. & Ry. 324; *R. v. Cramp*, Ib. 327). Referring to *R. v. Martin*, Lush, J. (in *Whiteley v. Chappell*), said, "If the Court had construed the words 'supposed to be entitled,' as 'alleged to be entitled,' there would be no difficulty in the judgment." *Vf* PERSONATE.

**ENTRANCE.** — A Bye Law relating to the construction of New Streets which requires an "Entrance" of a specified width to be made to each NEW STREET, must be complied with even though such Entrance can only be made on land over which the maker of the intended new street has no control (*Hendon v. Pounce*, and *Bromley v. Lloyd*, cited CONSTRUCTION).

**ENTREAT.** — *V. PRECATORY TRUST.*

**ENTRUST.**—*V.* INTRUSTED: IN TRUST.

**ENTRY.**—An “ ‘Entre’ is where a man entreth into any lands or tenements in his proper person, or any other by his commandement ” (Termes de la Ley: Cowel: Jacob: *who* for the various old Writs of Entry).

“ Right to make Entry,” s. 2, Real Property Limitation Act, 1833; *V. Re Lidiard and Jackson*, 58 L. J. Ch. 785: *Doc d. Spencer v. Beckett*, 12 L. J. Q. B. 236; 4 Q. B. 601.

*V.* ENTER: FORCIBLE ENTRY: OUSTER: VIOLENT: POSSESSION.

“ Entry ” quâ Part 7, Mer Shipping Act, 1894; *V.* s. 492.

Entry on *BENEFICE*; *V.* 5 Eneye. 32.

**EN VENTRE.**—Child *en ventre*; *V.* LIVING: BORN: 5 Eneye. 33.

**EQUAL.**— Salvage “ for Owners’ and Charterers’ Equal Benefit ”; *V.* SALVAGE, at end.

“ Equal Fares,” in an agreement between Railway Cos; *V. Mid. Ry v. G. W. Ry*, cited *COMPETITIVE*.

“ Equal to an estate of *Inheritance* ”; *V.* *PUR AUTRE VIE*.

“ Equal to Sample ”; *V.* *SAMPLE*.

Covenant to settle an “ Equal Child’s *Shure* ”; *V. Stephens v. Stephens*, 19 L. R. Ir. 190.

*V.* *NEARLY EQUAL*.

**EQUALLY.**— A testamentary gift to two or more, “ equally,” or “ equally to be divided,” or “ in equal shares,” or “ equally amongst them,” or “ to be distributed in joint and equal proportions,” creates a Tenancy in Common (*Rigden v. Vallier*, 3 Atk. 733: *Davenport v. Hanbury*, 3 Ves. 259, 260: 2 Jarm. 257: Wms. Exs. 1327: Hawk. 112: Watson Eq. 506). But this construction may be, though it rarely is, varied by the context (2 Jarm. 260-262: *Oakley v. Young*, 2 Eq. Abr. 536); and generally the distribution would be *PER CAPITA* (2 Jarm. 194, 195). *Vh* *Chitty Eq. Ind.* 7927-7929. *Cp.* *CONJOINTLY: JOINTLY AND EQUALLY: SHARE AND SHARE ALIKE*.

“ To take equally and in common as Joint Heiresses ”; *V. Watkins v. Frederick*, 11 H. L. Ca. 367.

**EQUIP.**— To “ equip ” a War Vessel; *V. A-G. v. Sillem*, 2 H. & C. 431; 33 L. J. Ex. 92.

“ Equipping ” a Ship, quâ Foreign Enlistment Act, 1870, 33 & 34 V. c. 90; *V.* s. 30.

**EQUIPMENT.**— “ Equipment,” in s. 24, Army Act, 1881, “ includes any article issued to a SOLDIER for his use, or entrusted to his care, for *MILITARY PURPOSES* ” (s. 4, 56 & 57 V. c. 4).

“ Equipment,” quâ Seal Fisheries Acts; Stat. Def., 54 & 55 V. c. 19, s. 3; 56 & 57 V. c. 23, s. 5; 57 & 58 V. c. 2, s. 5; 58 & 59 V. c. 21, s. 7.

**EQUITABLE.** — *V.* JUST AND EQUITABLE.

“Equitable ASSIGNMENT”; — “An agreement which does not exhibit the intention of the parties that the property shall pass at once, does not take effect as an Equitable Assignment at once; but only when, according to the terms of the agreement it can be gathered that the intention of the parties is that the actual property shall pass. On the other hand, where the intention is that the property shall pass, either at once or upon the satisfaction of some CONDITION, then the actual property does pass at once or upon satisfaction of that Condition” (per Fry, L. J., *Re Casey*, 1892, 1 Ch. 104; 61 L. J. Ch. 61; 66 L. T. 93; 40 W. R. 180).

“Equitable Charge”; *V.* MORTGAGE OR CHARGE.

“Legal or Equitable” DEBT; *V.* *Vyse v. Brown*, 13 Q. B. D. 199.

“Equitable EXECUTION”: It is not strictly accurate to speak of the appointment of a Receiver as an “Equitable Execution”; it is not an Execution, it is a relief judicially granted (*Re Sheppard*, 43 Ch. D. 131; 59 L. J. Ch. 83; 62 L. T. 337; 38 W. R. 133). *Sv.* *Blackman v. Fysh*, cited EXECUTION.

Relief on “Equitable Grounds,” s. 83, Com. L. Pro. Act, 1854, means, Grounds depending on equity law, not equity practice (*Phelps v. Prothero*, 7 D. G. M. & G. 722; 25 L. J. Ch. 105).

“Equitable INTEREST in a CORPOREAL Heredit,” s. 4, 47 & 48 V. c. 71, includes an undisposed of residue of the proceeds of sale of freeholds devised in trust for sale (*Re Wood*, 1896, 2 Ch. 596; 65 L. J. Ch. 814; 75 L. T. 28; 44 W. R. 685).

A CONTRACT for the SALE of an “Equitable Estate or Interest” in property, s. 59 (1), Stamp Act, 1891, means, a contract the subject-matter of which is Equitable, and does not include one for a Legal Assignment of Leaseholds, and which (failing the lessor’s assent) gives an option to the purchaser to call for a Declaration of Trust of the term (*West London Syndicate v. Inl. Rev.*, 1898, 2 Q. B. 507; 67 L. J. Q. B. 218, 956; *Muller v. Inl. Rev.*, 1900, 1 Q. B. 310; 69 L. J. Q. B. 291; 81 L. T. 667; *Vf.* *Danubian Sugar Factories v. Inl. Rev.*, 64 J. P. 441. *Sv.* *Chesterfield Brewery Co v. Inl. Rev.*, cited “Conveyance on Sale,” sub CONVEYANCE). The exception in the section of “Lands, Tenements, Heredit or Heritages, or Property LOCALLY SITUATE out of the United Kingdom,” does not apply to the phrase “Equitable Estate or Interest,” and an Equity of Redemption of lands in New South Wales is within such phrase, notwithstanding s. 25, New South Wales Trust Property Act, 1862 (*Farmer v. Inl. Rev.*, 1898, 2 Q. B. 141; 67 L. J. Q. B. 775; 79 L. T. 32).

“Equitable MORTGAGE,” quâ Stamp Act, 1891; *V.* s. 86 (2).

Equitable WASTE; *V.* WASTE.

**EQUITABLY.** — *V.* LEGALLY.



**EQUITY.**—Equity is “that portion of remedial justice which was, formerly, exclusively administered by a Court of Equity as contradistinguished from that portion which was, formerly, exclusively administered by a Court of COMMON LAW” (5 Encyc. 41, citing Story, s. 25; *V. 3 Bl. Com.* 429–437). *Vf*, LEGAL: LEGAL ESTATE: LEGALLY.

“‘Within the Equity,’ means the same thing as ‘Within the Mischiefs’ of a statute” (per Byles, J., *Shuttleworth v. Fleming*, 19 C. B. N. S. 703).

Where Claims, — *e.g.* Land Claims in a Colony, — are to be determined “by Equity and Good Conscience,” and the Court is not to be bound “by the strict rules of Law or Equity, or by any Technicalities or Legal Forms whatever”; the decisions are not judicial and are not appealable, or within the Royal Prerogative of allowing appeals (*Moses v. Parker*, 1896, A. C. 245; 65 L. J. P. C. 18; 74 L. T. 112).

#### *V.* RIGHT IN EQUITY.

“Equity of *Redemption*,” is the Right, established in Equity, whereby a Mtgor is entitled to redeem and get back the mortgaged property on payment of principal and interest and mtgee’s costs, although the day appointed for the payment of the principal has passed; provided he comes before FORECLOSURE or Sale by the mtgee. *Vh*, Fisher on Mortgages: Robbins Ib: Beddoes Ib.

#### “Clogging the Equity”; *V.* MORTGAGE.

A Wife’s “Equity to a *Settlement*,” is this, — Where her husband or his assignee seeks the aid of Equity to recover property belonging to her, she is entitled to have a due proportion of it settled on her (*Wms. R. P.* Part 4, ch. 5); her conduct in the matter may affect the quantum to be settled (*Roberts v. Cooper*, 1891, 2 Ch. 335; 60 L. J. Ch. 377).

**EQUIVALENT.** — “The Report or Award of any Official or Special Referee, or Arbitrator, on any such REFERENCE (shall) . . . “be *equivalent* to the Verdict of a Jury,” s. 15 (2), Arb Act, 1889, means, quà a Report or Award by an Official Referee (and, probably, one by a special Referee), that its findings must be accepted by the Court, “unless they can set it aside, according to the ordinary rules which would be applicable to the finding of a jury, or to the finding of a judge trying a cause without a jury. It is open to appeal, therefore, whether improper evidence has been received by the O. R., or whether he in considering the facts has, so to speak, misdirected himself,” or because it is against the weight of evidence (per Brett, L. J., *Longman v. East*, 3 C. P. D. 155; 47 L. J. C. P. 220; 38 L. T. 11; 26 W. R. 183). The Report of an O. R. is a matter “within the control of the Court, which it is the duty of the Court to investigate” to see how far it ought to be enforced by jdgmt; that is not so quà ARBITRATION, of which “finality has always been the great attribute,” and an Award by an Arbitrator is not “Equivalent to the Verdict of a Jury,” in the sense that it “can be

re-opened for the purpose of seeing whether the arbitrator has made some mistake by the admission of improper evidence, or upon some point of law" (per Day, J., *Darlington Wagon Co v. Harding*, 1891, 1 Q. B. 245; 60 L. J. Q. B. 110; 64 L. T. 409; 39 W. R. 167: *Vth*, cited CAUSE): — quà the Award of an Arbitrator, the phrase means, that it "may be dealt with in the way that the verdict of a jury may be dealt with, after it has been obtained, e.g. with respect to enforcing it" (*Ib.*: *Glasbrook v. Owen*, 7 Times Rep. 62); or by applying the rule that the Costs follow the EVENT, when the Award is silent as to costs (*Carr v. Dougherty*, 67 L. J. Q. B. 371).

#### EQUIVOCATION. — *V.* PATENT AMBIGUITY.

**ERECT.** — "It has been much questioned whether a bequest of money to be applied in the 'Erection' of a school-house or other building, for CHARITABLE PURPOSES, is bad as involving a trust to purchase. Lord Hardwicke considered that if the trustees could get a piece of ground given to them, so that land need not be purchased, the gift was good; but the contrary is now settled, and to make such a bequest valid, the testator must point to land already in mortmain, or he must forbid the PURCHASE of land" (1 Jarm. 230: *A-G. v. Parsons*, 8 Ves. 191), or declare his expectation or desire that land will be provided from other sources (*A-G. v. Parsons*, sup: *Philpott v. St. George's Hosp.*, 6 H. L. Ca. 338; 27 L. J. Ch. 70; 5 W. R. 845; 30 L. T. O. S. 15, over-ruling *Trye v. Gloucester*, 14 Bea. 173; 21 L. J. Ch. 81), or that the trust to "erect" or "build" is to wait till land be so otherwise provided (*Chamberlayne v. Brockett*, 8 Ch. 206; 42 L. J. Ch. 368; 21 W. R. 299; 28 L. T. 248: *Vth, Re White*, 33 Ch. D. 453: *If* 1 Jarm. 206). *Vth* Tudor Char. Trusts, 409-412: but consider INTEREST IN LAND, esp. 1st par.

#### *V.* ENDOW: FOUND: PROVIDE.

A power to "erect in a STREET," "points to a building upon the surface, and not under-ground" (per Smith, L. J., *Baird v. Tunbridge Wells*, 64 L. J. Q. B. 154; in H. L. 1896, A. C. 434; 65 L. J. Q. B. 451: *Vf* VEST).

To "erect" a Steam Engine, s. 70, Highway Act, 1835, does not, necessarily, connote that it must be fixed to the soil; a portable steam engine set up for working, is within the enactment; *secus*, if only stopping by the road-side, e.g. to take in water: the object of the section shows its meaning to be that whilst a steam engine is set-up and is working it shall be screened from the Highway (*Smith v. Stokes*, 4 B. & S. 84; 32 L. J. M. C. 199). *V.* ERECTED.

To "erect" a BUILDING, &c, s. 75, Metrop Man. Act, 1862, does not mean that the bg is being erected *de novo*, "erect" is satisfied by a further erection on an erection already in existence (*Wendon v. London Co. Co.*, 1894, 1 Q. B. 812; 63 L. J. M. C. 55, 117; 70 L. T. 440; 42 W. R. 370; 58 J. P. 606: *London Co. Co. v. Cross*, 61 L. J. M. C. 160). *V.* ERECTION.

“Erect, set-up, continue, or keep” a Foreign Lottery, 9 G. 1, c. 19, s. 4; *V. FOREIGN LOTTERY.*

Agreement not to “erect, or assist or be in any way CONCERNED or INTERESTED IN the erection, or USE” of competing Works; *V. Southland Frozen Meat Co v. Nelson*, 1898, A. C. 442; 67 L. J. P. C. 82; 78 L. T. 363.

*V. BUILD.*

### ERECTED. — *V. ERECT.*

Assignment of all Machinery and Fixtures whatsoever, “now erected, or set up, or standing, or being, — or which shall at any time hereafter be erected, or set up, or stand, or be, — in or upon the said lands, mills and premises, or any part thereof”; these words “are as comprehensive as could be devised to include the Machinery which is moved, as well as the moving Machinery” (per Campbell, C., *Haley v. Hammersley*, 30 L. J. Ch. 773, 774; 3 D. G. F. & J. 587).

A BRIDGE is not “erected or built,” s. 5, 43 G. 3, c. 59, by being repaired, though the repairs be ever so substantial (*R. v. Devon*, 5 B. & Ad. 383; 2 L. J. M. C. 74), nor by being widened (*R. v. Lancashire*, 2 B. & Ad. 813).

“Having erected” or “Improved” Buildings, s. 8 (1), S. L. Act, 1882, following and being controlled by “In consideration,” *semble*, has reference to Erections or Improvements included in the transaction of which the Lease to be granted under the section is part (*Re Chawner*, cited CONSIDERATION).

“The walls of a building were up, and all the brick and stone work finished, &c, the roof was not on nor were the sash and door frames in; no floors were laid: — The building in this condition was held to be ‘erected’ within the meaning of the contract: *Johnston v. Ewing*, 35 Ill. 518” (Hudson, 142). *Cp* ROOFED IN.

### ERECTION. — *V. ERECT: STRUCTURE.*

“Erection,” generally, is a wider term than “BUILDING,” and may include Trade FIXTURES (*Bidder v. Trinidad Petroleum Co*, 17 W. R. 153. *Vf*, *Naylor v. Collinge*, 1 Taunt. 19). It may include a Fence, quâ a Bye Law by a Local Authority prohibiting any “Erection” within a defined open space contiguous to a building (*Adams v. Bromley*, 36 J. P. 743; *Se*, *Borgnis v. Edwards*, 2 F. & F. 111).

*Cp* IMPROVEMENT.

“Erection used in conducting the business of any MINE,” s. 29, 24 & 25 V. c. 97; a scaffold erected at some distance *above the bottom* of a Mine, for the purpose of working a vein of coal on a level with the scaffold, is within these words (*R. v. Whittingham*, 9 C. & P. 234); and so is a wooden trough by means of which water is conveyed to, and for the purposes of, a Mine (*Barwell v. Winterstoke*, 19 L. J. Q. B. 206; 14 Q. B. 704; 15 L. T. O. S. 23).

“Erection of a Court House”; Stat. Def., 23 & 24 V. c. 79, s. 2.

“Erection, Improvement, and Enlargement,” of Parochial Buildings; Stat. Def., 29 & 30 V. c. 75, s. 1.

**ERRONEOUS.** — *Vf.* IMPERFECT.

**ERROR.** — “‘Error,’ is a fault in a Judgment, or in the process or proceeding to judgment or in the execution upon the same, in a Court of Record; — which in the Civill Law is called a Nullitie” (*Termes de la Ley*). *Vf.*, Jacob: 5 *Encyc.* 46.

The phrase in Conditions of Sale of realty whereby a purchaser is precluded from compensation in respect of any “Error, Mis-statement, or Omission,” in the Particulars, only covers small errors, and will not deprive a purchaser of his right to compensation for such a mistake as where 573 square yards have been represented as 753 square yards (*Whittemore v. Whittemore*, L. R. 8 Eq. 603; *Va.*, *Ayles v. Cox*, 16 Bea. 23; 20 L. T. O. S. 4; *Portman v. Mill*, 2 Russ. 570; *Cordingley v. Cheesebrough*, 31 L. J. Ch. 617; 3 Giff. 496; 4 D. G. F. & J. 379; *Dimmock v. Hallett*, 36 L. J. Ch. 146; 2 Ch. 21; *Terry to White*, 55 L. J. Ch. 345; 32 Ch. D. 14; 34 W. R. 379); or, where there is one entire Ground Rent whereas the Particulars spoke of several ground rents on “each” of six houses (*Re Boulton and Cullingford*, 37 S. J. 25, 248). But in *Re Severne to Bird* (7 Aug 1883), Kay, J., held that a purchaser who had bought under conditions similar to those in *Whittemore v. Whittemore* was not entitled to compensation for a mis-statement, whereby a cellar was wrongly stated to belong to the house described in the Particulars (*Va.*, *Taylor v. Bullen*, 20 L. J. Ex. 21; 5 Ex. 779).

On the other hand the “Error,” &c, may be so substantial that it will, at the purchaser’s option, avoid the contract altogether, even though there be a Compensation Clause; for the purchaser is not bound to take something substantially different from that he contracted to buy (*Flight v. Booth*, 4 L. J. C. P. 66; 1 Bing. N. C. 370; *Re Fawcett and Holmes*, 58 L. J. Ch. 763; 42 Ch. D. 150; *Jacobs v. Kerell*, 1900, 2 Ch. 858; 69 L. J. Ch. 879; 49 W. R. 109). *Vf.*, *Phillips v. Caldcleugh*, cited *FREEHOLD*, at end.

“Error, Mis-statement, and Omission” would not, unless the Condition were precise in that sense, be limited to the Description of the property and nothing else; the phrase, generally, would embrace matters relating to the property (*Palmer v. Johnson*, 13 Q. B. D. 354).

But “Incorrect Statement, Error, or Omission, in Particulars” would, *semble*, not embrace a defect in TITLE (*Re Neale and Drew*, 41 S. J. 274); nor would an *innocent* Omission to state that the Local Authority had given Notice to execute certain works respecting the property, be a ground for claiming compensation under a Condition providing for compensation “if any Error, Mis-statement, or Omission,” in the Particulars

be discovered (*Re Leyland and Taylor*, 1900, 2 Ch. 625; 69 L. J. Ch. 764); though, possibly, it would be such a ground if it could be shown that the Omission affected the value of the property bought (per Collins, L. J., *S. C.*).

**V. ADMEASUREMENTS: MATERIAL ERROR.**

"If the Vendor, on a sale of CHATTELS, is not to be responsible for any defect or 'Error,' the stipulation will protect him from all unintentional misdescription and mis-statement" (Add. C. 569). *Vf* FAULTS.

A Settled Account is not rendered Open by reason of its being made "Errors excepted" (*Johnson v. Curtis*, 3 Bro. C. C. 266).

An Election (under Thames Conservancy Act, 1894) by Proxies for a Corporation who (contrary to the provisions of the Act) were not Shareholders or Officers of the Corp, was not invalidated thereby, because this was only an "Error or Irregularity," and, as such, saved by s. 25 of the Act (*R. v. Samuel*, 1895, 1 Q. B. 815; 64 L. J. Q. B. 515; 72 L. T. 572; 11 Times Rep. 358).

Quà Appellate Jurisdiction Act, 1876, 39 & 40 V. c. 59, " 'Error' includes a Writ of Error, or any proceedings in or by way of Error" (s. 25).

**V. FAULTS: NEGLECT OR DEFAULT: OMISSION: WRIT OF ERROR.**

**ESCAPE.** — " 'Escape,' is where one that is arrested commeth to his liberty before that he be delivered by award of any Justice or by Order of law" (Termes de la Ley); "a privy evasion out of some lawful restraint" (Cowel). *Vf*, Jacob: 5 Encyc. 50-53: *Cp*, RESCUE.

"Escape of Water"; *V*. FLOOD.

**ESCHEAT.** — "Escheat is a Word of Art, and signifieth properly when, by accident, the lands fall to the lord of whom they are holden, in which case we say the fee is escheated" (Co. Litt. 13 a: *Vf*, Ib. 92 b): the "accident" being, the death of the owner without an heir and intestate. If there is a Mesne Lord the escheat is to him; if not, to the King (*V. A-G. of Ontario v. Mercer*, 52 L. J. P. C. 84, 86; 8 App. Ca. 767: *Vf*, *St. Catherine's Co v. The Queen*, 14 App. Ca. 46). *Vh*. 2 Bl. Com. 72, 89, 244: Wms. R. P. ch. 5: 5 Encyc. 53: Termes de la Ley, *Eschate*.

A legal or equitable estate or interest in an INCORPOREAL HEREDIT, or an equitable estate or interest in a CORPOREAL Heredit, is now the subject of Escheat (s. 4, 47 & 48 V. c. 71).

*Cp* FORFEITURE.

**ESCROW.** — *V*. DELIVERY.

**ESCUAGE.** — Escuage was one of the old military Tenures. — a "Service of the Shield" whereby the tenant (being "well and conveniently arrayed for war") had, in person or by proxy, for 40 days to attend the King when he, in person, made "a VOYAGE Royall into Scotland to sub-

due the Scots" (Litt. ss. 95-102: Co. Litt. 68 b-74 b). *Cp* CORNAGE. But " 'into Scotland' is put but for an example, for if the tenure be to goe in *Walliam, Hiberniam, Vasconiam, Pictariam, &c*, it is all one" (Co. Litt. 69 b). *Vf*, Termes de la Ley: SCUTAGE.

Blackstone (2 Com. 74) says that Escuage "was a Pecuniary, instead of a Military, Service," and Wms. R. P. 99, also speaks of Escuage as a "money payment"; but this would seem to refer to the secondary kind of Escuage, — Escuage Certain, assessed after a "Voyage Royall," on absentees (Litt. s. 97), — for the primary Escuage (Escuage Uncertain), which Littleton had previously dealt with, was the real "Escuage and Knight's Service, being subject to HOMAGE, FEALTY, and (formerly) WARD, and MARRIAGE" (Cowel).

**ESQUIRE.** — "Esquier, — *Armiger*, in French *Escuier*, i.e. *Scutiger*, — was originally such a one as, attending a Knight in time of War, did carry his shield; but this addition hath not of long time had any relation to that office, but signifieth with us a Gentleman, or one that beareth Arms as a testimony of his nobility or gentry, and is a meer Title of Dignity next to and below a Knight" (Cowel, *Esquier*). *Vf*, Jacob: 1 Bl. Com. 406; 5 Encyc. 55, 56: *Cp* GENTLEMAN.

A Lessee and Manager of a Theatre is not properly described as "Esquire" for the purposes of the Bills of Sale Acts (*Ex p. Homann, Re Fining*, 39 L. J. Bank. 4; L. R. 10 Eq. 63; 18 W. R. 450).

"I do not agree with the proposition that an 'Esquire' cannot be a miller or a farmer. I would be slow to hold that this Statute (Com. L. Pro. Act, Ir., 1853, ss. 124, 125), was constructed to lay traps for persons registering their judgments and getting security. Am I to rule that the title meant was according to chivalry or ancient observances, or that the reasonable intendment of the world is what is referred to?" (per Lynch, J., *Re Doughty*, Ir. Rep. 2 Eq. 237). But in referring to that case, Porter, M. R., said: — "As usual, Judge Lynch is again relied on as the champion of doubtful registrations" (*Spaddacini v. Treacy*, 21 L. R. Ir. 559). And on the Bills of Sale Act for Ireland, 17 & 18 V. c. 55, it was held that a Merchant was not properly described as "Esquire" (*Re O'Connor*, 27 L. T. O. S. 27).

*Vf*, *Perrins v. Marine Insrce*, 2 E. & E. 317; 8 W. R. 41, 563.

**ESSART.** — *Vf*. ASSART.

**ESSENCE.** — "TIME of the Essence of the Contract," means, that the time agreed for the performance of a stipulation must be strictly observed. At Common Law, this was always the rule; but in Equity, — quà such contracts as those for the sale of Realty, as distinguished from Mercantile Contracts (per Cotton, L. J., *Reuter v. Sala*, 48 L. J. Q. B. 499; 4 C. P. D. 249), — Time is only of the Essence of the Contract "in

cases of Direct Stipulation, or of NECESSARY Implication" (per Romilly, M. R., *Parlin v. Thorold*, 22 L. J. Ch. 170; 16 Bea. 59; *Vh, Oakden v. Pike*, 34 L. J. Ch. 620; 12 L. T. 527; 13 W. R. 673). A contract for the sale of a PUBLIC-HOUSE exemplifies what is such "Necessary Implication," for "in the sale and purchase of a Public-house as a going concern, time is of the essence of the contract" (per Romilly, M. R., *Day v. Lukke*, 37 L. J. Ch. 332; L. R. 5 Eq. 336; *Claydon v. Green*, 37 L. J. C. P. 226; L. R. 3 C. P. 511); whilst the absence of a Direct Stipulation does not preclude the contractee from giving his contractor subsequent notice requiring the fulfilment of the latter's stipulation at or within a specified time, if such time is reasonable (*Crawford v. Toogood*, 49 L. J. Ch. 108; 13 Ch. D. 153; 41 L. T. 549; 28 W. R. 248; *Howe v. Smith*, 53 L. J. Ch. 1055; 27 Ch. D. 89; 50 L. T. 573; 32 W. R. 802; *Compton v. Bagley*, 1892, 1 Ch. 313; 61 L. J. Ch. 113; 65 L. T. 706). *Vf* Dart, ch. 10.

Since the Jud. Act, 1873, "Stipulations in Contracts, as to Time or otherwise, which would not before the passing of this Act have been deemed to be, or to have become, of the Essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in Equity" (subs. 7, s. 25).

Quà the sale of Goods, "unless a different intention appears from the terms of the contract, stipulations as to *Time of Payment* are not deemed to be of the Essence of a Contract of Sale. Whether any other stipulation as to Time is of the Essence of the Contract or not, depends on the terms of the contract" (s. 10 (1), Sale of Goods Act, 1893).

**ESSENTIAL.** — "Essential Particular" of a TRADE-MARK; *V. s. 10*. 51 & 52 V. c. 50, on *whc, Orr-Ewing v. Registrar of Trade-Marks*, 48 L. J. Ch. 707; 4 App. Ca. 479; *Vthe*, applied in *Baker v. Rawson*, 60 L. J. Ch. 55; 45 Ch. D. 519. *Vf, Re Bryant and May*, cited **DISTINCTIVE.**

As to what is such an "Essential Particular" quà s. 92. Patents, &c. Act, 1883, *V. Re Phillips*, 1891, 3 Ch. 139; 61 L. J. Ch. 40; 65 L. T. 373; *Re Henry Clay Bock & Co*, 1892, 3 Ch. 549; 62 L. J. Ch. 143; 67 L. T. 614; *secus, Re Guinness*, 5 Pat. Ca. 316. In *Re Phillips*, Chitty, J., pointed out that there might be a MATERIAL ALTERATION of an Old Trade-Mark not allowable under the section, although not an alteration in an "Essential Particular" of a New one which might be allowed.

*Cp* "Material Particular," sub CORROBORATED.

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**ESTABLISH.** — *Cp* ENDOW. *V. FOUND: NEWLY ESTABLISH: PUBLIC MARKET.*

To "establish" a Law, does not, necessarily, mean to "INTRODUCE" it: "the Court in *Beverley v. Lincoln Gas Co* (6 A. & E. 839, n) ob-

served that the Action for Use and Occupation is 'established' by 11 G. 2, c. 19, s. 14; which expression must not be taken as meaning that it was *introduced* by that Act, but only that it was *established* even in cases where there was an express demise at a certain rent, if not under seal" (per Denman, C. J., *Gibson v. Kirk*, 1 Q. B. 855; 10 L. J. Q. B. 298).

**ESTABLISHED CUSTOM.** — *I. Woodf.* 807.

**ESTABLISHMENT.** — "Domestic Establishment"; *V. SERVANT.*

"Establishment in the World"; *V. ADVANCEMENT.*

"Part of the Establishment," s. 2, 8 & 9 V. c. 29; *V. Hoyle v. Oram*, cited **EMPLOYED.**

*V. TRADE ESTABLISHMENT.*

"Establishment Expenses"; *V. EXPENSES.*

**ESTATE.** — " 'State' or 'Estate' signifieth such inheritance, freehold, terme for yeares, tenancie by statute merchant, staple, elegit, or the like, as any man hath in lands or tenements, &c. And by the grant of his Estate, &c, as much as he can grant shall passe" (Co. Litt. 345 a: *1<sup>h</sup> Elph.* 204). "The word 'Estate' doth comprehend all that a man hath property or ownership in, and is divided into Real and Personal" (*Anon.*, *Skinner*, 194: *Vf*, *Barnes v. Patch*, 8 Ves. 604).

" 'Estate,' is a *genus generalissimum*, predicable of two species that have their difference, whereby they are divided, that is, Estate Real, and Estate Personal. 'Estate Real,' is *genus subalternum* and has its species too; that is Estate Real *in fee* or *for life*. And so is Estate Personal in like manner to be branched into Chattel Real and Chattel Personal; and it has that difference of a chattel real, not because it is a real estate, but because it has a real extraction. If a man seized in fee make a lease for years, the lessee for years has a chattel real, because his estate is derived out of a real estate; but still it is not a real estate" (per Holt, C. J., delivering judgment of Q. B., *Bridgewater v. Bolton*, 6 Mod. 107). " 'Estate' comes from '*stando*,' because it is fixed and permanent, and imports the most absolute property that a man can have" in the thing of which it is spoken (*Ib.* 109). *Vf*, *Jacob*: 5 *Encyc.* 59-64.

"It is now (A.D. 1775) clearly settled, that the words 'all his Estate,'— in a Will, — will pass *every thing* a man has" (per Lord Mansfield, *Hogan v. Jackson*, 1 Cowp. 306: *Vf*, *O'Toole v. Browne*, 3 E. & B. 579; 2 W. R. 430: 1 Jarm. 721 *et seq*); but "all my Freehold hereditaments and estate," will not pass copyholds (*Quennell v. Turner*, 20 L. J. Ch. 237; 13 Bea. 240).

"Estate," is so absolute to include Realty that it will pass lands acquired by a testator after the date of his Will which speaks chiefly of Personalty, and it will not be cut down by the operative words being "Give and Bequeath," or by the gift being to trustees "their exs, ads,



and assigns," or by preceding words of enumeration which only comprise personalty (*O'Toole v. Browne*, 3 E. & B. 572; 23 L. J. Q. B. 282; 2 W. R. 430).

"It appears to me to be perfectly clear that the word 'Estate,' before the new Wills Act, was a word sufficient to carry the FEE if there was nothing at variance with that construction upon the whole of the Will. It would not be a word of the vigour and force of a gift to a man 'and his Heirs'; but it would have the effect of carrying the fee equally, unless there was something in the context which led one to a different conclusion" (per Earl Cairns, *Bowen v. Lewis*, 54 L. J. Q. B. 62; 9 App. Ca. 890. The first case laying this down seems to have been *Bridge-water v. Bolton*, sup; and for a collection of the subsequent cases, *V. 2 Jur.* 834: *Doe d. Lean v. Lean*, cited SAME).

"It has been long established that a devise of a testator's 'Estate' includes not only the *corpus* of the property, but the whole of his interest therein" (2 Jarm. 275, *whc* to p. 282, for cases illustrating and qualifying this proposition: *Vf*; 1 Jarm. 732-737: *Moore v. James*, W. N. (74) 80. *Cp*, *Doe d. Burton v. White*, 18 L. J. Ex. 59; 2 Ex. 797, with *Burton v. White*, 22 L. J. Ex. 129; 7 Ex. 720).

Devise of A. "and *all my Estate therein*"; held to pass an after-acquired interest in A. (*Leekey v. Watson*, Ir. Rep. 7 C. L. 157).

As to this word when used as one of description or reference: *V. 1 Jarm.* 786, 788: *Watson*, Eq. 1318, 1319: *Doe d. Beach v. Jersey*, 1 B. & Ald. 550; 3 B. & C. 870: *Doe d. Norris v. Tucker*, 3 B. & Ad. 473: *Vick v. Saeter*, 3 E. & B. 219; 23 L. J. Q. B. 212: *Hill v. Brown*, 63 L. J. P. C. 46; 1894, A. C. 125; 70 L. T. 175.

V. TEMPORAL: WORLDLY ESTATE: REAL ESTATE: PERSONAL ESTATE: ESTATE AND EFFECTS: ESTATE AND INTEREST. *Cp*, INTEREST: INTEREST IN LAND: PRIVY: PARTICULAR ESTATE: THREE ESTATES.

"Any PART of an Estate" the retention of which entitles a Vendor to retain the Title Deeds, R. 5, s. 2, V. & P. Act, 1874, means a Freehold, Copyhold, or Leasehold Estate; and does not include an unsold Life Policy comprised in the deed giving the power of sale over the realty sold (*Re Fuller and Leathley*, 1897, 2 Ch. 144; 66 L. J. Ch. 543; 76 L. T. 646; 45 W. R. 627).

Quà Fines and Recoveries Act, 1833, "'Estate,' shall extend to an Estate in EQUITY as well as at Law; and shall also extend to any INTEREST, CHARGE, LIEN, or INCUMBRANCE in, upon, or affecting, LANDS either at Law or in Equity, or in, upon, or affecting, Money subject to be invested in the Purchase of Lands" (s. 1); "Estate," in s. 77, *V. Allcard v. Walker*, cited INTEREST.

"Estates," s. 7, Jdgmts Act, 1839, 2 & 3 V. c. 11, means "Land, and land only"; and "PROPERTY" has a like meaning in s. 2 of the Amending Act, Crown Debts and Jdgmts Act, 1860, 23 & 24 V. c. 115 (per *Lindley*, L. J., *Wigram v. Buckley*, cited LIS PENDENS.)

As to the words of the *All the Estate Clause* ("Estate," "Right," "Title," and "Interest"), *V. Co. Litt.* 345 a; *Elph.* 204-209. This Clause may now be omitted from Conveyances (s. 63, Conv & L. P. Act, 1881, on which section, *V. Thellusson v. Liddard*, 1900, 2 Ch. 635; 69 L. J. Ch. 673; 82 L. T. 753; 49 W. R. 10). As to the literal effect of the Clause, whether expressed or implied by statute, being narrowed by the recitals, *V. Williams v. Pinckney*, 66 L. J. Ch. 551; 67 Ib. 34.

"All other Estates and Heredits"; *V. HEREDITAMENT.*

"Duties incident to an Estate conveyed by way of Mtge"; *V. TRUST.*

"Deceased Debtor's Estate"; *V. DECEASED.*

Order in Probate Action that Costs be paid "OUT OF THE ESTATE," means, out of the Personal Estate (*Re Shaw*, 1894, 3 Ch. 615; 64 L. J. Ch. 47; 71 L. T. 515; 43 W. R. 159).

Estate of Inheritance; *V. INHERITANCE: Cp, PUR AUTRE VIE.*

Stat Def. — 21 & 22 V. c. 96, s. 4; 34 & 35 V. c. 84, s. 3. — *Scot.* 2 & 3 V. c. 41, s. 3; 19 & 20 V. c. 79, s. 4; 37 & 38 V. c. 94, s. 3; 43 & 44 V. c. 4, s. 3; 54 & 55 V. c. 29, s. 12. — *Ir.* 11 & 12 V. c. 48, s. 1; 12 & 13 V. c. 77, s. 54; 21 & 22 V. c. 72, s. 1; 44 & 45 V. c. 49, s. 57; 54 & 55 V. c. 45, s. 6: PRIVATE ESTATES: RECORDED.

**ESTATE AND EFFECTS.** — On the presentation of an Insolvency petition under 5 & 6 V. c. 16, all the "Estate and Effects" of the petitioner became vested in the Official Assignee. Choses in Action were included in those words (*Sayer v. Dufaur*, 17 L. J. Q. B. 50; 11 Q. B. 325). Denman, C. J., in giving judgment in that case, said, — "The words 'Estate and Effects' are, at least, as strong as 'Personal Estate.'"

"Real or Personal Estate or Effects," in a Covenant to Settle after-acquired property, includes Jewels and things of a like nature (*Wiltoughby v. Middleton*, 31 L. J. Ch. 683; 2 J. & H. 344).

A testamentary gift of "All my Estate and Effects" will, under the word "Estate," generally, pass realty as well as personalty (*Stokes v. Salomons*, 20 L. J. Ch. 343; 9 Hare, 75; *D'Almaine v. Moseley*, 1 Drew. 629; *O'Toole v. Browne*, 3 E. & B. 572; 2 W. R. 430; 23 L. T. O. S. 111; 23 L. J. Q. B. 282; *Patterson v. Huddart*, 17 Bea. 210; 1 W. R. 423); so, of the phrase, "Goods, Chattels, Estate and Estates whatsoever" (*Churchill v. Dibben*, 9 Sim. 447, *n*). *Cp, Saunderson v. Dobson*, 16 L. J. Ex. 249; 1 Ex. 141, as decided by the Court of Ex., but sent by M. R., 10 Bea. 484, for opinion of C. P., when that Court differed from the Exchequer, 7 C. B. 81.

But "All Estate, Effects, and PROPERTY, whatsoever and wheresoever," has been held, upon the context, not to pass realty (*Woollam v. Kenworthy*, 9 Ves. 137; *Coard v. Holderness*, 24 L. J. Ch. 388; 20 Bea. 147; *Srthle, Lloyd v. Lloyd*, L. R. 7 Eq. 458; 38 L. J. Ch. 458; *Streatfield v. Cooper*, 27 Bea. 343), and especially such a phrase will not pass realty when occur-

ring in a gift the qualifying word of which is "personal" (*Belaney v. Belaney*, 35 Bea. 469; 36 L. J. Ch. 265; 2 Ch. 138; *Jones v. Robinson*, 47 L. J. C. P. 673; 3 C. P. D. 344), or (but not so strongly) where the gift is coupled with a limitation to the personal representatives of the donee, e.g. "Exors or Admors," and there is no other context (*Doe d. Spearing v. Buckner*, 6 T. R. 610, and *Doe d. Hurrell v. Hurrell*, 5 B. & Ald. 18, both stated in *Stokes v. Salomons*, sup; *Pogson v. Thomas*, 6 Bing. N. C. 337; *Coaril v. Holderness*, sup; *Lloyd v. Lloyd*, L. R. 7 Eq. 458; 38 L. J. Ch. 458; 17 W. R. 702; 20 L. T. 898).

"Freehold Estate and Effects"; *V. FREEHOLD.*

The GOODWILL is included in "other the Estate and Effects" of a Partnership (*Stewart v. Gladstone*, 47 L. J. Ch. 423; 10 Ch. D. 626).  
*Va* ESTATE AND INTEREST.

"Estate and Effects" as regards Probate Duty, s. 2, 55 G. 3. c. 184: *V. A-G. v. Brunning*, 8 H. L. Ca. 243; 30 L. J. Ex. 379; *A-G. v. Partington*, 6 L. T. 900; *A-G. v. Ailesbury*, 12 App. Ca. 672. *Sudley v. A-G.*, 1897, A. C. 11; 66 L. J. Q. B. 21; *Re Smyth*, 1898, 1 Ch. 89; 67 L. J. Ch. 10; 77 L. T. 514; 46 W. R. 104.

*Vh, Stein v. Ritherdon*, 37 L. J. Ch. 369; 16 W. R. 477. *W. N.* (68) 65; *Charlton v. Charlton*, *W. N.* (71) 241; *Guthrie v. Walrond*, 52 L. J. Ch. 165; 22 Ch. D. 573; *Re Hotchkys, Freke v. Calmady*, 32 Ch. D. 408.

*V. ESTATE: EFFECTS.*

**ESTATE AND INTEREST.**—"All my Estate and Interest in the lands" at C. passes Charges on those lands in favour of the testator, as well as his Reversion in Fee therein (*Kilkelly v. Powell*, 1897, 1 I. R. 457), and such a devise passes Mortgages on land, as well as the Fee Simple therein (*Mackesy v. Mackesy*, 1896, 1 I. R. 511).

"All the Estate, TERM, and Interest" of Assignor in Leaseholds; held to mean, not "all such estate, &c, *if any*" as he had but, an indication that he was not conveying Freeholds; and that it did not save the Assignor from liability under his covenant for Title, he having previously assigned a part of the property described in the assignment (*May v. Platt*, 1900, 1 Ch. 616; 69 L. J. Ch. 357; 83 L. T. 123; 48 W. R. 617).

A contract for the sale of a person's "Estate and Interest" in a Business Property and in the Business, will carry the GOODWILL (*Pearson v. Pearson*, 54 L. J. Ch. 32; 27 Ch. D. 145). *Va* ESTATE AND EFFECTS.

"Estate or Interest claimed," s. 3, Real Property Limitation Act, 1833; *V. Grant v. Ellis*, 11 L. J. Ex. 233; 9 M. & W. 113; *Howitt v. Harrington*, 1893, 2 Ch. 497; 62 L. J. Ch. 577. In *Grant v. Ellis*, the Court spoke of "Interest" as being a word of a very "large and comprehensive nature." As to "Estate, Interest," &c, s. 20. *Ib.* *V. RIGHT.*

"Estate or Interest in Land," s. 4, Public Works (New Zealand)

Act, 1882; *V. Plimmer v. Wellington*, 9 App. Ca. 699; 53 L. J. P. C. 105; *Ramsden v. Dyson*, L. R. 1 H. L. 129.

*V.* subs. 1, 2, 3, s. 2, Settled Land Act, 1882.

“Estate or Interest, in POSSESSION,” s. 3, Real Property Limitation Act, 1833; *V. Corpus College v. Rogers*, 49 L. J. Ex. 4; *Ecclesiastical Commrs v. Rowe*, 49 L. J. Q. B. 771; 5 App. Ca. 736: *Ib. v. Tremer*, 1893, 1 Ch. 166; 62 L. J. Ch. 119; 41 W. R. 166; 68 L. T. 11.

“According to his Estate and Interest”; *V.* ACCORDING.

Future “Money, or Property” in which a Bankrupt has no “Estate or Interest.” s. 47 (2), Bankry Act, 1883; *V. Re Bishop*, cited MONEY.

*V.* INTEREST IN LAND.

**ESTATE DUTY.** — “Estate Duty.” s. 6, Finance Act, 1894, included Settlement Estate Duty under s. 5 (*Re Webber*, 1896, 1 Ch. 914; 65 L. J. Ch. 544); but this was altered by s. 19, Finance Act, 1896, on *whr*, *Re Gibbs*, cited DECEASED: *Re Muryon-Wilson*, cited DEDUCTION.

*V.* Austen-Cartmell on the Finance Acts.

“‘Estate Duty Grant,’ means, the Grant made under s. 19, Finance Act, 1894, in substitution for the Probate Duty Grant” (s. 2, 62 & 63 V. e. 17).

**ESTATE TAIL.** — *V.* HEIRS: HEIRS OF THE BODY: ISSUE: TAIL.

Quà Fines and Recoveries Act, 1833, “‘Estate Tail,’ in addition to its usual meaning, shall mean, a BASE FEE into which an Estate Tail shall have been converted” (s. 1).

“Estate Tail in Possession”; *V.* POSSESSION.

**ESTATES.** — Power to Lease “Estates, Heredits, and Premises,” or any Part or Parts thereof; *V. Dayrell v. Howe*, and other cases, cited ANY.

*V.* THREE ESTATES.

**ESTIMATE.** — An OFFER is not less binding for being in the form of an Estimate, and headed “Estimate” (*Croshaw v. Pritchard*, 16 Times Rep. 45).

**ESTIMATED: ESTIMATION.** — When Particulars of Sale state the property to be of an “Estimated” value, and an honest estimate has been made, no ground for compensation arises because the estimate is mistaken (*Re Hurlbalt and Chaytor*, 57 L. J. Ch. 421). *Cp* ADMEASUREMENT.

The qualification of a quantity by the phrase “*By Estimation*,” is equivalent to MORE OR LESS (*Joliffe v. Baker*, 52 L. J. Q. B. 609; 11 Q. B. D 255; Sug. V. & P. 559; Dart, 736).

“Estimated Price of Commission”; *V.* PRICE.

*V.* FAIRLY.

**ESTOPPEL.** — “ ‘Estoppe,’ commeth of a French word *estoupe*, from whence the English word stopped, and it is called an estoppel, or conclusion, because a man’s owne act or acceptance stoppeth or closeth up his mouth to allege or plead the truth; and *Littleton’s* ease here (s. 667) proveth this description ” (Co. Litt. 352 a, where it is said Estoppel is of three kinds, *i.e.* Matter (1) of Record, (2) in Writing, *i.e.*, *semble*, by Deed, (3) *in Paisis*). To the same effect is the def in *Termes de la Ley*.

*Vh*, *Dixon v. Kennaway*, 1900, 1 Ch. 833; 69 L. J. Ch. 501; 82 L. T. 527, and cases there cited: *Dalton v. Fitzgerald*, 1897, 2 Ch. 86; 66 L. J. Ch. 604: *Norris v. Craig*, 64 L. J. Q. B. 432: ACQUIESCENCE: WHEREAS: *White & Tudor*, 446: *Everest on Estoppel*: 5 *Encyc.* 74–81.

*Note.* Estoppel cannot apply to a Married Woman’s property that she is restrained from alienating (*Bateman v. Faber*, 1897, 2 Ch. 223; 1898, 1 Ch. 144; 66 L. J. Ch. 721; 67 *Ib.* 130; 77 L. T. 576; 46 W. R. 215).

**ESTOVERS.** — “ ‘Estovers’ are nutrishment or maintenance ” (*Termes de la Ley*). *Vf*, *Cowel*: 5 *Encyc.* 81.

“By the grant of Estovers, will pass houseboote, hayboote, and plowboote. But if a man grant to me estovers out of his manor, I may not by this grant cut down any of the fruit trees within his manor ” (*Touche*. 96). *V. BOTTE.* Excess of user may amount to WASTE (*Simmons v. Norton*, 7 *Bing.* 640).

**ESTRAY.** — “ ‘Estray’ is where any beast or cattel is in my lordship and none knoweth the owner thereof ” (*Termes de la Ley*). *Vf*, *Cowel*: 5 *Encyc.* 82: *Elph.* 573.

**ESTREAT.** — To estreat, *e.g.* estreat a Recognizance, or Fine, is to enforce an obligation to the Crown: *Vh.* 5 *Encyc.* 82–84.

An Estreat is “a true copy, or duplicate, of an original Writing. For example, of Amerciaments or Penalties set down in the Rolls of a Court, to be levyed by the Bayliff, or other officer, of every man for his Offence. See F. N. B. fol. 57, 76 ” (*Cowel*). *Vh.*, 3 *G.* 4, c. 46; 3 & 4 *W.* 4, e. 99; 22 & 23 *V.* c. 21; *Sum Jur Act*, 1879, s. 9.

**ESTREPEMENT.** — WASTE, voluntary or permissive, by a tenant for life or years (*Spelm.*: *Cowel*). “It also signifies the making land barren by continual ploughing, 6 *Edw.* I. c. 13 ” (*Jacob*).

**ESTUARY.** — Estuary of a RIVER; *V. Horne v. Mackenzie*, cited MOUTH.

*Quà Fisheries (Ir) Act*, 1850, 13 & 14 *V.* c. 88, “ ‘Estuary,’ and ‘Bay,’ shall include and extend to any HARBOUR or Roadstead ” (s. 1).

**ET CETERA.** — A bequest of “all my household furniture and effects, plate, glass, wearing apparel, &c.,” was held to pass the articles

enumerated, and others *ejusdem generis*, but not the general residue (*Newman v. Newman*, 26 Bea. 220); and a like construction was given to the words "all my furniture, &c" (*Barnaby v. Tussell*, L. R. 11 Eq. 363). But though those cases were cited to Jessel, M. R., in *Chapman v. Chapman* (46 L. J. Ch. 104; 4 Ch. D. 800), he held that the general residue passed under a bequest, to the testator's widow, of "all my money, cattle, farming implements, &c, she paying my brother the sum of £ . . . ." *Vt. Hertford v. Lowther*, 7 Bea. 9; *Gover v. Davis*, 30 L. J. Ch. 505; 29 Bea. 225; *Dean v. Gibson*, 36 L. J. Ch. 657; L. R. 3 Eq. 713; *Trining v. Powell*, 2 Coll. 262; 1 Jarm. 755, *n*: *Mullally v. Walsh*, 3 L. R. Ir. 244.

The insertion of "&c" in some of the terms of an Agreement for a Lease or Sale, does not produce such uncertainty as to render the Agreement incapable of specific performance, if the material points are sufficiently stated (*Parker v. Taswell*, 27 L. J. Ch. 812; 2 D. G. & J. 559; *Naylor v. Goodall*, 45 L. J. Ch. 53; *St. Price v. Griffith*, 21 L. J. Ch. 78; 1 D. G. M. & G. 80). On the sale of "GOODWILL, &c," the "&c" carries the belongings of the Goodwill, *e.g.* trade-marks (*Cooper v. Hood*, 28 L. J. Ch. 215; 26 Bea. 293; 4 Jur. N. S. 1266).

"&c" is used in Littleton, s. 246 (*Vth Co. Litt. 167 a*) and in s. 389 (*Vth Co. Litt. 239 b*); on *whc*, per Ld St. Leonards in the *Montrose Peerage Case*, 1 Macq. 432, 433.

#### V. OTHER.

**EUROPE.** — Ship "TRADING to any Port in Europe, North and East of Brest," s. 379 (3), Mer Shipping Act, 1854, as extended by Order in Council 21 Dec 1871 (for *whc* 2 Maude & P. 78), — "Europe" is there used in contradistinction to the UNITED KINGDOM the exemption as to which was provided by subs. 1 (per Bruce, J., *The Winestead*, 1895, P. 170; 64 L. J. P. D. & A. 53; 72 L. T. 91). *V. COASTING TRADE.*

#### EVANESCENT. — *V. FLEETING.*

**EVANGELICAL.** — A Trust for purchasing Advowsons of Churches where the Services are "Evangelical," is, *semble*, a good CHARITY (*Re Hunter*, 1897, 2 Ch. 105; 66 L. J. Ch. 545; 76 L. T. 725; 45 W. R. 610); but such a Trust must be declared in apt language (*S. C.* 1899, A. C. 309; 68 L. J. Ch. 449; 80 L. T. 732; 47 W. R. 673).

**EVASION.** — "I never understood what is meant by an Evasion of an Act of Parliament; either you are within the Act of Parliament or not. If you are not within it you have a right to avoid it, to keep out of the prohibition; if you are within it, say so, and then the course is clear" (per Cranworth, C., *Edwards v. Hall*, 25 L. J. Ch. 84).

Thus, where an occupier of land adjoining a TURNPIKE ROAD made a

road on that land which opening on to the Road at one place swept to another such opening, the Turnpike Gate being between the two openings, and so he used the Turnpike Road without paying toll; held, that he had done no act "with intent to evade the payment" of Toll, s. 41, 3 G. 4, c. 126, because the Toll was payable "at" the gate by a person going "through" it, and he had not come within either phrase (*Harding v. Headington*, 43 L. J. M. C. 59; L. R. 9 Q. B. 157). *Vf*, per Jessel, M. R., and Lindley, L. J., *Yorkshire Ry Wagon Co v. Maclure*, 51 L. J. Ch. 857; 21 Ch. D. 309: *Sv*, s. 6, Pawnbrokers Act, 1872.

"Everybody agrees that 'evade' is capable of being used in two senses; — (1) which suggests underhand dealing, (2) which means nothing more than the intentional avoidance of something disagreeable" (*Simms v. Registrar of Probates*, 69 L. J. P. C. 56). Probably, it may be said that it is in the first of these two meanings that the word is generally used in Penal Statutes, e.g. s. 27 (South Australia) Succession Duties Act, 1893 (which corresponds with s. 8, Sucn Dy Act, 1853) whereby property comprised in any "Non-testamentary Disposition" made "with the intent to evade the payment" of Succession Duty, is rendered liable to double duty. "Evade," there, "means some device or stratagem: some arrangement, trust, or other device (whether concealed, or apparent on the face of the Non-testamentary Disposition) by which what is really a part of the Estate of the Deceased is made to appear to belong to somebody else in order to escape payment of Duty" (per Way, C. J., adopted by P. C., *Simms v. Registrar of Probates*, 69 L. J. P. C. 54; 1900, A. C. 323; 82 L. T. 433); and, accordingly, it was there held that a covenant by a deceased to pay £200,000 to his children which conferred on them a complete ownership of the debt, and which (not having been paid during his life) diminished by that amount his Net Assets liable to Duty, and though it was a "DISPOSITION of Property" within the meaning of the Act, yet it was not entered into "with the intent to evade" the Duty, there being no evidence to show that the covenant was not a genuine transaction, or anything to impeach its *bona fides*. *Vf*, *Bullivant v. A-G. Victoria*, 1901, A. C. 196; 70 L. J. K. B. 645.

**EVASIVELY.** — Pleading "evasively," R. 19, Ord. 19, R. S. C., is the converse of answering the POINT OF SUBSTANCE, *whc*, for cases hereon: *Va* AS ALLEGED.

**EVEN DATE.** — *V*. BEARING.

**EVENING.** — *V*. AFTERNOON: EVERY.

**EVENT.** — "Event" in the well-known phrase in arbitration agreements, and in the Rules of Court (Ord. 65, R. 1) that "the Costs shall follow the Event," is "a *nomen collectivum*, and may be said to be equivalent to 'Result,' of which there may be more than one in the action or enquiry (per Bramwell, L. J., *Myers v. Defries*, 49 L. J. Ex. 270).

"The Event is the outcome or the result of the trial, and although there may be one verdict and one judgment, still there may be more than one event" (per Baggallay, L. J., *Ib.* 271). "Event" in this phrase is therefore to be read, distributively, as "Events" (*Ellis v. Desilva*, 50 L. J. Q. B. 328; 6 Q. B. D. 521). The result of each distinct issue, in an action or an enquiry, is its "Event"; the costs of which will go to the party who succeeds on it (*Hardy v. Fetherstonhaugh*, 38 L. J. Q. B. 337; 10 B. & S. 628; L. R. 4 Q. B. 725; *Myers v. Defries*, 49 L. J. Ex. 266; 5 Ex. D. 180; *Ellis v. Desilva*, sup; *Abbott v. Andrews*, 51 L. J. Q. B. 641; 8 Q. B. D. 648; *Goutard v. Carr*, 53 L. J. Q. B. 55; 13 Q. B. D. 598, *n*; *Hawke v. Brear*, 54 L. J. Q. B. 315; 14 Q. B. D. 841). Those costs mean the whole litigation relating to the "Event," including a wrong non-suit or verdict that has been set aside (*Green v. Wright*, 46 L. J. C. P. 427; 2 C. P. D. 354; *Field v. G. N. Ry*, 47 L. J. Ex. 662; 3 Ex. D. 261), the "Event" in the latter case being the "Event" of the fresh contest on which the rule is granted (*Jones v. Williams*, 42 L. J. Q. B. 48; L. R. 8 Q. B. 280). The general costs of a trial or an enquiry would, as a rule, in the one case follow the judgment and in the other would follow the general result, or balance, of the findings (*Goutard v. Carr*, sup; *Lund v. Campbell*, 54 L. J. Q. B. 281; 14 Q. B. D. 821; *Shrapnel v. Laing*, 57 L. J. Q. B. 195; 20 Q. B. D. 334; 58 L. T. 705; 36 W. R. 297). But in *Myers v. Defries*, sup, Bramwell, L. J., said, "The costs of the writ, for instance, are necessarily incurred by the plaintiff if there is *an* Event in his favour. Where *an* event is in the plaintiff's favour and where he gets costs, he will get the general costs of the cause; where, however, he recovers nominal damages and gets no costs, he will not have to pay any general costs to the other party" (49 L. J. Ex. 271). *V*, where there is a Counter-Claim, *Stooke v. Taylor*, 49 L. J. Q. B. 859; 5 Q. B. D. 569, dissenting from *Staples v. Young*, 2 Ex. D. 324, and distinguishing *Chatfield v. Sedgwick*, 4 C. P. D. 459; *Forrest v. Carte*, 1897, 2 L. R. 314; *Curtis v. Armstrong*, *Ib.* 327.

As to the deprivation of plt's costs where action should have been in the County Court, *V. Ferguson v. Davison*, cited RECOVER.

Costs to "abide the Event," s. 113, Co. Co. Act, 1888; *V. White v. Headland's Co*, cited RECOVER; *Wright v. Bull*, 1900, 2 Q. B. 124; 69 L. J. Q. B. 529; 82 L. T. 568.

*V*. VERDICT: RESULT.

Deposit "to abide the Event" of a Wager; *V*. DEPOSIT: COVER. *Cp*, GAMING CONTRACT.

The common "Sweep-stake" on a Horse-race is not money received as a consideration for an undertaking to pay "on any Event or Contingency of or relating to any Horse-race," s. 1, 16 & 17 V. c. 119, for the receiver is but a stake-holder, and the Event or Contingency on which the money is to be distributed is not a "HORSE-RACE," but is only the drawing of the names of the successful horses (*R. v. Hobbs*, 1898, 2 Q. B. 647; 67



L. J. Q. B. 928; 47 W. R. 79; 79 L. T. 160; 62 J. P. 551). But such a Sweep-stake is a LOTTERY (*V.* SUBSCRIPTION OR CONTRIBUTION).

The death of a Copyhold Tenant, or the devolution of his title (during proceedings for Enfranchisement), would be an "Event" requiring Admittance within s. 1, 15 & 16 V. c. 51 (*Myers v. Hodyson*, 45 L. J. C. P. 603; 1 C. P. D. 609).

"In the event of Decease," in a Will, are (probably) words of futurity (per Kekewich, arg. *Re Webster*, 52 L. J. Ch. 768).

**EVER.** — *V.* FOR EVER.

**EVERY.** — In *Brown v. Jarris* (29 L. J. Ch. 595; 2 D. G. F. & J. 168; 8 W. R. 644) a gift over "after the decease of every of them," *i.e.* certain prior legatees, "every" was read "EACH." In that case Campbell, C., said, "Dr. Johnson tells us in his Dictionary that 'every' was formerly spelt 'Everich,' that is, Ever-each; and that the true meaning is, 'each one of all.' The word may be used in this sense, although other lexicographers may give another meaning to it." *V.* ALL AND EVERY.

"Every *Building*," *V.* BUILDING.

"Every *Dispute*," s. 22, Friendly Societies Act, 1875; *V. Morrison v. Glocer*, 19 L. J. Ex. 20; 4 Ex. 430. *V.* DISPUTE: FRIENDLY SOCIETY.

"Every *Evening*," in an Artiste's Agreement to perform at a Place of ENTERTAINMENT, means, every evening on which the Place "may be legally opened and the artiste called upon to perform" (per Hawkins, J., *Kelly v. London Pavilion*, 77 L. T. 217), a def which excludes Sundays.

"Every such *Offence*," s. 20, 58 G. 3, c. 194; *V. Apothecaries Co v. Jones*, cited PRACTICE.

"Every *Person*," 5 G. 4, c. 83, s. 43, does not apply to a deserted married woman who has not the means of supporting her children who have become chargeable to the parish (*Peters v. Cowie*, 46 L. J. M. C. 177; 2 Q. B. D. 131); nor did this phrase entitle a married woman to vote for municipal councillors under ss. 1 and 9, 32 & 33 V. c. 55 (*R. v. Harrold*, 41 L. J. Q. B. 173; L. R. 7 Q. B. 361).

"Every *Person*," having served in the Militia, should have freedom to set up a TRADE (26 G. 3, c. 107), related only to persons exercising trades, and not to common labourers (*R. v. Guenop*, 3 T. R. 135). So "Every Person" who impounds an animal is to feed it, s. 5, 12 & 13 V. c. 92, does not include the pound-keeper (*Dargan v. Davies*, cited IMPOUND OR CONFINE); nor is an Innkeeper, whilst in his own inn after the same is closed, within the phrase "Every person found drunk on licensed premises," s. 12, 35 & 36 V. c. 94 (*Lester v. Torrens*, cited LICENSED PREMISES). But "Every Person" committed "for any offence or misdemeanour" to bear his own charges of being conveyed (3 Jac. 1,

c. 10), includes deserters as well as ordinary criminals (*R. v. Pierce*, 3 M. & S. 62).

*Vf.* for example of restricted meaning of "Every Person," *Beilby v. Shepherd*, 3 Ex. 40; 18 L. J. Ex. 73: PERSON.

A penalty on "Every Person" concerned in an OFFENCE, may be recovered, for the same offence, against each person therein concerned (*R. v. Dean*, 13 L. J. Ex. 33; 12 M. & W. 39).

"Every Power" enabling; *V.* ENABLING.

"Every Reference" to Arbitration shall be under the Act except where inconsistent with a Special Prior Act (s. 24, Arb Act, 1889), indicates that "the Act was intended to introduce a Code with regard to ARBITRATION; and its operation is only excluded from Arbitrations with which it is absolutely inconsistent" (per Fry, L. J., *Re Knight and Tabernacle Bg Socy*, cited INCONSISTENT).

Devise to "Every Son during his life"; *V. Surtees v. Surtees*, L. R. 12 Eq. 400: SON.

**EVERY THING ELSE.** — Held to include undisposed of Realty in FEE (*Wilce v. Wilce*, 9 L. J. O. S. C. P. 197; 5 Moore & P. 682; 7 Bing. 664); but in that case there was a preamble very comprehensively showing that the testator meant to dispose of all he had in the world, whilst the words of gift were "All the Rest of my Worldly Goods, Bonds, Notes, Book Debts, and Ready Money, and Every Thing Else *I die possessed of.*" But where the bequest was of "All my Stock-in-Trade, Household Goods, Wearing Apparel, Ready Money, Securities for Money, and Every Other Thing my property, of what nature or kind soever," it was held that land did not pass, the testatrix's intention being uncertain (*Doe d. Bunny v. Rout*, 7 Taunt. 79; 2 Marsh. 397).

*V.* EVERYTHING: THINGS.

**EVERYTHING.** — "Under a bequest of 'Everything' in a house, Money and Bank Notes will pass" (Watson, Eq. 1327, citing *Popham v. Aylesbury*, Amb. 68: *Stuart v. Bute*, 11 Ves. 662: *Vthle*, Watson Eq. 1328).

*Vh.* *Re Methuen and Blore*, 50 L. J. Ch. 464; 16 Ch. D. 696; 29 W. R. 656; 44 L. T. 332: EVERY THING ELSE.

**EVICTION.** — "The word 'Eviction' has in latter times been understood to mean what formerly it was not intended to express. Formerly it meant what was expressed by the language of Pleading, 'evicted, expelled, removed, and put out,' — describing the different modes in which it might take place. 'Eviction,' from *evincere*, to evict or dispossess by course of law, was used originally when the person having the permanent title asserted it and expelled his tenant. But that sort of Eviction is not absolutely necessary in order to operate as a suspension

of the rent, and the word is now used when that has been done which deprives the tenant of the enjoyment of the premises, and the rent is therefore suspended, and the right of the landlord to recover it is gone. The word 'Eviction' has come to have a popular meaning, and to be applied to every kind of expulsion in fact. Now, getting rid of the old notion of an Eviction, it may be taken to mean, not a mere trespass without anything more, — because, though every Eviction implies a Trespass, every Trespass does not amount to an Eviction, — but something of a more permanent character done by the landlord with the intention of depriving the tenant of the enjoyment of the whole or part of the demised premises. If that be shewn, the Eviction may be in various ways" (per Jervis, C. J., *Upton v. Townend*, 25 L. J. C. P. 51; 17 C. B. 30; *Uth, Wilson v. Burne*, 24 L. R. Ir. 20). Cp, EJECTMENT: ENTRY.

**EVIDENCE.** — For examples of what is "Evidence" in a Pleading, contrary to R. 4, Ord. 19, R. S. C.: *V. Davy v. Garrett*, 7 Ch. D. 473; 47 L. J. Ch. 218. Cp MATERIAL FACT.

"The Evidence" sufficient to justify an Election Court to order a prosecution for CORRUPT PRACTICE, s. 28 (5), 47 & 48 V. c. 70, is the Evidence which has already been given before that Court in the enquiry in which such prosecution is directed (*R. v. Shellard*, 58 L. J. M. C. 142).

V. CONCLUSIVE EVIDENCE: SUFFICIENT EVIDENCE: SATISFACTORY: HEARSAY: PRIMARY: PRESUMPTION: JUDICIAL PERSUASION: NO EVIDENCE: EXTRINSIC: FRESH EVIDENCE: MATERIAL EVIDENCE.

"The Evidence Acts, 1806 to 1895"; V. Sch 2, Short Titles Act, 1896.

**EVIDENCE OF A CONTRACT.** — "Agreement, or any Memorandum of an Agreement . . . UNDER HAND only . . . whether the same be only *Evidence of a Contract* or obligatory upon the parties from its being a written INSTRUMENT"; — This form of words, — which appeared in 48 G. 3, c. 149, Sch tit. "Agreement," and has re-appeared in the subsequent Stamp Acts of 1815, 1850, 1860, 1870, and 1891, — has imposed a Stamp Duty (which since the Act of 1860 has been *6d.*) on Agreements except such as come within the prescribed Exemptions.

The "Memorandum" of an Agreement differs from an "Agreement" chiefly in that it is less formal (V. NOTE).

But the words "Evidence of a Contract" strike against and nullify the possible argument that the document requiring a stamp must, like "AGREEMENT" in the Statute of Frauds, contain the whole agreement (per Maule, J., *Vaughton v. Brine*, 1 M. & G. 359; *Beeching v. Westbrook*, 10 L. J. Ex. 464; 8 M. & W. 411). Therefore, an Auctioneer's Sold Note, which omits the vendor's name (*Ramsbottom v. Wortley*, 2 M. & S. 448), or a Guarantee under s. 3, Mer Law Amend Act, 1856, which omits the consideration (*Glover v. Halkett*, 26 L. J. Ex. 416; 2 H. & N. 490), re-

quires the stamp. So, *a fortiori*, of any document which contains within itself the terms of the contract (*Knight v. Barber*, 16 L. J. Ex. 18; 16 M. & W. 66; *Hegarty v. Milne*, 23 L. J. C. P. 151; 14 C. B. 627; *Bowen v. Fox*, 2 M. & R. 167).

On the other hand, *Beeching v. Westbrook* (sup) shows that a document not intended to operate as a contract and only used as proof of the existence of a contract, is not "Evidence of a Contract," within the above phrase. "No document requires an Agreement Stamp unless it amounts to an Agreement or a Mem of an Agreement. The mere fact that a document may assist in proving a contract, does not render it chargeable with stamp duty. A mere proposal or offer, until accepted, amounts to nothing. If accepted in writing, the offer and acceptance *together* amount to an Agreement; but if accepted by parol, such acceptance does not convert the offer into an Agreement or Mem of an Agreement; unless, indeed, after the acceptance, something is said or done by the parties to indicate that in the future it is to be so considered" (per Hawkins, J., *Carlill v. Carbolic Smoke Ball Co*, 1892, 2 Q. B. 484; 61 L. J. Q. B. 696, citing *Edgar v. Blick*, 1 Starkie, 464; *Chaplin v. Clarke*, 4 Ex. 407; *Hudspeth v. Yarnold*, 19 L. J. C. P. 321; 9 C. B. 625; *Clay v. Crofts*, 20 L. J. Ex. 361). Therefore, the offer of a REWARD to any person who uses unsuccessfully an advertised specific (*Carlill v. Carbolic Smoke Ball Co*, 1893, 1 Q. B. 256; 62 L. J. Q. B. 257; 67 L. T. 837; 41 W. R. 210; 57 J. P. 325), or a private mem, or an Auctioneer's unsigned note (*Ramsbottom v. Tunbridge*, 2 M. & S. 434), or an acknowledgement of a fact (*Mullett v. Huchison*, 7 B. & C. 639; *Blackwell v. M'Naughtan*, 1 Q. B. 127), does *not* require a stamp.

An insufficiently stamped Receipt may be Evidence of a Contract (*Evans v. Prothero*, 21 L. J. Ch. 772; 1 D. G. M. & G. 572: *Cp AVAILABLE*, at end).

V. MINUTE.

**EVIDENCES.**— "Evidences and Information," s. 3 (6), Conv & L. P. Act, 1881; *V.* per Kay, L. J., *Re Stuart and Seadon*, cited INFORMATION.

**EVIL.**— "Suspected of Evil"; *V.* WALK.

**EVIL LIVER.**— "An open and notorious Evil-Liver" who may be rejected from Communion (Rubric to Communion Office), is limited to one whose moral conduct, as distinguished from religious belief, is bad (*Jenkins v. Cook*, 45 L. J. P. C. 1; 1 P. D. 80); and, *semble*, such bad moral conduct must be "open and notorious": *V.* COMMON AND NOTORIOUS.

**EWART'S ACT.**— The Trial for Felony Act, 1836, 6 & 7 W. 4, c. 114.

**EX FIRST PARCEL.** — “ Ex the first parcel of brimstone we have in the Tyne on our account ”; *V. Gray v. Leidemann*, 5 W. R. 294; 26 L. J. Ex. 162; 28 L. T. O. S. 341.

**EX MERO MOTU.** — These “ are words frequently used in Kings Charters, whereby hee signifies that hee doth that which is contained in the Charter of his owne Will and Motion, without Petition or Suggestion made by any other: and the effect of these words is to barre all exceptions that might be taken to the instrument wherein they be contained by alleaging that the King, in passing that Charter, was abused by any false suggestion . . . these words shall be taken most strongly against the King ” (Termes de la Ley).

**EX PARTE MATERNÂ.** — *V. NEXT OF KIN.*

**EX QUAY OR WAREHOUSE.** — “ In a contract for the sale of goods ‘ Ex Quay or Warehouse,’ there is an implied condition that the vendor shall give notice to the purchaser of the place of storage; and until such notice has been given, the purchaser is not in default for non-acceptance ” (Benj. 671, citing *Daries v. McLean*, 21 W. R. 264; 28 L. T. 113).

**EXACT.** — An exact *Imitation* of an ordinary article, is an imitation which cannot, by ordinary eyesight, be distinguished from the original. “ Exact Imitation ” has a much stricter meaning than a “ Colourable Imitation ”; *V. COPY.* Therefore, where a firm of Ladies’ Corset Manufacturers dissolved partnership and the retiring partner covenanted that he would not manufacture, or sell, corsets which should be an “ Exact Imitation ” of the corsets previously manufactured by the firm, it was held no breach of that covenant for the covenantor to manufacture and sell corsets which were a Colourable imitation of the firm’s corsets but were distinguishable therefrom by small, though readily recognisable, differences, *e.g.* the numbers of the bones used and their relative positions, or the colour of the silk or thread by which the decorative stitching was executed (per Chitty, J., *Reynolds v. Brown*, Dec 7, 1894).

*V. EXACTLY.*

**EXACTION.** — “ ‘ Exaction ’ is a wrong done by an Officer, or by one pretending to have authority, in demanding or taking any reward or fee for that matter, cause, or thing, for which the law alloweth not any fee at all. . . . ‘ EXTORTION ’ is where an officer demandeth and wresteth a greater summe or reward than his just fee ” (Termes de la Ley. *Exaction*).

But Coke treats “ Extortion ” as including “ Exaction,” for he defines “ Extortion ” as, “ unlawfully taking by any Officer, by colour of his Office, any money or valuable thing, of or from any man, either that is

not due or more than is due or before it be due" (Co. Litt. 368 b: *Vf*, *Beaufaye's Case*, 10 Rep. 99 b).

"Exactions"; *V*. DEMAND.

**EXACTLY.** — An Insolvent was to have the benefit of the Act 1 & 2 V. c. 110, though (s. 93) a debt was specified in his schedule "not exactly," if the error was "without any culpable negligence, or fraud, or evil intention"; *V. Hoyles v. Blore*, 15 L. J. Ex. 28; 14 M. & W. 387.

*V*. EXACT.

**EXAMINATION.** — A Power to a Court to "take Examinations," or other accusation or proof, implies that it is to be done on oath (Dalt. c. 115, cited Dwar. 672).

The "Examination," s. 79, 4 & 5 W. 4, c. 76, "means the ENTIRE body of Evidence taken on the occasion of making the Order (of Pauper Removal) the whole of which should be sent, that the Parish, which is ordered to receive the pauper, may have an opportunity of considering whether that Order should be resisted or submitted to" (per Coleridge, J., *R. v. Outwell*, 9 A. & E. 839).

FINAL EXAMINATION: INTERMEDIATE: PRELIMINARY.

**EXAMINED COPY.** — *V*. CERTIFIED: Rosc. N. P. 98.

**EXCAMBIATOR.** — " 'Excambiator,' was anciently used for an Exchanger of Land, such, I suppose, as we now call BROKERS" (Cowel).

**EXCAMBION.** — As used in Stamp Act, 1891; *V. Coats v. Inl. Rev.*, 66 L. J. Q. B. 434; *G. N. Ry v. Inl. Rev.*, 1899, 2 Q. B. 661; 68 L. J. Q. B. 983.

**EXCEED.** — Every contract made by an Urban Authority whereof the Value or Amount "exceeds" £50, must be IN WRITING and under its Common Seal (s. 174 (1), P. H. Act, 1875), *i.e.* the contract must necessarily exceed £50 *at the time of its making* (*Eaton v. Basker*, 50 L. J. Q. B. 444; 7 Q. B. D. 529, distinguishing *Hunt v. Wimbledon*, 48 L. J. C. P. 207; 4 C. P. D. 48). *V*. NOT TO BE: SMALL.

An Act in which a Justice "shall have exceeded his Jurisdiction," s. 2, 11 & 12 V. c. 44. means. "assuming to do something which the Act under which he is proceeding could, by no possibility, justify, — as in *Leary v. Patrick* (19 L. J. M. C. 211). where there could have been no authority to issue a Distress for Costs not adjudged by a Conviction, or as in *Barton v. Bricknell* (20 L. J. M. C. 1), where there was no power to order the plt to be put in the Stocks" (per Jervis, C. J., *Ratt v. Parkinson*, 20 L. J. M. C. 212). *Vf*, *Kendall v. Wilkinson*, 24 L. J. M. C. 89; 4 E. & B. 680; *Pease v. Chaytor*, 31 L. J. M. C. 1; 1 B. & S. 658.

Rate not to "exceed" one penny in the £; *V. Ex p. Brown*, 31 L. J. M. C. 108.

"Not exceeding"; *V. LESS: NOT EXCEEDING.*

*V. EXCESS.*

**EXCEPT.** — A bequest of all testator's property, "except" so much a year to A., gives A. an ANNUITY in perpetuity, for a thing excepted is of the same nature as that from which it is excepted (*Hill v. Potts*, 31 L. J. Ch. 380; 2 J. & H. 634).

"Property except Lands"; *V. PROPERTY OTHER THAN LAND.*

"Except where otherwise provided by statute"; *V. Re Taru*, 1893, 2 Ch. 280; 62 L. J. Ch. 564; 68 L. T. 311; 41 W. R. 397; *Buckley v. Hull Dock Co*, 1893, 2 Q. B. 93; 62 L. J. Q. B. 449; 69 L. T. 347; *Cp EXPRESSLY PROVIDED.*

"Except," may sometimes be read as "In addition to" (*Sowerby v. G. N. Ry*, 7 Ry & Can Traffic Ca. 164).

*V. EXCEPTION: UNLESS.*

**EXCEPTING.** — This word, — *e.g.* a Lease "excepting free passage" over premises demised, — may create a covenant (*Bush v. Cole*, Carth. 232; 12 Mod. 24; *nom. Bush v. Calis*, Show. 247; *Cole's Case*, 1 Salk. 196).

**EXCEPTION.** — An Exception in a Grant, "keeps the things from passing thereby, being a saving out of the deed as if the same had not been granted: but it is to be a particular thing out of a general one, — as a room out of a house, ground out of a manor, timber out of land, &c. And it must not be of a thing expressly granted; also it must be of what is severable from, and not inseparably incident to, the grant" (Jacob, citing *Co. Litt.* 47; 1 Lev. 287; *Kenson v. Reading*, Cro. Eliz. 244).  
*V. RESERVATION.*

"It is a rule of construction that where there is a Grant and an Exception out of it, the words of the Exception are to be considered as the words of the grantor and are to be construed in favour of the grantee" (per Holroyd, J., *Bullen v. Denning*, 5 B. & C. 850). *Vf Elph.* 93, 94, 427.

Exceptions in a BILL OF LADING, or CHARTER PARTY; *V. Schmidt v. Royal Mail S. S. Co*, cited FIRE ON BOARD. For connected treatment and discussion of these Exceptions, frequently called "Excepted Perils," *V. Abbott*, Part 3, ch. 4.

**EXCESS.** — *V. EXCEED: ABANDON.*

"In Excess"; *V. RECEIVE.*

For Order for Reduction of Capital of a Co when "in Excess" of its wants, s. 3, Comp Act, 1877; *V. Re Nixon Co.* 1897. 1 Ch. 872; 66 L. J. Ch. 406.

"'Excess,' in the Execution of POWERS, consists in the transgression either of the rules of law or of the scope of the Power" (Farwell, 285).

**EXCESSIVE.** — “In one sense, no doubt, an ‘Excessive’ (Railway) Charge is ‘Illegal’; but there are many charges which are not Excessive which are also Illegal” (per Field, J., *G. W. Ry v. Ry Commrs*, 50 L. J. Q. B. 487; 7 Q. B. D. 182). *V.* REASONABLE.

“To be ‘Excessive,’ a DISTRESS must be obviously disproportioned to the Rent” (Rednan, 388, 389, citing *Field v. Mitchell*, 6 Esp. 71). *Vf.* Bullen on Distress, 2 ed., 239.

*Excessive Weight*; *V.* EXTRAORDINARY TRAFFIC.

**EXCHANGE.** — *V.* Termes de la Ley: Jacob: 4 Cru. Dig. 74: 5 Encyc. 102.

A Power of Sale or Exchange, authorises PARTITION.

“Exchange” formerly implied a Warranty to vouch and a Condition to give re-entry (Co. Litt. 173 b, 174 a. and Hargrave’s note thereon); but it has now no special meaning (per Russell, C. J., *Baynes v. Lloyd*, 1895, 1 Q. B. 825; 64 L. J. Q. B. 414).

When a transaction is a “Conveyance on Sale,” quâ Stamp Act (*V.* CONVEYANCE), it cannot be an “Exchange” quâ stamp duty (*Coats v. Inl. Rev.*, 1897, 2 Q. B. 423; 66 L. J. Q. B. 434, 732; 77 L. T. 270; 46 W. R. 1).

“Exchange Area”; Stat. Def., 62 & 63 V. c. 38, s. 3 (6).

**EXCISE.** — For a brief account of the Excise Laws, *V.* 5 Encyc. 106–121.

“Excise Trader,” “Excise Warehouse”; Stat. Def., 43 & 44 V. c. 24, s. 3.

**EXCISEABLE LIQUOR.** — BEER was not an “Exciseable Liquor” (*Jones v. Whittaker*, 39 L. J. M. C. 139; L. R. 5 Q. B. 541; 22 L. T. 535; 43 & 44 V. c. 20, s. 47), nor, *semble*, is Sweet Wine (*Lancashire v. Staffordshire Jus.*, 26 L. J. M. C. 171; nom. *R. v. Lancashire*, 7 E. & B. 839).

Exciseable Liquors, now include *Beer* (s. 11, 43 & 44 V. c. 20; s. 3, 52 & 53 V. c. 7) except quâ a Billiard License (s. 47, 43 & 44 V. c. 20); *Spirits* (s. 1, 23 & 24 V. c. 129; s. 6, 53 & 54 V. c. 8); *Mum, Spruce, or Black Beer* (s. 3, 44 & 45 V. c. 12); *Berlin White Beer* (s. 3, 52 & 53 V. c. 7). *Va.* WINE: SWEETS.

**EXCLUDED.** — “Excluded Charges”; Stat. Def., Loc Gov (Ir) Act, 1898, s. 56 (1).

Sunday “excluded”; *V.* DAYS.

**EXCLUSION.** — “Entire Exclusion”; *V.* ENTIRE.

**EXCLUSIVE OCCUPATION.** — The ordinary Railway Station Bookstall does *not* have an “Exclusive Occupation” of any part of the platform, so as, thereby, to be rateable to the poor (*Smith v. Lambeth*,



10 Q. B. D. 327; 52 L. J. M. C. 1; 48 L. T. 57; 47 J. P. 244; *Vf*, *R. v. Morrish*, 32 L. J. M. C. 245; 11 W. R. 960; 8 L. T. 697; 10 Jur. N. S. 71). So of a limited right to the use of Gas Pipes (*Southport v. Ormskirk*, 1894, 1 Q. B. 196; 63 L. J. Q. B. 250; 69 L. T. 852; 42 W. R. 153; 58 J. P. 212).

But there is an Exclusive Occupation assessable to the Poor Rate, quâ ordinary Gas or Water Mains (*R. v. West Middlesex W. W. Co*, 28 L. J. M. C. 137; *R. v. Chelsea W. W. Co*, 5 B. & Ad. 156); Telephone Wires (*Lancashire Telephone Co v. Manchester*, 54 L. J. M. C. 63; 14 Q. B. D. 267); a Tramway (*Pinllico Tramway Co v. Greenwich*, 43 L. J. M. C. 29; L. R. 9 Q. B. 9); a Watercourse (*Talargoch Mining Co. v. St. Asaph*, 37 L. J. M. C. 149); or a Ry or other Tunnel (*Metrop Ry v. Fowler*, 1893, A. C. 416; 62 L. J. Q. B. 553; 69 L. T. 390; 42 W. R. 270; 57 J. P. 756; *Holywell v. Halkyn Drainage Co*, 1895, A. C. 117; 64 L. J. M. C. 113; 71 L. T. 818; 59 J. P. 566). In *this* *Ld Davey* said. " 'Exclusive Occupation.' does not mean that nobody else has any rights in the premises. The familiar case of Landlord and Lodger is an illustration. The cases show that if a person has only a Subordinate Occupation subject at all times to the control and regulations of another, then that person has not OCCUPATION, in the strict sense, for the purposes of Rating; but the Rateable Occupation remains in the other who has the right of regulation and control": but, *semble*, an EASEMENT may be such as to make a Rateable Occupation (per *Herschell, C., Ib.*). *Vf*, *Rochdale Canal Co v. Brewster*, 1894, 2 Q. B. 852; 64 L. J. Q. B. 37; 71 L. T. 243; 59 J. P. 132.

As to rating Advertising Stations; *V. Taylor v. Pendleton*, 56 L. J. M. C. 146; 19 Q. B. D. 288; 57 L. T. 530; 35 W. R. 762; 51 J. P. 613; *Chappell v. St. Botolph*, cited OCCUPIED; *Burton v. St. Giles*, cited PERMIT: 52 & 53 V. c. 27.

V. BENEFICIAL: CEASE: NEW OCCUPIER.

**EXCLUSIVE POSSESSION.** — *V. Marshall v. Taylor*, 1895, 1 Ch. 641; 64 L. J. Ch. 416; 72 L. T. 670: EXCLUSIVE OCCUPATION: POSSESSION.

**EXCLUSIVE PRIVILEGE.** — *V. CONVEY.*

**EXCLUSIVE RIGHT.** — *V. RIGHT: RIGHT OF SALE.*

The "Exclusive" Right of Legislation given respectively to the Dominion and Provinces of Canada (ss. 91, 92, 30 V. c. 3) renders invalid any law passed by either which is not within its own prescribed competence (*A-G. Canada v. A-G. Ontario*, 1898, A. C. 700; 67 L. J. P. C. 90): *Vh* BANKRUPTCY AND INSOLVENCY. *Vf* EXCLUSIVELY.

"An Exclusive Right to all the Profit of a particular kind can, no doubt, be granted but such a Right cannot be inferred from language

which is not clear and explicit" (*Sutherland v. Heathcote*, cited LIBERTY OF WORKING). *V.* AGIST.

Exclusive Right of Sporting, &c; *V.* A: FISHERY.

The "Exclusive Right" to Supply Goods, is equivalent to a Negative Covenant that no other person shall be the supplier (*Cutt v. Tourle*, 38 L. J. Ch. 401; 4 Ch. 654); but it is conditional on the covenanted supplier being able and willing to supply the goods of a proper quality and at reasonable prices (*Luker v. Dennis*, 47 L. J. Ch. 174; 7 Ch. D. 227; *Va, Edwick v. Hawkes*, 18 Ch. D. 199; 50 L. J. Ch. 577; 29 W. R. 913; 45 L. T. 168). *V.* SPIRITUOUS LIQUOR: *Cp* SOLE AGENT.

"Exclusive Right" to Use a Patent; *V. Smith v. Scott*, cited INVENTED.

**EXCLUSIVELY.** — A direction that a Charitable Bequest shall be paid "exclusively" out of Pure Personalty, implies marshalling the assets (*Wills v. Bourne*, L. R. 16 Eq. 487; 43 L. J. Ch. 89; *Re Arnold*, 57 L. J. Ch. 682; 37 Ch. D. 637; 58 L. T. 469; 36 W. R. 424; 1 Jarm. 237). *Cp* RESERVE.

Heredit "used exclusively" for a Charitable Purpose; *V.* PURPOSE.

Will "act exclusively for" Employers; *V. Mutual Reserve Assn v. New York Insree*, cited WHOLE: SOLE AGENT.

"Exclusively" in performance of duties; *V.* WHOLLY: "Entire Services," sub ENTIRE.

Contract between Ship Brokers to "exclusively correspond" with each other in specified Ports; *V. Pearce v. Lindsay*, 1 L. T. 456.

"Wholly and exclusively" for Trade; *V.* PURPOSES.

*V.* DOMESTIC: PUBLIC PURPOSE: SCIENCE.

**EXCOMMUNICATION.** — Is "an Ecclesiastical Censure divided into (1) The Greater, and (2) The Lesser. By the latter, a person is excluded from the Communion of the Church only; by the former, from that Communion and also from the company of the faithful" (*Jacob, wharf*). *Va*, Phil. Ecc. Law, 1087; 5 Encyc. 123, 124.

**EXCREMENTITIOUS.** — *V.* FILTHY WATER.

**EXCURSION TRAIN.** — *V.* PASSENGER TRAIN.

**EXCUSABLE.** — Excusable BREACH OF TRUST; *V.* REASONABLY. Excusable HOMICIDE; *V.* 4 Bl. Com. 182 et seq. *Cp* JUSTIFIABLE.

**EXCUSE.** — *V.* LAWFUL EXCUSE: REASONABLE EXCUSE: REASONABLY.

**EXECUTE.** — *V.* UNDERTAKE, 2nd par.

*V.* APPOINTMENT: DEED: WILL: MADE: SIGNATURE: SIGNED, SEALED, AND DELIVERED.

**EXECUTED.** — To speak of a Writ of Execution as “executed and levied” is to use synonymous terms signifying SEIZURE (*Cheston v. Gibbs*, 13 L. J. Ex. 53; 12 M. & W. 111; *Vth, Congreve v. Evetts*, 10 Ex. 311: *Vf, Whitmore v. Greene*, 13 L. J. Ex. 311; 13 M. & W. 112: *Hall v. Wallace*, 10 L. J. Ex. 133; 7 M. & W. 353). *V. EXECUTION: TO BE EXECUTED: LEVY: SERVED.*

Instrument “executed”; *V. INSTRUMENT.*

Quà Stamp Duty, “Executed” and “Execution.” “with reference to Instruments not under Seal, mean ‘signed’ and ‘signature’” (s. 27, 54 & 55 V. c. 38; s. 122, Stamp Act, 1891). *V. EXECUTE.*

“When the Trusts prescribed by the settlor are declared by him in the settlement or Will itself, and no further instrument is required in order to define what are the limitations or provisions to which he intends to subject the property, such trusts are said to be ‘Executed Trusts’; and the strict legal meaning and effect are given to any expressions he has used” (Godefroi, 152). *Cp EXECUTORY.*

**EXECUTING.** — Creditor “executing” a Composition Deed. s. 3. 31 & 32 V. c. 104, meant, one who “shall execute” (*Ellis v. McCormick*, 10 B. & S. 83; 38 L. J. Q. B. 127; L. R. 4 Q. B. 271).

**EXECUTION.** — “‘Execution,’ *Executio*, and signifieth in law the obtaining of actual possession of any thing acquired by judgement of law. or by a fine executory levied, whether it be by the sherife or by the entry of the party” (Co. Litt. 154a). *Vf. Termes de la Ley: Jacob: 5 Encyc.* 125–181: Ord. 42, 43, R. S. C., on *whc Ann. Pr.*

“Afore Execution *had*,” 3 H. 7. c. 10, means before obtaining the fruits of Execution (*Newlands v. Holmes*, 11 L. J. Ex. 456; 4 Q. B. 858).

An “Execution” proceeds from a judgment (*Re Hastings*, 61 L. J. Q. B. 654; 67 L. T. 234), and does not include a distraint for rent or other cause (*Ex p. Birmingham & Staffordshire Gas Co, Re Funshaw*, 40 L. J. Bank. 52; L. R. 11 Eq. 615; *Ex p. Harrison, Re Peake*, 13 Q. B. D. 760), nor a Garnishee Order (per Coleridge, C. J., *Fellows v. Thornton*, 54 L. J. Q. B. 279; 14 Q. B. D. 335; 52 L. T. 389; 33 W. R. 258; but consider jdgmt of Stephen, J.); nor is a Charging Order under s. 14, 1 & 2 V. c. 110, an “Execution against the goods of a debtor,” within s. 45, Bankry Act, 1883 (*Re Hutchinson*, 55 L. J. Q. B. 582; 16 Q. B. D. 515; 54 L. T. 302; 34 W. R. 475; 3 Morr. 19; *Re O’Shea*, 1895, 1 Ch. 325; 64 L. J. Ch. 263; 71 L. T. 827; 43 W. R. 232; *Wild v. Southwood*, 1897, 1 Q. B. 317; 66 L. J. Q. B. 166; 75 L. T. 388; 45 W. R. 224), nor is an Equitable Exon by obtaining a Receiver an “Execention” within that section (*Re Potts, Ex p. Taylor*, 1893, 1 Q. B. 648; 62 L. J. Q. B. 392).

A Receivership is not an “Execution” within R. S. 23. Ord. 42,

R. S. C. (*Norburn v. Norburn*, 1894, 1 Q. B. 448; 63 L. J. Q. B. 341; 70 L. T. 411; 42 W. R. 127). Indeed, and speaking generally, a Receivership cannot in strictness be called even an Equitable Execution (*Re Sheppard*, cited EQUITABLE); but it will work a FORFEITURE of a life interest determinable if such interest "shall be TAKEN IN EXECUTION by any process of law for the benefit of any creditors" (*Blackman v. Fysh*, 60 L. J. Ch. 666; 64 L. T. 590; 39 W. R. 520).

Proceedings to obtain a Committal under Debtors Act, 1869, are not a mode of "Execution," within s. 4 (limiting s. 1) Jdgmts Extension Act, 1868, 31 & 32 V. c. 54 (*Re Watson*, 1893, 1 Q. B. 21; 62 L. J. Q. B. 85; 67 L. T. 519; 41 W. R. 34); so, of a Bankry Notice under s. 4 (1g), Bankry Act, 1883 (*Re Bankry Notice*, 1898, 1 Q. B. 383; 67 L. J. Q. B. 308); but a Garnishee Order is within this section (*Johnstone v. Bucknall*, 1898, 2 L. R. 499).

As to what is a sufficient Execution entitling a Sheriff to Poundage; *V. Bissicks v. Bath Colliery Co*, 46 L. J. Q. B. 611; 2 Ex. D. 459, and cases there cited: there must be a Sale or, at least, a realization of the money due without a sale (*Re Thomas*, 1899, 1 Q. B. 460; 68 L. J. Q. B. 245; 80 L. T. 62; 47 W. R. 259). *Vf* LEVY.

Execution "completed," s. 45, Bankry Act, 1883; *V. Mackay v. Merritt*, 34 W. R. 433; *Figg v. Moore*, 1894, 2 Q. B. 690; 63 L. J. Q. B. 709; *Burns v. Brown*, 1895, 1 Q. B. 324; 71 L. T. 825; 43 W. R. 195; *Re Hastings*, sup: *Re Ford*, 1900, 1 Q. B. 264; 69 L. J. Q. B. 74; 81 L. T. 648; 48 W. R. 173.

The "Costs of Execution" mentioned in s. 46 (1), Bankry Act, 1883, repld s. 11 (1), Bankry Act, 1890, do not include the Sheriff's Poundage; but under the same phrase in subs. 2 of the same sections, such poundage is included (*Re Ludford*, 53 L. J. Q. B. 418; 33 W. R. 152; nom. *Re Ludmore*, 13 Q. B. D. 415; 51 L. T. 240). Expenses of reaping and harvesting growing crops, are not "Costs of Execution," though the selling value is thereby increased (*Re Woodham*, 57 L. J. Q. B. 46; 20 Q. B. D. 40; 58 L. T. 116; 36 W. R. 526). Note: After Notice under subs. 1 there are no Costs of Exon (*Re Harrison*, 1893, 2 Q. B. 111; 62 L. J. Q. B. 266; 68 L. T. 590; *Re Thomas*, 79 L. T. 356); but before such Notice possession money may be allowed even for so long a period as 15 months as "Costs of Exon," if the sheriff refrains from selling at the request of debtor and with the assent of the exon creditor (*Re Hurley*, 41 W. R. 653; 10 Morr. 120; *Re Beeston*, 1899, 1 Q. B. 626; 68 L. J. Q. B. 344; 80 L. T. 66; 47 W. R. 475).

As to the phrase "money, goods, or chattels, taken or intended to be taken in execution under any process," R. 1 b, Ord. 57, R. S. C.; *V. Smith v. Critchfield*, 54 L. J. Q. B. 366; 14 Q. B. D. 873.

"Enforce and put in execution" a Jdgmt; *V. Ex p. Holden*, 13 C. B. N. S. 641; 32 L. J. C. P. 111; 7 L. T. 791.

A covenant in a DEED commencing "ON," or "FROM," its "Execu-

tion," is obligatory on the covenantor on or from the time that *he* executes the deed (*Northampton Gas Co v. Parnell*, 15 C. B. 630; 24 L. J. C. P. 60; 3 W. R. 179; 24 L. T. O. S. 239).

*V.* DELIVERED IN EXECUTION: EQUITABLE: EXECUTE: EXECUTED.

"In Pursuance or Execution of" powers; *V.* PURSUANCE.

Stat. Def. — 7 & 8 V. c. 113, s. 49.

**EXECUTION OF STATUTORY POWERS.** — By many statutes protection, absolute or qualified, is given for works done "in execution" of statutory powers (*V.* NUISANCE). This means a careful and skilful execution, and no protection is afforded to carelessness or the absence of proper skilfulness (*Clothier v. Webster*, 31 L. J. C. P. 316; 12 C. B. N. S. 790). *Vf.*; *Canadian Pacific Ry v. Parke*, 1899, A. C. 535; 68 L. J. P. C. 89.

*V.* PURSUANCE.

**EXECUTIVE.** — Executive Proceedings; *V.* *Nouvion v. Freeman*, cited REMATE.

**EXECUTOR.** — " 'Executor' is when a man makes his Testament and last Will and therein nameth the person that shall execute his Testament, then he that is so named is his Executor; and is as much in the Civill Law as *hæres designatus*, or *testamentarius* " (Termes de la Ley). *Cp* UNIVERSAL HEIR.

"The Roman law did not recognize the Office of Executor; the *hæres institutus* was a true heir, although he might be burdened with legacies and *fideicommissa* " (*Faruum v. Admor-Gen. British Guiana*, 59 L. J. P. C. 10; 14 App. Ca. 651); and, accordingly, where the Roman-Dutch law prevails the "Executors" of a Testament are, in reality, procurators; their powers in relation to the estate falling to the testator's heirs are merely those of management (*Ib.*: *De Montmort v. Broers*, 57 L. J. P. C. 47; 13 App. Ca. 154).

Executor according to the Tenor; *V.* TENOR.

By what words Executors may be appointed, *V.* *Re Oliphant*, 30 L. J. P. M. & A. 82; Wms. Exs. 189. An appointment of Executors would be revoked by a codicil naming a "sole Executor" (*Ib.* 198).

*Vh.*, generally, Wms. Exs.: 5 Encyc. 184-221; Jacob, *Executor*.

" 'Executor *de son Tort* ' is he that takes upon him the Office of an Executor by intrusion, not being so constituted by the testator " (Cowley). *Vh.*, *Padget v. Priest*, 2 T. R. 97; *Thompson v. Harding*, 22 L. J. Q. B. 448; 2 E. & B. 630; Wms. Exs., Part 1, Bk. 3, ch. 5; Rose. N. P. 1141; 5 Encyc. 187; *A-G. v. New York Breweries Co.*, cited POSSESSION.

"Executor," quâ Part 1, Finance Act, 1894, means the Exor or Admor of a deceased person, and includes an Exor *de son Tort* (subs. 1*d.*, s. 22; subs. 11, s. 23).

Quà 53 & 54 V. c. 70, "exs, ads, or assigns" means in Scotland "heirs, exs, or assignees" (subs. 11, s. 96).

Other Stat. Def. — 38 & 39 V. c. 83, s. 34.

A substitutionary gift to the "Executors or Administrators" of a legatee in the event of his death in the testator's lifetime, does not vest the gift in the legatee's exors upon trust for his Next of Kin, but the exors take, and have to apply it, as part of the personal estate of the legatee (*Re Clay*, 54 L. J. Ch. 648; 52 L. T. 641; 32 W. R. 516; which distinctly over-rules *Palin v. Hills*, 1 My. & K. 470, *whr* discussed Wms. Exs. 1004-1007; 2 Jarm. 114: *Vf* 2 Jarm. 117-120). A bequest to A. "and his exors, admors, and assigns," or to A. "and his representatives," will lapse by the death of A. in the testator's lifetime (Wms. Exs. 1074); *secus*, if it be to A. "and his heirs" (Ib. 1074), or to A. "or his exors," &c (Ib. 1076).

A gift to A. for life, remainder as he may appoint and, in default of appointment, to his "exors and admors," is equivalent to an absolute gift to A. (*Derall v. Dickens*, 9 Jur. 550; *Page v. Soper*, 22 L. J. Ch. 1044; 11 Hare, 321); and, since the M. W. P. Act, 1882, that rule applies even if A. be a married woman (*Re Davenport*, 1895, 1 Ch. 361; 64 L. J. Ch. 252; 71 L. T. 875; 43 W. R. 217). *Cp*, Rule in *Shelley's Case*, cited HEIRS.

A testamentary gift large enough to carry Realty will sometimes be restricted to Personalty when coupled with a limitation to "exors or admors"; *V. ESTATE AND EFFECTS*.

As to when a legacy to an Executor is conditional on his accepting office and acting; *V. Wms. Exs.* 1146.

As to Right of Retainer by Exor; *V. RETAIN*.

For the rules and cases on Limitations to "Executors," and the distinction between "Executors" and "Next of Kin," and as to whether and when "Executors and Administrators" may mean "Next of Kin," *V. Elph.* 312-316; *Watson Eq.* 1406, 1407; *Seton*, 1574; *Chitty Eq. Ind.* 7690: *e.g.* in a Marriage Settlement the "exs and ads" of a Wife may mean her Next of Kin (*Allen v. Thorp*, 7 Bea. 72; *Smith v. Dudley*, 9 Sim. 125; *Daniel v. Dudley*, 11 Sim. 162; 1 Phill. 1).

In *Graffrey v. Humpage* (1 Bea. 52; 8 L. J. Ch. 98), Langdale, M. R., said that "exors, admors, and assigns" cannot mean Next of Kin: Why not? says *Elph.* 314.

As to construction of "Executors" in a Power; *V. Lewin.* 717, 718, 777.

A Power to "my Exors *herein named*" to select Charities, does not differ from one to Exors generally; and those words do not authorise a Renouncing Exor to take part in the selection (*Crawford v. Forshaw*, 1891, 2 Ch. 261; 60 L. J. Ch. 683; 65 L. T. 32; 39 W. R. 484). On the context in that case, the remaining exors were held entitled to make the selection.

An appointment of A. as "Executor of my Entire Property for the purpose of putting it to the best advantage of my sister, wife, and children"; held, to pass fee simple lands (*Murphy v. Donnelly*, Ir. Rep. 4 Eq. 111).

An appointment of A. as "Executor of all my lands for ever," passes the FEE to such exor (*Doe d. Gillard v. Gillard*, 5 B. & Ald. 785: *Vf. Pit v. Pelham*, Jo. T. 25: *Thomas v. Phelps*, 4 Russ. 348: *Doe d. Hickman v. Haslewood*, 6 A. & E. 167: 1 N. & P. 352: *Doe d. Pratt v. Pratt*, 6 A. & E. 180: 1 N. & P. 366: SOLE HEIR).

As to "By direction of the Exors" being a sufficient description of a Vendor; *Vf. PROPRIETOR*.

A devise of land to A. "and his exors," even before s. 28, Wills Act, 1837, passed the Fee (*Rose v. Hill*, 3 Burr. 1882).

*Vf. LEGAL REPRESENTATIVES: PERSONAL REPRESENTATIVES: REPRESENTATIVES: HEIRS, EXECUTORS, ADMINISTRATORS, AND ASSIGNS.*

**EXECUTORSHIP EXPENSES.** — This phrase is equivalent to "TESTAMENTARY EXPENSES" (*Sharp v. Lush*, 48 L. J. Ch. 231; 10 Ch. D. 468).

**EXECUTORY.** — An Executory *Bequest* of Personalty, is a bequest in futuro, whether preceded by a partial gift or not: for a REMAINDER cannot be limited in Personalty (1 Jarm. 879, citing Fearn, Cont. Rem. 402).

"An Executory *Devise*, is a limitation by Will of a future estate or interest in Land, which cannot, consistently with the rules of law, take effect as a Remainder" (1 Jarm. 864: *Vf.* 2nd Part, Fearn Cont. Rem.): for restriction on such limitations, *Vf. s. 10, Conv Act, 1882. Vf. SPRINGING: THEREAFTER TO BE BORN.*

An Executory *Estate* or *Interest* may, perhaps, be defined as, an Estate or Interest to arise of its own vigour on the happening of some future event. *Vf.* Jarm. ch. 26: Theobald, 566: Wms. R. P., Part 2, ch. 3: 5 Encyc. 221-237.

"A *Trust* is said to be Executory or Directory where the objects take, not immediately under it but, by means of some further act to be done by a third person, usually him in whom the Legal Estate is vested" (2 Jarm. 344: *Vf.* Lewin. 119 *et seq*: Godefroi, ch. 10). But in a direction to settle property, an Executory Trust is one which "is to be executed by the preparation of a complete and formal Settlement carrying into effect, through the operation of an apt and detailed legal phraseology, the general intention compendiously indicated" in the document directing it (per Ld Cairns, *Sackville-West v. Holmesdale*, 39 L. J. Ch. 517; L. R. 4 H. L. 571). *Cp* EXECUTED.

**EXEMPT.** — To be "exempt" from rating, "may be taken to mean, 'precluded from being chargeable'" (per Ellenborough, C. J., *R. v. Leeds, &c Canal Co*, 5 East, 331).

“Exempted,” s. 18, Sucn Dy Act, 1853, does not mean “free from,” but means those legacies that were by the then existing Legacy Duty Acts expressly exempted from duty (*A-G. v. Fitzjohn*, 27 L. J. Ex. 79; 2 H. & N. 465).

**EXEMPTION.** — “ ‘Exemption,’ is a privileged to be free from Service or Appearance ” (Termes de la Ley). *Vf* Jacob.

Quà Shipping Dues Exemption Act, 1867, 30 & 31 V. c. 15, “ ‘Exemption from Dues’ shall, in addition to its ordinary meaning, include every privilege of paying smaller Dues than the Public at large pay under like circumstances ” (s. 3).

**EXERCISE.** — *V.* GAME.

“ In Exercise ”; *V.* PURSUANCE: IN EXERCISE.

“ The Exercise of any of the powers of the Act,” s. 308, P. H. Act, 1875; *V. Burgess v. Northwich*, 50 L. J. Q. B. 219; 6 Q. B. D. 264. Giving a Notice under s. 16 is such an Exercise (*Davis v. Witney*, 63 J. P. 279).

“ COSTS, CHARGES, AND EXPENSES, of or INCIDENTAL to the Exercise of the powers . . . of this Act,” s. 21 (10), S. L. Act, 1882; *V. Re Llewellyn*, 57 L. J. Ch. 316; 37 Ch. D. 317; *Re Smith*, 60 L. J. Ch. 613; 1891, 3 Ch. 65; 64 L. T. 821; 39 W. R. 590.

To “ exercise ” a BUSINESS or TRADE is the same thing as to carry it on (*V.* CARRY ON).

Business “ exercised within the UNITED KINGDOM.” Sch D, s. 2, Income Tax Act, 1853, 16 & 17 V. c. 34; *V. Grainger v. Gough*, 1896, A. C. 325; 65 L. J. Q. B. 410; 44 W. R. 561; *Watson v. Sandie*, 1898, 1 Q. B. 326; 67 L. J. Q. B. 319.

“ Use, exercise, and vend ” an INVENTION; *V.* USE: VEND. In such a phrase “ exercise ” means “ put in practice ” (*Saccharin Corp. v. Reitmeyer*, 1900, 2 Ch. 659; 69 L. J. Ch. 761).

“ Used or exercised ”; *V.* ART: USE.

“ Trained or exercised ”; *V.* TRAINING.

**EXHAUSTED.** — A Coal Gale is “ exhausted,” 1 & 2 V. c. 43, s. 61, when there is not enough coal left in it to make it worth working (*Ellway v. Davis*, 43 L. J. Ch. 75; L. R. 16 Eq. 294). (*v.* EMPTY).

**EXHIBIT.** — An Exhibit, is a document or other thing shown to a witness and referred to by him in his evidence, — more particularly, a document or thing referred to by an affidavit (5 Encyc. 238). “ Any person entitled to see the affidavit, is entitled to see the exhibit also ” (per Smith, L. J., *Re Hinchliffe*, 1895, 1 Ch. 117; 64 L. J. Ch. 76; 71 L. T. 532).

“ Exhibiting of the Bill,” formerly meant the commencement of the suit (*Rees v. Morgan*, 5 B. & Ad. 1035).

*V.* EXPOSE.



**EXHIBITION.** — “Exhibition,” “Exhibitioners”; *V.* Endowed Schools Act, 1869, s. 7.

**EXILEMENT.** — *V.* BANISHMENT.

**EXISTENCE.** — *V.* VALIDITY.

**EXISTING.** — Sometimes the Stat. Def. for “existing” is “existing at the COMMENCEMENT of this Act” (*e.g.* Jud. Act, 1873, s. 100; Jud. Act (Ir), 1877, s. 3; 42 & 43 V. c. 78, s. 3; 51 & 52 V. c. 44, s. 3; 54 & 55 V. c. 66, s. 95); and sometimes it is “existing at the PASSING of this Act” (*e.g.* 36 & 37 V. c. 81, s. 7; 38 & 39 V. c. 17, s. 108, c. 22, s. 11; 60 & 61 V. c. 66, s. 14).

“Existing,” quâ the Loc Gov Acts; *V.* 51 & 52 V. c. 41, s. 100; 52 & 53 V. c. 50, s. 105; 61 & 62 V. c. 37, s. 109.

“Existing *Company*”; *V.* *Richmond W. W. Co v. Richmond*, 45 L. J. Ch. 441; 3 Ch. D. 82.

Existing *Fact*; *V.* FALSE PRETENCE.

“Existing *Governing Body*,” quâ Public Schools Act, 1868, 31 & 32 V. c. 118; *V.* s. 3.

“Existing *Leases or Lettings*,” to which a Conveyance is made subject, does not comprise parol unenforceable leases (*Rice v. O'Connor*, 11 Ir. Ch. Rep. 510). *Cp.* *Caballero v. Henty*, inf.

On death of A. “without issue, his part of the property to fall to whatever *Existing Member of my Family* he may be disposed to will it to”; — “existing” means, living at the date of A.’s Will (*Sinnott v. Walsh*, 5 L. R. Ir. 27).

“Existing *Officers*,” quâ London Gov Act, 1899; *V.* s. 30 (3); — “Existing *Officer of a Prison*,” quâ Superannuation Allowance; *V.* 56 & 57 V. c. 26, s. 1.

“Existing *Registrar*,” “Registry,” “Registry Acts,” quâ Yorkshire Registries Act, 1884, 47 & 48 V. c. 54; *V.* s. 3.

“Existing *Sewer*,” s. 13, P. H. Act, 1875; *V.* *Falconar v. South Shields*, 11 Times Rep. 223.

“Existing *Slave Trade Treaty*”; Stat. Def. 36 & 37 V. c. 88, s. 2; — “Existing East African Slave Trade Treaty”; *V.* 36 & 37 V. c. 59, s. 2.

“Existing *Street*,” in last proviso to s. 6, Metrop Man. Act, 1878; *V.* *Ellis v. London Co. Co.*, 67 L. T. 558; 57 J. P. 24; *London Co. Co. v. Mitchell*, 63 L. J. M. C. 104.

“Existing *Suit*,” quâ power of Amendment given by s. 222, Com. L. Pro. Act, 1852, meant “you may take the Record in the Existing Suit and make any alteration in the Parties or Pleadings so as to meet the justice of the case” (per Pollock, C. B., *Blake v. Dove*, 7 H. & N. 471, 472; 31 L. J. Ex. 100).

“Existing *Tenancies*,” to which a Sale is made subject; *V.* *Caballero*

v. *Henty*, 43 L. J. Ch. 635; 9 Ch. 447; 30 L. T. 314; 22 W. R. 446. *Cp.*, *Rice v. O'Connor*, sup.

“Existing Trustees,” quâ Sale of Advowsons Act, 1856, 19 & 20 V. c. 50; *V. s. 1.* *Cp.*, CONTINUING TRUSTEE.

**EXONERATION.** — A direction in a Will to pay debts “IN AID OF the personal and in exoneration of the real estate” (*Re Newmarch*, 48 L. J. Ch. 28; 9 Ch. D. 12), or, “in exoneration of the real estate” (*Re Rossiter*, 49 L. J. Ch. 36; 13 Ch. D. 355), will not exonerate the testator’s mortgaged property from its primary liability to pay the mortgage debt.

As to Exoneration of Mortgaged Property before and since Locke King’s Acts; *V.* 2 Jarm. 644–651; Wms. Exs. 1570: CONTRARY INTENTION: — and as to exoneration of Personalty from debts; *V.* 2 Jarm. 651–673; Wms. Exs. 1576.

**EXORCIST.** — “The Exorcist is he who abjures (*Cp.*, CONJURATION) evil spirits in the name of Almighty God to go out of persons troubled therewith” (Phil. Ecc. Law, 89).

**EXPECTANCY.** — *V.* ENTITLED IN IMMEDIATE EXPECTANCY.

“Property in Expectancy”; *V.* CONTINGENT: PRESUMPTIVE.

Quâ Finance Act, 1894, “‘Interest in Expectancy,’ includes, an Estate in Remainder or Reversion, and every other Future Interest whether vested or contingent, but does not include Reversions expectant upon the determination of Leases” (subs. 1*j.* s. 22).

**EXPECTANT HEIR.** — “Every person who is entitled, either absolutely or contingently, to any Reversion or Remainder in a property or a portion, or who has the Hope of Succession to the property of an ancestor or relative, either by reason of his being the heir apparent or presumptive, or by reason merely of any supposed or presumed affection on the part of his ancestor or relative, is an Expectant Heir within the meaning of the rule” for setting aside catching bargains (Seton, 2343, citing *Beynon v. Cook*, 10 Ch. 391. n g; *Aylesford v. Morris*, 8 Ch. 497; *Tyler v. Yates*, 6 Ch. 665; *Tottenham v. Emmet*, 14 W. R. 3). *Vf.*, *James v. Kerr*, 40 Ch. D. 449.

**EXPECTATION.** — Contracting debt without “reasonable or probable Ground of Expectation of being able to pay it,” s. 28 (3 c), Bankry Act, 1883; *V.* *Ex p. White*, 14 Q. B. D. 600; 54 L. J. Q. B. 384; 33 W. R. 670: REASONABLE EXPECTATION.

**EXPECTED.** — Cargo “expected to arrive”; *V.* *Bold v. Rayner*, 1 M. & W. 343; 5 L. J. Ex. 172; *Smith v. Myers*, L. R. 7 Q. B. 139; 41 L. J. Q. B. 91. *V.* ARRIVE: CARGO.

Where a Charter Party states that the Ship is “expected to be,” at a

stated place by a stated time, that is a Warranty that she will be there at that time, or that she is in such a part of the world that she may be reasonably expected to be there about that time (*Corkling v. Massey*, L. R. 8 C. P. 395; 42 L. J. C. P. 153; 28 L. T. 636; 21 W. R. 680).

**EXPEDIENT.** — *V.* INEXPEDIENT: JUST.

**EXPEND.** — “Expenditure.” — What do you expend? You expend that which you have. In common parlance, you say that a man has spent more than his income. That is common parlance; but that is not language which you would suppose the legislature to use. A man cannot spend what he has not got: he can mortgage or pledge, but he cannot actually spend” (per Kekewich, J., *Re Bristol*, 1893, 3 Ch. 161; 62 L. J. Ch. 901).

**EXPENDED.** — *V.* EXPENSES.

**EXPENSE.** — A *Legacy* made “free of all Expense,” is duty free (*Gosden v. Dotterill*, 1 My. & K. 56).

“If a *Charter Party* provides that if the charterer gives certain directions respecting the vessel he will bear any expense which the vessel may incur in consequence of those directions, he is liable to pay only such expenses as are the natural consequence of the directions” (Wood, 167, citing *Sully v. Duranty*, 3 H. & C. 270; 33 L. J. Ex. 319).

“At Ship’s Expense”; *V.* Risk.

**EXPENSES.** — “Expenses” means, actual disbursements, not allowances for loss of time (*Jones v. Carmarthen*, 10 L. J. Ex. 401; 8 M. & W. 605). Therefore, a charge by a Town Clerk for preparing Lists of Parliamentary Voters, is not an “Expense INCURRED” by him, within s. 55, 6 V. c. 18, even though the result be that otherwise he would do the work gratuitously (*R. v. Hull*, 2 E. & B. 182; 22 L. J. Q. B. 324).

But moneys “expended,” — *e.g.* by a Local Board and recoverable from owners or occupiers, — are not confined to moneys actually paid but include money expended in the sense that the owner or occupier is bound to pay it (per Esher, M. R., *R. v. Marsham*, 61 L. J. M. C. 55; 1892, 1 Q. B. 379; 65 L. T. 778; 40 W. R. 84; 56 J. P. 164). *Vf.* *R. v. St. Mary, Islington*, cited REPAID: *R. v. Dublin*, 32 L. R. Ir. 662.

“Expenses incurred”; *V.* *R. v. Hull*, *sup*: INCURRED: PURSUANCE.

“Expenses necessarily incurred”; *V.* NECESSARILY. *Cp.* NECESSARY.

The kind of “Expenses.” incidental to the stopping or diverting a highway, within s. 84, Highway Act, 1835, 5 & 6 W. 4, c. 50, are the expenses attending the view, the preparation of necessary plans, and of physically stopping or diverting the highway; but not a solicitor’s costs of taking the necessary legal steps in the matter (*United Land Co v. Tottenham*, 53 L. J. M. C. 136; 13 Q. B. D. 640).

Brokerage on an issue of Debentures by a Co is not deductible "Expenses," quâ *See* D, s. 2, Income Tax Act, 1853, 16 & 17 V. c. 34 (*Texas Co v. Holtham*, 63 L. J. Q. B. 496; 1 *Manson*, 429).

"Expenses," s. 10, 51 & 52 V. c. 54; *V. R. v. Plymouth*, 1896, 1 Q. B. 158; 65 L. J. Q. B. 258; 44 W. R. 620.

"Expenses, Rent Charge," &c, s. 10 (4), 54 & 55 V. c. 8; *V. TITHES.*

"Expenses of or incident to the making the Apportionment" of Tithes, s. 75, 6 & 7 W. 4, c. 71; *V. Hinchliffe v. Armitstead*, 11 L. J. Ex. 253; 9 M. & W. 155.

"Expenses" quâ Blind or Deaf *Child* at an Elementary School; Stat. Def., 56 & 57 V. c. 42. s. 15.

"Establishment Expenses," "Patients' Expenses," "Structural Expenses"; Stat. Def., Isolation Hospitals Act, 1893. 56 & 57 V. c. 68, s. 17.

"Expenses," quâ Detention of an *Inebriate*; Stat. Def., 61 & 62 V. c. 60, s. 27.

"Expenses of *leaving*"; *V. LEAVING.*

Expenses of *Maintenance*; *V. MAINTENANCE: COSTS: NECESSARY.*

"Expenses of *Management*," s. 58 (ix), S. L. Act, 1882; *V. Clarke v. Thornton*, 56 L. J. Ch. 304; 35 Ch. D. 307; 56 L. T. 294; 35 W. R. 603; — "Management Expenses"; *V. WORKING EXPENSES.*

"Expenses attaching to the *Meeting*"; *V. MEETING.*

"Expenses of *Noting*," are a LIQUIDATED DEMAND.

*V. PERSONAL EXPENSES: PRIVATE IMPROVEMENT: SPECIAL.*

Expenses of *removing Wrecks*, &c; *V. REMOVAL.*

Expenses of *Working*; *V. WORKING EXPENSES.*

Other Stat. Def. — 30 & 31 V. c. 102, s. 31; 32 & 33 V. c. 100, s. 10; 51 & 52 V. c. 41, s. 100; 54 & 55 V. c. 76, s. 135 (9); 56 & 57 V. c. 73, s. 11 (3).

"Clear of all Expenses"; *V. CLEAR.*

"Free from all Expenses WHATEVER in connection with the said Tramways," exonerates the covenantee from all Assessments, Rates, and Taxes, whether imperial or local (*Glasgow v. Glasgow Tramway Co*, 1898, A. C. 631).

*V. INCIDENTAL EXPENSES: MONEY, COSTS, CHARGES, AND EXPENSES. Cp. DISBURSEMENTS.*

**EXPERT.** — "Engineer, Valuer, Accountant, or *other Expert*," whose Report or Valuation may shield a Director from liability, includes, under the word "Expert." "any person whose profession gives authority to a statement made by him" (s. 3 (4), Directors Liability Act, 1890).

An Expert *Witness*, is one who has made the subject upon which he speaks a matter of particular study, practice, or observation; and he must have a particular and special knowledge of the subject (*Dole v. Johnson*, 50 N. Hamp. 454). *Note.* As to the province of an Expert's

evidence, *V. Salvin v. North Brancepeth Co*, 9 Ch. 705; 44 L. J. Ch. 149; *Rosc. N. P.* 84, 85, 121, 122, 177, 178; and as to when dispensed with, *Cooper King v. Cooper King*, 1900, P. 65; 69 L. J. P. D. & A. 33.

**V. QUALIFY.**

**EXPIRATION.** — “Expiration of the said term of years”; “‘Expiration,’ which is here used by similitude to things living, implies any end whatever. For as we signify by ‘Expiration’ the death of a man and his last end, whatever way it happens, so the word ‘Expiration’ being applied to an estate for years, may aptly enough signify the end of it, whatever way it be” (*Wrotlesley v. Adams*, Plowd. 198). *Cp.* **END.**

But when a consequence follows on the “Expiration” of a term, may that not mean exclusively, expiration by effluxion of the time? *Vh.* *judgmt of Coleridge, C. J., Hall v. Comfort*, 56 L. J. Q. B. 187.

In this connection “to expire” would seem rather to mean, for the term to run itself out by effluxion of time or otherwise in due course, as distinguished from being forcibly put an end to — *e.g.* by forfeiture, or surrender.

This is the meaning put on the word in R. 6, Ord. 3, R. S. C.: for whilst speedy judgment for recovery of land may, under that Rule and Ord. 14, be obtained where the action, or a previous notice, puts an end to a tenancy created by an **ATTORNMENT** in a mortgage deed (*Daubuz v. Lavington*, 53 L. J. Q. B. 283; 13 Q. B. D. 347; *Hall v. Comfort*, 56 L. J. Q. B. 185; 18 Q. B. D. 11; 55 L. T. 550; 35 W. R. 48; *Kemp v. Lester*, 1896, 2 Q. B. 162; 65 L. J. Q. B. 532), yet the Rule, quâ “expired,” is inapplicable to a case of Forfeiture of a term (*Burns v. Walford*, W. N. (84) 31; *Mansergh v. Rimell*, W. N. (84) 34; *Arden v. Boyce*, 1894, 1 Q. B. 796; 63 L. J. Q. B. 338; 70 L. T. 480; 42 W. R. 354), though (by R. S. C. Jan 1902) it now embraces a term “liable to forfeiture for non-payment of rent.” *Vh.* *Ann. Pr. Cp.* **DETERMINATION.** *Note:* that in *Arden v. Boyce*, the lease enabled the lessor to determine by notice if there should be default, and he gave notice accordingly, but that was held to be substantially the same as forfeiture; but, *semble*, such a ruling would not apply to a prescribed determination by notice at the end of a stated year of the term.

“At the expiration”; *V.* **AT:** quâ covenant for Renewal of a Lease;

**V. RENEWAL.**

*V.* **UNEXPIRED:** NOT BEFORE.

**EXPLANATION.** — *V.* **CORRECTION.**

**EXPLICITLY.** — *V.* **CLEARLY.**

**EXPLOSION.** — *V.* *Stanley v. Western Insree*, 37 L. J. Ex. 73; *L. R.* 3 Ex. 71; 17 L. T. 513; 16 W. R. 369, cited **GAS.** *Vh.* *Taunton v. Royal Insree*, 33 L. J. Ch. 406; 2 H. & M. 135; 12 W. R. 549; 10 L. T. 156.

**EXPLOSIVE.** — Quà the Explosives Act, 1875, 38 & 39 V. c. 17, an “Explosive,”

“ (1) *means*, gun-powder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance (whether similar to those above mentioned or not) used or manufactured with a VIEW to produce a practical effect by explosion or a pyrotechnic effect; and

“ (2) *includes*, fog-signals, fireworks, fuzes, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an Explosive as above defined ” (s. 3). *Vf*, DANGEROUS: GUNPOWDER.

Fog-signals are a “preparation or composition of an Explosive Nature,” ss. 6, 7, 23 & 24 V. c. 139 (*Bliss v. Lilley*, 3 B. & S. 128; 32 L. J. M. C. 3; 7 L. T. 319). *Cp* FIREWORKS.

“Explosive Substance”; V. s. 9 (1), 46 & 47 V. c. 3.  
*Vh*. 5 Eneye. 243-250.

**EXPORT.** — An inland town whence butter is sent direct to a foreign market, is not a “Place of Export” within 52 G. 3, c. 134, and 7 & 8 G. 4, c. 61 (*Hayes v. Dexter*, 13 Ir. Com. Law Rep. 22).

**EXPORTATION.** — Unless a vessel has proceeded out of the limits of the Port with her cargo, it is not such an Exportation of the goods as will protect the cargo from duties subsequently imposed on the Exportation of goods of the same nature; although the vessel is not only freighted and afloat but has gone through all the formalities of CLEARANCE, &c at the Custom House and has paid the Exportation Dues (*A-G. v. Pougett*, 2 Price, 381).

The words “Shipped for Exportation” are not, necessarily, restricted to an exportation to foreign countries, but may mean Exportation in its evident sense, *i.e.* a carrying out of Port, and thus include carrying commodities from one port to another within the Kingdom (*Stockton Ry v. Barrett*, 11 Cl. & F. 590; *Vth Dwar*. 648, 691).

*V*. EXPORTED.

**EXPORTED.** — “Exported” means, “carried out”; therefore dues on “coals exported” from a Port are payable on coals to be consumed on board (*Muller v. Baldwin*, L. R. 9 Q. B. 457; 43 L. J. Q. B. 164).

*V*. EXPORTATION: IMPORTED.

**EXPORTER.** — The manufacturer of goods though he contracts to ship them “F. O. B.” but who then ceases to have any further interest in the adventure, is not their “Exporter” (*Camelo v. Britten*, 4 B. & Ald. 184).

“Exporter of goods for which no bond is required”; Stat. Def., 39 & 40 V. c. 36, s. 284.

**EXPOSE.** — “Expose,” and “Exhibit,” are not Works of Art and have no legal meaning (per Parke, B., *R. v. Webb*, 2 C. & K. 940; *S. C.* 18 L. J. M. C. 40).

Articles of food “Exposed for sale, or Deposited in any place for the purpose of sale,” s. 116, P. H. Act, 1875, s. 47, P. H. London Act, 1891; *V. R. v. White*, 49 L. J. M. C. 19; 5 Q. B. D. 15; 41 L. T. 524; 28 W. R. 168; 44 J. P. 87, 102; *Newton v. Monkcom*, 58 L. T. 231; 4 Times Rep. 205; *Barlow v. Terrett*, 1891, 2 Q. B. 107; 60 L. J. M. C. 104; *R. v. Dennis*, 1894, 2 Q. B. 458; 63 L. J. M. C. 153; 71 L. T. 436; 42 W. R. 586; 58 J. P. 622; *V. KNOWINGLY.*

MARGARINE may be “exposed for sale,” s. 6, 50 & 51 V. c. 29, though not itself visible, being in a closed package (*Wheat v. Brown*, 1892, 1 Q. B. 418; 61 L. J. M. C. 94; 66 L. T. 464; 40 W. R. 462; 56 J. P. 153); but the package must be visible to a purchaser (*Crane v. Lawrence*, 59 L. J. M. C. 110; 25 Q. B. D. 152; 63 L. T. 197; 38 W. R. 620; 54 J. P. 471). *Vf* RETAIL, at end.

A person though “other than a Licensed Hawker,” — *V. PEDLAR*, — does not “sell” goods, or “expose” them “for sale” in contravention of s. 13, Markets and Fairs Clauses Act, 1847, by merely delivering goods previously ordered, e.g. a baker taking round bread to his habitual customers (*White v. Yeovil*, 61 L. J. M. C. 213; *Vf*, *Quilligan v. Limerick Market Trustees*, 14 L. R. Ir. 265; *Stretch v. White*, 25 J. P. 485); so, of a like provision in a Local Act (*Newton-in-Makerfield v. Lyon*, 69 L. J. Q. B. 230; 81 L. T. 756; 48 W. R. 222). *Cp*, *Pletts v. Campbell*, cited SALE.

*V. ABANDON*: “Expose to Obvious Risk”; *V. OBVIOUS.*

Exposing the person “in any Street,” &c; *V. PLACE.*

**EXPRESS.** — Express Agreement; *V. AGREEMENT.*

“Express Condition”; *V. Wright v. Wilkin*, cited CONDITION.

“Express or Implied” Contract; *V. IMPLIED.*

There was an “Express Decision” by a Revising Barrister. s. 98, 6 V. c. 18, when a case was *sub silentio* treated as governed by another which at the same revision had been decided by him (*Bewdley*, 1 O.M. & H. 177).

Express Declaration, s. 38, Settled Estates Act, 1877; *V. Re Peake*, 1893, 3 Ch. 430; 69 L. T. 281; 42 W. R. 125; 63 L. J. Ch. 109.

Express Loss; *V. “Special Damage,”* sub SPECIAL.

“Express Notice” of an Absolute Assignment, s. 25 (6), Jud. Act, 1873; *V. ABSOLUTE ASSIGNMENT.*

Express Postal Mail, quâ Post Office (Offences) Act, 1837, 1 V. c. 36. means, “every kind of Conveyance employed to carry letters on behalf of the Post Office other than the Usual Mail” (s. 47).

Where an “Express Provision” only is mentioned, e.g. s. 5, Jud. Act, 1890, “none is to be implied” (per Chitty, J., *Re Fisher*, 63 L. J. Ch. 71, 235).

"Express Provision," exempting from ESTATE DUTY, s. 14 (1), Finance Act, 1894, *V. Fitzhardinge v. Jenkinson*, and *Re Parker-Jervis*, cited DEDUCTION: — or from Settlement Estate Duty, s. 19, Finance Act, 1896, *V. Re Lewis*, 1900, 2 Ch. 176; 69 L. J. Ch. 406; 82 L. T. 291; 48 W. R. 426.

Express *Stipulation*; *V. EXPRESSLY STIPULATED.*

"Trains to be sent express"; *V. Rigby v. G. W. Ry*, 15 L. J. Ch. 266; 14 M. & W. 811; *Phillips v. G. W. Ry*, 7 Ch. 417.

"The words 'Express Trust' in this statute, s. 25, Real Property Limitation Act, 1833 (*Vf*, s. 25 (2), Jud. Act, 1873) are used by way of opposition to trusts arising from Implication, trusts Resulting, or trusts by Operation of Law" (per Westbury, C., *Dickenson v. Teasdale*, 1 D. G. J. & S. 59: *Vf*, per Kindersley, V. C., *Petre v. Petre*, 1 Drew. 393, and, per Cairns, C., *Cunningham v. Foot*, 3 App. Ca. 984; 26 W. R. 860; 38 L. T. 889: *Re Barker*, 62 L. J. Ch. 76; 1892, 2 Ch. 491); so, of "Express Trust," s. 1, Larceny Act, 1861 (*R. v. Fletcher*, cited TRUSTEE). But an "Express Trust" may arise without the formal language usually employed in creating a Trust, and if a Trust clearly arises from the language of a document, an "Express Trust" will be created (*Salter v. Cavanagh*, 1 Dr. & Wal. 668: *Patrick v. Simpson*, 59 L. J. Q. B. 7; 61 L. T. 686; 24 Q. B. D. 128; 6 Times Rep. 23: *Francis v. Grover*, 15 L. J. Ch. 99; 5 Hare, 39: *Vf* CESTUI QUE TRUST).

Trusts for sale and for application of purchase moneys in an ordinary mortgage, are not "Express Trusts" within the statute just cited (*Re Alison, Johnson v. Mounsey*, 11 Ch. D. 284: *Chapman v. Corpe*, 27 W. R. 781). *Vh*, *Re Rowe*, 58 L. J. Ch. 703.

*Cp*, "Express Trusts" as used in s. 25 (2), Jud. Act, 1873, and in s. 10, 37 & 38 V. c. 57:—on this latter section, *V. Re Davis*, cited LEGACY: SECURED.

As to what are Express Trusts; *Vf*, Lewin, 1065. *Fa*, Express and Constructive Trusts distd by Bowen, L. J., *Soar v. Ashwell*, 1893, 2 Q. B. 395, *vthe* per Alverstone, M. R., *Re Dixon*, 69 L. J. Ch. 612: TRUSTEE.

*Cp*, PARTICULAR TRUST.

An Executor is not an "Express Trustee" (*Re Lacy*, cited A).

EXPRESSION.—"Expression of Time"; *V. TIME.*

EXPRESSLY FOR SAFE CUSTODY.—Though it is not absolutely necessary to declare the value of goods, deposited with an Innkeeper "expressly for safe custody," s. 1, Innkeepers' Liability Act, 1863, 26 & 27 V. c. 41, yet there must be something stated substantially, though not necessarily formally, disclosing to the Innkeeper the nature and object of the deposit; merely to take a parcel to the bar and deposit it there saying to the barmaid, "Keep this for me," or words to that effect, is not to deposit it "expressly" for safe custody (*O'Connor v. Grand International Hotel Co*, 1898, 2 I. R. 92). *Cp*, WILFUL ACT.



**EXPRESSLY NAMED.** — A person, — *e.g.* an attorney to attest a Warrant of Attorney, s. 9, 1 & 2 V. c. 110, — is “named,” or even “expressly named,” by another if such other adopts a name that is suggested to him, for “expressly” does not mean “originally” (*Taylor v. Nicholl*, 6 M. & W. 91; 9 L. J. Ex. 78). *Vf* NAMED.

**EXPRESSLY PRESCRIBED.** — “In any manner expressly prescribed”; *V.* MANNER.

**EXPRESSLY PROVIDED.** — “EXCEPT as expressly provided”; *V. Thames Conservators v. Smee*, 1897, 2 Q. B. 334; 66 L. J. Q. B. 716; 77 L. T. 325; 45 W. R. 691; 61 J. P. 612.

**EXPRESSLY PURCHASED.** — S. 77, Ry C. C. Act, 1845; *V. Errington v. Metrop District Ry*, 51 L. J. Ch. 305; 19 Ch. D. 559.

**EXPRESSLY REFER.** — A condition that a General Power of Appointment is not to be executed by Will unless it “expressly refer” to the Power or its subject-matter, will prevent the operation of s. 27, Wills Act, 1837 (*Re Phillips*, 58 L. J. Ch. 448; 41 Ch. D. 417; *Phillips v. Cayley*, 59 L. J. Ch. 177; 43 Ch. D. 222; *Re Tarrant*, W. N. (89) 146; *Phillips v. Cayley*, over-ruled *Re Marsh*, 57 L. J. Ch. 639; 38 Ch. D. 630; *Vh*, Key & Elphinstone’s Prec., 3 ed., 668, n c). *V.* GENERAL POWER: POWER.

**EXPRESSLY STIPULATED.** — This is a very bad phrase as used in s. 7, Apportionment Act, 1870, for “one does not talk of ‘Stipulations’ in a Will” (per Lindley, M. R., *Re Lysaght*, cited ACCRUE: *V*the hereon, and *Vf*, *Tyrell v. Clark*, 23 L. J. Ch. 283; 2 Drew. 86). Under that section Non-apportionment of Income is not “expressly stipulated” simply because the gift is specific (*Pollock v. Pollock*, 44 L. J. Ch. 168; L. R. 18 Eq. 329; *Capron v. Capron*, 43 L. J. Ch. 677; L. R. 17 Eq. 288; *Re Meredith*, 67 L. J. Ch. 409; 78 L. T. 492, correcting *Whitehead v. Whitehead*, L. R. 16 Eq. 528): *Se* WHOLE.

**EXPRESSLY VARIED.** — Where one Act incorporates another, except where “expressly varied” by the incorporating statute, it is not essentially necessary that there should be express words saying, this particular section or provision shall not apply. Express words are not required for that purpose; but there must be something that indicates an express intention that a particular provision in the prior statute shall not apply to the incorporating statute. A mere variation in the incorporating statute from the ordinary type and form of a general Act would not be sufficient to prevent the general clauses applying. A variation in the incorporating Act showing that a provision in the prior Act was inapplicable, would have the same effect as if that provision were expressly varied (per Blackburn, J., *Metrop District Ry v. Sharpe*, 50 L. J. Q. B.

21). In that case it was held that s. 34, Lands C. C. Act, 1845, was not "expressly varied" by a special enactment as to arbitration which made no provision for costs (50 L. J. Q. B. 14; 5 App. Ca. 425); but s. 16, *Ib.* is "expressly varied" by an Act authorising the issue of new shares by a Ry Co for the purpose of an extension and the general purposes of the Undertaking (*Weld v. S. W. Ry*, 32 Bea. 340; 11 W. R. 448; 8 L. T. 13: *Vf, R. v. G. W. Ry*, 1 E. & B. 253; 22 L. J. Q. B. 65: APPLICABLE).

**EXTEND.**—*V.* ALTER.

**EXTEND TO AND INCLUDE.**—The words "shall extend to and include" (and so of the word "include" alone) in an Interpretation Clause, are wider and go further than the words "shall mean"; and denote that, in addition to the popular meaning given to a word or phrase, such word or phrase shall also have the meanings given to it by the Interpretation Clause (per Baggallay, L. J., and Brett, M. R., *Portsmouth v. Smith*, 53 L. J. Q. B. 92; 13 Q. B. D. 184: *Va, R. v. Elliott*, 41 L. J. Adm. 67; nom. *Dyke v. Elliott*, L. R. 4 P. C. 184).

*V.* INCLUDE: EMBRACE.

**EXTENDED.**—S. 180 (9), P. H. Act, 1875; *V. Yeardon Case*, 58 L. J. Ch. 563; 41 Ch. D. 32; 60 L. T. 550: ARBITRATION.

**EXTENSION.**—" 'Extension,' is a term properly used for the purpose of enlarging, or giving further duration to, any existing right, but does not import the re-vesting of an expired right; that would not be an 'Extension' but a 'Re-Creation'" (per Richardson, arg. *Brooke v. Clarke*, 1 B. & Ald. 399, and adopted per Cur.).

" 'Extension' is very commonly used in connection with Railways and Tramways both in legal documents and by people at large. When an 'Extension' of the G. W. Ry is spoken of, no one supposes that the thing meant is merely to prolong the existing line or to increase its breadth for laying down more rails. Branches are contemplated as well as the original main line when Extensions are spoken of. That is certainly a common use of language; nor can their lordships see that in point of etymology or philology it is incorrect" (*Shanghai Corp v. McMurray*, 69 L. J. P. C. 20). That def applies to "Extension of the lines of roads at present laid down" in Regn. 6, Shanghai Land Regns, 1869 (*S. C.* 1900, A. C. 206; 69 L. J. P. C. 19; 82 L. T. 101).

"Extension of Term of PATENT"; *V.* s. 25, 46 & 47 V. c. 57.

**EXTENT.**—*V.* TO THE EXTENT.

Writ of Extent; *V.* 5 Encyc. 254-257.

**EXTERNAL.**—In an Insurance against "bodily injury caused by VIOLENT, ACCIDENTAL, External, and VISIBLE means" but excepting "Natural Disease, or Weakness or Exhaustion consequent upon Dis-

ease," — "External" is used in contradistinction to such internal causes as disease or weakness; therefore, a dislocation of the cartilage of the knee caused by stooping to pick up an object is caused by "External" means, which are also "Violent, Accidental, and Visible" (*Hamlyn v. Crown Insrce*, 1893, 1 Q. B. 750; 62 L. J. Q. B. 409; 68 L. T. 701; 41 W. R. 531).

**EXTERNAL ALTERATION.** — A Lessee's covenant not to make "external" Alterations, "applies to everything external to the house, or, as it is popularly called, 'out-of-doors'" (per Williams, J., *Perry v. Davis*, 3 C. B. N. S. 777). *V. a.*, same case on construction of "Internal" alterations.

**EXTERNAL PARTS.** — A Covenant to repair the "External Parts" of a house includes a Wall by which it adjoins to, and is divided from, another house, — the "External Parts" of premises being those which form the enclosure of them and beyond which no part of them extends (*Green v. Eales*, 2 Q. B. 225; 11 L. J. Q. B. 63; 1 G. & D. 468): the phrase also includes the WINDOWS, they being part of the skin of the house (*Ball v. Plummer*, 23 S. J. 656).

**EXTERNAL WALL.** — Quà London Bg Act, 1894, "External Wall," "means, an outer WALL, or vertical enclosure, of any BUILDING not being a PARTY-WALL" (subs. 15, s. 5).

**EXTINCT.** — " 'Extinct' commeth of the verbe *extinguere*, to destroy or put out; and a rent is said to be extinguished, when it is destroyed and put out" (Co. Litt. 147 b), *e.g.* by the owner of the rent becoming the purchaser of the land, for "one may not have rent going out of his owne land" (Termes de la Ley, *Extinguishment*), so, if a freeholder purchase a lease of his land, the lease becomes extinct (Ib.).

*V. MERGER: SUSPENSE.*

**EXTINCTION.** — "Where the title to any Succession shall be *accelerated* by the Surrender or Extinction of any prior interests," s. 15, Sucn Dy Act, 1853; *V. Ex p. Sitwell, Re Drury Lowe*, 21 Q. B. D. 466; 59 L. T. 539.

Extinction of a Peerage; *V. PEERAGE.*

**EXTINGUISHED.** — *V. MERGER: SUSPENSE: EXTINCT.*

Rights to be "extinguished" under s. 20, Artizans and Labourers Dwellings Improvement Act, 1875; *V. Fry, L. J., Barlow v. Ross*, cited RIGHTS.

**EXTORTION.** — The offence of Extortion consists in a Public Officer "taking under colour of office from any person any money or valuable thing which is not due from him at the time when it is taken.

"If the illegal act consists in inflicting upon any person any bodily harm, imprisonment, or other injury not being extortion, the offence is called 'Oppression'" (Steph. Cr. 83). *V. EXACTION*: *Termes de la Ley*: 5 Encyc. 261-263: *Dire v. Maningham*, Plowd. 68.

*Vf*, Arch. Cr. 1030: *Rosc. Cr.* 712, 713: *Co. Litt.* 368 b.

As to what is Extortion *colore officii*, entitling the payer to recover back; *V. Bootle v. Lancashire Co. Co.*, 60 L. J. Q. B. 323.

*V. MISCONDUCT*: TAKE OR DEMAND. *Cp*, MENACE.

**EXTRA.** — An Extra to a Contract for Works, whether a Building or Ship, or any such thing, is something not specified in, or fairly comprised within, the contract, but which is cognate to the subject-matter of the contract and applicable to the carrying out of its design; *e.g.* if a deal door be specified and a subsequent order be given to substitute one of mahogany, the difference in value is an Extra; but if (say) the building of a house be the subject-matter and afterwards the building owner gives an order to the builder to furnish the house, that furniture is not an Extra, for that order is an independent contract (*per Byles, J., Russell v. Sa Da Bandeira*, 32 L. J. C. P. 68; 13 C. B. N. S. 149; 7 L. T. 804). *Vh* 1 Hudson, ch. 8.

Extra *Pilotage Services*; *V. The Servia*, 1898, P. 36; 67 L. J. P. D. & A. 36; 78 L. T. 54; 46 W. R. 492; 8 Asp. 353.

**EXTRACT.** — "Extract *Conviction*," or "Extract of Previous Conviction," *quà* Criminal Procedure (Scot) Act, 1887, 50 & 51 V. c. 35; *V. s. 1.*

Extract of *Decree*; *V. DECREE.*

**EXTRADITION.** — Is the delivery up by one State to another of a FUGITIVE CRIMINAL: *Vh*, Clarke on Extradition: 5 Encyc. 263-281.

"Extradition *Crime*"; Stat. Def., Extradition Act, 1870, s. 26; Extradition Act, 1873, s. 8 and Sch. *Cp*, POLITICAL.

**EXTRAORDINARILY.** — It is "dangerous" and "extraordinarily inconvenient to Passengers or Carriages," s. 53, Ry C. C. Act, 1845, for a Ry Co to lay down rails and run trains along a portion of a Highway; before doing so, they must comply with the section and "cause a sufficient road to be made instead of the road to be interfered with" (*A-G. v. Widnes Ry*, 30 L. T. 449; 22 W. R. 607).

**EXTRAORDINARY.** — "Extraordinary" means, what is less than, as well as what is more than, ordinary.

The charges for Attendances "in Extraordinary Cases," Sch 2, Solrs Rem Ord, may be diminished or increased by the Taxing Master according as he may regard the attendances as less or more onerous than ordinary (*Re Mahon*, 1893, 1 Ch. 507; 62 L. J. Ch. 448; 68 L. T. 189; 41 W. R. 257: *Vf* IF THEY SHALL THINK FIT).

**EXTRAORDINARY CHARGE.** — “Extraordinary Charge” to which a Poor Law Union is liable; *V. Waddington v. London*, 28 L. J. M. C. 113; E. B. & E. 370, on *wher*, *R. v. Leigh*, 1898, 1 Q. B. 836; 67 L. J. Q. B. 562; 78 L. T. 604; 46 W. R. 471; 62 J. P. 355.

Stat. Def., Extraordinary Tithe Redemption Act, 1886, 49 & 50 V. c. 54, preamble: *V. TITHES*.

**EXTRAORDINARY EXPENSES.** — S. 23, 41 & 42 V. c. 77; *V. EXTRAORDINARY TRAFFIC*.

**EXTRAORDINARY RESOLUTION.** — *V. RESOLUTION*.

**EXTRAORDINARY SACRIFICE.** — *V. GENERAL AVERAGE SACRIFICE*.

**EXTRAORDINARY SERVICES.** — By a Ry Co; *V. Dunkirk Colliery Co v. Manchester, S. & L. Ry*, 2 Ry & Can Traffic Ca. 402; *Neston Co v. Loud. & N. W. Ry*, 4 Ib. 257; *Hall v. L. B. & S. Ry*, cited *INCIDENTAL*. *Cp*, “Terminal Charges,” sub *TERMINAL: REASONABLE SUM*.

**EXTRAORDINARY TITHE.** — *V. TITHE*.

**EXTRAORDINARY TRAFFIC.** — “What constitutes ‘Excessive Weight’ or ‘Extraordinary Traffic’ (within s. 23, 41 & 42 V. c. 77), must, to a great extent, depend upon the opinion of those (*i.e.* the Justices) who know the neighbourhood” (per Grove, J., *Pickering v. Barry*, 51 L. J. M. C. 19; 8 Q. B. D. 59; 30 W. R. 246; 46 J. P. 215). In the same case, Lopes, J., said, “I think that the Legislature intended something Excessive in Weight or Extraordinary in Kind of Traffic, either, —

“1. As compared with what is usually carried over roads of the same nature in the neighbourhood, or

“2. As compared with that to which the road in its ordinary and fair use may reasonably be subjected. It would not be sufficient to compare the Weight and Traffic complained of with the traffic usually carried on the particular road, because the traffic usually carried might be of the lightest kind; but surely the Legislature never intended that a man was not to use the road for carrying materials for building a dwelling-house, farm-house, or barn, provided he used it in a reasonable way for those purposes. The comparison must be larger, and I think the definition I have given, if not exhaustive, will be found useful.”

For cases illustrating clause 1 of that definition; *V. Aveland v. Lucas*, 5 C. P. D. 351; 49 L. J. C. P. 643; 28 W. R. 571; 43 J. P. 830; *Savin v. Oswestry*, 44 J. P. 766; *Williams v. Davis*, Ib. 347; *Northumberland Whinstone Co v. Alnwick*, Ib. 360; *Wallington v. Hoskins*, 50 L. J. M. C. 19; 6 Q. B. D. 206; 29 W. R. 152; 45 J. P. 173; *R. v.*

*Ellis*, 8 Q. B. D. 466; 30 W. R. 613 (Traction Engine case): *Ellis v. Maidstone*, 46 J. P. 295: and *Cp, Tunbridge v. Sevenoaks*, 33 W. R. 306; 49 J. P. 340, with *Raglan v. Monmouth Steam Co.*, 46 J. P. 598.

And as illustrating Clause 2 of the definition, *V. Pickering v. Barry*, sup, where Grove, J., whilst agreeing that using a road for carrying materials for the building of an ordinary dwelling-house would not be exceptional, said, "I do not mean to say that there might not be Excessive Weight or Extraordinary Traffic for an extraordinary building such as a College or Workhouse."

But *Pickering v. Barry* soon became the subject of adverse criticism; and the leading def of "Extraordinary Traffic" was given by Bowen, L. J., in *Hill v. Thomas* (62 L. J. M. C. 164; 1893, 2 Q. B. 333; 69 L. T. 553; 42 W. R. 85; 57 J. P. 628) as follows:—

"It is true that Extraordinary Traffic is a traffic to be specially distinguished from other traffic by the section; but the distinction cannot solely depend on the unusual character of articles carried but rather on the effect which the carriage of the particular articles (call them by whatever name or classification one will) may presumably be expected to have upon the road. If so, Extraordinary Traffic is really, A carriage of articles over the road, at either one or more times, which is so exceptional,—in the quality or quantity of articles carried or in the mode or time of user or the road,—as substantially to alter and increase the burden imposed by ordinary traffic on the road, and to cause damage and expense thereby beyond what is common."

"In other words, there must be an exceptional user of the highway" (per Charles, J., *Wolverhampton v. Salop Co. Co.*, 64 L. J. M. C. 179; 43 W. R. 494).

The jdgmt in *Hill v. Thomas* deals with and disposes of *R. v. Williamson* (45 J. P. 505; nom. *Hall v. Thomas*, 9 Times Rep. 443), so far as it may have been regarded as laying down, as matter of law, that unusual frequency of ordinary loads does not constitute "Extraordinary Traffic." Observe, too, that only the particular road in question, and not the ordinary traffic of the district, has to be regarded (*Etherley Grange Coal Co v. Auckland*, 1894, 1 Q. B. 37; 69 L. T. 702; 42 W. R. 198; 58 J. P. 102; 10 Times Rep. 62).

As to the person "by whose Order" Extraordinary Traffic "has been conducted"; *V. Kent Co. Co. v. Fidler*, 1895, 1 Q. B. 448; 64 L. J. M. C. 77; 72 L. T. 77; 43 W. R. 273; *Kent Co. Co. v. Gerard*, 1897, A. C. 633; 66 L. J. Q. B. 677; 77 L. T. 109; 46 W. R. 111; 61 J. P. 804; *Colchester v. Gloucestershire Co. Co.*, 66 L. J. Q. B. 290; *Pethick v. Dorsetshire Co. Co.*, 62 J. P. 579. *Semble*, the phrase is to be interpreted literally and as meaning, the immediate masters of the men who are engaged in the Extraordinary Traffic. But by s. 12 (1e), 61 & 62 V. c. 29, these words "by whose Order" are to be replaced by the words "by, or in consequence of, whose Order," on *whv, Epsom v. London Co.*

Co., 1900, 2 Q. B. 751; 69 L. J. Q. B. 933; 83 L. T. 284; 64 J. P. 726.

*Note.* Proceedings to recover expenses of Ex. Traffic must be within 6 cal. months after Certificate (*Wirrall v. Newell*, 1895, 1 Q. B. 827; 64 L. J. M. C. 181; 72 L. T. 535; 43 W. R. 328; 59 J. P. 183, *where* as to validity of Certificate): *Vf*, *Whitehead v. Sevenoaks*, 1892, 1 Q. B. 8; 61 L. J. M. C. 59; 65 L. T. 855; 56 J. P. 214. The proceedings are FOUNDED ON Tort, and the maxim *Actio personalis moritur cum persona* applies (*Story v. Sheard*, 61 L. J. M. C. 178; 1892, 2 Q. B. 515; 67 L. T. 423; 41 W. R. 31; 56 J. P. 760).

**EXTRAPAROCHIAL.** — A place is Extraparochial which is "out of any Parish; anything privileged and exempt from the duties of a Parish" (Jacob: *Termes de la Ley*).

Quà New Parishes Act, 1856, 19 & 20 V. c. 104, " 'Extraparochial Place,' means any township, vill, village, or hamlet, being extraparochial " (s. 33).

*V.* TITHES.

**EXTRAVAGANCE.** — *V.* UNJUSTIFIABLE EXTRAVAGANCE.

**EXTRINSIC.** — **EXTRINSIC EVIDENCE**, is evidence of statements, facts or circumstances outside, or not referred to in, a written document which serve to explain or vary its meaning and sometimes to contradict it. Generally, it is not receivable, and is only so in a qualified way or in exceptional cases: *Vh*, Wigram on Extrinsic Evidence in the Interpretation of Wills: Elph. ch. 4, 5, 8: Leake, ch. 4, s. 2. *V.* PAROL.

**EY.** — "*Ey, ingy, and worth*, signifieth a watry place or water" (Co. Litt. 5 b).

**EYRE.** — Justices in Eyre; *V.* SUPERIOR COURT.

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**F. C. S. — F. P. A.**


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**F. C. S.** — “Free of Capture and Seizure” (1 Maude & P. 449). *Vh*, 5 Encyc. 324: CAPTURE.

**F. G. A.** — “Free of General Average” (1 Maude & P. 449).

**F. O. B.** — “Free on Board.” This expression throughout the whole of England, means that the seller is to put the goods on board at his own expense, but on account of, and thenceforward at the risk and as the property of, the purchaser; and this is so whether the goods are specific or only a proportion of a quantity (*Cowas-jee v. Thompson*, 5 Moore, P. C. 173; *Brown v. Hare*, 27 L. J. Ex. 372; 29 Ib. 6; 3 H. & N. 484; 4 Ib. 822; *Inglis v. Stock*, 54 L. J. Q. B. 582; 10 App. Ca. 263; Benj. 315; Blackb. 362). In *Ex p. Rosevear Co, Re Cock* (11 Ch. D. 565), Bacon, C. J. in Bankry, said, — “Delivery ‘free on board’ only means, ‘The price shall be that which we stipulate for, and you shall not have to pay for the wagons or carts necessary to carry (to the ship); we will bear all those charges and put it free on board the ship, the name of which you furnish.’”

As to whether “Free on Board” indicates that the transitus is at an end as soon as the goods are on the purchaser’s Ship; *V. Berndtson v. Strang*, L. R. 4 Eq. 488.

A contract for PIG IRON made at Glasgow and deliverable “F. O. B.” may, by a mercantile usage, be shown to mean a particular kind of iron made in the neighbourhood of Glasgow (*Mackenzie v. Dunlop*, 1 Paterson, 669).

**F. O. W.** — “FIRST OPEN WATER”: the phrase is “used in Charter-Parties, with reference to Ports in the Baltic, to mean ‘immediately after the Ice breaks up’” (5 Encyc. 471). *V.* “Open Water,” sub OPEN.

**F. P. A.** — “Free of Particular Average” (1 Maude & P. 449).

“Where, in the Memorandum, the words ‘Warranted free from Particular Average’ are used, these words are not confined to losses arising from injury to the goods themselves, but amount to a warranty against any loss other than a Total Loss, or General Average; and therefore, under a Marine Policy in the ordinary form on goods, the Underwriters are not liable for expenses incurred in relation to the goods unless such expenses are paid to avert a General Average loss, and are therefore



recoverable under the Suing and Labouring Clause" (1 Maude & P. 493, citing *Meyer v. Kalli*, 1 C. P. D. 372, 373; 45 L. J. C. P. 741; *Great Indian Peninsular Ry v. Saunders*, 1 B. & S. 41; 30 L. J. Q. B. 218; 31 Ib. 206). *Vh*, *Hendricks v. Australasian Insree*, 43 L. J. C. P. 188; L. R. 9 C. P. 461; *Stewart v. Merchants Mar Insree*, 55 L. J. Q. B. 81; 16 Q. B. D. 619.

**FABRIC LANDS.** — " 'Fabrick-Lands,' are lands given to the re-building, repair, or maintenance, of Cathedrals or other Churches," — as in 12 Car. 2, c. 11 (Cowel). *V. 5* Encyc. 284, 285; Tudor, Char. Trusts, 436.

**FABRICATE.** — *V. FALSELY ASSUMING TO ACT.*

**FACILITIES.** — By s. 2, Ry and Canal Traffic Act, 1854, Ry and Canal Companies "shall, according to their respective powers, afford all reasonable *Facilities*" for receiving, forwarding, and delivering, Traffic. The word "Facilities," here, does not mean merely facilities afforded by the management of traffic, *e.g.* Through Booking (*Didcot, &c Ry v. G. W. Ry*, 1897, 1 Q. B. 33; 66 L. J. Q. B. 33; 75 L. T. 401; 45 W. R. 282); but a Company violates the Act "if (*having sufficient powers*) it keeps its platforms, booking-office, and other structures, at any station, in such a condition as to space and other arrangements as to cause dangerous or obstructive confusion, delay or other impediment to the proper reception, transmission, or delivery, of the ordinary traffic of that station, whether consisting of passengers or of goods" (per Selborne, C., *S. E. Ry v. Ry Commrs*, 50 L. J. Q. B. 206; 6 Q. B. D. 586; 3 Ry & Can Traffic Ca. 508). But Refreshment-rooms, and Covered Platforms and Carriage Yards, even at places where invalids resort, are not "facilities" within the section (*Ib.*), nor are free Water-Closets (*West Ham v. G. E. Ry*, 9 Ry & Can Traffic Ca. 7; 64 L. J. Q. B. 340; 72 L. T. 395; 11 Times Rep. 264).

"When you speak of giving 'Reasonable Facilities' you imply that the thing with regard to which you order a Facility is an existing thing" (per Esher, M. R., *Darlaston v. Lond. & N. W. Ry*, 1894, 2 Q. B. 694; 63 L. J. Q. B. 826; 71 L. T. 461; 43 W. R. 29; 8 Ry & Can Traffic Ca. 233); therefore, there is no power, under the section, to order the opening of a New Station or the Re-Opening of one that has been closed (*S. E. Ry v. Ry Commrs*, sup: *Darlaston v. Lond. & N. W. Ry*, sup).

The section includes Facilities for Passengers (*Winsford Local Bd v. Cheshire Lines Committee*, 59 L. J. Q. B. 372; 24 Q. B. D. 456; *Ry Willesden Local Bd and Mid. Ry*, 37 S. J. 176), *e.g.* a Cloak Room (*Singer Co v. Lond. & S. W. Ry*, 1894, 1 Q. B. 833; 63 L. J. Q. B. 411; 70 L. T. 172; 42 W. R. 347). *V. RAILWAY.*

*Vf*, *G. W. Ry v. Ry Commrs*, 50 L. J. Q. B. 483; 7 Q. B. D. 182; 29

W. R. 901: *Brown v. G. W. Ry*, 51 L. J. Q. B. 529; 9 Q. B. D. 744; 3 Ry & Can Traffic Ca. 523: *R. v. Ry Commrs*, 58 L. J. Q. B. 233; 22 Q. B. D. 642: *Nichol v. N. E. Ry*, 4 Times Rep. 464: *Barry Ry v. Taff Vale Ry*, 1895, 1 Ch. 128; 64 L. J. Ch. 230; 71 L. T. 688; 43 W. R. 372: *Newington v. N. E. Ry*, 3 Ry & Can Traffic Ca. 306: *Watkinson v. Wrexham, &c Ry*, 1b. 446: *Tharsis Co. v. Lond. & N. W. Ry*, 1b. 455: *James v. Taff Vale Ry*, 1b. 540: *Beeston Brewery Co. v. Mid. Ry*, 5 1b. 53: *Distington Iron Co. v. Lond. & N. W. Ry*, 6 1b. 123: *Highland Ry v. G. N. of Scotland Ry*, 7 1b. 94.

"Proper and Sufficient Facilities" for TRAFFIC in a Ry Arrangement Act; *V. G. W. Ry v. Central Wales Ry*, 5 Ry & Can Traffic Ca. 1.

The "Facilities for IMPROVEMENT" which, under s. 16, Copyhold Act, 1852, 15 & 16 V. c. 51, are to be taken into account in valuing the Lord's rights on an Enfranchisement, are questions of fact depending in great measure on the state of the particular land and the local circumstances (*Lingwood v. Gyde*, cited CUSTOMARY FREEHOLD).

**FACT.**—An action on a Distress for church rates is commenced within three calendar months "after the Fact committed," 53 G. 3, c. 127, s. 12, if brought within that time after the sale under the distress (*Collins v. Rose*, 5 M. & W. 194; 8 L. J. Ex. 273).

A recital that A. B. is seised in fee, is a "recital or statement of a Fact" (and not merely of a proposition of law); and if contained in a Deed 20 years old will be sufficient evidence of the truth of that fact within s. 2 (2), V. & P. Act, 1874, 37 & 38 V. c. 78, until the contrary is proved (*Bolton v. London School Board*, 47 L. J. Ch. 461; 7 Ch. D. 766: *Vf, Cooper v. Phibbs*, L. R. 2 H. L. 170). *Vh*, ENTITLED.

"Question of Fact arising in the Action"; *V. Fennessey v. Clark*, 57 L. J. Ch. 398; 37 Ch. D. 184; 58 L. T. 289.

Existing Fact; *V. FALSE PRETENCE.*

"False Statement of Fact"; *V. FALSE STATEMENT.*

*V. MATERIAL FACT: PERJURY.*

**FACTO.**—*V. DE JURE.*

**FACTOR.**—"A Factor is an Agent entrusted with the possession of Goods for the purpose of selling them for his Principal" (per Cotton, L. J., *Stevens v. Biller*, inf). *V. POSSESSION.*

"There are two extensive classes of Mercantile Agents, namely;—*Factors*, who are entrusted with the possession as well as the disposal of property; and *Brokers*, who are employed to contract about it without being put in possession" (Smith, Mer. Law, 9 ed., 106, cited with approval by Brett, L. J., *Ex p. Dixon*, 46 L. J. Bank. 20; 4 Ch. D. 133, and by Chitty, J., *Stevens v. Biller*, 53 L. J. Ch. 249; 25 Ch. D. 31. *Vf*, as to "Factor," *A-G. v. Trueman*, 13 L. J. Ex. 70; 11 M. & W.

694; and as to distinction between "Factor" and "Broker," *Baring v. Corrie*, 2 B. & Ald. 143). *Uk*, Evans on Agency, 2 ed., 4: Story on Agency, s. 34; 5 Encyc. 286-288: *Cp*, BROKER.

"Factor," ss. 41, 44, Income Tax Act, 1842, "is used in its strict legal sense as meaning a person who is in possession of the goods of his principal" (per Esher, M. R., *Grainger v. Gough*, 1895, 1 Q. B. 71; 64 L. J. Q. B. 197; *Vthc*, in H. L. 1896, A. C. 325; 65 L. J. Q. B. 410).

"Factors, Servants, or Assigns," in the Suing and Labouring Clause of a Marine Insurance; *V. Uzielli v. Boston Mar Insree*, 15 Q. B. D. 11; 54 L. J. Q. B. 142.

*Note*. There is no definition of "Factor" in the Factors Act, 1889, but there is one of "Mercantile Agent." The Act of 1889 is extended to Scotland by 53 & 54 V. c. 40, which does not alter the general Scotch law quò PLEDGE; *V. Inglis v. Robertson*, cited MERCANTILE AGENT.

#### V. BUY.

In Scotland, "Factor" usually connotes a LAND Steward or Agent, e.g. " 'Factor,' shall mean a person acting under a Probative Factory and Commission for the proprietor or proprietors (including corporations being proprietors) for whom he is Factor, and in the *bonâ fide* actual management, as such Factor, of the lands and heritages belonging to such proprietor" (s. 42, 17 & 18 V. c. 91). *V. JUDICIAL FACTOR*.

A quaint use of "Factor" occurs at 2 Inst. 15, where it is said that Ranulph, Chaplain to William Rufus, "a man *subarto ingenio* and *profunda nequitia*, was a Factor for the King in making merchandize of Church Livings."

**FACTORY.**—A "Factory," within s. 3, 30 & 31 V. c. 103, related to trades carried on in covered buildings, and not to open-air processes, such as a Quarry, or Cement Works on a large piece of land (*Kent v. Astley*, 39 L. J. M. C. 3; 10 B. & S. 802; L. R. 5 Q. B. 19; *Redgrave v. Lec*, 43 L. J. M. C. 105; L. R. 9 Q. B. 363). That ruling is not applicable to the Factory and Workshop Act, 1901 (s. 149, subs. 5).

A code of law relating to Factories and Workshops is now provided by the said Act of 1901, which repealed the previous legislation, but re-enacted its provisions with emendations and amplifications. Its main definitions of "Factory" and "WORKSHOP" are contained in s. 149, whereby "Factory" is classified as either a "Textile Factory," or a "Non-Textile Factory," and either may be a "Tenement Factory," each phrase receiving by the section an elaborate def, in addition to which there is a List of "Non-Textile Factories" given in Part 1, Sch 6, whilst Part 2 of that Sch gives a List of places which are "Non-Textile Factories, and Workshops" (*V. NON-TEXTILE FACTORIES*):—whilst "WORK-

SHOP," comprises those lastly mentioned places, and others defined by the section, and also a "Tenement Workshop" as thereby defined.

By s. 104, "Every DOCK, WHARF, QUAY, and WAREHOUSE, and all MACHINERY or PLANT used in the PROCESS of loading or unloading or coaling any SHIP in any Dock, HARBOUR, or CANAL" is included in "Factory," the "OCCUPIER" of which is defined by such section.

By s. 105, "Premises on which Machinery worked by steam, water, or other mechanical power, is temporarily used for the purpose of the construction of a BUILDING or any Structural Work in connection with a Building" is included in "Factory," the "Occupier" of which is defined by such section: by this section too, quâ Notice and Investigation of Accidents, "Factory" includes, "(a) Any Building which exceeds 30 feet in HEIGHT and which is being constructed or repaired by means of a SCAFFOLDING; and (b) Any Building which exceeds 30 feet in height and in which more than 20 persons, not being Domestic Servants, are employed for wages."

By s. 115, "'Domestic Factory' and 'Domestic Workshop,' mean a private house, room, or place, which, though used as a Dwelling, is, by reason of the work carried on there, a Factory or a Workshop (as the case may be) within the meaning of this Act; and in which neither steam, water, nor other mechanical power, is used in aid of the manufacturing process carried on there; and in which the only persons employed are Members of the same Family dwelling there."

"The Factory and Workshop Acts, 1878 to 1895"; *V. Sch 2, Short Titles Act, 1896.*

Quâ Workmen's Comp Act, 1897, "'Factory,' has the same meaning as in the Factory and Workshop Acts, 1878 to 1891; and also includes any Dock, Wharf, Quay, Warehouse, Machinery, or Plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every Laundry worked by steam, water, or other mechanical power" (subs. 2, s. 7). That def must now be read as though it referred to and adopted the meanings of "Factory" as given in the Factory and Workshop Act, 1901 (s. 38 (1), Interp Act, 1889).

*Seemle*, as of general application, that a Part of a BUILDING separately occupied, does not become a "Factory" by reason of the rest of the bg being so used (*London Co. Co. v. Lewis*, 82 L. T. 195; 69 L. J. Q. B. 277; 64 J. P. 39).

Quâ P. H. Scotland Act, 1897, "'Factory' includes, Workshop and Workplace" (s. 3). *V. HOUSE.*

"Factory or Workshop," quâ Bills of Sale; *V. 41 & 42 V. c. 31, s. 5. — Ir. 42 & 43 V. c. 50, s. 5.*

"Factory MAGAZINE," quâ Explosives Act, 1875, 38 & 39 V. c. 17; *V. s. 108.*

**FACULTY.** — “ ‘Faculty’ signifies a privileged or special dispensation, granted unto a man by favour and indulgence to doe that which by the law he cannot doe ” (Termes de la Ley).

Quà Ecclesiastical Matters; *V. Phil. Ecc. Law: 5 Encyc. 307.*

**FAIL.** — “ Fails to land and take delivery,” s. 67, Mer Shipping Act, 1862, need not imply a wilful default in the cargo owner (*Miedbrodt v. Fitzsimon*, 44 L. J. Adm. 25; L. R. 6 P. C. 306).

If Mine shall “ fail,” in a proviso for cesser in a Mining Lease, means (probably) if it shall become not WORKABLE, and (probably) does not refer to “ exhaustion ” (*Jervis v. Tomkinson*, 26 L. J. Ex. 44).

Where, in case of dispute, an agreement has appointed A. as Arbitrator, or “ failing him ” then B., — there is a “ failure ” of A. if, at the time when a dispute arises, he is abroad on business and not likely to come back at once so as not to be available for the arbitration in a proper business sense (*Re Wilson and Eastern Counties Nav.*, 8 Times Rep. 264).

“ Failing the MALE ISSUE,” construed contextually as “ if there shall be no Son then living ” (*Murray v. Addenbrook*, 4 Russ. 407; 8 L. J. O. S. Ch. 79).

**FAILURE.** — “ Failure, Neglect, or Default ” to perform an obligation; *V. Lewis v. Swansea*, 4 Times Rep. 706. *Vf* DEFAULT.

“ Failure ” applied to a *Business* man or concern, means inability, by Insolvency, to pay his or its debts (*Boyce v. Ewart*, 1 Rice, 140).

Failure of *Issue*; *V. DIE WITHOUT ISSUE.*

Leave to Appeal if Court is “ satisfied that a Failure of *Justice* will take place if the leave is not granted,” Art. 26, Sch 2, 53 & 54 V. c. 70; *V. Ex p. Birch*, 1894, 2 I. R. 181.

**FAIR.** — A Fair “ is a solemn or greater sort of MARKET granted to any Town by privilege for the more speedy and commodious provision of such things as the subject needeth, or the utterance of such things as we abound in above our own uses and occasions ” (Cowel). *Vf*, Jacob.

In a Local Act prohibiting the setting up a “ Market or Fair ” without permission of the Local Authority, — Is the setting up of Swing-boats, Merry-go-rounds, and such like, within the word “ Fair ”? The justices said “ Yes ” and therein were upheld by Lawrence, J., but Bruce, J., said “ No,” who, however, being the junior judge withdrew his judgment and the conviction stood (*Collins v. Cooper*, 68 L. T. 450; 57 J. P. 248); in *the Bruce*, J., said that the selling of goods is a necessary element in a “ Fair.”

Grant of a Fair “ with all Liberties ”; *V. WITH ALL LIBERTIES.*

*V. FAIR OR MARKET TOLLS.*

**FAIR AND REASONABLE.** — A “Fair and Reasonable” *Agreement* IN WRITING between a Solicitor and Client as to Costs in *Contentious* Business, ss. 4, 9, Solrs Act, 1870, must be reasonable as well as fair; and therefore, though the agreement is fully explained to and understood by the Client yet if the amount to be paid to the Solr is unreasonable, *e.g.* nearly 5 times the ordinary remuneration, the Agreement will not be valid (*Re Stuart, Ex p. Cathcart*, 1893, 2 Q. B. 201; 62 L. J. Q. B. 623; 69 L. T. 334; 41 W. R. 614). *Vh, Re Hodgson*, 29 S. J. 149. *Note:* For an example of “a perfectly fair agreement” (per Cave, J., *Re West*, 61 L. J. Q. B. 642) *V. Stedman v. Collett*, 17 Bea. 608. Such an agreement, quâ *Non-Contentious* Business, is now governed by s. 8, Solrs Rem Act, 1881, under subs. 4, of which it may be “objected to by the Client as ‘Unfair or Unreasonable.’”

“Fair and Reasonable *Compensation*,” under 2nd par, s. 5, Agricultural Holdings (England) Act, 1883; *V. Woodf.* 822.

“Fair and Reasonable *Supposition*” of Right, s. 52, 24 & 25 V. c. 97; *V. White v. Feast*, L. R. 7 Q. B. 353; 41 L. J. M. C. 81; followed in *Brooks v. Hamlyn*, 79 L. T. 734; *Vu BONÂ FIDE*.

*V. REASONABLE.*

**FAIR ANNUAL VALUE.** — *V. FULL ANNUAL VALUE.*

**FAIR AVERAGE QUALITY.** — “If goods coming from a particular Port are sold as being of ‘a fair average quality,’ a fair average quality of the various sorts of the article which comes from that Port is meant, and not of the sorts which come from all parts of the world” (Wood, 354, citing *Jones v. Clarke*, 2 H. & N. 725; 27 L. J. Ex. 165). *Vh, Couturier v. Hastie*, 25 L. J. Ex. 253; 5 H. L. Ca. 673; 9 Ex. 102; 1 W. R. 495.

**FAIR COMMENT.** — “A Fair Comment (excusing what would otherwise be a LIBEL) is a Comment which is either true, or which, if false, expresses the real opinion of its author (as to the existence of matter of fact, or otherwise), such opinion having been formed with a reasonable degree of care and on reasonable grounds” (Steph. Cr. 202).

“The nearest approach, I think, to an exact definition of the word ‘fair,’ is contained in the judgment of Tenterden, C. J., in *Macleod v. Wakley* (3 C. & P. 313), where he said, — ‘Whatever is fair and can be reasonably said of the works of authors or of themselves, as connected with their works, is not actionable, unless it appears, that, under the pretext of criticising the works, the defendant takes an opportunity of attacking the character of the author: then it will be a libel’” (per Bowen, L. J., *Merivale v. Carson*, 20 Q. B. D. 283).

*Vh, PUBLIC INTEREST: QUACK:* 84 L. T. 114; Odgers, 42-58.

**FAIR OR MARKET TOLLS.** — The duties which are usually paid at a fair or market are tolls, stallage, and pickage; and this toll is

a reasonable sum due to the owners of the fair or market upon the sale therein of things which are tollable (Gunning on Tolls, 44).

V. TOLL.

**FAIR PRICE.** — The “Fair Price,” “agreed to be paid,” by an Agister and which gives his Live Stock a conditional exemption from DISTRESS (s. 45, Agricultural Holdings (England) Act, 1883), includes agreements for barter as well as for payments in cash (*London and Yorkshire Bank v. Belton*, 54 L. J. Q. B. 568; 15 Q. B. D. 457). In that case Coleridge, C. J., said, — “In ordinary colloquial language ‘Price’ does not always mean money, and ‘Fair Price’ is not necessarily an adequate sum of current coin: it may be used where the result of a transaction is that a man gave a fair equivalent for what he got.” In the same case, Mathew, J., said, “I think that ‘Fair Price’ means ‘Equivalent.’”

Vf AGIST.

V. BEST PRICE.

**FAIR RENT.** — “Fair clear annual rent”; *V. R. v. Lacy*, cited CLEAR.

As to fixing a “Fair Rent” of land in Ireland; *V. Adams v. Dunsceath*, 10 L. R. Ir. 109; *Davies v. M. Mahon*, 24 Ib. 447; *Sutton v. Walsh*, 26 Ib. 629.

V. JUDICIAL RENT.

**FAIR REPORT.** — A Fair Report of a judicial proceeding (excusing what would otherwise be a LIBEL) is one that “is substantially accurate, and either complete or condensed in such a manner as to give a just impression of what took place”; but this does not extend to comments of the reporter or to observations of persons not entitled to take part in the proceedings (Steph. Cr. 206). The report may be “fair,” although it contains only the speech of counsel and the summing-up of the judge (*Milissich v. Lloyds*, 46 L. J. Q. B. 404; 36 L. T. 423; W. N. (77) 36); Vf, Odgers, 285.

**FAIR VALUATION.** — When the terms of a contract, under which the produce of land is to be taken at a Fair Valuation, do not conclusively and clearly define what the parties mean by a “Fair Valuation,” it will be a question of fact for the jury what is such a Valuation (*Cumberland v. Bowes*, 15 C. B. 348; 24 L. J. C. P. 46; 1 Jur. N. S. 236; 3 Com. L. R. 149).

“It appears probable that a general agreement to sell ‘at a Fair Valuation’ may be enforced” (Dart, 257; V. cases there cited).

**FAIR-WAY.** — The “Fair-Way” of a River, means, a clear passage way by water, and is not, necessarily, confined to that part of the channel

which is marked by buoys but includes all that part of the river inshore of the buoys which is navigable for vessels of moderate draught (*The Blue Bell*, 1895, P. 242; 64 L. J. P. D. & A. 71; 72 L. T. 540).

**FAIRLY.**—As to covenants “Fairly and Regularly,” or “Diligently and Regularly,” or “Uninterruptedly, Efficiently and Regularly,” to work a Mine; *V. MacS.* 217, 233.

The introduction of the adverb “fairly” in the power to the Court to determine that a Liability in a Bankry shall not be proveable therein if it is incapable of being “fairly estimated” (s. 31, Bankry Act, 1869; s. 37 (6), Bankry Act, 1883), “involves the principle that all liabilities, subject to the express statutory exceptions, were intended to be included, but that in the one case where the Court should adjudicate that the liability was such that, at that time, it could not be ‘fairly estimated,’ then, and then only, should the liability continue” (per Halsbury, C., *Hardy v. Fothergill*, 58 L. J. Q. B. 45; 13 App. Ca. 351). *V. DEBTS DUE: DEBT OR LIABILITY: INCAPABLE.*

“Ought fairly to be excused,” s. 3, Judicial Trustees Act, 1896; *V. REASONABLY.*

Fairly *workable*; *V. WORKABLE.*

Fairly *wrought*; *V. WROUGHT.*

**FAIT.**—“In Latine, Factum, a DEED” (Cowel).

**FAITH.**—*V. GOOD FAITH: BONÂ FIDE: TRUE FAITH.*

**FAITOUR.**—“An evill doer, or an idle companion,” and, as used in 7 Rich. 2, c. 5, “it seemeth a synonymon to VAGABOND” (*Termes de la Ley*).

**FALDA.**—“A sheepfold. Rot. Cart. 16 Hen. 3, m. 6” (Cowel).

**FALDAGE.**—“‘*Faldagium*’ is a priviledge which anciently several Lords reserved to themselves of setting up Folds for Sheep in any Fields within their Mannors, the better to manure them; and this not onely with their own, but their tenants, sheep, which they called *Secta faldæ*. This Faldage, in some places, they call a FOLD-COURSE, or *Free-fold*, and, in some old Charters, *Faldsoca*, that is, *Libertas faldæ*, or *faldagii*” (Cowel). *V. FRANKFOLDAGE. Cp., FOLDAGE.*

**FALESIA.**—“*Falesia* is a bank or hill by the sea-side; it commeth of *falaize*, which signifieth the same” (Co. Litt. 5b).

**FALL.**—“Fall into RESIDUE”; *V. Re Rhoades*, 29 Ch. D. 142; 54 L. J. Ch. 573; 33 W. R. 608; *Re Sacage*, 50 L. J. Ch. 131, and *Re Bullance*, 42 Ch. D. 62; 37 W. R. 600, considering *Humble v. Shore*, 7 Hare, 247; 1 H. & M. 550 n: *Holgate v. Jennings*, 37 S. J. 303; *Lightfoot v. Burstall*, 1 H. & M. 546; 33 L. J. Ch. 188; 12 W. R. 148; *Crawshaw v. Crawshaw*, 14 Ch. D. 817; 49 L. J. Ch. 662; 29



W. R. 68: *Re Barker*, 15 Ch. D. 635. *Humble v. Shore*, is now definitely over-ruled by *Re Palmer* (1893, 3 Ch. 369; 62 L. J. Ch. 988; 69 L. T. 477; 42 W. R. 151). *Vf*, REST: SINK.

Person "who causes to *fall or flow*" Sewage-matter into a STREAM, s. 3, 39 & 40 V. c. 75; *V. Kirkheaton v. Ainley*, 1892, 2 Q. B. 274; 61 L. J. Q. B. 812; 67 L. T. 209; 41 W. R. 99.

**FALSE COIN.** — "False or COUNTERFEIT COIN." quâ Coinage Offences Act, 1861, 24 & 25 V. c. 99, includes "any of the CURRENT COIN which shall have been gilt, silvered, washed, coloured, or cased over, or in any manner altered, so as to resemble or be apparently intended to resemble or pass for" any Current Coin of a higher denomination (s. 1).

**FALSE DOCUMENT.** — *V. FORGERY.*

**FALSE ENTRY.** — False Entry on Registration of a Birth, Death, or Marriage; *V. R. v. Brown*, 2 C. & K. 504; *R. v. Mason*, 1b. 622; *R. v. Dewitt*, 1b. 905.

**FALSE IMPRISONMENT.** — "Is a trespass committed against a man by imprisoning him without lawful cause" (Cowel). *V. IMPRISONMENT.*

*Vh*, Rose. N. P. 903-910: Add. T. 146-164: Arch. Cr. 849: 5 Encyc. 311-315.

**FALSE OR UNJUST.** — *V. UNJUST.*

**FALSE PRETENCE.** — An indictable "False Pretence," "means a false representation made either by words, by writing, or by conduct (*Sv. R. v. Jones*, cited CREDIT), that some fact exists or existed, and such a representation may amount to false pretence, although a person of common prudence might easily have detected its falsehood by inquiry, and although the existence of the alleged fact was in itself impossible.

"But the expression 'False Pretence' does not include —

"(a) A promise as to future conduct not intended to be kept, unless such promise is based upon or implies an existing fact falsely alleged to exist; or,

"(b) Such untrue commendation or untrue depreciation of an article which is to be sold as is usual between sellers and buyers, unless such untrue commendation or untrue depreciation is made by means of a definite false assertion as to some matter of fact capable of being positively determined" (Steph. Cr. 265, and *T.* to p. 267 for cases in illustration). *Vf*, 62 & 63 V. c. 22, s. 3: per Halsbury, C. *Aaron's Reef's v. Twiss*, 1896, A. C. 283; 65 L. J. P. C. 59, 60; *R. v. Button*, 1900, 2 Q. B. 597; 69 L. J. Q. B. 902; 83 L. T. 288; 64 J. P. 600; 48 W. R. 703, over-ruling *R. v. Larner*, 14 Cox C. C. 497: Arch. Cr. 562-589: Rose. Cr. 429-452.

Observe, that if A. falsely says that he is prepared to do a thing as an inducement to B. to do something else, that is a False Pretence because it is a false representation of an *Existing Fact* (*R. v. Gordon*, 23 Q. B. D. 354; 58 L. J. M. C. 117; 60 L. T. 872; 53 J. P. 807; *R. v. Pockett*, 40 S. J. 509). Those cases seem also to warrant the broad proposition that, an Existing Intention is an Existing Fact a false statement of which may be a False Pretence. In *R. v. Gordon* (as reported 23 Q. B. D. 360), Mathew, J., said, "The phrase that the deft 'was prepared' indicates an Existing Intention as distinguished from one that is prospective only"; and Wills, J., said, "I find it difficult to see why an allegation as to the present existence of a State of Mind may not be, under some circumstances, as much an allegation of an Existing Fact as an allegation with respect to anything else." At any rate, it seems fairly clear that if A. falsely says to B. that C. has the intention to do a thing, that is a false representation of an Existing Fact.

"False Colour or Pretence" of Process; *V. PROCESS.*

**FALSE REPRESENTATION.**—For examples of False Representation in a Co Prospectus; *V. Aaron's Reefs v. Twiss*, 1896, A. C. 273; 65 L. J. P. C. 54; 74 L. T. 794; *Components Tube Co. v. Naylor*, 1900, 2 I. R. 1, with which cases *cp Bellairs v. Tucker*, 13 Q. B. D. 562. *Vf*, Hamilton, 418 *et seq*: LEGAL FRAUD: NOTICE.

*Cp*, MISREPRESENT: FALSE PRETENCE: QUALITY.

**FALSE RUMOUR.**—False Rumour to enhance or deery prices; *V. REGRATOR: RIGGING.* False News; *V. 3 Edw. 1, c. 34, on whv* 2 Inst. 227; Steph. Cr. 66.

**FALSE STATEMENT.**—A "False Statement of FACT in relation to the personal Character or Conduct" of a CANDIDATE at a Parliamentary Election, s. 1, 58 & 59 V. c. 40, must be one "of Fact, as distinguished from a false statement of Opinion," and does not include an attack upon a candidate attributing to him non-patriotic motives in seeking for "a Stream of Facts" wherewith to confound the Government, *e.g.* in their Transvaal policy (*Ellis v. National Union of Conservative Associations*, 44 S. J. 750) or "a mere argumentative statement of the conduct of a public man, although it may be in respect to his private life" (per Pollock, B., *Sunderland*, 5 O'M. & H. 62, 63): *Vthle* hereon.

**FALSE SWEARING.**—"Every one commits a misdemeanor, who swears falsely before any person authorised to administer an oath upon a matter of public concern, under such circumstances that the false swearing if committed in a judicial proceeding would have amounted to perjury" (Steph. Cr. 95). *Cp*, PERJURY.

**FALSE TRADE DESCRIPTION.**—Quà Merchandize Marks Act, 1887, " 'False Trade Description,' means, a TRADE DESCRIPTION which

is false in a *Material Respect* as regards the goods to which it is applied; and includes, every Alteration of a Trade Description (whether by way of Addition, Effacement, or otherwise) where that alteration makes the Description false in a Material Respect;— and the fact that a Trade Description is a TRADE-MARK or part of a Trade-Mark shall not prevent such Trade Description being a False Trade Description, within the meaning of this Act” (subs. 1, s. 3). In determining whether a Description is false in a “Material Respect,” you must not resort to the doctrine of equivalents; therefore, to describe Cigarettes as “Hand-made” when they are machine-made is false in a “Material Respect,” though the cigarettes be found to be as pure, clean, and proper for all smoking purposes as they could have been if hand-made (*Kirshenboim v. Salmon*, 1898, 2 Q. B. 19; 67 L. J. Q. B. 601; 78 L. T. 658; 46 W. R. 573; 62 J. P. 439). *Vf*, *Lipton v. The Queen*, 32 L. R. Ir. 115; *Bishop v. Toler*, cited INTENT: *Williamson v. Tierney*, 17 Times Rep. 174; *Hooper v. Balfour*, 62 L. T. 646.

*Vh*, INNOCENTLY ACTED: INTENT TO DEFRAUD.

**FALSE WARRANTY.**—A “False Warranty” under s. 27 (3), Sale of Food and Drugs Act, 1875, is one false to the knowledge of the person giving it (*Derbyshire v. Houlston*, 1897, 1 Q. B. 772; 66 L. J. Q. B. 569; 76 L. T. 624; 45 W. R. 527; 61 J. P. 374). *V*. KNOWINGLY: WRITTEN WARRANTY.

**FALSEHOOD.**—*V*. ANANIAS.

**FALSELY ASSUMING TO ACT.**—“Merely filling up a Voting Paper without authority, and witnessing it as if signed by the voter, is not ‘falsely assuming to act’ in the name of the voter (*Bell v. Morson*, 43 J. P. 638). Signing a Voting Paper at an election for member of Board of Health, by direction of voter’s wife who has been authorised by her husband to sign it, is not ‘fabricating’ a vote (*Aberdare v. Hammett*, 44 L. J. M. C. 49; L. R. 10 Q. B. 162; 39 J. P. 598). Nor is attesting a wife’s signature of her husband’s name to a Voting Paper for Guardians (*Wickham v. Phillips*, 47 J. P. 260).” Stone, 24 ed., 220.

**FALSIFY.**—“Note, that ‘to falsifie,’ in legall understanding, is to prove false,—that is, to avoyd, or, as Littleton here (s. 149) saith, to defeat, in Latine *falsare, seu falsificare, falsum facere*” (Co. Litt. 104 b).

“Liberty to Surcharge and Falsify”; *V*. Dan. Ch. Pr. 420.

**FAMILIA.**—*V*. FAMILY.

“‘Familia,’ is sometimes taken by our Writers for a HIDE, sometimes called a *Manse*, sometimes CARUCATA or a *Plough-land* containing as much as one Plough and Oxen can till in one year” (Cowel).

**FAMILY.** — The primary legal meaning of "Family" is not equivalent to *familia* or *famille*, but means "Children" (per Jessel, M. R., *Pigg v. Clarke*, 45 L. J. Ch. 849; 3 Ch. D. 672; *Beales v. Crisford*, cited CASH: *Re Terry*, 19 Bea. 580; *Se, Sinnott v. Walsh*, 5 L. R. Ir. 27; *Vthle, Armstrong v. Armstrong*, 21 L. R. Ir. 119). Therefore, where there is a gift to the "Family" of a person who has *Children* living at the Testator's death, the word means exclusively the children of that person and does not include grandchildren or great-grandchildren (*Barnes v. Patch*, 8 Ves. 604; *Woods v. Woods*, 1 My. & C. 401; *Re Parkinson*, 20 L. J. Ch. 224; 1 Sim. N. S. 242; *Burt v. Hellyar*, L. R. 14 Eq. 160; 41 L. J. Ch. 430; *Pigg v. Clarke*, sup; *Re Muffett*, 56 L. J. Ch. 600; 56 L. T. 685; 51 J. P. 660; 3 Times Rep. 126; *Vf, Re Mulqueen*, 7 L. R. Ir. 127; *Re Battersby*, 1896, 1 I. R. 600; in *Elgood v. Cole*, 21 L. T. 80, a Grandchild was included although there were children); or wife (*Re Hutchinson and Tennant*, 8 Ch. D. 540; *Re Muffett*, sup); but an illegitimate child, treated and recognized as a child, would be entitled to participate as part of the "Family" (per James, L. J., *Lambe v. Eames*, 40 L. J. Ch. 448; 6 Ch. 597; *Humble v. Bowman*, 47 L. J. Ch. 62). *Sq*, Would the foregoing be the rule in a case where the person spoken of had children living at the date of the Testator's Will but none at his death? It should seem not; for a Will speaks as if executed immediately before death (1 V. c. 26, s. 24), and to construe "family" as "children" in the case supposed would be to work an intestacy.

The word "Family" may, however, without difficulty, be controlled by the context, and "is, in itself, a word of a most loose and flexible description" (per Kindersley, V. C., *Green v. Marsden*, 1 Drew. 651; 1 W. R. 512, 513); it "is a popular, and not a technical, expression" (per Wickens, V. C., *Burt v. Hellyar*, sup). Thus, where a testator directed his business to be carried on by his wife and son "for the mutual benefit of my Family" it was held that the wife was included (*Blackwell v. Bull*, 5 L. J. Ch. 251; 1 Keen, 176). So the word "Family" may, by the context, be controlled to mean "Posterity or DESCENDANTS" generally, as in *Williams v. Williams* (20 L. J. Ch. 280; 1 Sim. N. S. 358; *this* was doubted by Jessel, M. R., in *Pigg v. Clarke*, 45 L. J. Ch. 852; *Vf, Re Sargent*, inf); or to mean "Heirs" or "Next of Kin" (per Cranworth, V. C., *Williams v. Williams*, 20 L. J. Ch. 283; *V. Wms. Exs.* 989-991); or "Heir" or "heir-at-law" or "Heirs of the body" (*Doe d. Chattaway v. Smith*, 5 M. & S. 126; *Wright v. Atkyns*, 19 Ves. 299; *Griffiths v. Evan*, 11 L. J. Ch. 219; 5 Bea. 241; *Lucas v. Goldsmid*, 30 L. J. Ch. 935; 29 Bea. 657; 2 Jarm. 91-93); or "Blood Relations" (*Re Macleay*, 44 L. J. Ch. 441; L. R. 20 Eq. 186); or "Relations" (2 Jarm. 95; *Snow v. Teed*, 39 L. J. Ch. 420; L. R. 9 Eq. 622) or relations by marriage (*McLeroth v. Bacon*, 5 Ves. 158); or even rejected as surplusage (*Robinson v. Waddelow*, 5 L. J. Ch. 350; 8 Sim. 134; *Sethle*

questioned in *Re Parkinson*, sup), or as being too uncertain (*Doe d. Hayter v. Joinville*, 3 East, 172; Lewin, 143).

Obviously, where the person spoken of is *single*, the word "Family" cannot be construed as meaning his or her "Children," and accordingly the statutory Next of Kin would in such a case be denoted *quà* personalty (*Cruycys v. Colman*, 9 Ves. 319; *Grant v. Lynam*, 4 Russ. 292; 6 L. J. O. S. Ch. 129); and probably the heir-at-law would take the realty. It is submitted that the construction would be the same if the person spoken of were married but never had a child; and possibly also if he had had a child, but none living either at the date of the Will or at the death of the Testator. So also, though less strongly, it is submitted that the construction would be the same if the person spoken of had had a child living at the date of the Will but none at the death of the testator. But in *Snow v. Teed* (sup) James, V. C., held that a Power to a SPINSTER to appoint amongst "her own Family, or Next of Kin," enabled her to appoint to any relative.

Indeed, in all cases where there is a Power of Appointment amongst a person's "Family" the rule of *Harding v. Glyn* (cited RELATIONS) applies so that the donee of the Power is not restricted in his choice but may appoint to any relative of the person (*Grant v. Lynam*, sup).

*V. Re Sibery*, W. N. (68) 251; *Re Norman*, W. N. (79) 175; *Re Price*, W. N. (87) 216; and for a full consideration of this word 2 Jarm. 90-98; *Va*, Vaizey, 172; Watson Eq. 1403; Chitty Eq. Ind. 7694; and per Pearson, J., *Re Collins*, 55 L. J. Ch. 674.

As to when persons taking under it would take *per stirpes* and when *per capita*, *V. Wms. Exs.* 1384, 1385, *n* (a).

A devise to A. and his "Family" gives A. the Fee Simple (*Chapman's Case*, Dyer, 333; *Cowden v. Clerke*, Hob. 33; *Wright v. Atkyns*, 17 Ves. 261; T. & R. 143; *Doe d. Chattaway v. Smith*, 5 M. & S. 126). Probably, where the devise directs the land "to be kept in the Family as long as can be," an Entail is created (*Vh, Doe d. Wood v. Wood*, 1 B. & Ald. 518).

A devise of lands upon trust to distribute the rents "among certain Families (thereinafter named) according to their circumstances as in the opinion of the trustees they may need assistance," has been held a good Trust, and not void as a Charitable Use or as a Perpetuity or as being uncertain (*Liley v. Hey*, 11 L. J. Ch. 415; 1 Hare, 580; *Srthe, Gillam v. Taylor*, cited POOREST).

In an Order in Council to discontinue Burials in a Churchyard except to "Members of the Families of Parishioners," "Families" is equivalent to DESCENDANTS (*Re Sargent*, 15 P. D. 168).

V. HOGHENHINE.

**FAMILY ARRANGEMENT.**—S. 4 (1), S. L. Act, 1890; *V. Re Ailesbury*, 62 L. J. Ch. 1012; 69 L. T. 493; 42 W. R. 45.

**FAMILY MANSION.**—To an application, under Settled Estates Act, 1877, for an Order to sell two properties in one lot, it was objected that one of the properties was a Family Mansion. “The answer is, it is not. The whole property consists of a house and 165 acres, which were purchased in 1842, so that the whole is not sufficiently large to entitle it to be called a Family Mansion. There are only 165 acres of land, and it is not really a Family Mansion in the sense that there is anything in the shape of *pretium affectionis* about it at all” (per Jessel, M. R., *Re Spurway*, 48 L. J. Ch. 214; 10 Ch. D. 230: *Cp*, “Principal Mansion House,” s. 15, S. L. Act, 1882).

**FAMILY PHYSICIAN.**—Signifies the physician who usually attends and is consulted by the Members of a Family in the capacity of a physician (*Price v. Insree Co*, 17 Minn. 519). *Cp*, USUAL MEDICAL ATTENDANT.

**FANCY BREAD.**—*V.* FRENCH BREAD.

**FANCY WORD.**—A “Fancy Word not in common use,” quâ TRADE-MARK as used in the Patents, Designs, and Trade-Marks Act, 1883, 46 & 47 V. c. 57, s. 64, subs. 1 c, “must either have, to ordinary English people to whom this Act of Parliament is addressed, no meaning,—like the word ‘Eureka’ or the word ‘Aeilyton,’—or, if it has any meaning at all, it must be obviously meaningless when used as a Trade-Mark” (per Lindley, L. J., *Re Van Duzer*, 56 L. J. Ch. 377). “I think a word to be a ‘Fancy Word’ must be obviously meaningless as applied to the article in question. I think it must be a word fanciful in its application to the article to which it is applied in the sense of being so obviously and notoriously inappropriate as neither to be deceptive nor descriptive, nor calculated to suggest deception or description. Further than that, I think that the word must have an innate and inherent character of fancifulness which must not depend on evidence, and cannot be supported by evidence, to show that, in fact, it is neither deceptive nor descriptive, nor calculated to be deceptive or descriptive. What I mean is that a Fancy Word, in my opinion, must speak for itself; it must be a Fancy Word of its own inherent strength” (per Lopes, L. J., *Ib.* 378).

The following are *not* such “Fancy Words”;—

“Alpine” as applied to Cotton Embroidery (*Re Van Duzer*, 56 L. J. Ch. 370; 34 Ch. D. 623, disapproving *Re Alpine*, 54 L. J. Ch. 727; 29 Ch. D. 877: *Re Van Duzer*, was explained, *Re Boovil*, 1896, 2 Ch. 600; 65 L. J. Ch. 715):

“Apollinaris,” as applied to Water (*Re Apollinaris Co*, 1891, 2 Ch. 186; 61 L. J. Ch. 625; 65 L. T. 6; 8 Pat. Ca. 137):

“Beatrice,” as applied to Shoes (*Re Harris*, 9 Pat. Ca. 492):

“Ben Ledi,” as applied to Whisky (*Re Ainslie*, 4 Pat. Ca. 212):

"Bökol," as applied to Beer (*Davis v. Stribolt*, 59 L. T. 854; 6 Pat. Ca. 207):

"Britannia," as applied to Soap (*Hodgson v. Sinclair*, 9 Pat. Ca. 22):

"Brymbo," as applied to Steel (*Re Butt*, 6 Pat. Ca. 493):

"Carnival," as applied to Cigarettes (*Re Lloyd*, 10 Pat. Ca. 281):

"Electric," as applied to Velveteen (*Re Van Duzer*, sup):

"Electroid," as applied to Anti-fouling Composition (*Re Hannay*, 7 Pat. Ca. 46):

"Emollio," as applied to a Perfumer's Cream (*Re Grossmith*, 6 Pat. Ca. 180; 60 L. T. 612):

"Emolliolorum," as applied to an Emollient (*Re Talbot*, 70 L. T. 119; 63 L. J. Ch. 264; 42 W. R. 501):

"Friedrichshall," as applied to Water (*Re Apollinaris Co*, sup):

"Gem," as applied to Air-guns (*Re Arbenz*, 35 Ch. D. 248; 56 L. J. Ch. 524; 56 L. T. 252; 35 W. R. 527: *Va*, per Cotton, L. J., *Re Van Duzer*, sup):

"Granolithic," as applied to Stone (*Stuart v. Scottish Co*, 13 Sess. Ca. 4th Ser. 1):

"Hand Grenade Fire Extinguisher" (*Re Harden Co*, 55 L. J. Ch. 596; 54 L. T. 834):

"Herbalin," as applied to a Medicine (*Humphries v. Taylor Co*, 59 L. T. 820):

"Hunyadi Janos," as applied to Water (*Re Apollinaris Co*, sup):

"John Bull," as applied to Beer (*Re Paine*, 61 L. J. Ch. 365; 66 L. T. 642; 9 Pat. Ca. 130):

"Jubilee," as applied to Paper (*Tourgood v. Pirie*, 56 L. T. 394; 35 W. R. 729):

"Kokoko," as applied to Cotton Goods (*Re Jackson*, 60 L. T. 93; 6 Pat. Ca. 80):

"Manor," as applied to Tin Plates (*Re Thompson*, 6 Pat. Ca. 213):

"Melrose," as applied to a Hair Restorer (*Re Van Duzer*, sup):

"Monobrut," as applied to Champagne (*Re Vignier*, 61 L. T. 495; 6 Pat. Ca. 490):

"National Sperm," as applied to Candles (*Re Price Candle Co*, 54 L. J. Ch. 210; 27 Ch. D. 681):

"Parchment Bank," as applied to Paper (*Pirie v. Goodall*, cited NAME):

"Red, White and Blue," as applied to Coffee (*Re Hanson*, 37 Ch. D. 112; 57 L. J. Ch. 173; 57 L. T. 859; 5 Pat. Ca. 130):

"Reversi," as applied to a Game (*Waterman v. Ayers*, 57 L. J. Ch. 893; 39 Ch. D. 29; 59 L. T. 17; 37 W. R. 110):

"Sanitas," as applied to a Disinfectant (*Re Sanitas Co*, 58 L. T. 166; 4 Pat. Ca. 533):

"Self-Washer," as applied to Soap (*Lever v. Goodwin*, 36 Ch. D. 1; 57 L. T. 583; 36 W. R. 177):

“Shakspeare,” as applied to Cigars (*Re Banks*, 44 W. R. 32; 11 Times Rep. 506):

“Strathmore,” as applied to Whisky (per Cotton, L. J., *Re Van Duzer*, sup. commenting on *Blair v. Stock*, 52 L. T. 123):

“Tower,” as applied to Tea (*Tower Tea Co v. Smith*, 6 Pat. Ca. 165):

“Washerine,” as applied to Soap (*Burland v. Broxburn Co*, 42 Ch. D. 274; 58 L. J. Ch. 816; 61 L. T. 618; 6 Pat. Ca. 482):

“Zephyr Asiatic Walnut Pipe” (*Re Friedlunder*, 29 S. J. 397).

Geographical and Dictionary words might, when very odd and uncommon, have been “Fancy Words,” but they should have been avoided and must have been “obviously meaningless” (*Re Van Duzer*, sup).

The following *are* such “Fancy Words”; —

“Bovril,” as applied to Fluid Beef (*Re Bovril*, sup):

“Mazawattee,” as applied to Tea (*Re Densham*, 1895, 2 Ch. 176; 64 L. J. Ch. 634; 72 L. T. 614; 43 W. R. 515):

“Oomoo,” an Australian word as applied to Wine (*Re Burgoyne*, 61 L. T. 39).

S. 10, Patents, Designs, and Trade-Marks Act, 1888, 51 & 52 V. c. 50, substitutes an amended clause for s. 64 of the prior Act. This amending clause omits the phrase “Fancy Word” &c, and substitutes for it, —

“(d) An *Invented Word* or Invented Words; or

“(e) A word or words having no reference to the CHARACTER or Quality of the goods, and not being a GEOGRAPHICAL Name.”

These two clauses are not to be read together; they are independent of each other (*Eastman Co v. Comptroller of Patents*, 1898, A. C. 571; 67 L. J. Ch. 628; 79 L. T. 195; 47 W. R. 152, over-ruling *Re Farbenfabriken*, 1894, 1 Ch. 645; 63 L. J. Ch. 257). Under clause (e) “any word in the English language may serve as a Trade-Mark” provided it has no reference to the Character or Quality of the goods and is not a Geographical Name (per Ld Herschell, *Eastman Case*, sup); on the other hand, under clause (d) “an Invented Word or Invented Words” is “a separate, independent, and sufficient, condition of registration” (per Ld Macnaghten, *Ib.*), and, per H. L. in the same case, such a Word may have reference to the Character or Quality of the goods. But an “Invented Word” must really be one “new and freshly coined” (per Ld Macnaghten, *Ib.*), “it may no doubt sometimes be difficult to determine whether a word is an Invented Word or not. I do not think the combination of two English words is an ‘Invented Word,’ even although the combination may not have been in use before; nor do I think that a mere variation of the orthography or termination of a word would be sufficient to constitute an ‘Invented Word’ if to the eye or ear the same idea would be conveyed as by the word in its ordinary form. Again, I do not think that a Foreign word is an ‘Invented Word’ simply because it has not been current in our language. At the same time I am not pre-



pared to go so far as to say that a combination of words from foreign languages so little known in this country that it would suggest no meaning except to a few scholars might not be regarded as an 'Invented Word' " (per *Ld Herschell, Jb.*). *Vf, Re Linotype Co*, 1900, 2 Ch. 238; 69 L. J. Ch. 625; 82 L. T. 794.

The following *are* such "Invented Words"; —

"Magnolia," without more, as applied to a Metal (*Re Magnolia Metal Co*, 1897, 2 Ch. 371; 66 L. J. Ch. 598; 76 L. T. 672):

"Mazawattee," as applied to Tea (*Re Deunham*, *sup*):

"Savonol," as applied to Soap (*Re Field*, 44 S. J. 315, in *whc* Buckley, J., said the termination "ol" was unlike "ine" and was quite meaningless: *Vf, Field v. Wajel Syndicate*, 1900, 1 Ch. 651; 69 L. J. Ch. 365; 82 L. T. 231; 48 W. R. 390):

"Solio," as applied to Photographic Articles (*Eastman Co v. Comptroller of Patents*, *sup*):

"Tachytype," as applied to Typographical Machines (*Re Linotype Co*, *sup*):

The following have been held *not* such "Invented Words"; —

"Cellular," as applied to Cloth and other like materials (*Cellular Clothing Co v. Maxton*, 1899, A. C. 326; 68 L. J. P. C. 72; 80 L. T. 809):

"Eboline," as applied to Silk Goods (*Re Sact*, 1894, 3 Ch. 166; 63 L. J. Ch. 756):

"Magnolia Metal," as applied to a Metal (*Re Magnolia Metal Co*, *sup*):

"Pirle," as applied to Woollen Fabrics (*Re Ripley*, 78 L. T. 367):

"Satinine," as applied to Starch (*Re Meyerstein*, 59 L. J. Ch. 401; 43 Ch. D. 604):

"Somatose," as applied to a Pharmaceutical Product (*Re Farbenfabriken*, *sup*):

"Trilby," as applied to Ladies' Aprons, &c (*Re Holt*, 1896, 1 Ch. 711; 65 L. J. Ch. 142, 410: *See* WORD).

But in view of the judgments of the House of Lords in *Eastman's Case*, (*sup*), some of these latter decisions will, probably, require re-consideration: *Vh* 44 S. J. 548, 549.

V. WORD: NAME: INDIVIDUAL: DISTINCTIVE.

**FAR AS.** — *V.* SO FAR AS.

**FADELLEA.** — "Fardella; Ferdella; Fardendela; Fardingdela; Farding; Ferdingel; Farthindel; Farundel; Ferlingus — a Rood; Spelm" (Elph. 574: *Va*, Termes de la Ley, *Fardingdeale*).

**FARE.** — Quà Cheap Trains Act, 1883, 46 & 47 V. c. 34, " 'Fare,' includes all sums received or charged for the hire, fare, or conveyance of passengers upon or along any Railway" (s. 8). Payment for extra

comfort in "Reserved" carriages is part of the "Fare," and if it makes the whole payment more than *1d.* per mile the Ry Passenger Duty is payable (*A-G. v. Furness Ry*, 1899, 2 Q. B. 267; 68 L. J. Q. B. 623; 80 L. T. 710; 63 J. P. 326).

V. HIS FARE: REASONABLE.

**FARM.** — "The word 'Farm' or 'Ferme,' called in Latine *firma*, is a compound word and doth comprehend many things. And therefore by the grant of a Ferme, will pass a message and much land, meadow pasture, wood, &c, thereunto belonging or therewith used; for this word doth properly signify a capital, or principal, message and a great quantity of demesnes thereunto appertaining. Also by the grant of all Farmes, or all Fermes, it seems leases for years do pass" (Touch. 93: *Va*, Co. Litt. 5a: *Portman v. Mill*, 8 L. J. Ch. 161; 2 Russ. 570; 3 Jur. 356: *Goodtitle v. Paul*, 2 Burr. 1089: *Goodtitle v. Southern*, 1 M. & S. 299: *Wrotlesley v. Adams*, Plowd. 195: *Black v. Hill*, 32 Ohio St. 318: *Termes de la Ley*).

This definition treats the word "Farm" in its two-fold aspect: —

1. As a word of description: —
2. As an abstract phrase.

1. When a person speaks of his "Farm" *at* such a place, then the first part of the definition in the *Touchstone* applies, and as a word of description it is very strong. Thus in a devise of "my *freehold* farm and lands at" A., the word "farm" is the essential part of the description, and so much of the farm as is copyhold will pass as well as the freehold part (*Re Bright-Smith*, 55 L. J. Ch. 365; 31 Ch. D. 314; 54 L. T. 47; 34 W. R. 252); though perhaps if such a devise be accompanied with limitations inapplicable to leaseholds, leaseholds would not pass (*Hall v. Fisher*, 1 Coll. 47: *Srthe* and also *Stone v. Greening*, 13 Sim. 390, questioned by Ld Selborne in *Hardwick v. Hardwick*, 42 L. J. Ch. 636; L. R. 16 Eq. 168, and *Va*, *Re Bright-Smith*, sup: FREEHOLD).

So a devise of "my farm" called Whiteacre, *in the occupation of A.*, will pass parts of Whiteacre Farm not in A.'s occupation (*Goodtitle v. Southern*, sup: *Down v. Down*, 7 Taunt. 343); *secus*, if the words were "All those my lands at Whiteacre Farm in the occupation of A." (per Ld Cranworth, *Slingsby v. Grainger*, 7 H. L. Ca. 283; 28 L. J. Ch. 617). *Va*, *Whitfield v. Langdale* (1 Ch. D. 61; 45 L. J. Ch. 177), where a devise of "All that my Farm called H. in the parish of L., containing by estimation 80 acres more or less, in the occupation of J. C.," passed a farm called H. in J. C.'s occupation, containing 175 acres of which 155 acres, partly freehold and partly copyhold, were in L., and the rest was situate in an adjoining parish. *Vj*, *Burley v. Saint*, W. N. (71) 221.

2. When a person devises all his messages, farms, and hereditals, then it is not correct to say that, necessarily, Leases for years will pass. It is indeed said, on the authority of Co. Litt. 5a, and *Doe d. Belaysye v.*

*Lucan* (9 East, 448), that "the word 'Farm' is construed, according to its obvious meaning, as including houses, lands, and tenements, of every tenure" (1 Jarm. 784). But in *Holmes v. Milward* (47 L. J. Ch. 522), the word came before the Court as part of a residuary devise of "manors, messuages, farms, lands, tithes, tenements, hereditis, and real estate as well copyhold as freehold." And in giving judgment Fry, J., said, — "It is said that the word 'Farm' is an ambiguous word, and that it may as well mean the estate of the lessee as well as the estate of the lessor, and for that the case of *Lane v. Stanhope* (6 T. R. 345) has been pressed upon me. I have no hesitation in saying that where there is a gift of 'Farms,' with real estate, with limitations which import that the fee is given, that carries the interest in real estate only, and does not carry with it the leasehold interest in a farm. The word 'Farm' undoubtedly may mean the interest of the lessor or lessee. Apparently, to refer to the old definition given in Plowden (pp. 132, 169, 195), it primarily and more naturally means the interest of the lessor, but it may also mean the interest of the lessee. The emphatic meaning of the word 'Farm' is this. — that it means lands which have not been held in hand by the owner, but granted out and occupied by another person. Where that is the case, the interest of the lessor or lessee may pass by the description of 'Farm'; but where it is contained in a devise of real estate upon limitations which import the fee, I have no hesitation in saying it carries the fee simple farms, and fee simple farms only."

*Vf*, *Arkell v. Fletcher*, 10 Sim. 299; 3 Jur. 1099. *Cp*, LAND: TOWN PARK: HOLDING: TACK.

But "Farm" is oftentimes used in other senses than those already stated; e.g. "Farmers," in Statute of Marlbridge, c. 23, means Lessees, and sometimes "Farm" means a Rent reserved (*Wrotlesley v. Adams*, Plowd. 195: Termes de la Ley).

"Farm," in a Reservation (in a Lease of Sporting Rights) to each tenant on his "Farm"; *V. Newton v. Wilmot*, 10 L. J. Ex. 476; 8 M. & W. 711.

Wherever there is a right to EMBLEMENTS which though small is not frivolous, there you have a "Farm or Lands" within s. 1, 14 & 15 V. c. 25; a Cottage with about an acre of land partly a garden and partly sown with corn and planted with potatoes, is within such phrase (*Haines v. Welch*, cited RECOVER).

"Ordinary Agricultural Farm"; *V. AGRICULTURAL*.

*V. Meux v. Copley*, cited IMPROVEMENT.

**FARM BUILDING.**—*V. Wiltshier v. Cottrell*, 22 L. J. Q. B. 177; 1 E. & B. 674: FARMING BUILDINGS.

**FARM HOUSE.**—"Farm-houses," s. 25 (11), S. L. Act. 1882. includes a house for the Land Agent if it be really a farmer's house (*Re*

*Houghton*, 55 L. J. Ch. 37; 30 Ch. D. 102); but not such a house as is usually occupied by a superior Land Agent, e.g. one containing 2 Sitting Rooms, 5 Bedrooms, and a Bath Room (*Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23; 69 L. T. 393, *V. espy* jdgmt of Lopes, L. J.). *V.* FARMING BUILDINGS.

*V.* IMPROVEMENT.

**FARM LET.**—“To farm let”; as to origin of this phrase, *V.* 1 Platt, 2: 2 Bl. Com. 318.

**FARM SERVANT.**—A Land Agent is not a “Farm Servant” within s. 25 (10), S. L. Act, 1882; but a Farm Bailiff is (per Lopes, L. J., *Re Gerard*, cited FARM HOUSE): *Se, quã* Farm Bailiff, *Davis v. Berwick*, cited SERVANT IN HUSBANDRY.

**FARMER.**—A farmer is one who cultivates his own land, or that of another, for his own profit;—he is not, as such, a TRADESMAN; nor, though he do the labour with his own hand, is he a LABOURER (*R. v. Silvester*, 33 L. J. M. C. 79; nom. *R. v. Cleworth*, 4 B. & S. 927). *V.* FERMOR: CATTLE SALESMAN: DAIRY.

**FARMING BUILDINGS.**—A testamentary direction to repair “Farming Buildings,” includes FARM HOUSES (*Cooke v. Cholmondeley*, 4 Drew. 328). *V.* FARM BUILDING.

**FARMING MAN.**—*V. Reynolds v. Whelan*, 16 L. J. Ch. 434.

**FARMING STOCK.**—A bequest of “Farming Stock” includes not only all moveable property upon or belonging to the farm (Wms. Exs. 1051: *Harvey v. Harvey*, 32 Bea. 441), but also growing crops (per Jessel, M. R., *Re Roose, Evans v. Williamson*, 50 L. J. Ch. 197; 17 Ch. D. 696; 43 L. T. 719; 29 W. R. 230, following *Cox v. Godsalve*, 6 East, 604, *n*: *West v. Moore*, 8 East, 339: *Blake v. Gibbs*, 5 Russ. 13, *n*; and dissenting from *Vaisey v. Reynolds*, 6 L. J. O. S. Ch. 172; 5 Russ. 12). In *Re Roose* the M. R. said, “the reasoning of *Vaisey v. Reynolds* is quite untenable in the face of the previous decisions.”

In *Brooksbank v. Wentworth* (3 Atk. 64) a bequest of “Stock on Farm” was held, on a context, to include a lessee’s trade interest in a malt-house and a stock of malt.

*Vh, Bryant v. Easterson*, 5 Jur. N. S. 166: LIVE AND DEAD STOCK.

*V.* IMPLEMENT OF HUSBANDRY.

**FAST.**—“As fast as Steamer can deliver”; *V.* CUSTOMARY.

**FAST AND LOOSE.**—In the Greenland Whale Fisheries (and also in the Cumberland Inlet) there is a custom called “Fast and

Loose," by which "a person who first harpoons a fish and retains his hold of that fish until it is finally captured, is to be regarded as the proprietor of the fish, although the actual capture and killing of the whale may be accomplished by the assistance of other persons. But the rule also involves this condition, — that if the fish, after it has been harpooned, breaks away from the person who first harpooned it or if the fish is subsequently abandoned, that fish, though dying in consequence of the wound originally inflicted by the harpoon, is a 'Loose Fish' and becomes the property of the person who first finds it and takes possession of it. Nay, to such an extent has the rule been carried that, supposing a whale or any number of whales to be killed and the captors of those whales are driven by stress of weather to abandon them and to moor them to the ice or even to the land, if another ship, which has had no part in the capture, comes up and finds the whales in that position, that other ship's party may take possession of them and appropriate them as the captors" (per Westbury, C., *Aberdeen Arctic Co v. Sutter*, 4 Macq. 355; 10 W. R. 516<sup>†</sup>); that rule as to a "Loose" fish is not displaced by the original harpooner fixing a Drog to the whale, before it breaks away, and pursuing the fish, but only comes up to the fish after it has been killed and captured by some one else (*S. C.*).

**FASTENED.** — *V.* FIXED AND FASTENED.

**FATAL.** — A Fatal ACCIDENT occurs where it happens, though the resulting death is elsewhere, *e.g.* a "Fatal Accident in the Mine" occurs in the Mine where the injury is received, though the patient be removed to a hospital and die there (*Denaby Co v. Fenton*, 14 Times Rep. 268).

**FATHER.** — Father, Grandfather, Mother, Grandmother, Child, as those words are used in the statutes (43 Eliz. c. 2, s. 7; 59 G. 3, c. 12, s. 26) relating to the maintenance of Poor Relations, mean only such of those persons as are legitimately related to a poor person *by blood*, *e.g.* a man is not liable to maintain his Mother-in-law or his Daughter-in-law (*R. v. Munden*, Strange, 3 ed., 189, and cases cited in note: *R. v. Dempson*, *Ib.* 954). *Vf*, MOTHER: CHILD: PARENT.

**FAULT.** — *V.* ACTUAL FAULT: DEFAULT.

Quà Sale of Goods Act, 1893, " 'Fault,' means, wrongful act or default" (subs. 1, s. 62).

A "Fault" by a Servant, includes "NEGLIGENCE, in the ordinary acceptance of the term" (per Cockburn, C. J., *Lond. & N. W. Ry v. Grace*, 2 C. B. N. S. 559).

**FAULTS.** — "With all faults," means all the faults that are consistent with a thing being what it is described (*Shepherd v. Kain*,

5 B. & Ald. 240; commented on in *Taylor v. Bullen*, 5 Ex. 779; 20 L. J. Ex. 23). Subject to that qualification, a sale "with all Faults" will release the vendor from responsibility for honest mis-statements that are capable of being detected by a rigid examination (*Baglehole v. Walters*, 3 Camp. 154; *Schneider v. Heath*, Ib. 506; *Pickering v. Dowson*, 4 Taunt. 779; *Taylor v. Bullen*, 20 L. J. Ex. 21; 5 Ex. 779; *Ward v. Hobbs*, 48 L. J. Q. B. 281; 4 App. Ca. 13; 27 W. R. 114; 40 L. T. 73; 43 J. P. 252). *Vh*, Dart, 102, 103.

In *Taylor v. Bullen* (sup), a Ship was sold "without any allowance for deficiency in length, height, quantity, quality, or any Defect or Error whatever," and Pollock, C. B., said, — "The real meaning of the contract is this, and the defendant may be supposed to have used this language to the plaintiff: — 'There is a vessel now lying at St. Katharine's Dock, I describe her as being the *Intrepid*, A. 1, and call her a teak-built barque; but I expressly give you notice that I do not mean to warrant anything; I point out what I mean, go and look at the Inventory of stores, examine and judge for yourself, but understand that you must take her with all her faults and without allowance for any defect or error whatever'" (5 Ex. 784; 22 L. J. Ex. 23).

An Auction of goods "with all Faults, Imperfections, or Errors of Description," refers to the quantity, as well as the quality, of the goods (per Coltman, J., *Pettitt v. Mitchell*, 4 M. & G. 838).

But "with all faults" does not mean "with all frauds," and such a stipulation will not avail as against material representations that are false to the vendor's knowledge and fraudulently made by him, nor as against defects which he has fraudulently concealed, nor (possibly) as against material defects within his knowledge but upon which he has been silent and which were undiscoverable by examination (Add. C. 568, 569, and cases there cited. *Va*, Benj. 657: 1 Maude & P. 53, *n* (*w*): *Freeman v. Baker*, 3 L. J. K. B. 17; 5 B. & Ad. 797), nor as against faults which go to the substance of the whole consideration, *e.g.* where eggs sold are all, or nearly all, unmerchantable (*Peters v. Planner*, 11 Times Rep. 169).

"Faults or Errors in Navigation"; *V. NAVIGATION*.

*V. ERROR*.

**FAVOUR.** — "The words 'in Favour of,' when used in relation to a BILL OF EXCHANGE, do not ordinarily mean that it is payable only to the person in whose favour it is said to be drawn; the words are equally applied when the Bill is made payable to his Order. The words 'in favour of,' therefore, are properly paraphrased by 'payable to or to the order of'" (per Ld Herschell, *Meyer v. Decroix*, 1891, A. C. 520; 61 L. J. Q. B. 205: *Sv*, per Ld Bramwell, *S. C.*).

"In favour or against any particular Co or Person," s. 90, 8 V. c. 20; *V. Manchester, S. & L. Ry v. Denaby Colliery*, 4 Ry & Can Traffic Ca. 453; 54 L. J. Q. B. 103.

**FAVOURABLY.**—An undertaking in writing to “favourably consider” an application, falls short of a Contract and cannot be aided by oral evidence (*Montreal Gas Co v. Vasey*, 1900, A. C. 595; 69 L. J. P. C. 134; 83 L. T. 233).

**FEALTY.**—“‘Fealtie,’ is a Service, called in Latine *fideltas*, and shall be done in such manner, viz., — the Tenant shall hold his right hand upon a book and shall say to his Lord, — ‘I shall be to you faithfull and true and shall beare to you faith for the lands and tenements which I claime to hold of you, and truely shall doe to you the Customes and Services that I ought to do to you at the termes assigned, So helpe mee God,’ — and shall kisse the booke; but he shall not kneele as in the doing HOMAGE” (Termes de la Ley). *Vf*, Co. Litt. Bk. 2, ch. 2: Cowel: Jacob: 1 Bl. Com. 367: 5 Encyc. 325.

**FEAR.**—*V. DURESS.*

**FEBRUARY.**—*V. NEXT.*

**FED.**—“To be fed”; *V. AGIST.*

**FEE.**—“Fee commeth of the French *fief* (i.e.) *prædium beneficium*, and legally signifieth inheritance” (Co. Litt. 1 b: *Vf*. Wright’s Tenures, 3: 1 Preston on Estates, 2 ed., 42). “Fee in our legall understanding signifieth, that the land belongs to us and our heires, in respect whereof the owner is said to be seized in fee” (Co. Litt. 1 b: *V. SEIZED*). “So, if Fee (only) is mentioned, it shall be intended Fee-simple” (*Metcalf’s Case*, 11 Rep. 39 a). *Vf*, Termes de la Ley: Cowel.

*V. FEE SIMPLE: TAIL: BASE: QUALIFIED.*

“Fees and Reasonable Expenses”; *V. ELECTRIC INSPECTOR.*

“Salaries, Fees, Wages, Perquisites, or Profits,” R. 1, Sch E, Income Tax Act, 1842; *V. INCOME.*

“Fee,” *quâ* Public Offices Fees Act, 1879, 42 & 43 V. c. 58; *V. s. 7.*

**FEE FARM.**—“‘Fee Farme,’ is when a Tenant holdeth of his Lord in FEE SIMPLE, paying to him the value of halfe, or of the third part, or of the fourth part, or of the other part of the land by the yeere. And hee that holdeth by fee farme, ought not to pay reliefe, or do any other thing that is contained in the feoffment but FEALTY, for that belongeth to all kinde of Tenures” (Termes de la Ley: *Vf*, Cowel). The substance of that definition remains to this day, — Fee Farm lands being those which are held in Fee Simple subject to a Fee Farm Rent, and (generally) made subject to covenants for repair, and insurance, and as to user and occupation. *Vf*, Copinger & Munro on Rents, 21, 22: Co. Litt. 143 b, and Hargrave’s note (5) thereto: 2 Bl. Com. 43: QUIT RENT: CHIEF: RENT.

A Sub-Perpetuity Grant made under the Church Temporalities Acts

(3 & 4 W. 4, c. 37; 4 & 5 W. 4, c. 90; 6 & 7 W. 4, c. 99) is a "Fee Farm *Grant*" within s. 1, Redemption of Rent (Ir) Act, 1891, 54 & 55 V. c. 57 (*Re Hamilton and Casey*, 1894, 2 I. R. 224).

*Note.* Renewable Leaseholds in Ireland are converted into Fee Farm Lands (12 & 13 V. c. 105; 31 & 32 V. c. 62).

#### FEE OR REWARD.—*V.* REWARD.

**FEE SIMPLE.**—"FEE" "signifieth inheritance," "and Simple is added, for that it is descendible to his heires generally, that is, simply, without restraint to the heires of his body, or the like. . . . This word (simple) properly excludeth both conditions and limitations, that defeat or abridge the fee" (Co. Litt. 1 b). *Vf*, *Termes de la Ley*: Jacob. So in the United States, a Fee Simple is a pure Inheritance in perpetuity, clear of Qualification or Condition and freely alienable (*Lott v. Wyckoff*, 1 Barb. N. Y. 575).

Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, " 'Fee Simple,' includes estates held under FEE FARM Grants and Perpetuity Grants" (s. 95).

Prior to the Conv & L. P. Act, 1881, the apt and necessary word of limitation for conveying a fee simple by *Deed*, was "heirs" (Co. Litt. 8 b: Wms. R. P. ch. 3: *Vf*, *Re Hudson*, 72 L. T. 892), even if it was merely Equitable (*Re Whiston*, 1894, 1 Ch. 661; 63 L. J. Ch. 273). That word still remains apt, though it is no longer necessary, "the words 'in fee simple' without the word 'heirs'" will suffice (s. 51, Conv & L. P. Act, 1881).

But though the old rule had its influence on *Wills* (*Hill v. Brown*, 1894, A. C. 125; 63 L. J. P. C. 46; 70 L. T. 175), yet "a conviction that the rule is generally subversive of the actual intention of testators, always induced the Courts to lend a willing ear whenever a plausible pretext for a departure from it could be suggested" (2 Jarm. 268, *wh*, to p. 286, *V.* for a collection of the cases as to what words, in a Will, would pass the fee simple prior to the Wills Act, 1837: *Vf*, *Watkins* on Conveyancing, 8 ed., 353 *et seq.*). And now by s. 28 of that Act a simple devise of real estate will pass the fee simple without any words of limitation; unless a CONTRARY INTENTION shall appear.

It remains however that a *Grant* to a man "and his heir," in the singular number, gives only a life estate (Co. Litt. 8 b: Touch. 106); and that in a conveyance to a Corporation Sole the limitation to create a fee simple, must, generally, be to the incumbent and his "successors" (Co. Litt. 8 b, 94 b), "but a fee will pass to a Corporation *Aggregate* without the word 'successors,' and sometimes to a Corporation Sole" (*Hargrave's n* to Co. Litt. 8 b, referring to Co. Litt. 94 b; Vin. Ab. *Estate*, L).

"SEIZED in Fee Simple or in Fee Tail in Possession," s. 8, 17 G. 3,



c. 26 (Registration of Annuities Act); *V. Halsey v. Hales*, 7 T. R. 194.

A Power to Trustees to purchase heredit "of an indefeasible estate of inheritance in Fee Simple in Possession," authorises the purchase of Freehold GROUND RENTS (*Re Peyton*, 38 L. J. Ch. 477; L. R. 7 Eq. 463).

A Power to Trustees to sell "the Fee Simple and Inheritance" of *Pews or Seats in a Church* only enables them to sell an Easement, and does not enable them to sell the soil on which a Pew or Seat stands, so as to convey a Parliamentary Freehold (*Hinde v. Charlton*, 36 L. J. C. P. 79; L. R. 2 C. P. 104; *Bramfitt v. Roberts*, 39 L. J. C. P. 95; L. R. 5 C. P. 224). *V. PEW.*

Tenant in Fee Simple of a RENT, s. 1, 32 H. 8, c. 37; *V. Prescott v. Boucher*, 3 B. & Ad. 849.

**FEE TAIL.** — *V. TAIL: HEIRS OF THE BODY: FEE SIMPLE.*

**FEEDING.** — *V. KEEPING: PASTURES: AGIST.*

**FEEL AGGRIEVED.** — *V. AGGRIEVED.*

**FEINTS.** — Quà Spirits Act, 1880, " 'Feints,' means, spirits conveyed into a feints receiver " (s. 3).

**FELLOW SERVANT.** — *V. COMMON EMPLOYMENT.*

**FELLOWS.** — A bequest to "the Fellows and Demies of Magdalen College, Oxford," held void, it being uncertain whether the gift was charitable, or for individuals (*A-G. v. Sibthorp*, 2 Russ. & My. 107).

**FELO DE SE.** — "A *felo de se* is he that deliberately puts an end to his own existence; or commits any unlawful, malicious, act the consequence of which is his own death, as if attempting to kill another he runs upon his antagonist's sword; or shooting at another the gun bursts and kills himself" (4 Bl. Com. 189, cited by Pollock, C. B., *Clift v. Schwabe*, 3 C. B. 476). *V. SUICIDE.*

**FELON.** — A Felon is a person convicted of FELONY, whose offence is unpardoned and whose sentence, or any part of it, remains to be suffered.

When a person, convicted of Felony, has suffered the punishment, it is actionable to call him a "Felon" (*Leyman v. Latimer*, 47 L. J. Ex. 470; 3 Ex. D. 352; 26 W. R. 305; 37 L. T. 819), for the "endurance of the punishment does away with the Felony" (per Brett, L. J., *ib.*, citing *Cuddington v. Wilkins*, Hob. 67, 81). A FREE PARDON also purges the offence (2 Hale P. C. 278; *Hay v. Tower Jus.*, cited CONVICTED).

*V. HEALER: PROHIBITED.*

**FELONY: FELONIOUSLY.**—These are terms of Art, which, in an INDICTMENT, cannot be supplied by equivalent expressions (Co. Litt. 391 a: 4 Bl. Com. 307: *Holford v. Bailey*, 18 L. J. Q. B. 109; 13 Q. B. 426: *R. v. Gray*, 33 L. J. M. C. 78; 1 L. & C. 365; 12 W. R. 350); but their redundant or inapt use would not vitiate (*R. v. Butterworth*, 25 L. T. 850). *Cp.* PERJURY. In a Warrant of Commitment (*R. v. Judd*, 2 T. R. 255), or in a PLEADING (*Beatson v. Rushforth*, 3 Price, 48) their omission would not be fatal so long as the proper facts are stated.

In an Indictment, "Felony" is not *nomen collectivum* meaning felony generally, but points to one particular charge of felony (*Ryalls v. The Queen*, 11 Q. B. 795: *Campbell v. The Queen*, *Ib.* 799, 837). *Cp.* MISDEMEANOR.

In *Termes de la Ley* it is said of serious crimes,—"It seemeth that they are called Felonies, . . . of the ancient English word 'fell' or 'fierce,' because that they are intended to be done with a cruell, bitter, fell, fierce, or mischievous, minde."

*Vf.* Spelm.: Cowel: 4 Bl. Com. 95: 2 Turner's Hist. of Anglo-Saxons, 508: 1 Pollock & Maitland's Hist. of English Law, 284-286, 2 *Ib.* 125, 463-468, 476-478, 509: 5 Encyc. 327: *Coombes v. Queen's Proctor*, 16 Jur. 821.

"Every CRIME, the perpetrator of which is, by any statute, ordained to have judgment of 'Life or Member' is a Felony: although the word *Felony* be not contained in the statute" (Dwar. 673, citing 1 Inst. 391: 2 Inst. 434: 3 Inst. 91): but an offence is not made Felony if only prohibited "under Pain of forfeiting Body and Goods," or of being "at the King's will for Body, Lands, and Goods" (Dwar. 673, citing 1 Inst. 391: 3 Inst. 145: Hob. 270).

"Felony," as respects Scotland; V. s. 28, Interp Act, 1889; 26 & 27 V. c. 28, s. 2; 45 & 46 V. c. 56, s. 36; 46 & 47 V. c. 3, s. 9.

"'Felony' and 'Misdemeanor' are different things; and on an Indictment for one there can be no conviction of the other except by express statutory enactment. At Common Law upon an Indictment for a Felony there may be a conviction for another and cognate felony; and so on an Indictment for a Misdemeanor a conviction of a like misdemeanor" (per Coleridge, C. J., *R. v. Thomas*, L. R. 2 C. C. R. 145: *Vf.* *R. v. Woodhall*, 12 Cox C. C. 240).

#### FEMALE. — V. MALE.

"Heirs Female," in Marriage Articles, means Daughters (Lewin, 123, 124, citing *West v. Errissey*, 2 P. Wms. 349), and, probably, that is the general meaning of the phrase (*Chambers v. Taylor*, 6 L. J. Ch. 193; 2 My. & C. 376). *Vh.* per Jessel, M. R., *Bathurst v. Stanley*, 4 Ch. D. 263: *Majendie v. Carruthers*, 2 Bligh, 692.

"Heirs Female of the body," held by H. L. to mean, Heirs Portioners

of Trust Funds who take as a CLASS (*MacKenzie v. Devonshire*, 1896, A. C. 400, reversing *Sutherland's Trustees v. Cromartie*, 22 Rettie, 839).

In Acts after 1850, words importing the Masculine gender include Females, unless a contrary intention appears (s. 1 *a*, Interp Act, 1889); but a CONTRARY INTENTION does appear wherever there is a Public Function to be exercised: therefore, a woman cannot exercise the Parliamentary Franchise (*Chorlton v. Lings*, 38 L. J. C. P. 25; L. R. 4 C. P. 374), or the Office of County Councillor (*Beresford-Hope v. Sandhurst*, 58 L. J. Q. B. 316; 23 Q. B. D. 79; 61 L. T. 150; 37 W. R. 548; 53 J. P. 805; *De Souza v. Cobden*, 60 L. J. Q. B. 533; 1891, 1 Q. B. 687; 65 L. T. 130; 39 W. R. 454; 55 J. P. 565). V. LEGAL INCAPACITY: MAN: SEX.

#### FEMALE LINE. — V. MALE LINE.

**FEME.** — Though "Feme," in the old phrase "Baron and Feme," denotes a Wife (Jacob, *Baron and Feme*), yet, *semble*, its proper meaning is a Woman noble by birth (V. Index to Hargrave & Butler's Notes to Co. Litt., *Feme*). Taking a still wider view, "Feme" means simply, a Woman; for we say "Feme Sole" to indicate a woman unmarried, and "Feme Covert" a wife.

Apart from a context "Feme Sole" may mean (1) a woman who has been married but has become single, or (2) a woman who has never been married. But where an enactment says that a Married Woman shall, as regards PROPERTY, be considered as a "Feme Sole," that means, not that her status shall be changed but, that quæ such property she shall "be competent to act in all respects as if she were a Feme Sole" (per Thurlow, C., *Hulme v. Tenant*, 1 Bro. C. C. 16: *Vj.* per Westbury, C., *Taylor v. Meads*, cited SEPARATE USE). S. 25, Matrimonial Causes Act, 1857, enacts an express provision to that effect (per Stirling, J., *Hope v. Hope*, 1892, 2 Ch. 336; 61 L. J. Ch. 441: *Vj.* "During the Coverture," sub DURING); but though no such express provision is contained in the M. W. P. Act, 1882, the same effect results from the enactment (s. 1) that a Married Woman may dispose of property (which by ss. 2, 5 of the Act becomes her Separate Property) "in the same manner as if she were a Feme Sole." Those words do not mean "in the same manner as if her husband were dead," but mean "in the same manner as a Feme Sole could do." Therefore, her Will executed during Coverture, is effectual (without Re-Execution) to pass her after-acquired Separate Property, whether such property is hers by a Settlement or under the Act (*Re Bowen*, 1892, 2 Ch. 291; 61 L. J. Ch. 432, distinguishing *Willcock v. Noble*, 44 L. J. Ch. 345; L. R. 7 H. L. 580); and, on the other hand, if she leaves her Separate Realty undisposed of, her husband's Estate by the CURTESY arises and is unaffected

(*Hope v. Hope*, sup, applying by analogy *Cooper v. Macdonald*, 47 L. J. Ch. 373; 7 Ch. D. 288). Still her Will, made during Coverture, did not pass property acquired after the Coverture was over unless it were republished after such acquisition (*Willock v. Noble*, sup: *Re Smith*, 60 L. J. Ch. 57; 45 Ch. D. 632; 63 L. T. 448; 39 W. R. 93); but that is altered by s. 3, M. W. P. Act, 1893, on *who*, *Re Wylie*, cited MADE.

"As a Feme Sole for the purposes of Contract," s. 26, Matrimonial Causes Act, 1857, means, that a woman to whom that section applies may contract in the same way as a man; therefore, her obligations contracted whilst the section applied to her, are payable out of a fund appointed by her under a GENERAL POWER (*Re Hughes*, 1898, 1 Ch. 529; 67 L. J. Ch. 279; 78 L. T. 432; 46 W. R. 502, distinguishing *Re Roper*, cited SEPARATE PROPERTY).

V. COVERTURE: HUSBAND: WIFE: WIDOW: WOMAN: UNMARRIED: NEIFE: WAIVE.

**FENCE.** — A DITCH may be a "Fence," e.g. quâ a requirement in an Enclosure Act to fence Allotments (*Ellis v. Arnison*, 1 B. & C. 70; 1 L. J. O. S. K. B. 24).

V. SECURELY: "Party Fence Wall," sub PARTY WALL.

**FENCE MONTH.** — "'Fence Moneth,' is a forrest word, and signifies the time in which it is forbidden for any man to hunt in the forrest or to goe into it to disquiet the wild beasts" (Termes de la Ley). *Vf*, Cowel.

**FENLAND.** — "Fenland," in a contract description, implies its liability to usual fen land taxes (*Barraud v. Archer*, 2 Sim. 433; 2 Russ. & My. 751).

**FEOFFMENT.** — The excellent and "ancient manner of Conveyance" (Co. Litt. 49 a) called Feoffment, was a CONVEYANCE of "Lands, Houses, or other Corporall Things which be hereditary" in FEE SIMPLE accompanied by LIVERY of Seizin (Termes de la Ley: Co. Litt. 48 a, b, 49 a); and, before the Statute of Frauds, it might have been "by Deed, or without Deed" (Litt. s. 59).

"'Feoffment' is derived of the Word of Art *feodum*, *quia est donatio feodi*; for the antient writers of the law called a Feoffment *donatio*, of the verb *do* or *dedi*, which is the aptest word of feoffment. And that word Ephron used (Genesis, 23) when he enfeoffed Abraham, saying, — 'I give thee the field of Macphelah over against Mamre, and the cave therein I give thee, and all the trees in the field and the borders round about'; all which were made sure unto Abraham for a possession in the presence of many witnesses" (Co. Litt. 9a: from what version of the Bible is this an exact excerpt?).

*Vf*, as to the word, Mad. Formul. Angl. Dissert. p. 3: 2 Inst. 110: And as to the Document itself, Butler's *n* Co. Litt. 271 b: Touch. ch. 9: Jacob: 2 Bl. Com. 310, 311, App. i: Wms. R. P. ch. 7: Goodeve, 364 *et seq*: 5 Encyc. 330-332.

*Cp*, GIFT.

**FERÆ NATURÆ.** — Animals *feræ naturæ*; *V*. GAME, *Animals*: DOMESTIC ANIMAL.

**FERDELLA.** — *V*. FARDELLA.

**FERLINGUS.** — *V*. STADIUM.

**FERMEHOLT.** — In Lancashire, a farm (Co. Litt. 5 a).

**FERMENTED.** — "Fermented Liquor" includes British Wine (*Harris v. Jenns*, cited WINE). *Vf*, SPIRITS.

**FERMOR.** — The term "Fermors" in the Statute of Marlbridge, 52 H. 3, c. 23, s. 2, comprehends all who hold by lease for life or lives or for years, by deed or without deed (2 Inst. 300, cited in *Woodhouse v. Walker*, 49 L. J. Q. B. 611; 5 Q. B. D. 404). *V*. FARMER.

**FERRY.** — Is a HIGHWAY common to all the Queen's subjects paying the Toll (*North Shields Ferry Co. v. Barker*, 2 Ex. 149), usually across a large and deep river. It is "a liberty by prescription, or the King's grant, to have a boat for passage upon a river for carriage of horses and men for reasonable toll (Termes de la Ley). Its termination must be in places where the public have rights, — as towns, or vills, or highways leading to towns or vills (per Abinger, C. B., *Huzzey v. Field*, 4 L. J. Ex. 243; 2 Cr. M. & R. 442: *Va*, *Newton v. Cubitt*, 12 C. B. N. S. 32; on app. 13 Ib. 864; 31 L. J. C. P. 246); or on ground that the owner of the ferry has a right to use: but he need not have the ownership of the soil at either end of the ferry (*Peter v. Kendal*, 6 B. & C. 703), nor need he have the ownership of the water (*Ipswich v. Brown*, Savile, 11, 14). *V*. the form of the King's grant in *Pim v. Curell*, 6 M. & W. 236. As to Ferries, *Va*, Woolrych on Ways, 363: Coulson & Forbes on the Law of Waters, ch. 8, 486; and *V*. the cases collected 7 Fisher, Dig. 786, Tit. *Way*" (Elph. 575). *Va*, *Trotter v. Harris*, 2 Y. & J. 285: *Letton v. Goodden*, 35 L. J. Ch. 427; L. R. 2 Eq. 123; 14 L. T. 296: *Londonderry Bridge Commrs v. M'Keever*, 27 L. R. Ir. 464: 5 Encyc. 332-334.

A ferry is a FRANCHISE, and, as such, a Hereditament as that word is ordinarily used (per Cockburn, C. J., *R. v. Cambrian Ry*, cited HEREDITAMENT); though whether it is a heredit within the def of "LANDS" in s. 3, Lands C. C. Act, 1845, is doubtful (*G. W. Ry v. Swindon, &c Ry*, cited HEREDITAMENT).

A Public Ferry is a Public THOROUGHFARE (*Coulbert v. Troke*, cited NEAREST).

As to when a Ferry is "Injurious Affected," within s. 68, Lands C. C. Act, 1845; *V. Hopkins v. G. N. Ry*, cited INJURIOUSLY AFFECTED.

V. OPPOSITION FERRY.

FÊTE-DAY. — V. HOLIDAY.

FEU. — Quà Conveyancing (Scot) Act, 1874, 37 & 38 V. c. 94, " 'Feu' shall include 'Blench,' and 'Feu Duty' shall include 'Blench Duty' " (s. 3).

Quà Scotch Entail Acts, " 'Feu Charter' shall comprehend a Feu Contract, a Feu Disposition, and every other Grant of a like kind " (31 & 32 V. c. 84, s. 2).

FEUD. — Fens are "stipendiary lands" (2 Bl. Com. 46), *i.e.* lands held of a lord on condition of rendering Suit or Service; the antithesis are ALLODIAL lands: *Vh.* 2 Bl. Com. ch. 4: TENURE: FEALTY: FEE FARM.

FICTITIOUS. — A Fictitious Name cannot be the name of a registered proprietor of land (*Gibbs v. Mercer*, cited PROPRIETOR, towards end).

"Fictitious or Non-existing Person," s. 7 (3), Bills of Exchange Act, 1882; *V. Bank of England v. Vagliano*, 1891, A. C. 107; 60 L. J. Q. B. 145; 64 L. T. 353; 39 W. R. 657; 55 J. P. 676; *Clutton v. Attenborough*, 1897, A. C. 90; 66 L. J. Q. B. 221; 75 L. T. 556; 45 W. R. 276; *Edinburgh Ballarat Co v. Sydney*, 7 Times Rep. 656.

"Fictitious Stamp"; Stat. Def., Post Office (Protection) Act, 1884, 47 & 48 V. c. 76, s. 7, *vth*, LAWFUL EXCUSE: *Va*, 61 & 62 V. c. 46, s. 1.

"Illusory or Fictitious," R. 12, Ord. 12, R. S. C.; *V. Hoar v. Loe*, W. N. (84) 241: Ann. Pr.

FIDUCIARY CAPACITY. — An Admor who has received money under Letters of Admon, and who is ordered to pay it over in a suit for the recall of the Grant, holds it "in a fiduciary capacity" within s. 4 (3), Debtors Act, 1869 (*Tinnuchi v. Smart*, 54 L. J. P. D. & A. 92; 10 P. D. 184; *Re Hickey*, 35 W. R. 53; 55 L. T. 588); so of moneys in the hands of a Receiver (*Re Gent*, 58 L. J. Ch. 162; 37 W. R. 151; 60 L. T. 355; 40 Ch. D. 190), or Agent (*Hutchinson v. Hartmont*, W. N. (77) 29), or Manager (*Marris v. Ingram*, 49 L. J. Ch. 123; 13 Ch. D. 338), or moneys due on an account from the London Agent of a Country Solr (*Litchfield v. Jones*, 36 Ch. D. 530; 57 L. J. Ch. 100; 36 W. R. 396; 58 L. T. 20), or proceeds of sale in the hands of an Auctioneer (*Crowther v. Elgood*, 34 Ch. D. 691; 56 L. J. Ch. 416; 56 L. T. 415; 35 W. R. 369), or moneys which in the compromise of an action have been ordered

to be held on certain trusts (*Preston v. Etherington*, 37 Ch. D. 104; 57 L. J. Ch. 176; 36 W. R. 49; 58 L. T. 318). *Secus*, of Partnership moneys received by a partner (*Piddocke v. Burt*, 1894, 1 Ch. 343; 63 L. J. Ch. 246; 70 L. T. 553; 42 W. R. 248). *Note*: that the period to be looked to is that of the act done (*Re Strong*, 32 Ch. D. 342; 55 L. J. Ch. 553). *V. POSSESSION.*

*V. BRIBERY: CESTUI QUE TRUST: 5 Encyc. 336-339.*

**FIFTH.** — *V. SEVENTH.*

**FIGURES.** — In s. 64, Patents, &c Act, 1883, amended by s. 10, Patents, &c Act, 1888, "Figures" means Numerals (*Ex p. Stephens*, 3 Ch. D. 659; 46 L. J. Ch. 46; 24 W. R. 963).

**FILED.** — " 'Filed,' held to be included in return of *non est inventus*" (Dwar. 673, citing *Hunter v. Caldwell*, 10 Q. B. 69; 16 L. J. Q. B. 274).

A document is "filed" when delivered to the proper officer to be filed (*Peterson v. Taylor*, 15 Georgia, 484).

*V. R. 10, Ord. 19; R. 4, Ord. 67, R. S. C.*

**FILICETUM.** — "A brackie ground" (Co. Litt. 4b); "or place where such things as fern grow" (Touch. 95).

**FILTH.** — *V. DUST.*

**FILTHY WATER.** — "SEWAGE or Filthy Water," conveyed by a Local Authority into a natural STREAM, &c, under s. 17, P. H. Act, 1875, is to be "freed from all Excrementitious or other Foul or Noxious Matter such as would affect or deteriorate the purity and quality of the water in such Stream," &c; — that does not mean that the effluent is to be rendered pellucid. Sand or Silt (from a road) which to a great extent gets in by natural drainage is not such Matter; nor does it "affect or deteriorate" the water in the Stream if that water be already charged with Sand and Silt from natural causes of which no one can complain (*Durrant v. Branksome*, 1897, 2 Ch. 291; 66 L. J. Ch. 517, 653; 76 L. T. 739; 46 W. R. 134). But Sand or Silt cast by a private individual into a FISHERY so as to cause a DISTURBANCE, is actionable (*Fitzgerald v. Firbank*, 1897, 2 Ch. 96; 66 L. J. Ch. 529; 76 L. T. 584). *If*, as to this section, *Ainley v. Kirkheaton*, 60 L. J. Ch. 734; 55 J. P. 230. *Cp.* POLLUTING: SOLID MATTER.

**FINAL.** — Where a statute provides that a specified determination shall be "final," — *e.g.* the decision of a Poor Law Auditor quâ an untaxed Solr's Bill, s. 39, 7 & 8 V. c. 101. — it is not open to review even though the Court does not see the reasonableness of the provision (*R. v. Napton*, 25 L. J. Q. B. 296; nom. *R. v. Hunt*, 6 E. & B. 408).

"Final to all Intents and Purposes"; *V. INCONSISTENT.*

**FINAL AND CONCLUSIVE.**—When a decision is “Final and Conclusive,” an appeal is taken away (*Waterhouse v. Gilbert*, 54 L. J. Q. B. 440; 15 Q. B. D. 569; *Bryant v. Reading*, 17 Q. B. D. 128; *Lyon v. Morris*, 19 Q. B. D. 139; 56 L. J. Q. B. 378; 57 L. T. 324; 35 W. R. 707).

So, a Co. Co. Order in an Interpleader, which by s. 157, Co. Co. Act, 1888, is “final and conclusive” between the parties, not only determines claims actually made but also bars those which might then have been made, *e.g.* damages against the Execution Creditor (*Death v. Harrison*, 40 L. J. Ex. 26; L. R. 6 Ex. 15; 23 L. T. 495; *Hills v. Renny*, 5 Ex. D. 313; 49 L. J. Ex. 710; *Davies v. Wise*, 50 L. J. Q. B. 655).

Justices’ decision as to what is “Refuse” “shall be final and conclusive,” s. 129, Metro Man. Act, 1855; *V. R. v. Bridge*, cited REFUSE.

By the Poututu Jurisdiction Act, 1889, of New Zealand, Jurisdiction quâ certain lands was given to the Native Land Court whose decisions were to be “final and conclusive”; held, on the principle *generalia specialibus non derogant*, that the right of re-hearing under the Native Land Acts was not excluded (*Barker v. Edger*, 1898, A. C. 749; 67 L. J. P. C. 115; 79 L. T. 151).

*Cp.* CONCLUSIVE EVIDENCE, under which make Note that *Re Dudley Trums Co* was disapproved in *A-G. v. Bournemouth*, 71 L. J. Ch. 730.

#### FINAL APPORTIONMENT.—*V.* APPORTION.

**FINAL ARRANGEMENTS.**—A. wrote “I will accept the appointment of Surgeon to your vessel on the terms you propose,” adding “I expect to be in London Saturday or Monday when I will call on you and make *final arrangements*”; held, that the contract was complete, though A. did not call to make final arrangements (*Richards v. Hayward*, 2 M. & G. 574; 10 L. J. C. P. 108; 2 Sc. N. R. 670). *Cp.* SUBJECT TO.

**FINAL AWARD.**—Quâ Drainage (Ir) Act, 1846, 9 & 10 V. c. 4, “Final Award” means, the Award required to be made by the Comms after the completion of the Works (s. 44).

**FINAL DECREE.**—A Cognovit, by a defendant, was not to be enforced “until after Final Hearing” of a Chancery Suit, “and the Final Decree or Order to be pronounced thereon”; at the Hearing the Decree was for the plaintiff, but the defendant appealed; held, that the appeal must be determined before there was a “Final Decree” (*Jones v. Reynolds*, 1 A. & E. 384; 3 N. & M. 465). *Cp.* FINAL JUDGMENT.

Where money paid into Court by the debt with a Denial of Liability has been accepted by the plt in satisfaction, a refusal to make an Order for the taxation and payment of the plt’s Costs, is a “Final Decree or



Order" within s. 26, Co. Co. Admiralty Jurisdiction Act, 1868 (*The Vulcan*, 1898, P. 222; 67 L. J. P. D. & A. 101; 47 W. R. 123).

V. FINAL ORDER.

"Final Decree of Nullity of Marriage, or Dissolution of Marriage," s. 5, Matrimonial Causes Act, 1859, applies, in its ordinary meaning, to ANY Marriage declared null or dissolved even though that be on the ground of Impotency (*Dormer v. Ward*, cited PROPERTY).

**FINAL DISCHARGE.**—Remainder of FREIGHT to "become Due" on "Final Discharge" of the vessel, is not payable if the vessel be lost and final discharge rendered impossible (*Byrne v. Pattinson*, Abbott, 619-621).

**FINAL DIVIDEND.**—*V. Murdock v. Heath*, 80 L. T. 50.

**FINAL DIVISION.**—The "Final Division" of a testator's estate, means the end of the dead year (*Spencer v. Duckworth*, 50 L. J. Ch. 774; 18 Ch. D. 634).

**FINAL EXAMINATION.**—Of an Articled Clerk to a Solr; Stat. Def., 40 & 41 V. c. 25, s. 4; 61 & 62 V. c. 17, s. 4.

**FINAL HEARING.**—*V. FINAL DECREE.*

**FINAL JUDGMENT.**—"No Order, Judgment, or other Proceeding, can be final which does not at once affect the status of the parties, for whichever side the decision may be given; so that if it is given for the plaintiff it is conclusive against the defendant, and if it is given for the defendant it is conclusive against the plaintiff" (per Brett, L. J., *Standard Discount Co v. La Grange*, 3 C. P. D. 71; 47 L. J. C. P. 3; *Salaman v. Warner*, 1891, 1 Q. B. 734; 60 L. J. Q. B. 624; 64 L. T. 598; 39 W. R. 547). "Where any further step is necessary to perfect an Order or Judgment, it is not final but interlocutory" (per Baggallay, L. J., *Collins v. Paddington*, 5 Q. B. D. 370. *Vf, Metcalfe's Case*, 11 Rep. 38 a). *Cp, FINAL DECREE.*

For the purposes of the Bankry Act, 1883, s. 4 (1g)—*V. OBTAINED*—a judgment for default in pleading is "final" quâ the taxed costs thereon, although it may provide for an enquiry as to damages which remains unexecuted (*Ex p. Moore, Re Faithfull*, 54 L. J. Q. B. 190; 14 Q. B. D. 627; 33 W. R. 438); so of a jdgmt on part of the matters in litigation (*Re Alexander*, 1892, 1 Q. B. 216; 61 L. J. Q. B. 377; 66 L. T. 133; 40 W. R. 202). *V. CREDITOR.*

But a mere *Order* cannot be a "Final Judgment," because it is not a Judgment at all, even though it put an end to the matter with which it deals. Thus an *Order* dismissing an action for *non pros* is not a Judgment, and costs thereon could accordingly not be due on a "Final Judgment" (*Cremetti v. Crom*, 48 L. J. Q. B. 337; 4 Q. B. D. 225; *Ex p.*

*Strathmore, Re Riddell*, 20 Q. B. D. 512; 36 W. R. 532; 57 L. J. Q. B. 259; 58 L. T. 838); nor is a Garnishee Order absolute, a "Final Judgment" (*Ex p. Chinery*, 53 L. J. Ch. 662; 12 Q. B. D. 342; 32 W. R. 469; 50 L. T. 342); nor an Order for Costs (followed by taxation) on an action which has been stayed (*Ex p. Schmitz*, 53 L. J. Ch. 1168; 12 Q. B. D. 509; 50 L. T. 747; 32 W. R. 812); nor an Order for Costs on a Divorce decree (*Re Binstead, Ex p. Dale*, 1893, 1 Q. B. 199; 62 L. J. Q. B. 207; 68 L. T. 31; 41 W. R. 452); nor, *semble*, an Order for Costs in a Probate action (*Re Arkell*, 61 L. T. 90; 6 Morr. 182); nor a "Balance Order" upon a contributory to a Company (*Ex p. Whinney, Re Sanders*, 13 Q. B. D. 476; *Ex p. Grimwade*, 55 L. J. Q. B. 495; 17 Q. B. D. 357); nor an Order for Alimony *pendente lite* (*Re Henderson*, 20 Q. B. D. 509; 36 W. R. 567; 57 L. J. Q. B. 258; 58 L. T. 835); nor an Order under s. 102, Bankry Act, 1883, setting aside a Deed of Assignment (*Ex p. Official Recr.*, 1895, 1 Q. B. 609; 64 L. J. Q. B. 429; 72 L. T. 312; 43 W. R. 305).

But if an ACTION be brought on an Order for Costs (*Philpott v. Le-hain*, 35 L. T. 855) and plt obtains jdgmt therein, that is a "Final Jdgmt" (*Re Boyd*, 1895, 1 Q. B. 611; 64 L. J. Q. B. 439; 72 L. T. 348, disapproving *Re Shirley*, 58 L. T. 237).

A Final Jdgmt within the Bankry Act, 1883, means one against the debtor personally, and therefore does not include a jdgmt against a Married Woman which only affects her Separate Estate (*Ex p. Lester, Re Lymes*, 1893, 2 Q. B. 113; 62 L. J. Q. B. 372; 68 L. T. 739; 41 W. R. 488).

A judgment obtained by a deceased person is not "final" in the hands of his executor, within the Bankry Act, until leave to issue execution thereon has been obtained under R. 23 (a), Ord. 42, R. S. C. (*Ex p. Woodall*, 53 L. J. Ch. 966; 13 Q. B. D. 479; 32 W. R. 774).  
 V. CREDITOR: OBTAINED.

*Note.* A Final Jdgmt, quâ Bankry Notice under s. 4, Bankry Act, 1883, must be obtained in England (*Re Bankry Notice*, 1898, 1 Q. B. 383; 67 L. J. Q. B. 308; 77 L. T. 710; 46 W. R. 325).

Under the R. S. C., Ord. 58, R. 15, the following are Final Judgments:— On Pleading admissions (*Emmet v. Emmet*, 13 Ch. D. 489); Default in Pleading (*Ex p. Moore, Re Faithfull*, sup: *See, Gossett v. Campbell*, W. N. (77) 134); Foreclosure under Ord. 15 (*Smith v. Davies*, 55 L. J. Ch. 496; 54 L. T. 478; 31 Ch. D. 595); Findings by judge of Ch. D. on facts, the issues on which have *not*, at the commencement of the trial, been agreed shall be first tried (*Lowe v. Lowe*, 48 L. J. Ch. 383; 10 Ch. D. 432; distinguishing *Krehl v. Burrell*, 48 L. J. Ch. 252; 11 Ch. D. 146).

As to finality of Judgment in Ecclesiastical Cases; *V. Ridsdale v. Clifton*, 46 L. J. P. C. 27; 2 P. D. 276.

"Judgment of the Court under this section shall be final," s. 28, 40 V.

(Canada) c. 41, abolished the Canadian right of appeal to the Queen (*Cushing v. Dupuy*, 49 L. J. P. C. 63; 5 App. Ca. 409).

Final Judgment of a Foreign Court; *V. Re Henderson*, 57 L. J. Ch. 367; 37 Ch. D. 244; 58 L. T. 242.

“Final Judgment” quâ Sheriff Courts in Scotland; Stat. Def., 39 & 40 V. c. 70, s. 3.

V. FINAL ORDER: ORDER: FURTHER ORDER: INTERLOCUTORY: JUDGMENT: LIBERTY TO SIGN.

**FINAL ORDER.**—The judgment of a Divisional Court on an appeal from a County Court in an Interpleader Issue, is a “Final Order” within R. 3, Ord. 58, R. S. C. (*Hughes v. Little*, 56 L. J. Q. B. 96; 18 Q. B. D. 32; 55 L. T. 476; 35 W. R. 36); so is an Order on Further Consideration (*Cummins v. Heron*, 46 L. J. Ch. 423; 4 Ch. D. 787; unless action is not thereby concluded, *Re Johnson*, 42 Ch. D. 505); or an Order at a trial by jury depriving a successful party of his Costs (*Marsden v. Lancashire and Yorkshire Ry*, 50 L. J. Q. B. 318; 7 Q. B. D. 641); or an Order on a Case stated by an Arbitrator, which provides that in one event the case is to be referred back, but in the other judgment is to be entered (*Shubrook v. Tufnell*, 9 Q. B. D. 621; 30 W. R. 740; distinguishing *Collins v. Paddington*, 5 Q. B. D. 370). But an Order under R. 3, Ord. 25, R. S. C., dismissing an action on a point of law raised by the pleadings is not “final” within R. 3, Ord. 58, because had the decision been the other way the action would have proceeded (*Salaman v. Warner*, 1891, 1 Q. B. 734; 60 L. J. Q. B. 624; 64 L. T. 598; 39 W. R. 547, applying the test laid down by Brett, L. J., *Standard Discount Co v. La Grange*, cited FINAL JUDGMENT): *Vf*, Ann. Pr. V. INTERLOCUTORY.

An Appeal against an Order, in its nature “final,” when made in Chambers, must be made within 21 days (s. 50, Jud. Act, 1873: *Re Lewis*, 31 Ch. D. 623; 34 W. R. 420; *Re Johnson*, 42 Ch. D. 505; 37 W. R. 765; 59 L. J. Ch. 99; *Re Giles*, 59 L. J. Ch. 226; 43 Ch. D. 391; 62 L. T. 375; 38 W. R. 273).

V. FINAL DECREE: FINAL JUDGMENT.

**FINAL PORT.**—A Marine Policy until the ship arrives “at her Final Port of Discharge,” covers her only until she arrives at her Port of Discharge; and does not protect her while she is a seeking vessel from island to island (*Moore v. Taylor*, 3 L. J. K. B. 132; 1 A. & E. 25; 3 N. & M. 406). In such a connection “Final Port of Destination or of Discharge,” means, “the Port where the ship is intended to, and does, discharge the bulk of her cargo; and the Last Port of Discharge is, not the Port where the ship may have been originally destined to discharge any part of her cargo but, the Place where she does actually discharge the whole of it (*Preston v. Greenwood*, 4 Doug. 28, 33; *Moffatt v. Ward*,

Ib. 29): 'Last Port of Discharge,' means, 'the Last Practicable Friendly Port of Discharge'; per Bayley, J., *Browne v. Vigne*, 12 East, 283" (5 Encyc. 340: *See*, there cited, *Oliverson v. Brightman*, 8 Q. B. 781).

*Vh.*, *Crocker v. Sturge*, cited PORT: LAST.

**FINAL SAILING.** — "Final Sailing," in a Charter-party, means, the final departure of the vessel from the port named, with her papers on board, and everything complete for the purpose, and with the view of proceeding on her voyage without intending to come back; even though, without clearing the fiscal limits of the port, she may have been driven back to it by stress of weather (*Roelandts v. Harrison*, 23 L. J. Ex. 169; 9 Ex. 444: *Hudson v. Bilton*, 26 L. J. Q. B. 27; 6 E. & B. 565: *Price v. Livingstone*, 53 L. J. Q. B. 118; 9 Q. B. D. 679: *Sailing-Ship "Garston" Co v. Hickie*, 15 Q. B. D. 587).

*V.* SAIL: DEPART.

**FINALLY DETERMINED.** — *V.* HEARD AND FINALLY DETERMINED.

**FINANCE.** — *V.* MANAGEMENT.

**FINANCED.** — Goods "financed"; *V.* *Bank of China v. American Trading Co*, 1894, A. C. 266; 63 L. J. P. C. 92; 70 L. T. 849.

**FINANCIAL.** — "Financial Agent," as a description of Occupation *quà* Bills of Sale Acts, 1878 and 1882; *V.* *Sharp v. McHenry*, 38 Ch. D. 428; 57 L. J. Ch. 961; 57 L. T. 606.

"Financial Period"; Stat. Def., 54 & 55 V. c. 62, s. 3.

"Financial Position"; *V.* BUSINESS TRANSACTIONS.

"Financial Relations"; Stat. Def., Loc Gov (Ir) Act, 1898, s. 71 (2).

**FINANCIAL YEAR.** — In all Acts of Parliament passed after the 31 Dec 1889, " 'Financial Year' shall, unless the contrary intention appears, mean, — as respects any matters relating to the Consolidated Fund or moneys provided by Parliament, or to the Exchequer, or to Imperial Taxes or Finance, — the twelve months ending the 31st day of March" (s. 22, Interp Act, 1889). So, "Financial Year," means, the year ending 31st March in the following Acts, — 36 & 37 V. c. 49 (s. 6); 37 & 38 V. c. 9 (s. 6); 45 & 46 V. c. 72 (s. 26); 50 & 51 V. c. 16 (s. 19).

*Quà* Life Assurance Companies Act, 1870, 33 & 34 V. c. 61, " 'Financial Year,' means, each period of 12 months at the end of which the balance of the accounts of the Company is struck; or, if no such balance is struck then, each period of 12 months ending with the 31st day of December" (s. 2).

*Quà* Public Libraries Act, 1892, 55 & 56 V. c. 53, " 'Financial Year,'

means, the period of 12 months for which the accounts of a Library authority are made up" (s. 27).

"Current Financial Year"; *V.* 50 & 51 *V. c.* 16, s. 19.

*V.* LOCAL FINANCIAL YEAR.

**FIND.** — "Find a Purchaser"; *V.* PROCURE, last par.

**FINDING.** — "Finding unto the said apprentice sufficient Meat, Drink, Lodgings, and other necessaries"; "finding" means, to supply gratis (*Abbott v. Bates*, 45 *L. J. C. P.* 117).

*V.* BEING.

Quà Criminal Procedure Act, 1851, 14 & 15 *V. c.* 100, " 'Finding of the INDICTMENT,' " includes, " 'the Taking of an Inquisition,' 'the Exhibiting of an Information,' and 'the Making a Presentment' " (s. 30). *V.* VERDICT.

A trust to apply funds towards "finding a MASTER" is well executed by applying part of the funds in rebuilding and repairing the school-room and school-house (*A-G. v. Stamford*, 2 *Swanst.* 592).

**FINE.** — " 'Fine,' *finis*. Here (*Litt.* s. 194) signifieth a pecuniarie punishment for an offence, or a contempt committed against the King, and regularly to it imprisonment appertaineth. And it is called *finis*, because it is an end for that offence. And in this case a man is said *facere finem de transgressione*, &c, *cum rege*, to make an end or fine with the King for such a transgression. It is also taken for a summe given by the tenant to the lord for CONCORD and an end to be made. It is also taken for the highest and best assurance of lands, &c" (*Co. Litt.* 126 b). *If*, *Termes de la Ley*: *Cowel*: *Jacob*: 5 *Encyc.* 341-343: for form of Fine of Lands, *V.* 2 *Bl. Com. App.* xiv. (*p.*, REDEMPTION).

A Royal Charter which grants "Fines," passes Fines for not appearing in proper time according to the tenor of Recognizances, but not the money payable on Estreated Recognizances (*Re Nottingham Corp*, cited AMERCIAMENT).

A "Fine, or sum of money in the NATURE of a Fine" (which, by s. 3, *Conv & L. P. Act*, 1892, is not, without express provision, to be exacted for a License to assign a Lease) means, "something which is to go irrevocably into the pocket of the person who requires it as a condition of consenting to an assignment" (per *Russell, C. J.*, *Re Cosh*, 66 *L. J. Ch.* 30); accordingly, it was there held that a Lessor may require a guarantee for the performance of unfulfilled covenants by deposit of a sum of money as a condition for such a License, because such a deposit, being returnable on the performance of the covenants, is not a "Fine" or "in the Nature of a Fine" (*Re Cosh*, 1897, 1 *Ch.* 9; 66 *L. J. Ch.* 28; 75 *L. T.* 363; 45 *W. R.* 117).

Quà *Conv & L. P. Act*, 1881, " 'Fine,' includes Premium or Foregift, and any payment, consideration, or benefit in the Nature of a Fine, Pre-

mium, or Foregift" (s. 2, ix). To the like effect is the def of "Fine" in s. 7, Rating Act, 1874, 37 & 38 V. c. 54, and s. 10 (ii), S. L. Act, 1882.

Quà Sum Jur Act, 1879, 42 & 43 V. c. 49, " 'Fine,' includes any pecuniary penalty, or pecuniary forfeiture, or pecuniary compensation, payable under a CONVICTION" (s. 49).

Other Stat. Def. — 63 & 64 V. c. 25, s. 6.

Conveyance of land by levying a Fine; *V. Co. Lit.* 120 b, 121 a, and note thereon by Hargrave: 2 Bl. Com. 348 *et seq.*: *Wms. R. P.* ch. 2: 5 Encyc. 343-346. These Fines were abolished by Fines and Recoveries Act, 1833.

*V. AMERCIAMENT: ARBITRARY FINE: CRIME: REASONABLE FINE.*

**FINE AND RANSOM.** — "The punishment of 'Fine and Ransom' is a single pecuniary penalty" (Maxwell, 427, citing *Co. Litt.* 127 a).

*V. RANSOM.*

**FINE ARTS.** — *V. SCIENCE.*

**FINE BARLEY.** — *V. BARLEY.*

**FINIS.** — *V. FINE.*

**FINLAND.** — Gulf of Finland; *V. BALTIC.*

**FINLAY'S ACT.** — The Supreme Court of Judicature Act, 1890, 53 & 54 V. c. 44.

**FIRE.** — "Loss or damage occasioned by Fire," in a Fire Policy, are words to be construed as ordinary people would construe them. "They mean loss or damage either by ignition of the article consumed, or by ignition of part of the premises where the article is: in the one case there is a loss, in the other a damage, occasioned by Fire" (per Byles, J., *Everett v. London Assree*, 19 C. B. N. S. 133; 34 L. J. C. P. 301; 13 W. R. 862). "Fire" means, in this connection, an actual burning directly causing the injury, for *In jure non remota causa, sed proxima spectatur* (Bac. Max. Reg. 1).

Thus neither artificial nor solar heat (*Austin v. Drewe*, 6 Taunt. 436; 2 Marsh. 130: per Byles, J., *Everett v. London Assree*, sup), nor lighting, nor an explosion of gunpowder, or of fire-damp, or of a steam-engine, nor the discharge of ordnance, nor a projectile from either a volcano or a gun, is "Fire" within a Fire Policy, unless there be an actual setting on fire directly causing the injury insured against (*Everett v. London Assree*, sup). *Vj*, Porter on Insurance, 3 ed., 121-126.

But "any loss resulting from an apparently necessary and *bonâ fide* effort to put out a fire, whether it be by spoiling the goods by water or throwing the articles of furniture out of window or even the destroying of a neighbouring house by an explosion for the purpose of checking

the progress of the flames, in a word, every loss that clearly and proximately results, whether directly or indirectly, from the fire is within the policy" (per Kelly, C. B., *Stanley v. Western Insree*, L. R. 3 Ex. 74; 37 L. J. Ex. 73; 17 L. T. 513; 16 W. R. 369; *Vthc*, GAS). But, on the authority of some American cases, it has been stated that if a fire has not actually reached the premises whence articles are removed, the damage occasioned by such removal would not be occasioned by "Fire," even though the removal was under the reasonable apprehension that the fire would reach the premises in which the articles were (*Porter*, 131; *Vf*, *Marsden v. City & County Assree*, 35 L. J. C. P. 60; L. R. 1 C. P. 232; 14 W. R. 106; 13 L. T. 465).

A Marine Insree on FREIGHT against "Fire, and all other Perils, Losses, and Misfortunes," covers loss through discharge of a cargo of coal to avoid imminent spontaneous combustion; for although not strictly speaking a loss by "fire" yet it is a loss *ejusdem generis* and covered by "all other Perils," &c (*The Knight of St. Michael*, 1898, P. 30; 67 L. J. P. D. & A. 19; 78 L. T. 90; 46 W. R. 396).

*Note.* A Marine Insree against Fire remains valid though the fire be occasioned by the negligence of the Master or Mariners (*Busk v. Royal Ex. Assree*, 2 B. & Ald. 73; *Dixon v. Sadler*, 9 L. J. Ex. 48; 5 M. & W. 405; 8 Ib. 895; *Vthc*, per Smith, L. J., *Trinder v. Thames & Mersey Insree*, 1898, 2 Q. B. 123).

"Fire," in an exception to a covenant to repair, is not, in an open contract to sell the Lease, to be extended by adding "or other casualty" (*Crosse v. Morgan*, 60 L. T. 703; 37 W. R. 543).

V. SET FIRE. *Vh*, *Bunyon on Fire Insurance*.

**FIRE ON BOARD.**—An Exception in a Bill of Lading of "Fire on Board," does not take away the liability of the owners of the ship to GENERAL AVERAGE; it only relates to their contract as Common Carriers (*Schmidt v. Royal Mail S. S. Co.*, 45 L. J. Q. B. 646).

"The protection afforded by the 26 G. 3, c. 86, s. 2, in cases of fire, was confined to cases in which the fire arose on board the ship, and, consequently, did not extend to a casual fire occurring on board a lighter employed by the shipowners to convey the goods from the shore to the ship" (1 Maude & P. 80, citing *Morewood v. Pollok*, 1 E. & B. 743; 22 L. J. Q. B. 250). *V. FIRE*.

**FIREARM.**—*V. GUN: ATTEMPT: LOADED ARM: 5 Encyc. 347.*

**FIRE-BOTE.**—*V. BOTE.*

**FIREPLUG.**—"Such Fireplug," s. 40, 10 & 11 V. c. 17, means, fireplugs fixed at the request of the Authority sought to be charged (*Grand Junction W. W. Co. v. Brentford*, 1894, 2 Q. B. 735; 63 L. J. Q. B. 717).

*Vh*, 5 Encyc. 354. *Vf*, PLUG.

**FIRE-RESISTING.**—Qua London Bg Act, 1894, "Fire-resisting Material" "means, any of the materials and things" described in its 2nd Sch (subs. 36, s. 5).

V. INCOMBUSTIBLE.

**FIREWORKS.**—In *Bliss v. Lilley* (32 L. J. M. C. 3; 3 B. & S. 128; 7 L. T. 319) Wightman, J., held that Fog-Signals were "Fireworks" within ss. 6 and 7, 23 & 24 V. c. 139; but Cockburn, C. J., said that "'Fireworks' must refer to things that are made for amusement," and Blackburn, J., was of the same opinion. Cockburn, C. J., also asked,—"Take the case of a shell or a rocket used in war, could you call that a 'Firework'?" Cp, EXPLOSIVE.

**FIRM.**—"The word 'Firm,' I believe, like many mercantile terms, is derived from an Italian word, which means simply 'Signature,' and it is as much the name of the house of business as John Nokes or Thomas Stiles is the name of an individual. The name of a Firm is a very important part of the GOODWILL" (per Wood, V. C., *Charlton v. Douglas*, 28 L. J. Ch. 841; Johns. 174; 7 W. R. 365).

**FIRMA BURGI.**—V. Madox, *Firma Burgi*: 1 Stubbs, Const. Hist., 4 ed., 445: Elph. 575: 1 Pollock & Maitland's Hist. of English Law, 635-638, 653, 650.

**FIRST.**—V. IN THE FIRST PLACE.

An Appellant from Justices, s. 2, 20 & 21 V. c. 43, has to TRANSMIT the Case to the Court "*first giving*" the prescribed Notice to the Respondent; accordingly, such Notice must precede the transmission of the Case (*Ashdown v. Curtis*, 31 L. J. M. C. 216: *Edwards v. Roberts*, 1891, 1 Q. B. 302; 60 L. J. M. C. 6; 55 J. P. 439).

**FIRST ACCRUED.**—Within 12 years after the right of action "shall have first accrued," s. 1, Real Property Limitation Act, 1874, 37 & 38 V. c. 57; *Vh*, ss. 2 and 3, 3 & 4 W. 4, c. 27, and as to both Acts, V. *Randall v. Stevens*, 2 E. & B. 641; 23 L. J. Q. B. 68: *Irish Land Commission v. Junkin*, 24 L. R. Ir. 40: *Ecclesiastical Commrs v. Treemer*, cited ESTATE AND INTEREST. The new title obtained by a Mtgee by FORECLOSURE "first accrues" at the date of the Order Absolute, and not at the date of the mtgee (*Heath v. Pugh*, 51 L. J. Q. B. 367; 50 Ib. 473; 7 App. Ca. 235; 6 Q. B. D. 345).

V. ACCRUE: *Cestui que Trust*, sub CESTUI: TENANT AT WILL.

**FIRST AND NEAREST.**—"First and Nearest of Kindred"; V. *Leigh v. Leigh*, cited NAME. Cp, NEXT OF KIN.

**FIRST AND READIEST.**—Agreement to pay an Annuity out of the "First and Readiest of MEANS"; V. *Bannatyne v. Ferguson*, 1896, 1 I. R. 149, 162.



**FIRST BORN.** — *V.* FIRST SON: ELDEST.

**FIRST CHARGE.** — A Debenture charging all the property, present and future, of a Company, and being a FLOATING SECURITY, although expressed to be a "First Charge," will give a First Charge as against general creditors for the time being, but not as against a subsequent specific mortgagee, even if only equitable, whose security has been duly created (*Wheatley v. Silkstone Co*, 54 L. J. Ch. 778; 29 Ch. D. 715).

The "First Charge" in favour of Debentures given by the (New Zealand) East and West Coast, &c Ry and Railways Construction Act of 1884, only operates against Creditors of the Co, and does not militate against the right of the Government under the Act of 1881 to take possession of the Ry and retain it as Government property in case the Co should make default in completing the Ry, — such a Right is paramount and not a Charge at all (*Coates v. The Queen*, 1900, A. C. 217; 69 L. J. P. C. 26; 82 L. T. 162).

**FIRST CLASS.** — *Semble*, the amount of accommodation implied by the expression "First Class Station," depends on the number of passengers using the railway station (*Hood v. N. E. Ry*, 5 Ch. 525; 17 W. R. 1085).

**FIRST COUSIN.** — A person's First Cousin is the child of his uncle or aunt; and only persons standing in that relationship to him will take under a gift to his "First Cousins"; first cousins once removed will not be comprised (*Sanderson v. Bailey*, 8 L. J. Ch. 18; 4 My. & C. 56; *Stoddart v. Nelson*, 25 L. J. Ch. 116; 6 D. G. M. & G. 68; *Glazier v. Foyster*, 39 S. J. 656; *Vf*, 2 Jarm. 152), unless there be no first cousins properly so called (1 Jarm. 153; Wms. Exs. 964).

*V.* COUSIN: SECOND COUSIN: COUSIN GERMAN.

**FIRST DEMISED.** — "Land which when first demised was Demesne"; *V.* DEMESNE, at end.

**FIRST DISCLOSED.** — *V.* s. 85, 24 & 25 V. c. 96: DISCLOSE.

**FIRST DULY PAID.** — *V.* HAVING.

**FIRST FRUITS.** — "First Fruits," *Primitia*, are the profits of every Spirituall Living for a yeere, which were anciently given to the Pope, but by 26 H. 8. c. 3, translated to the King" (*Termes de la Ley*).

By 5 Anne, c. 24, and 6 Anne, c. 27, Benefices under £50 per annum were discharged of First Fruits. By 2 & 3 Anne, c. 11, the First Fruits of the larger Benefices were settled for the establishment of QUEEN ANNE'S BOUNTY.

*Vh*, Jacob: 10 Encyc. 614-616: ANNATS.

**FIRST INVENTOR.** — The grant of a Patent must be “to the True and First Inventor” (Statute of Monopolies, 21 Jac. 1, c. 3). “It is a material question,” says Tindal, C. J., “to determine whether the party who got the patent was the real and original inventor or not, because these patents are granted as a reward, not only for the benefit that is conferred upon the public by the discovery, but also to the ingenuity of the first inventor; and although it is proved that it is a new discovery so far as the world is concerned, yet, if anybody is able to show that, although that was new, the party who got the patent was not the man whose ingenuity first discovered it, that he had borrowed it from A. or B. (*Barber v. Walduck*, cited 1 C. & P. 567), or taken it from a book that was publicly circulated in England (*Vh, Stead v. Williams*, 7 M. & G. 818; 2 Webster, 126: *Heurteloup’s Case*, 1 Webster, 553: *Plimpton v. Malcolmson*, 45 L. J. Ch. 505; 3 Ch. D. 531, 558: *Plimpton v. Spiller*, 47 L. J. Ch. 211; 6 Ch. D. 412; *Harris v. Rothwell*, 35 Ch. D. 416: *Re Avery*, 26 Ch. D. 307) and which was open to all the world; then, although the public had the benefit of it, it would become an important question whether he was the first and original inventor of it.” There is nothing, however, to prevent him from employing his servants in assisting him to bring a design to perfection, or to work out an idea first suggested by him (*Minter v. Wells*, 1 Webster, 132), or from employing third persons for such a purpose (*Bloxam v. Elsee*, 1 C. & P. 558). He is still the true and first inventor. If there are two persons, actual inventors in this country, who invent the same thing simultaneously, he who first takes out the patent is the first and true inventor; and a person is also entitled to that title who patents an invention previously invented, but not sufficiently disclosed (*Plimpton v. Malcolmson*, sup). The rule, it will be observed, is, he who is first in England is the first for England; and therefore if an invention be new within the Realm, the person who introduces it is its first inventor, although it may previously have been practised abroad (*Edgeberry v. Stephens*, 2 Salk. 446: *Plimpton v. Malcolmson*, sup). The communication however made in England by one British subject to another, of an invention does not make the person to whom the communication is made the first and true inventor. If, therefore, a man makes an invention, and dies before he has taken out a patent for it, his representatives cannot take one out (*Marsden v. Saville Street Co*, 3 Ex. D. 203).

*Vf*, Add. T. 561 *et seq*: PATENTEE.

**FIRST LORD OF THE ADMIRALTY.** — Stat. Def., 30 & 31 V. c. 98, s. 3.

**FIRST MAKING.** — “First making Satisfaction”; *V. Lond. & N. W. Ry v. Evans*, cited SATISFACTION.

**FIRST MALE HEIR.** — “First Male Heir of the Branch of C.’s family”; *V. Doe d. Winter v. Perratt*, 5 B. & C. 48; 9 Cl. & F. 606;

6 M. & G. 314; Sug. Prop. 271-280, on which latter page is this remark, "A careful study of the case, although it may perplex the student, will amply repay his trouble."

V. MALE: MALE LINE.

**FIRST MONEYS.** — "Out of the First Moneys"; V. OUT OF.

**FIRST OPEN WATER.** — In a contract of Shipment; V. *Kemp v. Batt*, 5 Times Rep. 27: F. O. W.

An ICE-BOUND Ship is relieved "when there is 'Open Water,' i.e. when the water is so open that she can get out of the ice" (per Esher, M. R., *Sunderland S. S. Co v. North of England Insree*, 14 The Reports, 196; 11 Times Rep. 106); but in the same case Lopes, L. J., said that, "Open Water" means, "Water in such a condition as would permit access to a ship for the purpose of salving." V. *f*, "Open Water," sub OPEN.

**FIRST PARCEL.** — V. EX FIRST PARCEL.

**FIRST PLACE.** — V. IN THE FIRST PLACE.

**FIRST PRODUCED.** — V. PRODUCED.

**FIRST PUBLICATION.** — "The First Publication" of a Book, s. 3, Copyright Act, 1842, may take place in the United Kingdom though SIMULTANEOUSLY published elsewhere (*Cocks v. Parlay*, 2 C. & K. 269; 17 L. J. C. P. 273; 5 C. B. 860: V. *f*, *Routledge v. Low*, L. R. 3 H. L. 100; 37 L. J. Ch. 454; 18 L. T. 874; 16 W. R. 1081).

A mere reprint of a book, though called a new edition, is not "the First Publication" of itself or of the book of which it is a reprint, within s. 13, Copyright Act, 1842; *Secus*, if the new edition is substantially a new work (*Thomas v. Turner*, 56 L. J. Ch. 56; 33 Ch. D. 292; 55 L. T. 534; 35 W. R. 177).

Book, &c "first published out of Her Majesty's dominions," s. 19, International Copyright Act, 1844, 7 & 8 V. c. 12; — this section has a limited purpose only; "a Book is published by being printed and issued to the public; a Dramatic Piece, or a Musical Composition, is published by being publicly performed; a piece of Sculpture, or other Work of Art, by being multiplied by casts or other copies" (per James, L. J., *Boucicault v. Chatterton*, 5 Ch. D. 275; 46 L. J. Ch. 307).

V. PUBLICATION: PRODUCED.

**FIRST RATE BUILDING LOT.** — V. *Dykes v. Blake*, 4 Bing. N. C. 463; 7 L. J. C. P. 282; 6 Sc. 320.

**FIRST REFUSAL.** — A valid Contractual "First Refusal" to a person to buy property, connotes that the owner shall, before selling to

any one else, intimate to such person the cash price which some other person is willing to give, and shall be ready and willing to sell at that price to the person having the "First Refusal" (*Manchester Ship Canal Co v. Manchester Racecourse Co*, 1900, 2 Ch. 352; 69 L. J. Ch. 850; affd 1901, 2 Ch. 37; 70 L. J. Ch. 468; 84 L. T. 436; 49 W. R. 418).

V. OPTION: PERPETUITY.

**FIRST SON.** — The "First SON," or "CHILD," means *primâ facie* the first-born. And in like manner if a child be designated by any other numeral, — such as "second," "third," &c, — the reference is to the *order of birth*. But this construction may be varied by the context or circumstances (2 Jarm. 213-216: Elph. 352: *Va ELDEST*).

A limitation to "First and other Sons," imports successive interests and excludes the idea of a Joint Tenancy (*Lewis v. Waters*, 6 East, 336).

**FIRST STOREY.** — *V. STOREY.*

**FIRST VOYAGE.** — "It seems that a 'First Voyage' is taken to be, one entire trading voyage out and home, however long or indirect that voyage may be" (Wood, 354, citing *Fewwick v. Robinson*, 3 C. & P. 323: *Pirie v. Steele*, 8 C. & P. 200).

**FISH.** — Crayfish are "Fish" within s. 24, 24 & 25 V. c. 96 (*Caygill v. Thwaite*, 1 Times Rep. 386); and Oysters are "Fish" within 13 Ric. 2, St. 1, c. 19, and 17 Ric. 2. c. 9 (*Maldon v. Woolret*, 12 A. & E. 13). From those cases, *semble*, Shell Fish are generally included in the word "Fish."

Quâ Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88, " 'Fish' shall extend to and include Oysters and Oyster Brood" (s. 1). So, quâ the Thames Conservancy, " 'Fish,' includes OYSTERS and SHELL-FISH, and also the spawn, brood, or fry, of Fish, Oysters, and Shell-Fish" (27 & 28 V. c. 113, s. 3: Thames Conservancy Act, 1894, s. 3).

V. FRESHWATER FISH: ROYAL FISH: SEA FISH: SHELL FISH.

*Note.* As to the origin of "Fish" and "Fishing," as applied to a mechanical contrivance of a groove or support; *V. note to Harwood v. G. N. Ry.* 11 H. L. Ca. 655.

**FISH TEINDS.** — Quâ Fish Teinds (Scot) Act, 1864, 27 & 28 V. c. 33, " 'Fish Teinds,' shall mean, the Vicarage Teinds on Fish, payable to the Minister of any Parish in Scotland and forming part of his stipend" (s. 2).

**FISHERMAN.** — As to what vessel may be called a "Fisherman": *V. Shepherd v. Hills*, 25 L. J. Ex. 6; 11 Ex. 55.

V. SEA FISHERMAN.

**FISHERY: PISCARY.** — "There appears to be some confusion between the names given to Fisheries of different sorts. They're

divided by Holt, C. J. (*Smith v. Kemp*, 2 Salk. 637; 4 Mod. 187; Carth. 285; Holt, 322; *Sv Skin*. 342), into —

1. *Separalis Piscaria*, where he who has the Fishery is owner of the soil;
2. *Libera Piscaria*, which is where a mere Right of Fishing is granted; and
3. *Communis Piscaria*.

“But the term ‘Several Fishery’ is sometimes applied to a right of fishing in public waters, which may be exerciseable by many people, and the term ‘Free Fishery’ is sometimes applied to a Several Fishery, either in private or in public waters, and sometimes to a right of fishing in common with others (*V. 6 Bac. Abr. tit. Piscary*, and *Bloomfield v. Johnston*, Ir. Rep. 8 C. L. 68, 107, 108, — where Fitzgerald, B., after observing that, according to Blackstone (2 Com. 39), the name ‘Free Fishery’ is properly applicable only to a Several Fishery in public waters, said that, ‘Free Fishery when used, as all admit it may be used, in the sense of a right of fishing not exclusive, is, if *in alieno solo*, not distinguishable from Common of Fishery’).

“In *Malcomson v. O’Dea* (10 H. L. Ca. 593), where the question related to a fishery granted by the Crown before Magna Charta, Willes, J. (delivering the unanimous opinion of the judges), said: ‘Some discussion took place during the argument as to the proper name of such a fishery, whether it ought not to have been called in the pleadings (following Blackstone) a ‘Free’ instead of a ‘Several’ fishery. This is more of the confusion which the ambiguous use of the word ‘free’ has occasioned, from a period so early as that of the Y. B. 7 H. 7, fol. 13, down to the case of *Holford v. Bailey* (18 L. J. Q. B. 109; 13 Q. B. 426), where it was clearly shown that the only substantial distinction is between an exclusive right of fishery, usually called ‘several,’ sometimes ‘free’ (used as in ‘free warren’), and a right in common with others, usually called ‘common of fishery,’ sometimes ‘free’ (used, as in ‘free port’). The fishery in this case is sufficiently described as a ‘Several’ Fishery, which means an exclusive right to fish in a given place, either with or without the property in the soil.’

“A Several Fishery is presumed to comprehend the soil, till the contrary appears” (Hargrave’s *n. Co. Litt.* 122 b: *Vh. Marshall v. Uleswater Nav. Co.*, 32 L. J. Q. B. 139; 3 B. & S. 732): *Vj, R. v. Old Alresford*, inf: Stat. Def., inf: SEVERAL FISHERY.

“*Common of Fishery*, sometimes also called ‘Free Fishery,’ is the right of fishing in another man’s water in common with the owner of the soil, and perhaps also with other persons who may be entitled to the same right (Wms. on Rights of Common, 259). As this right is a *profit à prendre* (*V. Fitzgerald v. Firbank*, inf), it cannot be claimed by the inhabitants of a parish (*Bland v. Lipscombe*, 24 L. J. Q. B. 155 n; 4 E. & B. 713 n: *Sr, Goodman v. Saltash*, 52 L. J. Q. B. 193; 7 App. Ca.

633), or of a parish and manor (*Allgood v. Gibson*, 34 L. T. 883; 25 W. R. 60).

"A *Common Fishery* (called by Hale, de Jur. Mar., cited 8 App. Ca. 177, 'A Public Common of Piscary'), which must be carefully distinguished from a Common of Fishery, is a Fishery which is free to all the public (*Benett v. Costar*, 8 Taunt. 183). It is submitted that a Common Fishery, being a *profit à prendre*, can only exist in a tidal river or the sea (*Pearce v. Scotcher*, 9 Q. B. D. 162, and the cases there cited)." (Elph. 576-579. *whv*). *Va*, Dart, 426, 427.

A "Fishery in Gross," is applicable either to a Several Fishery or to a Common of Fishery if it belong to a person or class of persons independently, in contradistinction to appendancy (Woolrych on Waters, 2 ed., 127).

In a parish settlement case it has been held that a lease of a Fishery, with the sedge flags and rushes therein, passed the soil (*R. v. Old Abresford*, 1 T. R. 358). But as to whether the grant of a "Fishery," simpliciter, will pass the soil, *V. Co. Litt.* 4b: Dart, 427, 428; and as to what passes by "Fishery," *V. per* Littledale, J., *Scrutton v. Brown*, 4 B. & C. 503. But neither such a grant, nor the grant of a "Free Fishery," will exclude the grantor from the right to fish (*Bloomfield v. Johnston*, Ir. Rep. 8 C. L. 68); but a RESERVATION of THE right of fishing, means the exclusive right (*Paget v. Milles*, 3 Doug. 43), so, of course, where such an exclusive right is expressly granted (*Fitzgerald v. Firbank*, *inf*). *Vf*, A.

"It was laid down in *Smith v. Kemp* (sup) and is repeated in 5 Com. Dig. p. 362, tit. *Piscary*, — 'If a grant be *de libera piscaria*, the grantee shall have the property of the fish there, and shall maintain Trespass for fishing there.' If a person chooses to pay anything for the sport of catching fish and returning them to the water, of course, he can do so; but that is not what is understood by lawyers, or men of sense, as a Right of Fishing" (per Lindley, L. J., *Fitzgerald v. Firbank*, 1897, 2 Ch. 96; 66 L. J. Ch. 529; 76 L. T. 584).

In construing a conveyance from the Landed Estates Court (Ir) purporting to convey "the Right of the Fishery" in certain waters, the Court will look at the rights of the parties at the time of the execution of the grant; and if the Owner, whose estate is being sold by the Court, had no Right of Fishery at the date of the grant nothing will pass by it (*Gore v. M'Dermott*, Ir. Rep. 1 C. L. 348).

"The Fishing in the Weirs of Garrynoe"; held, capable of passing a Fishery not, necessarily, confined to the portion of the river abutting upon the lands of Garrynoe. (*Powell v. Heffernan*, 8 L. R. Ir. 130).

As to implied grant of Fishery; *V. Devonshire v. Pattinson*, 57 L. J. Q. B. 189; 20 Q. B. D. 263; 58 L. T. 392; 52 J. P. 276.

Quà Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88, " 'Fisheries,' shall

mean and include, all fisheries whether Several or Public; and the words 'Several Fisheries,' shall mean and include, all fisheries lawfully possessed and enjoyed, as such (under any title whatsoever, being a good and valid title at law) exclusively of the public by any person or persons, whether in navigable waters or in waters not navigable, and whether the soil covered by such waters be vested in such person or persons or in any other person or persons" (s. 1); *Id.*, as to "Several Fishery," 5 & 6 V. c. 106, s. 114.

"The Fisheries (Ir) Acts, 1842 to 1895"; *V.* Sch 2, Short Titles Act, 1896.

Quà Salmon Fisheries (Scot) Act, 1862, 25 & 26 V. c. 97, " 'Fisheries' and 'Fishery,' shall mean, Salmon Fisheries, and a Salmon Fishery, in any river or estuary, or in the sea" (s. 2). *V.* SALMON.

By the law of Scotland, Salmon Fishings are *inter regalia* and *prima facie*, Crown property; and by a Grant of "Fishings," without more, Salmon fishing will not pass, but if such a Grant is followed by 40 years' possession of Salmon fishing it will establish a right of Salmon Fishing, even against the Crown: being *inter regalia* such a right will not pass under the mere word "Pertinents" (*Lord Advocate v. Sinclair*, L. R. 1 Sc. & D. App. 174).

"Fishery" as used in s. 20, Salmon Fishery Act, 1861, 24 & 25 V. c. 109, includes a contrivance, *e.g.* a Fishing Mill-Dam, which, with little trouble and expense, can be put into a state to be capable of catching fish (*Hodgson v. Little*, 14 C. B. N. S. 111, 121; 16 Ib. 198; 33 L. J. M. C. 229; 11 W. R. 782; 8 L. T. 358).

"Fishery," quà Thames Conservancy Act, 1894, "includes Oyster and Shell fishery" (s. 3).

*V.* SEA COAST: Paterson on the Fishery Laws: 5 Encyc. 359-365.

**FISHGARTH.** — Is "a Dam or Weare in a River for taking fish, especially in the Rivers of Ouse and Humber" (Cowel). *V.* GARTH.

**FISHING.** — *V.* HUNTING: NET.

Quà Part 4, Mer Shipping Act, 1894, " 'Fishing Boat,' means, a VESSEL, of whatever size and in whatever way propelled, which is for the time being employed in SEA FISHING or in the Sea Fishing Service; but (save as otherwise expressly provided) that expression shall not include a Vessel used for catching fish otherwise than for PROFIT" (s. 370): *Vh* 5 Encyc. 365-369. *V.* SEA FISHING.

Quà Sea Fisheries Act, 1883, 46 & 47 V. c. 22, " 'Fishing IMPLEMENT,' means, any net, line, float, barrel, buoy, or other instrument, engine, or implement, used or intended to be used, for the purpose of Sea-fishing" (s. 28).

"Fishing Interests"; Stat. Def., 51 & 52 V. c. 54, s. 14. — *Scot.* 58 & 59 V. c. 42, s. 28.

A Dam built solely for milling purposes, and without any contrivances for catching fish, is not a "Fishing Mill Dam," within s. 4, 24 & 25 V.

c. 109 (*Garnett v. Backhouse*, L. R. 3 Q. B. 30; 37 L. J. Q. B. 1; 8 B. & S. 490). Other Stat. Def., 26 & 27 V. c. 114, s. 44.

Fishing VESSEL; *V.* FISHERMAN.

"Fishing WEIR," as interpreted in Salmon Fishery Acts, 1861, 1865; *V. Rolle v. Whyte*, 37 L. J. Q. B. 105; L. R. 3 Q. B. 286; 8 B. & S. 116; *Leconfield v. Lonsdale*, 39 L. J. C. P. 305; L. R. 5 C. P. 657. For more recent Stat. Def., *V.* 36 & 37 V. c. 71, s. 4.

**FIT.**—"As may seem fit"; *V.* OPINION.

"A 'Fit' Person to execute an Office, is he, — 'qui melius et sciat et possit, officium illud intendere.' 'This word *idoneus*,' says Ld Coke, is oftentimes in law attributed to those who have any office or function; and he is said in law to be *idoneus*, apt and fit to execute his office, who has three things, Honesty, Knowledge, and Ability: Honesty to execute it truly, without malice, affection, or partiality; Knowledge to know what he ought duly to do; and Ability, as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it'" (*Dwar.* 685).

But "Fit" or "Fit and Proper" has also the meaning just stated with the added condition that the person to be appointed is legally eligible, e.g. a "fit and proper" person to be appointed Churchwarden, s. 16, 1 & 2 W. 4, c. 38, must be resident in the parish (*R. v. Harding*, 6 Times Rep. 53; 34 S. J. 64; *R. v. Cree*, 67 L. T. 556; 57 J. P. 72; as to such residency, *V. Stephenson v. Langston*, 1 Hagg. Con. 379).

So if legally eligible the "fit person" to be appointed a Workhouse Chaplain, s. 48, 1 & 2 V. c. 56, connotes "his fitness in point of years, activity, zeal, and discretion, as well as physical capability" (per Cramp-ton, J., *R. v. Poor Law Commrs*, 3 Ir. Com. Law Rep. 159). *V.* OFFI-CIATE.

*V.* ELIGIBLE: IF THEY SHALL THINK FIT: THINK FIT.

**FIT FOR.**—A house is "fit for *Habitation*," within an agreement for a lease, although (being a new house) there may be slight settlements and though there may be minor matters of defective papering or such like (*Faulkner v. Llewellyn*, 11 W. R. 1055). *Vh.* KEEP.

Roll Tobacco, or Cut Tobacco "fit for *Sale*"; Stat. Def., 50 & 51 V. c. 15, s. 4.

**FIT TO BE.**—An Action charging a serious Libel is "fit to be *prosecuted* in the High Court," and ought not to be remitted under s. 66, Co. Co. Act, 1888 (*Farrer v. Lowe*, 5 Times Rep. 234).

An Action "fit to be *tried*" in the High Court, means, one *more* fit to be tried there than in an Inferior Court (*Banks v. Hollingsworth*, 1893, 1 Q. B. 442; 62 L. J. Q. B. 239; 68 L. T. 477; 41 W. R. 225; 57 J. P. 436); and where fraud and falsehood are alleged, the action is one-emi-



nently "fit" to be so tried (*Simpson v. Shaw*, 56 L. J. Q. B. 92; 56 L. T. 24; 3 Times Rep. 120; *Vh, Cherry v. Endeau*, 55 L. J. Q. B. 292; 54 L. T. 763; 34 W. R. 458).

**FITS.** — *Seemle*, that Fainting Fits are not "Epileptic, or other Fits," within a Declaration leading to a Life Policy (*Shilling v. Accidental Insree*, 1 F. & F. 116).

V. CAUSED BY.

**FITTED.** — V. FINISH.

**FITTING.** — "More fitting," ss. 31 and 35, Ry. C. Act, 1845; *V. Morris v. Tottenham Ry*, 1892, 2 Ch. 47; 61 L. J. Ch. 215; 66 L. T. 585; 40 W. R. 310.

**FITTINGS.** — "Fittings for Gas," s. 14, Gasworks (Clauses Act, 1847, includes all the apparatus for the supply or consumption of gas, including gas stoves used for heating (*Gaslight & Coke Co v. Hardy*, 56 L. J. Q. B. 168; 17 Q. B. D. 619; 55 L. T. 585; 35 W. R. 50; 51 J. P. 6; 2 Times Rep. 851; *Same v. Smith*, 3 Times Rep. 15).

Water Supply "Fittings"; Stat. Def., Metropolis Water Act, 1871, 34 & 35 V. c. 113, s. 3.

"Fixtures and *Fitting up*"; V. FIXTURES.

**Vesey FITZGERALD'S ACT.** — The Consolidated Fund Act, 1816, 56 G. 3, c. 98.

**FIVE MILE ACT.** — 35 Eliz. c. 2.

**FIX.** — To "fix" an amount does not, necessarily, mean that one definite sum is to be ascertained once for all, therefore, the Loc Gov Board, in "fixing" the amount which, under s. 32, 4 & 5 W. 4, c. 76, is to be received or paid by a Parish affected by an alteration of a Poor Law Union, may order that the amount may be ascertained from time to time according to the varying sum of the assessment of the property in the Union altered and the Parish taken away respectively (*R. v. Willesden*, 82 L. T. 385).

**FIXED AND FASTENED.** — As applied to a Conveyance of Machines; *V. Metrop Counties Assree v. Brown*, 28 L. J. Ch. 581; 26 Bea. 454. *Vf*, FIXTURES: PERSONAL CHATTELS.

"Affixed"; V. WINDOW.

**FIXED ENGINE.** — Stop Nets are "Fixed Engines" within the Salmon Fishery Acts (*Gore v. Commrs for English Fisheries*, 40 L. J. Q. B. 252; L. R. 6 Q. B. 561). By ss. 4 and 11, Salmon Fishery Act, 1861, 24 & 25 V. c. 109, "Fixed Engines" are to include "Stake Nets,

Bag Nets, Putts, PUTCHERS, and all Fixed Implements for catching or facilitating the catching of fish," and "a Net that is secured by anchors or otherwise temporarily fixed to the soil"; and by s. 39, Salmon Fishery Act, 1865, 28 & 29 V. c. 121, the phrase includes "any net or other implement for taking Fish, fixed to the soil, or *made stationary* in any other way, not being a fishing weir or fishing mill-dam." In the case cited Stop Nets were used in the following way:—The fisherman first steadied his boat athwart the current of the River Usk by pushing poles, lashed to either end of the boat, into the bed of the river in a slanting direction, and when the boat was steadied the net was put overboard. The net was about 30 feet wide at the mouth, tapering to a point. The net was distended by two light poles, called rames, about 22 feet long, tied together at the upper end with the tapered end of the net. The fisherman kept his hand upon this upper end when fishing, the rames being gradually distended until at their furthest end they stretched out the mouth of the net to its full width of 30 feet, and were kept distended by a stretcher. The net when used for fishing was lowered overboard in a slanting direction with its mouth to the current, until the two rames rested on the side of the boat at about 8 feet from their upper end. The net was kept steady in the water by the fisherman; and when he felt a fish he pulled the upper end of the rames down, using the side of the boat as a fulcrum, and so raised the mouth of the net out of the water and caught the fish; Held, that this was a "Fixed Engine" within the Acts cited, because the net was kept *stationary* by the rames being rested on the boat and the fisherman keeping his hand upon them. *Vf, Olding v. Will*, 30 J. P. 295; *Holford v. George*, 37 L. J. Q. B. 185; 18 L. T. 817; and upon the phrase as defined in 24 & 25 V. c. 109, *Thomas v. Jones*, 34 L. J. M. C. 45; 5 B. & S. 916.

" 'Fixed Engine,' shall include, in addition to the nets, fixed implements, engines, and devices, respectively mentioned in 'The Salmon Fishery Acts, 1861 and 1865,' any net placed or suspended in any inland or tidal waters unattended by the owner, or any person duly authorised by the owner to use the same, for catching Salmon, and all engines, devices, machines, or contrivances (whether floating or otherwise) for placing or suspending such nets or maintaining them in working order or making them stationary" (s. 4, Salmon Fishery Act, 1873, 36 & 37 V. c. 71).

Quà Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88, " 'Fixed Engine' shall extend to and include, weirs, stake bag stop and still nets, and all other engines or devices used for the like purposes, of whatsoever construction or materials the same may be or however known or styled, and whether fixed to the soil or held by hand or made stationary in any other way" (s. 1).

**FIXED FURNITURE.** — Looking-glasses, standing on chimney-pieces and nailed to the wall, and a Book-case standing on (but not fastened to) brackets and screwed to the wall, held within this phrase (*Birch v. Dawson*, 4 L. J. K. B. 49; 2 A. & E. 37; 4 N. & M. 22); but a Book-case merely placed in, but not fastened to, the wall, was held by Littledale, J., not “fixed furniture” (*S. C. 6 C. & P. 658*).

V. FIXTURES: FURNITURE.

**FIXED MOTIVE POWERS.** — “Fixed Motive Powers,” “Fixed Power Machinery,” s. 5, Bills of Sale Act, 1878; *V. Topham v. Green-side Co*, 57 L. J. Ch. 583; 37 Ch. D. 281; 58 L. T. 274; 36 W. R. 464.

**FIXED NET.** — Stat Def., Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88, s. 1.

V. FIXED ENGINE: NET.

**FIXED PERIOD.** — The Apportionment Act, 1834, 4 W. 4, c. 22, s. 2, provides for the apportionment of all Rents, Dividends, and other Payments, “made payable, or coming due, at Fixed Periods”; a Co’s Dividends, out of profits to be divided half-yearly, were held payable at “Fixed Periods” (*Hartley v. Allen*, 27 L. J. Ch. 621; 31 L. T. O. S. 69; 6 W. R. 407). Wood, V. C., doubted (but followed) that decision, but held that Ry Dividends, where there was no obligation to pay them at any stated period, were not payable at “Fixed Periods” (*Re Maxwell*, 32 L. J. Ch. 333; 1 H. & M. 610; 11 W. R. 480). So, Royalties on ore when obtained, are not so payable (*St. Aubyn v. St. Aubyn*, 30 L. J. Ch. 917; 1 Dr. & Sm. 611). *Vj, Harris v. Harris*, 11 W. R. 451.

V. now, as to Apportionment of Income, Apportionment Act, 1870, sub PERIODICAL: *Vj, DIVIDEND*.

**FIXED PLANT.** — *V. Re Nutley and Finn*, cited PLANT.

**FIXTURES.** — “The word ‘Fixtures’ has no precise legal meaning; it is not to be found in *Termes de la Ley*” (per Campbell, C. J., *Will-shear v. Cottrell*, 22 L. J. Q. B. 179). It is “used by different writers to express different meanings; but it is always applied to articles of personal nature which have been affixed to land. In its most extensive sense it means anything annexed to the *freehold* in such a manner as to become parcel of it” (Woodf. 661: *Vj, Minshall v. Lloyd*, 6 L. J. Ex. 115; 2 M. & W. 450; *Mackintosh v. Trotter*, 7 L. J. Ex. 65; 3 M. & W. 184; *Monti v. Barnes*, 17 Times Rep. 88), and it will pass with it (*Colegrave v. Dias Santos*, 2 B. & C. 76). But “the word ‘Fixtures,’ though properly applicable to something annexed to the freehold, is sometimes used in a larger sense, — *Sheen v. Rickie* (5 M. & W. 182; 8 L. J. Ex. 217), where it is said by Parke, B., it does not necessarily

follow that the word 'Fixtures' must import things affixed to the freehold, nor has the word necessarily acquired that legal sense. It is a very modern word, and is generally understood to comprehend any article which a tenant has a power of removing" (per Coleridge, J., delivering judgment of the Court in *Wiltshier v. Cottrell*, 22 L. J. Q. B. 177; 1 E. & B. 674. *Vf*, *Horsfall v. Key*, 17 L. J. Ex. 266; 2 Ex. 778: *Ex p. Barclay*, 5 D. G. M. & G. 403; 1 Jur. N. S. 1145; 26 L. T. O. S. 97; 4 W. R. 80: *Gibson v. Hammersmith Ry*, 32 L. J. Ch. 337; 11 W. R. 299; 8 L. T. 43).

Therefore, the expression "*Landlord's* Fixtures" "is a most inaccurate one," for, if irremovable by the tenant, everything that sets up a house is as much a part of it as are walls or roofing or flooring (per Martin, B., *Elliott v. Bishop*, 24 L. J. Ex. 33; 10 Ex. 522). But the general acceptation of "*Landlord's* Fixtures" is, those things which, whether for use or ornament, the landlord himself incorporates into the premises, or which (being annexed by the tenant) are of such a kind that he cannot disannex them; "*Tenant's* Fixtures" are, those things which (being annexed by the tenant) are intended for his personal convenience or delight, — *e.g.* a highly ornate chimney-piece, — and are disannexable by him; "*Trade* Fixtures" are, those which are annexed by the tenant for the more profitable or convenient carrying on his trade in the premises (*Elliott v. Bishop*, *sup*: *Bishop v. Elliott*, 24 L. J. Ex. 229; 11 Ex. 113: *Ex p. Doglish*, 21 W. R. 893; 29 L. T. 168).

Such chattels as are annexed for the better enjoyment of the article itself, — *e.g.* machines screwed to the floor, — can hardly be called Fixtures at all (*Hellawell v. Eastwood*, 20 L. J. Ex. 154; 6 Ex. 295: *Vthe*, *Turner v. Cameron*, 39 L. J. Q. B. 125; L. R. 5 Q. B. 306; 22 L. T. 525). *Cp.* *Re Richards*, 38 L. J. Bank. 9; 4 Ch. 630.

*Vf*, *Chamberlayne v. Collins*, cited CHATTELS, at end.

Statues and Vases resting on their own weight in an ornamental garden may, frequently, be regarded as Fixtures as between the Exors of a Tenant for Life and a Remainder-man (*Re Lyne-Stephens*, 11 Times Rep. 564). Tapestry to the walls of a room in a Mansion-house may also as Fixtures be part of the house (*D'Eyncourt v. Gregory*, 36 L. J. Ch. 107; L. R. 3 Eq. 382: *Norton v. Dashwood*, 1896, 2 Ch. 497; 65 L. J. Ch. 737; 44 W. R. 680; 75 L. T. 205: *Cave v. Cave*, 2 Vern. 508); *Scrus*, of a collection of stuffed birds in fixed cases (*Hill v. Bullock*, 1897, 2 Ch. 482; 66 L. J. Ch. 705; 77 L. T. 240; 46 W. R. 84). *Cp.* *Petre v. Ferrers*, cited HOUSEHOLD.

As to what will pass under an Assignment of "Fixtures"; *V. Southport Banking Co v. Thompson*, 57 L. J. Ch. 114; 37 Ch. D. 64; 58 L. T. 143; 36 W. R. 113: *Ex p. Fletcher*, 8 Ch. D. 218: *Ex p. Brown*, 9 Ch. D. 389.

"Fixtures and Fitting up." will not pass Household Furniture (*Simmonds v. Simmonds*, 6 Hare, 352; 12 Jur. 8). *Cp.* PERSONAL CHATTELS.

Fixtures "separately assigned or charged," by Bill of Sale: *V. SEPARATELY.*

*V. FIXED FURNITURE: OTHER: PLANT.*

*Vf*, as to Fixtures, Amos & Ferard on Fixtures: Brown on Fixtures: Woodf. 661-689: Redman, ch. 9, s. 1: Fawcett, 479 *et seq*: Wms. Exs. 640: Dart, 607, 608: Add. C. 627-633: notes to *Elwes v. Mawe*, 2 Sm. L. C. 182: 5 Encyc. 370-388.

**FLACO.** — Is "a place covered with standing water: 1 Mod. Angl. 209" (Jacob).

**FLAG.** — *V. BANNER.*

To "flag" a Street, means, to flag it with stones; and that is its meaning in s. 152, P. H. Act, 1875 (per Jessel, M. R., *A-G. v. Bidder*, 47 J. P. 263).

Quà Metrop Man. Acts, "'Flag' or 'Flagging,' shall include asphalté or other similar paving material" (s. 4, 53 & 54 V. c. 54). *Cp*, PAVEMENT: PAVE.

**FLAGRANTE DELICTO.** — *V. BLOODY HAND: MANNER.*

**FLANGE WHEEL.** — As used in s. 54, Tramways Act, 1870; *V. Cottam v. Guest*, 6 Q. B. D. 70; 50 L. J. Q. B. 174; 29 W. R. 305.

**FLAT.** — Residential flat; *V. Kimber v. Admans and Rogers v. Hosegood*, cited HOUSE: *Moir v. Williams*, cited BUILDING: *Hudson v. Cripps*, 1896, 1 Ch. 265; 65 L. J. Ch. 328.

**FLAX.** — "Flax Scutch Mills"; *V. NON-TEXTILE FACTORIES.*

**FLEETING.** — The Private Wrong that gives a right of action for a Public Nuisance, "must be of a substantial character, not fleeting or evanescent" (per Brett, J., *Benjamin v. Storr*, L. R. 9 C. P. 407). "What is the meaning of those words 'fleeting or evanescent'?" It is, perhaps, not easy to answer that, but it appears to me that nothing can be deemed to be 'fleeting or evanescent' which results in substantial damage; and that, therefore, the question is not one to be measured by time but by its effects upon the plt" (per Fry, J., *Fritz v. Hobson*, 49 L. J. Ch. 326; 14 Ch. D. 556).

**FLETH.** — "Land is anciently called *Fleth*" (Co. Litt. 4 a).

**FLOATING FISH.** — *V. SEA FISH.*

**FLOATING SECURITY.** — As to the effect of this phrase in a Debenture; *V. Re Horne and Holland*, 54 L. J. Ch. 919; 29 Ch. D. 736: *Brunton v. Electrical Co*, 1892, 1 Ch. 434; 61 L. J. Ch. 256; 65 L. T. 745; *Driver v. Broad*, 1893, 1 Q. B. 744; 63 L. J. Q. B. 12; 69 L. T. 169; *Re Opera*, 1891, 3 Ch. 260; 60 L. J. Ch. 839; 39 W. R. 705. 1t,

at least, gives the holders "an Equitable Charge on all the Assets of the Co. That involves this, — that if their money is due (or in danger, *Edwards v. Standard Syndicate*, 62 L. J. Ch. 605) that Equitable Charge gives them a right in Equity to the appointment of a Receiver" (per Lindley, L. J., *Taunton v. Sheriff of Warwickshire*, 1895, 2 Ch. 319; 64 L. J. Ch. 500; 72 L. T. 712; 43 W. R. 579); but until that be done, or a Winding-up begins, the Co can carry on its business, and the ordinary rights and obligations of its debtors are not affected (*Re Standard Co*, 1891, 1 Ch. 627; 60 L. J. Ch. 292; 39 W. R. 369; *Robson v. Smith*, 1895, 2 Ch. 118; 64 L. J. Ch. 457; 72 L. T. 559; 43 W. R. 632; *Biggerstaff v. Rowatt's Wharf*, 1896, 2 Ch. 93; 65 L. J. Ch. 536; 74 L. T. 473; 44 W. R. 536), and the Co may, if not expressly forbidden, give a valid specific mortgage or charge (*Governments Stock Co v. Manilla Ry*, 1897, A. C. 81; 66 L. J. Ch. 102; 75 L. T. 553; 45 W. R. 353). But, on the other hand, the charge created by a Floating Security, though for the time being only Equitable, is valid as against an Execution Creditor (*Davey v. Williamson*, cited ORDINARY COURSE).

*Va*, as to the effect of a Floating Charge on the property of a Co, Buckley, 186: Palm. Co. Prec. Part 3, p. 63: Lindley Comp. 197: Hamilton, 279. *Vf*, UNDERTAKING.

*Note*. By Scotch law a Floating Security is inefficacious quà Scotch Assets.

As to Preferential payments over Floating Security, *V*. 60 & 61 *V*. c. 19; which Act is not retrospective (*Re Waverley Type Writer Co*, 67 L. J. Ch. 360; 1898, 1 Ch. 699; *Weeks v. Kent*, W. N. (98) 40).

**FLOOD.** — Damages from "any Bursting, or Flood, or Escape of Water from any Reservoir," &c, include damages occasioned by flood waters from a reservoir, no matter how such flood is caused even if it be by an extraordinary rise of the waters of a stream flowing into the reservoir (*Roths v. Kirkcaldy W. W.*, 7 App. Ca. 694).

*Cp*, *Ruck v. Williams*, 27 L. J. Ex. 357; 3 H. & N. 308; *Stretton Co v. Derby*, 1894, 1 Ch. 431; 63 L. J. Ch. 135; *Buckley v. Buckley*, 1898, 2 Q. B. 608; 67 L. J. Q. B. 953.

**FLOOR.** — *V*. STOREY.

**FLOTATION.** — The condition of "Flotation," in a South African agreement between a Mining Prospector and his Employers, is fulfilled when Claims pegged off under licenses to, and registered in the name of, the employers or their nominees are sold to a Mining Co in consideration of fully paid-up shares of the Co, and the undertaking by the purchasers of the contracts and obligations of the vendors. It is not necessary that the purchasing Co should have offered its shares to the PUBLIC, or be actually working at a profit, or that the word should be confined to the particular kind of "Flotation" referred to in the Mining Regulations in force in the territories of the British S. Africa Co (*Torva Syndicate*

v. *Kelly*, 1900, A. C. 612; 69 L. J. P. C. 115; 83 L. T. 34; 16 Times Rep. 495).

*Vf*, *Gifford v. Willoughby's Expedition Co*, 15 Times Rep. 71; 16 Ib. 24.

**FLOTSAM.** — “*Flotsam*, is when a Ship is sunk, or otherwise perished, and the Goods *float* on the Sea:

“*Jetsam*, is when the Ship is in danger of being sunk, and, to lighten the Ship, the Goods are *cast* into the Sea and afterwards the ship perish:

“*Lagan* (or *Ligan*), is when the Goods which are so *cast* into the Sea and afterwards the Ship perishes and such Goods cast are so heavy that they sink to the bottom, and the mariners, to the intent to have them again, tie to them a buoy or cork, or such other thing that will not sink, so that they may find them again.

“None of these Goods which are called Flotsam, Jetsam, or Ligan are called Wreck so long as they remain in or upon the SEA; but if any of them (by the Sea) be put upon the land, then they shall be said WRECK,” and will then, but not till then, pass by the grant of “Wreck” (*Constable's Case*, 5 Rep. 106): *Vf*, *Termes de la Ley*, *Flotsam*, *Jetsam*, *Lagan*: 1 Bl. Com. 292: (as to Flotsam) *Palmer v. Rouse*, 3 H. & N. 508.

*Note.* All three are included in the interp of “Wreck” quâ Mer Shipping Acts.

*V.* JETTISON: WAVESON.

**FLOUR.** — *V.* CORN.

**FLOW.** — Causing “to fall or flow”; *V.* FALL.

Flow of the Sea; *V.* EBB AND FLOW: SHORE: INFRA.

**FODDER.** — From the moment produce is destined for food for cattle, it is “Fodder for Cattle” within a Turnpike exemption, *e.g.* rye-grass or vetches cut and brought home at once, or turnips on their way to be boiled, or threshed barley on its way to be ground into meal; but not corn in the straw (*Clements v. Smith*, 30 L. J. M. C. 16; 3 E. & E. 238).

Quâ Diseases of Animals Act, 1894, 57 & 58 V. c. 57, “‘Fodder,’ means, hay or other substances commonly used for food of animals” (s. 59).

**FOLDAGE.** — Is “an allowance for the benefit to land by the dung of sheep folded thereon” (per Bruce, J., *Re Constable and Cranswick*, 80 L. T. 166). *Cp*, FALDAGE.

**FOLDCOURSE.** — “By the grant of a fouldcourse, lands and tenements may passe” (Co. Litt. 6 a: *Va*, Touch. 93).

“Here *fold-course* seems to be understood for land used as a *sheep-walk*; but the word has various other senses. Sometimes it signifies land

to which is appurtenant the sole right of folding the cattle of others. Sometimes it means merely *such* right of folding. It is also used to denote the right of folding on another's land, which is called *common* of faldage. See in W. Jo. 375, and Cro. Car. 432, a case in which *common* of faldage was claimed; and 2 Ventr. 139, one in which the right of folding the cattle of others is prescribed for" (Hargrave's *n* to above quotation from Co. Litt. 6 a).

"Foldcourse" has been recently defined as, "The right of a man to pasture his sheep on the commonable grounds of a manor or superior lordship, without being obliged to fold them in the lord's field" (Elph. 579, *who*). *Vh*, *Robinson v. Dhuleep Singh*, 11 Ch. D. 798; 48 L. J. Ch. 758.

*Cp*, FALDAGE: FRANKFOLDAGE.

**FOLK-LAND.** — *V*. CHARTER-LAND: 5 Encyc. 399.

**FOLKMOOT.** — "'Folkmoor,' signifies (according to Lambard in his Exposition of Saxon Words) two kinds of Courts; one now called the COUNTY COURT, the other the Sheriff's Tourn. And in London it signifies at this day *celebrem ex omni Civitate Conventum*: Stow's Survey" (Termes de la Ley).

**FOLLOW.** — Covenant "not to follow or be EMPLOYED in" a business (if properly limited as to ambit), restrains the covenantor from engaging in that business, either on his own account or as an employee for another (*Ward v. Byrne*, 9 L. J. Ex. 14; 5 M. & W. 548).

*V*. RESTRAINT OF TRADE: *Cp*, CARRY ON: OCCUPATION.

In a Marine Insurance, "The meaning of 'To follow Policy for £4,000. No.  $\frac{3}{4248}$ ' is, that there being consecutive policies, any loss declared is to be borne first by the earlier policies, and that it is not till after the Policy No.  $\frac{3}{4248}$  is exhausted, either by losses or declared adventures which have come in safe, that the underwriters on the policy which follows are to bear the balance of the loss, if any" (per Ld Blackburn, *Inglis v. Stock*, 54 L. J. Q. B. 586; 10 App. Ca. 269).

"Costs to follow the event"; *V*. EVENT.

As to the correct way of stating the offence of "following," s. 7, 38 & 39 V. c. 86; *V. R. v. McKenzie*, 1892, 2 Q. B. 519; 61 L. J. M. C. 181; 67 L. T. 201; 41 W. R. 144; 56 J. P. 712: *Exp. Wilkins*, 64 L. J. M. C. 221; 72 L. T. 567; 59 J. P. 294.

*V*. AS FOLLOWS.

**FOOD.** — Quà Sale of Food and Drugs Act, 1875, "'Food,' shall include every ARTICLE used for food or drink by man, other than drugs or water" (s. 2). Baking Powder is not "Food" within that def (*Warren v. Phillips*, 44 J. P. 61; *James v. Jones*, 1894, 1 Q. B. 304; 63 L. J. M. C. 41; 70 L. T. 351; 58 J. P. 230), nor is Chewing Gum (*Shortt v.*



*Smith*, 11 Times Rep. 325: *Bennett v. Tyler*, 81 L. T. 787; 61 J. P. 119; but, *semble*, Mustard is (*Sundys v. Markham*, 41 J. P. 52).

Walnuts are "Food," within s. 47, 54 & 55 V. c. 76 (*R. v. Dennis*, 1894, 2 Q. B. 458; 71 L. T. 436; 63 L. J. M. C. 153; 42 W. R. 586; 58 J. P. 622).

Quà Sale of Food and Drugs Act, 1875, the above def is repealed and amplified, and the def now is, " 'Food' shall include every Article used for food or drink by man, other than drugs or water, and any Article which ordinarily enters into, or is used in the composition or preparation of, human food; and shall also include flavouring matters and condiments " (s. 26, 62 & 63 V. c. 51). Baking Powder and Mustard would, therefore, now be "Food," within the Act.

*Note.* Fraud is no element of the offence under s. 6, S. F. & D. Act, 1875 (*R. v. Field*, 64 L. J. M. C. 158); and Justices may act on their own knowledge (*Shortt v. Robinson*, 68 L. J. Q. B. 352; 80 L. T. 261; 63 J. P. 295).

V. DRUG: WRITTEN WARRANTY: PREJUDICE OF PURCHASER.

**FOOL.**— " 'Thou are a Foole and Ass,' be but words of scorn," and are not actionable Slander (*Cawdry v. Highley*, Cro. Car. 270). *Vj*; BEETLE-HEADED.

**FOOT.**— As to the requirement in the Wills Act, 1837, that a Will is to be signed "at the Foot or End thereof"; *V.* 15 V. c. 24. s. 1; and *Vth*, *Sweetland v. Sweetland*, 34 L. J. P. M. & A. 42; 4 Sw. & Tr. 6: *Margary v. Robinson*, 56 L. J. P. D. & A. 42; 12 P. D. 8; 57 L. T. 281; 35 W. R. 350; 51 J. P. 407: *Re Anstee*, 1893, P. 283; 63 L. J. P. D. & A. 61; 42 W. R. 16 (on which three cases, *V.* 38 S. J. 123): *Royle v. Harris*, 1895, P. 163; 72 L. T. 474; 43 W. R. 352; 64 L. J. P. D. & A. 65: *Re Fuller*, 1892, P. 377; 62 L. J. P. D. & A. 40: *Hunt v. Hunt*, L. R. 1 P. & M. 209; 35 L. J. P. & M. 135. *V.* SIGNED.

One third part of the Imperial Standard Yard," is a Linear Foot (s. 11, 41 & 42 V. c. 49).

**FOOT-PATH.**— "Footpath or CAUSEWAY by the side of any road made or set apart for the use or accommodation of foot passengers," s. 72, Highway Act, 1835; this only applies to a Footpath that is "by the side" of the road, and not to a mere footpath (*R. v. Pratt*, 37 L. J. M. C. 23; L. R. 3 Q. B. 64; 32 J. P. 246).

That case seems to show that "Foot-way" and "Causeway" are used in the Act as convertible terms; but in the interp clause (s. 5) both words are used. So, in s. 112, 3 G. 4, c. 126, "Causeway" seems used as a convertible term for "Foot-path."

A power in a Water Works Co's Act enabling the Co to "dig, and break up the SOIL and PAVEMENT of any of the Roads, Highways, *Footways*, Commons, Streets, Lanes, Alleys, Passages, and Public Places." in a

defined area, does not under the word "Footways" include a public footway over a private ground, *e.g.* over a field, — "Footway," in such a connection, means, a paved way running by adjacent buildings (*Scales v. Pickering*, 4 Bing. 448; 6 L. J. O. S. C. P. 53).

V. TURNPIKE ROAD, at end: CALCEY: ROAD: BRIDLE-PATH: DRIFTWAY.

**FOOT-RACE.** — "One person running alone *against time*, may be properly called a Foot-Race, as well as one horse starting alone to be an HORSE-RACE which has often been the case" (per Bathurst, J., *Lynall v. Longbotham*, 2 Wils. 38). V. GAMING.

**FOOT TRAFFIC.** — V. TRAFFIC.

**FOOT-WAY.** — V. FOOT-PATH.

**FOOTING.** — V. ON THE FOOTING.

**FOR.** — "For," used with the active participle of a verb — *e.g.* a power "for making" Rules, — means, "for the purpose of" (V. *judgment* of Westbury, C., *A-G. v. Sillein*, 33 L. J. Ex. 213). So, an unlicensed person does not fish "for" Salmon (Trout or Char, 41 & 42 V. c. 39, s. 7) within s. 35, Salmon Fishery Act, 1865, unless he fishes for the purpose of catching salmon, &c (*Marshall v. Richardson*, 58 L. J. M. C. 45); but the intent is immaterial *quà* the offence (s. 36) of using (without license) an instrument other than rod and line "for catching" salmon, &c (*Lyne v. Leonard*, 37 L. J. M. C. 55; L. R. 3 Q. B. 156). *Vf*, TAKE. Cp, IN AND FOR.

Crossed Cheque received for payment "for" a Bank Customer; V. *Clarke v. London & County Bank*, cited PAYMENT.

For contrast between "for" and "subject to"; V. SUBJECT TO.

Sometimes "For" creates a CONDITION Precedent. "When one promises, agrees, or covenants, to do one thing *for* another, there is no reason he should be obliged to do it till that thing, *for* which he promised to do it, be done; and the word 'for' is a Condition Precedent in such cases. But upon this head some diversities are to be observed. *First*, if there be a day set for the payment of money, or doing the thing which one promises, agrees, or covenants, to do, *for* another thing, and that day happens to incur before the time the thing for which the promise, agreement, or covenant, is made, is to be performed by the tenor of the agreement; there, though the words be 'that the party shall pay the money,' or, 'do the thing *for* such a thing,' or, 'in consideration of such a thing,' after the day is past the other shall have an action for the money or other thing, although the thing, *for* which the promise, agreement, or covenant, was made, be not performed; for it would be repugnant there to make it a Condition Precedent; and, therefore, they are in that case left to mutual remedies, on which, by the express words of the agree-

ment, they have depended. *V.* 48 Edw. 3. 2, 3, cited in *Ughtred's Case*, 7 Rep. 10 b, where the diversity is taken when there are mutual remedies and not: it is thus put in that book: *Sir R. Pool* covenants with *Sir R. Tolcelser* to serve with him three Esquires in the wars of France. *Sir R. Tolcelser* covenants, *in consideration* of those services, to pay him so much money; and there it is said, action will lie for the money without any services performed. But if you look into the book at large, you will find it was upon the diversity which I have taken; for the Case in 48 Edw. 3. 2, 3 is, *R. Pool* covenants with *R. Tolcelser* to serve him with three Esquires in the wars of France, and *R. Tolcelser* covenanted with him to pay him so much for the service; and it was further agreed, that twenty marks of the money should be paid in England, at a day certain, before they went for France, and the rest by quarterly payments, which might likewise incur before the service; and upon action brought by *Sir R. Pool*, it was objected that the service was not performed; but there was no room for that objection upon the diversity which I have taken, the money, by the agreement, being made payable at a day certain, before the service was to have been performed" (per Holt, C. J., *Thorpe v. Thorpe*, 12 Mod. 460, 461; 1 Raym. Ld. 662).

"According to *Cowper v. Andrews* (Hob. 41), cited in *Chase v. Westmore* (5 M. & S. 187) the word 'for' works by Condition Precedent in all Personal Contracts; as, if I sell you my horse 'for' £10, you shall not take my horse except you pay the £10" (per Parke, B., *Scarfe v. Morgan*, 4 M. & W. 284).

A legacy to a Trustee or Exor "for" his trouble, will, probably, not be payable if he refuses, or neglects to act in, the trust; but if there be no such refusal or neglect, the legacy is payable though the trustee or exor die without having acted (*Brydges v. Wotton*, 1 V. & B. 134).

#### *Cp.*, ON THE ACCOUNT.

An obligation signed "for," or "*for and on behalf of*," or "on behalf of," or "on account of," another, makes that other, if any one, liable; not the signatory (*Aggs v. Nicholson*, 25 L. J. Ex. 348; 1 H. & N. 165; *Ogden v. Hall*, 40 L. T. 751; *Gadd v. Houghton*, 1 Ex. D. 357; 46 L. J. Ex. 71; 35 L. T. 222; *Cp.*, *Lewis v. Nicholson*, cited ON BEHALF): but evidence is admissible to show that, by the custom of a market, a contract signed "*for and on account of* the owner," binds the signatory personally (*Pike v. Ongley*, 18 Q. B. D. 708; 56 L. J. Q. B. 373; 35 W. R. 534; 3 Times Rep. 549); and an unauthorised Acceptance "for and on behalf of" another binds the acceptor personally (*West Lond. Commercial Bank v. Kitson*, 13 Q. B. D. 360; 53 L. J. Q. B. 345).

*Semble*, an Acceptance by a Partner "for A. B. & Co (his firm) and self," does not entitle the Drawer to payment out of the separate estate of the partner which is being administered by the Court (*Malcomson v. Malcomson*, 1 L. R. Ir. 228).

As to signatures in a representative capacity of Bills of Exchange and Promissory Notes, *Vf*, s. 26, Bills of Ex. Act, 1882: PER PROCURATION.

A Receipt or Pleading that a Bill of Ex or Promissory Note is or was given "for and on account of" an antecedent debt, only amounts to an allegation of a conditional payment, *i.e.* a payment if the Bill or Note is duly met; it does not amount to a SATISFACTION or an averment of it (*Belshaw v. Bush*, 22 L. J. C. P. 24; 11 C. B. 191); so, if the phrase is "for and on account of, and in payment and discharge of" (*M. Dowall v. Boyd*, 17 L. J. Q. B. 295; *Vf*, *Maillard v. Argyll*, 6 Sc. N. R. 938; 6 M. & G. 40; *Emblin v. Dartnell*, 13 L. J. Ex. 255; 12 M. & W. 830; *Kemp v. Watt*, 15 M. & W. 672).

Sitting for a gratis Photograph, does not show that the negative was taken "for or on behalf" of the sitter, within s. 1, 25 & 26 V. c. 68 (*Ellis v. Marshall* and *Melville v. Mirror of Life Co*, cited GOOD). *Vf*, on this phrase, *Petty v. Taylor*, cited PROPRIETOR: Cp, AUTHOR.

Action "for" Accounts; *V. MERCHANTS' ACCOUNTS*.

**FOR DEBT.** — *V. ATTACHMENT FOR DEBT*.

**FOR DEFAULT OF ISSUE.** — *V. DEFAULT*.

**FOR EVER.** — These words are useless or surplusage in a limitation by Deed of a Fee Simple, as in the not uncommon expression "his heirs and assigns for ever" (Litt. s. 1). In a *Derise* they would have passed the fee simple even before the Wills Act, 1837 (2 Jarm. 328; *Watson Eq.* 1370). They are not inconsistent with an Estate Tail (1 Jarm. 485, *n*; *Ib.* 328, 391), and would sometimes create such an estate (*Wright v. Vernon*, 2 Drew. 463; *Good v. Good*, 7 E. & B. 295; 28 L. T. O. S. 266): added to words creating an entail, the phrase "for ever" is insufficient to enlarge the gift to a fee simple (*Vernon v. Wright*, 28 L. J. Ch. 198; 7 H. L. Ca. 35).

As to the value of "for ever" in a covenant for Renewal of a Lease, so as to give the right of perpetual renewal; *V. Swinburne v. Milburn*, 54 L. J. Q. B. 6; 9 App. Ca. 844, and espy jdgmt of Ld Fitzgerald. *Vf*, RENEWAL.

**FOR SALE.** — Bread is carried out "for sale," within s. 7, 6 & 7 W. 4, c. 37, if anything (including its being actually weighed in the presence of the *buyer*) remains to be done in reference to its sale (*Robinson v. Cliff*, 45 L. J. M. C. 109; 1 Ex. D. 294; *Ridgway v. Ward*, 54 L. J. M. C. 20; 14 Q. B. D. 110); *Secus*, if the bread has been bought in the seller's shop, weighed in the presence of the buyer, and merely sent by the seller to the house of the buyer for the latter's convenience (*Daniel v. Whitfield*, cited CARRY OUT).

The Import Duties payable to the Corporation of London, under the Metage Act, 1872, on "all GRAIN brought into the Port of London for

*sale*," apply only to grain to be sold *as grain*, and not to grain to be manufactured into another article and then sold (*Cotton v. Vagon*, 1896, A. C. 457; 65 L. J. Q. B. 486; 74 L. T. 598; 12 Times Rep. 14).

"Supply gas for sale"; *V. SUPPLY*.

**FOR THE PURPOSE.** — *V. PURPOSE*.

**FOR THE TIME BEING.** — *V. TIME BEING*.

**FOR USE.** — *V. USE*.

**FOR WANT OF.** — "In default," or "For want of" signifies "all that is comprehended in the word 'Remainder,' being merely an expression employed in carrying on the series of limitations" (1 Jarm. 800).  
*Cp.* FROM AND AFTER.

**FORBEAR.** — To "forbear" to press for immediate payment, means to give reasonable time; which, though indefinite, is a sufficient consideration for a GUARANTEE (*Oldershaw v. King*, 27 L. J. Ex. 120; 2 H. & N. 517; *Vth*, per Bowen, L. J., *Miles v. New Zealand Alford Estate Co*, 32 Ch. D. 289; *Coles v. Pack*, L. R. 5 C. P. 65; 39 L. J. C. P. 63; *Crears v. Hunter*, 56 L. J. Q. B. 518; 19 Q. B. D. 341; 57 L. T. 554; 35 W. R. 821: *V. contra Semple or Temple v. Pink*, 1 Ex. 74; 16 L. J. Ex. 237). *Vf*, SUSPEND, at end.

**FORBES MACKENZIE'S ACT.** — The Licensing (Scot) Act, 1853, 16 & 17 V. c. 67; amended by MUIR'S ACT.

**FORCE.** — " *With force and armes, vi et armis.* Force, *vis*, in the common law is most commonly taken in ill part, and taken for unlawful violence, for *maximè paci sunt contraria vis et injuria*. And therefore Britton (116 a) said well, speaking in the person of the King, *nous volons, que tous gents plus usent judgement que force*.

"*Arma, Armes*, in the common law signifieth anything that a man striketh or hurteth withall" (Co. Litt. 161 b). *Vf*, Cowel, *Vis*: Jacob: 5 Encyc. 403, 404.

"One or more may commit a force" (Co. Litt. 257 a).

An averment in a Statement of Claim that a trespass was committed *vi et armis*, would, it seems, not amount to an allegation of a breach of the peace (*Harvey v. Brydges*, 14 L. J. Ex. 272; 14 M. & W. 437; *Wright v. Burroughes*, 16 L. J. C. P. 6; 4 Dowl. & L. 438; 3 C. B. 685). *Vf*, *Perry v. Fitzhove*, 8 Q. B. 757; 15 L. J. Q. B. 239.

*V. BY FORCE: IN FORCE: PUT IN FORCE: DURESS: POLICE.*

*Note.* "With Force and Arms," not now necessary in an indictment (s. 24, 14 & 15 V. c. 100), nor in a Statement of Claim in Trespass (s. 49, 15 & 16 V. c. 76).

**FORCES.** — *V. AUXILIARY: MILITARY FORCES: POLICE: RESERVE FORCES: VOLUNTEER.*

**FORCIBLE DETAINER.** — “ Everyone commits the misdemeanor called a Forcible Detainer who, having wrongfully entered upon any lands or tenements, detains such lands and tenements in a manner which would render an entry upon them for the purpose of taking possession forcible ” (Steph. Cr. 55). *Vf*, Arch. Cr. 1052-1058; Rosc. Cr. 461-465; 5 Encyc. 404.

**FORCIBLE ENTRY.** — “ Everyone commits the misdemeanor called a Forcible Entry who, in order to take possession thereof, enters upon any lands or tenements in a violent manner, whether such violence consists in actual force applied to any other person, or in threats, or in breaking open any house, or in collecting together an unusual number of persons for the purpose of making such Entry. It is immaterial whether the person making such an entry had or had not a right to enter; provided that a person who enters upon lands or tenements of his own, but which are in the custody of his servant or bailiff, does not commit the offence of Forcible Entry ” (Steph. Cr. 54, 55). *Vh*, *Milner v. Maclean*, 2 C. & P. 17; *R. v. Smyth*, 5 Ib. 201; *Lows v. Telford*, 45 L. J. Ex. 613; 1 App. Ca. 414; *Edwick v. Hawkes*, 18 Ch. D. 199; 50 L. J. Ch. 577; 45 L. T. 168; 29 W. R. 913; *Beddall v. Maitland*, 17 Ch. D. 174; 50 L. J. Ch. 401; 44 L. T. 248; 29 W. R. 484; *Srthlc*, *Jones v. Foley*, 1891, 1 Q. B. 730; 60 L. J. Q. B. 464; 64 L. T. 538.

*Vf*, Arch. Cr. 1052-1058; Rosc. Cr. 461-465; Co. Litt. 257 a, b; 5 Encyc. 404-406.

*V*. VIOLENT.

**FORECLOSURE.** — “ ‘ A Foreclosure,’ said Id Hardwicke, ‘ is considered as a new purchase of the land.’ ‘ The MORTGAGE being foreclosed,’ said Sir Wm. Grant, ‘ the estate becomes absolutely his ’ (*i.e.* the mtgee’s). ‘ By the Order made in the Foreclosure suit,’ said Sir L. Shadwell, ‘ he (the mtgee) became the absolute owner,’ — *Casborne v. Scarfe*, 1 Atk. 603; 2 White & Tudor, 6; *Silberschildt v. Schott*, 2 V. & B. 49; *Le Gros v. Cockerell*, 5 Sim. 384 ” (per Selborne, C., *Heath v. Pugh*, 50 L. J. Q. B. 478; 6 Q. B. D. 345; affd 51 L. J. Q. B. 367; 7 App. Ca. 235).

*V*. DECREE: CONVEYANCE.

*Vh*, Coote, ch. 78; Fisher, 476 *et seq*; 5 Encyc. 406-412.

**FORECOURT.** — The provisions as to “ Forecourts,” s. 13 (1), are not to be read into s. 14, London Bg Act, 1894 (*London Co. Co. v. Aylesbury Dairy Co*, 1898, 1 Q. B. 106; 67 L. J. Q. B. 24; 77 L. T. 440; 61 J. P. 759).

**FOREGIFT.** — *V*. FINE.

**FOREIGN.** — “ ‘ Forrein ’ is a word adjectively used, and joynd with divers substantives well worthy to be expressed ” (Termes de la

Ley), connoting matters outside the proper ambit of the things expressed by such substantives, *e.g.* "Forrein Matter," "Forrein Plea," "Forrein Answer," "Forrein Service" (Ib.).

But now we usually call those things "Foreign" which are not of any part of the REALM (*Comms of Railways v. Hyland*, cited COLONIAL); but sometimes, by an interp clause, "Foreign," means, things *e.g.* Animals, which are not of the UNITED KINGDOM but which may be brought there from outside (s. 59, Diseases of Animals Act. 1894, 57 & 58 V. c. 57).

Foreign *Asset*, quà Probate; *V. Re Ewing*, 50 L. J. P. D. & A. 11: *A-G. v. Sudeley*, 1896, 1 Q. B. 354; 65 L. J. Q. B. 281; 74 L. T. 91; 44 W. R. 340: *Wms. Exs. 1523 et seq.*

"Foreign Bill"; *V. INLAND. Va, PROMISSORY NOTE.*

"Foreign Bonds," will not, as a rule, include Colonial Bonds (*Hull v. Hill*, 4 Ch. D. 97; 25 W. R. 223). *Vj*, "Foreign Stock," inf: SECURITIES.

"Foreign Corporation"; Is a French charitable Association of ladies for educational purposes, a Foreign CORPORATION, within R. S, Ord. 9, R. S. C.? *V. Golding v. La Sainte Union*, cited OFFICER.

"Foreign Country," quà Post Office (Offences) Act, 1837, 1 V. c. 36, means, "any country, state, or kingdom, not included in the Dominions" of the Crown (s. 47); to the like effect is the def quà 53 & 54 V. c. 37 (s. 16); but quà the Army Act, 1881, the def is, "any place which is not situate in the United Kingdom, a Colony, or India (as above defined), and is not on the HIGH SEAS" (subs. 24, s. 190).

"Foreign Dominion"; the Isle of Man is not a "Foreign Dominion of the Crown," within s. 1, 25 & 26 V. c. 20 (*Ex p. Brown*, 33 L. J. Q. B. 193; 5 B. & S. 280).

"Foreign Funds"; *V.* "Foreign Stock or Funds," inf: FUNDS.

"Foreign-going Ship"; Quà Mer Shipping Act, 1894, " 'Foreign-going Ship,' includes every SHIP employed in trading, or going, between some place or places in the UNITED KINGDOM and some place or places situate beyond the following limits, *i.e.* the coasts of the United Kingdom, the Channel Islands, and Isle of Man, and the Continent of Europe between the River Elbe and Brest inclusive" (s. 742). *Cp.* HOME-TRADE SHIP.

"Foreign Government"; a Government is none the less a Government because it is a subordinate one; and therefore a power to invest in the Stocks or Funds of a "Foreign Government," would authorise an investment in the bonds or securities of any individual State of the United States, or of any of the separate kingdoms or governments of which the German Empire is composed (*Cadett v. Earle*, 5 Ch. D. 710; 46 L. J. Ch. 798. *Va, Ellis v. Eden*, 23 Bea. 543; 26 L. J. Ch. 533). *Vj*, "Foreign Stock," inf.

"Foreign Letter," quà Post Office (Offences) Act, 1837, means, "a

letter transmitted to or from a Foreign Country" (s. 47); *Vf*, "Foreign Country," *sup*.

"Foreign Lottery"; 9 G. 1, c. 19, s. 4, is only against the erection, &c of Foreign Lotteries in the United Kingdom; and 6 & 7 W. 4, c. 66, *semble*, only prohibits an "Advertisement or other Notice" of a Foreign Lottery when it solicits subscriptions; and, at any rate, a mere general statement that there will be such a Lottery is not an Advertisement or Notice thereof within the latter enactment (*Macnee v. Persian Investment Corp*, 59 L. J. Ch. 695; 44 Ch. D. 306; 62 L. T. 894; 38 W. R. 596). *V. LOTTERY.*

"Foreign Merchandize"; *V. per* Collins, J., *Mansion House Assn v. Lond. & S. W. Ry*, 64 L. J. Q. B. 535.

*Foreign Merchant*; *V. Grainger v. Gough*, cited CARRY ON.

"Foreign Newspapers," *quà* Post Office (Offences) Act, 1837, means, "newspapers printed and published in a Foreign Country, in the language of that country" (s. 47). *V. NEWSPAPER.*

"Foreign Parcels," *quà* Post Office (Parcels) Act, 1882, 45 & 46 V. c. 74, "means, parcels either posted in the United Kingdom and sent to a place out of the United Kingdom, or posted in a place out of the United Kingdom and sent to a place in the United Kingdom, or in transit through the United Kingdom to a place out of the United Kingdom" (s. 17).

"Foreign Parts"; Scotland was not a place "under the dominion of His Majesty in Foreign Parts," within s. 1, 1 W. 4, c. 22 (*Wainwright v. Bland*, 3 Dowl. 653).

"Foreign Possessions," as used in 5th Case Sch D, s. 100, Income Tax Act, 1842; *V. London Bank of Mexico v. Aphorpe*, 1891, 2 Q. B. 378; 60 L. J. Q. B. 653; 65 L. T. 601; 39 W. R. 564; *Bartholomay Co. v. Wyatt*, cited CARRY ON: *per* Ld Davy, *San Paulo Ry v. Carter*, 1896, A. C. 31; 65 L. J. Q. B. 161; 73 L. T. 538; 44 W. R. 336; 60 J. P. 452.

"Foreign Postage," *quà* Post Office (Offences) Act, 1837, means, "the duty charged for the conveyance of letters within" a "Foreign Country" as above defined *quà* this Act (s. 47).

*Foreign Principal*; *V. Watson v. Sandie*, cited EXERCISE.

"Foreign Refined Rape Oil"; *V. Nichol v. Godts*, 23 L. J. Ex. 314; 10 Ex. 191.

"Foreign Security"; *V. s. 82 (1 b)*, Stamp Act, 1891.

"Foreign or Colonial Share Certificate"; *V. s. 82 (2)*, Stamp Act, 1891.

"Foreign Ship," *quà* Territorial Waters Jurisdiction Act, 1878, 41 & 42 V. c. 73, "means, any Ship which is not a BRITISH SHIP" (s. 7).

"Foreign Spirits," *quà* Customs, "means, all Spirits and Strong Waters liable to a Duty of Customs" (32 & 33 V. c. 103, s. 3; 43 & 44 V. c. 24, s. 3).



"Foreign State"; *V.* Foreign Enlistment Act, 1870, 33 & 34 V. c. 90, s. 30; (quà Slave Trade) 36 & 37 V. c. 59, s. 2, c. 88, s. 2. *V.* NAVAL SERVICE: VESSEL.

"Foreign Statement"; *V.* GENERAL AVERAGE AS PER FOREIGN STATEMENT.

"Foreign Stock or Funds," means such as are not BRITISH FUNDS; therefore, a bequest of all sums in "any Foreign Stocks or Funds" did not include stock in the old East India Company (*Brown v. Brown*, 4 K. & J. 704; 6 W. R. 613; 31 L. T. O. S. 297). *Vf*, "Foreign Bonds," sup: FUNDS.

Foreign Trade; *V.* COASTING TRADE: EUROPE: TRADING.

"Foreign Warrant," s. 10, Extradition Act, 1870, 33 & 34 V. c. 52; *V. R. v. Ganz*, 51 L. J. Q. B. 419.

"Foreign Wine"; quà Refreshment Houses Act, 1860, all Liquor sold "as being Foreign Wine, or under the name by which any Foreign Wine is usually designated or known," is, as against the seller, "Foreign Wine" (s. 21); to sell "Best Pale Sherry, British" is within that def. for "Sherry" is a well-known foreign wine, and the addition of "British" does not indicate the contrary to the customer (*Richards v. Banks*, 58 L. T. 634; 52 J. P. 23). *V.* WINE: BRITISH WINE.

**FOREMAN.** — "Foreman," of a Grand Jury, includes any member of the Jury for the time being acting on behalf of the Foreman (s. 3, 19 & 20 V. c. 54).

**FORERA.** — A headland (Spelm.: Cowel).

**FORESAID.** — *V.* AFORESAID.

**FORESHORE.** — "The seashore up to the point of HIGH WATER of medium tides, between spring and neap tides, is called the Foreshore; and is ordinarily and *primâ facie* vested in the Crown, subject to the rights of the Queen's subjects for fishing and navigation only, not only in the sea, but in all tidal navigable rivers, and of passing over the foreshore itself; but it may belong to a subject, either by itself, or as part of a manor. *V.* the cases cited in Wms. on Rights of Common, 265 *et seq*: *A-G. v. Burridge*, 10 Price, 350; *A-G. v. Parmenter*, 10 Price, 378; *A-G. v. Tomline*, 14 Ch. D. 58; 46 L. J. Ch. 654. *Va*, Co. Litt. 261 a, n: Woolrych on Waters, 2 ed., 23; Coulson & Forbes on Waters, 12: Chitty Prerog. 207" (Elph. 580): *Blundell v. Catterall*, 5 B. & Ald. 268; *Llandudno v. Woods*, 1899, 2 Ch. 705; 68 L. J. Ch. 623; 81 L. T. 170; 48 W. R. 43; 63 J. P. 775. As to *A-G. v. Tomline*. *V.* per Esher, M. R., and Lopes, L. J., *West Norfolk Manure Co v. Archdale*, 16 Q. B. D. 758, 760; *Vh*, *A-G. v. Emerson and Eroyd v. Coulthard*, cited SEVERAL FISHERY: and as to the law of Scotland, *V.* per Lord Watson, *Lord Advocate v. Wemyss*, 1900, A. C. 66.

*Vh*, Moore on Foreshore: 5 Encyc. 444-452: BED. *Cp*, SHORE.

**FOREST.** — “ ‘Forrest,’ is a place priviledged by Royall Authority, or by Prescription, for the peaceable abiding and nourishment of the BEASTS or BIRDS of the Forrest, for disport of the King ” (Termes de la Ley: *U<sup>o</sup>*, Spelm. *Foresta*: Manwood, c. 1, s. 1: 5 Encyc. 452-455).

“ A subject may hold a Forest by grant from the Crown (Co. Litt. 233 a); provided that the grant contains a provision that, on request made in Chancery, the grantee and his heirs shall have justices of the forest (4 Inst. 314; *V. Leicester Forest Case*, Cro. Jac. 155).

“ By the grant of a forest in a man’s own ground, not only the privilege but the land itself passes (Co. Litt. 5 b: Touch. 96).” Elph. 580, *whc.*

*Cp.*, CHASE: PARK: *V.* DISAFFOREST.

**FORESTALLER.** — *V.* REGRATOR.

Also “ used for stopping of Deer, broke out of the Forest, from returning home again or laying between him and the Forest in the way that he is to return ” (Cowel).

Also “ forstall ” is “ to bee quit of ameracements and cattels arrested within your land, and the ameracements thereof comming ” (Termes de la Ley).

**FORESTARIUS.** — “ In ancient authors is taken for a Woodward ” (2 Inst. 300, *n*).

**FORFEIT.** — This word means not only an actual taking away of property on breach of a CONDITION, but also the doing or suffering a thing which creates a liability to such a deprivation (*Re Levy*, 54 L. J. Ch. 968; 30 Ch. D. 119; 53 L. T. 200).

In that case, Kay, J., said:—“ The word ‘Forfeit,’ the noun substantive, is defined in Dr. Johnson’s Dictionary to be, ‘Something lost by the commission of a crime; something paid for the expiation of the crime; a fine; a mulct.’ By the same authority, the verb ‘to forfeit’ is defined to mean, ‘to lose by some breach of condition; to lose by some offence.’ He gives certain illustrations, as usual in his dictionary, and this is one: ‘A father cannot alien the power he has over his child; he may perhaps to some degree forfeit it, but cannot transfer it. — Locke.’ There, forfeit is contrasted with ‘lose.’ Then ‘forfeit,’ the participial adjective, is defined to be, ‘liable to penal seizure; alienated by a crime; lost either as to the right or possession, by breach of conditions.’ Then he gives these fine lines of Shakespeare:—

All souls that are, were forfeit once;  
And he that might the vantage best have took,  
Found out the remedy.

*Measure for Measure.*

And again:—

Beg that thou may'st have leave to hang thyself:  
 And yet, thy wealth being forfeit to the state,  
 Thou has not left the value of a cord.

*Merchant of Venice.*

Now clearly the word 'forfeit' does not merely mean that which is actually taken from the man by reason of some breach of condition, but includes also that which becomes *liable* to be so taken."

But "Forfeit" would seem to involve the idea of *permanent* loss or liability thereto. Thus s. 9, 11 G. 4 & 1 W. 4, c. 65 (repealing and re-enacting and extending 9 G. 1, c. 29), provides that an infant, feme covert, or lunatic, shall not "forfeit" Copyholds by non-appearance, &c; but this does not take away the lord's right of seizure *quousque* (*Kensington v. Mansell*, 13 Ves. 240: *Doe d. Twining v. Muscott*, 14 L. J. Ex. 185; 12 M. & W. 832: *Dimes v. Grand Junction Canal*, 16 L. J. Q. B. 107; 9 Q. B. 469: *If, King v. Dilliston*, Show. 31, 83; Salk. 386; 3 Mod. 222).

V. FORFEITURE: LIQUIDATED DAMAGES: OFFENCE: CRIMINAL CAUSE: DEPOSIT.

**FORFEITED.** — "Forfeited Issues"; V. ISSUES.

Covenant not to do anything whereby a License "may be forfeited"; V. AFFECT.

A PAWN "forfeited" if not duly redeemed, s. 17, 39 & 40 G. 3, c. 99, does not become the absolute property of the Pawnee; it may be redeemed by the Pawnor at any time before it is disposed of (*Walter v. Smith*, 5 B. & Ald. 439), — a ruling which, quâ a pawn with a Pawnbroker for above 10s., is now prescribed by s. 18, 35 & 36 V. c. 93.

Wages "forfeited"; V. WAGES.

**FORFEITURE.** — "The proper signification of 'Forfeiture,' as appears from Cowel's Interpreter and Ducange, is 'a Mulet or Fine, — a punishment for an Offence'; and it is quite clear that it is used in that sense in a Charter where the Justices are empowered to punish delinquents by 'Fines, Ransoms, Amerciements, and Forfeitures.' The term 'Forfeit' is, indeed, ordinarily applied to the penalty of a bond with a condition, or to an estate held on condition; but the penalty of the bond when it is forfeited, or the estate itself, is never termed a 'Forfeiture,' even in common parlance; and it is, therefore, impossible to suppose that a RECOGNIZANCE with a condition broken could be intended to be described by such a term in a legal instrument. It is very true that in 22 & 23 Car. 2, c. 22, 'forfeiture' is used in the title of the Act as a general term; but there, the context clearly explains the meaning. In the present case the context affords no such aid; and in its proper sense,

especially in a Grant from the Crown, it does not apply to a Debt of Record rendered indefeasible by non-compliance with the condition," *e.g.* an Estreated Recognizance (per Parke, B., *R. v. Dover*, 4 L. J. Ex. 94; 1 Cr. M. & R. 726). *Cp.* AMERCIAMENT.

"Forfeiture" means, "the loss of all interest" in the property spoken of (2 Bl. Com. 267; *Vf.* Co. Litt. 59 a); and a clause effecting it must be construed strictly (*Fraunces' Case*, 8 Rep. 90 b; *Egerton v. Brownlow*, 4 H. L. Ca. 1; 23 L. J. Ch. 348; *Clavering v. Ellison*, cited EDUCATION). General words will not pass that which, if passed, would be forfeited (*Re Waley*, 3 Drew. 165; 24 L. J. Ch. 499). *Cp.* SHIFTING CLAUSE.

As to construction of Clause of Forfeiture; *V.* ALIENATION: ATTEMPT: BANKRUPTCY: DEATH: INTERFERE: LEGAL DISABILITY: SHALL: UNTIL: WOULD: *Re Sampson*, 1896, 1 Ch. 630; 65 L. J. (Ch. 406; 74 L. T. 246; 44 W. R. 557; *Re Spearman*, 82 L. T. 302. When it is allowed that it has to be construed strictly, that "means but little" (per Hawkins, J., *Horsey v. Steiger*, cited LIQUIDATION); it has to be construed "fairly, according to its meaning without regard to forfeiture" (per Cotton, L. J., *Bristol v. Westcott*, 12 Ch. D. 461; *Vf.* *Varley v. Coppard*, cited ASSIGN: LESSEE).

As to the Forfeiture Clause in a Building Contract; *V.* Hudson, ch. 10, s. 3.

Forfeiture of a Lease; *V.* LEASE: LAWFULLY DEMANDED.

*Note.* There is no DISCOVERY in aid of Forfeiture (*Mexborough v. Whitwood*, 1897, 2 Q. B. 111; 66 L. J. Q. B. 637; 76 L. T. 765; 45 W. R. 564).

As to Relief; *V.* 2 White & Tudor, 250-288: RELIEF.

"Forfeiture," in s. 1, 13 Eliz. c. 5, is not "intended only of a Forfeiture of an obligation, recognizance, or such like, but also of everything which shall by law be forfeit to the King or subject" (*Twyne's Case*, 3 Rep. 82).

"The words 'Forfeiture' and 'Breach of Condition' (in ss. 3 and 4, 3 & 4 W. 4, c. 27) are to be read in their largest sense; and to apply, whether the forfeiture gives a right to an estate under a conditional limitation, or whether it is a true forfeiture at law, and the gift over can only be taken advantage of by the heir or other person entitled in case of a forfeiture" (per Jessel, M. R., *Astley v. Essex*, 43 L. J. Ch. 819; L. R. 18 Eq. 290).

When a statute provides punishment by "Forfeiture," that "means Forfeiture to the Crown; except when it is imposed for wrongful detention or dispossession, in which cases the forfeiture goes to the benefit of the party wronged" (Maxwell, 427, citing 1 Inst. 159; 11 Rep. 60).

"Forfeiture" and "ESCHEAT" for Treason, or Felony, or Felo de se (*V.* 4 Bl. Com. 381-388) was abolished by s. 1, Forfeiture Act, 1870, 33 & 34 V. c. 23; but by s. 5 it is provided that "'Forfeiture,' in the

construction of this Act, shall not include any fine or penalty imposed on any convict by virtue of his sentence."

*Th.*, Cowel: Jacob: 5 Encyc. 456.

V. AMERCIAMENT: DEFEASANCE: FORFEIT: PENALTY: CRIME: LAPSE: WAIVER.

**FORGE.**—To "Forge" an *Int. Rev.* STAMP, or one "forged," includes counterfeit (s. 27, 54 & 55 V. c. 38).

**FORGER.**—"Forger of false Deeds,' comes of the French word *forger*, which signifies to frame or fashion a thing as the Smith doth his worke upon the Anvill. And it is used in our Law for the fraudulent making and publishing of False Writings to the prejudice of another mans right" (*Termes de la Ley*).

**FORGERY.**—"Forgery is making a false document with intent to defraud."

"To make a false Document is—

- (a) To make a document purporting to be what in fact it is not;
- (b) To alter a document without authority in such a manner that if the alteration had been authorized it would have altered the effect of the document;
- (c) To introduce into a document without authority, whilst it is being drawn up, matter which, if it had been authorized, would have altered the effect of the document;
- (d) To sign a document—
  1. In the name of any person without his authority, whether such name is or is not the same as that of the person signing;
  2. In the name of any fictitious person alleged to exist, whether the fictitious person is or is not alleged to be of the same name as the person signing;
  3. In a name represented as being the name of a different person from that of the person signing it, and intended to be mistaken for the name of that person;
  4. In the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be.

"But it is *not* making a false Document—

- (a) To procure the execution of a document by fraud;
- (b) To omit from a document being drawn up matter which would have altered its effect if introduced, and which might have been introduced, unless the matter omitted qualifies the **matter** inserted;

- (c) To sign a document in the name of a person personated by the person who signs it, or in a fictitious name, provided that the effect of the instrument does not depend upon the maker's identity with the person personated, or on the correctness of the name assumed by him" (Steph. Cr. 285, 287, 288, *whv* to p. 291, for cases in illustration, and espy jdgmt of Blackburn, J., *R. v. Ritson*, L. R. 1 C. C. R. 203, 204).

*Vf*, Arch. Cr. 672-736: Rosc. Cr. 466-507: 5 Encyc. 458-466.

**FORGETFULNESS.** — "Forgetfulness may well amount to NEGLIGENCE" (per Darling, J., *Baster v. London & County Printing Works*, 68 L. J. Q. B. 622; 1899, 1 Q. B. 901); and if it be in a matter of importance in a Servant's duty, it will justify the Master in dismissing without notice (*S. C.*). *Cp*, INADVERTENCE: MISTAKE.

**FORGIVENESS.** — *V.* CONDONATION.

**FORM.** — *V.* IN ACCORDANCE WITH THE FORM: IN THE FORM: MANNER AND FORM: TENOR: INSTRUMENT: SAME.

"The Form of the PAVEMENT" of a Footpath is not altered by a lowering (under statutory powers) of the street and relaying its pavement in the same form and of the same dimensions as before, but on a different level (*R. v. Eastern Counties Ry*, 2 Q. B. 569; 11 L. J. Q. B. 178).

A Notice by a Local Authority to Frontagers to "repair, form, and pave," the Street, is, *semble*, bad, because not sufficiently specifying the works required (*Parkinson v. Blackburn*, 33 L. T. O. S. 119).

**FORMÂ PAUPERIS.** — A person suing or defending "In Formâ Pauperis," pays no Court Fees, and has Counsel and Solicitor assigned him without fee (11 H. 7, c. 12: 3 Bl. Com. 400: R. 25, 26, Ord. 16, R. S. C.): formerly such a Pauper was one who would swear himself not worth £5 (3 Bl. Com. 400), but now he has to prove "that he is not worth £25, his wearing apparel and the subject-matter of the Cause or Matter only excepted" (R. 22, Ord. 16, R. S. C.). *Vh*, R. 22-R. 31, Ord. 16, R. S. C.: Ann. Pr.: DIVES' COSTS.

**FORMAL.** — Where the sealed copy of a Debtor's Summons stated the debt as £24 instead of £74, but the annexed Particulars of Demand stated the amount correctly, this was held a "Formal Defect or Irregularity" within s. 82, Bankry Act, 1869 (*Ex p. Johnson*, 53 L. J. Ch. 309; 25 Ch. D. 112); so was an omission by a petitioning creditor to state in the petition his readiness to give up his security (*Ex p. Vanderlinden, Re Pogose*, 51 L. J. Ch. 760: 20 Ch. D. 289. Note: S. 143 is the corresponding section in the Bankry Act, 1883). So, under the latter section, it is only an "Irregularity" to state in a Bankry Notice that

judgment was obtained against six persons when it was only obtained against four (*Re Low*, 1895, 1 Q. B. 734; 64 L. J. Q. B. 362; 72 L. T. 450; 43 W. R. 405; 59 J. P. 292). *Secus*, of an omission of the plaintiff's name (*Re Howes, Ex p. Hughes*, 1892, 2 Q. B. 628; 62 L. J. Q. B. 88; 67 L. T. 213; 40 W. R. 647: *Vf*, IN ACCORDANCE WITH THE JUDGMENT); and an omission (in a Bankry Petition) to state the intent of a debtor's departure out of England, is of the substance, and not merely "formal" (*Ex p. Coates, Re Skelton*, 5 Ch. D. 979).

So, the signature of the Commissioner to a Trader Debtor's Summons (Sch H, Bankry Act, 1849) was an essential part of the document, and its omission from the served copy was fatal (*Ex p. Tindall*, 24 L. J. Bank. 18; 6 D. G. M. & G. 741). *Vf, Ex p. Rogers*, 15 Ch. D. 207: *Re Holt*, 11 Ch. D. 168.

An allegation in an Indictment which must be proved as alleged, cannot be called "formal" (*Sill v. The Queen*, 1 E. & B. 553; 22 L. J. M. C. 41).

*V. INFORMALITY: DEFECT.*

"Formal Contract"; *V. SUBJECT TO.*

"Formal Points"; *V. MERITS.*

**FORMALITY.**— "Without any further Formality," s. 8, Clergy Discipline Act, 1892, 55 & 56 V. c. 32; *V. R. v. Durham, Bp.* 1897, 2 Q. B. 414; 66 L. J. Q. B. 576, 826; 77 L. T. 190; 46 W. R. 36; 13 Times Rep. 428.

**FORMATION EXPENSES.**— Include Promotion Moneys paid to persons as commission for floating a Company (*Arkwright v. Newbold*, 50 L. J. Ch. 372; 17 Ch. D. 301).

**FORMED.**— A Company, Association, or Partnership, is not newly "formed," within s. 4, Comp Act, 1862, when it admits new members, if its continuing identity is practically preserved (*Shaw v. Simmons*, 53 L. J. Q. B. 29; 12 Q. B. D. 117).

It has been suggested that "formed" in this section means, "formed in this country" (Buekl. 4).

"Formed for Working"; *V. ENGAGED IN WORKING.*

*V. NEW STREET.*

**FORMER.**— Covenant indemnifying against all "former" Titles and incumbrances; *V. Lovell v. Luttervell*, Savile, 74: *Hamington v. Rydear*, 1 Leon. 92; 1 And. 162, pl. 208; 10 Rep. 52 a; nom. *Haverington's Case*, Owen, 6. *V. these cases stated*, Platt on Covenants, 332, 333.

"Former Tenant"; Stat. Def., 59 & 60 V. c. 47, s. 47 (7).

**FORMING.**— A school set back 80 feet from a STREET, and in the greater part hidden by houses between it and the street but having a direct private access to the street, is a house "forming" part of a street

within s. 105, Metrop. Man. Act, 1855 (*London School Board v. St. Mary, Islington*, 45 L. J. M. C. 1; 1 Q. B. D. 65). In that case, Cockburn, C. J., said, — “I think that whether a house is ‘within’ a street, or whether it is ‘forming’ or ‘fronting’ a street, is much the same thing.”

*V. ABUT: FRONTING: WITHIN: and Cp*, the section above cited with s. 77, Metrop. Man. Act, 1862, where the words are “BOUNDING and abutting.”

**FORNICATION.** — “Is voluntary sexual intercourse between persons who are not husband and wife. Where one of them is married, such incontinence is usually termed ADULTERY” (5 Encyc. 466).

**FORSTALL.** — *V. FORESTALLER.*

**FORSWORN.** — “‘Forsworn,’ is applicable, not only to Perjuries punishable at law, but also to offences of the same description which incur no temporal punishment” (per Denman, C. J., *Tomlinson v. Brittlebank*, 4 B. & Ad. 632); but in *Holt v. Scholefield* (6 T. R. 691) it was held that to say a person was “forsworn” was not actionable Slander, without showing that it was spoken with reference to some judicial proceeding in which the plt had been sworn. *Vf*, *Stanhope v. Blith*, 4 Rep. 15. *Cp*, PERJURY.

**FORSYTH’S ACT.** — The Endowed Schools Act, 1869, 32 & 33 V. c. 56.

**FORTHWITH.** — Where a Judge has to do a thing “forthwith” after the happening of something else, the word will have a different meaning according as the act to be done is,

1. Ministerial and demandable *ex debito justitiæ*; or
2. Judicial.

If the act comes within the first of these classes the word will mean, “forthwith upon the application of the party entitled to have the act done.” Thus a successful defendant in an assault summons is entitled, under s. 44, 24 & 25 V. c. 100, to a Certificate of Dismissal on applying for it (*Hancock v. Somes*, 1 E. & E. 795; 28 L. J. M. C. 196; *Costar v. Hetherington*, 28 L. J. M. C. 198; 7 W. R. 413; over-ruling *R. v. Robinson*, 10 L. J. M. C. 9; 12 A. & E. 672).

Where, however, the act to be done is judicial and discretionary, “Forthwith” is synonymous with “Immediately” (*R. v. Francis*, Ca. t. Hard. 115; *Grace v. Clinch*, 12 L. J. Q. B. 273; 4 Q. B. 606; 3 G. & D. 591; *Chaplin v. Levy*, 23 L. J. Ex. 200; 9 Ex. 673; *Hancock v. Somes*, sup; *Heden v. Atlantic Royal Mail Steam Nav Co*, 29 L. J. Q. B. 191; per Cockburn, C. J., *R. v. Berkshire Jus.*, 48 L. J. M. C. 137; 4 Q. B. D. 469; 27 W. R. 798).

*V. IMMEDIATELY.*



In a *Contract*, and the ordinary transactions of life, "Forthwith" does not usually mean "Immediately" (*Roberts v. Brett*, 34 L. J. C. P. 241; 11 H. L. Ca. 337; 20 C. B. N. S. 148); but means, "with all reasonable celerity" (per Tindal, C. J., *Burgess v. Bootejeur*, 7 M. & G. 494), or, in other words, "as soon as reasonably possible" (*Kenny v. Hutchinson*, 6 M. & W. 134; *Hyde v. Watts*, 12 Ib. 254; 13 L. J. Ex. 41; *Simpson v. Henderson*, Moo. & M. 300). *Vh, Re Sullivan*, 15 L. T. 434; 36 L. J. Bank. 1.

"I think the word 'forthwith' is to be construed according to circumstances. A covenant to insure a man's life, for instance, cannot be complied with in a moment. But where an act required to be done 'forthwith,' is one which is capable of being done without any delay, no delay can be permitted" (per Jessel, M. R., *Re Southam, Ex p. Lamb*, 51 L. J. Ch. 207; 19 Ch. D. 169; 30 W. R. 126). In that case an Appeal Notice in Bankry was not sent to the country till the next day after the appeal was entered in London, and it was held not to have been sent "forthwith" (*Vth, Ex p. Williams*, 26 S. J. 345; *Er p. Hill, Re Darbyshire*, 53 L. J. Ch. 247).

When a Contract for Sale of Goods provides for delivery "forthwith," and for payment within a stated number of days, that means that the delivery is to be within those days and is a Condition Precedent to the liability for payment (*Stanton v. Wood*, 15 Jur. 1123).

So, "forthwith" is itself sometimes conditional; as where an Award directed that A. should "forthwith" execute Reconveyances to C. and C. should "forthwith" execute a Release to A.; "forthwith" in the latter case meant, as soon as A. had executed the Reconveyances (*Boyes v. Bluck*, 13 C. B. 652).

To "forthwith" notify to the Seller of an ARTICLE an intention to have it analysed, s. 14, Sale of Food and Drugs Act, 1875, does not mean that it is to be done on the instant of the sale; if A. sends B. to buy it and in (say) two minutes afterwards goes himself into the shop and gives the notification, that is "forthwith" (*Somerset v. Miller*, 54 J. P. 614; *Vf, Stace v. Smith*, 45 Ib. 141).

"Forthwith proceed," in a Charter-party, means that the Ship shall sail without unreasonable delay (*Hudson v. Hill*, 43 L. J. C. P. 273; 30 L. T. 555).

"A Covenant 'forthwith' to put premises into REPAIR must receive a reasonable construction, and it is not limited to any specific time; therefore it is for the jury to say, upon the evidence, whether the defendant has done what he reasonably ought in performance of it" (Woodf. 627. citing *Doe d. Pitman v. Sutton*, 9 C. & P. 706; *Vh, PUT*). So, by a Mandamus to persons to execute works, "the Court does not, by the word 'forthwith,' mean to command them to do everything instantly: but to set about the works directly and do what they can" (per Patteson, J., *R. v. Ouse Commrs.*, 3 A. & E. 550).

"Forthwith" *replace* articles, comprised in a Bill of Sale, that may be destroyed or deteriorated, means that this should be done with as little delay as possible (per Hannen, P., *Furber v. Cobb*, 56 L. J. Q. B. 275; 18 Q. B. D. 494; 56 L. T. 689; 35 W. R. 398).

In an action against an Overseer for not giving a copy of a Rate "upon demand, forthwith," it was held that that meant, within such time as the Jury might think reasonable (*Tennant v. Bell*, 16 L. J. M. C. 31; 9 Q. B. 684: *Sr, Spenceley v. Robinson*, 3 B. & C. 662, in *whe, semble*, Abbott, C. J., thought the question was for the Judge). So the proprietor of a Lunatic Asylum is, by s. 72, 8 & 9 V. c. 100, to discharge his patient "forthwith" on the receipt of the Order in that section mentioned; — that is, the proprietor "has no discretion, but would be bound to release the patient 'forthwith' and against the patient's will, — not cruelly, as for instance, if it were raining heavily, but within such a time as a reasonable man would say was practicable" (per Esher, M. R., *Lowe v. Fox*, 54 L. J. Q. B. 563; 15 Q. B. D. 667; *affd* 12 App. Ca. 206).

In a *Notice* to a person charged criminally and out on Bail to appear on pain of forfeiting his Recognizance, "forthwith," means within a reasonable time from the service, and not from the date, of the notice (*R. v. Price*, 8 Moore P. C. 203). So, of a payment to be made "forthwith" pursuant to a Recognizance (*R. v. Ely Jus.*, 5 E. & B. 496; 25 L. J. M. C. 1; 26 L. T. O. S. 57; 4 W. R. 5).

"Forthwith" give Notice of Recognizances, s. 3, 8 V. c. 10; *V. Ex p. Lowe*, 15 L. J. M. C. 99; 3 Dowl. & L. 737: *V. R. v. Price*, *sup.*

"Capable forthwith"; *V. CAPABLE.*

Where a Consequence is "forthwith" to follow on an event, the word imperatively excludes a time within which something else may be done inconsistent with that consequence. Thus by s. 36, Municipal Corporations Act, 1882, 45 & 46 V. c. 50, a Town Council, on receiving the resignation of a person elected to a corporate office, is "forthwith" to declare that office vacant; and therefore the resignation cannot be withdrawn (*R. v. Wigan*, 54 L. J. Q. B. 338; 14 Q. B. D. 908). So, a Notice determining a term, or other state of things, "forthwith," "means 'now,' 'as from this moment,' 'henceforth'" (per Kekewich, J., *Keith v. National Telephone Co*, 1894, 2 Ch. 147; 63 L. J. Ch. 376; 70 L. T. 276; 42 W. R. 380).

*Vf, Re Sillence*, 7 Ch. D. 238; 47 L. J. Bank. 87: *Ex p. Donnithorne*, 40 L. T. 660: *Thomas v. Nokes*, L. R. 6 Eq. 521; 58 J. P. 672: *Benj.* 679.

**FORTNIGHT.** — *Semble* a "Fortnight's" Notice, means 14 CLEAR days (*Labouchere v. Wharnclyffe*, 13 Ch. D. 353). *Cp, WEEK.*

"Two Voyages per month, fortnightly," in a Charter-Party, means, that the vessel is to sail at regular intervals of about a fortnight, and not more than two sailings per month (*The Melrose Abbey*, 14 Times Rep. 202).

**FORTUNE.** — In a devise, "Fortune" includes the realty as well as the personalty (*Spearing v. Hawkes*, 6 Ir. Ch. Rep. 297; *Baring v. Ashburton*, 54 L. T. 464).

*V.* SUBSTANCE: REASONABLE PORTION.

**FORTUNES.** — "Pretending or professing to tell fortunes," Vagrancy Act, 1824, s. 4; *V. Penny v. Hanson*, cited DECEIVE. *V.*; *Monck v. Hilton* and cognate cases, cited OTHERWISE: PALMISTRY: PRETEND: ROGUE AND VAGABOND.

*Cp.* CONJURATION.

**FORWARD.** — The "Forward Part" of a Vessel 150 feet or upwards in length, Art. 11, Regns for Preventing Collisions at Sea, means, that forward part of her from which the prescribed light will give, to those navigating in the vicinity, good information as to her length; a light fixed just forward of the middle length of the vessel would (possibly) not do; but a light 60 or 70 feet abaft the stem of a vessel 313 feet long will comply with the requirement (*The Philadelphian*, 1900, P. 43, 262; 69 L. J. P. D. & A. 31, 101; 82 L. T. 601; 48 W. R. 514).

**FORWARDER.** — *V.* CARRIER.

Stat. Def. — 31 & 32 V. c. 33, s. 2.

**FORWARDING CO.** — "Forwarding Co" and "Co requiring the traffic to be forwarded," s. 11 (1), Regn of Railways Act, 1873, 36 & 37 V. c. 48, "apply to any Co who (being interested in the TRAFFIC of a Ry, in pursuance of their legitimate interest and that of the public) require that it shall be forwarded by a continuous route on just and reasonable terms, as provided by the statute, although the traffic is not under their immediate management" (*Greenock & Wemyss Bay Ry v. Caledonian Ry*, 5 Sess. Ca. 4th Ser. 995; 3 Ry & Can Traffic Ca. 145; cited and adopted *Central Wales Ry v. G. W. Ry*, 4 Ry & Can Traffic Ca. 113).

*Vf.* *Warwick & Birmingham Canal Nav. v. Birmingham Canal Nav.*, 3 Ry & Can Traffic Ca. 113; THROUGH TRAFFIC: s. 37 (4), 51 & 52 V. c. 25.

**FORWARDS.** — "Forwards and Backwards," in a Marine Insree; *V. Grant v. Paxton*, 1 Taunt. 463.

**FOSSILS.** — "The word 'Fossils' may, in a strict sense, apply to stones dug or quarried. Usually, however, it appears to apply only to metallic minerals" (MacS. 19, citing *Rosse v. Wainman*, 14 M. & W. 872, 873; 15 L. J. Ex. 67; affd nom. *Wainman v. Rosse*, 2 Ex. 800).

**FOTHER.** — *V.* GORE.

**FOUL.** — "Foul Matter"; *V.* FILTHY WATER.

FOULDCOURSE. — *V.* FOLDCOURSE.

**FOUND.** — Mineral "Found" means, "ascertained to lie and be" (*Jowett v. Spencer*, 1 Ex. 647; 17 L. J. Ex. 367).

"No sufficient Distress to be Found on the demised premises," s. 2, 4 G. 2, c. 28; s. 210, Com. L. Pro. Act, 1852, — Goods are not so "to be found" if they are not so visible that a broker, using reasonable diligence, would be able to distrain them (*Doe d. Haverson v. Franks*, 2 C. & K. 678); nor if a distress be prevented by the outer door being locked (*Doe d. Chippendale v. Dyson*, 1 Moo. & M. 77; *Doe d. Cox v. Roe*, 5 Dowl. & L. 272; *Hammond v. Mather*, 3 F. & F. 151).

"Cannot be found"; *V.* CANNOT.

A Person is "found" wherever he is actually present, *e.g.* in the phrase "found within the Jurisdiction of any Court of Justice in Her Majesty's Dominions," s. 21, 18 & 19 V. c. 91 (*R. v. Lopez* and *R. v. Sattler*, 27 L. J. M. C. 48; 6 W. R. 227; 7 Cox C. C. 431).

The difference between "Found" and "*Frequenting*" as used in s. 4, Vagrancy Act, 1824, was pointed out in *R. v. Clark* (54 L. J. M. C. 66; nom. *Clark v. Reg.*, 14 Q. B. D. 92); where it was decided that a person "found" in a house, &c, for the purpose of committing a felony, could be convicted if only "found" there once; but that the offence of "*frequenting*" a street, &c, for a like purpose, is not shown to have been committed if the evidence does not show that the person was there more than once. *V.* FREQUENT: ROGUE AND VAGABOND.

In like manner a person "found" in a suspected COMMON GAMING HOUSE (including, a Betting House), — s. 14, 33 H. 8, c. 9, s. 11; 16 & 17 V. c. 119, — need not be shown to be "haunting, resorting, or playing"; if he is merely there, the magistrate may, under the first of those sections, bind him in recognizances "no more to play, haunt, or exercise" (*Murphy v. Arrow*, 1897, 2 Q. B. 527; 66 L. J. Q. B. 865; 77 L. T. 435; 46 W. R. 94).

"Found committing," — *e.g.* in s. 66, 2 & 3 V. c. 47; s. 103, 24 & 25 V. c. 96, — applies to the case of persons who are taken *flagrante delicto* doing the specific act (*Simmons v. Millingen*, 15 L. J. C. P. 102; 2 C. B. 524; *Vf, Roberts v. Orchard*, 33 L. J. Ex. 65; 2 H. & C. 769; 9 L. T. 737; *Griffiths v. Taylor*, 46 L. J. C. P. 152; 2 C. P. D. 194; *Downing v. Capel*, 36 L. J. M. C. 97; L. R. 2 C. P. 461), or who are taken on "immediate and FRESH PURSUIT" after the act (per Tindal, C. J., *Hanway v. Boulbee*, 1 Moo. & R. 15). *Cp.* BLOODY HAND: MANNER: VIEW.

"Found *offending*," — *e.g.* 5 G. 4, c. 83, ss. 6, 11, — has a similar meaning; so that a Constable cannot, without a Warrant, arrest a man for having neglected to maintain his family (*Horley v. Rogers*, 29 L. J. M. C. 140; 24 J. P. 261). "Found on" licensed premises after hours, s. 25, 35 & 36 V. c. 94, would, *semble*, receive a similar interpretation.

"Found drunk on licensed premises," s. 12, 35 & 36 V. c. 94, means to be so found "in places where the public go, or which are open and where the public may enter and consume drink" (per Mellor, J., *Lester v. Torrens*, 46 L. J. M. C. 281; 2 Q. B. D. 403); and, therefore, it was there held that an Innkeeper, in his own inn after the same is closed, cannot commit the offence. But, *semble*, the above dictum of Mellor, J., was too wide, though the actual decision in *Lester v. Torrens* is correct; and a drunken customer remaining on licensed premises after closing time is within the enactment, though the door has been closed (*R. v. Pelly*, 1897, 2 Q. B. 33; 66 L. J. Q. B. 519; 61 J. P. 373): *Seamble*, that licensed premises are not properly closed whilst a customer remains therein (*Ib.*).

Article "found in the Possession of any person," s. 47 (3), 54 & 55 V. c. 76; *V.* per Hawkins, J., *R. v. Dennis*, 63 L. J. M. C. 166; 1894, 2 Q. B. 458; 71 L. T. 436; 58 J. P. 622.

Regimental Equipments "found in the Possession or Keeping of any person," s. 156 (2), Army Act, 1881, 44 & 45 V. c. 58; *V. Laws v. Read*, 63 L. J. Q. B. 683.

"Found to be due," note (*d*), item 72, Court Fees Order, 1884, construed "found to have been received" (*Re Crawshaw*, 57 L. J. Ch. 923; 39 Ch. D. 552; 59 L. T. 598).

"Found to be of UNSOUND MIND," s. 1, 14 & 15 V. c. 81; *V. Re Maltby*, 50 L. J. Q. B. 419; 7 Q. B. D. 18.

"To Found," or "to Establish" a CHARITY, such as a school, hospital, or chapel, *primâ facie* involves the erection of a building for it; and a bequest for such a purpose is within the Mortmain Acts, as implying the bringing of lands into Mortmain (*Hopkins v. Philipps*, 30 L. J. Ch. 671; 3 Giff. 182; *Tatham v. Drummond*, 34 L. J. Ch. 1; 2 H. & M. 262; 4 D. & G. J. & S. 484; *Re Goldsmid, Mocatta v. A-G.*, 34 S. J. 63; W. N. (89) 184. *Sc.* quâ "establish," *Hartshorne v. Nicholson*, 27 L. J. Ch. 810; 26 Bea. 58: PROVIDE. *If*, 1 Jarm. 228, 229, 230). But a bequest "to Found a Charitable Endowment" is good (*Salisbury v. Denton*, 26 L. J. Ch. 851; 3 K. & J. 529: ENDOW: ERECT); and so is a bequest for "Supporting or Founding" ragged schools in a parish where such a school already exists (*Re Hedgman, Morley v. Croxon*, 8 Ch. D. 156: *V. SUPPORT*). *Cp.* NEWLY ESTABLISH.

#### FOUNDATION.—*V.* FOUNDER: BOY: PRIVATE FOUNDATION.

"Foundation" requiring instruction "according to the Doctrines or Formularies of any PARTICULAR CHURCH," s. 19 (2), Endowed Schools Act, 1869, 32 & 33 V. c. 56, does not comprise Christ's Hospital, London, as being specially attached to the Church of England (*Christ's Hospital v. Charity Commrs*, 59 L. J. P. C. 52; 15 App. Ca. 172; 62 L. T. 10; 38 W. R. 758).

Quâ London Bg Act, 1894, "'Foundation.' applied to a Wall having

footings, means, the solid ground or artificially formed support on which the footings of the wall rest; but in the case of a wall carried by a BRESSUMMER, means such bressummer" (subs. 9, s. 5). *Cp.* BASE.

Quà P. H. Ireland Act, 1878, 41 & 42 V. c. 52, "'Foundations,' shall mean, the space immediately beneath the footings of a wall" (s. 41).

**FOUNDED ON.**—A Motion is not in any way "founded on" an Affidavit relating merely to procedure, — *e.g.* an affidavit of service, — so as to require copy of such affidavit to be served with notice of motion under R. 4, Ord. 52, R. S. C. (per Pearson, J., *Witham v. Witham*, 29 S. J. 707; *Schirges v. Schirges*, 30 S. J. 403; W. N. (86) 85). But in *Re Lysaght* (31 S. J. 233), North, J., declined to follow that interpretation.

Action "founded on" Breach of Contract within the Jurisdiction, R. 1 (*e*), Ord. 11, R. S. C.; *V. Ann. Pr.*

Action may be said to be "Founded on CONTRACT," or "Founded on TORT," *V. s. 5*, Co. Co. Act, 1867; s. 116, Co. Co. Act, 1888. In *Bryant v. Herbert* (47 L. J. C. P. 670; 3 C. P. D. 389; 26 W. R. 498; 49 L. T. 17) there was a curious conflict of opinion as to whether these are Terms of Art:—Bramwell, L. J., said, "They are plain English words, and are to have the meaning ordinary Englishmen would give them"; whilst Brett, L. J., said, "With the greatest deference to my learned brother, I do not think those words can be called plain English; for they seem to me to be technical terms." "The rule is this;—if the action is in respect of a Cause of Action in order to make out which it is *not* necessary for the plt to rely on, or prove, a Contract, then the action is Founded on Tort; if, on the other hand, the action is one for the successful maintenance of which it is necessary for the plt to rely on, or prove, a contract, then the action is Founded on Contract" (per Smith, L. J., *Turner v. Stallibrass*, cited TORT).

**FOUNDER.**—The "Founder" of an ENDOWMENT is the person or persons who originally created it; and "every accretion to the original subscriptions, which was not an endowment for any new and special purpose, must be taken to be upon the footing of the original foundation" (per Selborne, C., *St. Leonards Trustees v. Charity Commrs*, 54 L. J. P. C. 31; 10 App. Ca. 304). Accordingly it was held in that case that mere Subscribers to an endowment subsequent to its origination, are not "Founders" within the Endowed Schools Acts, 1869, 1873 (32 & 33 V. c. 56, s. 19; 36 & 37 V. c. 87, s. 7). *Vf.* as to what is a Foundation, *R. v. Runciman*, cited PRIVATE ENDOWMENT.

"Founder," 17 Ric. 2, c. 1, a worker of metals by melting and casting (*Termes de la Ley*).

**FOUNDERSHIP.**—*V. A-G. v. Brentwood School*, 3 B. & Ad. 73.

**FOUNDRY.** — “Foundries”; *V.* NON-TEXTILE FACTORIES.

**FOURTH.** — *V.* SEVENTH.

**FOWL.** — Fowls of the Warren are “of two sorts, viz., *Terrestres* and *Aquatiles*. *Terrestres* of two sorts, *Silvestres*, and *Campestris*: — *Campestris*, as Partridge, Quail, Raile, &c; *Silvestres*, as Pheasant, Woodcocke, &c; *Aquatiles*, as Mallard, Herne, &c” (Co. Litt. 233 a): Grouse are not Fowls of the Warren (*Devonshire v. Lodge*, 7 B. & C. 36). Beasts of the Warren, *V.* BEASTS: GAME, *Animals*.

“The word ‘Fowl’ comprehends all birds and poultry” (per Holt, C. J., *Keeble v. Hickeringill*, 11 East, 577).

*V.* WILDFOWL. *Sc.* WILD BIRD.

**FOWLING.** — *V.* HUNTING.

In *Devonshire v. O'Connor* (cited FREEHOLD), Esher, M. R., is thus reported, — “It is said that the word ‘Fowling’ contains the right of Shooting. It *probably* does” (24 Q. B. D. 478), but in the Law Journal the words are, “It *perhaps* does,” . . . “even though the word ‘Fowling’ does include Shooting, which I am inclined to doubt” (59 L. J. Q. B. 212).

**FOX'S ACT.** — The Libel Act, 1792, 32 G. 3, c. 60. *Vh*, 5 Encyc. 472.

**FRACTION.** — Fraction of a Day; *V.* DAY.

**FRACTITIUM.** — Arable land: 2 Mon. Angl. 873 (Jacob).

**FRANCHISE.** — “Franchise or Liberty. — A royal Privilege belonging either to the Crown or to a subject by virtue of a grant from the Crown, either express, or implied from long enjoyment; Wms. on Rights of Common, 228” (Elph. 581, *whv*): “An immunity or exemption from ordinary jurisdiction” (Termes de la Ley). *V.* NON-USER.

“‘Franchise’ and ‘LIBERTY’ are used as synonymous terms; and their definition is, a Royal Privilege, or a branch of the King’s Prerogative, subsisting in the hands of a subject” (2 Bl. Com. 37). Accordingly, a Patent is a “Franchise” within s. 56, Co. Co. Act, 1888 (*R. v. Halifax Co. Co.*, 60 L. J. Q. B. 550; 1891, 2 Q. B. 263; 65 L. T. 104; 39 W. R. 545: *whv* for the authorities treating of the various kinds of Franchise).

A FERRY is a Franchise (per Cockburn, C. J., *R. v. Cambrian Ry.*, cited HEREDITAMENT).

In such a phrase as “Parliamentary Franchise,” as now used, the adjective negatives the idea of its arising from a Royal grant.

*Vh*, Jacob: 3 Cru. Dig. Title 27: 5 Encyc. 473–490.

In the United States, a Franchise is, a Privilege of a Public Nature conferred by a legislative grant (*State v. Weatherly*, 45 Mo. 20).

“Franchise of *Weights and Measures*”; Stat. Def., 55 & 56 V. c. 18, s. 1 (5).

“Franchise *Coroner*”; Stat. Def., 50 & 51 V. c. 71, s. 42.

**FRANK-ALMOIGN.**—“Our old bookes described frankalmoign thus; when lands or tenements were bestowed upon God, (that is) given to such people as are consecrated to the service of God” (Co. Litt. 94 b: *Vf*, Termes de la Ley: 5 Encyc. 491). *Cp*, AUMONE

**FRANK-BANK.**—Is the same as FREEBENCH.

**FRANK-CHASE.**—*V*. Termes de la Ley: 5 Encyc. 492.

**FRANK-FEE.**—Frank-Fee lands, were freeholds exempted from all Services but HOMAGE (Jacob). *Vf*, Cowel.

**FRANK-FERME.**—“Britton, who describes lands in SOCAGE tenure under the name of *fraunke ferme* (c. 66), tells us that they are ‘lands and tenements whereof the nature of the fee is changed by Feoffment *out of Chivalry* for certain yearly Services, and in respect whereof neither Homage, Ward, Marriage, nor Relief, can be demanded’” (2 Bl. Com. 80, 81).

**FRANK-FOLDAGE.**—“Frankfoldage — Faldagium — is the right of the lord of a manor, or other person, to have all the sheep within his manor, or within a certain vill or town or other district, folded at night on his land for the purpose of manuring it; *V*. Wms. on Rights of Common, 274 *et seq*” (Elph. 582, *whv*).

*Cp*, FALDAGE: FOLDCOURSE.

**FRANK-LAW.**—“Frank-Law” connoted the rights of a Free-man; in losing which a man lost his right to be a Juryman, or Witness, or to go to the King’s Court in person, and was liable to be imprisoned; and his lands goods and chattels might be seized by the King (Termes de la Ley). *Cp*, OUTLAW.

**FRANK-MARRIAGE.**—A gift in Frank-Marriage, was a special fee taile (Litt. s. 17). “‘Free Marriage,’ is when a man seised of lands in fee simple, giveth it to another man and to his wife (who is the daughter, sister, or otherwise of kin, to the donor) ‘in Free Marriage’; by vertue of which words they have an estate in speciall taile, and shall hold the land of the donor quit of all manner of Services” except Fealty, until the fourth degree, they being in the first degree (Termes de la Ley). “And these words (*in liberum maritagium*) are such Words of Art, and so necessarily required, as they cannot be expressed by words equipollent” (Co. Litt. 21 b). *Vf*, 5 Encyc. 492.



**FRANK-PLEDGE.** — Signified, “a Pledge or Surety for Free-men: for the ancient Custome of Free-men of England, for the preservation of the Publick Peace, was, that every free-born man at 14 years of age (Religious person, Clerks, Knights and their eldest sons excepted) should find Surety for his Truth towards the King and his subjects, or else be kept in prison; whereupon a certain number of Neighbours became customably bound one for another to see each man of their Pledge fortheoming at all times, or to answer the transgression committed by any broken away: So that whosoever offended, it was forthwith inquired in what Pledge he was, and then they of that Pledge either brought him forth within 31 dayes to his Answer, or satisfied for his Offence” (Cowel: *Vf*, Jacob: 5 Encyc. 493). The satisfaction was an AMERCIAMENT. *Vf*, PLEDGE: VIEW.

**FRANK-TENEMENT.** — *V*. FREEHOLD.

**FRANKING OFFICER.** — The “Franking Officer” of the Post Office, means, “the person appointed to frank the Official Correspondence of Offices to which the privilege of franking is granted” (s. 47, 1 V. c. 36).

**FRASSETUM.** — “*Frussetum* signifieth a wood, or ground that is woodie” (Co. Litt. 4 b).

**FRAUD.** — “‘Fraud,’ in my opinion, is a term that should be reserved for something dishonest and morally wrong, and much mischief is, I think, done, as well as much pain inflicted, by its use where ‘illegality’ and ‘illegal’ are the really appropriate expressions” (per Wills, J., *Ex p. Watson*, 57 L. J. Q. B. 613; 21 Q. B. D. 301; 59 L. T. 401; 36 W. R. 829; 52 J. P. 742: *Vf*, per Cranworth, C., *Boyse v. Rossborough*, cited UNDUE INFLUENCE). *Cp*, MALICE.

So, in Pleading, it is frequently unnecessary to use this word, — *e.g.* “an allegation that the deft made to the plt representations on which he intended the plt to act, which representations were untrue and known to the deft to be untrue, is sufficient” (per Thesiger, L. J., *Dary v. Garrett*, 7 Ch. D. 489). *Vh*, *Pasley v. Freeman*, 3 T. R. 51; *Polehill v. Walter*, 3 B. & Ad. 115; *Taylor v. Ashton*, 11 M. & W. 415; *Ormrod v. Huth*, 14 M. & W. 651; *Doyle v. Hort*, 4 L. R. Ir. 668; *Sethle, Byrne v. Muzio*, 8 Ib. 396.

“Fraud” must be found in the Further Report of the Official Receiver of a Co, under s. 8 (2) Comp Winding-up Act, 1890, if an Examination is to be directed under the following subsection; not “that the particular word ‘fraud’ must be used, but that such facts must be found by the Off. Rec. as suggest fraud” against a specified person (per Halsbury, C., *Ex p. Barnes*, 1896, A. C. 146; 65 L. J. Ch. 394; 44 W. R. 433; 74 L. T. 153; *Vf*, *Re Laxon*, 1893, 1 Ch. 210; 62 L. J. Ch. 206). And as to

what is a sufficient statement of Fraud in such Further Report, *V. Re Civil, &c Outfitters, Lim.*, 1899, 1 Ch. 215; 68 L. J. Ch. 164; 80 L. T. 241; 47 W. R. 233.

"Fraud," in s. 26 (4, c), Patents, Designs, and Trade Marks Act, 1883, 46 & 47 V. c. 57, means something more than mistake or misconception, there must be some intention to commit a fraud on the petitioner, or otherwise to derive an unfair benefit (*Re Avery*, 36 Ch. D. 307; 56 L. J. Ch. 1007; 57 L. T. 506; 36 W. R. 249).

"Fraud, or Unfair Dealing" as used in s. 1, Sales of Reversions Act, 1867, 31 V. c. 4, "does not mean deceit or circumvention; it means an unconscientious use of the power arising out of the circumstances and conditions; and when the relative position of the parties is such as *primâ facie* to raise this presumption, the transaction cannot stand, unless the person claiming the benefit of it is able to repel the presumption by contrary evidence, proving it to have been, in point of fact, fair, just, and reasonable" (per Selborne, C., *Aylesford v. Morris*, 42 L. J. Ch. 548; 8 Ch. 484: *Vf, Fry v. Lane*, 58 L. J. Ch. 116; 40 Ch. D. 312: *Brenchley v. Higgins*, cited PURCHASE).

Taking away or decoying a Child "*by Force or Fraud*," s. 56, 24 & 25 V. c. 100, does not, under the latter term, mean that the fraud must be practised on the child; any fraud whereby the child is taken away or decoyed is within the section (*R. v. Bellis*, 62 L. J. M. C. 155; 69 L. T. 26; 57 J. P. 441; overruling dictum of Montagu Smith, J., *R. v. Barrett*, 15 Cox C. C. 658).

V. ACTUAL FRAUD: LEGAL FRAUD: CONCEALED FRAUD: DECEIT: BREACH OF TRUST: FAULTS.

On Fraud generally, *V. Kerr on Fraud and Mistake*; 5 Encyc. 494-501.

"Fraud or Dishonesty," in a Guarantee Policy, *V. Ravenscroft v. Provident Clerks Assn*, 5 Times Rep. 3:—"Loss from Dishonesty," in a Guarantee, *V. Whitcaway v. Godard*, 11 Ib. 222.

V. CHARGE OF FRAUD: POWER.

**FRAUDS.**—Statute of Frauds, 29 Car. 2, c. 3.

**FRAUDULENT ASSURANCE.**—"Fraudulent Conveyance, Gift, Delivery, or Transfer," s. 4 (b), Bankry Act, 1883;—*Vh*, Yate Lee, 16-41: Wms. Bank. 6-19: Robson, 140-161: Baldwin, 92-101. *Vh*, *Re Moroney*, 21 L. R. Ir. 27.

"Fraudulent or Covinous" Conveyance, within the statutes of Eliz.; *V. GOOD: VALUABLE: May on Fraudulent Conveyances: 5 Encyc. 504-509.*

**FRAUDULENT BREACH OF TRUST.**—*V. BREACH OF TRUST.*

**FRAUDULENT IMITATION.**—A "Fraudulent Imitation" of a DESIGN, "must be something more than Imitation. As I understand it,

the meaning is, Imitation with Knowledge, — *i.e.* that the man who imitates has seen the first design. It is not unconscious imitation (which is said to be the greatest compliment you can pay to an artist or author), but Conscious Imitation, — the man having the design before him and knowingly and wilfully imitating. and that imitation being not sufficiently original to be protected as a fair imitation" (per Jessel, M. R., *Barran v. Lomas*, 28 W. R. 975).

"Colourably imitate"; *V. COPY.*

*Cp.*, OBVIOUS.

**FRAUDULENT PREFERENCE.** — A Fraudulent Preference "arises where the debtor, in contemplation of bankry, that is, knowing his circumstances to be such as that bankry must be, or will be, the probable result, though it may not be the inevitable result, does, *ex mero motu*, make a payment of money, or a delivery of property, to a CREDITOR, not in the ordinary course of business, and without any pressure or demand on the part of the Creditor" (per Ld Westbury, *Nunes v. Carter*, L. R. 1 P. C. 348; 36 L. J. P. C. 14; 15 W. R. 239. *Vf. Re Vautin*, 1900, 2 Q. B. 325; 69 L. J. Q. B. 703; 82 L. T. 722). *Semble*, the payment or delivery must be to, or in favor of, the Cr as distinguished from a Surety for the Debtor (*Re Warren*, 1900, 2 Q. B. 138; 69 L. J. Q. B. 425; 82 L. T. 502; 48 W. R. 523); but to the contrary is *Re Paine*, cited CREDITOR: *Vf. Re Blackpool Motor Car Co*, 49 W. R. 124; W. N. (1900) 252.

For the cases hereon, *V. Yate Lee*, 419-432: *Wms. Bank.* 235-243: *Robson*, 161-173: *Baldwin*, 101-109: *May on Fraudulent Dispositions*, 2 ed., 101-106: **GOOD FAITH: ORDINARY COURSE: VIEW.**

It is not a Fraudulent Preference to make a payment to revive a statute-barred debt that has not been treated as extinct (*Re Lane, Ex p. Gaze*, 58 L. J. Q. B. 373).

*Cp.*, UNDUE PREFERENCE, at end.

**FRAUDULENT PURPOSE.** — Taking a *fi. fa.* from a bailiff, under the impression that his authority to execute it depends on its possession, though not Larceny, is taking it "for a Fraudulent Purpose" within s. 96, 24 & 25 V. c. 96 (*R. v. Bailey*, 41 L. J. M. C. 61; L. R. 1 C. C. R. 347). *Vf.*, *Rosc. Cr.* 852-855.

**FRAUDULENT TRUSTEE.** — *V. BREACH OF TRUST.*

**FRAUDULENTLY.** — *V. FRAUD: KNOWINGLY.*

**FRAXINETUM.** — "A wood of ashes is called *fraxinetum*, and passeth by that name" (*Co. Litt.* 4 b).

**FREE.** — *V. DEDUCTION: EXPENSE: LEGACY DUTY: OUTGOING: FREELY.* *Cp.*, CLEAR.

"This adjective (*liber*) doth distinguish many things in law from others" (Co. Litt. 94 a, *wherof*). So, of "Frank," e.g. FRANK-ALMOIGN, and succeeding words.

**FREE ALMS.** — Grant, by the Sovereign, "In Free Alms for ever"; *V. Re St. Alphage, London Wall*, 59 L. T. 64.

**FREE ALONGSIDE.** — *V. Perceval v. Lawes Manure Co*, W. N. (80) 50.

*V. ALONGSIDE.*

**FREE AND COMMON SOCAGE.** — All TENURES "are hereby enacted to be turned into Free and Common SOCAGE, to all intents and purposes," from 24 Feb 1645 (s. 1 (6), 12 Car. 2, c. 24); except the Tenures of FRANK-ALMOIGN and COPYHOLD, and some of the Honorary Services of Grand SERJEANTY (s. 7, *Ib.*).

**FREE AND CONVENIENT WAY.** — *V. WAY.*

**FREE AND UNQUALIFIED DISCRETION.** — *V. DISCRETION.*

**FREE AND VOLUNTARY.** — *V. CONFESSION: CONSENT.*

**FREE BENCH.** — *V. FREEBENCH.*

**FREE BORD.** — *V. FREEBORD.*

**FREE CHAPEL.** — A Free Chapel is, *semble*, one which is "of the Foundation of the King, exempt from the Ordinary's Jurisdiction" (*Termes de la Ley*). *V. PROPRIETARY.*

**FREE CONVEYANCE.** — A stipulation in a contract for the sale of realty that the purchaser shall take a "Free Conveyance," relates only to the expense of the Conveyance; and does not relieve the Vendor from his obligation to show and prove his Title in the ordinary way (*Re Pelly and Jacob*, 80 L. T. 45).

**FREE CUSTOMS.** — *V. CUSTOM: WITH ALL LIBERTIES.*

**FREE FISHERY.** — *V. FISHERY.*

**FREE FROM AVERAGE.** — *V. AVERAGE: F. P. A.: WARRANTED FREE FROM AVERAGE.*

**FREE FROM CAPTURE.** — *V. CAPTURE: F. C. S.*

**FREE FROM DEDUCTIONS.** — *V. DEDUCTION.*

**FREE FROM INCUMBRANCES.** — The sale of an Expectancy "free from Incumbrances," does not throw the Succession Duty on

the Vendor (*Re Langham*, 60 L. J. Ch. 110; 39 W. R. 156); so, probably, of a similar sale of a Reversion (*Cooper v. Treuby*, 28 Bea. 194).

A purchaser in Ireland of land "free from Incumbrances," is entitled to have redeemed out of the purchase money the future instalments of the Rent-charges that have been substituted for Title Rent-charge (*Perin v. Roe*, 25 L. R. Ir. 37).

V. DEDUCTION: INCUMBRANCE: "Beneficial Owner," sub BENEFICIAL: FORMER.

**FREE GRAMMAR SCHOOL: FREE SCHOOL.**—A GRAMMAR SCHOOL is, strictly, a School for teaching the Learned Languages (*A-G. v. Whiteley*, 11 Ves. 241; *Re Berkhamstead School*, L. R. 1 Eq. 102; *Re Campden Charities*, 50 L. J. Ch. 646; 18 Ch. D. 310; 45 L. T. 152), and for Religious Instruction according to the Church of England (*Re Chelmsford School*, 1 K. & J. 543); but "*Writing and Arithmetic* may be well introduced into a scheme for the establishment or better regulation of a 'Free Grammar School.'" And so, *à fortiori*, of a "Free School" (Lewin, 610, and cases there cited: *Vf. Tudor Char. Trusts*, 163).

But, *semble*, "Free School is to be distinguished from Free Grammar School" (*A-G. v. Jackson*, 2 Keen, 551). "Free School" has no reference, *per se*, to the class of instruction to be given; it is a flexible term to be construed according to the context and the usage of the school; if the school was founded in or before the 17th century, the presumption is that instruction in the learned languages was intended (*A-G. v. Worcester, Bp.*, 9 Hare, 358, 359).

**FREE LAND.**—"Free Land or Tenement to the VALUE of 40s. by the year" to give qualification for a County Vote, 8 Hen. 6. c. 7: *V. Dawson v. Robins*, 2 C. P. D. 38; 46 L. J. C. P. 62; *Dodds v. Thompson*, 35 L. J. C. P. 97; L. R. 1 C. P. 133; 14 W. R. 476. The criterion of this Value is, not what the land produces at the moment but, what in its existing state it reasonably may be expected to produce (*Astbury v. Henderson*, 24 L. J. C. P. 20; 15 C. B. 251).

**FREE LIBERTY.**—The grant to a person, his heirs and assigns, of "Free Liberty, with servants or otherwise, to come upon lands and there to hawk, hunt, fish, and fowl," is a grant of license of profit, and not of a mere personal license of pleasure; and therefore it authorizes the grantee, his heirs and assigns, to hawk, hunt, &c. by his servants (*Wickham v. Hawker*, 7 M. & W. 63; 10 L. J. Ex. 153). V. PROFIT & PRENDRE: SERVANTS.

V. LIBERTY OF WORKING.

**FREE MARKET.**—*V. Lockwood v. Wood*, cited TOLL.

**FREE OF ALL OUTGOINGS.** — *V.* OUTGOING: EXPENSE.

**FREE OF COMMISSION.** — *V.* *Phillipps v. Briard*, 25 L. J. Ex. 233; *Russell v. Griffith*, 2 F. & F. 118.

**FREE OF DUTY.** — *V.* DEDUCTION.

**FREE OF EXPENSE AND RISK TO THE SHIP.** — *V.* *Wright v. New Zealand Shipping Co*, 4 Ex. D. 165. *Vf*, 5 Encyc. 513.

**FREE OF FREIGHT.** — *V.* *Mer. & Exchange Bank v. Gladstone*, L. R. 3 Ex. 233; 37 L. J. Ex. 130; 18 L. T. 641; 17 W. R. 11: FREIGHT: Carver, 653-655.

**FREE OF GENERAL AVERAGE.** — *V.* 1 Maude & P. 449.

**FREE OF LEGACY DUTY.** — *V.* LEGACY DUTY.

**FREE OF PARTICULAR AVERAGE.** — *V.* F. P. A., at commencement of this letter.

**FREE ON BOARD.** — *V.* F. O. B., at commencement of this letter.

**FREE PARDON.** — “What is the effect of a Free Pardon? It is clear that it extends to far more than merely acquitting of punishment. It is, in fact, a purging of the offence. In 2 Hale P. C. 278, it is stated that the King’s pardon ‘takes away *pœnam et culpam*,’ and in Hawk. P. C. s. 48 it is said that, ‘the pardon of a Treason or Felony, even after a Conviction or Attainder, does so far clear the party from the infamy and all other consequences of his crime that he may not only have an action for a scandal in calling him Traitor or FELON after the time of the pardon, but may also be a good witness notwithstanding the attainder or conviction, because the pardon makes him, as it were, a new man and gives him a new capacity and credit’ ” (per POLLOCK, B., *Hay v. Tower Jus.*, cited CONVICTED).

**FREE PROFITS.** — Synonymous with Net Profits (*Shaw v. Galt*, 16 Ir. C. L. Rep. 357). *V.* NET.

**FREE PUBLIC HOUSE.** — “The expression (in Particulars of Sale), ‘Free PUBLIC HOUSE,’ is a misdescription when the lease contains a covenant to take beer from the lessor” (Dart, 138, citing *Jones v. Edney*, 3 Camp. 285; *Mollen v. Snowball*, 31 L. J. Ch. 44; 29 Bea. 641; 4 D. G. F. & J. 143; 5 L. T. 299; 10 W. R. 24; *Ij*; Sug. V. & P. 23).

**FREE SCHOOL.** — *V.* FREE GRAMMAR SCHOOL.

**FREE SERVICES.** — Free Services of Ancient TENURES; *V.* 2 Bl. Com. 60-62.

**FREE USAGES.** — *V. LIBERTY.*

**FREE USE.** — *V. OCCUPATION: USE AND OCCUPATION.*

**FREE WARREN.** — *V. WARREN.*

**FREEBENCH.** — Freebench, like DOWER in Freeholds, is the interest which a Wife, after the death of her husband, takes in his COPYHOLDS; but whether she gets any interest and if so how much, depends upon the Custom of the particular Manor of which the property is held. It is, generally, a life interest in a third of such property as the husband was possessed of at the time of his death. *Vh*, *Scriven on Copyholds*, 7 ed., 69 *et seq*: 2 *Watkins on Copyholds*, ch. 3: *Wms. R. P.* 321: *Goodeve*, 327. *Termes de la Ley*, *Franke Banke*, says that, a Condition of Freebench is “the wife being married a Virgin,” but it would be difficult to refer to any case where proof of that Condition was insisted on; but a Widow’s incontinence has been known to forfeit her Freebench, to regain which she has sometimes to go through an ignominious performance (Cowel).

**FREEBORD.** — “Free Bord,” — or Free Border, in modern times frequently written “Freeboard,” — “in some places, is a right of claiming a certain quantity of Land beyond or without the Fence, containing about two foot and a half: *Mon. Angl.* 2 Part. fol 241” (*Termes de la Ley*). A learned writer has pointed out that the *Monasticon Anglicanum* only shows that the Free-bord of Brendwood Forest had a width of 2½ feet, which was not inconsistent with a greater width elsewhere; and he defined “Freeboard” “as a certain limited quantity of land, of a width determined by local custom and varying in different places, lying outside the fence of a Manor, Park, Forest, or other Estate; or, sometimes but less accurately, as the mere right of claiming the use of such a width of land.” After giving instances (*v.g.* Richmond Park) and speculating on the cause and origin of Freeboards, the same writer says, — “‘Freeboard,’ is, in fact, rather of the nature of a claim to, and ownership of, Soil than only a mere Right of User; and, in practice, its assurance is effected, not by way of grant or conveyance of an Easement in the land but, by an actual conveyance of the Soil itself” (46 *S. J.* 118, 119).

“Freeboard” of SHIPS; *V. s.* 438 (3), and *s.* 443 (2*d*), *Mer Shipping Act*, 1894, in connection with which *V. ss.* 436–445, *Ib.*

**FREEFOLD.** — *V. FALDA.*

**FREEHOLD.** — “‘Freehold.’ Here (*Litt. s.* 57) it appeareth that tenant in fee, tenant in taile, and tenant for life, are said to have a franktenement, a freehold, so called because it doth distinguish it from termes of yeares, chattels upon incertaine interests, lands in villenage, or cus-

tomary or copyhold lands" (Co. Litt. 43 b: Termes de la Ley: Jacob).  
*Vf*, FREEHOLDER: SOCAGE: CHARTER-LAND.

A devise of the testator's "Freehold Estates" will pass Leases for Lives (*Watkins v. Leu*, 6 Ves. 636: *Fitzroy v. Howard*, 3 Russ. 225; 7 L. J. O. S. Ch. 16).

An Advowson in Gross is a freehold (*Cleer v. Peacock*, Cro. Eliz. 359: *Re Earnshaw-Wall*, 1894, 3 Ch. 156; 63 L. J. Ch. 836); *secus*, of Common in Gross (*R. v. Day*, 3 E. & B. 859).

Blackstone says (2 Com. 104), "Such an estate, *and no other*, as requires *actual possession* of the land is, legally speaking, freehold"; but "an estate of freehold, may, according to our modern ideas, be in Possession, Remainder, or Reversion" (*Watkins on Conveyancing*, 8 ed., 63, *n*).

Butler (*n* 1, Co. Litt. 266 b) says, "The word *freehold* is now generally used to denote an estate for life, in opposition to an estate of inheritance." In olden times "the word *freehold* always imported the whole estate of the feudatory, but varied as that varied" (Ib.). When more than an estate for life is intended, "it is now more accurate to say, 'Freehold and Inheritance'" (*Watkins on Conv.* 64, *n*).  
 V. INHERITANCE: SEIZED.

The use of the word "Freehold" in connection with land, imports its amplest and most complete enjoyment. For example, if allotments under an Inclosure Act are made as "freehold," "the ownership must carry with it all the incidents which ordinarily attach to a freehold interest, unless, by the special provisions of the Act, some right has been reserved to the Lord which would derogate from the ordinary rights of ownership in the soil"; such a reservation "must be construed most strictly against the party claiming under it"; and, to take one instance, "nothing short of a positive reservation to the Lord of the right of SPORTING over the enclosed lands (if not in express terms, at all events in language necessarily leading to such a conclusion) will suffice to entail on land allotted as 'freehold' a burden of a feudal and onerous character inconsistent with the ownership in fee" (per Cockburn, C. J., *Sowerby v. Smith*, 43 L. J. C. P. 293, 296; L. R. 9 C. P. 531, 532, 537; adopted by Esher, M. R., *Devonshire v. O'Connor*, 59 L. J. Q. B. 206; 24 Q. B. D. 468. *Vf*, *Greathead v. Morley*, 10 L. J. C. P. 246; 3 M. & G. 139: *Bruce v. Helliwell*, 29 L. J. Ex. 297; 5 H. & N. 620), — the reservation of Manorial Rights "and all Courts, Perquisites, and Profits of Courts, Rights of Fishery, and Liberty of Hawking, HUNTING, Coursing, Fishing, and FOWLING," is not applicable to Territorial Rights incident to the ownership of the soil, and does not give the right of Shooting over lands allotted as "freehold" (*Sowerby v. Smith*, and *Devonshire v. O'Connor*, sup, in *whic Sowerby v. Smith* was followed in preference to *Leconfield v. Dixon*, 37 L. J. Ex. 33; L. R. 3 Ex. 30). For an example in which the words used did raise the necessary implication that the Right of Shooting was reserved, *V. Graham v. Ewart*, cited A.



Devise of "my PROPERTY, whether freehold or personal, wheresoever situate," comprises copyholds, "freehold" being construed "real" (*Reeves v. Baker*, 23 L. J. Ch. 599; 18 Bea. 372); but a devise of "all my freehold ESTATE AND EFFECTS, wheresoever situate," will not comprise copyholds (*Re Ballard*, 22 W. R. 433).

So, Leaseholds will pass under a devise of "freeholds" where there are no freeholds (1 Jarm. 676); and when "freehold" is shown to be a misdescription it will be rejected (*Ib.* 785; *V. FARM*). *Vf*, *Watson Eq.* 1361.

So, of a Share of Proceeds of a sale (*V. SEIZED*).

*Vh*, *Early v. Ruthbone*, W. N. (88) 64; 57 L. J. Ch. 652; 58 L. T. 517.

*Semble*, it is not a misdescription, in Conditions of Sale, to describe CUSTOMARY FREEHOLDS as "Freehold" (*Wadmore v. Toller*, 6 Times Rep. 58). But it is a fatal misdescription to describe Copyholds as "Freehold" (*Hart v. Swaine*, 7 Ch. D. 42; 47 L. J. Ch. 5; 37 L. T. 376; 26 W. R. 30; but a mere compensation may suffice where the copyhold payments are nominal and fixed, and the minerals and timber are in the copyholder, *Price v. Macculay*, 2 D. G. M. & G. 339; 19 L. T. O. S. 238). So, the vendor cannot enforce a contract which describes as "freehold," land formerly copyhold but enfranchised and in which the mineral rights of the Lord of the Manor are reserved (*Upperton v. Nicholson*, 6 Ch. 436; 40 L. J. Ch. 401; 25 L. T. 4; 19 W. R. 733). *V. COPYHOLD*.

So, if property is sold as "Freehold," that means, an unencumbered freehold; and if the stipulated Root of Title shows it to be encumbered with conditions, the vendor will not be protected by the usual Conditions of Sale limiting enquiries into title, or providing against ERROR (*Phillips v. Caldeleugh*, L. R. 4 Q. B. 159; 38 L. J. Q. B. 68).

So, if property is sold as "Freehold BUILDING LAND," that means, that the land is building land on which the purchaser can build at any time he thinks proper; subject, it may be, to restrictions about roads, frontage, and the like, but not subject to an obligation to build, within a stated time, houses or other buildings of a stated annual value (*Dougherty v. Oates*, 45 S. J. 119).

#### V. ACTUAL FREEHOLD: CUSTOMARY FREEHOLD.

Quà the Building Societies Acts, the Scotch equivalent for "Freehold Estate" is "Heritable Estate" (s. 6, 37 & 38 V. c. 42).

Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66. "Freehold Land," means, land the full ownership of which is an estate in FEE SIMPLE" (s. 95); but quà Part 4 of the Act, "Freehold Registered Land," includes Leasehold Registered Land which is not of Chattel Tenure" (s. 83).

**FREEHOLDER.** — "In ancient times by 'Hommes' or 'Men.' Homagers (whom we now call 'Freeholders') were intended: as in grants

that he *and his Men* should be free from toll. 14 H. 6, 12: 12 Ass. 35: 33 E. 3, 88" (1 Co. Litt. by Thomas, 252 n).

As to who were Freeholders entitled to elect Knights of the Shire and Coroners. *J. R. v. Day*, 3 E. & B. 859.

**FREELY.** — A devise of property to be "freely" enjoyed, probably means. free from Incumbrances, and (when the devise is for life) free from Impeachment of Waste (*Goodright d. Drewry v. Barron*, 11 East, 220). But where the testator had by his Will charged the estate, it was held that a devise of it "freely" to be enjoyed, could not mean free from incumbrances and must mean free from all limitations, and therefore that the devise passed the fee (*Loveaces v. Blight*, Cowp. 357).

**FREEMAN.** — Quà Part 10, Mun Corp Act; 1882, "'Freeman,' includes any person of the class whose rights and interests were reserved by the Municipal Corporations Act, 1835, under the name either of Freemen or of Burgesses" (s. 201).

V. FRANK-LAW.

**FREESTONE.** — V. MINE.

**FREIGHT.** — V. AFFREIGHTMENT.

"Freight," as used in a policy of Marine Insurance, "imports the benefit derived from the employment of the Ship" (per Ld Tenterden, *Flint v. Flemyng*, 1 B. & Ad. 48).

"'Freight' is the value of the use of the ship" (per Day, J., *Gayner v. Sunderland*, Cab. & El. 295).

"In my opinion nothing is Freight unless there is involved in it a contract to carry; for Freight is a sum payable in respect of a contract to carry, and if there is no contract to carry, then, although the sum to be paid may be called Freight, it is not in point of law Freight within the rule that the mortgagee is entitled to the accruing freight" (per Mellish, L. J., *Keith v. Burrows*, 2 C. P. D. 167; 46 L. J. C. P. 460; affd by H. L. 2 App. Ca. 636; 46 L. J. C. P. 801).

"Freight, according to the dictionaries, includes (1) the CARGO; (2) the actual Transport from one place to another; (3) the Hire of the ship, or part of it, or the charge for the transport of goods therein. *It may by extension include the Passengers*, or even *Passage Money*, as, for instance, upon a question arising upon the now abandoned maxim that 'Freight is the mother of wages,' or upon a question of sale or capture or abandonment, because the Passage Money is equally with the Freight of goods an incident or accessory of the ship. Accordingly, Chancellor Kent (3 Com., 7 ed., 296) states that, 'Freight, in the common acceptation of the term, means the price for the actual transportation of goods by sea from one place to another; but in its more extensive sense it is applied to all rewards or compensation paid for the use of ships, including the trans-

portation of passengers.' And he refers to *Giles v. The Cynthia* (1 Peters Adm. 206), in which the question arose upon a claim to wages. And in *Mallow v. Backer* (5 East, 321) Lawrence, J., said, 'Foreign writers consider Passage-Money the same as Freight'; and Lord Ellenborough added, 'Except for the purpose of lien, it seems the same thing'" (per Willes, J., *Denoon v. Home and Col. Assree*, 41 L. J. C. P. 168; L. R. 7 C. P. 348: *Vf, Decaue v. J'Anson*, 5 Bing. N. C. 519; 8 L. J. C. P. 284). But, generally speaking, "Freight" is applicable to Goods only (*Lewis v. Marshall*, cited CARGO). *Vh, Sweeting v. Darthez*, 23 L. J. C. P. 131; 14 C. B. 538: *Williams v. North China Insree*, 1 C. P. D. 757: Carver, Part 3, ch. 16; 6 Encyc. 1-14.

There is no loss of "Freight," within a Marine Insree, if, having been earned, the charterers are entitled to, and do, withhold it as a mulct or forfeit (*Inman Co v. Bischoff*, 52 L. J. Q. B. 169; 7 App. Ca. 670); *Secus*, if the right to the mulct or forfeiture arises from the happening of one of the perils insured against (*The Alps*, 1893, P. 109; 62 L. J. P. D. & A. 59; 68 L. T. 624; 41 W. R. 527).

In an Undertaking to give Bail for the value of a ship in her damaged condition and her "freight," that means, the whole freight due without deducting the expenses of earning it (*The Gemma*, 14 Times Rep. 444).

Freight payable "in Advance"; *V. ADVANCE.*

Freight payable "as per CHARTER-PARTY"; *V. Smidt v. Tiden*, L. R. 9 Q. B. 446; 43 L. J. Q. B. 199; 30 L. T. 891; 22 W. R. 913.

"Looking to him for Freight"; *V. SANS RECOURS.*

*V. BACK FREIGHT: DEAD FREIGHT: FREE OF FREIGHT: PAYING FREIGHT: VALUE OF THE SHIP AND FREIGHT: CONDITIONS AS PER CHARTER-PARTY: CHARTERED: Abbott, Part 3, ch. 7.*

#### FREIGHT IN ADVANCE SUBJECT TO INSURANCE. —

"This, in a Charter-Party, does not mean that the insurance is to be a Condition Precedent to the recovery of the freight; but merely that the insurance premium is to be deducted from the freight" (1 Maude & P. 365, citing *Jackson v. Isaacson*, 3 H. & N. 405; 27 L. J. Ex. 392: *Vh*, per Charles, J., *Smith v. Pymon*, 1891, 1 Q. B. 42; *revid Ib.* 742; and per Manisty, J., *Rodocanachi v. Milburn*, 17 Q. B. D. 322, *revid* 18 Q. B. D. 67; 56 L. J. Q. B. 202).

**FREIGHT PAYABLE HERE.** — *V. Lidgett v. Perrin*, 11 C. B. N. S. 362, *stated* 1 Maude & P. 365, *u (h)*.

*V. HE OR THEY PAYING FREIGHT: ON PAYMENT OF FREIGHT.*

**FRENCH BREAD.** — "French or Fancy Bread or Rolls." s. 4. 6 & 7 W. 4, c. 37; — "At the time this Act was passed (A. D. 1836), there was Household Bread, which consisted of ordinary loaves and which any poor or ignorant purchaser would expect to get of the right weight: and there was also bread called 'Fancy Bread,' which, according to my recol-

lection of that time, was made of a fine quality of flour, and was made in the shape of a long roll, and a person in buying bread of that description would not expect to get the weight so accurately as if he were buying a Household loaf. Then, taking that view of the matter, and seeing that it was more according to the shape of loaf than anything else, the legislature, it seems to me, enacted that bread should be sold by weight, *i.e.* all ordinary bread; and then it was provided that nothing should prevent any baker selling bread 'usually sold' under the denomination of 'French or Fancy Bread or Rolls' without previously weighing the same. My opinion is that that meant such bread as, at the time the legislature passed the Act, was sold under the denomination of 'French or Fancy Bread,' which, I think, as a matter of fact, bore these different *shapes* which have been referred to" (per Blackburn, J., *Aërated Bread Co v. Grigg*, 42 L. J. M. C. 119; L. R. 8 Q. B. 355; 37 J. P. 388; 28 L. T. 187; an opinion acquiesced in by the whole Court and therein dissenting from the opinion that it is the exceptional *quality* of the bread which constitutes it "French or Fancy" which had been given by the majority of the Court, Lush & Hayes, JJ., Hannen, J., *diss.*, in *R. v. Wood*, 38 L. J. M. C. 144; L. R. 4 Q. B. 599; 33 J. P. 823).

Tinned Loaves made crusty all round but with same ingredients as ordinary bread, except that carbonic acid gas is forced into it, is not "French or Fancy Bread" within the section (*Aërated Bread Co v. Grigg*, *sup.*); nor does bread, which is of the ordinary size, shape, and appearance, become "French or Fancy Bread" by being made by a different process or of better materials, *e.g.* by a special yeast the nature of which is a trade secret (*V. V. Bread Co v. Stubbs*, 74 L. T. 704; 60 J. P. 424; 18 Cox C. C. 336; 12 Times Rep. 454).

#### V. BY WEIGHT.

**FREQUENT: FREQUENTING.**—To "frequent" a place is to frequently go there, or to be in the habit of going there, *e.g.* to frequent a public-house. Therefore a conviction cannot be sustained under the Vagrancy Act, 1824, for "frequenting" a street, &c, with intent to commit felony, where the evidence does not show that the person has been there more than once (*R. v. Clark*, 54 L. J. M. C. 66; 14 Q. B. D. 93; 52 L. T. 136; 33 W. R. 226; 49 J. P. 246; 1 Times Rep. 109). "He must in fact be seen hanging about the street" (per Grove, J., *ib.*). *Th, Whickham v. Ashe*, 41 S. J. 211.

#### V. FOUND: RESORT: ROGUE AND VAGABOND.

To "frequent a *Market*," seems to mean the principal market in which the person deals (*Stephens v. Derry*, 16 East, 147; *Reeves v. Stroud*, 1 Dowl. 399; *Double v. Gibbs*, 1 Dowl. 583; 2 L. J. Ex. 87; *Jenks v. Taylor*, 5 L. J. Ex. 263; 1 M. & W. 578).

**FRESH EVIDENCE.**—"Fresh Evidence," *e.g.* s. 7, 58 & 59 V. c. 39, means, evidence of such a kind as would justify the granting of a

New Trial, *i.e.* evidence which had not come to the knowledge of the party wishing to call it at the time of the hearing, or which he could not then have called; not evidence which he could have called and did not, although the cause of his not calling it was that his brain and faculties were at that time so far paralysed that he could neither indicate the lines of his defence nor give the names of his witnesses to his solicitor (*Johnson v. Johnson*, 1900, P. 19; 69 L. J. P. D. & A. 13; 64 J. P. 72).

*Cp*, FURTHER EVIDENCE.

**FRESH FORCE.** — “ ‘Fresh force (*frisca fortia*)’ is a force committed in any Citie or Borough, as by disseisin, abatement, intrusion, or deforcement of any lands or tenements within the said Citie or Borough ” (Termes de la Ley).

**FRESH PURSUIT.** — The Fresh Pursuit which will justify a Constable in arresting without a Warrant, — *e.g.* in cases of FELONY or AFFRAY, or where a person is “ Found Committing ” an Offence, or “ Found Offending ” (*V. FOUND*), — must be a continuous pursuit conducted with reasonable diligence (*R. v. Howarth*, 1 Moody, 207; *Hanway v. Boulthbee*, 1 Moo. & R. 15; *R. v. Walker*, 23 L. J. M. C. 123; Dears. 358; *R. v. Marsden*, 37 L. J. M. C. 80; L. R. 1 C. C. R. 131; *R. v. Light*, 27 L. J. M. C. 1; Dears. & B. 332).

Therefore, where an Assault on a Constable has been committed, or an Affray has taken place and finished without fear of renewal, and the constable goes away for assistance and returns in an hour and then arrests; in such a case there has been no Fresh Pursuit (*R. v. Walker*, *R. v. Marsden*, *sup.*). But if a person is seen committing an offence for which he may be arrested and as soon as possible a constable is sent for, who proceeds to arrest as soon as possible, that is a Fresh Pursuit (*Hanway v. Boulthbee*, *sup.*); so, where a constable had seen a man assaulting his wife and the man continued to use violent language towards her and then left the house where the assault was committed; held, that the constable was justified in arresting the man after the latter had gone a few yards from the house (*R. v. Light*, *sup.*).

*Cp*, FRESH SUIT, which, observe, is not synonymous with Fresh Pursuit. *Va*, HUE AND CRY.

**FRESH STEP.** — An Appearance to a Writ, is a “ Fresh Step ” within R. S. C., Ord. 70, R. 2 (*Mulekern v. Doerks*, 53 L. J. Q. B. 526; 51 L. T. 296, 429; 33 W. R. 14); *Sth* not followed in *Hunt v. Worsfold*, 1896, 2 Ch. 224; 65 L. J. Ch. 548; 74 L. T. 456; 44 W. R. 461; *Va*, *Willmott v. Frechold House Co*, 51 L. T. 552.

*V. STEP.*

**FRESH SUIT.** — “ ‘ Fresh Suit,’ is when a man is robbed and the party so robbed followeth the Felon immediately, and takes him with

the MANNER, or otherwise, and then bringeth an appeale against him and doth convince him of the felony by verdict, which thing being enquired of for the King, and found, the party robbed shall have restitution of his goods againe.

“Also it may bee said, that the party made Fresh Suit although he take not the thiefe presently, but that it be halfe a yeere or a yeere after the robbery done before hee be taken, if so bee that the party robbed doe what lieth in him, by diligent enquiry and search, to take him, yea, although hee be taken by some other body, yet this shall be said Fresh Suit.

“And so Fresh Suit is when the Lord commeth to distreine for rent or service, and the owner of the beaſts doth make rescous and driveth them into anothers ground that is not holden of the lord, and the lord followeth presently and taketh them, this is called Fresh Suit. And so in other like cases” (Termes de la Ley).

*Cp.* FRESH PURSUIT.

**FRESH TAXES.** — A covenant in a Lease to pay “all Fresh Taxes,” would seem, primarily, to mean all new taxes (*Watson v. Atkins*, 3 B. & Ald. 647).

**FRESH-WATER FISH.** — Quà Freshwater Fisheries Act, 1878, 41 & 42 V. c. 39, “‘Freshwater Fish,’ includes, all kinds of fish (other than Pollan, Trout, and Char) which live in fresh water, except those kinds which migrate to or from the Open Sea” (s. 11); but that “does not include Eels” (s. 1, 49 & 50 V. c. 2). But “an Eel which is bred and living in a river is a ‘River Fish’” within a River Bye Law (*Woodhouse v. Etheridge*, L. R. 6 C. P. 574).

Quà Freshwater Fisheries Act, 1884, 47 & 48 V. c. 11, “‘Freshwater Fish’ means any fish living, permanently or temporarily, in fresh water, exclusive of Salmon” (s. 6). *V.* SALMON.

**FRIDAY.** — *V.* MAN FRIDAY.

**FRIEND.** — In a contract of sale for “my Friend,” the Vendor is not sufficiently described; *V.* PROPRIETOR.

*V.* FRIENDS AND RELATIONS: NEXT FRIEND: PRIVATE FRIEND.

**FRIENDLESS-MAN.** — “Was the Saxon word for him that we call an OUTLAW” (Cowel: Termes de la Ley). *V.* FRANK-LAW.

**FRIENDLY SOCIETY.** — The Societies which may be registered under the Friendly Societies Act, 1896, are of 5 kinds:—

1. *Friendly Societies*, i.e. “Societies for the purpose of providing by VOLUNTARY SUBSCRIPTIONS of the Members thereof, with or without the aid of Donations, for

- (a) the RELIEF or MAINTENANCE of the Members, their husbands, wives (*V. WIFE*), CHILDREN, fathers, mothers, brothers or sisters, nephews or nieces (*V. RELATIONS*), or wards being orphans, during SICKNESS, or other INFIRMITY (whether bodily or mental), in Old Age (which shall mean, any age after 50), or in Widowhood, or for the Relief or Maintenance of the Orphan Children of Members during minority; or
- (b) Insuring money to be paid on the Birth of a Member's Child, or on the Death of a Member, or for the Funeral Expenses of the Husband, Wife, or Child, of a member, or of the WIDOW of a deceased member, or (as respects persons of the Jewish Persuasion) for the payment of a sum of money during the period of Confined Mourning; or
- (c) the Relief or Maintenance of the members when on Travel or Search of Employment, or when in DISTRESSED CIRCUMSTANCES, or in case of Shipwreck, or Loss or Damage of or to BOATS or Nets; or
- (d) the Endowment of members, or nominees of members, at any age; or
- (e) the Insurance against FIRE (to any amount not exceeding £15) of the Tools, or Implements of the trade or calling, of the members:

“ Provided that a Friendly Society which contracts with any person for the assurance of an Annuity exceeding £50 per annum, or of a Gross Sum exceeding £200, shall not be registered under this Act.”

2. *Cattle Insurance Societies, i.e.* “ Societies for the purpose of Insurance to any amount against loss of Neat CATTLE, Sheep, Lambs, Swine, HORSES, and other ANIMALS, by death from DISEASE, or otherwise.”

3. *Benevolent Societies, i.e.* “ Societies for any BENEVOLENT, or CHARITABLE, PURPOSE.”

4. *Working-men's Clubs, i.e.* “ Societies for purposes of Social Inter-course, Mutual Helpfulness, Mental and Moral Improvement, and Rational RECREATION.”

5. *Specially Authorised Societies, i.e.* “ Societies for any purpose which the Treasury may authorize as a purpose to which the provisions of this Act, or such of them as are specified in the Authority, ought to be extended; Provided that where any provisions of this Act are so specified, those provisions only shall be so extended.” *V. SPECIALLY.*

The above definitions are provided by s. 8 of the above Act, which replaces s. 8, Friendly Societies Act, 1875.

“ The Friendly Societies Acts, 1875 to 1895 ”; *V. Sch 2, Short Titles Act, 1896.*

*Vh.* Fuller on Friendly Societies: Pratt, *ib.*: 6 Encyc. 16-21.

*V.* PROVIDENT: PUBLIC CHARITY: SOCIETY: TRADE UNION.

**FRIENDS AND RELATIONS.**—A Power to Appoint amongst “Relations and Friends,” or “Relations or Friends,” is the same as one to RELATIONS (*Gower v. Mainwaring*, 2 Ves. sen. 87, 110; Sug. Pow. 654; *Re Caplin*, 34 L. J. Ch. 578; 2 Dr. & Sm. 527).

“The next and most faithful Friends” to whom Administration is to be granted, 31 Edw. 3, stat. 1, c. 11, means “next-of-blood” (*Hersloe’s Case*, 9 Rep. 39 b); and property directed by Will to “REVERT” to “my Friends,” will go to the testator’s KINDRED,—his heir-at-law quâ Realty, or next-of-kin quâ Personalty (*Coogan v. Hayden*, 4 L. R. Ir. 585). In that case, Dowse, B., citing Schmidt’s Shakespeare Lexicon, p. 456, said, “Friends” is sometimes used for “near Relations, particularly parents.”

V. FRIEND.

**FRIGHT.**—V. ACCIDENT.

**FRIPERER.**—“‘Friperer’ is used, 1 Jac. c. 21, for a kind of BROKER” (Termes de la Ley), “one that scours up and cleanseth old apparel to sell again” (Cowel).

**FRISCUS.**—“Fresh, uncultivated ground; 2 Mon. Angl. 56” (Jacob).

**FRITH.**—V. FRYTHE.

**FRIVOLOUS OR VEXATIOUS.**—As to this phrase as used in R. 4, Ord. 25, R. S. C.; *V. Darlow v. Scratton*, 29 S. J. 131; *Metro-politan Bank v. Pooley*, 10 App. Ca. 210; 54 L. J. Q. B. 449; *Willis v. Beauchamp*, 11 P. D. 63; *Burstall v. Beyfus*, 26 Ch. D. 35; 32 W. R. 418; 53 L. J. Ch. 565; *Laurance v. Norreys*, 39 Ch. D. 213; *Mittens v. Foreman*, 58 L. J. Q. B. 40; *Barrett & Elers v. Day*, 59 L. J. Ch. 464; 43 Ch. D. 435; *Reichel v. Magrath*, 59 L. J. Q. B. 159; 14 App. Ca. 259; Ann. Pr.

V. EMBARRASS: VEXATIOUS.

**FROM.**—“From” is much akin to “AFTER”; and when used in reference to the computation of Time, e.g. “from” a stated date, *primâ facie* excludes the day of that date (*Howard’s Case*, cited DATE: *South Staffordshire Tramways Co v. Sickness & Accident Assree*, 1891, 1 Q. B. 402; 60 L. J. Q. B. 47; to the contrary was *Glassington v. Rawlins*, 3 East. 407).

But it “may be inclusive or exclusive according to the context” (per Smith, L. J., *Sidebotham v. Holland*, 64 L. J. Q. B. 202; 1895, 1 Q. B. 378, citing *Pugh v. Leeds*, 2 Cowp. 714; *Sethle, R. v. Gamlingay*, 3 T. R. 513, *who* was itself criticised in *R. v. Knight*, 7 B. & C. 414. *Vf*, *Hatter v. Ash*, 1 Raym. Ld. 84, on *when*, *Ackland v. Lutley*, 1 P. & D. 647; 8 L. J. Q. B. 168; *Wilkinson v. Gaston*, 15 L. J. Q. B. 339; 9 Q. B.



137: *Va*, note to *Godson v. Sanctuary*, 2 L. J. K. B. 23-25). *Vf*, ON: TIME: DAYS. *Cp*, FROM HENCEFORTH: TO: UNTIL.

So "from" a Place has a like interpretation (*R. v. Fisher*, 8 C. & P. 613; *Pim v. Curvell*, 6 M. & W. 234, cited *Richards v. L. B. & S. Ry*, 7 C. B. 851), and "does not, necessarily, import 'next immediately'" (per Littledale, J., *Simpson v. Leuthwaite*, 3 B. & Ad. 230). *Vf*, To.

"As from the 31st March next after the passing of this Act," s. 24 (1), (2), Loc Gov Act, 1888; *V. Ex p. West Riding of Yorkshire*, 6 Times Rep. 265.

When an act has to be done "from" or "within" two times, e.g. "from 6 to 8 weeks," — the time for doing it is some period fairly between those times (per Brett, J., *Ashworth v. Redford*, 43 L. J. C. P. 58; nom. *Ashforth v. Redford*, L. R. 9 C. P. 22).

*V. AFTER: AT AND FROM: FROM AND AFTER: FROM THE DAY OF THE DATE: SAY.*

A bequest to a Class "from S. downwards," includes S. (*Lett v. Osborne*, 51 L. J. Ch. 910).

"By, from, or under"; *V. CLAIMING UNDER.*

**FROM AND AFTER.** — The expression "From and after the death" is "generally regarded as being equivalent merely to 'REMAINDER'" (1 Jarm. 816, commenting on *Andrew v. Andrew*, 45 L. J. Ch. 232; 1 Ch. D. 410: *Vf*, *Lainson v. Lainson*, 5 D. G. M. & G. 754, approved L. R. 11 Ind. App. 1: *Jull v. Jacobs*, 3 Ch. D. 703, 713: *Ferguson v. Ferguson*, 17 L. R. Ir. 560: 1 Jarm. 806). *Cp*. FOR WANT OF.

"From and after" does not always mean, immediately after the death of the Tenant for Life; it will sometimes only mean, subject to the life interest (*Re Jobson*, 59 L. J. Ch. 245; 44 Ch. D. 154).

"From and after" death, controlled by context in *Rhodes v. Rhodes*, 51 L. J. P. C. 53; 7 App. Ca. 192.

*V. SEVERANCE.*

It is said that under a reversionary lease, which incorrectly recites an existing lease to A., habendum "from and after the said lease," the term commences immediately; but that if it were "from and after the lease to A.," the term commences on expiration of lease to A. (Elph. 139, *whv*).

*V. AFTER: AT: AT AND FROM: THENCEFORTH: WHEN.*

**FROM ANY CAUSE WHATEVER.** — As to effect of Condition of Sale giving interest if delay in completion take place "from any cause whatever"; *V. ANY: Dart*, 143, 144, 719-723.

**FROM HENCEFORTH.** — A lease to begin "From henceforth" or "From the making hereof," "shall begin on the day on which it is delivered, for the words of the Indenture are not of any effect till the delivery, and thereby from the making, or from henceforth, take their first effect" (Co. Litt. 46 b). *Vf*, *Llewelyn v. Williams*, Cro. Jac. 258:

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*Pope v. Skinner*, Hob. 72; *Clayton's Case*, 5 Rep. 1 a; *Cornish v. Cowsy*, Aley, 75; 2 Platt, 55. "The rule, uniformly acted upon from the time of *Clayton's Case* to the present day, is that a DEED or other Writing must be taken to speak from the time of the execution, and not from the date apparent on the face of it. That date is, indeed, to be taken *primâ facie* as the true time of execution; but, as soon as the contrary appears, the apparent date is to be utterly disregarded" (*Broune v. Burton*, 17 L. J. Q. B. 49; 5 Dowl. & L. 289). By s. 24, Wills Act, 1837, a TESTAMENT speaks from the death of the testator, unless a CONTRARY INTENTION appears.

*Cp.* FROM THE DAY OF THE DATE: FROM.

An enactment " 'from henceforth,' 'de cetero,' does not necessarily imply a new law; as may be seen upon the doubts arising on the Statute of Merton, c. 2" (Dwar. 685; *Vf.* lb. ch. 11).

**FROM HIS ABODE.** — A coroner's travelling Allowance for every mile he must travel "from" his Place of Abode, s. 1, 25 G. 2, c. 29, does not extend to the miles he travels in returning (*R. v. Oxfordshire Jus.*, 2 B. & Ald. 203).

**FROM HIS WORK.** — A man is not on his way "From his Work," within the meaning of the Rules of a Friendly Society, who after leaving his work goes to a public-house and there stays for 4 hours, and, getting drunk there, meets with an accident on his way home (*Joyce v. Northumberland Miners' Society*, 4 Times Rep. 525).

**FROM PERFORMANCE.** — A covenant by the Assignee of a Lease indemnifying his Assignor "from performance," — as distinguished from the usual one quâ "Non-performance," — of the obligations of the lease, means, that he indemnifies against past, as well as future, non-performances (*Gooch v. Clutterbuck*, 1899, 2 Q. B. 148; 68 L. J. Q. B. 808; 81 L. T. 9; 47 W. R. 609).

**FROM PLACE TO PLACE.** — *V. HAWKER.*

**FROM THE DAY OF THE DATE.** — " 'From the Date' and 'From the Day of the Date' are all of one sense, forasmuch as in judgment of law the Date doth include the whole Day of the Date" (*Clayton's Case*, cited FROM HENCEFORTH). *See* DATE.

A term limited to commence "from the day of the date." or "from the date" of the instrument, or from a certain day, will be taken to include or exclude that day, according to the context and subject-matter (*Williams v. Nash*, 28 L. J. Ch. 886; 28 Bea. 93; *Ammerman v. Digges*, 12 Ir. C. L. Rep. App. i: Elph. 124; 2 Platt, 54-57; Woodf. 159, and cases there cited: *Vh.* Co. Litt. 46 a). *V. FROM: DATE.*

"The general understanding is, that terms for years last during the

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whole anniversary of the day from which they are granted. Indeed, if this were otherwise, the last day, on which rent is almost uniformly made payable, would be posterior to the lease." (Per Denman, C. J., *Ackland v. Lutley*, 9 A. & E. 879; 8 L. J. Q. B. 164; 1 P. & D. 636).

**FROM THE DECK.** — "Where a cargo was sold 'From the Deck,' it was held to mean that the seller should pay all that was necessary in order to enable the buyer to remove the cargo from the deck" (Benj. 638, citing *Playford v. Mercer*, 22 L. T. 41).

**FROM TIME TO TIME.** — "'From time to time,' means, 'as occasion may arise'" (per Williams, J., *Bryon v. Arthur*, 11 A. & E. 117).

"The words 'From time to time' are words which are constantly introduced where it is intended to protect a person who is empowered to act from the risk of having completely discharged his duty when he has once acted, and therefore not being able to act again in the same direction." The meaning of the words "From time to time" is, that after once acting, the donee of the power may act again; — and either independently of, or by adding to, or taking from, or reversing altogether, his previous act (per Lord Penzance, *Laurie v. Lees*, 51 L. J. Ch. 214; 7 App. Ca. 19. *Vf, Re Sutton Coldfield Grammar School*, 51 L. J. P. C. 8; 7 App. Ca. 91). So, of the power to order costs out of a married woman's property restrained from alienation, s. 2, M. W. P. Act. 1893; (*Hood-Barre v. Cathcart*, 1895, 1 Q. B. 873; 64 L. J. Q. B. 520; 72 L. T. 427; 43 W. R. 560).

Expenses payable "from time to time," s. 81, Ry. C. C. Act, 1845; *V. Whitehouse v. Wolverhampton Ry.*, L. R. 5 Ex. 6; 39 L. J. Ex. 1.

*Va, Market Harborough v. Kettering*, 42 L. J. M. C. 137; L. R. 8 Q. B. 308: AT ANY TIME.

It seems to be considered that the words "from time to time," or "and so *toties quoties*," added to a covenant for renewal of a lease, creates the right to a perpetual renewal (1 Platt, 712, citing *Furnival v. Crew*, 3 Atk. 83; 9 Mod. 446; *Iggulden v. May*, 7 East, 242; *Maxwell v. Ward*, 11 Price, 3; 13 Ib. 674; *Atkinson v. Pilsworth*, 1 Vern. & S. 156. *Se. Baynham v. Guy's Hospital*, 3 Ves. 295). *Vf, RENEWAL.*

### V. QUAMDIU.

**FROM YEAR TO YEAR.** — *V. YEAR TO YEAR.*

**FRONT MAIN WALL.** — "A 'Front Main Wall' is the front main wall in the road" (per Matthew, J., *R. v. Ormesby*, 43 W. R. 96); and a Corner House has a "Front Main Wall" to both streets (*Warren v. Mustard*, 61 L. J. M. C. 18; 8 Times Rep. 65; *Leyton v. Causton*, 9 Times Rep. 180). *Vf, A-G. v. Edwards*, 1891, 1 Ch. 194; 63 L. T. 639; *Ravensthorpe v. Hinchecliffe*, cited *SIDE*.

**FRONT OF.**—By a local Act power was given of rating to the extent of 1s. per yard “of the length *in front of*” buildings. A county prison with its garden and grounds abutted at its entrance, at its back, and at both its sides, on to public ways; held, that “the words ‘in front of’ mean that part of the gaol which would be frontage if there were doors and windows in it, and therefore that that part of the gaol which abuts on public ways in the front, back, and sides, of the gaol is to be considered liable to be rated” (per Pöllöck, C. B., *Bedfordshire Jus. v. Bedford Improvement Commrs*, 21 L. J. M. C. 227; 7 Ex. 658). *Vf, Governors of Bedford Infirmary v. Bedford Improvement Commrs*, 21 L. J. M. C. 229; 7 Ex. 768.

V. FRONTING.

**FRONTAGE.**—Frontage to the Sea and Rivers, —“Frontage, is where the grounds of any man do join with the brow or front thereof to the SEA, or to Great or Royal STREAMS; and, in case of the Sea or Royal River, the property of the BANKS and grounds adjoining are and belong to the subject whose lands do but and bound thereon; but the Soil of the Sea and Royal Rivers do appertain to the King. But in case of Petty and Mean Rivers and Streams, the Soil of them, as well as the Banks thereof, do appertain to them whose grounds adjoin thereto; so that Frontage and Ownership in base inferior rivers do not differ, but in great streams and the sea they do vary as aforesaid” (Callis, 115).

**FRONTING.**—Premises “*fronting, adjoining, or abutting*” on a STREET, and as such chargeable with expense of road-making under s. 150, P. H. Act, 1875, need not be absolutely contiguous (*Wakefield v. Lee*, 1 Ex. D. 336; *Newport v. Graham*, 9 Q. B. D. 183); but must have direct access thereto (*Williams v. Wandsworth*, 53 L. J. M. C. 187; 13 Q. B. D. 211; *Lightbound v. Higher Bebington*, 54 L. J. M. C. 130; 55 *Ib.* 94; 14 Q. B. D. 849; 16 *Ib.* 577).

As to the same phrase in s. 10, 55 & 56 V. c. 57; *V. Clacton v. Young*, 1895, 1 Q. B. 395; 64 L. J. M. C. 124; 71 L. T. 877; 43 W. R. 219; 59 J. P. 581; distinguishing *Wakefield v. Mander*, 5 C. P. D. 248.

V. ABUT: ADJOIN; BOUNDING: FRONT OF: FORMING: WITHIN.

*Note.* When once a Local Authority is satisfied (*V. SATISFACTION*) with a SEWER, whether it has an outfall or not, then s. 150, P. H. Act, 1875, has no further application thereto (*Fulham v. Goodwin*, 1 Ex. D. 400; *Bonella v. Twickenham*, 57 L. J. M. C. 1; 20 Q. B. D. 63; 58 L. T. 299; 36 W. R. 50; 52 J. P. 356; *Hornsey v. Davis*, 1893, 1 Q. B. 756; 62 L. J. Q. B. 427; 68 L. T. 503; 57 J. P. 612); *Secus*, quà everything else in the section (*Barry v. Parry*, 1895, 2 Q. B. 110; 72 L. T. 692; 64 L. J. Q. B. 512; 43 W. R. 504; 59 J. P. 421).

FROST.—V. DETENTION BY ICE.

**FROZEN SNAKE.**—To write of a person that he is a "Frozen Snake," is Libel, without an explanatory innuendo; for the phrase implies a charge of treacherous ingratitude (*Hoare v. Silverlocke*, 12 Q. B. 624; 17 L. J. Q. B. 306).

**FRUIT.**—“The term ‘Fruit,’ in legal acceptation, is not confined to the produce of those trees which in popular language are called *fruit* trees, but applies also to the produce of oak, elm, and walnut, trees. In the old books the lessee is stated to have an interest in the trees in respect of the shade for cattle, and the fruit thereof” (per Bayley, J., *Bullen v. Denning*, 5 B. & C. 847). In *Liford’s Case* (11 Rep. 48 a). it is laid down that the lessee shall have the young of all birds that breed in the trees and the fruits. *Va, Berry v. Heurl*, Cro. Car. 242: Com. Dig. *Biens*, H. Trees: TREES.

V. FOOD.

**FRUSSETUM.**—V. FRASSETUM.

**FRUSTUM.**—“*Frustum* signifieth a parcell” (Co. Litt. 5 b). In the 4th ed. Co. Litt., this word is spelt “Frustrum.” So in Cowel it is “*frustrum terre*, a small piece of land”; but with Spelman it is “frustum.”

**FRUTECTUM.**—“A place where shrubs or tall herbs do grow; 3 Mon. Angl. 22” (Jacob).

**FRY.**—“Le Frie ou Brood de Salmons, Lammpreis, ou dautre person,” 13 Ric. 3, c. 19; V. OYSTER-SPAT.

**FRYTHE.**—“*Frythe* is a plaine betweene woods; and so is *lawnd* or *lound*” (Co. Litt. 5 b).

“Frith, or Frydd, (in Wales) a close: *A-G. v. Reveley*, printed for private circulation (in Linc. Inn Library)” (Elph. 582).

“Chaucer uses it for a Wood. Camden (in his *Brit.*) for an Arm of the Sea or Great River, and so we frequently use it at this day. Smith (in his *Englands Improvement*) makes it signifie, all Hedgewood, except Thorns. It is a task to reconcile this, when they all disagree with the Saxon, with whom we know *frid*, or *frith*, signifies Peace” (Cowel. *Fryth*).

**FUGACIA.**—“Signifies a CHASE” (Cowel).

**FUGITIVE.**—Fugitives were, in old time, such as depart out of the Realm without License, and such as were BEYOND SEA and returned not upon command; *Vh*, 3 Inst. ch. 84.

**FUGITIVE CRIMINAL.**—The Extradition Act, 1870, 33 & 34 V. c. 52, s. 26, defines a “Fugitive Criminal” as “any person accused or

convicted of an EXTRADITION Crime committed within the jurisdiction of any foreign state, *who is in*, or who is suspected of being in, some part of her Majesty's dominions." The words italicised show that the idea of flight from justice is not necessarily involved; and accordingly, for the purposes of the statute, the phrase "fugitive criminal" includes a person who being in England (and not in any sense fleeing) commits an offence abroad. — *e.g.* a False Pretence by means of sending a letter (*R. v. Nillins*, 53 L. J. M. (1. 157).

By the above section, "Fugitive Criminal of a Foreign State," means, "a Fugitive Criminal accused or convicted of an Extradition Crime committed within the jurisdiction of that State."

*Vh*, Clarke on Extradition: 6 Eneye. 23-26.

*V.* POLITICAL: PRESUMPTION.

**FUGITIVE GOODS.** — "*Bona Waviata seu Derelicta*, are Goods which are *stollen* and waived by the thief in the flight; and *Bona Fugitivorum*, are the *proper* goods of him who flies for Felony" (*Foxley's Case*, 5 Rep. 109 b). *Cp*, WAIF. *V.* BONA.

**FUGITIVE OFFENDER.** — *V.* Fugitive Offenders Act, 1881, 44 & 45 V. c. 69: *R. v. Hole*, 14 Times Rep. 578: *R. v. Spilsbury*, *Ib.* 579; 79 L. T. 211.

**FULFILLING.** — *V.* DOING.

**FULL.** — *V.* IN FULL.

"'In as Full and Ample a manner,' are rather empowering than disabling words" (per Ld Herschell, *Newcastle-upon-Tyne v. A-G.*, 1892, A. C. 568; 62 L. J. Q. B. 72).

**FULL AGE.** — "'Full Age' regularly is one and twenty yeares" (Co. Litt. 78 b: *Va*, Litt. s. 104: 1 Bl. Com. 463). *Cp*, ADULT: MAJORITY: MANHOOD: DISCRETION. at end: NONAGE: PERSON.

Quà Parliamentary Franchise; *V.* *Hargreaves v. Hopper*, 45 L. J. C. P. 105; 1 C. P. D. 195.

**FULL AGRICULTURAL RENT.** — This phrase as used in s. 1, 54 & 55 V. c. 57, means, the full letting value (*Warren v. Richardson*, 30 L. R. Ir. 639).

**FULL AND ABSOLUTE.** — "Full and Absolute power over all my property" given to a Tenant for Life, confers large powers of management, but it does not amount to saying that he is to be WITHOUT IMPEACHMENT OF WASTE (*Pardoe v. Pardoe*, 16 Times Rep. 373; 82 L. T. 547).

**FULL AND COMPLETE CARGO.** — *V.* CARGO.

FULL AND FREE LIBERTY. — *V.* LIBERTY OF WORKING.

**FULL ANNUAL VALUE.** — “Full Annual Value,” means, ANNUAL VALUE, *i.e.* Net Annual Value, not Gross. Therefore, where a Private Rating Act directs the assessments to be made on the “Full Annual Rent or Value” of the rateable heredit, that means the net annual rent or value (*Rose v. Watson*, 1894, 2 Q. B. 90; 63 L. J. M. C. 108; 70 L. T. 906; 42 W. R. 523; 58 J. P. 589). *Cp.* FULL COSTS.

Quà County Rates Act, 1852, 15 & 16 V. c. 81, “Full and Fair Annual Value,” means, “the Net Annual Value of any property as the same is, or may be, required by law to be estimated for the purpose of” the Poor Rate (s. 6). *V.* ANNUAL VALUE.

“Full Net Annual Value”; *V.* RACK-RENT.

**FULL APOLOGY.** — “Full Apology,” s. 2, Libel Act, 1843, 6 & 7 V. c. 96, — “I think the word ‘Apology,’ — whether it is ‘Full Apology’ or ‘Apology’ alone, — means one inserted in such a manner that it may operate as an Apology” (per Pollock, C. B., *Lafone v. Smith*, 28 L. J. Ex. 34); “when the statute says a deft may ‘insert’ an apology, it must mean, *effectually* insert” (per Bramwell, B., *Ib.*): the type and the part of the paper in which the apology appears are most materially to be considered on the question whether a real “Apology” has been made (*S. C.* 28 L. J. Ex. 33; 3 H. & N. 735; 32 L. T. O. S. 77; 7 W. R. 13). It is for the jury to say whether the apology is reasonably sufficient (*Risk Allah Bey v. Johnstone*, 18 L. T. 620). *Vf.* Odgers.

**FULL COMPENSATION.** — “Full Compensation” for “any DAMAGE,” s. 308, P. H. Act, 1875. includes Costs reasonably incurred in attending before the Justices and resisting the condemnation of the meat (*Re Bater and Birkenhead*, 1893, 2 Q. B. 77; 62 L. J. M. C. 107; 69 L. T. 220; 41 W. R. 513: *Walshaw v. Brighthouse*, 1899, 2 Q. B. 286; 68 L. J. Q. B. 828; 81 L. T. 2; 47 W. R. 600). But, quà “Reasonable Compensation,” s. 14 (1), Conv & L. P. Act, 1881, *Cp.* *Skinnners’ Co v. Knight*, cited REASONABLE. In *Re Bater and Birkenhead*, Esher, M. R., said, “‘Any Damage’ must include anything which a man suffers by reason of the exercise of the powers of the Act without any fault on his part.” But under any head of Damage no more can be recovered than what the law will give under that head; therefore, quà Costs, the party grieved can only recover “the amount which he can induce the Taxing Master to allow him”; and cannot recover the difference between his Taxed Costs and his Actual Expenses, however reasonable and proper the latter may be (*Barnett v. Eccles*, 1900, 2 Q. B. 104, 423; 69 L. J. Q. B. 556, 834). *Vh.* *Brierley Hill v. Pearsall*, cited DAMAGE.

*Cp.* FULL COSTS.

FULL CONFIDENCE. — *V.* PRECATORY TRUST.

**FULL CONSIDERATION.** — “Full and Valuable Consideration,” Mortmain Acts, 9 G. 2. c. 36, s. 2, and now 51 & 52 V. c. 42, s. 4 (5); *V.* interpretation, s. 10 (iv), lastly cited Act. *Vth*, Tudor Char. Trusts, 394, 395.

Discharge of a burden on real estate in the event of the same being sold or charged “for a Full or Valuable Consideration”; *V. Redman v. Rymer*, 5 Times Rep. 287; 65 L. T. 270.

*V.* VALUABLE: CONSIDERATION.

**FULL COSTS.** — “No distinction is known in the law between ‘Costs’ and ‘Full Costs’” (*Irvine v. Reddish*, 5 B. & Ald. 798: *who* was decided on s. 19, 11 G. 2, c. 19). So, “Full Costs,” 17 Car. 2, c. 17, s. 3, means, ordinary costs between Party and Party (*Jamieson v. Trevelyan*, 24 L. J. Ex. 74; 10 Ex. 748; wherein, 10 Ex. 750, reference is made by the judges to 4 & 5 W. 4, c. 39, and 4 & 5 V. c. 20, as obviously using the expression in this sense). So, of “Full Costs” in s. 26, Copyright Act, 1842 (*Avery v. Wood*, 1891, 3 Ch. 115; 61 L. J. Ch. 75; 65 L. T. 122; 39 W. R. 577: *See*, INDEMNITY, at end).

In *Doe d. Hyde v. Manchester* (12 C. B. 474) “Full Costs and Expenses,” s. 126, Lands C. C. Act, 1845, was construed as meaning, Costs as between Solr and Client: but in *Jamieson v. Trevelyan* (10 Ex. 750), Martin, B., said, that ruling was “without opposition, and consequently the point cannot be considered as decided by that case.”

When the legislature means that “Full Costs” shall be Solr and Client Costs it employs express words to that effect; *V.* s. 18, Patents, & c Act, 1888: INDEMNITY, at end.

“Full Costs,” s. 210, Com. L. Pro. Act, 1852; *Vth*, *Croft v. London & County Bank*, 54 L. J. Q. B. 277; 14 Q. B. D. 347.

*Cp.*, FULL COMPENSATION: FULL ANNUAL VALUE.

**FULL DISCHARGE.** — “Full Discharge” of a prisoner “from custody, without any adjudication,” s. 37, 1 & 2 V. c. 110; *V. Basham v. Smith*, 22 Bea. 190.

**FULL DISCLOSURE.** — *V. Fawcett v. Whitehouse*, 1 Russ. & My. 132: and per Jessel, M. R., *Dunne v. English*, L. R. 18 Eq. 535.

*V.* DISCLOSE.

**FULL ENJOYMENT.** — As used in s. 20, Sued Dy Act, 1853; *V. A-G. v. Mander*, 74 L. T. 103; 65 L. J. Q. B. 246; 44 W. R. 413.

**FULL FOR VOYAGE.** — *V.* IN FULL.

**FULL INDEMNITY.** — *V.* INDEMNITY, towards end.

**FULL INTEREST ADMITTED.** — A Marine Policy containing the term “Full Interest Admitted,” is void under 19 G. 2, c. 37, s. 1



(*Berridge v. The Man On Insree*, 18 Q. B. D. 346). *Cp*, Honour Policy, sub HONOUR.

*V.* WITHOUT BENEFIT OF SALVAGE.

**FULL NOTE.** — “ Full Notes of Evidence ”; *V.* NOTE.

**FULL OF ALL DEMANDS.** — *V.* IN FULL.

**FULL OPPORTUNITY.** — *V.* OPPORTUNITY.

**FULL RENT.** — *V.* FULL ANNUAL VALUE.

**FULL SALARIES.** — A bequest to employees of “ Full Salaries ” for a stated period, means, that the salaries are to be calculated free from incidental deductions either by custom of trade or illness, or anything of that sort, but does not exempt the legatee from legacy duty (per North, J., *Re Marcus*, 56 L. J. Ch. 830; 57 L. T. 399; W. N. (87) 168).

*V.* SALARY.

**FULL SATISFACTION.** — *V.* SATISFACTION.

**FULL VALUE.** — The “ Full Value ” of property, quā an obligation to insure against fire, is, “ not the saleable value, but such a sum as would suffice to replace the buildings with others exactly similar ” (Redman, 290, 291).

**FULL WAGES.** — *V.* DISABLE.

**FULLEST PRACTICABLE EXTENT.** — *V.* WORKABLE.

**FULLY ESTATED.** — Condition to keep Leaseholds for Lives “ fully estated ” with lives; *V. Blake v. Peters*, 32 L. J. Ch. 200; 1 D. G. J. & S. 345.

**FULLY PAID-UP.** — The ordinary meaning of a statement on the Certificate of a Co's Shares that they are “ fully paid-up ” is, that their full face value has been given in money, or money's worth; the phrase is not, ordinarily, to be confined to meaning that the Co itself will make no further claim in respect of them (*Bloomenthal v. Ford*, 1897, A. C. 156; 66 L. J. (Ch. 253; 76 L. T. 205; 45 W. R. 449).

“ It is material to observe the distinction which exists between what are commonly called ‘ Paid-up Shares ’ and Shares upon which the whole amount has been paid by instalments; because, the expression ‘ Fully paid-up Shares ’ generally applies to cases where, by reason of some concession having been given or some preliminary expenses having been incurred, it is a part of the contract upon the original constitution of the Co that certain persons, without any payment at all, shall be entitled to Fully Paid-up Shares ” (per Selwyn, L. J., *Re Peruvian Ry, Crawley's Case*, 4 Ch. 326, 327).

FUNDED PROPERTY.—*F. IRISH FUNDED PROPERTY.*

**FUNDS.**—“The Funds,” or “Government Funds” or “The Public Funds” (which expressions are synonymous, per *Ld Cranworth, Slingsby v. Grainger*, 7 H. L. Ca. 280; 28 L. J. Ch. 617; so, *semble*, of “Funded Property,” or “British Funds”), generally means, funded securities guaranteed by the English Government, *i.e.* Consols, Reduced Annuities, Long Annuities, or any other of the English Funds (*Howard v. Kay*, 27 L. J. Ch. 448; 6 W. R. 361); but does not include Foreign Bonds guaranteed by England (*Burnie v. Getting*, 2 Coll. 324), nor Bank Stock (*Slingsby v. Grainger*, 8 D. G. M. & G. 385; 7 H. L. Ca. 273; 28 L. J. Ch. 616), nor East India Stock, under 3 & 4 W. 4, c. 85 (*Brown v. Brown*, 4 K. & J. 704), nor even unfunded Exchequer Bills (*Johnson v. Digby*, 8 L. J. O. S. Ch. 38); unless there is nothing more appropriate to answer the bequest (*Mangin v. Mangin*, 16 Bea. 300). *V. CONSOLS.*

As to Irish Government debentures; *V. Ridge v. Newton*, 2 Dr. & War. 239.

“*Foreign Funds*,” means, securities for which the faith of a foreign government is directly pledged (*Ellis v. Eden*, 23 Bea. 543; 26 L. J. Ch. 533; *Cadett v. Earle*, 5 Ch. D. 710; 46 L. J. Ch. 798); but scarcely includes the bonds of an undertaking, — *e.g.* a railway, — which are to be paid off by a sinking fund which is guaranteed by a foreign government (*Re Langdale*, L. R. 10 Eq. 39; *Va, Ellis v. Eden*, *sup*). *V. FOREIGN.*

*Vh*, 1 Jarm. 770, *n*: Wms. Exs. 1055: Lewin, 340.

A power to *borrow* on the “Funds or PROPERTY” of a Co, does not authorize a Charge on future Calls (*Re British Provident Assree*, 33 L. J. Ch. 535; 4 D. G. J. & S. 407; 12 W. R. 894).

A power to *invest* in the “Funds” of any Incorporated Co, whilst authorizing Debentures, does not authorize the purchase of Preference Shares in a Co (*Harris v. Harris*, 29 Bea. 107; *Vthe, Murphy v. Doyle*, 29 L. R. Ir. 333: *V. SECURITIES*).

“Settled Funds”; *V. SETTLED.*

*V. PROVIDED THE FUNDS PERMIT: GOVERNMENT STOCK: PUBLIC PAROCHIAL FUNDS.*

**FUNDUS.**—“*Quod olim dicebatur fundus nunc manerium dicitur*” (Co. Litt. 5 a). A little further on, in same page, it is said, “anciently *fundus* signified a fearme, and sometime land.”

**FUNERAL EXPENSES.**—What are, and what may be allowed for; *V. Wms. Exs. 835 et seq.* Mourning is not a legal Funeral Expense (*Johnson v. Baker*, 2 C. & P. 207).

**FURLONG.**—*V. STADIUM.*

A Furlong in length, is 220 Imperial Standard Yards (s. 11, 41 & 42 V. c. 49: *V. YARD*).

**FURNISH.** — *V. PROVIDE.*

Mr. Vaughan (at Bow Street, Dec 1895) held that Window Advertisements to Omnibuses have no relation as to how such vehicles "are to be *furnished or fitted*," s. 9 (1), 32 & 33 V. c. 115, and, therefore, a Regulation prohibiting such advertisements was *ultra vires* (40 S. J. 93).

"Furnishing and Completing" the Asylum; Stat. Def., 9 & 10 V. c. 84, s. 10.

*Note.* As to implied agreement of fitness on letting a Furnished House; *V. KEEP.*

**FURNISHES THE SUPPLY.** — A Water Company "furnishes the supply" of water within s. 62, P. H. Act, 1875, when its mains are laid in such a position as regards a house as will reasonably enable the owner to connect it with the mains (*Southend W. W. Co v. Howard*, 53 L. J. Q. B. 354; 13 Q. B. D. 215).

**FURNITURE.** — "It has been held that the habit of hiring Furniture in Hotels is so notorious that the doctrine (of REPUTED OWNERSHIP) does not apply. It has not yet been declared what is meant by 'Furniture'; but the custom is such that it does not allow any one to think that anything used in the business of the hotel is within the reputed ownership of the hotel-keeper" (per Brett, M. R., *Re Parker, Ex p. Turquand*, 54 L. J. Q. B. 244; 14 Q. B. D. 636).

Generally, a Bequest of "Furniture" means the same as one of 'Household Furniture'; *V. HOUSEHOLD.*

A bequest of "Furniture" may pass PICTURES (*Cremorne v. Antrobus*, 5 Russ. 312; 7 L. J. O. S. Ch. 88), or FIXTURES (*V. HOUSEHOLD*); but not a Library of Books (*Bridgman v. Dove*, 3 Atk. 202: *See, Ouseley v. Anstruther*, and *Hutchinson v. Smith*, cited *HOUSEHOLD*).

"No doubt PLATE may pass under 'Furniture'" (per Stuart, V. C., *Wilkins v. Jodrell*, 11 W. R. 588); but if the bequest be of Furniture in a particular house, it will not pass Plate which is sometimes there and sometimes elsewhere, for such a bequest connotes furniture permanently in the house (*S. C.*).

A bequest of a Leasehold Public-house, with its "GOODWILL, and Fixtures, Furniture, and Fittings," will not pass the STOCK IN TRADE (*Re Presley*, 92 Law Times, 391).

*V. EFFECTS: FIXED FURNITURE: GOODS AND CHATTELS.*

"Furniture and Effects belonging to a PRISON"; Stat. Def., 40 & 41 V. c. 21, s. 56.

"It has been held that *Ballast* is not part of the Furniture of a Merchant SHIP" (1 Maude & P. 53, *n* (x), citing Molloy, B. 2, c. 1, s. 8: *Kyuter's Case*, 1 Leon. 46). *V. TACKLE.* But *Provisions*, for the use of the crew, are covered by a policy on the ship "and Furniture" (*Brough*

v. *Whitmore*, 4 T. R. 206; *Va, Hill v. Patteu*, 8 East. 373); so, of all necessary *Equipment* (*Hoskins v. Pickersgill*, 3 Doug. 222), e.g. Dunnage, Mats, and Separating Cloths, in a Grain Ship (*Hogarth v. Walker*, 1899, 2 Q. B. 401; 68 L. J. Q. B. 888; 48 W. R. 47; affd, 1900, 2 Q. B. 283; 69 L. J. Q. B. 634; 82 L. T. 744; 5 Com. Ca. 292).

**FURS.** — Hat bodies made partly of the soft parts of rabbit skins and partly of sheep's wool, are not "Furs" within s. 1, Carriers Act, 1830 (*Mayhew v. Nelson*, 6 C. & P. 58). *V. SKIN.*

**FURTHER.** — In *Doe d. Wickham v. Turner* (2 D. & R. 398), the Will was in the following words, — "I give unto H. W. a message or tenement now in the possession of W. *Item*, I give *further* unto my nephew H. W. half part of my garden, and £100 stock in the 4 per cent Bank Annuities; I give, *further*, my yard, stables, cowhouse, and all other outhouses in the said yard, my sister M. W. to have the interest and profits during her natural life"; — and the Court read in the words "to him" after the second "*further*," so that H. W. was held entitled to the yard, &c. *Vh*, 1 Jarm. 490, 491.

"Further or other Valuable *Consideration*," s. 16, 17 & 18 V. c. 83; *V. Re Bolton*, L. R. 5 Ex. 82; 39 L. J. Ex. 51.

"Further *Consideration Money*," in reddendum of a Mining Lease: *V. Barrs v. Leu*. 33 L. J. Ch. 437.

"Out of any Further *Moneys*"; *V. OUT OF.*

"To further": A testamentary gift "to further" the teaching of certain doctrines, does not offend against the Mortmain Act (*Re Moseley*, 4 Times Rep. 301).

**FURTHER ASSURANCE.** — As to Covenant for, *V. Elph*. 493 *et seq*: 6 Encyc. 29-31; *Re Jones*, 1893, 2 Ch. 461; 62 L. J. Ch. 999; 69 L. T. 45.

**FURTHER CHARGE.** — A Further Charge, is an additional charge given by the original mortgagor (or those standing in his shoes) to the original mtgee (or those standing in his shoes) on the same property as that contained in the original mortgage. Therefore, where a Tenant for Life of settled land mortgaged his life estate to A. and afterwards (by virtue of statutory powers) the Trustees of the Settlement obtained from A. an advance on mortgage of the fee simple of part of the property on the terms that A. should retain out of the advance the money due to him from the Tenant for Life, paying only the balance of the advance to the Trustees; held, that this was not a "Further Charge" for the balance, within R. 10. Sch 1, Part 1, Solrs Rem Ord, and that the Solr was entitled to the Scale Fee under that Sch as on a "LOAN" of the whole amount of the advance to the Trustees (*Aylesford v. Poulett*, 1891, 1 Ch. 248; 60 L. J. Ch. 204; 64 L. T. 336; 39 W. R. 241).

Further Charge quâ Stamp Duty; *V. Rushbrook v. Hood*, 17 L. J. C. P. 58; 5 C. B. 131.

V. CONVEYANCE.

**FURTHER CONSIDERATION.**—“Further Consideration,” s. 9, Partition Act, 1868, is not used technically; it means, subsequent consideration; and the Order thereunder may be made in Chambers (per Cairns, C., *Powell v. Powell*, 10 Ch. 130; 44 L. J. Ch. 122; Seton, 1879).

**FURTHER ENACTED.**—There are no words more appropriate or apposite to connect one section of an Act of Parliament with another than “Be it also further enacted” (per Abbott, J., *Brooke v. Clarke*, 1 B. & Ald. 402).

**FURTHER EVIDENCE.**—“Further Evidence,” R. 4, Ord. 58, R. S. C., means, Evidence not used in the Court below (*Re Chennell*, 47 L. J. Ch. 583; 8 Ch. D. 492).

Cp, FRESH EVIDENCE.

**FURTHER ORDER.**—A Decree directing periodical payments in a certain way “until further order,” is final as to the rights of the parties, and temporary only as to the sources and mode of payment (*Peareth v. Marriott*, 52 L. J. Ch. 221; 22 Ch. D. 182). *Vj. UNTIL FURTHER ORDER.*

**FURTHER PROCEEDINGS.**—*V. R. v. Brocklehurst*, cited SPECIAL, sub “Special Directions.”

**FURTHER REPORT.**—Further Report by Official Receiver, s. 8 (2), Comp Winding-up Act, 1890; *V. FRAUD: IF THEY SHALL THINK FIT.*

**FUSTIAN.**—“Fustian-cutting Works”; *V. NON-TEXTILE FACTORIES.*

**FUTURE.**—Read as “former” (*Pasmore v. Huggins*, 25 L. J. Ch. 251; 21 Bea. 103).

As to the value of this word in construing a covenant, in a Marriage Settlement, to settle after-acquired property; *V. jdgmt of Lindley, L. J., Re Garnett*, 55 L. J. Ch. 779; 33 Ch. D. 300; 55 L. T. 562; *Re Michell*, 9 Ch. D. 5; 48 L. J. Ch. 50.

“Any Act, whether Past or Future”; *V. PAST.*

“Future Act”; Stat. Def. 42 & 43 V. c. 49, s. 49; *MUTINY.*

“Future Advances”; Stat. Def. 54 & 55 V. c. 66, s. 77.

“Future Cargo”; *V. Lungton v. Horton*, 11 L. J. Ch. 299; 1 Hare, 549.

An Agreement to pay an Agent a commission on the sale or letting

of goods "at any Future *Date*," is not valid for all time, but only for a reasonable time; and a County Court Judge having held that such an agreement made in Feb 1883 might be determined in Sept 1884, it was held his decision was final, the question being one of fact (*Houghton v. Orgar*, 1 Times Rep. 653).

"Future *Debt or Liability*"; *V. LIABILITY.*

Future *Earnings*; *V. EARNINGS: INCOME.*

"Future *Election*"; *V. Oswald v. Berwick-upon-Tweed*, 5 H. L. Ca. 856; 25 L. J. Q. B. 383; 4 W. R. 738.

The words "or other future *Estate or Interest*" (s. 3, 3 & 4 W. 4, c. 27), comprehend all executory devises (per Tindal, C. J., *James v. Salter*, 3 Bing. N. C. 554). *Vf, Doe d. Johnson v. Liversedge*, 13 L. J. Ex. 61; 11 M. & W. 517: *Lewis v. Rees*, 3 K. & J. 132: *Astley v. Essex*, L. R. 18 Eq. 290; 43 L. J. Ch. 817: *Jumpsen v. Pitchers*, 13 Sim. 327: *Doe d. Corbyn v. Bramston*, 3 A. & E. 63: *INTEREST.*

A covenant to settle all such "Future *Fortune*" as may be acquired or succeeded to, embraces property the title to which was in existence at the date of the covenant, but the enjoyment of which was not acquired till afterwards (*Grafftey v. Humpage*, 1 Bea. 46; 8 L. J. Ch. 98).

"Future *Goods*"; *V. GOODS.*

"Past or Future *Husband*"; *V. HUSBAND.*

Resolution of a Co altering "the future *Qualification* of a Director," does not affect existing Directors, whose "Qualification" means that which qualified at the time of their election (*Hamilton's Case*, 8 Ch. 548; 42 L. J. Ch. 465).

"Future *Tenancy*"; Stat. Def., 44 & 45 V. c. 49, s. 57. *V. TENANCY.*

"Certain Future *Time*"; *V. CERTAIN TIME.*

*V. PRESENT.*

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## GABBERT — GAIN

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**GABBERT.** — “Gabbert,” is a Scotch word for LIGHTER; and is not a “SHIP, or Vessel,” within s. 2, 26 G. 3, c. 86 (*Hunter v. McGown*, 1 Bligh, 573).

**GABEL.** — “Here note for the better understanding of ancient records, statutes, charters, &c, *gabel*, or *gavell*, *gablum*, *gabellum*, *gabelletum*, *gulbellettum*, and *gavillettum*, doe signifie a rent, custome duty, or service, yeelded or done to the king or any other lord” (Co. Litt. 142 a). *Vf*, *Termes de la Ley*, *Gable*: Cowel: Elph. 582: GALE.

**GAGE.** — “Signifies a PAWN or PLEDGE” (Cowel, who shows the change of the word into “WAGE”).

**GAIN.** — Business Companies, of more than 20 persons, for “the acquisition of Gain” must be registered (s. 4, Comp Act, 1862). “‘Gain,’ means exactly Acquisition. Therefore the expression here is ‘the acquisition of acquisition.’ Gain is something obtained or acquired. It is not limited to pecuniary gain. In fact, we should have to put the word ‘pecuniary’ to show it. It is not ‘gains,’ but ‘gain’ in the singular. Commercial profits, no doubt, if acquired are gain; but I cannot find any word limiting it simply to a commercial profit. I take the word as referring to a Company which is formed to acquire something, as distinguished from a Company formed for spending something and in which the individual members are simply to give something away or to spend something, and not to gain anything” (per Jessel. M. R., *Re Arthur Average Assn*, 44 L. J. Ch. 572; 10 Ch. 546: *Vf*; *Smith v. Anderson*, 50 L. J. Ch. 39; 15 Ch. D. 247: *Crouther v. Thorley*, 50 L. T. 43; *Re Siddall*, 54 L. J. Ch. 682). A diminution of a loss, is a “Gain” within the meaning of the section (*Re Padstow Assree*, 51 L. J. Ch. 344; 20 Ch. D. 137). *V. JOINT STOCK COMPANY.*

A person is not EMPLOYED “for the purposes of Gain,” s. 47, Elementary Education Act, 1876, “merely because what he does enables some one else to earn money” (per Darling, J., *Mather v. Lawrence*, 68 L. J. Q. B. 714; 1899, 1 Q. B. 1000; 80 L. T. 600; 47 W. R. 559; 63 J. P. 455); therefore, there is no such Employment if a father keeps his daughter at home for domestic purposes in order to enable his wife to go out to work (*S. C.*).

*V. GAINS: BUSINESS: HIRE: INCOME.*

"Arable Land (which anciently is called *hyde and gaine*)" (Co. Litt. 85 b).

"Beasts that *gain* his land"; *V. BEASTS: Termes de la Ley, Gainage*: Cowel, *Gainage*.

**GAINS.** — "Although in the Income Tax Act, 1842 (Sch D and s. 100), 'profits' and 'gains' are really equivalent terms, yet the use of the word 'Gains' in addition to the word 'Profits' furnishes an additional argument for excluding the contention that you are to introduce into the word 'Profits' some ideas connected, not with the nature of the thing but, with the manner and rule of its application. What are the 'Gains' of a trade? If it could be reasonably contended that the word 'Profits' in these (Income Tax) Acts has reference to some advantage which the persons carrying on the concern are to derive from it, it might be said, perhaps, that the same argument might have been raised upon the word 'Gains,' but, to my mind, it is reasonably plain that the 'Gains' of a trade are that which is gained by the trading, for whatever purpose it is used — whether it is gained for the benefit of a community or for the benefit of individuals. Whether the benefit is to be obtained by dividends, or whether it is to be obtained by lightening and diminishing public burdens, it is all the same" (per Selborne, C., *Mersey Docks v. Lucas*, 53 L. J. Q. B. 7; 8 App. Ca. 891; 49 L. T. 781; 32 W. R. 34; 48 J. P. 212).

*V. INCOME: PROFITS.*

**GALE.** — From **GABEL** comes " 'Gale,' still used for the taking of a mine in the West of England. To *gale* a mine, to acquire the right of working it; and *gale* is the common word in Ireland for a payment of rent, or for the rent due at a certain term; Wedgwood, Dict. Eng. Etym., *Gabel*" (Elph. 582). *Vf*, Wood on Dean Forest, 6, 94: s. 1, Dean Forest Act, 1861, 24 & 25 V. c. xl.

Quà Dean Forest (Mines) Act, 1871, 34 & 35 V. c. 85, " 'Galee,' or 'Galees,' shall respectively include all persons holding or having any interest in or under any Gale or Gales" (s. 2).

**GALLON.** — "The Unit or Standard Measure of Capacity from which all other Measures of Capacity (as well for Liquids as for Dry Goods) shall be derived, shall be the Gallon, containing 10 Imperial Standard Pounds weight of distilled water weighed in air against brass weights, with the water and the air at the temperature of 62° of Fahrenheit's thermometer, and with the barometer at 30 inches" (s. 15, 41 & 42 V. c. 49).

**GAMBLER.** — To write of a person that he is a "Gambler," without more, is not actionable (*Forbes v. King*, cited **MAN FRIDAY**).

*V. PROFESSED GAMBLER.*



**GAME : Animals.** — “The word ‘Game’ is an indefinite word, and seems at various times to have had various meanings; to have at one time included one thing, at one time another; to have had at one time a wider, and at another time a narrower, signification” (per Erle, C. J., *Jeffryes v. Evans*, 34 L. J. C. P. 263; 19 C. B. N. S. 264).

Under Night Poaching Act, 1828, 9 G. 4, c. 69 (s. 13), and under the Game Act, 1831, 1 & 2 W. 4, c. 32 (s. 2), “Game” includes, “Hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards”; — a definition which, it will be observed, does not include Rabbits (*Spicer v. Baruard*, 28 L. J. M. C. 176; 1 E. & E. 874; 7 W. R. 467; 33 L. T. O. S. 121; *Padwick v. King*, 29 L. J. M. C. 42; 7 C. B. N. S. 88).

Under the Poaching Prevention Act, 1862, 25 & 26 V. c. 114. “Game” includes, “Hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, Rabbits, grouse, black or moor game, and eggs of grouse black or moor game” (s. 1).

Quà, and by, subs. 5, s. 5, Land Law (Ir) Act, 1881, 44 & 45 V. c. 49, “‘Game,’ means, Hares, Rabbits, pheasants, partridges, quails, landrails, grouse, woodcock, snipe, wild-duck, widgeon, and teal.”

But, quà Game Trespass Act, 1864, 27 & 28 V. c. 67 (which extends to Ireland only), Rabbits are omitted, the def being, — “‘Game,’ includes, Hares, pheasants, partridges, grouse, heath or moor game, black game, woodcocks, snipes, quails, landrails, wild-ducks, widgeon, and teal” (s. 2).

Quà the Game Acts for Scotland, “Game,” includes, “all the animals enumerated in the Game Acts, or any of them” (40 & 41 V. c. 28, s. 3), which Acts are those enumerated in Sch 1, to that statute, and include the above mentioned Acts, 9 G. 4, c. 69; 1 & 2 W. 4, c. 32; and 25 & 26 V. c. 114.

Rabbits are GROUND GAME. In Australia they are Vermin; *V. The Vermin Destruction (Victoria) Act, 1890.* *V. VERMIN.*

“Game,” in the Acts relating to the Sale of Game, means, generally, game killed in the United Kingdom (*Pudney v. Eccles*, 1893, 1 Q. B. 52; 62 L. J. M. C. 27; 67 L. T. 713; 41 W. R. 125; 57 J. P. 38).

“Bird of Game” in s. 4, Game Act, 1831, means English Bird of Game (*Guyer v. The Queen*, 58 L. J. M. C. 81; 23 Q. B. D. 100; 37 W. R. 586; 60 L. T. 824; *Va, Robertson v. Johnson*, cited TAKE); but extends throughout the section to live birds (*Loome v. Baily*, 30 L. J. M. C. 31; 3 E. & E. 444). *Cp, FOWL.*

#### V. ENTERING OR BEING: SEARCH: HUNTING.

*Note.* As to the property in Game and other animals *feræ naturæ*; *V. Sutton v. Moody*, 1 Raym. Ld. 250; 12 Mod. 144; *Lonsdale v. Rigg*, 26 L. J. Ex. 196; 1 H. & N. 923; *Blades v. Higgs*, 34 L. J. C. P. 286, and cases there cited; *Bowlston v. Hardy*, cited NUISANCE; 2 Bl. Com. 389.

**GAME: Lawful.**— A Foot-race is a “lawful game” (*Batty v. Marriott*, 17 L. J. C. P. 215; 5 C. B. 818). So are Billiards (*Parsons v. Alexander*, 24 L. J. Q. B. 277; 5 E. & B. 263), Dominoes, Chess, or Draughts (*R. v. Ashton*, 22 L. J. M. C. 1; 1 E. & B. 286). So Cards would seem, *per se*, not unlawful (*Patten v. Rhymer*, 29 L. J. M. C. 189; *R. v. Davies*, cited UNLAWFUL GAMING).

*Vh*, Jacob, *Gaming*: 6 Eneye, 45–47.

V. GAMING.

Subscriptions or contributions for any plate, prize, or sum of money, to be awarded to the winner “of any lawful game, sport, pastime, or exercise,” are legal (*V. proviso to s. 18, Gaming Act, 1845, 8 & 9 V. c. 109*). But a match for so much a side is a wager and not within this proviso (*Diggle v. Higgs*, 2 Ex. D. 422; *Trimble v. Hill*, 5 App. Ca. 342, overruling *Batty v. Marriott*, *sup*: *Vf*, *Shoolbred v. Roberts*, 1899, 2 Q. B. 560; 68 L. J. Q. B. 998; 81 L. T. 522).

V. SUBSCRIPTION: GAMING CONTRACT.

**GAME, Sport, Pastime, or Exercise.**— Gambling by tossing with coins, if not a “game,” is a “pastime or exercise” within s. 17, Gaming Act, 1845 (*R. v. O'Connor*, 15 Cox C. C. 3; and as to what is a “Game” within the section, *V. R. v. Hulson*, 29 L. J. M. C. 145; Bell C. C. 263).

**GAME CERTIFICATE.**— Quà Game Act, 1831, Hares Act, 1848 (11 & 12 V. c. 29), and Hares (Scot) Act, 1848 (11 & 12 V. c. 30), “Game Certificate” “shall be construed to mean, a ‘License to Kill Game’ under the provisions of” the Game Licenses Act, 1860, 23 & 24 V. c. 90 (s. 6, last mentioned Act).

**GAME LAWS.**— Shooting Game without a License is an offence against the Revenue Laws, and is not an offence against the “Game Laws,” within a Condition for Re-entry in a Lease (*per Kelly, C. B., Stevens v. Copp*, L. R. 4 Ex. 20; 38 L. J. Ex. 31; 17 W. R. 166; 19 L. T. 454).

**GAME OF CHANCE.**— Is a Dog Race, or any other Race, a “Game of Chance” within s. 3, 31 & 32 V. c. 52? *V. Hirst v. Molesbury*, cited INSTRUMENT OF GAMING. *Vj*, *BET. Cp*, GAMING.

**GAMING.**— “To game,” is to play at any game, whether of skill or chance, for money or money’s worth; and the act is not less gaming because the game played is not in itself unlawful (*R. v. Ashton*, 22 L. J. M. C. 1; 1 E. & B. 286; *Patten v. Rhymer*, 29 L. J. M. C. 189; *Parsons v. Alexander*, 24 L. J. Q. B. 277; 5 E. & B. 263; *Bew v. Harston*, 47 L. J. M. C. 121; 3 Q. B. D. 454; 26 W. R. 915; 42 J. P. 808; *Dyson v. Mason*, 58 L. J. M. C. 55; 22 Q. B. D. 351; 60 L. T. 265; 53 J. P. 261; 5 Times Rep. 230). In view of the “serious doubts” ex-

pressed by Cockburn, C. J., in *Bew v. Harston*, sup, the clause in the above definition expressed in the words "whether of skill or chance" cannot be regarded as absolutely settled by authority.

"Other Game or Games whatsoever," s. 1, Gaming Act, 1710, 9 Anne, c. 19, includes Horse-racing (*Goodburn v. Marley*, 2 Stra. 1159; *Woolf v. Hamilton*, cited ILLEGAL); so, of a FOOT-RACE (*Lynull v. Loughbotham*, 2 Wils. 36). *Cp.* GAME OF CHANCE.

A TIME BARGAIN on the Stock Exchange was not "Gaming or Wagering," within s. 201, Bankry Act, 1849, though it might be within the Gaming Act, 1845 (*Re Ryder*, 26 L. J. Bank. 69; 1 D. G. & J. 317; 29 L. T. O. S. 336). *Cp.* RASH AND HAZARDOUS.

An Innkeeper is guilty of an offence against his license prohibiting "any Gaming whatsoever," and any licensed person is guilty of suffering "any Gaming" within s. 17, Licensing Act, 1872, if he permits even his private friends to play at cards or other games of chance for money or money's worth, however small the stakes (*Foot v. Baker*, 6 Sc. N. R. 301; 5 M. & G. 335; 11 J. P. 444; *Patten v. Rhymer*, sup). And convictions against licensed persons for allowing games of skill, — such as ten pins, skittles, skittle-pool, "puff and dart," — to be played for money or money's worth have been supported (*Danford v. Taylor*, 20 L. T. 483; 33 J. P. 277, 612; *Luff v. Leaper*, 36 J. P. 54, 773; *Dyson v. Mason*, sup; *Bew v. Harston*, sup).

V. ASSEMBLE: PLACE: SUFFER: UNLAWFUL GAMING: USE: LOTTERY: BET: INSTRUMENT OF GAMING.

**GAMING HOUSE.** — *V.* COMMON GAMING HOUSE: PLACE.

**GAMING CONTRACT.** — The Gaming Act, 1845 (8 & 9 V. c. 109, s. 18), which renders null and void, "all contracts or agreements by way of *gaming or wagering*," means, contracts or agreements, *for wagers*; and relates only to contracts which are themselves by way of wagering (per Cleasby, B., *Beeston v. Beeston*, 45 L. J. Ex. 232; 1 Ex. D. 13). Therefore, an agreement between two persons that one shall make bets for the other, is not a contract "by way of gaming or wagering." And, accordingly, money won and received by a betting agent may be recovered from him by his principal (*Beeston v. Beeston*, sup; *Bridger v. Savage*, 15 Q. B. D. 363; 54 L. J. Q. B. 464; 53 L. T. 129; 33 W. R. 891; 49 J. P. 725); and (before the Gaming Act, 1892) the agent might recover from his principal all moneys paid in pursuance of a betting agency (*Rosewarne v. Billing*, 33 L. J. C. P. 55; 15 C. B. N. S. 316; *Bubb v. Yelverton*, *Ker's Claim*, 19 W. R. 739; 24 L. T. 822; *Bubb v. Yelverton*, *Steel & Nicholl's Claim*, 39 L. J. Ch. 428; L. R. 9 Eq. 471; *Re Lister*, 47 L. J. Bank. 100; 8 Ch. D. 754; *Thacker v. Hardy*, 4 Q. B. D. 685; 48 L. J. Q. B. 289). So, prior to the Act of 1892, it was held that, if a person employed another to bet for him in his (the agent's) own name, an authority to pay the bets, if lost, was coupled with the employment;

and although *before the bet was made* the employment and authority were both revocable, — the moment the employment was fulfilled by the making of the bet, the authority to pay it, if lost, became irrevocable, and the liability of the principal was consequently irrevocable (per Hawkins, J., *Read v. Anderson*, 52 L. J. Q. B. 219; 53 Ib. 532; 13 Q. B. D. 779; *Vith, Lilley v. Rankin*, 56 L. J. Q. B. 248: *Cohen v. Kittell*, 58 L. J. Q. B. 241; 22 Q. B. D. 680: *Seymour v. Bridge*, 54 L. J. Q. B. 347; 14 Q. B. D. 460: *Perry v. Barnett*, 54 L. J. Q. B. 351, 446; 15 Q. B. D. 388).

But by the Gaming Act, 1892, 55 & 56 V. c. 9 (which is not retrospective, *Knight v. Lee*, 62 L. J. Q. B. 28), it is now enacted that, “any promise, express or implied, to pay any person any sum of money PAID by him under, or in respect of, any contract or agreement rendered null and void by the Act of 8 & 9 V. c. 109, — or to pay any sum of money by way of commission, fee, reward, or otherwise, in respect of any such contract, or of any services in relation thereto, or in connexion therewith, — shall be null and void, and no action shall be brought or maintained to recover any such sum of money.” Still, the ruling in *Beeston v. Beeston* (sup) remains, and a principal may recover from his agent moneys received by the latter for bets (*De Mattos v. Benjamin*, 63 L. J. Q. B. 248; 70 L. T. 560; 42 W. R. 284); but the ruling in *Rosewarne v. Billing* (sup) is gone, so that an agent cannot now recover from his principal moneys paid for bets (*Tatum v. Reere*, 1893, 1 Q. B. 44; 62 L. J. Q. B. 30; 67 L. T. 683; 41 W. R. 174; 57 J. P. 118), nor can a partner recover contribution from his copartner towards losses in a betting partnership (*Saffery v. Mayer*, 83 L. T. 394).

V. Gaming Act, 1835, 5 & 6 W. 4, c. 41.

Stock Exchange speculations are not within the Act of 1892 unless there is a contract which is, in effect, that only “Differences” shall be paid (*Fuller v. Perryman*, 11 Times Rep. 350: *Hirst v. Williams*, Ib. 491: *Sr, Egleton v. Barclay*, Ib. 174: *Re Gieve*, 1899, 1 Q. B. 794; 68 L. J. Q. B. 509, applying *Universal Stock Exchange v. Strachan*, cited DEPOSIT); *seens*, of money advanced to provide a Stake on a Boxing Match, even though advanced to the winner who receives both stakes (*Carney v. Plimmer*, 1897, 1 Q. B. 634; 76 L. T. 374; 66 L. J. Q. B. 415; 45 W. R. 385; 61 J. P. 324).

Where on a contract for the Sale of Goods there is a Dispute, *e.g.* as to what price was agreed on, and the parties agree to refer the fact involved in that dispute to A. and the price to be paid is to be too much or too little according as A. may determine that fact, that is a Gaming Contract within the Gaming Act, 1845 (*Rourke v. Short*, 5 E. & B. 904; 25 L. J. Q. B. 196).

Art. 1927 of the Civil Code of Lower Canada, which prohibits the recovery of money or other thing “claimed under a Gaming Contract, or BET,” is, substantially, the same as s. 18, Gaming Act, 1845, and

therefore the employment of a BROKER to make purchases and sales as a speculation is not within the prohibition when the arrangement is that each transaction is to be completed by payment or delivery (*Forget v. Ostigny*, 1895, A. C. 318; 72 L. T. 399; 64 L. J. P. C. 62; 43 W. R. 590).

The offer of a REWARD to any person who uses an advertised specific unsuccessfully, is not a Gaming Contract (*Carlill v. Carbolic Smoke Ball Co*, 1893, 1 Q. B. 256; 62 L. J. Q. B. 257; 67 L. T. 837; 41 W. R. 210; 57 J. P. 325).

V. BET: DEPOSIT: EVENT: GAME, *lawful*: TIME BARGAIN: Stutfield on Betting: PLACE.

**GANG.** — Stat. Def., V. AGRICULTURAL: 14 & 15 V. c. 78, s. 46: (Gang Master) 30 & 31 V. c. 130, s. 3.

**GAOL.** — “Gaole,” signifies a Cage for Birds; but, metaphorically, is used for a PRISON. And from thence the Keeper of the prison is called a Gaoler, or Gayler” (Termes de la Ley). *Vf*, Jacob.

Stat. Def. — 13 & 14 V. c. 105, s. 9; 52 & 53 V. c. 12, s. 7. — *Ir*. 14 & 15 V. c. 90, s. 18, c. 92, s. 25, c. 93, s. 44; 16 & 17 V. c. 112, s. 80.

The Commission of General *Gaol Delivery* is the power which the Judges of Assize have “to try and deliver every prisoner who shall be in the gaol when they arrive at the Circuit Town” (4 Bl. Com. 270, iii). *Op*, OYER AND TERMINER.

**GAOLER.** — V. GAOL.

Stat. Def. — 28 & 29 V. c. 126, s. 4; 39 & 40 V. c. 36, s. 284. — *Ir*. 20 & 21 V. c. 60, s. 4.

**GARBLE.** — “Garble,” is to sort and chuse the good from the bad, as the Garbling of Bowstaves, 1 Ric. 3, c. 11. And the garbling of Spice is nothing else but to purifie it from the drosse with which it is mixed” (Termes de la Ley). As to the garbling and Garbler of Spices. *V*. 1 Jac. 1, c. 19; 6 Anne, c. 16.

**GARD.** — V. WARD.

**GARDEN.** — In *R. v. Hodges* (Moo. & M. 341), the jury (after being directed by Parke, J.), found that a piece of ground chiefly used to grow grafted seedling pear-trees for sale (though there were also a few currant and raspberry bushes on it, and a crop of potatoes and cabbages had in the preceding summer been grown amongst the pear-trees), was not a “Garden,” but was a “Nursery Ground” only, within s. 43, 7 & 8 G. 4, c. 29. *Vf*, *Ex p. Hammond*, 14 L. J. Bank. 14; D. G. 93; 9 Jur. 358.

So a piece of land in the occupation of a Seedsman for the purposes of his business and chiefly planted with trade bulbs, is not a “Garden,”

within the definition of "Allotment" in s. 4, Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 V. c. 26 (*Cooper v. Pearse*, 1896, 1 Q. B. 562; 65 L. J. M. C. 95; 74 L. T. 495; 44 W. R. 494; 60 J. P. 282). In that case Collins, J., said, — "A Garden might be defined as, a plot of ground on which fruit, vegetables, and flowers are grown for food or pleasure."

In *Gilbert v. Tomison* (4 D. & R. 222) the question was, What is a "Garden," within an Exception (of "Orchards, Gardens, and Highways") to a Custom to get lead ore at Wirksworth, Derbyshire? The jury found that a plot, part planted as a shrubbery within the preceding six years and other part with potatoes quite recently, was a "Garden" within that Exception, and the Court refused to disturb that verdict.

"My freehold Cottage with the Garden"; held, to include a small Orchard, very near but not adjoining and bought subsequently to the cottage with its attached garden of nearly half an acre; as otherwise there would have been an intestacy as regards the orchard (*Heach v. Prichard*, W. N. (82) 140). *Cp.*, OUTLET.

*V.* COTTAGE GARDEN: MARKET GARDEN: TILLAGE.

**GARDENER.** — "Gardener" or "Under-Gardener," *e.g.* in the def of MALE SERVANT in the Revenue Act, 1869, connotes a man skilled in gardening, and not merely a person working in a garden, *e.g.* labourers (*Dillon v. Bath*, 81 L. T. 186; 63 J. P. 597). *V.* MARKET GARDENER.

**GARNISHEE.** — As to what Debts may be attached under a Garnishee Order; *V.* DEBT: BIND.

**GARNISHMENT.** — Action of; *V.* Termes de la Ley: Cowel: Jacob.

**GARTH.** — "Signifies a little Backside or Close in the North of England; also a Dam or Wear in a River for the catching of Fish, vulgarly called a FISH-GARTH" (Cowel).

**GAS.** — Under a Fire Insurance excepting damage by explosion "except explosion *by Gas*," the insurer is not liable for an explosion of Gas created incidentally by the chemicals used in the works of the insured (*Stanley v. Western Insrce*, 37 L. J. Ex. 73; L. R. 3 Ex. 71; 17 L. T. 513; 16 W. R. 369). In that case Kelly, C. B., said, — "Strictly and philosophically speaking it is Gas; but so are the component parts of the water of the ocean in their strict philosophical and physical sense. But it appears in this case, and, without any statement to that effect, we know of our own knowledge, that though steam and vapour and substances of that description which find their way into the atmosphere strictly speaking are Gas, they do not pass in ordinary parlance by the name of Gas. Therefore construing the Policy on the principle that these parties expressed themselves in the ordinary language, not only of

men of business but even of scientific men when dealing with matters of this description, I think that *the Company were not to be liable for any explosion unless occasioned by Illuminating Gas.*"

**V. FIRE: FITTINGS.**

"Gas Company"; Stat. Def., 23 & 24 V. c. 125, s. 4; 62 & 63 V. c. 19, Sch, s. 18 (6).

"Gas, Water, or Electricity, Company"; Stat. Def., 59 & 60 V. c. 23, s. 10; 60 & 61 V. c. 25, s. 8 (2), c. 27, s. 9 (2).

"Gas Rate," quâ Gasworks Clauses Act, 1847, 10 & 11 V. c. 15, includes, "any rent, reward, or payment, to be made to the Undertakers for a supply of gas" (s. 3). "Gas Rent"; **V. RENT.**

"Gas Works"; Stat. Def., 10 & 11 V. c. 15, s. 3; 23 & 24 V. c. 125, s. 4.

**GATEWAY.** — By a grant of "the exclusive use" of a "Gateway" (with defined dimensions), not merely a right of way, but the right to use the gateway for all lawful purposes passed (*Reilly v. Booth*, 44 Ch. D. 12; 62 L. T. 378; 38 W. R. 484). **V. WAY.**

**GAVEL-ERTH: GAVEL-RIP.** — **V. BENERTH.**

**GAVELKIND.** — "In the County of Kent, — where lands and tenements are holden in Gavel-kinde, — there, by the Custom and Use out of minde of man, the issues male ought equally to inherit . . . for every son is as great a Gentleman as the eldest son is" (Litt. s. 210: *17th*, Co. Litt. 140 a). *Vf*, Termes de la Ley: Cowel: Jacob: 2 Bl. Com. 84; Wms. R. P. ch. 5; Challis on Real Property, 14 *et seq*: Robinson on Gavelkind.

**GAZETTE.** — The "Gazette," means the London Gazette, published under the authority of the English Government (*R. v. Holt*, 5 T. R. 439), unless otherwise provided by an interp clause, and then the word is made to mean, quâ Scotland, the Edinburgh Gazette, and, quâ Ireland, the Dublin Gazette: *V.* 30 & 31 V. c. 127, s. 3; 31 & 32 V. c. 18, s. 2, c. 37, s. 5; 38 & 39 V. c. 60, s. 4; 39 & 40 V. c. 45, s. 3; 56 & 57 V. c. 39, s. 79; 59 & 60 V. c. 25, s. 106. — *Scot.* 19 & 20 V. c. 79, s. 4. — *Ir.* 20 & 21 V. c. 60, s. 4.

**V. BY AUTHORITY: LONDON GAZETTE.**

**GAZETTED.** — Means, *primâ facie*, published in the London Gazette; *e.g.* s. 168. Bankry Act, 1883: **V. GAZETTE.**

**GEARING.** — *V. Holmes v. Clarke*, 30 L. J. Ex. 135; 31 Ib. 356; 6 H. & N. 349; 7 Ib. 937: **MILL: MILL GEARING.**

**GELD.** — **V. GILD.**

**GELDING.** — *V.* HORSE.

**GENDER.** — In all Acts passed after 1850, “unless the Contrary Intention appears, Words importing the Masculine Gender shall include FEMALES” (s. 1 (1 *a*), Interp Act, 1889).

*V.* LEGAL INCAPACITY: MAN: SEX: PUER.

**GENERAL.** — *V.* SPECIFIC: “General Issue,” *V.* TRIAL.

**GENERAL ACT OF PARLIAMENT.** — *V.* PUBLIC ACT OF PARLIAMENT.

**GENERAL ANNUAL LICENSING MEETING.** — This phrase, quâ P. H. Act, 1890, means, in Ireland, “Annual Licensing Quarter Sessions” (subs. 9, s. 12).

*V. R. v. Anglesey Jus.*, cited BEFORE.

**GENERAL ASSETS.** — Quâ Comp Act, 1879, “‘the General Assets of the Company,’ means, the funds AVAILABLE for payment of the General Creditors as well as the Note-holder” (s. 6).

**GENERAL AVERAGE.** — “The term ‘General AVERAGE’ is used indiscriminately, sometimes to denote the kind of loss which gives a claim to General Average Contribution, and sometimes to denote such Contribution itself; in order to prevent confusion it is better to use the term General Average Loss when speaking of the former, and General Average Contribution when speaking of the latter” (2 Arn. 1020: Lowndes, 210, *n* (*p*): Abbott, Part 3, ch. 8: Carver, Part 2, ch. 12: Maude & P. 425 *et seq*).

“The Captain when he determines on the General Average Act, is the agent for all parties interested; the occasion makes him their agent; and if, in doing the Act, he causes direct injury to the property of any one of them, it must be taken that the others, there and then, promise to contribute to make it good” (per Bigham, J., *Anglo-Argentine Agency v. Temperley Co*, 1899, 2 Q. B. 403; 68 L. J. Q. B. 900; 81 L. T. 296; 48 W. R. 64; 4 Com. Ca. 281).

*V.* GENERAL AVERAGE CONTRIBUTION: G. A. LOSS: G. A. SACRIFICE: PARTICULAR AVERAGE: AVERAGE.

**GENERAL AVERAGE CONTRIBUTION.** — “The object of General Average Contribution is to indemnify the person making the GENERAL AVERAGE SACRIFICE against so much of the loss caused directly thereby as does not fall to his own proportionate share” (per Bowen, L. J., *Srensden v. Wallace*, 53 L. J. Q. B. 393; 13 Q. B. D. 84; affd 54 L. J. Q. B. 497; 10 App. Ca. 404). *Vh.* *Steel v. Scott*, 59 L. J. P. C. 1; 14 App. Ca. 601: *The Carron Park*, 59 L. J. P. D. & A. 74; 15 P. D. 203: *Milburn v. Jamaica Fruit Importing Co*, 1900, 2 Q. B.



540; 69 L. J. Q. B. 860; 83 L. T. 321: *MrCall v. Houllder*, 66 L. J. Q. B. 408; 76 L. T. 469.

For an account working out a G. A. Contribution, *V. Abbott*, 662; *Carver*, 493-496.

**GENERAL AVERAGE LOSS.**—“Mr. Arnould, in stating the definition of a General Average Loss, says, — ‘A General Average Loss may be defined to be a loss arising out of Extraordinary Sacrifices made, or Extraordinary Expenses incurred, for the *Joint Benefit* of Ship and Cargo’; and for his authority he cites Lawrence, J., in *Birkley v. Presgrave*, 1 East, 220” (per Brett, M. R., *Seensden v. Wallace*, 13 Q. B. D. 74; 53 L. J. Q. B. 387; affd 10 App. C. 404; 54 L. J. Q. B. 497); but “Preservation” was the word used by Lawrence, J., and that is the sense in which “Joint Benefit” is used in the above definition (per Brett, M. R., *S. C.*). Accordingly in the 7th ed. of Arn. 1922 it is said, “A General Average Loss has been authoritatively defined to be, ‘a loss arising out of Extraordinary Sacrifices made, or Extraordinary Expenses incurred, for the Preservation of Ship and Cargo’”; but in a note thereto it is said that “it is submitted that a more correct definition, especially in view of modern decisions, is ‘a loss consisting in Extraordinary Sacrifices made, or in Expenses incurred through Extraordinary Action taken, for the Preservation of Ship and Cargo.’”

*Vh, Anglo-Argentine Agency v. Temperley Co*, cited GENERAL AVERAGE. As to what is Extraordinary Sacrifice, *V. GENERAL AVERAGE SACRIFICE.*

**GENERAL AVERAGE PER FOREIGN STATEMENT.**—

“Policies on Cargoes destined to foreign ports sometimes contain a provision that the underwriter is ‘to pay GENERAL AVERAGE as per Foreign Statement if so made up,’ or to the like effect. Where this is inserted, the underwriters are bound by a foreign adjustment in accordance with the law in force where it is made, although its effect may be to treat as General Average, what, according to English law, would be Particular Average” (1 Maude & P. 492, *n* (g), citing *Harris v. Searamonga*, L. R. 7 C. P. 481; 41 L. J. C. P. 170; *Hendricks v. Australasian Insree*, L. R. 9 C. P. 460; 43 L. J. C. P. 188; *Macro v. Ocean Mar Insree*, L. R. 9 C. P. 595; 10 *Ib.* 414; 44 L. J. C. P. 229).

In the lastly cited case, *Macro v. Ocean Mar Insree*, Cockburn, C. J., said, “In a policy of Marine Insurance ‘General Average as per Foreign Statement’ appears to be this: the underwriter is only to be liable for a General Average, but what is General Average is to be determined by the law of the foreign place to which the ship is bound.”

*Vh, The Mary Thomas*, 1894, P. 108; 63 L. J. P. D. & A. 49; 71 L. T. 104, distinguishing *Dickenson v. Jardine*, 37 L. J. C. P. 321; L. R. 3 C. P. 639; *The Brigella*, 1893, P. 189; 62 L. J. P. D. & A. 81; 69 L. T. 834.

**GENERAL AVERAGE SACRIFICE.** — “A GENERAL AVERAGE Sacrifice is an Extraordinary Sacrifice, voluntarily made in the hour of peril for the common preservation of ship and cargo” (per Bowen, L. J., *Srensen v. Wallace*, 53 L. J. Q. B. 393; 13 Q. B. D. 84; affd 54 L. J. Q. B. 497; 10 App. Ca. 404).

As to what is an Extraordinary Sacrifice, *V. The Bona*, 1895, P. 125; 64 L. J. P. D. & A. 62; 71 L. T. 870; 43 W. R. 289, espy jdgmt of Lindley, L. J.: and as to Sacrifice, *V. Shepherd v. Kottgen*, 2 C. P. D. 585; 47 L. J. C. P. 67.

There can be no “Sacrifice” when the thing said to be sacrificed is absolutely lost or become valueless: *Vh, Iredale v. China Traders Insree*, 1899, 2 Q. B. 356; 68 L. J. Q. B. 1021; 81 L. T. 231; 48 W. R. 48; affd 1900, 2 Q. B. 515; 69 L. J. Q. B. 783; 83 L. T. 299; 49 W. R. 107.

**GENERAL BEQUEST.** — *V. Specific Bequest*, sub SPECIFIC.

**GENERAL CONTRACTORS.** — “General Contractors,” as one of the Objects of a Company as stated in its Memorandum, will be controlled by the other objects in association with which the phrase is used (*Ashbury Co v. Riché*, 44 L. J. Ex. 185: L. R. 7 H. L. 653).

**GENERAL COUNCIL.** — Quà Dentists Act, 1878, 41 & 42 V. c. 33, “‘General Council,’ means, the General Council of Medical Education and Registration of the United Kingdom, established under the Medical Act, 1858” (s. 2).

**GENERAL COUNTY ACCOUNT.** — Stat. Def., Loc Gov Act, 1888, s. 68 (2).

**GENERAL COUNTY PURPOSES.** — “‘General County Purposes,’ means, all purposes declared by this or any other Act to be General County Purposes; and all purposes for contributions to which the County Council are for the time being authorized by law to assess the whole area of their Administrative County” (s. 68 (2), Loc Gov Act, 1888). The maintenance of MAIN ROADS remains a “General County Purpose” (ss. 11 (1) and 68, Loc Gov Act, 1888) although the County Council has adopted s. 20, Highways Act, 1878 (*R. v. Dolby*, 1892, 2 Q. B. 736; 61 L. J. Q. B. 826; 67 L. T. 619). *Cp*, SPECIAL.

**GENERAL EXPENSES.** — S. 229, P. H. Act, 1875; *V. Lancashire & Yorkshire Ry v. Bolton*, 15 App. Ca. 323; 60 L. J. Q. B. 118; 63 L. T. 358; 54 J. P. 532; 5 Times Rep. 610; *Jersey v. Urbridge*, 1891, 3 Ch. 183; 60 L. J. Ch. 833; 64 L. T. 858. *Cp*, “Special Expenses,” sub SPECIAL.

**GENERAL INTEREST.** — The mere question as to whether a particular person has committed perjury, or whether otherwise there be a question of individual character, is not “of General or Public Interest”

so as to justify an order for costs on the higher scale under s. 5, 45 & 46 V. c. 57 (*R. v. City of London Court*, 56 L. J. Q. B. 79; 18 Q. B. D. 105; 55 L. T. 736; 35 W. R. 123). *V. PUBLIC INTEREST.*

**GENERAL ISSUE.** — Is a DEFENCE which “denies at once the whole declaration, without offering any special matter whereby to evade it” (3 Bl. Com. 305).

**GENERAL LIMITS.** — “The *General Limits*” of the Metropolitan Streets Act, 1867 (*V. s. 2, 48 & 49 V. c. 18*) are “such parts of the Metropolis as are enclosed in a Circle of which the Centre is Charing Cross, and the Radii are 6 Miles in length as measured in a straight line from Charing Cross”; “The *Special Limits*,” being such streets, and portions of streets, as may be declared such (s. 4).

**GENERAL LINE OF BUILDINGS.** — “General Line of Buildings,” “to be decided by the Superintending Architect,” s. 75, Metrop Man. Act, 1862; *V. Barlow v. St. Mary Abbots*, 55 L. J. Ch. 680; 11 App. Ca. 257; 55 L. T. 221; 34 W. R. 521; 50 J. P. 691; *Newhaven Local Bd v. Newhaven School Bd*, 30 Ch. D. 350; *Paddington v. Snow*, 30 W. R. 46; 45 L. T. 475; *London Co. Co. v. Cross*, 61 L. J. M. C. 160: *Note*, this section replaces s. 143, Metrop Man. Act, 1855, in which the phrase was “*Regular Line of Buildings*,” a phrase which did not mean a strict mathematical line, but a substantially regular line (*Tear v. Freebody*, 4 C. B. N. S. 228; *nom. Tear v. Freebody*, 6 W. R. 520; 31 L. T. O. S. 131); but s. 75, of the Act of 1862, is itself replaced by Part 3, London Bg Act, 1894. *Cp.* BUILDING LINE.

The decision of the Superintending Architect is conclusive as to the General Line of Buildings (*Spackman v. Plumstead*, 54 L. J. M. C. 81; 10 App. Ca. 229); and, if confirmed on appeal, is operative from its date, notwithstanding the appeal (*Lavy v. London Co. Co.*, 64 L. J. M. C. 196, 262; *Ij, Arise*). *Vb.* *Gilbert v. Wandsworth*, 5 Times Rep. 31; *Allen v. London Co. Co.*, 1895, 2 Q. B. 587; 64 L. J. M. C. 228; 73 L. T. 101; 43 W. R. 674.

**GENERAL MANNER.** — “Any bequest of personal property described in a General Manner,” s. 27, Wills Act, 1837; — A bequest of “all my personal estate,” or of general pecuniary legacies, comes within these words (*Hawthorn v. Shedden*, 25 L. J. Ch. 833; 3 Sm. & G. 293; *Wilday v. Barnett*, L. R. 6 Eq. 193; *Re Wilkinson*, L. R. 8 Eq. 487; 4 Ch. 587; *St. Hurlstone v. Ashton*, 11 Jur. N. S. 725); so, of a gift of RESIDUE (*Re Hartley*, 81 L. T. 804; 48 W. R. 245; 69 L. J. Ch. 791); so, even a direction to pay debts may be within them (*A-G. v. Brackenbury*, 32 L. J. Ex. 108; 1 H. & C. 782; *Laing v. Cowan*, 24 Bea. 112). *Vf.* 1 Jarm. 683; GENERAL POWER.

**GENERAL MEETING.** — Where power is given to the Directors of a Co at a “General Meeting” to do certain acts, “General Meeting”

does not import that the acts shall be done by the Meeting, but the Directors are empowered to do the act, provided they exercise the power at a General Meeting (*Wilkins v. Roebuck*, 6 W. R. 644).

**GENERAL OR QUARTER SESSIONS.**—This phrase, 3 & 4 W. & M. c. 11; s. 6, 8 & 9 W. 3. c. 30; s. 4, 17 G. 2, c. 38; s. 14, 5 G. 4, c. 83; means, even in London and Middlesex, the Quarter Sessions only (*R. v. London Jus.*, 15 East, 632; *R. v. Middlesex Jus.*, 12 L. J. M. C. 134; 4 Q. B. 807).

V. QUARTER SESSIONS.

**GENERAL POLICE ACTS.**—Quà Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, the "General Police Acts" are those which are specified in Sch 1 of the Act (subs. 12, s. 4). *Vf*, POLICE.

**GENERAL POWER.**—Unless a CONTRARY INTENTION appears, a general testamentary gift includes property which the testator "may have Power to Appoint *in any manner* he may think proper,"—in other words, it includes property over which he has a *General Power of Appointment* (s. 27, Wills Act, 1837). This "applies to Powers which are unlimited in their objects" (Sug. Pow. 307: *V. Airey v. Bower*, 56 L. J. Ch. 742; 12 App. Ca. 263; *Boyes v. Cook*, 49 L. J. Ch. 350; 14 Ch. D. 53; Farwell, 7). Therefore, a Power to appoint amongst a CLASS, though it be of Children (*Cloves v. Awdry*, 12 Bea. 604; *Pidgely v. Pidgely*, 1 Coll. 255; *Elliott v. Elliott*, 15 Sim. 321; 15 L. J. Ch. 393; *Hawthorn v. Shedden*, 25 L. J. Ch. 833; 3 Sm. & G. 293), or a Power from the benefit of taking under which some person is excluded (*Re Byron*, 1891, 3 Ch. 474; nom. *Re Reynolds*, 60 L. J. Ch. 807; 40 W. R. 11), or any other Special Power (*Re Williams*, 58 L. J. Ch. 451; 42 Ch. D. 93), is *not* within the section.

But it has been said that the wide generality of "ANY manner" does not relate "to the *mode* in which the Power is to be exercised" (1 Jarm. 683); but this seems too broadly stated, for though it has been held that if the scope of the Power is general it is not less a General Power within the section because exercisable by Will only (*Hawthorn v. Shedden*, sup: *Lefevre v. Freeland*, 24 Bea. 403; *Re Powell*, 39 L. J. Ch. 188); yet, on the other hand, if the power prescribes that, in executing it, it is to be "expressly referred to," it is not within the section (*V. EXPRESSLY REFER*). *Vh*, 1 Jarm. 682-688: GENERAL MANNER.

A general gift will not exercise a Power to revoke existing Uses and thereupon to appoint generally (*Poufret v. Perring*, 24 L. J. Ch. 187; 5 D. G. M. & G. 775; *Charles v. Burke*, 43 Ch. D. 223, n; *Re Bruce*, 1891, 2 Ch. 671; 60 L. J. Ch. 505), or a Power to charge property (*Re Wallinger*, 1898, 1 I. R. 139, distinguishing and criticising *Greene v. Gordon*, 34 Ch. D. 65; 56 L. J. Ch. 58).

"Power to dispose of as he or she shall think fit," s. 7, 36 G. 3, c. 52,

—“General and Absolute Power of Appointment,” s. 18, *Ib.*; *V. Drake v. A-G.*, 10 Cl. & F. 257.

As to what words will execute a General Power; *V. Mv: POWER:* and quà a Special Power, *V. SPECIAL: POWER.*

**GENERAL PURPOSES.**—“General Purposes Rate,” is, probably, the same as “General Rate”; and “means, all Rates which may be made for General Purposes, *i.e.* for purposes in which the great majority of parishioners have a common interest” (per Day, J., *Burrop v. Lond. & S. W. Ry.*, 64 L. T. 112).

**GENERAL RE-VALUATION.**—“General Re-Valuation of rateable hereditis,” s. 65, Loc Gov (Ir) Act, 1898, means (by its subs. 3) “a General Revision under s. 34 of the Valuation (Ir) Act, 1852,” 15 & 16 V. c. 63.

**GENERAL RULE.**—General Poor Law Rule; Stat. Def., 4 & 5 W. 4, c. 76, s. 109; 10 & 11 V. c. 109, s. 15.—*Ir.* 1 & 2 V. c. 56, s. 124.

“General Rules”; Stat. Def., Land Transfer Act, 1875, 38 & 39 V. c. 87, s. 4; Bankry Act, 1883, s. 168; Comp Winding-up Act, 1890, s. 32.—*Ir.* 54 & 55 V. c. 66, s. 95.

**GENERAL SEARCH.**—*V. SEARCH.*

**GENERAL SUPPLY.**—Quà Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, “‘General Supply,’ means, the General Supply of ENERGY to Ordinary CONSUMERS; and, includes, unless otherwise specially agreed with the Local Authority, the General Supply of Energy to the Public Lamps, where the Local Authority are not themselves the Undertakers; but shall not include the supply of Energy to any one or more Particular Consumers under special agreement” (Sch, s. 1).

**GENERAL UTILITY.**—A bequest in aid of matters of “General Utility,” is not a good CHARITY (*Kendall v. Granger*, 11 L. J. Ch. 405; 5 Bea. 300).

**GENERAL WORDS.**—General Words, in a Conveyance, are not to be construed as merely passing Easements, but must be construed “like any other words with reference to what the words are intended to mean” (per Fry, J., *Willis v. Watney*, 51 L. J. Ch. 181: *V. YARDS*). They do not create rights, they only pass such rights as they comprise as were existing at the date of the conveyance (*Baring v. Abingdon*, 1892, 2 Ch. 374; 62 L. J. Ch. 105; 67 L. T. 6; 41 W. R. 22, *espy judgments of Lindley and Bowen*, LJJ.).

Sometimes the phrase, “General Words” refers to those just mentioned, and sometimes describes a class of things, — *e.g.* “personal estate” (*Elph.* 186, *n.*).

As to the effect of express words upon rights conferred by s. 6, Conv & L. P. Act, 1881, and as to excluding or modifying that section; *V. Birmingham Bank v. Ross*, 57 L. J. Ch. 601; 38 Ch. D. 295; 59 L. T. 609; 36 W. R. 914: *Broomfield v. Williams*, cited CONTRARY INTENTION: *Godwin v. Schweppes*, 1902, 1 Ch. 926; 71 L. J. Ch. 438: WAYS.

General Words, in a Contract and especially if in a printed Form, may be controlled by the main object and intent of the contract (per Herschell, C., *Glynn v. Margetson*, 1893, A. C. 351; 62 L. J. Q. B. 466).

**GENERALITY.** — Proviso that a Schedule shall “not abridge or affect the generality of the description hereinbefore contained”; “‘Generality,’ is different from ‘Comprehensiveness.’ The Sch is not to restrict the generality of the operative part, but the recital may still control its comprehensiveness” (per Coleridge, J., *Walsh v. Trevanion*, 19 L. J. Q. B. 461, cited SET FORTH).

**GENERALLY.** — “And *generally* do all such acts and things *in relation to* his property . . . as may be reasonably required”: — This obligation on a bankrupt (prescribed by s. 24 (2), Bankry Act, 1883), does not require him to submit to a medical examination with a view to an insurance on his life, and thereby the better to realize a contingent reversionary interest belonging to him (*Board of Trade v. Block*, 58 L. J. Q. B. 113; 13 App. Ca. 570; 4 Times Rep. 770: *Vf, CONDUCT*). Fry, L. J., when that case (nom. *Re Betts*, 56 L. J. Q. B. 370; 19 Q. B. D. 39) was in the Court of Appeal, said, “The most anxious desire is exhibited by the legislature to prevent its special words limiting the generality of its general words, by its use of the word ‘generally,’” and therefore that the bankrupt was bound to submit to the examination; but in the H. L., Halsbury, C., dissented from that view, and said that the examination was not an act “in relation to” the bankrupt’s property.

Assignment for Benefit of Creditors “generally,” s. 4, Bills of Sale Act, 1878; *V. Hadley v. Beedom*, 1895, 1 Q. B. 646; 64 L. J. Q. B. 240; 72 L. T. 493; 43 W. R. 218.

Quà Deeds of Arrangement Act, 1887, 50 & 51 V. c. 57, “‘Creditors generally,’ includes all Crs who may assent to or take the benefit of a Deed of Arrangement” (s. 19), does not, necessarily, include all the Crs of the Debtor, but rather means, Crs (all or less than all) dealt with as a class collectively and not individually (per Williams, L. J., *Hedges v. Preston*, 80 L. T. 847).

“His Creditors generally,” s. 4 (a), Bankry Act, 1883, means, *all the Debtor’s Crs*; therefore, an Assignment by a Partnership of its assets for the benefit of its Trade Crs, is not an Assignment by one of the partners

“for the benefit of his Creditors” and is not an Act of Bankry within that subsection, though, probably, it is a “Fraudulent Conveyance” by him within the next subsection (*Re Phillips*, 1900, 2 Q. B. 329; 69 L. J. Q. B. 604; 82 L. T. 691).

**GENTLE.** — A warranty that a horse is “gentle,” does not import that it has received any particular training, but only that it is docile, tractable, and quiet (*Bodurtha v. Phelon*, 2 Allen, 348).

**GENTLEMAN.** — “Gentlemen, be those whom their blood and race doth make noble and knowne.” It is the business of “the Prince to honour vertue where he doth finde it, to make gentlemen, esquires, knights, barons, earles, marquises, and dukes, where he seeth vertue able to beare that honour, or merits and deserves it, and so it hath alwayes bin used among us. But, ordinarily, the King doth only make knights and create barons or higher degrees: for as for gentlemen, they be made good cheape in England. For whosoever studieth the lawes of the realme, who studieth in the Universities, who professeth liberall sciences, and, to be shorte, who can live idly and without manuell labour, and will beare the port, charge, and countenance of a gentleman, he shall be called Master, for that is the title which men give to esquires and other gentlemen, and shall be taken for a gentleman” (Ch. 20, *De Republica Anglorum*, by Sir T. Smyth, D. C. L., published posthumously, 1583). *Vf*, Cowel: Jacob: 6 Encyc. 65.

“According to Sir T. Smyth, this title is applied generally to those who have nothing to do, and can ‘live idly’” (per Pollock, C. B., *Allen v. Thompson*, 25 L. J. Ex. 250; 1 H. & N. 15; 4 W. R. 506; *Va. Spauldceini v. Treacy*, 21 L. R. Ir. 553).

Therefore, for the purposes of the Bills of Sale Acts, neither of the following is correctly described as “Gentleman”; —

A Clerk in the Audit Office (*Allen v. Thompson*, sup).

An Attorney or an Attorney’s Clerk (*Tuton v. Saunier*, 27 L. J. Ex. 293; 3 H. & N. 280; *Dryden v. Hope*, 9 W. R. 18; 3 L. T. 280; *Bradrick v. Scale*, 40 L. J. C. P. 130; L. R. 6 C. P. 98).

A Solicitor’s Clerk out of regular employment, but engaged in making out bills for a firm of solicitors (*Beules v. Tennant*, 29 L. J. Q. B. 188; 1 L. T. 295),

A Buyer of Silks (*Adams v. Graham*, 12 W. R. 282; 9 L. T. 606; 33 L. J. Q. B. 71),

One who solicits orders on commission (*Mattheus v. Buchanan*, 5 Times Rep. 373).

But each of the following has been held to be correctly described as “Gentleman,” quâ B. of S. Acts; —

One who has never had an occupation (*Gray v. Jones*, 14 C. B. N. S. 743).

One who follows the usual pursuits of a country gentleman but is a Sleeping Partner in more than one business concern (*Frust v. Robinson*, 63 L. J. Ch. 321; 70 L. T. 168),

A Medical Student who had, for a short time, acted as a surgeon's assistant but for 6 months had been in no business (*Bath v. Sutton*, 27 L. J. Ex. 388; nom. *Sutton v. Bath*, 3 H. & N. 382),

A Coal Agent who, having been dismissed, was, at the time, out of employ (*Morewood v. South Yorkshire Ry*, 28 L. J. Ex. 114; 3 H. & N. 798; *Va, London & Westminster Loan Co v. Chace*, 31 L. J. C. P. 314; 12 C. B. N. S. 730),

A person who had been, but had ceased to be, a Proctor's Clerk and was occasionally collecting debts, but who lived chiefly on an allowance from his mother (*Smith v. Cheese*, 45 L. J. C. P. 156; 1 C. P. D. 60; 33 L. T. 670; *Va, Beauchamp v. Anderson*, 72 Law Times, 182).

"Gentleman" is an insufficient description of a deponent to the fitness of a new trustee (*Re Orde*, 52 L. J. Ch. 832; 24 Ch. D. 271; 31 W. R. 801; *Re Horwood*, 55 L. T. 373), because such a description gives no evidence of the deponent's ability to speak to such fitness; but for the mere purpose of identification of the deponent it is sufficient (*Re Dodworth, Spence v. Dodworth*, 60 L. J. Ch. 798; 1891, 1 Ch. 657; 64 L. T. 282; 39 W. R. 362).

"Gentleman," in a description of a transferee of Shares; *V, Re Humber Iron Co, Williams' Case*, 1 Ch. D. 576; *Re European Bank, Masters' Case*, 7 Ch. 292; 41 L. J. Ch. 501

*Cp, ESQUIRE.*

**GEOGRAPHICAL.** — A Word "not being a Geographical Name," quâ Trade-Mark (*V. FANCY WORD*), does not connote that no place or places can be found bearing the same name as the word; the general test is, Does the Word, in ordinary parlance, suggest a Geographical Name? Therefore, neither "Monkey," "Magnet," "St. Paul," nor "Magnolia," is, in this connection, a Geographical Name, though each is the name of a place, and "Magnolia" is the name of several places in the United States (*Re Magnolia Metal Co*, 1897, 2 Ch. 371; 66 L. J. Ch. 312, 598; 76 L. T. 672).

But, possibly, "John Bull" is a Geographical Name (*Re Paine*, 61 L. J. Ch. 369).

**GET.** — To "get" Minerals (or to "get Materials," s. 4, 5 & 6 W. 4, c. 50), is, it seems, synonymous with to "win" them (*Ramsden v. Yeates*, 50 L. J. M. C. 135; 6 Q. B. D. 583; 29 W. R. 628; 44 L. T. 612; *Vh, Jowett v. Spencer*, 17 L. J. Ex. 367; 1 Ex. 647). *V. WIN: WORKABLE.*

A power to "get" Minerals, *semble*, involves the power to carry them away; *V. DREDGE.*

**GET IN.** — *V. COLLECT.*



**GIBRALTAR.**—“To any Port in Spain *this side* Gibraltar,” in a Marine Insrce made in England, means any Port on the West Coast of Spain (per Wright, J., *Simon v. Sedgwick*, 61 L. J. Q. B. 702; affd 1893, 1 Q. B. 303; 62 L. J. Q. B. 163; 67 L. T. 785; 41 W. R. 163).

**GIFT.**—“This word (Gift), importing no more than the transferring of the property of a thing from one to another, is of larger extent than a Feoffment, which is always applied to an immoveable thing; for this is often applied to moveable things also” (Touch. 227). *Cp.* FEOFFMENT.

Conveyance by gift, *donatio*, was formerly the apt mode for creating an Entail (Ib. 228, *n* by Hilliard to 6 ed.). For full information on the history of the use and the effect of the word “Give” in Conveyances of Real Property, *V. n* 1, 384 a, Co. Litt. 18 ed., by Hargrave & Butler. But now in Deeds, executed after the 1st Oct 1845, “Give” will not imply any covenant in law in respect of any tenement or hereditament except so far as it may do so by force of some special Act of Parliament (s. 4, 8 & 9 V. c. 106). The late Mr. Joshua Williams stated that he was “not aware of any Act of Parliament by force of which the word ‘Give’ implies a covenant” (Wms. R. P. 368; *Kf.* Dart, 635; Jacob).

#### V. GRANT: CONVEYANCE.

A mere parol Gift of PERSONAL CHATTELS must be “accompanied by DELIVERY of possession” (Wms. P. P. 33; *Irons v. Smallpiece*, 2 B. & Ald. 551; *Cochrane v. Moore*, 59 L. J. Q. B. 377; 25 Q. B. D. 57, espy jdgmts of Fry and Bowen, L. J.J., who examine and trace the proposition and its history with a wealth of learning). In *thle* Esher, M. R., treated at length of the verbal meaning of “Gift” and said, —“Suppose the proposing donor offers the thing saying, ‘I give you this thing — take it,’ and the other says ‘No; I will not take it now, I will take it tomorrow,’ — I think the proposing donor could not, in the meantime, say correctly to a third person, ‘I gave this just now to my son, or my friend.’ The answer of the third person would (I think rightly) be, ‘You cannot say you gave it him just now; you have it now in your hand. All you can say is, That you are *going* to give it to him tomorrow, if then he will take it.’ I have come to the conclusion that in ordinary English language and in legal effect, there cannot be a ‘Gift’ without a giving and taking. The giving and taking are the two contemporaneous, reciprocal, acts which constitute a ‘Gift.’ They are a necessary part of the proposition that there has been a ‘Gift.’ They are not evidence to prove that there has been a gift, but facts to be proved to constitute the proposition that there has been a gift.”

But though a parol Gift without Delivery is inoperative, such delivery need not always be a Manual Delivery (*Kilpin v. Ratley*, 1892, 1 Q. B. 582), and *semble*, there may be a good parol DECLARATION of Trust of Personal Chattels without Delivery (*Cochrane v. Moore*, sup), or an

Equitable Assignment (*Milroy v. Lord*, 31 L. J. Ch. 798; 4 D. G. F. & J. 264; *Re Griffin*, 1899, 1 Ch. 408; 68 L. J. Ch. 220).

DELIVERY of a thing not capable of immediate manual delivery, may be accomplished by delivering its *indiciu*, *e.g.* the Key of a Warehouse (*West v. Ship*, 1 Ves. sen. 244; *Ryall v. Rowles*, Ib. 362; *Ward v. Turner*, 2 Ves. sen. 443), or by endorsing and delivering a Banker's Deposit Receipt (*Re Griffin*, sup), or by marking the thing with the name of the donee (*Storeld v. Hughes*, 14 East, 308; *Vf. Chaplin v. Rogers*, 1 East, 190): but where a thing is capable of manual delivery, a delivery of part of it is insufficient, *e.g.* delivery of a half of a Bank Note is not a delivery of the Note (*Smith v. Mundy*, 29 L. J. Q. B. 172). *Cp.* DONATIO MORTIS CAUSÂ.

*Note:* As to the validation of a Gift by the appointment of the Donee as the Exor of the Donor, *V. Strong v. Bird*, 43 L. J. Ch. 814; L. R. 18 Eq. 315; *Re Applebee*, 1891, 3 Ch. 422; 60 L. J. Ch. 793; *Re Griffin*, sup.

A direction in a Will that its Trustees are to be paid an Annual Remuneration if they carry on the testator's business, is a "Gift" payable out of the personal estate of the testator within s. 4, 8 & 9 V. c. 76, and as such is a LEGACY liable to duty (*Thorley v. Massam*, 1891, 2 Ch. 613; 60 L. J. Ch. 537; 39 W. R. 565).

A gift though absolute and immediate is still a "Gift" within s. 38 (2), 44 & 45 V. c. 12 and s. 11, 52 & 53 V. c. 7, and, as such, liable to Account-Stamp Duty, if made within 12 months of the death of the giver (*A-G. v. Booth*, 63 L. J. Q. B. 356). As to what is a "Gift" within those enactments, *V. A-G. v. Worrall*, 1895, 1 Q. B. 99; 64 L. J. Q. B. 141; 71 L. T. 807; 43 W. R. 118.

**GILBERT ACT.** — The Clergy Residences Repair Act, 1776, 17 G. 3, c. 53.

**GILD.** — " 'Gild' hath divers significations, as sometimes a Tribute, other times an Amercement, thirdly a Fraternity or Company . . . by the King's license " (Termes de la Ley). *Vf.* Cowel: Jacob, *Geld, Guild*.

**GILD AND SILVER.** — " 'Gild' and 'Silver,' as applied to coin, include casing with gold or silver respectively, and washing and colouring by any means whatsoever with any wash or materials capable of producing the appearance of gold or silver respectively " (Steph. Cr. 310, stating s. 1, 24 & 25 V. c. 99).

**GIN.** — " Gin," sold simply as such, must not be reduced more than 35 degrees under proof (Sale of Food and Drugs Act Amendment Act, 1879, 42 & 43 V. c. 30, s. 6); but there is no offence in selling it when reduced below that standard, if the purchaser have notice that it is sold "as diluted spirits. No alcoholic strength guaranteed " (*Gage v. Elsey*,

52 L. J. M. C. 44; 10 Q. B. D. 518: *Webb v. Knight*, 46 L. J. M. C. 264; 2 Q. B. D. 530).

In Mining, "a 'Gin' is a windlass fixed in the ground, and worked by a horse for the purpose of drawing materials from the mine" (MacS. 246, n 8; *Cp*, WIMSEY).

**GIRDLAND.** — The Saxon name for YARD-LAND: "the Saxons called it *girdland*, and now the *g* is turned to a *y*" (Co. Litt. 5a).

**GIRL.** — A female under 16 years; *V. R. v. Prince*, cited KNOWINGLY. So, quâ Coal Mines Regu Act, 1887 (s. 75). *Cp*, BOY: CHILD: WOMAN: YOUNG PERSON.

**GIVE.** — *V.* GIVEN: GIFT: GRANT: DISPOSE OF.

Give Notice; *V.* SERVED: BY POST.

**GIVEN.** — Goods "*given* in parochial relief," s. 77, 4 & 5 W. 4, c. 76, mean, goods gratuitously supplied for the purpose of parochial relief, though only by way of loan (*Davies v. Harvey*, 43 L. J. M. C. 121; L. R. 9 Q. B. 433).

Notice to be "given," may be oral, *V.* SERVED; if by post, *V.* BY POST.

"Given," as a participle, is doubtful in its tense. — it may refer to the past or the future; as in a Guarantee made "in consideration of the Credit given by A. to B.," on which Pollock, C. B., and Martin, B. (diss. Bramwell, B.), decided that there was a good consideration stated, because "given" referred to future credit (*Broom v. Batchelor*, 25 L. J. Ex. 299; 1 H. & N. 255). Pollock, C. B., said, — "the word 'given' is indefinite in point of time. It is, no doubt, a perfect participle; but it may mean perfect past, perfect present, or perfect future": and he seems to have thought the latter its *primâ facie* meaning. On the other hand, Bramwell, B., said, " 'Given' is a participle, and, *primâ facie*, it must have its primary meaning, namely, 'already given.' " "In consideration of your *giving* Credit," states an effective consideration; for "*giving* Credit," is as applicable to future as to past credit (*Edwards v. Jervous*, 8 C. B. 436; 19 L. J. C. P. 50). *V.* ADVANCE: DRAWN: HAVING: MAY BE: SECURE.

**GLADSTONE'S ACTS.** — The Succession Duty Act, 1853, 16 & 17 V. c. 51:

The Usury Laws Repeal Act, 1854, 17 & 18 V. c. 90:

The Public Revenue and Consolidated Fund Charges Act, 1854, 17 & 18 V. c. 94:

The Compulsory Church Rate Abolition Act, 1868, 31 & 32 V. c. 109:

The Irish Church Act, 1869, 32 & 33 V. c. 42.

**GLASS.** — S. 1, Carriers Act, 1830; *V. Owen v. Burnett*, 2 Cr. & M. 353; 4 Tyr. 133: *Bernstein v. Baxendale*, cited TRINKETS: *Glorer v. Loud. & S. W. Ry*, 37 L. J. Q. B. 57; L. R. 3 Q. B. 25.

Sale by the "Glass"; *V. MEASURE.*

Glass-houses; *V. Meux v. Cobley*, cited IMPROVEMENT: MARKET.

"Glass Works"; *V. NON-TEXTILE FACTORIES.*

**GLEBE.** — "We most commonly take it for land belonging to a Parish Church, beside the Tythe" (Cowel). *Vh*, 6 Encyc. 68-78.

Quà Glebe Land Act, 1888, 51 & 52 V. c. 20, " 'Glebe Land,' includes any manor, land, or tenement, forming the Endowment, or part of the Endowment, of a BENEFICE" (s. 12).

"Glebe" as used in Gifts for Churches Act, 1803, 43 G. 3, c. 108; *V. Re Randell*, 57 L. J. Ch. 899; 38 Ch. D. 213; 58 L. T. 626; 36 W. R. 543.

Stat. Def. — *Ir.* 33 & 34 V. c. 112, s. 2; 38 & 39 V. c. 42, s. 8. — *Scot.* 29 & 30 V. c. 71, s. 2; 31 & 32 V. c. 96, s. 1; 39 & 40 V. c. 11, s. 2.

**GLEBE HOUSE.** — Quà Irish Church Act, 1869, 32 & 33 V. c. 42 (*V.* s. 72), and, probably, as of general acceptation, "Glebe House," means, a house of residence belonging to a BENEFICE, using that last word in a very wide sense.

**GLYN.** — *V. COMBE.*

**GOAT.** — "Gote," or "Goat," 23 H. 8, c. 5; "Goats, be usual engines erected and built with perculleses and doors of timber, stone, or brick: invented first in Lower Germany and after brought into England and used here by imitation; and experience hath given so great approbation of them as they are now; and that with good reason and cause inducing the same, accounted the most useful instruments for draining the waters out of the land into the sea" (Callis, 91).

**GOD.** — *V. ACT OF GOD: CHANCE: SERVICE OF GOD.*

**GOD-BOTE.** — *V. BOTE.*

**GOD'S LAW.** — The degrees of consanguinity within which marriages are prohibited by "God's Law," as mentioned in 32 H. 8, c. 38, are those enumerated in 25 H. 8, c. 22, and 28 H. 8, c. 7 (*R. v. Chadwick*, 17 L. J. M. C. 33; 11 Q. B. 173).

**GOD'S MONEY.** — *V. ARGENTUM DEI.*

**GODLY.** — "So far as I am able to discover 'Godly,' and 'Pious,' as applied to Trusts or Uses, had, in early times, much the same significance in Scotland as in England. Their meaning was not limited to

objects of a religious or eleemosynary character, but embraced all objects which a well-disposed person might promote from motives of philanthropy," *e.g.* in *Saltoun v. Pitsligo* (M. Diet. 9948) it was held by the Court of Session that the repair of a Public Harbour was a "Pious Use," within the Scotch Act of 1685, c. 18 (per *Ld. Watson, Income Tax Commrs v. Pemsel*, cited CHARITABLE PURPOSE). *Cp.* PIOUS USES.

"Godly, righteous, and sober, life"; *V. CHURCH.*

**GODLY LEARNING.** — In a Deed made in 1549, a trust for the promotion of "Godly Learning," means that the instruction to be given is to be in conformity with the doctrines of the Protestant Church of England as by law established (*Re Ilminster School*, 2 D. G. & J. 535; nom. *Baker v. Lee*, 30 L. J. Ch. 625; 8 H. L. Ca. 495).

"If land or money be given for maintaining 'the Worship of God' (*A-G. v. Pearson*, 3 Mer. 409), or the promotion of 'Godly Learning' (*Re Ilminster School*, sup), and nothing more is said, the Court will execute the trust in favour of the established form of religion; and dissenters cannot be appointed trustees" (Lewin, 606, citing *Re Stafford Charities*, 25 Bea. 28; 27 L. J. Ch. 381; *Re Ilminster School*, sup; *A-G. v. Clifton*, 32 Bea. 596). It was however held in the lastly cited case, that the instruction was open to scholars of every denomination.

**GODLY PREACHER.** — A bequest to "Godly Preachers of Christ's Holy Gospel," may be explained by parol as indicating its applicability to a religious party by whom that phraseology was used and how they used it, and that the testator was a member of that party (*Shore v. Wilson*, 9 Cl. & F. 356; 11 Sim. 592; 7 Jur. 781; *V. Drummond v. A-G. Ireland*, cited PROTESTANT).

**GODLY USES.** — *V. GODLY: PIOUS USES.*

**GOING.** — To contract to have the "Going" of so many sheep or cattle, does not involve that they must be pasture fed; it, by itself, means, that the sheep or cattle are to go with the flock or herd of the person to give the "Going"; therefore, the right to it is not a TENEMENT, quâ a Pauper Settlement (*R. v. Thoruham*, 5 L. J. O. S. M. C. 70; 6 B. & C. 733). *V. R. v. Cumberworth Holy*, cited KEEPING.

"Going Concern"; *V. ESSENCE: County of Gloucester Bank v. Rudry*, cited GOODWILL.

**GOING TO.** — In reference to the phrase of "going to or returning from" certain places and duties, that so frequently recurred in the clause giving exemptions from Turnpike Tolls (s. 32, 3 G. 4, c. 126), it may be useful to call attention to *Harrison v. Brough* (6 T. R. 706), where a horse ridden by its owner to fetch cattle from pasture, was held not to be within such an exemption, under "Cattle going to or returning from pasture," or "Horses attending cattle returning from pasture."

**GOLD.** — “Gold,” s. 1, 30 & 31 V. c. 90, does not mean pure gold, but merely what in common parlance is called gold (*Young v. Cook*, 47 L. J. M. C. 28; 3 Ex. D. 101).

V. METAL: MINE, last par: GILD AND SILVER: PLATE.

**GOOD.** — The phrase “*Good* CONSIDERATION” is sometimes used as synonymous with “*meritorious* consideration,” which is good-for-nothing (Wms. P. P. 67: *Cp*, GOOD SHIP). But in the statutes of Elizabeth, the one (13 Eliz. c. 5) for the protection of Creditors, and the other (27 Eliz. c. 4) for the protection of Purchasers, — “good” means, VALUABLE consideration (*Twyne’s Case*, 3 Rep. 81, 83: *Vf*, *Re Moroney*, 21 L. R. Ir. 54). Yet the quantum of value required by the latter of those statutes is very different from that required by the former. Under 27 Eliz. c. 4, the valuable consideration, if genuine, will not be put into the judicial scales to be weighed as against the property conveyed (*Bassett v. Nosworthy*, Finch, 102: *Copis v. Middleton*, 2 Mad. 410); and therefore the obligation of the lessee’s covenants is a “good” consideration for the assignment of leaseholds so far as the 27 Eliz. is concerned (*Price v. Jenkins*, 46 L. J. Ch. 805; 5 Ch. D. 619: *Re Lulham*, 53 L. J. Ch. 928; 32 W. R. 1013; 33 Ib. 788: *Va*, *Schreiber v. Dinkel*, 54 L. J. Ch. 241: *Harris v. Tubb*, 42 Ch. D. 79). But the doctrine of *Price v. Jenkins* does not apply, even as regards the 27 Eliz. if leaseholds be transferred by sub-demise at a merely nominal rent (*Shurmur v. Sedgwick*, 53 L. J. Ch. 87; 24 Ch. D. 597); and in no case is it applicable to the 13 Eliz. c. 5, which was passed to prevent creditors being defeated or delayed, and in view of that statute, a consideration, though valuable, will not be “good” if substantially out of proportion to the property conveyed (*Ridler v. Ridler*, 52 L. J. Ch. 343; 22 Ch. D. 74: *Green v. Paterson*, 32 Ch. D. 104: *Va*, *Twyne’s Case*, 3 Rep. 83: May on Fraudulent Dispositions, 2 ed., 257–260). V. VALUABLE. Note:— By the Voluntary Conveyances Act, 1893, 56 & 57 V. c. 21, no Voluntary Conveyance, “if, in fact, made BONÂ FIDE,” is “fraudulent or covinous,” within 27 Eliz., “by reason of any subsequent purchase for value.”

V. PURCHASE: VOLUNTEER: PECUNIARY CONSIDERATION.

“Good or Valuable Consideration given”; V. CONTRACT.

The fact that a prominent person, *e.g.* a popular actress, has, by invitation, sat for her Photograph, is not such a “Good and Valuable Consideration” therefor as will, under s. 1, 25 & 26 V. c. 68, deprive the AUTHOR of the Photograph of his Copyright therein (*Ellis v. Marshall*, 64 L. J. Q. B. 757; 11 Times Rep. 522: *Sr*, *Melville v. Mirror of Life Co*, 1895, 2 Ch. 531; 65 L. J. Ch. 41). V. FOR.

A bequest for the “Good” of a place is a valid CHARITY (*A-G. v. Lonsdale*, 1 Sim. 105: *Va*, *A-G. v. Webster*, L. R. 20 Eq. 483; 44 L. J. Ch. 766).

**GOOD AND SUFFICIENT.** — V. SUFFICIENT.

GOOD BARLEY.—*V. BARLEY.*

**GOOD BEHAVIOUR.** — “ ‘Good abearing,’ signifies the exact carriage or behaviour of a Subject to a King and his Liege People, to which men sometimes, for their loose demeanor, are bound: and he that is bound to this is more strictly bound than to the Peace, for the Peace is not broken without an actual Affray, Battery, &c; but this may be forfeited by the number of a man’s company or his weapons: Crompt. Just. 119, 120, &c” (Termes de la Ley). *V. SURETY OF THE PEACE. Cp, PEACE.*

**GOOD CAUSE.** — The “ Good Cause ” which will enable the Judge to deprive a successful litigant of his costs in an action tried with a jury, or to give costs against him (R. 1, Ord. 65, R. S. C.), involves the idea of misconduct or improper claim on his part in or in relation to the litigation, and whether any such “ Good Cause ” exists is a question on which an appeal lies (*Jones v. Curling*, 53 L. J. Q. B. 373; 13 Q. B. D. 262). But if any “ Good Cause ” exists, the Court of Appeal will not (probably cannot, *Huxley v. West Lond. Extn. Ry*, inf) interfere with the exercise of the Judge’s discretion (*Williams v. Ward*, 55 L. J. Q. B. 566). Mis-statements, or improper proceedings, inviting the litigation, made or taken by the successful litigant, are such a “ Good Cause ” (*Sutcliffe v. Smith*, 2 Times Rep. 881; *Pool v. Lewin*, 1 Ib. 165; *Harnett v. Vise*, 5 Ex. D. 307; *Bostock v. Rumsey*, cited PURSUANCE), and so is the making of an extravagant claim (*Huxley v. West Lond. Extn. Ry*, 14 App. Ca. 26; 58 L. J. Q. B. 305; 60 L. T. 642; *Roberts v. Jones*, 1891. 2 Q. B. 194; 60 L. J. Q. B. 441), or a claim for special damage unproved at the trial, even though such claim was made on expert advice and was not oppressive or vexatious (*Forster v. Farquhar*, 1893, 1 Q. B. 564; 62 L. J. Q. B. 296; 68 L. T. 308; 41 W. R. 425), or even an unjustifiable choice of venue, although the deft has made no effort to obtain a change (*Roberts v. Jones*, sup), or oppression (*O’Connor v. Star Co*, 68 L. T. 146).

A letter “ Without Prejudice ” cannot be looked at to show such “ Good Cause ” (*Walker v. Wilsher*, cited WITHOUT PREJUDICE).

*Vh*, Obs of Jessel, M. R., *Cooper v. Whittingham*, 49 L. J. Ch. 752; 15 Ch. D. 501; *Pool v. Lewin*, sup; and *V.* those cases cited per Brett, M. R., *Felix v. Gordon*, 1 Times Rep. 97; *Cooper v. Whittingham* was followed in *Upmann v. Forester*, 52 L. J. Ch. 946; 24 Ch. D. 231, but distd in *American Tobacco Co. v. Guest*, 1892. 1 Ch. 630; 61 L. J. Ch. 242, and both *Cooper v. Whittingham* and *Upmann v. Forester* dissented from in *Walter v. Steinkopff*, 1892. 3 Ch. 489; 61 L. J. Ch. 521; 67 L. T. 184; 40 W. R. 599. *Va*, *Pearman v. Burdett-Coutts*, 3 Times Rep. 719; *Rooke v. Czarnikow*, 4 Ib. 669; *Macgregor v. Clay*, 4 Ib. 715; *Moore v. Gill*, 4 Ib. 738; *Myers v. Financial News*,

5 Ib. 42: *Beckett v. Stiles*, 5 Ib. 88: *Wilts Bank v. Hammond*, 5 Ib. 196: *Barnes v. Maltby*, 5 Ib. 207: *Wood v. Cor*, 5 Ib. 272: *Marriage v. Wilson*, 53 J. P. 120.

The corresponding phrase in Ireland is "Special Cause," s. 53, 40 & 41 V. c. 57: *V. SPECIAL*.

"Good Cause" for transferring proceedings in a Co's Winding-up; *V. Re Laxon*, 1892, 3 Ch. 31; 62 L. J. Ch. 79.

An affidavit of plaintiff's belief that he has "a Good Cause of Action," R. 4, Ord. 11, R. S. C., means, that he must "make out a Cause of Action in which he would, probably, be successful" (per Esher, M. R., *Strauss v. Goldschmid*, 8 Times Rep. 512).

"Good and SUFFICIENT CAUSE" for delay in taking steps to obtain redress under Bengal Regulations; held, to include the Lunacy of the applicant (*Troup v. East India Co*, 6 W. R. 373); so, litigation as to the ownership of the Equity of Redemption, was held "Good and Sufficient Cause" why a mtgee should delay proceedings for Foreclosure (*Prannath Roy v. Ramrutton Roy*, 8 W. R. 29).

"Just Cause"; *V. JUST*.

*V. CAUSE: DUE CAUSE: GOOD REASON: SUFFICIENT CAUSE: SUFFICIENT REASON.*

**GOOD CHARACTER.**—A certificate that an applicant for a license is of "Good Character" is not false (s. 2, 4 & 5 W. 4, c. 85) because he is cohabiting with a woman without being married to her (*Leader v. Yell*, 33 L. J. M. C. 231; 16 C. B. N. S. 584). In that case Erle, J., said:—" 'Character' must mean the estimation in which a man is held by those who are acquainted with him. You cannot pry into the secrets of a man's conduct; if you could do so, there might be many circumstances which would palliate the cohabitation."

**GOOD CONDITION.**—The question as to what is "Good Condition" of demised premises, is "to be viewed with regard to the class of tenement to which the demised one belongs" (per Fry, J., *Saner v. Bilton*, 47 L. J. Ch. 270; 7 Ch. D. 815; *Vthe, Manchester Bonding Warehouse Co v. Carr*, cited *WEAR AND TEAR*). *Vf*, *TENANTABLE REPAIR*.

**GOOD CONSCIENCE.**—*V. EQUITY*.

**GOOD CONSIDERATION.**—*V. GOOD*.

**GOOD DISCRETION.**—*V. DISCRETION*.

**GOOD DRAWER.**—*V. QUIET IN HARNESS*.

**GOOD FAITH.**—Purchaser "in Good Faith," s. 47, Bankry Act, 1883; *V. PURCHASE*.



“In Good Faith,” s. 92, Bankry Act, 1869, repld s. 48 (2), Bankry Act, 1883, — *i.e.* that a person taking a preference from a bankrupt “must not be conscious himself of an intention to favour one creditor above another” (per Ld Hatherley, *Butcher v. Stead*, L. R. 7 H. L. 849; 44 L. J. Bank. 134). *Vh, Re Cheeseborough*, 19 W. R. 973; 25 L. T. 76: FRAUDULENT PREFERENCE.

“In Good Faith,” s. 46 (3), Bankry Act, 1883, would seem to mean, innocent of the knowledge, and of the means of knowledge, that there is an adverse bankruptcy (*Lucas v. Dicker*, 49 L. J. C. P. 415; 50 Ib. 190; 5 C. P. D. 150; 6 Q. B. D. 84).

“A thing is to be deemed to be done in Good Faith, within the meaning of this Act, where it is in fact done *honestly*, whether it is done negligently or not” (s. 90, Bills of Ex. Act, 1882). “That section is obviously founded on the distinction pointed out in *Jones v. Gordon* (47 L. J. Bank. 1; 2 App. Ca. 616; 37 L. T. 477), by Ld Blackburn, between the case of a person who was ‘honestly blundering and careless,’ and the case of a person who has acted not honestly, that is, not necessarily with the intention to defraud, but not with an honest belief that the transaction was a valid one, and that he was dealing with a good Bill. Ld Blackburn there, with regard to the person on whom the onus of proof lies in such a case, says, — ‘If the facts and circumstances are such that the jury, or whoever has to try the case, came to the conclusion that he was not honestly blundering and careless, but that he must have had a suspicion that there was something wrong, and that he refrained from asking questions because he thought in his own secret mind — I suspect there is something wrong, and if I ask questions and make further enquiry, it will be no longer my suspecting it, but my knowing it, and then I shall not be able to recover. — I think that is dishonesty.’ I think that that is the dishonesty to which the Act refers where the word ‘honestly’ is used” (per Denman, J., *Tatum v. Hasler*, 23 Q. B. D. 345; 58 L. J. Q. B. 433).

Quà Sale of Goods Act, 1893, a thing is done “in Good Faith,” “when it is, in fact, done honestly, whether it be done negligently or not” (subs. 2, s. 62).

Purchaser “dealing in Good Faith with a Tenant for Life,” ss. 45 (3) and 54, S. L. Act, 1882; *F. Moyridge v. Clapp*, 1892, 3 Ch. 382; 61 L. J. Ch. 534; 67 L. T. 100; 40 W. R. 663; *Sutherland v. Sutherland*, 1893, 3 Ch. 169; 62 L. J. Ch. 946; 69 L. T. 186; 42 W. R. 12.

V. BONÂ FIDE: HOLDER IN DUE COURSE: IMPOSSIBLE.

**GOOD GOVERNMENT.** — V. PEACE: GOVERNMENT.

**GOOD JURY.** — An Order for a “Good Jury,” means that the Jury are to be selected from the Special Jury List, and their fees as Special Jurymen are to be allowed on taxation (*Vickery v. L. B. & S. Ry*, 39

L. J. C. P. 169; L. R. 5 C. P. 165: *Fines v. L. B. & S. Ry*, 39 L. J. Ex. 175; L. R. 5 Ex. 201).

In Lunacy enquiries the practice is to swear 23 jurymen, and that is also called a "Good Jury."

**GOOD ORDER.** — Where a Bill of Lading states that the goods were shipped "in Good Order and Condition," that is an admission against the Shipowner; and even if it be also stated "Weight, Contents, and Value, unknown" the admission remains that the goods appeared to be in good condition outside (*The Peter der Grosse*, cited CONTENTS UNKNOWN).

**GOOD REASON.** — The "Good Reason," justifying the refusal of an Order for Sale, — where sale is demanded by the owners of "one Moiety or upwards" in lands subject to a Partition Action, s. 4, Partition Act, 1868, — must be one which forces on the Court the conclusion that a sale would not be for the general (as distinguished from individual) benefit of the parties interested (*Pemberton v. Barnes*, 6 Ch. 685; 40 L. J. Ch. 675; 19 W. R. 988; 25 L. T. 577; *Porter v. Lopes*, 7 Ch. D. 364; 37 L. T. 824; *Wilkinson v. Joberns*, L. R. 16 Eq. 14; 42 L. J. Ch. 663; 21 W. R. 644; 28 L. T. 724; *Roughton v. Gibson*, 46 L. J. Ch. 366; 25 W. R. 269; 36 L. T. 93; *Rowe v. Gray*, 5 Ch. D. 263; 46 L. J. Ch. 279; 25 W. R. 250; *Langmead v. Cockerton*, 25 W. R. 315; *Saxton v. Bartley*, 48 L. J. Ch. 519; 27 W. R. 615; *Re Langdale*, Ir. Rep. 5 Eq. 572; *Re Whitwell*, 19 L. R. Ir. 45); and the onus of showing this is on the party who objects to a sale (*Pemberton v. Barnes*, sup; *Drinkwater v. Ratcliff*, L. R. 20 Eq. 528; 44 L. J. Ch. 605; 24 W. R. 25; 33 L. T. 417; *Lys v. Lys*, L. R. 7 Eq. 126; 17 W. R. 394; 19 L. T. 409; *Wilkinson v. Joberns*, sup; per Jessel, M. R., *Porter v. Lopes*, sup).

"Good and Sufficient Reason" for Arrest of a Ship; *V. SUFFICIENT REASON.*

"Good and Sufficient Reason" for Lessor withholding assent to Assignment of Lease; *V. UNREASONABLY.*

*V. GOOD CAUSE.*

**GOOD REPAIR.** — "Good Repair," means, "such a state of repair as will satisfy a respectable occupant using the premises fairly; but not that state of repair which an owner or tenant might fancy" (per Kindersley, V. C., *Cooke v. Cholmondeley*, 4 Drew. 328; 6 W. R. 802). *V. Proudfoot v. Hart*, cited TENANTABLE REPAIR: *Vf*; PERFECT REPAIR: REPAIR: KEEP.

"Good and Serviceable Repair," s. 22, 18 & 19 V. c. 121, does not include a re-construction of a Sewer if inadequately constructed, or deodorizing the sewage to prevent nuisance (*R. v. Epsom*, 11 W. R. 593; 8 L. T. 383, on *whco*, per Coleridge, C. J., *Meader v. West Cowes*, 1892, 3 Ch. 27).

A direction in a Will that the Tenant for Life is to KEEP the Mansion House, Parks, Grounds, and appurts in "Good and Substantial Repair, Order, and Condition," does not impose on him the obligation to scour and cleanse an ornamental lake in the park near the mansion house which at the testator's death had been allowed to become foul and choked with weed mud and filth (*Dashwood v. Magniac*, 1891, 3 Ch. 306).

**GOOD RULE.** — "Good Rule and Government"; *V. PEACE.*

**GOOD SAFETY.** — *V. SAFETY.*

**GOOD SHIP.** — Ld Abinger used to say that the implied warranty, in a Voyage Policy, that a Ship is SEAWORTHY arose out of the word "Good" in the phrase "Good Ship" (per Maule, J., *Small v. Gibson*, 20 L. J. Q. B. 153; and per Parke, B., *ib.* 156); but the latter learned judge dealt with the saying thus, — "The term 'Good' is a mere common declaratory expression; and it is going very far to say it means, not only that the vessel is tight, staunch, and sufficiently found in stores, &c, but is provided also with a competent master and crew. Further, no trace can be found that we are aware of in any decision of the doctrine which is attributed to Ld Abinger." *Cp, GOOD.*

**GOOD TITLE.** — "Good Title," in a contract for sale of realty, means, such a title as will be forced on a purchaser in an action for specific performance, and as would be an answer to an action of ejection by any claimant (*Jeukes v. White*, 21 L. J. Ex. 265; 6 Ex. 873). *Cp, BAD.*

**GOODS.** — *V. CHATELS: GOODS AND CHATELS.*

"If one devise to J. S. all his 'Goods,' or all his 'Chattels,' by either of these is devised as much as by both of them" (Touch. 447: *Vj, Wms. Exs. 1040, 1041*).

"The House of Lords were never clearer than in *Pratt v. Jackson* (2 P. Wms. 302) that the word 'Goods' related only to the testator's HOUSEHOLD Goods and Furniture; and did not extend to goods in the way of his Trade" (per Hardwicke, C., *Crichton v. Symes*, 3 Atk. 63); but, relying chiefly on the word "Goods" and there being no other residuary gift, Wood, V. C., held that the whole of the residuary personal estate passed under a bequest of "Household Furniture, Goods, Ready Money, Debts, and Securities" (*Arison v. Simpson*, Johns. 43). *Vj, GOODS AND CHATELS.*

"Goods," includes Debts (*Ford's Case*, 12 Rep. 1: *Ryall v. Rowles*, 1 Ves. sen. 362, 363, 367, 369); but to the contrary are *Culpe's Case*, 8 Rep. 33a: *Woolcomb v. Woolcomb*, 3 P. Wms. 112: *R. v. Powell*, 21 L. J. M. C. 78; 16 Jur 177. *Vj, GOODS AND CHATELS: DONATIO MORTIS CAUSA.*

The jurisdiction given to County Courts (by s. 2, 32 & 33 V. c. 51) to try claims arising "in relation to the Carriage of Goods in any Ship" is

confined to claims respecting Merchandize, and does not include claims respecting Personal Luggage (*R. v. City of London Court*, 53 L. J. Q. B. 28; 12 Q. B. D. 115; 51 L. T. 197).

Though a dog, not being the subject of Larceny at Common Law, is not a "Chattel" within s. 88, 24 & 25 V. c. 96 (*R. v. Robinson*, 28 L. J. M. C. 58; Bell C. C. 34); yet a dog is "Goods" within s. 40, 2 & 3 V. c. 71 (*R. v. Slade*, 57 L. J. M. C. 120; 21 Q. B. D. 433; 59 L. T. 640; 37 W. R. 141; 52 J. P. 599; 4 Times Rep. 777).

An Insree on "Goods" is a sufficient description of the subject-matter without mentioning the nature of the Interest therein of the insured (*Crowley v. Cohen*, 3 B. & Ad. 485, 486; *Mackenzie v. Whitworth*, 45 L. J. Ex. 233; 1 Ex. D. 36).

Quà Bankry Act, 1883, "'Goods,' includes all Chattels Personal" (s. 168). In s. 21 (5), Bankry (Ir) Act, 1872, "Goods" includes Chattels Real (*Re Morris*, 3 L. R. Ir. 451).

Quà Customs Tariff Amendment Act, 1860, 23 & 24 V. c. 22, "Goods," means, "Goods, Wares, and Merchandize, exported in the way of Trade; and shall not apply to small parcels or other articles in respect of which Shipping Bills have not been required under the Customs Laws prior to the passing of this Act" (s. 24).

Quà Factors Act, 1889, 52 & 53 V. c. 45, "'Goods,' shall include Wares and Merchandize" (s. 1): Certificates of Ry Stock are not "Goods" within that Act (*Freeman v. Appleyard*, 32 L. J. Ex. 175).

Quà Harbours, Docks, and Piers, Clauses Act, 1847, 10 & 11 V. c. 27, "'Goods,' shall include Wares and Merchandize of every description, and all articles in respect of which Rates or Duties are payable under the Special Act" (s. 3).

Quà Inland Revenue Regulation Act, 1890, 53 & 54 V. c. 21, "'Goods' includes. Commodities and Chattels" (s. 39).

Quà Merchandize Marks Act, 1887, 50 & 51 V. c. 28, "'Goods,' means, anything which is the subject of trade, manufacture, or merchandize" (subs. 1, s. 3).

Quà Merchant Shipping Act, 1894, Part 7, "'Goods,' includes, every description of Wares and Merchandize" (s. 492); Horses and Cattle are "Goods" within the phrase "Tonnage, Timber, Stores, or other Goods," s. 85 of that Act (*Richmond Hill S. S. Co v. Trinity House*, 1896, 2 Q. B. 134; 65 L. J. Q. B. 405, 561; 75 L. T. 8; 45 W. R. 6; *IF, SPACE*).  
*CP, GOODS, WARES, AND MERCHANDIZE: STORES. V. OWNER.*

Quà Naval Prize Act, 1864, 27 & 28 V. c. 25, "'Goods,' includes, all such things as are, by the course of Admiralty and Law of Nations, the subject of adjudication as prize, other than Ships" (s. 2).

Quà Ry C. C. Act, 1845, "'Goods,' shall include Things of every kind conveyed upon the railway" (s. 3).

Quà Sale of Goods Act, 1893, "'Goods' include all Chattels Personal.

other than Things in Action and Money; and, in Scotland, all Corporeal Moveables, except Money. The term includes Emblements, Industrial Growing Crops, and Things attached to, or forming part of, the Land which are agreed to be severed before sale or under the contract of sale": — " 'FUTURE Goods' mean, Goods *to be* manufactured, or acquired, by the seller after the making of the contract of sale" (subs. 1, s. 62). *Cp.* GOODS, WARES, AND MERCHANDIZE.

*V.* CHOSE IN ACTION.

In two Acts relating to Ireland, Chattels are declared to be included in "Goods" (14 & 15 V. c. 90, s. 18, c. 93, s. 44).

"Goods or Burden"; *V.* BURDEN.

"Goods of a Debtor"; *V.* DEBTOR: POSSESSION ORDER OR DISPOSITION.

Order for "Delivery of Goods"; *V. R. v. Illidge*, cited ORDER, at end.

"Goods Imported from Beyond Seas"; *V.* BEYOND SEAS.

"Goods, Materials, or Provisions"; *V.* USE.

"Goods supplied"; *V.* SUPPLIED.

*V.* OTHER: PERSONAL GOODS: WOOD GOODS: WORLDLY GOODS.

**GOODS AND CHATTELS.**—These words are synonymous (Wms. R. P. Intro. Ch.). "The words *bona et catulla*, jointly or separately, in our ancient statutes and law writers, denote Personal Property of every kind, as distinguished from Real" (*Bullock v. Dodds*, 2 B. & Ald. 276). *See, Pratt v. Jackson*, and *Crichton v. Symes*, cited GOODS.

A *Bequest* of all testator's "GOODS and CHATELS" "doth pass all his estate, active and passive (except land of inheritance and freehold estates and such things as depend thereon), as Leases for years, Gold, Silver, Plate, Household Stuff, Cattle, Corn, Debts (*V. inf*) and the like; and if one devise to J. S. all his 'Goods' or all his 'Chattels,' by either of these is devised as much as by both of them" (Touch. 447). "By the Canon Law 'Goods' and equally 'Chattels,' taken simply and without qualification, comprise the whole personal estate of every description" (per Leach, M. R., *Kendall v. Kendall*, 4 Russ. 370), and either phrase includes Stock in the Public Funds (*Ib.*).

But in such a connection as a bequest of "*Furniture*, goods and chattels," the latter words would pass only such things as are *ejusdem generis* with "*Furniture*," and would not include jewellery, guns, tricycles, and scientific instruments (*Manton v. Tabois*, 54 L. J. Ch. 1008; 30 Ch. D. 92; 33 W. R. 832; *Vf, Stuart v. Bute*, 11 Ves. 666; *See, OTHER. Unrestrictedly Comprehensive*), still less a sum of money (*Gibbs v. Lawrence*, 30 L. J. Ch. 170; *Vf, Lamphier v. Despard*, 2 Dr. & War. 59; *Timewell v. Perkins*, 2 Atk. 103; *Roberts v. Kuffin*, *Ib.* 113). *Growing Crops*, as between exor and heir, or between the exor and remainder-

man, and in most other respects, are looked upon as "Chattels" (Wms. Exs. 620-622; but *Vth* the obs of Brett, J., *Bruntom v. Griffiths*, 45 L. J. C. P. 592: *Va* PERSONAL CHATTELS). *Vf*, as to this phrase in Wills, 1 Jarm. 751 *et seq*: Wms. Exs. 1040.

But on the other hand whilst a *Grant*, by deed *inter vivos*, of all one's "Goods and Chattels" comprises generally speaking such property as would pass by a similar bequest (Touch. 97); yet such a grant does *not* comprise *Leases for Years* (*Portman v. Willis*, Cro. Eliz. 386; *Vh*, *Harrison v. Blackburn*, 34 L. J. C. P. 109; 17 C. B. N. S. 678, qualifying *Ringer v. Cann*, 7 L. J. Ex. 108; 3 M. & W. 343); nor *Choses in Action* (Touch. 98: Add. T. 459: but would this be so, now that *Choses in Action* are assignable? *V. Touch.*, 6 ed., 97, *n*); "nor *Things of Pleasure*, such as hawks, hounds, &c" (Add. T. 459: Touch. 98: *Termes de la Ley*, *Catals*).

Equally under Deed or Will, "Goods and Chattels" would pass property whether held in severalty or in common (Touch. 98).

Though the Touchstone says that "Debts" pass by a bequest of "Goods and Chattels," and though this is so if there is no controlling context (*Ford's Case*, and *Ryall v. Rowles*, cited GOODS), yet it is clear that a bequest of "Goods and Chattels" in a specified place, *e.g.* testator's house, does not include *Choses in Action* (*Hertford v. Lowther*, 7 Bea. 1; 13 L. J. Ch. 41: *Re Robson*, 1891, 2 Ch. 559; 60 L. J. Ch. 851: *Secus*, as to "Property" in a locality, *V. IN: CONTENTS*).

"*Choses in Action* were held to be included in the expression 'Goods and Chattels' in all the Bankruptcy Acts from the time of James I. downwards" (per Lindley, I. J., *Colonial Bank v. Whinney*, 55 L. J. Ch. 590, a statement not affected by the reversal in H. L. of the jdgmt in *the*, 56 Ib. 43; 11 App. Ca. 426; 55 L. T. 362; 34 W. R. 705); but the same expression in 13 Eliz. c. 5, s. 1, did not include *Choses in Action* (*Dundas v. Dutens*, 1 Ves. 196: *Sr, Re Baldwin*, inf. *V. 1 & 2 V. c. 110, s. 12*); nor does it include Charters or Evidences relating to Realty or Documents evidencing a *Chose in Action* (*Calye's Case*, 8 Rep. 33 a: *Chanel v. Robotham*, *Yelv.* 68); nor is the phrase a correct description of such Evidences quâ an Indictment (*R. v. Powell*, 2 Den. 403; 21 L. J. M. C. 78; 16 Jur. 177). The Copyright in a Newspaper has been held to be within "Goods and Chattels" in a Bankruptcy Act (*Re Baldwin, Ex p. Foss*, 27 L. J. Bank. 17); so, of a Trade Mark (*Ex p. Young*, Sebastian, Trade Mark Ca. 537). *V. CHOSE IN ACTION*.

"Money, Goods, or Chattels," R. 1, Ord. 57, R. S. C., authorizing an Interpleader Issue, includes, in "Chattels," Shares in a Co (*Robinson v. Jenkins*, 59 L. J. Q. B. 147; 24 Q. B. D. 275; 62 L. T. 439; 38 W. R. 360). So, *semble*, "Goods and Chattels" will, generally, include Shares (*Lawton v. Hickman*, 16 L. J. Q. B. 20; 9 Q. B. 563). *Se, GOODS OR COMMODITIES: GOODS, WARES, AND MERCHANDIZE*. Generally speak-

ing, FIXTURES of a Tenant are not "Goods and Chattels" (*Lee v. Risdon*, 7 Taunt. 188: *Coombs v. Beaumont*, 5 B. & Ad. 72; 2 L. J. K. B. 190: *Vf*, GOODS, WARES, AND MERCHANDIZE).

"Goods and Chattels," 13 Eliz. c. 5, "are words of very extensive signification, and undoubtedly comprise both property tangible, and property which is not tangible" (per Turner, L. J., *Re Baldwin*, 27 L. J. Bank. 22; 2 D. G. & J. 230): *Vh*, *Dundas v. Dutens*, sup.

Quà New Parishes Act, 1844, 7 & 8 V. c. 94, "Goods and Chattels" "extend to and comprehend all Personal Estate and Property whatsoever" (s. 7).

"In an Indictment, *Bills of Exchange or Promissory Notes* ought not in strict propriety to be described as 'Chattels.' (*Va*, *R. v. Powell*, sup). But for almost all purposes, they are comprehended under the general words 'Goods and Chattels,' or either of them, and as such were forfeitable to the Crown, and may be the subject of reputed ownership or fraudulent transfer" (Byles, 4, and cases there cited). *Vf*, CHATTELS. In *R. v. Mead* (4 C. & P. 535) the halves of Bank Notes were held "Goods and Chattels," quà Larceny.

"By the Common Law, no estate of inheritance or freehold is comprehended under these words *bona* or *catalla*" (Co. Litt. 118 b).

In the frequent phrase "Goods, Chattels, and EFFECTS," the last word is the most comprehensive.

V. CHATTELS: GOODS: HOUSEHOLD: OTHER.

**GOODS OR COMMODITIES.**—Buying and selling "Goods or Commodities," so as to make a man a TRADER, within s. 65, Bankry Act, 1849, did not include dealing in the Shares of Companies (*Re Cleland*, 36 L. J. Bank. 33; 15 W. R. 681; 2 Ch. 466); in *the Cairns*, L. J., said the phrase was very much akin to "GOODS, WARES, AND MERCHANDIZE."

**GOODS, WARES, AND MERCHANDIZE.**—When the substance of a contract is a chattel or chattels to be sold and delivered by one party to the other, the subject-matter is within "Goods, Wares, and Merchandizes" as used in s. 17, Statute of Frauds, repled, s. 4, Sale of Goods Act, 1893 (*Atkinson v. Bell*, 8 B. & C. 277; *Lee v. Griffin*, 30 L. J. Q. B. 252; 1 B. & S. 272); and, probably, in all cases the contract is within the exemption from Stamp Duty. Therefore, a contract to supply water (*West Middlesex W. W. v. Suwerkrop*, 4 C. & P. 87; Moo. & M. 408), or a properly fitting set of artificial teeth, is within the phrase, for "there can hardly be said to be more skill in fitting teeth than in fitting a pair of breeches" (per Crompton, J., *Lee v. Griffin*, sup). But if the substance of the contract be work and labour.—*e.g.* an Artist painting a picture, a Solicitor preparing a deed, or a Printer printing a book, or an Engineer making plans and models for an in-

tended patent, — then the subject-matter is not within this phrase (*Clay v. Yates*, 25 L. J. Ex. 237; 1 H. & N. 73; *Lee v. Griffin*, sup: *Grafton v. Armitage*, 15 L. J. C. P. 20; 2 C. B. 336). So, though FIXTURES are not within the phrase (*Hallen v. Runder*, 3 L. J. Ex. 260; 1 Cr. M. & R. 266; *Horsfall v. Key*, 17 L. J. Ex. 266; 2 Ex. 778; *Lee v. Gaskell*, 45 L. J. Q. B. 540; 1 Q. B. D. 700), nor is a contract for supplying and fixing them (*Chanter v. Dickenson*, 12 L. J. C. P. 147; 5 M. & G. 253), yet “Timber and Growing Crops are so, because the clear intention being that they shall be severed, they are taken, by a fiction of law, as being actually severed” (per Cockburn, C. J., *Lee v. Gaskell*, sup, referring to *Smith v. Surman*, 9 B. & C. 561; *Marshall v. Green*, 45 L. J. C. P. 153; 1 C. P. D. 35; *Evans v. Roberts*, 5 B. & C. 829; *Parker v. Staniland*, 11 East, 362; *Mayfield v. Wadsley*, 3 B. & C. 357; *Vf*, Rose. N. P. 312). *A fortiori*, trees felled are within the phrase (*Acraman v. Morrice*, 19 L. J. C. P. 57; 8 C. B. 449). *Secus*, of Standing Buildings to be taken down and cleared away by the purchaser (*Lavery v. Purssell*, 57 L. J. Ch. 570; 39 Ch. D. 508; 58 L. T. 846; 37 W. R. 163; *Vf*, INTEREST IN LAND). Note: s. 7, 9 G. 4, c. 14, extended this phrase, as used in the Statute of Frauds, to Goods, &c, not actually made or ready for delivery at the date of the contract. The phrase had always that extended meaning quâ exemption from Stamp Act, because in any view the contract would relate to the sale of goods (V. RELATING). Quâ Sale of Goods Act, 1893, the phrase and its said extended meaning are replaced by the phrases “Goods” and “Future Goods” (V. GOODS).

Choses in action are not within this phrase (Benj. Part 2, ch. 2: per Denman, C. J., *Humble v. Mitchell*, 9 L. J. Q. B. 30); so, neither Shares in a Joint Stock Co (*Humble v. Mitchell*, 9 L. J. Q. B. 29; 11 A. & E. 205; *Tempest v. Kilner*, 3 C. B. 251), or in a Canal Co (*Latham v. Barber*, 6 T. R. 76), or in a Railway (*Boulby v. Bell*, 16 L. J. C. P. 18; 3 C. B. 284; *Knight v. Barber*, inf), or in a Mining Co (*Watson v. Spratley*, 24 L. J. Ex. 53; 10 Ex. 222), or in a Ship Adventure (*Leigh v. Banner*, 1 Esp. 403) are included therein; nor are the Bonds or Certificates of Foreign Stock (*Heseltine v. Siggers*, 18 L. J. Ex. 166; 1 Ex. 856), nor the Certificates of ordinary Stock or Shares (*Freeman v. Appleyard*, 32 L. J. Ex. 175).

Shares are not “Goods, Wares, or Merchandize,” within the exemption of Agreements from Stamp Duty (*Knight v. Barber*, 16 L. J. Ex. 18; 16 M. & W. 66).

But Shares are “Goods” within the phrase “Goods, Wares, and Merchandize,” as used in R. 2, Ord. 50, R. S. C. (*Evans v. Davies*, 1893, 2 Ch. 216; 62 L. J. Ch. 661; 68 L. T. 244; 41 W. R. 687); so, of Bonds (*Coddington v. Jacksonville Ry.*, 39 L. T. 12), or a Foreign Ship (*The Hercules*, 11 P. D. 10; 54 L. T. 273; 34 W. R. 400), or a Horse (*Bartholomew v. Freeman*, 3 C. P. D. 316; 38 L. T. 814; 26 W. R. 743).

In a Criminal Statute “Goods, Wares, and Merchandize,” does not



include either British or Foreign Money (*R. v. Howard*, Foster, 79; *R. v. Leigh*, 1 Leach, 52), and, *semble*, is confined to "goods exposed for sale" (*R. v. Howard*).

As to the phrase as used in the Eau Brink Act, 35 G. 3, c. 77; *V. Coulton v. Ambler*, 14 L. J. Ex. 10; 13 M. & W. 403.

V. STONE.

**GOODWILL.** — "Goodwill" may be taken in the words of Ld Eldon (in *Cruttwell v. Lye*, 17 Ves. 335), "as the probability that the old customers will resort to the old place" (per Cotton, L. J., *Pearson v. Pearson*, 54 L. J. Ch. 41; 27 Ch. D. 145). But, "generally speaking, it means much more than that. Often it happens that the Goodwill is the very sap and life of the business, without which the business would yield little or no fruit" (per Ld Macnaghten, *Trego v. Hunt*, inf); "it is the attractive force which brings in custom" (per *Ib.*, *Inf. Rev. v. Muller*, 70 L. J. K. B. 680; 1901, A. C. 224).

The "Goodwill" of a business means every affirmative advantage, — as contrasted with negative advantage, — that has been acquired in carrying on the business, whether connected with the premises of the business, or its name or style, and everything connected with or carrying with it the benefit of the business (per Wood, V. C., *Churton v. Douglas*, 28 L. J. Ch. 845; Johns. 174; 7 W. R. 365, following *Cruttwell v. Lye*, sup: Ld Eldon's Order in *Cook v. Collingridge*, Jac. 607; 1. 27 Bea. 456, n: *Kennedy v. Lee*, 3 Mer. 441. *Vf.* *Johnson v. Helleley*, 34 L. J. Ch. 179; 2 D. G. J. & S. 446: *Shakle v. Baker*, 14 Ves. 468). "The Name of a FIRM is a very important part of the Goodwill" (per Wood, V. C., *Churton v. Douglas*, sup); and therefore the vendor of a goodwill must not carry on business in the name appertaining to such goodwill, nor hold out his new enterprise as the old business (*Ib.*), nor can he object to his purchaser using his (the vendor's) name, if it be the name, or part of the name, of the Firm (*Levy v. Walker*, 48 L. J. Ch. 273; 10 Ch. D. 436); but he must not use it in such a way as to hold out that the vendor remains the real owner of the business, nor so as to expose him to any liability (*Thynne v. Shore*, 59 L. J. Ch. 509; 45 Ch. D. 577). *Vh.* *Townsend v. Jarman*, 1900, 2 Ch. 698; 69 L. J. Ch. 823; 83 L. T. 366; 49 W. R. 158. *Cp.* *Thorneloe v. Hill*, inf.

But in the absence of express restriction, the Vendor may, notwithstanding the sale of his "Goodwill," continue to deal with his old customers (*Leggott v. Barrett*, 51 L. J. Ch. 90; 15 Ch. D. 306; 28 W. R. 962, over-ruling *Jessel, M. R.*, in *Ginesi v. Cooper*, 49 L. J. Ch. 601; 14 Ch. D. 596).

On the other hand, the vendor will not be allowed to *solicit* the custom of the old customers (*Trego v. Hunt*, 1896, A. C. 7; 65 L. J. Ch. 1; 73 L. T. 514; 44 W. R. 225, establishing ruling of *Romilly, M. R.*, *Labouchere v. Dawson*, 41 L. J. Ch. 427; L. R. 13 Eq. 322; 20 W. R.

309, of Jessel, M. R., and Brett, L. J., *Leggott v. Barrett*, sup, of Lush and Lindley, L. J.J., *Walker v. Mottram*, 51 L. J. Ch. 108; 19 Ch. D. 355; 30 W. R. 165, of Fry, J., *Mogford v. Courtenay*, 29 W. R. 864, and of Kay, J., and Lindley, L. J., *Pearson v. Pearson*, 54 L. J. Ch. 32; 27 Ch. D. 145; 32 W. R. 1006, and over-ruling the doubts of James, L. J., in *Leggott v. Barrett*, sup, and the judgments of Baggallay and Cotton, L. J.J., in *Pearson v. Pearson*, sup). *Vf*, *Vernon v. Hallam*, 56 L. J. Ch. 115; 34 Ch. D. 748; *Gillingham v. Beddow*, 1900, 2 Ch. 242; 69 L. J. Ch. 527; 82 L. T. 791.

The sale of a Goodwill by a Trustee in Bankry carries no implied restriction as against the bankrupt (*Walker v. Mottram*, sup); but after such a sale the bankrupt must not use the trade-marks of the business sold, or otherwise represent himself as carrying on that same business (*Hudson v. Osborne*, 39 L. J. Ch. 79; *Hammond v. Malcolm*, 8 Times Rep. 324).

*Seamble*, on a Sale of a Goodwill by the Court on a Partnership Winding-up (the usual condition framed by Turner, L. J., in *Johnson v. Helleley*, sup, being adopted), a rule similar to that in *Walker v. Mottram* (sup) applies, and each of the partners may carry on business similar to that of the firm, with the same freedom from restriction as if no sale of the Goodwill had been made (per Stirling, J., *Jennings v. Jennings*, cited ASSETS): *Vf*, *Re David and Matthews*, 1899, 1 Ch. 378; 68 L. J. Ch. 185; 80 L. T. 75; 47 W. R. 313.

Where, on a Dissolution of Partnership, one partner buys the "Goodwill," he is entitled to all the rights passing under that word, notwithstanding that the partnership agreement provides that nothing therein contained "shall prevent either partner from starting a similar business after the expiration of the partnership" (*Gillingham v. Beddow*, sup).

A purchaser of a Business is not entitled to use the Trade Name where deception would, probably, arise therefrom (*Thorneloe v. Hill*, 1894, 1 Ch. 569; 63 L. J. Ch. 331; 70 L. T. 124; 42 W. R. 397).

As to implying the sale of a "Goodwill" without its express mention; *V. Pearson v. Pearson*, sup; *Gray v. Smith*, cited WITHDRAW; which cases on this point are examined in *Jennings v. Jennings*, cited ASSETS: *Smith v. Hawthorn*, inf.

Valid agreements in RESTRAINT OF TRADE in connection with a Business, pass with the sale of its Goodwill (*Jacoby v. Whitmore*, 49 L. T. 335; 32 W. R. 18), though the word "Goodwill" may not be mentioned (*Smith v. Hawthorn*, 76 L. T. 716; 13 Times Rep. 477). *Vf*, *Townsend v. Jarman*, sup.

The term "Goodwill" seems inapplicable to a business, — e.g. that of a Solicitor, — depending upon personal trust and confidence (*Austen v. Boys*, 27 L. J. Ch. 243, 714; 2 D. G. & J. 626; 24 Bea. 598: *Va*, per Jessel, M. R., *Arundell v. Bell*, 52 L. J. Ch. 537). And however that may be, clients' papers are not included in the sale of the "Goodwill" of a solicitor's business (*James v. James*, 33 S. J. 366).

Bequest of "Business and Goodwill," or "Goodwill and Fixtures";  
*V. BUSINESS*, towards end.

Bequest of "Plant and Goodwill"; *V. PLANT*.

A Mortgage of hereditis does not, generally, pass the Goodwill of the Business there carried on, if it be not expressly assigned (*Cooper v. Metrop Bd of Works*, 25 Ch. D. 472; 53 L. J. Ch. 109), not even though the hereditis be an Hotel (*Whitley v. Challis*, 1892, 1 Ch. 64; 61 L. J. Ch. 307; 65 L. T. 838; 40 W. R. 291: *Re Bennett*, 1899, 1 Ch. 316; 68 L. J. Ch. 104); *Secus*, of a Colliery (*Jefferys v. Smith*, 1 Jac. & W. 298, 302; *Campbell v. Lloyd's Bank*, 1891, 1 Ch. 136, *n*; 58 L. J. Ch. 424; *County of Gloucester Bank v. Rudry*, 1895, 1 Ch. 629; 64 L. J. Ch. 451; 72 L. T. 375; 43 W. R. 486).

When a Lease of premises the possession of which is essential to the business there carried on, *e.g.* an ALEHOUSE, provides that on the expiration of the term such sum "as shall, or can be, procured for the Goodwill" shall be paid to the lessee, "the Value of the Goodwill must be taken to be that sum which, in the judgment of persons accustomed to value such matters, a purchaser would be willing to pay for the custom attached to the premises" at the time of such expiration (per Coleridge, C. J., *Llewellyn v. Rutherford*, 44 L. J. C. P. 281; L. R. 10 C. P. 456); what the lessor may then choose to do with the premises has nothing to do with the question, except that it may furnish evidence (*S. C.*).

As to construction of Partnership Articles excluding Goodwill from the Accounts; *V. Steuart v. Gladstone*, 47 L. J. Ch. 423; 10 Ch. D. 626; 38 L. T. 557; *Hunter v. Dowling*, 1895, 2 Ch. 223; 64 L. J. Ch. 713; 72 L. T. 653; 43 W. R. 619. *Cp.* SUSCEPTIBLE.

"Goodwill of the Business," in connection with which a TRADE-MARK must be assigned, s. 70, 46 & 47 V. c. 57; *V. Re Magnolia Metal Co*, 1897, 2 Ch. 371; 66 L. J. Ch. 312, 598; 76 L. T. 672.

Injury to "Interest for Goodwill"; *V. Ex p. Farlow*. cited INTEREST.  
*Vh.* Allan on Goodwill: Art., 34 S. J. 294; 6 Encyc. 82-85.

*V. ET CETERA*: PLANT: SHARE: EFFECTS: STOCK-IN-TRADE: BUSINESS: PROPERTY, quâ *Stamp Duty*: PROPERTY AND EFFECTS: PROPERTY OTHER THAN LAND.

**GORDON'S ACT.**—The Court of Session Act, 1868, 31 & 32 V. c. 100.

**GORE.**—"Gore, Fother, or Pyke. — Parcels in the common fields; 'and they are called so, because they be broad in the one end and a sharp pyke in the other end'" (Elph. 583, and authorities there cited).

**GORS: GORT: GUORT.**—*V. GURGES.*

**GOSCHEN'S ACT.**—The Valuation Metropolis Act, 1869, 32 & 33 V. c. 67.

**GOSPEL.** — A bequest “for the spread of the Gospel” is a good CHARITY (*Re Lea*, 56 L. J. Ch. 671; 34 Ch. D. 528).

**GOT IN.** — *V.* WHEN.

**GOTE.** — *V.* GOAT.

**GOTTEN.** — *V.* GET: MINERAL GOTTEN: ACTUAL WEIGHT.

**GOVERN.** — “Regulate and govern”; *V.* REGULATE.

**GOVERNING BODY.** — Quà Borough Funds Act, 1872, 35 & 36 V. c. 91; *V.* s. 1: — quà Borough Funds (Ir) Act, 1888, 51 & 52 V. c. 53; *V.* s. 2.

Quà Endowed Schools Acts, 1869 to 1889 (*V.* Sch 2, Short Titles Act, 1896), “ ‘Governing Body,’ means, any body corporate, persons or person, who have the right of holding, or any power of government of, or management over, any ENDOWMENT, or (other than as Master) over any ENDOWED SCHOOL, or have any power (other than as Master) of appointing officers, teachers, exhibitioners, or others, either in any Endowed School or with emoluments out of any Endowment” (s. 7, 32 & 33 V. c. 56). Those are “wide terms which, though not strictly grammatical, may include persons who have the right of holding any Endowment dealt with by any particular Scheme. And it may be that in some Foundations there are more bodies than one who, for different purposes of the Act, have to be considered as Governing Bodies” (*Re Christ's Hospital, Appeal C.*, cited EDUCATIONAL ENDOWMENT): — the City Corporation, though legally seized of the estates of Christ's Hospital yet, having no powers of management, is not the Governing Body of the Hospital (*Ib.*). *Vf*, *Christ's Hospital v. Charity Commrs*, cited FOUNDATION.

Quà Endowed Institutions (Scot) Act, 1878, 41 & 42 V. c. 48; *V.* s. 3.

Quà Educational Endowments (Scot) Act, 1882, 45 & 46 V. c. 59; *V.* s. 1.

Quà Educational Endowments (Ir) Act, 1885, 48 & 49 V. c. 78; *V.* s. 1.

Quà Loc Gov (Ir) Act, 1871, 34 & 35 V. c. 109; *V.* s. 3.

Quà City of London Parochial Charities Act, 1883, 46 & 47 V. c. 36; *V.* s. 53.

Quà Public Parks (Ir) Act, 1869, 32 & 33 V. c. 28; *V.* s. 4.

Quà Public Schools Act, 1864, 27 & 28 V. c. 92; *V.* s. 3.

“Governing Body,” quà the Oxford Colleges, except Christ Church, means, “the Head and all actual Fellows of the College, being Graduates, and, as regards Christ Church, means, the Dean, Canons, and Senior Students” (40 & 41 V. c. 48, s. 2: *Va* 17 & 18 V. c. 81, s. 48); and means quà Cambridge Colleges, “except Downing College, the Head and all actual Fellows of the College (Bye Fellows excepted) being Graduates, and, as regards Downing College, the Head, Professors, and all

actual Fellows thereof (Bye Fellows excepted) being Graduates" (40 & 41 V. c. 48, s. 2).

Quà Universities (Scot) Act, 1889, 52 & 53 V. c. 55, " 'Governing Body,' means, a Body constituted on a permanent footing, and charged (by Act of Parliament, Royal Charter, Deed of Endowment and Trust, or otherwise) with the management and administration of any fund devoted to Higher Education" (s. 3).

V. NEW GOVERNING BODY.

**GOVERNMENT.**— A legacy to "Government" for the public benefit is to be disposed of under the sign manual of the Crown (*Newland v. A-G.*, 3 Mer. 684; Wms. Exs. 1010).

"Foreign Government"; V. FOREIGN.

"Care, Government, or Management," of a house, &c; V. KEEPER.

"Good Government"; V. PEACE: REGULATE.

As to what is a good BYE-LAW for the "Government" of the Thames Company of Watermen and Lightermen; V. *Kemaird v. Cory.* 47 W. R. 30.

Preference in Insolvency of Debts due to the "Crown or Government"; V. *Fox v. Newfoundland Government*, 1898, A. C. 667; 67 L. J. P. C. 77; 78 L. T. 602.

**GOVERNMENT ACCOUNTANT.**— Stat. Def., 26 & 27 V. c. 116, s. 3.

**GOVERNMENT ANNUITIES.**— Quà Government Annuities Act, 1873, 36 & 37 V. c. 44, " 'Government Annuities,' means, Annuities granted, either before or after the passing of this Act, in pursuance of the Acts mentioned in the Schedule to this Act or any of them, or of any Acts repealed by those Acts, or of any other Acts authorizing the Commissioners to grant Annuities for Life or Years; and includes Annuities payable by the Commissioners in pursuance of any of the said Acts" (s. 4). V. PERPETUAL ANNUITY.

"The Government Annuities Acts, 1829 to 1888"; V. Sch 2. Short Titles Act, 1896.

**GOVERNMENT CLERK.**— A Clerk in the Admiralty is properly described as "Government Clerk," quà Bills of Sale Acts (*Grant v. Shaw*, 41 L. J. Q. B. 305; L. R. 7 Q. B. 700).

**GOVERNMENT FUNDS.**— V. FUNDS.

**GOVERNMENT OF INDIA.**— Quà Indian Advance Act, 1879, 42 & 43 V. c. 45, " 'Government of India,' means, one of Her Majesty's Principal Secretaries of State in the Council of India" (s. 5). Note:

that Act and the East Indian Loan (Annuities) Act, 1879, were repealed by s. 2 (1), Indian Loan Act, 1881, 44 & 45 V. c. 54.

*F. BRITISH INDIA.*

**GOVERNMENT PRINTER.**—Quà Documentary Evidence Acts, 1868 and 1882, “Government Printer,” means and includes, “the Printer to Her Majesty; and any Printer PURPORTING to be the Printer authorized to Print the Statutes, Ordinances, Acts of State, or other Public Acts, of the Legislature of any British Colony or Possession, or otherwise to be the Government Printer of such Colony or Possession” (s. 5, 31 & 32 V. c. 37); the phrase also includes “any Printer to Her Majesty in Ireland; and any Printer printing in Ireland under the superintendence or authority of Her Majesty’s Stationery Office” (s. 4, 45 & 46 V. c. 9).

Quà Army Act, 1881, 44 & 45 V. c. 58, “‘Government Printer’ means any Printer to Her Majesty; and, in India, any Government Press” (subs. 2, s. 163).

**GOVERNMENT SECURITIES.**—Where a trust authorizes investments “in the purchase of *Government* or East India Stocks or funds, Exchequer Bills, or any other easily convertible securities,” the word “Government” does not necessarily mean the British Government (per Jessel, M. R., *Sykes v. Beadon*, 48 L. J. Ch. 530; 11 Ch. D. 170). But a bequest of “Government Stock or Securities,” will not include Indian Government, or Colonial, securities (*Re Hamilton*, 34 S. J. 251; 6 Times Rep. 173: *Vf, Brown v. Brown*, 4 K. & J. 704, cited PARLIAMENTARY STOCK).

“Government Security” does not apply to Exchequer Bills (*Ex p. Chaplin*, 3 Y. & C. 397; *Knott v. Cottee*, 16 Bea. 77; 16 Jur. 752: *Vf, Matthews v. Brise*, 6 Bea. 239; 12 L. J. Ch. 263: s. 7, 36 & 37 V. c. 57); but the contrary was held in *Ex p. S. E. Ry* (9 Jur. 650); and Exchequer Bonds and Bills are sometimes made “Government Securities” by an interp clause (*e.g.* s. 3, 35 & 36 V. c. 44). *Cp*, GOVERNMENT STOCK.

*Vh*, Lewin, 340; Watson Eq. 1326.

*V. FUNDS: FOREIGN: Cp*, PUBLIC SECURITIES.

**GOVERNMENT STOCK.**—Quà Savings Banks Acts, 1880 and 1893, “Government Stock,” means, 2 $\frac{3}{4}$  % Consolidated Stock (1903); 2 $\frac{3}{4}$  % Annuities (1905); 2 $\frac{1}{2}$  % Annuities; Local Loans 3 % Stock; Guaranteed Land Stock (s. 5 (2), 56 & 57 V. c. 69); and that def applies to Investments by a Building Society (s. 16 (2), 57 & 58 V. c. 47).

*Cp*, GOVERNMENT SECURITIES. *V. STOCK: PERPETUAL ANNUITY.*

**GOVERNOR.**—*V.* s. 18 (6), Interp Act, 1889.

Prior Stat. Def. — 1 & 2 V. c. 9, s. 8, e. 19, s. 29, c. 67, s. 10; 32 &

33 V. c. 10, s. 2; 33 & 34 V. c. 52, s. 26, c. 90, s. 30; 35 & 36 V. c. 23, s. 3; 42 & 43 V. c. 33, s. 181; 48 & 49 V. c. 60, s. 1.

“Governor-General”; *V.* 42 & 43 V. c. 33, s. 181.

“Governor in Council”; *V.* 35 & 36 V. c. 19, s. 2.

“Governor of any British Possession”; *V.* 33 & 34 V. c. 14, s. 17.

“Governor of New Zealand”; *V.* 14 & 15 V. c. 86, s. 12.

“Governor of the Province of Canada”; *V.* 3 & 4 V. c. 35, s. 61.

Quà Ecclesiastical Dilapidations Act, 1871, 34 & 35 V. c. 43, “Governors” means, the Governors of QUEEN ANNE’S BOUNTY (s. 3).

“Governors” of a GRAMMAR SCHOOL; *V.* 3 & 4 V. c. 77, s. 25.

Quà Prisons (Scot) Act, 1877, 40 & 41 V. c. 53, “ ‘Governor,’ shall mean, the Chief Male Officer of a prison ” (s. 71); quà the application of 62 & 63 V. c. 11 to Scotland, “Governor” includes, any Officer in charge of Police Cells duly declared Legal Prisons (subs. 2, s. 2).

**GRACE.** — *V.* DAYS OF GRACE.

**GRAIN.** — Quà Part 5, Mer Shipping Act, 1894, “ ‘Grain’ means, any CORN, Rice, Paddy, Pulse, Seeds, Nuts or Nut Kernels ” (s. 456).

“Other Grain,” in a Charter-party, held, on the context and circumstances, to exclude Oats (*Warren v. Peabody*, 19 L. J. C. P. 43; 8 C. B. 800).

“Grain for sale”; *V.* FOR SALE.

A Grain Avoirdupois, is  $\frac{1}{7000}$ th of an Imperial Standard POUND (s. 14, 41 & 42 V. c. 49).

**GRAMMAR SCHOOL.** — Quà Grammar Schools Act, 1840, 3 & 4 V. c. 77, “ ‘Grammar School,’ shall mean and include, all ENDOWED Schools (whether of royal or other foundation), founded, endowed, or maintained for the purpose of teaching Latin and Greek, or either of such languages; whether (in the Instrument of foundation or endowment, or in the Statutes or Decree of any Court of Record, or in any Act of Parliament establishing such School, or in any other evidences or documents), such instruction shall be expressly described, or shall be described by the word ‘Grammar,’ or any other form of expression which is or may be construed as intending Greek or Latin, and whether (by such evidences or documents as aforesaid, or in practice) such instruction be limited exclusively to Greek or Latin, or extended to both such languages, or to any other branch or branches of literature or science in addition to them or either of them; and the words ‘Grammar School’ shall not include Schools not endowed, but shall mean and include, all Endowed Schools which may be Grammar Schools by reputation, and all other Charitable Institutions and Trusts so far as the same may be for the purpose of providing such instruction as aforesaid ” (s. 25).

*V.* FREE GRAMMAR SCHOOL.

**GRAND JURY.** — In England the Grand Jury is the Jury whose business it is at every Session of the Peace and every Commission of *Oyer* and *Terminer* and General Gaol Delivery (of a County, or a Borough having a separate Commission of the Peace), to enquire, present, do, and execute such things, on the part of the King, as shall be commanded them; and chiefly to find a "TRUE BILL," or "Not a True Bill," on every INDICTMENT brought before them, so that the accused may in the first case, be tried by the Petty Jury for the offence alleged against him, or, in the other case, be discharged (4 Bl. Com. 302-306).

Stat. Def., quâ Ireland, — 19 & 20 V. c. 63, c. 68, s. 2; 20 & 21 V. c. 16, s. 2; 32 & 33 V. c. 74, s. 6; 33 & 34 V. c. 9, s. 3; 34 & 35 V. c. 114, s. 1; 36 & 37 V. c. 51, s. 2; 39 & 40 V. c. 65, s. 6; 40 & 41 V. c. 49, s. 3, c. 56, s. 7; 41 & 42 V. c. 24, s. 1; 46 & 47 V. c. 42, s. 13; 48 & 49 V. c. 41, s. 17.

"The Grand Juries (1r) Acts, 1816 to 1895"; V. Sch 2, Short Titles Act, 1896.

V. SECRETARY OF GRAND JURY.

**GRAND-CHILD.** — Notwithstanding the opinion of Lord Northington to the contrary (*Hussey v. Berkley*, 2 Eden, 196), it seems now settled that *great* grand-children are not included in the word "grandchildren" (*Orford v. Churchill*, 3 V. & B. 59; stated and commented on, Wms. Exs. 959: *Va*, *Arnold v. Congreve*, 1 Russ. & My. 209: *Se*, *Strutt v. Finch*, 7 L. J. O. S. Ch. 176). A grand-child *by marriage* is not within the word (*Hussey v. Berkley*, sup).

A gift for all testator's "Grandchildren" to be divided equally amongst them at a stated period of distribution, confers a vested interest on all the grandchildren living at the testator's death, or born afterwards before the period of distribution (*Oppenheim v. Henry*, 10 Hare, 441).

V. CHILD.

**GRAND-DAUGHTER.** — Gift to "My grand-daughter," is explainable by parol to mean a particular grand-daughter (*Jefferies v. Michell*, 20 Bea. 15). *Vf*, *Phelan v. Slattery*, cited NEPHEW.

GRAND-FATHER. — V. FATHER.

GRAND-MOTHER. — V. MOTHER: FATHER.

**GRANGE.** — "By the name of Grange, *Grangia*, a house or edifice, not onely where corne is stored up like as in barnes, but necessary places for husbandry also, as stables for hay and horses, and stables and styes for other cattell. and a *curtilage*, and the close wherein it standeth, shall passe; and it is a French word and signifieth the same as we take it" (Co. Litt. 5a: V. Spelm.). "Where land, meadow, and pasture, &c, belonging to such houses are called altogether by the name of a Grange,



there perhaps by this word the whole may pass" (Touch. 93). "*V. Ognel's Case* (4 Rep. 48 b), where a farm was called Crewelfield Grange. In Lincolnshire and some of the northern counties every solitary farmhouse is called a grange: Tomlins' Law Dict." (Elph. 583).

**GRANT.** — "This word is taken largely, where any thing is granted or passed from one to another. And in this sense it doth comprehend feoffments, bargains and sales, gifts, leases, charges, and the like; for he that doth give, or sell, doth grant also. And thus it is sometimes in writing or by deed, and sometimes it is by word without writing. But the word being taken more strictly and properly, it is the grant, conveyance, or gift, by writing, of such an Incorporeal thing *as lieth in grant, and not in livery*, and cannot be given or granted by word only without deed. Or it is the grant by such persons as cannot pass any thing from them but by deed, as the King, bodies corporate, &c. And this albeit it may be made by other words, yet it is most commonly made by this word (grant) as being most proper to this purpose" (Touch. 228). As regards that part of the above definition which is italicised, it is to be observed that, since the 1st Oct 1845, all Corporeal hereditaments (as well as those Incorporeal) "lie in grant as well as in livery" (s. 2, 8 & 9 V. c. 106).

S. 49, Conv & L. P. Act, 1881, contains the following clause; — "The word 'Grant' is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal."

For the history of the use and effect of the words "Grant" and "Give," in Conveyances; *V. Co. Litt.*, 18 ed., 384 a, note by Butler; *Clarke v. Samson*, 1 Ves. sen. 100; *Baber v. Harris*, 9 A. & E. 532; 8 L. J. Q. B. 153; *Va, Lewin*, 505. But now in Deeds executed after the 1st Oct 1845, "Grant" will not imply any covenant in law in respect of any tenement or hereditament except so far as it may do so by force of some special Act of Parliament (s. 4, 8 & 9 V. c. 106) — *e.g.* in Conveyances *by* Companies under Lands C. C. Act, 1845 (s. 132, 8 & 9 V. c. 18); or in Conveyances *to* the Governors of QUEEN ANNE'S BOUNTY (s. 22, 1 & 2 V. c. 20); or the words "grant, bargain and sell." in a Bargain and Sale registered under the Registry Acts for Yorkshire (6 Anne, c. 35, ss. 30, 34; 8 G. 2, c. 6, s. 35; replaced as on and from 1 Jan 1885, by 47 & 48 V. c. 54). *Vh, Baynes v. Lloyd*, cited DEMISE; *Vf, Jacob*: 6 Encyc. 88, 89.

*V. CONVEYANCE: GIFT.*

"Covenant, grant, and agree"; *V. COVENANT.*

Covenant to grant a Lease; *V. LET.*

Not "to grant away, assign or let, charge or dispose of," in a Covenant in Lease; *V. Croft v. Lumley*, 25 L. J. Q. B. 73, 223; 27 lb. 321; 6 H. L. Ca. 672.

As to the distinction between "Grant" and "License," *V. Holford v.*

*Bailey*, 18 L. J. Q. B. 109; 13 Q. B. 426; *Heap v. Hartley*, cited PROPERTY; *Fitzgerald v. Firbank*, 1897, 2 Ch. 96; 66 L. J. Ch. 529; 76 L. T. 584.

**GRANTED.** — “Granted by Parliament”; *V. TALLAGE.*

**GRANTEE.** — Stat. Def., *Scot.* 31 & 32 V. c. 101, s. 3. — *Ir.* 54 & 55 V. c. 57, s. 3.

**GRANTOR.** — Stat. Def., *Scot.* 31 & 32 V. c. 101, s. 3. — *Ir.* 13 & 14 V. c. 72, s. 64; 18 & 19 V. c. 39, s. 1; 44 & 45 V. c. 65, s. 1; 54 & 55 V. c. 57, s. 3.

“Grantor” of an Annuity, s. 8, 17 G. 3, c. 26; *V. Darwin v. Lincoln*, 5 B. & Ald. 444.

“Grantor,” in Bills of Sale Act, 1882, is not complied with by a Bill of Sale by two or more separate Grantors of goods, some owned by one and some by the other or others, and such a Bill of Sale is void (*Saunders v. White*, 17 Times Rep. 72; 1901, 1 Q. B. 70; 70 L. J. Q. B. 34; 83 L. T. 712; 49 W. R. 127).

**GRASSUM.** — A Scotch word for a Fine taken upon granting a Lease (*Re Queensberry Leases*, 1 Bligh, 339).

**GRATING.** — Quà Salmon Fishery Act, 1873, 36 & 37 V. c. 71, “‘Grating,’ shall mean and include, any DEVICE approved by the Secretary of State for preventing the passage of fish through any channel” (s. 4).

**GRATIS.** — An Appearance “gratis,” is one made before service of the writ (*Fell v. Christ's Coll.*, 2 Bro. C. C. 279). *V. REJOINING GRATIS.*

**GRATUITOUS.** — A Gratuitous BAILMENT of goods is where “the Bailee is to have the use and enjoyment of the subject-matter of the Bailment for his own benefit and advantage, without payment of hire or reward to the Bailor” (Add. C. 724). *Vh. Coggs v. Bernard*, 2 Raym. Ld. 916; 1 Sm. L. C. 201; Paine on Bailments.

Quà the Trusts (Scot) Acts, 1861, 1863, and 1867, “‘Gratuitous TRUSTEES,’ shall mean and include, all trustees who are not entitled, as such, to remuneration for their services in addition to any benefit they may be entitled to under the Trust, or who hold the office *ex officio*; and shall extend to and include all trustees, whether original or assumed, who are entitled to receive any legacy or annuity or bequest under the Trust” (s. 1, 30 & 31 V. c. 97).

**GRATUITY.** — *V. HANDSOME GRATUITY.*

Gratuity or Retired Pay is “Income” (*Re Ward*, cited INCOME).

**GRAVA.** — “*Grava* signifieth a little wood, in old deeds, and *hirst* or *hurst* a wood; and so doth *holt* and *shawe*” (Co. Litt. 4 b): “Shawe” is “now generally applied to Underwood” (Jacob, *Shaw*).

**GRAVELLING.**—Quà Salmon Fisheries Acts, “ ‘Jenkin’ and ‘Gravelling,’ are deemed to be Salmon ” (s. 19, 26 & 27 V. c. 114).

**GRAVEYARD.**—Quà Burial Laws Amendment Act, 1880, 43 & 44 V. c. 41; *V. s. 1.*

**GREAT BRITAIN.**—“ Great Britain ” is the United Kingdoms of ENGLAND and Scotland (5 Anne, c. 8, Art. 1). (*Cp.* UNITED KINGDOM.

A bequest for “ the benefit and advantage of my beloved country, Great Britain,” is a good CHARITY (*Nightingale v. Goulbourn*, 16 L. J. Ch. 270; 17 Ib. 296; 5 Hare, 484; 2 Phil. 594).

“ Law of Great Britain ”; *V. BRITISH LAW.*

**GREAT CAUTION.**—*V. CAUTION.*

**GREAT MEN.**—The exemption from Tithes of “ Great Men or Noble Men,” 31 H. 8, c. 12, s. 16, did not comprise an Ecclesiastical Magnate, *e.g.* a Dean; for “ Great Men ” there, being in association with “ Noblemen,” comprise only Great Men of a “ noble ” kind (*Warden of St. Paul’s v. The Dean*, 4 Price, 65).

**GREAT SEAL.**—The “ Great Seal ” means, the Great Seal of the UNITED KINGDOM: *V. 11 & 12 V. c. 94, s. 46; 12 & 13 V. c. 109, s. 50; 40 & 41 V. c. 41, s. 7.*

**GREAT TITHES.**—*V. TITHES.*

**GREATER.**—*V. THREE TIMES GREATER.*

**GREE.**—SATISFACTION for an offence (*Termes de la Ley*, citing 1 Ric. 2, c. 15). *Va.* ACCORD.

**GREEN HEWE.**—A synonym for VERT (*Termes de la Ley*).

**GREEN-HOUSE.**—*V. MARKET: BUILDING: Meux v. Cobley*, cited IMPROVEMENT.

**GREEN TEA.**—*V. Roberts v. Egerton*, 43 L. J. M. C. 135; L. R. 9 Q. B. 494.

**GREENWICH HOSPITAL.**—“ The Greenwich Hospital Acts, 1865 to 1892 ”; *V. Sch 2, Short Titles Act, 1896.*

**GREENWICH MEAN TIME.**—*V. TIME.*

**GREY’S ACT.**—The Public House Closing Act, 1864, 27 & 28 V. c. 64.

**GREYHOUND.**—A Hound is not a Greyhound quà s. 2, 22 & 23 Car. 2, c. 25 (*Grant v. Hulton*, 1 B. & Ald. 134), or s. 4, 5 Anne, c. 14

(*Hooker v. Wilks*, 2 Stra. 1126), nor is an Italian Greyhound kept by a lady for her amusement within the section (per Buller, J., *Briarly v. Athorpe*, 5 B. & Ald. 321, *n*). Cp, SETTING DOG.

**GRIEVANCE.** — *V.* ANNOYANCE.

**GRIEVED.** — *V.* AGGRIEVED.

**GRIEVOUS BODILY HARM.** — This harm does not connote "that it should be either permanent or dangerous; if it be such as seriously to interfere with comfort or health it is sufficient" (per Willes, J., *R. v. Ashman*, 1 F. & F. 88, *whv*). Thus, to cut a girl's private part so as to enlarge it for the time, is to do her "grievous bodily harm," though the hymen is not injured, the incision is not deep, and the wound eventually is not dangerous (*R. v. Cox*, Russ. & Ry. 362). Where the INTENT is charged "it is not necessary that such harm should have been actually done" (*R. v. Ashman*, *sup*). Cp, INFLICT.

**GROCER.** — "Grocers were merchants that engrossed all merchandize vendible (*V.* INGROSSER); but now it is a particular and well-known trade" (Cowel).

As to what is carrying on the business of a "Grocer," *V. Fitz v. Iles*, cited COFFEE.

Grocer's Assistant; *V.* MANUAL LABOUR.

**GROG.** — S. 4, Finance Act, 1898, describes and prohibits "grogging" casks which have contained Spirits.

**GROGAN'S ACT.** — The Marriage Law (Ir) Amendment Act, 1863, 26 & 27 V. c. 27.

**GRONNA.** — "A deep pit or bituminous place where turfs are dug to burn; 1 Mon. Angl. 243" (Jacob).

**GROSS.** — "Gross Value is different from 'Value.' It is, though a convenient, an inaccurate expression, like 'gross profits.' The difference between what a thing costs and the larger sum it sells for is not profit, if the buying and selling are attended with expense to the trader. Value is net value" (per Ld Bramwell, *Dobbs v. Grand Junction W. W. Co*, 53 L. J. Q. B. 52; 9 App. Ca. 49).

In an Act authorising a Waterworks Company to levy rates on "the Gross sum assessed to the Poor Rate of the premises" they supply, that means, the gross estimated rental, and not the rateable value (*Bristol W. W. Co v. Uren*, 54 L. J. M. C. 97; 15 Q. B. D. 637).

"The Gross Estimated Rental" for the purpose of the Sch to Union Assessment Committee Act, 1862, 25 & 26 V. c. 103, is "the rent at which the hereditament might reasonably be expected to let from year

to year, free of all usual tenant's rates and taxes, and tithe commutation rent charge, if any" (s. 15); a def which is applied to "Gross Value," quâ Rating Act, 1874 (s. 15). The amount as it appears in the Rate Book and Valuation List is final (*Horton v. Walsall*, 1898, 2 Q. B. 237; 67 L. J. Q. B. 804; 78 L. T. 684; 46 W. R. 607; 62 J. P. 437).

"The Gross Value," for the purpose of the Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67, means, "the annual rent which a tenant might reasonably be expected (taking one year with another) to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rent-charge (if any), and if the landlord undertook to bear the costs of the repairs and insurance, and the other expenses (if any) necessary to maintain the hereditament in a state to command that rent" (s. 4). As to the application of this section to a School Board school; *V. R. v. London School Board*, 55 L. J. M. C. 169; 17 Q. B. D. 738; 55 L. T. 384; 34 W. R. 583; 50 J. P. 419; *Pullen v. St. Saviour*, 1900, 1 Q. B. 138; 69 L. J. Q. B. 139; 81 L. T. 583; 48 W. R. 186. *Cp.*, "Rateable Value," sub ANNUAL VALUE.

#### V. FULL ANNUAL VALUE.

A thing or right "*In Gross*," is one that is independent of anything else: *e.g.* a Lord in Gross, as is the King in respect of his Crown (Cowel), a Sum of Money in Gross, as distinct from a Rent (Touch. 80), or a COMMON in Gross, as distinct from a Common Appendant or Appurtenant (2 Bl. Com. 34), or an ADVOWSON in Gross, as distinct from one annexed to a Manor (2 Bl. Com. 22), or a Villein in Gross "which belongs to the person of the Lord; and belongeth not to any Mannor, lands &c," as a Villein Regardant did (Litt. s. 181: Co. Litt. 120 a, 120 b: 2 Bl. Com. 92, 93). A Power "is Appendant when the estate created by its exercise over-reaches and affects the estate and interest of the Donee of the Power. It is in Gross when the estate so created is beyond, and does not affect, the estate or interest of such Donee" (Farwell, 9). *Cp.* APPENDANT. V. FISHERY: INCORPOREAL HEREDIT.

"GROSS NEGLIGENCE," — "sometimes called 'Wilful Blindness'" (*Henderson v. Comptoir D'Escompte*, 42 L. J. P. C. 64). — "is the same thing as 'Negligence,' with the addition of a vituperative epithet" (per Rolfe, B., *Wilson v. Brett*, 11 M. & W. 115, 116; cited with approval by Willes, J., *Grill v. General Iron Screw Colliery Co.*, 35 L. J. C. P. 330; L. R. 1 C. P. 600; *affd* 37 L. J. C. P. 205; L. R. 3 C. P. 476). Referring to this phrase, Erle, C. J., said (35 L. J. C. P. 324, 325), "I advisedly abstained from using a word to which I can attach no definite meaning; and no one, as far as I know, ever was able to do so." But in *Lord v. Mid. Ry* (L. R. 2 C. P. 344) Willes, J., said, — "Any negligence is gross in one who undertakes a *duty* and fails to perform it. The term 'Gross Negligence' is applied to the case of a GRATUITOUS Bailee who is not liable unless he fails to exercise the degree of skill which *he* possesses." As to duty, *V. Le Lievre v. Gould*, 1893, 1 Q. B. 491.

So, as regards the negligence, apart from FRAUD, for which Directors of a Co will be answerable, Lindley, M. R., said, "It must be, in a business sense, Culpable or Gross" (*Lagunas Co v. Lagunas Syndicate*, 1899, 2 Ch. 392; 68 L. J. Ch. 707), apparently using "Gross" as a convertible term for "Culpable." "Their negligence must be not the omission to take all possible care; it must be much more blameable than that; it must be, in a business sense, Culpable or Gross. We do not know how better to describe it. Some useful observations justifying the expression 'Gross Negligence' will be found in *Ld Chelmsford's* judgment in *Giblin v. McMullen*, L. R. 2 P. C. 336, 337; 38 L. J. P. C. 28" (per Lindley, M. R., *Re National Bank of Wales*, 1899, 2 Ch. 672; 68 L. J. Ch. 652).

*Vf*, *McCawley v. Furness Ry*, 42 L. J. Q. B. 4; L. R. 8 Q. B. 57; 1 Sm. L. C. 223; *Petrie v. S. S. Rostrevor*, 1898, 2 I. R. 556.

If a Judge uses the expression as a material matter in his summing-up to a jury, it will be Mis-direction if he does not explain it (*Cashill v. Wright*, 6 E. & B. 891).

"Gross Negligence" is used in s. 2, Libel Act, 1843, 6 & 7 V. c. 96; but, apparently, there is no reported English decision as to what is such negligence in the conduct of a Newspaper. "In America it has been decided that the jury may take into consideration the hurry necessarily incident to the preparation and publication of a Daily Newspaper, as where an article is brought in at the last moment before going to press (*Scripps v. Reilly*, 38 Mich. 10); but that the excitement of an Election is no mitigation (*Rearick v. Wilcox*, 81 Ill. 77)": Odgers, 370.

"Gross or Culpable Negligence" by a purchaser of Realty; *V*. per Cranworth, C., *Ware v. Egmont*, 4 D. G. M. & G. 473, 474; 24 L. J. Ch. 361; *Vh*, per Lindley, L. J., *Bailey v. Barnes*, 1894, 1 Ch. 35; 63 L. J. Ch. 73; 69 L. T. 542; 42 W. R. 66; *Vf*, OUGHT.

Gross Profits; *V*. NET PROFITS.

"Gross Tonnage" of Ships; *V*. *Burrell v. Simpson*, 4 Sess. Ca. 4th Ser. 177; *The Franconia*, 3 P. D. 164; *The Umbilo*, 1891, P. 118; 60 L. J. P. D. & A. 7, on *whcv*, *The Zanzibar*, 1892, P. 233; 61 L. J. P. D. & A. 81; *The Pilgrim*, 1895, P. 117; 64 L. J. P. D. & A. 78; *The Petrel*, 62 L. J. P. D. & A. 92; 1893, P. 320. *Vf*, REGISTER.

*V*. INDECENCY.

**GROUND.** — *V*. PLEASURE: SEA-GROUNDS: WASTE GROUND.

"Same Ground"; *V*. SAME.

"Equitable grounds"; *V*. EQUITABLE.

"Special Grounds"; *V*. SPECIAL.

*V*. GROUNDED UPON.

**GROUND GAME.** — Quia Ground Game Act, 1880, "'Ground Game,' means, hares and rabbits" (s. 8).

*Vh*, 6 Encyc. 96-98. *Cp*, GAME. *V*. OCCUPIER: VOID, towards end.

**GROUND RENT.**—“By the expression ‘Ground Rent,’ if unexplained, is to be understood a rent less than the RACK-RENT of the premises: its proper meaning is the rent at which land is let for the purpose of improvement by building (*Stewart v. Alliston*, 1 Mer. 26: *Sr. Bartlett v. Salmon*, 6 D. G. M. & G. 33; 26 L. T. O. S. 82; 4 W. R. 32; and *Vf, Lecoy v. Mogford*, 2 Jur. N. S. 1084; 4 W. R. 805): but the expression is very carelessly used” (Dart, 138: *V. Sug. V. & P.* 28, 29: *Erans v. Robins*, 1 H. & C. 302; 2 Ib. 410; 31 L. J. Ex. 465; 33 Ib. 68; 6 L. T. 897; 10 W. R. 776: *Langford v. Selmes*, 3 K. & J. 220). *V. SECURED.*

By a Devise of “Ground Rent,” “not only the rent, but the reversion will pass” (1 Jarm. 797).

By a devise of “Copyhold Ground Rent,” a copyhold estate held to pass (*Walker v. Shore*, 19 Ves. 387).

By a bequest of “Leasehold Ground Rent,” not only the reserved rent, but also the reversionary leasehold interest, held to pass (*Kaye v. Larion*, 1 Bro. C. C. 76).

As to investment by Trustees in Ground Rents; *V. Vickery v. Erans*, 3 N. R. 286: Lewin, 571, 574, 575.

*Cp, RENT CHARGE.*

**GROUND STOREY.**—*V. STOREY.*

**GROUPED UPON.**—*V. CONTRACT: FOUNDED ON.*

**GROUP.**—Quà Taxes Management Act, 1880, 43 & 44 V. c. 19, “‘Group,’ means, any parishes united or grouped for the purposes of the collection of the Duties and the Land Tax” (s. 5).

**GROWING.**—*V. PRESENT TENSE.*

Growing Crops; *V. PERSONAL CHATTELS*: 6 Encyc. 98–106. In a contract for sale of an estate “including the Hay, Growing Crops, and Timber”; held, that that meant such of those things as were in existence at the time fixed for COMPLETION of the contract; and, if such time be extended by mutual agreement, then those in existence at such extended time (*Webster v. Donaldson*, 13 W. R. 515; 12 L. T. 69).

**GUARANTEE.**—“A Guarantee is a collateral engagement to answer for the DEBT, DEFAULT, OR MISCARRIAGE, of another person” (De Colyar on Guarantees: *Vf*, 6 Encyc. 106–112: ANOTHER). It has been said that “A Guarantee is a promise to another quà Creditor to secure the payment of a debt payable to him; whereas an INDEMNITY is a promise to another quà Debtor to secure the re-payment of a debt payable by him” (38 S. J. 577). *Vh, Dane v. Mortgage Insree*, 1894, 1 Q. B. 55; 63 L. J.

Q. B. 144: *Harbury Co. v. Martin*, 71 L. J. K. B. 529; 1902, 1 K. B. 778.

*V. CONTINUING GUARANTEE: ADVANCE: FORBEAR: GIVEN: RECEIVED*, at end. *Cp*, INSURANCE. *Va*, HESITATE: COLLIERY GUARANTEE.

“I guarantee my estates at C. for the payment of the above legacies”; *V. Willor v. Rhodes*, 2 Russ. 452.

**GUARANTEED.** — This word in a Charter Party “has no technical meaning. It is no more than ‘I have promised’; and means probably that the ship shall be ready” — (or whatever be the thing guaranteed). — “provided she be not prevented by the excepted perils” (per Willes, J., *Barker v. M'Andrew*, 34 L. J. C. P. 194; 18 C. B. N. S. 759; cited with approval by Esher, M. R., *Nottebohm v. Richter*, 56 L. J. Q. B. 33; 18 Q. B. D. 66; 35 W. R. 300).

“Guaranteed *Company*,” quâ Indian Guaranteed Railways Act, 1879, 42 & 43 V. c. 41, means, either of the following, — Gt Indian Peninsular Ry; Madras Ry; Bombay, Baroda, & Central India Ry; Scinde, Punjab, & Delhi Ry; Eastern Bengal Ry; South Indian Ry; Oude & Rohilcund Ry; “and any Ry Co which for the time being constructs, maintains, or works, a Railway under any guarantee from, or arrangement with, the Secretary of State for India in Council” (s. 1).

“Guaranteed *Rate of Interest*” to Preference Shareholders in a Building Socy; *V. Re Reliance By Socy*, 61 L. J. Ch. 453.

“Registration guaranteed”; *V. REGISTRATION.*

“Guaranteed” as a Trade Name; *V. Symington v. Footman*, W. N. (87) 70; 56 L. T. 696.

**GUARDIAN.** — “Guardian,” when standing alone, generally means “Guardian of the Person. An Infant may have several Guardians: he may have a Guardian of the Person, or a Guardian in Socage, or in Gavel kind, or, if he has a Copyhold estate, a Guardian according to the Custom of the Manor”; but, generally, the word means, Guardian of the Person (per Jessel, M. R., *Rimington v. Hartley*, 14 Ch. D. 632): in s. 6, Partition Act, 1876, 39 & 40 V. c. 17, it means, the Guardian *ad litem* (*lb.*).

As to Guardian *ad litem*; *V. R.* 18 and 19, Ord. 16, R. S. C., on *whr* Ann. Pr.

Guardian for Nurture; *V. NURTURE.*

*V. WARD.*

Quâ Church Patronage (Scot) Act, 1874, 37 & 38 V. c. 82, “Guardian,” includes, “Tutors, and Curators of pupils or minors or of persons labouring under incapacity or disability; and Factors loco tutoris, and Factors loco absentis” (s. 9).

Quâ Summary Jurisdiction of Justices, “Guardian,” includes, any person who (in the opinion of the Court) “has for the time being the charge of, or control over,” the Child (42 & 43 V. c. 49, s. 49; 47 & 48 V. c. 19, s. 9).



**GUARDIANS.** — “Board of Guardians”; *V.* s. 16 (1), (3). Interp Act, 1889.

Prior Stat. Def. — 9 & 10 *V.* c. 96, s. 17; 35 & 36 *V.* c. 79, s. 60; 36 & 37 *V.* c. 86, s. 27; 37 & 38 *V.* c. 88, s. 48; 38 & 39 *V.* c. 55, s. 4. — *Tr.* 43 & 44 *V.* c. 13, s. 38; 52 & 53 *V.* c. 56, s. 9.

Subsequent Stat. Def. — 53 & 54 *V.* c. 5, s. 341; 59 & 60 *V.* c. 50, s. 19.

“Overseers or Guardians” of the Parish, ss. 46 and 109, 4 & 5 *W.* 4, c. 76; *V. R. v. St. Pancras*, *E. B. & E.* 583; *R. v. St. George, Hanover Sq.*, 13 *Q. B.* 642; 18 *L. J. M. C.* 160.

*Wh.* Glen’s Poor Law: 6 *Encyc.* 114–123.

**GUEST.** — An innkeeper’s “Guest” is a TRAVELLER, passenger, wayfarer, or such like person, who, by himself, or his beast, has been, however temporarily, accepted to, and remains under, hospitality within an INN or its CURTILAGE (*Calye’s Case*, 1 *Sm. L. C.* 141, and cases there collected: *Bennett v. Melloe*, 5 *T. R.* 273; *Yorke v. Greenough*, 2 *Raym. Ld.* 866; *Medawar v. Grand Hotel Co.*, 1891, 2 *Q. B.* 11; 60 *L. J. Q. B.* 209; *Orchard v. Bush*, 1898, 2 *Q. B.* 284; 78 *L. T.* 557; 67 *L. J. Q. B.* 650; 46 *W. R.* 527; *Add. C.* 684; *Sr. Strauss v. County Hotel Co.*, 53 *L. J. Q. B.* 25; 12 *Q. B. D.* 27; *Manning v. Wells*, 9 *Humph.* 748). When he has stayed sufficiently long to obtain the necessary food and lodging for his journey he loses the character and peculiar privileges of a Guest, *e.g.* the right to demand refreshment; and, *semble*, the Innkeeper’s Lien also ceases (*Burgess v. Clements*, 4 *M. & S.* 306; *Lamond v. Richard*, 1897, 1 *Q. B.* 541; 66 *L. J. Q. B.* 315; 76 *L. T.* 141. *Cp.* BOARDER: LODGER).

“From the point of view of authority, I do not think that there is much to be said for the proposition that ‘Guest’ is limited to ‘Wayfarer.’ It is true that in old times Guests were most frequently Wayfarers, but the liability of the Innkeeper arises whenever he receives a person *causâ hospitandi* or *hospitii*” (per Wills, *J.*, *Orchard v. Bush*, *sup.*). But that dictum was *obiter*, for the *pl’t* was held to be a Wayfarer, and the dictum itself seems inconsistent with *Burgess v. Clements* and *Lamond v. Richard*, *sup.*, and with *R. v. Rymer* and *R. v. Luellin*, cited TRAVELLER; *Sr.* *Parker v. Flint*, cited LODGER, towards end.

**GUEST-TAKER.** — An Agistor: *V.* AGIST.

**GUILD.** — *V.* GILD.

**GUILDHALL.** — Quâ London Bg Act, 1894. “Guildhall.” “means, the land, offices, courts, and buildings commonly called The Guildhall, and the offices, courts, and buildings adjoining or appurtenant thereto, which now are used by, or may hereafter be erected for the use of, the Corporation or of any Committee, Commission, or Society, appointed by them” (subs. 45, s. 5).

**GUILTY.** — “Plead Guilty”; *V.* TRUTH.  
Guilty Mind: *V.* KNOWINGLY: MENS REA.

**GULE.** — Gule of August, *i.e.* the 1st of August (Termes de la Ley: Cowel).

**GUN.** — For the purposes of the Gun License Act, 1870, 33 & 34 V. c. 57, “Gun,” includes, a Firearm of any description, and an Air-gun or any other kind of gun from which any shot, bullet, or other missile, can be discharged (s. 2). A small Toy Pistol is a “Firearm” within this definition (*Campbell v. Hadley*, 40 J. P. 756).

*V.* ATTEMPT: ACCESSORY.

**GUNPOWDER.** — Quà Peace Preservation (Ir) Act, 1870, 33 & 34 V. c. 9, “Gunpowder” includes, “Gun Cotton, and any other EXPLOSIVE Matter used for the discharge of Firearms” (s. 3).

**GURGES.** — “*Gurges*, a deepe pit of water, a gors or gulfe, consisteth of water and land; and therefore by the grant thereof by that name the soile doth passe . . . In Domesday it is called *quort*, *gort*, and *gors* plurally: as for example, *de 3 gorz mille anguilla*” (Co. Litt. 5 b: *Vf*, Termes de la Ley, *Gors*). “By the name of *Stagnum* a pool, or *Gurges* a gulf, the water, land, and fish in the water, will pass” (Touch. 95).  
*V.* POOL.

This word is also used for “WEIR” (Spelm. Gloss. *Gors*); and *V.* “Gurgites,” “Gors,” and “Wears” discussed by Willes, J., *Malcomson v. O’Dea*, 10 H. L. Ca. 619. *Vf*, Elph. 583: KIDEL.

**GURNEY.** — *V.* RUSSELL GURNEY’S ACTS.

**GUT.** — “Gut,” in its ordinary signification, connotes “a portion of the animal form as a necessary part of its constitution” (per Ridley, J., *London Co. Co. v. Hirsch*, 81 L. T. 449; 63 J. P. 822); therefore, manufactured Sausage Casings are no longer “guts”; and the business of sorting, re-packing, and supplying them to sausage makers is not within an Order declaring as “OFFENSIVE” the business of a “Gut Scraper, *i.e.* any business in which gut is cleansed, scraped, or dealt with, otherwise than for the manufacture of catgut” (*S. C.*).

**GUTTER.** — *V.* DRAIN.

As used in 23 H. 8, c. 5, “a Gutter is of a less size and of a narrower passage and current, than a SEWER is; and, as I take it, a Gutter is the diminutive of a sewer: and the difference between them is, That a Sewer is a common public stream, and a Gutter is a straight private running water; and the use of a Sewer is common, and of a Gutter peculiar” (Callis, 80).

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## HABEAS CORPUS — HABITUAL

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**HABEAS CORPUS.** — “ ‘Habeas corpus,’ is a writ the which a man indited of any trespasse before Justices of the Peace, or in a Court of any Franchise, and upon his apprehension being laid in prison for the same, may have out of the King’s Bench thereby to remove himselfe thither at his own costs and to answer the cause there ; F. N. B. fol. 250 ” (Termes de la Ley).

The Habeas Corpus Act, 1679, 31 Car. 2, c. 2.

*Vh*, Jacob: 6 Encyc. 129-147: Short & Mellor’s Crown Office Practice.

**HABENDUM.** — The office of the PREMISES (in a Deed) is to express the names of the parties &c; “ the office of the Habendum is to limit the estate, so that the generall implication of the estate which by construction of law passeth in the Premises is by the Habendum controlled and qualified ” (Termes de la Ley). *Ij*, 2 Bl. Com. 298: Wms. R. P. ch. 9.

“ When a man limits a thing before the Habendum, and afterwards says, *habendum* for Years, or for Life, or in Fee, and does not name the thing in the Habendum, it shall be referred to the thing mentioned before the Habendum, and it is not necessary to repeat the thing again in the Habendum ” (*Wrotlesley v. Adams*, Plowd. 196). *V. HAVE AND TO HOLD.*

The Habendum of a Lease only marks the duration of the lessee’s Interest; its operation as a Grant is merely prospective (per Eyre, C. J., *Wyburd v. Tuck*, 1 B. & P. 464); therefore, the Lessee is only liable on his covenants from the execution of the Lease, though its habendum states the commencement of the term as from a previous DATE (*Shaw v. Kay*, 17 L. J. Ex. 17; 1 Ex. 412). *Cp*, LAST PAST.

**HABIT.** — *V. IMMORAL.*

**HABITABLE.** — Quà London Bg Act, 1894, “ ‘Habitable,’ applied to a Room, means, a Room constructed or adapted to be INHABITED ” (subs. 38, s. 5).

“ Fit for Habitation ”; *V. FIT.*

Habitable Repair. *V. REPAIR.*

**HABITUAL.** — Habitual *Criminal*; *V.* 6 Encyc. 147, 148.

Quà Habitual Drunkards Act, 1879, 42 & 43 V. c. 19, “ ‘Habitual *Drunkard*,’ means, a person who (not being amenable to any jurisdiction in Lunacy) is notwithstanding — by reason of habitual intemperate

drinking of Intoxicating Liquor — at times dangerous to himself or herself or to others, or incapable of managing himself or herself and his or her affairs” (subs. 3 (3*b*), s. 3). *Vh*, Inebriates Acts, 1898, 1899. To allege of a person that he is an Habitual Drunkard is not SLANDER *per se* (*Alexander v. Jenkins*, 1892, 1 Q. B. 797; 61 L. J. Q. B. 634).

Habitual Trade; *V. Odwell v. Willesden*, cited NEW BUILDING.

**HÂC RE.** — *V. IN HÂC RE.*

**HACKNEY CARRIAGE.** — “I think that a Hackney Carriage is a Carriage exposed for HIRE to the public, whether standing in the public street, or exposed for public use in a private gateway. The test is whether the Carriage is held out for the general accommodation of the public” (per Lush, J., *Bateson v. Oddy*, 43 L. J. M. C. 131; 30 L. T. 712; 22 W. R. 703). *Vh*, *Skinner v. Usher*, 41 L. J. M. C. 158; L. R. 7 Q. B. 423; *Case v. Storey*, L. R. 4 Ex. 319; 38 L. J. M. C. 113.

Quà Customs and Inl. Rev. Act, 1888, 51 & 52 V. c. 8, “‘Hackney Carriage,’ means, any CARRIAGE standing or plying for HIRE; and includes, any Carriage let for hire by a coachmaker, or other person, whose trade or business it is to sell carriages or to let carriages for hire; provided that such carriage is not let for a period amounting to 3 months or more” (subs. 3, s. 4). A Public Omnibus is within that def, and liable only to the lower duty of 15*s*. (*Hickman v. Birch*, 59 L. J. M. C. 22; 24 Q. B. D. 172; 6 Times Rep. 104). *Vf*, OMNIBUS.

Quà Metropolitan Public Carriage Act, 1869, 32 & 33 V. c. 115, “Hackney Carriage” means, “any Carriage for the conveyance of PASSENGERS which plies for Hire within the limits of this Act, and is not a STAGE CARRIAGE” (s. 4): *Vf*, 1 & 2 W. 4, c. 22, s. 4; 6 & 7 V. c. 86, s. 2. *Cp*, CAB.

Quà Town Police Clauses Act, 1847, 10 & 11 V. c. 89, ss. 37, 40-52, 54, 58, and 60-67, “Hackney Carriage,” “Hackney Coach,” and “CARRIAGE,” include every OMNIBUS (s. 4, 52 & 53 V. c. 14); but, observe, that though by s. 38 of the T. P. C. Act “every WHEELED CARRIAGE, whatever may be its form or construction” may be a Hackney Carriage, quà the Act, yet it must be one “used in standing or plying for hire *in any Street*”; and *vtb*, *Curtis v. Embery* and *Jones v. Short*, cited STREET.

Quà the Dublin Carriage Acts, 1853 and 1854, “Hackney Carriage,” includes, “every carriage constructed with less than four wheels used for Passengers (except a Stage Carriage, or any carriage known as Hanson’s Patent Safety Cab) which shall be used for the purpose of standing or plying for Hire in any Street or Road, or any place within the limits of” the Act of 1853 (17 & 18 V. c. 45, s. 10). *Cp*, CAB: JOB.

“Hackney Carriage plying for hire”; *V. PLY*.

**HAD.** — “Had” sometimes means “obtained,” *e.g.* “afore Execution had”; *V. EXECUTION*.

**HAD-BOTE.** — *V.* BOTE.

**HADE.** — A Hade of land was 10 Ridges (Cowel). *V.* SELION.

**HADFIELD'S ACT.** — The Judgments Act, 1864, 27 & 28 V. c. 112.

**HÆRES INSTITUTUS.** — *V.* EXECUTOR.

**HÆRES TESTAMENTARIUS.** — *V.* UNIVERSAL HEIR.

**HÆRETICO.** — *V.* HERETICO COMBURENDO.

**HAGA.** — “In Domesday, a house in a city or burrough is called *haga*; other houses are called there, *mansiones*, *mansura*, and *domus*: and in an ancient plea concerning Feversham in Kent, *haues* are interpreted to signifie *mansiones*. In Normans French it is called *mesnil* or *mesnil*” (Co. Litt. 5 b).

**HAIA.** — A Park (4 Inst. 294; Spelm.); also, a Net for catching coneyes (Ib.); also, a Hedge (Cowel). *Cp.* HAY.

**HALF A YEAR.** — A “Half a year” is not the same as “Six months” (*V.* SIX MONTHS), but means half the days of a year. “‘Half a year’ containeth 182 dayes; for the odde houres, in legall computation, are rejected” (Co. Litt. 135 b; *Va.* Redman, 441, *whr* as to reckoning a half year for a Notice to Quit). But in Woodf. (374), a half-year is stated to be 183 days.

*V.* BY LAW: HALF-YEARLY: *Cp.* QUARTER OF A YEAR.

**HALF-BLOOD.** — “‘Halfe blood,’ is when a man marrieth a wife and hath issue by her, a sonne or daughter, and the wife dyeth, and then he taketh another woman and hath by her also a son or daughter: Now these two sons are, after a sort, Brothers, or, as they are termed, halfe brothers or brothers of the halfe blood. In the same manner it is if a woman have divers issues by divers husbands who are called brothers by one mother” (Termes de la Ley, *Demy Sanke*). *V.* BROTHER.

*Cp.* Whole Blood, sub WHOLE: BLOOD.

**HALF-YEARLY.** — Where a Leasing Power provided that the rents should be reserved by “Half-yearly” payments, it was held that this required a division of the rent into, as nearly as may be, two *equal* half-yearly payments; and that, therefore, a Lease reserving rent at the Feast of St. Philip and St. James (1 May), and St. Michael (29 Sept), was not valid (*Doe d. Harries v. Morse*, 3 L. J. Ex. 70; 4 Tyr. 185; 2 Cr. & M. 247; cited in the jdgmt *Doe d. Douglas v. Lock*, 4 L. J. K. B. 118).

*V.* HALF A YEAR: YEARLY: QUARTERLY.

**HALL.** — “Hall or Office” liable to House Duty under Sch B, R. 5, House Tax Act, 1808, 48 G. 3, c. 55; — “A LIBRARY is a perfectly well-known thing and is essentially different from a Hall, which is generally a place that is used for some business purposes connected with the general objects of the Society, Company, or Corporation, which possesses it; whereas a Library is a place devoted to books, reading, and study. I cannot help thinking that if anybody were asked to describe the buildings constituting either the buildings of the Middle Temple or of Lincoln’s Inn or of any College or University, he would say that they consisted (amongst other things) of Lecture Rooms, a Hall, and a Library; and I do not think that any person would describe a building which contained a Library without the specific use of the expression” (per Wills, J., *Styles v. Middle Temple*, 68 L. J. Q. B. 161). In that case it was held that the Middle Temple Hall was liable to the Duty; but that its Library was not, it not being a “Hall or Office” (*S. C.* affd 68 L. J. Q. B. 1046; 81 L. T. 426; 48 W. R. 164; 63 J. P. 725). The Assembly Hall and College of the Free Church of Scotland, are “Halls or Offices,” and dutiable (*Scotland Free Church v. Bain*, W. N. (97) 138; 24 Rettie, 492; 3 Tax Cases, 530).

Quà Oxford University Act, 1854, 17 & 18 V. c. 81, “Hall,” means, “all Halls, other than Affiliated Halls or such Private Halls as are authorized by this Act” (s. 48); quà Universities of Oxford and Cambridge Act, 1877, 40 & 41 V. c. 48, “‘Hall,’ means, one of the following Halls, namely, — St. Mary Hall, St. Edmund Hall, St. Alban Hall, New Inn Hall, in the University of Oxford” (s. 2).

**HALYMOTE.** — *V.* Elph. 584.

**HAM.** — “Properly a house; 4 Inst. 294: a VILL; a piece of ground shaped like the ham of the leg; Spelm.” (Elph. 584, *whv*). *Va*, CROFT.

**HAMLET.** — Hamlet is “in common acceptance used for a VILL (per Kenyon, C. J., *King v. Morris*, 4 T. R. 552). Spelman (Gloss., *Hamel*) and Holt, C. J. (*Anon.*, 12 Mod. 546, pl. 912), consider it to be a part of a Vill. The distinction seems to be that a Vill has a constable and a Hamlet has none (*R. v. Hewson*, 12 Mod. 180: nom. *Chorley’s Case*, Holt, 153; 1 Salk. 175: *R. v. Horton*, 1 T. R. 374, 376)” (Elph. 584). *V.* TOWNSHIP.

**HAMMER PRICE.** — The “Hammer Price,” is the price officially fixed by the Official Assignee of the Stock Exchange for the artificial settlement of a Defaulter’s dealings with his fellow members: *Vh*, *Tompkins v. Saffery*, cited ASSETS: *Beckhuson v. Hamblet*, 1900, 2 Q. B. 18.

**HAND.** — *V.* HIS HAND: IN HAND: UNDER HAND: SECOND HAND.

**HANDICRAFT.** — Quà Workshop Regulation Act, 1867, 30 & 31 V. c. 146, “ ‘Handicraft’ shall mean, any Manual Labour exercised by way of Trade or for purposes of Gain in or incidental to the making any Article or part of an Article, or in or incidental to the altering, repairing, ornamenting, finishing, or otherwise adapting for sale, any Article ” (s. 4). Making straw plait, by a child under the age of 8 years and who is being taught such plaiting, is a “Handicraft” within this definition (*Beadon v. Parrott*, 40 L. J. M. C. 200; L. R. 6 Q. B. 718).  
*Cp*, HANDICRAFTSMAN.

V. MANUAL LABOUR: PERSONAL LABOUR.

**HANDICRAFTSMAN.** — Is a skilled Workman (per Brett, L. J., *Morgan v. London Gen. Omnibus Co*, 53 L. J. Q. B. 352; 13 Q. B. D. 832) and generally speaking is, probably, much the same as an ARTIFICER. Yet a Hairdresser is a Handicraftsman (per Palles, C. B., *R. v. Louth Jus.*, cited LABOUR: *Va, Phillips v. Innes*, cited HOLIDAY); but is not an Artificer (*Palmer v. Snow*, cited ARTIFICER). *Cp*, HANDICRAFT: LABOURER.

No “Common Baker, Brewer, Surgeon, or Scrivener, shall be interpreted or expounded, Handicraftsmen” (22 H. 8, c. 13). *Cp*, ART.

**HAND-MADE.** — *V. Kirshenboim v. Salmon*, cited FALSE TRADE DESCRIPTION.

**HANDBALE.** — This is a synonym for EARNEST (2 Bl. Com. 448); generally, now written and spoken as “handsel,” or “hansel.”

**HANDSOME GRATUITY.** — A request by a testator that a “handsome gratuity” should be given his executor, is void for uncertainty (*Jubber v. Jubber*, 9 Sim. 503).

But a promise to make a “Handsome Present” for services rendered, is evidence on which the promisee may recover reasonable recompense for those services (*Jewry v. Busk*, 5 Taunt. 302).

**HANG ABOUT.** — *V. FREQUENT.*

**HAPPEN.** — “If it happen”; *V. IV.*

**HARBOUR.** — To “harbour,” — *e.g.* thieves, ss. 10, 11, Prevention of Crimes Act, 1871, 34 & 35 V. c. 112, — means, to give persons shelter, or to permit them to congregate, even though it be only to take part in a “friendly lead” for the purpose of raising a legitimate subscription (*Marshall v. Fox*, L. R. 6 Q. B. 370; 19 W. R. 1108; 24 L. T. 751). An Innkeeper would, probably, be said to “harbour” a thief by permitting him to participate in a “free-and-easy.”

*Cp*, ASSEMBLE.

“A Harbour, in its ordinary sense, is a place to shelter ships from

the violence of the sea, and where ships are brought for commercial purposes to load and unload goods. The quays are a necessary part of a Harbour" (per Esher, M. R., *R. v. Hannam*, 2 Times Rep. 234). *Vh*, 6 Eneye. 152-158. *Cp*, HAVEN.

*Seemble*, that "Harbour" may, contextually, be synonymous with "PORT" (*R. v. Hull Dock Co*, 7 Q. B. 2; 14 L. J. M. C. 114, on *wher*, *R. v. Berwick*, 16 Q. B. D. 493; 55 L. J. M. C. 84).

Quà Mer Shipping Act, 1894, " 'Harbour,' includes, Harbours properly so called, whether natural or artificial, Estuaries, Navigable Rivers, Piers, Jetties, and other Works, in or at which SHIPS can obtain shelter, or ship and unship goods or passengers" (s. 742), a def identical with that in s. 2, 24 & 25 V. c. 47, and adopted for, and by, s. 104, Factory and Workshop Act, 1901.

Quà Burgh Harbours (Scot) Act, 1853, 16 & 17 V. c. 93, "Harbour," means, the harbour of any Royal Burgh (*V. BURGH*) possessing a harbour which is not under the regulations of any Local Act; and includes, "the whole limits assigned to such harbour by the charter of such burgh, or by any law, statute, or usage, and all docks, piers, quays, yards, works, buildings, creeks, and anchorages, within such limits" (s. 2).

Other Stat. Def. — 10 & 11 V. c. 27, s. 2; 34 & 35 V. c. 105, s. 2.

*V. PUBLIC HARBOUR: DIFFERENTIAL DUES: IMPORTED.*

"Harbour Authority," quà Mer Shipping Act, 1894, "includes, all persons, or bodies of persons corporate or unincorporate, being proprietors of, or intrusted with the duty or invested with the power of, constructing, improving, managing, regulating, maintaining, or lighting, a harbour" (s. 742), a def resembling, but a little wider than that in, s. 2, 24 & 25 V. c. 47.

Other Stat. Def. — 34 & 35 V. c. 105, s. 2; Explosives Act, 1875, 38 & 39 V. c. 17, s. 108; Shannon Act, 1885, 48 & 49 V. c. 41, s. 17; Sea Fisheries Regn Act, 1888, 51 & 52 V. c. 54, s. 14; Forged Transfers Act, 1891, 54 & 55 V. c. 43, s. 4 (2).

"Harbour Board," quà Ry and Canal Traffic Act, 1888, 51 & 52 V. c. 25, "means, any persons who are (otherwise than for private profit) intrusted with the duty, or invested with the power, of constructing, improving, managing, regulating, and maintaining, a harbour, whether natural or artificial, or any dock" (s. 55).

"Harbour Master"; Stat. Def., 10 & 11 V. c. 27, s. 2.

"Port" or "Harbour" Policy; *V. Hunting v. Boulton*, 1 Com. Ca. 120.

**HARD.** — Hard Bargain; *V. Middleton v. Brown*, 47 L. J. Ch. 411.

Hard Labour; *V. s.* 19, 28 & 29 V. c. 126; RIGOROUS.

Wall of "Hard and Incombustible" material; *V. WALL.*

"Hard Pinch," of metals so as to make them cohere, in a Patent Specification; *V. Betts v. Menzies*, 30 L. J. Q. B. 81; 31 *Ib.* 233; 10 H. L. Ca. 117.



Lord **HARDWICKE'S ACT.**—26 G. 2, c. 33, repealed by the Marriage Act, 1823, 4 G. 4, c. 76.

**Gathorne HARDY'S ACTS.**—Metropolitan Poor Act, 1867, 30 & 31 V. c. 6; amended by 31 & 32 V. c. 122:

Metropolitan Streets Act, 1867, 30 & 31 V. c. 134; amended by 31 & 32 V. c. 5:

Capital Punishment Amendment Act, 1868, 31 & 32 V. c. 24; amended by 31 & 32 V. c. 95, s. 19.

**HARM.**—*V.* INFLICT: INJURE.

**HARMONIZE.**—*V.* CORRESPOND.

**HARTER.**—The Harter Act, is the Act of Congress, U. S. A. of 13 Feb 1893: *Vh*, MANAGEMENT.

**HAS.**—*V.* HATH: HAVE.

**HAS BEEN.**—“Hath been,” construed as “is,” in the sense of indicating a continuous fact (*Ex p. Kinning*, 16 L. J. Q. B. 257; 10 Q. B. 730).

The provision in s. 23, Bankry Act, 1890, which, quâ dividend, limits interest to not exceeding 5 per cent per ann. “where a debt *has been* proved,” is not sufficient to give the section a RETROSPECTIVE operation (*Re Athlumney*, 1898, 2 Q. B. 547; 67 L. J. Q. B. 935; 79 L. T. 303; 47 W. R. 144, *wher* for cases on the retrospective operation of statutes). In *the* and referring to “has been,” Wright, J., said, “in former times draftsmen would have used the words, ‘where a debt SHALL HAVE BEEN proved’; but in modern Acts, the past tense is frequently used where no retrospective operation can be intended.” *Vf*, IS: HAVE BEEN.

**HATH.**—The Bedford Level Act, 15 Car. 2, c. 17, s. 15, provides that none shall be qualified as Governor or Bailiff that “hath” not 400 acres, or more, in the Level; held, that a mere legal estate qualifies (*Childers v. Childers*, 26 L. J. Ch. 743; 1 D. G. & J. 482; 3 Jur. N. S. 1277). In *the* Knight Bruce, L. J., said, —“‘Hath’ must be taken as equivalent to the French word ‘ait’ in old statutes, *e.g.* 2 H. 5, c. 3, and 8 H. 6, c. 7.”

Gift to the Children which A. “hath, or shall have”; *V. Gooch v. Gooch*, 14 Bea. 565; 3 D. G. M. & G. 366; 21 L. J. Ch. 238; 22 Ib. 1089: TO BE BORN.

Hath been; *V.* HAS BEEN: HAVE BEEN.

**HAT WORKS.**—*V.* NON-TEXTILE FACTORIES.

**HAULAGE.**—“Main Haulage Road”; *V.* MAIN ROAD.

**HAULM.** — *V. STRAW.*

**HAUNT.** — *V. Murphy v. Arrow*, cited **FOUND.**

**HAVE.** — A devise to children “who have Issue,” means who have Issue when the Will takes effect (*Doe d. Burton v. White*, 18 L. J. Ex. 59; 2 Ex. 797).

A devise of “the lands which *I have*,” speaks from the death, and not the date of the Will, and therefore includes lands acquired after the Will (*Doe d. York v. Walker*, 12 M. & W. 591); and on the balance of the authorities (and, *semble*, of good sense), that larger interpretation would not be narrowed to the date of the Will, if the phrase were “the lands which I *now* have” (*Castle v. Fox*, L. R. 11 Eq. 542; 40 L. J. Ch. 302; *Miles v. Miles*, 35 Bea. 192; 35 L. J. Ch. 315; L. R. 1 Eq. 462; *Cox v. Bennett*, L. R. 6 Eq. 422; *Wedgwood v. Denton*, 40 L. J. Ch. 526; L. R. 12 Eq. 290; *Saxton v. Saxton*, 13 Ch. D. 359; 49 L. J. Ch. 128; *Backwell v. Child*, 1 Amb. 260; *Struthers v. Struthers*, 5 W. R. 809; *Re Russell*, 51 L. J. Ch. 401; 19 Ch. D. 432; *See*, per contra, *Cole v. Scott*, 19 L. J. Ch. 63; 1 M. & G. 518; *Emuss v. Smith*, 2 D. G. & S. 722). *Vf*, Now: *Cp*, My.

If donee in fee shall die and “*shall not have*” disposed of the property, then over; means, that the Disposition must be accomplished in his lifetime, and cannot be by Will; because “*shall not have*” means “*shall not already have*” (*Doe d. Stevenson v. Glover*, 1 C. B. 461, *n*; *Va*, **DISPOSE OF**).

*V. HATH: HAVING.*

**HAVE ADJUDGED.** — A statement in a Justice’s Order that “we have adjudged,” means, “we do now adjudge” (*R. v. Moulden or Muulden*, 6 L. J. O. S. M. C. 76; 8 B. & C. 78; *R. v. St. Nicholas, Leicester*, 4 L. J. M. C. 97; 3 A. & E. 79; 4 N. & M. 624).

**TO HAVE AND TO HOLD.** — These words (since Conv & L. P. Act, 1881, generally shortened to “To hold”) which, as is well known, are the commencement of the **HABENDUM** in a Conveyance, mean, “*to have* an estate of inheritance and *to hold* the same of some superior lord” (Co. Litt. 6a).

*V. HOLD.*

**HAVE BEEN.** — This phrase will frequently mean, immediately prior to a specified time. Thus, Exhibitioners were to be elected from boys “who shall have been” or “who have been” three years at W. School; held, that only those boys were eligible who had been three years at the School at the time of, and immediately preceding, the election (*Re Storie*, 2 D. G. F. & J. 529, 539; 30 L. J. Ch. 193; 9 W. R. 323; 3 L. T. 638).

*V. SHALL HAVE BEEN: HAS BEEN.*

**HAVE HAD.** — “Have had a child”; *V. BORN.*

**HAVE OBTAINED.** — Construed “shall have obtained” (*Benjamin v. Belcher*, 9 L. J. Q. B. 153; 11 A. & E. 367).

**HAVE OR CONVEY.** — “Have in his possession or Convey anything suspected of being stolen or unlawfully obtained,” s. 24, 2 & 3 V. c. 71; — “Have” here is read as *ejusdem generis* with “convey,” and therefore the phrase does not apply to the possession of a building, but is confined to the class of offences contemplated by s. 66, 2 & 3 V. c. 47 (*Hudley v. Perks*, 35 L. J. M. C. 177; L. R. 1 Q. B. 444; 7 B. & S. 375: *V. KEEP.*).

**HAVE OR KEEP.** — *V. KEEP.*

**HAVEN.** — “A Haven is a place of a large receipt and safe riding of Ships, so situate and secured by the land circumjacent that the vessels thereby ride and anchor safely and are protected by the adjacent land from dangerous or violent winds; as Milford Haven, Plymouth Haven, and the like” (*Hale, De Portibus Maris*, ch. 2). *Cp. HARBOUR: ROAD.*  
For the diversity between CREEK, Haven, and PORT, *V. CALLIS*, 58.

**HAVING.** — “Every person having *Manors*,” &c, may make Wills, 34 H. 8, c. 5; “This word ‘having’ imports two things, *sc.* Ownership and Time of Ownership; for he ought to have the land at the time of the making of his Will, and the statute gives such person *having*, &c” the authority thereby conferred (*Butler & Baker’s Case*, 3 Rep. 30 a). *V. HAVE: PRESENT TENSE.*

“In consideration of your *having agreed*,” *e.g.* to stay an action, states an Effective Consideration; for it imports a continuing act (*Tanner v. Moore*, 9 Q. B. 1; 15 L. J. Q. B. 391); so, if the phrase be “*Having resigned*” an Office (*Steele v. Hoe*, 14 Q. B. 431; 19 L. J. Q. B. 89), or “*having released*” A. (*Butcher v. Stewart*, 11 M. & W. 857; 12 L. J. Ex. 391). *Cp. GIVEN: ADVANCE: RECEIVED: SECURE.*

“*Having erected or improved*”; *V. ERECTED.*

“*Having first duly paid* the said rent and performing” the lessee’s covenants, — in a clause enabling a lessee to determine by notice, — means that the only Conditions Precedent are “that at the time of giving the notice there should be no arrear of rent, and that at some time or other (but without saying when) the lessee’s covenants should be performed” (per Channell, J., *Seaward v. Dren*, 67 L. J. Q. B. 325: *V. Grey v. Friar*, 20 L. J. Ex. 365; 5 Ex. 597, on *while* the H. L. was equally divided and so decision *affd.*, 4 H. L. Ca. 565).

“*Having in his Possession*,” s. 15 (7), Friendly Soc. Act, 1875; *V. Re Miller*, cited POSSESSION.

The words “Die without having *Issue*” are equivalent to DIE WITH-

OUT ISSUE (*Lee's Case*, 1 Leon. 385; *Cole v. Goble*, 22 L. J. C. P. 148; 13 C. B. 445; *Eastwood v. Lockwood*, 36 L. J. Ch. 573; L. R. 3 Eq. 487). *Cp.*, LEAVING.

Court "having *Jurisdiction* under this Act to wind-up the Co," s. 32 (2), 53 & 54 V. c. 63; *V. Re Mining Shares Co*, 1893, 2 Ch. 660; 62 L. J. Ch. 434; 68 L. T. 578; 41 W. R. 376.

"Having or *Conveying*"; *V.* HAVE OR CONVEY.

"Having or *Holding*" lands, s. 4, Land Tax Act, 1797; *V. Ward v. Const*, 10 B. & C. 647.

"Having or *Taking*" BOTE for repair; *V.* BEING.

"Having regard"; *V.* REGARD.

**HAWES.** — *V.* HAGA.

**HAWGH** or **HOWGH.** — *V.* COMBE.

**HAWK: HAWKER.** — "'Hawkers' be a sort of deceitful fellows that go from place to place buying and selling brass, pewter, and other merchandize, that ought to be uttered in OPEN Market" (*Cowel*, cited *Morrill v. State*, 38 Wis. 437).

A person who goes from the town in which he resides and takes a room at another town and there sells goods which are brought direct from the town of his residence, was a "Hawker, Pedlar, Petty Chapman, or other trading person going from town to town" within s. 6, 50 G. 3, c. 41 (*Manson v. Hope*, 31 L. J. M. C. 191; 2 B. & S. 498: *Vf.*, TRADING PERSON).

But 50 G. 3, c. 41 and the other Acts relating to Hawkers are now consolidated and repealed by the Hawkers Act, 1888, 51 & 52 V. c. 33, which, by s. 2, provides that "'Hawker' means, any person who travels with a horse or other beast bearing or drawing burden, and goes from place to place or to other men's houses carrying to sell or exposing for sale any goods, wares, or merchandize, or exposing samples or patterns of any goods, wares, or merchandize to be afterwards delivered; and includes, any person who travels by any means of locomotion to any place in which he does not usually reside or carry on business, and there sells or exposes for sale any goods, wares, or merchandize in or at any house, shop, room, booth, stall, or other place whatever, hired or used by him for that purpose."

*Semble*, a single act of selling does not make a Hawker (*R. v. Little*, 1 Burr. 609); *secus*, of habitually selling, as distinguished from merely delivering goods previously ordered (*O'Dea v. Crowthurst*, 68 L. J. Q. B. 655; 80 L. T. 491; 63 J. P. 424).

Quà Petroleum (Hawkers) Act, 1881, 44 & 45 V. c. 67, a person is deemed "to hawk Petroleum if, by himself or his servants, he goes about carrying petroleum to sell,—whether going from town to town or to other men's houses, or selling it in the streets of the place of his resi-

dence or otherwise, and whether with or without any horse or other beast bearing or drawing burden" (s. 6).

Quà Public Houses Acts Amendment (Scot) Act, 1862, 25 & 26 V. c. 35, " 'Hawking' shall mean and include, TRAFFICKING in or about the streets, highways, or other places, or in or from any boat or other vessel upon the water" (s. 37).

"Carry to sell"; *V.* CARRY.

*Vh*, Termes de la Ley, *Haukers*: 6 Encyc. 158-161.

*V.* LICENSED HAWKER: PEDLAR: MAKER.

**HAWKING.** — *V.* HUNTING.

**HAY.** — "A hedge or inclosure; also, a net to take Game" (Jacob).  
*Cp*, ΗΑΙΑ.

**HAY-BOTE.** — *V.* BOTE.

**HAZARDOUS.** — *V.* RASH AND HAZARDOUS.

**HE OR THEY PAYING FREIGHT.** — "It is now well settled that the usual clause in Bills of Lading engaging the Master to deliver goods to the consignees or assignees 'he or they paying freight' is introduced for the benefit of the Master only, and does not cast upon him the duty of obtaining at his peril the freight from the consignees at the time of the delivery" (1 Maude & P. 386, 387, citing *Weguclin v. Cellier*, L. R. 6 H. L. 286; 42 L. J. Ch. 758). *Vf* PAYING.

**HEAD.** — How a trust for settling estates is to be executed where the testator says that his object is "to have a *Head to the Family*"; *V.* *Woolmore v. Burrows*, cited STRICT'ENTAIL.

"Head and other *Constables*"; Stat. Def., Constabulary (Ir) Act, 1866, 29 & 30 V. c. 103, s. 1; 37 & 38 V. c. 80, s. 1.

"Head *Manager*" of a Mine; Stat. Def., 6 & 7 W. 4, c. 106, s. 44.

Head *Office*; *V.* PRINCIPAL OFFICE.

Head *Officer*; *V.* OFFICER: CHIEF.

**HEADING.** — A word only cannot be registered as a TRADE-MARK on the ground of being a "Heading" within s. 64, 46 & 47 V. c. 57, repld s. 10, 51 & 52 V. c. 50 (*Re Leonard and Ellis*, 26 Ch. D. 288; 53 L. J. Ch. 603; 32 W. R. 530).

*V.* BRAND.

**HEADLAM'S ACTS.** — The Trustee Act, 1850, 13 & 14 V. c. 60: The Trustee Act, 1852, 15 & 16 V. c. 55.

**HEALER.** — "He is a Healer of Felons," meaning a Concealer of Felons, is Slander (*Pridham v. Tucker*, *Yelv.* 153).

**HEALTH.**—That is Injurious to Health which makes sick people worse, — *e.g.* an offensive smell (*Malton Local Bd v. Malton Manure Co*, 49 L. J. M. C. 90; 4 Ex. D. 302).

“Injury to its health”; *V. INJURY.*

A Warranty, quâ a Life Policy, that the assured is “in Health,” or “in Good Health,” “can never mean that he has not the seeds of disorder: we are all born with the seeds of mortality in us. A man subject to the gout is a Life capable of being insured if he has no sickness at the time to make it an unequal contract” (per Mansfield, C. J., *Willis v. Poole*, Park, 935); the only question on such a Warranty is, Was the insured “in a reasonable good state of health and such a life as ought to be insured on common terms?” (per Mansfield, C. J., *Ross v. Bradshaw*, Park, 934); in *this* the insured at the time of the Warranty had received a wound in his loins which occasioned a partial relaxation or palsy preventing him from retaining his urine or fæces, but which wound did not cause the death; and, on the ruling just stated, the jury found he was then in “Good Health.” *Vf, Morrison v. Muspratt*, 4 Bing. 60.

*V. PUBLIC HEALTH.*

**HEAPED MEASURE.** — *V. BUSHEL.*

**HEAR : HEARING.** — To “hear” a cause or matter means, to hear and determine it. And “unless there be something which by natural intendment, or otherwise, would cut down the meaning, I apprehend there can be no doubt that the legislature, when they direct a particular cause to be heard in a particular Court, mean that it is to be heard and finally disposed of there. And further, when they say that it is to be heard — (meaning, heard and finally disposed of) — in a particular Court, they mean, unless there is something in the context which either by natural interpretation or by necessary implication would cut it down, that in all matters which are not provided for that Court is to follow its ordinary procedure” (per Ld Blackburn, *Re Green*, 51 L. J. Q. B. 44); or, as Selborne, C., put it in the same case, “hearing” includes not only its necessary antecedents, but also its necessary or proper consequences (Ib. 40; nom. *Green v. Penzance*, 6 App. Ca. 657). *Vf, R. v. Canterbury, Archbp*, 1 E. & E. 545; 28 L. J. Q. B. 154; 7 W. R. 212.

But sometimes to “hear” is not quite the same as to “hear and determine” (per Denman, C. J., *R. v. Warwickshire Jus.*, 4 L. J. M. C. 62; 4 N. & M. 370; 2 A. & E. 768).

“Hear and determine”; *V. Termes de la Ley, Oyer and Terminer: Ex p. Gorman*, 1894, A. C. 23; 63 L. J. M. C. 84; 70 L. T. 46; 58 J. P. 316: **OYER AND TERMINER.**

When power is given “to hear and determine” an Offence, the condition is implied that the accused be first cited by summons, and have an opportunity of defence (*Dwar. 671, 672*).

When two or more are to "hear and determine," they must sit together, not separately (Burn's Justice, Introd. xxiv, cited Dwar. 670).

Under s. 6, Sum Jur Act, 1857, 20 & 21 V. c. 43, the Court has to "hear and determine the question or questions of law arising" on the case stated; therefore, it will take cognizance of such a question though the same was not made at the hearing; *scrus*, of a matter of fact (*Knight v. Halliwell*, 43 L. J. Q. B. 137; L. R. 9 Q. B. 412; 30 L. T. 359; 22 W. R. 689).

*Vf*, on "hear and determine," *R. v. Sykes*, 45 L. J. M. C. 39; 1 Q. B. D. 52; 24 W. R. 141; 33 L. T. 566.

"Hearing of any Motion or Summons," s. 46, Com. L. Pro. Act, 1854, included an application for a Rule *nisi* (*Morgan v. Alexander*, 44 L. J. C. P. 167; L. R. 10 C. P. 184, distinguishing *Thomas v. Stutterheim*, 5 W. R. 6).

There is a "Hearing" of a Summons before Justices, *e.g.* s. 27, 9 G. 4, c. 31, if the defendant attends on the return day and claims and obtains its dismissal, the complainant having withdrawn complaint and not appearing (*Bradshaw v. Vaughton*, 30 L. J. C. P. 93; 9 C. B. N. S. 103; 25 J. P. 102; 9 W. R. 120; 3 L. T. 373; *Tunncliffe v. Todd*, 17 L. J. M. C. 67; 5 C. B. 553; 12 J. P. 249; *R. v. Stamper*, 10 L. J. M. C. 73; 1 Q. B. 119). To avoid the rule in these cases quà the effect of a Certificate of Dismissal in a case of Assault or Battery, the Hearing must now be "upon the MERITS" (s. 44, 24 & 25 V. c. 100).

V. DAY OF HEARING: TRIAL: HIMSELF.

**HEARD AND FINALLY DETERMINED.**—A provision that certain matters shall be "heard and finally determined" by an Inferior Court, does not oust the supervision of the High Court (*R. v. Plowright*, 3 Mod. 95; 2 Hawk. P. C. c. 27, s. 23, cited Maxwell, 153). *Vf*, HEAR.

**HEARD OF.**—The presumption of Death of a person who has "never been heard of" for 7 years; *V. Prudential Assree v. Edmonds*, 2 App. Ca. 487; *Randle v. Lory*, 6 A. & E. 223. *V. PRESUMPTION.*

**HEARSAY.**—"In its legal sense 'Hearsay' Evidence is all EVIDENCE which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person" (Taylor on Evidence, 9 ed., 368).

Sometimes it is said "Hearsay is not Evidence"; but see this maxim examined, s. 495, Best on Evidence.

*Vh*, Rosc. N. P. 44 *et seq.*

**HEDGE-BOTE.**—*V. BOTE.*

**HEIGHT.**—Quà London Bg Act, 1894, "Height," in relation to any BUILDING, means, the measurement taken *from* the Level of the

Footway (if any) immediately in front of the centre of the face of the building, or (where there is no such Footway) from the Level of the Ground before excavation, to the Level of the Top of the Parapet, or (where there is no Parapet) to the Level of the Top of the EXTERNAL WALL, or (in the case of Gabled Buildings) to the Base of the Gable" (subs. 21, s. 5).

"Building which exceeds 30 feet in Height," s. 7 (1), Workmen's Comp Act, 1897, means, one which for the time being exceeds that height, not one in course of building which, when complete, will do so (*Billings v. Holloway*, 1899, 1 Q. B. 70; 68 L. J. Q. B. 16; 79 L. T. 396; 47 W. R. 105); the measurement must be taken to the ridge of the roof (*Hoddinott v. Newton*, 1899, 1 Q. B. 1018; 68 L. J. Q. B. 495; 80 L. T. 558; 47 W. R. 499; revd on another point, *V. CONSTRUCTED*). *Vf*, *Rixson v. Pritchard*, 1900, 1 Q. B. 800; 69 L. J. Q. B. 494; 82 L. T. 186; *Knight v. Cubitt*, 71 L. J. K. B. 65; 1902, 1 K. B. 31: MACHINERY: SCAFFOLDING.

**HEIR: HEIRS.**—The word "heir" means the person born or begotten in wedlock (*V. CHILD*), of human shape, in allegiance to the Crown, and who, according to the English Canons of Descent, is entitled to the undevise'd freehold estates of inheritance in England of a deceased person (Co. Litt. 7 b-8 b; 2 Bl. Com. 246-251). "A man cannot at his decease have more than one heir, for although several females may be Co-Heiresses yet they are in point of law only one Heir" (per Lindley, L. J., *Evans v. Evans*, 1892, 2 Ch. 173; 61 L. J. Ch. 456; 67 L. T. 152; 40 W. R. 465).

For the Canons of Descent relating to persons dying before 1 Jan 1834, *V. 2 Bl. Com. ch. 14*; and relating to persons dying since that date, *V. Inheritance Act, 1833, 3 & 4 W. 4, c. 106, and Wms. R. P. ch. 4*. The tenures by GAVELKIND (Litt. s. 210; Co. Litt. 140 a; 2 Bl. Com. 84; Wms. R. P. 105) and BOROUGH ENGLISH (Litt. s. 211; Co. Litt. 140 b; 2 Bl. Com. 83; Wms. R. P. 107) are exceptions as regards the descent of freehold estates. COPYHOLD estates descend to the person who is heir according to the Custom of the particular manor (Litt. ss. 73, 77; 2 Bl. Com. 97; Wms. R. P. 303).

So if, by Will, a person be appointed or recognized as "heir" to the testator, that will amount to a devise in fee of testator's undisposed of realty; *V. ACKNOWLEDGE.*

Where a devise is made of property held in Gavelkind or according to Borough English, or of Copyholds, to A. for life, with remainder to the "Heir Male" of A. (*Thorp v. Owen*, 2 Sm. & G. 90), or to the "RIGHT HEIRS" of A. (when words of PURCHASE), or to the "heirs" of A. (by words of Purchase), or "LAWFUL REPRESENTATIVES" (*Mallinson v. Liddle*, 39 L. J. Ch. 426), the heir at Common Law will take (*Re Garland*, 47 L. J. Ch. 711; 9 Ch. D. 213; *Sladen v. Sladen*, 31 L. J. Ch.



775; 2 J. & H. 369: Co. Litt. 10 a, and Hargrave's *n* 4 thereon: *Va*, MALE: *De Beauvoir v. De Beauvoir*, 15 Sim. 163; 15 L. J. Ch. 305; 3 H. L. Ca. 524: 2 Jarm. 78: Lewin, 1007: Watson Eq. 1373). But if the phrase "heirs" be one of Limitation, then the heir according to the peculiar tenure will take (Co. Litt. 10 a, and Hargrave's *n* 3 thereon: Co. Litt. 27 a: *Doe d. Eustace v. Easley*, 4 L. J. Ex. 87; 1 Cr. M. & R. 823).

V. HEIRS AND ASSIGNS: LAWFUL HEIRS: NEXT HEIR.

"Heirs" is, *primâ facie*, a word of Limitation, so that a devise or conveyance of realty to "A. and his heirs" merely limits or defines the estate that is taken by A., but gives no indefeasible interest to his heirs (Wms. R. P. 120: Watson Eq. 199, 1371 *et seq*). The rule (which is a rule of Law and not a mere rule of Construction, *Van Grutten v. Foxwell*, *inf*), namely, the well-known *Rule in Shelley's Case* (1 Rep. 94; for a defence of which, *V. jdgmt* of Earl Cairns, *Bowen v. Lewis*, 54 L. J. Q. B. 63, 64; 9 App. Ca. 890: it has been and is adhered to for its "good practical results," per Lindley, L. J., *Evans v. Evans*, *sup*), is probably the most conspicuous example of the application of this principle, laying down, as it does, the proposition that when A. takes an estate of freehold, and, by the same document, an estate is limited, either mediately or immediately, to his heirs in fee or in tail, the word "heirs" merely limits the estate of A., which he can dispose of, by the appointed means, to the exclusion of his heirs, who can only take as heirs in the event of A. making no effectual disposition of the property (Wms. R. P. 211, 215). But the first estate of freehold must be of the same quality as the limitation, *i.e.* both must be legal or both equitable; otherwise *Shelley's Case* will not apply (per Turner, L. J., *Re Wynch*, 23 L. J. Ch. 930; 5 D. G. M. & G. 188; and *V. obs* of Cranworth, C., therein): and in a Will (even where the first estate and the limitation are alike in quality) the context may control "heirs" to be read as a word of purchase, and then *Shelley's Case* would not apply (*White v. Collins*, *inf*: *Jordan v. Adams*, 29 L. J. C. P. 180; 30 *Ib.* 161; 6 C. B. N. S. 748; 9 *Ib.* 483; 9 W. R. 593: *Pedder v. Hunt*, 56 L. J. Q. B. 212; 18 Q. B. D. 565; 56 L. T. 687; 35 W. R. 371). For a collection and statement of cases in which the Rule in *Shelley's Case* has been applied, *V. jdgmt* of Lindley, L. J., *Evans v. Evans*, *sup*, and for its origin and history, *V. jdgmt* of Ld Macnaghten, *Van Grutten v. Foxwell*, 1897, A. C. 658; 66 L. J. Q. B. 745; 77 L. T. 170; 46 W. R. 426; *ethle*, *Foxwell v. Van Grutten*, 78 L. T. 231; 79 *Ib.* 617; 82 *Ib.* 272; 48 W. R. 653. For a statement of the Rule, *V. Goodeve*, 237 *et seq*, and for an elaborate discussion of it, *V. 4 Cru. Dig.* 304-328; 6 *Ib.* 275-325: Jarm. ch. 36: Watson Eq. 217-221: Elph. 238, 242-246: 37 S. J. 96, 113, 129.

"There is no case which establishes that you may not apply the Rule in *Shelley's Case* to a gift of Personalty" (per Bacon, V. C., *Comfort v. Brown*, 48 L. J. Ch. 318; 10 Ch. D. 146: *Sv*, *Crawford v. Trotter*,

4 Mad. 361). In *Comfort v. Brown* a blended gift of freeholds and leaseholds was made to A. for life, with remainders (which failed), and on their failure to "the Right Heirs of A. for ever," and it was held that A. took an absolute interest in the leaseholds as well as the freeholds. *Vf*, EXECUTORS.

When the words are to "A. and his heir" (in the singular number), the heir would probably take by Purchase as *persona designata*, and that construction would be conclusively established if the words were followed by a limitation to the heirs of the heir (*Gwynne v. Muddock*, 14 Ves. 488; *Tetlow v. Ashton*, 20 L. J. Ch. 53; *Greaves v. Simpson*, 33 L. J. Ch. 641; 10 L. T. O. S. 448). So, of a devise to A. for life, remainder "to the use of such *person or persons* as at the decease of A. shall be his heir or heirs-at-law and of the heirs and assigns of such person or persons" (*Evans v. Evans*, sup): *Vf*, *Re Bishop and Richardson*, inf.

But "according to many authorities 'heir' may be *nomen collectivum* as well in a Deed as a Will, and operate in both in the same manner as 'heirs' in the plural number: *V*. 2 Rol. Ab. 253; 1 Ib. 832, K. pl. 1, 2; Godb. 155; Jo. T. 111; Cro. Eliz. 313; Robins, Gavelkind, 95, 96; Burr. Part 4, v. 1, p. 38; Vin. Ab. *Devise*, U. a. pl. 13 and *Parols*, H." (Hargrave's *n* 45 to Co. Litt. 8 b; *V. Blackburn v. Staples*, 2 V. & B. 371; *Britton v. Twining*, 3 Mer. 176; *Chambers v. Taylor*, 6 L. J. Ch. 193; 2 My. & C. 376). But, probably, such a construction is a difficult one in a Deed; *V*. inf.

A gift in Remainder to an "heir" as *persona designata* will, as a rule, be a vested interest in the person answering the description at the testator's death (*Doe d. Pilkington v. Spratt*, 5 B. & Ad. 731), or as soon as there is such a person (*Danvers v. Clarendon*, 1 Vern. 35; *Vf* 2 Jarm. 87). For a context controlling this rule, *V. Phillips v. Deakin*, 1 M. & S. 744; *Doe v. Frost*, 3 B. & Ald. 546.

*Vf* as to words under which the "heir" would take as Purchaser, 2 Jarm. ch. 28: HEIRS AND ASSIGNS: — and where used in a Will as a word of Limitation, *White v. Collins*, 1 Com. 289; *Fuller v. Chamier*, 35 L. J. Ch. 772; L. R. 2 Eq. 682. *Va*, as to the use of "heir" (in the singular), *Watson Eq.* 200, 208; *Elph.* 252, 253; 37 S. J. 129.

A *Grant* to A. "and his heir," in the singular number, gives only a life estate to A., and the heir takes nothing (Co. Litt. 8 b, 22 a; Touch. 106). *Sr*, sup: SOLE HEIR.

As to the construction of a *Power* to a person's "heirs"; *V. Lewin*, 715.

A Devise of realty to *Trustees* and their "heirs" gives them the LEGAL ESTATE, "unless something is found on the face of the Will which cuts that estate down in some determinate event" (per Stirling, J., *Re Townsend*, 1895, 1 Ch. 716; 64 L. J. Ch. 336; 72 L. T. 321; 43 W. R. 392, citing *Doe d. Davies v. Davies*, 10 L. J. Q. B. 169; 1 Q. B. 430; *Poqd*

v. *Watson*, 6 E. & B. 606: *Collier v. Walters*, 43 L. J. Ch. 216; L. R. 17 Eq. 252).

When the word "heirs" is found in conjunction with words of procreation, defining the class of heirs, — e.g. "to A. and the HEIRS OF HIS BODY," — this will create an ENTAIL in the person whose heirs are referred to (Litt. ss. 14–34, and Coke thereon; 2 Bl. Com. 113–115: *Vh, Roe v. Avis*, 4 T. R. 605: *Sv, North v. Martin*, 6 Sim. 266). In Deeds (prior to the Conv & L. P. Act, 1881) there could be no entail unless there were a designation of the body or bodies out of whom the heirs were to issue (Litt. s. 31; 2 Bl. Com. 115); but by s. 51 of that Act it will be sufficient, in Deeds executed after 31st Dec 1881, to create an entail to use the words "in tail," "in tail male," or "in tail female," as the case may be. In Wills, those phrases would, probably, have always effected their apparent purpose. Generally, words of procreation were never absolutely necessary, the intention of the testator being regarded, though technical words were absent: thus, a devise "to A. and his heirs male," or to "A. and his heirs LAWFULLY BEGOTTEN," would, as they now will, create an entail (Co. Litt. 27 a: 2 Bl. Com. 115: for a collection of cases hereon, *V. 2 Jarm. ch. 35–40: Watson Eq. 207, 1371 et seq: Va, Nanfan v. Legh*, 7 Taunt. 85: *Webb v. Hearing*, Cro. Jac. 415: *Mortimer v. Hartley*, 20 L. J. Ex. 132). So "the rule is established that if a testator does express an intention that A. shall have the estate for life, and on the failure of the heirs of the body of A., the estate shall go over, the effect is that an estate tail is given to A. by necessary implication, as otherwise all the subsequent limitations would be too remote" (per Ld Blackburn, *Bowen v. Lewis*, 54 L. J. Q. B. 69; 9 App. Ca. 917, citing *Roddy v. Fitzgerald*, 6 H. L. Ca. 823: *V. Jesson v. Wright*, 2 Bligh, 1: *Doe v. Gallini*, 3 L. J. K. B. 71; 5 B. & Ad. 621: *Doe d. Atkinson v. Featherstone*, 1 B. & Ad. 944; 9 L. J. O. S. K. B. 163). *Vf*, TAIL.

"Heirs," standing alone, may be construed "Heirs of the body" where the necessity of the case so requires (*Doe d. Littledale v. Smeddle*, 2 B. & Ald. 126: *Re Smith*, 27 L. R. Ir. 121: *Hennessy v. Bray*, 11 W. R. 1053).

As to the sometimes difficult question, whether the person forming the stock of an Entail is to take an Estate for life, or In Tail; *V. Chamberlayn v. Chamberlayn*, 6 E. & B. 625; 25 L. J. Q. B. 187, 357; 27 L. T. O. S. 238: *Towns v. Wentworth*, 11 Moore P. C. 526; 31 L. T. O. S. 274: *Jordan v. Adams*, 29 L. J. C. P. 180; 30 Ib. 161; 6 C. B. N. S. 748; 9 Ib. 483; 9 W. R. 593: *Jenkins v. Clinton*, 26 Bea. 108: nom. *Jenkins v. Hughes*, 30 L. J. Ch. 870.

Contextually, especially in a Will, "heirs," or "heirs of the body," may mean CHILDREN, and then they will be words of purchase notwithstanding that the parent takes a prior estate of freehold (Elph. 256, and cases there cited: *Vf, Lowe v. Davies*, 2 Raym. Ld. 1561: *Goodtitle v.*

*Herring*, 1 East, 264: *Fetherston v. Fetherston*, 3 Cl. & F. 67: *Waller v. Snow*, Palm. 359: *Jordan v. Adams*, sup). *V. inf.* as to Personalty.

Of course, the word "heirs" is used inappropriately as indicating the successors to PERSONAL ESTATE, and when so used — when used as a word of substitution — it means, Next of Kin according to the Statute of Distribution (*Doody v. Higgins*, 2 K. & J. 729; 25 L. J. Ch. 773; 27 L. T. O. S. 281: *Low v. Smith*, 25 L. J. Ch. 503; 2 Jur. N. S. 344: *Re Gamboa*, 4 K. & J. 756: *Neilson v. Monro*, 27 W. R. 936: *Re Newton*, 37 L. J. Ch. 23; L. R. 4 Eq. 171: *Finlason v. Tatlock*, 39 L. J. Ch. 422; L. R. 9 Eq. 258: *Stannard v. Burt*, 52 L. J. Ch. 355). But, like the use of the word "heir" as regards realty (*Greaves v. Simpson*, sup), so "heir," or "heirs," as regards personalty, may be used as a designation; and then the person answering the designation will take. Thus, where there was a bequest in remainder of personalty coupled with a devise of freehold, copyhold, and leasehold, property, and the personalty with the rest was to go to testator's "own right heirs for ever" (*De Beauvoir v. De Beauvoir*, 15 L. J. Ch. 305; 15 Sim. 163; 3 H. L. Ca. 524), or "to the heir-at-law of my family" (*Tetlow v. Ashton*, 20 L. J. Ch. 53), or in the case of a bequest of personalty in remainder to testator's "next heir-at-law" (*Southgate v. Clinch*, 27 L. J. Ch. 651; 31 L. T. O. S. 263), or to be equally divided between the "heirs" of three specified persons (*Re Rootes*, 29 L. J. Ch. 868; 1 Dr. & Sm. 228), or to go to the "lawful heir or heirs" of the tenant for life (*Smith v. Butcher*, 48 L. J. Ch. 136; 10 Ch. D. 113), or, *à fortiori*, to A. and at his decease "to his eldest son or heir-at-law" (*Re Bishop and Richardson*, 1899, 1 I. R. 71), — in all these cases the heir-at-law took as *persona designata*, whilst in *Mounsey v. Blamire* (4 Russ. 384) three co-heirs took, as joint tenants, a gift of personalty made by the testatrix "to my heir": *Sv, Re Russell*, 53 L. J. Ch. 400. In *Atkinson v. L'Estrange* (15 L. R. Ir. 340) the words were to "M. for the term of her life, and to her heirs after her," and that was held an absolute bequest to M. *Vf*, Wms. Exs. 970: *Watson Eq.* 1373.

On this principle (when it applies) of the heir taking as a person designated, a bequest of Personalty "to A. and his heirs" will not lapse by the death of A. in testator's lifetime (Wms. Exs. 1074, 1075: *Gittings v. McDermott*, 2 My. & K. 69; 2 L. J. Ch. 212); but, *semble*, this would be otherwise as regards a devise of Realty (*Doe d. Turner v. Kett*, 4 T. R. 601).

In *Roberts v. Edwards* (12 W. R. 33; 33 L. J. Ch. 369; 33 Bea. 259), "heirs," in a bequest of personalty, was read as "CHILDREN": *V. sup.* as to Realty: *Vf*, *Bull v. Comberbach*, 25 Bea. 540: *Crawford v. Trotter*, 4 Mad. 362: *Sv, Smith v. Butcher*, sup.

"Heir under this my Will," construed as the Residuary Legatee (*Rose v. Rose*, 17 Ves. 347). *V. Thomason v. Moses*, 5 Bea. 77.

In *Re Walton* (25 L. J. Ch. 569; 8 D. G. M. & G. 173), where there

was a gift in remainder of personalty to children "or their heirs or assigns," the latter words were rejected as surplusage; but in *Wingfield v. Wingfield* (47 L. J. Ch. 768; 9 Ch. D. 658), a *mixed gift* of real and personal property in remainder to "brothers and sisters then living or their heirs" was read distributively, so as to mean heirs-at-law as regards the realty, and statutory next of kin (including widows) as regards the personalty — a construction which was followed in *Keay v. Boulton* (54 L. J. Ch. 48; 25 Ch. D. 212).

In *Powell v. Boggis* (14 W. R. 670), it was held that the Will used the word "heirs" once in its proper sense, twice as meaning Next-of-kin, twice as Exors and Admors, and once as Trustees. *Cp.* *Carter v. Bentall*, cited ISSUE.

A bequest of personalty in terms which, if applied to real estate, would create an Entail, vests the property absolutely in the first taker (Wms. Exs. 966, and cases there cited: Elph. 260: *Va. Re Barker*, 52 L. J. Ch. 565; *Re Lowman*, 1895, 2 Ch. 348; 64 L. J. Ch. 567), even though the bequest be directed to have operation "SO FAR AS THE RULES OF LAW WILL PERMIT" (*Searsdale v. Curzon*, 29 L. J. Ch. 249; 1 J. & H. 40).

In like manner, if "heirs" be used in connection with a legacy as merely a word of Limitation, the legatee takes an absolute interest (*Re Russell*, 53 L. J. Ch. 400).

As to a Limitation in Marriage Articles of chattels to "the heirs of the body"; *V. Lewin*, 124.

A limitation of an estate PUR AUTRE VIE to A. and his "heirs," designates the Heir, and not the Personal Representatives, of A. as the "Special Occupant" (*Wall v. Byrne*, and *King v. King*, cited SPECIAL).

As to when there is a Resulting Trust to the Heir; *V. 1 Jarm. ch. 18. Vh*, Chitty Eq. Ind. 7696.

Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "Heir" and "Heirs" are elaborately defined by its s. 89.

Quà the Law of Entail in Scotland, "Heir," "Heir of Entail," and "HEIR APPARENT" are defined by s. 52, Entail Amendment Act, 1848, 11 & 12 V. c. 36: *Vf*, as to "Heir of Entail," 16 & 17 V. c. 94, s. 25; 31 & 32 V. c. 84, s. 2; 38 & 39 V. c. 61, s. 3.

The "Heirs" of a LICENSED PERSON, in the proviso to s. 3, 35 & 36 V. c. 94, means, his Heir-at-law, even though he be a minor (*Rose v. Frogley*, 69 L. T. 346; 62 L. J. M. C. 181; 57 J. P. 376).

V. HEIRS OF THE BODY: NEXT OF KIN: FREE SIMPLE: PARCENERS: ASTRARIUS: NATURAL HEIRS: UNIVERSAL HEIR.

**HEIR APPARENT.** — An Heir Apparent, is he who if he survives his Ancestor *must* succeed: an Heir Presumptive, is he who is heir if the Ancestor dies immediately, but who will be ousted by the birth (in the lifetime of the Ancestor) and the continuance in life of one with a nearer title (*Anon.*, Lofft, 273). *V.* HEIR, towards end.

HEIR-AT-LAW. — *V.* HEIR.

HEIR MALE: HEIR FEMALE. — *V.* MALE: FEMALE: HEIR:  
FIRST HEIR MALE: RIGHT HEIR MALE.

**HEIRS AND ASSIGNS.** — The addition of “and assigns” to “heirs” in a Limitation of the Fee has now no conveyancing value, — “heirs” alone gives the fee (Wms. R. P. 121, 58: *Vf*, FEE SIMPLE: *Re Walton*, 25 L. J. Ch. 569; 8 D. G. M. & G. 173). So in *Milman v. Lane* (16 Times Rep. 568) Lawrence, J., held that in a devise to the “heirs and assigns” of a named person who took no particular freehold estate, “assigns” had no conveyancing value, and that the heir of the named person took as *persona designata*.

But “at an early period of our legal history a Feoffment or Conveyance to ‘a man and his heirs,’ only gave the right of enjoyment to a man and his heirs in succession with no power of alienation. The subject is clearly explained in *Burgess v. Wheate* (1 Bl. W. 123). After showing the original effect of a Conveyance to a man ‘and his heirs’ the M. R. proceeds, — ‘The next step in favour of the tenant was to alien without license, for which purpose a larger grant was necessary, viz., to *his heirs and assigns*.’ And he afterwards shows how the complete power of alienation was acquired, if a man had his estate limited to him ‘and his heirs’” (*Brookman v. Smith*, L. R. 7 Ex. 271; 40 L. J. Ex. 170).

And even yet “and assigns,” in the phrase “heirs and assigns,” will sometimes give a general Power of Appointment (*Tapner v. Merlott*, Willes, 177: *A-G. v. Vigor*, 8 Ves. 256: *Quested v. Michell*, 24 L. J. Ch. 722). In *this* there was a testamentary direction to pay the rents and profits of realty and personalty to A. for life, and after her decease the testator gave the realty and personalty “unto the heirs exors admors and assigns of A., according to the several natures and qualities thereof”; held, that A. took an absolute interest in the Personalty, and, as to the Realty, that she had a general Power of Appointment, and, in default of appointment, her heir would take by purchase at her decease: *Sythe, Brookman v. Smith*, sup.

The Personal Representatives of a Trustee or Mortgagee dying after 31st Dec 1881, “shall be deemed in law his Heirs and Assigns, within the meaning of all Trusts and Powers” (s. 30, Conv & L. P. Act, 1881); but that section is not applicable to Copyholds (s. 45, 50 & 51 V. c. 73).

“Heirs and Assigns,” *semble*, is too weak a context to confine to Realty a general gift which would include personalty (*Robinson v. Webb*, 17 Bea. 260).

A gift of Personalty to A. “OR his heirs or assigns”; held, an absolute gift to A. (*Re Walton*, 4 W. R. 416).

“Heirs and Assignees,” in a Scotch instrument; *V. M* ‘*Onie v. Whyte*, 15 App. Ca. 156.

Covenant with a Yearly Tenant "his heirs and assignus," giving him Right of Way; *V. Rymer v. McIlroy*, 1897, 1 Ch. 528; 66 L. J. Ch. 336; 76 L. T. 115; 45 W. R. 411.

A reservation in a Lease to a Lessor, "his heirs and assignus," attaches, as a general rule, to the reversion, so that whoever is entitled, for the time being, to the reversion, is also entitled to the reservation (*Greenaway v. Hart*, 14 C. B. 340; 23 L. J. C. P. 115; 2 W. R. 702; 23 L. T. O. S. 174; *Dynevor v. Tennant*, 57 L. J. Ch. 1078; 13 App. Ca. 279; 59 L. T. 5).

#### V. ASSIGNS.

**HEIRS, EXORS, ADMORS, AND ASSIGNS.**—This phrase means all persons claiming or to claim under the person to whom it refers whether by Deed, Will, or otherwise: *Vh*, per Hatherley, C., *Pride v. Bubb*, 41 L. J. Ch. 109; 7 Ch. 64.

"Such heirs exors or admors to be ascertained" in a stated way; held, not to be words of Limitation but, to be words of Gift to an artificial CLASS to be ascertained in a particular way (*Re Hall*, W. N. (93) 24).

**HEIRS IN MOBILIBUS.**—*V. NEXT OF KIN*, at end.

**HEIRS OF THE BODY.**—*V. HEIR*.

"Heirs of the body" and 'Issue' are far from being synonymous expressions. The former are properly words of Limitation, whereas the latter term is, in its primary sense, a word of Purchase. In several cases the Court appears to have ordered a strict settlement from the use of the term 'Issue,' where had the expression been 'Heirs of the body,' the estate would probably have been construed an estate tail" (Lewin, 129, and cases there cited).

In *Doe d. Strong v. Goff* (11 East, 668), *Gretton v. Haward* (6 Taunt. 94), *Right v. Creber* (5 B. & C. 866; 4 L. J. O. S. K. B. 324), and *Gummoe v. Howes* (23 Bea. 184; 26 L. J. Ch. 323; 5 W. R. 219; 28 L. T. O. S. 351) "heirs of the body" was, by a context, construed CHILDREN; and in *Jordan v. Adams* (29 L. J. C. P. 180; 30 Ib. 161; 6 C. B. N. S. 748; 9 Ib. 483; 9 W. R. 593), "heirs male of his body" was, by a context, construed SONS. In gifts of Personalty, "heirs of the body" will easily, if not generally, mean CHILDREN (*Symers v. Jobson*, 16 Sim. 267; *Pattenden v. Hobson*, 22 L. J. Ch. 697; 1 W. R. 282; 21 L. T. O. S. 84).

*V. ISSUE: NATURAL HEIRS: ON.*

"If in *Marriage Articles* the real estate of the husband or the wife be limited to the *heirs of the body*, or the *issue*, of the contracting parties or either of them, or to the heirs of the body, or issue and their heirs, so that 'heirs of the body' or 'issue,' if taken in their ordinary legal sense, would enable one or other of the parents to defeat the provision intended for the children, these words will then be construed in equity

to mean 'first and other sons'; and the settlement will be made upon them successively in tail as purchasers" (Lewin, 122, and cases there cited).

**HEIRLOOM.** — "In some places chattels as Heire-loomes (as the best bed, table, pot, pan, cart, and other dead chattels moveable) may go to the heire" (Co. Litt. 18 b). "'Heireloome,' is any peece of household stuffe which, by the custome of some countries, having belonged to a house for certaine descents, goes with the house, after the death of the owner, unto the Heire, and not to the Executors" (Termes de la Ley).

"Heir-looms, are such goods and personal chattels as shall go, by special Custom, to the heir along with the inheritance, and not to the executor or administrator of the last proprietor. The termination 'loom' is of Saxon origin, in which language it signifies a limb or member; so that Heir-loom is nothing else but a limb or member of the inheritance" (Wms. Exs. 633 *et seq*); but as to this derivation, *V. per Ld Cranworth, Byng v. Byng*, inf: *Vh*, 6 Encyc. 169.

There is another class of legal Heir-looms, — things which "savour of the inheritance," *e.g.* "Title Deeds, and the Chest where they are usually kept; the Patent creating a Dignity; the Garter and Collar of a Knight; an Ancient Horn whence the tenure is by CORNAGE, as in the case of the Pusey Horn; and the Ancient Jewels of the Crown" (per Chitty, L. J., *Hill v. Hill*, 1897, 1 Q. B. 483; 66 L. J. Q. B. 336).

The popular and familiar sense of the word "Heir-looms" is "things directed to descend by way of inheritance" (per Westbury, C., *Byng v. Byng*, 31 L. J. Ch. 472; 10 H. L. Ca. 183: *Va*, per Ld Cranworth, S. C.). But "if A. gives a chattel to B. and merely says that B. is to have it as an Heir-loom, no force (in the absence of any contract or special circumstances) can be attributed to the word 'Heir-loom'" (per Chitty, L. J., *Hill v. Hill*, sup, citing *Shelley v. Shelley*, 37 L. J. Ch. 357; L. R. 6 Eq. 540: *Re Johnson*, 53 L. J. Ch. 645; 26 Ch. D. 538). *Vh*, Watson Eq. 255: Wms. P. P. 12: Art. 8 S. J. 282: *Scarsdale v. Curzon*, 29 L. J. Ch. 249; 1 J. & H. 40.

For remarks on this word and as to its use in aiding the construction, and also for Forms of devising and settling Heir-looms; *V. Hill v. Hill*, sup: *Re Angerstein*, 1895, 2 Ch. 883; 65 L. J. Ch. 57; 73 L. T. 500; 44 W. R. 152: ACTUAL: ACTUAL FREEHOLD.

As to Land purchased by proceeds of Sale of Heir-looms; *V. Marlborough v. Majoribanks*, 55 L. J. Ch. 339; 32 Ch. D. 1: *Marlborough v. Queen Anne's Bounty*, 1897, 1 Ch. 712; 66 L. J. Ch. 323; 76 L. T. 388; 45 W. R. 426.

As to Sale of Heir-looms by Tenant for Life; *V. s. 37, S. L. Act*, 1882, on *whc*, *Re Radnor*, 59 L. J. Ch. 782; 45 Ch. D. 402: *Re Hope*, 1899, 2 Ch. 679; 68 L. J. Ch. 625.



**HELD.** — “Held or Enjoyed therewith”; *V. Williams v. Phillips*, 51 L. J. Q. B. 102; 8 Q. B. D. 437; *Roe v. Siddons*, 22 Q. B. D. 224; *Baring v. Abingdon*, 1892, 2 Ch. 374; 62 L. J. Ch. 105; 67 L. T. 6; 41 W. R. 22.

“Usually held and enjoyed”; *V. Brown v. Alabaster*, 57 L. J. Ch. 260; 37 Ch. D. 490.

*V.* BELONGING: COMMON: ENJOYED.

Action on the Case for Use and Occupation of “lands, tenements, or hereditals, held or occupied,” s. 14, Distress for Rent Act, 1737, 11 G. 2, c. 19; *V. Smallwood v. Sheppards*, 1895, 2 Q. B. 627; 64 L. J. Q. B. 727; 73 L. T. 219; 44 W. R. 44.

In the Pauper Settlement Act of 59 G. 3, c. 50, house or building “held,” is used as distinguished from land “occupied”; *Vh, R. v. Stow Bardolph*, 1 B. & Ad. 222; *R. v. North Collingham*, 1 B. & C. 578; *R. v. Tonbridge*, 6 Ib. 88; *R. v. Great Bolton*, 8 Ib. 71; *R. v. Wainfleet*, Ib. 227.

Share “held” in a Co, s. 25, Comp Act, 1867, repld s. 7, Comp Act, 1900, means “originally held”; therefore, a *bonâ fide* purchaser for value (without notice) of fully paid-up shares in a Co was not liable to Calls on the ground that the shares were issued gratis, or were not paid for in cash, and that no contract for their issue had been filed (*Burkinshaw v. Nicolls*, 3 App. Ca. 1004; 48 L. J. Ch. 179).

“The true meaning of the word ‘held,’—shares held.—in s. 40, Comp Act, 1867, is simply that the contributory has had his name upon the register as the holder of the shares for the period in question” (per Chitty, J., *Re Wala Wynaad Mining Co.*, 52 L. J. Ch. 88; 30 W. R. 915).

Allotments in a Land Socy “held” by the Trustees; *V.* ALLOTMENT.

Securities are not “held” by a testator’s Bank for him if not deposited by him, and the Bank holds no document of title relating thereto and only have a Power of Attorney to receive dividends and sell the securities (*Re Maitland*, 74 L. T. 274).

“Held out, or recommended”; *V.* HOLD OUT.

**HELD BURGAGE.**—*V.* BURGAGE.

**HENCEFORTH.**—*V.* FROM HENCEFORTH.

**HER.**—“Her Share”; *V. Laver v. Fielder*, cited SHARE.

*V.* HIS: MAJESTY.

**HERBAGE.**—If a man grant “*vesturam terræ.*” “the land itselfe shall not passe, because he hath a particular right in the land: for thereby he shall not have the houses, timber trees, mines, and other reall things, parcell of the inheritaunce, but he shall have the vesture of the land, (that is) the corne, grasse, underwood, swepage, and the like, and

he shall have an action of trespass *quare clausum fregit*. The same law, if a man grant *herbageum terre*, he hath a like particular right in the land, and shall have an action *quare clausum fregit*; but by grant thereof and liverie made, the soile shall not passe, as is aforesaid" (Co. Litt. 4 b, 17th Hargrave's note; *Va, Coverdale v. Charlton*, 4 Q. B. D. 113, 122; Elph. 585: *Cp, PASTURES*). *V. Cowel: Jacob.*

"Spelman (*Herbageum*) restricts *cestura terre* to that which is taken by the mouth of animals; but '*Sweepage*,' in the passage cited from Co. Litt., appears to mean 'by mowing'" (Elph. 586).

*V. COMMON: PASTURAGE: PANNAGE.*

**HEREAFTER.** — A divesting clause if the donee shall "hereafter" BECOME Bankrupt, &c, seems to mean simply, "being Bankrupt," &c; in such a case it is immaterial whether the bankry, &c, has happened before or shall have happened after the making of the instrument (*Manning v. Chambers*, 1 D. G. & S. 282; 16 L. J. Ch. 245; *Seymour v. Lucas*, 1 Dr. & Sm. 177; 29 L. J. Ch. 843; *Trappes v. Meredith*, 41 L. J. Ch. 237; 7 Ch. 248). *V. SHALL.*

*V. TO BE BORN.*

"Hereafter to be built"; Stat. Def., 7 & 8 V. c. 84, s. 2.

Where a testator gives all moneys which shall "hereafter be paid" by a Ry in respect of land taken by it, and, subject thereto, devises the land to A. for life, remainder in fee to A.'s children, "hereafter" is restricted to the interval between the date of the Will and the date of the Death of the testator (*Page v. Mid. Ry*, 95 Law Times, 252, affd on this point, 1894, 1 Ch. 11; 63 L. J. Ch. 126).

**HEREAFTER BORROW.** — The power given, s. 3, 12 & 13 V. c. 87, to Turnpike Commrs of setting apart a sinking fund to pay off moneys they should "hereafter borrow," relates to further moneys borrowed for some fresh purpose, and not to moneys borrowed at a cheaper rate to supply the place of a prior loan (*Chatham v. Rochester Commrs*, 35 L. J. M. C. 81; L. R. 1 Q. B. 24).

**HEREAFTER VALUED AND DECLARED.** — In a Marine Insurance, "The meaning of to be 'hereafter valued and declared' is, that if the insured has several adventures, all (within the description in the policy) out, he may select at his pleasure which is to be protected by the policy, and on his giving notice of such a selection to the insurers, the policy is as if it had named that ADVENTURE from the beginning" (per Ld Blackburn, *Inglis v. Stock*, 10 App. Ca. 269; 54 L. J. Q. B. 586).

**HEREBY.** — *V. HEREIN.*

**HEREBY AGREED AND DECLARED.** — *V. AGREED AND DECLARED.*

**HEREBY AUTHORIZED.** — *V. AUTHORIZED.*

**HEREBY GRANTED.** — Agreement to pay royalties on all rifles manufactured “under the powers hereby granted”; held, that there was a latent ambiguity explainable by parol (*Roden v. London Small Arms Co*, 46 L. J. Q. B. 213; 25 W. R. 269; 35 L. T. 505).

**HEREBY SETTLED.** — *V. Leman v. Saffery*, W. N. (72) 26.

**HEREDITAMENT.** — “The word ‘Hereditament’ is of as large extent as any word, for whatsoever may be inherited, be it CORPOREAL or INCORPOREAL, real, personal, or mixt, is an hereditament” (Touch. 91: — a definition almost verbally copied from Co. Litt. 6 a. *Ij*; Co. Litt. 16 a, 383 a, b). “‘Hereditament’ is defined in the text-books of authority (*e.g.* *Termes de la Ley*) to signify all such things, whether corporeal or incorporeal, which a man may have to him and his heirs by way of inheritance, and which, if they be not otherwise bequeathed, come to him who is next of blood, and not to exors or admors as chattels do” (per Wilde, C. J., *Lloyd v. Jones*, 17 L. J. C. P. 206; 6 C. B. 81). “The most comprehensive words of description applicable to Real Estate are *Tenements* and *Hereditaments*; as they include every species of realty, as well corporeal as incorporeal” (1 Jarm. 777). *e.g.* an Advowson (*Westfaling v. Westfaling*, 3 Atk. 460; *Crompton v. Jarratt*, 54 L. J. Ch. 1109; 30 Ch. D. 298; *Ij*, AT). *Vh*, Wms. R. P. 5, 12; Watson Eq. 193.

This large meaning, however, may be cut down by a context. And in the present state of the authorities it is a question whether “Hereditament,” in the definition of “LANDS” as prescribed by s. 3, Lands C. C. Act, 1845, is or is not confined to a Corporeal hereditament. That definition says that, for the purposes of that Act, “Lands” shall extend to “Messuages, Lands, Tenements, and Hereditaments, of any tenure.” Leaning on the three latter words Cranworth, C., in *Pinchin v. Lond. & Blackwall Ry* (24 L. J. Ch. 417; 5 D. G. M. & G. 851; 1 K. & J. 34) said, “Looking at the whole context, the conclusion to which I have come is, that a ‘hereditament’ there means a corporeal hereditament: a hereditament which may be the subject of tenure,” which a Right of Way, or other EASEMENT not actually attached to land or buildings to be purchased, — *e.g.* a right of Common in Gross — cannot be. But in *G. W. Ry v. Swindon & Cheltenham Ry* (53 L. J. Ch. 1075; 9 App. Ca. 787), Ld Bramwell (“with profound respect for that most learned, able, and accurate, lawyer,” Ld Cranworth) was of a directly opposite opinion; whilst, in the same case, Ld Fitzgerald, though not apparently with much energy, adhered to the doctrine of *Pinchin v. Lond. & Blackwall Ry*; whereas Ld Watson took a middle course, and whilst agreeing generally with Ld Bramwell, observed (53 L. J. Ch. 1083) that the word is “in many of the leading clauses of the Act of 1845, limited, by reason of the context, to corporeal hereditaments.” It

should be added that the actual decision in the *G. W. Ry v. Swindon & Cheltenham Ry* scarcely proceeded on the exact meaning of "Hereditament." *Vh, R. v. Cambrian Ry*, L. R. 6 Q. B. 422; 40 L. J. Q. B. 169, in *the* it was held that a FERRY is a hereditament within this definition of "Lands"; and though that case was over-ruled by *Hopkins v. G. N. Ry* (cited INJURIOUSLY AFFECTED) yet, as pointed out by Ld Watson (*G. W. Ry v. Swindon, &c Ry*, sup), that over-ruling was on a point other than that of this def.

An Easement authorized by the Special Act, *e.g.* a right to tunnel, is a "hereditament," quâ ss. 84, 85, Lands C. C. Act, 1845 (*Hill v. Mid. Ry*, 51 L. J. Ch. 774; 30 W. R. 774).

"Buildings, LANDS, and Hereditaments" which the quasi corporation of Churchwardens and Overseers may hold and deal with (s. 17, 59 G. 3, c. 12), does not include Copyholds, because, as it seems, that would be to forfeit manorial dues and fees, a deprivation not contemplated by the statute (*A-G. v. Lewin*, 8 Sim. 370: *Re Paddington Charities*, 1b. 629; 7 L. J. Ch. 44: *A-G. v. Anon.*, cited 2 Y. & C. Ex. 352, *v*).

Market Tolls are not rateable under a power to rate "land, house, shop, warehouse, or OTHER building, tenement, or hereditament" (*Colebrooke v. Tickell*, 5 L. J. K. B. 180; 4 A. & E. 916; 6 N. & M. 483); but where a similar collocation was followed by "meadow and pasture ground excepted," it was held that a Gas Company was rateable as occupiers of the land in which its pipes were placed (*R. v. Shrewsbury Gas Co*, 1 L. J. M. C. 18; 3 B. & Ad. 216); so of Tithes under 6 & 7 W. 4, c. 96 (*R. v. Capell*, 9 L. J. M. C. 65; 12 A. & E. 382).

On the other hand, "Hereditament" may include Leaseholds, and also matters not involving an Interest in Land. Thus in s. 56, Co. Co. Act, 1888 (which restricts the jurisdiction of the Co. Co.), "Hereditament" is used, "not to describe the quantum of interest, but the thing itself which is the subject-matter of the interest" (per Bowen, L. J.), and leaseholds are within the restriction (*Tomkins v. Jones*, 58 L. J. Q. B. 222; 22 Q. B. D. 599; 37 W. R. 328; 60 L. T. 939; 5 Times Rep. 302: *Vf. Chew v. Holroyd*, 22 L. J. Ex. 95; 8 Ex. 249; *Moore v. Denn*, 2 B. & P. 251). So, an OFFICE for Life, *e.g.* a Parish Clerkship, is a "heredit" within that section (*Stephenson v. Raine*, 23 L. J. Q. B. 62; 2 E. & B. 744); *secus*, of a CUSTOM (*Lloyd v. Jones*, sup: *Davis v. Walton*, 22 L. J. Ex. 25; 8 Ex. 153), or of RATES (*Buddleley v. Denton*, 19 L. J. Ex. 44; 4 Ex. 508; *Gwynne v. Knight*, 17 L. J. Ex. 168; 1 Ex. 802: *Sc, R. v. Harden*, 22 L. J. Q. B. 299; 2 E. & B. 188). *Vj*, CORPoreal: TITLE.

So, an Agreement for a Lease "of your Iron Ore at Newton," was held more than a License to take the ore, and that the agreement created a right which was a "hereditament," within s. 14, 11 G. 2, c. 19 (*Jones v. Reynolds*, 4 A. & E. 805; 6 N. & M. 441).

So, though "Lands, Tenements, or Hereditaments," s. 7, Statute of

Frauds, does not comprise Personal Chattels (*Bayley v. Boulcott*, 4 Russ. 345), yet Chattels Real are comprised in the phrase (*Forster v. Hale*, 3 Ves. 696), and so are copyholds (*Withers v. Withers*, Amb. 151).

So, "all other ESTATES and Heredit," in a direction to re-settle, has been held to include Trust Funds directed to be invested in land (*Basset v. St. Loran*, 43 W. R. 165; 71 L. T. 718).

"Hereditaments" in the phrase "Lands, Tenements, or Heredit," s. 4, Land Tax Act, 1797, 38 G. 3, c. 5, does not include a mere EASEMENT such as a Water Co's Mains (*Chelsea W. W. Co v. Bowley*, 17 Q. B. 358; 20 L. J. Q. B. 520: *Va*, *Southport v. Ormskirk*, cited EASEMENT); *secus*, of the arched Tunnel of the Metrop Ry running under public roadways (*Metrop Ry v. Fowler*, 1893, A. C. 416; 62 L. J. Q. B. 553; 69 L. T. 390; 42 W. R. 270; 57 J. P. 756: *Vf*, *Holywell v. Halkyn Drainage Co*, 1895, A. C. 117; 64 L. J. M. C. 113; 71 L. T. 818; 59 J. P. 566).

"Hereditament" in Mortmain Act; *V*. INTEREST IN LAND.

"Hereditament," s. 4, Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67; *V. R.* v. *St. George's*, 41 L. J. M. C. 30; L. R. 7 Q. B. 90.

Stat. Def. — 32 & 33 V. c. 67, s. 4. — *Dr.* 2 & 3 V. c. 61, s. 74.

Quà Rep People Act, 1884, 48 & 49 V. c. 3, "hereditament," in Scotland, includes "Lands and Heritages" (s. 11).

*V*. CORPOREAL; INCORPOREAL HEREDITAMENT; TENEMENT.

Prior to the Wills Act, 1837, a devise of "Hereditaments" without words of limitation, carried only an estate for life (2 Jarm. 284).

A VILLEIN was a heredit (*Termes de la Ley*, *Joynture*).

Heredit "in" a place; *V. Crompton v. Jarratt*, sup: IX.

**HEREIN: HEREINAFTER.** — "A direction in a Will that the legacy duty on the legacies 'herein' given shall be paid out of the estate, does not extend to legacies given by CODICIL, even though the Codicil is directed to be taken as part of the Will (*Early v. Bonbow*, 2 Coll. 355: *Va*, as to 'herein,' *Rudburn v. Jervis*, 3 Bea. 450: *Fuller v. Hooper*, 2 Ves. sen. 242: *Jauncey v. A-G.*, 3 Giff. 308; 10 W. R. 129; 5 L. T. 374). *Secus*, where legacies generally are given duty free (*Byne v. Currey*, 3 L. J. Ex. 177; 2 Cr. & M. 603; 4 Tyr. 478: *Va*, *Williams v. Hughes*, 27 L. J. Ch. 218; 24 Bea. 474)." 1 Jarm. 187. *Vf. Re Sealey*, 85 L. T. 451, discussing *Early v. Bonbow* and *Byne v. Currey*, sup.

"Where a testator, by his Will, charges his lands with the payment of the legacies 'hereinafter' bequeathed, the charge does not extend to legacies bequeathed by a Codicil" (1 Jarm. 95; *Vf. Ib.* 90, 186: *Bonner v. Bonner*, 13 Ves. 379; *Henwood v. Overend*, *Ib.* 383, n: *Edmunds v. Low*, 26 L. J. Ch. 432; 3 K. & J. 318; 5 W. R. 444).

Indeed, and speaking generally, "herein," "hereby," "by this my Will," and "hereinafter," are synonyms confining the matter spoken

of to the Will (*Henwood v. Overend*, sup: *Gillooly v. Plunkett*, 9 L. R. Ir. 324).

*V.* PART.

"My Executors herein named"; *V.* EXECUTORS.

A clause of Forfeiture in a Lease if any of the covenants "hereinafter contained" are broken, will be confined to the covenants subsequent to the clause; and if there be none, the clause will be inoperative and "hereinafter" will not be rejected, for the error might have been in the omission of subsequent covenants which it was intended to insert (*Doe d. Spencer v. Godwin*, 4 M. & S. 265).

"Such Trusts as are hereinafter declared"; *V. Hindle v. T aylor*, 5 D. G. M. & G. 577.

**HEREINBEFORE.** — "Hereinbefore contained," in a statute, may be limited to the clause in which it occurs. *e.g.* as used in s. 23, 30 & 31 V. c. 127 (*Re Cambrian Ry*, 3 Ch. 278; 37 L. J. Ch. 409; 16 W. R. 346; 17 L. T. 530).

Provisions "as are hereinbefore declared"; *V. Hanbury v. Tyrrell*, 21 Bea. 322.

"Not hereinbefore disposed of"; *V. Johns v. Wilson*, 1900, 1 I. R. 342.

"Hereinbefore mentioned," in a pleading; *V. R. v. Wareton*, 17 Q. B. 562; 21 L. J. M. C. 7: — in s. 5, 2 & 3 W. 4, c. 71; *V. Pye v. Mumford*, 11 Q. B. 668-670, 672, 677.

"Hereinbefore named"; *V.* NAMED.

**HERESY.** — "Heresy, consists not in a total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed; being defined by Sir Matthew Hale (Hale P. C. 384), '*sententia rerum divinarum humano sensu excogitata, palam docta et pertinaciter defensa*'" (4 Bl. Com. 44, 45). *V.*; HERETIC.

**HERETIC.** — A Heretic is a person convicted of HERESY: — "By the antient Laws Ecclesiastical of this Realm, no man could be convicted of Heresy (being High Treason against the Almighty) but by the Archbishop and all the Clergy of that Province, and after abjured thereupon, and after that newly convicted and condemned by the clergy of that Province in their General Council of Convocation. But 2 H. 4, c. 15, doth give the Bishop, in his Diocese, power to condemn an Heretic" (*Caudrey's Case*, 5 Rep. xxii b, xxiii a).

Of course, "High Treason against the Almighty" was in old time even in England, as it still is in many lands and with some persons, a very flexible term, embracing *e.g.* CONJURATION and its cognate offences; but the present Ecclesiastical offence of Heresy is, probably, well defined as, — "A False Opinion repugnant to some point of Doctrine clearly revealed in Scripture, and either absolutely essential to the Christian

Faith, or, at least, of most high importance" (Jacob, citing 1 Hawk. P. C. 2, s. 1: *Vf*, Phil. Ecc. Law, 842: Odgers, 472). *Vh*, 6 Encyc. 176, 177. *Cp*, BLASPHEMY.

To call a person a "Heretic" is not actionable Slander unless there be special damage (*Davis v. Gardiner*, 4 Rep. 16, 17).

**HERETICO COMBURENDO.**—This was the Common Law writ to burn a HERETIC (Termes de la Ley); but many doubt as to its being a writ at Common Law. *V. 2 L. Q. Rev.* 153.

Before 2 H. 4, c. 15, a Heretic "could not be committed to the Secular Power to be burnt until he had once abjured and was again relapsed to that, or some other heresy" (*Caudrey's Case*, 5 Rep. xxiii a). It was doubtful in Hilary Term, 9 Jac. 1, whether this writ could be issued; but in that "very Term the Attorney and Solicitor consulted with me (Coke) if at this day, upon Conviction of an Heretick before the Ordinary, this writ lieth, and it seems to me clearly that it doth not"; and so it was resolved by Fleming, C. J., Tanfield, C. B., and Williams and Crook, JJ. (12 Rep. 93).

*Note*:—This writ with all process thereon was abolished by 29 Car. 2, c. 9, but so as not to take away or abridge the power of the Ecclesiastical Court to punish "Atheism, BLASPHEMY, HERESY, or SCHISM, and other Damnable Doctrines and Opinions, by EXCOMMUNICATION, DEPRIVATION, Degradation, and other ECCLESIASTICAL CENSURES not extending to Death."

**HERETOFORE.**—"Now or heretofore held or enjoyed"; *V. Roe v. Siddons*, 22 Q. B. D. 224.

**HERIOT.**—Heriot is by Tenure (which is Heriot Service) or by Custom; in either case, it is the right which the Lord of a Manor has, on the death of a Customary Freeholder or Copyholder solely seized in fee, to the best beast or other chattel of such freeholder or copyholder wherever it can be found, and for cloiguing which the Lord may maintain an action (*Western v. Bailey*, 1896, 2 Q. B. 234; 1897, 1 Q. B. 86; 65 L. J. Q. B. 641; 66 *Ib.* 48).

"This dutie to the lord is very antient; for in the laws before the Conquest it is said, *sive quis incuriã, sive morte repentinã, fuerit intestat' mortuus, dominus tamen nullam rerum suorum partem (propter eam que jure debetur herioti nomine) sibi assumito.* In the Saxon tongue it is called *heregeat*, as much to say (as I take it) as the lord's beste; for *here* is, lord, and *geat* is beste" (Co. Litt. 185 b). *See*, as to this derivation, per Aland, J., *Edwards v. Moseley*, Willes, 194.

*V. Termes de la Ley, Heriot*: Wms. R. P. 304; 6 Encyc. 178-180.

As to the use of "Heriots" in 3 & 4 W. 4, c. 27; *V. Sug. Real Property Statutes*, 2 ed., 17, 18; *Owen v. De Beauvoir*, 16 M. & W. 547, 566.

Quà Copyhold Act, 1894, 57 & 58 V. c. 46. " 'Heriot,' includes a money payment in lieu of a Heriot " (s. 94).

*V.* MORTUARY.

**HERITABLE.** — " Heritable *Estate*," is the Scotch equivalent for " Freehold Estate "; *V.* FREEHOLD, at end.

" Heritable *Security*," in Scotland; Stat. Def., Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, s. 3; 37 & 38 V. c. 94, s. 3; 56 & 57 V. c. 39, s. 44 (6); Heritable Securities (Scot) Act, 1894, 57 & 58 V. c. 44, s. 18. *V.* SECURITY.

" Heritable and Personal Security "; *V. Knox v. Mackinnon*, 13 App. (1a. 753).

**HERITAGE.** — *V.* HEREDITAMENT, towards end.

**HÉRITIÉRIER.** — " Héritier," " Autres Héritiers " in the Civil Code of Lower Canada; *V. Herse v. Dufaux*, 42 L. J. P. C. 1; L. R. 4 P. C. 468, *whr* for an exposition of that Civil Code, quà Gifts, as compared with the old law of France and the Code Napoléon.

**HERITOR.** — " Heritor." in Scotland, means the OWNER or PROPRIETOR of land or heritage, *e.g.* in the Scotch Act of 1663 which makes " the Heritors of the paroche " rateable for the repair of the Manse, — within which enactment a Corporation is a " Heritor," quà its water-works conduit which goes underneath lands and which conduit is held under grants of perpetual way-leave made by the owners of the land underneath which the conduit goes (*Glasgow v. M'Ewan*, 1900, A. C. 91). In *the Halsbury, C.* after observing on the affinity of " Heritor " with " Proprietor," defined the latter word as the " person who is entitled to exclude everybody else, and who is himself entitled to possess and enjoy a thing."

Stat. Def. — 17 & 18 V. c. 80, s. 76; 29 & 30 V. c. 71, s. 2; 31 & 32 V. c. 96, s. 1; 37 & 38 V. c. 82, s. 9: VALUED.

**HERMAPHRODITE.** — " To call a Dancing Mistress ' an Hermaphrodite ' is not actionable; for girls are taught dancing by men as often as by women " (*Odgers*, 75, citing *Wetherhead v. Armitage*, 2 Lev. 233; 3 Salk. 328); " *secus*, in America " (*lb.*, citing *Malone v. Stewart*, 15 Ohio, 319).

**HERMIT.** — *V.* RECLUSE.

**HERNIA.** — *V. Fitton v. Accidental Death Insree*, cited ARISING.

**HERRING.** — " The Herring Fisheries (Scot) Acts, 1821 to 1890 "; *V.* Sch. 2. Short Titles Act. 1896.

*V.* OFFICER.

**HESITATE.** — " A man when he says, *e.g.* in a Co Prospectus, ' I do not hesitate to guarantee,' means to say, ' I represent ' " (*per Coleridge, J.*, *Gerhard v. Bates*, 2 E. & B. 482). *V.* REPRESENT.



**HIDE: HYDE.** — “ One plow-land, *carucata terra*, or a hide of land *hida terra* (which is all one), is not of any certain content, but as much as a plough can by course of husbandry plough in a yeare. And therewith agreeth *Lambard verbo Hide*. And a plow-land may containe a messuage, wood, meadow, and pasture, because that by them the plowmen and the cattell belonging to the plow are maintained ” (Co. Litt. 69 a; *Va Ib.* 5 a, 86 b: *Vf*; *Termes de la Ley, Hidage*: Elph. 587). *V. KNIGHT'S FEE: PLOW-LAND: CARUCATA.*

A Hide, speaking generally, would seem to be four times as much as an OXGANGE, because the latter is as much as an ox can till, and a JUGUM (or half a plow-land) as much as two oxen can till.

“ Hyde and Gaine ”; *V. GAIN.*

*V. SKIN.*

**HIDELL.** — “ ‘Hidell,’ 1 H. 7, c. 6, seemeth to signifie, a place of Protection, as a Sanctuary ” (Cowel).

**HIGH AND LOW WATER-MARK.** — The space between “ high and low water-mark ” means medium high and low water-mark, *i.e.* half way between the spring tide and neap tide high and low water-marks respectively (*Webber v. Richards*, 10 L. J. Q. B. 203; 1 G. & D. 114).

*V. HIGH WATER.*

**HIGH CONSTABLE.** — *V. CONSTABLE.*

**HIGH COURT.** — *V. s.* 13 (3), Interp Act, 1889. Observe, that that def relates only to England and Ireland. *Cp.* COURT: SUPERIOR COURT: SUPREME COURT: INFERIOR COURT.

“ High Court,” s. 95, Bankry Act, 1883, means the Bankry Court (*Re Evans*, cited CONTEXT).

Quà *Inl. Rev. Regn Act*, 1890, 53 & 54 V. c. 21, “ ‘ High Court,’ means, as respects Scotland, the Court of Session, sitting as the Court of Exchequer ” (s. 39); but quà 55 & 56 V. c. 27, “ High Court,” means, “ the Court of Session in either Division thereof ” (s. 3).

“ High Court of *Admiralty* ”; *Stat. Def.*, 27 & 28 V. c. 24, s. 2, c. 25, s. 2. — *Ir.* 40 & 41 V. c. 57, s. 3. *Vf.* COURT.

“ High Court of *Justice* ”; *Scot.* 39 & 40 V. c. 75, s. 21. — *Ir. Ib.* s. 22.

“ High Court of *Justiciary*,” quà *Criminal Procedure (Scot) Act*, 1887, 50 & 51 V. c. 35, includes, “ any Court held by the Lords Commissioners of Justiciary, or any of them ” (s. 1), and “ Lord Commissioner of Justiciary,” includes, “ Lord Justice General and Lord Justice Clerk ” (Ib.).

**HIGH JUDICIAL OFFICE.** — Quà the Appellate Jurisdiction. “ High Judicial Office,” means either of the following. — “ the Office of Lord Chancellor of Great Britain or Ireland, or of paid Judge of the Judicial Committee of the Privy Council, or of Judge of ” a SUPERIOR

COURT of Great Britain or Ireland (s. 25, 39 & 40 V. c. 59); and includes "the Office of a Lord of Appeal in Ordinary, and the Office of a Member of the Judicial Committee of the Privy Council" (s. 5, 50 & 51 V. c. 70).

**HIGH SEAS.** — "The expression 'High Seas,' when used with reference to the jurisdiction of the Court of Admiralty, included all oceans, seas, bays, channels, rivers, creeks, and waters below low water-mark, and where great ships could go, with the exception only of such parts of such oceans, &c as were within the body of some county (28 H. 8, c. 15: 4 Inst. 134: Com. Dig. Adm. E, 1, 7, and 14: *R. v. Anderson*, 38 L. J. M. C. 12; L. R. 1 C. C. R. 161: *R. v. Carr*, 52 L. J. M. C. 12; 10 Q. B. D. 76). A foreign or colonial port, if it was part of the High Seas in the above sense, *e.g.* Alexandria and Algiers, would be as much within the jurisdiction of the Admiralty as any other part of the High Seas. The jurisdiction, however, is necessarily limited in its application. It can only be exercised over persons or ships when they come to this country. An artificial Basin or Dock excavated out of land but into which water from the high seas could be made to flow, would not be in any sense part of the High Seas, whether such basin or dock was in this country or in any other" (per Lindley, L. J., *The Mecca*, 1895, P. 95; 64 L. J. P. D. & A. 44; 71 L. T. 711; 43 W. R. 209). Though that case shows that the Admiralty jurisdiction has been widened (*V.* "Any Ship," sub SHIP), yet the above def of "High Seas" remains as of general acceptance quâ that jurisdiction.

*Vh*, *Constable's Case*, 5 Rep. 105 b: *R. v. Bruce*, Russ. & Ry. 242: *R. v. Allen*, 1 Moody, 494: *R. v. Cunningham*, Bell C. C. 72: SEA.

**HIGH TREASON.** — "Every one commits High Treason who forms and displays by any overt act, or by publishing any printing or writing, an intention to kill or destroy the QUEEN, or to do her any bodily harm, tending to death or destruction, maim or wounding, imprisonment or restraint" (Steph. Cr. 40). So also to LEVY WAR against the Queen or ADHERING TO THE QUEEN'S ENEMIES is High Treason; so, of LAESAE MAJESTATIS. *Vf*, TREASON: Steph. Cr. 40-44: Arch. Cr. 883-900: Cowel, *Treason*: Jacob, *Treason*: 12 Encyc. 254-264: 4 Bl. Com. ch. 6.

HERESY is "High Treason against the Almighty" (*Caudrey's Case*, cited HERETIC).

**HIGH WATER.** — High Water, is the line marked by the periodical Flow of the Tide, excluding the advance of waters above that line by winds or storms or freshets or floods; Low Water, is the furthest receding point of Ebb Tide (*Howard v. Ingersoll*, 13 Howard. 423, 417). *V.* SHORE.

High *Water-Mark*, in a Colonial Proclamation delimitating a TOWN; *V. Smart v. Suva*, 1893, A. C. 301; 62 L. J. P. C. 88; 68 L. T. 774.

*V.* HIGH AND LOW WATER-MARK.

**HIGHEST.**—If property is to be sold by auction to the “Highest Bidder,” without more, and whether WITHOUT RESERVE or not, that means that there shall be no puffing, and the presence of a single puffer is evidence of fraud that will vitiate the sale (*Green v. Baverstock*, 32 L. J. C. P. 181; 14 C. B. N. S. 204). *V. RESERVED BIDDING.*

“Highest Net Money Tender”; *V. TENDER.*

“Highest Price;” *V. LOWEST PRICE.*

*V. WARRANTED HIGHEST RATE.*

**HIGHLANDS.**—Quà Loc Gov (Scot) Act, 1889, the “Highlands and Islands of Scotland,” means, “the counties of Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney, and Zetland” (s. 105); so, quà Probate Duties (51 & 52 V. c. 60, s. 5).

**HIGHWAY.**—“The common definition of a Highway that is given in all the text-books of authority is that, it is a Way, leading from one Market-town or Inhabited Place to another Inhabited Place, which is common to all the Queen’s subjects” (per Coleridge, C. J., *Bailey v. Jamieson*, 1 C. P. D. 332).

But if the DEDICATION to the PUBLIC is clear, a thoroughfare is not essential to a Highway, e.g. a Cul de Sac may be a highway (per Kenyon, C. J., *Rugby Trustees v. Merryweather*, 11 East, 376. n; *Sithe* per Mansfield, C. J., *Woodyear v. Hadden*, 5 Taunt. 142: per Abbott, C. J. and Best, J., *Wood v. Veal*, 5 B. & Ald. 454: but the *Rugby Case* was vindicated in *Buteman v. Bluck*, 21 L. J. Q. B. 406; 18 Q. B. 870: *Vo. Young v. Cuthbertson*, 1 Macq. 455: *Souch v. East London Ry*, 42 L. J. Ch. 477; L. R. 16 Eq. 108: Glen on Highways, Bk. 1, ch. 1. s. 1). Still, if the access to both ends of a road becomes impossible, it thereby loses its character of a Highway (*Bailey v. Jamieson*, sup).

There may be a Highway without the parish being bound to repair it (*Roberts v. Hunt*, 15 Q. B. 17: *Fawcett v. York & N. Mid. Ry*, 16 Q. B. 614, n).

*V. PUBLIC HIGHWAY: THOROUGHFARE.*

*Vh*, Pratt on Highways: Jacob: 6 Encyc. 184–203.

“In the case of an ordinary Highway, although it may be of a varying and unequal width running between fences one on each side, the right of passage or way (*primâ facie* and unless there be evidence to the contrary) extends to the whole space between the fences; and the Public are entitled to the use of the entire of it as the highway, and are not confined to the part which may be metalled or kept in order for the more convenient use of carriages and foot-passengers” (per Martin, B., and approved per Cur. R. v. *United Kingdom Telegraph Co*, 31 L. J. M. C. 166; 6 L. T. 378: *If. R. v. Wright*, 3 B. & Ad. 681: *Williams v. Wilcox*, 7 L. J. Q. B. 229; 8 A. & E. 314: *Locke-King v. Woking*, 77 L. T. 790; 62 J. P. 167); but this presumption may be rebutted by evidence

(*Neeld v. Hendon*, 81 L. T. 405; 63 J. P. 724). *V. ROADSIDE WASTE. Cp, MAIN ROAD.*

"Highway," s. 5, Highway Act, 1835; *V. R. v. Chart*, 39 L. J. M. C. 137; L. R. 1 C. C. R. 237:—ss. 84, 85, *ib.*; *V. R. v. Surrey Jus.*, 1892, 1 Q. B. 867; 61 L. J. M. C. 153; 66 L. T. 578; 40 W. R. 500; 56 J. P. 695.

"*Highway repairable by the inhabitants at large*," s. 150, P. H. Act, 1875; *V. Baird v. Tunbridge Wells*, 1896, A. C. 434; 64 L. J. Q. B. 145; 65 *Ib.* 451; *Austerberry v. Oldham*, 55 L. J. Ch. 633; 29 Ch. D. 750; 53 L. T. 543; 33 W. R. 807; 49 J. P. 532; *Gibson v. Preston*, L. R. 5 Q. B. 218; 10 B. & S. 942; 39 L. J. Q. B. 131; *Hirst v. Halifax*, L. R. 6 Q. B. 181; 40 L. J. M. C. 43.

"Street not being a Highway," s. 69, P. H. Act, 1848, held not to include a piece of ground dedicated, by user, as a public road (*Healey v. Batley*, 44 L. J. Ch. 642; L. R. 19 Eq. 375).

*V. STREET, towards end: TURNPIKE ROAD: SURVEYOR: WAY.*

Stat. Def.—14 & 15 V. c. 16, s. 19; 34 & 35 V. c. 56, s. 5; 54 & 55 V. c. 63, s. 6.—*Scot.* 41 & 42 V. c. 51, s. 3, c. 58, s. 9; 54 & 55 V. c. 32, s. 7.

As to the Soil in, and Trespass on, and Reasonable Use of, Highways; *V. Harrison v. Rutland*, 1893, 1 Q. B. 142; 62 L. J. Q. B. 117; 68 L. T. 35; 41 W. R. 332; 57 J. P. 278, and cases there cited: *Luscombe v. G. W. Ry*, cited OCCUPIER: *Hickman v. Maisey*, 1900, 1 Q. B. 752; 69 L. J. Q. B. 511; 82 L. T. 321; 48 W. R. 385; *A-G. v. Brighton Supply Assn*, 1900, 1 Ch. 276; 69 L. J. Ch. 204; 81 L. T. 762; 48 W. R. 314. *Cp, NUISANCE: OBSTRUCT.*

As to the vesting of the Soil of Highways in Local Authorities; *V. VEST: ROADSIDE WASTE.*

"Passing upon" a Highway; *V. PASSING.*

*V. EXTRAORDINARY TRAFFIC: LOP.*

"The Highway Acts, 1835 to 1885"; *V. Sch 2, Short Titles Act*, 1896.

"Highway AREA"; Stat. Def., *Loc Gov Act*, 1888, s. 100.

"Highway Audit"; Stat. Def., 45 & 46 V. c. 27, s. 10.

"Highway Authority"; Stat. Def., Highways and Locomotives (Amendment) Act, 1878, 41 & 42 V. c. 77, s. 38 (on *whv*, *R. v. Norfolk Co. Co.*, 60 L. J. (Q. B. 379); 44 & 45 V. c. 14, s. 6; 45 & 46 V. c. 27, s. 10, c. 52, s. 8; *Loc Gov Act*, 1888, s. 100. As used in s. 25, *Loc Gov Act*, 1894, *V. Re Isle of Wight Comms*, 59 J. P. 438; *Re Marshland Smeeth Comms*, 65 L. J. Q. B. 185; 73 L. T. 536; 59 J. P. 824.

"Highway Board"; Stat. Def., Highway Act, 1862, 25 & 26 V. c. 61, s. 3; 41 & 42 V. c. 77, s. 38.

"Highway District"; *V. DISTRICT.*

Highway "Improvements"; Stat. Def., 27 & 28 V. c. 101, s. 48.

“Highway *Parish*”; Stat. Def., 27 & 28 V. c. 101, s. 3; 41 & 42 V. c. 77, s. 38; 45 & 46 V. c. 27, s. 10.

“Highway *Rate*”; Stat. Def., 27 & 28 V. c. 101, s. 3; 45 & 46 V. c. 27, s. 10.

**HIMSELF.** — When a person “himself” has to do a thing he cannot do it by an agent (*Monks v. Jackson*, 46 L. J. C. P. 162; 1 C. P. D. 683). So where (by s. 38 (1), 46 & 47 V. c. 51) power is given to a person, reported guilty of electoral malpractices, of being heard, “by Himself,” before the Court enquiring into the Municipal Election at which such malpractices are alleged to have taken place, he cannot appear by Counsel or Solicitor (*Hereford Case, R. v. Jones*, 23 Q. B. D. 29; 37 W. R. 508; 5 Times Rep. 411). But, in the absence of words requiring a right to be exercised personally, the general rule is that an agent may be appointed to do it (*Jackson v. Napper*, 56 L. J. Ch. 406; 35 Ch. D. 162). *Cp. R. v. St. Mary Abbots*, cited COURT.

*V. DONE BY: HIS HAND: OWN CONSENT: SIGNED.*

**HINDE PALMER'S ACT.** — Administration of Estates Act, 1869. 32 & 33 V. c. 46.

**HINDER.** — A contest between rival claimants to Tithes, is not a “DIFFERENCE” whereby the making an Award under the Tithe Act, 1836, is “hindered” within s. 45 (*Shepherd v. Londonderry*, 21 L. J. Q. B. 204; 18 Q. B. 145).

**HINDRANCE.** — *V. UNAVOIDABLE.*

**HIRE.** — Is it acting “for hire” within s. 11, 6 & 7 V. c. 68, to represent a Stage Play at an evening party, the actor being, of course, paid by the host and not by the spectators? It would seem not (s. 16). In *Fredericks v. Payne* (32 L. J. M. C. 16), Bramwell, B., said, “The acting was ‘for hire’ whether payment was made at the door or any other place.”

Rowing on Thames for “Hire or Gain.” Thames Waterman’s Act, 1859, 22 & 23 V. c. cxxxiii., means, for the purpose of obtaining a direct reward for rowing (*Showell v. Skittrell*, 6 Times Rep. 120; nom. *Skittrell v. Showell*, 59 L. J. M. C. 26; 61 L. T. 874; 54 J. P. 325; *Tudhunter v. Buckley*, 7 L. T. 273). *Vh. R. v. Tibble*, 4 E. & B. 888.

“Ply for Hire”; *V. PLY.*

“Hire” does not, necessarily, mean, a stipulated reward; therefore a HACKNEY CARRIAGE, e.g. an Omnibus, plies for hire within s. 45. Town Police Clauses Act, 1847, if it carries a Notice saying it is placed at the disposal of the public free of charge, but that voluntary contributions to support it will be welcomed (*Cocks v. Mayner*, 70 L. T. 403; 58 J. P. 104; 17 Cox C. C. 745).

“ In relation to the Use or Hire of any Ship ”; *V. SHIP.*

“ Hire earned ”; *V. EARNED.*

Employment for HIRE; *V. EMPLOYMENT.*

**HIRE-PURCHASE.** — Hire-Purchase Agreement; *V. BUY*: 6 Encyc. 206-212.

**HIRST, or HURST.** — *V. GRAVA.*

**HIS.** — “ If a man be seized of land in fee simple, or for life, and have an estate in it for years, by statute merchant, a staple, eligit, or the like; and he grant all *his* estate, or all *his* right, or all *his* title, or all *his* interest of and in the land; by this grant all his estate, and as much as he is able to grant, doth pass ” (Touch. 98: *Vh*, per St. Leonards, C., *Drew v. Norbury*, 3 J. & La T. 284; 9 Ir. Eq. 171. 524); but when a person has a beneficial interest and also one as a trustee, it is a question of construction as to whether he means to pass both interests, or only one and which one (*Stronge v. Hawkes*, 4 D. G. M. & G. 186: *Rooper v. Harrison*, 2 K. & J. 112: *Vh* Elph. 205-209).

“ When A. demises to B. for the term of *his* life, the word ‘ his ’ would, in ordinary construction, apply to B. as the last antecedent. But instances perpetually occur where that word is used, and does not refer to the last party named ” (per Taunton, J., *Doe d. Pritchard v. Dodd*, 5 B. & Ad. 693).

*V. HER*: MAJESTY.

**HIS CREDITORS.** — “ His Creditors generally ”; *V. GENERALLY*, at end.

**HIS FARE.** — “ Without having previously paid His Fare,” s. 103, 8 V. c. 20; “ His Fare ” here means the fare by the train, and for the class of carriage, in which the passenger travels; therefore a traveller wrongfully travelling 2nd Class with a 3rd Class Ticket has not paid “ his fare,” though he has paid “ a fare ” (*Gillingham v. Walker*, 29 W. R. 896; 44 L. T. 715; 45 J. P. 470: *Vh*, *Langdon v. Howells*, 48 L. J. M. C. 133; 4 Q. B. D. 337; 27 W. R. 657; 43 J. P. 717).

*V. FARE.*

**HIS HAND.** — A letter written by a bankruptcy trustee’s solicitor in his own name disclaiming a Lease; held, not a due Disclaimer by the trustee, under s. 23, Bankry Act, 1869, because it was not a “ Writing under his (*i.e.* the Trustee’s) hand ” (*Wilson v. Wallani*, 49 L. J. Ex. 437; 5 Ex. D. 155). *V. HIMSELF.*

**HIS INTEREST.** — *V. DECLARE.*

**HIS LICENSE.** — *V. Price v. James*, cited LICENSED PERSON.

**HIS PROPERTY.** — *V.* PROPERTY.

**HIS WIFE.** — *V.* *Re Hancock*, cited WIFE; from *who* it may, probably, be stated that where a Settlement gives a man (who is then married) a Power to appoint to "his Wife," that will, generally, mean "his then Wife."

**HLOTH-BOTE.** — *V.* BOTE.

**HOARDING.** — The definition in Webster that a "Hoarding" is "a fence inclosing a house and materials *while buildings are at work*," is incomplete; and it is inaccurate if it is to be understood as, necessarily, meaning something of a mere temporary character; accordingly the claim in an action by a Reversioner for obstructing Ancient Lights is well laid by alleging that the obstruction was caused by a "Hoarding" (*Metropolitan Assn v. Petch*, 5 C. B. N. S. 509, where the reporter instances a "hoarding" which the Socy of the Inner Temple kept up for more than 20 years for the express purpose of preventing the acquisition of a Right to Light). *Vf*, BUILDING: PERMIT.

**HOBHOUSE'S ACT.** — The Vestries Act, 1831, 1 & 2 W. 4. c. 60.

**HOCUSSED.** — *V.* *Broome v. Gosden*, 1 C. B. 728, cited *O'Brien v. Salisbury*, 6 Times Rep. 137.

**HOGARTH'S ACTS.** — The Engraving Copyright Act, 1734, *ib.* 1766, 8 G. 2, c. 13; 7 G. 3, c. 38.

**HOGHENHINE.** — "Is hee who commeth guest-wise to a house and there lyeth the third night, after which time he is accounted one of his FAMILY in whose house he lyeth; — and if he offend the King's Peace his host must be answerable for him" (Termes de la Ley). *Cp*, INMATE.

**HOLD.** — Hold a CONTRACT; *V.* *Royse v. Birley*, cited PUBLIC SERVICE.

A written authority from an Execution Debtor to A. "to hold" Possession of Goods (then held by the Sheriff, but who had been paid out by A.) and to sell them and retain out of the proceeds the money A. had paid, &c (followed by an arrangement for the Sheriff's bailiff to continue in possession for A.), is equivalent to giving A. a PLEDGE, and is not a Bill of Sale, either as a License to take Possession or otherwise (*Mills v. Charlesworth*, cited BILL OF SALE). *Vf*, TRANSFER: *Se*, LICENSE.

To drive Animals about in search of purchasers is not to "hold" a SALE of them, within a Prohibitive Order under Diseases of Animals Act, 1894 (*McLean v. Monk*, 77 L. T. 663; 62 J. P. 180).

*V.* PURCHASE.

"Holding" compared with "Occupation"; *V.* HOLDING.

**HOLD OUT.**—Will not “hold himself out, nor seek to induce others to believe”; *V. Wolmerhausen v. O'Connor*, 36 L. T. 921.

Medicines “held out or recommended to the PUBLIC” as nostrums, 52 G. 3, c. 150; *V. Smith v. Mason*, cited PUBLIC NOTICE.

“Every one who, by words spoken or written or by conduct, represents himself, or who KNOWINGLY suffers himself to be represented, as a Partner in a particular Firm,” *holds himself out* as a Partner, and “is liable as a Partner to any one who has, on the faith of any such representation, given credit to the Firm, — whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made” (s. 14 (1), Partnership Act, 1890: *Vh*, Lindley P. Bk. 1, ch. 2, s. 6).

Quà Principal and Agent, it is submitted that, Every one who, by words spoken or written or by conduct, represents that another person is his Agent, or who knowingly suffers that other to represent himself as his Agent, *holds out* that other as his Agent, and is responsible for the acts of that other as his Agent, if such acts be within the ordinary scope of such an Agent’s employ: *Vh*, *Sandeman v. Scurr*, 36 L. J. Q. B. 63; L. R. 2 Q. B. 86; *Scheibler v. Gilchrest*, 60 L. J. Q. B. 605; 62 Ib. 201; 1891, 2 Q. B. 310; 1893, A. C. 8; 68 L. T. 1; *Brazier v. Camp*, 63 L. J. Q. B. 257; *Spooner v. Browning*, 1898, 1 Q. B. 528; 67 L. J. Q. B. 339; 78 L. T. 98; 46 W. R. 369.

**HOLD OVER.**—*V. WILFULLY HOLD OVER.*

**HOLDER.**—*V. HELD: IN HIS OWN RIGHT: ORIGINAL HOLDER.*

“‘Holder,’ of a Bill or Note, means, the Payee or Indorsee of it,” “who is in possession of it, or the bearer thereof” (s. 2, Bills of Ex. Act, 1882, on *wh*, *Good v. Walker*, 61 L. J. Q. B. 736; *Day v. Loughurst*, 62 L. J. Ch. 334; 68 L. T. 17; 41 W. R. 283); and every Holder of a Bill or Note “is *primâ facie* deemed to be a HOLDER IN DUE COURSE” (s. 30 (2), *Ib.*). As to the rights of the Holder, *V. s. 38, Ib.*

“Holder of Lease;” *V. LESSEE.*

**HOLDER FOR VALUE.**—“Every Indorsee of a Bill has his own title, and that of each intermediate party; and if he or any of such parties gave value for the bill, without fraud, he is a Holder for Value” (per Abinger, C. B., *Isaac v. Farver*, 1 M. & W. 69; 5 L. J. Ex. 96). *V. BONÂ FIDE.*

The phrase “Bonâ Fide Holder for Value, without Notice,” quà Bills and Notes, is now superseded by the phrase HOLDER IN DUE COURSE.

**HOLDER FOR THE TIME BEING.**—“The words ‘Holder for the time being,’ — in a Debenture, — are, in my opinion, identical with



the words 'to Bearer'" (per Malins, V. C., *Re Marseilles Imperial Land Co*, 40 L. J. Ch. 96; L. R. 11 Eq. 493, 494).

V. BEARER: NEGOTIABLE.

**HOLDER IN DUE COURSE.**—" (1) A Holder in Due Course (of a Bill of Ex.), is a HOLDER who has taken a Bill, complete and regular on the face of it, under the following conditions, namely:

"(a) That he became the Holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

"(b) That he took the Bill in Good Faith and for VALUE, and that at the time the Bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

"(2) In particular the title of a person who negotiates a Bill is 'defective' within the meaning of this Act, when he obtained the Bill, or the Acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

"(3) A Holder (whether for Value or not) who derives his title to a Bill through a Holder in Due Course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that Holder in Due Course as regards the Acceptor and all parties to the Bill prior to that Holder"

(s. 29, Bills of Ex. Act, 1882): and so of a Promissory Note (s. 89, *Ib.*). *V. Lewis v. Clay*, 67 L. J. Q. B. 224; 77 L. T. 653; 46 W. R. 319. A Banker is a Holder in Due Course when he credits the amount to the account of his customer who draws upon it (*National Bank v. Silke*, 1891, 1 Q. B. 435; 60 L. J. Q. B. 199; 63 L. T. 787; 39 W. R. 361).

*Vf*, as to presumption of VALUE and GOOD FAITH, s. 30, *Ib.*; and as to subs. 2 of that section, *V. Tatum v. Hasler*, 58 L. J. Q. B. 432; 23 Q. B. D. 345; *Clutton v. Attenborough*, 1897, A. C. 90; 66 L. J. Q. B. 221; 75 L. T. 556; 45 W. R. 276.

V. IN HIS OWN RIGHT: PURCHASER.

**HOLDING.**—Where Articles of a Company gave a power to demand a poll to "Shareholders qualified to vote and *holding* in the aggregate" a stated number of shares: held, that "themselves" must be read in before "holding," so that the required number could not be made up by proxies (*R. v. Government Stock Investment Co*, 47 L. J. Q. B. 478; 3 Q. B. D. 442).

V. IN HIS OWN RIGHT.

"Having or holding" lands; *V. HAVING*.

"Residence and Holding"; *V. RESIDE*.

*Quà* Agricultural Holdings (England) Act, 1883, " 'Holding,' means

any parcel of LAND held by a Tenant" (s. 61), such Holding being "either wholly AGRICULTURAL or wholly Pastoral, or in part Agricultural and as to the residue Pastoral, or in whole or in part cultivated as a MARKET GARDEN" (s. 54). *V. AGIST: LANDLORD: Vh, Cooper v. Pearse, cited GARDEN. Cp, TENEMENT.*

By ss. 42 and 35, Agricultural Holdings (Scot) Act, 1883, a def similar to the preceding is provided for Scotland: *Va, s. 34, Crofters Holdings (Scot) Act, 1886, 49 & 50 V. c. 29.*

Quà Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 V. c. 26, " 'Holding,' means, an ALLOTMENT, or COTTAGE GARDEN" (s. 4), an "Allotment" being "any parcel of land, of not more than 2 acres in extent, held by a Tenant under a Landlord, and cultivated as a GARDEN or as a FARM, or partly as a Garden and partly as a Farm" (Ib.).

"Holding," quà the Land Laws for Ireland; *V. ss. 57 and 58, Land Law (Ir) Act, 1881, as slightly enlarged by s. 48 (2), Land Law (Ir) Act, 1896; on whv, Ex p. Hutchinson, 12 L. R. Ir. 79.*

Other Stat. Def. — *Ir. 33 & 34 V. c. 46, s. 71; 39 & 40 V. c. 63, s. 5; 50 & 51 V. c. 33, s. 8 (11).*

The lessee of an undivided SHARE of land, is not the occupier of a "Holding" within the Redemption of Rent (Ir) Act, 1891, 54 & 55 V. c. 57 (*Re Cummins and St. Leger, 1896, 2 I. R. 603*).

"There is a material difference between a Holding and an OCCUPATION. A person may hold, though he does not occupy. A Tenant is a person who holds of another; he does not, necessarily, occupy" (per Littledale, J., *R. v. Ditchet, cited TENANT*).

Holding a SALE; *V. HOLD.*

**HOLDING OUT.** — *V. HOLD OUT.*

**HOLDING OVER.** — *V. WILFULLY HOLD OVER.*

**HOLIDAY.** — By a Charter-Party, a vessel was "to be loaded in L. in 14 days, and to be discharged, weather permitting, at not less than 25 tons per working day (holidays excepted)"; held, that though "holidays" are not included in "WORKING DAY," yet that the exception related only to the discharge as its last antecedent, and that the loading was to be done in 14 days including Sundays (*Niemann v. Moss, 29 L. J. Q. B. 206*). *Semble*, that is a "Holiday or Fête Day," within a Demurrage Clause, which is recognised as such in the district to which the clause relates, *e.g.* the National Eisteddfod in Wales (*Denniston v. Zimmermann, 98 Law Times, 181; 11 Times Rep. 113*).

Generally, "Holiday" does not include SUNDAY (*Phillips v. Innes, 4 Cl. & F. 234*), in *whc* a Scotch barber's Apprentice Indenture provided that the Apprentice should not absent himself from his master's business "on Holiday or Week-day," and the H. L. decided that Sunday is not

a "Holiday," but that, if it were, the words of the Indenture did not oblige the apprentice to shave his master's customers on a Sunday, because that is "an act of HANDICRAFT" prohibited by the Sunday Acts from being done on a Sunday, and is not a "Work of NECESSITY or MERCY or CHARITY."

V. BANK HOLIDAYS.

**HOLME.** — "*Holme*, or *hulmus*, signifieth an isle or fenny ground" (Co. Litt. 5 a).

**HOLT.** — V. GRAVA.

**HOLY COMMUNION.** — V. CHURCH: COMMUNION.

**HOLY ORDERS.** — V. CLERGYMAN.

**HOMAGE.** — Homage is (1) Homage by *Ligeance*, which is inherent and inseparable from every subject; (2) Homage *by reason of Tenure*, which latter "is defined to bee a Service which shall be made in such manner, that is to say, The Tenant in fee simple or fee taile that holdeth by Homage shall kneele upon both his knees ungirded, and the Lord shall sit and hold the hands of his Tenant between his hands and the Tenant shall say, — 'I become your Man from this day forward of Life and Member and of Earthly Honour, and to you shall be faithfull and true, and shall beare to you faith for the lands that I claime to hold of you, saving that faith that I hold to our Lord the King'; and then the Lord, so sitting, shall kisse him" (*Termes de la Ley*). *17* Co. Litt. Bk. 2, ch. 1: Cowel: Jacob: 1 Bl. Com. 367, 368; 2 Ib. 53, 54, *n*: *Cp*, FEALTY: KNEELING.

Homage *Ancestral*; V. *Termes de la Ley*: Cowel.

Homage *Jury*, often now called "the Homage," are Copyholders at a Court Baron of a Manor who enquire and make presentments of defaults and deaths of Copyholders, Admittances, Surrenders, &c. The consent of the Homage, means that of the majority (*Wentworth v. Clay*, Finch, 263: *Ramsey v. Cruddas*, 1893, 1 Q. B. 228; 62 L. J. Q. B. 269; 68 L. T. 364; 57 J. P. 406). *Note*. Since 31st Dec 1841 presentment by the Homage has not been essential to the validity of an Admission (s. 90, 4 & 5 V. c. 35; s. 84, Copyhold Act, 1894, 57 & 58 V. c. 46).

**HOMAGER.** — V. FREEHOLDER.

**HOME.** — V. AT HOME.

Quà Ry and Canal Traffic Act, 1888. " 'Home,' in relation to MERCHANDISE, includes the UNITED KINGDOM, the CHANNEL ISLANDS, and the Isle of Man" (s. 55).

A "*Passage Home*," s. 186 (*c*, *d*) Mer Shipping Act, 1894, means, to provide the Seaman "with a passage to the Port from which he originally

shipped, or to some other Port in the United Kingdom to which he agrees to go, and includes an obligation to provide him with reasonable maintenance during the passage" (per Esher, M. R., *Edwards v. Steel*, 1897, 2 Q. B. 327; 66 L. J. Q. B. 690; 77 L. T. 297; 2 Com. Ca. 272: *Vf*; *Purves v. Straits of Dover S. S. Co*, 1899, 2 Q. B. 217; 81 L. T. 35; 68 L. J. Q. B. 925; 47 W. R. 630; 4 Com. Ca. 274). D

A bequest to a Wife, though to be paid to her soon after the testator's decease and "to provide a *Suitable Home*," has no priority over other legacies if the estate be insufficient to pay all (*Re Schweder*, cited IMMEDIATELY, at end).

**HOME FARM.** — A HOLDING of which the Landlord desires to resume the occupation "as a Home Farm in connexion with his Residence, or for the purpose of providing a Residence for some member of his family," s. 21, Land Law (Ir) Act, 1881 (*Va* subs. 2, s. 58); *V. Re Hamilton and Sharpe*, 20 L. R. Ir. 224.

Quà Labourers (Ir) Act, 1886, 49 & 50 V. c. 59; *V.* s. 6.

**HOMESOKEN.** — To be quit of Amerciaments (Termes de la Ley).

**HOME-STALL.** — A Mansion-house (Jacob).

**HOME-TRADE SHIP.** — Quà Mer Shipping Act, 1894, " 'Home-Trade Ship,' includes, every SHIP employed in trading or going within the following limits, *i.e.* the UNITED KINGDOM, the CHANNEL ISLANDS, and the Isle of Man, and the Continent of Europe between the River Elbe and Brest inclusive" (s. 742). *Cp.* "Foreign-going Ship," sub FOREIGN.

By the same section " 'Home-Trade Passenger Ship,' means, every Home-trade Ship employed in carrying passengers." *V.* PASSENGER SHIP.

**HOMICIDE.** — "Homicide, as it is legally taken, is when one is slaine with a man's will, but not with malice prepensed" (Co. Litt. 287 b: *Vf*; Termes de la Ley).

"Homicide is the killing of a human being by a human being. A child becomes a human being within the meaning of this definition, when it has completely proceeded in a living state from the body of its mother, whether it has or has not breathed, and whether the navel string has or has not been divided; and the killing of such a child is homicide, whether it is killed by injuries inflicted before, during, or after, birth. A living child in its mother's womb, or a child in the act of birth, even though such child may have breathed, is not a human being within the meaning of this definition, and the killing of such a child is not homicide" (Steph. Cr. 151: *Vf*; *Ib.* ch. 23). *V.* KILL: MANSLAUGHTER. *Cp.* CHANCE-MEDLEY: EXCUSABLE: JUSTIFIABLE: MURDER.

*Vh*, Arch. Cr. 749; Rose. Cr. 543; Jacob: 6 Encyc. 216-218.

**HONEST.** — Honest Earnings; *V.* EARNINGS.

"Honest Persons," for trustees, in a charitable trust deed made in 1549; *V. Baker v. Lee*, 30 L. J. Ch. 625; 8 H. L. Ca. 495.

"Honesty"; *V.* GOOD FAITH: IMPOSSIBLE.

"Honestly and Reasonably," s. 3, Judicial Trustees Act, 1896; *V.* REASONABLY.

**HONOUR.** — "By the name of an Honor which a subject may have, divers manors and lands may passe" (Co. Litt. 5a: *Vf.* Termes de la Ley: Touch. 92: Cowel: Jacob: Elph. 558).

"Acceptance for Honour, supra protest"; *V.* ss. 65, 66, 67, Bills of Ex. Act, 1882.

"Payment for Honour, supra protest"; *V.* s. 68, *Ib.*

"When a man writes, 'I promise to pay the above as a DEBT of Honour,' he does not mean to admit that it is a debt which may be enforced against him at law" (per Brett, J., *Maccord v. Osborne*, cited RATIFICATION).

An "Honour," or P. P. L., Policy is one in which it is stipulated that the Policy itself shall be sufficient Proof of INTEREST; *Vh.* *Roddick v. Indemnity Insree*, cited UNINSURED: *Gedge v. Royal Ex. Assree*, 1900, 2 Q. B. 214; 69 L. J. Q. B. 506; 82 L. T. 463; *Vhle* for comment on Note to *Buchanan v. Faber*, 4 Com. Ca. 227. *Cp.* FULL INTEREST ADMITTED.

Title of Honour; *V.* DIGNITY: *Cowley v. Cowley*, 1900, P. 118; 83 L. T. 218.

**HONOURED.** — In a guarantee of a Promissory Note if it be not "duly honoured and paid," "duly honoured," means no more than duly paid when due. "Honoured" means, payment at maturity" (per Parke, B., *Walton v. Maskell*, 14 L. J. Ex. 56; nom. *Walton v. Mascall*, 13 M. & W. 457). *Cp.* DISHONOURED.

**HOO.** — *V.* HOWE.

**HOPCOMBE.** — "Signifies a Valley in Domesday Book" (Cowel): *Cp.* COMBE.

**HOPE.** — *V.* PRECATORY TRUST: EARNEST: COMBE.

"No Hope of Recovery," to render a Dying Declaration admissible in evidence, means, that "there must be an expectation of impending and almost immediate death from the causes then operating," with "no hope whatever" in the mind of the Declarant that he will recover: if the Declarant states he has no hope "at present," the declaration is inadmissible (*R. v. Jenkins*, L. R. 1 C. C. R. 187; 38 L. J. M. C. 82, *espy* *jdgmt* of Byles, J.).

"I am in hopes I shall be able"; *V. Smith v. Thorne*, cited ABLE.

**HORIZONTAL.** — “Horizontal Line”; *V.* s. 41, London Bg Act, 1894.

**HORNE-TOOKE'S ACT.** — 41 G. 3, c. 63, for removing doubts as to eligibility of Persons in Holy Orders to sit in the House of Commons.

**HORSE.** — “Horse, Gelding, or Mare,” s. 10, 1 Edw. 6, c. 12, 2 & 3 Edw. 6, c. 33, included Foals and Fillies (*R. v. Welland*, Russ. & Ry. 494); but a prisoner convicted of stealing a Colt did not lose his CLERGY under these statutes, because “Colts” are not mentioned therein *eo nomine* (*R. v. Beanev*, *Ib.* 416).

Quà Metropolitan Market Act, 1851, 14 & 15 V. c. 61, “Horse” includes “Mare, Ass, and Mule” (s. 44).

Quà the Revenue Act, 1869, 32 & 33 V. c. 14, and by its s. 19 (8), “‘Horse’ means and includes, a Horse or Pony of any sex or description or age, except a Foal, Colt, or Filly, which shall never have been used for any purpose of draught or riding: . . . ‘Mule,’ includes only such mule as shall have been at any time used for any purpose of draught or riding.” For Exemptions from License, *V.* s. 19 (12).

Quà Army Act, 1881, “‘Horse,’ includes a Mule”; and “applies to any BEAST of whatever description used for burden or draught, or for carrying persons, in like manner as if such beast were included in the expression ‘Horse’” (subs. 40, s. 190).

Quà Sum Jur (Ir) Act, 1851, “‘Horse,’ shall include any other animal of any kind commonly used or employed in drawing any kind of CARRIAGE” (s. 25).

Other Stat. Def. — 1 & 2 V. c. 79, s. 1; 6 & 7 V. c. 86, s. 2; 7 & 8 V. c. 87, s. 10. — *Ir.* 16 & 17 V. c. 112, s. 80.

*V.* JOB: PLANT: SOUND.

**HORSE CAUSEWAY.** — *V.* CAUSEWAY.

**HORSE DEALER.** — Quà Revenue Act, 1869, “Horse Dealer,” means and includes, “only such persons as shall buy and sell horses as a Trade, Occupation, and Means of Livelihood” (s. 13, 35 & 36 V. c. 20). *Vth*, *Allen v. Sharp*, 17 L. J. Ex. 209; 2 Ex. 352.

**HORSE FLESH.** — Quà 52 & 53 V. c. 11, “‘Horse Flesh,’ shall include, the flesh of asses and mules; and shall *mean*, horse flesh, cooked or uncooked, alone or accompanied by or mixed with any other substance” (s. 7).

**HORSE RACE.** — Quà Racecourses Licensing Act, 1879, 42 & 43 V. c. 18, “Horse Race,” means, “any Race in which any horse, mare, or gelding, shall run, or be made to run, in competition with any other horse, mare, or gelding, or against Time, — for any Prize of what nature or kind soever, or for any Bet or Wager made or to be made in respect of

any such horse, mare, or gelding, or the riders thereof, *and* at which more than 20 persons shall be present" (s. 1).

V. EVENT: FOOT RACE: LITERARY: LOTTERY: RACE.

**HORSE STEALER.**—To accuse a person of being a "Horse Stealer" is to impute that he has been guilty of feloniously stealing a horse (*Mountney v. Watton*, 2 B. & Ad. 673).

**HORSE-WAY.**—V. BRIDLE-PATH: CAUSEWAY: WAY.

**HOSIER.**— "A Draper sells materials, while a Hosier sells articles for wear" (per Channell, J., *Bailey v. Skinner*, cited CARRY ON).

**HOSPITAL.**— "There is no manner of difference between a COLLEGE and an Hospital, except only in degree; an Hospital is for those that are poor and mean and low and sickly; a College is for another sort of indigent persons; but it hath another intent, — to study in and breed up persons in the world that have not otherwise to live" (per Holt, C. J., *Philips v. Bury*, 2 T. R. 353).

A "Hospital" is an eleemosynary institution and, strictly speaking, there is no legal Hospital unless it be incorporated, and the persons benefited are themselves the corporation (*Sutton's Hospital*, 10 Rep. 31 a); "and of these Hospitals some bee Eligible, some Donative, and some Presentable" (Co. Litt. 342 a). *Vf*, Phil. Ecc. Law, Part 8, ch. 3.

But referring to this definition the Court of Ex. in *Colchester v. Kewney*, (35 L. J. Ex. 206) said, — "It seems rather more reasonable to hold that the word (in the exemption from Land Tax in s. 25, 38 G. 3, c. 5) is used in a popular sense only; and that any institution which, though not in a strictly legal, might in a popular, sense be called a Hospital, might claim exemption. But some doubts arise whether even upon this view this Institution (the Wandsworth Royal Victoria Patriotic Asylum) would be a 'Hospital,' by which word we understand, rather an Institution for the relief of the sick or aged than for the maintenance and education of children." *V*. that jdgmt affirmed, 36 L. J. Ex. 172; L. R. 2 Ex. 253; 16 L. T. 463: *Vh*, 14 Eliz. c. 14, cited inf.

"Hospital" is a word of wider and more variable meaning than DISPENSARY, and, primarily, signifies a place built for the reception of the sick, or the support of the aged or infirm, poor. It has been used in Great Britain, in some instances, to denote an Institution in which poor children are fed and educated. But that is not the ordinary meaning of the word" (per Ld Watson, *Dilworth v. Commrs of Stamps*, 1899, A. C. 107; 68 L. J. P. C. 4). *Vf*, *Moses v. Marstrand*, 70 L. J. Q. B. 261; 1901, 1 Q. B. 668.

"I apprehend that even a Hospital would not be the less entitled to exemption under this Act (Income Tax Act, 1842, s. 60, Sch A. No. VI) because, in order to diminish its expense, certain fees were taken

from certain richer patients who might choose to obtain the benefit of the Hospital for payment. As to 'Alms-house,' there, it would be impossible to suppose a case in which anybody except poor almsmen or almswomen would take the benefit of such an institution" (per Denman, J., *Blake and Loudon Corp.*, 56 L. J. Q. B. 152; 18 Q. B. D. 437; 35 W. R. 212; 51 J. P. 71: affd 56 L. J. Q. B. 424; 19 Q. B. D. 79; 35 W. R. 791). A wholly self-supporting Lunatic Asylum, though founded by subscription, is not within this exemption as a "Hospital" (*Needham v. Bowers*, 21 Q. B. D. 436); but when the support of such an Asylum is chiefly eleemosynary, then it is a "Hospital" within this exemption, and also within the exemption from Inhabited House Duty (Case 4, Sch B. 48 G. 3, c. 55; s. 2, 14 & 15 V. c. 36), although it may have some paying Patients (*Carse v. Nottingham Lunatic Asylum*, 1891, 1 Q. B. 585; 60 L. J. Q. B. 485; 65 L. T. 155; 39 W. R. 461; 55 J. P. 582).

V. CHARITY SCHOOL: PUBLIC SCHOOL: NOXIOUS: NUISANCE.

In *Colchester v. Kewney* (sup), it was held that no Hospital is, under s. 25, 38 G. 3, c. 5, exempt from Land Tax unless founded before 38 G. 3, c. 60.

"Hospital," s. 3, 13 Eliz. c. 10, means, "Hospitals, Maison Dieu, Bead-Houses, and other houses ordained for the sustentation or relief of the poor" (14 Eliz. c. 14): *Vth, Magdalen College Case*, 11 Rep. 66 b; 1 Rolle, 151: *Southwell v. Lincoln, Bp.*, 1 Mod. 204; 2 lb. 56; *Moore v. Clench*, 45 L. J. Ch. 80; 1 Ch. D. 447: *Magdalen Hosp. v. Knotts*, 48 L. J. Ch. 579; 4 App. Ca. 324; 27 W. R. 602; 40 L. T. 466.

Other Stat. Def. — P. H. London Act, 1891, s. 141; Idiots Act, 1886, 49 & 50 V. c. 25, s. 17; Lunacy Act, 1890, s. 341.

"Hospitals, Houses, and Places, . . . for the Public Reception of Pregnant Women, and supported by Charitable Contributions, or otherwise," s. 3, 13 G. 3, c. 82, does not include a Room in a Parish Workhouse appropriated for the reception of pregnant women resident within the parish (*R. v. Manchester*, 4 B. & Ald. 504).

"Hospitals of London"; V. LONDON.

A gift to the "Hospital" of a district by a name non-existent in the district, will go to the General Hospital, as distinguished from the Special Hospitals, of that district (*Re Alchin*, L. R. 14 Eq. 230).

V. PATIENT: PUBLIC HOSPITAL: Jacob: 6 Encyc. 233-235.

**HOSPITALITY.** — A gift for "Hospitality Or Charity," is void for uncertainty (*Re Hewitt*, 53 L. J. Ch. 132: *Re Jarman*, 47 L. J. Ch. 675; 8 Ch. D. 584).

**HOSTEL.** — V. INN: HOTEL.

**HOSTILITIES.** — V. WAR.

"Consequences of Hostilities"; V. CONSEQUENCES.



**HOTCHPOT.** — “This word is, in English, a pudding; for in this pudding is not commonly put one thing alone, but one thing with other things together” (Litt. s. 267). “*Hutspot*, or *Holspot*, is an old Saxon word, and signifieth so much as Littleton here speaks. And the French use *hotchpot* for a commixion of divers things together. It signifieth here metaphorically *in partem positio*. In English we use to say *hodgepodge*, in Latine *farrago* or *miscellaneum*” (Co. Litt. 177 a). *Vf*; Termes de la Ley: 2 Bl. Com. 190, 517: Wms. Exs. 1369 *et seq*: and as to effect and construction of a Hotchpot Clause, *V. Auster v. Powell*, 1 D. G. J. & S. 99; 8 L. T. 73: *For v. For*, 40 L. J. Ch. 182; L. R. 11 Eq. 142: *Re Whitehouse*, 37 Ch. D. 683; 57 L. J. Ch. 161; 57 L. T. 761; 36 W. R. 181: *Re Cosier, Wheeler v. Humphreys*, cited SATISFACTION, at end: *Re Bristol*, 1897, 1 Ch. 916; 66 L. J. Ch. 446; 76 L. T. 757; 45 W. R. 552: *Re Lambert*, 1897, 2 Ch. 169; 66 L. J. Ch. 624; 76 L. T. 752; 45 W. R. 661: Vaizey, 1220: 6 Encyc. 235-237.

In a Settlement pursuant to Articles, a Hotchpot Clause will not be inserted unless it be expressly directed (*Lees v. Lees*, Ir. Rep. 5 Eq. 549: *Sythe, Miller v. Gulson*, 13 L. R. Ir. 408).

V. ADVANCEMENT: COLLATION.

**HOTEL.** — “Hotel” is not to be confounded with the old word “Hostel” which is a synonym for INN.

An “Hotel” is a place where lodgings are let and where provisions are, to some extent, supplied (*Smith v. Scott*, 1 L. J. C. P. 143; 9 Bing. 14: *Gibson v. King*, 12 L. J. Ex. 9; 10 M. & W. 667: per Ld Brougham, *King v. Simmonds*, 1 H. L. Ca. 773); that the lodgings are let to invalids, makes no difference (*Re Jones, Ex p. Thorne*, 45 L. J. Bank. 158; 3 Ch. D. 457). These were decisions on “Keepers of Hotels” in the late Bankry definition of “Trader.” In *Smith v. Scott*, Tindal, C. J., said, — “It is clear that the word ‘Hotel’ is not used in the sense of the old word ‘Hostel,’ for that means what is now termed an ‘Inn’; and as the word ‘Inn’ immediately precedes, it could scarcely have been intended to designate the same thing by both. The modern word is introduced from the French, and rather implies a house to which people resort for lodgings, than for the sort of entertainment procured only at an Inn.” In that case a Lodging-house Keeper who procured and supplied, at a small profit, provisions for her lodgers, — such provisions being kept separately for the individuals for whom they were respectively procured, — was the keeper of an “Hotel”; and in *Gibson v. King* (sup) it was held that a Boarding-house was, *à fortiori*, an “Hotel” within the definition. In *Deronshire v. Simmons* (39 S. J. 60), “Hotel” was contrasted with “PUBLIC HOUSE.”

In America “Hotel” has been held to be a synonym for INN (*Cromwell v. Stephens*, 2 Daly. 15).

“I agree that the words ‘Hotel’ and ‘Tavern’ are undergoing a

change in their meaning, there being Temperance Hotels and Temperance Taverns, as well as houses for the sale of exciseable liquors" (per Chitty, L. J., *Webb v. Fugotti*, 79 L. T. 684). *V. Thompson v. Lucy*, cited INN: PRIVATE HOTEL.

*V. GOODWILL.*

**HOUR.** — In relation to the hour up to which a vendor can make a valid delivery on the last day fixed by the contract; *V. Startup v. Macdonald*, 6 M. & G. 593; 12 L. J. Ex. 477; *Va*, REASONABLE HOUR.

Demurrage, or Despatch Money, at so much "per hour"; *V. Living v. Holloway*, cited DESPATCH.

*V. AFTERNOON.*

**HOUSE.** — " 'House,' *Mese*, or *Maison* called in legall Latine *Mes-uagium*, containeth (as hath beene said) the buildings, curtelage, orchard, and garden" (Co. Litt. 56 a, 56 b; in the margin it is added "Six acres of land may be parcell of a house"). " 'Domus est nomen collectivum, and contains many buildings, as barns, stables, &c'" (*Hore v. Bridderworth*, 4 Leon. 15, 16).

"By the grant of a MESSUAGE, or house, *mesuagium*, the orchard, garden, and curtilage doe passe; and so an acre or more may passe by the name of a house" (Co. Litt. 5 b). To this passage Mr. Hargrave has the following Note (1); "*Contra* as to the garden, Keilw. 57. Mo. 24. Dal. in N. Bendl. 29. But see acc. *post*, 56 a and b. Plowd. 171. 2 Co. 32. 2 Saund. 401. S. P. adj. acc. in case of a devise. 3 Leon. 214, and Cro. Eliz. 89. See acc. 2 Cha. Cas. 27. See further, Litt. Rep. 6, where the Court held that the devise of a messuage was not sufficient to pass two acres four miles distant from the messuage, though occupied with it. In Keilw. 57, a difference is taken between *messuage* and *domus*; and it is there said that *messuage* extends to the *curtilage*, though not to the *garden*, but that *domus* only comprehends buildings. Also in some of the cases cited, particularly that from Plowden, the grant was of a *messuage* with the *appurtenances*; on which *latter* word some stress seems to have been laid": *Vth*, Elph. 588. *See*, MESSAGE for authorities, in addition to Co. Litt. sup, that that word and "House" are synonymous, and that the distinction between them (which distinction seems to have been started by Frowike, C. J., Keilw. 57, pl. 7; *Va*, *Thomas v. Lane*, 2 Cha. Cas. 26) is not to be relied on. *Cp*, MANSE: *If*, PREMISES.

For cases as to what is included in "House," quâ s. 92, Lands C. C. Act, 1845, *V*, inf.

"By the grant of a House the Estovers appendant thereunto will pass" (Touch. 89), also "the doors, windows, locks, and keys do pass as parcel of it, albeit at the time of the grant they be actually severed from the house," also "the ground whereon it doth stand doth pass" (Ib. 90). *If*, Woodf. 148.

A devise of "Freehold House and PROPERTY situate in" A., will not pass building materials and scaffolding temporarily on the ground near the house (*Conway v. Vernon*, 2 Giff. 277).

For the cases as to what will pass on a Devise of "House"; *V. 1 Jarm.* 779-782.

"A hundred years ago there was not much difficulty in saying what was a 'House,' but builders and architects have so altered the construction of houses, and the habits of people have so altered in relation to them, that 'house' has acquired an artificial meaning and the word is no longer the expression of a simple idea. To ascertain its meaning one must understand the subject-matter with respect to which it is used in order to arrive at the sense in which it is employed in a statute" (per Halsbury, C., *Grant v. Langston*, 1900, A. C. 390; 69 L. J. P. C. 68). "Formerly, houses were built so that each house occupied a separate site, but in modern times a practice has grown up of putting separate houses one above the other. They are built in separate flats or storeys; but for all legal and ordinary purposes they are separate houses. Each is separately let and separately occupied, and has no connection with those above or below, except in so far as it may derive support from those below instead of from the ground, as in the case of ordinary houses" (per Jessel, M. R., *Yorkshire Insuree v. Clayton*, 8 Q. B. D. 424; 51 L. J. Q. B. 84; cited with approval by Halsbury, C., and Ld Brampton, in *Grant v. Langston*, sup).

It may, therefore, be said that, generally, a "House" is a structure of a permanent character (1 Hale P. C. 557), structurally severed (*Sr. SEPARATE OCCUPATION*) from other tenements (and usually, *but not necessarily*, under its own separate roof) that is used, or may be used, for the habitation of man, and of which the holding (as distinct from Lodgings) is independent (*Evans and Finch's Case*, Cro. Car. 473; Jo. W. 394; *Yorkshire Insuree v. Clayton*, 8 Q. B. D. 421; 51 L. J. Q. B. 82; *Chapman v. Royal Bank of Scotland*, 50 L. J. Q. B. 670; 7 Q. B. D. 136; *R. v. Usworth*, 5 L. J. M. C. 139; 5 A. & E. 261; 6 N. & M. 811; *Cook v. Humber*, 31 L. J. C. P. 73; 11 C. B. N. S. 41, with *whle* compare. *Wilson v. Roberts*, 31 L. J. C. P. 78; 11 C. B. N. S. 50, *Henrette v. Booth*, 33 L. J. C. P. 61; 15 C. B. N. S. 500, and *Cuthbertson v. Butterworth*, 38 L. J. C. P. 98; L. R. 4 C. P. 523; *Numm v. Denton*, 14 L. J. C. P. 43; 7 M. & G. 66; 1 Lutw. 178; *Daniel v. Coulsting*, 14 L. J. C. P. 70; 7 M. & G. 122; 1 Lutw. 230; *Monks v. Dykes*, 8 L. J. Ex. 73; 4 M. & W. 567; *Vf*, MANSION. *Sr. Kimber v. Admans*, p. 896, inf). It is not necessary that a "House," if adapted for residential purposes, should be actually dwelt in (*Daniel v. Coulsting*, sup). It is true that in *Surman v. Darley* (14 L. J. M. C. 145; 14 M. & W. 181) Pollock, C. B., in commencing his judgment said. — "We all think that the term 'houses' *primâ facie* means, dwelling-houses"; but there the phrase to be construed was, "houses of the *inhabitants*" (in a Rating Act applicable to a particular

district), and it was held that Covent Garden Theatre was not such a "house." But, besides that the word "houses" was there coloured by its context "inhabitants," it could scarcely be contended that the Theatre had ever been adapted for residential purposes, so that the proposition above stated on the authority of *Daniel v. Coulsting*, that a "house," as such, need not be actually dwelt in, would seem unimpeached.

Notwithstanding the language used by Grove, J., in *Cuiger v. St. Mary, Islington* (50 L. J. M. C. 63), it would seem that the decisions which have been pronounced on "Houses" as used in s. 105, Metrop Man. Act, 1855, are in accordance with the principle just stated; for a Church consecrated according to the rites of the Established Church (as it never can be legally used as a habitation) is *not* a "house" thereunder (*Angell v. Puddington*, 37 L. J. M. C. 171; L. R. 3 Q. B. 714; 9 B. & S. 496, *Vt*he per Mathew, J., *St. Mary, Islington v. Cobbett*, 1895, 1 Q. B. 373; *G. E. Ry v. Hackney*, 52 L. J. M. C. 105; 8 App. Ca. 687; *St. inf*); but a Dissenting Chapel, merely registered as a place of worship, without any dedication in perpetuity, and over the vestry of which are rooms forming the residence of the care-taker and his family, *is* such a "house" (*Cuiger v. St. Mary, Islington*, 50 L. J. M. C. 59; *Wright v. Ingle*, 55 L. J. M. C. 17; 16 Q. B. D. 379; 54 L. T. 511; 34 W. R. 220; 50 J. P. 436; 2 Times Rep. 143). *Cp. Hornsey v. Brewis*, cited OWNER.

Though a Consecrated Church is not a "House" within the section just cited, yet it is a "House" quâ a BUILDING LINE which a Local Authority has a right to prescribe (*Folkestone v. Woodward*, L. R. 15 Eq. 159).

Quâ P. H. Act, 1875, " 'House,' includes, SCHOOLS, also FACTORIES and other Buildings in which more than 20 persons are employed at one time " (s. 4). But that def is inconsistent with the context to "House Refuse" as used in s. 42, which does not comprise REFUSE of a business (*London and Provincial Laundry v. Willesden*, 1892, 2 Q. B. 271; 67 L. T. 499; 40 W. R. 557; 56 J. P. 696).

Quâ P. H. Ireland Act, 1878, " 'House,' includes, Schools, and also Factories and other Buildings in which persons are employed, whatever their number may be " (s. 2).

Quâ P. H. London Act, 1891, " 'House,' includes, Schools, also Factories and other Buildings in which persons are employed " (s. 141); a BUILDING used, by day, for religious exercises and, by night, as a refuge for the destitute, but which contains sleeping accommodation, is a "House" within s. 2 (1 e) of that Act (*R. v. Mead*, 64 L. J. M. C. 169; 11 Times Rep. 242; *R. v. Slade*, 65 L. J. M. C. 108; 74 L. T. 656; 60 J. P. 358).

Quâ P. H. Scotland Act, 1897, " 'House,' means, a Dwelling-house; and includes, Schools, also Factories and other Buildings in which persons are employed " (s. 3).

*Cp.* COMMON LODGING HOUSE: "School House," sub SCHOOL.

"House," s. 92, Lands C. C. Act, 1845, "comprises all that would pass

by a Grant of a house" (per Wood, V. C., *St. Thomas' Hospital v. Charing Cross Ry*, 1 J. & H. 404); therefore, the word "House" there, comprises not only the curtilage, but also the garden or paddock and all that is necessary to the enjoyment of the house (*V. sup.*), — as distinct from what is merely a place of PLEASURE, or subsidiary to the personal use and enjoyment of a particular occupier, — whether attached to the main building or not, even though purchased subsequently to the erection of the main building (*Dart*, 245: *Steele v. Mid. Ry*, 1 Ch. 275: *Low v. Staines Reservoirs Committee*, 64 J. P. 212: *St. Thomas' Hospital v. Charing Cross Ry*, 30 L. J. Ch. 395; 1 J. & H. 400; 4 L. T. 13; 9 W. R. 411: *Marson v. L. C. & D. Ry*, 37 L. J. Ch. 483; L. R. 6 Eq. 101; L. R. 7 Eq. 546; 18 L. T. 317), but though the Court of Appeal held that two tenements, though internally inter-communicated, are two "Houses" (*Hurric v. S. Devon Ry*, W. N. (74) 195, 218; 32 L. T. 1), yet, in a subsequent case Bacon, V. C., took an opposite view (*Siegenberg v. Metrop District Ry*, 49 L. T. 554; 32 W. R. 333). For the other cases hereon, and as to what is "Part of a House" within the section; *V. Grosenor v. Hampstead Junction Ry*, 26 L. J. Ch. 731; 1 D. G. & J. 446; 5 W. R. 812: *Cole v. West London, &c Ry*, 28 L. J. Ch. 767; *Richards v. Swansea Improvement Co*, 9 Ch. D. 425; 38 L. T. 833; 26 W. R. 764: *King v. Wycombe Ry*, 29 L. J. Ch. 462; 28 Bea. 104: *Kerford v. Seacombe Ry*, 36 W. R. 431; 57 L. J. Ch. 270; 58 L. T. 445; 4 Times Rep. 228: *Littler v. Rhyl Commes*, W. N. (78) 219: *Teddwell v. Lond. & S. W. Ry*, W. N. (84) 233: *Allhusen v. Ealing & S. Harrow Ry*, 78 L. T. 396; 46 W. R. 483: *Barnes v. Southsea Ry*, 27 Ch. D. 536: *Fergusson v. L. B. & S. Ry*, cited PLEASURE: Lloyd on Compensation, 6 ed., 25-31: Woolf & Middleton, *Ib.* 204-207: Browne & Allan, *Ib.* 239-242: Cripps, *Ib.*, 4 ed., 32-36: 1 Jarm. 778, 779, *n* (a): *Dart*, 245-247: Seton, 2414, 2415. *Cp.* MANUFACTORY: *Vf*, PART.

A Workhouse is a "House" within W. W. C. Act, 1847, 10 V. c. 17 (*Liskeard Union v. Liskeard W. W. Co*, 7 Q. B. D. 505). *V.* PUBLIC PURPOSES.

"House," in House Tax Act, 1808, 48 G. 3. c. 55: *V. A-G. v. Westminster Chambers Assn*, 45 L. J. Ex. 886; 1 Ex. D. 469: But the reasoning of Jessel, M. R., in *the* was "unsatisfactory" (per Halsbury, C., *Grant v. Langston*, 1900, A. C. 383; 69 L. J. P. C. 66; 82 L. T. 629; 64 J. P. 644), and s. 13, 41 V. c. 15, was passed to remedy the hardship of that ruling (per Lds Brampton and Macnaghten, *Ib.*); and by subs. 2 of s. 13 (the evolution of which subs. is traced by Ld Macnaghten) a "House or Tenement" escapes the tax and is "occupied SOLELY" for Trade, &c, if it forms one floor of a building which floor is exclusively so used, and has no internal communication with the rest of the building, and has a separate entrance to it from the street (*S. C.*). *Vf*, DWELLING-HOUSE: DIVIDE: SERVANT.

Other Stat. Def. — Beerhouse Act, 1830, s. 32; Ecclesiastical Leasing

Act, 1842, 5 & 6 V. c. 108, s. 31; Births & Deaths Registration Act, 1874, 37 & 38 V. c. 88, s. 48 (so, for Ireland, 43 & 44 V. c. 13, s. 38); 53 & 54 V. c. 59, s. 11. — *Scot.* Lunacy (Scot) Act, 1857, 20 & 21 V. c. 71, s. 3; Removal Terms (Burghs) Scotland Act, 1886, 49 & 50 V. c. 50, s. 3; Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, s. 4 (13). — *Jr.* 7 & 8 V. c. 106, s. 156.

A Covenant restricting the number of houses to be erected on a stated piece of land, "House," with no controlling context, has been held to mean, the whole physical erection or amalgamated building (*semble*, under its own roof) usually called a "House" without any reference to its interior arrangement; therefore, a building containing Residential Flats is only *one* "House," within such a covenant (*Kimber v. Admans*, 1900, 1 Ch. 412; 69 L. J. Ch. 296; 82 L. T. 136; 48 W. R. 322: but *cp Evans and Finch's Case*, &c, *sup*). But where the covenant is that "no more than one messuage or dwelling-house, *with suitable out-houses and stabling* (if any) in connection therewith shall be erected, and that such messuage shall be adapted for, and used as, A private residence only, and that no trade or business shall be carried on in or upon that plot," a building containing Residential Flats is a breach of such a covenant (*Rogers v. Hosegood*, 1900, 2 Ch. 388; 69 L. J. Ch. 652; 83 L. T. 186; 48 W. R. 659). No doubt, in *this* there was a context sufficient to distinguish it from *Kimber v. Admans*, but the ground for his decision in *Rogers v. Hosegood* was stated by Farwell, J., as follows, — "In my opinion, a Block of Flats such as is proposed is *not one messuage, but several*. I cannot see any substantial difference, for the purposes of a covenant of this nature, between a Terrace of adjoining residences separated from one another vertically, and a Pile of Residences separated from one another horizontally" (69 L. J. Ch. 62, 63; 1900, 2 Ch. 393). The conclusion so arrived at was accepted by the Court of Appeal without hesitation; but it seems difficult to reconcile it with *Kimber v. Admans*: *Va*, what Jessel, M. R., said in *Yorkshire Insree v. Clayton*, p. 893, *ante*, in support of *Rogers v. Hosegood*.

Two houses with a common yard, water-closet, and ash-pit, are not one "house" for the purpose of Value in a covenant contained in a building lease (*Snow v. Whitehead*, 53 L. J. Ch. 885; 27 Ch. D. 588).

Trade Fixtures, though covenanted to be left, are not, — (but, *semble*, ordinary tenant's fixtures are), — within the phrase "*house or other buildings*" in s. 83, 14 G. 3, c. 78 (*Ex p. Gorely*, 34 L. J. Bank. 1).

"Part of a house" is now a "House," &c, for the purposes of the Rep People Act, 1832, and the Mun Corp Acts, if "separately occupied for the purpose of any trade, business, or profession" (s. 5, 41 & 42 V. c. 26). *Vth, Thompson v. Ward, Ellis v. Burch*, L. R. 6 C. P. 327: *Va*, SEPARATE OCCUPATION.

"House on Either Side"; *V. Warren v. Mustard*, cited *SIDE*.

"House not theretofore kept as an INN," s. 10, Alehouse Act, 1828;

it is a question of fact for the Justices whether alterations have made a new house (*R. v. Smith*, 15 L. T. 178).

"House of Correction"; Stat. Def., Cruelty to Animals Act, 1849, 12 & 13 V. c. 92, s. 29.

"House or PLACE"; Stat. Def., Spirits (Ir) Act, 1854, 17 & 18 V. c. 89, s. 12.

"House, Shop, or Building"; Stat. Def., 49 & 50 V. c. 38, s. 9.

V. DWELLING-HOUSE: MANSION: NEW HOUSE: PRIVATE DWELLING-HOUSE: THE: WAREHOUSE.

"House," as a word of Limitation or Substitution, "is considered as synonymous" with FAMILY (2 Jarm. 91).

A devise to A. and his "House" passed the Fee, even before the Wills Act, 1837, s. 28 (*Chapman's Case*, Dyer, 333 b: *Wright v. Atkyns*, 17 Ves. 261).

Contents of house; V. CONTENTS.

Official House: V. OFFICIAL.

**HOUSE BOAT.** — Quà Thames Conservancy Act, 1894, " 'House Boat,' includes, any PLEASURE Boat on the Thames above Teddington Lock which is not a STEAM LAUNCH, and which is decked or otherwise structurally covered in, and which is, or is capable of being, used as a place of habitation (whether by day and night, or the one or the other), or as a place for accommodating or receiving persons for purposes of shelter recreation entertainment or refreshment, or of witnessing regattas or other events, or as club premises, or as offices, or as a kitchen, pantry, or store place" (s. 3).

V. BOAT.

**HOUSE BOTE.** — V. BOTE.

**HOUSE OF COMMONS.** — "The House of Commons (Disqualifications) Acts, 1715 to 1821"; V. Sch 2, Short Titles Act, 1896.

**HOUSE REFUSE.** — V. REFUSE.

**HOUSEBREAKING.** — Is the same offence as BURGLARY, with the distinction that it is not done at NIGHT.

**HOUSEHOLD.** — This word is frequently used in bequests as a qualifying adjective: e.g. "household," — *Furniture; Goods; Stuff; Effects; Property.*

Of these Household *Furniture*, and Household *Goods* (1 Jarm. 757, n), and Household *Stuff* (Touch. 447) are synonyms. Either phrase will include all personal chattels that may contribute to the use or convenience of the householder or the ornament of the house, such as Plate (*Nicholls v. Osborne*, 2 P. Wms. 419: *See, Jesson v. Essington*, Pre. Ch. 207), Linen,

China (both useful and ornamental), and PICTURES, also Prize Medals, Coins, or Trinkets, if framed and hung or otherwise disposed for household ornament (Wms. Exs. 1048, 1049: 1 Jarm. 757, *n*: Touch. 447: *Cremorne v. Antrobus*, 5 Russ. 312; 7 L. J. O. S. Ch. 88: *Field v. Peckett*, 30 L. J. Ch. 813; 29 Bea. 573: *Re Londesborough*, 50 L. J. Ch. 9); or the Clock of the house, if not a fixture (*Slanning v. Style*, 3 P. Wms. 336); but *qy* as to a Bust (*Willis v. Curtois*, 1 Bea. 195).

But the Touch-Stone lays it down (p. 417) that a bequest of Household *Stuff* will *not* comprise "Apparel, Books, Weapons, Tools for Artificers, Cattle, Victuals, Corn, Plow-geere, and the like"; a restriction equally applicable to Household "Goods" or "Furniture" (*Slanning v. Style*, 3 P. Wms. 334: *Bridgman v. Dore*, 3 Atk. 202: *Kelly v. Powlet*, Ambl. 611: *Porter v. Tournay*, *inf*). But in *Ouseley v. Anstruther* (10 Bea. 462), and *Hutchinson v. Smith* (11 W. R. 417: *Sothe, Porter v. Tournay*, cited LIVE AND DEAD STOCK), Books, and (in *Hutchinson v. Smith*) Consumable Stores (Wines) passed by force of the general intention of the Will although there was no more appropriate word to carry them than "Furniture." On the other hand, in *Manton v. Tabois* (54 L. J. Ch. 1008; 30 Ch. D. 92), a bequest of "Furniture, Goods and Chattels" was held not to include Jewellery, Guns, Pistols, Tricycles, or Scientific Instruments. *V. GOODS AND CHATTELS.*

In *Peto v. Grissell* (5 L. J. Ch. 286) and *Paton v. Sheppard* (10 Sim. 186), Shadwell, V. C., held that Tenant's Fixtures in a leasehold house passed as "Household Furniture": but Jessel, M. R., refused to follow that ruling (*Finney v. Grice*, 48 L. J. Ch. 247; 10 Ch. D. 13; followed in *Re Seton-Smith*, 71 L. J. Ch. 386).

"Household *Effects*" (V. EFFECTS) will comprise all that Household "Furniture," "Goods," or "Stuff," would carry; and it will also comprise Books and Consumable Stores, *e.g.* Wine (*Re Bourne*, 58 L. T. 537), and also Weapons if kept for domestic defence (*Cole v. Fitzgerald*, 1 Sim. & St. 189; 3 Russ. 301); in other words, "articles adapted for the use or ornament of the house" (*Tempest v. Tempest*, *inf*). By *Cole v. Fitzgerald* it was also determined that the term "Household Effects" included a pair of pistols, lathes and apparatus for turning, with a quantity of ivory, mahogany, &c, a sawing machine, a vice and anvil, a copying-machine, an organ, wines and liquors, about 100 volumes of general books, and a hay-stack if retained exclusively for home consumption (*Va, Re Labron*, *inf*); but that it did not include a pony or a cow, or some fowling-pieces that apparently were not used for domestic defence. Whether the V. C. decided that a parrot was included, is a matter of dispute between the reporters (*V. note*, 3 Russ. 301). In *Re Labron*, Kay, J., decided that a bequest of "Household Effects" would carry hay-ricks, chicken and sheep-troughs, store pigs, poultry, and carriages that were on the grounds (40 acres in extent) appertaining to the



dwelling-house of the testator (29 S. J. 147); but not a horse, cows, or sheep (*Ib.*, on a second application, 1 Times Rep. 248). In *Watson v. Arundel* (cited EFFECTS) a horse, carriage, car, and a quantity of hay and farm produce, passed under a gift of "plate, house linen, furniture, and all other effects, in my house at the time of my death." But in *Re Hammersley* (81 L. T. 150) Stirling, J., held that jewellery did not pass under a gift of "household furniture, books, pictures, paintings, engravings, plate, linen, china, and other effects."

Articles of a "household" nature will pass under that description, although they may never have been used by the testator, nor even kept in his house (*Pellew v. Horsford*, 25 L. J. Ch. 352).

Neither of the terms referred to in the first par of this definition will include Articles of Trade (*Pratt v. Jackson*, 2 P. Wms. 302; *Le Farrant v. Spenceer*, 1 Ves. sen. 97; *V.* note, 24 L. J. Ch. 526; Wms. Exs. 1049; *Sv, Manning v. Purcell*, 24 L. J. Ch. 522; 2 Sm. & G. 284 (as to which three cases, *V. Re Seton-Smith*, sup); *Fitzgerald v. Field*, 1 Russ. 427); nor Farming Stock (*Stone v. Parker*, 29 L. J. Ch. 874; 1 Dr. & Sm. 212); nor Articles exclusively of Personal Ornament (*Tempest v. Tempest*, 2 K. & J. 635). *V. IN OR ABOUT.*

Having regard to the facts and circumstances of the case, Romer, J., held that neither a Consecrated Altar Stone, nor Sacred Relics in a glass case, in a Roman Catholic Chapel in a Mansion, passed under a bequest of "furniture and articles of Household Use or Ornament" (*Petre v. Ferrers*, 61 L. J. Ch. 426; 65 L. T. 568; *Cp, FIXTURES*). A collection of Orchids (espy if in a house outside the curtilage of testator's dwelling-house) is not, *per se*, "articles of Household or DOMESTIC Use or Ornament"; but such of the plants as have been used for the ornamentation of the dwelling-house will pass as "articles of Household or Domestic Ornament" (*Re Owen*, 78 L. T. 643).

Household Bread; *V. FRENCH BREAD.*

"Household Property," held to include Leaseholds (*Harris v. Darley*, W. N. (73) 137).

"Household Qualification"; Stat. Def., Rep People Act, 1884, s. 7 (1, 4).

Household *Servant*, is synonymous with DOMESTIC SERVANT; therefore, a bequest to "household servants" will not include a coachman or grooms who are not indoor servants and do not board in the testator's house (*Re Drax*, 57 L. T. 475, following *Ogle v. Morgan*, cited SERVANT).

**HOUSEHOLDER.**— "Householder" (*v.g.* in s. 8, 26 G. 3, c. 38). though it be not of so strict a sense as "Housekeeper," will not include a lodger or temporary inmate, but it will include a partner daily resorting to his firm's counting-house in the place referred to, the dwelling-part of which counting-house is occupied by a servant of the firm (*R. v.*

*Hall*, 1 B. & C. 123; 1 L. J. O. S. K. B. 20: *R. v. Poynder*, 1 B. & C. 178; 2 D. & R. 258). *Cp.* INHABITANT.

Qua Towns Improvement (1r) Act, 1854, 17 & 18 V. c. 103, " 'Householder' shall mean, a male occupier of a dwelling-house, or of any lands, tenements, or hereditaments (within the prescribed boundaries of the Town), rated to the relief of the poor in respect thereof " (s. 1).

Other Stat. Def. — *Scot.* 30 & 31 V. c. 37, s. 2; 50 & 51 V. c. 42, s. 2; 55 & 56 V. c. 55, s. 4.

"Substantial Householder"; *V.* SUBSTANTIAL.

**HOUSEKEEPER.** — *V.* HOUSEHOLDER.

**HOUSELLAGE.** — "A TOLL for the use or liberty of warehouse room " (*Hale, De Portibus Maris*, ch. 6).

**HOVEL.** — *V.* SHED.

**HOWE.** — "*Howe, hoo, knol, law, pen, and cope*, signifyeth a hill " (*Co. Litt.* 5 b). *Vf.* LAW OF LAWE.

**HOWEVER.** — "For 30 days in port after arrival, however EMPLOYED"; *V. Crocker v. Gen. Insree of Trieste*, 2 Com. Ca. 233; 3 Ib. 22.

**HUE AND CRY.** — " 'Hue and Cry' is a pursuit of one having committed FELONY by the high way; for if the party robbed, or any in the company of one that was murdered or robbed, commeth to the Constable of the next Towne and willeth him to raise Hue and Cry, or to make pursuit after the offender, describing the party and shewing as neere as he can which way he is-gone, the Constable ought forthwith to call upon the Parish for aide in seeking the Felon, and if hee be not found there, then to give warning to the next Constable, and hee to the next to him, untill the offender bee apprehended, or, at the least, untill he be so pursued to the sea-side. Of this see *Bracton*, lib. 3, tract. 2, cap. 5; *Smith, De Repub. Angl.* lib. 2, cap. 20; and the Statute of Winchester, made anno 13 E. 1, and the Statute of 28 E. 3, c. 11, and 27 Eliz. c. 13 " (*Termes de la Ley*). Hue and Cry "is the old Common Law process of pursuing, with horn and with voice, all felons, and such as have dangerously wounded another " (4 Bl. Com. 293): *Cp.* FRESH PURSUIT.

Hereon and for the statutes regulating Hue and Cry and making the Inhabitants of the Hundred responsible, &c. *V.* Jacob. Those statutes were repealed by 7 & 8 G. 4, c. 27; but the Common Law right to raise Hue and Cry remains; for the enactment of 3 Edw. 1, c. 9, "that all generally be ready and appavelled at the commandment and summons of the Sheriffs, and at the Cry of the Country, to sue and arrest Felons " is re-enacted by s. 8 (1). *Sheriffs Act*, 1887, 50 & 51 V. c. 55, which imposes "a Fine " on those convicted of being in default in answering

the summons, whilst s. 28, Criminal Law Act, 1826, 7 G. 4, c. 64, enables the Court to order compensation to those who have been active in the apprehension of the persons charged with either of the offences therein enumerated.

*Vf*, 6 Encyc. 252, 253, and the authorities there referred to: 1 Select Pleas of the Crown, by Selden Soc. p. 69.

**HULMUS.** — *V. HOLME.*

**HULL.** — A Marine Policy on "Hull and Machinery," does not include OUTFIT (*Roddick v. Indemnity Insree*, 1895, 2 Q. B. 380; 64 L. J. Q. B. 733; 72 L. T. 860), nor Expenses incurred in discharging Cargo which has become worthless through the consequences of a collision (*Field S. S. Co v. Burr*, 1898, 1 Q. B. 821; 67 L. J. Q. B. 528; 78 L. T. 293; 46 W. R. 490). "Where the insurance is upon the Hull Materials and Machinery, it is essential, before any claim at all can be made against the Underwriters, either that the Shipowner should be deprived of his ship or of the use of her, or that physical damage should happen to her, by the direct action of one of the perils insured against. . . . Even when the ship suffers such actual physical damage, the Underwriter's liability is to be limited to what may reasonably be regarded as the cost of making good the particular damage in question, — consequential damage which the Shipowner may suffer, the Underwriter is not responsible for" (per Bigham, J., *Ib.*, citing *Robertson v. Ever*, 1 T. R. 127; *De Vaux v. Salvador*, 5 L. J. K. B. 134; 4 A. & E. 420; *Field v. Burr*, *affd* 1899, 1 Q. B. 579; 68 L. J. Q. B. 426; 80 L. T. 445; 47 W. R. 341).

**HUMAN.** — Human *Being*; *V. HOMICIDE.*  
Human *Life*; *V. POLICY.*

**HUMANE AND CHARITABLE PURPOSES.** — A testator bequeathed £1000 to a lunatic asylum thereafter to be instituted, "for the humane and charitable purposes of that institution." An asylum afterwards built under statutory compulsory powers, and maintained by compulsory rates, was held not entitled to the bequest (*Lechmere v. Curtler*, 24 L. J. Ch. 647; 3 Eq. Rep. 938).

**HUNDRED.** — " 'Hundred' is a part of a Shire properly so called, because it contained 10 Tythings, either because at first there were a hundred Families in each Hundred, or else found the King a hundred able Men for his wars" (Cowel). *Vf*, *Termes de la Ley*: 1 Bl. Com. 115; Jacob: 6 Encyc. 253; TRING.

Stat. Def. — County Rates Act, 1852, 15 & 16 V. c. 81, s. 52.

"A grant of the Hundred by a subject passes only the franchises, and

not his lands within the Hundred: per King, C., *Bays v. Bird*, 2 P. Wms. 400 " (Elph. 589; *whc*).

"Hundred or Tithing"; *V. R. v. Milland*, 1 Burr. 577.

*V. Cwt.*

**Per HUNDRED.**—Evidence of usage is admissible to show that "per Hundred" in a contract means some other figure than 100;—*e.g.* six score (*Smith v. Wilson*, 1 L. J. K. B. 194; 3 B. & Ad. 728). *V. PER CWT.*

**HUNTING.**—The grant or reservation of "Hunting, Shooting, Fishing, and Sporting," includes all things generally hunted, shot, fished, or sported after, in contradistinction to small birds and things of a similar character, *e.g.* rats and sparrows (per Willes, J., *Jeffryes v. Evans*, 34 L. J. C. P. 261; 19 C. B. N. S. 265, 266: *Va, Graham v. Ewart*, 25 L. J. Ex. 48). *Jeffryes v. Evans* decided that rabbits would be included in such a reservation. It also decided that a covenant for Quiet Enjoyment, in such a grant or reservation, does not imply any undertaking restricting the ordinary use of the land: *Va, Gearns v. Baker*, 44 L. J. Ch. 334; 10 Ch. 355. But a grant or reservation as to Hares and Rabbits is now subject to the Ground Game Act, 1880, 43 & 44 V. c. 47; and as to Informations (apart from that Act) against a tenant for killing rabbits contrary to such a reservation, *V. Spicer v. Barnard*, 28 L. J. M. C. 176; 1 E. & E. 874; 7 W. R. 467; 33 L. T. O. S. 121: *Padwick v. King*, 29 L. J. M. C. 42; 7 C. B. N. S. 88: *Pryce v. Davies*, 35 J. P. 374. *V. GROUND GAME.*

*Vf, Sowerby v. Smith*, and cognate cases, cited FREEHOLD.

The Grant of A right to sport, without more, would probably be held not to exclude the grantor (*Bloomfield v. Johnston*, Ir. Rep. 8 C. L. 68); *secus*, of a reservation of THE right (*Paget v. Milles*, 3 Doug. 43).

"The liberty of Fowling has been decided to be a profit à prendre, and may be prescribed for as such (*Davies' Case*, 3 Mod. 246). The liberty to Hawk is one species of *aucupium* (Manwood, c. 18, s. 10, p. 107), the taking of birds by hawks, and seems to follow the same rule. The liberty of Fishing appears to be of the same nature; it implies, that the person who takes the fish, takes for his own benefit; it is Common of Fishing. The liberty of Hunting is open to more question, as that does not of itself import the right to the animal when taken; and if it were a license given to one individual either on one occasion, or for a time, or for his life, it would amount only to a mere personal license of pleasure, to be exercised by the individual licensed" (per Parke, B., *Wickham v. Hawker*, 10 L. J. Ex. 159, 160; 7 M. & W. 72); but even in the latter case if the grant were to the grantee "his heirs *and assigns*," or to be exercised by him or his "servants," it would be a profit à prendre (*ib.*). *V. FREE LIBERTY: PROFIT À PRENDRE: SERVANTS.*

**HURST.** — *V.* GRAVA.

**HURT.** — *V.* INGENUOUSLY AFFECTED: SERVICE OF THE SHIP.

**HUSBAND.** — A gift to A. (a woman) for life, remainder, "in trust for any husband with whom she may intermarry, if he shall survive her"; held, that a man whom A. had married but from whom she had been divorced and who survived her, was entitled as A.'s "Husband," although he had married again before her death (*Re Bullmore*, 52 L. J. Ch. 456; 22 Ch. D. 619). But in *Hitchins v. Morrison* (40 Ch. D. 32; 37 W. R. 91), Kay, J., said he should certainly have decided *Re Bullmore* otherwise, and refused to follow and apply it to a similar bequest in which however the word was "Wife" instead of "Husband." *V.* WIFE.

A gift to an unmarried woman for life, remainder to her Husband in fee, gives a vested remainder in fee to her *first* husband (*Radford v. Willis*, 41 L. J. Ch. 19; 7 Ch. 7).

"Husband," may, by a context, include a reputed husband (*V.* per Ld Cairns, *Hill v. Crook*, 42 L. J. Ch. 716; L. R. 6 H. L. 285; per Halsbury, C., *Re Jodrell*, 59 L. J. Ch. 542. affd H. L. nom. *Seale-Hayne v. Jodrell*, 1891, A. C. 304; 61 L. J. Ch. 70; 65 L. T. 57; *V.* WIFE: RELATIONS).

A gift to the children of A., "whether by her present or any future husband"; held, not to exclude a child of A. by a *former* husband, the words quoted being rejected as surplusage (*Re Pickup*, 30 L. J. Ch. 278; 9 W. R. 251; 4 L. T. 85).

*Vh.* Roper on Husband and Wife: Thicknesse, *Ib.*: Macqueen, *Ib.*: Crawley, *Ib.*: Eversley on Domestic Relations: 1 White & Tudor, 535-729.

*V.* BARON: COHABITATION: MARRIAGE: WIDOW: NEXT OF KIN: SHIP'S HUSBAND: JOINT TENANCY.

**HUSBANDRY.** — *V.* CUSTOM OF THE COUNTRY: SERVANT IN HUSBANDRY: TRADE: IMPLEMENT OF HUSBANDRY.

In the phrase "According to the best rules of Husbandry practised in the neighbourhood," — " 'Husbandry,' is equally applicable to a MARKET GARDEN as to a FARM arable or pasture" (per Kekewich, J., *Mouw v. Copley*, 1892, 2 Ch. 261).

**HUTSPOT.** — *V.* HOTSPOT.

**HYDE.** — *V.* HIDE.

**HYDEGILD.** — "Is the price or ransom to be paid for the saving of his skin from being beaten" (*Termes de la Ley*).

**HYDRANT.** — *V.* PLUG.

**HYPOCRITE.** — To write of a person that he is a Hypocrite is a Libel, and needs no innuendo (*Thorley v. Kerry*, 4 Taunt. 355).

**HYPOTHECATION.** — *V.* PLEDGE.

**HYPOTHETICAL.** — “Hypothetical Tenant” is a phrase employed to denote a possible tenant of property which is, ordinarily, not let and is in the hands of its Owner, its ANNUAL VALUE (for rating purposes) being the rent which such a possible tenant may be reasonably considered as willing to pay: *Vh. London Co. Co. v. Erith*, and cognate cases, cited BENEFICIAL.

**HYTH.** — “A Port or little Haven to lade or unlade Wares at” (Cowel).

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## I ENGAGE—ICE-BOUND

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**I ENGAGE.**—“I engage to pay”; *V.* I PROMISE.

**I HAVE.**—*V.* HAVE: NOW.

**I. O. U.**—*V.* p. 1009, *post.*

**I PROMISE.**—“Where a note runs ‘I promise to pay,’ and is signed by two or more persons, it is deemed to be their joint and several Note” (s. 85 (2), Bills of Ex. Act, 1882, codifying *Mareh v. Ward, Peake*, 177: *Cp.*, per Wightman, J., *R. v. Silkstone*, cited *ME.*)

But if it runs “I promise to pay” and is signed by one for himself and others, it is his and their joint Note (*Ex p. Buckley*, 14 M. & W. 469; 14 L. J. Ex. 341; over-ruling *Hall v. Smith*, 1 B. & C. 407). Probably, *Shipton v. Thornton* (9 A. & E. 314; 8 L. J. Q. B. 73, in *whc* “I hereby engage to pay,” signed by one of two partners but with the style of the firm, was held evidence of a several contract by the actual signatory) is explainable on the ground that the decision was against a very technical stamp objection.

**I REQUEST.**—*V.* REQUEST.

**I WILL BE READY.**—*V.* READY.

**I WILL SEE YOU PAID.**—These words amount, *primâ facie*, to an original and independent agreement to pay, as distinguished from a GUARANTEE for payment (*Birkmyr v. Darnell*, 1 Salk. 27; 1 Sm. L. C. 335: per Tenterden, C. J., *Oldfield v. Lowe*, 9 B. & C. 77: *Lakeman v. Mountstephen*, 43 L. J. Q. B. 188; L. R. 7 H. L. 17). *V.* ANOTHER: DEBT, DEFAULT, OR MISCARRIAGE.

*V.* ATTENDED TO.

**IBBETSON'S ACTS.**—The Wine and Beerhouse Act, 1869, 32 & 33 V. c. 27:

The Wine and Beerhouse Act Amendment Act, 1870, 33 & 34 V. c. 29.

**ICE.**—*V.* DETENTION BY ICE.

**ICE-BOUND.**—A ship is “Ice-bound” when “the ice is so round the ship that she cannot move away because of the ice. I do not think that it, necessarily, means that the ship cannot move at all. But it means that she cannot move so as to get out of the ice” (per Esher,

M. R., *Sunderland S. S. Co v. North of England Insree*, 14 The Reports, 198; 1 Times Rep. 106).

*Cp*, "Open Water," sub OPEN. *V.* FIRST OPEN WATER.

**IDENTICAL.** — *V.* CORRESPOND.

**IDIOT.** — " 'Idiot,' is he that is a foole naturall from his birth, and knoweth not how to account or number twenty pence, or cannot name his father or mother, nor of what age himselfe is, or such like easie and common matters; so that it appeareth hee hath no manner of understanding, of reason, or government of himselfe, what is for his profit or disprofit, &c" (*Termes de la Ley*).

*Vh*, *Beverley's Case*, 4 Rep. 124; *Crosswell v. People*, 13 Mich. 435; Cowel, *Idiot*: 1 Bl. Com. 302; 4 Ib. 24; Jacob: Wood Renton on Lunacy: Pope, Ib.: Archbold, Ib.: 6 Encyc. 295, 296.

Quâ Idiots Act, 1886, 49 & 50 V. c. 25, " 'Idiots,' or 'Imbeciles' do not include Lunatics" (s. 17).

*Cp*, LUNATIC: UNSOUND MIND.

**IDLE AND DISORDERLY PERSON.** — For the catalogue of those who come within this phrase, *V.* s. 3, Vagrancy Act, 1824, 5 G. 4, c. 83, enlarged by s. 7, 34 & 35 V. c. 108: Steph. Cr. 129. *Cp*, ROGUE AND VAGABOND.

The phrase includes able-bodied men who can work but will not because they are on strike, and so become indigent; but not their wives and children (*A-G. v. Merthyr Tydfil*, 1900, 1 Ch. 516; 69 L. J. Ch. 299; 82 L. T. 662; 48 W. R. 403; 64 J. P. 276). But however idle a person is he is not within this Act unless he is able and will not maintain himself; and it is immaterial that his inability is brought about by his own act, *e.g.* drinking to excess and thereby bringing on delirium tremens (*St. Saviour v. Burbridge*, 1900, 2 Q. B. 695; 69 L. J. Q. B. 886; 83 L. T. 317; 64 J. P. 725; 48 W. R. 685).

**IDONEUS.** — *V.* FIT.

**IF.** — "If he should die," construed as "When he should die," and not as importing a Contingency but as giving a Remainder after the death (*Smart v. Clark*, 3 Russ. 365; 5 L. J. O. S. Ch. 111; following *Billings v. Sandom*, 1 Bro. C. C. 393, 394, where the words were "In case of her demise"). *V.* WHEN: WHENEVER.

The four phrases apt for attaching a CONDITION to an estate are, *sub conditione* (On Condition); *proviso semper* (PROVIDED ALWAYS); *ita quoad* (So that); and *si contingat* (If it happen): each of the first three, of itself, operates as a Condition, but the last is "nought worth to such a Condition" unless it be followed by words of cesser or right of re-entry (*Litt. ss.* 328-331: *Vf.* Touch. 121-123: *Doe d. Henniker v. Watt*, 8 B. & C. 308).



“If” is sometimes qualificative; as, when a Lease is made for years “if” A. shall live so long (*Touch*, 123).

“If,” in a stipulation, will generally create a Condition Precedent (*Bromfield v. Crowder*, 1 B. & P. N. S. 313, 326; *Festing v. Allen*, 12 M. & W. 289; *Duffield v. Duffield*, 3 Bligh, N. S. 260, 331). *V.* STIPULATED, at end.

“If” may create a Reservation; *e.g.* of Mines and minerals in an Inclosure Act, under these words, “*If* the lord shall enter on any inclosure for the purpose of getting any Coals or other Minerals” (*Micklethwait v. Winter*, 20 L. J. Ex. 313; 6 Ex. 641).

**IF ALIVE.** — A devise to A. for life, and, should B. survive A., to B. for life, and at B.’s death to C. “if alive”; means, if C. is “alive to enjoy,” *i.e.* C., in order to take, must be alive at the death of the survivor of A. and B. (*Re Dundalk and Enniskillen Ry.*, 1898, 1 I. R. 219).

**IF AND WHENEVER.** — *V.* WHENEVER.

**IF ANY.** — “If any,” in a Pleading, is inconsistent with an Admission (*Seadding v. Eyles*, 9 Q. B. 860, 862).

**IF FROM ANY CAUSE.** — *V.* ANY.

**IF IT HAPPEN.** — *V.* IF.

**IF MORE THAN ONE.** — Devise to five in fee to be equally divided between them “if more than one”; — “I cannot strike out the words ‘if more than one,’ but I cannot read them as words of survivorship. I read them as if the testator had introduced the words ‘if they should be more than one, I direct an equal division,’ or ‘I give to my five great-nieces if in existence at my death, and, to provide against intestacy, there shall be a division between those who survive me, if more than one’” (per Romilly, M. R., *Sanders v. Ashford*, 28 Bea. 613).

**IF NECESSARY.** — A defendant, under terms to take “Short Notice of Trial, if necessary,” is not entitled to full notice, if the plaintiff, using reasonable diligence, is unable to give it (*Druke v. Pickford*, 15 M. & W. 607; 15 L. J. Ex. 346; *Pretty v. Nauseaueu*, 43 L. J. Ex. 3; L. R. 9 Ex. 42).

*V.* NECESSARY.

**IF POSSIBLE.** — *V.* POSSIBLE.

**IF REQUIRED.** — *V.* ADVANCE: REQUIRED.

**IF SUFFICIENT WATER.** — *V.* SUFFICIENT WATER.

**IF THEY SHALL THINK FIT.**—*V. R. v. Boteler*, 33 L. J. M. C. 101; 4 B. & S. 959; *R. v. Adamson*, 45 L. J. M. C. 46; 1 Q. B. D. 201; Maxwell, 149, 150.

The Further Report of FRAUD by the Official Receiver of a Co "if he thinks fit," s. 8 (2), Comp Winding-up Act, 1890, means, "if he arrives at a judicial conclusion in his own mind, that such facts are before him and in proof" (per Halsbury, C., *Ex p. Barnes*, 1896, A. C. 146; 65 L. J. Ch. 394; 74 L. T. 153; 44 W. R. 433).

Generally, where a power has to be exercised if the donee of the power "shall think fit," it is for him to determine whether the occasion has arisen for the exercise of the power; and, in the absence of *mala fides*, his determination is final (*Ex p. Ramshay*, 18 Q. B. 193; 21 L. J. Q. B. 240).

The power to a Taxing Master to increase or diminish allowances of Sch 2, Solrs Rem Ord, "if, for any special reasons, he shall think fit," does not require him to state his reasons until he formally answers objections (*Re Mahon*, 1893, 1 Ch. 507; 62 L. J. Ch. 448; 68 L. T. 189; 41 W. R. 257: *Vf*, EXTRAORDINARY).

In such a phrase as "may, *if they shall see fit*" the words italicised seem surplusage (*Julius v. Oxford, Bp*, 5 App. Ca. 228: *Sr, Twickenham v. Minton*, 1899, 2 Ch. 603; 68 L. J. Ch. 601; 81 L. T. 136; 47 W. R. 660).

*V. MAY: DISCRETION: THINK FIT.*

**IGNORAMUS.**—*V. TRUE BILL.*

**IGNORANCE.**—"Ignorance of Title," preamble 12 & 13 V. c. 26; *V. Sutherland v. Sutherland*, 1893, 3 Ch. 169; 62 L. J. Ch. 953.

**ILL.**—The power (s. 17, 11 & 12 V. c. 42) to read a deposition if the deponent is "so ill as not to be able to travel," may arise when the Illness is from pregnancy (*R. v. Wellings*, 47 L. J. M. C. 100; 3 Q. B. D. 426: *Cp* SICKNESS), or paralysis of speech (*R. v. Cockburn*, 26 L. J. M. C. 136; Dears. & B. 203); but not in a case of mere nervousness at the thought of appearing in court (*R. v. Farrell*, L. R. 2 C. C. R. 116; 43 L. J. M. C. 94; 38 J. P. 390), or absence abroad (*R. v. Austin*, 25 L. J. M. C. 48; Dears. 612). *Vh, R. v. Stephenson*, 31 L. J. M. C. 147; L. & C. 165.

*V. DISEASE: ILLNESS.*

**ILLEGAL.**—"Illegal" has, in a statute, a meaning very near to, but not the same as, VOID; and where a thing is only "illegal" quâ A., it is inoperative as against him and yet may be binding on B. (per Alderson, B., *Job v. Lamb*, 11 Ex. 542). On the other hand, a thing, *e.g.* a Wager, may be "null and void," s. 18, 8 & 9 V. c. 109, in the sense of being irrecoverable, without being "illegal" in the sense of being punish-

able or forbidden (per Lush, J., *Haigh v. Sheffield*, 44 L. J. M. C. 17; L. R. 10 Q. B. 102, cited by Smith, L. J., *Strachan v. Universal Stock Exchange, No. 2*, 1895, 2 Q. B. 697; 65 L. J. Q. B. 183: *Vf*, per Bowen, L. J., *Bridger v. Savage*, cited GAMING CONTRACT). So, a Bill or Note given for a BET on a horse-race, is void and irrecoverable (except in the hands of a HOLDER IN DUE COURSE), because by s. 1, 5 & 6 W. 4, c. 41, it is to be deemed to have been taken for an Illegal consideration (*Woolf v. Hamilton*, 1898, 2 Q. B. 337; 67 L. J. Q. B. 917; 79 L. T. 49; 47 W. R. 70). *Cp*, UNLAWFUL: UNLAWFUL GAMING.

*V*. EXCESSIVE.

**ILLEGAL DEALING.**—*V*. DEALING.

**ILLEGAL PAYMENT.**—(a) At Parliamentary Elections; *V*. Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, ss. 13-21:

(b) At Municipal Elections; *V*. Municipal Elections (C. & I. P.) Act, 1884, 47 & 48 V. c. 70, ss. 9-18.

*Vh*, Leigh & Le Marchant, ch. 3; Mattinson & Macaskie, ch. 2: 2 Rogers, ch. 13.

"Illegal Payment," s. 247 (7), P. H. Act, 1875, *semble*, does not include a merely wrong method of accounting (*R. v. Dolby*, 1892, 2 Q. B. 301; 61 L. J. Q. B. 809; 67 L. T. 296; 56 J. P. 599).

**ILLEGAL PRACTICES.**—(a) At Parliamentary Elections; *V*. Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, ss. 7-12:

(b) At Municipal Elections; *V*. Municipal Elections (C. & I. P.) Act, 1884, 47 & 48 V. c. 70, ss. 4-8.

*Vh*, Leigh & Le Marchant, ch. 2; Mattinson & Macaskie, ch. 2: 2 Rogers, ch. 13: 6 Encyc. 297-313.

**ILLEGALITY.**—*V*. ULTRA VIRES.

**ILLEGALLY.**—"Illegally *dealing*"; *V*. DEALING.

Coin "illegally dealt with"; Stat. Def., 54 & 55 V. c. 72, s. 1 (2).

"Illegally *divert*" water in a Water Act; *V*. *Bradford v. Pickles*, 1895, A. C. 587; 64 L. J. Ch. 101, 759; 73 L. T. 353; 44 W. R. 190; 60 J. P. 3.

**ILLEGITIMATE CHILD.**—*V*. BASTARD: CHILD: NATURAL CHILDREN. *Cp*, RELATIONS.

**ILLNESS.**—An insurance against "any CLAIM or Demand" for which the insurer may become liable and may be required to pay in respect of the "Illness of any person," does not cover expenses properly incurred by the insurer in obtaining substitutes for a crew disabled by

illness, or similar expenses consequent upon such illness (*Rogers v. British Ship Owners' Assn*, 1 Com. Ca. 414).

V. ILL: SICKNESS.

ILL-TREAT. — V. CRUELTY to *Animals*.

ILLUMINATING POWER. — V. CANNEL.

ILLUSORY. — V. FICTITIOUS.

IMBARGO. — V. EMBARGO.

IMBECILE. — V. IDIOT.

IMITATE. — V. COPY: EXACT: REPRODUCTION.

“Fraudulent or Obvious Imitation” of a NEW DESIGN; V. OBVIOUS.

IMMEDIATE APPROACH. — “Immediate Approach” to a Railway Bridge; *V. Waterford Ry v. Kearney*, 12 Ir. C. L. Rep. 224; *Fosberry v. Waterford Ry*, 13 Ir. C. L. Rep. 494; *Lond. & N. W. Ry v. Skerton*, 33 L. J. M. C. 158; 5 B. & S. 559.

IMMEDIATE ARREST. — *V. R. v. Curran*, 3 C. & P. 397; *Hanway v. Boulbee*, 1 Moo. & R. 15; IMMEDIATELY: FRESH PURSUIT.

IMMEDIATE EXPECTANCY. — V. ENTITLED IN IM. EXP.

IMMEDIATE POSSESSION. — In an Agreement for a Lease, the words, “Immediate Possession if required,” do not fix the commencement of the term; and if it be not otherwise fixed there is no contract (*Rock Portland Cement Co v. Wilson*, 52 L. Ch. 214).

In a V. & P. contract to give “Immediate Possession,” that means, actual occupation (*N. Staffordshire Ry v. Lawton*, 3 N. R. 31).

V. POSSESSION.

IMMEDIATE REVERSION. — It is submitted that this phrase, — *e.g.* in s. 7, 1 & 2 V. c. 74, cited LANDLORD, — means that REVERSION which will become an estate in Possession immediately on the DETERMINATION of the existing term, estate, or interest, in Possession.

IMMEDIATE USE OR ENJOYMENT. — “‘OCCUPIER,’ shall include every person in the Immediate Use or Enjoyment of any hereditaments rateable under this Act, whether corporeal or incorporeal,” 1 & 2 V. c. 56, s. 124; *V. Callan v. Armstrong*, 16 L. R. Ir. 33; *Middleton v. McDonnell*, 1896, 2 I. R. 228.

IMMEDIATELY. — “The word ‘Immediately,’ although in strictness it excludes all mean Times, yet to make good the Deeds and Intentions of Parties it shall be construed such convenient Time as is reasonably requisite for doing the Thing” (*Pybus v. Mitford*, 2 Lev. 77). “The Court

cannot say it absolutely excludes all *mesne acts*" (*R. v. Francis*, Ca. t. Hard. 115; Cunningham, 275): but "Immediately" implies that the act to be done should be done with all CONVENIENT SPEED (per Rolfe, B., *Thompson v. Gibson*, 10 L. J. Ex. 243; 8 M. & W. 281).

Thus, as regards a Judge's Certificate which any particular statute says shall be given "immediately," that "does not mean ten minutes, or a quarter or half an hour; but such a lapse of time as excludes the possibility of other business intervening to alter the impression made on the judge's mind" (per Abinger, C. B., *Ib.*). V. as to granting Judge's Certificates "immediately," under the various statutes: (Costs) *Thompson v. Gibson*, sup: *Gillett v. Green*, 10 L. J. Ex. 124; 7 M. & W. 347; *Spain v. Cadell*, 10 L. J. Ex. 313; 8 M. & W. 131; *Page v. Pearce*, 10 L. J. Ex. 434; 8 M. & W. 677: *Shuttleworth v. Cocker*, 10 L. J. C. P. 1; 2 Sc. N. R. 47: *Nelmes v. Hedges*, 2 Dowl. N. S. 350; *Grace v. Clinch*, 12 L. J. Q. B. 273; 4 Q. B. 606: *Jones v. Williams*, 14 L. J. Ex. 76; 13 M. & W. 420: *Forsdike v. Stone*, 37 L. J. C. P. 301; L. R. 3 C. P. 607: (Special Jury) *Christie v. Richardson*, 12 L. J. Ex. 86; 10 M. & W. 688: *Lecch v. Lamb*, 25 L. J. Ex. 17; 11 Ex. 437; 4 W. R. 99; 26 L. T. O. S. 107: *Skipper v. Skipper*, 29 L. J. P. M. & A. 133: *Webster v. Appleton*, 62 L. T. 704.

"Immediately" and "Forthwith" are quite unelastic in the Irish R. 19, Ord. 59, which requires the application for special leave to appeal to be made "immediately" after judgment, and which requires the applicant "forthwith" to hand in a written requisition stating grounds of appeal (*Re Hinde*, 27 L. R. Ir. 428).

#### V. DIRECTLY: FORTHWITH: POSSIBLE.

So, where a statute requires anything to be done "Immediately," that is the same thing as "Forthwith"; and implies "speedy and prompt action and an omission of all delay; in other words, that the thing to be done should be done as quickly as is reasonably possible" (per Cockburn, C. J., *R. v. Berkshire Jus.*, 48 L. J. M. C. 137; 4 Q. B. D. 469: *Va, R. v. Aston*, 19 L. J. M. C. 236; 1 L. M. & P. 491). So, where on an Appeal to Quarter Sessions recognizances are required to be entered into "Immediately" after notice of appeal, that raises a question of fact which the Sessions are to determine having regard to all the circumstances of each case; and if they, fairly exercising their judgment, say that a lapse of a week is *not* too long (*Re Blues*, 5 E. & B. 291), or that one of four days *is* too long, their determination is final (*R. v. Berkshire Jus.*, sup). But where a statute empowers Justices to commit if fine and costs are not paid "Immediately after Conviction, or within such period as the Justices shall, at the time of Conviction, appoint," the Justices may commit if the money be not paid that very instant, for it is the same as if they said they would give no time (*Arnold v. Dimsdale*, 2 E. & B. 580; 1 W. R. 430).

"May be *immediately apprehended* without a Warrant and *forthwith*

*taken*” before a Justice, s. 103, 24 & 25 V. c. 96; Whether this power is properly exercised, is a question for the jury, who should give effect to “Immediately” and “Forthwith” according to the principle of *R. v. Berkshire Jus* (*Griffiths v. Taylor, Thatcher v. Taylor*, 46 L. J. C. P. 152; 2 C. P. D. 194).

Similarly, where a power to seize goods is given by a Bill of Sale if the grantor does not “immediately” upon Demand make a prescribed payment, that means that the payment is to be made within a reasonably quick and prompt time after the demand, of which the jury are to judge having regard to the circumstances of the time and place of making the demand, including time to enquire into the authority of the person making the demand if it be not made by the creditor himself (*Toms v. Wilson*, 32 L. J. Q. B. 33, 382; 4 B. & S. 455; 11 W. R. 117; 7 L. T. 421; *Brightly v. Norton*, 32 L. J. Q. B. 38; 3 B. & S. 305; 11 W. R. 167; *Massey v. Sladen*, 38 L. J. Ex. 34; L. R. 4 Ex. 13; *Srthe* distd *Wharleton v. Kirkwood*, 29 L. T. 644; 22 W. R. 93). Cp, INSTANTLY.

A similar rule would apply where a person is to perform an act “immediately” after an Award (18 Edw. 4, 22, cited *Butler & Baker’s Case*, 3 Rep. 28 b, 34; *Hoggins v. Gordon*, 3 Q. B. 466), or “immediately” pursuant to a Contract (*Alexiadi v. Robinson*, 2 F. & F. 679).

Where a Consequence or Conclusion of Law is to follow “immediately after” an Event, that means, the next moment after (*Eager v. Furnivall*, 17 Ch. D. 120: *Vf. R. v. Wigan*, cited FORTHWITH).

A bequest to a Wife though to be paid to her “immediately” after the testator’s decease, has no priority over other legacies, if the estate be insufficient to satisfy all (*Blower v. Morret*, 2 Ves. sen. 420, *who* followed by Chitty, J., *Re Schweder*, 1891, 3 Ch. 44; 60 L. J. Ch. 656; 65 L. T. 64; 39 W. R. 588, who rejected the decision of Malins, V. C. *Re Hardy*, 50 L. J. Ch. 241; 17 Ch. D. 798). Cp, *Re Schweder*, cited HOME.

Limitations “from and immediately after” a Life Estate; V. FROM AND AFTER.

V. ON DEMAND: REASONABLE: PROCEED IMMEDIATELY: OPPOSITE.

IMMEDIATELY ADJOINING LAND.— V. ADJOINING OWNER

IMMEDIATELY CONNECTED.— “Works immediately CONNECTED WITH” the main building of the Crystal Palace, s. 21, Crystal Palace Act, 1881,— connotes the works connected with that structure, not those connected with the Objects of the Crystal Palace Co; a Polo Stable, a quarter of a mile from the main building, is not “immediately connected with” it (*Crystal Palace Co v. London Co. Co.*, 16 Times Rep. 184).

IMMEMORIAL.— V. TIME OUT OF MIND: MEMORY: PRESCRIPTION.

**IMMORAL.**—Quia Clergy Discipline Act, 1892, 55 & 56 V. c. 32. “ ‘Immoral Act,’ ‘Immoral CONDUCT,’ and ‘Immoral *Habit*,’ shall include such acts, conduct, and habits, as are proscribed by the 75th and 109th Canons issued by the Convocation of the Province of Canterbury in 1603 ” (s. 12). Those Canons are summed up in the 109th as “Uncleaness and Wickedness of Life,” and confirm the conclusion that neither SIMONY, nor a False Declaration against Simony, is “Immoral” within the Act. That word, as there used, is directed against “Offences which do not depend on disputable points of law, or on matters so highly controversial as doctrine and ritual, but which in the consensus of general opinion are acts of personal immorality, such as various forms of vice or dishonesty, or other like conduct of evil example generally, and especially so if committed by a person invested with sacred functions ” (per Halsbury, C. in delivering judgment of the Court in *Beneficed Clerk v. Lee*, 1897, A. C. 226; 66 L. J. P. C. 8; 75 L. T. 461; 13 Times Rep. 125).

Immoral Home; *V. Re G.*, cited MAINTENANCE.

**IMMOVEABLES.**—A devise of all testator’s “Immoveables” passes leases, rents, grass, and the like; but not debts (Touch. 447).  
V. MOVEABLES.

**IMPANEL.**—*V. PANEL.*

**IMPARTIALITY.**—“Difficult” for trustee in bankruptcy “to act with impartiality,” s. 21 (2), Bankry Act, 1883; *V. Re Lamb*, 1894, 2 Q. B. 805; 64 L. J. Q. B. 71; 71 L. T. 312; *Re Mardon*, 1896, 1 Q. B. 140; 65 L. J. Q. B. 111; 73 L. T. 480; 44 W. R. 111.

**IMPEACHABLE.**—A Tenant for Life is not “Impeachable for WASTE in respect of Minerals,” s. 11, S. L. Act, 1882, if he is entitled to work the Mines, whether that power arises from the express terms of the Settlement or only from the fact that the Mines are OPEN (*Re Chaytor*, 1900, 2 Ch. 804; 69 L. J. Ch. 837; 49 W. R. 125).

V. IMPEACHMENT.

**IMPEACHED.**—“Impeached, affected, or incumbered, in title, estate, or otherwise howsoever”; *V. Clifford v. Hoare*, 43 L. J. C. P. 225; L. R. 9 C. P. 362; AFFECT: IMPEACHMENT.

**IMPEACHMENT.**—There is no necessity to confine “Impeachment” to an impeaching of Title: “anything that operates as a hindrance, let, impediment, or obstruction, to the making of the profits out of which, e.g. an Annuity is to arise, is an Impeachment” of the Annuity, within a clause that nothing is to be done whereby the Annuity may be “impeached or become void” (*Pitt v. Williams*, 5 A. & E. 885).

“Impeachment of Waste,” is the liability on a Termor, Life Tenant, or other Qualified Owner, for WASTE.

*V.* IMPEACHABLE: WITHOUT IMPEACHMENT OF WASTE.

**IMPENDING.** — A legal proceeding is “impending” when a recourse to it is pressingly necessary in order to ascertain a right or a status (*Grimston v. Turner*, 18 W. R. 724).

*V.* PENDING.

“Impending *Danger*,” Board of Trade Regulations for Steam Trams (No. 3); *V. Jolly v. North Staffordshire Tramway Co*, Times, 27 July 1887; *Downing v. Birmingham & Mid. Trams*, 5 Times Rep. 40.

**IMPERCEPTIBLE.** — Land not suddenly Derelict but formed by Alluvion of the Sea, — *i.e.* by Imperceptible Degrees, — belongs to the owners of the adjoining lands, and not to the Crown (*Gifford v. Yarborough*, 5 Bing. 163). What are “Imperceptible Degrees” within that rule is shown by the following obs of Best, C. J., in the case cited, — “Unless trodden by cattle, many years must elapse before lands formed by Alluvion would be hard enough or sufficiently wide to be used beneficially by any one but the owner of the lands adjoining. As soon as Alluvion Lands arise above the water the cattle from the adjoining lands will give them consistency by treading on them, and prepare them for grass or agriculture by the manure which they will drop on them. When they are but a yard wide the owner of the adjoining lands may render them productive. Thus lands which are of no use to the King will be useful to the owner of the adjoining lands; and he will acquire a title to them on the same principle that all titles to lands have been acquired by individuals, viz. by Occupation and Improvement.” When that case was in the Q. B. Abbott, C. J., delivering the judgment of the Court, said, — “‘Imperceptible,’ must be understood as expressive only of the manner of the accretion, and as meaning imperceptible *in its progress*, not imperceptible after a long lapse of time” (*R. v. Yarborough*, 3 B. & C. 107; *Scth, A-G. v. Chambers*, 4 D. G. & J. 70, 71).

In *Re Hull & Selby Ry* (5 M. & W. 332; 8 L. J. Ex. 260), Abinger, C. B., seems to have thought that that is “imperceptible” “which cannot be ascertained from day to day.” Probably, however, the learned judge did not mean those words in their strict literalness; and where the evidence is that the recession of the Sea could be plainly perceived from time to time as it went on, then it cannot be said to have been “imperceptible,” and the accretions will belong to the Crown (*A-G. v. Keere*, 1 Times Rep. 675). *Vh*, INCREASE: 2 Bl. Com. 262. *Cp*, *Hindson v. Ashby*, cited SEVERAL FISHERY.

**IMPERFECT.** — An “Imperfect or Erroneous” Valuation, within s. 11, Copyhold Act, 1887, 50 & 51 V. c. 73, includes a case where the



valuation is too low; "Erroneous" is not confined to a valuation "erroneous in principle" (*R. v. Land Commrs.*, 23 Q. B. D. 59; 58 L. J. Q. B. 313; 5 Times Rep. 445).

**IMPERFECTIONS.** — *V. FAULTS.*

**IMPERIAL.** — Quà (and by) s. 2, Pensions (Colonial Service) Act, 1887, 50 & 51 V. c. 13, employment in an "Imperial civil capacity," "means the Permanent Civil Service of the State, and also the administration of the government of a Colony, within the meaning of the Colonial Governors (Pensions) Act, 1865."

**IMPERIL.** — Where a man, acting for a married woman with whom he was living, took a Lease of a Public-house and agreed with the landlord that he would do nothing whereby the License might be "imperilled," and handed the Lease and endorsed the License to the woman who carried on the business, and afterwards, having quarrelled with the woman, the man left her with an intention to abandon the premises and did not return, and the woman continued to carry on the business; held, that, only 3 days having elapsed since the man left, he had not then done anything to "imperil" the License so as to justify the landlord to re-enter under a clause of forfeiture: — had the landlord allowed time to elapse sufficient to enable the woman to obtain a transfer of the license, and she had neglected to do so, possibly the result would have been different (*Moore v. Robinson*, 48 L. J. Q. B. 156). *V. DANGER: AFFECT.*

**IMPERSONATE.** — *V. PERSONATE.*

**IMPLEMENT.** — "Implements" are "things of necessary use in any trade or mystery which are implied in the practice of the said trade, or without which the worke cannot be accomplisht. And so also for furniture of household with which the house is filled" (Termes de la Ley, adopted in *Coolidge v. Choute*, 11 Met. 82).

*V. MATERIALS: MACHINE.*

**IMPLEMENT OF HOUSE BREAKING.** — Common door-keys, or a pair of pincers, may be such Implements within s. 58, 24 & 25 V. c. 96 (*R. v. Oldham*, 21 L. J. M. C. 134; 2 Den. 472).

**IMPLEMENT OF HUSBANDRY.** — " 'Implements of Husbandry,' in 3 G. 4, c. 126, s. 32, shall be deemed to include Threshing Machines" (s. 4, 14 & 15 V. c. 38); and a Steam Engine used for working a Threshing Machine (*semble*, or any other Implement of Husbandry) is part of the Machine, and within the exemption from Turnpike Toll, though unconnected with the machine at the time of passing through the Toll-gate, and though capable of being used for other purposes (*R. v. Matty*, 27 L. J. M. C. 59; 8 E. & B. 712).

*V. FARMING STOCK: HUSBANDRY.*

**IMPLICATION.** — *V.* BY LAW.

For the rules as to the construction of Gifts by Implication; *V. Kinsella v. Caffrey*, 11 Ir. Ch. Rep. 154, 162: *Re Rawlins*, 59 L. J. Ch. 599; 45 Ch. D. 299: *Re Springfield*, 1894, 3 Ch. 603.

“Necessary Implication”; *V.* NECESSARY.

In *West Derby v. Metrop Life Assree* (cited **ENABLE**), Ld Davey spoke of the appellant’s argument as amounting to “the old, and apparently ineradicable, fallacy of importing into an enactment, which is expressed in clear and apparently unambiguous language, something which is not contained in it by what is called Implication, from the language of a proviso which may or may not have a meaning of its own.”

**IMPLIED.** — Contract with an Employer “express or implied” (*V.* WORKMAN) “are very wide words, and would, in my judgment, include all cases of men engaged by any agent for the purpose of the employer, and men known by the employer or his agent to be working and allowed to go on working in expectation of wages from the employer” (per Rigby, L. J., *Marrow v. Flimby Co*, cited **EMPLOYER**).

“There shall not be implied in this Lease any covenant or provision”; *V. Eccles v. Mills*, 1898, App. Ca. 360.

As to when a qualifying Term or Condition is implied; *V. Taylor v. Caldwell*, cited **IMPOSSIBLE**: per Brett, J., *Daniels v. Harris*, L. R. 10 C. P. 8; 44 L. J. C. P. 5: *Thorn v. Mayor of London*, L. R. 10 Ex. 123; 44 L. J. Ex. 70.

Implied Trusts; *V.* EXPRESS.

**IMPORT FOR SALE.** — As to “importing for sale” a printed book contrary to s. 17, Copyright Act, 1842; *V. Cooper v. Whittingham*, 49 L. J. Ch. 752; 15 Ch. D. 501: *Vthe*, for the distinction drawn by Jessel, M. R., between “import for sale” and “knowingly sell, publish, or expose to sale” as provided in the section cited: *Vf*, *Watson Eq.* 127.

**IMPORTED.** — The 48 G. 3, c. civ, s. 33. imposed a duty on all goods “imported into or exported from Berwick Harbour.” The harbour extended from Berwick Bridge down the Tweed to the sea, but not above the Bridge. Goods were brought up the river in a sea-going vessel, which, having first used the Harbour Commissioners’ rings and posts in order to moor the vessel while lowering the masts, passed through Berwick Bridge and unloaded her cargo about 200 yards above the Bridge and beyond the limits of the Harbour; held, that these Goods were not “imported into” the Harbour, and as such liable to duty (*Wilson v. Robertson*, 24 L. J. Q. B. 185; 4 E. & B. 923). *Vf*, *Mersey Docks v. Twigge*, cited **BEYOND SEAS**.

Goods are “imported into Canada,” s. 4, Canada Customs Tariff Act, 1894, “when the goods are landed and delivered to the importer or to his

order, — or when they are taken out of warehouse if, instead of being delivered, they have been placed in bond"; and, as a result, this must be at the Port of Discharge (*Canada Sugar Co v. The Queen*, 1898, A. C. 735; 67 L. J. P. C. 126; 79 L. T. 146, in *which* was considered the def of "Importation" in s. 150, Customs (Canada) Act, 1886, as amended by s. 12, 52 V. c. 14).

"Cause to be imported"; *V.* IMPORTER.

*V.* EXPORTED.

**IMPORTER.** — "Importer," in any Act relating to the Customs is "to apply to and include any Owner or other person for the time being possessed of, or beneficially interested in, any goods imported into the UNITED KINGDOM, from the time of the importation thereof until they shall, on payment of the duties thereon or otherwise, be duly delivered or discharged from the custody or control of the Customs" (s. 8, 22 & 23 V. c. 37); that def is not to be amplified by reading into it the phrase in s. 6, "cause to be imported," a phrase which is only applicable to a person who has ordered the goods, or who in fact has otherwise caused them to be imported; nor, on the other hand, does "cause to be imported" connote the same as "Importer" as so defined (*Budenberg v. Roberts*, L. R. 1 C. P. 575; 35 L. J. M. C. 235; 14 W. R. 992). The above def is replaced by s. 284, 39 & 40 V. c. 36, which enacts that " 'Importer,' shall mean, include, and apply to, any Owner or other person for the time possessed of, or beneficially interested in, any goods at and from the time of the importation thereof until the same are duly delivered out of the charge of the Officers of Customs."

*Quâ* Sale of Food and Drugs Acts. "Importer" includes "any person who (whether as Owner, Consignor or Consignee, Agent or Broker) is in possession of, or in anywise entitled to the custody or control of, the article" (s. 1 (2), 62 & 63 V. c. 51).

**IMPORTUNITY.** — "Importunity" (to invalidate a Will), "in its correct legal acceptation, must be in such a degree as to take away from the testator free agency; it must be such importunity as he is too weak to resist; such as will render the act no longer the act of the deceased; not the free act of a capable testator" (Wms. Exs. 39, citing *Kindleside v. Harrison*, 2 Phil. Ecc. 551, 552). *Cp.* UNDUE INFLUENCE.

**IMPOSE.** — *V.* DECEIVE.

**IMPOSED.** — As used in a covenant to pay Rates, &c. "imposed" means, imposed by compulsion; therefore, where a lessor covenanted to pay the rates, taxes, and impositions, which might be "imposed" on the demised premises, it was held that he was not liable to the WATER RATE (*Badcock v. Hunt*, 58 L. J. Q. B. 131; 22 Q. B. D. 145). *Cp.* ASSESSED.

*V.* CHARGED: IMPOSITION: RATE. RATED OR ASSESSED.

**IMPOSITION.** — “Impositions,” in the collocation in a lessee’s covenant to pay “Taxes, Rates, Assessments, and Impositions,” was held to mean, Impositions of a nature similar to that of Taxes, Rates, and Assessments, and that the word does not comprise an exceptional burden imposed by a local authority and ordinarily to be borne by the landlord (*Tidswell v. Whitworth*, 36 L. J. C. P. 103; L. R. 2 C. P. 326: *Sc. Foulger v. Arding*, 1902, 1 K. B. 700; 71 L. J. K. B. 499, where “Impositions” seems to have been regarded as a Word of Indemnity in the landlord’s favour). In the argument of *Crosse v. Raw* (43 L. J. Ex. 145) counsel said that “Impositions” was as extensive a word as “OUTGOINGS”; but that is not borne out by *Tidswell v. Whitworth*. *Vf, Arding v. Economic Printing Co* and *Gloster v. Murphy*, cited TAXES.

V. ASSESSMENT: BURDEN: IMPOSED: IMPOST: DEDUCTION: DUTIES: OUTGOING: RATES: TAXES.

**IMPOSSIBLE.** — *V. IMPRACTICABLE: POSSIBLE.*

“It is said we cannot define ‘Impossibility’ of discharging duties. Certainly not. Any definition would be either so wide as to be nugatory, or too narrow to fit the ever varying events of human life. Neither can we define other terms applicable to human conduct, — such as, ‘Honesty,’ or ‘GOOD FAITH,’ or ‘MALICE,’ or, to come nearer to the present case (Judicial Separation) ‘DANGER,’ ‘Reasonable Apprehension,’ ‘CRUELTY’ itself. Such rudimentary terms elude *à priori* definition; they can be illustrated but not defined; they must be applied to the circumstances of each case by the judge of fact which in this case is a Jury directed by a Judge and controlled, if erring in principle, by the Court above” (per *Ld Hobhouse, Russell v. Russell*, 1897, A. C. 436; 66 L. J. P. D. & A. 134).

As to what is an Impossibility of carrying on the Business of a Co, so as to make it “Just and Equitable” that the Co should be wound up; *V. per Kekewich, J., Re Bristol Joint Stock Bank*, 59 L. J. Ch. 724; 44 Ch. D. 711.

Impossibility of performing a Contract “is, in general, no answer to an action for damages for non-performance. If the thing to be done is notoriously physically impossible and was known to be so by both parties at the time of the making of the contract, the contract will be a void contract, unless the promisor has taken upon himself to warrant that it is possible” (Add. C. 132, citing per *Willes, J., Clifford v. Watts*, L. R. 5 C. P. 585; 40 L. J. C. P. 42. 43: *Hills v. Sughrue*, 15 M. & W. 253: *Jones v. St. John’s College*, L. R. 6 Q. B. 124; 40 L. J. Q. B. 80). *Vf, per Blackburn, J., Taylor v. Caldwell*, 32 L. J. Q. B. 166; 3 B. & S. 833, cited by *Lindley, L. J., Turner v. Goldsmith*, 1891, 1 Q. B. 544; 60 L. J. Q. B. 247: *Ashmore v. Cox*, 1899, 1 Q. B. 436; 68 L. J. Q. B. 72; 4 Com. Ca. 48: *Nickoll v. Ashton*, 1900, 2 Q. B. 298; 69 L. J. Q. B. 640; 82 L. T. 761: *Appleby v. Myers*, 36 L. J. C. P. 331; L. R. 2 C. P. 651: *Thornborow v. Whitacre*, 2 Raym. Ld. 1164.

**IMPOST.**—“ ‘Impost’ is taken for the taxes that is payed the King for any merchandize brought in into any haven from places beyond the seas ” (Termes de la Ley, adopted in *Brown v. Maryland*, 12 Wheaton, 437).

V. IMPOSITION.

**IMPOTENT.**—V. SICK.

**IMPOUND.**—To “impound or otherwise secure” a Distress, 11 G. 2, c. 12, implies its being put in an enclosed place (per Tindal, C. J., *Thomas v. Harries*, 1 M. & G. 702; 9 L. J. C. P. 308; 1 Sc. N. R. 524). V. SECURE: POUND.

A document is impounded when it is ordered by a Court to be kept in the custody of its officer.

**IMPOUND OR CONFINE.**—The penalty provided by 12 & 13 V. c. 92, s. 5, on “EVERY person who shall impound or confine” animals and then fail to supply them with proper food and water, applies to the person at whose instance they are detained, and does not extend to the pound-keeper who, in keeping the animals, only does what he is obliged to do (*Dargan v. Davies*, 46 L. J. M. C. 122; 2 Q. B. D. 118; 41 J. P. 468). Vh, 17 & 18 V. c. 60: Overt Pound, sub OPEN.

**IMPRACTICABLE.**—“In matters of business a thing is said to be IMPOSSIBLE when it is not practicable; and a thing is Impracticable when it can only be done at an excessive or unreasonable cost. A man may be said to have lost a shilling when he has dropped it into deep water; though it might be possible, by some very expensive contrivance, to recover it. So, if a ship sustains such extensive damage that it would not be reasonably practicable to repair her,—seeing that the expense of repairs would be such that no man of common sense would incur the outlay,—the ship is said to be totally lost” (per Maule, J., *Moss v. Smith*, 9 C. B. 103; 19 L. J. C. P. 228, cited with approval by Ld Blackburn, *Shepherd v. Henderson*, 7 App. Ca. 69, 70, and by Brett, L. J., *Nelson v. Dahl*, cited PERMANENT: Vf, per Alderson, B., *Benson v. Chapman*, 2 H. L. Ca. 696).

V. INEVITABLE, at end: NECESSITY: POSSIBLE: TOTAL LOSS.

**IMPRIMIS.**—V. IN THE FIRST PLACE.

**IMPRISONMENT.**—“ ‘Imprisonment’ is no other thing but the restraint of a mans liberty, whether it bee in the open field, or in the stocks, or cage in the streets, or in a mans owne house, as well as in the common Gaole; and in all these places the party so restrained is said to be a Prisoner so long as he hath not his liberty freely to goe at all times to all places whither he will, without baile or mainprise or otherwise ” (Termes de la Ley). Vf, *R. v. Pelham*, 8 Q. B. 963: PRISON.

When a statute provides punishment by "Commitment" or "Imprisonment" without stating its commencement, it commences immediately (*Foggassus' Case*, *Bonham's Case*, Plowd. 17 a, and 8 Rep. 119; *Cp*, 11 & 12 V. c. 43, s. 25); but if there be no limit to its duration, the prisoner must remain at the discretion of the Court (Dwar. 674, citing Dalt. 410).

V. FALSE IMPRISONMENT: ATTACHMENT FOR DEBT: SENTENCE.

*Note.* As to power to suspend Order for Imprisonment under Debtors Act, 1869, *V. Stonor v. Fowle*, 13 App. Ca. 20; 57 L. J. Q. B. 387; 58 L. T. 1; 36 W. R. 742; 52 J. P. 228, *wher* for Ld Bramwell's obs as to inutility of short committals.

**IMPROPER.** — " 'Improper' really means 'WRONGFUL,' — that is otherwise than by INEVITABLE accident " (per Brett, M. R., *The Warkworth*, 53 L. J. P. D. & A. 66).

An Auctioneer's neglect to ascertain the Reserve Price before commencing a sale, is not such "Improper Conduct in the Management of the Sale," s. 7, 30 & 31 V. c. 48, as would authorize the Court to open the biddings (*Brown v. Oakshott*, 38 L. J. Ch. 717).

"Improper" person to be a Member of a Club or Society, cannot be extended by an innuendo to mean a swindler and a sharper; for "there may be numerous reasons why a person may not be fit to become a Member, even though he be not a swindler or sharper" (*Goldstein v. Foss*, 2 Y. & J. 155).

Unnecessary or Improper Party; V. NECESSARY.

"Improper, vexatious, or unnecessary," *Proceeding*, R. 27 (20), Ord. 65, R. S. C.; *V. Garrard v. Edge*, 59 L. J. Ch. 379; 44 Ch. D. 224; 62 L. T. 510; 38 W. R. 455.

Improper Stowage; *V. Canada Shipping Co v. British Shipowners Assn*, cited IMPROPER NAVIGATION.

**IMPROPER NAVIGATION.** — " 'Improper Navigation,' within the meaning of this deed (one between Owners for their mutual indemnity), is something improperly done with the ship or part of the ship in the course of the voyage . . . an omission properly to navigate the ship " (per Willes, J., *Gool v. London Steamship Owners Assn*, L. R. 6 C. P. 569); accordingly, it was there held that damage to cargo from water, caused by the bilge-cock and sea-cock being negligently left open, was damage from "Improper Navigation."

"Improper Navigation." s. 54 (4), Mer Shipping Act Amendment Act, 1862, may result as well from structural defect in the vessel or from its gear being out of order, as from the negligence of those on board (*The Warkworth*, 53 L. J. P. D. & A. 4, 65; 9 P. D. 20, 145; *Carmichael v. Liverpool Sailing-Ship Assn*, 56 L. J. Q. B. 208, 428; 19 Q. B. D. 242; 57 L. T. 550; 35 W. R. 793; 3 Times Rep. 636).

But neither in a document *inter partes*, nor in the statute cited, does damage to cargo, caused by its being placed in a badly cleansed hold, arise from "Improper Navigation"; such damage arises rather from "Improper Stowage" (*Canada Shipping Co v. British Shipowners Assn*, 23 Q. B. D. 342; 58 L. J. Q. B. 462; 61 L. T. 312; 38 W. R. 87; 6 Asp. 422; 5 Times Rep. 700).

#### V. NAVIGATION.

**IMPROPRIATION.** — *V. Phil. Ecc. Law*, 219; *Cp*, APPROPRIATION.

**IMPROVE.** — "Utmost endeavours to improve," in a covenant in a Lease; *V. Croft v. Lumley*, 25 L. J. Q. B. 73, 223; 27 Ib. 321; 6 H. L. Ca. 672; **UTMOST.**

"Having improved" Buildings; *V. ERECTED.*

A Lease by which the lessee undertakes "to do NECESSARY REPAIRS," is within a Power authorizing a lease to any one who agrees "to improve or repair" the premises (*Truscott v. Diamond Rock-Boring Co*, 51 L. J. Ch. 259; 20 Ch. D. 251). *V. REPAIR.*

"Improve" a MARKET; *V. A-G. v. Cambridge*, L. R. 6 H. L. 303; 22 W. R. 37.

"Improved RENT," s. 41, 14 G. 3, c. 78; *V. Beardmore v. Fox*, 8 T. R. 214; *Lambe v. Hemans*, 2 B. & Ald. 467.

Barren Heath or Waste Ground is not "improved and converted into Arable-Ground, or Meadow," s. 5, 2 & 3 Edw. 6, c. 13, by merely turning cattle thereon; the phrase connotes some act of cultivation (*Ross v. Smith*, 1 B. & Ad. 907).

**IMPROVEMENT.** — A covenant in a Lease to deliver up the premises at the end of the term with all "Improvements," does not, *semble*, include *Trade FIXTURES* (*Cosby v. Shure*, 23 L. R. Ir. 181); but in 1832, the Common Pleas in England held that such a covenant, in the Lease of a Water-Mill, included a pair of new mill-stones set up by the lessee, although the Custom of the Country authorized him to remove them (*Martyr v. Bradley*, 9 Bing. 24; 1 L. J. C. P. 147). *Cp*, **ERECTION. If, WINDOW.**

A Lease which expressly or impliedly empowers the making of "Improvements," probably, justifies the conversion of the premises from a useless store-house into useful dwelling-houses, especially if the term be a long one and the external walls be not interfered with (*Doherty v. Allman*, 3 App. Ca. 709; 39 L. T. 129; 26 W. R. 513; *If, WASTE*). If such a conversion were made without objection, it is submitted, it would have to be given up by the lessee under an obligation to deliver up with all "Improvements."

"Improvements capable of removal *without injury to the land itself*," in a proviso enabling a lessee to remove them, embraces improvements affixed to the soil which can be removed without substantial injury to the

land; the proviso justifies the removal of brick improvement buildings down to their foundations (*Loulou & S. African Exploration Co v. De Beers*, 1895, A. C. 451; 64 L. J. P. C. 123; 72 L. T. 609).

The legislation giving *Compensation to Tenants* for "Improvements" received its first definition from the Landed Property (Ir) Improvement Act, 1860, 23 & 24 V. c. 153, — s. 37 of which contains a list of such "Improvements"; *I*f, Landlord and Tenant (Ir) Act, 1870, 33 & 34 V. c. 46, s. 70; Land Law (Ir) Act, 1881, 44 & 45 V. c. 49; Land Law (Ir) Act, 1896, 59 & 60 V. c. 47. Larger lists of such "Improvements" are given in the Schedules to Agricultural Holdings (England) Act, 1883, and Agricultural Holdings (Scotland) Act, 1883. *V*a, Crofters Holdings (Scotland) Act, 1886, 49 & 50 V. c. 29; Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 V. c. 26; Tenants Compensation Act, 1890, 53 & 54 V. c. 57; Market Gardeners Compensation Act, 1895, 58 & 59 V. c. 27. *V*. PERMANENT.

*S*emble, for a Lessee to convert part of an Arable Farm (in the neighbourhood of London, or other large town) into a MARKET GARDEN and thereon to erect glass-houses for the cultivation of tomatoes, mushrooms, grapes, and such like, is to effect an "Improvement," within the Agricultural Holdings (England) Act, 1883, for which, if done with the landlord's consent, the lessee may claim compensation under that Act (per Kekewich, J., *Mene v. Copley*, 1892, 2 Ch. 253; 61 L. J. Ch. 452, 453).

The legislation for the *Improvement of Land by Owners of Limited Interests* received its first definition from the Landed Property (Ir) Improvement Act, 1860 (sup) — by s. 11 of which a variety of things were enumerated as "Improvements." A considerable amplification of that list was (by its s. 9) adopted for the Improvement of Land Act, 1864, 27 & 28 V. c. 114, which list is now extended so as to comprise all the "Improvements" authorized by the S. L. Acts (s. 30, S. L. Act, 1882).

The list in the Act of 1864, but somewhat amplified, was adopted for the law of Entail in Scotland, as authorized "Improvements" (s. 3, 38 & 39 V. c. 61).

It was adopted, but still further amplified, as the "Improvements" authorized quâ Settled Land in England by s. 25, S. L. Act, 1882, which again is enlarged by s. 13, S. L. Act, 1890: *V*th. ADDITION: BUILDING: FARM HOUSE: INCLOSE: LET: REBUILDING: RENTAL. This code was intended to embrace "Improvements which are calculated to render the Settled Land more remunerative" (per Lopes, L. J., *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. (Ch. 23)); but do *not* include the ordinary incidents of occupation, e.g. House Sanitation (*Re Tucker*, 1895, 2 Ch. 468; 64 L. J. Ch. 513; *St.*, s. 25 (xviii) S. L. Act, 1882), unless of a structural character (*Re Thomas*, 1900, 1 Ch. 319; 69 L. J. Ch. 198). Re-roofing farm buildings with galvanized iron in place of thatch, is an "Improvement" within subs. xx, s. 25 (*Re Verney*, cited REDEEM).

*Note.* The Court cannot make a Prospective Order under the S. L.



Acts (*Re Millard*, 1893, 3 Ch. 116; 62 L. J. Ch. 761); but when a Tenant for Life has done "Improvements," duly sanctioned (*Re Hotchkiss*, 56 L. J. Ch. 445; 35 Ch. D. 41; 35 W. R. 463), the Trustees may pay for them out of CAPITAL MONEY subsequently coming to their hands, subject to the proper certificate being obtained (*Re Norfolk*, 1900, 1 Ch. 461; 69 L. J. Ch. 236; 82 L. T. 613; 48 W. R. 328). Improvements executed before Scheme approved, s. 15, S. L. Act, 1890; *V. Re Dolison*, 1892, 3 Ch. 522; 61 L. J. Ch. 712; *Re Bristol*, 1893, 3 Ch. 161; 62 L. J. Ch. 901; 69 L. T. 304; 42 W. R. 46.

A direction to trustees of realty to pay the Surplus of the Rents after deducting cost of Taxes, Repairs, "Improvements," &c, does not justify an expenditure on New Buildings not shown to be required to enhance the rents, or keep old tenants (*Walpole v. Boughton*, 12 Bea. 622).

"Facilities for Improvement"; *V. FACILITIES.*

"Improvements," in the Specification of a Patent; *V. De Rosne v. Fairrie*, 5 Tyr. 393; 2 Cr. M. & R. 476; 1 Carp. 664, 689.

"Improvement Act"; Stat. Def., 14 & 15 V. c. 28, s. 2; 18 & 19 V. c. 121, s. 2.

"Improvement Act District"; *V. DISTRICT.*

"Improvement AREA"; *V. ABUT.*

"Improvement COMPANY"; Stat. Def., Improvement of Land Act, 1899, 62 & 63 V. c. 46, s. 7.

HIGHWAY "Improvements"; Stat. Def., 27 & 28 V. c. 101, s. 48.

"Improvement RATES"; Stat. Def., 14 & 15 V. c. 34, s. 3; 18 & 19 V. c. 70, s. 3.

*V. PERMANENT: PRIVATE IMPROVEMENT: PUBLIC BENEFIT.*

**IMPURE.** — *V. PURE.*

**IN.** — "If one grant all his goods *in* such a place; by this grant nothing doth pass but the goods that are in such a place at the time of the grant, and not any other goods that shall be there afterwards" (*Touch.* 98).

A legacy of the goods, or of certain classes of goods, "in" a house or other place, will comprise all the goods of the kind indicated the usual locality of which is in such house or other place, though they may at the time be actually somewhere else, if they have only been removed from their usual locality for a temporary purpose, *e.g.* at testator's banker's for safe custody (*Re Johnson*, 53 L. J. Ch. 645; 26 Ch. D. 538; *Wms. Exs.* 1190). But in *Heseltine v. Heseltine* (3 *Mad.* 276) it was held that a gift of "the chattels *in* my house at Doctors' Commons" did not pass the furniture in testator's house in Bedford Square, where he subsequently removed, though they were in his house at Doctors' Commons at the date of his Will. *Vf. Spencer v. Spencer*, 21 *Bea.* 548; **CONTENTS.**

A bequest of all testator's property "in" a particular country, county,

or other locality, will include all the *Debts* due to him from persons resident in such locality (*Nisbet v. Murray*, 5 Ves. 149; *Tyrone v. Waterford*, 29 L. J. Ch. 486; 1 D. G. F. & J. 613; *Arnold v. Arnold*, 4 L. J. Ch. 123; 2 My. & K. 365; *Horsfield v. Ashton*, 2 Jur. N. S. 193, 355; *Guthrie v. Walrond*, 52 L. J. Ch. 165; 22 Ch. D. 573; *Cp, Jones v. Sefton*, cited IN OR ABOUT). *Vf*, CONTENTS: LOCALLY SITUATE.

So, a Debt due from a person resident in a Foreign Country, is, quâ its Assignment, to be regulated by the law of that country (*Re Maudslay*, 1900, 1 Ch. 602; 69 L. J. Ch. 347; 82 L. T. 378; 48 W. R. 568).

Shares in a Co are "LOCALLY SITUATE" where the Head Office is (*A-G. v. Higgins*, 26 L. J. Ex. 403; 2 H. & N. 339); a SPECIALTY, quâ Probate Duty, is where it is found at the death (*Commrs of Stamps v. Hope*, 1891, A. C. 476; 60 L. J. P. C. 44; 65 L. T. 268).

An ADVOWSON is not properly described as being situate "in," or "at," a place, and it will not, *primâ facie*, pass under such general words as "hereditis situate in" a particular place; though if the grantor or testator had no other hereditament in that place, it might pass, and so, if the context favoured its inclusion (*Crompton v. Jarratt*, 54 L. J. Ch. 1109; 30 Ch. D. 298, and cases there cited; *Re Hodgson*, 1898, 2 Ch. 545; 67 L. J. Ch. 591; 47 W. R. 44; 79 L. T. 345).

So, *Money to be laid out in Land*, and therefore to be treated as realty, cannot, as a general rule, be predicated as being in any particular locality, even though the money arises from the sale of land in England (*Re Cleveland*, 1893, 3 Ch. 244; 62 L. J. Ch. 955).

As to what passes under a general description of property "in" or "at" a place: *V. Crompton v. Jarratt*, sup; *Rooke v. Kensington*, 2 K. & J. 753; 25 L. J. Ch. 795; *Early v. Rathbone*, 57 L. J. Ch. 652; 58 L. T. 517; AT. In *Brooke v. Turner* (7 Sim. 671; 5 L. J. Ch. 175) Shadwell, V. C., held, that "Property" "in" testatrix's dwelling-house, included Guineas and Sovereigns and Bank of England Notes; but not Country Bank Notes, or Promissory Notes, or Mtge Securities. So, in *Rhodes v. Rhodes* (22 W. R. 835) Jessel, M. R., held, that a gift of freehold houses in the City of London "and all and every other my ESTATE AND EFFECTS in the City of London," did not pass a Balance at a City Bank.

In *Doe d. Humphreys v. Roberts* (5 B. & Ald. 407), there was a devise of all testator's messuage or dwelling-house in High Street in the town of H., and all and every his buildings and hereditaments "in" the same Street; the testator had only one house in High Street, but behind it he had two cottages fronting Bakehouse Lane; there was no thoroughfare through that lane, the only entrance into it being from the High Street; held, that the two cottages passed under the Will, and Holroyd, J., said, "The only way to these cottages was through the High Street, and there was no thoroughfare through Bakehouse Lane. If there had been an opening from the High Street to these cottages alone, they would clearly

be 'in' the street, and I can see no difference from the circumstance of there being other houses in the court." *V. WITHIN: NEAR.*

A house may be "in" more than one Street, *quâ s. 75, Metrop Man. Act, 1862, s. 3, 51 & 52 V. c. 52*, and such like enactments (per Herschell, C., *Barlow v. St. Mary Abbots*, 11 App. Ca. 257; 55 L. J. Ch. 680; 55 L. T. 221; 34 W. R. 521; 50 J. P. 691: *Vf, A-G. v. Edwards*, 1891, 1 Ch. 194; 63 L. T. 639); — it is always a question of fact (*Warren v. Mustard*, 61 L. J. M. C. 18; 66 L. T. 26; 56 J. P. 502). *Vf, SIDE.*

A power to a Local Authority to ERECT Conveniences "in" a Street (the power being unaccompanied by any statutory vesting of the street, *V. VEST*), does not sanction the construction of the Conveniences under the surface of the street (*Tunbridge Wells v. Baird*, cited *PUBLIC PLACE*).

As to the locality of a BUSINESS; *V. CARRY ON: LOCALLY SITUATE.*

CONTRACT "made in England or Ireland," s. 59, Stamp Act, 1891; *V. Muller v. Inl. Rev.*, cited *MADE.*

"In his Trade or Business" (s. 44 (iii), Bankry Act, 1883), "means, not necessarily visibly in his trade or business but, acquired for the purposes of the business and used for those purposes" (per Lindley, L. J., *Colonial Bank v. Whinney*, 55 L. J. Ch. 591; 30 Ch. D. 261; *the revid* by H. L. on another point, 56 L. J. Ch. 43; 11 App. Ca. 426; 55 L. T. 362; 34 W. R. 705. *Vf, Re Jenkinson*, 54 L. J. Q. B. 601; 15 Q. B. D. 441).

FIXTURES, &c, "used in" premises; *V. USED.*

A contract for goods, to be paid for "in," or "within," a *stated period*, gives the buyer the right to call for delivery at any reasonable time within that period without tendering the price, which is only payable at the expiration of the period (*Spartuli v. Benecke*, 19 L. J. C. P. 293; 10 C. B. 212: *Vh. Blackb. 226*).

**IN ACCORDANCE WITH THE FORM.** — A BILL OF SALE whenever given as Security for Money, must be "in Accordance with the Form" prescribed in the Sch to Bills of S. Act, 1882 (*V. s. 9*). In *Re Barber, Ex p. Stanford* (55 L. J. Q. B. 344; 17 Q. B. D. 269; 54 L. T. 894; 34 W. R. 507), it was pointed out in the jdgmt of Esher, M. R., and Cotton, Lindley, Bowen, and Lopes, L. J.J., that the words of that section did not say that a Bill of Sale was to be "in the Form" prescribed, but "in Accordance with the Form"; and it was added, "the distinction can scarcely be accidental": the phrase means "substantially in Accordance with the Form" (per Day, J., *Consolidated Credit Corp v. Gosney*, 55 L. J. Q. B. 62; 16 Q. B. D. 24; 54 L. T. 21; 34 W. R. 106).

But still the requirement that a document must be "in Accordance with the Form" prescribed is one of stringent obligation: as those who did not pay due heed to it have found to their cost. *Vh. Davis v. Burton*, 11 Q. B. D. 537; 52 L. J. Q. B. 636; 32 W. R. 413:

*Myers v. Elliott*, 16 Q. B. D. 526; 55 L. J. Q. B. 233; 54 L. T. 552; 34 W. R. 339: *Liverpool Investment Socy v. Richardson*, 55 L. J. Q. B. 455 n; 2 Times Rep. 602, *srthlc*, *Re Cleaver*, 55 L. J. Q. B. 455: *Melville v. Stringer*, 53 L. J. Q. B. 482; 13 Q. B. D. 392; 50 L. T. 774; 32 W. R. 890: *Hetherington v. Groome*, 53 L. J. Q. B. 576; 13 Q. B. D. 789; 51 L. T. 412; 33 W. R. 103: *Sibley v. Higgs*, 54 L. J. Q. B. 525; 15 Q. B. D. 619; 33 W. R. 748: *Parsons v. Hargreaves*, 55 L. J. Q. B. 408; 17 Q. B. D. 336; 34 W. R. 717: *Calvert v. Thomas*, 56 L. J. Q. B. 470; 19 Q. B. D. 204; 57 L. T. 441; 35 W. R. 616: *Macey v. Gilbert*, 57 L. J. Q. B. 461: *Kelly v. Kellond*, or, *Thomas v. Kelly*, 58 L. J. Q. B. 66; 13 App. Ca. 506: *Cp with thlc*, *Re Burdett*, 57 L. J. Q. B. 263; 20 Q. B. D. 310, and *Cochrane v. Entwisle*, 59 L. J. Q. B. 418; 25 Q. B. D. 116. *Vf*, *Blunkenstein v. Robertson*, 59 L. J. Q. B. 315; 24 Q. B. D. 543; 6 Times Rep. 178: *Altree v. Altree*, 1898, 2 Q. B. 267; 67 L. J. Q. B. 882; 47 W. R. 60; 78 L. T. 794, *vtlhc OF*: *Rimmer v. Brereton*, 41 S. J. 510: *Re Bullock*, 1899, 2 Q. B. 517; 68 L. J. Q. B. 953; 81 L. T. 268; 48 W. R. 46: *Davies v. Jenkins*, cited SPECIFIC: GRANTOR: STIPULATED: VOID: Reed, 167-185.

The obligation of the phrase is so exigent that if a transaction by way of Security on chattels cannot, from its nature, be made "in Accordance with the Form," it cannot be made at all (*Re Townsend, Ex p. Parsons*, 55 L. J. Q. B. 137; 16 Q. B. D. 532; 53 L. T. 897; 34 W. R. 329: *Hughes v. Little*, 56 L. J. Q. B. 96; 18 Q. B. D. 32; 55 L. T. 476; 35 W. R. 36).

#### V. IN THE FORM: TENOR.

**IN ACCORDANCE WITH THE JUDGMENT.** — A Bankry Notice "in accordance with the terms of the jdgmt," s. 4 (g), Bankry Act, 1883, must strictly follow the jdgmt on which it is founded; therefore, where plaintiffs sued and took jdgmt without disclosing their representative character, and the Bankry Notice added that they were "Trustees of St. John's Hospital, Northampton"; held, that the Notice was bad (*Re Howes, Ex p. Hughes*, 1892, 2 Q. B. 628; 62 L. J. Q. B. 88; 67 L. T. 213; 40 W. R. 647): *V. FORMAL*.

**IN ACCORDANCE WITH THE PLAN.** — Premises provisionally licensed under s. 22, Licensing Act, 1874, have to be constructed "in accordance with" the plans submitted to the Justices when the provisional license was obtained; that means, "in substantial accordance" (per Mathew, J., *R. v. London Jus.*, 59 L. J. M. C. 71; 24 Q. B. D. 341).

**IN ADDITION.** — *V. ADDITION*.

**IN ADVANCE.** — *V. ADVANCE*.

**IN AID.** — Where a testator charged his general realty "in aid of my personal estate and in exoneration of my other personal estate,

with the payment of all my just debts, funeral and testamentary expenses," — it was held that this did not amount to a direction to pay a mortgage debt on realty specifically devised (*Re Newmarch*, 48 L. J. Ch. 28; 9 Ch. D. 12; *Buckley v. Buckley*, 19 L. R. Ir. 555; DEBTS).

**IN AND ABOUT.** — *V.* IN OR ABOUT.

**IN AND FOR.** — In this phrase in a Justices' Order, "In" indicates the place in which the Order is made; "For" merely denotes the ambit of their jurisdiction, and does not imply that the Order was made within that ambit (*R. v. Stockton*, 7 Q. B. 520; 14 L. J. M. C. 128; *Wh. R. v. St. George, Bloomsbury*, 21 L. J. M. C. 49; 4 E. & B. 520).

**IN ANY ORDER, &c.** — *V.* LIBERTY TO CALL.

**IN ATTENDANCE.** — Cab Drivers who go as customers to a Cab Proprietor's yard, are none the less "in attendance" there, within s. 38, P. H. London Act, 1891 (*Bennett v. Harding*, cited WORKPLACE).

**IN BLOOD.** — The addition of "In Blood" to "Next-of-kin," makes the latter phrase stronger against a widow taking under it (*Re Fitzgerald*, 58 L. J. Ch. 662; 37 W. R. 552). *See* NEXT OF KIN.

Bequest to A.'s "Next of Kin in Blood, as if A. had died unmarried," means, A.'s nearest of kin (*Hulton v. Foster*, cited NEXT OF KIN).

*V.* BLOOD.

**IN CAPITE.** — *V.* CAPITE.

**IN CASE.** — *V.* IF: WHEN.

"In case of the *Death*"; *V.* DIE: OR.

"In case of *Dispute*"; *V.* DISPUTE.

"Referee in case of *Need*," of a Bill of Exchange, is a person to whom the Holder may resort if the Bill is dishonoured (s. 15, Bills of Ex. Act, 1882). *Vf.* *Re Leeds Banking Co, Ex p. Prungs*, 35 L. J. Ch. 33; L. R. 1 Eq. 1.

"In case the Parties differ"; *V.* *Baxendale v. Lucas*, W. N. (95) 30.

*V.* AS THE CASE REQUIRES: EITHER.

**IN CASH.** — A statutory requirement that things, — *e.g.* Shares in a Co under s. 25, Comp. Act, 1867, repled s. 7, Comp. Act, 1890, — shall be paid for "In Cash" unless otherwise determined, is satisfied not only by actually handing over the amount in moneys counted, but by anything that would sustain a plea of PAYMENT in point of law, as distinguished from mere ACCORD and Satisfaction; therefore, if there be *money due* to the person who has to make the payment and that money be set off against what he has to pay, that will be a payment "In Cash" (*Spargo's Case*, 8 Ch. 407; 42 L. J. Ch. 488; *Fothergill's Case*, 8 Ch.

270; 42 L. J. Ch. 481: *White's Case*, 12 Ch. D. 517; 48 L. J. Ch. 820: *Kent's Case*, 39 Ch. D. 259; *Re Jones & Co*, 41 Ch. D. 159; 58 L. J. Ch. 582. *See*, per Halsbury, C., *Ooregun Co v. Roper*, cited OTHERWISE, but that dictum was cited without avail in *Larocque v. Beauchemin*, 1897, A. C. 365; 66 L. J. P. C. 59). But the debt must be presently payable (*Re Land Development Assn*, 57 L. J. Ch. 977; 39 Ch. D. 259; 59 L. T. 449; 36 W. R. 818). The arrangement in *Re Johannesburg Hotel Co*, (1891, 1 Ch. 119; 60 L. J. Ch. 391; 39 W. R. 260) was one of mere Accord and Satisfaction.

*Vh*, *Ooregun Co v. Roper*, and other cases, cited OTHERWISE: Buckl. 599: Hamilton, 178.

"Payment shall be made in Cash against receipt of the Documents"; *V. Fry v. Raggio*, 40 W. R. 120.

V. CASH.

**IN CHARGE.** — "Being in Charge of any person so suffering," s. 126 (2), P. H. Act, 1875; *V. Tunbridge Wells v. Bisshopp*, 2 C. P. D. 187.

"RENTS payable to the Crown were formerly put 'In Charge' in one or other of two ways; (1) By the Auditor General *ex officio* from the King's grant; or (2) By the Court of Exchequer upon a *Scire facias* on behalf of the Crown. When a grant of lands was made by the Crown to a subject, the fiat of the Attorney or Solicitor General for the patent or grant was lodged in the Rolls Office; and when the grant was sealed and enrolled it was not given directly to the party concerned, but was brought by one of the clerks in the Rolls Office to the Auditor General to be entered by him. The Auditor General, having ascertained the Rent, inserted it in the Roll of the King's Rents, and the grant was then delivered to the party. The great Roll of the Pipe was the principal record in the Exchequer, and the medium of charge and discharge of rents and debts due to the Crown; and in it the accounts of the ancient royal revenue were entered. Hence *Ld Coke* (3 Inst. 189, in his Commentary on the first Nullum Tempus Act, 21 Jac. 1, c. 2), says, — 'Duly In Charge, in judgment of law, is the Roll of the Pipe: for although a note before the Auditor, or any other, may be a mean to bring it in question and to be put In Charge, yet that is not, in judgment of law, said to be, Duly In Charge, unless it be In Charge in the Pipe'" (per *Bewley, J.*, *Re Maxwell*, 28 L. R. Ir. 362, 363). *Semble*, QUIT RENTS are within the word "Rents" as used in s. 1, Crown Claim Limitation (Ir) Act, 1808, 48 G. 3, c. 47; but its third saving proviso is of Rents, &c "Duly In Charge," and therefore the Act does not run against Rents entered in the Crown Rental; nor does the Nullum Tempus (Ir) Act, 1876, 39 & 40 V. c. 37, apply, except "where the Rent has been wrongfully received by a subject for the statutory period" (*Ib.* 364).

**IN CIRCULATION.**—*V.* CIRCULATION.

**IN COMMENDAM.**—*V.* COMMENDAM.

**IN COMMON USE.**—*V.* COMMON TO THE TRADE.

**IN CONFIDENCE.**—*V.* PRECATORY TRUST.

**IN CONNECTION WITH.**—*V.* CONNECTED WITH.

**IN CONSEQUENCE OF.**—*V.* CAUSED BY: COMPULSORY POWERS.

**IN CONSIDERATION.**—*V.* CONSIDERATION: PREMISES.

**IN COURSE.**—*V.* IN THE COURSE: HOLDER IN DUE COURSE.

**IN COURT.**—Proceeding “in Court”; *V.* PROCEEDING.

**IN DANGER.**—*V.* DANGER.

**IN DEFAULT.**—An owner “in Default,” s. 150, P. H. Act, 1875, does not include a person who was owner when the notice to do the work was given, but who has ceased to be owner before completion of the works by the Local Authority (*R. v. Swindon*, 48 L. J. M. C. 119; 4 Q. B. D. 305).

“In default of such ISSUE,” to what antecedent referable; *V. R. v. Stafford*, 7 East, 521.

*V.* DEFAULT: DIE WITHOUT ISSUE.

**IN DEFEASANCE.**—*V.* DEFEASANCE, at end.

**IN DISCHARGE.**—*V.* FOR, towards end.

Accident “in discharge of Duty”; *V. Vickery v. G. E. Ry*, cited ACCIDENT.

**IN DUE COURSE.**—*V.* HOLDER IN DUE COURSE.

**IN EITHER CASE.**—*V.* EITHER.

**IN ESSE.**—*V.* IN POSSE.

**IN EXECUTION.**—*V.* PURSUANCE: ENFORCE: IN EXERCISE: DELIVERED IN EXECUTION: TAKE IN EXECUTION.

**IN EXERCISE.**—When anything is done under a power “in EXERCISE of every Power or Authority” thereunto ENABLING, and there are two or more Powers under which the thing might be done, that Power which is the more favourable to the Donee should be presumed to be the one executed, especially if it is the first in point of time (*Lonsdale v. Crawford*, 69 L. J. Ch. 686; nom. *Lonsdale v. Lowther*, 1900, 2 Ch. 687).

**IN EXPECTANCY.**—*V.* EXPECTANCY.

**IN FAVOUR.**—*V.* FAVOUR.

**IN FORCE.**—A Beerhouse License “in Force” on 1st May 1869, s. 19, 32 & 33 *V. c.* 27, means, a License in existence on that date and which has continued and remains in existence at the time application is made for its RENEWAL (*Hargreaves v. Dawson*, 24 L. T. 428; *R. v. Curzon*, 42 L. J. M. C. 155; L. R. 8 Q. B. 400; 21 W. R. 887); and this is so whether the application is under that section or is for a Transfer under s. 14, Alehouse Act, 1828 (*Freer v. Murray*, 1894, A. C. 576; 63 L. J. M. C. 242; 71 L. T. 444; 58 J. P. 508).

In the interp of “Sanitary Acts” in s. 2, P. H. Ireland Act, 1878, “‘In Force,’ means, in force for the time being” (s. 31, P. H. Ireland Act, 1896). It is submitted that this is the general meaning.

**IN FORMÂ PAUPERIS.**—*V.* FORMÂ PAUPERIS.

**IN FULL.**—Agreement to pay Rent “in full,” s. 103, 5 & 6 *V. c.* 35; *V. Lamb v. Brewster*, 48 L. J. Q. B. 421; 4 Q. B. D. 220.

A man who compounds with his creditors, does not pay “his Debts in full,” s. 52, 5 & 6 *W. 4, c.* 76 (*Hardwick v. Brown*, L. R. 8 C. P. 406).

Award “in full of all Demands,” disposes of all matters referred (*Mannion v. Harrison*, Ir. Rep. 11 C. L. 102; following *Jewell v. Christie*, 36 L. J. C. P. 168; L. R. 2 C. P. 296).

Sending a cheque “in full of all Demands,” even though the cheque be kept and placed to credit, does not, of itself, amount to an Accord and Satisfaction (*Day v. McLea*, 22 Q. B. D. 610; 58 L. J. Q. B. 293; 60 L. T. 947; 5 Times Rep. 379).

“In full for the Voyage”; *V. Sweeting v. Darthez*, 23 L. J. C. P. 131; 14 C. B. 538.

**IN GROSS.**—*V.* GROSS.

**IN GOOD FAITH.**—*V.* BONÂ FIDE: GOOD FAITH.

**IN HÂC RE.**—Solicitor “In hâc re”; *V. jdgmt of Turner*, L. J., *Holman v. Loynes*, 23 L. J. Ch. 534.

**IN HAND.**—“Balance in hand.” in a Poor Rate Collector’s account, does not, necessarily, connote that he has it in his cash-box; it may simply be a statement of what has to be accounted for (*R. v. Williams*, 79 L. T. 739).

“Available Balance in hand”; *V.* AVAILABLE.

A bequest of “all my MONEYS in hand”; held to pass balance at bankers (*Vaisey v. Reynolds*, cited FARMING STOCK).

“PROFITS in hand”; *V. Re Mercantile Trading Co*, 4 Ch. 475; 38 L. J. Ch. 698.



**IN HEIGHT.** — *V. HEIGHT.*

**IN HIS CAPACITY or CHARACTER.** — *V. CAPACITY: CHARACTER.*

**IN HIS DEMESNE AS OF FEE.** — *V. DEMESNE.*

**IN HIS HANDS.** — “Trust Funds in his hands”; *V. Hume v. Lopes*, cited **TRUST FUNDS.**

Agreement to let the Bar so long as the Theatre shall “remain in his hands”; *V. Edwardes Co v. Chudleigh*, 14 Times Rep. 47, 64.

**IN HIS OWN RIGHT.** — Holding Shares “in his Own Right,” *quà* qualification of Director, does not mean holding beneficially (*Pulbrook v. Richmond Mining Co*, 48 L. J. Ch. 65; 9 Ch. D. 610; 27 W. R. 377). In that case Jessel, M. R., said, “the Company cannot look behind the Register as to the beneficial interest.” But in *Bainbridge v. Smith* (41 Ch. D. 462; 37 W. R. 594), Cotton, L. J. (*obiter*), dissented from that view, whilst Lindley, L. J., said that that conventional meaning had been acted upon so long that he was not prepared to disturb it (*Vth. Re Bainbridge*, 34 S. J. 154, 155; W. N. (89) 228). That conventional meaning *quà the Co* will be adhered to: but *quà* a Charging Order under s. 14, Judgments Act, 1838, 1 & 2 V. c. 110, Shares or Stock standing in his name “in his Own Right,” mean, those which a person holds beneficially (*Cooper v. Griffin*, 1892, 1 Q. B. 740; 61 L. J. Q. B. 563; 40 W. R. 420; 66 L. T. 660; *Howard v. Sadler*, 1893, 1 Q. B. 1; 68 L. T. 120; 41 W. R. 126).

*Vth.*, 33 S. J. 624; *Gill v. Continental Gas Co*, 41 L. J. Ex. 176; L. R. 7 Ex. 332; *Re Glory Paper Mills*, 1894, 3 Ch. 473; 63 L. J. Ch. 885; *Re Blakely Ordnance Co*, 46 L. J. Ch. 367.

An Acceptor of a Bill of Ex. who becomes its **HOLDER** “in his Own Right,” s. 61. Bills of Ex. Act, 1882, means something more than one who does not acquire it in a representative character: it means, a holder “having a right to it, not subject to that of any one else, but his own. — good against all the world” (per Collins, L. J., *Nash v. De Freville*, 69 L. J. Q. B. 493; 1900, 2 Q. B. 72).

**IN HIS PROPER PERSON.** — *V. Hesketh v. Lee*, 2 Saund. 95.

**IN HIS TRADE OR BUSINESS.** — This phrase, in s. 44 (iii). Bankry Act, 1883, does not comprise property unconnected with a bankrupt’s trade or business, although mortgaged by him to secure a trade account (*Re Jenkinson*, 54 L. J. Q. B. 601; 15 Q. B. D. 441; *Vj.*, *Colonial Bank v. Whidney*, and *Sharman v. Mason*, cited **POSSESSION ORDER or DISPOSITION: Re Harrison**, inf).

A Lodging-house Keeper, though he does not provide board, carries

on a "Trade or Business" within the section (*Re Harrison*, 67 L. T. 600).

V. TRADE: BUSINESS: AS A TRADER.

IN KIND. — V. DUES.

IN LIEU OF. — Bequest "in lieu of"; *V. Barclay v. Maskelyne*, 5 Jur. N. S. 12; *Cooper v. Day*, 3 Mer. 154; *Hill v. Walker*, 4 K. & J. 166.

Liability "in lieu of"; V. UNDER.

Where a liability has to be discharged by A. "in lieu of" B., there must be a binding obligation on B. to do it before A. can be charged with it; *e.g.* when the Director of Public Prosecutions undertakes a prosecution the person who may have been bound over to prosecute is released and the Director "shall be liable to Costs *in lieu of* such person," s. 7, 42 & 43 V. c. 22; but if such person has given no security for costs, the Director cannot be made to pay them, because there is nobody in whose stead that liability can be imposed (*Stubbs v. Director of Public Prosecutions*, 59 L. J. Q. B. 201; 24 Q. B. D. 577; 62 L. T. 399; 38 W. R. 607).

Claimant in an Interpleader may "be made a Defendant . . . in lieu of the Applicant," R. 7, Ord. 57, R. S. C.; *V. Gerhard v. Montague*, 38 W. R. 76; 61 L. T. 564; 6 Times Rep. 19.

A section in an Act of Parliament "in lieu of" another, reads the substituted section into the Act containing the repealed section (per Bruce, J., *R. v. Hopkins*, 1893, 1 Q. B. 621; 62 L. J. M. C. 57; 68 L. T. 292; 41 W. R. 431; 57 J. P. 152).

V. INSTEAD OF: LIEU AND SUBSTITUTION: SUBSTITUTION: SUBSTITUTIONAL GIFTS.

IN LIKE MANNER. — V. AFORESAID.

IN LOCO PARENTIS. — V. LOCO PARENTIS.

IN MANNER AFORESAID. — V. AFORESAID.

IN MANNER AND FORM. — V. MANNER AND FORM.

IN MERCY. — V. AMERCIAMENT.

IN NEED. — V. IN CASE.

IN OPEN COURT. — V. OPEN.

IN OPERATION. — V. OPERATION.

IN OR ABOUT. — In *Re Labrou* (29 S. J. 147), Kay, J., held that a residuary bequest of household furniture, plate, books, . . . and

other household effects, "in or about" testator's dwelling-house, included hay-ricks, chicken and sheep-troughs, store pigs, poultry, and carriages, that were on the grounds (40 acres in extent) appertaining to the dwelling-house. *Cp.*, *Fitzgerald v. Field*, inf. *V.* HOUSEHOLD: IX.

A bequest of personal effects "in and about" testator's residence; held, to include the deer in his Park, but not the farming-stock and implements in his Home Farm (*Hastings v. Hastings*, W. N. (73) 118).

Horses used only at testator's Town House, but regularly wintered in the country where they happened to be at his death; held, to pass under a gift of the Town House, with the horses "in, upon, or about the same, or the stables thereof" (*Bruce v. Curzon-Howe*, 19 W. R. 116).

A bequest of all Corn, &c, "in or about" a Mill, held not to include a cargo of wheat consigned to the testator but which, in due course of transit, did not reach the mill till after his death (*Lane v. Sewell*, W. N. (74) 51).

There would appear to be no difference, in such a connection as the foregoing, between "in or about," and "in and about." Thus in *Gover v. Gover* (Ambl. 612; 2 Eden, 201) the Running Horses (Race-horses?) of a nobleman were held to be included in a bequest of goods and chattels "which should be in and about his dwelling-house and out-houses" (*Vth.*, *Porter v. Tournay*, 3 Ves. 314; *Vj.*, *Hastings v. Hastings*, sup). But a Money Bond and a sum of Cash (found in an iron chest in testator's house) were held not to pass under a bequest of such parts of personal estate "as should be in and about his house" (*Jones v. Sefton*, 4 Ves. 166), the short reason given by Loughborough, C., being, "there is no annexation." No such consideration as that is however to be discerned in *Fitzgerald v. Field* (1 Russ. 427), wherein the words "household furniture, &c, and UTENSILS in and about my house," were held not to pass farming utensils on lands occupied by testator along with his house.

Stock-in-Trade and "other Articles" "in and about" a Business; *V.* *Dean v. Brown*, cited OTHER.

*Cp.* IN OR UPON.

A WORKMAN was arranging timber in a cart belonging to his employers (a firm of builders) which stood in the street near the entrance to their yard; a piece of the timber on which he was standing tilted and thereby he was thrown into the road and injured; held, that he was "about" the FACTORY within the phrase "on, or in, or about," s. 7 (1), Workmen's Comp Act, 1897 (*Powell v. Brown*, 1899, 1 Q. B. 157; 68 L. J. Q. B. 151; 79 L. T. 631; 47 W. R. 145). But the phrase "about" implies "in close proximity to" (per Smith, L. J., *ib.*); therefore, an accident to a carter when delivering goods  $1\frac{1}{2}$  miles from his employer's factory, does not happen "about" the factory (*Louth v. Ibbotson*, 1899, 1 Q. B. 1003; 68 L. J. Q. B. 465; 80 L. T. 341; 47 W. R. 506; *Vj.* *Chambers v. Whitehaven Harbour Commrs.* 1899, 2 Q. B. 132; 68 L. J. Q. B.

740; 80 L. T. 586; 47 W. R. 533; *Fenn v. Miller*, 1900, 1 Q. B. 788; 69 L. J. Q. B. 439; 82 L. T. 284; 48 W. R. 369; 64 J. P. 356). *V. DOCK: A.*

“In or about” a MINE, in the same section; *V. Turnbull v. Lambton Co.*, 82 L. T. 589; 64 J. P. 404; 16 Times Rep. 369.

*V. RAILWAY.*

“In or about,” as used in stating a DATE; *V. R. v. St. Paul's, Covent Garden*, 14 L. J. M. C. 109; 7 Q. B. 232; *R. v. St. Anne, Westminster*, 15 L. J. M. C. 119; 7 Q. B. 241.

Errors or Irregularities “in or about” an Election; *V. R. v. Samuel*, 1895, 1 Q. B. 815; 64 L. J. Q. B. 515; 72 L. T. 572; 11 Times Rep. 358; *V. ERROR.*

“In or about a Shop”; *V. SHOP.*

*V. ABOUT.*

**IN OR AS OF.** — *V. AS OF.*

**IN OR NEAR.** — *V. NEAR: IN SIVE JUXTA.*

**IN OR UPON.** — A contractee's lien on his contractor's Implements, Materials, &c, that may be “in or upon” the lands or grounds where the contract works are going on at the time of the contractor's default, is in the nature of a Shifting LIEN; and the place where such lien attaches must be interpreted reasonably, and not literally, and it extends to all places where the works are, in a popular sense, going on, if such places are in the possession of the contractee (*Hawthorn v. Newcastle Ry*, 3 Q. B. 736, 737).

*Cp.*, IN OR ABOUT. *V. UPON.*

**IN ORDER.** — “In order to” or “In order that,” *semble*, intensifies “with INTENT” (*A-G. v. Sillem*, 2 H. & C. 525).

**IN PAIS.** — *V. PAIS.*

**IN PART.** — *V. PART: WHOLLY.*

**IN PAYMENT.** — “In Payment and Discharge”; *V. FOR*, towards end.

**IN PERSON.** — “In Person or by Proxy”; *V. PROXY.*

**IN PORT.** — *V. Hunter v. Northern Insree*, 13 App. Ca. 717; *Colby v. Hunter*, 3 C. & P. 7; Moo. & M. 81; *Kenyon v. Berthon*, 1 Doug. 12 a; PORT: WARRANTED IN PORT.

**IN POSSE.** — “Possibility of being, — as opposed to In Esse, in a state of being. A child *in ventre sa mère*, is a child *In Posse*, but the law regards it as *In Esse* for all purposes which are for its benefit: *Doe d. Clarke v. Clarke*, 2 Bl. H. 399” (6 Encyc. 503: Cowel, *Posse*).

*V. POSSE.*

**IN POSSESSION.**—*V.* ESTATE AND INTEREST: POSSESSION: COME TO: OCCUPATION.

**IN PRACTICE.**—*V.* PRACTISE.

**IN PREFERENCE.**—*V.* PREFERENCE.

**IN PRISON.**—*V.* *Sumption v. Monzani*, 4 A. & E. 1007: POISON.

**IN PURSUANCE.**—*V.* PURSUANCE.

**IN PURSUIT.**—“In Pursuit of Game”; *V.* SEARCH.  
*V.* FRESH PURSUIT.

**IN QUESTION.**—*V.* MATTER: QUESTION.

**IN RECEIPT.**—“In receipt of the *Profits* of such land or such rent,” s. 3, 3 & 4 W. 4, c. 27;—“The expression ‘in receipt of the Profits of any land’ is used in this Act in conjunction with the words ‘in Possession of the land,’ to denote, not the receipt of rent from a tenant but, the receipt of the actual proceeds of the land” (Sug. R. P. Statutes, 2 ed., 47. *V. Grant v. Ellis*, 11 L. J. Ex. 228; 9 M. & W. 113; *Vthe, Irish Land Commission v. Grant*, 10 App. Ca. 26).

*V.* POSSESSION.

Shortly after a Receiving Order (and to secure an advance wherewith to purchase his debts) a bankrupt (an actor) agreed that his manager should deduct £20 a week from his weekly salary of £30; held, that the bankrupt was not “in the receipt of a SALARY or INCOME” of £30, but only of £10, a week, within s. 53 (2), Bankry Act, 1883 (*Re Shine*, 1892, 1 Q. B. 522; 61 L. J. Q. B. 253; 66 L. T. 146; 40 W. R. 386). So, quâ that section, a bankrupt is not “in receipt of” so much of his Salary or Income as is required to pay Alimony that has been ordered against him (*Ib.*).

**IN REGULAR TURNS OF LOADING.**—*V.* TURN.

**IN RELATION TO.**—*V.* RELATING: RELATION: SHIP: GENERALLY.

**IN REM.**—*V.* ACTION: REM.

**IN RESPECT OF.**—Proceedings “in respect of a Debt” released by a bankry; *V. Heather v. Webb*, 46 L. J. C. P. 89; 2 C. P. D. 1.

Bets paid by an Agent for his Principal, or by a Partner in a Betting Partnership, though not paid “under,” are paid “in respect of” a Gaming Contract within s. 1, 55 & 56 V. c. 9; and the money is irrecoverable (*Tatum v. Reeve* and *Saffery v. Mayer*, cited GAMING CONTRACT). *V.* PAID.

“An Offence in respect of the commission of which,” s. 17 (1), Sum

Jur Act, 1879; *V. Williams v. Wynne*, 57 L. J. M. C. 30; 58 L. T. 283; 52 J. P. 343.

In a Covenant to pay taxes, &c, "on, or in respect of," demised premises, "in respect of" is used in contradistinction to "on," and is strong to throw liability on the covenantor (*Brett v. Rogers*, cited TAXES: *Vf*, *Tidswell v. Whitworth* and *Farlow v. Stevenson*, also cited TAXES).

The cost of removing a Vessel which by a Collision has become a WRECK, is not money paid "in respect of Injury" to the vessel occasioned by the collision, within a Marine Policy (*Burger v. Indemnity Mutual Mar Assree*, 1900, 2 Q. B. 348; 69 L. J. Q. B. 838; 82 L. T. 831; 48 W. R. 643).

Powers and Duties of the Board of Trade "with respect to" approval of Working Agreements between Railways; *V. Huddersfield v. G. N. Ry*, 50 L. J. Q. B. 587.

**IN SEARCH.** — "In Search, or Pursuit, of Game"; *V. SEARCH.*

**IN SIVE JUXTA.** — *V. A-G. v. Horner*, 54 L. J. Q. B. 227; 55 Ib. 193; 14 Q. B. D. 245; 11 App. Ca. 66: NEAR.

**IN SPECIE.** — *V. SPECIE.*

**IN SUBSTANCE.** — *V. SUBSTANCE.*

**IN SUBSTITUTION.** — *V. SUBSTITUTION.*

**IN SUMMARY MANNER.** — *V. SUMMARILY.*

**IN TERMS.** — "In terms of the Lands Clauses Acts"; *V. P. H. Scotland Act, 1897*, s. 4 (3).

**IN THAT BEHALF.** — " 'In that behalf,' is a phrase of wide signification" (per Pollock, C. B., *Garby v. Harris*, 21 L. J. Ex. 160).

**IN THE CAUSE.** — *V. COSTS IN THE CAUSE.*

**IN THE CONDUCT OF A SUIT.** — Matters done before action brought or after judgment recovered, were not "In the conduct of a suit," within s. 36, Co. Co. Act, 1856, 19 & 20 V. c. 108 (*Druiff v. Joel*, 51 L. J. Q. B. 490; nom. *Re Emanuel*, 9 Q. B. D. 408: *Vth, Re Dod & Co, Ex p. Lamond*, 21 Q. B. D. 242). *V. CONDUCTING.*

**IN THE COURSE.** — Sample of MILK "in Course of Delivery," s. 3, 42 & 43 V. c. 30; *V. Filshie v. Erington*, cited DELIVERY.

"In the Course of his Employment"; *V. EMPLOYMENT.*

"Debts due to the bankrupt in the Course of his Trade," s. 44 (2, iii), Bankry Act, 1883, means, in connection with his trade (*Ex p. Reusberg, Re Pryce*, 4 Ch. D. 685. *Vf*, DEBT).

“In the Course of Trade or Husbandry”; *V. CARRIAGE.*

*V. Speak v. Powell*, cited *TRADE.*

*Cp.*, *COURSE: ORDINARY COURSE.*

**IN THE FIRST PLACE.**—In some of the cases reliance seems to have been placed on such words as “*Imprimis*,” “*In the first place*,” and “*First*” in determining whether a direction to pay Debts charged the realty; but it seems now tolerably well settled that such phrases “are merely introductory words of form, denoting the commencement of the testamentary act; or, if they have any meaning, only denote the order of payment, not the fund out of which payment is to be made” (2 *Jarm.* 588), nor do they imply priority of payment (*Nash v. Dillon*, 1 *Moll.* 236). *Vf.*, 2 *Jarm.* 587–590, for a discussion of the cases hereon: *Vu*, *Watson Eq.* 32.

“In the first place,” “In the next place”; *V. Re Hardy*, 50 *L. J. Ch.* 241; 17 *Ch. D.* 798.

*V. FIRST.*

**IN THE FORM.**—Where a statute says that a thing shall be “in the Form” prescribed, that means that the form must be strictly and literally followed (*Henry v. Armitage*, 53 *L. J. Q. B.* 111; 12 *Q. B. D.* 257). *V.* on this phrase in *R. 2 of Rules of Nov 1842*, under 5 & 6 *V. c.* 116, *Re Russell* and *Re Fry*, 28 *L. T. O. S.* 343; *Re Hendrie*, 31 *Ib.* 14; *Re Pollastrini*, 7 *L. T.* 171; *Re Edwards*, 28 *L. T. O. S.* 258). *Secus*, where the words “or to the effect” or “or to the like effect,” are added (*Henry v. Armitage*, *sup.*): thus, where a Proxy was to be “in the form, or to the effect” prescribed, and the form used the words “one of the Members” of the Co, but the proxy given was expressed to be from the “Proprietor of Shares,” that was “to the effect” of the form (*Re Indian Zoolone Co*, 26 *Ch. D.* 78).

Where the words are *IN ACCORDANCE WITH THE FORM*, the obligation to comply with the Form is strict; though not so strict as where “in the Form” is used.

**IN THE MEANTIME.**—*V. MEANTIME.*

**IN THE NAME.**—*V. NAME.*

**IN THE SAME MANNER.**—*V. AFORESAID: FEME.*

**IN THIS PARTICULAR.**—*V. PARTICULAR.*

**IN TRANSIT.**—Stoppage in Transitu; *V. STOPPAGE.*

*V. DELAY IN TRANSIT.*

**IN TRUST.**—The phrase “In trust,” or “On trust,” may frequently be read as, “entrusted to”: *e.g.* in a floating fire policy by a carrier or warehouseman on “goods *in Trust* or on Commission” (*Waters v. Mon-*

*arch Insrec*, 25 L. J. Q. B. 102; 5 E. & B. 880; *Lond. & N. W. Ry v. Glyn*, 28 L. J. Q. B. 188; 1 E. & E. 652; *Cp, North British Co v. Moffatt*, 41 L. J. C. P. 1; L. R. 7 C. P. 25; *Martineau v. Kitching*, 41 L. J. Q. B. 227; L. R. 7 Q. B. 436).

Stock standing in the name of Accountant General is held "In trust" for the person entitled to it, within s. 14, Judgments Act, 1838 (*Hulkes v. Day*, 10 Sim. 41; *Va*, s. 1, 3 & 4 V. c. 82).

Property held "In Trust for an Industrial Society" shall vest in the Society on registration, s. 6, 25 & 26 V. c. 87; *V. Queensbury Industrial Society v. Pickles*, 35 L. J. Ex. 1; 3 H. & C. 857; L. R. 1 Ex. 1.

Property held "In Trust for an Infant," s. 43, Conv & L. P. Act, 1881; *V. Re Dickson, Hill v. Grant*, 54 L. J. Ch. 510; 29 Ch. D. 331; *Re Smith, Henderson-Roe v. Hitchins*, 58 L. J. Ch. 860; 42 Ch. D. 302; *Re Humphreys*, 1893, 3 Ch. 1; 62 L. J. Ch. 498; 68 L. T. 729; 41 W. R. 519.

A Royal Warrant granting BOOTY "In Trust" to be distributed, does not transfer the booty, or create a trust (*Kinloch v. Indian Secretary*, 51 L. J. Ch. 885; 7 App. Ca. 619).

A Transfer of Shares by a Bank Manager signed by him as "Manager In Trust," means, that he acts in trust for the Bank, and not that he has any fiduciary relation to any other person suggesting enquiry to the transferee (*London & Canadian Loan Co v. Duggan*, 1893, A. C. 506; 63 L. J. P. C. 14).

V. UPON TRUST.

IN TURN TO DELIVER.—V. TURN.

IN VALUE.—Where a statute prescribes that something may be done by a Majority "In Value" of creditors, the value of the securities held by such creditors as are secured is not to be deducted from the amounts of their debts (*Whittaker v. Lowe*, 35 L. J. Ex. 44; L. R. 1 Ex. 74; 4 H. & C. 109).

IN VESTRY ASSEMBLED.—V. PARISHIONER.

IN VIEW.—V. VIEW.

IN WRITING.—"An Agreement in Writing" between Solicitor and Client as to costs, in *Contentious Business*, s. 4, Solrs Act, 1870, need not be signed by both parties; if signed by the party at whose instance the taxation takes place, that suffices (*Re Thompson*, 1894, 1 Q. B. 462; 63 L. J. Q. B. 187; followed in *Re Jones*, 1895, 2 Ch. 719; 1896, 1 Ch. 222; 64 L. J. Ch. 832; 65 Ib. 191; and over-ruling the dictum of Coleridge, C. J., *Ex p. Munro, Re Lewis*, 45 L. J. Q. B. 816; 1 Q. B. D. 724; and explaining *Re Raven*, 45 L. T. 742). *Cp*, SUBMISSION. V. FAIR AND REASONABLE.



An Agreement quâ Costs in *Non-Contentious Business* under s. 8. Solrs Rem Act, 1881, is to be "in Writing, signed by the person to be bound thereby, or by his agent in that behalf"; *à fortiori*, a signature of both parties is not necessary, for "the meaning is that the person who seeks to get rid of an agreement is the person who is bound" (per Lindley, L. J., *Re Frappe*, 1893, 2 Ch. 284; 62 L. J. Ch. 473).

As to both enactments; *V. Re West*, 1892, 2 Q. B. 102; 61 L. J. Q. B. 639; 67 L. T. 57; 40 W. R. 644.

*Note.* As to what document will amount to an Agreement within the enactments, *V. Re Frappe*, sup, *Sethe, Re Baylis*, 1896, 2 Ch. 107; 65 L. J. Ch. 612; 74 L. T. 506; 44 W. R. 533; *Pontifex v. Furnham*, 62 L. J. Q. B. 344; 68 L. T. 168; 41 W. R. 238; *Re Palmer*, 59 L. J. Ch. 575; 45 Ch. D. 291; 62 L. T. 778; 38 W. R. 673. An Agreement not to charge costs at all is not within the Acts, and may be by parol (*Jennings v. Johnson*, L. R. 8 C. P. 425).

"Contract duly made in Writing," s. 25, Comp Act, 1867, repld s. 7, Comp Act, 1900; "'Duly made in writing,' means, I suppose, signed by the contracting party" (per Jessel, M. R., *Firmstone's Case*, 44 L. J. Ch. 618; L. R. 20 Eq. 524), or, rather, by both the contracting parties (*Re New Eberhardt Co*, 59 L. J. Ch. 73; 6 Times Rep. 56; 38 W. R. 97), and was required to state the consideration (*Re Karushkoma Syndicate*, 1897, 2 Ch. 451; 66 L. J. Ch. 675; 77 L. T. 82). *Vf.* as to what was a "Contract" within this phrase, *Firmstone's Case*, and *Re New Eberhardt Co*, sup; *Forde's Case*, 30 Ch. D. 153; 54 L. J. Ch. 724; CONTRACT: OTHERWISE: Buckl. 606: Hamilton, 181.

"I think that the expression 'Contract in Writing,' in s. 1, Bovill's Act, 28 & 29 V. c. 86, means, 'Contract in Writing signed by the parties'" (per Jessel, M. R., *Pooley v. Driver*, 46 L. J. Ch. 467; 5 Ch. D. 458); accordingly, an unsigned Contract was held not within the section. *Vf.* Rose. N. P. 552: Watson Eq. 792.

A "Consent or Agreement . . . by Deed or Writing," which, under s. 3, Prescription Act, 1832, 2 & 3 W. 4, c. 71, will prevent the acquisition of an easement for Light, need only be signed by the licensee, by or through whom the easement is claimed (*Bentley v. Atkinson*, 49 L. J. Ch. 153; 13 Ch. D. 283; *Mitchell v. Contrill*, 37 Ch. D. 61; 57 L. J. Ch. 72). But a mere general Exception out of a Grant is not such a Consent or Agreement (*Mitchell v. Contrill*, sup); *scens*, of an express Proviso (*Haynes v. King*, 1893, 3 Ch. 439; 63 L. J. Ch. 21; 69 L. T. 855; 42 W. R. 56). As to "Consent or Agreement" under s. 2, *V. Simpson v. Goldmunchester*, 1896, 1 Ch. 214; 1897, A. C. 696; 64 L. J. Ch. 837; 65 Ib. 154; 66 Ib. 770.

"Consent in Writing of the Author, or other Proprietor," s. 2, Dramatic Copyright Act, 1833, 3 & 4 W. 4, c. 15; *V. Eaton v. Lake*, 57 L. J. Q. B. 227; 20 Q. B. D. 378; 59 L. T. 100; 36 W. R. 277. The Consent need not be signed by anybody, and may be given by an Agent

(*Morton v. Copeland*, 16 C. B. 517; 24 L. J. C. P. 169); but all the proprietors must concur (*Powell v. Head*, 12 Ch. D. 686; 48 L. J. Ch. 731; 41 L. T. 70). *V. Fuller v. Blackpool Co.*, 1895, 2 Q. B. 429; 64 L. J. Q. B. 699. *Cp.* OWN CONSENT.

"*Deed or Note in Writing*," s. 3, Statute of Frauds, is not satisfied by a mere recital in a second Lease that it is being granted in consideration of the surrender of a prior Lease (*Roe d. Berkeley v. York*, 6 East, 86).

Demand "in Writing"; *V. DEMAND.*

"Lease in Writing"; *V. LEASE.*

An Order verbally intimated by a Magistrate, is not in any sense an Order "in Writing" within s. 75, Metrop Man. Act, 1862; and a written Order is not made "ON" a person until it has been duly served upon him, or otherwise brought to his knowledge (per *Ld Watson*, *Barlow v. St. Mary Abbots*, 11 App. Ca. 257; 55 L. J. Ch. 680; 55 L. T. 221; 34 W. R. 521; 50 J. P. 691).

"In Writing," s. 6 (1), Trustee Act, 1888, applies only to "Consent," and not to "Instigation or Request" (*Griffith v. Hughes*, 1892, 3 Ch. 105; 62 L. J. Ch. 135; 66 L. T. 760; 40 W. R. 524). *V. INSTIGATION.*

*V. INSTRUMENT IN WRITING: NOTE: SIGNED: WRITING.*

**INABILITY.** — "Inability," and "Incapable," to act, in regard to Trustees, seem convertible terms; and mean, a personal impossibility of acting (*e.g.* from age or infirmity, *Re Lemann*, 22 Ch. D. 633; 52 L. J. Ch. 560), as distinguished from unfitness (*V. UNFIT*).

In *Withington v. Withington* (16 Sim. 104), it was held that a Trustee did not become "incapable," or "unable," to act by residing abroad (*Va, Re Harrison*, 22 L. J. Ch. 69; 1 W. R. 58); but in *Mesnard v. Welford* (22 L. J. Ch. 1053; 1 W. R. 443; *nom. Mennard v. Welford*, 1 Sm. & G. 426), Stuart, V. C., said, — "How *can* Mr. Welford perform the duties of a trustee of property situate at Somers Town and in Paddington, if he is a resident in New York? I think that a trustee domiciled at New York can hardly be *capable* of acting as a trustee of the property in question." But it has been said that this "seems scarcely in harmony with correct principle (residence abroad being rather a question of *unfitness*, than incapacity), and cannot be reconciled with other authorities (*Withington v. Withington*, *sup*: *Re Harrison*, *sup*: *Va, Re Watts*, 9 Hare, 106; 20 L. J. Ch. 337: *O'Reilly v. Alderson*, 8 Hare, 104). And the Court has since intimated an opinion that Incapacity, means *personal* incapacity (*Re Bignold*, 7 Ch. 223; 41 J. L. Ch. 235)." Lewin, 780. *Vf, Re Wheeler and De Rochow*, 1896, 1 Ch. 315; 65 L. J. Ch. 219.

A temporary absence would clearly not be "inability" or "incapacity" (*Re Moravian Socy*, 26 Bea. 101; 4 Jur. N. S. 703).

By s. 24, Co. Co. Act, 1846, a Co. Co. Judge could remove a Co. Co. Clerk "in case of Inability or Misbehaviour"; pecuniary embarrassment

was not within that phrase (*R. v. Owen*, 19 L. J. Q. B. 490; 15 Q. B. 476). Note this section is replaced by s. 27, Co. Co. Act, 1888.

“Inability to LOAD,” in a Marine Insrce, construed a total inability (*Smith v. Fenning*, 3 Com. Ca. 75).

Abatement of FREIGHT upon loss of time “from Ship’s Inability to execute or proceed on the service,” arises if the “Inability” be caused by wilful misconduct or neglect, or necessity, or the ACT OF GOD, *e.g.* the crew being ravaged by small-pox (*Beatson v. Schank*, 3 East, 233).

V. INCAPABLE: INCAPACITATED: INEXPEDIENT: UNABLE: UNSOUND MIND: ABILITY: DISABILITY: LEGAL DISABILITY.

**INACCURACY.** — V. DEFECT: ERROR: MISTAKE.

**INACCURATE.** — “Inaccurate Description . . . of the Premises,” s. 75, 6 V. c. 18; *V. Cook v. Lockett*, 2 C. B. 168; 15 L. J. C. P. 78. *Cp.* MISTAKE.

**INADVERTENCE.** — “If North, J., in *Re Lister* (1892, 2 Ch. 417; 61 L. J. Ch. 721) intended to hold that ‘Inadvertence’ and ‘MISTAKE’ are convertible terms, I cannot agree with him” (per Smith, L. J., *Re Piers*, 1898, 1 Q. B. 631; 67 L. J. Q. B. 522). “Inadvertence,” *e.g.* in R. 10, Sch 1, Bankry Act, 1883, and the (identical) R. 8, Sch 1, Comp Wind-ing-up Act, 1890, means, “the opposite of deliberate action; and does not include a deliberate election founded on misinformation as to the facts. It means that the doer never really meant to do what he did; he was not aware of what he was doing” (per Wright, J., *Ib.*; approved on appeal, 1898, 1 Q. B. 627; 67 L. J. Q. B. 519; 78 L. T. 314; 46 W. R. 475; *Vf.* per Williams, J., *Ex p. Clarke*, 67 L. T. 232). In *Re Piers*, Smith, L. J., further said that, “‘Inadvertence,’ points to forgetfulness, or accident.”

Ignorance of the provisions of s. 25, Comp Act, 1867 (repld s. 7, Comp Act, 1900), was an “Inadvertence” within s. 1 (1), Comp Act, 1898, which gave relief if the omission to file a CONTRACT under s. 25 was “ACCIDENTAL, or due to Inadvertence” (*Re Jackson*, 1899, 1 Ch. 348; 68 L. J. Ch. 190; 79 L. T. 662).

Electoral Offence through “Inadvertence,” means, one arising through “negligence, or carelessness, where the circumstances show an absence of bad faith” (per Huddleston, B., *Ex p. Lenanton*, 53 J. P. 263). *Vf.* *Ex p. Darlington*, 53 J. P. 71; *Ex p. Walker*, 58 L. J. Q. B. 190; 22 Q. B. D. 384; 60 L. T. 581; 37 W. R. 293; 53 J. P. 260.

V. CARELESSLY: FORGETFULNESS: NEGLIGENCE.

**INALIENABLE.** — “Even if there were no authority to the effect that the word ‘inalienable’ (in a gift to a married woman) amounts to a restraint on anticipation, I should be prepared so to hold; but there is ample authority — *Steedman v. Poole*, 6 Hare, 193; *Spring v. Pride*, 10

Jur. N. S. 646, 647, and other cases" (per Bowen, L. J., *Harrison v. Harrison*, 58 L. J. P. D. & A. 32; 13 P. D. 186).

V. RESTRAINT ON ALIENATION.

**INAPPRECIABLE.** — An "inappreciable" abstraction of water from a stream, has been suggested to mean, so "inconsiderable an amount as to be incapable of value or price" (per Talfourd, J., *Embrey v. Owen*, 20 L. J. Ex. 212; 6 Ex. 353); on which Parke, B., in delivering the judgment of the Court of Exchequer, said, — "We are not prepared to say that the learned judge was correct in the interpretation of 'inappreciable' when connected with 'quantity'; nor are we sure that he was not. The word 'unappreciable,' or 'inappreciable,' is one of a new coinage, not to be found in Johnson's Dictionary, Richardson's, or Webster's. The word 'appreciate' first appears in the edition of Johnson by Todd, in 1827, with the explanation, 'To estimate and value.'" *Vth*, per Bowen, L. J., *Brunsdon v. Humphrey*, 14 Q. B. D. 150.

INATTENTION. — V. MISMANAGEMENT.

**INCAPABLE.** — "Debt or LIABILITY incapable of being fairly estimated," s. 31, Bankry Act, 1869, s. 37 (6), Bankry Act, 1883; — The liability of a bankrupt contributory for future Calls to a Company which goes into liquidation pending his bankruptcy, is not so "incapable" (*Re Mercantile Mar Insree*, 53 L. J. Ch. 593; 25 Ch. D. 415); nor is an Annuity terminable on a second marriage (*Ex p. Blakemore*, 46 L. J. Bank. 118; 5 Ch. D. 372); nor Damages for the breach of a Business Contract (*Ex p. Waters*, 8 Ch. 562). V. FAIRLY ESTIMATED.

A Mayor is "incapable of acting," s. 36, 5 & 6 W. 4, c. 76, whether the incapacity be physical, or legal, *e.g.* when he is a candidate for election as Town Councillor and is thus disqualified from acting as Returning Officer (*R. v. Owens*, 2 E. & E. 86; 28 L. J. Q. B. 316; *R. v. White*, 36 L. J. Q. B. 267; 8 B. & S. 587; L. R. 2 Q. B. 557); so, of an Alderman, under s. 72, 3 & 4 V. c. 108 (*Fanagan v. Kernan*, 8 L. R. Ir. 44).

A Trustee "incapable"; V. INABILITY.

V. UNFIT: LEGAL INCAPACITY: DISABLED FROM ACTING: RAPE. *Cp.*, CAPABLE: CAPACITY.

**INCAPACITATED.** — A functionary "incapacitated" from acting, is, *semble*, the same thing as if he be DISABLED FROM ACTING (*V.* judgment of Martin, B., *Nicholson v. Fields*, 31 L. J. Ex. 237; 7 H. & N. 810).

A person "incapacitated by any law or statute from voting," s. 28 (7), 41 & 42 V. c. 26, means the same as one who is "prohibited" from voting under s. 7, Ballot Act, 1872: V. PROHIBITED, and *espy Hayward v. Scott*, there cited, and judgment of Coleridge, C. J., *Doulon v. Hulse*, also there cited.

"Incapacitated from Employment by reason of Accident"; V. *Pugh v. L. B. & S. Ry.* cited ACCIDENT. *Cp.*, PARTIAL INCAPACITY.

V. INABILITY.

**INCENDIARISM.**—In a Fire Policy, a condition that it does “not cover any loss or damage occasioned by or in consequence of *Incendiarism*,” includes any act of incendiarism, wherever committed, *e.g.* in the adjoining house, which directly causes the loss (*Walker v. London & Prov. Insree*, 22 L. R. Ir. 572). *V. CAUSED BY.*

*V. ARSON.*

**INCERTAINTY.**—*V. CERTAINTY.*

**INCEST.**—“Is sexual intercourse between persons who are within the prohibited Degrees of Affinity, or Consanguinity,” stated in the Book of Common Prayer (6 Encyc. 334).

**INCH.**—An Inch is the  $\frac{1}{12}$ th of a FOOT (s. 11, 41 & 42 V. c. 49). Sale by “Inch of Candle”; *V. CANDLE.*

**INCIDENT: INCIDENTAL.**—A thing is “Incident” to another when it appertains to, or follows on, that other which is more worthy. or principal (Co. Litt. 151 b), *e.g.* a Court Baron is incident to a Manor. Rent to a Reversion, Distress to Rent, Timber Trees to the Freehold. Title Deeds to an Estate, &c, “and of Incidents, some be separable, and some inseparable” (Co. Litt. 151 b); “Separable, as Rents incident to Reversions, &c, which may be severed: Inseparable, as Fealty to a Reversion or Tenure” (Ib. 93 a), or, Possession or Usage and Time to a Custom or Prescription (Ib. 113 b).

“Costs of and incident to all Proceedings in the Supreme Court.” R. 1. Ord. 65, R. S. C.; *V. Re Chennell*, 47 L. J. Ch. 583; 8 Ch. D. 492; 38 L. T. 494; 26 W. R. 595: COSTS: COSTS AND CHARGES.

On a sale under the S. L. Act, 1882, by a Tenant for Life, the Costs of the concurrence of his mortgagee are not costs “of or incidental to” the sale, within s. 21 (x) of the Act (*Cardigan v. Curzon House*, 58 L. J. Ch. 177, 436; 40 Ch. D. 338; 41 Ib. 375; explaining, but not following, *Re Beck*, 52 L. J. Ch. 815; 24 Ch. D. 608; and considering *Re Sebright*, 56 L. J. Ch. 169; 33 Ch. D. 429). *V.*; *Re Llewellyn*, 57 L. J. Ch. 316; 37 Ch. D. 317; 58 L. T. 152; 36 W. R. 347; *Re Stamford*, 43 Ch. D. 84; *Re Smith*, 60 L. J. Ch. 613; 1891, 3 Ch. 65; 64 L. T. 821; 39 W. R. 590.

“Costs of and incident to any proceeding” in Bankruptcy, s. 105 (1). Bankry Act, 1883, do not include the debtor’s solicitor’s attendance at a meeting of creditors to confirm an Arrangement (*Re Stroud*, 53 L. J. Q. B. 563; 13 Q. B. D. 492).

The Costs of a Rule to return a *fi. fa.* are not “Incidental EXPENSES” to the Execution (*Hutchinson v. Humbert*, 8 M. & W. 638; 10 L. J. Ex. 418).

INCOME of unconverted property (directed to be sold, but sale of which may be postponed), to go to A. “after payment thereof of all Incidental

*Expenses and OUTGOINGS*," will, *semble*, have to bear structural meliorations of the property rendered necessary in a reasonable course of management, unless it be an Improvement under S. L. Acts (*Re Thomas*, cited IMPROVEMENT).

Labour "incident" to *Manufacturing Process*; *V. Haydon v. Taylor*, 4 B. & S. 519; 33 L. J. M. C. 30: *vthc*, *Whymper v. Harney*, 18 C. B. N. S. 249, 253.

Incidental *Printing Process*; *V. Hoyle v. Oram*, cited EMPLOYED.

Matter "incident to the *Sale and Conveyance*" quâ Stamp Duty; *V. Doe d. Phillips v. Phillips*, 11 A. & E. 796.

"Relating or incidental to the Sale"; *V. RELATING*.

Charges for "*Services incidental to the duty or business of a Carrier*," in a Ry Act, include a reasonable share of the expenses of station and siding accommodation, weighing, checking, clerkage, watching, shunting, and labelling (*Hall v. L. B. & S. Ry*, 4 Ry & Can Traffic Ca. 398; 5 Ib. 28; 15 Q. B. D. 505; 17 Ib. 230: *Soverby v. G. N. Ry*, 7 Ry & Can Traffic Ca. 156; 60 L. J. Q. B. 467; 65 L. T. 546: *Neston Co v. Lond. & N. W. Ry*, 4 Ry & Can Traffic Ca. 257); but not taking waggons to and from a private siding, or allowing heavy goods to be left on the carrier's land (*Lanc. & Y. Ry v. Gidlow*, 45 L. J. Ex. 625; L. R. 7 H. L. 517: *Cp*, *Manchester S. & L. Ry v. Pidcock*, cited CONVEYANCE). *V. REASONABLE SUM*.

"It is said that 'Services' implies personal acts, and that no charge can be made for a share of the expenses of providing and maintaining stations. The answer is, that the performance of a Service may, and in many cases must, require the erection of a building in which, or of appliances and conveniences with which, to perform that Service. Any reasonable tradesman or carrier making a charge for Services performed in a building, would include in it a reasonable payment in respect of interest, or otherwise, in respect of the annual allowance to be made for the expenditure on that building" (per Esher, M. R., *Soverby v. G. N. Ry*, sup). *Cp*, "Terminal Charges," sub TERMINAL: EXTRAORDINARY SERVICES.

*V. ANCILLARY: COMMON*.

**INCIDENTAL OR CONDUCTIVE.** — As to the meaning of this phrase in a Memorandum of Association of a Joint Stock Co; *V. Simpson v. Westminster Palace Hotel Co*, 29 L. J. Ch. 561; 2 D. G. F. & J. 141, 146, 152; 8 H. L. Ca. 712: *Joint Stock Discount Co v. Brown*, L. R. 3 Eq. 150: *Re Baglan Hall Colliery Co*, 5 Ch. 346, 356: *Leifchild's Case*, L. R. 1 Eq. 231, 235: *Taunton v. Royal Insree*, 33 L. J. Ch. 406; 2 H. & M. 135: *Studdert v. Grosvenor*, 33 Ch. D. 538: *London Financial Assn v. Kelk*, 53 L. J. Ch. 1025; 26 Ch. D. 107: *Re Faure Electric Accumulator Co*, 58 L. J. Ch. 48; 40 Ch. D. 141.

A *Gratuity* may be within this phrase, if for the benefit of the Com-

pany as, *e.g.*, tending to secure able officers (*Henderson v. Bank of Australasia*, 58 L. J. Ch. 197; 40 Ch. D. 170); *secus*, of a mere subscription, *e.g.* to the Imperial Institute (*Tomkinson v. S. E. Ry.*, 35 Ch. D. 675).

**INCLINED PLANE.** — As used in s. 76, Ry. Cl. C. Act, 1845; *V. Lancashire Brick Co v. Lanc. & Y. Ry.*, 71 L. J. K. B. 141.

**INCLOSE.** — *Seemle*, to make new fences, partly to replace decayed ones and partly to divide a park for grazing purposes, is within s. 25 (vi), S. L. Act, 1882, which authorizes CAPITAL MONEY to be spent in “Inclosing; straightening of fences; re-division of fields” (*Re Verney*, cited REDEEM).

Stat. Def. — Inclosure Act, 1845, 8 & 9 V. c. 118, s. 167.

**INCLOSED LANDS.** — “Inclosed Lands,” ss. 97, 98, Turnpike Roads Act, 1822, 3 G. 4, c. 126, is used in its popular sense, as denoting lands which are actually inclosed within fences (*Topsell v. Crosskey*, 10 L. J. Ex. 188; 7 M. & W. 441); the effect of that decision, quâ that Act, was taken away by 4 & 5 V. c. 51.

*Vf*, *Allaway v. Wagstaff*, 29 L. J. Ex. 51; 4 H. & N. 681.

**INCLOSING WALLS.** — As used in s. 8, Metrop Building Act, 1855; *V. Tear v. Freebody*, 4 C. B. N. S. 228.

**INCLOSURE.** — *V. ENCLOSURE: OLD ENCLOSURES.*

Stat. Def. — Inclosure Act, 1845, 8 & 9 V. c. 118, s. 167.

“The Inclosure Acts, 1845 to 1882”; *V. Sch* 2, Short Titles Act, 1896.

**INCLUDE.** — “Shall include,” is a phrase of extension, and not of restrictive definition; it is not equivalent to “shall MEAN” (*R. v. Ker-shaw*, 6 E. & B. 1007; 26 L. J. M. C. 19; *R. v. Hermann*, 48 L. J. M. C. 106; 4 Q. B. D. 284; 27 W. R. 475; 40 L. T. 263). *Vf*, per Channell, *J., Savoy Hotel Co v. London Co. Co.*, cited SHOP.

“‘Include’ is very generally used in Interp Clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also, those things which the interp clause declares that they shall include. But ‘include’ is susceptible of another construction which may become imperative if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to ‘Mean and Include,’ and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the

Act, must invariably be attached to these words or expressions" (per *Ld Watson, Dilworth v. Commr of Stamps*, 1899, A. C. 105, 106; 68 L. J. P. C. 4).

"Include" in s. 27, Wills Act, 1837, is equivalent in meaning to "comprise" in s. 24 (per *Stirling, J. Re Wells*, 58 L. J. Ch. 840; 61 L. T. 592).

V. EXTEND TO AND INCLUDE.

INCLUDING. — V. NAMELY.

**INCOMBUSTIBLE.** — A material to be "Incombustible," within s. 19 (1), *Metrop Bg Act*, 1855, must be wholly incombustible; therefore, a roof-covering of Duroline (the foundation of which material is of wire but which is coated with an ignitable compound) is not a compliance with the section (*Payne v. Wright*, 1892, 1 Q. B. 104; 61 L. J. M. C. 7; 65 L. T. 612; 40 W. R. 191; 56 J. P. 120).

Wall of "hard and incombustible" material; V. WALL.

V. FIRE-RESISTING.

**INCOME.** — "Income" signifies "what comes in" (per *Selborne, C., Jones v. Ogle*, 42 L. J. Ch. 336). "It is as large a word as can be used" to denote a person's receipts (per *Jessel, M. R., Re Huggins*, 51 L. J. Ch. 938); and will therefore, for the purpose of s. 90, *Bankry Act*, 1869, and now of s. 53 (2), *Bankry Act*, 1883, include the retiring pension of a Colonial Judge notwithstanding that such pension has to be voted every year (*Re Huggins*, 51 L. J. Ch. 935; 21 Ch. D. 85; *Va, Re Currie*, 26 S. J. 563); so, of the retired pay of an Army Officer (*Re Ward*, 1897, 1 Q. B. 266; 66 L. J. Q. B. 310; 76 L. T. 37; 45 W. R. 329), or the stipend of a Workhouse Chaplain (*Re Mirams*, cited PUBLIC OFFICER). But it will not include a Voluntary Allowance even though made from public funds (*Ex p. Wicks*, 50 L. J. Ch. 620; 17 Ch. D. 70; *Re Webber*, 56 L. J. Q. B. 209; 18 Q. B. D. 111; 55 L. T. 816; 35 W. R. 308; 3 Times Rep. 138), nor, seeing that the word in the sections mentioned is used in association with the word "Salary," will it for the purpose of those sections include prospective personal earnings in a profession or business carried on by a bankrupt on his own account (*Ex p. Benwell, Re Hutton*, 54 L. J. Q. B. 53; 14 Q. B. D. 301; 51 L. T. 677; 33 W. R. 242; *V. Hamilton v. Brogden*, W. N. (91) 36; *Holmes v. Millage*, 1893, 1 Q. B. 551; 62 L. J. Q. B. 380; 68 L. T. 205; 41 W. R. 354), nor the weekly wages of a Working Man (*Re Jones*, 1891, 2 Q. B. 231; 60 L. J. Q. B. 751; 64 L. T. 804; 40 W. R. 95; *Re Hurrell*, 12 Times Rep. 133). But "Salary" includes the earnings of a Commercial Traveller employed at so much a year, terminable at a week's notice (*Ex p. Brindle*, 56 L. T. 498; 35 W. R. 596), and "Salary or Income" includes an actor's earnings under an engagement at so much a week



with forfeiture and deductions in certain cases (*Re Shine*, cited, IN RECEIPT). V. PERSONAL LABOUR.

V. SALARY: DEBT.

So, quâ the *Income Tax Acts*, a person's "Income," — even "Total Income from all sources," s. 8, 39 V. c. 16, — means, Money, or MONEY'S WORTH, received by him, and (in this connection, at least) Money's Worth must be something that "can be turned into money" (per Halsbury, C., *Tennant v. Smith*, inf); the tax, whether under Sch D or E, is, "not on what saves a person's pocket but, on what goes into his pocket" (per Ld Macnaghten, *Ib.*). Therefore, an employee, though of so superior a character as a Bank Manager, who as part of the terms of his employment has to reside on his employer's premises, which residence he gets rent free but cannot sub-let or turn to pecuniary account, does not thereby get any addition to his Income, any more than does the Master of a Ship who is spared the cost of house rent while afloat (*Tennant v. Smith*, 1892, A. C. 150; 61 L. J. P. C. 11; 66 L. T. 327; 56 J. P. 596). It may be a GAIN to him, in the popular sense of the word, but it is not "PROFITS or GAINS," as that phrase is used in Sch D, nor is it "SALARIES, FEES, WAGES, PERQUISITES, or PROFITS," within R. 1, Sch E, nor is it "Profits, Gains, or EMOLUMENTS," within R. 2, Case 2, Sch D, or "Perquisites . . . from Fees or other Emoluments" within R. 4, Sch E (*Ib.*). V. INCOME TAX.

The like ruling applies to the Minister of a *Free Kirk* Manse, who has merely a right of residence (*M'Dougal v. Sutherland*, 21 Rettie, 753; W. N. (96) 113); *secus*, of the Minister of a *Parish* Manse, who is entitled to let it (*Corke v. Fry*, 22 Rettie, 422; W. N. (96) 128).

A Government annual subvention, *e.g.* to a Railway Co, is taxable Income, even as regards so much of it as is to form a Sinking Fund for redemption of debentures (*Nizam's State Ry v. Wyatt*, 59 L. J. Q. B. 430; 24 Q. B. D. 548).

But, quâ ALIMONY in Divorce Proceedings, Income includes moneys ordinarily received but "of which the recipient has no legal power to enforce the payment" (per Jeune, P., *Bonsor v. Bonsor*, 1897, P. 77; 66 L. J. P. D. & A. 35; 76 L. T. 168; 45 W. R. 304). *e.g.* annual moneys in the absolute discretion of trustees (*Clinton v. Clinton*, L. R. 1 P. & D. 215), or voluntary allowances (*Moss v. Moss*, 15 W. R. 532; *Bonsor v. Bonsor*, sup).

Quâ *Finance Act*, 1894, s. 21 (5), "Income," means, income only; and therefore, where on the death of a husband or wife the Survivor becomes entitled to the corpus of settled property, the section does not apply (*A-G. v. Strange*, 67 L. J. Q. B. 629; 1898, 2 Q. B. 39; 78 L. T. 516; 46 W. R. 663).

A *Devise* of the "Income" of Realty may pass the property itself (I. RENTS AND PROFITS: USE AND OCCUPATION); but the ordinary acceptance of "Income," in a devise or bequest, is the Net Annual Income (*Re*

*Little, Mather v. Roddy*, W. N. (81) 138: *Re Redding*, 1897, 1 Ch. 876; 66 L. J. Ch. 460; *Vthlc, Re Tomlinson*, 1898, 1 Ch. 232; 67 L. J. Ch. 97): *Vf*, PROFITS: OUTGOING, at end.

"Profits" and "Income" are sometimes used as synonyms; but, strictly speaking, "Income" means, that which comes in without reference to the OUTGOINGS; whilst "Profits," generally, means the Gain which is made when both receipts and payments are taken into account (*People v. Niagara Supervisors*, 4 Hill, 23).

In a Divesting Clause in the event of a Tenant for Life succeeding to an "Income" of so much *per annum*, one year must be taken with another, and the usual and proper deductions, as fairly as possible, must be made, including allowances off rents in order to maintain good relations between landlord and tenant (*Bateman v. Faber*, 83 L. T. 7).

"Income," ss. 43 and 2 (iii), Conv & L. P. Act, 1881: *V. Re Dickson, Hill v. Grant*, 54 L. J. Ch. 510; 29 Ch. D. 331; 52 L. T. 707; 33 W. R. 511: *Re Clements*, 1894, 1 Ch. 665; 63 L. J. Ch. 326; 70 L. T. 682; 42 W. R. 374.

Quà S. L. Acts, " 'Income' includes Rents and Profits " (s. 2 (10, i), S. L. Act, 1882).

As to what is Income as between *Tenant for Life* and the *Remainder-Men*; *V. Lewin*, 324 *et seq*: 3 Encyc. 442-445: PRODUCE: PROFITS: *Re Kemeys-Tynte*, 1892, 2 Ch. 211; 61 L. J. Ch. 377; 66 L. T. 752; 40 W. R. 423: *Allhusen v. Whittell*, 36 L. J. Ch. 929; L. R. 4 Eq. 295.

Extraordinary Profits of a Company are "Income" or "CAPITAL" according to the way in which the Co (acting within its powers) deals with them;— if they are distributed as a Dividend, they are "Income" (*Re Alsbury, Sugden v. Alsbury*, 45 Ch. D. 237; 60 L. J. Ch. 29); if properly used for creating new Shares, they are "Capital" (*Bouch v. Sproule*, 12 App. Ca. 385; 56 L. J. Ch. 1037; 33 W. R. 621; *Sythe, Re Northage*, 60 L. J. Ch. 488; 64 L. T. 625). *Vh, Re Paget*, 9 Times Rep. 88: *Re Malam*, 1894, 3 Ch. 578; 63 L. J. Ch. 797; 71 L. T. 655: *Re Armitage*, 1893, 3 Ch. 337; 63 L. J. Ch. 110; 69 L. T. 619.

"Income," in a Building Society's Rules, read as including all the incomings of whatever nature (*Re West Riding Socy*, 6 Times Rep. 16; 59 L. J. Ch. 197; 43 Ch. D. 407; 62 L. T. 486; 38 W. R. 376).

"Income," s. 4, St. John's, New Brunswick, Assessment Act (31 V. c. 36), means, the balance of gain over loss in any financial year (*Lawless v. Sullivan*, 50 L. J. P. C. 33; 6 App. Ca. 373); but where Commrs are, by statute, authorized to receive certain moneys, and at the same time directed to pay a portion to another body, the gross sum received is to be deemed the "Income" of the Commrs (*R. v. Southampton Commrs*, L. R. 4 H. L. 449; 39 L. J. Q. B. 253). *V. INCOME TAX.*

The losses, outgoings, and expenses, incurred "*in the production of his*

*Income*," and which a tax-payer is (by s. 28, New South Wales Land and Income Tax Assessment Act, 1895) entitled to deduct from the taxable amount of his income, means, the losses, &c, incurred in producing the **WHOLE** amount of his income from whatever source arising, and whether the Act exempts a portion or not; they are not confined to those immediately connected with, or properly attributable to, his taxable income (*New S. Wales Commrs v. Teece*, 1899, A. C. 254; 68 L. J. P. C. 8; 79 L. T. 601).

"Actually producing Income"; *V. Re Hubbard*, 1896, 1 Ch. 454; 65 L. J. Ch. 271.

"Income arising from any Endowment": *V. ENDOWMENT. Va, ARISING.*

"Whole Income"; *V. WHOLE.*

**INCOME TAX.** — "Income Tax," is a tax on **INCOME**. It is not meant to be a tax on anything else. It is one tax, not a collection of taxes essentially distinct. There is no difference, in kind, between the duties of Income Tax assessed under Sch D and those assessed under Sch A, or any of the other Schedules of charge. One man has fixed property; another lives by his wits; each contributes to the tax if his Income is above the prescribed limit. The standard of assessment varies according to the nature of the source from which Taxable Income is derived; that is all" (per Ld Macnaghten, *London Co. Co. v. A-G.*, 70 L. J. Q. B. 80).

As to what words will exonerate beneficiary from Income Tax; *V. CLEAR: DEDUCTION.*

"The Income Tax Act, 1842," is 5 & 6 V. c. 35, "The Income Tax Act, 1853," is 16 & 17 V. c. 34 (s. 5, 43 & 44 V. c. 19).

*Vh, INCOME: CARRY ON: DERIVE: PROFITS: TRADE: AGENT: FOREIGN POSSESSIONS: PUBLIC OFFICE: VOCATION: Dowell's Income Tax Laws: 6 Encyc. 339-352.*

**INCOMING TENANT.** — The Trustee in a Bankry is not, as such, the "Incoming Tenant" of the bankrupt's premises (per Cotton, L. J., *Re Peake*, 53 L. J. Ch. 977; 13 Q. B. D. 753); but he assumes that character if he takes possession of the premises and uses them for the purposes of the estate (*Re Flack*, 1900, 2 Q. B. 32; 69 L. J. Q. B. 458; 82 L. T. 503; 48 W. R. 446). *Vj, NEW OCCUPIER: OUTGOING OCCUPIER.*

**INCOMMODIOUS.** — Dealing with a Declaration which charged that deft's Public Nuisance caused a Private Wrong by rendering the plaintiff's Coffee-house "Unhealthy and Incommodious," Brett, J., said, — "When we speak as lawyers we do not always use words in their ordinary and popular signification; and we shall not be doing violence to language by holding that 'Incommodious' sufficiently de-

scribes Annoyance by bad smells" (*Benjamin v. Storr*, 43 L. J. C. P. 162; L. R. 9 C. P. 400).

V. INJURIOUS TO HEALTH.

**INCONSISTENT.** — When a statute says that its provisions are to obtain, quâ its subject-matter, except so far as they may be "Inconsistent" with a previous statute, the Inconsistency connoted must be one "so at variance with the machinery and procedure indicated by the previous Act that, if that obligation were added, the machinery of the previous Act would not work" (per Fry, L. J., *Re Knight and Tabernacle Bg Socy*, 60 L. J. Q. B. 633; 65 L. T. 550; 39 W. R. 507; 55 J. P. 534; *Vf*, EVERY). Therefore, it was held in that case that the power to state a Case under s. 19, Arb Act, 1889, applies to a Building Socy arbitration, and is not "inconsistent" with s. 36, Bg Socy Act, 1874, which makes an arbitration thereunder "binding and conclusive" and "final to all intents and purposes"; for on a Case stated the Court only instructs the arbitrators as to the law and does not destroy the finality of their award which they make after receiving the instruction: affd in H. L. nom. *Tabernacle Bg Socy v. Knight*, 1892, A. C. 298; 62 L. J. Q. B. 50; 67 L. T. 483; 41 W. R. 207; 56 J. P. 709.

"Not inconsistent"; V. APPLICABLE.

**INCONTESTABLE.** — A Life Policy declared "Incontestable," is not thereby rendered valid if it is contrary to law, *e.g.* if the insured had no Insurable INTEREST in the Life (*Auctil v. Manufacturers' Life Insree*, 1899, A. C. 604; 68 L. J. P. C. 123; 81 L. T. 279).

*Cp*, FULL INTEREST ADMITTED.

**INCONVENIENCE.** — V. ANNOYANCE: EXTRAORDINARILY: INCOMMODIOUS: UNNECESSARY INCONVENIENCE.

**INCORPORATED.** — A Railway Act which is repealed and in part re-enacted by a subsequent amalgamating Act is thereby "incorporated" with the latter, within s. 80, Lands C. C. Act, 1845 (*Re Ellison*, 8 D. G. M. & G. 62; 25 L. J. Ch. 379; 4 W. R. 306; 26 L. T. O. S. 267; following *Ex p. Eton College*, 15 Jur. 45).

"Co incorporated by Act of Parliament"; V. BY: COMPANY.

Other incorporated Co; V. COMPANY.

V. UNINCORPORATED.

A Document "incorporated"; V. RATIFY.

"Incorporated Enactments"; Stat. Def., 47 & 48 V. c. 12, s. 2.

"Incorporated Law Society"; Stat. Def., 23 & 24 V. c. 127, s. 1; 40 & 41 V. c. 25, s. 4; 44 & 45 V. c. 44, s. 1; 51 & 52 V. c. 65, s. 4. — *Ir*. 29 & 30 V. c. 84, s. 1; 61 & 62 V. c. 17, s. 4.

**INCORPOREAL HEREDITAMENT.** — Is "a right issuing out of a thing corporate, whether real or personal, or concerning or annexed

to, or exercisable within, the same. It is not the thing corporate itself, which may consist in lands, houses, jewels, or the like; but something collateral thereto, as a rent issuing out of those lands or houses, or an office relating to those jewels" (2 Kerr's Blackstone, 4 ed., 16, cited and applied by Cotton, L. J., *Re Christmas*, 55 L. J. Ch. 880).

Mixed Incorporeal Hereditaments are Reversions, Remainders, and Executory Interests (Wms. R. P. Part 2, chs. 1, 2, and 3).

There are three kinds of pure Incorporeal Hereditaments:—

1. *Appendant*:

*e.g.* Seigniories; Manorial Rights of Common; Advowson (appendant to a Manor);

2. *Appurtenant*:

*e.g.* Rights of Common, of Way, or of Light, annexed to land and arising by grant or prescription;

3. *In gross*:

*e.g.* Seigniories severed from a Manor; Rent-Seek; Rent-Charge; Common in Gross; Advowsons (generally); Tithes; Titles of Honour; Offices.

V. Wms. R. P. Part 2, ch. 4; Goodeve, ch. 13; Challis, 47, 48:

APPENDANT: GROSS: CORPOREAL: HEREDITAMENT.

Poor Rates, being charged in respect of the occupation of land, may reasonably be considered as Incorporeal Hereditaments within the Mortmain Acts (*Re Christmas*, 55 L. J. Ch. 878; 33 Ch. D. 332; 55 L. T. 197; 33 W. R. 779; 50 J. P. 759).

Vf, *Hastings v. N. E. Ry*, cited LEASEHOLD REVERSION.

"Incorporeal Hereditament," s. 2 (10, i), Settled Land Act, 1882, is not to be restricted to incorporeal hereditaments of a saleable or alienable character, but extends to an hereditary DIGNITY, whether such Dignity does or does not concern lands or a place; so that the Court, under s. 37, has power to order a sale of chattels devolving with the title (*Re Rivett-Carnac's Will*, 54 L. J. Ch. 1074; 30 Ch. D. 136; 53 L. T. 81; 33 W. R. 837; *Re Aylesford*, 32 Ch. D. 162: *Sr.* both cases criticised by Hood & Challis on Conveyancing, 6 ed., 277, 274).

**INCORRECT.**— Incorrect Statement. V. ERROR.

Incorrect Weight, &c; V. CORRECT: UNJUST.

**INCORRIGIBLE ROGUE.**— Stat. Def., Vagrancy Act, 1824. 5 G. 4, c. 83, s. 5: Steph. Cr. 132.

V. ROGUE AND VAGABOND.

**INCREASE.**— A mortgage of "all the Issue, Increase, and Progeny, of the sheep," does not, under the word "Increase," include additions to the flock made by purchase, but means the natural increase or offspring of the original sheep mortgaged (*Webster v. Power*, 37 L. J. P. C. 9: L. R. 2 P. C. 69).

“The King hath a title to *Maritima Incrementa*, or, Increase of Land by the SEA; and this is of three kinds, viz. (1) Increase *per projectionem vel alluvionem*; (2) Increase *per relictionem vel desertionem*; (3) *Per insule productionem*” (Hale, *De Jure Maris*, ch. 4):

(1) “Is when the Sea, by casting up sand and earth, doth by degrees (*V. IMPERCEPTIBLE*) increase the land and shut itself out further than the ancient bounds went”;

(2) Is the “recess of the Sea . . . and so also it regularly holds in lands deserted by a River that is an Arm of the Sea or CREEK of the Sea *primâ facie*, especially if the Creek or River be part of a PORT”;

(3) “Islands arising *de novo* in the King’s Seas, or the King’s Armes thereof” (Ib.).

*Vf*, Hale, ch. 6; and as to the law by which *Nova Insula* is to be governed, *V. Callis*, 44 *et seq.*

Increase of Nominal Share Capital; *V. NOMINAL*.

There is no “Increase” of any Rate or Charge, directly or indirectly, within s. 1 (1), Ry & Canal Traffic Act, 1894, if a Ry Co makes a legal charge for an Accommodation which it has previously given gratuitously, *e.g.* a Siding Rent for coal waggons after 4 clear days allowed for their discharge (*Manchester, &c Traders’ Assns v. Lanc. & Y. Ry*, 10 Ry & Can Traffic Ca. 127). *Vf*, *South Yorkshire Coal Owners’ Assn v. Mid. Ry*, Ib. 28; *Mid. Ry v. Black*, Ib. 142.

**INCREASED RENT.** — The “Increased Rent” assessed by Commrs under s. 56, Drainage and Improvement of Lands Act (Ir) 1863, 26 & 27 V. c. 88, is not an ordinary contract RENT, though recoverable as such; it is assessed in respect of a specific improvement to the HOLDING, and is unaffected by the Land Law (Ir) Act, 1881, 44 & 45 V. c. 49 (*Ennis-killen v. Reilly*, 32 L. R. Ir. 372).

**INCUMBENT.** — “‘*Incumbent*’ commeth from the verbe *incumbo*, that is, to be diligently resident, *id est, obnixè operam dare*; and when it is written *incumbent*, it is falsely written, for it ought to be *incumbent*, as *Littleton* doth here (s. 180). And therefore the law doth intend him to be resident on his benefice” (Co. Litt. 119 b). *Vf*, *Termes de la Ley*.

“Incumbent or Minister,” ss. 32, 52, Burial Act, 1852, 15 & 16 V. c. 85; *V. Stewart v. West Derby Burial Bd*, 34 Ch. D. 314; 56 L. J. Ch. 425; 56 L. T. 380; 35 W. R. 268.

Quà Sale of Advowsons Act, 1856, 19 & 20 V. c. 50, “‘Incumbent,’ means, the Rector, Vicar, or Perpetual Curate (as the case may be) of a Church or Ecclesiastical Benefice, the Advowson of which is to be dealt with under this Act; and includes, the Officiating Clergyman for the time being, if the Incumbent reside abroad or be incapable of acting” (s. 1).

Quà Public Worship Regulation Act, 1874, 37 & 38 V. c. 85, " 'Incumbent,' means, the person or persons in Holy Orders legally responsible for the due performance of Divine Service in any Church, or of the Order for the Burial of the Dead in any Burial Ground " (s. 6).

Quà 23 & 24 V. c. 72, "Incumbent" means, "Rector, Vicar, or Perpetual Curate" (s. 2).

"The Incumbent or Minister of any Church, Chapel, or Place appropriated to Public Religious Worship, which is now by law exempt from" Poor Rates (s. 151, P. H. Act, 1875), means, an Incumbent or Minister in the ordinary sense of the term, and cannot apply to the Trustees of a Dissenting Chapel (*Hornsey v. Brewis*, 60 L. J. M. C. 48: *Cp*, *Caiger v. St. Mary, Islington*, and *G. E. Ry v. Hackney*, cited HOUSE).

V. MINISTER.

INCUMBER. — V. CHARGE OR INCUMBER: CHARGE: INCUMBRANCE.

INCUMBRANCE. — "In Wharton's Law Lexicon, I find 'Incumbrance' defined as being, 'A CLAIM, LIEN, or LIABILITY, attached to property'; and this definition is wide enough to cover the plt's claim," which was, as assignee for value of a reversionary interest, against a person coming in under a subsequent title (per Romer, J., *Jones v. Barnett*, 68 L. J. Ch. 247, 248; 1899, 1 Ch. 620).

A power to charge land with a sum of money, is an "Incumbrance" on the land (*Evans v. Evans*, 22 L. J. Ch. 785).

A Lease is an Incumbrance if a vendor has contracted to give Vacant Possession (Sug. V. & P. 304: *Caballero v. Henty*, 43 L. J. Ch. 635; 9 Ch. 447; 30 L. T. 314; 22 W. R. 446); but, *semble*, a mere Tenancy from Year to Year is, generally, not an Incumbrance (*Doe d. Davies v. Davies*, 16 Q. B. 951; 20 L. J. Q. B. 408). So, a Lease at an inadequate rent is an Incumbrance, within a clause prohibiting a married woman from incumbering the property (*Baygett v. Meux*, 13 L. J. Ch. 228; 1 Coll. 138).

"Incumbrances, Claims, and Demands," in the ordinary covenant against Incumbrances, whether express or implied under s. 7 (1. A), Conv & L. P. Act, 1881, includes apportioned assessment under the P. H. Act, 1875 (*Re Bettesworth and Richer*, 57 L. J. Ch. 749; 37 Ch. D. 535; *Vth*, *Re Boor*, 40 Ch. D. 577); but not those under s. 77, Metrop. Man. Act, 1862 (*Egg v. Blayney*, 57 L. J. Q. B. 460; 21 Q. B. D. 107; 59 L. T. 65; 36 W. R. 893; 52 J. P. 517). A Liability to a Local Authority for Works completed before the date of a V. & P. contract, is an "Incumbrance," within a covenant implied by s. 7 (1. A, C), Conv & L. P. Act, 1881 (*Stock v. Meakin*, cited OUTGOING).

Quà Part 1, Finance Act, 1894, " 'Incumbrances,' includes, Mortgages and Terminable Charges " (subs. 1, k, s. 22); in Scotland " 'Incum-

brance,' includes, any Heritable Security, or other debt or payment secured upon Heritage" (subs. 10, s. 23).

Other Stat. Def. — Land Registry Act, 1862, 25 & 26 V. c. 53, s. 140; CIVIL & L. P. Act, 1881, s. 2 (vii). — *Ir.* 21 & 22 V. c. 72, s. 1; 28 & 29 V. c. 88, s. 2, c. 101, s. 3; 50 & 51 V. c. 33, s. 34; 54 & 55 V. c. 66, s. 95.

"Incumbrance affecting" an estate, 18 G. 2, c. 20, includes a SEQUESTRATION on a Benefice (*Pack v. Tarpley*, 8 L. J. M. C. 93; 9 A. & E. 468; 1 P. & D. 478).

"Incumbrances affecting the *Inheritance*," s. 21 (ii), S. L. Act, 1882, means, Incumbrances affecting the land sold or any other land comprised in the Settlement (*Re Chaytor*, 53 L. J. Ch. 312; 50 L. T. 88; 32 W. R. 517; 25 Ch. D. 651; *Re Stumford*, 43 Ch. D. 95); but it only includes incumbrances in the ordinary sense, e.g. Mortgages, Portions, &c; and does not include sums which, if he lives sufficiently long, will be payable by the tenant for life, or which, at any rate, affect him as much as those in remainder, e.g. charges for a Drainage Loan effected prior to the Act (*Re Knatchbull*, 54 L. J. Ch. 154, 1168; 27 Ch. D. 349; 29 Ib. 588; 33 W. R. 10, 569; 51 L. T. 695; 53 Ib. 284; *Vf, the* as to application of Capital to Drainage under s. 25 (i), S. L. Act: *Re Knatchbull* followed in *Re Leinster*. 23 L. R. Ir. 160; *Va, Re Dalison*, 1892, 3 Ch. 522; 61 L. J. Ch. 712). *Note*: As to application of CAPITAL MONEY in discharge of Incumbrances, *V. Re Richardson*, cited TENANT FOR LIFE.

"Incumbrance affecting the *Land charged*," s. 9, 33 & 34 V. c. 56; *V. Provident Clerks' Assn v. Law Life Assce*, W. N. (97) 73.

"ESTATE,' shall extend to any Interest, CHARGE, Lien, or Incumbrance, in, upon or affecting lands, either at Law or in Equity," s. 1, Fines and Recoveries Act, 1833; *V. Miller v. Collins*, 1896, 1 Ch. 573; 65 L. J. Ch. 353; *S. C.*, cited INTEREST.

"Incumbrance affecting" land, s. 5, S. L. Act, 1882, includes an Improvement Rent-charge created under 27 & 28 V. c. 114, s. 51 *et seq* (*Strafford to Maples*, 1896, 1 Ch. 235; 65 L. J. Ch. 124; 73 L. T. 586; 44 W. R. 259). *Sr*, S. L. Act, 1887, and thereon *Re Howard*, 1892, 2 Ch. 233; 61 L. J. Ch. 311; 67 L. T. 156; 40 W. R. 360.

Except where the mtgee purchases, the Solrs Scale Fee on the Sale of property "subject to Incumbrances" is to be calculated on the gross amount of the purchase money, including the incumbrances, and not on the amount thereof attributable to the equity of redemption (Solrs Rem Ord Sch 1, R. 9; *Fortescue v. Mercantile Bank*, 1897, 2 Q. B. 236; 66 L. J. Q. B. 591; 76 L. T. 645; 45 W. R. 529; *Re Gallard*, 57 L. J. Q. B. 528; 21 Q. B. D. 38).

*V. DEDUCTION: FREE FROM INCUMBRANCES: CHARGE: CHARGE OF INCUMBER.*



**INCUMBRANCER.** — “Purchaser, Payee, or Incumbrancer”: *V. PAYEE.*

Stat. Def. — Conv & L. P. Act, 1881, s. 2 (vii). — *Tr.* 21 & 22 *V.* c. 72, s. 1; 28 & 29 *V.* c. 101, s. 3.

*V. PRIOR INCUMBRANCER.*

**INCUR.** — *V. DEBT OR LIABILITY.*

**INCURRED.** — A statutory power to Quarter Sessions to order payment of “Costs incurred,” means that the Court must, for itself, ascertain what costs have been incurred and then put the amount in the Order (*Sellwood v. Mount*, 10 *L. J. M. C.* 121; 1 *Q. B.* 726); so, if the Court has to “CERTIFY” the amount (*R. v. Long*, 10 *L. J. M. C.* 124; 1 *Q. B.* 740): *Cp.* **OPINION: REASONABLE COSTS.**

Though a contract with a Local Authority may not be obligatory on them by reason of its not being under seal (s. 174 (1), *P. H. Act*, 1875: *Hunt v. Wimbledon Local Bd*, 48 *L. J. C. P.* 207; 4 *C. P. D.* 48: *Young v. Royal Leamington Spa*, 8 *App. Ca.* 517), yet if street work be done for a Local Authority, and they recognize their liability and pay for such work, though there be no contract under seal, such payments are “EXPENSES incurred” and may be recoverable against owners under s. 150, *P. H. Act*, 1875 (*Bournemouth Commrs v. Watts*, 54 *L. J. Q. B.* 93; 14 *Q. B. D.* 87).

But the phrase “have incurred expenses” (s. 257. *Ib.*) means at least, that the local authority has paid those expenses, or become liable to pay them, as distinguished from estimated expenses (*West Ham v. Grant*, 58 *L. J. Ch.* 121). *Vf.* **NECESSARILY: PURSUANCE: REPAID.**

Where an Arbitrator or Justices have to APPORTION “Expenses incurred” by a Local Authority, the enquiry is limited to the Apportionment, and does not embrace the reasonableness or actual payment of the expenses (*Bayley v. Wilkinson*, 33 *L. J. M. C.* 161; 16 *C. B. N. S.* 161: *Cook v. Ipswich*, 40 *L. J. M. C.* 169; 1 *R. 6 Q. B.* 451).

“Right or Liability incurred”; *V. RIGHT: ACQUIRE.*

**INDEBTED.** — As to the meaning of this word in Art. 10, Table A, *Comp Act*, 1862; *V. Buckl.* 494, 495. It has a similar meaning to “due,” *i.e.* presently payable (*Re Stockton Iron Co.* cited **DUE**).

**INDECENCY.** — *V.* 6 *Encyc.* 365.

“GROSS Indecency with Another Male Person,” s. 11, 48 & 49 *V.* c. 69; *V. R. v. Jones*, cited **ANOTHER**.

**INDECENT.** — A prostitute accosted four men in the Haymarket, for the purposes of her trade, and in each case put her arm into that of the man and walked by his side until he threw her off; the Middlesex Sessions held she had not behaved in an “indecent manner” within s. 3, 5 *G. 4*, c. 83 (*R. v. De Ruiter*, 41 *J. P.* 90). *Cp.* **INDECENTLY.**

Indecent ASSAULT; *V. R. v. Rosinski*, 3 Russ. Cr. 307, 308: *R. v. Case*, 1 Den. 580: *R. v. Lock*, L. R. 2 C. C. R. 10; 42 L. J. M. C. 5: INFAMOUS CRIME.

Indecent *Exposure* of the Person; *V. PLACE*: Rosc. Cr. 701: Arch. Cr. 1128.

Indecent *Publication*; *V. OBSCENE*: Rosc. Cr. 596, 597: Arch. Cr. 1130.

**INDECENTLY.**—“The word ‘indecently’ has no definite legal meaning; and with respect to the word ‘presence,’ I remember that in our older Courts of Justice the judge retired to a corner of the court for a necessary purpose, even in the presence of ladies. That, perhaps, would be considered ‘indecent’ now” (per Pollock, C. B., *R. v. Webb*, 2 C. & K. 938). *Cp.*, INDECENT. *V. PRESENCE.*

**INDEFEASIBLE.**—*V. ABSOLUTE AND INDEFEASIBLE.*

**INDEMNIFY.**—A contract to “indemnify,” quâ a sum of money, means, in its ordinary sense, that the contractor will pay the amount; and, if given in respect of a past debt, the word “Indemnity” does not, necessarily, import that the contractee will forbear to sue for the sum due (*Bell v. Welch*, 19 L. J. C. P. 184).

Where a person has a contract to “indemnify” him against obligations that will lie upon him, that implies that the contractee must himself pay before he sues on the contract (*Collinge v. Haywood*, 8 L. J. Q. B. 98; 9 A. & E. 633): *Secus.* where the contract is to be “answerable,” or “responsible” (*Spark v. Heslop*, 28 L. J. Q. B. 197; 1 E. & E. 563).

The duty of CONTRIBUTION between Sureties and Co-Contractors is founded on principles of Equity, and does not spring from Contract; therefore “Indemnification for the advances made and loss sustained,” by a Surety against a Co-Surety, not exceeding a “Just Proportion,” s. 5, Mer Law Amend Act, 1856, includes interest on the Co-Surety’s proportion from the date of payment (*Re Swan*, Ir. Rep. 4 Eq. 209, *whv* for a statement of the authorities on the principles of this kind of Contribution, showing how the Irish Courts ignored English decisions, and *vice versâ*). *Vf.* on this section, *Re McMyn*, 55 L. J. Ch. 845; 33 Ch. D. 575.

*V. DAMAGE.*

**INDEMNITY.**—An “Indemnity” is a CONTRACT, express or implied, to indemnify against a liability, and the liability under which is coterminous with the liability it is intended to cover, and is independent of the question whether somebody else makes default or not (*Pontifex v. Foord*, 53 L. J. Q. B. 321; 12 Q. B. D. 152: *Cotton v. Bennett*, 53 L. J. Ch. 685; 26 Ch. D. 161: *Speller v. Bristol Steam Nav Co*, 53 L. J. Q. B. 322; 13 Q. B. D. 96: *Carshore v. N. E. Ry*, 29 Ch. D. 344: *Birmingham Land Co v. Lond. & N. W. Ry*, 34 Ch. D. 272; *inf: Trit-*

*ton v. Bankart*, 56 L. J. Ch. 629; 56 L. T. 306; 35 W. R. 474; per Davey, L. J., *Guild v. Conrad*, cited ANOTHER). (*Vf*, GUARANTEE.

Therefore the covenants by an underlessee, in precisely similar terms to those of the original lease, are not an "Indemnity" by the underlessee to the original lessee within the Third Party Procedure, R. 48, Ord. 16, R. S. C.; because the effect in such a case, even of the same words, would vary according to the age of the house, or the condition of the demised premises, at the time each obligation was undertaken (*Pou-tifex v. Foord*, sup; distinguishing *Hornby v. Cardwell*, 51 L. J. Q. B. 89; 8 Q. B. D. 329; 45 L. T. 781; 30 W. R. 263. *Vf*, *Tritton v. Bankart*, sup; *Gooch v. Clutterbuck*, cited FROM PERFORMANCE). And so a right to damages for breach of contract, is not a right to an "Indemnity" within the rule (*Birmingham Land Co v. Lond. & N. W. Ry*, 34 Ch. D. 261; 56 L. J. Ch. 956; 55 L. T. 699; 35 W. R. 173; 3 Times Rep. 179; *The Jacob Christensen*, 1895, P. 281; 64 L. J. P. D. & A. 92; 72 L. T. 902). So, the claim of a Trustee (sued to replace a trust fund lost by the default of a solicitor co-trustee) to have the loss made good by the partners of the defaulting trustee, is not within the Rule (*Wynne v. Tempest*, 1897, 1 Ch. 110; 66 L. J. Ch. 81; 75 L. T. 624; 45 W. R. 183).

So, an allegation, by one defendant against a co-defendant, that the contract sued on was induced by the co-defendant's false representation, will not well found a claim for "CONTRIBUTION or Indemnity" under R. 55, Ord. 16 (*Catton v. Bennett*, sup).

*Vf*, *Baxter v. France*, 1895, 1 Q. B. 455, 591; 64 L. J. Q. B. 335. 337; 72 L. T. 146, 183; 43 W. R. 227, 341; 11 Times Rep. 234.

*Vh*, Add. C. Bk. 2, ch. 5.

The "Full and Reasonable Indemnity" as to Costs, given by s. 2, Limitations of Actions and Costs Act, 1842, 5 & 6 V. c. 97, generally means, Costs as between Solr and Client, and is in the nature of Damages, and is unaffected by R. 1, Ord. 65, R. S. C., or by s. 116, Co. Co. Act, 1888 (*Garnett v. Bradley*, 48 L. J. Ex. 186; 3 App. Ca. 944; 26 W. R. 698; 39 L. T. 261; *Hasker v. Wood*, 54 L. J. Q. B. 419; 33 W. R. 697; *Reeve v. Gibson*, 1891, 1 Q. B. 652; 60 L. J. Q. B. 451; 39 W. R. 420): *See*, FULL COSTS.

Indemnity for Breach of Trust; *V*. BREACH OF TRUST.

**INDENTURE.** — "Indenture" is a Word of Art, and implies that the document is a DEED, and sealed by the parties (Litt. s. 217; Co. Litt. 143 b, and *V*. Hargrave's notes, 233, 234, thereon; 2 Bl. Com. 295; 19 L. J. Q. B. 215; Wms. R. P. 128. *Vh*, 8 & 9 V. c. 106, s. 5; 24 & 25 V. c. 9, s. 1). *V*. POLL.

But an Apprentice Indenture, as the phrase is used in 3 W. & M. c. 11, s. 8 (explained by s. 1, 31 G. 2. c. 11), does not require sealing as a Deed (*Woodstock v. Shipton-on-Stour*, 68 L. T. 449; 62 L. J. M. C. 43; 57 J. P. 167).

**INDIA.** — For stat. def. in Acts passed since 31st Dec 1889, *V. BRITISH INDIA.*

Prior Stat. Def. — 21 & 22 V. c. 106, s. 1; 22 & 23 V. c. 20, s. 15; 26 & 27 V. c. 57, s. 2; 44 & 45 V. c. 58, s. 190 (21); 47 & 48 V. c. 31, s. 18.

“Government of India”; Stat. Def., 42 & 43 V. c. 45, s. 5.

“Native of India”; Stat. Def., 33 & 34 V. c. 3, s. 6; 44 & 45 V. c. 58, s. 190 (22).

“India Stock”; Stat. Def., 25 & 26 V. c. 7, s. 1; 26 & 27 V. c. 73, s. 2; 48 & 49 V. c. 25, s. 2. *Cp, EAST INDIA STOCK.*

**INDIA-RUBBER WORKS.** — *V. NON-TEXTILE FACTORIES.*

**INDIAN.** — Indian *Island*; *V. EAST INDIES.*

“Indian Military Law”; Stat. Def., 44 & 45 V. c. 58, s. 180 (2, *b*).

“Indian Railway Co”; Stat. Def., 48 & 49 V. c. 25, s. 2; 57 & 58 V. c. 12, s. 2.

“Indian Waters,” quâ Indian Marine Service Act, 1884, 47 & 48 V. c. 38, “includes, the High Seas between the Cape of Good Hope on the west and the Straits of Magellan on the east, and all TERRITORIAL WATERS between those limits” (s. 3).

**INDICTMENT.** — “‘Indictment,’ is a Bill or Declaration in forme of Law, exhibited by way of accusation against one for some OFFENCE either criminall or penall, and preferred unto Jurors, and by their verdict found presented to be true before a Judge or Officer that hath power to punish or certifie the offence” (Termes de la Ley, *Enditement*). *Vf, Jacob: Arch. Cr. 1-127: 6 Encyc. 371-388: TRUE BILL.*

“I think it is clear that in old times the word ‘Indictment’ included any charge made by an inquest which had power to make the inquiry, and that when the charge made by them was reduced into writing, it was called an ‘Indictment.’ And the reason of the thing is, that in all charges of felony the preliminary step is that 12 men should be sworn to make the inquiry. The ordinary case is that of Grand Jurors (*V. GRAND JURY*). They are sworn, and when they find some charge it is reduced into writing, and becomes a record of the Court. In practice it is brought to them in the shape of a Bill, and they write upon the back of it either, ‘A True Bill’ or ‘No Bill’; but when it is thus in the shape of a record, it appears in the present tense, ‘the Jurors &c present,’ as in the old times they would have come into Court, and would have said, ‘We present,’ &c, and their presentment would afterwards have been put into writing. The Coroner has authority to make an inquiry by the jury upon the dead body; but the accusation by such jury is equally an accusation as that of the grand jury, and the judgment upon the one is like a judgment upon the other” (per Blackburn, J., *R. v. Ingham*, 33 L. J. Q. B. 189; 5 B. & S. 257; *Va*, per Cockburn, C. J.,

*Ib.*). It was accordingly held in that case that "Indictment" generally includes an Inquisition, and does so within s. 6, 24 & 25 V. c. 100.

But "Indictment" does not include an Information, *e.g.* in the proviso to s. 7, 26 V. c. 29 (*R. v. Slaton*, 51 L. J. Q. B. 246; 8 Q. B. D. 267: INFORMATION); but, not infrequently, by an interp clause, "Indictment" is made to include Information, *e.g.* 46 & 47 V. c. 51, s. 64; 47 & 48 V. c. 76, s. 20.

For a wide def, *V.* Criminal Procedure Act, 1851, 14 & 15 V. c. 100, s. 30.

For Scotland, "Indictment" includes "Criminal Letters," quâ 46 & 47 V. c. 51 (*V. s.* 68); 47 & 48 V. c. 76 (*V. s.* 20); and quâ 34 & 35 V. c. 112 (*V. s.* 20) it includes "Criminal Letters, and Criminal Libel." Quâ Criminal Procedure (Scot) Act, 1887, 50 & 51 V. c. 35, "Indictment," includes, "any Indictment, whether in the Sheriff Court or the High Court of Justiciary, framed according to the existing practice or according to the form given in Sch A" to the Act (s. 1); a def adopted for 55 & 56 V. c. 4 (*V. s.* 7).

"Acquitted on the Indictment"; *V.* ACQUITTED.

**INDIFFERENT.** — Commissioners of Sewers to be appointed under 23 H. 8, c. 5, are to be "substantial and indifferent persons" (s. 1); "Indifferent," "that is persons who have no interest in the matter with which they are dealing" (per Coleridge, C. J., *R. v. Essex Commrs of Sewers*, 14 Q. B. D. 578).

**INDIRECT TAXATION.** — *V.* DIRECT TAXATION.

**INDIRECTLY.** — "Directly or Indirectly" carry on a Business; *V.* CARRY ON.

*V.* DIRECTLY: DIRECTLY AFFECT: INCREASE.

**INDIVIDUAL.** — For a TRADE-MARK the "Name of an Individual, or Firm," s. 10 (1, *a*), 51 & 52 V. c. 50, means, a real, as distinguished from an imaginary, person or firm (*Re Holt*, 1896, 1 Ch. 711; 65 L. J. Ch. 410; 74 L. T. 225; 44 W. R. 369, Kay, L. J., diss.). In *the Lindley*, L. J., said, — "In metaphorical language, an imaginary person may, perhaps, be called an 'Individual'; but such a use of the word is unusual, and, to my mind, rather fanciful. It is hardly to be supposed that the legislature meant 'Individual' to be taken in a fanciful or metaphorical sense, or meant it to denote an imaginary person who has not, and never had, any real existence. I do not think that such words as 'Hamlet,' 'Sam Weller,' 'Jupiter,' 'Venus,' &c. can be called Names of Individuals, within clause (*a*) of s. 10. Such names fall within (*c*) rather than (*a*)." Smith, L. J., thought the same construction should be placed on "Individual or Firm" in clause (*b*). Does "Individual" here, include a Body Corporate? *V.* per Stirling, J., *Re Colman*, cited NAME.

*V.* FANCY WORD: WORD: NAME: DISTINCTIVE.

A Railway "obligation in favour of the PUBLIC or *any Individual*," s. 9 (c), Ry and Canal Traffic Act, 1888, includes, in the words italicised, not only what is commonly called an individual person, but also a Co or Corporation, *i.e.* "any Legal PERSON who is not the General Public" (*G. N. Ry v. G. Central Ry*, 10 Ry & Can Traffic Ca, 275, 276).

**INDOOR.** — "Indoor Pauper"; Stat. Def., Loc Gov Act, 1888, s. 43 (2). *V.* PAUPER.

Indoor Servant; *V.* DOMESTIC SERVANT.

**INDORSE.** — *V.* ENDORSE.

**INDORSED.** — "Indorsed," in an allegation in an action on a Bill of Ex or Promissory Note against the Acceptor or Maker, does not, necessarily, mean such an indorsement as will give a right of action against the Indorser, but only such an indorsement as gives the pl't a title (*Smith v. Johnson*, 27 L. J. Ex. 363; 3 H. & N. 222).

"The Claim *indorsed*" on a Writ, s. 26, 19 & 20 V. c. 108, meant a claim for a liquidated money demand; for at the date of the Act that was the only kind of claim that could be "indorsed": therefore, there was no power under that section to remit an action to the County Court where *damages* for breach of contract were claimed (*Knight v. Abbott*, 52 L. J. Q. B. 131; 10 Q. B. D. 11; *Vf*, *Mackay v. Bannister*, 16 Q. B. D. 174); so, under s. 65, Co. Co. Act, 1888 (*Bassett v. Tong*, 1894, 2 Q. B. 332; 63 L. J. Q. B. 653; 71 L. T. 16; 42 W. R. 668).

License "indorsed, or otherwise affected"; *V.* AFFECTED.

**INDORSEE.** — *V.* HOLDER.

**INDORSEMENT.** — *V.* ENDORSE.

"Indorsement" of a BILL OF EXCHANGE, "means, an Indorsement completed by Delivery" (s. 2, Bills of Ex. Act, 1882). But that def "does not help us much" (per Wills, J., *Jenkins v. Comber*, 1898, 2 Q. B. 168; 67 L. J. Q. B. 780); "a proper Indorsement can only be made by one who has a right to the Bill, and who thereby transmits the right, and also incurs certain well-known and well-defined liabilities" (per Ld Watson, *Steele v. McKinlay*, 5 App. Ca. 782: *who* has not been deprived of authority by the Bills of Ex. Act, *V. Jenkins v. Comber*, sup).

Forged Indorsement; *V. La Cave v. Credit Lyonnais*, cited CUSTOMER.

*V.* NEGOTIATE: BILL OF LADING: PLEADING: SPECIAL.

**INDORSER.** — Indorser of a Bill of Exchange; *V.* BILL OF EXCHANGE: and as to the liability of an Indorser, *V.* s. 55 (2), Bills of Ex. Act, 1882, on *whr* *Jenkins v. Comber*, cited INDORSEMENT.

**INDOWMENT.** — *V.* ENDOWMENT.

**INDUCE.** — *V.* PROCURE.

An "Inducement" may amount to a Bargain: — "If a man is induced to do a thing upon the faith of a sum being paid to him, that amounts to a Bargain between the parties, whether the word describing the transaction be 'Inducement,' or 'Bargain'" (per Hatherley, *C.*, *Bayspoole v. Collins*, 6 Ch. 234; 40 L. J. Ch. 292).

A CONDITION forfeiting a devise to a TENANT FOR LIFE, if he shall alienate the lands or fail to reside there, is void; because it is "tending to induce" the Tenant for Life to abstain from exercising his powers under the S. L. Acts, within s. 51, S. L. Act, 1882 (*Re Ames*, 1893, 2 Ch. 479; 62 L. J. Ch. 685; 41 W. R. 505; *Re Paget*, and *Re Eastman*, cited RESIDE: *Vf*; *Re Trenchard*, 16 Times Rep. 525, commented on 44 S. J. 668); *secus*, of a proviso for recoupment of IMPROVEMENT money (*Re Sudbury*, 1893, 3 Ch. 74; 62 L. J. Ch. 539; 68 L. T. 707; 41 W. R. 585). *V.* OCCUPATION. The section applies where the Inducement is made outside the Settlement by a person other than the Settlor (*Re Smith*, 1899, 1 Ch. 331; 68 L. J. Ch. 198).

**INDUCTION.** — " 'Induction,' *inductio*, a leading into: It is most commonly taken for the giving possession to an Incumbent of his Church by leading him into it and delivering him the Keys by the Commissary or Bishops Deputy, and by his ringing one of the Bells" (Cowel). *Vf*, 1 Bl. Com. 391; Jacob: Phil. Ecc. Law, 350, 359.

**INDUSTRIAL AND PROVIDENT SOCIETY.** — *V.* s. 4, Industrial and Provident Societies Act, 1893, 56 & 57 V. c. 39; 6 Encyc. 389-391. *Cp.* FRIENDLY SOCIETY. *V.* LAWFUL PURPOSE.

**INDUSTRIAL ASSURANCE CO.** — *V.* s. 4, Friendly Societies Act, 1875; s. 1 (*b*), 59 & 60 V. c. 26; 6 Encyc. 391. *Cp.* FRIENDLY SOCIETY.

**INDUSTRIAL EMPLOYMENT.** — *Quæ* Fatal Accidents Inquiry (Scot) Act, 1895, 58 & 59 V. c. 36. "Industrial Employment, or Occupation," means, "employment or occupation for, or in the performance of, any MANUAL LABOUR, or the Superintendence of any such labour, or the working, management, or superintendence, of Machinery or other Appliances, or Animals, used in the prosecution of any WORK" (s. 7). *Cp.* RURAL.

**INDUSTRIAL SCHOOL.** — *V.* CERTIFIED: *Vh.* 6 Encyc. 393-399.

**INEBRIATE.** — The Inebriates Acts, 1879, 1888, 1898, and 1899. 42 & 43 V. c. 19; 51 & 52 V. c. 19; 61 & 62 V. c. 60; 62 & 63 V. c. 35. — amended for Scotland by 63 & 64 V. c. 28.

Inebriate Reformatory; *V.* 61 & 62 V. c. 60, s. 5. *Cp.* RETREAT.  
*V.* DRUNK: DRUNKEN PERSON: HABITUAL.

**INEVITABLE.** — An "Inevitable Accident," or an "UNAVOIDABLE Accident," is that which could not possibly be prevented by the exercise

of ordinary care, caution, and skill (*The Marpesia*, L. R. 4 P. C. 212; *The Merchant Prince*, 1892, P. 179; *The Schwan*, 1892, P. 432, 434; nom. *The Albano*, 8 Times Rep. 425; *Lucas v. The Swan*, 6 MeL. 288; *Dygert v. Bradley*, 8 Wend. 473), and will not comprise anything arising from the acts or defaults of either of the contracting parties. This phrase does not apply to anything known when the deed or contract is executed (*Jervis v. Tomkinson*, 26 L. J. Ex. 41; 1 H. & N. 195; 4 W. R. 683); nor does it apply to anything which either party might have avoided, and it is immaterial upon which of them the burden lies of providing against it (per Fry, J., *Saner v. Bilton*, 47 L. J. Ch. 270; 7 Ch. D. 815; approved in *Manchester Bonding Warehouse Co v. Carr*, 49 L. J. C. P. 809; 5 C. P. D. 507): *Vf*, *The Buckhurst*, 51 L. J. P. D. & A. 10; 6 P. D. 152; *Brabant v. King*, 1895, A. C. 632; 64 L. J. P. C. 161; 72 L. T. 785; 44 W. R. 157; Abbott, 825, 826.

V. ACT OF GOD: PERILS OF THE SEA.

“An influx of Brine is, probably, in a Lease of Salt Mines, an ‘Inevitable Accident’” (MacS. 244, *n* 1, citing *Jervis v. Tomkinson*, sup).

A lessee of a Coal Mine covenanted that a stated quantity of coal should be raised, unless prevented by “Unavoidable Accident”; held, that he was not discharged from that obligation by a great influx of water coming through faults in the mine but which might have been remedied, though at a greater expense than could possibly repay (*Morris v. Smith*, 3 Doug. 279); in *the Mansfield*, C. J., said, “‘Unavoidable Accident,’ means, an Accident physically unavoidable. An interruption for some months will not discharge the lessee.” *Cp*, IMPRACTICABLE.

V. UNFORESEEN.

**INEXPEDIENT.**—Where a Power of appointing new Trustees was exerciseable by husband and wife jointly, but the wife had obtained a judicial separation and the husband was living in Australia, North, J., held that it was “*inexpedient or difficult*,” within s. 32, Trustee Act, 1850, to exercise the power without the assistance of the Court, and accordingly made the appointment (*Re Somerset*, 31 S. J. 559). So, of a Trustee permanently residing abroad (*Re Bignold*, 41 L. J. Ch. 235; 7 Ch. 223; 20 W. R. 345), or incapacitated through age or infirmity (*Re Lemann*, 22 Ch. D. 633; 52 L. J. Ch. 560; 48 L. T. 389; 31 W. R. 520). V. INABILITY: UNFIT.

**INFAMOUS CONDUCT.**—“If a Medical Man in the pursuit of his profession has done something with regard to it which will be reasonably regarded as disgraceful, or dishonourable, to his professional brethren of good repute and competency, then it is open to the General Medical Council, if that be shown, to say that he has been guilty of ‘Infamous Conduct in a Professional respect,’” within s. 29, 21 & 22



V. c. 90 (per Lopes, L. J., and adopted by Esher, M. R., and Davey, L. J., *Allinson v. Gen. Med. Council*, 1894, 1 Q. B. 750; 63 L. J. Q. B. 534; 70 L. T. 471; 42 W. R. 289; 58 J. P. 542).

Thus, for a medical man to publish in a popular form, directions to enable women to prevent conception (*Allbutt v. Gen. Med. Council*, 23 Q. B. D. 400; 37 W. R. 771), or to allow his name to be used as a "Cover" for an unqualified person (*Leeson v. Gen. Med. Council*, 43 Ch. D. 366; 59 L. J. Ch. 233; 38 W. R. 303), or to advertise for practice, espy if the advertisements are in themselves discreditable (*Allinson v. Gen. Med. Council*, sup), may be regarded as such "Infamous Conduct." In *Leeson's* case it was held that to state in the notice that the offender had acted so as to enable the other to charge "as if he were *duly qualified*," was sufficient, because in that connection, "duly qualified" had reference to a medical qualification.

*Cp*, MISCONDUCT: OBSCENE.

**INFAMOUS CRIME.** — Quà written accusations to extort money, &c, "the abominable crime of BUGGERY, committed either with mankind or with beast, and every Assault with intent to commit the said abominable crime, and every Attempt or Endeavour to commit the said abominable crime, and every Solicitation, Persuasion, Promise, or Threat, offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an 'Infamous Crime' within the meaning of this Act" (s. 46. Larceny Act, 1861). *V*. ACCUSATION.

In America, it has been said that, at Common Law, the Infamous Crimes are, Treason, Felony, and Crimen Falsi (*People v. Toynbee*, 20 Barb. 189).

**INFANGTHEEFE.** — The Privilege "that Theeves taken within your demesne or fee convicted of thefts, shall be judged in your Court" (*Termes de la Ley*). *Cp*, OUTFANGTHEEFE.

**INFANT.** — "Infant, or Minor, — whom we call any that is under the age of 21 yeares" (Co. Litt. 2 b: *Va*, CHILD). This is the sense in which the word is used in Infants Relief Act, 1874, on *whr* CONTRACT: NECESSARIES: VOID, towards end: VOIDABLE. "The law knows of no distinction between Infants of tender and of mature years" (per Parke, B., *Morgan v. Thorue*, 7 M. & W. 408).

Quà Betting and Loans (Infants) Act, 1892, 55 & 56 V. c. 4, "Infant," in Scotland, "means and includes, any Minor, or Pupil" (s. 7).

*Vh*, 1 Bl. Com. 464 *et seq*: Simpson on Infants: Eversley on Domestic Relations, Part 4: 6 Encyc. 405-424: GUARDIAN: NONAGE: NURTURE: YOUNG PERSON.

**INFECTIOUS.** — Quà Infectious Disease (Notification) Act, 1889, 52 & 53 V. c. 72, " 'Infectious Disease,' means, any of the following

Diseases, viz. Small Pox, Cholera, Diphtheria, Membranous Croup, Erysipelas, the disease known as Scarlatina or Scarlet Fever, and the Fevers known by any of the following names, — Typhus, Typhoid, Enteric, Relapsing, Continued, or Puerperal; and *includes*, as respects any particular District, any Infectious Disease to which this Act has been applied by the Local Authority of the District in manner provided by this Act" (s. 6).

That def is made applicable to the Isolation Hospitals Act, 1893, 56 & 57 V. c. 68 (*V. s.* 26); and a similar one is provided for the P. H. Scotland Act, 1892 (*V. subs.* 15, s. 4).

#### *V.* CONTAGIOUS.

**INFETTMENT.** — Stat. Def., Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, s. 3; 37 & 38 V. c. 94, s. 3.

**INFERENCE.** — *V.* IMPLICATION: JUDICIAL PERSUASION: PRESUMPTION.

**INFERIOR COURT.** — Quà Inferior Courts Judgments Extension Act, 1882, 45 & 46 V. c. 31, " 'Inferior Courts,' shall include, County Courts, Civil Bill Courts, and all Courts in England and Ireland having jurisdiction to hear and determine (*V.* HEAR) Civil Causes, other than the High Courts of Justice; and in Ireland, Courts of Petty Sessions, and the Court of Bankruptcy; and in Scotland, shall include, Sheriffs Courts, and the Courts held under the Small Debts and Debts Recovery Acts" (s. 2).

Other Stat. Def. — *Scot.* 28 & 29 V. c. 85, s. 1.

The London Lord Mayor's Court is an Inferior Court (*London v. Cox*, 36 L. J. Ex. 225; L. R. 2 H. L. 239: *who* for an extraordinarily elaborate and learned opinion by Willes, J., which was adopted by the H. L., and in which, as *Ld Cranworth* said, the subject-matter of Inferior Courts was investigated "with a care and attention rarely equalled"). The Mayor's Court is also within "any other Inferior Court" as used in s. 45, Jud. Act, 1873 (*Appleford v. Judkins*, 47 L. J. C. P. 615; 3 C. P. D. 489; 38 L. T. 801; 26 W. R. 734).

*Vh.* 6 Encyc. 426-440. *Op.* HIGH COURT: SUPERIOR COURT. *Vj.* COURT.

**INFERIOR JUDGE.** — Quà Summary Prosecutions Appeals (Scot) Act, 1875, 38 & 39 V. c. 62, " 'Inferior Judge,' means and includes, any Sheriff, or Sheriff Substitute, Justice or Justices of the Peace, or Magistrate or Magistrates" (s. 2).

**INFERIOR TRADESMAN.** — The "Inferior Tradesman" or "other Dissolute Persons" punishable by having to pay "FULL COSTS of Suit" if he should "presume" to hunt on another man's ground "to

the ruin of themselves and damage of their neighbours" (s. 10, 4 & 5 W. & M. c. 23) included a Clothier (*Bennet v. Talboys*, Carth. 382; 1 Raym. Ld. 149; *Wickham v. Walker*, Barnes, 125), also an Alehouse-Keeper (*Wickham v. Walker*); but the better opinion was that the section did not hit an APOTHECARY or SURGEON (*Buxton v. Mingay*, 2 Wils. K. B. 70), in *whle* Noel, J., said, — "In my own opinion a Surgeon is the fittest person in the world to be in the field with gentlemen a-hunting. for I remember the Master of a pack of hounds had his neck dislocated by a fall from his horse when out a-hunting, and if a Surgeon had not been near him when the accident happened, who pulled his neck right, the gentleman would, most certainly, have lost his life." The same learned judge also said, "There is a known distinction universally agreed to be between Tradesmen with respect to Superior and Inferior, — as Master, and Journeyman, and Apprentice." *Cp.* TRADE. Bathurst and Clive, JJ., however, were of opinion that all tradesmen qualified by land to hunt were "not Inferior Tradesmen, and that all unqualified Tradesmen were Inferior," but counsel for deft denied that any such qualification was necessary.

**INFIRMARY.** — *V.* PUBLIC HOSPITAL.

**INFIRMITY.** — In a Friendly Socy's Rules "Infirmity" connotes "some permanent DISEASE, ACCIDENT, or something of that kind" (per Kekewich, J., *Re Buck*, 65 L. J. Ch. 884). *V.* FRIENDLY SOCIETY.

"Permanent Infirmity"; *V.* PERMANENT.

**INFLICT.** — To "inflict GRIEVOUS BODILY HARM," s. 20, 24 & 25 V. c. 100, means, "the *direct* causing of some grievous injury to the body itself with a weapon, as by a cut with a knife, or without a weapon, as by a blow with a fist or by pushing a person down." Poisoning, whether of the ordinary kind or by animal infection, is not within the phrase. "If a man by a grasp of the hand infects another with small pox, it is impossible to trace out in detail the connection between the act and the disease, and it would, I think, be an unnatural use of language to say that a man by such an act 'inflicted' small pox on another. It would be wrong in interpreting an Act of Parliament to lay much stress upon etymology; but I may just observe that 'inflicting' is derived from *infligo*, to which, in Faeciolati's Lexicon, three Italian and three Latin equivalents are given, all meaning 'to strike,' — viz. *dare*, *ferire*, and *percutere*, in Italian, and *infero*, *impingo*, and *percutio*, in Latin" (per Stephen, J., *R. v. Clarence*, 58 L. J. M. C. 18, 19; 22 Q. B. D. 23). And in accordance with the reasoning of Stephen, J., it was held (by a majority) in the case cited, that knowingly suffering from a venereal disease and yet having connection with, and imparting the disease to, one of the opposite sex who is ignorant that the embracer is so suffering, is not to "inflict grievous Bodily Harm" within the section: nor is it

an "Assault occasioning Actual Bodily Harm" within s. 47 of the same statute: and whether the parties are married or not is immaterial for the purpose of this construction. But Hawkins, J., delivered a strong judgment against the conclusion at which the majority of the Court arrived; and in the course of that judgment said that, in his opinion, "Inflict," "Cause," and "Occasion," were used as synonymous terms in the sections (and their cognates) then under discussion. *Vh, Hegarty v. Shine*, 4 L. R. Ir. 288.

*Vh, R. v. Martin*, cited MALICE: Following that case, where a woman had been so terrified by her husband that she attempted to get out of the window but, when partially out, her daughter caught hold of her and was preventing her from falling, when the husband ordered the daughter to let go which she accordingly did, and in consequence the woman fell into the street and broke her leg, there it was held that the injury was "inflicted" by the husband within the section cited (*R. v. Halliday*, 6 Times Rep. 109; 34 S. J. 129).

*Cp*, INTENT: OCCASIONED.

**INFLUENCE.** — *V. UNDUE INFLUENCE: INDUCE.*

**INFORMALITY.** — To quash an Order for "Informality" does not exclusively mean for something informal appearing on the face of the Order; it may mean nothing more than that the decision to quash did not proceed upon the merits (*R. v. Cottingham*, 4 L. J. M. C. 65; 2 A. & E. 250).

*V. FORMAL.*

**INFORMANT.** — Quà Factory and Workshop Acts, "Informant" in Scotland, "means, Petitioner, Pursuer, or Complainer" (s. 105 (12), 41 & 42 V. c. 16; s. 159 (11), 1 Edw. 7. c. 22).

*Cp*, INFORMER.

**INFORMATION.** — " 'Information' is of a two-fold character, one granted by the Queen's Bench at the relation of a private person, and the other laid by the Attorney-General, *ex proprio motu*, as the officer of the Crown" (per Denman, J., *R. v. Slaton*, 51 L. J. Q. B. 246; 8 Q. B. D. 267. *Vf*, *Termes de la Ley: Jacob: 3 Burn's Justice*, 30 ed., 2). *Cp*, INDICTMENT. *V. RELATOR.*

Stat. Def. — 28 & 29 V. c. 104, s. 6.

*Vh*, Shortt on Informations: Short and Mellor's Crown Office Practice: Arch. Cr. 128: 6 Encyc. 445-459.

The foregoing definition relates to an Information in the High Court. There is also an Information leading to a Justice's Summons or Warrant for an offence punishable upon a Summary conviction; and in this connection "Information" is used as distinguished from "COMPLAINT" leading to an Order for the payment of money or otherwise (ss. 1, 8., 9,

and 10, 11 & 12 V. c. 43: *Vh, Stone, Procedure, Practice*. "The term 'Information' is of well-defined meaning; and, whether it be in writing or *ore tenus*, is understood to be the initiatory step in proceedings of a Criminal nature which are to be disposed of summarily, — while the term 'Complaint' designates the initiatory step in summary proceedings of a Civil nature; but equally in both cases there is contemplated the existence of a matter in controversy between two parties" (per Hayes, J., *Re Dillon*, 11 Ir. Com. Law Rep. 238).

"Information" is sometimes made to include "Complaint," e.g. 38 & 39 V. c. 63, s. 33 (3); sometimes, for Scotland, it is made to mean "Petition or Complaint," e.g. 41 & 42 V. c. 16, s. 105 (11); 1 Edw. 7, c. 22, s. 159 (10).

#### F. WHOSOEVER WILL GIVE INFORMATION.

"Information" not in a Vendor's possession, s. 3 (6), Conv & L. P. Act, 1881, is as wide a word as can be, extending indeed to the Vendor's own title deeds, so that the expense of searching for his lost deeds is, under an Open Contract, thrown on the purchaser (*Re Stuart and Sealon*, 1896, 2 Ch. 328; 65 L. J. Ch. 576; 74 L. T. 450; 44 W. R. 610); but the enactment only concerns the expenses of "Production and Inspection," and does not affect the purchaser's right to have the deeds handed over on completion (*Re Duthy and Jesson*, 1898, 1 Ch. 419; 67 L. J. Ch. 218; 78 L. T. 223; 46 W. R. 300), or to have a proper Abstract (*Re Johnson and Tustin*, 54 L. J. Ch. 889; 30 Ch. D. 42; 33 W. R. 737). *Note*: If the deeds are proved to have been lost, the purchaser can be compelled to complete on being, in proper time, furnished with satisfactory secondary evidence of them (*Bryant v. Busk*, 4 Russ. 1; *Moulton v. Edmunds*, 29 L. J. Ch. 181; 1 D. G. F. & J. 246; 8 W. R. 153; *Re Halifax Commercial Bank and Wood*, 79 L. T. 183).

A statement in an Affidavit on "*Information and Belief*," without giving the sources thereof, is irregular (*Re Young Manufacturing Co*, 1900, 2 Ch. 753; 69 L. J. Ch. 868). *CP*, BEST BELIEF.

**INFORMER.** — "Informer" is frequently used in the same sense as APPROVER.

"Common Informer" is a person suing for a Penalty which goes to any person who will sue for it (2 Bl. Com. 439), e.g. a Plaintiff in a POPULAR ACTION.

**INFRA.** — "*Infra*," though strictly meaning "underneath," will easily be regarded as a substitute for "*infra*" (per *Ld Herschell, Lord Advocate v. Wemyss*, 1900, A. C. 61), in *whc* a grant of a right to work minerals "*infra fluxum maris*," was held, not to refer to the permanent waters of the ocean but, to mean "*within the Sea Flood*," i.e. the FORESHORE.

**INFRINGEMENT.** — “Infringement of his PATENT,” proviso to s. 32, 46 & 47 V. c. 57; *V. Barrett v. Day*, 59 L. J. Ch. 464; 43 Ch. D. 435: USE: PERSONAL ACTION.

Quà Infringement of a DESIGN, the object of the Design is not considered; “the eye must be the judge in such a case, *i.e.* by placing the Designs side by side, and asking whether they are the same, or whether the one is an OBVIOUS imitation of the other” (per Ld Herschell, *Hecla Foundry Co v. Walker*, 59 L. J. P. C. 46; 14 App. Ca. 550).

As to Measure of Damages for Infringement; *V. United Horse Shoe Co v. Stewart*, 13 App. Ca. 401; *American Braided Wire Co v. Thomson*, 59 L. J. Ch. 425; 44 Ch. D. 274; *Pneumatic Tyre Co v. Puncture Proof Co*, 16 Pat. Ca. 209, applied in *British Motor Syndicate v. Taylor*, cited USE.

*Th. Wallace & Williamson on Patents*, ch. 21; Frost, *Ib.* ch. 13; Edmunds on Designs, ch. 8; Knox & Hind on Designs, ch. 5.

Infringement of COPYRIGHT; *V. Copinger on Copyright*: Scrutton, *Ib.*

**ING.** — *V. Ex.*

**INGIURIE GRAVI.** — These words (Art. 46, Ordinance of Malta, No. 5, 1867) leave a large discretion to the tribunal having to consider the facts; and words, as well as acts, designed to wound the feelings of the party complaining may amount to “Ingiurie Gravi” (*Sant v. Sant*, 43 L. J. P. C. 73; L. R. 5 P. C. 542). *V. INJURY.*

**INGRESS.** — A grant of a Right of “*Ingress, Egress, and Regress*,” is a grant of a right of way from the *locus a quo* to the *locus ad quem*, and from the *locus ad quem* forth to any other spot to which the grantee may lawfully go, or baek to the *locus a quo* (*Somerset v. G. W. Ry*, 46 L. T. 883).

As to the Kind of WAY granted by this phrase, *V. Cannon v. Villars*, 8 Ch. D. 415; 47 L. J. Ch. 597; *Cousens v. Rose*, L. R. 12 Eq. 366.

**INGROSSER.** — “‘Ingrosser’ comes of the French word ‘Grosier,’ one that selleth by whole sale. But in our Law an Ingrosser is one that buyeth Corne, Graine, Butter, Cheese, Fish, or other dead victuals, with an intent to sell the same againe; and so he is defined in 5 Edw. 6, c. 14, made against such Ingrossing” (Termes de la Ley). But that statute and the obvious sense of the thing show that the Offence of Ingrossing connoted, not only buying to sell again but also, that its intent must be to create what would now be called a “Corner” in the article dealt in, like Forestalling: *V. REGRATOR.*

**INHABIT.** — “The word ‘inhabit’ simply means to dwell in” (per Cave, J., in delivering judgment of the Court in *Atkinson v. Collard*, 55 L. J. Q. B. 23; 16 Q. B. D. 254; 53 L. T. 670; 34 W. R. 75; 50 J. P.

23: *Whe and Adams v. Ford*, 55 L. J. Q. B. 13, and *Stribbling v. Hulse*, 55 L. J. Q. B. 15, as to meaning of the word in Rep People Act, 1884). Would it not be more accurate to say that "inhabit" implies the place where a person usually sleeps? *Cp.* DWELL, and DWELLING-HOUSE: *V.* SERVE.

Power to Rate persons who "Inhabit or Occupy"; *V. Donne v. Martyr*, 8 B. & C. 62; 2 M. & R. 98: *Cp.* OCCUPIED.

Quia London Bg Act, 1894, "'Inhabited,' applied to a Room, means a Room in which some person passes the NIGHT, or which is used as a Living Room; including a Room with respect to which there is a PROBABLE presumption (until the contrary is shown) that some person passes the Night therein, or that it is used as a Living Room" (subs. 37, s. 5).

"Cease to inhabit"; *V.* CEASE.

**INHABITANT.** — "Inhabitants." "takes in housekeepers, though not rated to the poor, also persons who are not housekeepers, as for instance, such as who have gained a Settlement and by that means have become Inhabitants" (per Hardwicke, C., *A-G. v. Parker*, 3 Atk. 577; 1 Ves. sen. 43). *Cp.* HOUSEHOLDER: PARISHIONER: RATEPAYER: and for a comparative analysis of the cases on "Inhabitants" and "Parishioners," *V.* Tudor Char. Trusts, 867-870.

An "Inhabitant" of a place, speaking generally, is one who has his permanent home there (*R. v. Mitchell*, 10 East, 511): but the word has no definite legal meaning, its signification varying according to the subject matter (*A-G. v. Foster*, 10 Ves. 339: *R. v. Mashiter*, 6 L. J. K. B. 121; 6 A. & E. 153; 1 N. & P. 314), or the context, or, sometimes, according to usage (*R. v. Sandford*, 6 L. J. K. B. 126; 1 N. & P. 328; nom. *R. v. Davie*, 6 A. & E. 374). It "may mean, either OCCUPIER or RESIANT. The latter is the proper sense when it is used to denote persons on whom a personal (and not a pecuniary) charge is to be imposed" (per Bayley, J., *Donne v. Martyr*, 8 B. & C. 69; 2 M. & R. 98).

"Inhabitant" in s. 1, 43 Eliz. c. 2, means a person, who, by himself, family, or servants, resides and sleeps in the parish (*R. v. Nicholson*, 12 East, 330: *R. v. Rochester, Bp.*, Ib. 358: *R. v. North Curry*, 4 B. & C. 953); therefore, a person who is lessee of a stall in a market and comes there only on market days to sell his wares, is not rateable to the Poor Rate, as an "Inhabitant" (*Halledge's Case*, 1 Bott. 134. *Jf.* Arch. P. L. 763: *Donne v. Martyr*, sup). So of the liability of an "Inhabitant" to serve as Constable (*R. v. Adlard*, 4 B. & C. 772). *Cp.* RESIDE.

Stat. Def. — City of London Burial Act, 1857, 20 & 21 V. c. 35, s. 8.

But when the object of an Act is to impose a burden on property, then "Inhabitants" will (probably) generally include all holders of rateable property in the district; but not mere dwellers therein, *e.g.* servants (*R. v. North Curry*, sup: *Jf.* Maxwell, 77, 78). "The Inhabitant of

a Parish in reference to a parochial tax, *e.g.* s. 6, Highway Act, 1835, is the person having property in respect of which he is liable to that tax" (per Campbell, C. J., *R. v. Kershaw*, 6 E. & B. 1004; 26 L. J. M. C. 21). So, in the repealed statute (27 Eliz. c. 13, s. 5) relating to HUE AND CRY, "Inhabitant" chargeable thereunder, meant, an Occupier of land, although he had neither a house or a lodging in the Hundred (per Hale, C. J., *Leigh v. Chapman*, 2 Wms. Saund. 423, in *whc*, p. 423 *d*), it is said that this construction "is agreeable to that which Ld Coke gives to the same word in the Statute of Bridges, 22 H. 8, c. 5, — 2 Inst. 702": *Vf*, *Jeffrey's Case*, 5 Rep. 66 b: *Atkins v. Davis*, 2 Wms. Saund. 423 *e*; *Cald*. 315).

A person who qualifies as a Vestryman as being an "inhabitant," *semble*, need not sleep as well as reside in the parish (*Wilson v. Sunderland*, 34 L. J. M. C. 90; 17 C. B. N. S. 694).

A legacy for the benefit of the "Inhabitants" of a place would seem a good CHARITY (*A-G. v. Clarke*, Amb. 422), as one to the "Poor Inhabitants" certainly is, under which the persons to be benefited are those poor inhabitants who are not in receipt of parochial relief (*Ib.*: Wms. Exs. 1009, 1010).

In *Rogers v. Thomas* (2 Keen, 8), a gift "to the Inhabitants of Tawleaven Row, Sethney" took effect as a *designatio personarum*.

A Grant to or Prescription by the "Inhabitants" of a place is too vague and not good (Touch. 237: *Warrick v. Queen's College*, 6 Ch. 724); unless the Grant be by the Crown and then it erects the Inhabitants into a Corporation (*Willingale v. Maitland*, 36 L. J. Ch. 64; L. R. 3 Eq. 103; *whc* explained by *Chilton v. London*, 47 L. J. Ch. 433; 7 Ch. D. 735). Towards end of the jdgmt of Jessel. M. R., in *thlc*, see obs as to what would be the meaning of "Inhabitant" in such a Crown Grant: *Va, Rivers v. Adams*, 48 L. J. Ex. 47; 3 Ex. D. 361: *Re St. Alphage, London Wall*, 59 L. T. 614.

So, where Rights of Common have long been exercised by the freehold tenants of a Manor and also by the Inhabitants, the Court will presume that the Inhabitants claim through the freehold tenants (*Warrick v. Queen's College*, 6 Ch. 716, as to whose are such Inhabitants, *V. p.* 724 *ib.*; 19 W. R. 1098; 25 L. T. O. S. 254).

Highway "repairable by the Inhabitants *at Large*"; *V. HIGHWAY: REPAIRABLE.*

"Inhabitant HOUSEHOLDER": *V. Rutter v. Chapman*, 10 L. J. Ex. 495; 8 M. & W. 1: *R. v. Exeter*, L. R. 4 Q. B. 110, 114: *M'Dougal v. Creedon*, Ir. Rep. 7 C. L. 165.

"Inhabitant OCCUPIER," s. 3, 30 & 31 V. c. 102, as explained by s. 5, 41 & 42 V. c. 26; *V. Bradley v. Baylis*, 51 L. J. Q. B. 183; 8 Q. B. D. 195. *Vf*, *Stribling v. Halse*, 16 Q. B. D. 246; 55 L. J. Q. B. 15: *Hogan v. Sterrett*, 20 L. R. Ir. 344: *Sc. quã Stribling v. Halse*, DWELLING-HOUSE. *Cp*, RESIDE.



"Inhabitants," s. 11 (2), Customs & Inl. Rev. Act, 1885, means, the Inhabitants generally, as distinguished from only a portion of them (per Ld Herschell, *Inl. Rev. v. Scott*, cited MANNER).

A Municipal Bye-Law prohibiting things to the "annoyance of *any of the Inhabitants*," does not mean "any one," but means a reasonable number, of the Inhabitants (*Booth v. Howell*, 5 Times Rep. 449); but the contrary seems to have been held in *Innes v. Newman* (1894, 2 Q. B. 292; 63 L. J. M. C. 198).

**INHABITED.** — Inhabited Dwelling-house; *V. DWELLING-HOUSE.*

"Dwelling-house to be inhabited, or adapted to be inhabited, by persons of the WORKING CLASS," s. 13 (5), London Bg Act, 1894; — a PUBLIC BUILDING may be a "Dwelling-house," although the def in the Act of "DOMESTIC BUILDING" includes a "Dwelling-house," and excludes a "Public Building": "to be inhabited," means, intended by the person who erects the dwelling-house, when he erects it, to be inhabited: "adapted to be inhabited," means, "structurally adapted to be inhabited," and nothing more, of which there would be strong proof if it be shown that a house was, at the time of its erection, specially adapted to be used in a particular way, and that it was afterwards actually so used: the Rowton Houses were not constructed "to be inhabited by the Working Class," for they are built for the accommodation of *any class* who may choose to use them (*London Co. Co. v. Davis: Same v. Rowton Houses, Lim.*, 77 L. T. 693; 62 J. P. 68).

**INHERIT.** — "Inherit" held to mean, succession by descent (*East v. Twyford*, 9 Hare, 729). *V. SUCCESSION.*

"To inherit," held to mean, "to take." But if more is required, then, certainly, the words 'to inherit' are fully satisfied by holding them to mean, 'to take an Estate of INHERITANCE'" (per Westbury, C., *Watkins v. Frederick*, 11 H. L. Ca. 366).

Bequest to A., but if he die, "without leaving any children legally to inherit," then lapse; A. died in testator's lifetime leaving children; held, that his children took the bequest by IMPLICATION (*M'Clean v. Simpson*, 19 L. R. Ir. 528).

**INHERITANCE.** — "This word (Inheritance) is not only intended where a man hath lands or tenements by descent of inheritance, but also everie fee simple or taile which a man hath by his purchase may be said an inheritance. because his heires may inherit him" (Litt. s. 9; *17th, Co. Litt.* 16 a, 383 b). *V. Termes de la Ley, Enheritance: FREEHOLD.*

In what, probably, is the first formal Interp Clause to an Act. "*Estate of Inheritance*" is "declared, expounded, taken, and judged of, Estates in Fee Simple only" (s. 3, of the second Act authorizing a Will of Lands, 34 & 35 H. 8, c. 5).

“Estate of Inheritance,” “Equal to an Estate of Inheritance”; *V. PUR AUTRE VIE.*

A devise of an “Inheritance,” apart from the Wills Act, 1837, carries the fee (2 Jarm. 283; *See, u* thereto). So too of an appointment by Will of “Trustees of Inheritance, for the execution hereof,” for that phrase is equivalent to “Trustees of my inheritance” or “Trustees to inherit my estate for the execution of this my Will” (2 Jarm. 394, citing *Trent v. Hanning*, 1 B. & P. N. R. 116; 10 Ves. 495; 7 East, 97; *Va*, Lewin, 229).

“By inheritance”; *V. Wilkinson v. Bewicke*, 22 L. J. Ch. 781; 3 D. G. M. & G. 937.

As to the Rules of Descent of Inheritance; *V. DESCENT.*

**INHERITOR.**—This word may be used in the sense merely of “Taker” (per Knight-Bruce, L. J., *Boys v. Bradley*, 22 L. J. Ch. 621; 10 Hare, 389; 4 D. G. M. & G. 58).

**INHIBIT.**—“‘Inhibition’ is a writ to inhibit a Judge to proceed further in the cause depending before him: See Fitzh. Nat. Brev. fol. 39., where he putteth Prohibition and Inhibition together. Inhibition, is most commonly a writ issuing forth of a higher Court Christian” — *i.e.* an Ecclesiastical Court — “to a lower and inferiour, upon an appeale; and Prohibition, out of the Kings Court of Record at Westminster to a Court Christian or to an inferiour Temporall Court” (*Termes de la Ley*). *Vh*, Phil. Ecc. Law, 977–979.

Inhibition under Public Worship Regn Act, 1874, 37 & 38 V. c. 85; *V. s.* 13: Phil. Ecc. Law, 1032, 1033.

Inhibition during Visitation, *V.* Phil. Ecc. Law, 1050; during Sequestration, 34 & 35 V. c. 45, ss. 5, 6, 7.

**INITIAL.**—*V. CHRISTIAN NAME: MISNOMER: SIGNED.*

*Kinnersley v. Knott* (7 C. B. 980; 18 L. J. C. P. 281), should occupy a high place in legal curiosities, for there a Demurrer was allowed against a Plea because the deft’s Christian Name began with a Consonant and not with a Vowel. He used its initial letter only and that was a consonant, “which (as remarked by Maule, J.) can only be sounded with the aid of a vowel,” and therefore it could not (as, astutely, a vowel might) be regarded as a compliance with the then rule of pleading that the “Name” of every person mentioned must be correctly set forth.

“Initial Valuation”; *V. TRADE INTEREST.*

**INJUNCTION.**—An Injunction is a JUDGMENT, or ORDER, to do or refrain from doing a particular thing.

It is either (1) Interlocutory or Interim, *i.e.* an Order until the hearing of the action or further order; or (2) Perpetual, *i.e.* a judgment determining and concluding the right in litigation: it is also (a) Restrain-

ing, *i.e.* when it inhibits the doing of anything; or (*b*) Mandatory, *i.e.* when it commands the doing, or restoring, of anything.

*Vh*, Joyce on Injunctions: Kerr, 1b.: Notes in Ann. Pr. to R. 6, Ord. 50, R. S. C. *Cp*, MANDAMUS.

Quà Coal Mines Regu Act, 1887, 50 & 51 V. c. 58, "Injunction," in Scotland, "means, Interdict" (subs. 2, s. 76).

**INJURE.** — "An intent to 'injure,' in strictness, means more than an intent to do harm. It connotes an intent to do wrongful harm" (per Bowen, L. J., *Mogul Co v. McGregor*, 58 L. J. Q. B. 479; 23 Q. B. D. 598). *Vf* MALICE.

The offence of administering "Poison, or other destructive or noxious Thing, with intent to injure, aggrieve, or annoy," s. 2, 23 V. c. 8, is committed by a man giving a woman cantharides with intent to excite her sexually in order that he may obtain connection with her (*R. v. Wilkins*, 31 L. J. M. C. 72; L. & C. 89).

*V*. ANNOYANCE: DAMAGE.

**INJURIA.** — *V*. DE INJURIA.

**INJURIOUS.** — *V*. OFFENSIVE.

"Injurious Noise"; *V*. DISAGREEABLE.

**INJURIOUS TO HEALTH.** — "An offensive smell which makes sick people worse, must, more or less, interfere with the health of robust people"; and is therefore "injurious to health" generally (per Stephen, J., *Malton Local Bd v. Malton Manure Co*, 49 L. J. M. C. 93; 4 Ex. D. 302). *V*. NUISANCE. *Cp*, INCOMMODOUS: INJURY.

**INJURIOUSLY AFFECTED.** — Lands or any Interest therein "Injuriously affected by the execution of the works," s. 68, Lands C. C. Act, 1845; — The complex meaning of this phrase has, probably, never been more clearly explained than by Bramwell, B., in *McCarthy v. Metrop Bd of Works* (42 L. J. C. P. 93, 94; L. R. S C. P. 208, 209), as follows: —

1. "The word 'Injuriously' does not mean 'Wrongfully' affected. What is done is rightful under the powers of the Act. It means 'Hurtfully' or 'Damnously' affected. As where we say of a man that he fell and injured his leg, we do not mean that his leg was wronged, but that it was hurt. We mean he fell, and his leg was injuriously (that is to say), hurtfully affected. At the same time I am clearly of opinion that to entitle the parties interested to compensation, the injury or hurt must be such as could not lawfully be inflicted except by the powers of the Act."

2. "The words of the section shew this: The lands must be 'injuriously affected by reason of the EXERCISE, as regards such lands, of the

*powers of the Act.*' The Act, therefore, injuriously affecting must be one which would be wrongful but for the statute."

In accordance with the first branch of this definition it is settled that no injury can be embraced in this phrase unless it would have been an actionable wrong but for the Act authorizing it (*Rickett v. Metrop Ry*, L. R. 2 H. L. 175; 36 L. J. Q. B. 205; 15 W. R. 937; 16 L. T. 542; *Metrop Bd of Works v. McCarthy*, L. R. 7 H. L. 243; 43 L. J. C. P. 385; 23 W. R. 115; 31 L. T. 182). But in *Re Stockport Ry* (33 L. J. Q. B. 251; 10 L. T. 426), it was held, as an exception to this rule, that non-actionable nuisances might be the subject of compensation if done on land that had, by the nuisance maker, been compulsorily acquired from the person complaining and whose other land was affected by such nuisances. After a long litigation the ruling in the *Stockport Ry Case* has been upheld by the H. L. (*Cowper-Essex v. Acton*, 14 App. Ca. 153; 58 L. J. Q. B. 594; 61 L. T. 1; 38 W. R. 209; 53 J. P. 756).

In accordance with the second branch of the definition, the injury must be done whilst the powers of the Act are being exercised, as distinguished from the authorized user of the thing which the Act authorizes. Therefore, *e.g.*, though damages may be recovered against a Railway Company for injury caused by vibration, smoke, and noise, caused by their trains during the *construction* of their line, because such damage is caused by reason of the exercise of their powers; yet they are not liable for such damages occasioned by their trains *after their line is completed*, because then they are only using the thing that their Act has authorized (*Brand v. Hammersmith Ry*, *Hammersmith Ry v. Brand*, L. R. 2 Q. B. 223; L. R. 4 H. L. 171; 36 L. J. Q. B. 139; 38 Ib. 265; 16 L. T. 101; 21 Ib. 238; 15 W. R. 437; 18 Ib. 12). That case is applicable to Canada (*Jones v. Stunstead Ry*, 41 L. J. P. C. 19; L. R. 4 P. C. 98; *See, North Shore Ry v. Pion*, inf); and for an application in England, *V. A-G. v. Metrop Ry*, 1894, 1 Q. B. 384; 69 L. T. 811; 42 W. R. 381.

When *Metrop Bd of Works v. McCarthy* (sup) was in the H. L. the following def (which, probably, amplifies both branches of that laid down by Bramwell, B.) was submitted by Mr. Thesiger and adopted by Cairns, C., as to when land is "Injuriouslly affected," — "Where, by the construction of works, there is a physical interference with any RIGHT, public or private, which the Owner or Occupier of any property is, by law, entitled to make use of in connection with that property, and which Right gives it a Marketable Value apart from the uses to which any particular occupier might put it, there is a title to compensation, if, by reason of such interference, the property, as a property, is lessened in value": that def was adopted and applied by Darling, J., *Re Masters and G. W. Ry*, 1900, 2 Q. B. 677; 69 L. J. Q. B. 673; 82 L. T. 819; 49 W. R. 29.

The following are examples of how land may be "injuriouslly affected" so as to give right to compensation under the section: — Narrowing

(*Beckett v. Mid Ry*, 37 L. J. C. P. 11; L. R. 3 C. P. 82; 17 L. T. 499; 16 W. R. 221), or Obstructing a Highway which is the Proximate Access to the land in question (*Caledonian Ry v. Walker*, 7 App. Ca. 259; 30 W. R. 569; in *whc Selborne, C.*, questioned whether a mere change of gradient would carry compensation, and *Vth, R. v. Eastern Counties Ry*, 2 Q. B. 347; 11 L. J. Q. B. 66; 1 G. & D. 589; 2 Rail. Ca. 736: *Vf, Metrop Bd of Works v. Howard*, inf): Interference with a Right of Way, though only of a temporary nature (*Ford v. Metrop Ry*, 55 L. J. Q. B. 296; 17 Q. B. D. 12; 54 L. T. 718; 34 W. R. 426; 50 J. P. 661): Darkening Ancient Lights (*Eagle v. Charing Cross Ry*, 36 L. J. C. P. 297; L. R. 2 C. P. 638; 15 W. R. 1016; 16 L. T. 593): so of Modern Lights when ancient ones are darkened with them (*Gower's-Walk Schools v. London Tilbury & Southend Ry*, 59 L. J. Q. B. 162; 24 Q. B. D. 326; 6 Times Rep. 120): Obstructing Access to a water frontage (*Metrop Bd of Works v. McCarthy*, sup: *Buccleuch v. Metrop Bd of Works*, 41 L. J. Ex. 137; L. R. 5 H. L. 418; 27 L. T. 1: *Lyon v. Fishmongers' Co*, 46 L. J. Ch. 68; 1 App. Ca. 662; 25 W. R. 165: *North Shore Ry v. Pion*, 59 L. J. P. C. 25; 14 App. Ca. 612: *Sr, Falls v. Belfast Ry*, 12 Ir. L. R. 233): Noise of Children outside a Board School (*R. v. Pearce*, 67 L. J. Q. B. 842; 78 L. T. 681): Prevention of sinking a Mine Shaft at the spot compulsorily taken (*Re Masters and G. W. Ry*, sup): Inundation caused by raising the level of a stream (*R. v. North Mid Ry*, 2 Rail. Ca. 1): Damage caused by insufficient drainage or protection of a Railway (*R. v. North Union Ry*, 1 Rail. Ca. 729).

But land is not "injuriously affected" in the following cases:— Drainage or intercepting its percolating subterraneous water (*R. v. Metrop Bd of Works*, 3 B. & S. 710; 32 L. J. Q. B. 105; 11 W. R. 492): Diversion of Traffic by interference with a Highway, and not being the Immediate Access to the land in question (*Rickett v. Metrop Ry*, sup: *Martin v. London Co. Co.*, 79 L. T. 170), or which Highway is an access to a FERRY (*Hopkins v. G. N. Ry*, 46 L. J. Q. B. 265; 2 Q. B. D. 224; 36 L. T. 898): Level Crossing (*Caledonian Ry v. Ogilvy*, 2 Macq. 229). But if a place of Business is on a Highway and the latter be diverted in such a way that the place is less accessible to CUSTOMERS, then it is "injuriously affected" (*Metrop Bd of Works v. Howard*, 5 Times Rep. 732: *Vf, Caledonian Ry v. Walker*, sup).

*Note.* — The dictum of Chelmsford, C., in *Rickett v. Metrop Ry* (sup) that land to be "injuriously affected" must have *permanent* damage done to it is not supported (*Ford v. Metrop Ry*, sup).

*Vf*, Lloyd on Compensation, 6 ed., 97-137; Woolf. & Middleton, Ib. 120-129; Browne & Allan, Ib. 118, 129-143; Cripps, Ib. 4 ed., 118-141.

S. 332, *P. H. Act*, 1875, is not *in pari materia* with s. 68, *Lands C. C. Act*, 1845; and the cases under the latter are, in great measure, irrelevant to the former: a "Reservoir, Canal, River, or Stream." &c. is "injuri-

ously affected," within s. 332, P. H. Act, 1875, if a Local Authority, claiming a right to do so, interferes with the accustomed flow of water, even though such interference causes no actual damage to a riparian proprietor who complains of it (*R. v. Darlington*, 35 L. J. Q. B. 45; *Roberts v. Gayrfai*, 1899, 1 Ch. 583; 1899, 2 Ch. 608; 68 L. J. Ch. 233, 757; 81 L. T. 465; 48 W. R. 51; 64 J. P. 52).

"Injuriously affected," s. 6, *W. W. C. Act*, 1847; *V. Holliday v. Wakefield*, cited LAND: *Bush v. Trowbridge Water Co*, cited TAKE.

V. PREJUDICIAALLY AFFECTED: TELEGRAPHIC LINE.

**INJURY.**— "Injury, *Injuria*. A wrong or DAMAGE to a man's person or goods" (Jacob).

"*Damnum absque injuria*" is a hurt or inconvenience which inflicts no actionable wrong or damage: *Vh, Acton v. Blundell*, 13 L. J. Ex. 289, 302; 12 M. & W. 324, 341, 354; *Chosemore v. Richards*, 29 L. J. Ex. 81; 7 H. L. Ca. 349; Broom's Maxims, 3 ed., 184. The converse phrase is, *Injuria sine damno*, on *whc, Ashby v. White*, 2 Raym. Ld, 953; 1 Sm. L. C. 268.

"Injury," s. 2, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42, is not confined to the time when it was originally done; it is being committed every day that it is continued; therefore, an action for a continuing Obstruction to an Ancient Light lies against the exors of the obstructor, though the obstruction was completed more than six months before his death (*Jenks v. Clifden*, 1897, 1 Ch. 694; 66 L. J. Ch. 338; 76 L. T. 382; 45 W. R. 424).

"Continuance of Injury or Damage"; V. CONTINUANCE.

Loss of condition to cattle through want of food and water, is "Injury" to them within s. 7, Ry and Canal Traffic Act, 1854 (*Allday v. G. W. Ry*, 34 L. J. Q. B. 5; 5 B. & S. 903; *Sheridan v. Midland G. W. Ry*, 24 L. R. Ir. 161).

Quà the Acts for Protection of Children, "Injury to its HEALTH" includes, "Injury to, or loss of, Sight or Hearing or Limb or Organ of the Body, and any Mental Derangement" (s. 19, 57 & 58 V. c. 27).

V. ANNOYANCE: COMPULSORY POWERS: DAMAGE: INGIURIE GRAVI: INJURE: IRREPARABLE: LOSS: SERVICE OF THE SHIP.

**INJURY TO PROPERTY.**— Means "a substantial physical injury to property" (per Fry, J., *Goodhand v. Ayscough*, 52 L. J. Q. B. 99; 10 Q. B. D. 71).

So, of "Injury to the land itself" by removal of improvements; V. IMPROVEMENT.

V. WILFUL AND MALICIOUS.

**INJUSTICE.**—"Without Injustice to Creditors," s. 18 (11). Bankry Act. 1883: *V. Re Moon*, 56 L. J. Q. B. 496; 19 Q. B. D. 669; 35 W. R. 743; *Ex p. Charlton*, 6 Ch. D. 45; 46 L. J. Bank. 110.

**INLAND.** — Inland, is DEMESNE land (Elph. 590, citing Spelm.; *See* other references given by Elph.: *Vf*, Cowel); Outland, is land beyond the Demesne, and let out like Copyholds (Jacob, *Outland*).

An Inland *Bill of Exchange* was defined in *Amner v. Clark* (2 Cr. M. & R. 471: *Vf*, *Mahoney v. Ashlin*, 2 B. & Ad. 478) as a Bill both drawn and payable in Great Britain; and now such a Bill, "is a Bill which is, or on the face of it purports to be, (a) both drawn and payable within the BRITISH ISLANDS, or (b) drawn within the British Islands upon some person resident therein. Any other Bill is a FOREIGN Bill.

"For the purposes of this Act, 'British Islands' mean, any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

"Unless the contrary appear on the face of the Bill the holder may treat it as an Inland Bill" (s. 4, Bills of Ex. Act, 1882).

So of Promissory Notes (s. 89, *ib.*). *Vf*, PROMISSORY NOTE.

"Inland PARCELS," quâ Post Office (Parcels) Act, 1882, 45 & 46 V. c. 74, "means, parcels posted within the UNITED KINGDOM, and addressed to some place in the United Kingdom" (s. 17). Observe, that the def does not extend to the Channel Islands and the Isle of Man, as, by another Act, is expressly done quâ an Inland Postal PACKET (s. 12, 38 & 39 V. c. 22). *Cp*, FOREIGN.

"Inland POSTAGE," quâ Post Office (Offences) Act, 1837, 1 V. c. 36, means, "the duty charged for the transmission of post letters within the limits of the UNITED KINGDOM or within the limits of any COLONY" (s. 47). *Cp*, FOREIGN.

"Inland REVENUE," quâ Inland Revenue Regn Act, 1890, 53 & 54 V. c. 21, "means, the Revenue of the UNITED KINGDOM collected or imposed as Stamp Duties, Taxes, and Duties of Excise, and placed under the care and management of the Commissioners, and any part thereof" (s. 39). *Vth*, *Lord Advocate v. Sawers*, W. N. (98) 131; 25 *Rettie*, 242.

"Inland Revenue *affidavit*" ; Stat. Def., Finance Act, 1894, ss. 22 (1 *n*), 23 (5).

*Inland Sea* ; V. 6 *Encyc.* 493.

"Inland WATERS," quâ Salmon Fishery Act, 1861, 24 & 25 V. c. 109, means, "All Waters that are not TIDAL WATERS" (s. 4); *Va*, s. 108, Explosives Act, 1875, 38 & 39 V. c. 17.

**INMATE.** — "Inmates" are those persons of one family that are suffered to come and dwell in one cottage together with another family, by which the poore of the parish will be increased. And therefore by the statute of 31 Eliz. c. 7, there is a penalty of ten shillings a month set upon every one that shall receive or continue such an Inmate" (*Termes de la Ley*). *Vf*, Cowel: Jacob. *Cp*, HOGHENUINE.

A Clerk in an Office was an "Inmate" of his employer's "Place of

Abode" within s. 150, P. H. Act, 1848 (*Mason v. Bibby*, 2 H. & C. 881; 33 L. J. M. C. 105; 12 W. R. 382; 9 L. T. 692). *Vf*, PLACE.

"The temporary occupiers of an HOTEL would be 'Inmates' of that hotel" (per Russell, C. J., *R. v. Slade*, 65 L. J. M. C. 109). In that case it was held, that mere Wayfarers getting a night's rest in a Shelter, are "Inmates" of a HOUSE within s. 2 (1 *c*), P. H. London Act, 1891 (65 L. J. M. C. 108; 74 L. T. 656; 60 J. P. 358).

*Vf*, note to *Burton v. Jones* (1 M. & G. 86) at the end of which it is said, "It would rather seem that every LODGER is an Inmate."

**INN.** — An Inn or Hostel may be defined to be a house in which TRAVELLERS, passengers, wayfaring men, and other such like casual GUESTS, are accommodated with victuals and lodgings and whatever they reasonably desire, for themselves and their horses, at a reasonable price, while on their way (*V. R. v. Luellin*, 12 Mod. 455; *Thompson v. Lacy*, 3 B. & Ald. 283. 1 Burn's Jus., *Alehouse*). A Refreshment-bar, structurally severed, though part of a duly licensed premises, is not an Inn (*R. v. Rymer*, 46 L. J. M. C. 108; 2 Q. B. D. 136; *Strauss v. County Hotel Co.*, 53 L. J. Q. B. 25; 12 Q. B. D. 27); nor is an ordinary Coffee-house (*Doc v. Laming*, 4 Camp. 77) nor a Restaurant (*Ultzen v. Nicols*, 1894, 1 Q. B. 92; 63 L. J. Q. B. 289; 70 L. T. 140; 42 W. R. 58); nor is a Boarding-house (*Dausey v. Richardson*, 23 L. J. Q. B. 217; 3 E. & B. 144): but a London Coffee-house where beds as well as provisions are provided would seem to be an Inn (*Thompson v. Lacy*, sup).

In *Cunningham v. Philp* (Times, 29th April 1896) the jury (after a direction from Cave, J., wherein he cited *Thompson v. Lacy*, sup) found that an unlicensed house advertised as a "Temperance Hotel" (which had bed accommodation, but had no sign, and wherein no intoxicants were sold) was an Inn: *V. Webb v. Fagotti*, cited HOTEL.

But, Inn, or not an Inn? — is a question of fact, and "it would be open to a Court to find that many Hotels in London, carried on as they are at the present time, do not hold themselves out as taking in all persons coming to them as Travellers, according to the Custom of England" (per Esher, M. R., *Lamond v. Richard*, 1897, 1 Q. B. 541; 66 L. J. Q. B. 319; 45 W. R. 289; 61 J. P. 260; 76 L. T. 141).

Assuming a place, *e.g.* an Hotel, to be an Inn according to that custom, then its ordinary Dining Room is part of the Inn (*Orchard v. Bush*, cited GUEST).

Qua Innkeepers' Liability Act, 1863, 26 & 27 V. c. 41, an "Inn" means, "any Hotel, Inn, Tavern, Public-house, or other place of refreshment, the keeper of which is now by law responsible for the goods and property of his GUESTS": and "Innkeeper," means, "the keeper of any such place" (s. 4).

Qua the Acts for regulating Public Houses in Scotland, "Inn and



Hotel,' shall, in Towns and the suburbs thereof, refer to a house containing at least 4 apartments set apart exclusively for the sleeping accommodation of TRAVELLERS; and in Rural Districts and Populous Places, not exceeding 1,000 inhabitants according to the Census last before taken, to a house containing at least 2 such apartments" (s. 37, 25 & 26 V. c. 35). *Cp.*, SIEBEEN.

*Vh.*, 1 Sm. L. C. 142; Add. C. 680, 681; Rose. N. P. 649; Haycroft on Innkeepers: 6 Encyc. 495-497.

V. HOTEL: ALEHOUSE: PUBLIC HOUSE: VICTUALLING HOUSE: BEER-HOUSE: LICENSED PREMISES.

**INN OF CHANCERY.** — *V. Smith v. Kerr*, cited CHARITY.

**INNINGS.** — Are "Lands recovered from the sea in Romney Marsh, by draining" (Jacob).

**INN-KEEPER.** — *V.* INN: LICENSED PERSON; GUEST.

As to what is carrying on the trade of an Inn-Keeper, within a Restrictive Covenant, *V. Buckle v. Fredericks*, cited RETAIL.

**INNOCENT.** — Innocent Dealer infringing a Patent or Trade-Mark sometimes escapes Costs (*Upmann v. Forester*, 52 L. J. Ch. 946; 24 Ch. D. 231; *American Tobacco Co. v. Guest*, 61 L. J. Ch. 242; 1892. 1 Ch. 630.)

"'Innocent' is a word of many meanings": but in such a connection as Whisky only to be coloured with an "Innocent Material," it means, "a material which would not be injurious to the commodity by rendering it unfit for the purpose for which it was intended" (per Cairns, C., *Macfarlane v. Taylor*, 18 L. T. 217).

Innocent Misrepresentation; *V.* MISREPRESENT: *Whittington v. Scale-Hayne*, W. N. (1900) 31; 82 L. T. 49, discussing *Adam v. Newbigging*, 57 L. J. Ch. 1066; 13 App. Ca. 308.

Innocent Shippers; *V. Brooking v. Maudslay*, 57 L. J. Ch. 1001; 38 Ch. D. 636; 58 L. T. 852; 36 W. R. 664.

**INNOCENTLY ACTED.** — A *primâ facie* offence, as to a TRADE-MARK or TRADE DESCRIPTION, may be rebutted if the accused proves that he acted without INTENT to defraud, &c, or otherwise "acted innocently" (s. 2, Merchandize Marks Act, 1887), on which latter phrase, *V. Wood v. Burgess*, 59 L. J. M. C. 11; 24 Q. B. D. 162; *Kirshenboim v. Salmon*, cited FALSE TRADE DESCRIPTION: *Coppen v. Moore*, cited TRADE DESCRIPTION: *Christie v. Cooper*, 1900, 2 Q. B. 522; 69 L. J. Q. B. 708; 83 L. T. 54; 49 W. R. 46; 64 J. P. 692. *Cp.*, KNOWINGLY. *V.* INTENT.

**INNONIA.** — An inclosure (Spelm.).

**INNUENDO.** — An Innuendo, is a statement by the plaintiff in an action for Defamation “of the construction which he puts upon the words himself, and which he will endeavour to induce the jury to adopt at the trial” (Odgers, 160, *wh et seq c.* for cases in illustration: *17h*, Ib. 556, 596, 634).

*V.* LIBEL: SLANDER.

**INOFFICIOUS.** — A Will is said to be “Inofficious” when it wholly passes by those having strong natural claims on the testator. “By the Roman Law, testaments might be set aside as being *inofficiosa* if they totally passed by (without assigning a true and sufficient reason) any of the children of the testator: though if the child had any legacy, however small, it was a proof the testator had not lost his memory or his reason, which otherwise the law presumed. But the law of England makes no such constrained suppositions of forgetfulness or insanity; and, therefore, though the heir or next-of-kin be totally omitted, it admits no *querela inofficiosa* to set aside such testament” (Wms. Exs. 32, citing 2 Bl. Com. 503; *Wrench v. Murray*, 3 Curt. 623).

*V.* UNDUE INFLUENCE.

**INQUEST.** — “‘Enquest,’ is that INQUIRY which is made by jurors in all causes, civill or criminall, touching the matter in fact” (Termes de la Ley). *Vf*, Cowel: JURY.

**INQUIRY.** — *V.* INQUEST.

An “Inquiry” in an action is not limited to what a man can see with his own eyes; it signifies a judicial inquiry with witnesses; therefore in a Reference “for Inquiry and Report” under s. 56, Jud. Act, 1873, the Referee may, and it is the invariable practice to, hear counsel and witnesses (*Wenlock v. River Dee Co*, 19 Q. B. D. 155; 56 L. J. Q. B. 589; 57 L. T. 320; 35 W. R. 822).

Stat. Def. — 55 & 56 V. c. 64, s. 1.

The power in Club Rules to expel a Member “after Inquiry,” means, after a fair inquiry into the truth of the alleged facts by giving due notice to the accused, and by taking and fairly considering the evidence (*Labouchere v. Wharnclyffe*, 13 Ch. D. 346).

A “Due Inquiry,” s. 29, 21 & 22 V. c. 90, means to give its subject-matter a fair hearing (*Allbutt v. Gen. Med. Council*, and *Leeson v. Gen. Med. Council*, cited INFAMOUS CONDUCT).

A “Due Inquiry” by the Local Government Bd, under s. 299, P. H. Act, 1875, is one which the Board thinks sufficient, and (in the absence of *mala fides*) the Q. B. D. has no right to interfere (*R. v. Staines*, 62 L. J. Q. B. 540; 69 L. T. 714).

Inquiry on *Title*; *V.* REQUISITION: INVESTIGATING.

**INQUISITION.** — Quà Lunacy Act, 1890, “‘Inquisition,’ includes an Order, Certificate, or Verdict, operating as an Inquisition” (s. 341).

**INROL.** — *V.* ENROL.

**INSANE.** — *V.* IDIOT; LUNATIC; UNSOUND MIND.

**INSERT.** — *V.* FULL APOLOGY.

**INSINUATION.** — *V.* CHARGE OF FRAUD.

**INSIST.** — A Power to rescind a Contract of Sale, if purchaser shall make Requisitions "and shall *insist* thereon," cannot be exercised until a fair attempt has been made to answer the Requisitions (*Greaves v. Wilson*, 25 Bea. 290; 27 L. J. Ch. 546); in this connection "persist" is synonymous with "insist" (*Mawson v. Fletcher*, 39 L. J. Ch. 583; L. R. 10 Eq. 212). The exercise of the power must be prompt and in good faith (*Smith v. Wallace*, 1895, 1 Ch. 385; 64 L. J. Ch. 240; 71 L. T. 814; 43 W. R. 539).

*Cp.* UNWILLING.

**INSOLUBLE.** — Quà Fertilizers and Feeding Stuffs Act, 1893, 56 & 57 V. c. 56, "Soluble," and "Insoluble," shall respectively mean, soluble and insoluble in Water" (s. 8).

**INSOLVENCY.** — *V.* INSOLVENT; BANKRUPTCY AND INSOLVENCY.

**INSOLVENT.** — "An 'Insolvent,' in ordinary acceptation, is a person who cannot pay his debts" (per Parke, B. *Parker v. Gossage*, 5 L. J. Ex. 4; 2 Cr. M. & R. 617; Tyr. & G. 105); but in its special use in s. 16, 7 & 8 V. c. 112, it was restricted to mean, a person who had taken the benefit of an Insolvent Debtors Act (*The Princess Royal*, 9 Jur. 433).

A person is an "Insolvent," within a clause of FORFEITURE, or for terminating a Contract, who enters into a Composition Deed which recites his inability to pay his creditors in full (*Billson v. Crofts*, 42 L. J. Ch. 531; L. R. 15 Eq. 314), or who (under the Bankruptcy Act, 1869) presented a petition for liquidation under which a composition was accepted (*Nixon v. Verry*, 54 L. J. Ch. 736; 29 Ch. D. 196). It is indeed broadly stated that "where 'Insolvency' is made a cause of forfeiture, it is not generally necessary that the legatee should have taken the benefit of any Act for the relief of insolvent debtors. It is enough that he is unable to pay his debts in full" (2 Jarm. 37). "As to the meaning of the word 'Insolvent' it is now settled that it is not a technical term, but simply means a person who is incapable of paying his debts" (per Wood, V. C., *Re Muggeridge*, 29 L. J. Ch. 288; Johns. 625), or the being liable to more debts than he can pay (*Biddlecombe v. Bond*, 5 L. J. K. B. 47; 4 A. & E. 332; 5 N. & M. 621); but insolvency is not shown by proving non-payment on demand of one debt (*Doe d. Gatehouse v. Rees*, 7 L. J. C. P. 184; 4 Bing. N. C. 384; 6 Sc. 161).

Is the above interpretation quite applicable to a Forfeiture clause in a Lease on the Lessee becoming "Insolvent"? Or, must there not, in that case, be a stricter interpretation? *Vh, Bowser v. Colby*, 1 Hare, 135, 136, and cases there cited: *Doe d. Gatehouse v. Rees*, sup. And where the phrase is, shall become "*bankrupt or otherwise insolvent*," "insolvent" (it may plausibly be contended) should be read as *ejusdem generis* with "bankrupt" (per Blackburn. J., *R. v. Saddlers' Co*, 32 L. J. Q. B. 340; 10 H. L. Ca. 404: *Vf, Parker v. Gossage*, sup: *Re Birmingham Benefit Socy.* 3 Sim. 421). The question as to "Insolvent" arose in *R. v. Saddlers' Co* on the following Bye-Law of the Saddlers' Co. — "that no person who has been a Bankrupt, or become otherwise Insolvent, shall hereafter be admitted a member of the Court of Assistants, unless it be proved, to the satisfaction of the Court, that such person, after his bankruptcy or insolvency, has paid his creditors in full, or shall have established a fair and honourable character for the seven years subsequent." The H. L., having regard chiefly to the need of some definite time from which to calculate this 7 years, held that "become otherwise Insolvent" meant notorious or avowed insolvency, *e.g.* a public stoppage in business, or calling creditors together and obtaining time or terms of indulgence, or entering into a deed of composition: *V. jdgmt of Westbury, C. Vf, BECOME.*

Quà Sale of Goods Act, 1893 (*V. espy ss. 44-46*), "A person is deemed to be Insolvent, who either has ceased to pay his debts in the ORDINARY COURSE of business or cannot pay his debts as they become due, whether he has committed an Act of Bankruptcy or not and whether he has become a Notour Bankrupt or not" (subs. 3, s. 62). *Note*: A "Notour Bankrupt" is a Scotch phrase meaning one legally declared bankrupt (Imperial Dicty).

Other Stat. Def. — *Ir. 20 & 21 V. c. 60, s. 4.*

Indebtedness to the extent of Insolvency, quà 13 Eliz. c. 5; *V. Shears v. Rogers*, 3 B. & Ad. 362; 1 L. J. K. B. 89: INSOLVENT CIRCUMSTANCES.

Co "unable to pay its debts": *V. UNABLE.*

A Company becoming "Insolvent" as regards the return of a parliamentary deposit; *V. Re Bradford Tramway Co*, 46 L. J. Ch. 89; 4 Ch. D. 18.

"Insolvent," in the Colony of Victoria, is equivalent to "Bankrupt" in England (*Hunt v. Fripp*, 77 L. T. 516; 46 W. R. 125).

*Cp, BANKRUPT.*

**INSOLVENT CIRCUMSTANCES.** — "In Insolvent Circumstances' has always been held to mean, not merely being behind the world if an account were taken, but insolvency to the extent of being unable to pay just debts in the ORDINARY COURSE of trade and business" (per Willes, J., *R. v. Saddlers' Co*, 32 L. J. Q. B. 345; 10 H. L. Ca.

404. *Vf*, per Ellenborough, C. J., *Bayly v. Schapfield*, 1 M. & S. 350; *Teule v. Younge*, McCl. & Y. 497).

V. INSOLVENT: INSOLVENT DEBTOR.

**INSOLVENT DEBTOR.** — *V. Re Gordon*, 28 Bea. 5; 29 L. J. Ch. 352; 1 L. T. 359; 2 L. T. 100: INSOLVENT.

**INSPECT.** — A statutory power to “inspect” a Co’s documents, includes, generally, a right to take copies, *e.g.* under s. 28, Comp C. Act, 1863 (*Mutter v. Eastern & Midland Ry*, 57 L. J. Ch. 615; 38 Ch. D. 92; 36 W. R. 401), or under s. 43, Comp Act, 1862 (*Nelson v. Anglo-American Land Co*, 1897, 1 Ch. 130; 56 L. J. Ch. 112; 45 W. R. 171; 75 L. T. 482; *Boord v. African Co*, 1898, 1 Ch. 596; 67 L. J. Ch. 451; 77 L. T. 553; 46 W. R. 150), or under s. 14, 36 & 37 V. c. 48 (*Peckius v. Lond. & N. W. Ry*, 1 Ry & Can Traffic Ca. 327). But that right is negatived by a statutory provision expressly directing a mode of obtaining copies, *e.g.* s. 32, Comp Act, 1862, under which a Co may be required to furnish copies on being paid therefor (*Re Balaghât Gold Co*, 1901, 2 K. B. 665; 70 L. J. K. B. 866; 85 L. T. 8; 49 W. R. 625; over-ruling *Boord v. African Co*, sup).

*V. R. v. Mariquita Co*, cited PROCEEDING.

S. 16 (1), Conv & L. P. Act, 1881, in giving a mtgor a right to “inspect” the documents of title in his mtgee’s hands, expressly adds “and make copies or abstracts of, or extracts from,” the same.

**INSPECTION.** — Expenses of “Production and Inspection” of Documents, s. 3 (6), Conv & L. P. Act, 1881; *V. Re Duthy and Jesson*, cited INFORMATION.

The Bank of England books of the National Debt are only “OPEN for Inspection,” s. 52, 33 & 34 V. c. 71, to persons who are *bonâ fide* interested in the matters to which the entries in the books relate; not to those who are merely collecting trade-lists of unclaimed dividends (*R. v. Bank of England*, 1891, 1 Q. B. 785; 60 L. J. Q. B. 497; 64 L. T. 468; 39 W. R. 558; 55 J. P. 695).

“Inspection” and “MANAGEMENT” of a bankrupt’s estate, s. 192, Bankry Act, 1861; *V. Bailey v. Bowen*, 37 L. J. Q. B. 61; L. R. 3 Q. B. 133; 16 W. R. 396; 17 L. T. 470.

**INSPECTOR.** — “Inspector,” s. 35, 35 & 36 V. c. 77, includes his authorized agent (*Poster v. Fyffe*, 1896, 2 Q. B. 104; 65 L. J. M. C. 184; 74 L. T. 784; 44 W. R. 524; 60 J. P. 423).

Stat. Def. — 26 & 27 V. c. 124, s. 3; 52 & 53 V. c. 21, s. 35. — *Ir.* 31 & 32 V. c. 97, s. 4.

“Inspector,” “Inspector of the *Bil of Agriculture*,” “Inspector of a *Local Authority*”; *V. ss. 59 and 69 (4), Diseases of Animals Act, 1894, 57 & 58 V. c. 57.*

“Inspector of *Constabulary*,” quâ Prevention of Crime (Ir) Act, 1882, 45 & 46 V. c. 25, “*means*, a County Inspector of the Royal Irish Constabulary; and *includes*, an Inspector of the Dublin Metropolitan Police” (s. 35).

“*Her Majesty’s Inspectors*” under the Education Acts; Stat. Def., 33 & 34 V. c. 75, s. 3. — *Scot.* 35 & 36 V. c. 62, s. 1.

“Inspectors of *Irish Fisheries*”; Stat. Def., 40 & 41 V. c. 42, s. 13.

“Inspectors” of *Salmon Fisheries*; V. s. 31, Salmon Fishery Act, 1861, 24 & 25 V. c. 109; s. 4, S. F. Act, 1873, 36 & 37 V. c. 71.

**INSTANT.** — “Although an instant *est unum indivisibile tempore quod non est tempus nec pars temporis, ad quod tamen partes temporis connectuntur*, and that *instans est finis unius temporis et principium alterius*; yet in consideration of law there is a prioritie of time in an instant,” so that a surviving joint tenant takes and is preferred before the devisee of his companion (Co. Litt. 185 b). *Vf*, Termes de la Ley.

**INSTANTLY.** — “Instantly” does not, at least in a Bill of Sale, seem a more intense word than “IMMEDIATELY” (*Massey v. Sluden*, 38 L. J. Ex. 34; L. R. 4 Ex. 13).

Indeed, in *R. v. Brownlow* (9 L. J. M. C. 15; 11 A. & E. 119; 3 P. & D. 52), it was said that “Instantly” had no definite meaning; there a Coroner’s Inquisition stated an explosion on a Thames steamer from the effects of which A. B. “instantly died,” and the Inquisition was quashed for not averring with sufficient distinctness the time of the death, the Court saying “‘Instanter’ and ‘Incontinenter’ are not words implying what is expressed by ‘ad tunc’”: *Cp*, THEN, at end.

**INSTEAD OF.** — The words “Instead of,” “In lieu of,” though naturally implying some, need not necessarily mean a total, substitution. Thus a gift by a Codicil “instead of” one in the Will, may be read “instead of so much of the gift in the Will only as is incompatible with the Codicil” (1 Jarm. 177, 178, citing *Doe d. Murch v. Marchant*, 13 L. J. C. P. 59; 6 M. & G. 813; 7 Sc. N. R. 644; *Hill v. Walker*, 4 K. & J. 168; *Butler v. Greenwood*, 22 Bea. 303; *Barclay v. Maskelyne*, 5 Jur. N. S. 12). *Vf*, *Ex p. Drew*, W. N. (71) 184; *Re Wilcock*, 1898, 1 Ch. 95; 67 L. J. Ch. 154; 77 L. T. 679; 46 W. R. 153.

A fund provided by statute “in lieu of” other means of payment, may become the primary fund (*R. v. St. Saviour’s, Southwark*, 7 L. J. M. C. 59; 7 A. & E. 925; 3 N. & P. 126).

Buildings “in lieu of,” mean, “in the place of” (*Boyer v. Bancroft*, W. N. (83) 67).

V. ADDITION: IN LIEU OF: LIEU AND SUBSTITUTION.

**INSTIGATION.** — A Breach of Trust committed “at the Instigation or Request, or with the Consent IN WRITING, of a Beneficiary”

(s. 6, Trustee Act, 1888, repld s. 45, Trustee Act, 1893) applies only to such Breach of Trust as the Beneficiary knows of; and, *semble*, that constructive notice, by having the same Solicitor as the Trustee, would not be sufficient (*Re Somerset*, 1894, 1 Ch. 231; 63 L. J. Ch. 41; 69 L. T. 744; 42 W. R. 145). In that section "In Writing" only applies to "Consent," and not to "Instigation, or Request" (*Griffith v. Hughes*, 1892, 3 Ch. 105; 62 L. J. Ch. 135; 66 L. T. 760; 40 W. R. 524; approved in *Re Somerset*, sup). Mere Consent, though in writing, differs from, and does not necessarily amount to, an Instigation or Request (*Bolton v. Currie*, 1895, 1 Ch. 544; 64 L. J. Ch. 164; 71 L. T. 752; 43 W. R. 521; *Mara v. Browne*, cited BREACH OF TRUST).

#### V. CONSENT.

**INSTITUTED.** — A PROCEEDING "instituted," means, one commenced; therefore, where, to a petition for restitution of conjugal rights, the Answer charged Adultery, there was no "Action, Suit, or Proceeding, . . . instituted in consequence of Adultery" within s. 4, 14 & 15 V. c. 99 (*Blackborne v. Blackborne*, 37 L. J. P. & M. 73; L. R. 1 P. & M. 563).

So, of s. 2, M. W. P. Act, 1893; which, quâ an Appeal by a married woman who is the *Defendant* in the action, gives no power to order costs out of her property restrained from ANTICIPATION, for such an Appeal is not an "Action or Proceeding instituted" by her (*Hood-Barrs v. Cathcart*, 1894, 3 Ch. 376; 63 L. J. Ch. 793; *Hood-Barrs v. Heriot*, 1897, A. C. 177; 66 L. J. Q. B. 356; *Th. Re Lumley*, 63 L. J. Ch. 900; *Re Godfrey*, 43 W. R. 244; 63 L. J. Ch. 854); *seus*, where the married woman is *Plaintiff* (*Paget v. Paget*, 67 L. J. Ch. 266). A *Counter-Claim* is a "Proceeding instituted" within the section (*Hood-Barrs v. Cathcart*, 1895, 1 Q. B. 873; 64 L. J. Q. B. 520; 72 L. T. 427; 43 W. R. 560; *Cp*, PLAINTIFF). A *Caveat* does not "institute" a Probate Action within the section (*Moran v. Place*, 1896, P. 214; 65 L. J. P. D. & A. 83; 74 L. T. 661; 44 W. R. 593).

Proceedings before Justices are "instituted" when the INFORMATION is laid, or COMPLAINT is made; therefore, where an Information under the Sunday Observance Act, 1677, was laid without the written consent of the CHIEF Officer of Police of the District, s. 1, 34 & 35 V. c. 87, it was "instituted" without that required consent and was bad, although such consent was given the next day and before the summons was served (*Thorpe v. Priestnull*, 1897, 1 Q. B. 159; 66 L. J. Q. B. 248; 45 W. R. 223; 60 J. P. 821; 13 Times Rep. 95).

V. this word in the Prayer of Consecration in the Communion Office.

#### *Cp*, COMMENCEMENT.

Sometimes "instituted" means, established, *e.g.* a Society instituted for the purposes of Science, &c : I. SCIENCE: INSTITUTION.

**INSTITUTION.** — *V.* ADMISSION: COLLATION.

“Endowed Institution”; *V.* ENDOWED.

“Institution” for Idiots; Stat. Def., 49 & 50 V. c. 25, s. 17.

“Institution for Lunatics”; Stat. Def., 53 & 54 V. c. 5, s. 341.

“Literary or Scientific Institution”; *V.* LITERARY.

“Public Charitable Institution”; *V.* PUBLIC CHARITY.

“Societies and Institutions”; *V.* SOCIETIES.

**INSTROKE.** — “The right of ‘Instroke’ is the right of conveying Minerals from a demised mine to the surface through a pit or shaft in an adjoining mine. It is the converse right to that of ‘Outstroke’; which is the right of conveying Minerals from an adjoining mine to the surface through a pit or shaft in the demised mine” (MacS. 231, *whc*).

**INSTRUCT.** — *V.* TEACH AND INSTRUCT.

**INSTRUCTION.** — *V.* MANUAL INSTRUCTION: TECHNICAL.

**INSTRUMENT.** — An “Instrument” is a Writing, and generally imports a document of a formal legal kind. *Semble*, the word may include an Act of Parliament (*V.* DEED OF SETTLEMENT); so, quâ the Trustee Act, 1893 (*V.* s. 50).

“The words, ‘Instrument of Foundation or Statutes,’ s. 19, 32 & 33 V. c. 56, and s. 7, 36 & 37 V. c. 87, point with great distinctness to written instruments” (per Selborne, C., *St. Leonards Trustees v. Charity Commrs*, 54 L. J. P. C. 31; 10 App. Ca. 304; 51 L. T. 305; 33 W. R. 756); and “entitled under any Instrument,” s. 1, Malins’ Act, 20 & 21 V. c. 57, does not include an Intestacy (*Allcard v. Walker*, 1896, 2 Ch. 369; 65 L. J. Ch. 660; 74 L. T. 487; 44 W. R. 661: *Va, Re Elcom*, cited PECUNIARY LEGACIES).

A Power by “Deed, Instrument, or Will,” is well executed by a mere writing which is neither a Deed nor a Will, provided the document refers to the Power, or can only have effect by operating on a fund which is subject to the Power, *e.g.* an order, a letter, or a cheque on the fund; and this is not altered by the Power providing that the “Deed, Instrument, or Will” shall not be “executed” until after a stated event (*Brodrick v. Brown*, 1 K. & J. 328). *V.* WRITING: INSTRUMENT IN WRITING.

Orders of Court are not “Instruments” within s. 2, Apportionment Act, 1834, 4 & 5 W. 4, c. 22 (*Jodrell v. Jodrell*, 38 L. J. Ch. 507; L. R. 7 Eq. 461).

A Post Office Telegram accepting a Wager is an “Instrument” within s. 38, Forgery Act, 1861, 24 & 25 V. c. 98 (*R. v. Riley*, 1896, 1 Q. B. 309; 65 L. J. M. C. 74; 74 L. T. 254; 44 W. R. 318; 60 J. P. 519).

“Instrument.” in the phrase “BOND, COVENANT, or Instrument,” Sch. Stamp Act, 1870, repld Sch 1. Stamp Act, 1891, means an Instrument of the same nature as “Bond” or “Covenant” with which it is asso-



ciated, *i.e.* one which is a SECURITY FOR MONEY (*Thomas Conservators v. Inl. Rev.*, 56 L. J. Q. B. 181; 18 Q. B. D. 279; 56 L. T. 198; 35 W. R. 274; *Cp, Limmer Asphalte Co v. Inl. Rev.*, 41 L. J. Ex. 106; L. R. 7 Ex. 211; 20 W. R. 610, and *Sweetmat Co v. Inl. Rev.*, 1895. 1 Q. B. 484; 64 L. J. Q. B. 84; 71 L. T. 763; 43 W. R. 318; *Vhle*, PERIODICAL). A document whereby money is made payable for a Telephone Service is an "Instrument" for the "SECURITY" of money within the phrase, and requires the Bond *ad val.* duty on the aggregate amount necessarily payable thereunder, *i.e.* the whole of the payments for the period for which the service must necessarily continue (*National Telephone Co v. Inl. Rev.*, 1899, 1 Q. B. 250; 1900, A. C. 1; 68 L. J. Q. B. 222; 69 *Ib.* 43).

"Instrument" in Exemption 11 to *Receipt*. Sch, Stamp Act, 1891; *V. London and Westminster Bank v. Inl. Rev.*, cited RECEIPT.

Quà Conv & L. P. Act, 1881, "'Instrument,' includes Deed, Will, Inclosure, Award, and Act of Parliament" (subs. xiii, s. 2): quà Stamp Duties it, generally, "includes every Written Document" (s. 27, 54 & 55 V. c. 38; s. 122, Stamp Act, 1891); but quà and by s. 44 of the latter Act "Instrument" which an unqualified person may not prepare, does not include "(a) A Will or Testamentary Instrument; or (b) An Agreement under hand only; or (c) A Letter or Power of Attorney; or (d) A Transfer of Stock containing no trust or limitation thereof."

Other Stat. Def. — Stamp Act, 1891, s. 9; Great Seal Act, 1884, 47 & 48 V. c. 30, s. 4. — *Scot.* 21 & 22 V. c. 76, s. 36; 31 & 32 V. c. 101, s. 3; 37 & 38 V. c. 94, s. 3.

*V.* DEED: INSTRUMENT IN WRITING: TESTAMENT: SEIZIN.

"Instrument or Device" to catch Fish; *V.* TO PLACE: ROD AND LINE.

"Snare . . . or other *like* Instrument" to catch Salmon; *V. Jones v. Davies*, cited OTHER, p. 1365.

"Measuring Instrument"; *V.* MEASURING.

"Noisy Instrument"; *V.* NOISY.

"Instruments" of a Ship; *V.* TACKLE.

"Weighing Instrument"; *V.* WEIGHING.

**INSTRUMENT IN WRITING.** — Where by a Company's Articles a Transfer of Shares may be by an "Instrument in Writing," a Deed is not necessary, even though the Company's uniform practice has required one (*Re Tahiti Cotton Co, Ex p. Sargeant*, L. R. 17 Eq. 273; 43 L. J. Ch. 425; *Ortigosa v. Brown*, 47 L. J. Ch. 168; 38 L. T. 145. *Vh.* Buckl. 488).

*Semble*, an "Instrument in Writing" does not necessarily require to be signed by the party making it (per Parke, B., *Hunter v. Parker*, 10 L. J. Ex. 288; 7 M. & W. 322).

As to the execution of a Power by Deed or "Instrument in Writing" — *V.* WRITING.

Submission to arbitration by "Deed or Instrument in Writing," s. 17, Com. L. Pro. Act, 1854; *V. Re Dawdy and Hartcup*, 54 L. J. Q. B. 574; 15 Q. B. D. 426: SUBMISSION.

"Deed, Will, or Instrument in Writing" in the definition of TRUSTEE, s. 1, Larceny Act, 1861, includes the Rules of a Savings Bank (*R. v. Fletcher*, L. & C. 180; 31 L. J. M. C. 206); that is so even though "Instrument in Writing" has to be read as *ejusdem generis* with "Deed or Will," for "whatever shape an Instrument may assume, if it authorizes a Trustee to receive money upon certain trusts and points out the mode of investment and generally declares the purposes to which the property is to be applied, it is an Instrument *ejusdem generis* as a Deed or Will" (per Cockburn, C. J., *S. C. L. & C.* 204).

"Written Instrument," s. 28, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42, means, an Instrument creating the obligation to pay; therefore, a mere letter of application for a loan is not such an Instrument (*Taylor v. Holt*, 3 H. & C. 452; 34 L. J. Ex. 1: *Vf*, *L. C. & D. Ry v. S. E. Ry*, 1893, A. C. 429; 63 L. J. Ch. 93; 69 L. T. 637).

A Bill or Note paid by a Surety is a "Written Instrument" entitling him to prove for Interest under R. 20, Sch 2, Bankry Act, 1883 (*Re Evans*, 76 L. T. 530; 66 L. J. Q. B. 499; 46 W. R. S).

*I. CERTAIN TIME: SUM CERTAIN: DEMAND.*

"Deed, Will, or other Written Instrument," R. 1, Ord. 54 a, R. S. C., applies to "any written document under which any right or liability, whether legal or equitable, exists," *v.g.* a Contract for an OPTION to re-purchase land, a Bill of Lading, or a Charter-Party (*Mason v. Schuppisser*, 81 L. T. 147).

*V. IN WRITING: INSTRUMENT.*

**INSTRUMENT OF DISSOLUTION.**— "Instrument of Dissolution" of a Building Socy; *V. s. 32*, Bg Socy Act, 1874. It cannot vary priorities (*Botten v. City & Suburban Bg Socy*, 1895, 2 Ch. 441; 64 L. J. Ch. 609), nor alter the rights of advanced members (*Kemp v. Wright*, 1895, 1 Ch. 121; 64 L. J. Ch. 59). Its signatories respectively may sign by an agent (*Dennison v. Jeffs*, 1896, 1 Ch. 611; 65 L. J. Ch. 435; 74 L. T. 270; 44 W. R. 476).

**INSTRUMENT OF GAMING.**— A machine used for registering bets at a race, is an "Instrument of Gaming" (*Tollet v. Thomas*, 24 L. T. 508).

Money is not an "Instrument of Gaming" (*Watson v. Martin*, 34 L. J. M. C. 50; 28 J. P. 775; *Hirst v. Molesbury*, 40 L. J. M. C. 76; L. R. 6 Q. B. 130; 23 L. T. 555).

*V. GAMING.*

**INSTRUMENTALITY.**— Under s. 28, 23 & 24 V. c. 127, a Solicitor is entitled to a charge for his costs on property recovered or preserved

through his "instrumentality." "Suppose that a Solicitor is employed in a hotly contested action, and prepares the whole case of the plaintiff down to the moment of trial, and that just before the trial the plaintiff changes his solicitor, and then, owing to the exertions of the solicitor formerly employed, he succeeds in the action. Can it possibly be said that that success is not owing to the 'instrumentality' of the discharged solicitor?" (per Kay, J., *Re Wadsworth*, 54 L. J. Ch. 640; 29 Ch. D. 517; 52 L. T. 613; 33 W. R. 558). *V. RECOVERED OR PRESERVED.*

**INSUFFICIENT.** — "Insufficient" Sureties for Costs, s. 8, Parliamentary Elections Act, 1868, 31 & 32 V. c. 125, does not mean general incapacity of entering into a suretyship, but insufficiency for the purpose of the Act; therefore, a Recognizance for Costs signed by an election petitioner is "insufficient" and may be amended by a deposit of money under s. 9; and, *semble*, that this would be so if the Recognizance were signed by an infant or married woman (*Pease v. Norwood*, L. R. 4 C. P. 235; 38 L. J. C. P. 161). *Vt*he, and espy jdgmt of Bovill, C. J., for discussion of contrast as to when such a Recognizance is "insufficient" and amendable, and when "*invalid*" and altogether void. *V. ON BEHALF.*

Insufficient Accommodation Works; *V. ACCOMMODATION.*

"Insufficient or Unreasonable," Proposed Works, s. 7 (*d*), Private Street Works Act, 1892, 55 & 56 V. c. 57, means, insufficiency of the Work to carry out its object, and not that the Work ought to include something else; or (using a wider word) that it is "unreasonable" as a scheme of work with reference to the street itself, and not because it does not go further (*Mansfield v. Butterworth*, 1898, 2 Q. B. 274; 67 L. J. Q. B. 709; 78 L. T. 527; 46 W. R. 650; 62 J. P. 500; *Vf*, *Sheffield v. Anderson*, cited UNREASONABLE).

*Cp*, SUFFICIENT, and succeeding defs.

**INSULT.** — *V. WILFUL INSULT.*

**INSURABLE INTEREST.** — *V. INTEREST.*

**INSURANCE.** — A contract of "Insurance" is one *uberrima fidei*, and demands a full disclosure of all facts and circumstances affecting the risk and is vitiated by their non-disclosure, whether innocent or fraudulent; *secus*, of a Contract of GUARANTEE (*Davies v. London & Prov. Mar Insrce*, 47 L. J. Ch. 511; 8 Ch. D. 469; 26 W. R. 794; *North British Insrce v. Lloyd*, 24 L. J. Ex. 14; 10 Ex. 523; *Seaton v. Heath*, 1899, 1 Q. B. 782; 68 L. J. Q. B. 631; 80 L. T. 579; 47 W. R. 487. *V. CONCEAL*). There is no magic in the words "Insurance" or "Guarantee"; whether the transaction is the one or the other depends on the character of the Contract itself (per Romer, L. J., *Seaton v. Heath*, sup: *Vf*, *Dan v. Mortgage Insrce*, 1894, 1 Q. B. 54; 63 L. J. Q. B. 144; *Finlay v. Mexican Investment Corp*, 1897, 1 Q. B. 517; 66 L. J. Q. B. 151; 76

L. T. 257: *Parr's Bank v. Albert Mines Syndicate*, 5 Com. Ca. 116). *Id.*; 8 Encyc. 150.

"Damage to any goods which is capable of being covered by Insurance," in an Exception in a Bill of Lading, includes a TOTAL LOSS or Destruction, but not an Abstraction, of the goods (*Taylor v. Liverpool & G. W. Steam Co.*, L. R. 9 Q. B. 546; 43 L. J. Q. B. 205; 22 W. R. 752; 30 L. T. 714). But, observe, the reason given by Lush, J. (p. 550, L. R.), "I think that it must be confined to cases where the goods receive damage from some Peril *which may be insured against*," words which are thus reported in the Law Journal (p. 207), "I think it is confined to cases where the goods receive damage by one of the Perils *insured against*." It is submitted that the words in the L. R. correctly report the learned judge; if so, it may be doubted whether, on this point, *Taylor's Case* is now a binding authority seeing that since its date Insurance against Larceny has become well known. *Vh.* *Moore v. Harris*, 45 L. J. P. C. 55; 1 App. Ca. 318.

*V.* on *Marine* Insree, Park: Arn.: Phillips: Marshall: Jacob, *Insurance*: 8 Encyc. 132-210: On *Fire* Insree, Park, ch. 24: Bunyon: 5 Encyc. 348-353: On *Life* Insree, Park, ch. 23: Bunyon: 7 Encyc. 436-447: On *Fire, Life, Accident, and Guarantee* Insree, Porter. POLICY.

*V.* SEA INSURANCE.

**INSURANCE CLERK.** — *V.* *Grant v. Shaw*, cited GOVERNMENT CLERK.

**INSURANCE COMPANY.** — "Insurance Company" whose premiums may be deducted from Income Tax (s. 54, 16 & 17 V. c. 34; 16 & 17 V. c. 91), must be a Co in the United Kingdom, which also is a Co subject to English law (*Colquhoun v. Heddon*, 59 L. J. Q. B. 465; 25 Q. B. D. 129; 38 W. R. 545; 62 L. T. 853; 6 Times Rep. 153).

Quà Comp Act, 1862, "a Co that carries on the business of Insurance in common with any other business or businesses shall be deemed to be an Insurance Company" (s. 3). Prior to, and independently of that provision, the reverse was held (*London Monetary Co v. Smith*, 3 H. & N. 543; *London Provident Socy v. Ashton*, 12 C. B. N. S. 709, 723; 11 W. R. 152; 7 L. T. 530).

Other Stat. Def. — Metropolitan Fire Brigade Act, 1865, 28 & 29 V. c. 90. s. 2.

*V.* ASSURANCE COMPANY.

**INSURED.** — *V.* NOT INSURED: UNINSURED.

**INSURED ELSEWHERE.** — As a Condition in a Fire Policy: *V.* *Australian Agricultural Co. v. Saunders*, 44 L. J. C. P. 391; L. R. 10 C. P. 668.

**INSURRECTION.** — *V.* CIVIL COMMOTION: LEVY WAR.

**INTAKE MEASURE OF QUANTITY DELIVERED.**—*V. Spaight v. Farnworth*, 5 Q. B. D. 115; 49 L. J. Q. B. 346; 42 L. T. 297; 28 W. R. 508; cited and stated 1 Maude & P. 380, 381, and Carver, 657, 658.

**INTENDED.**—A part of a Building Estate was sold to A. under restrictive covenants as to user and occupation, and in the Conditions of Sale and also in the recitals to the conveyance to A. it was stated that "it is intended" that the other parts of the Estate should, in the hands of the respective purchasers thereof, be subject to similar covenants, but the vendor entered into no covenant in that behalf with A.; held, that "intended" amounted, if not to a covenant, yet to an implied agreement by the vendor, and that he could be restrained by A. from selling the remaining parts of the Estate free from the restrictive covenants, so as to contravene the building scheme thereby contemplated (*Mackenzie v. Childers*, 43 Ch. D. 265; 59 L. J. Ch. 188; *V. J. Collins v. Castle*, 57 L. J. Ch. 76; 36 Ch. D. 243; *Sheppard v. Gilmore*, 57 L. J. Ch. 6; *Spicer v. Martin*, 58 L. J. Ch. 309; 14 App. Ca. 12).

*V. INTENT.*

**INTENDED HUSBAND.**—A clause restraining alienation of a married woman's separate estate being applicable to all her covertures, unless expressly limited (*Re Gaffer*, 19 L. J. Ch. 179; 1 Mac. & G. 541), the phrase, in a Marriage Settlement, that separate estate is to be enjoyed by the lady "independently of her said intended husband" is not enough to confine the restraint clause to that particular coverture (*Hawkes v. Hubback*, 40 L. J. Ch. 49; L. R. 11 Eq. 5; *Shafto v. Butler*, 40 L. J. Ch. 308; 19 W. R. 595). *V. Elph. 299, 300.*

**INTENDED TO BE DONE.**—*V. DONE.*

**INTENDMENT.**—"Intendment of the Law." *Intendment, i.e. intellectus*, the understanding or intelligence of the law. Regularly, judges ought to adjudge according to the common intendment of law" (Co. Litt. 78b). *V. Jacob: NECESSARY: INTENTION.*

**INTENT.**—*V. VIEW: IN ORDER: MENS REA: KNOWINGLY.*

The distinction between an "Intent" and an "ATTEMPT" to do a thing is, that the former implies the purpose only, while the latter implies that and also something done towards its accomplishment (*Prince v. State*, 35 Ala. 369; *State v. Marshall*, 14 Ib. 414).

"With intent to Defeat or Delay" Creditors, 13 Eliz. c. 5: s. 4 (1 *d*). Bankry Act, 1883; s. 4, New S. Wales Bankry Act, 1887, 51 V. No. 19:—*V. Morris v. Morris*, 1895, A. C. 625; 64 L. J. P. C. 136; 72 L. T. 879; 44 W. R. 65; distinguishing *Re Ash*, 7 Ch. 636. *V. BONÂ FIDE: GOOD: May on Fraudulent Dispositions: Baldwin, 83: Wms. Bank. 19.*

To use a FALSE TRADE DESCRIPTION with "Intent to Defraud,"

s. 2 (1), Merchandize Marks Act, 1887, does not mean "with intent to cheat," for as good Goods may be supplied under a false, as under a true, Description; an intention to represent the Goods as being manufactured by some one other than the real manufacturer brings a case within the section (*Stavey v. Chilworth Gunpowder Co*, 59 L. J. M. C. 13; 24 Q. B. D. 90; 62 L. T. 73; 38 W. R. 204; 54 J. P. 436: *Wood v. Burgess*, 59 L. J. M. C. 11; 24 Q. B. D. 162); so, of a representation that the Goods are of FOREIGN manufacture when they have been made or finished in England (*Bishop v. Toler*, 73 L. T. 402; 65 L. J. M. C. 1; 44 W. R. 189; 59 J. P. 807). *V. INNOCENTLY ACTED.*

"Intent to do Grievous Bodily Harm"; *V. GRIEVOUS BODILY HARM: INFLICT.*

**INTENTION.** — " 'Intention of the Legislature,' is a common but very slippery phrase; which, popularly understood, may signify anything from Intention embodied in positive enactment to Speculative Opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by REASONABLE and NECESSARY Implication" (per Ld Watson, *Re Salomon*, 1897, A. C. 38; 66 L. J. Ch. 44). *Cp.* PUBLIC POLICY.

A like rule obtains as regards the Intention of a Testator, which has to be gathered from the Will itself, except in so far as Extrinsic Evidence may be given of the circumstances in which it is made so that the intention may be elucidated thereby; the Golden Rule enunciated in *Grey v. Pearson* (*V. Introductory Chapter* of this book) being the guide for ascertaining a testator's intention: *Vf.* *Hill v. Crook*, *Re Lowe*, and *Re Walker*, cited CHILD.

The Intention is presumed to cause that which is the natural consequence of something consciously done or omitted. "I take the rule of law to be as stated by Ellenborough, C. J., in *R. v. Dixon* (3 M. & S. 15). He says, 'It is a universal principle that when a man is charged with doing an act,' — *i.e.* a wrongful act without legal justification, — 'of which the probable consequence may be highly injurious, the Intention is an inference of law resulting from the doing the act'" (per Blackburn, J., *R. v. Hicklin*, cited OBSCENE).

**INTENTS.** — "Void to all intents and purposes"; *V. VOID: ALL INTENTS AND PURPOSES.*

**INTER-COMMONING.** — "Is where the Commons of two Manors lie together and the inhabitants of both have, time out of mind, depastured their Cattel promiscuously in each" (Cowel).

**INTERDICT.** — *V. INJUNCTION.*

**INTEREST.**—“*Interesse* is vulgarly taken for a terme or chattell reall, and more particularly for a future tearme; in which case it is said in pleading that he is possessed *de interesse termini*. But *ex vi termini*, in legall understanding, it extendeth to estates, rights, and titles, that a man hath of, in, to, or out of, lands; for he is truly said to have an interest in them: and by the grant of *totum interesse suum* in such lands, as well reversions as possessions in fee simple shall passe” (Co. Litt. 345 b; *Vh*, Elph. 205).

Thus, a mere Possibility or Expectancy of an interest is not an “Interest” or even a “Future Interest,” within s. 1, Malins’ Act, 20 & 21 V. c. 57 (*Allcard v. Walker*, 1896, 2 Ch. 369; 65 L. J. Ch. 660; 74 L. T. 487; 44 W. R. 661; *Cp*, *Re Parsons*, cited CONTINGENT).

“Interest in Expectancy”; *V*. EXPECTANCY. *Cp*, VESTED.

A Lessee for Years before entry is said to have an interest, *Interesse termini* (Co. Litt. 46 b); but the phrase is never used with regard to a Freehold Lease (*Ecclesiastical Commrs v. Tremer*, cited ESTATE AND INTEREST). *Vh*, 6 Encyc. 519.

The Lessor has “an Interest” in Disclaimed Leaseholds, within s. 55 (6) Bankry Act, 1883 (*Re Cork, Ex p. Shilson*, cited ONEROUS; *Re Finley*, 57 L. J. Q. B. 628; 21 Q. B. D. 475; 37 W. R. 6).

“Provided the Interest of the Lessor shall so long continue”; *V*. CONTINUE.

“‘ANY Interest,’ must Include an Equitable Interest” (per Fry, L. J., *Re Cusey*, cited EQUITABLE).

“Interest,” s. 2 (1 *b*). Finance Act, 1894, is *not* to be cut down to “Interest in Possession” (per Williams, J., *A-G. v. Wood*, cited SUBSIST).

“Interest,” s. 38 (2 *c*), Customs & Ind. Rev. Act, 1881, 44 & 45 V. c. 12; *F. A-G. v. Heywood*, 56 L. J. Q. B. 572; 19 Q. B. D. 326; 57 L. T. 271; 35 W. R. 772.

The “Interests of all parties entitled under the Settlement” to which a TENANT FOR LIFE is to have regard, s. 53, S. L. Act, 1882, do not merely connote pecuniary interests, but include, *e.g.* wishes and sentimental feelings (*Bruce v. Ailesbury*, 1892, A. C. 356; 62 L. J. Ch. 95; 67 L. T. 490; *Sutherland v. Sutherland*, 62 L. J. Ch. 951; 1893, 3 Ch. 169; 69 L. T. 186; 42 W. R. 13). *Vf*, *Hampden v. Buckinghamshire*, 1893, 2 Ch. 531; 62 L. J. Ch. 643; 68 L. T. 695; 41 W. R. 516.

“Interest of the Beneficiary in the Trust Estate,” s. 6 (1), Trustee Act, 1888, repld s. 45 (1), Trustee Act, 1893, probably, includes that kind of dominion which is given to a donee of a general Power of Appointment (*Fleming v. Buchanan*, 22 L. J. Ch. 886; 3 D. G. M. & G. 976).

An *Insurable* “Interest” in *Goods*, “does not, necessarily, imply a right to the whole, or a part, of a thing, nor, necessarily and exclusively, that which may be the subject of privation: but the having some relation

to, or concern in, the subject of the insurance, which relation or concern, by the happening of perils insured against, may be so affected as to produce a damage, detriment, or prejudice, to the person insuring: and where a man is so circumstanced with respect to matters exposed to certain risks or dangers as to have a moral certainty of advantage or benefit but for those risks or dangers, he may be said to be INTERESTED IN the safety of the thing. To be interested in the preservation of a thing is to be so circumstanced with respect to it as to have benefit from its existence, — prejudice from its destruction ” (per Lawrence, J., *Lucena v. Crauford*, 2 B. & P. N. S. 302). *Vf*, Park, ch. 14: *Stainbank v. Fenning*, 11 C. B. 72; 20 L. J. C. P. 226: *Lond & N. W. Ry v. Glyn*, 28 L. J. Q. B. 193; 1 E. & E. 652; 7 W. R. 238: *Waters v. Monarch Insree*, 25 L. J. Q. B. 102; 5 E. & B. 870: *Hill v. Scott*, 1895, 2 Q. B. 713; 65 L. J. Q. B. 87: Add. C. 1022: Carver, 131: Scrutton, 165.

V. FULL INTEREST ADMITTED.

The “Interest,” s. 1, 14 G. 3, c. 48, required in an Insurer on another *Life* than his own, must be a *pecuniary* interest (*Halford v. Kymer*, 10 B. & C. 724). *Cp*, INTERESTED IN.

By Art. 2590, Civil Code of Lower Canada, an “Insurable Interest” of the Insured in a *Life*, means, that the *Life* insured must be “(1), Of Himself; (2) Of any person upon whom he depends, wholly or in part, for Support or Education; (3) Of any person under Legal Obligation to him for the payment of Money, or respecting the Property or Services which Death or Illness might defeat, or prevent, the performance of; (4) Of any person upon whose life any Estate or Interest in the insured depends”: *Ith*, *Ancil v. Manufacturers’ Life Insree*, cited INCONTESTABLE.

“Declare his Interest”; *V*. DECLARE.

Compensation for injury “in respect of any Interest for GOODWILL”; *V. Ex p. Farlow*, 2 B. & Ad. 341; 9 L. J. O. S. K. B. 255.

“Rights or Interests” in Literary or Artistic Work; *V*. RIGHTS.

“All My Interest”; *V. Manton v. Tubois*, 30 Ch. D. 92; 54 L. J. Ch. 1008; 53 L. T. 289; 33 W. R. 832: *Scott v. Best*, 6 L. R. Ir. 7.

“Part, Share, and Interest”; *V*. PART.

“Interest,” of Judgment Debtor, in Stock or Shares which under s. 1, Jdgmts Act, 1840, 3 & 4 V. c. 82, is chargeable under s. 14, Jdgmts Act, 1838; *V. Cragg v. Taylor*, L. R. 2 Ex. 131; 36 L. J. Ex. 63: *Dixon v. Wrench*, L. R. 4 Ex. 154; 38 L. J. Ex. 113: *Re Ashton*, 44 S. J. 429.

V. ABANDONMENT: BENEFICIAL: CONTINUING INTEREST: EQUITABLE: ESTATE: ESTATE AND INTEREST: FULL INTEREST ADMITTED: GENERAL INTEREST: PECUNIARY INTEREST: PUBLIC: PUBLIC INTEREST: RIGHT AND TITLE: SHARE: TRANSMISSIBLE: UNCERTAIN.

“Where the ‘Interest’ or ‘Produce’ of a *Fund* is bequeathed to a legatee, or in trust for him, *without any limitation as to continuance*, the principal will be regarded as bequeathed also ” (Wms. Exs. 1058,



and cases there cited); but this "is not a very strong rule," and "it is always a question of construction whether the testator did or not intend to give more than a life interest" (per Parker, V. C., *Blann v. Bell*, 21 L. J. Ch. 813; 5 D. G. & S. 663: *Va, Wetherell v. Wetherell*, 32 L. J. Ch. 476; 1 D. G. J. & S. 134; 4 Giff. 51). *V. PRODUCE.*

"Interest and Profits," "Interest Dividends and Profits," "Residue of Interest and Rents"; *V. RENTS AND PROFITS.*

"Bearing Interest"; *V. BEARING.* Interest on Money is, generally, Damages; but when payable by express stipulation or provision it is recoverable as a Debt (*Watkins v. Morgan*, 6 C. & P. 661; *Hudson v. Fossett*, 13 L. J. C. P. 141; 7 M. & G. 348; *Florence v. Jennings*, 26 L. J. C. P. 274; 1 C. B. N. S. 584; *Hamilton v. Brogden*, 60 L. J. Ch. 88; *Vh, LIQUIDATED DEMAND*).

Interest until COMPLETION, in a V. & P. contract, if from "any Cause" the completion be delayed; *V. "Any Cause,"* sub ANY: WILFUL DEFAULT.

Interest when and what payable on Sum Certain, &c; *V. CERTAIN TIME: DEMAND:* what by Trustees; *V. CURRENT.*

"Rate of Interest varying with Profits"; *V. RATE.*

*V. YEARLY INTEREST.*

**INTEREST IN LAND.**—By the construction put upon the *Mortmain Act* (9 G. 2, c. 36; repealed, but its provisions re-enacted by the *Mortmain and Charitable Uses Act*, 1888), no Interest in Land could be given by Will to Charitable Uses, but this is modified as regards Wills of persons dying after 5th Aug 1891 (54 & 55 V. c. 73). For the very numerous and frequently conflicting cases defining what is such an Interest in Land, *V. Tudor Char. Trnsts*, 398-409; *Wms. Exs.* 914-927; 1 Chit. Stat., 3 ed., 486; *Seton*, 1337, 1345, 1346. In *Jervis v. Lawrence* (52 L. J. Ch. 244; 22 Ch. D. 202), Bacon, V. C., said, "I believe there is a fault that has been committed in a great many of these cases."

Many of the cases came under review in *Attree v. Howe* (47 L. J. Ch. 863; 9 Ch. D. 337), which decided that a Railway Debenture is not an Interest in Land. The principle of that case as stated by Jessel, M. R., *Re Harris* (49 L. J. Ch. 687; 15 Ch. D. 561), is that in order to create an Interest in Land, within the *Mortmain Acts*, the land must be affected directly. *In re Harris* decided that Bonds charged on Police Rates under 3 & 4 V. c. 88, and payable by justice's precept under 7 & 8 V. c. 33, are pure personalty. *Va*, the effect of *Attree v. Howe*, and *Re Harris* (sup), on the cases prior thereto, discussed and applied by Bacon, V. C., in *Jervis v. Lawrence* (sup). In *this* the learned judge illustrated his position by the following reasoning, "A man who has a power of distress has no interest in the land. A landlord or lessor, while the lease subsists, has no interest in the land"! but only his right of distress. It was in that case held that Bonds created under the Act for the improvement of the Norland Estate, in St. Mary Abbot's,

Kensington (6 V. c. xxxiii.), which were secured by a rate levied upon owners or occupiers on the estate and enforceable against them by action or distress, did not create an Interest in Land, but were pure personalty (*Sr, Toppin v. Lomas*, 24 L. J. C. P. 144; 16 C. B. 159; 3 W. R. 446). So, of a Charge on a Borough Fund derived partly from realty, for such a charge is only on the surplus of the Fund after the statutory payments thereout have been satisfied (*Re Thompson*, 59 L. J. Ch. 689; 45 Ch. D. 161). So, Railway Stock the interest on which has to be kept down by the income from SUPERFLUOUS LAND, is not an "Interest in Land" (*Re Hollon*, 68 L. T. 160; 69 lb. 425). So, a Charge binding assets of a Building Society is not an Interest in Land within the Mortmain Acts; but a charge on Municipal Rates, e.g. Metropolitan Consolidated Stock (*Cluff v. Cluff*, 2 Ch. D. 222; *Re Crossley*, 1897, 1 Ch. 934; 66 L. J. Ch. 558) is such an Interest, and so of a legacy payable out of realty and personalty (*Walmsley v. Rice*, 29 S. J. 256). An Equitable Interest in money secured by mortgage of real estate is such an Interest (*Re Watts*, 55 L. J. Ch. 332; 29 Ch. D. 947, discussing *Re Harris*, sup: *Vn, Miller v. Collins*, inf), and so is a share of proceeds of realty the time for selling which has not arrived (*Brook v. Badley*, 36 L. J. Ch. 741; 3 Ch. 672). Whether Statutory Duties, Tolls, or Dues, are an interest in land within the Statute of Mortmain depends on the particular provisions of the Act by which they are authorized (*Re Christmas*, 55 L. J. Ch. 878; 33 Ch. D. 332; 55 L. T. 197; 34 W. R. 779; 50 J. P. 759, in *who Knapp v. Williams*, 4 Ves. 430, *n*, was commented on and explained. *Vf, Re David, Buckley v. Lifeboat Inst.*, 43 Ch. D. 27; 59 L. J. Ch. 87; 38 W. R. 162; 60 L. T. 786). In *Re Parker, Wignall v. Park* (1891, 1 Ch. 682; 60 L. J. Ch. 195), a mtge of its Waterworks by a Municipal Corporation was held *not* such an Interest. So other Municipal Corporation Bonds have been sometimes held to be pure personalty (*Bedford v. Teal*, 59 L. J. Ch. 689; 45 Ch. D. 161; *Re Pickard*, 1894, 3 Ch. 704; 64 L. J. Ch. 92), and sometimes an Interest in Land (*Re Holmes*, 60 L. J. Ch. 267; *vthc, Re Crossley*, sup).

*Note.* "Interest in" Land, quà the Mortmain Acts, 1888 and 1891, is now no part of the def of "Land," which now includes "tenements and hereditis, corporeal or incorporeal, of any tenure; but not money secured on land, or other personal estate arising from or connected with land" (s. 3, Act 1891), the effect of which is merely to exclude Impure Personalty from the operation of the Mortmain Acts, but not otherwise to restrict therein the meaning of "land" (*Re Hume*, 1895, 1 Ch. 422; 64 L. J. Ch. 267; 72 L. T. 68; 43 W. R. 291).

By s. 4, *Statute of Frauds*, 29 Car. 2, c. 3, no CONTRACT for the Sale of lands tenements or hereditaments, or "any Interest in or concerning them," is valid, unless evidenced by a signed writing. For the cases on that provision, *V. Add. C. 22, 29: Woodf. 135: Rose. N. P. 312*. These decisions have gone to the length of establishing that a right to shoot

game and take it away for one's own benefit is an "Interest in Land" within that Act (*Webber v. Lee*, 51 L. J. Q. B. 486; 9 Q. B. D. 315, *where*, for cases establishing the contrary as regards contracts for Board and Lodging, use of a Graving-Dock, Shares in a Cost-book Mine, and an Opera Box). So, the sale of standing Buildings to be taken down and cleared away in 2 months, is of an "Interest in Land" (*Lavery v. Purssell*, 57 L. J. Ch. 570; 39 Ch. D. 508; 58 L. T. 846; 37 W. R. 163). So, of the sale of a Debenture of a Co creating a FLOATING SECURITY on its land (*Driver v. Broad*, 1893, 1 Q. B. 744; 63 L. J. Q. B. 12; 69 L. T. 169; 41 W. R. 483), or of the Assignment of a debt charged on land (*Jarris v. Jarvis*, 63 L. J. Ch. 10; 69 L. T. 412). But *semble*, an agreement allowing a Tenant to remove FIXTURES after the expiration of his term, is *not* such an Interest (per Hawkins, J., *Thomas v. Jennings*, 66 L. J. Q. B. 8); so, a tenant's severable Fixtures are not such an Interest (*Hallen v. Runder*, and *Lee v. Gaskell*, cited GOODS, WARES, AND MERCHANDISE), nor are Growing Crops or standing Timber which are sold to be taken away (*Evans v. Roberts*, and *Marshall v. Green*, cited *ib.*). *Vf*, *McManus v. Cooke*, 56 L. J. Ch. 662; 35 Ch. D. 681; 56 L. T. 900; 35 W. R. 754; 51 J. P. 708; *Gray v. Smith*, 43 Ch. D. 208; 58 L. J. Ch. 803; 59 *ib.* 145; 38 W. R. 310. *Cp*, UNCERTAIN.

"Lands" or an Interest in Land within s. 3, *Lands C. C. Act*, 1845, includes an equitable interest (*Martin v. L. C. & D. Ry*, 35 L. J. Ch. 795; 1 Ch. 501; 14 W. R. 880; 14 L. T. 814); but not a contract for purchase (*Tasker v. Small*, 7 L. J. Ch. 19; 3 M. & Cr. 63; *et h*c cited in *judgmt* of Erle, C. J., *Bird v. G. E. Ry*, 34 L. J. C. P. 371; 13 W. R. 991; 19 C. B. N. S. 267). A right of shooting, by an agreement not under seal, is not an interest in land within the *Lands C. C. Act*, nor (probably) would it be so if granted by deed (*Bird v. G. E. Ry*, *sup*: *Se*, *Webber v. Lee*, *sup*). *V*. HEREDITAMENT. A quarterly tenant, after notice to quit duly given, has no "interest in land" entitling him to notice under s. 18, *Lands C. C. Act*, 1845 (*Syers v. Metrop Bd of Works*, 36 L. T. 277).

A right of support, or of light, is not an "Interest in Land" within s. 19, *Artisans and Labourers Dwellings Improvement Act*, 1875, 38 & 39 V. c. 36; but is an "EASEMENT" upon the servient tenement within s. 20 (*Barham v. Marris*, 45 L. T. 579; 52 L. J. Ch. 237; *Swainston v. Finn*, 52 L. J. Ch. 235).

A life interest in part of the proceeds of the sale of land is an "Interest" in land within s. 9, *Dower Act*, 1833, 3 & 4 W. 4, c. 105 (*Re Thomas*, 56 L. J. Ch. 9; 34 Ch. D. 166; 55 L. T. 629; following dictum of Jessel, M. R., *Lacey v. Hill*, 44 L. J. Ch. 215; L. R. 19 Eq. 346).

An Equitable interest in money secured by Mortgage of Realty, is an "Interest" in Land, within s. 1, *Fines and Recoveries Act*, 1833, 3 & 4 W. 4, c. 74, which by its s. 77 defines "ESTATE" (per Lindley and

Smith, L. J. J., diss. Kay, L. J., *Miller v. Collins*, 1896, 1 Ch. 573; 65 L. J. Ch. 353; 74 L. T. 122; 44 W. R. 466; citing *Re Watts*, sup, and over-ruling *Re Newton*, 23 Ch. D. 181).

A general Power of Appointment is an "Interest" in Land, within 3 & 4 W. 4, c. 104 (per Turner, L. J., *Fleming v. Buchanan*, 22 L. J. Ch. 886; 3 D. G. M. & G. 976).

"Interest in Land," s. 13, *Judgments Act*, 1838, 1 & 2 V. c. 110; *F. Thomas v. Cross*, 34 L. J. Ch. 580; 2 Dr. & Sm. 423.

In New South Wales Real Property Act, 1862, "Interest in Land" includes Equitable, as well as Legal, Interests (*Williams v. Papworth*, 1900, A. C. 563; 69 L. J. P. C. 129; 83 L. T. 184).

An Interest in Land is not to be confounded with a mere CHARGE on land (per Page Wood, L. J., *Franks v. Bollans*, 3 Ch. 718).

V. ESTATE AND INTEREST: REAL ESTATE.

**INTEREST IN LEASE.** — Sale of; V. LEASE.

**INTEREST IN POSSESSION.** — V. POSSESSION.

**INTEREST IN THE NATURE OF REAL ESTATE.** — V. REAL ESTATE.

**INTEREST OF MONEY.** — Sch D, Income Tax Act, 1853, 16 & 17 V. c. 34; V. YEARLY INTEREST.

**INTEREST OR CHARGE.** — "Interests and Charges having priority to the settlement," s. 20 (2), Settled Land Act, 1882; *F. Grainge v. Wilberforce*, 5 Times Rep. 436.

**INTERESTED.** — V. PERSON INTERESTED: PARTY INTERESTED.

**INTERESTED IN.** — "Interested in" an Award; *F. Carr v. Metrop Bd of Works*, 49 L. J. Ch. 272; 14 Ch. D. 807.

"Interested in" a Business or Bargain seems a little wider expression than "CONCERNED IN." But still it does not mean that which is "interesting to" the person from affection, curiosity, novelty, or the like; it means, having a direct pecuniary interest in the business or bargain, or, at least, some interest therein whereby the person's legal rights or liabilities are affected (*R. v. Bedfordshire*, 4 E. & B. 541, 542: *Smith v. Hancock*, inf: *Halford v. Kymer*, cited INTEREST).

A person is "interested in" a Contract if he have a mortgage thereon (*Hunnings v. Williamson*, 52 L. J. Q. B. 416; 11 Q. B. D. 533; 49 L. T. 361; 32 W. R. 267; 48 J. P. 132). So, of a shareholder in a Company who has a contract (*Dimes v. Grand Junction Canal Co*, 3 H. L. (Ca. 759). The principle of those cases applies as regards officers and servants of Local Authorities in respect of s. 193, P. H. Act, 1875 (*Todd v. Robinson*, 54 L. J. Q. B. 47; 14 Q. B. D. 739; 52 L. T. 120; 49 J. P. 278). An Officer of a Local Authority who lets rooms to the Board is

“concerned or interested in a Bargain or Contract” within that section (*Burgess v. Clark*, 14 Q. B. D. 735); and a Town Surveyor who takes out the quantities for a contract for which he is paid by the contractor, is “interested in” the contract (*Whiteley v. Barley*, 57 L. J. Q. B. 643; 21 Q. B. D. 154; 36 W. R. 823; 52 J. P. 595; *R. v. Rumsgate*, 58 L. J. Q. B. 352; *R. v. Whiteley*, 58 L. J. M. C. 161); *scus*, of the mere act of supplying materials to a Board Contractor (*Le Feuvre v. Lankester*, 23 L. J. Q. B. 254; 3 E. & B. 530; *Cp. Tomkins v. Jolliffe*, 51 J. P. 247), or selling a single small article, or completing a previous contract for the sale of land to a Board (*Woolley v. Kay*, 1 H. & N. 307; 25 L. J. Ex. 351; *See, Re Louth*, cited OFFICE).

*Seemle*, that a person may be “interested in” a contract made by him with a Municipal Corporation though he be unable to enforce it for want of the Corporation Seal (*R. v. Francis*, 18 Q. B. 526; 21 L. J. Q. B. 304; 16 J. P. 664).

Disqualification for being elected a Municipal Councillor if the candidate have “any Share or Interest in any Contract or Employment” with the Council, s. 12 (1c), 45 & 46 V. c. 50; *V. Cox v. Ambrose*, cited CONCERNED IN.

“Interested in the Sale or Lease of any lands,” clause 64, Sch 2, P. H. Act, 1875; *V. R. v. Gaskarth*, 49 L. J. Q. B. 509; 5 Q. B. D. 321.

Having sold his Business, A. agreed not to be “interested in” a like business within a specified time and area; within that time and area A’s wife (with her separate estate) carried on a like business (A. and his wife living together on the premises), and A. assisted his wife in negotiating the lease of the premises and also wrote a trade circular for her which he distributed and he introduced her manager to some of the wholesale merchants; held, that A. was not “interested in” that business and had not committed a breach of his agreement (*Smith v. Hancock*, 1894, 2 Ch. 377; 63 L. J. Ch. 477; 70 L. T. 578; 42 W. R. 465). So, a salaried servant is not “interested in” a business (*Glophir Diamond Co. v. Wood*, 71 L. J. Ch. 550).

*Cp.* CONCERNED IN; ENGAGE IN; PECUNIARY INTEREST. *V.* BARGAIN OR CONTRACT.

As regards Municipal Corporations, *V.* proviso to s. 28, 5 & 6 W. 4, c. 76, and s. 5, 32 & 33 V. c. 55.

“Interested in” Goods quā an Insurable Interest; *V.* INTEREST.

“OWNER and every other person interested in the Minerals.” s. 13, Metalliferous Mines Regn Act, 1872; *V. Devonshire v. Stokes*, 76 L. T. 424; 61 J. P. 406.

*V.* CARRY ON; PARTY INTERESTED; PERSON INTERESTED; ERECT.

**INTERFERE.** — “Every man’s business is liable to be ‘interfered with’ by the action of another and yet no action lies for such interference. Competition represents ‘interference,’ and yet it is in the interest

of the community that it should exist. A new invention utterly ousting an old trade would certainly 'interfere with' it. . . . Every organizer of a strike in order to obtain higher wages, 'interferes with' the employer carrying on his business; also every member of an employers' federation who persuades his co-employer to Lock-out his workmen must 'interfere with' those workmen. Yet I do not think it will be argued that an action can be maintained in either case on account of such interference" (per *Ld James, Allen v. Flood*, 1898, A. C. 179, 180; 67 L. J. Q. B. 212; 77 L. T. 717; 46 W. R. 258; 62 J. P. 595). *Cp*, MALICE.

"Interfere, or attempt to interfere, with" the management of a testator's estate, within a clause of Forfeiture; *V. ATTEMPT: INTERMEDDLE*.

"The words 'interfere with or affect any SETTLEMENT,' s. 19, M. W. P. Act, 1882, mean, invalidate or render inoperative any Settlement" (per *Lindley, L. J., Re Armstrong*, 57 L. J. Q. B. 557; 21 Q. B. D. 264; 36 W. R. 772; *Re Onslow*, 57 L. J. Ch. 941; 39 Ch. D. 622; 59 L. T. 308; 36 W. R. 883). *Cp*, CONFLICT.

"Interfere with, or prejudicially affect any Ancient Mill," s. 50, 11 & 12 V. c. 112; *V. R. v. Metrop Bd of Works*, cited PREJUDICIALLY.

*V. AFFECT: UNNECESSARY INTERFERENCE: MOLEST: INTERMEDDLE: ATTEMPT.*

**INTERIM.** — Does an Interim Curator Bonis (in Scotland) mean a Curator appointed until the Patient recovers his faculties, or until some more regular proceeding is instituted? *V. Dickson v. Graham*, 4 Bligh, N. S. 492.

*V. INJUNCTION.*

**INTERIOR.** — *V. INTERNAL.*

Interior Repairs; *V. REPAIR: TENANTABLE REPAIR.*

*Insrce of Cotton* "at and from Savannah to Barcelona, while there, and thence by any conveyances to the mills in the Interior, including Press Risk at port of shipment"; re-insrce "at and from Savannah to Barcelona, or as per original Policy, including the Risk of Craft to and from the vessel, but no *Interior Risk*"; the cotton, when awaiting shipment at Savannah, was destroyed by fire; held, that "*Interior Risk*" did not include "*Shore Risk*," and that the re-insurer was liable (per *Day, J., Hewitt v. United Mar Insrce*, *Times*, 2nd March 1892). *V. RISK.*

**INTERLINEATION.** — "*Interlineation*," s. 21, Wills Act, 1837, is not confined to something written between lines; it includes something put into one of the lines, but written *on* the line (per *Hannen, P., Bagshawe v. Cunning*, 52 J. P. 583). *V. APPARENT. Cp, OBLITERATE.*

**INTERLOCUTORY.** — *Interlocutory Costs; V. Thompson v. Parish*, 5 C. B. N. S. 685; 28 L. J. C. P. 153; 7 W. R. 210.

*Interlocutory Injunction; V. INJUNCTION.*

An Interlocutory *Judgment* determines the right to recover, but not the amount. *Vth*, R. 5, Ord. 13, R. S. C.

The following are Interlocutory *Orders* within R. 15, Ord. 58, R. S. C. : — Leave to sign immediate judgment under Ord. 14 (*Standard Discount Co v. La Grange*, 47 L. J. (C. P. 3; 3 C. P. D. 67); Order on Summons by Creditors and Claimants in an Administration or Winding-up (*Lewis v. Lewis*, 34 W. R. 40, 420; 54 L. T. 199; *Lewis v. Williams*, 31 Ch. D. 623; *Pheysey v. Pheysey*, 12 Ch. D. 305); Order to work out rights given by a Final Judgment (*Blakey v. Latham*, 13 Ch. D. 23); Order on a Case stated by an Arbitrator for his guidance prior to making Award (*Collins v. Paddington*, 49 L. J. Q. B. 264; 5 Q. B. D. 368; *See, Shubbrook v. Tufnell*, 9 Q. B. D. 621; 30 W. R. 740; *V. FINAL ORDER*); Findings on Interpleader Issues (*McAndrew v. Barker*, 47 L. J. Ch. 340; 7 Ch. D. 701; *McNair Co v. Audenshaw*, 1891, 2 Q. B. 502; 60 L. J. Q. B. 770; 65 L. T. 292); Findings by a judge of the Ch. D. on distinct issues of fact which at the commencement of the trial have been agreed shall be first tried, *secus* if issues not so settled (*Kreht v. Burrell*, 48 L. J. Ch. 252; 11 Ch. D. 146; *Lowe v. Lowe*, 48 L. J. Ch. 383; 10 Ch. D. 432); Order discharging rule *nisi* for Prohibition (*R. v. Local Board*, 26 S. J. 545); Opinion of Q. B. D. on Case stated from Quarter Sessions (*Peterborough v. Wilsthorpe*, 53 L. J. M. C. 33; 12 Q. B. D. 1).

*Note.* — As to what Interlocutory Orders are not appealable, *V. s. 1*, Jud. Act, 1894. On Appeals, “any doubt which may arise as to what Decrees, Orders, or Judgments, are Final, and what are Interlocutory, shall be determined by the Court of Appeal” (s. 12, Jud. Act, 1875).

“Interlocutory Order,” s. 25 (S), Jud. Act, 1873, is not confined to an Order made between writ and final judgment but, means an Order other than final judgment; and, therefore, a Receiver may be appointed under that section after final judgment (*Smith v. Cowell*, 6 Q. B. D. 75; 50 L. J. Q. B. 38; *Vth, Manchester and Liverpool Bank v. Parkinson*, 22 Q. B. D. 175).

*Cp*, FINAL JUDGMENT: FINAL ORDER.

**INTERMARRY.** — *V. KNOWINGLY.*

**INTERMEDDLE.** — A provision that “no Court shall intermeddle” with an inferior Court, does not oust the supervision of the High Court (*R. v. Moreley*, 2 Barr. 1041; *Vth, Re Heaphy*, 22 L. R. Ir. 513).

As to what is an “Intermeddling” by an Exor with his testator’s estate, so as to preclude him from being able to renounce probate: *V. Wms. Exs.* 228. The phrase includes an application for a debt, though unsuccessful (*Re Stevens*, 1897, 1 Ch. 422; 66 L. J. Ch. 155; 76 L. T. 18; 45 W. R. 284).

“Executor de son tort”; *V. EXECUTOR.*

“Intermeddle, or attempt to intermeddle” with the management of a testator’s estate, within a clause of Forfeiture; *V. ATTEMPT.*

*Cp.*, INTERFERE.

**INTERMEDIATE.** — “Intermediate EDUCATION,” quæ Welsh Intermediate Education Act, 1889, 52 & 53 V. c. 40, “means, a Course of Education which does not consist chiefly of Elementary Instruction in reading, writing, and arithmetic, but which includes instruction in Latin, Greek, the Welsh and English language and literature, Modern Languages, Mathematics, Natural and Applied Science, or in some of such studies, and generally in the higher branches of knowledge” (s. 17).

*Cp.*, TECHNICAL.

“Intermediate *Examination*” of an Articled Clerk to a Solr; Stat. Def., 40 & 41 V. c. 25, s. 4; 61 & 62 V. c. 17, s. 4.

**INTERMENT.** — Re-interment of human remains is not an “Interment” of bodies, within s. 44, 15 & 16 V. c. 85 (*Scuddling v. St. Pancras*, W. N. (89) 45, 120).

“Set apart for the purposes of Interment”; *V. SET APART.*

*V.* BURIAL.

**INTERNAL.** — Construction of a Lessee’s Covenant not to make “Internal Alterations”; *V. EXTERNAL ALTERATION.*

*Cp.*, INTERIOR.

**INTERNATIONAL.** — “The International Copyright Acts”; *V.* Sch 2, Short Titles Act, 1896.

**INTERPLEADER.** — “‘Enterpleader,’ is when in any cause a matter happeneth which of necessity ought to bee discussed before the principall cause it selfe bee determined” (*Termes de la Ley*).

Interpleader Issue; *V. ACTION.*

“Proceedings in Interpleader,” s. 120, Co. Co. Act, 1888; *V. Lumb v. Teal*, 58 L. J. Q. B. 298; 22 Q. B. D. 675.

*V. Ord.* 57, R. S. C., on *whc* Ann. Pr.: 7 Encyc. 18–30.

**INTERRUPTION.** — The “Interruption” which (under ss. 3 and 4, 2 & 3 W. 4, c. 71, and, *semble*, in ss. 1 and 2, *ib.*) defeats a Prescriptive Right (*V. PRESCRIPTION*), is an ADVERSE obstruction by the owner of the servient tenement, not a mere discontinuance of user by the claimant himself (*Carr v. Foster*, 3 Q. B. 581; 11 L. J. Q. B. 284; 2 G. & D. 753; 6 Jur. 837; *Cooper v. Straker*, 58 L. J. Ch. 26; 40 Ch. D. 21; *Smith v. Barter*, 1900, 2 Ch. 138; 69 L. J. Ch. 437; 82 L. T. 650; 48 W. R. 458; *Hollins v. Verney*, 53 L. J. Q. B. 430; 13 Q. B. D. 304; *Vf.* *Bennison v. Cartwright*, 33 L. J. Q. B. 137; 5 B. & S. 1; *Arkwright v. Gell*, 8 L. J. Ex. 201; 5 M. & W. 203; *Flight v. Thomas*, 8 Cl. & F. 231; 10 L. J. Ex. 529; Dart, 432): as to a Fluctuating Interruption, *V. Presland v. Bingham*, 41 Ch. D. 268. Taking a money



payment for permission to enjoy, is not an "Interruption" of the enjoyment of the easement (*Plasterers Co. v. Parish Clerks Co.*, 20 L. J. Ex. 362; 6 Ex. 630). *Note*: Under s. 4, no Interruption counts unless there be ACQUIESCENCE for a year; therefore, Actual Enjoyment of Light for 19 years and a fraction gives title if the right is promptly asserted at the expiration of the 20 years (*Flight v. Thomas*, sup.). But this inchoate right will not be protected by injunction before the lapse of the full 20 years (*Bridewell Hospital v. Ward*, 62 L. J. Ch. 270; *Battersea v. Comms of Sewers*, 1895, 2 Ch. 708; 65 L. J. Ch. 81; 73 L. T. 116; 44 W. R. 124). *V. ACTUALLY ENJOYED.*

"The words 'Interruption,' 'DISTURBANCE,' and the like, in the covenant for QUIET ENJOYMENT, mean lawful interruptions and disturbances only" (Elph. 483); but the covenant may be so worded as to extend to tortious acts, *e.g.* if against all "claiming or *pretending to claim*" (*Chaplin v. Southgate*, 10 Mod. 384; nom. *Southgate v. Chaplin*, 1 Comyn, 230: *V. Hunt v. Allen*, Winch, 25). *V. THROUGH.*

**INTERVAL.**—Where an "Interval" of so many days has to elapse between two events, *e.g.* two meetings, the days are *clear days*, and have to be reckoned exclusive of both the days between which the interval is to elapse (*Re Railway Sleepers Co.*, 54 L. J. Ch. 720; 29 Ch. D. 204); but, possibly, if the interval, in a Company's meetings, be less than 14 clear days, the defect does not concern Creditors (*Re Miller's Dale Co.*, 31 Ch. D. 211).

*V. BETWEEN: CLEAR: NOT LESS: WITHIN.*

**INTERVENTION.**—Plaintiffs (house agents) were instructed by Defendant to offer a house for sale, at a commission of 2½ per cent. on the purchase money if they found a purchaser, but to receive £1. 1s. 0d. only if sale made "without their Intervention." A., who had observed that the house was for sale, but had not then seen over it, called on Plaintiffs, and obtained a Card to View the house, and also other houses, the terms being written by Plaintiff's clerk on the back of the Card. A. went to the house, but thought the price asked (£2200) too high, and went away. A. had no further communication with Plaintiffs; but he subsequently renewed his negotiation with a friend of Defendant's, and became the purchaser for £1700; held, that there was evidence for a jury that A. had become the purchaser "through the Intervention" of the Plaintiffs, and the jury found that they were entitled to the commission. At the trial, the Judge put the following question to A., "Would you, if you had not gone to the Plaintiffs' office and got the Card, have purchased the house?" and, overruling an objection by Defendant's counsel, received this answer, "I should think not"; *Semble*, that the answer was properly received (*Mansell v. Clements*, L. R. 9 C. P. 139).

*Cp.* INTRODUCE: INTERFERE.

Intervention in Divorce proceedings (generally by the King's Proctor) is for, (1) COLLUSION, or (2) Suppression of a MATERIAL FACT (s. 7, 23 & 24 V. c. 144). *Vh*, Brown & Powles on Divorce: Dixon, Ib.

**INTESTATE.** — A person dying "Intestate," as that phrase is used in the Statute of Distribution, 22 & 23 Car. 2, c. 10, includes one dying *partially* intestate (*Twisden v. Twisden*, 9 Ves. 425); but as used in 53 & 54 V. c. 29, it means only one who is *wholly* intestate (*Re Twigg*, 1892, 1 Ch. 579; 61 L. J. Ch. 444; 66 L. T. 604). It is submitted that this latter is the primary meaning of the word, *i.e.* (as Cowel puts it) "one that makes no Will at all"; in *Hensloe's Case* (9 Rep. 40a) it was held to mean, one who makes no Will, or one who makes a Will but the Exors refuse to act.

Quà Intestate Moveable Succession (Scot) Act, 1855, 18 & 19 V. c. 23, "Intestate," means and includes, "every person deceased who has left undisposed of by Will the whole, *or any portion*, of the MOVEABLE Estate on which he might (if not subject to incapacity) have tested"; "Intestate Succession," means and includes, "succession in cases of partial, as well as of total, intestacy" (s. 9).

*V.* LEFT: NEXT OF KIN.

"Sole and Intestate"; *V.* UNMARRIED.

**INTIMIDATE.** — "Intimidation" is not a technical word having a necessary meaning in a bad sense (*O'Connell v. The Queen*, 11 Cl. & F. 155).

"Intimidate" is not a Word of Art as employed in s. 7 (1), Conspiracy, and Protection of Property Act, 1875, 38 & 39 V. c. 86; it there means, "such Intimidation as would justify a magistrate in binding over the intimidator to keep the peace towards the person intimidated; in other words, such Intimidation as implies a threat of personal violence" (*Connor v. Kent*, 1891, 2 Q. B. 545; 61 L. J. M. C. 9; 65 L. T. 573; 55 J. P. 485): "What is 'Intimidation'? Why, the using of language which causes another man to fear" (per Smith, J., *Judge v. Bennett*, inf). *Seemle*, to tell a Master that he should not employ a Workman not belonging to a Trades Union (*Shelbourne v. Oliver*, 30 J. P. 213), or to say to a Workman, "If you leave the town quietly we shall not hurt you" (*Hodgson v. Graveling*, 31 J. P. 115), or to threaten a picketing (*Judge v. Bennett*, 36 W. R. 103), would be such Intimidation; but there is no Intimidation in *bonâ fide*, and in answer to enquiries, communicating a Society rule as to the number of apprentices a Master might take (*Wood v. Bourron*, 7 B. & S. 931; 36 L. J. M. C. 5; L. R. 2 Q. B. 21; 15 L. T. 207; 31 J. P. 21: *Vf*, *Connor v. Kent*, sup). *Cp*, BESET: CONSPIRACY: DURESS: MALICE: THREAT.

Quà Prevention of Crime (Ir) Act, 1882, 45 & 46 V. c. 25, " 'Intimidation,' includes, *any word spoken, or act done*, in order to and calculated

to put any person in fear of any injury or danger to himself or to any member of his family or to any person in his employment, — or in fear of any injury to or loss of *his* property, business, or means of living" (s. 7).

Similar, but in important details different, is the def. quâ Criminal Law and Procedure (Ir) Act, 1887, 50 & 51 V. c. 20, viz., " 'Intimidation,' includes, ANY words or acts, intended and calculated to put any person in fear of any injury or danger to himself or to any member of his family or to any person in his employment, — or in fear of any injury to or loss of property, business, employment, or means of living" (s. 19). "Words," within that def. may be words published (*Whelan v. Fisher*, 26 L. R. Ir. 340).

As to Electoral Intimidation; *V. SPIRITUAL*: Leigh & Le Marchant, 4 ed., 30-38: 2 Rogers, 325.

*Vh*, 7 Encyc. 51-53. *Cp*, *BOYCOTT*: *MOLEST*.

**INTO.** — The employment of a Humber pilot is not compulsory upon a vessel which is being towed from one dock to another in the port of Hull, as it is not, under such circumstances, passing "into or out of" the port within s. 22, Hull Pilot Act, 2 & 3 W. 4, c. cv., nor is it "bound to or from" the port within s. 89, 1b. (*The Maria*, L. R. 1 A. & E. 358).

Discharge of Cargo "into Lighters"; *V. LIGHTER*.

*V. THROUGH*.

**INTOXICATING LIQUOR.** — Quâ the Licensing Act, 1872. " 'Intoxicating Liquor,' means, SPIRITS, WINE, BEER, PORTER, CIDER, Perry, and SWEETS, and any fermented, distilled, or spirituous, liquor which cannot, according to any law for the time being in force, be legally sold without a license from the Commrs of Inland Revenue" (ss. 74, 77); but throughout the Act the phrase should be taken distributively so as in each case to mean that description of liquor which the dealer is licensed to sell (per May, C. J., *Dowling v. O'Loughlin*, Ir. Rep. 11 C. L. 488).

*V. SPIRITUOUS LIQUOR*.

**INTRODUCE.** — To merely introduce a person who becomes a Customer, is not to "introduce *Business*," so as to earn an agreed commission: "In order to found a legal claim for commission, there must not only be a Causal, there must also be a Contractual, relation between the introduction and the ultimate transaction of sale" (per Ld Watson, *Toulmin v. Millar*, 58 L. T. 96). *Vf*, *Neck v. Andrews*, 1 Times Rep. 607: *INTERVENTION*. *Cp*, *PROCURE*, last par.

Introduce a *Law*; *V. ESTABLISH*.

**INTRUDER.** — *V. DEFORCEOR*.

**INTRUSION.**—“‘Intrusion’ first properly is, when the ancestor died seised of any estate of inheritance expectant upon an estate for life, and then tenant for life dieth, and between the death and the entry of the heire an estranger doth interpose himselfe and intrude.

“Secondly, he that entreth upon any of the king’s demesnes, and taketh the profits, is said to intrude upon the king’s possession.

“Thirdly, when the heire in ward entereth at his full age without satisfaction for his marriage, the writ saith, *quòd intrusit*” (Co. Litt. 277 a, b, *why* for the difference between ABATE, INTRUSION, DEFORCEMENT, USURPATION, and PURPRESTURE). *Vf*, 3 Bl. Com. 167-174: 7 Encyc. 56: ENTRY: OUSTER.

*Seemble*, to “intrude” into a Parish, does not connote going to dwell there (*R. v. Willats*, 7 Q. B. 516; 14 L. J. M. C. 157).

**INTRUSTED.**—Factors Act, 6 G. 4, c. 94, s. 2: *V. Phillips v. Huth*, 10 L. J. Ex. 65; 6 M. & W. 572: *Hatfield v. Phillips*, 11 L. J. Ex. 425; 9 M. & W. 647; 14 Ib. 665; 12 Cl. & F. 343: *Fuentes v. Montis*, 38 L. J. C. P. 95; L. R. 4 C. P. 93. *Vth*, s. 4, 5 & 6 V. c. 39: *Sheppard v. Union Bank*, 7 H. & N. 661; 31 L. J. Ex. 154; 10 W. R. 299; 5 L. T. 757; 1 Sm. L. C. 822. *Note*: The Factors Act, 1889, s. 2, omits the phrase “intrusted with.”

A person is not “intrusted with” a thing if all that he has is access to it (*R. v. Bakewell*, Russ. & Ry. 35).

“Person anyways intrusted” by or for a Papist, and incapable of nominating to a BENEFICE, 13 Anne, c. 13, s. 1; *V. Böyer v. Norwich*, Bp, 1892, A. C. 417; 61 L. J. P. C. 46; 67 L. T. 30; 56 J. P. 692.

“Superintendence entrusted”; *V. SUPERINTENDENCE.*

*V. AGENT INTRUSTED: IN TRUST.*

**INVALID.**—*V. INSUFFICIENT.*

**INVENTED.**—Where a person states that he has “invented” an article, that word implies the statement by him that the invention was new and that he was its FIRST INVENTOR (*Bowman v. Taylor*, 2 A. & E. 278; 4 L. J. K. B. 58; *Smith v. Scott*, 6 C. B. N. S. 771; 28 L. J. C. P. 325).

“Invented Word”; *V. FANCY WORD.*

**INVENTION.**—Quà the Patent Acts “‘Invention,’ means, any manner of NEW MANUFACTURE the subject of Letters Patent” (s. 46, 46 & 47 V. c. 57). *V. NATURE.*

**INVENTOR.**—*V. FIRST INVENTOR.*

**INVENTORY.**—An “Inventory” is a detailed list of goods, enumerating them with reasonable particularity according to the well under-

stood usage of business men; and the word is so used in s. 4, Bills of Sale Act, 1882 (*Witt v. Banner*, 20 Q. B. D. 114; 57 L. J. Q. B. 141; 58 L. T. 34; 36 W. R. 115; 3 Times Rep. 759; *Carpenter v. Deen*, 23 Q. B. D. 566; 33 S. J. 590; 5 Times Rep. 617). *V. SPECIFIC.*

In a Bill of Sale under the heading "Study" was this item, "1800 volumes of books, *as per catalogue*"; held, that the Catalogue was not a "Schedule or Inventory" requiring registration under s. 10 (2), Bills of Sale Act, 1878 (*Davidson v. Carlton Bank*, 1893, 1 Q. B. 82; 62 L. J. Q. B. 111; 67 L. T. 641; 41 W. R. 132).

"Schedule, Inventory, or Catalogue," 55 G. 3, c. 184; *V. Strutt v. Robinson*, 3 B. & Ad. 395.

*V. Termes de la Ley, Inventory.*

**INVEST.** — In a Will, a Trust for Sale may be implied from a trust "to invest" (*Affleck v. James*, 17 Sim. 121). *V. THINK FIT.*

*V. ACCUMULATION: Cp, DIVEST: VESTURE.*

**INVESTED.** — A Bequest of the income of a certain sum "invested by me" in a particular way, is *SPECIFIC* (*Kermode v. Macdonald*, 35 L. J. Ch. 358; 37 Ib. 879; L. R. 1 Eq. 457; 3 Ch. 584). *V. Re Pratt*, 1894, 1 Ch. 491; 63 L. J. Ch. 487, and cases there cited.

**INVESTIGATING.** — If a purchaser's solicitor has in any way inquired into the vendor's title, he is entitled to the Scale Fee for "investigating TITLE" provided by Sch 1, Part 1, Solrs Rem Ord; and this though no Abstract or Evidence of Title be delivered by the vendor, or though "the investigation took only 5 minutes instead of 10 days" (per Kay, J., *Ex p. London Corp*, 56 L. J. Ch. 308; 34 Ch. D. 452; 35 W. R. 211; 56 L. T. 13; *Ex p. Ferguson to Buckley*, 21 L. R. Ir. 396, 397).

*Cp*, "Deducing Title"; *V. DEDUCE.*

*Note*, on Conditions restricting Investigation of Title: — A Condition of Sale which provides that, "No Requisition or Enquiry" (which, in such a connection, are synonymous terms) shall be made as to the Title prior to a specified date, or to the Title at all, will not prevent the purchaser from ascertaining a defect aliunde; and, if it be substantial, it will entitle him to cancel the contract, and (if there be a breach of contract, *V. DEPOSIT*) he may recover the deposit (*Waddell v. Wolfe*, 43 L. J. Q. B. 138; L. R. 9 Q. B. 515); so, of a Condition (on sale of Leaseholds) that the vendor "shall not be obliged to PRODUCE the lessor's title" (*Shepherd v. Keatley*, 3 L. J. Ex. 288; 1 Cr. M. & R. 117); *Secus*, if the contract provides that the Title "will not be shown and shall not be inquired into" (*Hume v. Bentley*, 21 L. J. Ch. 760; 5 D. G. & S. 520), or that it shall not be "required, investigated, or objected to" (*Re Marsh*, 64 L. J. Ch. 255). In *the North*, J., dissented from the dictum of Wood, V. C., in *Darlington v. Hamilton* (23 L. J. Ch.

1000; Kay, 558) that "whatever may be the terms of the Condition of Sale, if the purchaser obtain information aliunde that the Title of the vendor is not clear and distinct, he has a right to insist upon the objection"; but the decision in *Re Marsh* was on a V. & P. summons for return of deposit, and North, J., pointed out that the Court was not being asked by the vendor for specific performance: *Vf, Scott v. Alvarez*, 1895, 2 Ch. 603; 64 L. J. Ch. 376, 821; 73 L. T. 43; 43 W. R. 694; Dart, 163-176; Fry, 593; Webster on Conditions of Sale, 2 ed., 208.  
**V. REQUISITION: BAD.**

**INVESTING.** — "Investing" member of a Building Society; *V. Re Norwich and Norfolk Bg Socy*, 45 L. J. Ch. 785.

**INVESTMENT.** — "In the like Mode of Investment as the same shall be at my decease"; *V. Re Grindley*, cited REASONABLY: SAME.

**V. ONE INVESTMENT: PERMANENT: PROPER INVESTMENT: SECURITIES.**

**INVESTMENTS.** — Foreign Government Bonds will pass under a bequest of "Investments" (*Arnould v. Grinstead*, 21 W. R. 155).

As to what are Trustee Investments, *V. Part 1, Trustee Act, 1893*, on *whv, Re Owthwaite*, cited AUTHORIZE: R. 17, Ord. 22, R. S. C.

Quà Scotland; *V. 47 & 48 V. c. 63; 61 & 62 V. c. 42.*

**V. ISLE OF MAN.**

**INVOICE PRICE.** — Where an Agent's Commission is to be calculated on "Invoice Prices," that means, the amounts that ought to go into the invoices; and though the invoices themselves (when unchallenged) are the best evidence of those amounts, yet their production is not essential (*Plank v. Gavila*, 3 C. B. N. S. 807; 6 W. R. 210; 30 L. T. O. S. 287).

**INVOICE VALUE.** — In a Marine Insrce "Invoice Value" is, *semble*, synonymous with, SHIPPING VALUE (per Blackburn, J., *Ander-son v. Morice*, L. R. 10 C. P. 614).

**INVOLVE.** — A thing is only said to be "involved" in another when it is a necessary resultant of that other. Therefore, actual injury sustained by a boy under 13 through a man attempting to commit an unnatural offence with him, does not bring the case within s. 15 (1), Prevention of Cruelty to Children Act, 1894, 57 & 58 V. c. 41 (which allows unsworn evidence of a child of tender years); for this offence is not specifically mentioned, and it does not come within the general words of the Schedule to the Act because it is not one "involving Bodily Injury," it being very common to have an Indecent Assault without any bodily injury (*R. v. Beer*, 62 J. P. 120).

"Questions involved in the Cause or Matter," R. 11, Ord. 16, R. S. C.; *V. Montgomery v. Foy*, 1895, 2 Q. B. 321; 65 L. J. Q. B. 18; 73 L. T. 12; 43 W. R. 691.

Land "involved in Partnership Dealings," so as to become part of the partnership ASSETS; *V. Davies v. Games*, 28 W. R. 16; 12 Ch. D. 813; *Jackson v. Jackson*, 7 Ves. 535; 9 Ib. 591; *Waterer v. Waterer*, L. R. 15 Eq. 402; 21 W. R. 508; on *whler*, *Martugh v. Costello*, 7 L. R. Ir. 428; *Vf, Morris v. Barrett*, 3 Y. & J. 384; *Houghton v. Houghton*, 11 Sim. 491; 10 L. J. Ch. 310.

**INWARD-BOUND.** — Quà Post Office (Duties) Act, 1810, 3 & 4 V. c. 96, " 'Inward-Bound,' shall be held to include, Vessels bound as well to any Port in the UNITED KINGDOM, as to any Port in any of Her Majesty's Colonies; and 'Outward-Bound,' shall be held to include, Vessels bound as well *from* any Port in the United Kingdom as from any Port in Her Majesty's Colonies" (s. 71).

**INWARDS.** — "Trading Inwards"; *V. TRADING.*

*V. OUTWARDS.*

**I. O. U.** — An I. O. U. is evidence of an Account Stated (*V. ACCOUNT*), but not of money lent, goods sold, &c (*Fesenmayer v. Adcock*, 16 M. & W. 449). It is merely an ACKNOWLEDGMENT of a Debt; it is neither a Promissory Note nor a Receipt (*Fisher v. Leslie*, 1 Esp. 427).

An I. O. U. not given in acknowledgment of a debt due, nor as the result of an account stated between the parties, is not evidence under a count on an Account Stated (*Lemere v. Elliott*, 30 L. J. Ex. 350; 6 H. & N. 656).

**IRELAND.** — *V. UNITED KINGDOM.*

**IRISH FUNDED PROPERTY.** — Government Debentures, held not to pass under a bequest of "Irish Funded Property" (*Ridge v. Newton*, 4 Ir. Eq. Rep. 389; 2 Dr. & War. 239; 1 Con. & L. 381).

**IRISH VALUATION ACTS.** — *V. s. 24*, Interp Act, 1889.

**IRON.** — In a Marine Insurance was this clause, — "Warranted no Iron or ore or phosphate cargoes, exceeding the net register tonnage, across the Atlantic"; held, that Steel was included in the word "Iron" (*Hart v. Standard Mar Insrce*, 22 Q. B. D. 499; 58 L. J. Q. B. 284; 37 W. R. 366; 60 L. T. 619).

The waste from Iron-works called Tap Cinders is not Stores or other Effects, Iron or Ironstone, Slack, or Cannel, nor is it within a Lease demising "all Mines, Seams, Veins, and BEDS, as well opened as unopened, of all other Minerals and Clay lying and being within and under the lands" (*Boileau v. Heath*, 1898, 2 Ch. 301; 67 L. J. Ch. 529; 78 L. T. 622; 46 W. R. 602).

"Iron Mills"; *V. NON-TEXTILE FACTORIES.*

**IRRECOVERABLE.** — *V. RECOVERABLE.*

**IRREGULARITY.** — *V. Er p. Johnson*, 53 L. J. Ch. 309; 25 Ch. D. 112; *Davies v. Bolton*, 1894, 3 Ch. 678; 63 L. J. Ch. 743; 71 L. T. 336; 43 W. R. 171; ERROR: FORMAL: INFORMALITY.

**IRREPARABLE.** — Irreparable Injury may be said to be done to a Trading Co, *e.g.* a Railway, if it entail an “expenditure of money which it will be impossible, perhaps, ever to get back again” (per Cranworth, V. C., *Beman v. Rufford*, 1 Sim. N. S. 571).

**IRRESISTIBLE.** — Irresistible Inference, *V. JUDICIAL PERSUASION.* *Cp.*, Necessary Implication, sub NECESSARY.

“‘*Vis Major*,’ which we translate ‘Irresistible Violence’” (per Campbell, C. J., *Walker v. Guarantee Assn*, 18 Q. B. 286). *Cp.*, ACT OF GOD.

**IRRESPONSIBLE.** — “In their uncontrolled and irresponsible Discretion”; *V. DISCRETION.*

**IRREVOCABLE.** — A SUBMISSION “irrevocable, except by leave,” and to “have the same effect in all respects as if it had been made an Order of Court,” s. 1, Arb Act, 1889, means, that the power of the Arbitrators when once appointed cannot be revoked; but the section does not give the Court power to order a party to appoint his arbitrator, for such a power would not, prior to the Act, have followed on the submission being made a Rule of Court (*Re Smith and Nelson*, 59 L. J. Q. B. 533; 25 Q. B. D. 545; 39 W. R. 117; 63 L. T. 475); nor can a Commission for examining witnesses abroad be ordered (*Re Shaw and Ronaldson*, 1892, 1 Q. B. 91; 61 L. J. Q. B. 141).

**IS.** — “Is” with an active participle, generally connotes present time, *e.g.* “Is proceeding”; *V. PROCEEDING*, at end: *Vf*, *Fisher v. Ford*, 12 A. & E. 654.

But with a perfect participle, “is” sometimes connotes future time. Thus, the disqualifications, imposed by s. 32, Bankry Act, 1883, where a debtor “is adjudged bankrupt,” apply only to persons adjudged bankrupt under that Act (*Bourke v. Nutt*, 1894, 1 Q. B. 725; 63 L. J. Q. B. 497; 70 L. T. 639; 42 W. R. 388: *Vf*, ARE). But “where . . . houses . . . are connected with a Public Sewer,” s. 19, P. H. Act, 1890, was held to connote an existing state of things, giving the section a retrospective operation (*Eastbourne v. Bradford*, cited DRAIN).

“Is of FULL AGE,” s. 6, Rep People Act, 1867, means, being of full age at or before the end of the year of qualification (*Hargreaves v. Hopper*, 45 L. J. C. P. 105; 1 C. P. D. 195). In this connection “is” was read “was.”

*V. BEING: HAS BEEN.*

**ISLAND.** — *V. ISLE.*

Islands arising *de novo* in the King’s Seas; *V. INCREASE.*



"Islands" of Scotland; *V. HIGHLANDS.*

*V. BRITISH ISLANDS.*

**ISLE.** — "By the name of an isle, *insula*, many manors, lands and tenements may passe" (Co. Litt. 5 a: *Vf. Touch.* 92). *V. ISLAND.*

**ISLE OF MAN.** — A Trustee's power of Investment in Securities of the Isle of Man, or of the Government of a COLONY, includes securities under the Isle of Man Loans Act, 1880, 43 & 44 V. c. 8 (s. 5 (4), Trustee Act, 1893).

*V. ENGLAND:* "Foreign Dominion," sub FOREIGN.

**ISOLATED.** — "Isolated Parts of Counties," s. 26, Parliamentary Boundaries Act, 1832, 2 & 3 W. 4, c. 64; *V. R. v. Brecon*, 15 Q. B. 813; 19 L. J. M. C. 203.

**ISSUE.** — This is a word of flexible meaning; —

1. Its legal meaning is, "DESCENDANTS" *in infinitum* (*Holland v. Fisher*, Orl. Bridg. 214; *Warman v. Seaman*, Poll. 117; *Davenport v. Hanbury*, 3 Ves. 259; per Ld Watson, *Hickling v. Fair*, 68 L. J. P. C. 15; 1899, A. C. 15):

2. Its popular meaning is, "CHILDREN" (per Jessel. M. R., *Morgan v. Thomas*, 51 L. J. Q. B. 556; 9 Q. B. D. 643; and per James and Brett, L. J.J., *Rolph v. Carrick*, 48 L. J. Ch. 807, 808, 809; 11 Ch. D. 873); and (like "heirs," *Powell v. Boggis*, cited HEIR) it may be used in different clauses of the same instrument in different senses (*Carter v. Bentall*, 9 L. J. Ch. 303; 2 Bea. 551, on *wher*, *Re Hopkins*, 9 Ch. D. 131; 47 L. J. Ch. 672; *Re Warren*, 53 L. J. Ch. 787; 26 Ch. D. 208; *Se, Ruldgey v. Munkittrick*, 1 Dr. & War. 84; *Rhodes v. Rhodes*, 27 Bea. 413; *Re Harrison*, 3 L. R. Ir. 114).

In its popular meaning it is a Designation of Persons; whilst in its technical import it is generally a word of LIMITATION.

In devises of *Real Estate*, "Issue" is a word of limitation which when uncontrolled by the context, is equivalent to, but more flexible than (*Doe d. Cooper v. Collis*, 4 T. R. 300; *Lees v. Mosley*, 5 L. J. Ex. Eq. 78; 1 Y. & C. 589) "HEIRS OF THE BODY"; so that a devise to A. "and his Issue" will generally give to A. an Estate Tail (*Roddy v. Fitzgerald*, 6 H. L. Ca. 823; *Bowen v. Lewis*, 54 L. J. Q. B. 55; 9 App. Ca. 890; *Pelham-Clinton v. Newcastle*, 49 W. R. 12; 69 L. J. Ch. 875; *Sandes v. Cooke*, 21 L. R. Ir. 445; *Woodhouse v. Herrick*, 24 L. J. Ch. 649; 1 K. & J. 352; *Simmons v. Simmons*, 8 Sim. 22; 5 L. J. Ch. 198; *Vf*, 2 Jarm. 414 *et seq*: *Williams v. Williams*, 33 W. R. 118; W. N. (84) 198; *Whitelaw v. Whitelaw*, 5 L. R. Ir. 120). Indeed, it has been said that a devise to A. "and his Issue" is the aptest way to describe an Estate Tail (per Ld Thurlow, *Hockley v. Mawbey*, 1 Ves. 149).

It is, however, an old doctrine that, by a context, "Issue" may be

taken as a word of PURCHASE, and may denote a particular person or persons (*Luddington v. Kime*, 1 Raym. Ld, 205).

And where there is a manifest indication in a Will, made since 31st Dec 1837, that the Testator intended A. to take a life interest in Realty, a subsequent limitation to the "Issue" of A. would be construed as words of Purchase (*Rotheram v. Rotheram*, 13 L. R. Ir. 442, distinguishing *Roddy v. Fitzgerald*, sup), and the "Issue" would be entitled to take subject to the life interest, and the word would frequently, if not generally, be construed as "Children" (*Ralph v. Carrick*, 11 Ch. D. 882, 885: *Foster v. Hayes*, 24 L. J. Q. B. 161; 4 E. & B. 717: *Morgan v. Thomas*, 51 L. J. Q. B. 289, 556; 9 Q. B. D. 643: *Ithle* for a collection of the cases on Wills made prior to 1838 showing the care the Courts took to construe a devise, where "issue" mentioned, as an Entail when the words superadded were insufficient to carry the Fee; — a reason which, as was observed by the M. R. in *Morgan v. Thomas*, does not exist as regards Wills made since the Wills Act, 1837).

In a gift to the "Issue" of an existing marriage, *e.g.* to wife and "the Issue of our marriage," there is not such a context as will take the gift out of the general rule whereby "Issue" includes all Lineal Descendants, and, in the case of Realty, gives an Entail to the person whose issue is spoken of (*Walsh v. Johnston*, 1899, 1 I. R. 501). *Cp.* *Harris v. Loftus*, inf.

A direction that "Issue" shall take a VESTED Interest at a certain period, is a context inconsistent with "Issue" being a word of Limitation, and the Issue take as Purchasers (*Re Wilmot*, 76 L. T. 415; 45 W. R. 492).

It has been said that a bequest of *Personal Property* to "A. and his Issue" will give to A. the absolute interest (Wms. Exs. 971). But the rule would seem to be better stated thus: — "The rule that 'Issue' is *primá facie* a word of limitation does not extend to bequests of personal estate (*Knight v. Ellis*, 2 Bro. C. C. 570: *Ex p. Wynch*, 5 D. G. M. & G. 188; 1 Sm. & G. 427; 22 L. J. Ch. 750; 23 Ib. 930). If it be clear that the testator intended to make such a disposition of personal estate as would in the case of real estate amount to an estate tail, the first taker will take the absolute interest; but it is not the case that every expression which would create an estate tail in real estate, will be held to indicate the same intention in the case of personal estate; . . . and slight circumstances would probably be held to show an intention that the issue should take in remainder after a life interest in the parent" (Hawk. 197, 198: *V.* this point elaborately treated, 2 Jarm. 567-581). *Cp.* CHILDREN.

But the question frequently occurs in cases where "Issue" are entitled in remainder under words of PURCHASE, whether the word means "Descendants" according to its legal rendering and so includes grandchildren and remoter issue, or whether it should be confined to children

in the first generation. Upon this branch of the meaning of the word "Issue," it is conceived that there could be no difference between a devise of real, and a bequest of personal, estate; and then we come to this proposition, — When the phrase "Issue" is employed in a Will (and *a fortiori* in a Deed, *Harrison v. Symons*, 14 W. R. 959) as a word of Purchase or as a description of a Class, it will, in its ordinary import, comprise all those who can claim as Descendants of the person whose issue are indicated, *i.e.* grandchildren and great-grandchildren and so on, as well as children; and in order to restrain this primary legal sense of the word, a clear intention to do so must appear upon the instrument (Wms. Exs. 973, and cases there cited). The rule hereon has also been thus stated, — "The word *Issue*, though its popular sense is said to be 'Children,' is, technically and when not restrained by the context, co-extensive and synonymous with *Descendants*, comprehending objects of every degree" (2 Jarm. 101).

"But it is, I think, settled by the case of *Pruen v. Osborne* (11 Sim. 132), that as a general rule, when you find a gift to a person, and then a gift to the issue of that person, such issue to take only the *parent's* share, the word 'Issue' is cut down to mean 'Children'" (per James, L. J. *Ralph v. Carrick*, 48 L. J. Ch. 807; 11 Ch. D. 873: the leading case on this point is *Sibley v. Perry*, 7 Ves. 522, but of that case Brett, L. J., said, in *Ralph v. Carrick*, "I should have no objection to be present at the funeral of *Sibley v. Perry*," 48 L. J. Ch. 809); and a similar construction will obtain if a similar collocation of Parent and Issue occur in a Deed (*Barraclough v. Shillito*, 53 L. J. Ch. 841). But where there is a gift over, the meaning of "Issue," even when collocated with "Parent," will frequently be widened to mean "Descendants" (*Ross v. Ross*, 20 Bea. 645; *Ralph v. Carrick*, *sup*); but so that grandchildren will not take in competition with children, or great-grandchildren with grandchildren (*Robinson v. Sykes*, 23 Bea. 40; 28 L. T. O. S. 114).

A further rule has, *semble*, been laid down in Ireland that, where the occasion of the instrument in which "Issue" occurs is the making a MARRIAGE SETTLEMENT, *e.g.* "Issue of intended marriage," that, in itself and when not otherwise controlled, is sufficient to restrict its meaning to the Children of such marriage (*Harris v. Loftus*, 1899, 1 I. R. 499, stating and somewhat reluctantly following, *Re Dixon*, Ir. Rep. 4 Eq. 1, and *Re Denis*, Ir. Rep. 10 Eq. 81; *See, Hobbs v. Tuthill*, 1895, 1 I. R. 115). *Cp. Walsh v. Johnston*, *sup*.

If the construction of "Issue" should be "Descendants" distributively, they will take *per capita* and, failing words of severance, as joint tenants (*Davenport v. Hanbury*, 3 Ves. 258; *Hobgen v. Neale*, 40 L. J. Ch. 36; L. R. 11 Eq. 48; *Hume v. Lloyd*, 47 L. J. Ch. 775; 26 W. R. 828; 2 Jarm. 101; Wms. Exs. 1384-1386, *n* (a); *Sr. Stonor v. Curcen*, 5 Sim. 264, where, on a context, "Issue" was read as, "Children and Descendants of Children, per Stirpes").

. In the following cases "Issue" was read as "Children":—*Sibley v. Perry*, sup: *Pruen v. Osborne*, sup: *Barracrough v. Shillito*, sup: *Re Birks*, 1900, 1 Ch. 417; 69 L. J. Ch. 124: *Re Walker*, cited CHILD: *Re Merricks*, 35 L. J. Ch. 418; L. R. 1 Eq. 551: *Re Hopkins*, sup: *Heasman v. Pearse*, 41 L. J. Ch. 705; 7 Ch. 275: *Martin v. Holgate*, 35 L. J. Ch. 789; L. R. 1 H. L. 175: *Bryden v. Willett*, L. R. 7 Eq. 472: *Re Drewcatt*, W. N. (68) 106: *Re Hall*, W. N. (71) 136: *Grove v. Marshall*, W. N. (72) 43: *Buckingham v. Sellick*, W. N. (72) 136: *Morgan v. Thomas*, sup: *Re Hopkin*, 47 L. J. Ch. 672; 9 Ch. D. 131: *Re Smith*, 58 L. J. Ch. 661: *Re Mullis*, 27 S. J. 585: *Fairfield v. Bushell*, 32 Bea. 158: *Lanphier v. Buck*, 34 L. J. Ch. 650; 2 Dr. & Sm. 484: *Marshall v. Baker*, 31 Bea. 608: *Maynard v. Wright*, 26 Bea. 285: *Smith v. Horsfall*, 25 Bea. 628: *Tatham v. Vernon*, 9 W. R. 822; 4 L. T. 531: *Pope v. Pope*, 21 L. J. Ch. 276; 14 Bea. 591: *Slater v. Dangerfield*, 16 L. J. Ex. 51; 15 M. & W. 263: *Swift v. Swift*, 8 Sim. 168; 5 L. J. Ch. 376: *Cursham v. Newland*, 7 L. J. Ex. 212; 4 M. & W. 101: *Dulzell v. Welch*, 2 Sim. 319: *Doe d. Comberbach v. Perryn*, 3 T. R. 484: *R. v. Stafford*, 7 East, 527: *Smyth v. Power*, Ir. Rep. 10 Eq. 192: *Foster v. Wybrants*, 11 Ib. 40: *Re Handcock*, 23 L. R. Ir. 34.

In the following cases "Issue" was read as "Descendants":—*Leigh v. Norbury*, 13 Ves. 344: *Clay v. Pennington*, 7 Sim. 370; 6 L. J. Ch. 183: *Louis v. Louis*, 7 L. T. 666: *Hobgen v. Neale*, sup: *Re Warren*, 53 L. J. Ch. 787; 26 Ch. D. 208: *Waldron v. Boulter*, 22 Bea. 284.

*Vf, McGregor v. McGregor*, 1 D. G. F. & J. 63: 2 Jarm. 101-107: Wms. Exs. 971: *Watson Eq.* 1391-5: *Hawk.* 189-198: Prior on Issue: *Chitty Eq. Ind.* 7719-7726, 7907.

"Issue," *primâ facie*, meads, Legitimate Issue: *V. RELATIONS.* In *Re Walker* (cited CHILD) Illegitimate Issue were held to be included in "Issue."

*V. CHILDREN: OFFSPRING: DESCENDANTS: LAWFUL ISSUE: HEIR: DIE WITHOUT ISSUE: OTHER THE ISSUE.*

Issue "living"; *V. Re Burrows*, cited LIVING.

"Issue Male," means Sons (*Fitzherbert v. Heathcote*, cited 4 Ves. 794) or Sons of Sons (*Lumbert v. Peyton*, 8 H. L. Ca. 1): "Issue Female," means Daughters (*Sussex v. Temple*, 1 Raym. Ld. 310). Note: In *Blackwell v. Hale* (1 Ir. C. L. Rep. 612), "Issue Male" was read "Heirs Male." *V. MALE: MALE DESCENDANTS: MALE LINE.*

*V. INCREASE: GENERAL ISSUE.*

**To ISSUE.**—A power to a Co "to issue" Securities, may be exercised by creating an Oral security; for "to issue" applies to words spoken as well as to words written (per Williams, J., *Re Tilbury Cement Co.* 62 L. J. Ch. 814; 69 L. T. 495); but in that case the power in the Memorandum was aided by a clause in the Articles.

*V. ISSUED.*

**ISSUE of Bank Notes.** — The word "Issue" (of Bank Notes) "means, the delivery of the Notes to persons who are willing to receive them in exchange for value in gold, in bills, or otherwise, the person who delivers them being prepared to take them up when they are presented for payment" (per Stephen, J., delivering judgment of the Court, *A-G. v. Birkbeck*, 53 L. J. Q. B. 382; 12 Q. B. D. 605). *Vf*, ISSUED.

**ISSUE of Bills of Ex. or Promy. Notes.** — "Issue" of a Bill or Note, "means, the first delivery of a Bill or Note, complete in form, to a person who takes it as a HOLDER" (s. 2, Bills of Ex. Act, 1882). *Vth*, *Scholfield v. Londesborough*, cited ACCEPTANCE: *Clutton v. Attborough*, cited HOLDER IN DUE COURSE.

**ISSUE of Debentures.** — To "issue" a Debenture, s. 17, Bills of Sale Act, 1882, means, its "delivery over by the Company to the person who has the charge" (per Chitty, J., *Lery v. Abercorris Co*, cited DEBENTURE). *V*, ISSUED.

**ISSUE of a Dispute.** — *V*, LEGAL ISSUE.

**ISSUE of Fact.** — *V*, JOINDER: TRIAL: GENERAL ISSUE.

**ISSUE of Law.** — An Issue of Law in an action arises "where either side perceives any material objection in point of law upon which he may rest his case" (3 Bl. Com. 314); it was formerly raised by a DEMURRER (*Ib.*), but now in England, "no Demurrer shall be allowed" (R. 1, Ord. 25, R. S. C.), and the Order cited establishes Proceedings in lieu of Demurrer.

**ISSUE of Orders.** — By s. 161, Metrop Man. Act, 1855, Overseers, to whom an Order of a District Board of Works "is issued," have to levy the amount mentioned therein. "The *issuing* of the Order is not effected by sending the precept by the Clerk of the Board to the Overseers, but by the putting of the hands and seal of the Board to the document" (per Stephen, J., *Glen v. Fulham*, 54 L. J. M. C. 12; 14 Q. B. D. 328; 51 L. T. 856; 33 W. R. 165; 49 J. P. 519; but *cp* judgment of Day, J., *Ib.*).

"Date and Issuing" of a Fiat in Bankry, 2 & 3 V. c. 29, meant, the time of its delivery out as an operative instrument (*Pewtress v. Annan*, 9 Dowl. 828); but "sued forth," 6 G. 4, c. 16, s. 6, meant, the time the application was made and the docket struck (*Re Rowe*, 1 Dea. 68).

**ISSUE of Shares.** — The word "Issue" in s. 25, Comp Act, 1867, repld s. 7, Comp Act, 1900, means, putting the shareholder in complete possession of his share, a conclusion which is one more of fact than of law on a consideration of all the circumstances. It was not, necessarily, either the allotment of the shares or delivery of the share certificate which con-

stituted "Issue" within that section (*Blyth's Case*, 4 Ch. D. 140; *Clarke's Case*, 8 Ch. D. 635; 47 L. J. Ch. 696; *Pool's Case*, 35 Ch. D. 581; *Spitzel v. Chinese Corp.*, 80 L. T. 347; *Re Gibson & Co.*, 5 L. R. Ir. 139; *Vh*, Buckl. 612). *V. ISSUED.*

Sale or Re-Allotment of Forfeited Shares, is not an "Issue" of Shares (*Morrison v. Trustees, &c Corp.*, 79 L. T. 605; 68 L. J. Ch. 11).

**ISSUED.** — Debentures "Already issued"; *V. ALREADY.*

Issued capital; *V. CAPITAL.*

"Execution Issued," 3 G. 4, e. 39, s. 2; the Court refused to read this as Execution either "levied" or "executed" (*Green v. Wood*, 14 L. J. Q. B. 217; 7 Q. B. 178).

Foreign Security "issued" in the United Kingdom, s. 2 (1), 34 V. c. 4; s. 21, 48 & 49 V. e. 51; *V. Grenfell v. Int. Rev.*, 45 L. J. Ex. 465; 1 Ex. D. 242.

A Foreign MARKETABLE SECURITY is "made or issued in the United Kingdom," s. 82 (1 *b*), Stamp Act, 1891, if that be the locality where "it becomes an actual, valid, subsisting, document" (per Smith, L. J., *Baring v. Int. Rev.* 1898, 1 Q. B. 78; 67 L. J. Q. B. 44; affd in H. L. nom. *Revelstoke v. Int. Rev.*, 1898, A. C. 565; 67 L. J. Q. B. 855; *Vf*, *Chicago Ry v. Int. Rev.*, 75 L. T. 572). *Vf*, *Brown v. Int. Rev.*, cited OFFER.

*V. To ISSUE*, and succeeding defs.

**ISSUES.** — "Issues," — as used in old Charters, *e.g.* in such a phrase as "all Fines for Licenses to agree, and all Amercements, Ransoms, and Forfeited Issues," — "applies only to money issuing out of Property, and has no reference to money coming from a Debt due to the Crown" (per Pollock, B., *Re Nottingham Corp.*, cited AMERCIAMENT: *Vf*, *R. v. Dover*, cited CONTEMPR). *V. PRINCIPAL ACCOUNTANT.*

"To have the 'Issues and Profits,' and to have the Land, is all one" (*Parker v. Plummer*, Cro. Eliz. 190). *Cp*, RENTS AND PROFITS.

**IT SHALL BE LAWFUL.** — *V. MAY: SHALL AND LAWFULLY MAY:* and obs of Jessel, M. R., *Emden v. Carte*, 51 L. J. Ch. 373; 19 Ch. D. 311: *Va*, *Re Newport Bridge*, 29 L. J. M. C. 52; 2 E. & E. 377; *Re Morgan*, 32 S. J. 272, 273.

*Vh*, in a direction to Trustees to renew Leaseholds, Lewin, 424.

**IT SHALL NOT BE LAWFUL.** — Where a statute simply prescribes that "It shall not be lawful" to do a stated thing, Is the doing it an indictable offence, necessarily? *V. R. v. Nott*, 4 Q. B. 768.

**IT SHALL SUFFICE.** — "There is no doubt that in many cases these words, standing alone and unexplained by a context, would be quite consistent with something different from, larger or smaller, more or less numerous, more or less costly, than what is mentioned, being supplied.

“Here, however (Rubric to Communion Office as to the Bread), the sentence commences with the introduction: ‘To take away all occasion of dissension and superstition which any person hath or might have concerning the Bread, *it shall suffice,*’ &c. These words seem to their Lordships to make it necessary that that which is to take away the occasion of dissension and superstition should be something definite, exact, and different from what had caused the dissension and superstition. If not, the occasion of dissension remains, and the superstition may recur. ‘To suffice,’ it must be as here described. What is substantially different will not ‘suffice’” (per Cairns, C., delivering judgment of P. C. *Ridsdale v. Clifton*, 46 L. J. P. C. 63; 2 P. D. 276). It was accordingly there held that a Communion Wafer was not allowed by the words “it shall suffice that the Bread be such as is usual to be eaten.”

**ITA QUOD.** — *V. 1F.*

**ITEM.** — As an adverb, is synonymous with **LIKEWISE.**

“Item in any account for distilled **SPIRITUOUS LIQUORS,**” s. 12. Tippling Act, 24 G. 2, c. 40, may be made up of two sorts of spirits sold at the same time (*Owens v. Porter*, 4 C. & P. 367).

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## JACTITATION — JETTISON

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**JACTITATION.** — Jactitation of Marriage, is an action (originally Ecclesiastical) for the false, malicious, and unexcusable boast and assertion by a person that some one else is married to him or her (3 Bl. Com. 93). “As stated by Ld Stowell in *Hawke v. Corri* (2 Hagg. Con. 280), it is in the nature of a Criminal suit. It has something in common with proceedings for Defamation” (per Bowen, L. J., *Thompson v. Rourke*, 1893, P. 70; 62 L. J. P. D. & A. 46; 67 L. T. 788). Therefore, if the respondent has lived as spouse with the petitioner, or if the petitioner has represented, or acquiesced in the representation, that the respondent was spouse to him or her, that is an answer to the action (*Hawke v. Corri*, and *Thompson v. Rourke*, sup). *Vf*, *Cowley v. Cowley*, cited HONOUR.

**JAMPNA.** — *V. JUNCARIA.*

**JENKIN.** — *V. GRAVELLING.*

**JEFAILS.** — The Statutes of Jeofails, — *i.e.* for rectifying oversights in Pleading, — 14 Edw. 3, c. 6; 9 H. 5, c. 4; 4 H. 6, c. 3; 8 H. 6, c. 12, c. 15; 32 H. 8, c. 30; 37 H. 8, c. 23; 2 & 3 Edw. 6, c. 32; 18 Eliz. c. 14; 21 Jac. 1, c. 13; 16 & 17 Car. 2, c. 8; 4 & 5 Anne, c. 16; 9 Anne, c. 20; 5 G. 1, c. 13. *Vh*, *Termes de la Ley*: 3 Bl. Com. 407.

**JEOPARDY.** — “It would be giving a very narrow meaning to the word ‘Jeopardy’ to hold that because nothing could be done that is improper, and because the security of the Debenture Holders will of course be preserved, they ought not to take care of themselves. That being so, I can appoint a Receiver. It is mere protection” (per Kekewich, J., *Re Victoria Steam Boats*, 1897, 1 Ch. 158; 66 L. J. Ch. 23; 45 W. R. 135).

**JERVIS’ ACTS.** — The Indictable Offences Act, 1848, 11 & 12 V. c. 42:

The Sum Jur Act, 1848, 11 & 12 V. c. 43:

The Justices Protection Act, 1848, 11 & 12 V. c. 44.

**JETTISON.** — “‘Jettison,’ in its largest sense, signifies any throwing overboard; but, in its ordinary sense, it means, throwing overboard for the preservation of the ship and cargo, and most jurists treat of it in this sense under the head of GENERAL AVERAGE” (per Abbott, C. J.,



*Butler v. Wildman*, 3 B. & Ald. 400). *V. Maude & P.* 487: *Termes de la Ley, Jetsam*: on "Jetsam," *V. FLOTSAM*.

Some say that "Jettison" and "Jetsam" are the same. No doubt, the leading idea of each is common to both, viz., Goods cast into the SEA from a Ship in Distress with the view to save her; but goods Jettisoned are, frequently, irrecoverably lost and give rise to a claim of AVERAGE; whilst Jetsam are goods found, in and to which legal rights arise. Jettisoned goods may become Jetsam, but only so when found.

*Vh, Abbott*, 625: *Arn.* 1034: *Carver*, 424: *Lowndes on General Average*.

An Exception of "Jettison," in a Bill of Lading, does not cover goods carried on deck contrary to the contract (*Royal Ex. Co v. Dixon*, 12 App. Ca. 11) nor goods Jettisoned in consequence of the ship putting to sea without sufficient ballast (*Lew v. Dudgeon*, 3 Mar. Ca. 3; 37 L. J. C. P. 5; L. R. 3 C. P. 17; 17 L. T. 145; 16 W. R. 80).

**JEWELS.** — On the context, and having regard to the circumstances of the testatrix, the word "Jewels" was held by Lyndhurst, L. C., as specially comprising diamonds, — *e.g.* diamond necklace, cross, and rings, — so that a direction to sell "Jewels" took effect on such diamonds; and that accordingly (and in competition with the word "Jewels"), diamond rings did not pass under the words "the remainder of my rings" (the testatrix having specifically given one diamond ring), nor did a valuable diamond necklace and cross pass under "necklaces of every description" (*A-G. v. Harley*, 5 Russ. 173; 7 L. J. O. S. Ch. 31. *Note*: It is suggested that it will be seen, on reference to the reports, that the statement of the judgment in this case is erroneously given in *Wms. Exs.* 1065, in that it is there stated that the L. C. held that the diamond necklace, &c, "were not to be sold"; the "not" here should, it is suggested, be placed between the words "did" and "pass").

A bag of Coins held not to pass under a bequest of "Jewellery" (*Sudbury v. Brown*, 4 W. R. 736). Masonic Orders and filigree ornaments passed as "Jewels" (*Brooke v. Warwick*, 12 Jur. 912; 2 D. G. & S. 425).

**JOB.** — "Job Carriage," quâ Dublin Carriage Act, 1853, 16 & 17 V. c. 112, includes, "every hearse and mourning coach, and also every carriage which shall not ply publicly for hire or stand for the soliciting of passengers, but shall be let out to hire for the purpose of conveying, from or to any place within the limits of this Act to or from any place within or beyond the said limits, any person or persons engaging the same by the hour, day, or otherwise, by way of job" (s. 80). *Cp. HACKNEY CARRIAGE.*

"Job Horse," quâ the same Act and by the same section, includes, "every horse let out for hire, singly or otherwise in the way of job, to

draw any carriage for the carrying of persons from or to any place within the limits of this Act to or from any place within or beyond the said limits, such carriage not being a hackney, job, post, or stage, carriage."

**JOBBER.**—Is one "who sells, to any one who comes to him, at a fraction above the market price; and buys, of any one, at a fraction below the market price" (per Blackburn, J., *Mollett v. Robinson*, 41 L. J. C. P. 78; L. R. 7 C. P. 104, 105). *Cp*, BROKER.

**JOCKEY.**—A "Regular Jockey, or Paid Rider," is one who follows the business of a Jockey for a livelihood; and does not include one who is in the habit of riding at races without payment, except that he sometimes receives his expenses (*Walmsley v. Matthews*, 3 M. & G. 133). Probably, if the word were "Jockey," without more, it would have the same meaning.

**JOHN BULL.**—*V.* GEOGRAPHICAL.

**JOINDER.**—"Joinder of Issue," is where the two parties to a litigation (whether civil or criminal) "have agreed to rest the fate of the cause upon the truth of the fact in question" (3 Bl. Com. 315).

As to such Joinder in Civil actions; *V.* R. 18, Ord. 19; R. 5, Ord. 23; R. 13, Ord. 27, R. S. C.:

In Criminal prosecutions; *V.* 4 Bl. Com. 339-341.

*V.* ISSUE OF FACT.

**JOINT.**—"There is in the cases of Joint Contract and Joint Debt, — as distinguished from the cases of Joint and Several Contract and Joint and Several Debt, — only one CAUSE OF ACTION" (per Bowen, L. J., *Re Hodgson*, 55 L. J. Ch. 241; 31 Ch. D. 177, considering *Kendall v. Hamilton*, 48 L. J. Q. B. 705; 4 App. Ca. 504, and *King v. Hoare*, 14 L. J. Ex. 29; 13 M. & W. 494). *Note*, As to the consequence of this principle in discharging a joint obligor if a Jdgmt be obtained against, or a Release be given to, his fellow obligor, *V.* the cases cited: *McLeod v. Power*, 1898, 2 Ch. 295; 67 L. J. Ch. 551, and cases there cited: *Rosc. N. P.* 557: *Vf*, JOINTLY AND SEVERALLY.

A Joint Covenant is one by which each covenantor "becomes answerable for himself, and is, in effect, a surety also for the due performance of the covenant by the other" (*Platt Cov.* 116, 117). *Cp*, SEVERAL COVENANT.

Where a husband is liable for the ante-nuptial debts of his wife, and he and she are sued jointly, the judgment "shall be a joint judgment against the husband personally, and against the wife as to her separate property" (s. 15, M. W. P. Act, 1882); but "what the word 'joint'

means in this sentence is not clear" (per Lindley, L. J., delivering the judgment of the C. A., *Beck v. Pierce*, 58 L. J. Q. B. 518). From the decision in that case, "joint" would seem to be without meaning in the sentence cited.

**JOINT AND EQUAL.**—A direction that the subject of a gift shall "be distributed in joint and equal Proportions" creates a Tenancy in Common (2 Jarm. 257, citing *Ettricke v. Ettricke*, Amb. 656). *See*, JOINTLY AND EQUALLY.

**JOINT AND SEVERAL.**—*V. JOINTLY AND SEVERALLY: JOINT.*

**JOINT APPOINTMENT.**—A Joint Appointment of Property is one made under a POWER by two or more persons, the commonest example being one made by a husband and wife under a marriage settlement. *Vh*, Farwell, 453 *et seq.*

Quà Poor Law Officers' Superannuation Act, 1896, 59 & 60 V. c. 50, " 'Joint Appointment,' includes, any Office the tenure whereof is determined by the death, removal, resignation, or incapacity, of the holder of another Office under the same Authority" (s. 19).

**JOINT AUTHORSHIP.**—*V. AUTHOR.*

**JOINT CAPTORS.**—For the purposes of Booty, "Joint Captors" are those who, not being the actual captors, have assisted, or are taken to have assisted, the actual captors by conveying either encouragement to them, or intimidation to the enemy (*Banda and Kirwee Booty*, cited CO-OPERATION). *Cp*, ASSOCIATION.

**JOINT HEIRESSES.**—*V. PARCENERS.*

"Equally as Joint Heiresses"; *V. EQUALLY.*

**JOINT LIVES.**—A gift to two or more for "their lives," or their "joint lives," and then over, will generally mean "for their joint lives and the lives or life of the survivors or survivor of them." and then over; and this construction is not altered by the fact that the first gift is to a husband and wife for their lives (*Townley v. Bolton*, 2 L. J. Ch. 25; 1 My. & K. 148; *Smith v. Oakes*, 14 Sim. 122; *Moffat v. Burnie*, 23 L. J. Ch. 591; 18 Bea. 211; 2 W. R. 83; 22 L. T. O. S. 218; *Alder v. Lawless*, 32 Bea. 72; *See*, *Grant v. Winbolt*, 23 L. J. Ch. 282. *Vf*, 2 Jarm. 542; Elph. 283).

"During their joint lives," will not, generally, be read as "During their intended coverture" (*Hamilton v. Hamilton*, cited DURING).

**JOINT STOCK.**—*Seemle*, Railway Shares were not "Joint Stock" within the Stock Jobbing Act, 7 G. 2, c. 8 (*Hewitt v. Price*, 4 M. & G. 355).

*V. STOCK.*

**JOINT STOCK COMPANY.** — The first part of the def in s. 2, 7 & 8 V. c. 110, may, probably, be stated as defining the *general* meaning of "Joint Stock Company" thus, — "Every partnership whereof the Capital is divided, or agreed to be divided, into Shares and so as to be transferable without the express consent of all the co-partners."

"It is not of the essence of a Joint Stock Co that it should provide for a Dividend or Bonus among its members," for, among other reasons, the Comp Act, 1862, recognizes the existence of Companies formed for the acquisition of GAIN, as distinguished from others that are not" (per North, J., *Re Russell Institution*, 1898, 2 Ch. 72; 67 L. J. Ch. 411; 78 L. T. 588). Therefore, though an unregistered Literary or Scientific Socy which does not permit of any dividend, division, or bonus, among its members, is not such an UNREGISTERED COMPANY as can be wound-up under s. 199, Comp Act, 1862 (*Re Bristol Athenæum*, 59 L. J. Ch. 116; 43 Ch. D. 236); yet it is "in the NATURE of a Joint Stock Co," and, as such on its dissolution, its surplus assets are distributable among its members under the proviso to s. 30, 17 & 18 V. c. 112 (*Re Russell Institution*, sup: *Re Jones*, 1898, 2 Ch. 83; 67 L. J. Ch. 504; 78 L. T. 639; 46 W. R. 577). J. SCIENCE.

Quà Comp Act, 1862, and "so far as the same relates to the description of Companies empowered to register as Companies Limited by Shares, — a 'Joint Stock Company' shall be deemed to be, a Co having a permanent paid-up or nominal Capital of fixed amount, divided into Shares also of fixed amount, or held and transferable as Stock, or divided and held partly in one way and partly in the other; and formed on the principle of having for its Members the holders of Shares in such Capital or the holders of such Stock, and no other persons: and such Co, when registered with limited liability under this Act, shall be deemed to be a Co Limited by Shares" (s. 181).

Quà Irish Bankrupt and Insolvent Act, 1857, 20 & 21 V. c. 60; V. s. 4.

**JOINT TENANCY.** — "A limitation, either at Common Law or in a Conveyance to Uses [or in a Will], of estates of the same nature to several, either nominatim or as a class, without more, makes them joint tenants. The estate must begin at the same time if the conveyance is at Common Law (*Termes de la Ley, Joyntenants*), but this is immaterial if it be under the Statute of Uses" (Elph. 279, *whc: 17*, 2 Jarm. ch. 32). Cp, TENANCY IN COMMON.

This is not a rule of Tenure, or of Real Property Law exclusively. It also applies to Personalty, *e.g.* to Terms of Years, Policies, and Patents: thus, a grant of a Patent to "A. and B., their exors admors and assigns," creates a joint tenancy in A. and B., with all its incidents (*National Socy for Distribution of Electricity v. Gibbs*, 1899, 2 Ch. 289; 68 L. J. Ch. 503; 80 L. T. 524; 47 W. R. 518; *revid*, quà the Covenants

to be given on the sale of such a Patent, 1900, 2 Ch. 280; 69 L. J. Ch. 457; 82 L. T. 413; 48 W. R. 499).

The chief practical incident which distinguishes a Joint Tenancy from a TENANCY IN COMMON is the *Jus accrescendi* of Joint Tenants, *i.e.* the right of the survivors or survivor to the whole property. The Court leans strongly against that right, and frequently adjudicates "a Tenancy in Common by construction on the intent of the parties" (per Hardwicke, C., *Rigden v. Vallier*, 2 Ves. sen. 258; 3 Atk. 731; *Harrison v. Barton*, 30 L. J. Ch. 213; 1 J. & H. 287). *V. AMONG: BETWEEN: DIVIDE: EACH: EQUALLY: RESPECTIVE: SHARE AND SHARE ALIKE: per contra, ALL AND EVERY: BENEFIT: JOINTLY AND EQUALLY: JOINTLY AND SEVERALLY.*

As to what words create Joint Tenancy as distinguished from Tenancy in Common, *Vf*, 6 Cru. Dig. 329-343; Elph. ch. 19; Jarm. ch. 32; Theobald, 358-364; Hawk. ch. 10.

As to Joint Tenancy and Tenancy in Common generally, *V*, 2 Cru. Dig. Titles 18, 20; Goodeve, ch. 9; Wms. R. P. Part 1, ch. 6; 7 Encyc. 102-104, 12 Ib. 112-117; PER MY ET PER TOUT: PARTNERSHIP.

#### *V. SEVERANCE.*

Under a Conveyance of realty, before 1st Jan 1883, to Husband and Wife as joint tenants "they hold the estate in Entireties, the Husband being entitled to receive the rents during coverture," and if the marriage is dissolved, they hold as ordinary joint tenants; under a conveyance, since 31st Dec 1882, they are ordinary joint tenants, the Wife holding her interest as her SEPARATE PROPERTY (per Romer, J., *Thoruley v. Thornley*, 1893, 2 Ch. 229; 62 L. J. Ch. 370).

"Where there is a Devise or Bequest to a Husband and Wife and one or more other persons, *primâ facie* the husband and wife take as one person, and take *only one share* (Litt. s. 291; Co. Litt. 187; *Re Wyld*, 2 D. G. M. & G. 724; 22 L. J. Ch. 87). Thus, if the gift be to husband and wife and A., the husband and wife take one moiety, and A. the other moiety. The rule applies whether the gift be in Joint Tenancy or Tenancy in Common, and whether of real or personal estate (*Re Wyld*)." Hawk. 115. *Seem*, the M. W. P. Act, 1882, has not altered this rule (per Kay, J., *Re Jupp*, 57 L. J. Ch. 774; 39 Ch. D. 148; dissenting from Chitty, J., *Re March*, 52 L. J. Ch. 680; 54 Ib. 143; 24 Ch. D. 222; 27 Ib. 166). But the rule easily yields to a context (*Warrington v. Warrington*, 2 Hare, 54; *Re Dixon*, 42 Ch. D. 306).

#### JOINT TENANTS.—*V. JOINT TENANCY: PARCENERS: RECEIVING.*

"The expression 'as Joint Tenants' is, no doubt, a technical expression" (per Stuart, V. C., *Booth v. Alington*, 27 L. J. Ch. 117; 5 W. R. 811); but the decision in that case shows that a gift to two or more "as joint tenants" may be controlled by a context so that, notwithstanding that expression, a tenancy in common may be created, *e.g.* as in *the*, where

the fund is directed to be "divided equally between" the beneficiaries;  
*V. DIVIDE.*

Quà Rep People Act, 1884, "Joint Tenants," or "Tenants in Common," includes, "Pro Indiviso Proprietors" (s. 11).

**JOINTLY.** — *V. SEIZED JOINTLY.*

A gift to two or more "jointly and between them" is a tenancy in common (*Perkins v. Baynton*, 1 Bro. C. C. 118; *Richardson v. Richardson*, 14 Sim. 526). *Vf, CONJOINTLY.*

Where two had been appointed "to execute jointly the Office of Clerk" to a County Court, s. 25, Co. Co. Act, 1846, and one died, the survivor continued in office but could not act till the appointment of a successor to the deceased person (*R. v. Wake*, 8 E. & B. 384; 27 L. J. Q. B. 11); if the Office were judicial, the death of one of two or more appointed to act "jointly" would vacate the Office (*Curle's Case*, 11 Rep. 2 b).

**JOINTLY AND EQUALLY.** — A gift to two or more "jointly and equally," creates a JOINT TENANCY (*Cookson v. Bingham*, 17 Bea. 262; 3 D. G. M. & G. 668; 23 L. J. Ch. 127) *Se, JOINT AND EQUAL. V. EQUALLY.*

**JOINTLY AND SEVERALLY.** — A Joint and Several Covenant, is a combination of a JOINT COVENANT and a SEVERAL COVENANT (Platt Cov. 117).

"If a covenant be so constructed as to be ambiguous, *i.e.* as to whether it be Joint or Several, then it will be Joint if the interest be joint and it will be Several if the interest be several. On the other hand, if it be in its terms unmistakably Joint then, although the interest be several, all the parties must be joined in the action. So, if the covenant be clearly Several the action must be several, although the interest be joint" (per Pollock, C. B., *Keightley v. Watson*, 3 Ex. 721; 18 L. J. Ex. 339). *V. SEPARATE COVENANT.*

"If a man grants *proximam advocacionem*, or makes a Lease for years of land to two 'jointly and severally,' these words 'severally' are void, and they are joint tenants" (*Slingsby's Case*, 5 Rep. 19 a: *Vth, White v. Tyndall*, 13 App. Ca. 275). *V. SEVERALLY.*

Where a Note signed by three persons was in the following Words, — "For value received, We the subscribers *jointly and severally* promise to pay Messrs. B. or order, for the Boston Glass Manufactory," it was held, in America, that the words "jointly and severally" showed that it was a personal undertaking (*Bradlee v. Boston Glass Manufactory*, 16 Pickering, 347); in citing which case, Bramwell, B., said, — "I infer that, but for those words, it would have been held that the Note bound the Company" (*Aggs v. Nicholson*, 25 L. J. Ex. 349; 1 H. & N. 167, 168). But the learned Baron seems to have forgotten that a few years pre-

vously, and in his own Court of Ex., the point had been definitely decided in England in the same way (*Heuley v. Story*, 3 Ex. 3; 18 L. J. Ex. 8), in *while* Alderson, B., said, "The plain, grammatical, meaning of the words is 'We jointly promise, and we severally promise'; that is to say, We *personally* promise."

*V.*, as to a "joint and several" Note of Hand, Byles, 8: "joint and several" Contracts, Add. C. 300-302; Leake, 376-381: "joint and several" Partnership Debts and Property, per Cairns, C., *Kendall v. Hamilton*, 4 App. Ca. 504; 48 L. J. C. P. 705; 41 L. T. 418: *Cambefort v. Chapman*, 19 Q. B. D. 229; *Pilley v. Robinson*, 20 Ib. 155; *Re Hodgson*, 55 L. J. Ch. 241; 31 Ch. D. 177; *Budeley v. Consolidated Bank*, 34 Ch. D. 536; Watson Eq. 822, 823; Lindley P. 202, 718, 331.

**JOINTURE.** — "Before the Statute of Uses, the Use of Equitable Estate was subject neither to Curtesy nor to Dower. Hence settlements upon marriage became necessary, of which the most simple form was to make the husband and wife JOINT TENANTS, that the whole might go to the survivor. This seems to be the origin of the word 'Jointure' as applicable to the provision made for a woman upon marriage *in the event of her husband's death*; though it has been more usual, as being more secure, to make this provision by way of Remainder expectant upon a Life Estate in the husband" (Burton's Compendium, 7 ed., 124).

*Primâ facie*, " 'Jointure' is a provision for the wife *after* the death of the husband" (per Stirling, J., *Re De Hoghton*, 1896, 2 Ch. 385; 65 L. J. Ch. 667, citing Burton's Compendium, sup: Co. Litt. 36 b; 2 Bl. Com. 137; 2 Bacon Abr. 744; Sug. Power, 484. *Vj.* *Termes de la Ley. Jointure*: 1 Cru. Dig. 187, 4 Ib. 149); so that a Power of Jointuring does not give the donee power to create a Rent-Charge payable to his wife during his own life (*Re De Hoghton*, sup), unless the context enlarges the meaning of the phrase (*Jamieson v. Trevelyan*, 23 L. J. Ex. 281; 10 Ex. 269).

*V. Re De Hoghton*, sup, for Form of Power of Jointuring.

Jointure was an "estate made to the wife in satisfaction of her DOWER" (Co. Litt. 36 b). A woman shall not have both a Jointure and Dower (s. 6, 27 H. 8, c. 10); and any provision for a wife (even if out of Personal Estate) which imports a "Jointure" bars the Dower, though not using the word or not expressed to be in bar of dower (*Walker v. Walker*, 1 Ves. sen. 54, 55; *Vizod v. Louden*, Kelynge, W. 17, *et*hc, 1899, 1 I. R. 438). Thus, an annuity for a wife's "Livelihood and Maintenance" if she should survive her husband, was held to bar her dower (*Vizod v. Louden*, sup); *secus*, where it was only "for the purpose of making a Provision" for her (*Lemon v. Mark*, 1899, 1 I. R. 416).

*Vh.* Vaizey, 974-1003: 1 Cru. Dig. Title 7.

Statute of Jointures, 11 H. 7, c. 20; repealed by Fines and Recoveries Act, 1833, s. 17.

JONCARIA. — *V.* JUNCARIA.

**JOURNEYMAN.** — “ ‘Journey-man’ cometh of the French word *Journee*, that is a day, or days-work, so that properly it is one that wrought with another by the day, though now, by 5 Eliz. c. 4, it be extended to those likewise that covenant to work with another in his Trade or Occupation by the year ” (Cowel). Yet, notwithstanding this extension of meaning, Ld Mansfield (in 1774), said, “ A Journeyman is a servant *by the day*; and it makes no difference whether the work is done by the day or by the piece ” (*Hart v. Aldridge*, 1 Cowp. 55, 56). *Vh*, *Louther v. Radnor*, cited LABOURER. *Cp*, PERSONAL LABOUR.

**JUDAS.** — To write of one that he is a “ Judas ” is Libel, and needs no innuendo (per Coleridge, J., *Hoare v. Silverlock*, 12 Q. B. 633).

**JUDGE.** — “ The words ‘ Judges ’ and ‘ JUSTICES ’ cannot mean any but the Judges and Justices of the Courts at Westminster ” (per Littledale, J., *Wardroper v. Richardson*, 1 A. & E. 75). “ The words ‘ Judge or Judges ’ certainly mean, a Judge or Judges of the Superior Courts ” (per Parke, B., *Elsley v. Kirby*, 12 L. J. Ex. 97; 9 M. & W. 536: *If*, *Kissam v. Link*, 1896, 1 Q. B. 574; 65 L. J. Q. B. 433; 74 L. T. 368; 44 W. R. 452: *Re Noyce*, 1892, 1 Q. B. 642; 61 L. J. Q. B. 628). But prior to the Jud. Acts “ Judge of one of the Superior Courts at Westminster, ” generally, meant a Common Law Judge, and did not include a Chancery Judge (*Miles v. Presland*, 4 My. & C. 431).

Notwithstanding R. 12, Ord. 54, and R. 6, Ord. 35, R. S. C., “ Judge, ” in s. 49, Jud. Act, 1873, means only a Judge of the High Court (*Foster v. Edwards*, 48 L. J. Q. B. 767: *Srth*, *Bryant v. Reading*, 17 Q. B. D. 131). *If*, as to R. 12, Ord. 54, *Re Donisthorpe*, 1897, 1 Q. B. 671; 66 L. J. Q. B. 399; 76 L. T. 371; 45 W. R. 386.

“ Judge ” in R. 11, Ord. 27, “ probably, refers only to a Judge of the Chancery Division ” (per Kennedy, J., *Greenwood v. Briggs*, 41 S. J. 409).

“ Unless *the Judge* certify, ” s. 5, County Court Act, 1867, meant, “ the Judge who tried the case, ” *e.g.* a County Court Judge to whom the case was remitted (*Taylor v. Cass*, L. R. 4 C. P. 614), or an Undersheriff on a Writ of Inquiry (*Craven v. Smith*, L. R. 4 Ex. 146). And now *V.* s. 116, Co. Co. Act, 1888, on *whr*, *Harris v. Judge*, 1892, 2 Q. B. 565; 61 L. J. Q. B. 577; 67 L. T. 19; 41 W. R. 9.

The power to appoint “ Judges ” given to the Governor of New Zealand by the New Zealand Supreme Court Act, 1882, Part 1, is restricted to Judges who have at the time an ascertained salary payable by law (*A-G. New Zealand v. Edwards*, 1892, A. C. 387; 61 L. J. P. C. 64; 66 L. T. 833).

*V.* COURT: COURT OR JUDGE: INFERIOR JUDGE: PUISNE.

“ Judge ” in a modern Act is generally defined by the Act’s interpellative clause according to the subject-matter of the Act, *e.g.* — Inferior Courts



Act, 1844, 7 & 8 V. c. 19, s. 9; 7 & 8 V. c. 96, s. 73; 8 & 9 V. c. 127, s. 24; 15 & 16 V. c. 76, s. 227; Naval Prize Act, 1864, 27 & 28 V. c. 25, s. 52; Crown Suits, &c, Act, 1865, 28 & 29 V. c. 104, s. 5; Vice Admiralty Courts Act, Amendment Act, 1867, 30 & 31 V. c. 45, s. 3; 35 & 36 V. c. 51, s. 4; Jurisdiction in Rating Act, 1877, 40 & 41 V. c. 11, s. 3 (a comprehensive def); 42 & 43 V. c. 11, s. 10; 49 & 50 V. c. 42, s. 2 (5); County Court Act, 1888, s. 186; Arb Act, 1889, 52 & 53 V. c. 49, s. 27. — *Ir.* 16 & 17 V. c. 113, s. 4; 21 & 22 V. c. 72, s. 1; 28 & 29 V. c. 88, s. 2; 30 & 31 V. c. 114, s. 2; Juries Act (*Ir.*) 1871, 34 & 35 V. c. 65, s. 3; Debtors Act (*Ir.*), 1872, 35 & 36 V. c. 57, s. 10; Bankry (*Ir.*) Act, 1872, s. 4; Mer Shipping Act, 1894, s. 610 (9). — *Scot.* Summary Procedure Act, 1864, 27 & 28 V. c. 53, s. 2.

### *Vf.* COUNTY COURT.

“Judge of ASSIZE”; Stat Def., *Ir.* 8 & 9 V. c. 108, s. 25; 13 & 14 V. c. 88, s. 1; 33 & 34 V. c. 9, s. 3; 54 & 55 V. c. 48, s. 42; 61 & 62 V. c. 37, s. 109 (1).

“Land Judge”; Stat. Def., *Ir.* 54 & 55 V. c. 48, s. 42, c. 66, s. 95.

“Presiding Judge,” s. 4, Evidence Further Amendment Act, 1869, 32 & 33 V. c. 68, includes, “any person or persons having By Law authority to administer an oath for the taking of evidence” (s. 1, 33 & 34 V. c. 49).

“Receiver Judge”; Stat. Def., *Ir.* 59 & 60 V. c. 47, s. 48.

“Judge of one of the SUPERIOR COURTS”; Stat. Def., 39 & 40 V. c. 48, s. 2.

“Judges of the Supreme Court”; Stat. Def., *Ir.* 45 & 46 V. c. 25, s. 35.

**To JUDGE.** — “To judge” a matter, *cq.* s. 29, 21 & 22 V. c. 90, means, generally, to come to a conclusion on it (*Allbutt v. Gen. Med. Council*, and *Leeson v. Gen. Med. Council*, cited INFAMOUS CONDUCT).

**JUDGMENT.** — A “Judgment” is the sentence of the law pronounced by the Court upon the matter contained in the Record (*Vh. Co. Litt.* 39 a, 168 a) and the decision must be one obtained in an ACTION (*Ex p. Chinery*, cited FINAL JUDGMENT: *Onslow v. Ind. Rev.*, cited ORDER). *Vf.* DECREE: BALANCE ORDER: 7 Encyc. 114–126; 9 *Ib.* 310, 311.

“Judgment,” in s. 40, 3 & 4 W. 4, c. 27, and, in the section replacing it, s. 8, Real Property Limitation Act, 1874, is not confined to judgments charging land but has a general application, and includes ordinary personal judgments (*Watson v. Birch*, 15 Sim. 523; 16 L. J. Ch. 188; *Henry v. Smith*, 2 Dr. & War. 381; *Ex p. Tynte*, 15 Ch. D. 125; 28 W. R. 767; *Hebblethwaite v. Peever*, 1892, 1 Q. B. 124; 40 W. R. 318; *Jay v. Johnstone*, 1893, 1 Q. B. 189; 62 L. J. Q. B. 128; 68 L. T. 129; 41 W. R. 161).

“Judgment,” ss. 13 and 18, Judgments Act, 1838, 1 & 2 V. c. 110; *V. Pratt v. Bull*, 4 Giff. 117; 32 L. J. Ch. 144; 11 W. R. 295; 7 L. T. 702.

“Judgment or ORDER,” s. 19, Jud. Act, 1873; a Judge’s Certificate. — *e.g.* for Special Jury, or allowing Counsel, or under 3 & 4 V. c. 24, or under s. 31, Patents, &c Act, 1883, — is neither a “Judgment” nor an “Order” (*Haslam Co v. Hall*, 57 L. J. Q. B. 352; 20 Q. B. D. 491; 59 L. T. 102; 36 W. R. 406); so, of an Opinion of a Divisional Court on a Case stated under s. 19, Arb Act, 1889 (*Re Knight and Tabernacle Bg Socy*, 1892, 2 Q. B. 613; 62 L. J. Q. B. 33; 67 L. T. 403; 41 W. R. 35; 57 J. P. 229). *Vf*, Ann. Pr.

“Judgment,” as used in Jud. Act, 1873, includes DECREE (s. 100), and as used in s. 47, and especially when read in connection with s. 19, Jud. Act, 1875, does not merely mean the final judgment in criminal cases, but is there used in its larger sense, as including *any decision* in such cases; such as taxation of costs, refusal to quash a magisterial conviction for trespass in pursuit of game, or refusing to admit to bail, or to grant a certiorari (*R. v. Steel*, 46 L. J. M. C. 1; 2 Q. B. D. 37; 25 W. R. 34; 35 L. T. 534; *R. v. Fletcher*, 46 L. J. M. C. 4; 2 Q. B. D. 43; 35 L. T. 538; *R. v. Foote*, 52 L. J. Q. B. 528; 10 Q. B. D. 378; *R. v. Rudge*, 16 Q. B. D. 459; 55 L. J. M. C. 112; 34 W. R. 207; 2 Times Rep. 243). *V*. CRIMINAL CAUSE. *Cp*. DECISION.

A Consent Order, made in Chambers, dismissing an action against a Public Authority, is a “Judgment” within s. 1 (*b*), 56 & 57 V. c. 61 (*Shaw v. Hertfordshire Co. Co.*, 1899, 2 Q. B. 282; 68 L. J. Q. B. 857; 81 L. T. 208). *V*. *Bostock v. Ramsey*, cited PURSUANCE.

A jdgmt against a *Married Woman*, though in the form laid down in *Scott v. Morley* (20 Q. B. D. 120; 57 L. J. Q. B. 43; 36 W. R. 67; 57 L. T. 919), is none the less a “Judgment” within R. 1. Ord. 45, R. S. C. (*Holtby v. Hodgson*, 59 L. J. Q. B. 46; 24 Q. B. D. 103; 62 L. T. 145; 38 W. R. 68; *ethlc*, *Softlaw v. Welch*, 1899, 2 Q. B. 419; 68 L. J. Q. B. 940; 81 L. T. 64). *Note*: As to the effect of M. W. P. Act, 1893, on *Scott v. Morley*, and as to the form of jdgmt now to be signed against a Married Woman, *V. Barnett v. Howard*, 1900, 2 Q. B. 784; 69 L. J. Q. B. 955; 83 L. T. 301: where she is a Defaulting Trustee. *V. Re Turnbull*, 1900, 1 Ch. 180; 69 L. J. Ch. 187. *V*. SEPARATE PROPERTY.

A Conviction is a “Judgment” within s. 7, 12 & 13 V. c. 45 (*R. v. Biggins*, 26 J. P. 437: *Vf*, CONVICTED). An Acquittal by Justices is not a jdgmt (*R. v. Loudon Jus.*, cited DETERMINATION).

An Assessment under s. 68, Lands C. C. Act, 1845, is not equivalent to a Judgment, so as to carry interest (per Collier, Co. Co. Judge, *Evans v. Loud. & N. W. Ry*, 31 S. J. 333: *V*. SUM CERTAIN).

A Foreclosure Judgment is not included in the word “Judgment” as used in s. 18, Middlesex Registry Act, 1708, 7 Anne, c. 20, and would not be ordered to be registered thereunder (*Burrows v. Holley*, 56 L. J. Ch. 605; 35 Ch. D. 123). *Note*: registration of jdgmts under that section was abolished by s. 6, 54 & 55 V. c. 64.

Where a Rule for a Prohibition is made absolute without pleadings, there is no "Judgment" giving right to costs under 1 W. 4, c. 21 (*Ex p. Everton*, 40 L. J. C. P. 201; 19 W. R. 927; L. R. 6 C. P. 245; following *R. v. Keating*, 1 Dowl. 440; *Seth, Wallace v. Allan*, 23 W. R. 703).

"Judgment with Costs" means only such costs as have been incurred through the adversary's act (per Esher, M. R., *Stamm v. Dixon*, 22 Q. B. D. 529; 60 L. T. 560).

Stat. Def. — Law of Property Amendment Act, 1859, 22 & 23 V. c. 35, s. 25; Law of Property Amendment Act, 1860, 23 & 24 V. c. 38, s. 5; Judgments Act, 1864, 27 & 28 V. c. 112, s. 2; 30 & 31 V. c. 127, s. 3; 39 & 40 V. c. 17, s. 2; 45 & 46 V. c. 31, s. 2; 51 & 52 V. c. 51, s. 4; 53 & 54 V. c. 27, s. 15; 55 & 56 V. c. 32, s. 12. — *Id.* 40 & 41 V. c. 57, s. 3; 50 & 51 V. c. 33, s. 34.

V. ORDER: FINAL JUDGMENT: LIBERTY TO SIGN: OPINION.

**JUDGMENT CREDITOR.** — A Rule with Costs, did not make the person obtaining it a judgment creditor of the Costs, within s. 61. Com. L. Pro. Act, 1854 (*Re Frankland*, L. R. 8 Q. B. 18; 42 L. J. Q. B. 13), so, of the Costs of an Interpleader Issue (*Best v. Pembroke*, L. R. 8 Q. B. 363; 42 L. J. Q. B. 212). *Note*: this section repealed by 46 & 47 V. c. 49, and as to present Garnishee proceedings. *V. Ord.* 45. R. S. C.

A petitioner in a Divorce Suit is not a "Judgment Creditor," within s. 103, Bankry Act, 1883, quâ damages recovered against the Co-Respondent (*Re Fryer*, 55 L. J. Q. B. 478; 17 Q. B. D. 718; 55 L. T. 276; 34 W. R. 766).

V. CREDITOR.

**JUDGMENT DEBT.** — "Judgment Debt," includes the money payable under a Decree for Specific Performance when such Decree contains an Order to pay the purchase money with interest and costs (*Beaufort v. Phillips*, 1 D. G. & S. 321).

"CIVIL DEBT" is used as a Scotch equivalent for "Judgment Debt" (s. 6 (3), 55 & 56 V. c. 61).

V. DEBT: ENFORCE.

**JUDGMENT MORTGAGE.** — Quâ Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "Judgment Mortgage," means, an Affidavit of Ownership registered under "13 & 14 V. c. 29, and any Act amending the same (s. 95).

**JUDICATURE.** — "The Judicature Acts, 1873 to 1894." "The Judicature (Ireland) Acts, 1877 to 1888"; *V. Sch* 2, Short Titles Act, 1896.

**JUDICIAL.** — "The word 'Judicial' has two meanings:— it may refer to the discharge of duties exerciseable by a Judge or Justices in

Court; or to administrative duties which need not be performed in Court, but in respect of which it is necessary to bring to bear a judicial mind, *i.e.* a mind to determine what is fair and just in respect of the matters under consideration. Justices, for instance, act judicially when administering the law in Court, and they also act judicially when determining in their private room what is right and fair in some administrative matter brought before them. *e.g.* the levying of a Rate" (per Lopes, L. J., *Royal Aquarium v. Parkinson*, cited COURT). *V.* JUDICIAL PERSUASION: JUDICIAL PROCEEDING.

**JUDICIAL APPOINTMENT.** — Quà Clergy Discipline Act, 1892, 55 & 56 V. c. 32, " 'Judicial appointment' includes, a Chairmanship of Quarter Sessions, and a Police or Stipendiary Magistrateship" (s. 12). *Cp.* JUDICIAL OFFICE.

**JUDICIAL DOCUMENT.** — "Judicial Document authorizing the arrest of a person accused of crime," interpreting "WARRANT," s. 26, Extradition Act, 1870, 33 & 34 V. c. 52; *V. R. v. Ganz*, 51 L. J. Q. B. 419; 9 Q. B. D. 93.

**JUDICIAL FACTOR.** — Quà Trusts (Scot) Acts, 1861 to 1884, " 'Judicial Factor,' shall mean, any person judicially appointed FACTOR upon a Trust Estate or upon the Estate of a person Incapable of managing his own affairs, factor loco tutoris, factor loco absentis, and curator bonis" (s. 2, 47 & 48 V. c. 63). *Vf.* 20 & 21 V. c. 71, s. 3; 31 & 32 V. c. 101, s. 3; 43 & 44 V. c. 4, s. 3.

**JUDICIAL OFFICE.** — Quà Corrupt and Illegal Practices Prevention Act, 1883, " 'Judicial Office,' includes, the office of Justice of the Peace, and Revising Barrister" (s. 64). *Cp.* JUDICIAL APPOINTMENT. *V.* HIGH JUDICIAL OFFICE.

**JUDICIAL PERSUASION.** — "In the case of *Goblet v. Beechey* (3 Sim. 24), the inference that Nollekens meant 'models' by the word 'mod' was irresistible to the mind of the V. C. His mind was *judicially persuaded* that such was the sense in which the testator used the word. The mind of the L. C. was proof against the same impression. That case is a fair illustration of the legal meaning of an 'Irresistible Inference' and a 'Judicial Persuasion'" (Wigram on Extrinsic Evidence, 3 ed., 99, 100). *Cp.* PRESUMPTION: Necessary Implication, sub NECESSARY.

**JUDICIAL POWERS.** — Stat. Def., Vice Admiralty Courts Act Amendment Act, 1867, 30 & 31 V. c. 45, s. 3.

**JUDICIAL PROCEEDING.** — Statements made extra-judicially to a Magistrate with a view to asking his advice are not a JUDICIAL Proceeding (*M<sup>r</sup> Gregor v. Thwaites*, 3 B. & C. 24). *Vf.* PERJURY.

Proceedings by Petition for the reception of an alleged lunatic, Lunacy Act, 1890. are judicial, and, as such, statements in the Particulars accompanying the Petition are absolutely privileged (*Hodson v. Pare*, 1899, 1 Q. B. 455; 68 L. J. Q. B. 309; 80 L. T. 13; 47 W. R. 241). *Vf.* COURT.

An *ex parte* Order of a Foreign Court is a "Judicial Proceeding" within s. 7, 14 & 15 V. c. 99 (*Leishman v. Cochrane*, 1 Moore P. C. N. S. 49).

#### V. PROCEEDING.

**JUDICIAL RENT.** — Quà Land Law (Ir) Act, 1896, 59 & 60 V. c. 47, " 'Judicial Rent,' means, a FAIR RENT, whether fixed by the Court or by Agreement or Arbitration or by Demand of the landlord accepted by the tenant; and any reference to an application to fix a fair rent shall include a reference to an agreement to fix a fair rent or to refer to arbitration the fixing of a fair rent or to the demand of an increased rent by the landlord " (s. 48).

**JUDICIAL SEPARATION.** — A sentence of Judicial Separation has the same effect as a DIVORCE *à mensâ et thoro* had under the law prior to 1st Jan 1858, and such other legal effect as is provided by statute (s. 16, 20 & 21 V. c. 85: *Vf.*, ss. 25, 26, ib.).

**JUDICIAL TRUSTEE.** — *Vf.* Judicial Trustees Act, 1896, 59 & 60 V. c. 35, on *whv*, *Re Ratcliff*, 1898, 2 Ch. 352; 67 L. J. Ch. 562; *Douglas v. Bolam*, 1900, 2 Ch. 749; 70 L. J. Ch. 1; *Re Martin*, W. N. (1900) 129.

#### V. TRUSTEE.

**JUGUM.** — "Jugum terræ in Domesday containeth halfe a plow-land" (Co. Litt. 5 a); and "is as much as two oxen can till, and by the grant of half a plow-land may pass meadow and pasture" (Touch. 93). *Vf.* HIDE.

**JUNCARIA.** — "By the grant of *omnes juncarias* or *joncarias*, the soile where rushes do grow doth passe; for *jone* in French is a rush, whereof *joncaria* commeth. . . . And *jampna* commeth of *jone* and *nower*, a waterish place, and is all one in effect with *joncaria*" (Co. Litt. 5 a). But in *Gryffyth v. Jenkins* (Cro. Car. 179), *Jampna* is bracketed with BRUERA, and both were held to be "heath ground, whereupon gorse and furze are growing." *Vh.* Cowel, *Jampnum*.

**JUNCTION.** — "For the purposes of the Junction," s. 10, Ry. C. Act, 1863, is not confined to the actual union of the lines but, includes the formation of all Works necessary for effecting the Junction (*Dublin and Drogheda Ry v. Naran Ry*, Ir. Rep. 5 Eq. 393).

**JUNIOR.** — "Junior," — *e.g.* Tom Brown, Junr., — is no part of a man's name; to add "Junior" to the signature of a Nominator at a

County Council Election, if that be his ordinary mode of signing, does not invalidate the signature (*Gledhill v. Crowther*, 23 Q. B. D. 136; 58 L. J. Q. B. 327).

“Junior Assistant Teacher”; *V. Main v. Stark*, cited ASSISTANT.

**JURE.** — *V.* DE JURE.

**JURISDICTION.** — “‘Jurisdiction,’ is a DIGNITY which a man hath by a Power to do Justice in Causes of Complaint made before him” (Termes de la Ley).

In that sense of conferring power “Jurisdiction” is defined in 47 & 48 V. c. 47, s. 5; 53 & 54 V. c. 37, s. 16. — *Ir.* 27 & 28 V. c. 54, s. 4; Irish Church Act, 1869, 32 & 33 V. c. 42, s. 72.

But sometimes it means an Area or District, *e.g.* 26 & 27 V. c. 96, s. 2: this is obviously so where the phrase is “Local Jurisdiction,” *e.g.* 35 & 36 V. c. 38, s. 1; 60 & 61 V. c. 57, s. 15.

In s. 20, 7 G. 4, c. 64, “Jurisdiction,” means, local jurisdiction; and not jurisdiction with reference to the nature of the charge (*R. v. O’Connor*, 5 Q. B. 16).

“Jurisdiction of the Admiral,” *quà* Territorial Waters Jurisdiction Act, 1878, 41 & 42 V. c. 73; *V.* s. 7.

“Unlimited Civil Jurisdiction,” *quà* Colonial Courts of Admiralty Act, 1890, 53 & 54 V. c. 27, “means, Civil Jurisdiction unlimited as to the Value of the Subject-matter at issue, or as to the Amount that may be claimed or recovered” (s. 15).

“Separate PRISON Jurisdiction”; *V.* 28 & 29 V. c. 126, s. 9.

*V.* SUMMARY JURISDICTION: WITHIN THE JURISDICTION.

**JUROR.** — “Juror” means a male person only (Juries Act, 1870, s. 5; Juries Act (Ir), 1871, s. 3). *V.* SPECIAL.

“The Average *English* Juror is a prosaic sort of person, — unimaginative, unexcitable, docile to the evidence, and amenable to the advice and guidance of the Judge. His *Irish* counterpart will be a man of another temper; and, not to push invidious distinctions too far, suffice it to say that, in certain classes of cases which need not be particularized but of which those of an agrarian order are undoubtedly an example, he is (to put it mildly) prone to be a little unreliable” (per Christian, L. J., *Moffett v. Gough*, 1 L. R. Ir. 371).

**JURY.** — *V.* JUROR: PEER. *Vh.* Jacob: 7 Encyc. 145–157.

All the Exemptions from serving on Juries (for *whv.*, Sch, 33 & 34 V. c. 77) are applicable to Coroners’ Inquests; for by s. 9, 33 & 34 V. c. 77 (re-enacting s. 2, 6 G. 4, c. 50), the exemptions extend “to any Juries or inquests WHATSOEVER” (*R. v. Dutton*, 1892, 1 Q. B. 486; 61 L. J. Q. B. 190; 66 L. T. 324; 40 W. R. 270; 56 J. P. 455): *V.* arg. of Counsel in *the* for obs on the word “INQUEST.”

*V.* GOOD JURY: CHALLENGE: TRIAL: PAIS: PANEL.

"The Juries Acts, 1825 to 1870," "The Juries (Scotland) Acts, 1745 to 1869," "The Juries (Ireland) Acts, 1871 to 1894"; F. Sch 2, Short Titles Act, 1896. *V.* GRAND JURY.

**JUS.** — In the maxim *Ignorantia juris haud excusat*, "the word '*jus*' is used in the sense of denoting General Law, — the ordinary law of the country. But when '*jus*' is used in the sense of denoting a Private Right, that maxim has no application. Private Right of ownership is a matter of fact; it may be the result also of matter of law; but if parties contract under a mutual mistake and misapprehension as to their relative and respective rights, the result is that that agreement is liable to be set aside as having proceeded upon a common mistake" (per Lord Westbury, *Cooper v. Phibbs*, L. R. 2 H. L. 170). *V.* RIGHT.

*Jus Accrescendi*; *V.* JOINT TENANCY.

**JUST.** — Order for Sale of Goods in an Interpleader "upon such terms as may be Just," R. 12, Ord. 57, R. S. C.: *V. Forster v. Chawcer*, 1897, 2 Q. B. 362; 66 L. J. Q. B. 693; 76 L. T. 825; *Stern v. Tequer*, 1898, 1 Q. B. 37; 66 L. J. Q. B. 859; 77 L. T. 347.

"Just and BENEFICIAL" application under s. 138, Comp Act, 1862; *V. Re Gold Co*, 12 Ch. D. 77; 48 L. J. Ch. 650; *Re Metropolitan Bank, Heiron's Case*, 15 Ch. D. 139; 49 L. J. Ch. 651; *Re North Australian Co*, 45 Ch. D. 87; 59 L. J. Ch. 654; *Re Great Kruger Co*, 1892, 3 Ch. 314, 315; *Ex p. Barnes*, 1896, A. C. 146; 65 L. J. Ch. 394; 44 W. R. 433.

"Just," in such a connection as "Just CAUSE" for a Court to do anything, "does not add much weight, though it may add a little. It means, some substantial reason must be shown" (per Jessel, M. R., *Ex p. Cocks*, *Re Poole*, 52 L. J. Ch. 65; 21 Ch. D. 397). *Cp.* GOOD CAUSE.

A Prerogative Mandamus is not a "Just and CONVENIENT" course when there is another appropriate remedy (*R. v. Registrar of Joint Stock Cos*, 57 L. J. Q. B. 433; 21 Q. B. D. 131; *R. v. Charity Comrs.* 1897, 1 Q. B. 407; 66 L. J. Q. B. 321; 76 L. T. 199; 45 W. R. 336; *R. v. St. Giles*, 66 L. J. Q. B. 337; 45 W. R. 335; 61 J. P. 217). *V.* as to when Prerogative Mandamus lies, *R. v. St. George the Martyr*, 61 L. J. Q. B. 398; 67 L. T. 412; 56 J. P. 821; MANDAMUS.

In ascertaining what is a "Just or Convenient" case in which the Court should grant an Interlocutory Mandamus or Injunction, or appoint a Receiver, s. 25 (8), Jud. Act, 1873, regard should be had to what is "Just" according to settled legal principles, as well as to what is "Convenient" (*Beddow v. Beddow*, 47 L. J. Ch. 588; 9 Ch. D. 89; 26 W. R. 570): — Quà Mandamus or Injunction, F. R. 6. Ord. 50, R. S. C.; quà Receiver, R. 15 *a* and 16, *Ib.*; and on each Rule, F. Ann. Pr.

"Just Debts"; *V.* DEBTS.

As to when it is "Just and EQUITABLE" that a Winding-up Order

should be made on a Co. s. 79 (5), Comp Act. 1862; *V. Re Suburban Hotel Co.*, 36 L. J. Ch. 710; 2 Ch. 737; *Re Haven Gold Mining Co.*, 20 Ch. D. 151; 51 L. J. Ch. 242; 46 L. T. 322; *Re German Date Coffee Co.*, 20 Ch. D. 169; 51 L. J. Ch. 564; *Re Diamond Fuel Co.*, 49 L. J. Ch. 301; 13 Ch. D. 400; *Re Bristol Joint Stock Bank*, 59 L. J. Ch. 722; 44 Ch. D. 703; *Re Crown Bank*, 59 L. J. Ch. 739; 44 Ch. D. 634; 62 L. T. 823; 38 W. R. 666; *Re Brinsmead*, 1897, 1 Ch. 406; 66 L. J. Ch. 290; 76 L. T. 100; *Re Amalgamated Syndicates*, 1897, 2 Ch. 600; 66 L. J. Ch. 783; 77 L. T. 431; 46 W. R. 75; *Re Australian Bank*, 41 S. J. 469; W. N. (97) 48; *Re Coolgardie Gold Mines*, 76 L. T. 269; Buckl. 243; Palmer Co. Prec. Part 2, 41-47.

"Peculiar Circumstances" rendering it "Just and EXPEDIENT" to enlarge time for enrolling a Decree; *V. Hooper v. Gumm*, 26 L. T. 537.

"Just Proportion"; *V. INDEMNIFY*.

"There is always some difficulty in understanding the meaning of the term 'just'; but I am putting a favourable construction on it if, in this case — *i.e.* on the phrase 'Just and REASONABLE' Conditions in s. 7, Ry & Canal Traffic Act, 1854 — I construe it as meaning 'to the advantage of the customer'" (per Cave, J., *Brown v. Manchester S. & L. Ry*, 51 L. J. Q. B. 601; *V. S. C.* 52 L. J. Q. B. 132; 53 *Ib.* 124; 9 Q. B. D. 230; 10 *Ib.* 250; 8 App. Ca. 703).

Disqualification from bankruptcy or notorious insolvency, is a "Just and Reasonable" provision in the Bye-Laws of a City Company (*R. v. Saddlers Co.*, 32 L. J. Q. B. 337; 10 H. L. Ca. 404).

*V. FAIR AND REASONABLE: REASONABLE.*

Joint Tenant "receiving more than his Just SHARE"; *V. RECEIVING*, towards end.

**JUST ALLOWANCES.** — This term in a Redemption Order includes, — Payments in discharge of Legacies (*Nightingale v. Lawson*, 1 Cox. 23); Counsel's Opinions and procuring directions (*Feürns v. Young*, 10 Ves. 184); Dower deductions (*Graham v. Graham*, 1 Ves. sen. 262); Partnership Business Expenses (*Brown v. De Tastet*, Jac. 284, 289; *Cook v. Collingridge*, *Ib.* 607, 621); but not taxed costs of a solicitor accountable for rents received by him as Plaintiff's steward (*Jolliffe v. Hector*, 12 Sim. 398); *V.* the foregoing cases cited from Daniel Ch. Pr. by Jessel, M. R., in *Wilkes v. Sannion* (47 L. J. Ch. 151; 7 Ch. D. 188). which case decided that expenses of taking and holding possession of a mortgaged ship, advertising her sale, and effecting insurances, came under "Just Allowances." So do all necessary repairs; but not repairs beyond what are necessary, nor substantial improvements (*Tipton Green Colliery v. Tipton Moat Colliery*, 47 L. J. Ch. 152; 7 Ch. D. 192). So the expense of defending the Title is within the phrase (*Godfrey v. Watson*, 3 Atk. 518). *Vh.* Dan. Ch. Pr. 857:



Seton, 1976-1979: Fisher, 839-849; Coote, 814, 871-876; MacS., 84, 538; 7 Encyc. 159-161.

In an Administration Order: *V. Cotham v. West*, 1 Bea. 381.

In taking an account directed by a judgment or Order; *V. R.* 8, Ord. 33, R. S. C.: Ann. Pr.

**JUST BEFORE.** — In a plea justifying the shooting a dog, that “just before” the defendant shot the dog it was worrying the defendant’s sheep, — “just before” was construed as “at the time when,” or as implying that the dog had attacked the sheep and was about to renew the attack (*Kellett v. Stannard*, 2 Ir. Com. Law Rep. 156). *Vh, Janson v. Brown*, 1 Camp. 41.

**JUST DEBTS.** — *V. DEBTS.*

**JUSTICE.** — “Administration of Justice”; *V. ADMINISTRATION. Cp, COURT.*

“Necessary for the purposes of Justice,” R. 5, Ord. 37, R. S. C.; *V. Re Mysore Mining Co.*, 58 L. J. Ch. 731.

“To do justice”; *V. JUSTLY.*

*V. FAILURE OF JUSTICE.*

“High Court of Justice”; *V. HIGH COURT.*

“Justice, *Justitiarinus*,’ signifies him that is deputed by the King to do Right by way of Judgment” (Cowel, *whr* for the various kinds of Justices: *Vf, Jacob, Justices*). *V. JUDGE.*

When a modern Act prescribes anything to be done by or before a “Justice,” in *England*, its interp clause, generally, defines that word as meaning “JUSTICE OF THE PEACE,” either without qualification or as acting within a prescribed area, *e.g.* 7 & 8 V. c. 31, s. 36, c. 110, s. 3; 8 & 9 V. c. 126, s. 84; 9 & 10 V. c. 74, s. 2, c. 96, s. 17; 10 & 11 V. cc. 14, 15, 16, 17, 27, 34, s. 3, c. 38, s. 20, c. 65, s. 3, c. 89, s. 3; 11 & 12 V. c. 63, s. 2, c. 112, s. 147, c. 123, s. 22; 12 & 13 V. c. 92, s. 29; 14 & 15 V. c. 34, s. 3; 25 & 26 V. c. 114, s. 1; 26 & 27 V. c. 112, s. 3; 28 & 29 V. c. 125, s. 2; 29 & 30 V. c. 117, s. 3, c. 118, s. 4; 32 & 33 V. c. 115, s. 13; 35 & 36 V. c. 93, s. 5; 38 & 39 V. c. 69, s. 2, c. 70, s. 4; 42 & 43 V. c. 19, s. 3; 43 & 44 V. c. 24, s. 3; 45 & 46 V. c. 50, s. 7; 51 & 52 V. c. 33, s. 2; 53 & 54 V. c. 5, s. 341; 54 & 55 V. c. 38, s. 27; 57 & 58 V. c. 57, s. 59.

Other and wider Stat. Def. — 8 & 9 V. c. 20, s. 3; 13 & 14 V. c. 115, s. 49; 14 & 15 V. c. 78, s. 48; 23 & 24 V. c. 112, s. 47; 25 & 26 V. c. 93, s. 3; 35 & 36 V. c. 23, s. 3; 39 & 40 V. c. 36, s. 281.

“Justices,” as used *quà England*; *V.* 7 & 8 V. c. 18, s. 3; 8 & 9 V. c. 63, s. 6; 14 & 15 V. c. 16, s. 19; 20 & 21 V. c. 43, s. 12, c. 48, s. 2; 24 & 25 V. c. 113, s. 3; 38 & 39 V. c. 63, s. 2.

*V. Edwards v. Hodges*, 15 C. B. 477; 24 L. J. M. C. 81; 24 L. T. O. S. 237; 3 W. R. 167.

“Two Justices,” is generally defined as meaning two Justices as-

sembled and acting together, *e.g.* 8 & 9 V. cc. 16, 17, 18, 19, 20, 33, s. 3; 10 & 11 V. cc. 14, 15, 16, 17, 34, 65, 89, s. 3, c. 38, s. 20; 11 & 12 V. c. 63, s. 2, c. 112, s. 147, c. 123, s. 22; 18 & 19 V. c. 121, s. 2; 23 & 24 V. c. 113, s. 21; 26 & 27 V. c. 112, s. 3; 29 & 30 V. c. 118, s. 4; 31 & 32 V. c. 60, s. 2; 33 & 34 V. c. 78, s. 3.

"Justice," or "Justices," as used quâ *Scotland*; V. 8 & 9 V. cc. 17, 19, 33, s. 3; 25 & 26 V. c. 97, s. 2; 27 & 28 V. c. 53, s. 2; 35 & 36 V. c. 68, s. 15; 46 & 47 V. c. 3, s. 9; 50 & 51 V. c. 28, s. 21; 52 & 53 V. c. 11, s. 9; 55 & 56 V. c. 8, s. 5.

"Justice," or "Justices," as used quâ *Ireland*; V. 1 & 2 V. c. 56, s. 124; 9 & 10 V. c. 87, s. 2; 10 & 11 V. c. 84, s. 8; 12 & 13 V. c. 91, s. 89, c. 97, s. 133; 13 & 14 V. c. 102, s. 59; 14 & 15 V. c. 90, s. 18, c. 92, s. 25, c. 93, s. 44; 16 & 17 V. c. 112, s. 80; 17 & 18 V. c. 103, s. 1; 22 & 23 V. c. 52, s. 1; 28 & 29 V. c. 50, s. 4; 29 & 30 V. c. 44, s. 2; 31 & 32 V. c. 59, s. 3, c. 60, s. 2; 35 & 36 V. c. 68, s. 14.

Justices are never spoken of as a "Court or Judge" (*Re Jones*, cited COURT OR JUDGE).

"Majority of Justices," s. 9, Alehouse Act, 1828, applies only to Justices at Petty Sessions, and not to Quarter Sessions (*Ex p. Evans*, 1894, A. C. 16; 63 L. J. M. C. 81; 70 L. T. 45; 58 J. P. 260).

"Justices in Sessions assembled," quâ *Prison Acts*; V. 28 & 29 V. c. 126, s. 6; 31 & 32 V. c. 21, s. 4.

"The Justices Qualification Acts, 1731 to 1875"; V. Sch 2, Short Titles Act, 1896.

Justices in Eyre, Justices of Assize; V. SUPERIOR COURT.

V. COURT: MAGISTRATE.

**JUSTICE OF THE PEACE.** — "'Justices of the Peace, *Justicarii ad pacem*,' Are they that are appointed by the Kings Commission to attend the Peace of the COUNTY where they dwell" (Cowel), or of their BOROUGH if it have a Commission of the Peace. V. Jacob: 7 Encyc. 162-167; JUSTICE: PETTY SESSIONS.

Stat. Def. — 1 V. c. 67, s. 3; 7 & 8 V. c. 91, s. 114; 10 & 11 V. c. 33, s. 4; 32 & 33 V. c. 115, s. 13; Army Act, 1881, 44 & 45 V. c. 58, s. 94. — *Scot.* 23 & 24 V. c. 45, s. 9; 33 & 34 V. c. 52, s. 26; 52 & 53 V. c. 44, s. 17; 57 & 58 V. c. 41, s. 26. — *Ir.* 1 & 2 V. c. 56, s. 124; 29 & 30 V. c. 4, s. 16.

**JUSTICIARY.** — V. HIGH COURT: CLERK.

"The Justiciary Court (Scotland) Acts, 1783 to 1892"; V. Sch 2, Short Titles Act, 1896.

**JUSTIFIABLE.** — Justifiable HOMICIDE; V. 4 Bl. Com. 178 *et seq.*; Arch. Cr. 742; Rose. Cr. 543. (*q.*, EXCUSABLE.

**JUSTIFICATION.** — "'Justification,' is an affirming or showing good reason in Court why he did such a thing as he is called to answer," (Cowel).

“This word has acquired a somewhat special meaning in actions for Defamation. A ‘Plea of Justification’ is a Plea that the words complained of ‘are true in substance and in fact.’ Such a plea is a complete defence to any action of Libel or Slander” (7 Encyc. 170-173).

*V. DEFENCE.*

**JUSTLY.** — “To act justly” (*Mussoorie Bank v. Raynor*, 51 L. J. P. C. 72; 7 App. Ca. 321), or “to do Justice” to Relations (*Re Boud, Cole v. Hawes*, 4 Ch. D. 238; 46 L. J. Ch. 488), does not create a PRECATORY TRUST.

“Justly responsible”; *V. RESPONSIBLE.*

**JUXTA.** — *V. IN SIVE JUXTA.*

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 KALENDAR—KEEP
 

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**KALENDAR.**—*V.* ALMANAC: CALENDAR MONTH.

**KAY.**—*V.* QUAY.

**KEATING'S ACT.**—The Summary Procedure on Bills of Ex. Act, 1855, 18 & 19 V. c. 67; repealed by 46 & 47 V. c. 49, but the spirit of its provisions is made applicable to several Causes of Action by R. 6, Ord. 3 and Ord. 14, R. S. C.

**KEELAGE.**—Is a TOLL for every Vessel coming within the Port (Hale, *De Portibus Maris*, ch. 6).

**KEEP.**—“To keep in GOOD REPAIR” pre-supposes the putting into it, and means that during the whole term the premises shall be in good repair” (per Rolfe, B., *Pague v. Haine*, 16 M. & W. 546; 16 L. J. Ex. 130; *Luxmore v. Robson*, 1 B. & Ald. 584; *Proudford v. Hart*, 59 L. J. Q. B. 389; 25 Q. B. D. 42); the meaning is the same if the phrase is “keep in REPAIR” (*Vf*, *Crowe v. Crisford*, 17 Bea. 507; *Cooke v. Cholmondeley*, 4 Drew. 328; Woodf. 628; Fawcett, 314): and this ruling seems applicable not only to Buildings but also to a Road (*R. v. Kerry Jus.*, Ir. Rep. 9 C. L. 471).

But to “keep” in Repair or in Good Repair does not involve re-building if that become necessary through Natural Decay (*Crowe v. Crisford*, sup; *Lister v. Lane*, 1893, 2 Q. B. 212; 62 L. J. Q. B. 583; 69 L. T. 176; 41 W. R. 626) *Vf*, *Dashwood v. Magniac*, cited GOOD REPAIR. But to “keep” in repair involves re-building in case of Fire (*Bullock v. Dommitt*, and other cases, cited REPAIR), and also the building of a house agreed to be built but which agreement for building has been waived by receipt of rent after breach (*Jacob v. Down*, 1900, 2 Ch. 156; 69 L. J. Ch. 493; 83 L. T. 191; 48 W. R. 441; 64 J. P. 552).

*Vf*, PUT. *Cp*, *Jolliffe v. Twyford*, 26 Bea. 227; 28 L. J. Ch. 93; 32 L. T. O. S. 141, *whc* was on a direction to “keep in repair” in a Will: *Va*, KEEPING SAME IN REPAIR.

A Lessor's implied agreement, on the letting of a *Furnished* house, that it is FIT for habitation (*Smith v. Marrable*, 11 M. & W. 5), is not displaced by express agreement on his part to “keep” the house in good repair (*Wilson v. Hatton*, 25 W. R. 537; 2 Ex. D. 336; 46 L. J. Ex. 489; 36 L. T. 473; *othc*, *Bunn v. Harrison*, 3 Times Rep. 146). *Note*: There is no such implied agreement on the letting of an *Unfurnished*

house (*Hart v. Windsor*, 12 M. & W. 68; *Manchester Bonding Warehouse Co v. Carr*, 49 L. J. C. P. 809; 5 C. P. D. 507; *Chester v. Powell*, 52 L. T. 722; *Murray v. Mace*, Ir. Rep. 8 C. L. 396), or Land (*Sutton v. Temple*, 12 M. & W. 52; *Erschine v. Avarane*, 42 L. J. Ch. 835; 8 Ch. 756); nor, even in the case of a Furnished House or Apartments, is there any implied agreement of a *continuance* of fitness (*Sarson v. Roberts*, 1895, 2 Q. B. 395; 65 L. J. Q. B. 37; 73 L. T. 174).

V. KEEPING SAME IN REPAIR: REPAIRING LEASE.

"Keep such PAVEMENT in good and sufficient repair," s. 105, Metrop. Man. Act, 1855; *V. R. v. Hackney*, 42 L. J. M. C. 151; L. R. 8 Q. B. 528.

A contractual obligation to "keep *in order*" Growing Trees, means, *semble*, not only to prune them but also to weed and clear the ground where they are growing (*Allen v. Cameron*, 1 C. & M. 832).

To "PERFORM and keep" the covenants (in a Forfeiture Clause) includes Negative as well as Positive covenants (*Timms v. Baker*, 49 L. T. 106); "if the word 'perform' alone had been used I think the case would have been very different" (per Lopes, J., *ib.*).

"To keep" a *Place or Thing*, involves the idea of having over it the immediate control, of a character more or less permanent. Thus the landlord of a BROTHEL wholly let out in rooms to different tenants at weekly rents, and who has no control over the premises except that of determining the tenancies, does not "keep" the brothel (*R. v. Stannard*, 33 L. J. M. C. 61; L. & C. 349; *Va, R. v. Barrett*, 32 L. J. M. C. 36; L. & C. 263; Steph. Cr. 122; Stone, 233; *Sr, Halligan v. Ganly*, 19 L. T. 268). And to "keep" a place for a particular purpose, involves the idea that it is used for that purpose on more than one occasion; but the how many or how frequent those occasions must be, is a question of fact to be determined in each case (*Marks v. Benjamin*, 5 M. & W. 568; 9 L. J. M. C. 20), — *e.g.* PLACE "opened, kept, or used," for illegal Betting, s. 1, 16 & 17 V. c. 119; *Vth, R. v. Cook*, 13 Q. B. D. 377; 51 L. T. 21; 32 W. R. 796; 48 J. P. 694; *R. v. Brown*, 1895, 1 Q. B. 119; 64 L. J. M. C. 1; 72 L. T. 22; 43 W. R. 222; 59 J. P. 485.

As to keeping a place for Bull-baiting, &c. within s. 3, 12 & 13 V. c. 92, *V. Clarke v. Hague*, 29 L. J. M. C. 105; and as to the phrase "Open, keep, or use," a house for UNLAWFUL GAMING, s. 4, 17 & 18 V. c. 38; *V. Jenks v. Turpin*, 53 L. J. M. C. 161; 13 Q. B. D. 505; USE: *Cp*, PUBLIC SINGING.

The words "have" and "keep" are not, *per se*, synonyms in the phrase "*to have or keep*." Therefore, the proprietor of an unlicensed theatre incurs the penalty prescribed by s. 2, Theatres Act, 1843, 6 & 7 V. c. 68, by permitting it to be used, if only for a single occasion, for the public performance of stage plays (*Shelley v. Bethell*, 53 L. J. M. C. 16; 12 Q. B. D. 1); yet it would seem that the person to whom such occasional permission may be given would neither "have" nor "keep" the theatre (*R. v. Strugnell*, 35 L. J. M. C. 78; L. R. 1 Q. B. 93).

But under 12 G. 3. c. 61, s. 11, the word "have" as used in the phrase to "have or keep" gunpowder, was held to be synonymous with "keep," because in s. 18 of that Act there is the phrase "have and convey," and the word "have" was held to refer in each section to the word with which in each place it was associated; and therefore a carrier having only the temporary custody of the prohibited quantity of gunpowder was not liable to the penalty imposed by s. 11 (*Biggs v. Mitchell*, 31 L. J. M. C. 163; 2 B. & S. 523; 6 L. T. 242: *Vth*, per Coleridge, C. J., *Foster v. Diphwys Casson Co*, 18 Q. B. D. 432). *V. CASE OR CANISTER: HAVE OR CONVEY.*

"Keep her Course"; *V. COURSE.*

A direction to "keep the RESIDUE"; held, sufficient to pass the general residue of the estate (*Boys v. Morgan*, 3 My. & C. 661).

**KEEP ACCOUNTS.** — A direction to an Exor to "keep Accounts," furnishes a presumption that he is not to take beneficially; but the phrase may be explained by extrinsic evidence (*Gladding v. Yapp*, 5 Mad. 56).

**KEEP COMPANY.** — *V. ASSOCIATE.*

**KEEP DOWN.** — " 'Keeping down Interest,' is familiar in legal instruments, and means, the payment of interest as it becomes due; and not the payment of all arrears of interest which may have become due on any security from the time when it was executed" (*R. v. Hutchinson*, 4 E. & B. 211; 24 L. J. M. C. 30; 3 W. R. 70).

**KEEP HOUSE.** — "Begins to keep house," s. 4 (*d*), Bankry Act, 1883; *V. Yate Lee*, 50-53: *Wms. Bank. 21*: *Robson*, 137-139: *Baldwin*, 85.

**KEEP OPEN.** — To "OPEN," or "keep open" LICENSED PREMISES, s. 9, 37 & 38 V. c. 49, means, that the opening is such as involves an invitation to persons outside to come in (*Jeffrey v. Weaver*, 1899, 2 Q. B. 449; 68 L. J. Q. B. 817; 81 L. T. 193; 63 J. P. 663; 47 W. R. 638). A Draper who is also a Grocer and licensed to sell Wines and Spirits not to be consumed on the premises, is not shown to "keep open" his premises for the sale of Intoxicating Liquors, within the section, by merely proving that his shop was open after prohibited hours; for, in the absence of other proof, it must be assumed that, quà such sale, his shop was duly closed (*Tussell v. Orenden*, 2 Q. B. D. 383; 46 L. J. M. C. 228; 36 L. T. 696; 25 W. R. 692).

To "keep Open SHOP for retailing" POISONS, s. 1, Pharmacy Act, 1868, 31 & 32 V. c. 121, means, to keep any Shop which is open to the public to come in and buy any Poison by retail, *e.g.* a Watchmaker who sells a substance containing Corrosive Sublimate "keeps Open Shop" for its sale (*Pharmaceutical Socy v. Hornsey*, 10 Times Rep. 492). *V. OPEN.*

**KEEP OUT OF THE WAY.** — *V.* 1 Maude & P. 599.

**KEEP UP.** — “Repair and keep up”; *V.* REPAIR.

**KEEPER.** — *V.* KEEP: KEEPING.

“Keeper of a COMMON LODGING-HOUSE,” quâ P. H. Scotland Act, 1897, “includes any person having, or acting in, the care and management of a Common Lodging-House” (s. 3).

“Keeper of the Gaol”; Stat. Def., *Ir.* 14 & 15 V. c. 90, s. 18, c. 93, s. 44.

A solicitor or other agent who (acting on behalf of the Liquidator of a Co, which Co is the owner of a Hall) lets the Hall for “PUBLIC ENTERTAINMENT” on Sunday (such Entertainment being contrary to s. 1, Sunday Observance Act, 1780, 21 G. 3, c. 49) is not the “Keeper” of the Hall, within that section; nor, within s. 2, does he “appear, act, or behave himself,” as the “Master” of the Hall, or as the person having its “Care, Government, or Management”; nor is the Chairman, who simply introduces the entertainer to the audience, the person “managing or conducting” the Entertainment, within s. 1 (*Reid v. Wilson*, 1895, 1 Q. B. 315; 64 L. J. M. C. 60; 71 L. T. 739; 43 W. R. 161; 59 J. P. 516).

*V.* LORD KEEPER.

**KEEPING.** — “Custody, Possession, or Keeping,” of Naval Stores; *V. R. v. Sunley*, 7 W. R. 418.

“Found in the Possession or Keeping”; *V.* FOUND.

“Keeping” a House, Stall, &c, s. 5, 39 & 40 G. 3, c. 104, means, keeping it as continuously as its nature will reasonably admit of (*Gray v. Cook*, 8 East, 336).

An agreement to have the “Keeping and Feeding” a Cow on another person’s land, does not constitute a TENEMENT, quâ a Pauper’s Settlement; for the cow might be fed upon hay made previously or elsewhere (*R. v. Cumberworth Half*, 13 L. J. M. C. 49; 5 Q. B. 484). *Cp.* GOING.

**KEEPING SAME IN REPAIR.** — A devise of realty to A. for life, he “keeping the same in repair,” gives the remainderman a right of action against the exors of A. if the property is allowed to go out of repair; and the measure of damages is the sum reasonably necessary to put the property in that state of repair in which A. ought to have left it (*Woodhouse v. Walker*, 49 L. J. Q. B. 609; 5 Q. B. D. 404; 42 L. T. 770; *Re Williamses*, 52 L. T. 41; *Batthyany v. Walford*, 33 Ch. D. 630, 631; affd 36 Ch. D. 269; 56 L. J. Ch. 881). *Cp.* *Re Cartwright*, cited WASTE, towards end. *Vf.* KEEP: REPAIR.

**Fitzroy KELLY’S ACTS.** — The Corrupt Practices Prevention Act, 1854, 17 & 18 V. c. 102:

The Legitimacy Declaration Act, 1858, 21 & 22 V. c. 93, amended by s. 7, 22 & 23 V. c. 61.

**KELP-SHORE.** — “Kelp-Shore,” probably, includes the land between high and low water mark; but where a conveyance of land “with the Kelp-Shore” gave metes and bounds which clearly excluded the land between high and low water mark, it was held that such land was not included, and that parol evidence could not be received to show that it was included (*Boyle v. Mulholland*, 10 Ir. Com. Law Rep. 150).

**KEPT.** — *V.* KEEP: BRED.

**KEPT UP.** — *V.* KEEP UP: WHOLLY.

**KEY.** — *V.* CONTENTS: DONATIO MORTIS CAUSA.

**KEYAGE.** — *V.* WHARFAGE.

**KIDEL: KIDDLE.** — “Kidels is a proper name for open weirs whereby fish are caught” (2 Inst. 38: *Vf*; Cowel: Termes de la Ley). “Weirs (kidelli, or gurgites) were the means usual in ancient times for appropriating and enjoying several fisheries in tidal waters” (per Selborne, C., *Neill v. Deronshire*, 8 App. Ca. 144: *Vf*, *A-G. v. Emerson*, cited SEVERAL FISHERY). *V.* GURGES: WEIR.

**KILL.** — “Killing is causing the death of a person by an act or omission but for which the person killed would not have died when he did, and which is directly and immediately connected with his death. The question whether a given act or omission is directly and immediately connected with the death of any person, is a question of degree dependent upon the circumstances of each particular case” (Steph. Cr. 151, 152). *Vf*, Arch. Cr. 750-772.

*V.* HOMICIDE: MANSLAUGHTER: MURDER: SEEDS.

**KIN.** — *V.* KINDRED.

**KIND.** — *V.* DYE.

“Of what Nature and Kind soever”; *V.* *Campbell v. Prescott*, cited EFFECTS: EVERY THING ELSE.

“In kind”; *V.* DUES.

**KINDRED.** — Neither husband nor wife is of “kin” to the other (Wms. Exs. 983, 984); but persons related by the half-blood are of “kin” equally with those of the whole-blood (Ib. 984).

The Statutes of Distribution (22 & 23 Car. 2, c. 10; 1 Jac. 2, c. 17, s. 7), furnish the best rules that can be observed for limiting the extent of this word (*Carr v. Bedford*, 2 Rep. in Chanc. 146).

Devise of freeholds to A. and B. for life, “and in the event of either dying, the deceased’s share to revert to the Next Male Kin”; held, that “Next Male Kin” did not indicate an individual but meant the NEAREST of Kin of the testator, being males living at his death, who



took as Joint Tenants in fee simple (*Re Chapman*, W. N. (83) 232; 49 L. T. 673).

V. CONSANGUINITY: FRIENDS AND RELATIONS: NEXT OF KIN: *Re Parsons*, cited CONTINGENT.

**KING.** — V. MAJESTY: QUEEN: RESTRAINT OF KINGS.

V. LOCKE KING'S ACTS.

**KING'S ENEMIES.** — V. ENEMY: QUEEN'S ENEMIES: QUEEN.

**KING'S PLEASURE.** — V. AT THE KING'S PLEASURE.

**KING'S WILL.** — “At the King's will for Body, Lands, and Goods”; V. FELONY.

**Lord KINGSDOWN'S ACT.** — The Wills Act, 1861, 24 & 25 V. c. 114.

**KNACKER.** — Quà Slaughter-houses, &c (Metropolis) Act, 1874, 37 & 38 V. c. 67, “‘Knacker,’ means, a person whose business it is to slaughter any horse, ass, or mule, or any cattle, sheep, goat, or swine, which is *not* killed for the purpose of its flesh being used as Butcher's Meat” (s. 12). A similar def is given quà P. H. London Act, 1891 (s. 141), and quà P. H. Scotland Act, 1897 (s. 3); and by these two lastly mentioned sections “Knacker's Yard,” “means, any building or place used for the purpose of such business.” *Cp*, SLAUGHTERER.

**KNEELING.** — “It is not necessary that a person should touch the ground in order to perform such an act of reverence as will constitute kneeling. Of course there may be such a bowing of the knee as would not amount to Kneeling, — there may be an accidental bowing of the knee arising from fatigue or otherwise; but here is a knee bent for the purpose of reverence and in such a manner that those who behold cannot tell whether or not touching the ground with the knee has been arrived at, and, indeed, Mr. Macknochie says that at certain times his knee has momentarily touched the ground. This seems to their Lordships to be literally Kneeling” (*Martin v. Macknochie*, L. R. 3 P. C. 66; 39 L. J. Ecc. 18).

*Cp*, HOMAGE.

**KNIGHT'S FEE.** — “There is great diversity of opinions concerning the contents of a knight's fee, that is, how much land goeth to the livelihood of a knight. For some say that a knight's fee consisteth of eight hides, and every hide containeth an hundred acres, and so a knight's fee should contain 800 acres. Others say that a knight's fee containeth 680 acres. Others say, that an oxgange of land containeth 15 acres, and eight oxgangs make a plowland; by which account a plowland containes 120

acres; and that *virgata terra*, or a yardland, containeth 20 acres. But I hold that a knight's fee, an hide or plowland, a yardland or oxgange of land, doe not containe any certaine number of acres; but a knight's fee is properly to be esteemed according to the qualitie and not according to the quantity of the land, that is to say, by the value and not by the content" (Co. Litt. 69 a). *V. HIDE.*

"The word 'Knight's-fee' is a compound word, and may comprehend many things. And therefore by the grant of this may pass land, meadow, and pasture, as parcel of it. And sometimes by this, doth pass so much land as to make a knight's fee. And some say it doth contain 8 hides of land. And it seems also that a manor may pass by this name if it be usually called so" (Touch. 92, 93). In Hilliard's note to this passage it is said, "In different ages a Knight's fee was estimated at several values, 2 Inst. 596"; and "probably it does not contain any certain number of acres" (Elph. 590, *whv* for further references).

**KNIGHT'S SERVICE.** — *V. Litt.* ss. 103–116: Co. Litt. 74 b–85 a: 2 Bl. Com. ch. 5. "Note, that Knights Service is Service of lands or tenements to beare Armes in war in defence of this Realme" (Termes de la Ley, *Service de Chivaler*). *V. TENURE.*

**KNIGHT OF THE SHIRE.** — A Knight of the Shire is the Parliamentary Representative of a County, or (now) of a Division of a County. Blackstone wrote, "The Knights of Shires are the representatives of the Landowners or Landed Interest of the Kingdom" (1 Bl. Com. 172, citing 8 H. 6, c. 7; 10 H. 6, c. 2; and 14 G. 3, c. 58: *Vj*, May's Parliamentary Practice); but s. 19, Rep People Act, 1832, gave £10 Copyholders a County vote, and s. 20, *Ib.* (the CHANDOS clause) gave a like vote to £10 Leaseholders and £50 Occupiers. The Rep People Act, 1884, established a uniform Householder and Lodger Franchise for Counties and Boroughs, but besides this, there is still a property qualification for Counties.

By s. 9, Redistribution of Seats Act, 1885, 48 & 49 V. c. 23, Counties are now divided into separate Divisions, and "the law relating to Parliamentary Elections shall apply to each such Division as if it were a separate County." Therefore, the character of County Members is not destroyed; and where a trust or function (established prior to this last Act) has to be performed by the "Knights of the Shire" for the time being of a stated County, that means the Members of Parliament elected by the several Divisions of that County (*R. v. Runciman*, 28 L. R. Ir. 527).

**KNOL.** — *V. HOWE.*

**KNOW.** — "To know" a thing or state of things, is not only to have precise KNOWLEDGE of it; knowledge of circumstances ordinarily leading to the conclusion that the thing or state of things exists will suffice,

e.g. quà a provision in a New South Wales Act saving payments to Creditors by an Insolvent, if a Creditor so paid "shall not, at the time of payment, have known that the Debtor was then insolvent" (*National Bank of Australasia v. Morris*, 1892. A. C. 287; 61 L. J. P. C. 32; 66 L. T. 240). Cp. KNOWN.

"Well Know"; V. PREGATORY TRUST.

"Know of or be privy to"; V. PERMIT.

**KNOWINGLY.** — As to the importance of the presence, or absence, of this word in statutory definitions of offences; V. *Mullins v. Collins*, 43 L. J. M. C. 67; L. R. 9 Q. B. 292; 22 W. R. 297; 29 L. T. 838; 38 J. P. 629; *Cundy v. Le Cocq*, cited DRUNKEN PERSON, and cases cited in the latter case. From the observations of Stephen, J., in *Cundy v. Le Cocq*, it would seem that the maxim, *Actus non fitit reum nisi mens sit rea* is not nearly as robust as it once was: "the Act of Parliament must be looked at to see what knowledge is necessary to complete the criminal act." "Knowingly" ought not to be read into a statutory offence "unless it is clear that the legislature intended some such qualification" (per Cave, J., *Betts v. Armstead*, 57 L. J. M. C. 101; 20 Q. B. D. 771; 58 L. T. 811; 36 W. R. 720; 52 J. P. 471). But how that clear intention is to be ascertained, — by trained minds, to say nothing of the common herd, — is not very apparent. Thus in *R. v. Tolson* (23 Q. B. D. 168; 58 L. J. M. C. 97; 37 W. R. 716), nine judges read the word into s. 57, 24 & 25 V. c. 100; whilst five judges declined to do so: the practical point which the majority decided in that case being that a married person, who re-marries, is not guilty of Bigamy if he or she, in good faith and on reasonable grounds, believes that his or her wife or husband is dead at the time of such re-marriage, and this notwithstanding the proviso in the section which, in terms, excepts from Bigamy a re-marriage after a seven years' absence (V. KNOWN). The following observations of Stephen, J., in *R. v. Tolson*, may be usefully added: — "Crimes are in the present day much more accurately defined by statute or otherwise than they formerly were. The mental element of most crimes is marked by one of the words 'Maliciously,' 'Fraudulently,' 'Negligently,' or 'Knowingly,' [should it not be added "wilfully" ?]; but it is the general, — I might, I think, say the invariable, — practice of the legislature to leave unexpressed some of the mental elements of crime. In all cases whatever, competent age, sanity, and some degree of freedom from some kinds of coercion, are assumed to be essential to criminality, but I do not believe they are ever introduced into any statute by which any particular crime is defined."

*Sherras v. De Rutzen* (1895, 1 Q. B. 918; 64 L. J. M. C. 218; 43 W. R. 526; 72 L. T. 839; 59 J. P. 450) seems very like an emphatic re-assertion of the doctrine that *Mens Rea* is an essential ingredient in every offence; and there Wright, J. (in a remarkable judgment), reduced

the exceptions to three classes, — (1) Cases not criminal in any real sense but which, in the public interest, are prohibited under a penalty; (2) Public Nuisances; (3) Cases criminal in form but which are really only a summary mode of enforcing a civil right. *Vthe, Bank of New South Wales v. Piper*, 1897, A. C. 383; 66 L. J. P. C. 73; 76 L. T. 572; 61 J. P. 660: *Fitzgerald v. Hosford*, 1900, 2 I. R. 396. “The general rule is that, unless the contrary is expressed, *Mens Rea* enters into every OFFENCE” (per Russell, C. J., *Williamson v. Norris*, cited PERSON).

It is, however, not necessary to show that the seller of an Article of Food, — e.g. MILK, — in an altered state, s. 9, 38 & 39 V. c. 63, knew that it had been altered (*Pain v. Boughtwood*, 6 Times Rep. 167; 54 J. P. 68; 59 L. J. M. C. 45; 24 Q. B. D. 353; *Dyke v. Gower*, 1892, 1 Q. B. 220; 61 L. J. M. C. 70; 65 L. T. 760; 56 J. P. 168: *Brown v. Foot*, 61 L. J. M. C. 110; 66 L. T. 649; 56 J. P. 581), or, indeed, that he was in any way morally to blame (*Parker v. Alder*, 79 L. T. 381; 68 L. J. Q. B. 7).

So, of the possessor of Diseased Food, s. 117, P. H. Act, 1875 (*Mallinson v. Carr*, 1891, 1 Q. B. 48; 60 L. J. M. C. 34; 63 L. T. 459; 39 W. R. 270: *Blaker v. Tillstone*, 1894, 1 Q. B. 345; 63 L. J. M. C. 72; 58 J. P. 184).

So, a master is responsible for the acts of his servant, done within the scope of the latter's employment, in contravention of s. 2, Merchandize Marks Act, 1887, unless the master brings himself within one or other of the excuses prescribed in that section (*Coppen v. Moore*, cited TRADE DESCRIPTION, *whv* for other instances).

As to necessity at Common Law of showing *Mens Rea*, even for selling Diseased Meat for human food; *V. Emmerton v. Matthews*, 31 L. J. Ex. 139; 7 H. & N. 586.

*Mens Rea* has nothing to do with the offence of selling intoxicants to a DRUNKEN PERSON (*Cundy v. Le Corq*, sup), or of not Keeping open a Salmon Weir, under s. 40, 5 & 6 V. c. 106 (*Fitzgerald v. Hosford*, sup). So, a *bonâ fide* belief that a girl was over 16 years of age, is no answer to a charge of ABDUCTION under s. 55, 24 & 25 V. c. 100, if in fact she was under that age (*R. v. Prince*, 44 L. J. M. C. 122; L. R. 2 C. C. R. 154). *Vf*, *Collman v. Mills*, cited PERMIT.

But the *bonâ fide* belief of a Publican that a Policeman is off duty, is a defence to an Information under s. 16 (2), 35 & 36 V. c. 94, for supplying the latter with liquor (*Sherras v. De Rutzen*, sup); in *the Day*, J., said that the only effect of “knowingly” being in subs. 1 and not in subs. 2 was “to shift the burden of proof”: *Sr. Mullins v. Collins*, sup. *Vf*. SUFFER.

Knowledge is necessary to an offence against R. 19, Part 2, Order 1871, made under Contagious Diseases (Animals) Act, 1869, s. 75 (*Nicholls v. Hall*, 42 L. J. M. C. 105; L. R. 8 C. P. 322). So, of Cruelty to Animals (*Elliott v. Osborn*, cited CRUELTY). So, of sending

Dangerous Goods by railway (*Hearne v. Garton*, 2 E. & E. 66; 28 L. J. M. C. 216).

So, there must be knowledge, or at least the means of knowledge, of Obstruction to make a Surveyor liable under s. 56, Highway Act, 1835 (*Hardcastle v. Bielby*, cited ALLOW). So, under s. 27 (3), Sale of Food and Drugs Act, 1875 (*V. FALSE WARRANTY*): so, under ss. 6, 8 lb., and therefore a master is not responsible under the latter sections for a sale by a servant contrary to express orders (*Kearley v. Tonge*, 60 L. J. M. C. 159; nom. *Kearley v. Tylor*, 65 L. T. 261; *Sethe*, 42 S. J. 91). *See, Farley v. Higginbotham*, cited REFUSAL.

As to s. 8, 6 & 7 W. 4, c. 37; *V. Core v. James*, 41 L. J. M. C. 19; L. R. 7 Q. B. 135.

*V. LAWFUL EXCUSE: SUFFER: Stone*, 733, 734; Maxwell, 115; 6 Encyc. 125-127.

"Knowingly and wilfully *intermarry*, without due publication of BANNs," s. 22, Marriage Act, 1823, 4 G. 4, c. 76; *V. R. v. Clarke*, 16 L. T. 429; 15 W. R. 796. *V. MARRY*.

"Knowingly *issuing*" Fraudulent Prospectus, s. 38, Comp Act, 1867, means, intentionally issuing it (*Twyeross v. Grant*, 2 C. P. D. 469; 46 L. J. C. P. 636).

"Knowingly *permits*" Sewage to fall into a Stream; *V. CAUSE OR PERMIT*.

"Knowingly *sell*, publish or expose to sale" any printed book contrary to s. 17, Copyright Act, 1842, 5 & 6 V. c. 45; *V. Cooper v. Whittingham*, 49 L. J. Ch. 752; 15 Ch. D. 501.

In *Royse v. Birley* (cited PUBLIC SERVICE), the Court read "knowingly and willingly" into the first part of s. 1, 22 G. 3, c. 45, taking that phrase from the latter part, and applying it to the first part, of the section.

*V. FRAUD: MALICE: NEGLIGENCE: WILFUL NEGLIGENCE: WILFULLY: WITTINGLY: PRESUME: OFFENCE: INNOCENTLY ACTED.*

**KNOWLEDGE.**— "Come to the Knowledge": *V. COME TO.* *Cp.* KNOW.

"Knowledge and Belief" in an affidavit, *cp.* "Information and Belief," sub INFORMATION.

"Notice and Knowledge"; *V. NOTICE.*

*V. NOT TO MY KNOWLEDGE: SCIENTER.*

**KNOWN.**— Husband or wife absent and not "known" by the other to be living within 7 years, s. 22, 9 G. 4, c. 31, meant, not "known" at any time during the 7 years (*R. v. Cullen*, 9 C. & P. 681); but "known" did not include "having the means of knowing" (*R. v. Briggs*, Dears. & B. 98).

*V. R. v. Tolson*, cited KNOWINGLY: BIGAMY. *Cp.* KNOW.

**KNOWN CHANNEL.**— *V. DEFINED CHANNEL.*

**KUT-KUBALA.**—A Kut-kubala, or Bye-bil-waffa, is a Deed of Conditional Sale, and one of the customary deeds or instruments of security in INDIA as declared by Regulation 17 of 1806, regulating the legal proceedings to be taken to enforce such deeds; such conditional sales are to be regarded in the same light as mortgages, and therefore, adverse possession is not to be presumed against a person claiming under such a conditional sale (*Prannath Roy Chowdhry v. Ramrutton Roy*, S W. R. 29, cited also **GOOD CAUSE**). The deed in that case began as follows, —“To the high in dignity, Baboo Prannath Chowdhry. This mortgage-deed, or kut-kubala, of the land and garden house, held under a khirajepottah (rent-lease) is executed in the year 1231 (*i.e.* 1825 A. D.), by Meer Sydoo and Beebee Noor Jehan, neekahee wife of the said Meer, inhabitants of Cossipore.”

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## L. S. — LABOURER.

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**L. S.** — L. S. as commonly encircled at the end of a copy of a DEED, in or about the place where the seal would be in the original, is the abbreviation of *Locus Sigilli*, the place of the seal; and is the proper designation and copy of the seal (*Smith v. Butler*, 25 N. Hamp. 524).

**LABEL.** — Quà Merchandize Marks Act, 1887, “ ‘Label,’ includes any Band or Ticket ” (subs. 2, s. 5).

### V. TRADE-MARK.

**LABOUR.** — “The expression used” (in the definition of “Workman” in the Employers and Workmen Act, 1875, and Employers’ Liability Act, 1880), “is not ‘manual *Work*,’ but ‘manual *Labour*’: for many occupations involve the former but not the latter, such as telegraph clerks, and all persons engaged in writing” (per Smith, J., *Cook v. Metrop Tramways Co.*, 18 Q. B. D. 684; 56 L. J. Q. B. 309; 56 L. T. 448; 57 Ib. 476; 35 W. R. 577; 51 J. P. 630); in *whc* it was held that the Driver of a Tram-car, though engaged in manual *work*, is not engaged in manual *labour*, and is, therefore, not a “Workman” within the Acts cited: so, of a Hairdresser (*R. v. Louth Jus.*, 1900, 2 I. R. 714).

Probably, the true meaning of “Labour” is this, “Real ‘labour,’ is that which tests a man’s muscles and sinews” (per Esher, M. R., *Yarmouth v. France*, 19 Q. B. D. 651).

V. LABOURER: MANUAL LABOUR: PERSONAL LABOUR: TROUBLE: WORKMAN.

**LABOURER.** — “A ‘Labourer,’ is a man who digs and does other work of that kind with his hands. A Carpenter or a Bailiff or a Parish Clerk is not called a Labourer” (per Brett, L. J., *Morgan v. London Gen. Omnibus Co.*, 53 L. J. Q. B. 353; 13 Q. B. D. 832; *Vj*, per Lopes, L. J., *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23).

So, under s. 1, 20 G. 2, c. 19, a Man in Possession was not a “Labourer” (*Bramwell v. Penneck*, 7 B. & C. 536; 1 M. & R. 409). Neither would “Labourer” include a skilled ARTIZAN; “there being, as I take it, a known distinction between a JOURNEYMAN in any art, trade, or mystery, or other workman employed in the different branches of it, and a Labourer” (per Ellenborough, C. J., *Louther v. Radnor*, 8 East, 124).

A Fireman or a Stoker on board ship (or, probably, on land) is a "Labourer," within the exemption from Agreement Duty in the Stamp Acts (*Wilson v. Zulueta*, 19 L. J. Q. B. 49; 14 Q. B. 405); so, *semble*, of a Farm Bailiff who takes charge of glebe lands at a salary and share of profits (*R. v. Wortley*, 21 L. J. M. C. 44; 2 Den. 333). In *the Campbell*, C. J., said, "I see no reason for confining the meaning of the word 'Labourer' to a mere hedger and ditcher."

V. LABOUR: ARTIFICER: HANDICRAFTSMAN: MECHANIC: SERVANT: WORKMAN.

It is doubtful whether the word "Labourer" in the Sunday Observance Act, 1677, 29 Car. 2, c. 7, extends to an Agricultural Labourer (*R. v. Silvester*, 33 L. J. M. C. 79, nom. *R. v. Cleworth*, 4 B. & S. 927; nom. *Cleworth v. Leigh Jus.*, 12 W. R. 375). That case decided that a FARMER is not a Labourer within the Act, even though he work with his own hands.

Agricultural Labourer; V. AGRICULTURAL.

Quà Land Law (Ir) Acts, "Labourer" means, "a man whose occupation, during the ordinary season of agricultural work, is the doing of Agricultural Work for HIRE on the HOLDING; and shall include, a Herdsman" (s. 26 (1), 54 & 55 V. c. 48).

"The Labourers (Ireland) Acts, 1883 to 1892"; V. Sch 2, Short Titles Act, 1896.

A representation that a Ship "will carry *Emigrant* Labourers, not more than 40," is satisfied if not more than that number of *men* are taken; although with their wives and children the number is exceeded (*Richards v. Hayward*, 2 M. & G. 574; 10 L. J. C. P. 108; 2 Sc. N. R. 670).

**LABOURING CLASSES.**—Quà s. 5 (and by its subs. 7), Metropolitan Police Act, 1886, 49 & 50 V. c. 22, " 'Persons belonging to the Labouring Classes,' *includes*, mechanics, artizans, labourers, and others, working for WAGES, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons (other than DOMESTIC SERVANTS) whose income does not exceed an average of 30s. a week; and the families of any such persons who may be residing with them."

That def is adopted quà s. 8 (V. subs. 3), of the Sch to Electric Lighting Clauses Act, 1899, 62 & 63 V. c. 19, by which, however, "Labouring Classes" *means* the enumerated persons, instead of merely *including* them.

Cp, WORKING CLASSES.

**LACE.**—As used in s. 1, Carriers Act, 1830. "Lace" does not include Machine-made Lace (s. 1, 28 & 29 V. c. 94); but it includes a



piece of valuable lace framed for an exhibition (*Treadwin v. G. E. Ry.*, L. R. 3 C. P. 308; 37 L. J. C. P. 83).

“Lace Factories”; “Lace Machine”; *V.* s. 4, 24 & 25 V. c. 117.

“Lace Warehouses”; *V.* NON-TEXTILE FACTORIES.

**LACERTA.** — *V.* SALIVA.

**LACHES.** — “*Laches*, or *laches*, is an old French word for slackness or negligence, or not doing” (Co. Litt. 380 b: *Va*, lb. 246 b: *Termes de la Ley*: Cowel): that def was cited and applied by North, J., *Partridge v. Partridge*, 1894, 1 Ch. 351; 63 L. J. Ch. 122.

“‘Laches’ is a neglect to do something which by law a man is obliged to do” (per Ellenborough, C. J., *Sebag v. Abitol*, 4 M. & S. 463).

**LACTARIUM: LACTITIUM.** — *V.* VACCARIA.

**LADIES’ OUTFITTER.** — What amounts to a breach of a covenant not to carry on the business of a “Ladies’ Outfitter”; *V.* *Stuart v. Diplock*, 59 L. J. Ch. 142; 43 Ch. D. 343; 38 W. R. 223; *Vthe, Bailey v. Skinner*, cited CARRY ON; which dealt with a like covenant quâ “General Draper.”

**LADING.** — *V.* LOAD: PORT: BILL OF LADING.

**LADY DAY.** — *V.* MICHAELMAS.

**LÆSÆ MAJESTATIS.** — “When disloyalty so rears its crest as to attack even Majesty itself, it is called by way of eminent distinction HIGH TREASON, *alta proditio*, being equivalent to the *Crimen Læsæ Majestatis* of the Romans, as Glauvil (lib. 1, c. 2) denominates it also in our English law” (4 Bl. Com. 75). Glauvil’s instances, quâ English law, are Regicide and Sedition.

**LAGAN.** — *V.* FLOTSAM.

**LAGE-DAY.** — *V.* LAW DAY.

**LAID OUT.** — “Money laid out,” s. 7, S. L. Act, 1882, does not comprise a past voluntary expenditure; it means, money “laid out” in reference to the transaction of which the lease to be granted under the section is part (*Re Chawner*, cited CONSIDERATION).

*V.* NEW STREET.

**LAID UP.** — A clause in a Marine Insree for a return of part of the premium if the Ship “is sold, or laid up,” means (“laid up” being in association with “sold”), “a permanent laying up similar to that which would take place if the Ship had been sold; *i.e.* such a laying up as would put a final end to the policy” (per Tenterden, C. J., *Hunter v. Wright*, 10 B. & C. 714).

**LAIRAGE.** — A Lairage is a building, generally of brick and wood roofed over, used for the reception and slaughter of cattle and sheep brought from abroad, and for the cooling and preservation of the carcasses (*Mersey Docks v. Birkenhead*, cited ANNUAL VALUE).

**LAITY.** — *V.* CLERGY.

**LAKE.** — *V.* POND; POOL.

**LAMB.** — *Semble*, the offspring of sheep when between 9 and 12 months old is still a Lamb (*R. v. Spicer*, 1 Den. 82, 83). *V.* SHEEP.

**LAME DUCK.** — “ ‘Lame Duck’ would be actionable if applied to a person on the Stock Exchange, because there it has acquired a particular meaning ” (per Watson, B., *Barnett v. Allen*, 27 L. J. Ex. 412; 3 H. & N. 376; 31 L. T. O. S. 217). *Vf.*, *Morris v. Langdale*, 2 B. & P. 284.

**LAMMAS LANDS.** — “ Lands belonging to the owner in fee simple, who is absolutely the owner in fee simple, to all intents and purposes for half the year; and the other half of the year he is still the owner in fee simple, subject to a right of pasturage over the land by other people ” (per Jessel, M. R., *Baylis v. Tyssen Auhurst*, 46 L. J. Ch. 721; 6 Ch. D. 507). Lammas lands were formerly opened to the right of pasturage on the 1st August; but since the 2nd September, 1752, the right commences eleven days later, *i.e.* 12th August (24 G. 2. c. 23, s. 5).

*Vh.*, per Hatherley, C., *Warrick v. Queen’s College*, 6 Ch. 724.

**LANCASTER.** — “ The Lancaster County Palatine Acts, 1794 to 1871 ”; *V.* Sch 2, Short Titles Act, 1896.

**LAND.** — “ To land ”; *V.* LANDED.

**LAND: LANDS.** — Though the word “ Land ” anciently meant “ whatsoever may be plowed ” (Co. Litt. 4 a), and signified “ nothing but arable land ” (Touch. 91: *Cp.*, MOUNTAIN); yet in and since the time of Id Coke, and now, it “ comprehendeth any ground, soile, or earth, whatsoever ” (Co. Litt. 4 a: *Va.*, Touch. 91); whether of freehold or copyhold tenure (*Dor d. Clarke v. Ludlam*, 7 Bing. 275). But as regards Leaseholds, the law prior to Jan. 1, 1838, was that “ if a man hath Land in fee, and Lands for yeers, and deviseth all his Lands and Tenements, the Fee simple Lands passe only and not the Lease for yeers: And if a man hath a Lease for yeers, and no Fee simple, and deviseth all his Lands and Tenements, the Lease for yeers passeth: For otherwise the Will should be merely void ” (*Rose v. Bartlett*, Cro. Car. 293; *Vhr.*, *Arkell v. Fletcher*, cited FARM: *Vf.*, *Thompson v. Lawley*, 2 B. & P. 303; *Swift v. Swift*, 29 L. J. Ch. 121; 1 D. G. F. & J. 160: 1 Jarm. 667-672). But *Rose v. Bartlett* governed a Conveyance *inter vivos* (*Doe d. Davies*

v. *Williams*, 1 Bl. H. 25); and, since the date mentioned, a Will of "Lands" *primâ facie* includes all kinds of leaseholds (Wills Act, 1837, s. 26: *Wilson v. Eden*, 11 Bea. 237; 14 Ib. 317; 16 Ib. 153; 17 L. J. Ch. 459; 21 L. J. Q. B. 385; 5 Ex. 752; 18 Q. B. 474: *Prescott v. Barker*, 43 L. J. Ch. 498; 9 Ch. 174: *Butler v. Butler*, 54 L. J. Ch. 197; 28 Ch. D. 66; 33 W. R. 192: *Re Davison*, 58 L. T. 304: *Sr.* 41 S. J. 75, for note of an anonymous case in which Kekewich, J., found a CONTRARY INTENTION. *Vf*, 1 Jarm. 673).

Even before the Wills Act, 1837, a devise of "Lands" included Leases for Lives (*Watkins v. Lea*, and *Fitzroy v. Howard*, cited FREEHOLD).

"Land or other hereditaments of whatever TENURE," Locke King's Act, 1877, 40 & 41 V. c. 34, includes Leaseholds (*Re Kershaw*, 57 L. J. Ch. 599; 37 Ch. D. 674; 58 L. T. 512; 36 W. R. 413).

#### V. REAL ESTATE.

In *R. v. Mid. Ry.* (4 E. & B. 958) "Land," in a Local Rating Act, was restricted to mean, land occupied for cultivation and uses ancillary thereto.

"Land," or "Lands," not only means the surface of the ground, but also everything (except gold or silver mines, *V.* Note to MINE) on or over or under it, for *cujus est solum ejus est usque ad cœlum et ad inferos* (Co. Litt. 4 a: Touch. 91: 2 Bl. Com. 18. Ld Coke calls the earth "the Suburbs of Heaven"). But though a devise of "Lands" will generally carry the houses on it, "yet, of course, this does not hold where the testator evidently uses the term in contradistinction to 'house.' As where A., having a messuage at L., and a messuage and lands at W., devised his house at L., with all other his lands, meadows, pastures, with their appurtenances, lying in W., the house at W. was held not to pass" (1 Jarm. 777, citing *Ewer v. Hayden*, Cro. Eliz. 476, 658; 2 And. 123: *Va*, *Re Portal to Lamb*, 54 L. J. Ch. 1012; 30 Ch. D. 50; 33 W. R. 859; 53 L. T. 650).

Tithes (*Ritch v. Sanders*, Styles, 261), or a Fee-Farm Rent (*Inchley v. Robinson*, 2 Leon. 165, pl. 218), may pass under a devise of "Lands" when there is nothing else on which it can operate: *Sq.* as to Rent-Charge or Rent-Seek (*West v. Lawday*, 11 H. L. Ca. 375). So Running Water may, by a context, pass under the name of "land" (*Canham v. Fish*, 2 Cr. & J. 126; 2 Tyr. 155): but the Touchstone says (p. 91), "Rents, Advowsons, and such like things," do not pass under this word (*Va*, *Westfaling v. Westfaling*, 3 Atk. 460).

"The word 'Lands' has often been extended to include Trusts" (Lewin, 884); and money to be laid out in land "will pass, by the cestui que trust's Will, under the general description of all the testator's lands" (Ib. 1154, citing *Guidot v. Guidot*, 3 Atk. 256; *Rashleigh v. Master*. 1 Ves. 201: *Chandler v. Pocock*, 15 Ch. D. 491: *Re Greaves*, 23 Ch. D. 313; 52 L. J. Ch. 753).

In all Acts of Parliament since 1850, "Land" includes, "messuages

tenements and hereditaments, houses and buildings, of any tenure, unless where there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure" (13 & 14 V. c. 21, s. 4; *Vf*, s. 3, Interp Act, 1889). This def is confined to CORPOREAL Heredit (per Chitty, J., *Re Danson*, 11 Times Rep. 455); and, probably, does not include a mere EASEMENT (*V. Chelsea W. W. Co v. Bowley*, 20 L. J. Q. B. 520; 17 Q. B. 358; *Metrop Ry v. Fowler*, 1893, A. C. 416; 60 L. J. Q. B. 518; 62 Ib. 553; 69 L. T. 390; 42 W. R. 270; 57 J. P. 756).

In the great Clauses Consolidation Statutes of 1845, the word "Lands" extends to "messuages, lands, tenements, and hereditaments, of any tenure" (8 V. cc. 16, 18, and 20). In the contemporary Consolidation Statutes for Scotland, the def is, "houses, lands, tenements, and heritages, of any description or tenure" (8 V. cc. 17 and 19), *Va*, 8 & 9 V. c. 33, s. 3. As to the first of these definitions, *V. G. W. Ry v. Swindon Ry*, 53 L. J. Ch. 1075; 9 App. Ca. 787; 32 W. R. 957; 48 J. P. 821: HEREDITAMENT: TENEMENT. These defs, like that copied from them in s. 3, W. W. C. Act, 1847, include MINES (per Cairns, C., *Smith v. G. W. Ry*, 47 L. J. Ch. 105; 3 App. Ca. 180; *Holliday v. Wakefield*, 1891, A. C. 81; 60 L. J. Q. B. 361; 64 L. T. 1; 40 W. R. 129; 55 J. P. 325), at least when the subjacent minerals, as well as the surface of the "lands," are necessary for the support of the authorized works (per Ld Watson, *Holliday v. Wakefield*, sup). But, observe that, by ss. 77 to 85, Ry C. C. Act, 1845, a Ry Co is not entitled to the Mines under "lands" purchased by them, except such as are necessarily excavated in the construction of their works, or are expressly purchased; *Vh*, *Errington v. Metrop District Ry*, 19 Ch. D. 559; 51 L. J. Ch. 305; *Re Metrop Ry and Cotton's Trustees*, 45 L. T. 103; *Gerard v. Lond. & N. W. Ry*, 1895, 1 Q. B. 459; 64 L. J. Q. B. 260; 72 L. T. 142; 43 W. R. 374. Note: ss. 18-27, W. W. C. Act, 1847, "constitute a special code relating to Mines and their working, and to interference with them" qua that Act, and Acts incorporating it (per Ld Herschell, *Holliday v. Wakefield*, sup).

New Buildings on a Settled Estate, are substantially new "Land," within s. 69, Lands C. C. Act, 1845 (per James, L. J., *Re Leigh*, 40 L. J. Ch. 687; 6 Ch. 887; *Vf*, *Drake v. Trefusis*, 10 Ch. 364; *Re Lytton*, W. N. (84) 193; *Re Speers*, 3 Ch. D. 262); but that construction is not applicable to "Land" as somewhat similarly used in s. 21 (7), S. L. Act, 1882 (*Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 231).

Qua Conv & L. P. Act, 1881. " 'Land,' unless a CONTRARY INTENTION appears, includes, land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, also an undivided share in land" (s. 2. ii). In *Re Lake and Taylor, Spain v. Mowatt* (33 W. R. 597). Pearson, J., seems to have held that a share of an equitable interest in an agreement for a lease is within that definition.

Quà Conveyancing (Scot) Act, 1874, 37 & 38 V. c. 94, " 'Land,' or 'Lands,' shall include, all subjects of heritable property which are or may be held of a superior, according to feudal tenure; or which (prior to the Commencement of this Act) have been or might have been held by burgage tenure or by tenure of booking " (s. 3).

Quà Entail (Scot) Acts, "Land" includes, "all heritages" (38 & 39 V. c. 61, s. 3). A similar def. for Scotland, is provided quà 23 & 24 V. c. 143 (s. 2); 45 & 46 V. c. 49 (s. 52); 57 & 58 V. c. 44 (s. 18).

Quà S. L. Act, 1882, " 'Land' includes, incorporeal hereditaments, also an undivided share in land " (s. 2, subs. 10, i); *Vth, Re Gerard*, sup. Under that def a Baronetcy or other title is "Land" (*Re Rivett-Carnac*, 54 L. J. Ch. 1074; 30 Ch. D. 136; *Re Aylesford*, 55 L. J. Ch. 523; 32 Ch. D. 162; 54 L. T. 414; 34 W. R. 410). A TENANT FOR LIFE of "an undivided share" in land can sell it without the consent of the owner of any other share (*Cooper v. Belsey*, 1899, 1 Ch. 639; 68 L. J. Ch. 258; 80 L. T. 69; over-ruling *Re Collinge*, 57 L. J. Ch. 219; 36 Ch. D. 516). *Vf, Re Thomas*, cited CAPITAL MONEY.

In s. 2, Poisoned Flesh Prohibition Act, 1864, 27 & 28 V. c. 115, "Land," includes, e.g. a Pigeon-house in an enclosed garden, because s. 3 supplies an enlarging context (*Rogers v. Hull*, 12 Times Rep. 470).

As to what "Land," or "Lands" includes under,

Agricultural Holdings Act, 1883, and the subsequent acts read therewith; *V. HOLDING*:

Allotments Act, 1887, 50 & 51 V. c. 48; *V. s. 17*:

Chief Rents Redemption (Ir) Act, 1864, 27 & 28 V. c. 38; *V. s. 1*:

Friendly Societies Act, 1896, 59 & 60 V. c. 25; *V. ss. 102, 106*:

Gas Works Clauses Act, 1847, 10 & 11 V. c. 15; *V. s. 3*:

Harbours, Docks, and Piers, Clauses Act, 1847; *V. s. 3*:

Inheritance Act, 1833; *V. s. 1*:

Industrial and Provident Societies Act, 1893, 56 & 57 V. c. 39; *V. s. 79*:

Judgments Act, 1864, 27 & 28 V. c. 112; *V. s. 2*; *Dart*, 545:

Land Debentures (Ir) Act, 1865, 28 & 29 V. c. 101; *V. s. 3*:

Land Drainage Act (Ir), 1863, 26 & 27 V. c. 26; *V. s. 3*; *Va. 5 & 6 V. c. 89, s. 159*:

Land Tax Act, 1797, 38 G. 3. c. 5, s. 4; *V. Chelsea W. W. Co v. Bowley and Metrop Ry v. Fowler*, sup:

Land Transfer Act, 1897, 60 & 61 V. c. 65; *V. s. 24*:

Landed Estates Court (Ir) Act, 1858, 21 & 22 V. c. 72; *V. s. 1*: A Fishery is within that def (*Gore v. M'Dermott*, 15 W. R. 843; 1r. Rep. 1 C. L. 348):

Lighting and Watching Act, 1833, 3 & 4 W. 4. c. 90; *V. s. 33*, on *whv*, PROPERTY OTHER THAN LAND:

Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66; *V. s. 95*:

Markets and Fairs Clauses Act, 1847, 10 & 11 V. c. 14; *V. s. 3*:

Metrop Man. Acts, 1855, 1862; *V. Higgins v. Harding*, L. R. 8 Q. B. 7:

42 L. J. M. C. 31; 27 L. T. 483; 21 W. R. 191: *Wright v. Ingle*, cited HOUSE:

Military Lands Act, 1892, 55 & 56 V. c. 43; *V. s.* 23:

Mortmain Acts; *V.* INTEREST IN LAND:

Police, &c (Scot) Acts; *V.* 25 & 26 V. c. 101, s. 3:

Poor Law (Scot) Act, 1845, 8 & 9 V. c. 83; *V. s.* 1:

Public Health Acts; *V.* P. H. Act, 1875, s. 4; P. H. Ireland Act, 1878, s. 2; P. H. Scotland Act, 1897, s. 3; on *whv*, *Durrant v. Branksome*, 1897, 2 Ch. 291; 66 L. J. Ch. 653; 76 L. T. 739; 46 W. R. 134; 61 J. P. 472: *Cleckheaton v. Firth*, 62 J. P. 536:

Public Works (1r) Act, 1869, 32 & 33 V. c. 74; *V. s.* 6:

Real Property Limitation Acts, 1833 and 1874; *V.* Dart, 433, 434, 454:

Record of Title Act (Ir), 1865, 28 & 29 V. c. 88; *V. s.* 2:

Registration of Assurances (Ir) Act, 1850, 13 & 14 V. c. 72; *V. s.* 64:

Sale of Land by Auction Act, 1867, 30 & 31 V. c. 48; *V. s.* 5:

Satisfied Terms Act, 1845, 8 & 9 V. c. 112; *V.* Dart, 329, 330:

Telegraph Acts; *V.* 26 & 27 V. c. 112, s. 3; 31 & 32 V. c. 110, s. 3:

Thames Preservation Act, 1885, 48 & 49 V. c. 76; *V. s.* 29:

Titles to Land (Scot) Act, 1858, 21 & 22 V. c. 76; *V. s.* 36:

Trustee Acts; *V.* Dart, 657, *n*:

Vendor and Purchaser Act, 1874, 37 & 38 V. c. 78; *V.* Dart, 160.

Other Stat. Def. — 8 & 9 V. c. 35, s. 10, c. 124, s. 5; 24 & 25 V. c. 41, s. 1, c. 133, s. 28 (2); 27 & 28 V. c. 57, s. 2; 44 & 45 V. c. 20, s. 3 (1); 51 & 52 V. c. 29, s. 3 (1); Lunacy Act, 1890, s. 341; 53 & 54 V. c. 25, s. 2 (4), c. 70, s. 93; 55 & 56 V. c. 31, s. 20; Copyhold Act, 1894, 57 & 58 V. c. 46, s. 94. — *Scot.* 38 & 39 V. c. 49, s. 30, 41 & 42 V. c. 8, s. 27; 55 & 56 V. c. 54, s. 16. — *Ir.* 34 & 35 V. c. 22, s. 2; 37 & 38 V. c. 60, s. 2.

As to what "Land" includes in a Contract for Sale; *V.* Dart, 128-130.

Independently of the Wills Act, 1837, "there is no case in which a Fee has been held to pass by a mere devise of 'Lands'" (per Parke, J., *Doe d. Norris v. Tucker*, 3 B. & Ad. 477; 1 L. J. K. B. 163; *Va, Doe d. Ashby v. Baines*, 2 Cr. M. & R. 23). *V.* FEE SIMPLE.

"Boundary of Lands"; *V.* BOUNDARY.

"Buildings, Lands, and Heredits"; *V.* HEREDITAMENT.

"Corporate Land"; *V.* CORPORATE.

"Farm or Lands." s. 1, 14 & 15 V. c. 25; *V.* FARM.

"Lands and Assessments"; *V.* 31 & 32 V. c. 82, s. 4.

"Lands and Heritages"; *V.* s. 42, 17 & 18 V. c. 91, which def was adopted by 20 & 21 V. c. 72, s. 78; 23 & 24 V. c. 79, s. 2; 31 & 32 V. c. 96, s. 1; 39 & 40 V. c. 49, s. 3; 41 & 42 V. c. 51, s. 3.

"Lands and Houses"; *V.* 21 & 22 V. c. 84, s. 1.

"Lands and Premises"; *V.* 55 & 56 V. c. 55, s. 4.

"Lands and Streams"; *V.* W. W. C. Act, 1847, 10 & 11 V. c. 17, s. 2.

“Land lawfully occupied”; *V.* LAWFULLY OCCUPIED.

Lands of “Like Quality”; *V.* LIKE.

“Land or Tenement”; *V.* Rep People Act, 1885, 48 & 49 V. c. 3, s. 11.

“Lands, Tenements, and Hereditaments”; *V.* 4 & 5 V. c. 39, s. 29.

“Recorded Land”; *V.* RECORDED.

“Registered Land”; *V.* REGISTERED.

“Settled Land”; *V.* SETTLED.

Waste Land; *V.* WASTE.

*V.* ADJACENT: INTEREST IN LAND: LAND COVERED WITH WATER: LAND TAX: LANDED PROPERTY: PROPERTY OTHER THAN LAND: RECOVERY OF LAND: SOIL: SUBSOIL: TERRA: TIDAL LAND.

**LAND CERTIFICATE.** — Quà Land Transfer Act, 1897; *V.* 38 & 39 V. c. 87, s. 29; Land Transfer Acts, 1897, s. 8; Land Transfer Rules, 1898, 204–208.

Quà Record of Title Act (Ir), 1865, 28 & 29 V. c. 88. “ ‘Certificate,’ or ‘Land Certificate,’ shall include the counterpart of a conveyance, or the duplicate of a judicial declaration of title recorded pursuant to this Act ” (s. 2).

**LAND CHARGE.** — Stat. Def., 51 & 52 V. c. 51, s. 4; 17, 63 & 64 V. c. 26, c. 50, s. 3: CHARGE.

“Land Improvement Charge”; Stat. Def., 50 & 51 V. c. 33, s. 34; 51 & 52 V. c. 39, s. 6; 54 & 55 V. c. 66, s. 95.

**LAND COMMISSIONERS.** — *V.* COMMISSIONERS.

**LAND COVERED WITH WATER.** — These words, — *e.g.* in s. 55, Loc Gov Act, 1858, 21 & 22 V. c. 98, and s. 211 (1*b*), P. H. Act, 1875, — include a Wet Dock (*R. v. Newport Dock Co*, 31 L. J. M. C. 266; 2 B. & S. 708; *R. v. Birmingham W. W. Co*, 1 B. & S. 84), the Reservoir of a W. W. Co (*Southwark & Vauxhall W. W. Co v. Hampton*, 1899, 1 Q. B. 273; 68 L. J. Q. B. 207; *affd* in H. L. nom. *Hampton v. Southwark, &c Co*, 1900, A. C. 3; 69 L. J. Q. B. 72; 81 L. T. 547; 48 W. R. 209; 64 J. P. 260), the Filter Beds of a W. W. Co and its Canal for conveying water to a Reservoir or Filter Bed (*East London W. W. Co v. Leyton*, 40 L. J. M. C. 190; L. R. 6 Q. B. 669; 20 W. R. 95): But not the Banks of a Reservoir or Filter Bed, nor land part of the public ways occupied by the Co’s Pipes but available to it for any other purpose (*ib.*).

Land is “not the less Land for being covered with water” (per Pateson, J., *R. v. Leeds & Liverpool Navigation Co*, 7 A. & E. 685; 7 L. J. M. C. 41; 2 N. & P. 540).

In *R. v. Regents Canal Co* (6 B. & C. 720) the expression in the Act incorporating the Company was, “Lands, whether covered with water or not.”

“Land covered with water” is the phrase used by Ld Coke for a POOL (Co. Litt. 4 b, 5 a, 5 b); *semble*, for POND also.

*Cp*, PROPERTY OTHER THAN LAND: RAILWAY.

**LAND JUDGE.**—*V.* JUDGE.

**LAND LAW.**—“The Land Law (Ireland) Acts”; *V.* Sch 2, Short Titles Act, 1896.

**LAND LAWFULLY OCCUPIED.**—*V.* LAWFULLY OCCUPIED.

**LAND NOT SETTLED.**—This phrase includes an unsettled Reversion of SETTLED land (1 Jarm. 654).

**LAND ONLY USED AS RAILWAY.**—*V.* RAILWAY.

**LAND PURCHASE.**—“The Land Purchase (Ireland) Acts”; *V.* Sch 2, Short Titles Act, 1896.

**LAND REGISTRY.**—Established by Land Transfer Acts, 1875, 1897.

**LAND TAKEN.**—“Land taken for the purposes of the Works,” s. 133, Lands C. C. Act, 1845; *V. Putney v. Lond. & S. W. Ry*, cited WORKS.

**LAND TAX.**—As to what is a sufficient recital in a title deed of the redemption of Land Tax, within a Condition of Sale making such a recital evidence, and justifying a statement in the Particulars that “Land Tax redeemed”; *V. Buchanan v. Poppleton*, 27 L. J. C. P. 210; 4 C. B. N. S. 20.

Quà the Finance Acts, “‘Land Tax Acts,’ means, the Land Tax Act, 1797, 38 G. 3, c. 5, and the Land Tax Redemption Act, 1802, 42 G. 3, c. 116, and the enactments amending those Acts”; “‘LAND subject to Land Tax,’ includes, all the property specified in s. 4 of the Land Tax Act, 1797, which is not exonerated from Land Tax”; and “‘Land Tax PARISH,’ means, any parish, township, tithing, precinct, or place, for which a separate assessment of land tax is for the time being made” (s. 35, 59 & 60 V. c. 28).

**LAND USED FOR.**—*V.* BUILDING PURPOSES: BUILT UPON: RAILWAY.

**LANDED.**—“All risk of Craft until safely landed”; “landed” means, actually put ashore (*Houlder v. Merchants’ Mar Insree*, 55 L. J. Q. B. 420; 17 Q. B. D. 354; 55 L. T. 244; 34 W. R. 673; *Vf, Pelly v. Royal Ex. Assree*, 1 Burr. 348). *Cp*, LOAD. *V. Brown v. Carstairs*, 3 Camp. 161.

Stones shot from boats on to a harbour shore, below high-water mark, where they remain until shipped for exportation, are not “landed” within an Act enabling Commrs to levy tolls on goods “landed” within



their harbour (*Harvey v. Lyme Regis*, 38 L. J. Ex. 141; L. R. 4 Ex. 260).

In *Ash v. Financial News* (cited *TOUT*) a jury found that a statement in a comment on a trial that the plt (an Outside Stockbroker) had "landed a parson," was not libellous.

**LANDED INTEREST.** — *V. KNIGHT OF THE SHIRE.*

**LANDED PROPERTY.** — "The Landed Property Improvement (Ireland) Acts"; *V. Sch 2, Short Titles Act, 1896.*

Devise of "all my Landed Property" at A.; held, equivalent to all the testator's Estate and Interest in land at A. (*Sharp v. De St. Saurcur*, 17 W. R. 1002; 20 L. T. 799).

*V. LAND: REAL ESTATE.*

**LANDING WAITER.** — *Quà Customs Consolidation Act, 1853, 16 & 17 V. c. 107, "Landing Waiter,"* includes, "any officer duly authorized to superintend the landing and examination of goods on their importation" (s. 357).

**LANDLORD.** — Generally speaking, "Landlord" implies, not the mere lordship or ownership of the soil, but, the relationship to a TENANT" (per Bramwell, B., *Churchward v. Ford*, 26 L. J. Ex. 354; 2 H. & N. 446).

The power to a "Landlord" of defending an Action of EJECTMENT brought against his Tenant (11 G. 2, c. 19, s. 13; ss. 172, 173, Com. L. Pro. Act, 1852; R. 25, 26, Ord. 12, R. S. C.), extends to any person claiming title consistent with the tenant's possession, whether he has received rent or not (*Lovelock v. Dancaaster*, 4 T. R. 122); e.g. a Mtgee out of possession having a real interest in the result (*Doe d. Tilgard v. Cooper*, 8 T. R. 645; *Doe d. Pearson v. Roe*, 6 Bing. 613), or an Heir or Devisee who has never been in possession (*Doe d. Heblethwaite v. Roe*, 3 T. R. 783, n; *Lovelock v. Dancaaster*, sup), or a Devisee in Trust (*Lovelock v. Dancaaster*), or a Sub-Lessee (*Craft v. Lumley*, 4 E. & B. 608), or a CESTUI que Trust (*Loughbourne v. Fisher*, 47 L. J. Ch. 379; 38 L. T. 216; 26 W. R. 276; *Leader v. Hayes*, 54 L. T. 204); But not a Remainder-man (*Whitworth v. Humphries*, 5 H. & N. 185; 29 L. J. Ex. 113; 8 W. R. 215), or a person who has recovered jdgmt in Ejectment upon a Forfeiture of Lease, but has not obtained possession (*Thompson v. Tomkinson*, 11 Ex. 442), or a person claiming adversely (*Doe d. Horton v. Rhys*, 2 Y. & J. 88; *Faireclaim v. Shantitle*, 3 Burr. 1295). *Vf. Redman*, 559.

*Quà Small Debt (Scot) Act, 1837, 1 V. c. 41, "Landlord,"* includes, "any person having a right to exact RENT, whether as owner, life-renter, heritable creditor in possession, principal tenant, or otherwise" (s. 37).

*Quà Small Tenements Recovery Act, 1838, 1 & 2 V. c. 74, "Landlord"* signifies, "the person entitled to the IMMEDIATE REVERSION of

the premises; or, if the property be held in Joint Tenancy, Co-parcenary, or Tenancy in Common," signifies "any one of the persons entitled to such Reversion" (s. 7); this def adopted for Co. Co. Act, 1888 (s. 186).

Quà Landlord and Tenant (Ir) Act, 1870, 33 & 34 V. c. 46, " 'Landlord,' in relation to a HOLDING, shall include, a superior mesne or immediate landlord, or any person, for the time being, entitled to receive the rents and profits or to take possession of any Holding" (s. 70): *Id.*, 23 & 24 V. c. 154, s. 1, on *whv*, *Liddy v. Kennedy*, L. R. 5 H. L. 134.

Quà Agricultural Holdings Act, 1883, " 'Landlord,' in relation to a HOLDING, means, any person for the time being entitled to receive the rents and profits of any Holding" (s. 61): although that definition (having regard to the def of "Tenant" in the same section) does not include the Exors or Admors of a landlord, yet the clause at the end of the section gives them the right to a Charge on the Holding for the compensation paid by them to a tenant under proceedings pending at the landlord's death (*Gough v. Gough*, 1891. 2 Q. B. 665; 60 L. J. Q. B. 726; 65 L. T. 110; 39 W. R. 593; 55 J. P. 807).

Quà Agricultural Holdings (Scot) Act, 1883, 46 & 47 V. c. 62, " 'Landlord,' in relation to a Holding, means any person for the time being entitled to receive the rents and profits of, or to take possession of, any Holding": and " 'Landlord,' or 'Tenant,' includes the exors, admors, assignees, legatee, disponee, or next-of-kin, husband, guardian, curator bonis, or trustees in bankruptcy, of a Landlord or Tenant" (s. 42)

Other Stat. Def. — 50 & 51 V. c. 26, s. 4; Loc Gov Act, 1894, s. 10 (10); Loc Gov (Scot) Act, 1894, s. 26 (9); Loc Gov (Ir) Act, 1898, s. 109. — *Id.* 9 & 10 V. c. 111, s. 22; 19 & 20 V. c. 65, s. 9; 44 & 45 V. c. 49, s. 57; 50 & 51 V. c. 33, s. 34; 59 & 60 V. c. 47, s. 48.

Same Distress "as Landlords"; *V. DISTRESS.*

"Landlord" is an insufficient description of a Vendor (*Coombs v. Wills*, cited PROPRIETOR).

*Cp*, LANDOWNER: LESSOR: OWNER.

#### LANDLORD'S FIXTURES. — *V. FIXTURES.*

**LANDOWNER.** — Quà Extraordinary Tithe Redemption Act, 1886, 49 & 50 V. c. 54, " 'Landowner,' means, the person for the time being receiving the RACK RENT of land, whether on his own account or as trustee for any other person, or who would so receive it if the land were let at a rack-rent" (s. 14).

Other Stat. Def. — Tithe Act, 1836, 6 & 7 W. 4, c. 71, s. 12; Improvement of Land Act, 1864, 27 & 28 V. c. 114, s. 8.

"Owner of Land"; Stat. Def., Public Money Drainage Act, 1846, 9 & 10 V. c. 101, s. 49, with which *cp*, 12 & 13 V. c. 100, s. 32; 24 & 25 V. c. 133, s. 38 (3). — *Id.* 29 & 30 V. c. 97, s. 3, adopted for 61 & 62 V. c. 28, s. 6; 32 & 33 V. c. 42, s. 34 (8).

*Cp*, LANDLORD: OWNER.

**LANDS CLAUSES ACTS.** — *V. s. 23*, Interp Act, 1889: *LAND*.

**LANDWARD.** — In Scotland, the “Landward part of a COUNTY,” connotes “a County exclusive of the Burghs situated therein” (20 & 21 V. c. 71, s. 3, c. 72, s. 78; 23 & 24 V. c. 105, s. 4).

“‘Landward PARISH,’ means, a Parish no part of which is comprised within the boundaries of a BURGH”; “‘Landward part of a Parish,’ means, any part of a Parish not comprised within the boundaries of a Burgh” (s. 54, *Loc Gov (Scot) Act*, 1894).

**Lord LANGDALE’S ACTS.** — The Wills Act, 1837, 1 V. c. 26:  
The Public Record Office Act, 1838, 1 & 2 V. c. 91:  
The Solicitors Act, 1843, 6 & 7 V. c. 73.

**LANGUISH.** — A “languishing” Tenant by Esequage could send a substitute to attend the King on his wars (*Litt. s. 96*), a phrase which included “an idiot, a mad-man, a leper, a man maymed, blind, deaf, of decrepit age, or the like” (*Co. Litt. 70 b*).

**LANNEMANNI.** — *V. ALODIUM*.

**LAPSE.** — “‘Lapse,’ is the omission of a Patron to present to a Church of his patronage within sixe moneths attter an Avoidance by death, or taking of another Benefice without qualification or notice to him given of the resignation or deprivation of the present Incumbent, by which neglect title is given to the Ordinary to collate unto the said Church” (*Termes de la Ley*). *Vf*, 2 Bl. Com. 276: *Phil. Ecc. Law*, 366.

A Legacy is said to “lapse” when the legatee dies in the lifetime of the testator, or when something happens in such lifetime which prevents the intended legatee from being entitled to the legacy, or (it is submitted) when the legatee dies after the testator but before becoming entitled to the legacy. *Vh*, *Jarm. ch. 11*: *Theobald, ch. 50*: *Wms. Exs. Part 3, Bk. 3, ch. 2, s. 5*.

S. 33, *Wills Act*, 1837, saves from lapse gifts to a CHILD or ISSUE of a testator who “shall die in the lifetime of the testator LEAVING issue”: *Vh*, *COMPETENT: SURVIVE*. *Va*, s. 32, *Ib.*, as to saving an Estate Tail from lapse. Lapsed Devises fall into the Residuary Devise (s. 25, 1b.). *V. CY-PRÈS*.

If there is a testamentary gift to two or more persons, *by name*, who take as JOINT TENANTS, there is no lapse if one dies in the lifetime of the testator, because Joint Tenants take PER MY ET PER TOUT, and the survivors take the dying person’s share; *secus*, if the persons take as TENANTS IN COMMON, for there each takes in severalty, and on the death of one in the testator’s lifetime his share falls into the Residuary Gift, if there be one, or, if not, it will go as on an intestacy. If the

gift is to a CLASS, there is no lapse if one who would be a member of the Class dies in the lifetime of the testator, because such a Class is ascertained at the testator's death. *Vh*, 1 Jarm. 340, 341.

Where a Will directed that after payment of legacies and expenses, everything that remained was to "lapse" to the Exors; James, V. C., held that the Exors took the residue beneficially (*Prior v. Mackinnon*, W. N. (70) 117).

What is a "Lapse, Voidance, or Forfeiture," s. 20, Crown Lands (New South Wales) Act, 1884, is a question of fact to be determined by the Land Board after a trial held pursuant to s. 14 (*A-G. N. S. Wales v. Walters*, 1898, A. C. 460; 67 L. J. P. C. 36; 78 L. T. 272, *wh* for illustrations).

**LARCENY.** — *V.* THEFT: PETTY LARCENY: SIMPLE LARCENY.

**LARGE.** — *V.* AT LARGE: "Public at large," sub PUBLIC.

**LARGEST.** — In Conditions of Sale relating to who shall have the custody of the deeds, the "largest lot," means, largest in extent, not in value (*Griffiths v. Hatchard*, 23 L. J. Ch. 957; 1 K. & J. 17): and in this connection, "Lot" means single lot, and not the aggregation of more than one (*Scott v. Jackman*, 21 Bea. 110: *See, Re Doherty*, 15 L. R. Ir. 247, 256). *Vh*, Sug. V. & P. 34.

**LAST.** — "Last Annual Balance Sheet which should have been signed" in a Partnership, quâ the ascertainment of a retiring or dying partner's share, means, that such share is to be ascertained by the accounts of the last year of the partnership completed prior to the retirement or death; *i.e.* by the actual signed Balance Sheet, if there was one; if not, then by taking the accounts for such last year (*Pettyt v. Janeson*, 6 Mad. 146: *Hunter v. Dowling*, 1893, 1 Ch. 391; 62 L. J. Ch. 617).

"Last Defence," R. 1, Ord. 23, R. S. C.; Where the plaintiff added new defendants after Answer, the "last Answer" (Cons. Ord. 33, R. 10, 1), was held to mean the last Answer of the *original* defendants (*Bertolucci v. Johnstone*, 13 L. J. Ch. 99; 2 Hare, 632).

"Last Place of Abode"; *V. R. v. Evans*, 19 L. J. M. C. 151; nom. *Ex p. Jones*, 1 L. M. & P. 357: *R. v. Damarell*, L. R. 3 Q. B. 50; 37 L. J. M. C. 21; 8 B. & S. 659: *R. v. Davis*, 22 L. J. M. C. 143; 1 Bail C. C. 191: *R. v. Higham*, 26 L. J. M. C. 116; 7 E. & B. 557: *R. v. Brown*, 24 J. P. 5: *R. v. Smith*, L. R. 10 Q. B. 604; 23 W. R. 523; 39 J. P. 292, 322: *R. v. Farmer*, 1892, 1 Q. B. 637; 61 L. J. M. C. 65; 65 L. T. 736; 40 W. R. 228; 56 J. P. 341: *R. v. Webb*, 1896, 1 Q. B. 487; 65 L. J. M. C. 98; 74 L. T. 428; 44 W. R. 527; 60 J. P. 280. "Last known place of abode"; *V. Hanrott v. Evans*, 4 Times Rep. 128. *V.* PLACE: USUAL PLACE OF ABODE.

“Last Port”; *V. Price v. Livingstone*, cited PORT: FINAL PORT.

“Last Rate”; Stat. Def., Rep People (Ir) Act, 1850, 13 & 14 V. c. 69, s. 117.

A Sole trustee is “the last surviving or Continuing *Trustee*” within s. 31, Conv & L. P. Act, 1881, repld s. 10, Trustee Act, 1893 (per Pearson, J., *Re Shafto*, 29 S. J. 372).

“Last Will.” “My last Will dated.” &c. giving date of the first Will; held to mean the last Will in fact, the date given being rejected as a mistake (*Re Ince*, 46 L. J. P. D. & A. 30; 2 P. D. 111; *Re Steele*, L. R. 1 P. & D. 575; 37 L. J. P. & M. 72, n; *Re Wilson*, lb.; *Thomson v. Hempehall*, 1 Rob. 783; 13 Jur. 814). And, generally speaking, “Last Will,” means, the one latest in date, though there may be two or more Wills all speaking from the death of the testator (*Pottinger v. Ambler*, 35 L. J. Ch. 389; L. R. 1 Eq. 510; 35 Bea. 321; *Leslie v. Leslie*, Ir. Rep. 6 Eq. 332); *Vf. Woodroffe v. Creed*, 1894, 1 L. R. 508. “This is my last Will and Testament” does not, of itself, revoke a former Will (*Cutto v. Gilbert*, 9 Moore P. C. 131; *Freeman v. Freeman*, 5 D. G. M. & G. 704; 23 L. J. Ch. 838; *Re O'Connor*, 13 L. R. Ir. 406); but may be confirmatory proof of an intention to revoke (*Plenty v. West*, 16 Bea. 173; 22 L. J. Ch. 185; 1 W. R. 3). *Vf. Re Petchell*, L. R. 3 P. & M. 153; 43 L. J. P. & M. 22: REVIVAL.

**LAST ENTITLED.** — “Person last entitled to any Particular Estate,” s. 2, Real Property Limitation Act, 1874; *V. Pedder v. Hunt*, cited HEIR: “Person last entitled to Land”; *V. 3 & 4 W. 4, c. 106, s. 1. Cp, PURCHASER.*

**LAST MENTIONED.** — *V. Brancker v. Molyneux*, 1 M. & G. 710; *Ashton v. Brevitt*, 14 M. & W. 106; 14 L. J. Ex. 297.

“Last mentioned Residue”; *V. Mathews v. Jordan*, Ir. Rep. 5 Eq. 200.

**LAST PAST.** — In a Deed, a day “now last past,” means, last preceding the day of the Delivery, not of the Date (*Steele v. Murt*, 4 B. & C. 272). *Cp, Shaw v. King*, cited HABENDUM.

**LATE.** — *V. SOMETIME.*

**LATELY.** — Devise of cottages and premises “which I have *lately* purchased”; *V. Care v. Harris*, 57 L. J. Ch. 62; 57 L. T. 768; 36 W. R. 182.

**LATENT AMBIGUITY.** — *V. PATENT AMBIGUITY.*

**LATENT DEFECT.** — *V. DEFECT.*

**LATERAL.** — “Lateral DEVIATION” defined and contrasted with “Vertical Deviation”; *V. Herron v. Rathmines Commrs*, 27 L. R. Ir. 179, 214; 29 lb. 218; 1892, A. C. 498.

**LATHE.** — “ ‘Lathe, *lestum*,’ is a great part of a County, sometimes containing three or more Hundreds, as in Kent, Sussex, &c” (Termes de la Ley). *V.* HUNDRED: RAPE.

**LAUNDRY.** — *V.* FACTORY.

**LAW.** — *V.* BY LAW: BYE LAW: CIVIL RIGHTS: COMMON LAW: EQUITY: LAW MERCHANT: LOCAL LAW: MARTIAL LAW: MILITARY LAW: PENAL: RIGHT IN EQUITY.

“Court of Law”; *V.* COURT.

“Matter of Law,” s. 40, 6 G. 4, c. 120; *V.* *Fleming v. Hislop*, 11 App. Ca. 686, cited ANNOYANCE, towards end.

“Question of Law”; *V.* QUESTION.

“Laws and Statutes”; *V.* ADMINISTRATION.

He acts “against law”; *V.* UNWORTHY.

**LAW or LAWE.** — “*Cope* signifieth a hill, and so doth *lawe*; as *stanlawe* is *saxens collis*” (Co. Litt. 4 b). *V.* HOWE.

**LAW AGENT.** — In Scotland “Law Agent,” includes, “Writers to the Signet, Solicitors in the Supreme Courts, Procurators in any Sheriff Court, and every person entitled to practise as an Agent in a Court of Law in Scotland” (Law Agents (Scot) Act, 1873, 36 & 37 V. c. 63, s. 1; 54 & 55 V. c. 30, s. 1: *Ij*, 59 & 60 V. c. 49, s. 1).

**LAW DAY.** — “ ‘Law-day’ signifies a Leet or Sheriffes tourne” (Termes de la Ley). “Law-day or lage-day was properly any day of open court, and commonly used for the more solemn courts of a county or hundred” (Hilliard’s *u* to Touch. 92, citing Cowel. *Ij*, Elph. 591). *V.* MANOR.

**LAW LIBRARY.** — Under a bequest of “Law Library, and Books of Antiquity,” Dugdale’s Monasticon, Domesday Book, and State Trials, passed (*Wallace v. Bayldon*, 4 L. J. O. S. Ch. 74).

**LAW MERCHANT.** — “The Law Merchant is neither more nor less than the Usages of Merchants and Traders in the different departments of trade ratified by the decisions of Courts of Law, which, upon such usages being proved before them, have adopted them as settled law, with a view to the interests of trade and the public convenience; the Courts proceeding herein on the well-known principle of law that, with reference to transactions in the different departments of trade, Courts of law, in giving effect to the contracts and dealings of the parties, will assume that the latter have dealt with one another on the footing of any CUSTOM or Usage prevailing generally in the particular department. By this process, what before was usage only, unsanctioned by legal decision, has become engrafted upon, or incorporated into, the Common Law, and may thus be said to form part of it. ‘When a general Usage has been judi-

cially ascertained and established,' — says *Ld Campbell*, in *Brandao v. Barnett*, 12 Cl. & F. 805, — 'it becomes a part of the Law Merchant which Courts of justice are bound to know and recognize' (*Goodwin v. Roberts*, 44 L. J. Ex. 162; L. R. 10 Ex. 346).

Therefore, the Law Merchant is never a rigidly fixed body of law, but is constantly expanding: *V. Bechuanaland Exploration Co v. London Trading Bank*, cited NEGOTIABLE. But in *Crouch v. Credit Foncier* (42 L. J. Q. B. 190; L. R. 8 Q. B. 386) it was said that, as the Custom there under discussion related to instruments of "only recent introduction, it can be no part of the Law Merchant."

*Vh*, 17 L. Q. Rev. 232; 114 Law Times, 110.

**LAW OFFICER.** — "Law Officer," usually connotes the Attorney or Solicitor General for England (35 & 36 V. c. 70, s. 2; 46 & 47 V. c. 57, s. 117).

**LAWFUL.** — *V. IT SHALL BE LAWFUL: IT SHALL NOT BE LAWFUL: MAY: LIBERTY OF WORKING.* *Cp*, LEGAL, and succeeding defs.

**LAWFUL CAUSE.** — "The priest shall not without Lawful Cause deny the Communion," s. 8, 1 Edw. 6, c. 1; such cause is that the person is an open and notorious Evil Liver (*Jenkins v. Cook*, 45 L. J. P. C. 1; 1 P. D. 80). *V. DEPRAVE: EVIL LIVER.*

Whether a Coroner's absence is "from any Lawful or Reasonable Cause," s. 1, 6 & 7 V. c. 83, is a question for the judge; and it includes taking a necessary vacation, though a good part of it be spent in shooting (*R. v. Johnson*, 42 L. J. M. C. 41; L. R. 2 (C. C. R. 15).

*V. GOOD CAUSE: REASONABLE AND PROBABLE CAUSE.*

**LAWFUL DAY.** — *Quà Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103*, "Lawful Day," means, "a day not being Sunday, Christmas Day, or Good Friday" (s. 1). *Seemle*, that def is of general acceptation.

**LAWFUL EXCUSE.** — Absence of Knowledge is a "Lawful Excuse" for the possession of a FICTITIOUS Stamp, s. 7, Post Office (Protection) Act, 1884, 47 & 48 V. c. 76, but Innocency of Motive is not; there can be no "Lawful Excuse" for its retention after the proper authority has intervened (*Dickins v. Gill*, 1896, 2 Q. B. 310; 65 L. J. M. C. 187; 75 L. T. 32; 44 W. R. 686; 60 J. P. 488; 12 Times Rep. 427). *V. KNOWINGLY.*

*Cp*, REASONABLE EXCUSE.

**LAWFUL GAME.** — *V. GAME, Lawful.*

**LAWFUL HEIRS.** — The addition of "lawful" in no degree affects the word "heirs," for it is implied therein (*Mathews v. Gardiner*, 17 Bea. 254); therefore, a limitation to "lawful heirs" will not, standing

alone, create an Entail, but gives the Fee (2 Jarm. 325, and cases there cited). *Cp.*, LAWFULLY BEGOTTEN.

So, a gift of Personalty in remainder to a person's "lawful heir or heirs," does not mean his next of kin, but means "the person or persons who, either together or separately, take the fee simple of an intestate" (per Jessel, M. R., *Smith v. Butcher*, 48 L. J. Ch. 136; 10 Ch. D. 113).

*V.* HEIR.

*V.* LEGAL HEIRS: LEGITIMATE.

**LAWFUL IMPEDIMENT.** — *V.* LET, at end.

**LAWFUL ISSUE.** — In *Edwards v. Edwards* (12 Bea. 97) "lawful issue" was held, upon the context, to mean CHILDREN, to the exclusion of grand-children born prior to the period of distribution. *Vf.* ISSUE.

*Vh.* *Re Cortlass*, 45 L. J. Ch. 118; 1 Ch. D. 460.

**LAWFUL MERCHANDIZE.** — *V.* *Vanderspar v. Duncan*, cited MERCHANDIZE: LEGAL MERCHANDIZE: OTHER, *Ejusdem Generis*.

**LAWFUL PURPOSE.** — Though, possibly, the Rules of an Industrial Socy may, under the words "Lawful Purpose," s. 12 (7), 39 & 40 *V.* c. 45, enable subscriptions to be made to STRIKE FUNDS, yet such a subscription cannot be made under a Rule directing that the profits shall be applied "either to increase the Capital, Reserve Fund, or Business, of the Socy, or to any Lawful Purpose, and the remainder, less any grant that may be made for educational purposes," to be divided among the members; for there "Lawful Purpose" is controlled by the context and is restricted to purposes of the Socy similar to those indicated in the preceding words (*Warburton v. Huddersfield Industrial Socy*, 1892, 1 Q. B. 817; 61 L. J. Q. B. 422; 67 L. T. 43; 40 W. R. 346; 56 J. P. 453).

*V.* PURPOSE.

**LAWFUL REPRESENTATIVES.** — *V.* LEGAL REPRESENTATIVES: *Mallinson v. Siddle*, cited HEIR.

**LAWFUL TRADE.** — In *Havelock v. Hancill* (3 T. R. 277) a marine insurance against loss "in Lawful Trade," was construed, "during employment by the owner in lawful trade," — that is, by limiting the condition to acts of the owner" (per Cotton, L. J., *Cory v. Burr*, 51 L. J. Q. B. 472; 9 Q. B. D. 463; affd 52 L. J. Q. B. 657; 8 App. Ca. 393).

*Vf.* *Manning v. Clement*, 7 Bing. 362.

**LAWFULLY.** — In a Pleading "lawfully," *e.g.* "lawfully being," "lawfully," means, lawfully so far as the other party is concerned (*Fawcett v. York & N. Mid. Ry.*, 20 L. J. Q. B. 222; 16 Q. B. 610).

**LAWFULLY BEGOTTEN.** — A limitation in a Will to "HEIRS lawfully begotten," creates an Entail (*Nanfan v. Legh*, 7 Taunt. 85,



cited by Parke, B., *Mortimer v. Hartley*, 20 L. J. Ex. 132; *Vf*, 2 Jarm. 325; *Mayhew v. Cattermole*, W. N. (78) 153).

A gift to all and every the Children of Nephews and Nieces "lawfully begotten," includes after-born children (*Browne v. Groombridge*, 4 Mad. 495). *Vf*, BORN.

*Cp*, LAWFUL HEIRS: LEGITIMATE. *Vf*, TO BE BORN.

The children of a duly celebrated marriage of an English person who, prior to the marriage, had been divorced by a Foreign Tribunal, are not "lawfully begotten," quâ English law, unless at the time of the divorce such person was really domiciled in the foreign country and obtained the divorce without COLLUSION (*Shaw v. Gould*, L. R. 3 H. L. 55; 37 L. J. Ch. 433; 18 L. T. 833; *Vf*, *Bonaparte v. Bonaparte*, 1892, P. 402).

**LAWFULLY DEMANDED.** — If a Lease in its clause of *Re-entry* on non-payment of rent, does not dispense with demand, or makes the right of re-entry conditional on the rent being "demanded" or on its being "lawfully demanded," such demand must be made by the landlord, or by his agent duly authorized; and it must be made (1) of the precise rent due and payable to save the forfeiture, (2) on the exact day on which it became so due and payable, (3) at a convenient hour before sunset, and (4) at the appointed place, if any appointed, and if not, then at the most notorious place of the demised premises, *e.g.* if there be a dwelling-house it must be made there and at its front door (Rose, N. P. 1014, and cases there cited: *See, Manser v. Dix*, 8 D. G. M. & G. 703). When however a *half-year's rent* is in arrear, then *V. Com. L. Pro. Act*, 1852, s. 210, which makes similar provisions to those contained in 4 G. 2, c. 28, s. 2.

But a *Power of Distress* conditional on the rent being "demanded," does not need the demand to be made in the strict way above stated (*Maund's Case*, 7 Rep. 28 b); nor even if the condition require the rent to be "legally demanded" (*Thorp v. Hart*, 30 S. J. 469). If indeed such a power were made conditional on the rent being "lawfully demanded," it is submitted that such a phrase would not import into the condition the technicalities of demand required at Common Law prior to re-entry for non-payment. In *Thorp v. Hart* (sup), Chitty, J., finding that the power of distress was only conditional on the rent being "legally demanded," refused to say that that meant all that the cases had decided must be done prior to re-entry for default in payment after the rent had been "lawfully demanded." And that was enough for the decision in *Thorp v. Hart*. But having regard to the different character of a Forfeiture as compared with a Distress, it is difficult to believe that the strictness of the one would be applied to the other, even if the power of distress were not to be exercised until after the rent had been "lawfully demanded." It seems indeed not free from doubt whether *any* demand of rent is needed prior to distress, even though the Lease give power to

distrain on default of payment of rent after demand (Bac. Abr., *Rent*, J., cited by Chitty, J., in *Thorp v. Hart*, sup). *Vf*, ON DEMAND.

A Poor Rate is "legally demanded," s. 12, 54 G. 3, c. 170, when the first demand is made, though the rate be payable by quarterly instalments under s. 2, 32 & 33 V. c. 41 (*Walton-on-the-Hill v. Jones*, 1893, 2 Q. B. 175; 62 L. J. M. C. 123; 69 L. T. 319; 42 W. R. 32; 57 J. P. 552).

**LAWFULLY DETAINED.** — A person "lawfully detained as a Lunatic," s. 116 (1 *e*) Lunacy Act, 1890, is one detained under that Act, not one detained in a foreign Country (*Re Watkins*, 1896, 2 Ch. 336; 65 L. J. Ch. 636; 74 L. T. 504). *Vh*, *Re B. A. S.*, 1898, 2 Ch. 392; 67 L. J. Ch. 453; 78 L. T. 638.

**LAWFULLY OCCUPIED.** — "Land lawfully occupied by a Building or Structure," s. 22 (2), London Bg Act, 1894; *V. Scott v. Carritt*, 81 L. T. 454; 63 J. P. 772; affd 82 L. T. 67; 16 Times Rep. 134.

**LAWFULLY PRODUCED.** — *V. PRODUCED.*

**LAWLESS MAN.** — "Is he *qui est extra legem*, Bract. lib. 3, tr. 2, c. 2" (Cowel), *i.e.* an OUTLAW.

**LAWN.** — *V. Palmer v. M'Cormick*, 25 L. R. Ir. 110, 120.

**LAWND or LOUND.** — *V. FRYTHE.*

**LAWRENCE.** — *V. ST. LAWRENCE.*

**LAY.** — "If any Surveyor shall lay, or cause to be laid, any heap of stone," &c, on a Highway, s. 56, Highway Act, 1835; *V. Hardeastle v. Bielby*, cited ALLOW.

**LAY DAYS.** — "Days which are given to the charterer in a Charter-party either to load or unload without paying for the use of the ship are 'Lay Days.'" "The Lay Days are described as days for loading and unloading, and they are sometimes called Lay Days and sometimes Working Days" (per Esher, M. R., *Nielsen v. Wait*, 16 Q. B. D. 70; 55 L. J. Q. B. 89). *Vh*, *Pyman v. Dreyfus*, 24 Q. B. D. 152; 59 L. J. Q. B. 13; *Little v. Stevenson*, 1896, A. C. 108; 65 L. J. P. C. 69. In *Commercial S. S. Co v. Boulton* (cited RUNNING DAYS) "Lying Days," held, on the context, to mean "Working," and not "Running" Days.

Lay Days, mean, days of the week, and not periods of 24 hours. *V.* RUNNING DAYS: READY TO LOAD.

*V.* DAYS: DEMURRAGE: DEMURRAGE DAYS: WORKING DAYS.

**LAY IMPROPRIATOR.** — *Vh*, 7 Encyc. 330.

**LAY OUT.** — *V. NEW STREET.*

**LAYLAND.** — “Land that lies fallow” (Cowel).

**LEA.** — “*Lea* or *ley* signifieth pasture” (Co. Litt. 4 b).

**LEAD.** — A Reward for such information as shall “lead to” the apprehension and conviction of a criminal, will be earned if the information given was the CAUSA CAUSANS of the apprehension and conviction, even though it was somewhat remote (*Turner v. Walker*, L. R. 2 Q. B. 301; 35 L. J. Q. B. 179).

**LEAD AWAY.** — A power or right to “lead away,” e.g. manure, implies the drawing it away in a CARRIAGE (*Brunton v. Hall*, 1 Q. B. 792; 10 L. J. Q. B. 258; 1 G. & D. 207).

*V. TAKE AND CARRY AWAY.*

**LEAKAGE AND BREAKAGE.** — “‘Not accountable for Leakage,’—is frequently inserted in Bills of Lading, and in such case the owners are not answerable for loss by leakage, unless it is proved that the leakage was caused by the negligence of the master and crew” (1 Maude & P. 356, citing *The Helene*, Brown & Lush, 429; 35 L. J. Adm. 1; L. R. 1 P. C. 231; *Phillips v. Clark*, 2 C. B. N. S. 156; 26 L. J. C. P. 168; *Allan v. James*, 3 Com. Ca. 11). “Breakage,” in such a connection, “is not used in an active sense, but means that the Shipowner is not to be responsible for the broken condition of the goods at the Port of Delivery” (per Inglis, L. P., *Moes v. Leith & Amsterdam Co*, 5 Sess. Ca. 3rd Ser. 988; also stated Abbott, 492).

An Exception of damage arising from “Rust, Leakage, and Breakage,” does not include rust, leakage, or breakage, caused by the carelessness of the shipowner or his servants in stowing (*Phillips v. Clark*, sup; *The Nepoter*, L. R. 2 A. & E. 375; 38 L. J. Adm. 63; *Czech v. Gen. Steam Nav. Co*, 37 L. J. C. P. 3; L. R. 3 C. P. 14; *The Chusea*, 44 L. J. Adm. 17; L. R. 4 A. & E. 446; and per Lindley, L. J., *Chartered Bank of India v. Netherlands Steam Nav. Co*, 52 L. J. Q. B. 230; 10 Q. B. D. 521); and the primary and natural meaning of the Exception is that the shipowner will not be answerable if the thing comprised in the Bill of Lading shall *itself* rust, leak, or break, and therefore it furnishes him no protection against his liability to compensate for consequential damage happening to that thing by reason of some other thing rusting, leaking, or breaking (*Thrift v. Youle*, 46 L. J. C. P. 402; 2 C. P. D. 432; *Barrow v. Williams*, 7 Times Rep. 37). But though such consequential damage be not caused by a “Leakage” it may, if the facts lead to that conclusion, be a PERIL OF THE SEA (*The Catherine Chalmers*, 32 L. T. 847).

**LEARNING.** — *V. GODLY LEARNING: SCHOOL.*

**LEASE.** — “If the owner of land consents by Deed that another person shall occupy the land for a certain time, that is a Lease” (per Bayley,

J., *St. Germain v. Willan*, 2 B. & C. 220). So, now, if the document be under hand only (*Duxbury v. Sandiford*, 80 L. T. 552).

"A Lease doth properly signify a demise or letting of lands, rent, common, or any hereditament, unto another for a lesser time than he that doth let it hath in it. For when a lessee for life or years doth grant over all his estate or time unto another, this is more properly called an Assignment than a Lease" (Touch. 266: *Vf*, 4 Cru. Dig. 54: *Burton v. Reeve*, 16 M. & W. 308: *Beardmore v. Wilson*, 38 L. J. C. P. 91; L. R. 4 C. P. 57; 17 W. R. 54). But "the word 'Lease' does not in law import a written instrument" (per Abinger, C. B., *Bridgland v. Shapter*, 5 M. & W. 381; 8 L. J. Ex. 246: *Va*, *Bicknell v. Hood*, 5 M. & W. 107, 108; 8 L. J. Ex. 193), except, it may perhaps be added, in those cases where, by statute, a writing is required, or (as quæ the Solrs Scale Fee, *V. inf*) where a writing is implied.

"Lease IN WRITING," s. 8, 3 & 4 W. 4, c. 27, means, "not merely a Demise in Writing but, an instrument that passes an Interest" (per Patteson, J., *Doe v. Gower*, 21 L. J. Q. B. 57; 17 Q. B. 589).

As to when a Renewal is a continuation of the old Lease; *V. Rawe v. Chichester*, and *Winslow v. Tighe*, cited DURING.

Sometimes a document which expresses itself to be an *Agreement* for a Lease will (if it contain words of present Demise, e.g. "A. hereby agrees to let and B. agrees to take") be construed as a Lease (*V. the somewhat conflicting cases hereon collected, 1 Platt on Leases, 582-610: Va*, Woodf. 142: *Parker v. Tuswell*, cited VOID). But "if the whole instrument import rather an intention to a future act than a thing done, the words will not be construed to amount to an actual letting or taking, though certain terms used, taken by themselves, might imply a present Demise" (1 Platt on Leases, 582).

"Lease," as defined by an Interp Clause, is usually made to include an *Agreement* for a Lease; e.g. 8 & 9 V. c. 16, 17, 18, 19, 20, 33, s. 3; 10 & 11 V. c. 14, s. 3; 23 & 24 V. c. 112, s. 47. — *Ir.* 10 & 11 V. c. 32, s. 66; 11 & 12 V. c. 48, s. 1; 12 & 13 V. c. 105, s. 38; 21 & 22 V. c. 72, s. 1; 28 & 29 V. c. 88, s. 2; 32 & 33 V. c. 42, s. 72; 33 & 34 V. c. 46, s. 70; 54 & 55 V. c. 66, s. 95; 59 & 60 V. c. 47, s. 48.

Other Stat. Def. — 12 & 13 V. c. 49, s. 7; 14 & 15 V. c. 104, s. 11; 37 & 38 V. c. 54, s. 7; 53 & 54 V. c. 5, s. 341. — *Scot.* 16 & 17 V. c. 80, s. 50; 46 & 47 V. c. 62, s. 42; 49 & 50 V. c. 50, s. 3. — *Ir.* 23 & 24 V. c. 154, s. 1; 63 & 64 V. c. 63, s. 3 (4).

#### V. DEMISE.

"The definition of 'Lease' given in s. 14 (3), Conv. & L. P. Act, 1881, does not appear to include an *Agreement* for a lease" (per Esher, M. R., *Coatsworth v. Johnson*, 55 L. J. Q. B. 221: *Vf*, per Charles, J., *Swain v. Ayres*, 20 Q. B. D. 585; 52 J. P. 500, and per Farwell, J., *Manchester Brewery Co v. Coombs*, cited ASSIGNS, quæ s. 10), and certainly does not include a tenancy from year to year (*Swain v. Ayres*, 21

Q. B. D. 289; 57 L. J. Q. B. 428; 36 W. R. 798). "Lessee" in the same section includes an Assignee of a Lease (*Crown v. Rogers*, Cab. & El. 348); but not, quà the original lessor, an Under-lessee of part of the demised property (*Burt v. Gray*, 1891, 2 Q. B. 98; 60 L. J. Q. B. 664; 65 L. T. 229; 39 W. R. 429; *Vf*, A). But these decisions are modified by s. 5, Conv & L. P. Act, 1892, whereby, for that Act and for s. 14, Conv & L. P. Act, 1881, "Lease," includes, "an Agreement for a Lease, where the lessee has become entitled to have his lease granted," and "Under-lease," includes, "an Agreement for an Under-lease, where the under-lessee has become entitled to have his under-lease granted"; and, quà the Act of 1892, "Under-lessee," includes, "any person deriving title under, or from, an under-lessee," on which latter def in its application to s. 4, Act of 1892; *V. Cholmeley School v. Sewell*, 1894, 2 Q. B. 906; 63 L. J. Q. B. 820; 71 L. T. 88; 58 J. P. 591; *Inray v. Oakshott*, 1897, 2 Q. B. 218; 66 L. J. Q. B. 544; 76 L. T. 632; 45 W. R. 681. Still "Lessee," in s. 2, Act of 1892, does not include an Under-lessee (*Nind v. Nineteenth Century Bg Socy*, 1894, 2 Q. B. 226; 63 L. J. Q. B. 636; 70 L. T. 831; 42 W. R. 481). *V. RELIEF.*

As to what is a "Lease or Tack" for purposes of Stamp Duty; *V. Thames Conservators v. Inl. Rev.*, 56 L. J. Q. B. 181; 18 Q. B. D. 279; 56 L. T. 198; 35 W. R. 274; *Sweetmeat Co v. Inl. Rev.*, cited INSTRUMENT, and distd in *Clifford v. Inl. Rev.*, cited PERIODICAL: s. 96, Stamp Act, 1870: s. 75, Stamp Act, 1891.

The Scale Fee for "Lease," Sch 1, Part 2, Solrs Rem Ord includes a Preliminary Agreement (*Re Emanuel and Simmonds*, 55 L. J. Ch. 710; 33 Ch. D. 40: per Ld Maenaghten, *Parker v. Bleukhorn*, 14 App. Ca. 10; *Savery v. Enfield*, 1893, A. C. 218; 62 L. J. Ch. 674), and negotiations for the Lease actually granted (*Re Field*, 54 L. J. Ch. 661; 29 Ch. D. 608); but not abortive negotiations with persons not the actual lessee (*Re Marten*, 58 L. J. Ch. 478; 41 Ch. D. 381). The Scale Fee applies to a mere Agreement (if that be the only document) even though the letting might have been created by parol (*Re Negus*, 1895, 1 Ch. 73; 64 L. J. Ch. 79). Under R. 5 of this Sch, when a Lease is partly for a premium, the Solr is entitled to the Scale Fee on the rent and for deducting title quà the premium, but nothing for negotiation (*Re Robson*, 59 L. J. Ch. 627; 45 Ch. D. 71; *Ex p. Connolly to Sheridan*, cited LONG: *Re Horn and Francis*, 1896, 2 Ch. 797; 66 L. J. Ch. 15; 75 L. T. 370; 45 W. R. 72). *Vf*, BUSINESS CONNECTED WITH: CONVEYANCE: *Re McGarell*, cited EACH.

An Interest in Land for a year, a month, a week, or a day, is a "Lease," within s. 12 (2 a), Mun Corp Act, 1882 (*Re Louth*, 1894, 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499).

"Lease in Perpetuity"; Stat. Def. Irish Encumbered Estates Act, 11 & 12 V. c. 48, s. 1; 12 & 13 V. c. 105, s. 38; 21 & 22 V. c. 72, s. 1. *Cp*, PERPETUAL INTEREST: RENEWAL.

A title under an Underlease for the original term less (say) 3 days satisfies a contract by a vendor to sell "all his Interest in the Lease" (*Waring v. Scotland*, 57 L. J. Ch. 1016; 36 W. R. 756); *secus*, if the contract be "for the Residue" of the original term (*Madeley v. Booth*, 2 D. G. & S. 718). So, a contract which represents a property as held under a "Lease" when it is held under an Underlease for the original term less 2 days, will not be enforced against the purchaser (*Re Beyfus and Masters*, 39 Ch. D. 110; disapproving dictum of Jessel, M. R., *Cumberwell & S. London Bg Socy v. Holloway*, 13 Ch. D. 760; 49 L. J. Ch. 361).

V. BUILDING LEASE: CHURCH LEASE: DERIVATIVE LEASE: MINING: OCCUPATION LEASE: PASTORAL LEASE: REPAIRING LEASE: UNDERLEASE: LET: SET: COSTS OF LEASE: DURING.

Power to grant Lease as contrasted with a Restriction on granting; *V. Croft v. Lumley*, 6 H. L. Ca. 737; 27 L. J. Q. B. 343.

An indefinite Power of Leasing authorizes leases for any period however long (*Muskerry v. Chinnery*, L. & G. t. Sug. 185; nom. *Sheehy v. Muskerry*, 7 Cl. & F. 1; 2 Jebb & Sy. 300; 1 H. L. Ca. 576. *Taylor v. Mostyn*, 52 L. J. Ch. 848; 23 Ch. D. 583); it also includes a Building Lease (*Re James*, 73 L. T. 1; 64 L. J. Ch. 686).

A Power to lease Mines (following a Life Estate in the land of which they form part) though expressed in general terms, does not necessarily imply a power to lease beyond the life of the Tenant for Life (*Vivian v. Jegon*, L. R. 3 H. L. 285; 37 L. J. C. P. 313; 19 L. T. 218).

The word "lease," *semble*, has not the same force in implying a covenant as "demise"; V. DEMISE.

**LEASEHOLD.** — Property held on a Lease for Life, is properly described as "Leasehold" quâ Parliamentary Qualification (*Jones v. Jones*, L. R. 4 C. P. 422; 38 L. J. C. P. 43).

**LEASEHOLD AREA.** — "Leasehold AREA," in New South Wales Crown Lands Acts; *V. Colless v. N. S. Wales Minister for Lands*, 1899, A. C. 90; 68 L. J. P. C. 9; 79 L. T. 505; *N. S. Wales Minister for Lands v. Harrington*, 1899, A. C. 408; 68 L. J. P. C. 60; 80 L. T. 604.

**LEASEHOLD ESTATE.** — "Leasehold Estate," quâ s. 53, Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66; *V. its subs. 2, (b)*: *V. (a)* and *(c)* of same subs. for "Leaseholder."

**LEASEHOLD GROUND RENT.** — *V. GROUND RENT.*

**LEASEHOLD INTEREST.** — A Lease of CHATELS is not a "Leasehold Interest" (*Sheffield Waggon Co v. Stratton*, 48 L. J. Ex. 35; 27 W. R. 120; 40 L. T. 86).

**LEASEHOLD REVERSION.** — A "Leasehold Reversion," ss. 3 (1), 13 (1), Conv & L. P. Act, 1881, means, the reversion immediately after that term out of which the sub-term contracted to be sold or granted has been, or is to be, derived; therefore, the sections cited do not deprive an intended purchaser or sub-lessee of the right to call for an Abstract of the lease and subsequent documents under which the intended vendor or sub-lessor holds (*Gosling v. Woolf*, 1893, 1 Q. B. 39; 41 W. R. 106).

As used in 32 H. 8, c. 34; *V. Martyn v. Williams*, 26 L. J. Ex. 117; 1 H. & N. 817; *Norval v. Pascoe*, 34 L. J. Ch. 83; *Hastings v. N. E. Ry*, 1898, 2 Ch. 674; 67 L. J. Ch. 590; 47 W. R. 59; 78 L. T. 812; affd 1899, 1 Ch. 656; 68 L. J. Ch. 315; 80 L. T. 217; affd in H. L. nom. *N. E. Ry v. Hastings*, 1900, A. C. 260; 69 L. J. Ch. 516; 82 L. T. 429.

V. REVERSION.

**LEASEHOLD SECURITY.** — A power to invest in "Leasehold Securities" does not authorize the lending of trust money on a short term, — e.g. one for 14 years (*Pince v. Beattie*, 9 Jur. N. S. 1119).

**LEASEHOLDER.** — V. LEASEHOLD ESTATE.

**LEAST.** — V. AT LEAST.

**LEAVE.** — "To leave" at the end of a term certain things comprised in a lease, — e.g. Pillars in a Mine, — does not assume that there will be any power to remove those things and afterwards to restore them (per Bacon, V. C., *Mostyn v. Lancaster*, 51 L. J. Ch. 702; 23 Ch. D. 583; 31 W. R. 3, 686; 46 L. T. 648; 48 lb. 715).

"If tenant leaves the house," implies, in a condition for a payment to the tenant on that event, that the tenant shall "leave" on a legal termination of his tenancy (*Lucas v. Ridout*, L. R. 3 H. L. 153). Cp. *Murray v. Close*, cited LEAVING.

A Power "to leave" property, signifies, *ex vi termini*, a disposition by Will (*Doe d. Thorley v. Thorley*, 10 East, 438; *Moore v. Ffolliot*, 19 L. R. Ir. 504; *Vf, Archibald v. Wright*, 7 L. J. Ch. 120; 9 Sim. 161; DISPOSE OF: Sug. Pow. 210).

"To leave" a Port, — in a Charter-Party, — does not mean that the ship is to "sail on her voyage" therefrom: "leave," in such a connection, has no other than its ordinary signification of "going away from" (*Van Baggen v. Baines*, 23 L. J. Ex. 213; 9 Ex. 523). Cp. DEPART: SAIL.

CRUELTY or Neglect causing a Wife "to leave and live separately"; V. NEGLECT.

V. LEFT.

Where there is an Appeal by "leave," its allowance or refusal by the constituted Authority is final (*Ex p. Stevenson*, 1892, 1 Q. B. 609; 61 L. J. Q. B. 492; 66 L. T. 544; 40 W. R. 417; *Lane v. Esdaile*, 1891,

A. C. 210; nom. *Payne v. Esdaile*, 60 L. J. Ch. 644; 64 L. T. 666; 40 W. R. 65). *Note*: Under s. 1 (1 *b*), Jud. Act, 1894, there are two independent constituted authorities, though it needs a very strong case for the Court of Appeal to give "leave" when the Judge has refused it.

"Special Leave"; *V. SPECIAL*.

**LEAVING.**— Though this word, in such a phrase as "dying without leaving children" "obviously points at the period of death" (2 Jarm. 199); yet, in a gift over, it frequently means "HAVING" or "having had."

Thus, if property, real or personal, be given by Will or limited by Settlement to the children of A., the shares to vest in them on a given event which has no reference to their surviving A., but there is a gift over on the death of A. without "leaving" a child, &c., — the word "leaving" will be construed "having," or "having had," in order not to defeat the vested interests which A.'s children, who may have predeceased him, may have acquired under the terms of the gift (*Maitland v. Charlie*, 6 Mad. 243; *Re Thompson*, 5 D. G. & S. 667; *Kennedy v. Sedgwick*, 3 K. & J. 540; *Marshall v. Hill*, 2 M. & S. 608; *Ex p. Hooper*, 1 Drew. 264; *White v. Hill*, L. R. 4 Eq. 265; *Bryden v. Willett*, L. R. 7 Eq. 472; *Sethle, Re Watson*, L. R. 10 Eq. 36; 39 L. J. Ch. 770, following *Sheffield v. Kennett*, 27 Bea. 207; 4 D. G. & J. 593; *Vf, Re Brown*, L. R. 16 Eq. 239; 43 L. J. Ch. 84; *Treharne v. Layton*, L. R. 10 Q. B. 459; 44 L. J. Q. B. 202; Hawk. 217). This is sometimes called the Rule in *Maitland v. Charlie*: as to vesting words, *V. VEST: PAYABLE*.

But the interpretation of "having" or "having had" has not always been confined to the protection of vested interests of children. Thus in *White v. Hight* (12 Ch. D. 751; not followed in *Armstrong v. Armstrong*, 21 L. R. Ir. 114), where there was a devise to A. absolutely, with a gift over "after her decease without leaving any issue," it was held that the devise to A. became indefeasible upon her having a child (*the*, criticised 2 Jarm. 825, and is now over-ruled; *Re Ball, Slutterley v. Ball*, 58 L. J. Ch. 232; 40 Ch. D. 11; 59 L. T. 800, on *whlcv*, *Re Bogle*, 78 L. T. 457, and *Armstrong v. Armstrong*, sup. *V. generally* as to meaning of "leaving," 2 Jarm. 200, 823–827).

If, however, a gift be introduced by words importing contingency, — such as a gift to the children of A. "in case he *shall leave* any child or children," — the word has its natural construction and means "leave living at his death" (*Bythesea v. Bythesea*, 23 L. J. Ch. 1004; *Young v. Turner*, 30 L. J. Q. B. 268; 1 B. & S. 550); but that ruling may be controlled the other way by a context, so that the representatives of children who took a Vested Interest may be entitled, though such children predeceased A. and though the words are "On the death of A. leaving issue" (*Hickling v. Fair*, 1899, A. C. 15; 68 L. J. P. C. 12).

But to construe "leaving" as "having" or "having had" is to do violence to the language; and such a construction will only be adopted within the lines distinctly laid down by the cases, or where there is a



real ambiguity (*Re Hamlet, Stephen v. Cunningham*, 38 Ch. D. 183; 39 Ib. 426; 57 L. J. Ch. 1007; 58 Ib. 242; in *which* the authorities are reviewed). In *Re Hamlet*, it was said that the addition of such words as "her surviving" or "at her death," makes it much more difficult to construe "leaving" as "having" or "having had." In the case of a gift of an Annuity such a construction will not be adopted (*Re Hemingway*, 60 L. J. Ch. 85; 45 Ch. D. 453; 63 L. T. 218; 39 W. R. 4).

"Die without leaving *Issue Male*"; *V. Re Ball, Slatterley v. Ball*, sup: *Clay v. Coles*, 57 L. T. 682.

Devise to A. "and the Heir Male of his body, and the heirs and assigns of such heir male," but if A. should "die without leaving *any Son*," gives A. an estate for life, with a contingent remainder in fee to the person (if any) who at A.'s death should be the heir male of his body, with a limitation over if there should be no such heir (*Chamberlayne v. Chamberlayne*, 25 L. J. Q. B. 357; 6 E. & B. 625).

Devise to A. for life, and, "*she leaving no child*," remainder to B., is a gift to A. for life, and on her death B. takes in fee, even though A. leaves a child; for a fee simple in A. cannot be implied from the words italicised (*Scale v. Rawlins*, 1892, A. C. 342; 61 L. J. Ch. 421; 66 L. T. 542).

V. DIE: DIE WITHOUT ISSUE: DIE WITHOUT CHILDREN.

"Corresponding EXPENSES of leaving" the Place of Loading of a ship, R. x (a) York-Antwerp Rules, 1890, does not include the cost of what is really prosecuting a voyage, *e.g.* cutting through ice in the River between St. Petersburg and Kronstadt, the ship having to make a voyage from St. Petersburg to London (*Westoll v. Carter*, 3 Com. Ca. 112; 11 Times Rep. 281).

An Agreement restricting competition with an Employer "after leaving his Service," is operative on the termination, however accomplished, of the service, *e.g.* by a dismissal without notice (*Murray v. Close*, 32 L. T. O. S. 89). "A Convict who is sent to Botany Bay 'leaves' England" (per Campbell, C. J., *Ib.*). *Cp. Lucas v. Rideout*, cited LEAVE.

**LEAVING A WIDOW.** — "Shall die leaving a Widow"; *V. Hood v. Hood*, W. N. (69) 237.

**LEAVINGS.** — "Leavings" of a Tin Mine; *V. Mineral Residues Syndicate v. Levant Mine*, 7 Times Rep. 654.

**LEEMAN'S ACTS.** — The Banking Companies' (Shares) Act, 1867, 30 & 31 V. c. 29:

The Borough Funds Act, 1872, 35 & 36 V. c. 91.

**LEET.** — *V. Elph.* 592; *Termes de la Ley*; *Cowel*; *Jacob, Court List*: 4 Bl. Com. 273.

**LEFT.**— A bequest of what shall “remain,” or “be left” at the decease of the prior legatee, or of what the legatee is possessed of at the time of death, or of “what he does not want,” or “does not spend,” or “can transfer,” or “can save,” or “of what remains undisposed of,” or of the “bulk” of certain property, or a gift over of the whole legacy in case of the death of the prior legatee “intestate,” is void for uncertainty (1 Jarm. 362, 363, and cases there cited).

But where the Will gives to A. a limited interest with a power of disposal of the corpus, and this is followed by a gift over of what “remains,” or is “remaining” at the death of A., or of what “remains undisposed of,” or “does not spend,” or other like expression, the gift over will take effect upon such of the property as A. may not have disposed of by act *inter vivos* (*Re Pounder*, 56 L. J. Ch. 113; 56 L. T. 104: *Re Thomson*, 49 L. J. Ch. 622; 14 Ch. D. 263: *Re Stringer*, 46 L. J. Ch. 633; 6 Ch. D. 1). In *Re Pounder*, Kay, J., said that “Remaining” was equivalent to “Remaining undisposed of.” *Vf*, WHAT IS LEFT: DISPOSAL.

Where there is a direction that property is to go as as it may be “left,” that word “imports a Will” (per Chitty, L. J., *Hill v. Hill*, 66 L. J. Q. B. 334).

Notice to be “left”; *V. SERVED*.

“Left an Orphan”; *V. ORPHAN*.

*V. LEAVE*.

**LEGACY.**— “The plain import of the word ‘Legacies,’ includes both specific and pecuniary legacies” (per Romilly, M. R., *Ward v. Grey*, 29 L. J. Ch. 75, 76; 26 Bea. 485: *V. LEGATEE*).

“There is no doubt that the word ‘Legacy’ is sufficient to include an Annuity; but it is a word *incipitibus usus*, which sometimes may include an annuity and sometimes may not; whether it does so or not depends upon the context” (per Cairns, C., *Cunningham v. Foot*, 3 App. Ca. 989).

“Under a charge of ‘Legacies,’ Annuities will generally be included; unless the testator manifests an intention to distinguish them, as by sometimes using both words” (2 Jarm. 609: *Vf*, *Gaskin v. Rogers*, L. R. 2 Eq. 284: Wms. Exs. 1062, n: Seton, 1635), as in *Weldon v. Bradshaw* (Ir. Rep. 7 Eq. 168).

“A direction to pay ‘Legacies’ free of duty, will not generally include the proceeds of realty directed to be sold (*White v. Lake*, L. R. 6 Eq. 188); but, probably, would include legacies payable out of such proceeds (*Hodges v. Grant*, 36 L. J. Ch. 935; L. R. 4 Eq. 140)”; 1 Jarm. 187. Such a direction applies to specific, as well as pecuniary, legacies (*Re Johnson*, 53 L. J. Ch. 645; 26 Ch. D. 538).

“Legacy,” *primâ facie*, has reference to personalty only (*Windus v. Windus*, 26 L. J. Ch. 185; 6 D. G. M. & G. 549: *Gethin v. Allen*, 23 L. R. Ir. 241); but, contextually, it may extend to realty (*Hardacre*

v. *Nash*, 5 T. R. 716; 1 Jarm. 743; *V. RESIDUARY LEGATEE*). As used in s. 8, 37 & 38 V. c. 57, it "applies to both real and personal estate" (per Jessel, M. R., *Sutton v. Sutton*, cited CHARGED UPON); and that, indeed, seems to have been the old *primū facie* meaning of the word, which in *Termes de la Ley* is defined as, "lands or goods given unto any man by the Will or Testament of another."

*V. PECUNIARY LEGACY: CUMULATIVE: DEMONSTRATIVE: SPECIFIC: DEVISE.*

A bequest of a share of proceeds arising from the sale of real and leasehold properties is a "Legacy" within Co. Co. Acts, 9 & 10 V. c. 95, s. 65; 13 & 14 V. c. 61, s. 1; Co. Co. Act, 1888, s. 58 (*Pears v. Wilson*, 20 L. J. Ex. 381; 6 Ex. 833); so, *semble*, of a bequest conditional on good conduct (per Campbell, C. J., *Re Fuller*, 2 E. & B. 575, 576; 22 L. J. Q. B. 415; 21 L. T. O. S. 166). But where there are active trusts to be exercised in respect of the fund bequeathed (*Phillips v. Hewston*, 25 L. J. Ex. 133; nom. *Hewston v. Phillips*, 11 Ex. 699; *Va, Beard v. Hine*, 10 W. R. 45), or where so much a week is to be paid by a person taking a benefit under the Will (*Longbottom v. Loughbottom*, 22 L. J. Ex. 74; 8 Ex. 203), there is no "Legacy" within the meaning of these sections.

"Residue is not a 'legacy' in the ordinary sense of the term" (per Romilly, M. R., *Ward v. Grey*, sup).

A Share of Residue is a "Legacy" within s. 40, Real Property Limitation Act, 1833, repld s. 8, 37 & 38 V. c. 57 (per Alderson, B., *Prior v. Hornblow*, 2 Y. & C. 200; *Sc, Christian v. Devereux*, 12 Sim. 264; *Adams v. Barry*, 2 Coll. 293); "but it only includes it where there is an exor named" (per Jessel, M. R., *Sutton v. Sutton*, cited CHARGED UPON). *Vf*, quā "Legacy" in this connection, *Sheppard v. Duke*, 9 Sim. 567; 8 L. J. Ch. 228; *Piggott v. Jefferson*, 12 Sim. 26; *Re Davis*, 1891, 3 Ch. 119; 61 L. J. Ch. 85; 65 L. T. 128; 39 W. R. 627; *Re Swain*, cited BREACH OF TRUST.

A direction to invest the "Legacies" given by a Will does not extend to the Residue (*Re Aiken*, 1898, 1 I. R. 335).

A direction in a Will that a Solicitor Trustee may make professional charges, is a "Legacy" within s. 15, Wills Act, 1837, so that if he be one of the attesting witnesses (to the testamentary document by which the direction is given, *Gurney v. Gurney*, 24 L. J. Ch. 656; 3 Drew. 208; *Re Marcus*, 57 L. T. 399) the direction is void (*Re Barber*, 55 L. J. Ch. 373; 31 Ch. D. 665; *Re Pooley*, 58 L. J. Ch. 1; 40 Ch. D. 1). If the estate be insolvent, such charges, though validly directed, cannot be paid, because (being a legacy) they cannot compete with the debts of creditors (*Re White*, 1898, 2 Ch. 217; 67 L. J. Ch. 502; 46 W. R. 676; 78 L. T. 770). *Va, GIFT: PROFESSIONAL CHARGES: REPUBLICATION.*

Legacy to Husband and Wife; *V. JOINT TENANCY*, at end.

*V. ADDITION.*

**LEGACY DUTY.** — A direction in a Will that all legacies are “to be *paid*, free of Legacy Duty,” will apply to all the specific legacies of chattels as well as to the pecuniary legacies; but not to the Succession Duty in respect of a bequest of leaseholds (*Re Johnson*, 53 L. J. Ch. 645; 26 Ch. D. 538).

As to what words will exempt a legatee from payment of Legacy Duty; *V. 1 Jarm.* 186, 187: CLEAR: DEDUCTION.

As to when Legacy Duty (and not Succn Duty) is payable in respect of an Annuity; *V. Re De Houghton*, 1896, 1 Ch. 855; 64 L. J. Ch. 590; 65 Ib. 528; 74 L. T. 297; 44 W. R. 550, applying *A-G. v. Jackson*, 1 L. J. Ex. 21; 2 Cr. & J. 101, and distinguishing *Shirley v. Ferrers*, 12 L. J. Ch. 111; 1 Phill. 167.

**LEGAL.** — *V. LEGALLY*: RIGHT IN EQUITY. *Cp.*, LAWFUL and succeeding defs.

**LEGAL CHOSE IN ACTION.** — *V. CHOSE IN ACTION.*

**LEGAL CRUELTY.** — *V. CRUELTY.*

**LEGAL DISABILITY.** — A FORFEITURE if a donee be “under any Legal Disability in consequence whereof he would be hindered from taking for his own personal and exclusive benefit,” means, some DISABILITY imposed on the donee BY LAW, *e.g. bonâ fide* Bankry, or (per Lindley and Lopes, L. JJ.) Attainder for Treason, or Lunacy; the phrase does not include an inability to receive the property caused by a Charge created by the donee, or by a Jdgmt against him for debt (*Re Carew*, 1896, 2 Ch. 311; 65 L. J. Ch. 686; 44 W. R. 700; 74 L. T. 501).

*V. ABILITY*: INABILITY: LEGAL INCAPACITY.

**LEGAL ESTATE.** — The Legal Estate in Land, means, its legal proprietorship at Common Law, as distinct from those estates and interests which have their sanction in the jurisprudence of EQUITY (*Vh.*, LEGALLY).

In the majority of cases the Legal Estate is given by express and apt words; but where there is a devise to Trustees, who have active duties to discharge in relation to the land devised, they will take the legal estate by implication; but, “the mere fact that the devised property is charged with Debts or Legacies, will not vest the legal estate in the trustees, unless they are directed to pay them, or the Will contains some other indication of an intention to create a trust for the purpose” (2 *Jarm.* 296, cited with approval by Stirling, J., *Re Adams and Perry*, 68 L. J. Ch. 263; 1899, 1 Ch. 554; 80 L. T. 149; 47 W. R. 326). Yet, if the legal estate is once in trustees, then it remains in them until all their active duties are fulfilled; for “it is a convenient rule that where there are recurring occasions for the exercise of active duties by the trustees,

and no repeated devises to them to enable them to perform the duties, the legal estate, if once in the trustees, is to be deemed to be vested in them throughout, — notwithstanding the duration, in the meantime, of what would but for the recurring duties be construed as Uses executed in the beneficiaries” (per *Ld Davey, Van Grutten v. Foxwell*, 1897, A. C. 683; 66 L. J. Q. B. 758, *who* cited and applied *Re Adams and Perry*, *sup.*). But when their duties are fulfilled, then “it may be laid down, as a general rule, that where an estate is devised to trustees for Particular Purposes the legal estate is vested in them as long as the execution of the trust requires it, and no longer; and therefore, as soon as the trusts are satisfied it will vest in the person beneficially entitled” (per *Bayley, J., Doe d. Player v. Nicholls*, 1 B. & C. 342), unless the words of limitation in the instrument indicate that it is to remain in the trustees (*Tudball v. Medlicott*, 36 W. R. 886). *V.* SIMPLE TRUST.

*Vf*, as to what words vest the Legal Estate in Trustees, *Jarm.* ch. 34: *Godefroi*, ch. 1: *Richardson v. Harrison*, 55 L. J. Q. B. 58; 16 Q. B. D. 85; 54 L. T. 456: *Re Lashmar*, 1891, 1 Ch. 258; 60 L. J. Ch. 143; 64 L. T. 333: *Re Brooke*, 1894, 1 Ch. 43; 63 L. J. Ch. 159; 70 L. T. 71; 42 W. R. 186: *Re Townsend*, 1895, 1 Ch. 716; 64 L. J. Ch. 334; 72 L. T. 321; 43 W. R. 392. CONVEY: HEIR: NET: PAY TO: PERMIT: REST: UPON.

#### LEGAL EXCUSE. — *V.* LAWFUL EXCUSE.

**LEGAL FRAUD.** — In the general acceptation of the phrases, there is no real difference between “Legal Fraud” and “Fraud” (*Derry v. Peek*, 14 App. Ca. 337; 58 L. J. Ch. 864; 38 W. R. 33; 61 L. T. 265; 5 Times Rep. 625).

*Vh, Angus v. Clifford*, 1891, 2 Ch. 449; 60 L. J. Ch. 443; 39 W. R. 498: *Joliffe v. Baker*, 52 L. J. Q. B. 609; 11 Q. B. D. 255: *Bishop v. Balkis Co*, cited CERTIFICATION: *Glazier v. Rolls*, 42 Ch. D. 436; 58 L. J. Ch. 820.

*V.* ACTUAL FRAUD: CONCEALED FRAUD: FRAUD.

**LEGAL HEIRS.** — *V. Low v. Smith*, 25 L. J. Ch. 503; 2 Jur. N. S. 344: *Re Dixon*, 47 L. J. P. D. & A. 57; 4 P. D. 81: HEIR: LAWFUL HEIRS. In Ireland, “Legal Heir” has been construed “Heir of the body,” and so creating an Entail (*Moffet v. Catherwood*, Al. & N. 472).

*V.* LAWFUL HEIRS.

**LEGAL INCAPACITY.** — A woman, as such, is subject to a “Legal Incapacity” to vote for a Member of Parliament, within s. 3 (1), Rep People Act, 1867 (*Chorlton v. Lings*, 38 L. J. C. P. 25; L. R. 4 C. P. 374), or as a freeholder for a County (*Chorlton v. Kessler*, L. R. 4 C. P. 397): *Va, Beresford-Hope v. Sandhurst*, 58 L. J. Q. B. 316; 23 Q. B. D. 79; 61 L. T. 150; 37 W. R. 548: FEMALE.

*V.* LEGAL DISABILITY: INCAPABLE: SEX.

**LEGAL ISSUE.** — The “Legal Issue” of disputed title to Shares or Stock after registration, R. 92, Stock Exchange Rules, means “one decided between the real principals to the transaction” (per Esher, M. R., *Smith v. Reynolds*, 66 L. T. 810; 36 S. J. 102, 103).

*V. ISSUE: ISSUE OF LAW.*

**LEGAL MEASURES.** — A direction in a Mandamus “to take the Necessary and Legal Measures and Proceedings for obtaining and recovering” stated payments. does not, necessarily, mean that an Action must be brought (*R. v. Southampton*, 30 L. J. Q. B. 244; 1 B. & S. 5, diss. Cockburn, C. J.).

**LEGAL MEMORY.** — *V. MEMORY.*

**LEGAL MERCHANTIZE.** — Under the words “Other Legal MERCHANTIZE” in a Charter-party, the charterer is at liberty to ship any lawful article he pleases (due regard being had to the safety of the vessel), but is bound to pay the same amount of freight as the vessel would have earned if loaded within the terms of the Charter (*Cockburn v. Alexander*, 18 L. J. C. P. 74; 6 C. B. 791). *Vf. Capper v. Foster*, 3 Bing. N. C. 938; *Southampton Colly Co. v. Clarke*, 40 L. J. Ex. 8; L. R. 6 Ex. 53; 19 W. R. 214: **OTHER.**

**LEGAL MORTGAGE.** — A “Legal MORTGAGE,” means, a *first* mortgage. This is unquestionably so as regards Land, because it is only the first mortgage which can grant the legal estate in the land. But where a person had agreed to give a “Legal Mortgage” of a *Ship* it was contended that this did not necessarily mean a first mortgage, because (by the Mer Shipping Act, 1854, ss. 66, 70) even a first mortgage would not pass the legal interest in a ship. It was, however, held in that case that even as regards a ship the expression “Legal Mortgage” generally means a first mortgage (*Thompson v. Clerk*, 7 L. T. 269; 11 W. R. 23).

*Vh. Fisher*, Part 2. s. 1.

**LEGAL NOTICE.** — A “Legal Notice,” — *e.g.* “Legal Notice to Quit,” s. 50, Co. Co. Act, 1856, s. 138, Co. Co. Act, 1888, — means, a Notice provided by law, as distinguished from one prescribed by contract (*Friend v. Shaw*, 57 L. J. Q. B. 225; 20 Q. B. D. 374; 36 W. R. 236; 58 L. T. 89). *V. BY LAW: NOTICE TO QUIT.*

**LEGAL OR EQUITABLE DEBT.** — *V. Vyse v. Brown*, 13 Q. B. D. 199: **DEBT.**

**LEGAL OR NEXT OF KIN.** — *V. Harris v. Newton*, 46 L. J. Ch. 268.

*V. NEXT OF KIN.*

**LEGAL PERSONAL REPRESENTATIVE.** — Quà Mer Shipping Act, 1894, “Legal Personal Representative,” means, the person

constituted (by Probate, Administration, Confirmation, or other Instrument) "Exor, Admor, or other Representative, of a deceased person" (s. 742). *Vf*, LEGAL REPRESENTATIVES.

**LEGAL PROCEEDING.**—Qua Bankers' Books Evidence Act, 1879, 42 & 43 V. c. 11, "'Legal Proceeding,' means, any Civil or Criminal proceeding or enquiry in which evidence is, or may be, given; and includes, an Arbitration." It is submitted that the first part of this def is of general application.

In *Smith v. Manchester* (53 L. J. Ch. 96; 24 Ch. D. 611), it was held that a Winding-up Petition was not a "legal proceeding" within Articles of Association empowering directors to direct "legal proceedings" to be prosecuted on behalf of the Company.

"Legal Proceedings," s. 2, 35 & 36 V. c. 91 (which section authorizes certain payments out of a Borough Fund) "means, the taking of some legal proceeding by or on the behalf of the Inhabitants, against some person or persons, in order to promote the interest of the Inhabitants; or, the defending of some legal proceedings, brought against the Corporation or the Inhabitants by some person or persons, in order to protect the interest of the Inhabitants. The Intervention of a Police Constable as a Respondent at Quarter Sessions in a Licensing Appeal, is neither the one nor the other" (per Smith, L. J., *A-G. v. Tynemouth*, 1898, 1 Q. B. 604; 67 L. J. Q. B. 489; 78 L. T. 372; 46 W. R. 518; 62 J. P. 292). *Cp*, *Boulter v. Kent Jus.* and *R. v. Sharman*, cited ORDER: *Sharpe v. Wakefield*, cited DISCRETION. But, none the less, Quarter Sessions cannot, without hearing evidence, dismiss such an Appeal (*Evans v. Conway Jus.*, 1900, 2 Q. B. 224; 69 L. J. Q. B. 636; 82 L. T. 704; 48 W. R. 577; 64 J. P. 467). *Vf*, COURT.

*V*. PROCEEDING.

**LEGAL PROCESS.**—*V*. PROCESS.

**LEGAL REPRESENTATIVES.**—Though Knight-Bruce, V. C., suggested that this phrase might be void for uncertainty (*Tipping v. Howard*, 15 Jur. 911), yet it may now be regarded as settled that the primary meaning of "REPRESENTATIVES," "Legal Representatives," "PERSONAL REPRESENTATIVES," or "LEGAL PERSONAL REPRESENTATIVES," is "Executors or Administrators" in their official capacity (*Price v. Strange*, 6 Mad. 159; *Saberton v. Skeels*, 1 Russ. & My. 587; *Hinchliffe v. Westwood*, 17 L. J. Ch. 167; *Smith v. Barneby*, 2 Coll. 728; *Stockdale v. Nicholson*, 36 L. J. Ch. 793; L. R. 4 Eq. 359 and cases cited in *thlc*: *Re Turner*, 13 W. R. 771; 12 L. T. 695; *Re Best*, L. R. 18 Eq. 686; 43 L. J. Ch. 545; 22 W. R. 599; 2 Jarm. 120; Wms. Exs. 991-993; *Chitty Eq. Ind.* 7690).

But that meaning may be controlled by the context. Thus, in a gift

to nephews and nieces, living on the happening of an event, "or their legal personal representatives *share and share alike*," the phrase "legal personal representatives" means NEXT OF KIN (*King v. Cleaveland*, 4 D. G. & J. 477; 26 Bea. 26, 166; 28 L. J. Ch. 835, 74, 76; *Va, Walter v. Meakin*, 2 L. J. Ch. 173; 6 Sim. 148; *Robinson v. Smith*, 2 L. J. Ch. 76; 6 Sim. 47; *Baines v. Ottey*, 1 My. & K. 465; *Walker v. Camden*, 17 L. J. Ch. 488; 16 Sim. 329). The phrase "Legal Representatives," and such like phrases, will generally mean Next of Kin, and not exors or admors, when the individuals so indicated are to take beneficially (*Bridge v. Abbott*, 3 Bro. C. C. 224; *Cotton v. Cotton*, 8 L. J. Ch. 349; 2 Bea. 67; *Briggs v. Upton*, 7 Ch. 376; 41 L. J. Ch. 33; 21 W. R. 30; 27 L. T. 62; *Re Gryll*, L. R. 6 Eq. 589; *Robinson v. Evans*, 43 L. J. Ch. 82; 22 W. R. 199; 29 L. T. 715; 2 Jarm. 111 *et seq.*; Wms. Exs. 994-996; *Jacob v. Catling*, W. N. (81) 105; *V. EXECUTORS*). In *Atherton v. Crouther* (19 Bea. 448; 2 W. R. 639) the gift was to a Class and their "personal representatives," "such representatives to take *per stirpes and not per capita*"; held, that this latter phrase excluded the idea that exors or admors were to take, and (on another context) that "personal representatives" meant DESCENDANTS: *the* was followed in *Re Knowles*, 59 L. T. 359; *Vf*, REPRESENTATIVES. In *Re Thompson* (55 L. T. 85), Kay, J., relied on the fact that the testatrix had used the words "executors or administrators" in a similar clause as an additional reason for following *Bridge v. Abbott* and *Cotton v. Cotton*, *sup.*, and for holding that "legal personal representatives" in the clause under his consideration meant something else than exors or admors, *i.e.* Next of Kin.

So, again, "Legal Personal Representative" may sometimes include the person who on the death of the person spoken of becomes entitled to the property in question, *e.g.* as used in s. 23, M. W. P. Act, 1882, under which a Husband, who *jure mariti* succeeds on his wife's death to her separate leaseholds, is her "legal personal representative" without taking out Administration; and, as such, liable to her debts to the extent of such property (*Surman v. Wharton*, 1891, 1 Q. B. 491; 60 L. J. Q. B. 233; 64 L. T. 866; 39 W. R. 416).

Where such a phrase as "Legal Representatives" would be held to mean Next of Kin, that would, it has been said, generally imply Next of Kin according to the Statute of Distribution and would include a wife, but not a husband (2 Jarm. 125; Wms. Exs. 1000-1002). But *Booth v. Vicars* (13 L. J. Ch. 147; 1 Coll. 6) cited on this point in Wms. Exs. was, in *Stockdale v. Nicholson* (*sup.*), thus dealt with by Malins, V. C., in his judgment:—"In the case of *Booth v. Vicars*, Lord Justice Knight-Bruce held that it was the next of kin, *according to the statute*, who took; but I think the authorities since that decision are so clear that a gift to the Next of Kin, as a Class, gives a joint tenancy to the *nearest of kin*." But as the point had only been slightly argued he



invited further discussion, upon which Counsel, whose interest it was to argue the other way, said that he considered the question had been so clearly settled by *Withy v. Mangles* (cited NEXT OF KIN) and other cases that it would be hopeless to argue it.

V. NEXT PERSONAL REPRESENTATIVES: REAL REPRESENTATIVE.

**LEGAL RIGHTS.**—S. 32, Patents, Designs, and Trade Marks, Act, 1883, 46 & 47 V. c. 57; *V. Kurtz v. Spence*, 55 L. J. Ch. 919; 33 Ch. D. 579; 55 L. T. 317; 35 W. R. 26; *Seth, Challender v. Royle*, 36 Ch. D. 425.

“Legal Rights,” may include Equitable, as well as Common Law, rights (per Esher, M. R., *Warren v. Murray*, 1894, 2 Q. B. 618; 64 L. J. Q. B. 44).

LEGAL TIME.—V. TIME.

**LEGAL VISITORS.**—Stat. Def., Lunacy Regn (Ir) Act, 1871, 34 & 35 V. c. 22, s. 2.

**LEGALITY.**—The Poor Law Auditor to decide as to “the reasonableness, as well as the legality,” of a Solrs untaxed Bill of Costs against Guardians, s. 39, 7 & 8 V. c. 101; “legality,” in such a connection, means, the liability to pay (*R. v. Napton*, cited FINAL).

**LEGALLY.**—When you are contrasting “legally” with “equitably,” “legal” refers to COMMON LAW as distinguished from EQUITY: V. LEGAL ESTATE. In such a contrast there cannot be a “legal” conveyance of an Equity, or an “equitable” conveyance of Common Law property. Therefore, an Agreement to sell Common Law property, e.g. a Goodwill, did not require *ad val.* Duty as a CONVEYANCE whereby property was “legally or equitably transferred” (s. 70, Stamp Act, 1870), for “the word ‘legally’ applies to a legal transfer of a legal right, and the word ‘equitably’ applies to an equitable transfer of an equitable interest” (per Esher, M. R., *Int. Rev. v. Angus*, 23 Q. B. D. 589, 590, 594). *Sr.*, s. 59, Stamp Act, 1891, which charges duty on such a transaction as on a Conveyance.

But where a Life Policy is saved from forfeiture for SUICIDE if “legally assigned” that means, “validly and effectually assigned,” and an Equitable Charge is within the saving clause (*Dufaur v. Professional Life Assree*, 25 Bea. 599; 27 L. J. Ch. 817; 32 L. T. O. S. 25).

**LEGALLY APPROPRIATED.**—Property “legally appropriated” for certain purposes, s. 11 (2), (3), Customs & Int. Rev. Act, 1885; *V. Int. Rev. v. Forrest*, and *Re Royal College of Surgeons*, cited SCIENCE.

LEGALLY ASSIGNED.—V. LEGALLY.

**LEGALLY BOUND.** — “Legally bound to maintain”; *V. R. v. Flinton*, cited WIFE.

**LEGALLY DEMANDED.** — *V. LAWFULLY DEMANDED.*

**LEGALLY ESTABLISHED.** — *V. PUBLIC MARKET: SCHEME.*

**LEGALLY QUALIFIED.** — *V. MEDICAL.*

**LEGALLY TRANSFERRED.** — *V. LEGALLY.*

**LEGATEE.** — Where a testator directed “every legatee” to make a percentage contribution “out of their legacies,” it was held that legatees of chattels and annuities, as well as ordinary pecuniary legatees, were included, and also (on the context) the residuary legatees (*Ward v. Grey*, 29 L. J. Ch. 74; 26 Bea. 485).

*V. LEGACY: RESIDUARY LEGATEE: PECUNIARY LEGACY.*

Stat. Def. — *Scot.* 31 & 32 V. c. 101, s. 3.

**LEGISLATIVE.** — “Legislative Assembly,” s. 2, New South Wales Parliamentary Representatives Allowance Act, 1889, is regarded as a permanent body, and the allowance given by the section is payable to the members of future Assemblies as well as of that existing when the Act passed (*A-G. N. S. Wales v. Rennie*, 1896, A. C. 376; 65 L. J. P. C. 52; 74 L. T. 532).

“Legislative Body,” quâ Colonial Prisoners Removal Act, 1869, 32 & 33 V. c. 10, means, “any House of Assembly, or other body of persons, having legislative powers in the Colony; and, where such body of persons consists of two separate Houses, it shall include both Houses; and, where there are Local legislative bodies as well as a Central legislative body, shall mean the Central legislative body only” (s. 2).

**LEGISLATURE.** — *V. COLONIAL: LOCAL LEGISLATURE: REPRESENTATIVE LEGISLATURE.*

Other Stat. Def., 18 & 19 V. c. 104, s. 1; 28 & 29 V. c. 63, s. 1, c. 64, s. 2; 31 & 32 V. c. 37, s. 5; 46 & 47 V. c. 57, s. 117.

**LEGITIMATE.** — In *Howarth v. Mills* (L. R. 2 Eq. 389) a gift by a woman (who had gone through the ceremony of an unauthorized marriage) to her children, “legitimate or otherwise,” was held only to include children born at the date of the Will; but *the* was disapproved in *Occleston v. Fullalove*, cited CHILD.

A limitation to A. “and his Legitimate Heir or Legitimate Heirs” passes a fee simple, as the words of the limitation are not to be construed as “heirs of the body lawfully begotten” (*Re Co-operative Wholesale Socy and Kershaw*, W. N. (86) 45). *V. LAWFULLY BEGOTTEN: LAWFUL HEIRS.*

**LEND.** — A person who requests another to “lend” his ACCEPTANCE, impliedly engages to pay the Bill at maturity and to indemnify the Acceptor against the consequences of non-payment (*Reynolds v. Doyle*, 1 M. & G. 753).

V. ADVANCE.

**LENDER.** — In a Contract for a Mortgage, a description of the proposed mtgee as the “Lender” is insufficient; V. PROPRIETOR.

V. MONEY LENDER.

**LESE-MAJESTY.** — V. LESSE MAJESTATIS.

**LESS.** — V. NOT LESS: SAY.

A covenant in a Mining Lease to pay certain royalties where “less than” a stated quantity is gotten, is applicable to a case where none is gotten (*Jervis v. Tomkinson*, 26 L. J. Ex. 41; 1 H. & N. 195). So, a place with no population may be within a statutory provision relating to places having a population “less than” a stated number (*R. v. Gee*, 1 E. & E. 1068; 28 L. J. Q. B. 298).

“Less than,” read as “NOT EXCEEDING” (*Garby v. Harris*, 21 L. J. Ex. 160; 7 Ex. 591). But in *Millington v. Harwood* (1892, 2 Q. B. 166; 61 L. J. Q. B. 582; 66 L. T. 576; 40 W. R. 481) the Court refused to read “not exceeding” in R. 12, Ord. 65, R. S. C., as either inconsistent with, or affected by, “less than” in s. 116, Co. Co. Act, 1888, and, therefore, a plt who, in a High Court action, recovers exactly £50 in Contract is only entitled to Co. Co. Costs.

When in a Covenant to SETTLE there is a limit fixing the amount or value of the sum or property to be included in the covenant. — *e.g.* “if A. shall become ENTITLED to any real or personal property of the value of” so much, or “less than,” or “not exceeding,” the stated amount. — you cannot aggregate two or more properties or amounts, so as to pass the limit, if they come to A. under different titles, even though they so come at the same time and under the same instrument, *e.g.* a Definite Legacy and a Share of Residue given by the same Will cannot be so aggregated (*Re Middleton*, 16 W. R. 1107; *Re Gerard*, 58 L. T. 800; *Bower v. Smith*, 40 L. J. Ch. 194; L. R. 11 Eq. 279, on *whlcv.* *Steward v. Poppleton*, W. N. (77) 29). The same rule is applicable to s. 7, M. W. P. Act, 1870 (*Re Davies*, 1897, 2 Ch. 204; 66 L. J. Ch. 512).  
Cp, ONE TIME.

“Tenancy at Will, or less than a Tenancy from YEAR TO YEAR,” s. 69, Landlord and Tenant (Ir) Act, 1870, 33 & 34 V. c. 46; V. *Wright v. Tracey*, Ir. Rep. 7 C. L. 134; 8 Ib. 478; *Brew v. Couole*, 9 Ib. 151.

**LESSEE.** — The strict legal sense of “Lessee” is, the original lessee; but it may easily be controlled to also include the assignees of the original lease; in such a connection as a devise “to the Lessees, or Holders of the present leases,” of the property devised, the word has that extended meaning (*King v. Rymill*, 78 L. T. 696; 67 L. J. P. C. 107).

"Lessee," s. 14, Conv & L. P. Act, 1881, and s. 2 (1), Conv & L. P. Act, 1892; *V. LEASE*.

Where there are Joint Lessees and the Lease provides for FORFEITURE if "the Lessees" do anything, *e.g.* assign, or become bankrupt, the forfeiture is worked if the thing be done by either of the lessees (*Horsey v. Steiger*, cited LIQUIDATION: *Farley v. Coppard*, cited ASSIGN).

Forfeiture on bankruptcy of "lessee, his exors, admors, or assigns"; *V. BANKRUPTCY*.

Stat. Def. — 14 & 15 V. c. 104, s. 11. — *Scot.* 40 & 41 V. c. 28, s. 3 (2). — *Ir.* 18 & 19 V. c. 39, s. 1; 20 & 21 V. c. 47, s. 2; 38 & 39 V. c. 11, s. 2; 50 & 51 V. c. 33, s. 3; 51 & 52 V. c. 13, s. 1; 54 & 55 V. c. 57, s. 3.

**LESSEN.** — *V. AFFECT.*

**LESSOR.** — Stat. Def., Stannaries Act, 1887, 50 & 51 V. c. 43, s. 2. — *Scot.* 40 & 41 V. c. 28, s. 3 (1). — *Ir.* 18 & 19 V. c. 39, s. 1; 20 & 21 V. c. 47, s. 2; 44 & 45 V. c. 65, s. 1; 54 & 55 V. c. 57, s. 3.

*Cp.* LANDLORD.

**LESWES.** — *V. PASTURES.*

**LET.** — It has been said that, as an operative word in a LEASE (whether under seal or not), "let" is synonymous with "DEMISE" (*Hart v. Windsor*, 12 M. & W. 68, 85; 13 L. J. Ex. 135, 136; *Mostyn v. West Mostyn Co*, 1 C. P. D. 152; 45 L. J. C. P. 405); but the contrary was held by Russell, C. J., in *Baynes v. Lloyd* (1895, 1 Q. B. 825; 64 L. J. Q. B. 411), and this ruling seems upheld by the Court of Appeal (*S. C.* 1895, 2 Q. B. 610; 64 L. J. Q. B. 787; *Va, Messent v. Reynolds*, 15 L. J. C. P. 226).

An Agreement to grant a Lease has been held to import an undertaking that the lessor has a title to grant it (*Stranks v. St. John*, 36 L. J. C. P. 118; L. R. 2 C. P. 376; *Sethe, Baynes v. Lloyd*, 1895, 2 Q. B. 616; 64 L. J. Q. B. 790; *Hoare v. Chambers*, 11 Times Rep. 185).

A Power to "let" is equivalent to a Power to "lease" (*Parker v. Sowerby*, 1 Drew. 493; 1 W. R. 404). *V. LEASE*.

A Covenant not to "let" realty for a particular purpose, means that the covenantor will not permit the premises to be used for that purpose, *i.e.* he will do no act that shall suffer that purpose to take place, and that obligation binds every person who claims under him, — whether lessee, purchaser, or other (*Jay v. Richardson*, 30 Bea. 571; 31 L. J. Ch. 398; 10 W. R. 412; 6 L. T. 177).

"Let in Different Tenements"; *V. Hoddinott v. Home and Colonial Stores*, cited DIVIDE.

*V. SET: ASSIGN: LETTING: UNDERLEASE.*

The application of CAPITAL MONEY for IMPROVEMENT to buildings,

so as "to enable the same *to be let*," s. 13 (ii), S. L. Act, 1890, is not authorized where the Tenant for Life is occupier, and the betterment of that occupation is the thing desired; an actual letting must be in contemplation (*Re De Teissier*, 1893, 1 Ch. 153; 62 L. J. Ch. 552; *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23).

"Let into Possession"; *V. Wheeler v. Tootel*, 36 L. J. Ch. 221; L. R. 3 Eq. 571.

"Let to be used for Pasture"; *V. PASTURE*.

Further Recompense to be given by a Witness who absents himself "having not a lawful and reasonable *Let or Impediment*," s. 12, 5 Eliz. c. 9; *V. Pearson v. Hes*, 2 Doug. 561; *Farrak v. Keat*, 6 Dowl. 470.

**LETTER.**—*Quà* Post Office (Offences) Act, 1837, 1 V. c. 36, "Letter" includes "PACKET," and *vice versâ* (s. 47). For other Stat. Def., in the Post Office Acts, *V. 7 & 8 V. c. 49*, s. 10; 10 & 11 V. c. 85, s. 20; 12 & 13 V. c. 66, s. 6.

*Vf*, COLONIAL: DOUBLE: FOREIGN: POST LETTER: SHIP LETTER: SINGLE LETTER: THREATENING: TREBLE.

Contract by Letter; *V. BY POST*: *Henthorn v. Fraser*, 1892, 2 Ch. 27; 61 L. J. Ch. 373; *Pearce v. Gardner*, cited DEAR SIR: SUBJECT TO.

Service by Letter; *V. BY POST*.

"Letters of Administration"; Stat. Def., 37 & 38 V. c. 42, s. 6; 55 & 56 V. c. 6, s. 6: from which it may be gathered that in Scotland they say, "CONFORMATION." *Vf*, PROBATE.

Letter, or Power, of Attorney, *quà* Stamp Duty; *V. Walker v. Remmett*, 2 C. B. 850; 15 L. J. C. P. 174.

Letter of Credit; *V. BILL OF CREDIT*.

Letters of Marque or Reprisal, are Commissions (recognized by the Law of Nations) issued by a Sovereign State "to the Commanders of Merchant Ships for Reprisals, in order to make Reparation for those damages they have sustained, or the Goods they have been despoiled of, by Strangers at Sea. Or to cruise against and make Prize of an Enemy's Ships or Vessels, either at Sea or in their Harbours" (Beawe's *Lex Mercatoria*, 5 ed., 229): *Vf*, 1 Bl. Com. 258, 259; Twiss, *Law of Nations (War)*, ss. 13-21.

Letter of Request is a document from a Diocesan Court asking the assistance of another Ecclesiastical Tribunal in a matter within the cognizance of such Court; generally, it is used "in order that (as the case may be) a cause may be instituted in the Court of Arches, or the Chancery Court of York" (Phil. Ecc. Law, 981: *Vh*, *Ib.* Part 4, ch. 8).

Letters Patent; *V. PATENT*. Other Stat. Def., 28 & 29 V. c. 63, s. 1.

**LETTER-PRESS.**—*V. SHEET OF LETTER-PRESS*: PRINT.

"Letter-press Printing Works"; *V. NON-TEXTILE FACTORIES*.

**LETTING.**—"Letting for habitation by persons of the WORKING CLASSES"; *V. s. 12*, 48 & 49 V. c. 72.

**LEVANT AND COUCHANT.**—“ ‘Levant and Couchant,’ is said, when the Beasts or Cattel of a stranger are come into another mans ground, and there have remained a certaine good space of time ” (Termes de la Ley), i.e. “ have layne down and are risen again to feed ” (Cowel), “ which, in general, is held to be one night at least ” (3 Bl. Com. 9).

Levancy and Couchancy, for the purpose of estimating the number of Cattle which a commoner has the right to depasture on an unstinted common (and which “ he may borrow of a stranger if he pleases,” Wms. on Commons, 32), means the *capability* of the commonable tenement to maintain, during the winter, by its summer produce, the cattle claimed to be depastured (*Scholes v. Hargreaves*, 5 T. R. 46; *Mellor v. Spateman*, cited STINT: *Rogers v. Benstead*, Camb. Sum. Ass. 1727, cor. Lord Raymond, C. J., M.S., Serj. Leeds, quoted by Bayley, J., *Cheesman v. Hardham*, 1 B. & Ald. 711; *Robertson v. Hartopp*, 43 Ch. D. 484; 59 L. J. Ch. 553; 62 L. T. 585, and cases there cited); but the cattle need not be actually fed on the commonable tenement, or from its produce (*Carr v. Lambert*, 34 L. J. Ex. 66; L. R. 1 Ex. 168; 3 H. & C. 499; *Robertson v. Hartopp*, sup).

*Note:* As to how the right may be proved; *V. Johnson v. Barnes*, 41 L. J. C. P. 250; 42 Ib. 259; L. R. 7 C. P. 592; 8 Ib. 527.

**LEVEL.**—Oral evidence may be given to explain this word as used in a Mining Lease (*Clayton v. Gregson*, 4 L. J. K. B. 161; 5 A. & E. 302; 6 N. & M. 694).

“Level of the Ground,” quâ London Bg Act, 1894; *V. s. 5* (8).

Level Crossing; *V. RAILWAY: TURNPIKE ROAD.*

In a statutory power to Local Authorities to order owners or occupiers to “level” a STREET, each Street is to be regarded singly; and no power is given to order a Street to be “levelled” so as to correspond with the level of the streets in the surrounding district (*Caley v. Kingston*, 13 W. R. 143; nom. *Cary v. Kingston*, 34 L. J. M. C. 7).

**LEVIED.**—*V. LEVY: MADE.*

**LEVIES.**—*V. PUBLIC TAXES.*

**LEVITICAL DEGREES.**—The two statutes in which this phrase “is explained, are the 25 H. 8, c. 22 (where they are enumerated, and include a Wife’s Sister), and the 28 H. 8, c. 7, in s. 9 of which are described, by way of recital, the Degrees prohibited by God’s Laws in similar terms, with the addition of carnal knowledge by the husband in some cases” (per Ld Wensleydale, *Brook v. Brook*, 9 H. L. Ca. 244).

**LEVY.**—“ ‘Levy,’ signifies to collect, or exact, as to levy money; sometimes, to set up any thing, as to levy a Mill ” (Cowel, citing Kitchen, 180: *Vj*, per Denman, C. J., *Williams v. Wilcox*, 7 L. J. Q. B. 235;

8 A. & E. 335); "sometimes, to cast up, as to levy a Ditch"; and sometimes, to levy a Fine (Cowel). *Va*, LEVY WAR.

To "levy" a Rate, in a Mandamus to Overseers and other Officers, "merely means to take all the necessary steps to enforce payment; that is, such steps as, under the particular circumstances of the case, would be reasonable and proper; and if the expense to be incurred in taking any particular step would render it unreasonable to take it, the Return must shew it" (per Blackburn, *J.*, *R. v. Southampton*, cited LEGAL MEASURES).

By s. 1, 29 Eliz. c. 4, a Sheriff became entitled to poundage on the amount of goods which he should "levy" under a *fi. fa.*; "levy" there, means, to seize the goods and thereby obtain the money (per Bramwell, *L. J.*, *Mortimore v. Cragg*, 47 L. J. Q. B. 348; 3 C. P. D. 217: *Vf*; *Cocker v. Musgrove*, 9 Q. B. 231): *Cp.* TAKE IN EXECUTION. Therefore, where the debt and costs were paid before seizure (*Coles or Colls v. Coates*, 9 L. J. Q. B. 232; 11 A. & E. 826; 3 P. & D. 511), or where the *fi. fa.* was, after seizure but before sale, set aside for irregularity (*Miles v. Harris*, 31 L. J. C. P. 361; 6 L. T. 649: *Vthe*, per Williams, *L. J.*, *Re Thomas*, cited EXECUTION), there was no "Levy"; *secus*, where the writ was set aside after sale (*Bullen v. Ansley*, 6 Esp. 111), or where a sale was prevented by a compromise between the parties (*Alchin v. Wells*, 5 T. R. 470), or where the debtor pays after seizure of his goods and so prevents their sale (*Mortimore v. Cragg*, *sup.*).

But *Alchin v. Wells* only related to civil proceedings; and under s. 3, 3 G. 1, c. 15, the amount "levied or collected" for the Crown, on which poundage was chargeable was the amount actually obtained, although such amount was the result of a compromise (*R. v. Robinson*, 4 L. J. Ex. 319; 2 Cr. M. & R. 334); but, on the other hand, the poundage under this latter statute was payable on the amount "levied or collected" and therefore, *semble*, if the amount was paid before seizure, the poundage was payable (*R. v. Jetherell*, Parker, 177: *Vth*, per Denman, *C. J.*, *Coles v. Coates*, *sup.*).

"Levied," in a Declaration for a False Return of *nulla bona*, imported not only a seizure and a sale under the plaintiff's *fi. fa.*, but also that the sheriff had in his hands the proceeds (*Drewe v. Lainson*, 9 L. J. Q. B. 69; 11 A. & E. 529; 3 P. & D. 245; *Shattock v. Carven*, 21 L. J. Ex. 200; 6 Ex. 725).

#### V. EXECUTED.

To "make" a Distress is synonymous with to "levy" it, quâ Agricultural Holdings Acts, 1883, and 1888 (*Phillips v. Rees*, cited DISTRESS). "Make and levy" a Distress; *V. MADE*.

**LEVY WAR.**—"Every one commits HIGH TREASON who levies war against the Queen in any of her dominions. The expression 'to levy war' means—(a) Attacking in the manner usual in war the Queen her-

self or her military forces, acting as such by her orders, in the execution of their duty; (b) Attempting by an insurrection of whatever nature by force or constraint to compel the Queen to change her measures or counsels, or to intimidate or overawe both Houses or either House of Parliament; (c) Attempting by an insurrection of whatever kind to effect any general public object.

"But the expression 'to levy war against the Queen,' does not include any insurrection against any private person for the purpose of inflicting upon him any private wrong, even if such insurrection is conducted in a warlike manner" (Steph. Cr. 41).

*Vf*, Arch. Cr. 895-899.

V. CIVIL COMMOTION: CIVIL WAR: REBELLION: RIOT: USURPED POWER.

**LIABILITY.** — V. CHARGE OR LIABILITY: DEBT OR LIABILITY: DEBTS: INCAPABLE: INCUMBRANCE.

"Liability," for purpose of Proof in Bankruptcy; *V*. s. 37 (8), Bankry Act, 1883. *Vh*, *Hardy v. Fothergill*, 56 L. J. Q. B. 363; 58 *Ib*. 44; 13 App. Ca. 351; nom. *Morgan v. Hardy*, 18 Q. B. D. 646: An amount not payable till after the death of the obligor is such a "Liability" (*Barnett v. King*, 1891, 1 Ch. 4; 60 L. J. Ch. 148; 63 L. T. 501; 39 W. R. 39), so of an unascertained claim by one Surety against another for Contribution (*Wolmershausen v. Gullick*, 1893, 2 Ch. 514; 62 L. J. Ch. 773; 68 L. T. 753). But Alimony is not (*Linton v. Linton*, 54 L. J. Q. B. 529; 15 Q. B. D. 239); nor are arrears of Permanent Maintenance (*Kerr v. Kerr*, 1897, 2 Q. B. 439; 66 L. J. Q. B. 838; 77 L. T. 29). *Vf*, *Re Perkins*, 1898, 2 Ch. 182; 67 L. J. Ch. 454; 78 L. T. 666; 46 W. R. 595; *Re McMahon*, 1900, 1 Ch. 173; 69 L. J. Ch. 142; 81 L. T. 715: FAIRLY ESTIMATED: CREDITOR.

"Do not admit liability"; *V. G. W. Ry v. McCarthy*, 56 L. J. P. C. 33; 12 App. Ca. 218; 56 L. T. 582; 35 W. R. 429; 51 J. P. 532.

"Liabilities," in a Building Society's Rules, includes sums payable to Investing Members (*Re West Riding By Socy*, 59 L. J. Ch. 197; 43 Ch. D. 407; 6 Times Rep. 160).

"Liabilities," quâ the Loc Gov Acts; *V*. Loc Gov Act, 1888, s. 100; Loc Gov (Scot) Act, 1889, s. 105; London Gov Act, 1899, s. 34. *Cp*, POWER.

"Claims and Contingent Liabilities"; *V*. CLAIM.

"Right, Privilege, Obligation, or Liability," "Right or Liability"; *V*. RIGHT.

**LIABILITY TO CEASE.** — In a Charter-Party, the cases show "that the plain meaning of the words 'liability to cease' is, not that the liability should cease to accrue but, that the liability should cease to be enforced" (per Cleasby, B., *Francesco v. Massey*, L. R. 8 Ex. 104; 42 L. J. Ex. 76, 77; *Vf*, *Kish v. Cory*, L. R. 10 Q. B. 561; 44 L. J. Q. B. 205: CEASE).



**LIABLE.** — *V.* ANSWERABLE.

"Liable," "is generally regarded by jurists as a word of modern English, and not having any existence in ancient documents. It means very little more than 'under an OBLIGATION'" (per Kekewich, J., *Re Chapman*, 1896, 1 Ch. 323; 65 L. J. Ch. 170), and shortly afterwards the same learned judge said, it "must mean, to some extent, 'under an obligation'" (*Re Hill*, 1896, 1 Ch. 962; 65 L. J. Ch. 511; 74 L. T. 460; 44 W. R. 573).

Money is "liable to be laid out in the purchase of Land," s. 33, S. L. Act, 1882, when the trust requires it, or on the request of one entitled to require it; and even if specific land is indicated in the trust, CAPITAL MONEY may be applied in the purchase of other land (*Re Hill*, sup); but the phrase does not mean, *must* be so laid out, but "means that the money is in the hands of the trustees under some disposition under which it *may* be laid out in the purchase of land" (per North, J., *Re Soltau*, 79 L. T. 335; 1898, 2 Ch. 629; 68 L. J. Ch. 39).

For an instance of the practical value of this word; *V. James v. Young*, 53 L. J. Ch. 796; 27 Ch. D. 652.

"Liable to pay" a Solicitor's Bill and so entitled to have it taxed, s. 38, 6 & 7 V. c. 73; *V. Re Barber*, 15 L. J. Ex. 9; 14 M. & W. 720; *Re Early*, 1897, 1 Ch. 6.

An Owner is "liable" to pay rates within s. 19, Poor Rate Assessment and Collection Act, 1869, 32 & 33 V. c. 41, whether he is so by agreement with the overseers under s. 3, or by vestry order under s. 4, or by agreement with the occupier (*Barton v. Birmingham*, 48 L. J. C. P. 87).

"Liable, by reason of any contract or promise, to a demand in the nature of damages," s. 153, Bankry Act, 1861, repealed; *V. Johnson v. Shapte*, L. R. 4 Q. B. 700; 38 L. J. Q. B. 318.

"Liable to contribute in whole or in part to the County Rate," s. 117, 5 & 6 W. 4, c. 76; *V. R. v. Monck*, 2 Q. B. D. 541; 46 L. J. M. C. 251.

The person "liable to repair" a HIGHWAY repairable *ratione tenuræ*, s. 25, Loc Gov Act, 1894, is the Occupier of the land chargeable with the obligation (*Cuekfield v. Goring*, 1898, 1 Q. B. 865; 67 L. J. Q. B. 539; 78 L. T. 530; 46 W. R. 541; 62 J. P. 358; *Daventry v. Parker*, 1900, 1 Q. B. 1; 69 L. J. Q. B. 105; 81 L. T. 403; 48 W. R. 68; 63 J. P. 708).

"Stock liable to be concerted," s. 25 (2), 51 & 52 V. c. 2; *V. Northumberland v. Percy*, 1893, 1 Ch. 298; 62 L. J. Ch. 331; 68 L. T. 45; 41 W. R. 597.

A Tenant for Life is "liable to be deprived," within a Forfeiture Clause, if he does or suffers an act which deprives him of control and leaves it to a Court to say whether or not he is to be deprived, *v.g.* if he commits an Act of Bankry on which a petition is founded (*Re Otway*, 1895, 2 Ch. 235; 64 L. J. Ch. 529; 43 W. R. 501; 72 L. T. 656). *Cp.* DANGER: IMPERIL.

Food "liable to be seized," s. 47 (2), P. H. London Act, 1891; *V. Thomas v. Van Os*, 1900, 2 Q. B. 448; 69 L. J. Q. B. 665.

"Liable to be surrendered"; *V. Re Galwey*, cited BOUND.

*V. LIABILITY: NOT LIABLE: PARTY LIABLE.*

**LIAR.** — *V. ANANIAS.*

If deft justifies an allegation that the author of a book is a "barefaced liar," he may be ordered to give Particulars pointing out the particular passages of the book on which he based the allegation (*Devereux v. Clarke*, 1891, 2 Q. B. 582; 60 L. J. Q. B. 773). *V. NAKED.*

**LIBEL.** — "The word 'Libel' means —

(a) The offence defined in this Article.

(b) Anything by the publication of which the offence is committed.

"Everyone commits the misdemeanour called Libel who maliciously publishes defamatory matter of any person, or body of persons definite and small enough for its individual members to be recognized as such, in or by means of anything capable of being a Libel in the second sense of the word. The publication of a libel on the character of a dead person is not a misdemeanour unless it is calculated to throw discredit on living persons" (Steph. Cr. 197; *Ij*, *Ib.* 200-206; Arch. Cr. 1071; Rose. Cr. 595-613). *V. MALICE.*

"Defamatory Matter is matter which, either directly or by insinuation or irony, tends to expose any person to hatred, contempt, or ridicule" (Steph. Cr. 198).

A similar definition obtains for the purposes of an action for Libel: *V. Rose. N. P.* 837; Add. T. ch. 7, s. 1; Odgers on Libel and Slander: Folkard, *Ib.*; Fraser, *Ib.*; Fraser on Libel by the Press: 4 Encyc. 176-191. *Cp.* SLANDER. *Vh.* INNUENDO: JUSTIFICATION: PUBLICATION.

It is Slander, without special damage, to charge one with being a "Libereller" (*Russell v. Ligon*, 1 Roll. Ab. 46; 1 Vin. Ab. 423); so, of the phrase "Libellous Journalist" (*Wakley v. Cooke*, 19 L. J. Ex. 91; 4 Ex. 514).

"Criminal Libel"; *V. INDICTMENT.*

**LIBERALITY.** — *V. BENEVOLENCE.*

**LIBERTY.** — A "Liberty," not prerogative, "imports, *ex vi termini*, that it is a privilege to be exercised over another man's estate" (per Ellenborough, C. J., *Bourne v. Taylor*, 10 East, 205).

*V. FRANCHISE: WITH ALL LIBERTIES.*

"Liberties and Free Usages"; *V. Northumberland v. Houghton*, L. R. 5 Ex. 127; 39 L. J. Ex. 66; 18 W. R. 495, and cases there cited.

Quà the Liberties Act, 1850, 13 & 14 V. c. 105, " 'Liberty' shall be taken to mean also Division of a County, Town and County, and Soke" (s. 9).

**LIBERTY OF SPORTING.** — *V. Sowerby v. Smith*, cited FREEHOLD: HUNTING.

**LIBERTY OF THE SUBJECT.** — As used in s. 1 (1 bi) Jud. Act, 1894; *V. Lancashire v. Hunt*, W. N. (95) 52; *Bouden v. Yorull*, 45 S. J. 59; 70 L. J. Ch. 5: 1901, 1 Ch. 1; 83 L. T. 419.

*V. FALSE IMPRISONMENT: HABEAS CORPUS: IMPRISONMENT.*

**LIBERTY OF WORKING.** — Where an owner conveys lands in Scotland to a singular successor or other person, reserving the "Liberty of working the Coal" in these lands, he must be taken to have reserved the Estate of coal (unless there were clear words in the deed qualifying that right of property) with which he stands vested by infeftment at the date of the conveyance (*Hamilton v. Dunlop*, 10 App. Ca. 813). But that construction arises from the law of Scotland applicable to the indicated kind of conveyance (per *Ld Watson, Ib.*), and *Hamilton v. Dunlop* is not of general application (*Sutherland v. Heathcote*, 1892, 1 Ch. 475; 61 L. J. Ch. 248; 66 L. T. 210). For, the general rule is that, when a Conveyance of Land provides that "*it shall be lawful*" for the grantor, or he shall be at "*liberty*," or shall have "*full and free liberty*," to GET the MINERALS, turves, and such like things, therein or thereon, such a RESERVATION operates, not as an exception of those things but, as a Re-Grant of a non-exclusive license to get the things reserved (*Mountjoy's Case*, Godb. 24; Moore, 197; 4 Leon. 147; *Chertham v. Williamson*, 4 East. 469; *Doe v. Wood*, 2 B. & Ald. 724; *Carr v. Benson*, 3 Ch. 524; *Sutherland v. Heathcote*, sup).

On the construction of a reservation to a Lord of a Manor of Mines and Minerals, and Liberty of Working same, in an Inclosure Act; *V. Love v. Bell*, 53 L. J. Q. B. 257; 9 App. Ca. 286; *Hayles v. Pease*, 1899, 1 Ch. 567; 68 L. J. Ch. 222; 80 L. T. 220.

**LIBERTY TO APPLY.** — The rule that an Order carries with it "Liberty to apply" though not expressly reserved, only relates to an Order which is not one of a final nature (*Peurice v. Williams*, 23 Ch. D. 353; 52 L. J. Ch. 593). *Vh*, 1 Encyc. 285.

**LIBERTY TO AVERAGE.** — "Charterers to be at Liberty to Average the days for Loading and Discharging in order to avoid DEMURRAGE," authorizes the charterers to add together the days allowed for loading and discharging and exhaust them before demurrage can be calculated at all (*Molière S. S. Co v. Naylor*, 2 Com. Ca. 92).

**LIBERTY TO CALL.** — When a Bill of Lading, or Charter-party, gives "Liberty to CALL at any Ports" on the VOYAGE, that means that the ship must call at the ports in their geographical order; but when the liberty is "to call at any Ports *in any order*," then the ship may go

backwards and forwards from the Ports of Call as long as she does not deviate from the ordinary track of the voyage (per Esher, M. R., *Leduc v. Ward*, 20 Q. B. D. 475; 36 W. R. 537; 57 L. J. Q. B. 379; 58 L. T. 908; 4 Times Rep. 313; *Coffin v. Aldridge*, cited PORT); for neither the words "in any order," or "in any rotation," applied to general limits wider than the voyage, will justify a DEVIATION from the specified voyage, if that voyage be the main purpose of the contract (*Glyn v. Margetson*, 1893, A. C. 351; 62 L. J. Q. B. 466; 69 L. T. 1; *White v. Granada S. S. Co.*, 13 Times Rep. 1). *V.* DIRECTION: PURPOSE: PORT OR PLACE.

**LIBERTY TO SIGN.**—“Liberty to sign FINAL JUDGMENT” is not equivalent to the actual signing of jdgmt, or to jdgmt, *e.g.* quâ priority in an Administration (*Re Gurney*, 1896, 2 Ch. 863; 66 L. J. Ch. 32; 75 L. T. 332; 45 W. R. 92).

**LIBERTY TO TOW.**—A general clause in a Charter-Party, giving “liberty to tow and be towed, and assist vessels in all situations,” embraces only such Deviations as do not frustrate the object of the contract (*Potter v. Burrell*, 1897, 1 Q. B. 97; 66 L. J. Q. B. 63). *Vh.* *Stuart v. British and African Steam Nav. Co.*, 32 L. T. 257; 2 Asp. 497.

**LIBRARY.**—“Library” may mean, (1) the place where books are kept, or (2) the books in the aggregate (*Carter v. Andrews*, 16 Pickering, 9).

“Libraries or Reading Rooms for general use among the Members,” s. 33, 17 & 18 V. c. 112; *e.g.* the Russell Institution (*Re Russell Institution*, cited JOINT STOCK COMPANY).

*V.* PUBLIC LIBRARY: LITERARY: HALL.

“Libraries and Museums,” “Library Rate”; Stat. Def., *Scot.* 50 & 51 V. c. 42, s. 2.

“Library Authority”; Stat. Def., 50 & 51 V. c. 22, s. 4.

“Library District”; *V.* DISTRICT.

**LIBRATA TERRÆ.**—240 acres (Elph. 592. *whr.*).

**LICENSE.**—A mere License, unlike an EASEMENT, is not an interest in the land but only a privilege to go upon the land for a specified purpose; it may be revocable, whilst an Easement is irrevocable (*Wood v. Leadbitter*, 13 M. & W. 838; 14 L. J. Ex. 161; *Forbes v. Balenseifer*, 71 Ill. 185). But a License “to shoot game, and to take game away when shot by the person who shoots it for his own benefit,” is one for an INTEREST IN LAND, being a *Profit à prendre* (per Jessel, M. R., *Webber v. Lee*, 51 L. J. Q. B. 486; 9 Q. B. D. 315). And even quâ a revocable License, its revocation may give rise to an action against the licensor

for breach of contract (*Kerrison v. Smith*, 1897, 2 Q. B. 445; 66 L. J. Q. B. 762). *V.* PROFIT A PRENDRE.

As to the distinction between "Grant" and "License"; *V.* GRANT.

License to *assign* not to be unreasonably withheld; *V.* UNREASONABLY.

A letter whereby the owner of goods authorizes another to *take* immediate possession of them and *afterwards* to sell them, and out of the proceeds to deduct money due to him from the owner, to pay certain accounts, and to pay over the balance to the owner, is a "License to take possession of personal chattels as SECURITY FOR ANY DEBT" within s. 4, Bills of Sale Act, 1878, and is a BILL OF SALE by way of security for money within the Bills of S. Act, 1882 (*Re Townsend, Ex p. Parsons*, 55 L. J. Q. B. 137; 16 Q. B. D. 532; 53 L. T. 897; 34 W. R. 329; *Sr, Charlesworth v. Mills*, cited HOLD); *secus*, of a PLEDGE (*Charlesworth v. Mills: Vj, Re Hall*, and *Ex p. Hubbard*, cited TRANSFER).

A Mortgage, of a Building in course of erection, which provides that all building materials brought by the mtgor on the land shall immediately attach to the fee simple and become part of the mtgee's security, is, *quà* such materials, a Bill of Sale; for, although it confers no RIGHT IN EQUITY, it is a "License to take possession of Personal Chattels as Security for a Debt" (*Climpson v. Coles*, 58 L. J. Q. B. 346; 23 Q. B. D. 465; 38 W. R. 110; 61 L. T. 116; *Vthe, Church v. Sage*, 67 L. T. 800; 41 W. R. 176); *Cp*, SECURITY FOR DEBT. *Vj*, AUTHORITY OR LICENSE.

"License," s. 50, Licensing Act, 1872, includes an Off-License (*R. v. Thornton*, 66 L. J. Q. B. 774; 67 *Ib.* 249; 1897, 2 Q. B. 308; 77 L. T. 26; 61 J. P. 470; *V. S. C. nom. Lareby v. Lacon*, cited REMOVAL).

"License," s. 29, Alehouse Act, 1828, includes a PROVISIONAL LICENSE under s. 22, Licensing Act, 1874, so that an appeal lies against a refusal to renew it (*R. v. London Jus.*, 59 L. J. M. C. 71; 24 Q. B. D. 341; 62 L. T. 458; 38 W. R. 269).

Stat. Def., *quà* Licensing Acts; *V.* Licensing Act, 1872, s. 74; for Ireland, *Ib.* s. 77; 37 & 38 V. c. 69, s. 37:—*quà* Spirits Act, 1880, 43 & 44 V. c. 24; *V.* s. 3.

*V.* OCCASIONAL: NEW LICENSE: AUTHORITY OR LICENSE: SPECIAL.

**LICENSE FEE.**—*V.* PASTORAL LEASE.

**LICENSE RENT.**—*V.* *Cutlan v. Dawson*, 13 Times Rep. 10.

**LICENSED.**—"Licensed," as applied to an Excise Trader, means, a person holding a License," granted by the Commrs or their Officer, "for the purpose of his business" (s. 3, Spirits Act, 1880).

**LICENSED HAWKER.**—*V.* HAWKER: PEDLAR.

*Quà* Markets and Fairs Clauses Act, 1847, and any Act incorporating same, a Certificate under Pedlars Act, 1871, has the same effect as a

Hawker's License; and "licensed Hawker," quà that legislation, includes "a Pedlar holding such a Certificate" (Pedlars Act, 1871, s. 6).

**LICENSED HOUSE.** — *V.* s. 17, Idiots Act, 1886, 49 & 50 *V.* c. 25; s. 2, 38 & 39 *V.* c. 67.

**LICENSED MINISTER.** — Quà Poor Law Amendment Act, 1834, 4 & 5 *W.* 4, c. 76, *e.g.* s. 19, "Licensed Minister." and, quà 7 & 8 *V.* c. 101, "MINISTER," "shall be construed to mean and include, every person in Holy Orders, and also every person teaching or preaching in any Congregation for Religious Worship whose place of meeting is certified and recorded according to law" (s. 74, 7 & 8 *V.* c. 101).

**LICENSED PERSON.** — "Licensed Person," quà Licensing Act, 1872, "means a person holding a License as defined by this Act" (s. 74).

An occupier holding a temporary authority, under s. 1, 5 & 6 *V.* c. 44, to carry on a Beer-house, is not a "Licensed Person" entitled to Notice of Objection under s. 42, 35 & 36 *V.* c. 94 (*Price v. James*, 1892, 2 *Q. B.* 428; 61 *L. J. M. C.* 203; 41 *W. R.* 57; 67 *L. T.* 543; 57 *J. P.* 148); such authority does not cancel the existing license, and whilst he retains possession of the premises the licensee is a "Licensed Person" (*Andrews v. Denton*, 1897, 2 *Q. B.* 37; 76 *L. T.* 423; 66 *L. J. Q. B.* 520; 45 *W. R.* 500; 61 *J. P.* 326).

"Person duly licensed" whose house is pulled down and therefore entitled to apply for a Transfer of License under s. 14, Alehouse Act, 1828; *V. R. v. Yorkshire Jus.*, cited RENEWAL.

*Vf*, *Symons v. Wedmore*, cited RENEWAL: *R. v. Drake*, 6 *M. & S.* 116.

**LICENSED PREMISES.** — "Licensed Premises," quà Licensing Act, 1872, "means premises in respect of which a License, as defined by this Act, has been granted and is in force" (s. 74); and, as used in s. 12, means, premises open to the public for the sale of drink under the provisions of the Act, and therefore a publican may get tipsy on his own premises after hours, without becoming liable under this section (*Lester v. Torrens*, 46 *L. J. M. C.* 280; 2 *Q. B. D.* 403). *Vf*, "Found drunk," sub FOUND.

*V.* PUBLIC HOUSE: PEACEABLE: UNLICENSED: DRUNKEN PERSON: OPEN.

**LICENSED TESTER.** — *V.* TESTER.

**LICENSING.** — "The Licensing Acts, 1828 to 1886," "The Licensing (Ireland) Acts, 1833 to 1886," "The Licensing (Scotland) Acts, 1828 to 1887"; *V.* Sch 2, Short Titles Act, 1896.

"Licensing Authority"; Stat. Def., *Scot.* 50 & 51 *V.* c. 38, s. 8.

County Licensing Committee; *V.* 35 & 36 *V.* c. 94, s. 37.

"Licensing District"; Stat. Def., Licensing Act, 1872, s. 74; *P. H.* Act, 1890, s. 51 (13).

"Licensing *Justices*"; Stat. Def., Licensing Act, 1872, ss. 74, 77; 37 & 38 V. c. 69, s. 37; P. H. Act, 1890, ss. 12 (9), 51 (13).

V. ANNUAL GENERAL LICENSING MEETING.

"Licensing *Officer*"; Stat. Def., Licensing Act, 1872, s. 74.

**LICENTIATE.** — "Licentiate of Apothecaries' Hall," quâ Pharmacy Act (Ir), 1875, 38 & 39 V. c. 57, means, "a person who has a Certificate to open shop or to follow the art and mystery of an APOTHECARY under the Act of 1791" (s. 3).

**LICITATION.** — Sale by auction; used in the Mauritius; *V. Chasteauneuf v. Capeyron*, cited TRANSMISSION.

**LIE.** — *V. LIAR: NAKED.*

**LIEN.** — A Lien — (without effecting a transference of the property in a thing) — is the right to retain Possession of a thing until a claim be satisfied; and it is either particular or general. So, quâ Scotland, "Lien" is defined as including "the right of retention" (s. 62. Sale of Goods Act, 1893), or it "shall mean and include right of retention" (s. 1, Factors (Scot) Act, 1890).

For the different sorts of Lien and the cases thereon; *V. Add. C.* 829-840; *Rosc. N. P.* 968-975; Cavanagh on Money Securities, ch. 30; 7 *Encyc.* 418, 423; *Cp.* PLEDGE: RECOVERED OR PRESERVED.

For an instance of Lien by CUSTOM; *V. Re Cutford*, 43 W. R. 159.

Unlike the foregoing, the "Lien" given on a Shareholder's Shares by a Co's Articles for his debts to the Co, does not depend on the retention of things or documents, for it constitutes an Equitable CHARGE upon the Shares (*Re General Exchange Bank*, 40 L. J. Ch. 429; 6 Ch. 818), and, as such, is a MORTGAGE of them within the def of "Mortgage" in s. 2 (vi), Conv & L. P. Act, 1881, and the shareholder, as "Mortgagor" (Ib.), is entitled to the rights given by s. 15 of the same Act (*Everitt v. Automatic Weighing Machine Co.* 1892, 3 Ch. 506; 62 L. J. Ch. 241; 67 L. T. 349). *Vh.* *Re Perkins*, 59 L. J. Q. B. 226; 24 Q. B. D. 613.

By s. 184, Bankry Act, 1849, the rights of creditors holding "any Mortgage of or Lien upon any part of the property" of a bankrupt were preserved; and that "referred to cases in the nature of mortgages or liens by some conveyance or contract, or course of dealing which is the same as contract, where some property in (Qy., right to possession of?) the thing passed"; and at all events the word "Lien" referred to something different from the mere binding of goods by delivery of a *fi. fa.* to the sheriff, or by the seizure of bills or notes under 1 & 2 V. c. 110, s. 12, or by the defendant being bound by a garnishee order (per Campbell, C. J., in delivering the jdgmt, *Holmes v. Tutton*, 24 L. J. Q. B. 351; 5 E. & B. 67; *Vthe*, *Murray v. Arnold*, 32 L. J. Q. B. 11; 3 B. & S. 287; *Vf.* *Tilbury v. Brown*, 30 L. J. Q. B. 46; 9 W. R. 147; *Turner v. Jones*, 26 L. J. Ex. 262; 1 H. & N. 878).

Thus, though a "Lien" is a "Security," yet the former word is much too narrow to comprise all that may be comprehended under the latter.

"Lien or Charge," throughout s. 7, Yorkshire Registries Act, 1884, 47 & 48 V. c. 51, means, a Lien or Charge in respect of unpaid purchase money, or by reason of a deposit of title deeds; this enactment was to alter the law laid down in *Sumpster v. Cooper*, cited CONVEYANCE (*Batfison v. Hobson*, 1896, 2 Ch. 403; 65 L. J. Ch. 695: nom. *Re Hobson*, 44 W. R. 615).

*Maritime Lien*; A "Maritime Lien" does *not* include or require Possession. The word is used in Maritime Law not in the strict legal sense in which we understand it in Courts of Common Law, in which case there could be no Lien where there was no possession, actual or constructive; but to express, as if by analogy, the nature of claims which neither presuppose nor originate in possession. This was well understood in the Civil Law, by which there might be a PLEDGE with possession and a Hypothecation without possession, and by which, in either case, the right travelled with the thing into whosoever possession it came. Having its origin in this rule of the Civil Law, a Maritime Lien is well defined by *Ld Tenterden* to mean, a claim or privilege upon a thing to be carried into effect by legal process; and *Mr. Justice Story* (1 Sumner, 78) explains that process to be, a proceeding *in rem*, and adds that, wherever a Lien or Claim is given upon the thing, then the Admiralty enforces it by a proceeding IN REM, and, indeed, is the only Court competent to enforce it. A Maritime Lien is the foundation of the proceeding *in rem*, — a process to make perfect a right inchoate from the moment the Lien attaches; and whilst it must be admitted that, where such a Lien exists, a proceeding *in rem* may be had, it will be found to be equally true that in all cases where a proceeding *in rem* is the proper course, there a Maritime Lien exists which gives a privilege or claim upon the thing, to be carried into effect by legal process. This claim or privilege travels with the thing into whosoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and, when carried into effect by legal process by a proceeding *in rem*, relates back to the period when it first attached" (*The Bold Buccleugh*, 7 Moore P. C. 284, cited and applied *The Feronia*, 37 L. J. Adm. 60; L. R. 2 A. & E. 65).

*Cp.* BOTTOMRY BOND.

"A Maritime Lien may be defined as, a right specifically binding a SHIP, her FURNITURE, TACKLE, CARGO, and FREIGHT, or any of them, for payment of a claim founded upon the maritime law and entitling the claimant to take judicial proceedings against the property bound to enforce, or to ascertain and enforce, satisfaction of his demand; thus, a Salvor has a Maritime Lien on the property saved for such an amount as a Court exercising Admiralty jurisdiction shall award. Maritime are distinguished from all other Liens in these two chief particulars; (1) they are in no way founded on possession or property in the claimant, (2) they are exercised by taking proceedings against the property itself in a form of action styled an Action *in rem* (*The Glasgow Packet*, 2 Rob. W. 312:



*The Repulse*, 4 Notes of Ca. 170). and, from this and their secret nature. they closely resemble the species of security known to Roman Law under the name of *Hypotheca* (Dig. xiii). Interest, if any allowed, and the Costs of enforcing a claim for which a Maritime Lien exists, will be included in such Lien (*The Margaret*, 3 Hagg. Adm. 240).

"A Maritime Lien is universal; that is, it attaches to every part of the *res* to the fullest extent; as long as a plank remains it is subject to the same claim as the vessel to which it belonged (*The Neptune*, 1 Hagg. Adm. 238). It continues to attach to the *res* whatever transfers or dealings take place (*The Bold Buccleugh*, 7 Moore P. C. 267: *The City of Mecca*, 50 L. J. P. D. & A. 53; 6 P. D. 106). until extinguished either by payment, or by acceptance of bail or other security on the part of the person entitled (*The Kalamazoo*, 15 Jur. 886: *The William Money*, 2 Hagg. Adm. 136), or by judicial sale (*The Nymph*, Swabey, 86), or by loss or destruction of the *res*, or by an agreement to postpone payment (*The Royal Arch*, Swabey, 269), or by want of diligence of the creditor (*The Saracen*, 6 Moore P. C. 56; 2 Rob. W. 451); but it is not affected by mere delay in enforcing the claim (*The Mellona*, 5 Notes of Ca. 452), or by a sale of the *res* to a bonâ fide purchaser for value without notice (*The Europa*, Brown. & Lush. 97), or by an agreement to refer the amount of the claim (*The Purissima Concepcion*, 7 Notes of Ca. 150), or to receive a certain sum therefor (*The William Lushington*, 7 Notes of Ca. 362), or by a receipt given in ignorance (*The Silver Bullion*, 2 Spinks, 74), or by knowledge in the claimant of an intended sale (*The Repulse*, sup), or by a release of the owner (*The Chieftain*, Brown. & Lush. 215)": Cavanagh on Money Securities, 2 ed., 464, 465. *Vh*, Abbott, 244-267: Carver, Part 3, ch. 18: 8 Encyc. 211-218. *V*. TOWAGE.

Maritime Lien for DISBURSEMENTS as well as for WAGES; *V. Morgan v. Castlegate S. S. Co*, 1893, A. C. 38; 62 L. J. P. C. 17; 68 L. T. 99; 41 W. R. 349; 7 Asp. 284; 9 Times Rep. 139, expounding s. 1, Mer Shipping Act, 1889, repld s. 167, Mer Shipping Act, 1894.

*Shifting Lien*; *V. IN* OR UPON.

"Lien for Unpaid Purchase Money," s. 1, 40 & 41 V. c. 34; *V. Re Kidd*, 63 L. J. Ch. 855; 1894, 3 Ch. 558; 71 L. T. 481. *Vj*, on Vendor's Lien, *Ecc. Commrs v. Pinney*, 1900, 2 Ch. 736; 69 L. J. Ch. 844.

*V. BIND*: CHARGE: INCUMBRANCE: SECURED CREDITOR: SECURITY.

**LIEU and SUBSTITUTION.**—A bequest in a Codicil, "in lieu of" or "in substitution for," one in the Will, is to be taken with all the accidents and conditions of the original bequest (*Shaftesbury v. Marlborough*, 7 Sim. 237; 2 My. & K. 111: *Re Boddington*, 53 L. J. Ch. 477; nom. *Boddington v. Clairat*, 25 Ch. D. 685).

*V. ADDITION*: IN LIEU OF: INSTEAD OF.

**LIEUTENANT.**—Of a County; Stat. Def., 26 & 27 V. c. 65, s. 49; 34 & 35 V. c. 86, s. 19; 38 & 39 V. c. 69, s. 2.

*Cp*, LORD LIEUTENANT.

**LIFE.** — “During Life”; *V.* DURING: JOINT LIVES.

“Life or Member”; *V.* FELONY.

Life Salvage; *V.* SALVAGE.

*V.* TENANT FOR LIFE.

**LIFE ASSURANCE.** — “Life Assurance Company”: Stat. Def., 59 & 60 V. c. 8, s. 2.

“The Life Assurance Companies Acts, 1870 to 1872”; *V.* Sch 2, Short Titles Act, 1896.

**LIFE POLICY.** — Stat. Def., 59 & 60 V. c. 8, s. 2.

*V.* POLICY.

**LIFEBOAT SERVICE.** — Quà Mer Shipping Act, 1894, “‘Lifeboat Service,’ means, the saving, or attempted saving, of VESSELS, or of life or property on board Vessels, wrecked or aground or sunk, or in danger of being wrecked or getting aground or sinking” (s. 742).

**LIGAN.** — *V.* FLOTSAM.

**LIGEANCE.** — “Ligeance, is the true and faithful obedience of a liegeman or subject to his liege lord or sovereign” (Co. Litt. 129 a).

“‘Ligeance,’ is a true and faithfull obedience of the subject due to his Sovereign; and this Ligeance (which is an incident inseparable to every subject) is in foure manners; (1) Naturall, (2) Acquired, (3) Locall, and (4) Legal: of all which you may reade much excellent learning in *Calvin’s Case*, 7 Rep. 1” (Termes de la Ley). *V.* 1 Bl. Com. ch. 10.

*V.* ALLEGIANCE: LOYALTY.

**LIGHT.** — *V.* SHOW A LIGHT: EASEMENT.

“Colonial Lights”; *V.* COLONIAL.

**LIGHT CART.** — An ordinary farmer’s cart without springs, if driven with reins, is a “Light Cart” within s. 132, 3 G. 4, c. 126 (*Morton v. Freeman*, 26 J. P. 215).

**LIGHT LOCOMOTIVE.** — Stat. Def., 59 & 60 V. c. 36, s. 1: *Vh*, Mears on Motor Cars: Lewis & Porter, lb.: 7 Encyc. 458–461.

*V.* LOCOMOTIVE.

**LIGHT or UNJUST.** — *V.* UNJUST.

**LIGHT RAILWAY.** — Stat. Def. — *V.* 52 & 53 V. c. 66, s. 11. *Vh*, Light Railways Act, 1896, 59 & 60 V. c. 48: 7 Encyc. 461–463.

**LIGHTER.** — *V.* WHERRY: GABBERT: VESSEL.

Discharge of Cargo “into Lighters”; *V.* *Petersen v. Freebody*, 1895, 2 Q. B. 294: 65 L. J. Q. B. 12; 73 L. T. 163; 44 W. R. 5; 11 Times Rep. 459.

Quà Thames Conservancy Act, 1894, “‘Lighter,’ includes any Barge, or other like Craft, for carrying goods” (s. 3).

**LIGHTERMAN.** — *V.* COMMON CARRIER.

**LIGHTHOUSE.** — *Qua Mer Shipping Act, 1894*, “ ‘Lighthouse’ shall, in addition to the ordinary meaning of the word, include any Floating and other Light exhibited for the guidance of Ships, and also any Sirens and any other description of Fog Signals, and also any addition to a lighthouse of any improved light or any siren or any description of fog signal ” (s. 742).

“The General Lighthouse *Authorities*” are, (a) “Throughout England and Wales and the Channel Islands, and the adjacent Seas and Islands, and at Gibraltar,” the TRINITY HOUSE; (b) “Throughout Scotland, and the adjacent Seas and Islands, and the Isle of Man,” the COMMISSIONERS of *Northern Lighthouses*; and (c) “Throughout Ireland, and the adjacent Seas and Islands,” the COMMISSIONERS of *Irish Lights*: and those areas are “Lighthouse areas” (s. 634, *Mer Shipping Act, 1894*). *Va*, the same section for def of “Local Lighthouse Authorities.”

“New Lighthouse”; Stat. Def., 50 & 51 V. c. 62, s. 5.

**LIGHTS.** — *V.* LIGHT: OVERTAKEN: WITH ALL ITS LIGHTS.

**LIKE.** — “The like” is not equivalent to “the SAME”: (*p.* CORRESPOND. Therefore, where a sum of money was settled to A. for life, and in default of appointment to her next-of-kin, as if she had died intestate, and the Settlement contained a covenant that her after-acquired property should be settled “upon the like trusts, intents, and purposes,” it was held that, in default of appointment, after-acquired realty went to her heir-at-law, personalty to her next-of-kin (*Brigg v. Brigg*, 54 L. J. Ch. 464.)

“Like *Circumstances*”; *V. G. W. Ry v. Sutton*, cited SAME: *Strick v. Swansea Canal Co*, 16 C. B. N. S. 245; 33 L. J. C. P. 240; *Manchester S. & L. Ry v. Denaby Main Co*, cited USING.

Goods of a “like *Description and Quantity*”; *V. G. W. Ry v. Sutton*, sup.

“To the like *Effect*”; *V. B. v. Harwich*, 1 E. & B. 617; 22 L. J. Q. B. 216; *R. v. Gen. Med. Council*, 1897, 2 Q. B. 203; 66 L. J. Q. B. 588; 76 L. T. 706; 46 W. R. 2.

“Other like *Instrument*”; *V.* SNARE.

“In like *Manner*”; *V.* AFORESAID.

Business of a “like *Nature*”; *V. Re Empire Assree*, L. R. 4 Eq. 341; 36 L. J. Ch. 663; *Southland Frozen Meat Co v. Nelson*, cited ERECT.

“Like *Penalty*,” means, a Penalty of a like amount, recoverable in a like way (per Selborne, C., *Bradlaugh v. Clarke*, 52 L. J. Q. B. 507; 8 App. Ca. 357).

“Like *Proceedings*,” s. 21, Highway Act, 1864, includes all proceedings contained in s. 85, Highway Act, 1835, and also those proceedings designated by the general name of appeal to Quarter Sessions given by s. 88 (*R. v. Surrey Jus.*, L. R. 5 Q. B. 87; 39 L. J. M. C. 49).

Underlease to contain "like *Provisions*," &c, as Original Lease; *V. Williamson v. Williamson*, 43 L. J. Ch. 738; 9 Ch. 729; *Haywood v. Silber*, 30 Ch. D. 404; 34 W. R. 114: *SUCH*.

S. 101, Regent's Canal Act, 52 G. 3, c. 195, provided that the land belonging to the Company should be rated "in like manner as LANDS of a like *Quality*," *i.e.* as open land which never could be built upon, but which perhaps might have some enhanced value from its proximity to the Canal and adjoining buildings, as applicable to any purpose except for building (*Regent's Canal Co v. St. Pancras*, 47 L. J. M. C. 37; 3 Q. B. D. 73).

"With the like *Remainder* over in default of Issue, *similar to* and in all respects *corresponding with*"; *V. Surtees v. Hopkinson*, 36 L. J. Ch. 305; L. R. 4 Eq. 98.

Like *Services*; *V. SAME*.

"Like *Traffic*"; *V. LOWEST RATE*.

"Like *Trusts*, intents, and purposes," in a Settlement; *V. Brigg v. Brigg*, *sup.* In a Will, a referential declaration that on death of A. a fund of which she was life tenant should be held "upon such and the like *Trusts*" as those declared of B.'s fund, has been held to mean, the same trusts *mutatis mutandis*, and not identical trusts (*Bushford v. Chaplin*, W. N. (81) 126).

*V. SIMILAR*.

**LIKEWISE.** — When a clause begins with "Likewise," or "ITEM," it is, generally speaking, to be read independently of the former clause, as a fresh departure, and starting upon a new disposition (1 Jarm. 831, 832, citing *Lethicullier v. Tracy*, 3 Atk. 774; Amb. 204; *Pearson v. Rutter*, 3 D. G. M. & G. 398; *Boosey v. Gardener*, 5 D. G. M. & G. 122). " 'Item,' is an usual word in a Will to introduce new distinct matter" (per Trevor, C. J., *Hopewell v. Ackland*, 1 Salk. 239); " 'Item' shews that the testator is dealing with a new subject, and that the words following apply to that only, and not to the preceding matter unless the intention that they should do so is plain" (per Bayley, J., *Doe d. Ellam v. Westley*, 4 B. & C. 669).

"It is not, however, to be assumed that whenever the word 'Item' or 'Likewise' begins a sentence, it creates a complete severance of all that follows from the previously-expressed contingency. It cannot be put higher than this, that such expressions make a *primâ facie* case for the disconnection, which the context of the Will may either maintain or rebut" (1 Jarm. 832, 833): and where there is a devise, *e.g.* for life, upon condition, and that is followed by another devise of the same estate, commencing with "Likewise," such other devise will, probably, be construed as subject to the same condition as the prior devise (*Paylor v. Pegg*, 24 Bea. 105, stated 1 Jarm. 833).

*V. ALSO*.

**LIMESTONE.** — *V.* MINE.

**LIMIT.** — S. 43, P. H. Act, 1872, 35 & 36 V. c. 79, provided that any "Limit" of rating imposed by a Local Act shall not apply to that Act; "Limit" there does not include "Exemption," and, therefore, property exempted by a Local Act was held not rateable under the P. H. Act (*Walton v. Walford*, L. R. 10 Q. B. 180; 44 L. J. Q. B. 74; *R. v. Wexford*, 18 L. R. Ir. 132).

*V.* GENERAL LIMITS.

"To limit"; *V.* THREAT.

"Limit and appoint," quâ property over which the Power of Appointment then being executed did not extend; held, words of GRANT (*McAndrew v. Gallagher*, Ir. Rep. 8 Eq. 490).

**LIMITATION.** — Statutes of Limitation; *V.* ACKNOWLEDGMENT: ACQUIESCENCE: CESTUI: CLAIMING UNDER: DISPOSSESSION: FIRST ACQUIRED: FORFEITURE: IN RECEIPT: INTERRUPTION: WRONGFULLY CLAIMING. *Vh.* Darby & Bosanquet on the Statutes of Limitations: 7 Encyc. 466-479.

Words of Limitation are "words which limit, or mark out, the ESTATE to be taken by the grantee" (Wms. R. P. 210, 211). *Cp.* PURCHASE: *V.* FEE SIMPLE: HEIR: HEIRS OF THE BODY: 7 Encyc. 483, 484.

**LIMITED.** — "Limited *Estate*"; Stat. Def., 24 & 25 V. c. 47, s. 2. — *Dr.* 27 & 28 V. c. 38, s. 1.

"Limited *Owner*"; Stat. Def., Landed Property (Ir) Improvement Act, 1860, 23 & 24 V. c. 153, ss. 7 and 24. The defs contained in those two sections were amalgamated in s. 26, Landlord and Tenant (Ir) Act 1870, 33 & 34 V. c. 46, which latter section is adopted for Land Law (Ir.) Act, 1896, 59 & 60 V. c. 47, with the addition that the latter def is also to include "any person having the powers of a Tenant for Life under the Settled Land Acts, 1882 to 1890" (s. 48). *Vj.* 36 & 37 V. c. 57, s. 7, which apparently was framed in view of s. 24, 23 & 24 V. c. 153.

**LINARIUM.** — "A place where flax groweth" (Cowel).

**LINCOLNSHIRE.** — *V.* DIVISION.

**LINDSAY ACT.** — 25 & 26 V. c. 101.

**LINE.** — *V.* MALE LINE: LINEAL: NEW LINE: ROD AND LINE: TELEGRAPHIC LINE.

**LINE OF BUILDINGS.** — *V.* GENERAL LINE OF BUILDINGS.

**LINE OF RAIL.** — *V.* RAIL: RAILWAY.

**LINEA MASCULINA.** — *V.* MALE LINE.

**LINEAL.** — The expressions “Lineal Descent,” “Lineally descended,” indicate, *primâ facie*, a direct line of descent from father to son (*Th*, note to *Craik v. Lamb*, 1 Coll. 491); but under the peculiar circumstances of that case, yet still with difficulty, Knight-Bruce, V. C., held that collateral next-of-kin were meant by “Relations by *Lineal Descent*” (14 L. J. Ch. 84; 1 Coll. 489). Again, in *Boys v. Bradley* (22 L. J. Ch. 623; 4 D. G. M. & G. 58), the same learned judge, when L. J., said, “Whatever may be the range of the word ‘Lineal’ considered by Mr. Collyer in his note to *Craik v. Lamb*, to speak of a man’s collateral kindred, as related to him in any line, is *not* an improper use of language, but equally allowable with the genealogical *transversa linea* of the civil lawyers.” *Jf*, 2 Jarm. 99. *Cp*, *Best v. Stonehewer*, cited DESCENDANTS.

“The eldest *male* lineal descendant” is inapplicable to a male person claiming in part through a female (*Oddie v. Woodford*, 7 L. J. Ch. 117; 3 My. & C. 584; *Th*, 2 Jarm. 69). **V. ELDEST: MALE LINE.**

**V. STRANGERS IN BLOOD.**

Lineal Yard; **V. YARD.**

**LINEN.** — “Under this term, without qualification, table and bed linen, and every article to which that general word can be applied, will pass. But where there is a bequest of ‘all linen and *clothes* of all kinds,’ it has been held that only body linen will pass” (Wms. Exs. 1066, citing *Hunt v. Hort*, 3 Bro. C. C. 311).

An Insree on “Household Furniture, Linen, and Wearing Apparel,” does not include linen drapery bought for sale (*Watchorn v. Langford*, 3 Camp. 422).

**LIQUIDATED DAMAGES.** — Where parties to a contract agree that, in the event of default by either, a sum stated shall be paid as “Liquidated Damages”; the primary meaning of that phrase is, that the sum named has been “assessed between the parties” (per Cotton, L. J., *Wallis v. Smith*, 52 L. J. Ch. 154) as the damages to be paid by the party in default. Yet, where the Court sees plainly that the stated sum is a “Penal Sum” (8 & 9 W. 3. c. 11. s. 8; per Bramwell, B., *Betts v. Burch*, 4 H. & N. 506; 28 L. J. Ex. 267), there it is treated as a Penalty and only proved damages are recoverable (*Magee v. Lavell*, L. R. 9 C. P. 107; 43 L. J. C. P. 131, discussing *Reilly v. Jones*, 1 Bing. 302, and *Leu v. Whitaker*, L. R. 8 C. P. 70): and “where the parties themselves call the sum made payable a ‘Penalty,’ the onus lies on those who seek to show that it is to be payable as Liquidated Damages” (per Esher, M. R., *Willson v. Love*, cited PENALTY).

It is, however, always a question of construction, by the light of the rules laid down in decisions not always easy to be reconciled, — the tendency of modern decisions being to hold contracting parties to the bar-

gains they make, and the usual meaning of the words they use (*Wallis v. Smith*, 52 L. J. Ch. 145; 21 Ch. D. 243; 31 W. R. 214; 47 L. T. 389). In *Dickson v. Lough* (18 L. R. Ir. 529) O'Brien, J., said,—"Sir Geo. Jessel, in *Wallis v. Smith*, fell foul of the ruling in *Magee v. Lavell*, as he fell foul of many other things, for which reason those fell foul of him who came after him; and in his contempt for authority he went so far as to say there was no authority for it."

The rules where "Liquidated Damages" are *agreed upon*, may, probably, be stated thus, —

1. Where the payment of a smaller sum is secured by a larger, — the larger sum is a Penal Sum, or, in other phrase, a PENALTY (*Astley v. Weldon*, 2 B. & P. 346; *Davies v. Penton*, 6 B. & C. 216; *Betts v. Burch*, sup; *Kemble v. Farren*, 6 Bing. 141; *Law v. Redditch*, 1892, 1 Q. B. 127; 61 L. J. Q. B. 172):

2. Where a single lump sum is prescribed as payable on the breach of any one of several stipulations, and *one* of such stipulations is within the preceding rule, or is obviously of "very trifling consideration," others being substantial, — the lump sum is a Penalty (per Chambre, J., *Astley v. Weldon*, sup; per Ld Westbury, *Thompson v. Hudson*, L. R. 4 H. L. 30; 38 L. J. Ch. 443; per Ld Watson, *Elphinstone v. Monkland*, 11 App. Ca. 342; *Horner v. Flintoff*, 11 L. J. Ex. 270; 9 M. & W. 679; per Alderson, B., *Atkyns v. Kinnier*, 19 L. J. Ex. 132; 4 Ex. 776); and so of a lump sum payable on one event of trifling importance (*Jones v. Hough*, 49 L. J. Ex. 211; 5 Ex. D. 115; *Rayner v. Ornen S. S.*, 1895, 2 Q. B. 289; 64 L. J. Q. B. 540; 73 L. T. 96):

3. Where a sum of whatever amount is prescribed as payable on the breach sounding in uncertain damages of a single stipulation, — such sum is recoverable as Liquidated Damages (per Eldon, C. J., *Astley v. Weldon*, sup; *Roy v. Beaufort*, 2 Atk. 190; *Barton v. Glover*, Holt, N. P. 43; *Reynolds v. Bridge*, 26 L. J. Q. B. 12; 6 E. & B. 528; *Sparrow v. Paris*, 31 L. J. Ex. 137; 7 H. & N. 594; *Law v. Redditch*, sup; *Vf*, *Green v. Price*, 14 L. J. Ex. 225; 13 M. & W. 695; *Rawlinson v. Clarke*, 14 L. J. Ex. 364; 14 M. & W. 187; *Sainter v. Ferguson*, 18 L. J. C. P. 217; 7 C. B. 716; *Galsworthy v. Strutt*, 17 L. J. Ex. 226; 1 Ex. 659; *Ward v. Monaghan*, 59 J. P. 532; 11 Times Rep. 529; *Strickland v. Williams*, 68 L. J. Q. B. 241; 1899, 1 Q. B. 382; 80 L. T. 4):

4. Where a single lump sum is prescribed as payable on the breach sounding in uncertain damages of any one of several stipulations all of which are substantial *but which are various in kind and of different degrees of importance*, — the lump sum is recoverable as Liquidated Damages (*Wallis v. Smith*, sup; *Atkyns v. Kinnier*, sup; *Green v. Price*, sup. *Sr*, as to the words italicised, per Heath, J., *Astley v. Weldon*, sup; per Erskine, J., *Boys v. Ancell*, 8 L. J. C. P. 267; 5 Bing. N. C. 390; per Coleridge, C. J., *Magee v. Lavell*, sup; *Re Newman*, 46

L. J. Bank. 57; 4 Ch. D. 724; 25 W. R. 244. *Vf*, *Willson v. Love*, cited PENALTY):

5. A DEPOSIT which (per agreement, *Palmer v. Temple*, 8 L. J. Q. B. 179; 9 A. & E. 508: *Cusson v. Roberts*, 32 L. J. Ch. 105) becomes forfeited, is retainable, or (where an l. O. U. given for it) is recoverable, as Liquidated Damages (per Jessel, M. R., *Wallis v. Smith*, sup: *Hinton v. Sparkes*, 37 L. J. C. P. 81; L. R. 3 C. P. 161).

*Note.* Though Channell, B., said in *Sparrow v. Paris* (sup) that "the use of 'Penalty' or 'Unliquidated Damages' signifies nothing," yet that is too wide a statement (*e.g.* *V.* per Erskine, J., *Boys v. Ancell*, sup: *Willson v. Love*, sup). Such words, however, are not conclusive either way (per Cranworth, C., *Ranger v. G. W. Ry*, 5 H. L. Ca. 94: per Bramwell, B., *Betts v. Burch*, sup: *Sainter v. Ferguson*, sup); though their use is nearly always material and will not infrequently be decisive. In *Lowe v. Peers* (4 Burr. 2229) Mansfield, C. J., said, "Where the precise sum is not the essence of the agreement, the quantum of the damages may be assessed by the jury; but where the precise sum is fixed and agreed upon between the parties, that very sum is the ascertained damage, *and the jury are confined to it*," on which italicised words, *V. Lea v. Whitaker*, sup. So, the association of the stated amount with the word "Forfeit" has been relied on to show that a Penalty was intended (per Parke, B., *Horner v. Flintoff*, sup); *secus*, as regards a provision under which a Deposit becomes "forfeited" (*Hinton v. Sparkes*, sup).

*Vh.* Add. C. 267-272: Leake, 933-942: STIPULATED.

"Unliquidated Damages," s. 31, Bankry Act, 1869, repld s. 37 (1), Bankry Act, 1883, does not include a sum found due from a Promoter of a Co in respect of a secret profit (*Emma Co v. Grant*, 50 L. J. Ch. 449; 17 Ch. D. 122), nor a patentee's right to an account of profits made by an infringer (*Watson v. Holliday*, 52 L. J. Ch. 543; 31 W. R. 536; 48 L. T. 545; 20 Ch. D. 780). *Vf*, *Wms. Bank*. 114 *et seq*: DAMAGES.

**LIQUIDATED DEMAND.**—It is submitted that a "Liquidated Demand," R. 6, Ord. 3, R. S. C., includes all that is comprehended in "Liquidated Damages" (*V.* per Esher, M. R., *Law v. Redditch*, cited LIQUIDATED DAMAGES).

By s. 57 (1), Bills of Ex. Act, 1882, INTEREST and NOTING on a Bill or Note (as well as its principal sum) are to be deemed Liquidated Damages; therefore (though they may be withheld, subs. 3, s. 57) such interest and noting are a "Liquidated Demand in money" within R. 6, Ord. 3, R. S. C. (*Lawrence v. Willcocks*, 1892, 1 Q. B. 696; 61 L. J. Q. B. 519; 66 L. T. 511; 40 W. R. 419; *Vf*, *Dando v. Boden*, 1893, 1 Q. B. 318; 62 L. J. Q. B. 339; 68 L. T. 90); so, generally, of interest clearly shown to be payable by statute or by agreement (*Gold Ores Co v. Parr*, 1892, 2 Q. B. 14; 61 L. J. Q. B. 522; 66 L. T. 687; 40 W. R. 526). But interest which may be awarded on a SUM CERTAIN, is not within



the Rule (*Elliott v. Roberts*, 36 S. J. 92; *Blood v. Robinson*, *Ib.* 203; *Wilks v. Wood*, 1892, 1 Q. B. 684; 61 L. J. Q. B. 516; *London and Universal Bank v. Clancarty*, 1892, 1 Q. B. 689; 61 L. J. Q. B. 225; 66 L. T. 798; 40 W. R. 411; *Sheba Gold Co v. Trubshawe*, 1892, 1 Q. B. 674; 61 L. J. Q. B. 219; 40 W. R. 381; 66 L. T. 228).

A claim for Short Delivery of Goods sold, is a liquidated demand (*Biggerstaff v. Rowatt's Wharf*, 1896, 2 Ch. 93; 65 L. J. Ch. 536); so is an amount due on a Jdgmt (*Hodsoll v. Barter*, E. B. & E. 884), though a foreign one (*Grant v. Easton*, 53 L. J. Q. B. 68; 13 Q. B. D. 302).

V. DEBT: DEBTS DUE: *Re Miller*, cited NOTICE.

**LIQUIDATION.** — Voluntary Liquidation of a Co, though merely for the purpose of Reconstruction, is none the less a "Liquidation" within a clause of FORFEITURE in a Lease to the Co (*Horsey v. Steiger*, 1898, 2 Q. B. 259; 67 L. J. Q. B. 747; 79 L. T. 116). But a Voluntary Liquidation is equivalent to "BANKRUPTCY," as that latter word is used in s. 14 (6, i), Conv & L. P. Act, 1881, and s. 2 (2), Conv & L. P. Act, 1892; therefore, in cases provided for by the latter section, NOTICE will have to be given under the first section (*S. C.* 1899, 2 Q. B. 79; 68 L. J. Q. B. 743; 80 L. T. 857; 47 W. R. 644). *Vf.* *Watney v. Ewart*, 18 Times Rep. 426.

Forfeiture on "Liquidation" is worked immediately on the making of a Winding-up Order (*General Share Co v. Wetley Co*, 20 Ch. D. 260; 51 L. J. Ch. 464).

**LIQUIDATOR.** — *V. Re English Bank of River Plate*, 1892, 1 Ch. 391; 61 L. J. Ch. 205; 66 L. T. 177; 40 W. R. 325.

V. OFFICIAL.

**LIQUOR.** — "Such Liquor"; *V. SUCH*.

*V. SPIRITUOUS LIQUOR: PUBLIC HOUSE: SALE.*

**LIS MOTA.** — "By the law of England, differing in this respect from the Civil Law, a suit is not necessary to constitute *lis*" (*Butler v. Mountgarret*, 7 H. L. Ca. 641); a family controversy capable of being litigated is a *lis mota* (*Ib.*). *Vf.* 7 Encyc. 485.

**LIS PENDENS.** — Is an Action PENDING.

For a review of the cases relating to the Registration, and effect of Registration, of a *Lis Pendens*, *V. Wigram v. Buckley*, 1894, 3 Ch. 483; 63 L. J. Ch. 689; 71 L. T. 287; 43 W. R. 147, *whc.* decides that the doctrine that a *Lis Pendens*, duly registered, binds the subject-matter of the action, does not apply to PERSONAL ESTATE, except Leaseholds, and, possibly, Money in Court.

**LITERARY.**—A Municipal Free Library is “the PROPERTY of a Literary or Scientific *Institution*” within R. 6, s. 61, Income Tax Act, 1842, and is, therefore, exempt from that tax (*Manchester v. McAdam*, 1896, A. C. 500; 65 L. J. Q. B. 672; *Musgrave v. Dundee Magistrates*, 24 Sess. Ca. 4th Ser. 930; W. N. (98) 127). In *Manchester v. McAdam* the majority in H. L. held that “the property of,” in this context, does not connote ownership, but means, held for or appropriated for the purposes of a Literary or Scientific Institution; and, on the word “Institution,” Ld Herschell (who was one of the majority) said, “It is a word employed to express several different ideas. It is sometimes used in a sense in which the ‘Institution’ cannot be said to consist of any persons, or body of persons, who could strictly speaking own property. The essential idea conveyed by it, in connection with such adjectives as ‘literary’ and ‘scientific,’ is often no more than a system, scheme, or arrangement, by which literature or science is promoted, without reference to the persons with whom the management may rest, or in whom the property appropriated for these purposes may be vested, save in so far as these may be regarded as a part of such system, scheme, or arrangement”; in support of this his lordship gives illustrations: *Ij*; jdgmt of Ld Macnaghten, *Ib.* *Cp*, SCIENCE.

“Literary *Work*,” preamble to Copyright Act, 1842, means, a Work “intended to afford either information and instruction, or pleasure in the form of literary enjoyment” (per Davey, L. J., *Hollinrake v. Truswell*, 1894, 3 Ch. 420; 63 L. J. Ch. 722); Sporting Tips are not “Literary Work” (*Chilton v. Progress Co*, 1895, 2 Ch. 29; 64 L. J. Ch. 510; 72 L. T. 442; 43 W. R. 456), in *the* Lindley, L. J., suggested that the limit to which “Literary Work” could be stretched was reached in the Directory case, *Kelly v. Morris* (35 L. J. Ch. 423; L. R. 1 Eq. 697; *Va*, *Lamb v. Evans*, 1893, 1 Ch. 218; 62 L. J. Ch. 404; 68 L. T. 131).

“Literary and Artistic Work,” quâ International Copyright Act, 1886, “means, every Book, Print, Lithograph, Article of SCULPTURE, DRAMATIC Piece, MUSICAL COMPOSITION, PAINTING, Drawing, PHOTOGRAPH, and other work of literature and art to which the Copyright Acts or the International Copyright Acts, as the case requires, extend” (s. 11).

**LITERATURE.**—*V.* SCIENCE.

**LITIGATION.**—*V.* ADVERSE.

The Rescission Clause in Conditions of Sale “notwithstanding any previous (or, intermediate) Litigation,” means, “notwithstanding PENDING litigation”; notice to rescind comes too late after jdgmt (*Re Arbit and Class*, 1891, 1 Ch. 601; 60 L. J. Ch. 263; 64 L. T. 217; 39 W. R. 305). But, on the other hand, if the clause is without that phrase it is operative during the pendency of litigation if exercised *bonâ fide* (*Isaacs v. Towell*, 1898, 2 Ch. 285; 67 L. J. Ch. 508; 78 L. T. 619).

**LITTER.**—*Quà Diseases of Animals Act, 1894, 57 & 58 V. c. 57,* “ ‘Litter,’ means, straw, or other substance commonly used for bedding or otherwise for or about animals ” (s. 59).

**LITTLE DAMAGE.**—“ As little damage as can be ”; *V. DAMAGE.*

**LITTUS MARIS.**—*V. SHORE.* *Vf, WARETTUM.*

**LIVE AND DEAD STOCK.**—“ The words ‘Live and Dead Stock’ have never occurred alone in a bequest, consequently their import in the abstract could not have received a legal interpretation. Since, however, the term ‘Stock’ is of extensive meaning, and not rendered less so by the prefatory words ‘Live and Dead,’—expressions that merely distinguish such part of the personal estate as is inanimate from that which is animate,—it is not improbable that a Court might interpret the word ‘Stock,’ under those circumstances, as synonymous with ‘Property,’ and sufficient to pass the whole of a testator’s personal estate ” (*Rop. 274*). It is however submitted that it would need a context, and probably a strong one, to warrant so large an interpretation, and that the primary meaning of “Live and Dead Stock” is that which was put on the phrase in *Porter v. Tournay* (3 Ves. 311), viz. “out-of-door Stock”; indeed in that case the M. R. said, that that would be the interpretation of the phrase “if those words stood alone.” But where the bequest was of “all testator’s furniture, linen, plate, pictures, carriages, horses, and *other Live and Dead Stock,*” Wood, V. C., considering that “other” referred to all the previous words of the sentence and that the testator evidently meant to include every stock and store he had about his house, held that Books and Wines passed under the bequest. He said, “The words ‘Dead Stock’ might apply to in-door things. The expression ‘Stock of Wines’ was common; but ‘Stock of Books’ was not heard so often ” (*Hutchinson v. Smith, 11 W. R. 417; 8 L. T. 602,* also cited *HOUSEHOLD: Rudge v. Winnall, 12 Bea. 357*). In *Blake v. Gibbs* (5 Russ. 13, *n*) Growing Crops passed under this phrase.

*Vf, Randall v. Russell, 3 Mer. 190: Hardman v. Johnson, Ib. 347: Burbidge v. Burbidge, 37 L. J. Ch. 47; 16 W. R. 76; 17 L. T. 138.*

*Quà Agricultural Holdings Act, 1883.* “ ‘Live Stock,’ includes any Animal capable of being distrained ” (s. 61), *i.e.* all animals except those which are *feræ naturæ.* *Vh, AGIST.*

*V. STOCK: FARMING STOCK.*

**LIVE AND RESIDE.**—A Condition in a gift of a house that the donee shall “live and reside” therein, does not seem more exigent than if it said nothing about living and only required residence: *V. RESIDE.* *whæ* as to validity of such a condition *quà* the powers of a Tenant for Life under the S. L. Act. In *Fillingham v. Bromley* (T. & R. 534),

Ld Eldon said, — "Suppose the devisee had been an M. P., and had a house in London, would you say he did not *live and reside* at J.?" It would seem that "live" in that question adds nothing to its point. In *the*, a FORFEITURE was to be created if the donee did not "live and reside" at J., and the phrase was held too uncertain to work a forfeiture, and the title of the person claiming under the gift was forced on a purchaser. *Cp*, EDUCATION: RENT FREE.

**LIVE IN.** — A gift of "the HOUSE 1 live in." will include stables and coal-pen occupied by the testator with his dwelling-house, though used by him for the purposes of trade as well as for the convenience of that house (*Doe d. Clements v. Collins*, 2 T. R. 498). *V*. OCCUPATION.

**LIVE SEPARATE.** — *V*. SEPARATE: NEGLECT: LIVING APART.

**LIVELIHOOD.** — In *Stephens v. Derry* (16 East, 147), a man who lived with his wife in Middlesex, the wife carrying on a business there as a milliner, acted as clerk to a solicitor in London, and it was held that he was not within the London Court of Requests Act (39 & 40 G. 3, c. 104) as a person "Seeking his livelihood" in London; inasmuch as he did not get his *whole* livelihood there; the trade which he carried on by his wife, being, in fact, *his* trade. So, the context in the section shows that the phrase "points to a person carrying on some business on his own account, and not one in a subordinate situation," *e.g.* a Clerk (*Smith v. Hurrell*, 10 B. & C. 542). *Va*, *Jenks v. Taylor*, 5 L. J. Ex. 263; 1 M. & W. 578.

Trade, &c. "by which the occupier seeks a Livelihood or Profit," s. 13 (2), 41 V. c. 15; *V*. TRADE.

Provision for a Wife's "Livelihood and Maintenance"; *V*. JOINTURE.  
*V*. OCCUPATION.

**LIVERPOOL.** — The Port of Liverpool is of many miles extent, with a series of docks for different classes of ships and trades; a Ship does not "ARRIVE" there the moment she enters the Mersey, but, generally, she arrives when she gets into her proper dock; but it may be shown by the Custom of a particular trade that she does not "arrive" at Liverpool until she is moored at a quay where she is allowed to discharge (*Norden S. S. Co v. Dempsey*, 1 C. P. D. 654; 45 L. J. C. P. 764; 24 W. R. 984; for obs on *wher* Carver, 227).

**LIVERY.** — Of Liveries (1) in Law, and (2) in Deed, of which latter there are two kinds, General and Special; *V*. 2 Inst. 693; Co. Litt. 48 a: "Livery," in this connection, means, DELIVERY.

As to how Livery of SEIZIN was made, *V*. Co. Litt. 48 a-49 a: *Termes de la Ley*. *Livery of Seisin*: 2 Bl. Com. 311-316: 4 Cru. Dig. 46-48: 4 Encyc. 202.

LIVES. — *V.* JOINT LIVES.

**LIVING.** — “Now, the word ‘Living’ is ambiguous. It is sufficient to pass the *ADVOWSON*. On the other hand it may be restricted to a single Presentation: the law does not determine which is its meaning, and the point must be ascertained from the context” (per Wood, V. C., *Webb v. Byng*, 2 K. & J. 674; affd 10 H. L. 171: *Vtlic*, 2 Jarm. 286, n).

“A Power to Appoint to Children *living* at the parent’s decease, includes a child *in ventre sa mère* at that time (*Beale v. Beale*, 1 P. Wms. 244). This point has been otherwise decided (*Pierson v. Garnett*, 2 Bro. C. C. 38, 63); but the law is now perfectly settled (*Clarke v. Blake*, 2 Bro. C. C. 320; nom *Doe v. Clarke*, 2 Bl. H. 399: *Va*, *Thellusson v. Woodford*, 4 Ves. 226: *Hale v. Hale*, Prec. Ch. 50); Sug. Pow. 673. So, a gift to A. if she have issue “living,” will take effect if she be pregnant at the time indicated and afterwards give birth to a child (*Re Burrows*, 1895, 2 Ch. 497; 65 L. J. Ch. 52; 43 W. R. 683); in *the* Chitty, J., rejected the doctrine that a child *en ventre* is only “living” where a direct benefit passes to such child. *Cp*, BORN.

Bequest to A. for life, remainder to “her children living”; held, that children of A. living at the death of testator took vested interests (*Hodgson v. Smithson*, 26 L. J. Ch. 110; 21 Bea. 354: *Va*, *Kidd v. North*, 3 D. G. M. & G. 947).

“Who shall be living”; *V. Penny v. Clarke*, 29 L. J. Ch. 370; 1 D. G. F. & J. 425; Johns. 619.

Bequest on condition of “Being” or “Living” in England or “residing in this country”; *V. Woods v. Tounley*, 23 L. J. Ch. 281; 11 Hare, 314: *Dale v. Atkinson*, 3 Jur. N. S. 41: RESIDE.

*V.* CHILD: THEN LIVING.

**LIVING APART.** — A husband and wife are “living apart,” within the power given by s. 91, Fines and Recoveries Act, 1833, to dispense with his concurrence in her conveyance of property, if that be substantially the state of things between them; and “to suggest that they are not ‘living apart’ because occasionally they pay short visits to one another. there being at the same time an entire absence of mutual affection, is absurd” (per Erle, C. J., *Re Rogers*, H. & R. 88: 35 L. J. C. P. 71; L. R. 1 C. P. 47). *Vh*, *Ex p. Thomas*, 4 Moore & S. 331: *Ex p. Shuttleworth*, *Ib.* 332, n: *Ex p. Gilmore*, 3 C. B. 967: *Re Squires*, 17 C. B. 176: *Re Caine*, 52 L. J. Q. B. 354; 10 Q. B. D. 284: *Ex p. Sutcliffe*, 29 L. T. 747: *Re Horsfall*, 3 M. & G. 132. An unjustifiable (or, *semble*, even a justifiable) withdrawal from cohabitation by the Wife, is not a “living apart” entitling her to an Order under the section (*Re Price*, 13 C. B. N. S. 286). *Vf*, Shelford’s Real Property Statutes, 9 ed., 305.

*Cp*, COHABITATION: DESERTION: SEPARATE: NEGLECT.

**LIVING WITH ME.** — The phrase “living with me” in a bequest to SERVANTS, does not mean “living in my house” but, means “living in my service” (per Turner, V. C., *Blackwell v. Pennant*, 22 L. J. Ch. 155; 9 Hare. 551).

**LLOYD'S BOND.** — A Lloyd's Bond, is a Bond issued by a Ry or other Incorporated Co, to secure a debt or other obligation it has already contracted in carrying out its undertaking, as distinct from a security for a present advance; its issue, therefore, is not dependent upon or limited by the Borrowing Powers of the Co (*White v. Carmarthen Ry*, 33 L. J. Ch. 93; 1 H. & M. 787; Cavanagh on Money Securities, Ch. 28). *Vh, Re Cork & Youghal Ry*, 4 Ch. 748; 39 L. J. Ch. 277. As to inadmissibility of evidence impeaching such a Bond, *V. Blackmore v. Yates*, 36 L. J. Ex. 121; L. R. 2 Ex. 225.

**LLOYD'S CONDITIONS.** — *V. USUAL LLOYD'S CONDITIONS.*

**LOAD: LOADING.** — To “load” a CARGO is actually to put it on board (*Hurry v. Royal Ex. Assce*, 2 B. & P. 430: *Cp, LANDED*). “But the Loading begins in and at the place named in the Charter-Party” (per Brett, L. J., *Kay v. Field*, cited DETENTION BY ICE).

Circumstances which prevent the cargo from being brought to the place of loading, are not “Accidents preventing the loading” within an Exception in a charter-party relieving from charges for demurrage (*Grant v. Coverdale*, 53 L. J. Q. B. 462; 9 App. Ca. 470; 51 L. T. 472; 32 W. R. 881; *Stephens v. Harris*, 57 L. J. Q. B. 203; 4 Times Rep. 11).

*Vf*, as to Policy attaching on “loading,” 8 Encyc. 176, 177.

The words “loading or discharging” as used in s. 41, Mer Shipping Act, 1862, are employed in their general sense, and are not confined to loading or discharging cargo, but (*int. al.*) comprise taking in coals to enable the ship to carry on her voyage (*The Winston*, 52 L. J. P. D. & A. 72; 53 lb. 69; 9 P. D. 85; 51 L. T. 183).

“Loading excepted,” in a CESSER clause in a Charter-Party, relates to all liabilities connected with the loading (*Lister v. Van Haansbergen*, 45 L. J. Q. B. 495; 1 Q. B. D. 269; 24 W. R. 395).

“Loading in Turn”; *V. Taylor v. Clay*, 9 Q. B. 713; 16 L. J. Q. B. 44.

*V. READY TO LOAD: INABILITY: PORT.*

“Load,” and “Unload,” in a *Railway Act*, are used in their ordinary sense, and do not cover station accommodation, and the like (*Kempson v. G. W. Ry*, 4 B. & Maen. 426).

Railway charges for “loading, covering, unloading, delivery, and collection, and any other services incidental to the duty or business of a Carrier”; *V. INCIDENTAL.*

“Preventing the loading”; *V. PREVENT.*

**LOAD IN USUAL AND CUSTOMARY MANNER.**—*V.* USUAL AND CUSTOMARY MANNER.

**LOAD LINE.**—*V.* ss. 436-445, Mer Shipping Act, 1894.

**LOAD WITH USUAL DESPATCH OF PORT.**—*V.* USUAL DESPATCH.

**LOADED ARM.**—*Seamble*, a tin box containing gunpowder and detonators, the latter to ignite the gunpowder on the box being opened and so kill or injure the person opening it, was not a "Loaded Arm," within ss. 11 and 12, 9 G. 4, c. 31 (*R. v. Mountford*, 7 C. & P. 242). To be a "loaded" Arm, within these sections, even an ordinary fire-arm must have been "so loaded as to be capable of doing mischief by having the trigger drawn" (*R. v. Carr*, Russ. & Ry. 377; *R. v. Gamble*, 10 Cox C. C. 545); therefore, a pistol loaded with powder and balls, but its touch-hole so plugged up that it could not possibly be fired, was not a "loaded arm" (*R. v. Harris*, 5 C. & P. 159). *Vf*; *R. v. Coates*, 6 C. & P. 394; *R. v. Kitchen*, Russ. & Ry. 95; *R. v. Baker*, 1 C. & K. 254; *R. v. James*, *Ib.* 531.

But quà Offences against the Person Act, 1861, "any gun, pistol, or other arms, which shall be loaded in the barrel with gunpowder or any other EXPLOSIVE substance, and ball, shot, slug, or other destructive material, shall be deemed to be 'Loaded Arms,' although the ATTEMPT to discharge the same may fail from want of proper priming, or from any other cause" (s. 19). *V.* GUN: SHOOT.

**LOAN.**—A "Loan" for negotiating which a Solr is entitled to the Scale Fee prescribed by Sch 1, Part 1, Solrs Rem Ord, is not confined to a present advance of money; a mortgage for a pre-existing debt is also within the phrase (*Re D'Arcy to White*, 31 L. R. Ir. 142). In this connection, "Loan" is confined to a loan on mortgage; but not exclusively to a mtge on freehold, copyhold, or leasehold, property (*Re Furber*, 1898, 2 Ch. 538; 67 L. J. Ch. 593; 79 L. T. 266). *V.* FURTHER CHARGE.

A loan at interest to a Building Society from its bankers, secured by deposit of title deeds, and made by allowing over-draughts, is a "Loan" within s. 15, 37 & 38 V. c. 42 (*Looker v. Wrigley*, 9 Q. B. D. 397; *Cunliffe v. Blackburn Bg Socy*, 9 App. Ca. 857; 54 L. J. Ch. 376; 33 W. R. 309; 52 L. T. 225); but, generally speaking, merely over-drawing a banking account is not "borrowing," in the ordinary sense of the word (*Re Cefn Cileen Co*, L. R. 7 Eq. 88; 38 L. J. Ch. 78; 19 L. T. 593; *Waterlow v. Sharp*, L. R. 8 Eq. 501; 20 L. T. 902). *V.* *Re Pyle Works, No. 2*, 1891, 1 Ch. 173; 60 L. J. Ch. 114: RECEIVE.

A rule of a Building Society merely stating that the Society is established for the purpose of raising by subscriptions and "Deposits on

Loans " a fund for advances, confers a power to borrow by receiving deposits on loans (*Re Mutual Aid By Society*, 54 L. J. Ch. 493; 29 Ch. D. 182).

For a Vendor to offer to allow part of the purchase money to remain unpaid, does not enable the Purchaser to "arrange a Loan" to that extent (*Heitzmann v. Gowenlock*, 7 Times Rep. 611); in an agreement for the purchase of a Public-house in London if purchaser "is able to arrange loans to complete the purchase," "loans" means, loans from Brewers and Distillers (*Ib.*).

Loan on "Security of Land"; V. SECURITY.

"Loan CAPITAL"; quâ Stamp Duty; Stat. Def., 62 & 63 V. c. 9, s. 8 (5).

Loan *Company*; V. MORTGAGE COMPANY.

V. PAWN.

**LOBSTER.** — V. SEA FISH.

**LOCAL ACCEPTANCE.** — Is "an ACCEPTANCE to pay only at a particular, specified place" (s. 19 (2 c), Bills of Ex. Act, 1882).

**LOCAL ACT OF PARLIAMENT.** — "Local and Personal" Act is "Local, in being confined to certain limits, and Personal, as affecting a particular description of persons only as distinguished from that of all the Queen's subjects" (per Parke, B., delivering judgment of the Court, *Richards v. Easto*, 15 L. J. Ex. 167; 15 M. & W. 251), which case shows that an Act may be "Local and Personal" although some of its objects are public. *Jf, Cook v. Gent*, 13 L. J. Ex. 24; 12 M. & W. 234; *Carr v. Royal Ex. Assrce*, 31 L. J. Q. B. 93; 6 L. T. 105; *R. v. London Co. Co.*, 1893, 2 Q. B. 454; 63 L. J. Q. B. 4; 69 L. T. 580; 42 W. R. 1; 58 J. P. 21.

A General or Public Act expressly incorporated into a Special Act is, quâ the Undertaking authorized by the Special Act, a "Local or Private" Act (*Lond. & N. W. Ry v. Runcorn*, cited SEWER).

A Local Act "must be judicially noticed as a Public Act, and must have all the operation of a Public Act" (per Cairns, C., *Aiton v. Stephen*, 1 App. Ca. 457).

Stat. Def. — "Local Act," 62 & 63 V. c. 14, s. 34; — *Scot.* 60 & 61 V. c. 38, s. 192 (2). "Local Act of Inclosure," 8 & 9 V. c. 118, s. 167; 36 & 37 V. c. 19, s. 1. "Local and Personal Act," 56 & 57 V. c. 73, s. 75. "Local Police Act," 55 & 56 V. c. 55, s. 4.

Cp. PUBLIC ACT OF PARLIAMENT.

**LOCAL APPEAL.** — Quâ Colonial Courts of Admiralty Act, 1890, 53 & 54 V. c. 27, "Local Appeal," means, an appeal to any Court inferior to Her Majesty in Council" (s. 15).

**LOCAL AREA.** — Stat. Def., Isolation Hospitals Act, 1893, 56 & 57 V. c. 68, s. 26.



**LOCAL AUTHORITY.** — "Local Authority," is a modern phrase and in a modern Act is generally defined by the Act's interp clause, according to the subject-matter of the Act; as follows, —

- Allotments (Scot) Act, 1892, 55 & 56 V. c. 54; *V. s.* 16:
- Barbed Wire Act, 1893, 56 & 57 V. c. 32; *V. s.* 2:
- Canals Protection (London) Act, 1898, 61 & 62 V. c. 16; *V. s.* 8:
- Cattle Diseases Prevention Act, 1866, 29 & 30 V. c. 2; *V. s.* 4:
- Cleansing of Persons Act, 1897, 60 & 61 V. c. 31; *V. s.* 2. (*Scot*) s. 3, (*Ir*) s. 4:
- Coroners Act, 1887, 50 & 51 V. c. 71; *V. s.* 41:
- District Auditors Act, 1879, 42 & 43 V. c. 6; *V. s.* 8:
- Electric Lighting Act, 1882, 45 & 46 V. c. 56; *V. s.* 31, (*Scot*) s. 36:
- Explosives Act, 1875, 38 & 39 V. c. 17; *V. s.* 67, (*Ir*) s. 116:
- Finance Act, 1899, 62 & 63 V. c. 9; *V. s.* 8 (5):
- Forged Transfers Act, 1891, 54 & 55 V. c. 43; *V. s.* 2:
- Gas and Water Works Facilities Act, 1870, 33 & 34 V. c. 70; *V. s.* 2:
- Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70; *V. s.* 92:
- Infant Life Protection Act, 1897, 60 & 61 V. c. 57; *V. s.* 15:
- Isolation Hospitals Act, 1893, 56 & 57 V. c. 68; *V. s.* 26:
- Labourers (*Ir*) Act, 1896, 59 & 60 V. c. 53; *V. s.* 3:
- Local Authorities (Expenses) Act, 1887, 50 & 51 V. c. 72; *V. s.* 2:
- Local Authorities Loans (Scot) Acts; *V.* 54 & 55, V. c. 34, s. 4; 56 & 57 V. c. 8, s. 5:
- Loc Gov (*Ir*) Act, 1898, 61 & 62 V. c. 37; *V. s.* 109:
- Loc Gov (Stock Transfer) Act, 1895, 58 & 59 V. c. 32; *V. s.* 1 (2):
- Local Light Dues Reduction Act, 1876, 39 & 40 V. c. 27; *V. s.* 2:
- Local Loans Act, 1875, 38 & 39 V. c. 83; *V. s.* 34:
- Local Stamp Act, 1869, 32 & 33 V. c. 49; *V. s.* 3:
- Local Taxation Returns Act, 1877, 40 & 41 V. c. 66; *V. s.* 3:
- Margarine Act, 1887, 50 & 51 V. c. 29; *V. s.* 13:
- Mer Shipping Act, 1894, 57 & 58 V. c. 60; *V. s.* 214 (7):
- Metropolis Gas Act, 1860, 23 & 24 V. c. 125; *V. s.* 4:
- Metropolis Water Act, 1897, 60 & 61 V. c. 56; *V. s.* 5:
- Metropolitan Commons Act, 1866, 29 & 30 V. c. 122; *V. s.* 2:
- Mortmain and Charitable Uses Act Amendment Act, 1892, 55 & 56 V. c. 11; *V. s.* 2:
- Open Spaces Act, 1890, 53 & 54 V. c. 15; *V. s.* 2:
- Petty Sessions Clerks (*Ir*) Act, 1881, 44 & 45 V. c. 18; *V. s.* 4:
- Prevention of Cruelty to Children Act, 1894, 57 & 58 V. c. 41; *V. s.* 25, (*Scot*) s. 26, (*Ir*) s. 27:
- Prison (Officers Superannuation) Act, 1878, 41 & 42 V. c. 63; *V. s.* 5:
- Public Health Acts; *V. P. H. Act.* 1875, s. 4; *P. H. Act.* 1890, s. 11 (3); *P. H., Ireland, Act.* 1896, s. 8 (2); *P. H., Scotland, Act.* 1897, s. 12; *Vj,* 48 & 49 V. c. 22, ss. 3, 4:
- Ry and Canal Traffic Act, 1888, 51 & 52 V. c. 25; *V. ss.* 45 (7), and 7:

## LOCAL AUTHORITY 1116. LOCAL INVEST'N

Reservoirs and Water Supply Further Facilities Act, 1877, 40 & 41 V. c. 31; *V.* s. 10:

Sale of Food and Drugs Act, 1899, 62 & 63 V. c. 51; *V.* s. 25:

Sale of Horseflesh, &c, Regulation Act, 1889, 52 & 53 V. c. 11; *V.* s. 9:

Shannon Act, 1885, 48 & 49 V. c. 41; *V.* s. 17:

Technical Instruction Acts; *V.* 52 & 53 V. c. 76, s. 4, (*Ir*) s. 7; (*Scot*) 55 & 56 V. c. 63, s. 4:

Tramways Act, 1870, 33 & 34 V. c. 78; *V.* s. 3:

Trusts (*Scot*) Acts; *V.* 61 & 62 V. c. 42, s. 2:

Weights and Measures Acts; *V.* 41 & 42 V. c. 49, s. 50; 52 & 53 V. c. 21, s. 35.

*V.* BURGII.

**LOCAL BANK.**—*Quà* Bankry Act, 1883, “ ‘Local Bank,’ means, any bank in, or in the neighbourhood of, the bankruptcy District in which the proceedings are taken ” (s. 168).

**LOCAL BANKRUPTCY COURT.**—Stat. Def., 51 & 52 V. c. 44, s. 3; 53 & 54 V. c. 24, s. 4.

**LOCAL BOARD.**—*V.* BOARD.

**LOCAL COMMON LAW.**—*V.* CUSTOM.

**LOCAL COURT.**—Stat. Def., Court of Admiralty (*Ir*) Act, 1867, 30 & 31 V. c. 114, s. 2.

**LOCAL FINANCIAL YEAR.**—Means *quà* Loc Gov (*Ir*) Act, 1898, “ the twelve months ending 31st March ” (s. 109). *V.* YEAR.

**LOCAL GOVERNMENT BOARD.**—Established, constituted, and defined, by Loc Gov Board Act, 1871, 34 & 35 V. c. 70; *V.* BOARD. *Vh.*, 7 Encyc. 503–515.

**LOCAL GOVERNMENT DISTRICT.**—*V.* DISTRICT.

**LOCAL GOVERNMENT ELECTORS.**—Stat. Def., Loc Gov (*Ir*) Act, 1898, s. 109.

“ Local Government Register of Electors ”; *V.* Interp Act, 1889, s. 17 (3); Loc Gov (*Ir*) Act, 1898, s. 98 (10).

**LOCAL GRANTS.**—Stat. Def., Purchase of Land (*Ir*) Act, 1891, 54 & 55 V. c. 48, s. 42.

**LOCAL INVESTIGATION.**—*V.* PROLONGED EXAMINATION.

## LOCAL JURISDICTION 1117 LOCAL TAXATION

**LOCAL JURISDICTION.**—*V. JURISDICTION.*

**LOCAL LAW.**—*Quà* Medical Act, 1886, 49 & 50 V. c. 48, “ ‘ Local Law,’ means, an Act or Ordinance passed by the legislature of a BRITISH POSSESSION ” (s. 27).

**LOCAL LEGISLATURE.**—*Quà* Indian Councils Acts; *V.* 55 & 56 V. c. 14, s. 6.

**LOCAL LIGHTHOUSE AUTHORITIES.**—*V. LIGHTHOUSE.*

**LOCAL MEAN TIME.**—*V. OF THE CLOCK: TIME.*

**LOCAL MEASURE.**—*V. MEASURE.*

**LOCAL NEWSPAPER.**—*Quà* Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, “ Local Newspaper,” means, “ any newspaper circulating in the County or Burgh, as the case may be ” (s. 3).

*V. NEWSPAPER.*

**LOCAL PRISON.**—*V. PRISON.*

**LOCAL RATE.**—“ Local Rate ” has received statutory definition in and for the following Acts;—

Advertising Stations (Rating) Act, 1889, 52 & 53 V. c. 27; *V.* s. 6 (2):

Coroners Act, 1887, 50 & 51 V. c. 71; *V.* s. 41 (*c*):

District Auditors Act, 1879, 42 & 43 V. c. 6; *V.* s. 8:

Electric Lighting Act, 1882, 45 & 46 V. c. 56; *V.* s. 31:

Explosives Act, 1875, 38 & 39 V. c. 17; *V.* s. 70, (*Ir*) s. 118:

Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70; *V.* s. 92:

Infant Life Protection Act, 1897, 60 & 61 V. c. 57; *V.* s. 15:

Isolation Hospitals Act, 1893, 56 & 57 V. c. 68; *V.* s. 26:

Local Loans Act, 1875, 38 & 39 V. c. 83; *V.* s. 34:

Metropolitan Commons Act, 1866, 29 & 30 V. c. 122; *V.* s. 2:

Public Parks (Scot) Act, 1878, 41 & 42 V. c. 8; *V.* s. 13:

Public Works Loans Act, 1897, 60 & 61 V. c. 51; *V.* s. 12 (1):

Rating Act, 1874, 37 & 38 V. c. 54; *V.* s. 15:

Summary Jurisdiction Act, 1879, 42 & 43 V. c. 49; *V.* s. 49:

Tramways Act, 1870, 33 & 34 V. c. 78; *V.* s. 3:

Voluntary Schools Act, 1897, 60 & 61 V. c. 5; *V.* s. 4:

Weights and Measures Act, 1878, 41 & 42 V. c. 49; *V.* s. 50.

**LOCAL REGISTRAR.**—Stat. Def., Local Bankry (Ir) Act, 1888, 51 & 52 V. c. 44, s. 3; Dentists Act, 1878, 41 & 42 V. c. 33, s. 2.

**LOCAL TAXATION.**—“ Local Taxation (Ireland) Account ”; Stat. Def., 54 & 55 V. c. 48, s. 42.

“ Local Taxation Probate Duty ”; Stat. Def., 53 & 54 V. c. 60, s. 6.

**LOCAL TRAFFIC.**—*V.* THROUGH TRAFFIC: *Plymouth & Dartmoor Ry v. G. W. Ry*, 6 Ry & Can Traffic Ca. 101; *Midland Ry v. Manchester, &c Ry*, W. N. (70) 117. *Vj.* TRAFFIC.

**LOCALLY SITUATE.**—The exemption from CONVEYANCE ad val. Stamp Duty where the subject-matter is “Lands, tenements, hereditaments, or heritages, or PROPERTY, locally situate out of the UNITED KINGDOM,” s. 59 (1), Stamp Act, 1891, extends only to immovable property, *i.e.* Realty or quasi realty, and does *not* include that which has no locality, *e.g.* a CHOSE IN ACTION, or a mere License to use a PATENT (*Smelting Co v. Inl. Rev.*, 1897, 1 Q. B. 175; 66 L. J. Q. B. 137; 75 L. T. 534; 45 W. R. 203; 61 J. P. 116), or a TRADE-MARK (*Brooke v. Inl. Rev.* 1896, 2 Q. B. 356; 65 L. J. Q. B. 657; 44 W. R. 670). In the *Smelting Co's* case Esher, M. R., said, “If a Chattel is of a *touchable* character. — *i.e.* something which can be touched or seen, — it may perhaps have a Local Situation”: *V. Muller v. Inl. Rev.*, cited PROPERTY OTHER THAN LAND.

*Seemle*, a SPECIALTY debt is, quâ Stamp (Probate) Duty, locally situate in the place where it is found at the time of the death (*Comms of Stamps v. Hope*, cited IN).

*Vj.* *Farmer v. Inl. Rev.*, cited EQUITABLE.

*Cp.* CONTENTS: IN.

**LOCH.**—“River, Water, or Loch”; *V.* RIVER.

**LOCK-OUT.**—An excuse for non-fulfilment of a Contract on the ground of a Lock-out, —like one on the ground of a STRIKE, —in its ordinary meaning applies to labour disputes; the non-employment of men because there is no work for them to do, is not a Lock-out (*Re Richardsons and Samuel*, 77 L. T. 479; 66 L. J. Q. B. 868).

*V.* TURN-OUT.

**LOCKE'S ACT.**—The Solicitors Act, 1860, 23 & 24 V. c. 127.

**LOCKE KING'S ACTS.**—The Real Estates Charges Acts, 1854, 1867, and 1877: 17 & 18 V. c. 113, 30 & 31 V. c. 69, 40 & 41 V. c. 34.

**LOCO PARENTIS.**—“What is the meaning of a person *in loco parentis*? I cannot do better than refer to the definition of it given by Lord Eldon in *Es. p. Pye* (18 Ves. 140), referred to and approved by Lord Cottenham in *Powys v. Mansfield* (3 My. & C. 359, 367; 7 L. J. (Ch. 9). Lord Eldon says it is a person, ‘*meaning to put himself in loco parentis*, — in the situation of the person described as the lawful father of the child.’ Upon that Lord Cottenham observes, — ‘But this definition must, I conceive, be considered as applicable to those parental offices and duties to which the subject in question has reference, *viz.*, to the

office and duty of the parent to make provision for the child. The offices and duties of a parent are infinitely various, some having no connection whatever with making a provision for a child; and it would be most illogical, from the mere exercise of any of such offices or duties by one not the father, to infer an intention of such person to assume also the duty of providing for the child.' So that a person *in loco parentis* means, a person taking upon himself the duty of a *father* of a child to make a provision for that child" (per Jessel, M. R., *Bennet v. Bennet*, 10 Ch. D. 477: *Vf, Montagu v. Sandwich*, 32 Ch. D. 537: per Kay, J., *Re Hamlet*, 38 Ch. D. 190: *Re Ashton*, 1897, 2 Ch. 574; 66 L. J. Ch. 731; 77 L. T. 49; 46 W. R. 138; Wms. Exs. 1199: Elph. 350: Godefroi, 178, 533, 534).

V. PORTION.

**LOCOMOTIVE.** — A tricycle capable of being propelled by the feet, or by steam as an auxiliary, or by steam alone, but going along without noise or escape of steam or anything to frighten or cause danger beyond any ordinary tricycle, is a "Locomotive propelled by steam or by other than animal power" within s. 38, Highways and Locomotives (Amendment) Act, 1878, 41 & 42 V. c. 77 (*Parkyn v. Preist*, 50 L. J. Q. B. 648; 7 Q. B. D. 313; 30 W. R. 13; 45 J. P. 452), and, *semble*, is within the like def in s. 17 (1), 61 & 62 V. c. 29.

V. AGRICULTURAL: CARRIAGE: LIGHT LOCOMOTIVE: LOCOMOTIVE ENGINE.

**LOCOMOTIVE ENGINE.** — The use of Locomotive Engines upon a Railway was recognized in 1823 (*R. v. Pease*, 4 B. & Ad. 30).

As to when a Locomotive Engine was included in "Engine"; *V. Jones v. Festiniog Ry*, 9 B. & S. 835; 37 L. J. Q. B. 214; L. R. 3 Q. B. 733.

A steam-crane fixed on a trolley, and propelled by steam along a set of rails when it is desired to move it, is not a "Locomotive Engine" within s. 1 (5), Employers' Liability Act, 1880, 43 & 44 V. c. 42 (*Murphy v. Wilson*, 52 L. J. Q. B. 524).

V. RAILWAY.

**LODGER.** — "Generally speaking, a lodger is a person whose occupation is of part of a house, and subordinate to, and in some degree under, the control of a landlord or his representative, who either resides in or retains the possession of or dominion over the house generally, or over the outer door, and under such circumstances that the possession of any particular part of the house held by the lodger does not prevent the house generally being in the possession of the landlord.

"Where a landlord resides in part of a house, and there is an outer door from the street, and he, by himself or his servants, has the control of this outer door, and undertakes the care or control of rooms let to other persons and the access to them, and those rooms themselves have not any-

thing in the nature of an outer door, and are not structurally severed from the rest of the house, there could be little hesitation in saying that an occupier of those rooms, being part of the house, is only a *Lodger*. On the other hand, if there be no real outer door to the street, and neither the landlord nor his servants, nor any one representing him, occupies any part of the premises, or exercises any control over any part of them, and the rooms occupied by another person are structurally severed from the rest of the house and have an outer door to the general landing or staircase, and no one but such tenant has or exercises any care or control over the room or that outer door, as a general proposition, the person so occupying those rooms could not properly be said to be a lodger.

“It is always important in determining whether a man is a lodger, to see whether the owner of the house retains his character of master of the house, and whether he occupies a part of it by himself or his servants, and at the same time retains the general control and dominion over the whole house, and this he may do though he do not personally reside on the premises.”

The foregoing definition is taken from the judgment of Bovill, C.J., in *Thompson v. Ward* (40 L. J. C. P. 188; L. R. 6 C. P. 360, 361), and it seems closely applicable for determining who *as Lodger* is entitled to the *Parliamentary Franchise*. Perhaps a Lodger for the purpose of that franchise may be generally and briefly defined to be, — One who occupies apartments, whether furnished or not, in another man’s dwelling-house, and who, besides the benefit of that occupation, is entitled to domestic service, or otherwise to participate (more or less) in the general economy of the house. If the rooms are, so to speak, self-sufficient, they would seem to confer the Household Franchise as being a “part of a house . . . SEPARATELY occupied as a dwelling” (s. 5, 41 & 42 V. c. 26: *Vf, Anckettill v. Baylis*, 52 L. J. Q. B. 104; 10 Q. B. D. 577; *Bradley v. Baylis*, 51 L. J. Q. B. 183; 8 Q. B. D. 195; *Hogan v. Sterrett*, 20 L. R. Ir. 344; *Thompson v. Ward*, sup: and the cases cited in those cases. *Vf, Allchurch v. Hendon*, cited SEPARATE OCCUPATION: LODGING).

“Lodger Qualification”; Stat. Def., Rep. People Act, 1884, s. 7 (3, 5).

But the object of the *Lodgers’ Goods Protection Act*, 1871, 34 & 35 V. c. 79, is “to protect persons who are in the house under contract subordinate to that of the tenant, and who are in no direct relation to the landlord of the premises” (per Grove, J., *Phillips v. Henson*, 47 L. J. Q. B. 276); therefore, it was there held that an under-tenant who lodges — *i.e. semble*, resides, — in a house, under an agreement rendering him independent of its general economy, is none the less a Lodger within the meaning of the last-named Act (*Phillips v. Henson*, 47 L. J. Q. B. 273; 3 C. P. D. 26); though probably he would be a Householder for the purpose of the parliamentary franchise. Still even for the purpose of the Lodger’s Goods Protection Act there must be a retention by the imme-

diate landlord of the claimant-lodger of some such dominion over the house as the master of a house let in lodgings usually has (*Morton v. Palmer*, 51 L. J. Q. B. 7). In that case Brett, L. J., after noticing that the Act gives no definition of a "Lodger," proceeded to say, — "I am of opinion that the word 'Lodger' must be taken to mean, a lodger according to the understanding of that word by the majority of persons conversant with the modes of letting and occupying houses in this country to lodgers and under-tenants. The Courts have at various times given some tests which help to decide whether a person is a lodger or an under-tenant. I will refer to two tests which have been given. The first given by Mr. Justice Maule in *Toms v. Luckett* (17 L. J. C. P. 27; 5 C. B. 23), contains the fundamental proposition, which is as follows: — 'Where the owner of a house takes in a person to reside in a part of it, though such person has the exclusive possession of the rooms appropriated to him, and the uncontrolled right of ingress and egress, yet, if the owner retains his character of master of the house, the individual so occupying part of it occupies as a lodger only.' It is clear, therefore, that if all that has been done is for the owner or lessee of a house to give a man the house to live in on certain terms, that man may be a tenant or an under-tenant; but it cannot be said that the lessor has taken him in to lodge with him. It does not follow that a man who has been taken in to lodge with another should live at the table or sleep in the room of that other. He may very well have the exclusive use of part of the house. A further test was given by Mr. Justice Blackburn in *Allan v. Liverpool* (43 L. J. M. C. 69; L. R. 9 Q. B. 180), where he said: — 'A lodger in a house, although he has the exclusive use of rooms in the house in the sense that nobody else is to be there, and though his goods are stowed there,' — by which I understand him to mean that the rooms may be unfurnished, — 'yet he is not in exclusive occupation in that sense, because the landlord is there, for the purpose of being able, as landlords commonly do in the case of lodgings, to have his own servants to look after the house and the furniture, and has retained to himself the occupation,' — that is, of the house, — 'though he has agreed to give the exclusive occupation,' — that is, of the rooms, — 'to the lodger.' It follows that the person who takes in another to lodge must retain power in and dominion over the house, as the master of a house usually does in this country. It is not absolutely necessary that he should live or sleep in the house: he may live elsewhere and yet reserve power in and dominion over the house, such as a master of a house does in this country usually have. If, however, he goes away, if he gives up all power of dealing with the house as master, then I do not think it is possible to say that he takes another person in to lodge with him." Cotton, L. J., in the same case said: — "I think that a 'lodger' is a man living in a house owned by or leased by another person, and to some extent living there with that other person." *Vf, Ness v. Stephenson*, 9 Q. B. D.

245; *Heuwood v. Bone*, 13 Q. B. D. 179; 51 L. T. 125; 32 W. R. 752; 48 J. P. 710.

“If one come to an INN and make a previous contract for a lodging for a set time and do not eat or drink there, he is no GUEST, but a Lodger and as such is not under the Innkeeper’s protection; but if he eat and drink there, it is otherwise; or if he pay for his diet there though he do not take it there” (per Holt, C. J., *Parker v. Flint*, 12 Mod. 255).

Lodger or “Person Lodging” in licensed premises, s. 10, Licensing Act, 1874; *V. Pine v. Barnes*, 57 L. J. M. C. 28; 20 Q. B. D. 221; 58 L. T. 520; 36 W. R. 473; 52 J. P. 199; *Cope v. Landlès*, 41 S. J. 39. Liquor which, under this section, can be supplied to a Lodger must be for consumption by him on the premises (*Mountifield v. Ward*, 1897, 1 Q. B. 326; 66 L. J. Q. B. 246; 76 L. T. 202; 61 J. P. 216).

*Cp.* BOARDER: GUEST. *V.* 8 Encyc. 128.

**LODGING.**—For the purposes of the parliamentary franchise the term “Lodgings” includes “any apartments or place of residence, whether furnished or unfurnished, in a dwelling-house” (s. 5, 41 & 42 V. c. 26).

*V.* LODGER: PROPER LODGING.

As to implied fitness of Furnished Lodgings, *V. Smith v. Marrant*, and other cases, cited KEEP.

**LODGING-HOUSE.**—*V.* COMMON LODGING-HOUSE.

Quà Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, “‘Lodging-house,’ shall mean, a house in which Lodgers are housed for a less period than one week at a time, at an amount not exceeding 4*l.* per head per night” (s. 1).

“Lodging-houses for the WORKING CLASSES,” quà Part 3, Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, includes, “separate Houses or Cottages for the Working Classes, whether containing one or several tenements; and the purposes of this Part of this Act shall include the provision of such Houses and Cottages” (s. 53, replacing s. 2 (1), 48 & 49 V. c. 72, in which, however, the phrase was “Lodging-houses for the LABOURING CLASSES”).

**LONDON.**—“London,” in a Contract, means strictly and properly, the City of London, and not the Metropolis in its popular sense (*Mallan v. May*, 14 L. J. Ex. 48; 13 M. & W. 511); so, *semble*, in an Act of Parliament when not otherwise thereby defined (*Hudson v. Tooth*, *inf.*). But in *R. v. Lewen* (1 Sid. 405), there was a conviction for perjury for swearing that a person in Southwark was in London; but *thlc* “would be scarcely followed in the present day” (per Romilly, M. R., *Wallace v. A-G.*, 33 L. J. Ch. 316).

“The London Right” of a drama means, the whole right of repre-



sentation in London (*Taylor v. Neville*, 47 L. J. Q. B. 254); but in that case no definition of "London" was attempted, though it is obvious that it was accepted not in the restricted sense of *Mallan v. May*, but rather in a popular sense as embracing all the theatres which are usually called London Theatres.

In a Will where there was a bequest to the "Hospices de Londres," the Will being French and being made by an Englishman, who had resided all his life in France and who in his Will referred to his notary as "de Londres" (who however carried on business at Saville Row and had no place of business or residence in the City), Romilly, M. R., refused to follow *Mallan v. May* and only slightly regarded *R. v. Leven* (sup), and practically adopted Sir Wm. Petty's definition by which, writing in 1686, he defined "London" as, "The housing within the Walls, with the Liberties thereof, Westminster and the Borough of Southwark, and so much of the built ground in Middlesex and Surrey whose houses are contiguous unto, or within call of, those before mentioned" (*Wallace v. A-G.*, 12 W. R. 506; 33 L. J. Ch. 314; 33 Bea. 384; 10 L. T. 51, cited by Selwyn, L. J., *Carington v. Wycombe Ry*, cited TOWN: *Va. Beckford v. Crutwell*, 5 C. & P. 242; 1 Moo. & R. 187). *V. HOSPITAL.*

By s. 9, Public Worship Regn Act, 1874, 37 & 38 V. c. 85, the Bishop, to whom a representation under the Act is made, is to transmit it to the Archbishop who shall forthwith require the Judge to hear the matter "at any place within the Diocese or Province, or in London or Westminster"; held, that Lambeth Palace, which obviously is not in Westminster, is not in "London" within that enactment (*Hudson v. Tooth*, 47 L. J. Q. B. 18; 3 Q. B. D. 46). In that case Cockburn, C. J., pointed out why the collocation of "London" with "Westminster" connoted that "London" meant the City of London; but he also said, "Even if the term had been 'London,' simply, I doubt very much whether it would not have been going much too far to say that the term 'London' could be taken in that vague and loose sense in which the precincts of this huge Metropolis are now sometimes spoken of as 'London.'" *Wallace v. A-G.* (sup), was cited in *Hudson v. Tooth*, but rejected as an authority on the point to be decided in *this*, Mellor, J., observing that "the construction of a Will proceeds upon very different principles indeed from that of a Statute which defines and gives jurisdiction." *Vf, Serjeant v. Dale*, 46 L. J. Q. B. 781; 2 Q. B. D. 558.

Diocese of London; *V. Phil. Ecc. Law*, 24.

Quà Loc Gov Act, 1888, the "METROPOLIS" is "the ADMINISTRATIVE County of London" (subs. 1, s. 40); and the "Metropolis," means the City of London and the Parishes and Places mentioned in Schs A, B. & C to the Metrop Man Act, 1855, as amended by subsequent Acts" (s. 100); *Cp*, LONDON DISTRICT: *Vf*, London Gov Act, 1899, 62 & 63 V. c. 14: 8 Encyc. 11-34.

"London," "means the Administrative County of London" in the following statutes, 54 & 55 V. c. 76, s. 141; 55 & 56 V. c. 59, s. 9; 57 & 58 V. c. 53, s. 4.

"City of London"; Stat. Def., 11 & 12 V. c. clxiii, s. 262; 38 & 39 V. c. 36, s. 31.

"Port of London"; Stat. Def., Thames Conservancy Act, 1894, s. 3 and Sch 2: by the same section "London," quâ that Act, "means the Administrative County of London."

*V.* METROPOLIS.

**LONDON AGENT.** — Of a Country Solicitor; *V.* CLIENT.

**LONDON DISTRICT.** — Quâ the London Coal and Wine Duties (abolished as to Coals, 52 & 53 V. c. 17), "London District" was defined as, "so much of the several Counties of Middlesex, Surrey, Kent, Herts, Essex, Bucks. and Berks, as shall be situate within the Metropolitan Police District; and shall include the Cities of London and Westminster" (24 & 25 V. c. 42, s. 3).

For the Merchant Shipping Acts, "The London District" comprises "the waters of the Thames and Medway as high as London Bridge and Rochester Bridge respectively, and also the sea and channels leading thereto or therefrom as far as Orfordness, to the north, and Dungeness, to the south; so nevertheless that no Pilot shall be hereafter licensed to conduct Ships both above and below Gravesend" (s. 370 (1), 17 & 18 V. c. 104; repld s. 618, Mer Shipping Act, 1894). *Cp.* ENGLISH.

Quâ Infectious Disease (Notification) Act, 1889, 52 & 53 V. c. 72, "London District," means, the City of London, or the Parish or District mentioned in Sch A or Sch B of the Metrop Man. Act, 1855, for which a Local Authority is elected" (s. 16; for these Schs, *V.* METROPOLIS). *Cp.* LONDON, towards end.

**LONDON GAZETTE.** — *V.* GAZETTE.

A single sheet from the *London Gazette*, containing a notice, is not proof that such notice has appeared in the *Gazette* (*R. v. Lowe*, 52 L. J. M. (C. 122)).

**LONDON RIGHT.** — The "London Right" of a Drama, means the right of its representation in London (*Taylor v. Neville*, 47 L. J. Q. B. 254); *Vf.* LONDON.

**LONDON TIME.** — *V.* OF THE CLOCK.

**LONG.** — Possession to give a prescription at Common Law must be "long, continual, and peaceable" (Co. Litt. 113 b). "As to 'long,' Lord Coke says it is the time given by law, which in England is the 'time whereof there is no MEMORY of man to the contrary' . . . namely the time of Richard I. (A.D. 1189)" (per Ld Blackburn, *Dalton v. Angus*, 50 L. J. Q. B. 740; 6 App. Ca. 810, 811).

“Long Lease not at RACK RENT,” Sch 1, Part 2, 2nd Scale. Solrs Rem Ord, includes a Lease for 100 years (*Ex p. Connolly to Sheridan*, 1900, 1 I. R. 1; *where* on the phrase generally, and same followed *Re Robson*, cited LEASE).

As long as; *V.* QUAMDIU.

**LONG WEIGHT.** — *V.* TON.

**LOOK-OUT.** — “Proper Look-out,” in Bye Laws under Thames Conservancy Act, 1864; *V. Gosling v. Green*, or *Green v. Gosling*, 1893, 1 Q. B. 109; 62 L. J. M. C. 45; 67 L. T. 853; 41 W. R. 141; 57 J. P. 87.

**LOOM.** — *V.* BELONGING.

**LOOSE.** — To “turn loose” cattle on a thoroughfare, s. 54, 2 & 3 V. c. 47, means, to allow cattle to be there without any control at all, and does not apply to cattle turned out under the care of a boy (*Sherborn v. Wells*, 32 L. J. M. C. 179; 3 B. & S. 784). *Cp.* LYING ABOUT.

*V.* FAST AND LOOSE.

**LOP.** — To “lop” a tree, is to cut off its lateral branches; to “top” it, is to cut off its head. The powers as to lopping trees overhanging a Highway, s. 65, Highway Act, 1835, do not justify an Order to “top” such trees, nor can it excuse an injury done to trees by topping them (*Unwin v. Hanson*, 1891, 2 Q. B. 115; 60 L. J. Q. B. 531; 65 L. T. 511; 39 W. R. 587; 55 J. P. 662).

As to a landowner’s right to lop his neighbour’s overhanging trees. *V. Lemmon v. Webb*, 1895, A. C. 1; 64 L. J. Ch. 205; 71 L. T. 647.

**LORD.** — Quâ Copyhold Act, 1894, 57 & 58 V. c. 46, “‘Lord,’ means, a Lord of a Manor, whether seized for life, or in tail, or in fee simple, and whether having power to sell the manor or not; or the person for the time being filling the character of, or acting as, Lord, whether lawfully entitled or not; and includes, all Ecclesiastical Lords seized in right of the Church or otherwise, and Lords Farmers holding under them, and Bodies Corporate or Collegiate” (s. 94).

Lord of Parliament; *V.* PARLIAMENT: PEER.

**LORD CHANCELLOR.** — *V.* CHANCELLOR.

**LORD IN GROSS.** — The King: *V.* GROSS.

**LORD KEEPER.** — “Lord Keeper” is equivalent to “Lord Chancellor”; for he “hath always had, used, and executed, and of right ought to have, use, and execute,” and is to “have, perceive, take, use, and execute” . . . “the same and like place, authority, pre-eminence, jurisdiction, execution of laws, and all other customs, commodities, and advantages, as the Lord Chancellor of England” (5 Eliz. c. 18).

**LORD LIEUTENANT.** — *I.* s. 12 (9), Interp Act, 1889: *Cp.*, LIEUTENANT.

“Lord Lieutenant in Council,” is generally defined as, the Lord Lieutenant acting by and with the advice of the Privy Council in Ireland: *I.* 23 & 24 *V.* 152, s. 49; 26 & 27 *V.* c. 11, s. 3; 27 & 28 *V.* c. 54, s. 4; 30 & 31 *V.* c. 46, s. 1; 48 & 49 *V.* c. 78, s. 1.

**LORD ORDINARY.** — Quà the Clauses Consolidation Acts relating to Scotland, “Lord Ordinary,” means, “the Lord Ordinary of the Court of Session in Scotland officiating on the Bills in time of Vacation, or the Junior Lord Ordinary if in time of Session, as the case may be” (8 & 9 *V.* cc. 17, 19, 33, s. 3).

Other Stat. Def. — 19 & 20 *V.* c. 56, s. 47, c. 79, s. 4; 24 & 25 *V.* c. 86, s. 19; 31 & 32 *V.* c. 96, s. 1; 38 & 39 *V.* c. 61, s. 3; 55 & 56 *V.* c. 55, s. 4.

**LORDS ACT.** — The Debtors Imprisonment Act, 1758, 32 *G.* 2, c. 28, on *whc* s. 119, Judgments Act, 1838: it was amended by 33 *G.* 3, c. 5, and made perpetual by 39 *G.* 3, c. 50.

**LORD'S DAY.** — *V.* SUNDAY.

**LORDS OF THE ADMIRALTY.** — Stat. Def., 24 & 25 *V.* c. 45, s. 2.

**LOSS.** — The word “Loss,” s. 1, Carriers Act, 1830, does not comprise all cases where the owner of the article suffers damage from the neglect of the carrier to carry. It means such loss as the abstraction of a parcel by a stranger, or by the carrier's servant, not amounting to a felonious act; or by the carrier or his servants losing a parcel in its transit, or mislaying it so that it cannot be found when it ought to be delivered (*Hearn v. Lond. & S. W. Ry.*, 24 *L. J. Ex.* 181; 10 *Ex.* 801: *Vf. Harris v. G. W. Ry.*, 45 *L. J. Q. B.* 729; 1 *Q. B. D.* 515: *Skipwith v. G. W. Ry.*, 4 *Times Rep.* 589; *Roche v. Cork Ry.*, 24 *L. R. Ir.* 250).

It is, however, “immaterial whether the loss is temporary or absolute” (per Lopes, J., *Millen v. Brusck*, 51 *L. J. Q. B.* 166; 10 *Q. B. D.* 142; *affd.*, on this point, on appeal, 52 *L. J. Q. B.* 127); but in the case of a temporary loss, the carrier will not be protected against an unreasonable detention after the goods have been found (*Hearn v. Lond. & S. W. Ry.*, *sup.*: *Millen v. Brusck*, *sup.*).

Loss of goods by the THEFT of a Ry Co's own servant, is not one “occasioned by the NEGLIGENCE OR DEFAULT of such Co or its Servants” within s. 7, Ry and Canal Traffic Act, 1854; therefore, a Ry Co can contract itself out of liability for such a loss, even by a contract not “JUST and REASONABLE” as prescribed by the section (*Shaw v. G. W. Ry.*, 1894, 1 *Q. B.* 373; 70 *L. T.* 218).

“It has been held, that, in construing a Bottomry Bond, ‘Loss’ (of a

Ship) means, a loss by going to the bottom of the sea" (per Martin, B., *Broomfield v. Southern Insrce*, L. R. 5 Ex. 196; 39 L. J. Ex. 186: *Vf*; *The Great Pacific*, L. R. 2 P. C. 516; 38 L. J. Adm. 14, 45).

Where a ship's main shaft was broken by a PERIL OF THE SEA so that she had to be towed back for such delaying repairs as that her owners lost the freight; held, that such loss of freight was "consequent on Loss of Time, whether arising from a Peril of the Sea or otherwise," within an Exception to an Insrce on the freight (*Bensaude v. Thames and Mersey Insrce*, 1897, A. C. 609; 66 L. J. Q. B. 45, 666; 77 L. T. 282; 46 W. R. 78; 2 Com. Ca. 238: *Vf*; *Turnbull v. Hull Underwriters*, 1900, 2 Q. B. 402; 69 L. J. Q. B. 588; 82 L. T. 818; 5 Com. Ca. 248).

"Compensation for Loss or Damage"; *V. COMPENSATION.*

"Loss or Damage by Collision"; *V. DAMAGE BY COLLISION.*

"Personal injury is not 'Loss'; because a limb may be broken without being lost. The word 'Injury' would certainly be more apt" (per Brett, M. R., in delivering judgment of the Court, *Haigh v. Royal Mail Steam Packet Co*, 52 L. J. Q. B. 643). *V. INJURY.*

"Injury of Loss"; *V. COMPULSORY POWERS.*

*V. DAMAGE: FREIGHT: TOTAL LOSS: PARTIAL LOSS.*

"Loss," in s. 20, Artizans' and Labourers' Dwellings Improvement Act, 1875, 38 & 39 V. c. 36; *V. RIGHTS.*

"Losses," in a Contract as to Contribution in, e.g. a Building Socy's Rules, only includes "sums actually lost" (per Chitty, J., *Re Reliance Bg Socy*, 61 L. J. Ch. 455).

**LOST.**—"Lost Capital"; *V. CAPITAL.*

Is a Pawnbroker liable as for a "lost" Pledge if it be destroyed by Accidental Fire? *V. Ex p. Cording*, 4 B. & Ad. 198.

**LOST OR NOT LOST.**—An INSURANCE on Goods "lost or not lost," implies that "if the Ship or Goods should be lost at the time of the insurance, still the Underwriter, provided there be no fraud, is liable" (Park, 36: *Vf*; *Sutherland v. Pratt*, 12 L. J. Ex. 235; 11 M. & W. 296: *Gledstones v. Royal Ex. Assree*, 34 L. J. Q. B. 30; 5 B. & S. 797; 13 W. R. 71; 8 Encyc. 41). Such a policy is good though the chance of loss was in fact over in consequence of the arrival, or loss, of the thing insured, if both parties knew, or were ignorant, of the fact (*Bradford v. Symondson*, 50 L. J. Q. B. 582; 7 Q. B. D. 456: *Mead v. Davison*, 4 L. J. K. B. 193; 3 A. & E. 303). *V. RISK.*

When money for the carriage of goods by sea is payable at the port of destination, "Ship lost or not lost," and the ship is wrecked upon the voyage, the shipowner has no lien upon the goods, although the money to be paid for carriage is described as "Freight" (*Nelson v. Protection Assn*, 43 L. J. C. P. 218).

A stipulation in a Charter-Party that freight should be paid in advance, vessel "lost or not lost," does not prevent the charterer from recovering back the freight as damages from the ship-owner upon a loss of the vessel owing to negligence (*Gt. Indian Pen. Ry v. Turnbull*, 53 L. T. 325; 33 W. R. 874).

**LOT.** — *V. LARGEST: SCOT AND LOT.*

Solrs Scale Fee on sale of several Lots at one time; *V. Re Thomas*, cited TRANSACTION.

**LOT AND COPE.** — These are duties payable to the Crown in respect of workings of mines in the Hundred of High Peak, Derbyshire (*Wake v. Hall*, 50 L. J. Q. B. 548). *Vf*, *Cowel*; *Cope*: Jacob, *Cope*: *Cp*, SCOT AND LOT.

**LOT MEADS.** — *V. DOLE.*

**LOTHERWIT.** — " 'Lotherwit,' that is, that you may take amends of him which doth defile your bond-woman without your license " (Termes de la Ley).

**LOTTERY.** — " In *Webster's Dictionary* a Lottery is defined to be, 'A distribution of prizes by lot or CHANCE,' — and a similar definition is given in *Johnson*. Such definitions are, in our opinion, correct; and in such sense we think the word is used in s. 2, 42 G. 3. c. 119 " (per Hawkins, J., in delivering judgment of the Court. *Taylor v. Smetten*, 52 L. J. M. C. 101; 11 Q. B. D. 207). Accordingly it was held in that case that selling packets of good tea at prices worth the money, but in each packet of which (as publicly and truly stated) was a coupon entitling the purchaser to receive the prize (whatever it might turn out to be) mentioned on such coupon, was a "Lottery" within the statute. So, a Missing-Word Competition (where any one of several words would fill the blank but the winning word is selected by chance) is such a Lottery (*Barclay v. Pearson*, 1893, 2 Ch. 154; 62 L. J. Ch. 636; 68 L. T. 709; 42 W. R. 74); so, of a Weather-Forecast Competition (*R. v. Pearson*, 37 S. J. 749). *Vf*, SUBSCRIPTION OR CONTRIBUTION: EVENT: *Morris v. Blackman*, 2 H. & C. 912; 28 J. P. 199; *R. v. Harris*, 10 Cox C. C. 352.

But issuing coupons in connection with a Sporting Newspaper and offering prizes for naming winners of races on such coupons, is not a Lottery within the Act cited, or s. 41, Lotteries Act, 1823, 4 G. 4, c. 60 (*Caminada v. Hulton*, cited BET: *Stoddart v. Sagar*, 1895, 2 Q. B. 474; 64 L. J. M. C. 234; 73 L. T. 215; 59 J. P. 598; *Settle, R. v. Stoddart*, 83 L. T. 538); so, of a prize for predicting the number of births and deaths during a stated period in a stated locality (*Hall v. Cox*, 1899, 1 Q. B. 198; 68 L. J. Q. B. 167; 79 L. T. 653; 47 W. R. 161); so, of

a Co formed for making advances to its members, the members to receive advances to be selected by lot (*Wallingford v. Mutual Socy*, 50 L. J. C. P. 49; 5 App. Ca. 685), but a Building Socy established since 25th Aug 1894, is prohibited from adopting this system (s. 12, 57 & 58 V. c. 47). *Vf*, *Sykes v. Beadon*, 48 L. J. Ch. 522; 11 Ch. D. 170.

“Foreign Lottery”; *V*. FOREIGN.

*Vh*, 8 Encyc. 42-45: PUBLICATION.

*Cp*, GAMING: GAMING CONTRACT.

**Lord LOUGHBOROUGH'S ACT.**—Sometimes the THELLUSSON ACT is called Ld Loughborough's Act, his lordship being its author.

**LOW WATER.**—*V*. HIGH WATER.

**LOW WINES.**—Quà Spirits Act, 1880, 43 & 44 V. c. 24, “‘Low Wines,’ means, Spirits of the first extraction conveyed into a Low Wines Receiver” (s. 3).

**LOWER PASSENGER DECK.**—*V*. DECK.

**LOWEST PRICE.**—A. wires to B. “Will you sell me X? Telegraph lowest price”; B. wires back “Lowest Price for X is £900”; A. replies “I agree to buy X for £900 asked by you”: held, not a concluded bargain, for that “the mere statement of the lowest price at which the vendor would sell, contains no implied contract to sell at that price to the person making the enquiry” (*Harvey v. Facey*, 1893, A. C. 552; 62 L. J. P. C. 127; 69 L. T. 504; 42 W. R. 129).

**LOWEST RATE.**—“Lowest Rate for Like Traffic”; *V. Barry Ry v. Tuff Vale Ry*, 1895, 1 Ch. 128; 64 L. J. Ch. 230; 71 L. T. 688: MILE.

**LOYALTY.**—“Attachment to the person of the reigning sovereign does not complete the idea of ‘Loyalty.’ That comprehensive term includes within its meaning, not only affection to the Person, but also to the Office, of the King; not only attachment to royalty but, as the word itself imports, attachment to the law and to the constitution of the realm: and he who would, by force or by fraud, endeavour to prostrate that law and constitution (though he may retain his affection for its head) can boast but an imperfect and spurious species of Loyalty” (per Crampton, *J.*, *R. v. O'Connell*, 7 Ir. L. R. 300).

*V*. LIGEANCE. *Cp*, FEALTY.

**LUBBOCK'S ACT.**—The Bank Holidays Act, 1871, 34 & 35 V. c. 17; extended by 38 & 39 V. c. 13; 43 & 44 V. c. 17.

**LUCIFER.**—“Lucifer-Match Works”; *V*. NON-TEXTILE FACTORIES.

**LUGGAGE.**—The practical meaning of “Luggage,” in such a collocation as “Ordinary” or “Personal” Luggage, seems at least to get

illustration from considering its, probable, derivation as being something which is lugged about, — Ordinary or Personal Luggage being that which is lugged about on a journey for personal convenience, as distinct from what is carried about the person. “In *Butcher v. Lond. & S. W. Ry* (16 C. B. 13; 24 L. J. C. P. 137), the Co were made liable for £400, carried by a passenger as luggage in a carpet-bag. But I doubt whether, having regard to *Phelps v. Lond. & N. W. Ry* (cited PERSONAL LUGGAGE) and the authorities therein cited, it would now be held that such a sum would be included in ‘Luggage.’ As stated in the note to that case (19 C. B. N. S. 330), ‘It is a fraud to subject him (the Carrier) to so great a hazard without warning him of its existence.’ It may be that Money to a reasonable amount and intended for personal use, may be governed by other considerations” (per Gibson, J., *Roche v. Cork Ry*, 24 L. R. Ir. 256).

*Vh. Meux v. G. E. Ry*, 1895, 2 Q. B. 387; 64 L. J. Q. B. 657: *Pratt v. S. E. Ry*, cited RESPONSIBLE: *The Stella*, 81 L. T. 235; *Ib.* 1900, P. 161; 69 L. J. P. D. & A. 70.

V. BAGGAGE: ORDINARY LUGGAGE: PERSONAL LUGGAGE.

**LUNACY.** — “The Lunacy (Scotland) Acts, 1857 to 1887,” “The Lunacy (Ireland) Acts, 1821 to 1890”; V. Sch 2, Short Titles Act, 1896.

**LUNATIC.** — “A Lunatic is one who hath had understanding, but, by disease, grief or other accident, hath lost the use of his reason. He is, indeed, properly one that hath lucid intervals, sometimes enjoying his senses and sometimes not; and that, frequently depending upon the change of the Moon” (Jacob). *Cp.*, IDIOT.

“Lunatic,” s. 114, 8 & 9 V. c. 100, means, “every Insane Person, and every person being an Idiot or Lunatic, or of Unsound Mind”; imbecility arising from natural causes, — *e.g.* intemperance or old age, — would constitute “Unsoundness of Mind” within that section (*R. v. Shaw*, 37 L. J. M. C. 112; L. R. 1 C. C. R. 145). That Act is repealed by the Lunacy Act, 1890, quâ which latter statute “‘Lunatic,’ means, an Idiot, or Person of Unsound Mind” (s. 341); *Vf.*, s. 116 (1), on *whv.*, *Re Browne*, 1894, 3 Ch. 412; 63 L. J. Ch. 729; 71 L. T. 365; 43 W. R. 175.

Other Stat. Def. — Trustee Act, 1850, s. 2; 49 & 50 V. c. 25, s. 17. — *Scot.* 20 & 21 V. c. 71, s. 3; 25 & 26 V. c. 54, s. 1. — *Ir.* 8 & 9 V. c. 107, s. 26; 30 & 31 V. c. 44, s. 2.

“Alleged Lunatic”; V. ALLEGE.

“Criminal Lunatic”; Stat. Def., 47 & 48 V. c. 31, s. 18, c. 64, s. 16; Lunacy Act, 1890, s. 341. — *Ir.* 8 & 9 V. c. 107, s. 26.

“Pauper Lunatic”; V. PAUPER.

“Lunatic Asylum,” quâ *Loc Gov (Ir) Act*, 1898, “means, an Asylum for the Lunatic Poor under the Lunatic Asylum Acts” (s. 109), for which Acts, V. Sch 1, Part 2, of the Act.



"District Lunatic Asylum"; Stat. Def., 38 & 39 V. c. 67, s. 2. *V.* DISTRICT.

*V.* UNSOUND MIND: DANGEROUS.

*Vh.* Wood Renton on Lunacy: Pope, *Ib.*: Archbold, *Ib.*: 8 Encyc. 46-69.

**LUPULICETUM.** — "Where hoppes grow" (Co. Litt. 4 b): "a hop-yard or place where hops do grow" (Touch. 95).

**LYING.** — "Now lying"; *V.* Now.

*V.* LIAR.

**LYING ABOUT.** — Cattle, &c. may be "lying about" a Highway, s. 25, 27 & 28 V. c. 101, although under the control of a keeper (*Lawrence v. King*, L. R. 3 Q. B. 345; 37 L. J. M. C. 78; 9 B. & S. 325); but animals grazing and occasionally lying down and always under the control of a keeper, were not "wandering or straying" within s. 75, 4 G. 4, c. 95 (*Morris v. Jeffries*, 35 L. J. M. C. 143; L. R. 1 Q. B. 261). In *Lawrence v. King*, Blackburn, J., said, "I think if cattle driven along a Highway were to lie down for a short time and then were driven on again, they could not be said to be found 'lying about' the highway." *Cp.* LOOSE.

**LYING DAYS.** — *V.* LAY DAYS.

**LYNCHES: LINCES.** — "The banks between the terraces formed where a common field is on a hill-side by ploughing, so as to turn the sod down hill; also the terraces themselves: Seebohm, Eng. Vill. Comm. 5" (*Elph.* 592).

**Lord LYNDHURST'S ACTS.** — The Marriage Act, 1835, 5 & 6 W. 4, c. 54:

The Nonconformists Chapels Act, 1844, 7 & 8 V. c. 45:

The Execution Act, 1844, 7 & 8 V. c. 96.

**Lord LYTTON'S ACT.** — The Dramatic Copyright Act, 1833, 3 & 4 W. 4, c. 15, amended by 5 & 6 V. c. 45.

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## MACHINE — MADE

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**MACHINE.** — “Machine” includes the **ENGINE** that works it; *V.* **IMPLEMENT OF HUSBANDRY.**

“A table with a hole in it for water, used in the manufacture of bricks, was held not to be a ‘Machine prepared for, or employed in, any Manufacture,’ within the repealed 7 & 8 G. 4, c. 30, s. 4, *R. v. Penny*, Chester Summer Ass., 1855 (per Jervis, C. J., after consulting Campbell, C. J.). But it would, no doubt, have been held to be a ‘Tool’ or ‘Implement’ within” s. 15, 24 & 25 V. c. 97 (Arch. Cr. 645).

Quà Threshing Machines Act, 1878, 41 & 42 V. c. 12, “‘Threshing Machine,’ means, a threshing machine which is worked by steam, or by any motive power other than **MANUAL LABOUR**” (s. 5).

*V.* **WEIGHING : SPRAYING.**

**MACHINERY.** — “‘Machinery,’ implies the application of mechanical means to the attainment of some particular end by the help of natural forces; ‘Operative Machinery,’ means, Machinery with the potentiality of operating or doing work” (per Davey, L. J., *Chamberlayne v. Collins*, 70 L. T. 217: 10 Times Rep. 233); in *whe* it was held that a Switch-back Ry was within a covenant prohibiting the fixing of “Operative Machinery.”

*V.* **TRADE MACHINERY : DANGEROUS.**

“Hull and Machinery” of a **SHIP**; *V.* **HULL.**

“Machinery” contrasted with “Plant”; *V.* **PLANT.** *Va.* **FACTORY.**

Condition of Machinery; *V.* **DEFECT.**

“Machinery driven by . . . mechanical power,” s. 7 (1), Workmen’s Comp Act, 1897, is controlled only by “Building,” — that branch of the section contemplating two distinct classes of building, (1) One which exceeds 30 feet in **HEIGHT**; (2) One on which machinery driven by mechanical power is being used (*Mellor v. Tomkinson*, 1899, 1 Q. B. 374; 68 L. J. Q. B. 214; 79 L. T. 715; 47 W. R. 240; 63 J. P. 55).

Quà Factory and Workshop Act, 1901, “‘Machinery,’ includes, any driving-strap or band” (s. 156). *V.* **SAME.**

**MACKENZIE.** — *V.* **FORBES MACKENZIE’S ACT.**

**MADE.** — An Objection to the **RENEWAL** of a License, made privately to Justices before they come to Court, is not an “Objection made” within

s. 42, 35 & 36 V. c. 94 (*R. v. Merthyr Tydril*, 14 Q. B. D. 584; 54 L. J. M. C. 78). But an Objection made openly at the Annual Licensing Meeting is a good "Objection made," although the nature of the objection is not stated at the time (*Daykin v. Parker*, 1894, 2 Q. B. 556; 63 L. J. M. C. 246; 71 L. T. 379; 42 W. R. 625; 58 J. P. 835). A Constable's Report may constitute an Objection (*Hawkins v. Bridgwater Jus.*, 1900, 2 Q. B. 382; 69 L. J. Q. B. 663; 82 L. T. 847; 48 W. R. 587; 64 J. P. 631).

Foreign MARKETABLE SECURITY "made or issued"; *V. Revelstoke v. Inl. Rev.*, cited ISSUED. In that case *Ld Macnaghten* said that such a Security is "made" when and where "the finishing touch" is given to it.

So, a *Contract for Sale* is "made in England or Ireland," s. 59, Stamp Act, 1891, if, as an effective document, it is completed there (*Muller v. Inl. Rev.*, 1900, 1 Q. B. 310; 69 L. J. Q. B. 291; 81 L. T. 667). *V. WITHIN THE JURISDICTION.*

A Deposit of Stock with a Banker "against Acceptances made," is ambiguous and may mean, "Acceptances already made," or "Acceptances to be made during the continuance of the security"; parol evidence is admissible to explain the ambiguity (*Ulster Bank v. Synnott*, Ir. Rep. 5 Eq. 595).

A DISTRESS is "made" when the goods are seized; it is "levied" when the goods are sold: therefore, where the right to "make and levy" a Distress, after a stated event, is restricted, *e.g.* s. 31, 7 G. 4, c. 57, that restriction does not arise as regards a Distress commenced before, but completed by sale after, the event (*Wray v. Egremont*, 2 L. J. K. B. 48; 4 B. & Ad. 122).

A Receiving Order in Bankruptcy is "made" when it is pronounced, not when it is afterwards formally drawn up and signed (*Re Manning*, 55 L. J. Ch. 613; 30 Ch. D. 480; 54 L. T. 33; 34 W. R. 111).

An Order by a Chancery Judge in Chambers is "made," not when it is pronounced but, when it is signed and entered, or otherwise perfected (*Heatley v. Newton*, 19 Ch. D. 326; 51 L. J. Ch. 225).

As to when an Order is made "on" a person; *V. IN WRITING.*

A Poor Rate is "made" when it is signed by the Parish Officers, and allowed by the Justices (*Jones v. Bubb*, L. R. 4 C. P. 468; 38 L. J. C. P. 57).

A WILL is "made," 20 & 21 V. c. 57, s. 1, when it is signed with such formalities as the law requires (*Re Eleom*, 1894, 1 Ch. 303; 63 L. J. Ch. 392; 70 L. T. 54; 42 W. R. 279). *Cp.* EXECUTE.

Will of a Married Woman "made during COVERTURE," s. 3, M. W. P. Act, 1893, applies to such a Will, whenever made, of every married woman dying after the date of the Act (*Re Wylie*, 1895, 2 Ch. 116; 64 L. J. Ch. 613; 43 W. R. 475). *V. DURING.*

"Made," in the Irritant Clause of a Scotch Entail making contra-

ventions void "suchlike as if the same had never been made"; *V. Howden v. Fleeming*, L. R. 1 Sc. & D. App. 40.

*V.* ACKNOWLEDGE.

"Made or Issued"; *V.* ISSUED.

Building "made or suffered to continue"; *V. Pearson v. Kingston*, 35 L. J. M. C. 326; 3 H. & C. 921.

Artistic Work "made"; *V.* PRODUCED.

"Matter or Thing begun or made"; *V.* BEGIN.

"Made to Appear"; *V.* APPEAR.

"Made Binding"; *V.* REQUIRED: OBLIGATORY: BIND.

*V.* MAKE.

**MADE WINE.** — *V.* BRITISH WINE: SWEETS: WINE.

**MADRAS COTTON.** — *V. Azemar v. Casella*, 36 L. J. C. P. 263; L. R. 2 C. P. 677.

**MAG-BOTE.** — *V.* BOTE.

**MAGAZINE.** — Quà Explosives Act, 1875, "Magazine," includes, any SHIP or other Vessel used for the purpose of keeping any explosive" (s. 108). *C<sub>p</sub>*, "Factory Magazine," sub FACTORY.

**MAGIC.** — *V.* CONJURATION.

**MAGISTRATE.** — "Of Magistrates, some are *Supreme*, in whom the Sovereign Power of the State resides; others are *Subordinate*, deriving all their authority from the Supreme Magistrate, accountable to him for their conduct and acting in an inferior secondary sphere" (1 Bl. Com. 146: *V.* *Ib.* Bk. 1, chs. 2, 3, 4, 5, 6, 7, quà Supreme, and ch. 9, quà Subordinate, Magistrates).

But in ordinary daily affairs "Magistrate" commonly connotes a Justice of the Peace (or his Scotch or Irish equivalent), or a Stipendiary Magistrate. In a modern Act the meaning of "Magistrate" will frequently be ascertained by referring to its Interp Clause, *e.g.* —

Bail (Scot) Act, 1888, 51 & 52 V. c. 36, s. 9:

Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, s. 4:

Burgh Voters Registration (Scot) Act, 1856, 19 & 20 V. c. 58, s. 48:

Burghs (Scot) Act, 1852, 15 & 16 V. c. 32, s. 1:

Dockyard Ports Regn Act, 1865, 28 & 29 V. c. 125, s. 2:

Fugitive Offenders Act, 1881, 44 & 45 V. c. 69, s. 39:

Industrial Schools Act, 1866, 29 & 30 V. c. 118, s. 4:

Industrial Schools Act (Ir), 1868, 31 & 32 V. c. 25, s. 3:

Lunacy Act, 1890, 53 & 54 V. c. 5, s. 341:

Mer Shipping Act, 1894, 57 & 58 V. c. 60, s. 610 (9):

Metropolis Gas Act, 1860, 23 & 24 V. c. 125, s. 4:

Metropolitan Streets Act, 1867, 30 & 31 V. c. 134, s. 3:

Prevention of Gaming (Scot) Act, 1869, 32 & 33 V. c. 87, s. 2:

P. II. Scotland Act, 1897, 60 & 61 V. c. 38, s. 3:

Reformatory Schools Act, 1866, 29 & 30 V. c. 117, s. 3:

Sheriff Court Houses Act, 1860, 23 & 24 V. c. 79, s. 2:

Summary Procedure Act, 1864, 27 & 28 V. c. 53, s. 2:

Summary Prosecutions Appeals (Scot) Act, 1875, 38 & 39 V. c. 62, s. 2:

Trespass (Scot) Act, 1865, 28 & 29 V. c. 56, s. 2.

A Police Magistrate, or Metropolitan Police Magistrate, is a paid Magistrate appointed to act at, and sitting at, a Police Court within the Metropolitan Police District (s. 29, 11 & 12 V. c. 42: *Vh*, 2 & 3 V. c. 71; 3 & 4 V. c. 84: *Edwards v. Hodges*, 15 C. B. 477; 24 L. J. M. C. 81; 3 W. R. 167; 24 L. T. O. S. 237). Stat. Def., 33 & 34 V. c. 52, s. 26. — *Ir*. 50 & 51 V. c. 58, s. 77 (*d*). *Vf*, METROPOLITAN.

A Stipendiary Magistrate is a paid Magistrate appointed for any City, Town, Liberty, Borough, or Place, outside the Metropolitan Police District (s. 29, 11 & 12 V. c. 42: *Vh*, 21 & 22 V. c. 73; 26 & 27 V. c. 97). Sometimes "Stipendiary Magistrate" is made to include a Metropolitan Police Magistrate (32 & 33 V. c. 99, s. 2). The Scotch equivalent for "Stipendiary Magistrate" is, Sheriff or Sheriff Substitute (32 & 33 V. c. 99, s. 2; 34 & 35 V. c. 78, s. 16; 35 & 36 V. c. 76, s. 73; 38 & 39 V. c. 17, s. 109; 50 & 51 V. c. 58, s. 76). Stat. Def., quà Ireland, 7 & 8 V. c. 106, s. 156; 32 & 33 V. c. 99, s. 2; 39 & 40 V. c. 80, s. 42; Mer Shipping Act, 1894, s. 610 (9).

"Magistrates of *Burghs*"; Stat. Def., *Scot*. 17 & 18 V. c. 91, s. 42; 20 & 21 V. c. 71, s. 3; 25 & 26 V. c. 35, s. 30.

"Magistrates and Council"; Stat. Def., *Scot*. 30 & 31 V. c. 107, s. 1; 31 & 32 V. c. 42, s. 2; 50 & 51 V. c. 42, s. 2.

*V*. CHIEF: COMPETENT: JUSTICE: RESIDENT MAGISTRATE.

**MAGNATES.** — *V*. GREAT MEN.

**MAGNOLIA.** — *V*. GEOGRAPHICAL.

**MAIL.** — "*Mail*," quà Post Office (Offences) Act, 1837, 1 V. c. 36, includes, "every conveyance by which post letters are carried, whether it be a Coach or Cart or Horse or any other conveyance, and also a Person employed in conveying or delivering post letters, and also every Vessel which is included in the term 'Packet Boat'" (s. 47).

"Mail Bag," quà same Act and by same section, means, "a Mail of Letters, or a Box or a Parcel or any other Envelope in which post letters are conveyed, whether it does or does not contain post letters": *Vf*, 54 & 55 V. c. 31, s. 9.

"*Mails*," quà Regn of Railways Act, 1873. 36 & 37 V. c. 48, "includes, Mail Bags and Post-letter Bags," s. 3; quà Conveyance of Mails Act, 1893, 56 & 57 V. c. 38, the word has a like inclusiveness, with the addition of "Parcels within the meaning of the Post Office (Parcels) Act, 1882" (s. 5).

**MAIM.** — “ ‘*Mayhem*,’ *mahemium*, *membri mutilatio*, or *obtruncatio*, cometh of the French word *mehaigne*, and signifieth a corporall hurt, whereby hee loseth a member, by reason whereof hee is lesse able to fight; as by putting out his eye, beating out his fore-teeth, breaking his skull, striking off his arme hand or finger, cutting off his legge or foot, or whereby he loseth the use of any of his said members ” (Co. Litt. 288 a). “ And the law hath so appropriated this word *mayhem*, which our author here (s. 194) useth, to this offence, as *mayhemavit* cannot be expressed by any other word, as *mutilavit*, *truncavit*, or *detruncavit*, or the like ” (Ib. 126 a, b). *Vh*, *Termes de la Ley*, *Maihim* or *Maim*.

“ A Maim is bodily harm whereby a man is deprived of the use of any member of his body, or of any sense which he can use in fighting, or by the loss of which he is generally and permanently weakened; but a bodily injury is not a Maim merely because it is a disfigurement ” (Steph. Cr. 142).

In shooting with intent to maim (24 & 25 V. c. 100, s. 18), “ to Maim is to injure any part of a man’s body which may render him, in fighting, less able to defend himself, or annoy his enemy ” (Arch. Cr. 807).

*V*. **DISABLE: DISFIGURE.**

**MAIN.** — Quà Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, “ ‘Main’ means, any Electric Line which may be laid down by the Undertakers in any street or public place, and through which ENERGY may be supplied, or intended to be supplied, by the Undertakers for the purposes of GENERAL SUPPLY ” (Sch, s. 1). *V*. “ Distributing Main,” sub **DISTRIBUTE.**

Gas and Water Mains; *V*. **EASEMENT: HEREDITAMENT: PIPES.**

**MAIN DRAINAGE.** — Stat. Def., 57 & 58 V. c. 11, s. 3.

“ Main Drainage Securities ”; Stat. Def., 34 & 35 V. c. 47, s. 2.

**MAIN PURPOSE.** — The “ Main Purpose ” of a Co, s. 1 (5*b*), Comp Mem of Assn Act, 1890, is that which is its leading distinctive idea; it is not within the “ Main Purpose ” of a Co formed to invest in Government Stocks to give it the additional power of investing in Trust or Investment Companies (*Re Governments Stock Investment Co*, 1891, 1 Ch. 649; 60 L. J. Ch. 477; 64 L. T. 339; 39 W. R. 375). *Cp*, *Small v. Smith*, 10 App. Ca. 119, 129. *Vf*, *Re Coolgardie Gold Mines*, cited **JUST.**

*V*. **EFFICIENTLY: CONSTITUTED.**

**MAIN ROAD.** — A Main Road is, speaking generally, a Road which is a medium of communication between TOWNS (*V*. s. 15, 41 & 42 V. c. 77).

There are two classes of Main Roads, —

1. Roads which were **TURNPIKE ROADS** on 31st Dec 1870 and since disturnpiked (s. 13, 41 & 42 V. c. 77):

2. Roads which have been declared to be Main Roads by Order of Quarter Sessions (s. 15, *Ib.*), or, since the *Loc Gov Act*, 1888, by Order of a County Council (s. 3 (viii), *Loc Gov Act*, 1888) or of a Borough Council quâ roads in a County Borough (s. 34, *Ib.*). "Main Road," when used in the *Loc Gov Act*, 1888, "in relation to the District of any Highway or Road Authority, means, so much of the Main Road as is situate within the District of such AUTHORITY" (s. 100).

*V. Lancashire v. Rochdale*, 53 L. J. M. C. 5; 8 App. Ca. 494; 32 W. R. 65; 49 L. T. 368; 48 J. P. 20: *West Riding v. The Queen*, 53 L. J. M. C. 41; 8 App. Ca. 781; 32 W. R. 253: *Newton-in-Makerfield v. Lancashire Jus.*, 54 L. J. M. C. 1; 56 *Ib.* 17; 13 Q. B. D. 623; 15 *Ib.* 25; 33 W. R. 488; 48 J. P. 406: *Middlesex Co. Co. v. Willesden*, 12 *Times Rep.* 437: *Glen on Highways*, 2 ed., 20, 920.

The Footways of a TURNPIKE ROAD are, like those of any other road, part of it; and, on such road being distrupiked, its footways are part of the resulting Main Road (*Re Burslem and Staffordshire Co. Co.*, 1896, 1 Q. B. 24; 65 L. J. Q. B. 1; 73 L. T. 651; 44 W. R. 356; 59 J. P. 722: *Derby Co. Co. v. Matlock*, 1896, A. C. 315; 65 L. J. Q. B. 419; 74 L. T. 595; 60 J. P. 676, approving *Re Warminster and Wilts Co. Co.*, 59 L. J. Q. B. 434; 25 Q. B. D. 450).

*V. HIGHWAY: CEASE.*

"*Main Haulage Road*"; Stat. Def., *Coal Mines Regn Act*, 1887, s. 49, R. 12 (*k*).

**MAIN SEA.** — The Main Sea is the Ocean: *V. SEA.*

**MAIN TIMBERS.** — *V. TIMBERS.*

**MAIN WALL.** — *V. FRONT MAIN WALL.*

**MAINLY.** — *V. PASTURE.*

**MAINOUR.** — *V. MANNER.*

**MAINPERNOR.** — "Mainpernors differ from BAIL in that a man's Bail may imprison or surrender him up before the stipulated day of appearance; Mainpernors can do neither, but are barely sureties for his appearance at the day: Bail are only sureties that the party be answerable for the special matter for which they stipulate; Mainpernors are bound to produce him to answer all charges whatsoever" (3 *Bl. Com.* 128). *V.* MAINPRISE.

**MAINPRISE.** — " 'Mainprise,' is when a man is arrested by *Capias*, then the Judge may deliver his body to certaine men for to keep and to bring him before him at a certain day, and these be called MAINPERNORS; and if the party appeare not at the day assigned the mainpernors shall be amerced" (*Termes de la Ley*). *V. BAIL: AMERCIAMENT.*

**MAINTAIN.** — To "maintain" an ACTION, is to support one which has already been brought (*per Platt. B.*, *Moon v. Durdan*, cited BROUGH);

but the majority of the Court in that case held that, though the Gaming Act, 1845, provided that no suit should be "brought or maintained" for the recovery of a Wager, yet that that was not enough to give the Act a RETROSPECTIVE effect so as to prevent a plt, who had begun his action for a wager before the Act was passed, from going on with it after the passing of the Act. *V. MAINTENANCE.*

An Act which prohibits an uncertificated or unqualified person from "maintaining an Action or Suit" for the recovery of his fees, &c, is not quite the same thing as an Act which makes the fees not "recoverable." Thus s. 26, Solrs Act, 1843, enacts that no Uncertificated Solr "shall be capable of maintaining any Action or Suit . . . for the recovery of any fee, reward, or disbursement," in respect of a client's litigation; held, that a Client's Common Order to Tax was not within those words, and that his Solr, though uncertificated, was, under such an Order, entitled to have his costs allowed, for the Order was not an "Action or Suit" and it was not "maintained" by the Solr (*Re Jones*, 39 L. J. Ch. 83; L. R. 9 Eq. 63; *Re Hope*, 7 Ch. 766: *Va.*, s. 26, Solrs Act, 1860). But the sections cited are now replaced by s. 12, Solrs Act, 1874, which provides that no costs, &c, of an Unqualified Solr "shall be recoverable in any Action, Suit, or Matter, by any person or persons whomsoever," under which words the successful client of an uncertificated solr cannot recover his solr's costs from the other side (*Fowler v. Monmouthshire Canal Co*, 48 L. J. Q. B. 457; 4 Q. B. D. 334), nor can such a solr get his costs, &c, allowed under his client's Common Order to Tax (*Re Sweeting*, 1898, 1 Ch. 268; 67 L. J. Ch. 159; 78 L. T. 6; 46 W. R. 242), for even under such an Order the solr seeks to recover his costs, and the proceeding is a "Matter" (even if it be not an "Action or Suit") which may be "by any person" and is not restricted to one by the solr (*Ib.*).

Quà Ancient Monuments Protection Act, 1882, 45 & 46 V. c. 73, " 'Maintain' and 'Maintenance,' include, the fencing, repairing, cleansing, covering in, or doing any other act or thing which may be required for the purpose of repairing, any MONUMENT, or protecting the same from decay or injury" (s. 2): should not "Monument" here be "ANCIENT MONUMENT"?

"Control, manage, and maintain," a HIGHWAY; *V. CONTROL.*

Taking water "for the purpose of maintaining the *Navigation*" of a CANAL; *V. Llewellyn v. Swansea Canal Nav.*, 27 L. J. Ex. 85; 2 H. & N. 509.

To "maintain and repair" a ROAD, does not include lighting it (*County Road Trustees v. Fleming*, W. N. (86) 180). *Cp.* *Sevenoaks Ry v. L. C. & D. Ry*, *inf.* and *Loc Gov (Ir) Act*, 1898, s. 109.

"Where an express statutory right is given to 'make and maintain' a thing necessarily requiring support, — *e.g.* a Canal, — the statute, in the absence of a context implying the contrary, must be taken to mean that the right to necessary support of the thing constructed shall accom-



pany the right to 'make and maintain' it" (per Bowen, L. J., *Lond. & N. W. Ry v. Evans*, 1893, 1 Ch. 16; 62 L. J. Ch. 1; 67 L. T. 630; 41 W. R. 149).

"*Work and maintain*" a RAILWAY; *V. Severnocks, &c Ry v. L. C. & D. Ry*, 48 L. J. Ch. 513; 11 Ch. D. 625: In that case Jessel, M. R., said, — "It is very difficult to define what Works of Maintenance are. It is a very large term; and useful and reasonable ameliorations would not be excluded by it. For instance, if a Co had power to maintain the Banks of a River on one side, might they not put on a facing to the banks in a particular way, even supposing that they were restricted, under the words of maintenance, to keeping up the banks in precisely the same mode, which might have been very good when the banks were originally formed but which had been very much improved by the subsequent advance of science? So, where a Ry Co has to maintain a Railway, I should not at all doubt for a moment that in 'maintaining' it they might use any reasonable improvement. If, for instance, the Ry were originally fenced with wooden palings and it was sought, when they decayed, to replace them by an iron structure, I should say, that was fully within their power. If the Ry was originally made in a deep cutting and it was thought desirable to face the cutting with brick to make it more secure, I should say, that was fair Maintenance: and if the Ry Station was found inconvenient and it was desirable when you came to repair it to alter the arrangement of the rooms or to alter the access or form of access and so to ameliorate at the same time that you repaired, I should say, all that was within the powers of Maintenance given by the legislature. That is, that you may maintain by keeping in the same state, or you may maintain by keeping in the same state *and* improving the state, — always bearing in mind that it must be Maintenance as distinguished from Alteration of Purpose." So, quâ *Loc Gov (Ir) Act*, 1898, " 'Maintenance,' when used in relation to any Road or Public Work, includes, the reasonable improvement and enlargement of such road or work" (s. 109). *Cp.*, cases quâ Highway, sub MAINTENANCE.

*V. REPAIR: UPHOLD.*

**MAINTENANCE.** — Maintenance has two meanings:

1. Maintenance of an Action;
2. Maintenance of Persons, Corporeal Things, or Documents.

1. In the judgment in *Brodlaugh v. Newdegate* (52 L. J. Q. B. 454; 11 Q. B. D. 1), Coleridge, C. J., said that perhaps the fullest and completest definition of "Maintenance" was to be found in *Termes de la Ley*, which is as follows, — " 'Maintenance,' is where any man giveth or delivereth to another, that is plaintife or defendant in any action, any sum of money or other thing for to maintaine his plee, or else maketh extreame labour for him, when he hath nothing therwith to doe; then the party grieved shall have against him a Writ, called a Writ of Maintenance."

*V.*, same judgment for collection of other definitions of "Maintenance" and their application to the case then before the Court: *Vf*, *Alabaster v. Harness*, 1895, 1 Q. B. 339; 64 L. J. Q. B. 76; 71 L. T. 740; 43 W. R. 196; *Sarill v. Langman*, 79 L. T. 44; Steph. Cr. 97, 355; Co. Litt. 368 b. But to assist an action *out of charity* is not Maintenance, even though the charity be not discreet (*Harris v. Brisco*, 55 L. J. Q. B. 423; 17 Q. B. D. 504; 55 L. T. 14; 34 W. R. 729). *V.* MAINTAIN: CHAMPERTY. *Note*: This doctrine of Maintenance is confined to Civil, and does not apply to Criminal, proceedings (*Grant v. Thompson*, 72 L. T. 264; 43 W. R. 446; 11 Times Rep. 207): As to Measure of Damages, *quà* Civil proceedings, *V.* *Alabaster v. Harness*, *sup.* *Seemle*, that Maintenance "is not an Equitable Offence" (per James, V. C., *Elborough v. Ayres*, 39 L. J. Ch. 602; L. R. 10 Eq. 367).

2. By s. 4, Prison Act, 1877, 40 & 41 V. c. 21, the "Maintenance" of Prisons and Prisoners is to be defrayed out of moneys provided by Parliament; and by s. 57, "the Maintenance of a Prisoner" "includes, all such necessary expenses incurred in respect of a prisoner for food, clothing, custody, safe conduct, and removal from one place of confinement to another or otherwise," from the time the Order of Committal is made out until his death or discharge; and includes, the cost of his conveyance from where he is committed to his place of confinement, and the cost of his food, &c. when in a lunatic asylum during the term of his imprisonment (*Mullins v. Surrey*, 51 L. J. Q. B. 145; L. R. 7 App. Ca. 1; *Mews v. The Queen*, 52 L. J. M. C. 57; 8 App. Ca. 339), or, if after imprisonment the prisoner be sent to a Reformatory School, the cost of suitable clothing prior to his admission there (*Prison Commrs v. Liverpool*, 49 L. J. Q. B. 431; 5 Q. B. D. 332).

"Costs of Maintenance" of Criminal Lunatics; *V.* 47 & 48 V. c. 64. s. 16.

Costs other than for the "Prosecution, Maintenance," &c, of Offenders; *V.* PROSECUTION.

"Support and Maintenance" of Prisoners; *V.* SUPPORT: — of Donee of a Power. *V.* inf.

*V.* COMMITMENT: PRISONER.

The "Maintenance" of persons, includes their Lodging, and consequently the payment of the necessary rent, rates, and taxes; therefore, the payment of rates on a Lunatic Asylum is part of the EXPENSES of "Maintenance" of pauper lunatics within ss. 283 (1), 287 (1), Lunacy Act, 1890 (*R. v. Dolby*, 1892, 2 Q. B. 301; 61 L. J. Q. B. 809; 67 L. T. 296; 56 J. P. 599).

*Quà* 56 & 57 V. c. 42. "Maintenance," includes Clothing" (s. 15).

An obligation attached to a Testamentary Gift for "maintaining, educating, and bringing-up," children, includes such adequate supply of house-room, food, clothing, and other necessaries, as can reasonably be expected from the person who has to discharge such obligation, having

regard to his or her station in life and that of the children and the means available; added to that, the word "Education" connotes a like reasonable and proper scholastic instruction, either at school or by private tuition; it is difficult to give any definite additional meaning to "Bringing up," but that phrase connotes something more than "Maintenance and Education," e.g. the formation of the moral character and the general equipment for a healthy life, and must be accomplished properly: thus, a widow is not properly "bringing-up" her late husband's children if they are in a home where she is cohabiting with a man to whom she is not married, and especially is this so if the man is married to another woman (*Re G.*, 1899, 1 Ch. 719; 68 L. J. Ch. 374; 80 L. T. 470; 47 W. R. 491). If, however, children have to be removed because the mother is not bringing them up properly, a reasonably adjusted portion of the income must be appropriated for her own personal maintenance and support (*Ib.*).

As to what words will create an obligation for the Maintenance of Children, *V. Booth v. Booth*, 1894, 2 Ch. 282; 63 L. J. Ch. 560; 42 W. R. 613; *Longmore v. Eleum*, 12 L. J. Ch. 469; 2 Y. & C. Ch. 363; *Castle v. Castle*, 1 D. G. & J. 352; Lewin, 148-151.

A trust for Maintenance and Education does not, by implication, cease at 21, but is frequently one for life (*Bayne v. Crouther*, 20 Bea. 400; *Brocklebank v. Johnson*, *Ib.* 211, 212; *Curr v. Living*, 33 Bea. 474; *Scott v. Key*, 35 Bea. 291; *Wilkins v. Jodrell*, 49 L. J. Ch. 26; 13 Ch. D. 564; 41 L. T. 649; 28 W. R. 224; *Booth v. Booth*, *sup.*: 1 Jarm. 400, *n.*; *Sr, Gandy v. Gandy*, 30 Ch. D. 76); *secus*, if it be for "Maintenance, Education, and Bringing-up" (*Badham v. Mee*, 1 Russ. & My. 632; *Somes v. Martin*, 3 Jur. 1144). As to cesser on a woman's Marriage, *V. Boarden v. Laing*, 14 Sim. 113; *Curr v. Living*, 28 Bea. 644. Probably, a Power for "Maintenance," without more, will generally last as long as the object requires support (*Curr v. Living*, 28 Bea. 645, 647; *Booth v. Booth*, *sup.*: *Vf, Williams v. Papworth*, *inf.*); but *Booth v. Booth* seems to show that, generally, a Trust for "Education" ceases at 21.

The Court will not over-rule the DISCRETION of Trustees when *bonâ fide* exercising, or refusing to exercise, a Power for Maintenance (*Wilson v. Turner*, 52 L. J. Ch. 270; 22 Ch. D. 521; *Re Bryant*, 1894, 1 Ch. 324; 63 L. J. Ch. 197; 70 L. T. 301; 42 W. R. 183), and, sometimes, money may be so applied when the years for Maintenance have expired (*Re Wise*, 1896, 1 Ch. 281; 65 L. J. Ch. 281; 73 L. T. 743; 44 W. R. 310).

But, observe, that sometimes there is no discretionary power, but a definite yearly sum is given "for," or "to be applied for," the Maintenance, Clothing,  $\frac{\text{and}}{\text{or}}$  Education of a CLASS, without more, in which case the members of that Class take a Joint Interest in the yearly sum. Thus, where an Annuity of £416 was "to be applied by the Trustees for the Maintenance and Education of such children or child as aforesaid."

that meant that "the children took a Joint Interest in the annuity,—but the shares of Minors were to be applied for their Maintenance and Education." for "the word 'applied' did not import a Power of Selection: it simply meant 'devoted to,' or 'employed for the special purpose of'" (*Williams v. Papworth*, 1900, A. C. 563; 69 L. J. P. C. 129; 83 L. T. 184). In that case the P. C. cited in support of their judgment *Lewes v. Lewes* (17 L. J. Ch. 425; 16 Sim. 266), *Somes v. Martin* (sup), and *Wilkins v. Jodrell* (sup), and stated *Lewes v. Lewes* thus,—"Certain estates were devised to trustees in trust to receive the rents and pay thereout the yearly sum of £300 for and towards the Maintenance, Clothing, and Education, of all and every the children of the testator's eldest son in equal shares and proportions during the life of the son. The eldest son had 3 children, one of whom died in his father's lifetime. The V. C. said, 'There is no sensible way of dealing with this case except by taking the words,—for the Maintenance, Clothing, and Education,—to be equivalent to, for the Benefit of the children'; and he therefore declared that the Personal Representative of the deceased child was entitled to one third of the £300 a year, during the life of the father."

A Power to a Wife to appoint for her "Maintenance and Support" enables her to appoint the corpus (*Re Heginbotham*, W. N. (84), 179).

For the statutory power of Trustees to apply income of an Infant's property for or towards his Maintenance, EDUCATION, or BENEFIT; *V.* s. 43, Conv & L. P. Act, 1881, and *Vth*, *Re Burton*, 1892, 2 Ch. 38; 61 L. J. Ch. 702; 67 L. T. 221: *Re Holford*, 1894, 3 Ch. 30; 63 L. J. Ch. 637; 70 L. T. 777; 42 W. R. 563: *Re Moody*, 1895, 1 Ch. 101; 64 L. J. Ch. 174; 72 L. T. 190; 43 W. R. 462: *Re Jeffery*, 1895, 2 Ch. 577; 64 L. J. Ch. 830; 73 L. T. 332; 44 W. R. 61: *Re Wells*, 43 Ch. D. 281; 59 L. J. Ch. 113: IN TRUST.

Education is included in the phrase "Maintenance and Support" as applied to Children (*Re Breed*, 45 L. J. Ch. 191; 1 Ch. D. 226).

*Seemle*, that words giving income for the "Maintenance and Support" of a wife and children, are sufficient to create a separate use in the wife (*Austin v. Austin*, 46 L. J. Ch. 92; 4 Ch. D. 233).

A CHILD, s. 35, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85, s. 4, 22 & 23 V. c. 61, is a child till 21, and under those sections the Court may make an Order for "Maintenance and Education" until that age (*Thomassett v. Thomassett*, 1894, P. 295; 63 L. J. P. D. & A. 140; 71 L. T. 148, over-ruling *Blandford v. Blandford*, 1892, P. 148; 61 L. J. P. D. & A. 97).

*V.* BENEFIT: COMFORT: COMFORTABLE MAINTENANCE.

"Maintenance and Passage Home"; *V.* HOME.

As to what is included in the "Maintenance" of an ENDOWED SCHOOL; *V. A-G. v. Christ Church, Oxford*, cited EDUCATIONAL ENDOWMENT.

The restoration of a HIGHWAY that has been completely destroyed, or so damaged as not to be restorable except at a very large outlay, is not

within the parochial obligation, or a statutory power, requiring or enabling its "Maintenance" (*R. v. Paul*, 2 Moo. & R. 307; *R. v. Bamber*, 13 L. J. M. C. 13; 5 Q. B. 279; *R. v. Horsea*, 23 L. J. M. C. 59; 1 Dears. C. C. 291); nor is converting a macadamised road into one paved with sets of granite, "Maintenance" within s. 13, 41 & 42 V. c. 77 (*Leek v. Stafford Jus.*, 57 L. J. M. C. 102; 20 Q. B. D. 794; 36 W. R. 654; 52 J. P. 403), for (as there remarked by Bowen, L. J.), "Maintenance," in that section, is identical with "Repair." But the restoration, at a cost of £341, of 252 yards of a highway rendered impassable by a landslip (*R. v. Greenhow*, 45 L. J. M. C. 141; 1 Q. B. D. 703), or, on the other hand, the removal of an obstruction occasioned by a heavy fall of snow (*Amesbury v. Wilts Jus.*, 52 L. J. M. C. 64; 10 Q. B. D. 480), are matters of "Maintenance." V. MAINTAIN.

A bequest for the "Maintenance" of an INSTITUTION is not against the Mortmain Act (*Kirkbank v. Hudson*, 7 Price, 221): *Va*, SUPPORT: FOUND.

*Semble*, that "Maintenance" of a RAILWAY, in a railway sense, generally connotes, not only the maintenance of the permanent way, but also the management and working of the line (*Portpatrick Ry v. Caledonian Ry*, 3 Ry & Can Traffic Ca. 201). *Vh*, *Cloumel Traders v. Waterford & Limerick Ry*, 4 Ib. 92.

"Maintenance Rate," quæ Drainage and Improvement of Land (Ir) Act, 1892, 55 & 56 V. c. 65; *V. s.* 12.

"Construction and Maintenance of a *Telegraphic Line*"; *V. Cox*: CONSTRUCTION.

Terms for the "Maintenance of the *Security*," as used in the prescribed Form of a BILL OF SALE (Bills of S. Act, 1882), mean, such terms as may maintain the title to, or otherwise preserve, the goods comprised in a Bill of Sale or for rendering the document effective as a security (*Vh*, *Re Morrill*, 56 L. J. Q. B. 139; 18 Q. B. D. 222; 56 L. T. 42; 35 W. R. 277; *Furber v. Cobb*, 18 Q. B. D. 494; 56 L. J. Q. B. 273; 56 L. T. 689; 35 W. R. 398; *Goldstrom v. Tallerman*, 18 Q. B. D. 1; 35 W. R. 68; 56 L. J. Q. B. 22; 55 L. T. 866, *rtlic*, *Haslewood v. Consolidated Co*, 60 L. J. Q. B. 12; 25 Q. B. D. 555, and *Edwards v. Marston*, cited STIPULATED: *Hammond v. Hocking*, 12 Q. B. D. 291; 53 L. J. Q. B. 205; 50 L. T. 267; *Seed v. Bradley*, 1894, 1 Q. B. 319; 63 L. J. Q. B. 387; 70 L. T. 214; 42 W. R. 257); but an addition to a power of sale exonerating a purchaser from enquiring as to whether default has been made, is a provision for the relief of the purchaser and not a "Maintenance" of the security (*Blaiberg v. Beckett*, 56 L. J. Q. B. 35; 18 Q. B. D. 96; 55 L. T. 876; 35 W. R. 34. *Vj*, *Bianchi v. Offord*, 17 Q. B. D. 484; 55 L. J. Q. B. 486); nor is giving the grantee larger rights than the Act would confer, such a "Maintenance" (*Calvert v. Thomas*, 56 L. J. Q. B. 470; 19 Q. B. D. 204; *Watson v. Strickland*, 56 L. J. Q. B. 595; 19 Q. B. D. 391; 35 W. R. 769; *Lyon v. Morris*,

19 Q. B. D. 139; 56 L. J. Q. B. 378; 57 L. T. 324; 35 W. R. 707; *Macey v. Gilbert*, 57 L. J. Q. B. 461; *Peace v. Brookes*, 1895, 2 Q. B. 451; 64 L. J. Q. B. 747; 72 L. T. 798). *Cp.*, DEFEASANCE.

Seizure for the "Maintenance" of a Bill of S.; *V. Ex p. Ellis*, 1898, 2 Q. B. 79; 67 L. J. Q. B. 734; 78 L. T. 733; 46 W. R. 531, approving and distinguishing *Ex p. Wickens*, 1898, 1 Q. B. 543; 67 L. J. Q. B. 397; 78 L. T. 213; 46 W. R. 385. *Cp.*, REASONABLE EXCUSE.

**MAISON.** — *V.* HOUSE.

**MAJESTY.** — *V.* CROWN: QUEEN: PERMANENT.

"His Majesty," "His Majesty in Council"; Stat. Def., 6 & 7 W. 4, c. 79, s. 64.

"Her Majesty in Council"; Stat. Def., 30 & 31 V. c. 114, s. 2.

"In Her Majesty's Service"; Stat. Def., 27 & 28 V. c. 91, s. 3.

"Her Majesty's Colonies"; Stat. Def., 1 V. c. 36, s. 47; 3 & 4 V. c. 96, s. 71; 12 & 13 V. c. 66, s. 6: *V.* COLONY.

*V.* PRIVATE ESTATES.

**MAJORITY.** — "Majority of Justices"; *V.* JUSTICES.

A person attains his Majority at 12 o'clock at night of the day preceding his 21st birthday (1 Bl. Com. 463: DAY); but, *semble*, a Will made during such day is good, because "the law will not make a fraction of a day" (per Holt, C. J., *Howard's Case*, cited DATE); but it may be observed that the legal status of Majority is not attained till the last minute of a person's 21 years has passed, and then it is complete, and immediately (and it is submitted, not before) testamentary capacity commences and is complete; it seems difficult to understand how the argument about a fraction of a day applies. *Vf.*, ADULT: FULL AGE: MANHOOD. *Cp.*, MINORITY.

**MAKE.** — "To make," "in itself involves a conscious act on the part of the maker" (per Collier, J., *Dickins v. Gill*, 1896, 2 Q. B. 310; 65 L. J. M. C. 189).

A Tenaunt's covenant to "make, uphold, support, cleanse, and repair," all Sewers, Drains, &c, does not include the making of a *new* sewer or drain (*Lyon v. Greenhow*, 8 Times Rep. 457).

"Make and maintain"; *V.* MAINTAIN.

"Make and prosecute"; *V.* PROSECUTE.

"Make, use, exercise, and vend," a PATENT; *V. Minter v. Williams*, cited VEND.

*V.* MADE: DO OR MAKE.

**MAKE BINDING.** — *V. G. W. Ry v. Halesowen Ry*, cited RE-QUIRED: OBLIGATORY: BIND.

**MAKE COMPLAINT.** — *V.* COMPLAINT.

**MAKE DEFAULT.**—*V.* DEFAULT.

"Make default in PERFORMANCE"; *V. Doe* d. *Palk* v. *Marchetti*, cited  
 DONE: MAKING DEFAULT.

**MAKE DISTRESS.**—*V.* LEVY.

**MAKE GOOD.**—To "Make Good" damage done to property, means, to restore the property to the condition in which it was immediately before the damage; and not that pecuniary compensation be given (*Wells* v. *Ody*, 5 L. J. Ex. 199; 1 M. & W. 452; *Crofts* v. *Haldane*, 36 L. J. Q. B. 85; 8 B. & S. 194; L. R. 2 Q. B. 194).

*V.* RESTORE.

**MAKE SALE.**—*V.* NEGOTIATE.

**MAKE USE OF.**—"Make use of" a Patented Article; *V. British Motor Syndicate* v. *Taylor*, cited USE.

"Make use of" Perishable Articles, "must mean CONSUME" (per Denman, C. J., *Gale* v. *Burnell*, 7 Q. B. 862; 14 L. J. Q. B. 342).  
*V.* CONSUMABLE.

**MAKE VOID.**—*V.* AFFECT.

**MAKER.**—Maker of a PROMISSORY NOTE; *V.* per Lindley, L. J., *Edwards* v. *Walters*, cited MATURE: RENUNCIATION: and as to the liability of a Maker; *V.* s. 88, Bills of Ex. Act, 1882: TENOR.

The mere printer of Calicoes is not their "Maker or MANUFACTURER" (*R. v. Tregoning*, 2 Y. & J. 132).

The "real Worker or Maker of Goods," s. 23, 50 G. 3, c. 41, repld s. 3 (3b), Hawkers Act, 1888, includes the manufacturer, though he does no manual labour to the goods, and the exception extends to his servants when selling in his presence and with his concurrence (*R. v. Faraday*, 1 B. & Ad. 275); but a person buying books in sheets and making them up, is not the "Maker" of the books (*Moore* v. *Edwards*, 2 Chitty, 213). *Vf*, *R. v. Websdell*, 2 B. & C. 136: HAWKER.

**MAKING.**—*V.* FROM HENCEFORTH.

**MAKING COMPENSATION.**—"Making Compensation," or "Satisfaction"; *V.* SATISFACTION.

**MAKING DEFAULT.**—"The purchaser making default" to pay interest; *Vh*, *Denning* v. *Henderson*, 17 L. J. Ch. 8; 1 D. G. & S. 689.  
*V.* WILFUL DEFAULT: MAKE DEFAULT.

**MALÂ FIDE.**—*V.* BONÂ FIDE.

**MALE.**—It may, it is submitted, be stated that, generally, in a gift or grant to a person's "Heirs Male," or "Heirs Female," these words are words of LIMITATION and not of PURCHASE, and create a Limited

Entail (*V. Doe d. Brune v. Martyn*, 8 B. & C. 497; *Toller v. Attwood*, 15 Q. B. 929; 20 L. J. Q. B. 40).

“In order to entitle a person to *inherit* by the description of ‘Heir Male,’ or ‘Heir Female’ of the body, it is essential, not only that the claimant be of the prescribed sex but, that such person trace his or her descent *entirely* through the male or female line, as the case may be. Thus, it is laid down by *Littleton* (s. 24) that, — ‘If Lands be given to a man and to the heires males of his body, and he hath issue a daughter, who hath issue a sonne, and dieth, and after the donee die; in this case, the son of the daughter shall not inherit by force of the entaile; because whosoever shall inherit by force of a gift in taile made to the heires males, ought to convey his descent *whole by the heires males.*’ It is otherwise, however, in the case of gifts to the heir male or female by words of *purchase*” (2 Jarm. 68, *whc et seq.*). **V. MALE DESCENDANTS.**

“It has been long settled that where a testator devises lands to his ‘Heir Male,’ he must be held to mean his heir male at Common Law” (per Stuart, V. C., *Thorp v. Owen*, 2 Sm. & G. 94; 23 L. J. Ch. 286; 2 W. R. 208). **Vf, HEIR.**

“Next Heir Male”; *V. Dormer v. Phillips*, cited **NEXT HEIR.**

**V. MALE LINE: FIRST MALE HEIR: RIGHT HEIR MALE.**

**MALE CHILDREN.** — Held, **MALE DESCENDANTS** (*Bernal v. Bernal*, 7 L. J. Ch. 115; 3 My. & C. 559).

**MALE DESCENDANTS.** — In *Bernal v. Bernal* (cited **MALE CHILDREN**) a devise to “Male Descendants” was confined to males claiming through males; *Vth*, 2 Jarm. 69; Wms. Exs. 976: **MALE: MALE LINE: MALE NEPHEW.** **Vf, Pelham-Clinton v. Newcastle**, 49 W. R. 12; 69 L. J. Ch. 875.

**MALE ISSUE.** — “Eldest Male Issue”; *V. ELDEST.*

**V. ISSUE: FAIL: DIE WITHOUT ISSUE.**

**MALE LINE: MALE LINEAL.** — “The phrase ‘linea masculina’ properly means a line commencing with a male and continued through males” (per Earl Selborne, *D’Amico v. Trigona*, 58 L. J. P. C. 23; 13 App. Ca. 815; *Seeberras Trigona v. Seeberras D’Amico*, 1892, A. C. 69; 61 L. J. P. C. 8).

“‘Male Lineal’ has been construed to mean as though it were one word signifying, ‘male in a line of males.’ With this construction I entirely agree; and I agree that it may be read as though it were a compound word, ‘Male-Line’” (per Bramwell, B., *Thellusson v. Rendlesham*, 28 L. J. Ch. 953; 7 H. L. Ca. 429).

But though the *primâ facie* meaning of “In the Male Line,” “Male Lineal,” may be a Male in a Line of Males, yet such meaning will readily yield to a context (*Boys v. Bradley*, 22 L. J. Ch. 617; 25 Ib.



593; 10 Hare, 389; 4 D. G. M. & G. 58; nom. *Sayer v. Beadly*, 5 H. L. Ca. 873). Whether the phrase means *ex parte paternâ* is doubtful: — *Cp.*, jdgmt of Wood, V. C., with that of Knight-Bruce, L. J., in the case just cited. The latter learned judge said, — “The expression ‘Female Line’ is one habitually, I believe, used less strictly than the phrase ‘Male Line.’ The idiom of the English language seems to authorize me to designate all his maternal kindred as his relatives in the Female Line, whether related to his mother on her father’s side, or otherwise; but not to authorize an equally free application of the term ‘Male Line.’ When a correct speaker says that one person is related to another in the Male Line we understand him to mean that they are the *agnati* of the Roman Law; that is *cognati per virilis sexûs personarum cognatione conjuncti*”; and he added he did not think, in that case, that it would be safe to construe “In the Male Line” as equivalent to *ex parte paternâ*. The case, however, did not turn on this question; — the phrase there to be construed being, “The Nearest of Kin in the Male Line, in preference to the Female Line,” a collocation which, with the other provisions of the Will, led the V. C., the L. J.J., and the H. L., unanimously to the conclusion that the (bachelor) testator’s only surviving sister was entitled in preference to a remoter relative who was a male claiming kinship with the testator through an unbroken line of males. *Vh.*, 2 Jarm. 110, 68, 69.

V. MALE: LINEAL: ISSUE.

**MALE NEPHEW.** — A bequest to “Male Nephews,” goes to sons of a brother of the testator, to the exclusion of sons of a sister (*Lucas v. Cuddy*, Ir. Rep. 10 Eq. 514). *Cp.*, MALE DESCENDANTS.

**MALE PERSON.** — V. ANOTHER.

**MALE SERVANT.** — Quâ Revenue Act, 1869, 32 & 33 V. c. 14, and by s. 19 (3) thereof, “the term ‘Male Servant,’ means and includes, any male servant employed, either WHOLLY or partially, in any of the following capacities; that is to say, maitre d’hôtel, house-steward, master of the horse, groom of the chambers, valet de chambre, butler, under-butler, clerk of the kitchen, confectioner, cook, house-porter, footman, page, waiter, coachman, groom, postilion, stable-boy or helper in the stables, gardener, under-gardener, park-keeper, gamekeeper, under-gamekeeper, huntsman and whipper-in; or in any capacity involving the duties of any of the above descriptions of servants by whatever style the person acting in such capacity may be called.” But that def does not “include a servant who, being bonâ fide employed in any capacity other than the capacities” just specified, “is occasionally or partially employed in any of the said capacities; and shall not include a person who has been bonâ fide engaged to serve his employer for a portion only

of each day and does not reside in his employer's house" (s. 5, 39 V. c. 16). Observe further that, licenses are not required for male servants of Officers in the Army or Navy, or for servants employed in the business of a Licensed Retailer of Exciseable Liquors, Licensed Keeper of a Refreshment-house, Livery-stable Keeper, or Public Stage or Hackney Carriage Proprietor (s. 19 (5), 32 & 33 V. c. 14).

A Club Steward is a taxable "Male Servant" within s. 19 (3), 32 & 33 V. c. 14 (*Solomon v. Cropper*, 79 L. T. 301; 62 J. P. 758). But where a man, employed as a yardsman and farm labourer, did such groom-work as his master, a farmer, required, but this only occupied a small portion of the man's time; held, that the employer was not bound to take out a license for him, as the man was not a "Male Servant" within that section, but came within the exceptions in s. 5, 39 V. c. 16 (*Yelland v. Winter*, 34 W. R. 121; 2 Times Rep. 117).

F. DOMESTIC SERVANT: GARDENER: SERVANT.

**MALICE: MALICIOUS: MALICIOUSLY.** — "*Odium*, signifieth hatred, and *atia* or *acia* in this writ (*De odio et atia*) signifieth malice, because that malice is *acida*, that is, eager, sharpe and cruell" (2 Inst. 42), referring to which Jacob's definition is, "Malice is a formal design of doing mischief to another; it differs from hatred."

"'Malice,' in common acceptation, means, ill-will against a person; but in its legal sense, it means, a WRONGFUL act done intentionally without just cause or excuse" (per Bayley, J., *Bromage v. Prosser*, 4 B. & C. 255, cited by Brett, L. J., *Clark v. Molyneux*, 3 Q. B. D. 247, also cited and adopted by Halsbury, C., and Lds Watson and Herschell, *Allen v. Flood*, inf. and used by them apparently without acknowledgement, by Littledale, J., *McPherson v. Daniels*, 10 B. & C. 272, from whom it was adopted by Martin, B., *Johnson v. Emerson*, L. R. 6 Ex. 373).

"The word 'Malice' is satisfied by the thing being done with knowledge of the plaintiff's right, and with intent to interfere with it 'maliciously' or, which is the same thing, 'with notice' (per Crompton, J., *Lumley v. Gye*, 2 E. & B. 224; 22 L. J. Ex. 9). The effect of Malice is adopted by Sir W. Erle, and so long ago as by Ld Holt in *Keble v. Hickeringill* (11 Mod. 75, 130; 3 Salk. 9; Holt, 14, 17, 19: Va, 11 East. 574). 'Suppose,' he says, 'the defendant had shot in his own ground; if he had occasion to shoot, it would have been one thing; but to shoot on purpose to damage the plaintiff is another thing and a wrong.' In truth, I have never known this rule doubted" (per Esler, M. R., *Mogul Co. v. McGregor*, 58 L. J. Q. B. 477; 23 Q. B. D. 598: N. C. in H. L. 1892. A. C. 25; 61 L. J. Q. B. 295; 66 L. T. 1; 40 W. R. 337; 56 J. P. 101). In the same case, when in the Court of Appeal, Bowen, L. J., said, — "The terms 'maliciously,' 'wrongfully,' and 'injure,' are words all of which have accurate meanings well known to the law. but which also have a popular and less precise signifi-

cation. An intent to 'injure,' in strictness, means more than an intent to harm. It connotes an intent to do *wrongful* harm. 'Maliciously,' in like manner, means and implies an intention to do an act which is wrongful, to the detriment of another. The term 'wrongful' imports in its turn the infringement of some right." And if there be no such infringement there can be no actionable wrong, however vile the Motive (*Allen v. Flood*, 1898, A. C. 1; 67 L. J. Q. B. 119; 77 L. T. 717; 46 W. R. 258, in *the* *Ld Watson*, who led the majority in H. L., cited with approval the above words of Bowen, L. J.: *Allen v. Flood*, was applied in *Lyons v. Wilkins*, No. 2, 67 L. J. Ch. 383; 68 lb. 146; 1899, 1 Ch. 255, and in *Ajello v. Worsley*, 1898, 1 Ch. 274; 67 L. J. Ch. 172; 77 L. T. 783; 46 W. R. 245; and distd in *Leathem v. Craig*, 1899, 2 I. R. 667, affd in H. L. nom. *Quinn v. Leathem*, 1901, A. C. 495). Nor can Motive "in itself, constitute FRAUD, although it may incite the person who entertains it to adopt proceedings which, if successful, would necessarily lead to a fraudulent result" (*King v. Henderson*, 1898, A. C. 732; 67 L. J. P. C. 140). *Vf*, INTERFERE: *Kearney v. Lloyd*, and *Huttley v. Simmons*, cited CONSPIRACY: *R. v. Davis*, cited WILFULLY, on *whlev* 43 L. J. M. C. 94, *n*: 8 Encyc. 77-80.

The word "Malice," "seldom has any meaning except a misleading one. It refers not to intention but to motive; and in almost all legal inquiries intention, as distinguished from motive, is the important matter. Another objection to it is that its popular meaning is not barely ill will, but an ill will which it is immoral to feel. No one would describe legitimate indignation as 'Malice'" (Steph. Cr. 204, *n* 3: *Vf*, the learned author's jdgmt in *R. v. Tolson*, 23 Q. B. D. 168; 58 L. J. M. C. 97; 37 W. R. 716: KNOWINGLY).

But a "Malicious Damage" is something illegally and unreasonably done for mischief's sake; and scarcely comprises a thing done in the exercise of a right that is reasonably believed to exist (*R. v. Jenner*, 7 L. J. O. S. M. C. 79).

"Where any person wilfully does an act injurious to another without lawful excuse" he does it maliciously (per *Ld Blackburn*, *R. v. Pemberton*, 43 L. J. M. C. 91; L. R. 2 C. C. R. 122: *Vthe*, *R. v. Welch*, 45 L. J. M. C. 17; 1 Q. B. D. 23; 24 W. R. 280: *Sc*, *R. v. Davis*, *sup*) even though it be a piece of foolish mischief which results in injury, *e.g.* causing panic by putting out the lights in a place where people are assembled (*R. v. Martin*, 51 L. J. M. C. 36; 8 Q. B. D. 54; 30 W. R. 106; 46 J. P. 228: *Vh*, *R. v. Ward*, 41 L. J. M. C. 69; L. R. 1 C. C. R. 356: INFLECT). So "it is common knowledge that when one person has a malicious intent against another and in carrying it out injures a third person, he is guilty of malice against the person he has injured; he has general malice, and that is enough to support the general allegation of malice" (per *Coleridge*, C. J., *R. v. Latimer*, 55 L. J. M. C. 136; 17 Q. B. D. 359; 54 L. T. 768).

So, it is "maliciously" to commit an offence under Malicious Damage Act, 1861, 24 & 25 V. c. 97, "whether the offence shall be committed from Malice conceived against the owner of the property in respect of which it shall be committed, or otherwise" (s. 58), a def which applies to "maliciously" as used in Conspiracy and Protection of Property Act, 1875, 38 & 39 V. c. 86 (s. 15).

Again, in an Action for Words, it is sufficient to charge that the deft uttered them falsely; "maliciously" need not be alleged (*Mercer v. Sparks*, Owen, 51; Noy, 35; *Bromage v. Prosser*, sup). Therefore, in an Indictment for "maliciously" publishing a Defamatory Libel, s. 5, 6 & 7 V. c. 96, it is sufficient to allege that it was done "unlawfully" (*R. v. Manslow*, 1895, 1 Q. B. 758; 62 L. J. M. C. 138; 72 L. T. 301; 43 W. R. 495).

But Malice *in Fact*, — *e.g.* that kind of Malice which, in an action for Defamation is an answer to a plea of PRIVILEGED COMMUNICATION, — "means a wrong feeling in a man's mind" (per Brett, L. J., *Clark v. Molyneux*, sup). *Vf.* Odgers, ch. 11.

"Malicious Obstinacy"; *V. Mackenzie v. Mackenzie*, cited REASONABLE CAUSE.

"Unlawfully and maliciously"; *V. UNLAWFULLY.*

*V. WILFUL AND MALICIOUS: IMPOSSIBLE.*

**MALICE AFORETHOUGHT.** — "Malice Aforethought, means any one or more of the following states of mind preceding or co-existing with the act or omission by which death is caused, and it may exist where that act is unpremeditated: —

- (a) An intention to cause the death of, or grievous bodily harm to, any person, whether such person is the person actually killed or not;
- (b) Knowledge that the act which causes death will probably cause the death of, or grievous bodily harm to, some person, whether such person is the person actually killed or not; although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- (c) An intent to commit any felony whatever;
- (d) An intent to oppose by force any officer of justice on his way to, in, or returning from, the execution of the duty of arresting, keeping in custody, or imprisoning, any person whom he is lawfully entitled to arrest, keep in custody, or imprison, or the duty of keeping the peace, or dispersing an unlawful assembly, provided that the offender has notice that the person killed is such an officer so employed.

"The expression '*Officer of Justice*' in this clause includes every person who has a legal right to do any of the acts mentioned, whether he is an officer or a private person.

"Notice may be given, either by words, by the production of a warrant, or other legal authority, by the known official character of the person killed, or by the circumstances of the case" (Steph. Cr. 158, 159; *V. Ib.* 364 *et seq.*).

*Vf.*, Arch. Cr. 753: 4 Bl. Com. 198-202: WILFUL AND MALICIOUS: HOMICIDE.

**MALICIOUS PROSECUTION.** — *V.* PROSECUTE: REASONABLE AND PROBABLE CAUSE: Rosc. N. P. 867-873: Add. T. 219-234: 8 Encyc. 85-89.

**MALINS' ACTS.** — Infant Settlements Act, 1855, 18 & 19 V. c. 43: Married Woman's Reversionary Interests Act, 1857, 20 & 21 V. c. 57.

**MALT.** — *V. R. v. Wheeler*, 2 B. & Ald. 345: CORN.

"Malt Trader," quâ Inl. Rev. Act, 1880, 43 & 44 V. c. 20, "means and includes, a maltster or maker of malt, a dealer in malt, a roaster of malt, a brewer of beer for sale, and a vinegar maker" (s. 2).

**MAN.** — "No doubt the word 'Man,' in a scientific treatise on zoology or fossil organic remains, would include men women and children as constituting the highest order of vertebrate animals. It is also used in an abstract and general sense in philosophical or religious disquisitions. But in almost every other connection the word 'Man' is used in contradistinction to 'Woman.' Certainly, this restricted sense is its ordinary and popular sense" (per Byles, J., *Chorlton v. Lings*, L. R. 4 C. P. 392; 38 L. J. C. P. 33). In that case it was held that "Man," in s. 3 (1), Rep People Act, 1867, means only "Male Person" and does not include Woman, and that a woman is not entitled to be registered as a Parliamentary Voter under the section: *Ithe* for a wealth of learning on this word. *Vf.*, *Wilson v. Salford*, L. R. 4 C. P. 398; 38 L. J. C. P. 35.

*V.* MEN: FEMALE: FEME: WOMAN: LEGAL INCAPACITY: GENDER: SEX: ONE MAN: POSSESSION.

*Note:* Quâ Municipal Elections, words "importing the masculine gender, include women" (s. 63, 45 & 46 V. c. 50); and so of County Council Elections, for they are in like manner as Municipal Elections (s. 2 (1), 51 & 52 V. c. 41).

"Man," quâ the Reserve Forces; Stat. Def. 45 & 46 V. c. 48, s. 28; 45 & 46 V. c. 49, s. 51: MILITIA.

"Man of the Royal Marines"; *V.* 44 & 45 V. c. 58, s. 179 (21).

**MAN-BOTE.** — *V.* BOTE.

**MAN FRIDAY.** — To write of a person that he is a "Man Friday" to another is not an actionable Libel without an innuendo imputing degradation (*Forbes v. King*, 1 Dowl. 672; 2 L. J. Ex. 109); "the 'Man Friday' we all know was a very respectable man although a black man,

and black men have not been denounced as criminals yet" (per Denman, C. J., *Hoare v. Silverlocke*, 17 L. J. Q. B. 308; 12 Q. B. 632).

**MAN IN POSSESSION.**—*V.* POSSESSION.

**MAN OF STRAW.**—To write, or speak, of a person in trade that he is a "Man of Straw," is to impute insolvency (*Eaton v. Johns*, 11 L. J. Ex. 150; 1 Dowl. N. S. 602); and yet an old English proverb (having its parallel in France and Italy) says, "A Man of Straw is worth a Woman of Gold" (N. Bailey's Dict., *Straw*).

**MANAGE.**—A power to a Land Agent to "manage and superintend" estates, authorizes him on behalf of his principal to enter into an agreement for the usual and customary Leases according to the nature and locality of the property (*Peers v. Sneyd*, 17 Bea. 151), and to do Repairs (*Bowes v. Strathmore*, 8 Jur. 92). For Trustees' general Powers of Management, *V.* s. 42 (2), Conv & L. P. Act, 1881; Trustee Act, 1893, Part 2.

"Managing and Conducting" an ENTERTAINMENT; *V.* KEEPER.

"Control, manage, and maintain," HIGHWAYS; *V.* CONTROL.

**MANAGEMENT.**—*V.* CARE: EXPENSES OF MANAGEMENT.

"The power to appoint a Receiver is clearly a power relating to 'Management and ADMINISTRATION,'" s. 116 *et seq.*, Lunacy Act, 1890, although not specially mentioned in that group of sections (per Lindley, L. J., *Re Browne*, 1894, 3 Ch. 412; 63 L. J. Ch. 732; 71 L. T. 365: *Cp. Re Flowers*, cited CONTROL). *Vf.* quâ "Management and Administration," *Re Langdale*, 45 S. J. 78; 70 L. J. Ch. 38.

Ry Co "having the Management of any CANAL," s. 17, Regn of Railways Act, 1873; *V. Foster v. G. W. Ry*, 3 Ry & Can Traffic Ca. 14.

Management of a GRAMMAR SCHOOL; *V.* DISCIPLINE.

Power to make rules for "Management of the *Property, Finances, and Civil Affairs.*" of a Volunteer Corps, s. 24, 26 & 27 V. c. 65, does not authorize a penalty on a member for failing to render himself "efficient" (*R. v. Lewis*, 1896, 1 Q. B. 665; 65 L. J. M. C. 126; 74 L. T. 551; 60 J. P. 376).

The "Management" of a VESSEL, connotes *her* handling as distinguished from what is directly done to the Cargo, and is not limited to the time when she is actually at sea: therefore, damage from bad stowage is not within an Exception of damage arising from "Management" of the Vessel (*The Ferro*, 1893, P. 38; 62 L. J. P. D. & A. 48; 68 L. T. 418; 7 Asp. 309); but if, though during the discharge of a cargo, damage arises to the cargo through something done for the benefit of the vessel, that damage is due to the "Management" of the vessel within s. 3 of the Harter Act of U. S. A. (*The Glenochil*, 1896, P. 10; 65 L. J. P. D. & A. 1; 73 L. T. 416; *The Rodney*, 1900, P. 112; 69 L. J. P. D. & A. 29; 82 L. T. 27; 48 W. R. 527). In the latter case, Jeune, P., said,

“ ‘Management,’ goes somewhat beyond, — perhaps, not much beyond, — ‘NAVIGATION.’ ”

“Conduct or Management” of an Election; *V. CONDUCT.*

“Control or Management”; *V. CONTROL.*

“Expenses of the Management and Working”; *V. WORKING EXPENSES.*

*V. INSPECTION.*

**MANAGER.** — “A Manager, in ordinary talk, is a person who has the management of the whole affairs of the Company; not an agent who is to do one thing, or a servant who is to obey orders and do another, but a Manager who is entrusted with power to manage the whole of the affairs” (per Blackburn, J., *Gibson v. Barton*, 44 L. J. M. C. 86; L. R. 10 Q. B. 329): *Vt*he as to “Manager” as used in s. 27, Comp Act, 1862. *Cp, RECEIVER.*

A signature by A. as “Manager,” to a Bill or Note, will, generally, not bind A. personally (*Bult v. Morrell*, 10 L. J. Q. B. 52; 12 A. & E. 745): *Cp, SECRETARY.* As to Bill or Note given to the “Manager” of a Bank, *V. Robertson v. Sheward*, 1 M. & G. 511.

“Manager in trust”; *V. IN TRUST.*

Quà Elementary Education Acts, “ ‘Managers’ include, all persons who have the management of any Elementary School, whether the legal interest in the school-house is or is not vested in them” (s. 3, 33 & 34 V. c. 75): *Va*, quà Science and Art Schools, s. 1 (3), 54 & 55 V. c. 61. Quà Reformatory Schools, “Managers” includes, “any person or persons having the Management or Control of” a Reformatory School (s. 3, 29 & 30 V. c. 117; s. 3, 31 & 32 V. c. 59), so of an Inebriate Reformatory (s. 27, 61 & 62 V. c. 60).

Quà Lunacy Act, 1890, “ ‘Manager,’ in relation to an Institution for Lunatics, means, the superintendent of an Asylum, the resident medical officer or superintendent of a Hospital, and the resident licensee of a Licensed House” (s. 341).

Is its President a “Manager” of a Savings Bank? *V. Re Cardiff Savings Bank*, 1892, 2 Ch. 100; 61 L. J. Ch. 357.

**MANAGING CLERK.** — *Se*mble, a Managing Clerk to a Solr, is a clerk sufficiently skilled, and entrusted, to be able to do, or confer, or take the necessary steps in pending matters, if the solr himself be absent (*Pike v. Stephens*, 17 L. J. Q. B. 282; 12 Q. B. 465).

**MANAGING OWNER.** — One of the duties of a Managing Owner of a Ship is to procure charters and freights; he is therefore not entitled to make an extra profit to himself by accepting secret commissions on such business (*Williamson v. Hine*, 1891, 1 Ch. 390; 60 L. J. Ch. 123): quà his authority, *V. The Huntsman*, 1894, P. 214.

**MANCHESTER.** — Notwithstanding that by the Manchester Ship Canal Act, 1885, the “Port of Manchester” is defined to include the whole

of the Manchester Ship Canal above East Ham Locks and that the former Port of Runcorn is abolished, yet, *semble*, in a commercial sense, the words "Port of Manchester," introduced into SHIPPING DOCUMENTS, only include Manchester and the Waters adjacent thereto, and do not include Runcorn Lay-bye; therefore, in such a document, "Manchester" is not a SAFE PORT, though Runcorn Lay-bye is (*Re Goodbody & Co and Balfour & Co*, 80 L. T. 188; 82 *Ib.* 484; 4 Com. Ca. 119; 5 *Ib.* 59).

V. DIVISION.

**MANDAMUS.** — A Mandamus, generally speaking, is, —

(1) The high *Prerogative* Writ, issuing from the High Court, commanding an Inferior Court, Corporation, or Person, to do some Particular thing of Right and Justice appertaining to their Office or Duty: *Vh*, Shortt on Informations, &c: Short & Mellor's Crown Office Practice: Jacob: 8 Encyc. 92-115: —

(2) The *Private* Writ, commanding the performance of some ascertained private right, — a remedy closely allied to a Mandatory Injunction: *Vh*, Kerr on Injunctions, 3 ed., 48: Joyce on Injunctions, 1309, 10, 816, 439. 1044: Ann. Pr., notes on R. 6, Ord. 50, R. S. C.: *Cp*, INJUNCTION.

For other kinds of Mandamus, *V. Termes de la Ley*: Cowel.

"The 'Mandamus' spoken of in s. 25 (8), Jud. Act, 1873, is not the Prerogative Mandamus, but only a mandamus which may be granted to direct the performance of some act, of something to be done which is the result of an action where an action will lie" (per Brett, L. J., *Glossop v. Heston*, 49 L. J. Ch. 101; 12 Ch. D. 122). *Vh*, JUST.

**MANHOOD.** — Age of Manhood is the same as FULL AGE (*McCunn v. McKaughley*, Cr. & Dix Ab. Ca. 435). *Vf*, MAJORITY.

**MANIA.** — *V. UNSOUND MIND.*

**MANIFEST.** — *V. CLEARANCE.*

**MANIFESTED.** — A TRUST or Confidence to be "manifested and proved" by a signed writing under s. 7, Statute of Frauds, need not be constituted by such writing, — it is sufficient if its existence and its terms be so evidenced (*Forster v. Hale*, 3 Ves. 707; 5 *Ib.* 308: *Randall v. Morgan*, 12 Ves. 73, 74: *Smith v. Matthews*, 30 L. J. Ch. 445; 3 D. G. F. & J. 139. *Vh*, *Rochevoucauld v. Boustead*, 1897, 1 Ch. 196; 66 L. J. Ch. 74; 75 L. T. 502; 45 W. R. 272). Notwithstanding what was said by Grant, M. R., in *Randall v. Morgan*, it would seem that the practical difference is scarcely appreciable between the document required by s. 7 and the Note or Memorandum under ss. 4 and 17 of the Statute of Frauds (*V.* cases cited NOTE, and esp. *Barkworth v. Young*).  
*V. PARTY BY LAW ENABLED TO DECLARE SUCH TRUST: TRUST.*



**MANILLA HEMP.**—*V. Jones v. Just*, 37 L. J. Q. B. 89; L. R. 3 Q. B. 197; 9 B. & S. 141.

**MANNER.**—The Exemption, from the 5% tax on property of Bodies Corporate and Unincorporate, given by subs. 2 of the section imposing the tax (s. 11, Customs and Inl. Rev. Act, 1885) in favour of Property “appropriated and applied for the benefit of the PUBLIC at large, or of any County, Shire, Borough, or Place, or the Ratepayers or Inhabitants thereof, or *in any Manner expressly prescribed by Act of Parliament*,” does not (under these italicised words) require that the appropriating Act should contain any specific provisions as to the exact mode in which the income is to be dealt with: if the income is honestly applied for the benefit of the prescribed class, it will be entitled to the Exemption (*Inl. Rev. v. Scott*, 60 L. J. Q. B. 612; 62 Ib. 432; 1892, 2 Q. B. 152; 67 L. T. 173; 40 W. R. 632; 56 J. P. 580, 632).

“In like Manner”; *V. AFORESAID*.

“No penalty or forfeiture shall afterwards be recoverable in any *other* Manner,” s. 21 (4), Taxes Management Act, 1880, 43 & 44 V. c. 19; *V. Ld Advocate v. Sawers*, W. N. (98) 131; 25 Rettle, 242.

“In such *other* Manner”; *V. Jackson v. Rainford Co*, 1896, 2 Ch. 340; 65 L. J. Ch. 757; 44 W. R. 554.

“Particular Manner”; *V. DISTINCTIVE*.

*V. GENERAL MANNER: METHOD.*

A Thief “*taken with the Manner*,” is one “taken with the thing stollen about him” (Cowel, *Mainour*). “‘Maynour’ is when a theefe hath stolne, and is followed with Hue and Cry and taken having that found about him which he stole, that is called Maynour. And so we commonly use to say, when we find one doing of an unlawfull act, that we took him with the maynour or manner” (Termes de la Ley, *Maynour*). “Taken with the mainour (or *mainoeuvre, a manu*), that is, in the very act” (3 Bl. Com. 71; *Vf*, 4 Ib. 307), or, as is frequently said, *flagrante delicto*. *Cp*, “Found Committing” sub FOUND: BLOODY HAND: BACKBERIND: BACK BARE: FRESH SUIT.

**MANNER AND FORM.**—“The words ‘in Manner and Form’ refer only to the mode in which the thing is to be done, and do not introduce anything from the Act referred to as to the thing which is to be done or the time for doing it” (per Campbell, C. J., *Acraman v. Herniman*, 16 Q. B. 1003, 1004; 20 L. J. Q. B. 355).

*V. TENOR.*

**MANOR.**—“This word *Manor* is a word of large extent, and may comprehend many things (*Hill v. Grange*, Plowd. 168). And therefore by the grant of a Manor, without the words of *cum pertinentiis*, do pass DEMESNES, rents, and services (Co. Litt. 310 b, 319 b), lands, meadows,

pastures, woods, commons, advowsons appendant (*Ice's Case*, 5 Rep. 11 b; *V. Dart*, 139; *Higgins v. Grant*, Cro. Eliz. 18), villains regardant, courts baron, and perquisites thereof, that are in truth at the time of the grant parcel of the manor. But nothing that in truth is not parcel of the manor, albeit it be so reputed, will pass by the grant of the manor (*A-G. v. Evelme Hospital*, 17 Bea. 388); and therefore if one have a manor, and after purchase the Law-day (*i.e.* the Leet), or a WARREN to it, and then he grant away the manor, — hereby the law-day, or the warren, will not pass (Dy. 30 b, pl. 209). And yet if by union time out of mind [or for a short period] they have gotten a reputation of appendaney, perhaps by the grant of the manor *cum pertinentiis*, these things may pass (Plowd. 168 a). By the grant of a manor also divers towns (Co. Litt. 5 a) [the land in divers towns] may pass. An honor also may pass by this name. And so also may a castle or a hundred. And one manor also, that is parcel of another manor, may pass by the grant of that manor whereof it is parcel' (Touch. 92), viz. the seignory of the inferior manor; *Marsh and Smith's Case*, 1 Leon. 26; Cro. Eliz. 38. *Ta*, Co. Litt. 58 a; Termes de la Ley, *Mannour: Darell v. Wybarne*, Dy. 207 a. pl. 14. The freehold interest in the copyhold passes; *Delacherois v. Delacherois*, 11 H. L. Ca. 62; 13 W. R. 24; 10 L. T. 884; 4 N. R. 501.

“By a grant of a ‘Reputed Manor,’ the freehold interest in the Waste does not pass, nor does any specific tenement of the grantor; *Dor d. Clayton v. Williams*, 12 L. J. Ex. 429; 11 M. & W. 803.

“By ‘Manor’ a Reputed Manor may pass in a Deed, but not in a Fine or Recovery; *Mallet v. Mallet*, Cro. Eliz. 524, 707; *Finch's Case*, 6 Rep. 64 a; *Treswallen v. Penhales*, 2 Rol. Rep. 66” (Elph. 593–595. *whc*).

By grant of a Manor its unsevered Mines would pass (MacS. 203).

#### V. CASTLE: SHORE: TERRA: WARREN.

“The devise of a ‘Manor’ will carry everything which, having originally been copyhold of the manor, has, after the devise and before the testator's death, ceased to be copyhold only because it has been surrendered to the lord to his own use” (per Cranworth, C., *Hicks v. Saltit*, 3 D. G. M. & G. 793; 23 L. J. Ch. 571; 22 L. T. O. S. 322; 2 W. R. 173), in which case it was held that Allotments from the Waste made to the lord upon an Enclosure passed by a devise of the “Manor.” *Vf*, Dart, 139.

Prior to the Wills Act, 1837, a devise of a “Manor” without words of limitation, only gave a life estate (*Paice v. Canterbury, Archbp.*, 14 Ves. 364); but such a devise comprised the devisor's copyholds, though acquired after the making of the Will (*Roe d. Hale v. Wegg*, 6 T. R. 708), and Escheats (*Delacherois v. Delacherois*, sup).

Qua Conv & L. P. Act, 1881, “‘Manor,’ includes lordship and reputed

manor or lordship" (s. 2, iv); so, quâ S. L. Act, 1882 (subs. 10, v, s. 2). As to what passes under "Manor" in a Conveyance executed since 31st Dec 1881, *V. s. 6 (3), Conv & L. P. Act, 1881.*

Quâ Copyhold Act, 1894, " 'Manor,' includes a reputed manor" (s. 94); so, quâ Metropolitan Commons Act, 1866 (s. 3).

Quâ Inclosure Act, 1845, 8 & 9 V. c. 118. "Manor" includes "any hundred, honour, or lordship" (s. 167).

"Belonging to a Manor"; *V. Doe d. Gore v. Laughton*, cited BELONGING.

*W. Jacob: Wms. R. P. Part 3: 1 Watkins on Copyholds, ch. 1: Scriven, Ib. ch. 1: Elton, Ib. ch. 1: 8 Encyc. 118-123: WASTE.*

**MANSE.** — "The House and Glebe are both comprehended under the word 'Manse,' of which the rule of the Canon Law is, *sancitum est ut unicuique ecclesie unus mansus integer absque ullo servitio tribuatur*" (Phil. Ecc. Law, 1125, citing Spelman, *Mansus*). *Cp.* HOUSE.

Quâ Ecclesiastical Buildings and Glebes (Scot) Act, 31 & 32 V. c. 96, "Manse" includes. "all necessary and usual offices, garden, and garden walls, which the heritors are now by law bound to provide" (s. 1).

**MANSION.** — *V. FAMILY MANSION: HAGA: HOME-STALL.*

" 'Mansion' is in our law most commonly taken for the chief messuage or habitation of the Lord of a Mannor, — the Mannor House where he doth most remain or continue, his Capitall Messuage, as it is called" (Termes de la Ley). *V. MANOR.*

"Mansion-house, garden, and premises," in a Devise; *V. Lethbridge v. Lethbridge*, cited PREMISES.

"Principal Mansion House," s. 15, S. L. Act, 1882; *V. Re Thompson*, 21 L. R. Ir. 109.

Whether "Principal Mansion House," s. 13 (4), S. L. Act, 1890, includes Stables depends on "where the stables are and what they are for" (per Lindley, L. J., *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23; 69 L. T. 393); they would be so if they "practically amount to a necessary adjunct to the house," but that would not include "hunting stables at some distance off" (per Lopes, L. J., *Ib.*).

Formerly, and down to quite recent times (1 Burn's J. P., 30 ed., 551: 4 Bl. Com. 224, 225), a man's "Mansion-house" also meant an ordinary DWELLING-HOUSE; and the use of the word in that sense was common quâ BURGLARY (Jacob), in which connection it included all out-houses, if parcel of the house though not under its roof or adjoining it (1 Hale P. C. 558, 559: *Sc.*, s. 53, Larceny Act, 1861). In the sense of "Dwelling-house," a "Mansion" (or "Mansion-house") included, and probably still includes. "a Chamber or Room, be it upper or lower, wherein any person does inhabit or dwell." for that "is *domus mansionalis* in law" (3 Inst. 65, cited *Fran v. Grafton*, sub MESSAGE).

**MANSLAUGHTER.** — “Manslaughter is unlawful homicide without MALICE AFORETHOUGHT” (Steph. Cr. 158; *Ij*; *Ib.* ch. 24, 362–383; Cowel). *V.* HOMICIDE: KILL.

“Homicide, which would otherwise be Murder, is not murder, but manslaughter, if the act by which death is caused is done in the heat of passion, caused by PROVOCATION, unless the provocation was sought or voluntarily provoked by the offender as an excuse for killing or doing bodily harm” (Steph. Cr. 161).

*Ij*, Arch. Cr. 16, 750–754; Rose. Cr. 620–637; 8 Encyc. 126–130.

In the application to Scotland of the Prevention of Cruelty to Children Act. 1894, “‘Manslaughter,’ means, ‘Culpable Homicide’” (s. 26).

As to Manslaughter by Neglect of Duty; *V. R. v. Instan*, 1893, 1 Q. B. 450; 62 L. J. M. C. 86; 68 L. T. 420; 41 W. R. 368; 57 J. P. 282.

**MANSURA.** — *V.* HAGA.

**MANUAL INSTRUCTION.** — Quà Technical Instruction Act, 1889, 52 & 53 V. c. 76, “Manual Instruction.” means, “instruction in the use of tools, processes of agriculture, and modelling in clay wood or other material” (s. 8): a def applied to Scotland by s. 4, 55 & 56 V. c. 63. *Cp.*, TECHNICAL.

**MANUAL LABOUR.** — As to “Manual Labour” within s. 8, Employers’ Liability Act. 1880, 43 & 44 V. c. 42; *V. Shaffers v. Gen. Steam Nav. Co.*, 52 L. J. Q. B. 260; 10 Q. B. D. 356. The duties of an Omnibus Conductor (*Morgan v. London Gen. Omnibus Co.*, 53 L. J. Q. B. 352; 13 Q. B. D. 832; 32 W. R. 759; 48 J. P. 503, dissenting from *Wilson v. Glasgow Tramways Co.*, 5 Sess. Ca. 4th Ser. 981), or those of the Driver of a Tram-car (*Cook v. North Metrop. Trams Co.*, 18 Q. B. D. 683; 56 L. J. Q. B. 309; 56 L. T. 448; 57 *Ib.* 476; 35 W. R. 577; 3 Times Rep. 523), or of a Guard of a Goods Train who occasionally assists in loading and unloading (*Hunt v. G. N. Ry.*, 1891, 1 Q. B. 601; 60 L. J. Q. B. 216; 64 L. T. 418; 55 J. P. 470), or of a Grocer’s Assistant (*Bound v. Lawrence*, cited WORKMAN), or of a Hair Dresser (*V. LABOUR*), do not involve manual labour, except incidentally.

*V.* LABOUR: PERSONAL LABOUR: INDUSTRIAL EMPLOYMENT: MANUAL OCCUPATION: WORKMAN: HANDICRAFT.

**MANUAL OCCUPATION.** — *V.* ART: MANUAL LABOUR.

A Butcher’s was a “Manual Occupation” within a City of London Bye Law in restraint of trade (*Shaw v. Poynter*, 2 A. & E. 312; 4 L. J. K. B. 16).

**MANUFACTORY.** — As to what is a “Manufactory” within s. 92, Lands C. C. Act, 1845; *V. Gibson v. Hammersmith Ry*, 32 L. J. Ch. 337; 11 W. R. 299; 8 L. T. 43; *Barker v. North Staffordshire Ry*, 2 D. G. & S. 55; 12 Jur. 589; *Dakin v. Lond. & N. W. Ry*, 3 D. G. & S. 414; 13 L. T. O. S. 156; 13 Jur. 579; *Furniss v. Mid. Ry*, L. R. 6 Eq. 473; *Sparrow v. Oxford, Worcester, & Wolverhampton Ry*, 2 D. G. M. & G. 94; 19 L. T. O. S. 131; 16 Jur. 703; *Richards v. Swansea Improvement Co*, 9 Ch. D. 425; 38 L. T. 833; 26 W. R. 764; *Reddin v. Metrop Bd of Works*, 31 L. J. Ch. 661; 4 D. G. F. & J. 532; 10 W. R. 764; 7 L. T. 6; *Benington v. Metrop Bd of Works*, 54 L. T. 837; 50 J. P. 740; *Brook v. Manchester S. & L. Ry*, 1895, 2 Ch. 571; 64 L. J. Ch. 890; 43 W. R. 698. *Va*, HOUSE: Dart, 247; Seton, 2415.  
*Cp*, FACTORY.

**MANUFACTURE.** — “The word ‘Manufacture’ in the Statute of Monopolies (21 Jac. 1, c. 3), must be construed in one of two ways. It may mean the machine when completed, or the mode of constructing the machine” (per Parke, B., *Morgan v. Seaward*, 6 L. J. Ex. 156; 2 M. & W. 558). “The word ‘Manufacture,’” said Abbott, C. J., in *R. v. Wheeler* (2 B. & Ald. 349), “has been generally understood to denote, either a thing made which is useful for its own sake and vendible as such, as a medicine, a stove, a telescope, and many others; or to mean an engine or instrument, or some part of an engine or instrument, to be employed either in the making of some previously known article, or in some other useful purpose, as a stocking frame, or a steam engine for raising water from mines; or, it may, perhaps, extend also to a new process to be carried on by known implements or elements acting upon known substances, and ultimately producing some other known substance but producing it in a cheaper or more expeditious manner, or of a better or more useful kind. No mere philosophical or abstract principle can answer to the word ‘Manufactures.’ Something of a corporeal and substantial nature, — something that can be made by man from the matters subjected to his art and skill, or at the least some new mode of employing practically his art and skill, is required to satisfy the word.” *Vf*, *Gibson v. Brand*, 4 M. & G. 199; 11 L. J. C. P. 177.

On the contrast between “Process” and “Manufacture” consider the following by Eyre, C. J., in *Boulton v. Bull* (2 Bl. H. 492, 493), — “When the effect produced is some new *substance or composition* of things, it should seem that the privilege of the sole working or making ought to be for such new substance or composition, without regard to the *mechanism or process* by which it has been produced, which, though perhaps also new, will be only useful as producing the new substance. . . . When the effect produced is no substance or composition of things, the Patent can only be for the mechanism, if new mechanism is used, or

for the process, if it be a new method of operating with or without old mechanism, by which the effect is produced."

Stat. Def., — " ' Manufacture ' and ' Work, ' " Hosiery Act, 1843, 6 & 7 V. c. 40, s. 35.

V. NEW MANUFACTURE.

Article of Manufacture; V. ARTICLE.

Machine for any Manufacture; V. MACHINE.

Stage of Manufacture; V. STAGE.

**MANUFACTURED.** — Quà, and by, s. 1, Fertilizers and Feeding Stuffs Act. 1893, 56 & 57 V. c. 56, an Article is " ' Manufactured ' if it has been subjected to any artificial process."

" Manufactured Goods, " quà a statutory charge for carriage by a Ry Co. " must be understood in a popular sense, and must mean, not merely goods produced from the raw state by manual skill and labour but, such as are ordinarily produced in Manufactories; and we should, therefore, exclude Statuary, and include Shoes, Ironmongery, Glass, and Drapery." . . . But " the application of that meaning to particular articles is a question of fact, not of law " (*Parker v. G. W. Ry*, 6 E. & B. 109; 25 L. J. Q. B. 221).

**MANUFACTURER.** — The " Manufacturer " of an article is a different person from a " DEALER " in it; but in, *e.g.*, an agreement in RESTRAINT OF TRADE. " Manufacturer " may, on the context and circumstances, include " Dealer. " so as to prevent the covenantor from dealing in the article (*Harms v. Parsons*, 32 L. J. Ch. 247; 32 Bea. 328). So, quà Revenue Act, 1883, 46 & 47 V. c. 55, " Manufacturer " includes, " a Dealer, and a Manufacturing or Trading Company, having a place of business in the United Kingdom " (subs. 6, s. 2).

Quà Hosiery Act. 1845, 8 & 9 V. c. 77, " Manufacturer " means, " any person furnishing the materials of work to be wrought into hosiery goods, to be sold or disposed of on his own account " (s. 9).

Manufacturer of Tobacco; V. RETAILER.

Other Stat. Def. — 50 & 51 V. c. 28, s. 3.

V. MAKER: MERCHANT.

**MANUFACTURING PROCESS.** — Stat. Def., s. 3 (7), Factory, &c. Act, 1867, 30 & 31 V. c. 103, which Act was repealed by 41 & 42 V. c. 16; and it is believed that there is no existing statutory def of this phrase. *Vh*, ss. 104, 149, Factory and Workshop Act, 1901: FACTORY.

*Seemle*, a large open-air Quarry is not a " Manufacturing Process " within either of the Factory Acts (*Kent v. Astley*, 39 L. J. M. C. 3; L. R. 5 Q. B. 19). *Vh*, ARTICLE.

**MANUMISSION.** — V. Litt. s. 204: Co. Litt. 137 a, b: Termes de la Ley.

**MANURE.** — Street sweepings may be Manure (*R. v. Freke*, 5 E. & B. 944; 25 L. J. M. C. 64; 26 L. T. O. S. 236; 4 W. R. 264). *V.* EMPLOYED.

“Manures,” quâ Agricultural Holdings (England) Act, 1883, *V.* s. 61, incorporating Nos. 22 and 23, Part 3, Sch 1: “Purchased Manure,” in that def, does not include straw purchased by the tenant and converted by him into manure (*Brunskill v. Atkinson*, 29 S. J. 29).

In a TOLL Clause in a Railway Act, “all Sorts of Manure” held to mean, all sorts, as well artificial as natural, *bonâ fide* forwarded for the purpose of being used as fertilizers (*Aberdeen Commercial Co v. G. N. Scotland Ry*, 3 Ry & Can Traffic Ca. 205).

**MAP.** — *V.* PLAN: CHART: DEPOSITED.

**MARBLE.** — *V.* STATUARY.

**MARE.** — *V.* HORSE.

**MARETTUM.** — “This word *marettum* is derived of *mare* the sea, and *tego*, and properly signifieth a moorish and gravelly ground, which the sea doth cover and overflow at a full sea, and lyeth betwene the high water marke and low water marke. *infra fluxum et refluxum maris*” (Co. Litt. 5 a). *Cp.* WARETTUM: SHORE.

**MARGARINE.** — “Margarine,” quâ Margarine Act, 1887, means, “all substances, whether compounds or otherwise, prepared in imitation of BUTTER, and whether mixed with butter or not” (s. 3). *V.* EXPOSE: PACKAGE: PAPER: RETAIL.

“Margarine Cheese,” quâ Sale of Food and Drugs Act, 1899, “means, any substance, whether compound or otherwise, which is prepared in imitation of CHEESE, and which contains fat not derived from milk” (s. 25).

**MARINE.** — *V.* SEAMAN.

Marine Store Dealer; *V.* DEALER.

“Marine Work”; Stat. Def., Loc Gov (Ir) Act, 1898, s. 18 (4).

**MARINER.** — “Any Mariner or Seaman, *being at Sea*” may make a NUNCUPATIVE Will (Statute of Frauds. s. 22; Wills Act, 1837, s. 11).

The term “Mariner or Seaman” here includes *merchant* seamen (*Morrell v. Morrell*, 1 Hagg. Ecc. 51; *Re Milligan*, 2 Rob. Ecc. 108; 13 Jur. 1011; *Re Parker*, 2 Sw. & Tr. 375; 5 Jur. N. S. 553; *Re Thompson*, 5 Notes of Ca. 596); and includes also the whole profession, as well of the Royal Navy as of the Merchant Service, from the highest officer to a common seaman (*Re Hayes*, 2 Curt. 338), not excepting a Navy Surgeon (*Re Saunders*, 35 L. J. P. & M. 26; L. R. 1 P. & D. 16.)

“At Sea”: An Admiral of a Naval Station, living on shore and who made his Will at his house, held not within this phrase (*Euston v. Sey-*

*mour*, cited 2 Curt. 339; 3 Ib. 530), and so it was held of a seaman who was in a British port whose vessel did not sail for several days after he had made the alleged Will (*Re Corby*, 18 Jur. 634). But a seaman stationed at Portsmouth on board a training ship was held to be "at Sea" (*Re MacMurdo*, 16 W. R. 283), and a seaman who, being in harbour, went on shore and there was so severely injured that he died, was held to be "at Sea" (*Re Lay*, 2 Curt. 375). A test seems to be, was the seaman "in expeditione"? and therefore (following *Re Lay*), it was held that a Seaman engaged with the enemy and on board ship, but in a River beyond the flux and reflux of the tide, was "at Sea" within the phrase under consideration (*Re Austen*, 17 Jur. 284; 2 Rob. Ecc. 611). *Vf*, Wms. Exs. 106: AT SEA.

*V*. SEAMAN: DESERTION.

**MARISCUS.** — "He that granteth *omnes mariscos suos*, all his fennes or marish grounds doe passe. *Mariscus* is derived of the French word *mares* or *marets*" (Co. Litt. 5 a).

**MARITIMA INCREMENTA.** — *V*. INCREASE.

**MARITIME LIEN.** — *V*. LIEN.

**MARK.** — *V*. DISTINCTIVE: OUTWARD MARK: TRADE MARK.

Quà Gold and Silver Wares Act, 1844, 7 & 8 V. c. 22; *V*. s. 14.

"Mark of Distinction," s. 16 (1), Corrupt and Illegal Practices Prevention Act, 1883, includes a party card intended for personal wear (*Walsall*, 4 O'M. & H. 123). A party card intended for general window exhibition, e.g. a Candidate's Portrait, — Is that a "Mark of Distinction" within the section? *Vth*, and as to the scope and object of the prohibition, *judgmt of Cave, J., Stepney*, Times, 22nd Dec 1892; 4 O'M. & H. 179. A Banner may be a "Mark of Distinction" (*Ib.*). *Vf*, BANNER: COCKADE.

**MARKET.** — "Market (anciently written *mercat*, Fr., *mercatus*, L.), a public time and appointed place of buying and selling; also purchase and sale" (Wharton Law Lex.: *Cp*, FAIR: *V*. 1 Bl. Com. 274; 8 Encyc. 221-225). A market may be granted without metes and bounds, but, generally, will be restricted to the anciently accustomed day or days (*A-G. v. Horner*, 54 L. J. Q. B. 227; 55 Ib. 193; 14 Q. B. D. 245; 11 App. Ca. 66: *Vth. Biddle v. Herbert*, 90 Law Times, 189). *V*. WITH ALL LIBERTIES.

*V*. PUBLIC MARKET: MARKET OVERT: MARKET PLACE: ENLARGE.

*Vth*, and as to DISTURBANCE of a Market, Pease & Chitty on Markets and Fairs.

"Market Authority"; Stat. Def., 50 & 51 V. c. 27, s. 2; 55 & 56 V. c. 50, s. 6.



“Delivery to Market,” means, arrival at the place of destination (*Fur-rington v. Meek*, 30 Mo. 584).

V. RIGGING.

**MARKET GARDEN.** — A market-gardener and nurseryman occupied a piece of land upon which were built 16 green-houses on brick foundations, and which practically covered the surface of the land and in which the occupier grew fruit and vegetables for sale in his business; held, that it was a “Market Garden” or “Nursery Ground” within s. 211 (1*b*), P. H. Act, 1875 (*Purser v. Worthing*, 56 L. J. M. C. 78; 18 Q. B. D. 818; 35 W. R. 682; 51 J. P. 596; 3 Times Rep. 509, 637). But “that case merely shows that a Market Garden, *primâ facie*, includes the Buildings upon it used for market garden purposes” (per Lindley, M. R., *Smith v. Richmond*, 67 L. J. Q. B. 440); and as used in the def of “Agricultural Land,” s. 9, Agricultural Rates Act, 1896 (V. AGRICULTURAL) such a garden as that in *Purser v. Worthing* is not “Agricultural Land,” for that phrase is, in that Act, the antithesis of “Buildings” (*Smith v. Richmond*, 1898, 1 Q. B. 683; 67 L. J. Q. B. 439; affd in H. L. 1899, A. C. 448; 68 L. J. Q. B. 898; 81 L. T. 269; 48 W. R. 115; 63 J. P. 804). *Cp.*, “Land used only as a Ry,” sub RAILWAY.

Quâ Market Gardeners Compensation Acts, “Market Garden,” means, “a HOLDING, or that part of a holding, which is cultivated wholly or mainly for the purpose of the trade or business of Market Gardening” (58 & 59 V. c. 27, s. 6; 60 & 61 V. c. 22, s. 6). *Cp.* PASTURE.

V. MARKET GARDENER: GARDEN.

**MARKET GARDENER.** — A tenant of 130 acres, under a farming lease, who grew annually 20 acres of green peas and 12 acres of young potatoes, the produce of which he sold by forwarding the same from time to time to salesmen in London, was held not to be a “Market Gardener” within the late Bankruptcy definition of “Trader” (*Ex p. Hammond*, 14 L. J. Bank. 14; D. G. 93; 9 Jur. 358; *Sc. Ex p. Sully, Re Wallis*, 14 Q. B. D. 950; 33 W. R. 733; 52 L. T. 625).

V. MARKET GARDEN.

**MARKET OVERT.** — In all places, outside the City of London, the MARKET PLACE, or spot of ground set apart by custom (or other legal authority?) for the sale of particular goods, is the only Market Overt (2 Bl. Com. 449, citing Godb. 131); and to be Market Overt it must be open, public, and legally constituted (per Jervis, C. J., *Lee v. Bayes*, 18 C. B. 601: as to how it is legally constituted, *V. Downshire v. O'Brien*, 19 L. R. Ir. 380).

But in the City of London “every SHOP is a Market Overt, for such things only which by the trade of the owner are put there for sale” (*Market Overt Case*, 5 Rep. 83*b*; 8 Rep. 127*a*; Cro. Eliz. 454; nom. *Bishop of Worcester's Case*, Moore, 360); therefore, a “Scrivener's Shop

is not a Market Overt for Plate, for none would search there for such a thing; *et sic de similibus, &c*" (*Ib.*). And the goods must not be sold behind a hanging or a cupboard, but must be sold "openly . . . so that any one that stood, or passed, by the shop might see it" (*Ib.*: *Hill v. Smith*, 4 Taunt. 533; *Lyons v. De Pass*, 9 L. J. Q. B. 51; 11 A. & E. 326; *Crane v. London Docks Co*, 33 L. J. Q. B. 224; 5 B. & S. 313) *i.e.*, *semble*, the shop must be on the ground floor; certainly an up-stairs show-room of a City shop to which access is only obtained by special permission is not Market Overt (*Hargreave v. Spink*, 1892, 1 Q. B. 25; 61 L. J. Q. B. 318; 65 L. T. 650; 40 W. R. 254). *Note*: *Semble*, the City's custom of Market Overt does not extend to goods bought by the shopkeeper (*Hargreave v. Spink*).

A Market constituted by statute is a "Market Overt" (*Ganly v. Ledwidge*, Ir. Rep. 10 C. L. 33; *Delaney v. Wallis*, 14 L. R. Ir. 31: the dictum to the contrary in *Moyce v. Newington*, 4 Q. B. D. 34, may, probably, be disregarded, the decision itself being over-ruled by *Bentley v. Vilmont*, cited RESTORE).

**MARKET PLACE.**—The Market Place of a Borough, means, that or those place or places where, in fact, the principal MARKET is held (*A-G. v. Cambridge*, L. R. 6 H. L. 303; 22 W. R. 37).

**MARKET TOLL.**—*V. FAIR OR MARKET TOLLS.*

**MARKET VALUE.**—The Market Value of property, means, what it would fetch in the market under the state of things for the time being existing; *e.g.* the Market Value of the Reversion of a Public-house, quâ Lands C. C. Act, 1845, means, what the reversion of the premises *as* a Public-house would fetch, and not merely the reversionary value calculated on the rental of the premises apart from the license (*Belton v. London Co. Co.*, 68 L. T. 411; 62 L. J. Q. B. 222; 41 W. R. 315; 57 J. P. 185).

In a contract for the sale of goods, "Market Value" means, the price in the market to an ordinary customer, irrespective of the particular contract (*Orchard v. Simpson*, 2 C. B. N. S. 299).

*Op.* VALUE.

**MARKETABLE SECURITY.**—"Marketable Security," quâ Stamp Duty, means, "a Security of such a description as to be capable of being sold in any stock market in the United Kingdom" (s. 122, Stamp Act. 1891: *Vf.*, s. 82, *Ib.*; s. 6, Finance Act, 1899, 62 & 63 V. c. 9):—in other words, the phrase means, "an INSTRUMENT which will be treated on the Stock Exchange as something which can be bought and sold" (per Esher. M. R., *Brown v. Inl. Ren.*, 1895, 2 Q. B. 598; 64 L. J. M. C. 241; 73 L. T. 377, adopting def of *Ld Shand, Texas Land*

& *Cattle Co v. Inl. Rev.*, 16 Sess. Ca. 4th Ser. 69; 26 Sc. L. R. 51).  
*Cp*, SECURITY.

*Vh*, *Stern v. The Queen*, 1896, 1 Q. B. 211; 65 L. J. Q. B. 240; 73 L. T. 752; 44 W. R. 302; *Chicago Ry v. Inl. Rev.*, 75 L. T. 572; *Noakes v. Inl. Rev.*, 83 L. T. 714.

A Co's Debenture is, ordinarily, a "Marketable Security, not transferable by delivery," Sch 1, Stamp Act, 1891, and requires a Mortgage *ad val.* stamp on the amount secured by it (*Rowell v. Inl. Rev.*, 1897, 2 Q. B. 194; 66 L. J. Q. B. 528: *V.* AMOUNT).

An Equitable Charge on Debentures, was held a "Marketable Security" within s. 2 (10), Stamp Act, 1870, which is in the same terms as s. 122, Stamp Act, 1891 (*Reed v. Eley*, W. N. (1900) 57).

*V.* ISSUED: MADE.

**MARLBIDGE.** — Statute of Marlbridge, 52 H. 3, c. 23.

**MARQUE.** — Letters of Marque; *V.* LETTER.

**MARRIAGE.** — " 'Marriage' is one and the same thing substantially all the Christian world over. Our whole law of Marriage assumes this" (per *Ld Brougham*, *Warrender v. Warrender*, 2 Cl. & F. 532). "I conceive that 'Marriage,' as understood in Christendom, may, for this purpose," — *i.e.* creating the status of "Husband" and "Wife" as those words are used in the Matrimonial Causes Act, 1857, — be defined as, the voluntary union for life of one man and one woman, to the exclusion of all others," the man and woman not being legally prohibited from marrying one another (per *Penzance*, *J. O.*, *Hyde v. Hyde*, L. R. 1 P. & D. 133; 35 L. J. P. M. & A. 58; *Brinkley v. A-G.*, 59 L. J. P. D. & A. 51; 15 P. D. 76); it was accordingly held in *Hyde v. Hyde* that neither party to a so-called marriage accomplished according to a law allowing Polygamy, *e.g.* a Mormon Marriage, is entitled to a divorce in an English Court. Nor are the children of such a marriage legitimate (*Re Bethell*, 38 Ch. D. 220; 57 L. J. Ch. 487).

The Form or Ceremony of marriage is not its essential, so long as a marriage, as above defined, is intended and the law is observed and the contracting parties have the legal capacity thereunto (*Dalrymple v. Dalrymple*, 2 Hagg. Con. 54: *R. v. Millis*, 10 Cl. & F. 534: *Re De Wilton*, 1900, 2 Ch. 481; 69 L. J. Ch. 717; 83 L. T. 70; 48 W. R. 645; *Beamish v. Beamish*, 9 H. L. Ca. 274; *Simonin v. Mallac*, 29 L. J. P. & M. 97; 2 Sw. & Tr. 67; *Hay v. Northcote*, 1900, 2 Ch. 262; 69 L. J. Ch. 586).

*Vh*, Phil. Ecc. Law, Part 3, ch. 7.

As to Invalid Marriages, *V. Warter v. Warter*, 59 L. J. P. D. & A. 87; 15 P. D. 152; 63 L. T. 250.

As to Jews' Marriages, and history thereof in England; *V. Lindo v. Belisario*, 1 Hagg. Con. 216, 217 *n*: *Re De Wilton*, *sup.*

“Marriage” may, but only by a context, include a reputed, though illegal, marriage (*V. per* Ld Cairns, *Hill v. Crook*, 42 L. J. Ch. 716; L. R. 6 H. L. 285; per Halsbury, C., *Re Jodrell*, 59 L. J. Ch. 542; *S. C.* on appeal nom. *Seale-Hayne v. Jodrell*, 1891, A. C. 304; 61 L. J. Ch. 70). *Sv*, SOLEMNIZATION.

*V.* BIGAMY: ENGLISH MARRIAGE: LEVITICAL DEGREES: SPECIAL.

Cesser of a Life Interest on death or re-marriage; *V.* DEATH.

The “Right of Marriage,” in its feudal sense, signified “the power which the Lord, or Guardian in Chivalry, had of disposing of his Infant Ward in matrimony” (2 Bl. Com. 70: *Vf*, *Ib.* 88).

“The Marriage Acts, 1811 to 1886”; *V.* Sch 2, Short Titles Act, 1896. *Vf*, MATRIMONIAL.

The Foreign Marriage Acts; *V.* 12 & 13 V. c. 68; 31 & 32 V. c. 61; 53 & 54 V. c. 47; 54 & 55 V. c. 74.

**MARRIAGE SETTLEMENT.** — “A ‘Marriage Settlement’ is well understood to be a Deed executed in consideration of a marriage about to take place” (per Hill, J., *Foster v. Fowler*, 5 Jur. N. S. 99); and therefore (unless made in pursuance of an ante-nuptial agreement), a post-nuptial Settlement of personal chattels is not a “Marriage Settlement” which, under s. 4, Bills of Sale Act, 1878, is exempt from registration (*Fowler v. Foster*, 28 L. J. Q. B. 210; 5 Jur. N. S. 99; *Ashton v. Blackshaw*, 39 L. J. Ch. 205; L. R. 9 Eq. 510); but “there is no doubt that a post-nuptial Settlement, in pursuance of an ante-nuptial Agreement, is a ‘Marriage Settlement’ and within that exemption” (per Bowen, L. J., *Courcier v. Bardili*, 27 S. J. 276: *Vf*, *Rosc. N. P.* 1189); so of Ante-Nuptial Articles, or of any ante-nuptial document, by which a Trust would be created in favour of the intended wife (*Wenman v. Lyon*, 1891, 2 Q. B. 193; 60 L. J. Q. B. 663; 65 L. T. 136; 39 W. R. 519).

*V.* SETTLEMENT: CONTRACT.

**MARRIED MAN.** — A Widower is a “Married Man” within s. 2, Married Women’s Policies of Assurance (Scot) Act, 1880, 43 & 44 V. c. 26 (*Goss v. Sharpe*, 23 *Rettie*, 146). *Cp*, UNMARRIED: WIFE.

**MARRIED WOMAN.** — *V.* MARRY: FEME: WIFE: UNMARRIED: SEPARATE PROPERTY: SEPARATE USE: INSTITUTED: JUDGMENT: OPPOSITE PARTY: PENDING: RESTRAINT ON ALIENATION: BENEFIT: MADE.

**MARRY.** — “If she shall marry”; *V.* DEATH.

Gift to Widow “provided she shall not marry”; *V.* WIDOW.

Direction to settle the share of such of testator’s daughters as “shall be a MARRIED WOMAN,” does not apply to one who is a widow when the direction becomes operative (*Rudall v. Nichols*, W. N. (1900) 133).

*V.* UNMARRIED: WITHOUT HAVING BEEN MARRIED.

Knowingly marry without Banns; *V.* KNOWINGLY.

"Being married," "marries"; *V.* BIGAMY. *Vf.* KNOWN.

**MARSHALL.** — Marshalling ASSETS, is the adoption of this principle: — Where there are two funds and two parties, and one of those parties has a claim exclusively upon one fund whilst the other has the right of resorting to either, the Court sends the latter party primarily to that fund from which the former is excluded; or, if the party entitled to resort to either fund has actually resorted to the common fund, then, to that extent, the party entitled only to the common fund will be allowed to stand in the place of the other party (1 Jarm. 234, 235: *Aldrich v. Cooper*, 8 Ves. 382, 388; 1 White & Tudor, 36, which latter to p. 67, *V.* for the various applications of the doctrine). *Vf.* as to gifts to CHARITY, 1 Jarm. 234-237: Tudor Char. Trusts, 58-66: — in an Administration of a Deceased's Estate, Wms. Exs. 1585 *et seq.*: Theobald, 740 *et seq.*: Seton, 1663-1675: 8 Encyc. 228, 229.

Marshalling SECURITIES, resembles marshalling assets, and is this: — "If a person having two estates mortgages both to A., and then one only to B., who had no notice of A.'s mtge, B. may, as against the mortgagor, compel the payment of the first mtge out of the estate on which he had no charge" (per Kay, L. J., *Flint v. Howard*, 62 L. J. Ch. 812; 1893, 2 Ch. 72, stating the effect of *Lanoy v. Athol*, 2 Atk. 444, 446). The qualification here that B. "had no notice of A.'s mtge" seems not essential, for the doctrine of *Lanoy v. Athol* is said to apply whether B. took his mtge "with or without notice of the first" mtge (1 White & Tudor, 56). *Vh.* *Dolphin v. Aylward*, L. R. 4 H. L. 486: *Moxon v. Berkeley Bq Socy.*, 59 L. J. Ch. 524: *Re Jones*, 1893, 2 Ch. 461; 62 L. J. Ch. 996; 69 L. T. 45: Robbins on Mortgages, ch. 41: 8 Encyc. 230, 231.

**MARTIAL LAW.** — "Martial Law, which is built upon no settled principles but is entirely arbitrary in its decisions, is (as Sir Matthew Hale observes, Hist. C. L. c. 2) in truth and reality, no law but something indulged rather than allowed as a law. The necessity of order and discipline in an army is the only thing which can give it countenance; and, therefore, it ought not to be permitted in time of peace, when the King's Courts are open for all persons to receive justice according to the laws of the land" (1 Bl. Com. 413). *Vh.* *Grant v. Gould*, 2 Bl. H. 69: *Sutton v. Johnstone*, 1 T. R. 493, 550: *Elphinstone v. Bedreechund*, 1 Knapp P. C. 316: *Ex p. Marais*, 1902, A. C. 109; 71 L. J. P. C. 42: *Ex p. Milligan*, 4 Wallace, 141, 142.

**MARTINMAS.** — *V.* MICHAELMAS.

**MASCULINE.** — In Acts after 1850, Masculine includes Feminine (s. 1 *a*, Interp Act, 1889). *V.* FEMALE: SEX: MAN: MALE: MALE LINE.

**MASK.** — *V.* MESH.

**MASS.** — Masses for the Dead; *V.* SUPERSTITIOUS.

**MASTER.** — “Master,” R. 21, Ord. 54, R. S. C., includes a Registrar of the Probate Divorce and Admiralty Division (*Re Patrick*, 14 P. D. 42; 58 L. J. P. D. & A. 36; 60 L. T. 343). *Vf*, R. 1, Ord. 71. Stat. Def., *Scot.* 38 & 39 V. c. 17, s. 109; 57 & 58 V. c. 28, s. 7.

Master of the *Ceremonies*, s. 1, 21 G. 3, c. 49, is not applicable to an ENTERTAINMENT of an intellectual kind, *e.g.* a Lecture on Art (per Esher, M. R., *Reid v. Wilson*, 1895, 1 Q. B. 315; 64 L. J. M. C. 60).

“Master,” “Under-Master,” and “Schoolmaster” of a Grammar School; Stat. Def., 3 & 4 V. c. 77, s. 25.

“Master” of a House or Building, *quà* P. H. London Act, 1891; *J* s. 141.

“Master or Mistress” of a House, &c. s. 2, 21 G. 3, c. 49; *V.* KEEPER.

“Master” of a Ship or Vessel, *quà* Mer Shipping Act, 1894, “includes, every person (except a PILOT) having command or charge of any SHIP” (s. 742); to the like effect are the following defs, 10 & 11 V. c. 27, s. 3; 28 & 29 V. c. 125, s. 2; 33 & 34 V. c. 90, s. 30; 35 & 36 V. c. 19, s. 2; 39 & 40 V. c. 36, s. 284; 48 & 49 V. c. 49, s. 12; 54 & 55 V. c. 31, s. 9: — *quà* Canal Boats Act, 1877, 40 & 41 V. c. 60, “‘Master,’ in relation to a Canal Boat, means, the person having for the time being command or charge of the boat” (s. 14); *quà* Thames Conservancy Act, 1894, “‘Master,’ when used in relation to any Vessel, means, any person (whether the owner, master, or other person) lawfully or wrongfully having or taking the command charge or management of the Vessel for the time being” (s. 3).

An Exception, in a Bill of Lading, of damage caused by the “NEGLECT OR DEFAULT of the Master”; held, not displaced by the fact that the Master was part-owner of the ship (*Westport Co v. McPhail*, 1898, 2 Q. B. 130; 67 L. J. Q. B. 674; 78 L. T. 490; 46 W. R. 566).

On Master and Servant; *V.* Eversley on Domestic Relations: Macdonell on Master and Servant: Parkyn, *Ib.*: 8 Encyc. 235–265.

*V.* FINDING A MASTER: GENTLEMAN.

**MATERIAL.** — *Quà* Stamp Acts, “Material,” “includes every sort of material upon which words or figures can be expressed” (54 & 55 V. c. 38, s. 27, c. 39, s. 122).

“Hard and Incombustible Material”; *V.* INCOMBUSTIBLE: WALL.

*V.* MATERIALS: SPRAYING.

**MATERIAL ALTERATION.** — “When a Deed is altered in a Point material, by the Plaintiff himself or by any Stranger without the Privity of the Obligee, be it by Interlineation, Addition, Rasing, or by drawing of a Pen through a Line, or through the midst of any material Word, the Deed thereby becomes void: as if a Bond is to be made to the Sheriff for Appearance, &c. and in the Bond the Sheriff’s name is omitted, and after the Delivery thereof his Name is interlin’d, either by the Obligee or a Stranger without his Privity, the Deed is void: So if one make a Bond

of £10 and after the Sealing of it another £10 is added which makes it £20, the Deed is void: So if a Bond is rased, by which the first word can't be seen, or if it is drawn with a Pen and Ink through the Word, although the first Word is legible, yet the Deed is void" (*Pigot's Case*, 11 Rep. 27 a: Touch. 68, 69: *Swiney v. Barry*, 1 Jones, 109).

The Touchstone (p. 68) thus particularizes what is a *material* alteration in a Deed:—"As if it be in a deed of grant, in the name of the grantor, grantee, or in the thing granted, or in the limitation of the estate; or if it be in an obligation when the word [heirs] shall be inserted, or the sum increased, or in the date of either, or the like." So a Surety-Bond is voided by the last signatory adding to his signature words limiting, otherwise than in the bond, the amount of his liability (*Ellesmere Co v. Cooper*, 1896, 1 Q. B. 75; 65 L. J. Q. B. 173; 73 L. T. 567; 44 W. R. 254).

But the execution of a Deed of Arrangement by Creditors *after* its registration under 50 & 51 V. c. 57, is not to make a Material Alteration in the deed, and does not render the deed void (*Re Batten, Ex p. Milne*, 58 L. J. Q. B. 333; 22 Q. B. D. 685; 37 W. R. 499).

The alteration of a date in a Bill of Exchange, whereby its due date would be accelerated (*Master v. Miller*, 4 T. R. 320; affd 5 T. R. 367; 2 Bl. H. 141; 1 Anst. 225; 1 Sm. L. C. 825: *See, Aldous v. Cornwall*, 37 L. J. Q. B. 201; 9 B. & S. 607; L. R. 3 Q. B. 573), or, adding words to an Acceptance, making the Bill payable at a particular place (*Hanbury v. Lovett*, 18 L. T. 366), or the alteration of the number of a Bank of England note (*Suffell v. Bank of Eng.*, 51 L. J. Q. B. 401; 7 Q. B. D. 270; 9 Ib. 555: *Leeds Bank v. Walker*, 11 Q. B. D. 84), is material (and so probably of the numbers on Bonds which have to be drawn by lot; but not of a number put on a Bill of Ex. or Cheque; per Jessel, M. R., *Suffell v. Bank of Eng.*, sup). Erasing the crossing of a Cheque is not a material alteration of the Cheque (*Simmons v. Taylor*, 27 L. J. C. P. 45, 248; 4 C. B. N. S. 463). *V.* now as to alterations in Bills of Ex., Bills of Ex. Act, 1882, ss. 63, 64: *Scholfield v. Londesborough*, cited ACCEPTANCE.

As to what verbal alteration in a Sale Note or other Contract is material; *V. Powell v. Divett*, 15 East, 29; *Mollett v. Wackerbarth*, 17 L. J. C. P. 47; 5 C. B. 181. It is probably safe to say that only such an alteration is material as would alter the business effect of the instrument if used for any ordinary business purpose for which such an instrument or any part of it is used (*V. jdgmt of Brett, L. J.*, and *cp.*, that of Jessel, M. R., *Suffell v. Bank of Eng.*, sup). To put a seal against the signature to a contract which was not under seal, is a material alteration of the contract (*Davidson v. Cooper*, 12 L. J. Ex. 467; 13 Ib. 276; 11 M. & W. 778; 13 Ib. 343).

*Op.* ESSENTIAL. *V.* ALTERATION.

Material Alteration of Discipline; *V.* MATERIALLY ALTERED.

**MATERIAL DETRIMENT.** — In considering whether "Material Detriment" will be caused by Severance, on a Ry Co compulsorily taking land, regard must be had to all the circumstances and the mode and manner in which the Co are prepared to bind themselves as to the user of the land, *e.g.* where the land is only wanted for a viaduct, and the Co offer the grant of a perpetual and commodious right of way under the viaduct (*Re Gonty and Manchester S. & L. Ry*, 1896, 2 Q. B. 439; 65 L. J. Q. B. 625; 45 W. R. 83; 75 L. T. 239; *Vthe, Caledoniam Ry v. Turcan*, cited ROAD). *Vf, Morrison v. G. E. Ry*, 53 L. T. 384.

**MATERIAL DISCOMFORT.** — *V. ANNOYANCE.*

**MATERIAL ERROR.** — As to what is a "Material Error" in a description of property quâ Conditions of Sale; *V. Phelps v. White*, 5 L. R. 1r. 318: ERROR.

**MATERIAL EVIDENCE.** — "Material Evidence in Support of the Promise of Marriage," s. 2, 32 & 33 V. c. 68; — Evidence of silence when a man is to his face taxed with such a promise is "Material Evidence" in its support (*Bessela v. Stern*, 46 L. J. C. P. 467; 2 C. P. D. 265; 42 J. P. 197); *secus*, of leaving unanswered a letter which states the promise (*Wiedemann v. Walpole*, 1891, 2 Q. B. 534; 60 L. J. Q. B. 762; 40 W. R. 114). In *Bessela v. Stern* Branwell, L. J., said, — "I rather fancy it has somewhere been said that the word 'Material' makes no difference in the meaning of the section."

*V. CORROBORATED.*

**MATERIAL FACT.** — The "Material Facts" that are to be stated in Pleadings, R. 4. Ord. 19. R. S. C., mean those that are "material to the party pleading, be he plt or deft" (per Lopes, L. J., *Darbyshire v. Leigh*, 1896, 1 Q. B. 554; 65 L. J. Q. B. 360; 74 L. T. 241; 44 W. R. 452). They may, and generally should, include the consequences, or motives, of the matter relied on as well as those pertinent to that matter itself; *e.g.* seduction and imparting venereal disease in an action for Breach of Promise of Marriage (*Millington v. Loring*, 50 L. J. Q. B. 214; 6 Q. B. D. 190; 43 L. T. 657; 29 W. R. 207), or of malicious motives in defamation (*Glossop v. Spindler*, 29 S. J. 556), or any other fact which the party is entitled to prove at the trial (*Lumb v. Beaumont*, 49 L. T. 772); but not damages (*Wood v. Durham*, 57 L. J. Q. B. 547; 21 Q. B. D. 501; 59 L. T. 142; 37 W. R. 222).

The following are examples of what are "Material Facts" within the Rule; —

In Defamation, the precise words complained of (*Harris v. Warre*, 48 L. J. C. P. 310; 4 C. P. D. 125); in a Defence to Defamation, the facts relied on to show justification or privilege (*Belt v. Lawes*, 51 L. J. Q. B. 359); the alleged purport of documents when such is relied on (*Phillipps v.*



*Philippis*, 4 Q. B. D. 127; 48 L. J. Q. B. 135; 27 W. R. 436: *Darbyshire v. Leigh*, sup); in Ejectment, when the claim is by devolution, the material steps showing title (*Philippis v. Philippis*, sup: *Davis v. James*, 53 L. J. Ch. 523; 26 Ch. D. 778; 32 W. R. 406; 50 L. T. 115; *See, Evelyn v. Evelyn*, 28 W. R. 532: and as to the Defence, *V. Danford v. McAnulty*, 52 L. J. Q. B. 652; 8 App. Ca. 456), in a Right of Way case, the termini and general course of the Way and whether claim arises by prescription or grant (*Harris v. Jenkins*, 52 L. J. Ch. 437; 22 Ch. D. 481; 31 W. R. 137); in Negligence, inevitable accident (*Winchelsea v. Beckly*, 2 Times Rep. 300); in Negligence under Employers' Liability Act, the knowledge by the master of the danger and the want of such knowledge by the servant (*Griffiths v. London & St. K. Docks Co.*, 53 L. J. Q. B. 504; 13 Q. B. D. 260); in Donatio Mortis Causâ, the actual facts attending the gift (*Re Parton*, 30 W. R. 287). *Vf.* Anu. Pr.

"Material Facts not brought before the Court," s. 7, Matrimonial Causes Act, 1860, 23 & 24 V. c. 144, includes Collusion (*Rogers v. Rogers*, cited COLLUSION); and "even events happening after the Decree nisi," e.g. subsequent adultery (per Jenne, P., *Ib.*, citing *Hulse v. Hulse*, 40 L. J. P. & M. 51; L. R. 2 P. & D. 259, and referring to the doubts on *this* in *Howarth v. Howarth*, 9 P. D. 218).

*Cp.* EVIDENCE: *V.* CONCEALMENT: FACT: PERJURY.

**MATERIAL MEN.**—"Those are commonly called Material Men whose trade it is to build, repair, or equip, Ships or to furnish them with tackle and provision (necessary in any kind). Those men, when they have furnished any victuals or materials upon the credit of a Ship, are certain losers if they be prohibited from taking their remedy against such Ships by arresting and proceeding to gain a possession of the Ship itself till the debt be satisfied according to the ancient course of the Admiralty" (per Sir Leoline Jenkins, temp. Car. 2, cited and adopted in *The Neptune*, 3 Hagg. Adm. 142).

**MATERIAL PARTICULAR.**—*V.* CORROBORATED.

*Cp.* "Essential Particular," sub ESSENTIAL.

**MATERIAL RESPECT.**—*V.* FALSE TRADE DESCRIPTION.

**MATERIALLY ALTERED.**—Transfer of an Endowment if a School should become "materially altered in discipline, numbers, or other circumstances"; *V. London School Bd v. Faulconer*, 48 L. J. Ch. 41; 8 Ch. D. 571.

*V.* MATERIAL ALTERATION.

**MATERIALS.**—"Materials, Tools, or Implements, to be used by such artificer in his trade or occupation, if such artificer be employed in mining," s. 23, Truck Act, 1831, 1 & 2 W. 4. c. 37;—Wooden Props

or "Sprags," though neither "Tools, or Implements," are "Materials" within these words (*Cutts v. Ward*, 36 L. J. Q. B. 161; L. R. 2 Q. B. 357; 15 W. R. 445; 15 L. T. 614). *V.* IMPLEMENT.

Policy on "Hull, Materials, and Machinery": *V.* HULL.

"Unfinished Goods or Materials"; Stat. Def., Pawnbrokers Act, 1872, 35 & 36 V. c. 93, s. 5.

Woollen, &c. "Materials"; Stat. Def., Hosiery Act, 1843, 6 & 7 V. c. 40, s. 35.

*V.* MATERIAL.

**MATERNÂ.** — *Ex p. maternâ*; *V.* NEXT OF KIN. *Cp.* MALE LINE.

**MATRIMONIAL.** — "The Matrimonial Causes Acts, 1857 to 1878"; *V.* Sch 2, Short Titles Act, 1896. *Vf.* MARRIAGE.

Matrimonial Cruelty; *V.* CRUELTY.

**MATRON.** — *Quâ* Prisons (Scot) Act, 1877, 40 & 41 V. c. 53, "Matron" shall mean, the chief female officer of a prison" (s. 71).

**MATTER.** — *V.* CAUSE: CAUSE AND MATTER: PROCEEDING.

*Quâ* Jud. Act, 1873, "Matter," includes, "every proceeding in the Court not in a Cause" (s. 100); *Va.* Jud. Act (Ir), 1877, s. 3.

An Originating Summons is a "Matter" within s. 43, Trustee Act, 1850 (*Re Jones*, 59 L. J. Ch. 157; 61 L. T. 554). So, a Company Summons is a "Matter" (*V.* TRIAL).

"Matter," in the phrase "Cause or Matter," R. 5, Ord. 37, R. S. C., includes a Voluntary Winding-up of a Co (*Re Mysore Mining Co*, 58 L. J. Ch. 731; 42 Ch. D. 535; 61 L. T. 453; 37 W. R. 794); but not an Arbitration by consent out of Court (*Re Shaw and Ronaldson*, 1892, 1 Q. B. 91; 61 L. J. Q. B. 141).

"Matter not being an Action." R. 15, Ord. 54, R. S. C.; *V. Re Fawsitt, Galland v. Burton*, 54 L. J. Ch. 1131; 30 Ch. D. 231.

Power to make "Orders as to Costs, and all other Matters," R. 15, Ord. 57, R. S. C., includes the charges for warehousing of an Interpleading Wharfinger (*Attenborough v. St. Katharine's Docks*, 47 L. J. C. P. 763; 3 C. P. D. 450; 38 L. T. 404; 26 W. R. 583; *De Rothschild v. Morrison*, 59 L. J. Q. B. 557; 24 Q. B. D. 752; 38 W. R. 635).

*Quâ* Co. Co. Act, 1888, "Matter," means, "every proceeding in the Court which may be commenced as prescribed otherwise than by Plaintiff" (s. 186). A Counter-Claim exceeding £20 is an appealable "Matter" within s. 120 of that Act, though the Claim itself be under £20 (*Smith v. Gill*, 1896, 2 Q. B. 166; 65 L. J. Q. B. 556); *secus*, of disciplinary proceedings under s. 48 (*Lewis v. Owen*, 1894, 1 Q. B. 102; 63 L. J. Q. B. 233).

A Client's Order for Taxation of his Solr's Bill is a "Matter" within

s. 12, 37 & 38 V. c. 68, though, probably, not an "ACTION or SUIT" (*Re Sweeting*, cited MAINTAIN).

"Articles, Matters, and Things"; *V.* ARTICLE.

Exception of "Matters or Things done at any time before the passing of this Act," s. 1, 6 & 7 V. c. 73; *V. Doe d. Potts v. Jinders*. 14 L. J. Q. B. 245; 2 Dowl. & L. 986: DONE: BEGIN.

"Any other Matter or Thing relating or incidental to the Sale"; *V.* RELATING.

"Matter" contrasted with "SUBSTANCE"; *V.* DESTRUCTIVE.

"Matter of Account"; *V.* ACCOUNT.

"Matter" of an Agreement, quâ Stamp Act; *V. Doe d. Marlow v. Wiggins*, 12 L. J. Q. B. 177; 4 Q. B. 367; 3 G. & D. 504: *Marlow v. Thompson*, 1 Dowl. N. S. 575.

"Matter of Complaint"; *V.* ARISE: COMPLAINT: DEFACE.

"All Matters in Difference"; *V.* CAUSE: CONSENT.

"Matter of Law"; *V.* LAW.

"Matter of Practice and Procedure": *V.* PRACTICE.  
Matter of Record; *V.* RECORD.

"Matter of Invention in Sculpture"; *V.* SCULPTURE.

"Matter in Question," R. 12, Ord. 31, R. S. C.; *V. Penrice v. Williams*, 23 Ch. D. 353; 52 L. J. Ch. 593. *V.* QUESTION.

"Matters and Causes Testamentary," shall comprehend all matters and causes relating to the grant and revocation of Probate of Wills, or of Administration" (20 & 21 V. c. 77, s. 2, c. 79, s. 2).

*V.* FILTHY WATER: SOLID MATTER.

**MATURE.** — A Bill of Exchange or Promissory Note matures when it becomes due; and when payable "ON DEMAND" it "Matures" at once, *e.g.* quâ s. 62 (1), Bills of Ex. Act, 1882 (*Edwards v. Walters*, 1896, 2 Ch. 157; 65 L. J. Ch. 557; 44 W. R. 547; 74 L. T. 396): *Cp.* RENUNCIATION: OVERDUE.

**MAURITIUS.** — *V.* EAST INDIES.

**MAXIMUM.** — A Maximum Railway Rate is the major limit which is not to be exceeded (per Miller, Commr, *Skinningrove Co v. N. E. Ry*, 5 Ry & Can Traffic Ca. 265).

Maximum Width; *V.* WIDTH.

**MAY.** — Though dicta of eminent judges may be cited to the contrary, it seems a plain conclusion that "may," "it shall be lawful," "it shall and may be lawful," "empowered," "shall hereby have power," "shall think proper," and such like phrases, give, in their ordinary meaning, an enabling and discretionary power. "They are potential and never (in themselves) significant of any obligation" (per Ld Selborne, *Julius v. Oxford, Bp.*, 49 L. J. Q. B. 585; 5 App. Ca. 235). "They confer a faculty or power, and they do not of themselves do more than confer

a faculty or power"; and therefore, where the point in question is not covered by authority, "it lies upon those who contend that an *obligation* exists to exercise this power, to show in the circumstances of the case something which according to the principles I have mentioned creates this obligation" (per Cairns, C., *S. C.* 49 L. J. Q. B. 578, 579; 5 App. Ca. 223; 42 L. T. 546; 28 W. R. 726). On that case Cotton, L. J., observed: "'May' never can mean 'MUST,' so long as the English language retains its meaning; but it gives a power, and then it may be a question in what cases, where a Judge has a power given him by the word 'may,' it becomes his *duty* to exercise that power" (*Re Baker, Nichols v. Baker*, 59 L. J. Ch. 661; 44 Ch. D. 262).

*Julius v. Oxford, Bp* (sup), may be regarded as the leading case on the principles therein referred to by Lord Cairns for construing as obligatory, phrases which in their ordinary meaning are merely enabling. His Lordship in that case gathers those principles into the following proposition:—

"Where a power is deposited with a public officer for the purpose of being used for the benefit of persons (1) who are specifically pointed out, and (2) with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised" (49 L. J. Q. B. 580; 5 App. Ca. 214).

And the following supplemental proposition may be gathered from the judgment of Lord Blackburn in the same case:—

Enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right: and if the object of the power is to enable the donee to effectuate a legal right, then it is the *duty* of the donee of the power to exercise the power when those who have the right call upon him to do so.

*Vh, Hill v. Barge*, 12 Ala. 693: *Fowler v. Perkins*, 77 Ill. 273.

"May," and such enabling words as those above referred to, therefore group themselves into two classes according as they impose or give:—

I. An Obligatory Duty;

II. A Discretionary or Enabling Power.

I. In the following cases, which all seem to come well within the principles to which form and substance were given by *Julius v. Oxford, Bp.*, enabling words have been held to impose

### An Obligatory Duty:—

Where, by the joint effect of 13 Eliz. c. 7, s. 2, and 1 Jac. 1, c. 15, s. 3, the Lord Chancellor "shall have full power and authority" to issue a bankruptcy commission (*Backwell's Case*, 1 Vern. 152: *ethc.*, stated by Ld Blackburn, *Julius v. Oxford, Bp.* sup):

Where, by Arb Act, 1889, s. 5, the Court "may" appoint an

### An Obligatory Duty:—

Arbitrator or Umpire (per Esher, M. R., *Re Eyre and Leicester*, 1892, 1 Q. B. 136; 61 L. J. Q. B. 438; 65 L. T. 733; 40 W. R. 203, Kay, L. J., hesitating):

Where, by s. 17, Matrimonial Causes Act, 1857, the Court "may" decree Restitution of Conjugal Rights (per Lopes and Lindley, L. J.J., *Russell v. Russell*, 1895, P. 315; 64 L. J. P. D. & A. 114); but observe from that judgment that this imperative sense has in one instance been qualified:

Where it was declared by 13 & 14 Car. 2, c. 12, s. 18, that constables and others, out of purse in enforcing the poor-law, "together with the churchwardens and overseers of the poor and other inhabitants of the parish, shall hereby have power and authority" to make a rate to reimburse the constables and others (*R. v. Barlow*, 2 Salk. 609: *note*, stated by Ld Blackburn, *Julius v. Oxford, Bp.*):

Where, by 56 G. 3, c. 1y, "it shall be lawful" for the wardens, &c, to raise a rate to pay the increased stipends of two chaplains and the schoolmaster of St. Saviour's, Southwark (*R. v. St. Saviour's, Southwark*, 7 L. J. M. C. 59; 1 N. & P. 496; 7 A. & E. 925: *Vf*, per Holroyd, J., *R. v. Flockwood Commrs*, 2 Chitty, 253):

Where, by 8 & 9 W. 3, c. 11, s. 8, a plaintiff in an action on a Bond or for a penal sum "may" assign as many breaches as he shall think fit, the statute being for the benefit of defendants (*Roles v. Rosewell*, 5 T. R. 538: *Hardy v. Bern*, cited *Ib.* 540: *Plomer v. Ross*, 5 Taunt. 386):

Where a power was granted by royal charter to the steward and suitors of a manor enabling them to hear and determine civil suits (*R. v. Steward of Havering-atte-Bower*, 5 B. & Ald. 691):

Where, by 7 W. 4 & 1 V. c. 78, s. 24, "it shall be lawful" for the King's Bench to enquire into the title of a claimant (whose claim has been REJECTED in the revision court) to have his name inserted in the Burgess Roll (*R. v. Harwich*, 8 A. & E. 919; *See*, s. 47 (2), Municipal Corporations Act, 1882):

Where, by 2 & 3 V. c. 84, s. 1, "it shall be lawful" for two justices to summon overseers to a special sessions for their contribution to their Union, "and if the justices at such sessions shall think fit" to issue warrant of distress (*R. v. Boteler*, 4 B. & S. 959; 33 L. J. M. C. 101):

Where, by 5 & 6 V. c. 54, s. 7, the Tithe Commissioners were "empowered" to confirm invalid agreements respecting tithes when a fair equivalent given (*R. v. Tithe Commrs*, 14 Q. B. 459; 19 L. J. Q. B. 177):

Where, by 7 & 8 V. c. 110, s. 66, judgments against certain joint-stock companies "shall and may" take effect and be enforced against the shareholders (*Hill v. London & County Assree*, 1 H. & N. 398; 26 L. J. Ex. 89, over-ruling *Thompson v. Universal Salvage Co*, 3 Ex. 310; 18

## An Obligatory Duty:—

L. J. Ex. 242: *Va, Morisse v. Royal British Bank*, 1 C. B. N. S. 67; 26 L. J. C. P. 62: *Ij*; SHALL AND LAWFULLY MAY):

Where, by 7 & 8 V. c. 113, s. 13, execution “may be issued by leave of the Court” (against a shareholder in a joint-stock bank) on motion by a judgment creditor, and that “it shall be lawful” for such Court to make absolute or discharge such rule (*Morisse v. Royal British Bank*, sup):

Where, by Indictable Offences Act, 1848, 11 & 12 V. c. 42, s. 9, justices “may if they think fit” issue summons or warrant (*R. v. Adamson*, 1 Q. B. D. 201; 45 L. J. M. C. 46):

Where, by P. H. Act, 1848, 11 & 12 V. c. 63, s. 89, a local board of health “may” make rates to pay charges within that section (*R. v. Rotherham*, 8 E. & B. 906; 27 L. J. Q. B. 156: *Worthington v. Hulton*, L. R. 1 Q. B. 63; 35 L. J. Q. B. 61; cited by Ld Blackburn, *Julius v. Oxford, Bp.*, sup):

Where, by the Joint Stock Companies Winding-up Act, 1848, 11 & 12 V. c. 45, s. 73, “it shall be lawful” for a judge to restrain an action against a contributory to a Company unless Master’s permission to proceed obtained and the debt proved before the Master (*Marson v. Lund*, 13 Q. B. 664):

Where, by a Private Act it was declared that “it shall be lawful” for a Railway Company to construct bridges of a certain height and span (*R. v. Caledonian Ry*, 16 Q. B. 19; 20 L. J. Q. B. 150):

Where, by 13 & 14 V. c. 61, s. 13, a Judge “may” order costs of an action in a Superior Court (under certain defined conditions) though for an amount which might have been sued for in the County Court (*Macdougall v. Paterson*, 21 L. J. C. P. 27; 11 C. B. 755: *Crake v. Powell*, 21 L. J. Q. B. 183; 2 E. & B. 210: *Asplin v. Blackman*, 21 L. J. Ex. 78; 7 Ex. 386;—over-ruling the previous decisions in the Exchequer of *Jones v. Harrison*, 20 L. J. Ex. 166; 6 Ex. 328: *Palmer v. Richards*, 20 L. J. Ex. 323; 6 Ex. 335):

Where, by the Comp Act, 1862, s. 79, a Company “may” be wound up by the Court (*Bowes v. Hope Socy*, 11 H. L. Ca. 389; 35 L. J. Ch. 574):

Where, by s. 211, P. H. Act, 1875, power is given of rating the owner of property instead of the occupier, but at a reduced estimate, and when that estimate is in respect of tenements whether occupied or not, then the assessment “may” be on one half an occupier’s rating (*R. v. Barclay*, 51 L. J. M. C. 47; 8 Q. B. D. 486):

Where a Merchant writes to his Commission Agent “you may invest” in a specified way proceeds of goods consigned to the latter (*Entwistle v. Dent*, cited PROCEEDS).

11. In the following cases the words now under consideration have been held to confer

### A Discretionary or Enabling Power:—

Where, by 43 G. 3, c. 59, s. 2, "it shall and may be lawful" for justices in Quarter Sessions to widen county bridges (*Re Newport Bridge*, 29 L. J. M. C. 52; 2 E. & E. 377):

Where, by 1 W. 4, c. 22, s. 4, "it shall be lawful" for the Court to order examination of witnesses before a Master within the jurisdiction or to issue commission for the examination of witnesses out of the jurisdiction (*Ducket v. Williams*, 9 L. J. O. S. Ex. 177; *Castelli v. Groome*, 21 L. J. Q. B. 308; 18 Q. B. 490):

Where, by Church Discipline Act, 1840, 3 & 4 V. c. 86, s. 3, "it shall be lawful" for a Bishop to issue a commission to enquire as to the conduct of clerks in holy orders within his diocese (*R. v. Chichester, Bp.*, 29 L. J. Q. B. 23; 2 E. & E. 209; *Julius v. Oxford, Bp.*, sup); so, under ss. 8 and 9, Public Worship Regn Act, 1874, 37 & 38 V. c. 85 (*R. v. London, Bp.*, 59 L. J. Q. B. 169; 24 Q. B. D. 213; *Allcroft v. London, Bp.*, 1891, A. C. 666; 61 L. J. Q. B. 62; 65 L. T. 92; 55 J. P. 773):

Where, by s. 6 (1), Comp Winding-up Act, 1890, the Court "may" give effect to the nomination of a Liquidator by Creditors and Contributories (*Re Johannesburg Land and Gold Trust*, 1892, 1 Ch. 583; 61 L. J. Ch. 284; 66 L. T. 605; 40 W. R. 456):

Where, by s. 125 (4), Bankry Act, 1883, the Court "may" transfer an Administration Action to a Bankry Court (*Re Baker, Nichols v. Baker*, 59 L. J. Ch. 661; 44 Ch. D. 262); so, where "it shall be lawful" for a Bankry Court to remove a Trustee who becomes bankrupt (*Re Bridgman*, 1 Dr. & Sm. 164; 29 L. J. Ch. 844):

Where, by s. 49, Lunacy Act, 1890, the Commrs in Lunacy "may" discharge a patient, on certificate of two medical practitioners (*R. v. Lunacy Commrs*, 1897, 1 Q. B. 630; 66 L. J. Q. B. 387; 76 L. T. 353; 45 W. R. 505; 61 J. P. 278):

Where, by s. 134, Lunacy Act, 1890, the Court "may" order the transfer of stock vested in a person out of the jurisdiction (*Re Knight*, cited VESTED):

Where, by s. 74, Co. Co. Act, 1888, an Admiralty action "may" be brought in a specified district (*Pugsley v. Ropkins*, 1892, 2 Q. B. 189. 190; 61 L. J. Q. B. 645, explaining *The Hero*, 1891, P. 294; 60 L. J. P. D. & A. 99); so, under the same section, of the leave to be given by the Judge or Registrar (*R. v. Turner*, 1897, 1 Q. B. 445; 66 L. J. Q. B. 417):

Where, by s. 10, Rivers Pollution Prevention Act, 1876, 39 & 40 V. c. 75, a Co. Co. Judge "may" make a Summary Order to restrain offences under that Act (per Lindley, L. J., *West Riding v. Holmfirth*,

**A Discretionary or Enabling Power: —**

1894, 2 Q. B. 842; 63 L. J. Q. B. 488; 71 L. T. 217: *Kirkheaton v. Ainley*. 1892, 2 Q. B. 274; 61 L. J. Q. B. 812; 67 L. T. 209; 41 W. R. 99):

Where, by s. 20, Commons Act, 1876, 39 & 40 V. c. 56, Justices "may" prescribe conditions as to mode of digging for gravel, &c (*Hayes Common Conservators v. Bromley*, 1897, 1 Q. B. 321; 66 L. J. Q. B. 155; 76 L. T. 51; 45 W. R. 207; 61 J. P. 104):

Where, by s. 8 (1), Private Street Works Act, 1892, 55 & 56 V. c. 57, Justices "may" if they think fit adjourn the hearing of Objections (*Trickham v. Manton*, cited IF THEY SHALL THINK FIT):

Where, by s. 42 (13), Valuation (Metropolis) Act, 1869, Justices "may" hold Assessment Sessions at any time after 1st February which will enable them to determine all appeals before the ensuing 31st March (*R. v. London Jns.*, 1893, 2 Q. B. 476; 63 L. J. Q. B. 148; 69 L. T. 682; affd in H. L., nom. *London Co. Co. v. St. George's Assessment Committee*, 1894, A. C. 600; 64 L. J. Q. B. 48; 71 L. T. 409):

Where, by s. 17, Canada Temperance Act, 1864, two or more Offences by the same party "may" be included in one Complaint (*Wentworth v. Mathieu*, 1900, A. C. 212; 69 L. J. P. C. 11; 82 L. T. 161; 16 Times Rep. 223):

Where, by s. 37, Solicitors Act, 1843, "it shall be lawful" for the Court or Judge to order the delivery up of documents in possession of a solicitor upon an application under that section for taxation of costs (*Ex p. Jarman*, 46 L. J. Ch. 485; 4 Ch. D. 835):

Where, by R. 48, Ord. 65, R. S. C., the Taxing Master "may" allow Refreshers to Counsel (*Smith v. Wills*, 29 S. J. 684):

Where, by s. 97, Comp C. Act, 1845, Directors "may" contract on behalf of a Company by writing and under their common seal (per Turner, L. J., *Wilson v. West Hartlepool Ry*, 34 L. J. Ch. 250):

Where, by Acts obtained in 1846 and 1849, it was recited that it would be for the local and public advantage that a certain railway should be made and that "it shall be lawful" for the projecting Company to make it (per Exch. Chamber in *York & North Mid Ry v. The Queen*, 22 L. J. Q. B. 225; 1 E. & B. 858, reversing jdgmt of the Queen's Bench wherein Erle, J., was diss., 22 L. J. Q. B. 41; 1 E. & B. 178: *Va, Scottish N. E. Ry v. Stewart*, 3 Macq. H. L. 382: *R. v. Lancashire & Yorkshire Ry*, 1 E. & B. 228: *R. v. G. W. Ry*, 1 E. & B. 253, 874, and jdgmt of Manisty, J., *S. E. Ry v. Ry Commrs*, 49 L. J. Q. B. 277; 5 Q. B. D. 217, revd 6 Q. B. D. 586: *R. v. G. W. Ry*, 69 L. T. 572; 62 L. J. Q. B. 572). *Vf*, CONTRACT.

Where, by s. 27 (2), Ry & Canal Traffic Act, 1883, the Court or Commrs in deciding as to an alleged UNDUE PREFERENCE "may" take into consideration whether a lower charge or difference in treatment is



### A Discretionary or Enabling Power : —

necessary for securing the interests of the PUBLIC (*Liverpool Corn Traders Assn v. G. W. Ry*, 8 Ry & Can Traffic Ca. 142):

Where, by Com. L. Pro. Act, 1852, s. 40, "it shall be lawful" for a husband, in an action for injury to his wife, to add thereto claims in his own right (*Brockbank v. Whitehaven Junction Ry*, 31 L. J. Ex. 349; 7 H. & N. 834):

Where, by Com. L. Pro. Act, 1854, s. 64, a Judge, if a garnishee disputes his liability, "may" (instead of ordering execution) order that judgment creditor shall be at liberty to proceed against the garnishee by writ (*Wise v. Birkenshaw*, 29 L. J. Ex. 240):

Where, by 18 & 19 V. c. 128, s. 4, a vacancy in a Burial Board "may" be filled up by the Board, in case vestry shall, for one month, neglect to supply the vacancy (*R. v. South Weald*, 5 B. & S. 391; 33 L. J. M. C. 193):

Where, by the Sunday and Ragged Schools (Exemption from Rating) Act, 1869, 32 & 33 V. c. 40, s. 1, the rating authority "may" exempt from rating a Sunday or Ragged School (*Bell v. Crane*, 42 L. J. M. C. 122; L. R. 8 Q. B. 481; 29 L. T. 207; 21 W. R. 911):

Where, by s. 27, Industrial and Provident Societies Act, 1893, 56 & 57 V. c. 39, a Committee of a Provident Society "may," without Letters of Administration, distribute shares in cases of intestacy (*Escriv v. Todmorden Socy*, 1896, 1 Q. B. 461; 65 L. J. Q. B. 358; 74 L. T. 350; 44 W. R. 544).

*Note.* — In *Castelli v. Groome*, sup, it was contended in argument that the words there should be construed as imperative, as being governed by *R. v. Havering-atte-Bower*, sup, and it has since been urged that *Castelli v. Groome* is an inconsistent decision (Wilberforce, 202).

But in the earlier case the question was as to the right to sue at all and which right was inherent in suitors without distinction of mode; but in *Castelli v. Groome* the question was as to the mode of taking evidence in certain cases, — a mode by no means the usual and necessarily a costly one. It would therefore seem that *Castelli v. Groome* is peculiarly within the canon of *Julius v. Oxford, Bp.*, and like *Wise v. Birkenshaw*, sup, was a case in which enabling words should receive their ordinary meaning.

In *Ex p. Jarman*, and *R. v. South Weald*, sup, the enabling nature of the words would scarcely need adventitious aid; but in each case it was pointed out that the enabling words under discussion were found in sections which for other purposes employed imperative words.

### Undetermined.

In *Davies v. Evans* (51 L. J. M. C. 132; 9 Q. B. D. 238), the magistrates decided that the power under 35 & 36 V. c. 65, s. 4. whereby

### Undetermined.

justices "may if they see fit" commit a putative father for disobedience of a Bastardy Order, gave a discretion which they refused to exercise; and on appeal the Court was equally divided, Huddleston, B., holding that the power was obligatory, Grove, J., holding that it was discretionary.

It is doubtful whether "may" as used in s. 4, Removal of Wrecks Act, 1877, 40 & 41 V. c. 16, makes it obligatory on a Harbour Authority to remove wrecks that have sunk within the area of its jurisdiction. During the argument of *The Douglas*, Brett, L. J., indicated that "may" should here be read as "must," and apparently to a like effect was the judgment of Cotton, L. J. (7 P. D. 151; 51 L. J. P. D. & A. 89). But in *Dormout v. Furness Ry* (52 L. J. Q. B. 331; 11 Q. B. D. 496), Kay, J., hesitated to follow the lead as indicated, rather than positively ruled, in *The Douglas*, and based his decision for the plaintiff on another ground.

So, it is doubtful whether "may" is obligatory or enabling in s. 4 (3*b*), P. H. London Act, 1891 (*J. per Coleridge, C. J., Thames Conservators v. Port of London Sanitary Authority*, 1894, 1 Q. B. 647; 63 L. J. M. C. 123).

*F. SHALL: SHALL AND LAWFULLY MAY: MUST: Maxwell, 286-303; Wilberforce, 193-206.*

A Lessee's Covenant (in a Public-house Lease) not to do or suffer anything whereby the License "*may be forfeited*," is not to be read as "*shall be forfeited*," and if the license is put in jeopardy the covenant is broken (*Harmann v. Powell*, cited AFFECT).

"May," like "Shall," may denote futurity, *e.g.* a gift to the children of the members of a CLASS "*who may die* in my lifetime," would not include children of a member of such class who was already dead at the date of the Will (*Re Hotchkiss*, 38 L. J. Ch. 631; L. R. 8 Eq. 643).

**MAY BE.** — Guarantee of "any balance that may be due," construed by Pollock, C. B., and Martin, B. (diss. Bramwell, B.), as referring to a future balance (*Broom v. Batchelor*, 25 L. J. Ex. 299; 1 H. & N. 255). Pollock, C. B., said, — " 'May be' is, in my judgment, clearly future. I have been unable to find direct authority in any Dictionary; but in *Cruden's Concordance of the Bible*, from sixty to eighty references are given, and the expression 'may be' is found in various parts of the Bible, nine out of ten of which have manifestly a reference to the future, and not to the past or present, and not one is necessarily future. The *Concordance of Shakespeare* gives no references in respect to the words 'may' and 'be.' But as far as I can bring my knowledge of the English language to bear upon the subject, 'may be' is much oftener used with

reference to the future than the past or the present." On the other hand Bramwell, B., said, — " 'May be' is the present tense, and, *primâ facie*, means, 'now may be.' It is occasionally used in the future tense, no doubt, as, for instance, 'may be due to-day,' or 'may be due to-morrow.' I apprehend you may use it to indicate future applications; but in that case it must be understood as applied in the present tense. A thing 'may be black,' or 'it may be fit to eat,' or 'it may be fit to cook.' If you use the words 'may be,' without indicating the time, to my mind the expression applies to the present, or, more correctly, not to a question with reference to the future." *V. GIVEN.*

**MAYHEM.** — *V. MAIM.*

**MAYNOUR.** — *V. MANNER.*

**MAYOR.** — The Scotch equivalent for "Mayor," in the Ballot Act, 1872, is "the Provost, or other Chief Magistrate, of a Municipal Borough" (s. 22); so of 46 & 47 V. c. 51 (s. 68).

In Ireland "Mayor" sometimes includes Lord Mayor (18 & 19 V. c. 40, s. 3; 39 & 40 V. c. 76, s. 2; 61 & 62 V. c. 37, s. 109), and sometimes, "Chairman of Commrs, Chairman of Municipal Commrs, Chairman of Town Commrs, and Chairman of Township Commrs" (Ballot Act, 1872, s. 23).

Mayor *Elect*; *V. OUTGOING ALDERMAN.*

"The Municipal Corporation of a BOROUGH shall bear the name of 'the Mayor, Aldermen, and Burgesses' of the Borough; or, in the case of a CITY, 'the Mayor, Aldermen, and Citizens' of the City" (s. 8, Mun Corp Act, 1882).

**ME.** — An Examination before Removing Justices "sworn before me" and "I do hereby certify," &c, is good if, in fact, signed by two Justices (*R. v. Silkstone*, 2 Q. B. 520; 12 L. J. M. C. 5). *V. I PROMISE.*

**MEADOWS.** — "If a man grant *omnia prata sua*, all his meadows, the land itselfe of that kinde passeth" (Co. Litt. 4 b). *V. PRATA.*

"In general, where meadow or pasture land is named, it must be understood of ANCIENT MEADOW or pasture" (Woodf. 147, citing *Tresham v. Lamb*, 2 Brownl. & Gold. 46; *Gunning v. Gunning*, Show. 354). But this deduction from the cases has been questioned, *V. Elph.* 596). *V. PASTURES.*

**MEAL.** — *V. CORN.*

**MEAN.** — When a statute says that a word or phrase shall "mean," — not merely that it shall "include," — certain things or acts, "the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in the definition" (per

Esher, M. R., *Gough v. Gough*, cited LANDLORD: *Vf.*, per same learned judge, *Bristol Tram Co v. Bristol*, 59 L. J. Q. B. 449). *Cp.* INCLUDE.

“Mean and include”; *V.* INCLUDE.

*V.* EXTEND TO AND INCLUDE.

**MEAN OF TWO LONDON CHEMISTS.** — *V.* *Hegworth v. Knight*, 33 L. J. C. P. 298; 17 C. B. N. S. 298.

**MEAN TIME.** — *V.* OF THE CLOCK: TIME.

*V.* MEANTIME.

**MEANS.** — A judgment-debtor was ordered to pay the debt by £5 a month; subsequently he received (by £5 a week) £60 as a voluntary gift from his brother; — Cave, J., refused to commit, being of opinion that Gifts are not “Means to pay” within s. 5 (2), Debtors Act, 1869, 32 & 33 V. c. 62. The Court of Appeal upheld the decision; but on the ground that there had been no evidence of the circumstances of the debtor other than the receipt of the £60; and both Cotton and Lindley, L. J.J., were of opinion that “Means” had no relation to their source (*Koster v. Park*, 54 L. J. Q. B. 389; 14 Q. B. D. 597; 33 W. R. 606; 52 L. T. 946). An inalienable Pension, while accruing, is not “Means” (*Bank of Scotland v. Cunningham*, 1899, 2 I. R. 780). *Vh.* *Chard v. Jerris*, 51 L. J. Q. B. 442; 9 Q. B. D. 178; *McIntosh v. Simkins*, 45 S. J. 30; revid 70 L. J. K. B. 268; 1901, 1 K. B. 487; 84 L. T. 21; 49 W. R. 241. Having means to pay *part only* of a jdgmt debt, justifies committal (*Re Fryer*, 3 Morr. 231).

*V.* FIRST AND READIEST: REASONABLE MEANS.

“Acts, Means,” &c; *V.* ACTS.

Injury by “External and Visible Means,” — in such a phrase, “Means” is used in the sense of “Cause” (per Esher, M. R., *Hamlyn v. Crown Insee*, cited EXTERNAL).

*V.* MECHANICAL.

**MEANTIME.** — A payment made more than 12 years after right of action accrued but made within 12 years of action brought, is a payment “in the Meantime” within s. 8, Real Property Limitation Act, 1874; for the phrase “refers to the period between the time when the action is brought and the time after which the remedy for the debt would otherwise have been barred” (per Byrne, J., *Re Clifden*, 1900, 1 Ch. 774; 69 L. J. Ch. 478; 82 L. T. 558; 48 W. R. 428; following *Harty v. Davis*, 13 Ir. L. R. 23).

**MEASE: MESE.** — A MESSAGE (Spelm.: Termes de la Ley).  
*V.* HOUSE.

**MEASURAGE.** — Measurage “was a TOLL due for the use of a Common Bushel, or other instrument, to measure dry or wet goods imported or exported” (Hale, De Portibus Maris. ch. 6).

**MEASURE.** — A “Measure,” within 41 & 42 V. c. 49, is a Vessel ordinarily used as a Measure; — the material of which it is made is immaterial (*Washington v. Young*, 19 L. J. Ex. 348; 5 Ex. 403; *R. v. Aulton*, 30 L. J. M. C. 129; 3 E. & E. 568); a milk-churn may be within the word (*Harris v. London Co. Co.*, 1895, 1 Q. B. 240; 64 L. J. M. C. 81; 71 L. T. 844). As to selling by the “Glass”; *V. Craig v. McPhee*, 10 Sess. Ca. 4th Ser. 51; 48 J. P. 115.

V. STANDARD: WEIGHT.

“Local or Customary Measure,” s. 19, 41 & 42 V. c. 49; *V. Hughes v. Humphreys*, 23 L. J. Q. B. 356; 3 E. & B. 954; *Jones v. Giles*, 23 L. J. Ex. 292; 24 Ib. 259; 10 Ex. 119; 11 Ib. 393.

For the old and modern *Measures of Land*; *V. Elph.* 596–602.

V. LEGAL MEASURES.

**MEASUREMENT.** — V. ADMESUREMENT.

Measurement of Distance; V. DISTANCE.

V. WEIGHT AND MEASUREMENT.

**MEASURING.** — “Measuring Instrument,” quâ Weights and Measures Act, 1889, “includes, any instrument of length, capacity, volume, temperature, pressure, or gravity, or for the measurement and determination of electrical quantities” (s. 35). *Cp.* WEIGHING.

**MECHANIC.** — Probably, this word is synonymous with ARTIFICER. *Va.*, *Jackson v. Hill*, 13 Q. B. D. 618; 48 J. P. 488.

V. WORKMAN.

**MECHANICAL.** — A Vessel whose fog-horn is sounded by the mouth, does not comply with Art. 12, Regns for Preventing Collisions at Sea, 1879, which required one “sounded by a Bellows or other Mechanical Means,” and the vessel will be to blame for a Collision though the sound from the mouth-horn is heard by the other vessel (*The Love Bird*, 6 P. D. 80; 44 L. T. 650).

“Mechanical Means of Bodily Restraint,” quâ Lunacy Act, 1890, are “such instruments and appliances as the Commissioners may, by regulations to be made from time to time, determine” (s. 40).

**MEDALS.** — This word, in a bequest, will pass curious pieces of current coin kept by the testator with his medals (*Bridgman v. Dove*, 3 Atk. 202; Wms. Exs. 1066).

**MEDICAL.** — Quâ Poor Relief (Ir) Act, 1851. 14 & 15 V. c. 68. “Medical” includes Surgical (s. 21).

The meaning of the term “Medical or Surgical Assistance” in the Medical Relief Disqualification Removal Act, 1885. 48 & 49 V. c. 46. “depends upon the nature of the service rendered, and not necessarily upon the person who renders it” (per Pollock. B., *Honeybone v. Hunt*).

*bridge*, 56 L. J. Q. B. 48; 18 Q. B. D. 418; 56 L. T. 365; 35 W. R. 520; 51 J. P. 103); and it was there held that it included the attendance of a Mid-wife.

Medical Attendance; *V.* MEDICINE.

“Medical Authorities”; Stat. Def., 41 & 42 V. c. 33, s. 2.

“Medical Certificate”; Stat. Def., Police (Scot) Act, 1890, 53 & 54 V. c. 67, s. 30.

“Medical Corporation”; Stat. Def., Medical Act, 1886, 49 & 50 V. c. 48, s. 27: the Apothecaries Hall, Dublin, is a “Medical Corporation” within s. 3 of that Act (*A-G. Ireland v. Apothecaries Hall*, 21 L. R. Ir. 253); and so is the Royal College of Physicians, London (*Royal College of Physicians v. Gen. Med. Council*, 68 L. T. 496; 62 L. J. Q. B. 329).

“Medical Diploma”; Stat. Def., Medical Act, 1886, s. 27.

“Medical Institution”; *V.* PUBLIC HOSPITAL.

“Medical Officer”; Stat. Def., Lunacy Act, 1890, s. 341; General Prisons (Ir) Act, 1877, s. 3; P. H. Scotland Act, 1897, s. 3. “Medical Officer” of a Public Hospital, s. 22, Coroners Act, 1887, includes one who gives his services gratuitously (*Horner v. Lewis*, cited PUBLIC HOSPITAL). *V.* CHIEF.

“Medical Officer of Health”; Stat. Def., 53 & 54 V. c. 34, s. 2, c. 70, s. 96; P. H. Ireland Act, 1896, s. 18; P. H. Scotland Act, 1897, s. 3.

“Medical Person,” quâ Lunacy (Scot) Acts; Stat. Def., 20 & 21 V. c. 71, s. 3; 25 & 26 V. c. 54, s. 1.

“Medical Practitioner”; Stat. Def., 30 & 31 V. c. 84, s. 35; Lunacy Act, 1890, s. 341. — *Scot.* 23 & 24 V. c. 105, s. 4; 26 & 27 V. c. 108, s. 30; P. H. Scotland Act, 1897, s. 3. One holding only a United States degree of Doctor of Medicine is not a “Medical Practitioner” within s. 16, 30 & 31 V. c. 84 (*Cromack v. Brennard*, 37 J. P. 276).

“Registered Medical Practitioner”; Stat. Def., Medical Act, 1886, s. 27.

“The Medical Acts”; *V.* Sch 2, Short Titles Act, 1896.

*V.* USUAL MEDICAL ATTENDANT: APOTHECARY: PHYSICIAN: SURGEON.

**MEDICINE.**—“Medicine” is equivalent to “Physic” (per Smith, L. J., *Royal College of Physicians v. Gen. Med. Council*, cited MEDICAL).

“Medicine dispensed by a registered person,” s. 17, Pharmacy Act, 1868, 31 & 32 V. c. 121; *V. Berry v. Henderson*, L. R. 5 Q. B. 296; 39 L. J. M. C. 77.

Deductions for payment to a Sick and Funeral Allowance Club, are for “Medicine, or Medical Attendance,” within s. 23, Truck Act, 1831, if it be proved that the whole amount of the deduction has been actually expended on medicine or medical attendance (*Lamb v. G. N. Ry*, cited CONTRACT TO SUPPLY).

“Patent Medicine”; *V.* POISON.

**MEET.**—*V.* SEEM MEET.

MEET TOGETHER. — *V.* ASSEMBLE.

**MEETING.** — One swallow does not make a summer, nor does the presence of one shareholder constitute a "Meeting" (*Re Sanitary Carbon Co*, W. N. (77) 223). "The word 'Meeting' implies a concurrence, or coming face to face, of at least two persons" (per Coleridge, C. J., *Sharpe v. Dawes*, 46 L. J. Q. B. 104; 2 Q. B. D. 26; 25 W. R. 66; 36 L. T. 188). There is accordingly, and speaking generally, no "Meeting" of Shareholders or other bodies if only one attends; though "no doubt in a particular statute the word might be used in a special sense, so that the attendance of one might satisfy it" (per Coleridge, C. J., *Sharpe v. Dawes*, sup). *V.* QUORUM.

"Meeting," in Art. 35, Table A, Comp Act, 1862, does not apply to a meeting of subscribers of Mem of Assn (*John Morley By Co v. Barras*, cited DIRECTORS).

Quà Friendly Soc. Act, 1896, " 'Meeting' shall include (where the Rules of a Socy or Branch so allow) a meeting of delegates appointed by members " (s. 106).

"Meeting of an AUTHORITY"; Stat. Def., Loc Gov Act, 1888, s. 78 (4).

Insurance of the Takings at a Cycling Meeting "provided that the EXPENSES attaching to the Meeting" are not less than a stated sum; held, that the cost of the Insrce was an "Expense attaching to the Meeting," for, in such a connection, "Meeting," means, not merely the actual Meeting while in progress but, the whole adventure" (per Big-ham, J., *London County Cycling Club v. Beck*, 3 Com. Ca. 49).

*V.* GENERAL MEETING: PUBLIC MEETING: SPECIAL.

"Present at the Meeting," s. 18, Highway Act, 1835;—a power to determine questions by vestrymen so present, does not preclude the common law right to demand a poll (*R. v. How*, 33 L. J. M. C. 53; *R. v. D'Oyly*, 12 A. & E. 139; *R. v. St. Mary, Lambeth*, 8 Ib. 356; 9 L. J. M. C. 113; *White v. Steel*, 31 L. J. C. P. 265; 12 C. B. N. S. 383). *V.* ASSEMBLED.

MELIORATING WASTE. — *V.* WASTE.**MEMBER.** — "Life or Member"; *V.* FELONY.

Quà Comp Act, 1862, and Companies thereunder, "Member," means, a registered shareholder or stockholder in a Co (s. 23: per Jessel, M. R., *Pender v. Lushington*, 46 L. J. Ch. 317; 6 Ch. D. 70). *V.* *Re Macdonald*, 1894, 1 Ch. 89; 63 L. J. Q. B. 193: note on s. 23, Buckl.

"In his Character of a Member"; *V.* CHARACTER.

"Members," s. 199, Comp Act, 1862, does not necessarily mean SHAREHOLDERS (*Re South London Fish Market*, 39 Ch. D. 324; 37 W. R. 3; 59 L. T. 210). Past members who are merely liable as contributories and estates of deceased or bankrupt members, are not "Members" within the

section (*Re Bowling and Wilby*, 1895, 1 Ch. 663; 64 L. J. Ch. 427).  
*Vf. PAST.*

In Art. 27, Table A, Comp Act, 1862, "Member" includes a deceased member so long as his name remains on the register (*James v. Buena Ventura Syndicate*, 1896, 1 Ch. 456; 65 L. J. Ch. 284); so, generally, throughout the Table (*New Zealand Gold Co v. Peacock*, 1894, 1 Q. B. 622; 63 L. J. Q. B. 227; *Allen v. Gold Reefs of W. Africa*, 1900, 1 Ch. 656; 69 L. J. Ch. 266; 82 L. T. 210; 48 W. R. 452).

Stat. Def. — 11 & 12 V. c. 45, s. 3.

"Member of an AUTHORITY"; Stat. Def., Loc Gov Act, 1888, s. 78 (4).

"Member" of a *Building Socy* "is not a Term of Art; and it may mean different things according as you apply the term to persons outside the Socy, or as you apply it to the rights which arise under the Rules to persons within the Socy" (per Bowen, L. J., *Re Blackburn Bg Socy*, 52 L. J. Ch. 902; 24 Ch. D. 437). A Member of a Bg Socy who has given Notice of Withdrawal, does not cease to be a Member till he has been paid off (*Sibun v. Pearce, &c, Bg Socy*, 44 Ch. D. 354); but one who has been paid off, or who has redeemed his mortgage, ceases to all intents and purposes to be a Member (*Re West Riding Bg Socy*, 59 L. J. Ch. 823; 45 Ch. D. 463; 63 L. T. 483; 39 W. R. 74). *Note*: As to Priorities of WITHDRAWAL, and Deceased, Members on a Voluntary Dissolution of a Bg Socy, *V. Re Counties Conservative Bg Socy*, 69 L. J. Ch. 798; 1900, 2 Ch. 819; 49 W. R. 71.

Member of the Church of England; *V. CHURCH.*

"Member of a CATHEDRAL Church," quâ Clergy Discipline Act, 1892, 55 & 56 V. c. 32, "means, any Dean, Residentiary Canon, Non-residentiary Canon, Prebendary, or Honorary Canon, of that Church" (s. 12).

"Member of the *Collegiate Establishment*"; Stat. Def., 51 & 52 V. c. 11, s. 8.

"Members of the CONSTABULARY Force"; Stat. Def., 29 & 30 V. c. 103, s. 1; 37 & 38 V. c. 80, s. 1.

"Member" of a *Railway Co*; *V. Hutton v. Thompson*, 3 H. L. Ca. 161.

A "Member" of a Body *virtute officio*, is none the less a Member, *e.g.* a Churchwarden was a Member of the Vestry of his parish within s. 54, Metrop Man. Act, 1855 (*Lefly v. Monnington*, 4 Ex. D. 307; 48 L. J. Ex. 543).

Members' Club; *V. CLUB.*

**MEMORANDUM.** — " '*Memorandum.*' This word doth ever betoken some excellent point of learning" (Co. Litt. 40 a): so of "NOTE" (Ib. 22 a), and "To Wit" (Ib. 16 a).

"Memorandum of Agreement"; *V. AGREEMENT: EVIDENCE OF A CONTRACT; MINUTE: NOTE.*



"Memorandum of Association" of a Co is its charter, and defines the limitation of its powers (per Cairns, C., *Ashbury Co v. Riche*, 44 L. J. Ex. 196; L. R. 7 H. L. 668); it prescribes the Co's Name, Registered Office, Objects, and Capital (Comp Act, 1862, Part 1, by Sch 2 of which Act the Form is provided). *Wh. Comp Mem of Assn Act, 1890*: Buckl. 6-21: Palmer Co. Prec. ch. 6: Hamilton, ch. 2: MAIN PURPOSE.

"Memorandum of Charge"; *V. CONVEYANCE.*

**MEMORY.** — The time of legal "Memory hath been long ago ascertained by the law to commence from the beginning of the reign of Richard 1" (2 Bl. Com. 31, citing 2 Inst. 238, 239). *V. PRESCRIPTION*: TIME OUT OF MIND.

**MEN.** — *V. FREEHOLDER*: MAN: MATERIAL MEN.

Men's Workshop; *V. WORKSHOP.*

**MENACE.** — A Menace is a threat to injure; and the injury may be to reputation as well as to the person or property. So, quâ 24 & 25 V. c. 96, s. 49, provides that "it shall be immaterial whether the Menaces or Threats herein before mentioned be of Violence, Injury, or Accusation."

Thus, a threat to allege mere sexual immorality, is a "Menace" within s. 44, 24 & 25 V. c. 96 (*R. v. Tomlinson*, 1895, 1 Q. B. 706; 64 L. J. M. C. 97; 72 L. T. 155; 43 W. R. 544; 11 Times Rep. 212): *Vf, R. v. Smith*, 19 L. J. M. C. 80; 1 Den. 510; 2 C. & K. 882, on same word in s. 8, 7 & 8 G. 4, c. 29.

*V. ACCUSATION*: ACCUSE: THREAT: 8 Encyc. 354-358.

**MENIAL SERVANT.** — A "Menial Servant" is a subordinate DOMESTIC SERVANT (not always, though generally, an indoor servant, *V. 1 Bl. Com. 425*) whose service brings him into close proximity to his master, and thus rendering it to the interest of both master and servant that the contract should be determinable before the end of the year of service (per Erle, C. J., *Nicoll v. Greaves*, 33 L. J. C. P. 261; 17 C. B. N. S. 27).

A Head Gardener is a menial servant (*Nowlan v. Ablett*, 4 L. J. Ex. 155; 2 Cr. M. & R. 54); so is a Huntsman (*Nicoll v. Greaves*, sup); so is a general handy man, partly paid by perquisites (*Johnson v. Blenkinsopp*, 5 Jur. 870).

But a Governess is not a menial servant (*Todd v. Kerrieh* or *Kellage*, 8 Ex. 151; 22 L. J. Ex. 1); nor is a Housekeeper of a large hotel (*Lawler v. Linden*, Ir. Rep. 10 C. L. 188); nor is a Farm Bailiff who takes charge of glebe lands at a salary and share of profits (*R. v. Wortley*, 21 L. J. M. C. 44; 2 Den. 333).

In *Lawler v. Linden*, sup, Lawson, J., said, — "We have had an interesting disquisition as to the derivation of the word 'mœnia,' and it

has received a Saxon, a Latin, and a Greek, origin. If I were to offer an opinion I should say that the word 'mœnia' has nothing to do with it. Johnson derives it from the Saxon word *meiny*, which occurs in Chaucer and Shakespeare." *Vth*, Eversley on Domestic Relations, 2 ed., 824.

"I can find no better suggested explanation of 'Menial,' or statement of the position of a 'Domestic,' Servant than that given in Roberts & Wallace on the Employers' Liability Act, 3 ed., 214. It is as follows; — It is submitted that the term *Menial Servant* may best be explained in accordance with all the authorities and the ordinary use of the word, as denoting those persons whose main duty is to do actual bodily work, as servants, for the personal comfort, convenience, or luxury, of the master his family and guests, and who, for this purpose, become part of the master's residential, or quasi residential, establishment.' It is not easy to conceive any clearer statement, or one which could be given to a jury with greater propriety" (per Collins, J., *Pearce v. Lansdowne*, 62 L. J. Q. B. 441; 69 L. T. 316; 57 J. P. 760). After referring with approval to the dictum in *Lawler v. Linden* (sup), Collins, J., added that (as pointed out by Roberts & Wallace, 215, n) the word was "originally spelt 'meyneall.' and may well be derived from the Saxon, *meine*, *mesnie*, a household, a family." "Meiny" is used for "Household" in 1 Ric. 2, c. 4.

V. SERVANT: DOMESTIC SERVANT: WORKMAN.

MENS REA. — V. KNOWINGLY: NEGLIGENTLY: OFFENCE: WILFUL NEGLECT.

MENTAL. — Mental Gratification; V. ENTERTAINMENT.

Mental Improvement; V. CONSERVATIVE.

Mental Infirmity; V. IDIOT: LUNATIC: UNSOUND MIND.

Mental Shock by Fright; V. ACCIDENT.

MENTIONED. — V. HEREINBEFORE: SET FORTH.

MERCANTILE AGENT. — Quà Factors Act, 1889, "Mercantile Agent," means, "a Mercantile Agent having, in the customary course of his business *as such Agent*, authority either to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods" (s. 1): *Vh*, *Strohmenger v. Attenborough*, 11 Times Rep. 7. *Seemle*, that a Jeweller's Traveller or agent, employed at a weekly salary and a commission on cash received, is not within that def (*Hastings v. Pearson*, 1893, 1 Q. B. 62; 62 L. J. Q. B. 75; 67 L. T. 553; 41 W. R. 127); and, at any rate, it is not "in the ORDINARY COURSE" of his business, within s. 2 (1), to pledge his employer's goods with a pawnbroker (*ib.*). A mere Warehousekeeper is not a "Mercantile Agent" (*Inglis v. Robertson*, 1898, A. C. 616; 67 L. J. P. C. 108; 79

L. T. 224). *Vf*, *Cole v. North Western Bank*, and *Tremouille v. Christie*, cited AGENT INTRUSTED: *Shenstone v. Hilton*, cited BUY: FACTOR.

This def is applicable to Sale of Goods Act, 1893; *V. s.* 25 (3).

**MERCANTILE LAW.** — *V.* LAW MERCHANT.

**MERCHANDIZE.** — *V.* GOODS, WARES, AND MERCHANDIZE: STONE.

In a Charter-Party the usual meaning of "Merchandize" is, "Articles Shipped from the Port with reference to which the Contract of Carriage is made," or "Goods ordinarily shipped from the Port of Shipment" (per Charles, J., *Vunderspar v. Duncan*, 8 Times Rep. 30). (*Cp*, *Warren v. Peabody*, cited PRODUCE.

"Other legal Merchandize," in a Charter-Party; *V. Cockburn v. Alexander*, cited LEGAL MERCHANDIZE: *Vf*, *Warren v. Peabody*, sup: OTHER.

"Merchandize in trust or on commission for which the assured are responsible," in a Fire Policy; *V. North British Insree v. Moffatt*, L. R. 7 C. P. 25; 41 L. J. C. P. 1.

Quà Ry and Canal Traffic Act, 1888, "Merchandize," includes. Goods, Cattle, Live Stock, and animals of all descriptions" (s. 55).

"Foreign Merchandize"; *V.* FOREIGN.

"The Merchandize Marks Acts, 1887 to 1894"; *V.* Sch 2, Short Titles Act, 1896.

**MERCHANDIZE TRAFFIC.** — "Merchandize Traffic," s. 10, Ry and Canal Traffic Act, 1888, is used in a more limited sense than the word "TRAFFIC" (per Peel, Commr, *Harrison v. Mid. Ry*, 8 Ry & Can Traffic Ca. 62).

**MERCHANT.** — A merchant of, or in, an article, is one who buys and sells it. A MANUFACTURER who confines himself to selling his own manufactures is not a "Merchant" (*Josselyn v. Parson*, 41 L. J. Ex. 60; L. R. 7 Ex. 127). In that case Bramwell, B., said that even where a man sells goods not of his own manufacture but sells only one class of those goods, he is not a Merchant. He said, "I think a Porter Merchant is a man who deals in all or many sorts of porter, not one only." The decision in the case was that a man travelling for a Brewer did not offend against a bond whereby he was prohibited from travelling "for any Porter, Ale, or Spirit, Merchant."

Ordinary Shopkeepers were formerly called Merchants (*Hamond v. Jethro*, 2 Brownl. & Gold. 99; Jacob: Com. Dig. *Merchant*. A): and, *semble*, "Merchant," s. 3, 21 Jac. 1, c. 16, includes an ordinary Shopkeeper (per Tindal, C. J., and Erskine, J., *Cottam v. Partridge*. 11 L. J. C. P. 161; 4 M. & G. 271). "But every one who buys and sells is not, at this day, called a Merchant; only those who traffic in the way of COMMERCE by importation or exportation, or carry on business by way

of emption, vendition, barter, permutation, or exchange, and who make it their living to buy and sell by a continued assiduity or frequent negotiation in the mystery of merchandizing, are esteemed Merchants. Those who buy goods to reduce them by their own art or industry into other forms and then to sell them are ARTIFICERS, not Merchants. Bankers, and such as deal by exchange, are properly called Merchants" (Jacob).

"Merchant" is a good description, quâ Bills of Sale Acts, of a person who is a Coal Merchant and Ship Broker (*Gugen v. Sampson*, 4 F. & F. 974).

"Merchant Exporter"; *V. Camelo v. Britten*, cited EXPORTER.

In *R. v. Harper* (2 Salk. 611), the Court said, "they did not know what a *Merchant-Taylor* meant."

Statute of Merchants, 13 Edw. 1, stat. 3, repealed by Statute Law Revision Act, 1863.

V. LAW MERCHANT: BANKER.

**MERCHANTABLE.** — As between Manufacturer and Merchant, and where there is no express stipulation, goods are "merchantable" if they are reasonably fit for *some* of the merchant's purposes though not for others (*Jones v. Padgett*, 59 L. J. Q. B. 261; 24 Q. B. D. 650, discussing *Drummond v. Van Ingen*, cited SAMPLE).

**MERCHANTS' ACCOUNTS.** — The exception in the Limitation Act, 1623, 21 Jac. 1, c. 16, s. 3, relating to Merchants' Accounts, applies only to the Action of Account, or, *semble*, to an action for not accounting. It does not apply to an action for the several items of which the account is composed, or for the general balance (*Inglis v. Haigh*, 10 L. J. Ex. 406; 8 M. & W. 769; *Cottam v. Partridge*, cited MERCHANT). In *Cottam v. Partridge*, Erskine, J., pointed out that the exception was not of actions "upon" such accounts, but "for" them. *Note*: The exception was abolished by s. 9, Mer Law Amend. Act, 1856. *Vf*, ACCOUNT.

**MERCHANT'S RISK.** — Goods carried "at Merchant's Risk" and properly jettisoned, give rise to a claim by the charterers for a GENERAL AVERAGE CONTRIBUTION (*Burton v. English*, 53 L. J. Q. B. 133; 12 Q. B. D. 218; 48 L. T. 730; 31 W. R. 566). *Cp*, OWNER'S RISK.

"To be brought to and taken from Alongside the Ship at Merchant's Risk and Expense": *V. Aktieselskab Helios v. Ekman*, cited ALONGSIDE.

**MERCY.** — "To be in Mercy"; *V. AMERCIAMENT*.

Shaving is not a "Work of Mercy," within the Sunday Observance Acts (*Phillips v. Innes*, cited HOLIDAY); from *whc* it may be stated that when GAIN is the object of the worker, his cannot be called a Work of Mercy.

**MERE ACCOUNT.** — *V. ACCOUNT*.

**MERE MOTION.**—“The words ‘*Ex mero motu et certâ scientiâ*’ do not reduce a Royal Grant to the same standard of construction as the grant of a subject and bring it within the principle that it is to be taken strongly against the grantor” (*R. v. Dover*, 4 L. J. Ex. 94; 1 Cr. M. & R. 726, citing *R. v. Capper*, 5 Price, 260).

**MERELY CHARITABLE.**—*V. PURPOSE.*

**MERGER.**—“Whenever a greater ESTATE and a less coincide and meet in one and the same person, without any intermediate estate, the less is immediately annihilated; or, in the law phrase, is said to be merged, that is, sunk or drowned in the greater” (2 Bl. Com. 177: Touch. 347, *n*), in other words, a Merger is accomplished by Operation of Law. It “is distinguishable from Suspension (*V. SUSPENSE*); the latter being the partial absorption occasioned by the temporary union of two estates or interests”: “‘Extinguishment’ also differs from Merger and more especially denotes the annihilation of a collateral subject, right, or interest, in the estate out of which it is derived” (6 Cru. Dig. 467).

*Vh. Preston* on Merger: 6 Cru. Dig. Title 39: Goodeve, 162: Wms. R. P. 234: 8 Encyc. 366–370: *Re Radcliffe*, 1892, 1 Ch. 227; 61 L. J. Ch. 186; 66 L. T. 363; 40 W. R. 323.

“Mergers were never favoured in Courts of Law and still less in Courts of Equity” (Butler’s *n* 4, Co. Litt. 338 b); and since the Jud. Act, 1873, (subs. 4, s. 25) there has been no “Merger, by Operation of Law only, of any Estate the beneficial interest in which would not be deemed to be merged or extinguished in Equity”; that means, there must now be a Merger both at Law and in Equity which is to be gathered from the intention of the parties (*Snow v. Boycott*, 1892, 3 Ch. 110; 61 L. J. Ch. 591; 66 L. T. 762; 40 W. R. 603; *Thellusson v. Liddard*, 1900, 2 Ch. 635; 69 L. J. Ch. 673; 82 L. T. 753; 49 W. R. 10; *Ingle v. Vaughan-Jenkins*, 1900, 2 Ch. 368; 69 L. J. Ch. 618; 83 L. T. 155; 48 W. R. 684).

A similar doctrine applies as to the Merger of a Mortgage or Charge when the Mtgee or Chargee becomes the Owner of the property (*Swinfen v. Swinfen*, 29 Bea. 199); but then, again, the question of Merger or not is one of intention; and that intention is to be gathered, not only from the documents, but also from the circumstances, an important consideration being whether or not Merger is for the benefit of the Owner (*Thorne v. Cann*, 1895, A. C. 11; 64 L. J. Ch. 1; 71 L. T. 852, *whc.* as nearly as possible without doing so in terms, over-rules *Toulmin v. Steere*, 3 Mer. 210: *Vj; Liquidation Co v. Willoughby*, 1898, A. C. 321; 67 L. J. Ch. 251; 78 L. T. 329). *Vh. Chetwynd v. Allen*, 1899, 1 Ch. 353; 68 L. J. Ch. 160; 80 L. T. 110; 47 W. R. 200; Beddoes on Mortgages, ch. 5: Fisher, Part 7, ch. 3: Robbins on Mortgages, ch. 62.

*Cp, SURRENDER.*

**MERITS.**—Rejection of a Bill in Parliament “upon Merits, and not merely upon Formal Points”; *V. N. Staffordshire Ry v. Lond. & N. W. Ry*, 6 W. R. 54.

If a Complainant in a Justices’ Summons withdraws and gives Notice that he shall not attend, yet nevertheless the person charged attends on the Return-day and claims and obtains a dismissal of the charge, there is a “HEARING”; but not a Hearing “upon the Merits” within s. 44, 24 & 25 V. c. 100, to constitute which both the parties must appear and fight out their dispute before the Justices, and, failing such a “Hearing upon the Merits,” a Certificate of Dismissal under s. 44 will not bar further proceedings under s. 45 (*Reed v. Nutt*, 59 L. J. Q. B. 311; 24 Q. B. D. 669; 62 L. T. 635; 38 W. R. 621; 54 J. P. 599). *Vh*, FORTHWITH: “Same Cause,” sub CAUSE.

Amendments in Pleading “not material to the Merits,” s. 23, 3 & 4 W. 4, c. 42; *V. Harvey v. Johnston*, 6 C. B. 295; 17 L. J. C. P. 298, and cases there cited.

**MERTON.**—The Statutes of Merton are those that were “provided in the Court of our Lord the King holden at Merton on Wednesday the morrow after the Feast of St. Vincent,” 20 H. 3, A. D. 1235 (*V. Preamble to these Statutes*): repealed in part by Statute Law Revision Act, 1863.

**MESE.**—*V. HOUSE: MEASE.*

**MESH.**—The “Mesh or Mask” of a NET is the square formed by the lines; therefore, the provision, s. 3, 1 Eliz. c. 17, against fishing as therein mentioned except “with Net or Trammel whereof the Mesh or Mask shall be  $2\frac{1}{2}$  inches broad,” does not mean that the Mesh may be drawn out in a straight line but, means that “every space between the threads of the Net should be  $2\frac{1}{2}$  inches from one thread to the opposite thread, and that the superficial area which bounds each Mesh should be  $2\frac{1}{2}$  inches square at least” (per Campbell, C. J., *Thomas v. Evans*, 27 L. J. M. C. 172; E. B. & E. 171); the word “broad” leads to that mode of calculation (per Campbell, C. J., and Wightman, J., *Ib.*).

S. 2, 3 Jac. 1, c. 12, speaks of a Mesh as that part of a Net which is “from knot to knot”: (*Cp.* s. 20, 5 & 6 V. c. 106.

**MESIUL: MESUIL.**—*V. HAGA.*

**MESNE.**—A Mesne Incumbrance is a charge on property subordinate to another. *Cp.* PUISNE.

A Mesne Lord is one holding of a Superior Lord (*Termes de la Ley*).

Mesne Process means, “preliminary, and not final, process” (per Lush, J., *Mainwaring v. Milner*, L. R. 4 Q. B. 152); therefore, a *Capias* under s. 3, 1 & 2 V. c. 110, was a “Mesne Process” within s. 21, 11 G. 4 & 1 W. 4, c. 70 (*S. C.*).

**MESSAGE.** — Though “Message” is frequently used in the Telegraph Acts of 1863 and 1868 in the sense of a substance with a message written upon it, yet a conversation through a Telephone is either a “Message” or, at all events, a “Communication” transmitted by a TELEGRAPH, which is the def of “Telegram” as given by s. 3, Telegraph Act, 1869, 32 & 33 V. c. 73 (*A-G. v. Edison Telephone Co.*, 50 L. J. Q. B. 152; 6 Q. B. D. 244).

**MESSUAGE.** — This word is synonymous with (Co. Litt. 5 b: Touch. 94: per Ashhurst, J., *Doe d. Clements v. Collins*, 2 T. R. 502: per Bullen, J., *Scholes v. Hargreaves*, 5 Ib. 46: per Tindal, C. J., *Taylor v. Clemson*, 2 Q. B. 1036; 11 L. J. Ex. 453), or, at least, as comprehensive as, HOUSE, or DWELLING-HOUSE (*Fenn v. Grafton*, 2 Bing. N. C. 617); and includes an unfinished Carcase of a house (*Bennett v. Herring*, 3 C. B. N. S. 370, 374).

“The distinction suggested in the early cases between *Message* and *House* in regard to the greater comprehensiveness of the former (*J. Termes de la Ley*, *Mease: Arlett v. Ellis*, 9 B. & C. 681: HOUSE) is not to be relied on; and it is clear that even the word ‘Message’ would not now be held to carry land beyond a homestead or orchard, though contiguous to or enjoyed with it” (1 Jarm. 779).<sup>1</sup> It may, however, be added that where under special circumstances, the word “House” would carry land or buildings beyond its own ambit, a like result would follow if the word “Message” were employed. *Vj*, 1 Jarm. 778, 779: Elph. 602: *Hibon v. Hibon*, 32 L. J. Ch. 374; 8 L. T. 195; 11 W. R. 455: *Smith v. Martin*, 2 Saund. 400; Wms. Saund.

“‘Message,’ denotes all that is occupied together at one and the same time, and no more” (per Abbott, C. J., *Kerslake v. White*, 2 Starkie, 508); therefore, a Lease of a Message with all its rooms, &c. will not comprise a room formerly part of the house but which had long ceased to be occupied with it and was separated from it by a wooden partition (*S. C.*).

“One Message”; *V. Rogers v. Hosegood*, cited HOUSE.

“All that my Message,” being partly freehold and partly leasehold, and of which leasehold part testator afterwards acquired the fee, — passed the fee of the entirety (*Miles v. Miles*, L. R. 1 Eq. 462; 35 L. J. Ch. 315; 14 W. R. 272; 13 L. T. 697).

**METAL.** — “The word ‘Metals’ taken in its ordinary sense does not include the precious metals,” *i.e.* gold or silver (per Parke, J., *Casher v. Holmes*, 2 B. & Ad. 597; 9 L. J. O. S. K. B. 280).

“‘Metal’ is a word of less extensive meaning than ‘Mineral.’ All Metals are Minerals; but all Minerals are not Metals” (MacS. 18); and the same learned author proceeds to adopt the definition in Johnson’s Dictionary as follows; — “We understand by the term ‘Metal’ a firm,

heavy, and hard substance, opaque, fusible by fire, and concreting again when cold into a solid body such as it was before, which is malleable under the hammer and is of a bright glossy and glittering substance where newly cut or broken."

"Metal fixed in land . . . in a Place dedicated to PUBLIC USE," s. 44, 7 & 8 G. 4, c. 29; held, to include a copper sundial fixed on the top of a wooden post standing in a churchyard (*R. v. Jones*, 27 L. J. M. C. 171; 31 L. T. O. S. 121).

"Metal Goods," quâ s. 81, Patents, &c, Act, 1883, "means, all metals whether wrought, unwrought, or partly wrought; and all goods composed wholly or partly of any metal" (s. 20, 51 & 52 V. c. 50).

"Metal and India-Rubber Works"; *I. NON-TEXTILE FACTORIES.*  
*V. DEALER: PAVE: OTHER.*

**METER.**—Quâ Sale of Gas Act, 1859, 22 & 23 V. c. 66, "Meter" means, "Gas Meter, and shall include every kind of machine used for measuring gas" (s. 1).

"Meter Rent," quâ Metropolis Gas Act, 1860, 23 & 24 V. c. 125, "includes, all rents and other payments for the use of Gas Meters" (s. 4).

**METHOD.**—" 'Method,' properly speaking, is only placing several things and performing several operations in the most convenient order; but it may signify a contrivance or device" (per Lawrence, J., *Hornblower v. Boulton*, 8 T. R. 106), or a "mode or manner of effecting" a result or constructing a thing (per Rooke, J., *Boulton v. Bull*, 2 Bl. H. 478).

**METHYLATE.**—Quâ Spirits Act, 1880, 43 & 44 V. c. 24, to "methylate" "means, to mix spirits with some substance in such manner as to render the mixture unfit for use as a beverage; and 'methylated spirits' means, spirits so mixed to the satisfaction of the Commissioners" of Inl. Rev. (s. 3).

**METROPOLIS.**—By the Metrop Man. Act, 1855, 18 & 19 V. c. 120, s. 250, the "Metropolis," for the purposes of that Act, is defined as,

The City of London:—  
 and the parishes and places mentioned in Schedules A, B, and C to that Act, — as follows, —

*Schedule A.*

The Parishes of St. Marylebone, St. Pancras, Lambeth, St. George Hanover Square, Islington, St. Mary. Shoreditch, St. Leonard:

The Parishes of Paddington, St. Matthew Bethnal Green, St. Mary Newington (Surrey), Camberwell, St. James Westminster, St. James and St. John Clerkenwell, Chelsea, Kensington, St. Mary Abbot, St. Luke Middlesex, St. George the Martyr Southwark, Bermondsey, St. George



in the East, St. Martin in the Fields, Hamlet of Mile End Old Town, Woolwich, Rotherhithe, St. John Hampstead.

*Schedule B.*

*Whitechapel District*, — The Parishes of St. Mary Whitechapel, Christchurch Spitalfields, St. Botolph without Aldgate (Middlesex), Holy Trinity (Minories), Precinct of St. Katherine, Hamlet of Mile End New Town, Liberty of Norton Folgate, Old Artillery Ground, District of Tower:

*Westminster District*, — The Parishes of St. Margaret, St. John the Evangelist:

*Greenwich District*, — The Parishes of St. Paul Deptford (including Hatcham), St. Nicholas Deptford, Greenwich:

*Wandsworth District*, — The Parishes of Clapham, Tooting Graveney, Streatham, St. Mary Battersea (excluding Penge), Wandsworth, Putney (including Roehampton):

*Hackney District*, — The Parishes of Hackney, St. Mary Stoke Newington:

*St. Giles District*, — The Parishes of St. Giles in the Fields, St. George Bloomsbury:

*Holborn District*, — The Parishes of St. Andrew Holborn above Bars, St. George the Martyr, St. Sepulchre Middlesex, — Saffron Hill, Hatton Garden, Ely Rents, and Ely Place, The Liberty of Glasshouse Yard:

*Strand District*, — The Parishes of St. Anne Soho, St. Paul Covent Garden, St. John the Baptist Savoy (or Precinct of the Savoy), St. Mary-le-Strand, St. Clement Danes, The Liberty of the Rolls:

*Fulham District*, — The Parishes of St. Peter and St. Paul Hammer-smith, Fulham:

*Limehouse District*, — The Parishes of St. Anne Limehouse, St. John Wapping, St. Paul Shadwell, Hamlet of Ratcliffe:

*Poplar District*, — The Parishes of All Saints Poplar, St. Mary Stratford-le-Bow, St. Leonard Bromley:

*St. Saviour's District*, — The Parishes of Christchurch, St. Saviour (including the Liberty of the Clink):

*Plumstead District*, — The Parishes of Charlton next Woolwich, Plumstead, Eltham, Lee, Kidbrooke:

*Lewisham District*, — The Parishes of Lewisham including Sydenham Chapelry, Hamlet of Penge:

*Rotherhithe and St. Olave District*, — The Parishes of Rotherhithe, St. Olave, St. Thomas Southwark, St. John Horsleydown.

*Schedule C.*

The Close of the Collegiate Church of St. Peter:

The Charter House:

Inner Temple:

Middle Temple:

Lincoln's Inn:

Gray's Inn:

Staple Inn:

Furnival's Inn.

And any Parish adjoining, containing not less than 750 rated inhabitants, to which the Act may be extended by Order in Council (s. 249).

The foregoing definition is adopted for the purposes of the following statutes:—

Metropolis *Management* Amendment Act, 1862, 25 & 26 V. c. 102, V. s. 112;

Metropolitan *Fire Brigade* Act, 1865, 28 & 29 V. c. 90, V. s. 2;

Metropolis *Gas* Act, 1860, 23 & 24 V. c. 125, V. s. 4;

Metropolitan *Open Spaces* Acts, 1877 and 1881, V. s. 1, Act of 1881, 44 & 45 V. c. 34;

Metropolitan *Streets* Act, 1867, 30 & 31 V. c. 134, V. s. 2;

*Valuation* (Metropolis) Act, 1869, 32 & 33 V. c. 67, V. s. 4;

Metropolis *Water* Act, 1871, 34 & 35 V. c. 113, V. s. 3 (for the previous def, V. 15 & 16 V. c. 84, s. 29);

Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 V. c. 26, V. s. 4;

County Electors Act, 1888, 51 & 52 V. c. 10, V. s. 5;

Elementary Education Act, 1870, 33 & 34 V. c. 75, V. s. 3;

Highways and Locomotives (Amendment) Act, 1878, 41 & 42 V. c. 77, V. s. 38;

Local Government Act, 1888, 51 & 52 V. c. 41, V. s. 100 (Metropolitan Boroughs, V. METROPOLITAN);

Poor Rate Assessment and Collection Act, 1869, 32 & 33 V. c. 41, V. s. 20; and

Public Health Act, 1875, 38 & 39 V. c. 55, V. s. 4.

The Infant Life Protection Act, 1872, 35 & 36 V. c. 38, 1st Sch, provides that, for the purposes of that Act, the "Metropolis" shall include all Parishes and Places in which the Metropolitan Board of Works have power to levy a Main Drainage Rate, exclusive of the City of London and the Liberties thereof.

Other Stat. Def. — Burial Act, 1852, 15 & 16 V. c. 85, s. 53 and Sch; City of London Parochial Charities Act, 1883, 46 & 47 V. c. 36, s. 53.

"The Metropolis Management Acts, 1855 to 1893"; V. Sch 2, Short Titles Act, 1896.

V. LONDON: COMMISSIONERS.

**METROPOLITAN.** — "The Metropolitan ASYLUMS Board" and "The Metropolitan Asylum Managers," are synonyms, each meaning, the Managers of the Metropolitan Asylum District (42 & 43 V. c. 54, s. 18; 54 & 55 V. c. 76, s. 141).

"Metropolitan AUTHORITY," quâ Metropolitan Water Act, 1871; *V.* s. 3.

"Metropolitan Board"; *V.* BOARD.

Metropolitan *Boroughs*; *V.* London Gov Act, 1899, 62 & 63 *V.* c. 11.

"Metropolitan COMMISSIONERS of Sewers," s. 112, Metrop Man. Act, 1862, refers to the Commrs created by 11 & 12 *V.* c. 112, and does not include prior Commrs of Sewers (*Appleyard v. Lambeth*, 76 *L. T.* 442; 66 *L. J. Q. B.* 347; 45 *W. R.* 370; 61 *J. P.* 276).

"The Metropolitan COMMONS Acts, 1866 to 1878"; *V.* Sch 2, Short Titles Act, 1896.

"Metropolitan DISTRICT"; Stat. Def. 31 & 32 *V.* c. 125, s. 3; 37 & 38 *V.* c. 49, s. 32.

"The Metropolitan *Police Acts*, 1829 to 1895"; *V.* Sch 2, Short Titles Act, 1896.

"Metropolitan *Police District*"; Stat. Def., 10 *G.* 4, c. 44, s. 4 and Sch; 2 & 3 *V.* c. 47, s. 2; 17 & 18 *V.* c. 33, s. 1.—*Ir.* 8 & 9 *V.* c. 109, s. 24; 16 & 17 *V.* c. 119, s. 18.

"Metropolitan *Police Force*"; Stat. Def., *Ir.* 8 & 9 *V.* c. 109, s. 24; 16 & 17 *V.* c. 119, s. 18.

"Metropolitan *Police Fund*"; Stat. Def., 49 & 50 *V.* c. 22, s. 7.

Metropolitan *Police Magistrate*; *V.* MAGISTRATE.

"Metropolitan *Police Rate*"; Stat. Def., 49 & 50 *V.* c. 11, s. 7.

"Metropolitan STAGE CARRIAGE"; Stat. Def., London Hackney Carriages Act, 1843, 6 & 7 *V.* c. 86, s. 2.

"Metropolitan *Water Companies*"; Stat. Def., 60 & 61 *V.* c. 56, s. 5; 62 & 63 *V.* c. 7, s. 6. *Vf*, WATER COMPANY.

**MICHAEL.**—Michael Angelo Taylor's Act, 57 *G.* 3, c. xxix; *V.* TAYLOR.

**MICHAELMAS.**—When "Michaelmas" or "the Feast of St. Michael" is mentioned as a date, it means New Michaelmas, 29th September; not 11th October according to the Old Style (*Doe d. Spicer v. Lea*, 11 *East*, 312). So "Martinmas" means the 11th November, not the 23rd (*Smith v. Walton*, 1 *L. J. C. P.* 85; 8 *Bing.* 235; 1 *Moore & S.* 380). So "Lady Day" means the 25th March, not the 6th April (*Doe d. Hall v. Benson*, 4 *B. & Ald.* 588). So, "Christmas Day" means the 25th December, not the 6th January.

The two firstly cited cases show that in a Deed or a Pleading parol evidence was not admissible to show that the date by the Old Style was meant; but that rule was otherwise on an agreement by parol (*Doe d. Hall v. Benson*, sup).

The Act (on which the above decisions proceeded) for regulating the commencement of the Year and rectifying the Julian Calendar (24 *G.* 2, c. 23), takes operation from the 1st January, 1752; so that in documents

prior to that date the Feast dates above referred to would be construed according to the Old Style.

V. ALMANAC.

**MIGHT.** — “ Might have been ”; V. COMMENCED.

**MILE.** — A mile in length is 1760 Imperial Standard Yards (s. 11, 41 & 42 V. c. 49). V. YARD.

How measured, V. DISTANCE: NEAREST: *Myers v. Lond. & S. W. Ry*, inf.

V. SQUARE MILE.

Railway “ Rates per Mile not greater than the LOWEST RATE ”; V. *Davis v. Taff Vale Ry*, 1895, A. C. 542; 64 L. J. Q. B. 488; 72 L. T. 632.

Where a Ry Co is entitled to so much “ Per Mile ” for the Carriage of Goods, the mileage is to be reckoned by the usual and reasonable route, though it may not be the shortest available route (*Myers v. Lond. & S. W. Ry*, L. R. 5 C. P. 1; 39 L. J. C. P. 57).

“ Per Ton per Mile ”; V. *Pryce v. Mon. Ry & Can Co*, 49 L. J. Ex. 130; 4 App. Ca. 197.

**MILEAGE RATE.** — V. *Warwick and Birmingham Canal Nav. v. Birmingham Canal Nav.*, cited TOLL.

**MILITARY CUSTODY.** — Quà Army Act, 1881, “ ‘ Military Custody,’ means, according to the usages of the Service, the putting the offender under arrest, or the putting him in confinement ” (subs. 2, s. 45); and by s. 6, Art. 29, Queen’s Regulations, “ ‘ Military Custody ’ in the case of a Private Soldier, means, confinement under charge of a guard, picket, patrol, or sentry, or of a provost marshal ”: *Vth*, per Smith, L. J., *Marks v. Frogley*, cited SOLDIER.

**MILITARY DECORATION.** — Quà Army Act, 1881, “ ‘ Military Decoration,’ means, any medal, clasp, good-conduct badge, or decoration ” (subs. 18, s. 190). Cp, MILITARY REWARD.

**MILITARY FORCES.** — Quà Army Act, 1881, “ ‘ Regular Forces ’ and ‘ Her Majesty’s Regular Forces,’ mean, Officers and Soldiers who (by their commission, terms of enlistment, or otherwise) are liable to render continuously for a term MILITARY SERVICE to Her Majesty in any part of the world, including (subject to the modifications in this Act mentioned) the Royal Marines and Her Majesty’s Indian Forces and the Royal Malta Fencible Artillery; and, subject to this qualification that when the RESERVE FORCES are subject to MILITARY LAW, such Forces become, during the period of their being so subject, part of the Regular Forces ” (subs. 8, s. 190).

Quà Uniforms Act, 1894, 57 & 58 V. c. 45, “ ‘ Her Majesty’s Military Forces,’ means, the Regular Forces, the Reserve Forces, and the

AUXILIARY Forces, within the meaning of the Army Act, other than the Naval Coast Volunteers and Naval Volunteers": " 'Her Majesty's Naval Forces,' means, the Navy, the Naval Coast Volunteers, and the Naval Volunteers" (s. 4).

"Volunteer Forces"; *V.* VOLUNTEER.

**MILITARY LAW.** — *V.* TRAINING: SOLDIER. *Cp.* MARTIAL LAW.

**MILITARY POWER.** — *V.* USURPED POWER.

**MILITARY PURPOSES.** — Quà Military Lands Act, 1892, 55 & 56 V. c. 43, " 'Military Purposes,' includes, rifle or artillery practice, the building and enlarging of barracks and camps, the erection of butts targets batteries and other accommodation, the storing of arms, military drill, and any other purpose connected with military matters approved by the Secretary of State" (s. 23).

**MILITARY REWARD.** — Quà Army Act, 1881, " 'Military Reward,' means, any gratuity or annuity for long service or good conduct; it also includes any good-conduct pay or pension, and any other military pecuniary reward" (s. 190). *Cp.* MILITARY DECORATION.

**MILITARY SERVICE.** — Quà Foreign Enlistment Act, 1870, 33 & 34 V. c. 90, "Military Service," includes, "military telegraph and other employment whatever in, or in connection with, any military operation" (s. 30). A vessel despatched to furnish and lay for the French Government a telegraphic cable along the French coast between Cherbourg and Verdun, and which cable, though valuable to such Government in a military sense, was chiefly intended for commercial purposes and not to subserv the military service of France, was held not to have been despatched to be employed "in the *Military or Naval Service*" of France within s. 8, of the Act (*The International*, 40 L. J. Adm. 1; L. R. 3 A. & E. 321). *Cp.* NAVAL SERVICE.

*V.* ACTUAL MILITARY SERVICE: EMPLOYED.

**MILITES REGIS.** — *V.* TAINI.

**MILITIA.** — Stat. Def., 34 & 35 V. c. 86, s. 19; 44 & 45 V. c. 57, s. 2, c. 58, s. 190; Militia Act, 1882, 45 & 46 V. c. 49, s. 51.

"Militia Reserve"; Stat. Def., 34 & 35 V. c. 86, s. 19: "Militia Reserve Force," 44 & 45 V. c. 58, s. 190; 45 & 46 V. c. 48, s. 28.

"Term of Militia Service"; Stat. Def., 45 & 46 V. c. 49, s. 51.

"Militia Man" or "Man in the Militia," includes a non-commissioned officer (44 & 45 V. c. 57, s. 2; Militia Act, 1882, s. 51). *V.* MAN.

**MILK.** — "Milk, commercially speaking, means SKIMMED MILK" (per Mathew, J., *Lane v. Collins*, 54 L. J. M. C. 76; 14 Q. B. D. 193; *Sothe, Smithies v. Bridge*, 1902, 2 K. B. 13; 71 L. J. K. B. 555). *It*

was accordingly held in *Lane v. Collins* that the sale of milk which had been deprived of 60 per cent of its butter-fat was not an offence within s. 6, Sale of Food and Drugs Act, 1875, 38 & 39 V. c. 63: *See, Hotchin v. Hindmarch*, cited SELLER: *Heywood v. Whitehead*, 76 L. T. 781; 13 Times Rep. 503. But selling skimmed milk as "milk," is an offence under s. 9 of that Act (*Pain v. Boughtwood*, 24 Q. B. D. 353; 59 L. J. M. C. 45; 54 J. P. 68; 6 Times Rep. 167: *Vf*; KNOWINGLY), and so of selling milk which (being in the lower part of the receptacle for storing it) has been deprived of its butter-fat by natural process of that fat rising to the surface (*Dyke v. Gower*, 1892, 1 Q. B. 220; 61 L. J. M. C. 70; 65 L. T. 760; 56 J. P. 168: *Vf*, *Smithies v. Bridge*, sup: *V*. ABSTRACTION). *Note*: As to Analyst's Certificate, *V. Bridge v. Howard*, 1897, 1 Q. B. 80; 65 L. J. M. C. 229; 75 L. T. 300; 60 J. P. 790, distinguishing *Fortune v. Hanson*, 1896, 1 Q. B. 202; 65 L. J. M. C. 71: SAMPLE.

*V*. NATURE: SALE: SELLER.

"Pure New Milk"; *V. Robertson v. Harris*, cited WRITTEN WARRANTY.

**MILL.**—"By the grant of a Mill, the millstone doth pass, albeit at the time of the grant it be actually severed from the mill" (*Touch*. 90: *Vf*, *Place v. Fagg*, 4 M. & R. 277; *Thorpe v. Milligan*, 5 W. R. 336).

Looms, standing upon a loom-foot and removable at pleasure, do not "belong" to a mill, within a contract for its sale "with all machinery, &c, belonging to the said Mill" (*Hatchinson v. Kay*, 26 L. J. Ch. 457; 23 Bea. 413). *Vf*, *Burt v. Haslett*, 25 L. J. C. P. 201; 18 C. B. 162; *Haley v. Hammersley*, 3 D. G. F. & J. 587; 30 L. J. Ch. 771; 9 W. R. 562; *Holland v. Hodgson*, L. R. 7 C. P. 328; 41 L. J. C. P. 146; *Southport Banking Co. v. Thompson*, 37 Ch. D. 64; 57 L. J. Ch. 114; 58 L. T. 143; 36 W. R. 113; *Cosby v. Shaw*, 23 L. R. Ir. 181: BELONGING.

Insree on "Oil Mill and Millwright's Gear therein"; *V. Hare v. Barstow*, 8 Jur. 928.

*V*. MILL GEARING.

**MILL DAM.**—*V*. FISHING MILL DAM.

**MILL GEARING.**—Qua Factory and Workshop Act, 1901, " 'Mill-gearing,' comprehends every shaft, whether upright oblique or horizontal, and every wheel, drum, or pulley, or other appliance, by which the motion of the first moving power is communicated to any machine appertaining to a MANUFACTURING PROCESS " (s. 156).

*V*. GEARING.

**MINE: MINES: MINERALS.**—"The primary meaning of the word '*Mine*,' standing alone, is an underground excavation made for the

purpose of getting minerals (*Bell v. Wilson*, 35 L. J. Ch. 337; 1 Ch. 303; 14 L. T. 115; 14 W. R. 493; *Vj*; *Listowel v. Gibbings*, 9 Ir. Com. Law Rep. 223; *Cp*, QUARRY). In Leases and similar documents it is commonly used in a slightly different sense. For instance, 'all that mine, vein, or seam of coal,' — &c. There the word includes the stratum of the minerals as well as the excavation made to win it. 'Minerals,' on the other hand, means primarily all substances, — other than (*and underneath*) the agricultural surface of the ground, — which may be got for manufacturing or mercantile purposes, whether from a mine, as the word would seem to signify, or such as stone or clay, which are got by open working as decided in *Mid. Ry v. Checkley* (36 L. J. Ch. 380; L. R. 4 Eq. 19; 15 W. R. 671; 16 L. T. 260), and *Rosse v. Wainman* (15 L. J. Ex. 67; 14 M. & W. 859). The particular signification of each of these words may be varied largely by the context" (per Kay, J., *Mid. Ry v. Haunchwood Co*, 51 L. J. Ch. 778; 20 Ch. D. 552; 46 L. T. 301; 30 W. R. 640; approved in *Mid. Ry v. Robinson*, 57 L. J. Ch. 441; 37 Ch. D. 386; affd in H. L. 59 L. J. Ch. 442; 15 App. Ca. 19; 62 L. T. 194; 38 W. R. 577; 6 Times Rep. 100); or indeed by the kind of document in which they are found (*Menzies v. Breadalbane*, 1 Shaw App. 225; *Glasgow v. Farie*, 58 L. J. P. C. 33; 13 App. Ca. 657; 37 W. R. 627; 60 L. T. 274, and espy jdgmt of Halsbury, C., in *thle*).

The words "and underneath" italicised in the above definition by Kay, J., are not to be found in the extract just given, and are added, with submission, in order to complete the primary meaning of the word "Minerals." Thus, in *Hext v. Gill* (41 L. J. Ch. 761; 7 Ch. 699; 26 L. T. 502; 27 Ib. 291; 20 W. R. 959), Mellish, L. J., said the word " 'Minerals' includes every substance which can be got from *underneath* the surface of the earth for the purpose of profit." (The *ipsissima verba* of that definition were adopted by Fry, J., in *A-G v. Tomline*, 46 L. J. Ch. 657). And so in *Tucker v. Linger* (52 L. J. Ch. 941; 8 App. Ca. 508; 32 W. R. 40), Ld Blackburn said it was "by no means clear" that Flints in a flinty district, that were turned up by ploughing and lying on the surface, would be "Minerals" within a reservation in a Lease: and *qy.*, is an Ancient Boat, — for centuries embedded in the soil several feet below the surface but not fossilised or petrified. — a "Mineral" within a like reservation? — Chitty, J., was of opinion that it was not (*Elwes v. Brigg Gas Co*, 55 L. J. Ch. 734; 33 Ch. D. 562). *Vj*, *Boileau v. Heath*, cited *Iron*.

Observe further, that though the above primary meaning states that the substances to be "Minerals" are such as "may be got for manufacturing or mercantile purposes," yet that does not mean that the substances must be such as can be worked for commercial profit (*Johnstone v. Crompton*, 1899, 2 Ch. 190; 68 L. J. Ch. 559; 81 L. T. 165; 47 W. R. 604).

"Minerals" is by far a more general word than "Mines" (per Mellish, L. J., in *Hext v. Gill*, sup); in which case, however, the same learned

judge said that "Mines" may possibly extend to open workings or even not apply to workings at all. But in *Darrill v. Roper* (24 L. J. Ch. 779; 3 Drew. 294; 3 W. R. 467; 25 L. T. O. S. 302), Kindersley, V. C., said, "Mining, is when you begin on the surface, and, by sinking shafts, you work underground in a horizontal direction, making a tunnel as you proceed, and leaving a roof overhead." But "putting the word 'Mines' before 'Minerals,' — as in the ordinary phrase 'Mines and Minerals,' — does not alter the more extended meaning of the word 'Minerals'" (per Mellish, L. J., *Hext v. Gill*, sup: *Va, Mid. Ry v. Haunchwood Co*, sup: jdgmt Ld Macnaghten in *Glasgow v. Farie*, sup). *Vf*, hereon MacS. 1-19, for a discussion of the cases in which the *primâ facie* meaning of "Mines and Minerals" has been restricted by the context.

In ss. 77, 78, Ry C. C. Act, 1845, "Mines" ought to receive the widest possible construction short of straining the language; the word there is not confined to minerals got by underground workings (*Mid. Ry v. Robinson*, sup). *V. LAND.*

The following have been held to be "Minerals":—

**Brick Clay**, in a Reservation by Deed (*Jersey v. Neath*, cited WHATSOEVER: *Shaftesbury v. Wallace*, 1897, 1 I. R. 381), or under s. 77, Ry C. C. Act, 1845, and whether got underground or by open workings (*Mid. Ry v. Haunchwood Co*, sup: *Loosenore v. Tiverton and North Deron Ry*, 51 L. J. Ch. 570; 22 Ch. D. 25; 30 W. R. 628; 47 L. T. 151; *Mid. Ry v. Miles*, 55 L. J. Ch. 745; 33 Ch. D. 632; 55 L. T. 428; 35 W. R. 76; *Dixon v. Cal. Ry*, 5 App. Ca. 820; 43 L. T. 513; 29 W. R. 249). *Cp.*, *Glasgow v. Farie* and *Church v. Inclosure Commrs*, inf:

**Chalk and Calc-spar** (*Stokes v. Arkwright*, cited PERSON INTERESTED):

**China Clay** (*Hext v. Gill*, sup):

**Coal and Ironstone** (*Bell v. Wilson*, sup: *Mid. Ry v. Robinson*, sup):

**Coprolites** (*A-G. v. Tomline*, 46 L. J. Ch. 654; 5 Ch. D. 750; *V. STONE*):

**Freestone and Limestone** got by open workings, as within s. 77, Ry C. C. Act, 1845 (*Dixon v. Cal. Ry*, sup: *Mid. Ry v. Robinson*, sup: *Se, Menzies v. Breadalbane*, inf: *Listowel v. Gibbings*, inf):

**Granite** (*A-G. v. Welsh Granite Co*, 1 Times Rep. 549):

**Slate** got by underground workings (*Cleveland v. Meyrick*, 37 L. J. Ch. 125; *rthe* inf):

**Stone** got by quarrying (*Mid. Ry v. Checkley*, sup: *Bell v. Wilson*, sup: *Rosse v. Wainman*, sup: *Micklethwait v. Winter*, 20 L. J. Ex. 313; 6 Ex. 644; 17 L. T. O. S. 185):

*Vf*, MacS. 12, where it is said, on the authority chiefly of the above cases, that "Minerals" include, "every kind of Stone, Flint, Marble, Slate, Brick, Earth, Chalk, Gravel, and Sand; provided only that these articles are under the surface and do not lie loosely upon it." *Va*, Seton, 581, 582.



The following have been held *not* to be Minerals:—

**Boat**, ancient and embedded, but unpetrified (*Elwes v. Brigg Gas Co*, sup):

**Brine** formed by the percolation of rain-water through rock salt, quâ s. 4 (3), Settled Estates Act, 1877, 40 & 41 V. c. 18 (*Re Dudley*, 26 S. J. 359):

**Clay and Sand**, under the Act of Settlement (1703) of the Isle of Man whereby tenants were confirmed in their customary estates, “saving always all mines and minerals of what kind and nature soever, quarries and delfs of flag, slate, or stone” (*A-G. Isle of Man v. Mylchreest*, 48 L. J. P. C. 36; 4 App. Ca. 294; 40 L. T. 764). In that case the Court said,—“The words ‘quarries and delfs of flag, slate, or stone’ appear to be used to describe open workings and the specified substances got by such workings, as distinguished from mines properly so called, and mineral substances usually got by underground works”:

**Clay Subsoil**, quâ s. 18, Waterworks Clauses Act, 1847, 10 V. c. 17, as incorporated in a Scotch Act (*Glasgow v. Furie*, 13 App. Ca. 657; 37 W. R. 627; 60 L. T. 274; 58 L. J. P. C. 33: *Va, Church v. Inclosure Commrs*, 31 L. J. C. P. 201; 11 C. B. N. S. 664. *Cp, Hext v. Gill and Mid. Ry v. Hauxwood Co*, sup):

**Freestone Quarry**, in a reservation in a Feu in Scotland (*Menzies v. Breadalbane*, 1 Shaw App. 225: *Sr, Dixon v. Cal. Ry*, sup):

**Furnace Slag**; *V. QUARRY*:

**Limestone**, in Ireland (*Listowel v. Gibbings*, 9 Ir. Com. Law Rep. 223).

The phrase “Mines of Minerals” does not, necessarily, restrict the Minerals to such as are got by mining (per *Ld Watson, Mid. Ry v. Robinson*, 15 App. Ca. 33; 59 L. J. Ch. 448: *Shaftesbury v. Wallace*, 1897, 1 I. R. 407).

In view of the doctrine that “Coal Mines” in 43 Eliz. c. 2, was confined to mines of coal so that mines of other minerals were not thereunder rateable to the Poor Rate (*Leudsmelting Co v. Richardson*, 3 Burr. 1341; 1 Bl. W. 389; 1 Bott, 159: *Morgan v. Craushay*, 40 L. J. M. C. 202; L. R. 5 H. L. 304: *Thursby v. Briercliffe*, 1895, A. C. 32; 64 L. J. M. C. 66; 71 L. T. 849; 59 J. P. 180), it was held that Stone Quarries or Lime Works (*R. v. Alberbury*, 1 East, 534; 1 Bott, 210), Slate Works (*R. v. Woodland*, 2 East, 164; 1 Bott, 212), and a potter’s Clay Pit (*R. v. Brown*, 8 East, 528), were not mines at all, but only gave additional value to the rateable land wherein they were; unless, indeed, the material was obtained by underground mining works (*R. v. Sedgley*, 2 B. & Ad. 65; 9 L. J. O. S. M. C. 61: *R. v. Brettell*, 3 B. & Ad. 424; 1 L. J. M. C. 46: *R. v. Dunsford*, 2 A. & E. 568; 4 L. J. M. C. 59). In the last case *Denman, C. J.*, said,—“The principle established is, that the *mode* of obtaining the material, and not the nature of the material itself, is to be considered in order to come to a decision whether it

constitutes a Mine or not." In *Cleveland v. Meyrick* (sup) Malins, V. C., relied on the two lastly mentioned cases in holding that a partnership share in Slate, formerly got by QUARRY workings but which at the date of the Will was obtained by underground workings, passed under a gift of "all Shares in Mines of which I shall die possessed." 17. jdgmt of Ld Watson, *Glasgow v. Farie* (sup). Note:—the exemption from rating of Mines other than Coal Mines was taken away by s. 3 (3), Rating Act, 1874, 37 & 38 V. c. 54; V. s. 7, Ib., for def of "Mine."

For the purpose of the Settled Land Act, 1882, " 'Mines and Minerals,' mean, Mines and Minerals whether already opened or in work or not, and include, all minerals and substances in, on, or under, the land obtainable by under-ground or by surface working" (s. 2, subs. 10, iv).

Where in a conveyance there was a reservation to the vendor of mines and minerals, "with full liberty to search for, dig, bore, sink, win, work, lead and carry away, the same," it was held that the working must be by under-ground mining and not from the surface (*Bell v. Wilson*, sup). *Va, Proud v. Bates*, 34 L. J. Ch. 406; 12 L. T. 565.

Quà Coal Mines Regn Act, 1887, 50 & 51 V. c. 58, " 'Mine,' includes, every Shaft in the course of being sunk, and every Level and Inclined Plane in the course of being driven, and all the shafts, levels, planes, works, tram-ways, and sidings (both below ground and above ground), IN and ADJACENT to and BELONGING to the Mine" (s. 75), being the def a little shortened provided for Metalliferous Mines Regn Act, 1872, 35 & 36 V. c. 77 (s. 41); and quà Workmen's Comp Act, 1897, " 'Mine,' means, a Mine to which the Coal Mines Regn Act, 1887, or the Metalliferous Mines Regn Act, 1872, applies" (subs. 2, s. 7).

Quà Duchy of Cornwall; Stat. Def., 21 & 22 V. c. 109, s. 8; 26 & 27 V. c. 49, s. 37.

Quà the Stannaries; Stat. Def., 6 & 7 W. 4, c. 106, s. 44; 18 & 19 V. c. 32, s. 2.

By Grant of Mines the land itself will pass (Touch. 96).

"Open Mine"; V. OPEN.

Erection used in the business of a Mine: V. ERECTION.

Note. Gold and Silver Mines are part of the prerogative of the Crown (*Mines Case*, 1 Plowd. 336, 336 a, *Sc*, 332 a: *A-G. British Columbia v. A-G. Canada*, 58 L. J. P. C. 91; 14 App. Ca. 295: *A-G. v. Morgan*, 1891, 1 Ch. 432; 60 L. J. Ch. 126; so much so that a Crown grant of land "including all coal, coal-oil, ores, stones, clay, marble, slate, *Mines, Minerals, and substances whatsoever*," will not pass its Gold and Silver (*Esquimalt & Nanaimo Ry v. Bainbridge*, 1896, A. C. 561; 65 L. J. P. C. 98; 75 L. T. 111: *Vf, Mines Case*, sup).

V. IRON: SOIL: SUBSOIL: VEIN: WITH ALL MINES: IN OR ABOUT: PRODUCE.

MINE OR PART OF A MINE.—V. PART.

**MINER.** — Quà Stannaries Act, 1887, 50 & 51 V. c. 43, “ ‘Miners,’ includes, all artizans, labourers, and other persons, working in and about a Mine, except the Purser, Secretary, Agent, or Manager ” (s. 2). *V.* IN OR ABOUT.

Other Stat. Def. — 18 & 19 V. c. 32, s. 2.

“ Practical Working Miner ”; *V.* PRACTICAL.

**MINERAL ESTATE.** — *V.* per Ld Watson, *Campbell v. Wardlaw*, 8 App. Ca. 641: *Dashwood v. Magniac*, cited TIMBER ESTATE.

**MINERAL GOTTEN.** — “ Mineral contracted to be gotten,” s. 17, 35 & 36 V. c. 76, includes Slack as well as Large Coal (*Netherseal Co v. Bourne*, 59 L. J. Q. B. 66; 14 App. Ca. 228): *Vtbc*, and as to “ Mineral contracted to be gotten,” s. 12 (1), 50 & 51 V. c. 58, *Brace v. Abercurn Co*, 1891, 2 Q. B. 699; 60 L. J. Q. B. 706; 40 W. R. 3; 56 J. P. 20: *Kearney v. Whitehaven Colliery*, 1893, 1 Q. B. 700; 62 L. J. M. C. 129; 68 L. T. 690; 41 W. R. 594; 57 J. P. 645.

**MINERAL PROPERTY.** — All erections made upon or affixed to the solum of the surface land, in virtue of the powers conferred upon the miner by the 5th Custom in the Act, constitute ‘ Mineral Property ’ as defined in s. 2, 14 & 15 V. c. xciv ” (per Ld Watson, *Wake v. Hall*, 52 L. J. Q. B. 500; 8 App. Ca. 207; 31 W. R. 585; 48 L. T. 834; *Va*, per Ld Fitzgerald, *ib.*).

**MINING.** — “ Mining *Company* ”; Stat. Def., 59 & 60 V. c. 45, s. 4. “ Mining *Effects* ”; Stat. Def., 50 & 51 V. c. 43, s. 2.

“ Mining LEASE,” quà Conv & L. P. Act, 1881, “ is a Lease for Mining *Purposes*, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of, Mines and Minerals or purposes connected therewith; and includes, a grant or license for mining purposes ” (s. 2, xi): *Va*, S. L. Act, 1882, s. 2 (10, iv), which gives a rather wider def of “ Mining Purposes.”

**MINISTER.** — A Bishop is included in the word “ Minister,” as used in the Rubrics relating to the celebration of the Holy Communion (*Read v. Lincoln, Bp.*, 14 P. D. 148).

“ The word ‘ Minister ’ is general, and may apply to any person who has the cure of souls in the district ” (per Blackburn, J., *R. v. Allen*, 42 L. J. Q. B. 37; L. R. 8 Q. B. 69); which case decides that a PERPETUAL CURATE, as well as a RECTOR or VICAR, is a “ Minister ” entitled to appoint a Churchwarden within the meaning of a custom founded on the 89th of the Canons of 1603.

Where the PARSON or Vicar has been suspended or inhibited, he cannot appoint the Parish Clerk because he is not “ the Minister *for the time being* ” within the 91st of the Canons of 1603. — such Minister is

the Curate in Charge (*Pinder v. Barr*, 24 L. J. Q. B. 30; 4 E. & B. 105); *secus*, if there be only a SEQUESTRATION (*Lawrence v. Edwards*, 1891, 1 Ch. 144; 60 L. J. Ch. 336).

"Minister." s. 68, 5 & 6 W. 4, c. 76, is "used in its most general signification" (per Littledale, J., *R. v. Liverpool*, 7 L. J. Q. B. 134; 8 A. & E. 176; 3 N. & P. 280); and it was there held that a Lecturer in Holy Orders at St. John's, Liverpool, who occasionally assisted its regular Incumbent in the services, though not "the Minister" of the Church, was yet a "Minister" of it, within the section.

Quà Clerical Disabilities Act, 1870, 33 & 34 V. c. 91, " 'Minister,' means, a Priest or a Deacon" (s. 2).

*V.* INCUMBENT: CLERGYMAN: LICENSED MINISTER: REGULAR CLERGYMAN: REGULAR MINISTER.

Quà Glebe Lands (Scot) Act, 1866, 29 & 30 V. c. 71, "Minister," means, "the minister of any Parish in Scotland for the time who shall be in possession of a Glebe" (s. 2): quà Registration of Births, Deaths, and Marriages (Scot) Act, 1854, 17 & 18 V. c. 80, "Minister" includes "Ministers or Pastors of Christian Congregations of all Denominations" (s. 76).

"British Minister," in any Act relating to the solemnization of Marriages abroad, includes "a British Chargé d'Affaires" (s. 11, 54 & 55 V. c. 74); so, of "Minister" as used in that Act (*Ib.*).

**MINISTERIAL POWERS.** — Stat. Def., 30 & 31 V. c. 45, s. 3.

**MINISTRATION.** — "Ministering the Sacraments or other Rites of the Church," in the Ornaments Rubric at the beginning of the Church of England Prayer Book, does not include Preaching, for preaching is not a "Ministration" or a "RITE" (*Re Robinson*, 1897, 1 Ch. 85; 66 L. J. Ch. 97; 76 L. T. 95; 45 W. R. 181; 61 J. P. 132). In *the* Court of Appeal said, — "What the exact meaning of the word 'Rite' is has not been decided."

**MINOR.** — *V.* INFANT.

**MINOR CANON.** — *V.* CANON.

**MINORITY.** — A gift of income "during minority" may, on a context, mean until the beneficiaries attain some other age than 21, if such other age be clearly indicated (*Milroy v. Milroy*, 13 L. J. Ch. 266; 14 Sim. 48; 1 Jarm. 845). *V.* *Weddell v. Munday*, 6 Ves. 341; *Hart v. Talk*, 2 D. G. M. & G. 300; *Maddison v. Chapman*, 3 D. G. & J. 536; 28 L. J. Ch. 450; 7 W. R. 214; 33 L. T. O. S. 212.

As to ACCUMULATIONS during "Minority"; *V.* 1 Jarm. 304.

*Cp.* MAJORITY.

**MINUTE.** — A “Minute of an Agreement” is the same thing as a “MEMORANDUM of an Agreement,” on *wh* EVIDENCE OF A CONTRACT. *Vf*, *Lucas v. Beach*, 1 M. & G. 417; *Blackwell v. M'Naughtan*, 1 Q. B. 127.

**MISADVENTURE.** — “ ‘Misaventure,’ or ‘Misadventure,’ has in law a special signification for the killing of a man partly by negligence, and partly by chance ” (Cowel). *V*. CHANCE-MEDLEY: *Cp*, ADVENTURE, last par.

**MISAPPLICATION.** — “Misapplication” of public funds, s. 44, 7 W. 4 & 1 V. c. 78, only covers cases of corrupt practices or of showing illegal favour (*R. v. Norwich*, 30 W. R. 752).

“Wilfully waste or misapply”; *V*. WILFUL WASTE.

*V*. WITHHOLD.

**MISAPPROPRIATE.** — “Misappropriate,” means, the wrongful conversion of or dealing with anything, by the person to whom it has been intrusted (*V*. Steph. Cr. 275–278, summarising and stating 24 & 25 V. c. 96, ss. 75–80). *V*. AGENT. *Note*: ss. 75, 76, repld s. 1, Larceny Act, 1901, on and from 1st Jan 1902.

**MISBEHAVIOUR.** — “Misbehaviour in his Office,” s. 6, 23 & 24 V. c. 116; *V. Re Ward*, 30 L. J. Ch. 775. *Cp*, MISDEMEAN.

*V*. INABILITY.

**MISCARRIAGE.** — *V*. DEBT, DEFAULT, OR MISCARRIAGE: SUBSTANTIAL.

**MISCHANCE.** — *V*. MISADVENTURE.

**MISCHIEF.** — “Within the Mischief”; *V*. EQUITY.

**MISCONDUCT.** — “EXTORTION or Misconduct” by a County Court Officer, s. 50, Co. Co. Act, 1888, means, under the latter word, Misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistakes, do not constitute such Misconduct (*Moore v. Brompton Co. Co. Bailiff*, 69 L. T. 140; 62 L. J. Q. B. 498; 41 W. R. 557; 57 J. P. 742).

“Misconduct” in a Solicitor justifying the disciplinary jurisdiction of the Court, s. 13, 51 & 52 V. c. 65, is not confined to professional misconduct, but extends to conduct, — *e.g.* letting a BROTHIEL, — which shows him to be an unworthy member of the legal profession (*Re Weare*, 1893, 2 Q. B. 439; 62 L. J. Q. B. 596; 69 L. T. 522). *Cp*, INFAMOUS CONDUCT.

*V*. CONDUCT: CONDUCE: MISFORTUNE: SERIOUS: WILFUL MISCONDUCT: WILFUL NEGLECT,

**MISDEMEAN.** — “ Misdemean himself in his Office,” s. 6, 1 W. & M. c. 21; *V. Wildes v. Russell*, L. R. 1 C. P. 722; 35 L. J. M. C. 241; H. & R. 689. *Cp.*, MISBEHAVIOUR.

**MISDEMEANOR.** — “ The word ‘ Misdemeanor,’ in its usual acceptation, is applied to all those Crimes and Offences for which the law has not provided a particular name; and they may be punished, according to the degree of the offence, by fine or imprisonment, or both. A Misdemeanor is in truth any crime less than a FELONY, and the word is generally used in contradistinction to Felony; Misdemeanors comprehending all Indictable Offences which do not amount to Felony, — as, PERJURY, Battery, Libels, Conspiracies, and Public Nuisances ” (1 Russell on Crimes, 6 ed., 193, 194). *Vf.*, CRIME. *Cp.*, OFFENCE.

In an Indictment “ Misdemeanor ” is *nomen collectivum*; and a finding that the defendant is Guilty of the “ Misdemeanor ” as alleged, is finding him guilty of the whole matter charged by the Indictment (*R. v. Powell*, 2 B. & Ad. 75: *rthe, Campbell v. The Queen*, 11 Q. B. 837: *Ryalls v. The Queen*, lb. 795).

The absolute refusal of a Bankrupt’s Discharge when “ the Debtor has committed *any* Misdemeanor under Part 2 of the Debtors Act, 1869 ” (s. 2 (3), 50 & 51 V. c. 66), is restricted to any such Misdemeanor as may be committed “ in any matter connected with, or arising out of, the bankruptcy ”; the words quoted are to be read into the provision (*Re Brocklebank*, 58 L. J. Q. B. 375).

As respects Scotland, “ Misdemeanour ” in the Interp Act, 1889, and in every Act passed after its commencement, means “ an Offence ” (s. 28). In the prior and subsequent Acts the def, quà Scotland, generally, is, “ Crime and Offence,” *e.g.* 25 & 26 V. c. 88, s. 1; 34 & 35 V. c. 31, s. 23; 35 & 36 V. c. 76, s. 73; 37 & 38 V. c. 15, s. 4; 38 & 39 V. c. 17, s. 109, c. 60, s. 4, c. 63, s. 33; 39 & 40 V. c. 45, s. 3; 44 & 45 V. c. 58, s. 190; 46 & 47 V. c. 51, s. 68; 47 & 48 V. c. 76, s. 20; 48 & 49 V. c. 69, s. 15; 57 & 58 V. c. 41, s. 26; 59 & 60 V. c. 25, s. 102.

**MISFEASANCE.** — This word, in s. 165, Comp Act, 1862, means, “ Misfeasance in the nature of a BREACH OF TRUST ” (per James, L. J., *Corentry’s Case*, 14 Ch. D. 670); “ it must be an act resulting in loss to the Company. The section does not give the Court power to fine a Director for misconduct. It gives no new rights, but simply provides a summary mode of enforcing rights which must otherwise have been enforced by action ” (Buckl. 435 *et seq.*).

That section is now replaced by s. 10, 53 & 54 V. c. 63, wherein “ Misfeasance ” recurs; thereon Vaughan Williams, J., gave a broader interpretation than that of James, L. J. (sup), which he pointed out was obiter, and said, “ It seems to me that ‘ Misfeasance ’ covers every misconduct by an Officer of the Co, as such, for which such Officer might

have been sued apart from the section" (*Re Kingston Cotton Mills Co, No. 2*, 1896, 1 Ch. 331; *affd*, 2 *Ib.* 279; 65 L. J. Ch. 290, 673; 71 L. T. 568: *Vh, Re North Australian Co*, 1892, 1 Ch. 322; 61 L. J. Ch. 129; 65 L. T. 800; 40 W. R. 212: *Re New Mashonaland Co*, 1892, 3 Ch. 577; 61 L. J. Ch. 617; 67 L. T. 90; 41 W. R. 75); but the Liquidator must prove that damage has resulted to the Co (*Re Wragg*, 1897, 1 Ch. 796; 66 L. J. Ch. 419: per Ludlow, L. J., *Re London and Colonial Finance Corp*, 77 L. T. 150). *Seemble*, a sin of OMISSION, as well as one of Commission, may be a "Misfeasance" (per Kekewich, J., *Re Liverpool Household Stores*, 59 L. J. Ch. 617, commenting on *Re Wedgwood Coal Co*, 47 L. T. 612).

*Cp*, MISMANAGEMENT.

**MISFORTUNE.**—A thing caused by "Misfortune," is where it arises through something unforeseen which cannot ordinarily be guarded against (*Re Burgess*, 57 L. T. 200; 35 W. R. 702: *Vf, CONDUCT*). *Cp*, ACCIDENT.

Bankruptcy "caused by Misfortune without any MISCONDUCT," s. 32 (2*b*), Bankry Act, 1883; *V. Re Campbell*, 20 Q. B. D. 816; 59 L. T. 194; 36 W. R. 582: *Re Grahame*, 5 Times Rep. 259.

HOMICIDE "by Misfortune," s. 7, 24 & 25 V. c. 100, does not extend to doing a lawful, but dangerous, act without taking proper precautions (*R. v. Salmon*, 50 L. J. M. C. 25; 6 Q. B. D. 79; 43 L. T. 573; 29 W. R. 246).

"Misfortune," in a plea that the plaintiff contributed to the "Misfortune" complained of, is not ambiguous (*Smith v. McAuley*, Ir. Rep. 8 C. L. 525).

**MISLEADING.**—Misleading Conditions of Sale; *V. CONDITIONS*.

**MISMANAGEMENT.**—"'Mismanagement' and 'Inattention' are not synonymous. The one is active, the other passive; the one denotes Commission, the other Omission" (per Vaughan, B., *Brooks v. Blanchard*, 2 L. J. Ex. 281; 1 C. & M. 779; 3 Tyr. 84).

*Cp*, MISFEASANCE.

**MISNOMER.**—A Writ wherein deft is described by his initials only may be amended as a "Misnomer" (*Rust v. Kennedy*, 8 L. J. Ex. 85; 4 M. & W. 586); and a Voting Paper which ought to contain the Christian and Surname of the person voted for is (probably) not accurate if it only gives the initial of such Christian name, but may be saved if there is provision that no "Misnomer" shall invalidate, if the description be such as to be commonly understood (*R. v. Plenty*, cited CHRISTIAN NAME). *Cp*, MISTAKE.

**MISPRISION.**—Misprision of *Felony*;—"Every one who knows that any other person has committed Felony and conceals or procures the

concealment thereof, is guilty of Misprision of Felony" (Steph. Cr. 104, 105). *Vf*, Rosc. Cr. 365.

Misprision of *Treason*; — "Every one who knows that any other person has committed High Treason, and does not within a reasonable time give information thereof to a Judge of Assize, or a Justice of the Peace, is guilty of Misprision of Treason" (Steph. Cr. 104).

*Vh*, Termes de la Ley: Cowel: Jacob: 4 Bl. Com. ch. 9: 8 Encyc. 430-432.

"The word 'Misprision' means a mere MISTAKE" (per Denman, C. J.: *R. v. Conyers*, 8 Q. B. 991).

**MISREPRESENT.** — To "misrepresent," "misrepresentation," do not, by themselves, import wilful falsehood or malice; "misrepresentation of facts may be, and often is, INNOCENT" (per Crampton, J., *Dowdall v. Kelly*, 4 Ir. Com. Law Rep. 556).

*Cp*, FALSE REPRESENTATION: QUALITY.

**MISS.** — Bequest to "Miss Sarah Jameson"; there was no "Miss" Sarah Jameson, but there was a "Mrs." S. J. who had a daughter named Miss Frances Ann Jameson; held, that the latter was entitled to the legacy, for clearly, by the use of the word "Miss," it was intended to give it to an unmarried lady (*Lee v. Pain*, 4 Hare, 253).

**MISSING SHIP.** — *V. Stribley v. Imperial Mar Insrce* 45 L. J. Q. B. 396; 1 Q. B. D. 507.

**MISSIONARY PURPOSES.** — A trust for "Missionary Purposes," is void for vagueness (*Scott v. Brownrigg*, 9 L. R. Ir. 246).

**MIS-STATEMENT.** — *V. ERROR.*

**MISTAKE.** — "Mistake," is not mere forgetfulness (per Esher, M. R., *Barrow v. Isaacs*, cited UNREASONABLY); it is a slip "made, not by design but, by mischance" (per Russell, C. J., *Sandford v. Beal*, 65 L. J. Q. B. 74; 73 L. T. 406: *Se*, *Prescott v. Lee*, inf). *Vf*, 4 Bl. Com. 27.

As to what is a "Mistake" in a List, Claim, or Notice of Objection, which a Revising Barrister may amend under s. 28 (1, 2), Parliamentary and Municipal Registration Act, 1878, 41 & 42 V. c. 26; *V. Hartley v. Halse*, 58 L. J. Q. B. 100; 22 Q. B. D. 200; 60 L. T. 322; 37 W. R. 302; *Adams v. Bostock*, 51 L. J. Q. B. 175; 8 Q. B. D. 259; 45 L. T. 443; 30 W. R. 460; *Bollen v. Southall*, 54 L. J. Q. B. 589; 15 Q. B. D. 461; 34 W. R. 44; *Prescott v. Lee*, 68 L. J. Q. B. 906; 79 L. T. 447; 47 W. R. 139; 62 J. P. 824; *Seenus, Smith v. Chandler*, 58 L. J. Q. B. 103; 22 Q. B. D. 208; 60 L. T. 327; 37 W. R. 351. *Vf*, "Nature of Qualification," sub NATURE: INACCURATE.



As to correcting Mistakes, —

In *Deeds*; *V. BLANKS*. Wrong Description, *V. Cowen v. Truefitt*, 1898, 2 Ch. 551; 67 L. J. Ch. 695; 47 W. R. 29; 79 L. T. 348.

In *Wills*; *V. BLANKS*. Where there is a gift to a defined CLASS generally, but the number of such a CLASS is wrongly stated, the number is rejected, and all take, if there be no indication to the contrary (*Garvey v. Hibbert*, 19 Ves. 124; *Lee v. Pain*, 4 Hare, 249, 250; *Wrightson v. Calvert*, 1 J. & M. 250; *Sleech v. Thorington*, 2 Ves. sen. 561; Hawk. 62, 63). *Note*. A wrong description of persons or things may be corrected, even by extrinsic evidence (*Camoys v. Blundell*, 1 H. L. Ca. 778; *Lee v. Pain*, 4 Hare, 251; 14 L. J. Ch. 346; *Reynolds v. Whelan*, 16 L. J. Ch. 434; *Re Feltham*, 1 K. & J. 528; Hawk. 10-13), e.g. by previous Wills (*Re Waller*, 68 L. J. Ch. 526; 80 L. T. 701; 47 W. R. 563).

Mistake of FACT; *V. Withington v. Herring*, 5 Bing. 442.

"Mistake or INADVERTENCE," s. 12, 54 G. 3, c. 173; *V. Doe d. Blewitt v. Phillips*, 1 Q. B. 96: — as to same phrase in preamble to 12 & 13 V. c. 26; *V. Sutherland v. Sutherland*, 1893, 3 Ch. 169; 62 L. J. Ch. 953.

*V. BONÂ FIDE*: FORGETFULNESS: MISNOMER: OMISSION: Kerr on Fraud and Mistake: 8 Encyc. 433-439.

**MISTRESS.** — *V. MASTER.*

**MIS-USER.** — *V. NON-USER.*

**MIXED.** — *V. CORPORATION*: TITHES: REAL ACTION.

**MIXTURE.** — *V. PROPER MIXTURE.*

**MOB.** — *V. REBELLION.*

**MODEL.** — Quâ Official Secrets Act, 1889, 52 & 53 V. c. 52, "Model," includes, DESIGN, PATTERN, and Specimen" (s. 8).

**MODERATE SPEED.** — "Moderate Speed" in Art. 13, Regulations for Preventing Collisions at Sea, 1879, replaced by Art. 16 of the Regns of 1897, is a relative term, depending upon the circumstances: it means, that a Vessel is to reduce her speed so far as she can, consistently with keeping stearage way (*The Zadok*, 9 P. D. 114; 53 L. J. P. D. & A. 72); and a sailing ship going in a dense fog is not to go at a greater speed than is enough to keep her under CONTROL (*The Beta*, 9 P. D. 134). "A speed which may be moderate in a fog through which daylight appears, is not a proper speed in a dense fog in which nothing can be discerned" (per Brett, M. R., *ib.*); "in a dense fog the vessel should be brought as nearly as possible to a standstill so as only to be just under COMMAND" (per Brett, M. R., *The Dordogne*, 10 P. D. 10; 54 L. J. P. D. & A. 29). *Vf. The Pennsylvania*, 23 L. T. 55; *The Elysia*, 46 L. T. 840; *The Resolution*, 60 L. T. 430; 6 Asp. 363; *The Campania*, 70 L. J. P. D. & A. 101; Abbott, 843-847.

**MODERATE TERMS.** — An agreement to sell goods on “Moderate Terms” satisfies the Statute of Frauds *quâ* price (*Aschcroft v. Morrin*, 4 M. & G. 450).

**MODEST.** — Modest gifts from Husband to Wife; *V. DON.*

**MODIFICATION.** — A power to sanction “any Modification” of the rights of Debenture Holders, enables its donee to place another security in front of the debentures (*Re Canada Freehold Estate & Timber Co*, 55 L. T. 347; *Follit v. Eddystone Quarries Co*, 1892, 3 Ch. 75; 61 L. J. Ch. 567). But it is not a “Modification” of such rights to substitute for the debentures the shares (or, *semble*, debentures) of another Co; that is rather an Extinction of those rights than a Modification of them (per Fry, L. J., *Mercantile Trust v. International Co*, 1893, 1 Ch. 490, 491). *Vh. Hay v. Swedish & Norwegian Ry*, 33 S. J. 454.

This power is usually to effect a “Modification or COMPROMISE.” But under “Compromise” “a power to ‘compromise’ their rights pre-supposes some dispute about them or difficulties in enforcing them, . . . it does not include a power to make presents” (per Lindley, L. J., *Mercantile Trust v. International Co*, 1893, 1 Ch. 489). Therefore, that case shows that where there is no dispute, difficulty, or peril, about the rights of debenture holders, a power to “compromise” such rights does not justify their extinction, abridgement, or, *semble*, alteration. But if there be dispute, or difficulty, or peril, then a power to “compromise” includes a power to compel the substitution for the debentures of debentures or shares of another Co (*Sneath v. Valley Gold*, 1893, 1 Ch. 477; 68 L. T. 602; *Mercantile Trust v. River Plate Trust*, 1894, 1 Ch. 578; 63 L. J. Ch. 366; 70 L. T. 131; 42 W. R. 365).

*V. ALTER.*

**MODUS.** — “*Modus decimandi*, is money, or other thing of value, given annually in lieu of TITHES” (Termes de la Ley). It, and indeed all Fees, *e.g.* a Marriage Fee, which have only CUSTOM for their warrant, must be fixed and unvarying and have been paid from time IMMEMORIAL, and their amount must be reasonable and avoid the sin of Rankness, *i.e.* it must be of such an amount as would not have been unreasonable and could have been claimable, as of Right, in the time of Richard 1 (2 Bl. Com. 30, 31; *Bryant v. Foot*, 36 L. J. Q. B. 65; 37 Ib. 217; L. R. 2 Q. B. 161; 3 Ib. 497; 7 B. & S. 725; 9 Ib. 444). *Cp.* TOLL TRAVERSE.

“Modus decimandi, or Exemption or Discharge from Tithes.” 2 & 3 W. 4, c. 100; *V. Knight v. Waterford*, 15 L. J. Ex. 288; 15 M. & W. 419; *Salkeld v. Johnston*, 2 C. B. 749; 18 L. J. Ex. 89; 2 Ex. 256; 18 L. J. Ch. 493; 1 Mac. & G. 242.

**MOIETY.** — “Although the proper meaning of ‘Moiety’ is a *half* part, it is here, in my opinion, used by the testator, who seems to have

been an ill-educated person, in the sense of an *equal* part or share. I am not aware of any judicial opinion having been expressed on the meaning of this or a similar word; in the Imperial Dictionary, I find one of its meanings given as, a part or share as distinguished from a half part" (per Chatterton, V. C., *Morrow v. M'Conville*, 11 L. R. 1r. 252). In that case the testator had made provision for three separate moieties, adding "the several moieties to be arranged by the executors."

That "Moiety" means, generally, half part, *V. Litt. ss. 662, 663*; Jacob.

When a person goes into an auction room, where a "Moiety" of a piece of ground is being sold, and bids for the same at so much per yard, that means that his bids are for the interest in the property (*i.e.* the half part thereof) which is being sold, at so much per yard, not that he is bidding for the entirety of the property at so much per yard; his purchase money will, accordingly, be the amount of his successful bid multiplied by the number of yards, not half that amount (per Cottenham, C., *Chamberlain v. Lee*, 8 L. J. Ch. 266).

A devise of "My Moiety," even before Wills Act, 1837, would generally pass the fee (2 Jarm. 285: *Doe d. Atkinson v. Fawcett*, 3 C. B. 274; 15 L. J. C. P. 244; 10 Jur. 740).

"Where there is a general conveyance, as here, of a Moiety of a Ship, without saying more, the ordinary and fair Construction is that the conveying parties are the owners of the whole" (per Mansfield, C. J., *Reed v. Wilcox*, 5 Taunt. 258).

V. PER MY ET PER TOUT.

**MOLEST: MOLESTATION.** — "Molestation," in contravention of a covenant in a Separation Deed, is an act done by the person contracting (or contracted for), or her or his authorized agent. It must be an act the natural tendency of which is to injure or annoy, and intended to injure or annoy, the covenantee. The mere adultery of a wife, even though she have a bastard child, is not a "Molestation" by her of her husband. But adultery might be done under such circumstances of aggravation towards the covenantee as would amount to Molestation; *e.g.* if a wife caused her bastard child to be called by her husband's name, or by one of his titles (*Sr, Cowley v. Cowley*, 70 L. J. P. D. & A. 83; 1901, A. C. 450), and (especially) if she held out that such child was her husband's son and heir, that would amount to "Molestation" of the husband (*Fearon v. Aylesford*, 53 L. J. Q. B. 410; 54 *Ib.* 33; 12 Q. B. D. 539; 14 *Ib.* 792). Following that case, the adultery of a wife is not, by itself, an "ANNOYANCE" of her husband within such a covenant (*Sweet v. Sweet*, 1895, 1 Q. B. 12; 64 L. J. Q. B. 108; 71 L. T. 672; 43 W. R. 303).

"It is clear law that a covenant not to 'molest' does not cover, and is not intended to cover, the same ground as a covenant not to take legal

proceedings" (per Collins, L. J., *Hunt v. Hunt*, 67 L. J. Q. B. 18; 1897, 2 Q. B. 547; 77 L. T. 421: *Cp*, *Gibbons v. Vouillon*, inf). Therefore, a *bonâ fide* suit for Judicial Separation or Divorce is not a breach of a covenant not to "Molest or Disturb" (*Thomas v. Everard*, 30 L. J. Ex. 214; 6 H. & N. 448: *Hunt v. Hunt*, sup). But for a wife or husband to write or adopt a statement holding up the other to reprobation and to send it to that other and his or her friends (or, probably, to send it only to the other), is such a "Molestation" (*Linton v. Mackenzie*, Times, 31st Oct 1893).

A woman "molests" a man, within the meaning of a Bastardy Agreement, if she falsely, fraudulently, and knowing it to be a false charge, imputes to him that he is the father of another of her illegitimate children (*Lane v. Panton*, 3 F. & F. 125).

In a Creditors' Deed of Arrangement, an agreement not to "molest or interfere with" the debtor, is broken by a creditor (who is a party to the deed) bringing an action against the debtor for a debt included in the deed (*Gibbons v. Vouillon*, 8 C. B. 483; 19 L. J. C. P. 74). *Cp*, *Hunt v. Hunt*, sup.

As to an agreement with a Tenant "not to molest, disturb, or raise the rent"; *V. Woodf.* 96, citing *Kusel v. Watson*, 11 Ch. D. 129; 48 L. J. Ch. 413; 27 W. R. 714: *Wood v. Davis*, 6 L. R. Ir. 50: *Roberts v. Tregaskis*, 38 L. T. 176: *Vf*, *Browne v. Warner*, 14 Ves. 156: *Re King*, L. R. 16 Eq. 521, which two last cases are distd in *Wood v. Beard*, 2 Ex. D. 30; 46 L. J. Q. B. 100; 35 L. T. 866: TERMINATE.

Picketing, — *i.e.* besetting workmen not joining in a strike, — with a view to prevent them from working; held, "Molestation" under s. 1 (3), 34 & 35 V. c. 32, repealed (*R. v. Dr Witt*, 16 L. T. 855). So, a threat by workmen to combine to strike as against other workmen, was a "Molestation" within s. 3, 6 G. 4, c. 129 (*Walsby v. Anley*, 30 L. J. M. C. 121). *Vth*, 22 V. c. 34: *Va*, THREAT: BESET: COERCION: INTERFERE.

**MONEY.** — " 'Money,' as Currency and not as Medals, seems to me to have been well defined by Mr. Walker in *Money, Trade, and Industry*, as, — 'That which passes freely from hand to hand throughout the community, in final discharge of debts and full payment for commodities; being accepted equally without reference to the character or credit of the person who offers it, and without the intention of the person who receives it to consume it or apply it to any other use than in turn to tender it to others in discharge of debts or payment for commodities'" (per Darling, J., *Moss v. Hancock*, 68 L. J. Q. B. 660; 1899, 2 Q. B. 111; 80 L. T. 693; 47 W. R. 698; 63 J. P. 517). *Cp*, CASH.

In a bequest, "Money" "is a general word, but yet not so large and comprehensive as the word *Pecunia* in the Roman tongue, for such word, in that language, means all the testator's substance, both real and personal, that can be converted into money. But the word 'Money' in

our language answers to the barbarian's Latin word 'Moneta,' and is a genus that comprehends two species, viz., READY MONEY and MONEY DUE, *i.e.* the money in testator's own hands, or his money in the hands of anybody else" (per Gilbert, C. B., *Re Shelmer*, Gilb. Eq. Rep. 202). *Vf*, Cowel, *Pecunia*.

The natural meaning of a gift of "Money," or "Moneys," as established by the authorities and when unaffected by a context, is that it will only include, "Cash in the house and at bankers and any other money belonging to the testator at law. Any sums actually due and really payable, — sums in fact which he had a right to receive on demanding them, — would pass; but income not payable until a future time would not pass. Arrears due under a Settlement would therefore pass, but the apportioned parts of current dividends would not pass" (per Selborne, C., *Byrom v. Brandreth*, 42 L. J. Ch. 826; L. R. 16 Eq. 475).

According to this definition "the term Moneys" is equivalent to "Ready Money at Call" (per Pearson, J., *Re Townley*, 53 L. J. Ch. 518).

But in *Williams v. Williams* (47 L. J. Ch. 857; 8 Ch. D. 789), Baggallay, L. J., cited with approval a dictum of Wood, V. C., in *Langdale v. Whitfield* (27 L. J. Ch. 795; 4 K. & J. 426), that *primâ facie* a bequest of "Moneys" "will be confined to Ready Money actually in Hand." *Vf*, *Re Sutton*, cited DESERVING: *Dunnally v. Dunnally*, 6 Ir. Ch. Rep. 540: *Dillon v. McDonnell*, 7 L. R. Ir. 335: CASH: MONEY DUE.

Without a context "Money" will not include Stocks or Shares, "though redeemable by money, or saleable for money" (*Re Shelmer*, sup: *Vf*, *Willis v. Plaskett*, 4 Bea. 208: *Ommoney v. Butcher*, 1 T. & R. 260); but in *Gallini v. Noble* (3 Mer. 691) a bequest of "Money in the Bank of England" included Bank Stock, because the testator never had had cash in the Bank: *Va*, *Brennan v. Brennan*, Ir. Rep. 2 Eq. 321: *Conly v. Green*, 5 Ib. 430. In *Re Smith, Henderson-Roe v. Hitchins* (58 L. J. Ch. 860; 42 Ch. D. 303), North, J., held that "the RESIDUE of my Money" comprised Stocks, Shares, and Securities for Money. *Va*, SURPLUS.

"Money" will not include the balance undisposed of arising from the sale of realty directed to be sold (*Re Shelmer*, sup).

The meaning of the word "Money" in a Will, will, generally, depend upon the context — if there is any that can explain it — and upon the surrounding circumstances (per Kay, J., *Re Cadogan*, 53 L. J. Ch. 209; 25 Ch. D. 154; 32 W. R. 57; cited POSSESSED OF). But from the observations of the learned judge in that case it would seem that there is no middle course between holding "Money" to its natural sense, and construing it as meaning "the PERSONAL ESTATE" according to the cases herein subsequently cited. And it would seem to follow that if the word is employed so that it could not be considered as having so wide a meaning as "Personal Estate," then it must be restricted to its natural sense. *Sr*, *Re Townley*, 53 L. J. Ch. 516: *Langdale v. Whitfield*, sup: *Kendall v. Kendall*, inf.

When "Money" is bequeathed charged with debts or funeral expenses, that affords "a strong inference that the testator considered himself as disposing of that property which by law was subject to those charges," namely his personal estate or (as the case may be) his residuary personal estate (per Leach, M. R., *Kendall v. Kendall*, 4 Russ. 371; 6 L. J. O. S. Ch. 111; a doctrine adopted by Langdale, M. R., in *Rogers v. Thomas*, 2 Keen, 13; *Va.*, for other contexts by which "Money" carried all, *Barrett v. White* and *Re Egan*, cited REMAIN: *Newman v. Newman*, 26 Bea. 218; *Williams v. Williams* and *Re Cadogan*, sup: *Re White*, 51 L. J. P. D. & A. 40; 7 P. D. 65; *Re Buller*, 74 L. T. 406).

On the other hand if a bequest of "Money" is followed by other legacies, whether pecuniary or specific, then "Money" will generally be restricted to the natural meaning of the word (*Low v. Thomas*, 23 L. J. Ch. 453, 616; 5 D. G. M. & G. 315; *Byrom v. Brandreth*, sup: *Re Cadogan*, sup); but referring to *Low v. Thomas*, Malins, V. C., said in *Prichard v. Prichard* (inf), "I cannot say that I understand upon what grounds the decision was based."

The use of the word "Moneys" (in the plural) e.g. "ALL my moneys," — is a circumstance, though perhaps not a strong one, favouring the larger interpretation (*Re Townley*, 53 L. J. Ch. 516; *Manning v. Purcell*, 24 L. J. Ch. 522; 2 Sm. & G. 284; 7 D. G. M. & G. 55; *Whateley v. Spooner*, 3 K. & J. 542). In *Langdale v. Whitfield* (sup) "Moneys" was held to include all moneys due (whether on security or not) as well as cash in hand.

Besides the cases already cited on this word, *V. Dowson v. Gaskoin*, 2 Keen, 18; 6 L. J. Ch. 295; *Prichard v. Prichard*, 40 L. J. Ch. 92; L. R. 11 Eq. 232; *Legge v. Asgill*, T. & R. 265, n; *Stratton v. Hillus*, 2 Dr. & War. 51; *Waite v. Combes*, 5 D. G. & S. 676; 21 L. J. Ch. 814, in *while* (as well as in *Kendall v. Kendall* and *Rogers v. Thomas*, sup) it was held that "Money" included the undisposed-of personal estate: *Se, Gosden v. Dotterill*, 1 My. & K. 56; 2 L. J. Ch. 15; *Larner v. Larner*, 26 L. J. Ch. 668; 3 Drew. 704; *Collins v. Collins*, 40 L. J. Ch. 541; L. R. 12 Eq. 455, in which the word was confined to its literal and natural meaning: *Va.*, REMAIN.

In *Gaskell v. Harman* (11 Ves. 504) "Money," being controlled by a strong context, was held to include Securities for Money, and even REAL ESTATE.

*Vf*, PRINCIPAL MONEY: RESIDUE: 1 Jarm. 768, n (e); Wms. Exs. 1052; Watson Eq. 1324, 1325; Chitty Eq. Ind. 7819-7825, 7854.

As to the phrase "Money Due," *V. Stephenson v. Dowson*, cited MONEY DUE: and consider how that case is affected by s. 24, Wills Act, 1837.

"Moneys in hand": *V. Vaisey v. Reynolds*, cited FARMING STOCK.

*V.* ALL: MONEY DUE: POSSESSED OF: READY MONEY: SECURITIES FOR MONEY: WHAT IS LEFT.

"Money," s. 12, Judgments Act, 1838, 1 & 2 V. c. 110, "means, specific gold and silver COIN; not a Debt" (per Alderson, B., *Harrison v. Paynter*, 6 M. & W. 390). Therefore, the word there does not include an execution debtor's unpaid purchase money (*Brown v. Perrot*, 4 Bea. 585), or his moneys in the sheriff's hands under an execution at his suit (*Collingridge v. Parton*, 11 C. B. 683; 21 L. J. C. P. 39; *Wood v. Wood*, 4 Q. B. 397; 12 L. J. Q. B. 141; *Harrison v. Paynter*, sup; *Fieldhouse v. Croft*, 4 East, 510; *Vf, Willows v. Bull*, 2 B. & P. N. R. 376).

"Moneys," in a Declaration against a Sheriff for not levying "the whole of the moneys" under a fi. fa., held to embrace not only the debt but also all the items endorsed on the writ (*Slade v. Hawley*, 14 L. J. Ex. 217; 13 M. & W. 757).

"Money," s. 135, Com. L. Pro. Amendment Act (1r), 1853, includes the Suitors Fee Fund (*Quinn v. O'Keeffe*, 10 Ir. C. L. Rep. 393).

Quà Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, "'Pecuniary Reward,' and 'Money,' shall be deemed to include, any office, place, or employment, and any valuable security or other equivalent for money, and any valuable consideration; and expressions referring to money shall be construed accordingly" (s. 64).

Quà Stamp Act, 1891, "'Money,' includes, all sums expressed in British, or in any Foreign or Colonial, currency" (s. 122).

In a Criminal Statute, "Money," e.g. "Money, Goods, Wares, or Merchandize," s. 1, 30 G. 2, c. 24, has been held not to include Bank Notes (*R. v. Hill*, Russ. & Ry. 190); but the contrary was held on "Money, Goods, or Chattels," s. 2, 8 Eliz. c. 4 (2 East P. C. 701).

"Money" for which there may be an Order to RESTORE under s. 100, Larceny Act, 1861, *semble*, is limited to cases where the money stolen is found on the thief or in the possession of some one who took it from him otherwise than as currency (per Channell, J., *Moss v. Hancock*, sup, p. 1214); a Victorian £5 piece kept as a curio is "Money" within the section (*S. C.*).

A covenant in a Marriage Settlement to settle "Money or PROPERTY" wherein the covenantor has not "any ESTATE OR INTEREST" and which may become void under s. 47 (2), Bankry Act, 1883, does not include a covenant by him to pay money to the trustees at a future time; the money referred to by the section must be something specific (*Ex p. Bishop*, 42 L. J. Bank. 107; 8 Ch. 718).

"Any Moneys or Property of the Co," s. 10 (1), Comp Winding-up Act, 1890, is to be read in a popular sense, and includes any money which ought to be treated, whether on legal or equitable grounds, as received by any Promoter to the use of the Co (*Re Sale Hotel Co*, 46 W. R. 617; 78 L. T. 368).

"Money" distinguished from "Property"; *V. POSSESSION.*

"Money or other Property to which no existing Statute of Limitations

applies," s. 8 (1 *b*), Trustee Act, 1888, includes, and *semble* means, that which is sought to be recovered as upon a BREACH OF TRUST (*Re Bowden*, 59 L. J. Ch. 815; 45 Ch. D. 444).

To pay Money; *V. PAY*.

Money acquired; *V. ACQUIRED*.

Money "liable" for purchase of Land, s. 33, S. L. Act, 1882; *V. LIABLE*.

"Rogue Money"; *V. ROGUE AND VAGABOND*.

*V. BRITISH COIN: COIN: CURRENT: PUBLIC MONEY: OTHER: PIN MONEY.*

**MONEY CHARGED UPON LAND.** — *V. CHARGED UPON.*

**MONEY, COSTS, CHARGES, AND EXPENSES.** — "When the legislature mentions 'Money, Costs, Charges, and Expenses' (s. 18, 1 & 2 V. c. 110), it means money decreed or ordered to be paid, together with the costs, charges, and expenses, to be ascertained in the usual way by the officers of the Court. It is unnecessary to decide the further point; but I am of opinion, that, with respect to costs, it is enough if they are ascertained by the officer of the Court, and that it is not necessary that there should be any order to pay after they are taxed" (per Parke, B., *Jones v. Williams*, 10 L. J. Ex. 257; 8 M. & W. 349).

*V. COSTS: COSTS AND CHARGES.*

**MONEY DUE.** — A bequest of "Money due" obviously differs from one of MONEY. "Money due" points to debts or to moneys arising under a contractual obligation. Under a bequest of "Money due" will pass moneys payable on the termination of testator's own life (*Petty v. Willson*, 4 Ch. 574; 17 W. R. 778), and damages for breach of contract to which he was entitled, though the amount be ascertained in an action by his executor after his death (*Bide v. Harrison*, 43 L. J. Ch. 86; L. R. 17 Eq. 76; 29 L. T. 451); but not money for a service uncompleted at testator's death (*Stephenson v. Dowson*, 10 L. J. Ch. 93; 3 Bea. 342; *Itie*, s. 24, Wills Act, 1837).

"I think it very likely that the words, 'Sums of money due and owing,' might extend beyond what were strictly debts. It might possibly, under the particular circumstances of certain Wills, be held to include any sum which could be recovered either at law or in equity" (per Mellish, L. J., *Martin v. Hobson*, 42 L. J. Ch. 342; 8 Ch. 401; 21 W. R. 376; 28 L. T. 427); but in that case it was held that such phrase did not comprise an unascertained share in certain partnership assets to which the testatrix was entitled as one of the next of kin of her son.

A bequest to testator's *debtor* of "All Moneys due" from him, means, if there be cross accounts, the balance (*Ganly v. Dowling*, 5 L. R. Ir. 628).

"Money due *on a mortgage*," will not pass a sum merely *charged on* property (*Poulett v. Hood*, 35 L. J. Ch. 253; L. R. 5 Eq. 115; 35 Bea.



234; 13 L. T. 783; 14 W. R. 298): *See*, *Brown v. Brown*, 6 W. R. 613.

V. MONEY ON MORTGAGE.

V. DUE.

**MONEY EXPENDED.** — Quà Naval Defence Act, 1889, 52 & 53 V. c. 8, “ ‘Money expended,’ includes, the value of stores issued from stock and used in the construction or completion of the vessels to be built under this Act ” (s. 7).

**MONEY, GOODS or CHATTELS.** — *V. Robinson v. Jenkins*, cited GOODS AND CHATTELS, towards end.

**MONEY IN COURT.** — Stat. Def., 35 & 36 V. c. 44, s. 3.

**MONEY IN HAND.** — “ ‘There is no real difference between ‘Money in Hand’ and ‘Ready Money’ ” (per Lyndhurst, C., *Parker v. Marchant*, 12 L. J. Ch. 387). V. READY MONEY.

**MONEY IN POSSESSION.** — V. POSSESSION.

**MONEY IN THE FUNDS.** — Foreign Bonds guaranteed by England not included herein (*Burnie v. Getting*, 2 Coll. 324: V. FUNDS).

*V. Grant v. Mussett*, 8 W. R. 330; 2 L. T. 133: GOVERNMENT STOCK: MONEY OUT AT INTEREST.

**MONEY LENDER.** — Quà Money-lenders Act, 1900, 63 & 64 V. c. 51, “ ‘Money-lender,’ includes, “ every person whose business is that of money-lending, or who advertises or announces himself, or holds himself out in any way, as carrying on that business; but shall *not* include, —

“(a) Any Pawnbroker, in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to Pawnbrokers; or

“(b) Any Registered Society, within the meaning of the Friendly Societies Act, 1896, or any Society registered or having rules certified under ss. 2 or 4 of that Act, or under the Benefit Building Societies Act, 1836, or the Loan Societies Act, 1840, or under the Building Societies Acts, 1874 to 1894; or

“(c) Any Body Corporate, incorporated or empowered by a Special Act of Parliament to lend Money in accordance with such Special Act; or

“(d) Any person *bonâ fide* carrying on the business of Banking or Insurance, or *bonâ fide* carrying on any business (not having for its primary object the lending of money) in the course of which and for the purposes whereof he lends money; or

"(e) Any Body Corporate, for the time being exempted from registration under this Act by Order of the Board of Trade made and published pursuant to regulations of the Board of Trade" (s. 6).

**MONEY ON MORTGAGE.**—Prior to the Conv & L. P. Act, 1881, a bequest of "Money on Mortgage" passed also the fee in the mortgaged property (*Doe d. Guest v. Bennett*, 20 L. J. Ex. 323; 6 Ex. 892; *Re Arrowsmith*, 27 L. J. Ch. 704). But that Act, since it came into operation, has superseded this ruling (s. 30).

V. MONEY DUE: MORTGAGE.

**MONEY ON SECURITY.**—V. SECURITY FOR MONEY.

**MONEY OUT AT INTEREST.**—This phrase does not include such Government Stock or Funds the principal of which cannot be recalled, for it means "money which is capable of being recalled at some time or other" (per Ellenborough, C. J., *R. v. St. John, Maddermarket*, 6 East, 186).

Gift of "PROPERTY at Interest"; *V. Sealy v. Stowell*, Ir. Rep. 2 Eq. 326.

**MONEY PAID.**—V. PAID: PAYMENT: TRULY SET FORTH.

**MONEY RECEIVED.**—Agreement to pay Commission on "Money Received"; *V. Fisher v. Drewett*, 48 L. J. Ex. 32; W. N. (78) 151.

**MONEY SECURED.**—V. AMOUNT.

**MONEY VALUE.**—The reservation, in a Lease for 500 years dated in 1647, of a silver penny, if demanded, is a "Rent having no money value" within s. 65, Conv & L. P. Act, 1881 (*Re Chapman to Hobbs*, 54 L. J. Ch. 810; 29 Ch. D. 1007); but, *semble*, a rent of 3s. in a long Lease dated 1668, has a "money value" (*Re Smith and Stott*, 48 L. T. 512; 31 W. R. 411).

**MONEY'S WORTH.**—"Annuity or Rent-charge granted without regard to Pecuniary Consideration or Money's Worth," s. 10, 53 G. 3, c. 141; V. PECUNIARY CONSIDERATION.

Marriage is not a "Valuable Consideration in Money, or Money's Worth" within s. 17, Suen Dy Act, 1853 (*Floyer v. Bankes*, 33 L. J. Ch. 1; 3 D. G. J. & S. 306; V. per Westbury, C., in *the* on the meaning of this phrase, quoted by the Court in *A-G. v. Wolverton*, 1897, 1 Q. B. 231; 65 L. J. Q. B. 615; 66 Ib. 202; S. C. in H. L., 1898, A. C. 535; 67 L. J. Q. B. 829; 79 L. T. 58; 47 W. R. 97); nor does a Parent's covenant on his child's Marriage create a debt for "Money, or Money's

Worth" within s. 7, Finance Act, 1894 (*Re Gray*, 1896, 1 Ch. 620; 65 L. J. Ch. 462; 74 L. T. 275; 44 W. R. 406). *Vh, A-G. v. Rathdonnell*, 32 L. R. Ir. 594.

"Money, or Money's Worth," s. 3 (1), Finance Act, 1894; *V. A-G. v. Smith-Marriott*, 1899, 2 Q. B. 595; 69 L. J. Q. B. 59; 81 L. T. 359; 48 W. R. 12; 64 J. P. 54.

*V. EARNINGS: INCOME: PURCHASE.*

**MONITION.** — " 'Monition' (which is sometimes itself called an Ecclesiastical Censure) is described in the books as of a 'preparatory' nature, that is (as I understand the term) as a warning or command to be followed in case of disobedience by some coercive sanction " (per Selborne, C., *Mackonochie v. Penzance*, 50 L. J. Q. B. 611; 6 App. Ca. 424, cited in *Enraght v. Penzance*, 51 L. J. Q. B. 510; 7 App. Ca. 240). *Vh, Phil. Ecc. Law*, 960, 1065: 8 Eneye. 454.

**MONOPOLY.** — " A Monopoly is an institution or allowance by the King, by his grant commission or otherwise, to any person or persons, bodies politique or corporate, of or for the sole buying, selling, making, working, or using, of any thing, whereby any person or persons, bodies politique or corporate, are sought to be restrained of any freedom or liberty that they had before or hindered in their lawful trade " (3 Inst. 181). *Vh, 8 Eneye.* 455-458: Gordon on Monopolies.

"Pretext of Monopoly"; *V. PRETEXT.*

Statute of Monopolies, 21 Jac. 1, c. 3, the exceptions in which are the foundation of the law of Patents (Wms. P. P., Part 3, ch. 2).

**MONSELL'S ACT.** — Registration of Marriages (Ir) Act, 1863, 26 & 27 V. c. 90.

**MONSTRAVERUNT.** — *V. Termes de la Ley: SOCAGE.*

**MONTGOMERY ACT.** — Entail Improvement Act, 1770, 10 G. 3, c. 51.

**MONTH.** — " A Month, *mensis*, is regularly accounted in law 28 dayes, and not according to the solar month, nor according to the Kalendar, unlesse it be for the account of the laps in a *quare impedit*" (Co. Litt. 135 b). " A Month, in law, is a lunar month, or 28 days, unless otherwise expressed; not only because it is always one uniform period, but because it falls naturally into a quarterly division by weeks " (2 Bl. Com. 141). " In legal proceedings, the word 'Months,' means lunar months, unless the contrary appear to be the meaning from the subject-matter to which that term is applied " (per Bayley, J., *Johnstone v. Hudleston*, 4 B. & C. 932). " In the instance, indeed, of a *quare impedit*, the computation of time is by calendar months, but that depends on the words of an Act of Parliament, *tempus semestre*. But for all

other purposes, and in all Acts of Parliament, where 'Months' are spoken of without the word 'Calendar,' and nothing is added from which a clear inference can be drawn that the legislature intended calendar months, it is understood to mean lunar months" (per Kenyon, C. J., *Lacon v. Hooper*, 6 T. R. 224). "One of the earliest things we learn is that the word 'Month,' *ex vi termini*, means a lunar month" (per Park, J., *Crooke v. M'Tavish*, 1 Bing. 310): *Vf*, *Ryalls v. The Queen*, 11 Q. B. 781. But in *Dyke v. Sweeting* (Willes, 588) the Court "thought, but came to no opinion," that "Month," in a Covenant to pay money, meant a calendar month. *Sr*, as to Acts of Parliament, *inf*.

"Month," means lunar month, "unless there is admissible evidence of an intention in the parties using the word to denote calendar month. If the context shows that calendar month was intended, the Judge may adopt that construction (*Lung v. Gale*, 1 M. & S. 111: *R. v. Chawton*, 10 L. J. M. C. 55; 1 Q. B. 247: *Marsh v. Higgins*, 9 C. B. 567). If the surrounding circumstances, at the time the instrument was made, show that the parties intended to use the word, not in its primary or strict sense, but in some secondary meaning, the Judge may construe it, from such circumstances, according to the intention of the parties (*Goldshede v. Swan*, 16 L. J. Ex. 284; 1 Ex. 154: *Walker v. Hunter*, 15 L. J. C. P. 12; 2 C. B. 324: Bacon's Maxims, 10, and the examples there given: *Mallan v. May*, 14 L. J. Ex. 48; 13 M. & W. 511: *Beckforā v. Crutwell*, 1 Moo. & R. 187; 5 C. & P. 242). If there is evidence that the word was used in a sense peculiar to a trade, business, or place, the jury must say whether the parties used it in that peculiar sense (*Smith v. Wilson*, 1 L. J. K. B. 194; 3 B. & Ad. 728: *Grant v. Maddox*, 16 L. J. Ex. 227: *Jolly v. Young*, 1 Esp. 186)" (per Denman, C. J., *Simpson v. Margitson*, 17 L. J. Q. B. 81; 11 Q. B. 23; in *whc* it was held that the conduct of the parties was not, by itself, admissible evidence to vary the primary meaning of "Month").

"In a Contract at law 'Month' means a lunar month, unless there is admissible evidence of an intention in the parties using the word to denote a calendar month" (Sug. V. & P. 257: *Va*, Dart, 492). But that, if still law, must, at least from 1st Jan 1894, be confined to contracts not relating to the Sale of Goods, for on and since that date, in a Contract for the Sale of Goods " 'month,' means, *primā facie*, calendar month" (s. 10 (2), Sale of Goods Act, 1893).

On the question being suggested by counsel for the plaintiff as to whether so many "Months'" credit, for goods sold and delivered, meant Calendar or Lunar Months, Pollock, C. B., said, — "In Legal matters a 'Month' means, a Lunar month; but in *Commercial matters* a 'Month' always means a Calendar month. In Bills of Exchange, Promissory Notes, Invoices, Times of Credit, and everything else relating to commercial matters, it is so; and I know of no instance to the contrary" (*Hart v. Middleton*, 2 C. & K. 10). But it is to be observed

that this is a *nisi prius* ruling on a point not, apparently, taken by defendant's counsel and one on which, in the result, the case did not turn.

"The word 'Month,' although at common law it generally means a lunar month, is in *Mercantile Contracts* understood to mean a calendar month (*Jolly v. Young*, sup: *R. v. Chaulton*, 10 L. J. M. C. 55; 1 Q. B. 247, 250: *Hart v. Middleton*, sup: *Webb v. Fairmaner*, 7 L. J. Ex. 140; 3 M. & W. 474: *Turner v. Barlow*, 3 F. & F. 946). And the Court will look at the context in all cases, to see whether a calendar month was not intended, and, if so, will adopt that construction (*Simpson v. Margitson*, sup: *Webb v. Fairmaner*, sup) (Benj. 674). So, at p. 230, Blackb., citing *Hart v. Middleton*, sup, it is said, "The word 'Month' means a lunar month in legal matters; but in *Commercial* matters it always means a calendar month, unless the context shows differently." And again in Maude & P. 293, it is stated (on the authority of *Jolly v. Young* and *Simpson v. Margitson*, sup), that "in Charter-Parties, as in other mercantile contracts, the expression 'A Month' is construed to mean a calendar month." But on the other hand, and also citing *Simpson v. Margitson*, it is stated in Woodf. 236, "Month, in any legal document, means lunar month, unless calendar month be specified, or there be admissible evidence to show that a calendar month was intended." (Fa. as to Agreement for hire of Furniture, *Hutton v. Brown*, W. N. (81) 116; 45 L. T. 343: and in an Agreement to engrave a Picture, which is not mercantile, "month" means a lunar month, *Turner v. Barlow*, sup). But again, per contra, it is said that where a term (in an agreement between Landlord and Tenant) "is for Months, without specifying whether lunar or calendar, the latter must now be understood" (Watson Eq. 544), and for that proposition 13 & 14 V. c. 21, s. 4, is cited; though it would be probably difficult to show how that statute operates on Leases, and the proposition seems negatived by *Rogers v. Hull Dock Co* (4 N. R. 494). In a Condition of RESIDENCE in a testamentary gift, "Month" means a lunar month (*Walcot v. Botfield*, 2 Eq. Rep. 758).

In *Bills of Exchange or Promissory Notes*, "Month" means a calendar month (s. 14 (4), Bills of Ex. Act, 1882). So also, in *Matters Ecclesiastical* (*Catesby's Case*, 6 Rep. 62 a). So, quà period allowed for redemption in a Foreclosure Decree (*Anon.*, Barnardiston Ch. Ca. 324; Fisher. 922; Robbins on Mortgages, 1027). And so also in *Proceedings in the Supreme Court* (R. 1, Ord. 64, R. S. C.), or in the *County Court* (Ord. 52, Co. Co. Rules, 1889); and so, as regards a stipulation for a "Six Months'" Notice to Quit (*V. SIX MONTHS*), and in calculating the time for performance of Conditions (*Franco v. Alvares*, 3 Atk. 346).

"Month," in the rule that a Domestic Servant may be discharged by a month's notice or payment of a month's wages, means a calendar month.—the wages being the money wages and not including board wages (*Gordon v. Potter*, 1 F. & F. 644).

In *Acts of Parliament* passed before the end of the year 1850. "Month,"

unless otherwise specially interpreted, means lunar month (2 Bl. Com. 141: *Lacon v. Hooper*, 6 T. R. 224: *Glassington v. Rawlins*, 3 East, 407); in all Acts passed since that date, "Month," "unless words be added showing lunar month to be intended," means calendar month (13 & 14 V. c. 21, s. 4; *I7*, s. 3, Interp Act, 1889).

In sentences for Crime "Month" formerly meant lunar month, but since 1st Jan 1899, it means calendar month, unless the contrary is expressed (s. 12 (1), 61 & 62 V. c. 41).

For the American view of the meaning of "Month"; *V. Burrill's Law Dictionary*.

*V. CALENDAR MONTH: SIX MONTHS: TWELVE-MONTH: PER MONTH: WARRANTED SOUND.*

**MONTHLY.**—Freight "monthly in advance"; *V. ADVANCE.*

*V. PER MONTH.*

**MONUMENT.**—Quà Ancient Monuments Protection Act, 1900, 63 & 64 V. c. 34, " 'Monument,' means, any structure, erection, or monument, of historic or architectural interest, or any remains thereof " (s. 6). *V. ANCIENT MONUMENT.*

Quà Monuments (Metropolis) Act, 1878, 41 & 42 V. c. 29, " 'Monument' shall include, any monument, statue, or other work " (s. 2).

*V. MAINTAIN.*

**MOOR.**—*V. MORA.*

**MOORAGE.**—*V. MOREAGE.*

**MOORED.**—Vessel "moored at anchor" at Port of Discharge "in Good Safety"; *V. SAFETY.*

**MOORING.**—Mooring "is such a mode of attachment as will allow a VESSEL to leave from time to time and to come back and re-take possession of the old attachment. A claim to a Mooring is not a claim of right of Possession in land, but is only a claim to come back from time to time and use the same mooring. . . . The right is not one to be attributed to a Grant by a sovereign or by an individual, but is a right common to every one except an ENEMY; it is part of the right to use Navigable Waters in the ordinary way of navigation" (per Esher, M. R., *A-G. v. Wright*, 1897, 2 Q. B. 318; 66 L. J. Q. B. 834; 77 L. T. 295; 46 W. R. 85).

Change of Mooring; *V. M'Intosh v. Slade*, 6 B. & C. 657.

*V. MOREAGE.*

**MORA.**—"*Mora* is derived of the English word moore, and signifieth a more barren and unprofitable ground than marshes, dangerous for any cattell to go there, in respect of myrie and moorish soyle, neither serves it for getting of turves there" (Co. Litt. 5a).

**MORAL.** — *V.* IMMORAL.

Moral Obligation; *Vh*, *Wennall v. Adney*, 3 B. & P. 249-252, *n*.

**MORALITY.** — “Offence against Morality, not being a question of Doctrine or Ritual,” s. 2, Clergy Discipline Act, 1892; *V. Lee v. Flack*, 1896, P. 138, *revd* by *Beneficed Clerk v. Lee*, cited IMMORAL.

**MORE.** — *V.* IF MORE THAN ONE: FITTING.

**MORE OR LESS.** — “‘ABOUT,’ and ‘More or less,’ seem to be words of general import, and I should have much difficulty in saying that evidence ought to be received to ascertain their meaning” (per Little-dale, J., *Cross v. Eglin*, 2 B. & Ad. 106; 9 L. J. O. S. K. B. 145); they frequently, if not generally, connote an estimate and not a warranty (*McLay v. Perry*, 44 L. T. 152).

Where goods are sold as “about” a certain quantity, or “thereabouts,” or “more or less,” these words are intended to provide only for a small difference between the numbers; and the purchaser is not bound to accept 350 tons on a bargain for “about 300 tons, more or less”; at least, unless it be shown that a large excess was contemplated (*Cross v. Eglin*, *sup*). So, a tender of 2700 stones of wool is not warranted by a contract for “2300 stones, 100 stones more or less” (*Macdonald v. Longbottom*, 28 L. J. Q. B. 293; 29 *Ib.* 256; 1 E. & E. 977, 987). But in *Cockerell v. Aucompte* (26 L. J. C. P. 194; 2 C. B. N. S. 440), it was held that the delivery of 127 tons of coal was according to a contract for “100 tons, more or less.” In *Morris v. Levison* (cited *SAY*), it was held that an allowance of 3 per cent either way would be a fair estimate for satisfying the word “about” (*V. espy* *judgmt* of Brett, J.; *Vthe*, *Carnegie v. Conner* and *Miller v. Borner*, cited *CARGO*, in *whle* a cargo of “about” 2800 tons was satisfied by one of 2840 tons). In *The Resolven* (9 *Times*, Rep. 75) *Jeune*, P., held that 5 per cent was a fair margin to allow quà a Charter-Party agreement that the vessel was to carry “2000 tons, or THEREABOUTS.” *Vf*, *Reuter v. Sala*, 48 L. J. C. P. 492; 4 C. P. D. 239; *Tamvaco v. Lucas*, 28 L. J. Q. B. 150, 301; 1 E. & E. 581; *Beckh v. Page*, 28 L. J. C. P. 164, 341; 5 C. B. N. S. 708; 7 *Ib.* 861; *Bourne v. Seymour*, 24 L. J. C. P. 202; 16 C. B. 337; *Moore v. Campbell*, 10 *Ex.* 323; 23 L. J. *Ex.* 310.

Where the Defendant instructed the Plaintiffs to buy for him 500 tons of sugar, “50 tons more or less of no moment if you are enabled to get a suitable vessel,” and the plaintiffs bought 400 tons, parcel by parcel, according to the usage of the market, and could buy no more at the price named, it was held that the Defendant was not bound to accept the 400 tons, as the usage could not affect the express order (*Ireland v. Livingston*, 39 L. J. Q. B. 282; L. R. 5 Q. B. 516; reversed on another ground. 41 L. J. Q. B. 201; L. R. 5 H. L. 395). *Se*, *Johnston v. Kershaw*, 36 L. J. *Ex.* 44; L. R. 2 *Ex.* 82.

A contract to supply the whole of a specified article required for a specified work, is not controlled and limited by the addition of an estimate of a specified quantity "more or less" (*Tancred Co v. Steel Co of Scotland*, 15 App. Ca. 125; 62 L. T. 738).

*Vh.* Blackb. 215-222: Benj. 682, 683: SAY: THEREABOUTS.

"The words 'More or Less' or 'Thereabouts,' in a Contract for Sale of Realty, will only cover a moderate excess or deficiency, and will never be suffered to be the instrument of fraud" (Add. C. 467: *Va, Day v. Fyru*, Owen, 133: Dart, 736). They would cover 5 out of 41 acres (*Winch v. Winchester*, 1 V. & B. 375), but not 100 out of 349 acres (*Portman v. Mill*, 8 L. J. Ch. 161; 3 Jur. 356; 2 Russ. 570). *Va, Gell v. Watson*, 3 Mad. 225; 2 Sim. & St. 402; Sug. V. & P. 325: *Leslie v. Tompson*, 9 Hare, 268, 273; 20 L. J. Ch. 561; 15 Jur. 717; 17 L. T. O. S. 277: *Simpson v. Dendy*, 8 C. B. N. S. 433: *Sv, Corless v. Sparling*, Ir. Rep. 9 Eq. 595.

"More or Less" in a Devise of Realty; *V. Whitfield v. Langdale*, 1 Ch. D. 61; 45 L. J. Ch. 177, cited FARM: *Harrison v. Hyde*, 4 H. & N. 805; 29 L. J. Ex. 119.

**MOREAGE.**—"A sum due by usage for moreing or fastening of Ships to trees or posts at the SHORE" (Hale, *De Portibus Maris*, ch. 6).  
V. MOORING.

**MORGAN.**—V. OSBORNE MORGAN'S ACT.

**MORTALITY.**—"The word 'Mortality' may, under certain circumstances, include every description of death, every termination of life to which mortals are subject. It applies generally, however, to that description of death which is not occasioned by violent means" (per Bayley, J., *Lawrence v. Aberdeen*, 5 B. & Ald. 112. *Vf, Gabay v. Lloyd*, 3 B. & C. 793).

"In *Campanhia de Navegacion la Flecha v. Brauer* (168 U. S. 104) Cattle were carried on deck 'at Owner's Risk,' and the shipowners were not to be 'accountable for Mortality from whatever cause arising.' Some of the cattle were thrown overboard by the Master under an unfounded fear and without apparent or reasonable necessity. It was held by the Supreme Court of the United States that the shipowners were not protected" (Carver, 122).

"Mortality from any cause whatever" in a Marine Insrce; *V. The Pomeranian*, 1895, P. 349; 65 L. J. P. D. & A. 39.

V. DEATH.

**MORTGAGE.**—"What is a Mortgage? Everybody knows, it consists of two things: it is a Personal Contract for a Debt secured by an Estate; and, in Equity, the Estate is no more than a PLEDGE or Security for the Debt:—the Debt is the Principal; the Estate is the Accident.



Whether the mtgee is, or is not, in possession of the pledge his right is precisely the same, with this difference, indeed, that he has never any right in Equity to the estate except as a fund to pay him his debt; for every other purpose the estate is the estate of the mtgor, and when the debt is paid all the mtgee's right and interest in the estate ceases; he has then the LEGAL ESTATE only and not a beneficial interest in it. If the mtgee has chosen to take possession and help himself, he becomes then a Bailiff without Salary and is accountable for the profits, which are applicable, in the first instance, to pay the principal and interest of his debt and all other mtgee allowances; but he is bound to be an Accounting Party, — taking the estate in possession upon the principle and upon the obligation to account with the mtgor for all the rents he receives. He is bound to keep the Account, — and to be ready with it, to apply it regularly to pay his principal and interest, — and to be ready to surrender up the Pledge as soon as it has answered its purpose. All the cases treat the mtgee, as soon as he is paid, as becoming a mere Naked Trustee, holding the legal estate for the benefit of the cestui que trust, the mtgor " (per Plumer, V. C., *Quarrel v. Beckford*, 1 Mad. 278).

A mtge of Personal Effects " is a PLEDGE and more; for it is an absolute Pledge to become an absolute Interest if not redeemed at a certain time: a Pledge is a deposit of Personal Effects, not to be taken back, but on payment of a certain sum by express stipulation or the course of trade to be a LIEN upon them " (per Arden, M. R., *Jones v. Smith*, 2 Ves. 378).

" A Mortgage is a CONVEYANCE of Land or an Assignment of Chattels, as a Security for the payment of a debt or the discharge of some other obligation for which it is given: — the Security is redeemable on the payment or discharge of such debt or obligation, — any provision to the contrary notwithstanding. . . . If I give a mtge with a Condition that I am not to redeem, that is a repugnant condition, and is a Clog on the Equity of Redemption " which is invalid (per Lindley, M. R., *Santley v. Wilde*, 1899, 2 Ch. 474; 68 L. J. Ch. 686: *when* as to what is such a " Clog "; *Va, Salt v. Northampton*, 1892, A. C. 1; 61 L. J. Ch. 49; 40 W. R. 529; *Biggs v. Hoddinott*, 1898, 2 Ch. 307; 67 L. J. Ch. 540, which two last cases modify most of the previous decisions as to what is *Clogging the Equity*). A covenant in a mtge of LICENSED PREMISES " tying " its trade, is invalid after the mtge is paid off, and cannot prevent that paying off (*Rice v. Noakes*, 1900, 1 Ch. 213; 1900, 2 Ch. 445; 69 L. J. Ch. 43, 635; 82 L. T. 784; 48 W. R. 629). But, observe, that it has been said that the doctrine against Clogging the Equity of Redemption is entirely one of Equity and has no application to that *Legal Right of Redemption* which arises on the express agreement between the parties (per Buckley, J., *Lisle v. Reeve*, 49 W. R. 188); *Sethle*, on appeal, 50 W. R. 231; 71 L. J. Ch. 42. *V. EQUITY.*

The ordinary meaning of a " Mortgage " is a conveyance of freehold,

copyhold, leasehold, or other property, with a proviso for redemption to secure an advance; and does not include a statutory charge on Turnpike Tolls (*Cavendish v. Cavendish*, 55 L. J. Ch. 144; 30 Ch. D. 227; *Poulett v. Hood*, 35 L. J. Ch. 253; L. R. 5 Eq. 115; 35 Bea. 234): *V. REAL SECURITY.*

A security created by a trust for sale, is a "Mortgage" within s. 28, Real Property Limitation Act, 1833, repld s. 7, 37 & 38 V. c. 57 (*Locking v. Parker*, 8 Ch. 30; 42 L. J. Ch. 257; *Re Alison, Johnson v. Mounsey*, 11 Ch. D. 284).

An Equitable Charge, is not a "Mortgage" within the Act against Clandestine Mortgages, 4 & 5 W. & M. c. 16 (*Kennard v. Futvoje*, 29 L. J. Ch. 553; 2 Giff. 81).

Compare the definition of "Mortgage" as given in the Conv & L. P. Act, 1881 (s. 2, vi), in Ld St. Leonards Act, 22 & 23 V. c. 35, s. 25, and in the Stamp Act, 1891, 54 & 55 V. c. 39, s. 86.

For the purposes of the Acts which, in an administration of a deceased's estate, throw the burden of mortgage debts on the mortgaged property, "the word 'Mortgage' shall be deemed to extend to any Lien for unpaid Purchase Money" (s. 2, 30 & 31 V. c. 69). *V. LOCKE KING'S ACTS: CONTRARY INTENTION.*

Other Stat. Def. — 38 & 39 V. c. 89, s. 51; 47 & 48 V. c. 54, s. 3; Lunacy Act, 1890, s. 341; Trustee Act, 1893, s. 50; Mtgees Legal Costs Act, 1895, 58 & 59 V. c. 25, s. 4. — *Scot.* 37 & 38 V. c. 42, s. 6; 53 & 54 V. c. 70, s. 96. — *Ir.* 18 & 19 V. c. 69, s. 2; 20 & 21 V. c. 16, s. 2.

A CONTRIBUTORY Mortgage, is a mtge to several independent mtgees securing their several advances on the same property: for an example and form, *V.* 2 Key & Elph. Prec., 6 ed., 106. Unless expressly authorized, it is a Breach of Trust for a trustee to lend trust money on such a mtge (*Webb v. Jonas*, cited REAL SECURITY: *Re Massingberd*, 59 L. J. Ch. 107; 60 L. T. 620; 63 Ib. 296).

A bequest of "Mortgages" prior to the Conv & L. P. Act, 1881, and if uncontrolled by context, passed the legal estate in the mortgaged hereditaments (1 Jarm. 699: *Rippen v. Priest*, 13 C. B. N. S. 308; 32 L. J. C. P. 65); but *V.* s. 30 of that Act as regards a testator dying after 31st Dec 1881.

As to when mortgaged property will pass by words which, *primâ facie*, are applicable to a testator's own property; *V. MY.*

"That the benefit of a mtge will pass by the word 'Mortgages,' collocated with other personal chattels, is perfectly clear" (1 Jarm. 692): *Cp.* TRUST.

A Trustee's power of Investment in the "Mortgages or Bonds" of any Ry or other Co, includes Debenture Stock (s. 5 (2), Trustee Act, 1893); and, by subs. 5 of that section, a power to invest in the "Shares, Stock, Mortgages, Bonds, or Debentures," of any Incorporated Co, includes

Mortgage Debentures issued pursuant to the Mortgage Debenture Act, 1865, 28 & 29 V. c. 78. *V. DEBENTURE*, at end.

As to the difference between a Co's Debenture and a Mortgage, quâ Stamp; *V. Rowell v. Inl. Rev.*, cited MARKETABLE SECURITY.

A Trust Deed of freeholds to secure the Debentures of a Co, is not a "COMPLETED" Mtge within Ord. 2 (a) and Sch 1, Part 1, Solrs Rem Ord, if in fact no debentures have been issued (*Re Birchan*, 1895, 2 Ch. 786; 64 L. J. Ch. 768; 43 W. R. 673); in *the Lindley*, L. J., doubted whether an ordinary mtge if for *future* advances, would be "completed" within the Order.

A Building Socy's Reconveyance is not liable to Stamp Duty, for it is not a "Mortgage" within the proviso at the end of s. 41, Bg Socy Act, 1874 (*Old Battersea Bg Socy v. Inl. Rev.*, 67 L. J. Q. B. 696; 1898, 2 Q. B. 294; 78 L. T. 746).

A power to mortgage, authorizes the inclusion in the mtge of a power of sale (*Bridges v. Longman*, 24 Bea. 27; *Cook v. Dawson*, 29 Ib. 128; *Vh*, Farwell, 447-450).

A covenant by a Lessee not to "mortgage, SELL, ASSIGN, or otherwise PART WITH, this present Indenture of Lease, or the premises hereby demised or any part or parcel thereof," is not broken by a Deposit of the Lease as a security for a loan, more especially if, by reason of the Lease containing a covenant against sub-letting, it may be inferred that the primary intention was to protect the Lessor from having a New Tenant imposed upon him (*M'Kay v. M'Nally*, 4 L. R. Ir. 438).

"Sale, Mtge, or other Disposition," of Land, quâ Legacy Duty; *V. DISPOSITION*.

"Claiming under any Mortgage"; *V. CLAIMING UNDER*.

*Vh*. Fisher: Coote: Robbins on Mortgages: 2 White & Tudor, 1-149: 8 Encyc. 467-526: Co. Litt. 205 a.

*V. CHARGE: CONVEYANCE: FORECLOSURE: FURTHER CHARGE: LEGAL MORTGAGE: MORTGAGE OR CHARGE: MONEY DUE: MONEY ON MORTGAGE: PUISNE*.

**MORTGAGE COMPANY.** — A "Mortgage" or "Loan" Co, s. 17, Bills of Sale Act, 1882, includes a Co authorized to raise money on loan or mtge, *i.e.* a Co having borrowing powers (*Re Standard Manufacturing Co*, 1891, 1 Ch. 627; 60 L. J. Ch. 292).

**MORTGAGE MONEY.** — Quâ Conv & L. P. Act, 1881, "Mortgage Money," means money, or MONEY'S WORTH, secured by a mortgage" (s. 2, vi).

**MORTGAGE OR CHARGE.** — The prohibition quâ Charity Trustees making "any Sale, Mortgage, or Charge, of the CHARITY ESTATE," without the express authority prescribed by s. 29, 18 & 19

V. c. 124, extends to an over-draft at their bankers if reconpment be sought out of the estate (*Fell v. Official Trustee of Charity Lands*, 1898, 2 Ch. 44; 67 L. J. Ch. 385; 78 L. T. 474; 62 J. P. 804). In that case Lindley, L. J., said, — “Whether I sign a piece of paper and so create a Charge, or whether I do an act which creates a Charge, appears to me to be a piece of mere machinery”; and Rigby, L. J., said, — “No doubt those words ‘Sale’ and ‘Mortgage,’ in themselves, are special, but the word ‘Charge’ is a very general one indeed.”

A clause in a Co’s Articles or Debentures prohibiting a “Mortgage or Charge,” does not embrace a lien or charge worked by Operation of Law (*Brunton v. Electrical Co*, 1892, 1 Ch. 434; 61 L. J. Ch. 256; 65 L. T. 745; *Robson v. Smith*, 1895, 2 Ch. 118; 64 L. J. Ch. 461). *Cp*, ASSIGN: *V. CHARGE OR INCUMBER*.

The Judgment Debt on an executed *Elegit*, is a sum charged “by way of Mortgage or other Equitable Charge,” within s. 1, 40 & 41 V. c. 34, and is payable by a devisee of the land in exoneration of his testator’s general personal estate (*Re Anthony*, 1892, 1 Ch. 450; 61 L. J. Ch. 434; 66 L. T. 181; 40 W. R. 316); *secus*, quà such exoneration, if the land descend by entail, though, by s. 13, 1 & 2 V. c. 110, such *Elegit* operates as a “Charge” (for the benefit of the Jdgmt Creditor) on the entire estate in the land (*Ib.*, 1893, 3 Ch. 498; 62 L. J. Ch. 1004; 69 L. T. 300; 41 W. R. 667). Broadly, it may be stated that whenever an instrument charges money on land it, at least, creates an “Equitable Charge” within 40 & 41 V. c. 34 (*Re Sharland*, 40 S. J. 514).

**MORTGAGEE.** — “For the Mortgagee” is a sufficient description of a Vendor; *V. PROPRIETOR*.

A legatee of a Legacy charged on Realty, is not a “Mortgagee” within R. 1, Ord. 65, R. S. C. (*Thorold v. Thorold*, 35 S. J. 81).

Quà Ld St. Leonards’ Act, 22 & 23 V. c. 35, “Mortgagee” includes, “every person to whom, or in whose favor, any such conveyance, assignment, pledge, or charge, as aforesaid, is made or transferred” (s. 25).

Quà Conv & L. P. Act, 1881, “‘Mortgagee,’ includes, any person from time to time deriving title under the Original Mortgagee”; and “Mortgagee in Possession” includes “a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property” (s. 2, vi): a conveyance “*as Mtgee*,” implies a covenant against having made incumbrances (s. 7 (F), *Ib.*).

Quà Trustee Act, 1893, “Mortgagee” includes, “every person deriving title under the Original Mortgagee” (s. 50).

Other Stat. Def. — 50 & 51 V. c. 43, s. 2. — *Ir.* 18 & 19 V. c. 69, s. 2; 20 & 21 V. c. 16, s. 2.

**MORTGAGOR.** — Quà Conv & L. P. Act, 1881, “‘Mortgagor,’ includes, any person from time to time deriving title under the Original Mortgagor, or entitled to redeem a mortgage, according to his estate,

interest, or right, in the mortgaged property" (s. 2, vi). *Cp*, def in 22 & 23 V. c. 35, s. 25.

**MORTGAGOR ENTITLED TO REDEEM.** — This phrase in s. 15, Conv & L. P. Act, 1881, means, the mortgagor, or other the person under him who has the right to a Reconveyance (*Teecan v. Smith*, 51 L. J. Ch. 621; 20 Ch. D. 724: *Va*, *Kinnaird v. Trollope*, 39 Ch. D. 636: *Alderson v. Elgey*, 26 Ch. D. 567; LIEN). But the section is modified by s. 12, Conv Act, 1882.

*V.* ENTITLED TO REDEEM.

**MORTMAIN.** — " 'Mortmain,' signifies an alienation of lands and tenements to any Guild, Corporation, or Fraternity, and their successors, e.g. Bishops, Parsons, Vicars, &c" (Cowel: *V. Termes de la Ley*). The common modern use of "Mortmain" connotes land alienated to, or for the purposes of, a CHARITY: *V.* INTEREST IN LAND.

The chief Statutes of Mortmain are 7 Edw. 1; 9 G. 2, c. 36; Mortmain and Charitable Uses Act, 1888, 51 & 52 V. c. 42; 54 & 55 V. c. 73.

*Vh*, Tudor Char. Trusts: Jacob, *Mortmain*: 9 Encyc. 1.

**MORTUARY.** — " 'Mortuary,' is that beast, or other chattell moveable, which after the death of the owner (by the Custome of some places) became due unto the Parson, Vicar, or Priest, of the Parish, in lieu or satisfaction of Tithes or Offerings, forgot, or not well and truly paid, by him that is dead" (Termes de la Ley); but, in a larger sense, a Mortuary is "a Gift, left by a man at his death to his parish church, for the recompense of his personal Tythes and Offerings not duly paid in his lifetime" (Cowel). *Vf*, 2 Bl. Com. 425-427. *Cp*, HERIOT.

*V.* BURIAL.

**MOSSSES.** — In a fee-farm grant it was held that the words "All Mosses," as used in the fee-farm grant and controlled by its context, meant all places in which turf, or matter in the course of becoming turf, was found, including the soil of such places (*Quinn v. Shields*, Ir. Rep. 11 C. L. 254). Though the word "Turbarry" would *primâ facie* mean "a right to cut turf," *qy*, whether the word "Turbarries" might not, according to the context, more properly mean "places in which turf may be cut" (per Palles, C. B., *Ib.*). *V.* TURBARY.

**MOSS-TROOPER.** — *V.* BLACKMAIL.

**MOST DESERVING.** — *V.* NEAREST.

**MOST PROPER AND EFFECTIVE MANNER.** — *V.* WORKABLE.

**MOST RENT.** — *V.* *Doe d. Newnham v. Creed*, 4 M. & S. 371: Sug. Pow. 791. *Cp*, BEST RENT.

**MOTHER.** — As to whether the expression “Mother of my children,” will, contextually, let in illegitimate children: *V. Beachcroft v. Beachcroft*, 1 Mad. 430, stated and discussed 2 Jarm. 234–236. *Vf*, RELATIONS.

“Mother,” “Grand-mother,” in the statutes relating to maintenance of Poor Relations (43 Eliz. c. 2, s. 7; 59 G. 3, c. 12, s. 26), means, one not under COVERTURE (*Custodes v. Jinks*, Style, 283; *Coleman v. Birmingham*, 50 L. J. M. C. 92; 6 Q. B. D. 615; 29 W. R. 715; 45 J. P. 521; 44 L. T. 578). But a married woman having SEPARATE PROPERTY is now liable for maintenance of Children and Grandchildren (s. 21, M. W. P. Act, 1882). *V. FATHER.*

*V. PARENT.*

**MOTHER’S SHARE.** — In a substitutionary gift to children of their “Mother’s Share,” held, that what was meant was, the share which the mother would have taken had she survived the period of distribution (*Re Hunter*, L. R. 1 Eq. 295).

**MOTIVE.** — In nine cases out of ten “with THE View” (*V. A*) and “with the Motive” are synonymous (per Bowen, L. J., *Ex p. Hill, Re Bird*, 23 Ch. D. 704). *V. VIEW*: 9 Encyc. 14, 15. *Cp*, MALICE.

**MOUNTAIN.** — In Ireland, “Mountain” is descriptive of (1) Situation, or (2) Quality; “and is a sort of coarse land that yields little or no profit. For the English, upon settling there, called such land as they improved *Arable* (*Cp*, LAND), and the uncultivated part went by the name of *Mountain*. And the L. C. adds that it does not so much as necessarily include the Situation, for he has a great deal of coarse land which is called Mountain, and yet does not lie upon a hill, but is as low as the arable land about it; and that a boy can distinguish which is Arable and which is Mountain” (*Kildare v. Fisher*, 1 Stra. 71, 72: *Vf*, per Mansfield, C. J., *Cottingham v. King*, 1 Burr. 629). “‘Mountain,’ means, not the Situation but, the Quality of the land” (per Perrin, J., *Waterpark v. Fennell*, 5 Ir. Com. Law Rep. 131).

**MOUNTEBANK.** — *V. QUACK.*

**MOUTH.** — The Mouth of a RIVER “comprehends the whole space betwixt the lowest ebb and the highest flood mark” (*Horne v. Mackenzie*, 6 Cl. & F. 644).

Mouth of the Thames; *V. THAMES.*

**MOVEABLE.** — A bequest of all testator’s “Moveables” “doth pass all his personal goods, both quick and dead, which either move themselves, — as horses, sheep, and the like; or may be moved by another, — as plate, household stuff, corn in the garners and barns or in the sheaf,

&c, also all bonds and specialties; and by a devise of *Immoveables* do pass leases, rents, grass, and the like, but not any of those things that do pass by the devise of *Moveables*: but Debts will not pass by either of these devises" (Touch. 447). It will be observed that here there is a difference drawn between "Bonds and Especialties" and "Debts" — the latter, *i.e.* as it would seem, Simple Contract Debts — not passing under "Moveables." The reason, possibly, may be because that which creates a Bond or Specialty Debt can be carried about, — *i.e.* is moveable. But that also is true of a Bill of Ex. or Pro. Note; yet the money secured by such a document would be a mere debt, and therefore, according to the definition in the Touch-Stone, would not be comprised in a bequest of "Moveables."

In *Steignes v. Steignes* (Moseley, 296) it was held that "Moveables" did not comprise a sum of South Sea Stock; but that was simply because the word was controlled by a context.

In citing that case it is stated at p. 755, 1 Jarm., that "the word, if unrestrained by the context, would take in the whole *purely* personal estate." What is meant by this is shewn in a note at p. 4, *Ib.*, where it is shown that Leaseholds are not "Moveables," and where this word is discussed and distinguished from the large acceptation of "PERSONAL ESTATE." But even so, it is difficult to reconcile the statement that "the whole purely personal estate" is comprised in "Moveables," seeing that the Touch-Stone says that Debts are not within that word.

#### V. IMMOVEABLES.

Money is a "Moveable" (*Swinfen v. Swinfen*, 29 Bea. 207).

In Scotland, a man's "Moveable" property seems equivalent to the English phrase PERSONAL ESTATE (s. 4, 19 & 20 V. c. 79); "Moveable Estate," means and includes, "the whole free moveable estate on which the Deceased, if not subject to incapacity, might have tested, undisposed of by Will, and any portion thereof so undisposed of" (s. 9, 18 & 19 V. c. 23); or, as a later Act puts it, "all personal debts and obligations, and moveable or personal property or effects of every kind" (s. 4, 25 & 26 V. c. 85).

"Moveable Means and Estate"; *V. Re Caithness*, 7 Times Rep. 354.

"Moveable PROPERTY," bequest of; *V. Enohine v. Wylie*, 10 H. L. Ca. 1; 31 L. J. Ch. 402.

"Moveable Structure"; *V. STRUCTURE*.

#### MOVEMENT. — *V. CAUSING*.

**MUIR'S ACT.** — Public Houses Acts, Amendment (Scot) Act, 1862, 25 & 26 V. c. 35. *V. FORBES MACKENZIE'S ACT*.

#### MULE. — *V. HORSE*.

**MULIER.** — *V. Co. Litt.* 243b: *Termes de la Ley*: Cowel: Jacob.

**MULTIPLE.** — “This term may be understood in a restricted sense so as to comprehend only multiples numerically expressed, such as 10 pounds, 100 pounds, &c; or generally all multiples, however expressed, such as a Stone, a Hundredweight, a Ton, or any other weight, such as a ‘Weigh,’ a ‘Tod,’ or a ‘Hobbet,’ supposing these words to be in use for expressing multiples of the pound avoirdupois” (per Maule, J., in delivering judgment of Ex. Cham., *Giles v. Jones*, 24 L. J. Ex. 261; 11 Ex. 393). *V. TON.*

**MULTIPLY.** — “Repeat, COPY, Colourably Imitate, or otherwise Multiply,” Works of Art, s. 6, Fine Arts Copyright Act, 1862; there “‘copy,’ implies one re-production; ‘repeat,’ implies more than one; and ‘multiply,’ implies many” (per FitzGibbon, L. J., *Green v. Irish Independent Co*, 1899, 1 I. R. 391). *V. REPRODUCTION.*

**MULTITUDE.** — “Multitude of people,” Litt. s. 431, — “a multitude here spoken of (as some have said) must be ten or more. *Multitudinem decem faciunt.* And so (say they) it is said *de grege hominum.* But I could never read it restrained by the common law to any certain number, but left to the discretion of the judges” (Co. Litt. 257 a). *Cp, ASSEMBLY.*

**MUNICIPAL.** — “Municipal AUTHORITY”; *V.* 38 & 39 V. c. 86, s. 14; 46 & 47 V. c. 4, s. 5. — *Scot.* 38 & 39 V. c. 86, s. 18. — *Ir.* 1b. s. 21; 51 & 52 V. c. 47, s. 3.

“Municipal BOROUGH”; *V.* s. 15 (1, 2), Interp Act, 1889; 36 & 37 V. c. 68, s. 8; 48 & 49 V. c. 23, s. 23. — *Scot.* 35 & 36 V. c. 68, s. 15; 46 & 47 V. c. 51, s. 68; 48 & 49 V. c. 10, s. 2; 52 & 53 V. c. 69, s. 8. — *Ir.* 48 & 49 V. c. 10, s. 2; *Lingard v. Brennan*, Ir. Rep. 3 C. L. 203.

“Municipal CORPORATION,” quâ Mun Corp Act, 1882, 45 & 46 V. c. 50, “means the Body Corporate constituted by the incorporation of the inhabitants of a Borough” (s. 7). *Vh, Arnold on Municipal Corporations: Rawlinson, Ib.: 9 Encyc. 16-29. V. RATE.*

*Municipal Corporation Acts*; *V.* 46 & 47 V. c. 51, s. 68.

“The Municipal Corporations (Ireland) Acts, 1840 to 1888”; *V.* Sch 2, Short Titles Act, 1896.

“Municipal ELECTION”; *V.* 35 & 36 V. c. 33, s. 29; 45 & 46 V. c. 50, s. 7; 47 & 48 V. c. 70, ss. 35, 36; 48 & 49 V. c. 9, s. 3, c. 10, s. 2. — *Scot.* 57 & 58 V. c. 58, s. 54; 60 & 61 V. c. 34, s. 1.

“Municipal Election Court,” “Municipal Election List,” “Municipal Election Petition”; *V.* 47 & 48 V. c. 70, s. 36.

“Municipal ELECTORS”; *V.* 57 & 58 V. c. 58, s. 54.

“Municipal Polling District”; *V.* POLLING.

“Municipal REGISTER”; *V.* 50 & 51 V. c. 42, s. 2; 57 & 58 V. c. 58, s. 54.

“Municipal WARDS”; *V.* 57 & 58 V. c. 58, s. 54.



**MUNIMENT.** — “ ‘Muniments,’ are evidences or writings concerning a mans possession or inheritance, whereby he is able to defend the estate which he hath ” (Termes de la Ley).

**MUNITION.** — “Munition and Furniture”; *V. Gale v. Laurie*, 5 B. & C. 156: FURNITURE.

“Munitions of War”; *V. ARMS.*

**MURAGE.** — “ ‘Murage’ is a toll or tribute levied for the repaying or building of publike walls ” (Termes de la Ley). *Vf, Jacob.*

**MURDER.** — “Murder is when one is slaine with a man’s will, and with malice prepensed or forethought. . . . Murder commeth of the Saxon word *mordreu*” (Co. Litt. 287 b: *Vf, Termes de la Ley*). But the person slain must be another person than the slayer (4 Bl. Com. 195); therefore Suicide is not Murder (*R. v. Burgess*, 32 L. J. M. C. 55); but if two agree to kill each other and one only is killed, the survivor is guilty of Murder (*R. v. Alison*, 8 C. & P. 418: *R. v. Dyson*, Russ. & Ry. 523).

“Murder is unlawful homicide with malice aforethought” (Steph. Cr. 158; *Vf, Ib.* ch. 24, 362–383).

“Murder” is a Term of Art (4 Bl. Com. 307: *Holford v. Bailey*, 18 L. J. Q. B. 113; 13 Q. B. 430, 446: *R. v. Gray*, 33 L. J. M. C. 78; L. & C. 365). *Cp, PERJURY.*

*Vf, Arch. Cr.* 742–790: *Rosc. Cr.* 641–693: 9 *Encyc.* 31–37.

Quà Coroners Act, 1887, 50 & 51 V. c. 71, “ ‘Murder,’ includes, the offence of being an ACCESSORY before the Fact to a Murder ” (s. 42).

*V. HOMICIDE: KILL: MALICE AFORETHOUGHT: SUICIDE.*

**MUSEUM.** — *V. PUBLIC MUSEUM.*

**MUSIC.** — “Public Music”; *V. PUBLIC BALL: PUBLIC MUSIC.*  
“Sheet of Music”; *V. COPY.*

**MUSICAL COMPOSITION.** — *V. DRAMATIC.*

*Note.* To protect a Musical Composition from public representation, Notice, reserving that right, must appear on the title-page of each copy (ss. 1 and 2, 45 & 46 V. c. 40). Damages for illegal representation may be less than 40s.; and costs are “in the absolute discretion of the Judge” (51 & 52 V. c. 17).

**MUSSELS.** — *V. OYSTER: SEA FISH.*

**MUST.** — The direction that a Complete Specification of a Patent “must end with a distinct statement of the Invention claimed,” s. 5 (5), Patents, &c, Act, 1883, is directory only, and the absence of such statement does not void the Patent (*Vickers v. Siddell*, cited DESCRIBE). *Cp, SHALL: MAY.*

**MUST NOT.** — “If the landlord of a house let out in separate tenements lives in the house, he *must not* return the names of the

occupiers of tenements in that house" (last par of Form A, Sch 2, Part ii, Registration Act, 1885, 48 V. c. 15). "Must not" means the same as "Need not" in the corresponding Form provided for Ireland, *i.e.* Form No. 34, 48 V. c. 17 (per Porter, M. R., *Hogan v. Sterrett*, 20 L. R. Ir. 349).

V. NEED NOT.

**MUSTER.**—"To muster," is to make a shew of souldiers well armed and trained in some open field; ubi se ostendentes prælundunt prælio" (Co. Litt. 71 a); "to shew men and their armes, and to inroll them in a booke, as appeares by 18 H. 6, c. 19" (Termes de la Ley).

MUTILATION. — V. MAIM.

**MUTUAL ACCOUNTS.**—"Mutual Accounts," by which are meant not where one only of two parties has received money and made payments on account of the other, but where each of two parties has received and paid on account of the other" (Seton, 1358: *Phillips v. Phillips*, 9 Hare, 473; *Padwick v. Hurst*, 18 Bea. 579).

**MUTUAL CREDITS.**—"Mutual Debts between the plaintiff and defendant," s. 13, 2 G. 2, c. 22; *V. Rees v. Watts*, 11 Ex. 410; 25 L. J. Ex. 30.

When the Bankry Act of 5 G. 2, c. 30, spoke (s. 28) of "Mutual Credit" given by, or "Mutual Debts" between, a bankrupt and any other person, "the legislature must have intended something more than would have been expressed by 'Mutual Debts' only," and "where there is a Trust between both parties there is a Mutual Credit" (per Kenyon, C. J., *Atkinson v. Elliott*, 7 T. R. 380). *Vf*, *Eusum v. Cato*, 5 B. & Ald. 861.

"Mutual Debts and Credits," s. 50, 6 G. 4, c. 16; *V. Rose v. Sims*, 1 B. & Ad. 521; *Alsager v. Currie*, 12 M. & W. 756; 13 L. J. Ex. 203.

"Mutual Credits, Debts, and Dealings," s. 38, Bankry Act, 1883, replacing s. 39, Bankry Act, 1869; *V. Re Daintrey, Ex p. Mant*, 1900, 1 Q. B. 546; 69 L. J. Q. B. 207; 82 L. T. 239; *Palmer v. Day*, 1895, 2 Q. B. 618; 64 L. J. Q. B. 807; *Ex p. Morier*, 12 Ch. D. 491; 49 L. J. Bank. 9, explaining *Bailey v. Finch*, 41 L. J. Q. B. 83; L. R. 7 Q. B. 34, and *Bailey v. Johnson*, 41 L. J. Ex. 211; L. R. 7 Ex. 263; *Juck v. Kipping*, 9 Q. B. D. 113; 51 L. J. Q. B. 463; *Peat v. Jones*, 8 Q. B. D. 147; 51 L. J. Q. B. 128; *Re Winter*, 47 L. J. Bank. 52; 8 Ch. D. 225; *Booth v. Hutchinson*, L. R. 15 Eq. 30; 42 L. J. Ch. 492. *Vh*, 26 S. J. 575. Quà Joint Stock Co, *V. Sovereign Life Assree v. Dodd*, 1892, 2 Q. B. 573; 62 L. J. Q. B. 19; 67 L. T. 396; 41 W. R. 4.

**MUTUAL INSRCE CO.** — *V. Last v. London Assree, New York Insree v. Styles*, and *Equitable Assree v. Bishop*, cited PROFITS.

**MY.** — If a testator refers to his possessing any particular and definite thing, — *e.g.* “My Estate at A.,” “My ring,” “My horse,” — it seems that the **CONTRARY INTENTION** referred to by the Wills Act, 1837, is manifested, and the Will, quà such bequest, speaks from its date and the gift is specific: but where the bequest is generic, of that which may be increased or diminished, — *e.g.* Consols, — the Act requires something more to indicate such contrary intention than that the subject-matter should be preceded by “My”; and accordingly, quà such a bequest, the Will would speak from the death of the testator (*Goodlad v. Burnett*, 1 K. & J. 341; *Re Gibson*, L. R. 2 Eq. 669; 35 L. J. Ch. 596; *Vh*, 1 Jarm. 329–332, and as to the old rule, *Ib.* 320–329). But on the authority of *Miles v. Miles* (L. R. 1 Eq. 462; 35 L. J. Ch. 315; 13 L. T. 697; 14 W. R. 272) it has been stated that “the use of the pronoun ‘My,’ in the description of the thing given, is not sufficient evidence of an intention that the Will shall not speak as from the date of the death” (*Dart*, 309). “The word ‘My’ is evidence of a gift being Specific, when the particular Stock is also referred to; but it is not enough alone” (per *Plumer*, M. R., *Parrott v. Worsfold*, 1 Jac. & W. 602), in *whc* it was held that a legacy of “All my Stock that I may be possessed of at my decease,” was not Specific; but a legacy of “All my Stock in the Midland Ry” is Specific (*Bothamley v. Sherson*, cited **SPECIFIC**). *Cp*, **NOW: HAVE.**

A bequest of the **MONEY** “at my **BANKERS**,” will not include money deposited with a Bank at interest and as an investment, but which Bank the testator had not employed to do his general banking business and which business had been done for him by another Bank (*Re Waddilove*, 91 Law Times, 176).

“**ALL** I hold in the N. Bank”; held, to pass a Deposit Receipt and Cash (*Townsend v. Townsend*, 1 L. R. Ir. 180).

“My Debentures”; *V.* **DEBENTURE**, towards end.

“My **PROPERTY** at R.’s bank”; *V.* *Re Prater*, 37 Ch. D. 481; 57 L. J. Ch. 342; 58 L. T. 784; 36 W. R. 561; *Vth*, *Re Robson*, cited **CONTENTS**.

“All my Land at S.”; *V.* *Re Portal and Lumb*, 27 Ch. D. 600; 30 *Ib.* 50; 54 L. J. Ch. 1012; 53 L. T. 650; 33 W. R. 859. *Vf*, **ALL**.

So as regards the objects of the gift. “My Son” of a particular name, means the son of that name at the date of the Will, and him only (1 Jarm. 323).

“My Brother’s Son”; *V.* *Doe d. Westlake v. Westlake*, 4 B. & Ald. 57.

“My Estate of”; *V.* **OF**.

“My Family”; *V.* *Wright v. Atkyns*, cited **FAMILY**.

“My Grand-daughter”; *V.* **GRAND-DAUGHTER**.

“My House,” where there are two answering the description given; *V.* *Gardiner v. Jewers*, W. N. (72) 35.

"My Nephew"; *V. NEPHEW.*

"Per My"; *V. PER MY ET PER TOUT.*

"My own Heirs whatsoever"; *V. Gordon v. Gordon*, 7 App. Ca. 713.

"My own Right Heirs"; *V. De Beauvoir v. De Beauvoir*, cited *HEIRS: Boydell v. Golightly*, 14 Sim. 327.

"My Wife," "My Children," as a *designatio personæ*; *V. Pratt v. Mathew*, 25 L. J. Ch. 409; 22 Bea. 328; *Re Petts*, 29 L. J. Ch. 168; 27 Bea. 576; *V. CHILD.* "My Sons" as a Class; *V. SON.*

"In my Possession"; *V. Re Egan*, cited *POSSESSION.*

Bequest of "All My" PROPERTY will pass property subject to a General Power of Appointment (*Chandler v. Pockock*, 50 L. J. Ch. 380; 16 Ch. D. 648; *Re Harman*, 1894, 3 Ch. 607; 63 L. J. Ch. 822); but, *semble*, not property the subject of a Special Power (*Cooke v. Cunliffe*, 17 Q. B. 245; 21 L. J. Q. B. 30; *Wildbore v. Gregory*, L. R. 12 Eq. 482; 41 L. J. Ch. 129; *Re Huddleston*, 1894, 3 Ch. 595; 64 L. J. Ch. 157; 43 W. R. 139), unless accompanied by a strong context (*Re Richardson*, 17 L. R. Ir. 442). *V. POWER.*

A devise of "all My REAL ESTATE," or equivalent words, would, in the absence of a controlling context, pass Trust, as well as Beneficial, estates (*Lysaght v. Edwards*, 45 L. J. Ch. 554; 2 Ch. D. 499); *vthc*, and also Jarm. ch. 21, as to what is such a context: *Sv*, s. 30, Conv & L. P. Act, 1881, which however is not applicable to Copyholds (s. 45, 50 & 51 V. c. 73, on *whv*, *Re Mills*, 37 Ch. D. 312; 40 Ib. 14; 57 L. J. Ch. 466; 37 W. R. 81).

A devise of "My" Realty, will pass property of which the testator is *Mtgee in Possession* (*Re Carter*, 1900, 1 Ch. 801; 69 L. J. Ch. 426; 82 L. T. 526; 48 W. R. 555); but where there was a specific devise of freeholds which the testator, after making his Will, sold, taking a mtgee for part of the purchase-money, and of which freeholds he had not possession at his death, it was held that the mtgee debt passed under a Residuary Bequest, and not under the devise (*Re Clowes*, 1893, 1 Ch. 214).

"My Stock"; *V. STOCK.*

"My Stock in Trade and Trade Debts"; *V. STOCK IN TRADE*, at end. *V. Watson* Eq. 1330.

A BOTTOMRY BOND so many days "after My Arrival," is good because it does not mean the personal arrival of the Master, but means his arrival with the Ship (*Simonds v. Hodgson*, 1 L. J. K. B. 51; 3 B. & Ad. 50).

"My," in an agreement for Sale of Land, may render a description certain which otherwise would be uncertain (*Owen v. Thomas*, 3 My. & K. 353; *Cowley v. Watts*, 22 L. J. Ch. 591); and this word may, for that purpose, be imported into the agreement (*Plant v. Bourne*, 1897, 2 Ch. 281; 66 L. J. Ch. 643; 76 L. T. 820; 46 W. R. 59).

Indorsement of Bill "for my Use"; *V. USE.*

**MYSTERY.** — *V. ART.*

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## NAKED — NAME

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### NAKED. — *V.* BARE TRUSTEE: NUDE CONTRACT.

A Bare Naked *Lie*, is "saying a thing which is false, knowing or not knowing it to be so, and without any design to injure, cheat, or deceive, another person" (per Buller, J., *Pasley v. Freeman*, 3 T. R. 56). (*Cp.*, DECEIT: LIAR.

A picture of a Woman naked only to the waist, is not a picture of a "Naked" woman (*Commonwealth v. Dejardin*, 126 Mass. 46).

**NAME.** — "Sometimes it is made part of the description or qualification of a devisee or legatee, that he be of the testator's *Name*. The word 'name' so used, admits of either of the following interpretations: —

"1. As designating one whose name answers to that of the testator (which seems to be the more obvious sense);

"2. As denoting a person of the testator's family, — the word 'name' being, in this case, synonymous with 'FAMILY' or 'BLOOD.'

"The former, as being the more natural construction, prevails in the absence of an explanatory context; and such is most indisputably its meaning when found in company with some other term or expression which would be synonymous with 'name' if otherwise construed" (2 Jarm. 141, *whv.*, to p. 146, for discussion of the cases).

In *Leigh v. Leigh* (15 Ves. 92), the Remainder was to the "First and NEAREST of my Kindred, being Male and of my *Name and Blood*"; held (15 Ves. 107, 109, following Hardwicke, C., *Pyot v. Pyot*, 1 Ves. sen. 335) that by "Blood" the testator meant, the Stock or Family to which he himself belonged; and by "Name" he meant to exclude the Female Line, and, further, that taking the Name by Royal License was not being of the testator's "Name."

A woman losing the "Name" by marriage, loses her right to be classed as one of the "Name"; but not so a person who assumes another name by License or Act of Parliament (2 Jarm. 144).

"Descendants who shall BEAR the Name of"; *V. Re Roberts*, 19 Ch. D. 520; 50 L. J. Ch. 265.

A *Name and Arms Clause* will be construed (1) "most strictly," and (2) "the Cesser and the Limitation Over must fit in with one another" (per Pearson, J., *Re Brooke, Musgrave v. Brooke*, 54 L. J. Ch. 102; 26 Ch. D. 792; 33 W. R. 211, citing *Re Catt*, 33 L. J. Ch. 495; 2 H. & M. 46). *Vh.*, *Beran v. Mahon-Hagan*, 31 L. R. Ir. 342; Butler's note Co. Litt. 327 a; Vaizey, 1268: 9 Encyc. 41, 42: USUAL, towards end. If the added Name is to be taken "alone or *together with*" the person's own

SURNAME, the person who has to adopt it may, at his option, put it either before or after his own Surname (*Re Eversley*, 1900, 1 Ch. 96; 69 L. J. Ch. 14); but if the direction is that he is to take "the Surname" indicated, he must add it after his own (*D'Eye court v. Gregory*, 45 L. J. Ch. 205; 1 Ch. D. 411).

A *Power of Investment* "in the Name of" the Trustees, does not authorize Bearer Securities (*Re Roth*, W. N. (96) 16; 74 L. T. 50). To embrace these, the phrase should be "in the Name, or under the CONTROL, of" the Trustees.

Quà TRADE-MARK, the "Name of an INDIVIDUAL, or FIRM," s. 10 (1 *a*), Patents, &c. Act, 1888, is not given by putting it in the genitive case, *e.g.* "Pirie's" Parchment Bank (*Pirie v. Goodall*, 1892, 1 Ch. 35; 61 L. J. Ch. 79; 65 L. T. 640; 40 W. R. 81); but a person's "Own Name," s. 10 (3), *Ib.*, need not be his whole name; a part suffices if that part is such that it fairly indicates the person (*Re Colman*, 1894, 2 Ch. 115; 63 L. J. Ch. 403; 70 L. T. 398; 42 W. R. 555); and quà Merchandize Marks Act, 1887, "'Name,' includes any abbreviation of a Name" (subs. 1, s. 3).

So, when a *Voting Paper* has to be signed with "the Name" of the Voter, s. 32, 5 & 6 W. 4, c. 76, that is complied with if he sign his Surname and the initials of his Christian names (*R. v. Avery*, 21 L. J. Q. B. 428; 18 Q. B. 576). *V. CHRISTIAN NAME: SIGNED.*

So, the "Name" of a *Seller of Coal*, s. 21 (1) and Sch 3, Weights and Measures Act, 1889, is given either by his real name, or by the name under which he carries on business (*Cameron v. Tyler*, 1899, 2 Q. B. 94; 68 L. J. Q. B. 759; 80 L. T. 764; 47 W. R. 559; 63 J. P. 567).

So, the direction in s. 1, Engraving Copyright Act, 1734, 8 G. 2, c. 13, that a Copyrighted Engraving "shall be truly engraved with the Name of the PROPRIETOR," is complied with if the Proprietors give the Name of their Firm (*Blackwell v. Harper*, 2 Atk. 93; *Graves v. Ashford*, cited COPY: *Rock v. Lazarus*, 21 W. R. 215; L. R. 15 Eq. 104; 42 L. J. Ch. 105; 27 L. T. 744).

So, quà Revenue Act, 1883, 46 & 47 V. c. 55, "'Name,' as applied to a MANUFACTURER, shall include, any abbreviation or imitation of a Name" (subs. 6, s. 2).

Quà Mer Shipping Act, 1894, "'Name,' includes a Surname" (s. 742).

*V. CHRISTIAN NAME: INDIVIDUAL: JUNIOR: WORD: TRADE-MARK.*

"Name, Address, and Description," of an Attesting Witness to a Bill of Sale; *V. Re Wood*, 48 L. J. Bank. 26: ADDRESS: DESCRIPTION.

To give a false "Name and Address" is no better than giving none at all (per Bruce, J., *Knights v. L. C. & D. Ry.*, 62 L. J. Q. B. 378).

**NAMED.** — "The strict and accurate meaning of this word 'named' is (as stated by Kindersley, V. C., *Re Holmes*, 1 Drew. 321; 22 L. J. Ch. 393), 'mentioned *nominatim*, if not by all their names, by some at

least, either their Christian or their Surnames' " (per Stirling, J., *Re Jodrell*, W. N. (89), 230; 34 S. J. 129); it "is also used, and used in no unnatural sense, as synonymous with 'specified' or 'mentioned'" (per *Ld Herschell*, S. C. nom. *Seale-Hayne v. Jodrell*, cited RELATIONS), or "designated" (per *Ld Hannen*, *Ib.*). In that case "Relatives *hereinbefore named*" was held to include those which the testator had previously indicated in his Will.

A Power to be exercised by Exors "herein named"; *V. Crawford v. Forshaw*, cited EXECUTOR.

V. EXPRESSLY NAMED: HEREIN: HEREINBEFORE: NOMINATE.

**NAMELY.** — "A difference, in grammatical sense, in strictness exists between the words 'namely' and 'including.' 'Namely' imports interpretation, *i.e.* indicates what is included in the previous term; but 'Including' imports addition, *i.e.* indicates something not included" (2 Jarm. 229). But, observe, that "if a *videlicet* is repugnant to what has gone before, it shall be rejected; but if it can be reconciled and made restrictive, it shall be so" (*Wilson v. Mount*, 3 Ves. 194; *Eccard v. Brooke*, 2 Cox Ch. 213, is important because Arden, M. R., at first thought the "viz" in *the* was not interpretative, but his decision was the other way). As to how far a *videlicet* is restrictive, *V. Fisher v. Hepburn*, 14 Bea. 626; 1 Jarm. 753, 759: as to its antecedent, *V. Harrington v. Pole*, Dyer, 77 b, pl. 38; cited Hob. 173.

In *Smith v. Walton* (1 L. J. C. P. 85; 8 Bing. 235; 1 Moore & S. 380), the explanatory phrase was "*To Wit*"; and it was there held, on a Pleading, that the phrase "Martinmas, to wit, on the 23rd November, 1830," meant Martinmas, the 11th November, according to the New Style, and that the *videlicet* did not enable the Court to read the date as the 23rd Nov. V. MICHAELMAS.

V. THAT IS TO SAY: COMPRISING.

**NARROW CHANNEL.** — *V. The Florence Nightingale*, 8 L. T. 34: *The Leverington* and *The Pekin*, cited CROSSING: *The Clydach*, 5 Asp. 336: *The Minnie*, 1894, P. 336: 1 Maude & P. 603, n (y).

**NATIONAL DEBT.** — National Debt Comurs; *V. s.* 12 (17), Interp Act, 1889.

"The National Debt Acts, 1870 to 1893"; *V. Sch* 2, Short Titles Act, 1896.

V. PERMANENT: PERPETUAL ANNUITY: STOCK.

**NATIVE.** — There is no distinction between "Native-Born" as used in the French Extradition Treaty, and "Natural-Born" as used in the Extradition Act, 1870 (*Re Guerin*, 37 W. R. 269; 58 L. J. M. C. 42; 60 L. T. 538): generally, the two phrases are synonymous. *Vh*, 9 Encyc. 56-59.

Native of India; *V. INDIA*.

Native Oyster; *V. Whitstable Free Fishers v. Elliott*, W. N. (88) 27.

**NATURAL BORN.** — *V.* NATIVE.

**NATURAL CHILDREN.** — As to when illegitimate children are sufficiently designated by the words "Natural Children"; *V. Bentley v. Blizard*, 4 Jur. N. S. 652; *Worts v. Cubitt*, 2 W. R. 633; 19 Bea. 421; *V.* CHILD.

**NATURAL HEIRS.** — It has been decided in America that, in a Will, "Natural Heirs" is synonymous with "HEIRS OF THE BODY" (*Smith v. Pendell*, 19 Conn. 112).

**NATURAL NECESSITY.** — *V.* "Necessary Implication," sub NECESSARY.

**NATURAL PERSON.** — *V.* PERSON.

**NATURAL REPRESENTATIVES.** — A gift to a Class or their "Natural Representatives" if dead; held to mean, Lineal Descendants to the exclusion of the WIDOW whose position is contractual and not "natural" (*Re Bromley*, 83 L. T. 315; W. N. (1900) 187). *Cp.* WIFE: NEAR RELATIONS.

**NATURAL RIGHTS.** — "Natural Rights of Property, must be Rights which attach to property in its primitive state; and cannot, without a contradiction in terms, be applied to an artificial subject-matter, like a house" (per Thesiger, L. J., *Angus v. Dalton*, 4 Q. B. D. 169; 48 L. J. Q. B. 228).

**NATURAL STATE.** — *V.* PLANTATION.

**NATURALIZATION.** — Is the making an ALIEN a DENIZEN.  
*V.* BRITISH SUBJECT.

**NATURALLY.** — "Naturally dead"; *V.* DEAD.

**NATURE.** — "Nature of the *Action*"; *V. Smith v. Hailey*, 42 L. J. Ex. 5; L. R. 8 Ex. 16.

"Specifying the Nature and Detail of such other Expenses," s. 14, Regulation of Railways Act, 1873; these words require a Ry Co to state what terminal charges they undertake to perform with regard to the particular traffic, and how much they charge for each of such services; and this obligation is not discharged by merely giving a list of services performed and the total amount of the charge therefor (*Colman v. G. E. Ry*, 4 Ry & Can Traffic Ca. 108).

Change of the Nature of *Goods*; *V.* SPECIE.

The Notice to be given under s. 68, Lands C. C. Act, 1845, of the "Nature of the *Interest*" of a Claimant, must state its Quantity as well as its Quality (*Healey v. Thames Valley Ry*, 5 B. & S. 769; 34 L. J. Q. B. 52; 13 W. R. 44; 11 L. T. 268).

"Interest in the Nature of Real Estate"; *V.* REAL ESTATE.

The "Nature" of an *Invention* which has to be stated in the provisional



specification; this does not confine the complete specification to minute agreement with the provisional specification the object of which is to set forth fairly, though it may be roughly, the "Nature" of the Invention for which a patent is sought (*United Telephone Co v. Harrison*, 51 L. J. Ch. 705; 21 Ch. D. 720, in which the prior cases are collected: *Vf, Siddell v. Vickers*, 39 Ch. D. 92). *V. DESCRIBE.*

*V. JOINT STOCK COMPANY.*

"Of what Nature and Kind soever"; *V. Campbell v. Prescott*, cited EFFECTS: EVERY THING ELSE.

The "Nature of *Qualification*," entitling a person to be on an Electoral List, means, those facts which bring him within some one of the qualifying franchises, *i.e.* the legal nature and character of the qualification; therefore, a SUCCESSIVE Occupation is a qualification of a nature different from an occupation of one property during the whole of the qualifying period (*Foskett v. Kaufman*, 55 L. J. Q. B. 1; 16 Q. B. D. 279; 54 L. T. 64; 34 W. R. 90; 50 J. P. 484; 1 Colt, 466, following *Bartlett v. Gibbs*, 13 L. J. C. P. 40; 5 M. & G. 81; *Hurcum v. Hilleary*, 1894, 1 Q. B. 579; 63 L. J. Q. B. 306; 70 L. T. 505; 42 W. R. 321; *See, inf.*). The distinction between the substantial "Nature" of the Qualification (which the Revising Barrister has not a power to amend as a MISTAKE) and the verbal "Description" of it (within such power), is shown by a comparison between the cases just cited and *Friend v. Towers* (52 L. J. Q. B. 109; 10 Q. B. D. 87), *Dashwood v. Ayles* (55 L. J. Q. B. 8; 16 Q. B. D. 295; 53 L. T. 588; 34 W. R. 53; 50 J. P. 132; 1 Colt, 486), and *Minifie v. Banger* (55 L. J. Q. B. 10; 16 Q. B. D. 302; 53 L. T. 590; 50 J. P. 131; 1 Colt, 493). In the first of these latter cases "house" was amended into "dwelling-house," and in the last two cases "tenement" was amended into "dwelling-house." *Vf, Wilson v. Buchanan*, 20 L. R. Ir. 213; *Melaugh v. Chambers*, *Ib.* 286; *Alexander v. Burke*, 22 L. R. Ir. 595; *Birks v. Allison*, 32 L. J. C. P. 51; 13 C. B. N. S. 12; *Howitt v. Stephens*, 28 L. J. C. P. 105; 5 C. B. N. S. 30. "House" was formerly a sufficient description of Houses in Succession, if the 4th Column of Claim showed that to be the fact (*Hitchins v. Brown*, 15 L. J. C. P. 38; 2 C. B. 25); but now the description should be "Dwelling-house (Successive)" (Registration Ord. 1895, Sch 2, Part 1, s. 19, subs. 1 *b*); still if "Successive" be omitted, the Barrister may and ought to amend by adding that word if the 4th Column sets forth the houses forming the Successive Occupation (*Soutter v. Roderick*, 1896, 1 Q. B. 91; 65 L. J. Q. B. 145; 73 L. T. 576; 44 W. R. 205). But the Barrister cannot amend by substituting "leasehold" for "freehold" (*Plant v. Potts*, 1891, 1 Q. B. 256; 60 L. J. Q. B. 33; 63 L. T. 730). On the other hand, he may correct a wrong number of a house (*Kitchen v. Johnson*, 1899, 1 Q. B. 95; 68 L. J. Q. B. 11; 79 L. T. 422; 47 W. R. 110).

"Nature, Substance, and *Quality*, of the Article demanded," s. 6, Sale of Food and Drugs Act, 1875, 38 & 39 V. c. 63, means, the Nature or

Quality according as the Article is ordinarily understood in the trade dealing with it; therefore when Tincture of Opium was demanded and a tincture was supplied one-third less in strength than the article according to the recognized standard (*i.e.* the British Pharmacopœia); held, that the Article supplied was not of the "Nature or Quality" demanded (*White v. Bywater*, 19 Q. B. D. 582; 51 J. P. 821; 3 Times Rep. 631); but skimmed milk has been held to be a good supply for a demand of "milk" within this section (*V. MILK*). *V. ARTICLE DEMANDED: PREJUDICE OF PURCHASER: SELLER.*

"Money in the Nature of a Fine"; *V. FINE.*

"Any Writing in the Nature of a *Will*," means the same as a Will (Sug. Pow. 230: *Longford v. Eyre*, 1 P. Wms. 741); but, probably, a wider meaning would be given to the phrase "PURPORTING to be a Will," if the document relied on is entire (*Gullan v. Grove*, 26 Bea. 64).

Business of a "Like Nature"; *V. LIKE.*

Goods of a "Like" Nature; *V. SIMILAR.*

Act of Parliament of a "Local and Personal Nature"; *V. LOCAL ACT OF PARLIAMENT.*

Book or Document of a "Public Nature"; *V. PUBLIC BOOK; PUBLIC DOCUMENT.*

**NAVAL ENLISTMENT.** — "The Naval Enlistment Acts, 1835 to 1884"; *V. Sch 2, Short Titles Act, 1896.*

**NAVAL FORCES.** — *V. MILITARY FORCES.*

**NAVAL SERVICE.** — Quà Foreign Enlistment Act, 1870, 33 & 34 V. c. 90, " 'Naval Service' shall, *as respects a Person*, include, service as a Marine, employment as a Pilot in piloting or directing the course of a Ship of War or other Ship when such Ship of War or other Ship is being used in any Military or Naval Operation, and any employment whatever on board a Ship of War, Transport, Store-ship, Privateer or Ship under Letters of Marque; and, *as respects a Ship*, include, any user of a ship as a Transport, Store-ship, Privateer or Ship under Letters of Marque" (s. 30). "Naval Service of a FOREIGN State," s. 8 (4), of that Act, does not merely mean a service in or directly connected with some warlike naval operation, but includes, *e.g.* the employment of an English tug to tow a prize to the captor's waters (*R. v. Elliott, The Gauntlet*, 41 L. J. Adm. 65; nom. *Dyke v. Elliott*, L. R. 4 P. C. 184). *Cp.* **MILITARY SERVICE.**

**NAVIGABLE.** — Land may properly be said to be covered with "Navigable" Water although, at different times of short duration, dry portions of the land may be seen. When, however, such portions of the land are dry for days together, this excludes the notion of navigability. The legal and technical meaning of "Navigable," requires not only that

navigation should be possible, but also that there should be ebb and flow of the tide (*Ilchester v. Raishley*, 38 W. R. 104; 61 L. T. 477). *V. EBB AND FLOW.*

But, *semble*, "Navigable RIVER, in the United States, does not connote Ebb and Flow but rather means, a River which, in its natural state and ordinary volume of water, is capable of and suited to the usual purposes of navigation by such vessels as are ordinarily employed for the purpose of transporting merchandize or other goods (*Sigler v. The State*, 7 Baxter, 496; *The Daniel Ball*, 10 Wallace, 563); so, of "Navigable STREAM" (*Morgan v. King*, 35 N. Y. 459). In the United Kingdom, "the authorities seem to demonstrate that a 'Navigable River' in which the public have a general right to fish, must be a TIDAL RIVER in which the Sea ebbs and flows" (per O'Hagan, J., *Murphy v. Ryan*, Ir. Rep. 2 C. L. 149, 150).

"Navigable THING," means, a thing capable of being navigated, including one only temporarily disabled (*Chandler v. Blogg*, cited COLLISION).

"Navigable WATERS"; *V. NAVIGATION: Commonwealth v. Vincent*, 108 Mass. 447.

**NAVIGATED.** — "Worked and Navigated"; *V. WORKED.*

**NAVIGATING.** — *V. NAVIGATION.*

"Navigating" steamboat "on the River"; *V. Rolles v. Newell*, cited WORKED.

**NAVIGATING WITHIN.** — "The words 'Navigating within' in the Mer Shipping Act, 1854, s. 379 (repld, s. 625, Mer Shipping Act, 1894), mean, 'BEING within'; and, therefore, a vessel belonging to the Port of London, not carrying passengers and coming from the west, is not bound to employ a licensed pilot when she is within the limits of the Port of London" (1 Maude & P. 278, citing *The Stettin*, Brown & Lush. 199; 31 L. J. P. M. & A. 208). In that case Dr. Lushington said, — "Though I do not deny that the word, 'Navigating,' alone, is a doubtful expression, yet, coupled with the word 'within,' it appears to me to negative voyages beyond the limits, and to be confined to those within the limits." *Vf, General Steam Nav. Co v. British & Colonial Steam Nav. Co*, 37 L. J. Ex. 194; 38 Ib. 97; L. R. 3 Ex. 330; 4 lb. 238.

**NAVIGATION.** — "Navigation," is, "the science or art of conducting a ship from one place to another. This includes the supply of necessary implements and skilful mariners. The instruments are useless without the skilful mariners, and conversely, navigation includes two things, — the supply of the instruments or organs of the ship, and the

living instruments, or seamen. If either of these is wanting by the negligence of the owner, or of those for whom he is responsible, there is Improper Navigation" (per Fry, L. J., *The Warkworth*, 53 L. J. P. D. & A. 66; 9 P. D. 145: *Vf, Good v. London S. S. Assn*, L. R. 6 C. P. 563; 20 W. R. 33: *Carmichael v. Liverpool Sailing-Ship Assn*, cited IMPROPER NAVIGATION).

"Cases have decided that the word 'Navigation,' for some purposes, includes a period when the ship is not in motion; as, for instance, when she is at anchor" (per Denman, J., *Hayu v. Culliford*, 3 C. P. D. 417; 47 L. J. C. P. 759; affd, 4 C. P. D. 182; 48 L. J. C. P. 372).

#### V. WORKED.

Canting over in port is a "Danger or Accident of Navigation" (*Laurie v. Douglas*, 15 M. & W. 746); so, damage "caused by the bad navigation of another ship, is a 'Danger of Navigation.' Where, however, the loss is brought about by the ship-owner's own servants, that is not a 'Danger of Navigation,' for the danger there is a danger arising from the ship-owner having employed inefficient or negligent servants" (per Esher, M. R., *Garston Co v. Hickie*, 56 L. J. Q. B. 40; 18 Q. B. D. 17; 55 L. T. 879; 35 W. R. 33). V. STEAM NAVIGATION.

"FAULTS or Errors in NAVIGATION," primarily applies "to faults or errors in sailing the Vessel DURING the voyage" (per Kay, L. J., *Dobell v. S. S. Rossmore Co*, 1895, 2 Q. B. 408; 64 L. J. Q. B. 777: *Va, The Accomac*, 59 L. J. P. D. & A. 91; 15 P. D. 208: 63 L. T. 118; 39 W. R. 133: *Sc, The Carron Park*, 59 L. J. P. D. & A. 74; 15 P. D. 203: *The Southgate*, 1893, P. 329: *The Glenochil*, 1896, P. 10; 65 L. J. P. D. & A. 1; 73 L. T. 416). V. MANAGEMENT: NEGLIGENCE OR DEFAULT OF MASTER OR MARINERS.

"Vessel used in Navigation," s. 2, Mer Shipping Act, 1854; V. SHIP.

"Navigation," as used in 7 & 8 G. 4, c. lxxv, "seems to be used as synonymous with rowing" (per Coleridge, J., *Tisdell v. Combe*, 7 L. J. M. C. 48).

The (Dominion) "Act respecting certain works constructed in or over NAVIGABLE Waters" (1886), Revised Statutes of Canada, c. 92, is clearly Legislation relating to "Navigation," within s. 91, British North America Act, 1867 (*A-G. Canada v. A-G. Ontario*, cited EXCLUSIVE).

"Navigation," sometimes connotes an INCORPOREAL HEREDITAMENT; *V. R. v. Aire & Calder Navigation*, 9 B. & C. 820; 4 M. & R. 728; 8 L. J. O. S. M. C. 9. Sometimes it is synonymous with CANAL.

V. IMPROPER NAVIGATION: NAVIGATED: NAVIGATING: NEGLECT OR DEFAULT: PERIL OF THE SEA: DANGERS.

**NEAP.** — "Ordinary Tides or Nepe Tides" are used by Ld Hale as synonyms (per Cranworth, C., *A-G. v. Chambers*, cited SHORE).

Exception of "Neaps" in a Charter-Party; *V. Allerton Co v. Falk*, 6 Asp. 287.

**NEAR.**—“ ‘Near’ has no precise meaning ” (per Pollock, C. B., *Chamberlaine v. Chester, &c, Ry*, 18 L. J. Ex. 494; 1 Ex. 870).

By 1 G. 4, c. liii, a Toll was imposed on the exported coals of any Colliery “near the River Tyne”; a Colliery 10 miles from Tyne is within that provision (*Tyne Keelmen v. Davison*, 16 C. B. N. S. 612).

“In or near,” in the Grant of a Market; *V. A-G. v. Horner*, 54 L. J. Q. B. 227; 55 Ib. 193; 14 Q. B. D. 245; 11 App. Ca. 66. In his judgment in that case, Brett, M. R., is reported (54 L. J. Q. B. 230) to have said, — “A distinction was attempted to be drawn between the words ‘next’ and ‘near’; but I can see none”; *See, R. v. Harvey*, 1 Bl. W. 19; and as “Next” is synonymous with NEAREST, can it also be said that “near” is the equivalent of “nearest”?

“In or near the Parish or Division,” 43 Eliz. c. 2, is directory (*R. v. Loxdale*, 1 Burr. 447).

“As near as”; *V. SO FAR AS*.

*V. AT OR NEAR: IN SIVE JUXTA: ON OR NEAR.*

“Too near”; *V. TOO*.

*V. NEXT*.

**NEAR RELATIONS.**—*V. RELATIONS.*

Quà Allotment Notes under Mer Shipping Act, 1894, “ ‘Near Relative,’ means, one of the following persons, viz., the WIFE, FATHER, Mother, Grandfather, Grandmother, CHILD, Grandchild, Brother, or Sister, of the SEAMAN ” (s. 141, subs. 4).

*V. NEAREST.*

**NEAR THERETO AS SHE MAY SAFELY GET.**—“It appears from *Parker v. Winklo* (27 L. J. Q. B. 49; 7 E. & B. 942), *Bustifell v. Lloyd* (31 L. J. Ex. 413; 1 H. & C. 388; 10 W. R. 721), and *Dahl v. Nelson* (50 L. J. Ch. 411; 12 Ch. D. 568; 6 App. Ca. 38) that when the Charter-Party provides that a ship shall go to a harbour named, or ‘as near thereto as she can safely get,’ — the primary object is to get to the place named, and the alternative condition does not arise unless the cause which prevents the immediate arrival of the ship at the place named, is such that it cannot be got rid of by the ship-owner by reasonable means and within a reasonable time, having regard to the nature and object of the voyage; and further, that if the cause of detention be the arrival of the vessel during the low tides, her having to wait for the tides to increase is one of the ordinary incidents of navigation, and the ship-owner must submit to the delay so occasioned” (per North, J., *Horsley v. Price*, 52 L. J. Q. B. 605; 11 Q. B. D. 244: *Vf, Schilizzi v. Derry*, 24 L. J. Q. B. 193; 4 E. & B. 873; *Shield v. Wilkins*, 19 L. J. Ex. 238; 5 Ex. 305; *Metcalf v. Britannia Co*, 46 L. J. Q. B. 443; 2 Q. B. D. 423; *The Alhambra*, 50 L. J. P. D. & A. 36; 6 P. D. 68; *Castel v. Trechman*, 1 Cab. & El. 276; 1 Maude & P. 296, 317, 320, n. f). “The words ‘as near thereto as she can safely get,’ must receive

a reasonable, and not a literal, application" (per Pollock, B., *Nielsen v. Wait*, 14 Q. B. D. 522; *affd* 16 Q. B. D. 67). *Vf*; *Whitwell v. Harrison*, cited *PORT: Capper v. Wallace*, 49 L. J. Q. B. 350; 5 Q. B. D. 163, *Sethe*, per Day, J., *Reynolds v. Tomlinson*, 65 L. J. Q. B. 499; *Pyman v. Dreyfus*, 24 Q. B. D. 152; 59 L. J. Q. B. 13; *Nobel Co v. Jenkins*, cited *RESTRAINTS OF KINGS: Jaques v. Wilson*, 7 Times Rep. 119; *Milverton S. S. Co v. Cape Town Gas Co*, 13 Ib. 548.

V. ALWAYS AFLOAT: AT ALL TIMES OF TIDE: SAFE PORT: SUFFICIENT WATER.

**NEARER.**—In estimating whether a proposed new Highway is "nearer" than an old one which is proposed to be diverted (s. 89, Highway Act, 1835), "nearer" does not mean nearer as between two arbitrary points, but as between the terminus *à quo* and the terminus *ad quem*, — *i.e.* the point where the proposed diversion begins, and the point where it ends (*R. v. Shiles*, 10 L. J. M. C. 157; 1 Q. B. 919; *vthe*, dissented from *R. v. Phillips*, L. R. 1 Q. B. 648).

**NEAREST.**— "Nearest" is synonymous with *NEXT* (*Smith v. Campbell*, 19 Ves. 400). In *Griffiths v. Evan* (11 L. J. Ch. 219; 5 Bea. 241), a Power of Appointment of realty to the "Nearest Family" of the donee of the Power, was held to mean his heir-at-law.

"Nearest of Blood," "Nearest of Kin"; V. *NEXT OF KIN: NAME.* "Nearest of Kindred," with reference to the Statute of Distribution, is synonymous with "Next of Kin" (*Markham v. Ivatt*, 20 Bea. 579).

"Nearest of Kin in the Male Line, in preference to the Female Line"; V. *MALE LINE.*

A Public Ferry (even though useable on payment of a Toll, *e.g.* at Southampton Water) is a Public Thoroughfare; and where a Ferry intervenes between a person's house and a Public-house at which he gets Exciseable Liquor on a Sunday, the distance across the Ferry has to be measured as the "Nearest PUBLIC THOROUGHFARE" for the purpose of ascertaining whether he was a *bonâ fide* Traveller when obtaining the liquor (*Coulbert v. Troke*, cited *TRAVELLER*); so, a Navigable ARM of the Sea, though not crossed by a Ferry, is a "Public Thoroughfare" within that enactment (*Parker v. The Queen*, 1896, 2 I. R. 404).

"Nearest Relation" of a particular Stock; V. *Pyot v. Pyot*, 1 Ves. sen. 335: *NAME.*

"Nearest Relations": V. *RELATIONS: NEAR RELATIONS.*

"Nearest Relative in the Male Line"; V. *Woolmore v. Burrows*, 1 Sim. 529.

"Nearest and Most Deserving Male Cousin, and a regular Power of the Family"; V. *Power v. Quealy*, 2 L. R. Ir. 227; 4 Ib. 20.

Nearest "Common SEWER," s. 61, 11 & 12 V. c. clxiii., means, the one

practicably nearest, not the one literally nearest (*Bathard v. London Sewers Commrs*, 54 J. P. 135).

V. NEAR: NEXT OF KIN.

**NEARLY AS POSSIBLE.** — “As nearly as possible,” *e.g.* in a Charter-Party “as nearly as possible a Steamer a month,” is only an approximate phrase (per Lindley, L. J., *Potter v. Burrell*, 66 L. J. Q. B. 63; 1897, 1 Q. B. 97; 75 L. T. 491).

**NEARLY EQUAL.** — “Nearly equal to Freehold,” — as to the effect of this representation on the sale of Leaseholds; *V. Fenton v. Browne*, 14 Ves. 144; Dart, 110.

**NEATLAND.** — “‘Neatland,’ *terra villanorum*, is land let or granted out to the Yeomanry” (Cowel).

**NECESSARIES.** — “Necessaries,” in a Master’s covenant in an *Apprentice Indenture*, includes Clothing and Washing (*Abbott v. Bates*, 45 L. J. C. P. 117); and in that case it was found that there was no custom with Horse Trainers giving the word a restricted meaning, and, held, that had there been such a custom it would be inapplicable because inconsistent with the terms of the contract.

The “Necessaries” for which an *Infant* may contract liability are not confined to such articles as are necessary for the support of life; but extend to such articles as are reasonably fit to maintain the particular person in his state, station, and degree (Add. C. 382, 383, and cases there cited), and are suitable to his fortune and circumstances (*Rose*, N. P. 666, and cases there cited); and (among such circumstances) regard must be had as to whether he was already sufficiently supplied with the kind of article in respect of which the liability was contracted (*Barnes v. Toye*, 53 L. J. Q. B. 567; 13 Q. B. D. 410; 33 W. R. 15; *Johnstone v. Marks*, 35 W. R. 806; 19 Q. B. D. 509; 57 L. J. Q. B. 6). “Likewise, his good teaching or instruction, whereby he may profit himself afterwards” (Co. Litt. 172 a), *e.g.* a covenant in an Apprenticeship Indenture (*Walter v. Everard*, 1891, 2 Q. B. 369; 60 L. J. Q. B. 738; 65 L. T. 443; 39 W. R. 676; 55 J. P. 693; *Vh. TURN OUT*) is an Infant’s Necessary; and so, probably, of “Literary Instruction likely to lead to success in a learned profession” (per Fry, L. J., *Ib.*). But, *semble*, the employment of an agent to obtain an engagement at a Music Hall, is not a Necessary (*Lofthouse v. Brown*, W. N. (98) 52). A Racing Bicycle, partly used for exercise and costing £12:10:0, held by a Co. Co. Judge as a Necessary for an apprentice to a scientific-instrument maker, receiving 21s. a week, a finding which the Divisional Court (*Russell, C. J.*, and *Ridley, J.*) refused to disturb (*Clyde Cycle Co v. Hargreaves*, 78 L. T. 296). A Bill or Note is not a Necessary, even

though given for Necessaries (*Re Soltzkoff*, 1891, 1 Q. B. 413; 60 L. J. Q. B. 339; 39 W. R. 337).

Quâ, and by, s. 2. Sale of Goods Act, 1893, "Necessaries" means, "goods suitable to the condition in life of such Infant or Minor or other person, and to his actual requirements at the time of the sale and delivery."

The "Necessaries" for which a *Husband* is liable, means such things as are necessary for the Sustenance or Protection of the Wife" (per Abinger, C. B., *Ladd v. Lynn*, 2 M. & W. 267), e.g. "Meat, Drink, Clothes, Physick, &c, suitable to the husband's degree, estate, or circumstances" (per Hale, C. J., *Manby v. Scott*, Bac. Ab. *Baron and Feme* (H), cited by Park, J., *Hunt v. De Blaquiére*, 5 Bing. 559; *Vf*, as to Clothes, *Shoolbred v. Baker*, 16 L. T. 359; *Jolly v. Rees*, 33 L. J. C. P. 177; 15 C. B. N. S. 628; 10 L. T. 299; 12 W. R. 473; *Debenham v. Mellon*, 6 App. Ca. 24; 50 L. J. Q. B. 155; 43 L. T. 673; 29 W. R. 141; *Bazeley v. Forder*, 37 L. J. Q. B. 237; L. R. 3 Q. B. 559; 18 L. T. 756, on *whlec*, *Mecredy v. Taylor*, Ir. Rep. 7 C. L. 256:—As to Physic, *V. Harrison v. Grady*, 14 W. R. 139; 13 L. T. 369; *Beale v. Arabin*, 36 L. T. 249).

A House to live in and Furniture therefor (instead of furnished lodgings) may be a Wife's "Necessaries" (*Hunt v. De Blaquiére*, sup).

The Costs of Legal Proceedings necessary for a Wife's protection against her husband's Violence or Misconduct, are "Necessaries" (per Deasy, B., *Mecredy v. Taylor*, sup, citing *Shepherd v. Mackoul*, 3 Camp. 326); but that does not include costs of a Prosecution against him for an Assault (*Grindell v. Godmond*, 5 A. & E. 755), or of a Defence to his application for a *Habeas Corpus* to recover possession of his child (*Mecredy v. Taylor*, sup), or the costs of a Separation Deed (*Ladd v. Lynn*, sup); but it does include the legal expenses of a Deserted Wife (1) preliminary and incidental to a suit for Restitution of Conjugal Rights, (2) in obtaining counsel's opinion on an ante-nuptial agreement for a Settlement, (3) in obtaining professional advice as to dealing with pressing tradesmen and as to avoiding a distress (*Wilson v. Ford*, L. R. 3 Ex. 63; 37 L. J. Ex. 60; 17 L. T. 605; 16 W. R. 482).

*Note.* A wife's authority to pledge her husband's credit for "Necessaries" ceases if she ELOPES (*Todd v. Stokes*, 1 Raym. Ld, 444), or generally and where there is no DESERTION, if he revokes such authority (*Jolly v. Rees* and *Debenham v. Mellon*, sup). *Vf*, Lush on Husband and Wife, 2 ed., 351-353.

*Shipping Necessaries* :—

"The general rule is, that the Master may bind his Owners for necessary repairs done, or supplies provided, for the ship. It was contended that this liability of the owners was confined to what was absolutely necessary. I think that rule too narrow, for it would be extremely difficult to decide, and often impossible in many cases, what is absolutely necessary. If, however, the jury are to enquire only what is necessary,



there is no better rule to ascertain that, than by considering what a prudent man, if present, would do under circumstances in which the agent, in his absence, is called upon to act. I am of opinion, that whatever is fit and proper for the service on which a vessel is engaged, whatever the owner of that vessel as a prudent man would have ordered, if present at the time, comes within the meaning of the term 'Necessary,' as applied to those repairs done or things provided for the ship by order of the Master for which the Owners are liable" (per Abbott, C. J., *Webster v. Seekamp*, 4 B. & Ald. 354).

"The expression 'Necessaries Supplied' in 3 & 4 V. c. 65, s. 6, which gave the Admiralty Court jurisdiction over foreign ships, though it is not to be restricted to things absolutely and immediately necessary for a ship in order to put to sea (*The Perla*, Swabey, 354), must still be confined to things directly belonging to the ship's equipment necessary at the time, and under the existing circumstances, for the service on which the ship is engaged (*The Alexander*, 1 Rob. W. 361). But the insurance of a vessel is something quite extraneous to its equipment for sea; and however prudent it may be for an owner to insure, it is prudence exercised for his own protection, and not for the requirements of the vessel, which is the sense in which the word 'Necessaries' is used in the statute" (per Hannen, P., *The Henrich Bjorn*, 52 L. J. P. D. & A. 84; 8 P. D. 151; revd on app. without, *semble*, affecting the dictum just cited, 10 P. D. 44; 11 App. Ca. 270; 54 L. J. P. D. & A. 33; 55 Ib. 80).

"I shall hold that 'Necessaries' means primarily, indispensable Repairs, — Anchors, Cables, Sails, when immediately necessary; and also Provisions; but, on the other hand, does not include things required for the Voyage, as contra-distinguished from things necessary for the ship" (per Dr. Lushington, *The Comtesse de Frègécille*, Lush. 332). The latter part of this definition was not followed by Sir R. Phillimore in *The Riga* (41 L. J. Adm. 39; L. R. 3 A. & E. 516), where he held (citing opinion of Abbott, C. J., sup), that there was no distinction between Necessaries for the Ship and Necessaries for the Voyage.

Coals and a Screw Propeller, for a steamer, are Necessaries (*The West Friesland*, Swabey, 454; *The Flecha*, 1 Spinks, 441), so is Insurance of Freight and, *semble*, Brokerage Charges (*The Riga*, sup); *seens*, of Brokerage Charges on a Charter-Party for a future voyage (*The Marianne*, 1891, P. 180; 60 L. J. P. D. & A. 39; 64 L. T. 539), or expenses of witnesses (*The Bonne Amélie*, L. R. 1 A. & E. 19; 35 L. J. Adm. 115; *Va. Gunn v. Roberts*, L. R. 9 C. P. 331; 43 L. J. C. P. 233), or payments for Averages (*The Aaltje*, L. R. 1 A. & E. 107).

*Vf*, 1 Maude & P. 99, 157; Abbott, Part 2, ch. 3: 9 Encyc. 73-77: DISBURSEMENTS: NECESSARY.

**NECESSARILY.** — Moneys "necessarily" expended in the performance of Duties; *Vf*. WHOLLY.

Justices' Clerks Fees, held "Expenses necessarily INCURRED" in carrying out 5 & 6 W. 4. c. 76. within s. 92. *Ib.* (*R. v. Gloucester*, 13 L. J. Q. B. 233; 5 Q. B. 862); so, of repairs to a Corporation Pew in the Parish Church (*R. v. Warwick*, cited BUILDING, towards end); but not the Costs of opposing a Water Bill in Parliament, or such like (*R. v. Sheffield*, 40 L. J. Q. B. 247; L. R. 6 Q. B. 652; nom. *Roberts v. Sheffield*, 24 L. T. 659). *Vf.* "Rights, Privileges, and Duties," sub RIGHTS.

A Damage "necessarily resulting" from Works by a Local Authority, includes, damage resulting from their defective construction of such works, if such construction were adopted in the *bonâ fide* exercise of their powers (*Raleigh v. Williams*, 1893, A. C. 540; 63 L. J. P. C. 1; 69 L. T. 506).

**NECESSARY.**—It may, probably, as a general rule be broadly stated that those things are "Necessary" to the doing of a thing which are reasonably required, or legally ancillary, to its accomplishment (*J. Jdgmt Pollock, C. B., A-G. v. Walker*, 18 L. J. Ex. 179; 3 Ex. 242); but in that case Parke, Alderson, and Rolfe, BB. (diss. Pollock, C. B.), held, that the exemption from the then duty on bricks (given by s. 18, 2 & 3 V. c. 24) if used "in constructing the Necessary Drains, Gouts, Culverts, Arches, and Walls, of the brickwork proper, and necessarily required, for effecting and maintaining the Drainage" of wet and marshy lands, included only such bricks as were absolutely and physically necessary in the very works of Drainage, and did not include bricks used in works which would not have been needed but for the Drainage, *e.g.* parapets to protect highways alongside which drains ran, or bridges to carry highways over drains.

"Necessary and convenient"; *V.* CONVENIENT.

"Necessary Apparatus"; *V.* REGULATE.

An obligation of a Ry Co (on buying land which effects a severance of the vendor's property) to provide "Necessary Approaches," connotes that the Approaches shall be convenient and proper (*Saulterson v. Cocker-mouth Ry*, inf: *Lytton v. G. N. Ry*, 2 K. & J. 394). *V.* APPROACH.

A Ry Co which buys land only to be used for the construction of "a Station-house, and other Works and Conveniences Necessary and CONVENIENT for passenger and goods TRAFFIC," may devote a reasonable part of it as gardens for their Station Master and Porters, or for sheds for their Customers (*Harris v. Lond. & S. W. Ry*, 60 L. T. 392).

A necessary *Easement* is one necessary for the enjoyment of the property as it stood at the time when such property was acquired under the title in virtue of which the easement is claimed (*Pyer v. Carter*, 1 H. & N. 916; 26 L. J. Ex. 258, commented on in *Morland v. Cook*, L. R. 6 Eq. 252; dissented from in *Wheeldon v. Burrows*, 12 Ch. D. 31; and approved in *Watts v. Kelson*, 6 Ch. 166: *Vf.* MAINTAIN: (as to Light)

*Corbett v. Jonas*, 1892, 3 Ch. 137; 62 L. J. Ch. 43; Gale on Easements, 5 ed., 131; Elph. 189, 190). *Cp.* APPARENT EASEMENT.

"Expenses (if any) necessary to maintain hereditaments in a state to command such rent," in definition of "ANNUAL VALUE," s. 1, 6 & 7 W. 4, c. 96, include Drainage Works for a Farm (*R. v. Gainsborough*, 41 L. J. M. C. 1; L. R. 7 Q. B. 64): as regards Tithe Rent-Charge. *V. St. Asaph (Dean) v. Llanchaiadr-yu-Morhnant*, 1897, 1 Q. B. 511; 66 L. J. Q. B. 267; 76 L. T. 42; 45 W. R. 374; 61 J. P. 213, following *R. v. Goodchild*, 27 L. J. M. C. 233; E. B. & E. 1.

"With regard to that expression 'Necessary Implication,' I will repeat what I have before stated from a note of Ld Hardwicke's judgment in *Coryton v. Helyar* (2 Cox Ch. 348), that, in construing a Will, Conjecture must not be taken for Implication; but 'Necessary Implication,' means, not Natural Necessity but, so strong a Probability of Intention that an intention contrary to that which is imputed to the testator cannot be supposed" (per Eldon, C., *Wilkinson v. Adam*, 1 V. & B. 466; *Vf. Wykham v. Wykham*, 18 Ves. 421; *Key v. Key*, 22 L. J. Ch. 647; 4 D. G. M. & G. 85). Citing this dictum, Ld Chelmsford (*Hill v. Crook*, 42 L. J. Ch. 711; L. R. 6 H. L. 276, 277) said, the words "Natural Necessity" "are, perhaps, not happily chosen, but I understand them to mean, that the intention need not be expressed in language which is, necessarily, susceptible of only one interpretation, but that it is sufficient if it is indicated in a way that excludes the probability of an opposite intention having existed in the mind of the testator." Quà Acts of Parliament, "I take a 'Necessary Implication' to be, not guess nor probability but, an inference which by no reasonable INTENDMENT can be otherwise. It is a state of things excluding any reasonable conclusion but the one" (per Ball, J., *Dickson v. Pape*, 7 Ir. L. R. 123). *Vf. Andrew v. Andrew*, cited DEFAULT. *Cp.* JUDICIAL PERSUASION: PRESUMPTION.

"By 'Necessary INTENDMENT' I do not mean that the words used can by no possibility be misinterpreted or perverted"; if a particular meaning is conveyed to a rational mind, there is a Necessary Intendment in favour of such meaning (per Erle, J., *R. v. Anderson*, cited SERVED).

An exception, in a contract for sale of an estate, of "Necessary Land for making a Railway," renders the contract void for uncertainty (*Peacock v. Watts*, 44 L. J. Ch. 492; L. R. 20 Eq. 492).

"Necessary and Legal Measures"; *V.* LEGAL MEASURES.

A fund applicable to the "Reparations, Ornaments, and other Necessary Occasions," of a Parish Church may be applied (probably under either of the words "Reparations" or "Ornaments," and certainly under "Necessary Occasions") in the building of a spire to the Church, although the Church has not previously had a spire (*Re Palatine Estate Charity*, 39 Ch. D. 54; 36 W. R. 732; 57 L. J. Ch. 751; 58 L. T. 925; 4 Times Rep. 499). So, a gift for the "Reparation" of a building may

be applied in erecting a new one (*A-G. v. War Chandlers' Co*, L. R. 6 H. L. 1; 42 L. J. Ch. 425; 28 L. T. 681; 21 W. R. 361).

"Necessary *Outgoings*" deductible from the annual value of a Succession (s. 22, 16 & 17 V. c. 51) means, "permanent charges made on the occupier of the property, — such as repairs, poor rates, highway sewer and county rates, drainage-rates, and the like"; but Income Tax or Commission to agent is not included (*Re Elwes*, 28 L. J. Ex. 46; 3 H. & N. 719; *Re Cowley*, L. R. 1 Ex. 288). *V. OUTGOING.*

"Necessary or Proper Party," R. 1 (*g*), Ord. 11, R. S. C.; The party to be served hereunder if "proper," need not also be "necessary" (*Sykes v. Scholfield*, 28 S. J. 477); but he must be a real, and not a mere dummy, defendant (*Witted v. Galbraith*, 1893, 1 Q. B. 433, 577; 62 L. J. Q. B. 248; 68 L. T. 421; 41 W. R. 395). *Vh, Massey v. Heynes*, 57 L. J. Q. B. 521; 21 Q. B. D. 330; 36 W. R. 834; *Williams v. Cartwright*, 1895, 1 Q. B. 142; 64 L. J. Q. B. 92; 71 L. T. 834; 43 W. R. 145; *The Elton*, 1891, P. 265; 60 L. J. P. D. & A. 69; 65 L. T. 232; 39 W. R. 703; *Boutree v. Great N. W. Central Ry*, 14 Times Rep. 448; Ann. Pr. A "Necessary" Party may get Costs when, if he were only a "Proper" Party, he would not (*Merry v. Pownall*, 1898, 1 Ch. 306; 67 L. J. Ch. 162; 78 L. T. 146).

"Necessary or Usual" Powers, in a Mining Lease; *V. Morris v. Rhydydefed Co*, cited USUAL.

"Necessary for the Purposes of Justice," R. 5, Ord. 37, R. S. C.; *V. Re Mysore Mining Co*, 58 L. J. Ch. 731; 42 Ch. D. 535; 61 L. T. 453; 37 W. R. 794; *Re Shaw and Ronaldson*, cited IRREVOCABLE.

"Necessary," in the phrase "Necessary Repairs," neither adds to nor takes away from the meaning (per Jessel, M. R., *Truscott v. Diamond Rock Co*, 51 L. J. Ch. 260; 20 Ch. D. 251); but in the same case, Brett, L. J., said, "I think the phrase must mean, All such Repairs as would be necessary to enable the landlord to hand over the property to a new tenant in substantial and TENANTABLE REPAIR."

Necessary Repairs to a Ship; *V. NECESSARIES.*

Necessary Sale of Cargo by a Master of a Ship; *V. Australasian Nav. Co v. Morse*, cited NECESSITY.

"Necessary Wayleave"; *V. WAY.*

"Necessary for the beneficial Winding-up" of a Co, s. 95, Comp Act, 1862; *V. Re Wreck Recovery Co*, 15 Ch. D. 353; 43 L. T. 190; 29 W. R. 266.

"Necessary Work connected therewith." s. 46, Ry. C. C. Act, 1845; *V. Waterford Ry v. Kearney*, 12 Ir. C. L. Rep. 224; *City & S. London Ry v. London Co. Co.*, inf.

The power given by s. 96, P. H. Act, 1875, enabling justices to order the doing of Works "necessary" for the abatement of a nuisance, does not extend "to whatever the Local Sanitary Authority thinks necessary" (per Stephen, J., *Ex p. Whitchurch*, 50 L. J. M. C. 42; 6 Q. B. D. 545);

and accordingly it was there held that an Order to supply a particular kind of closet was bad (*V. SUFFICIENT PRIVY*). But an Order to do such specified things as may be necessary to prevent the recurrence of the nuisance, — *e.g.* to remove a closet from the middle to the outside of a house, or specifying the works necessary to be done to abate a nuisance, — is within the power (*Ex p. Saunders*, 52 L. J. M. C. 89; 11 Q. B. D. 191; *R. v. Llewellyn*, 13 Q. B. D. 681; 55 L. J. M. C. 9; *R. v. Kent*, 55 L. J. M. C. 9; 49 J. P. 404; *Whitaker v. Derby*, 55 L. J. M. C. 8); and, indeed, unless the Order does specify what is required to be done it will be bad (*R. v. Wheatley*, 55 L. J. M. C. 11; 16 Q. B. D. 34; 54 L. T. 680; 34 W. R. 257; 50 J. P. 424), and that applies where the proceedings are under s. 105 (*R. v. Horrocks*, 82 L. T. 767; 69 L. J. Q. B. 688; 64 J. P. 661).

“Necessary” Works, s. 46, P. H. Act, 1848; *V. Scunston v. Twickenham*, 48 L. J. Ch. 623; 11 Ch. D. 838.

“Necessary Works of Repair,” s. 3, Metrop Man. Act, 1890, 53 & 54 V. c. 66, are such as are necessary in the opinion of the Local Authority (*Stroud v. Wandsworth Bd*, 1894, 2 Q. B. 1; 63 L. J. M. C. 88; 70 L. T. 190; 58 J. P. 652: *Vthe* per Kay, J., *Metrop District Ry v. Fulham*, 65 L. J. Q. B. 32). *Sp. R. v. Marsham*, 1892, 1 Q. B. 371; 61 L. J. M. C. 52; 65 L. T. 778; 40 W. R. 84; 56 J. P. 164.

The Surveyor is the proper person to determine what Sewers and Water Mains are “necessary” under ss. 16, 54, P. H. Act, 1875 (*Lewis v. Weston-super-Mare*, 58 L. J. Ch. 39; 40 Ch. D. 55; *whv*, for a discussion of “Necessary” in this connection).

“Necessary” Works for supplying Water; *V. SUPPLY*.

A contractual right to demand such things as “may be necessary,” “must receive a reasonable interpretation having regard to the circumstances and situation of both sides” (per Langdale, M. R., *Sanderson v. Cockermouth Ry*, 11 Bea. 497; 7 Ry. Ca. 613, 617, cited *Lewis v. Weston-super-Mare*, sup).

Where a party has a contractual right to demand such things as he may “think necessary,” — *e.g.* to ask for further proof or information, — this does not enable him to act capriciously, it only embraces such things as he may reasonably require (*Braunstein v. Accidental Insree*, 31 L. J. Q. B. 17; 1 B. & S. 782).

An act is not “necessary” within s. 16, Ry C. C. Act, 1845, merely because it would be economical to the Company or its Contractor (*R. v. Wycombe Ry*, L. R. 2 Q. B. 310; 36 L. J. Q. B. 121; *Fenwick v. East London Ry*, L. R. 20 Eq. 544; 44 L. J. Ch. 602; 23 W. R. 901; *Pugh v. Golden Valley Ry*, 12 Ch. D. 274; 15 lb. 330; 28 W. R. 44; *Morris v. Tottenham Ry*, 1892, 2 Ch. 47; 61 L. J. Ch. 215; *A-G. v. Metrop Ry*, 1894, 1 Q. B. 390). *Vf*, as to this section generally, *Emsley v. N. E. Ry*, 1896, 1 Ch. 418; 65 L. J. Ch. 385; 74 L. T. 113. “Necessary” work, in this and such like provisions, means, Necessary, in the honest

and *bonâ fide* judgment of the undertakers, for the Undertaking or Works which the statute authorizes (*City and S. London Ry v. London Co. Co.*, 1891, 2 Q. B. 513; 60 L. J. M. C. 149; 65 L. T. 362; 40 W. R. 166; 56 J. P. 6). *V.*; REQUIRED.

“Necessary to be dug or carried away or used,” s. 77, Ry C. C. Act, 1845; *V.* per Fry, J., *Loosemore v. Tiverton Ry*, 51 L. J. Ch. 574, 575; 22 Ch. D. 33, 34; 30 W. R. 628; 47 L. T. 151; *Jamieson v. North Brit. Ry*, 6 Scot. L. R. 188.

“Necessary to make a *Separate Valuation*,” s. 76, 32 & 33 V. c. 67; *V. A-G. v. Westminster Chambers Assn*, 45 L. J. Ex. 886; 1 Ex. D. 469.

*V.* IF NECESSARY: NECESSITY: REASONABLY NECESSARY.

#### NECESSITOUS. — *V.* RELATIONS.

“‘Necessitous,’ does not, necessarily, mean persons in extreme poverty” (per Hawkins, J., *Cowen v. Kingston-upon-Hull*, cited ALMS).

**NECESSITY.** — Baking rolls on a Sunday is not a “Work of Necessity” within the exception in s. 1, Sunday Observance Act, 1677, 29 Car. 2, c. 7 (*Crepps v. Darden*, 2 Cowp. 640), nor is baking bread in the ordinary course of a baker’s business (*R. v. Younger*, 5 T. R. 451; *Va*, 34 G. 3, c. 61), nor is Shaving (*V. HOLIDAY*); but baking dinners for customers is (*R. v. Cox*, 2 Burr. 787; *R. v. Younger*, 5 T. R. 449). Whether haymaking (and indeed it should seem any other work not covered by authority) is of “necessity” is a question of fact on which the finding of Justices is conclusive (*R. v. Cleworth*, 4 B. & S. 927). *Vh*, PENALTY.

Necessity, justifying a Deviation in a Voyage; *V. Phelps v. Hill*, cited DEVIATION.

The “Necessity,” which justifies the Termination of a Voyage elsewhere than at the Port of Destination, must be “the occurrence of circumstances beyond the control of the contractors and such as renders the completion of the voyage, on the terms originally agreed upon, physically impossible or so clearly unreasonable as to be impossible in a business point of view” (per Lindley, J., *Hill v. Wilson*, 4 C. P. D. 333, 334; 48 L. J. C. P. 764; 41 L. T. 412).

“Necessity” which authorizes a Master of a Ship to sell cargo; *V. Australasian Nav. Co v. Morse*, L. R. 4 P. C. 222; 27 L. T. 357; 20 W. R. 728, criticized in *Atlantic Mutual Insree v. Huth*, 16 Ch. D. 474; 44 L. T. 67; 29 W. R. 387; *Vthe* and others compared and discussed, Abbott. 423-428. ◊

Natural Necessity; *V.* “Necessary Implication,” sub NECESSARY.

“Sudden and urgent Necessity”; *V.* SUDDEN.

*V.* IMPRACTICABLE: POSSIBLE.

AGENT of Necessity; *V.* per Parke, B., *Hautayne v. Bourne*, 7 M. &

W. 598; 10 L. J. Ex. 224: per Eyre, C. J., *Nicholson v. Chapman*, 2 Bl. H. 254; *Guilliam v. Twist*, 1895, 2 Q. B. 84; 64 L. J. Q. B. 474; 72 L. T. 579; 43 W. R. 566; 59 J. P. 484.

“Temporary Necessity”; *V. TEMPORARY.*

Way of Necessity; *V. WAY.*

**NECKLACES.** — Where a testatrix gave her “Necklaces of every description” to A. and her “Pearls” to B.; held, that a Pearl Necklace passed to A. (*A-G. v. Harley*, 5 Russ. 173; 7 L. J. O. S. Ch. 31). *V. JEWELS.*

**NEED.** — *V. IN CASE.*

**NEED NOT.** — This phrase does not mean “must not”; and therefore though by s. 1 (2), M. W. P. Act, 1882, a husband “need not” be joined in actions by or against his wife, yet he *may* be joined, especially so where the wife is a defendant in an action of tort (*Seroku v. Kattenburg*, 17 Q. B. D. 177; 55 L. J. Q. B. 375; 54 L. T. 649; 34 W. R. 542); and his liability for her tort remains, except where the tort is part and parcel of her own contract and is also the means of effecting (in the sense of obtaining) such contract (*Earle v. Kingscote*, 1900, 2 Ch. 585; 69 L. J. Ch. 725; 83 L. T. 377; 49 W. R. 3).

In such a phrase as “no further Particulars *need be* delivered,” “the words ‘need be’ rather suggest that the party may deliver other Particulars if he chooses” (per Campbell, C. J., *Fromant v. Ashley*, 1 E. & B. 725).

*V. MUST NOT.*

**NEEDFUL.** — *V. DO THE NEEDFUL.*

**NEGATIVE PREGNANT.** — “‘Negative pregnant’ is a Negative implying also an Affirmative” (Cowel).

“*Negativa pregnans*, is when an Action or Information, or such like, is brought against one, and the Defendant pleadeth in barre of the Action, or otherwise a negative Plee, which is not so speciall an answer to the Action but that it includeth also an affirmative: As for example; If a Writ of *entre en casu proviso*, brought by him in the reversion upon Alienation by the Tenant for Life supposing that he hath aliened in fee (which is a forfeiture of his estate) and the Tenant to the Writ saith, that he hath not aliened in fee, this is a Negative wherein is included an Affirmative: for although it be true that he hath not aliened in fee, yet it may be that he hath made an Estate in Tayle (which is also a forfeiture) and then the entrie of him in the reversion is lawfull, &c” (*Termes de la Ley*, which gives further examples). A simpler example is where plt claims (say) £100 for money lent, and deftd pleads that the plt did not lend him £100; that is a Negative Pregnant, for it denies the precise £100, but may imply that a greater or lesser sum was lent.

The phrase "Negative Pregnant" is preserved in the marginal note to R. 19, Ord. 19, R. S. C., which Rule (without itself using the phrase) forbids the pleading of a Negative Pregnant (*V. SPECIFIC*). The phrase was in use at least as long ago as the time of Henry IV (*V. margin Year Book, 2 H. 4, 18 b*). *Vh*, with a citation of several cases and examples, per Pollock, C. B., *Jones v. Jones*, 16 M. & W. 708, 709; 16 L. J. Ex. 301, 302.

**NEGLECT.** — To "neglect" doing, "is the omission to do some DUTY which the party is *able* to do" (per Patteson, J., *King v. Burrell*, 12 A. & E. 468), whether he gets a demand to do it, or not (*East London W. W. Co v. Kyffin*, 1895, 1 Q. B. 55; 64 L. J. M. C. 32; 71 L. T. 615; 59 J. P. 405); *e.g.* an Arbitrator not making his Award in due time (*Willoughby v. Willoughby*, 16 L. J. Q. B. 251; 9 Q. B. 923). *Cp.* OMISSION: OMIT.

A prisoner was convicted on an Indictment charging him with Neglect to provide food and clothing for his child, but omitting to allege ability; held, that the ability to provide was implied in the word "neglect" (*R. v. Ryland*, 37 L. J. M. C. 10; L. R. 1 C. C. R. 99).

A Solicitor does not "neglect" to apply for his Certificate, s. 25, Solrs Act, 1843, during the time he is under sentence of Suspension, because he could not then get it if he applied for it (*Anon.*, 80 L. T. 720; 47 W. R. 575).

A Gas Co does not "neglect or refuse" to supply gas, s. 36, 34 & 35 V. c. 41, when prevented from doing so by *vis major*, *e.g.* an extraordinary frost (*Re Richmond Gas Co and Richmond*, 1893, 1 Q. B. 56; 62 L. J. Q. B. 172; 67 L. T. 554; 41 W. R. 41; 56 J. P. 776: *Va, Blyth v. Birmingham W. W. Co*, cited NEGLIGENCE): *Cp.* REFUSAL.

So, a Poor Vicar does not, within a Forfeiture Clause, "neglect" to read Morning Prayer every Wednesday, Friday, and Holy-Day, if no one will come to hear him; in such a connection, "neglect" "amounts to a moral delinquency" (per Wood, V. C., *Re Conington*, 8 W. R. 445).

Mere Non-attendance (even for a long time) at Board Meetings is not Neglect in a Director of a Co (*Re Forest of Dean Co*, 10 Ch. D. 450: *Re Denham*, 25 Ib. 752); so, such non-attendance by a Trustee or Manager of a Savings Bank is not, of itself, "Neglect or Omission" within s. 11 (2), 26 & 27 V. c. 87 (*Re Cardiff Savings Bank*, 1892, 2 Ch. 100; 61 L. J. Ch. 357; 66 L. T. 317; 40 W. R. 538), *secus*, when coupled with irregularities of which he has knowledge or of which he ought to have knowledge or suspicion (*Ib.* 59 L. J. Ch. 450; 45 Ch. D. 537).

"Neglect," implicating a Ship or Boat in an offence against the Customs Acts, includes "cases where goods unowned by any of the crew, are discovered in a place or places in which they could not reasonably have been put if the RESPONSIBLE Officer or Officers having supervision of



such place or places had exercised proper care at the time of the loading of the ship or subsequently" (s. 3, 53 & 54 V. c. 56).

"Neglect to attend"; *V. ABSENT.*

Where there is a real dispute as to liability, a Co does not "neglect to pay" by not complying with a Demand under s. 80 (1), Comp Act, 1862 (*Re London and Paris Banking Corp*, L. R. 19 Eq. 444; 23 W. R. 643).

Where a Husband and Wife had parted for many years, and then the husband called at the wife's house and resumed COHABITATION for 2 or 3 days, about two months after which the wife went to the husband's house and asked for admission, but the husband sent her away saying, "Get thee home, and never come here again: go and drown thyself"; held, that he was guilty of WILFUL NEGLECT, causing his wife "to leave and live separately and apart from him" within s. 4, 58 & 59 V. c. 39 (*Snape v. Snape*, 64 J. P. 793): but how can a wife "leave" a home that she has relinquished and to which she has not been re-admitted? *V. CAUSE: Cp, SEPARATE: LIVING APART.*

*V. FORGETFULNESS: NEGLECT OR DEFAULT: REFUSAL: NON-USER.*

**NEGLECT OR DEFAULT.** — "A 'NEGLECT' and a 'DEFAULT' (in a Covenant for QUIET ENJOYMENT) seems to imply something more than the mere want of discretion with respect to the covenantor's own interests; something like the breach of a duty or legal obligation existing at the time; those words, in their proper sense, implying the not doing some act to secure his title which he ought to have done, and which he had the power to do; and the not preventing or avoiding some danger to the title which he might have prevented or avoided" (per Tindal, C. J., *Woodhouse v. Jenkins*, 9 Bing. 441, 442). *Vf, Sug. V. & P. 602-604.*

"Neglect or Default of Master"; *V. MASTER: NEGLIGENCE OR DEFAULT OF MASTER OR MARINERS.*

As to the construction of Exception from liability for PERILS OF THE SEA, even when caused "by the Neglect, Default, or Error in Judgment," of Pilot, Master, &c; *V. NEGLIGENCE: The Cressington*, 1891, P. 150: 60 L. J. P. D. & A. 25. *Cp, Shaw v. G. W. Ry* (cited Loss) on loss "occasioned by the Neglect or Default" of a Ry Co or its Servants.

**NEGLECT OR MISCONDUCT.** — *V. CONDUCE.*

**NEGLIGENCE.** — "Negligence" is not an affirmative word; "it is a negative word; it is the absence of such care, skill, and diligence, as it was the duty of the person to bring to the performance of the work which he is said not to have performed" (per Willes, J., *Grill v. General Iron Screw Collier Co*, 35 L. J. C. P. 330). *Cp, SKILL: ORDINARY CARE.*

"Negligence is the omitting to do something that a reasonable man

would do, or the doing something which a reasonable man would not do" (per Alderson, B., *Blyth v. Birmingham W. W. Co.*, 25 L. J. Ex. 212; 11 Ex. 781). Accordingly it was there held that a Water Works Co was not liable for injuries occasioned by one of its plugs bursting through an extraordinary frost. *Va, Re Richmond Gas Co and Richmond*, cited NEGLECT.

Where in a Bill of Lading, or Contract for Towage, the owners of the vessel contract themselves out of liability for "negligence or default" of themselves or their servants, they will be protected from the consequences of breaking any express statutory rule in the same way as they would be for the breach of the general law (*The United Service*, 52 L. J. P. D. & A. 18).

"Negligence," s. 1, Employers' Liability Act, 1880; *V. Wild v. Waygood*, 1892, 1 Q. B. 783; 61 L. J. Q. B. 391; 66 L. T. 309; 40 W. R. 501.

*Vh.* Beven on Negligence: Rose. N. P. 762 *et seq.*: 9 Encyc. 82-99.

CONTRIBUTORY Negligence, — which deprives a person who is injured by the negligence of another of the right to recover damages from that other, — is such Negligence by the person injured as that but for it the misfortune would not have happened, and the consequences of which could not have been prevented by the exercise of reasonable care and diligence on the part of the other (*Butterfield v. Forrester*, 11 East, 60; *Bridge v. Grand Junction Canal Co.*, 3 M. & W. 244; *Tuff v. Warman*, 26 L. J. C. P. 263; 27 Ib. 322; 2 C. B. N. S. 740; 5 Ib. 585; *The Bernina*, 56 L. J. P. D. & A. 17; 12 P. D. 58; nom. *Mills v. Armstrong*, 57 L. J. P. D. & A. 65; 13 App. (Ca. 1). *Vh.* Beven, Bk. 1, ch. 5: Rose. N. P. 768, 769, 773, 774: PROXIMATE: REASONABLE DILIGENCE.

*V.* GROSS.

"Negligence," quàm an ADVOWSON exerciseable in TURN, "means merely, Omission to present; or, in other words, missing the Turn" (per Chitty, J., *Keen v. Denny*, 64 L. J. Ch. 59; 1894, 3 Ch. 169).

Quàm Benefices Act, 1898, 61 & 62 V. c. 48, " 'Negligence' in the performance of Ecclesiastical Duties " includes, " WILFUL DEFAULT in the performance of such duties " (subs. 3, s. 13).

**NEGLIGENCE OR DEFAULT OF MASTER OR MARINERS.** — *V.* 1 Maude & P. 358, citing *The Duero*, L. R. 2 A. & E. 393; 38 L. J. Adm. 69; *Steel v. State Line Co.*, 3 App. Ca. 72; 37 L. T. 333; Abbott. 499-502, discussing *Steel v. State Line Co* and *Huyn v. Culliford*, 48 L. J. C. P. 372; 4 C. P. D. 182; 40 L. T. 536; 27 W. R. 541; *Vf.* *Norman v. Binnington*, cited OTHERWISE: *The Carron Park*, cited NAVIGATION: *Barker v. McAndrew*, cited SAIL: *Bruce v. Nicolopalo*, cited DURING: *The Accomac*, cited NAVIGATION: *The Undaunted*, 55 L. J. P. D. & A. 24; *The United Service*, 52 L. J. P. D. & A. 18; 9 P. D. 3; 48 L. T. 486; 31 W. R. 614.

**NEGLIGENTLY.** — When “Negligently” is a part of the definition of an offence, it implies that the act constituting the offence shall have been done, or caused, by the alleged offender himself; proof that it was done by the alleged offender’s servant, without more, will not bring the charge home (*Chisholm v. Doulton*, 58 L. J. M. C. 133; 22 Q. B. D. 736; 60 L. T. 966; 37 W. R. 749; 53 J. P. 550). *Op*, KNOWINGLY.

**NEGOTIABLE.** — “It may be laid down as a safe rule that where an INSTRUMENT is, by the Custom of the Trade, transferable, like Cash, by delivery, and is also capable of being sued upon by the person holding it *pro tempore*, there it is entitled to the name of a Negotiable Instrument, and the property in it passes to a *bonâ fide* transferee for value, though the transfer may not have taken place in MARKET OVERT. But if either of the above requisites be wanting, — *i.e.* if it be either not accustomably transferable, or, though it be accustomably transferable yet, if its nature be such as to render it incapable of being put in suit by the party holding it *pro tempore*, — it is not a Negotiable Instrument; nor (apart from the question of Estoppel) will delivery of it pass the property of it to a vendee, however *bonâ fide*, if the transferor himself have not a good title to it and the transfer be made out of Market Overt” (1 Sm. L. C. 456, summarizing *Miller v. Race* and its cognate authorities, and quoted with approval by Blackburn, J., *Crouch v. Credit Foncier of England*, L. R. 8 Q. B. 381, 382; 42 L. J. Q. B. 188). *Vf*, *Taylor v. Kyper*, 3 B. & Ad. 320.

The Negotiable Instruments most commonly known are Bills of Exchange, Promissory Notes, and Bills of Lading. A Bill of Exchange or Promissory Note is negotiable if made payable “to Order,” or contains no words prohibiting transfer (ss. 8, 89, Bills of Ex. Act, 1882: *V*. NEGOTIATE); *secus*, of a BILL OF LADING (*Henderson v. Comptoir D’Escompte*, cited ASSIGNS): *Vf*, as to the essentials of the negotiability of a Bill of Lading, *Carver*, 539–547.

Foreign Bonds (*Gorgier v. Mierille*, 2 L. J. K. B. O. S. 206; 3 B. & C. 45), and Debentures payable to BEARER (*Bechuanaland Exploration Co v. London Trading Bank*, 1898, 2 Q. B. 658; 67 L. J. Q. B. 986; 79 L. T. 270) or to Order (*Re General Estates Co*, 16 W. R. 919; 18 L. T. 894), are also Negotiable Instruments: *Vf*, 43 S. J. 435: and as to Foreign Bonds, *Pieker v. London & County Bank*, 56 L. J. Q. B. 299; 18 Q. B. D. 515: *SCRIP*.

*Vh*, *London & County Bank v. London & River Plate Bank*, 21 Q. B. D. 535; 57 L. J. Q. B. 601; *Easton v. London Joint Stock Bank*, 34 Ch. D. 95; *Colonial Bank v. Hepworth*, 36 Ch. D. 36; 56 L. J. Ch. 1089; *Sheffield v. London Joint Stock Bank*, 13 App. Ca. 333; 57 L. J. Ch. 986; *Baker v. Nottingham Bank*, 60 L. J. Q. B. 542; *London Joint Stock Bank v. Simmons*, 1892, A. C. 201; 61 L. J. Ch. 723; 41 W. R. 108; 66 L. T. 625; *Venables v. Baring*, 1892, 3 Ch. 527; 61 L. J. Ch.

609; 40 W. R. 699; 67 L. T. 110: *Bentinck v. Loudon Joint Stock Bank*, 1893, 2 Ch. 120; 62 L. J. Ch. 358; 42 W. R. 140; 68 L. T. 315: Cavanagh on Money Securities, 351-355: Willis on Negotiable Securities: Daniel on Negotiable Instruments: 9 Encyc. 105-109; 16 L. Q. Rev. 135.

"Negotiable instrument." s. 90, Com. L. Pro. (Ireland) Act, 1856, includes a Bank Note (*McDonnell v. Murray*, 9 Ir. C. L. Rep. 495).

V. NOT NEGOTIABLE.

**NEGOTIATE.** — "(1) A Bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the HOLDER of the Bill.

"(2) A Bill payable to BEARER, is negotiated by Delivery.

"(3) A Bill payable to Order (V. NEGOTIABLE), is negotiated by the Indorsement of the holder, completed by delivery" (s. 31, Bills of Ex. Act, 1882): and so of a Note (s. 89, *Ib.*): *V. Day v. Longhurst*, 68 L. T. 17; 62 L. J. Ch. 334; 41 W. R. 283: TRANSFEROR.

*Vf*, subs. 4 and 5, s. 31, *Ib.*, and on subs. 4, *Good v. Walker*, 61 L. J. Q. B. 736; and as to requisites of an Indorsement ss. 32 to 37, *Ib.*

A Power of Attorney "to negotiate, make sale, dispose of, assign, and transfer," a Promissory Note, does not authorize its being pledged (*Joumenjoy Coondoo v. Watson*, 53 L. J. P. C. 80; 9 App. Ca. 561); had the word "negotiate" stood alone it might have included a pledge (*S. C.*, 53 L. J. P. C. 84); and if a power to "indorse" be included in the enabling words, that would authorize a pledge (*Bank of Bengal v. Macleod*, 5 Moore Ind. App. 1).

House Agent's authority to "negotiate" a Sale; V. PROCURE, at end.

To "negotiate" a Sale by Private Contract, so as to earn the Scale Fee given by Sch 1, Part 1, Solrs Rem Ord and R. 11 thereto, is to "arrange" it, *i.e.* to obtain and finally settle all the terms and conditions, including the price (per Lindley and Bowen, L. J. J.), the negotiation ceasing "when the consent of the consenting party is given" (per Fry, L. J., *Re MacGowan*, 1891, 1 Ch. 105; 60 L. J. Ch. 118; 39 W. R. 227; 63 L. T. 793): as to what is a "Commission" to an Agent, V. CONDUCTING. *Cp*, LOAN, at commencement.

**NEGOTIATION.** — As to when contract documents amount to no more than Negotiation, V. SUBJECT TO.

**NEIFE.** — "Niefe, is a woman that is bound, or a VILLEINE woman; but if shee marry a free man shee is thereby made free, because that shee and her husband are but one person in law" (Termes de la Ley: *Vf*, Litt. ss. 186, 187: Cowel, *Neife*: 2 Bl. Com. 93, 94).

**NEIGHBOUR.** — Who is my neighbour? How ought he to behave to me? and, How ought I to behave to him? V. Mac S. chs. 14-17.

**NEIGHBOURHOOD.** — “According to the best rules of husbandry practised in the Neighbourhood”; *V. Meux v. Cobley*, 1892, 2 Ch. 253; 61 L. J. Ch. 449; 66 L. T. 86: CUSTOM OF THE COUNTRY.

An agreement by the Seller, on the Sale of a Business, *e.g.* a Milk Business, not to carry on a like business “in the Neighbourhood” of the places where the business sold is carried on, is not too vague to be specifically enforced. — “Neighbourhood,” there, means, the immediate neighbourhood of the stated places, and is equal to a distance sufficient to prevent competition (*Stride v. Martin*, 77 L. T. 600).

**NEIGHBOURING.** — A covenant prohibiting anything that may be an ANNOYANCE, &c, to the “neighbouring or adjoining” property, means, the Owners or Occupiers of such property (*Bramwell v. Lacy*, cited ANNOYANCE), and is not restricted so as only to prevent annoyance to the occupiers of property belonging to the covenantee (*Tod-Heatley v. Benham*, 58 L. J. Ch. 83; 40 Ch. D. 80).

A power, in a Mining Lease, to distrain upon the lessee’s chattels in the demised Colliery, or “any Adjoining or Neighbouring Collieries,” “must be construed to apply to those neighbouring mines only which, though not actually adjoining the seam of coal demised, might be or become connected with it by underground workings” (per Lindley, L. J., *Re Roundwood Colliery Co*, 1897, 1 Ch. 373; 66 L. J. Ch. 194; 75 L. T. 641; 45 W. R. 324).

“Neighbouring” Borough; Stat. Def., 46 & 47 V. c. 55, s. 8.

V. ADJACENT: ADJOINING PROPERTY.

**NEPE.** — V. NEAP.

**NEPHEW: NIECE.** — Is the child of a person’s brother or sister, whether such brother or sister be of the whole or only of the half blood (*Grievess v. Rawley*, 22 L. J. Ch. 625; 10 Hare, 63). “I have no doubt that the primary meaning, of ‘Nephew’ or ‘Niece,’ is ‘Child of Brother or Sister’” (per Jessel, M. R., *Wells v. Wells*, 43 L. J. Ch. 681; L. R. 18 Eq. 504; 22 W. R. 893; 31 L. T. 16). V. RELATIONS.

Accordingly, a great-nephew or great-niece is not included in a testamentary gift to “nephews and nieces” (*Shelley v. Bryer*, Jac. 207; *Falkner v. Butler*, 1 Amb. 514; *Crook v. Whitley*, 26 L. J. Ch. 350; 7 D. G. M. & G. 490; *Re Blower*, 42 L. J. Ch. 24; 6 Ch. 351; 19 W. R. 666; 25 L. T. 181; *Williamson v. Moore*, 10 W. R. 536), nor a great grand-nephew in a gift to “grand-nephews” (*Waring v. Lee*, 8 Bea. 247): but these extended meanings may be gathered from a context (*Wreeds v. Bristow*, 35 L. J. Ch. 839; L. R. 2 Eq. 333; 14 L. T. 587; 14 W. R. 726; *Va, Re Fish*, 1894, 2 Ch. 83; 63 L. J. Ch. 437; 70 L. T. 825; 42 W. R. 520), though not easily (*Thompson v. Robinson*, 29 L. J. Ch. 280; 27 Bea. 486; *Campbell v. Bouskell*, 27 Bea. 325). V. Wms. Exs. 962: 2 Jarm. 152.

A gift to Nephews and Nieces (like one to CHILDREN) includes such as are *en ventre sa mere* (*Re Hallett*, W. N. (92) 148).

"As regards the term 'Nephew' and 'Niece,' popular language has attached a meaning which includes nephews and nieces *by marriage*; but I do not think there is any such popular usage with regard to the term 'Cousin'" (per Bowen, L. J., *Re Taylor*, *Cloak v. Hammond*, 56 L. J. Ch. 173; 34 Ch. D. 255; 55 L. T. 649; 35 W. R. 186. *Vf*, *Grant v. Grant*, 39 L. J. C. P. 140, 272; 39 L. J. P. & M. 17; L. R. 2 P. & D. 8; L. R. 5 C. P. 380, 727; 18 W. R. 951. But in *Wells v. Wells*, sup, Jessel, M. R., questioned *Grant v. Grant*, adding however that it was "not a question of law, but of the English language." *Grant v. Grant* was also questioned by Malins, V. C., in *Merrill v. Morton*, 17 Ch. D. 382; 50 L. J. Ch. 249; 29 W. R. 394; 43 L. T. 750; *Va*, *Re Fish*, sup: *Re Ashton*, 1892, P. 83; 61 L. J. P. D. & A. 85; 67 L. T. 325). Of course, where a person is named but, being a Niece or Nephew by marriage only, is not quite accurately called "Niece" or "Nephew," such inaccuracy is immaterial (*Smith v. Lidiard*, inf).

If a testator has no nephews and nieces of his own and no possibility of any, his wife's nephews and nieces would take under a bequest to his "Nephews and Nieces" (*Sherratt v. Mountford*, 42 L. J. Ch. 688; 8 Ch. 928; 21 W. R. 818; 29 L. T. 284; *Hogg v. Cook*, 32 Bea. 641; *Adney v. Greatree*, 38 L. J. Ch. 414; 17 W. R. 637; 20 L. T. 647); and so of a bequest to nephews and nieces "*on both sides*" (*Frogley v. Phillips*, 30 Bea. 168; 3 D. G. F. & J. 466; 3 L. T. 718). And where a testator having made separate gifts to the wife of his wife's nephew and to his (testator's) nephews and nieces by name (some of whom were his own, some his wife's, nephews and nieces), and then gave his residue to "All and every my Nephews and Nieces living at my decease, including my nephews and nieces to whom I have given legacies as aforesaid"; held, that nephews and nieces of testator's wife, and also the wife of his wife's nephew, were included in the residuary gift (*Re Gue*, 61 L. J. Ch. 510; 40 W. R. 553). *Vh*, *Smith v. Lidiard*, 3 K. & J. 252, on *whlcr*, *Hibbert v. Hibbert*, cited RELATIONS.

"All and every my Nephews and Nieces"; *V. Re Goodall*, W. N. (88) 69.

A Residuary bequest to "all my Nephews and Nieces," held (there being legitimate nieces), not to include an illegitimate niece who, in a previous part of the Will, had been spoken of as testator's "niece" (*Re Brown*, 58 L. J. Ch. 420. *Va*, *Bagley v. Mollard*, 1 Russ. & My. 581; 8 L. J. O. S. Ch. 145; *Re Hall*, 56 L. J. Ch. 780; 35 Ch. D. 551; 57 L. T. 42; 35 W. R. 797). But, without expressly over-ruling those cases, the modern view is against their conclusion; and when the testator has, by his Will, furnished a dictionary of his meaning from which it may be fairly gathered that, in speaking of Nephews and Nieces, he included illegitimate ones, then the illegitimate will take as well as the

legitimate (per Kekewich, J., *Re Parker*, 1897, 2 Ch. 208; 66 L. J. Ch. 509; 76 L. T. 421; 45 W. R. 536, relying on *Hill v. Crook*, cited CHILD, and *Seale-Hayne v. Jodrell* and *Re Deakin*, cited RELATIONS).

In a competition (over a gift by name) between two nieces or two nephews of the same name, one being legitimate and the other illegitimate; the legitimate one is to be preferred and evidence to the contrary is inadmissible (*Re Fish*, sup: *Sr*, *Re Ashton*, sup).

Devise to "MY Nephew"; held, a latent ambiguity explainable by parol to mean a particular nephew (*Phelun v. Slattery*, 19 L. R. Ir. 177).  
*Vf*, GRAND-DAUGHTER.

*Note.* — In his Will Shakespeare speaks of his Grand-daughter, Elizabeth Hall, as his "Neece." So, in *Richard 3*, Act 4, Sc. 1, the Duchess of York says, — "Who meets us here? My niece Plantagenet," the latter being the Duchess' grand-daughter; and in *Othello*, Act 1, Sc. 1, Iago, speaking derisively to Brabantio of the latter's possible grand-children by Othello, says, — "You'll have your Nephews neigh to you."

*V*. MALE NEPHEW.

**NERVOUS.** — As to difference between Nervous and Mental shock, *V. Dubieu v. White*, cited ACCIDENT, p. 15.

**NET.** — *V*. SNARE: MESH.

Quà Fisheries (Ir) Act, 1842, 5 & 6 V. c. 106, " 'Net,' shall extend to all descriptions of tackle, trawl, trammel, stake, bag, coghill, eel, haul, draft, and seine, nets; and to all other engines or devices, of whatever construction or materials or by whatever name known, which shall be used for the like purposes as the nets in this Act referred to" (s. 113); so of the Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88 (s. 1).

"From very early times," Salmon Fishing in Scotland "by 'Net and Coble,' was a well-understood description; and that a grant of 'Salmon Fishing,' without more, would entitle the grantee to this species of Fishing only" (per Ld Chelmsford, *Hay v. Perth*, 2 Paterson, 1194; 4 Macq. 535); but the proper and allowable use of Net and Coble does "not admit of the use of a Fixed Net" (per Ld Macnaghten, *Wedderburn v. Atholl*, 1900, A. C. 421: *V*. FIXED ENGINE: FIXED NET); yet "improvements upon the Net and Coble mode of fishing are lawful, so long as it is fair Net and Coble" (Ib., citing McNeill, L. P., in *Hay v. Perth*, sup), *i.e.* "used by a Fisherman in the act of fishing" (per Halsbury, C. *Wedderburn v. Atholl*), *e.g.* the *Bermoney Boat* system (*Hay v. Perth*). The *Toot and Haul* Net, the *Stell* Net, the *Drift* or *Hang* Net, the *Stent* Net, are not allowable, not being fairly within "Net and Coble" (*Wedderburn v. Atholl*, 1900, A. C. 403; 16 Times Rep. 413, *whv* for defs of the above-mentioned Nets). *Cp*, ROD AND LINE.

"Stop Nets," &c; *V*. STOP.

"Annual Net Value"; *V. R. v. Wistow*, 5 A. & E. 260; 5 L. J. M. C. 122.

“Net Annual Value”; *V. R. v. Liverpool*, 20 L. J. M. C. 35: ANNUAL VALUE: FULL ANNUAL VALUE: CLEAR: RACK RENT.

Quà, and by, s. 71, Diseases of Animals Act, 1894, “Net Annual Value of property” means, in Ireland, “the net annual value of property rateable to the relief of the poor according to the valuation in force for the time being.”

A direction to sell goods “at such a price as will *realize*” so much “Net Cash,” does not mean that the goods are necessarily to be sold for ready money; though, possibly, in the absence of a trade custom, that might be the construction if the direction were simply to sell for so much “Net Cash” (*Boden v. French*, 20 L. J. C. P. 143; 10 C. B. 886).

“Net Moneys”; *V. Court v. Buckland*, 45 L. J. Ch. 214; 1 Ch. D. 605.

“Highest Net Money Tender”; *V. TENDER*.

A commission payable to an agent on “Net Proceeds,” is only payable on the actual sum which reaches the pocket of the principal after deducting all charges, expenses, and bad debts (*Cuine v. Horsfall*, 17 L. J. Ex. 25; 1 Ex. 519: *Vf*, *Bower v. Jones*, 8 Bing. 65).

“Net Profits” of a Company; *V. Lambert v. Neuchatel Asphalte Co*, 51 L. J. Ch. 882. Net profits is the sum divisible after discharging, or making provision for, every outgoing properly chargeable against the period, whether a year or less, for which the profits are to be calculated (per Kekewich, J., *Glusier v. Rolls*, 42 Ch. D. 453: *Bishop v. Smyrna & Cassaba Ry*, 1895, 2 Ch. 596; 64 L. J. Ch. 619, 806; 73 L. T. 337).

#### V. PROFITS.

When the Articles of a Co provide a Percentage to the Directors on the “Net Profits” of each year, that means, the “Net Profits” made by the Co as a going concern (including, probably, the profit on a sale of part, or possibly of the whole, of the Co’s realty); but the phrase does not comprise a profit made by a sale of the whole undertaking and assets in a Winding-up for the purpose of a Reconstruction (*Frames v. Bultfontein Mining Co*, 1891, 1 Ch. 140; 60 L. J. Ch. 99; 64 L. T. 12; 39 W. R. 134, following *Rishton v. Grissell*, L. R. 5 Eq. 326). *V. SERVICES*.

Salary to a Manager of a Co and a moiety of “Net Profits” on stated contracts, means, that such profits are those arising on each contract, minus only the expenses thereon; but not deducting anything on account of the general management of the Co (*Re British Columbia, &c, Co*, 25 L. T. 653).

“Net Profits” of a PREBEND; *V. Repton v. Hodgson*, 3 H. L. Ca. 72.

“When a party stipulates to receive a ‘Net RENT,’ that means a rent clear of all deductions to which it would otherwise be liable; the covenant to pay land tax and sewers rate must, therefore, be a USUAL covenant in a lease reserving a certain Net rent” (per Tenterden, C. J., *Bennett v. Wormack*, 7 B. & C. 628; 3 C. & P. 96; 6 L. J. O. S. K. B. 175). The principle of that case would seem to extend to all landlord’s



taxes, except property tax, where Net Rent is stipulated for. *Va, Barrett v. Bedford*, 8 T. R. 602: **OUTGOING**. Similarly a direction to Trustees to permit A. to receive "*Net Rents and Profits*" vests the **LEGAL ESTATE** in the trustees, for they must take the gross rents, and, after paying the charges thereon, hand over the net rents (*Barker v. Greenwood*, 8 L. J. Ex. 5; 4 M. & W. 421).

As regards a question of an equal mode of Rating, "Net Rent" is not equivalent to "Net Value" (*V. ANNUAL VALUE*); it does not include repairs and re-instatements: it means, "that part of the Rent which goes into the landlord's pocket, *i.e.* the rent paid by the tenant, after deducting taxes and charges of collection" (per Bayley, J., *R. v. Tomlinson*, 9 B. & C. 166, 167).

"Net Rental" simply means the profit rent, — *i.e.* the difference between the gross rent paid by under-tenants, and the head rents and annual fines (*Re Barnewall*, Ir. Rep. 1 Eq. 308).

"Net Sum" to be realized, frees from Succn Duty (*Re Saunders*, cited CLEAR, p. 322).

"Net Value of such Personal Estate," s. 6, Intestates' Estates Act, 1890, means, the Net Value of the *whole* personalty (*Re Twigg*, 1892, 1 Ch. 579; 61 L. J. Ch. 444).

Net Value of TITHES; *V. R. v. Lacy*, cited CLEAR.

"Net Weight delivered"; *V. DELIVERED*.

**NEVER.** — "Never been heard of"; *V. HEARD OF*.

"Never was indebted"; *V. Stockbridge v. Sussums*, 3 Q. B. 239. *Note*: such a Defence now inadmissible (R. 1 and 3, Ord. 21, R. S. C.).

**NEW ASSIGNEE.** — S. 53, Judgments Act, 1838, 1 & 2 V. c. 110; *V. Sladden v. De Lasaux*, 3 W. R. 499.

**NEW ASSIGNMENT.** — In the old forms of pleading, "the plt, who has alleged in his Declaration a general wrong, may in his Replication, after an evasive plea by the deft, reduce that general wrong to a more particular certainty by assigning the injury afresh with all its specific circumstances in such manner as clearly to ascertain and identify it, consistently with his general complaint; which is called a *new* or *novel assignment*" (3 Bl. Com. 311; *Vf*, Stephen on Pleading, 6 ed. 186-192). But now "no New assignment shall be necessary or used," its place being taken by an Amendment in the Statement of Claim or by way of Reply (R. 6, Ord. 23, R. S. C.).

**NEW BOROUGH.** — Stat. Def., Boundary Act, 1868, 31 & 32 V. c. 46, s. 3. *Cp*, OLD BOROUGH.

**NEW BRICKWORK.** — "New Brickwork," s. 64 (18), London Bg Act, 1894; *V. Aerated Bread Co v. Shepherd*, W. N. (97) 33; 13 Times Rep. 311.

**NEW BUILDING.**—Where a small building erected against the wall of a yard belonging to a house is taken down and re-erected in another part of the yard, the old materials being re-used, and portions of the old wall of the yard being used as two sides of the re-erection, — such a re-erection is a “New Building” within s. 34. Loc Gov Act, 1858, and of bye-laws made thereunder (*Hobbs v. Dance*, 43 L. J. M. C. 21; L. R. 9 C. P. 30). But where the proprietor of a house, yard, coach-house, and stable, pulled down the coach-house and stable and erected a building partly upon their site and partly upon the yard, with rooms over — the ground-floor opening into the yard and also into a back street, but the access to the rooms over the ground-floor was by a covered way from the old house — the object of the new works being to increase the accommodation of the old house which had been converted into an hotel; — this was held not to be a “New Building” within the meaning of the Act just cited (*Shiel v. Sunderland*, 30 L. J. M. C. 215; 6 H. & N. 796). *It*, *Worley v. St. Mary Abbots*, cited **NEW HOUSE**.

Under s. 157 (2), P. H. Act, 1875, a moveable structure used as a butcher’s shop was held a “New Building” (*Richardson v. Brown*, 49 J. P. 661). That subs. is explained by s. 159, under which a Building nearly all taken away and then re-built, is a “New Building”; *secus*, if the alteration or addition be not considerable (*James v. Wyrill*, 51 L. T. 237; 48 J. P. 725). *Cp.*, **TAKE DOWN**.

In *Odwell v. Willesden* (Times, 2nd Nov 1891) Collins, J., held, that a newly erected Coffee Stall resting on wooden supports and intended to be kept open for some months, was a “New Building” used for Habitual Trade, within a Local Authority’s Bye Law, and that it was none the less a “BUILDING” because made of wood and capable of being moved.

“New Building,” s. 5 (6), London Bg Act, 1894; *V. Holland v. Wallen*, 70 L. T. 376; 10 Times Rep. 300; *Crow v. Redhouse*, 11 Times Rep. 563; 59 J. P. 663.

What is a “New Building” is chiefly a question of fact (*James v. Wyrill*, *sup.*: *Slaughter v. Sunderland*, cited **BUILDING**).

A Local Authority Bye Law which requires a week’s notice to its Surveyor with plans and sections of every floor of a “New Building,” does not apply to a temporary building; if it does it is unreasonable and bad (*Fielding v. Rhyl*, 3 C. P. D. 272).

“New Building” as a verb; *V. Doe d. Dymoke v. Withers*, cited **REBUILD**.

*V.* **BUILDING**: **OLD BUILDING**.

**NEW BURIAL GROUND.**—*V.* **BURIAL**.

**NEW CERTIFICATE.**—*Qua* Publicans’ Certificates (Scotland) Act, 1876, 39 & 40 V. c. 26, “a ‘New Certificate,’ means, a Certificate granted by the competent authority for a **LICENSE** for the sale of **EXCISEABLE LIQUORS** to any person in respect of any premises which are not

certificated at the time of the application for such grant; but shall not apply to the re-building of certificated premises which have been destroyed by fire, tempest, or other unforeseen and unavoidable calamity" (s. 4).

*Cp.*, NEW LICENSE.

**NEW DESIGN.** — " 'DESIGN,' signifies something in the nature of a picture, or drawing, or diagram, — something to be applied to a subject-matter of manufacture. It may be applied to pottery ware, to calico printing, to worsted, and to a great many other things" (per Crompton, *J.*, *Harrison v. Taylor*, 29 L. J. Ex. 3; 4 H. & N. 815); "I apprehend the word 'Design' imports configuration" (per Byles, *J.*, *Ib.*).

Whether a Design was "New and Original," s. 2, 5 & 6 V. c. 100, was a question for the jury: and not to be withdrawn from them because the Design was composed of a simple combination of two sizes of a previously well-known pattern (*Harrison v. Taylor*, sup). And so, under s. 47, Patents, &c. Act, 1883, 46 & 47 V. c. 57, for a Design to be "New or Original" it must be "either substantially novel, or substantially original, having regard to the nature and character of the subject-matter" (per Fry, L. J., *Le May v. Welch*, 54 L. J. Ch. 283; 28 Ch. D. 35; *Vf*, *Re Reul and Greswell*, 58 L. J. Ch. 624; *Re Rollason*, 67 L. J. Ch. 100; nom. in *H. L. Heath v. Rollason*, cited DESIGN); but the Design, itself, need not be of something unseen before, if the application of it to the particular article be novel or original, e.g. a view of Westminster Abbey for the handles of spoons and forks (*Saunders v. Wiel*, 1893, 1 Q. B. 470; 62 L. J. Q. B. 341; 68 L. T. 183; 41 W. R. 356).

As to what is the essential part of a New Design; *V. Harper Co v. Wright Co*, 1896, 1 Ch. 142; 65 L. J. Ch. 161; 44 W. R. 274; *Re Clarke*, 1896, 2 Ch. 38; 65 L. J. Ch. 629; 74 L. T. 631; *Re Rollason*, sup: and as to its Imitation, *V. OBVIOUS*.

A Combination to be protected, must be one Design, — not several Designs (*Norton v. Nicholls*, 28 L. J. Q. B. 225; 1 E. & E. 761; *M'Creagh v. Holdsworth*, 35 L. J. Q. B. 123; L. R. 1 Q. B. 264).

*Vh.*, Edmunds on Designs, ch. 3.

**NEW FOR OLD.** — *V. TOTAL LOSS*.

**NEW GOVERNING BODY.** — "New GOVERNING BODY of a School"; Stat. Def., Public Schools Act, 1868, 31 & 32 V. c. 118, s. 3.

**NEW HOUSE.** — *V. Barlow v. St. Mary Abbots*, 53 L. J. Ch. 899; 27 Ch. D. 362; 32 W. R. 966, revd on another point, 11 App. Ca. 257; 55 L. J. Ch. 680; 34 W. R. 521; *Worley v. St. Mary Abbots*, 1892, 2 Ch. 404; 61 L. J. Ch. 601; 66 L. T. 747; 40 W. R. 566: NEW BUILDING.

*V. HOUSE*.

**NEW INVENTION.** — *V. NEW MANUFACTURE*.

**NEW LICENSE.** — Quà the Licensing Acts, “ ‘New License,’ means. a LICENSE for the sale of any INTOXICATING LIQUOR granted at a General Annual Licensing Meeting in respect of premises in respect of which a similar license has not theretofore been granted ” (s. 32, 37 & 38 V. c. 49, replacing def in s. 74, 35 & 36 V. c. 94): *Vth, R. v. Smith*, 48 L. J. M. C. 38. A similar def (with a little addition) is provided for Ireland by s. 37, 37 & 38 V. c. 69: *Vth, R. v. Antrim Jus.*, 4 L. R. Ir. 230: *Vo*, that lastly mentioned section for “New Excise License” and “New Wholesale Beer Dealer’s License.” *Cp*, NEW CERTIFICATE: *V*. RENEWAL: NEW PREMISES: IN FORCE: Paterson’s Licensing Acts: 7 Encyc. 339, 340.

**NEW LINE.** — In an agreement between Railway Companies, “New Lines,” held to mean, Lines proposed but not yet authorized by Parliament (*Mid. Ry v. G. W. Ry*, 2 Ry & Can Traffic Ca. 298).

**NEW MANUFACTURE.** — A new combination of materials previously in use, producing a new, better, or cheaper, article than that previously produced by the old method, is a “New Manufacture” or “Invention,” within the Patent laws (*Crane v. Price*, 12 L. J. C. P. 81; 4 M. & G. 580; 5 Sc. N. S. 338: *Harrison v. Anderston Co*, 1 App. Ca. 574).

For an example of an Invention on the border-line of being New; *V*. *Vickers v. Siddell*, 60 L. J. Ch. 105; 15 App. Ca. 496.

*V*. ANTICIPATION: MANUFACTURE.

**NEW MINE.** — *V*. “Open Mine,” sub OPEN.

**NEW OCCUPIER.** — A New Occupier, quà non-liability to pay Gas Arrears, does not include the Official Receiver under a Bankry Receiving Order (*Re Smith*, 1893, 1 Q. B. 323), nor a Receiver appointed by the Court in a Debenture-holder’s Action (*Paterson v. Gas Light & Coke Co*. 1896, 2 Ch. 476; 65 L. J. Ch. 443, 709; 74 L. T. 640; 45 W. R. 39; 60 J. P. 532). *Vf*, INCOMING TENANT: “Cease to occupy,” sub CEASE: OCCUPIER.

*V*. NEW TENANT.

**NEW PARISH.** — The Vestry of any “New Parish,” s. 5, 20 & 21 V. c. 81; *V*. *Cronshaw v. Wigan*, 42 L. J. Q. B. 137; L. R. 8 Q. B. 217. “The New Parishes Acts, 1843 to 1884”; *V*. Sch 2, Short Titles Act, 1896.

**NEW PREMISES.** — An addition to the structure of LICENSED PREMISES, if on the site of the premises included within the license, does not make the addition “New Premises” (*Deer v. Bell*, 64 L. J. M. C. 85; 43 W. R. 286; 11 Times Rep. 188); nor even a small addition from adjacent property, if the Justices find that the structure is substan-

tially the same as before the addition (*R. v. Raffles*, 45 L. J. M. C. 61; 1 Q. B. D. 207). Those cases show that the question is, generally, one of fact for the Justices; but that their decision may be reviewed when obviously wrong. *V. RENEWAL: NEW LICENSE.*

**NEW QUARRY.**—*V.* “Open Mine,” sub *OPEN.*

**NEW STREET.**—For the purposes of s. 157, P. H. Act, 1875, a street becomes a “New Street” on its acquiring the character of a “Street” in the ordinary meaning of that word (*V. STREET*); and therefore a way, which would not ordinarily be called a “Street” but which has been included in that word by force of s. 4 of the Act, becomes a “New” Street when buildings are erected by its side in such a mode as to give it a street character (*Robinson v. Burton*, 51 L. J. Ch. 467; 52 Ib. 5; 53 Ib. 226; 21 Ch. D. 621; 8 App. Ca. 798; 48 J. P. 276; 50 L. T. 57): and that ruling is applicable to “New Street” in the Towns Improvement Clauses Act, 1847 (*A-G. v. Rufford*, 1899, 1 Ch. 537; 68 L. J. Ch. 179; 80 L. T. 17; 47 W. R. 405; 63 J. P. 232).

As to when a street is laid out and is “new,” reference may be made to the judgment of Brett, L. J., in the case just cited; for although the judgment of the learned judge was reversed by the H. L., that reversal proceeded on a ground that left untouched the value of the following observations:—

“New streets may be made under different circumstances. You may have the whole land on both sides belonging to one owner. Then he makes a plan; he has an intention in his mind, and he has a plan drawn. But that does not begin the street. To my mind that is not *laying out* the street within the meaning of the Act of Parliament. The Act of Parliament does not care what people do upon paper. It cares about what they do in point of fact, and upon the land. When would such an owner *begin* to lay out and form a street? To my mind he would do so when he built his first house, having the intention to go on to make a street. He would have begun to lay out and to form a street then; and it would then from that moment begin to be a street. But streets are formed in another way. Supposing that along the line of that which would eventually be considered a street there are a great many owners. There is not any one of them who would make a plan for the whole; but it may be clear that all of them are intending to build there, and to build, having regard to a roadway—if there is an existing roadway, certainly having regard to that. Then how will those people lay out and form a street? Why, each of them, by what he does on his own land, would be laying out and forming a street. Which of them begins? I should say the one who begins first in point of time begins to form a street; and if you find that there are several proprietors along a line each of whom is letting it be known, so that the tribunal comes to the conclusion that

each of them intends to build not absolutely in a line but in the same direction, why then the tribunal would have the right to say that there is a common intention amongst all these people to build in a particular course. When they have done so, that course will produce a street, and therefore the first of them who in virtue of that, not consensus but, common idea begins to build, and begins to form and lay out that street — he and all others are subject to the jurisdiction of the Board. There is another case which my Lord has alluded to, — where there shall be several proprietors along a long line, but no tribunal could say that there ever was at the same time an intention amongst them all to build, — that is to say, that one man at the end of the street may have that intent, but the others have not shown by any act that they have any intent at all; they have not laid out their land as building land, they have not advertised it as building land — they have done nothing to show that intent. Then the street really forms itself, as it were, by continuous action or successive action without any common intent. Then you have to wait until you can see by the course of building that there is that common intent. The moment you see *that*, you come to the conclusion that it is a street, and that it is begun to be formed.”

As to commencing, or laying out, a New Street, *V. Gozzett v. Maldon*, 1894, 1 Q. B. 327; 70 L. T. 414; 58 J. P. 229: *Cp*, s. 8, London Bg Act, 1894, cited COMMENCEMENT).

*If*, CONSTRUCTION: *St. George's v. Ballard*, 1895, 1 Q. B. 702; 64 L. J. Q. B. 547; 72 L. T. 345; 59 J. P. 182; 43 W. R. 409.

Quà Metrop Man. Acts, “New Street,” includes all Streets which, since 7th August, 1862, have been or shall be “formed or laid out, and a part of any such Street; and also all Streets the maintenance of the paving and roadway whereof had not” previously to that date “been taken into charge and assumed by” the Public Authority “having control of the pavements or highways in the Parish or Place in which such Streets are situate, and a part of any such Street; and also all Streets partly formed or laid out” (s. 112, Metrop Man. Act, 1862): *Vth, Pound v. Plumstead*, 41 L. J. M. C. 51; L. R. 7 Q. B. 183: *St. Mary, Islington v. Barrett*, L. R. 9 Q. B. 278; 43 L. J. M. C. 85: *Dryden v. Putney*, 1 Ex. D. 223; 40 J. P. 263: *Williams v. Powning*, 47 J. P. 486; 48 L. T. 672: *L. B. & S. Ry v. St. Giles, Camberwell*, 48 L. J. M. C. 184; 4 Ex. D. 239: *A-G. v. Wandsworth Bd*, 6 Ch. D. 539; 46 L. J. Ch. 771: *St. John's, Hampstead v. Hoopel*, 54 L. J. M. C. 147; 15 Q. B. D. 652: *St. John's, Hampstead v. Cotton*, 16 Q. B. D. 475: *Daw v. London Co. Co.*, 59 L. J. M. C. 112; 62 L. T. 937; 54 J. P. 502: *White v. Fulham*, 74 L. T. 425: *St. Mary, Battersea v. Palmer*, 75 L. T. 362; 45 W. R. 110: *Wilson v. St. Giles, Camberwell*, 1892, 1 Q. B. 1; 61 L. J. M. C. 3; 65 L. T. 790; 56 J. P. 167: *Arter v. Hammersmith*, 66 L. J. Q. B. 460; 1897, 1 Q. B. 646; 76 L. T. 390: *Crosse v. Wandsworth Bd*, 79 L. T. 351; 62 J. P. 807: *Allen v. Fulham*, 1899, 1 Q. B. 681; 68 L. J. Q. B.

450; 80 L. T. 253; 47 W. R. 428; 63 J. P. 212; *Simmonds v. Fulham*, 1900, 2 Q. B. 188; 69 L. J. Q. B. 560; 82 L. T. 497.

As used in the Metrop. Man. Acts, and (*semble*) as used in the P. H. Acts, "New Street" is not limited by the Stat. Def.; it includes a New Street in the popular sense of the term (*St. Giles, Camberwell v. Crystal Palace Co*, 1892, 2 Q. B. 33; 61 L. J. Q. B. 802; 66 L. T. 840; 40 W. R. 648; 57 J. P. 5; *Daris v. Greenwich*, 1895, 2 Q. B. 219; 64 L. J. M. C. 257; 72 L. T. 674). In s. 105, Metrop. Man. Act, 1855, and s. 77, Metrop. Man. Act, 1862, a road substantially without houses is not a "STREET" at all, and therefore not a "New Street" (*Buttersea v. Palmer*, 1897, 1 Q. B. 220; 66 L. J. Q. B. 77; 75 L. T. 362; 45 W. R. 110; 60 J. P. 774).

*Vh*, generally, *Eraus v. Newport*, 59 L. J. M. C. 8; 24 Q. B. D. 264.

**NEW SUCCESSION.**— "By ALIENATION, or by any Title not conferring a New Succession," s. 15, 16 & 17 V. c. 51; *V. A-G. v. Cecil*, L. R. 5 Ex. 263; *A-G. v. Wolverton*, 1897, 1 Q. B. 231; 66 L. J. Q. B. 202; *nom. Wolverton v. A-G.*, 1898, A. C. 535; 67 L. J. Q. B. 829; 47 W. R. 97.

**NEW SUPPLY.**— Of Gas; *V. Paterson v. Gas Light & Coke Co*, cited NEW OCCUPIER.

**NEW TENANT.**—"New Tenant or Occupier" of LICENSED PREMISES, s. 14, 9 G. 4, c. 61, is not restricted to a tenant next in succession to the licensed occupier, but embraces any succeeding tenant applying during the currency of the license (*Re Todd*, 47 L. J. M. C. 89; 3 Q. B. D. 407; *Baldwin v. Dover Jus.*, 1892, 2 Q. B. 421; 61 L. J. M. C. 215); but when such tenant has once obtained a transfer under the section he cannot again apply thereunder (*R. v. Powell*, 1891, 2 Q. B. 693; 60 L. J. Q. B. 594; 65 L. T. 210; 39 W. R. 630; 56 J. P. 52). *Vf*, *R. v. Swansea Jus.*, 7 Times Rep. 586.

*V. NEW OCCUPIER.*

**NEW TRUSTEE.**— A "New" Trustee, means, a person newly appointed; not an old one to whom power is given to act in the stead of another old trustee as well as for himself (*Re Gardiner*, 55 L. J. Ch. 714; 33 Ch. D. 590).

**NEW ZEALAND.**— Stat. Def., 15 & 16 V. c. 72, s. 80; 26 & 27 V. c. 23; *V. PEACE.*

**NEWLY ESTABLISH.**— A slaughter-house newly built, and afterwards let to butchers; held, "newly established" by the Owners within s. 64, P. H. Act, 1848 (*Liverpool Cattle Market Co v. Hodson*, 36 L. J. M. C. 30; L. R. 2 Q. B. 131; 8 B. & S. 184). (*V*, FOUND).

**NEWLY FORMED.**— *V. FORMED.*

**NEWRY.**— For Custom-house purposes, "The Pool" is in the Port of Newry (*Caffarini v. Walker*, cited ALWAYS AFLOAT).

**NEWS.**— "Official News"; *V.* OFFICIAL.

*V.* FALSE NEWS.

**NEWSPAPER.**— The Newspaper Libel and Registration Act, 1881, 44 & 45 V. c. 60, s. 1, contains, for its purposes (and, *semble*, it may be of general utility), the following definition;—"The word 'newspaper' shall mean, any paper containing public news, intelligence, or occurrences, or any remarks or observations therein, printed for sale, and published in England or Ireland periodically or in parts or numbers at intervals not exceeding 26 days between the publication of any two such papers, parts, or numbers; also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding 26 days, containing only or principally advertisements." This definition is a partial adoption of the definition in Sch A, 6 & 7 W. 4, c. 76, on *whic, A-G. v. Bradbury*, 21 L. J. Ex. 12; 7 Ex. 97; and is adopted for 51 & 52 V. c. 64 (s. 1).

Other Stat. Def. — 33 & 34 V. c. 65, s. 2. — *Ir.* 33 & 34 V. c. 9, s. 34.

*V.* BRITISH NEWSPAPER: COLONIAL: FOREIGN: LOCAL NEWSPAPER: REGISTERED.

*Semble*, that a statutory requirement that a Notice shall be given in "the Newspapers" of a stated locality, will be satisfied if the Notice is given in those newspapers which were published in the locality at the time when the requirement was enacted (*Tibbits v. Yorke*, 5 B. & Ad. 605; 3 L. J. K. B. 38).

Is a Newspaper a Book? *V.* BOOK.

**NEXT.**— "Next," "is only an abbreviation of the word 'NEAREST'" (per Knight-Bruce, V. C., *Booth v. Vicars*, 1 Coll. C. C. 9; 13 L. J. Ch. 147; *Vthe and Stockdale v. Nicholson*, 36 L. J. Ch. 793; L. R. 4 Eq. 359, for illustrations as to the effect of "next" in such a phrase as NEXT PERSONAL REPRESENTATIVES). "The word 'next' means, nearest or highest; not in the sense of propinquity alone, as for example, three persons on three chairs, one in the midst, those on each side of the middle one are equally near, each 'next' to the centre one. But it signifies also order, or succession, or relation, as well as propinquity" (per Kindersley, V. C., *Southgate v. Clinch*, 27 L. J. Ch. 654). *Vf.* NEXT OF KIN.

"Next Assizes," in a Notice of Appeal from an Irish County Court Judge, held to mean, Next Assizes at which the appeal could be lawfully heard (*Burns v. Collum*, 4 L. R. Ir. 493).

"Next Quarter Sessions" for a Pauper Settlement Appeal, 13 & 14 Car. 2, c. 12, s. 2, means, "next practically possible, in order that the appellants might have the possibility of exercising their right" (per Erle, C. J., delivering judgment of the Court, *R. v. Sussex*, 34 L. J. M. C. 71; 4 B. & S. 966: *Vf.*, cases therein cited); so, of a Poor Rate Appeal, under



s. 4, 17 G. 2, c. 38 (*R. v. Surrey*, 50 L. J. M. C. 10; 6 Q. B. D. 100; 29 W. R. 260; 43 L. T. 500): As to Licensing Appeal, *V. R. v. Belton*, 17 L. J. M. C. 70; 11 Q. B. 379. As to what Sessions are "next practically possible"; *V. Liverpool Gas Co v. Everton*, 40 L. J. M. C. 104; L. R. 6 C. P. 414; 23 L. T. 813; 19 W. R. 412: *R. v. Peterborough*, 26 L. J. M. C. 153; 7 E. & B. 643: *R. v. Biggleswade*, 21 L. T. 494: *R. v. Herefordshire*, 8 Dowl. 638.

"Next Quarter Sessions," s. 24, Petty Sessions (Ir) Act, 1851, 14 & 15 V. c. 93; *V. R. v. Armagh Jus.*, 1895, 2 I. R. 503.

A Warrant to arrest and take prisoner before Justices to the end he may be bound to appear "at the Next Sessions," means, the next Sessions after the Arrest, not the Sessions next after the Date of the Warrant (*Mayhew v. Parker*, 8 T. R. 110).

"Next Sitting of the Petty Sessions Court," s. 103, Fisheries (Ir) Act, 1842, 5 & 6 V. c. 106, means, the next Sitting at which it is reasonably practicable to make the application under the section for the destruction of illegal nets (*R. v. Limerick Jus.*, 1898, 2 I. R. 135).

As to the phrase "day next appointed" for holding Brewster Sessions, in the Sunday Closing (Wales) Act, 1881, 44 & 45 V. c. 61, s. 3; *V. Richards v. Macbride*, 51 L. J. M. C. 15; 8 Q. B. D. 119. The Court in that case refused to read that phrase as though it ran the "next day appointed."

"Next BEFORE some Suit or Action," s. 4, Prescription Act, 1832; *V. Parker v. Mitchell*, 11 A. & E. 788; 9 L. J. Q. B. 194; *Clayton v. Corby*, 2 Q. B. 813; 5 Ib. 415; 11 L. J. Q. B. 239: *Lowe v. Carpenter*, 6 Ex. 825; 20 L. J. Ex. 374: *Glover v. Coleman*, L. R. 10 C. P. 108; 44 L. J. C. P. 66.

Where a *Contract for Sale* of reversionary interests was signed on the 15th Dec 1885, and the day of completion was therein fixed for "the 28th of December next," and if not then completed interest to run on the unpaid purchase money from that day; it was held that the day appointed for completion was the 28th Dec 1885, — *i.e.* that "next" was, in that connection, equivalent to "instant," for that "the 28th of Dec next" was to be read as one noun substantive and meant the next 28th Dec following the 15th Dec 1885, — *viz.*, the 28th Dec 1885 (*Daves v. Charsley*, 30 S. J. 401; W. N. (86) 78, cited Dart, 142, 143, *n*). So also, where an Award, dated 13th Oct 1840, directed money to be paid "on the 28th Oct next," "next" was read "instant" (*Brown v. Smith*, 8 Dowl. 867).

"Next," without a context, in a Deed or other Writing, means, next after its execution if the execution be shown to be a day different from its apparent date (*Browne v. Burton*, cited FROM HENCEFORTH).

"The 29th February next," means, the 29th February in the next Leap Year (*Chapman v. Beecham*, 3 Q. B. 723; 12 L. J. Q. B. 42; 3 G. & D. 71).

“On the            of,” any named month, “next ensuing” means, *semble*, some day of that month next happening (*Chapman v. Bercham*, sup).  
 V. BLANKS.

“*The next two months.*” in the Iron Trade; *V. Bissell v. Beard*, 28 L. T. 740.

V. NEAR.

**NEXT AVOIDANCE.**—The gift of the “Next AVOIDANCE” of a living, was in *Hatch v. Hatch* (20 Bea. 105), construed as, the next at the testator’s disposal.

The words “Next Avoidance of, or Presentation to, any Benefice,” 12 Anne, st. 2. c. 12, s. 2, refer only to chattel interests and do not extend to freehold estates, and therefore the purchase of an estate for life in an Advowson is not SIMONY within the statute (*Walsh v. Lincoln, Bp*, 44 L. J. C. P. 244; L. R. 10 C. P. 518; 32 L. T. 471; 23 W. R. 829).

**NEXT ENTITLED.**—“Next ENTITLED in Remainder”; *V. Turton v. Lambarde*, 29 L. J. Ch. 361; 1 D. G. F. & J. 495.

**NEXT FRIEND.**—“Here (Litt. s. 123) *friend* (amy) is taken for the next of blood” (Co. Litt. 88 a).

“Next Friend,” in Feudal times, was “commonly taken for Gardian in SocAGE: and is where a man seised of land holden in Socage dyeth, his issue within age of 14 yeares, then the Next Friend or Next of Kinne to whom the lands cannot come or descend, shall have the keeping of the heire and of the land, to the only use of the heire untill he come to the age of 14 yeares” (Termes de la Ley, *Procheine amy*).

“Otherwise, Prochaine Amy is he which appeareth in any Court for an Infant which sueth any Action and aydeth the infant to pursue his suit” (Termes de la Ley). *Vb.* R. 16, Ord. 16, R. S. C., and notes thereon: Ann. Pr.: 9 Eneve. 139-147.

**NEXT HEIR.**—In an executory devise to the “Next Heir” of A., the person is meant who shall fill the character of true heir to A. (*Doe d. Knight v. Chaffey*, 17 L. J. Ex. 154; 16 M. & W. 664).

Under a bequest of personalty to testator’s “next heir-at-law,” the heir, and not the next of kin, is the person entitled (*Southgate v. Clinch*, 27 L. J. Ch. 651; 31 L. T. O. S. 263).

And so in a devise, “Next Heir” may mean a person, and not the heir general (*Baker v. Wall*, 1 Raym. 185. cited 2 Jarm. 76). And such a phrase would be one of purchase and not of limitation (*Re Parry*, 55 L. J. Ch. 239; 31 Ch. D. 130; 54 L. T. 229; 34 W. R. 353).

“Next Heir Male”; *V. Dormer v. Phillips*, 3 Drew. 39; 4 D. G. M. & G. 855; 24 L. J. Ch. 168; 3 W. R. 92; *Op.* MALE.

V. HEIRS.

NEXT MALE KIN. — *V. Re Chapman*, cited KINDRED.

**NEXT OF KIN.** — “The expressions ‘Nearest of Kin,’ ‘Nearest of Blood,’ and ‘Next of Kin,’ are synonymous” (*Seton*, 1575, 1576); so of “Next of Kindred.” So, of “Next of Kin in Blood” (*Re Gray*, 1896, 2 Ch. 802; 65 L. J. Ch. 858; 75 L. T. 407; *See, Re Fitzgerald*, cited IN BLOOD). *Vf*, NEAREST: FIRST AND NEAREST: KINDRED. *c*

The primary and proper meaning of “Next of Kin” is, the nearest in proximity of blood (whether of the whole or half blood, and as distinguished from those who would be entitled under the Statute of Distribution), living at the death of the person whose next of kin are spoken of (*Elmsley v. Young*, 2 My. & K. 780; *Withy v. Mangles*, 10 L. J. Ch. 391; 4 Bea. 358; 10 Cl. & F. 215; *Collingwood v. Pace*, 1 Vent. 424; *Brown v. Wood*, Alyn, 36; *Avison v. Simpson*, Johns. 43; *Moss v. Dunlop*, Ib. 490; *Bullock v. Downes*, 9 H. L. Ca. 1; *Re Webber*, 17 Sim. 221; 19 L. J. Ch. 445; *Halton v. Foster*, 3 Ch. 505; 37 L. J. Ch. 547; *Heron v. Stokes*, 4 Ir. Eq. Rep. 296; *Mortimore v. Mortimore*, 47 L. J. Ch. 134; 48 Ib. 470; 4 App. Ca. 449, nom. *Mortimer v. Slater*, 7 Ch. D. 322; *Re Rees*, 59 L. J. Ch. 305; 44 Ch. D. 484; Wms. Exs. 983-989; 2 Jarm. 108, 124, 129; Hawk. 95-103; *Watson Eq.* 1404). *Cp*, RELATIONS: last par of this Def: LEGAL REPRESENTATIVES.

Where however there is an express reference to the Statute of Distribution (or where such reference is implied, *e.g.* where a division is directed, or reference is made to intestacy, *Garrick v. Camden*, 14 Ves. 372; *Re Gray*, sup), or the word “heirs” is used as a limitation of personality and is therefore construed as “next of kin.” or the phrase “next of kin” is coloured by association with the word “heirs.” — *e.g.* a gift of realty and personality to the “heirs or next of kin” of A., — in those cases the statutory next of kin are entitled (*Doody v. Higgins*, 25 L. J. Ch. 773; 2 K. & J. 729; 27 L. T. O. S. 281; *Re Thompson*, 48 L. J. Ch. 135; 9 Ch. D. 607; *Vf*; 2 Jarm. 109); but “as if she had died unmarried” will not import the statute (*Halton v. Foster*, sup). *Cp*, STATUTE OF DISTRIBUTION.

A gift to “next of kin” creates a Joint Tenancy, PER CAPITA (2 Jarm. 107); but where the statutory next of kin take, they take their respective statutory shares as Tenants in Common PER STIRPES (Ib. 109; *See, Re Gray*, sup; *Re Greenwood*, 31 L. J. Ch. 119, *whic* was not followed in *Re Ranking*, L. R. 6 Eq. 601; *Re Rees*, sup).

A Husband is obviously not of kin to his Wife nor a Wife to her Husband; and, further, neither would be entitled under a limitation to the statutory “Next of Kin” of the other (*Garrick v. Camden*, sup; *Bailey v. Wright*, 18 Ves. 49; 1 Wils. Ch. 15; *Lee v. Lee*, 8 W. R. 443; *Re Parry*, *Leak v. Scott*, 32 S. J. 645; *Milne v. Gilbert*, 23 L. J. Ch. 828; 2 D. G. M. & G. 715; 5 Ib. 510; IN BLOOD. *Cp*, LEGAL REPRESENTATIVES. *Vf*; 2 Jarm. 125).

A child Illegitimate by the law of England but having the status of legitimacy in a foreign country where his or her parent is domiciled, is one of the "next of kin" of such parent within the Statute of Distribution, 22 & 23 Car. 2, c. 10 (*Re Goodman*, 50 L. J. Ch. 425; 17 Ch. D. 266; disapproving *Boyes v. Bedale*, 33 L. J. Ch. 283; 1 H. & M. 798: *Vf*; *Re Grove*, 40 Ch. D. 216; *Re Andros*, 24 Ib. 637).

Bequest to Next of Kin of an Illegitimate child; *V. Re Standley*, L. R. 5 Eq. 303.

Under a bequest to next of kin "*ex parte Maternâ*," a person who is next of kin on the father's, as well as the mother's, side will be entitled (*Gundry v. Pinniger*, 21 L. J. Ch. 405; 14 Bea. 94; 1 D. G. M. & G. 502), unless expressly excluded (*Say v. Creed*, 5 Hare, 580); and a direction that one line is to take "in preference" to another, does not exclude the latter, but only postpones it (*Boys v. Bradley*, 10 Hare, 399; 4 D. G. M. & G. 58; nom. *Sayer v. Brudly*, 5 H. L. Ca. 892, 900; nom. *Sayers v. Boys*, 25 L. J. Ch. 593).

A devise to "nearest of kin *by way of heirship*," means, the heir though he be not next of kin (*Williams v. Ashton*, 1 J. & H. 115). But a gift of personalty to "the heirs or next of kin" of A., goes to his statutory next of kin (*Re Thompson*, 48 L. J. Ch. 135; 9 Ch. D. 607), because, as was pointed out in that case by Jessel, M. R., "next of kin" was there used in connection with "heirs," and as "heirs" (as regards succession to personalty) means statutory next of kin, and as the testatrix meant both descriptions to apply to the one class, that class was the statutory next of kin. *V. HEIRS.*

Lineal DESCENDANTS of children, — *e.g.* grandchildren, — are not comprised in "Next of Kindred" as that phrase is used in ss. 6 & 7, Statute of Distribution, for such descendants are provided for in the phrase "legal representatives" of children in s. 6, and the phrase "no child," in s. 7, should be read "no child either in person or in its descendants"; therefore, where such descendants take (even where they are all in the same degree) they take by representation, *per stirpes* (per North, J., *Re Natt. Walker v. Gammage*, 57 L. J. Ch. 797; 37 Ch. D. 517; 58 L. T. 722; 36 W. R. 548, following Ld Hardwicke's last opinion in *Lockyer v. Wade*, Barnard. Ch. 444; 1 Hargrave's Jurisconsult Exercitationes, 271; Burton's Compendium, 7 ed., 438; Joshua Williams' n. on Watkins on Descents, 4 ed., 259; and *Re Ross*, 41 L. J. Ch. 130; L. R. 13 Eq. 286; and rejecting the text of Watkins on Descents; Toller on Exors 375; Wms. Exs. 1367). Where, however, collaterals take under the phrase "Next of Kindred," they take *per capita* (*Davers v. Dewes*, 3 P. Wms. 40; *Lloyd v. Tench*, 2 Ves. sen. 213).

"Legal or Next of Kin"; *V. Harris v. Newton*, 46 L. J. Ch. 268.

In construing a Limitation (common in a *Settlement of a Wife's Property*), to Wife for life, remainder to Husband for life, remainder to *Wife's statutory Next of Kin*, the exact words of each case will have to

be considered to determine at whose death the Next of Kin are to be ascertained, in the event of the Husband surviving. Romilly, M. R., favoured the death of the Husband as the proper period (*Piuder v. Piuder*, 28 Bea. 44; 29 L. J. Ch. 527; *Chalmers v. North*, 28 Bea. 175), and so, apparently, did Kay, J. (*Re Beach, Clarke v. Hayne*, 42 Ch. D. 529; 59 L. J. Ch. 195; 37 W. R. 667); but Pearson, J. (*Druitt v. Seaward*, 31 Ch. D. 234; 55 L. J. Ch. 239; 34 W. R. 180) and Stirling, J. (*Re Bradley*, 58 L. T. 631) favoured the death of the Wife as the proper period for ascertaining the class: *Vh*, 33 S. J. 697.

“According to *Philps v. Evans* (4 D. G. & S. 188), a bequest to the Next of Kin of a person who is *dead at the date of the Will* must, under ordinary circumstances, receive an interpretation analogous to that adopted in the case of a bequest to the testator’s own Next of Kin, as regards the period of ascertaining who are the persons intended; and if there be nothing in the context to make the words applicable to a Class to be ascertained at any other time than that of the testator’s death, those who at *the testator’s death* are the Next of Kin of the deceased person named in the Will would naturally be the persons to take” (per Wood, V. C., *Wharton v. Barker*, 4 K. & J. 502). “This view of the law appears to be in accordance with the decision of Sir Wm. Grant in *Vaux v. Henderson* (1 Jac. & W. 388), and of Ld Romilly in *Re Philps* (L. R. 7 Eq. 151)” (per Stirling, J., *Re Rees*, 59 L. J. Ch. 305; 44 Ch. D. 484, in *whc*, however, the learned judge found a controlling context). *Cp*, 2nd par of this Def. *Vf*, 2 Jarm. 130 *et seq*.

A Power of Appointment amongst “Next of Kin,” *semble*, enables the donee of the Power to appoint to any or either of them (*Snow v. Teed*, cited FAMILY: *Cp*, RELATIONS, towards end).

*Vf*, *Re Parsons*, cited CONTINGENT.

Quà Lunacy Act, 1890, “‘Next of Kin’ includes, heir at law and the persons entitled under the statutes for the distribution of the estates of intestates” (s. 341): *Va*, Lunacy Regu (Ir) Act, 1871, 34 & 35 V. c. 22, s. 2.

*V. Chitty Eq. Ind.* 7729–7739.

“In the Common Law of Scotland, ‘Next of Kin’ and ‘Heirs in Mobilibus’ meant one and the same thing; but another meaning might, of course, be impressed upon the term ‘Next of Kin’ if the context showed, either expressly or by reasonable implication, that the testator or settlor used it in a different sense” (per Ld Watson, *Hood v. Murray*, 14 App. Ca. 135, citing for such a context *Connell v. Grierson*, 5 Sess. Ca. 3rd Ser. 379; *Scott v. Scott*, 14 Sess. Ca. 2nd Ser. 1057). At the next page the same learned lord proceeded to remark on the Intestate Moveable Succession (Scot) Act, 1855, 18 & 19 V. c. 23, saying, — “The effect which these enactments may have upon the significance of ‘Nearest of Kin’ was discussed in *Young’s Trustees v. James* (8 Sess. Ca. 4th Ser. 242), but the circumstances of the case made it unnecessary

to give any decision on the point. One thing is clear that the expression is no longer equivalent to legal 'Heirs in Mobilibus' inasmuch as it does not include all the members of that Class. In its legal sense, the expression is still applicable to those members of the Class who would have been the Sole Heirs before the passing of the Act, and are now preferably entitled to administer the succession of the intestate. There may be a question whether, and how far, the surviving Parent of the defunct ought to be regarded as one of his Next of Kin."

*Cp.* HEIR: *V.* LAWFUL HEIRS.

**NEXT PERSONAL or LEGAL REPRESENTATIVES.** — Under a gift to a person's "next Personal Representatives," or "next Legal Representatives," his nearest of kin, in blood, will take (*Booth v. Vicars*, 13 L. J. Ch. 147; 1 Coll. C. C. 6; *Withy v. Mangles*, 10 L. J. Ch. 391; 10 Cl. & F. 215; *Stockdale v. Nicholson*, 36 L. J. Ch. 793; L. R. 4 Eq. 359).

**NEXT PRESENTATION.** — *V.* NEXT AVOIDANCE: PRESENTATION: 2 Vin. Ab. *Adcowson* (B).

**NEXT QUARTER SESSIONS.** — *V.* NEXT.

**NEXT SURVIVING SON.** — *V.* *Eastwood v. Lockwood*, 36 L. J. Ch. 573; L. R. 3 Eq. 487.

**NEXT TENANT.** — *V.* NEW OCCUPIER.

**NIECE.** — *V.* NEPHEW.

**NIEFE.** — *V.* NEIFE.

**NIGHTEST.** — *V.* FIRST AND NEAREST: NEAREST: NEXT.

**NIGHT.** — "As to what is reckoned Night, and what Day, for this purpose (Burglary): antiently the day was accounted to begin only at sun-rising, and to end immediately upon sunset; but the better opinion seems to be, that if there be daylight or *crepusculum* enough, begun or left, to discern a man's face withal, it is no burglary (*Vf, R. v. Tundy*, 1 C. & P. 297). But this does not extend to moonlight; for then many midnight burglaries would go unpunished: and besides the malignity of the offence does not so properly arise from its being done in the dark, as at the dead of night; when all creation, except beasts of prey, are at rest; when sleep has disarmed the owner, and rendered his castle defenceless" (4 Bl. Com. 224: *Vf, Co. Litt.* 135 a).

But now for all purposes relating to Larceny or other similar offences including Burglary, "Night" means from 9 P.M. to 6 A.M. (Larceny Act, 1861, 24 & 25 V. c. 96, s. 1); and a similar definition applies as regards the phrase "in the night," in s. 11, 14 & 15 V. c. 19 (s. 13).

But under the Night Poaching Act, 1828, 9 G. 4, c. 69, s. 12, Night-time begins the first hour after sunset, and ends the last hour before sunrise; so, of the Hares (Scot) Act, 1848, 11 & 12 V. c. 30 (s. 5).

What is the definition of "Night" as used in s. 56, Highway Act, 1835, and in s. 10, Gasworks Clauses Act, 1847? Under the first, Night, *semble*, begins at least as early as 7 o'clock in the evening in the month of November (*Harcastle v. Bielby*, cited ALLOW).

Quà Factory and Workshop Act, 1901, " 'Night,' means, the period between 9 o'clock in the evening and 6 o'clock in the succeeding morning" (s. 156).

Quà Inland Revenue Acts, " 'Night,' shall be deemed to begin at 11 of the clock in the evening of each day and to end at 5 of the clock in the morning of the next succeeding day" (s. 38 (2), 53 & 54 V. c. 21).

*Cp.* DAY.

**NIGHT-CAP.** — A man having "some Infirmity" may during Divine Service "wear a Night-cap or Coif" (No. 18, Canons Ecc. of 1604). "which word 'Night-cap' is not to be understood as a covering worn in bed, but as a kind of close-fitting cap, as is shown by the words in the Latin Canons 'pileolo aut ricâ'" (per Sir R. Phillimore, *Elphinstone v. Purchus*, L. R. 3 A. & E. 95).

**NIGHT-WALKER.** — "A woman walking up and down the streets to pick up men" (per Lawrence, J., *Lawrence v. Hedger*, 3 Taunt. 15). But Dalton (Countrey Justice, 189) speaks of Night-Walkers as of either sex, and as being such "that be suspected to bee pilferers or otherwise liketo disturbe the peace, or that be persons of evill behaviour," or be EAVES-DROPPERS by night, or as "shall cast mens gates or carts &c into ponds, &c, or shall commit other like misdemeanors or outrages in the night time."

It is Slander, without special damage, to say of a woman that she "walks the streets" for a living (*Wilby v. Elston*, 18 L. J. C. P. 320; 8 C. B. 142: 54 & 55 V. c. 51). *St.* WALK.

**NISI.** — A decree or judgment *Nisi*, is one that is conditional and requires something more to be done to make it absolute, *e.g.* a Decree *Nisi* for a DIVORCE, which cannot be made absolute until after 6 calendar months from its being pronounced, unless the court shall fix a shorter time (s. 3, 29 & 30 V. c. 32).

Court of *Nisi Prius*. V. 3 Bl. Com. 58-60: Termes de la Ley. *Nisi Prius*.

**NITRO GLYCERINE.** — Stat. Def., Nitro Glycerine Act, 1869, 32 & 33 V. c. 113, s. 2.

**NO EVIDENCE.** — "No Evidence" to go to a Jury, means, "No Reasonable Evidencé" (per Pollock, C. B., *Avery v. Bowden*, 6 E. & B.

973; 26 L. J. Q. B. 4; *Uf*, per Cresswell, J., *Ib.*: *Cross v. Williams*, 31 L. J. Ex. 147). *V.* EVIDENCE.

**NO HOPE.** — *V.* HOPE.

**NO INJURY.** — *V.* COMPULSORY POWERS: INJURY.

**NO INSTRUCTIONS.** — A TENDER to a clerk whose reply is, he has "No Instructions" and his master is out, is good (*Finch v. Boning*, 4 C. P. D. 143); *secus*, had the reply been, "No Authority" (*Ib.*: *Bingham v. Allport*, 1 N. & M. 398).

**NO ORDER.** — Where a Trustee is, as such, a litigant and the Judge, in giving judgment, expressly says "No Order as to Costs," not only does the Trustee get no costs from his adversary but his right of retainer against the trust estate is gone (*Re Hodgkinson*, 1895, 2 Ch. 190; 64 L. J. Ch. 663; 72 L. T. 617; 43 W. R. 594).

On a Summons, "No Order" means, "Summons dismissed" (*Meredith v. Gittens*, 18 Q. B. 257).

**NO OTHER.** — *V.* SECURITIES.

**NOBLEMEN.** — *V.* MAGNATES: GREAT MEN.

**NOISE.** — *V.* DISAGREEABLE: NUISANCE.

**NOISOME.** — *V.* OFFENSIVE: NOXIOUS.

**NOISY.** — *Seemle*, a private individual may institute the proceedings for enforcing the Bye-Law of the London County Council against keeping "any Noisy ANIMAL which shall be, or cause, a Serious NUISANCE to residents in the neighbourhood" (*Anon.*, 43 S. J. 71).

A Concertina is a "Noisy INSTRUMENT" within a Municipal Bye-Law (*Booth v. Howell*, 5 Times Rep. 449).

*V.* OFFENSIVE.

**NOKA.** — A half virgate, generally 7½ acres (*Elph.* 605).

**NOLLE PROSEQUI.** — Only puts the deft *sine die* (*Goddard v. Smith*, 6 Mod. 261).

**NOMINAL.** — "Nominal Amount of Stock"; Stat. Def., 32 & 33 V. c. 102, s. 46 (2).

The "Nominal Share CAPITAL" of a Co, is the face value of its shares; and a "splitting" operation whereby Ordinary Shares are extinguished and in lieu Preferred and Deferred Shares are created of a greater nominal face value, is an "INCREASE of the amount of Nominal Share Capital" of the Co, within s. 113, Stamp Act, 1891, although no increase of dividend can result (*A-G. v. Mid. Ry.*, 1900, 2 Q. B. 353; 69 L. J. Q. B. 669; 82 L. T. 716; *affd* 70 L. J. Q. B. 254).



**NOMINATE.** — In an Agreement for Reference, a provision that each party shall “nominate” a referee means, not only naming him, but also the communication of the nomination to the other party (*Tew v. Hurris*, 17 L. J. Q. B. 2; 11 Q. B. 7).

*V.* ACKNOWLEDGE: APPOINT.

The power to “nominate” who is to take the money (not exceeding £100) payable on the death of a Member of a FRIENDLY SOCIETY (s. 15, Friendly Soc. Act, 1875, repld s. 56, Friendly Soc. Act, 1896) may, possibly, be exercised by Will if the document be delivered, sent, or made, in the prescribed manner, but not otherwise; a Nomination duly delivered, sent, or made, cannot, generally, be revoked by a Will, though, possibly, a Will might have that effect if it contained an express revocation and were delivered or sent to the Society (*Bennett v. Slater*, 1899, 1 Q. B. 45; 68 L. J. Q. B. 45; 79 L. T. 324): *Vf*, *Re Griffin*, 71 L. J. Ch. 112; 1902, 1 Ch. 135; 86 L. T. 38; 50 W. R. 250, which decides that (when there is no Nomination) a Friendly Socy Policy is assignable; herein over-ruling *Cuddick v. Highton*, 68 L. J. Q. B. 281; 80 L. T. 527; 47 W. R. 668.

**NOMINATED.** — The person nominated by an instrument creating a trust, as the person to appoint new trustees, is the person “nominated” for the purposes of s. 31, Conv & L. P. Act, 1881, repld s. 10, Trustee Act, 1893, though the event on which such new appointment becomes necessary was not contemplated at the date of the instrument (*Re Walker*, 53 L. J. Ch. 135; 24 Ch. D. 698: *Sr*, *Re Wheeler and De Rochow*, 1896, 1 Ch. 315; 65 L. J. Ch. 219; 73 L. T. 661; 44 W. R. 270).

**NOMINATION.** — ‘Nomination,’ is where one may in right of his manor, or otherwise, nominate and appoint a worthy clerke or man to a Parsonage, Vicarage, or such like Spirituall Promotion” (Termes de la Ley). *Vh*, Phil. Eec. Law, 277. *V.* INTRUSTED.

*V.* NOMINATE: DAY OF NOMINATION: CANDIDATE, last par.

The objections to a “Nomination Paper” at a Municipal Election which the Mayor is to decide under Rules 9, 14, Part 2, Sch 3, 45 & 46 V. c. 50, are those only which relate to the Form of the Paper (*Howes v. Turner*, 45 L. J. C. P. 550; 1 C. P. D. 671). *Vh*, 9 Encyc. 154–161.

**NOMINEE.** — *V.* *Urquhart v. Butterfield*, 56 L. J. Ch. 938; 36 Ch. D. 55; 37 *Ib.* 357.

**NONAGE.** — “Nonage, in general understanding, is all the time of a person’s being under the age of 21; and, in a special sense, where one is under 14 as to marriage” (Jacob). *Cp*, FULL AGE: INFANT.

**NON-ARRIVAL.** — Of a Ship; *V.* *Soames v. Lonergan*, 2 L. J. O. S. K. B. 106; 2 B. & C. 564: ARRIVE.

**NON-ATTENDANCE.** — *V.* NEGLECT.

**NON-BUSINESS DAYS.** — *V.* BUSINESS DAYS.

**NON-COMMISSIONED OFFICER.** — Stat. Def., 38 & 39 V. c. 69, s. 2; 44 & 45 V. c. 58, s. 190.

**NON COMPOS MENTIS.** — *V.* UNSOUND MIND.

**NON CORPORATE.** — *V.* DISTRICT.

**NON-CULTIVATION.** — “ ‘Non-Cultivation’ will not let in evidence of bad cultivation ” (Dwar. 688, citing no authority).

**NON EST.** — “ *Non est factum* ” was the old form of denying, and pleading the General Issue to, a DEED (3 Bl. Com. 305).

“ *Non est inventus*,” was the old return of a sheriff to a Writ of Capias when he could not find the defendant (Ib. 283).

**NON-EXISTING.** — *V.* FICTITIOUS.

**NON-PERFORMANCE.** — *V.* FROM PERFORMANCE: OBSERVANCE OR PERFORMANCE.

**NON PROS.** — The jdgmt of Non Pros (*non prosequitur*) was where the plaintiff delayed proceeding in his action more than the rules allowed, for then he was “ adjudged not to follow or pursue his remedy as he ought to do,” and jdgmt was entered against him, and he was said to be “ nonpros’d ” (3 Bl. Com. 295, 296).

*Cp.* NON-SUIT.

**NON-SUIT.** — “ ‘Non Suite,’ is a renouncing of the suit by the Plaintiff or Demandant, most commonly upon the discovery of some Error or Defect, when the matter is so far proceeded in as the jury is ready at the bar to deliver their Verdict ” (Cowel). *Vh.* *Stanclyffe v. Clarke*, 7 Ex. 439; 21 L. J. Ex. 129; *Kershaw v. Chantler*, 26 L. T. 474; *Poyser v. Minors*, 7 Q. B. D. 329, 336; 50 L. J. Ex. 555, 559.

*V.* DISCONTINUANCE.

*Cp.* NON PROS.

**NON-TESTAMENTARY DISPOSITION.** — *V.* EVASION.

**NON-TEXTILE FACTORIES.** — The “ Non-Textile Factories,” as enumerated in Part 1, Sch 6, Factory and Workshop Act, 1901, are, — (1) PRINT WORKS; (2) BLEACHING and Dyeing Works; (3) Earthenware Works; (4) Lucifer-Match Works; (5) Percussion Cap Works; (6) Cartridge Works; (7) Paper-staining Works; (8) Fustian-cutting Works; (9) Blast Furnaces; (10) Copper Mills; (11) Iron Mills; (12) Foundries; (13) Metal and India-rubber Works; (14) Paper Mills; (15) Glass Works; (16) Tobacco Factories; (17) Letter-press

Printing Works; (18) Book-binding Works; (19) Flax Scutch Mills; (20) Electrical Stations:—

“Non-Textile Factories *and* Workshops,” as enumerated in Part 2 of the same Sch, are, — (21) Hat Works; (22) Rope Works; (23) BAKE-HOUSES; (24) Lace Warehouses; (25) SHIPBUILDING YARDS; (26) QUARRIES; (27) Pit-banks; (28) Dry-cleaning, Carpet-beating, and Bottle-washing Works.

All these (except Nos. 10, 19, and 28) are provided with definitions by the Sch.

**NON-USER.**—An OFFICE, public or private, may be forfeited “(1) By Mis-User, or abuse; as if a judge takes a bribe, or a park-keeper kills deer without authority: (2) By Non-User, or neglect; which in public offices that concern the administration of justice, or the commonwealth, is of itself a direct and immediate cause of forfeiture; but Non-User of a private office is no cause of forfeiture, unless some special damage is proved to be occasioned thereby” (2 Bl. Com. 153: *V. ABANDONMENT*, last par: *USE*). *FRANCHISES*, being regal privileges in the hands of a subject, “may be lost and forfeited either by Abuse or by Neglect” (2 Bl. Com. 153).

**NON-VESTED NATIONAL SCHOOL.**—Stat. Def., *Ir.* 38 & 39 V. c. 82, preamble; 47 & 48 V. c. 22, s. 5.

**NONE.**—“None” is less than *SOME*; *V. LESS*.

**NONE EFFECT.**—“Void and of None Effect”; *V. VOID*.

**NORTH SEA.**—“North Sea Limits”; *V. North Sea Fisheries Act*, 1893, 56 & 57 V. c. 17, s. 9.

**NORTH SIDE.**—“There can be no doubt that at the period when the Rubric in question (that prefixed to the Communion Office, in the Book of Common Prayer) was framed the TABLE was, at the time of the Holy Communion, placed in almost all parish churches length-wise in the body of the church or chancel, — the smaller sides or ends facing east and west, and the longer sides north and south, when the church stood, as it ordinarily did, east and west. And there can be as little doubt that the Rubric was framed with reference to this position of the Table. . . . Where a position at the ‘North Side’ was enjoined by the Rubric, one of the longer sides of the Table was in contemplation, and it was also in contemplation that all the acts prescribed which were to be done at the Table should be done at that side. . . . It is not an ecclesiastical offence to stand at the northern part of the side which faces westward” (per Halsbury, C., delivering judgment of P. C., *Read v. Lincoln, Bp.*, 1892, A. C. 663, 665; 62 L. J. P. C. 13, 14, 15; 67 L. T. 128; 56 J. P. 725). *Vf, Ridsdale v. Clifton*, cited *SIDE*.

## NORTHCOTE'S ACT 1286 NOT EXCEEDING

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**Stafford NORTHCOTE'S ACT.** — The Poor Law (Certified Schools) Act, 1862, 25 & 26 V. c. 43; amended by 31 & 32 V. c. 122.

**NOT ABLE.** — *V.* ABLE.

**NOT AMOUNTING.** — *V.* LESS.

**NOT AS COMMON CARRIERS.** — “ We hold not as Common Carriers, but as Warehousemen, at Owner’s sole risk, and subject to usual warehouse charges ”; *V. Mitchell v. Lanc. & Y. Ry.*, cited OWNER’S RISK.

*V.* COMMON CARRIER.

**NOT ASSIGNABLE.** — A Wife’s Endowment Policy one of the Conditions of which is “ This Policy is not assignable, ” is, by that Condition, subjected to a RESTRAINT ON ALIENATION so that an attempted disposition of, or charge on, it by the wife is invalid (*Re Lavender*, 1898, 1 I. R. 175).

**NOT BEFORE.** — “ A devise of lands, ‘ not before devised, ’ or ‘ not before disposed of, ’ carries the reversion in lands which the testator had previously devised for life ” (1 Jarm. 655).

Where time for pleading shall “ not expire before ” a stated day, that means that the party has up to the close of that day for delivering the pleading (*Severin v. Leicester*, 12 Q. B. 949; nom. *Savery v. Lister*, 18 L. J. Q. B. 13).

*V.* BEFORE.

**NOT ENTITLED.** — *V. Viney v. Norwich Union Insrce.*, cited ENTITLED.

**NOT EXACTLY.** — *V.* EXACTLY.

**NOT EXCEEDING.** — A sum “ not exceeding ”; *V.* per Bayley, J., *Cortis v. Kent W. W. Co.*, 7 B. & C. 340; *Palmer v. Newell*, W. N. (72) 9; *Vf. R. v. St. George’s, Southwark*, 56 L. J. Q. B. 652; 19 Q. B. D. 533; 35 W. R. 841; 52 J. P. 6. In *Cortis v. Kent W. W. Co.* (7 B. & C. 314) the phrase was held, under the circumstances, as connoting a minimum. But it usually connotes a maximum (*Henry v. Antrim*, 1900, 2 I. R. 547).

*V.* LESS: NOT LESS.

A Guarantee for “ not exceeding ” a stated sum, without more, does not impose any condition or restriction against giving credit for a larger sum; it only limits the amount of the guarantor’s liability (*Parker v. Wise*, 6 M. & S. 239; *Gordon v. Rae*, 27 L. J. Q. B. 185; 8 E. & B. 1065).

Penalties, &c, “ not exceeding ”; held, to mean, “ not exceeding in the aggregate ” (*Collins v. Hopwood*, 15 M. & W. 459; 16 L. J. Ex. 124).

*V.* TO THE EXTENT.

**NOT INSURED.** — “Please send the marbles not insured,” in a direction to a Carrier; *V. North Staffordshire Ry v. Peck*, 10 H. L. Ca. 473; 32 L. J. Q. B. 241.

**NOT LESS.** — Where time is to be computed as “not less” than a given number of days, that means clear days (*Chumbers v. Smith*, 13 L. J. Ex. 25; 12 M. & W. 2: *Re Railway Sleepers Co*, 54 L. J. Ch. 720; 29 Ch. D. 204: *See, Re Miller's Dale Co*, 31 Ch. D. 211).

V. CLEAR: LESS: PERIOD: SAY.

Where a statute prescribes a Penalty for an Offence of “not less” than a stated amount, that is the minimum penalty that Justices can impose, notwithstanding that the section, prescribing the penalty, says that the offender “shall be liable” thereto; and the power to mitigate given by s. 4, 42 & 43 V. c. 49 is, in such a case, qualified so that mitigation cannot go below such minimum (*Osborn v. Wood*, 1897, 1 Q. B. 197; 66 L. J. Q. B. 178; 76 L. T. 60; 61 J. P. 118).

Where Articles of a Co prescribe that the business of the Co shall be conducted by “not less” <sup>and</sup>/<sub>or</sub> “not more” than a stated number of Directors, that is imperative and not merely directory (*Re Alma Spinning Co*, cited QUORUM).

Free Gap “not less than  $\frac{1}{10}$ th part of the Width of the Stream,” s. 9 (4), Salmon Fishery (Ir) Act, 1863, 26 & 27 V. c. 114; *V. Westropp v. Commrs of Public Works*, 1896, 2 I. R. 93.

**NOT LIABLE.** — Bequest of Farming Effects to wife for life, remainder to children, with a direction that the wife should “not be liable to account for any diminution” in the effects; held, that the wife took absolutely (*Breton v. Mockett*, 47 L. J. Ch. 754; 9 Ch. D. 95).

**NOT MORE.** — V. NOT LESS.

**NOT NEGOTIABLE.** — “Where a person takes a Crossed Cheque which bears on it the words ‘Not Negotiable,’ he shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had” (s. 81, Bills of Ex. Act, 1882): *semble*, a cheque cannot be made “Not Negotiable” except by adding those words as prescribed by the Act (per Lindley, L. J., *National Bank v. Silke*, 1891, 1 Q. B. 435; 60 L. J. Q. B. 199). *Vh, G. W. Ry v. London & County Bank*, cited CUSTOMER.

The protection given to a Banker by the latter part of s. 12, Crossed Cheques Act, 1876, repealed by Bills of Ex. Act, 1882, was not confined to a cheque which, under the first part of the section, had “not negotiable” in its crossing (*Matthieson v. London & County Bank*, 48 L. J. C. P. 529; 5 C. P. D. 7). *Vh*, ss. 80, 82, Bills of Ex. Act, 1882.

V. NEGOTIABLE.

**NOT OTHERWISE.** — “Not otherwise charged”; *V.* DEED.  
“Not otherwise occupied”; *V.* OCCUPIED.

**NOT SETTLED.** — A devise of lands, “Not Settled,” or “Out of Settlement,” or “Not by him formerly settled or thereby disposed of,” will pass an unsettled reversion in fee, of lands of which a lesser estate or interest is in settlement (1 Jarm. 654, 655).

*V.* UNSETTLED ESTATE.

**NOT TO BE.** — An agreement “not to be performed within the space of one year from the making thereof” (s. 4, Statute of Frauds), means, one which, you can see from its terms, cannot be so performed (*Peter v. Compton*, Skinner, 353; 1 Sm. L. C. 359; *Boydell v. Drummond*, 11 East, 142; *Souch v. Strawbridge*, 2 C. B. 808; 15 L. J. C. P. 170; *McGregor v. McGregor*, 57 L. J. Q. B. 591; 21 Q. B. D. 424; 37 W. R. 45; 52 J. P. 772). The last case shows that *Davey v. Shannon* (48 L. J. Ex. 459; 4 Ex. D. 81) was not well decided. *V.* YEAR: EXCEED.

*Vf.* *McManus v. Cooke*, 56 L. J. Ch. 662; 35 Ch. D. 681; 56 L. T. 900; 35 W. R. 754; 51 J. P. 708.

*V.* TO BE.

**NOT TO MY KNOWLEDGE.** — Where a proper Requisition on Title is made on a question of fact, “an answer by the seller’s solicitor, ‘not to his knowledge,’ is not satisfactory; he should apply to his client for information before he answers the inquiry, and, if necessary, search amongst the title deeds” (Sug. V. & P. 416).

Generally, such an answer would be unsatisfactory in reply to an Interrogatory in an Action when the party interrogated is put upon enquiry (*Bolekow v. Fisher*, 52 L. J. Q. B. 12; 10 Q. B. D. 161; 47 L. T. 724; 31 W. R. 235).

**NOT UNDER COMMAND.** — *V.* COMMAND.

**NOT WORTH THE EXPENSE.** — *V.* WORTH THE EXPENSE.

**NOTABILIA.** — *V.* BONA.

**NOTARY PUBLIC.** — *Vf.* Brooke’s Notary, by Cranstoun: Tenant’s Notary’s Manual.

Quà Infeffment Act, 1845, 8 & 9 V. c. 35. “Notary Public” means, “a Notary Public in Scotland duly admitted and practising there” (s. 10); so of, 31 & 32 V. c. 101 (s. 3); 54 & 55 V. c. 30 (s. 1); 59 & 60 V. c. 49 (s. 1).

**NOTE.** — *V.* MEMORANDUM.

“Note or Memorandum in Writing,” s. 17, Statute of Frauds, repld s. 4, Sale of Goods Act, 1893; For the numerous cases on this phrase,

*V. Dart*, ch. 6: Add. C. 35: Rose. N. P. 527: Benj. 185-218: Blackb. 44-65. The form of the document is immaterial (*Welford v. Beuzeley*, 3 Atk. 503); and it may be broadly stated that almost any document properly SIGNED (whether cotemporaneous or subsequent) suffices, e.g. an Affidavit which states the essential particulars of the transaction (*Barkworth v. Young*, 4 Drew. 1; 26 L. J. Ch. 153; 5 W. R. 156: *Sethe*, per Jessel, M. R., *Trowell v. Shenton*, 8 Ch. D. 324). A Recital in a Will (*Re Hoyle*, 1893, 1 Ch. 84; 62 L. J. Ch. 182), or a signed Resolution in the Minute Book of a Co (*Jones v. Victoria Dock Co*, 46 L. J. Q. B. 219; 2 Q. B. D. 314), or Letters from a Manager of a Co (*John Griffiths Corp v. Humber*, 68 L. J. Q. B. 959; 1899, 2 Q. B. 414), a letter which states, but repudiates, the terms of a transaction (*Bailey v. Sweeting*, 9 C. B. N. S. 843; 30 L. J. C. P. 150), or even a Telegram (*Godwin v. Francis*, 1. R. 5 C. P. 295; 39 L. J. C. P. 121), is within the phrase. *Vh*, ANOTHER.

The document (whatever it is) that contains the "Note or Memorandum" must specify these essential particulars, — (1) The Names of both Seller and Buyer; (2) The Subject-matter of the contract; (3) The Price; and (4) Time of performance, — when such particulars respectively are actually part of the bargain.

As to connecting documents so as to make a Note or Memorandum; *V. Peirce v. Corf*, 43 L. J. Q. B. 52; L. R. 9 Q. B. 210: *Shurdlow v. Cotterill*, 50 L. J. Ch. 613; 20 Ch. D. 90: *Oliver v. Hunting*, 59 L. J. Ch. 255: *Taylor v. Smith*, 67 L. T. 39; 40 W. R. 486; 61 L. J. Q. B. 331: *Coombs v. Wilks*, cited PROPRIETOR: *Warner v. Willington*, cited SIGNED: *Potter v. Peters*, 64 L. J. Ch. 357; 72 L. T. 624: *Pearce v. Gardner*, cited DEAR SIR: Blackb. 44: Leake, 149: Add. C. 35: Rose. N. P. 527: Fry, 254.

As to imperfection of document in consequence of Uncertainty; *V. Ogilvie v. Foljambe*, 3 Mer. 53: MY: ET CETERA: THE.

"The only difference between an 'Agreement' and a 'Note' of an Agreement is that, in the one instance a formal agreement is meant; and in the other, something not so particular in form and technical accuracy, but still containing the essentials of the agreement" (per Cockburn, C. J., *Williams v. Lake*, 29 L. J. Q. B. 3). *V. AGREEMENT.*

*V. IN WRITING: WRITING: SIGNED.*

"Full Notes of Evidence," s. 76(7), 43 V. c. 25 (Canada), may be well taken in short-hand (*Riel v. The Queen*, 10 App. Ca. 675).

*V. PROMISSORY NOTE.*

**NOTICE.** — "Notice," is a direct and definite statement of a thing, as distinguished from supplying materials from which the existence of such thing may be inferred (*Vh*, per Parke, B., *Burgh v. Legge*, 5 M. & W. 420; 8 L. J. Ex. 258: *Vallee v. Dumeryue*, 18 L. J. Ex. 398; 4 Ex. 290). *V. COME TO.*

"Notice," s. 3, Conv Act, 1882, is used "in its strict legal sense" (per Chitty, J., *Re Cousins*, 55 L. J. Ch. 664; 31 Ch. D. 671; 54 L. T. 376; 34 W. R. 393).

"Notice," s. 38, Comp Act, 1867, means, Actual Notice as distinguished from what is called Constructive Notice, but includes a fair business-like statement of the facts (per Lindley, M. R., *Greenwood v. Leather Shod Wheel Co*, cited UNTRUE). Merely specifying the Date of and Names of Parties to a CONTRACT, is not a compliance with the section (*Aaron's Reefs v. Twiss*, cited FALSE REPRESENTATION).

But, Notice that the subject-matter of an Assignment is the subject-matter of an Action, amounts to Notice to the Assignee of the existence of the Solicitor's right to a Lien on property "RECOVERED OR PRESERVED," within s. 28, Solicitors Act, 1860, 23 & 24 V. c. 127 (*Faithful v. Ewen*, 47 L. J. Ch. 457; 7 Ch. D. 495; *Cole v. Eley*, 1894, 2 Q. B. 350; 63 L. J. Q. B. 682; 70 L. T. 892; 42 W. R. 561; *Shippey v. Grey*, 49 L. J. Q. B. 524; *The Paris*, 1896, P. 77; 65 L. J. P. D. & A. 42; 73 L. T. 736; *Dallow v. Garrold*, 54 L. J. Q. B. 76; 14 Q. B. D. 543).

So, Notice of an Act of Bankry, means, knowledge of it, or wilfully abstaining from acquiring such knowledge (*Bird v. Bass*, 6 M. & G. 143; *Vf*; Wms. Bank. 134, 246).

"Notice and Knowledge" of an infirmity in a NEGOTIABLE Instrument, means, not merely EXPRESS notice but, knowledge or the means of knowledge to which the party wilfully shuts his eyes, — a suspicion in the mind of the party and the means of knowledge in his power wilfully disregarded (per Parke, B., *May v. Chapman*, 16 M. & W. 355; *Vf*, *Raphael v. Bank of England*, 17 C. B. 161; 25 L. J. C. P. 33; 1 Sm. L. C. 519).

"Notice" and "Knowledge" contrasted; *V*. judgments of Ld Blackburn and Selborne, C., *Mildred v. Maspons*, 53 L. J. Q. B. 38, 40; 8 App. Ca. 888. *Cp*, MALICE AFORETHOUGHT.

Purchaser for value without Notice; *V*. PURCHASER: OUGHT.

The "Notice" prior to action, to be given under the Employers' Liability Act, 1880, 43 & 44 V. c. 42, must be IN WRITING, because the words of s. 7 are only appropriate to a written document (*Moyle v. Jenkins*, 51 L. J. Q. B. 112; 8 Q. B. D. 116; 30 W. R. 324); and such notice "should be one and single, delivered at one and the same time, containing in it at one and the same time all the incidents which the statute has made a condition precedent to the right to maintain an action" (per Coleridge, C. J., *Keen v. Milwall Dock Co*, 51 L. J. Q. B. 278; 8 Q. B. D. 482; so, by the other members of the Court). *Keen v. Milwall Dock Co* is an instance of an insufficient notice. *Clarkson v. Musgrave*, 51 L. J. Q. B. 525; 9 Q. B. D. 386; *Stone v. Hyde*, 51 L. J. Q. B. 452; 9 Q. B. D. 76; *Carter v. Drysdale*, 53 L. J. Q. B. 557; 32 W. R. 171, furnish instances of sufficient notices. *V*. Notice "of the Cause" of an action, inf.



The "Notice" to be given to a prisoner of an intention to take a deposition under s. 6, 30 & 31 V. c. 35, must be written (*R. v. Shurmer*, 55 L. J. M. C. 153; 17 Q. B. D. 323; 55 L. T. 126; 34 W. R. 656; 50 J. P. 743); so, of a Notice of Distress under 2 W. & M. sess. 1, c. 5, s. 2 (*Wilson v. Nightingale*, 15 L. J. Q. B. 309; 8 Q. B. 1034); though in neither case is writing expressly prescribed. *Va*, NOTICE TO QUIT.

Written Notice of Dispute, s. 257, P. H. Act, 1875; *V. DISPUTE*.

A Notice in Writing does not imply that it is to be SIGNED; it may be in the third person (*Brydges v. Dix*, Jan 1891).

"Notice" of Suspension, s. 4 *h*, Bankry Act, 1883, may be Oral (*Ex p. Nickoll, Re Walker*, 13 Q. B. D. 469; *Re Scott*, 1896, 1 Q. B. 619; 65 L. J. Q. B. 465; *Re Miller*, 45 S. J. 44; 70 L. J. Q. B. 1); but if oral it must be a definite statement, and mere casual talk by a Debtor about his inability to pay his debts in full will not suffice (*Ex p. Oustler*, 54 L. J. Q. B. 23; 13 Q. B. D. 471; 33 W. R. 126). But a Circular to Creditors stating the debtor's inability to pay them in full and offering a Composition, is a Notice of Suspension; for the test is, "What effect would the circular produce on the mind of a creditor receiving it as to the intention of the debtor with regard to his creditors?" (per Bowen, L. J., *Ex p. Gibson, Re Lamb*, 4 Morr. 25, cited with approval by Ld Selborne, *Crook v. Morley*, 1891, A. C. 316; 61 L. J. Q. B. 97; 65 L. T. 389). So, a Circular convening a Meeting of Creditors in consequence of the debtor "being unable to meet his engagements as they fall due" (*Crook v. Morley*, sup), or which speaks of "financial difficulty which makes it desirable for him to consult with his creditors as to his position" (*Re Simonsen*, 1894, 1 Q. B. 433; 63 L. J. Q. B. 242; 70 L. T. 32; *Re Selwood*, 1 Manson, 66; 10 Times Rep. 418; *Re Waite*, 71 L. T. 778; 43 W. R. 208), is a Notice of Suspension. *Semble*, that, in view of these later decisions, *Ex p. Jones* (29 S. J. 357) and *Re Walsh* (52 L. T. 694; 2 Morr. 112) would not be followed: *Vf*, per Williams, J., *Re Dagnall*, 1896, 2 Q. B. 411; 65 L. J. Q. B. 666; 75 L. T. 142; 45 W. R. 79; *Re Wolstenholme*, 2 Morr. 213. On the other hand, it was held in *Hill v. Rowlands* (1896, 2 Q. B. 124; 65 L. J. Q. B. 542) that the following letter from a Debtor's Solrs was *not* a Notice of Suspension, — "As promised we send you herewith Statement showing the Income and Expenditure and the amount of the mortgages on the estates. We think it well to repeat what we stated to you at our interview, that a Receiving Order will be applied for immediately Execution is issued." *Vf*, *Re Phillips*, 41 S. J. 470; 76 L. T. 531. In *Re Scott* (sup) it was intimated that it is material, in this connection, to consider whether the statement was made by a Trader or a Non-Trader; but that a verbal statement by a lady who was a non-trader, — "I won't pay anybody now; it is too late. I am acting under advice, and refuse to see anybody at all," — was a Notice of Suspension. *V. SUSPEND: WITHOUT PREJUDICE.*

*V. SERVED.*

Notice of Appeal; *V.* APPEAL: COURT OF SUMMARY JURISDICTION, *Note.*

Notice of Poor Rate Appeal; *V. R. v. De Grey*, cited SIGNED.

Notice of ASSIGNMENT of a CHOSE IN ACTION has to be given to the Payer, in order to complete the Assignee's title (*Dearle v. Hull*, 3 Russ. 1, *Sethe*, per Ld Macnaghten, *Ward v. Duncombe*, 1893, App. Ca. 392; 62 L. J. Ch. 893; *Somerset v. Cox*, 33 L. J. Ch. 490; 33 Bea. 634; 12 W. R. 590). *Vh.* CONSENT: POSSESSION, ORDER, OR DISPOSITION: *Bridge v. Bridge*, 22 L. J. Ch. 189; 16 Bea. 315; Warren on Choses in Action, 86 *et seq.*

Notice "of the CAUSE" of an Action, in a statutory notice before action, connotes that the Time and Place of the act complained of must be given (*Martins v. Upcher*, 11 L. J. Q. B. 291; 1 Dowl. N. S. 555; *Breeze v. Jerdein*, 12 L. J. Q. B. 234; 4 Q. B. 585). *Vf.* sup: CLEARLY. *Note:* As to computing the Time of Notice of Action, *V.* NOTICE TO QUIT: "Place of Abode" in a Notice of action, *V.* PLACE. *Vh.* PUBLIC AUTHORITY.

Notice of *Claim*, s. 24 (3), Jud. Act, 1873, includes Notice to a Defendant by including him in a Counter-Claim (*Dear v. Swarder*, 4 Ch. D. 482; 46 L. J. Ch. 100). *V.* CLAIM.

Notice to *Determine* a Lease; *V.* DETERMINE: *Vf.* "Notice to Quit," *inf.*

Notice of *Dissent*, s. 161, Comp Act, 1862; *V. Re London and Westminster Bread Co*, 59 L. J. Ch. 155. It has been said that this Notice "should not merely express dissent but should also require the Liquidators either to abstain from carrying the Resolution into effect or to purchase the member's interest" (Palm. Co. Prec. Part 1, 1132, citing *Re Union Bank of Hull*, 13 Ch. D. 808; 49 L. J. Ch. 264); that opinion, however, was obiter, the actual decision being that in that case there had been no Notice at all.

"EXPRESS Notice" of an Absolute Assignment; *V.* ABSOLUTE ASSIGNMENT.

Notice of Novation; *V.* NOVATION.

The Notice of Objection, s. 1, 27 & 28 V. c. 39 (the giving of which is a Condition Precedent to the hearing by an Assessment Committee of an Objection to a Valuation List) means, the Notice to be given, by the objecting party, to the Committee (*R. v. Langrville*, 54 L. J. Q. B. 124).

Notice to exercise an OPTION, *e.g.* to purchase in a Lease, which has to be of a prescribed length given by a certain day; *semble*, the whole of the prescribed period must elapse between the giving of the notice and the stated day; *V.* PREVIOUS.

The "Notice specifying PARTICULAR BREACH complained of," which, under s. 14, Conv & L. P. Act, 1881, must be given before an Action for Forfeiture of a Lease, must be by the person legally entitled, — as distinguished from one only equitably entitled, — to the property (*Matthews v. Usher*, cited ASSIGNS), and "must be such as to enable

the Tenant to see generally what he is required to do. The Landlord need not go through every room in detail; but he must give sufficient particulars to enable the Tenant to take advantage of the Act and avoid the action"; to say, "You have broken the covenants for repairing the inside and outside of the houses (naming them all) contained in your Lease" (giving the date of the Lease) is insufficient (per North, J., *Fletcher v. Nokes*, 1897, 1 Ch. 271; 66 L. J. Ch. 177; 76 L. T. 107; 45 W. R. 471). "Particular Breach," in this section, means, "that the Tenant should be informed of the particular condition of the premises which he is required to remedy. 'Breach,' means, the Neglect to deal with the condition of the premises so pointed out, and not merely failure to comply with the covenants of the lease. The common sense of the matter is, that the Tenant is to have Full Notice of what he is required to do" (per Collins, L. J., *Penton v. Barnett*, 1898, 1 Q. B. 281; *Vf, Re Serle*, 1898, 1 Ch. 652; 67 L. J. Ch. 344), and "the opportunity of considering his position before an action is brought against him" (*Horsey v. Steiger*, 68 L. J. Q. B. 751; 1899, 2 Q. B. 79; 80 L. T. 857; 47 W. R. 644; *vthe*, applied, *Jacob v. Down*, cited KEEP). Note: that in *Re Serle*, Kekewich, J., held that a Notice (proper as regards two Particular Breaches mentioned in it) was bad because it was insufficient as regards a third, — saying "I think that the Notice is not to be saved because it is good in part"; but though that case was cited in *Pannell v. City of London Brewery* (1900, 1 Ch. 496; 69 L. J. Ch. 245), yet Buckley, J., held that a Notice good in part but bad in part is valid as regards the good part, and "the rest is merely matter of defence": *Vf, Locke v. Pearce*, cited PROCEEDING.

When Notice demanding PAYMENT of the money secured by a BILL OF SALE is required to be given, it must give a reasonable time for a compliance therewith (*Brightly v. Norton*, 32 L. J. Q. B. 38; 3 B. & S. 305; 11 W. R. 167; *Vf, IMMEDIATELY: REASONABLE*).

Notice, quà Peace Preservation (Ir) Acts; *V. 11 & 12 V. c. 2, s. 11; 33 & 34 V. c. 9, s. 4. V. THREATENING.*

Notice, quà Telegraph Act, 1878, 41 & 42 V. c. 76; *V. s. 12.*

"Notice, Order, or other Document"; *V. R. v. Mead*, cited OTHER.

"Public Notice or Advertisement"; *V. PUBLIC NOTICE: — "Advertisement or Notice"; V. "Foreign Lottery," sub FOREIGN.*

NOTICE TO QUIT, as to construction of Inaccurate Words in; *V. Doed. Robinson v. Dobell, Doe d. Richmond v. Morphett, and Wride v. Dyer*, cited CURRENT: *Vf, Doe d. Huntingtower v. Culliford*, 4 D. & R. 248; *Doe d. Williams v. Smith*, 5 L. J. K. B. 216; 5 A. & E. 350.

Notice to Treat; *V. TREAT.*

Note. As to the Equitable Doctrine of Notice; *V. 2 White & Tudor*, 150–249; 9 Encyc. 189–202.

*V. LEGAL NOTICE: SHORT NOTICE: STOP.*

**NOTICE TO QUIT.** — A "Notice to Quit" is a NOTICE (which generally speaking may be written or verbal) which on its expiry does,

of itself and in accordance with the subsisting contract, put an end to a relationship of Landlord and Tenant.

"Notice to Quit," in Notices to Quit (Ir) Act, 1876, 39 & 40 V. c. 63, includes, a Notice of Surrender by a Tenant (*Re O'Brien*, 19 L. R. Ir. 429).

Under R. 6, Ord. 3, R. S. C., a Writ may be specially indorsed where a tenancy has been determined "by Notice to Quit," though such tenancy be only created by an Attornment in a Mortgage Deed (*Daubuz v. Lavington*, 53 L. J. Q. B. 283; 13 Q. B. D. 347; 51 L. T. 206; *Hall v. Comfort*, 56 L. J. Q. B. 185; 18 Q. B. D. 11; 55 L. T. 550; 35 W. R. 48; *Mumford v. Collier*, 25 Q. B. D. 279; *Kemp v. Lester*, 1896, 2 Q. B. 162; 65 L. J. Q. B. 532; 74 L. T. 268; 44 W. R. 453); but a Notice demanding possession on a Forfeiture, is not a "Notice to Quit" under that Rule (*Burns v. Walford*, W. N. (84) 31; *Mansergh v. Rimell*, Ib. 34), though a Notice of that kind may now be given under the Rule as amended by R. S. C., Jan 1902: *V. EXPIRATION*.

Nor is a Notice demanding possession on a Forfeiture, a "Legal Notice to Quit" within s. 50, Co. Co. Act, 1856, s. 138, Co. Co. Act, 1888 (*Friend v. Shaw*, 57 L. J. Q. B. 225; 20 Q. B. D. 374; 58 L. T. 89; 36 W. R. 236: *V. LEGAL NOTICE*); nor is it a "Regular Notice to Quit" within s. 1, 1 G. 4, c. 87 (*Doe d. Cundey v. Sharpley*, 15 L. J. Ex. 341; 15 M. & W. 558); nor would a Notice demanding possession of a tenant holding over after surrendering his term be within the last phrase (*Doe d. Tindal v. Roe*, 2 B. & Ad. 922; 1 Dowl. 143).

As to Form of Notice to Quit; *V. NOTICE: DETERMINE*. As to the Notice generally, *V. Redman*, ch. 8, s. 7; Woodf. ch. 8, s. 7; Fawcett, 440; 9 Encyc. 216-223.

"A Notice required as a Condition Precedent to any Right or Claim, — e.g. Notice of Action, or Notice to Quit, — is computed exclusively of the day of the notice" (Leake, 729, citing *Young v. Higgon*, 6 M. & W. 49; 9 L. J. M. C. 29; *Freeman v. Read*, 4 B. & S. 174; 32 L. J. M. C. 226, approved by Esher, M. R., *Quartermaine v. Selby*, 5 Times Rep. 223).

**NOTICE TO TREAT.** — *V. TREAT.*

**NOTING.** — Noting is a minute made by a Notary on a Bill of Exchange of its Dishonour by Non-Acceptance or Non-Payment (Byles, ch. 19): *Vh*, s. 51, Bills of Ex. Act, 1882: *LIQUIDATED DEMAND*.

An intimation to the Drawer of a Bill of a charge for "Noting," implies Presentment to and Non-payment by the Acceptor (*Armstrong v. Christiani*, 5 C. B. 687; 17 L. J. C. P. 181).

*V. BANK CHARGES.*

**NOTORIOUS.** — *V. COMMON AND NOTORIOUS.*

**NOTOUR BANKRUPT.** — *V. INSOLVENT.*

**NOTWITHSTANDING.** — “ ‘Anything in this Act to the contrary notwithstanding’; is equivalent to saying that the Act shall be no impediment to the measure, and precisely corresponds to the words in the second saving of the Statute of Uses, 27 H. 8, c. 10, ‘as if this Act had not been made’ ” (Dwar. 683, citing *Chenic’s Case*; *Cecil’s Case*, 7 Rep. 20).

**NOVATION.** — “ ‘Novation,’ — a term derived from the Civil Law, — means this, That, there being a Contract in existence, some new contract is substituted for it, either between the same parties (for that might be) or between different parties; the Consideration mutually being the discharge of the old contract. A common instance of it, in Partnership cases, is where, upon the Dissolution of the Partnership, the Persons who are going to continue in business agree and undertake, as between themselves and the retiring partner, that they will assume and discharge the whole liabilities of the business, usually taking over the assets; and if they give NOTICE of that arrangement to a creditor and ask for his accession to it, there becomes a contract, between the creditor who accedes and the new firm, to the effect that he will accept their liability instead of the old liability, and, on the other hand, that they promise to pay him for that consideration ” (per Selborne, C., *Scarf v. Jardine*, 7 App. Ca. 351; 51 L. J. Q. B. 616). “ In order that one liability may be extinguished by being replaced by another by agreement, it is essential that the person in whom the correlative right resides should be a party to the agreement, or should, at all events, show by some act of his own that he accedes to the substitution ” (Lindley P. 246, *whv* to p. 260 for cases in illustration). *Vf*, Leake, 684–695; Buckl. 403–417: *Re Manchester & London Assrce*, L. R. 9 Eq. 643; 5 Ch. 640; 23 L. T. 332; 18 W. R. 1185: per Mellish, L. J., *Spencer’s Case*, 6 Ch. 370; 40 L. J. Ch. 461: *Sugg v. Hill*, 10 Times Rep. 288: the following four cases in the European Assrce Liquidation, *Hort’s Case*, 45 L. J. Ch. 321; 1 Ch. D. 307, *Cocker’s Case*, 45 L. J. Ch. 822; 3 Ch. D. 1, *Douse’s Case*, 46 L. J. Ch. 402; 3 Ch. D. 384, and *Miller’s Case*, 3 Ch. D. 391: s. 7, Life Assurance Companies Act, 1872, 35 & 36 V. e. 41: (Novation of Suretyship) *Wilson v. Lloyd*, L. R. 16 Eq. 60; 42 L. J. Ch. 559; 28 L. T. 331, distd in *Manchester & London Assrce*, sup, and disapproved *Ex p. Jacobs*, 10 Ch. 211; 44 L. J. Bank. 34: *Dane v. Mortgage Insrce*, 1894, 1 Q. B. 54; 63 L. J. Q. B. 144; 70 L. T. 83; 42 W. R. 227: *Provincial Bank v. Cussen*, 18 L. R. Ir. 388.

*Cp*, SUBROGATION.

**NOW.** — “The word ‘Now,’ — ‘any property I *now* possess’ — would pass all the property possessed by the testator at *the time of his death* ” (per Kay, J., *Re Portal to Lamb*, 53 L. J. Ch. 1163. — reversed without affecting this proposition, 54 L. J. Ch. 1012; 30 Ch. D. 50, — citing *Wagstaff v. Wagstaff*, 38 L. J. Ch. 528; L. R. 8 Eq. 229: *Re*

*Ord*, 12 Ch. D. 22; *Everett v. Everett*, 47 L. J. Ch. 367; 7 Ch. D. 428; *Goodlad v. Burnett*, 1 K. & J. 341; *Re Otley and Ilkley Committee*, 34 L. J. Ch. 596; 34 Bea. 525. *Sr*, Wms. Exs. 175). It will, however, be observed that this interpretation is based on the rule embodied in s. 24, Wills Act, 1837, which says that every Will "with reference to the *real estate and personal estate* comprised in it," shall speak from the death. *Vf*; note to Introductory Chapter, towards end: HAVE.

For other purposes, — *e.g.* ascertaining persons or classes, or for fixing a particular description of property, 1 Jarm. 332-334, — "It may be stated, as a general rule, that wherever a testator refers to an actually existing state of things, his language is referential to *the date of the Will*, — and not to his death, as this is then a prospective event. Such, it is clear, is the construction of the word 'Now,' or any other expressions pointing at present time" (1 Jarm. 318: *Va*, *Ib*. 154, where it is said that a testamentary "gift to children 'now living' applies to such as are in existence *at the date of the Will* and those only").

So "now occupied by A." are words of description and relate to the date of the Will (*Hutchinson v. Barrow*, 30 L. J. Ex. 280; 6 H. & N. 583). So, of the phrase, "the house *I now live in*" (*Williams v. Owen*, 2 N. R. 585). *Vf*; *Cole v. Scott*, 19 L. J. Ch. 63; 16 Sim. 259; 1 Mac. & G. 518, on *whc* per Lindley, L. J., *Re Bridger*, 1894, 1 Ch. 297; 63 L. J. Ch. 186; 70 L. T. 204; 42 W. R. 179: and to the contrary of *Cole v. Scott*, *V*. HAVE. *Vf*; OCCUPATION.

"I now Possess"; *V. Hepburn v. Skirving*, 4 Jur. N. S. 651.

But in the case of a *Residuary Gift*, "Now" does not always have the effect of making the gift speak from the date of the Will (*Miles v. Miles*, 35 L. J. Ch. 315; 35 Bea. 192; L. R. 1 Eq. 462; 14 W. R. 272; 13 L. T. 697; *Cox v. Bennett*, L. R. 6 Eq. 422; *Saxton v. Saxton*, 49 L. J. Ch. 128; 13 Ch. D. 359; 41 L. T. 648; 28 W. R. 294. *Vf*, *Dart*, 309).

"Now and in future"; *V. Weller v. Stone*, 54 L. J. Ch. 497.

"Now are," in a tenant's agreement "to leave the premises in the same state and condition as they now are," may properly be taken as referring to the commencement of the tenancy (*White v. Nicholson*, 11 L. J. C. P. 264; 4 M. & G. 95; 4 Sc. N. S. 707).

"Now born"; *V. BORN*: 1 Jarm. 423, 2 *Ib*. 184, 222.

"Now due," or "Now owing," or "Now paid"; as to when this is a true setting forth of the consideration of a Bill of Sale (s. 8, B. of S. Acts, 1878, 1882); *V. Ex p. Allom, Re Monday*, 14 Q. B. D. 43; 33 W. R. 231; *Hawlyn v. Betteley*, 5 C. P. D. 327; 49 L. J. C. P. 465; *Ex p. Hunt, Re Cann*, 13 Q. B. D. 36. The last case distinguished *Ex p. Firth, Re Corburn*, 19 Ch. D. 419; 51 L. J. Ch. 473. *Vf*, *Re Hockaday*, 4 Morr. 12; *Re Smith*, 43 W. R. 206; 72 L. T. 59; *Criddle v. Scott*, 11 Times Rep. 222; *Cochrane v. Moore*, 59 L. J. Q. B. 377; 25 Q. B. D. 57; *Re Moore*, 4 Manson, 51; *Darlow v. Bland*, 1897, 1 Q. B. 125; 66 L. J. Q. B. 157; 75 L. T. 537; 45 W. R. 177; *Re Wiltshire*,

1900, 1 Q. B. 96; 69 L. J. Q. B. 145; 81 L. T. 616; 48 W. R. 256; *Davies v. Jenkins*, cited SPECIFIC: Rosc. N. P. 1192: *Watson Eq.* 714: TRULY SET FORTH.

"Every Deed or Memorandum of Arrangement now or hereafter entered into," s. 224, Bankry Act, 1849; held, in view of the subject-matter, not to be retrospective (*Waugh v. Middleton*, 22 L. J. Ex. 109; 8 Ex. 352: *Larpen v. Bibby*, 5 H. L. Ca. 481; 24 L. J. Q. B. 301).

"Now last past"; V. LAST PAST.

"Now let at"; V. USUALLY.

"Now payable"; V. *Waterlow v. Sharp*, cited LOAN.

"Now in the Port of A."; these words, in a Charter-Party, import a Warranty amounting to a Condition Precedent (*Behu v. Burness*, 32 L. J. Q. B. 204; 3 B. & S. 751); so do the words "Now lying" (*Glynn v. Margetson*, cited LIBERTY TO CALL, or "Now at Sea" (*Ollive v. Booker*, 17 L. J. Ex. 21; 1 Ex. 416), or "Now on Passage" (*Gorrison v. Perrin*, 27 L. J. C. P. 29; 2 C. B. N. S. 681); so, of the words "Now sailed, or about to sail" (*Bentsen v. Taylor*, 1893, 2 Q. B. 274; 63 L. J. Q. B. 15; 69 L. T. 487; 42 W. R. 8: V. SAIL). *Vh*, Abbott, 331, 332.

An assignment of all household goods and other estate and effects of or to which the assignor is "now possessed or entitled," or "belonging or due" to him, will not pass a contingent interest under a Will (*Pope v. Whitecombe*, 3 Russ. 124: *Re Wright*, 15 Bea. 367: *Sythe, Evison v. Gassiot*, 3 D. G. M. & G. 958).

Devise of message "wherein D. now resides"; V. *Re Otley and Ilkley*, sup.

"Now residing"; V. *Re Lyon*, W. N. (79) 20.

**NOXIOUS.** — "Noisome" and "Noxious" are synonyms (per Foster, *J., R. v. White*, 1 Burr. 334), — " 'Noxious,' not only means hurtful and offensive to the smell, but it is also the translation of the very technical term 'nocivus'; it is not necessary that the smell should be unwholesome, it is enough if it renders the enjoyment of life and property uncomfortable" (per Mansfield, C. J., *Ib.*, 1 Burr. 337).

The penalty imposed by s. 64, P. H. Act, 1848, for newly establishing, without license, "the business of a blood-boiler, bone-boiler, fell-monger, slaughterer of cattle horses or animals of any description, soap-boiler, tallow-melter, tripe-boiler, or other noxious or offensive business, trade, or manufacture," was, on the *ejusdem generis* principle, restricted to trades that dealt with substances which are, or must necessarily become, in themselves, noxious or offensive; and brick-making was not necessarily prohibited (*Wanstead v. Hill*, 32 L. J. M. C. 135; 13 C. B. N. S. 479; 11 W. R. 368). In that case it was also pointed out that all the enumerated trades involve the collection of large quantities of animal matter, which brick-making does not. That section, in

language nearly identical, is replaced by s. 112, P. H. Act, 1875; but this latter section does not include a Fish-frying business, although, as carried on, the effluvium is perceptible 200 or 300 yards off (*Braintree v. Boyton*, 52 L. T. 99; 48 J. P. 582), nor does it include a Small-Pox Hospital (*Withington v. Manchester*, 1893, 2 Ch. 19; 62 L. J. Ch. 393; 68 L. T. 330; 41 W. R. 306. *Cp*, *Fleet v. Metropolitan Asylums Bd* and *Metropolitan Asylums District v. Hill*, cited NUISANCE); but it does include the business of a Bone Dealer (*Passey v. Oxford*, 43 J. P. 622). *Cp*, Offensive Trades, ss. 19-22, P. H. London Act 1891. *Vf*, *Bamford v. Turnley*, *Reinhardt v. Mentasti*, *Sanders-Clark v. Grosvenor Mansions v. Co* and *A-G. v. Cole*, cited NUISANCE.

#### V. OFFENSIVE.

A thing is "Noxious," ss. 58, 59, Offences against the Person Act, 1861, 24 & 25 V. c. 100, if capable of doing harm, and if noxious as administered; although innoxious if differently administered (*R. v. Cramp*, 49 L. J. M. C. 44; 5 Q. B. D. 307; 28 W. R. 701; 42 L. T. 442; 44 J. P. 70, 411; *R. v. Brown*, 63 J. P. 791. *Vf*, *R. v. Hennah*, 13 Cox C. C. 547; *R. v. Perry*, 2 Ib. 223; *R. v. Blakeman*, 12 Ib. 463; *R. v. Isaacs*, 32 L. J. M. C. 52; L. & C. 220). *V*. POISON: ADMINISTER.

"Noxious or Offensive Gas," quæ Alkali, &c, Works Regn Act, 1881, 44 & 45 V. c. 37, "does not include sulphurous acid arising from the combustion of coal" (s. 29).

"Noxious Matter"; *V*. FILTHY WATER.

**NUDE CONTRACT.** — "Nude Contract, *nudum pactum*, is a bare promise of a thing without any CONSIDERATION; and, therefore, we say, *Ex nudo pacto non oritur actio*" (Cowel). *Cp*, PROMISE.

*Vh*, Add. C. 2: Leake, 6.

**NUISANCE.** — "Nusauns' is where any man levieth any wall, or stoppeth any water, or doth any thing upon his owne ground, to the unlawfull hurt or annoyance of his neighbour" (*Termes de la Ley*: *Vf*, Cowel: Jacob).

"I do not think that the 'Nuisance' for which an action will lie is capable of any legal definition, which will be applicable to all actions and useful in deciding them. The question so entirely depends on the surrounding circumstances, — the place, where, — the time, when, — the alleged nuisance, what, — the mode of committing it, how, — and the duration of it, whether temporary or permanent, occasional or continual, — as to make it impossible to lay down any rule of law applicable to every case, and which will be also useful in assisting a jury to come to a satisfactory conclusion. It must at all times be a question of fact with reference to all the circumstances of the case. Most certainly, in my judgment, it cannot be laid down as a legal proposition, or doctrine,



that anything which, under any circumstances, lessens the comfort or endangers the health or safety of a neighbour, must necessarily be an actionable nuisance. That may be a nuisance in Grosvenor Square which would be none in Smithfield Market. That may be a nuisance at mid-day which would not be a nuisance at mid-night. That may be a nuisance which is permanent and continual, which would be no nuisance if temporary or occasional only. A clock striking the hour, or a bell ringing for some domestic purpose, may be a nuisance if unreasonably loud and discordant, of which the jury alone must judge; but although not unreasonably loud, if the owner, from some whim or caprice, made the clock strike the hour every ten minutes, or the bell ring continually, I think that a jury would be justified in considering it to be a very great nuisance. In general, a kitchen chimney, suitable to the establishment to which it belonged, could not be deemed a nuisance; but if built in an inconvenient place or manner, on purpose to annoy the neighbours, it might very properly be treated as one. The compromises that belong to social life, and upon which the peace and comfort of it mainly depend, will furnish an indefinite number of examples in which some apparent natural right is invaded, or some enjoyment abridged, to provide for the more general convenience or necessities of the whole community" (per Pollock, C. B., *Bamford v. Turnley*, 31 L. J. Q. B. 292; 3 B. & S. 62; 6 L. T. 721). In that case it was held that Brickmaking may be so carried on as to be an actionable Nuisance: *Va, Walter v. Selfe*, inf: *Beardmore v. Tredwell*, 31 L. J. Ch. 892; 3 Giff. 683; 7 L. T. 207; *Cavey v. Lidbetter*, 32 L. J. C. P. 104; 13 C. B. N. S. 470; *Boreham v. Hull*, W. N. (70) 57. *See, Wanstead v. Hill*, cited NOXIOUS. A "Nuisance" is, "an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living but, according to plain and sober simple notions among the English people" (per Knight-Bruce, V. C., *Walter v. Selfe*, 4 D. G. & S. 322; 20 L. J. Ch. 435, approved *Tod-Heatley v. Benham*, inf, and *Pembroke v. Warren*, 1896, 1 L. R. 134, 135, 140). *Vf.* per Selborne, C., *Gaunt v. Fynney*, 42 L. J. Ch. 122; 8 Ch. 8; 21 W. R. 129; *Bendelow v. Wortley*, 57 L. J. Ch. 762; 57 L. T. 849; 36 W. R. 168; *Reinhardt v. Mentast*, 42 Ch. D. 685; 58 L. J. Ch. 787, *Sethle, Sanders-Clark v. Grosvenor Mansions Co*, 1900, 2 Ch. 373; 69 L. J. Ch. 579; 82 L. T. 758; 48 W. R. 570, on *wher, A-G. v. Cole*, W. N. (1900) 272; 70 L. J. Ch. 148; *Truman v. L. B. & S. Ry*, 55 L. J. Ch. 354; 11 App. Ca. 45; *Fleet v. Metropolitan Asylums Bd.* 2 Times Rep. 361; *Metropolitan Asylums District v. Hill*, 6 App. Ca. 193; 50 L. J. Q. B. 353; *Harrison v. Southwark, &c, Water Co*, 1891, 2 Ch. 409; 60 L. J. Ch. 630; *Jeffery v. St. Paneras*, 63 L. J. Q. B. 618; *Wanton v. Coppard*, cited DISAGREEABLE: *Rosc. N. P.* 748-761; *Add. T.* 362 *et seq.*

As to a Nuisance by, *e.g.*, —

A BROTHEL; *V. per Denman, C. J., Norris v. Smith*, 10 A. & E. 188:

Crowds of people; *V. Betterton's Case*, Holt, 538: *Bellamy v. Wells*, 60 L. J. Ch. 156; *Barber v. Penley*, 1893, 2 Ch. 447; 62 L. J. Ch. 623:

Crying Newspapers; *V. Innes v. Newman*, cited INHABITANT, p. 971:

Defective Fence or Ruinous House abutting on a Highway; *V. Harrold v. Watney*, 1898, 2 Q. B. 320; 67 L. J. Q. B. 771: *R. v. Watts*, 1 Salk. 357: *Barnes v. Ward*, 19 L. J. C. P. 195; 9 C. B. 392:

Deposit of Filth; *V. A-G. v. Tod-Heatley*, 1897, 1 Ch. 560; 66 L. J. Ch. 275:

Dog Show; *V. Churchill v. Pemberton*, 39 S. J. 332:

New and Unusual User; *V. Ball v. Ray*, 8 Ch. 467; 28 L. T. 346; 21 W. R. 282: *Houland v. Dover Harbour Bd*, 14 Times Rep. 355: *Cp*, HIGHWAY:

Night Noises; *V. Bellamy v. Wells*, sup: *Cp*, NOISY:

Noxious Trades; *V. Bamford v. Turnley*, *Reinhardt v. Mentasti*, *Sanders-Clark v. Grosvenor Mansions Co*, and *A-G. v. Cole*, sup:

Overhanging Trees; *V. Lemmon v. Webb*, cited LOP: *Crowhurst v. Amersham*, inf.

Pigeon-Shooting Match; *V. R. v. Moore*, 1 L. J. M. C. 30; 3 B. & Ad. 184:

Smoke; *V. Salvin v. North Brancepeth Co*, 9 Ch. 705; 44 L. J. Ch. 149:

Snow-heaps in a Street melted by salt; *V. Ogston v. Aberdeen Tramways*, 1897, A. C. 111; 66 L. J. P. C. 1:

Spiked Wall abutting on a Highway; *V. Feanu v. Clare*, 1895, 1 Q. B. 199; 64 L. J. Q. B. 238:

Stables: *V. Rapier v. London Tramways Co*, cited, CONVENIENCE:

Urinal; *V. Chibnall v. Paul*, 29 W. R. 536.

A Ladies' School with its musical lessons is *not* a Nuisance (per North, J., *Christie v. Davey*, 1893, 1 Ch. 316; 62 L. J. Ch. 439: as to a Boys' School, *V. Waiton v. Coppard*, sup); nor is a Public Small-Pox Hospital, necessarily, a Nuisance (*Withington v. Manchester*, cited NOXIOUS: *A-G. v. Manchester*, 1893, 2 Ch. 87; 62 L. J. Ch. 459; 68 L. T. 608). So, making Rabbit Burrows is *not* a Nuisance, for rabbits, though mischievous to neighbours, are *feræ naturæ* (*Bowlston v. Hardy*, Cro. Eliz. 547; 5 Rep. 104 b); nor are Yew Trees placed near a boundary, unless placed there as a trap to cattle (*Pouting v. Noakes*, 1894, 2 Q. B. 281; 63 L. J. Q. B. 549: *secus*, if they overhang plt's land, *Crowhurst v. Amersham Bd*, 48 L. J. Ex. 109; 4 Ex. D. 5, distinguishing *Wilson v. Newberry*, 41 L. J. Q. B. 31; L. R. 7 Q. B. 31); nor is allowing Thistles to seed a Nuisance (*Giles v. Walker*, 59 L. J. Q. B. 416; 24 Q. B. D. 656).

*V. ELIGIBLE.*

Generally speaking, Annoyance and Injury occasioned by the due EXECUTION OF STATUTORY POWERS do not give rise to an Actionable Nuisance (*Vanhan v. Taff Vale Ry*, 29 L. J. Ex. 247; 5 H. & N. 679: *National Telephone Co v. Baker*, 1893, 2 Ch. 186; 62 L. J. Ch. 699:

68 L. T. 283; 57 J. P. 373, and cases therein referred to: *Shelfer v. City of London Electric Lighting Co*, 1895, 2 Ch. 388; 64 L. J. Ch. 216; 73 L. T. 42; 44 W. R. 198).

In the ordinary Covenant against "Nuisance, Injury, or Annoyance," it would seem that the words are used in the order of their relative extent; for a Nuisance is also an "Injury" and "Annoyance," whilst there may be an "Annoyance" without its constituting a "Nuisance," or creating any very definite "Injury." "Unless the nuisance complained of is one for which an indictment would lie, or an action could be maintained, it is no Nuisance within the terms" of such a covenant (per Bacon, V. C., *Harrison v. Good*, 40 L. J. Ch. 300; L. R. 11 Eq. 338; 24 L. T. 263; 19 W. R. 346); and, accordingly, it was there held that the establishment of a National School with playground for boys, in the immediate neighbourhood of valuable residential properties, was not a "Nuisance," though it would be an "Annoyance," and, probably, an "Injury." But in *Tod-Heatley v. Benham* (58 L. J. Ch. 83; 40 Ch. D. 80; 37 W. R. 38), Lindley, L. J., referring to *Harrison v. Good*, said, "I am not by any means sure that the V. C. did not put on the word 'Nuisance' in that covenant too restricted an interpretation"; and Bowen, L. J., said that that interpretation was "a matter that may be doubted." *Vf*; *Jenkins v. Jackson*, 58 L. J. Ch. 124; 40 Ch. D. 71: DETRIMENTAL: DIS-AGREEABLE.

*Note.* A Covenant of this kind, which enumerates several prohibited trades and concludes with general words, will not, as a rule, be construed on the *Ejusdem Generis* principle (*Tod-Heatley v. Benham*, and *Wauton v. Coppard*, sup).

V. ANNOYANCE.

Disturbance of Light is a "Nuisance," within the non-exoneration clauses of the Gas Works Clauses Acts, 1847 and 1871 (*Jordeson v. Sutton, &c, Gas Co*, 1899, 2 Ch. 217; 68 L. J. Ch. 457).

A "Nuisance," under s. 8, Nuisances Removal Act, 1855, 18 & 19 V. c. 121, must have been one that was injurious to health (*G. W. Ry v. Bishop*, 41 L. J. M. C. 120; L. R. 7 Q. B. 550). But, as used in the corresponding section in the P. H. Act, 1875 (s. 114), Stephen, J., was of opinion that the word "Nuisance" was not confined to something that was injurious to health (*Malton Local Bd v. Malton Manure Co*, 49 L. J. M. C. 90; 4 Ex. D. 302); which latter case was followed in *Bishop Auckland Sanitary Authy. v. Bishop Auckland Iron Co* (52 L. J. M. C. 38; 10 Q. B. D. 138) quâ s. 91 (4), P. H. Act, 1875. Swine or pigstye not to be kept "so as to be a Nuisance" (s. 47 (1) *Ib.*), "Nuisance" is used in its general and popular sense, and as not necessarily implying injury to health (*Banbury v. Page*, 51 L. J. M. C. 21; 8 Q. B. D. 97).

Stat. Def. — Sanitary Act, 1866, 29 & 30 V. c. 90, s. 19: that def includes an overcrowded house, though occupied by one family only (*Rye v. Payne*, 44 L. J. M. C. 148). *Vf*, as to the section, *Barnes v. Akroyd*,

41 L. J. M. C. 110; L. R. 7 Q. B. 474: *Norris v. Barnes*, 41 L. J. M. C. 154; L. R. 7 Q. B. 537.

Nuisances, quâ P. H. Act, 1875; *V.* s. 91, a def adopted by P. H. Ireland Act, 1878 (s. 107), and adopted but amplified by P. H. London Act, 1891, ss. 2-18, and by P. H. Scotland Act, 1897, ss. 16-31.

S. 2, P. H. London Act, 1891, "clearly contemplates 'Nuisances' arising from the actions of Owners of property, as distinguished from acts arising out of the construction of great public works" (per Day, J., *Fulham v. London Co. Co.*, 1897, 2 Q. B. 76; 66 L. J. Q. B. 515; 76 L. T. 691; 45 W. R. 620; 61 J. P. 440).

"Accumulation or Deposit, which is a Nuisance or injurious to health"; *V.* ACCUMULATION.

"Acts relating to Nuisances," quâ Artizans and Labourers Dwellings Improvement Act, 1879; *V.* s. 5: — quâ Housing of the Working Classes Act, 1890; *V.* (for England) s. 2, (for Ireland) s. 98.

"Author of a Nuisance"; *V.* AUTHOR.

"Nuisance to a HIGHWAY"; Stat. Def., Barbed Wire Act, 1893, 56 & 57 V. c. 32, s. 2. *Cp.* PURPRESTURE.

As to a *Quia Timet* action to prevent Nuisance; *V.* *A-G. v. Manchester*, sup.

*V.* COMMON NUISANCE: OBSTRUCT: URINAL: Garrett on Nuisances: 9 Encyc. 228-235.

**NULL.**—The power given by Art. 1034 of the Canadian Code of Civil Procedure to declare "Null" Letters Patent obtained by fraudulent suggestion, does not authorize a partial annulment; it must be entire (*La Banque D'Hochelaga v. Murray*, 59 L. J. P. C. 102; 15 App. Ca. 414).

"Null and void"; *V.* VOID.

**NULLA BONA.**—The return of "Nulla Bona" to a *fi. fu.*, means, that there are no goods applicable to satisfy the claim (*Shattock v. Carden*, 21 L. J. Ex. 200; 6 Ex. 725).

**NULLITY.**—*V.* ERROR.

Nullity of *Marriage*, is when there has been no real marriage at all, *e.g.* when the parties are within the prohibited Degrees of Consanguinity, or when either is not of his or her supposed sex, or is so sexually malformed or impotent as to be incapable of living conjugally with the other, or has a wife or husband living, or is insane, or when the marriage has been brought about by fraud, or is in violation of a legal prohibition or in breach of an essential legal prescription: *Vth.* Dixon on Divorce, ch. 5.

**NULLUM TEMPUS ACT.**—9 G. 3, c. 16, amended by 24 & 25 V. c. 62, so called because it modifies the maxim, *Nullum tempus aut locus occurrit regi*: *Vth.*, 2 Inst. 273.

**NUMBER.** — When an elector has more votes than one, *e.g.* at a School Board Election, and has to mark on his Ballot Paper the "Number" of Votes he gives for each candidate, he is not to be presumed to have exhausted the whole of his voting power by putting a cross against the name of one candidate only; such cross will only count as one vote for that candidate, and will not cumulate all the votes of the elector for such candidate (*Morris v. Beves*, 1897, 1 Q. B. 449; 66 L. J. Q. B. 299; 76 L. T. 120; 45 W. R. 430; 61 J. P. 263, rejecting dictum of Coleridge, C. J., *Phillips v. Goff*, 55 L. J. Q. B. 512; 17 Q. B. D. 805).

Where a testator, desiring to benefit a Class of persons, *e.g.* Servants, or Children, uses a wrong number and, for example, speaks of two when there are three of such persons, the number will be rejected and will be read as "all" (*Sleech v. Thorington*, 2 Ves. sen. 560; *Garvey v. Hibbert*, 19 Ves. 124; *McKeechnie v. Vaughan*, L. R. 15 Eq. 289).

As to effect of omitting the Number of a House in a devise; *V. Asten v. Asten*, cited BLANKS.

"Number of Scholars in schools," quâ Voluntary Schools Act, 1897, 60 & 61 V. c. 5, "means, the number of scholars in average attendance as computed by the Education Department" (s. 4).

**NUMMATA TERRÆ.** — Is synonymous with DENARIATA TERRÆ (Elph. 605).

**NUN.** — Nuns in a Convent; *V. Bannon v. Hanrahan*, cited DWELLING-HOUSE, p. 590.

**NUNCUPATIVE.** — A Nuncupative Will is when a testator, without any writing, doth declare his Will before a sufficient number of witnesses (Swinburne, 24: 2 Bl. Com. 500: Wms. Exs. 103). Before the Statute of Frauds all kinds of Personalty might be bequeathed by a Nuncupative Will without restriction; but s. 19 of that Act (explained slightly by 4 Anne, c. 16, s. 14) imposed restrictions. Nuncupative Wills were abolished by Wills Act, 1837, except (as provided by s. 11) as regards a "SOLDIER, being in ACTUAL MILITARY SERVICE, or any MARINER or Seaman, being at Sea."

**NURSE.** — Quâ Poor Law Officers Superannuation Acts, "'Nurse,' includes, any Assistant Nurse, and Attendant on the Sick or Insane" (s. 1, 60 & 61 V. c. 28).

A child under the age of seven years is accounted a "Nurse Child" (*Dumbleton v. Beckford*, 2 Salk. 470; *Cumner v. Milton*, Ib. 528). *Vf.*  
NURTURE.

**NURSERY GROUND.** — *V.* GARDEN: MARKET GARDEN.

**NURTURE.** — "Under 7, is sometimes called, the 'Age of Nurture'" (*Op.*, "Nurse Child," sub NURSE); but this is the peculiar Nurture re-

quired by a Child from its Mother, and is entirely different from Guardianship for Nurture which belongs to the Father in his lifetime, even from the birth of the child. We can find no distinction in the books as to the rights and incidents of this species of guardianship from the time when it commences till the time when it expires. One of these incidents is, that the guardian shall be entitled to the custody of the person of the child. He is to 'nurture' the child; the legal sense of this word is its natural and common sense in the English language, which, Dr. Johnson says, is 'to educate; to train; to bring up.' Accordingly, from the case in the Year Book (Mich. 8 ed. 4, fo. 7 b, pl. 2) to the present time, it has ever been considered that the Father, or whoever else on his death may be the Guardian for Nurture, has by law a right to the custody of the child, and shall maintain an Action of Trespass against a stranger who takes the child: *V. the authorities, Com. Dig. Guardian D*" (per Campbell, C. J., *R. v. Clarke*, 7 E. & B. 192, 193; nom. *Re Race*, 26 L. J. Q. B. 172).

*Vf*, Guardianship of Infants Act, 1886, 49 & 50 V. c. 27, on *whv*, *Re A. & B., Infants*, 66 L. J. Ch. 592.

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## OATH — OBLIGATION

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**OATH.** — “An Oath is a religious asseveration, by which a person renounces the mercy and imprecates the vengeance of Heaven if he do not speak the truth” (*R. v. White*, Leach, 430, 431). SACRAMENT.

In Acts of Parliament passed since the end of 1850, “the words ‘Oath,’ ‘Swear,’ and ‘Affidavit,’ shall include Affirmation, Declaration, Affirming, and Declaring, in the case of persons by law allowed to declare or affirm instead of swearing” (s. 4, 13 & 14 V. c. 21; *Vf*, s. 3, Interp Act, 1889). *Cp*, DECLARATION.

“Proof made upon Oath,” s. 32, Solicitors Act, 1843, 6 & 7 V. c. 73, — “I think that admits proof on Affidavit, but is not confined to it” (per Esher, M. R., *Osborne v. Milman*, 56 L. J. Q. B. 264).

*V*. PERJURY. *Vh*, 9 Encyc. 248-258.

“Oath of Possession,” quæ Representation of the People in Scotland; *V*. 19 & 20 V. c. 58, s. 48; 31 & 32 V. c. 48, s. 59.

**OBEDIENCE.** — “In Obedience” to Rules, Bye Laws, or Particular Instructions, s. 1,(4), 43 & 44 V. c. 42; *V. Whately v. Holloway*, 6 Times Rep. 190.

*V*. ENFORCE.

**OBJECT.** — *V*. SCENE.

“With the object of”; *V*. VIEW.

“Objects” of a Company; *V*. PURPOSE.

**OBJECTION.** — *V*. REQUISITION: INVESTIGATING, *Note*.

“Objection made,” to Renewal of License; *V*. MADE.

*V*. NOMINATION.

**OBJECTS OF VERTU.** — *V*. VERTU.

**OBLATIONS.** — *V*. OFFERINGS.

**OBLIGATION.** — “‘Obligation,’ is a word of his owne nature of a large extent: but it is commonly taken in the common law, for a bond containing a penalty, with condition for payment of money or to do or suffer some act or thing. &c, and a bill is most commonly taken for a single bond without condition” (Co. Litt. 172 a). The person bound is the “Obligor”; the other party is the “Obligee.”

*V. Ryland v. Delisle*, 38 L. J. P. C. 67; L. R. 3 P. C. 17.

The word "Obligations," s. 9, Partnership Act, 1890, does not, it is submitted, import any larger obligations than those prior to the Act, and, at any rate, as regards the estate of a deceased partner the rule in *Devaynes v. Noble, Houlton's Case* (1 Mer. 616) applies, so that such estate is not responsible for acts done after such partner's death (*Re Friend*, 1897, 2 Ch. 421; 66 L. J. Ch. 737; 77 L. T. 50; 46 W. R. 139).

"Right, Privilege, Obligation, or Liability"; *V. RIGHT*.

*V. LIABLE*.

**OBLIGATORY.** — "I can see no difference at all between enacting that certain words shall be 'VALID and obligatory' and saying that the agreement is to be 'confirmed and made BINDING' on the several parties. I do not understand how an agreement which was not made 'binding' could be made 'obligatory.' The only meaning that I can attach to the word 'obligatory,' when so used, is that the parties to the agreement are bound by its contents; just as the meaning of a contract being 'binding' is that the different clauses are 'obligatory' upon the parties to the contract. Indeed, the only difference that I can see between 'binding' and 'obligatory,' is that the one uses an English word and the other a Latin word to express identically the same idea; because 'obligatory' means 'binding,' and 'binding,' I suppose, means an 'obligation' or 'tie'" (per Stephen, J., *Mid. Ry v. G. W. Ry*, 5 Ry & Can Traffic Ca., 274, 275; *S. C. nom. R. v. Mid. Ry*, cited **REQUIRED**).

"Writing Obligatory"; *V. R. v. Morton*, cited **DEED**.

**OBLIGE.** — *V. BIND*.

**OBLITERATE: OBLITERATING.** — As to revocation of a Will by "obliterating" the same under the Statute of Frauds, *V. 1 Jarm.* 133-139. Since the Wills Act, 1837, no obliteration, interlineation, or other alteration, in a Will is operative unless it be executed like a Will, or the words altered are no longer "APPARENT." Pasting over a piece of paper is an "obliteration" (*Finch v. Combe*, 1894, P. 191; 63 L. J. P. D. & A. 117).

**OBLIVION.** — Act of Oblivion, 12 Car. 2, c. 11.

**OBOLATA TERRÆ.** — Half an aere, or half a square perch (*Elph.* 605, citing Spelm., *Furdella; Obolata*).

**OBSCENE.** — A book or other publication is not saved from being "obscene," within the Obscene Publications Act, 1857, 20 & 21 V. c. 83, because the professed INTENTION of it is, not to injure public morals but, to attack the iniquity of a particular religion; *e.g.* "The Confessional



Unmasked, shewing the depravity of the Romish Priesthood, the Iniquity of the Confessional, and the Questions put to Females in Confession" was "obscene," because it glaringly detailed impure and filthy acts words and ideas, and was indiscriminately published to all classes of persons (*R. v. Hicklin*, 37 L. J. M. C. 89; L. R. 3 Q. B. 360; 18 L. T. 395; 16 W. R. 801). *Vf. Steele v. Brannan*, 41 L. J. M. C. 85; L. R. 7 C. P. 261; 20 W. R. 607; 26 L. T. 509.

*Cp.* INFAMOUS CONDUCT. *V.* INDECENT.

Bye Law against obscene language; *V. Strickland v. Hayes and Thomas v. Sutters*, cited PEACE.

**OBSERVANCE or PERFORMANCE.** — "A negative cannot be performed" (Co. Litt. 303 b), referring to which proposition Fry, J., said, "the word 'performance' is not applicable to negative covenants" (*Evans v. Davis*, 48 L. J. Ch. 225), and in another report of that case (10 Ch. D. 757) that learned judge amplified his meaning thus, — "I have always understood that 'Non-Observance' refers to the negative covenants, and 'Non-Performance' to the affirmative covenants." And so Brett, L. J., in delivering the judgment of the Court of Appeal in *Hyde v. Warden* (47 L. J. Ex. 127; 3 Ex. D. 82) said that the Court were prepared to hold that the forfeiture there "being only in the event of the lessee wilfully failing or neglecting to perform any of the covenants, does not apply to a breach of a negative covenant."

That is all clear, but in support of that proposition, *West v. Dobb* (39 L. J. Q. B. 193; L. R. 5 Q. B. 460) was cited. But in *West v. Dobb* the words of forfeiture were, in case the lessee "should fail in the observance or performance of any or either of the covenants or agreements" on his part; and, assuming the correctness of the dictum of Fry, J., above stated, a negative covenant would be within the word "observance." This latter word seems, however, not to have been observed. Nor indeed was the point necessary for the decision in *West v. Dobb*. Kelly, C. B., speaking for himself and Channell, B., merely said, "the proviso seems to refer only to a failure in the performance of an affirmative covenant"; but Montague Smith, J., said, "I think it quite unnecessary to put a construction upon the words 'Observance or Performance of the covenant.'"

And, *semble*, a clause of forfeiture on "Non-Performance" of covenants, applies to "Non-Observance" of negative covenants (*Croft v. Lumley*, 6 H. L. Ca. 672).

**OBSTACLE.** — *V.* PERMANENT: UNAVOIDABLE.

**OBSTRUCT.** — To omit (after notice) to remove an obstruction is to "wilfully obstruct the free passage of a highway," within s. 72, Highway Act, 1835 (*Gully v. Smith*, 53 L. J. M. C. 35; 12 Q. B. D. 121; 48 J. P. 309; *Se. R. v. Lordsmere*, 50 J. P. 388). So, *à fortiori*, is

it such an obstruction to leave unlighted at night large stones on a road under repair (*Fearnley v. Ormsby*, 4 C. P. D. 136; 27 W. R. 823; 43 J. P. 384); or to leave on the side of a highway anything calculated to frighten horses going along it (*Harris v. Mobbs*, 3 Ex. D. 268; 27 W. R. 154; 39 L. T. 164; *Wilkins v. Day*, 12 Q. B. D. 110; 48 J. P. 6). *V. ALLOW.*

But an obstruction within this section must involve an interference with the surface of the highway; and therefore trees and underwood growing over and across a road is not such an obstruction (*Walker v. Horner*, 45 L. J. M. C. 34; 1 Q. B. D. 4; 39 J. P. 773). But if trees or underwood grow *across* a road in such a way as to send a growth up from their roots through the surface of the road, then, *semble*, that would be within *Gully v. Smith*, sup. *V. LOP.*

A Custom, *e.g.* for a Fair, may justify such an obstruction (*R. v. Smith*, 4 Esp. 109; *Elwood v. Bullock*, 13 L. J. Q. B. 330; 6 Q. B. 383); but not a private user (*Gerring v. Barfield*, 28 J. P. 615; 11 L. T. 270).

An "obstruction in any thoroughfare," s. 60 (7), Metropolitan Police Act, 1839, 2 & 3 V. c. 47, is caused by a projecting moveable Show-board, which is none the less an "obstruction" because many persons are not incommoded by it (*Read v. Perrett*, 1 Ex. D. 349). *V. TAYLOR'S ACT.*

A PROJECTION "so as to cause any annoyance or obstruction in any thoroughfare," s. 17 (7), Dublin Police Act, 1842, 5 V. c. 24, is not set up if it be on private land not part of the thoroughfare (*Dowling v. Byrne*, Ir. Rep. 10 C. L. 135; *Byrne v. Ring*, Ib. 192; *Grant v. Karunagh*, 11 Ib. 27; *Secus, Dolan v. Kavanagh*, 10 Ib. 166).

Changing a Signal, or stretching out the arm as a Signal, so as to cause a Railway Train to go more slowly, is to "obstruct" it within s. 36, 24 & 25 V. c. 97 (*R. v. Hadfield*, 39 L. J. M. C. 131; L. R. 1 C. C. R. 253; *R. v. Hardy*, 40 L. J. M. C. 62; L. R. 1 C. C. R. 278). *CP, PREVENT.* "Obstruction," 6 G. 4, c. 129; *Vth*, 22 V. c. 34; *Va*, MOLEST.

*V. INTERRUPTION: NUISANCE: WILFUL OBSTRUCTION.*

**OBTAIN.**—The primary meaning of "obtain" a Patent is the original obtaining from the Crown: but a context (*e.g.* as in s. 1, 5 & 6 W. 4, c. 83) may make it to mean "the becoming possessed, either by original grant, by assignment, or by any other title" (*Russell v. Ledsam*, 14 L. J. Ex. 357; 16 Ib. 145; 14 M. & W. 588; 16 Ib. 633; 1 H. L. Ca. 687; *Vf*, *Spilsbury v. Clough*, 11 L. J. Q. B. 109; 2 Q. B. 466).

"The word 'obtains' (in s. 88, 24 & 25 V. c. 96) means, an obtaining by the offender from the owner, with an intent on the part of the offender to deprive the owner permanently and entirely of the thing obtained; and it includes cases in which things are obtained by a contract which is obtained by a false pretence, unless the obtaining under the contract is

remotely connected with the false pretence" (Steph. Cr. 267). *Vf*, Rose. Cr. 429-452.

"Obtains Credit"; *V*. CREDIT.

*V*. PROCURE.

**OBTAINED.** — A FINAL JUDGMENT was not "obtained" (within s. 4 (*g*), Bankry Act, 1883), by anyone except the successful party to the action himself, or his personal representatives, who for this purpose are in fact the same *persona* (*Ex p. Woodall*, 53 L. J. Ch. 966; 13 Q. B. D. 479; 32 W. R. 774). Neither an assignee of a judgment debt (*Re Keeling, Ex p. Blanchett*, 55 L. J. Q. B. 327; 17 Q. B. D. 303; 34 W. R. 538), nor the jdgmt creditor's Trustee in Bankry (*Ex p. Harper, Re Goldring*, 22 Q. B. D. 87; 58 L. J. Q. B. 3; 37 W. R. 228), was within the phrase. But s. 1, Bankry Act, 1890, now enacts that "any person who is, for the time being, entitled to enforce a Final Jdgmt shall be deemed a creditor who has obtained" it, within s. 4, Bankry Act, 1883: *Vth, Re Palmer*, cited CREDITOR.

The assignee of a judgment debt is a person who has "obtained" the judgment for the purpose of getting a Garnishee Order under R. 1, Ord. 45, R. S. C. (*Goodman v. Robinson*, 18 Q. B. D. 332; 56 L. J. Q. B. 392; 55 L. T. 811; 35 W. R. 274).

**OBVENTIONS.** — *V*. OFFERINGS.

**OBVIOUS.** — A "Fraudulent or Obvious" *Imitation* of a NEW DESIGN, within s. 58, Patents, &c, Act, 1883, does not mean obvious to the uneducated or unskilled eye, but obvious to a judge or jury sitting as experts (*Mitchell v. Henry*, 15 Ch. D. 181; *Grafton v. Watson*, 50 L. T. 420; 51 Ib. 141; *Vh, Harper Co v. Wright Co*, 1896, 1 Ch. 142; 65 L. J. Ch. 161; 44 W. R. 274). *V*. FRAUDULENT IMITATION.

A person exposes himself to "Obvious Risk" of injury within an Exception in an Accident Policy, (1) if the Risk is obvious to him at the time he exposes himself to it, or (2) if it would be obvious if he were paying reasonable attention to what he is doing (*Cornish v. Accident Insree*, 58 L. J. Q. B. 591; 23 Q. B. D. 453; 38 W. R. 139). *Vh, Shilling v. Accidental Insree*, 1 F. & F. 116.

*V*. APPARENT.

**OCCASION.** — *V*. INFLICT: OCCASIONED.

"Necessary Occasions" of a Church; *V*. NECESSARY.

"Special Occasion"; *V*. SPECIAL.

**OCCASIONAL.** — "Occasional Court-house"; Stat. Def., Sum Jur Act, 1879, s. 50.

"Occasional LICENSE," as well for Ireland as Great Britain, "means,

a License to sell Beer, Spirits, or Wine, granted in pursuance of" s. 13, 25 & 26 V. c. 22, and s. 5, 27 V. c. 18, and the Acts amending the same (s. 32, 37 & 38 V. c. 49; s. 37, 37 & 38 V. c. 69).

Occasional Vacancy; *V.* CASUAL.

**OCCASIONED.** — An injury to a horse is not "occasioned" by plunging (within a Carrier's exemption) if the animal is made to plunge by actionable negligence (per FitzGibbon, L. J., *Sheridan v. Mid. Great Western Ry.*, 24 L. R. Ir. 173).

*V.* CAUSED BY: INFLECT.

**OCCUPANT.** — *V.* Co. Litt. 41 b: "Special Occupant," *V.* SPECIAL.

**OCCUPATION.** — The "Occupation" of the Grantor of a BILL OF SALE, as used in the Bills of Sale Acts, "means, the TRADE or CALLING by which he ordinarily seeks to get his LIVELIHOOD" (per Kelly, C. B., *Luckin v. Hamlyn*, 21 L. T. 366; 18 W. R. 43), "the BUSINESS in which he is usually engaged to the knowledge of his neighbours" (per Martin, B., *Ib.*), and in respect of which he contracts debts (*Ex p. National Mercantile Bank, Re Haynes*, 49 L. J. Bank. 62; 28 W. R. 848), and the statement of which would be "sufficient to identify him to persons who have had dealings with him" (per Coleridge, C. J., *Throssell v. Marsh*, 53 L. T. 321). Within that definition it has been held that a Coach-Builder openly carrying on business as such (the execution creditor's debt being contracted in respect of that business) but who was also a Parish Clerk from which Office he mostly got his living, was well described as "Parish Clerk" only, it being found as a fact that such description of his Occupation was not calculated to deceive his creditors (*Hosking v. Wood*, 25th Jan 1893: *Vf*, *Feast v. Robinson*, 70 L. T. 168; 63 L. J. Ch. 321; *Re Davies*, 77 L. T. 567). *A fortiori*, if a Grantor's principal employment be stated, a merely subsidiary employment need not be (*Ex p. National Deposit Bank, Re Wills*, 26 W. R. 624; *Ex p. National Mercantile Bank, Re Haynes*, sup; *Throssell v. Marsh*, sup; *Vf*, RESIDENCE). In Ireland, however, it has been held that *all* the Occupations of the Grantor must be given (*Re Fitzpatrick*, 19 L. R. Ir. 206: *Vf*, DESCRIPTION). As to stating Occupation of Women; *V. Luckin v. Hamlyn*, sup; *Usher v. Martin*, 61 L. T. 778: *Ex p. Chapman, Re Davey*, 45 *Ib.* 268: — A Married Woman living apart from her husband and engaged as a Milliner's Manager should be described as such Manager; to describe her as a "Married Woman" is fatal to the document (*Kemble v. Addison*, 1900, 1 Q. B. 430; 69 L. J. Q. B. 299; 82 L. T. 91; 48 W. R. 331). As to particular descriptions, *V.* ACCOUNTANT: BROKER: CLERK: ESQUIRE: GENTLEMAN: GOVERNMENT CLERK: MERCHANT: TUTOR: *Vf*, DESCRIPTION.

Quà Newspaper Libel and Registration Act, 1881, 44 & 45 V. c. 60, " 'Occupation,' when applied to any person, shall mean, his Trade or

Following; and if none, then his rank or usual title, as Esquire, Gentleman" (s. 1). *V. FOLLOW.*

"Industrial Occupation"; *V. INDUSTRIAL EMPLOYMENT.*

*V. MANUAL OCCUPATION.*

Occupation of a DWELLING-HOUSE, quâ BURGLARY; *V. ROSC. CR. 323-331: Arch. Cr. 593-600: 2 Russ. Cr. 14-37.*

Occupation, or Occupancy, is said to arise out of "the ACTUAL possession and manurance of the LAND" (*Vin. Abr. "Occupancy," II. Vj, Co. Litt. 249 b: Sc, inf.*) *V. TERRE TENANT. Cp, HOLDING: POSSESSION.*

"Occupation includes Possession as its primary element, but it also includes something more. Legal Possession does not, of itself, constitute an Occupation. The owner of a VACANT house is in Possession, and may maintain Trespass against any one who invades it; but as long as he leaves it vacant he is not rateable for it as an Occupier" (per Lush, J., *R. v. St. Pancras*, 2 Q. B. D. 588; 46 L. J. M. C. 250; 37 L. T. 126). But "vacant" is not the same as "unused"; therefore, where, for example, a seaside tradesman completely shuts up his shop during non-season and clears out the stock but (having the legal possession and *animus revertendi*) leaves in the shop his trade fittings and utensils, the shop is not "unoccupied" within s. 211 (2), P. H. Act, 1875, and the rates are payable (*Southend-on-Sea v. White*, 83 L. T. 408: *Cp, Yates v. Chorlton*, cited OCCUPIER).

"Occupation" and "Possession" are used in contrast in ss. 18, 26, Rep People Act, 1832, 2 W. 4, c. 45; and whilst, under the latter section, an owner of a Rent-charge in fee would be entitled to qualify for a county vote after having been for the prescribed time in the ACTUAL "possession" of the rent-charge, yet if being only entitled for life he is, by the circumstances, driven to claim as for its "actual and *bouâ fide* occupation" under s. 18, then he will fail, because a rent-charge is incapable of such occupation (*Druitt v. Christchurch*, 53 L. J. Q. B. 177; 12 Q. B. D. 365).

"Occupation," — even "ACTUAL Occupation," — does not, necessarily, mean RESIDENCE (*R. v. West Riding Jus.*, 11 L. J. M. C. 80; 2 Q. B. 505), although "99 persons in 100 would so understand it" (per Patteson, J., *ib.*). *Vj, OWNER.*

"Occupation," as a CONDITION in a devise, "is not living and residing" (per Ld Eldon, *Fillingham v. Bromley*, T. & R. 536); and if in any given case it means "residing," that does not involve a continual personal living in the house (*V. RESIDENCE*). And so a devise of the "Free Use" (*Cook v. Gerrard*, 1 Saund. 181, 186 *e*), or of the "Use and Occupation" (*Whittome v. Lamb*, 13 L. J. Ex. 205; 12 M. & W. 813; *Rabbeth v. Squire*, 24 L. J. Ch. 203; 19 Bea. 70; 4 D. G. & J. 406; 7 W. R. 657; *Mannox v. Greener*, L. R. 14 Eq. 456) of land, or a permission to "Occupy" land for life, or as long as wished (*Re Eastman*,

43 S. J. 114; W. N. (98) 170; 68 L. J. Ch. 122, *u*: *Re Curne*, 1899, 1 Ch. 324; 68 L. J. Ch. 120; 79 L. T. 542; 47 W. R. 352), passes an estate, *i.e.* that of TENANT FOR LIFE, with the right to let or assign the property, and is not confined to a personal use and occupation, unless the context clearly calls for that limited construction (*Maclaren v. Stainton*, 27 L. J. Ch. 442; 4 Jur. N. S. 199; *Stone v. Parker*, 29 L. J. Ch. 874). *Vh*, 1 Jarm. 798: *R. v. Eutington*, 4 T. R. 181, cited Elph. 605: OCCUPY: OCCUPIED: RESIDE: USE AND OCCUPATION: PERSONAL OCCUPATION. *Note.* A Condition of personal use and occupation is (by s. 51, S. L. Act, 1882), rendered nugatory when it interferes with the exercise by a TENANT FOR LIFE of his powers under the Act (*Re Paget*, 55 L. J. Ch. 42; 30 Ch. D. 161; 33 W. R. 898: *Re Haynes*, 57 L. J. Ch. 519; 37 Ch. D. 306: *Re Edwards*, 1897, 2 Ch. 412; 66 L. J. Ch. 658): *Vf*, INDUCE: RESIDE.

“Occupation” as a DESCRIPTION of property is, frequently, not a word restricting the meaning, and then it has little more effect than to indicate the property in a general way. Therefore, a devise of “my Farm called Blackacre in the Occupation of A.,” may easily include such parts of Blackacre Farm as are not in A.’s occupation (*Goodtitle v. Southern*, 1 M. & S. 299: *White v. Birch*, 36 L. J. Ch. 174, *whic* questions *Doe d. Parkin v. Parkin*, 5 Taunt. 321: *Sv, Homer v. Homer*, 8 Ch. D. 758; 47 L. J. Ch. 635: *Morrell v. Fisher*, 19 L. J. Ex. 273; 4 Ex. 591. *Cp*, SET FORTH). So, where an expired lease to A. had reserved the flat roof of the premises to the lessor, and on its expiration the lessor leased the premises to B. without making the reservation, but such second lease (after describing the premises) added “as the same was late in the Occupation of A.”; held (by Turner, L. J., affg Wood, V. C., diss. Knight-Bruce, L. J.) that B.’s lease passed the premises without the reservation (*Martyr v. Lawrence*, 2 D. G. J. & S. 261). But, on the other hand, a devise of a house “and premises thereto, as the same are now occupied by me,” was held not to include stables formerly occupied by the testator with the house but which, at the date of the Will, he had severed therefrom (*Re Seal*, 1894, 1 Ch. 316; 63 L. J. Ch. 275; 70 L. T. 329: *Va, Mocatta v. Mocatta*, 49 L. T. 629; 32 W. R. 477). But when the testator has added lands to his occupation, *V. Re Champion*, 1893, 1 Ch. 101; 62 L. J. Ch. 372.

A devise of house “as now in the Occupation of A.,” will not pass an Easement, not used of necessity but, occasionally used by A. on testator’s adjoining land, *e.g.* an easement to use a pump (*Polden v. Bastard*, 32 L. J. Q. B. 372; L. R. 1 Q. B. 156; 4 B. & S. 258); if the words were “as now enjoyed by A.” the Easement might pass (per Erle, C. J., *Ib.*, citing *Bodenham v. Pritchard*, cited ENJOYED). *V. LIVE IN: For v. Clarke*, cited WALL.

Building, &c, “vested in and in the occupation of Her Majesty”; *V. VESTED.*

“Occupation,” quâ Inhabited House Duty; *V. Bent v. Roberts*, 3 Ex. D. 66; 47 L. J. Ex. 112.

“Occupation,” quâ Parliamentary Franchise; *V. “as Tenant,”* sub TENANT: s. 5, Rep People Act, 1884, on *whv, Hall v. Metcalfe*, 1892. 1 Q. B. 208; 61 L. J. Q. B. 53; 66 L. T. 496: *Vf*, on such an Occupation apart from the lastly cited section, *R. v. Ege*, 2 P. & D. 348.

“Occupation,” quâ Pauper Settlement; “The meaning of the word ‘Occupied’ may vary according to the occasion or the subject-matter. The meaning which it has received in considering what Occupation was necessary to constitute a mansion-house in which BURGLARY might be committed, or to give a Right of Voting, or to make a party Rateable to the Relief of the Poor, is no test of its meaning in this particular case (of Pauper Settlement). A new distinction is introduced by 1 W. 4, c. 18. Under the former statute, 6 G. 4, c. 57, a Constructive Occupation was sufficient (*R. v. Ditchet*, 9 B. & C. 176). This statute requires an Occupation *in fact*. It recites the former Act and that doubts have arisen with respect to the intentions of the legislature concerning the Occupation of such house, building, or land, by the person hiring the same, and enacts, that ‘no person shall acquire a Settlement in any Parish by reason of such yearly hiring of a dwelling-house or building or of land or of both, as in the said Act expressed, unless such house or building or land shall be *actually* occupied under such yearly hiring by the person hiring the same.’ A Constructive Occupation will not satisfy these words. The statute requires, in terms, an Actual Occupation” (per Denman, C. J., *R. v. St. Nicholas, Rochester*, 5 B. & Ad. 226, 227; 3 L. J. M. C. 45; 3 N. & M. 21), *e.g.* as in *R. v. St. Giles in the Fields*, 4 A. & E. 495. *V. Arch. P. L. 563.*

“Occupation” quâ Poor Rate; *V. BENEFICIAL: CEASE: EXCLUSIVE OCCUPATION: NEW OCCUPIER: TENEMENT: Arch. P. L. Part 5: Boyle & Davies Principles of Rating: R. v. Sinclair*, 12 Times Rep. 466.

Occupation to confer a Vestryman’s qualification; *V. RATED OR ASSESSED.*

*V. CONTINUOUS OCCUPATION: OCCUPY.*

**OCCUPATION LEASE.** — An “Occupation Lease” of “LAND,” s. 18, Conv & L. P. Act, 1881, as distinct from an AGRICULTURAL Lease or a BUILDING LEASE, “may well apply to a Lease of an INCORPOREAL HEREDITAMENT” (per Williams, L. J., *Browne v. Peto*, 69 L. J. Q. B. 874). Certainly, the phrase is in no way to be narrowed by the authority of *Dayrell v. Hoare* (cited ANY, p. 95); and, probably, an “Occupation Lease” may be defined as, a Lease which, according to the nature and situation of the property and the common experience of mankind, is made for the convenience and comfort of Personal Occupation, including such amenities and advantages as not infrequently go with the kind of property; *e.g.* a Mortgagor in Possession may, under the section cited,

grant a lease of a Country House and therewith the Sporting Rights over the land comprised in the mortgage, especially if those rights have been severed from the land before the mortgage (*Browne v. Peto*, 1900, 2 Q. B. 653; 69 L. J. Q. B. 869; 83 L. T. 303).

**OCCUPATION VOTER.** — Quà Registration Act, 1885, 48 & 49 V. c. 15. “ ‘Occupation Voter,’ means, as regards a Parliamentary *County*, a person entitled to vote in respect of any qualification conferred by the Representation of the People Act, 1884; and, as regards a Parliamentary *Borough*, means, a person entitled to vote in respect of any qualification conferred by s. 5 of the Representation of the People Act, 1884, or in respect of a Household Qualification or a Lodger Qualification as defined by that Act ” (s. 19).

“Occupation Voters,” s. 92 (2), Loc Gov Act, 1888, means, County Occupation Voters, and not Voters for a Borough (*Weller v. Collins*, 54 J. P. 441). *Vf*, “County Occupation Franchise,” sub COUNTY.

*Cp*, “Ownership Voter,” sub OWNERSHIP: “Parliamentary Voter,” sub PARLIAMENTARY.

**OCCUPIED.** — Permitting persons to use small portions of land, for growing potatoes, is a breach of a stipulation in a lease of a Farm not to “suffer to be occupied by any other person,” without consent (*Greenslade v. Tapscott*, 3 L. J. Ex. 328; 1 Cr. M. & R. 59; 4 Tyr. 566).

“Premises occupied” by a grantor of a Bill of Sale, s. 7, 17 & 18 V. c. 36, meant, not merely premises of which he was tenant, but also premises actually under his control (*Robinson v. Briggs*, 40 L. J. Ex. 17; L. R. 6 Ex. 1).

“Land lawfully occupied by building”; *V*. LAWFULLY OCCUPIED.

“Occupied therewith”; *V*. THEREWITH.

Premises “belonging to and occupied with” DWELLING-HOUSE, 48 G. 3, c. 55, Sch B, R. 2; 14 & 15 V. c. 36; *V*. BELONGING.

Land “not otherwise occupied,” s. 3, Advertising Stations (Rating) Act, 1889, 52 & 53 V. c. 27; *V*. *Chappell v. St. Botolph*, 1892, 1 Q. B. 561; 65 L. T. 581; 40 W. R. 192; 56 J. P. 310: EXCLUSIVE OCCUPATION.

*V*. OCCUPATION: HELD: INHABIT: ONE OCCUPATION.

**OCCUPIER.** — The tenant, though absent, is, speaking generally, the “Occupier” of premises (*R. v. Poynder*, 1 B. & C. 178), but a servant, or other person who may be there *virtute officii*, is not an Occupier (*Clarke v. St. Mary, Bury St. Edmunds*, 26 L. J. C. P. 12; 1 C. B. N. S. 23; *Bent v. Roberts*, 47 L. J. Ex. 112; 3 Ex. D. 66; *R. v. Spurvell*, 35 L. J. M. C. 74; L. R. 1 Q. B. 72; *Tennant v. Smith*, cited INCOME).

If an owner is driving his cattle, or if, *with his consent*, his cattle are being driven, along a road leading to a Level Crossing on a Railway,



such an owner is an "Occupier" of the road, and therefore of "*Adjoining Land*" to the Railway within s. 68, Ry C. C. Act, 1845 (*Vh*, s. 47); but if the cattle are being driven *without the owner's consent* he is not such an "Occupier" (per Esher, M. R., *Charman v. S. E. Ry*, 57 L. J. Q. B. 598; 21 Q. B. D. 524; 37 W. R. 8; *Manchester S. & L. Ry v. Wallis*, 14 C. B. 213; 23 L. J. C. P. 85). So, a mere Licensee is an "Occupier" within the section (*Dawson v. Mid. Ry*, L. R. 8 Ex. 8; 42 L. J. Ex. 49; *Sr, Luscombe v. G. W. Ry*, 1899, 2 Q. B. 313; 68 L. J. Q. B. 711; 81 L. T. 183). *V. ADJOINING OWNER.*

"Occupier," quâ Agricultural Rates Act, 1896, 59 & 60 V. c. 16; *V. s. 9.*

For cases on Betting Houses Acts; *V. PLACE.*

"Occupier," quâ Births and Deaths Registration Acts; *V. 37 & 38 V. c. 88, s. 48.* — *Scot.* 17 & 18 V. c. 80, s. 76. — *Ir.* 26 & 27 V. c. 11, s. 3; 43 & 44 V. c. 13, s. 38.

"Occupier," quâ Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55; *V. ss. 4, 120.*

"Occupier," quâ Explosives Act, 1875, 38 & 39 V. c. 17; *V. s. 108.*

Occupier of a Factory; *V. FACTORY.*

An "Occupier," ss. 11, 39, Gasworks Clauses Act, 1871, 34 & 35 V. c. 41, remains Occupier notwithstanding that a Receiving Order be made against him (*Re Smith, Ex p. Mason*, 1893, 1 Q. B. 323; 67 L. T. 596).

"Occupier," Ground Game Act, 1880, 43 & 44 V. c. 47, is to be read by the light of "the governing intention of the Act, which is that there shall be no land in the kingdom over which the person *in Occupation* has not the right to kill and take the GROUND GAME with a view to preserving his crops, and that, so far as this right is concerned, the *Owning Occupier* shall be in the same position as any other Occupier" (per Wright, J., *Anderson v. Vicary*, 1899, 2 Q. B. 436; 68 L. J. Q. B. 970). It was accordingly there held that an Occupying Owner whose predecessor in title had granted the Sporting Rights over the land, was nevertheless the "Occupier" and, as such, entitled to kill and take the Ground Game concurrently with the grantee of the sporting rights (*S. C. affd* 1900, 2 Q. B. 287; 69 L. J. Q. B. 713, Smith, L. J., diss.). Such an Occupying Owner is, however, not subject to s. 6 of the Act (*Smith v. Hunt*, 54 L. T. 422), though Tenant Occupiers are, even those to whom the sporting rights are expressly granted (*Saunders v. Pitfield*, 58 L. T. 108; 4 Times Rep. 233). *Vh, Sherrard v. Gascoigne*, cited *DIVEST: VOID*, towards end.

"Occupier," quâ Infectious Diseases (Notification) Act, 1889, 52 & 53 V. c. 72; *V. s. 16.*

A License to take minerals or stones from a MINE or QUARRY, does not make the licensee an "Occupier" of the Mine or Quarry, within s. 41, 35 & 36 V. c. 77; s. 2, 57 & 58 V. c. 42 (*Foster v. Newhaven Harbour Trustees*, 61 J. P. 629; 13 Times Rep. 292).

"Occupier," quâ Poor Rate; *V.* BENEFICIAL: CEASE: EXCLUSIVE OCCUPATION: NEW OCCUPIER. *Seem*, but doubtfully, by putting in a mere Care-taker in an empty house the Owner is not the Rateable Occupier (*Yates v. Chorlton*, 48 L. T. 872; 47 J. P. 630: *Cp.*, *Southend-on-Sea v. White*, cited OCCUPATION); *seus*, if Care-taker is paid, or if there be the relationship of Master and Servant between him and the Owner, and especially so if goods of the owner are there being cared for (*Hicks v. Dunstable*, 48 J. P. 326: *Burstedon v. Clarke*, 61 J. P. 261). *Note*: Before issuing Distress for the Rate, Justices may enquire whether the person rated was really the "Occupier" (*R. v. Bagshawe*, 75 L. T. 513).

"Person in Actual Occupation," s. 71, "Occupier," s. 124, Poor Relief (Ir) Act, 1838, 1 & 2 V. c. 56; *V. Middleton v. M'Donnell*, 1896, 2 I. R. 228: IMMEDIATE USE OR ENJOYMENT.

"Occupier," quâ P. H. Scotland Act, 1897; *V.* s. 3.

"Occupier," quâ Purchase of Land (Ir) Act, 1891, 54 & 55 V. c. 48; *V.* s. 42: — quâ Salmon Fishery Act, 1873, 36 & 37 V. c. 71; *V.* s. 4: — quâ Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103; *V.* s. 1.

*V.* INCOMING TENANT: INHABITANT: NEW OCCUPIER: OCCUPATION: OCCUPIED: OUTGOING OCCUPIER: REAL RESIDENT HOLDER: SUCCESSIVE: TENANT.

**OCCUPY.** — "To occupy" property is the co-relative verb of OCCUPATION, which commonly denotes a physical possession; but "occupy" is a word which in one form and another is not infrequently used of an INCORPOREAL HEREDIT (per Williams, L. J., *Browne v. Peto*, cited OCCUPATION LEASE).

"Cease to Occupy"; *V.* CEASE.

Power "to occupy"; *V.* OCCUPATION: RESIDE. Such a power for life creates an equitable tenancy for life; but, *seem*, the rent (if the property is leasehold), the repairs, and insurance may be payable by the trustees out of the general estate; but the fines and expenses of renewal of leaseholds ought to be borne by the beneficiaries rateably (*Re Baring*, 1893, 1 Ch. 61; 62 L. J. Ch. 50; 41 W. R. 87; 67 L. T. 702, applying *Re Courtier*, 56 L. J. Ch. 350; 34 Ch. D. 136; 55 L. T. 574; 35 W. R. 85. *Sethe*, *Re Redding*, 1897, 1 Ch. 876; 66 L. J. Ch. 460: *Re Tomlinson*, 1898, 1 Ch. 232; 67 L. J. Ch. 97; 78 L. T. 12; 46 W. R. 299: *Re Betty*, 1899, 1 Ch. 821; 68 L. J. Ch. 435; 80 L. T. 675: *Re Gijers*, 1899, 2 Ch. 54; 68 L. J. Ch. 442; 80 L. T. 689; 47 W. R. 535).

**OCTOBER.** — A representation, on the faith of which a Marine Insree was effected, stated that the Ship would sail from St. Domingo "in the month of October," and she sailed on the 11th Oct; held, that the Policy was void, for it was proved that, in that connection, "October" was well understood to mean some time between 25th Oct and 2nd Nov, and, certainly, not before 15th Oct, and to sail before that latter date would make a difference of 15% in the premium (*Chaurand v. Angerstein*, 1 Peake, 61).

**OF.** — “Of,” as meaning “belonging to,” *e.g.* “Burial Ground *of* any Parish,” s. 18, 18 & 19 V. c. 128, means, one that is parish property, not one that is merely *in* the parish (*R. v. St. John, Westgate*, 31 L. J. Q. B. 205; 2 B. & S. 703).

“Of” a place, imports dwelling; and is ordinarily taken to mean that the person spoken of dwells at the place named (*Dwar. 675: li. v. West Riding Jus.*, 2 Dowl. N. S. 707; *Saunders v. Jones*, 3 Dowl. & L. 770; *R. v. Rotherham*, 12 L. J. M. C. 17; 3 Q. B. 776; 2 G. & D. 523; *See*, per Littledale, J., *R. v. Toke*, 8 A. & E. 232; 7 L. J. M. C. 74; 3 N. & P. 323; *R. v. Flockton*, 12 L. J. M. C. 70; 2 Q. B. 535).

The statutory form of a BILL OF SALE says that the document must run as between “A. B. of \_\_\_\_\_, of the one part, and C. D. of \_\_\_\_\_, of the other part”; if the address of the grantee (though a Registered Co) is omitted, the Bill of Sale is void (*Altree v. Altree*, cited IN ACCORDANCE WITH THE FORM).

A Contract for the Goods “of” a person means, *primâ facie*, goods of his manufacture, and not merely that they will come out of his hands (*Powell v. Horton*, 2 Bing. N. C. 668). “If I speak of the literary work ‘of’ a given author, I imply that it was written by that author; that the picture ‘of’ a given artist was painted by that artist; and that manufactured articles stamped with a name are the manufacture of the party whose name they bear” (per Bosanquet, J., *Ib.*).

“My estate of A.”; — In a devise in these words it was held, that “of” was equivalent to “AT,” and that the devise could not, by extrinsic evidence, be extended to property out of, though contiguous to, A. (*Doe d. Chichester v. Orenden*, 3 Taunt. 147; 4 Dowl. 65). But hereon it has been suggested that “the distinction between a devise of ‘my estate of A.’ and a devise of ‘my estate called A.’ is not very perceptible” (1 Jarm. 428: CALLED).

“Of my Name”; *V. NAME.*

“Of” is sometimes the equivalent of AFTER, — *e.g.* “within 21 days of the execution,” s. 3, 17 G. 3, c. 26 (*Ex p. Fallon*, 5 T. R. 283; *Williams v. Burgess*, 10 L. J. Q. B. 10; 12 A. & E. 635).

**OF AND CONCERNING.** — “Of and concerning the premises,” in an Arbitrator’s Award; *V. Dunn v. Warlters*, 9 M. & W. 296; 11 L. J. Ex. 188; *Perry v. Mitchell*, 12 M. & W. 802; 14 L. J. Ex. 88.

As to the importance of this phrase in an Indictment for Libel, *V. R. v. Marsden*, 4 M. & S. 164; as to its exigency in a Statement of Claim for Libel, *V. per Bayley, J., May v. Brown*, 3 B. & C. 127–130.

**OF COURSE.** — *V. PRECATORY TRUST.*

**OF RIGHT.** — *V. RIGHT.*

**OF THE BODY.** — “The distinction between heirs *of* the body, and heirs *on* the body, must be attended to: where ‘heirs *of*’ the body of

the husband begotten by him *on* the body of the wife' are spoken of, the heirs intended are the heirs of the body of the husband, but they are restricted by the words 'on the body of the wife' to a particular class of the heirs of the body of the husband, namely, those that he has by her. 'Heirs begotten by the husband *of* the body of the wife,' means 'heirs of the body of the wife,' but they are restricted to the heirs begotten by the husband. On the other hand, 'heirs begotten by the husband *on* the body of the wife,' means the heirs of their two bodies, because the word 'heirs' is not applied to the one more than the other" (Elph. 235, *whv*).

#### F. HEIRS OF THE BODY.

**OF THE CLOCK.**—This expression indicates "Mean as opposed to Solar Time, but a question might arise as to whether it means Local Mean Time or the Mean Time commonly observed at any given place. London Time, or, as it is called, Railway Time, is now very generally observed, and there is a difference of more than 20 minutes between London and Cornwall. Local Mean Time is the natural meaning" (Steph. Cr. 247, *n* 2). *Vh, Curtis v. Marsh*, 28 L. J. Ex. 36; 3 H. & N. 866; 4 Jur. N. S. 1112: TIME.

**OFF.**—A ship's arrival "at or off the Berth," *quà* DEMURRAGE, means, that the time allowed for discharging cargo only begins to run when the ship gets alongside and can discharge (per Mathew, J., *Thomson v. London & Grays Co*, 12 Times Rep. 99).

**OFF LICENSE.**—*V. R. v. Thornton*, cited LICENSE.

**OFFENCE.**—"*Primâ facie*, an 'Offence' is equivalent to a CRIME" (per Collins, J., *Derbyshire Co. Co. v. Derby*, 65 L. J. Q. B. 488; 1896, 2 Q. B. 57, 58; *S. C. affd*, 1896, 2 Q. B. 297; 1897, A. C. 550; 65 L. J. Q. B. 557; 66 *Ib.* 701: *Va*, per Littledale, J., *Mann v. Owen*, 9 B. & C. 601: DECEIT: INDICTMENT: *Sv*, 6 H. & N. 254), giving rise to a CRIMINAL CAUSE, and (if a Civil Action be brought to recover its penalty) preventing a plaintiff from obtaining Interrogatories or Discovery of Documents (*Martin v. Treacher*, 55 L. J. Q. B. 209; 16 Q. B. D. 507; 54 L. T. 7; 34 W. R. 315). "I do not deny that the use of such words as 'Offence' or 'Offender' or 'FORFEIT' is not, of itself, conclusive to show that the sum to be recovered is a PENALTY, if there are other words which show that such is not their meaning. I think, however, that the use of such words is strong *primâ facie* evidence as to what was the intention of the legislature" (per Esher, M. R., *Saunders v. Wiel*, 1892, 2 Q. B. 321; 62 L. J. Q. B. 37; 67 L. T. 207). Thus, the refusal to pay Costs awarded under s. 90, 5 & 6 W. 4, c. 50, is not an "Offence," within s. 103 of the same Act (*Sellwood v. Mount*, 10 L. J. M. C. 121; 1 Q. B. 726). So, the "Offender" who infringes a Copyright in a Musical Composition, s. 2, 3 & 4 W. 4, c. 15, is not liable criminally,

because the prescribed mulct is referred to as "DAMAGES" (*Adams v. Batley*, 56 L. J. Q. B. 393; 18 Q. B. D. 625; 56 L. T. 770; 35 W. R. 437). So, the "Offence" of River Pollution, s. 10, 39 & 40 V. c. 75, is not a crime, because its penalty is only a means of enforcing an Order thereunder and is only then recoverable "as any DEBT" (*Derbyshire Co. Co. v. Derby*, sup).

On the other hand, the "FORFEIT" for the "Offence" of infringing a Copyright Design, s. 58, 46 & 47 V. c. 57, is a PENAL matter although recoverable "as a Simple Contract Debt," because the following section calls it a "Penalty" and provides a quite separate right of action for "Damages" (*Saunders v. Wiel*, sup). So, an action under P. H. Act, 1875, to recover a penalty against a Member of a Local Board for acting without qualification, is a penal action (*Martin v. Treacher*, sup). So, the "Offence" of travelling to avoid paying fare, s. 51, 33 & 34 V. c. 78, is a crime, and for wrongfully charging it an action will lie for Malicious Prosecution (*Rayson v. South London Tram Co*, 1893, 2 Q. B. 304; 62 L. J. Q. B. 593; 69 L. T. 491): *Vf*, *Biggs v. G. E. Ry*, W. N. (68) 173.

A statutory "Offence," generally, connotes MENS REA in the individual charged; it is not committed if the thing be only done accidentally; nor, generally, does the maxim *Respondet Superior* apply, e.g. a SHERIFF is not liable to the fine and punishment prescribed by s. 29, Sheriff's Act, 1887, if (without his concurrence or knowledge) his officer is guilty of EXTORTION (*Lee v. Dangar*, 1892, 2 Q. B. 337; 61 L. J. Q. B. 780; 66 L. T. 548; 40 W. R. 469; 56 J. P. 678: *Bagge v. Whitehead*, 1892, 2 Q. B. 355; 61 L. J. Q. B. 778; 66 L. T. 815; 40 W. R. 472; 56 J. P. 548). *Vf*, KNOWINGLY.

#### V. ARISE: CONTINUING OFFENCE: SECOND OFFENCE.

*Semble*, that in an Indictment "Offence," unlike "MISDEMEANOR," is not *nomen collectivum* (*R. v. Salomons*, 1 T. R. 249).

Non-payment of Rates is an "Offence," within s. 31, 7 W. 4 & 1 V. c. 78 (*R. v. Sutcliffe*, 13 Q. B. 833). On the other hand, *semble*, that the non-payment by an Overseer of a sum certified by the Poor Law Auditor as due from him, is *not* an "Offence," within s. 99, 4 & 5 W. 4, c. 76 (*R. v. Master*, 38 L. J. M. C. 73; L. R. 4 Q. B. 285; 10 B. & S. 42; 19 L. T. 733; 17 W. R. 442). *V*. CRIME.

Contempt of Court in a civil action, is not an "Offence" within s. 19, Extradition Act, 1870, 33 & 34 V. c. 52 (*Pooley v. Whetham*, 50 L. J. Ch. 236; 15 Ch. D. 435). *V*. POLITICAL.

"Offence," s. 15, Copyright Act, 1842, 5 & 6 V. c. 45, is not co-extensive with "Offence" in s. 26 (*Hogg v. Scott*, 43 L. J. Ch. 705; L. R. 18 Eq. 444).

Quà Prevention of Crimes Act, 1871, 34 & 35 V. c. 112. "Offence" "means, any act or omission which is not a CRIME as defined by this Act, and is punishable on Indictment or Summary Conviction" (s. 20):

*Cp.*, def in s. 7, Territorial Waters Jurisdiction Act, 1878, 41 & 42 V. c. 73.

Other Stat. Def. — Bail (Scot) Act, 1888, 51 & 52 V. c. 36, s. 9.

“Offence punishable on Indictment” quæ Fugitive Offenders Act, 1881, “means, as regards India, an Offence punishable on a Charge or otherwise” (s. 39).

“Offence,” sometimes only means, an offensive Act (*Hipkins v. Birmingham Gas Co*, 5 H. & N. 84; 6 Ib. 254).

**OFFENDER.** — *V.* “Cease to occupy,” sub CEASE, p. 282.

**OFFENDING.** — “Found Offending”; *V.* FOUND.

**OFFENSIVE.** — In construing a covenant not to carry on any “Offensive” TRADE or BUSINESS on premises demised, much will depend on the situation of the premises; and in construing such a covenant it is particularly worthy of consideration, whether such trade as that complained of was carried on there at the time of the demise; and, *semble*, that a trade carried on there at the time of the demise would not be within the covenant (per Tindal, C. J., *Gutteridge v. Manyard*, 7 C. & P. 129); and the words “any other offensive trade” must be read as *ejusdem generis* with those they follow (*Doe d. Wetherell v. Bird*, 4 L. J. K. B. 52; 2 A. & E. 161; 4 N. & M. 285; *V. S. C.* sub TRADE: *Se, Pembroke v. Warren*, inf). Neither a Private Lunatic Asylum (*Doe d. Wetherell v. Bird*, sup), nor a Hospital for curing diseases which may be infectious (*V.* per Lindley, L. J., *Tod-Heatley v. Benham*, 58 L. J. Ch. 91; 40 Ch. D. 80; 37 W. R. 38), nor the business of a Licensed Victualer (*Jones v. Thorne*, 1 B. & C. 715), nor that of a Lucifer Match Deposit (*Hickman v. Isaacs*, 4 L. T. 285), nor that of a Slaughter-house Keeper (*Rapley v. Smart*, 38 S. J. 129; W. N. (94) 2; 10 Times Rep. 174, on *wher*, per Fitzgibbon, L. J., *Pembroke v. Warren*, 1896, 1 I. R. 119; *Sr. Gutteridge v. Manyard*, 7 C. & P. 132 and *Cleaver v. Bacon*, inf), is an “Offensive” Business within such a covenant. In *Hickman v. Isaacs* the words were “Noisome or Offensive”; and Cockburn, C. J., asked if the word “Dangerous” were in the covenant, and, getting a negative reply, said to counsel arguing for a breach, “then you cannot make anything of your point.”

The business of a Butcher, though in carrying it on beasts are slaughtered on the premises, is not, necessarily, an “Offensive, Noisy, or Noisome” trade within such a covenant (*Cleaver v. Bacon*, 4 Times Rep. 27); and though the business of Fish-frying may not be, necessarily, “Offensive” within the Acts relating to Public Health (*Braintree v. Boyton*, cited Noxious), yet it is within a Restrictive Covenant relating to such a place as Cavendish Place, Eastbourne (*Devonshire v. Brookshaw*, 81 L. T. 83).

A covenant prohibiting any business which should be "Noisy, Noxious, Dangerous, or Offensive, . . . or in anywise INJURIOUS," was held by Romer, J., not to include a Laundry, even though the locality be residential (*Knight v. Simmonds*, 1896, 1 Ch. 653; 65 L. J. Ch. 307; affd, 1896, 2 Ch. 294; 65 L. J. Ch. 583).

It is difficult to reconcile the decision of the majority of the Court of Appeal in Ireland with some of the foregoing cases. In *Pembroke v. Warren* (1896, 1 I. R. 76) the words of the restrictive covenant were, that the covenantor would not carry on or permit or suffer to be carried on "the business of a tavern, ale-house, soap-boiler, chandler, baker, butcher, distiller, sugar-baker, brewer, druggist, apothecary, tanner, skinner, lime-burner, hatter, silversmith, coppersmith, pewterer, blacksmith, or any other Offensive or Noisy trade, business, or profession, whatsoever"; held (by Chatterton, V. C., and by O'Brien, C. J., and Walker, L. J., diss. Fitzgibbon, L. J.), that a Private Hospital in which every description of patient was received, except those suffering from contagious and infectious diseases or actual insanity, was a breach of the covenant, the property being in Fitzwilliam Square, Dublin. To reach that conclusion the V. C. held that the *Ejusdem Generis* rule did not apply, and therein he was not over-ruled by the majority of the Court of Appeal. Dealing with "Offensive," O'Brien, C. J. (p. 111) said, "It would appear to me to reach any business which would be so annoying and hurtful as materially to diminish the comfort and enjoyment, and thereby the value, of the residences in the Square. — any business, in fact, that would produce such a sense of discomfort as prejudicially to affect the residential character of the Square and the value of the property and houses therein." At p. 112, the learned judge illustrated his position by saying that having sick people next door, would be "Offensive" to a person of ordinary humanity, for "he would not use his house for the purpose of giving practically any entertainment. He would not give a ball or musical party, which I assume it is the privilege of those living in Fitzwilliam Square to give, — both would be attended with considerable noise, not alone from the music and dancing but, from the crowding of carriages and conveyances and people outside the house. If he abstained from giving entertainments which would be attended with noise through regard for the sufferers next door, he would certainly be restricted in the use of his own house, and, if he did not abstain, his feelings would not be of the most enviable description. I think the very fact of having a number of persons next door in an ailing condition, which may result in a severe struggle for existence sometimes ending in death, is eminently calculated to develop in any ordinary average citizen a very considerable sense of discomfort and annoyance." Not so sweeping or pointed but to a like effect was the decision of Walker, L. J.; but this reasoning, as well as the ruling of the V. C. that the *Ejusdem Generis* rule did not apply, was powerfully combated by Fitzgibbon, L. J.

*Note.* Where "Offensive" "Noisome" or such like classes of trade are prohibited, trades not within the prohibition are impliedly permitted (*Bouneett v. Sadler*, 14 Ves. 526).

*V.* ANNOYANCE: NOXIOUS: NUISANCE.

Offensive *Noise*; *V.* DISAGREEABLE.

Offensive *Trades*, quâ P. H. London Act, 1891; *V.* ss. 19-22: *GUT.*

Whether a Stick or a Bat (*i.e.* the smuggler's long pole) was an "Offensive *Weapon*" within s. 56, 6 G. 4, c. 108, or s. 9, 9 G. 4, c. 69, was a question for the Jury; *primâ facie* it would not be so, and it would lie on the prosecution to establish that that was its intended purpose (*R. v. Palmer*, 1 Moo. & R. 70: *R. v. Fry*, 2 Ib. 42: *R. v. Noakes*, 5 C. & P. 326). Under 7 G. 2, c. 21, a Stick was held an "Offensive *Weapon*" though not of extraordinary size and might be used as a walking-stick (*R. v. Johnson*, Russ. & Ry. 492). Large Stones were "Offensive *Weapons*" within s. 9, 9 G. 4, c. 69 (*R. v. Grice*, 7 C. & P. 803).

**OFFER.** — An "Offer" or "Promise" of REWARD for a Vote is constituted by any assurance of a reward which would not otherwise be obtained; a binding contract is not necessary: therefore, a statement by a canvasser that the voter "would be remunerated for loss of time" is such an "Offer" or "Promise" (*Simpson v. Yeend*, 38 L. J. Q. B. 313; L. R. 4 Q. B. 626; 10 B. & S. 752: *Vh, Cooper v. Slade*, 27 L. J. Q. B. 449; 6 H. L. Ca. 746).

Offer of a Contract; *V.* SUBJECT TO.

Offer by Post; *V.* BY POST.

Foreign MARKETABLE SECURITY "ISSUED" or "offered for Subscription" in the United Kingdom, s. 82 (1) Stamp Act, 1891; *V. Brown v. Inl. Rev.* 84 L. T. 71.

"Less sum than shall have been offered by the Promoters," s. 34, Lands C. C. Act, 1845; *V. Lascelles v. Swansea School Bd*, 69 L. J. Q. B. 24. "Previously offered," s. 51, *Ib.*; *V.* PREVIOUSLY.

*V.* ESTIMATE.

**OFFERINGS.** — "Offerings," are personal tithes payable by Custom to the Parson or Vicar of the parish; either occasionally, as at Sacraments, Marriages, Christenings, Churching of Women, Burials, &c. — or at constant times as at Easter, Christmas" (Jacob). "Oblations, Obventions, and Offerings, are generally the same thing, though Obvention has been esteemed the most comprehensive" (Jacob, *Obvention*).

Offerings. Oblations. Obventions; explained in Phil. Ecc. Law, 1242, citing Com. Dig. *Prohibition*, G. 11: Ayliffe's *Parergon*, 392-395: *Va*, 16 Vin. Ab. 77, *Offerings*: 9 Encyc. 271, 272: *Ayrton v. Abbott*, 18 L. J. Q. B. 314; 14 Q. B. 1.

**OFFICE.** — An Office is "a right to exercise a Public or Private Employment, and to take the fees and emoluments thereunto belonging" (2 Bl. Com. 36: *Vf*, 3 Cru. Dig. Title. 25: 9 Encyc. 276-278).



But sometimes that def is too narrow. Thus, in *R. v. Charretie* (13 Q. B. 447; 18 L. J. M. C. 100), it was held that a Director's Nomination to a Cadetship in the East India Co's service was an "Office, Commission, Place, or Employment," within s. 3, 49 G. 3, c. 126 (amplifying 5 & 6 Edw. 6, c. 16), although such Nomination only gave the nominee the right to present himself for examination and when examined and passed to proceed to India, at his own expense, where on landing he would obtain a commission, and then, but not till then, be entitled to pay. *Note*, that the statutes on which that decision proceeded were to prevent corrupt bargains for the sale of patronage in matters of public concernment.

So, on the other hand, Blackstone's def is sometimes too wide. — "Office" being sometimes confined to a public employment *regulated by law*. In this restricted sense it has not infrequently been interpreted in America (*Jackson v. Healy*, 20 Johnson, N. Y. 493; *Platt v. Braeh*, 2 Benedict, 306; *People v. Pinckney*, 32 N. Y. 726; *Smith v. New York*, 37 N. Y. 520).

So, whilst "Office" in ss. 18, 26, Rep People Act, 1832, seems clearly to include a Parish Clerk (*Huntingdon, Rowledge's Case*, W. & D. 199; *Jackson v. Courtenay*, 27 L. J. Q. B. 37; 8 E. & B. 8), yet, *semble*, it does not include a Wesleyan Minister (*Foster v. Mulhall*, 10 Ir. Com. Law Rep. 532).

In any case "an Office necessarily implies that there is some duty to be performed" (per Cockburn, C. J., *Heartley v. Banks*, 5 C. B. N. S. 55). Accordingly, the Military Knights of Windsor do not hold an "Office" within the Rep People Act, 1832 (*S. C. 5 C. B. N. S. 40*; 28 L. J. C. P. 144; 7 W. R. 342; 33 L. T. O. S. 203), nor does one who is only a Bedesman (*Faulkner v. Boddington*, 3 C. B. N. S. 412; 27 L. J. C. P. 20; 6 W. R. 101; 30 L. T. O. S. 168); *Vf*, *Freeman v. Gainsford*, 31 L. J. C. P. 33; 11 C. B. N. S. 68; *Sv*, distinguishing the foregoing cases, *Roberts v. Percival*, 18 C. B. N. S. 36; 34 L. J. C. P. 84; 13 W. R. 265; 11 L. T. 603; *Fryer v. Bodenham*, L. R. 4 C. P. 529; 38 L. J. C. P. 185; 19 L. T. 645.

"Office" disqualifying a Director of a Co under its Articles; *V. Iron Ship Coating Co v. Blunt*, 37 L. J. C. P. 273; L. R. 3 C. P. 484; 16 W. R. 868.

"Office," quâ Loc Gov Act, 1888, "includes any Place, Situation, or Employment" (s. 100); for Ireland the def is "any Office. Situation, or Employment" (s. 109, Loc Gov (Ir) Act, 1898).

"Office," quâ the Universities; Stat. Def., 34 & 35 V. c. 26, s. 2; 36 & 37 V. c. 21, s. 2; 40 & 41 V. c. 48, s. 2.

Other Stat. Def. — *Tr*. 35 & 36 V. c. 60, s. 28; 45 & 46 V. c. 70, s. 2.

"Accepted Office"; *V. ACCEPTED*.

#### V. CHURCH OFFICES.

An Office COPY, is a Copy of a document vouched as accurate by an Office or Officer thereunto duly authorized, *e.g.* a copy of a document

sealed with the seal of the Central Office of the Royal Courts of Justice is an Office Copy (R. 7, Ord. 61, R. S. C.).

“Corporate Office”; *V. CORPORATE.*

“Divine Service, Rite, or Office”; *V. DIVINE SERVICE.*

“Office or EMOLUMENT”; Stat. Def., 31 & 32 V. c. 32, s. 4.

“Office *found*” is the affirmative finding of a jury on an “Inquisition or Inquest of Office: which is an enquiry made by the King’s officer, his sheriff, coroner, or escheator, *virtute officii* or by writ to them sent for that purpose, or by commissioners specially appointed, concerning any matter that entitles the King to the possession of lands or tenements, goods or chattels” (3 Bl. Com. 258: Cowel, *Office*).

*V. HIGH JUDICIAL OFFICE: JUDICIAL OFFICE.*

“Office of PROFIT” does not connote that its incumbent actually makes a profit from it; if “it might reasonably be expected that a man would make a profit of it, it must be considered an Office of Profit” (per Bayley, J., *Delane v. Hillecot*, 9 B. & C. 313).

“Office,” or “Office of Profit,” entitling its holder to *Compensation* on its abolition; *V. R. v. Loc Gov Board*, L. R. 9 Q. B. 148; 43 L. J. Q. B. 49; 22 W. R. 315: *R. v. Carmarthen*, 9 L. J. Q. B. 25; 11 A. & E. 9; 3 P. & D. 35: *R. v. Bridgewater*, 6 A. & E. 339; 6 L. J. M. C. 78. *Vf, OFFICER.*

“Place of Profit”; *V. PLACE.*

A person appointed the Chemist to a Town Council, holds an “Office, or Place of Profit” in the gift of the Council, s. 12 (1*a*), 45 & 46 V. c. 50, and, within that section, has a “Contract or Employment,” although his only emolument has been the profit on four pennyworth of oil supplied by him to the Council’s fire brigade (*Re Louth*, 1894, 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499: *See, Woolley v. Kay*, cited INTERESTED IN).

“Office under Her Majesty the Queen”; Stat. Def., Official Secrets Act, 1889, 52 & 53 V. c. 52, s. 8.

An officer of a Friendly Socy who properly receives its money, though only for the purpose of handing it over to the treasurer, has such money “in his possession BY VIRTUE of his Office,” within s. 15 (7), 38 & 39 V. c. 60 (*Re Welch*, 70 L. T. 691; 63 L. J. Q. B. 524; 42 W. R. 320). But an officer whose proper duties do not include the receipt of money but who does in fact receive it, does not receive it “by Virtue of his Office” (*Ex p. Fleet*, 4 D. G. & S. 52; 19 L. J. Bank. 10: *Re Aberdeen*, W. N. (96) 154; 31 L. J. N. C. 705). *V. POSSESSION.*

*V. OFFICER: PENSIONABLE OFFICE: PUBLIC OFFICE.*

An “Office,” as used in the sense of a *place* for transacting business, is not, necessarily, a completed building, e.g. in s. 3, Malicious Damage Act, 1861. 24 & 25 V. c. 97 (*R. v. Manning*, cited BUILDING). *Cp, COUNTING-HOUSE.*

“Office” for Betting, s. 3, Betting Act, 1853, 16 & 17 V. c. 119; *V.*

*Shaw v. Morley*, 37 L. J. M. C. 105; L. R. 3 Ex. 137; 19 L. T. 15;  
*Bows v. Fenwick*, 43 L. J. M. C. 107; L. R. 9 C. P. 339: PLACE.

An "Office," though a place of business as a SHOP is, must be distinguished from "Shop"; thus, a Lease to a Wine Merchant "for Offices, and the storage of wines and spirits," precluded the lessee (a Free Vintner of the City of London) from selling there wine by the glass and so making it a Wine-shop (*Randell v. Block*, 38 S. J. 141).

"Office," quâ Industrial and Provident Societies Act, 1893, means "the Registered Office for the time being of a Society" (s. 79).

"Hall or Office"; *V. HALL*.

*V. PRINCIPAL OFFICE: RECORD.*

"Registered Office of a Co"; Stat. Def., Comp Winding-up Act, 1890, s. 32 (3).

"Registry Office"; Stat. Def., Newspaper Libel and Registration Act, 1881, 44 & 45 V. c. 60, s. 1.

"Offices," quâ 35 & 36 V. c. 27, includes "all necessary conveniences and appurtenances" (s. 3).

#### OFFICER. — *V. OFFICE.*

Neither a Banker (*Re Imperial Land Co*, 39 L. J. Ch. 331; L. R. 10 Eq. 298), nor a Solicitor (*Re Great Wheel Polgooth Co*, 53 L. J. Ch. 42; *Re Great Western Coal Co*, 55 L. J. Ch. 494; 31 Ch. D. 496; 54 L. T. 531; 34 W. R. 516, explaining *Ex p. Valpy & Chaplin*, 7 Ch. 289; *Va. Brown v. Thames & Mersey Insree*, 43 L. J. C. P. 112), is an "Officer" of a Joint Stock Co, within either s. 165, Comp Act, 1862 (repld s. 10, Comp Winding-up Act, 1890), or, *semble*, s. 38, Comp Act, 1867. But if special circumstances show that the Solr was really an Officer, he is none the less an Officer because he is also the Solr (*Re Liberator Bg Socy*, 71 L. T. 406; *A-G. v. Carlton Bank*, cited RECEIPT). A Trustee is not an "Officer" within the latter section (*Cornell v. Hay*, 42 L. J. C. P. 137; L. R. 8 C. P. 328), but he may be within the former (*Re British Guardian Co*, W. N. (80) 63). A formally appointed Auditor is an "Officer" within the sections (*Re Kingston Cotton Mill Co*, 1896, 1 Ch. 6; 65 L. J. Ch. 145, 673; 44 W. R. 210; following *Re London & Gen. Bank*, 1895, 2 Ch. 166; 72 L. T. 611; 43 W. R. 481; 64 L. J. Ch. 866); *secus*, of an Accountant simply employed to audit the accounts on a particular occasion (*Re Western Counties Bakeries Co*, 1897, 1 Ch. 617; 66 L. J. Ch. 354; 76 L. T. 239; 45 W. R. 418).

Its Solicitor is not an "Officer" of a Body Corporate within s. 50, Com. L. Pro. Act, 1854 (*Brown v. Thames & Mersey Insree*, sup).

Default by Solicitor in paying Costs when ordered to pay same "as an Officer of the Court making the Order," s. 4 (4), Debtors Act, 1869; *V. Re Rush*, L. R. 9 Eq. 147; *Re Hope*, 41 L. J. Ch. 797; 7 Ch. 523; *Re A Solicitor*, 64 L. J. Ch. 467.

A Union Chaplain or Doctor, is an "Officer" within s. 46, Poor Law

Amendment Act, 1834, 4 & 5 W. 4, c. 76, *Va*, s. 109 (*R. v. Braintree Union*, 10 L. J. M. C. 76; 1 Q. B. 130: *R. v. Haslehurst*, 53 L. J. M. C. 127; 13 Q. B. D. 253; 51 L. T. 95; 32 W. R. 877; 48 J. P. 774); so, a Chaplain was an "Officer" within s. 30, 9 G. 4, c. 40 (*R. v. Middlesex Asylum*, 2 Q. B. 433).

An Architect to a School Board, is an "Officer" within R. 7, Sch 3, Elementary Education Act, 1870, 33 & 34 V. c. 75 (*Scott v. Clifton School*, Cab. & El. 435).

By the Act for dividing the parishes Plumstead and Hackney (56 & 57 V. c. 55, s. 11) *Compensation* was to be awarded to all "Officers" of the parishes as originally constituted whom the Act should throw out of employment. In argument reference was made to s. 100, Loc Gov Act, 1888, defining an "Officer," quâ that Act, as one who holds "any Place, Situation, or Employment." But it was contended that whilst "Officer" quâ 56 & 57 V. c. 55, s. 11, would admittedly include a Medical Officer, yet that it did not include a Hall-Porter, or Messenger, and still less an Office Boy. But Day, J., held that all these were included, his reason being,—"We are now in 1893, and not 1855. This is an age of exaggeration and humbug; we do not now, even in Acts of Parliament, use the same language as we did 100 years ago. No doubt, in those days, these plaintiffs would have been called 'Servants' and not 'Officers'; and very properly so too. I must, however, read this Act in the sense of our time; and I think it clearly means to compensate any of the servants who by its operation have suffered any pecuniary loss" (*Legg and others v. Stoke Newington*, Times, 28th May 1895). *Vf*, OFFICE.

"Officer" of a Borough, County, or Division of a County, entitled to Compensation under s. 2, 5 & 6 V. c. 111, did not include the Clerk to a Stipendiary Magistrate appointed under 53 G. 3, c. 72 (*R. v. Manchester*, 16 L. J. Q. B. 27; 9 Q. B. 458).

Officers of a Ry Co entitled to Compensation on an Amalgamation; *V. Bruff v. Cobbold*, 30 L. T. 597.

The Bankry Act, 1849, s. 113, which imposed a penalty on "any Officer" detaining a bankrupt after production of his protection; held, not to apply to the Gaoler, or Governor, of a prison, but only to the Officer who actually arrested the bankrupt (*Myers v. Veitch*, 38 L. J. Q. B. 316; L. R. 4 Q. B. 649).

Stat. Def.—Army Act, 1881, s. 190 (4); Friendly Soc Act, 1896, s. 106; Illicit Distillation (Ir) Act, 1857, s. 8; Lunacy (Ir) Act, 1867, s. 1 (*Cp*, "Medical Officer," inf); Naval and Marine Pay and Pensions Act, 1865, 28 & 29 V. c. 73, s. 2; Poor Law Officers Superannuation Act, 1896, 59 & 60 V. c. 50, s. 19; Prison Officers Superannuation (Ir) Act, 1873, 36 & 37 V. c. 51, s. 2; Record of Title Act (Ir), 1865, 28 & 29 V. c. 88, s. 2; Revenue Act, 1898, 61 & 62 V. c. 46, s. 14 (4).

"Officer in the Consular Service of Her Majesty," "Officer in the Diplomatic Service of Her Majesty": Stat. Def., 33 & 34 V. c. 14. s. 17.

"Officer of the COURT," s. 58, Jud. Act, 1873; *V. Re Palmer*, 63 L. T. 302. *V. SUMMARY JURISDICTION.*

"Chief Officer of Customs"; *V. CHIEF.*

"Officer of the Fishery"; Stat. Def., Herring Fisheries (Scot) Acts, 1860, and 1867, 23 & 24 V. c. 92, s. 2; 30 & 31 V. c. 52, s. 11.

"Head Officer," R. 8, Ord. 9, R. S. C., does not include the London Agent of a Foreign Co (*Nutter v. Messageries Maritimes*, 54 L. J. Q. B. 527; *Haggin v. Comptoir d'Escompte*, 23 Q. B. D. 519; 58 L. J. Q. B. 508; *Golding v. La Sainte Union*, 67 L. T. 309, 605; 9 Times Rep. 1). *Vf, Muckreth v. Glasgow & S. W. Ry*, 42 L. J. Ex. 82; L. R. 8 Ex. 149, on same phrase in s. 16, Com. L. Pro. Act, 1852: *Cp*, PRINCIPAL OFFICER.

Officer of Justice; *V. MALICE AFORETHOUGHT.*

"Medical Officer"; *V. MEDICAL.*

"Constable, Headborough, or OTHER Officer," s. 6, 24 G. 2, c. 44, includes a Churchwarden, or a Gaoler (*Butt v. Newman*, Gow, 97, cited by Lindley, L. J., 21 Q. B. D. 367).

*V. PAROCHIAL OFFICER: POLICE.*

"Officer of the POST OFFICE"; Stat. Def., Post Office (Offences) Act, 1837, 1 V. c. 36, s. 47.

"Postal Officer"; Stat. Def., Mail Ships Act, 1891, 54 & 55 V. c. 31, s. 9.

*V. PRINCIPAL OFFICER.*

"Proper Officer"; Stat. Def., Inland Revenue Act, 1880, 43 & 44 V. c. 20, s. 2; Spirits Act, 1880, 43 & 44 V. c. 24, s. 3: "Proper Officer of Inland Revenue," *V. 39 & 40 V. c. 36, s. 284*: "Proper Officer of the Recorder's Court," *V. Petty Sessions (Ir) Act, 1851, 14 & 15 V. c. 93, s. 44.*

"QUALIFIED Officer"; Stat. Def., Army Act, 1881, s. 122 (6).

"Registration Officer"; Stat. Def., Corrupt and Illegal Practices Prevention Act, 1883, s. 64, 68.

"Responsible Officer"; *V. RESPONSIBLE.*

*V. RETURNING OFFICER.*

"Officer of a SHERIFF," s. 20 (2), 50 & 51 V. c. 55, means, an Officer acting on a Sheriff's behalf; a Sheriff's Officer is not entitled to sue in his own name for expenses under the section (*Smith v. Broadbent*, 1892, 1 Q. B. 551; 61 L. J. Q. B. 490; 66 L. T. 260; 40 W. R. 332).

"Officers and Crew," quâ Naval Agency and Distribution Act, 1864, 27 & 28 V. c. 24, includes, "all flag officers, commanders, and other officers, engineers, seamen, marines, soldiers, and others, on board any of Her Majesty's Ships of War" (s. 2); so, of the Naval Prize Act, 1864, 27 & 28 V. c. 25 (s. 2). *V. CREW.*

"Officers and Troops of Her Majesty's Army," in the Indian Prize Money Act, 1866, 29 & 30 V. c. 47, does not include "officers and soldiers of Her Majesty's European or Native Indian Forces" (s. 4).

*V. COMMANDING OFFICER: NON-COMMISSIONED OFFICER: SUPERIOR OFFICER: PAID OFFICER: PUBLIC OFFICER: SEA FISHERY.*

**OFFICIAL.** — “Official *Administrator*”; Stat. Def., 56 & 57 V. c. 5, s. 29.

“Official *House*,” quâ Westminster Abbey Act, 1888, 51 & 52 V. c. 11, “means, any house, building, and premises, to the exclusive occupation of which a person is entitled by reason of his being a Dean, Canon, or Member, of the collegiate establishment of the Dean and Chapter of Westminster” (s. 8).

“Official House of a Marriage Officer”; Stat. Def., Foreign Marriage Act, 1892, 55 & 56 V. c. 23, s. 24.

“Official *Import Lists*, and Official *Export Lists*”; Stat. Def., Customs Consolidation Act, 1876, 39 & 40 V. c. 36, s. 284.

The entry of a Capture or Embargo in Lloyd’s Loss-Book is sufficient proof of the “receipt of Official *News*” of the occurrence, quâ a Marine Insree (*Powler v. English & Scottish Mar. Insree*, 18 C. B. N. S. 818; 34 L. J. C. P. 253).

Official RECEIVER in Bankry, was established, and his duties prescribed, by Part 4, Bankry Act, 1883; *Vh*, R. 321–339, Bankry Rules, 1886: Wms. Bank. 277, 470–476: Robson, 65–73: — Official Receiver in the Winding-up of Companies; *V*. s. 26, Comp Winding-up Act, 1890, and the Rules of Nov 1890 made pursuant thereto; he alone is entitled to be styled “Official Liquidator” (s. 4, Comp Winding-up Act, 1890).

“Official *Referee*,” established by s. 83, Jud. Act, 1873, and his duties prescribed by Part 8, Ord. 36, R. S. C.; *V*. Ann. Pr.

Official *Solicitor*; *V*. 23 & 24 V. c. 149, ss. 2–6: Dan. Ch. Pr. 723, 724: *Moutrie v. Mitchell*, 1901, 1 K. B. 596; 70 L. J. K. B. 401.

“Official *Trustees*”; Stat. Def., Mun Corp Act, 1883, s. 27: “Official Trustee of Charity Lands,” *V*. s. 15, 18 & 19 V. c. 124; “Official Trustees of Charitable Funds,” s. 18, *Ib.*, s. 4 (1), 50 & 51 V. c. 49. *CP*, JUDICIAL TRUSTEE.

**OFFICIATE.** — To “Officiate as a Clergyman” means, the *public* performance of the service of the Established Church, *in accordance with the laws regulating it* (per Hardwicke, C., *Trebec v. Keith*, 2 Atk. 498). “The ordinary meaning,” — and also as used in s. 48, 1 & 2 V. c. 56, — “of ‘officiate’ is ‘to do the duty of his Office,’ and the extent of the duty will be exactly in proportion to the sphere of that duty” (per Cramp-ton, J., *R. v. Poor Law Commrs*, 3 Ir. Com. Law Rep. 160: *Ij*, *Ib*. 2 Jebb & Sy. 721 on “Officiating Clergyman”). *V*. FIT.

*V*. REGULAR CLERGYMAN.

**OFFICIOUS.** — *V*. INOFFICIOUS.

**OFFSPRING.** — “When a man uses the terms ‘Offspring,’ ‘Issue,’ or ‘Descendants,’ they are vague expressions which no doubt, on the particular context, may mean ‘children,’ or remote descendants; but, *primâ facie*, it can hardly be supposed to mean ‘Children’ when that

simple word is so obvious a one to use. The word 'Offspring,' in its proper and natural sense extends to any degree of lineal descendants and has the same meaning as 'Issue'" (per Kindersley, V. C., *Young v. Davies*, 32 L. J. Ch. 373; 2 Dr. & Sm. 167; 9 Jur. N. S. 399: *Va, Thompson v. Beasley*, 24 L. J. Ch. 327; 3 Drew. 7; 2 Jarm. 101, *n*).  
**V. ISSUE: DESCENDANTS.**

In *Lister v. Tidd* (29 Bea. 618), "Offspring" was construed "Children," to the exclusion of grandchildren; so, per Byrne, J., *Tabuleau v. Nixon*, W. N. (99) 115; 107 Law Times, 324. **V. CHILD.**

**OFTEN.** — *V. AS OFTEN AS.*

**OIL.** — "Oil," s. 4, Tobacco Act, 1842, 5 & 6 V. c. 93, means, "Olive Oil and Essential Oil only" (s. 27, 42 & 43 V. c. 21).

**OLD AGE.** — As regards relief by a FRIENDLY SOCIETY, "Old Age," means, "any age after 50" (s. 8 (1 *a*), Friendly Soc. Act, 1896).

**OLD AND WORN-OUT.** — *V. SICK.*

**OLD BOROUGH.** — Stat. Def., Boundary Act, 1868, 31 & 32 V. c. 46, s. 3: *Cp*, NEW BOROUGH.

**OLD BUILDING.** — In Metrop Management and Building Acts; *V. Tear v. Freebody*, 4 C. B. N. S. 228.

*V. NEW BUILDING.*

**OLD CORPORATION.** — Stat. Def., 36 & 37 V. c. 41, s. 2.

**OLD INCLOSURES.** — This phrase is, ordinarily, equivalent to "Old Inclosed Land," or "Old Closes"; and in that ordinary sense it is used in s. 62, Inclosure Act, 1845, 8 & 9 V. c. 118 (*Hornby v. Silvester*, 57 L. J. Q. B. 558; 20 Q. B. D. 797; 59 L. T. 666; 36 W. R. 679; 52 J. P. 468). "I find the term, 'ANCIENT INCLOSURES' and 'Old Inclosures' almost invariably used in private Inclosure Acts to denote inclosed lands in the ordinary sense of the words" (per Lopes, L. J., *lb.*).

*V. INCLOSED LANDS.*

**OLD MARK.** — *V. Richards v. Butcher*, and *Re Hopkinson*, cited TRADE-MARK, and *Birmingham Vinegar Co v. Powell*, cited TRADE NAME.

**OLD METALS.** — *V. DEALER.*

**OLD RENT.** — *V. ACCUSTOMED RENT.*

**OLERON.** — "Laws of Oleron" so called because they were made by King Richard 1 when he was in the Island of that name; they relate to maritime affairs (Co. Litt. 260 b: 1 Bl. Com. 418, 4 Ib. 423).

**Coleman O'LOCHLEN'S ACT.**—Policies of Assurance Act, 1867, 30 & 31 V. c. 144.

**OMISSION.**—An "Omission" to perform a duty involves the idea that the person to act is aware that performance is required or needful (*Lond. & S. W. Ry v. Flower*, 45 L. J. C. P. 54; 1 C. P. D. 77). *V. DONE.* *Cp.*, *Somerset v. Wade*, cited *SUFFER*.

Omission, in a Bankry Proof of Debt, to value a Security; *V.* per Col. HINS. L. J., *Re Piers*, cited *INADVERTENCE*.

"Omission," in Conditions of Sale; *V.* *ERROR*.

"Accidental Slip or Omission"; *V.* *ACCIDENTAL*.

"Omission, Misdescription, or MISTAKE," s. 232, 20 & 21 V. c. 60; *V.* *Darley v. M'Donnell*, Ir. Rep. 3 C. L. 260.

*V.* *COMMITTED: ERROR: NEGLECT*.

**OMIT.**—To "omit" performing a *CONDITION* to a gift is a wider word than to "refuse or *NEGLECT*" to do so (per North, J., *Partridge v. Partridge*, 1894, 1 Ch. 351; 63 L. J. Ch. 122; 70 L. T. 261). *V.* *REFUSAL*.

A Condition making an Insree void if the insurer "omits to communicate" any material circumstance, relates to the circumstances existing at or before the execution of the Policy (*Pin v. Reid*, cited *ALTERATION*).

**OMITTED.**—An "Omitted" Interest in Lands, s. 124, Lands C. C. Act, 1845, is one (as the section says) omitted "by mistake"; *Vth.*, *Thomas v. Barry Dock Co*, 5 Times Rep. 360.

Notwithstanding anything "omitted," as used in a Covenant for Title; *V.* *David v. Sabin*, cited *TITLE*.

**OMNIBUS.**—For the lengthy def of "Omnibus," quæ Town Police Clauses Acts, 1847 and 1889, *V.* s. 3 of the latter Act. By its subs. 2 that def is adopted for s. 6, Finance Act, 1897, with the addition that there "Omnibus" shall also "include a 'STAGE CARRIAGE,' within the meaning of the Metropolitan Public Carriage Act, 1869."

*V.* *HACKNEY CARRIAGE: CARRIAGE: DRIVE: TRAMWAY*.

**ON.**—Where there is a devise to A. in fee, and if he "DIES WITHOUT ISSUE," then, "at," or "on," or "upon," his death, over;—A. takes an estate in fee with an executory devise over in case he leaves no issue living at his death (*Doe d. King v. Frost*, 3 B. & Ald. 546; *Ex p. Davies*, 21 L. J. Ch. 135; 2 Sim. N. S. 114; *Parker v. Birks*, 24 L. J. Ch. 117; 1 K. & J. 156; *Coltsmann v. Coltsmann*, L. R. 3 H. L. 121; in *this* the words were "die without heirs of the body"). But if the phrase is "after" his death, over,—that is not quite so strong (per Wood, V. C., *Parker v. Birks*, 1 K. & J. 165), pointing, as it does, less precisely to the moment of his death; and accordingly the construction,



in the latter case, will frequently give A. an estate tail (*Walter v. Drew*, 1 Comyn, 372; *Doe d. Cock v. Cooper*, 1 East, 229; *Jones v. Ryan*, 9 Ir. Eq. Rep. 249; *Vf*, 2 Jarm. 516-522).

"If an estate be vested in trustees upon trust for A. for life, and 'on the decease of A.' to sell, — the trustees have no power to sell during the life of A., however beneficial it may be to the parties interested in the trust (*Johnstone v. Baber*, 8 Bea. 233; *Blacklow v. Lours*, 2 Hare, 40; *Mosley v. Hide*, 17 Q. B. 91; 20 L. J. Q. B. 539; *Want v. Stallibrass*, L. R. 8 Ex. 175; 42 L. J. Ex. 108). But if an estate be devised to A. for life and after her decease to trustees upon trust to sell 'as soon as conveniently may be after the testator's decease,' — the trustees, with the concurrence of A., can make a good title (*Mills v. Dugmore*, 30 Bea. 104)." Lewin, 492.

The power to grant Alimony "On any such Decree," s. 32, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85, "if not confined to the time of making the Decree, must mean shortly after" (per Jessel, M. R., *Robertson v. Robertson*, 8 P. D. 96; 48 L. T. 591; 31 W. R. 652).

Though "on," or "upon," a Date or Event may, *primâ facie*, have an inclusive meaning, yet either word will mean "before," "simultaneously with," or "after," according to the context and subject-matter (*V. UPON*).

"I can find no distinction ever drawn between tenancies commencing 'at' a particular time, or 'on' a particular day, or 'from' the same day. 'At,' 'on,' 'from,' or 'on and from,' are, for this purpose, equivalent expressions. Any distinction between them for such a purpose is far too subtle for practical use" (per Lindley, L. J., *Sidebotham v. Holland*, 1895, 1 Q. B. 378; 64 L. J. Q. B. 204; 72 L. T. 62; 43 W. R. 228; 11 Times Rep. 154). *V. FROM*.

Charged "on"; *V. CHARGED*.

Order made "on" a person; *V. IN WRITING*.

"Served on"; *V. SERVED*.

*V. AFTER: AS AND WHEN: AT: IMMEDIATELY: IN RESPECT OF: ON OR BEFORE: PASSING: UPON: WHEN.*

"On" is also frequently used, like "UPON," elliptically as expressing a Condition Precedent; *e. g.* several of the succeeding definitions.

**ON ACCOUNT OF.** — *V. FOR: ON BEHALF: ON THE ACCOUNT.*

**ON ACTIVE SERVICE.** — Quâ Army Act, 1881, and "if not inconsistent with the context, the expression 'On Active Service,' as applied to a person subject to MILITARY LAW, means, whenever he is attached to or forms part of a Force which is engaged in operations against the ENEMY, or is engaged in Military Operations in a country or place wholly or partly occupied by an Enemy, or is in Military Occupation of any foreign country" (s. 189, subs. 1).

*Cp.* ACTUAL MILITARY SERVICE.

**ON ALLOTMENT.**—“ ‘Allotment’ is a popular term; it is not a technical term,” and is not anywhere used in the Comp Act, 1862; it means, “generally, neither more nor less than the acceptance by the Co of the offer to take Shares” (per Chitty, J., *Nicol’s Case*, 29 Ch. D. 426, 427). *Th. Spitzel v. Chinese Corp*, 80 L. T. 349, 351.

Payment on Shares “on Allotment,” means, “as and when allotted” (*Browne v. Pickering*, 4 Times Rep. 726).

The “Allotment” of Shares, in a contract to UNDERWRITE, refers to the day on which the Co proceeds to allotment, although notices of allotment are not sent out till afterwards (per North, J., *Re Consort Deep Level Co*, 66 L. J. Ch. 122; a ruling unaffected by the reversal of the decision, 1897, 1 Ch. 575; 66 L. J. Ch. 297).

**ON AND AROUND.**—*V.* AROUND.

**ON AND FROM.**—*V.* ON.

**ON ATTAINING.**—*V.* ATTAIN.

**ON BEHALF.**—If an Agreement be made “On behalf” of A., he alone is entitled to its benefit and liable on its obligations; the actual signatory, however, impliedly warrants that he has authority to sign and is liable on that warranty if he was not authorized (*Lewis v. Nicholson*, 18 Q. B. 503; 21 L. J. Q. B. 311). *Cp.*, *FOR*.

Where security is to be given “On behalf” of a person, — *e.g.* for costs that may become payable by an Election Petitioner, s. 6 (4), Parliamentary Elections Act, 1868, 31 & 32 V. c. 125, — it cannot be given by the person himself (*Pease v. Norwood*, L. R. 4 C. P. 235; 38 L. J. C. P. 161). *V.* INSUFFICIENT.

“For and on behalf”; *V.* *FOR*.

A contract by a member of a body “on behalf of” the body, is joint, and the member signing cannot alone sue on it (*Lucas v. Beale*, 20 L. J. C. P. 134; 10 C. B. 739).

*Cp.*, *ON THE ACCOUNT*.

**ON BOARD.**—*V.* FIRE ON BOARD: F. O. B.: CLEARANCE.

A Bequest of Goods “on Board” a ship, may pass goods on board at the date of the Will, but removed thence at the testator’s death (*Chapman v. Hoar*, 1 Ves. sen. 271).

Seaman “employed or engaged on Board”; *V.* SEAMAN.

*V.* TAKE ON BOARD.

**ON CONDITION.**—*V.* IF.

**ON CONVICTION.**—*V.* RECOVERY.

**ON DEMAND.**—“In general, where money is payable *on demand*, the law holds that the debtor is bound to find out the creditor and pay

him" (per Blackburn, J., *Toms v. Wilson*, 32 L. J. Q. B. 37: *Va, Jackson v. Ogg*, Johns. 397); and this the debtor is liable to do at once. Therefore a Promissory Note payable "on demand" is payable the instant the note is made; no demand is necessary prior to bringing an action, and the Statute of Limitations will run from its date (*Norton v. Ellam*, 6 L. J. Ex. 121; 2 M. & W. 461: *Va, Multhby v. Murrells*, 29 L. J. Ex. 377: *Re Bethell*, 34 Ch. D. 566: *Re George*, 59 L. J. Ch. 709: 44 Ch. D. 627; 38 W. R. 617). *Vf*, MATURE.

But the reason of the above rule seems (in some measure, at least) to come from the Law Merchant by which "the debtor is bound to have the money ready on demand" (per Blackburn, J., *Brightly v. Norton*, 32 L. J. Q. B. 40). The rule is otherwise "on a promise to pay a collateral sum *On Request*, for there an actual request ought to be made before action brought" (*Birks v. Trippet*, 1 Saund. 33); and, therefore, on a joint and several covenant by a principal debtor and his surety to pay "on Demand," the Statute of Limitations does not run, quâ the surety, until demand on him (*Brown v. Brown*, 1893, 2 Ch. 300; 62 L. J. Ch. 695; 69 L. T. 12; 41 W. R. 440).

So, in cases other than debts, the general rule is, that where a right or duty arises on demand of something else, an actual demand must be made and a reasonable time given for compliance before that right or duty will arise. Thus if, by a Bill of Sale or other document, a power to seize goods be given, if the grantor or other donor of the power does not "immediately upon demand" pay a certain sum, such power will not arise until demand made and subsequent default be made after a reasonable time given to get the money and make the payment; and the word "IMMEDIATELY," or such a phrase as "INSTANTLY on demand, and without delay on any pretence whatsoever," will not alter that construction (*Toms v. Wilson*, 32 L. J. Q. B. 33, 382; 4 B. & S. 442; 11 W. R. 117: *Brightly v. Norton*, 32 L. J. Q. B. 38; 3 B. & S. 305; 11 W. R. 167: *Massey v. Sladen*, 38 L. J. Ex. 34; L. R. 4 Ex. 13: *Moore v. Shelley*, 52 L. J. P. C. 35; 8 App. Ca. 285; 48 L. T. 918); and a premature seizure will give rise to a claim for substantial damages (*Massey v. Sladen*, and *Moore v. Shelley*, sup). *Vf*, STIPULATED.

So, though, on a Receiving Order being made against an execution debtor, the Sheriff has to deliver goods seized to the Official Receiver, yet he has only to do so "On Request," s. 11 (1), Bankry Act, 1890 (replacing s. 46 (1), Bankry Act, 1883), and, until request, there is no duty on the sheriff to so deliver the goods and he must proceed to sell (*Woolford's Trustee v. Levy*, 1892, 1 Q. B. 772; 61 L. J. Q. B. 546; 66 L. T. 812; 40 W. R. 483); *Vthe* applied *Re Thomas*, 1899, 1 Q. B. 460, cited EXECUTION.

So, even in the case of a Promissory Note, if it be payable at a certain time *after* demand, an actual demand must be made before action brought, and the Statute of Limitations will only run from such demand (*Thorpe*

v. *Booth*, Ry. & Moo. 388); and even when payable *on demand*, a Bill or Note (not expressly giving interest on its face) only carries INTEREST "from the time of presentment for payment" (s. 57 (1 b), Bills of Ex. Act, 1882, consolidating cases cited Byles, 445). *Vf*, as to when Bills and Notes are payable "On Demand," ss. 10, 86, 89, Bills of Ex. Act, 1882.

A Bill of Sale as a security for money payable "on Demand," is bad, because it is not "in accordance with the Form" prescribed by s. 9, Bills of Sale Act, 1882 (*Melville v. Stringer*, *Hetherington v. Groome*, and *Hughes v. Little*, cited IN ACCORDANCE WITH THE FORM. *Vf*, STIPULATED).

*V. AT SIGHT: IMMEDIATELY.*

If a power of distress be given on default of payment of rent "if demanded," the demand need not be accompanied with the formalities required for re-entry on non-payment of rent (*Maunder's Case*, 7 Rep. 28 b); and a like rule obtains where such a power is made conditional on the rent being "legally demanded" (*Thorp v. Hart*, 30 S. J. 469). From the citation, in the judgment in the last case, of Bac. Ab. (Rent, I), it would seem doubtful whether a power of distress may not be exercised without a prior demand even though the Lease makes it conditional on a demand being made.

*V. LAWFULLY DEMANDED.*

Officer distraining for Rates to return overplus "On Demand," s. 2, 27 G. 2, c. 20. implies that a demand must, before action, be made by the plt himself or by some person whose authority is fairly notified to the officer (*Charinton v. Johnson*, 14 L. J. Ex. 299; 13 M. & W. 856).

Note to Bearer on Demand; *V. BEARER.*

**ON DUTCH TERMS.**—Marine Policy "to pay all claims and losses on Dutch terms, and according to statement made up by official dispatcheur in Holland"; *V. Hendricks v. Australasian Insree*, 43 L. J. C. P. 188; L. R. 9 C. P. 460.

**ON GOODS.**—In a Marine Insurance; *V. Mackenzie v. Whitworth*, cited Goods.

**ON, IN, OR ABOUT.**—*V. IN OR ABOUT.*

**ON MARRIAGE.**—Read "at 21 or marriage" (*Lang v. Pugh*, 1 Y. & C. Ch. 718; *Vf*, 1 Jarm. 488, and cases there cited).

**ON OR BEFORE.**—When a thing has to be done "on or before" a day, it is sufficient to say it was not done "on" the day (per Holt, C. J., *Harman v. Owden*, Raym. Ld, 620; *Sr*, *Wattnough v. Holygate*, 3 Lev. 293).

An obligation to pay "on or before" a named day at a stated place, is not discharged by tender of the money at the place before the day, if the obligee be not there to receive it (*Hawley v. Simpson*, Cro. Eliz. 14).

A stipulation in a Charter-Party that the ship shall sail "on or before" a named day, is, probably, of the ESSENCE of the contract; *secus*, if the phrase is "with all despatch," or "IMMEDIATELY," for then a certain amount of elasticity is introduced, and the remedy for a breach is damages (*Forest Oak S. S. Co v. Richard*, 5 Com. Ca. 105). *Vf.* CONVENIENT SPEED.

*V.* STIPULATED.

**ON OR NEAR.**—The weighing of coal "on or near" whence it is brought, s. 22 (1), 52 & 53 V. c. 21, is to be at the seller's premises previously to the coal being sent out, and not on delivery (*Knowles v. Sinclair*, cited CORRECT: *Sethe, Edwards v. Purnell*, 1899, 1 Q. B. 449; 68 L. J. Q. B. 272; 79 L. T. 737; 47 W. R. 380).

*V.* NEAR.

**ON PASSAGE.**—"Now on Passage"; *V.* Now.

**ON PAYMENT.**—"The meaning of the words 'on Payment of FREIGHT,' in Bills of Lading and Charter Parties, is not that freight is to be paid either immediately before or immediately after the delivery of the cargo, but that the two acts are to be concurrent, and the Master may demand payment of the freight each day on the cargo delivered" (1 Maude & P. 153, citing *Black v. Rose*, 2 Moore P. C. N. S. 277; *Paynter v. James*, L. R. 2 C. P. 348). *V.* PAYING.

Further Credit "on your paying INTEREST"; held, that payment of interest was not a Condition Precedent to the further credit (*Dodd v. Ponsford*, 6 C. B. N. S. 324).

*V.* PAYMENT.

**ON PRESENTATION.**—*V.* PRESENTATION.

**ON PROFIT ON CHARTER.**—*V.* PROFIT.

**ON RECOVERY.**—*V.* RECOVERY.

**ON REQUEST.**—*V.* ON DEMAND.

**ON SALE.**—"On Sale on Trial." "On Sale or Return"; *V.* SALE ON TRIAL.

"Conveyance on Sale"; *V.* CONVEYANCE.

**ON SHORE.**—"On Shore," s. 15, 24 G. 3, c. 47, means, "on Land"; so, that an Excise Officer seizing smuggled goods at an inland place (at any distance from the Sea) was within the statutory protection (*R. v. Brady*, 1 B. & P. 187). *Cp.* ON THE SHORE.

**ON THE ACCOUNT.**—"On the Account of his master or employer," s. 68, 24 & 25 V. c. 96; *V. R. v. Cullum*, 28 L. T. 571; *R. v.*

*Gale*, 46 L. J. M. C. 134; 2 Q. B. D. 143; 41 J. P. 119; *R. v. Beaumont*, 2 W. R. 235; *Dears*, 270, with *whc ep*, *R. v. Thorpe*, 6 W. R. 502; 8 COX C. C. 29.

*Cp*, ON BEHALF.

**ON THE BODY.** — *V.* OF THE BODY.

**ON THE CONTRARY.** — *V.* BUT: CONTRARY.

**ON THE DEATH.** — *V.* DEATH.

“Property passing on the Death”; *V.* PASSING.

**ON THE EXECUTION.** — *V.* EXECUTION.

**ON THE FOOTING.** — An Order or Terms of Arrangement “on the Footing, and by way of Continuation, of the old account,” means, “on the same principle as”; “on the Footing of,” is not equivalent to “from the Foot of” (per Lindley, L. J., *Wilding v. Sanderson*, 66 L. J. Ch. 686; 1897, 2 Ch. 534).

**ON THE HIGH SEAS.** — *V.* HIGH SEAS.

**ON THE MERITS.** — *V.* MERITS.

**ON THE PREMISES.** — A Beer Retailer, having only an Off License, placed a bench just outside his street door and his customers sat on the bench whilst drinking the ale he supplied; held, that the ale was sold “to be consumed on the premises” (*Cross v. Watts*, 32 L. J. M. C. 73; 13 C. B. N. S. 239; 27 J. P. 7, 18); but ale handed through a window to a customer who called for it and drank part of it whilst standing on the highway, was held not to have been sold “to be consumed on the premises,” though he drank the remainder of the ale whilst sitting on the window-sill of the house (*Deal v. Schofield*, 37 L. J. M. C. 15; L. R. 3 Q. B. 8; 8 B. & S. 760; 31 J. P. 724). *See* now hereon, s. 6, 35 & 36 *V. c.* 94.

**ON THE SHORE.** — The phrase “on the shore of any sea or tidal water” in the United Kingdom, s. 458, Mer Shipping Act, 1854, means, according to its nautical interpretation, near the shore, not hard and fast on the shore (*The Leda*, Swabey, 40; *The Mae*, 51 L. J. P. D. & A. 81); the phrase in s. 546, Mer Shipping Act, 1894, is “on or near the Coasts of the United Kingdom, or any tidal water within the limits of the U. K.” *Cp*, ON SHORE.

*V.* KELP-SHORE.

**ONCE.** — “If a statute requires some act to be done periodically and recurrently once in a certain space of time, — *e.g.* the inspection of the boilers of steamers ‘once in 6 months,’ — it would, probably, be

understood to mean that not more than six months should elapse between the two acts. It would not be satisfied by dividing the year into two equal periods and doing the act once in the beginning of the first, and once at the end of the second, period (*Virginia and Maryland Steam Nav. Co v. U. S.*, Tauey & Campbell's Maryland Rep. 418). Maxwell, 423.

V. AT ONCE.

**ONE.** — "It has often been laid down that if a devise be to 'our,' of the sons of J. S. (*he having several sons*) the devise is void for uncertainty, and cannot be made good" (1 Jarm. 370: *See*, Watson Eq. 1298). So, an appointment of "either one" of testator's three sisters as sole executrix (*Re Blackwell*, 46 L. J. P. D. & A. 29; 2 P. D. 72), or of "any two" of his sons as exors (*Re Baylis*, 31 L. J. P. M. & A. 119; 2 Sw. & Tr. 613), is void.

But a devise "to one of my cousin A.'s daughters that shall marry with a Norton within 15 years," has been held to mean the daughter who shall first marry a Norton, and consequently a good devise (*Bate v. Amherst*, Raym. T. 82; *Vth, Smithwick v. Hayden*, 19 L. R. Ir. 497); and in *Ashburner v. Wilson* (19 L. J. Ch. 330; 17 Sim. 204), a remainder, after certain estates for life, "to a son of James Wilson, in marriage, his heirs and assigns," was construed as giving an estate in fee to the first-born son of James Wilson. *Vf*, 1 Jarm. 433, *n* (x).

"If there be one such child"; held, to mean "if there be no such child" (*Moore v. Beagley*, 33 L. T. 198).

If "either one" should die; *V. EITHER.*

"When an Act of Parliament gives Power or Interest to one person certain, by that express designation of one, all others are excluded, although such statute be in the affirmative" (*Foster's Case*, 11 Rep. 59 a; *Vf*, *Ib.* 64).

V. A: ANY.

"Where a statute appoints a conviction to be 'on the Oath of one Witness,' this ought not to be by the single oath of the Informer; for if the same person shall be allowed to be both prosecutor and witness, it would induce profligate persons to commit perjury for the sake of the reward" (*Dwar.* 672, citing 2 Raym. Ld, 1545). *Vf*, WITNESS.

"By one *Broker* or more," 57 G. 3, c. 93, Sch; here the singular number does not repeal s. 2, 2 W. & M. c. 5, requiring the employment of two sworn appraisers (*Allen v. Flicker*, 9 L. J. Q. B. 42; 10 A. & E. 640): *See*, as to the latter Act. 35 & 36 V. c. 92, s. 13.

"One of Her Majesty's Principal *Secretaries of State*," is sometimes interpreted for Ireland to mean, "the Chief Secretary of the Lord Lieutenant of Ireland," *c.g.* 35 & 36 V. c. 33, Sch 1, s. 66; 35 & 36 V. c. 60, s. 28 (8).

"One of Her Majesty's *Ships*," qua 52 & 53 V. c. 73, "includes, any

Vessel being under the command of an Officer of Her Majesty's Navy on full pay" (s. 4).

"One Year's *Stipend*," quâ Church Patronage (Scot) Act, 1874, 37 & 38 V. c. 82, means, "the sum which, on an average of the 3 preceding years, the Minister has received in name of Stipend out of the Teinds of the parish" (s. 9).

**ONE ACCIDENT.** — "One ACCIDENT," — *e.g.* in an Accident Policy limiting the amount of insurance against personal injury in respect of "any One Accident," — does not mean one cause producing an accident irrespective of the number of persons injured by the occurrence; on the contrary, where several persons are injured by one occurrence there is an Accident to each (*South Staffordshire Tramways Co v. Sickness and Accident Assree*, 1891, 1 Q. B. 402; 60 L. J. Q. B. 260; 64 L. T. 279).

**ONE BUILDING.** — The Lowther Arcade was not "One Building only," within the def of DRAIN in s. 250, Metrop Man. Act, 1855 (*St. Martin's in the Fields v. Bird*, 1895, 1 Q. B. 428; 64 L. J. Q. B. 230; 71 L. T. 868; 43 W. R. 194; 60 J. P. 52). *Cp.* ONE MESSAGE: A.

**ONE CAUSE OF ACTION.** — *V.* CAUSE OF ACTION.

**ONE DAY.** — Notice of Taxation given before 9 o'clock, P. M. of one day for the day following at 12, held "One Day's Notice" within the Rule of Trinity Term, 1 W. 4, s. 12 (*Edmunds v. Cates*, 4 M. & W. 66). *V.* DAY.

**ONE INVESTMENT.** — A direction in a Co's Articles that not more than a stated proportion of Capital "shall be invested in *any one* Stock, Share, or Obligation," is not disregarded by investing less than that proportion in each of two classes of Stocks, &c, of the same Undertaking but the aggregate of which exceeds the proportion (*Re Imperial and Foreign Investment Corp*, 9 Times Rep. 69).

**ONE MAN.** — Craft UNDER-WAY in Thames to have "at least one Competent Man" on board, and, if above 50 tons burden, to have "one Man in ADDITION"; "one Man" in the latter phrase, means, one Competent Man in addition, so that if the craft is above 50 tons burden she must have, at least, two Competent Men, — a man and a boy will not suffice (*Perkins v. Gingell*, 50 J. P. 277; *Goldsmith v. Slattery*, 63 L. T. 273).

**ONE MESSAGE.** — *V.* *Rogers v. Hosegood*, cited HOUSE. *Cp.* ONE BUILDING.

**ONE MONTH.** — "One month after"; *V.* *Blunt v. Heslop*, cited AFTER.



**ONE OCCUPATION.** — Building constructed for One Occupation;  
*V.* CONSTRUCTED.

**ONE TIME.** — A covenant to settle property which may “at any one time” be acquired, means, “from one and the same source” (Elph. 526, citing *Hood v. Franklin*, L. R. 16 Eq. 496; 21 W. R. 724; *Re Hooper*, 13 W. R. 710; 11 Jur. N. S. 479). But it is added, “In neither of these cases had the wife any interest in either fund at the date of the Settlement. But in *Mackenzie’s Settlement* (2 Ch. 345; 36 L. J. Ch. 320), where the wife was entitled at the date of the Settlement to two different reversions which fell into possession at the same instant, it was held that, in estimating the *value* for the purpose of the covenant, the aggregate value of the two shares, and not the value of each share separately, must be taken.” So in *St. Leger v. Magniac* (W. N. (80) 183), it was held that “at one time” included sums of money coming from different sources, but falling into possession at the same time, *e.g.* the death of the wife’s mother. *Cp.*, *Bower v. Smith*, cited LESS.

The Tippling Act, 24 G. 2, c. 40, s. 12 (as amended by 25 & 26 V. c. 38), prevents the recovery of sums under 20s. for “SPIRITUOUS LIQUORS” had “at one time,” unless the same are “to be consumed elsewhere than on the premises where sold, and delivered at the residence of the purchaser thereof in quantities not less at any one time than a reputed quart”; but that minimum amount may be made up of the prices of two or more lots of spirits had at the same time (*Owens v. Porter*, 4 C. & P. 367). *Vf.* ITEM. *Cp.* SITTING.

**ONEROUS.** — “Onerous Act,” “Onerous Covenant,” s. 55 (1), Bankry Act, 1883; *V. Re Maughan, Ex p. Monkhouse*, 54 L. J. Q. B. 128; 14 Q. B. D. 956; *Re Cock, Ex p. Shilson*, 57 L. J. Q. B. 169; 20 Q. B. D. 343; 36 W. R. 187; *Re Gee*, 59 L. J. Q. B. 16; 24 Q. B. D. 65. *Vf.* INTEREST.

**ONLY.** — ACCEPTANCE of Bill of Ex “in Favor of A. only”; *V. Meyer v. Decroix & Co*, cited FAVOUR.

ACCUMULATION “for the purchase of Land only,” 55 & 56 V. c. 58; *V. Re Danson*, cited LAND.

“ACKNOWLEDGMENT or Promise by Words only,” s. 1, 9 G. 4, c. 14; *V. Bevan v. Gething*, 3 Q. B. 740; 12 L. J. Q. B. 37.

“Costs only”; *V.* COSTS.

“LAND used only as a Canal or Towing-path for the same, or as a Railway,” s. 211 (1 *b*), P. H. Act, 1875, — “only” governs both members of that phrase (per Wills, J., *Swansea Improvements Co v. Swansea*, cited RAILWAY). *V.* PROPERTY OTHER THAN LAND.

Actions “where the plaintiff *seeks only* to recover a debt or liquidated demand,” R. 6, Ord. 3, R. S. C.; *V.* ANN. PR.

“Eldest or only *Son*”; *V.* ELDEST.

"In trust only for E. W. (a married woman), her exs, ads, and assns," is not a trust for her SEPARATE USE (*Spivett v. Willows*, 34 L. J. Ch. 365; 1 Ch. 520): *See, Re Molyneux*, cited **SOLE**.

**ONUS.** — The Onus Probandi, or Burden of Proof, "lies on the party who substantially asserts the affirmative of the issue. This rule is in the Roman law thus expressed, *Ei incumbit probatio, qui dicit, non qui negat*" (Taylor on Evidence, s. 364). "The best tests for ascertaining on whom the burthen of proof lies are, to consider first which party would succeed if no evidence were given on either side; and, secondly, what would be the effect of striking out of the record the allegation to be proved. The onus lies on whichever party would fail, if either of these steps were pursued" (Ib. s. 365). *Vh*, Ib. Part 2, ch. 3: Best on Evidence, Book 3, ch. 2.

V. BURDEN.

**OPEN.** — An Open V. & P. *Contract*, is one where the respective rights of the parties are not interfered with by express stipulation.

"In Open COURT," s. 5 (1 a), Debtors Act, 1869, means, "what any one would take to be a Court, with the usual accompaniments of the jury-box, the witness-box, the judge's seat, and seats for solicitors counsel and others" (per Coleridge, C. J.), and does not include the private room of a County Court Judge, though often used by him for hearing causes (*Kenyon v. Eastwood*, 57 L. J. Q. B. 455).

"Open COURT," s. 19, 11 & 12 V. c. 42, means, that the room where Justices are sitting to take Examinations and Statement under the two preceding sections "is not to be deemed an Open Court, so that it cannot be closed; but if it is not closed then it is 'open'" (per Esher, M. R., *Kimber v. Press Assn*, 1893, 1 Q. B. 65; 62 L. J. Q. B. 154).

An "Open COVER," is a proposal to insure before the goods to be insured are shipped (*Blugwandass v. Netherlands Insree*, 14 App. Ca. 83; L. R. 16 Ind. App. 60): for examples, *V. Home Marine Insree v. Smith*, cited **SHIP**: *Royal Ex. Assree v. Tod*, 8 Times Rep. 669.

Open Fields; *V. COMMON FIELDS*: **COMMON LAND**.

Open Market; *V. MARKET OVERT*: **PRINCIPAL VALUE**.

Open MINE; a TENANT FOR LIFE, though not expressly made unimpeachable for Waste, may work an Open Mine for his own benefit (*Re Ridge*, 55 L. J. Ch. 268; 31 Ch. D. 508: per Bowen, L. J., *Dashwood v. Magniac*, 1891, 3 Ch. 360; 60 L. J. Ch. 819); — A Mine may be "open" though it has not been worked for 20 or 30 years (*Bagot v. Bagot*, 33 L. J. Ch. 116; 32 Bea. 509), or has temporarily become "dormant" (*Greville-Nugent v. Mackenzie*, 1900, A. C. 83; 69 L. J. P. C. 1; 81 L. T. 793), and whether opened by the Settlor or Testator, or not, is immaterial (*Ib.*). "When a Mine or QUARRY is once 'open,' — so that the owner of an estate impeachable for waste may work it, — I do not consider that the sinking a new pit on the same vein, or breaking ground in a new place

on the same rock, is, necessarily, the 'opening' of a New Mine or a New Quarry" (per *Ld Selborne*, *Elias v. Snowdon Co*, 48 L. J. Ch. 818; 4 App. Ca. 454, citing *Cluvering v. Cluvering*, 2 P. Wms. 388; *Bagot v. Bagot*, sup: *Cowley v. Wellesley*, 35 Bea. 635; L. R. 1 Eq. 656). But that rule does not apply where two properties, owned by the same owner and underneath which the same vein runs, are separated from one another by land belonging to a different owner; in such a case, the Court, in directing (under S. L. Act, 1882) a Lease of the property which has not been worked, will direct  $\frac{3}{4}$ ths of the rent to be set aside and invested under s. 4 (iii), Settled Estates Act, 1877 (*Re Maynard*, 1899, 2 Ch. 347; 68 L. J. Ch. 609; 81 L. T. 163; 48 W. R. 60): *Vf*, *Re Chaytor*, cited IMPEACHABLE: *Campbell v. Wardlaw*, 8 App. Ca. 641.

An "Open Place," for the sale of goods, means, "open" to the PUBLIC, not to the sky (per Bowen, arg. *Hooper v. Kenshole*, 46 L. J. M. C. 162; 2 Q. B. D. 130). *V. KEEP OPEN*.

"Open and Public Place"; *V. PLACE*.

Open Policy; *V. POLICY*.

An Overt or (as otherwise called) an open POUND, is "called 'open' because the owner may give his cattle meat and drinke without trespass to any other, and then the cattle must be sustained at the perill of the owner" (Co. Litt. 47 b): *Sv*, IMPOUND OR CONFINE. *Cp*, MARKET OVERT.

By "'Open PRAYER,' in and throughout this Act, is meant, that Prayer which is for others to come unto or hear, either in Common Churches or Private Chapels or Oratories, commonly called the Service of the Church" (s. 1, Act of Uniformity of Service, 2 & 3 Edw. 6, c. 1). *Vf*, PUBLIC READING.

Open SEA; *V. TERRITORIAL WATERS*.

"Open SHOP"; *V. KEEP OPEN*.

"Open Space," quâ "The Open Spaces Acts, 1877 to 1890" (*V. Sch* 2, Short Titles Act, 1896), means, "any land (whether inclosed or uninclosed) which is not built on, and which is laid out as a GARDEN, or is used for purposes of RECREATION, or lies waste and unoccupied" (s. 1, 44 & 45 V. c. 34, the further words of the def therein being repealed by 50 & 51 V. c. 32); but if not more than a twentieth part of an area of land is covered with building, the land may be an "Open Space" (s. 7, 53 & 54 V. c. 15). *V. "Burial Ground,"* sub BURIAL: PARK.

A covenant that a "Garden or Open Space" shall be kept "open and unbuilt upon," means, that the surface shall not be built upon, — a building excavated below the surface is not prohibited (*Graham v. Newcastle-upon-Tyne*, 67 L. T. 260, 790; 9 Times Rep. 130).

"Open Water" describes a state of things the opposite of ICE-BOUND, and means, Water so far open as to allow the ship to move away, or, quâ SALVAGE, to allow of operations (*Re Sunderland S. S. Co and North of England S. S. Insree*, 10 Times Rep. 663; 11 Ib. 106). *V. F. O. W.*

To "open, keep, or use," a place for Betting; *V.* OPENED: USE: PLACE.

"Open for Inspection"; *V.* INSPECTION.

To "open" LICENSED PREMISES for the Sale of drink; *V. Cates v. South*, 1 L. T. 365; 23 J. P. 823; *Overton v. Hunter*, 1 L. T. 366; 23 J. P. 808; 37 & 38 V. c. 49, s. 30. There is such an "opening" when the premises are opened for carrying out a material part of the transaction of Sale, e.g. delivering the drink (*Saunders v. Thorney*, 62 J. P. 404; 78 L. T. 627). *V.* KEEP OPEN.

Power to "open and break up Soil and Pavement of Streets, Bridges," &c; *V. Glasgow v. Glasgow & S. W. Ry*, 1895, A. C. 376; 64 L. J. P. C. 171; 72 L. T. 809; 59 J. P. 788.

Factory not to be "open for Traffic on Sunday"; *V.* TRAFFIC.

*V.* OPENLY: PUBLIC TRAFFIC.

**OPENED.** — PLACE "opened, kept, or used," for illegal betting, s. 1, 16 & 17 V. c. 119; *V. R. v. Cook*, 13 Q. B. D. 377; *Reid v. Wilson*, cited KEEPER: KEEP: USE.

*V.* OPEN: DISCOVERED.

**OPENING.** — A bequest for "Opening New Schools" is not against the Mortmain Acts (*Crafton v. Frith*, 20 L. J. Ch. 198).

**OPENLY.** — Where a statute directs that certain commodities shall be sold "openly and publicly," every one is entitled to become a buyer (*Eagleton v. East India Co*, 3 B. & P. 55).

*V.* OPEN.

**OPERA.** — *V.* DRAMATIC.

**OPERATION.** — If a Company is not dissolved, it is "in Operation" within s. 7 (5), Comp Act, 1880, although it is not carrying on business (*Re Financial Corporation*, 27 S. J. 199). *Vh, Re Outlay Asssee*, 56 L. J. Ch. 448; 34 Ch. D. 479; 56 L. T. 477; 35 W. R. 343.

"By operation of Law"; *V.* BY LAW: DEVOLUTION: MERGER: SURRENDER.

**OPERATIVE.** — Operative Machinery; *V.* MACHINERY.

**OPINION.** — "In the Opinion of the Court or a Judge," s. 57, Jud. Act, 1873, means, according to the *judgment* of the Court or Judge, which judgment is subject to appeal (*Ormerod v. Todmorden Co*, 51 L. J. Q. B. 348; 8 Q. B. D. 664). So, a decision that it is "desirable" to try without a jury under R. 4, Ord. 36, R. S. C., is appealable (*Re Martin*, 51 L. J. Ch. 683; 20 Ch. D. 365, explaining judgment of James, L. J., *Ruston v. Tobin*, 10 Ch. D. 558, 565, and approving *Golding v. Wharton Co*, 1 Q. B. D. 374). *Cp.* JUDGMENT: ORDER.

Where a statutory power is given, — *e.g.* to Quarter Sessions, in s. 29, Alehouse Act, 1828, — to order such Costs as “in the Opinion of” the Court is proper, that means that, the Court must exercise its own opinion, and cannot make an Order in blank and delegate it to the Taxing Master to tax and then fill in the amount of costs allowed by him on taxation (*R. v. Winder*, 1900, 2 Q. B. 666; 69 L. J. Q. B. 729; 83 L. T. 171; 48 W. R. 605). *Cp.*, INCURRED: REASONABLE COSTS: SUM ADJUDGED.

The “Opinion” of a Bishop that proceedings should not be taken under the Public Worship Regulation Act, 1874, 37 & 38 V. c. 85, has to be stated with “the Reason of his Opinion” (s. 9); this does not deprive him of an absolute discretion; his Reasons cannot be examined on an application for a Mandamus (*R. v. London, Bp.*, 24 Q. B. D. 213; 59 L. J. Q. B. 160; *Allcroft v. London, Bp.*, 1891, A. C. 666; 61 L. J. Q. B. 62; 65 L. T. 92; 55 J. P. 773. *Cp.*, *Julius v. Oxford, Bp.*, 49 L. J. Q. B. 577; 5 App. Ca. 214; 42 L. T. 546; 28 W. R. 726). “If a man is to form an Opinion and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him” (per *Ld Bramwell, Allcroft v. London, Bp.*, *sup.*). *Vf.*, CIRCUMSTANCES.

*V.* DISCRETION.

“Religious Opinions”; *V.* RELIGIOUS.

**OPPORTUNITY.** — A prisoner, present when a statement is taken down against him under s. 6, 30 & 31 V. c. 35, and who is not in any way hindered from cross-examining the witness, has “full opportunity” to do so within the meaning of the section, even though he be not told he may do so (*R. v. Shurmer*, 55 L. J. M. C. 153; 17 Q. B. D. 323; 55 L. T. 126; 34 W. R. 656; 50 J. P. 743).

**OPPOSING.** — Claims by rival Agents for Commission for selling or letting the same property, are not an Interpleader Matter, and are not “Opposing or Conflicting Claims” within R. 13, Ord. 27, Co. Co. R., nor “Adverse Claims” within R. 1 (*a*), Ord. 57, R. S. C. (*Greatorex v. Shackle*, 1895, 2 Q. B. 249; 64 L. J. Q. B. 634; 72 L. T. 897).

**OPPOSITE.** — A. conveyed to B. a piece of land with a house (No. 7, Windsor Terrace) on the west side of a road, and covenanted that no building (except monuments and tombs) should be erected on any part of the land belonging to him (A.) “lying on the east side of the said Terrace and opposite to the plot of land thereby conveyed”; held, that the covenant applied only to that part of A.’s land which was “opposite” to, and of the same width as, — *i.e.* “immediately opposite,” — the piece conveyed (*Patching v. Dubbins*, 23 L. J. Ch. 45; Kay, 1). Wood. V. C., in his affirmed *jdgmt.*, said, — “The word ‘Opposite’ is not, *ex vi termini*, necessarily confined to land precisely opposite, between parallel lines drawn from the sides of the plot conveyed. If the words had been

'the land opposite' only, it would have been merely a word of description, showing the particular position of the land in question."

Signature "opposite to the End of the Will," s. 1, 15 & 16 V. c. 24; *V. Royle v. Harris*, 1895, P. 163; 64 L. J. P. D. & A. 65; 72 L. T. 474; 43 W. R. 352: *Vf*, FOOT.

**OPPOSITE PARTY.**—Even without an Issue between them, a Party on the other side of the Record is an "Opposite Party" to an Applicant for Interrogatories under R. 1, Ord. 31, R. S. C. (*Spokes v. Grosvenor Hotel Co*, 1897, 2 Q. B. 124; 66 L. J. Q. B. 598; 76 L. T. 677; 45 W. R. 545); so, the phrase extends to a Party having an interest in the action antagonistic to the applicant although ranged with him as a co-plt or co-defct (*Molloy v. Kilby*, inf: *Shaw v. Smith*, cited PARTY: *Alcoy v. Greenhill*, 74 L. T. 345).

A Third-party, who has obtained leave to resist the plaintiff's claim under R. 53, Ord. 16, R. S. C., is an "Opposite Party" to the plaintiff within R. 1, Ord. 31, and is liable to be interrogated (*MacAllister v. Rochester, Bp.*, 49 L. J. C. P. 443; 5 C. P. D. 194: *Eden v. Weardale Co*, 56 L. J. Ch. 178; 34 Ch. D. 223; 35 W. R. 235); but as to when he becomes a "Defendant," within such Rule, so as to be entitled to deliver Interrogatories, *V. DEFENDANT*.

A defendant to a Counter-claim, who was not a party to the original action, is not an "Opposite Party" to his co-defendant to the Counter-claim who was the plaintiff in the original action (*Molloy v. Kilby*, 15 Ch. D. 162; 29 W. R. 127: *Marshall v. Langley*, W. N. (89) 222). *Vf*, PARTY.

A Married-woman defct who sets up a Counter-claim is, quà that Claim, an "Opposite Party," within s. 2, M. W. P. Act, 1893 (*Hood-Barrs v. Cathcart*, 1895, 1 Q. B. 873; 64 L. J. Q. B. 520; 72 L. T. 427; 43 W. R. 560). *V. INSTITUTED*.

**OPPOSITION FERRY.**—*V. Dixon v. Curwen*, W. N. (77) 4.  
*V. FERRY*.

**OPPRESSION.**—*V. EXACTION: EXTORTION*.

**OPPRESSIVE.**—To write of a Poor Law Guardian that he is guilty of "Oppressive Conduct" to the paupers, is Libel (*Woodard v. Dowsing*, 2 M. & R. 74).

**OPTION.**—*V. FIRST REFUSAL: SALE ON TRIAL*.

When an Option has been declared it is irrevocable; *e.g.* where goods are to be delivered or ready for delivery "at Seller's Option" in August or September and he gives notice electing August, the Option has been exercised and the contract must be completed in August (*Gath v. Lees*, 3 H. & C. 558).

A Bankrupt's Option passes to the trustee of his estate (*Mason v. Schuppisser*, cited PERSON INTERESTED).

V. CASH WITH OPTION OF BILL.

Option of Charterer as to Port of Discharge; *V. Bulman v. Fenwick*, cited STRIKE.

Option by Hire-Purchase agreement; *V. Helby v. Matthews*, cited BUY.

Lease "with the Option of Renewal"; V. RENEWAL.

As to the person *by whom* an Alternative, or an Option, is to be exercised; *V. Or*, p. 1347.

Option in a Lease to purchase the Freehold, by whom exercisable; *V. Friary v. Singleton*, cited ASSIGNS.

Option to purchase Land, as to *when* exercisable; V. PERPETUITY: *Dibbins v. Dibbins*, 1896, 2 Ch. 348; 65 L. J. Ch. 724; following *Holland v. King*, 6 C. B. 727; and distinguishing *Bolton v. Lambert*, 58 L. J. Ch. 425; 41 Ch. D. 295.

"Previous Notice" for; V. PREVIOUS.

As to effect of a breach of the contract containing Option; *V. Rafferty v. Schofield*, 1897, 1 Ch. 937; 66 L. J. Ch. 448.

"At the Option of the TENANT FOR LIFE," S. L. Act, 1882, ss. 22, 33, means, "at his direction," and not merely "with his consent" (*Re Gee*, 64 L. J. Ch. 606; *Re Mundy*, 1891, 1 Ch. 399; 60 L. J. Ch. 273; *Vthc*, *Re Byng*, 1892, 2 Ch. 219; 61 L. J. Ch. 511). *Vh*, *Re Fisher and Grazebrook*, 1898, 2 Ch. 660; 67 L. J. Ch. 613; *Re Tesseyman*, W. N. (97) 168; 77 L. T. 484.

A Yearly Hiring with an "Option" to one of the parties to require its continuance for a stated number of years, does not enable that party to determine the hiring at will; his right is to insist on the hiring continuing for the stated time, or to determine it (probably, by giving a reasonable notice) at the end of a year of the hiring (*Down v. Pinto*, 23 L. J. Ex. 103; 9 Ex. 327).

**OR.** — "Or" is, *primâ facie*, an Alternative word (Litt. s. 732: per Parke, B., *Elliott v. Turner*, 15 L. J. C. P. 49; 2 C. B. 446). It is, however, "not always disjunctive. It is sometimes Interpretative, or Expository, of the former word; '*balivam, vel jurisdictionem.*' See stat. Marlbridge" (Dwar. 689: *Vf*, *Hills v. London Gas Co*, 5 H. & N. 312; 29 L. J. Ex. 409; *Bristol W. W. Co v. Bristol*, cited STREET. *Sv*, *Hills v. Evans*, 31 L. J. Ch. 466). In the power in the Infant Settlements Act, 1855, 18 & 19 V. c. 43, s. 1, to make a Settlement "upon or in contemplation of" marriage, the words "in contemplation of" are not expository of "upon"; for the "or" has its natural disjunctive effect of presenting to the view two distinct things (per Selborne, C., *Re Sampson and Wall*, 53 L. J. Ch. 460; 25 Ch. D. 482: *Vth*, *Seaton v. Seaton*, 13 App. Ca. 68: *Sv*, *Re Borrowes*, cited PREVIOUSLY).

A bequest to be applied "to any Charitable *or* Benevolent purpose," or to be expended "in acts of Hospitality *or* Charity," is void, for the vice of uncertainty taints so much of the bequest as is not charitable, whilst the alternative "*or*" *contra*-distinguishes that part from so much of the bequest as is charitable (*Morice v. Durham, Bp.*, 9 Ves. 399; 10 Ves. 522: *Hunter v. A-G.*, 1899, A. C. 309; 68 L. J. Ch. 449; 80 L. T. 732; 47 W. R. 673, espy jdgmt of Ld Davey: *Ellis v. Selby*, 4 L. J. Ch. 69; 5 Ib. 214; 7 Sim. 352; 1 My. & C. 286: *Re Jarman*, 47 L. J. Ch. 675; 8 Ch. D. 584: *Re Hewitt*, 53 L. J. Ch. 132: *Re Sutton*, 54 L. J. Ch. 613; 28 Ch. D. 446: 1 Jarm. 215-217). V. AND: CHARITY: RELIGIOUS.

A bequest for the Protestant Alliance "*or* some one or more Kindred Institutions"; held, a good charitable bequest, and that the gift was alternative, and not substitutional (*Re Delmar*, 1897, 2 Ch. 163; 66 L. J. Ch. 555; 76 L. T. 594; 45 W. R. 630).

'If a man give lands to one, to have and to hold to him *or* his heires, he hath but an estate for life, for the uncertaintie' (Co. Litt. 8 b; *Va*, Touch. 106).

But, on the other hand, "'Or' is often a connecting term of synonymous words, as in the common expression 'piece or parcel of land'" (per Taunton, J., *Ross v. Smith*, 1 B. & Ad. 911).

Sometimes "*Or*" is used as an introduction to a Substitutional Bequest, and then it is synonymous with "IN CASE of" (per Wigram, V. C., *Salisbury v. Petty*, 3 Hare, 93: *Vj*, 2 Jarm. 758: DIE).

In a testamentary gift to a person or a class "*or*" his or their heirs, issue, children, or descendants, the word "*or*" is substitutionary (*Turner v. Moor*, 6 Ves. 557: *Longmore v. Broom*, 7 Ves. 124: *Montague v. Nucella*, 1 Russ. 165: *Carey v. Carey*, 6 Ir. Ch. Rep. 255: *Re Sibley*, 46 L. J. Ch. 387; 5 Ch. D. 494: *Re Webster*, 52 L. J. Ch. 767; 23 Ch. D. 737: *Re Delmar*, sup).

In a bequest *in Remainder* to a person or persons, or a class, "*or*" his or their issue, &c, the bequest confers a vested interest in the person or persons named or the class, which is only to be divested as regards those dying before the period of distribution leaving issue; therefore, the exors or admors, of any such person or member of a class as may die before such period without issue, will be entitled (*Hervey v. McLaughlin*, 1 Price, 264: *Salisbury v. Petty*, sup: *Gray v. Garman*, 2 Hare, 268; 12 L. J. Ch. 259: *Smither v. Willock*, 9 Ves. 233: *Vh*, Hawk. 266, 267). But this is an exception (1 Jarm. 870), and the general rule is that a gift dependent on the happening of an event is not rendered absolute by the gift over becoming impossible or otherwise void (*Doe d. Blomfield v. Eyre*, 5 C. B. 713; 18 L. J. C. P. 284: *O'Mahoney v. Burdett*, L. R. 7 H. L. 388; 44 L. J. Ch. 56, n: 1 Jarm. 867-870).

"It appears to be now established that where there is a bequest 'to A. *or* his personal representatives,' or 'to A. *or* his heirs,' the word '*or*,



generally speaking, implies a substitution, so as to prevent a lapse" (Wms. Exs. 1076); *seus*, where the gift is "to A. *and* his exors, admors, and assns" (Wms. Exs. 1074); but, *semble*, when "to A. *and his heirs*," there is no lapse (Ib. 1075).

An Alternative Bequest is good, *e.g.* a gift to A. B. "of £50 *or* £100," the OPTION being with the legatee (1 Jarm. 359, citing *Seale v. Seale*, 1 P. Wms. 290: *Haggar v. Neathy*, 23 L. J. Ch. 455; Kay, 379: *Phillipps v. Chamberlaine*, 4 Ves. 50). But qy where the *person* to take is in the alternative (V. 1 Jarm. 372, 375, 376).

Where there are alternative Times or Modes for the performance of an act, and nothing is said as to the person who is to exercise the OPTION, that option is with the person by whom the act is to be performed. Thus, on a Sale at 6 "or" 9 months' credit, the purchaser, by not paying at the end of the 6 months, elects not to pay till the expiration of 9 months, and the price cannot be recovered till then (*Price v. Nicholson*, 5 Taunt. 333); so, of a loan (*Reed v. Kilburn Socy*, 44 L. J. Q. B. 126; L. R. 10 Q. B. 264). *Vf*, *Alexander v. Vanderzee*, L. R. 7 C. P. 530: *Ashworth v. Redford*, 43 L. J. C. P. 57; *nom. Ashforth v. Redford*, L. R. 9 C. P. 20.

So, a Lease for 7, 14, "or" 21, years is not void, but gives the *lessee* an OPTION to determine the lease at the end of the 7th or 14th year (*Dann v. Spurrier*, 3 B. & P. 399: *Doc d. Webb v. Dixon*, 9 East, 15: *Price v. Dyer*, 17 Ves. 356: *Goodright d. Hall v. Richardson*, 3 T. R. 462: *Powell v. Smith*, 41 L. J. Ch. 731; L. R. 14 Eq. 85). *Cp*, *Lewis v. Stephenson*, cited RENEWAL. But a lease for 21 years "DETERMINABLE if the parties shall so think fit" at an earlier period, is determinable only by both (*Fowell v. Franter*, 34 L. J. Ex. 6; 3 H. & C. 458; 13 W. R. 145).

A Power to Appoint to certain persons "or" their children, gives a discretion (*Longmore v. Broom*, 7 Ves. 124).

In a clause enabling a Vendor (of part of a Building Estate) "his heirs *or* assigns" to waive Restrictive Covenants, Romer, J., said, "It is worthy of notice that the phrase is not '*and* assigns'" (*Everett v. Remington*, cited ASSIGNS).

The power given to Justices by s. 3, Licensing Act, 1872, 35 & 36 V. c. 94, to inflict a fine "or" to imprison, is in the alternative; and "or" is not to be read "or in default of paying the fine"; therefore, a conviction imposing a fine *or*, in default of payment, imprisonment, is bad (*Re Brown*, 47 L. J. M. C. 108; 3 Q. B. D. 545; *Re Clew*, 51 L. J. M. C. 140; 8 Q. B. D. 511). *Cp*, CASE OR CANISTER: RATED OR ASSESSED.

The power to Justices to order a person to comply with specified health requisitions, "*or otherwise to abate the nuisance*," gives the Justices the alternative, and does not compel them to make an Order in the alternative (*Whitaker v. Derby*, 55 L. J. M. C. 8; 50 J. P. 357; 2 Times Rep. 68; dissenting from *Ex p. Whitchurch*, 6 Q. B. D. 545; 50 L. J. M. C. 41).

*Va, Ex p. Saunders*, 11 Q. B. D. 191; 52 L. J. M. C. 89; *R. v. Llewellyn*, 13 Q. B. D. 681).

As to the part of a clause where "or" becomes operative; *V. Randwick v. Australian Cities Investment Corp*, 1893, A. C. 322; 62 L. J. P. C. 116; 68 L. T. 771.

"Or," as used in a Patent Specification; *V. Elliott v. Turner*, sup: *Hills v. London Gas Co*, and *Hills v. Evans*, sup: *Beard v. Egerton*, 3 C. B. 97; 8 Ib. 165; 15 L. J. C. P. 270; 19 Ib. 36.

*Cp*, AND.

**OR read as AND, and vice versâ.**—"You will find it said in some cases that 'or' means 'and'; but 'or' never does mean 'and.'" (So also 'and' never does mean 'or:'.) "There is a context which shows that 'or' is used for 'and,' by mistake. Suppose a man said, 'I give the black cow on which I usually ride to A. B.,' and he rode on a black horse. Of course the horse would pass, but I do not think even a modern annotator of cases would put in the marginal note 'cow' means 'horse.' You correct the wrong word by the context" (per Jessel, M. R., *Morgan v. Thomas*, 51 L. J. Q. B. 557; 9 Q. B. D. 643).

Still, "it is an ancient rule of construction (the principle of which, however, would not be extended at the present day) to avoid disinheriting issue, that if real estate be devised to A. in fee simple with a limitation over in the event of A. dying under 21 *or* without issue, the word 'or' will be read 'and,' and the gift over will be construed to take effect only in the event of A. dying under twenty-one *and* without issue (*Soullé v. Gerrard*, Cro. Eliz. 525; *Fairfield v. Morgan*, 2 B. & P. N. R. 38; *Right v. Day*, 16 East, 69; *Eastman v. Baker*, 1 Taunt. 174)": Hawk. 203. *If*, 1 Jarm. 505-507; *Johnson v. Simcox*, 31 L. J. Ex. 38; 7 H. & N. 344. But if the first estate is less than the fee simple, the rule just stated will not apply (*Mortimer v. Hartley*, 20 L. J. Ex. 129; 6 Ex. 47; *Cooke v. Mirehouse*, 34 Bea. 27). The rule applies to personalty (*Wright v. Marsom*, W. N. (95) 148; 40 S. J. 67).

Besides that rule there is probably no other general rule which could with practical utility be relied on, for sanctioning the change of "Or" to "And." or the converse (*See*, 1 Jarm. 505-524, where this change of words is elaborately treated: *Va*, *Watson Eq.* 1316-1318). Whenever such a construction is adopted there must be some violence done to the language which only a context can justify.

In the following cases, "OR" read as "AND":—*Richardson v. Spragg*, 1 P. Wms. 434; *Read v. Snell*, 2 Atk. 645; *Wright v. Kemp*, 3 T. R. 470; *Fowler v. Pudgey*, 7 T. R. 509; *Dean v. Kemey*, 9 East, 366; *Grant v. Dyer*, 2 Dowl. 87, 88; *Horridge v. Ferguson*, Jac. 583; *Miles v. Dyer*, 8 Sim. 330; *Harris v. Davis*, 1 Coll. 416; *Morris v. Morris*, 17 Bea. 198; *Shand v. Kidd*, 19 Bea. 310; *Maude v. Maude*, 22 Bea. 290; *Bentley v. Meech*, 25 Bea. 197; *Maynard v. Wright*, 26 Bea. 285; *Greated v. Greated*, 26 Bea. 621; 28 L. J. Ch. 756; *Hawksworth*

v. *Hawksworth*, 27 Bea. 1: *Cooke v. Mirchouse*, 34 Bea. 27: *Greenway v. Greenway*, 29 L. J. Ch. 601; 2 D. G. F. & J. 128; 1 Giff. 131: *Parkin v. Knight*, 15 L. J. Ch. 209; 15 Sim. 83: *G. W. Ry v. Bishop*, 41 L. J. M. C. 120; L. R. 7 Q. B. 550 (*Settle*, *Malton Local Bd v. Malton Manure Co*, 49 L. J. M. C. 90; 4 Ex. D. 302, and *Bishop Auckland Local Board v. Bishop Auckland Iron Co*, 52 L. J. M. C. 38): *Metrop Bd of Works v. Steed*, 51 L. J. M. C. 22; 8 Q. B. D. 445: *Re Philips*, L. R. 7 Eq. 151: *Holland v. Wood*, L. R. 11 Eq. 91: *Re Fleming*, 15 L. R. Ir. 363.

Vf, Wms. Exs. 936: Co. Litt. 99 b: RATED OR ASSESSED.

In the following cases "OR" not read as "AND": — *Barry Ry v. Tuff Vale Ry*, 1895, 1 Ch. 128; 64 L. J. Ch. 238, 239: *Mersey Docks v. Henderson*, 4 Times Rep. 703: *Prim v. Smith*, 20 Q. B. D. 643; 57 L. J. Q. B. 336; 58 L. T. 606; 36 W. R. 530: *Re Huggins*, 58 L. J. Q. B. 207; 22 Q. B. D. 277: *Re Clew*, 51 L. J. M. C. 140; 8 Q. B. D. 511: *Finlason v. Totlock*, 39 L. J. Ch. 422; L. R. 9 Eq. 258: *Re Sanders*, L. R. 1 Eq. 675: *Simpson v. Holliday*, 35 L. J. Ch. 811; L. R. 1 H. L. 315: *Wingfield v. Wingfield*, 47 L. J. Ch. 768; 9 Ch. D. 658: *Re Stroud*, W. N. (75) 148: *Girdlestone v. Doe*, 2 Sim. 225: *Benson v. Dunn*, 23 L. T. 848: *Wright v. Frant*, 32 L. J. M. C. 204; 4 B. & S. 118: *R. v. Phillips*, 35 L. J. M. C. 217; 7 B. & S. 593; L. R. 1 Q. B. 648 (over-ruling *R. v. Shiles*, 10 L. J. M. C. 157; 1 Q. B. 919): *Harrington v. Rumsay*, 22 L. J. Ex. 326; 8 Ex. 879: *R. v. Pooock*, 15 L. J. M. C. 132; 8 Q. B. 729: *Green v. Wood*, 14 L. J. Q. B. 217; 7 Q. B. 178: *Curey v. Curey*, 6 Ir. Ch. Rep. 255: *Re Clelund*, 7 L. R. Ir. 74.

In the following cases "AND" read as "OR": — *Chapman v. Dalton*, Plowd. 289: *Brownsword v. Edwards*, 2 Ves. sen. 243: *Maberly v. Strode*, 3 Ves. 450: *Bell v. Phyn*, 7 Ves. 458: *Losh v. Tounley*, Cooper t. Brougham, 372: *Stubbs v. Sargon*, 2 Keen, 255; 6 L. J. Ch. 254, affd 3 My. & C. 507; 7 L. J. Ch. 95: *Waterhouse v. Keen*, 4 B. & C. 200; 6 D. & R. 257: *Townsend v. Reul*, 30 L. J. M. C. 245; 10 C. B. N. S. 317: *Stapleton v. Stapleton*, 21 L. J. Ch. 434; 2 Sim. N. S. 212: *Gonne v. Cook*, 15 W. R. 576: *Townsend v. Kingston*, 6 Ir. Eq. Rep. 118: *Lony v. Lane*, 17 L. R. Ir. 11: *Re Brittlebank*, 30 W. R. 99.

Vf, Wms. Exs. 936: So, where a conjunctive Condition of a Bond, &c, is not possible of performance (1 Rol. Ab. 444: *Baldwin v. Cook*, 1 Leon. 74; nom. *Cooke v. Baldwin*, Owen, 52).

In the following cases "AND" not read as "OR": — *Twyne's Case*, 3 Rep. 80 a: *Doe d. Usher v. Jessop*, 12 East, 288: *Grey v. Pearson*, 26 L. J. Ch. 473; 6 H. L. Ca. 61: *Day v. Day*, Kay, 703: *Secombe v. Edwards*, 28 Bea. 440: *Malmesbury v. Malmesbury*, 31 Bea. 407: *Reed v. Braithwaite*, L. R. 11 Eq. 514; 40 L. J. Ch. 355: *Re Kirkbride*, L. R. 2 Eq. 400: *Barker v. Young*, 33 L. J. Ch. 279; 33 Bea. 353: *Oldfield v. Dodd*, 22 L. J. Ex. 144; 8 Ex. 578: *Re Sanders*, L. R. 1 Eq. 675.

#### WHERE BOTH WORDS USED.

When a contract specifies that it is to be performed during "and/or" two or more months, that means during either both or all those months (*Bowes v. Shand*, 46 L. J. Q. B. 564).

Vh, Chitty Eq. Ind. 7647-7658.

**OR**, read as **NOR**. — *V. Metrop Bd of Works v. Steed*, 51 L. J. M. C. 22; 8 Q. B. D. 445.

**ORAL**. — *V. PAROL*.

**ORATORY**. — “An Oratory differs from a CHURCH; for in a church there is appointed a certain Endowment for the minister and others; but an Oratory is that which is not built for saying Mass nor endowed, but ordained for PRAYER” (Phil. Ecc. Law, 1451, citing Linwood’s Provinciale, 233 *n*).

**ORCHARD**. — *V. TILLAGE: GARDEN*.

**ORDEAL**. — Trial by; *V. 4 Bl. Com.* 342–344.

**ORDELF**. — “‘Ordelfe’ is where any claimes to have the Ore that is found in the soile or ground” (Termes de la Ley).

*V. DELF*.

**ORDER**. — An Order (as contrasted with a JUDGMENT, or FINAL JUDGMENT) is a judicial or ministerial direction or conclusion on matters outside the record; “a ‘Judgment’ is a decision obtained in an Action, and every other decision is an ‘Order’” (per Esher M. R. *Onslow v. Inl. Rev. inf.* *Cp*, OPINION).

An Opinion by the Q. B. D. (under s. 11, 12 & 13 V. c. 45), on a Case stated from Quarter Sessions, though not a “Judgment,” is an “Order” within s. 19, Jud. Act, 1873, and it is interlocutory (*Walsall v. Lond. & N. W. Ry*, 48 L. J. M. C. 65; 4 App. Ca. 30; *Peterborough v. Wils-thorpe*, 53 L. J. M. C. 33; 12 Q. B. D. 1; *Holborn v. Chertsey*, 15 Q. B. D. 76; 51 L. J. Q. B. 137; *Dewsbury W. W. v. Penistone*, 2 Times Rep. 375; *Lodge v. Huddersfield*, 67 L. J. Q. B. 571; 1898, 1 Q. B. 859; 62 J. P. 515); so, of a decision on a Special Case under s. 19, Stamp Act, 1870, repld s. 13, Stamp Act, 1891 (*Onslow v. Inl. Rec.* 59 L. J. Q. B. 556; 25 Q. B. D. 465; 38 W. R. 728). *Secus*, as regards an Opinion on a Special Case stated by an Arbitrator when in the reference (made by consent before the Jud. Acts) the parties agreed that neither party should bring Error (*Jones v. Victoria Dock Co*, 2 Q. B. D. 314). An Order for a Habeas Corpus is an “Order” under s. 19, Jud. Act, 1873 (*Barnardo v. Ford*, 1892, A. C. 326; 61 L. J. Q. B. 728; 67 L. T. 1; 56 J. P. 629). *V. DECISION*: “Balance Order,” sub BALANCE.

*V. DETERMINATION*.

A refusal to transfer Bankry Proceedings under R. 16, Bankry Rules, 1883, is an appealable “Order” under s. 104, Bankry Act, 1883 (*Ex p. Gillibrand, Re Walker*. W. N. (84) 159); so, of the Disallowance by a Judge (s. 21 (2), Bankry Act, 1883) of an objection by the Board of Trade to an appointment of a trustee (*Re Lamb*, 1894, 2 Q. B. 805; 64 L. J. Q. B. 71; 71 L. T. 312); but a Refusal to give Leave to Appeal is not an “Order or Jdgmt” within s. 3, 39 & 40 V. c. 59 (*Lane v. Esdaile*, cited LEAVE, at end).

The settlement by Justices of Compensation under s. 22, Lands C. C. Act, 1845, is not an "Order," or Conviction within Sum Jur Act, 1848, 11 & 12 V. c. 43, s. 1 (*R. v. Edwards*, 53 L. J. M. C. 149; 13 Q. B. D. 586; over-ruling *Re Edmundson*, 21 L. J. M. C. 193; 17 Q. B. 67). So, the refusal (or the granting) a License by Licensing Justices, is not a "Conviction or Order" within s. 31, Sum Jur Act, 1879 (*Boulter v. Kent Jus.*, cited COURT: *R. v. Sharman*, 1898, 1 Q. B. 578; 67 L. J. Q. B. 460; 78 L. T. 320; 62 J. P. 296). *Cp.* ACT: COMPLAINT: LEGAL PROCEEDINGS.

The mere entry by a County Court Registrar of an Order of Commitment, is not an "Order" (*Harris v. Slater*, 57 L. J. Q. B. 539; 21 Q. B. D. 359; 37 W. R. 56).

"All Decrees and Orders of Courts of Equity," s. 18, 1 & 2 V. c. 110, includes an Interlocutory Order for Costs (*Taylor v. Roe*, 1894, 1 Ch. 413; 63 L. J. Ch. 282; 70 L. T. 232; 42 W. R. 426).

"Order," quâ Bankry Act, 1883, includes, in Scotland, "Deliverance or Decree" (s. 6 (2), 47 & 48 V. c. 16); quâ Jud. Acts, and Co. Co. Acts, it includes "Rule" (s. 100, Jud. Act, 1873; s. 3, Jud. Act (Ir), 1877; s. 186, Co. Co. Act, 1888); quâ Petty Sessions (Ir) Act, 1851, 14 & 15 V. c. 93, it includes "Conviction" (s. 44).

"Order of a Court"; Stat. Def., Yorkshire Registries Act, 1884, 47 & 48 V. c. 54, s. 3.

V. ENFORCE: FINAL JUDGMENT: JUDGMENT: NO ORDER: ORDER OF ADJUDICATION: ORDER OF COURSE: ORDERED: RECEIVING ORDER.

"Order of the *Board of Agriculture*"; Stat. Def., 57 & 58 V. c. 57, s. 59.

"Order" of *Guardians*, s. 114, Poor Relief (Ir) Act, 1838, 1 & 2 V. c. 56; *V. R. v. Sheehan*, 1898, 2 I. R. 683.

"Order of the *Land Commissioners*"; Stat. Def., 47 & 48 V. c. 54, s. 3.

"Orders and Regulations," quâ *Poor Law Amendment Act*, 1834, 4 & 5 W. 4, c. 76; *V. s.* 109.

"Order," s. 11, P. H. London Act, 1891, includes "Notice" (*Gebhardt v. Saunders*, 1892, 2 Q. B. 452; *Andrew v. St. Olave*, 1898, 1 Q. B. 775; 67 L. J. Q. B. 592, explained and followed *North v. Walthamstow*, 67 L. J. Q. B. 972).

V. PROVISIONAL ORDER: PROTECTION.

"*Reception Order*"; Stat. Def., Lunacy Act, 1890, s. 341.

"*Standing Orders*," quâ Private Legislation Procedure (Scot) Act, 1899, 62 & 63 V. c. 47, "means, the Standing Orders of the House of Lords and the House of Commons respectively" (s. 18).

V. ORDER IN COUNCIL: ORDINANCE: SPECIAL: STOP.

"By whose Order"; V. EXTRAORDINARY TRAFFIC.

"To whose Orders workman bound to conform"; V. CONFORM.

In a commercial sense, "Order," — *e.g.* in an agreement to pay commission on "Orders," — means, a binding contract to take a commodity (*Field v. Manlove*, 5 Times Rep. 614).

Bill of Exchange, or Promissory Note, or Bill of Lading, payable to a person's "Order" is a Negotiable Instrument: *V. BILL OF EXCHANGE: NEGOTIABLE.* A Bill of Exchange directing payment "to Order" is a good Bill, for it means "pay to my Order" (*Chamberlain v. Young*, 1893, 2 Q. B. 206; 63 L. J. Q. B. 28; 69 L. T. 332; 42 W. R. 72).

In a Charter-Party "the provision to deliver the Cargo to the 'Order' of the merchants or their agents, gives to the Charterers the option of designating the particular wharf or store at which they desire the ship to unload" (per Collins, J., *Sanders v. Jenkins*, cited ARRIVE, sub "Arrived Ship"). *Cp.* AS ORDERED.

"Order for the delivery of goods," s. 10, 1 W. 4, c. 66, includes an Order to taste wines (*R. v. Illidge*, 2 C. & K. 871).

Order "for payment of money": *V. PAYMENT.*

*V. POSSESSION, ORDER, OR DISPOSITION.*

"Peace, Order, and Good Government"; *V. PEACE.*

"In any Order"; *V. LIBERTY TO CALL.*

"Good Order and Condition"; *V. GOOD ORDER.*

"Keep in order"; *V. KEEP.*

*V. IN ORDER.*

**ORDER AND DIRECT.**—*V. PRECATORY TRUST.*

**ORDER IN COUNCIL.**—Probably, as of general acceptance, "Order in Council" means, an Order of the Monarch acting by and with the advice of the Privy Council, *e.g.* International Copyright Act, 1844, 7 & 8 V. c. 12, s. 20; but quâ Ireland it will generally mean an Order of the Lord Lieutenant made by and with the advice and consent of the Privy Council in Ireland, *e.g.* 51 & 52 V. c. 44, s. 3; *Va.* 35 & 36 V. c. 94, s. 77.

Where it is provided by statute that an Order in Council is to have the effect of an Act of Parliament, it is to be read as one with the Act under which it is made (*Patent Agents' Institute v. Lockwood*, 1894, A. C. 347; 63 L. J. P. C. 74; 71 L. T. 205; *Baker v. Williams*, cited VENTILATION).

"Order of Council"; Stat. Def., 57 & 58 V. c. 57, s. 59.

"Order of a County Council"; Stat. Def., 58 & 59 V. c. 32, s. 1 (2).

"By Order of the Council," s. 140 (3 *b*), Mun Corp Act, 1882; *V. A-G. v. Tynemouth*, cited LEGAL PROCEEDINGS.

**ORDER OF ADJUDICATION.**—"Order of Adjudication," as defined by s. 42 (2), Bankry Act, 1883, to include "an Order for the Administration of the estate of a deceased person," is confined to Orders made under s. 125, and does not include a Chancery Administration Order (*Re Fryman*, 57 L. J. Ch. 862; 38 Ch. D. 468; 58 L. T. 872; 36 W. R. 631).

*V. PETITION.*

## ORDER OF COURSE 1353 ORDINARY CALLING

**ORDER OF COURSE.**—“An Order of Course, means an Order made on an *ex parte* application, and to which a party is entitled as of right on his own statement, and at his own risk” (Ann. Pr., note to R. 18, Ord. 62, R. S. C.).

**ORDERED.**—Goods “ordered to be given in Parochial Relief,” s. 77, 4 & 5 W. 4, c. 76; *V. Davies v. Harcey*, 43 L. J. M. C. 121; L. R. 9 Q. B. 433.

Parliamentary Co “ordered to be Wound-up,” s. 1 (2), 55 & 56 V. c. 27, includes a Co which by an Act of Parliament is directed to be wound-up (*Re Urbridge, &c, Ry*, 59 L. J. Ch. 409; 43 Ch. D. 536; 62 L. T. 347; 38 W. R. 644). *Cp.* ORDER.

“Decreed or ordered”; *V.* DECREE.

*V.* AS ORDERED.

**ORDERLY.**—Licensed Premises conducted in a “peaceable and orderly manner”; *V.* PEACEABLE.

**ORDINANCE.**—A University Statute or Order is the same thing as an “Ordinance”; therefore, an Order under s. 16, Universities (Scot) Act, 1889, for effecting a union between St. Andrews Univ. and Univ. College, Dundee, is an “Ordinance,” and must, under ss. 19, 20, be laid before Parliament and approved by the Crown (*Metcalf v. Cox*, 1895, A. C. 328; 64 L. J. P. C. 148; 72 L. T. 511).

**ORDINARILY.**—*V.* ORDINARY RESIDENCE.

**ORDINARY.**—“‘Ordinarie.’ *Ordinarius*, is hee that hath ordinarie jurisdiction in causes ecclesiasticall, immediate to the King and his Courts of Common Law, for the better execution of justice, as the Bishop, or any other that hath exempt and immediate jurisdiction in causes ecclesiasticall” (Co. Litt. 344 a: *Vj*, Termes de la Ley). In Westm. 2, c. 19, the word “is not onely taken for a Bishop, but every one that is *in loco episcopi*,” including usurpers (2 Inst. 398). *V.* BISHOP. *Vh*, Phil. Ecc. Law, 166.

“Ordinary” as compared with “Extraordinary”; *V.* EXTRAORDINARY.

**ORDINARY AGRICULTURAL FARM.**—*V.* *Daly v. Wright*, 32 L. R. Ir. 9: AGRICULTURAL.

**ORDINARY CALLING.**—Enlisting is not part of the “Ordinary Calling” of a soldier within s. 1, Sunday Observance Act, 1677, 29 Car. 2, c. 7; for the ordinary duty of a soldier is to attend drill and fight the battles of his country (*Wolton v. Gavin*, 16 Q. B. 48; 20 L. J. Q. B. 73); nor is the giving by a tradesman of a guarantee for the fidelity of an intended employé (*Norton v. Powell*, 4 M. & G. 42; 11 L. J. C. P. 202). Nor is it within a farmer’s “ordinary calling” to hire out a stallion to

## ORDINARY CALLING 1354 ORDINARY COURSE

cover a mare (*Scarfe v. Morgan*, 7 L. J. Ex. 324; 4 M. & W. 270); or to employ labourers (*R. v. Whitnash*, 7 B. & C. 596; 6 L. J. O. S. M. C. 26; 1 M. & R. 452). Selling horses is not within the "ordinary calling" of any one except he be a horse-dealer (*Drury v. Defontaine*, 1 Taunt. 131; *Fennell v. Ridler*, 5 B. & C. 406; 8 D. & R. 204; as to these cases, *V. per Park, J., Smith v. Sparrow*, 4 Bing. 88). *V. WORLDLY LABOUR.*

*V. CALLING: OTHER. Ejusdem Generis.*

**ORDINARY CARE.** — Ordinary Care means, that care which may reasonably be expected from a person old enough to be responsible for his conduct (*Lynch v. Nurdin*, 10 L. J. Q. B. 75; 1 Q. B. 36); want of it is NEGLIGENCE. *Cp.* "Ordinary Skill," sub SKILL.

*Cp.* DUE DILIGENCE: REASONABLE DILIGENCE.

**ORDINARY CIVIL CAUSE.** — *V. CAUSE.*

**ORDINARY COURSE.** — An Execution on the goods of a Company is not a "DEALING" therewith by the Co "in the Ordinary Course of Business," within an Exception in a Debenture by the Co creating a FLOATING SECURITY; it is not a "Dealing" at all; it is a compulsory legal process against the Co (*Davey v. Williamson*, 1898, 2 Q. B. 194; 67 L. J. Q. B. 699; 78 L. T. 755; 46 W. R. 571). It is in the "Ordinary Course of Business" of a Co which has given a Floating Security to sell one of its Branches, if the Directors *bonâ fide* think such sale will be advantageous to the Co (*Re Vivian*, 1900, 2 Ch. 654; 69 L. J. Ch. 659; 82 L. T. 674; 48 W. R. 636); *secus*, to sell the Whole of its property (*Foster v. Borax*, 1899, 2 Ch. 130; 68 L. J. Ch. 410; 80 L. T. 637). *Semble*, "if done *bonâ fide*, it is within the 'Ordinary Course of Business' of a Co to issue Debentures as security for the costs of an action brought against it which might result in the destruction of its Undertaking" (*per Wright, J., Re Hubbard*, 68 L. J. Ch. 57; 79 L. T. 665).

"Ordinary Course of Business of a Mercantile Agent"; *V. MERCANTILE AGENT.*

A PAYMENT IN DUE COURSE of a Trader's Bill of Exchange is in the Ordinary Course of Business, and is not a FRAUDULENT PREFERENCE within s. 48, Bankry Act, 1883, even though made when the Trader was conscious of his insolvency (*Re Clay*, 3 Manson, 31); *secus*, if payment was made after the Bill had been held over at the Trader's Request (*Re Eaton*, 1897, 2 Q. B. 16; 66 L. J. Q. B. 491). *V. VIEW.*

SALE "in the Ordinary Course of Business"; *V. Re Old Bushmill's Co*, 1897, 1 I. R. 488.

"TRANSFERS of goods in the Ordinary Course of Business," s. 4, Bills of Sale Act. 1878; *V. Re Hall*, 54 L. J. Q. B. 43; 14 Q. B. D. 386; 51 L. T. 795; 33 W. R. 228. *Re Cunningham, Ex p. Attenborough*, 28 Ch. D. 682.



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When a Notice is to be considered as served when "in the Ordinary Course of Post" it would be delivered, the onus is on the sender to show that there is an Ordinary Course of Post at the place and to the person addressed (*Lewis v. Evans*, 44 L. J. C. P. 41; L. R. 10 C. P. 297; *Hudson v. Louth*, 6 L. R. Ir. 69; *Doogan v. Colquhoun*, 20 L. R. Ir. 361; *Chillis v. Cox*, 4 Times Rep. 114); but where it is shown that there is an Ordinary Course of Post within the district to which the Notice is addressed, that Course is the one to be regarded, and the sender, *e.g.* under s. 100, 6 V. c. 18, has nothing to do with an extraordinary postal delivery to a particular body of persons, *e.g.* soldiers in barracks (*Kemp v. Wanklyn*, 1894, 1 Q. B. 583; 63 L. J. Q. B. 520; 70 L. T. 478; 42 W. R. 369; 58 J. P. 605; over-ruling *Childs v. Coe*, 20 Q. B. D. 290). *Vf*, s. 26, Interp Act, 1889.

"Ordinary Way of his Trade," s. 11 (14, 15), Debtors Act, 1869; *V. Ex p. Brett*, 45 L. J. Bank. 17; 1 Ch. D. 151.

**ORDINARY LUGGAGE.** — As regards the contract of carriage, this has the same meaning as PERSONAL LUGGAGE. *Vf*, LUGGAGE.

**ORDINARY OUTGOINGS.** — The Cost of Drainage Works under s. 73, Metrop Man. Act, 1855, is within a direction to deduct "Ordinary Outgoings" from the income of a tenant for life; and is certainly so if such outgoings be expressed to be for "taxes or otherwise" (*Re Crawley, Acton v. Crawley*, 54 L. J. Ch. 652; 28 Ch. D. 431).

*V. OUTGOING.*

**ORDINARY PRISON.** — Stat. Def., General Prisons (Ir) Act, 1877, 40 & 41 V. c. 49, s. 3; Prisons (Scot) Act, 1877, 40 & 41 V. c. 53, s. 71.

*V. PRISON.*

**ORDINARY RESIDENCE.** — A man who has frequently stayed in London with friends or at a lodging-house or an hotel for some weeks or a month at a time, is not thereby shown to have "ordinarily resided" there, within s. 6 (1 *d*), Bankry Act, 1883 (*Re Erskine*, 10 Times Rep. 32; 38 S. J. 144). *Vf*, DOMICIL: RESIDE.

**ORDINARY RESOLUTION.** — *V. RESOLUTION.*

**ORDINARY SKILL.** — *V. SKILL.* *Cp.* ORDINARY CARE.

**ORDINARY TENANCY.** — Quà Land Law (Ir) Act, 1881, 44 & 45 V. c. 49, " 'Ordinary Tenancy,' means, a tenancy to which this Act applies, and which is not a tenancy subject to statutory conditions or a judicial lease or a fixed tenancy" (s. 57).

*V. TENANCY.*

**ORDINARY TIDE.** — *V.* SHORE: NEAP.

**ORDINARY TRAIN.** — A TRAIN having a special object other than the ordinary traffic and purposes of the particular Railway, going faster and stopping much less frequently than the usual trains thereon, is not an "Ordinary Train" within a Special Act (*Turner v. Lond. & S. W. Ry*, 43 L. J. Ch. 430; L. R. 17 Eq. 561). *Va.*, "Special Train," sub SPECIAL. *Cp.*, PASSENGER TRAIN.

**ORDINARY WAY OF.** — *V.* ORDINARY COURSE.

**ORDINATION.** — "The rite through which the Bishop transmits to his clerical assistants a portion of his authority, is Ordination (*ordination*). Through Ordination the ordained person receives the privileges and powers necessary for the execution of sacerdotal functions in the Church" (Phil. Ecc. Law, 88).

**ORDNANCE MAP.** — *V.* s. 25, Interp Act, 1889.

**ORE.** — *Seemle*, "Ore," is Metal in its crude state separated from the rock (per Kay, L. J., *A-G. v. Morgan*, 1891, 1 Ch. 462, 60 L. J. Ch. 130; *Vf*; per North, J., *Ib.*, 1891, 1 Ch. 449; 59 L. J. Ch. 779).

**ORIGINAL.** — "Where there are a great number of persons who produce the same article, 'Original' means that the article so called is that made by the first inventor" (per Romilly, M. R., *Cocks v. Chandler*, L. R. 11 Eq. 449; 40 L. J. Ch. 575; 19 W. R. 593; 24 L. T. 379).

*V.* DUPLICATE: PRIMARY.

**ORIGINAL CLIENTS.** — Where Articles of Partnership between Solicitors restricted each partner from being concerned for the "Original Clients" of the other if and when the partnership was dissolved; held, that the phrase included, not only the clients of the other at or before the date of the Articles but also, those for whom (by the terms of the Articles) he was authorized to be concerned separately from the firm (*Badham v. Williams*, 44 S. J. 575; 83 L. T. 141). *V.* CLIENT.

**ORIGINAL COMPOSITION.** — *V.* AUTHOR: COMPOSE.

**ORIGINAL DESIGN.** — *V.* NEW DESIGN.

**ORIGINAL HOLDER.** — *V.* *Re Oriental Bank* (54 L. J. Ch. 481; 1 Times Rep. 273), in which it was held, on the construction of a clause in the Charter of that Bank, that "Original Holder" of shares did not mean the first allottee, but meant the immediate transferor to the person holding the shares at the time when the phrase became operative, — *i.e.* in that case, the winding-up of the Company.

**ORIGINAL PAINTING.** — *V. PAINTING.*

**ORIGINAL PHOTOGRAPH.** — *V. PHOTOGRAPH.*

**ORIGINAL POLICY.** — “Subject to same terms as Original Policy, and to PAY as may be paid thereon,” in a Marine Re-Insrce; *V. Lower Rhine, &c, Insrce v. Sedgwick*, 1 Q. B. 739; 67 L. J. Q. B. 330; 78 L. T. 496; 46 W. R. 380; 8 Asp. 380, revd on app., 1899, 1 Q. B. 179; 68 L. J. Q. B. 186; 80 L. T. 6; 47 W. R. 261; 8 Asp. 466; 4 Com. Ca. 14.

**ORIGINAL PROCEEDING.** — *V. CAUSE: ACTION: PROCEEDING.*

**ORIGINAL STATES.** — *V. STATES.*

**ORIGINAL SUBJECT.** — “Original Subject of the cause or matter,” s. 24 (3), Jud. Act, 1873; *V. Barber v. Blaiberg*, 51 L. J. Ch. 509; 19 Ch. D. 473; 30 W. R. 362.

**ORIGINALLY.** — By the Blackheath Court of Requests Act (6 & 7 W. 4, c. 120, s. 22), that Court had no jurisdiction over debts “for any sum being the balance of an account *originally exceeding*” £5. “The meaning of the term ‘originally’ in this clause is somewhat obscure and has not been judicially decided; but we think it is to be understood to apply to a case where credit was given at one time for an amount exceeding £5, either in one or different sums, although afterwards the credit might have been reduced under that sum by part payments before the commencement of the suit in the superior Court” (per Parke, B., *Pope v. Banyard*, 7 L. J. Ex. 183; 3 M. & W. 424). And under another statute (2 W. 4, c. lxx. s. 10), it was settled that a claim which at its inception exceeded the stated amount, “originally” exceeded it, though reduced by payment below such amount before action brought (*Green v. Bolton*, 4 Bing. N. C. 308; *Elsley v. Kirby*, 12 L. J. Ex. 96; 9 M. & W. 536). *Cp.* REDUCED BY PAYMENT.

When passengers, travelling upon branch lines to the termini of the main line, have to await the arrival of a train upon the main line to reach their destination, the terminus of the main line from which the train started is “the place from which the Train *originally started*” (*Barry v. Midland G. W. Ry, Ir. Rep.* 1 C. L. 130).

**ORIGINATE.** — *V. Best v. Stonehewer*, 34 L. J. Ch. 349; 34 Bea. 66; 2 D. G. J. & S. 537.

**ORIGINATING.** — Damage originating; *V. Marsden v. City & County Assrce*, 35 L. J. C. P. 60; L. R. 1 C. P. 232.

An “Originating *Summons*,” means, “a Summons by which an ACTION is commenced otherwise than by Writ” (per Esher, M. R., *Re Holloway*, 1891, 2 Q. B. 163; 63 L. J. Q. B. 672; 70 L. T. 615; 42 W. R.

433); accordingly it was there held that a Summons under s. 37, Solrs Act, 1843, to a Solr to deliver up papers, is not an Originating Summons, and is unaffected by Rules 4 b, 4 c, and 4 d, Ord. 54, R. S. C.

**ORNAMENT.**—As to what are the proper “Ornaments” and “Ceremonies” of the Church, Minister, and Services; *V. Westerton v. Liddell*, Moore, Special Rep. 187: *Martin v. Mackonochie*, 38 L. J. Ecc. 1; L. R. 2 P. C. 365; L. R. 2 A. & E. 116; 4 Ib. 279: *Sumner v. Wör*, 39 L. J. Ecc. 25; L. R. 3 A. & E. 58; *Clifton v. Ridsdale*, 1 P. D. 316: *Ridsdale v. Clifton*, 46 L. J. P. C. 27; 2 P. D. 276: *Masters v. Durst*, 45 L. J. P. C. 51; 1 P. D. 123, 373: *Elphinstone v. Purchas*, 39 L. J. Ecc. 28; L. R. 3 A. & E. 66; nom. *Hebbert v. Purchas*, 40 L. J. Ecc. 33; L. R. 3 P. C. 605: *Boyd v. Phillpotts*, 44 L. J. Ecc. 1; L. R. 4 A. & E. 297: *Phillpotts v. Boyd*, L. R. 6 P. C. 435: *White v. Bowron*, 43 L. J. Ecc. 7; L. R. 4 A. & E. 207; *Fuller v. Bishop*, 14 Times Rep. 103: *Re St. Mark's*, 1898, P. 114: *Keusit v. St. Ethelburga*, 1900, P. 80. *Vf*, Phil. Ecc. Law, 711–736; 9 Encyc. 323–325: RITE.

“Ornaments and other Necessary Occasions”; *V. NECESSARY.*

Bequest of “Ornaments”; *V. PERSONAL ORNAMENTS.*

Articles of “Household Use or Ornament”; *V. HOUSEHOLD*, towards end.

*V. DESIGN: PATTERN.*

**ORNAMENTAL TIMBER.**—“As the Court cannot determine what is Ornamental Timber, it being merely a matter of taste, they therefore say that what was planted for ornament must be considered as ornamental” (per Grant, M. R., *Mahon v. Stanhope*, 3 Mad. 523, *n*).

“If the object (of a proprietor having the absolute power of disposition) in planting Timber, or in leaving Timber standing, is Ornament,—whether that object is effected, whether the effect is truly ornamental or the most absurd exhibition that ever was produced,—this Court will protect that Timber; and the protection is not confined to trees planted, or left standing, as ornamental to a House or Park; nor does it depend on the distance from the Mansion. . . . If such a proprietor had even the bad taste to plant, or leave standing, a couple of yew trees cut in the shape of peacocks on the road-side, I do not shrink from what I laid down in *Downshire v. Sandys* (6 Ves. 107, 111) that they must be protected until some person (having the same absolute power of disposition) with more correct taste comes into possession” (per Eldon, C., *Wombwell v. Belaysse*, 6 Ves., 2 ed., 110 a, 110 b).

*Vf*, *Bewick v. Whitfield*, 3 P. Wms. 267: *Marker v. Marker*, 9 Hare, 1; 20 L. J. Ch. 246: *Newdigate v. Newdigate*, 2 Cl. & F. 601: *Ford v. Tynte*, 2 D. G. J. & S. 127: *Magennis v. Fallon*, 2 Molloy, 590: *Ashby*

v. *Hincks*, 58 L. T. 557; *Stafford v. Sutherland*, 92 Law Times, 390: **TIMBER.**

*Vh*, Equitable Waste, sub **WASTE.**

**ORPHAN.** — Though Johnson defines an Orphan as “a child who has lost father, or mother, or both”; yet where there was a bequest to A. until 21, “provided she be left an Orphan, unprovided for, and lives with part of my family,” it was held, by Wood, V. C., that though A.’s mother was dead, yet as her father was alive and as on him lay the obligation of providing for A., she was not an “Orphan” as contemplated by the bequest (*Guilmette v. Mossop*, 7 L. T. 190).

A gift for the “Orphans” of a place is a good **CHARITY** (*A-G. v. Comber*, 2 Sm. & St. 93; *Russell v. Kellett*, 3 Sm. & G. 264; 26 L. T. O. S. 193; 2 Jur. N. S. 132).

**ORPHAN ASYLUM.** — *V.* **ASYLUM.**

**OSBORNE MORGAN’S ACT.** — Burial Laws Amendment Act, 1880, 43 & 44 V. c. 41.

**OSTIARY.** — “The Ostiary is he who keeps the doors of the church and tolls the bell” (Phil. Ecc. Law, 90). *Cp.* **SEXTON.**

**OTHER.** — “‘Other’ always implies something additional” (per Erle, C. J., *Ayrton v. Abbott*, 14 Q. B. 17).

“‘Other,’ ought to be other in Nature, Quality, and Person” (*Mildmay’s Case*, 1 Rep. 177); “You do not use the word ‘other’ unless there is some relation between the classes of things” (per North, J., *Re Miller*, 61 L. T. 367). Yet it is frequently a differentiating word, and a power to appoint “any other Person” a New Trustee, excludes the donee of the power who cannot appoint himself (*Re Skeats*, 58 L. J. Ch. 656; 42 Ch. D. 522; *Re Newen*, 1894, 2 Ch. 297; 63 L. J. Ch. 763; 43 W. R. 58).

“Where general words follow particular ones, the rule is to construe them as applicable to persons *ejusdem generis*” (per Tenterden, C. J., *Sandiman v. Breach*, 7 B. & C. 99). This rule has been “acted upon in all times, but nowhere more clearly stated than by Lord Tenterden in *Sandiman v. Breach*” (per Denman, C. J., *Kitchen v. Shaw*, 7 L. J. M. C. 16; 6 A. & E. 729); and it is therefore sometimes called Lord Tenterden’s Rule, which quâ the word “Other” may perhaps be more fully stated thus:—Where a statute, or other document, enumerates several classes of persons or things, and immediately following and classed with such enumeration the clause embraces “other” persons or things, — the word “other” will generally be read as “other such like,” so that the persons or things therein comprised may be read as *ejusdem*

*generis* with, and not of a quality superior to, or different from, those specifically enumerated. The principle of this rule as regards statutes was explained by Kenyon, C. J., in *R. v. Wallis* (5 T. R. 379), wherein he said that if the legislature had meant the general words to be applied without restriction it "would have used only one compendious word." Yet, on the other hand, though "it is very likely that in former days the doctrine was applied strictly, there are cases which show that the modern tendency is to reject a restricted construction" (per Esher, M. R., *Anderson v. Anderson*, 64 L. J. Q. B. 458; 1895, 1 Q. B. 749), and very frequently the word receives its wide and larger interpretation of "every other sort or kind."

It is perhaps impossible to lay down any workable rule to determine which of these two interpretations the word should receive in any case not already covered by authority. Therefore, it would seem to be the most practically useful way to range, as far as possible, the cases into their two classes of interpretation:—

- I. *Ejusdem generis*;
- II. Unrestrictedly Comprehensive.

### Ejusdem Generis.

I. The Sunday Observance Act, 1677, 29 Car. 2, c. 7, from the readiness with which it may be apprehended, and because it was in *Sandiman v. Breach* (decided upon that statute) that Tenterden, C. J., gave his celebrated expression to the rule, may well be placed as the leading example of the application of the *ejusdem generis* interpretation of "Other." That Act enacts that "no tradesman, artificer, workman, laborer, or other *Person whatsoever*," shall exercise his ORDINARY CALLING on the Lord's Day; but neither an Attorney nor Solicitor (*Peate v. Dickinson*, 4 L. J. Ex. 28; 1 Cr. M. & R. 422; 5 Tyr. 116), Farmer (*R. v. Silvester*, 33 L. J. M. C. 79; nom. *R. v. Cleworth*, 4 B. & S. 927), nor a Stage-Coachman (*Sandiman v. Breach*, 7 B. & C. 96; 5 L. J. O. S. K. B. 298), is comprised within the phrase "other person" in that enactment. *Note*: This construction of the Sunday Observance Act is not only remarkable because it stands at the head of the numerous modern cases on the word "Other," but also because the words in that Act are "or other person *whatsoever*," and it might well have been held that "whatsoever" would have widened the meaning of "other," so as to give the latter word an unrestrictedly comprehensive meaning. Nor can the narrowing of the word "other" in that Act be attributed to any judicial unwillingness to enforce the statute; for *Sandiman v. Breach* was decided only three years after the Court which decided it had declared that that statute "ought to receive a liberal construction, being for the better observance of the Lord's Day": per Cur., *Ex p. Middleton*, 3 B. & C. 164. *Cp.*, *Harris v. Jenns*, cited inf, p. 1368.

Ejusdem Generis:—

So, "any other *Person*," s. 1, 22 G. 3, c. 45, "must mean, 'other persons acting as the Agents of Government'" (per Richardson, J., *Thompson v. Pearce*, cited PUBLIC SERVICE).

So, the power to examine a judgment debtor or "any other *Person*," in aid of Execution (R. 32, Ord 42, R. S. C.), does not authorize the examination of a stranger to the record; and the phrase only means that if the judgment debtor be a corporation, any of its officers may be examined (*Irwell v. Eden*, 56 L. J. Q. B. 446; 18 Q. B. D. 588; 56 L. T. 620; 35 W. R. 511; 3 Times Rep. 535).

So, the words "other *Person* having the Management of the Road," s. 57, Ry C. C. Act, 1845, includes only a person *ejusdem generis* with the preceding words "Trustees, Commissioners, Surveyor" (*R. v. Wilson*, 21 L. J. Q. B. 281; 18 Q. B. 348).

So, the words "or other *Agent*," s. 75, Larceny Act, 1861, had to be read as *ejusdem generis* with "Banker, Merchant, Broker, Attorney," with which they are there associated (*R. v. De Portugal*, 55 L. J. Q. B. 567; 34 W. R. 42): *Note*, this section repealed and replaced by Larceny Act, 1901.

*Abstracts of Title* are not, nor are the Deeds abstracted, within the scale of fees for "perusing Deeds, Wills, and other *Documents*," provided by Part 1, Sch 2, Solrs Rem Ord (*Re Parker*, 54 L. J. Ch. 959; 29 Ch. D. 199; 52 L. T. 686; 33 W. R. 541; *Re Bann Navigation, Ex p. Olpherts*, 17 L. R. Ir. 168). But *Cases for Counsel* are "other *Documents*" within the phrase cited (*Re Mahon*, 1893, 1 Ch. 507: held otherwise in Ireland, *Ex p. O'Hagan*, 19 L. R. Ir. 99); so is an *Agreement* with a Local Authority for the execution of Sewage Works (*Ex p. Caruth*, 25 L. R. Ir. 478).

A *Conveyance* of described lands "and all other the Freehold Heredits" of the grantor "in the several parishes of D., W., & C., in the county of York"; held, not to pass an Advowson of a church at D. (*Crompton v. Jarratt*, 54 L. J. Ch. 1110; 30 Ch. D. 298; *Srthe, Early v. Rathbone*, 57 L. J. Ch. 652). So, a mortgage by the Secretary of a Building Society to the Society to secure subscriptions (on an advance), fines, "and other Moneys," does not secure moneys embezzled (*Bailes v. Sunderland By Socy.* 55 L. T. 808; 51 J. P. 310; 3 Times Rep. 97).

A *Bill of Sale* by a yearly tenant of a dwelling-house, of all his household goods, furniture, and other household effects, in and about the house, "and all other his *Personal Estate whatsoever*," does not pass his interest in the house (*Harrison v. Blackburn*, 34 L. J. C. P. 109; 17 C. B. N. S. 678). But, probably, if the Bill of Sale had included growing crops (per Byles, J., *S. C.*), or without that, if the document

*Ejusdem Generis*:—

had been an Assignment for the benefit of Creditors, the interest in the tenancy of the premises would have passed (*Ringer v. Cunn*, 7 L. J. Ex. 108; 3 M. & W. 343).

“Rents and other *Moneys* held upon the trusts of the deed”; held, that “other Moneys” meant Income only (*Clifford v. Arundell*, 1 D. G. F. & J. 307).

“Stock-in-Trade, Materials, and other *Articles*” in or about a Business; held, to include a Horse and Gig used in the business (*Dean v. Brown*, 5 B. & C. 336).

As to Wills and Settlements; *V. Unrestrictedly Comprehensive*, pp. 1366, 1367.

“Other Fixtures and Articles in the nature of Fixtures,” in a Lessee’s covenant to deliver up at the end of the term, connotes Fixtures of a kind previously enumerated, and if those be only of a kind usually called “Landlord’s Fixtures” the covenant will not include Trade, or even Tenant’s, Fixtures (*Elliott v. Bishop*, *Bishop v. Elliott*, cited FIXTURES).

A Proviso for Reduction of Rent in case of fire, flood, storm, tempest, or other *Inevitable Accident*,” does not apply to damage arising from faulty construction of the premises (*Saner v. Bilton*, 47 L. J. Ch. 267; 7 Ch. D. 815; *Manchester Bonding Warehouse Co v. Carr*, 49 L. J. C. P. 809; 5 C. P. D. 507). *V. INEVITABLE*.

“Sickness or other *Sufficient Cause*”; *V. SICKNESS*.

The sale of a British ship by licitation is not a Transmission of it “by any lawful means *other than a Transfer*,” within s. 58, Mer Shipping Act, 1854, repld s. 27, Mer Shipping Act, 1894, as the word “other,” in that phrase, comprehends only transmissions of the same nature as those previously enumerated in that section (*Chasteauueuf v. Cupeyron*, 51 L. J. P. C. 37; 7 App. Ca. 127).

“Other *Causes beyond Charterer’s Control*,” in a Charter-Party Exception, refers only to matters *ejusdem generis* with the preceding words (*Re Richardsons and Samuel*, 1898, 1 Q. B. 261; 66 L. J. Q. B. 868; 77 L. T. 479; 8 Asp. 330; 3 Com. Ca. 79; *Shamrock S. S. Co v. Storey*, 4 Com. Ca. 80; 5 Ib. 21; 81 L. T. 413).

“All other *CONDITIONS AS PER CHARTER-PARTY*,” in the Exceptions in a Bill of Lading, will be read *ejusdem generis*, and will not incorporate from the Charter the Negligence Clause as per Baltic Bill of Lading. 1885 (*Serraino v. Campbell*, 1891, 1 Q. B. 283; 60 L. J. Q. B. 303; *Manchester Trust v. Furness*, 1895, 2 Q. B. 539; 64 L. J. Q. B. 766, following *Russell v. Niemann*, 34 L. J. C. P. 10; 17 C. B. N. S. 163).

“Other *Legal Merchandize*,” in a Charter-Party, means, that the char-



## Ejusdem Generis:—

terer may ship any lawful article he pleases, but must pay Freight as though such articles were *ejusdem generis* with those specified (*Capper v. Forster*, 6 L. J. C. P. 332; 3 Bing. N. C. 938; *Cockburn v. Alexander*, 18 L. J. C. P. 74; 6 C. B. 791; *Furness v. Tennant*, 8 Times Rep. 336).  
*V. LEGAL MERCHANDIZE.*

“All other *Perils*,” &c, in a Marine Insurance, covers only such perils as are *ejusdem generis* with the enumerated perils (*Thames & Mersey Mar Insree v. Hamilton*, 12 App. Ca. 484; 56 L. J. Q. B. 626. *Vf*; the cases there cited). *Note*: as to what are such “other Perils,” &c, *V. The Knight of St. Michael*, 1898, P. 30; 67 L. J. P. D. & A. 19; 78 L. T. 90; 46 W. R. 396, and cases there cited.

“Other *Proceeding* whatsoever,” in a power to release contained in a Power of Attorney, meant, Proceedings of the same kind as those enumerated (*Solomon v. Graham*, 5 E. & B. 323). *Vf*, PROCEEDING.

The Act (11 G. 2, c. 19, ss. 8, 9), for extending the Common Law right of Distress, and enables a landlord to distrain upon “all sorts” of growing “corn and grass, hops, roots, fruits, pulse, or other *Product* whatsoever,” does not include trees, shrubs, and plants growing in a nursery garden (*Clark v. Gaskarth*, 8 Taunt. 431; *Clark v. Calvert*, 3 Moore C. P. 114; *Va, R. v. Hodges*, Moo. & M. 341, which is a similar decision, as regards the offence created by 7 & 8 G. 4, c. 29, s. 42, repld s. 36, Larceny Act, 1861).

“Any *Way* or other *Easement*” in the Prescription Act, 1832, 2 & 3 W. 4, c. 71, s. 2, does not include a right of wind or air (*Webb v. Bird*, 30 L. J. C. P. 384; 31 Ib. 335; 10 C. B. N. S. 268; 13 Ib. 841), or light (*Perry v. Eames*, 1891, 1 Ch. 658; 60 L. J. Ch. 345; 64 L. T. 438; *Wheaton v. Maple*, 1893, 3 Ch. 48; 62 L. J. Ch. 963; 69 L. T. 208; 41 W. R. 677).

“Other *Agent*”; *V. AGENT.*

“Other *Building*” to qualify for the parliamentary franchise under Rep People Act, 1832, 2 & 3 W. 4, c. 45, s. 27 (repealed by 48 & 49 V. c. 3) must have been something substantial and *ejusdem generis* with the preceding words, “house, ware-house, counting-house, shop” (*Powell v. Boroston*, 34 L. J. C. P. 76; 18 C. B. N. S. 175; H. & P. 170; *Morrish v. Harris*, L. R. 1 C. P. 155; nom. *Norrish v. Harris*, 35 L. J. C. P. 101; *Powell v. Farmer*, 34 L. J. C. P. 71): and so, of the same phrase in s. 3, Prescription Act, 1832 (*Harris v. De Pinna*, 33 Ch. D. 238).  
*Vf*, BUILDING.

“House or other *Building*,” s. 92, Lands C. C. Act, 1845; *V. HOUSE.*

“Dwelling-house, workshop, or other *bg*”; *V. BUILDING.*

“Other *Place*”; *V. PLACE: PUBLIC DANCING.*

In Rating Acts, where power is given to rate enumerated classes of

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corporeal property (*e.g.* lands, houses) and “other *Tenements or Hereditaments*,” these latter words will generally be confined to corporeal tenements or hereditaments, and will not extend to Tithes (*R. v. Neville*, 15 L. J. M. C. 33; 8 Q. B. 452: *semble*, the over-rules *Powell v. Bull*, 1 Comyn, 265, and *R. v. Skingle*, 1 Stra. 100); or Market-Tolls (*R. v. Mosley*, 2 B. & C. 226; 3 D. & R. 385: *Colebrooke v. Tickell*, 5 L. J. K. B. 180; 4 A. & E. 916); or the Street Mains of a Gas, or Water, Company (*R. v. Manchester W. W. Co*, 1 B. & C. 630; 3 D. & R. 20: *East London W. W. Co v. Mile End Old Town*, 17 Q. B. 512: *Chelsea W. W. Co v. Bowley*, 17 Q. B. 358; 20 L. J. Q. B. 520: *See, R. v. Shrewsbury Gas Co*, p. 1368, *post*: *Metrop Ry v. Fowler*, 1893, A. C. 416; 62 L. J. Q. B. 553; 69 L. T. 390; 42 W. R. 270). So, where (by s. 33, 3 & 4 W. 4, c. 90) the rating of “houses, buildings, and *Property* (other than land)” was to be triple that of land, it was held that “property” did not include a canal and towing-path (*R. v. Neath Canal Nav.*, 40 L. J. M. C. 193; L. R. 6 Q. B. 707). *V. PROPERTY OTHER THAN LAND: TENEMENT.*

“High Constable, or other *Proper Officer*,” s. 62, 13 G. 3, c. 78, means, an Officer analogous to a High Constable in a Hundred (*R. v. Surrey Jus.*, 5 B. & C. 241).

The duties on metals exported or imported into the port of Arundel and imposed by the Schedule to 6 G. 4, c. clxx., which enumerated copper, iron, lead, brass, pewter, and tin, and concluded with an assessment “on all other *Metals* not enumerated,” were held not to apply to gold or silver (*Casher v. Holmes*, 9 L. J. O. S. K. B. 280; 2 B. & Ad. 592).

The penalty imposed by the Turnpike Roads Act, 1822, 3 G. 4, c. 126, s. 121, for hauling “any timber or stone, or other *Thing*, otherwise than upon wheeled carriages,” is confined to heavy substances injurious to roads, like timber or stone, and does not extend to straw (per Crompton and Mellor, JJ., Cockburn, C. J., *dub.*, *Radnorshire v. Evans*, 33 L. J. M. C. 100; 3 B. & S. 400).

The Act (7 & 8 G. 4, c. lxxv., s. 37) imposing a penalty for the navigation of the Thames by unqualified persons with “any wherry, lighter, or other *Craft*,” does not include a steam-tug carrying neither passengers nor goods (*Reed v. Ingham*, 23 L. J. M. C. 156; 3 E. & B. 889). But s. 57 of the same statute, enabling the Corporation to make bye-laws for the navigation “of boats, vessels, and other *Craft*,” does extend to steam vessels (*Tisdell v. Combe*, 7 L. J. M. C. 48; 7 A. & E. 788).

The penalty imposed by s. 64, P. H. Act, 1848, for newly establishing, without a license, “the business of a blood-boiler, bone-boiler, fell-monger, slaughterer of cattle horses or animals of any description, soap-boiler, tallow-melter, tripe-boiler, or other *Noxious or Offensive business, trade, or manufacture*,” was restricted to trades that dealt with substances

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which are or must necessarily become, in themselves, noxious or offensive; and brick-making, *per se*, was not prohibited (*Wunstead v. Hill*, cited NOXIOUS).

“Notice, Order, or other *Document*,” s. 128 (1), P. H. London Act, 1891, includes a Summons (*R. v. Meud*, 1894, 2 Q. B. 124; 63 L. J. M. C. 128; 70 L. T. 766; 42 W. R. 442; 58 J. P. 448).

The penalty imposed by s. 3, Hosiery Manufacture (Wages) Act, 1874, 37 & 38 V. c. 48, for making deductions from wages “for frame rent and standing, or other *Charges*,” does not include fines for misconduct (*Willis v. Thorp*, 44 L. J. Q. B. 137; L. R. 10 Q. B. 383).

The penalties for fishing without license in the Severn Fishery District, — (defined by the Secretary of State’s certificate to be “So much of the River Severn and of the Rivers Vyrynw and Teme, and of all other *Tributaries* of the said River Severn as is situate” in certain counties, &c), — were only applicable to such tributaries of the Severn as are, like Vyrynw and Teme, *i.e.* those that are *direct* tributaries (*Merricks v. Cadwallader*, 51 L. J. M. C. 20). *Vf*, TRIBUTARY.

“SNARE, spear, gaff, strokehall, snatch, or other *Like Instrument*,” for catching salmon, s. 8, Salmon Fisheries Act, 1861, as amended by s. 18, Salmon Fisheries Act, 1873, does not include a net having a smaller mesh than that prescribed by s. 10 of the Act of 1861 (*Jones v. Davies*, 1898, 1 Q. B. 405; 67 L. J. Q. B. 294; 78 L. T. 44; 62 J. P. 182).

A builder employed by a building owner was not entitled to notice of action under s. 108, Metrop Bg Act, 1855 (repealed by London Bg Act, 1894), which required such a notice to be given to “any district surveyor or other *Person*” (*Williams v. Golding*, 35 L. J. C. P. 1; L. R. 1 C. P. 69; H. & R. 18: *Cp*, *R. v. Doubleday*, p. 1367, *post*: TREASURER).

A Ragged Industrial and Reformatory School is not within the proviso to s. 62, Charitable Trusts Act, 1853, which enacts that “cathedral, collegiate, chapter, or other *Schools*” shall not have exemption from the jurisdiction of the Charity Commrs (*Re Stockport Schools*, 1898, 2 Ch. 687; 68 L. J. Ch. 41; 79 L. T. 507; 47 W. R. 166). *J*. SCHOOL.

It has been stated that when words descriptive of the rank of persons or things are used in a descending order according to rank, and general words (such as “other” persons or things) are superadded, that word will not include persons or things of a higher rank or importance than the highest named, if there be any lower species to which they can apply (Maxwell, 417, 418: *Va*, Wilberforce, 183, 184, for cases on early statutes illustrating this rule). The case of *Ex p. Hill* (3 C. & P. 225), which decided that the 3 G. 4, c. 71, which punished cruelty to any “horse, mare, gelding, mule, ass, ox, cow, heifer, sheep, or other *Cattle*,” did not include a Bull, was certainly a remarkable decision; but it may be

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doubted whether it, or the rule just stated which it is supposed to illustrate, is of much practical value at the present day. It may however be noticed that this rule receives illustration from at least one Stat. Def., for the Naval Discipline Act, 1861, 24 & 25 V. c. 115, provides that "other Punishment," shall be deemed to comprise any one or more of the punishments *inferior in degree* to the specified punishment according to the scale hereinbefore mentioned" (s. 48).

"Other Place"; *V. PLACE.*

For other cases of the application of the *ejusdem generis* interpretation of the word "Other"; *V. Lowther v. Radnor*, 8 East, 113; *Kitchen v. Shaw*, 7 L. J. M. C. 14; 6 A. & E. 729; *Bramwell v. Penneck*, 6 L. J. O. S. M. C. 47; 7 B. & C. 536, on 20 G. 2, c. 19, s. 1; 6 G. 3, c. 25, s. 4, and 4 G. 4, c. 34, s. 3:—*Midgley v. Richardson*, 15 L. J. Ex. 257; 14 M. & W. 595; *Hedley v. Fenwick*, 3 H. & C. 349, on Enclosure Acts:—*R. v. Hall*, 1 B. & C. 237, on 9 Anne, c. 20:—*R. v. Spratley*, 25 L. J. Q. B. 257; 6 E. & B. 363, on Municipal Act, 5 & 6 W. 4, c. 76, ss. 32, 142, and *R. v. Dickenson*, 26 L. J. M. C. 204; 7 E. & B. 831, on a Bye-law made under that Act:—and *Ward v. Folkestone W. W. Co.*, 59 L. J. M. C. 65; 24 Q. B. D. 334, on a Local Waterworks Act.

*Va, ACCIDENT: ALMS.*

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II. It seems the better opinion, in view of modern authorities, that the *ejusdem generis* principle of construing the word "other" is not, in general, applicable in the construction of *Wills*. No doubt, in *Hotham v. Sutton*, 15 Ves. 326 (which was a Will case), Ld Eldon said, "The doctrine appears now to be settled in this Court, that the words 'other effects,' in general, mean effects *ejusdem generis*"; but he did not in that case apply the doctrine, but rather seized upon an exception of money out of "other effects" as a reason for giving that latter phrase its full meaning after allowing the express exception. And so although in *Wms. Exs.* (p. 1046) it is stated that the *ejusdem generis* rule is applicable even to *Wills*, yet, it is added, "this rule is not of universal application"; whilst at p. 757, 1 Jarm., it is said that the rule "seems scarcely to accord" with the recent decisions there, *et seq.*, very elaborately stated (*Va, Theobald*, 206). If, indeed, the rule exists at all for the purpose of construing *Wills*, it is at least subject to so many exceptions and may so easily be displaced by very small expressions, that it is probably safe to say that the *ejusdem generis* principle has practically so slender a value, quâ *Wills*, as to be inappreciable; and that therefore when general words, such as "other," occur in a Will they must be construed according to the

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circumstances of each case. Thus in *Hodgson v. Jer* (45 L. J. Ch. 388; 2 Ch. D. 122), it was held that a bequest of "all my furniture, plate, linen, and other *Effects*," comprised all the residuary personal estate of the testator; so, after similar words of enumeration, of "all other the rest and residue of my personal estate" (*Martin v. Glover*, 1 Coll. 269); and so, of a bequest of "All my wines and other *Property*" (*Arnold v. Arnold*, 4 L. J. Ch. 123; 2 My. & K. 365; *Vf*, *Bernard v. Minshull*, 28 L. J. Ch. 649; Johns. 276; 1 Jarm. 751, 754, *n*: ET CETERA). So, of Settlements: therefore, where a Post-Nuptial Settlement assigned "all the household furniture, plate, linen, china, glass, and tenant's fixtures, wines, spirits, and other consumable stores, and other *Goods Chattels and Effects*," in or upon a message with its coach-houses and stable-buildings; held, that the italicised words passed carriages, horses, harness, and stable furniture, in the coach-houses and stable-buildings (*Anderson v. Anderson*, 1895, 1 Q. B. 749; 64 L. J. Q. B. 457; 72 L. T. 313; 43 W. R. 322); but a Bequest of "household furniture, books, pictures, paintings, engravings, plate, linen, china, and other *Effects*" was held by Stirling, J., not to pass jewellery (*Re Hammersley*, 81 L. T. 150). *Cp*, *Harrison v. Blackburn*, and *Ringer v. Cann*, cited *ante*, pp. 1361, 1362.

It would also seem that the *ejusdem generis* rule of interpretation has but little, if any, value in statutes conferring discretionary powers on the judiciary or such like public functionaries. Thus, the power to remit to the County Court actions for "Malicious Prosecution, Illegal Arrest, Illegal Distress, Assault, False Imprisonment, Libel, Slander, Seduction, or other *Action of Tort*," in cases where the plaintiff has no visible means of paying costs (s. 10, Co. Co. Act, 1867), seems to have applied to all actions of tort without limitation (*Clapham v. Oliver*, 30 L. T. 365; 22 W. R. 655): *Note*. The section is replaced by s. 66, Co. Co. Act, 1888.

So, the power given by s. 7 of the County Rates Act, 1852, 15 & 16 V. c. 81, to a County Assessment Committee to summon "overseers, constables, assessors, collectors, and any other *Persons* whomsoever," to produce documents relating to values of property, &c. is not confined to officials, but extends to all persons whomsoever (*R. v. Doubleday*, 3 E. & E. 501). *Cp*, *Williams v. Golding*, p. 1365, *ante*.

The words "any other *Article or Thing*," s. 37, Prison Act, 1865, 28 & 29 V. c. 126, which makes it felony to facilitate the escape of a prisoner by conveying to the prison "any mask, dress, or other disguise, or any letter, or any other *Article or Thing*," mean, any other article or thing of any kind, sort, or description, whatsoever, *e.g.* a crow-bar (*R. v. Payne*, 35 L. J. M. C. 170; L. R. 1 C. C. R. 27). *Note*.—The Court in that case gave as a reason for its judgment that all the prior statutes on the subject had included a crow-bar; but its omission should, it is submit-

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ted, have rather had a contrary effect. The decision would, perhaps, be better based if the word "or," after the word "letter," were construed as altogether disconnecting "article or thing" from the preceding enumerations.

"Any other *Building* whatsoever," 4 G. 2, c. 32, comprises all buildings, *e.g.* a summer-house half a mile away from the house using it (*R. v. Norris*, Russ. & Ry. 69).

"Other *Officer*"; *V. OFFICER.*

A power to rescind a Contract, "from any other *Cause* whatever," includes any reasonable cause (*Sun Fire Office v. Hart*, 58 L. J. P. C. 69; 14 App. Ca. 98).

"Tonnage, timber, stores, or other *Goods*," s. 23, 39 & 40 V. c. 80, repld s. 85, Mer Shipping Act, 1894, includes horses and cattle (*V. Goods*).

A ship-owner is entitled to limit his liability for the loss of passenger's personal effects wearing apparel and luggage, under the phrase "goods, merchandize, or other *Things* whatsoever," in s. 503, Mer Shipping Act, 1894 (*The Stella*, 81 L. T. 235).

The penalty imposed by s. 3, 26 & 27 V. c. 117, for preventing the Medical Officer or Inspector from entering any "slaughter-house, shop, building, market, or other *Place*," extended to "every species of premises," *e.g.* a yard (*Young v. Gattridge*, 38 L. J. M. C. 67; L. R. 4 Q. B. 166). *Note:* s. 118, P. H. Act, 1875, replaces that section, but avoids question by simply imposing the penalty for preventing the entry of "any premises."

"Other *Place*"; *V. PLACE.*

"Licensed Victualler or person licensed to sell beer," &c, "or other *Person*," s. 1, 11 & 12 V. c. 49, includes all the world other than the persons specified (*Harris v. Jenns*, 9 C. B. N. S. 152; 30 L. J. M. C. 183). *Cp.* *Sandiman v. Breach*, *ante*, pp. 1359, 1360.

By a Private Town Act the Trustees were empowered to rate occupiers of all "shops, malt-houses, granaries, warehouses, coach-houses, yards, gardens, garden-ground, stables, cellars, vaults, wharfs, and other Buildings and *Hereditaments*" within certain limits, "*meadow and pasture-ground excepted.*" This exception was held to take the words "other hereditaments" out of the *ejusdem generis* rule, so that the mains of a Gas Company were rateable (*R. v. Shrewsbury Gas Co.* 1 L. J. M. C. 18; 3 B. & Ad. 216: *Va.* as to the value of an exception in controlling the construction, *Hotham v. Sutton*, 15 Ves. 326: ALMS: and *Cp.* *R. v. Manchester W. W. Co.* and other cases, p. 1364, *ante*).

"Other *Incorporated Company*"; *V. COMPANY.*

"Other *Rate*"; *V. Carr v. Fowle*, cited RATE.

*Vh, Cork and Bandon Ry v. Goode*, 22 L. J. C. P. 198; 13 C. B. 826. Note, that in *Leicester v. Brown* (cited BUILDING), the absence of "other" was used by Pollock, B., as a reason for excluding an *ajusdem generis* construction.

**OTHER CIRCUMSTANCES.** — *V. CIRCUMSTANCES.*

**OTHER CONDITIONS.** — *V. CONDITIONS AS PER CHARTER-PARTY.*

**OTHER DAUGHTERS.** — "Other daughters surviving"; *V. Beckwith v. Beckwith*, 25 W. R. 282; 36 L. T. 128.

**OTHER MANNER.** — *V. MANNER.*

**OTHER PARTY.** — *V. PARTY: OPPOSITE PARTY.*

**OTHER PERSON.** — *V. OTHER: PERSON.*

**OTHER SONS.** — In a gift to second, third, fourth, and all and every "other Sons" of A., the first son though not mentioned is not excluded, but rather the word "other," "*ex vi termini*," includes the first" (per Ld Brougham, *Langston v. Langston*, 8 Bligh, N. S. 167; 2 Cl. & F. 194, cited 2 Jarm. 215, 216). In *Locke v. Dunlop* (39 Ch. D. 387; 57 L. J. Ch. 1010; 3 Times Rep. 628), Stirling, J., held, on the context, that "other son" had reference to futurity, and included only those sons who should be born after his sons who were in existence at the date of his Will; and that learned judge distinguished *Galley v. Barrington* (2 Bing. 387; 10 Moore, 21). *Cp, ELDEST.*

**OTHER THAN.** — "Other than" creates an Exception (*Wrotesley v. Adams*, Plowd. 195).

*V. BESIDES: PROPERTY OTHER THAN LAND.*

**OTHER THE ISSUE.** — In *Allgood v. Blake* (41 L. J. Ex. 217; 42 Ib. 101; L. R. 7 Ex. 339; 8 Ib. 160), the words (at the end of a series of limitations in Tail Special) "to the use of all and every Other the Issue," were read, not as excluding those before mentioned but rather, as completing a provision for all the issue and as thus creating a vested remainder in tail general.

**OTHER TRUSTEE.** — "Where four Trustees were appointed originally, and the power was to the surviving, or continuing, or *other* Trustee, to appoint new Trustees, it was held that the survivor of the four trustees who desired himself to be discharged, could, by force of the words 'other Trustee,' appoint four new trustees in the place of himself and three others" (Lewin, 786, citing *Camoy's v. Best*, 19 Bea. 414).

**OTHERS** <sup>and</sup>  
<sup>or</sup> **OTHER.** — “Others and other of them”; *V. Re Chaston*, 50 L. J. Ch. 716; 29 W. R. 778; 45 L. T. 20.

“Others or other,” not read as “Survivors or Survivor”; *V. Re Hagen*, 46 L. J. Ch. 665. *V. SURVIVOR.*

**OTHERWISE.** — Speaking generally, “Otherwise” when following an enumeration, should receive an *ejusdem generis* interpretation much in the same way as **OTHER**. As to this general rule “no authority is necessary” (per Cleasby, B., *Monck v. Hilton*, 46 L. J. M. C. 167), and Pollock, B., said (Ib. 168) “the principle upon which this rule is founded is thoroughly established.” *Va*, per Dowse, B., *Haren v. Archdale*, 12 L. R. Ir. 318. But it is a general rule which, in the case of “Otherwise,” is not unfrequently found inapplicable. Indeed, Russell, C. J., is reported to have said. “the doctrine of *ejusdem generis* does not apply to the words ‘or otherwise’” (*Sutton v. L. C. & D. Ry*, 12 Times Rep. 425. *Va*, per Jessel, M. R., *Louther v. Bentinck*, p. 1372, post).

*Vernon’s Case* (4 Rep. 1 a) is the leading authority on this word; and there it was decided that the proviso, contained in s. 9, Statute of Uses, 27 Hen. 8, c. 10, enabling a wife to take or reject hereditaments given to her “for term of her life *or otherwise in jointure*,” extended to an estate in fee simple; but the judgment says, “for *nota*, this word ‘otherwise’ is not indefinite, but ‘otherwise *in jointure*’” (4 Rep. 3 b).

By s. 1, Sum Jur Act, 1848, 11 & 12 V. c. 43, Justices may issue a summons in cases where they have authority to make “any Order for the payment of any Money *or otherwise*”; an Order for the demolition of a building under a local Improvement Act is within these words and must therefore (by s. 11) be made within 6 months after the completion of the building (*Morant v. Taylor*, 45 L. J. M. C. 78; 1 Ex. D. 188; 40 J. P. 101). *Vj*, **ARISE.**

S. 4, Vagrancy Act, 1824, 5 G. 4, c. 83, makes it an offence “pretending or professing to tell FORTUNES, or using any subtle craft means or device by Palmistry *or otherwise* to deceive.” “Reading this as a whole I should take the word ‘otherwise,’ not as limiting the earlier words, but as enlarging the word ‘palmistry,’ and providing against the professing to tell fortunes or using craft means or devices to deceive, whether by palmistry or by contrivance to deceive other than palmistry, *provided they are of the same general character as is indicated by the earlier words of the section*” (per Pollock, B., *Monck v. Hilton*, 46 L. J. M. C. 169). Accordingly, pretended spiritualism is within the offence (*Monck v. Hilton*, 46 L. J. M. C. 163; 2 Ex. D. 268; 25 W. R. 373; 41 J. P. 214). But a trick of legerdemain is not (*Johnson v. Fenner*, 33 J. P. 740); for, “in such a case no peculiar power is pretended, like telling fortunes or palmistry, to impose upon the credulous” (per Cleasby, B., in *Monck v. Hilton*, 46 L. J. M. C. 167). *Vj*, *Ex p. A-G.*, 41 J. P. 118; *R. v. Middlesex Jus.*, Ib. 629; *Re Slade*, 36 L. T. 402.



Though under the County Courts Act, 1867, 30 & 31 V. c. 142, s. 7, an action in the High Court for an amount exceeding £50, but reduced by payment *after action brought*, could not be remitted to the Co. Co. under the words of the section "reduced by payment, an admitted set-off, or otherwise" (*Osborne v. Hombury*, 45 L. J. Ex. 65; 1 Ex. D. 48; 24 W. R. 161; *Walesby v. Gouldstone*, 35 L. J. C. P. 302; L. R. 1 C. P. 567; 14 W. R. 899; 14 L. T. 662; *Foster v. Usherwood*, 47 L. J. Ex. 30; 3 Ex. D. 1; 37 L. T. 389; 26 W. R. 91; *Va*, Co. Co. Act, 1888, s. 65, and thereon *Hodgson v. Bell*, 59 L. J. Q. B. 231; 24 Q. B. D. 525; 38 W. R. 325; 62 L. T. 481), yet, after issue joined, such an action, however subsequently reduced below £50, could be remitted under s. 26, Co. Co. Act, 1856, 19 & 20 V. c. 108, because in that section the words are "reduced by payment *into Court*, payment, an admitted set-off, or otherwise," and as "payment into Court" must refer to something after action brought, the words "or otherwise" received their natural meaning (*Gray v. Hopper*, 36 W. R. 746; 21 Q. B. D. 246; 57 L. J. Q. B. 505). By s. 65, Co. Co. Act, 1888, the words are "reduced by payment, an admitted set-off, or otherwise." *V. REDUCED BY PAYMENT: ADMITTED SET-OFF.*

A Provision in a Private (Borough) Improvement Act that nothing therein contained should affect any right which the Corporation might have "under the Municipal Corporation Acts, or otherwise," is not confined to Acts similar in kind to the Municipal Corporation Acts, but extends to all Acts (*Taylor v. Oldham*, 46 L. J. Ch. 108; 4 Ch. D. 395). *Va*, on s. 169, 11 & 12 V. c. clxiii., *Sion College v. London Corp*, 1900, 2 Q. B. 581; 69 L. J. Q. B. 766.

"A Married Woman shall be capable of entering into, and rendering herself liable in respect of and to the extent of her SEPARATE PROPERTY on, any Contract, and of suing and being sued either in Contract or in Tort, or otherwise, in all respects as if she were a FEME Sole." s. 1 (2), M. W. P. Act, 1882; that is not to be read only in connection with the power to contract, but has a general application and gives her the power of suing, and imposes the liability of being sued, just as though she were unmarried, — *e.g.* she may be sued by an exor to refund assets paid to her in ignorance of a debt which afterwards the exor is called on to pay and which if known would have been paid out of such assets (*Re Kershaw*, 60 L. J. Ch. 9; 45 Ch. D. 320; 63 L. T. 203; 39 W. R. 23).

"A Power to Appoint, 'by Will or otherwise,' of course, authorizes an appointment by Deed" (Sug. Pow. 211, citing *Irwin v. Farver*, 19 Ves. 86; *Van v. Barnett*, Ib. 110).

A Condition of Sale empowered a vendor to vacate the sale if any Objection were made "as to the abstract of title, or the evidence thereof, or the conveyance, or as to compensation, or indemnity, or otherwise"; and Westbury, C., held that the word "otherwise" would comprehend all other subjects as to which there might be an objection or a claim

made by the purchaser (*Cordingley v. Cheesebrough*, 31 L. J. Ch. 621; 3 Giff. 496; 4 D. G. F. & J. 379: If, jdgmt of Esher, M. R., *Re Terry to White*, 55 L. J. Ch. 347; 32 Ch. D. 14; 34 W. R. 379).

So, in the ordinary Power to Trustees to apply capital in or towards "the advancement, or preferment, or otherwise for the benefit" of a person, the words italicised are not restricted by "advancement" or "preferment" (*V. ADVANCEMENT: Lowther v. Bentinck*, 44 L. J. Ch. 197; L. R. 19 Eq. 167: in *the Jessel*, M. R., said, "When I find the words 'or otherwise,' I am bound to say I don't know what is *ejusdem generis*"). So, a direction to make Deductions, from the income of a tenant for life, for all ordinary outgoings for "taxes, or otherwise," was held to include cost of drainage works under s. 73, 18 & 19 V. c. 120 (*Re Crawley*, 54 L. J. Ch. 652; 28 Ch. D. 431).

A Lessee's covenant to pay expenses of "reparation, pulling down, rebuilding, or raising, or in or about any drainage or sewerage, or otherwise BY VIRTUE of any Act of Parliament," includes structural works under the Factory and Workshop Act (*Arding v. Economic Printing Co.*, 79 L. T. 622).

A Gift of Real Estate, to hold "for ever, or otherwise," according to the respective natures and tenures thereof; held to include leaseholds for years (*Swift v. Swift*, 29 L. J. Ch. 121; 1 D. G. F. & J. 160).

Where a party to an Action has to satisfy the Court of any matter "by Affidavit, or otherwise," that means, by affidavit or any other sufficient means (*Shelford v. Louth Ry*, 4 Ex. D. 317; 28 W. R. 407).

An Admission "either on the Pleadings, or otherwise," R. 6, Ord. 32, R. S. C., may be in an affidavit (*Freeman v. Cox*, 47 L. J. Ch. 560; 8 Ch. D. 148: *Porrett v. White*, 55 L. J. Ch. 79; 31 Ch. D. 52: *Laudergan v. Feast*, 55 L. J. Ch. 505; 54 L. T. 369), or in a letter before action (*Hampden v. Wallis*, 54 L. J. Ch. 1175; 27 Ch. D. 251; 32 W. R. 977), "Jessel, M. R., used to say that one admission is as good as another" (per Chitty, J., *Ib.*); it may even be oral (*Re Beeny*, 1894, 1 Ch. 499; 63 L. J. Ch. 312; 70 L. T. 160; 42 W. R. 377).

Though an Indictment will not lie for an offence newly created by statute where another method of prosecution is appointed, yet if the statute gives a recovery by Action of Debt, Bill, Complaint, Information, 'or otherwise,' it authorizes a proceeding by way of Indictment" (Dwar. 673).

A Bill of Lading which exonerates the ship-owner from the negligence of his servants "in Navigating the ship, or otherwise," means, that the ship-owner is not to be responsible, "whether the negligence be in navigating the ship or not" (per Rigby, L. J., *Baerselman v. Bailey*, 1895, 2 Q. B. 301; 64 L. J. Q. B. 707; 72 L. T. 677; 43 W. R. 593, in *whc* was discussed, *Norman v. Binnington*, 59 L. J. Q. B. 490; 25 Q. B. D. 475; 38 W. R. 702; 63 L. T. 109). But where a Bill of Lading exonerated the ship-owners from claims arising from "Defects latent on beginning of

voyage, or otherwise"; held, that that did not cover a patent defect in ventilation nor the consequent damage (*Waikato v. New Zealand Shipping Co*, 1899, 1 Q. B. 56; 68 L. J. Q. B. 1; 8 Asp. 442; 3 Com. Ca. 109; 79 L. T. 326).

"Dividends, Profits, or otherwise," s. 38 (7), Comp Act, 1862; *F. Re Leicester Racecourse Co*, 55 L. J. Ch. 206; 30 Ch. D. 629; 53 L. T. 340; 34 W. R. 14.

THREAT by "Circulars, Advertisements, or otherwise," s. 32, Patents, Designs, and Trade-Marks Act, 1883, has a general interpretation (*Driffield & East Riding Linseed Co v. Waterloo Mills Co*, 31 Ch. D. 638; 55 L. J. Ch. 391; 54 L. T. 210; 34 W. R. 360; *Skinner v. Shew*, 1893, 1 Ch. 413; 62 L. J. Ch. 196). *Vf*, CIRCULAR.

On the other hand:—

Where a Settlement recited a Will under which A. was entitled to an interest in certain funds, and then settled all the share and interest of A. in those funds "to which she is now, or may become, entitled by accruer, survivorship, or otherwise"; held, that the share in the same funds to which A. afterwards became entitled by a *subsequent* Will of another person was not comprised in the Settlement (*Parkinson v. Dashwood*, 30 Bea. 49; 9 W. R. 493; 4 L. T. 41).

The provision in the Wills Act, 1837, for revoking a Will by "burning, tearing, or otherwise destroying" it, the words italicised have to be read as *ejusdem generis* with "burning, tearing"; *F. DESTROY*.

So, the phrase in s. 53, Towns Improvement Clauses Act, 1847, 10 & 11 V. c. 34, relating to streets not theretofore paved and flagged, "or otherwise *made good*," refers to a process *ejusdem generis* with paving and flagging; *i.e.* otherwise made into an artificial road in a manner similar to that in which a road is made by paving and flagging (per Brett, M. R., *Portsmouth v. Smith*, 53 L. J. Q. B. 92; 13 Q. B. D. 184; in H. L., 54 L. J. Q. B. 473; 10 App. Ca. 364).

*F. GUT*.

So, the phrase "otherwise *engaged in Manual Labour*," s. 10, Employers and Workmen Act, 1875, 38 & 39 V. c. 90, following, as it immediately does, an enumeration of employments exclusively manual, embraces only "people who are ordinarily known in the English language as working people who exercise manual labour" (per Brett, L. J.), and does not include an omnibus conductor (*Morgan v. London Gen. Omnibus Co*, 53 L. J. Q. B. 352; 13 Q. B. D. 832; *Va*, per Smith, J., *Cook v. N. Metrop. Tramways*, 18 Q. B. D. 684).

So, the requirement, s. 25, Comp Act, 1867, that shares in a Co must be paid for IN CASH unless "otherwise *determined by a CONTRACT* duly made IN WRITING," means, that a consideration other than cash may be accepted, but did not enable a Co to issue shares at a DISCOUNT (*Ooregum Co v. Roper*, 1892, A. C. 125; 61 L. J. Ch. 337; 66 L. T. 427; 41 W. R. 90; *Welton v. Saffery*, 66 L. J. Ch. 362; 1897, A. C. 299; 76 L. T. 505:

*Re Eddystone Marine Insrec*, 1893, 3 Ch. 9; 62 L. J. Ch. 742), even though they were taken with Debentures (*Re Railway Time Tables Co*, 62 L. J. Ch. 935); and the ruling also applied as between the shareholders *inter se* (*Ib.*): but the Court would not weigh-up such other consideration, if real and not illusory (*Re Theatrical Trust*, 1895, 1 Ch. 771; 64 L. J. Ch. 488; 72 L. T. 461; 43 W. R. 553: *Re Common Petroleum Engine Co*, 1895, 2 Ch. 759; 65 L. J. Ch. 76: *Re Wragg*, 1897, 1 Ch. 796; 66 L. J. Ch. 419; 76 L. T. 397; 45 W. R. 557: *Larocque v. Beauchemin*, cited IN CASE). Note: the section is repealed by s. 33, Comp Act, 1900, and is replaced by s. 7 thereof.

Compliance with the Forest of Dean Rules may be enforced by "Injunction, . . . or otherwise," s. 29, 1 & 2 V. c. 43; words which "probably mean that if an injunction to restrain be not the proper remedy, a mandatory order may be made. In other words, they refer rather to prevention than to damages" (per Selborne, C., *Brain v. Thomas*, 50 L. J. Ex. 664: *Va*, per Bramwell, B., *Ross v. Price*, 45 L. J. Ex. 777; 1 Ex. D. 269).

The direction in the Act, which is the foundation of the modern Poor Law (43 Eliz. c. 2), that the Poor Rate is to be raised "*weekly or otherwise*," means, "that it is to be raised, at the outside, annually" (per Esher, M. R., *R. v. Christopherson*, 55 L. J. M. C. 5; 16 Q. B. D. 7; 53 L. T. 804; 34 W. R. 86; 50 J. P. 212).

Perhaps one of the most instructive decisions as to the meanings of "Otherwise" is that of Cave, J., in *Ex p. Tildswell* (56 L. J. Q. B. 548; 57 L. T. 416; 35 W. R. 669), wherein he analysed the use of the word in several of the sections of the M. W. P. Act, 1882, and as a result held that in s. 3 a loan from a wife to her husband for the purpose "of any trade or business, carried on by him *or otherwise*," means, trade or business carried on by himself, or otherwise in partnership with others, or as agent, &c, and that therefore a wife is entitled to prove in competition with the general creditors of her husband for a loan advanced for private purposes wholly unconnected with trade or business. That case was followed in *Macintosh v. Pogose* (1895, 1 Ch. 505; 64 L. J. Ch. 274; 72 L. T. 251), notwithstanding the dictum to the contrary in *Alexander v. Burnhill* (24 L. R. Ir. 511), and the reading of Cave, J., having, on a review of the cases, received the approval of the Court of Appeal (*Re Clark*, 1898, 2 Q. B. 330; 67 L. J. Q. B. 759), it will, probably, be accepted as the true reading.

"Otherwise than under this Act"; *V.* TENANT. towards end.

"Or as she shall otherwise direct"; *V.* DIRECT.

"Except where otherwise provided"; *V.* EXCEPT.

"Not otherwise"; *V.* DISTRESS.

**OTTER.** — *V.* BITCH.

"Otter lath or jack." quâ the Salmon Fishery Acts, means and includes,

“any small boat or vessel, board, or stick, used for the purpose of running out baits (artificial, or otherwise) across any portion of any lake or river, and whether used with a hand-line or as auxiliary to a rod and line or in any other way” (s. 4, 36 & 37 V. c. 71).

Fishing with an “Otter,” s. 40, Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88, connotes a fishing implement of that name, not the animal (*Alton v. Parker*, 30 L. R. Ir. 87).

**OUGHT.** — Contract “which, according to the TERMS thereof, ought to be performed WITHIN THE JURISDICTION,” R. 1 e, Ord. 11. R. S. C., means, a Contract some part of which “was, by its terms, bound” to be so performed (per Ld Herschell, *Comber v. Leyland*, cited REMIT: *Vf, Bell v. Antwerp, &c, Line*, 1891, 1 Q. B. 103; 60 L. J. Q. B. 270; 64 L. T. 276; 39 W. R. 84). *Vf. Ann. Pr.*

“Ought fairly to be excused,” s. 3, Judicial Trustees Act, 1896; *V. REASONABLY.*

Inquiries and Inspections which “ought reasonably” to be made by a Purchaser to prevent him from being affected by Constructive Notice, s. 3 (1), Conv Act, 1882, mean, such as “ought” to be made “as a matter of prudence, having regard to what is usually done by men of business under similar circumstances” (per Lindley, L. J., *Bailey v. Barnes*, 1894, 1 Ch. 35; 63 L. J. Ch. 77; 69 L. T. 542; 42 W. R. 66).

**OUNCE.** — An Ounce Avoirdupois, is  $\frac{1}{16}$ th of an Imperial Standard POUND (s. 14, 41 & 42 V. c. 49): an Ounce Troy, is 480 grains (Ib.), *i.e.* there are 14 ounces and  $\frac{7}{8}$ ths of an ounce Troy to a Pound.

**OUR.** — “Our Children,” means, the children of us two; a bequest “to my wife” for life, remainder to “our children,” will not operate in favour of the wife’s children by a former marriage, even though she has had no children by the testator (*Re Baynham*, 7 Times Rep. 587).

**OSTER.** — “Ouster or Dispossession,” is a wrong or injury that carries with it the amotion of Possession: for thereby the wrong-doer gets into the actual occupation of the land or hereditament, and obliges him that hath a right to seek his legal remedy in order to gain possession and damages for the injury sustained” (3 Bl. Com. 167); Ouster is effected by ABATEMENT, INTRUSION, DISSEISIN, DISCONTINUANCE, or DEFORCEMENT (Ib.).

**OUT AT INTEREST.** — A bequest of money “Out at Interest” is not SPECIFIC (*Mytton v. Mytton*, cited SUM).

**OUT OF.** — Where a testator directed his legatees to contribute to A. a percentage “out of their legacies,” Romilly, M. R., said, “I doubt whether the testator intended by the words ‘out of’ to point to any

particular description of legatees who were to contribute" (*Ward v. Grey*, 29 L. J. Ch. 75; 26 Bea. 485).

Where certain of a testator's liabilities are directed to be paid by a Tenant for Life under the Will "out of" a separate benefit thereby given to him, he is only liable to the extent of that benefit, and any excess of such liabilities will have to be borne by the residuary estate (*Re Cleveland*, 1894, 1 Ch. 164; 63 L. J. Ch. 115). *V. OUT OF THE RENTS.*

So, where there is a Contract to pay a stated sum (part of a larger agreed sum) "out of the *First Moneys*" the payer may receive from A., and the other part of that larger sum out of "any *Further Moneys*" he may receive from A., and the payer receives in one sum from A. much more than enough to pay the stated sum and receives nothing afterwards, he is only liable to pay the stated sum, for he has received no "further moneys" "out of" which the other part of the agreed sum is payable (*Cochrane v. Green*, 9 C. B. N. S. 448; 30 L. J. C. P. 97).

Where, for valuable consideration, a draft or order is given which is made payable "out of" a particular fund, that amounts to an Equitable Assignment of so much of such fund as will satisfy the draft or order (*Row v. Dawson*, 1 Ves. sen. 331; 1 White & Tudor, 93; *Rodick v. Gaudell*, 1 D. G. M. & G. 763; *V. Re Sheward*, 1893, 3 Ch. 502, 507); on the other hand, words of similar import, in a Life Policy, will not, necessarily, create a Charge (*Re International Life Assree, McIver's Claim*, 5 Ch. 424).

*V. INTO.*

**OUT OF LAND.** — "Money charged upon, or payable out of, Land," s. 42, 3 & 4 W. 4, c. 27; *V. CHARGED UPON.*

**OUT OF SETTLEMENT.** — *V. NOT SETTLED: UNSETTLED ESTATE.*

**OUT OF THE BUSINESS.** — A provision in Partnership Articles that moneys that might be due to a retiring partner shall be paid "out of the Business by the continuing or surviving partners" by annual instalments, does not mean that the source of such payment is to be restricted to the Business from time to time carried on by such continuing or surviving partners, but means that such moneys are to be paid by such partners as partners and becomes a personal obligation on them (*Beresford v. Browning*, 45 L. J. Ch. 36; 1 Ch. D. 30). "The word 'Business' there, is evidently the Capital" (per Jessel, M. R., *ib.*).

*V. BUSINESS: OUT OF THE PROFITS.*

**OUT OF THE EMPLOYMENT.** — "Arising out of and in the Course of the Employment," s. 1 (1) Workmen's Comp Act, 1897; *V. EMPLOYMENT.*

**OUT OF THE ESTATE.** — *V. ESTATE.*

**OUT OF THE PROFITS.** — An agreement to pay an annual sum “out of the Profits” of a business, refers to NET profits (per Parke, B., *Bond v. Pittard*, 3 M. & W. 357; 7 L. J. Ex. 78).

V. PROFITS.

**OUT OF THE REALM.** — V. REALM.

**OUT OF THE RENTS.** — A devise of an Annuity for life to be paid “out of RENTS AND PROFITS” which prove insufficient to keep down the Annuity, does not entitle the annuitant to a continuing charge upon the rents and profits after his death until the arrears are satisfied, but only to the rents and profits during his life (*Wormald v. Muzeen*, 50 L. J. Ch. 776; *Stelfox v. Sugden*, Johns. 234; on *thler*, *Bell v. Bell*, Ir. Rep. 6 Eq. 239). V. *Re Forster*, Ir. Rep. 4 Eq. 152: OUT OF.

**OUT OF THE RESIDUE.** — Bequest by Will “out of the RESIDUE” and a like bequest by Codicil, were ordered to abate *pari passu*, there being a deficiency (*Evestaff v. Austin*, 19 Bea. 591).

**OUTCRY.** — Sale “by Outcry,” &c, s. 7, 50 G. 3, c. 41; V. *Allen v. Sparkhall*, 1 B. & Ald. 100.

Cp, HUE AND CRY.

**OUTER.** — V. EXTERNAL PARTS.

**OUTER DOOR.** — The “Outer Door” which must not be broken for a DISTRESS for rent, is the door which protects the building to be entered, whether such building be within the CURTILAGE of a larger premises or not (*American Must Co v. Hendry*, 68 L. T. 742; 62 L. J. Q. B. 388); but in executing a *fi. fa.* the Officer may break open the Outer Door of any building which is not a DWELLING-HOUSE (*Penton v. Browne*, 1 Keble, 698; Sid. 186; *Hodder v. Williams*, 1895, 2 Q. B. 663; 65 L. J. Q. B. 70; 73 L. T. 394; 44 W. R. 98).

**OUTFANGTHEEFE.** — “‘Outfangtheefe,’ that is, that theeves or felons of your Land or Fee, out of your land or fee, taken with felony or stealing, shall be brought backe to your Court, and there judged” (Termes de la Ley: V. Cowel). Cp, INFANGTHEEFE.

**OUTFIT.** — “‘Outfit,’ is, correctly speaking, that portion of the ship’s furniture or apparel which ordinarily perishes, or is consumed in the course of her voyage, as provisions for the crew, spare ropes, and the like” (Lowndes on Insurance, 2 ed., 11). V. DISBURSEMENTS: SHIP.

“‘Outfit’ (in a fishing voyage) differs materially from what is comprehended under the term ‘Goods’” (per Ellenborough, C. J., *Hill v. Patten*, 8 East, 375).

**OUTFITTER.** — V. LADIES’ OUTFITTER.

**OUTGOING.** — “The precise meaning of ‘Outgoing’ may be open to doubt; but it is certainly a large word, and may fairly comprehend Rates and Taxes” (per Patteson, J., *R. v. Shaw*, 12 Q. B. 427; 17 L. J. M. C. 137), e.g. a statutory annual sum to a Rector in lieu of Tithes to be paid clear of “Outgoings,” is not rateable to the Poor (*S. C.*); a like result was reached where the words were “free and clear of all Rates Taxes and Deductions whatsoever” (*Chatfield v. Ruston*, 3 B. & C. 863). *Cp. Mitchell v. Fordham*, cited DEDUCTION, towards end: *R. v. Lucy*, cited CLEAR.

The word “Outgoings,” in a Covenant to bear burdens, “is of the largest possible signification” (per Brett, L. J., *Budd v. Marshall*, 50 L. J. Q. B. 26); but at the same page, Bramwell, L. J., speaks of the word as “an awkward one”; “but the word ‘Outgoings’ is certainly as strong as DUTIES” (per Grove, J., *Aldridge v. Ferne*, 55 L. J. Q. B. 588; 17 Q. B. D. 212: *Va, Tubbs v. Wynne*, inf). “‘An Outgoing’ means something that has gone out, an expense that some one has been at” (per Bramwell, B., *Crosse v. Raw*, 43 L. J. Ex. 144; L. R. 9 Ex. 209; 23 W. R. 6); and it was accordingly held in that case that the expense of sanitating a house, under s. 10, Sanitary Act, 1866, 29 & 30 V. c. 90, was an outgoing within a lessee’s covenant to pay “taxes, rates, assessments, and outgoing”: *Va, Re Bettingham*, 9 Times Rep. 48. So, the expenses of street paving under the Metrop Man. Acts are within a lessee’s covenant to pay “outgoings of every description for the time being payable either by the landlord or tenant” in respect of the premises (*Aldridge v. Ferne*, 55 L. J. Q. B. 587; 17 Q. B. D. 212; 34 W. R. 578, in *whc, Hill v. Edward*, W. N. (85) 32; 1 Times Rep. 253, was doubted, but *thc* was approved by Russell, C. J., in *Arding v. Economic Printing Co*, 79 L. T. 421). *Va, Batchelor v. Bigger*, 60 L. T. 416; *Antil v. Godwin*, 63 J. P. 441; 15 Times Rep. 462. *Cp, BURDEN: IMPOSITION: “Net Rent,”* sub NET: TAXES.

So, under an agreement for a lease at a rent “free of all Outgoings,” the tenant has to pay land tax and tithe rent-charge, and the landlord is entitled to have a covenant to that effect inserted in the lease (*Parish v. Sleeman*, 1 D. G. F. & J. 326; 29 L. J. Ch. 96; 1 L. T. 506; 8 W. R. 166; 6 Jur. N. S. 385. *If, TAXES: SCOT*); *seeus*, quà Tithe Rent Charge, if the agreement only extends to “taxes and assessments” (*Jeffrey v. Neale*, cited ASSESSMENT). *Note: a Landlord cannot now contract himself out of his liability to pay Tithe Rent Charge (s. 1 (1), 54 V. c. 8).*

*Seuble*, a general agreement by a Tenant to pay “all Outgoings” is not an “Agreement to the contrary” of a statute imposing the Rates upon the Landlord (*Mile End Old Town v. Whitby*, 78 L. T. 80).

A paving assessment under the Manchester General Improvement Act, 1851, is an “Outgoing” within a V. & P. Contract for *Sale of a House* which provides that “all rents, rates, taxes, and outgoing, shall be re-



ceived and discharged by the vendor up to the time of Completion" (*Midgley v. Coppock*, 4 Ex. D. 309; 48 L. J. Q. B. 674; 28 W. R. 161). So also is a liability for works done by a Local Board and chargeable on an owner by virtue of ss. 150, 257, P. H. Act, 1875, although the assessment by the Board may not be made until after the date fixed for completing the contract for sale (*Re Furtado and Jeffries*, 27 S. J. 466; *Secus*, of expenses of paving under s. 77, Metrop. Man. Act, 1862, under vendor's implied covenant (*Eggy v. Blayney*, 21 Q. B. D. 107). But where, in a *Deed of Gift*, the tenant for life was to pay all "Outgoings" during his life; held, that that word did not comprise expenses of making up a road abutting on the premises comprised in the deed, which work had been done by a Local Board in the lifetime of the tenant for life and on his non-compliance with their notice, but which expenses had not been assessed by the Local Bd until after his death (*Re Boor*, 58 L. J. Ch. 285; 40 Ch. D. 572; 60 L. T. 412; *Vh, Re Bettesworth and Richer*, 57 L. J. Ch. 749; 37 Ch. D. 535; 36 W. R. 544).

Reasoning on those cases and on *R. v. Swindon* (48 L. J. M. C. 119; 4 Q. B. D. 305; 27 W. R. 732; 43 J. P. 431) it has been urged (36 S. J. 782) that in Conditions of Sale, in a V. & P. contract, "Outgoings to be cleared by the Vendor" will not include the cost of works done by a Local Bd unless such works are completed by the day fixed for Completion of the purchase; but the contrary has since been held as regards works the liability for which has been incurred before the day for Completion (*Tubbs v. Wynne*, 1897, 1 Q. B. 78; 66 L. J. Q. B. 116); if, however, the Notice to do such works comes after the day for Completion and after the acceptance of Title though before actual Completion, the Outgoing will be on the Purchaser (*Barsht v. Tagg*, 1900, 1 Ch. 231; 69 L. J. Ch. 91; 81 L. T. 777; 48 W. R. 220). In *Stock v. Meakin* (1899, 2 Ch. 496; 68 L. J. Ch. 612; 81 L. T. 80; 48 W. R. 6; 63 J. P. 647; affd 1900, 1 Ch. 633; 69 L. J. Ch. 401; 82 L. T. 248; 48 W. R. 420), the Outgoing was on the Vendor, because the works had been completed before the date of the contract, on which reason *V. Re Waterhouse*, 44 S. J. 645. *Vf, Re Leyland and Taylor*, cited Error.

"All Rates and Outgoings to be adjusted as usual," means, "Outgoings which would enure to the benefit of the Purchaser" (*Country Estates Co v. Graves*, 1895, A. C. 113; 64 L. J. P. C. 44; 72 L. T. 31); therefore, a Land Tax (in Victoria) on owners of 640 acres and upwards, was not apportionable on a Purchaser buying less than that quantity which was part of an estate of more than that quantity (*S. C.*).

On a *Sale of Leaseholds* in which all "Outgoings" are to be cleared by the Vendor to date of Completion, the Vendor must pay a proportionate part of the rent reserved by the lease under which the premises are held (*Laves v. Gibson*, 35 L. J. Ch. 148; L. R. 1 Eq. 135; 13 L. T. 316; 14 W. R. 25).

A *Bequest of Leaseholds* "free of all Outgoings and payments, except

the annual and other rent "payable in respect of it, means, that the testator's estate must pay the rent, taxes, and other payments, in respect of the property up to his death; and after that time the legatee takes the property subject to the rents and the liability to perform the covenants (*Re Taber, Arnold v. Kayess*, 51 L. J. Ch. 721; 46 L. T. 805; 30 W. R. 883).

Where a Tenant for Life of Leaseholds has to pay "all INCIDENTAL EXPENSES and Outgoings"; that would include re-constructing the drainage, unless it be an Improvement under the S. L. Acts (*Re Thomas*, cited IMPROVEMENT, p. 922).

Bequest to Tenant for Life of ARREARS of Rent and proportionate part of rents up to testator's death, but so that all unpaid "Outgoings properly chargeable against" such Arrears, &c, shall be paid thereout, includes, in such proviso, "all such expenses due and remaining unpaid at the testator's death as in the ordinary course of management, as carried on by him, would, at the time of his death, come into charge against such Arrears," e.g. repairs and agent's remuneration, as well as rates taxes and tithes (*Re Cleveland*, 1894, 1 Ch. 164; 63 L. J. Ch. 115; 69 L. T. 807). "By an 'Outgoing' is generally meant, some payment which must be made to secure the Income" (per Lindley, L. J., *Re Bennett*, 65 L. J. Ch. 424; 1896, 1 Ch. 778).

A bequest "CLEAR of TAXES and Outgoings," exonerates from Legacy Duty (*Louch v. Peters*, 1 My. & K. 489; 3 L. J. Ch. 167): "to deny that the Legacy Duty is an Outgoing surely seems strong, especially in reading a Will; but to doubt that it is a Tax appears really a subtlety that passes all understanding" (per Brougham, C., *Ib.*).

V. CHARGES: CURRENT: DEDUCTION: NECESSARY: ORDINARY OUTGOINGS: OUTLAY: WORKING EXPENSES.

**OUTGOING ALDERMAN.** — An "Outgoing Alderman" within s. 60 (3), Mun Corp Act, 1882, "applies to Aldermen whose turn it is to go out of office on November 9, unless that office has first become vacant, and been declared vacant, within the contemplation of s. 36 (2), i.e. one who retires on Nov 9" (per Wright, J., *Pease v. Loudon*, 68 L. J. Q. B. 240; 1899, 1 Q. B. 386; 79 L. T. 672; 63 J. P. 56). An Outgoing Alderman, though Mayor Elect and though he has done every thing to qualify himself to act as Mayor, is still "an Outgoing Alderman" and disqualified to vote in the election of Aldermen under sub 3, s. 60 (*Hounsell v. Suttill*, 56 L. J. Q. B. 502; 19 Q. B. D. 498; 57 L. T. 102; 36 W. R. 127; 51 J. P. 440).

**OUTGOING OCCUPIER.** — An "Outgoing Occupier," s. 16, 32 & 33 V. c. 41, does not become entitled to an abatement of Poor Rate under the section unless there be an INCOMING TENANT on whom that abatement may be assessed (*Werburgh v. Hutchinson*, 5 Ex. D. 19; 49 L. J. M. C. 23).

**OUTGOING SURVEYOR.** — "Outgoing Surveyor," s. 43, 25 & 26 V. c. 61; *V. Wrexham v. Hardeastle*, 19 C. B. N. S. 177.

**OUTHOUSE.** — "I apprehend that it has been settled from ancient times that an 'Outhouse' must be that which belongs to a DWELLING-HOUSE, and, in some respects, parcel of such dwelling-house" (per Taunton, J., *R. v. Haughton*, 5 C. & P. 559).

"House, barn, or outhouse," 9 G. 1, c. 22; a Paper Mill is not such an Outhouse (1 Hawk. P. C. ch. 18, s. 4): *V. R. v. Winter*, Russ. & Ry. 295; *Elsmore v. St. Briavells*, 8 B. & C. 461.

"Outhouse," s. 2, 7 & 8 G. 4, c. 30; *V. R. v. Ellison*, 1 Moody, 336; *R. v. Stallion*, Ib. 398; *R. v. Haughton*, 5 C. & P. 555; *R. v. Parrot*, 6 Ib. 402. A thatched Pig-stye in a yard adjoining the prosecutor's house, held an "Outhouse" within s. 3, 1 V. c. 89 (*R. v. Jones*, 2 Moody, 308).

*Cp.*, OUTLET.

**OUTLAND.** — *V.* INLAND.

**OUTLAW.** — An Outlaw is "one deprived of the benefit of the law, and out of the Kings protection" (Cowel: *Cp.*, LAWLESS MAN). In Alfred's time, and a good while after the Conquest, no man could be outlawed but for FELONY (Co. Litt. 128 b); its consequences were dreadful, for "an outlawed man had *caput lupinum*, because he might be put to death by any man as a wolfe, that hateful beast, might" (Co. Litt. 128 b, citing Fleta, l. 1, ch. 27; Bracton, l. 5, 421; Brit. 20 b; Mir. c. 4, s. 4). But a different rule was established in the second year of Edward 3 (Y. B. 25), viz., that "the Sheriffe onely (having lawful warrant therefor)" might kill an Outlaw, "and so from thenceforth the law continued until this day" (Co. Litt. 128 b). *V. f.*, Jacob: 9 Encyc. 328: FRANK-LAW: WAIVE.

"FORFEITURE consequent upon Outlawry" is not affected by 33 & 34 V. c. 23 (*V.* s. 1).

**OUTLAY.** — Where a Will contained a trust for sale of realty and personalty with a discretionary power to postpone sale, and then gave powers of management during the interval and "to make out of the Income or Capital of my real and personal estate any outlay" the trustees might think proper for specified purposes; held, that the trustees had power, for those purposes, to mortgage or charge the unsold realty (*Re Bellingier*, 1898, 2 Ch. 534; 67 L. J. Ch. 580; 79 L. T. 54).

*Cp.*, OUTGOING.

**OUTLET.** — "Garden . . . or Outlet BELONGING to any DWELLING-HOUSE or other Building," 4 G. 2, c. 32: *V. R. v. Richards*, Russ. & Ry. 28.

*Cp.*, OUTHOUSE.

**OUT-PENSIONER.** — Quà Reserve Forces Act, 1882, 45 & 46 V. c. 48, “ ‘ Out-Pensioners of Chelsea Hospital,’ includes, all persons whose claims for prospective or deferred pension have been registered in virtue of any warrant of Her Majesty ” (s. 28).

**OUTSTANDING.** — Debentures “ Outstanding ”; *V. ALREADY.*

“ Outstanding Debts owing ”; *V. Phillips v. Eastwood*, L. & G. t. Sng. 270.

“ Outstanding LEGAL ESTATE ” in a V. & P. contract; *V. Re Williams and Parry*, 72 L. T. 869.

“ Outstanding ” Part of any Loan, quà and by s. 1, Poor Law Act, 1897, 60 & 61 V. c. 29, “ means, not repaid by instalments, or by means of a sinking fund, or out of capital money properly applicable to the purpose of repayment other than money borrowed for that purpose ”; so, quà and by s. 61, Loc Gov (Ir) Act, 1898, except that “ applicable for the purpose,” is substituted for “ applicable to the purpose.”

**OUTSTROKE.** — *V. INSTROKE.*

**OUTWARD-BOUND.** — *V. INWARD-BOUND.*

**OUTWARD MARK.** — For a tradesman to place on a wire-blind to a front window such letters as “ H. B. & Co., late S. B. & Co.,” with similar letters on a roller-blind and on a brass-plate fixed on the front railings, is to make an “ Outward Mark or Show of Business ” within a restrictive covenant in a lease (*Evans v. Davis*, 10 Ch. D. 747; 48 L. J. Ch. 223; 27 W. R. 285).

**OUTWARDS.** — “ Outwards and Inwards Railway Stations,” s. 3 (2), 45 & 46 V. c. 74; *V. R. v. Lond. & N. W. Ry*, 65 L. J. Q. B. 516.

“ Trading Outwards ”; *V. TRADING.*

**OVER.** — “ *Primâ facie*, a BRIDGE ‘ over ’ a River, or ‘ over ’ a Street, means, a bridge with an arch which shall clearly span it; and if I covenant to build a bridge over a river or a road, I must not block up or obstruct any part of it with piers or abutments, but must make an arch which shall span completely over, without contracting, it ” (per Wood, V. C., *Clarke v. Manchester S. & L. Ry*, 1 J. & H. 636, 637); *whc* also decided that a Ry Co cannot, quà such an agreement, claim the benefit of the Ry C. C. Act, 1845, if the contract does not so provide.

Projection “ over or upon ” a pavement; *V. PROJECTION.*

*V. THROUGH.*

**OVER AND ABOVE.** — Lessee, in an Irish Lease, to pay rent “ over and above all taxes, charges, and impositions whatsoever ”; *V. Greene v. Thornton*, 16 L. R. Ir. 381, 390; *Morrogh v. Hall*, 32 Ib. 216; *Re Bradford*, 31 Ib. 364; *Malton v. West*, Ir. Rep. 11 C. L. 525. *Vf*, TAXES, towards end.

**OVERDRAFT.** — A deposit of deeds with a Banker “to Cover overdraft,” gives a charge as well for Overdue Bills charged to the depositor’s account as for money drawn out by Cheque (*Re Williams*, Ir. Rep. 3 Eq. 346).

**OVER-DRIVE.** — Quà Cruelty to Animals Acts, “over-drive” includes “over-ride” (s. 29, 12 & 13 V. c. 92; s. 11, 13 & 14 V. c. 92).  
Cp, DRIVE: RIDE.

**OVERDUE.** — A Bill of Exchange or Promissory Note payable on a stated day, is not “overdue” until the day after that day (*Hinton v. Duff*, 31 L. J. C. P. 199; 5 L. T. 797; 10 W. R. 295). Cp, MATURE.

A Bill or Note payable “ON DEMAND,” or a Cheque, is “overdue” if not paid within a REASONABLE time (Byles, 284). “What is an unreasonable time for this purpose, is a question of fact” (s. 36 (3), Bills of Ex. Act, 1882), — six days (*Rothschild v. Corney*, 9 B. & C. 388), or eight days (*London & County Bank v. Groome*, 51 L. J. Q. B. 224; 46 L. T. 60; 30 W. R. 382), after date is not an unreasonable time.

**OVERHANGING.** — Overhanging Trees; V. NUISANCE: LOP.

**OVERHAUL.** — “Overhaul and repair”; V. *Inglis v. Buttery*, cited REPAIR.

V. OVERTAKING SHIP.

**OVERPLUS.** — “Overplus,” 2 W. & M. sess. 1, c. 5, s. 2, means, what remains after payment of the rent and the reasonable charges of the Distress (*Lyon v. Tomkies*, 1 M. & W. 603; *Knight v. Egerton*, 7 Ex. 407).

A bequest of “Overplus” usually includes whatever shall turn out to be the Overplus (*Shaw v. Bull*, 12 Mod. 593, stated and commented on, 1 Jarm. 729; *Page v. Leapingwell*, 18 Ves. 463; *Berberley v. A-G.*, 27 L. J. Ch. 66; 6 H. L. Ca. 310). Cp, RESIDUE: REMAINDER: SURPLUS.

**OVERRATE.** — To “Over-rate,” “in its strictest signification, means a rating by way of excess, and not one which ought not to have been made at all” (per Parke, B., *Allen v. Sharpe*, 17 L. J. Ex. 214; 2 Ex. 352); but that learned judge, and the Court, held that the word in s. 24. 43 G. 3, c. 99 (giving appeal for an “over-rating”), had a far wider interpretation.

**OVER-REGULATION PRICE.** — V. REGULATION.

**OVERSEER.** — V. *Burgess v. Boetefeur*, 13 L. J. M. C. 126; 7 M. & G. 481; *Caunter v. Addams*, 33 L. J. C. P. 68; 15 C. B. N. S. 512.

By virtue of Loc Gov Act, 1894, “Overseers” in s. 4. Poor Relief Act, 1743, 17 G. 2, c. 38, is to be read as “Parish Council” (*R. v. De Grey*, cited SIGNED): As to appointment of Overseer by Parish Council; V. *R. v. Powell*, 1899, 1 Q. B. 396; 68 L. J. Q. B. 274.

In the Lighting & Watching Act, 1833, 3 & 4 W. 4, c. 90, "Overseers" includes Churchwardens (*R. v. Rye*, 13 W. R. 142).

As to what "Overseer" or "Overseers" means or includes under,

Burial Act, 1852, 15 & 16 V. c. 85; *V. s.* 52:

Juries Act, 1870, 33 & 34 V. c. 77; *V. s.* 5:

Militia Act, 1882, 45 & 46 V. c. 49; *V. s.* 52:

Metrop Man. Act, 1855, 18 & 19 V. c. 120; *V. s.* 250:

Mun Corp, 1882, 45 & 46 V. c. 50; *V. s.* 7:

Parish Constables Acts; *V. s.* 5 & 6 V. c. 109, s. 26; 35 & 36 V. c. 92, s. 14:

Parliamentary Voters Registration Act, 1843, 6 & 7 V. c. 18; *V. s.* 101, on *whv*, *Points v. Attwood*, 18 L. J. C. P. 19; 6 C. B. 38: *Green v. Mephum*, 48 L. J. C. P. 92; 39 L. T. 450:

Pawnbrokers Act, 1872, 35 & 36 V. c. 93; *V. s.* 56:

Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76; *V. s.* 109:

Poor Rate Assessment and Collection Act, 1869, 32 & 33 V. c. 41; *V. s.* 20:

Public Libraries Act, 1892, 55 & 56 V. c. 53; *V. s.* 27:

Public Works (Manufacturing Districts) Act, 1863, 26 & 27 V. c. 70; *V. s.* 22:

Railway C. C. Act, 1845, 8 & 9 V. c. 20; *V. s.* 3:

Rep People Act, 1884, 48 & 49 V. c. 3; *V. s.* 11:

Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67; *V. s.* 4.

*V. SUCCEEDING: GUARDIANS.*

*Vh*, Shaw's Parish Law: Steer's *Ib.*: 9 Encyc. 330-339.

**OVERT.**—An Overt Act is an OPEN Act, which must be manifestly proved (3 Inst. 12).

A Lease, under a Power requiring accustomed clauses, was objected to because its clause of re-entry did not follow previous leases in that it did not provide for re-entry if there were no "Overt" distress to be found on the premises; but the Court decided against the objection, and (per Denman, C. J.), said,—“The law recognizes a difference between a *Pound Overt* and a *Pound Covert*; but as to *Distress*, the law does not affix any meaning to the word ‘Overt.’ Is ‘Overt’ to be confined to what may be seen by walking over the lands and farm-yard, without going into any inclosed buildings? or does it extend to what may be seen by opening the outer doors of a house or other building, or what may be seen by opening inner doors, or by opening cupboards, chests, and boxes, which are not concealed and have no locks, or various other shades of being less ‘Overt’?” (*Doe d. Douglas v. Lock*, 4 L. J. K. B. 119; 2 A. & E. 705).

*F. MARKET OVERT.*

A **POUND Overt**, is an open place made (or an open field used, *Castleman v. Hicks*, C. & M. 266) for the purpose of impounding distresses:

a Pound Covert, is a house, close, or place, to which the owner of the thing distrained may not come (Co. Litt. 47 a: Termes de la Ley, Pounds: Jacob: 10 Encyc. 262, 263). *Vf*; OPEN.

**OVERTAKEN.** — A ship is “being overtaken by another,” within the Regulations for Preventing Collisions at Sea, when the other vessel is going faster than, and coming nearer to, her in such a position that her lights cannot be seen by the approaching ship (*The Main*, 55 L. J. P. D. & A. 70; 11 P. D. 132; 55 L. T. 15; 34 W. R. 678; 2 Times Rep. 689, and the cases there cited). *Vf*, *The Molière*, 1893, P. 217; 69 L. T. 263; 62 L. J. P. D. & A. 102.

*V*. SNOW A LIGHT.

**OVERTAKING SHIP.** — If Ships are in such a position and are on such courses and at such distances that, if it were Night, the hinder ship could not see any part of the side lights of the forward ship, then they cannot be said to be CROSSING Ships although their courses may not be exactly parallel; and if the hinder of two such ships is going faster than the other she is an Overtaking Ship (*The Franconia*, 2 P. D. 8; 25 W. R. 197; 35 L. T. 721); that may not be an exhaustive definition but it is a good working rule (per Herschell, C., and Esher, M. R., *The Main*, cited OVERTAKEN), though at one time questioned in the Court of Appeal (*The Peckforton Castle*, 3 P. D. 11; 47 L. J. P. D. & A. 69). *Vf*, *The Seaton*, 9 P. D. 1: Art. 24, Regns for Prev. Collisions at Sea, 1897.

**OWELTY.** — *V*. Termes de la Ley.

**OWING.** — A CALL on shareholders of a Co is “Owing” from the day on which it is made, although “PAYABLE” subsequently (*Re China S. S. Co*, 38 L. J. Ch. 512; L. R. 6 Eq. 232).

“In addition to sums owing”; *V*. ADDITION.

“Now owing”; *V*. NOW, p. 1296.

*V*. DEBT: DUE: MONEY DUE.

**OWN CONSENT.** — A person’s “Own Consent in writing” without which he is not to be added as a Party to an Action, R. 11, Ord. 16, R. S. C., must be signed by himself; a Consent signed on his behalf and in his presence by his Solr is not sufficient (*Fricke v. Van Grutten*, 1896, 2 Ch. 649; 65 L. J. Ch. 823; 75 L. T. 117; 45 W. R. 53). In that case Lindley and Lopes, L. J.J., said that “Own” was an abbreviated way of saying “under his hand.” *Cp*, *Morton v. Copeland*, cited IN WRITING. *V*. HIMSELF: SIGNATURE.

**OWN DWELLING-PLACE.** — *V*. DWELLING-PLACE.

**OWN HAND.** — *V*. DIE BY HIS OWN HANDS: HIS HAND.

**OWN HEIRS.** — *V*. MY.

**OWN NAME.** — *V. NAME.*

**OWN OCCUPATION.** — *V. White v. Birch*, cited **OCCUPATION.**

**OWN PROFIT.** — Goods are supplied by a Poor Law Guardian "for his Own Profit," 55 G. 3, c. 137, s. 6; 4 & 5 W. 4, c. 76, s. 77, if supplied by his partner, even though it be without his knowledge (*Davies v. Harvey*, 43 L. J. M. C. 121; L. R. 9 Q. B. 433).

"SEWER made by any person for his Own Profit," s. 13, P. II. Act, 1875, does not include a Sewer made for the benefit of the maker's own houses (*Acton v. Batten*, 54 L. J. Ch. 251; 28 Ch. D. 283; *Bonella v. Twickenham*, 57 L. J. M. C. 1; 20 Q. B. D. 63; 58 L. T. 299; 36 W. R. 50; 52 J. P. 356; *Ferrand v. Hallas Co*, 1893, 2 Q. B. 135; 62 L. J. Q. B. 479; 69 L. T. 8; 41 W. R. 580; 57 J. P. 692; *Vowles v. Colmer*, 64 L. J. Ch. 414; 72 L. T. 389); *Sr. Minhead v. Luttrell* (1894, 2 Ch. 178; 63 L. J. Ch. 497; 70 L. T. 446; 42 W. R. 667) where a direct money payment brought the case within the phrase. But "Profit" here is not restricted to such a payment; therefore, a Sewer for collecting and conveying sewage to be converted into manure (per Huddleston, B., *Bonella v. Twickenham*, sup), or for supplying water to a cattle pond (*Croysdale v. Sunbury-on-Thames*, 1898, 2 Ch. 515; 67 L. J. Ch. 585; 79 L. T. 26; 46 W. R. 667; 62 J. P. 520), or for diverting water from the owner's land (*Sykes v. Sowerby*, 1900, 1 Q. B. 584; 69 L. J. Q. B. 464; 82 L. T. 177; 64 J. P. 340), is within the phrase.

**OWN PROPERTY.** — A woman's "Own Property" respecting which "no restriction against ANTICIPATION" in a Settlement made by her is valid "against DEBTS contracted by her before marriage," s. 19, M. W. P. Act, 1882, includes a Chose in Action vested in her before marriage and reduced into possession after marriage (*Jay v. Robinson*, cited **BEFORE MARRIAGE**).

**OWN RIGHT.** — *V. IN HIS OWN RIGHT.*

**OWN RISK.** — Passenger travelling "at his Own Risk"; *V. McCawley v. Furness Ry*, L. R. 8 Q. B. 57; **RISK.**

*V. SANS RECOURS.*

**OWN SHOP.** — *V. SHOP.*

**OWN SOLE USE.** — For the purpose of giving a married woman a **SEPARATE USE**, "own" does not seem to give any additional force to "sole" (*Re Tarsey*, 35 L. J. Ch. 452; L. R. 1 Eq. 561). *V. SOLE.*

**OWN USE AND BENEFIT.** — A limitation to A., "his exors or admors, to and for his and their own use and benefit," does not, under the italicised words, give the exors or admors any beneficial interest;



they simply take the property as part of A.'s estate (*Hames v. Hames*, 2 Keen, 646; 7 L. J. Ch. 123; *Meryon v. Collett*, 8 Bea. 386; 14 L. J. Ch. 369).

A Condition of a legacy to a Married Woman that it should be received by her for her "Own use and benefit"; held, satisfied by a receipt by her husband, — O'Hagan, C., observing that the phrase "could not mean, 'separate from any control of her husband,' for the testator uses the latter words, in their accurate legal sense, in the end of his Will" (*Foley v. Foley*, 18 W. R. 81). *V. SEPARATE USE.*

**OWNER.**—The "Owner" or "PROPRIETOR" of a property is the person in whom (with his or her assent), it is for the time being beneficially vested, and who has the occupation, or control, or usufruct, of it: *e.g.* a lessee is, during the term, the owner of the property demised (*V. jdgmt of Bramwell*, L. J., *Eglinton v. Norman*, 46 L. J. Q. B. 559; *Va, Chauntler v. Robinson*, 4 Ex. 163; 19 L. J. Ex. 170; *Russell v. Shenton*, 3 Q. B. 449; *Lister v. Lobley*, 6 L. J. K. B. 200; 7 A. & E. 124). So, in *Cook v. Humber* (31 L. J. C. P. 75), Erle, C. J., speaks of the "occupation" necessary to the franchise, under s. 27, Rep People Act, 1832, as equivalent to the "actual exercise of the rights of the Owner of a house in possession." But in *Re Crawley, Acton v. Crawley* (54 L. J. Ch. 654; 28 Ch. D. 431), Pearson, J., said, "the Owner — that is, the person entitled to the rack-rent." *Cp, HERITOR.*

"Owner <sup>and</sup>/<sub>or</sub> Proprietor," does not, necessarily, import that the person spoken of is the actual occupier (*Chauntler v. Robinson*, *Russell v. Shenton*, and *Lister v. Lobley*, sup). *Vf, OCCUPATION.*

"Owner" is a sufficient description of a vendor of property, in a V. & P. contract; *V. PROPRIETOR.*

Quà *Metropolitan Building Act*, 1855, 18 & 19 V. c. 122, "Owner," applies "to every person in possession or receipt either of the whole, or of any part, of the rents or profits of any land or tenement; or in the occupation of such land or tenement, other than as a tenant from year to year or for any less term or as a tenant at will" (s. 3). That Act is replaced by London Bg Act, 1894, s. 5 (29) of which prescribes therefor a like def. Under the Act of 1855, the lessee for years, and not the lessor, of a chapel or house, is its "owner," within s. 73 (*Mourilyan v. Labelmondieere*, 30 L. J. M. C. 95; 1 E. & E. 533; *Hunt v. Harris*, 34 L. J. C. P. 249; 19 C. B. N. S. 13; *V. Fillingham v. Wood*, cited ADJOINING OWNER); nor, under a building agreement, is the ground landlord the "owner" of the buildings, within s. 51 (*Evelyn v. Whichcord*, 27 L. J. M. C. 211; E. B. & E. 126; *Canwell v. Hanson*, 41 L. J. M. C. 8; nom. *Caudwell v. Hanson*, L. R. 7 Q. B. 55), the person in possession under such an agreement is the "Owner," and as such is entitled to the notices and rights under s. 90 of the Act of 1894 (*List v. Tharp*, 1897, 1 Ch.

260; 66 L. J. Ch. 175; 76 L. T. 45; 45 W. R. 243; 61 J. P. 248). So, the incumbent of a district church is not the "owner" of it within ss. 69-74 (*R. v. Lee*, 48 L. J. M. C. 22; 4 Q. B. D. 75; 27 W. R. 151; *Vf, Chorlton-upon-Medlock v. Walker*, 12 L. J. Ex. 88; 10 M. & W. 742). The "owner" who is liable for surveyor's charges, under s. 51, Act of 1855, is the person answering that description at the time the service is rendered (*Tubb v. Good*, 39 L. J. M. C. 135; L. R. 5 Q. B. 443).

Quà *Metropolis Management Acts*, a def is provided by s. 250, *Metrop Man. Act*, 1855, on *whr*, *London School Bd v. St. Mary, Islington*, 1 Q. B. D. 65; 45 L. J. M. C. 1; *Wright v. Ingle*, 55 L. J. M. C. 17; 16 Q. B. D. 379; 54 L. T. 511; 34 W. R. 220; 50 J. P. 436: *Plumstead v. Ecc. Commrs*, 1891, 2 Q. B. 361; *St. Giles, Camberwell v. London Cemetery Co*, 1894, 1 Q. B. 699; 63 L. J. M. C. 74; 70 L. T. 734; 42 W. R. 446; *Walford v. Hackney*, 43 W. R. 110; 11 Times Rep. 17; *Vf, Caiger v. St. Mary, Islington*, and *G. E. Ry v. Hackney*, cited HOUSE: INCUMBENT. A Vendor, entitled to the receipt of rents and profits until Completion, remains hereunder the "Owner" until that time (*Wix v. Rutson*, cited TAXES).

"Owner of land bounding or abutting on" a New Street, s. 77, *Metrop Man. Act*, 1862, s. 3, *Metrop Man. Act*, 1890; *V. Holland v. Kensington*, 36 L. J. M. C. 105; L. R. 2 C. P. 565; *Plumstead Bd of Works v. British Land Co*, L. R. 10 Q. B. 203; 44 L. J. Q. B. 38; *Williams v. Wandsworth Bd of Works*, 53 L. J. M. C. 187; 13 Q. B. D. 211; 32 W. R. 908; 48 J. P. 439; *Wright v. Ingle*, sup: *St. Mary, Islington v. Cobbett*, 1895, 1 Q. B. 369; 64 L. J. M. C. 36: *Vf*, HOUSE.

Other Stat. Def., relating to the Metropolis, — Metropolitan Fire Brigade Act, 1865, 28 & 29 V. c. 90, s. 33; Metropolitan Open Spaces Act, 1881, 44 & 45 V. c. 34, s. 1; Metropolitan Water Act, 1871, 34 & 35 V. c. 113, s. 3.

Quà the *Public Health Acts*, the statutory definitions of "Owner" may, probably, be said to have taken form from that contained in the Nuisances Removal Act, 1855, 18 & 19 V. c. 121, by s. 2 of which it is provided that, quà that Act, " 'Owner,' includes, any person receiving the rents of the property in respect of which that word is used from the occupier of such property, on his own account or as trustee or agent for any other person, or as receiver or sequestrator appointed by the Court of Chancery or under any Order thereof, or who would receive the same if such property were let to a tenant": *Vth, Blything v. Warton*, 32 L. J. M. C. 132; 3 B. & S. 352. "It may be that the rule introduced by the statute is a rough one" (per Blackburn, J., *Cook v. Montagu*, 41 L. J. M. C. 149; L. R. 7 Q. B. 418); at any rate the def quà P. H. Act, 1875 (which repealed 18 & 19 V. c. 121) is provided by s. 4, and runs thus, —

" 'Owner,' means, the person for the time being receiving the RACK-RENT of the lauds or premises in connection with which the word is

used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a Rack-rent."

*Note.* That def is very similar to, but not quite so wide as, the def in s. 3, Metropolis Water Act, 1871; whilst the first of this class of def of "Owner" is, probably, that contained in Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, by s. 109 whereof, "'Owner,' shall be construed to include, any person for the time being in the actual occupation of any property rateable to the relief of the poor and not let to him at Rack-rent; or any person receiving the rack-rent of any such property either on his own account or as mortgagee or other incumbrancer in possession." *Cp.*, Towns Improvement Clauses Act, 1847, 10 & 11 V. c. 34, s. 3; Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, s. 1; Salmon Fishery Act, 1873, 36 & 37 V. c. 71, s. 4.

On the def in *P. H. Act*, 1875; *V. Hornsey v. Smith*, 1897, 1 Ch. 843; 66 L. J. Ch. 476; 76 L. T. 431; 45 W. R. 581: *St. Helen's v. Kirkham*, 16 Q. B. D. 403; *Tottenham v. Williamson*, 69 L. T. 51; 62 L. J. Q. B. 322; 57 J. P. 614; *Broadbent v. Shepherd*, 45 S. J. 61; 83 L. T. 504; *Hornsey v. Brewis*, 60 L. J. M. C. 48, *cp* with *thlc*, *Cuiger v. St. Mary, Islington*, and *G. E. Ry v. Hackney*, cited HOUSE: *Re Christchurch Enclosure Act*, 1894, 3 Ch. 209; 63 L. J. Ch. 657; 71 L. T. 122; 42 W. R. 614; 58 J. P. 556: *Re Barney*, 1894, 3 Ch. 562; 63 L. J. Ch. 676; 71 L. T. 180. Observe, that a "Receiver or Sequestrator," included in the def as given by the Nuisances Removal Act, 1855, is dropped out of the def in the *P. H. Act*, 1875, and the def in the latter Act does *not* include a Receiver or Sequestrator (*Bacup v. Smith*, 59 L. J. Ch. 518; 44 Ch. D. 395).

By its s. 141, the *P. H. London Act*, 1891, adopts the def of "Owner" contained in *P. H. Act*, 1875, except that for "lands or premises" it simply has "premises"; *V. quâ* *P. H. London Act*, 1891, *Thames Conservators v. Port of London Sanitary Authority*, 1894, 1 Q. B. 647; 63 L. J. M. C. 121; 69 L. T. 803; 58 J. P. 335; *Truman v. Kerlake*, 1894, 2 Q. B. 774; 63 L. J. M. C. 222; 43 W. R. 111; 58 J. P. 766; *Re Lever*, 1897, 1 Ch. 32; 66 L. J. Ch. 66; 75 L. T. 383; 45 W. R. 172.

The def of "Owner" contained in *P. H. Act*, 1875, is adopted for; — *P. H. Ireland Act*, 1878, 41 & 42 V. c. 52; *V. s. 2*:

*P. H. Acts Amendment Act*, 1890, 53 & 54 V. c. 59; *V. s. 11*:

*P. H. Scotland Act*, 1897, 60 & 61 V. c. 38; *V. s. 3*, which provides Scotch verbal equivalents in the def:

Advertising Stations (Rating) Act, 1889, 52 & 53 V. c. 27; *V. s. 2*:

Brine Pumping (Compensation for Subsidence) Act, 1891, 54 & 55 V. c. 40; *V. s. 52*:

Private Street Works Act, 1892, 55 & 56 V. c. 57; *V. s. 5*.

*Note*: "OWNER IN DEFAULT," *quâ* *Public Health Acts*, means the person who is owner at the time of the completion by the Local Author-

ity of the works the expenses of executing which are sought to be recovered (*R. v. Swindon*, 48 L. J. M. C. 119; 4 Q. B. D. 305; 27 W. R. 732; 43 J. P. 431: *Vf*, PREMISES). *Vh*, *Bowditch v. Wakefield*, 40 L. J. M. C. 214; L. R. 6 Q. B. 567; *Peek v. Waterloo*, 33 L. J. M. C. 11; 2 H. & C. 709; *Wallsend v. Murphy*, 61 L. T. 777; 6 Times Rep. 29; *Re Bettesworth and Richer*, 57 L. J. Ch. 749; 37 Ch. D. 535; 58 L. T. 796; 36 W. R. 544; 52 J. P. 740.

Quà *Town Police Clauses Act*, 1847, 10 & 11 V. c. 89, s. 33, "Owner of Lands and Buildings," means the same as "Owner" as defined by s. 4, P. H. Act, 1875 (*Sale v. Phillips*, 1894, 1 Q. B. 349; 63 L. J. M. C. 79; 70 L. T. 559; 58 J. P. 460; over-ruling *Lewis v. Arnold*, 44 L. J. M. C. 68; L. R. 10 Q. B. 245).

Quà *Poor Rate Assessment and Collection Act*, 1869, 32 & 33 V. c. 41, " 'Owner,' shall mean, any person receiving, or claiming, the rent of the hereditament for his own use; or receiving the same for the use of any corporation aggregate or of any public company, or of any landlord or lessee who shall be a minor, a married woman, or insane, or for the use of any person for whom he is acting as agent " (s. 20).

Quà *Lands C. C. Act*, 1845, " 'Owner,' shall be understood to mean, any person or corporation who, under the provisions of this or the Special Act, would be enabled to sell and convey lands to the promoters of the undertaking " (8 & 9 V. c. 18, s. 3); the def in s. 3, Lands C. C. (Scot) Act, 1845, is the same, except that, between "corporation" and "who," there is inserted "or trustees or others." *Vh*, *Chauntler v. Robinson*, 4 Ex. 163; 19 L. J. Ex. 170: *R. v. Kerrison*, 1 M. & S. 435; *Russell v. Shenton*, 11 L. J. Q. B. 289; 3 Q. B. 449; 2 G. & D. 573; *Mann v. G. Southern & Western Ry*, inf. As to "Owner" in s. 76, of the English Act; *V. Ex p. Winder*, 46 L. J. Ch. 572; 6 Ch. D. 696; *Douglass v. Lond. & N. W. Ry*, 3 K. & J. 173; *Wells v. Chelmsford*, 49 L. J. Ch. 827; 15 Ch. D. 108.

Quà *Ry C. C. Act*, 1845, 8 & 9 V. c. 20, " 'Owner' shall be understood to mean any person or corporation who, under the provisions of this or the Special Act or any Act incorporated therewith, would be enabled to sell and convey lands to the company " (s. 3). "Owner," of a Private Road entitled to the penalty prescribed by s. 54, includes the owner of one half of the road usque ad medium filum, and if he recovers the penalty the owner of the other half of the road cannot, for only one penalty is recoverable (*Llewellyn v. Glamorgan Vale Ry*, 1898, 1 Q. B. 473; 67 L. J. Q. B. 305; 78 L. T. 70; 46 W. R. 290: *Vh*, PENALTY). *Vf*, *Mann v. G. Southern & Western Ry*, 9 Ir. Com. Law Rep. 105. "Owners or Occupiers," s. 68, *Ib.*, and s. 11, 34 & 35 V. c. 41, *V. OCCUPIER*.

The def in Lands C. C. Act, 1845, is adopted for Land Drainage Act, 1861, 24 & 25 V. c. 133 (s. 3); Land Drainage Act (Ir) 1863, 26 & 27 V. c. 26 (s. 3); and also for Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, with the addition that it there "includes all lessees or

mortgagees of any premises required to be dealt with under this Part of this Act, except persons holding or entitled to the rents and profits of such premises for a term of years of which 21 years do not remain unexpired" (s. 29: *Vh, Osborne v. Skinners' Co*, 60 L. J. M. C. 156; 39 W. R. 715).

A def similar to that in Lands C. C. Act, 1845, is provided for Tramways (Ir) Act, 1860, 23 & 24 V. c. 152 (s. 49).

"Owner" has also received various statutory definitions in and for the following Acts; —

Alkali, &c, Works Regulation Act, 1881, 44 & 45 V. c. 37; *V. s. 29*:  
 Ancient Monuments Protection Act, 1882, 45 & 46 V. c. 73; *V. s. 9*:  
 Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55; *V. s. 4*:  
 Chief Rents Redemption (Ir) Act, 1864, 27 & 28 V. c. 38; *V. s. 1*:  
 Coal Mines Regulation Act, 1887, 50 & 51 V. c. 58; *V. s. 75*:  
 Defence Act, 1860, 23 & 24 V. c. 112; *V. s. 47*:  
 Dispensary Houses (Ir) Act, 1879, 42 & 43 V. c. 25; *V. s. 2*:  
 Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88; *V. s. 1*:  
 Geological Survey Act, 1845, 8 & 9 V. c. 63; *V. s. 6*:  
 Inclosure Act, 1836, 6 & 7 W. 4, c. 115; *V. s. 56*:  
 Land Debentures (Ir) Act, 1865, 28 & 29 V. c. 101; *V. s. 3*:  
 Landed Estates Court (Ir) Act, 1858, 21 & 22 V. c. 72; *V. s. 1*, on *wh, Re Beckett*, 5 L. R. Ir. 43; on s. 64, *Grier v. Grier*, L. R. 5 H. L. 688:

Landed Property Imp. (Ir) Act, 1847, 10 & 11 V. c. 32; *V. s. 66*:  
 Landed Property (Ir) Imp. Act, 1860, 23 & 24 V. c. 153; *V. s. 35*:  
 Loc Gov (Scot) Act, 1889, 52 & 53 V. c. 50; *V. s. 105*:  
 Lunacy (Scot) Act, 1857, 20 & 21 V. c. 71; *V. s. 3*:  
 Metalliferous Mines Regulation Act, 1872, 35 & 36 V. c. 77; *V. s. 41*:  
*Vh, Evans v. Mostyn*, 47 L. J. M. C. 25; 2 C. P. D. 547: *Arkwright v. Evans*, 49 L. J. M. C. 82: *Devonshire v. Stokes*, cited INTERESTED IN: *Foster v. Newhaven Harbour Trustees*, 61 J. P. 629:  
 Poor Law (Scot) Act, 1845, 8 & 9 V. c. 83; *V. s. 1*:  
 Public Works Loans Act, 1888, 51 & 52 V. c. 39; *V. s. 6*:  
 Record of Title Act (Ir) 1865, 28 & 29 V. c. 88; *V. s. 2*:  
 Rep People Act, 1884, 48 & 49 V. c. 3; *V. s. 9 (8)*:  
 Rep People (Scot) Act, 1868, 31 & 32 V. c. 48; *V. s. 59*:  
 Sale of Advowsons Act, 1856, 19 & 20 V. c. 50; *V. s. 1*:  
 School Sites Act, 1849, 12 & 13 V. c. 49; *V. s. 7*:  
 Tithe Act, 1891, 54 & 55 V. c. 8; *V. s. 9*: *semble*, does not include a Reversioner (*Peed v. King*, 11 Times Rep. 18). *V. TITHE.*

*V. PROPRIETOR: LANDLORD.*

"Owner," of a *Canal Boat*; *V. 40 & 41 V. c. 60, s. 14.*

"Owner," of a *Dog*, quâ Dogs Act, 1865, 28 & 29 V. c. 60; *V. s. 2*, and *vth, Gardner v. Hart*, 44 W. R. 527.

"Owners of a *Dock or Canal*"; *V. 63 & 64 V. c. 32, s. 2 (5).*

"Owner" of *Fairs*, quâ *Fairs Acts*; *V.* 34 & 35 *V. c.* 12, s. 2; 36 & 37 *V. c.* 37, s. 3. — *Ir.* 31 & 32 *V. c.* 12, s. 2.

"Owner" of *Goods*; *V.* *Harbours Docks and Piers Clauses Act*, 1847, 10 & 11 *V. c.* 27, s. 3. "Owner," quâ *Royal Charter* granting duties on *Goods* brought from *Beyond Seas* into the *Tyne*, held to mean the *Importer* (*Newcastle Pilots v. Hammond*, 18 *L. J. Ex.* 417; 4 *Ex.* 285). Quâ *Part 7, Mer Shipping Act*, 1894, " 'Owner,' used in relation to *Goods*, means, every person who is for the time entitled, either as owner or agent for the owner, to the possession of the goods; subject in the case of a *LIEN* (if any) to that lien" (s. 492, adopted from s. 66, 25 & 26 *V. c.* 63, on *chw, White v. Furness*, 1895, *A. C.* 40; 64 *L. J. Q. B.* 161; *Cp.*, *FACTOR: MERCANTILE AGENT*). "Owner" of goods *shipped*; *V. Ribble Nav. Co v. Hargreaves*, cited *SHIPPED*.

"Owner," quâ *Highway Act*, 1835, 5 & 6 *W. 4, c.* 50, s. 65, means, the person in occupation, who may be either the actual owner or only the occupying tenant (*Woodard v. Billericay*, 48 *L. J. Ch.* 535; 11 *Ch. D.* 214; 27 *W. R.* 594; 43 *J. P.* 224).

"Owner of *LAND*"; *V.* *LANDOWNER*.

"Owner of *LICENSED PREMISES*," quâ the *Licensing Act*, 1872, "means, the person for the time being entitled to receive, either on his own account or as mortgagee or other incumbrancer in possession, the *RACK-RENT* of such premises" (s. 74; *va.*, s. 77).

"Owner of a *Limited Interest in Lands*"; *V. Landowners' West of England Co v. Ashford*, 50 *L. J. Ch.* 276; 16 *Ch. D.* 411.

"Owner of the *Prior Estate*," who is the *Protector* of a *Settlement*, s. 22, *Fines and Recoveries Act*, 1833, 3 & 4 *W. 4, c.* 74, is "the real, substantial, owner of the estate, *i.e.* the person who has the beneficial interest in the land" (per *James, L. J.*, *Re Dudson*, 47 *L. J. Ch.* 632; 8 *Ch. D.* 8, 628; *Va.*, *Re Ainslie*, 54 *L. J. Ch.* 8; 51 *L. T.* 780; 33 *W. R.* 148).

"Owner or Occupier" of premises is a sufficient description quâ a *Notice* under s. 128 (1), *P. H. London Act*, 1891 (*R. v. Mead*, cited *OTHER*, p. 1365).

"Owner" of a *SEVERAL FISHERY*, s. 11, *Fresh Water Fisheries Act*, 1878, 41 & 42 *V. c.* 39, does not include one who is merely an *Occupier* (*Swanwick v. Varney*, cited *CATCH*).

"Owner" of a *SHIP*, quâ s. 169, *Mer Shipping Act*, 1854, and, probably, throughout that Act and the replacing Act of 1894, does not mean the *Registered Owner* if he has parted with all control over it, but "must be restrained to such actual owner for the time being of the ship as, either himself or by his master or other authorized agent, manages and controls her" (*Meikleroid v. West*, 45 *L. J. M. C.* 91; 1 *Q. B. D.* 428; 40 *J. P.* 708; 34 *L. T.* 353; 24 *W. R.* 703; *Baumwoll Manufactur v. Furness*, 62 *L. J. Q. B.* 201; 1893, *A. C.* 8; 68 *L. T.* 1; 7 *Asp.* 263). A person who has contracted to buy and has paid a deposit on purchase

of a share in a ship, but who has not been registered, has a real, substantial, interest in the ship and is an "Owner," within the exception provided by s. 147 (1) of the Act of 1854 (*Hughes v. Sutherland*, 7 Q. B. D. 160; 50 L. J. Q. B. 567). *V.* SHIPOWNER: MANAGING OWNER.

"Owner" of *Tithe*; *V.* TITHE OWNER: TITHE RENTCHARGE.

"Owner" of a WRECK, s. 56, 10 & 11 V. c. 27, is the person who was the owner when the expense of removing it was incurred (*Arrow Co. v. Tyne Commrs*, 1894, A. C. 508; 63 L. J. P. D. & A. 146; over-ruling *Eglinton v. Norman*, 46 L. J. Ex. 557; *Vf*, *Barraclough v. Brown*, 1897, A. C. 615; 66 L. J. Q. B. 672; 76 L. T. 797; 2 Com. Ca. 249). But in the similar, but differently worded, provision of the Victoria Marine Act, 1890 (s. 13), "Owner," is the owner when the ship "sunk, stranded, or ran on shore," for in that section it is the owner of the ship that is made liable, — a liability not transferred by an ABANDONMENT (*Smith v. Wilson*, 1896, A. C. 579; 65 L. J. P. C. 66; 12 Times Rep. 505). *Vf*, REMOVE.

"Beneficial Owner"; *V.* BENEFICIAL.

"Successive Owner"; *V.* SUCCESSIVE.

"Owner who allows"; *V.* ALLOW.

*V.* ADJOINING OWNER: BUILDING OWNER: TRUE OWNER.

**OWNER'S RISK.** — Goods carried at "Owner's Risk," means, at the risk of the owner, *minus* the liability of the carrier for the misconduct of himself or servants (per Branwell, L. J., *Lewis v. G. W. Ry*, 47 L. J. Q. B. 134; 3 Q. B. D. 195; *Pontifex v. Hartley*, 62 L. J. Q. B. 199); and a stipulation that goods shall be carried "at owner's risk," only exempts the carrier from the ordinary risks of the transit and does not cover the carrier's negligence (*Mitchell v. Lanc. & Y. Ry*, 44 L. J. Q. B. 107; L. R. 10 Q. B. 256), or his negligent delay (*Robinson v. G. W. Ry*, 35 L. J. C. P. 123); even though less than the usual freight be charged (*D'Arc v. Lond. & N. W. Ry*, L. R. 9 C. P. 325).

*Vf*, *McCawley v. Furness Ry*, L. R. 8 Q. B. 57; *Stewart v. Lond. & N. W. Ry*, 33 L. J. Ex. 199. *Cp*, DELAY IN TRANSIT.

Where a Bill of Lading provides that the goods are "to be forwarded at SHIP'S EXPENSE and Owner's Risk," "Owner's Risk," means, "that those risks which, ordinarily, the ship takes are to be taken by the shipper"; therefore, the clause does not relieve the ship-owner from liability for negligent transshipment, *secus*, for negligent stowage (*Allan v. James*, 3 Com. Ca. 10). *Vf*, SHIP'S RISK.

*Cp*, MERCHANT'S RISK: PASSENGER'S RISK.

**OWNERSHIP.** — Quà Small Dwellings Acquisition Act, 1899, 62 & 63 V. c. 44, " 'Ownership,' shall be such interest, or combination of interests, in a house as (together with the interest of the purchaser of the ownership) will constitute either a Fee Simple in possession, or a Leasehold Interest in possession of at least 60 years unexpired at the date of the purchase " (subs. 2, s. 10); quà Scotland, " 'Ownership' shall in-

clude a Leasehold Interest of at least 60 years unexpired at the date of the purchase" (subs. 3. s. 11).

Part Ownership; *V.* PARTNERSHIP.

Reputed Ownership; *V.* POSSESSION, ORDER OR DISPOSITION.

"Ownership VOTER," quâ Registration Act, 1885, 48 & 49 V. c. 15, "means, a person entitled to vote in respect of the ownership of property, whether of freehold leasehold or copyhold tenure" (s. 19). *Cp.* OCCUPATION VOTER: PARLIAMENTARY.

**OWNING OCCUPIER.** — *V.* OCCUPIER.

**OXGANGE.** — "*Una borata terra*, an oxgange, or an oxgate of land, is as much as an ox can till"; but, like *carucata*, it "may containe meadow, pasture, and wood necessary for such tillage" (Co. Litt. 5 a: *Vf.* Cowel: Touch. 93: *Se.* Elph. 564). *V.* HIDE: KNIGHT'S FEE.

**OYER.** — To have Oyer of a Record or Document, is a request "made in Court that the judges, for better proofs-sake, will be pleased to hear or look upon" it (Cowel: *Vf.* Termes de la Ley).

**OYER AND TERMINER.** — A Court or Commission of "Oyer and Terminer," is one to hear and determine (Termes de la Ley: Cowel: Jacob: 4 Bl. Com. 269, 270). *Vf.* HEAR: *Cp.* GAOL DELIVERY.

The Court of Queen's, or King's, Bench (lately the Q. B. D. and now the K. B. D.), is a Court of "Oyer and Terminer," e.g. in s. 20, 11 & 12 V. c. 42 (*R. v. Eyre*, 37 L. J. M. C. 159; L. R. 3 Q. B. 487).

**OYSTER.** — Quâ Part 3, Sea Fisheries Act, 1868, 31 & 32 V. c. 45, "Oysters' and 'Mussels' respectively, include the brood, ware, half-ware, spat, and spawn, of Oysters and Mussels respectively" (s. 28). *V.* OYSTER SPAT.

Oysters taken in Foreign Waters; *V.* TAKE.

*V.* FISH: SEA FISH.

*Note.* For a judicial hesitancy to hold that the common law right of the subject to take sea fish includes a right to take the shells, *V. Bagott v. Orr*, 2 B. & P. 472.

**OYSTER LAYINGS.** — "Perhaps, the words 'Oyster Layings' would not pass the privilege of getting oysters, because those words only import a privilege of laying oysters, and it might be doubtful whether they could give a right to take them" (per Littledale, J., *Scrutton v. Brown*, 4 B. & C. 503, 504); but the association of this phrase with "SEA-GROUNDS" would not limit the force of the latter (*S. C.*).

**OYSTER SPAT.** — "Spat" or "Spawn" of Fish, is the same thing as "FRY or Brood"; "Oyster Spat," is the spawn or young brood of oysters cast by oysters and not fully grown or formed into oysters or fit for the food of man (*Maldon v. Woolvet*, 12 A. & E. 15).



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## P — PACKET

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**P.** — *V.* PER PROCURATION.

**P. A.** — *V.* PARTICULAR AVERAGE.

**P. P. I.** — “P. P. I.” Policy; *V.* HONOUR.

**PACIFIC.** — In a SLIP, “the Pacific” does not mean all Ports on the West Coast of North, Central, or South, America; what it means in any particular case depends on the circumstances and course of dealing (*Royal Ex. Assree v. Tod*, 8 Times Rep. 669); in *the* it meant, all the Ports on the west coast of *South* America.

**PACK.** — “Pack of Cards”; *V.* CARDS.

**PACKAGE.** — *V.* PACKET: PARCEL.

That which is a “PAPER WRAPPER” within s. 6, Margarine Act, 1887, cannot also be a “Package” within the same section (*Toler v. Bishop*, 65 L. J. M. C. 4; 73 L. T. 403; 60 J. P. 9). *V.* MARGARINE.

Quà Salmon and Freshwater Fisheries Acts, 1861 to 1892, “‘Package,’ shall mean and include, any box, basket, barrel, case, receptacle, sack, bag, wrapper, or other thing, in which fish is placed for the purpose of carriage consignment or exportation” (s. 6, 55 & 56 V. c. 50).

Similar Package; *V.* SIMILAR.

**PACKER.** — “This is a term well understood in London, and means, a person employed by merchants to receive, and (in some instances) to select, goods for them from manufacturers, dyers, calenderers, &c, and pack the same for exportation” (Arch. Bank., 11 ed., 37).

**PACKET.** — *V.* PACKAGE: PARCEL: POST LETTER.

Quà Post Office Offences Act, 1837, 1 V. c. 36, “Packet” includes LETTER (s. 47); *V.* same section for interp of “Packet Postage,” “Packet Letter,” “Packet Boats,” and “Post Office Packets.”

Quà Post Office Act, 1875, 38 & 39 V. c. 22, “*Postal* Packet,” “means, a letter, post-card, newspaper, book-packet, pattern or sample packet, circular, legal and commercial document, packet of photographs, and

every packet or article which is not, for the time being, prohibited by or in pursuance of the Post Office Acts from being sent by post: Every Postal Packet shall be deemed to be a Post Letter within," 1 V. c. 36 (s. 10): *Vf*, 47 & 48 V. c. 76, s. 20; 54 & 55 V. c. 46, s. 12. "A REPLY Post Card, or any part thereof, which may be again transmitted through the post without further payment, shall be deemed to be a 'Postal Packet,' within the meaning of" the Post Office (Duties) Acts (s. 2, 45 & 46 V. c. 2). V. POST OFFICE.

"INLAND" Postal Packet, means a Postal Packet "posted within the UNITED KINGDOM and addressed to some place in the United Kingdom" (s. 11, 38 & 39 V. c. 22), and quâ that Act, "United Kingdom" includes, "the Channel Islands and the Isle of Man" (s. 12).

**PAID.** — "Paid," like "PAYMENT," is, generally, satisfied by something being given or done which is MONEY'S WORTH, *e.g.* of the payment of a Legacy as in *Coombe v. Trist* (1 My. & C. 69) and *A-G. v. Loscombe* (5 H. & N. 564; 29 L. J. Ex. 305); or of an "estate" for which at least £30 shall be "*bonâ fide* paid" so as to obtain a Pauper Settlement, s. 5, 9 G. 1, c. 7 (*R. v. Belford*, 3 B. & S. 662; 32 L. J. M. C. 156).

A testamentary direction that all legacies are to be "paid" free of Legacy Duty, will be read as including the idea of satisfaction, transfer, or delivery, so that chattels, stock, or shares, the subject of a specific legacy, will, like payment of a pecuniary legacy, have to be delivered or transferred free of duty to the legatee (*Ansley v. Cotton*, 16 L. J. Ch. 55: *Re Johnston, Cockerell v. Essex*, 53 L. J. Ch. 645; 26 Ch. D. 538; 32 W. R. 634).

A testamentary direction that Debts are to be "paid" (whether Legacies are also mentioned or not) prevents the presumption that a legacy to a Creditor is in satisfaction of his claim (*Re Huish, Bradshaw v. Huish*, 59 L. J. Ch. 135; 43 Ch. D. 260; disapproving *Edmunds v. Low*, 3 K. & J. 318; 26 L. J. Ch. 432).

#### V. PAY.

Articles of a Co which empower the declaration of Dividends "to be paid" to Members, do not authorize the issue of Bonds for Dividends (*Wood v. Odessa W. W. Co*, 42 Ch. D. 636; 58 L. J. Ch. 628: *Hoole v. G. W. Ry*, 3 Ch. 262).

#### V. TO BE PAID: PAYABLE: PAYMENT.

A Bill of Sale "truly sets forth its consideration" (s. 8, Bills of S. Act, 1882), if the money therein stated to be "paid" did not actually pass in cash, but was a sum owing by the grantor to the grantee for unpaid purchase-money of the chattels therein comprised (*Ex p. Bolland*, 52 L. J. Ch. 113; 21 Ch. D. 543; 31 W. R. 102). V. TRULY SET FORTH: Now, p. 1296.

In a Charter-Party agreeing to pay the highest sum proved to have

been paid, "paid" should be read as meaning "contracted to be paid" (*Gether v. Capper*, 24 L. J. C. P. 69; 15 C. B. 701: *Vf, PROVE*).

So, in a Re-Insree Policy, "to pay as may be paid thereon" does not imply an actual payment by the re-insurer as a Condition Precedent, but means that payment under such re-insree is to be regulated by that to be made on the Original Policy (*Re Eddystone Insree*, cited *PAY*).

Stamp on Security for money to be "lent, advanced, or paid," 55 G. 3, c. 184, Sch; *V. Wroughton v. Turtle*, 11 M. & W. 561; 13 L. J. Ex. 57.

"Money paid," s. 1, Gaming Act, 1892, 55 V. c. 9 (*V. GAMING CONTRACT*), does not apply to a revocable deposit (*O'Sullivan v. Thomas*, 1895, 1 Q. B. 698; 64 L. J. Q. B. 398; 72 L. T. 285; 43 W. R. 269; *Burge v. Ashley*, 1900, 1 Q. B. 744; 69 L. J. Q. B. 538; 82 L. T. 518; 48 W. R. 438). *V. IN RESPECT OF*.

"Commission paid by the Client"; *V. BY*.

"Unless he shall have paid all such Rates"; *V. UNLESS*.

"Valuable Consideration actually paid"; *V. VALUABLE*.

*V. PAYMENT: I WILL SEE YOU PAID: RECEIPT*.

**PAID OFFICER.** — "Paid Officers" may be appointed, s. 46, Poor Law Amendment Act, 1834, and any Paid Officer deemed UNFIT or Incompetent may be discharged, s. 48, *Ib.*; by s. 109, *Ib.*, "OFFICER" extends to "any CLERGYMAN, Schoolmaster, person duly licensed to practise as a Medical Man, Vestry Clerk, Treasurer, Collector, Assistant Overseer, Governor, Master or Mistress of a Workhouse, or any other person who shall be employed . . . in carrying the laws for the Relief of the Poor, into execution"; a Workhouse Chaplain is a "Paid Officer" within ss. 46, 48 (*Ex p. Molyneux*, 11 W. R. 233; 7 L. T. 599; 27 J. P. 56).

**PAID UP.** — Paid-up Capital; *V. CAPITAL*.

Paid-up Shares; *V. FULLY PAID UP*.

**PAIN.** — "Under pain of forfeiting Body and Goods"; *V. FELONY*.

"'Paine fort et dure,' is an especial punishment for such as being arraigned for Felony, refuse to put themselves upon the common tryall of God and the Countrey, and thereby are mute, or as mute in law" (*Termes de la Ley*); *Vh*, 4 Bl. Com. 325-329, where the phrase is "Peine forte et dure." Abolished by 12 G. 3, c. 20.

**PAINT.** — A covenant to "paint" premises at the end of a period, does not include distemping (*per Cave, J., Perry v. Chotzner*, 9 Times Rep. 488).

**PAINTING.** — A "Painting," is a pictorial work in colours the object and value of which are artistic. Hence original trade models and Working designs, though carefully painted by hand and skilfully designed, are not "Paintings" within the Carriers Act, 1830 (*Woodward v. Lond.*

& *N. W. Ry*, 47 L. J. Ex. 263; 3 Ex. D. 121). Nor (per Hawkins, J., *Ib.*) would such models or designs be "Original Paintings" within the Fine Arts Copyright Act, 1862, 25 & 26 V. c. 68: *See, Hildesheimer v. Dunn*, 35 S. J. 365; 64 L. T. 452.

When it is doubtful whether a pictorial work is a "Painting" or not, the question is for the jury, just as it is on the other things enumerated in the Carriers Act, *e.g.* SILK.

V. PICTURE: ENGRAVING: COPY: PLATE.

**PAIS.** — ASSURANCE of land "by matter *in pais*, or deed; which is an assurance transacted between two or more private persons *in pais*, in the country; that is (according to the old common law) upon the very spot to be transferred" (2 Bl. Com. 294).

ESTOPPEL "by matter *in pais*, as by liverie, by entry, by acceptance of rent, by partition, and by acceptance of an estate, as here in the case that Littleton putteth (s. 667); whereof Littleton maketh a special observation that a man shall be estopped by matter in the countrey, without any writing" (Co. Litt. 352 a).

Trial by Jury, "called also the trial *per pais*, or by the country" (3 Bl. Com. 349; 4 *Ib.* 341).

PALACE. — V. ROYAL PALACE.

**PALMER ACT.** — The Central Criminal Court Act, 1856, 19 & 20 V. c. 16. This Act does not derive its popular name from a legislator, but because its need was shown by the trial of Palmer, the Rugeley murderer.

Roundell Palmer's Act; Sales of Reversions Act, 1867, 31 & 32 V. c. 4.  
V. HINDE PALMER'S ACT.

**PALMISTRY.** — "Is a kind of divination, practised by looking upon the lines and marks of the hands and fingers" (Jacob). *Vh, Monck v. Hilton*, 46 L. J. M. C. 163; 2 Ex. D. 268; 25 W. R. 373; 41 J. P. 214; 9 Encyc. 344.

*Cp.* DECEIVE: FORTUNES.

**PANEL.** — "'Pannell' is an English word, and signifieth a little part; for a pane is a part, and a pannell is a little part; as a pannell of wainscot, a pannell of a saddle, and a pannell of parchment wherein the jurors names be written and annexed to the writ. And a jury is said to be impannelled, when the sherife hath entered their names into the pannell, or litle peece of parchment, *in pannello assise*" (Co. Litt. 158 b). *Vf*, Termes de la Ley, *Pannell*: Cowel, *Panell*.

**PANNAGE.** — All the definitions "agree that the Right of Pannage is simply a right granted to an owner of pigs (he is generally entitled to

some land; as a rule it was granted to the owners of land of some kind who kept pigs) to go into the wood of the grantor of the right, and to allow the pigs to eat the acorns or beech mast which fell upon the ground. That is what the right has always been defined to be. The pigs have no right to take a single acorn or any beech mast off the tree, either by themselves or by the hands of those who drive them, who might reach them or knock them down. There is not even a right to shake the tree. It is only a right to eat those things which fell" (per Jessel, M.R., *Chilton v. London*, 47 L. J. Ch. 435; 7 Ch. D. 562: *Vf*, *Termes de la Ley*: Cowel: Jacob: Elph. 606). *V. PASTURES.*

As to the rateability of Herbage and Pannage; *V. Bute v. Grindall*, 1 T. R. 338: *Jones v. Maunsell*, 1 Doug. 302.

**PANNELL.** — *V. PANEL.*

**PANTOMIME.** — *V. arg. Wigan v. Strange*, cited STAGE PLAY: DRAMATIC.

**PAPER.** — "Paper," is a manufactured substance composed of fibres, — (whether vegetable or animal), — adhering together, in form consisting of sheets of various sizes and of different thicknesses, used for writing or printing or other purposes to which such sheets are applicable (*A-G. v. Barry*, 28 L. J. Ex. 211; 4 H. & N. 470: *Vf*, *Coles v. Dickinson*, 16 C. B. N. S. 604; 33 L. J. M. C. 235). Paper can, generally, be now used as a substitute for parchment (*Ex p. Carr*, 5 C. B. 496); and on and from 1st Jan 1901, paper (of a special kind) has been substituted for parchment for grossments of Wills for Probate (45 S. J. 91).

Nomination Paper; *V. NOMINATION.*

*V. SHIP PAPERS.*

**PAPER MILL.** — *V. NON-TEXTILE FACTORIES.*

**PAPER-STAINING.** — "Paper-staining Works"; *V. NON-TEXTILE FACTORIES.*

**PAPER WRAPPER.** — A Cardboard Wrapper is a "Paper Wrapper" within s. 6, Margarine Act, 1887, but the "Paper Wrapper," however manufactured, should be the external wrapper, or if enclosed in another wrapper that should be at the purchaser's request (*Toler v. Bishop*, cited PACKAGE).

**PARALLEL.** — In the Specification of a Patent for a horse-clipping machine, "Parallel" was construed in its popular sense of going side by side, and not in its purely mathematical sense (*Clarke v. Adie*, 2 App. Ca. 423; 46 L. J. Ch. 598).

**PARAMOUNT.** — "Paramount" is a word compounded of two French words (*par* and *monter*), and it signifies in our law, the highest Lord of the Fee" (*Termes de la Ley*, referring to *Fitz. N. B.* 135). *Vf*, Cowel: 2 Bl. Com. 59, 91.

**PARAPHERNALIA.** — A Wife's paraphernalia (in which she takes a qualified ownership, *V. Wms. P. P.* 302) consist of her apparel and ornaments suitable to her station (2 Bl. Com. 435, 436: *Mungey v. Hungerford*, 2 Eq. Ca. Ab. 156) including gifts from her husband (*Graham v. Londonderry*, 3 Atk. 393: *Jervoise v. Jervoise*, 17 Bea. 566). Such gifts are not affected by the M. W. P. Act, 1882, and may still be made; but it is a question of fact whether gifts of ornaments from a husband to his wife are absolute or only as paraphernalia (*Tasker v. Tasker*, 1895, P. 1; 64 L. J. P. D. & A. 36; 71 L. T. 779; 43 W. R. 255).

*Cp.*, SEPARATE PROPERTY: SEPARATE USE: PIN MONEY.

**PARAVAIL.** — “‘Paravaile,’ . . . signifies in our law, the lowest tenant of the fee, who is tenant to one that holdeth over of an other” (*Termes de la Ley*).

**PARCEL.** — Paintings, exceeding the value of £10, laid upon one another without any covering or tie in a waggon which has sides but no top, are a “Parcel or Package” within ss. 1, 2, Carriers Act, 1830 (*Whaite v. Lanc. & Y. Ry*, 43 L. J. Ex. 47; L. R. 9 Ex. 67; 22 W. R. 374).

Quà Post Office (Parcels) Act, 1882, 45 & 46 V. c. 74, “‘Parcel,’ means, all such postal packets as by the regulations of the Treasury, made in pursuance of the Post Office Acts, are defined to be Parcels” (s. 17). *F. PACKET*: “Foreign Parcel,” sub *FOREIGN*: “Inland Parcels,” sub *INLAND*.

“Packed Parcel” as contrasted with “Enclosure” or “Enclosed Parcel,” for the purpose of carriage; *V. Crouch v. G. N. Ry*, 25 L. J. Ex. 137; 11 Ex. 742.

“Parcel Rates” of Carriage; *V. Parker v. G. W. Ry*, 11 C. B. 545; 21 L. J. C. P. 57; 6 E. & B. 77; 25 L. J. Q. B. 209.

*V. PACKAGE.*

The “Parcels” of a Conveyance usually begin with the words “All that,” and contain a description of the property conveyed; *V. 2 Bl. Com. Appx. ii.*

“*Parcelle terra*,’ a small piece of land” (*Cowel*).

**PARCENERS.** — “Many times parceners are called coparceners” (*Co. Litt.* 164 b). As to description and division of Parceners, *V. Ib.* 163 a, *et seq.*: *Termes de la Ley*: *Jacob*.

“None are called Parceners by the Common Law but females, or the heires of females, which come to lands or tenements by descent; for if sisters purchase lands or tenements, of this they are called joyn-tenants, and not parceners” (*Litt.* s. 254); and so co-heiresses who take as such under words of *PURCHASE* are joint tenants (*Berens v. Fellowes*,

56 L. T. 391; 35 W. R. 356; 3 Times Rep. 425: *Re Baker, Pursey v. Holloway*, 79 L. T. 343: *Vf*, HEIR: RIGHT HEIRS).

*Vh*, 2 Cru. Dig. Title 19: 9 Eneye. 349-352.

**PARDON.**— Pardon, is the remitting or forgiving of a CRIME; and is *ex gratia Regis* (Cowel: Jacob). *Vf*, *R. v. Harrod*, 2 C. & K. 294: *Re Moseley*, cited CRIME.

A Pardon, is a remission of guilt; an Amnesty, is oblivion (*Exp. Law*, 35 Georgia, 296).

*V*. FREE PARDON: THINK FIT.

**PARENT.**— The ordinary sense of the word "Parent" is, father or mother (*Sibley v. Perry*, 7 Ves. 530: *Vf*, ISSUE: 2 Jarm. 103-105); but it may mean any lineal ancestor (*Ross v. Ross*, 20 Bea. 645: "I have tried hard to understand that part of the judgment in *Ross v. Ross* that deals with the shifting meaning of the word 'Parent'"; per Brett, L. J., *Ralph v. Carrick*, 48 L. J. Ch. 809).

Where there is a Condition in Restraint of Marriage without the consent of "Parents," a surviving parent may give the consent (*Dawson v. Oliver-Massey*, 45 L. J. Ch. 519; 2 Ch. D. 753; 34 L. T. 120: *Booth v. Meyer*, 38 L. T. 125. *Vh*, *Re Brown*, 18 Ch. D. 61: CONSENT).

"Parents," s. 5, Matrimonial Causes Act, 1859, 22 & 23 V. c. 61, means, parents personally, *i.e.* the Husband or Wife; the word does not include their respective representatives (*Thomson v. Thomson*, 1896, P. 263; 65 L. J. P. D. & A. 80; 74 L. T. 801; 45 W. R. 134); and if there is no child alive there can be no "parents" (*Bird v. Bird*, 14 W. R. 1023; 35 L. J. P. & M. 102; 14 L. T. 860). *Vf*, *Dormer v. Ward*, cited PROPERTY.

Quà Elementary Education Act, 1870, 33 & 34 V. c. 75, " 'Parent,' includes, Guardian and every person who is liable to maintain, or has the ACTUAL custody of, any CHILD " (s. 3); but this does not prevent "Parent" from bearing its obvious meaning of Father, or (failing him) Mother, if there be one on whom an Order can be made (*London School Bd v. Jackson*, 50 L. J. M. C. 134; 30 W. R. 47).

The def of "Parent" in 33 & 34 V. c. 75, is prescribed for, —

Canal Boats Act, 1877, 40 & 41 V. c. 60; *V*. s. 14:

Education (Scot) Act, 1872, 35 & 36 V. c. 62; *V*. s. 1:

Irish Education Act, 1892, 55 & 56 V. c. 42; *V*. s. 13:

Welsh Intermediate Education Act, 1889, 52 & 53 V. c. 40; *V*. s. 17.

Quà Factory and Workshop Act, 1901, " 'Parent,' means, a Parent or Guardian of, or person having the LEGAL custody of or the control over or having direct benefit from the wages of, a YOUNG PERSON or Child " (s. 156).

The def provided for the Act for Prevention of Cruelty to Children (52 & 53 V. c. 44, s. 17) has been replaced by s. 23, Prevention of Cruelty to Children Act, 1894, 57 & 58 V. c. 41.

Quà Custody of Children Act, 1891, 54 & 55 V. c. 3, "Parent," includes "any person *at law* liable to maintain such child or *entitled to his custody*" (s. 5); but quà Industrial Schools (Scot) Act, 1861, 24 & 25 V. c. 132, the def includes "any person *legally* liable to maintain a child" (s. 3); whilst quà the Vaccination Act, 1871, 34 & 35 V. c. 98, the def broadly includes "any person having the custody of a child" (s. 4).

Quà Fatal Accidents Act, 1846, 9 & 10 V. c. 93, "Parent" includes, "father and mother, and grandfather and grandmother, and stepfather and stepmother" (s. 5).

The Putative Father of an Illegitimate child is not its "Parent"; *V. CARE.*

*V. CHILD: FATHER: MOTHER.*

**PARENTAL DUTY.**— "Unmindful of his Parental Duties," s. 3, 54 V. c. 3; *V. Re O'Hara*, cited **ABANDONMENT.**

**PARI PASSU.**— "Save as aforesaid, ALL Debts provable under the bankry shall be paid *pari passu*," s. 32, Bankry Act, 1869, repld s. 40 (4), Bankry Act, 1883, includes *bonâ fide* VOLUNTEER Debts, as well as those for VALUABLE consideration (*Re Stewart, Ex p. Pottinger*, 47 L. J. Bank. 43; 8 Ch. D. 621).

Although s. 133 (1), Comp Act, 1862, says that the ASSETS of a Co in Voluntary Liquidation are to be "applied in satisfaction of its liabilities *pari passu*," yet, as the Crown is not mentioned, its right to priority is not affected (*Re Henley*, 9 Ch. D. 469; 48 L. J. Ch. 147; 26 W. R. 885; *Re Oriental Bank*, 28 Ch. D. 643; 54 L. J. Ch. 327; *Sv, Re Regent Storcs*, 38 L. T. 130; W. N. (78) 21).

Where a Co's Debentures state that they are to rank "*pari passu*," the power given by them to appoint a Receiver is a fiduciary power and must be fairly exercised in the interests of all the debenture-holders (*Re Maskelyne Typewriter, Lim.*, 1898, 1 Ch. 133; 67 L. J. Ch. 125; 77 L. T. 579; 46 W. R. 294).

**PARISH.**— A Parish, "is the circuit of ground in which the people who belong to one Church do inhabit, and the particular charge of a Secular Priest" (Jacob: *V. Re Sandbach School*, 1901, P. 20; 70 L. J. Ch. 604). *Vf*, Shaw's Parish Law: Steer, *Ib.*: 9 Encyc. 373-378. As to the Division of Parishes, *V. Phil. Ecc. Law*, Part 9, ch. 6.

In all Acts of Parliament passed since 1866, "'Parish,' shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate Poor Rate is or can be made, or for which a separate Overseer is or can be appointed" (s. 5, Interp Act, 1889): that def is taken from s. 18, 29 & 30 V. c. 113, which made more precise the def contained in s. 52, 15 & 16 V. c. 85, on *whc, R. v. Sudbury*, 6 W. R. 551; 27 L. J. Q. B. 232.



"Parish," s. 109, 4 & 5 W. 4, c. 76; *V. R. v. Fornsett, St. Mary*, 12 Q. B. 160; 18 L. J. M. C. 125.

Residence for 3 years "in any Parish," so as to confer a Pauper Settlement under s. 34, 39 & 40 V. c. 61, means, "any one Parish," not two or more Parishes in the same Union (*Plomesgate v. West Ham*, 50 L. J. M. C. 51; 6 Q. B. D. 576; 44 L. T. 610; 29 W. R. 630).

"Parish . . . not under any Local Authority," s. 32, Elementary Education Act, 1876, 39 & 40 V. c. 79; *V. R. v. Vane*, 51 L. J. M. C. 114.

"Parish" in Hobhouse's Act, 1 & 2 W. 4, c. 60, does not include a separate portion of a divided ancient parish (*R. v. Basset*, 17 Q. B. 332).

"Parish or Place," s. 1, Beerhouse Act, 1840, 3 & 4 V. c. 61; *V. Preston v. Buckley*, 39 L. J. M. C. 105; L. R. 5 Q. B. 391: and as to same phrase in s. 15, same statute; *V. R. v. Charlesworth*, 20 L. J. M. C. 181; *Smith v. Redding*, 35 L. J. M. C. 202; 7 B. & S. 360; L. R. 1 Q. B. 489; *Rice v. Slee*, L. R. 7 C. P. 378.

"Parishes or Places," s. 20, Church Building Act, 1822, 3 G. 4, c. 72; *V. Craven v. Sanderson*, 7 A. & E. 880; 7 L. J. Q. B. 81; 2 N. & P. 641.

"Parish or Place," s. 34, County Rates Act, 1852, 15 & 16 V. c. 81; *V. A-G. v. Deeping, St. Nicholas*, 68 L. T. 278; 62 L. J. Ch. 188; 57 J. P. 196.

"Parish separately maintaining its own Highways," s. 32, 25 & 26 V. c. 61; *V. R. v. Central Wingland*, 46 L. J. M. C. 282; 2 Q. B. D. 349.

EXTRA-PAROCIAL places, deemed Parishes, for rating purposes, by 20 V. c. 19.

"Parish" has received statutory definition in and for the following Acts; —

Allotments Act, 1887, 50 & 51 V. c. 48; *V. s. 14*:

Annual Turnpike Acts Continuance Act, 1863, 26 & 27 V. c. 94;  
*V. s. 1*:

Bishopries Act, 1878, 41 & 42 V. c. 68; *V. s. 10*:

Church Patronage (Scot) Act, 1874, 37 & 38 V. c. 82; *V. s. 9*:

Compulsory Church Rate Abolition Act, 1868, 31 & 32 V. c. 109; *V. s. 10*:

Ecclesiastical Buildings and Glebes (Scot) Act, 1868, 31 & 32 V. c. 96;  
*V. s. 1*:

Education (Scot) Act, 1872, 35 & 36 V. c. 62; *V. s. 1*:

Highway Act, 1862, 25 & 26 V. c. 61; *V. s. 3*:

Inclosure Act, 1836, 6 & 7 W. 4, c. 115; *V. s. 56*:

Loc Gov Act, 1888, 51 & 52 V. c. 41; *V. s. 100* (that def does not apply to Loc Gov Act, 1894, V. s. 75):

- Loc Gov (Scot) Act, 1889, 52 & 53 V. c. 50; *V. s.* 105:  
 Loc Gov (Scot) Act, 1894, 57 & 58 V. c. 58; *V. s.* 54:  
 Marriage Notice (Scot) Act, 1878; 41 & 42 V. c. 43; *V. s.* 1:  
 Poor Law (Scot) Act, 1898, 61 & 62 V. c. 21; *V. s.* 9:  
 P. H. Scotland Act, 1897, 60 & 61 V. c. 38; *V. s.* 3:  
 Public Libraries Consolidation (Scot) Act, 1887, 50 & 51 V. c. 42;  
*V. s.* 2:  
 Public Worship Regn Act, 1874, 37 & 38 V. c. 85; *V. s.* 6:  
 Redistribution of Seats Act, 1885, 48 & 49 V. c. 23; *V. s.* 23:  
 Revenue Act, 1884, 47 & 48 V. c. 62; *V. s.* 7:  
 Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51; *V. s.* 3:  
 Sale of Exhausted Parish Lands Act, 1876, 39 & 40 V. c. 62;  
*V. s.* 7:  
 School Sites Act, 1851, 14 & 15 V. c. 24; *V. s.* 1:  
 Taxes Management Act, 1880, 43 & 44 V. c. 19; *V. s.* 5:  
 Tithe Act, 1836, 6 & 7 W. 4, c. 71; *V. s.* 12:  
 Valuation (Ir) Act, 1852, 15 & 16 V. c. 63; *V. s.* 45.  
 "Parish or District"; Stat. Def., Church Building Act, 1851, 14 & 15  
 V. c. 97, s. 29.  
 "Parish, District, or Place"; Stat. Def., New Parishes Act, 1856, 19  
 & 20 V. c. 104, s. 33.  
 "Parish or Place"; Stat. Def., Beerhouse Act, 1830, 11 G. 4 & 1 W. 4,  
 c. 64, s. 32; Revenue (No. 2) Act, 1861, 24 & 25 V. c. 91, s. 44.  
 "Burghal Parish"; *V. BURGH.*  
 "Ecclesiastical Parish"; Stat. Def., 41 & 42 V. c. 68, s. 14.  
 "Highway Parish"; *V. HIGHWAY.*  
 "Land Tax Parish"; *V. LAND TAX.*  
 "United Parish"; Stat. Def., Union of Benefices Act, 1860, 23 & 24  
 V. c. 142, s. 2.  
 "PART of a Parish"; Stat. Def., Pluralities Act, 1887, 50 & 51 V.  
 c. 68, s. 1.  
 "Poor Law Parish"; *V. POOR LAW.*  
*V. NEW PARISH: PLACE: RURAL: TOWNSHIP: VILL.*  
 Property "belonging" to a Parish; *V. BELONGING.*

**PARISH BEADLE.** — *V. CONSTABLE: BEADLE.*

**PARISH CLERK.** — "A Parish Clerk, in the ordinary acceptation of the word, is not a Spiritual Person, and so it was decided generations ago, and by Holt, C. J., in particular in *Parker v. Clerk*, Holt, 599" (per Dr. Robertson, *Kemp v. Attenborough*, 30 L. T. O. S. 211); "it appears to be well settled that the Office of Parish Clerk is a Temporal Office" (per Chitty, J., *Lawrence v. Edwards*, No. 2, 1891, 2 Ch. 72). He is appointed by the Minister for the time being (*V. Pinder v. Barr*, and *Lawrence v. Edwards*, cited MINISTER).

**PARISH COUNCIL.**—For England; *V. Loc Gov Act, 1894, 56 & 57 V. c. 73, Part 1*; for Scotland; *V. Loc Gov (Scot) Act, 1894, 57 & 58 V. c. 58, Part 2.*

**PARISH SCHOOL.**—Stat. Def., Education (Scot) Act, 1872, 35 & 36 V. c. 62, s. 1.

**PARISHIONER.**—“ ‘Parishioner’ is a very large word, and takes in not only Inhabitants of the PARISH, but persons who are occupiers of land, that pay the several rates and duties, though they are not resiant, nor do contribute to the ornaments of the church ” (per Hardwicke, C., *A-G. v. Parker*, 3 Atk. 577: *Vf, Etherington v. Wilson*, 45 L. J. Ch. 153; 1 Ch. D. 160: *Batten v. Gedye*, 41 Ch. D. 507). (*Cp, INHABITANT.*

“Parishioners and Inhabitants” of a parish, — “*i.e.* the Parishioners being Inhabitants of the parish ” (Lewin, 88).

In regard to persons to execute a Trust, “the expression ‘*Parishioners and Inhabitants*’ is, in itself, extremely vague, and has never acquired any very exact and definite meaning ” (Lewin, 89); but even without qualifying words, — *e.g.* CHIEFEST AND DISCREETEST, — “Parishioners and Inhabitants ” would be generally confined to those paying scot and lot; yet, if the phrase stand alone, it may easily, and with no better warrant than constant usage, be read as *Housekeepers*, whether paying scot and lot, or not (Lewin, 90).

“By ‘Parishioners and Inhabitants in Vestry assembled,’ are meant the persons who by the existing law constitute the Vestry ” (Lewin, 89, citing *Re Hayle*, 31 Bea. 139; 31 L. J. Ch. 612: *Va, Etherington v. Wilson*, sup).

*V.* cases on this word discussed, Tudor, Char. Trusts, 867–870: 40 J. P. 225.

Stat. Def. — City of London Burial Act, 1857, 20 & 21 V. c. 35, s. 8; Public Worship Regulation Act, 1874, 37 & 38 V. c. 85, s. 6.

**PARK.**—“*Parke*, this should be written *parque*, which is a French word, and signifieth that which we vulgarly call a Parke, of the French word *parquer*, to imparke, to inclose. It is called in *Domesday*, *Parcus*. In law it signifieth a great quantity of ground inclosed, priviledged for wild beasts of chase by prescription or by the King’s grant. . . . A forest and a chase are not, but a parke must be. inclosed ” (Co. Litt. 233 a: *Vf, 2 Bl. Com. 38, 416*). “To a lawful park three things are required: (1) a Liberty either by grant or prescription; (2) Inclosure by pale, wall, or hedge; (3) Beasts savage of the park: 2 Inst. 199 ” (Elph. 606). The right of a Parker to kill unyielding trespassers in his Park (21 Edw. 1, *De Malefactoribus in Parcibus*). was only incident to a strictly legal Park (1 Hale, 491: 3 Dyer, 326 b). *V. BEASTS. Cp, CHASE: WARREN.*

By the grant of a "Park," "not onely the privileged, but the land itselfe passes" (Co. Litt. 5 b).

*Seuble*, the modern def of "Park," is an enclosed (private or public) space of ground set apart for ornament, or to afford the benefit of air exercise or amusement (*Perrin v. N. Y. Central Ry*, 36 N. Y. 126).

Quà County Dublin Grand Jury Act, 1844, 7 & 8 V. c. 106, "Park" or "House" is "to include and be construed to mean, a Courtyard, Garden, or Orchard" (s. 156).

The Royal Parks and Gardens which (in 1872) were under the management of the Commrs of Works were,—Hyde Park; St. James' Park; The Green Park; Kensington Gardens; Parliament Square Garden; Regent's Park; Kennington Park; Primrose Hill; Victoria Park; Battersea Park; Greenwich Park; Kew Gardens, Pleasure Grounds, and Green; Hampton Court Park. Hampton Court Gardens and Green; Richmond Park and Green; Bushy Park; Holyrood Park; Linlithgow Peel or Park (Preamble, Sch 2, and s. 2, Parks Regn Act, 1872, 35 & 36 V. c. 15); *See* as to Linlithgow Peel or Park, s. 5, 37 & 38 V. c. 84. On 1st Nov 1887, Victoria Park, Battersea Park, and Kennington Park, together with Bethnal Green Museum Garden and Chelsea Embankment, were transferred from the Commrs of Works to the Metropolitan Bd of Works (50 & 51 V. c. 34, ss. 2, 7); the successors of which Board is the London County Council (s. 40 (8), Loc Gov Act, 1888).

*V.* PUBLIC PARK: TOWN PARK.

**PARK BOTE.** — *V.* BOTE.

**PARK KEEPER.** — Stat. Def., Parks Regn Act, 1872, s. 3.

**PARKE'S ACT.** — The Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42: *Va*, WENSLEYDALE'S ACT.

**PARLIAMENT.** — "Parliament is the highest and most honourable and absolute Court of Justice in England, consisting of the King, the Lords of Parliament, and the Commons" (Co. Litt. 109 b). The constituent parts of Parliament are, "the King's Majesty, sitting there in his royal political capacity, and the Three Estates of the Realm, *i.e.* the Lords Spiritual, the Lords Temporal (who sit together with the King in one house), and the Commons, who sit by themselves in another. And the King and these Three Estates, together, form the great corporation or body politic of the kingdom, of which the King is said to be *caput, principium, et finis*" (1 Bl. Com. 153). *V.* SUPREME COURT.

Land "purchased with money provided by Parliament in consideration of PUBLIC SERVICES," s. 58 (1, i), S. L. Act, 1882, includes Strathfield-saye (54 G. 3, c. 161), but not Blenheim (*Re Marlborough*, 8 Times Rep. 179, 582). *Cp*, PUBLIC MONEY.

**PARLIAMENTARY.** — “Parliamentary *Borough*”; *V. BOROUGH.*

“Parliamentary *Boundary*”; Stat. Def., 34 & 35 V. c. 61, s. 5. — *Scot.* 25 & 26 V. c. 101, s. 3.

“Parliamentary *Burgh*”; *V. BURGH.*

“The Parliamentary *Costs Acts, 1847 to 1879*”; *V. Sch 2, Short Titles Act, 1896.*

“Parliamentary *COUNTY*,” in England, “means, a County returning a Member or Members to serve in Parliament; and, where a County is divided for the purpose of such return, means a Division of such County” (48 & 49 V. c. 15, s. 19, c. 23, s. 33; *Loc Gov Act, 1888, s. 100.*)

“Parliamentary *ELECTION*,” on and since 1st Jan 1890; *V. s. 17 (1), Interp Act, 1889*: for prior Stat. Def., *V. Mun Corp Act, 1882, s. 7*; 48 & 49 V. c. 10, s. 2, c. 23, s. 24; *Loc Gov Act, 1888, s. 100.* “Law relating to Parliamentary Elections,” *V. 48 & 49 V. c. 23, s. 24.*

“Parliamentary *Election Petition*”; Stat. Def., 45 & 46 V. c. 50, s. 77. — *Scot. 53 & 54 V. c. 55, s. 2.*

“Parliamentary *ELECTORS*”; Stat. Def., 31 & 32 V. c. 41, s. 2.

Parliamentary *Estate*; *V. PARLIAMENT.*

“Parliamentary *Grant*”; Stat. Def., *Elementary Education Act, 1870, 33 & 34 V. c. 75, s. 3*; *Education (Scot) Act, 1872, 35 & 36 V. c. 62, s. 1.*

“Parliamentary *Polling District*”; Stat. Def., 48 & 49 V. c. 23, s. 23.

“Parliamentary *Register of Electors*”; *V. s. 17 (2), Interp Act, 1889.*

“Parliamentary *Stock*”: “In order to come within the description ‘Government or Parliamentary Stocks or Funds,’ a fund ought to be either managed by Parliament, or paid out of the revenues of the British Government, or, at least, guaranteed by that Government” (per Wood, *V. C., Brown v. Brown, 4 K. & J. 706*; *6 W. R. 613*; *31 L. T. O. S. 297*). *V. GOVERNMENT SECURITIES.*

“A ‘Parliamentary’ *Tax*, is one that is imposed *directly* by Act of Parliament” (per Parke, B., *Palmer v. Earith, 14 L. J. Ex. 257*; *14 M. & W. 428*; *Sethe, R. v. Kent Jus., 2 E. & E. 911*; *29 L. J. M. C. 191*; *8 W. R. 496*; *2 L. T. 353*). Land Tax is a “parliamentary” tax (*Manning v. Lunn, 2 C. & K. 13*; *Christ’s Hospital v. Harrild, 2 M. & G. 707*; *3 Sc. N. R. 126*): but a Sewers Rate is not (*Waller v. Andrews, 3 M. & W. 312*; *7 L. J. Ex. 68*; *Palmer v. Earith, sup*); nor a Local Improvement Rate (*Bedford Union v. Bedford Imp. Commrs, 21 L. J. M. C. 229*; *7 Ex. 777*); nor a rate made, under a Local Act, for Repair of a Bridge *ratione tenuræ* (*Baker v. Greenhill, 11 L. J. Q. B. 161*; *2 G. & D. 435*; *3 Q. B. 148*); nor a County Rate which, by statute, was to be levied and paid out of the Poor Rate (*R. v. Aylesbury, 9 Q. B. 261*). *Vf, Woodf. 591*: *Cp, PAROCHIAL RATE: PAROCHIAL TAX. V. TAXES.*

“Parliamentary *Voter*,” quâ Parliamentary and Municipal Registration Act, 1878, 41 & 42 V. c. 26, “means, a person entitled to be regis-

tered as a VOTER, and, when registered, to vote at the election of a Member or Members to serve in Parliament for a Parliamentary Borough" (s. 4). *Vf*, s. 19, 48 & 49 V. c. 15; s. 100, Loc Gov Act, 1888. *Cp*, "County Elector," sub COUNTY: PAROCHIAL ELECTOR.

**PAROCHIAL.** — *V*. EXTRAPAROCHIAL: PARISH.

**PAROCHIAL BUILDING.** — Quà Parochial Buildings (Scot) Act, 1862, 25 & 26 V. c. 58, "Parochial Building" means and includes, "church, manse, churchyard walls, schoolhouse, and schoolmaster's house respectively" (s. 1).

**PAROCHIAL BUSINESS.** — In country parishes, the Poor Rate Collector's Office will, generally, be the "Place for transacting Parochial Business," within the provision as to serving Notices in s. 101, 6 V. c. 18 (*Green v. Mepham*, 48 L. J. C. P. 92).

**PAROCHIAL CHAPELRY.** — *V*. CHAPELRY.

**PAROCHIAL CHARITY.** — Quà Loc Gov Act, 1894, " 'Parochial Charity,' means, a CHARITY the benefits of which are, or the separate distribution of the benefits of which is, confined to INHABITANTS of a single Parish, or of a single ancient Ecclesiastical Parish divided into two or more parishes, or of not more than 5 neighbouring parishes" (s. 75): *Vh*, *Re Ross*, cited ECCLESIASTICAL CHARITY.

**PAROCHIAL CHURCH.** — An exemption from Turnpike Toll for persons "going to and returning from their PROPER Parochial Church, Chapel, or other place of religious worship, on Sundays" was, in all its terms, governed by "parochial," and was confined to Members of the Church of England who themselves were only exempt when attending worship in their own parish, any other not being their "proper" place (*Lewis v. Hammond*, 2 B. & Ald. 206). *Cp*, USUAL PLACE OF RELIGIOUS WORSHIP.

**PAROCHIAL ELECTOR.** — Quà Loc Gov Act, 1894, " 'Parochial Elector,' when used with reference to a Parish in an URBAN District or in the County of London or any County Borough, means, any person who would be a Parochial Elector of the Parish if it were a RURAL Parish" (s. 75); this def is adopted quà the London County Council (63 & 64 V. c. 29, s. 3).

A Freeman, quà Freeman, is not a Parochial Elector within s. 2 (1), or s. 44 (1) of the Act (*Hart v. Beard*, 1896, 1 Q. B. 54; 65 L. J. Q. B. 157; 73 L. T. 535). *Vf*, SEX.

**PAROCHIAL FUNDS.** — *V*. PUBLIC PAROCHIAL FUNDS.

## PAROCHIAL OFFICER 1409 PAROCHIAL RELIEF

**PAROCHIAL OFFICER.** — Stat. Def., quâ the Public Records Acts for Ireland, 38 & 39 V. c. 59, s. 4.

**PAROCHIAL PURPOSE.** — *V. R. v. St. Marylebone*, 1895, 1 Q. B. 771; 64 L. J. Q. B. 622; 72 L. T. 11: BELONGING.

**PAROCHIAL RATE.** — A General District Rate, under ss. 209-211, P. H. Act, 1875, which may or may not include several parishes, is not a "Parochial Rate" within s. 14, Bills of Sale Act, 1882 (per North, J., *Richards v. Kidderminster*, 65 L. J. Ch. 508 n: *Vf, Wimbledon v. Underwood*, cited DISTRESS).

An exemption from all "Parochial Rates or Assessments," does not exonerate from Land Tax (*Waterloo Bridge Co v. Cull*, cited PAROCHIAL TAX: *Sv, R. v. East Teignmouth*, 1 B. & Ad. 244).

V. RATE. *Cp*, PARLIAMENTARY.

**PAROCHIAL RELIEF.** — Parochial Relief, speaking generally and also as disqualifying a person from being an elector (s. 36, Rep People Act, 1832, 2 & 3 W. 4, c. 45), means, the receipt of any benefit, service, or needful thing, at the cost of, or by persons employed and paid by, the parish, to or for the presumptive voter, or his wife, or child under 16 not being blind or deaf or dumb (4 & 5 W. 4, c. 76, s. 56); and such relief to a wife or child would still be parochial relief to the husband or father though he did not at the time require parochial assistance and did not authorize his wife to apply for it (*Bewdley*, 1 O'M. & H. 176). Of course, the supply of nutriment is such relief. And so also is the supply of a coffin or the payment of funeral expenses (*Oldham*, 1 O'M. & H. 159. 160, 161: *Vf*, 1 Rogers, 212). So, charitable parish labour at a price exceeding the value of the work done, is parochial relief (*Magarill v. Whitehaven*, 55 L. J. Q. B. 38; 16 Q. B. D. 242; 53 L. T. 667; 34 W. R. 275; 49 J. P. 743).

Excusal from payment of poor-rate on the ground of poverty is not receiving parochial relief (*Mashiter v. Dunn*, 18 L. J. C. P. 13; 6 C. B. 30; 2 Lutw. 112), in which case Maule, J., said, — "a man is not receiving parochial relief because he does not pay the rate, any more than I receive money from a beggar, because I do not give him any when he asks me." Nor is relief by way of loan under s. 58, 4 & 5 W. 4, c. 76, disqualifying (*Oldham*, 1 O'M. & H. 161). And though Medicine from, or Medical Attendance by, the parish doctor is parochial relief (*Oldham*, sup), yet that kind of relief does not now disqualify a person from being registered as a parliamentary or municipal voter (48 & 49 V. c. 46, ss. 2, 4; V. MEDICAL; but s. 2 excludes its application to elections of guardians); and statutory exceptions from what would otherwise be parochial relief are also made, so that no "right or privilege" shall be lost by reason of Parochial Vaccination (30 & 31 V. c. 84, s. 26), and so that no

“franchise, right, or privilege” shall be lost by reason of School Fees being paid for poor persons by the guardians (39 & 40 V. c. 79, s. 10).

V. ALMS: RELIEF.

**PAROCHIAL TAX.**—Neither Land Tax (*Waterloo Bridge Co v. Cull*, 29 L. J. Q. B. 10; 1 E. & E. 213), nor a Sewers Rate (*Waller v. Andrews*, 3 M. & W. 312; 7 L. J. Ex. 68; *Palmer v. Earith*, 14 M. & W. 428; 14 L. J. Ex. 256), nor an Improvement Rate by virtue of a local act (*Bedford Union v. Bedford Imp. Commrs*, 21 L. J. M. C. 229; 7 Ex. 777), nor a rate made, under a Local Act, for Repair of a Bridge *ratione tenuræ* (*Baker v. Greenhill*, 11 L. J. Q. B. 161; 2 G. & D. 435; 3 Q. B. 148), is a “Parochial” Tax. But a County Rate, levied and paid out of the poor rate, is Parochial (*R. v. Aylesbury*, 9 Q. B. 261). *Vf*; Woodf. 591: *Cp*, PARLIAMENTARY: V. PAROCHIAL RATE: TAXES.

**PAROL.**—“All Contracts are, by the laws of England, distinguished into Agreements by SPECIALTY and Agreements by Parol”; therefore, a contract in writing not under seal, is said to be a “parol” contract (*Rann v. Hughes*, 7 T. R. 350-1, *n*).

Parol Demise, includes a Writing not under Seal as well as a demise by word of mouth (per Denman, C. J., *Gibson v. Kirk*, 1 Q. B. 856).

Parol Evidence of a Written Document, means EXTRINSIC evidence, whether verbal or otherwise (Best on Evidence, s. 223).

**PARSON.**—“‘Parson,’ *Persona*. In the legal signification it is taken for the rector of a church parochiall, and is called *persona ecclesiæ*, because he assumeth and taketh upon him the parson of the church, and is said to be seised *in jure ecclesiæ*” (Co. Litt. 300 a, b); he is “one that hath full possession of all the rights of a Parochial Church” (Jacob). “A Parson, *persona ecclesiæ*, is one that hath full possession of all the rights of a Parochial Church. He is called Parson, *persona*, because by his person the church (which is an invisible body) is represented; and he is, in himself, a Body Corporate, in order to protect and defend the rights of the church (which he personates) by a perpetual succession” (1 Bl. Com. 384).

“‘Parson impersonæ,’ is he that is in possession of a Church Appropriate, or Presentative, for so it is used in both cases in Dyer, 40 b and 221 b” (Termes de la Ley). *Vf*, 1 Bl. Com. 391.

“Parson or VICAR, or, where there is no Parson or Vicar, by the Minister of that place for the time being,” 91 Canons Ecc. 1604; *V. Pinder v. Barr*, cited MINISTER.

*Vh*, Phil. Ecc. Law. Part 2, ch. 9.

V. CLERGYMAN: RECTOR: REGULAR CLERGYMAN.

**PARSONAGE.**—*V. RECTORY.*



**PART.** — “Part” of a Book, Copyright Act, 1842; *V.* “Part of a Drama,” inf: *Vf*, *Re Cooper*, 64 L. J. Ch. 403; 1895, 1 Ch. 567; 72 L. T. 390; 43 W. R. 444.

“Part” of a *Cause of Action* or *Claim*, s. 74, Co. Co. Act, 1888; *V.* CAUSE OF ACTION.

A “part” of a *Drama* within the Dramatic Copyright Act, 1833, 3 & 4 W. 4, c. 15, s. 2, does not mean a particle of it, but a substantial or material part (*Chatterton v. Cure*, 47 L. J. C. P. 545; 3 App. Ca. 483; *Vf*, *Walter v. Steinkopff*, 1892, 3 Ch. 489; 61 L. J. Ch. 521). *V.* DRAMATIC.

“Part” of an *Estate*; *V. Re Fuller and Leathley*, cited ESTATE. *Vf*, ANY: Power of Sale of “any Part,” inf.

Part of a “*House*” or “*Manufactory*” within s. 92, Lands C. C. Act, 1845; *V.* HOUSE: MANUFACTORY: *Caledonian Ry v. Turran*, cited ROAD.

“Part” of “Houses, Walls, Buildings, Lands, Tenements, and Heredits,” may be acquired compulsorily by a Metropolitan Local Authority under ss. 80, 81, 82, Michael Angelo Taylor’s Act; but that only authorizes the taking of such a “Part” as will not so sensibly and substantially alter the character and condition of the property from which it is to be taken that such property could no longer be occupied and used for its existing purposes (*Gordon v. St. Mary Abbots*, 1894, 2 Q. B. 742; 63 L. J. M. C. 193; *Gibbon v. Puddington*, 1900, 2 Ch. 794; 69 L. J. Ch. 746; 83 L. T. 136; 49 W. R. 8; 64 J. P. 727).

Part of a “*House*,” quâ Rep People Act, 1832; *V.* HOUSE: DWELLING HOUSE: SEPARATE OCCUPATION.

“Any Part” of *Land*; *V.* ANY.

“Parts of the *Machinery*”; *V.* DANGEROUS.

“Part of a *Mine*,” within the Coal Mines Regulation Act, 1872, 35 & 36 V. c. 76, means, “a part having a separate system of ventilation which, by the terms of the statute, is a separate mine” (per Day, J., *Wales v. Thomas*, 55 L. J. M. C. 61; 16 Q. B. D. 340; 55 L. T. 400; 50 J. P. 516; 2 Times Rep. 53).

“Part Ownership”; *V.* PARTNERSHIP.

“Part of a *Parish*”; *V.* PARISH, towards end.

Part *Payment*; *V.* EARNEST: PAYMENT.

“Part of a *Promissory Note*, Bill of Exchange, or Bank Post Bill, PURPORTING to be a Bank Note,” &c, s. 16, Forgery Act, 1861, 24 & 25 V. c. 98, is not confined to the obligation contained in such a document but, means the thing as it is commonly regarded, including *e.g.* an engraved ornamental border (*R. v. Keith*, 24 L. J. M. C. 110; 3 W. R. 412; 25 L. T. O. S. 118).

Building “used in Part for PURPOSES of Trade or Manufacture and in Part as a Dwelling-house,” s. 74 (2), London Bg Act, 1894, “applies to the case of a SHOP with living rooms above it” (per Lawrence, J.,

*Carritt v. Godson*, 1899, 2 Q. B. 193; 68 L. J. Q. B. 799; 80 L. T. 771; 63 J. P. 644), and does not apply to a PUBLIC HOUSE, because "a Publican carries on his business all through the Licensed Premises" (per Day, J., *Ib.*).

Services are rendered "in Part within British Waters in saving life" from a British or Foreign Vessel, s. 544, Mer Shipping Act, 1894, if the crew of a Foreign Vessel (in distress outside British Waters) are there taken off the vessel and are thence brought to an English Port where they are landed (*The Pacific*, 1898, P. 170; 67 L. J. P. D. & A. 65; 79 L. T. 125; 46 W. R. 686). *V.* SALVAGE.

As to "Part of a STREET"; *V. Mile-End Old Town v. Whitechapel Union*, 45 L. J. M. C. 75; 46 *Ib.* 138.

"Part of the UNITED KINGDOM," quâ Medical Act, 1886, 49 & 50 V. c. 48, "means, according to circumstances, England, Scotland, or Ireland" (s. 27).

"A Codicil is in its nature part of the WILL" (per Hardwicke, C., *St. Alban's v. Beaulekerk*, 2 Atk. 639; *Va, Fuller v. Hooper*, 2 Ves. sen. 242; *Crosbie v. Macdowal*, 4 Ves. 610). *V.* HEREIN.

A Power to apply the whole or part of *Income*; *V.* WHOLE.

A Power to Lease "*any Part*" of an Estate; *V.* ANY, p. 95.

A Power to resume Possession of "*any Part*" of demised premises; *V.* ANY, p. 92.

A Power of Sale of "*any Part*" of an Estate; *V.* ANY, p. 95.

*V. Re Fuller and Leathley*, cited ESTATE.

An Appointment under a Power of a sum "part of" a larger sum subject to the Power, only indicates the fund out of which the Appointment is to have effect, so that if the larger sum is not wholly realized the sum appointed will not have to abate (*Booth v. Alington*, 6 D. G. M. & G. 613; 26 L. J. Ch. 138; 5 W. R. 107; 28 L. T. O. S. 211; *Vthc, Re Saunders-Davies*, 34 Ch. D. 482; 56 L. J. Ch. 492; 35 W. R. 493; 56 L. T. 153). *Vf*; REMAINDER.

"Although it has been held that the words 'Part' or 'SHARE' will not carry an Accrued Share, it was laid down in *Douglas v. Andrews* (14 Bea. 347) that the words 'Part. Share, and INTEREST' would carry an accrued share" (per Jessel, M. R., *Re Henriques*, W. N. (75) 187, 188, following *Douglas v. Andrews*).

A Devise of "*my Part*," even before the Wills Act, 1837, would generally carry the fee (2 Jarm. 285: *Woodhouse v. Herrick*, 1 K. & J. 352; 24 L. J. Ch. 649; 3 W. R. 303).

"Part thereof"; *V. Hewitt v. George*, 18 Bea. 522.

"Wholly or in Part"; *V.* WHOLLY.

**PART WITH.** — *V.* ASSIGN: MORTGAGE: UNDERLEASE.

If donee in fee "shall not have disposed of and parted with" the property; *V. Doe d. Stevenson v. Glover*, cited DISPOSE OF.

**PARTIAL ACCEPTANCE.** — A Partial Acceptance is, "an ACCEPTANCE to pay part only of the amount for which the Bill is drawn" (s. 19 (2 *b*), Bills of Ex. Act, 1882).

**PARTIAL INCAPACITY.** — Compensation for Partial Incapacity, Seb 1 (1 *b*), Workmen's Comp Act, 1897; *V. Irons v. Daris*, 1899, 2 Q. B. 330; 68 L. J. Q. B. 673; 80 L. T. 673; 47 W. R. 616; *Pomphrey v. Southwark Press*, 45 S. J. 59; 70 L. J. Q. B. 48: DISABLE: EARNINGS.  
*Cp*, INCAPACITATED.

**PARTIAL LOSS.** — "This expression includes both a deterioration of all or any part of, and a total destruction of a part of, the subject of insurance" (Wood, 359, citing 2 Phillips, No. 1422. *Vf*, Park, ch. 6, 215: Maude & P. 525 *et seq*: *Francis v. Boulton*, 73 L. T. 578; 65 L. J. Q. B. 153; 44 W. R. 222; 8 Asp. 79).

*V.* TOTAL LOSS: LOSS: TRANSHIPMENT.

**PARTIALITY.** — *V.* IMPARTIALITY.

**PARTICATA TERRÆ.** — A Rood (Elph. 606).

**PARTICIPATE.** — Where beneficiaries are to "participate" in a trust property, and there is no direction as to the shares to be taken, they take as tenants in common, in equal shares and proportions (*Liddard v. Liddard*, 29 L. J. Ch. 619; 28 Bea. 266). In *Robertson v. Fraser* (40 L. J. Ch. 776; 6 Ch. 696), Hatherley, C., said, "the word 'participate' clearly implied a sharing or division, and a tenancy in common was the natural consequence."

*V.* SHARE.

**PARTICULAR.** — "If a Condition of Sale provide compensation for any mistake in the description of the lots or for any error or misstatement 'in this particular,' the latter words will be construed 'in these particulars,' so as to embrace an error in the Particulars" (Sug. V. & P. 15, citing *White v. Cuddon*, 8 Cl. & F. 766; 4 Y. & C. Ex. 25: Sug. Real Prop. Law, 591). *V.* ERROR.

"Essential Particular"; *V.* ESSENTIAL.

"Material Particular"; *V.* CORROBORATED.

**PARTICULAR AVERAGE.** — *V.* *Gt. Indian Peninsular Ry v. Saunders*, 30 L. J. Q. B. 218; 31 *Ib.* 206; 1 B. & S. 41; 2 *Ib.* 266: *Kidston v. Empire Mar Insree*, 35 L. J. C. P. 250; 36 *Ib.* 156; L. R. 1 C. P. 535; 2 *Ib.* 357: 1 Maude & P. 426, *n* (*y*): Arn. Part 3, ch. 5.

*V.* GENERAL AVERAGE: AVERAGE: F. P. A.

**PARTICULAR BREACH.** — *V.* *Fletcher v. Nokes*, and *Penton v. Barnett*, cited NOTICE, p. 1293.

**PARTICULAR CHARGES.** — *V.* *Kidston v. Empire Mar Insree*, 35 L. J. C. P. 250; 36 Ib. 156; L. R. 1 C. P. 535; 2 Ib. 357.

**PARTICULAR CHURCH.** — *V.* ECCLESIASTICAL CHARITY : CHURCH : FOUNDATION.

**PARTICULAR DAMAGE.** — *V.* "Special Damage," sub SPECIAL.

**PARTICULAR ESTATE.** — A Particular Estate is an Estate less than a FEE SIMPLE; thus it is said "a Reversion is where the residue of the estate always doth continue in him that made the Particular Estate, or where the Particular Estate is derived out of his estate," *e.g.* where a "tenant in fee simple maketh gift in taile" (Co. Litt. 22 b).

*V.* Contingent Remainders Act, 1877, 40 & 41 V. c. 33.

*V.* REMAINDER.

**PARTICULAR MANNER.** — *V.* DISTINCTIVE.

**PARTICULAR PROVISION.** — As to this phrase in s. 59, 6 G. 4, c. 125, and in s. 370 (3), Mer Shipping Act, 1854, repld s. 618 (1, iii), Mer Shipping Act, 1894; *V.* *The Killarney*, Lush. 427; 30 L. J. P. M. & A. 41; *Hadgraft v. Hewith*, L. R. 10 Q. B. 350; 44 L. J. M. C. 140; *The Hankow*, 4 P. D. 197; 48 L. J. P. D. & A. 29; *Vf*, 1 Maude & P. 261, *n* (s); TRINITY HOUSE OUTPORT DISTRICTS.

**PARTICULAR SEARCH.** — *V.* SEARCH.

**PARTICULAR TRUST.** — "Particular and Specific Trust"; *V.* per Romilly, M. R., *Sons of Clergy Corp v. Sutton*, 29 L. J. Ch. 393; 27 Bea. 651; and per North, J., *Sons of Clergy Corp v. Skinner*, 1893, 1 Ch. 178; 62 L. J. Ch. 148. *Cp.* "Express Trust," sub EXPRESS.

**PARTICULARLY.** — *V.* DESCRIBE.

**PARTIES.** — *V.* PARTY: PRIVY.

**PARTITION.** — "It is clear that a power to make Partition of an Estate will not authorize a Sale or Exchange of it; but it has frequently been a question amongst conveyancers, whether the usual Power of Sale and Exchange does not authorize a Partition, and several partitions have been made, by force of such powers, under the direction of men of eminence" (Sug. Pow. 856). The learned author proceeds to discuss *Abell v. Heathcote* (4 Bro. C. C. 278; 2 Ves. 98), *Re McQueen and Farquhar* (11 Ves. 467), *A-G. v. Hamilton* (1 Mad. 214), and *Bradshaw v. Fane* (3 Drew. 534; 2 Jur. N. S. 247; 25 L. J. Ch. 413); but his conclusion is (p. 857), — "Until the question shall receive further decision, it can scarcely be considered clear that a Power to Exchange will authorize a Partition." That further decision was, however, furnished in *Re Frith and Osborne* (3 Ch. D. 618; 45 L. J. Ch. 780), in which Jessel, M. R.,

reviewed all the authorities hereon, and, without hesitation, ruled that a Partition may be effected through a Power of Sale and Exchange.

On Partition generally, *V. Partition Acts, 1868 and 1876, 31 & 32 V. c. 40; 39 & 40 V. c. 17; 1 White & Tudor, 181-222; Walker on Partition: Seton, 1853-1892: 9 Encyc. 437-451; SEVERANCE.*

**PARTNER.** — The prohibition, in R. 316, Bankry Rules, 1886, that a Trustee or Member of a Committee of Inspection shall not purchase any part of a bankrupt's estate, either "by" himself or "any Partner, Clerk, Agent, or Servant," does not extend to such Partner, &c, who becomes such a purchaser on his own account (*Re Gallard, 1897, 2 Q. B. 8; 66 L. J. Q. B. 484; 76 L. T. 327; 45 W. R. 556.*)

"Partner of a company" includes "the members of such bodies," *quâ* Bankry (Scot) Act, 1856, 19 & 20 V. c. 79 (s. 4).

**PARTNERSHIP.** — "An agreement that something shall be attempted with a view to gain, and that the gain shall be shared by the parties to the agreement, is the grand characteristic of every partnership" (Lindley, *P.*, 5 ed., 1); and "to use the word 'partnership' to denote a society not formed for gain, is to destroy the value of the word" (Ib. 2).

For a discussion of the various definitions of "Partnership"; *V. Pooley v. Driver, 46 L. J. Ch. 466; 5 Ch. D. 458; Badeley v. Consolidated Bank, 34 Ch. D. 536; 38 Ib. 238; 40 S. J. 46.*

The Partnership Act, 1890. 53 & 54 V. c. 39, provides that:—

I. " 'Partnership' is the relation which subsists between persons carrying on a business in common, with a view of PROFIT"; but membership in a Registered or Incorporated Co does not create a partnership (s. 1).

II. "In determining whether a partnership does or does not exist, regard shall be had to the following rules:—

"(1) JOINT TENANCY, TENANCY IN COMMON, Joint Property, Common Property, or Part Ownership, does not, of itself, create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

"(2) The sharing of Gross Returns does not, of itself, create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

"(3) The receipt by a person of a Share of the Profits of a business is *primâ facie* evidence that he is a partner in the business; but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not, of itself, make him a partner in the business; and in particular—

"(a) The receipt by a person of a DEBT or other Liquidated

Amount by instalments or otherwise out of the Accruing Profits of a business does not, of itself, make him a partner in the business or liable as such :

“(b) A contract for the Remuneration of a Servant or Agent of a person engaged in a business by a Share of the Profits of the business does not, of itself, make the servant or agent a partner in the business or liable as such :

“(c) A person being the WIDOW or CHILD of a Deceased Partner and receiving by way of Annuity a portion of the profits made in the business in which the deceased person was a partner is not, by reason only of such receipt, a partner in the business or liable as such :

“(d) The advance of money by way of LOAN to a person engaged, or about to engage, in any business on a contract with that person that the lender shall receive a Rate of Interest varying with the Profits, or shall receive a Share of the Profits arising from carrying on the business does not, of itself, make the lender a partner with the person or persons carrying on the business or liable as such ; Provided that the contract is IN WRITING and signed by or on behalf of all the parties thereto :

“(e) A person receiving by way of Annuity, or otherwise, a portion of the profits of a business in consideration of the sale by him of the GOODWILL of the business is not, by reason only of such receipt, a partner in the business or liable as such.” (s. 2.)

On these subs. *d* and *e* *V.* s. 3; on all, *V. Re Young*, 1896, 2 Q. B. 484; 65 L. J. Q. B. 681; 75 L. T. 278; 45 W. R. 96: *Re Mason*, 1899, 1 Q. B. 810; 68 L. J. Q. B. 466; 80 L. T. 92; 47 W. R. 270.

Quà the postponement of loan until ordinary creditors are paid in full under s. 3, the Contract is not confined to one in writing (*Re Fort*, cited (CONTRACT)).

*Vh*, Lindley P. : 9 Encyc. 452-491.

*V.* COMPANY: COPARTNERSHIP: INVOLVE.

“During the Partnership”; *V.* DURING.

A bequest of all “my share, right, and interest” in a partnership, does not include a debt due to the testator from the partnership (*Re Beard*, 57 L. J. Ch. 887; 58 L. T. 629; 36 W. R. 519).

**PARTY.** — “They that make a DEED and they to whom it is made are called parties to the Deed” (Termes de la Ley). So, the persons by and between whom an Agreement is made are the Parties to it. *Cp.* PRIVY.

"Signed by the Party to be charged therewith," ss. 4, 17, Statute of Frauds, s. 4, Sale of Goods Act, 1893; — "Party" there is not to be construed *party* as to a deed, but person in general (Sug. V. & P. 129, citing 3 Atk. 503).

"Party" read "Person" in *Barlow v. Osborne*, 27 L. J. Ch. 308; 6 H. L. Ca. 556.

The word "Party" in the latter part of s. 40, Chancery Procedure Act, 1852, 15 & 16 V. c. 86, means "person"; so that when an affidavit by any "person" has been filed under that statute it cannot be withdrawn for the purpose of preventing the cross-examination of that person whether he be a "party" to the cause or not (*Re Quartz Hill Gold Mining Co*, 51 L. J. Ch. 940; 21 Ch. D. 642, upholding *Clarke v. Law*, 2 K. & J. 28; 4 W. R. 35; and setting at rest the doubt expressed by Ld Selborne in *Pike v. Dickinson*, 21 W. R. 862). But in s. 17, Com. L. Pro. Act, 1860, the word "Parties" means only the litigant parties and does not include the Sheriff (*Smith v. Darlow*, 53 L. J. Ch. 696; 26 Ch. D. 605; 32 W. R. 665).

For the purposes of the Judicature Acts and Rules, "Party," unless controlled by the context, "includes every person served with notice of, or attending, any proceeding, although not named on the record" (Jud. Act, 1873, s. 100; Jud. Act (Ir), 1877, s. 3; *Vth, Fraser v. Burrows*, 46 L. J. Q. B. 501; 2 Q. B. D. 624; *Burstall v. Fearon*, 31 W. R. 581; per Lindley, L. J., *Re Evans*, 1893, 1 Ch. 264); so, quà Co. Co. Act, 1888 (s. 186).

A Third-party, who has appeared, is a "Party" within R. 12, Ord. 31, R. S. C. (*MacAllister v. Rochester, Bp.*, 49 L. J. C. P. 443; 5 C. P. D. 194); but the Next Friend of an infant is not (*Re Corsellis*, 52 L. J. Ch. 399; 31 W. R. 414; *Dyke v. Stephens*, 55 L. J. Ch. 41; 30 Ch. D. 189; 33 W. R. 932, in *thle*, Pearson, J., refused to follow *Higginson v. Hall*, 48 L. J. Ch. 250; 10 Ch. D. 235, because there the application was unopposed, or *Crowe v. Bank of Ireland*, 19 W. R. 910).

A co-plaintiff or co-defendant is within this Rule, and also within R. 3, Ord. 50, "so long as there is some right between" him and others on the same side of the record "which may be adjusted; but it does not so apply when there is no right to be adjusted" (per Esher, M. R., *Shaw v. Smith*, 56 L. J. Q. B. 175; 18 Q. B. D. 193; 56 L. T. 40; 35 W. R. 188, explaining *Brown v. Watkins*, 55 L. J. Q. B. 126; 16 Q. B. D. 125; 34 W. R. 293; *Vh, Whitham v. Whitham*, 28 S. J. 456).

V. OPPOSITE PARTY.

"Party," quà R. 26, Ord. 31, R. S. C. (which provides for security for Costs on asking for Discovery), is a noun of multitude meaning "Side," e.g. if Discovery be sought against either side and that side consists of more than one person, the deposit of only one sum of £5 can be insisted on as such security (*Eder v. Attenborough*, 58 L. J. Q. B. 311; 23 Q. B. D. 130; 60 L. T. 452; 37 W. R. 507; *Joyce v. Beall*, 1891.

1 Q. B. 459; 60 L. J. Q. B. 242; 64 L. T. 137; 39 W. R. 316). *Vf*, Ann. Pr.

A Co-Respondent in a Divorce action who, in an Intervention by the King's Proctor, is charged with COLLUSION, is a "Party" to the Intervention, even though he does not appear thereon, and he is liable as such to be ordered to pay the K. P.'s costs under s. 2, 41 V. c. 19 (*Taplin v. Taplin*, 1891, P. 283; 60 L. J. P. D. & A. 88; 64 L. T. 870, *whc* explains *Blackhall v. Blackhall*, 57 L. J. P. D. & A. 60; 13 P. D. 94).

A person merely cited under s. 7, Legitimacy Declaration Act, 1858, 21 & 22 V. c. 93, does not thereby become a "Party"; but he does so if he opposes (*Bain v. A-G.*, 1892, P. 261; 61 L. J. P. D. & A. 135; 67 L. T. 447).

"Other Party" to whom Notice of Appeal is to be given under s. 31 (2), Sum Jur Act, 1879, 42 & 43 V. c. 49, includes, in Licensing Appeals, the Superintendent of Police who serves the Notice of Objection on the applicant (*Price v. James*, 1892, 2 Q. B. 428; 61 L. J. M. C. 203; 41 W. R. 57; 67 L. T. 543; 57 J. P. 148; *R. v. Gloucestershire Jus.*, 41 W. R. 379; 68 L. T. 225; 57 J. P. 486). *V. COURT OF SUMMARY JURISDICTION. Cp, OPPOSITE PARTY.*

Justices who appear and actively oppose an Appeal from their decision in a Licensing case, *semble*, are a "Party" to the Appeal (*R. v. London Jus.*, 1895, 1 Q. B. 616; 64 L. J. M. C. 100; 72 L. T. 211; 43 W. R. 387; 59 J. P. 820: *Vf. R. v. Worcestershire Jus.*, cited REQUIRED). But an Objector to the Renewal of a License, which renewal was refused and which refusal is appealed, is not a "Party" to the appeal within s. 31 (5), 42 & 43 V. c. 49, and cannot be ordered to pay the costs of the appeal even, as it seems, though he appears at the hearing of the appeal (*Boulter v. Kent Jus.*, 1897, A. C. 556; 66 L. J. Q. B. 787; *Sethc. R. v. Yorkshire Jus.*, 67 L. J. Q. B. 279; *Vf, Tynemouth v. A-G.*, 68 L. J. Q. B. 752; 1899, A. C. 293; 80 L. T. 633; 63 J. P. 404). So, of the Licensing Justices who have refused to renew a license and who appear by counsel on the appeal (*R. v. Staffordshire Jus.*, 1898, 2 Q. B. 231; 67 L. J. Q. B. 931; 79 L. T. 142; 62 J. P. 741).

A Prosecutor who obtains a conviction which is appealed, though not appearing on the appeal, is a "Party" to the appeal and liable to an Order for costs under s. 5, Quarter Sessions Act, 1849, 12 & 13 V. c. 45, though the convicting Justices may be the formal respondents to the appeal (*R. v. Hants Jus.*, 1 B. & Ad. 659, *R. v. Smith*, 29 L. J. M. C. 216): the Justices are not "Parties" (*R. v. Purley*, 34 L. J. M. C. 4; 5 B. & S. 909). *Vf*, "Party decided against," sub AGAINST.

"Both or either of the Parties," s. 525 (1), Mer Shipping Act, 1854, repled s. 683 (1), Mer Shipping Act, 1894; *V. Austin v. Olsen*, cited DURING.

"Party" to a BILL OF SALE, s. 10, Bills of S. Act, 1882; *V. Peuce*



*v. Brookes*, 1895, 2 Q. B. 457; 64 L. J. Q. B. 747; *Baker v. Ambrose*, 1896, 2 Q. B. 372; 65 L. J. Q. B. 589.

“Party in Possession”; *V. POSSESSION.*

“Parties,” s. 36, 9 G. 4, c. 22; *V. Ranson v. Dundas*, 6 L. J. C. P. 137; 3 Bing. N. C. 123, 180, 556.

“All parties,” s. 24, Metropolis Water Act, 1871, 34 & 35 V. c. 113, means “all persons” (*East London W. W. Co v. St. Matthew, Bethnal Green*, 55 L. J. Q. B. 571; 17 Q. B. D. 475; 54 L. T. 919; 35 W. R. 37; 50 J. P. 820).

“Party,” quâ Leases Act, 1845, 8 & 9 V. c. 124, means and includes, “any Body politic or corporate or collegiate, as well as an Individual” (s. 5); a similar, but not identical, def is provided for the following Acts; —

Civil Bill Courts (Ir) Acts; *V.* 14 & 15 V. c. 57, s. 162; 27 & 28 V. c. 99, s. 3:

Com. L. Pro. Amendment Act (Ir), 1853, 16 & 17 V. c. 113; *V.* s. 4:

Landlord and Tenant Law Amendment Act (Ir), 1860, 23 & 24 V. c. 154; *V.* s. 1: *Va*, 33 & 34 V. c. 46, s. 70:

Lunacy Regulation (Ir) Act, 1871, 34 & 35 V. c. 22; *V.* s. 2.

Other Stat. Def. — Crown Suits, &c, Act, 1865, 28 & 29 V. c. 104, s. 5.

*V. PARTY CONCERNED: PARTY INTERESTED: PARTY TO THE SUIT: PERSON*, and succeeding defs: *NECESSARY*, p. 1254.

**PARTY ABSOLUTELY ENTITLED.** — *V. ABSOLUTELY ENTITLED.*

**PARTY AGGRIEVED.** — *V. AGGRIEVED.*

**PARTY ARCH.** — Quâ London Bg Act, 1894, “Party Arch,” “means, an Arch separating adjoining BUILDINGS, STOREYS, or Rooms, belonging to different owners, or occupied or constructed or adapted to be occupied by different persons, or separating a Building from a Public WAY or a Private Way leading to premises in other occupation” (subs. 19, s. 5).

**PARTY BY LAW ENABLED TO DECLARE SUCH TRUST.**

— This phrase, in s. 7, Statute of Frauds, means the owner of the beneficial interest in the property to be affected (*Dye v. Dye*, 13 Q. B. D. 147; 53 L. J. Q. B. 442), whether such property be real (*Tierney v. Wood*, 19 Bea. 330; 23 L. J. Ch. 895; *Kronheim v. Johnson*, 7 Ch. D. 60; 47 L. J. Ch. 132; *Dye v. Dyr*, sup), or personal (*Bridge v. Bridge*, 16 Bea. 315; 22 L. J. Ch. 189; *Ex p. Pye*, 18 Ves. 140); *Vh*, Lewin, 53. *V. MANIFESTED.*

**PARTY CONCERNED.** — A “PARTY concerned” in an Appeal against a Boundary Order under an Inclosure Act, means, a “person

directly interested in the soil who, by the boundary being either in one direction or the other, would be entitled to more or less land" (per Bayley, J., *R. v. Lancashire Jus.*, 1 B. & Ald. 637), e.g. the Lord of the Manor but not the Commoners (*S. C.*).

*Cp.*, PARTY INTERESTED.

**PARTY COSTS.**—Costs as between Party and Party, are those taxable by a successful party against his antagonist: *V.* COSTS.

**PARTY INTERESTED.**—"PARTY interested," s. 39, Solicitors Act, 1843, 6 & 7 V. c. 73, means a party under a trust created by Deed, Will, or under an Intestacy (*Re Leadbitter*, 48 L. J. Ch. 242; 10 Ch. D. 388).

Money paid into Court to the account of the "Party interested" under Lands C. C. Act, 1845; *V. Re Winder*, 46 L. J. Ch. 572; 6 Ch. D. 696.

Incumbrancers upon the shares of persons entitled in common to real estate, are "Parties Interested" in the property within the Partition Act, 1868, so as to be able, adversely to the persons entitled to the equity of redemption, to claim a sale under s. 4 of the Act (*Davenport v. King*, W. N. (83) 133; 31 W. R. 911; 49 L. T. 92). So, a Tenant for Life, who has also a general Power of Appointment, is a "Party Interested" quâ the Remainder as well as the life interest (*Parker v. Trigg*, W. N. (74) 27).

*V.* PERSON INTERESTED: INTERESTED IN. *Cp.*, PARTY CONCERNED.

**PARTY LIABLE.**—As to this phrase in s. 5, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42; *V. Roddam v. Morley*, 1 D. G. & J. 1; 26 L. J. Ch. 438; *Taft v. Stephenson*, 1 D. G. M. & G. 28; 21 L. J. Ch. 129; 7 Hare, 1; *Pears v. Laing*, L. R. 12 Eq. 41; 40 L. J. Ch. 225; *Coope v. Cresswell*, 2 Ch. 112; 35 L. J. Ch. 496; 36 Ib. 114; *Forsyth v. Bristowe*, 8 Ex. 716; 22 L. J. Ex. 255; *Dill v. Walker*, 1893, 2 Ch. 429; 62 L. J. Ch. 536; 68 L. T. 610; 41 W. R. 427: PAYMENT.

"Person liable"; *V.* DEMAND: LIABLE.

**PARTY OR PRIVY.**—Though a covenant that the covenantor has not done, permitted, or suffered, anything preventing him from conveying, is not broken by his having assented to what he could not prevent, yet if the words "or been party or privy to" were added, there would be a breach in such a case (*Hobson v. Middleton*, 6 B. & C. 295; 9 D. & R. 249. *Vh.*, Elph. 490; Dart, 885, 886; Sug. V. & P, 603, 604). *Vf.*, *Clifford v. Hoare*, 43 L. J. C. P. 225; L. R. 9 C. P. 362: PERMIT.

"Fraudulent Breach of Trust to which the Trustee was Party or Privy"; *V.* BREACH OF TRUST.

**PARTY STRUCTURE.**—*V. Major v. Park Lane Co.*, L. R. 2 Eq. 453; 14 L. T. 543.

Quâ London Bg Act, 1894, "Party Structure," "means, a PARTY-

WALL; and also a partition floor or other structure separating, vertically or horizontally, BUILDINGS, STOREYS, or ROOMS, approached by distinct staircases or separate entrances from without" (subs. 20, s. 5); for the previous Stat. Def., *V. Metrop Bg Act, 1855, s. 3.*

**PARTY TO THE SUIT.** — "Generally speaking, the Crown is not bound under the terms 'Party to the suit'" (per Alderson, B., *A-G. v. Donaldson*, 11 L. J. Ex. 340; 10 M. & W. 117, citing *R. v. Tuckin*, 2 Raym. Ld, 1066).

A Next Friend is not a "Party to the Suit," and therefore was not within the proviso to Evidence Act, 1843, 6 & 7 V. c. 85, as a "Party" "individually named in the Record" (*Sinclair v. Sinclair*, 14 L. J. Ex. 109; 13 M. & W. 640). *V. PARTY.*

**PARTY-WALL.** — " 'Party-wall' may be used in four different senses: —

"*First.* — A wall of which the two adjoining owners are tenants in common: *Wiltshire v. Sidford*, 1 M. & R. 404; *Cubitt v. Porter*, 8 B. & C. 257; *Stedman v. Smith*, 26 L. J. Q. B. 314; 8 E. & B. 1; *Standard Bank, British S. Africa v. Stokes*, 47 L. J. Ch. 554; 9 Ch. D. 68; *Watson v. Gray*, 49 L. J. Ch. 243; 14 Ch. D. 192. This is the most common and primary meaning of the term; per Fry, J., *Watson v. Gray*, sup.

"*Second.* — A wall divided longitudinally into two strips, one belonging to each of the neighbouring owners. In this case the owners are not tenants in common, even if the wall was erected at their joint expense (*Matts v. Hawkins*, 5 Taunt. 20); but where there has been a common user of the wall erected at the common expense, that, in the absence of any other evidence, is sufficient evidence for a jury to find that the wall is held by the two parties as tenants in common; *Cubitt v. Porter*, and *Standard Bank, B. S. Africa v. Stokes*, sup.

"*Third.* — A wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenants. The term is so used in the Metrop Bg Act, 1855, s. 3, which enacts that, quâ that Act, "Party-Wall" shall apply to every wall used, or built in order to be used, as a separation of any building from any other building with a view to the same being occupied by different persons' (*Knight v. Purcell*, 48 L. J. Ch. 395; 11 Ch. D. 412); *Vf*, 7 & 8 V. c. 84, s. 2. Such a wall may be a party-wall for some part of its height, and above that height the separate property of one of the adjoining owners (*Weston v. Arnold*, 43 L. J. Ch. 123; 8 Ch. 1084); and in the same way such a wall may be laterally a party wall for such distance as it is used by both owners and no further; *Knight v. Purcell*, sup.

"*Fourth.* — A wall divided longitudinally into two moieties, each

moiety being subject to a cross-easement in favour of the owner of the other moiety. This meaning is suggested in the note to *Wiltshire v. Sidford*, sup.

"The cases are collected in 5 Fisher Dig. 990 *et seq.*; and *V. Hunt* on Boundaries, ch. 5" (Elph. 606, 607).

Quà London Bg Act, 1894, " ' Party Wall ' means, (a) a WALL forming part of a BUILDING and used, or constructed to be used, for separation of adjoining Buildings belonging to different owners, or occupied, or constructed or adapted to be occupied, by different persons; or (b) a Wall forming part of a Building and standing to a greater extent than the projection of the footings on lands of different owners" (subs. 16, s. 5). A wall may be a Party Wall, ss. 59, 75, 77. of this last Act, for a portion only of its height; s. 75 does not make it a Party Wall where it ceases to divide buildings (*Drury v. Army and Navy Stores*, 1896, 2 Q. B. 271; 65 L. J. M. C. 169; 74 L. T. 621; 44 W. R. 560; 60 J. P. 421). In these sections " Party Wall " is not used in a technical sense (per Wright, J., *ib.*); *semble*, its meaning there is, *Parting Wall*, *i.e.* a wall which parts two buildings whether they belong to different owners or not.

#### *Cp.*, EXTERNAL WALL.

*Note*: As to the Usage to pay for a proportionate part of the value of a Party Wall when used by an adjoining owner as a wall for his own house, *V. Robinson v. Thompson*, 89 Law Times, 137: As to implying a Contract to that effect. *V. Irving v. Turnbull*, 1900, 2 Q. B. 129; 69 L. J. Q. B. 593: As to Partition of Party Wall belonging to Tenants in Common, *V. Mayfair Co v. Johnston*, 63 L. J. Ch. 399; 1894, 1 Ch. 508.

" Party Fence Wall," quà London Bg Act, 1894, " means, a WALL used, or constructed to be used, as a separation of adjoining Lands of different owners and standing on Lands of different owners, and not being part of a Building; but does not include a Wall constructed on the land of one owner the footings of which project into the land of another owner" (subs. 18, s. 5).

#### PASCUUM. — *V.* PASTURES.

**PASS.** — " Every indorsee of a BILL OF LADING to whom the property in the goods shall *pass*," s. 1, 18 & 19 V. c. 111; *V. Sewell v. Burdick*, 54 L. J. Q. B. 156; 10 App. Ca. 74; 52 L. T. 445; 33 W. R. 461.

" Pass to the Exor, as such," s. 9 (1), Finance Act, 1894; *V.* As SUCH.

#### *V.* PASSING.

**PASS AND REPASS.** — " Pass and Repass," in a local Turnpike Act, held to mean going and returning over the road once only (*Armstrong v. Hunt*, 34 J. P. 823, nom. *Hill v. Browning*, 22 L. T. 712).

**PASSAGE.**—“Passage,” is “the hire that a man pays for being transported over Sea, or over any River” (Cowel), and that is its primary meaning (Jacob). *Cp*, VOYAGE.

“Now on Passage”; *V*. NOW.

*V*. PASSAGE BROKER.

“Passage Home”; *V*. HOME.

*V*. STEERAGE PASSAGE.

A Way communicating with the backs of houses and used for obtaining access to privies and ash-pits, is a “Passage” within the def of “Street” in s. 4, P. H. Act, 1875 (*R. v. Goole*, cited STREET).

Quà Dublin Improvement Act, 1849, 12 & 13 V. c. 97, “Passage” means, “any alley way or other place, not being a carriageway, not having the principal or only entrance of any dwelling-house therein” (s. 133).

“Passage or Place which now is, or hereafter may be, built upon or in building,” in a Local Paving Act, 55 G. 3, c. xxv., s. 3, did not include a Bridge, forming part of a public highway, and which was built over a canal, and had walls 4 to 5 feet high on either side (*Arnell v. Regent's Canal Co*, 23 L. J. C. P. 155; 14 C. B. 564). *If*, BUILT UPON.

*V*. PUBLIC PASSAGE.

**PASSAGE BROKER.**—Quà Part 3, Mer Shipping Act, 1894, “Passage Broker,” means, “any person who sells or lets, or agrees to sell or let or is anywise CONCERNED IN the sale or letting, of STEERAGE PASSAGES in any SHIP proceeding from the BRITISH ISLANDS to any place out of Europe not within the Mediterranean Sea” (s. 341; *If*, s. 342); “the selling or letting there referred to, means, a selling or letting of a Passage in a named ship to commence at a definite Time for a specified Voyage” (per Bruce, J., *Morriss v. Howden*, 1897, 1 Q. B. 378; 66 L. J. Q. B. 264; 76 L. T. 156; 45 W. R. 221; 61 J. P. 246). Accordingly, a person who (for a lump sum which, amongst other things, includes the cost of voyage) agrees to place, *e.g.*, Farm Pupils in the Colonies, is not such “Passage Broker”; nor is he a person who “receives money for or in respect of a Passage” within s. 320 (1) of the same Act (*Ib*).

*Cp*, BROKER.

**PASSENGER.**—The wife and father-in-law of a Captain of a vessel, who were on the vessel and being carried by it to a place to which they wished to go, but who were being so carried by the captain's invitation without the knowledge of the owners; held, not “Passengers” within ss. 354, 379, Mer Shipping Act, 1854 (*The Lion*, L. R. 2 P. C. 525; 38 L. J. Adm. 51; 6 Moore P. C. N. S. 163; 17 W. R. 993). From the jdgmt of the P. C. in that case it would seem that payment of a fare is not an absolutely necessary test of such a “Passenger”; any one (other

than the officers and crew) being carried by a ship, and towards whom the owners have, quâ the voyage, any obligation or duty, would, probably, have been such a "Passenger": *Va*, s. 303. In the Court below, Sir R. Phillimore said. "The payment of fare would appear to be a necessary incident for the constitution of a 'Passenger,' in the legal sense of the term, both as to his rights and duties" (L. R. 2 A. & E. 105; 37 L. J. Adm. 40; 18 L. T. 803, — a proposition adopted in *Maude & P.* 277, *n*, on the authority of *The Lion*, sup, and *The Hanna*, L. R. 1 A. & E. 283; 36 L. J. Adm. 1; 15 W. R. 263; 15 L. T. 334). But in neither of those cases was so absolute a proposition needful. An ordinary payment of fare would, of course, be clear proof that a voyager was a passenger; but it is submitted that a Voyager (other than the officers and crew) is a Passenger, though he pay no fare, if the owners of the ship carry him in pursuance of an obligation or duty (jdgmt of P. C., *The Lion*, sup).

On the other hand, a payment by a voyager of subsistence money to the MASTER for which the latter is not accountable to the owners, would not, of itself, make the voyager a Passenger within a proviso to an exemption from Light Dues (*Hay v. Trinity House*, 73 L. T. 471; 44 W. R. 188; 65 L. J. Q. B. 90).

"Distressed Seamen," s. 191 (1), Mer Shipping Act, 1894, are not "Passengers" within s. 625 of that Act (*The Clymene*, 1897, P. 295; 66 L. J. P. D. & A. 152; 76 L. T. 811; 46 W. R. 109). *V. SEAMAN.*

Quâ Part 3 (relating to Passenger and Emigrant Ships), Mer Shipping Act, 1894, "Passenger" includes, "any person carried in a SHIP other than the Master and Crew, and the Owner his Family and Servants" (s. 267): that def is confined to Part 3 (per Barnes, J., *The Clymene*, sup).

#### *V. STEERAGE PASSENGER.*

Quâ London Hackney Carriages Act, 1843, 6 & 7 V. c. 86, "Passenger" includes, "every person carried by any Hackney Carriage or by any Metropolitan Stage Carriage, except one Driver and (where there shall be a conductor to such metropolitan stage carriage) one Conductor" (s. 2).

#### *V. PASSENGER TRAIN.*

#### **PASSENGER BOAT.** — *V. WATERMAN.*

#### **PASSENGER DECK.** — *V. DECK.*

**PASSENGER RAILWAY.** — Quâ Railway Regn Act, 1844, 7 & 8 V. c. 85, "Passenger Railway" extends "to railways constructed under the powers of any Act of Parliament upon which one third, or more, of the Gross Annual Revenue is derived from the conveyance of passengers by steam or other mechanical power" (s. 25). *V. RAILWAY.*

**PASSENGER'S RISK.** — *V. Stewart v. Lond. & N. W. Ry*, 33 L. J. Ex. 199. *V. OWNER'S RISK.*

**PASSENGER SHIP.** — “ Passenger Ship,” quâ s. 52, Passengers Act, 1855, and s. 15, Act 1863, signified “ every description of SEA-GOING Vessel carrying one or more passenger or passengers on any voyage from any place in Her Majesty’s Dominions to any place whatever ” (s. 2, 52 & 53 V. c. 29): *Vh*, Maude & P. 712; *Ellis v. Pearce*, E. B. & E. 431; 27 L. J. M. C. 257. These Acts repealed by Mer Shipping Act, 1894.

V. EMIGRANT: HOME-TRADE SHIP: PASSENGER STEAMER: SHIP.

**PASSENGER STEAMER.** — A “ Passenger Steamer,” within ss. 317, 318, Mer Shipping Act, 1854, must have been a “ Vessel used in NAVIGATION ” within s. 2 (*R. v. Southport*, 62 L. J. M. C. 47; 1893, 1 Q. B. 359). V. SHIP: PLY.

Quâ Part 3, Mer Shipping Act, 1894, “ Passenger Steamer ” means, “ every British STEAMSHIP carrying PASSENGERS to from or between any places in the UNITED KINGDOM (except steam ferry boats working in chains, — commonly called Steam Bridges), and every FOREIGN Steamship carrying Passengers between places in the United Kingdom ” (s. 267).

V. HOUSE BOAT: “ Pleasure Boat,” sub PLEASURE: STEAM LAUNCH.

**PASSENGER TRAIN.** — “ A ‘ Passenger TRAIN,’ *primâ facie*, is a train advertised to take PASSENGERS generally, — people travelling from place to place, — upon the terms and in the manner *ordinarily* applicable to such passengers ” (per Selborne, C., *Burnett v. G. N. of Scotland Ry*, 54 L. J. Q. B. 535; 10 App. Ca. 147).

Accordingly, in that case (the defendant company having agreed that all their passenger trains should regularly stop at Crathes), it was held that Queen’s Messenger trains and Post Office trains, which ran only whilst the Queen was staying at Balmoral, but which were advertised in the Company’s time-tables, and by which, to some extent, ordinary passengers could travel, were “ Passenger Trains ”; but (diss. Ld Bramwell) that Excursion trains were not.

Cp, ORDINARY TRAIN: “ Special Train,” sub SPECIAL.

**PASSING.** — “ The date of the ‘ Passing ’ ” of an Act “ are common English words, which have a fixed meaning in our language and law, — they mean, the time when the Royal Assent is given to a Bill which has passed both Houses of Parliament ” (per James, L. J., *Ex p. Rashleigh, Re Dalzell*, 45 L. J. Bank. 31; 2 Ch. D. 9), and that is also the date of its COMMENCEMENT where it provides no other commencement (33 G. 3, c. 13; s. 36 (1), Interp Act, 1889). *Vh*, *Hall v. L. B. & S. Ry*, 55 L. J. Q. B. 328; 17 Q. B. D. 233; *Ings v. Lond. & S. W. Ry*, 38 L. J. C. P. 8; L. R. 4 C. P. 20; *Wood v. Hunt*, 38 L. J. C. P. 10, n 8; L. R. 4 C. P. 18, n 2. But where there is a date named in the Act for it to

come into operation, and a thing prohibited by it is completed before that date, then the phrase "after the passing" would seem to mean, "after the Act shall come into operation" (*Wood v. Riley*, 37 L. J. C. P. 24; L. R. 3 C. P. 26). *Cp.*, TO BE PASSED.

Where an Act comes into operation on a stated DAY, it becomes law as soon as the clock begins to strike twelve on the previous night (*Tomlinson v. Bullock*, 48 L. J. M. C. 95; 4 Q. B. D. 230: s. 36 (2), Interp Act, 1889).

Debt "contracted after the passing" of the Act; *V.* CONTRACTED.

Estate Duty is by s. 1, Finance Act, 1894, payable on PROPERTY which *really* "passes on" Death; by s. 2, it is imposed on what shall be "*deemed*" to be property so passing; if any "case falls within s. 1, it cannot also come within s. 2. The two sections are mutually exclusive" (per Ld Macnaghten, *Cowley v. Inl. Rev.*, 1899, A. C. 212; 68 L. J. Q. B. 442); therefore, if it comes within s. 1, Duty is payable only on the principal value of the property after deducting the mortgages and charges subject to which it passes (*S. C.*, 1899, A. C. 198; 68 L. J. Q. B. 435; 80 L. T. 361; 47 W. R. 525; 63 J. P. 436). *Vh.*, s. 22 *l* of the Act, which enacts that " 'Property passing *on the Death*,' includes, property passing either immediately on the death, or after any interval, either certainly or contingently and either originally or by way of substitutive limitation; and the expression '*on the Death*' includes, 'at a period ascertainable only by reference to the death'": *V. A-G. v. Dodington*, cited UNDER: *A-G. v. Beech*, 1898, 2 Q. B. 147; 67 L. J. Q. B. 585; affd in H. L. 1899, A. C. 53; 68 L. J. Q. B. 130; 79 L. T. 565; 47 W. R. 257; 63 J. P. 116, the doctrine of *whle* is further established by s. 11 (1), Finance Act, 1900: *A-G. v. Grey*, 67 L. J. Q. B. 76, 947; 1898, 2 Q. B. 534; nom. *Grey v. A-G.*, 1900, A. C. 124, 69 L. J. Q. B. 308: *A-G. v. De Preville*, 1900, 1 Q. B. 223; 69 L. J. Q. B. 283; 81 L. T. 690; 48 W. R. 193: BENEFIT: INTEREST: CESSER: PURCHASE: COMPETENT.

Property "passing UNDER" Voluntary Settlement, s. 38 (2 *c*), 44 & 45 V. c. 12, amended by s. 11, 52 & 53 V. c. 7; *V. A-G. v. Chapman*, 1891, 2 Q. B. 526; 60 L. J. Q. B. 602; 40 W. R. 79: *A-G. v. Gosling*, 1892, 1 Q. B. 545; 61 L. J. Q. B. 429; 66 L. T. 284; 40 W. R. 366.

"Passing OVER the same portion of the Line," s. 90, Ry C. C. Act, 1845; *V. SAME.*

Vehicle "passing UPON" a Highway, s. 78, Highway Act, 1835, means, "while the vehicle is on its way or journey; and whether the driver leaves his horses whilst they are moving and lets them go on, or stops them and then leaves them" for a brief while, "they are equally passing upon the highway" (*Phythian v. Baxendale*, 1895, 1 Q. B. 768; 64 L. J. M. C. 174; 72 L. T. 465; 43 W. R. 412; 59 J. P. 217).

*V. PASS.*



**PAST.** — “Past Act”; Stat. Def., Sum Jur Act, 1879, s. 49.

“Any Act, whether Past or Future,” s. 19, Sum Jur Act, 1879, does not include that Act itself (*R. v. London Jus.*, 1892, 1 Q. B. 664; 61 L. J. M. C. 104; 66 L. T. 678; 40 W. R. 575; 56 J. P. 421). *Vtbc*, CONSENT, at end.

Past MEMBERS of a Co liable to be Contributories, s. 38, Comp Act, 1862; *V. Webb v. Whiffin*, L. R. 5 H. L. 711; 42 L. J. Ch. 161: *Brett's Case*, 40 L. J. Ch. 497; 6 Ch. 800: *Morris' Case*, 41 L. J. Ch. 11; 7 Ch. 200.

**PASTIME.** — *V. GAME*, p. 796.

**PASTOR.** — *V. BISHOP*.

**PASTORAL.** — *V. AGRICULTURAL*.

**PASTORAL LEASE.** — The “Annual License Fee” which under s. 81, Crown Lands (New South Wales) Act, 1884, the Minister is to determine on the grant of a Pastoral Lease under the Act, cannot be higher than the appraisalment of the Local Land Board under s. 78 (*Allison v. Burns*, 59 L. J. P. C. 34; 15 App. Ca. 44). The rent of such a Lease is payable from the date of its notification in the Government Gazette (*Reid v. Garrett*, 58 L. J. P. C. 74; 14 App. Ca. 94).

**PASTURAGE.** — A right of “Common Pasturage and Herbage,” only authorizes taking what can be taken by the mouth or bite of cattle, and not to cut or carry away any part of the growth of the soil (*De lu Warr v. Miles*, 50 L. J. Ch. 754; 17 Ch. D. 535). *V. COMMON*.

“Right of Pasturage usually enjoyed”; *V. Musgrave v. Inclosure Commrs*, L. R. 9 Q. B. 162; 43 L. J. Q. B. 80. *Vf*, HELD.

“Sole” is synonymous with “Several” right of Pasturage (*Hopkins v. Robinson*, 2 Lev. 2).

As to obtaining the right of pasturage by long user, *V. Neaverson v. Peterborough*, 83 L. T. 496.

**PASTURE.** — “Any Holding let to be used wholly or mainly for the purpose of Pasture,” s. 58 (3), Land Law (Ireland) Act, 1881, 44 & 45 V. c. 49; *V. Westropp v. Elliyott*, 9 App. Ca. 815; 52 L. T. 153; 14 L. R. Ir. 319: *Battersby v. Nicholson*, 22 L. R. Ir. 38: *Holmes v. Launder*, Ib. 47: *Eivers v. Hamilton*, 28 Ib. 464: *Ball v. Maxwell*, Ib. 468: *Byrne v. Hill*, 30 Ib. 603, 609, 610. *Vf*, AGRICULTURAL: TILLAGE: *Cp*, MARKET GARDEN, at end.

*V. COMMON*: SUFFICIENT PASTURE.

**PASTURES.** — “If a man doth grant all his pastures, *pasturas*, the land itselfe employed to the feeding of beasts doth passe, and also such pastures or feedings as he hath in another man's soile. *Leswes* or *lesues*,

is a Saxon word, and signifieth pastures. Between *pastura* and *pasceum*, the legall difference is, that *pastura* in one signification containeth the ground itselfe called pasture. *Pasceum*, feeding, is wheresoever cattell are fed. of what nature soever the ground is" (Co. Litt. 4 b: *Vh*, *Doe d. Kinglake v. Beviss*, 7 C. B. 483, 484, 504; 18 L. J. C. P. 128: *Mogg v. Yutton*, 50 L. J. M. C. 17; 6 Q. B. D. 10; 29 W. R. 74: Elph. 607-615). *Vp*, GOING: HERBAGE: *V*. MEADOWS.

"Pasture"; — "Pasture is a general name for herbage, acorns, mast, and nuts, and for leaves and flowers, and for all things comprised under the name of Pannage" (Britton, l. 2, ch. 24, 1 Nichols' Ed. 371: *Va*, Bracton, l. 4, c. 38, fol. 222: Fleta, l. 4, c. 19: Cowel). *V*. PANNAGE.  
*V*. COMMON.

**PATENT.** — Quà Patent Acts, " ' Patent ' means, Letters Patent for an INVENTION " (s. 46, 46 & 47 V. c. 57).

*Vh*, Edmunds on Patents: Terrell, *Ib.*: Robinson, *Ib.*: Gordon, *Ib.*: 9 Encyc. 515-538: FRANCHISE: USE: VEND.

Rights of Co-Owners of a Patent; *V. Steers v. Rogers*, 1893, A. C. 232; 62 L. J. Ch. 671.

"The Patents, Designs, and Trade Marks Acts, 1883 to 1888"; *V*. Sch 2, Short Titles Act, 1896.

"No doubt, a man may use the word ' Patent ' so as to deceive no one. It may be used so as to mean, that which was a Patent but is not so now. But if you suggest (*i.e.* untruly) that it is protected by an existing Patent, you cannot obtain the protection of that representation as a Trade-Mark" (per Jessel, M. R., *Cheavin v. Walker*, 5 Ch. D. 862; 46 L. J. Ch. 686: *Vf*, per Ld Kingsdown, *Leather Cloth Co v. American Leather Cloth Co*, 11 H. L. Ca. 543, 544). And, now, if a person sells an article with the word " Patent " or " Patented," or like phrase, on it, that is a representation that it is a Patented Article within subs. 1, s. 105, Patents, &c, Act, 1883 (subs. 2, *Ib.*): As to penalty for unauthorized use of " Patent," " Letters Patent," &c, s. 7, 5 & 6 W. 4, c. 83, *V. Myers v. Baker*, 28 L. J. Ex. 90; 3 H. & N. 802. *Vf*, REGISTERED.

*V*. PATENTEE: THREAT.

**PATENT AGENT.** — Quà, and by, s. 1, Patents, &c, Act, 1888. " ' Patent Agent,' means, exclusively an Agent for obtaining patents in the United Kingdom."

**PATENT AMBIGUITY.** — " There are two kinds of Ambiguity : —  
" *First*, where the ambiguity arises from the fact that the parties have expressed inconsistent intentions on the face of the deed. An ambiguity of this class is apparent to any person perusing the deed, even if he be unacquainted with the circumstances of the parties; and is called a ' Patent Ambiguity.'

" *Second*, where no ambiguity is apparent to a person perusing the

deed until, on obtaining evidence of the circumstances of the parties, it is discovered that there are several persons or things, or classes of persons or things, to each of which a name or description contained in the deed seems to be equally applicable. An ambiguity of this class is called a 'Latent Ambiguity,' or an 'Equivocation'" (Elph. ch. 8, *whc*, for cases and obs in illustration).

**PATENT DEFECT.** — *V.* DEFECT.

**PATENT MEDICINE.** — *V.* POISON.

**PATENTEE.** — Quà the Patent Acts, " 'Patentee' means, the person for the time being entitled to the benefit of a PATENT " (s. 46, 46 & 47 V. c. 57); but an Assignee of a Patent is not on the same favourable footing as regards its Prolongation under s. 25, *Ib.*, as the Inventor (*Re Bower-Barff*, 1895, A. C. 675; *Re Hopkinson*, 1897, A. C. 249; 66 L. J. P. C. 38; 75 L. T. 462). *V.* FIRST INVENTOR.

A description on a manufacturer's label as "Patentee," held to be equivalent to describing the article as "patent" (*Nivey v. Roffey*, W. N. (70) 227).

**PATERNA.** — "Ex parte Paternâ"; *V.* NEXT OF KIN.

**PATIENT.** — "Patient in a HOSPITAL," s. 1, 9 & 10 V. c. 66, means, one who has "resided" in, not one who has been compulsorily "confined" in, a Hospital (*St. Olave's v. Canterbury*, 1897, 1 Q. B. 682; 66 L. J. Q. B. 471; 76 L. T. 517; 45 W. R. 529).

Quà Inebriates Acts, "Patient," means, "a person who has been admitted into a Retreat, and whose term of detention has not expired or been concluded by his discharge" (s. 27, 61 & 62 V. c. 60).

"Patients' Expenses"; *V.* EXPENSES.

"Private Patient," quà Lunacy Act, 1890, "means, a Patient who is not a PAUPER" (s. 341).

*V.* AGENT AND PATIENT.

**PATRIMONY.** — "Patrimony" is not, necessarily, restricted to property derived directly from a father (*Green v. Giles*, 5 Ir. Ch. Rep. 25).

**PATRON.** — "Is hee that hath the Advowson of a Parsonage, Vicarage, Free-Chappell, or such like Spirituall Promotion" (Termes de la Ley).

Quà Ecclesiastical Dilapidations Act, 1871, 34 & 35 V. c. 43 (and by its s. 3), " 'Patron' shall, with reference to any BENEFICE, mean the person or persons or corporation who, in case such benefice were vacant, would be entitled to present thereto; but if the right to present to such Benefice shall be vested in different persons or corporations, whether jointly or by way of alternate presentations, the term 'Patron' shall

(unless the context requires otherwise) comprehend both or all such different persons or corporations in whom such right of joint or alternate presentations shall for the time being be vested"; and ss. 126, 127, 128, Pluralities Act, 1838, 1 & 2 V. c. 106, shall be applicable.

Incumbents Resignation Act, 1871, 34 & 35 V. c. 44, provides a like def (s. 2); which def is also made applicable to Glebe Lands Act, 1888, 51 & 52 V. c. 20 (s. 12).

V. PRIVATE PATRON.

**PATRONAGE.** — Quà Bishops Resignation Act, 1869, 32 & 33 V. c. 111, "Patronage," includes, "all Advowsons, Rights of Presentation to benefices, and any ecclesiastical or cathedral preferment or dignity, and all other appointments to office exercisable by an Archbishop or Bishop by reason of his office" (s. 14).

**PATTERN.** — Where novelty of design registered for "Pattern" is in question, "Pattern" includes, SHAPE and Ornamentation, in which accordingly novelty or originality may be found as distinguished from Pattern (*Re Rollason*, 1898, 1 Ch. 237; 67 L. J. Ch. 100, diss. Williams, L. J., affd in *H. L. nom. Heath v. Rollason*, cited DESIGN). Cp, CHART.

**PAUPER.** — "Pauper," quà Lunacy Act, 1890, "means, a person wholly or partly chargeable to a Union, County, or Borough" (s. 341): for the prior defs in the Lunacy Acts, 11, 8 & 9 V. c. 100, s. 114, c. 126, s. 84; 16 & 17 V. c. 97, s. 132. "Pauper LUNATIC"; V. Lunacy (Scot) Act, 1862, 25 & 26 V. c. 54, s. 1.

Other Stat. Def. — Divided Parishes and Poor Law Amendment Act, 1876, 39 & 40 V. c. 61, s. 44.

V. CASUAL: INDOOR.

"Pauper removed," s. 36, 39 & 40 V. c. 61, means, a person who was a pauper at the time of the passing of the Act and had been removed (*Brighton v. Strand*, 60 L. J. M. C. 105; 1891, 2 Q. B. 156; 64 L. T. 722; 39 W. R. 581; 55 J. P. 743).

Pauper Costs; V. DIVES' COSTS: FORMÂ PAUPERIS.

**PAVE.** — Quà Metrop Man. Acts, " 'Pave,' shall apply to and include, the formation of the ROADWAY or FOOTWAY of any STREET" (s. 112, 25 & 26 V. c. 102); and " 'paved,' shall include, asphalted or other similar paved work" (s. 4, 53 & 54 V. c. 54).

"Paving, Metalling, and Flagging," quà Private Street Works Act, 1892, 55 & 56 V. c. 57, includes "macadamizing, asphaltting, gravelling, kerbing, and every method of making a Carriageway or Footway" (s. 5).

*Seemle*, a Wood Pavement would not satisfy the word "paved" as used in s. 152, P. H. Act, 1875 (*A-G. v. Bidder*, 47 J. P. 263).

V. FLAG: PAVEMENT.

**PAVEMENT.** — A "Pavement" is, probably, a paved footway (s. 112, 3 G. 4, c. 126, on *wher*, *R. v. Manchester*, 2 L. T. 280).

A footway made up with gravel and kerbed, though not paved with stone or flagged, is a "Pavement" within s. 78, *Metrop. Man. Act, 1855* (*St. John's, Hampstead v. Hoopel*, 15 Q. B. D. 652; 54 L. J. M. C. 147; 1 Times Rep. 584; 33 W. R. 903).

*Vh*, per Tenterden, C. J., *Loveridge v. Hodson*, 2 B. & Ad. 608, 609.  
*Cp*, PAVE: FLAG. *V*. FOOTPATH: FRONTING, *n*: SOIL.

**PAWN.** — *V*. PLEDGE: FORFEITED.

Quà *Pawnbrokers Act, 1872, 35 & 36 V. c. 93*, " 'Pawnbroker,' includes, every person who carries on the business of taking goods and chattels in pawn" (s. 5); within which italicised words are included "every person who keeps a SHOP for the purchase or sale of goods or chattels, or for taking in goods or chattels by way of security for money advanced thereon, and who purchases or receives or takes in goods or chattels and pays or advances or lends thereon any sum of money (not exceeding £10) with or under an agreement or understanding (expressed or implied, or to be, from the nature and character of the dealing, reasonably inferred) that those goods or chattels may be afterwards redeemed or repurchased on any terms; And every such transaction, article, payment, advance, and loan, shall be deemed a 'Pawning, Pledge, and Loan,' respectively, within this Act" (s. 6; *Vf*, s. 10).

"*Pawner*," quà *Pawnbrokers Act, 1872*, "means, a person delivering an article for pawn to a Pawnbroker" (s. 5). *Vf*, PLEDGE.

**PAY.** — "To pay Money" is, not to pay over any particular coins but, to satisfy the Amount by PAYMENT (per *Esher, M. R., Re Miller*, 1893, 1 Q. B. 327; 62 L. J. Q. B. 324).

Quà *Trustee Act, 1893*, " 'Pay' and 'PAYMENT,' as applied in relation to stocks and securities and in connection with the expression 'into Court,' include the deposit or transfer of the same in or into Court" (s. 50).

A direction "to pay and DIVIDE" will not postpone the vesting of a Gift (*Re Pickworth*, cited EITHER); sometimes, when aided by a context, these words will work a vesting (*Pearman v. Pearman*, 33 Bea. 394). Such a direction may imply a Power, but not a Trust, for sale (per *North, J., Re Wintle*, 65 L. J. Ch. 868; explaining *Mower v. Orr*, 18 L. J. Ch. 361; 7 Hare, 473).

As a context, "pay" may sometimes work a Tenancy in Common; *V*. EACH.

"To pay as may be paid thereon," in a Marine Re-Insree. does not bind the re-insurer to pay what the insurer has paid unless the latter shows that he was liable to pay it (*Chippendale v. Holt*, 73 L. T. 472; 65 L. J. Q. B. 104; 44 W. R. 128); but actual payment is not a Con-

dition Precedent (*Re Eddystone Insrce*, 1892, 2 Ch. 423; 61 L. J. Ch. 362; 66 L. T. 370; 40 W. R. 441). *Vf*, ORIGINAL POLICY.

The "Annual Pay" of a POLICE Constable, quâ Pension under the Police Act, 1890, 53 & 54 V. c. 45, is 365 times his Daily Pay, not 52 times his Weekly Pay (*Upperton v. Ridley*, 1900, 1 Q. B. 680; 69 L. J. Q. B. 475; 82 L. T. 233; 48 W. R. 494; 64 J. P. 469; affd 70 L. J. Q. B. 249); but his "Pay" does not include Special Allowances, *e.g.* that of 7s. a week for being in attendance at the House of Lords (*Ib.*, 70 L. J. Q. B. 249): *Vf*; *Goodwin v. Sheffield*, 71 L. J. K. B. 492; 1902, 1 K. B. 629. *Cp*, EMOLUMENT.

*V*. PAID: ADVANCE: RETIRED PAY.

#### PAY TO. — *V*. APPLY.

A devise to A. upon trust to pay to B. the rents, or to pay taxes, or to apply the rents for B.'s maintenance, gives the LEGAL ESTATE to A. (2 Jarm. 292, 293). *V*. PERMIT.

"Pay to Order"; *V*. ORDER.

"Raise and pay"; *V*. SEVERANCE.

**PAYABLE.** — Where there is a gift to a remainderman on attaining 21 or marrying, but to go over in case of his death before his share becomes "payable," this word will generally be read as "vested" (*Emperor v. Rolfe*, 1 Ves. sen. 208: *vthe, Walker v. Main*, 1 Jac. & W. 1: *Mendham v. Williams*, L. R. 2 Eq. 399: *Day v. Radcliffe*, 3 Ch. D. 657; 24 W. R. 961). *Vf*, *Hallifax v. Wilson*, 16 Ves. 168: *Mocatta v. Lindo*, 9 Sim. 56: *Haydon v. Rose*, 39 L. J. Ch. 688; L. R. 10 Eq. 224. *Cp*, DIE.

It frequently happens that "a money fund is given to a person for life, and after his decease, to his children at majority or marriage, with a gift over in the event of any of the objects dying before their shares become payable. In such cases it becomes a question whether the word 'payable' is to be considered (1) as referring to the age or marriage (or any other such circumstance affecting the personal situation of the legatee), on the arrival or happening of which the shares are made 'payable,' or (2) to the actual period of distribution; in other words, whether the shares vest absolutely at the majority or marriage of the legatees, — *in the lifetime of the legatee for life*; or whether the vesting is postponed to the period of such majority or marriage, *and the death of the legatee for life*. As the latter construction exposes the legatees to the risk of losing the testator's provision in the event of their dying in the lifetime of the legatee for life, — although they may have reached adult or even advanced age and may have left numerous descendants, — the Courts have strongly inclined to hold the word 'Payable' to refer to the majority or marriage of the legatees, especially if the testator stood towards the legatees in the parental relation.

“ And where (as often happens) the question has arisen under Marriage Settlements, the leaning to this construction is strongly aided by the occasion and design of the instrument, whose primary object obviously is to secure a provision for the issue of the marriage. In Wills, the point, like all others, depends solely upon the intention to be collected from the context ” (2 Jarm. 799, *whr*, to p. 808, for cases illustrating and qualifying these propositions: *If, Wakefield v. Maffet*, 55 L. J. Ch. 4; 10 App. Ca. 422; 53 L. T. 169: *Partridge v. Baylis*, W. N. (81) 81).

“ It is presumed that if upon the true construction of the Will ‘ payable ’ applies to the age or marriage of the legatee, the construction will not be varied by the accident of the legatee for life dying before the majority or marriage of the legatee in remainder; but that the interest of the latter will remain liable to defeasance during minority or until marriage.

“ But if no time is specified — (or, can be collected as specified ?) — for payment, the word ‘ payable ’ in the gift over will be held to refer to the death of the tenant for life, and the legatee in remainder must survive him in order to take.

“ If an *immediate* legacy is given without specifying a time for payment, and is given over in case the legatee dies before it becomes payable, the word ‘ payable ’ can only have reference to the death of the testator. And even where a legacy (whether immediate or after a prior life estate) is directed to be paid at a particular age, and is given over in case the legatee dies before it becomes ‘ payable,’ the gift over takes effect if the legatee dies before the testator, although he may have attained the age ” (2 Jarm. 808, 809). *If, Watson Eq.* 1228-1230. *Cp, VESTED.*

“ A PORTION is not properly said to be ‘ payable ’ by Trustees until two things have occurred, *i.e.* when the time appointed for raising it has arrived, *and* the person entitled is able to give a discharge for it; but a Portion is often said to be ‘ payable ’ to a Child so soon as the event has happened which gives the child a Vested Interest in it, and, in the latter case, the word ‘ payable ’ denotes only that the child is entitled or enabled to receive such Share or Portion ” (per Westbury, C., *Massy v. Lloyd*, 10 H. L. Ca. 268).

“ Would become payable ” to any other person, in a FORFEITURE clause; *V. WOULD.*

“ Due and Payable ”; *V. Re Willmott*, cited *DUE.*

“ RENT PAYABLE ” from which TITHES are deductible, s. 80, 6 & 7 W. 4, c. 71, means, the current rent next payable (*Dawes v. Thomas*, 1892, 1 Q. B. 414; 61 L. J. Q. B. 482; 66 L. T. 451). So, of “ Rent,” in s. 17, 38 G. 3, c. 5 (*Andrew v. Hancock*, 1 Brod. & B. 37: *Spragg v. Hammond*, 2 Ib. 59). So, quā deduction of Income Tax (*Denby v. Moore*, 1 B. & Ald. 123: *Cumming v. Bedford*, 15 M. & W. 428: *Sr*, s. 15, 27 V. c. 18). But when the full rent is paid under protest to avoid distress, the charge or tax deductible therefrom may be recovered

(*Baker v. Greenhill*, 11 L. J. Q. B. 161; 3 Q. B. 148; 2 G. & D. 435).

“Money charged upon, or payable OUT OF, land,” s. 42, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; *V. CHARGED UPON.*

An Acknowledgement of Arrears of Rent or Interest so charged or payable, “by the person by whom the same was *payable*,” has to be made, not so much by the person compellable to pay but, by the person whose property or right to property would be affected if such arrears are payable and which arrears would not be payable without an Acknowledgement, *e.g.* an Acknowledgement by a Mtgor does not prejudice a Puisne Mtgee, nor, quà realty devised in trust, does an acknowledgement avail which is not signed by all the trustees (*Bolding v. Lane*, and *Astbury v. Astbury*, cited ACKNOWLEDGEMENT. *Vh*, 42 S. J. 738, 739).

As to the contextual effect of “payable”; *V. Tennant v. Smith*, cited PERQUISITE.

*V. OWING: RECEIVED: TO BE PAID.*

**PAYEE.** — A Payee means, ordinarily, a person to whom payment is made, but in the phrase “Purchaser, Payee, or Incumbrancer,” at end of s. 92, Bankry Act, 1869, it meant, “person receiving payment as a Creditor” (per Cairns, C., *Butcher v. Stead*, 44 L. J. Bank. 132; L. R. 7 H. L. 839). In the corresponding section (subs. 2, s. 48) of the Bankry Act, 1883, this phrase is varied to “any person making title through or under a creditor of the bankrupt.”

A “Payee,” *e.g.* of a BILL OF EXCHANGE, or PROMISSORY NOTE, is the person to whom the money is, or will become, payable: *V. HOLDER.*

**PAYING.** — The usual preface in a Lessor’s Covenant for Quiet Enjoyment, — *viz.*, the Lessee “paying the rent hereby reserved and performing the covenants on his part herein contained,” — does not make such payment or performance a Condition Precedent to the performance by the lessor of his covenant (*Hays v. Bickerstaffe*, 2 Mod. 34; Vaugh. 118; *Dawson v. Dyer*, 5 B. & Ad. 584; 2 N. & M. 559; *Edge v. Boileau*, 55 L. J. Q. B. 90; 34 W. R. 103. *Vh*, Woodf. 722). In his successful argument in *Hays v. Bickerstaffe*, Pemberton, Serjt., said, “The words ‘Paying and Yielding’ make no Condition, nor was it ever known that for such words the Lessor entered for non-payment of rent; and there is no difference between these words and ‘Paying and Performing,’ *Bennet’s Case* in B. R.: *Duncomb’s Case*. Owen, 54.” In a previous part of his argument he admitted that “the word ‘Paying,’ in some cases, may amount to a Condition; but that is where, without such construction, the party could have no remedy.”

*V. YIELDING AND PAYING.*

“Paying a DIVIDEND”: *V. STOCKS.*

“Paying FREIGHT and all other CONDITIONS AS PER CHARTER-PARTY,”



or "Paying for the said Goods as per Charter-Party," in a Bill of Lading, will not make the consignee liable for Demurrage at the Port of Loading over which he has no control (*Smith v. Siereking*, 24 L. J. Q. B. 257; 4 E. & B. 945; 5 Ib. 589; *County of Lancaster S. S. v. Sharpe*, 59 L. J. Q. B. 22; 24 Q. B. D. 158); *secus* of, "for Demurrage accruing from his own delay in the Port of Discharge" (per Jervis, C. J., *Smith v. Siereking*, 5 E. & B. 591, referring to *Jesson v. Solly*, 4 Taunt. 52, and *Wegener v. Smith*, 24 L. J. C. P. 25; 15 C. B. 285). If it is shown that any part of the goods has been received under the Bill of Lading, that is evidence that the consignee undertook to pay for Demurrage even at the Port of Loading (*Wegener v. Smith*, sup: per Mathew, J., *County of Lancaster S. S. v. Sharpe*, sup); but such evidence is not conclusive and may be rebutted by a repudiation of the claim before accepting delivery, especially when the shipowner knows that the consignee is only an Agent (*County of Lancaster S. S. v. Sharpe*, sup). *Vf*, *East Yorkshire S. S. Co v. Hancock*, 5 Com. Ca. 266. *V*. HE OR THEY PAYING FREIGHT: ON PAYMENT: SANS RECOURS.

**PAYMASTER.** — "Paymaster of *Civil Services*," quâ Landed Property Improvement (Ir) Act, 1847, 10 & 11 V. c. 32, means, "the Paymaster of Civil Services in Ireland for the time being" (s. 66).

"Paymaster *General*"; Stat. Def., 30 & 31 V. c. 98, s. 3; National Debt Act, 1883, 46 & 47 V. c. 54, s. 11; Lunacy Act, 1890, s. 341. — *Scot.* 55 & 56 V. c. 27, s. 3. — *Ir.* 55 & 56 V. c. 27, s. 4.

**PAYMENT.** — A "payment ought to be reall, and not in shew or appearance" (Co. Litt. 209 b).

"'Payment' is not a technical word; it has been imported into law proceedings from the Exchange and not from law treatises. It does not necessarily mean payment in satisfaction and discharge, but may be used in a popular sense" (Dwar. 675, citing *Maillard v. Argyle*, 6 M. & G. 40, adopted in *Turney v. Dodwell*, 3 E. & B. 141; 23 L. J. Q. B. 139; *Va*, FOR).

A Cheque or Bill, if duly honoured, is Payment as from the time of its being given (*Belshaw v. Bush*, 22 L. J. C. P. 24; 11 C. B. 191; per Cockburn, C. J., *Bridges v. Garrett*, 39 L. J. C. P. 251; L. R. 5 C. P. 451; *Currie v. Misa*, 44 L. J. Ex. 94; L. R. 10 Ex. 153; per Ld Blackburn, *McLean v. Clydesdale*, 9 App. Ca. 95; *Hadley v. Hadley*, 1898, 2 Ch. 680; 67 L. J. Ch. 694). Therefore, an agreement for the sale of a business with all its "DEBTS DUE" and the "benefit of all Securities for such Debts," does not pass any debt for which a Cheque or Bill has been given, if such cheque or bill is duly honoured although such honouring is subsequent to the agreement (*Hadley v. Hadley*, sup). So, NOTICE of an Assignment of a Debt is too late after a cheque for it has been given to the assignor (*Bence v. Shearman*, cited ABSOLUTE ASSIGN-

MENT). But quia the Statute of Limitation a Loan for which the lender gives his cheque, dates from the time when the cheque is cashed (*Garden v. Bruce*, L. R. 3 C. P. 300; 37 L. J. C. P. 112).

A Banker "receives payment" of a Crossed Cheque for his CUSTOMER, within the protection of s. 82, Bills of Ex. Act, 1882, when he has collected it and placed the proceeds to the customer's account, although such account is overdrawn and the effect of the transaction is to pay off the overdraft (*Clarke v. London and County Bank*, 1897, 1 Q. B. 552; 66 L. J. Q. B. 354; 76 L. T. 293; 45 W. R. 383; *Srthe*, per Collins, M. R., *Gordon v. London City Bank*, 71 L. J. K. B. 228; 1902, 1 K. B. 270, 271).

A payment may, generally, be made by the mere transfer of figures in an account without any money passing (*Eyles v. Ellis*, 4 Bing. 112; *Bodenham v. Purchas*, 2 B. & Ald. 39; *Hills v. Mesnard*, 16 L. J. Q. B. 306; 10 Q. B. 266); or, by giving receipts pursuant to an arrangement (*Amos v. Smith*, 31 L. J. Ex. 423; 1 H. & C. 238); or, sometimes, by an agreement (*Page v. Meek*, 32 L. J. Q. B. 4); or, by payment to a third person (*Waller v. Andrews*, 3 M. & W. 312; *Bramston v. Robins*, 4 Bing. 11); or, by acceptance of goods (*Cunman v. Wood*, 2 M. & W. 465; nom. *Cunning v. Wood*, 6 L. J. Ex. 112; *Hooper v. Stephens*, 4 A. & E. 71); or, by a service rendered (*Bodger v. Arch*, 24 L. J. Ex. 19; 10 Ex. 333); or (conditionally) by bill or note (*V. cases collected Rose. N. P. 692*); or, by sending a cheque by post in compliance with a request for a cheque (*Norman v. Ricketts*, 31 S. J. 124): But sending the Half of a Bank Note is not a Payment (*Smith v. Mundy*, 29 L. J. Q. B. 172).

*Vh*, *Commercial Bank of Australia v. Wilson*, 1893, A. C. 181; 62 L. J. P. C. 61: *Re Cronmire*, 1898, 2 Q. B. 383; 67 L. J. Q. B. 620.

"Payment," s. 41, Solicitors Act, 1843, 6 & 7 V. c. 73; *V. Re Street*, 39 L. J. Ch. 495; L. R. 10 Eq. 165; *Re Stogdon*, 56 L. J. Ch. 420; 56 L. T. 355; 51 J. P. 565; *Re West*, 1892, 2 Q. B. 102; 61 L. J. Q. B. 639; 67 L. T. 57; 40 W. R. 644; *Re Romer*, 62 L. J. Q. B. 610; 1893, 2 Q. B. 286; 69 L. T. 547; 42 W. R. 51; *Re Thompson*, 1894, 1 Q. B. 462; 63 L. J. Q. B. 187; 70 L. T. 238; 42 W. R. 462:—The payment must be after the delivery of a proper BILL (*Re Baylis*, 1896, 2 Ch. 107; 65 L. J. Ch. 418, 612; 74 L. T. 506; 44 W. R. 533; explaining *Hitchcock v. Stretton*, 1892, 2 Ch. 343; 61 L. J. Ch. 529; 66 L. T. 707; 40 W. R. 555; *Re Street*, sup; *Re West*, sup). As to what are a Solicitor's "Disbursements"; *V. DISBURSEMENTS*.

A receipt for a Peppercorn Rent is not a receipt for a "Payment" within s. 3 (4), Conv & L. P. Act, 1881 (*Re Moody and Yates*, 54 L. J. Ch. 886; 30 Ch. D. 344; 33 W. R. 785). In that case, Brett, M. R., said that the subsection was not applicable where rent is reserved in kind; "the words, 'the receipt for the last payment due for rent under the lease,' apply only when there is to be a payment of Money."

A payment to take a case out of a Statute of Limitation must be By,

or by an AGENT on behalf of, the PARTY LIABLE, or entitled or bound, to make it (*Chinnery v. Eeaus*, 11 H. L. Ca. 115; 11 L. T. 69; *Cockburn v. Edwards*, 51 L. J. Ch. 46; 18 Ch. D. 449; *Harlock v. Ashberry*, 51 L. J. Ch. 394; 19 Ch. D. 539; *Lewin v. Wilson*, 11 App. Ca. 639; 55 L. T. 410; *Bradshaw v. Widdrington*, 71 L. J. Ch. 627; 1902, 2 Ch. 430; *Re Frisby*, 59 L. J. Ch. 94; 43 Ch. D. 106; *Re Hale*, 1899, 2 Ch. 107; 68 L. J. Ch. 517; 80 L. T. 827; 47 W. R. 579; *Barnes v. Glenton*, 1899, 1 Q. B. 885; 68 L. J. Q. B. 502; *Re England*, 1895, 2 Ch. 820; 65 L. J. Ch. 21; *Re Allen*, 1898, 2 Ch. 499; 67 L. J. Ch. 614; *Re Clifden*, cited MEANTIME, dissenting from *Re Conlan*, 29 L. R. Ir. 199); and it must be made to the Creditor or to some person on his behalf (*Stamford Banking Co v. Smith*, 1892, 1 Q. B. 765; 61 L. J. Q. B. 405; 66 L. T. 306; 40 W. R. 355), but that includes money recovered by the Creditor by a *fi. fa.* (*Brew v. Brew*, 1899, 2 I. R. 163). *Ij*, ACKNOWLEDGMENT.

#### V. PAY.

Quà Settled Land Act, 1882, "Payment," "in relation to RENT, includes Delivery" (subs. 10 ii, s. 2).

Quà Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, "'Payment' includes, any Pecuniary or other Reward" (s. 64).  
V. MONEY, p. 1217.

Order "for Payment of Money"; *V. R. v. Ravenscroft*, Russ. & Ry. 161; *R. v. Richards*, Ib. 193.

An Order to deposit money in Court to abide a subsequent Order, is not one for the "Payment of a Sum of Money" within s. 4, Debtors Act, 1869, and, on DEFAULT IN PAYMENT, it may be enforced by Attachment (*Lynch v. Lynch*, 54 L. J. P. D. & A. 93; 10 P. D. 183; *Bates v. Bates*, 58 L. J. P. D. & A. 85; 14 P. D. 17; 60 L. T. 125; *Va, Preston v. Etherington*, 57 L. J. Ch. 176; 37 Ch. D. 104); *Secus*, as regards an Order to pay Taxed Costs (*Hewitson v. Sherwin*, L. R. 10 Eq. 53), or an Order on an Undertaking, in an Interpleader, to make good a deficiency on sale of the goods (*Buckley v. Crawford*, 1893, 1 Q. B. 105; 62 L. J. Q. B. 87; 67 L. T. 681; 41 W. R. 239). "The words 'Sum of Money' were advisedly used as a substitute for the word 'DEBT' in order to include cases which do not properly come under 'Debt.' e.g. Costs on a Jdgmt of Nonsuit or on a Rule of Court, or Unliquidated Damages in a Tort" (per Lush, J., *R. v. Pratt*, 39 L. J. M. C. 73; L. R. 5 Q. B. 182). Observe, that in these cases MEANS must be proved. *Cp*, FIDUCIARY CAPACITY: SOLICITOR.

Appropriation of Payments; *V. Clayton's Case*, 1 Mer. 572, 585; *The Mecca*, 1897, A. C. 286; 66 L. J. P. D. & A. 86; *Mutton v. Peat*, 1900, 2 Ch. 79; 69 L. J. Ch. 484; Rosc. N. P. 689 *et seq.*

"Reduced by Payment or otherwise," s. 65, Co. Co. Act, 1888; *V*.  
OTHERWISE: REDUCED BY PAYMENT.

The deduction of Fines from the WAGES of an ARTIFICER is not a

"Payment otherwise than in the CURRENT Coin of the Realm," within s. 9, Truck Acts, 1 & 2 W. 4, c. 37; 50 & 51 V. c. 46 (*Redgrave v. Kelly*, 37 W. R. 543); so, of agreed payment to a Sick or Accident Fund (*Hewlett v. Allen*, 1894, A. C. 383; 63 L. J. Q. B. 608; 42 W. R. 670): *secus*, of a merely colourable payment (*Gould v. Haynes*, 59 L. J. M. C. 9). *Vh*, *Archer v. James*, 31 L. J. Q. B. 153; 2 B. & S. 61; 1 L. T. 26: *Chawner v. Cummings*, cited ARTIFICER: *Smith v. Walton*, 3 C. P. D. 109; 47 L. J. M. C. 45.

"In payment"; *V. FOR*, towards end.

Part payment; *V. EARNEST*.

"Periodical Payments"; *V. PERIODICAL*.

*V. ON PAYMENT: PAID: TO BE PAID: UNPAID: IN CASH: PAYMENT IN DUE COURSE: RENTS AND PROFITS: VOLUNTARY PAYMENT.*

**PAYMENT FOR HONOUR.**—Payment for Honour, *supra* protest; *V. s.* 68, Bills of Ex. Act, 1882.

**PAYMENT IN CASH.**—*V. IN CASH.*

**PAYMENT IN DUE COURSE.**—"Payment in Due Course," of a Bill or Note, means, payment made at or after the maturity of the Bill or Note, to the Holder thereof in GOOD FAITH, and without notice that his title to the Bill or Note is defective (ss. 59, 89, Bills of Ex. Act, 1882): *Vf*, s. 59: ORDINARY COURSE.

**PEACE.**—"Peace," particularly connotes "a quiet and harmless behaviour towards the King and his people" (Cowel). *Vf*, GOOD BEHAVIOUR: SURETY OF THE PEACE.

A Colonial Rule which (under reasonable conditions) enables a plaintiff, in an Action FOUNDED ON contract, to proceed against an ABSENT defendant, is for the "*Peace, Order, and Good Government*," of the Colony and, as such, is within the powers of the New Zealand legislature given by s. 53 of the Act of 1852 for granting a Representative Constitution to New Zealand, 15 & 16 V. c. 72 (*Ashbury v. Ellis*, 1893, A. C. 339; 69 L. T. 159; 62 L. J. P. C. 107). So, a Colonial Act to REGULATE, or even prohibit, the Liquor Traffic, relates to "Peace, Order, and Good Government" (*Russell v. The Queen*, cited CIVIL RIGHTS: *Ontario v. Canada*, 1896, A. C. 348; 65 L. J. P. C. 26). *Vf*, *A-G., Canada v. A-G., Ontario*, cited EXCLUSIVE.

"Good Rule and Government" of BOROUGHs for which BYE LAWS may be made under s. 23, Mun Corp Act, 1882; *V.* note on the section in Arnold on Municipal Corporations: *Vh* (the leading case), *Kruse v. Johnson*, 1898, 2 Q. B. 91; 67 L. J. Q. B. 782; 78 L. T. 647; 46 W. R. 630; 62 J. P. 469, which weakens, if it does not over-rule, such cases as, *Strickland v. Hayes*, 1896, 1 Q. B. 290; 65 L. J. M. C. 55; 44 W. R. 398, and *Munro v. Watson*, 57 L. T. 366. *Strickland v. Hayes* was com-

mented on in *Burnett v. Berry*, 1896, 1 Q. B. 641; 65 L. J. M. C. 118; 74 L. T. 494; 44 W. R. 512 and in *White v. Morley*, 1899, 2 Q. B. 34; 68 L. J. Q. B. 702; and all these three cases were considered in *Thomas v. Sutters*, 1900, 1 Ch. 10; 69 L. J. Ch. 27; 81 L. T. 469; 48 W. R. 133; 63 J. P. 724. *Vf*, as to what is a good Bye Law under the section, *Walker v. Stretton*, 44 W. R. 525: *Simmons v. Malling*, cited BUILDING: *Gray v. Sylvester*, 46 W. R. 63; 61 J. P. 807: *Godwin v. Walker*, 40 S. J. 481; 12 Times Rep. 367: *Brounscombe v. Johnson*, 78 L. T. 265; 62 J. P. 326: *Scott v. Glasgow*, 1899, A. C. 470; 68 L. J. P. C. 98; 81 L. T. 302.

A *County Council* (*V. COUNTY*) has a like power, quâ so much of its area as is not within a Borough (s. 16, Loc Gov Act 1888): *Vh*, *Mantle v. Jordan*, 1897, 1 Q. B. 248; 66 L. J. Q. B. 224; 75 L. T. 552; 61 J. P. 119).

Bye Laws by LOCAL AUTHORITY; As to approving *Building Plans*, *V. Cook v. Hainsworth*, 1896, 2 Q. B. 85; 65 L. J. M. C. 190; 75 L. T. 51; 44 W. R. 541; 60 J. P. 439: As to *Cesspools*, *V. Simmons v. Malling*, sup: Under *Weights and Measures Act*, 1889. *V. Alty v. Farrell*, 1896, 1 Q. B. 636; 65 L. J. M. C. 115; 74 L. T. 492; 60 J. P. 373.

RAILWAY Bye Laws; *V. Bentham v. Hoyle*, 47 L. J. M. C. 51; 3 Q. B. D. 289: *Huffam v. N. Staffordshire Ry*, 1894, 2 Q. B. 821; 63 L. J. M. C. 225; 71 L. T. 517; 43 W. R. 28; 59 J. P. 23: *Dyson v. Lond. & N. W. Ry*, 50 L. J. M. C. 78; 7 Q. B. D. 32: *Saunders v. S. E. Ry*, 49 L. J. Q. B. 761; 5 Q. B. D. 456: — "These authorities relate to cases of variation between the offence as created by Act of Parliament and as set out in the Bye Laws, or to the omission in the Bye Laws of material words given by the section of the Act creating the offence so that the one was repugnant to the other" (per Lindley, L. J., *Lowe v. Volp*, inf).

Under s. 46, TRAMWAYS Act, 1870, Tramway Companies may make Bye Laws to REGULATE "the travelling in or upon any Carriage belonging to them"; *V. Heap v. Day*, 51 J. P. 213; *Hanks v. Bridgman*, 1896, 1 Q. B. 253; 65 L. J. M. C. 41; 74 L. T. 26; 44 W. R. 285; 60 J. P. 312: *Lowe v. Volp*, 1896, 1 Q. B. 256; 65 L. J. M. C. 43; 74 L. T. 143; 44 W. R. 442; 60 J. P. 232.

"Peace OFFICER"; *V. CONSTABLE*.

**PEACEABLE.** — The words of the Certificate of Justices required in Ireland on the Renewal of the license of LICENSED PREMISES as "to the Peaceable and Orderly Manner in which such house has been conducted in the past year," s. 11, Spirits (Ir) Act, 1854, 17 & 18 V. c. 89, "INVOLVE" that the house "has been *conducted* as a Licensed House; and consequently that if the house has not been *so* conducted, there is no subject-matter to which 'Peaceable and Orderly Manner' can be applied"

(per Palles, C. B., *R. v. Antrim Jus.*, 1900, 2 I. R. 499). A house conducted as a Licensed House must be held out to the public *as such*, *i.e.* for the sale of spirituous liquors intended to be consumed "on," as well as those intended to be consumed "off," the premises; and where, in substance, what is done is the carrying on the trade of a Family Wine Merchant, that is not the kind of "conducting" a Licensed premises that is required, not even though a few glasses of liquor are sold during the year for consumption "on" the premises, nor though such a mode of conducting is in accordance with an undertaking given to the Justices (*S. C. : R. v. Dublin Recorder*, 16 L. R. Ir. 424), *à fortiori*, if it is shown that there has been a refusal to supply for consumption "on" the premises (*R. v. Armagh Jus.*, 1897, 2 I. R. 57). *Cp.*, PUBLIC HOUSE.

**PEACEABLY AND QUIETLY.** — In a covenant for quiet enjoyment " 'Quietly' does not mean 'undisturbed by noise.' When a man is quietly in possession it has nothing whatever to do with noise. 'Peaceably and Quietly' means, without interference, — without interruption of the possession" (per Kekewich, J., *Jenkins v. Jackson*, 58 L. J. Ch. 124; 40 Ch. D. 71: *whc* for discussion of *Shaw v. Stenton*, 27 L. J. Ex. 253; 2 H. & N. 858, as explained by *Sauderson v. Berwick*, 53 L. J. Q. B. 559; 13 Q. B. D. 547; 33 W. R. 67. *Vf.*, *Robinson v. Kilvert*, 41 Ch. D. 88). *V.* QUIET ENJOYMENT.

**PEARLS.** — *V.* NECKLACES.

**PECK.** — A Peck is 2 GALLONS (s. 15, 41 & 42 V. c. 49).

**PECULIAR.** — "Peculiar Circumstances for" enlarging time for enrolling a Decree; *V. Hooper v. Gumm*, 26 L. T. 537.

*Cp.*, "Special Circumstances," sub SPECIAL.

An Ecclesiastical "Peculiar" "signifies a particular Parish or Church, that hath jurisdiction within its self, for *probat* of Wills, &c, exempt from the Ordinary, and the bishops Courts. The Kings Chappel is a Royal *peculiar*, exempt from all Spiritual Jurisdiction, and reserved to the Visitation and immediate Government of the King himself, who is Supreme Ordinary" (Cowel). The Court for Peculiars was the Court of Arches (3 Bl. Com. 65). The independent jurisdiction of Benefices "exempt or peculiar" was abolished by s. 108, 1 & 2 V. c. 106. *Vf.*, Phil. Ecc. Law. Part 2. ch. 7.

**PECUNIA.** — *V.* MONEY.

**PECUNIARY CONSIDERATION.** — The exemption from registration of annuities contained in s. 8, 17 G. 3, c. 26 (repealed) for "any Voluntary Annuity granted without regard to Pecuniary Consideration" was held to comprise the case of a grantee giving up his business to the grantor (*Crespigny v. Wittenoom*, 4 T. R. 790; *Hutton v. Lewis*, 5 T. R.

639), or, the assignment of a leasehold interest (*James v. James*, 2 Brod. & B. 702), or, where the consideration was a transfer of stock (*Cumberland v. Kelley*, 1 L. J. K. B. 172; 3 B. & Ad. 602), or, the giving a better security for an existing debt (*Frost v. Frost*, 3 B. & Ad. 612, *n*). But Bank Notes (*Wright v. Reed*, 3 T. R. 554; *Cousins v. Thompson*, 6 T. R. 335; *Morris v. Wall*, 1 B. & P. 208), Cheques (*Pool v. Cabanes*, 8 T. R. 328), and Bills of Exchange or Promissory Notes (*Rumball v. Murray*, 3 T. R. 298), were held to be "Pecuniary Consideration" within the section.

Under 53 G. 3, c. 141 (which replaced 17 G. 3, c. 26), it was held that the surrender of a life interest in a sum of money and of a contingent interest in the corpus, was not a "Pecuniary Consideration" within s. 2, and was "without regard to Pecuniary Consideration or MONEY'S WORTH" within s. 10 (*Evatt v. Hunt*, 22 L. J. Q. B. 348; 2 E. & B. 374, following *Blake v. Attersoll*, 2 L. J. O. S. K. B. 193; 2 B. & C. 875). So, of an Annuity on the Conveyance of property (*Mestayer v. Biggs*, 3 L. J. Ex. 292; 1 Cr. M. & R. 110). Referring to some of the foregoing cases, the Court (*A-G. v. Wolverton*, 65 L. J. Q. B. 616; *affd* 66 Ib. 202; *revid* on another point in H. L., 1898, A. C. 535; 67 L. J. Q. B. 829) said, "This Act (53 G. 3, c. 141), excepted 'Annuities granted without regard to Pecuniary Consideration or Money's Worth' from the operation of the statute; and it was held, in several instances, that Annuities granted in consideration of the Conveyance of an estate, or as part of a Family Arrangement, or in consideration of Marriage, were granted without regard to 'Money's Worth,' within the meaning of the Act, and consequently did not require enrolment." But the cancellation of an ACCEPTANCE and the extinguishment of the debt thereby secured, come within "Money's Worth" (*Burgess v. Richardson*, 9 W. R. 512; 4 L. T. 316).

**PECUNIARY INTEREST.** — If a salary is attached to the office of Mayor, that is a "Pecuniary Interest" within s. 22 (3), Mun Corp Act, 1882, which prevents a member of the Council from voting for himself (*Re Louth*, 1894, 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499).

V. INTEREST: INTERESTED IN.

**PECUNIARY LEGACY.** — "If you find simply the word 'LEGACY' used, and a direction to apportion property amongst the legatees, there, — unless there be something apparent on the face of the Will which shows that the testator has not used the word in its ordinary legal signification, — it will include Annuitants. The expression 'Pecuniary Legatees' in itself, I do not think, would go further than this — it would exclude specific legatees, that is, legatees of mere chattels, but it would have no effect in excluding, *primâ facie*, annuitants from taking the same

benefit as they would have taken if the word had been 'Legatees' instead of 'Pecuniary Legatees' " (per Wood, V. C., *Gaskin v. Rogers*, L. R. 2 Eq. 291, in *whc*, however, Annuitants were excluded, by a context, from participating in a residue given to persons "taking pecuniary legacies"). *Cp*, LEGACY: LEGATEE.

A direction relating to "Pecuniary Legacies" does not apply to the Residue (*Re Elcom*, 1894, 1 Ch. 303; 63 L. J. Ch. 392; 70 L. T. 54; 42 W. R. 279). *V*. REST.

**PECUNIARY REWARD.** — *V*. MONEY, p. 1217.

**PEDIGREE.** — "The term 'Pedigree' embraces not only general questions of descent and relationship, but also the particular facts of *birth*, *marriage*, and *death*, and the *times* when, either absolutely or relatively, these events happened, provided such facts are required to be proved for some genealogical purpose" (Taylor on Evidence, s. 642).

**PEDLAR.** — Quà the Pedlars' Acts. " 'Pedlar,' means, any HAWKER, Pedlar, Petty Chapman, Tinker, Caster of Metals, Mender of Chairs, or other person, who, *without* any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any GOODS WARES or MERCHANDIZE, or procuring orders for goods wares or merchandize, immediately to be delivered, or selling or offering for sale his skill in HANDICRAFT" (s. 3, 34 & 35 V. c. 96). *Vth*, *Gregg v. Smith*, 42 L. J. M. C. 121; L. R. 8 Q. B. 302; 28 L. T. 555; 21 W. R. 737.

Observe, a Pedlar works "without" a horse or beast; and though (by s. 6 of the Act) his Certificate gives him the same exemption from Market Tolls as a "Licensed Hawker" has under s. 13, 10 & 11 V. c. 14 (*V*. *Llandudno v. Hughes*, 1900, 1 Q. B. 472; 69 L. J. Q. B. 303; 82 L. T. 147; 64 J. P. 357), yet that is only so while he is acting as a Pedlar, and he is not exempt from Toll when exposing for sale in a Market goods in a cart drawn by a horse (*Woolwich v. Gardiner*, 1895, 2 Q. B. 497; 64 L. J. M. C. 248; 73 L. T. 218; 44 W. R. 46; 59 J. P. 597, *whc* shows that *Howard v. Lupton*, 44 L. J. M. C. 150, is no longer of authority). *V*. EXPOSE.

**PEEL'S ACTS.** — 7 & 8 G. 4, c. 27, which repealed numerous Criminal Statutes; 7 & 8 G. 4, cc. 29, 30, which reformed the Criminal Law quà Larceny and Malicious Injuries; 9 G. 4, c. 31. The three lastly named Acts, and much subsequent criminal legislation, were repealed by 24 & 25 V. c. 95, and were replaced by the Criminal Law Consolidation and Amendment Acts of 1861, namely, Accessories and Abettors Act, 1861; Larceny Act, 1861; Malicious Damage Act, 1861; Forgery Act, 1861; Coinage Offences Act, 1861; and Offences against the Person Act, 1861: on the history of these Acts, *V*. Preface to 2 ed.



of Greaves on those Acts, of which Acts Mr. Greaves was the draughtsman:

The Sliding Scale Act, 9 G. 4, c. 60: *V. BOUGHT*:

New Parishes Act, 1843, 6 & 7 V. c. 37; New Parishes Act, 1844, 7 & 8 V. c. 94.

**PEER.** — “ ‘Peeres, *Pares,*’ signifie in our Common Law those that are impannelled in an Enquest upon any man, for the convicting or clearing him of any Offence for which he is called in question; and the reason thereof is, because the course and custome of our Nation is to try every Man in such case by his Equals or *Peers*. . . . But this word is most principally used for those that be of the Nobility of the Realm and Lords of the Parliament, the reason whereof is, that although there be a distinction of degrees in our Nobility, yet in all publick actions they are equal, as in their Votes in Parliament, and in passing in Tryal upon any Noble-man, &c ” (Cowel).

The Peers of Parliament are the Lords Spiritual and the Lords Temporal: *V. PARLIAMENT*: 1 Bl. Com. 155–158: “The number of Lords Spiritual, sitting and voting as Lords of Parliament, shall not be increased by the foundation of a New Bishopric in pursuance of this Act ” (s. 5, Bishoprics Act, 1878, 41 & 42 V. c. 68).

Trial by Peers of Parliament; *V. 4 Bl. Com. 259 et seq.*, 348: the other trial “by his peers” is the same as Trial by *JURY* (*Vf*, 4 Bl. Com. 349).

*V. PROHIBITED.*

**PEERAGE.** — “Peerage,” Clause 5, Art. 4, Act of Union between Great Britain and Ireland, means, the Status and Condition of a Peer; therefore, in the case of an Irish Peer holding many titles (by any one of which he could have sate in the Irish House of Peers), there is no “extinction” of a Peerage so long as either of those titles remains in him or his descendants (*Fermoy’s Case*, 5 H. L. Ca. 716; 28 L. T. O. S. 15).

**PEINE.** — *V. PAIN.*

**PEN.** — *V. HOWE.*

**PENAL.** — “A penal LAW is a statute which imposes a penalty” (per Parke, B., *Spencer v. Swannell*, 7 L. J. Ex. 75; 3 M. & W. 162). In that case it was held that an action of debt upon 2 & 3 Edw. 6, c. 13, was a Penal Action within 21 Jac. 1, c. 4, s. 4. An action for treble damages for Pound Breach under 2 W. & M. c. 5, s. 4, is a Penal Action (*Jones v. Jones*, 58 L. J. Q. B. 178; 22 Q. B. D. 425; 60 L. T. 421; 37 W. R. 479: *See, Castleman v. Hicks*, C. & M. 266); so, of an action under 11 G. 2, c. 19, s. 3, to recover double value of goods fraudulently removed to avoid Distress for rent (*Hobbs v. Hudson*, 59 L. J. Q. B. 562; 25 Q. B. D. 232; 63 L. T. 215; 38 W. R. 682); so, of an action by a Common Informer (*Martin v. Treacher*, cited OFFENCE).

Actions for "Penalties, DAMAGES, or Sums of Money given to the Party grieved by any statute now or hereafter to be in force" which by s. 3, Civil Procedure Act, 1833, are to be brought within 2 years of the CAUSE OF ACTION, are "what are popularly called 'Penal Actions,'" and do not include an action against Directors or Promoters of a Co under Directors Liability Act, 1890, 53 & 54 V. c. 64 (*Thomson v. Clanmorris*, 1900, 1 Ch. 718; 69 L. J. Ch. 337; 82 L. T. 277; 48 W. R. 488).

"In its ordinary acceptation 'Penal' may embrace penalties for infractions of general law which do not constitute Offences against the State; it may, for many legal purposes, be applied with perfect propriety to penalties created by Contract; and it, therefore, when taken by itself, fails to mark that distinction between Civil Rights and Criminal Wrongs which is the very essence of the international rule" that no country executes the Penal Laws of another, — "Penal," quâ such rule, comprising "not only prosecutions and sentences for crimes and misdemeanors, but all suits in favour of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue or other municipal laws, and all judgments for such penalties" (*Huntington v. Attrill*, 1893, A. C. 150; 62 L. J. P. C. 47, 48, citing for the latter proposition, *Wisconsin v. Pelican Insree*, 8 Supreme Court Rep. 1370).

"Penal Servitude"; V. Penal Servitude Act, 1853, 16 & 17 V. c. 99, ss. 4, 6: this Act, with s. 2, 20 & 21 V. c. 3, abolished TRANSPORTATION. As to the power of a Colonial Court to order Penal Servitude, *V. R. v. Mount*, 44 L. J. P. C. 58; L. R. 6 P. C. 283. "The Penal Servitude Acts, 1853 to 1891"; V. Sch 2, Short Titles Act, 1896. *Vf*, PRISONER.

"Penal Sum"; V. LIQUIDATED DAMAGES: PENALTY.

**PENALTY.** — " 'Penalty' is an ambiguous word. A Penalty may be the subject-matter of an INFORMATION, or of a COMPLAINT" (per Wright, J., *R. v. Lewis*, 1896, 1 Q. B. 665; 65 L. J. M. C. 126).

Where an Act imposes a Penalty for anything done (*Crepps v. Durdan*, cited NECESSITY) or omitted to be done (*Llewellyn v. Glamorgan Vale Ry.*, cited OWNER, p. 1390) on a day, that, generally, means only one penalty for the entire day; e.g., a man may "exercise his Ordinary Calling on a Sunday" on any number of times on a particular Sunday but will only be liable to one penalty therefor under 29 Car. 2, c. 7 (*Crepps v. Durdan*). So, only one penalty can be recovered for each day that a Ry Co offends against s. 54, Ry C. C. Act, 1845, by not making a substituted road for an existing road which the Co has interrupted (*Llewellyn v. Glamorgan Vale Ry.*). Note: As to when there is only one penalty where there are two or more offenders, *V. Maxwell*, 238-242.

"Penalty," quâ Beerhouse Act, 1830, includes "any Fine, Penalty, or Forfeiture, of a Pecuniary Nature" (s. 32); quâ Post Office (Offences) Act, 1837, it includes "every Pecuniary Penalty or Forfeiture" (s. 47); quâ Exchequer Court (Scot) Act, 1856, 19 & 20 V. c. 56, it comprehends

“Fine and Forfeiture” (s. 47): other Stat. Def., for Scotland, Summary Procedure Act, 1864, 27 & 28 V. c. 53, s. 2; 35 & 36 V. c. 93, s. 56.

“Penalty,” quâ Small Penalties (Ir) Act, 1873, 36 & 37 V. c. 82, includes “any sum of money recoverable in a summary manner” (s. 3); *Vth, R. v. Kildare Jus.*, 1895, 2 I. R. 577.

Where an Act gives a power to inflict a “Penalty or FORFEITURE,” such words “clearly relate to a sum inflicted” (per Groves, J., *Ex p. Elsdon*, inf); and a power to appeal with respect to any “Penalty or Forfeiture” does not embrace an Order for demolition of buildings (*Ex p. Elsdon*, 51 L. J. M. C. 94; 9 Q. B. D. 41: *Vu, Bermondsey v. Johnson*, 42 L. J. M. C. 67; L. R. 8 C. P. 441).

Notwithstanding what was said by Parke, B., in *Chilton v. London & Croydon Ry* (16 L. J. Ex. 89; 16 M. & W. 212), a liability created by a Ry Co’s Bye Law for non-production by a passenger of his ticket is, *semble*, a “Penalty or Forfeiture” under Ry C. C. Act, 1845, s. 145 (*Brown v. G. E. Ry*, 46 L. J. M. C. 231; 2 Q. B. D. 406); and certainly that is so of a liability under a Bye Law for travelling without a ticket (*L. B. & S. Ry v. Watson*, 48 L. J. C. P. 316; 4 C. P. D. 118); *secus*, of an ordinary liability for using a ticket for another station than that named contrary to the conditions of the ticket but where there is no Bye Law applicable (*G. N. Ry v. Winder*, 1892, 2 Q. B. 595; 61 L. J. Q. B. 608; 67 L. T. 422; 56 J. P. 775).

V. PENAL: CRIME: DAILY PENALTY: OFFENCE.

A “Penalty,” in a Contract, generally means, not a sum to be recovered *eo nomine* but, a provision for securing the due performance of the Contract; *secus*, of “LIQUIDATED DAMAGES.”

Additional “Rent by way of Penalty” to secure the performance of stipulations of varying degrees of importance, is such a Penalty and not LIQUIDATED DAMAGES (*Willson v. Love*, 1896, 1 Q. B. 626; 65 L. J. Q. B. 474).

Sometimes, however, a “Penalty” will connote agreed Liquidated Damages (*Fletcher v. Dyche*, 2 T. R. 32: *Duckworth v. Alison*, 5 L. J. Ex. 171; 1 M. & W. 412: *Crux v. Aldred*, 14 W. R. 656: *Bonsall v. Byrne*, 16 W. R. 372; Ir. Rep. 1 C. L. 573).

Penalty for delay in a Bg Contract will be waived if additional works be ordered which cause the delay (*Dodd v. Churton*, 1897, 1 Q. B. 562; 66 L. J. Q. B. 477).

A Charter granting “Penalties” does not include money payable on Estreated Recognizances (*R. v. Dover*, cited CONTEMPT).

“Like Penalty”; V. LIKE.

“Right or Penalty”; V. RIGHT.

PENCIL. — V. WRITING.

PENDING. — A legal PROCEEDING is “pending” as soon as commenced (on *whv* 5 Rep. 47, 48; 7 Ib. 30), and until it is concluded, *i.e.*

so long as the Court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein.

The issue of a citation, for Dissolution of a voidable Marriage, though only issued 7 days before the 5 & 6 W. 4, c. 54 received the royal assent, constituted a suit "depending" at the passing of the Act (*Sherwood v. Ray*, 1 Moore P. C. 353; 1 Curt. 173).

After decree nisi and before decree absolute, a Divorce Suit is "pending" and ALIMONY *pendente lite* may be ordered (*Ellis v. Ellis*, 52 L. J. P. D. & A. 99; 8 P. D. 188).

An action is "pending" within s. 2, M. W. P. Act, 1893, after verdict and judgment if the application that the Costs be charged on Separate Estate restrained from alienation be made within (say) a fortnight of the trial (*Muirhead v. Day*, 12 Times Rep. 168, 169).

A Liquidation under the Bankry Act, 1869, was "pending" (within No. 292 of the Rules made in pursuance thereof) until the Receiver was discharged (*Ex p. Jefferey*, 43 L. J. Bank. 27; 9 Ch. 144; 22 W. R. 57; *Ex p. McHenry*, 53 L. J. Ch. 27; 24 Ch. D. 35; *Vh, Ex p. Hooper, re Elliott*, 8 Ch. D. 53); and Composition Proceedings were "pending" until the composition was fully paid (*Re Lund*, 18 S. J. 343). So, as regards the old Insolvent Debtors Court, a matter was "pending" within s. 4, 32 & 33 V. c. 83, if some proceeding therein might still have been taken (*Re Claygett, Fordham v. Claygett*, 20 Ch. D. 637; 30 W. R. 857). *Vf, Graham v. Robinson*, L. R. 2 Q. B. 387; *R. v. Smith*, 31 L. J. M. C. 105; 9 Cox C. C. 110.

"Pending," s. 169 (3), Bankry Act, 1883; *V. Ex p. Pratt*, 53 L. J. Ch. 613; 12 Q. B. D. 334.

Action "pending," s. 42, Patent Law Amendment Act, 1852, 15 & 16 V. c. 83; *V. Holland v. Fox*, 3 E. & B. 977; 23 L. J. Q. B. 211.

"Pending" Appeal; *V. Taylor v. Greenhalgh*, 24 W. R. 311.

As to what is a *Cause or Proceeding* "pending" within s. 24 (5), Jud. Act, 1873; *V. Hart v. Hart*, 50 L. J. Ch. 697; 18 Ch. D. 670; 30 W. R. 8; *Marshall v. Marshall*, 48 L. J. P. D. & A. 49; 5 P. D. 19; *Va*, Ann. Pr. Quà s. 24 (7), Jud. Act, 1873, a Cause is "pending," even after final judgment, so long as such judgment remains unsatisfied (*Salt v. Cooper*, 50 L. J. Ch. 529; 16 Ch. D. 544); but after Foreclosure Absolute, a Foreclosure action is at an end (*Wills v. Luff*, 57 L. J. Ch. 563; 38 Ch. D. 197).

So, an *Action* may be "pending" within s. 514, Mer Shipping Act, 1854, repld s. 504, Mer Shipping Act, 1894, although an adverse claimant has obtained judgment condemning the ship (*Leycester v. Logan*, 3 K. & J. 446; 26 L. J. Ch. 306).

So, speaking generally, an Unsatisfied Judgment is a "Depending Suit" (*Howell v. Bowers*, 2 Cr. M. & R. 621).

So, the Quebec Act, 43 & 44 V. c. 49, saving suits then "pending,"

applies to proceedings taken in execution of a final judgment (*Redfield v. Wickham*, 57 L. J. P. C. 94; 13 App. Ca. 467; 58 L. T. 455).

An action for Infringement of a Patent is not, after judgment, a "pending" action within s. 18 (10), Patents, &c, Act, 1883, although an appeal from the judgment is pending (*Cropper v. Smith*, 54 L. J. Ch. 287; 28 Ch. D. 148). As to pending "legal proceeding" in the same section; *V. Re Hall*, 21 Q. B. D. 137; 57 L. J. Q. B. 494; 59 L. T. 37; 36 W. R. 892.

"Suit or Matter *actually* pending," s. 17, Charitable Trusts Act, 1853, means, pending at the time of the application (*Re Lister's Hospital*, 6 D. G. M. & G. 187; 26 L. T. O. S. 192; 4 W. R. 156); and when a Final Order has been made, the Petition is no longer "actually pending" (*Re Jarvis' Charity*, 1 Dr. & Sm. 97; 5 Jur. N. S. 724; 7 W. R. 606. *Va, Re Ford's Charity*, 3 Drew. 324). *Vh*, Tudor's Char. Trusts, 336, 480.

As to a "pending" Election; *V. Davies v. Stone*, 36 J. P. 390: *R. v. Pyne*, 37 Ib. 363.

V. IMPENDING: LIS PENDENS: STAGE.

**PENSION.** — Surplus moneys of a Pension which (by an Order under s. 53, Bankry Act, 1883) are in the hands of a Trustee in Bankruptcy, are "Pension" within s. 141, Army Act, 1881; *secus*, of Commutation Money (*Crowe v. Price*, 58 L. J. Q. B. 215; 22 Q. B. D. 429; 37 W. R. 424, *whv* for the other authorities as to Sequestration of a Pension).

V. INCOME.

"Pension," quâ Pensions Commutation Act, 1871, 34 & 35 V. c. 36, "includes any half-pay, compensation allowance, superannuation or retirement allowance, or other payment of the like nature" (s. 2); quâ Pensions and Yeomanry Pay Act, 1884, 47 & 48 V. c. 55, it "includes any allowance in the nature of a pension" (s. 7): *Va*, 50 & 51 V. c. 13, s. 8.

"Pension," quâ Loc Gov Act, 1888, "includes any superannuation allowance, gratuity, or other payment, made on the retirement of any OFFICER" (s. 100); so, of Loc Gov (Scot) Act, 1889 (s. 105).

Other Stat. Def. — Jud. Act, 1873, s. 100: Jud. Act (Ir), 1877, s. 3.

As to calculation of Police Constable's Pension; *V. PAY*, at end.

**PENSIONABLE OFFICE.** — Quâ Loc Gov (Ir) Act, 1898, " 'Pensionable Office,' means, an OFFICE coming within the provisions of any Act authorizing the grant of a superannuation allowance" (s. 109).

**PENSIONER.** — *V. OUT-PENSIONER.*

**PEOPLE.** — In a Marine Insurance, "People," means, the People of all nations in their respective collective capacities; and not bodies of insurgents acting in opposition to their rulers. It means, the governing power of the country; therefore if a corn vessel is seized and detained

by a hungry mob, or a party of rebels, that is not a detention by "the People" (*Nesbitt v. Lushington*, 4 T. R. 783; *Vu, Rotch v. Edie*, 6 Ib. 413; 1 Maude & P. 487).

*Vf*, RESTRAINTS OF KINGS.

**PEPPERCORN.** — *V.* MONEY VALUE: PAYMENT, p. 1436.

**PER.** — *V.* per Ld Selborne, *Pryce v. Mon. Ry*, 49 L. J. Q. B. 141; 4 App. Ca. 216.

**PER ANNUM.** — A. covenanted that if B. married his (A.'s) daughter, he would pay B. £20 "per annum," without saying for how long; held, that that meant more than for one year only (*Hookes v. Swaine*, 1 Sid. 151; 1 Lev. 102; 1 Keble, 511, 517, 555). The report in Siderfin says, that the covenant was by A. to pay "his son-in-law and daughter," and that the ruling was that the £20 was payable "pur lour vies, et que le maintenance serra cy lasting que le marriage." But the other reporters state that the covenant was to pay the son-in-law; and even so, Keble says (p. 555) that the conclusion was that the sum was payable "for life; and whichsoever of them that survived shall have it, it being apparent on the record that it was for their maintenance"; Levinz does not report the conclusion: *Vh*, Platt Cov. 141, 142.

A woman, on marriage, covenanted with her intended husband that he should enjoy her lands during their joint lives, he covenanting with her trustees to pay them £20 "annually"; held that such sum was payable during their joint lives, "as the covenant on the other part was for the enjoyment of the wife's lands" (*Death v. Benns*, 1 Lev. 103, n).

Rent "at the rate of" so much per annum; *V.* RATE.

Directors' remuneration at so much "per annum"; *V.* *Central De Kaop Co*, cited YEAR.

"Per Annum" means, "YEARLY; not *in* the year" (per Bramwell, B. *Easton v. Alce*, cited RATE); *Vf*, *Bateman v. Faber*, cited INCOME.

*V.* ANNUALLY.

**PER AUTRE VIE.** — *V.* PUR AUTRE VIE.

**PER CAPITA.** — A distribution *per capita* is when a number of individuals, *e.g.* a CLASS, even though in different degrees of relationship, take the fund distributable among them in equal shares. Its opposite is PER STIRPES.

**PER CENT.** — As to this phrase, *V.* *Re McGarel*, cited EACH.

**PER CWT.** — In the Hop Trade, a contract for the sale of a stated number of pockets of hops at so many shillings, means, that that is the price "per cwt." (*Spicer v. Cooper*, 1 Q. B. 424; 10 L. J. Q. B. 241; 1 G. & D. 52).

*V.* CWT.

**PER DAY.** — *V.* DAY.

PER HOUR. — *V.* HOUR: DESPATCH.

PER HUNDRED. — *V.* HUNDRED: PER CWT.

PER MIE. — *V.* PER MY ET PER TOUT.

PER MILE. — *V.* MILE.

**PER MONTH.** — An agreement to pay so much “per Month” for a stated service, means, that such payment is to be made “each month, or monthly; and gives a cause of action as each month accrues which, once vested, is not subsequently lost or divested by the service-giver’s desertion or abandonment of his contract” (per Pollock, C. B., *Taylor v. Laird*, 1 H. & N. 273; 25 L. J. Ex. 329).

*V.* MONTH.

FREIGHT “monthly in advance”; *V.* ADVANCE.

**PER MY ET PER TOUT.** — JOINT TENANTS hold “per my et per tout” (Litt. s. 288); — “*Et sic totum tenet et nihil tenet, scil. totum conjunctim, et nihil per se separatim*” (Co. Litt. 186 a).

“In 2 Bl. Com. 182, it is stated that ‘Joint Tenants are said to be seised *per my et per tout*; by the half, or MOIETY, and by all.’ It is true, that, for certain purposes, joint-tenants are *potentially* seised of aliquot parts of the land held by them in jointure; as, for the purpose of alienation in severalty, either by grant (Litt. s. 288), or by demise (*Doe v. Errington*, 3 N. & M. 647); so, for the purposes of merger (Preston on Merger, 447). And where the joint-tenancy happens to be between *two* persons only, their potential aliquot parts may, without impropriety, be termed *moieties*. But this is not, as the learned Commentator, followed by numerous subsequent writers, has supposed, implied in the terms ‘per my et per tout’; the term ‘my’ signifying, not ‘a moiety,’ but ‘not in the least’: See the Epitaph on *La Fontaine’s*, *Picard* wolf, cited 7 M. & G. 172, *n.* And, therefore, Lord Coke gives the exact force of the expression ‘seised *per my et per tout*’ by describing the party so seised as one *qui nihil habet et totum habet*.

“Littleton was rightly understood by Howard, who translates or modernizes Litt. s. 288 thus, — ‘On dit communément que chaque jointenant n’a la propriété de *rien* et est propriétaire de tout; ce qui veut dire qu’il tient tout conjointement, et ne tient *rien* en particulier. En effet, la terre, considérée en sa totalité ou dans chacune de ses parties, ne lui appartient que conjointement avec son associé,’ — *Anciennes Loix des François*, Vol. 1, p. 362” (*Note to Murray v. Hall*, 7 C. B. 455).

This phrase is sometimes written “per mie et per tout” (1 Watkins on Copyholds, 4 ed., 338).

*V.* MOIETY.

**PER PROCURATION.**—Probably, it may in strictness be said “that a simple ‘p,’ ‘pro,’ or ‘for,’ expresses an authority generally; and ‘per pro,’ or ‘p. p.’ expresses an authority created by procuration or power of attorney” (per Chatterton, V. C., *Ulster Bank v. Synnott*, Ir. Rep. 5 Eq. 612): sometimes the latter abbreviation is “per proc.”

The expression “Per Procuration” does not always and necessarily mean that the act is done under procuration. All that it means is this, “I am an agent, not acting on any authority of my own in the case, but authorized by my principal to enter into this contract” (per Pollock, C. B., *Smith v. McGuire*, 27 L. J. Ex. 468; 3 H. & N. 554, citing and commenting on *Attwood v. Munnings*, 7 B. & C. 278, and *Alexander v. Mackenzie*, 18 L. J. C. P. 94; 6 C. B. 766).

A signature of a Bill of Exchange or Promissory Note “by Procuration, operates as notice that the Agent has but a limited authority to sign, and the Principal is only bound by such signature if the Agent, in so signing, was acting within the actual limits of his authority” (ss. 25, 89, Bills of Ex. Act, 1882, codifying *Stagg v. Elliott*, 31 L. J. C. P. 260; 12 C. B. N. S. 373: *Vh, Re Land Credit Co of Ireland*, 39 L. J. Ch. 27; 4 Ch. 460: *National Bank of Scotland v. Dewhurst*, 1 Com. Ca. 318); but though not liable on the document, the Principal may be liable as for money had and received (*Reid v. Rigby*, 1894, 2 Q. B. 40; 63 L. J. Q. B. 451), and, *semble*, a Bill or Note may be indorsed “per pro” so as to give a title to the document although such indorsement may not be in such a mode or under such authority as to render liable the person in whose name the indorsement is made (*Smith v. Johnson*, cited INDORSED).

V. s. 26, Bills of Ex. Act, 1882, as to when an Agent is personally responsible on his signature; *vth, Nicholls v. Diamond*, 23 L. J. Ex. 1; 9 Ex. 154: *Mare v. Charles*, 25 L. J. Q. B. 119; 5 E. & B. 978; 4 W. R. 267; 26 L. T. O. S. 238.

An Acceptance of a Bill of Ex. “for” A. is not equivalent to “per proc” A.; “for” does not, like “per proc,” import a special and limited authority to sign, nor does it put the drawer upon discovery as to whether the agent has exceeded his authority; an Acceptance “for” another is governed by the general law of Principal and Agent in which the course of dealing by the Agent is evidence showing the extent of his authority (*O’Reilly v. Richardson*, 17 Ir. Com. Law Rep. 74: *Va, Mare v. Charles*, sup).

**PER STIRPES.**—A distribution of property “per Stirpes and not per Capita,” means, that all the beneficiaries will not, necessarily or probably, take equal shares but, that the property is to be divided into as many parts as there are Stocks and each Stock will have one, and only one, of such parts though such Stock may consist of many persons whilst another may only consist of one person; *e.g.* a gift to A. for life, Re-



mainer to his children living at his death and the issue then living of his then deceased children "per stirpes and not per capita"; A. had 6 children, 5 of whom died in his lifetime each leaving issue living at A.'s death, and one child survived him; the stirpital distribution is into 6 parts, one of which goes to A.'s surviving child, and one to and among the issue (however numerous) of each of the 5 deceased children. *Cp.* PER CAPITA.

Where a distribution of property amongst a CLASS embracing descendants "is to be *per stirpes*, the principle of representation will be applied through all degrees, children never taking concurrently with their parents (*Ralph v. Carrick*, 11 Ch. D. 873; 48 L. J. Ch. 801). In a case (*Robinson v. Shepherd*, 32 Bea. 665, on app. 10 Jur. N. S. 53), where the gift was 'to the descendants of A. and B. per stirpes,' Romilly, M. R., thought A. and B. were the stirpes in the first instance to be considered, so that the primary division should be into two parts. But Westbury, C., held that you must look to the number of families or stirpes descended either from A. or B., and existing at the testator's death, and divide the fund primarily into a corresponding number of parts. However, in a subsequent case, the M. R. acted on his own opinion, which appears to have been acquiesced in (*Gibson v. Fisher*, L. R. 5 Eq. 51; 37 L. J. Ch. 67; *Va, Booth v. Vicars*, 1 Coll. 6; 13 L. J. Ch. 147). If the gift were to the descendants of *one* person per stirpes, it must necessarily be dealt with on Ld Westbury's principle" (2 Jarm. 100). In *Re Wilson* (53 L. J. Ch. 130; 24 Ch. D. 664), North, J., endeavoured to reconcile *Gibson v. Fisher* with *Robinson v. Shepherd*; but added, "if I had to choose between them I should follow *Robinson v. Shepherd* in preference to *Gibson v. Fisher*." In *Re Wilson* the bequest was upon the determination of a prior estate to such cousins (children of 6 named aunts and uncles), and such issue of predeceased cousins, living at the period of distribution, as should attain the age of 21 years, or should die under that age, leaving issue, "to take if more than one in a course of distribution, according to the stocks, and not to the number of individuals," and it was held that under that phrase the property was not divisible into 6 parts, but into 16; because the consins (16 in number), and not the aunts and uncles, were the "stocks."

*Vh*, Theobald, ch. 23, s 4: Watson Eq. 1409: 10 Encyc. 16. 17.

*Vf*, as to when a distribution is to be made *per stirpes*, and when *per capita*, 2 Jarm. 101, 107, 112, 122, 194: Wms. Exs. 1384.

There is no presumption against a Per Capita distribution of the Corpus because the Income has to be distributed Per Stirpes (*Re Stone*, 1895, 2 Ch. 196; 64 L. J. Ch. 637; 72 L. T. 815).

PER TESTES. — *V. TESTE.*

PER TON. — "Per Ton per Mile"; *V. MILE.*

**PERCH.** — *V.* Rod.

**PERCUSSION.** — “Percussion-cap Works”; *V.* NON-TEXTILE FACTORIES.

**PEREMPTORY.** — “Peremptory,” “signifies a final and determinate act, without hope of renewing or altering” (Cowel).

A Peremptory CHALLENGE of a Juror is “used onely in matters criminal, and alledged without other cause than barely the prisoners fancy” (Cowel, *Challenge*); but the Crown has also in some cases the right of peremptory challenge; *Vh*, Arch. Cr. 178; Rose. Cr. 184.

“A Peremptory DAY, is when business is to be spoke to at a precise day; but if it cannot be spoken to then, the Court, at the prayer of the party concerned, will give a farther day without prejudice to him” (Jacob).

A Peremptory MANDAMUS, requires the thing to be done absolutely, and to it nothing but a certificate of perfect obedience can be a proper Return: *Vh*, Short & Mellor’s Crown Office Practice, 57.

A Peremptory Order for time to plead, means, that the Order is final, unless varied by a subsequent Order on special circumstances being shown for a further extension (*Falek v. Axthelm*, 24 Q. B. D. 176; 59 L. J. Q. B. 161).

Peremptory Sale; *V.* WITHOUT RESERVE.

**PERFECT.** — A Warranty, on sale of a thing to perform a specific work, that it shall be “complete and perfect,” implies, at least under the word “perfect,” that it shall be efficient for that work (*Mallan v. Radloff*, 17 C. B. N. S. 588).

Perfect Abstract; *V.* ABSTRACT.

Perfect Documents of Title; *V.* DOCUMENT.

“Perfect Repair,” *semble*, does not mean more than “REPAIR” (*Mosse v. Killick*, 50 L. J. C. P. 300). *V.* TENANTABLE REPAIR: GOOD REPAIR.

**PERFECTED.** — *V.* SIGNED, ENTERED, OR OTHERWISE PERFECTED.

**PERFORM.** — A Theatrical or Music Hall agreement by an Actor or Singer not to “perform” elsewhere than at the place for which the agreement engages him, generally, connotes such a performance as he would give at such place, and does not prevent him from exercising his talents amongst friends gathered together on a Sunday evening for their mutual companionship and entertainment (*Kelly v. London Pavilion*, 77 L. T. 215; 14 Times Rep. 234).

*V.* REPRESENTING OR PERFORMING: KEEP.

Quà International Copyright Act, 1886, 49 & 50 V. c. 33, “‘performed’ and ‘performance,’ and similar words, include, REPRESENTATION and similar words” (s. 11).

**PERFORMANCE.** — *V.* DRAMATIC: FROM PERFORMANCE: IMPOSSIBLE: OBSERVANCE OR PERFORMANCE: PERFORM: PERFORMED: REPRESENTING OR PERFORMING.

“Default in Performance”; *V.* DONE.

Part Performance of a Contract to take case out of the Statute of Frauds; *V. Miller v. Sharp*, 1899, 1 Ch. 622; 68 L. J. Ch. 322, and cases there cited: Fry, s. 578 *et seq*: Leake, 259.

Specific Performance; *V.* SPECIFIC.

**PERFORMED.** — No agreement “that is not to be performed” within one year from its making is valid unless evidenced by a signed writing (s. 4, Statute of Frauds, 29 Car. 2, c. 3). This means, (1) a complete performance; (2) by one of the parties. A contract which contemplates more than a year for its performance is within the statute, though it may be defeasible within the year; and, on the other hand, a contract which does not in terms contemplate more than a year for its performance is not within the statute because it may exceed that limit (*Vh*, Add. C. 33: Rosc. N. P. 520: Leake, 218).

**PERFORMING.** — *V.* DOING: HAVING: PAYING: REPRESENTING OR PERFORMING.

**PERIL.** — *V.* ACCIDENT: RIVER.

“Excepted Perils”; *V.* EXCEPTION.

“Other Perils”; *V.* OTHER, p. 1363.

**PERIL OF THE ROAD.** — *V.* DANGERS.

**PERIL OF THE SEA.** — “I am of opinion that ‘Perils of the Sea’ is a phrase having the same meaning in Bills of Lading and Charter Parties, as in Policies of Insurance” (per Ld Bramwell, *Hamilton v. Pandorf*, 12 App. Ca. 527; 57 L. J. Q. B. 28, 29; 6 Asp. 212; 57 L. T. 726; 36 W. R. 369: *Va*, *Wilson v. The Xantho*, 56 L. J. P. D. & A. 116; 12 App. Ca. 503; 57 L. T. 701; 36 W. R. 353; 6 Asp. 207).

“I think the definition of ‘Perils of the Sea,’ of Lopes, L. J., in this case very good: — ‘It is a Sea Damage, occurring at Sea, and nobody’s fault.’ What is the ‘Peril’? It is that the ship or goods will be lost or damaged, but it must be ‘Of the Sea’” (per Ld Bramwell, *Hamilton v. Pandorf*, 12 App. Ca. 526, 527; 57 L. J. Q. B. 24).

But in view of the decision of the H. L. in *Wilson v. The Xantho* (sup), it is suggested, with the greatest diffidence in a matter on which the greatest authorities have differed, that the def of Lopes, L. J., should be thus amended, — “A ‘Peril of the Sea’ is a Sea Damage, *undesignedly* occurring at Sea.”

For, the broad principle of *Wilson v. The Xantho* seems to be that, a Collision, which popularly would be called accidental, is a “Peril of the

Sea," though brought about by the negligence of one of the vessels, or even (possibly) of both of them. The consequences, indeed, would vary according as there might be negligence; but those varying consequences would arise not from a varying interpretation of "Perils of the Sea," but because other, and varying considerations would come into play. Thus, *e.g.*, as regards a Bill of Lading, the ship-owner, in the case of a Collision, could rely on the Exception if his vessel were not in fault, because he and those for whom he is answerable would have done nothing to deprive him of its benefit; but if his vessel were in fault, he could not so rely, not because "Perils of Sea" would have changed meaning, but because something else (his vessel's negligence), by a paramount obligation, would have rendered him liable on the ground that the author of a mischief cannot avail himself of his own wrong. *Note.* — *Woodley v. Michell* (11 Q. B. D. 47; 52 L. J. Q. B. 325; 31 W. R. 651) is over-ruled by *Wilson v. The Xantho*.

*Vf.* as to COLLISIONS, *Lloyd v. Gen. Iron Screw Collier Co*, 33 L. J. Ex. 269; 3 H. & C. 284; *Grill v. Gen. Iron Screw Collier Co*, 35 L. J. C. P. 321; 37 Ib. 205; L. R. 1 C. P. 600; 3 Ib. 476; H. & R. 654.

As to whether a loss by Sea-Worms or Barnacles is a "Peril of the Sea," *V.* jdgmt of Esher, M. R., *Pandorf v. Hamilton*, 17 Q. B. D. 679; 55 L. J. Q. B. 550. A Snow-Storm is not (*V.* ACCIDENT).

*Vh.* Abbott, 460-466, 481-490; Carver, 98-110; 10 Encyc. 23-27: DANGERS: RISKS OF THE SEA.

Loss by Pirates is a Peril of the Sea (*V.* jdgmt of Bowen, L. J., *Pandorf v. Hamilton*, 55 L. J. Q. B. 553). So are losses "by the Swell of the Tide in a dry harbour (*Fletcher v. Inglis*, 2 B. & Ald. 315; *Cp.* *Thompson v. Whitmore*, *inf.*); by the Wilful but not barratrous Act of the Crew in throwing the ballast overboard (*V.* BARRATRY); or by a STRANDING rendered necessary by leakage produced by the careless loading of the cargo" (1 Maude & P. 355, and cases there cited); and, *semble*, that every Accidental Stranding is a Peril of the Sea (per Ld Herschell, *Wilson v. The Xantho*, 12 App. Ca. 509; *Va.* per Ld Bramwell, *Hamilton v. Pandorf*, 12 App. Ca. 527). But damage to a ship by her being hove down on a beach to repair, is not a Peril of the Sea (*Thompson v. Whitmore*, 3 Taunt. 227). Neither Fire, nor Lightning, is a Peril of the Sea (per Ld Bramwell, *Hamilton v. Pandorf*, 12 App. Ca. 527).

Direct damage done to cargo by Rats is not a Peril of the Sea (*Laveroni v. Drury*, 22 L. J. Ex. 2; 8 Ex. 166; *Vthe, Kay v. Wheeler*, L. R. 2 C. P. 302; 36 L. J. C. P. 180); but damage caused by the incursion of sea-water through a Rat-hole, or a strained Rivet-hole, is a Peril of the Sea, and, if the ship-owner has not been guilty of NEGLIGENCE OR DEFAULT he may rely on the Exception (*Hamilton v. Pandorf*, *sup.*: *The Cressington*, 1891, P. 152; 60 L. J. P. D. & A. 25). Damage to cargo from the Heat of the Engines, confined through the ventilators being necessarily

closed because of exceptionally bad weather, is an "Accident of the Sea" (*The Thrunscoc*, 1897, P. 301; 66 L. J. P. D. & A. 172; 77 L. T. 407); *secus*, of damage arising from the nature or collocation of the cargo, or from want of due ventilation not caused by stress of weather (*The Freedom*, L. R. 3 P. C. 594; 38 L. J. Adm. 25; 24 L. T. 452).

Loss by Unseaworthiness, *e.g.* through insufficiency of coal, is not a loss by a "Peril of the Sea" (*Ballantyne v. Mackinnon*, 1896, 2 Q. B. 455; 65 L. J. Q. B. 616; 75 L. T. 95; 45 W. R. 70). *V. SEAWORTHY.*

In view of recent decisions, before referred to, the following can now hardly be regarded as a perfectly accurate statement of English law:—

"The phrase 'Perils of the Sea,' whether understood in its most limited sense as importing a loss by natural accidents peculiar to that element, or whether understood in its more extended sense as including inevitable accidents occurring upon that element, must still in either case be understood to include such losses only to the goods on board as are of an extraordinary nature or arise from some irresistible force, or from inevitable accident or some overwhelming power which cannot be guarded against by the ordinary exertions of human skill and prudence. Hence it is that if the loss occurs by a Peril of the Sea which might have been avoided by the exercise of any reasonable skill or diligence at the time when it occurred, it is not deemed to be, in the sense of the phrase, such a loss by the Perils of the Sea as will exempt the carrier from liability, but rather a loss by the gross negligence of the party" (Story on Bailments, s. 512 a).

A damage whilst a vessel is in Port is not covered by an insrce against "Perils of the SEA" (*V. Phillips v. Barber*, 5 B. & Ald. 161).

The general words, in a Marine Insurance, whereby "all other Perils," &c, are insured against, do not cover such a thing as the bursting of the air-chamber of a donkey-pump, whether it occur negligently or accidentally, for such a peril is not *ejusdem generis* with those enumerated (*Thames & Mersey Insrce v. Hamilton*, 12 App. Ca. 484; 56 L. J. Q. B. 626; disapproving *West India & Panama Telegraph Co v. Home & Col. Mar Insrce*, 50 L. J. Q. B. 41; 6 Q. B. D. 51).

As to the Damages recoverable on the happening of a Peril of the Sea; *V. Field S. S. Co v. Barr*, cited HULL: *Bensuade v. Thames & Mersey Insrce*, cited Loss.

**PERIOD.**—A Period, means, a time that runs continuously, *e.g.* a Superannuation or other Allowance if an employé has been in the service "for a less Period" than 10 years, means 10 continuous years (*Tyler v. London and India Docks*, 9 Times Rep. 11). *Cp.* NOT LESS: TIME.

"Period of QUALIFICATION"; Stat. Def., 41 & 42 V. c. 26, s. 7.

"Period of the Tenure"; Stat. Def., 19 & 20 V. c. 65, s. 9.

**PERIODICAL.** — A “Periodical Work” within the *Copyright Act*, 1842, 5 & 6 V. c. 45, is “a work that comes out from time to time and is miscellaneous in its articles” (*Brown v. Cooke*, 16 L. J. Ch. 142); but a Newspaper was held not a “Periodical” within ss. 18, 19, of that Act (*Cox v. Land & Water Journal Co*, 39 L. J. Ch. 152; L. R. 9 Eq. 324); but in *Walter v. Howe* (50 L. J. Ch. 621; 17 Ch. D. 708), *Cox v. Land, &c, Co* was not followed, and the “Times” newspaper was held to be a “Periodical Work” within the sections.  
**F. BOOK: FIRST PUBLICATION: SEPARATELY.**

A work published at uncertain intervals by subscription and the principal cost of which was defrayed by funds bequeathed for that purpose, was not a “Periodical Publication” within the proviso to s. 5, 54 G. 3, c. 156 (*British Museum v. Payne*, cited VOLUME).

“Periodical Payments,” apportionable under the *Apportionment Act*, 1870, 33 & 34 V. c. 35, s. 2, “must be payments occurring periodically, that is, at fixed times from some antecedent obligation, and not at variable periods at the discretion of individuals” (per Selborne, C., *Jones v. Ogle*, 42 L. J. Ch. 337; 8 Ch. 192; 21 W. R. 239); therefore, it was held in that case that profits in a private trading partnership were not within the phrase. **Vf. DIVIDEND.** The Act “has no application to an ANNUITY payable *in advance* where the instalment is already in the hands of the annuitant” (per Charles, J., *Trevelion v. Anderton*, 66 L. J. Q. B. 230; affd, *Ib.* 489); or to RENTS agreed to be paid in advance (*Ellis v. Rowbotham*, 1900, 1 Q. B. 740; 69 L. J. Q. B. 379; 82 L. T. 191; 48 W. R. 423).

“Periodical Payments,” s. 2, 47 & 48 V. c. 68; *V. Theobald v. Theobald*, 15 P. D. 26; 59 L. J. P. D. & A. 21.

“Annuities or Periodical Sums charged upon land,” s. 1, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; *V. Payne v. Esdaile*, cited CHARGED UPON.

“Annuity” or *Sum* payable “at stated Periods,” Stamp Act, 1891, *Seb, Bond, Covenant, or Instrument*; *V. Clifford v. Inl. Rev.*, 1896, 2 Q. B. 187; 65 L. J. Q. B. 582; 74 L. T. 699; 45 W. R. 14; approving and distinguishing *Sweetmeat Co v. Inl. Rev.*, cited INSTRUMENT, and *Jones v. Inl. Rev.*, 1895, 1 Q. B. 484; 64 L. J. Q. B. 84. *Note: Clifford v. Inl. Rev.*, distd in *Lewis v. Inl. Rev.*, 1898, 2 Q. B. 290; 67 L. J. Q. B. 694; 78 L. T. 745; *Jones v. Inl. Rev.*, approved in *National Telephone Co v. Inl. Rev.*, cited INSTRUMENT.

**PERISHABLE.** — Shares in a Co, though GOODS, are not “perishable” within R. 2, Ord. 50, R. S. C. (*Erans v. Davies*, 1893, 2 Ch. 216; 62 L. J. Ch. 661; 68 L. T. 244; 41 W. R. 687). **V. PRESERVATION.**

In *Buckler v. Wilson* (1896, 1 Q. B. 83; 65 L. J. M. C. 18; 73 L. T. 580; 44 W. R. 220; 60 J. P. 118) the Justices found that MARGARINE is not “a perishable article” within s. 10, Sale of Food and Drugs Act,

Amendment Act, 1879, 42 & 43 V. c. 30, and the Divisional Court refused to set aside that finding.

*Vh, Maclean v. Dunn*, 4 Bing. 728.

*Bona Peritura* from a WRECK, are such as will not endure for a year and a day (3 Edw. 1, c. 4).

**PERJURY.** — “Perjury, is an assertion upon an OATH duly administered in a judicial proceeding, before a competent Court, of the truth of some matter of fact, material to the question depending in that proceeding, which assertion the assertor does not believe to be true when he makes it, or on which he knows himself to be ignorant.

“In this definition, the word ‘*Oath*’ includes every Affirmation which any class of persons are by law permitted to make in place of an oath.

“The expression ‘*duly administered*,’ means administered in a form binding on his conscience, to a witness legally called before them, by any Court, Judge, Justice, Officer, Commissioner, Arbitrator, or other person who by the law for the time being in force, or by consent of the parties, has authority to hear, receive, and examine evidence. The fact that a person takes an oath in any particular form is a binding admission that he regards it as binding on his conscience.

“The expression ‘*Judicial Proceeding*,’ means a proceeding which takes place in or under the authority of any Court of Justice, or which relates in any way to the administration of justice, or which legally ascertains any right or liability. A proceeding may be judicial although the person accused in it was brought before the Court, by which the proceeding is held, by an irregular warrant.

“The word ‘*Fact*,’ includes the fact that the witness holds any opinion or belief.

“The word ‘*Material*’ means of such a nature as to affect in any way, directly or indirectly, the probability of any thing to be determined by the proceeding, or the credit of any witness, and a fact may be material although evidence of its existence was improperly admitted” (Steph. Cr. 93-94): *Vf, R. v. Baker*, 1895, 1 Q. B. 797; 64 L. J. M. C. 177; 72 L. T. 631; 43 W. R. 654.

*Vf, Arch. Cr.* 992-1023; *Rosc. Cr.* 717-741.

*Cp*, FALSE SWEARING; FORSWORN.

“‘Perjury’ is not a Word of Art like ‘MURDER’” (*Ryalls v. The Queen*, 11 Q. B. 794). *Va*, FELONY.

**PERMANENT.** — “‘The Permanent *Annual Charge* of the NATIONAL DEBT,’ means, the permanent annual charge of the National Debt within the meaning of the Sinking Fund Act, 1875 (38 & 39 V. c. 45), and the Acts amending the same” (47 & 48 V. c. 23, s. 9).

“Permanent BUILDING.” quâ Land Law (Ir) Act, 1896, 59 & 60 V. c. 47, includes, “permanent structures, and sea and river embankments having a permanent character” (s. 48).

Permanent *Building Society*; *V.* TERMINATING.

"Permanent *Civil Service of the State*," "Permanent *Civil Service of Her Majesty*," "Permanent *Civil Service of the Crown*," in Acts relating to Salaries and Pensions, "have the same meaning" (s. 8, 50 & 51 V. c. 13). *V.* CIVIL SERVANT: IMPERIAL: MAJESTY.

"Permanent COMMON"; the Governor of New South Wales (under that Colony's Acts, 25 V. No. 1, and 18 V. No. 33) dedicated 490 acres of land near Sydney as "Permanent Common," which meant "that the land was to go for ever for the Common or Public Enjoyment," and created no Common of Pasturage (*Sydney v. A-G. New South Wales*, 1894, A. C. 444; 63 L. J. P. C. 116; 71 L. T. 30).

Permanent *Curate*; *V.* PERPETUAL CURATE.

"Permanent *Improvements*," is the phrase adopted in the Crofters Holdings (Scot) Act, 1886, 49 & 50 V. c. 29, for the Improvements for which compensation is to be made thereunder, and a list of them is given in its Sch, but they resemble, in kind, the "Improvements" to which the consent of the Landlord is required under the Agricultural Holdings Acts of 1883: *V.* IMPROVEMENT.

"Permanent *Investment*," R. 2 (7), Ord. 55, R. S. C.; *V. Ex p. Jesus College*, W. N. (84) 37; *Ex p. Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541; 54 L. J. Ch. 1143.

Permanent OBSTACLE, entitling a Shipowner to insist on an alternative place of Delivery, "means, that it is an obstacle which cannot be overcome by the shipowner by any reasonable means except within such a time as, having regard to the objects of the adventure of both charterers and shipowner, is, as a matter of business, wholly unreasonable" (per Brett, L. J., *Nelson v. Dahl*, 12 Ch. D. 593). *Cp.* IMPRACTICABLE.

"Permanent SICKNESS, or other Permanent Infirmary," — justifying the reception of a deposition of a witness, s. 10, Evidence on Commission Act, 1831, 1 W. 4, c. 22, — does not, quâ "Sickness," mean an incurable one, but imports such a state of disability as to preclude the hope of the deponent being able, in any reasonable time, to attend the trial (*Beaufort v. Crawshay*, L. R. 1 C. P. 699; 35 L. J. C. P. 342).

"Permanent SOLICITOR," agreement appointing; *V.* RETAIN.

"Permanent *Staff*," quâ Militia (Voluntary Enlistment) Act, 1875, 38 & 39 V. c. 69, "means, the adjutant and such other commissioned officers and such non-commissioned officers and drummers as may, for the time being, be commissioned or attested thereto" (s. 2).

"Permanent WAY" of a RAILWAY, quâ 30 & 31 V. c. 80 (and, *semble*, generally) means and includes "the line or lines of railway, bridges under and over the same, viaducts, tunnels, fences and ditches along the said lines, signals and apparatus connected therewith" (s. 2).

"Permanent WORKS"; Stat. Def., 35 & 36 V. c. 79, s. 40.



**PERMISSION.** — Generally, a required Permission involves the idea that the person to grant it may impose limitations, *e.g.* the “permission” of a Committee of Inspection (s. 57, Bankry Act, 1883) or, there being none, of the Board of Trade (s. 22 (9), 1b.), to employ a Solicitor, may impose a maximum on the amount to be paid him (*Re Duncan*, 1892, 1 Q. B. 879; 61 L. J. Q. B. 712; 66 L. T. 508; 40 W. R. 409). Such a “permission” by a Committee of Inspection must, in some way or other, specify the work to be done; a Resolution empowering a Trustee to employ a Solr “where necessary” is too vague (*Re Vavasour*, 1900, 2 Q. B. 309; 69 L. J. Q. B. 685; 82 L. T. 622; 48 W. R. 543).  
*Cp.* SANCTION.

“Act, Default, Permission, or Sufferance”; *V. Draper v. Sperring*, 30 L. J. M. C. 225; 10 C. B. N. S. 113: BY WHOSE: PERMIT: SUFFER: DEFAULT.

“Consent and Permission of the True Owner”; *V. CONSENT.*

“Special Permission”; *V. SPECIAL.*

**PERMISSIVE WASTE.** — “Permissive Waste, is WASTE by reason of omission or not doing, — as, for want of reparation” (2 Inst. 145).

*V. VOLUNTARY WASTE.*

**PERMIT.** — A Devise of FREEHOLDS to A. to “permit,” or to “permit and suffer,” B. to receive the rents, gives the LEGAL ESTATE to B. (*Right d. Phillips v. Smith*, 12 East, 455; *Doe d. Noble v. Bolton*, 11 A. & E. 188; 3 P. & D. 135). And even a devise to A. to PAY TO B. { or, }  
 { and } “permit and suffer, B. to receive the rents” gives the legal estate to B. (*Doc d. Leicester v. Biggs*, 2 Taunt. 109; *Baker v. White*, L. R. 20 Eq. 166; 44 L. J. Ch. 651; *Re Adams and Perry*, cited LEGAL ESTATE: *See, Re Lashmar*, 1891, 1 Ch. 258; 60 L. J. Ch. 143; *Vf*, 2 Jarm. 293; Lewin, 225. *See, Lewin*, 226, as to the difference between “pay to and permit” and “pay to or permit”). But the rule does not apply where the direction is to permit the receipt of the “CLEAR,” or “NET,” rents (*White v. Parker*, 4 L. J. C. P. 178; 1 Bing. N. C. 573; *Barker v. Greenwood*, 8 L. J. Ex. 5; 4 M. & W. 421), or where the trustees have to exercise control or have duties to perform regarding the legal estate; for in such cases the legal estate will be in the trustees (*Harton v. Harton*, 7 T. R. 652; *Gregory v. Henderson*, 4 Taunt. 772; *Re Tanqueray-Willauwe to Landau*, 51 L. J. Ch. 434; 20 Ch. D. 465; *Van Grutten v. Foxwell*, 1897, A. C. 658; 66 L. J. Q. B. 745; *Re Adams and Perry*, sup, in *whle* the trustees did not take the legal estate because they had no active duties): *Vf*, 2 Jarm. 294. Nor, *semble*, does the rule apply to COPYHOLDS, because in the case of Copyholds “you lose the reason for construing the Will with reference

to the Statute of Uses" (per Jessel, M. R., *Baker v. White*, sup). *Cp*, CONVEY.

*Semble*, the opposite rule obtains as regards a DEED (Elph. 273, citing *Doe d. Leicester v. Biggs*, and *Baker v. White*, sup).

In a clause of Forfeiture on alienation, the word "Permit" means the same as SUFFER (per James, L. J., *Ex p. Eyston*, 47 L. J. Bank. 63; 7 Ch. D. 145; 26 W. R. 181; 37 L. T. 447).

" 'Permitting and Suffering' (in a Covenant) do not bear the same meaning as 'Knowing of and being Privity to'; the meaning of them is that the covenantor should not concur in any act over which he had control" (per Bayley, J., *Hobson v. Middleton*, 6 B. & C. 303; *Vth*, Sug. V. & P. 603, 604: *Vf*, Dyer, 255, pl. 4); nor does that phrase mean "to hinder and forbid" (per Lopes, L. J., *Hall v. Ewin*, 36 W. R. 86; 37 Ch. D. 74; 57 L. J. Ch. 95; 57 L. T. 831). So, in the phrase "Do or SUFFER," "suffer" is used in a passive sense as contra-distinguished from "do" (*Roffey v. Bent*, L. R. 3 Eq. 759). *Vf*, *Re Ryan*, 19 L. R. Ir. 24: Elph. 490: PARTY OR PRIVY.

A Licensed Person who "permits Drunkenness"; *V*. SUFFER.

An Advertising Agent, merely as such, is not rateable for the HOARDING exhibiting his advertisements, because he is not the person who "permits" the land to be so used within s. 3, 52 & 53 V. c. 27 (*Burton v. St. Giles*, 1900, 1 Q. B. 389; 69 L. J. Q. B. 184; 82 L. T. 24; 48 W. R. 222; 64 J. P. 213). *Vf*, EXCLUSIVE OCCUPATION.

"Will not permit any *Sale by Public Auction*"; *V. Toleman v. Portbury* (41 L. J. Q. B. 98; L. R. 7 Q. B. 344; 26 L. T. 292; 20 W. R. 441), where it was held that a sale in which the lessee took no part, but which was made under a Bill of Sale he had given, was not "permitted" by him, and accordingly there was no breach of the covenant.

"So much of any Act as permits" the *Sale of Beer*, &c, without a license is hereby repealed, s. 12, 25 & 26 V. c. 22; *V. Huxham v. Wheeler*, 3 H. & C. 75; 33 L. J. M. C. 153.

A Slaughterer "permits" the *Slaughtering of Animals* within Public View, &c, contrary to a Bye Law, if his servant does it, though such servant has no general authority to manage his master's business and does the act without his master's knowledge and disobediendly (*Collman v. Mills*, 1897, 1 Q. B. 396; 66 L. J. Q. B. 170; 75 L. T. 590; 61 J. P. 102): *Se*, *Somerset v. Hart*, cited SUFFER. *Vh*, KNOWINGLY.

The phrase "permit and suffer" the hirer of a cabin in a ship to *Stow Buggage* in the hold, imports that the hirer shall make some request for space (*Corbyn v. Leuder*, 6 C. & P. 32; 10 Bing. 275; 3 Moore & S. 751).

"So far as the law will permit"; *V*. SO FAR AS.

*V*. CAUSE OR PERMIT: PERMISSION: SUFFER: USE OR PERMIT: ALLOW: PROVIDED THE FUNDS PERMIT: WILFULLY.

**PERMITTING.** — “Wind, Weather, and Tide, permitting”; *V. Hawes v. S. E. Ry*, 54 L. J. Q. B. 174; 52 L. T. 514.

*V.* AT ALL TIMES OF TIDE.

“Weather permitting,” effect of in construing a DESPATCH Clause; *V. The Glendevon*, 1893, P. 269; 62 L. J. P. D. & A. 123.

**PERNOR.** — A pernor of the profits of land, is one who enjoys the profits and is the same as a CESTUI *que use* (*Chulleigh's Case*, 1 Rep. 123).

**PERPETRATE.** — *V.* COMMIT.

**PERPETUAL.** — *V.* PERMANENT: PERPETUITY.

**PERPETUAL ADVOWSON.** — A devise of a “Perpetual Advowson,” prior to the Wills Act, 1837, only passed a life estate (*Pocock v. Lincoln, Bp.*, 3 Brod. & B. 27). *Cp.* LIVING.

**PERPETUAL ANNUITY.** — Quà National Debt Act, 1881, 44 & 45 V. c. 55, “‘Perpetual Annuities,’ means  $3\frac{1}{2}\%$  Bank Annuities; 3% Consolidated Bank Annuities; 3% Reduced Bank Annuities; New 3% Bank Annuities; or,  $2\frac{1}{2}\%$  Bank Annuities” (s. 6); and so, quà National Debt Act, 1883, 46 & 47 V. c. 54 (s. 11). This def, with the addition of the  $2\frac{3}{4}\%$  Bank Annuities, is adopted for National Debt and Local Loans Act, 1887, 50 & 51 V. c. 16 (s. 19 and Sch); and subsequently it was made to “include the New Stock created under the National Debt (Conversion) Act, 1888” (s. 4, 51 & 52 V. c. 15).

*V.* ANNUITY: NATIONAL DEBT. *Cp.* GOVERNMENT ANNUITIES: GOVERNMENT STOCK: TERMINABLE.

**PERPETUAL CURATE.** — “Permanent, or Perpetual, Curates, are Clerks who officiate in Parishes or Districts to which they are nominated by the Impropriators, and licensed by the Bishop” (Phil. Ecc. Law, 239).

*Vh.* *Greenslade v. Darby*, 37 L. J. Q. B. 137; L. R. 3 Q. B. 421, 9 B. & S. 428; *Mason v. Lambert*, 17 L. J. Q. B. 366; 12 Q. B. 795; 10 Encyc. 35, 36.

*V.* CURATE: MINISTER.

**PERPETUAL INTEREST.** — Quà Landlord and Tenant Law Amendment Act (Ir), 1860, 23 & 24 V. c. 154, “‘Perpetual Interest,’ shall comprehend (in addition to any greater interest) any Lease or Grant for one or more than one Life with or without a term of years, or for Years whether absolute or determinable on one or more than one Life, with a covenant or agreement by a party competent thereto in any of such cases (whether contained in the instrument by which such lease or

contract is made or in any separate instrument) for the *Perpetual Renewal* of such lease or grant" (s. 1); a def which is an enlarged version of that in s. 1, 18 & 19 V. c. 39.

*Cp.*, "Lease in Perpetuity," sub LEASE: RENEWAL.

**PERPETUITY.** — The Rule against Perpetuities requires that gifts and limitations of property must *necessarily* vest in the beneficiaries during a life or any number of lives, in being at the time when the instrument becomes operative (*e.g.* in the case of a Will, the death of the testator), or within 21 years afterwards.

A gift or limitation the vesting of which may *possibly* be at a time beyond that period is void (as the phrase is) for Remoteness (1 Jarm. ch. 9, s. 2, *whv* for a full treatment of the authorities hereon). *Vh*, Lewis on Perpetuities: Marsden, *Ib.*: 10 Encyc. 37-45: *Jee v. Audley*, 1 Cox Ch. 324, followed in *Re Dawson*, 39 Ch. D. 155; 57 L. J. Ch. 1061, *Vf*, L. R. 5 Ind. App. 146: *Re Hocking*, 1898, 2 Ch. 567; 67 L. J. Ch. 662: *Re Mervin*, 1891, 3 Ch. 197; 60 L. J. Ch. 671: *Re Bence*, 1891, 3 Ch. 242; 60 L. J. Ch. 636: *Goodier v. Edmunds*, 1893, 3 Ch. 455; 62 L. J. Ch. 649: *Re Abbott*, 1893, 1 Ch. 54; 62 L. J. Ch. 46: *Re Stratheden and Campbell*, 1894, 3 Ch. 265; 63 L. J. Ch. 872: *Re Sudeley and Baines*, 1894, 1 Ch. 334; 63 L. J. Ch. 194: *Re Wood*, 1894, 3 Ch. 381; 63 L. J. Ch. 790: *Re Hollis' Hospital*, 1899, 2 Ch. 540; 68 L. J. Ch. 673; *Re Turney*, 1899, 2 Ch. 739: *Re Tyler*, 60 L. J. Ch. 686.

For the Rule of Construction when Remoteness is suggested; *V.* per Selborne, C., *Pearks v. Moseley*, 50 L. J. Ch. 59; 5 App. Ca. 719.

The Rule against Perpetuities applies to an indefinite OPTION to purchase land (*Lond. & S. W. Ry v. Gomm*, cited ABSOLUTELY SELL); but possibly that is not so quâ such an Option to a Lessee if contained in his lease and to be exercised during the term: *Vh*, 42 S. J. 628, 650: *Vf*, *Manchester Ship Canal Co v. Manchester Racecourse Co*, cited FIRST REFUSAL.

For the source and origin of the Rule; *V.* per Kenyon, C. J., *Porter v. Bradley*, 3 T. R. 142, 146: per Jessel, M. R., *Re Ridley*, 48 L. J. Ch. 563; 11 Ch. D. 645.

*V.* POSSIBILITY.

"Lease in Perpetuity"; *V.* LEASE: RENEWAL.

**PERQUISITE.** — "Profits arising to the lord from his Court Baron above the yearly revenue, such as fines in respect of copyholds; Perkins, 20, 21. *Perquisitum* is also used in the sense of purchase: Spelm., *Perquisitum*: Bracton, l. 2, c. 30, num. 3" (Elph. 615. 616).

"'Perquisites,' are advantages and profits that come to a Manor by casualty, and not yearely, as Escheats, Hariots, Reliefs, Waifes, Estraires, Forfeitures, Amerciaments in Courts, Wards, Marriages, goods and lands purchased by villeines of the same manor, fines of copiholds, and divers

other like things that are not certaine, but happen by chance, sometimes more often than at other times. See Perkins, f. 20 and 21 " (Termes de la Ley).

"Perquisites," as used in R. 1, Sch E (s. 146) Income Tax Act, 1842, might have included a gratis residence by an employé in his employer's house, although the employé could not sublet it, but for the fact that that construction is prevented by R. 4 of the same Sch which defines "Perquisites," for all purposes of the Act, to be "such PROFITS of Offices and Employments as arise from Fees and other EMOLUMENTS, and payable either by the Crown or by the Subject in the course of executing such Offices or Employments" (per Ld Watson, *Tenant v. Smith*, cited INCOME).

Cowel defines "Perquisite" as "anything gotten by a mans own industry or purchased with his own money, different from that which descends to him from his father or ancestors," citing Bracton, l. 2, c. 30, n. 3, and l. 4, c. 22.

**PERRY.** — *V. CIDER.*

**PERSIST.** — *V. INSIST.*

**PERSISTENT.** — "Persistent CRUELTY, or WILFUL NEGLECT to provide reasonable maintenance," causing a Wife to leave her Husband, s. 4, 58 & 59 V. c. 39, is not a CONTINUING OFFENCE, but is completed when the wife leaves (*Ellis v. Ellis*, 1896, P. 251; 65 L. J. P. D. & A. 124; 75 L. T. 390; 45 W. R. 144; 60 J. P. 823; *Vf, Medway v. Medway*, 1900, P. 141; 69 L. J. P. D. & A. 56; 82 L. T. 627; 48 W. R. 622; 64 J. P. 120). *Semble*, that a number of acts of cruelty in one day may amount to "Persistent Cruelty" (*Broad v. Broad*, 78 L. T. 687). *Cp, DESERTED: RUNNING AWAY: SHALL HAVE BEEN.*

**PERSON.** — *Primâ facie* the word "person," in a public statute, includes a Corporation as well as a natural person (per Selborne, C., *Pharmaceutical Socy v. London & Provincial Supply Assn*, 49 L. J. Q. B. 736; 5 App. Ca. 857; *Vf, R. v. Gardner*, Cowp. 79; *Cortis v. Kent W. W. Co*, 7 B. & C. 314; *Meath v. Winchester*, 3 Bing. N. C. 207; ss. 2, 19, Interp Act, 1889).

"The word 'Person' may very well include both a Natural person (a human being), and an Artificial person (a corporation). I think that in an Act of Parliament, unless there be something to the contrary, probably (I would not like to pledge myself to that), it ought to be held to include both. I have equally no doubt that in common talk, in the language of men (not speaking technically) a 'Person' does not include a corporation. Nobody in common talk, if he were asked who is the richest person in London, would answer, The London and North Western Ry Co. It is plain that in common speech 'Person' would mean a natural person. In

technical language it may mean the other, but which meaning it has in any particular Act, must depend on the context and the subject-matter. I do not think that the presumption that it includes an artificial person, a Corporation, — (*if the presumption does arise*) — is at all strong. Circumstances, and indeed very slight circumstances, in the context might show which way the word is to be construed in an Act of Parliament. And I am quite clear about this, that whenever you can see the object of the Act requires that 'Person' shall have the more extended sense or the less extended sense, then you should apply the word in that sense and construe the Act accordingly" (per *Ld Blackburn, Pharmaceutical Socy v. London, &c, Assn, sup*).

That case shows that "person" as used in ss. 1 and 15, Pharmacy Act, 1868, 31 & 32 V. c. 121, does not include a Corporation; so, of "person" in s. 30, Pharmacy (Ir) Act, 1875, 38 & 39 V. c. 57 (*Pharmaceutical Socy of Ireland v. Boyd*, 1896, 2 I. R. 394); *secus* of "person" in s. 6, Sale of Food and Drugs Act, 1875 (*Pearks v. Ward*, 1902, 2 K. B. 1; 71 L. J. K. B. 656). *V. SELLER.*

The Attorney-General, acting *ex officio*, is not a "person" within the Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; but an action by him on behalf of the poor of a parish may be statute barred, as these constitute "a class of persons" within s. 1 (*A-G. v. Magdalen College*, 23 L. J. Ch. 844; 18 Bea. 223; *Magdalen College v. A-G.*, 26 L. J. Ch. 620; 6 H. L. C'a. 189). The Ecclesiastical Commrs are "persons" within ss. 1, 2, of the Act just cited, except in cases where they claim (by virtue of s. 57, 3 & 4 V. c. 113) through an Ecclesiastical Corporation (*Ecclesiastical Commrs v. Rowe*, 49 L. J. Q. B. 771; 5 App. Ca. 736).

A Corporation is not a "person" within the Charitable Uses Act, 1735, 9 G. 2, c. 36, s. 1 (*Walker v. Richardson*, 6 L. J. Ex. 229; 2 M. & W. 882), nor so as to become a Common Informer (*St. Leonard's, Shore-ditch v. Franklin*, 47 L. J. C. P. 727; 3 C. P. D. 377). *Va, RESPONSIBLE.*

The Royal Mail Steam Packet Co is a "person" within s. 19 (Jamaica) Supreme Court Procedure Law, 1872 (*Royal Mail Steam Packet Co v. Braham*, 46 L. J. P. C. 67; 2 App. Ca. 381).

By the Melbourne Harbour Trust Act a "person" includes a Corporation, and this was held to include Commissioners appointed under the Act (*Union Steamship Co v. Melbourne Harbour Commrs*, 53 L. J. P. C. 59; 50 L. T. 337; 9 App. Ca. 365).

So, where trustees of a Will had power to grant leases to "any person or persons" they should think fit, Chitty, J., held that this authorized them to grant a lease to a Limited Company (*Re Jeffrock*, 51 L. J. Ch. 507).

So, where a Railway Act provided that "any person" acting in pursuance of it should be entitled to Notice of Action, it was held the Company itself was included (*Boyd v. London & Croydon Ry*, 7 L. J. C. P.

241; 4 Bing. N. C. 669; 6 Sc. 461): *Vf*, *St. Helen's Tramway Co v. Wood*, 56 J. P. 71.

"ANY person," s. 1 (1), Land Transfer Act, 1897, does not include the Crown (*Re Hartley*, 1899, P. 40; 68 L. J. P. D. & A. 16).

Quà, and by, the following Acts, "Person" is defined so as to include a Corporation; —

Ecclesiastical Commissioners (Exchange of Patronage) Act, 1853, 16 & 17 V. c. 50; *V*. s. 3:

Ecclesiastical Leases Act, 1842, 5 & 6 V. c. 27; *V*. s. 15:

Exchequer Court (Scot) Act, 1856, 19 & 20 V. c. 56; *V*. s. 47:

General Pier and Harbour Act, 1861, 24 & 25 V. c. 45; *V*. s. 2:

Land Registry Act, 1862, 25 & 26 V. c. 53; *V*. s. 140:

Lunacy Regn (Ir) Act, 1871, 34 & 35 V. c. 22; *V*. s. 2.

Quà Trustee Act, 1850, "Person," used and referred to in the MASCULINE gender, shall include a FEMALE as well as a Male; and shall include a Body Corporate" (s. 2), *Va*, s. 1, Interp Act, 1889.

"Person," s. 20, Trustee Act, 1850, does not exclusively mean, person beneficially entitled (*Re Dickson*, W. N. (72) 223).

Other Stat. Def. — Custody of Children Act, 1891, 54 & 55 V. c. 3, s. 5; Inferior Courts Judgments Extension Act, 1882, 45 & 46 V. c. 31, s. 2; Legitimacy Declaration Act (Ir), 1868, 31 & 32 V. c. 20, s. 10; Sum Jur Act, 1879, s. 49.

"Person," s. 6, Companies Act, 1862, includes an INFANT (*Re Laxon*, 1892, 3 Ch. 555; 61 L. J. Ch. 667).

"Person," s. 9, Factors Act, 1889, means, *any* person, and is not confined to a MERCANTILE AGENT (*Shenstone v. Hilton*, 1894, 2 Q. B. 452; 63 L. J. Q. B. 584; 71 L. T. 339). *V*. BUY.

"ANY Person," s. 1, Public Authorities Protection Act, 1893, is not confined to a PUBLIC AUTHORITY; any Officer or Agent acting on behalf of a Public Authority is entitled to the benefits provided by the section (*Greenwell v. Howell*, cited PUBLIC DUTY).

Person absolutely entitled; *V*. ABSOLUTELY ENTITLED.

"Person acting in the administration"; *V*. ACTING.

"Person aggrieved"; *V*. AGGRIEVED.

"Person BEING a CHILD or other Issue of the testator," s. 33, Wills Act, 1837, means, a person or persons *named*, as distinguished from a CLASS (*Olney v. Bates*, 3 Drew. 319; *Broune v. Hammond*, Johns. 210; *Re Harvey*, 1893, 1 Ch. 567; 62 L. J. Ch. 328; 68 L. T. 562; 41 W. R. 293).

"Persons belonging to a Ship"; *V*. BELONGING.

"Person by whose act," &c, Nuisance arises; *V*. BY WHOSE: PERMISSION.

"Persons *claiming through* a Member"; Stat. Def., Industrial and Provident Societies Act, 1893, 56 & 57 V. c. 39, s. 79; Friendly Societies Act, 1896, 59 & 60 V. c. 25, s. 106. *V*. CLAIMING UNDER: THROUGH.

Person *detained*; *V.* LAWFULLY DETAINED.

"Persons employed by or under the Post Office"; Stat. Def., Post Office (Offences) Act, 1837, 1 V. c. 36, s. 47.

"Every Person of FULL AGE," s. 22, Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, does *not* include women, who are not entitled to vote thereunder (*R. v. Crosthwaite*, 17 Ir. Com. Law Rep. 463). *V.* LEGAL INCAPACITY: SEX.

"Person *liable*"; *V. Re McMurdo*, cited DEMAND: LIABLE: PARTY LIABLE.

Person *licensed*; *V.* LICENSED PERSON: RENEWAL.

"No Person unlicensed shall sell by retail Intoxicating Liquors," s. 3, Licensing Act, 1872, does not include one who is "merely an innocent servant," *e.g.* the Bar-Keeper of the Kitchen Committee of the House of Commons (*Williamson v. Norris*, 1899, 1 Q. B. 7; 68 L. J. Q. B. 31; 79 L. T. 415; 47 W. R. 94; 62 J. P. 790).

"Person *making* any Distress"; *V.* DISTRESS.

"Person *nominated*"; *V.* NOMINATED.

"Person *residing*"; *V.* RESIDING.

"Person" RUNNING AWAY and leaving children parochially chargeable, s. 4, Vagrancy Act, 1824, 5 G. 4, c. 83, does not include a married woman deserted by her husband, and, *semble*, does not include a married woman at all (*Peters v. Cowie*, 46 L. J. M. C. 177; 2 Q. B. D. 131).

"Person *supplied*"; *V.* SUPPLIED.

"Person who has *Superintendence*"; *V.* SUPERINTENDENCE.

"Court or Person," s. 1 (5), Jud. Act, 1894, includes an Official Referee (*Duglish v. Barton*, 81 L. T. 551; 68 L. J. Q. B. 1044; 48 W. R. 50).

"In Person or by Proxy"; *V.* PROXY.

"Other Person," s. 6, Fine Arts Copyright Act, 1862, 25 & 26 V. c. 68, means, any person (including the person photographed) other than the AUTHOR (*Melville v. Mirror of Life Co*, 1895, 2 Ch. 531; 65 L. J. Ch. 41; 73 L. T. 334).

*V.* ANY: EVERY: INDIVIDUAL: OTHER: PARTY, and succeeding defs: PERSON ENTITLED: PERSON IN CHARGE: PERSON INTERESTED: UNSOUND MIND.

**PERSON ENTITLED.** — "Persons entitled," 19 & 20 V. c. 120; *V.* ENTITLED.

Person "entitled to *Equity of Redemption*"; *V.* ENTITLED TO REDEEM.

"Person entitled to the *First Estate of Freehold*," *quâ* Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, means, as regards Scotland, "OWNER" (subs. 5, s. 96).

"Person entitled to any REVERSION expectant on the determination" of a Tenancy for Life, s. 8, Prescription Act, 1832, 2 & 3 W. 4, c. 71, is not limited to an owner of the whole reversion, but includes a Tenant



at Will to such an owner (per Fry, J., *Laird v. Briggs*, W. N. (80) 205).

Person "entitled to vote"; *V. ENTITLED TO VOTE.*

*V. ABSOLUTELY ENTITLED.*

**PERSON IN CHARGE.** — A Pilot, by "compulsion of law," was not a "Person in Charge," within s. 33, Mer Shipping Act, 1862 (*The Queen*, L. R. 2 A. & E. 354; 38 L. J. Adm. 39). *Note:* This section was replaced by s. 16, Mer Shipping Act, 1873, which is now replaced by s. 422, Mer Shipping Act, 1894. *Vf*, 1 Maude & P. 286.

*V. CHARGE OR CONTROL.*

**PERSON INTERESTED.** — "Person interested," s. 14, Regulation of Railways Act, 1873, 36 & 37 V. c. 48, includes any person who makes out, by proper evidence, that the Rates which he seeks to have dissected are really and substantially competitive Rates with his own (per Wills, J., and Price, Commr); and (per Peel, Commr) includes all persons who have a *bonâ fide* interest in knowing how the particular Rates, which are the subject of their application, are made up (*Pelsall Co v. Loud & N. W. Ry*, 23 Q. B. D. 536; 61 L. T. 257; 7 Ry & Can Traffic Ca.). *Vf*, *Tomlinson v. Loud. & N. W. Ry*, 63 L. T. 86; 7 Ry & Can Traffic Ca. 22.

"Persons interested in such Lands," s. 68, Inclosure Act, 1845, 8 & 9 V. c. 118; *V. Crush v. Turner*, 47 L. J. Ex. 639; 3 Ex. D. 303; 26 W. R. 900.

"Persons interested in the Land"; Stat. Def., Land Drainage Act, 1847, 10 & 11 V. c. 38, s. 20.

"Person interested in the Minerals" of an abandoned Mine, and liable to fence the shaft (s. 13, 35 & 36 V. c. 77), includes owners in fee who have leased the Mine, reserving a royalty on the minerals produced (*Evans v. Mostyn*, 47 L. J. M. C. 25; 2 C. P. D. 547). So, of the owner of the soil of an abandoned Lead Mine which contains Calc-spar and Calk, although such owner only becomes entitled to such minerals after they have been raised and brought to the surface by persons working the mine for lead ore (*Stokes v. Arkwright*, 77 L. T. 400; 66 L. J. Q. B. 845; 61 J. P. 775).

The Trustees of a Friendly Society, held not comprised within "any Person interested" in the matter of an application for altering its Rules, within s. 41, 18 & 19 V. c. 63 (*Hull v. Macfarlane*, 27 L. J. C. P. 41; 2 C. B. N. S. 796).

A Trustee in Bankry is a "Person interested" in an ORTIOX belonging to the bankrupt, within R. 1, Ord. 54 *a*, R. S. C. (*Mason v. Schuppiesser*, 81 L. T. 147): the phrase there "is a wide one and ought to extend to the claim of any person who has an INTEREST of any sort, — whether vested or contingent, absolute or defeasible, in possession or

reversion, — under an INSTRUMENT within the meaning of the Rule” (per Stirling, J., *Ib.*).

V. PARTY INTERESTED. *Cp.* AGGRIEVED.

**PERSONAL.** — For examples of this word qualifying the whole of a testamentary gift, so as to exclude realty therefrom; *V. Belaney v. Belaney*, 35 Bea. 469; 36 L. J. Ch. 265; 2 Ch. 138; *Jones v. Robinson*, 47 L. J. C. P. 673; 3 C. P. D. 344.

“Special Cause *personal* to the LICENSED PERSON,” s. 26, Licensing Act, 1874; *V. Sharpe v. Wakefield*, cited DISCRETION.

**PERSONAL ACT OF PARLIAMENT.** — *V.* LOCAL ACT OF PARLIAMENT: PUBLIC ACT OF PARLIAMENT.

**PERSONAL ACTION.** — “‘Action Personal,’ is such as one man brings against another on any contract for money or goods, or on account of any offence or trespass; and it claims a debt, goods, chattels, &c, or damages” (Jacob, *Action. Vj*, 3 Bl. Com. 117). *Cp.* REAL ACTION.

*Vh.* *A-G. v. Churchill*, 8 M. & W. 192; 10 L. J. Ex. 314.

An action for Infringement of a Patent is clearly a “Personal Action” within s. 56, Co. Co. Act, 1888 (per Pollock, B., *R. v. Halifax Co. Co.*, cited FRANCHISE: *Vj*, Ann. Co. Co. Pr. Part 2, ch. 1). So, of an action against a tenant for DOUBLE Value for holding over (*Wickham v. Lee*, 18 L. J. Q. B. 21; 12 Q. B. 521). But it has frequently been decided that FORECLOSURE is not a personal action (per Romer, J., *Kibble v. Fairthorne*, 64 L. J. Ch. 186).

**PERSONAL CHATTELS.** — “Personal Chattels” are CHATTELS which do “not savour of REAL ESTATE” (Wms. P. P. 2); to a large extent the leading part of the def of “Personal Chattels,” quâ a BILL OF SALE, given by s. 4, Bills of Sale Act, 1878, is of general application, *i.e.* “Goods, Furniture, and other Articles, capable of complete transfer by delivery”; and observe that this section expressly excepts CHOSES IN ACTION from its def of “Personal Chattels.”

That def supersedes the one given by s. 7, Bills of S. Act, 1854, under which Growing Crops (unsevered, *Ex p. National Mercantile Bank*, 16 Ch. D. 104; 50 L. J. Ch. 231), were not “Personal Chattels” (*Brantom v. Griffiths*, 46 L. J. C. P. 408; 2 C. P. D. 212); but they are in terms included in the full def provided by s. 4, B. of S. Act, 1878, “when separately assigned or charged”; and so of FIXTURES. But this def is modified by s. 6, Bills of S. Act, 1882, on *whc.* *Meur v. Jacob*, 44 L. J. Ch. 481; L. R. 7 H. L. 481; 23 W. R. 526; 32 L. T. 171; *Reed*, 72 *et seq.*

The fixed machinery and all the essential parts of the fixed machinery of a building were part of the realty, and were not “Personal Chattels,” under Bills of S. Act, 1854 (*Longbottom v. Berry*, 39 L. J. Q. B. 37; L. R.

5 Q. B. 123; *Holland v. Hodgson*, 41 L. J. C. P. 146; L. R. 7 C. P. 328; *Sheffield By Socy v. Harrison*, 54 L. J. Q. B. 15; 15 Q. B. D. 358); *secus*, as respects machines only fixed for occasional convenience, and not for the permanent improvement of the building (*Waterfall v. Penistone*, 26 L. J. Q. B. 100; 6 E. & B. 876; 27 L. T. O. S. 252; *Vthe, Walmsley v. Milne*, 29 L. J. C. P. 97; 7 C. B. N. S. 115). And still a mtge of land into which land trade machinery is permanently fixed, is not an assurance of "Personal Chattels" within s. 4, Bills of S. Act, 1878, for the machinery passes with the land, and the assurance does not need to be IN ACCORDANCE WITH THE FORM prescribed by s. 9 (*Re Yates*, 57 L. J. Ch. 697; 38 Ch. D. 112; 59 L. T. 47; 36 W. R. 563). V. FIXTURES.

*Cp*, Bills of Sale Acts for Ireland, 17 & 18 V. c. 55, s. 7; 42 & 43 V. c. 50, s. 4: PERSONAL ESTATE.

**PERSONAL DELIVERY.**—At a Town Council meeting for the Election of Aldermen the Chairman requested the Town Clerk to collect the voting papers and hand them to him; the Town Clerk walked round to the Councillors and received their voting papers which he immediately handed to the Chairman who could, and did, see what was done and that each Councillor was a person entitled to vote; held, that there was a "Personal Delivery" to the Chairman of the voting papers within s. 60 (4), Mun Corp Act, 1882 (*Baxter v. Spencer*, 72 L. T. 838; 64 L. J. Q. B. 644; 59 J. P. 376).

V. DELIVERY.

**PERSONAL EARNINGS.**—V. EARNINGS: PERSONAL LABOUR. *Cp*, AVERAGE WEEKLY EARNINGS.

**PERSONAL ESTATE.**—The "Personal Estate and Effects," or, its equivalent, the "PERSONAL PROPERTY" of an individual may, perhaps, be broadly defined to be, all his property other than that which, if he died intestate, would go to his heir. Either of these phrases includes all a person's Goods and Chattels, Moneys, Choses in Action, Leases for Years, Funded Property, and Shares (Wms. R. P. Introd. Ch.: Wms. P. P. Introd. Ch., and Part 4, on *wher*, *Witherby v. Rackham*, inf: Wms. Exs. Pt. 2, Bk. 2, chs. 1 and 2: *Va*, *Butler v. Butler*, 54 L. J. Ch. 197; 28 Ch. D. 66). New River Shares however are realty (*Drybutter v. Bartholomew*, 2 P. Wms. 127; *Buckeridge v. Ingram*, 2 Ves. 652; *Bligh v. Brent*, 6 L. J. Ex. Eq. 58; 2 Y. & C. Ex. 268). But Chelsea Water Works Shares have been held to be personalty (*Bligh v. Brent*, sup). Sometimes Canal Shares have been held to be realty (Wms. Exs. 720–722). *Cp*, REAL ESTATE: PERSONAL CHATTELS.

For the purposes of the Wills Act, 1837, "Personal Estate" extends to, "Leasehold estates and other chattels real, and also to moneys, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property

whatsoever which by law devolves upon the exor or admor, and to any share or interest therein" (s. 1).

As used in Malins' Act, 20 & 21 V. c. 57, "any Personal Estate whatsoever" is large enough to comprise a CHOSE IN ACTION, e.g. a Life Policy (*Witherby v. Rackham*, 60 L. J. Ch. 511; 39 W. R. 363).

"Personal Estate" in s. 2, Wills Act, 1861, 24 & 25 V. c. 114, is not confined to MOVEABLES, but comprises also leaseholds (*Re Watson*, 35 W. R. 711).

But the context may restrict the wide meaning of "Personal Estate." Thus in *Harrison v. Blackburn* (34 L. J. C. P. 109; 17 C. B. N. S. 678; 13 W. R. 135), a Bill of Sale of the grantor's household goods, stock in trade, and all other goods chattels and effects, in or about his dwelling-house, "and all other his *personal estate* whatsoever," did not pass the term he had in his dwelling-house (*Cp, Ringer v. Cann*, inf).

So, "where a testator shows by his Will that he uses the term 'Personal Estate' as contradistinguished from 'Leaseholds,' occurring in the same bequest, and he afterwards, by a codicil, directs a charitable legacy to be payable out of his 'personal estate,' the expression is considered as used in the same restricted and peculiar sense as in his Will; and the legacy is payable out of the pure personalty and is therefore good" (1 Jarm. 239, citing *Wilson v. Thomas*, 3 My. & K. 549; 3 L. J. Ch. 144). But it has been said (Elph. 178), "no general rule can be laid down as to whether leaseholds will pass by a general description of 'Personal Property.' The principal cases are *Ringer v. Cann*, 3 M. & W. 343; 7 L. J. Ex. 108; *Doe d. Farmer v. Howe*, 9 L. J. Q. B. 352; *Hopkinson v. Lusk*, 34 Bea. 215; *White v. Hunt*, L. R. 6 Ex. 32; 40 L. J. Ex. 23." *Vf, Debenham v. Digby*, 21 W. R. 359; 28 L. T. 170, in *whc, Harrison v. Blackburn*, sup, was distd.

On the other hand, the expression "Personal Estate" may be widened by a context so as to include Realty (*Doe d. Tofield v. Tofield*, 11 East, 246, stated 1 Jarm. 748: *Vf, Cadman v. Cadman*, 41 L. J. Ch. 468; L. R. 13 Eq. 470). But in such phrases as "Personal Estate and Property," or "Personal Property, Estate, and Effects," the word "Personal" will generally over-ride the whole (1 Jarm. 748 *n* and cases there cited: *Vf, per Mansfield, C. J., Hogan v. Jackson*, 1 Cowp. 306: *Va, Jones v. Robinson*, 47 L. J. C. P. 673; 3 C. P. D. 344); thus, Wood, V. C., held that a gift of "all my Personal Estate and Property whatsoever and wheresoever" did not pass realty (*Buchannan v. Harrison*, cited PROPERTY).

So, "if a testator direct his *lands to be sold*, and afterwards add a general bequest of all his 'Personal Estate' (*Maugham v. Mason*, 1 V. & B. 410; *Smith v. Harding*, W. N. (74) 101; *Va, Gibbs v. Rumsey*, 2 V. & B. 294), or appoint a person 'Residuary Executor' (*Berry v. Usher*, 11 Ves. 87), any part of the proceeds of the sale that is undisposed of will not form part of the residuary fund in the first case, or pass to the residuary

executor in the second; for nothing, properly speaking, is a testator's 'Personal Estate' but what possesses that character at the moment of his decease" (Lewin, 170, *whr*, as to cases where the special language employed requires a different construction).

"Personal Estate and Effects of any person deceased," quò PROBATE DUTY, means, Personal Estate and Effects which have belonged to the deceased in his lifetime; therefore, neither Probate Duty nor ESTATE DUTY is payable by the exors of the deceased in respect of property coming to his estate under a substitutional bequest to them in the event of the deceased dying before the donor of such property (*Lord Advocate v. Bogie*, 63 L. J. P. C. 85; *A-G. v. Loyd*, 1895, 1 Q. B. 496; 64 L. J. Q. B. 365).

The "Personal Estate" of a deceased person liable to Duty under the Act for Victoria No. 388 of 1870, only includes that which is in the local area of that Probate jurisdiction (*Blackwood v. Regina*, 8 App. Ca. 82; 52 L. J. P. C. 10; followed in *Commrs of Stamps v. Hope*, cited BONA, and in *Henty v. Regina*, cited REAL ESTATE).

V. ESTATE: MONEY: MOVEABLE: PERSONAL PROPERTY: PERSONALTY: REAL ESTATE, last par: REAL OR PERSONAL PROPERTY: OTHER.

**PERSONAL EXPENSES.** — "Personal Expenses" of a CANDIDATE at an ELECTION, quò Corrupt and Illegal Practices Prevention Act, 1883, "includes the reasonable Travelling Expenses of such Candidate, and the reasonable expenses of his living at Hotels or elsewhere, for the purposes of and in relation to such election" (s. 64).

**PERSONAL GOODS.** — For examination of this phrase as used Co. Litt. 185 b; *V. Re Butler*, 57 L. J. Ch. 643; 38 Ch. D. 286.

V. Goods.

**PERSONAL INJURY.** — V. DAMAGE.

**PERSONAL LABOUR.** — "Personal Earnings" from Personal Labour (which do not vest in a Trustee in Bankry) "point to a limitation of 'Personal Earnings' to something analogous, both in its character and in the nature of its remuneration, to Personal DAILY LABOUR, — not, of course, manual or menial only" (per Wright, J., *Mercer v. Vans Colina*, 67 L. J. Q. B. 424; 78 L. T. 21). Therefore, a person who employs several persons under him and procures vans for removal of furniture — in other words, one who carries on business as a Furniture Remover, — is not one using merely his Personal Labour (*Crofton v. Poole*, 1 B. & Ad. 568; *Vf, Wadling v. Oliphant*, 1 Q. B. D. 145; 45 L. J. Q. B. 173; 24 W. R. 246; 33 L. T. 837; *Re Dowling*, 4 Ch. D. 689; 46 L. J. Bank. 74). So, *semble*, the earnings and profits of a Dentist are not such Personal Earnings (*Re Rogers*, 1894, 1 Q. B. 425; 63 L. J. Q. B. 178), nor are the fees and profits of a Surgeon and Apothecary (*Elliot v.*

*Clayton*, 20 L. J. Q. B. 217; 16 Q. B. 581), nor the fees of an Architect (*Emden v. Carter*, 51 L. J. Ch. 41; 17 Ch. D. 769), nor the commission, of a Commission Agent (*Mercer v. Evans Colina*, sup), nor money won in a contest of skill (*Shoolbred v. Roberts*, 1899, 2 Q. B. 560; 68 L. J. Q. B. 998; 81 L. T. 522), nor rewards given to a champion billiard player for playing with no other balls than those made by the person giving those rewards (*Re Roberts*, 1900, 1 Q. B. 122; 69 L. J. Q. B. 19; 81 L. T. 467; 48 W. R. 132). *Vf*; INCOME.

But, in Ireland, it has been held that the fee of an Election Agent, and the charges of a Solicitor in legal proceedings, are Personal Earnings (*Re Ebbs*, 19 L. R. Ir. 81).

*Seemle*, that Patent Royalties may be Personal Earnings (*Re Graydon*, 1896, 1 Q. B. 417; 65 L. J. Q. B. 328; 44 W. R. 495; 74 L. T. 175).

*Note*. The exception of "Personal Earnings" from the property which vests in a Trustee in Bankry "is not to be found in the Act itself, but is said to be an implied exception based upon a long series of authorities and well recognized for the last 100 years" (per Lindley, L. J., *Re Roberts*, sup). *Vh*, per Willes, J., *Kitson v. Hardwick*, L. R. 7 C. P. 479.

V. EARNINGS: HANDICRAFT: LABOUR: MANUAL LABOUR: WAGES: WORKMAN.

#### PERSONAL LUGGAGE. *V*. LUGGAGE.

"Personal" means the same thing as "Ordinary" Luggage (*Hudston v. Mid. Ry*, 38 L. J. Q. B. 213; L. R. 4 Q. B. 366; 10 B. & S. 504; 17 W. R. 705).

"Whatever the passenger takes with him for his personal use or convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or to the ultimate purpose of the journey, must be considered as Personal Luggage. This would include, not only all articles of apparel, whether for use or ornament, but also the gun-case or the fishing apparatus of the sportsman, the easel of the artist on a sketching tour, or the books of the student, and other articles of an analogous character the use of which is personal to the traveller, and the taking of which has arisen from the fact of his journeying. On the other hand, the term 'Ordinary Luggage' being thus confined to that which is personal to the passenger, and carried for his use and convenience, it follows that what is carried for the purpose of business, such as merchandize or the like, or for larger or ulterior purposes such as articles of furniture or household goods, would not come within the description of Ordinary Luggage, unless accepted as such by the carrier" (per Cockburn, C. J., in delivering the judgment of the Court, *Mucrow v. G. W. Ry*, 40 L. J. Q. B. 304; L. R. 6 Q. B. 612). *V*. BAGGAGE.

The cases of *Cahill v. Lond. & N. W. Ry* (31 L. J. C. P. 271; 13

C. B. N. S. 818; 10 W. R. 391), *G. N. Ry v. Shepherd* (21 L. J. Ex. 286; 8 Ex. 30), and *Belfast & Bullymena Ry v. Keys* (9 H. L. Ca. 556), establish that Articles of Merchandize cannot be considered as personal luggage; and, by a parity of reasoning, it has been held, at the Liverpool Co. Co., that samples and accounts are not personal luggage of a Commercial Traveller (*Bayley v. Lanc. & Y. Ry*, 18 S. J. 301), neither are documents carried by a Solicitor for use in a cause in which he is professionally engaged (*Phelps v. Lond. & N. W. Ry*, 34 L. J. C. P. 259; 19 C. B. N. S. 321; 13 W. R. 782); and though in *Macrow v. G. W. Ry*, sup, it was laid down that an easel of an Artist on a sketching tour would be his personal luggage, yet in *Mytton v. Mid. Ry* (28 L. J. Ex. 385; 4 H. & N. 615; 7 W. R. 737) it was held that the sketches of an artist are not such luggage. At the Newbury Co. Co. it has been held that a Bicycle is not such luggage (*G. W. Ry v. Edwards*, 41 S. J. 24), a view afterwards adopted by Channell, J. (*Britten v. G. N. Ry*, 1899, 1 Q. B. 243; 68 L. J. Q. B. 75; 79 L. T. 640). But a chronometer is, it seems, luggage for a Master Mariner (*Le Couteur v. Lond. & S. W. Ry*, 35 L. J. Q. B. 40; L. R. 1 Q. B. 54).

A child's rocking-horse is not personal luggage (*Hudston v. Mid. Ry*, sup), nor is an unpacked invalid's chair (*Cusack v. Lond. & N. W. Ry*, 7 Times Rep. 452); and though, probably, bedding for a passenger's own use on a journey might be held "personal luggage," yet bedding intended for the passenger's household when permanently settled, would not (*Macrow v. G. W. Ry*, sup).

*Note:* As to Carrier's duty quâ a Passenger's Hand-Luggage; *V. G. W. Ry v. Bunch*, 13 App. Ca. 31; 57 L. J. Q. B. 361; 58 L. T. 128; 36 W. R. 785; 52 J. P. 147.

**PERSONAL OCCUPATION.**—A Condition of Personal Occupation in a devise, implies that the devisee must himself actually occupy the property (*Re Edwards*, cited OCCUPATION). *Cp*, RESIDE, *whv*, for *Note* on s. 51, S. L. Act, 1882.

V. REAL RESIDENT HOLDER.

**PERSONAL ORNAMENTS.**—A question arose on this phrase as used in the Will of Dr. John Willis (physician to George III.). He possessed an ivory Tooth-pick Case with a portrait of his father in the centre, a gold Pencil-Case, a silver Lip-salve Box, a gold Eye-glass, a Pocket-book, and a Case of Instruments which he usually carried about his person. Langdale, M. R., decided that the pocket-book and case of Instruments were not "Personal Ornaments." But as to the other things he said,—"The question seems to be whether a thing that is ornamental and capable of being applied to useful purposes, is, or is not, to be considered as an Ornament. There are some things of no personal use, a common ring, for instance, which may be set round with diamonds

and be of extreme value, and yet of no use, except as an ornament; but it may be said, if you convert that into a signet-ring and seal letters with it, in consequence of that useful purpose to which it is applied, it becomes an article of utility as well as of ornament. A shirt-pin is equally useful. A pencil-case certainly is useful as containing the pencil. The inclination of my opinion is, that though those things were capable of being connected with personal *use*, yet they were considered as personal ornaments in the sense in which the testator intended them. If you come to a minute definition, they may not be so; but at the same time they may be put in such a form and appearance that the ornamental part is paramount to the useful part, and consequently they might pass as 'Ornaments' (Willis v. Curtois, 1 Bea. 196). In the report of this case in the Law Journal (8 L. J. Ch. 106) the learned M. R. is reported to have said, — "I do not think that the tooth-pick case or the silver lip-salve box passed under the Will." As the matter was settled between the parties, no decision was given except as to the pocket-book and case of instruments.

V. TRINKETS: WEARING APPAREL. Cp, ORNAMENT: PICTURE.

**PERSONAL PROPERTY.** — V. PERSONAL ESTATE: PERSONALTY: REAL OR PERSONAL PROPERTY.

"Personal Property," s. 38 (2), Customs and Inl. Rev. Act, 1881, 44 & 45 V. c. 12, amended by s. 11, 52 & 53 V. c. 7, includes Land of which there has been an Equitable Conversion (*A-G. v. Dodd*, 1894, 2 Q. B. 150; 63 L. J. Q. B. 319; 70 L. T. 660; 42 W. R. 524); so, of a mtgee's interest in the mortgaged realty, even after a Foreclosure Order until that interest becomes absolute by the expiry of the time fixed by the Order for Redemption and the non-payment of the mtge debt (*A-G. v. Worrall*, 1895, 1 Q. B. 99; 64 L. J. Q. B. 144; 71 L. T. 807).

Quà Sucn Duty Act, 1853, " 'Personal Property,' shall not include Leaseholds, but shall include money payable under any engagement, and money secured on heritable property in Scotland, and all other property not comprised in the preceding definition of 'Real Property,'" *i.e.* "All freehold, copyhold, customary, leasehold, and other hereditaments and heritable property whether corporeal or incorporeal, in Great Britain and Ireland (except money secured on heritable property in Scotland); and all estates in any such hereditaments" (s. 1).

Quà Finance Act, 1894, "Personal Property," in Scotland, "means MOVEABLE Property" (subs. 8, s. 23).

"Personal Property SETTLED" before the Finance Act, 1894, s. 21 (1); *V. A-G. v. Dodington*, cited UNDER.

**PERSONAL REPRESENTATIVES.** — This phrase (except when otherwise controlled by a context) is synonymous with LEGAL REPRESENTATIVES. *Va*, REPRESENTATIVES: REAL REPRESENTATIVE.



An executor (though he has not taken probate) of a surviving trustee, is such trustee's "Personal Representative" within s. 25, 13 & 14 V. c. 60 (*Re Ellis*, 24 Bea. 426); so also one of the next of kin may be, though not an executor (*Re Stroud*, W. N. (71) 180).

The General (as distinguished from Special) Exors are the "Personal Representatives" of a Mtgee or Trustee within s. 30, Conv & L. P. Act, 1881, and s. 10, Trustee Act, 1893 (*Re Parker*, 1894, 1 Ch. 707; 63 L. J. Ch. 316; 70 L. T. 165).

Quà Copyright Act, 1843, 5 & 6 V. c. 45, "Personal Representative," means and includes, "every exor admor and next of kin entitled to administration" (s. 2).

Quà Land Transfer Act, 1897, "Personal Representative," means, an exor or admor" (subs. 2, s. 24); and throughout Part 1 of that Act, "Personal Representatives," in cases where exors are appointed, means, all the exors named in the Will, whether they have proved or not, except that the phrase would not include such nominated exors as by Renunciation or otherwise have made it impossible for them to obtain Probate (*Re Pawley and London & Provincial Bank*, 1900, 1 Ch. 58; 69 L. J. Ch. 6; 81 L. T. 507; 48 W. R. 107).

Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "Personal Representatives," means, an exor or admor; and includes, a Special Exor, and an exor named in a Will in exercise of a Power by a woman married before 1883, unless and until a general administration of her estate and effects has been granted" (s. 95).

"Personal Representatives," held, contextually, to mean DESCENDANTS of Children of testatrix (*Rainford v. Knowles*, 59 L. T. 359), or the phrase may mean NEXT OF KIN (V. LEGAL REPRESENTATIVES), or sometimes give an absolute interest to the person spoken of (*Alger v. Parrott*, L. R. 3 Eq. 328).

#### V. NEXT PERSONAL REPRESENTATIVES.

A Conveyance "as Personal Representative of a deceased person" implies a covenant against having made, or been party or privy to, incumbrances (s. 7 (F), Conv & L. P. Act. 1881).

**PERSONAL SECURITY.** — A power to invest on "Personal Security," seems, obviously, to include a security on PERSONAL PROPERTY; but, *semble*, it also includes the security of somebody's personal obligation (*Forbes v. Ross*, 2 Bro. C. C. 430; *Pickard v. Anderson*, L. R. 13 Eq. 608; 26 L. T. 725; *Sr, Langston v. Ollivant*, Cooper, G. 33), including that of the Tenant for Life, if he (like any other person) is a person to whom the loan may prudently be made (*Re Laing*, 1899, 1 Ch. 593; 68 L. J. Ch. 230; 80 L. T. 228).

**PERSONAL SERVICE.** — "Personal Service" of a Writ, R. 2, Ord. 9, R. S. C. ; V. Ann. Pr.

**PERSONAL TITHES.** — *V.* TITHES.

**PERSONALLY.** — *V.* APPEAR: CONTRACT OF SERVICE.

“Personally or by Proxy”; *V.* VOTE.

**PERSONALTY.** — “Personalty” is, generally, only a shortened form of PERSONAL ESTATE or PERSONAL PROPERTY; but quâ 40 & 41 V. c. 56. it does not “include Chattels Real, unless the contrary be expressed” (s. 31).

A direction to pay a Charitable Bequest out of the “Personalty” means, the PURE Personalty (*Nickisson v. Cockill*, 3 D. G. J. & S. 622; 11 W. R. 353, 1082; *Roberts v. Jones*, W. N. (80) 96).

**PERSONATE.** — To “personate” means, “to pretend to be a person” (per Crompton, J., *R. v. Hague*, inf); but, *semble*, the def should be “to pretend to be an *existing* person,” because pretending to be a dead elector is not Personation (*Whiteley v. Chappell*, cited ENTITLED TO VOTE). The offence of personating a voter is complete as soon as a person has, to the proper officer, falsely represented himself as the person entitled to vote, even though he stop short of voting (*R. v. Hague*, 33 L. J. M. C. 81; 4 B. & S. 715). *Vh*, 35 & 36 V. c. 60, s. 3; 45 & 46 V. c. 50, s. 77; 53 & 54 V. c. 55, s. 2.

As to Personation.

1. To obtain money; *V.* 24 & 25 V. c. 98, s. 34;
  2. Of Stock-holders; *V.* 33 & 34 V. c. 58, s. 21; of India Stock-holders, *V.* 26 & 27 V. c. 73, s. 111; and of holders of Joint-Stock Co’s Stock, *V.* 30 & 31 V. c. 131, s. 35;
  3. In giving recognizance, &c; *V.* 24 & 25 V. c. 98, s. 34;
  4. In fraud of the Admiralty; *V.* 28 & 29 V. c. 124, s. 8.
- Vj*, Arch. Cr. 736-741; Rose. Cr. 426-428.

**PERSUASION.** — *V.* JUDICIAL PERSUASION.

**PERTINENTS.** — *V.* FISHERY.

**PERUSE.** — The Scale Fee to Lessee’s Solr for “perusing draft and completing,” Sch 1, Part 2, Solrs Rem Ord, does not apply to a number of leases in a printed common form (*Welby v. Still*, 1895, 1 Ch. 524; 64 L. J. Ch. 495; 72 L. T. 108).

**PERVERSE.** — Perverse Delay; *V.* WILFUL DELAY.

A Perverse VERDICT may, probably, be defined as, one that is not only against the weight of evidence but is altogether against the evidence, *e.g.* like those referred to by Christian, L. J., in *Moffett v. Gough* (cited JUROR) as too frequently given by Irish juries in agrarian cases.

*Cp*, “Adverse Witness,” sub ADVERSE.

**PESAGE.** — A customary duty for the weighing of merchandize other than Wool (Hale, *De Portibus Maris*, ch. 6).

*Cp*, TRONAGE.

**PETITION.** — “Bankry Petition,” s. 11 (2), Bankry Act, 1890, includes an Administration Order under s. 125, Bankry Act, 1883 (*Watkins v. Barnard*, cited DECEASED: *Sr*, *Hasluck v. Clark*, cited DECEASED). *V.* ORDER OF ADJUDICATION.

“Petition of Bankry,” “Petition of Insolvency”; Stat. Def., 20 & 21 V. c. 60, s. 4.

“Election Petition”; *V.* ELECTION.

“Petition questioning the Election or Return”; Stat. Def., Ballot Act, 1872, s. 20.

Petition of Right; 3 Car. 1, c. 1. *Cp*, BILL OF RIGHTS.

Petitions of Right Act, 1860, 23 & 24 V. c. 34; Petitions of Right (Ir) Act, 1873, 36 & 37 V. c. 69.

*V.* PLAINT.

**PETITIONER.** — Quà the Jud. Acts, “Petitioner,” includes, “every person making any application to the Court, either by Petition Motion or Summons, otherwise than as against any defendant” (Jud. Act, 1873, s. 100; Jud. Act (Ir), 1877, s. 3). *Cp*, PLAINTIFF.

Parliamentary Costs Act, 1865, 28 & 29 V. c. 27, s. 2, provides that when the Committee of either House of Parliament on a Private Bill decides that the preamble is proved, and reports that the promoters have been vexatiously subjected to expense by the opposition of any petitioner against the same, then the Committee may order such Petitioner to pay costs to the promoters; there, “Petitioner” only includes the person appearing on the petition as the petitioner, and the Committee cannot go behind the petition and award costs against a person not appearing on the petition as Petitioner on the ground that he was in fact the real Petitioner (per Bowen and Fry, L. J.J., Esher, M. R., diss., *Mallet v. Hauly*, 18 Q. B. D. 787; 56 L. J. Q. B. 384; 35 W. R. 601; 3 Times Rep. 497).

Other Stat. Def. — 31 & 32 V. c. 101, s. 3.

**PETITIONING CREDITOR.** — Quà Bankry Act, 1861, “Petitioning Creditor” means, “the Creditor who files the Petition for Adjudication” (s. 229); no def of the term is included in the interp clause of the Bankry Act, 1883, but who the Petitioning Cr may be and what are the conditions on which he may petition thereunder are prescribed by s. 6.

Quà Irish Bankrupt and Insolvent Act, 1857, 20 & 21 V. c. 60, a def similar to that in the Bankry Act, 1861, is provided (s. 4).

**PETO'S ACT.** — Trustee Appointment Act, 1850, 13 & 14 V. c. 28: *Vh*, 10 Encyc. 68.

**PETROLEUM.**—Stat. Def., 25 & 26 V. c. 66, s. 1; 31 & 32 V. c. 56, s. 3; on *whc*, *Jones v. Cook*, 40 L. J. M. C. 179; L. R. 6 Q. B. 505. Those Acts were repealed by Petroleum Act, 1871, 34 & 35 V. c. 105, s. 3 of which has a def similar to that in 31 & 32 V. c. 56, but is amended by s. 2, 42 & 43 V. c. 47; *eth*, *London Co. Co. v. Holzappels Co*, 68 L. J. Q. B. 886; 81 L. T. 190; 47 W. R. 622; 63 J. P. 615.

“The Petroleum Acts, 1871 to 1881”; *V. Sch* 2, Short Titles Act, 1896.

**PETTIFOGGING.**—To write of a lawyer that he is a “Pettifogging Shyster” is Libel, and needs no innuendo (*Odgers*, 112, citing *Bailey v. Kalamazoo Co*, 4 Chaney, 251).

**PETTY CHAPMAN.**—*V. HAWKER*: PEDLAR.

**PETTY LARCENY.**—Petty Larceny was at Common Law distinguished from THEFT in that “the Goods stolen exceed not the value of twelve pence” (*Cowel, Larceny*). The distinction was abolished by s. 2, Larceny Act, 1861.

**PETTY SESSIONS.**—Petty Sessions of the Peace, are the Courts in which the JUSTICES OF THE PEACE, or Stipendiary Magistrates, discharge their various judicial and ministerial functions: *Vh*, STONE: Petty Sessions Act, 1849, 12 & 13 V. c. 18; s. 2, *Ib*. prescribes the authority for determining the places where these Sessions are to be held.

“Petty Sessional Court”; Stat. Def., s. 13 (12), Interp Act, 1889.—*Scot.* 46 & 47 V. c. 51, s. 68; 57 & 58 V. c. 41, s. 26; 60 & 61 V. c. 43, s. 8.—*Ir.* 57 & 58 V. c. 41, s. 27.

“Petty Sessional Court House”; Stat. Def., s. 13 (13), Interp Act, 1889.—*Scot.* 46 & 47 V. c. 3, s. 9.

“Petty Sessional Division”; Stat. Def., 8 & 9 V. c. 10, s. 10; 41 & 42 V. c. 77, s. 38.—*Scot.* 60 & 61 V. c. 43, s. 8.—*Ir.* (“Petty Sessions District”) 28 & 29 V. c. 50, s. 4.

“Petty Sessions”; *Vf.* 31 & 32 V. c. 22, s. 3.—*Scot.* 60 & 61 V. c. 43, s. 8.—*Ir.* 7 & 8 V. c. 106, s. 156; 14 & 15 V. c. 92, s. 25.

“Petty Sessions Clerk,” in Ireland; *V.* 28 & 29 V. c. 50, s. 4; 44 & 45 V. c. 18, s. 4.

*Cp.*, QUARTER SESSIONS. *V.* SESSIONS.

**PETTY TREASON.**—*V.* TREASON.

**PEW.**—*V.* FEE SIMPLE, towards end.

A freehold interest in a pew may be annexed to a house by a Faculty as well as by Prescription, for the latter supposes a faculty (*Phillipps v.*

*Halliday*, 1891, A. C. 361; 61 L. J. Q. B. 210); as to what is sufficient proof of a Prescription, *V. Stileman-Gibbard v. Wilkinson*, 1897, 1 Q. B. 749; 66 L. J. Q. B. 215.

**PHARMACY ACTS.**—*V.* POISON.

**PHILANTHROPIC.**—A bequest for “Philanthropic,” or for “Charitable or Philanthropic,” purposes, is not a good CHARITY (*Re Macduff*, 1896, 2 Ch. 451; 65 L. J. Ch. 700; 74 L. T. 706; 45 W. R. 154). In that case Stirling, J., said,—“‘Philanthropic’ is no doubt a word of narrower meaning than ‘BENEVOLENT.’ An act may be benevolent if it indicate goodwill to a particular individual only; whereas, an act cannot be said to be philanthropic unless it indicate goodwill to mankind at large. Still, it seems to me that ‘philanthropic’ is wide enough to comprise purposes not technically charitable.” *V.* OR: CHARITABLE PURPOSE.

**PHILLIMORE’S ACT.**—Ecclesiastical Courts Act, 1855, 18 & 19 V. c. 41.

**PHOTOGRAPH.**—“We can understand the difference between an Original Painting or Design and a Copy of it; but it is hard to say what an Original Photograph is. All photographs are copies of some object,—either picture, statue, piece of architecture, or the like. I think that the photograph of a picture is an ‘Original Photograph’” within s. 1, 25 & 26 V. c. 68 (per Blackburn, J. *Ex p. Walker, Re Graves*, 10 B. & S. 691; 39 L. J. Q. B. 35).

*V.* AUTHOR: FOR: PAINTING: PICTURE: PORTRAIT.

*Note.* A photograph is not, generally, sufficient evidence of identification in a Matrimonial cause (*Frith v. Frith*, 1896, P. 74; 65 L. J. P. D. & A. 53).

**PHYSIC.**—“The science of Physic doth comprehend include and contain, the knowledge of Surgery as a special member and part of the same” (s. 3, 32 H. 8, c. 40),—that is a direct recognition that “Physic,” as also its equivalent “Medicine,” embraced (at any rate, in the time of Henry 8) “the general art of healing, whether by drugs or surgery, and was not confined to the healing by drugs” (per Smith, L. J., *Royal College of Physicians v. Gen. Med. Council*, cited MEDICAL CORPORATION).

*V.* PHYSICIAN: SURGEON: MEDICINE.

**PHYSICAL.**—Physical Possession; *V.* ACTUAL.

**PHYSICIAN.**—“Physician,” in its technical sense, denotes a person “in the highest grade of medical practitioners” (per Channell, J.,

*Hunter v. Clare*, inf). A Licentiate of the Socy of Apothecaries, — registered under the Medical Act, 1886, 49 & 50 V. c. 48, and qualified to practise in Medicine and Surgery as well as an Apothecary, — is not entitled to describe himself as a "Physician"; but to support a conviction under s. 40, Medical Act, 21 & 22 V. c. 90, such description must have been adopted "wilfully" as well as "falsely" (*Hunter v. Clare*, 1899, 1 Q. B. 635; 68 L. J. Q. B. 278; 80 L. T. 197; 47 W. R. 394; 63 J. P. 308). *Vf*, *Podgrift v. Chevallier*, cited WILFULLY AND FALSELY.

*V*. "Medical Practitioner," sub MEDICAL.

*Cp*, SURGEON: APOTHECARY: SCHOLAR.

"Royal College of Physicians of London"; *V*. Medical Act, 1860, 23 & 24 V. c. 66, ss. 1, 6; "Royal College of Physicians of Scotland"; *V*. 21 & 22 V. c. 90, s. 49; "Royal College of Physicians of Ireland"; *V*. *ib.* s. 51.

**PICKAGE.** — *V*. STALLAGE AND PICKAGE.

**PICKETTING.** — *V*. BESET.

**PICKPOCKET.** — To call a person a "Pickpocket" is Slander *per se* (*Baker v. Pierce*, 2 Raym. Ld, 959; *Stebbing v. Warner*, 11 Mod. 255).

**PICLE.** — "Picle: Pickle: Pightel: Pitle: Pigtle. — A little close; Spelm. *Pictellum*" (Elph. 616).

"'Picle,' or 'Pitle,' seems to come from the Italian (*Piccolo, parvus*), and it signifies with us a little small close or inclosure" (Termes de la Ley).

**PICTURE.** — *Semble*, a Miniature Portrait, ordinarily worn, though richly framed will not pass under a bequest of "Pictures" (per Wood, V. C., *Tempest v. Tempest*, 2 K. & J. 644, 645). *Vf*, FURNITURE: HOUSEHOLD: VERTU. *Cp*, PERSONAL ORNAMENTS.

Its frame is part of a "Picture." as that word is used in the Carriers Act, 1830 (*Henderson v. Lond. & N. W. Ry*, L. R. 5 Ex. 90; nom. *Anderson v. Lond. & N. W. Ry*, 39 L. J. Ex. 55. *Sv*, *Treadwin v. G. E. Ry*, 37 L. J. C. P. 83; L. R. 3 C. P. 308).

*V*. PAINTING: ENGRAVING: FIXTURES: PHOTOGRAPH: PORTRAIT.

**PIER.** — Collision with "Piers or similar structures," in a Marine Insrce, includes the toe of a breakwater outside a harbour (*Union Mar Insrce v. Borwick*, cited COLLISION). *Vf*, DAMAGE BY COLLISION.

Quà Thames Conservancy Act, 1894, "'Pier,' includes, any floating pier and any jetty" (s. 3).

**PIG IRON.** — Parol evidence is inadmissible to explain "Pig Iron" in a written contract, but its meaning even there may be shown by a mercantile usage (*Mackenzie v. Dunlop*, cited F. O. B.).

**PIGEON.** — To say of one that he "pigeoned," even with an innuendo that he thereby obtained, *e.g.* a Bill of Exchange, by fraud,

held, not actionable (*Pemberton v. Colls*, 16 L. J. Q. B. 403; 10 Q. B. 461).

Pigeon-Shooting Match; *V.* NUISANCE.

**PIGOT'S ACT.** — The Debtors (Ir) Act, 1840, 3 & 4 V. c. 105.

**PILOT.** — *Quà Mer Shipping Act*, 1894, “ ‘Pilot,’ means, any person not belonging to a SHIP who has the conduct thereof ” (s. 742).

“ Qualified Pilot ”; *V.* QUALIFIED.

An “ *Under Book* ” Pilot is one qualified to take charge of a vessel drawing not more than 14 feet water; an “ *Upper Book* ” Pilot is one authorized to pilot vessels of any draught (*The Carl XVI.*, 1892, P. 325).

As to Pilots generally, *V.* Abbott, Part 2, ch. 5: 10 Encyc. 77-94; ss. 606-610, *Mer Shipping Act*, 1894.

**PILOTAGE.** — “ *Pilotage Authority*,” *quà Mer Shipping Act*, 1894, “ includes, all bodies and persons authorized to appoint or license pilots, or to fix or alter rates of pilotage, or to exercise any jurisdiction in respect of pilotage ” (s. 573), a def identical with that in s. 2, 24 & 25 V. c. 47.

*Compulsory Pilotage*; *V.* ss. 603-605, 622-625, *Mer Shipping Act*, 1894: COASTING TRADE: TRADING.

The 10s. 6d. per day to which a licensed pilot, taken, without his consent, to sea or beyond the limits of his pilotage district, in any ship, is entitled by s. 357, *Mer Shipping Act*, 1854, repld s. 594, *Mer Shipping Act*, 1894, are not “ *Pilotage Dues* ” for which the ship-brokers are liable under s. 363, *Mer Shipping Act*, 1854, repld s. 591, *Mer Shipping Act*, 1894 (*Morteo v. Julian*, 4 C. P. D. 216; 48 L. J. M. C. 126).

*Vh*, generally, Part 10, *Mer Shipping Act*, 1894; “ *English Channel District*,” sub ENGLISH: LONDON DISTRICT: TRINITY HOUSE OUTPORT DISTRICTS.

**PIN MONEY.** — Pin Money is an allowance made to a Wife, generally upon marriage, “ to save the trouble of a constant recurrence by the wife to the husband ” for money to defray her ordinary personal expenses, *e.g.* milliner’s bills, repair of jewels and trinkets, pocket money (*Howard v. Dighy*, 8 Bligh, N. S. 265); its arrears cannot be recovered for more than one year (*Aston v. Aston*, 1 Ves. sen. 267).

*Cp.*, PARAPHERNALIA.

**PINCH.** — *V.* HARD PINCH.

**PINT.** — Is  $\frac{1}{8}$ th of a GALLON (s. 15, 41 & 42 V. c. 49).

**PIOUS.** — *V.* GODLY.

**PIOUS USES.** — As to how the pre-Reformation phrase "Pious Uses" was supplanted by the post-Reformation "Godly Uses," *V. jdgmt of Fry, L. J., R. v. Income Tax Comurs*, 58 L. J. Q. B. 202; 22 Q. B. D. 296. *Vh, GODLY.*

**PIPES.** — "The Pipes," s. 35, W. W. C. Act, 1847, 10 & 11 V. c. 17, are the water *Mains*, and do not include Service-pipes by which water is conducted into houses (*Milnes v. Huddersfield*, 56 L. J. Q. B. 1; 11 App. Ca. 511; 55 L. T. 617; 34 W. R. 761; 50 J. P. 676).

*V. MAIN.*

**PIRACY.** — "Piracy," is only a sea term for ROBBERY" (*R. v. Dawson*, 13 State Trials, 454, cited and approved *A-G. Hong Kong v. Kwok-a-Sing*, L. R. 5 P. C. 199, 200).

"Piracy by the law of nations is, Taking a ship on the HIGH SEAS or within the jurisdiction of the Lord High Admiral from the possession or control of those who are lawfully entitled to it, and carrying away the ship itself, or any of its goods, tackle, apparel, or furniture, under circumstances which would have amounted to Robbery if the Act had been done within the body of an English County. It is doubtful whether persons cruising in armed vessels, with intent to commit piracy, are pirates or not" (Steph. Cr. 73, 74). *Vf, Ib.* 74-76, 78; 4 Bl. Com. 72; Arch. Cr. 507-513; Rosc. Cr. 743-747; 10 Encyc. 94-96: PIRATE.

In time of Peace, any act of depredation on a Ship is *primâ facie* an act of Piracy; but in time of WAR between two countries the presumption is that depredation by one of them on the ship of the other is an act of Legitimate Warfare (*Re Tirnan*, or *Ternan*, 5 B. & S. 645; 33 L. J. M. C. 201; 10 L. T. 499; 12 W. R. 858).

"Piracy," s. 1, 6 & 7 V. c. 76, does not mean Piracy by the law of nations, but Piracy according to the municipal law of the United Kingdom or the United States, as the case may be (*Re Tirnan*, sup).

By s. 9, Slave Trade Act, 1824, 5 G. 4, c. 113, the person or persons doing the acts of slave trading therein described "shall be deemed and adjudged guilty of Piracy, Felony, and Robbery."

Quà Copyright; *V. INFRINGEMENT.*

**PIRATE.** — A Pirate "signifieth a rover at sea" (Co. Litt. 391 a), who commits Robbery or Forceful Depredation or Murder, on the HIGH SEAS (*The Magellan Pirates*. 1 Spinks, 83; 18 Jur. 18: *United States v. Smith*, 1 Spinks, 90, n; 5 Wheaton, 153). An independent state may be piratical; and insurgent subjects of an independent state who commit acts of piracy, are "Pirates" within s. 2, Piracy Act, 1850, 13 & 14 V. c. 26 (*The Magellan Pirates*, sup). *V. ATTACK.*

Pirates "certainly take by force and not by stealth" (per Pollock, C. B.,



*Rothschild v. Royal Mail Steam Packet Co*, 21 L. J. Ex. 276; 7 Ex. 734).

"Pirates, Rovers, and Thieves"; *V.* 1 Maude & P. 487; Carver, 111: 10 Encyc. 96-97.

*V.* PIRACY: ROBBERS: THIEVES: PERIL OF THE SEA.

**PISCARY.** — " 'Piscary,' is a Liberty of Fishing in an other mans waters " (Termes de la Ley). *V.* FISHERY.

**PISTOL.** — *V.* GUN.

**PIT-BANKS.** — *V.* NON-TEXTILE FACTORIES.

**PITS AND VEINS.** — As to what would pass under a devise of "Pits and Veins"; *V.* *Brown v. Whiteway*, 8 Hare, 145, and *Vth*, MacS. 2, *n* 7.

**PITTANSARY.** — Is the person entrusted with the collection and distribution of the funds of a Dean and Chapter (*Shoubridge v. Clark*, 12 C. B. 335).

**PLACARD.** — *V.* BILL: BANNER.

" 'Placard' is a word used in the statutes of 33 H. 8, c. 6, and 2 & 3 Mary, c. 9, and it signifies a license to use unlawfull games or to shoot in a gunne " (Termes de la Ley).

**PLACE.** — The word "Place" is generally found in conjunction with other words which give it a colour, and is usually controlled by its context.

In the Vagrancy Act. 1824, 5 G. 4, c. 83, s. 4, it is, *inter alia*, declared an act of vagrancy to play or bet "in any street, road, highway, or other Open and PUBLIC PLACE," and in the amplified version of that enactment contained in s. 3, Vagrant Act Amendment Act. 1873, 36 & 37 V. c. 38, the words defining the locality of the offence are identical with those just quoted; held, that a Railway Carriage in transit on a railway is an "Open and Public Place" within those sections (*Langrish v. Archer*, 52 L. J. M. C. 47; 10 Q. B. D. 44; 31 W. R. 183; 47 L. T. 548; 47 J. P. 295); but the conviction must show that the carriage was in actual transit at the time of the commission of the offence (*Ex p. Freestone*, 25 L. J. M. C. 121; 1 H. & N. 93; 20 J. P. 376). It has been held by a Police Magistrate that the inside of a four-wheeled cab, which cab was standing on a public rank and used by three waiting cabmen for a gamble with dice, was an "Open and Public Place" within the section last cited (*R. v. Weller*, Times, 18th April 1894).

"Open Place to which the PUBLIC have or are permitted to have access," s. 3, 36 & 37 V. c. 38; *V.* *Turnbull v. Appleton*, 45 J. P. 469; *Hirst v. Molesbury*, L. R. 6 Q. B. 130; 40 L. J. M. C. 76.

An Inn Skittle-alley, used for the sale of manufactured goods, is an "Open Place" within a Local Market Act prohibition against selling outside a Market, and is not a "Shop" within an exception thereto (*Hooper v. Kenshole*, 46 L. J. M. C. 160; 2 Q. B. D. 127). V. SHOP.

In the phrase "At some *Standing or Place* appointed," s. 33, 6 & 7 V. c. 86, "Place" means, "public street or road" (*Skinner v. Usher*, 41 L. J. M. C. 158; L. R. 7 Q. B. 423).

*Vf*, on "Public Place," *Re Birch*, 15 C. B. 743: PUBLIC PLACE: PLV.

"Place of *Abode*"; V. inf.

By s. 4, Vagrancy Act, 1824, already cited, it is an act of vagrancy to indecently expose the person "in any street road or public highway, or in the view thereof, or in any Place of *Public Resort* with intent to insult a female," or for a suspected person or REPUTED THIEF to frequent any river, &c, "or any Place of *Public Resort*." Within these words a private house in which a sale by Public Auction is being held, is a "Place of Public Resort" (*Sewell v. Taylor*, 29 L. J. M. C. 50; 7 C. B. N. S. 160; 1 L. T. 37; 23 J. P. 792); so is the Platform of a Railway Station (*Ex p. Davis*, 26 L. J. M. C. 178; 21 J. P. 280); and so (probably) is the inside of an Omnibus (*R. v. Holmes*, 22 L. J. M. C. 122; Dears. 207); or a Public Urinal (*R. v. Harris*, 40 L. J. M. C. 67; L. R. 1 C. C. R. 282; 24 L. T. 74); or the roof of a house (*R. v. Thullman*, inf); or, indeed, any place where a number of persons may be affected by the criminal act (*R. v. Thullman*, 33 L. J. M. C. 58; 12 W. R. 88; L. & C. 326; *R. v. Saunders*, 45 L. J. M. C. 11; 1 Q. B. D. 15; *R. v. Wellard*, 54 L. J. M. C. 14; 14 Q. B. D. 63; Steph. Cr. 115); though, *semble*, even a PUBLIC HIGHWAY is not, necessarily, a "Place of Public Resort" (*Re Timson*, L. R. 5 Ex. 257; 39 L. J. M. C. 129; 18 W. R. 840; on *wher*, *Clark v. Regina*, 14 Q. B. D. 99, where Hawkins, J., refers to the variation of language of s. 4, made by s. 15. 34 & 35 V. c. 112).

A curious contrast to *Sewell v. Taylor* (sup), and as showing how exactly similar words are controlled into a different meaning by the context, is furnished by s. 2, Theatres Act, 1843, 6 & 7 V. c. 68. It is thereby provided that it shall not be lawful "to have or keep any house or other Place of *Public Resort*" for the public performance of stage plays without a license; and it was held that a booth used by strolling players is not within those words (*Dorcy v. Douglas*, 28 L. J. M. C. 193; 4 H. & N. 180. *Va*, *Fredericks v. Howie*, 31 L. J. M. C. 249; 1 H. & C. 381). It will be observed that in the section just mentioned the phrase "place of public resort" occurs in conjunction with the word "house," and that both are controlled by the verbs "have or keep." Accordingly the kind of "Place" intended is one of a permanent character. But in the very same Act (s. 11) it is provided that no person shall, for hire, act "in any Place, not being a patent theatre or duly licensed as a the-

atre"; and the Court held (apparently rejecting the force of the word "place" being found in conjunction with "patent theatre") that a booth used by strolling players is within s. 11 (*Fredericks v. Payne*, 32 L. J. M. C. 14; 1 H. & C. 584; *Tarling v. Fredericks*, 21 W. R. 785; 28 L. T. 814; 38 J. P. 197). The curious consequence is reached that whilst it is not unlawful to have or keep an unlicensed moveable booth in which, for hire, stage plays may be acted, yet it is unlawful for any one so to act therein. *Cp.* *Powell v. Kempton Park Co*, inf.

"Place of *Public Resort*," quâ and by s. 36, P. H. Acts Amendment Act, 1890, 53 & 54 V. c. 59, "means, a building used, or constructed or adapted to be used, either ordinarily or occasionally, as a church, chapel, or other Place of PUBLIC WORSHIP (not being merely a dwelling-house so used), or as a theatre, public hall, public concert-room, public ball-room, public lecture-room, or public exhibition room, or as a public place of assembly for persons admitted thereto by tickets or by payment, or used, or constructed or adapted to be used, either ordinarily or occasionally, for any other PUBLIC PURPOSE; but shall not include a private dwelling-house used occasionally or exceptionally for any of those purposes."

A place to which the Public resort in fact, even though not of right, is a "place of *Public Resort*" within an authorized municipal Bye Law for the prevention of betting (*Kitson v. Ashe*, 1899, 1 Q. B. 425; 68 L. J. Q. B. 286; 80 L. T. 323; 63 J. P. 325).

"House, Shop, Room, or OTHER Place of *Public Resort*," s. 35, 10 & 11 V. c. 89, includes a licensed Alehouse (*Cole v. Coulton*, 29 L. J. M. C. 125).

#### V. RESORT.

A "Place of *Dramatic Entertainment*" within s. 2, Dramatic Copyright Act, 1833, 3 & 4 W. 4, c. 15, is not confined to those places, — *v.g.* a regular theatre, — that are ordinarily or habitually used for representing the drama for profit; but means, a place adapted, for the time being, for the representation of a dramatic piece to an audience of a public, or quasi public, character, as distinguished from one that is merely domestic, internal, and private; and though a money charge for admission would, probably, conclusively show the audience to be a public one, yet such a charge is not an essential element in this definition (*Russell v. Smith*, 17 L. J. Q. B. 229; 12 Q. B. 217; *Duck v. Bates*, 53 L. J. Q. B. 97, 338; 13 Q. B. D. 843). It was accordingly held in the latter case that a room at Guy's Hospital fitted up for the play of "Our Boys," with theatrical scenery at the expense of the Governors, the actors being all unpaid, and the entertainment being for the amusement of the medical staff nurses and patients of the Hospital, and of the friends of the Governors and actors, all of whom were admitted by ticket obtained privately without payment, was not, — though it was very near the line, — a "Place of *Dramatic Entertainment*" within the lastly cited statute: for

though the place had been adapted for the drama, the audience was merely domestic.

In *Duck v. Bates* (sup), Brett, M. R., said that Patteson, J., must have been putting a jocular illustration in saying, — “When *Punch* is performed in the street, the street becomes a Place of Scenic Entertainment” (*Russell v. Smith*, 17 L. J. Q. B. 227).

V. DRAMATIC PIECE: REPRESENTING OR PERFORMING.

“House, Office, Room, or OTHER Place,” prohibited from being kept or used for betting (*V. BET*), by Betting Act, 1853, 16 & 17 V. c. 119, ss. 1, 2, and 3: — “The statute is directed against betting *places*, — not against betting *persons*” (per Channell, J., *Brown v. Patch*, inf); “the legislature has not prohibited betting at all; but prohibited keeping a house for betting” (per Halsbury, C., *Powell v. Kempton Park Co*, 1899, A. C. 162; 68 L. J. Q. B. 399, whose judgment contains a luminous analysis of the language of the prohibition); “it is not betting, whatever be its kind, which, independent of locality, is struck at; but it is the providing of a locality for particular kinds of betting which is the mischief to be dealt with” (per Esher, M. R., *Ib.*, 1897, 2 Q. B. 256; 66 L. J. Q. B. 609). In *Powell v. Kempton Park Co*, it was held by the H. L., affg C. A., that ambulatory betting in Tattersall’s Ring on Kempton Park Racecourse is *not* within this prohibition, because it is not in a “Place” “Kept or used” for betting (1899, A. C. 143; 68 L. J. Q. B. 392; 80 L. T. 538; 47 W. R. 585; 63 J. P. 260). The facts of that case were stated by Esher, M. R., as follows; “The Co are the owners of the Kempton Park Racecourse and of certain stands and enclosures on the racecourse. There are several stands, and each stand has an enclosure in front of it open to the stand but railed off from the rest of the racecourse by iron railings. One of these enclosures is known as the Reserved Enclosure. Admission is given to that enclosure and its stand to any one who applies and makes a payment of £1 for and in respect of such admission. Every person so admitted is entitled to walk and stand in the enclosure and in every part of it, and to sit in the stand. No part of the enclosure or stand can be, or is, reserved by any one for his own use when not actually there. Many persons pay for admission to such enclosure and stand upon such terms, and amongst them are many professional betting men called BOOKMAKERS, who pay the same amount as others for their admission and who are admitted on the same terms as the others. The Bookmakers, when in the enclosure, shout out the odds they are prepared to bet against each and every horse in a race, and, for a certain time, they bet such odds with every one who desires to bet and who is ready, if required, to deposit with the Bookmaker the amount which he bets against the Bookmaker, so that the latter, in case the horse against which he bets does not win, keeps the money he took on deposit; but, if the horse does win, he undertakes to pay the odds he bet against the horse. The Bookmaker goes to the races and into the

enclosure for the purpose of betting, in the way described, with every one who will bet with him. The Bookmaker bets as a matter of business. The businesses of the various bookmakers are, as against each other, rival and competing; and the business of each Bookmaker is independent of that of every other Bookmaker. No one of them assumes to exercise, or does exercise, any manner of exclusive user of any part of the enclosure, but walks or stands in the enclosure and every part of it in the same manner and on the same terms as every other person in the enclosure." To use the expression of Ld James of Hereford in the same case, there was there "no definite localization of the business of betting"; and therefore, no offence against the statute. As a consequence, *Eastwood v. Miller* (43 L. J. M. C. 139; L. R. 9 Q. B. 440), *Haigh v. Sheffield* (44 L. J. M. C. 17; L. R. 10 Q. B. 102), and *Hawke v. Dunn* (1897, 1 Q. B. 579; 66 L. J. Q. B. 364) were over-ruled; whilst *Snow v. Hill* (54 L. J. M. C. 95; 14 Q. B. D. 588; 33 W. R. 476; 49 J. P. 149), and *Henretty v. Hart* (13 Sess. Ca. 10), were established.

The question, then, apart from quite plain cases, will, generally, be, — Has there been such a localization of his business by the Betting Man as will convert its locality into a "Place" within the enactment? That question must be answered with due regard to the legal interpretation laid down by *Powell v. Kempton Park Co*, but it will, in very great measure, be one of fact in each case. "Speaking in general terms, whilst the 'Place' mentioned in the Act must be, to some extent, *ejusdem generis* with 'House, Room, or Office,' I do not think that it need possess the same characteristics; *e.g.* it need not be covered in or roofed. It may be, to some extent, an open space. There must be a defined area so marked out that it can be found and recognized as the 'Place' where the business is carried on and wherein (or whereat?) the bettor can be found. Thus, if a person betted on Salisbury Plain, there would be no 'Place' within the Act. The whole of Epsom Downs, or any other racecourse, where betting takes place, would not constitute a 'Place'; but directly a definite localization of the business of betting is effected, be it under a Tent or even a moveable Umbrella, it may be well held that a 'Place' exists, for the purposes of a conviction under the Act" (per Ld James, *Powell v. Kempton Park Co*, 1899, A. C. 194; 68 L. J. Q. B. 415).

Thus, a wooden Desk 5 feet high on which a bookmaker's name with the odds against the horses are exhibited and at which he transacts his business, is a "Place" within the enactment (*Shaw v. Morley*, 37 L. J. M. C. 105; L. R. 3 Ex. 137; 19 L. T. 15; 16 W. R. 763); so, of a space between the stays of an advertisement Hoarding used by a bookmaker for three consecutive race days (*Liddell v. Lofthouse*, 1896, 1 Q. B. 295; 65 L. J. M. C. 64; 74 L. T. 139; 44 W. R. 349; 60 J. P. 264); so, of a particular spot where a bookmaker takes up his standing with his back against the wall there (*M'Luany v. Hildreth*, 1897, 1 Q. B. 600; 66

L. J. Q. B. 376; 76 L. T. 463; 61 J. P. 325); or an Archway in a street (*R. v. Humphreys*, 1898, 1 Q. B. 875; 67 L. J. Q. B. 534; 78 L. T. 360; 46 W. R. 543; 62 J. P. 409); or a large Umbrella temporarily fixed in the ground by means of its spiked telescopic handle so as to form a tent (*Bous v. Fenwick*, 43 L. J. M. C. 107; L. R. 9 C. P. 339; 22 W. R. 804; 30 L. T. 524); or a Box or Stool with a placard on it indicating, not merely that its owner is a bookmaker but, that he is using it for carrying on his business and at which bettors may find him (*Brown v. Patch*, 1899, 1 Q. B. 892; 68 L. J. Q. B. 588; 80 L. T. 716; 47 W. R. 623; 63 J. P. 421); but in *Galloway v. Maries* (51 L. J. M. C. 53; 8 Q. B. D. 275; 30 W. R. 151; 45 L. T. 763; 46 J. P. 326), "the Court, I think, went too far" (per Smith, L. J., *Powell v. Kempton Park Co*, 1897, 2 Q. B. 278; 66 L. J. Q. B. 620; *Va*, per Esher, M. R., *Ib.*, 1897, 2 Q. B. 259; 66 L. J. Q. B. 610: but Lindley, L. J., said he was not prepared to say so, *Ib.*, 1897, 2 Q. B. 262; 66 L. J. Q. B. 612): *Galloway v. Maries* was a case of a Bookmaker standing on a stool to bet, but it is no longer binding (*Brown v. Patch*, sup).

*Vf*, "Open, keep, or use," sub USE: BUSINESS, p. 237.

A "Place" within which the offence of bull-baiting, cock-fighting, &c, can be committed within s. 3, *Cruelty to Animals Act*, 1849, 12 & 13 V. c. 92, must be one kept or used for the purpose (*Clarke v. Hague*, 29 L. J. M. C. 105; 2 E. & E. 281; *Morley v. Greenhalgh*, 32 L. J. M. C. 93; 3 B. & S. 374; *Coyne v. Brady*, 12 Ir. Com. Law Rep. 577; 9 L. T. 30). *V. AFORESAID*. As to effect of s. 2, *V. Bridge v. Parsons*, 32 L. J. M. C. 95; 11 W. R. 424; 27 J. P. 231.

"House or OTHER Place"; *V. BESET*.

A "Place," s. 15, Beerhouse Act, 1840, 3 & 4 V. c. 61, must be *ejusdem generis* with the preceding words, "City," &c (*Scott v. Washington*, 13 W. R. 939).

"OTHER Place," s. 6 (2), Bills of Sale Act, 1882, is to be read *ejusdem generis* with the preceding words (*London & Eastern Counties Loan Co v. Creasy*, cited PLANT). *Va*. PUBLIC DANCING; and the cases already cited on the Betting Act, 1853.

Treasurer of the "County, Riding, Division, or Place," s. 9, Vagrancy Act, 1824, means a "Place" having a Court of Quarter Sessions (*R. v. Yorkshire Jus.*, 1900, 1 Q. B. 291; 69 L. J. Q. B. 13). *Cp*, BOROUGH OR PLACE.

A Warehouse is a "Place" within s. 10, 17 G. 3, c. 56 (*R. v. Edmundson*, 2 E. & E. 77; 28 L. J. M. C. 213). *V. TENEMENT*.

In Ireland it has been held that a cart moving along the street was within the phrase "ANY Place" as used in s. 116, P. H. Act, 1875, so as to justify the seizure of diseased meat therein (*Daly v. Webb*, Ir. Rep. 4 C. L. 309). This seems a strong order. *Vh*, *Young v. Gattridge*, L. R. 4 Q. B. 166; 38 L. J. M. C. 67. *Vf*, on "Any Place," *Ex p. Kippins*, cited PLY.

"Place"; Stat. Def., 14 & 15 V. c. 28, s. 2. — *Scot.* 20 & 21 V. c. 73, s. 14; 28 & 29 V. c. 102, s. 1. — *Ir.* 23 & 24 V. c. 26, s. 3.

"Place of *Abode*" usually means the Place of Residence; "in Johnson's Dictionary 'Abode' is defined to be 'Habitation, Dwelling, Place of Residence,' and 'Residence' is defined to be 'Place of Abode, Dwelling.' A man's residence, where he lives with his family and sleeps at night, is always his Place of Abode in the full sense of that expression" (per Campbell, C. J., *R. v. Hammond*, 21 L. J. Q. B. 153; 17 Q. B. 772). *See*, INMATE.

"Place of *Abode*" occurs frequently in the Forms provided by the Acts for the *Registration of Voters* (6 V. c. 18; 41 & 42 V. c. 26). What is a person's Place of Abode within the meaning of these Acts is "rather a question of fact than of law" (per Erle, C. J., *Courtis v. Blight*, 31 L. J. C. P. 48; 5 L. T. 450). That case related to an Objector's Place of abode: and *Vth*, *Sheldon v. Fletcher*, 17 L. J. C. P. 34; 5 C. B. 17: *Vf*, *Melbourne v. Greenfield*, 29 L. J. C. P. 81; 7 C. B. N. S. 1. The place of abode of a person entitled to vote, need only be described in an Overseer's List where the person has one, and it may be given as "travelling abroad" where the facts warrant that statement (*Walker v. Payne*, 15 L. J. C. P. 38; 2 C. B. 12; 1 Lutw. 324). In a *Notice of Action*, or other such like document, a Solicitor's "Place of Abode" would be sufficiently given by his business address (*Roberts v. Williams*, 5 L. J. M. C. 23; 2 Cr. M. & R. 561; 5 Tyr. 583; 4 Dowl. 486), but such a requirement would not be complied with by giving the Town in which the Solr practices, *e.g.* "given under my hand at Durham" (*Taylor v. Fenwick*, cited 7 T. R. 635, and referred to by Williams, J., *Martins v. Upcher*, 11 L. J. Q. B. 293).

V. RESIDE: USUAL PLACE OF ABODE: LAST: ADDRESS.

"Place of *Burial*"; V. BURIAL.

"Place of *Business*," R. 1, Ord. 48 a, R. S. C.; *V. Grant v. Anderson*, 1892, 1 Q. B. 108; 61 L. J. Q. B. 107; 66 L. T. 79.

"*Competitive Place*"; V. COMPETITIVE.

"*Contributory Place*"; V. CONTRIBUTORY.

V. CONVENIENT PLACE.

"Place of *Delivery*"; V. DELIVERY.

"Place of *Destination*"; V. DESTINATION.

"Place of *Discharge*"; V. PORT.

"Place of *Dramatic Entertainment*"; *V. sup* p. 1485.

"Place of *Entertainment*"; V. ENTERTAINMENT.

"Place of *Export*"; V. EXPORT.

"House or Place"; *V. sup*: HOUSE, towards end.

"Place having a *Known and Defined BOUNDARY*," s. 12, 21 & 22 V. c. 98, included, an Ecclesiastical District, under 6 & 7 V. c. 37, consisting of parts of two Townships each of which Townships separately maintained its own poor and its own highways (*R. v. Northowram*, 35

L. J. Q. B. 90; L. R. 1 Q. B. 110; 7 B. & S. 110). *Vf*; *R. v. Hardy*, 9 B. & S. 926; L. R. 4 Q. B. 117; 38 L. J. Q. B. 9; *R. v. Loc Gov Bd*, L. R. 8 Q. B. 227; 42 L. J. Q. B. 131.

"Loading Places," *e.g.* in par. 19, River Plate Charter, is not the same as Loading PORTS; it means, Loading Spots (per Russell, C. J., *Branckelou S. S. Co v. Lamport*, 66 L. J. Q. B. 382).

"Office, Commission, Place or Employment"; *V.* OFFICE.

"Open Place," "Open and Public Place"; *V.* sup: "Opened, kept, or used"; *V.* KEEP: OPEN: USE.

"Place for transacting *Parochial Business*"; *V.* PAROCHIAL BUSINESS.

"Passage or Place"; *V.* PASSAGE.

Place of *Pleasure*; *V.* PLEASURE.

"Polling Place"; *V.* POLLING.

"Populous Place"; *V.* POPULOUS.

"Place of *Profit*"; a Trustee of a Trust Deed for securing the Debentures of a Co, who is appointed and paid, but not removeable by, the Co, holds a "Place of Profit UNDER the Co" (*Astley v. New Ticoli*, 1899, 1 Ch. 151; 68 L. J. Ch. 90; 79 L. T. 541; 47 W. R. 326). *V.* OFFICE.

"Public Place"; *V.* sup: PUBLIC PLACE.

"Place dedicated to Public Use"; *V.* PUBLIC USE.

"Place of *Religious Worship*"; *V.* s. 36, 53 & 54 V. c. 59, set out sup p. 1485: ENLARGE: PUBLIC RELIGIOUS WORSHIP: PUBLIC BUILDING: PAROCHIAL CHURCH: USUAL PLACE OF RELIGIOUS WORSHIP.

"Place of *Residence*"; Stat. Def., 44 & 45 V. c. 60, s. 1; 48 & 49 V. c. 54, s. 15: RESIDE.

"Place of *Safety*," quâ Prevention of Cruelty to Children Act, 1891, 57 & 58 V. c. 41, "includes, any place certified by the Local Authority under this Act for the purposes of this Act; and also includes, any Workhouse or Police Station, or any Hospital Surgery, or place of the like kind" (s. 25): quâ Infant Life Protection Act, 1897, 60 & 61 V. c. 57, "Place of Safety" of an Infant, means, "any suitable place the occupier of which is willing temporarily to receive such infant" (s. 15).

Place of *Sale of Goods*, &c; *V.* SALE.

"Place for *Slaughtering* horses or other cattle," s. 9, 12 & 13 V. c. 92, includes, private, as well as licensed, slaughter-houses (*Colam v. Hall*, L. R. 6 Q. B. 206; 40 L. J. M. C. 100). *V.* SLAUGHTER-HOUSE.

"Same Town or Place"; *V.* TOWN.

"Place for *Water*," includes, a Well (*Hipkins v. Birmingham Gas Co*, 5 H. & N. 74).

*V.* CITY: DIVISION: MARKET PLACE: PARISH: PLY: PORT OR PLACE: STREET OR PLACE.

**To PLACE.** — A Device for catching fish will be "placed," within the meaning of s. 15. Salmon Fishery Act, 1873, 36 & 37 V. c. 71. by merely raising the shuttles of a weir constructed in 1838, and so using



a grating, that had always been part of the weir, as a trap to catch fish, that being the intended use of such grating from the time of the construction of the weir (*Briggs v. Swanwick*, 52 L. J. M. C. 63; 10 Q. B. D. 510).

An agreement "to place" *Shares* in a Company, is not equivalent to an agreement to take them; and the contractor is thereby liable, not as a contributory, but only in damages for breach of contract (*Gorriessen's Case*, 42 L. J. Ch. 864; 8 Ch. 507). *V. s. S*, Comp Act, 1900: UNDERWRITE.

**PLACE OUT.**— "Place out" a Parish Apprentice, recital to s. 9, 56 G. 3, c. 139; *V. PUT AWAY*, with which phrase "place out" seems synonymous.

"An Assignment imports a transfer of the services of the Apprentice for the residue of his term. But an Apprentice may be said to be 'placed out' when the master consents to the apprentice serving another individual, so as to become subject to the control of that other" (per Bayley, J., *R. v. Shipton*, 8 B. & C. 96).

**PLAIN SPIRITS.**— Quà Spirits Act, 1880, 43 & 44 V. c. 24, " 'Plain Spirits' means, any BRITISH SPIRITS (except Low WINES and FEINTS) which have not had any flavour communicated thereto, or ingredient or material mixed therewith" (s. 3).

**PLAINT.**— A "Plaint" is the process by which proceedings in the County Court are, generally, commenced (R. 1*a*, Ord. 5, Co. Co. Rules, 1889); there are a few exceptions otherwise provided for which commence by Petition.

The Scotch equivalent, *semble*, is, "Petition, or Complaint, presented in a Sheriff's Court" (39 & 40 V. c. 75, s. 21); the Irish, "Civil Bill Process" (Ib. s. 22).

*Cp*, WRIT. *V.* PROCESS.

**PLAINTIFF.**— Quà the Jud. Acts this word includes "every person asking any relief (otherwise than by way of Counter-Claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise" (s. 100, Jud. Act, 1873; s. 3, Jud. Act (1r), 1877, which adds "cause" before the word "action"). Therefore, as used in Ord. 31, R. S. C. it includes Petitioner, and a Petitioner for the revocation of a Patent is not an exception (*Re Haddan*, 54 L. J. Ch. 126; 51 L. T. 190; 33 W. R. 96). *V.* INSTITUTED. *Cp*, PETITIONER.

A deft Caveator in a Probate action is not a "plaintiff" within R. 4, Ord. 29, R. S. C. (1r), 1891 (*Re Twomey*, 1900, 2 I. R. 560).

*Semble*, a Limited Co, pleading a Counter-Claim, is not a "plaintiff or pursuer" who can be ordered to give security for costs under s. 69,

Comp Act, 1862 (*Accidental & Mar. Insree v. Mercati*, 37 L. J. Ch. 56; L. R. 3 Eq. 200; *Sr. Washoe Co v. Ferguson*, L. R. 2 Eq. 371; *Moscoe Gas Co v. International Financial Socy*, 41 L. J. Ch. 350; 7 Ch. 225). *Vf*, REASON.

In Scotland, the equivalent of "Plaintiff" is "Pursuer"; 17. 38 & 39 V. c. 90, s. 14; 41 & 42 V. c. 49, s. 74, c. 74, s. 74; 45 & 46 V. c. 49, s. 52; 53 & 54 V. c. 21, s. 39.

Other Stat. Def. — Inferior Courts Jdgmts Extension Act, 1882, 45 & 46 V. c. 31, s. 2; Sale of Goods Act, 1893, s. 62. — *Ir. Chancery (Ir) Act*, 1867, 30 & 31 V. c. 44, s. 2; Civil Bill Courts Procedure Amendment Act (Ir), 1864, 27 & 28 V. c. 99, s. 3; 11 & 12 V. c. 28, s. 18; 20 & 21 V. c. 60, s. 4.

"Plaintiff" is used in 12 G. 1. c. 29, "to signify a party who intends to become a plaintiff" (per Abinger, C. B., *Schletter v. Cohen*, 7 M. & W. 389; 10 L. J. Ex. 99); *whc* shows that such meaning may be attributed to the word in other connections.

**PLAN.** — The "Plan," to be submitted to a Local Authority, of Works to be done, does not mean something merely showing "method" or "manner," but means a "map" or its equivalent, which will enable the Authority to judge whether what is proposed shall be allowed to proceed; and therefore under s. 31, 10 V. c. 17, the position and depth of proposed pipes ought to form part of the "Plan" (*Edgeware v. Colne Valley Water Co*, 46 L. J. Ch. 889; W. N. (77) 154; *East Molesey v. Lambeth W. W. Co*, 1892, 3 Ch. 289; 62 L. J. Ch. 82; 67 L. T. 493). But under s. 157, P. H. Act, 1875, a Local Authority is not entitled to reject Building Plans solely because they do not disclose a complete system of Sewage (*R. v. Tynemouth*, 1896, 2 Q. B. 451; 65 L. J. Q. B. 545). *Vf*, as to Plans under P. H. Acts, *Masters v. Pontypool*, 47 L. J. Ch. 797; 9 Ch. D. 677; *James v. Masters*, 1893, 1 Q. B. 355; *Fulford v. Blatchford*, 80 L. T. 627.

"Plans showing the extent of the previously existing Domestic Building in its several parts," s. 43 (i) London Bg Act, 1894, means, a complete set of Plans showing what the old building was; not a mere ground plan (*Payuter v. Watson*, cited DEVIATE).

"Plan" as used in a statute; *Vf*, *Edinburgh Tramways Co v. Black*, L. R. 2 Sc. App. 336.

Stat. Def. — Coal Mines Regn Act, 1887, 50 & 51 V. c. 58, s. 75; Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, Sch, s. 1; Land Drainage Act, 1847, 10 & 11 V. c. 38, s. 20; Land Drainage (Scot) Act, 1847, 10 & 11 V. c. 113, s. 17; Metalliferous Mines Regn Act, 1872, 35 & 36 V. c. 77, s. 41.

As to the effect of a Plan quã the PARCELŌ in a Conveyance; *V. Brown v. Wales*, 42 L. J. Ch. 45; L. R. 15 Eq. 142; 27 L. T. 410; 21 W. R. 157; *Re Lindsay and Forder*, 72 L. T. 832; *Re Cadogan*, 11 Times

Rep. 477: *Laybourn v. Gridley*, 1892, 2 Ch. 53; 61 L. J. Ch. 352; *May v. Platt*, cited ESTATE AND INTEREST: Where there is a Variance, a plan will, generally, control the written description (*New Valley Commrs v. Dunkley*, 4 Ch. D. 1).

DEPOSITED Plans of a Ry Co, are not binding on the Co except so far as they are incorporated in the Special Act (*North British Ry v. Tod*, 12 Cl. & F. 722; *R. v. Caledonian Ry*, 16 Q. B. 19; 20 L. J. Q. B. 147). Errors therein may be corrected (s. 7, Ry C. C. Act, 1845).

#### V. CHART.

**PLANT.** — A bequest of "Plant and Goodwill," passes the house of business held at rack-rent, also trade fixtures, benches, presses, and implements of trade; but not stock-in-trade, or household furniture and effects of the ordinary kind (*Blake v. Shaw*, 8 W. R. 410; *Johns*, 732).

#### V. GOODWILL.

The Employers' Liability Act, 1880, contains no def of "Plant," as therein used, "but, in its ordinary sense, it includes whatever apparatus is used by a business man for carrying on his business, — not his stock-in-trade which he buys or makes for sale, but all goods and chattels, fixed or moveable, alive or dead, which he keeps for permanent employment in his business" (per Lindley, L. J., *Yarmouth v. France*, 57 L. J. Q. B. 17; 19 Q. B. D. 647; 36 W. R. 281). In that case Esher, M. R., and Lindley, L. J., held that, a Wharfinger's horse was part of his "Plant"; so, of a Coal Merchant's ship (*Carter v. Clarke*, 78 L. T. 76). The carcase of a house is not part of a Builder's "Plant" (*Conway v. Clemence*, 80 Law Times, 44, 58; 2 Times Rep. 80), but scaffolding and ladders are (*Cripps v. Judge*, cited DEFECT). *Vf, Merrill v. Wilson*, cited DOCK.

But (whilst recognizing *Yarmouth v. France*) a Cab Proprietor's horses were held not part of his "Plant" within s. 6 (2), Bills of Sale Act, 1882, because there the context, — *v.g.* "TRADE MACHINERY" and "FIXTURES," — indicates that "Plant," as there used, refers to something connected with the premises (*London & Eastern Counties Loan Co v. Creasy*, 1897, 1 Q. B. 768; 66 L. J. Q. B. 503; 76 L. T. 612; 45 W. R. 497).

Quà, and by, s. 104, Factory and Workshop Act, 1901, "Plant," includes any gangway or ladder used by any person employed to load or unload or coal a SHIP."

"Plant" and "MACHINERY" are two quite different things" (per Kekewich, J., *Re Brooke*, 64 L. J. Ch. 27). On a contract for the sale of a Freehold Brewery which provided that its "Fixed Plant and Machinery" should be paid for by valuation, Kekewich, J., held that, "speaking generally, 'Machinery' includes everything which by its action produces or assists in production; and that 'Plant' might be regarded as that without which production could not go on . . . and included such things as, brewer's pipes, vats, and the like"; and that

therefore a Chimney Shaft, which was built just outside the boiler-house but formed no part of it, a double-boarded partition, forming a malt and grain store, and Staging, erected by placing joists on the stout bearers built into the walls, were not to be included in the valuation (*Re Nutley and Finn*, W. N. (94) 64).

“Plant, Root, Fruit, or Vegetable Production”; *V. R. v. Hodges*, cited **PRODUCT**.

To impute that a state of things has been created as a “Plant” (probably, without an innuendo) is actionable defamation, for it connotes an accusation of an artful and wicked plan and contrivance (*R. v. Holt*, 8 J. P. 212).

**PLANTATION.** — Is a District, Settlement, or COLONY (Jacob); *Vj*, 1 Bl. Com. 106, 107.

The devise of a “Plantation” will, *semble*, pass also the stock, implements, utensils, &c, upon it (*Lushington v. Sewell*, 1 Sim. 435, cited Wms. Exs. 1066).

The “natural and unimproved state” of land “used only for a Plantation or Wood,” s. 4 (*a*), Rating Act, 1874, includes, the enhanced value of the land owing to game being preserved on it (*Eyton v. Moll*, 50 L. J. M. C. 39; 6 Q. B. D. 13). **V. SALEABLE UNDERWOOD.**

**V. WOOD.**

**PLASTERING.** — Gauging plastering, *i.e.* by mixing Plaster of Paris with the plaster to make it dry more quickly, is “wholly different from ordinary plastering” (per Martin, B., *Wallis v. Robinson*, 3 F. & F. 307).

“Where the specifications of a building contract contained a general heading or title called ‘Plastering,’ under which, in sub-titles called ‘Deafening,’ ‘Lathing,’ and ‘Plastering,’ the whole title is described, and a contractor undertook ‘to do the plastering and stucco work’ according to the specifications, — there is no ambiguity raised by the double use of the word ‘plastering,’ and it will be construed to mean, all included under the general title, and not that alone described under the sub-title ‘plastering,’ and this although the specifications require wire-lathing, and not the ordinary wooden slip: *Mellen v. Ford*, 28 Fed. Rep. 639; U. S. Dig. 125” (1 Hudson, 144).

**PLATE.** — “Plate,” will not pass plated articles where the testator is possessed of solid silver ones (*Holden, or Holder v. Ramsbottom*, 4 Giff. 205; 11 W. R. 302; 7 L. T. 735).

In *Field v. Peckett* (30 L. J. Ch. 813; 29 Bea. 573), it was held that “Plate and China” would carry snuff-boxes of gold, silver, and china: and, under particular circumstances, a gold watch passed as “Plate” (*Spencer v. Spencer*, cited in *Tempest v. Tempest*, 2 K. & J. 644).

*Vj*, *Domville v. Taylor*, 32 Bea. 604.

Bequest of Plate and Paintings as Heir-looms; *V. Re Johnston, Cockrell v. Essex*, cited SUCCESSORS.

Gold Plate, s. 1, 30 & 31 V. c. 90; *V. GOLD*.

**PLAY.** — “Haunting, resorting, and playing”; *V. Murphy v. Arrow*, cited FOUND.

*V. DRAMATIC: THEATRE: STAGE PLAY.*

**PLAYING CARDS.** — *V. CARDS.*

**PLEADING.** — Quà the Jud. Acts, “Pleading” shall include any Petition or Summons, and also shall include the Statements in writing of the Claim, or Demand of any Plaintiff, and of the Defence of any Defendant thereto, and of the Reply of the Plaintiff to any Counterclaim of a Defendant” (s. 100, Jud. Act, 1873; s. 3, Jud. Act (Ir), 1877). But this does not repeal s. 9, 23 & 24 V. c. 38; and therefore though an ordinary “Pleading” does not now absolutely require signature of Counsel (R. 4, Ord. 19, R. S. C.), yet a Petition for the advice of the Court must be so signed (*Re Boulton*, 30 W. R. 596).

The endorsement on a Writ was not a “Pleading” within R. 11, Ord. 40, R. S. C. 1875 (*Wallis v. Jackson*, 52 L. J. Ch. 384; 23 Ch. D. 204); nor is a specially endorsed Writ a “Pleading” under R. 11, Ord. 64, R. S. C. 1883 (*Murray v. Stephenson*, 19 Q. B. D. 60; 56 L. J. Q. B. 647; 56 L. T. 720; 35 W. R. 666).

*Semble*, that Particulars are a “Pleading,” within R. 1, Ord. 25, R. S. C. (*Davey v. Bentinck*, 1893, 1 Q. B. 185; 62 L. J. Q. B. 114; 67 L. T. 742; 41 W. R. 181).

“Mode of Pleading”; *V. PRACTICE. Vh*, 10 Encyc. 105–131.

*V. POINT OF SUBSTANCE.*

**PLEASURE.** — A devise to A. *to give and sell at his pleasure*, carries the fee (Sug. Pow. 104; *Vj*, DISCRETION).

A Head Master of a School to which the Public Schools Act. 1868, 31 & 32 V. c. 118, applies, holding his office “*at the pleasure*” of the Governing Body (s. 13), is dismissible without cause assigned; and such a dismissal, if *bonâ fide*, cannot be impeached (*Hayman v. Rugby School*, 43 L. J. Ch. 834; L. R. 18 Eq. 28); *semble*, if cause assigned, it may be enquired into. *Vj*, AT DISCRETION. “At his will” or “pleasure”; *V. CONVENIENCE.*

“Pleasure BOAT,” quà Thames Conservancy Act, 1894, “includes, any ship, launch, HOUSE BOAT, boat, randan, wherry, skiff, dingy, shallop, punt, canoe, or yacht, however navigated, not being used solely as a tug or for the carriage of goods, and not being certified by the Board of Trade as a PASSENGER STEAMER to carry 200 or more passengers” (s. 3).

License of Pleasure; *V. PROFIT À PRENDRE.*

That which is a distinct PLACE of pleasure, is, *semble*, not part of a

HOUSE within s. 92, Lands C. C. Act, 1845 (*Fergusson v. L. B. & S. Ry*, 33 L. J. Ch. 29; 33 Bea. 103; 11 W. R. 1088; *Pulling v. L. C. & D. Ry*, 33 L. J. Ch. 505; 33 Bea. 644; 12 W. R. 969; *wher* as to what are PLEASURE GROUNDS); *semble*, otherwise quà rating for water supply (*Bristol W. W. Co v. Uren*, cited PREMISES).

A "Pleasure Ground," is a ground for recreation and enjoyment, including accessories conducive to that object; therefore, a Conservatory, a Museum, and a Library, "into which people may turn if the weather becomes unfavourable," come within "Public Walks and Pleasure Grounds," s. 74, P. H. Act, 1848, which a Local Authority may be authorized to provide; *secus*, of town buildings generally (*A-G. v. Sunderland*, 24 W. R. 991; 2 Ch. D. 634; 34 L. T. 921).

**PLEDGE.** — "The Contract of Pledge is a BAILMENT, or Delivery, of Goods and Chattels by one man to another to be held as a security for the payment of a debt or the performance of some engagement, and upon the express or implied understanding that the thing deposited is to be restored to the owner, as soon as the debt is discharged or the engagement has been fulfilled. The thing deposited as a security is called a PAWN or Pledge; the party making the deposit, the pawnor or pledgor; and the person who receives it into his possession, the pawnee or pledgee. The contract is to be distinguished from the contract of hypothecation by the transfer of the possession, or the ACTUAL delivery, of the thing intended to be charged to the creditor, and from the contract of MORTGAGE by the absence of a transfer of the ownership or right of property thereof to the pawnee during the continuance of the trust" (Add. C. 733): *Vf*, *Bristol & West of England Bank v. Mid. Ry*, 1891, 2 Q. B. 653; 61 L. J. Q. B. 115; 65 L. T. 234; 40 W. R. 148; Jacob: 9 Encyc. 540-545.

Quà Factors Act, 1889, "Pledge," "includes, any contract pledging, or giving a LIEN or Security on, Goods, — whether in consideration of an original advance or of any further or continuing advance, or of any pecuniary liability" (subs. 5, s. 2). For definitions relating to Pledges as affected by this Act, *V*. BOUGHT: BUY: DELIVERY: DISPOSITION: DOCUMENT: FACTOR: MERCANTILE AGENT: MORTGAGE: PERSON: SALE.

Quà Pawnbrokers Act, 1872, "'Pledge,' means, an article pawned with a PAWNBROKER" (s. 5).

A power of SALE or to purchase, does not include a power to pledge (*Jonmenjoy Coondoo v. Watson*, cited NEGOTIATE); *secus*, probably, of "negotiate" if standing alone (*Ib.*), and, certainly, of "indorse" (*Bank of Bengal v. Macleod*, cited NEGOTIATE).

"Pledge," in olden time, was used in the sense of a man or men being answerable for the good conduct of another (Cowel: *V*. FRANK-PLEDGE). Thus, in ancient Charters we read of grants of "Amercements,

of Pledges, and Mainperners" (*V. MAINPRIZE*). The distinction between "Pledges" and "Mainperners," "has been variously stated and is somewhat obscure; but they did not either of them acknowledge a debt due to the Crown, though sometimes they may have been responsible for a fixed amount; their liability was not fixed from the beginning and was a different thing from the liability under RECOGNIZANCES" (per Ridley J., *Re Nottingham Corp*, cited AMERCIAMENT).

**PLENARY.** — Plenary proceedings and judgment; *V. Noucion v. Freeman*, cited REMATE.

**PLENE ADMINISTRAVIT.** — This is a plea by an exor or admor that he has fully and duly administered the deceased's estate, and has therefore nothing in his hands with which to satisfy the plaintiff's demand: *Vh, Wms. Exs. 1847 et seq.*

**PLIGHT.** — "Plight is an old English word, and here (s. 357, Litt.) signifieth not only the estate but the habit and qualitie of the land, and extendeth to rent charges, and to a possibility of dower. *Vide* Sect. 289, where Plight is taken for an estate or interest of and in the land itself, and extendeth not to a rent charge out of the land" (Co. Litt. 221 b).

**PLOUGH.** — Beasts of Plough; *V. BEASTS*.  
Plough-Bote; *V. BOTE*.

**PLOUGHING.** — In a Reference for Valuation of "Ploughing and Sowing," all expenses incidental to the preparation of land for sowing are included (*Branscombe v. Rowcliffe*, 18 L. J. C. P. 38; 6 C. B. 523): *Vthe*, for what was allowed for "Ploughing."

**PLOW-LAND: PLOUGHLAND.** — " 'Plow-land' and a 'Hide of land' are *synonyma*, and are collective words. And, therefore, by the grant of *Carucatum* or *Hidam terræ*, or of a plow-land, or a hide of land, may pass 100 acres of land, meadow and pasture, and the houses thereupon; but it doth properly intend as much land as one plow can till in a year" (Touch. 93). *V. HIDE: CARUCATA: JUGUM*.

**PLUG.** — In s. 32, Metropolitan Fire Brigade Act, 1865, 28 & 29 V. c. 90 and s. 34, Metropolis Water Act, 1871, 34 & 35 V. c. 113, "Plug," or "FIREPLUG," includes, "Hydrant, and all other apparatus necessary or proper, in connection with the Co's pipes, for supply of water in case of fire" (s. 34 (1), 34 & 35 V. c. 113).

*Vh, London Co. Co. v. East London W. W. Co*, 1900, 1 Q. B. 330; 69 L. J. Q. B. 304; 82 L. T. 268; 48 W. R. 252.

**PLUNDER.** — "Whosoever shall *plunder* or steal any part of any ship or vessel which shall be in distress"; s. 64, Larceny Act, 1861, 24

& 25 V. c. 96 — "I do not know that this word 'plunder' has any special legal signification" (Steph. Cr. 255, *n* 5); *Vf*; Arch. Cr. 483, 484.

**PLURAL.** — *V.* SINGULAR.

**PLY.** — To "ply" a Passenger Steamer, within s. 318, Mer Shipping Act, 1854, repld s. 281 (3), Mer Shipping Act, 1894, means, to "ply for HIRE" (*R. v. Ipswich Jus.*, 5 Times Rep. 405): *Vh*, per Coleridge, C. J., *R. v. Southport*, 62 L. J. M. C. 48; 1893, 1 Q. B. 359.

A Steam Vessel "plies between" London Bridge and the Nore Light, s. 1, 19 & 20 V. c. 107, whilst she is travelling for hire between those boundaries, though she sometimes goes beyond them (*Walker v. Evans*, 2 E. & E. 356; 29 L. J. M. C. 22; 8 W. R. 61; 1 L. T. 59).

A HACKNEY CARRIAGE "plies for hire," within s. 7, 32 & 33 V. c. 115, if, without word or gesture, it solicits passengers in a Railway Station (*Clark v. Stanford*, 40 L. J. M. C. 151; L. R. 6 Q. B. 357; 19 W. R. 846; *Allen v. Tunbridge*, 40 L. J. M. C. 197; L. R. 6 C. P. 481; 19 W. R. 849); *secus*, under the previous (repealed) Act, 1 & 2 W. 4, c. 22, because in that Act the offence of unlicensed plying was restricted to a "Public Street or Place" which a Railway Station is not (*Case v. Storey*, L. R. 4 Ex. 319; 38 L. J. M. C. 113; *Skinner v. Usher*, cited PLACE, p. 1484). So, where a Livery-stable keeper rented an Office at Victoria Station and also ground within the station on which he kept superior carriages ready for use but which carriages could only be hired at the office; held, that was "plying for hire" within s. 7, 32 & 33 V. c. 115 (*Foinett v. Clark*, 41 J. P. 359). But where a Cab Proprietor was driving a licensed Hackney Carriage not large enough to carry the party of persons and he (gratuitously) drove them round to his stables to see his unlicensed Waggonette which they engaged for hire; held, that there was no plying for hire with the waggonette, within s. 45, Town Police Clauses Act, 1847 (*Cavill v. Amos*, 64 J. P. 309).

Following *Clark v. Stanford* (sup), it is an offence under s. 17 (2), 16 & 17 V. c. 33, for a Cabman to refuse to drive to a private place, *e.g.* a Ry Station, because, there, the words are "ANY Place," which means, any place where he can gain admittance (*Ex p. Kippins*, 1897, 1 Q. B. 1; 66 L. J. Q. B. 95; 75 L. T. 421; 45 W. R. 188; 60 J. P. 791).

"Ply for Hire" within a Municipal Bye Law; *V. Blackpool v. Bennett, Blackpool v. Kenyon*, 4 H. & N. 127; nom. *Bennett v. Blackpool*, 28 L. J. M. C. 203.

*Vf*; *Cocks v. Mayner*, cited HIRE.

**POACHING.** — *V.* GAME, *Animals*: NIGHT: SEARCH.

**POCKET.** — *V.* BAG.



**POINT.**—A sailor's "Point" is not a mathematical point at the end of a promontory; it is the whole of the promontory. "The Point begins where a vessel having to go round it, either up or down the river, would, if there were nothing in the way, be obliged to use her steerage for the purpose of continuing her course, and that it ends where the necessity, if there were nothing in the way, of using the steerage in order to go round, ceases." "*Rounding*" a Point "begins from the time when, if there were nothing in the way, a vessel would have to begin to use her steerage to go round, and that the rounding ends at the same place that I before stated, where, if there were nothing in the way, she would cease using her steerage for the purpose of going round, and would then be straight for her opposite course" (per Brett. M. R., *The Margaret*, 53 L. J. P. D. & A. 18; 9 P. D. 47; 50 L. T. 447; 32 W. R. 564; 5 Asp. 204).

"Points" on a Railway; *V.* CHARGE OR CONTROL.

**POINT OF LAW.**—*V.* LAW: QUESTION. *Cp.* FACT.

**POINT OF SUBSTANCE.**—As to what is "the Point of Substance" in a PLEADING within R. 19, Ord. 19, R. S. C.; *V.* *Thorp v. Holdsworth*, 3 Ch. D. 637; 45 L. J. Ch. 406; *Collette v. Goode*, 7 Ch. D. 842; 47 L. J. Ch. 370; *Byrd v. Nunn*, 7 Ch. D. 284; 47 L. J. Ch. 1; 26 W. R. 101; *Tildesley v. Harper*, 10 Ch. D. 393; 48 L. J. Ch. 495; 27 W. R. 249; *Green v. Sevin*, 49 L. J. Ch. 166; 13 Ch. D. 589. *Cp.* *Rutter v. Tregent*, 48 L. J. Ch. 791; 27 W. R. 902; 12 Ch. D. 758, and *Harris v. Gamble*, 7 Ch. D. 877; 47 L. J. Ch. 344, with *Smith v. Gamlen*, W. N. (S1) 110.

*V.* SUBSTANCE: *Cp.* "Question," or "Point," of Law, QUESTION: LAW.

**POISON.**—"With regard to the meaning of the term 'Poison' (s. 58, 24 & 25 V. c. 100), there are certain things which have acquired the name of Poisons; and as to these, possibly, if a small quantity only were administered, the administration might come within the statute" (per Stephen, J., *R. v. Croup*, 49 L. J. M. C. 45; 5 Q. B. D. 307; 28 W. R. 701; 42 L. T. 442; 44 J. P. 70, 411). But in the same case Coleridge, C. J., said, "A 'Poison' is defined to be that which, *when administered*, is injurious to health or life." And surely that must be the test. It is submitted that nothing is a Poison, unless regard be had to its administration, *e.g.* Strychnine is a deadly poison, or a valuable medicine, according to how and how much taken (*V.* *Pharmaceutical Socy v. Delve*, inf). *V.* ADMINISTER: DRUG: MEDICINE: NOXIOUS.

Quâ the Pharmacy Act, 1868, 31 & 32 V. c. 121, there are certain things which, by s. 2 and Sch A, are to be deemed Poisons, but s. 2 also authorizes the Pharmaceutical Society (by Resolution, approved

by the Privy Council) to declare any article a Poison within the Act. The *London Gazette* of 21st December 1869, 14th December 1877, 28th July 1882, and 27th July 1900, contain the Resolutions that have been made. The joint effect of the Act and those Resolutions is, that the following is a List of Poisons within the Act:—

Not to be sold, unless buyer is known, or introduced by some one known, to the seller: Signed Entry to be made in Poison Book of,

1. Date of Sale,
2. Name and Address of buyer,
3. Name and Quantity of article,
4. Purpose for which it is wanted, and

Must be labelled with,

1. Name of Article,
2. The word "Poison,"
3. Name and Address of seller.

*Arsenic*, and its preparations;  
*Acouite*, and its preparations;  
*Alkaloids*,—all poisonous vegetable alkaloids and their salts;  
*Atropine*, preparations of;  
*Cantharides*;  
*Corrosive Sublimate*;  
*Cyanides of Potassium*, and all Metallic Cyanides, and their preparations;  
*Emetic Tartar*;  
*Ergot of Rye*, and its preparations;  
*Prussic Acid*, and its preparations;  
*Savin*, and its oil;  
*Strochaine*, and its preparations;  
*Vermin Killers*, if preparations of above poisons.

Must be labelled with,—

1. Name of Article,
2. The word "Poison,"
3. Name and Address of seller.

*Almonds, Essential Oil of* (unless deprived of its Prussic Acid);  
*Belladonna*, and its preparations;  
*Cantharides Tincture*, and all vesicating liquid preparations of Cantharides;  
*Carbolic Acid*, liquid preparations of, and homologues;  
*Chloral Hydrate*, and its preparations;  
*Chloroform*;  
*Corrosive Sublimate*, preparations of;  
*Morphine*, preparations of;  
*Nux Vomica*, and its preparations;  
*Optum*, and its preparations, or preparations of Poppies;  
*Ozalic Acid*;  
*Precipitate, Red* (Red Oxide of Mercury);  
*Precipitate, White* (Ammoniated Mercury);  
*Vermin Killers*, if preparations of above poisons.

By the joint operation of the Poisons (Ir) Act, 1870, 33 & 34 V. c. 26, and the resolutions thereunder a similar list of Poisons is provided for Ireland,—the differences being that, in the Second Class of Poisons, the Irish authorities have added, Biniodide of Mercury; Preparations of Strychnine; Phosphorus, and all preparations of it in a free state; and Sulphuric Ether: whilst instead of the English qualified admission of Carbolic Acid in a liquid state, &c, the Irish admit, absolutely, Phenol commonly called Carbolic Acid.

A compound containing one of the above ingredients in such quantity that the compound is, in its entirety, a poisonous thing, though only to a child, is a "Poison" within the Acts (*Pharmaceutical Socy v. Piper*, 1893, 1 Q. B. 686; 62 L. J. Q. B. 305; 68 L. T. 490; 41 W. R. 447; 57 J. P. 502; *Ib. v. Armonson*, 1894, 2 Q. B. 720; 63 L. J. Q. B. 532; 64 Ib. 32; 71 L. T. 315; 42 W. R. 662; 59 J. P. 52). Thus, Chlorodyne is a "Poison" within s. 15, Pharmacy Act, 1868, because it contains 2 grains of Morphine to the fluid ounce; and it is not a "*Patent Medicine*," within s. 16, for that latter phrase is only applicable to Patent Medicines strictly so called, *i.e.* those Medicines for which Letters Patent have been granted (*Pharmaceutical Socy v. Piper*, sup). So, Powell's Balsam of Aniseed is a "Poison," though it contains only  $\frac{1}{10}$ th of a grain of Morphine to the fluid ounce (*Pharmaceutical Socy v. Armonson*, sup). But a preparation having but little more than a trace of Morphine is not a "Poison" within s. 15 (*Pharmaceutical Socy v. Delve*, 1894, 1 Q. B. 71; 63 L. J. Q. B. 360; 70 L. T. 139; 42 W. R. 192; 58 J. P. 152).

*V. SELLER.*

*Vh*, Taylor's Medical Jurisprudence: Mann's Forensic Medicine: 12 Encyc. 211-221.

To "ADMINISTER" "Poison or other Destructive Thing," s. 2, 1 V. c. 85, would not include administering an Innocent Thing and thinking it Poison; but it does include administering Poison though accompanied with something which prevents its acting, *e.g.* administering to a child *Cocculus Indicus* berries entire in the pod, the pod being indissoluble in the child's stomach (*R. v. Cluderoy*, 2 C. & K. 907; 19 L. J. M. C. 119; 1 Den. 514).

Death "by Poison," — *e.g.* in an Exception in a Life or Accident Policy, — is none the less so because the poison is taken accidentally (*Cole v. Accident Insree*, 5 Times Rep. 370, 737; 61 L. T. 227).

Damage by Poisonous Trees; *V. Wilson v. Newberry, Crowhurst v. Amersham Bd*, and *Ponting v. Noakes*, cited NUISANCE, p. 1300.

POLE. — *V. ROD.*POLICE. — *V. CONSTABLE.*

"Police Force"; Stat. Def., 46 & 47 V. c. 34, s. 8; 57 & 58 V. c. 57, s. 59. — *Scot.* 53 & 54 V. c. 67, s. 30; 57 & 58 V. c. 57, s. 60.

"Officer of Police"; Stat. Def., *Scot.* 50 & 51 V. c. 35, s. 1: "Chief Officer of Police"; *V. CHIEF: SUPERINTENDENT.*

Soldiers are not Constables or Police, even assuming that they happen to act as civilians (*R. v. Glamorganshire Co. Co.*, 1899, 2 Q. B. 536; 68 L. J. Q. B. 1047; 81 L. T. 372; 48 W. R. 112; 15 Times Rep. 536).

Payments "to or in respect of the Borough Police" "for the purpose of the Borough Constabulary Force," Sch 5, Part 2, clause 5, Mun Corp Act, 1882, do not include the costs of a Chief Constable of appearing as a litigant in a Licensing Appeal (*A-G. v. Tynemouth*, cited LEGAL PROCEEDINGS).

Rooms, part of Police Premises, occupied by the Chief Constable and his family, are occupied for "Police PURPOSES," and, as such, are exempt from Poor Rate (*Leicester Co. Co. v. Leicester Assessment Committee*, 78 L. T. 463; 46 W. R. 585; *See, Showers v. Chelmsford Assessment Committee*, cited PUBLIC PURPOSE, but *thlc* was distd in *Cross v. West Derby*, 81 L. T. 645). *Vf*, "Beneficial Occupation," sub BENEFICIAL.

A Police Officer or Constable when travelling, not *as* a Policeman but, only as an Inspector of Weights and Measures, is not an Officer or Man "of a Police Force" who is travelling on an "Occasion of the PUBLIC SERVICE," so as to be entitled to travel at a reduced fare under s. 6, Cheap Trains Act, 1883, 46 & 47 V. c. 34 (*Spencer v. Lanc. & Y. Ry*, 1898, 1 Q. B. 643; 67 L. J. Q. B. 465; 78 L. T. 323; 46 W. R. 443; 62 J. P. 296).

"The Police Acts, 1839 to 1893," "The Police (Scotland) Acts, 1857 to 1890." "The Town Police Clauses Acts, 1847 and 1899"; *V* Sch 2, Short Titles Act, 1896. *Vf*, GENERAL POLICE ACTS: "Local Police Act," 55 & 56 V. c. 55, s. 4.

"Annual Pay" of a Police Constable; *V*. PAY.

"Police Area": Stat. Def., 53 & 54 V. c. 45, s. 33; 57 & 58 V. c. 57, s. 59. — *Scot.* 53 & 54 V. c. 67, s. 30; 57 & 58 V. c. 59, s. 60.

"Police Authority"; Stat. Def., Licensing Act, 1872, s. 74; Army Act, 1881, s. 190; 46 & 47 V. c. 34, s. 8; 49 & 50 V. c. 38, s. 9; Police Act, 1890, 53 & 54 V. c. 45, s. 33. — *Scot.* 40 & 41 V. c. 53, s. 30; 53 & 54 V. c. 67, s. 30.

"Police Burgh"; *V*. BURGH.

"Police Commissioners"; *V*. COMMISSIONERS.

"Police Constable," in Ireland; Stat. Def., 38 & 39 V. c. 63, s. 34: *Vf*, CONSTABLE.

Police *Cubicle*, is not a separate dwelling-house; *V*. DWELLING-HOUSE, p. 590.

"Police District": Stat. Def., Dublin Police Act, 1842, 5 & 6 V. c. 24, s. 79; Explosives Act, 1875, 38 & 39 V. c. 17, ss. 107, 120; Licensing Act, 1872, s. 74; Pedlars Act, 1871, 34 & 35 V. c. 96, s. 3; Prevention of Crimes Act, 1871, 34 & 35 V. c. 112, s. 20; Prosecution of Offences Act, 1884, 47 & 48 V. c. 58, s. 4; P. H. Acts, Amendment Act, 1890, 53 & 54 V. c. 59, s. 51; Riot (Damages) Act, 1886, 49 & 50 V. c. 38, s. 9; 34 & 35 V. c. 87, s. 2.

"Police Force"; *V*. sup.

"Police Fund"; Stat. Def., Police Act, 1890, 53 & 54 V. c. 45, s. 33; Police (Scot) Act, 1890, 53 & 54 V. c. 67, s. 30.

Police *Magistrate*; *V*. MAGISTRATE.

"Police Purposes"; *V*. sup.

"Police Rate"; Stat. Def., Riot (Damages) Act, 1886, s. 9; Public Libraries Act (Scot), 1867, 30 & 31 V. c. 37, s. 2.

"Police Receiver"; Stat. Def., 49 & 50 V. c. 22, s. 7.

*V*. METROPOLITAN: PROHIBITED.

**POLICY.** — A Policy of INSURANCE is an INSTRUMENT of Recoupment, or Mitigation, of Loss, effected between the Insurer and the Insured, whereby the Insurer agrees to pay money, or make good destruction or damage, or do some other thing, on the happening of some event or events. "It is not, like most contracts, signed by both parties but only by the Insurer, who on that account, it is supposed, is denominated an 'Underwriter'" (Park. 1).

"Policy of Insurance," quâ Stamp Act, 1891, "includes every writing whereby any Contract of Insurance is made or agreed to be made, or is evidenced; and the expression 'Insurance' includes ASSURANCE" (s. 91).

“Policy of Insree against Accident”; *V. ACCIDENT.*

Honour Policy; *V. HONOUR.*

“Policies of Assurance upon *Human Life*,” s. 2, Life Assurance Companies Act, 1870, 33 & 34 V. c. 61; *V. Neubold Soey v. Barlow*, 1893, 2 Q. B. 128; 62 L. J. M. C. 124; 68 L. T. 798; 41 W. R. 543; 57 J. P. 565.

“Policy of *Life Assurance*,” quâ Policies of Assurance Act, 1867, 30 & 31 V. c. 144, means, “any INSTRUMENT by which the payment of moneys, by or out of the funds of an Assurance Co, on the happening of any contingency depending on the duration of human life, is assured or secured” (s. 7): “Policy of Life Insurance,” quâ Stamp Act, 1891, “means, a Policy of Insurance upon any life or lives, or upon any event or contingency relating to or depending upon any life or lives, except a policy of insurance against ACCIDENT” (s. 98).

*Port Policy*; *V. HARBOUR.*

“Policy of SEA INSURANCE,” quâ Stamp Act, 1891, “means, any insurance (including re-insurance) made upon any ship or vessel, or upon the machinery tackle or furniture of any ship or vessel, or upon any goods merchandize or property of any description whatever on board of any ship or vessel, or upon the freight of or any other interest which may be lawfully insured in or relating to any ship or vessel; and includes, any insurance of goods merchandize or property for any transit which includes not only a sea risk but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance: — Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods merchandize or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods merchandize or property from any risk loss or damage, such agreement or engagement shall be deemed to be a Contract for Sea Insurance” (s. 92). Other Stat. Def., Policies of Marine Assurance Act, 1868, 31 & 32 V. c. 86, s. 3.

There are two kinds of Policies of Marine Insree (1) *Valued*, .e. when the Policy, in terms, puts a value on the thing insured; (2) *Open*, .i.e. when it does not mention the value, and therefore, in case of loss, the value has to be proved (Park, 1, citing 2 Burr. 1171). *Vh. Bruce v. Jones*, 1 H. & C. 769; 32 L. J. Ex. 132; *Wilson v. Nelson*, 5 B. & S. 354; 33 L. J. Q. B. 220.

*V. SLIP: ORIGINAL POLICY: CONTINUING POLICY: PUBLIC POLICY.*

“Policy wholly or partially kept up for donee”; *V. WHOLLY.*

**POLICY HOLDER.** — “Policy Holder,” quâ Life Assurance Companies Act, 1870, 33 & 34 V. c. 61, “means, the person who for the time being is the legal holder of the policy for securing the life assur-

ance, endowment, annuity, or other contract, with the Company" (s. 2). As used in s. 14, *Ib.*, it includes covenantees under a deed by which an Insree Co guarantees the payment of annuities (*Re Sovereign Life Assure*, 58 L. J. (Ch. 811); "but I feel grave doubt whether 'Policy Holder' includes those persons who have been policy holders but whose policies have matured, not by death but, by the happening of the stipulated event" (per Bowen, L. J., *Sovereign Life Assure v. Dodd*, 1892, 2 Q. B. 582; 62 L. J. Q. B. 25).

**POLITICAL.**—To constitute an OFFENCE as one of a "Political Character," s. 3, Extradition Act, 1870, 33 & 34 V. c. 52, there must be, at least, two distinct Political Parties, each striving to impose its form of government on the country of those in conflict. "The offences of Anarchists, consist, in the main, of attacks on Private Citizens generally rather than on Governments, or members of any particular government, as such. In such cases they cannot be called 'political' offences" (per Cave, J., *Re Meunier*, 1894, 2 Q. B. 415; 63 L. J. M. C. 198; 71 L. T. 403; 42 W. R. 637). *Vf*, *Re Arton*, 1896, 1 Q. B. 108; 65 L. J. M. C. 23; 73 L. T. 687; 44 W. R. 238.

That being premised, a Crime of a "Political Character," can best be explained by examples. "For instance, if a Civil War were to take place, it would be High Treason by levying war against the Queen. Every case in which a man was shot in action would be Murder. Whenever a house was burnt for military purposes, Arson would be committed. To take cattle by requisition would be Robbery. According to the common uses of language, however, all such acts would be Political Offences, because they would be incidents in carrying on Civil War. I think, therefore, that the expression in the Extradition Act ought to be interpreted to mean, that FUGITIVE CRIMINALS are not to be surrendered for Extradition crimes if those crimes were incidental to, and formed a part of, the political disturbances" (2 Stephen's History of the Criminal Law of England, 70). "I adopt that language as the definition that I think is the most perfect to be found, or capable of being given, as to what is the meaning of the phrase [Offence of a "Political Character"] which is made use of in the Extradition Act" (per Hawkins, J., *Exp. Castioni*, 1891, 1 Q. B. 149, 60 L. J. M. C. 22).

#### V. EXTRADITION.

In construing an Exception in a Charter-Party of "Political Disturbances or Impediments," the rule in *Hudson v. Ede* (cited DETENTION BY ICE) is applicable (*Smith v. Rosario Nitrate Co*, 1893, 2 Q. B. 323; 1894, 1 Q. B. 174; 70 L. T. 68).

**POLITICS.**—According to its true original meaning, "Politics" "comprehends everything that concerns the government of the country, of which the administration of justice makes a considerable part" (per Hardwicke, C., *Chesterfield v. Janssen*, 2 Ves. sen. 156).

**POLL.** — A Deed Poll, is a Deed the paper or parchment on which it is written being polled or even at the top, and is unipartite, binding only the PARTY making it (Plowd. 134, 421); an INDENTURE, is a Deed which formerly was (but is not now, s. 5, 8 & 9 V. c. 106) required to be indented at the top, and is, generally, *inter partes*, and then its language is, speaking generally, that of all its Parties: *Vf*, DEED.

*V*. VOTE.

**POLLAN.** — *V*. FRESH-WATER FISH.

**POLLING.** — “Polling *Agent*”; Stat. Def., Corrupt and Illegal Practices Prevention Act, 1883, s. 64.

“Polling *Booth*” quà Rep People Acts, includes “a Polling *Station*” (s. 15, Ballot Act, 1872); Rules 15–25 of Sch 1, to Ballot Act, describe a Polling Station, and how it is to be furnished manned and used for the purposes of an Election. Quà Ballot Act, 1872, “‘Polling *Place*,’ means, in the case of a BOROUGH, such Borough, or any part thereof in which a separate Booth is required, or authorized by law, to be provided” (R. 57, Sch 1).

“Polling *District*”; Stat. Def., Registration of County Voters (Ir) Act, 1864, 27 & 28 V. c. 22, s. 20.

“Municipal Polling District”; Stat. Def., 48 & 49 V. c. 23, s. 23.

“Parliamentary Polling District”; *V*. PARLIAMENTARY.

**POLLOCK’S ACT.** — Limitations of Actions and Costs Act, 1842, 5 & 6 V. c. 97.

**POLLUTING.** — Quà Rivers Pollution Prevention Act, 1876, 39 & 40 V. c. 75, “‘Polluting,’ shall not include innocuous discoloration” (s. 20).

*Cp*, FILTHY WATER: SOLID MATTER.

**POLYGAMY.** — *V*. MARRIAGE.

**POND.** — “A Pond is a standing DITCH cast by labour of man’s hand in his private grounds for his private use to serve his house and household with necessary waters; but a POOL is a low plat of ground by nature, and is not cast by man’s hand” (Callis, 82).

**PONTAGE.** — Is sometimes a Charge for repairing a Bridge, and sometimes a Toll for using a Bridge (Termes de la Ley).

**POOL.** — “*Stagnum*, in English a poole, doth consist of water and land; and therefore by the name of *stagnum*, or a poole, the water and land shall passe also” (Co. Litt. 5 a, b: *Cp*, WATERS). “A Pool is a mere standing water without any current at all, and hath seldom or never any issue to convey away the waters; but a DITCH hath no constant standing nor any apparent current” (Callis, 82). *Cp*, POND.

*V*. GURGES: LAND COVERED WITH WATER.

A Stock Exchange “Pool,” is an arrangement between two or more

persons for selling or buying some particular class of stock, shares, or securities, and apportioning the result among themselves with the view (generally) to "Make a Price" in the thing dealt in. Such an arrangement is not illegal, or *ultra vires* of a Board of Directors (*Sunderson v. British Westralian Corp.*, 43 S. J. 45).

Pooling Receipts by Railway Companies; *V. L. C. & D. Ry v. S. E. Ry.* cited CERTAIN TIME.

**POOR.**—Quà Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, " 'Poor,' shall be construed to include any PAUPER, or poor or indigent person applying for or receiving RELIEF from the Poor Rate in England or Wales, or chargeable thereto " (s. 109).

A trust for the benefit of "the Poor" of a locality does not, as a general rule, include those who are receiving Parochial Relief (*A-G. v. Exeter Corp.*, 3 Russ. 395; 6 L. J. O. S. Ch. 50; *A-G. v. Clarke*, 1 Amb. 422; *A-G. v. Wilkinson*, 1 Bea. 370; *A-G. v. Gutch*, Reg. Lib. A., 1830, fo. 2720; 1 Jarm. 209; Lewin, 604, 605. *V. jdgmt St. Nicholas, Deptford v. Sketchley*, 17 L. J. M. C. 22, 23; *Sv. RELIEF*). A CHARITY for the benefit of "Poor Boys," was held *not confined* to those poor boys who required parish relief or to the boys of persons requiring such relief (*Canterbury Gdns. v. Canterbury Corp.*, 31 L. J. Ch. 810); "indeed, poverty alone is an insufficient qualification" when the Charity is for EDUCATION (per Romilly, M. R., *Re Latymer*, 17 W. R. 525; L. R. 7 Eq. 353; 20 L. T. 425).

*V. POOREST: RELATIONS: SICK.*

A trust of impure personalty, "to give it to the Poor as the trustees may think fit," is against the statutes of Mortmain (*Re Clark, Husband v. Martin*, 54 L. J. Ch. 1080).

Sometimes "Poor" is used as a term of endearment (*Anon.*, 1 P. Wms. 327; *Vth.* 2 Jarm. 126, 127).

**POOR CHILD.**—*V. CHILD.*

**POOR INHABITANTS.**—*V. INHABITANT.*

**POOR KINDRED.**—*V. POOREST.*

**POOR LAW.**—Quà Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, " 'Poor Law,' or 'Laws for the Relief of the Poor,' shall be construed to include, every Act of Parliament for the time being in force for the RELIEF or Management of the Poor, or relating to the execution of the same or the administration of such relief" (s. 109). *Vh.* Arch. P. L.: 10 Encyc. 156-213.

The Poor Law Board was and is superseded by the LOCAL GOVERNMENT BOARD (s. 2, 34 & 35 V. c. 70).



“Poor Law *Parish*,” quâ Highway Act, 1862, 27 & 28 V. c. 101, means, “A Place that separately maintains its own poor” (s. 3).

“Poor Law *Union*”; V. s. 16 (2, 4), Interp Act, 1889.

**POOR RATE.**—Quâ Poor Law Amendment Act, 1834, 4 & 5 W. 4. c. 76, “‘Poor Rate’ shall be construed to include, any rate, rate in aid, mulct, cess, assessment, collection, levy, ley, subscription, or contribution, raised assessed imposed levied collected or disbursed for the RELIEF of the Poor in any Parish or Union” (s. 109).

Other Stat. Def.—32 & 33 V. c. 41, s. 20.—*Ir.* 1 & 2 V. c. 56, s. 61 *et seq.*: 13 & 14 V. c. 69, s. 117; 54 & 55 V. c. 1, s. 13; 58 & 59 V. c. 2, s. 14; 61 & 62 V. c. 50, s. 10:—“The Poor Relief (Ireland) Acts, 1838 to 1892”; *V.* Sch 2, Short Titles Act, 1896.

**POOR RELATIONS.**—*V.* RELATIONS.

**POOREST.**—In order that a gift “for the relief and use of the poorest of my kindred” may be good as a charitable bequest, the word “poorest” must mean “poor” or “very poor,” and not “the least wealthy of a number of wealthy persons” (*A-G. v. Northumberland*, 47 L. J. Ch. 569; 7 Ch. D. 745; 26 W. R. 586; 38 L. T. 245; disapproving dictum of Wickens, V. C., *Gillam v. Taylor*, 42 L. J. Ch. 674; L. R. 16 Eq. 581). *Vf.* Tudor, Char. Trusts, 5, 103.

*V.* POOR: RELATIONS.

**POPULAR ACTION.**—“Actions Popular are those given on the breach of some PENAL statute, which every man hath a right to sue for himself and the King. And because this action is not given to one especially, but generally to ANY that will prosecute, it is called Action Popular; and from the words used in the process (*qui tam pro domino rege sequitur quam pro se ipso*) it is called a Qui Tam action” (*Jacob, Action*). *Vf.* *Termes de la Ley, Action Popular*: 3 Bl. Com. 160.

*V.* PROMOTER.

**POPULATION.**—Stat. Def., London (Equalization of Rates) Act, 1894, 57 & 58 V. c. 53, s. 4 (1).—*Ir.* 54 & 55 V. c. 48, s. 42.

**POPULOUS.**—Quâ the English Licensing Acts, “‘Populous Place,’ means, any area with a population of not less than 1000 which, by reason of the density of such population, the County LICENSING Committee may, by Order, determine to be a Populous Place” (s. 32, 37 & 38 V. c. 49).

Quâ Working Classes Dwellings Act, 1890, 53 & 54 V. c. 16, “‘Populous Place,’ means, the Administrative County of LONDON, any Municipal BOROUGH, any URBAN Sanitary District, and any other PLACE having a dense population of an urban character” (s. 1).

Quà Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, " 'Populous Place,' shall mean, any Town, Village, Place, or Locality, containing a population of 700 inhabitants or upwards, not being administered under any General or Local POLICE Act; and, for the purpose of this Act, two or more contiguous Towns, Villages, Places, or Localities (not being BURGHS), may be held to be a Populous Place " (subs. 26, s. 4).

**PORCA TERRÆ.** — "By the name of *selio* or *porca terræ*, doth pass a Ridge of land, which is sometimes longer, and sometimes shorter " (Touch. 95). *V. SELION.*

**PORCARIA.** — "Fleta maketh mention of *porcaria*, a swinestye" (Co. Litt. 5 b).

**PORK BUTCHER.** — *V. BUTCHER.*

**PORT.** — "A Port is a place, for the lading and unlading of Ships or Vessels, erected by Charter of the King or a lawful Prescription " (per Ld Chelmsford, *Foreman v. Free Fishers of Whitstable*, 38 L. J. C. P. 350; L. R. 4 H. L. 266).

"A Port is a HAVEN and somewhat more, —

"1. It is a place for arriving and unlading of Ships or Vessels;

"2. It hath a superinduction of a civil signature upon it, somewhat of Franchise and Privilege;

"3. It hath a Ville or City or Borough, that is the *capus portus* for the receipt of mariners and merchants, and the securing and vending of their goods, and victualling their ships.

"So that a Port is *quid aggregatum*, consisting of somewhat that is *Natural*, — viz. an access of the sea whereby ships may conveniently come; safe situation against winds where they may safely lye; and a good shore where they may well unlade: Something that is *Artificial*, — as, Keys and Wharfs, and Cranes and Warehouses, and houses of common receipt: And something that is *Civil*, — viz. Privileges and Franchises *jus applicandi*, *jus mercati*, and divers other additaments given to it by Civil Authority" (Hale, *De Portibus Maris*, ch. 2, cited by Ld Chelmsford, *Foreman v. Free Fishers of Whitstable*, sup). *Vf*, Callis, 57. *Cp*, CREEK.

*Note.* "The FRANCHISE of a Port may be in one person and the ownership of the Soil, within the limits of the Port, in another" (per Ld Chelmsford, *Foreman's Case*, sup, citing *De Portibus Maris*).

*Vf*, 10 Encyc. 215-220: *Cp*, HARBOUR.

The word "Port," in a Charter-Party or Marine Policy, is to be understood in its popular, or business, or commercial, sense; it does not in such a document, necessarily, mean Port as defined for revenue or pilotage purposes (*Sailing-Ship "Garston" Co v. Hickie*, 15 Q. B. D. 580; in *whc* tests for determining the business-meaning of "Port" were consid-

ered); *e.g.* "Port or Ports" may be construed "Place or Places," and so comprise an Open Roadstead (*Cockey v. Atkinson*, 2 B. & Ald. 460). *Vf.* *Price v. Livingstone*, 53 L. J. Q. B. 118; 9 Q. B. D. 679; per Martin. B., *Gen. Steam Nav. Co. v. British & Colonial Steam Nav. Co.*, cited NAVIGATING WITHIN: *Cuffin v. Aldridge*, 1895, 2 Q. B. 366, 648; 64 L. J. Q. B. 736; 65 Ib. 85; 73 L. T. 426; 44 W. R. 129; *Sea Insree v. Gavin*, 4 Bligh, N. S. 578; *Hull Dock Co v. Browne*, 2 B. & Ad. 43.

Insurance on a Ship "at and from her Port of Lading in North America to Liverpool." She took in part of her cargo at K., in New Brunswick, and sailed thence to B., in the same province, seven miles distant on the same bay of the sea. She there completed her cargo, and then returned to K., to receive provisions, &c, after which she sailed for England, and was lost on the voyage. B. was not in the way from K. to Liverpool, B. and K. were situate on creeks opening in the bay, and were spoken of by some persons as ports, but neither of them had a custom-house. They had custom-house officers and were under the jurisdiction of the custom-house of St. John, New Brunswick; held, that after the ship had begun to load at K., that was her port of Lading; that the term "Port of Lading" in the policy did not allow of her afterwards going to B., and that her doing so was a deviation (*Brown v. Tayleur*, 4 A. & E. 241; 5 L. J. K. B. 57; 5 N. & M. 472). "There must be a nonsuit in this case, unless we are prepared to say, that 'Port' is equivalent to 'Ports' or 'Port or Ports.' But I think we are not at liberty here to construe the word with reference to custom-house regulations, but must consider it *as merely indicating a place*" (per Coleridge, J., *S. C.*, 4 A. & E. 250; 5 L. J. K. B. 60). *Vf.* *Harrover v. Hutchinsson*, 39 L. J. Q. B. 229; 10 B. & S. 469; L. R. 5 Q. B. 584; 22 L. T. 684.

So, quà statutes, "Port" has been defined in its popular, rather than its legal, sense (*Barrett v. Stockton & Darlington Ry*, 2 M. & G. 134. *Hull Dock Co. v. Browne*, 2 B. & Ad. 43); but in a case which, like the last, related to Hull Dock, "Port," s. 14, 54 G. 3, c. 159, was held to mean, the Port as constituted for the time being by the Order of the Comms of the Treasury (*Nicholson v. Williams*, 40 L. J. M. C. 159; L. R. 6 Q. B. 632).

"Port," quà Mer Shipping Act, 1894, "includes, Place" (s. 742).

*Any Port; V. LIBERTY TO CALL.*

*Port of Call; V. CALL.*

"'Port of Discharge,' includes the whole Port within which any portion of the Cargo is usually, according to the Custom of such Port, taken out of the vessel" (*Whitwell v. Harrison*, 18 L. J. Ex. 465; 2 Ex. 127, and cases there cited). *Vf.* *Attwood v. Case*, 45 L. J. M. C. 20; 1 Q. B. D. 134; 33 L. T. 507; 24 W. R. 94; 8 Encyc. 179.

In the Warranty of freedom from SEIZURE in Port of Discharge, "the word 'Port' is not to be taken in its narrow or strict legal sense, but

rather as meaning the place of discharge agreed upon by the assured and underwriters" (1 Maude & P. 507; and cases there cited).

"Port of *Discharge*," in Marine Policies, is in common use where it is intended to limit the risk to such Port; and where the Policy says to "any Port or Place," without more, it covers Ports of Loading as well as Ports of Discharge (*The Aikshaw*, 9 Times Rep. 605: *Crocker v. Sturge*, 1897. 1 Q. B. 330; 66 L. J. Q. B. 142; 2 Com. Ca. 43; 13 Times Rep. 96).

"Port of *Dublin Corporation*"; Stat. Def., 16 & 17 V. c. 131, s. 1; 17 & 18 V. c. 104, s. 2, c. 120, s. 2.

"Port of *Lading*" or "*Loading*"; "There is no technical meaning to be attached to the words 'Port of Lading'" (per Denman, C. J., *Brown v. Tyleur*, 4 A. & E. 247). *Vh*, LOAD.

"*Last Port*"; *V. Price v. Livingstone*, sup.

"Port of *London*"; *V. LONDON*, at end.

Port Policy; *V. HARBOUR*.

"Port of *Registry*," quâ Mer Shipping Act, 1894; "the port at which a British Ship is registered for the time being, shall be deemed her Port of Registry, and the port to which she belongs" (s. 13).

"Port Sanitary Authority"; Stat. Def., 40 & 41 V. c. 60, s. 14.

"Port Sanitary District"; Stat. Def., 52 & 53 V. c. 72, s. 16.

"Now in the Port of A."; *V. Now*.

*V. BRITISH PORT: CINQUE PORTS: FINAL PORT: IN PORT: PORT OR PLACE: SAFE PORT.*

**PORT CHARGES.**—"Port Charges," "in their ordinary sense, mean, such charges as a Ship would have to pay before she leaves Port," including Light Dues (per Mathew, J., *Newman v. Lamport*, 1896, 1 Q. B. 20; 65 L. J. Q. B. 102; 73 L. T. 475; 8 Asp. 76; 1 Com. Ca. 161).

"Port Charges, Pilotages, and other Expenses, at the Port," in a Charter-Party, do not include coals supplied at a port into which a steamer has been obliged to put in consequence of the breakdown of her machinery (*The Durham City*, 14 P. D. 85; 58 L. J. P. D. & A. 46).

**PORT OR PLACE.**—*V. Hull Dock Co v. Priestley*, 4 B. & Ad. 178; 1 N. & M. 85; *Cp. Tennant v. Swansea Harbour Trustees*, 3 Times Rep. 128. *V. PORT.*

Policy on a Ship "to any Port or Place in any order"; *V. Crocker v. Sturge*, cited *PORT: Spalding v. Crocker*, 2 Com. Ca. 189; *Crocker v. Gen. Insrce of Trieste*, 3 Ib. 22; 14 Times Rep. 113; *Cp. LIBERTY TO CALL.*

*V. AUSTRALIA: PLACE.*

**Bishop PORTEOUS' ACT.**—The Sunday Observance Act, 1780, 21 G. 3, c. 49. *Vh*, ENTERTAINMENT.

**PORTER.**—*V. BEER: MERCHANT.*

**PORTION.**—Probably, in its most frequent use, a “Portion” may be defined as, an undefined Share in a fund to which a member of a CLASS, *e.g.* Children or younger children, is or may become entitled under a Settlement or Will; and, generally, the right thereto arises by the exercise of a Power of Appointment: *Vh*, Lewin, ch. 17: Godefroi. ch. 28: *O’Hanlon v. Unthank*, Ir. Rep. 7 Eq. 68.

“Portion” is synonymous with SHARE; and a bequest of a legatee’s “Portion” will not, without an auxiliary context, pass an accrued share (2 Jarm. 711, 712).

“The word ‘Portion’ is ambiguous. It may only mean, — and it frequently merely means, — a part of some larger amount; and it may also mean, the ‘Portion’ as used in the sense in which a person speaks of providing for his children” (per Pollock, C. B., *Butt v. Thomas*, 11 Ex. 243, 244; 25 L. T. O. S. 218).

“Portions for Children,” s. 2, Accumulations Act, 1800, 39 & 40 G. 3, c. 98:—“Portions for Children are, I think, generally understood to be, sums of money secured to them out of property springing from or settled upon their parents; and although there may, no doubt, be cases in which provisions for children out of property in which the parents take no interest may well be called ‘Portions,’ I think that such provisions should only receive that designation where the nature or context of the instrument gives them that character. Where there is a gift to children both of capital and income, and there is nothing in the nature or context of the instrument to impress upon the gift the character of a Portion, I do not think it could be called a ‘Portion’ in the ordinary sense of the word, or ought to be so considered within the meaning of this Act” (per Turner, V. C., *Jones v. Maggs*, 22 L. J. Ch. 91; 9 Hare, 605; *Vf*, the cases there cited, and *Edwards v. Tuck*, 3 D. G. M. & G. 40; 23 L. J. Ch. 204; *Va*, *Watson Eq. 8*). *V. ACCUMULATION.*

“Advanced by Portion”; *V. ADVANCEMENT.*

“Any Portion”; *V. Liddy v. Kennedy*, cited ANV.

“The rule against Double Portions is generally stated to apply to a Parent, or person *in loco parentis*” (per Stirling, J., *Re Ashton*, cited LOCO PARENTIS). As to rebutting the presumption against Double Portions; *V. Re Lacou*, 1891, 2 Ch. 482; 60 L. J. Ch. 403; 64 L. T. 429; 39 W. R. 514. *Vh*, Lewin, 463; 10 Encyc. 221–225.

As to MAINTENANCE of Children in respect of Portions to which they are contingently entitled, *V. Re Greaves*, 1900, 2 Ch. 683; 69 L. J. Ch. 596.

**PORTIONIBUS.**—This word is properly employed to mean a portion of the Tithes of one parish claimed by the Rector of another parish (*Scarlet v. Lucton School*, 4 Cl. & F. 1; 10 Bligh, N. S. 592).

**PORTRAIT.**—A Portrait is the pictorial presentment, taken from life or from “reasonable materials from which a likeness may be framed,”

of a person (or it may be of more than one person), the chief object of the picture being the preservation of a life-like resemblance of the countenance; and it is not less a "Portrait" because accompanied by subordinate accessories more or less of an ideal character (*Leeds v. Amherst*, 14 L. J. Ch. 73; 13 Sim. 459, in *whic* the word, and even its derivation, are treated with a wealth of learning and illustration not a little unusual in a case on which the L. C. said, "nothing but Mr. Bethell's talent and ingenuity could have thrown any doubt"). In that case Lord Lyndhurst in the course of his judgment said, "I may be permitted to say this, that if a picture is painted *after a man's death*, and meant to represent him, if there is nothing affording the materials for the portrait, it is completely an ideal picture, and cannot properly be called a Portrait; but if there are reasonable materials from which a likeness may be framed. I do not consider it less a portrait, though painted after the death of the individual, than if painted during his lifetime" (14 L. J. Ch. 81).

Would a likeness of an animal. — *e.g.* a horse, — come within the meaning of "Portrait"? *V.* obs of Shadwell, V. C., in *Leeds v. Amherst*, 14 L. J. Ch. 75.

*V.* PHOTOGRAPH: DISTINCTIVE.

**POSITION.** — Of Celebrant and Minister at Holy Communion; *V.* *Elphinstone v. Purchas*, and *Rüdsdale v. Clifton*, cited ORNAMENT.

**POSITIVE.** — "Clear and Positive Proof"; *V.* CLEAR.

**POSSE.** — For keeping the Peace and pursuing Felons (*V.* HUE AND CRY) the Sheriff "may command all the people of his County to attend him; which is called the *Posse Comitatus*, or Power of the County" (1 Bl. Com. 343), which "in the opinion of Lambert in his *Eirenarcha*, l. 3, c. 1, fol. 309, containeth the Ayd and Attendance of all Knights, Gentlemen, Yeomen, Laborers, Servants, Apprentices, and all others above the age of fifteen years, within the County: but Women, Ecclesiastical Persons, and such as be decrepitate, or labor of an Infirmity, shall not be compelled to attend" (Cowel, *Power of the County*).

*V.* IN POSSE.

**POSSESSED.** — " 'Possessed' is peculiarly applied to Personalty, and a gift coupled with that word would, *primâ facie*, imply PERSONAL ESTATE" (per Turner, V. C., *Stokes v. Salomons*, 9 Hare, 81; 20 L. J. Ch. 343: *Vf.* *Wilde v. Holtzmeyer*, 5 Ves. 816: *Coard v. Holderness*, 20 Bea. 147).

As to whether the use of the word "possess," in any of its inflections, will limit a general testamentary gift to personalty, *e.g.* in such a phrase as "all I am possessed of," *V.* ALL.

"Effects I die possessed of"; *V. Michell v. Michell*, cited EFFECTS.

"Everything else I die possessed of"; *V. EVERY THING ELSE*.

"Moneys I die possessed of"; *V. Re Greaves*, 23 Ch. D. 313; 52 L. J. Ch. 753; *Petty v. Willson*, 4 Ch. 574; 17 W. R. 778; *Byrom v. Brandreth*, cited MONEY: *Chapman v. Reynolds*, 28 Bea. 221; 29 L. J. Ch. 594; 8 W. R. 403. *V. GENERAL POWER*.

"Money of which I am possessed"; *V. Re Cadogan*, 25 Ch. D. 154; 32 W. R. 57; 53 L. J. Ch. 209, following *Prichard v. Prichard*, L. R. 11 Eq. 232; 40 L. J. Ch. 92, and dissenting from *Larner v. Larner*, 3 Drew. 704; 26 L. J. Ch. 668; 5 W. R. 513: MONEY.

"Now possessed or entitled"; *V. Now*.

Property, as mentioned in a Settlement, which a wife during the coverture may become "possessed of"; *V. Wilton v. Colvin*, 25 L. J. Ch. 850; 3 Drew. 617: *Vth, Archer v. Kelly*, 3 Jur. N. S. 814.

Quà Trustee Act, 1850, "'Possessed' shall be applicable to any vested estate, less than a life estate, at Law or in Equity in Possession or in Expectancy, in any Lands" (s. 2); a def applicable to the Lunacy Acts (s. 28, 54 & 55 V. c. 65); but quà Trustee Act, 1893, the def also includes "receipt of income" (s. 50); *Va, Stat. Def.*, POSSESSION.

*V. ENTITLED*.

**POSSESSION.**—"Possession is said two waies, either actual possession, or possession in Law.

"Actual Possession, is when a man entred in deed into lands or tenements to him descended, or otherwise.

"Possession in Law, is when lands or tenements are descended to a man, and hee hath not as yet really, actually, and in deed, entred into them: And it is called Possession in Law because that in the eye and consideration of the law, he is deemed to be in possession, forasmuch as he is tenaunt to every mans action that will sue concerning the same lands or tenements" (*Termes de la Ley, Possession*).

Sometimes "in Possession," in relation to an estate, — *e.g.* in the phrase "ESTATE TAIL in possession" in a Will, — will be construed as "vested" (*Foley v. Burnell*, 1 Bro. C. C. 274; 4 Bro. P. C. 319; *Martelli v. Holloway*, 42 L. J. Ch. 26; L. R. 5 H. L. 532).

But, generally, where an estate or interest in realty is spoken of as being "in Possession," that does not, primarily, mean the actual occupation of the property; but means, the present right thereto or to the enjoyment thereof (*Ren v. Bulkeley*, 1 Doug. 292), as distinguished from REVERSION, REMAINDER, or EXPECTANCY, as illustrated by the old conveyancing phrase, "In possession, reversion, remainder, or expectancy." In this sense the word is employed at the commencement of s. 58, S. L. Act, 1882 (*Re Morgan*, 53 L. J. Ch. 85; 24 Ch. D. 114: *Se, Re Edwards*, cited OCCUPATION, p. 1312). and in s. 2 (5), same Act (*Re Atkinson*, 31 Ch. D. 577). *Va, COME TO*.

So, a Power of Leasing conferred on each succeeding Tenant for Life "as and when he shall be entitled to the Possession or the Receipt of the Rents and Profits," is referable to the falling into possession of the several life interests, and not to the unincumbered beneficial enjoyment thereof; and is exerciseable by the donee although he has aliened his life interest (*Lonsdale v. Crawford*, 1900, 2 Ch. 687; 69 L. J. Ch. 686; 83 L. T. 312). *V. ENTITLED IN POSSESSION.*

But in a SHIFTING CLAUSE in the event of "any person for the time being entitled to the Possession or to the Receipt of the Rents and Profits" succeeding to a Title, the idea that "Possession" was used in contradistinction to "Reversion" was rejected, and "Possession" was construed "Actual Possession" which the devisee was prevented from having by a Trustee's Management Clause (*Leslie v. Rothés*, 1894, 2 Ch. 499; 63 L. J. Ch. 617; 71 L. T. 134: *Vf*, *Fuzakerley v. Ford*, 1 A. & E. 897; 4 Sim. 390; 2 L. J. K. B. 111).

"Actual Possession"; *V. ACTUAL FREEHOLD*: *Vf*, *inf.*

"The first meaning which is found for 'Possession' in Johnson's Dictionary is this, — 'The state of owning, or having in one's hands or power; property.'—and that, with in some cases slight modifications, has been repeated in every other Dictionary which I have been able to consult. I think that the fine distinction between such words as 'Possession,' 'Property,' and 'Ownership,' is not one which would be present to the mind of a layman, and I do not think that the words here, 'Money in my possession,' were used by the testatrix with reference to the distinction which lawyers draw between interests in Possession and in Reversion" (per Stirling, J., *Re Egan*, cited *REMAIN*).

Quà Land Registry Act, 1862. 25 & 26 V. c. 53, "Possession," includes "Receipt of the Rents and Profits" (s. 140); which expansion of meaning is made applicable to Conv & L. P. Act, 1881 (s. 2, iii), to S. L. Act. 1882 (subs. 10, s. 2), and to 25 & 26 V. c. 67, s. 48; 28 & 29 V. c. 101, s. 3; 54 & 55 V. c. 66, s. 95. *Vf*, Stat. Def., *POSSESSED*.

"Possession" on COMPLETION of a purchase of Realty, does not, of itself, mean Personal Occupation; if the property be tenanted, putting the purchaser into the Receipt of the Rents and Profits will be giving him "Possession" (*Lake v. Dean*, 28 Bea. 607; *Vth*, Sug. V. & P. 8: Dart, 145): *sees*, if the phrase be "ACTUAL Possession" (*Royal Bristol Bg Socy v. Bomash*, 56 L. J. Ch. 840; 35 Ch. D. 390; 57 L. T. 179). "Possession," in this connection, means Possession with a GOOD TITLE shown (*Tilley v. Thomas*, 3 Ch. 61).

Mere ENTRY is not "Possession" of land quà Statutes of Limitation (s. 10, 3 & 4 W. 4. c. 27: *Vth*. *Baker v. Coombes*, 9 C. B. 718).

"Possession to the Entire Exclusion of the donor"; *V. ENTIRE EXCLUSION*. *Cp*, *ADVERSE*.

"Possession," s. 2251. Civil Code of Lower Canada; *V. Dunn v. Larcou*, 57 L. J. P. C. 108.



"Apparent Possession"; *V. inf.*

Power to purchase hereditis "in Fee Simple in Possession"; *V. FEE SIMPLE.*

"Estate or Interest in Possession"; *V. ESTATE AND INTEREST.*

"Possession" of an "Estate or Interest" to give a Poor Law Settlement, s. 68, 4 & 5 W. 4, c. 76; *V. R. v. St. Giles*, cited *COMING.*

"Interest in Possession," s. 8 (1*b*), Trustee Act, 1888; *V. Mara v. Browne*, cited *BREACH OF TRUST.*

"Interest which shall fall into Possession"; *V. SETTLE.*

As to what is a sufficient "Lawful Possession" of a Location in Lower Canada to enable its holder to obtain an Injunction against a Timber License under 41 V. c. 14, Quebec; *V. Gilmour v. Mauroit*, 59 L. J. P. C. 38; 14 App. Ca. 645.

"Mtgee in Possession"; *V. MORTGAGEE.*

"Possession" of "Money or Property" belonging to a Friendly Society by its Officer "by virtue of his Office," s. 15 (7), 38 & 39 V. c. 60, means, Money or Property which at his death or bankruptcy is, or at any time previously has been, in his possession by virtue of his Office (*Re Atkins*, 51 L. J. Ch. 406; *Re Miller*, 1893; 1 Q. B. 327; 62 L. J. Q. B. 324; 68 L. T. 367; 41 W. R. 243; 57 J. P. 469). So, a sum in a Trustee's "Possession, or under his CONTROL," in respect of which he is in DEFAULT, s. 4 (3), Debtors Act, 1869, means, money at any time in his Possession or under his CONTROL (*Middleton v. Chichester*, 40 L. J. Ch. 237; 6 Ch. 152; *Crowthor v. Elgood*, 56 L. J. Ch. 416; 34 Ch. D. 691; 56 L. T. 415; 35 W. R. 369); but it must be, or have been, actually in his possession or control, as distinguished from his being merely liable for it (*Re Walker*, 60 L. J. Ch. 25; 63 L. T. 237; 38 W. R. 766), or ordered to pay it (*Ex p. Sharp*, 37 L. T. 168): Note, this latter section applies to a Married Woman (*Re Turnbull*, 1900, 1 Ch. 180; 69 L. J. Ch. 187). *V. TREASURER*, at end.

"PARTY in Possession," s. 79, Lands Cl. C. Act, 1845; *V. Ex p. Hollinsworth*, 19 W. R. 580; *Ex p. Winder*, 46 L. J. Ch. 572; 6 Ch. D. 696; *Re Evans*, 42 L. J. Ch. 357; *Ex p. Chamberlain*, 49 L. J. Ch. 354; 14 Ch. D. 323; *Gedye v. Commrs of Works*, 1891, 2 Ch. 630; 60 L. J. Ch. 587.

To pay a debt or transfer personal property to an Exor before Probate, e.g. for a Co to transfer shares of a deceased shareholder, is to "TAKE Possession" of the money or property by the payer or transferor within s. 37, Stamp Act, 1815, 55 G. 3, c. 184 (*A-G. v. New York Breweries Co*, 1898, 1 Q. B. 205; 67 L. J. Q. B. 86; affd in H. L. nom. *New York Breweries Co. v. A-G.*, 1899, A. C. 62; 68 L. J. Q. B. 135; 79 L. T. 568; 48 W. R. 32; 63 J. P. 179).

"Take effect in Possession," s. 1, Charitable Uses Act, 1735, 9 G. 2, c. 36, means, "giving the right to possession" (1 Jarm. 220, citing *Fisher v. Brierley*, 10 H. L. Ca. 159; 32 L. J. Ch. 281).

Distress "during the Possession of the TENANT" holding over; *V. DURING.*

*V. ACTUAL: ACTUAL FREEHOLD: ENTITLED IN POSSESSION.*

"In general, in technical language, one is said to be possessed of Goods when he has the property, and an immediate right to have the goods dealt with as he will" (Blackb. 334). Yet obviously the word is one largely dependent on the context (*Vh*, Blackb. 334).

As to what acts will take Goods out of the "APPARENT POSSESSION" of a grantor, for the purpose of the Bills of Sale Act, 1878; *V. Gough v. Everard*, 32 L. J. Ex. 210; 2 H. & C. 1; 11 W. R. 702: *Ex p. Homann, Re Vining*, 39 L. J. Bank. 4; L. R. 10 Eq. 63: *Ex p. Lewis, Re Henderson*, 6 Ch. 626: *Davies v. Jones*, 7 L. T. 130: *Robinson v. Briggs*, 40 L. J. Ex. 17; L. R. 6 Ex. 1: *Ex p. Saffery, Re Brenner*, 16 Ch. D. 668: *Gibbons v. Hickson*, 55 L. J. Q. B. 119; 53 L. T. 910; 34 W. R. 140: *Ex p. Mutton, Re Cole*, 41 L. J. Bank. 57; L. R. 14 Eq. 178: *Ex p. Jay, Re Blenkhorn*, 43 L. J. Bank. 122; 9 Ch. 697: *Edwards v. Edwards*, 45 L. J. Ch. 391; 2 Ch. D. 291; 34 L. T. 472; 24 W. R. 713. *Ex p. Jay, Re Blenkhorn*, decides that the "Apparent Possession" will remain in the grantor unless much more be done to take it from him than would be necessary with reference to the doctrine of reputed ownership. If in fact the grantor keeps possession, he is none the less in apparent possession because his act is wrongful (*Ancona v. Rogers*, 46 L. J. Ex. 121; 1 Ex. D. 285), or because he occupies as the salaried servant of the grantee (*Pickard v. Marriage*, 45 L. J. Ex. 594; 1 Ex. D. 364); *secus*, if a Wife (with her own moneys) be the buyer and the goods remain in the conjugal domicile (*Ramsay v. Margrett*, 1894, 2 Q. B. 18; 63 L. J. Q. B. 513; 70 L. T. 788). *Vf*, *Cookson v. Swire*, 54 L. J. Q. B. 249; 9 App. Ca. 653. *Cp*, POSSESSION, ORDER, OR DISPOSITION.

"*Man in Possession*," entitled to charge for possession under a DISTRESS, connotes a real and Actual possession, as distinguished from what is called a Constructive or Walking possession (*Lumsden v. Burnett*, 1898, 2 Q. B. 177; 67 L. J. Q. B. 661; 78 L. T. 778; 46 W. R. 664). As to Abandonment of Possession, *V. ABANDONMENT.*

Possession under a Distress for Rent, does not require that some one should be actually on the premises (*Bannister v. Hyde*, 29 L. J. Q. B. 141; 2 E. & E. 627: *Jones v. Beirnstein*, 1900, 1 Q. B. 100; 69 L. J. Q. B. 1; 81 L. T. 553; 48 W. R. 232).

*V. EXCLUSIVE POSSESSION: IMMEDIATE POSSESSION: OCCUPATION.*

"Possession," quâ the *Criminal Law* and Offences against Property, has been thus defined:—

"A moveable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.

"A moveable thing is in the possession of the husband of any woman, or the master of any servant, who has the custody of it for him, and from whom he can take it at pleasure. The word '*Servant*' here includes any person acting as a servant for any particular purpose or occasion.

"The word '*Custody*,' means such a relation towards the thing as would constitute Possession if the person having custody had it on his own account.

"If a servant receives anything for his master from a third person, not being a fellow-servant, he has the Possession as distinguished from the Custody of it, until he has put it into his master's possession, by putting it into a place or thing belonging to his master, or by some other act of the same sort, whether the servant himself has or has not the custody of that place or thing.

"If a servant receives anything belonging to his master from a fellow-servant who has received it from their common master, such thing continues to be in the Possession of the master, unless the servant who delivered it, delivered it with the intention to pass the property therein to the servant to whom it is delivered, having authority to do so from the master.

"If a servant receives anything belonging to his master from a fellow-servant who has received it on the master's account, and has done no act to put it into the master's possession, it is in the Possession of the servant who so receives it, and not in his Custody merely" (Steph. Cr. 210, 211).

A servant whose regular employment does not include taking care of, but who during his master's temporary absence is merely left in charge of, the Weights and Measures on his master's premises, is not, during such absence "in the Possession" of the Weights and Measures within s. 48, 41 & 42 V. c. 49 (*Smith v. Webb*, 12 Times Rep. 450).

"Custody or Possession," *quâ* Coinage Offences Act, 1861; *V. CUSTODY*.

"Custody, Possession, or Keeping" of Naval Stores; *V. R. v. Sunley*, 7 W. R. 418: 27 & 28 V. c. 91, s. 12.

Possession of Unwholesome Meat, s. 117, P. H. Act, 1875; *V. Newton v. Monkcom*, 58 L. T. 231; 4 Times Rep. 205.

"Found in the Possession"; *V. FOUND*.

As to meaning of "fraudulently allure, &c, a woman, under the age of 21 years, out of the Possession and against the will of her father or mother," s. 53, 24 & 25 V. c. 100; *V. R. v. Burrell*, 33 L. J. M. C. 54; L. & C. 354. And as to a similar use of "Possession" in s. 55 of the same Act; *V. R. v. Manktelow*, 22 L. J. M. C. 115; *Dears*. 159; *R. v. Timmins*, 30 L. J. M. C. 45; *Vf. TAKE*.

*V. Pollock and Wright on Possession*: 10 Encyc. 228-237.

**POSSESSION or POWER.**—As to the meaning and requirements of this phrase in an Affidavit of Documents; *V. Ann. Pr.*, notes to R. 13, Ord. 31, R. S. C.

**POSSESSION, ORDER, or DISPOSITION.** — The property divisible amongst a Bankrupt's Creditors comprises (int. al.), "All Goods being, at the commencement of the bankruptcy, in the Possession, Order, or Disposition of the Bankrupt, IN HIS TRADE OR BUSINESS, by the CONSENT and Permission of the TRUE OWNER, under such circumstances that he is the Reputed Owner thereof" (s. 44 iii, Bankry Act, 1883). The construction of "Possession, Order, or Disposition" "has yet to be determined" (per Ld Fitzgerald, *Colonial Bank v. Whinney*, 56 L. J. Ch. 52; 11 App. Ca. 445). "It is to be remarked, however, that the words are not now, — and have not been since 6 G. 4, c. 16, s. 72, — what they were when many of the earlier cases were decided. It is pointed out by Parke, B. (*Whitfield v. Brand*, 16 L. J. Ex. 103; 16 M. & W. 282), that they now stand as 'Possession, Order, or Disposition,' instead of 'Possession, Order, and Disposition.' I think, therefore, that it is enough if these goods were in the 'Possession' of the bankrupt in his 'Trade or Business, although they were not in his 'Disposition' therein, in the sense that they were such things as he sold in his trade. The words 'Order or Disposition' seem to me, necessarily, to enlarge the word 'Possession' so as to include something beyond visible occupation by a Reputed Owner. If it be said that this construction appears inconsistent with Ld Watson's words in *Colonial Bank v. Whinney*, — 'the principle which appears to me to be deducible from the authorities is this, That goods belonging to a third party are not within s. 44 (iii), unless they were left with the bankrupt in such circumstances that, as Reputed Owner, he could have sold them or otherwise obtained credit upon them in the course of his trade or business,' — then I would answer that I understand Ld Watson to have meant by 'obtaining credit upon goods,' not merely getting a loan by pledging them but, obtaining credit on the purchase of other goods because of the bankrupt appearing to own things valuable for business purposes though not for sale in his business. This construction recommends itself to me as being entirely consonant with the passage quoted in *Colonial Bank v. Whinney* (56 L. J. Ch. 53; 11 App. Ca. 447), by Ld Ashbourne, from *Ryall v. Rowles* (1 Ves. sen. 371), as applicable to the existing Bankry Law that the intent of it is 'to prevent traders from gaining a delusive credit by a false appearance of substance to mislead those who should deal with them.' Moreover, I think there is extreme force in the following passage from the judgment of Cotton, L. J., in *Colonial Bank v. Whinney*, — 'What meaning then are we to give to those words? Of course, where the goods are in the nature of Stock-in-Trade there is no difficulty; goods apparently forming part of the Stock-in-Trade of the firm must be in the Order or Disposition of the bankrupt in his trade or business. But, in my opinion, the words go further than that. I think the true construction is, that the goods must be in his Order or Disposition for the purposes of, or purposes connected with, his Trade or Business.' Further on in the same case,

Lindley, L. J., construes these words as meaning, 'not merely visibly employed in his Trade or Business but, acquired for the purposes of the business and used for those purposes'" (per Darling, J., *Sharman v. Mason*, 69 L. J. Q. B. 7, who points out that, though *Colonial Bank v. Whinney* was revd in H. L., the above reasoning of Cotton and Lindley, L. J.J., remained unaffected). Accordingly, it was held that Stands in a Dressmaker's business, which were not for sale and could not lawfully have been pledged, were in the "Possession, Order, or Disposition," of the Dressmaker, and came within the above Reputed Ownership Clause (*Sharman v. Mason*, 1899, 2 Q. B. 679; 69 L. J. Q. B. 3; 81 L. T. 485; 48 W. R. 142).

"Possession" by the TRUE OWNER is effectual to exclude the Reputed Ownership rule if it be real, even though it be friendly (*Re Francis*, 10 Ch. D. 408). So, of a notorious Trade Custom, e.g. that of an Hotel Keeper to hire his Furniture (*Re Parker*, cited FURNITURE: *Crawcour v. Salter*, 51 L. J. Ch. 495; 18 Ch. D. 30), or of Pianos on the HIRE-PURCHASE system (*Re Blanchard*, 47 L. J. Bank. 113; 8 Ch. D. 601), or of goods the subject of a SALE ON TRIAL (*Ex p. Wingfield*, 10 Ch. D. 591).

Note: That s. 44 (iii), Bankry Act, 1883, provides "that THINGS IN ACTION, other than Debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed 'Goods,' within the meaning of this section": *Vth, Re Seaman*, 1896, 1 Q. B. 412; 65 L. J. Q. B. 348; 74 L. T. 151; 44 W. R. 496: *Re Goetz*, cited CONSENT. V. CHOSE IN ACTION.

*Vh, Baldwin*, 304 *et seq*: Wms. Bank. 205 *et seq*: Robson, ch. 23.

*Semble*, "POWER, order, or disposition," is equivalent to "Possession, order, or disposition" (*Re Pole*, 4 W. R. 685; 27 L. T. O. S. 247).

**POSSESSIONS.**—The word "Possessions," in Case 5, Sch D, s. 100, Income Tax Act, 1842, 5 & 6 V. c. 35, includes a Trade or Business, and is to be taken in the widest sense, as denoting all property that may be a source of income (*Colquhoun v. Brooks*, 59 L. J. Q. B. 53; 14 App. Ca. 493; 61 L. T. 518). V. PROFITS.

V. BRITISH POSSESSION: FOREIGN.

"Her Majesty's Possessions in Australasia"; Stat. Def., 48 & 49 V. c. 60, s. 1.

"His Majesty's Colonies and Possessions Beyond the Seas"; Stat. Def., 6 & 7 W. 4, c. 54, s. 25.

"Possessions of the Duchy of Cornwall"; Stat. Def., 7 & 8 V. c. 65, s. 44; 26 & 27 V. c. 49, s. 37.

**POSSESSORY.**—Possessory LIEN of a Shipbuilder for repairs to a ship; *V. The Scio*, L. R. 1 A. & E. 353.

A Possessory TITLE to land may perhaps be defined as, a Title unde-

fended by Muniments and the holder of which has only undisturbed and unqualified length of possession on which to rely: *Vh*, Real Property Limitation Acts, 1833 and 1874. Under the Land Transfer Act, 1897, a person may apply for registration "with a Possessory Title," if he makes a Declaration that he is "*in* possession [*or*, receipt of the rents and profits]" and that he is somehow entitled (Part 2, Land Transfer Rules, 1898, and Form 2 of Sch 1); but, *semble*, such a title never "ripens into absolute title" (s. 8, 38 & 39 V. c. 87; R. 18, L. T. Rules, 1898).

**POSSIBILITY.**—A Possibility is "an uncertain thing which may or may not happen" (Jacob). *Cp*, CONTINGENT.

"Estate, Interest, Right, or Possibility," s. 20, Real Property Limitation Act, 1833; *V*, RIGHT.

"Possibility of Issue extinct"; *V*, TAIL.

A "Possibility on a Possibility," in a limitation of property, is rejected in law (Co. Litt. 25 b, 184 a), referring to which doctrine and to Coke's discussion of it Lindley, L. J., said, "I hope he who reads it will be able to understand it better than I do. I do not understand it now, and I never did" (*Whitby v. Mitchell*, 59 L. J. Ch. 485; 44 Ch. D. 85). The phrase and the rule it expresses have but little force now (Wms. R. P. Part 2, ch. 2); but one example remains in the vigorous and "important rule that, if land is limited to one unborn person during his life, a Remainder cannot be limited so as to confer an estate by PURCHASE on that person's issue" (Butler's *n*, Fearné Cont. Rem. 565: *Vf*, Wms. R. P. sup). That old rule has not been abrogated by the much more modern rule against PERPETUITIES, though, in consequence of the latter, it is but seldom brought into practical operation; therefore, a limitation offending against the old rule is not saved because it happens not to offend the rule against Perpetuities (*Whitby v. Mitchell*, sup). *Vh*, *Re Frost*. 59 L. J. Ch. 118; 43 Ch. D. 246.

**POSSIBLE.**—Where a manufacturer undertakes to supply an article "*as soon as possible*," that means with all reasonable promptitude and in the shortest practicable time, regard being had to the manufacturer's ordinary means of business, and the orders he may reasonably be assumed to have already in hand (*Attwood v. Emery*, 26 L. J. C. P. 73; 1 C. B. N. S. 110, explained by *Hydraulic Engineering Co. v. McHaffie*, 4 Q. B. D. 670; 27 W. R. 221). *Vh*, Benj. 678: Add. C. 125: Blackb. 226. *Vf*, CAN: *Cp*, EFFICIENTLY.

A Duty, to do a thing "if possible" means, generally, if reasonably possible in a business sense (per Esher, M. R., *Assicurazione Generali v. Bessie Morris Co*, 1892, 2 Q. B. 652; 61 L. J. Q. B. 754; 67 L. T. 218; 41 W. R. 83, and in *Shepherd v. Kottgen*, 2 C. P. D. 585; 47 L. J. C. P. 72, 73). *Vf*, IMPRACTICABLE.

So, where a local Act modified the then law requiring furnaces to consume their own smoke by enacting that they should do so "as far as possible," this was held to mean "as far as possible consistently with carrying on the manufacture in question" (*Cooper v. Woolley*, L. R. 2 Ex. 88; 36 L. J. M. C. 27; 15 L. T. 539. Note: The general phrase hereon now is, "as far as practicable"; s. 91, proviso 2, P. H. Act, 1875).

Quarter Sessions "next practically possible"; *V. NEXT*.

A rule of a Managing Committee of a Publication to obtain Literary Compositions "as far as possible without expense," does not authorize one of the committee to contract for contributions to be paid for (*Herauld v. Leaf*, 5 C. B. 157; 17 L. J. C. P. 57).

*V. IMMEDIATELY: IMPOSSIBLE: NECESSITY: PRACTICABLE: REASONABLE.*

"To load with all possible DESPATCH"; *V. Hudson v. Clementson*, 25 L. J. C. P. 234; 18 C. B. 213. *V. NEARLY AS POSSIBLE.*

To discharge cargo "as fast as you can"; *V. CUSTOMARY.*

"If possible"; *V. Wilson v. Kynock*, W. N. (77) 164.

**POST.** — *V. BY POST: ORDINARY COURSE.*

Quà Telegraph Act, 1863, 26 & 27 V. c. 112, "'Post,' means, a post, pole, standard, stay, strut, or other aboveground contrivance, for carrying suspending or supporting a TELEGRAPH" (s. 3); *V. s. 20, 47 & 48 V. c. 76.*

"Post TOWN"; Stat. Def., 1 V. c. 36, s. 47; 3 & 4 V. c. 96, s. 71.

"Travelling Post," 25 G. 3, c. 51; *V. R. v. Tooley*, 3 T. R. 69; *R. v. Swift*, 8 East, 584, n: 44 G. 3, c. 98, Sch B; *V. Welsford v. Todd*, 8 East, 580.

**POST CARD.** — *V. PACKET.* "Reply Post Card"; *V. REPLY.*

**POST LETTER.** — Quà Post Office (Offences) Act, 1837, 1 V. c. 36, "Post Letter," means, "Any letter or packet transmitted by the Post under the authority of the Postmaster General; and a letter shall be deemed a Post Letter from the time of its being delivered to a POST OFFICE to the time of its being delivered to the person to whom it is addressed" (s. 47); that def does not include a letter, not posted in the ordinary course but, put by a Post Official amongst letters so posted as a trap for a suspected person (*R. v. Rathbone*, 2 Moody, 242; C. & M. 220; *R. v. Shepherd*, 25 L. J. M. C. 52; Dears. 606); but, if duly posted, a letter is none the less a "Post Letter" because addressed to a fictitious person as a trap (*R. v. Young*, 2 C. & K. 466; 1 Den. 194, over-ruling *R. v. Gardner*, 1 C. & K. 628).

The above def of "Post Letter" quà Post Office (Offences) Act, 1837, and any Act incorporating it or referring thereto or to be construed there-

with, and also quâ Post Office (Protection) Act, 1884, 47 & 48 V. c. 76, is widened by s. 19 (1) of the latter Act.

A Postal TELEGRAM, is a "Post Letter" within the Act of 1837 (s. 23, 32 & 33 V. c. 73).

*V.* LETTER: PACKET: ROSE. CR. 755.

"Post Letter Bag," quâ the Act of 1837, includes, "a mail bag or box, or packet or parcel, or other envelope or covering, in which Post Letters are conveyed, whether it does or does not contain post letters" (s. 47). *Cp.* PACKET: "Post Office Letter Box," sub POST OFFICE.

**POST OBIT.**—A Post Obit Bond or other obligation, is one that is payable on or after the death of a person other than the maker, *e.g.* one by an expectant heir payable on or after the death of the tenant for life of family estates; if unconscionable, it may be set aside (*Chesterfield v. Janssen*, 2 Ves. sen. 158 *et seq.*).

**POST OFFICE.**—Quâ Post Office (Offences) Act, 1837, and any Act incorporating it, or referring thereto, or to be construed therewith, "Post Office," means, "any house, building, room, carriage, or place, where Postal Packets, as defined by this Act (*V.* PACKET), or any of them are, by the permission or under the authority of the Postmaster General received delivered sorted or made up, or from which such packets or any of them are, by the authority of the Postmaster General, despatched; and shall include, any Post Office Letter Box" (s. 19 (1), 47 & 48 V. c. 76). A covenant to use demised premises as a "Post Office" only, is not broken by issuing therefrom Inland Revenue Licenses (*Wadham v. Postmaster General*, 24 L. T. 545).

"The Post Office Acts, 1837 to 1895," "The Post Office (Duties) Acts, 1840 to 1891," "The Post Office (Management) Acts, 1837 to 1884," "The Post Office (Money Orders) Acts, 1848 to 1883," "The Post Offices (Offences) Acts, 1837 and 1884," "The Post Office Savings Bank Acts, 1861 to 1893"; *V.* Sch 2, Short Titles Act, 1896.

"Post Office Laws"; Stat. Def., 1 V. c. 36, s. 47; 32 & 33 V. c. 73, s. 24.

"Post Office Letter Box"; Stat. Def., 47 & 48 V. c. 76, s. 19 (1).

"Post Office Packets," in the sense of Vessels; Stat. Def., 1 V. c. 36, s. 47.

Post Office "Purpose," land for; Stat. Def., 44 & 45 V. c. 20, s. 8.

"Post Office Regulations"; Stat. Def., 33 & 34 V. c. 79, s. 2; 43 & 44 V. c. 33, s. 5.

*V.* OFFICER: SAVINGS.

On the Post Office generally, *V.* 10 Eneye. 250-259.

**POSTAGE.**—Quâ Post Office (Offences) Act, 1837, "Postage," means, "the duty chargeable for the transmission of POST LETTERS"



(s. 47); "Sea Postage," means, "the duty chargeable for the conveyance of letters by sea by vessels not packet boats" (Ib.).

V. BRITISH POSTAGE: COLONIAL: DOUBLE: FOREIGN: INLAND: PACKET: SINGLE POSTAGE: TREBLE.

**POSTAL.** — "Postal Officer"; V. OFFICER.  
"Postal Packet"; V. PACKET.

**POSTER.** — V. BILL: BANNER.

**POSTERITY.** — V. DESCENDANTS.

**POSTHUMOUS CHILD.** — It is said, "If a father gives a legacy to provide for a CHILD *en ventre sa mère* by the term of a 'Posthumous Child' and he happens to survive its birth, it will still be considered a Posthumous Child within the meaning of the Will" (Wms. Exs. 951, citing *Jaggard v. Jaggard*, Pr. Ch. 177). But that proposition and case, and also *White v. Barber* (5 Burr. 2703), were cited in *Doe d. Blakiston v. Haslewood* (20 L. J. C. P. 89; 10 C. B. 544) in *which* the facts were that a testator (contemplating his early death which did not happen) devised lands to his wife for life, with remainder in fee to his nephew, but if his wife should give birth to a posthumous child then such child to take to the exclusion of his nephew, and a child was born in the lifetime of the testator; held, that such child did not take, and that the devise to the nephew remained undisplaced; and, if necessary, the Court was prepared to over-rule *White v. Barber*. *Vh*, 10 Encyc. 243-248.

**POSTMASTER GENERAL.** — V. s. 12 (11), Interp Act, 1889.

**POSTPONE.** — An unrestricted power to Trustees to postpone a sale will not be limited by the court; and a power to postpone the sale of a Business involves the power of continuing the business in the meantime (*Re Chancellor*, 26 Ch. D. 46, 47; *Re Crowther*, 1895, 2 Ch. 56; 64 L. J. Ch. 537; 72 L. T. 762).

Such a power does not authorize postponement for a defined time, but has to be exercised from time to time according to the exigency of the circumstances for the time being, and must (unless otherwise directed) be exercised by the trustees unanimously (*Re Roth*, W. N. (96) 16; 74 L. T. 50); and should be exercised as a matter of prudent management (*Rowlls v. Bebb*, cited PRODUCE). *Vj*, PROFITS.

**POULTER'S ACT.** — The Apportionment Act, 1834, 4 & 5 W. 4, c. 22.

**POUND.** — "A Pound (*parcus*, which signifies any inclosure) is either Pound Overt, *i.e.* open overhead; or Pound Covert, *i.e.* close"

(3 Bl. Com. 12). *Vf*, OVERT: "Open Pound," sub OPEN, and on the authority of the passage from Co. Litt. there cited it may, probably, be said that, an Open Pound is one which is accessible to the owner of the impounded animals. *V*. IMPOUND: IMPOUND OR CONFINE.

The weight of the "Imperial Standard Pound" is regulated by s. 13, 41 & 42 V. c. 49. *V*. CWT.: DRAM: GRAIN: OUNCE: STONE: TON.

A "Pound," when a payment or money is referred to, means 20s.; and a covenant to pay so many "Pounds," without more, means pounds in money (per Twisden, J., *Hookes v. Swaine*, 1 Sid. 151). In *Re Buller* (74 L. T. 406) a gift of "£400 invested" in a stated Co, was held by Stirling, J., to mean, shares of that nominal amount in the Co.

**POUNDAGE.** — Sheriff's Poundage; *V*. EXECUTION, p. 662.

Poundage, was a SUBSIDY of 12*d*. in the £ on all merchandize exported or imported (Cowel).

**POURPRESTURE.** — *V*. PURPRESTURE.

**POVERTY.** — *V*. CHARITY: FORMÂ PAUPERIS: PAUPER: POOR.

**POWER.** — " 'Power,' does not apply to the sort of interest which the Ownership gives " (per Ellenborough, C. J., *Roe d. Berkeley v. York*, 6 East, 107): *Vf*, per Fry, L. J., *Re Armstrong*, cited PROPERTY.

"A Power is an authority reserved by, or limited to, a person to dispose, either wholly or partially, of Real or Personal Property, either for his own benefit or for that of others. The word is used as a technical term, and is distinct from the dominion which a man has over his own estate by virtue of ownership" (Farwell, 1).

*V*. APPOINT: APPOINTED: APPOINTMENT.

As to what words will *create* a Power of Appointment; *V*. Sug. Pow. ch. 4, s. 1: Farwell, ch. 3.

As to what words will *exercise* a Power, the simple question is, Whether you can find in the document, which is put forward as exercising it, such an indication to exercise the Power as that it ought to be held that the Power has been exercised; "it is a question of intention, and a question of intention only" (per Pearson, J., *Von Brockdorff v. Malcolm*, 55 L. J. Ch. 121; 30 Ch. D. 172; cited with approval by North, J., *Re Cotton*, 58 L. J. Ch. 174; 40 Ch. D. 41, and by Stirling, J., *Re Milner*, cited ABSOLUTELY); and, "in applying a rule of this kind, little assistance is to be got from decisions on Wills differing in form and expression" (per Stirling, J., *Re Milner*, sup: *wher*, for numerous cases hereon). *Vf*, Farwell, ch. 5: Theobald, ch. 20: 2 White & Tudor, 289-365: GENERAL POWER: MY: BENEFICIAL: WILL: WRITING: SPECIAL.

*Fraud* on a Power, is where a Power of Appointment, exercised according to the letter of the Power, is exercised pursuant to an antecedent bargain that the property shall be held for persons not objects of the Power (*Pryor v. Pryor*, 33 L. J. Ch. 441; 2 D. G. J. & S. 205). *Vh*, Farwell, 418 *et seq*: Watson Eq., *Powers*, ch. 9.

"Power to appoint," s. 27, Wills Act, 1837, means, "Power to appoint, *by the Will in question*" (*Phillips v. Coyley*, 43 Ch. D. 222; 59 L. J. Ch. 177). *V.* EXPRESSLY REFER.

"Shall hereby have Power"; *V.* MAY.

"According to their respective Powers"; *V.* FACILITIES.

"Disposing Power"; *V.* DISPOSING: BENEFICIAL.

"Powers in anywise enabling"; *V.* ENABLING: IN EXERCISE.

Leasing Power contrasted with a Restriction on granting leases; *V.* *Croft v. Lumley*, 6 H. L. Ca. 737; 27 L. J. Q. B. 343; YEAR.

Necessary Powers; *V.* NECESSARY.

"Power of Revocation"; *V.* REVOKE.

"Right, Power, or Privilege"; *V.* RIGHT.

Electrical "Power"; Stat. Def., 62 & 63 V. c. 19, Sch s. 1. *Cp.* ENERGY.

"Powers"; Stat. Def., Loc Gov Act, 1888, s. 100; London Gov Act, 1899, s. 34; Loc Gov (Scot) Act, 1889, s. 105; Loc Gov (Ir) Act, 1898, s. 109 (*Cp.* DUTIES: LIABILITY); 57 & 58 V. c. 57, s. 39 (8); 62 & 63 V. c. 50, s. 30.

*V.* POSSESSION OR POWER: POSSESSION, ORDER, OR DISPOSITION, at end: USURPED POWER.

**POWER OF ATTORNEY.** — A Power of Attorney, is an authority whereby one "is set in the turne, stead, or place of another" to act for him (*V.* ATTORNEY). It is generally made by Deed Poll (*V.* POLL), but *semble* (Wms. P. P. Part 2, ch. 3), may be by writing unsealed (*Howell v. M'ivers*, 4 T. R. 690), or even by parol (*Hrath v. Hall*, 4 Taunt. 326). *Vh.*, ss. 46, 47, 48, Conv & L. P. Act, 1881; ss. 8, 9, Conv Act, 1882; s. 23, Trustee Act, 1893.

For wide Form of such a Power, esp'y of Power to Sell; *V.* *Hawksley v. Outram*, 1892, 3 Ch. 359; 62 L. J. Ch. 215; 67 L. T. 804.

As to effect of Recitals in; *V.* *Danby v. Coutts*, 54 L. J. Ch. 577; 59 Ch. D. 500; 52 L. T. 401; 33 W. R. 559.

**POWER OF THE COUNTY.** — *V.* POSSE.

**POYNINGS' ACTS.** — These are the Irish Acts, 10 H. 7, cc. 4, 22 (amended by Irish Act, 3 & 4 W. 3, c. 4); and were so called because Sir Edward Poynings was Lord Lieutenant at the time of the making thereof. Thereby all the then statutes in England were made to be of force in Ireland (Termes de la Ley: 1 Bl. Com. 101-104). *Vf.* YELVERTON'S ACTS: 7 Encyc. 63.

**P. P.** — As used in a sporting match; *V.* *Daintree v. Hutchinson*, 11 L. J. Ex. 186; 10 M. & W. 85.

*V.* PER PROCURATION.

P. P. I. Policy; *V.* HONOUR.

**PRACTICABLE.** — “ All Practicable Speed ”; *V. Nicholls v. Hall*, 42 L. J. M. C. 105; L. R. 8 C. P. 322.

“ As far as Practicable,” s. 91, proviso 2, P. H. Act, 1875; *V. Cooper v. Woolley*, L. R. 2 Ex. 88; 36 L. J. M. C. 27; 15 L. T. 539: POSSIBLE.

*V.* CORRESPOND: REASONABLY PRACTICABLE: WORKABLE: WORTH THE EXPENSE: IMPRACTICABLE: SAFE.

**PRACTICAL.** — “ Able, Practical, Surveyor or Valuer ”; *V. SURVEYOR.*

A man who has been a working miner, but who is, and for 8 years has been, employed above ground as a check-weigher, is not a “ Practical Working Miner ” within Rule 38, s. 49, Coal Mines Regulation Act, 1887, 50 & 51 V. c. 58 (*Indian v. Colquhoun*, Times, 18 Jan 1890).

**PRACTICALLY.** — *V. PRACTICABLE.*

Quarter Sessions “ next practically possible ”; *V. NEXT.*

**PRACTICE.** — “ Practice,” in its larger sense, is like “ Procedure,” and “ denotes the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right ” (per Lush, L. J., *Poyser v. Minors*, 7 Q. B. D. 333; 50 L. J. Ex. 557).

The “ Practice ” of a Court, when that word is used in its ordinary and common sense, denotes the Rules that make or guide the *cursum curiæ*, and regulate procedure within the walls or limits of the Court itself, and does not involve or imply anything relating to the extent or nature of its jurisdiction; and, therefore, the Queen’s Remembrancer Act, 1859, 22 & 23 V. c. 21, s. 26, enabling the now abolished Barons of the Exchequer to frame Rules for making “ the process, practice, and mode of pleading ” on the Revenue side of the Court uniform with that on the Plea side, did not give those learned judges the power, they assumed to exercise, of giving an appeal in Revenue cases (*A-G. v. Sillëm*, 33 L. J. Ex. 209; 10 H. L. Ca. 704).

A Chamber Summons to Review a Taxation, is a matter of “ Practice and Procedure ” within s. 1 (4), Jud. Act, 1894, and R. 23, Ord. 54, R. S. C. (*Re Oddy*, 1895, 1 Q. B. 392; 64 L. J. Q. B. 123; 43 W. R. 363; 71 L. T. 861); so, is a summons for an Interim Injunction, even though the action itself be for an Injunction (*McHarg v. Universal Stock Exchange*, 1895, 2 Q. B. 81; 64 L. J. Q. B. 498); so, of an Application to set aside an *ex parte* Order to serve writ out of the jurisdiction (*Black v. Dawson*, 1895, 1 Q. B. 848; 64 L. J. Q. B. 464; 43 W. R. 435), or for leave to revoke appointment of an Arbitrator (*Re Portland and Tilley*, 1896, 2 Q. B. 98; 65 L. J. Q. B. 527; 74 L. T. 703), or for appointment of a Receiver (*Hood-Barrs v. Cathcart*, 11 Times Rep. 262), or a Garnishee Order (*Hockley v. Ansah*, 44 W. R. 666), or for judgment under Ord. 14, R. S. C. (*Cannon Brewery Co. v. Gilby*, 75 L. T. 407). So, *semble*,

of a summons to take out Execution (*Wilson v. Parker*, 39 S. J. 180); but a Prohibition to a County Court is not within the section (*Watson v. Petts*, 1899, 1 Q. B. 54; 67 L. J. Q. B. 970; 79 L. T. 330; 47 W. R. 68; *Morton v. Emanuel*, 43 S. J. 97). *Vh*, *Hood-Barrs v. Cathcart*, 1895, 1 Q. B. 597, *n*; 64 L. J. Q. B. 352; 43 W. R. 309.

R. 22, Ord. 22, R. S. C., which forbids communicating to a jury that money has been paid into Court, is one of Practice and Procedure (*Williams v. Goose*, 1897, 1 Q. B. 471; 66 L. J. Q. B. 345; 76 L. T. 143; 45 W. R. 308).

To constitute a "*Custom or Practice*" authorizing a Municipal Corporation to make a RENEWAL of a Lease, s. 95, 5 & 6 W. 4, c. 76, repld s. 110, Mun Corp Act, 1882, "there must be such a number of preceding leases of such a similar and uniform character as to amount, though not to a legal CUSTOM yet, to that which in ordinary and common parlance and by persons not acquainted with the technical import of legal expressions would be called a 'Custom,' to which the word 'Practice' is synonymous" (per Romilly, M. R., *A-G. v. Yarmouth*, 21 Bea. 635; 3 W. R. 309; 25 L. T. O. S. 5).

No "RIGHT or PRIVILEGE with respect to denominational schools which any class of persons have, by *Law or Practice*," in the Province of Manitoba (s. 22, Manitoba Act, 1870, confirmed by 34 & 35 V. c. 28), was prejudicially affected by the establishment of free and non-sectarian public education; for though "Practice," in such a connection, is not restricted to "Custom having the force of Law," yet it there relates to some legal Right or Privilege, or some benefit or advantage in the nature of a Right or Privilege, and, as there was no law or regulation or ordinance with respect to education in Manitoba at or before the Act, what was previously done by the denominations in the matter of providing education was only pursuant to a natural right needing no law to protect it, and could not be called a "Privilege" in any proper sense of the word (*Winnipeg v. Barrett*, 1892, A. C. 445; 61 L. J. P. C. 58; 67 L. T. 429).

"Practices"; *V. PRETENCE*.

"Put in Practice," a Patent; *V. USE*.

*V. PRACTISE: ALREADY: CORRUPT PRACTICE.*

**PRACTISE.** — To "act or practise" as an APOTHECARY without a certificate within the prohibition of s. 20, 55 G. 3, c. 194, has relation to an habitual or continuous course of conduct; therefore, where an uncertificated person gave advice and supplied medicine to three different persons at different times, he was guilty of one offence, not three, and was liable to only one penalty (*Apothecaries Co v. Jones*, 1893, 1 Q. B. 89; 41 W. R. 267; 67 L. T. 677).

A man practises as an Apothecary and, if registered, is entitled to recover his charges for medical aid and medicine (s. 21, 55 G. 3, c. 194; ss. 31 and 32, 21 & 22 V. c. 90) if his is the directing brain, though the

ministering hand be that of an unqualified person (*Howarth v. Brearley*, 19 Q. B. D. 303; 56 L. J. Q. B. 543). An assistant to another, though doing the work of an Apothecary, was not "in practice as an Apothecary" within s. 21, 55 G. 3, c. 194 (*Brown v. Robinson*, 1 C. & P. 264).

A SOLICITOR, holding a Country Certificate and whose office is in the country, does not "ACT or practise" in London (s. 59, Stamp Act, 1870, repld s. 43, Stamp Act, 1891) by attending one taxation at the Central Office (*Re Horton*, 8 Q. B. D. 434; 51 L. J. Q. B. 309).

Quà Justices Qualification Act, 1871, 34 & 35 V. c. 18, a Solicitor "shall be deemed to practise and carry on his profession or business in the County, City, or Town, in which he maintains an OFFICE, or place of business" (s. 2); *Vth, R. v. Douglas*, 1898, 1 Q. B. 560; 67 L. J. Q. B. 406; 78 L. T. 198; 46 W. R. 377; 62 J. P. 277. On the other hand, a Solr who regularly practises at a Petty Sessions or County Court, "exercises, practises, or carries on," his business there, although he receives his instructions elsewhere (*Llewellyn v. Simpson*, 91 Law Times, 9).

To "practise" as a SURGEON; *V. Rawlinson v. Clarke*, 14 L. J. Ex. 364; 14 M. & W. 187.

Assuming title of a "Veterinary Practitioner"; *V. VETERINARY: QUALIFIED.*

*V. CARRY ON.*

**PRACTITIONER.** — *V. MEDICAL: QUALIFIED: VETERINARY.*

**PRÆDIAL TITHES.** — *V. TITHES.*

**PRÆMUNIRE.** — This offence was "where any man sueth any other in the Spirituall Court for anything that is determinable in the Kings Court" (*Termes de la Ley*); and the statutes of Præmunire were to repress the civil power of the Pope. For those statutes, and hereon, *V. Jacob*: 4 Bl. Com. ch. 8; *Martin v. Mackonochie*, L. R. 2 A. & E. 150-155; *Middleton v. Crofts*, 2 Atk. 669; Phil. Ecc. Law, 1108.

**PRATA.** — *V. MEADOWS.*

"'Pratum Falcabile,' a Meadow or Ground fit for mowing" (*Cowel*).

**PRAWNS.** — *V. SEA FISH.*

**PRAYER.** — "What is Prayer? Barrow says it is, not only supplication but, adoration" (per Byles, J., *Baxter v. Langley*, 38 L. J. M. C. 5).

So, though "bequests for Prayers for the Soul of the testator are void as superstitious" (*Tudor's Char. Trusts*, 23, and cases there cited: *If, Egerton v. All Saints, Odd Rode*, 1894, P. 15), yet, *semble*, a bequest to say Prayers for the Living, or to offer Thanksgiving for the Dead in the sense at the end of the Prayer for the Church Militant in the Book of

COMMON PRAYER, would be good (*Re Michel*, 28 Bea. 39; 29 L. J. Ch. 547; 2 L. T. 46; 8 W. R. 299; 6 Jur. N. S. 573). *Vf*, 10 Encyc. 289, 290.

“Open Prayer”; *V. OPEN*.

*V. PRECATORY TRUST*.

**PREACHER.** — *V. GODLY PREACHER*.

**PREACHING.** — *V. MINISTRATION: PUBLIC PREACHING*.

Preaching on the Seashore; *V. Llandudno v. Woods*, cited *FORESHORE*.

**PREAMBLE.** — The Preamble of a statute “is a key to open the minds of the makers of the Act, and the mischiefs which they intend to remedy by the same” (Termes de la Ley). *Vh, Sussex Peerage Case*, 11 Cl. & F. 143: per Ld Blackburn, *West Ham v. Miles*, 8 App. Ca. 388; 52 L. J. Q. B. 650.

**PREBEND.** — “Prebend” signifies the office which a Prebendary holds, and also his stipend, which stipend “is an endowment in land, or pension in money, given to a Cathedral or Conventual Church in *prebendam*” (Phil. Ecc. Law, 138).

A “Prebendary” is the holder of a Prebend, and is a Secular Priest or Regular Canon, and is either a Simple Prebendary or a Dignitary Prebendary, — Simple, when he has no jurisdiction; Dignitary, when he has a prescriptive jurisdiction (*Ib.*).

“Net Profits” of a Prebend; *V. NET*.

**PRECARIÆ.** — Precariæ, or Benework, or Boonwork, is “special work done by a tenant at the request of his lord, as distinguished from fixed services; Seebohm, 78; Spelm. Gloss. s. v. *Precariæ sicca* are ‘boon days without allowance of drink’; Domesday of St. Paul’s (Cam. Soc.), notes, p. cxxiv. *Precariæ* is also used in the sense of Benefices (feuds); 2 Palgr. Eng. Commonwealth, p. ccv” (Elph. 616, 563). In the first of these senses, Cowel gives the def thus, “‘Precariæ,’ are Dayes-works, which the Tenants of some Mannors are bound, by reason of their Tenure, to do for the lord in Harvest.”

**PRECARIO.** — *V. VI, CLAM, PRECARIO*.

**PRECATORY TRUST.** — “It has long been settled that words of Recommendation, Request, Entreaty, Wish, or Expectation, addressed to a devisee or legatee, will make him a trustee for the person or persons in whose favour such expressions are used” (1 Jarm. 385. *Va. Lewin*, 141); but “it is essential that there should be (1) a *certain subject*, and (2) a *certain object* of the trust to be so created” (per Wood. *V. C.*, *Bernard v. Minshull*, Johns. 285, 286; 28 L. J. Ch. 649); *Vthe*, for an explanation as to these two essential certainties. *Va, Knight v. Knight*,

3 Bea. 148; 9 L. J. Ch. 354, for a full discussion of this doctrine before and by Langdale, M. R. *Vf*, *Cowman v. Harrison*, 22 L. J. Ch. 993.

"The words 'Precatory Trust' are an abominable phrase. They are used as a roundabout way of saying that the Court finds that there is a trust although the trust is not expressed, as such, but by words of prayer or suggestion, or the like" (per Chitty, J., *Re Sanson*, 12 Times Rep. 142). "The doctrine of thus construing expressions of Recommendation, Confidence, Hope, Wish, and Desire, into positive and peremptory commands, is not a little difficult to be maintained, upon sound principles of interpretation of the actual intention of the testator." "Accordingly we find, of late, a more strict and uniform requisition of definiteness, in regard to both the subject-matter and the objects of the intended trust than can be traced in some of the earlier, and a few of the more modern, adjudications" (1 Jarm. 391); and the strong disposition now is "to give to the words of Wills their natural and ordinary sense, unless it is clear that they are designed to be used in a peremptory sense" (Story, s. 1069). *Vf*, per Cotton, L. J., *Re Adams and Kensington*, 27 Ch. D. 410, cited by North, J., *Cochrane v. Dundonald*, 10 Times Rep. 262; per Rigby, L. J., *Re Williams*, 1897, 2 Ch. 27 *et seq*; 66 L. J. Ch. 491 *et seq*.

Each of the following phrases in Wills has been held to create a Precatory trust:—

"Advise him to settle" (*Parker v. Bolton*, 5 L. J. Ch. 98).

"Well Assured" (*Macey v. Shurmer*, 1 Atk. 389; 1 Amb. 520. *V. Ray v. Adams*, 3 My. & K. 237).

"Have full Assurance and confident Hope" (*Macnab v. Whitbread*, 17 Bea. 299).

"Authorize and Empower" (*Brown v. Higgs*, 4 Ves. 708; 5 Ib. 495; 8 Ib. 561; 18 Ib. 192: *Vf*, *Griffiths v. Evan*, 11 L. J. Ch. 219; 5 Bea. 241).

"Beg" (*Corbet v. Corbet*, Ir. Rep. 7 Eq. 456: *Sv*, *Green v. Marsden*, 1 Drew. 646; 1 W. R. 511).

"In the full Belief" (*Fordham v. Speight*, W. N. (75) 140).

"Most heartily Beseech" (*Meredith v. Heneage*, 1 Sim. 553).

"Confide" (*Griffiths v. Evan*, 11 L. J. Ch. 219; 5 Bea. 241: *Vf*, *Shepherd v. Nottige*, 2 J. & H. 766).

"Have the fullest Confidence" (*Shovelton v. Shovelton*, 32 Bea. 143: *Re Downing*, 60 L. T. 140: *Wright v. Atkyns*, 17 Ves. 255; 19 Ib. 299: *Webb v. Woods*, 21 L. J. Ch. 625; 2 Sim. N. S. 267: *Palmer v. Simmonds*, 2 Drew. 225: *Curnick v. Tucker*, L. R. 17 Eq. 320: *Le Marchant v. Le Marchant*, L. R. 18 Eq. 414). *Secus*, where the words expressing "confidence" are preceded by an absolute gift (*Meredith v. Heneage*, 1 Sim. 542: *Re Adams and Kensington*, 52 L. J. Ch. 758; 54 Ib. 87; 24 Ch. D. 199; 27 Ib. 394: *Va*, *Lambe v. Eames*, 40 L. J. Ch. 447; 6 Ch. 597: *Re Hutchinson and Tennant*, 8 Ch. D. 540: *Re Hamilton*, 1895, 2 Ch. 370; 64 L. J. Ch. 799; 72 L. T. 748; 43 W. R. 577: *Re*



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*Williams*, 1897, 2 Ch. 12; 66 L. J. Ch. 485; 76 L. T. 600; 45 W. R. 519: *Mussoorie Bank v. Raynor*, inf).

“In **Consideration** the legatee has promised to give” (*Clifton v. Lombe*, 1 Amb. 519).

“Under the firm **Condition**” (*Burnes v. Grant*, 26 L. J. Ch. 92; 2 Jur. N. S. 1127).

“**Of Course** the legatee will give” (*Robinson v. Smith*, 6 Mad. 194: *Se, Lechmere v. Lavie*, 2 My. & K. 198).

“**Declare**”; *V.* “Will and Declare,” inf.

“**Desire**” (*Harding v. Glyn*, 1 Atk. 469; *Mason v. Limbury*, cited *Vernon v. Vernon*, Amb. 4; *Trott v. Vernon*, 2 Vern. 708; *Pushman v. Filliter*, 3 Ves. 7; *Brest v. Offley*, 1 Ch. Rep. 246; *Bonser v. Kinnear*, 2 Giff. 195; *Cary v. Cary*, 2 Sch. & Lef. 189; *Cruwys v. Colman*, 9 Ves. 319; *V.*, on the contrary, *Shaw v. Lawless*, 5 Cl. & F. 129; *Re Diggles*, 32 S. J. 608: where “desire” follows an absolute gift there will be no trust, *Re Sanson*, sup).

“**Direct**”; *V.* “Order and Direct,” inf.

“**Do not Doubt**” (*Parsons v. Baker*, 18 Ves. 476; *Taylor v. George*, 2 V. & B. 378; *Malone v. O'Connor*, L. & G. t. Plunk. 465; *Va, Sale v. Moore*, inf).

“**Empower**”; *V.* “Authorize and Empower,” sup.

“**Entreat**” (*Prevost v. Clarke*, 2 Mad. 458; *Meredith v. Heneage*, 1 Sim. 553, 555: *Vf, Taylor v. George*, 2 V. & B. 378).

“**Hope**” (*Harland v. Trigg*, 1 Bro. C. C. 142; *Vf, Paul v. Compton*, 8 Ves. 380; *V.* “Assurance and Hope,” sup). *Se, Eaton v. Watts*, L. R. 4 Eq. 151.

“**Well Know**” (*Bardswell v. Bardswell*, 7 L. J. Ch. 268; 9 Sim. 323; *Nowlan v. Nelligan*, 1 Bro. C. C. 489; *Briggs v. Penny*, 21 L. J. Ch. 265; 3 Mac. & G. 546; 3 D. G. & S. 525; *Sethle, Stead v. Mellor*, 46 L. J. Ch. 880; 5 Ch. D. 225; 36 L. T. 498). *Cp, Greeae v. Greene*, inf.

“**Order and Direct**” (*Cary v. Cary*, 2 Sch. & Lef. 189).

“**Provide**”; *V.* “Take care of and provide,” inf.

“**Recommend**” (*Tibbits v. Tibbits*, Jac. 317; 19 Ves. 656; *Horwood v. West*, 1 L. J. O. S. Ch. 201; 1 Sim. & St. 387; *Paul v. Compton*, 8 Ves. 380; *Malim v. Keighley*, 2 Ves. 333, 529; *Malim v. Barker*, 3 Ves. 150; *Meredith v. Heneage*, 1 Sim. 553; *Kingston v. Lorton*, 2 Hogan, 166; *Cholmondeley v. Cholmondeley*, 14 Sim. 590; *Hart v. Tribe*, 23 L. J. Ch. 462; 18 Bea. 215; *White v. Briggs*, 15 L. J. Ch. 182; 15 Sim. 33). “That ‘recommend’ may amount to a command and create a binding trust is certain. It is equally certain that the word is susceptible of a different interpretation. It must depend upon the language of the particular instrument in which this word is found, in which of the two senses it is to be taken” (per Knight Bruce, *V. C., Johnson v. Rowlands*, 17 L. J. Ch. 438; 2 D. G. & S. 356). *Vh, Re Hamilton*, 1895, 2 Ch. 370; 64 L. J. Ch. 799; 72 L. T. 748; 43 W. R. 577.

“Request” (*Pierson v. Garnet*, 2 Bro. C. C. 38: *Eade v. Eade*, 5 Mad. 118: *Moriarty v. Martin*, 3 Ir. Ch. Rep. 26: *Bernard v. Minshull*, 28 L. J. Ch. 649; *Johns*. 276: *Va, House v. House*, W. N. (74) 189): *St*, per contra, *Hill v. Hill*, 1897, 1 Q. B. 483; 66 L. J. Q. B. 329; 76 L. T. 103; 45 W. R. 371, in *whc*, *Esher*, M. R., said, “a Request, in its ordinary meaning, is nothing but a request; it does not impose an obligation, although there may be cases in which, under special circumstances, an obligation must be implied from a request”: *Vf*, *Cochrane v. Dundonald*, 10 Times Rep. 262, where the words “requiring him to advise and assist his brothers, as I have done,” were held, by North, J., as insufficient to create a trust.

“Take Care of and Provide” (*Broad v. Bevan*, 1 Russ. 511, *n*: *Svthe*, *Abraham v. Alman*, 1 Russ. 509, and *Re Moore*, inf).

“Trusting” (*Irvine v. Sullivan*, 38 L. J. Ch. 635; L. R. 8 Eq. 673): *St*, *Curtis v. Rippon*, 5 Mad. 434.

“Trusting and Confiding” (*Wade*, or *Wood v. Cox*, 5 L. J. Ch. 361; 6 Ib. 366; 1 Keen, 317; 2 My. & C. 684: *Pilkington v. Boughey*, 12 Sim. 114).

“Tell Know”; *V*. “Know,” sup.

“Will” (*Eales v. England*, Pr. Ch. 200: *Cloudsley v. Pelham*, 1 Vern. 411).

“Will and Declare” (*Gray v. Gray*, 11 Ir. Ch. Rep. 218).

“Will and Desire” (*Birch v. Wade*, 3 V. & B. 198: *Forbes v. Ball*, 3 Mer. 437: *Svthe*, per Romer, J., *Re Weekes*, 1897, 1 Ch. 296; 66 L. J. Ch. 181). *Vf*, *Re Hall*, 1899, 1 I. R. 308.

“Wish and Desire” (*Liddard v. Liddard*, 29 L. J. Ch. 619; 28 Bea. 266). *St*, *Stead v. Mellor*, inf: *Re Hamilton*, sup.

“Wish and Request” (*Foley v. Parry*, 5 Sim. 138; 2 My. & K. 138: *Re Hutchings*, W. N. (87) 217).

But either of the foregoing (or such like) phrases might easily be controlled the other way by a context; for, in the present day, there is, probably, no construction more dependent on, or more easily liable to be affected by, the general tenor of the instrument than one from which a precatory trust is to be gathered. “I fully agree with Lord Justice James in what he said in *Lambe v. Eames* (40 L. J. Ch. 447; 6 Ch. 597), that when you come to read the older authorities you can only arrive at the conclusion that they created trusts in numbers of cases where trusts were never intended” (per Pearson, J., *Re Adams and Kensington*, 52 L. J. Ch. 761; 24 Ch. D. 199: *Vf*, per Cotton, L. J., *S. C.*, 54 L. J. Ch. 95; 27 Ch. D. 410, and per Lindley, L. J., *Re Hamilton*, sup, “Recommend”).

Words of entreaty when coupled with discretionary words (*Curtis v. Rippon*, sup: *White v. Briggs*, 15 L. J. Ch. 182; 15 Sim. 33: *Williams v. Williams*, 20 L. J. Ch. 280; 22 Ib. 639; 17 Bea. 156: *Hart v. Tribe*, 23 L. J. Ch. 462; 18 Bea. 215: *Eaton v. Watts*, L. R. 4 Eq. 151: *Re*

*Bond, Cole v. Hawes*, 4 Ch. D. 238; 46 L. J. Ch. 488: *Lambe v. Eames*, 40 L. J. Ch. 447; 6 Ch. 597), or with an absolute gift (*Green v. Marsden*, 1 Drew. 646; 1 W. R. 511: *Re Adams and Kensington*, sup: *Re Moore*, 55 L. J. Ch. 418), do not create a precatory trust. In the case lastly cited the words were, "they are hereby enjoined to take care of my nephew J. J. N. C. as may seem best in the future." So "feeling confident that she will act JUSTLY" does not create a Precatory Trust (*Mussoorie Bank v. Raynor*, 51 L. J. P. C. 72; 7 App. Ca. 321); nor do the words, "to do Justice to those Relations as she shall think worthy of remuneration" (*Re Bond*, sup: *Vf, Knight v. Knight*, sup: *Ellis v. Ellis*, 44 L. J. Ch. 225; 23 W. R. 382), nor "well knowing her Sense of Justice and love to her family" (*Greene v. Greene*, Ir. Rep. 3 Eq. 90), nor "not doubting but that she will consider my near Relations" (*Sale v. Moore*, 1 Sim. 534), nor a desire that the fund will be distributed "agreeably to my wishes" (*Stead v. Mellor*, 46 L. J. Ch. 880; 5 Ch. D. 225; 36 L. T. 498). *Vf, DISPOSAL.*

*Note.*—The doctrine of precatory trusts, though usually arising on Wills, is applicable to transactions *inter vivos* (*Liddard v. Liddard*, 29 L. J. Ch. 619; 28 Bea. 266: *Wheeler v. Smith*, 29 L. J. Ch. 194; 1 Giff. 300), but those cases were not cited when Chitty, L. J., said, "It is on Wills only, so far as I am aware, that these questions of Precatory Trusts have been raised" (*Hill v. Hill*, 66 L. J. Ch. 335).

*Vh, Lewin*, 142 *et seq*: 1 Jarm. 385 *et seq*.

**PRECEDENT.**—*V. CONDITION.*

**PRECEDING.**—*V. PREMISES.*

**PRECEDING TWELVE MONTHS.**—As to this phrase in s. 46, Valuation, Metropolis, Act, 1869; *V. R. v. East & W. India Docks Co*, 53 L. J. M. C. 97; 13 Q. B. D. 364; 51 L. T. 97; 48 J. P. 564.

The Rate, on a Brine Pumper, on brine pumped or raised by it "during the preceding 12 months," s. 38, 54 & 55 V. c. 40, means, during the 12 months next preceding the making of the Rate (*Salt Union v. Northwich Compensation Bd*, 42 S. J. 328).

**PRECIOUS METALS.**—*V. METAL: GOLD: SILVER: MINE*, last par.

**PREDECESSOR.**—"Predecessor," quâ Sucn Dy Act, 1853; for Stat. Def. *V. SUCCESSION: Vh, A-G. v. Braybrooke*, 9 H. L. Ca. 150; 31 L. J. Ex. 177: *A-G. v. Floyer*, 9 H. L. Ca. 477; 31 L. J. Ex. 404: *A-G. v. Smythe*, 9 H. L. Ca. 497; 31 L. J. Ex. 404: *Charlton v. A-G.*, 4 App. Ca. 427; 49 L. J. Ex. 86: *A-G. v. Mitchell*, 50 L. J. Q. B. 406; 6 Q. B. D. 548: *A-G. v. Dowling*, 50 L. J. Ex. 192; 6 Ex. D. 177: *Re O'Neill*, 20 L. R. Ir. 73: *Re Barker*, 30 L. J. Ex. 404; 7 H. & N. 109:

*Re Ramsay*, 30 L. J. Ch. 849; 30 Bea. 75; *Re Lovelace*, 28 L. J. Ch. 489; 4 D. G. & J. 340; *A-G. v. Baker*, 4 H. & N. 19.

V. ANCESTOR: DISPOSITION.

**PREDIAL TITHES.** — V. TITHES.

**PRE-EMPTION.** — Right of, V. SUPERFLUOUS LAND: FIRST REFUSAL: OPTION.

**PREFERENCE.** — Preference *Dividend*; V. DIVIDEND: CUMULATIVE.

Preference *Shareholders*, s. 12, Ry Comp Act, 1867; V. *Re Brighton & Dyke Ry*, 59 L. J. Ch. 329; 44 Ch. D. 28. *Va*, NOMINAL: PREJUDICIALLY.

Payment of a Friendly Socy's claim on its OFFICER "in Preference" to his other debts, s. 15 (7), 38 & 39 V. c. 60; — "That is an English idiom. When a man says that he will do one thing in preference to another, according to the ordinary English idiom, the two things referred to are of the same kind" (per Esher, M. R., *Re Miller*, 1893, 1 Q. B. 327; 62 L. J. Q. B. 324); *whc* shows that this preference against a bankrupt Officer's estate extends to moneys he has received by virtue of his office.

Gift to one line "in Preference" to another; V. *Boys v. Bradley*, cited NEXT OF KIN.

V. FRAUDULENT PREFERENCE: UNDUE PREFERENCE.

**PREFERENTIAL.** — Preferential, as distinguished from Proprietary, right; V. *Ellis v. Bedford*, cited "Same Interest," sub SAME.

Preferential Payments in Bankry and Winding-up; V. 51 & 52 V. c. 62; 60 & 61 V. c. 19; *lr*. 52 & 53 V. c. 60: DEBTS.

**PREFERMENT.** — Quà Church Discipline Act, 1840, 3 & 4 V. c. 86, "Preferment," comprehends, "every deanery, archdeaconry, prebend, canonry, office of minor canon, priest vicar, or vicar choral in holy orders, and every precentorship, treasurership, sub-deanery, chancellorship of the church, and other dignity and office in any cathedral or collegiate church; and every mastership, wardenship, and fellowship, in any collegiate church; and all benefices with cure of souls, comprehending therein all parishes, perpetual curacies, donatives, endowed public chapels, parochial chapelries, and chapelries or districts belonging to or reputed to belong or annexed or reputed to be annexed to any church or chapel; and every curacy, lectureship, readership, chaplaincy, office, or place, which requires the discharge of any spiritual duty; and whether the same be or be not within any exempt or peculiar jurisdiction" (s. 2): that def is adopted for Clerical Disabilities Act, 1870, 33 & 34 V. c. 91 (s. 2).

Other Stat. Def. — *Ir.* 14 & 15 V. c. 73, s. 1.

“Cathedral Preferment”; *V.* CATHEDRAL.

Power to apply Trust Moneys for the “Preferment” of beneficiaries;  
*V.* ADVANCEMENT: BENEFIT.

**PREFERRED.** — In the power given by s. 98, 5 & 6 W. 4, c. 50, to the Court before whom a Highway Indictment shall be “preferred” to award Costs, “preferred” means “tried” (*R. v. Pembridge*, 12 L. J. Q. B. 47; 3 Q. B. 901; 3 G. & D. 5: *Vf.* *R. v. Upper Papworth*, 2 East, 413). *V.* TRIAL.

*V.* PREFERENCE.

**PREGNANT.** — “Pregnant with a Child”; *V.* *Doe d. Blakiston v. Haslewood*, cited POSTHUMOUS CHILD. As to Period of Gestation, *V.* *Bosville v. A-G.*, cited PRESUMPTION.

“Pregnant” with the aptitude to learn; *V.* EDUCATIONAL ENDOWMENT.

*V.* NEGATIVE PREGNANT.

**PREJUDICE.** — *V.* ANNOYANCE: UNDUE PREFERENCE: WITHOUT PREJUDICE.

Creditors “prejudiced by a Voluntary Winding-up,” s. 145, Comp Act, 1862; *V.* *Re Medical Battery Co*, 1894, 1 Ch. 444; 63 L. J. Ch. 189; *Re Bishop*, 1900, 2 Ch. 254; 69 L. J. Ch. 513; 82 L. T. 756.

**PREJUDICE OF PURCHASER.** — A PURCHASER who *knows* that the article which he buys is not of the nature, substance, and quality demanded by him, has not had the article sold to him to his “Prejudice” within s. 6, Sale of Food and Drugs Act, 1875, 38 & 39 V. c. 63, even though no label is delivered to him pursuant to s. 8 (*Sandys v. Small*, 47 L. J. M. C. 115; 3 Q. B. D. 449; 26 W. R. 814; 42 J. P. 550). But “Prejudice” here does not mean pecuniary prejudice, or injury from taking unwholesome food; it means, the prejudice which the person buying sustains as a customer in getting, *without his knowledge*, an article different from that demanded; and it is immaterial that he buys only for analysis or with money other than his own (*Hoyle v. Hitchman*, 48 L. J. M. C. 97; 4 Q. B. D. 233; 27 W. R. 487; 43 J. P. 431; adopting the principle on which *Sandys v. Markham*, 41 J. P. 53, was remitted to be re-stated: *Vh.* s. 2, 42 & 43 V. c. 30). *Vf.* *Horder v. Grainger*, 44 J. P. 188; *Kirk v. Coates*, 55 L. J. M. C. 182; 16 Q. B. D. 49; 34 W. R. 296; 50 J. P. 148; 54 L. T. 178; *Collett v. Walker*, 59 J. P. 600; 64 L. J. M. C. 267.

*Note.* The due Notice of Analysis (*V.* *Barnes v. Chipp*, 3 Ex. D. 176) to be given under s. 14, 38 & 39 V. c. 63, is a Condition Precedent to a prosecution (*Parsons v. Birmingham Dairy Co*, 9 Q. B. D. 172; *Smart v. Watts*, 1895, 1 Q. B. 219; 71 L. T. 768); *secus*, of a prosecu-

tion under s. 6, Margarine Act, 1887, 50 & 51 V. c. 29 (*Buckler v. Wilson*, 1896, 1 Q. B. 83; 65 L. J. M. C. 18; 73 L. T. 580; 44 W. R. 220; 60 J. P. 118), but under that latter section an Analysis is admissible only against the person from whom the article is obtained (*Tyler v. Kingham*, 1900, 2 Q. B. 413; 69 L. J. Q. B. 630; 83 L. T. 169; 64 J. P. 598).

#### V. ARTICLE DEMANDED.

The principle of *Sandys v. Small* (sup), is applicable to the sale of Spirits diluted below the standard prescribed by s. 6 of the Sale of Food and Drugs Act Amendment Act, 1879, 42 & 43 V. c. 30 (*Gage v. Elsey*, 52 L. J. M. C. 44; 10 Q. B. D. 518).

It is not necessary to show the seller's guilty knowledge (*Betts v. Armstead*, 57 L. J. M. C. 100; 20 Q. B. D. 771; 58 L. T. 811; 36 W. R. 720; 52 J. P. 471). *Vh*, KNOWINGLY.

**PREJUDICIALLY.** — Damages when lands or buildings are "prejudicially affected" by the exercise of statutory powers, *e.g.* s. 50, 11 & 12 V. c. 112, connotes the same as INJURIOUSLY AFFECTED (*R. v. Metrop Bd of Works*, 3 B. & S. 710; 32 L. J. Q. B. 105; 11 W. R. 492).

#### V. INTERFERE.

"Prejudicially affect" rights of Guaranteed or PREFERENCE Shareholders, s. 15, Ry Comp Act, 1867; *V. Re Neath & Brecon Ry*, 1892, 1 Ch. 349; 66 L. T. 40; 40 W. R. 289, affg North, J., 61 L. J. Ch. 172.

**PRELIMINARY.** — "Preliminary Examination" of an Articled Clerk to a Solr; Stat. Def., 40 & 41 V. c. 25, s. 4; 61 & 62 V. c. 17, s. 4.

#### PREMIER.

 — Premier Earl; *V. ELDEST.*

The King's Premier Serjeant, had pre-audience in all the Courts over all other barristers, including the Attorney General (3 Bl. Com. 28, *n*).

#### V. SENIOR: *Cp*, PUISNE.

**PREMISES.** — The *Premises* of a DEED are all the foreparts of the deed before the HABENDUM (Touch. 75: 2 Bl. Com. 298). The word "Premises" in fact signifies what has gone before (*Buccon Assrce v. Gibb*, 1 Moore P. C. N. S. 73); and therefore may with propriety be used in relation to any preceding subject or subjects. Thus where a testator devised a certain messuage and the furniture in it, to A. for life and after his decease he gave "the said messuage and premises" to B., the latter devise was held to carry the furniture as well as the messuage (*Sanford v. Irby*, 4 L. J. O. S. Ch. 23; *Va, Doe v. Meakin*, 1 East, 456; *Fitzgerald v. Field*, 1 Russ. 427). *Cp*, "Parcels," sub PARCEL.

"In consideration of the Premises"; *V. Bell v. Welch*, 19 L. J. C. P. 184.

But frequently PROPERTY is spoken of as "Premises," without a

preceding description or mention of it. Thus, where a testator gave permission to A. to occupy a "mansion-house, garden, and premises," rent-free; it was held that the word "premises" meant, "premises in immediate connection with the mansion, and without the occupation of which the mansion could not be conveniently occupied and enjoyed" (per Turner, L. J., *Lethbridge v. Lethbridge*, 31 L. J. Ch. 741; 4 D. G. F. & J. 35). A park of 100 acres adjoining the Mansion-house was accordingly, in that case, held to be included in the word "Premises," (30 L. J. Ch. 388; 3 D. G. F. & J. 523); *secus*, as regards the Home Farm, though it was contiguous to the park on which the Mansion-house stood and was in hand at the death of the testator (31 L. J. Ch. 737). In such a connection "Premises" is as nearly as possible synonymous with APPURTENANCES (*Read v. Read*, W. N. (66) 386; 15 W. R. 165): and, in *e.g.* a Lease of a "House and Premises," " 'premises' would naturally extend only to that which is closely and intimately connected with the house " (per Kelly, C. B., *Minton v. Geiger*, cited BELONGING), and, therefore, did not include an adjoining meadow. *Vf*, *Hibon v. Hibon*, cited MESSAGE: *Doe d. Hemming v. Willetts*, 18 L. J. C. P. 240; 7 C. B. 709; 1 Jarm. 778: HOUSE.

"Premises" includes a PLEASURE Garden occupied with a dwelling-house, quâ rating for water supply (*Bristol W. W. Co v. Uren*, 54 L. J. M. C. 97; 15 Q. B. D. 637).

"Premises," in popular language, frequently means Buildings (*Beacon Assree v. Gibb*, 1 Moore P. C. N. S. 97); that, however, was a case of a fire insurance on a Ship, and "on the premises" in the policy was construed as "on the ship."

For a wide use of "Premises," *Vf*, *R. v. Leith*, 1 E. & B. 136.

"Premises," s. 22, P. H. Act, 1875, means, "premises in the state in which they are,—not at the time the grant was made, the Act passed, or the arrangements come to,—but, it means, the premises in all time according to the state in which they are at the time" (per North, J., *New Windsor v. Stovell*, 54 L. J. Ch. 117; citing *Newcomen v. Coulson*, 46 L. J. Ch. 459; 5 Ch. D. 133: *Finch v. G. W. Ry*, 5 Ex. D. 254).

Quâ P. H. Act, 1875, generally, "Premises," includes, "messuages, buildings, lands, easements, and hereditaments, of any tenure" (s. 4: *Vf*, s. 11, 53 & 54 V. c. 59); in that sense it is used in s. 257, so that the CHARGE created by the latter section is on the respective interests of every owner for the time being, in proportion to the value of his interest (*Birmingham v. Baker*, 17 Ch. D. 782), and over-rides all trusts whether of a private, public, or statutory, origin (*ib.*: *Scottish Widows Fund v. Craig*, 51 L. J. Ch. 363; 20 Ch. D. 208; *Bowditch v. Wakefield*, 40 L. J. M. C. 214; L. R. 6 Q. B. 567: *Re Christchurch Enclosure Act*, 1894, 3 Ch. 209; 63 L. J. Ch. 657; 71 L. T. 122; 42 W. R. 614; 58 J. P. 556); *secus*, if a Statutory Trust declares that the premises are to be used "for no other purpose whatsoever" (*Hornsey v. Smith*, 1897, 1 Ch.

843; 66 L. J. Ch. 476; 76 L. T. 431; 45 W. R. 581), and it does not over-ride Restrictive Covenants adversely affecting the Premises (*Tendring v. Downton*, 1891, 3 Ch. 265; 61 L. J. Ch. 82; 65 L. T. 434; 40 W. R. 145). *V.* OWNER. *Note:* that in *Hornsey v. Smith* the trustees were held personally liable.

For the other defs relating to Public Health Acts, *V.* P. H. Ireland Act, 1878, s. 2; P. H. London Act, 1891, s. 141; P. H. Scotland Act, 1897, s. 3. "Premises" may, when coupled with words of identification, be equivalent to "house, or part of a house" quâ s. 2 (1 *e*), P. H. London Act, 1891 (*R. v. Slade*, 65 L. J. M. C. 108; 74 L. T. 656; 60 J. P. 358).

"Premises" has also received statutory definition in and for the following Acts;—

Civil Bill Court Procedure Amendment Act, 1864, 27 & 28 V. c. 99; *V.* s. 3:

Gas Works Clauses Act, 1871, 34 & 35 V. c. 41; *V.* s. 4:

Licensing Act, 1872; *V.* ss. 77, 83:

Metropolis Gas Act, 1860, 23 & 24 V. c. 125; *V.* s. 4:

Metropolis Water Act, 1871, 34 & 35 V. c. 113; *V.* s. 3:

Private Street Works Act, 1892, 55 & 56 V. c. 57; *V.* s. 5:

Rep People (Scot) Act, 1868, 31 & 32 V. c. 48; *V.* s. 59:

Small Tenements Recovery Act, 1838, 1 & 2 V. c. 74; *V.* s. 7:

Spirits Act, 1880, 43 & 44 V. c. 24; *V.* s. 3:

Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103; *V.* s. 1:

Trespass (Scot) Act, 1865, 28 & 29 V. c. 56; *V.* s. 2.

"Premises occupied," "Premises occupied with Dwelling-house"; *V.*

OCCUPIED.

*V.* LICENSED PREMISES: NEW PREMISES: ON THE PREMISES: SUITABILITY: UNLICENSED.

**PREMIUM.** — "Premium," ordinarily means, increased value; it inaccurately describes a Bonus on a Life Policy, but under a bequest of the "Premium of Insurance on my life" in the R. Office, a bonus that had been declared on the policy, but not the policy itself, was held to pass (*Barrow v. Methold*, 3 W. R. 629).

*V.* FINE.

"Premium" is now frequently used to denote the annual payment for keeping up an insurance; or the money paid on an Apprenticeship (*Walter v. Everard*, cited NECESSARIES).

**PREPAID.** — Prepaid Letter; *V.* BY POST.

**PREPARE.** — Under a Condition of Sale that the conveyance is "to be prepared and completed at the vendor's expense," the vendor is only liable to pay for the costs of the actual work done in such preparation and completion under Sch 2, Solrs Rem Ord, and is not liable for the



Scale Fee on the amount of purchase money under Sch 1 (*Re Thackeray*, 34 S. J. 64).

Scale Fee for "preparing and completing Conveyance"; *V. Grey v. Curtice*, cited CONVEYANCE, p. 404.

**PREROGATIVE.** — "*Littleton* speaketh of the king's prerogative but twice in all his bookes, viz., here (s. 125), and sect. 178, and in both places as part of the lawes of *England*. *Prærogativa* is derived of *præ*, i.e. *ante*, and *rogare*, that is, to aske or demand beforehand, whereof commeth *prærogativa*, and is denominated of the most excellent part; because though an act hath passed both the houses of the lords and commons in parliament, yet before it be a law, the royall assent must be asked or demanded and obtained, and this is the proper sense of the word. But legally it extends to all powers, preheminences, and privileges, which the law giveth to the Crowne" (Co. Litt. 90 b). *V. CROWN*. *Vh*, 10 Encyc. 311-315.

Prerogative Mandamus; *V. MANDAMUS*.

Prerogative Writ; *V. 10 Encyc.* 316-318.

**PRESBYTER.** — *V. BISHOP*.

**PRESBYTERIAN.** — *V. A-G. v. Bunce*, 37 L. J. Ch. 697; L. R. 6 Eq. 563; *A-G. v. Anderson*, 57 L. J. Ch. 543; 58 L. T. 726; 36 W. R. 714.

**PRESCRIBED.** — "All laws should be made to commence *in futuro*, and be notified before their commencement; which is implied in the term 'prescribed'" (1 Bl. Com. 46).

In the Acts of Queen Victoria there are about 100 definitions of "prescribed," each having relation to the subject-matter of the Act in which it is contained and, generally, to be found in such Act's Interp Clause, — e.g. quâ County Courts Act, 1888, " 'prescribed' shall mean, prescribed by the County Court Rules for the time being" (s. 186); quâ Explosives Act, 1875, 38 & 39 V. c. 17, " 'prescribed,' means, prescribed by Order in Council" (s. 108); quâ Loc Gov Act, 1894, " 'prescribed,' means, prescribed by Order of the Local Government Board" (s. 75); quâ Parliamentary Elections Act, 1868, 31 & 32 V. c. 125, " 'prescribed,' shall mean, 'prescribed by the Rules of Court'" (s. 3); quâ Regimental Debts Act, 1893, 56 & 57 V. c. 5, " 'prescribed,' means, prescribed by Royal Warrant" (s. 29).

"Prescribed *Day*"; Stat. Def., Medical Act, 1886, 49 & 50 V. c. 48, s. 17.

"Prescribed *DISTANCE*" from the *CENTRE* of a *ROADWAY*, quâ London Bg Act, 1894, "means, 20 feet from the centre of the roadway where such roadway is used for the purpose of Carriage Traffic, and 10 feet from

the centre of the roadway where such roadway is used for the purposes of Foot Traffic only" (subs. 5. s. 5).

"Prescribed DISTRICT"; Stat. Def., *l.* 44 & 45 V. c. 4, s. 1.

"Prescribed Limits," s. 13, Markets and Fairs Clauses Act, 1847, 10 & 11 V. c. 14, means, the boundaries of the borough to which the local Act relates, and not the limits of the market (*Cuswell v. Cook*, 31 L. J. M. C. 185; 11 C. B. N. S. 637). *Vf*, *Llanduff Market Co v. Lyndon*, 8 C. B. N. S. 515; 6 Jur. N. S. 1344; *Spurling v. Bantoft*, 1891, 2 Q. B. 384; 60 L. J. Q. B. 745; 65 L. T. 584; 40 W. R. 157.

"Prescribed Limits," quâ Harbours, Docks, and Piers, Clauses Act, 1847, 10 & 11 V. c. 27, means, "the distance measured from the harbour dock or pier, or other local limits (if any) beyond the harbour dock or pier, within which the powers of the harbour-master dock-master or pier-master, for the regulation of the harbour dock or pier, shall by the Special Act be authorized to be exercised" (s. 2). *V.* DISTANCE.

"In any Manner expressly prescribed by Act of Parliament"; *V.* MANNER.

*V.* PUBLIC DEPARTMENT.

**PRESCRIPTION.** — "Prescription, is when a man claimeth anything for that he, his ancestors or predecessors or they whose estate hee hath, have had or used it all the time whereof no mind is to the contrary" (*Termes de la Ley*). *V.* TIME OUT OF MIND: MEMORY.

"Prescription is a title taking his substance of use and time allowed by the law. In the common law a prescription, which is personal, is for the most part applied to persons. . . . And a custome, which is local, is alledged in no person, but layd within some manner or other place" (*Co. Litt.* 113 a, b; *whv* for illustration of this distinction: *Va*, 4 Rep. 32); or, in other words, a title by Prescription is when a man "and those under whom he claims have immemorially used to enjoy" the property or claim (2 Bl. Com. 263). *V.* CUSTOM.

*Vh*, Prescription Act, 1832, 2 & 3 W. 4, c. 71: ACCESS: ACTUALLY ENJOYED: RIGHT: ACQUIESCENCE: INTERRUPTION: *Rosc. N. P.* 802; 3 Cru. Dig. Title 31; *Herbert on Prescription*.

**PRESENCE.** — The subscription of the attesting witnesses of a Will has to be done in the "Presence" of the Testator (s. 9, Wills Act, 1837). This means that he must be corporeally in such a position as to be able to see the witnesses subscribe, and mentally capable of knowing what they are doing (1 Jarm. 86-88, *whv* for cases hereon: *Vf*, *Tod v. Winchelsea*, 2 C. & P. 488). By the same section a testator is to sign his Will in the "presence" of two or more witnesses; and that also means "that the witnesses should see *and be conscious* of the act done (per Dr. Lushington, *Hudson v. Parker*, 1 Rob. Ecc. 24), but that requirement is complied with if, in fact, it has been so done, even though the

witnesses may not be aware that the document is a Will or that what they saw the testator write was his signature (*Smith v. Smith*, 35 L. J. P. & M. 65; L. R. 1 P. & D. 143).

But to aver in an Indictment that the act charged was done in the "Presence" of others would, *semble*, not be equivalent to stating that it was done in their "sight" or "view," for they might be blind, or not looking (*R. v. Webb*, 2 C. & K. 937; 1 Den. 338), but, in the report of that case in the Law Journal, Parke, B., says, "I think that 'in the Presence of,' means, 'in the sight of'" (18 L. J. M. C. 40).

V. REAL PRESENCE.

**PRESENT.** — V. HANDSOME GRATUITY.

"Present at"; V. MEETING: ASSEMBLED.

"Present in Person or by Proxy"; V. PROXY.

"Present or future Husband"; V. HUSBAND.

Power to charge a Co's "present and future Property"; V. *Re Streatam Estates Co*, cited PROPERTY.

"Present and past Member" of a Co, s. 38, Comp Act, 1862; V. *National Bank of Wales*, cited SHARE.

"Present Tenancy"; Stat. Def., 44 & 45 V. c. 49, s. 57: "Present tenancy," s. 8, Ib.; V. *Massy v. Norse*, 20 L. R. Ir. 57; *Ronaldson v. La Touche*, 24 Ib. 344; *Magner v. Hawkes*, 28 Ib. 365. V. TENANCY.

V. AT THE PRESENT TIME: FUTURE: PRESENT TENSE.

**PRESENT RIGHT TO RECEIVE.** — This phrase in s. 40, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27, means, an *immediate* right without waiting for the happening of any future event (*Farran v. Beresford*, 10 Cl. & F. 319, 334). V; *Barcroft v. Murphy*, 1896, 1 I. R. 590.

As to the same phrase, in s. 13, 23 & 24 V. c. 38: V. *Re Johnson, Sly v. Blake*, 29 Ch. D. 964; 33 W. R. 502; 52 L. T. 682.

As used in s. 8, Real Property Limitation Act, 1874, 37 & 38 V. c. 57; V. *Hornsey v. Monarch By Soey*, 59 L. J. Q. B. 105; 24 Q. B. D. 1; *Re Owen*, 1894, 3 Ch. 220; 63 L. J. Ch. 749; 71 L. T. 181; 43 W. R. 55; *Barcroft v. Murphy*, sup.

**PRESENT TENSE.** — Words in the present tense will, frequently, also import the future when not accompanied by words of restraint, such as "then," "now," &c, *e.g.* in a Grant of Woods "*growing*," or in a Proviso making a Lease of a Commandry void if the Prior (the lessor) "or any of his Brethren there *being* Commanders will dwell thereupon" (4 Leon. 36, 37). V. BEING: HAVING.

**PRESENT TIME.** — V. AT THE PRESENT TIME.

**PRESENTATION.** — "The word 'Presentation' may have many meanings according to the context or as circumstances require, and it

may mean either 'showing' or 'delivering over' (per Jervis, C. J., *Bartlett v. Holmes*, 22 L. J. C. P. 185; 13 C. B. 630). In that case the vendor's memorandum of contract was to deliver 1,000 tons of pig iron "on the presentation of this document," and it was held that there, "presentation" meant "delivering over."

In ecclesiastical law. "Presentation is derived à *presentando* . . . and is the act of the patron offering his clerke to the bishop of that diocese, to be instituted to such a church, in these or the like words directed to the bishop, *Presento vobis A. B. clericum meum ad ecclesiam de Dale, &c*" (Co. Litt. 120 a). *V. Phil. Ecc. Law*, 277: ADVOWSON: COLLATION: PRESENTMENT.

**PRESENTATIVE.** — A Presentative Living, is one in which a Right of PRESENTATION, as distinct from a power of direct appointment, is vested in the Patron: *Vh, R. v. Foley*, cited DONATIVE: 2 Bl. Com. 22.

**PRESENTLY ANSWER.** — *V. ANSWER.*

**PRESENTMENT.** — "'Presentment' is of two significations: one is presentments to a Church, which when any man which hath right to give any Benefice Spirituall and nameth the person to the Bishop to whom hee will give it and maketh a writing to the Bishop for him, that is a PRESENTATION, or Presentment. . . . The other is a Presentment or Information by a Jury in a Court, before any Officer which hath authority to punish any offence done contrary to the law" (*Termes de la Ley*). But such Presentments are also made of matters not entailing punishment.

*V. GRAND JURY: HOMAGE.*

"Presentment Sessions," quâ Loc Gov (Ir) Act, 1898, "includes, Road Sessions and Special Road Sessions" (s. 109).

**PRESENTS.** — *V. THESE PRESENTS: TOUCH.*

**PRESERVATION.** — To restrain a lessee of a mine from allowing damage by ceasing to pump, is "Preservation" within R. 3, Ord. 50, R. S. C. (*Strelley v. Pearson*, 15 Ch. D. 113; 49 L. J. Ch. 406; 28 W. R. 752; 43 L. T. 155; *Vf, Pollini v. Gray*, 12 Ch. D. 438).

*V. PERISHABLE: REALIZATION.*

Preservation of the Peace; *V. GOOD BEHAVIOUR: PEACE: SURETY OF THE PEACE.*

**PRESERVED.** — *V. RECOVERED OR PRESERVED: BRED.*

**PRESIDING JUDGE.** — *V. JUDGE.*

**PRESS.** — "The finishing process of a Press," in a Patent Specification; *V. Barber v. Grace*, 17 L. J. Ex. 122; 1 Ex. 339.

**PRESSURE.** — Merely paying money under protest to suit one's own convenience is not paying under "Pressure" (*Re Harrison*, 16 L. J. Ch. 170; 10 Bea. 57; *Re Boycott*, 29 Ch. D. 571; 52 L. T. 482; 34 W. R. 26). *Cp.*, DURESS: UNDER PROTEST: UNDUE INFLUENCE.

**PRESUME.** — Where an Act imposes a Penalty if any one shall "presume" to do a stated thing, that "seems to me to imply, not a mere ignorant act but, an act in which a person KNOWINGLY takes upon him to do that which the law says shall not be done under the circumstances" (per Willes, J., *Royse v. Birley*, cited PUBLIC SERVICE).

**PRESUMED.** — "Admeasurements are presumed to be correct"; *V.* ADMEASUREMENT: *Cp.*, ESTIMATED.

**PRESUMPTION.** — " 'Presumption' is the evidence of things not seen; where, from an apparent effect, you may infer a probable cause" (per Counsel, arg., *Fanshaw v. Rotherham*, 1 Eden, 284). *Cp.*, "Necessary Implication," sub NECESSARY: JUDICIAL PERSUASION.

Presumptions are of "three sorts, (1) Violent, (2) Probable, and (3) Light or Temerary. *Violenta præsumptio* is manie times *plena probatio*; as if one be runne thorow the bodie with a sword in a house, whereof he instantly dieth, and a man is seene to come out of that house with a bloody sword, and no other man was at that time in the house. *Præsumptio probabilis* moveth little; but *Præsumptio levis seu temeraria* moveth not at all" (Co. Litt. 6 b). *Vf.*, 10 Encyc. 327-332.

"A Presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged but of which there is no direct proof. It follows, therefore, that a presumption of any fact is an inference of that fact from others that are known (per Abbott, C. J., *R. v. Burdett*, 4 B. & Ald. 161). The word 'Presumption,' therefore, inherently imports an act of reasoning, — a conclusion of the judgment; and it is applied to denote such facts or moral phenomena as from experience we know to be invariably, or commonly, connected with some other related fact" (Wills on Circumstantial Evidence, 4 ed., 18, 19).

The presumption that a Woman is past *Child-Bearing* (quà payment out of Court of trust funds) will, generally, be made when she is 54 without having had a child (*Haynes v. Haynes*, 35 L. J. Ch. 303; 14 W. R. 361; *Re Widow*, 40 L. J. Ch. 380; L. R. 11 Eq. 408; 19 W. R. 468; *Davidson v. Kimpton*, 18 Ch. D. 213; 29 W. R. 912); in the case of a spinster, 53 has been adopted as the age (*Priee v. Boustead*, 8 L. T. 565): *Vf.*, collection of cases in Note to *Haynes v. Haynes*, 35 L. J. Ch. 303. But where a married woman had lived 26 years with her husband without having had a child, the presumption was made when she was 49 years and 9 months old (*Re Millner*, 42 L. J. Ch. 44; L. R. 14 Eq. 245; 20 W. R. 823); yet it was refused at the age of 54 in the case of a woman

who had been married only 3 years (*Croxton v. May*, 9 Ch. D. 388; 27 W. R. 325). *Vh, Re Hocking*, cited CHILD, p. 307.

There is a presumption that a Child born in Wedlock is legitimate; but that presumption may be rebutted, though not upon a mere balance of probabilities (*Bosville v. A-G.*, 56 L. J. P. D. & A. 97; 12 P. D. 177).

DEATH is presumed if a person has not been HEARD OF for 7 years (per Ellenborough, C. J., *Doe d. George v. Jesson*, 6 East, 85, citing 19 Car. 2, c. 6 and 1 Jac. 1, c. 11), *i.e.* the fact that he is dead, "but not that he died at the beginning or the end of any particular period during those 7 years" (*Nepean v. Doe*, 7 L. J. Ex. 339; 2 M. & W. 910, affg and stating effect of *Doe d. Knight v. Nepean*, 2 L. J. K. B. 150; 5 B. & Ad. 86: *Re Rhodes*, 56 L. J. Ch. 825; 36 Ch. D. 586): *Vf*, Dart, 385: Godefroi, 474: Rosc. N. P. 41. As to the onus of proof, *V. Prudential Assree v. Edmonds*, 2 App. Ca. 487, 511, 514. Where two die together, *e.g.* in a shipwreck, there is no presumption of survivorship on the ground of sex, age, or otherwise (*Wing v. Angrave*, 8 H. L. Ca. 183; 30 L. J. Ch. 65: *Re Greene*, 35 L. J. Ch. 252; L. R. 1 Eq. 289: *Re Alston*, 61 L. J. P. D. & A. 92; 1892, P. 142). The Probate Division will not presume death until the person has been advertised for (*Re Robertson*, 1896, P. 8; 65 L. J. P. D. & A. 16: *Re Matthews*, 67 L. J. P. D. & A. 11. *Vh, Re Hurlston*, 67 L. J. P. D. & A. 69: *Re Winstone*, *Ib.* 76). *Note*: the power to presume Death is sometimes made a discretionary power; *V. Escriott v. Todmorden Socy*, cited MAY, p. 1179.

#### V. BIGAMY.

"A strong or probable presumption" against a FUGITIVE CRIMINAL, s. 5, 44 & 45 V. c. 69; *V. R. v. Spilsbury*, 79 L. T. 211.

For other Presumptions, *V. Rosc. N. P.* 5, 33 *et seq.* *Cp*, "Way of Necessity," sub WAY.

#### PRESUMPTIVE. — Heir Presumptive; *V. HEIR APPARENT.*

A Presumptive Share is the antithesis of one that is VESTED; therefore, a Power of Advancement to A. out of "his Presumptive Share" can hardly be properly exercised when the share has become vested (*Molyneux v. Fletcher*, cited ADVANCEMENT). A clause for MAINTENANCE in favour of minors "presumptively ENTITLED," will need a strong context to control that phrase into any other than its ordinary meaning (*King-Harman v. Cayley*, 1899, 1 I. R. 39).

PRETENCE. — A charter (restoring one surrendered) granting all Franchises, Rights, &c, previously enjoyed "by Virtue or Pretence of any Charter," only (under the word "pretence") "excludes very scrupulous, nice, and subtle, enquiry upon doubtful points; and does not authorize matters done under a previous charter that were contrary to its clear and unambiguous ordinance" (*R. v. Salway*, 9 B. & C. 436).

“Pretence,” and “Practices,” are sometimes used as implying something of an improper description; *V. Barber v. Gamson*, 4 B. & Ald. 281.  
*V. CHARGE OF FRAUD: FALSE PRETENCE.*

**PRETENCED.** — A “Pretenced” TITLE within 32 H. 8, c. 9, s. 2, is one purely fictitious (*Kennedy v. Lyell*, 15 Q. B. D. 491). Formerly a right of entry disannexed from actual possession, however good and true it might be, was a pretenced title within the statute (Co. Litt. 369 a: *Partridge v. Strange*, 1 Plowd. 88: *Doc d. Williams v. Erans*, 14 L. J. C. P. 237: 1 C. B. 717); but as a right of entry, formerly incapable of being conveyed, may now be conveyed (8 & 9 V. c. 106, s. 6), it is not, as such, a pretenced title within the statute of Henry 8 (*Jenkins v. Jones*, 51 L. J. Q. B. 438; 9 Q. B. D. 128; 46 L. T. 795; 30 W. R. 668).  
*Note:* the section is repealed by s. 11, Land Transfer Act, 1897.

“‘Pretensed Right or Title’ is where one is in possession of lands or tenements, and another who is out of possession, claimeth it, and sueth for it” (Termes de la Ley).

“Buying or selling a *pretended* title, is buying or selling lands, of which the title is known to be in dispute, below the value which they would have if the title was not in dispute, and to the intent that the buyer may carry on the suit in place of the seller” (Steph. Cr. 97).

**PRETEND.** — To “pretend,” or “profess,” to do a thing, *e.g.* to tell one’s FORTUNES, usually connotes that what is done is with the intention to deceive (*R. v. Entwistle*, 1899, 1 Q. B. 846; 68 L. J. Q. B. 580; 80 L. T. 657; 63 J. P. 423).

“Pretend to be” a Solicitor; *V. SOLICITOR.*  
*V. PURPORTING.*

**PRETENDED.** — *V. PRETENCED.*

**PRETENDING TO CLAIM.** — “A covenant that the lessee shall quietly enjoy against all claiming ‘or pretending to claim’ a right in the premises, extends to all interruptions, be the claim legal or not, provided it appear that the disturber do not claim under the lessee himself” (Woodf. 723, citing *Chaplin v. Southgate*, 10 Mod. 384; 1 Comyn. 230: *Va, Ibbett v. De la Salle*, 6 H. & N. 233; 30 L. J. Ex. 44). *V. QUIET ENJOYMENT.*

**PRETEXT.** — “Pretext of Monopoly,” s. 4, 21 Jac. 1, c. 3: *V. Peck v. Hindes*, 67 L. J. Q. B. 272.

**PREVENT.** — To “prevent” does not mean *only* an obstruction by physical force, *e.g.* in the phrase that one party to a bargain “prevented or discharged” the other from fulfilling his part thereof: — “In answer to a question from the Court, we were told it would not be a ‘preventing’

of the delivery of goods if the purchaser were to write in a letter to the person who ought to supply them, 'Should you come to my house to deliver them, I will blow your brains out.' But may I not reasonably say that I was 'prevented' from completing a contract by being desired not to complete it?"; and though "DISCHARGE" is sometimes used as equivalent to "RELEASE," yet, in such a phrase as the above, it "only means, like 'prevent,' that the act of the other side was the cause of the contract not being executed or performed" (per Campbell, C. J., *Cort v. Ambergate Ry*, 17 Q. B. 145, 146; 20 L. J. Q. B. 465: *Cp*, OBSTRUCT, towards end). So, if the fulfilment of a Contract, legal in its inception, becomes contrary to law, the contractor is "prevented" from fulfilling it (*United States v. Pelly*, 47 W. R. 332; 4 Com. Ca. 100).

"Preventing the LOADING,' in a Charter-Party, means, preventing in the sense of stopping it, either before it has been commenced or whilst it is going on" (per Pollock, B., *Coverdale v. Grant*, 8 Q. B. D. 602, a def. *semble*, not affected by the reversal of the judgment, 53 L. J. Q. B. 462; 9 App. Ca. 470).

Preventing Workman "from returning to his work"; *V. RETURN.*

#### PREVENTION. — *V. REGULATE.*

**PREVIOUS.** — Previous Conviction; *V. Stephen Cr.*, Articles 19, 20; Arch. Cr. 1239-1249; **SECOND OFFENCE.**

"Previous Litigation"; *V. LITIGATION.*

Where a Lessee has an **OPTION** to purchase at any time before a stated day, on giving so many days or months "Previous NOTICE" to the Lessor, the notice must be given the prescribed length of time before the stated day (*Riddell v. Durnford*, W. N. (93) 30; 37 S. J. 267).

**PREVIOUSLY.** — A Substitutional gift to issue of members of a CLASS "who may previously have died," means, generally, previously to the period of distribution (*Re Wintle*, 1896, 2 Ch. 719; 65 L. J. Ch. 865).

A Power to be exercised "UPON or previously to" Marriage, cannot mean "AFTER" and must be executed before the marriage (*Re Borrowes*, Ir. Rep. 2 Eq. 468: *Sv*, *Re Sampson and Wall*, cited *OR*, p. 1345, and UPON); if it were "AT" marriage, it could be executed as soon as the marriage takes place or at any time after (*Re Creagh*, 25 L. R. Ir. 128).

An employé's agreement in **RESTRAINT OF TRADE** not, at the determination of the service, to be engaged in trade or business with any goods which his employer "shall have dealt in at any time previously, to such determination," is limited to the period of his employment (*Moenich v. Fenestre*, 61 L. J. Ch. 737; 67 L. T. 602); "dealt in," means, dealt in like the employer had done, *e.g.* if the employer is a



Commission Agent, it does not mean bought or sold across the counter, but means dealt in as a Commission Agent (per Smith, L. J., *Id.*). *Vf*, TRADE.

"The sum previously offered," s. 51, Lands C. C. Act, 1845, means, the sum mentioned in the Notice for a Jury given under s. 38 (*R. v. Smith*, 53 L. J. Q. B. 115; 12 Q. B. D. 481; 32 W. R. 275; *Metrop Ry v. Turnham*, 32 L. J. M. C. 249; 14 C. B. N. S. 212). *Vf*, OFFER.

**PRICE.** — *V.* BEST PRICE: FAIR PRICE: HAMMER PRICE: INVOICE PRICE: MARKET VALUE: REGULATION.

"Make a Price"; *V.* POOL: RIGGING: the phrase also means, quoting a price at which a Jobber on the Stock Exchange is prepared to deal.

"Sound Price"; *V.* SOUND, at end.

"Price to be fixed," by VALUATION, of Mains, Pipes, &c. of Water Works; *V.* *Stockton v. Kirkleatham*, 1893, A. C. 444; 63 L. J. Q. B. 56; 69 L. T. 661; 57 J. P. 772: *Cp*, TRAMWAY.

**PRIEST.** — A Priest in the Church of England, "by his ORDINATION, receives authority to preach the Word of God, and to consecrate and administer the Holy Communion in the Congregation where he shall be lawfully appointed thereunto" (Phil. Ecc. Law, 111). *Cp*, CLERGYMAN.

*V.* RESIDENT PRIEST.

**PRIMÂ FACIE EVIDENCE.** — Is, probably, synonymous with SUFFICIENT EVIDENCE (*Galvanized Iron Co v. Westoby*, cited SHAREHOLDER).

*Cp*, CONCLUSIVE EVIDENCE.

**PRIMAGE.** — "This is a small payment made by the owner or consignee of the goods to the Master for his care and trouble, which varies in amount according to the particular trade in which the Ship is engaged" (1 Maude & P. 121: *Va*, Cowel: 10 Encyc. 335). When used with "Primage," — *e.g.* "paying Freight with Primage and Average accustomed," — "AVERAGE" "denotes several petty charges which are to be borne partly by the Ship and partly by the Cargo, *e.g.* towage, beaconage, &c" (Abbott, 531). *V.* PRIVILEGE. As to what will exclude the right to Primage, *V.* *Caughey v. Gordon*, 3 C. P. D. 419.

**PRIMARY.** — "Of Conveyances by the Common Law, some may be called *Original*, or *Primary*, Conveyances, which are those by means whereof the benefit or estate is created or first arises: others are *Derivative*, or *Secondary*, whereby the benefit or estate originally created is enlarged, restrained, transferred, or extinguished. *Original* Conveyances are the following; — Feoffment; Gift; Grant; Lease; Exchange;

Partition: *Derivative* are;—Release; Confirmation; Surrender; Assignment; Defeasance” (2 Bl. Com. 309, 310). *V.* SUPPLEMENTAL.

Primary *Education*; *V.* ELEMENTARY: EDUCATION.

The “Primary” EVIDENCE of a document is itself; “Secondary” evidence of it is, *e.g.* a copy, or the recollection of it by a person who has read it. “The terms ‘primary’ and ‘secondary’ evidence are used by our law in the limited sense of the *original* and *derivative* evidence of written documents, the latter of which is receivable when, by credible testimony, the existence of the primary source has been established and its absence explained” (s. 89, Best on Evidence: *Vh*, *Ib.* Book 3). *Vf.* Rosc. N. P. 1: Taylor on Evidence, 9 ed., 184, 277. *Cp.* PRIMÁ FACIE EVIDENCE.

Primary *Security*; *V.* SECURITY FOR MONEY, at end.

**PRIMATE.**—Is an ARCHBISHOP.

**PRIME BACON.**—*V.* *Yates v. Pym*, 6 Taunt. 446; 2 Marsh. 141: 1 Sm. L. C. 597.

**PRIMER SEISIN.**—*V.* Termes de la Ley: Cowel: 2 Bl. Com. 66, 87.

**PRIMOGENITURE.**—Primogeniture is “the right of the ELDEST among the males to inherit” REAL ESTATE (Wms. R. P. Part 1, ch. 4: *V.* HEIR), or a DIGNITY.

**PRIMUS.**—*V.* ARCHBISHOP.

**PRINCE.**—Quà Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, “‘Prince,’ shall extend to and include, the Prince and Steward of Scotland, and his successors” (s. 3).

“Princes”; *V.* RESTRAINTS OF KINGS.

**PRINCIPAL.**—As to contextual effect of “principal” to cut down a testamentary gift to Personalty; *V.* *Saumarez v. Saumarez*, 4 My. & C. 331: *Stokes v. Salomons*, 9 Hare, 83; 20 L. J. Ch. 343: *Coard v. Holderness*, 20 Bea. 147.

*V.* AGENT.

**PRINCIPAL ACCOUNTANT.**—Quà Exchequer and Audit Department, “‘Principal Accountants,’ shall mean, those who receive ISSUES directly from the Accounts of Her Majesty’s Exchequer at the Banks of England and Ireland respectively; ‘Sub-Accountants,’ shall mean, those who receive advances, by way of Imprest, from Principal Accountants, or who receive Fees or other Public Moneys through other channels” (s. 2, 29 & 30 V. c. 39).

*V.* ACCOUNTANT.

**PRINCIPAL CAUSE.** — “Principal Cause,” “Cross Cause,” s. 34, 24 & 25 V. c. 10; *V. The Rougemont*, 1893, P. 275; 62 L. J. P. D. & A. 121; 70 L. T. 420.

**PRINCIPAL DEBTOR.** — The principal debtor quâ a guaranteed debt, is the person for whom a GUARANTEE is given.

**PRINCIPAL ENGINEER.** — As to who is the “Principal Engineer” of a Ry Co, within a clause referring disputes to arbitration; *V. Re Wunsbeck Ry*, L. R. 1 C. P. 269.

**PRINCIPAL IN FIRST DEGREE.** — “Whoever actually commits, or takes part in the actual commission of, a crime, is a Principal in the First Degree, whether he is on the spot when the crime is committed or not; and if a crime is committed partly in one place and partly in another, every one who commits any part of it at any place is a principal in the first degree” (Steph. Cr. 29). “Whoever commits a crime by an innocent agent is a Principal in the First Degree” (Ib.).

“The general definition of a Principal in the First Degree is, one who is the actor or actual perpetrator of the fact” (Arch. Cr. 11).

*Cp.* ACCESSORY: AID OR ABET.

**PRINCIPAL IN SECOND DEGREE.** — “Whoever aids or abets the actual commission of a crime, either at the place where it is committed or elsewhere, is a Principal in the Second Degree in that crime.

“Mere presence on the occasion when a crime is committed does not make a person a Principal in the Second Degree, even if he neither makes any effort to prevent the offence or to cause the offender to be apprehended, but such presence may be evidence for the consideration of the jury of an active participation in the offence.

“When the existence of a particular intent forms part of the definition of an offence, a person charged with aiding or abetting the commission of the offence must be shown to have known of the existence of the intent on the part of the person so aided” (Steph. Cr. 30).

*Vf.* Arch. Cr. 11; Rose. Cr. 157: AID OR ABET.

**PRINCIPAL MANSION HOUSE.** — *V.* MANSION: FAMILY MANSION.

**PRINCIPAL MONEY.** — A testator possessed of a small amount of cash, but of considerable other property both real and personal, gave as follows, — “I desire that the income arising from my Principal Money shall be paid to my wife, while unmarried, for the support of herself and the education of my children, and, at her death or on her marriage, to be divided between them”; held, that all the personalty, including lease-

**PRIOR INVENTOR.** — *V.* FIRST INVENTOR.

**PRIOR PUBLICATION.** — *V.* PUBLICATION.

**PRIOR USER.** — *V.* ANTICIPATION: PUBLIC USE.

**PRIORITY.** — If a mesne incumbrancer of realty be given a “Priority of Charge” over a prior incumbrancer who has the LEGAL ESTATE, that will not divest the latter of his legal estate (*Doe d. Thompson v. Lediard*, 4 B. & Ad. 137).

**PRISAGE.** — “ ‘Prisage’ is that part or portion that belongs to the King of such merchandises as are taken at sea by way of lawfull prize. And this word you shall finde in the statute of 31 Eliz. c. 5 ” (Termes de la Ley: *Vf*, PRIZE).

“Prisage of *Wines*, mentioned in the statutes of 1 H. 8, c. 5, is a Custome by which the King out of every barke laden with wine under forty Tunne, claims to have two tun at his own price ” (Termes de la Ley).

*Vf*, Cowel: Hale, Concerning Customs, ch. 2 *et seq*: Jacob: 10 Encyc. 402.

As to Customary, as distinguished from Prerogative, prisage; *V.* Hale, De Portibus Maris, ch. 6.

**PRISON.** — “Every place where any person is restrained of his liberty is a Prison: as, if one take SANCTUARY and depart thence, he shall be said to ‘break prison’ ” (*Hobert and Stroud’s Case*, Cro. Car. 210); so, of a place where you are only at liberty on parole (*Ib.*); so, where “un fuit mis in les cippes come suspect de felony, et la vient un autre que luy lessa aler alarge, — ces est felony per common ley, *de frangentibus prisonis* ” (Dyer, 99, pl. 60): *Vf*, GAOL: IMPRISONMENT. Probably, a fuller def of “Prison” is, “a place of restraint for the safe custody of a person to answer any action, personal or criminal ” (Cowel), or of a person convicted of an offence or who for any cause is legally ordered into confinement. *Vf*, 2 Hawk. P. C. ch. 18, s. 4: 10 Encyc. 402–404. So, quà West Indian Prisons Act, 1838, 1 & 2 V. c. 67, “Prison,” comprises, “every gaol, house of correction, hospital, asylum, work-house, and every other place however called, which shall be used, in any of the said Colonies or Plantations, for the confinement of persons charged with, or convicted of, any offence ” (s. 10); *Vf*, 47 & 48 V. c. 31, s. 18, c. 64, s. 16: BREAK OUT: ESCAPE: RESCUE: PRISONER.

“Prison” quà Prison Acts for England; Stat. Def., 28 & 29 V. c. 126, s. 4; 40 & 41 V. c. 21, s. 60: *Vth*, *Prison Commrs v. Middlesex*, 51 L. J. Q. B. 433; 9 Q. B. D. 506; 46 L. T. 861; 30 W. R. 881.

“Prison” quà Prison Acts for Scotland; *V.* 40 & 41 V. c. 53, s. 71: — for Ireland, 40 & 41 V. c. 49, s. 3.

Other Stat. Def. — 62 & 63 V. c. 11, s. 2 (2).

“Local Prison,” Stat. Def., 23 & 24 V. c. 105, s. 4; 61 & 62 V. c. 41, s. 14.

V. CERTIFIED: CONVICT: ORDINARY PRISON: PUBLIC PRISON.

“The Prison Acts, 1865 to 1893,” “The Prisons (Scotland) Acts, 1860 to 1887,” “The Prisons (Ireland) Acts, 1826 to 1884”; V. Sch 2, Short Titles Act, 1896.

“Prison *Authority*” first became a *nomen juris* on the passing of the Prison Act, 1865 (per Ld Watson, *Mullins v. Surrey Treasurer*, 51 L. J. Q. B. 150; 7 App. Ca. 1, *whcv* hereon): Stat. Def., 28 & 29 V. c. 126, s. 5; 29 & 30 V. c. 117, s. 3, c. 118, s. 4; 40 & 41 V. c. 21, ss. 18, 61.—*Scot.* 40 & 41 V. c. 53, s. 71; 41 & 42 V. c. 40, s. 2.

“Authorized Prison”; V. AUTHORIZE.

“Prison CHARITY”; Stat. Def., Prison Charities Act, 1882, 45 & 46 V. c. 65, s. 2.

“Separate Prison *Jurisdiction*”; V. JURISDICTION.

“Prison SERVICE”; Stat. Def., 40 & 41 V. c. 21, s. 36; 56 & 57 V. c. 26, s. 1.—*Scot.* 40 & 41 V. c. 53, s. 43.—*Ir.* 40 & 41 V. c. 49, s. 32; 46 & 47 V. c. 25, s. 1.

“In Prison or in Custody for DEBT”; V. *Re Stoffel*, 3 Ch. 240; 37 L. J. Bank. 4.

**PRISONER.**—V. IMPRISONMENT: PRISON.

“Prisoner,” quâ Prison Act, 1877, 40 & 41 V. c. 21, is “any person committed to prison on remand, or for trial, safe custody, punishment, or otherwise” (s. 57); such a person does not cease to be a “prisoner” by reason of being removed to a lunatic asylum during the term of punishment (*Mews v. The Queen*, 52 L. J. M. C. 57; 8 App. Ca. 339).

Other Stat. Def.—47 & 48 V. c. 64, s. 16; 61 & 62 V. c. 41, s. 11 (3).—*Scot.* 40 & 41 V. c. 53, s. 70.—*Ir.* 20 & 21 V. c. 60, s. 4; 40 & 41 V. c. 49, s. 3.

V. CIVIL PRISONER: CRIMINAL PRISONER: MAINTENANCE.

A person in PENAL Servitude, is a “Prisoner in a Prison,” s. 1, 9 & 10 V. c. 66 (*R. v. Potterhanworth*, 1 F. & E. 262; 28 L. J. M. C. 56; 7 W. R. 106; 32 L. T. O. S. 158, reviewing *R. v. Salford*, 12 Q. B. 106; 17 L. J. M. C. 170; *R. v. Pott Shrigley*, 12 Q. B. 143; 18 L. J. M. C. 33; *Hartfield v. Rotherfield*, 17 Q. B. 746).

A CHARITY for the “relief or redemption of Prisoners or Captives” (43 Eliz. c. 4), “does not include prisoners for crime, as poachers (*Thrupp v. Collett*, 26 Bea. 125). A bequest for such a purpose is against public policy and void” (1 Jarm. 208, *n*).

**PRIVACY.**—Invasion of, is DAMAGE, p. 456.

**PRIVATE ACT.**—V. PUBLIC ACT: LOCAL ACT OF PARLIAMENT: SEWER: 5 Cru. Dig. Title 33.

## PRIVATE ASSESSM'T 1554 PRIVATE D'G-HOUSE

**PRIVATE ASSESSMENT.**—Quà Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103. “Private Assessment” shall mean, any assessment or charge on individuals for Private Improvement Expenses, or for House Drainage, or otherwise under this Act” (s. 1).

**PRIVATE ASYLUM.**—*V. PUBLIC ASYLUM.*

**PRIVATE BILL.**—Quà Parliamentary Costs Act, 1865, 28 & 29 V. c. 27, “Private Bill,” extends to and includes, “any Bill for a Local and Personal Act” (s. 10).

**PRIVATE BRIDGE.**—“A distinction between a Public and a Private Bridge is taken in 2 Inst. 701, and made to consist principally in the former being built for the common good of all the subjects as opposed to a bridge made for private purposes; and the instance put of a Private Bridge is, a ‘Bridge to a Mill, which A. was bound to maintain over which B. had passage’” (per Ellenborough, C. J., *R. v. Bucks*, 12 East, 202). *V. PUBLIC BRIDGE.*

**PRIVATE CHAPEL.**—*V. PROPRIETARY.*

A Bishop may license a Private Chapel belonging to any College, School, Hospital, Asylum, or Public or Charitable Institution, in his diocese (s. 1, 34 & 35 V. c. 66); ss. 2, 3, of that Act prescribe the status of the Minister of the Chapel and as to the Offertory and Alms, and save the right of the Incumbent of the Parish “to the entire Cure of Souls” throughout his parish “elsewhere than within such Institution and the Chapel thereof.”

*V. PRIVATE HOUSE.*

**PRIVATE CHARITY.**—*V. CHARITABLE PURPOSE.*

**PRIVATE CLUB.**—*V. CLUB.*

**PRIVATE COURT.**—Quà Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, “Private Court,” means, “a Court maintained, or liable to be maintained, by persons other than the Commissioners” under the Act (s. 4).

**PRIVATE DEBTS.**—*V. Re Fleck, Colton v. Roberts*, 57 L. J. Ch. 943; 37 Ch. D. 677; 58 L. T. 624; 36 W. R. 663.

**PRIVATE DRAIN.**—“Single Private Drain,” s. 19, P. H. Act, 1890; *V. DRAIN.*

**PRIVATE DWELLING-HOUSE.**—A covenant requiring a building to be used as a “Private” dwelling-house, or RESIDENCE, only, is broken by its being used as a school, or dancing academy (*Wickenden v. Webster*, 25 L. J. Q. B. 264; 6 E. & B. 387), or as an adjunct to a school,

by taking in the governesses, and some pupils on ordinary paying terms (*Hobson v. Tullock*, 1898, 1 Ch. 424; 67 L. J. Ch. 205; 78 L. T. 224; 46 W. R. 331), or as an institution for educating the daughters of missionaries, or as a club (*German v. Chapman*, 47 L. J. Ch. 250; 7 Ch. D. 271; 37 L. T. 685; 26 W. R. 149), or as an hotel or lodging-house (*Rolls v. Miller*, 53 L. J. Ch. 682; 27 Ch. D. 71), or by using it as an office for receiving orders, putting a trade-blind in one of the windows, e.g. "Coal Office" (*Wilkinson v. Rogers*, 2 D. G. J. & S. 62; 10 Jur. N. S. 5, 162; 12 W. R. 119, 284; *Va, Evans v. Davis*, 10 Ch. D. 747; 48 L. J. Ch. 223; 39 L. T. 391; 27 W. R. 285); but a public auction of the furniture of the house is not a breach of such a covenant (*Reeves v. Cattell*, 24 W. R. 485. *Vf*, AUCTION).

A covenant that every house to be erected shall be "adapted for and used as and for a private residence only" is broken by the erection of a block of Residential Flats (*Rogers v. Hosegood*, cited HOUSE). *V. A.*

An art studio erected away from the house in such a way as, not to be an adjunct thereto, is a breach of a covenant that only "private dwelling-houses" shall be erected (*Patman v. Harland*, 17 Ch. D. 353, 50 L. J. Ch. 642; 44 L. T. 728; 29 W. R. 707); so is the erection of a wall (*Bowes v. Law*, L. R. 9 Eq. 636; 39 L. J. Ch. 483; 22 L. T. 267; 18 W. R. 640): *secus*, of a stable with a bedroom over it (*Russell v. Baber*, 18 W. R. 1021), or even a stable having no bedroom over it, if used solely as an adjunct to the private house, and so of such other mere adjuncts as a green-house, summer-house, or garden tool-house (*Blake v. Marriage*, 37 S. J. 633).

*V. BUILDING : DWELLING-HOUSE : HOUSE : PRIVATE HOUSE : RESIDE.*

**PRIVATE ENDOWMENT.**—"The Irish Church Act, 1869, 32 & 33 V. c. 42, s. 29, describes 'Private Endowments' as 'real or personal property becoming vested in the Commissioners by virtue of this Act, which may consist, or be the produce, of property or moneys given by private persons out of their own resources, or which may consist of, or be the produce of, moneys raised by private subscription.' That section shows that Holmes, J. (*R. v. Galway Infirmary*, 24 L. R. Ir. 233) rightly defined 'Private Endowment' as 'an Endowment contributed by individual members of the public, as distinguished from one originating in either Royal Bounty or in a grant from some Public Fund'; and is inconsistent with the dicta of O'Brien, J., that 'no one would call Subscriptions or Donations from the PUBLIC AT LARGE a Private Endowment,' and that 'Subscriptions are not Endowment'" (per FitzGibbon, L. J., *R. v. Runciman*, 28 L. R. Ir. 559).

*V. ENDOWMENT.*

**PRIVATE ESTATES.**—The "Private Estates of Her Majesty, her heirs or successors," shall mean (unless controlled or confined to a

more limited sense by express words or the context), any manors, messuages, lands, tenements, leases, and hereditaments, and other real or heritable property and estate, of whatsoever tenure the same may be (whether situate or arising in England Scotland or Ireland, or in any other part of Her Majesty's dominions) which have at any time heretofore been *purchased or acquired* by Her Majesty, or shall at any time hereafter be purchased or acquired by Her Majesty, her heirs or successors, out of any moneys issued and applied for the use of her or their Privy Purse, or with any other moneys not appropriated to any public service; And any manors, messuages, lands, tenements, leases, and hereditaments, and other real or heritable property and estate, of whatsoever tenure the same may be (whether situate or arising in England Scotland or Ireland, or in any other part of Her Majesty's dominions) which have *come to Her Majesty*, or shall or may come to Her Majesty, or her heirs or successors, by the gift or devise or disposition of, or by descent inheritance or succession or otherwise from, any of her or their ancestors, or any other person or persons, not being Kings or Queens of this Realm; And any manors, messuages, lands, tenements, leases, and hereditaments, and other real or heritable property and estate, of whatsoever tenure the same may be (and whether situate or arising in England Scotland or Ireland, or in any other part of Her Majesty's dominions) which did or shall *belong to Her Majesty*, or her heirs or successors or to any person or persons in trust for her or them, *at the time of her or their respective accessions* to the crown of this Realm and which, before such accession, she or they respectively might have legally granted, sold, given, devised, disposed, or conveyed" (s. 1, 25 & 26 V. c. 37).

V. CROWN: MAJESTY: QUEEN.

**PRIVATE FOUNDATION.** — *V. R. v. Runciman*, 28 L. R. Ir. 527, 551, 558, 566: *Cp.* PRIVATE ENDOWMENT. V. FOUNDATION.

**PRIVATE FRIEND.** — If a Licensed Person supplies on his premises a dinner to the order of A. the guests at which stop till closing time, the licensed person cannot convert any of such guests into his own "Private Friends" so as to come within the exception of s. 30, Licensing Act, 1874, although it be clearly proved that he *bonâ fide* entertained them after closing hours at his own expense (*Corbet v. Haigh*, 5 C. P. D. 50; 42 L. T. 185; 28 W. R. 430).

**PRIVATE HOTEL.** — A Private Hotel, is "a dwelling-place for persons who wish to live there" (per Stirling, J., *Devonshire v. Simmons*, 39 S. J. 60). V. HOTEL.

**PRIVATE HOUSE.** — An unconsecrated PROPRIETARY Chapel into which strangers are admitted, is not a "Private House" within the 71st of the Canons Ecc., 1604; and to read the Church Service in such a



building is a PUBLIC READING (*Barnes v. Shore*, 1 Rob. Ecc. 382). *Cp.*  
PRIVATE CHAPEL.

*V.* PRIVATE DWELLING-HOUSE.

**PRIVATE IMPROVEMENT.** — “Private Improvement EXPENSES,” s. 150, P. H. Act, 1875; *V. Gould v. Bucup*, 50 L. J. M. C. 44; 44 L. T. 103; 29 W. R. 471; 45 J. P. 325.

**PRIVATE PATIENT.** — *V.* PATIENT.

**PRIVATE PATRON.** — Quia Church Patronage (Scot) Act, 1874, 37 & 38 V. c. 82, “‘Private Patron,’ shall mean and include, all patrons of churches and parishes (whether single or joint), — other than Her Majesty and her royal successors, and Burgh Corporations, Universities, or Trustees constituted Commissioners, Officers, or persons acting in a public capacity” (s. 9).

*V.* PATRON.

**PRIVATE PROPERTY.** — Though s. 1, Melbourne Corporation Act, 14 V. No. 20, gives the Melbourne Corporation a limited control over “Streets, Courts, and Alleys, on Private Property,” and s. 2 renders adjoining or abutting owners or occupiers liable to contribute to the making and repair of such Streets, &c, yet such an owner or occupier has not, by the Act, any right of way over any such Street, &c, for the Act does not alter or affect its ownership or create any rights over it (*Moubray v. Drew*, 1893, A. C. 295; 62 L. J. P. C. 81; 68 L. T. 549).

*V.* PRIVATE ESTATES: PROPERTY.

**PRIVATE PURPOSE.** — *V.* PUBLIC PURPOSE.

**PRIVATE RESIDENCE.** — *V.* PRIVATE DWELLING-HOUSE.

**PRIVATE ROAD.** — *V.* ROAD.

The def of “STREET,” in s. 4, P. H. Act, 1875, includes a Private Road (*Hill v. Wallasey*, 1894, 1 Ch. 133; 63 L. J. Ch. 1).

**PRIVATE STREET.** — Quia Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, “Private Street,” means, “any Street maintained, or liable to be maintained, by persons other than the Commissioners” under the Act (s. 4).

*V.* STREET.

**PRIVATE WAY.** — *V.* WAY: EASEMENT.

**PRIVATELY.** — In order to constitute the offence of “privately stealing,” 10 & 11 W. 3, c. 23, it was necessary that some degree of force was used to come at the goods (*East*, P. C. 641, 642). *V.* 4 Bl. Com. 242.

PRIVATION. — *V.* DEPRIVATION.

PRIVIES. — *V.* PRIVY.

**PRIVILEGE.** — “ ‘Priviledges,’ are liberties and franchises granted to an office, place, towne, or mannor, by the Kings great charter, letters patents, or Act of Parliament: as, Toll, Sake, Socke, Infangtheefe, Outfangtheefe, Turne, or Delfe, and divers such like ” (Termes de la Ley). *Vj*, Cowel: Jacob: FRANCHISE.

A “Privilege,” *e.g.* s. 15 (7), 38 & 39 V. c. 60, is an advantage conferred “over and above the ordinary law ” (per Esher, M. R., *Re Miller*, 1893, 1 Q. B. 327; 62 L. J. Q. B. 324): *Cp.* *Winnipeg v. Barrett*, cited PRACTICE.

“Privilege,” R. 19 *a* (2), Ord. 31, R. S. C., is not used in a narrow sense but, extends to every case in which Inspection is sought to be resisted on any ground whatsoever (*Ehrmann v. Ehrmann*, No. 2, 1896, 2 Ch. 826; 65 L. J. Ch. 889; 75 L. T. 243).

“Privilege, Servitude, or Easement”; *V.* *Ramsay v. Blair*, 1 App. Ca. 701.

“Right, Power, or Privilege”; *V.* RIGHT: RIGHTS.

“Privileges and Conditions,” in a power enabling a Co to create New Capital with such “privileges and conditions” as may be thought fit, are words of extensive meaning and authorize the issue of Preference Shares quâ Capital and Dividend (*Harrison v. Mexican Ry*, L. R. 19 Eq. 358; 44 L. J. Ch. 403; 23 W. R. 403; 32 L. T. 82: *vthc*, *Re South Durham Co*, 31 Ch. D. 261; 55 L. J. Ch. 179; 34 W. R. 126; 53 L. T. 928).

In a Shipping Contract whereby the Captain was to receive a stipulated sum in lieu of “Privilege and PRIMAAGE,” Gibbs, C. J., regarding “privilege” “of so indeterminate a signification,” received evidence of conversations between the parties to show in what sense they had used the word (*Birch v. Depeyster*, 1 Starkie, 210).

DOCUMENTS privileged from DISCOVERY; *V.* notes in Ann. Pr. to R. 1, Ord. 31, R. S. C.

GOODS privileged from DISTRESS; *V.* PUBLIC TRADE, and text-books there cited.

**PRIVILEGED COMMUNICATION.** — Quâ Defamation, “the proper meaning of ‘Privileged Communication’ is only this, — That the occasion on which the communication was made rebuts the inference *primâ facie* arising from a statement prejudicial to the character of the plaintiff, and puts it upon him to prove that there was MALICE in fact, *i.e.* that the deft was actuated by motives of personal spite or ill-will, independent of the occasion on which the communication was made” (per Parke, B., *Wright v. Woodgate*, 2 Cr. M. & R. 577, cited *Jenoure v. Delmege*, 1891. A. C. 78; 60 L. J. P. C. 11; 63 L. T. 814; 39 W. R. 388; 55 J. P. 500).

The broad principle is, — “A communication made *bonâ fide* upon any subject-matter in which the party communicating has an *interest*, or in reference to which he has a *duty*, is privileged, if made to a person having a corresponding interest or duty, although it contain crimimatory matter which, without this privilege, would be slanderous and actionable” (per Campbell, C. J., delivering the jdgmt, *Harrison v. Bush*, 25 L. J. Q. B. 29; 5 E. & B. 348): *Vf*, *Newill v. Fine Arts Insree*, 1897, A. C. 68; 66 L. J. Q. B. 195; 75 L. T. 606: *Stuart v. Bell*, 1891, 2 Q. B. 341; 60 L. J. Q. B. 577; 64 L. T. 633; 39 W. R. 612: *Hunt v. G. N. Ry.*, 1891, 2 Q. B. 189; 60 L. J. Q. B. 498: *Pullman v. Hill*, 1891, 1 Q. B. 524; 60 L. J. Q. B. 299: *Clark v. Molyneux*, 47 L. J. Q. B. 230; 3 Q. B. D. 237.

*Vh*, Odgers, chs. 8, 9, 10: Add. T. 180: Rose. N. P. 852: 10 Encyc. 439-449.

**PRIVY.** — As distinguished from a PARTY, a Privy “signifies him that is partaker, or hath an interest, in any Action or Thing” (Cowel); but a person who has a *Privy of Contract* is hardly distinguishable from one who is a Party to the CONTRACT, for it is a “personal privy” (*Walker’s Case*, 3 Rep. 23). Other privities are, —

*Privy of Estate*, *i.e.* where two or more are legally bound together by the same Estate in lands or tenements, *e.g.* Lessor and Lessee, Joint Tenants; and the Privy lasts only so long as the Estate lasts. Thus, an Assignee of a leasehold term, is a Privy in Estate with the Lessor and liable on the lessee’s covenants which RUN WITH THE LAND and arise for performance or observance whilst he is Assignee; but if he assigns to another, then he is not liable on those covenants so far as they remain to be performed or observed (*V. Platt Cov. Part 4, ch. 1, s. 5*). *Vh*, *Mercantile Investment Trust v. River Plate Trust*, cited MODIFICATION. *Note*: Between lessor and lessee there is Privy of Contract and of Estate (*Walker’s Case*, sup); but between lessor and under-lessee there is no Privy at all, — not of Contract for there is none between them, nor of Estate for the under-lessee’s term is one carved out, and different from, that granted by the lessor; therefore, Mortgages of Leaseholds are nearly always by Sub-Demise to prevent the mtgee from being liable on the lessee’s covenants.

*Privy in Blood*, *e.g.* Heir, or between Co-Parceners (*Beverley’s Case*, 4 Rep. 123; Co. Litt. 271 a): *Vf*, *Weeks v. Birch*, 69 L. T. 759; 10 Times Rep. 28.

*Privy in Representation*, *e.g.* Exors or Admors (*Beverley’s Case*, 4 Rep. 123, 124).

*Privy in Tenure*, *e.g.* the Lord by Escheat (Ib. 124).

Privities in *Deed*, in *Law*, in *Right*; *V. Termes de la Ley, Privie*: Co. Litt. 271 a.

*V. PARTY OR PRIVY.*

"Privy to," is used in the sense of having knowledge of, a thing; *V.* PERMIT.

"Actual Fault or Privity"; *V.* ACTUAL FAULT.  
*V.* SUFFICIENT PRIVY.

**PRIVY COUNCIL.**—*V.* s. 12 (5), Interp Act, 1889.  
Other Stat Def.—30 & 31 *V.* c. 125, s. 4; 31 & 32 *V.* c. 37, s. 5;  
45 & 46 *V.* c. 9, s. 4.

**PRIZE.**—A Prize of War, as distinguished from BOOTY, is a belligerent capture of an Enemy's Ship or other property at SEA (*Beak v. Tyrrrell*, Carth. 32). *Vh*, Hall on International Law, 4 ed., 473-480, 761-763; *Bolton v. Gladstone*, 5 East, 155; *Fisher v. Ogle*, 1 Camp. 418. *Vj*, PRISAGE.

Prize Courts; *V.* Part 1, 27 & 28 *V.* c. 25.  
"Prize Money"; Stat. Def., 27 & 28 *V.* c. 36, s. 2.  
Prize Competitions; *V.* LOTTERY.

**PRIZE FIGHT.**—*V.* ASSAULT: AID OR ABET.

**PRO.**—*V.* PER PROCURATION.  
Pro Indiviso Proprietors; *V.* JOINT TENANTS.

**PROBABLE.** — *V.* PRESUMPTION: REASONABLE AND PROBABLE CAUSE: REASONABLE EXPECTATION.

"Probable Consequences," it is submitted, means very nearly the same as those results which are CAUSED BY something else; *V.* *Chibnall v. Paul*, cited NUISANCE.

"Probable Requirements"; Stat. Def., Prison Act, 1877, s. 18.

**PROBATE.**—Stat. Def., 47 & 48 *V.* c. 54, s. 3. *Semble*, in Scotland the equivalent for "Probate" is "Confirmation"; *V.* 46 & 47 *V.* c. 47, s. 2; 55 & 56 *V.* c. 6, s. 6. *Vj*, "Letters of Administration," sub LETTER.

Probate Duty; *V.* ESTATE AND EFFECTS: Stat. Def., Loc Gov Act, 1888, ss. 21, 121; Probate Duties (Scotland and Ireland) Act, 1888, 51 & 52 *V.* c. 60, s. 5; Loc Gov (Scot) Act, 1889, s. 21; 55 & 56 *V.* c. 6, s. 6.

**PROBATIONARY DRAWINGS.**—Where an architect undertakes to supply an intending employer with "Probationary Drawings" of the building or works to be executed, he undertakes, not merely to furnish drawings reasonably fit for approval but, that the employer shall be the sole judge of their fitness (*Moffatt v. Dickson*, 13 C. B. 543; 22 L. J. C. P. 265).

**PROCEDURE.**—"Practice and Procedure"; *V.* PRACTICE.

**PROCEED IMMEDIATELY.**—An obligation for a Ship “to proceed immediately” from Rotterdam to America, is not broken by stopping at an English port to coal (*Forest Oak S. S. Co v. Richard*, 5 Com. Ca. 100). *V. ON OR BEFORE.*

**PROCEED TO SEA.**—*V. Rodrigues v. Melhuish*, 10 Ex. 110; *Wood v. Smith*, L. R. 5 P. C. 451; 43 L. J. Adm. 11; *The Cachapool*, 7 P. D. 217; *The Servia*, 1898, P. 36; 67 L. J. P. D. & A. 36; 78 L. T. 54; 46 W. R. 492; 8 Asp. 353.

**PROCEED WITH ALL CONVENIENT SPEED.**—*V. CONVENIENT SPEED.*

**PROCEEDING.**—“Any Proceeding,” s. 89, Jud. Act, 1873, is equivalent to “any Action,” and does not mean any step in an action (*Pryor v. City Offices Co*, 52 L. J. Q. B. 362; 10 Q. B. D. 504). But in R. 13, Ord. 64, R. S. C., “Proceeding” is obviously used as meaning a step in an action; *i.e.*, *semble*, a step “towards,” and not “after,” judgment (*Houlston v. Woodward*, Law Notes, 1885, p. 15).

“Any other Proceeding in the Action,” R. 1, Ord. 26, R. S. C., means, any proceeding with a view to continuing the action, *i.e.* a step forward, not one backward (*Spencer v. Watts*, 58 L. J. Q. B. 383; 23 Q. B. D. 350; 37 W. R. 676; 61 L. T. 711). *V. STEP.*

“At any stage of the Proceedings”; *V. STAGE.*

“Proceeding,” s. 53, Jud. Act (Ir), 1877; *V. Cassidy v. O’Loughlen*, 4 L. R. Ir. 731.

An Incumbrancer’s Petition for sale by the Land Judges in Ireland, is a “Proceeding” to recover money within s. 8, Real Property Limitation Act, 1874 (*Re Stinson*, 29 L. R. Ir. 490).

An Action is a “Proceeding” within s. 13, 14 & 15 V. c. 99 (*Richardson v. Willis*, 42 L. J. Ex. 15; L. R. 8 Ex. 69); and the word “Proceeding” in s. 6, Ry and Canal Traffic Act, 1854, includes an action (*Manchester, S. & L. Ry v. Denaby Colliery*, 54 L. J. Q. B. 103; 14 Q. B. D. 209; affd in H. L., 55 L. J. Q. B. 181; 11 App. Ca. 97. *Vf, Rhymney Ry v. Rhymney Iron Co*, 59 L. J. Q. B. 414; 25 Q. B. D. 146).

A Counter-Claim is a “Proceeding” within the Condition of a Bond (*Norman v. Bolt*, Cab. & El. 77): *Vf, Chappell v. North*, cited *STEP.*

“Suit or Proceeding”; *V. SUIT.*

“Proceedings,” s. 84, Co. Co. Act, 1888, apply to all Proceedings that may be brought in a Co. Co., including Administration Proceedings (*R. v. Bloomsbury Co. Co.*, 24 Q. B. D. 309; 62 L. T. 286; 38 W. R. 320).

Fees payable on the “Proceedings” in a Co. Co., s. 166, Co. Co. Act, 1888, include those on a Return to a Certiorari (*Batt v. Price*, 1 Q. B. D. 264; 45 L. J. Q. B. 170; 33 L. T. 808; 24 W. R. 318).

“Action or Proceeding,” s. 2, M. W. P. Act, 1893, means, in the latter word, “a proceeding in the nature of an action” (per Davey, L. J.,

*Hood-Barrs v. Catheart*, 1894, 3 Ch. 376; 63 L. J. Ch. 793; 71 L. T. 11). *Vh.* INSTITUTED.

The power given by s. 85. Comp Act, 1862, to restrain "any Action, Suit, or other Proceeding," against a Co in liquidation, extends to quasi-criminal Proceedings, e.g. for recovering penalties for neglecting to publish Statement, Form D., or Annual List of Members, or to make yearly statement of revenue (*Re Briton Medical Assree*, 55 L. J. Ch. 416; 32 Ch. D. 503; 54 L. T. 152; 34 W. R. 390). Going to sale under a *fi. fa.* executed by seizure, is a "Proceeding" within the same section (*Re Perkins Beach Lead Mining Co*, 7 Ch. D. 371; *Re Artistic Colour Printing Co*, 49 L. J. Ch. 526; 14 Ch. D. 502), and so is a Distress for rent (*Re Exhall Mining Co*, 4 D. G. J. & S. 377; *Re Lancashire Cotton Co*, 56 L. J. Ch. 761; 35 Ch. D. 656; *Re Higginshaw Mills*, 1896, 2 Ch. 544; 65 L. J. Ch. 771; Buckl. 261).

A Co's Winding-up Petition, even before any Order thereon, is a "Proceeding" within s. 3, 53 & 54 V. c. 63 (*Re Laxon*, 1892, 3 Ch. 31; 62 L. J. Ch. 79; 67 L. T. 584; 40 W. R. 614).

The Taxation of Costs is a "Proceeding" within the phrase, "no actions, suits, executions, attachments, or other proceedings," shall be continued or commenced without leave (*R. v. L. C. & D. Ry*, L. R. 3 Q. B. 170; 37 L. J. Q. B. 75): *Vh.* *Mid. Ry v. Edmonton*, cited COMMENCEMENT.

A Debtor's Summons, under Bankry Act, 1869, was a "Proceeding" in Bankry (*Ex p. Johnson*, 53 L. J. Ch. 309); but Conveyancing business in a Bankry, is not a "Proceeding" in it, so as to limit the solicitor's costs by the three-fifths rule, if the assets do not exceed £300 (*Re Parfitt*, 58 L. J. Q. B. 428).

The Examination of a Witness under s. 27, Bankry Act, 1883, is a "Proceeding" within R. 12, Bankry Rules, 1886 (*Re Beall*, 1894, 2 Q. B. 135; 63 L. J. Q. B. 425; 70 L. T. 643; *Sc.* *Re Grey's Brewery*, and *Re Norwich Assree*, inf). A Meeting of Creditors for confirming or rejecting a Scheme of Arrangement of a debtor's affairs, is not "a Proceeding in Court" within s. 105 (1), Bankry Act, 1883 (*Re Strand*, 53 L. J. Q. B. 563; 13 Q. B. D. 492).

An Examination of a witness, under s. 115, Comp Act, 1862, was not a "Proceeding" in a matter (*Re Grey's Brewery*, 53 L. J. Ch. 262; 25 Ch. D. 400; *Re Norwich Equitable Fire Assree*, 54 L. J. Ch. 254; 27 Ch. D. 515; *Sc.* *Re Beall*, sup); *secus*, now by Rules 11, 32, Companies (Winding-up) Rules, April, 1892 (*Re Standard Gold Mining Co*, 1895, 2 Ch. 545; 64 L. J. Ch. 790; 73 L. T. 285; 44 W. R. 63).

"The Proceedings of a Co," in a clause giving a shareholder a right to INSPECT, means, "the proceedings of any meeting of the Shareholders, and not the proceedings of the Directors" in their Minute Book (*R. v. Mariquita Co*. 28 L. J. Q. B. 67; 1 E. & E. 289).

An Arbitration under Lands C. C. Act, 1845, is not a "Proceeding in

a Court of Justice" within s. 28, Solicitors Act, 1860 (*Macfarlane v. Lister*, 57 L. J. Ch. 92; 37 Ch. D. 88; 58 L. T. 201).

"Suit or other Proceeding," s. 17, Charitable Trusts Act, 1853; *V. Holme v. Guy*, 5 Ch. D. 901; 46 L. J. Ch. 648. An Action by Charity Trustees to recover Rent-charge, is not a "Proceeding" within s. 41, *lb.* (*Bassano v. Bradley*, 1896, 1 Q. B. 615; 65 L. J. Q. B. 479; 41 W. R. 576; 74 L. T. 553).

"Proceeding," s. 7, Friendly Soc. Act, 1858; *V. Roberts v. Page*, 45 L. J. Q. B. 601; 1 Q. B. D. 476.

An action under ss. 41, 224, Mun Corp Act, 1882, is not a "Proceeding" to which 56 & 57 V. c. 61 (*V. s. 2*) applies; s. 224 is unrepealed (*Humphriss v. Worwood*, 64 L. J. Q. B. 437).

"Other LEGAL PROCEEDING," s. 18 (10), Patents, &c, Act, 1883, refers to a proceeding for the revocation of a patent (*Cropper v. Smith*, 54 L. J. Ch. 287; 28 Ch. D. 148).

The appropriation of Penalties by s. 26, Sale of Food and Drugs Act, 1875, is a "Proceeding" within s. 12, Margarine Act, 1887, 50 & 51 V. c. 29 (*R. v. Titterton*, 1895, 2 Q. B. 61; 64 L. J. M. C. 202; 43 W. R. 603).

A Power of Attorney to commence, &c, "actions, suits, or other Proceedings," confers authority to sign a Bankruptcy Petition (*Ex p. Wallace*, 54 L. J. Q. B. 293; 14 Q. B. D. 22); and, in like manner, the power given to an Official Liquidator (s. 95, Comp Act, 1862), to bring or defend "any action, suit, or prosecution, or other legal Proceeding," includes the power to serve a Bankry Notice (*Re Winterbottom*, 56 L. J. Q. B. 238; 18 Q. B. D. 446; 56 L. T. 168). *Vf*; OTHER, p. 1363.

Proceeding "against" a Co; *V. AGAINST*.

A "Criminal Proceeding" is a far larger term than "Criminal Prosecution" (*Yates v. The Queen*, 54 L. J. Q. B. 258; 14 Q. B. D. 648).

"Proceeding in the Cause"; *V. Bull v. Stanley*, 9 L. J. Ex. 161; 6 M. & W. 398.

Proceedings by Poor Law Guardians against a husband, to compel him to maintain a child which, although born of his wife in wedlock, he refuses to maintain, on the ground that he is not its father, are not "Proceedings instituted in consequence of Adultery," within s. 3, Evidence Further Amendment Act, 1869, 32 & 33 V. c. 68 (*Notttingham v. Tomkinson*, 4 C. P. D. 343; 48 L. J. M. C. 171). *V. INSTITUTED*.

"Like Proceedings"; *V. LIKE*.

"Necessary and Legal Measures and Proceedings"; *V. LEGAL MEASURES*.

*V. ACTION: CIVIL PROCEEDING: CRIMINAL CAUSE: JUDICIAL PROCEEDING: LEGAL PROCEEDING: MATTER: PROCESS*.

Power to Local Authority "to cause any Proceedings to be taken" to abate or prohibit a NUISANCE, s. 107, P. H. Act, 1875, means, ordinary proceedings, and (there being no special damage) does not authorize a

Local Authority to sue in its own name in respect of a PUBLIC NUISANCE which must be by Information in the name of the Attorney General (*Wallasey v. Gracey*, 56 L. J. Ch. 739; 36 Ch. D. 593; *Stoke v. Price*, 1899, 2 Ch. 277; 68 L. J. Ch. 447; 80 L. T. 643; 47 W. R. 663; 63 J. P. 502).

“Where a Lessor *is* proceeding” to enforce Forfeiture, s. 14 (2), Conv & L. P. Act, 1881, means, where his proceedings are pending; not where they have been concluded by judgment (*Rogers v. Rice*, 1892, 2 Ch. 170; 61 L. J. Ch. 573; 66 L. T. 640; 40 W. R. 489; *Lock v. Pearce*, 1893, 2 Ch. 271; 62 L. J. Ch. 582; 68 L. T. 569; 41 W. R. 369).  
V. COMMENCEMENT: IS: PENDING.

**PROCEEDS.**—Money paid under protest is the “Proceeds” of goods and chattels taken under a *fi. fa.* within R. 1 *b*, Ord. 57, R. S. C. (*Smith v. Critchfield*, 54 L. J. Q. B. 366; 14 Q. B. D. 873).

“Proceeds of Sale”; V. SALE.

“Proceeds of such Sale,” s. 1, 9 Anne (Ireland), c. 8; V. *Re M'Carthy*, 7 L. R. Ir. 473; *Davidson v. Allen*, 20 Ib. 16.

In *Entwistle v. Dent* (18 L. J. Ex. 138; 1 Ex. 812), a direction by a Merchant to his Commission Agent to remit the “Proceeds” of goods consigned to the latter, was held to mean that the Agent was to remit as soon as a part of the proceeds considerable enough to be remitted was received, and so on till all was remitted. V. REMIT.

“The Ship, or Proceeds thereof”; V. *James v. Lond. & S. W. Ry.*, cited DAMAGE.

“Net Proceeds”; V. NET.

V. RENTS AND PROFITS.

**PROCESS.**—“‘Proces’ are the writs and precepts that go upon the original . . . . But in actions personals, as in Debt, Trespasse, or Detinue, the processe is a distresse” (Termes de la Ley).

“Process” is the doing of something in a proceeding in a civil or criminal Court; and that which may be done without the aid of a Court is not a “Process.” Therefore, a distraint, whether for rent or any other payment, and whether the right of distress be given by the Common Law or Statute (or, as it should seem, by any other authority), is not a “Process,” nor is it “an Execution or other Legal Process” within s. 13, Bankry Act, 1869, or within the substituted section (s. 10) of the Bankry Act, 1883 (*Blackmore's Case*, 8 Rep. 157 a; *R. v. Crisp*, 1 B. & Ald. 287; 3 Bl. Com. 3, 6, 7; *Ex p. Birmingham & Staffordshire Gas Co., Re Fanshaw*, 40 L. J. Bank. 52; L. R. 11 Eq. 615; *Re Peake, Ex p. Harrison*, 53 L. J. Ch. 977; 13 Q. B. D. 753); so, *semble*, of the registration of a jdgmt under s. 13, 1 & 2 V. c. 110 (*Flueter v. M'Cielland*, 8 C. B. N. S. 357; 29 L. J. C. P. 237; 8 W. R. 497): but a Writ of Sequestration is such a Process (*Re Browne*, 40 L. J. Bank. 46; nom.



*Ex p. Hughes*, L. R. 12 Eq. 137); and a Notice of Appeal from a Bastardy Order is a "Process" within 29 Car. 2, c. 7 (*R. v. Middlesex Jus.*, 17 L. J. M. C. 111).

"All the steps taken in an execution — the seizure and the sale — are, in the natural meaning of the word, comprehended in the term 'Process'" (per Lynch, J., *Re Delahoyd*, 11 Ir. Ch. Rep. 407); therefore, s. 211, Bankry Act, 1849, did not prohibit a Jdgmt Creditor from registering his jdgmt under s. 13, 1 & 2 V. c. 110 (*Flueter v. McClelland*, sup), for such a registration is not "Process."

A Trader-Debtor's Summons was not a "Process" (*Re Dobson*, 8 Ir. Ch. Rep. 391), nor an Adjudication in Bankruptcy thereon (*Re Kerr*, 1 L. R. Ir. 67; *Re M'Veigh*, 5 Ib. 177); nor is a Petition in Bankruptcy (*Ex p. Walker*, *Re Haywood*, 6 D. G. M. & G. 752; *Ex p. Treherne*, *Re Saunders*, 2 D. G. F. & J. 661; *Ex p. Hills*, 3 D. G. & J. 476, n).

A mere notice, though headed with the name of a County Court, is not a "Process" within s. 57, 9 & 10 V. c. 95, repld s. 180, Co. Co. Act, 1888 (*R. v. Castle*, 27 L. J. M. C. 70; 30 L. T. 188); but such a notice, especially if it also has the Royal Arms and (without authority) professes to bear the signature of the Registrar, is a "False Colour or Pretence" of such "Process" (*R. v. Evans*, 26 L. J. M. C. 92; Dears. & B. 236; *R. v. Richmond*, 28 L. J. M. C. 188).

Quà the Summary Jurisdiction Acts, "'Process,' includes, any summons or warrant of citation to appear either to answer any Information or Complaint, or as a Witness; also any warrant of commitment, any warrant of imprisonment, any warrant of distress, any warrant of poinding and sale; also any Order or Minute of a Court of Summary Jurisdiction, or copy of such Order or Minute; also an Extract Decree; and any other document or process (other than a Warrant of Arrestment) required for any purpose connected with a Court of Summary Jurisdiction to be served or executed" (s. 8, 44 & 45 V. c. 24).

Other Stat. Def.—27 & 28 V. c. 99, s. 3; 35 & 36 V. c. 58, s. 62.

V. COMPLAINT: INFORMATION: ORIGINATING SUMMONS: PETITION: PLAINT: PRACTICE: PROCEEDING: WRIT.

"Process of Loading or Unloading"; V. *Stuart v. Nixon*, cited AVERAGE WEEKLY EARNINGS.

"Process," quà Factory and Workshop Act, 1901, "includes the use of any locomotive" (s. 156). V. FACTORY.

"Process" contrasted with "Manufacture"; V. MANUFACTURE.

"Process of Manufacture"; V. STAGE.

V. MANUFACTURING PROCESS.

PROCLAIMED DISTRICT.—V. DISTRICT.

PROCLAMATION.—Stat. Def., Ballot Act, 1872, 35 & 36 V. c. 33, s. 15; Leeward Islands Act, 1871 34 & 35 V. c. 107, s. 3.

**PROCTOR.**—"An Attorney at Law answers to the *Procurator*, or Proctor, of the civilians and canonists" (3 Bl. Com. 25). **V. ATTORNEY:** SOLICITOR: Jacob: 10 Encyc. 484: Phil. Ecc. Law, 937.

**V. PROCURATOR FISCAL.**

**PROCURATION.**—**V. PER PROCURATION.**

"Procuration," Art. 137 in the French Code of Commerce; *V. Bradlough v. De Rin*, L. R. 5 C. P. 473; 18 W. R. 931.

"Procuration Générale et Spéciale" to administer affairs and give promissory notes, authorizes the giving of all kinds of promissory notes; and, in Lower Canada, is not confined to such as, by Art. 181, Civil Code, are required for administration (*Banque de Hochelaga v. Jodoin*, 1895, A. C. 612; 64 L. J. P. C. 174).

"'Procurations' are certain sums of money which Parish Priests pay yearly to the Bishop, or Archdeacon, *ratione visitationis*" (Cowel).

**PROCURATOR FISCAL.**—Stat. Def., 17 & 18 V. c. 80, s. 76; 28 & 29 V. c. 56, s. 2; 32 & 33 V. c. 87, s. 2; 50 & 51 V. c. 35, s. 1; 58 & 59 V. c. 36, s. 7.

**PROCURE.**—An obligation to "procure" something to be done by another person, connotes, at any rate, that the obligor is to take steps to procure its being done (per Fry, L. J., *Louther v. Caledonian Ry*, 1892, 1 Ch. 73; 61 L. J. Ch. 108).

In such a phrase as "procuring, enticing, and persuading," e.g. a wife to absent herself from her husband, "'procuring' is certainly persuading with effect" (per Willes, C. J., *Winsmore v. Greenbank*, Willes, 582, 583); the learned judge also said, "Whether 'enticing' goes so far or not I will not, nor need, determine."

Gifts, &c, "to *endeavour* to procure the Return" of a Member of Parliament, s. 2 (3), 17 & 18 V. c. 102, are Bribery, though given only on a test ballot, and to secure a person being adopted as the candidate of a particular party (*Britt v. Robinson*, L. R. 5 C. P. 503; 23 L. T. 188; nom. *Brett v. Robinson*, 39 L. J. C. P. 265).

A person, even though he be the Election Agent, does not "induce or procure" a prohibited person to vote at an election, within s. 9, 46 & 47 V. c. 51, by merely having the opportunity to prevent the vote but doing nothing (*Stepney*, 4 O'M. & H. 178).

"Procure himself to be arrested, or his goods, &c, attached, sequestered, or taken in execution," 6 G. 4, c. 16, s. 3; 12 & 13 V. c. 106, s. 67:—This phrase imported an intent *on the part of the alleged bankrupt* to defeat or delay his creditors, and did not include a *fi. fa.* on a default judgment (*Gibson v. King*, C. & M. 458), or on a Warrant of Attorney (*Gore v. Lloyd*, 12 M. & W. 463; 13 L. J. Ex. 366). In the latter case Abinger, C. B., said, "It might just as well be argued, that any step which any defendant voluntarily takes in a cause, is a pro-

curing of the judgment and execution against him, as that the giving of this warrant of attorney, and the entering up judgment upon it, was a procuring by this person of his goods to be taken in execution."

By false pretences to "procure" a Woman or Girl to have unlawful carnal connexion, s. 3 (2), 48 & 49 V. c. 69, does not merely mean to act as a pimp or pandar to induce her to have connexion with another, but, means, "procure" in its ordinary sense of to obtain, cause, or bring about, a connexion, which may be with the offender himself (per Hall, Recorder of London, *Anon.*, 42 S. J. 444: *Cp.*, *R. v. Jones*, cited ANOTHER).

Commission on Loan "procured"; *V. Fisher v. Drewett*, 48 L. J. Ex. 32; *Green v. Lucas*, 33 L. T. 584.

Authority to House or Estate Agent to "procure" or "find" a purchaser and "negotiate" a sale, does not, of itself, authorize him to enter into a contract binding his principal (*Chadburn v. Moore*, 61 L. J. Ch. 674; 67 L. T. 257; 41 W. R. 39; *Hamer v. Sharp*, 44 L. J. Ch. 53; L. R. 19 Eq. 108); *secus*, of an authority to "sell," even though the subject-matter be Realty (*Rosenbaum v. Belson*, 1900, 2 Ch. 267, 69 L. J. Ch. 569; 48 W. R. 522). An authority to "sell," "seems to me to mean 'I authorize you to *make* some one a purchaser'; but an authority to "find a purchaser," means, "I authorize you to find some one who is willing to *become* a purchaser'" (per Buckley, J., *Ib.*). *Cp.* INTRODUCE: TREAT AND VIEW.

V. CAUSE OR PROCURE: COUNSEL OR PROCURE: INDUCE: OBTAIN.

#### PROCUREMENT.—V. ACTS: COLLUSION.

PRODUCE.—"The 'Produce' of *Capital* employed in trade is, all that the Capital produces; *i.e.* whether in the shape of interest or profits allowed" (per Wood, V. C., *Johnston v. Moore*, 27 L. J. Ch. 455, 456): and accordingly, a direction to pay to A. for life "the Rents, Dividends, and Produce," of an estate consisting partly of Capital in a partnership, will give to A. the profits on that Capital, so long as the Capital is properly employed in the business of partnership (*S. C.*: *Vf.*, *Straker v. Wilson*, 40 L. J. Ch. 630; 6 Ch. 503; *Re Hammersley*, 81 L. T. 150). So, where there is a bequest of Residuary Personalty with a direction to sell and invest and to pay the income of such investments to A. for life, with remainders over; and then there is a power to POSTPONE sale with a direction that, until sale, "the Yearly Produce" of the personalty "shall be deemed Annual Income"; A. is entitled to so much income, and no more, as the property in its actual state produces (*Rowlls v. Bebb*, 1900, 2 Ch. 107; 69 L. J. Ch. 562; 82 L. T. 633; 48 W. R. 562). In these and such like cases (*Vh.* *Jarm.* ch. 19, s. 3), the Rule in *Howe v. Dartmouth* (7 Ves. 137; *White & Tudor*, 68) is displaced,—a Rule which lays down, as a general proposition, Where personal property is be-

queathed for Life, with remainders over, it is to be converted, or is to be considered as converted, and the proceeds invested, the Tenant for Life being entitled to income on the capital as so ascertained or assumed whether it be against his interest or in his favour (*Rowlls v. Bebb*, sup),—an exception being a REAL SECURITY which will be retained in specie if, after enquiry, such retention is seen to be for the benefit of all parties.

V. PROFITS : RENTS : INTEREST.

In a *Charter-Party* containing an agreement to ship at A. “a full cargo of Produce,” “Produce” means, “anything produced by the country in the neighbourhood of the port of lading, and being an ordinary subject of importation” (per Maule, J., *Warren v. Peabody*, 19 L. J. C. P. 46 ; 8 C. B. 800). Cp, MERCHANDIZE.

“The expression ‘Produce’ of Mines or Minerals, does not, necessarily, mean Produce in its native state: Coke may be such Produce, although by combustion its chemical nature is changed” (MacS. 19, citing *Bowes v. Ravensworth*, 15 C. B. 518, 523 ; 24 L. J. C. P. 73 ; 3 W. R. 241 ; 24 L. T. O. S. 257).

V. PRODUCT : PRODUCTION.

“To produce” a thing to a person, *semble*, means, to show it to him personally, and does not involve the idea that the possession of it is to be parted with ; for the holder of a Bill of Sale to ask the grantor to send him the last Receipt for Rent, is not to ask the grantor to “produce” it to him within s. 7 (5), Bills of S. Act, 1882 (*Ex p. Wickens*, cited MAINTENANCE, at end). Vj, REASONABLE EXCUSE.

*Semble*, a Vendor does not “produce” a GOOD TITLE until he has verified it (*Parr v. Lovegrove*, 6 W. R. 709).

Vendor shall not be required “to produce” Title ; V. INVESTIGATING.

V. PRODUCTION.

**PRODUCED.**—“Produced” is a word “which has not got any exact legal meaning, but which requires to have an interpretation placed upon it in the statute in which it is used” (per Rigby, L. J., *Hanfstaengl v. American Tobacco Co*, 1895, 1 Q. B. 347 ; 64 L. J. Q. B. 282 ; 71 L. T. 864 ; 43 W. R. 261).

By s. 11, International Copyright Act, 1886, 49 & 50 V. c. 33, “‘produced’ means, as the case requires, published or made, or performed or represented.” Reading that in connection with the Berne Convention of 5th Sep 1887 (which prescribes that the Country of Origin of a Literary or Artistic Work is that in which it is “first published”), a PAINTING is “produced” (or, synonymously, “first produced”) within the Act in the country, not where it is “made” but, where it is “first published” (*Hanfstaengl v. American Tobacco Co*, sup, approving *Hanfstaengl Art Co v. Holloway*, 1893, 2 Q. B. 1 ; 62 L. J. Q. B. 347 ; 68 L. T. 676 ; 57 J. P. 407, and disapproving *Fishburn v. Hollingshead*, 1891, 2 Ch. 371 ; 60 L. J. Ch. 768 ; 64 L. T. 647). V. PUBLICATION.

“*Lawfully produced*,” proviso to s. 6 of Act just cited, means, produced “without contravening any existing Copyright” (per Smith, J., *Moul v. Groenings*, 1891, 2 Q. B. 443; 60 L. J. Q. B. 718).

**PRODUCT.** — “Corn, Grass, or other *Product*,” growing on land, 11 G. 2, c. 19; young trees are not distrainable under these words (*Clark v. Gaskarth*, 8 Taunt. 431). *V.* OTHER.

*V.* PRODUCE.

**PRODUCTION.** — “Plant, Root, Fruit, or *Vegetable Production*, growing in a garden, orchard, nursery-ground, hot-house, or conservatory,” s. 42, 7 & 8 G. 4, c. 29, repld s. 36, Larceny Act, 1861, does not include young fruit trees (*R. v. Hodges*, Moo. & M. 341).

*V.* PRODUCE: PRODUCT.

Production of Documents; *V.* DISCOVERY: INSPECTION.

The “Production” of Literary or Artistic Work, quâ International Copyright Act, 1886, is where it is “first published” (*Hanfstaengl v. American Tobacco Co*, cited PRODUCED).

**PRODUCTIVE CAPITAL.** — Fines on granting Leases “applied as Productive Capital,” proviso to R. 2 (5), Sch A, 5 & 6 V. c. 35, imports (under the words “applied” and “capital”) some element of permanence; therefore, a deposit at a bank is not within the proviso so as to exempt the money from Income Tax (*Mostyn v. Loudon*, 1895, 1 Q. B. 170; 64 L. J. Q. B. 106; 71 L. T. 760; 43 W. R. 330).

**PROFANENESS.** — “Profaneness” in Sunday Observance Act, 1780, 21 G. 3, c. 49, is used in the classical sense of “non-religious” (per Denman, as Counsel, in *Baxter v. Langley*, 38 L. J. M. C. 5).

*Cp.* BLASPHEMY.

Bye Law against Profane or OBSCENE language; *V.* *Strickland v. Hayes*, and *Thomas v. Sutters*, cited PEACE.

**PROFESS.** — *V.* PRETEND.

**PROFESSED EXERCISE.** — *V.* PURPORTING.

**PROFESSED GAMBLER.** — “The phrase ‘Professed Gambler’ would not, *per se*, be actionable” (per Watson, B., *Barnett v. Allen*, 27 L. J. Ex. 412; 3 H. & N. 376; 31 L. T. O. S. 217). *V.* BLACK: CHEAT: GAMBLER.

**PROFESSED IN RELIGION.** — *V.* ENTERED IN RELIGION.

**PROFESSION.** — *V.* APPRENTICE: CALLING: CARRY ON.

**PROFESSIONAL CHARGES.** — In a clause that a Solicitor Trustee may make “the Usual Professional Charges,” — though accom-

panied by a special direction that he shall be entitled to the same remuneration for all business done, attendances, time, and trouble, as if (not being a Trustee) he were employed by the Trustees, — the Solicitor Trustee is only entitled to charge for business of a strictly professional character (*Re Chapple, Newton v. Chapman*, 27 Ch. D. 584; *Re Loftus-Otway*, 100 Law Times, 609, 610; *Re Bedingfield*, 57 L. T. 332; *Harbin v. Darby*, 28 Bea. 325; 29 L. J. Ch. 622; 8 W. R. 512; *If, Clarkson v. Robinson*, 1900, 2 Ch. 722; 69 L. J. Ch. 859; 83 L. T. 164; 48 W. R. 698). But where a testator directed that a Solicitor Trustee might make “the Usual Professional, or other proper and reasonable, charges for all business done and Time expended in relation to the trusts of the Will, whether such business should be usually within the business of a Solicitor or not”; held, that a Solicitor Trustee might charge for business not strictly of a professional character (*Re Ames, Ames v. Taylor*, 25 Ch. D. 72). *If, Re Fish*, 1893, 2 Ch. 413; 62 L. J. Ch. 977; 69 L. T. 233, *whc* sets out a full clause hereon, and on *whew, Clarkson v. Robinson*, *sup.*

*Cp.*, LEGACY, last par but one.

#### PROFESSIONAL RESPECT. — *V.* INFAMOUS CONDUCT.

**PROFESSIONAL SERVICES.** — The provision in s. 73 (2), Bankry Act, 1883, that where a Trustee in a bankry is a Solr he may contract that his remuneration “shall include all Professional Services,” is governed by the preceding sub-section so that he cannot contract that his remuneration shall be his proper professional charges for work done; his remuneration as Trustee must be in the nature of a commission or percentage which he may contract shall be put at a fair amount to include “all professional services” (*Re Wayman*, 59 L. J. Q. B. 28; 24 Q. B. D. 68).

**PROFESSOR.** — “Professor” of the Universities of Oxford and Cambridge; Stat. Def., 17 & 18 V. c. 81, s. 48; 19 & 20 V. c. 88, s. 50; 25 & 26 V. c. 26, s. 11; 40 & 41 V. c. 48, s. 2.

**PROFIT.** — Policy on “Profit on Cargo,” means, the improved value of an actually loaded cargo at its destined port (*Halhead v. Young*, 6 E. & B. 324, 325; *Royal Exchange Assure v. M<sup>c</sup>Swiney*, 14 Q. B. 646). *If, Chope v. Reynolds*, 5 C. B. N. S. 642.

Policy on “Profit on Charter”; *V. Asfar v. Blundell*, 1896, 1 Q. B. 123; 65 L. J. Q. B. 138; 73 L. T. 648; 44 W. R. 130; 1 Com. Ca. 71, 185.

A Solicitor’s profit is “what he receives on his Bill of Costs beyond his DISBURSEMENTS out of Pocket” (per Esher, M. R., *Re Gallard*, 65 L. J. Q. B. 199; 1896, 1 Q. B. 68); therefore, if, being a member of a Committee of Inspection in Bankry, he does work in the bankry without

the SANCTION of the Court, no allowance can be made him quâ general office expenses (*S. C.*).

Profit Costs; *V. Mortgagee's Legal Costs Act, 1895, 58 & 59 V. c. 25: Vth, Day v. Kelland, 1900, 2 Ch. 745; 70 L. J. Ch. 3. Cp, PROFESSIONAL CHARGES: THESE PRESENTS.*

"Office of Profit," "Place of Profit"; *V. OFFICE: PLACE.*

*Sewer* made for Profit; *V. OWN PROFIT.*

*Society* "for any Purpose of Profit"; *V. PURPOSE.*

*Trade, &c.*, "by which the occupier seeks a Livelihood or Profit," s. 13 (2), 41 & 42 V. c. 15; *V. TRADE.*

*V. PROFITS: SECRET PROFIT.*

**PROFIT À PRENDRE.**— "A Profit à Prendre, is a right vested in one man of entering upon the land of another and taking therefrom a profit of the soil" (Add. T. 284), *e.g.* a Right of COMMON.

The leading case on whether a grant is (1) a Personal License of Pleasure, or (2) a Profit à Prendre, is *Norfolk v. Wiseman*, Year Book, 12 Hen. 7, 25; 13 Hen. 7, 13, pl. 2: *Vh, Wickham v. Hawker*, 10 L. J. Ex. 153; 7 M. & W. 72: *Manning v. Wasdale*, 5 A. & E. 758; 6 L. J. K. B. 59: *Rave v. Ward*, 4 E. & B. 702; 24 L. J. Q. B. 153; 3 W. R. 240; 24 L. T. O. S. 270: *Sutherland v. Heathcote*, cited LIBERTY OF WORKING.

*V. FREE LIBERTY: HUNTING: SERVANTS: TENEMENT.*

*Vh, Add. T. 284 et seq; Gale, 1 et seq; Hall on Profit à Prendre and Rights of Common: 10 Encyc. 486-489.*

**PROFIT CHARGES.**— *V. PROFESSIONAL CHARGES: PROFIT: USUAL AGENCY TERMS.*

**PROFIT RENT.**— *V. Langley v. Langley, 6 L. R. Ir. 277.*

**PROFITABLE.**— *V. BENEFICIAL.*

**PROFITS.**— "Are 'Profits' anything more than an excrescence upon the value of the Goods beyond the prime cost?" (per Ellenborough, C. J., *Eyre v. Glocer*, 16 East, 220; 3 Camp. 276); expected profits may be insured by an Open POLICY (*S. C.*).

The Profits of a *Company*,— *e.g.* those out of which a Dividend may be declared,— are not such sum as may remain after the payment of every debt but, are the excess of Receipts (including extraordinary receipts, *Lubbock v. British Bank of S. America*, 1892, 2 Ch. 198; 61 L. J. Ch. 498) over Expenses properly chargeable to revenue account (*Mills v. Northern Ry of Buenos Ayres Co*, 5 Ch. 621, 631: *Vf, Birch v. Cropper*, 14 App. Ca. 525; 59 L. J. Ch. 122, on *wher, Re Bridgewater Nav.*, 1891, 2 Ch. 317, 60 L. J. Ch. 415: *Lee v. Neuchatel Co*, 58 L. J. Ch. 408; 41 Ch. D. 1). Lost Capital need not, necessarily, be made good before estimating Profits out of which dividends may be

declared (*Lee v. Neuchatel Co*, sup: *Bolton v. Natal, &c, Co*, 1893, 2 Ch. 124; 61 L. J. Ch. 281; *Verner v. General & Commercial Trust*, 1894, 2 Ch. 239; 63 L. J. Ch. 456; 70 L. T. 516; *Wilmer v. McNamara*, 1895, 2 Ch. 245; 64 L. J. Ch. 516; *Re Kingston Cotton Mills Co, No. 2*, 65 L. J. Ch. 290, 673); but, though not absolutely necessary, care should be taken to properly write down Bad Debts (*Re National Bank of Wales*, 1899, 2 Ch. 629; 68 L. J. Ch. 634). *Vh*, and as to working out a Profit and Loss Account, Buckl. 563: *Va*, Hamilton, ch. 24.

“Profits available for Dividend”; *V. AVAILABLE: REALIZED.*

“Profits of EACH Year”; *V. CUMULATIVE: Dent v. London Trams*, 50 L. J. Ch. 196.

In a Winding-up, “Profits” means, the balance, if any, which remains after payment of liabilities and re-payment of the capital brought into the undertaking, with the accretions of such capital (*Birch v. Cropper*, sup: *Re Bridgewater Nav.*, sup); but, even in a Winding-up, Preference Shareholders are entitled (in priority to paid-up capital) to be paid their arrears of dividends out of a balance of the revenue account, though such profits were undivided at the date of the liquidation (*Bishop v. Smyrna & Cassaba Ry*, 1895, 2 Ch. 265; 72 L. T. 773; 64 L. J. Ch. 617: *Vf*, *Ib.* 1895, 2 Ch. 596; 64 L. J. Ch. 806; 73 L. T. 337).

*V. DIVIDEND: IN HAND: NET.*

Under the *Income Tax Act*, 1842, ss. 60-100, the “Profits” assessable “is the amount got from the property (or business) *minus* the cost of getting it” (per Jessel, M. R., *Mersey Docks v. Lucas*, 51 L. J. Q. B. 116; 32 W. R. 34: *Vf*, *Erichsen v. Last*, 51 L. J. Q. B. 86; 8 Q. B. D. 414; *Russell v. Town and County Bank*, 58 L. J. P. C. 8; 13 App. Ca. 418). The decision in *Mersey Docks v. Lucas* also laid down that excess of earnings over expenditure was “Profits,” even though such excess had to be applied in reduction of a past debt. Nor (apart from special exemption) is it material, for the purpose of the Income Tax, that the “Profit” is earned by a Public Company, or by a Board (*e.g.* Burial Board) on behalf of parochial ratepayers (*Mersey Docks v. Lucas*, 51 L. J. Q. B. 114; 53 *Ib.* 4; 8 App. Ca. 891: *Puddington Burial Board v. Inl. Rev.*, 53 L. J. Q. B. 224; 13 Q. B. D. 9), or by a Hospital charging its richer, for the benefit of its poorer, patients (*St. Andrew's Hospital v. Shearsmith*, 19 Q. B. D. 624), or by Trustees who have to distribute the whole of the profits in charitable purposes (*Baptist Trustees v. Whitwell*, 7 Times Rep. 164). After a remarkable conflict of judicial opinion, and ultimately by the decision of the H. L. (Lords Blackburn and Fitzgerald; Lord Bramwell, diss.), it has been ruled that bonuses by an Insurance Company to participating policy-holders are “Profits” chargeable with Income Tax (*Last v. London Assree*, 55 L. J. Q. B. 92; 10 App. Ca. 438; 32 W. R. 233: *Sethe, New York Insree v. Styles*, 59 L. J. Q. B. 291; 14 App. Ca. 381; 61 L. T. 201: and on the comparison of those two cases, *V. Equitable Assree v. Bishop*, 1899, 2 Q. B. 439; 68 L. J. Q. B. 772; 80 L. T. 728, affd 1900, 1 Q. B.



177; 69 L. J. Q. B. 252; 81 L. T. 693; 48 W. R. 341. *Va, Mersey Loan Co v. Woolton*, 4 Times Rep. 164; 2 Tax Cases, 316; *Gresham Assree v. Styles*, 1892, A. C. 309; 62 L. J. Q. B. 41; 67 L. T. 479).

*Note.* As to what losses and expenses may be deducted in order to ascertain Taxable Profits; *V. Watney v. Musgrave*, 49 L. J. Ex. 493; 5 Ex. D. 41, with *whc* compare *Reid's Brewery Co v. Male*, 1891, 2 Q. B. 1; 60 L. J. Q. B. 340; 64 L. T. 294; 39 W. R. 459; 55 J. P. 216; *vtble* for other decisions hereon. Profits are none the less assessable to Income Tax because the business is carried on for the Benefit of Creditors (*Armitage v. Moore*, 1900, 2 Q. B. 363; 69 L. J. Q. B. 614; 82 L. T. 618).

As to interest on a Company's Investments; *V. Clerical Med. & Gen. Insree v. Carter*, cited YEARLY INTEREST.

Local Coal Duties are "PROPERTY or Profits" assessable to Income Tax (*A-G. v. Black*, L. R. 6 Ex. 308; 40 L. J. Ex. 194; 19 W. R. 1114).

In the case of Mines, the cost of sinking pits is not, generally speaking, deductible from the gross Profits (*Coltness Co v. Bluck*, 51 L. J. Q. B. 626; 6 App. Ca. 315); nor repayments out of royalties in respect of antecedent losses (*Broughton Co v. Kirkpatrick*, 54 L. J. Q. B. 268; 14 Q. B. D. 491).

Costs of collecting, are not deductible from Manorial Rates and Dues (*Norfolk v. Lamarque*, 24 Q. B. D. 485; 59 L. J. Q. B. 119).

A personal eleemosynary gift to a meritorious Curate, *e.g.* a donation, *honoris causa*, for having worked hard for 15 years, from the Curates' Augmentation Fund, is not "Profits or Gains" assessable to Income Tax (*Turner v. Curson*, 58 L. J. Q. B. 131; 22 Q. B. D. 150); *secus* of an allowance from that Fund in augmentation of the income of a benefice or a curacy, made to a clergyman in virtue of his office (*Herbert v. McQuade*, 1902, 2 K. B. 631; 71 L. J. K. B. 884).

*V. ARISING: BUSINESS: CARRY ON*, p. 264: ELSEWHERE: "Foreign Possessions," sub FOREIGN: GAINS: INCOME: POSSESSIONS.

"Profits" of a *Building Society*; *V. Fleming v. Self*, Kay, 518; 2 W. R. 390; 23 L. T. O. S. 63.

"Profits" of a *Partnership*, include the rise in value of partnership assets (*Robinson v. Ashton*, 44 L. J. Ch. 542; L. R. 20 Eq. 25).

As to when an anticipation of Profits in the *Prospectus* of a Co is fraudulent; *V. Bellairs v. Tucker*, cited FALSE REPRESENTATION.

"Rate of Interest varying with the Profits"; *V. Re Vince*, cited DUE ALLOWANCE.

"Share of Profits"; *V. SHARE*.

When trustees, under the powers of a Will, POSTPONE the sale of their testator's business, the net profits realized by their carrying on the business will belong to the person to whom "the Rents, Profits, and Income," of the testator's estate are, by the Will, to be paid during postponement of conversion (*Re Chancellor*, 53 L. J. Ch. 443; 26 Ch. D. 42; *Re*

*Crowther*, 1895, 2 Ch. 56; 64 L. J. Ch. 537; 72 L. T. 762; 43 W. R. 571). *Vf*, PRODUCE.

"If a man seised of lands in fee, by his deed granteth to another the 'profit' of those lands, to have and to hold to him and his heires, and maketh livery *secundum formam chartæ*, the whole land itselfe doth passe; for what is the land but the profits thereof; for thereby vesture, herbage, trees, mines, and all whatsoever parcell of that land doth passe" (Co. Litt. 4 b).

But a Bequest of the Profits of Leaseholds, was held to pass only the profits accruing from the death of the testator (*Tissen v. Tissen*, 1 P. Wms. 503).

"Profits arising in my Will," has been confined to income arising from Realty (*Elgood v. Cole*, 21 L. T. 80).

*Scoble*, "Profits" means, *primâ facie*, "Annual Profits" (1 P. Wms. 418 n).

*Cp*, INCOME.

In *Gordon v. Rutherford* (T. & R. 373; 2 L. J. O. S. Ch. 50) a direction as to a son sharing in the Profits of testator's Business was held not to be operative until after the son was admitted to partnership in the business.

In an Order, against an innocent occupier, to account for "*Rents and Profits*," the latter word means, profits in the nature of rent and as arising from the land, and not such profits as may have been made by carrying on a business, — *e.g.* a colliery, — upon the land (*Re Morewood, Errington v. Morewood*, 29 S. J. 320; W. N. (85) 51).

"Net Profits"; *V*. NET.

*V*. ADVANTAGES: IN RECEIPT: OUT OF THE PROFITS: OWN PROFIT: PROFIT: RENT: RENTS AND PROFITS: SECRET PROFIT.

**PROGENITOR.** — The Progenitors of King Henry 7, held to be synonymous with his Predecessors, and therefore to include Edward 4 (*Meath v. Winchester*, 3 Bing. N. C. 205).

*V*. PREDECESSOR.

**PROGENY.** — *V*. INCREASE.

**PROGRESS.** — "Progress of Manufacture"; *V*. STAGE.

**PROGRESS CERTIFICATE.** — Certificates by an Architect during the progress of works, — called Progress Certificates, — mean, "that the sums advanced shall be accounted for by the contractor on the final settlement between him and the employer: they are to be treated as sums paid on account of whatever the contractor may eventually be entitled to recover, whether for original or additional works" (per Pollock, C. B., *Lamprell v. Billericay*, 18 L. J. Ex. 286; 3 Ex. 305). "The Certificates I look upon as simply a statement of a matter of fact, *viz.*, what was the weight, and what was the contract price, of the materials actually delivered from time to time upon the ground; and the payments

made under those certificates were altogether provisional, and subject to adjustment, or re-adjustment, at the end of the contract" (per Cairns, C., *Tharsis Co v. M·Elroy*, 3 App. Ca. 1045; *Va*, per Ld Blackburn, Ib. 1054, and per Ld Hatherley, Ib. 1048). *Vf*, 1 Hudson, 288-293: CERTIFICATE.

**PROHIBIT.** — *V*. INHIBIT.

**PROHIBITED.** — A Penalty on smuggling "prohibited" goods, may extend to goods prohibited by a subsequent statute (*A·G. v. Snygers*, 1 Price, 182). *Cp*, "Convicted of Felony," sub CONVICTED: FELON.

A person "prohibited from voting by any Statute, or by the Common Law of Parliament," s. 7, Ballot Act, 1872, means, one who, from some inherent or (for the time) irremovable quality in himself or herself, has not the status of a Parliamentary Voter, e.g. a Peer, a Woman, a FELON, or the holder of an Office or Employment which by statute or law incapacitates from voting (*Stowe v. Jolliffe*, L. R. 9 C. P. 734; 43 L. J. C. P. 265; *Doulon v. Halse*, 18 Q. B. D. 421; 56 L. J. Q. B. 41; 35 W. R. 502; 56 L. T. 340); but the prohibition does not include a mere temporary disqualification, e.g. receipt of Parochial Alms, Non-Residence, Non-Occupation, Insufficient Qualification (*Stowe v. Jolliffe*, sup; *Hagward v. Scott*, 5 C. P. D. 231; 49 L. J. C. P. 167; 28 W. R. 988; 41 L. T. 476). *Note*: the disqualification of Police was removed by 50 & 51 V. c. 9, s. 2, and 56 & 57 V. c. 6. *V*. BY LAW: INCAPACITATED.

**PROHIBITED DEGREES.** — The "prohibited degrees of Consanguinity or Affinity" within which marriages are now absolutely void by s. 2, 5 & 6 W. 4, c. 54, are those enumerated in 25 H. 8, c. 22, and 28 H. 8, c. 7 (*R. v. Chadwick*, 17 L. J. M. C. 33; 11 Q. B. 173).

**PROHIBITION.** — *V*. REGULATE.

Quà proceedings by Prohibition; *V*. Shortt on Informations, &c: 10 Encyc. 489-504. *Cp*, QUO WARRANTO.

**PROJECTION.** — A Local Act, one of the objects of which was to keep the pavements clear for passenger traffic, prohibited any Projection, in front of any Building, "over or upon" the pavement: held, that, "over" being used in association with "upon," the prohibition did not forbid a projection so high as not to impede the traffic, and, therefore, that an Oriel Window "over" a pavement, which only impeded the access of light and air to the street, was not prohibited (*Goldstraw v. Duckworth*, 49 L. J. M. C. 73; 5 Q. B. D. 275; 42 L. T. 440; 28 W. R. 504).

"Projection," s. 73 (8), London Bg Act, 1894; *V. Hull v. London Co. Co.*, 1901, 1 K. B. 580; 70 L. J. K. B. 364.

Overhanging Trees or Houses; *V*. NUISANCE: LOP.

*V*. OBSTRUCT.

**PROLONGATION.** — For Prolongation of a Patent, the phrase now is “Extension of Term of Patent”; *V.* EXTENSION.

**PROLONGED EXAMINATION.** — “Cause or Matter requiring any *Prolonged Examination* of documents or accounts, or any *Scientific or Local Investigation*,” s. 57, Jud. Act, 1873; s. 14 (*b*), Arb Act, 1889; — An action to recover Damages for abstracting and heating water from a river is not within these words (*Ormerod v. Todmorden Mill Co*, 51 L. J. Q. B. 348; 8 Q. B. D. 667); nor, speaking generally, is an action for Constructive Total Loss of a Vessel (*Hamilton v. Merchant Mar. Insree*, 58 L. J. Q. B. 544): but a complicated Builder’s Bill, wherein many items are disputed, is within them (*Ward v. Pilley*, 49 L. J. Q. B. 705; 5 Q. B. D. 427). An action relating to the mode of moving a Ship in Doek, having no cargo or ballast, may involve a Scientific Investigation (*Suryng v. N. E. Ry*, 74 L. T. 88).

**PROMISE.** — “ ‘Promise’ is when, upon a valuable consideration, we bind ourselves by our words to do or perform such an act as is agreed upon and concluded, upon which an action may be grounded; whereas, if it be without consideration it is called *Nudum Pactum, ex quo non oritur actio* ” (Cowel). *Cp.* NUDE CONTRACT.

*V.* CONTRACT; OFFER.

**PROMISSORY NOTE.** — “A Promissory Note is an unconditional Promise in Writing made by one person to another, signed by the maker, engaging to pay, ON DEMAND, or at a fixed or DETERMINABLE FUTURE TIME, a SUM CERTAIN in money to, or to the order of, a specified person, or to bearer ” (s. 83, Bills of Ex. Act, 1882). That section further provides that,

“An instrument in the form of a Note payable to maker’s order is not a Note within the meaning of this section unless and until it is indorsed by the maker.

“A Note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

“A Note which is, or on the face of it purports to be, both made and payable within the British Islands, is an INLAND Note. Any other Note is a Foreign Note.”

The provisions of the Act relating to Bills of Exchange apply, generally, to Promissory Notes (s. 89).

As to “specified person” in above def; *V.* *Storm v. Stirling*, cited SECRETARY.

*Cp.* BILL OF EXCHANGE. *Vj.* NEGOTIABLE.

“The expression ‘Promissory Note’ includes, any document or writing (except a bank-note) containing a promise to pay any sum of money ” (s. 33 (1), Stamp Act, 1891, replacing s. 49 (1), Stamp Act, 1870). A document is not within that definition unless it contains a promise to

pay a definite and ascertained sum of money, which promise is substantially the whole contents of the document (*Mortgage Insree v. Inl. Rev.*, 57 L. J. Q. B. 630; 21 Q. B. D. 352; 36 W. R. 833. *Vf*, *British India Steam Nav Co v. Inl. Rev.*, 50 L. J. Q. B. 517; 7 Q. B. D. 165; 44 L. T. 378; 29 W. R. 610; *Brown v. Inl. Rev.*, cited MARKETABLE SECURITY). But a clause in a Promissory Note by two or more that time may be given to either without the other's consent, does not necessitate an Agreement Stamp nor prevent the document from being a good Pro. Note (*Yates v. Evans*, 61 L. J. Q. B. 446; 66 L. T. 532); but, *semble*, the exact opposite was held in *Kirkwood v. Smith* (1896, 1 Q. B. 582; 65 L. J. Q. B. 408).

*Vf*, as to what is a Promissory Note, *Levds v. Lancashire*, 2 Camp. 205; *Bolton v. Dugdale*, 4 B. & A. 619; 2 L. J. K. B. 104; *Green v. Davies*, 4 B. & C. 235; 3 L. J. O. S. K. B. 185; *Smith v. Dean*, 81 L. T. 755; 69 L. J. Q. B. 331; Byles.

V. PART.

#### PROMONTORY. — V. POINT.

**PROMOTER.** — “First, Cockburn, C. J., in *Twyeross v. Grant* (46 L. J. C. P. 636; 2 C. P. D. 469), defined a Promoter to be ‘one who undertakes to form a COMPANY with reference to a given project, and to set it going, and who takes the necessary steps to accomplish that purpose.’ Bowen, L. J., in *Whaley Bridge Printing Co v. Green* (49 L. J. Q. B. 326; 5 Q. B. D. 109), says, ‘The term, Promoter, is a term not of law but of business, usefully summing up in a single word a number of business operations, familiar to the commercial world, by which a Company is generally brought into existence.’ Then Lindley, L. J., in *Emma Silver Mining Co v. Lewis* (48 L. J. C. P. 504; 4 C. P. D. 396), says, ‘With respect to the word Promoter, we are of opinion that it has no very definite meaning. As used in connection with Companies, the term, Promoter, involves the idea of exertion for the purpose of getting up and starting a Company, or what is called floating it, and also the idea of some duty towards the Company imposed by or arising from the position which the so-called Promoter assumes towards it.’ All this is by no means satisfactory” (per Bacon, V. C. *Re Great Wheal Polygooth Co*, 53 L. J. Ch. 46; 49 L. T. 20; 32 W. R. 107; 47 J. P. 710). Referring to the passage in the judgment of Lindley, L. J., which is italicised in the above extract, the V. C. went on to observe, “That is the most satisfactory of all these varying definitions that I have been able to find.”

*Vf*, Buckl. 622: *Lydney Iron Co v. Bird*, 55 L. J. Ch. 387; 33 Ch. D. 85; 55 L. T. 558; 34 W. R. 749; *Re Coal Economising Gas Co*, 44 L. J. Ch. 323; 1 Ch. D. 182; *Rooney v. Palmer*, 9 Ir. L. R. 327; *Re Olympia*, 67 L. J. Ch. 433; 1898, 2 Ch. 153; 78 L. T. 629; 5 Manson, 139.

“Promoter” has received statutory definition in and for the following Acts; —

Directors Liability Act, 1890, 53 & 54 V. c. 64; *V. s.* 3 (2):

General Pier and Harbour Act, 1861, 24 & 25 V. c. 45; *V. s.* 2:

Military Tramways Act, 1887, 50 & 51 V. c. 65; *V. s.* 12:

Parliamentary Costs Act, 1865, 28 & 29 V. c. 27; *V. s.* 9:

Railways Construction Facilities Act, 1864, 27 & 28 V. c. 121; *V. s.* 2.

“‘The Promoters of the UNDERTAKING,’ shall mean, the parties (whether Company, Undertakers, Commissioners, Trustees, Corporations, or Private Persons) by the Special Act empowered to execute the Works or Undertaking” (s. 2, Lands C. C. Act, 1845); and as the phrase is used in s. 133 of that Act, *V. Wheeler v. Metrop Bd of Works*, L. R. 4 Ex. 303; 38 L. J. Ex. 165: *Stratton v. Metrop Bd of Works*, L. R. 10 C. P. 76; 44 L. J. M. C. 33: *Bristol Poor v. Bristol*, 18 Q. B. D. 549; 56 L. J. Q. B. 320. *Cp.* UNDERTAKER.

“The Promoters of the Undertaking,” quā Burgh Harbours (Scot) Act, 1853, 16 & 17 V. c. 93, means, “the Town Council of any Burgh” in which the Act is adopted (s. 6): — quā Post Office (Land) Act, 1881, 44 & 45 V. c. 20, the phrase means “the Post-Master General” (subs. 2 a, s. 3): — and quā Vestries Act, 1850, 13 & 14 V. c. 57, it means “the Churchwardens and Overseers, or Overseers, as aforesaid” (s. 4).

“Promoters” of a TRAMWAY, s. 42, Tramways Act, 1870, 33 & 34 V. c. 78; *V. Re Pontypridd Tramways Co*, 58 L. J. Ch. 536; 37 W. R. 570: ss. 43, 44, 1b., *V. Marshall v. South Staffordshire Tramways Co*, 1895, 2 Ch. 36; 64 L. J. Ch. 481; 72 L. T. 542; 43 W. R. 469.

“‘Promoters,’ or rather ‘Promoters,’ are those who, in Popular and Penal actions, do prosecute Offenders in their own name and the Kings, having part of the Fines or Penalties for their reward” (Cowel). *V.* POPULAR ACTION: PENAL.

**PROMOTION.** — In order to acquire property “by Promotion,” *e.g.* a BENEFICE or OFFICE, ss. 18, 26, Rep People Act, 1832, s. 14, 13 & 14 V. c. 69, the property must accrue, as of right, by virtue of the promotion itself (*Foster v. Mulhall*, 10 Ir. Com. Law Rep. 532).

Promotion of Education; *V.* EDUCATION: of Science; *V.* SCIENCE.

*V.* GODLY LEARNING.

Promotion Money; *V.* FORMATION EXPENSES.

**PROMPT DISPATCH.** — “Prompt Dispatch in loading,” in a Charter-party; *V. Elliott v. Lord*, 52 L. J. P. C. 23; 48 L. T. 542: 5 Asp. 63: *whc, semble*, shows that delay, even though caused by an insufficiency of cargo at the Port of Loading, is a breach of an obligation for “Prompt Dispatch.”

“A contract to give ‘Prompt Dispatch’ has been held in the United States to require the Charterer to have a berth ready at once (87 Fed. Rep. 935)”: Carver, 695, 696, *u.*

**PROOF.** — “The word ‘Proof’ seems properly to mean any thing which serves, either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition; and as truths differ, the proofs adapted to them differ also. ‘Proof’ is also applied to the conviction generated in the mind by proof properly so called” (Best on Evidence, s. 10). *V.* defs referred to sub EVIDENCE.

The “Proofs” in a Brief to Counsel, are the written statements of the facts which the witnesses for his client are respectively expected to state on oath at the trial; “taking a Proof,” is the act of writing down (generally, from the witness’ lips) such a statement with the view to placing it among the “Proofs.”

Burden of Proof: *V.* ONUS.

The 17 V. No. 22 (New South Wales), s. 1, provides, whenever a person executing a Power of Attorney, declares that such Power shall continue in force until notice of his death or of revocation shall have been received by the Attorney, then a Solemn Declaration by the Attorney that he has not received notice of revocation, by death or otherwise, shall, if made immediately before or after acting, “be *Conclusive Proof* of such non-revocation” in favour of a purchaser for value without notice; that means, that such Declaration is *Conclusive Proof* of non-revocation, in favour of such a purchaser, even though the Attorney had notice of revocation at the time of acting on the Power (*Mutual Provident Socy v. Macmillan*, 59 L. J. P. C. 22; 14 App. Ca. 596). *Cp.* ss. 8, 9, Conv Act, 1882.

“Clear and Positive Proof”; *V.* CLEAR.

“Proof made upon Oath”; *V.* OATH.

Satisfactory Proof; *V.* SATISFACTORY.

“Proof of Debts,” in Bankry, *V.* ss. 37, 38, 39, and Sch 2. Bankry Act, 1883: *Wms. Bank.* 114–146: *Baldwin*, 501–578: *DEBT*, p. 471: in *Winding-up a Co*, s. 158, *Comp Act*, 1862, and *Gen. Ord.* 1862, under the Act, R. 20 *et seq.*: *Buekl.* 378 *et seq.*

*V.* PROVE: CONCLUSIVE EVIDENCE: SUFFICIENT EVIDENCE.

*Quà Spirits Act*, 1880, 43 & 44 V. c. 24, “‘Proof,’ means, the strength of proof as ascertained by Sykes’s hydrometer” (s. 3). *V.* SPIRITS.

**PROPER.** — “Shall think proper”; *V.* MAY: *Va.* jdgmt *Cockburn*, C. J., *S. E. Ry v. Ry Commrs*, 49 L. J. Q. B. 289; 5 Q. B. D. 217: *Se*, S. C., *revd* 6 Q. B. D. 586.

*V.* FIT: REASONABLE AND PROPER.

“Proper” is also used in the sense of “Own,” *e.g.* a London Solr speaks of his “proper” business as distinguished from what he does as Agent for a Country Solr; so, in the phrase of parishioners going to and from “their proper PAROCHIAL CHURCH.” *Va.* IN HIS PROPER PERSON.

**PROPER ACCOUNTS.** — *Se* *Se*, that the “Proper Accounts” to be rendered by a Working Ry Co to an Owning Ry Co, within a

Working agreement of a Ry, are half-yearly accounts showing in detail, from each station of the railway, the gross receipts from all traffic conveyed over the railway, and the deductions made or claimed to be made therefrom (*Bedford & Northampton Ry v. Mid. Ry*, 4 Ry & Can Traffic Ca. 170).

**PROPER and WORKMANLIKE.** — A covenant, in a Mining Lease, to work in “a Proper and Workmanlike manner,” though open to parol evidence to explain its local meaning, does not, *primâ facie*, mean in such a manner only as shall be most advantageous to the lessor; “but it means, in such a manner as shall not be simply an attempt to get out of the earth as much mineral as can be got for the particular purpose of the lessee, regardless of any ordinary or workmanlike proceeding” (per Hatherley, C., *Lewis v. Fothergill*, 5 Ch. 108).

**PROPER CHURCH.** — *V.* PAROCHIAL CHURCH.

**PROPER CLAUSES and POWERS.** — The phrase “Proper Clauses” in an *Agreement for a Lease* does not seem quite synonymous with “Usual Clauses.” In *Eadie v. Addison* (52 L. J. Ch. 82, 83), Pearson, J., said, — “Then it is said that the word is ‘proper,’ not ‘usual.’ But that argument seems to me to have great weight on behalf of the plaintiff; because a clause against underletting *which might have been proper with regard to the publican to whom the house was to be let*, would be manifestly improper with regard to Mr. Eadie, who was known to be a brewer and to have no intention whatever of going into the trade of a publican.” Accordingly, specific performance of an agreement to lease, with “proper clauses,” a Public-house to a Brewer who it was known was not going to occupy it himself, was decreed without a clause against underletting. But could such a clause be insisted on even if the intended lessee were an occupying publican? Can “proper” in such a case really be distinguished from “usual”?

*V.* USUAL, and especially the cases of *Church v. Brown*, and *Hodgkinson v. Crowe* there cited.

A power to appoint New Trustees is “a Proper and Reasonable Power” (*Lindow v. Fleetwood*, 6 Sim. 152); but, *semble* and speaking generally, a power of Sale or Exchange is not (*Lewin*, 137, citing *Brewster v. Angell*, 1 Jac. & W. 625; *Horne v. Barton*, Jac. 437). *Vf.*, as to “Proper Powers” in a Settlement, S. L. Act, 1882, ss. 3, 4, 6, *et seq.*; Conv & L. P. Act, 1881, ss. 42, 66; and *Vth*, *Lewin*, 138.

*V.* NECESSARY.

**PROPER CONTROL.** — *V.* CONTROL.

**PROPER COSTS.** — *V.* COSTS.



**PROPER CUSTODY.** — Of Documents; *V. Taylor on Evidence*, s. 659-667: CUSTODY.

**PROPER ENTAIL.** — As to effect of direction for "a Proper Entail"; *V. Lewin*, 127.

**PROPER FACILITIES.** — *V. FACILITIES.*

**PROPER INVESTMENT.** — The trustee investment which is entitled to the benefit of s. 9 (1), Trustee Act, 1893, must be a "Proper Investment," *i.e.* one the quality of which, apart from the question of value, is such that the trustee would, at the time, be justified in investing in it (*Re Walker*, 59 L. J. Ch. 386).

**PROPER LODGING.** — "Proper Lodging or Accommodation," s. 124, P. H. Act, 1875, means, "proper" in the sense of protecting others from infection, as well as being proper for the patient himself (*Warwick v. Graham*, 1899, 2 Q. B. 191; 68 L. J. Q. B. 1001; 80 L. T. 773; 63 J. P. 599).

**PROPER MIXTURE.** — A proviso exonerating a Lessee of Iron Mines from working them if the iron-stone therein found will not "with a Proper Mixture," make good common pig-iron, does not mean that the "Proper Mixture" should necessarily be procurable on the premises (*Foley v. Addenbrooke*, 14 L. J. Ex. 169; 13 M. & W. 174).

**PROPER NAME.** — As a TRADE-MARK; *V. Re Colman*, cited NAME.

**PROPER OFFICER.** — *V. OFFICER.*

**PROPER OUTGOINGS.** — *V. OUTGOING: WORKING EXPENSES.*

**PROPER PARTY.** — "Necessary or Proper Party to an Action," R. 1 (g), Ord. 11, R. S. C.; *V. NECESSARY.*

**PROPER PERSON.** — *V. IN HIS PROPER PERSON.*

**PROPER WORKS.** — *V. CONVENIENCE.*

**PROPERLY.** — Action "properly BROUGHT," R. 1 (g), Ord. 11, R. S. C.; *V. Witted v. Galbraith*, 1893, 1 Q. B. 577; 62 L. J. Q. B. 248; 68 L. T. 421; 41 W. R. 395.

"Legal or Equitable Claim properly brought forward," s. 24 (7), 36 & 37 V. c. 66; *V. Warter v. Warter*, 59 L. J. P. D. & A. 45; 15 P. D. 35; 62 L. T. 328.

Outgoings "properly chargeable" against Arrears of Rents; *V. OUTGOING.*

A Trustee is entitled to COSTS AND CHARGES "properly incurred";

in that proposition "properly" means reasonably, as well as honestly (per Bowen, L. J., *Re Beddoe*, 1893, 1 Ch. 547; 62 L. J. Ch. 239), *whc* shows that, before embarking in a doubtful litigation, trustees should get the sanction of the Court. *Vf*, *Re Davis*, 57 L. T. 755; 57 L. J. Ch. 3; *Re Llewellyn*, 37 Ch. D. 327; *Re Smith*, 64 L. T. 821; *Re Bennett*, 1896, 1 Ch. 778; 65 L. J. Ch. 422; 74 L. T. 157; 44 W. R. 419.

"Properly stamped"; *V. Allen v. Pullay*, 30 W. R. 904; 46 L. T. 435.

**PROPERTY.** — "Property" is the generic term for all that a person has dominion over. Its two leading divisions are (1) Real, and (2) Personal; *Th*, 2 Bl. Com. passim: Mr. Joshua Williams' treatises on these two topics. *Th*, per Chitty, J., *Re Earnshaw-Wall*, 1894, 3 Ch. 156; 63 L. J. Ch. 836: REAL ESTATE: PERSONAL ESTATE.

But care must be taken to distinguish between "Property" and "Power." "The Power of a person to appoint an estate to himself, is no more his 'Property' than the power to write a book or to sing a song" (per Fry, L. J., *Re Armstrong*, 55 L. J. Q. B. 579: *Vf*, *Poucy v. Horderu*, cited WILL: *Sr*, *Re Drummond and Davies*, inf): *V. POWER*. But if a person has power to make property his own, he may, by appropriate language, charge it (*Bank of S. Australia v. Abrahams*, 44 L. J. P. C. 76; L. R. 6 P. C. 265, cited hereon by Stirling, J., *Re Pyle Works*, inf).

"'Property,' is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have" (per Langdale, M. R., *Jones v. Skinner*, 5 L. J. Ch. 90). *Vf*, *Casey v. Lalor*, 5 Ir. Com. Law Rep. 507; *Morony v. Morony*, Ir. Rep. 8 C. L. 174; *Morrison v. Hoppe*, 4 D. G. & S. 234; 15 Jur. 737: *Termes de la Ley*: Cowel.

A gift by Will of all the testator's "Property," will pass everything belonging to him at his death (or over which he had a GENERAL POWER of Appointment, s. 27, Wills Act, 1837), whether real or personal property (per Knight-Bruce, L. J., *Tyrone v. Waterford*, 29 L. J. Ch. 486; 1 D. G. F. & J. 613); and in that case it was decided that a testamentary gift of "all my property in the County of N—," passed debts due to testator in respect of collieries in that county. Indeed, the context to deprive "property" of its comprehensiveness must be a clear one; no such context is provided by "Property and Effects" (*Doe v. Morgan*, 6 B. & C. 517; 5 L. J. O. S. K. B. 268; 9 D. & R. 633), or by "Property, Goods and Chattels" (*Doe d. Wall v. Langlands*, 14 East, 370), or by "all the Residue of my Money, Stock, Property, and Effects of what kind or nature soever" (*Doe d. Andrew v. Lainchbury*, 11 East, 290), or by "all my property, leasehold and freehold" (*Re Roberts, Kiff v. Roberts*, cited ALL, p. 68): *Sr*, ESTATE AND EFFECTS. Even such a collocation as a bequest of moneys at a bank and "all my Wines and property" does not narrow down the latter word to things *ejusdem generis* (*Arnold v. Arnold*,

4 L. J. Ch. 123; 2 My. & K. 365: *Va, Robinson v. Webb*, 17 Bea. 260; *Footner v. Cooper*, 2 Drew. 7; 23 L. J. Ch. 229; 2 W. R. 5; *Gover v. Davis*, 30 L. J. Ch. 505; 29 Bea. 222: *Mullaly v. Walsh*, 3 L. R. Ir. 214). But a bequest of "*Personal Estate and Property*" whatsoever and wheresoever, was held by Wood, V. C., not to pass realty (*Buchanan v. Harrison*, 31 L. J. Ch. 74; 1 J. & H. 662: *Va, Doe d. Bunny v. Rout*, 7 Taunt. 79; 2 Marsh. 397: *Roe d. Helling v. Yeul*, 2 B. & P. N. R. 214; *Belaney v. Belaney*, 36 L. J. Ch. 265; 35 Bea. 469; 2 Ch. 138); but in *Hall v. Hall* (1892, 1 Ch. 361; 61 L. J. Ch. 289; 66 L. T. 206; 40 W. R. 277) "Property," used in a general way, was relied on as part of the context to make "EFFECTS" comprise realty; and in *Reeves v. Baker* (cited FREEHOLD) "Property, whether freehold or personal," was held to include copyholds. *Vf*, 1 Jarm. 670, 728: Wms. Exs. 1041, 1047: ALL: IN: POSSESSED OF.

"My property at R.'s Bank"; *V. MY*.

"Property," in a Will, is equivalent to "ESTATE" for passing the fee of land before Wills Act, 1837 (2 Jarm. 283: *Hill v. Brown*, 1894, A. C. 125; 63 L. J. P. C. 46).

"Property" quâ *Bankry Act*, 1883; *V. ss. 44, 168*. That will include (and will empower the Trustee to sell), a Bankrupt's claim to have an absolute conveyance set aside and declared to be only a security (*Seear v. Lawson*, 49 L. J. Bank. 69; 15 Ch. D. 426: *Vthe, Re Park Gate Waggon Co*, 17 Ch. D. 238). So, it includes a husband's interest in a wife's *chose in action* which he has not reduced into possession (*Re Biaggi*, 26 S. J. 417); also the right to sue on a covenant for Indemnity in an Assignment of Leaseholds (*Re Perkins*, cited LIABILITY); also the Pension of a retired Civil Servant (*Re Huggins*, 51 L. J. Ch. 935; 21 Ch. D. 85). Nor is the power to disclaim, given to Trustees by s. 55, Bankry Act, 1883, confined to property divisible amongst creditors (*Re Maughan*, 54 L. J. Q. B. 128; 14 Q. B. D. 956). But these Bankry defs do not comprise as "Property," that which the bankrupt holds in trust (*Heritable Reversionary Co v. Millar*, 1892, A. C. 598), or the future receipts in a person's business (*Ex p. Nichols*, 52 L. J. Ch. 635; 22 Ch. D. 782: *Wilmot v. Alton*, 1897, 1 Q. B. 17; 66 L. J. Q. B. 42; 45 W. R. 12, 113: *Sr, Re Toward*, 14 Q. B. D. 310; 54 L. J. Q. B. 126: *Re Davis, Ex p. Rawlings*, 22 Q. B. D. 193: *Cp. INCOME*), nor are Divorce damages "Property" within s. 47, Bankry Act, 1883, for by s. 33, Matrimonial Causes Act, 1857, they are under the control of the Court (*Re Stephenson*, 1897, 1 Q. B. 638; 66 L. J. Q. B. 423; 76 L. T. 328; 45 W. R. 416).

"His Property," s. 4 (1a), Bankry Act, 1883, means, substantially the whole of the debtor's property (*Re Spackman*, 24 Q. B. D. 728; 59 L. J. Q. B. 306; 38 W. R. 497: *vthe, Re Hughes*, 1893, 1 Q. B. 595; 62 L. J. Q. B. 358; 68 L. T. 629; 41 W. R. 466). *V. CONVEYANCE*.

If a Building Contract provides that on default of the Contractor his

PLANT "shall be deemed to be the property" of the Contractee, that is effective "for the purposes of the Contract only"; it may protect as against the contractor's Exon Creditor but not as against his Trustee in Bankry (*Re Winter*, 47 L. J. Bank. 52; 8 Ch. D. 225; 38 L. T. 362: *Cp*, *Baker v. Gray*, cited USING).

Quà *Conveyancing Acts*, "'Property,' includes, Real and Personal property, and any Debt, and any Thing in Action, and any other Right or Interest in the nature of property, whether in possession or not" (s. 1 (4), Conv Act, 1882, amplifying def, s. 2 (i), Conv & L. P. Act, 1881). *Cp*, def in Trustee Act, inf.

Quà *Finance Act*, 1894, "'Property,' includes, Real Property and Personal Property, and the proceeds of sale thereof respectively, and any money or investment for the time being representing the proceeds of sale" (subs. 1 *f*, s. 22): as used in s. 15 (1), Finance Act, 1895, *V. A-G. v. Penrhyn*, 83 L. T. 103; 16 Times Rep. 464.

Quà *Friendly Societies Act*, 1896, "'Property,' shall extend to all property, whether Real or Personal, including books and papers" (s. 106); a similar def is provided for *Industrial and Provident Societies* (56 & 57 V. c. 39, s. 79).

Quà *Joint Stock Companies*, Uncalled Capital is not within a power enabling Directors to mortgage "Property" of a Co (*Bank of S. Australia v. Abrahams*, 44 L. J. P. C. 76; L. R. 6 P. C. 265; 23 W. R. 668: *Vf*, FUNDS); so, even though the power extends to "Property, both present and future" (*Re Streatham Estates Co*, 1897, 1 Ch. 15; 66 L. J. Ch. 57; 45 W. R. 105; 75 L. T. 574: *Re Russian Spratts'*, 1898, 2 Ch. 149; 67 L. J. Ch. 381; 78 L. T. 480; 46 W. R. 514), or to "PROPERTY AND EFFECTS" (*Re Sankey Brook Co*, L. R. 10 Eq. 381; 18 W. R. 914: *Jackson v. Rainford Co*, 1896, 2 Ch. 340; 65 L. J. Ch. 757; 44 W. R. 554):—*Secus*, if the power extends to a Co's "Property and Rights" (*Howard v. Patent Ivory Co*, 57 L. J. Ch. 878; 38 Ch. D. 156), or to "any SECURITY of the Co" (*Newton v. Anglo-Australian Co*, 1895, A. C. 244; 64 L. J. P. C. 57; 72 L. T. 305; 43 W. R. 401: *Jackson v. Rainford Co*, sup). *Vf*, Buckl. 185: *Re Pyle Works*, 59 L. J. Ch. 489; 44 Ch. D. 534; 62 L. T. 887; 38 W. R. 674: UNDERTAKING.

"Property," in a Co's Debenture, includes all the Co's property except future Calls (*Bower v. Foreign & Colonial Gas Co*, W. N. (77) 222: *Sc*, *Page v. International Agency*, 68 L. T. 435; 62 L. J. Ch. 610); and "PROPERTY AND EFFECTS," includes its GOODWILL (*Re Leas Hotel Co*, 1902, 1 Ch. 332; 71 L. J. Ch. 294).

"Money or Property of a Co"; *V. MONEY*.

Quà *Larceny Act*, 1861, "'Property,' shall include, every description of real and personal property, money, debts, and legacies; and all deeds and instruments relating to, or evidencing the title or right to, any property, or giving a right to recover or receive any money or goods; and shall also include, not only such property as shall have been origi-

nally in the possession or under the control of any party but also, any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise" (s. 1).

Quà *Loc Gov Act*, 1888; *V.* s. 100, a def adopted for London Gov Act, 1899 (s. 34): quà *Loc Gov (Scot) Act*, 1889, " 'Property,' includes, all property heritable and moveable, and all interests therein" (s. 105).

Quà *Lunacy Act*, 1890, " 'Property,' includes, Real and Personal Property, whether in possession, reversion, remainder, contingency, or expectancy; and any estate or interest, and any undivided share, therein" (s. 341).

Quà *M. W. P. Act*, 1882, "Property," "includes a Thing in Action" (s. 24); "Property" in this Act is very comprehensive, e.g. "Real Property" in s. 2 comprises the power to enlarge a Base Fee (*Re Drummond and Davies*, 1891, 1 Ch. 524; 60 L. J. Ch. 258; 64 L. T. 246; 39 W. R. 445).

Quà *Matrimonial Causes Act*, 1857, s. 25, ALIMONY is not "Property" (*Re Robinson*, 53 L. J. Ch. 986; 27 Ch. D. 160); but a gross or annual sum ordered under s. 32 of that Act (as the Order cannot be subsequently withdrawn or modified) is "property" (*Harrison v. Harrison*, 58 L. J. P. D. & A. 28; 13 P. D. 180: *Re Tatham*, W. N. (92) 150; *Maclurean v. Maclurean*, 77 L. T. 474); and an allowance to a wife under a Deed of Separation is her "property" within s. 45. so that on her adultery the Court may deal with it (*Jump v. Jump*), 52 L. J. P. D. & A. 71; 8 P. D. 159). "Property" of a wife, s. 3, Matrimonial Causes Act, 1884, 47 & 48 V. c. 68, does not comprise property on which there is a RESTRAINT ON ALIENATION (*Michell v. Michell*, 1891, P. 208; 60 L. J. P. D. & A. 46; 64 L. T. 607; 39 W. R. 680, considering *Swift v. Swift*, 59 L. J. P. D. & A. 61).

"Property SETTLED," the settlement of which may be varied by the Court — under s. 5, Matrimonial Causes Act, 1859, as extended by s. 3, Matr. Causes Act, 1878 — no doubt includes "Property," in the ordinary sense of the word, which at the time of the marriage was transferred to and vested in trustees, but it may also include mere interests which are purported to be carved out of property; and under this statutory power the Court has the right to deal with a Covenant to pay an Annuity or a Jointure Rent-Charge (*Dormer v. Ward*, 69 L. J. P. D. & A. 144; 1901. P. 20; 83 L. T. 556; 49 W. R. 149). *Note*: As to the guiding principle justifying a variation of a settlement, *V. Hartopp v. Hartopp*, 1899, P. 65; 68 L. J. P. D. & A. 33; 80 L. T. 297.

"Property" which a wife may acquire after Judicial Separation; *V. ACQUIRE*.

Quà *Sale of Goods Act*, 1893. " 'Property,' means, the general property in goods, and not merely a special property" (s. 62).

Quà *Solrs Rem Ord*, "Property," Sch 1. Part 1, means, property in

respect of which Title is deduced; it therefore comprises an **ADVOWSON**, but not **CHATTELS** (*Re Earnshaw-Wall*, sup: *So*, as to Chattels, 38 S. J. 544). An **EASEMENT** is not "Property" within the Order (*Re Stewart*, 41 Ch. D. 494: *Re Sanders*, 1896, 1 Ch. 480; 65 L. J. Ch. 426).

Quà *Stamp Acts*, and the duties thereunder, "a **LICENSE** may be, and often is, coupled with a Grant, and that grant may convey an interest in Property; but the License, pure and simple and by itself, never conveys an interest in Property" (per Fry, L. J., *Heap v. Hartley*, 42 Ch. D. 461; 58 L. J. Ch. 790; 61 L. T. 538; 38 W. R. 136; *Vf*, *Muskett v. Hill*, 5 Bing. N. C. 694; *Limmer Co. v. Inl. Rev.*, 41 L. J. Ex. 106; L. R. 7 Ex. 211; 26 L. T. 633; *Thames Conservators v. Inl. Rev.*, 56 L. J. Q. B. 181; 18 Q. B. D. 279; 56 L. T. 198; 35 W. R. 274; *Newby v. Harrison*, 1 J. & H. 393); but a License to use a **PATENT**, does convey an interest in Property (*Smelting Co v. Inl. Rev.*, cited **LOCALLY SITUATE: National Socy, &c v. Gibbs, inf). A **GOODWILL** is Property (*Potter v. Inl. Rev.*, 23 L. J. Ex. 345; 10 Ex. 147; *Inl. Rev. v. Angus*, 23 Q. B. D. 590); and though, for some purposes, it is said that "Goodwill" is inapplicable to a business depending upon personal trust and confidence, e.g. a Solicitor's (*Austen v. Boys*, 27 L. J. Ch. 243, 714; 2 D. G. & J. 626; 24 Bea. 598; per Jessel, M. R., *Arundell v. Bell*, 52 L. J. Ch. 537; 31 W. R. 477), yet, it is submitted, that if a person buys such a Goodwill, the Conveyance thereof is one of "property" and will be liable to the ad val. Stamp Duty (*Potter v. Inl. Rev.*, sup: *Vf*, **PROPERTY OTHER THAN LAND**); so, of a Trade-Mark (*Brooke v. Inl. Rev.*, 1896, 2 Q. B. 356; 65 L. J. Q. B. 657; 44 W. R. 670).**

Quà *Succession Duty Act*, 1853, "the term 'Property' alone shall include Real property and Personal property" (s. 1): *vth*, and espy in reference to s. 2, *Re Cigala*, 47 L. J. Ch. 166; 7 Ch. D. 351; 38 L. T. 439; 26 W. R. 257: *A-G. v. Jewish Colonisation Assn*, cited **DOMICIL: Colquhoun v. Brooks, 59 L. J. Q. B. 53; 14 App. Ca. 493; 61 L. T. 518; 38 W. R. 289.**

Quà *Trustee Act*, 1893, "'Property,' includes Real and Personal property, and any estate and interest in any property real or personal, and any Debt, and any Thing in Action, and any other Right or Interest, whether in possession or not" (s. 50). *Cp*, def quà *Conveyancing Acts*, sup.

"Property" has also received a Stat. Def. in and for the following Acts;—

Bankruptcy (Scot) Act, 1856, 19 & 20 V. c. 79; *V*. s. 4:

Conjugal Rights (Scot) Amendment Act, 1861, 24 & 25 V. c. 86; *V*. s. 19:

Criminal Procedure Act, 1851, 14 & 15 V. c. 100; *V*. s. 30:

Deeds of Arrangement Act, 1887, 50 & 51 V. c. 57; *V*. s. 19:

Ecclesiastical Commission Act, 1868, 31 & 32 V. c. 114; *V*. s. 2:

General Prisons (Ir) Act, 1877, 40 & 41 V. c. 49; *V*. s. 3:

Irish Church Act, 1869, 32 & 33 V. c. 42; *V.* s. 72.

A PATENT "is for all purposes to be regarded as Property" (per Cozens-Hardy, *J.*, *National Socy, &c v. Gibbs*, cited JOINT TENANCY: *Vf, Smelting Co v. Inl. Rev.*, sup. sub "Stamp Acts").

"Property" sometimes means, held for or appropriated to; *V.*

#### LITERARY.

The *description* of "Property" in *Conditions of Sale*, refers to the physical thing sold, and not to the estate therein (*Re Beyfus and Masters*, cited LEASE).

"Property and Benefit" in a Copyright; *V.* BENEFIT.

"House and Property"; *V. Conway v. Vernon*, cited HOUSE.

"Money or other Property"; *V.* MONEY.

"Property or Profits"; *V.* PROFITS.

"Vessel or Property"; *V.* VESSEL.

"Workhouse or other Property" of a Poor Law Union, s. 32, 4 & 5 W. 4, c. 76, includes, as "Property," Annuities payable to a Union by the County Council (*R. v. Willesden*, cited FIX).

After-acquired property; *V.* ACQUIRE: ENTITLED, pp. 629-631: FUTURE: RIGHT IN EQUITY.

"Property in the Goods," mentioned in a Bill of Lading; *V.* PASS.

"Property at Interest"; *V.* MONEY OUT AT INTEREST.

"Property held in Trust"; *V.* IN TRUST.

"Property locally situate out of the United Kingdom"; *V.* LOCALLY SITUATE.

Property not reduced into Money; *V.* REDUCED INTO MONEY.

"Property passing"; *V.* PASSING.

"Property purchased"; *V.* PURCHASED.

Property recovered; *V.* RECOVERED OR PRESERVED.

"Property vested" under P. H. Act, 1875; *V.* VESTED.

*V.* ACTUALLY PRODUCING INCOME: BENEFIT: CIVIL RIGHTS: EFFECTS: EXPECTANCY: FREEHOLD: HOUSEHOLD: MOVEABLE: OWN PROPERTY: PRIVATE PROPERTY: PROPERTY AND EFFECTS: PROPERTY OTHER THAN LAND: SEPARATE PROPERTY: SPECIAL: THE.

**PROPERTY AND EFFECTS.**—The "Property and Effects" of a business have been held not to include its GOODWILL (*Chapman v. Hayman*, 1 Times Rep. 397: *Sc, Potter v. Inl. Rev.*, p. 1586, and *Re Leas Hotel Co*, p. 1584: ASSETS). *V.* EFFECTS: PROPERTY OTHER THAN LAND: STOCK IN TRADE.

"Property and Effects," in a Co's borrowing powers; *V.* PROPERTY.

**PROPERTY OTHER THAN LAND.**—"Houses, Buildings, and Property *other than land*, quâ the *three times greater* rating prescribed by s. 33, Lighting and Watching Act, 1833, 3 & 4 W. 4, c. 90, includes, a Coal Mine (*Thursby v. Brierecliffe*, 1895, A. C. 32; 64 L. J. M. C. 66;

71 L. T. 849; 59 J. P. 180); so, of SALEABLE UNDERWOOD (per Cave, J., *Crayford v. Rutter*, inf). But a Railway, a Canal with its towing paths, or a Dry Dock, is "Land" (*R. v. Neath Canal Nav.*, 40 L. J. M. C. 193; nom. *R. v. Neath*, L. R. 6 Q. B. 707; *rthe*, and *Peto v. West Ham*, 28 L. J. M. C. 240; 2 E. & E. 144, discussed in *R. v. Mid. Ry.*, 44 L. J. M. C. 137; L. R. 10 Q. B. 389); so, of a Water Co's Pipes (*R. v. Southwark, &c, Water Co*, 6 E. & B. 1008), or a Brickfield (*Crayford v. Rutter*, 1897, 1 Q. B. 650; 66 L. J. Q. B. 506).

In the last case, and dealing with those cases where the rateable tenement is partly Land and partly Buildings, Cave, J., said, — "If it is really Buildings, it is to be rated at the higher rate; if Land, at the lower rate. In the case of a Building alone, or Land without a building upon it, no difficulty can arise. But where a particular subject is both land and buildings, then the question is, Whether it is to be considered as a Building or as Land? Strictly speaking, it is not solely land, nor solely buildings; and it seems to me that the only way to decide whether it should be rated at the higher or the lower rate is to consider whether the buildings are accessory to the land, or the land to the buildings. If, *e.g.*, there is a large Warehouse with a small court-yard for the convenience of carts and waggons delivering goods at the warehouse, it is obvious that the court-yard must be accessory to the building and that the whole is rateable as a building. On the other hand, if there is a piece of land occupied as a Farm and there happens to be upon it a shed for horses to take refuge in at night, it is obvious that the subject of rateability is Land, and not Buildings." The learned judge went on to indicate that where part of a tenement is a building, *e.g.* a house, which can be conveniently separated from land with which it is held, it should be so separated for the purpose of the rating; but that, probably, the engines, mills, and such like buildings, on a Brickfield could not be so separated.

V. LAND: *Cp*, LAND COVERED WITH WATER.

GOODWILL, ordinarily, is "Property except" — *i.e.* other than — "Lands," a Contract for the sale of which is liable to ad val. Stamp Duty as on a CONVEYANCE (s. 59 (1), Stamp Act, 1891); and even the Goodwill of a Public-House is not, necessarily, a mere enhancement of the value of the tenement, and may, on the facts, be "Property except lands," &c, within the section (*West London Syndicate v. Inl. Rev.*, 1898, 2 Q. B. 507; 67 L. J. Q. B. 956; 79 L. T. 289; 47 W. R. 125); but if the Goodwill be inherent in, or annexed to (and not treated as separate from), the land, then it is (like an EASEMENT) part of the land, and ad val. duty on a Contract for its sale is not payable under the section (*Muller v. Inl. Rev.*, 1900, 1 Q. B. 310; 69 L. J. Q. B. 291; 81 L. T. 667). *Vf*, LOCALLY SITUATE: PROPERTY: PROPERTY AND EFFECTS.

PROPERTY TAX. — *V* CLEAR.



**PROPHECY.** — “ ‘Prophecies,’ are, by our statutes, reputed for wizardly foretelling of things to come in dark and ambiguous speeches, whereby great commotions have been often caused in this Kingdom, and great attempts made by those to whom those speeches promised good success” (Cowel: *Vf*, Jacob). *Cp*, CONJURATION.

**PROPORTION.** — “In joint and equal proportions”; *V*. JOINT AND EQUAL.

**PROPRIETARY.** — “A Proprietary CHAPEL is perfectly anomalous; it is a thing unknown to the constitution of our Church and in our Ecclesiastical Establishment. It can possess no parochial rights; and the exercise of any such rights would be a mere usurpation in the view of the law” (per Nicholl, D. A., *Moysey v. Hillecut*, 2 Hagg. Ecc. 46). *Vf*, EASE: FREE CHAPEL: PRIVATE CHAPEL: PRIVATE HOUSE.

Proprietary Club; *V*. CLUB.

Proprietary, as distinguished from a Preferential, Right; *V*. *Ellis v. Bedford*, cited “Same Interest,” sub SAME.

The holder of “Proprietary STOCK is a MEMBER of the Co, and has the right of participating in the dividends or net profits of the Co”; whilst the holder of DEBENTURE STOCK is a CREDITOR of the Co (per Chitty, J., *Re Bodman*, cited SHARE).

**PROPRIETOR.** — *V*. OWNER: HERITOR.

In a Contract for the Sale of property for “the Proprietor” (*Sale v. Lambert*, 43 L. J. Ch. 470; L. R. 18 Eq. 1; 22 W. R. 478; *Rossiter v. Miller*, 48 L. J. Ch. 10; 3 App. Ca. 1124; 39 L. T. 173; 26 W. R. 865), or for the “OWNER,” “MORTGAGEE,” or the like (*Jarrett v. Hunter*, 56 L. J. Ch. 141; 34 Ch. D. 182; 55 L. T. 727; 35 W. R. 132; *Vf*, *Butcher v. Nash*, 61 L. T. 72), or for “the Executor or Personal Representative of A.” (*Towle v. Topham*, 37 L. T. 308), or for “a Trustee selling under a trust for sale” (*Catling v. King*, 46 L. J. Ch. 384; 5 Ch. D. 660; 36 L. T. 526; 25 W. R. 550; *Va*, *Bourdillon v. Collins*, 19 W. R. 556; 24 L. T. 344), or “by direction of the Executors” of a person named (*Hood v. Barrington*, L. R. 6 Eq. 218), the description of the vendor is sufficient to satisfy the Statute of Frauds though he be not named; “but if he is described as ‘VENDOR,’ or as ‘CLIENT,’ or ‘FRIEND’ of a named agent, that is not sufficient” (per Kay, J., *Jarrett v. Hunter*, sup: *Vf*, *Butcher v. Nash*, sup: *Potter v. Duffield*, 43 L. J. Ch. 472; L. R. 18 Eq. 4; 22 W. R. 585; per Mellish, L. J., *Catling v. King*, sup). But the description is sufficient if it be for “Vendors” who are described as “a Company in possession of, and carrying on mining operations on, the property” (*Commins v. Scott*, 44 L. J. Ch. 563; L. R. 20 Eq. 11; 32 L. T. 420; 23 W. R. 498). In a Contract for a Mortgage, a description of the proposed mtgee as the “Lender” is insufficient (*Pattle*

v. *Anstruther*, 69 L. T. 175; 41 W. R. 625). *Vf*, as to what is a sufficient designation of a Vendor, *Filby v. Hounsell*, 1896, 2 Ch. 737; 65 L. J. Ch. 852; 75 L. T. 270:— of a Lessee or Purchaser, *V. YOU: Shardlow v. Cotterill*, cited PURCHASED.

"Proprietor," s. 24, Copyright Act, 1842, "includes, not merely an original proprietor but, all persons who become proprietors by assignment in some valid method other than that provided by s. 13, and seek to sue for an Infringement" (per Kennedy, J., *Liverpool Brokers' Assn v. Commercial Press*, 1897, 2 Q. B. 1; 66 L. J. Q. B. 405; 76 L. T. 292, rejecting dictum of Cockburn, C. J., *Wood v. Boosey*, 36 L. J. Q. B. 110; L. R. 2 Q. B. 352). As to who is to be registered as such Proprietor under, s. 13, *V. London Printing Alliance v. Cox*, 1891, 3 Ch. 291; 60 L. J. Ch. 707; *Petty v. Taylor*, 1897, 1 Ch. 465; 66 L. J. Ch. 209. *Cp*, AUTHOR.

"Proprietor," s. 1, Engraving Copyright Act, 1734, 8 G. 2, c. 13; *V. Graves v. Ashford*, cited COPY. *V. NAME*.

"Proprietor" of a DESIGN, s. 61, Patents, Designs, and Trade-Marks Act, 1883; *V. Re Guiterman*, 55 L. J. Ch. 309: "Registered Proprietor," ss. 58, 59, *Ib.*; *V. Woolley v. Broad*, 1892, 1 Q. B. 806; 61 L. J. Q. B. 259; 66 L. T. 680: "Proprietor" of a PATENT, s. 87, *Ib.*; *V. Van Gelder v. Sowerby Bridge Socy*, 59 L. J. Ch. 583; 44 Ch. D. 374; 62 L. T. 105. *Cp*, AUTHOR. The "'Proprietor' and 'Inventor'" (of a Design or Patent) "do not mean the same thing" (per Cresswell, J., *Millingen v. Picken*, 1 C. B. 813).

A Registered Proprietor of *Land*, under the Transfer of Land (Victoria) Act, 1866, must be a real person; the myth of a forger is not within the phrase, though on the Register (*Gibbs v. Messer*, 1891, A. C. 248; 60 L. J. P. C. 20).

"Proprietor," as used in a River Navigation Act; *V. Tibbits v. Yorke*, 3 L. J. K. B. 38; 5 B. & Ad. 605.

"Proprietor" has received various statutory definitions in and for the following Acts;—

County Voters Registration (Scot) Act, 1861, 24 & 25 V. c. 83, *V. s. 2*:

Drainage Acts; *V. 5 & 6 V. c. 89, s. 159; 8 & 9 V. c. 69, s. 21; 10 & 11 V. c. 38, s. 20, e. 113, s. 17; 29 & 30 V. c. 49, s. 24: Vh, Re White*, 25 L. R. Ir. 418:

Dublin Carriage Act, 1853, 16 & 17 V. c. 112; *V. s. 80*:

Fisheries Acts; *V. 5 & 6 V. c. 106, s. 113; 9 & 10 V. c. 3, s. 87; 13 & 14 V. c. 88, s. 1; 25 & 26 V. c. 97, s. 2*:

Lands Valuation (Scot) Act, 1854, 17 & 18 V. c. 91; *V. s. 42*:

London Hackney Carriages Act, 1843, 6 & 7 V. c. 86; *V. s. 2, on whr, King v. London Improved Cab Co*, 58 L. J. Q. B. 456; 23 Q. B. D. 281, and *Keen v. Henry*, 63 L. J. Q. B. 63; 1894, 1 Q. B. 292:

Merchandise Marks Act, 1887, 50 & 51 V. c. 28; *V. s. 3*:

Newspaper Libel and Registration Act, 1881, 44 & 45 V. c. 60; V. s. 1:

Rep People (Scot) Act, 1868, 31 & 32 V. c. 48; V. s. 59:

Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51; V. s. 3:

Small Dwellings Acquisition Act, 1899, 62 & 63 V. c. 44; V. s. 10 (3).

**PROSECUTE.** — “A man prosecutes a Charge (quæ Malicious Prosecution) who lays an Information before a magistrate accusing of the Offence (*Davis v. Noak*, 1 Starkie, 377), or in making an Oral Accusation before a magistrate (*Dawson v. Van Sandeau*, 11 W. R. 516); or in taking any active part in a Prosecution at any stage (*Fitzjohn v. Mackinder*, 9 C. B. N. S. 505), including preferring a Bill before a Grand Jury (*Poyn v. Porter*, Cro. Jac. 490; *Smith v. Cranshaw*, Jo. W. 93), whether it is ignored, or is found and is followed by acquittal on any ground, or the indictment is bad (*Taylor's Case*, Palm. 44; *Chambers v. Robinson*, 2 Stra. 691), and whether the Court to which the accusation was made was or was not competent to adjudicate on it (*Atwood v. Monger*, Style, 378), and whether or not the prosecutor was under recognizance to prefer the Bill (*Fitzjohn v. Mackinder*, sup): 8 Eneye. 87.

To “prosecute” a Suit or Matter, — that is, begin to prosecute (*Morris v. Matthews*, 11 L. J. Q. B. 57; 2 Q. B. 293). So to “make and prosecute” an application for a new trial, s. 27, 4 & 5 W. 4, c. 62, was satisfied by obtaining a Rule *nisi*, whatever afterwards became of the Rule (*Haworth v. Ormerod*, 13 L. J. Q. B. 265; 6 Q. B. 300).

To prosecute an Action for Infringement of a Patent “with DUE DILIGENCE,” proviso to s. 32, 46 & 47 V. c. 57, does not necessarily require that the action should be carried on to trial (*Colley v. Hart*, 59 L. J. Ch. 308; 44 Ch. D. 179; 62 L. T. 424; 38 W. R. 501).

To “prosecute *with Effect*,” — that is, to prosecute to a not unsuccessful termination. “It has never been decided, as I believe, that the Condition ‘to prosecute the suit’ means to prosecute it successfully: ‘to prosecute *with effect*’ has been held to have that meaning” (per Jackson, J., *Bentley v. Hastings*, 8 Ir. L. R. 177). V. EFFECT.

To “prosecute *with Effect*,” an application for extension of time for a Patent, 5 & 6 W. 4, c. 83, s. 4; *V. Russell v. Ledsam*, 12 L. J. Ex. 439; 14 Ib. 353; 16 Ib. 145; 14 M. & W. 574; 16 Ib. 633; 1 H. L. Ca. 687.

To “prosecute *without Delay*,” is to use due diligence in the business (*Harrison v. Wardle*, 5 B. & Ad. 146). Cp., WILFUL DELAY.

V. SUE: THREAT.

**PROSECUTING.** — In the Colony of Victoria a Crown Prosecutor is a Barrister whose functions and status are quite distinct from those of a “Prosecuting Barrister,” — the duties of the first are higher than those

of the second, the first being paid by salary, the second by fees, the one point of similarity being that both act as advocates for the Crown in prosecutions, the first in cases presented by him, the second on getting a brief; a Prosecuting Barrister is not, under the Public Service (Victoria) Act, 1890, entitled to superannuation, *secus* of a Crown Prosecutor, unless excluded by s. 3 which provides that nothing in the Act shall apply to a "Prosecuting Barrister"; held, that that phrase does not embrace a Crown Prosecutor although, if read without that meaning, the phrase is meaningless (*Smyth v. The Queen*, 1898, A. C. 782; 67 L. J. P. C. 129; 79 L. T. 199).

**PROSECUTION.** — "Laying a Prosecution, does not, in ordinary parlance, mean bringing an Action" (per Patteson, J., *Rawlins v. Jenkins*, 12 L. J. Q. B. 151; 4 Q. B. 419), and it was there held that an agreement amongst claimants to a Fishery to bear expenses "of defending any Prosecution laid" against them for asserting their claim, referred only to criminal proceedings.

A criminal Information for libel, whether *ex officio* or not, is not a "Criminal Prosecution" within s. 3, Newspaper Libel and Registration Act, 1881, 44 & 45 V. c. 60 (*Yates v. The Queen*, 54 L. J. Q. B. 258; 14 Q. B. D. 648).

"Such Prosecution," s. 95, Highway Act, 1835, 5 & 6 W. 4, c. 50, means, a Prosecution which Justices have power to order, and which is the one which they have actually ordered; and the power given by the section to award costs, cannot be exercised where the Indictment ordered was for non-repair of a general highway, and was amended at the trial so as to charge in respect only of a limited highway (*R. v. Lee*, 45 L. J. M. C. 54; 1 Q. B. D. 198).

Costs other than for the "Prosecution, MAINTENANCE, and Punishment," of Offenders, s. 117, 5 & 6 W. 4, c. 76; *V. R. v. Birmingham*, 10 Q. B. 116; 17 L. J. M. C. 56; *Cp. R. v. Gravesend*, cited SUPPORT.

The "Prosecution" of an Action ends with the FINAL JUDGMENT therein (*Hume v. Druff*, L. R. 8 Ex. 214; 42 L. J. Ex. 145).

V. MALICIOUS PROSECUTION: NON PROS: PUBLIC PROSECUTION: COMMENT.

**PROSECUTOR.** — *V. PUBLIC PROSECUTOR.*

**PROSPECTUS.** — Prospectus of a Co; *V. ss. 9-11, Comp Act, 1900, 63 & 64 V. c. 48, and 17, Palmer Co. Prec. ch. 3; Hamilton, ch. 10: PROMOTER: UNTRUE.*

**PROTECTION.** — Proceedings for "Protection," or "Recovery," of SETTLED Land, s. 36, S. L. Act, 1882; *V. Re De la Warr*, 16 Ch. D. 587; 50 L. J. Ch. 383; 51 *Ib.* 407; 29 W. R. 350; 44 L. T. 56; *Re*

*Twyford Abbey*, 30 W. R. 268; 45 L. T. 745; *Re Ormrod*, 1892, 2 Ch. 318; 61 L. J. Ch. 651; 66 L. T. 845; 40 W. R. 490.

"Protection and Security" of a Wife's Separate Property; *V. SEPARATE PROPERTY.*

A Protection Order, is an Order granted by Justices to a Married Woman who has been DESERTED by her husband "without REASONABLE CAUSE," and who "is maintaining herself by her own industry or property"; its effect is that her earnings and property become her own "as if she were a FEME sole," and her status is the same as if she had obtained a JUDICIAL SEPARATION (s. 21, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85; *Ij*, s. 9, 21 & 22 V. c. 108; 27 & 28 V. c. 44). Besides and distinct from this, an Order may be granted by Justices to a married woman whose husband has offended in either of the ways mentioned in s. 4, 58 & 59 V. c. 39; and by s. 5 thereof such Order may provide (1) that its effect shall be the same as a "Judicial Separation on the ground of CRUELTY," (2) for the custody of the Children while under 16, (3) for a weekly payment by the husband, not exceeding £2, and (4) for the costs. *Vh*, "Aggravated Assault," sub AGGRAVATED: DESERTED: NEGLECT: PERSISTENT: WILFUL NEGLECT: Stone, tit. *Wif*.

**PROTECTOR OF THE SETTLEMENT.** — "The Protector of the Settlement" without the consent of whom (where there is one) the Remainder and Reversion after an Entail cannot be barred (ss. 34, 35, Fines and Recoveries Act, 1833), was established by that Act, and is, ordinarily, the First Tenant for Life (s. 22); but *Ij*, ss. 23-33. His power is absolute; "by s. 36, a Protector is made irresponsible, and is at liberty to act from mere caprice, ill-will, or any bad motive. By s. 37, he is enabled to take a bribe for giving consent" (per Shadwell, V. C., *Bankes v. Le Despencer*, 11 Sim. 527; 12 L. J. Ch. 297).

*Vh*, Wms. R. P., Part 1, ch. 2: Goodeve, 73: 10 Encyc. 518-522: BASE.

**PROTEST.** — "When a Foreign Bill is refused Acceptance or Payment, it was, and still is, necessary by the Custom of Merchants, in order to charge the Drawer, that the Dishonour should be attested by a Protest" (Byles, ch. 19), and it is usually done by a NOTARY PUBLIC: *Vh*, ss. 51, 65, 68, Bills of Ex. Act, 1882: *Re English Bank of the River Plate*, 1893, 2 Ch. 438; 62 L. J. Ch. 578; 69 L. T. 14; 41 W. R. 521; 9 Times Rep. 367. *V. SUPRA* PROTEST.

*V. UNDER* PROTEST.

**PROTESTANT.** — "Protestants," s. 2, Places of Religious Worship Act, 1812, 52 G. 3, c. 155, extends to a congregation of foreign Lutherans (*R. v. Hube*, Peake, 132). *V. CONVENTICLE.*

The phrase "Protestant Dissenters" now includes Unitarians (1 Jarm. 206, *n*).

A bequest to "Protestant Dissenters" may be explained by parol (*Drummond v. A-G., Ireland*, 2 H. L. Ca. 837). *Cp.*, GODLY PREACHER.

"Protestant Episcopal Church in Scotland," quâ Episcopal Church (Scot) Act, 1864, 27 & 28 V. c. 94 (T. s. 2), means, "the Episcopal Communion in Scotland as mentioned in" 32 G. 3, c. 63.

"Protestant Episcopalian," quâ Matrimonial Causes and Marriage Law (Ir) Amendment Act, 1870, 33 & 34 V. c. 110, means, a member, of the Church of Ireland, "the Church of England, the Episcopal Church of Scotland, and any other Protestant Episcopal Church" (s. 4).

Protestant Religion; *V.* EDUCATION: RELIGION.

**PROVABLE.** — "Debt provable in Bankruptcy"; *V.* DEBT, p. 471. *Va.*, LIABILITY.

**PROVE.** — "To prove" a thing is to test it, or (when spoken of a legal conclusion) to establish it by litigation; therefore, to say of a man's patent that it "has been *proved* to be an infringement" of another patent, is actionable, if there has been no litigation under which such infringement has been established (*Crampton v. Swete*, 32 S. J. 274; 58 L. T. 516).

But where a Charter-Party stipulated that the Owner should receive "the highest freight which he could prove" to have been paid for a similar voyage; held, that this did not contemplate strictly legal proof, but, meant such proof as ought reasonably to satisfy (*Gether v. Capper*, 24 L. J. C. P. 69; 25 Ib. 260; 15 C. B. 39, 696). In *the Maule, J.*, asked "Is not a thing proved to one who knows the fact?" *Vf.* PROOF.

"*Admitted or Proved*," s. 30 (2), Bills of Ex. Act, 1882, "means no more than that some evidence of circumstances in the nature of the fraud must be given sufficient to be left to the Jury" (per Denman, J., *Tatum v. Hasler*, 23 Q. B. D. 345; 38 W. R. 110; 58 L. J. Q. B. 432).

"Manifested and Proved"; *V.* MANIFESTED.

"Proved to be Rich," in a Prospectus of a Mine Co; *V. Aaron's Reefs v. Twiss*, 1896, A. C. 282; 65 L. J. P. C. 59.

*V.* ATTEST: EVIDENCE: OATH.

**PROVIDE.** — A bequest to be applied in "*Providing* a proper school" is good, as not necessarily involving the acquisition of land (*Johnston v. Swann*, 3 Mad. 457; 1 Jarm. 228, 229). *Cp.*, FOUND: ENDOW: ERECT.

"Provide, Furnish, or Supply," goods for parochial relief, s. 6, Poor Relief Act, 1815, 55 G. 3, c. 137, s. 77, 4 & 5 W. 4, c. 76; *V. Davies v. Harvey*, 43 L. J. M. C. 121; L. R. 9 Q. B. 433.

A power to "Purchase or Provide" fire engines, &c, s. 32, Town Police Clauses Act, 1847, authorizes, when necessary, a Hiring (*Janes v. Staines*, 83 L. T. 426; 17 Times Rep. 2).

*V.* PRECATORY TRUST: PROVIDED: SUPPLY.

**PROVIDE SUITABLY.** — “It has been held, in Marriage Articles, that a trust to ‘provide suitably’ for the settlor’s younger children is not too vague to be executed, but the Court will direct an enquiry what the provision should be” (Lewin, 127, citing *Brenan v. Brennan*, Ir. Rep. 2 Eq. 266).

**PROVIDED.** — *V.* WHEN: CONDITION.

“Except otherwise provided”; *V.* EXCEPT: *Vf.* EXPRESSLY PROVIDED.

No New BURIAL Ground “shall be provided *and used*” without the approval of the Home Secretary, s. 6, 16 & 17 V. c. 134, does not merely mean that no land shall be acquired (whether by gift or purchase) for a Burial Ground without such approval, — it means more than that, for “provided and used” in that connection, means, the acquisition and equipment of land as, and so that it may at once be properly used as, a New Burial Ground (*Ward v. Portsmouth*, 1898, 2 Ch. 191; 67 L. J. Ch. 489; 78 L. T. 771; 46 W. R. 610; 62 J. P. 820).

**PROVIDED ALWAYS.** — “If a man by Indenture letteth lands for yeares, Provided alwaies, and it is covenanted and agreed between the said parties, that the lessee should not alien, and it was adjudged that this was a CONDITION by force of the *proviso*, and a covenant by force of the other words” (Co. Litt. 203b: *Vf.* Touch. 122: Elph. 411: *Doe d. Henniker v. Watt*, cited *Ir.*). The rule was thus stated by Periam, J., *Simpson v. Titterell* (Cro. Eliz. 242), — “‘Proviso,’ alwaies implieth a Condition if there be not words subsequent which may, peradventure, change it into a Covenant, as where there is another penalty annexed to it for performance as *Dockwray’s Case* (27 H. 8, 14), but it is a rule in provisoes, where the proviso is that the lessee shall perform or not perform a thing and no penalty to it, this is a Condition, otherwise it is void; but if a penalty is annexed, *aliter est.*” But in *Brookes v. Drysdale* (3 C. P. D. 52; 26 W. R. 331), it was held that, in a Lease, the words “Provided always, and these presents are upon this express condition,” of themselves, amounted to a Covenant. *V.* PROVISO: *IF.*

But, generally, the words “Provided always” refer to, and qualify, what has preceded (*Martelli v. Holloway*, L. R. 5 H. L. 532; 42 L. J. Ch. 26). *Vf.* *Dicker v. Angerstein*, cited PURPORTING.

**PROVIDED THE FUNDS PERMIT.** — These words in the withdrawal clause of a Building Society, do not deprive a member who has given Notice of Withdrawal of his right of priority over other members, in case of a liquidation after the Notice has expired (*Walton v. Edge*, 54 L. J. Ch. 362; 10 App. Ca. 33, distinguishing *The Mutual Socy*, 24 Ch. D. 425, *n.*, and explaining *Blackburn By Socy v. Cunliffe*, 52 L. J. Ch. 92; 22 Ch. D. 61). *V.* AVAILABLE.

**PROVIDENT.** — “Provident Benefits,” quâ Trade Union (Provident Funds) Act, 1893, 56 & 57 V. c. 2, “means and includes, any payment made to a Member during sickness, or incapacity from personal injury, or while out of work; or, to an Aged Member, by way of superannuation; or to a Member who has met with an Accident or has lost his Tools by fire or theft; or a payment in discharge or aid of Funeral expenses on the death of a member or the wife of a member; or as provision for the Children of the Deceased Member where the payment in respect whereof exemption is claimed is a payment expressly authorized by the registered rules of the Trade Union claiming the exemption” (s. 3).

*V.* INDUSTRIAL AND PROVIDENT SOCIETY. *Cp.*, FRIENDLY SOCIETY.

**PROVIDING COVERS.** — *V.* COVERS.

**PROVINCE.** — *V.* CANADA: PROVINCIAL.

Quâ Indian Councils Act, 1892, 55 & 56 V. c. 14, “ ‘Province,’ means, any presidency, division, province, or territory, over which the powers of any local legislature for the time being extend” (s. 6).

**PROVINCIAL.** — “Provincial Court,” quâ Clergy Discipline Act, 1892, 55 & 56 V. c. 32, “means, as respects the Province of Canterbury, the Arches Court of Canterbury; and, as respects the Province of York, the Chancery Court of York” (s. 12).

“Provincial Law Societies or Associations”; Stat. Def., 44 & 45 V. c. 44, s. 1.

**PROVISION.** — Annuity to “make provision” for a wife; *V.* JOINTURE. *Vf.*, REASONABLE.

“Like Provisions”; *V.* LIKE.

*V.* PROVISIONS.

**PROVISIONAL COMMITTEE.** — A Provisional Committee is an association formed for carrying into effect the preliminary arrangements necessary to promote a scheme; it is not a partnership, for it constitutes no agreement to share in profit or loss (*Reynell v. Lewis*, 15 M. & W. 526; 16 L. J. Ex. 25).

*V.* COMMITTEE.

**PROVISIONAL LICENSE.** — A Provisional License under s. 22, Licensing Act, 1874, “covers the whole period of the building of the premises to be constructed, however long” (per Coleridge, C. J., *R. v. London Jus.*, cited LICENSE).

**PROVISIONAL LIQUIDATOR.** — *V.* s. 4, Comp Winding-up Act, 1890.

**PROVISIONAL ORDER.** — Quâ Parliamentary Costs Act, 1871, 34 & 35 V. c. 3, “Provisional Order” includes, “provisional certificates,



schemes, and orders in the nature of Provisional Orders, made under the authority of any statute and requiring to be confirmed sanctioned or carried into effect by Act of Parliament" (s. 4).

"Provisional and Final Order," *quâ* Highway Acts; *V.* 27 & 28 *V.* c. 101, s. 18.

#### PROVISIONAL SPECIFICATION. — *V.* SPECIFICATION.

**PROVISIONS.** — "Provisions," in a Market Act, includes Potatoes (*Collier v. Worth*, 40 *J. P.* 342).

"Goods, Materials, or Provisions"; *V.* USE.

"Provisions," as used in the sense of Regulations or Rules; *V. Walsh v. Secretary for India*, 10 *H. L. Ca.* 385; 32 *L. J. Ch.* 594.

#### *V.* PROVISION.

**PROVISO.** — "This word (*proviso*) hath divers operations. Sometime it worketh a Qualification or Limitation; sometime a Condition; and sometime a Covenant" (*Co. Litt.* 146 b; *Vf*, *Ib.* 203 b). " 'Proviso' is a condition inserted into any deed, upon the performance whereof the validity of the deed consisteth. Sometimes it is onely a covenant, whereof see Coke, l. 2, p. 71, 72, in the *Lord Cromwells Case*" (*Termes de la Ley*). A proviso wholly repugnant to a covenant creating a personal liability is void; *secus* of a proviso only limiting such liability (*Williams v. Hathaway*, 6 *Ch. D.* 544).

A statutory proviso "is something engrafted on a preceding enactment" (*R. v. Tuunton, St. James*, 9 *B. & C.* 836).

It is said that "the terms 'Proviso' and 'Condition' are synonymous, and signify some quality annexed to a real estate, by virtue of which it may be defeated, enlarged, or created, upon an uncertain event" (*Woodf.* 192). That proposition is probably true when Real Estate is the subject-matter; but "Proviso" and "Condition" can hardly be regarded as convertible terms for all purposes.

#### *V.* CONDITION: PROVIDED ALWAYS.

**PROVOCATION.** — As to what is Provocation that will reduce MURDER to MANSLAUGHTER; *V.* *Steph. Cr.* 161, 162; *Arch. Cr.* 759-762; *Rose. Cr.* 620.

"Provocation" for riot, s. 2 (1), Riot (Damages) Act, 1886, 49 & 50 *V.* c. 38, may prevent compensation altogether, or reduce its quantum (*Gunter v. Metrop. Police*, 5 *Times Rep.* 58).

**PROXIMATE.** — Proximate Cause of Loss or Damage; *V. Marsden v. City and County Assree*, 35 *L. J. C. P.* 60; *L. R.* 1 *C. P.* 232; *Collins v. Middle Level Commrs.* 38 *L. J. C. P.* 236; *L. R.* 4 *C. P.* 279; *Harrison v. G. N. Ry.* 33 *L. J. Ex.* 266; 3 *H. & C.* 231; *Everett v. London Assree*, 34 *L. J. C. P.* 299; 19 *C. B. N. S.* 126. *Vf*, FIRE.

Negligence which is the Proximate Cause of a Mistake so as to work ESTOPPEL, means, that which is the real cause (*Seton v. Lafone*, 56 L. J. Q. B. 415; 19 Q. B. D. 68). *Cp.*, Contributory Negligence, sub NEGLIGENCE.

**PROXY.** — A Proxy is a “lawfully constituted Agent” (per Smith, L. J., *Re English Scottish & Australian Bank*, 1893, 3 Ch. 385; 62 L. J. Ch. 825; 69 L. T. 268; 42 W. R. 4), an “Agent properly appointed” (per Lindley, L. J., *Ib.*); and, *semble* (from the judgments of the Court of Appeal in that case), he need not, in the absence of a contrary regulation, be appointed in writing. However, in the Court below, Williams, J., said, “Under the Companies Act, generally, there can be to my mind no doubt but that the authority of the Proxy must be in writing”; and referring to the phrase “Creditors present, either in person or by proxy,” s. 2, 33 & 34 V. c. 104, he added, that “means a Proxy authorized by an instrument in writing”; but referring to the same phrase Smith, L. J., said, it “means, either in person or by his lawfully constituted agent, and not by the instrument of proxy, or the proxy paper.”

If there be an Instrument of Proxy, it is not absolutely necessary to produce it at the meeting for which it is to be used, unless there be some requirement to that effect (*S. C.*).

*Note:* *Vt*he for a Special Order under s. 2, 33 & 34 V. c. 104, and also as to the Stamp on Proxies, on which latter, *V. Ernest v. Loma Co*, 1897, 1 Ch. 1; 66 L. J. Ch. 17; 75 L. T. 317; 45 W. R. 86: in *thlc* it was also held that the Date of the Meeting may be filled in after the proxy paper is signed. *Vf*, VOTE.

**PUBLIC.** — “The Public,” — *e.g.* quā an UNDUE PREFERENCE which is to be guarded against “in the interests of the Public,” s. 27 (2), Ry and Canal Traffic Act, 1888, — means, “nothing wider than the British Public, at any rate,” but it does not mean anything so narrow as the general interests of the particular localities which may be affected by the matters in question; it means, those interests which concern the *Public at Large*. “Whilst it may, undoubtedly, be a most difficult enquiry whether this or that be for the Public Good, I would point out that the question is not altogether foreign to many which have from time to time been freely entertained by the Courts. Many a contract has been held invalid as contrary to PUBLIC POLICY; and although, warned perhaps by the economic errors of their predecessors, judges have grown more cautious in laying down what is and what is not contrary to Public Policy, yet the jurisdiction remains and is constantly exercised” (per Wills, J., *Liverpool Corn Trade Assn v. Lond. & N. W. Ry*, 1891, 1 Q. B. 120; 60 L. J. Q. B. 76; 7 Ry & Can Traffic Ca. 125). It is suggested that the older cases on the construction of Contracts in RESTRAINT OF TRADE may usefully be studied as examples of those remarks,

and that the persons entitled to complain of a COMMON NUISANCE furnish an illustration of what is generally connoted by "the Public."

Public at Large; *Vf*, *Int. Rev. v. Scott*, cited MANNER.

*V*. PUBLIC BENEFIT: PUBLIC DOCUMENT: PUBLIC INTEREST: PUBLIC SERVICE.

**PUBLIC ACCOUNTANT.** — "Public Accountant," held to include a Deputy Assistant Commissary General (*R. v. Fernandes*, 12 Price, 862).

**PUBLIC ACT OF PARLIAMENT.** — "Public Act of Parliament," "Public and General" Act, means, an Act which affects the Public at Large, as distinguished from one which only or chiefly affects private, personal, or local, interests; *Vh*, *Richards v. Easto*, 15 L. J. Ex. 163; 15 M. & W. 251; *R. v. London Co. Co.*, 1893, 2 Q. B. 454; 63 L. J. Q. B. 4; 69 L. T. 580; 42 W. R. 1; 58 J. P. 21: LOCAL ACT OF PARLIAMENT.

The TOLERATION ACT was held a Private Act (*R. v. Larwood*, 1 Salk. 168), but was declared a Public Act by s. 4, 19 G. 3, c. 44.

*Cp*, "Special Act," sub SPECIAL.

**PUBLIC ANALYST.** — Quà Sale of Food and Drugs Acts, "Public Analyst," means, an Analyst appointed by a Local Authority authorized to make such an appointment (s. 25, 62 & 63 V. c. 51).

**PUBLIC ANNUAL OFFICE.** — *V*. PUBLIC OFFICE.

**PUBLIC ASYLUM.** — "Public Asylum," and also "Private Asylum"; Stat. Def., Lunacy (Scot) Act, 1857, 20 & 21 V. c. 71, s. 3.

*V*. ASYLUM.

**PUBLIC AUCTION.** — *V*. AUCTION.

**PUBLIC AUTHORITY.** — *V*. AUTHORITY: PUBLIC BODY.

Costs as between Solr and Client under Public Authorities Protection Act, 1893; *V*. PURSUANCE: PUBLIC DUTY. *Seemle*, that "PERSON" exercising a "Public Authority," s. 1 of that Act, includes one having a public authorization (*Chamberlain Co. v. Bradford*, 83 L. T. 518).

**PUBLIC BALL.** — A "Public Dinner or Ball," s. 20 (3), 26 & 27 V. c. 33, is one in aid of, or connected with, some Public Purpose, *e.g.* a CHARITY, and to which members of the Public are admitted, such admission being, generally, on payment or with the expectation of a subscription; though, probably, payment or such an expectation is not a necessary ingredient to a Public Dinner or Ball, nor is a Dinner or Ball less Public on account of power being reserved to exclude improper persons: if, however, the Dinner or Ball be solely for the entertainment or amusement

of its promoters and their friends, and one to which the Public are in no way invited, it is private: whether or not a particular Dinner or Ball is Public or Private, is a question of fact (*Maloney v. Lingard*, 42 S. J. 193).

*Semble*, this construction applies to "Public Dancing, Singing, Music, or other Public Entertainment of the like kind," s. 51 (1), P. H. Act, 1890.

V. PUBLIC DANCING: PUBLIC SINGING.

**PUBLIC BATH.** — V. BATH.

**PUBLIC BENEFIT.** — As to what is for the "Public Benefit"; *V. A-G. v. Terry*, 9 Ch. 423; disapproving *R. v. Russell*, 6 B. & C. 566.

Payments by a Municipal Corporation to a University College in the Borough, are not "for the Public Benefit of the inhabitants and IMPROVEMENT of the borough" within s. 143, Mun Corp Act, 1882 (*A-G. v. Cardiff*, 1894, 2 Ch. 337; 63 L. J. Ch. 557; 70 L. T. 591; 10 Times Rep. 420).

V. PUBLIC: PUBLIC CONCERN.

A Bequest for the Public Benefit is a good CHARITY (Tudor Char. Trusts, 11 *et seq.*).

**PUBLIC BODY.** — V. PUBLIC AUTHORITY: PUBLIC DUTY: PURSUANCE.

Stat. Def. — Public Bodies Corrupt Practices Act, 1889, 52 & 53 V. c. 69, s. 7; Public Works Loans Act, 1882, 45 & 46 V. c. 62, s. 7. — *Id.* 32 & 33 V. c. 79, s. 9.

**PUBLIC BOOK.** — A Public Book, receivable in evidence as such, is one the entries in which are made by an Officer in the discharge of a Public Duty, *e.g.* the Register of the Navy Office, Log-book of a Man of War, or a Master's Book; but does not include the Register of Attendances kept by a Medical Officer of a Poor Law Union (*Merrick v. Wakley*, 8 A. & E. 170; 7 L. J. Q. B. 190). *Vf*, PUBLIC OFFICER: *Rosc. N. P.* 123: s. 14, Evidence Act, 1851, 14 & 15 V. c. 99, within which section is included the Act Book of the Ecclesiastical Court (*Dorrett v. Meur*, 15 C. B. 142; 23 L. J. C. P. 221). *Cp*, PUBLIC DOCUMENT.

**PUBLIC BRIDGE.** — *Vh*, Glen on Highways, 2 ed., 21, 110 *et seq.*, and the cases there collected.

A bridge of public utility, even though built by an individual, if dedicated to and accepted by the community, is a Public Bridge (*R. v. Yorkshire*, 2 East, 342; *R. v. Bucks*, 12 East, 192). A bridge in a HIGHWAY is a Public Bridge (s. 1, 22 H. 8, c. 5); and "Public Bridges" "may safely be defined to be, such Bridges as all His Majesty's subjects have used freely and without interruption, as of Right, for a period of time competent to protect them from being considered as wrong-doers in

respect of such use" (per *Ellenborough, C. J., R. v. Bucks*, 12 East, 204); and such user may be intermittent, *e.g.* only on occasion of floods (*R. v. Northampton*, 2 M. & S. 262; *R. v. Devon*, Ry. & Moo. 144). *Vf, R. v. Southampton*, 17 Q. B. D. 424; 19 Q. B. D. 590.

V. BRIDGE: COUNTY BRIDGE: PRIVATE BRIDGE.

**PUBLIC BUILDING.**—A Union Workhouse is a "Public Building" for the purposes of rating under a local Improvement Act (*Bedford Union v. Bedford Improvement Commrs*, 21 L. J. M. C. 229; 7 Ex. 777); and so is an Infirmary (*Bedford Infirmary v. Bedford Improvement Commrs*, 21 L. J. M. C. 229). In *Arnell v. Lond. & N. W. Ry* (12 C. B. 695) a Bridge over a Ry was, on the context in a Local Paving Act, held not to be a "Public Building"; but Maule and Talfourd, J.J., held that the fence-walls of the bridge were such a building; and from the judgment of Maule, J., it may, probably, be said that any building (including a fence-wall or DEAD WALL) built pursuant to an Act of Parliament and for the convenience and safety of the Public, is a "Public Building"; *See*, per Jervis, C. J., *Arnell v. Regent's Canal Co*, 14 C. B. 576.

An ambulance was not a "Public Building" within the Metropolitan Building Acts, 1855 and 1878, so as to require deposit of plans, &c. (*Josolyne v. Meeson*, 53 L. T. 319; 49 J. P. 805; 1 Times Rep. 565).

Quà London Bg Act, 1894, "Public Building," "means, a Building used, or constructed or adapted to be used, as a CHURCH, CHAPEL, or other PLACE of PUBLIC WORSHIP, or as a SCHOOL, College, or Place of Instruction (not being merely a Dwelling-house so used), or as a HOSPITAL, Workhouse, Public THEATRE, Public Hall, Public Concert Room, Public Ball Room, Public Lecture Room, Public Library, or Public Exhibition Room, or as a PUBLIC PLACE of ASSEMBLY, or used, or constructed or adapted to be used, for any other PUBLIC PURPOSE; also a building used, or constructed or adapted to be used, as an HOTEL, LODGING-HOUSE, Home, Refuge, or Shelter, where such building extends to more than 250,000 cubic feet or has sleeping accommodation for more than 100 persons" (subs. 27, s. 5): *Vth, Moses v. Marsland*, 1901, 1 Q. B. 668; 70 L. J. Q. B. 261.

V. INHABITED.

**PUBLIC BURIAL PLACE.**—V. BURIAL.

**PUBLIC BUSINESS.**—V. PUBLIC TRADE OR BUSINESS.

**PUBLIC CARRIAGE ROAD.**—"Turnpike Road or Public Carriage Road"; V. TURNPIKE ROAD: PUBLIC ROAD.

**PUBLIC CHARGES.**—"Public Charges or Taxes"; Stat. Def., Arrears of Rent (Ir) Act, 1882, 45 & 46 V. c. 47, s. 17.

**PUBLIC CHARITABLE INSTITUTION.** — “Public Charitable Institution.” “Public Charitable Purpose”; *V. PUBLIC CHARITY: PUBLIC PURPOSE: CHARITABLE PURPOSE.*

**PUBLIC CHARITY.** — An institution for the charitable benefit of a large and important body of poor persons, is a “Public Charity,” as well for the purposes of construing that phrase in a Will as for obtaining a statutory exemption from rating (*A-G. v. Pearce*, 2 Atk. 87; *St. Thomas's Hosp. v. Lambeth*, 45 L. J. M. C. 23; L. R. 7 H. L. 477; *Hall v. Derby*, 55 L. J. M. C. 21; 16 Q. B. D. 163; 54 L. T. 175; 50 J. P. 278; 2 Times Rep. 81). *Vf, R. v. Stapleton*, 33 L. J. M. C. 17; 4 B. & S. 629.

As a general rule, a FRIENDLY SOCIETY, even if it has honorary members, is not a Public Charity (*Re Clark*, 45 L. J. Ch. 194; 1 Ch. D. 497; *Re Dutton*, 48 L. J. Ex. 350; 4 Ex. D. 54; *Cunnack v. Edwards*, 1896, 2 Ch. 679; 65 L. J. Ch. 801; 75 L. T. 122; 45 W. R. 99; *See Spiller v. Moule*, 32 Ch. D. 158 *n*, on *whlev, Re Lacy*, cited *A: Pease v. Pattinson*, 55 L. J. Ch. 617; 32 Ch. D. 154; 54 L. T. 209; 34 W. R. 361); *secus*, if it receives voluntary donations and be founded for members in DISTRESSED CIRCUMSTANCES, or otherwise in poverty (*Re Buck*, 1896, 2 Ch. 727; 65 L. J. Ch. 881; 75 L. T. 312; 45 W. R. 106; 60 J. P. 775).

The Dilworth Ulster Institute is not only a “Public School” but is also a “Public Charitable Institution . . . carried on for” a “Public Charitable Purpose, and not for any gain or profit,” within s. 3 (4), Land and Income Assessment (New Zealand) Act, Amendment Act, 1892 (*Dilworth v. Commr of Stamps*, cited PUBLIC SCHOOL).

“Public Charitable Purposes”; Stat. Def., 35 & 36 V. c. 24, s. 14.

*V. CHARITABLE PURPOSE: CHARITY: PUBLIC HOSPITAL: PUBLIC PURPOSE.*

**PUBLIC CIVIL OFFICE.** — *V. PUBLIC OFFICE.*

**PUBLIC COMPANY.** — “What a ‘Public Company’ is has not been defined, but one test is, whether the members have a right to transfer their shares” (Buckl. 3, citing *Re Griffith, Carr v. Griffith*, 12 Ch. D. 655; 41 L. T. 540; 28 W. R. 28). “The words ‘Public Company’ import, no doubt, some relation to the PUBLIC; but the decisions leave it doubtful what that relation should be. It may mean, a Company the shares in which are open to all the public” (per Byles. J., *Nicholls v. Rosewarne*, 6 C. B. N. S. 493; 28 L. J. C. P. 275).

It is suggested that, a Public Company is one the constitution or affairs of which is or are made public. Therefore, a Co which has a PUBLIC OFFICER through whom it may sue or be sued, or which has to make returns to a Public Office from which the names and places of abode of its members or the state of its affairs may be ascertained, is a

“Public Company” within s. 14, 1 & 2 V. c. 110 (*Macintyre v. Connell*, 1 Sim. N. S. 225; 20 L. J. Ch. 284; *Graham v. Connell*, 19 L. J. Ex. 361). So, a Co incorporated under Comp Act, 1862 (whose Mem of Assn and Articles are, necessarily, public documents) is a “Public Company” within a testamentary power authorizing investments in the securities of “any Railway or other Public Company” (*Re Sharp, Rickett v. Sharp*, 60 L. J. Ch. 38; 45 Ch. D. 286; 62 L. T. 777); and such a Co is a “Public Company” within s. 5, Apportionment Act, 1870 (*Re Lysaght*, cited ACCRUE); but a PUBLIC BODY for the execution of public functions, is not a “Public Company” within an investment clause (*Wood v. Middleton*, 79 L. T. 155).

V. TRADING AND OTHER PUBLIC COMPANIES.

**PUBLIC CONCERN.** — “Matter not of Public Concern, and the publication of which is not for the PUBLIC BENEFIT,” proviso to s. 4, Law of Libel Amendment Act, 1888, 51 & 52 V. c. 64; *Vh. Odgers*, 730: PUBLIC MEETING. Cp, PUBLIC INTEREST.

**PUBLIC and CONSPICUOUS.** — “Public and Conspicuous Place”; V. PUBLIC PLACE.

“Public and Conspicuous Situation”; V. PUBLIC SITUATION.

**PUBLIC CONVENIENCE.** — V. CONVENIENCE: FACILITIES: PUBLIC PLACE: PUBLIC SERVICE.

**PUBLIC CONVEYANCE.** — “Railway for Public Conveyance”; V. RAILWAY.

V. CAB: HACKNEY CARRIAGE: OMNIBUS: STAGE CARRIAGE.

**PUBLIC DANCING.** — V. PUBLIC BALL.

A “house, room, garden, or other PLACE, kept for Public Dancing, Music, or other Public ENTERTAINMENT of the like kind.” s. 2, Disorderly Houses Act, 1751, 25 G. 2, c. 36 (made perpetual by 28 G. 2, c. 19), must be so used (to the knowledge of the deft) on more than one occasion (*Marks v. Benjamin*, cited KEEP); but exclusive use, or one for payment, is not essential (*Ib.*: *Gregory v. Tuffs*, 6 C. & P. 271; 1 Moo. & R. 313), yet the dancing or music must be a substantial, and not merely a subsidiary, part of the Entertainment (*Guaglieni v. Matthews*, 13 W. R. 679; 34 L. J. M. C. 116: *R. v. Tucker*, 46 L. J. M. C. 197; 2 Q. B. D. 417).

Rinking is not Dancing (*R. v. Tucker*, sup), nor are performances on the Tight-rope, or other rhythmic movements in a Circus (*Guaglieni v. Matthews*, sup), though it is not necessary to “Public Dancing” that the dancing should be by the Public (*Marks v. Benjamin*, sup).

**PUBLIC DEPARTMENT.** — Stat. Def., Crown Suits (Scot) Act, 1857, 20 & 21 V. c. 44, s. 4; Lunacy Act, 1890, s. 341: Superannuation

Act, 1887. 50 & 51 V. c. 67, s. 12, which section also provides that " 'Prescribed Public Department,' means, as respects any matter, the Department prescribed for the purpose of that matter by the Treasury."

**PUBLIC DINNER.** — *V. PUBLIC BALL.*

**PUBLIC DOCUMENT.** — The principle upon which a Public Document is admissible as Evidence is, that there "should be a Public Inquiry, a Public Document, and made by a Public Officer. I do not think that 'PUBLIC,' there, is to be taken in the sense of meaning the whole world. I think an entry in the books of a Manor is 'public,' in the sense that it concerns all the people interested in the Manor. And an entry, probably, in a Corporation book concerning a corporate matter or something in which all the corporation is concerned, would be 'public' within that sense. But it must be a Public Document, and it must be made by a Public Officer. I understand a 'Public Document,' there, to mean a document that is made for the purpose of the Public making use of it, and being able to refer to it. It is meant to be where there is a judicial, or quasi judicial, duty to enquire as might be said to be the case with the Bishop acting under the writs issued by the Crown: that may be said to be quasi judicial. He is acting for the public when that is done; but I think the very object of it must be that it should be made for the purpose of being kept public, so that the persons concerned in it may have access to it afterwards" (per Ld Blackburn, *Sturla v. Freecia*, 50 L. J. Ch. 96; 5 App. Ca. 643, 644). *Vh, Evans v. Merthyr Tydfil*, 1899, 1 Ch. 241; 68 L. J. Ch. 175; 79 L. T. 578: *Moriarty v. Moriarty*, 18 W. R. 145.

A Register of Parliamentary Voters and Poll Books are documents of a "Public Nature," within s. 14, Evidence Act, 1851, 14 & 15 V. c. 99 (*Reed v. Lamb*, 29 L. J. Ex. 452; 6 H. & N. 75); so, are Bye Laws of a Ry Co made under Ry C. C. Act, 1845 (*Motteram v. Eastern Counties Ry*, 29 L. J. M. C. 57; 7 C. B. N. S. 58); so, *semble*, verified copies of Parish Registers under s. 7, 52 G. 3, c. 146 (*Walker v. Beauchamp*, 6 C. & P. 552).

As to what is a Public Document the republication of which is not a Libel, except there be Malice: *V. Fleming v. Newton*, 1 H. L. Ca. 363; *Cosgrave v. Trade Auxiliary Co*, Ir. Rep. 8 C. L. 349; *Williams v. Smith*, 22 Q. B. D. 134; 58 L. J. Q. B. 21; *Searles v. Scarlett*, 1892, 2 Q. B. 56; 61 L. J. Q. 573; 66 L. T. 837; 40 W. R. 696; 56 J. P. 789; *Annaly v. Trade Auxiliary Co*, 26 L. R. Ir. 11.

**V. PUBLIC BOOK: DOCUMENT.**

**PUBLIC DRAIN.** — The Eau Brink Cut near King's Lynn, is not a "Public or Parish Drain," s. 35, 4 G. 4, c. Iv (*Coulton v. Ambler*, 13 M. & W. 403; 14 L. J. Ex. 10).

**V. DRAIN.**



**PUBLIC DUTY.**—A PUBLIC AUTHORITY, — *e.g.* a Municipal Corporation, or a Local Board, — even when carrying on a Business or a Trade such as supplying water or gas, is exercising a “Public Duty” within the Public Authorities Protection Act, 1893, 56 & 57 V. c. 61 (*The Ydan*, 1899, P. 239, 240; 68 L. J. P. D. & A. 101); *secus*, of a Body which has private gain for one of its substantial objects, though executing statutory powers, *e.g.* a Ry Co or a Harbour Board (*A-G. v. Margate Pier Co*, 1900, 1 Ch. 749; 69 L. J. Ch. 331; 82 L. T. 448; 48 W. R. 518; *et* *h* *per* Williams, L. J., *Ambler v. Bradford*, 1902, 2 Ch. 585; 71 L. J. Ch. 744). So, a Public Authority is exercising such a Public Duty when authorizing the driving over a road as an assertion of its being a HIGHWAY (*Greenwell v. Howell*, 1900, 1 Q. B. 535; 69 L. J. Q. B. 461; 82 L. T. 183; 48 W. R. 307). V. PURSUANCE.

V. PUBLIC OFFICER.

**PUBLIC EDUCATION.**—Quà Leases for Schools (Ir) Act, 1881, 44 & 45 V. c. 65, “Public Education,” includes, “EDUCATION provided in return for periodical payments. as well as purely gratuitous or free education” (s. 1).

**PUBLIC ELEMENTARY SCHOOL.**—In the application of Coal Mines Regn Act, 1887, to Scotland, “Public Elementary School,” means, State-aided School” (s. 76); in a like application of Elementary School Teachers (Superannuation) Act, 1898, 61 & 62 V. c. 57, the phrase “means a Public or other School in receipt of annual parliamentary grant” (s. 12).

V. ELEMENTARY: PUBLIC SCHOOL.

**PUBLIC EMPLOYMENT.**—V. PUBLIC TRADE OR BUSINESS.

**PUBLIC ENDOWMENT.**—V. ENDOWMENT: PRIVATE ENDOWMENT.

**PUBLIC ENEMIES.**—V. ADHERING TO THE QUEEN’S ENEMIES: ENEMY: QUEEN’S ENEMIES.

**PUBLIC ENTERTAINMENT.**—V. ENTERTAINMENT: PUBLIC BALL: PUBLIC DANCING: PUBLIC SINGING.

**PUBLIC EXAMINER.**—Quà Oxford University Act, 1854, 17 & 18 V. c. 81, “Public Examiner,” includes, “Moderators and Masters of the Schools” (s. 48).

**PUBLIC FUNDS.**—V. FUNDS: GOVERNMENT SECURITIES: PUBLIC MONEY: PUBLIC PAROCHIAL FUNDS: PUBLIC SECURITIES.

**PUBLIC GALLERY.**—Quà National Gallery (Loan) Act, 1883, 46 & 47 V. c. 4, “Public Gallery authorized by this Act,” means, any Gal-

lery situate in the United Kingdom belonging to, or under the control of. Government or of any Municipal Authority, or of any Society or Body approved by any two or more of the said Trustees of the National Gallery together with the Director" (s. 5).

**PUBLIC GARDEN.** — *V.* PUBLIC PARK.

**PUBLIC GOOD.** — *V.* PUBLIC: PUBLIC BENEFIT: GOOD, at end.

**PUBLIC HARBOUR.** — "Public Harbours," British North America Act, 1867, 30 & 31 V. c. 3, Sch 3; *V. A-G. Canada v. A-G. Ontario*, cited EXCLUSIVE, over-ruling *Holman v. Green*, 6 Canada S. C. R. 707.

*V.* HARBOUR.

**PUBLIC HEALTH.** — "The Public Health Acts"; *V.* Sch 2, Short Titles Act, 1896; these relate to England and Wales, other than London.

P. H. London Act, 1891, 54 & 55 V. c. 76.

P. H. Ireland Acts, 1878 to 1896, are, 41 & 42 V. c. 52; 42 & 43 V. c. 57; 47 & 48 V. c. 77; 52 & 53 V. c. 64; 53 & 54 V. c. 59; and 59 & 60 V. c. 54 (*V.* ss. 34 and 35, 59 & 60 V. c. 54).

P. H. Scotland Act, 1897, 60 & 61 V. c. 38.

"Public Health Rate"; Stat. Def., P. H. Scotland Act, 1897, s. 193.

**PUBLIC HIGHWAY.** — Where the access to a road at either end has become impossible by reason of ways leading up to it having been lawfully stopped, such road ceases to be a "Public Highway" (*Bailey v. Jamieson*, 1 C. P. D. 329); such a case forms an exception to what Byles, J., said (*Dawes v. Hawkins*, 29 L. J. C. P. 347; 8 C. B. N. S. 858), it is "an established maxim, Once a highway always a highway." *V.* HIGHWAY.

"Turnpike Road or Public Highway"; *V.* TURNPIKE ROAD.

*V.* PUBLIC ROAD: THOROUGHFARE: PLACE.

**PUBLIC HOSPITAL.** — "Public HOSPITAL, Infirmary, or other Medical Institution," proviso to s. 22, Coroners Act, 1887, 50 & 51 V. c. 71, includes a Children's and General Hospital, supported by voluntary contributions, and founded for the free admission and relief of patients within a defined area upon production of a Governor's letter, and of patients outside that area upon payment of a small weekly sum (*Horner v. Lewis*, 78 L. T. 792; 67 L. J. Q. B. 524; 62 J. P. 345).

*Cp.* PUBLIC CHARITY.

**PUBLIC HOUSE.** — Quà Licensing (Scot) Act, 1853, 16 & 17 V. c. 67, and, probably, of general acceptation, "Public house." includes, "a Common Inn, Alehouse, VICTUALING HOUSE, or other premises in which any exciseable liquors are sold by retail, to be drunk or consumed in the premises in which the same are sold" (s. 17).

Obtaining and using an "off" License for the sale of Beer, is not a breach of a covenant not to use the premises "as a Public-house for the sale of beer" (*Pease v. Coates*, 36 L. J. Ch. 57; L. R. 2 Eq. 688: *Vf*; *Fielden*, or *Feilden v. Slater*, 38 L. J. Ch. 379; L. R. 7 Eq. 523; 20 L. T. 112; 17 W. R. 485; *Devonshire v. Simons*, 11 Times Rep. 52; 39 S. J. 60). So, a Private CLUB, in which liquors are only sold to members, is not a "Public-house," nor is it used "for the SALE of liquors" within a restrictive covenant (*Ranken v. Hunt*, 96 Law Times, 413). *Cp*, Conducting a Public-house, sub PEACEABLE.

A clause, in a lease against the use of the premises "as a Public-house," will prohibit the lessee from using them as a Beer-house (1 W. 4, c. 64, s. 31), and from selling "Wine to be consumed on the premises" under the Wine and Refreshment Houses Acts (17, 23 V. c. 27, s. 44).

#### V. ON THE PREMISES.

*Vf*, as to covenant against a Public-house, RETAIL.

As to the duty of a Vendor, quà the License, on the sale of a Public-house; *V. Claydon v. Green*, 37 L. J. C. P. 226; L. R. 3 C. P. 511; *Day v. Luhke*, 37 L. J. Ch. 330; L. R. 5 Eq. 336; *Cowles v. Gale*, 40 L. J. Ch. 492; 7 Ch. 12; *Tadcaster Brewery Co v. Wilson*, cited AFFECTED.

#### V. ALEHOUSE: BEER-HOUSE: FREE PUBLIC HOUSE: HOTEL: SHOP.

"Public-house," used sometimes to be employed in the sense of a Toll-house (*R. v. St. Andrew the Less*, 10 B. & C. 742).

#### PUBLIC INSTITUTION. — V. PUBLIC CHARITY: PUBLIC SCHOOL: INSTITUTION.

"Public Institution," quà Births and Deaths Registration Act, 1874, 37 & 38 V. c. 88, "means, a prison, lock-up, workhouse, lunatic asylum, hospital, and any prescribed public or charitable institution" (s. 48); a like def for a like purpose is provided for Ireland, but between "workhouse" and "lunatic asylum" is inserted "barracks," and "religious" is added to "public or charitable institution" (s. 38, 43 & 44 V. c. 13).

**PUBLIC INTEREST.** — A matter of Public or General Interest, "does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected" (per Campbell, C. J., *R. v. Bedfordshire*, 4 E. & B. 541, 542; 24 L. J. Q. B. 84; 24 L. T. O. S. 268). *Vf*, *Seymour v. Butterworth*, 3 F. & F. 372; *Cox v. Feeney*, 4 Ib. 13; *Strauss v. France*, Ib. 1113; *Hunter v. Sharp*, Ib. 983; 15 L. T. 421; *R. v. Labouchere*, 14 Cox C. C. 419; *South Hetton Co v. North Eastern News Assn*, 1894, 1 Q. B. 133; 63 L. J. Q. B. 293; 69 L. T. 844; 42 W. R. 322; 58 J. P. 196.

V. FAIR COMMENT: GENERAL INTEREST: INTERESTED IN: PUBLIC: PUBLIC BENEFIT: PUBLIC CONCERN.

**PUBLIC LANDS.**—Gold and Silver Mines are not included in the "Public Lands" which, by the 11th Article of the Union of British Columbia to Canada, were to be "conveyed" by British Columbia to the Dominion of Canada (*A-G. British Columbia v. A-G. Canada*, cited *MINE*, at end).

**PUBLIC LIBRARY.**— "The Public Libraries Acts, 1892 and 1893." "The Public Libraries (Ireland) Acts, 1855 to 1894." "The Public Libraries (Scotland) Acts, 1887 and 1894"; *V. Sch 2*, Short Titles Act, 1896.

*V. LIBRARY: PUBLIC MUSEUM.*

**PUBLIC MARKET.**—A "Public Market," s. 5, 50 G. 3, c. 41, means, a "legally established" MARKET by grant from the Crown, not a merely *de facto* Market (*Benjamin v. Andrews*, 5 C. B. N. S. 299; 6 W. R. 692).

**PUBLIC MEETING.**—Qua Law of Libel Amendment Act, 1888, 51 & 52 V. c. 64. "Public Meeting," means, "any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of PUBLIC CONCERN, whether the admission thereto be general or restricted" (s. 4). A Sermon delivered in the usual course in a place of religious worship, is not at a "Public Meeting" within that def. and "a fair and accurate report" thereof is not entitled to the protection of s. 4 (per Wills, *J. Chaloner v. Lansdown*, 10 Times Rep. 290).

**PUBLIC MONEY.**—Qua Universities (Scot) Act, 1889, 52 & 53 V. c. 55, and, probably, of general acceptance, "'Public Moneys,' means, 'moneys provided by Parliament,' or 'moneys issuing out of the Consolidated Fund'" (s. 3). *Vf. PARLIAMENT: PUBLIC FUNDS: PUBLIC OFFICE: PUBLIC TAXES.*

"The Public Money Drainage Acts, 1846 to 1856"; *V. Sch 2*, Short Titles Act, 1896.

**PUBLIC MUSEUM.**—Stat. Def., Mortmain and Charitable Uses Act, 1888, 51 & 52 V. c. 42, s. 6 (4 iv).

*V. LIBRARY: PUBLIC LIBRARY.*

**PUBLIC MUSIC.**—The music at a Skating Rink is "Public Music," within 25 G. 2, c. 36 (*R. v. Tucker*, cited *PUBLIC DANCING*).

*V. PUBLIC BALL.*

**PUBLIC NATURE.**—*V. PUBLIC BOOK: PUBLIC DOCUMENT: PUBLIC PURPOSE: NATURE: RECORD.*

**PUBLIC NOTARY.**—*V. NOTARY PUBLIC.*

**PUBLIC NOTICE.** — A "Public Notice or Advertisement," Sch to Medicines Stamp Act, 1812, 52 G. 3, c. 150, is not confined to an announcement in a newspaper; the phrase includes, a statement in a Trade Price List (*Smith v. Mason*, 1894, 2 Q. B. 363; 63 L. J. M. C. 201; 70 L. T. 909; 58 J. P. 432).

*V.* PROCLAMATION.

**PUBLIC NUISANCE.** — This is another name for a COMMON NUISANCE. *V.*, NUISANCE.

**PUBLIC OCCUPATION.** — *V.* PUBLIC TRADE OR BUSINESS.

**PUBLIC OFFICE.** — *V.* OFFICE: PUBLIC OFFICER.

An employ in an Incorporated Co, such as the Bank of Scotland, is a "Public Office, or Employment of Profit" within Sch E, Income Tax Acts, 1842, and 1853 (*Tennant v. Smith*, 1892, A. C. 150; 61 L. J. P. C. 11; 66 L. T. 327; 56 J. P. 596); so, of a National Schoolmaster, "because the salary is paid by persons whose position as Managers of the school is recognized by Act of Parliament, and is paid out of sums of money principally contributed from the taxes of the country in order that the persons to whom it is paid may discharge a duty which is recognized as part of the PUBLIC SERVICE" (per Pollock, B., *Bowers v. Harding*, 1891, 1 Q. B. 560; 60 L. J. Q. B. 474): *V.* PUBLIC MONEY. A Bursar of an Oxford College, who is not on the foundation and receives a salary, holds such a "Public Office" (*Langston v. Glasson*, 1891, 1 Q. B. 567; 60 L. J. Q. B. 356; 65 L. T. 159). *Note:* A person assessable on a "Public Office, or Employment" must be assessed under Sch E, and cannot be assessed under Case 2, Sch D, as on an "Employment or VOCATION" (per Ld Watson, *Tennant v. Smith*, sup).

"Public Office": Stat. Def., Corrupt and Illegal Practices Prevention Act, 1883, s. 64; Public Bodies Corrupt Practices Act, 1889, 52 & 53 V. c. 69, s. 7; Superannuation Act, 1892, 55 & 56 V. c. 40, s. 4.

"Public Annual Office," s. 6, 3 & 4 W. & M. c. 11, includes, the office of Assessor and Collector of Land or Assessed Taxes, or of a Churchwarden (*R. v. Anderson*, cited SERVED); so, *semble*, of a Clerk to Land Tax Commrs (*R. v. St. Martin in the Fields Commrs*, 1 T. R. 146).

"Public Civil Office," quâ Pensions Commutation Act, 1871, 34 & 35 V. c. 36, "means, any Office (other than that of an Officer in Her Majesty's Naval or Land Forces) the holder of which is paid his remuneration out of moneys provided by Parliament for supply services" (s. 2). *V.* PUBLIC MONEY.

*Semble*, the Mastership of a City Company, is a Public Office of Trust (*R. v. Neal*, *Cunningham*, 267).

*V.* PUBLIC TRADE OR BUSINESS: WHOLLY.

**PUBLIC OFFICER.** — *V.* OFFICER: PUBLIC OFFICE.

“Every one who is appointed to discharge a PUBLIC DUTY, and receives a compensation in whatever shape, whether from the Crown or otherwise, is constituted a Public Officer,” *e.g.* a Bishop, Clergyman, or Lord of a Manor, or a Corporation with a grant of lands which grant imposes a public duty, and, as such, is liable to an action for injury to an individual arising from abuse of the Office, either by act of omission or commission (*Henly v. Lyne*, 5 Bing. 107, 108).

In *Re Mirams* (1891, 1 Q. B. 594; 60 L. J. Q. B. 397, cited also INCOME), Cave, J. held that a Charge on the Stipend of a Workhouse Chaplain was not against PUBLIC POLICY as being on the emoluments of a Public Officer: he said “to make the Office a Public Office the pay must come out of national, and not out of local, funds, — the Office must be Public in the strict sense of that term. It is not enough that the due discharge of the duties should be for the Public Benefit in a secondary and remote sense”; he also said, “It has never been held that a Clergyman having the Cure of Souls was a Public Officer”: *Sc, Henly v. Lyne*, *sup.*

“Public Officer” of a Bank; *V.* Country Bankers Act, 1826, 7 G. 4, c. 46, ss. 4, 5, 8, 9.

**PUBLIC PARK.** — Quà Mortmain and Charitable Uses Act, 1888. “‘Public Park.’ includes, any park, garden, or other land, dedicated or to be dedicated to the recreation of the PUBLIC” (subs. 4 i, s. 6).

*V.* PARK.

**PUBLIC PAROCHIAL FUNDS.** — By 56, G. 3, c. 139, s. 11, a parish Indenture of Apprenticeship at the expense of “Public Parochial Funds” is invalid unless approved by two justices (“under their hands and seals”; *V.* VOID): — such funds mean, those of some one particular parish having an interest in the transaction (*R. v. St. Peter’s*, 1 B. & Ad. 916): and though property given “for the benefit of a parish in general terms might probably be considered as a parochial fund,” yet it would not be so if “confined to a particular specified purpose, and not intended to go generally in aid of the parish funds” (*R. v. Halesworth*, 1 L. J. M. C. 71; 3 B. & Ad. 717; *Vf. R. v. Quinton*, 3 L. J. M. C. 93; 1 A. & E. 133; 3 N. & M. 289).

**PUBLIC PASSAGE.** — The bridges over the Regent’s Canal, London, might very well answer the description of a “Public Passage or Place,” but they are not “BUILT UPON, or in building” within s. 3, 55 G. 3, c. xxv (*Arnell v. Regent’s Canal Co*, cited PASSAGE). *V.* PUBLIC BUILDING: PUBLIC ROAD.

**PUBLIC PLACE.** — A Place is public, within the Criminal law against Indecency, “if it is so situated that what passes there can be

seen by any considerable number of persons if they happen to look" (Steph. Cr. 115). *V.* PLACE: OPEN.

The declaration in a Private Act that a Place of usual resort is a "Public Place," does not imply a dedication to the public of anything except the surface; and the Local Authority is not entitled to erect public conveniences under the surface of such "Public Place" (*Tunbridge Wells v. Baird*, 1896, A. C. 434; 65 L. J. Q. B. 451; 74 L. T. 385; 60 J. P. 788). *V.* VEST.

"Public Place"; Stat. Def., Public Statutes (Metropolis) Act, 1854. 17 & 18 V. c. 33, s. 1; 30 & 31 V. c. 134, s. 3; Licensing Act, 1902, s. 8.

"Public and *Conspicuous* Place." s. 4, 45 & 46 V. c. 20. for Publication of Rates; *V. R. v. Wolferstan*, 1893, 2 Q. B. 451; 62 L. J. M. C. 148; 69 L. T. 429; 42 W. R. 176; 58 J. P. 133.

*V.* STREET, towards end: *PLY.*

**PUBLIC POLICY.**— "Is a very unruly horse, and when once you get astride of it you never know where it will carry you" (per Burrough, J., *Richardson v. Mellish*, 2 Bing. 252): this saying was adopted and approved by Esher, M. R., *Clearer v. Mutual Reserve Assn*, 1892, 1 Q. B. 147; 61 L. J. Q. B. 128; 66 L. T. 220. "Judges are more to be trusted as interpreters of the Law than as expounders of what is called 'Public Policy'" (per Cave, J., *Re Mirams*, cited PUBLIC OFFICER). *Vh, Egerton v. Brownlow*, 4 H. L. Ca. 1; 23 L. J. Ch. 348; per Kekewich, J., *Davies v. Davies*, 36 Ch. D. 364; Matthews' Restraint of Trade, Introd. ch. *Cp*, INTENTION: CHARGE OF FRAUD. *Sc*, PUBLIC.

**PUBLIC PREACHING.**—*V.* PUBLIC READING: Phil. Ecc. Law, Part 3, ch. 11, s. 9.

**PUBLIC PRISON.**—Stat. Def., 44 & 45 V. c. 58, ss. 64, 65.

*V.* PRISON.

**PUBLIC PROSECUTION.**— A PROSECUTION instituted by the Director of Public Prosecutions under Prosecution of Offences Act, 1879, 42 & 43 V. c. 22, is a Public Prosecution (*Morcks v. Beyfus*, 59 L. J. Q. B. 479; 25 Q. B. D. 494; 38 W. R. 705).

**PUBLIC PROSECUTOR.**— In England, the Public Prosecutor, or (to use his exact legal title) "Director of Public Prosecutions" is the Solicitor to the Treasury (s. 2, 47 & 48 V. c. 58).

Qua Bail (Scot) Act, 1888, 51 & 52 V. c. 36, "Public Prosecutor," means, "any prosecutor acting for the PUBLIC INTEREST in the High Court of Justiciary, or the Sheriff Court" (s. 9).

**PUBLIC PURPOSE.**— A bequest for charitable "or other purposes" is uncertain and bad (*Ellis v. Selby*, 4 L. J. Ch. 69; 5 Ib. 214; 7 Sim. 352; 1 My. & C. 286); but if given for charities and "other

*public purposes*” it is good, the word “public” indicating that the other purposes are to be legally, if not popularly called, charitable (*Dolan v. Macdermot*, L. R. 5 Eq. 60; 3 Ch. 676. *Vh*, 1 Jarm. 215, 216).

#### F. PUBLIC CHARITY.

A Workhouse is a “House,” and the supply of water to it by a Water Co is for “Domestic,” and not “for Public, purposes” (*Liskeard Union v. Liskeard W. W. Co*, 7 Q. B. D. 505).

Quà Electric Lighting Act, 1882, 45 & 46 V. c. 56, “Public Purposes,” means, “lighting any Street or any Place belonging to or subject to the control of the Local Authority, or any Church or Registered Place of Public Worship, or any Hall or Building belonging to or subject to the control of any Public Authority, or any Public Theatre; but shall not include any other purpose to which electricity may be applied”: “Private Purposes,” includes, “any purposes whatever to which electricity may, for the time being, be applicable not being Public Purposes; except the transmission of any Telegram” (subss. 3, 4, s. 3). *V. s.* 36, lb., for def of “Public Purposes” quà Scotland.

Quà rateability or non-rateability of property to Poor Rate, a Public Purpose is, *semble*, synonymous with a Crown Purpose; *V.* per Bowen, L. J., *Showers v. Chelmsford Assessment Committee*, 1891, 1 Q. B. 339; 60 L. J. M. C. 55; 64 L. T. 755; 39 W. R. 231: per Whiteside, C. J., *Rep. Church Body v. Commr of Valuation*, Ir. Rep. 6 C. L. 566: *Limerick v. Commr of Valuation*, Ib. 420: BENEFICIAL, p. 181: *Cp*, *Belfast Harbour Commrs v. Commr of Valuation*, 1897, 2 I. R. 516: *Commr of Valuation v. Sligo Harbour*, 1899, 2 I. R. 214.

The property used for the purposes of the Irish Church Representative Body, is not “altogether of a Public Nature, or used exclusively for CHARITABLE PURPOSES,” within the exemption from rating given by ss. 15, 16, Valuation (Ir) Act, 1852, 15 & 16 V. c. 63 (*Rep. Church Body v. Commr of Valuation*, Ir. Rep. 6 C. L. 561).

A Savings Bank, is not a “Public or Charitable Purpose” within s. 1, 20 & 21 V. c. 54, repld. s. 80, Larceny Act, 1861 (*R. v. Fletcher*, L. & C. 180; 31 L. J. M. C. 206; 6 L. T. 545).

#### F. PUBLIC CHARITY.

#### PUBLIC RACE. — *V.* RACE.

**PUBLIC READING.** — “In *Barnes v. Shore* (1 Rob. Ecc. 397), I said what I now repeat, that ‘where two or three are gathered together,’ who do not strictly form a part of a FAMILY, there is a ‘Congregation,’ and the reading to them the Service of the Church is a reading ‘in Public’” (per Sir H. J. Fust, *Freeland v. Neale*, 1 Rob. Ecc. 651). *Cp*, “Open Prayer,” sub OPEN. *Vf*; PRIVATE HOUSE.

**PUBLIC RECEPTION.** — “Public Reception of Pregnant Women”; *V. R. v. Manchester*, cited HOSPITAL, towards end.



PUBLIC RECORDS. — *V.* RECORD.

**PUBLIC REFRESHMENT.** — Building kept for "Public Refreshment, Resort, and Entertainment," s. 6, 23 V. c. 27; *V.* ENTERTAINMENT: KEEP: REFRESHMENT HOUSE.

**PUBLIC RELIGIOUS WORSHIP.** — "Place appropriated to Public Religious Worship"; *V.* *Hornsey v. Brewis*, cited INCUMBENT.  
"Place of Religious Worship"; *V.* PLACE, towards end.

**PUBLIC RESORT.** — *V.* PLACE: RESORT.

**PUBLIC RIGHT.** — Quà Artillery and Rifle Ranges Act, 1885, 48 & 49 V. c. 36 (*V.* subs. 3, s. 3), and quà Military Lands Act, 1900, 63 & 64 V. c. 56 (*V.* subs. 4, s. 2), "Public Right," "means any right of navigation, anchoring, grounding, fishing, bathing, walking, or recreation."

**PUBLIC ROAD.** — "A Road becomes Public by reason of a dedication of the right of passage to the PUBLIC by the owner of the soil, and of an acceptance of the right by the Public or the Parish" (per Littledale, J., *R. v. Mellor*, 1 B. & Ad. 37). *Vf*, *R. v. St. Benedict*, 4 B. & Ald. 447; *R. v. Leake*, 5 B. & Ad. 469; *Selby v. Crystal Palace Gas Co.*, 30 Bea. 606; 10 W. R. 432, 636; *Grand Junction Canal Co v. Petty*, 21 Q. B. D. 273; 57 L. J. Q. B. 572.

"Public Road," quà Telegraph Acts; Stat. Def., 26 & 27 V. c. 112, s. 3; 41 & 42 V. c. 76, s. 2.

*V.* HIGHWAY: PUBLIC HIGHWAY: PUBLIC PASSAGE: PUBLIC WAY: ROAD: TURNPIKE ROAD.

**PUBLIC SALE.** — *V.* OPEN.

**PUBLIC SCHOOL.** — The City of London School, though partly supported by the fees payable by the scholars, is a "Public School" within Sch A, No. VI (Allowances), to s. 60, Income Tax Act, 1842. 5 & 6 V. c. 35 (*Blake v. London Corp*, 56 L. J. Q. B. 148, 424; 19 Q. B. D. 79; 35 W. R. 791); but some charitable element is implied in the phrase (*Needham v. Bowers*, 21 Q. B. D. 442). A Theological College for educating ministers for the Free Church of Scotland, is not a "Public School" within the Allowances (*Bain v. Free Church of Scotland*, W. N. (97) 140).

In the firstly cited case Denman, J., said that, "a definition of 'Public School' is nowhere to be found either at Common Law, or in any law book, or Act of Parliament. It is, therefore, a very mixed question of law and fact, though in its nature it is very much a question of fact." But the statement was not strictly accurate, for quà Education (Scot) Act, 1872, 35 & 36 V. c. 62, "Public School" had been defined as meaning

any Parish or Burgh School, or any school under the management of a School Board established under this Act" (s. 1).

"Public Institutions, such as Libraries, Museums, Institutions for the promotion of Science and Art, Colleges, and Schools," s. 2, Charitable Gifts Duties Exemption (New Zealand) Act, 1883;—The Dilworth Ulster Institute, of Auckland, New Zealand, is a "Public School" within that exemption, although the recipients of the benefits are to be trained in the doctrines of a particular Church and chosen from specified Localities, for it has the distinguishing elements of a Public School in that it is an Educational Endowment in perpetuity, the trustees of which have no personal interest in it, and the beneficial interest in which belongs inalienably to the Public, or to members of the Public (*Dilworth v. Commr of Stamps*, 1899, A. C. 99; 68 L. J. P. C. 1; 79 L. T. 473).

"Public School Accommodation"; Stat. Def., 54 & 55 V. c. 56, s. 5.

"The Public Schools Acts, 1868 to 1873"; V. Sch 2, Short Titles Act, 1896.

V. CHARITY SCHOOL: HOSPITAL: PUBLIC ELEMENTARY SCHOOL.

**PUBLIC SECURITIES.**—"Public Securities" in the Stock Jobbing Act, 7 G. 2, c. 8, did not include FOREIGN SECURITIES (*Wells v. Porter*, 2 Bing. N. C. 722; 5 L. J. C. P. 250). In *the Bosanquet, J.*, said, "When we find the expression 'PUBLIC STOCKS' we must intend the Public Stocks of this country": *Vf, Hewitt v. Price*, 4 M. & G. 355.

*Semble*, "Public Securities," in an Investment Clause, is a wider term than "GOVERNMENT SECURITIES" (per Shadwell, V. C., *Sampayo v. Gould*, 12 Sim. 435).

**PUBLIC SERVICE.**—The "Public Service,"—an existing contract for or on account of which disqualifies the Contractor from being elected to the House of Commons (22 G. 3, c. 45, s. 1),—means, the Government of the United Kingdom. Probably, a contract made with an agent of the Government, though the payment thereunder would not be out of the PUBLIC FUNDS of Great Britain, *e.g.* one with the Secretary of State for India, would be within the phrase (*Royse v. Birley*, 38 L. J. C. P. 203; L. R. 4 C. P. 296, *espy* jdgmt of Brett, J.); but the contract must be immediately with the Government or its agent; therefore, if an Army Officer, having an allowance for the clothing of his men, personally enters into a contract for the supply of such clothing, that is not a contract "for or on account of the Public Service" within the section (*Thompson v. Pearce*, 1 Brod. & B. 25); a contract for the supply of goods to the State Lunatic Asylum at Broadmoor is within the section (*Royse v. Birley*, *sup.*) *Vf*, UNDERTAKE: KNOWINGLY.

But a requisition which the Board of Trade may be authorized to make on a Railway Co as being "requisite for the Public Service," is not nar-

rowed to the service of the Government; the phrase includes "any service which would supply wants felt by the PUBLIC, or which the Public might reasonably be desirous of having on its own behalf" (*Re Laureston Ry Acts*, 3 Ry & Can Traffic Ca. 139).

Quà Treasury Chest Fund Act, 1877, 40 & 41 V. c. 45, " 'Public Service,' includes Colonial Service" (s. 6).

V. PARLIAMENT: POLICE: PUBLIC OFFICE.

**PUBLIC SINGING.** — By simply providing a piano forte and letting his customers amuse themselves with playing and singing, a PUBLICAN does not "keep or use" his premises for "Public Singing or Music" within s. 51, P. H. Act, 1890 (*Brearley v. Morley*, 1899, 2 Q. B. 121; 68 L. J. Q. B. 722; 80 L. T. 801; 47 W. R. 574; 63 J. P. 582). *Vj*; KEEP, p. 1039.

V. PUBLIC BALL: PUBLIC DANCING.

**PUBLIC SITUATION.** — "Public and Conspicuous Situation," s. 23, Parliamentary Voters Registration Act, 1843, 6 V. c. 18; *V. Hildred v. Ingram*, 64 L. J. M. C. 57.

*Cp*, PUBLIC PLACE.

**PUBLIC STATUE.** — Stat. Def., Public Statues (Metropolis) Act, 1854, 17 & 18 V. c. 33, s. 1; the Sch. to the Act contains a list of the then Public Statues in the Metropolis.

**PUBLIC STATUTE.** — *V.* PUBLIC ACT OF PARLIAMENT.

**PUBLIC STOCKS.** — Quà Dividends and Stock Act, 1869, 32 & 33 V. c. 104, "Public Stocks," means and includes "any Stock forming part of the National Debt, and transferable in the books of the Bank" (s. 6).

*V.* PUBLIC SECURITIES: GOVERNMENT STOCK.

**PUBLIC STORES.** — *V.* STORES.

**PUBLIC STREET.** — *V.* STREET: PLY.

**PUBLIC TAX.** — "Public Taxes, or Levies of the Town or Parish," s. 6, 3 & 4 W. & M. c. 11; *V.* *R. v. St. Thomas*, L. R. 5 Q. B. 371; 39 L. J. M. C. 83; 18 W. R. 997; 22 L. T. 379; *Vj*, TAXES.

Poor Rate is a "Public Tax," quà an eleemosynary exemption (*R. v. Scot*, 3 T. R. 602).

*V.* RATE.

**PUBLIC THOROUGHFARE.** — *V.* HIGHWAY: NEAREST: PUBLIC HIGHWAY: PUBLIC ROAD: TRAVELLER.

**PUBLIC TRADE or BUSINESS.** — A Girls' School is a breach of a covenant not to suffer "any Public Trade or Business" to be carried on (*Wickenden v. Webster*, 25 L. J. Q. B. 264; 6 E. & B. 387; 27 L. T. O. S. 122: BUSINESS). Cp, PUBLIC OFFICE.

Things delivered to a person exercising a "Public Trade." — to be carried, wrought, worked-up, or managed, in the way of his trade or employ, — are exempt from DISTRESS (*Simpson v. Hartopp*, Willes, 512: 1 Sm. L. C. 463: *V. DELIVERY*). On that, Patteson, J., said, "I do not know what is meant by the phrase 'Public Trade'" (*Gibson v. Iveson*, 3 Q. B. 44); but each of the following is a "Public Trade" within this rule, — Auctioneer (*Adams v. Grane*, 1 Cr. & M. 380; 2 L. J. Ex. 105: *Williams v. Holmes*, 8 Ex. 861; 22 L. J. Ex. 283); Butcher (*Brown v. Shevill*, 2 A. & E. 138; 4 L. J. K. B. 50); Carrier (*Gisbourn v. Hurst*, 1 Salk. 249); Clothier, Farrier, Innkeeper, Miller, Tailor, Weaver (Co. Litt. 47 a: *Rede v. Burley*, Cro. Eliz. 596); Factor or Commission Agent (*Gilman v. Elton*, 3 Brod. & B. 75: *Findon v. M'Laren*, 6 Q. B. 891; 14 L. J. Q. B. 183); Pawnbroker (*Swire v. Leach*, 34 L. J. C. P. 150; 18 C. B. N. S. 479); Warehouseman (*Miles v. Furber*, 42 L. J. Q. B. 41; L. R. 8 Q. B. 77; 27 L. T. 756; 21 W. R. 262); Wharfinger (*Thompson v. Mashiter*, 1 Bing. 283: *Matthias v. Mesnard*, 2 C. & P. 353). *Vh*, Rose. N. P. 724-726: Woodf. 704-711: Redman, 351-354: Fawcett, 333-339.

The only public businesses which (under pain of indictment or action) must be carried on by those who profess them (if they are at the time able to do so) are, *semble*, those of an Innkeeper and, possibly, a Carrier (per Parke. B., *Maspratt v. Gregory*, 1 M. & W. 653).

**PUBLIC TRAFFIC.** — A Railway "authorized to be open for Public Traffic," means, " 'open' for Public Traffic generally, and not merely open for Mineral Traffic" (per Lindley, M. R., *Great Central Ry v. Metrop Ry*, 15 Times Rep. 86). *V. OPEN: RAILWAY: TRAFFIC.*

**PUBLIC UNDERTAKING.** — *V. Gardner v. L. C. & D. Ry*, 36 L. J. Ch. 323; 2 Ch. 201: *Blaker v. Herts & Essex W. W. Co*, 58 L. J. Ch. 497: *UNDERTAKING.*

**PUBLIC USE.** — A "Public Use" of an INVENTION does not mean a general use, but a use in public as distinguished from one that is secret (*Carpenter v. Smith*, 11 L. J. Ex. 213; 9 M. & W. 300; 1 Webster, 530: *V. Patterson v. Gas Light & Coke Co*, 47 L. J. Ch. 402; 3 App. Ca. 239: *Stead v. Williams*, 2 Webster, 136: *Breerton v. Richardson*, 1 Pat. Ca. 173).

The "Public Use" of a TRADE-MARK, s. 17, Patents, &c, Act, 1888. is, not use since registration but, use and the reputation gained by it at the time of the Application for Registration; continued registration is

not equivalent to continued user (*Re Batt*, 1898, 2 Ch. 432; 67 L. J. Ch. 576; 79 L. T. 206; in H. L. nom. *Batt v. Dunnutt*, 1899, A. C. 428; 68 L. J. Ch. 557; 81 L. T. 94).

*V.* USE.

A Churchyard is a "PLACE dedicated to Public Use" (*R. v. Jones*, cited METAL).

**PUBLIC WALKS.**—"Public Walks and Pleasure Grounds"; *V.* PLEASURE.

**PUBLIC WASH-HOUSE.**—*V.* BATH.

**PUBLIC WAY.**—"By Public Way, I mean, not merely a Mail-Coach Road but, every WAY which is common to the Queen's subjects" (per Pennefather, B., *Deroy's Case*, Ir. Circuit Rep. 74, 75). *Vf.* HIGHWAY: PUBLIC ROAD: *Campbell v. Lang*, 1 Macq. 451.

**PUBLIC WELL.**—A Well, though situate in private ground, which is used gratuitously, and as of RIGHT, by the inhabitants in the vicinity for the purpose of drawing water, is a "Public Well" within s. 89 (4), P. H. Scotland Act, 1867, repld s. 126 (3), P. H. Scotland Act, 1897 (*Smith v. Archibald*, 5 App. Ca. 489); a definition which applies to the similar enactment in s. 74, P. H. Ireland Act, 1878 (*Dungarvan Guardians v. Mansfield*, 1897, 1 I. R. 420). *V.* SPRING.

**PUBLIC WHARF.**—A Public WHARF or QUAY is one which is common to all the King's subjects; a claim of a "Public Wharf," without more, involves that it is claimed by immemorial usage (*Bolt v. Stennott*, 8 T. R. 606).

**PUBLIC WORK.**—Stat. Def., Grand Jury (Ir) Act, 1872, 35 & 36 V. c. 42, s. 1; Loc Gov (Ir) Act, 1898, s. 109.

"The Public Works (Ireland) Acts, 1831 to 1886"; *V.* Sch 2, Short Titles Act, 1896.

"Comms of Public Works"; *V.* COMMISSIONERS, p. 343.

*V.* WORK.

**PUBLIC WORSHIP.**—*V.* PUBLIC RELIGIOUS WORSHIP: WORSHIP.

*V.* Public Worship Regulation Act, 1874, 37 & 38 V. c. 85, on *whr* BOOK OF COMMON PRAYER: CIRCUMSTANCES: MAY: OPINION.

**PUBLICAN.**—The prohibition, in a Lease, of the business "of a Victualler or Publican," will include a Beer-shop (1 W. 4, c. 64, s. 31).

"Victualler"; *V.* Article, 52 J. P. 398, 423. Primarily, "Victualler" simply means, "he who sells Victuals" (Cowel, *Vitteler*); the restriction of the word to one who keeps a PUBLIC HOUSE is modern (*Tyson v. Smith*, 9 A. & E. 410).

**PUBLICATION: PUBLISH.**—“Publication” is accomplished in a variety of ways according to the subject-matter.

A Book or other literary matter is published by being surrendered by its author for public use. Thus the sale of a MS. copy of a book is a publication of it (*White v. Gerock*, 1 Chitty, 26; 2 B. & Ald. 298). But a circulation amongst friends gratuitously, or to pupils, *e.g.* by lectures, is not (*Queensbury v. Shebbear*, 2 Eden, 329; *Prince Albert v. Strange*, 18 L. J. Ch. 120; 2 D. G. & S. 652; 1 Mac. & G. 25; 1 H. & Tw. 1; *Caird v. Sime*, 57 L. J. P. C. 2; 12 App. Ca. 326; *Palmer v. Dewitt*, 23 L. T. 823; *Bartlett v. Crittenden*, 4 McLean, 300, cited Copinger on Copyright, 3 ed., 117); so, of a circulation amongst subscribers for their private use (*Exchange Telegraph Co v. Central News*, 1897, 2 Ch. 48; 66 L. J. Ch. 672). Nor is the use of letters as evidence in court, a publication (7 Jarman Conv. by Sweet, 628, *n*). *V.* FIRST PUBLICATION: PRODUCED.

A NEWSPAPER, or PERIODICAL, is published whenever and wherever it is offered to the Public by the proprietor (*McFarlane v. Hulton*, 1899, 1 Ch. 884; 68 L. J. Ch. 408; 80 L. T. 486; 47 W. R. 507).

Acting a *Play* is not a “publication” of it, according to the primary meaning of that word (*Palmer v. Dewitt*, *sup*: Copinger on Copyright, 3 ed., 329 *et seq*); but for the purposes of the Copyright Acts the first public representation of a drama or musical composition is equivalent to the first publication of a book (5 & 6 V. c. 45, s. 20): *Vf*, per James, L. J., *Bouicault v. Chatterton*, cited FIRST PUBLICATION.

A *Sculpture*, or *Bust*, is published (54 G. 3, c. 56, s. 1) by being publicly exhibited (*Turner v. Robinson*, 10 Ir. Ch. Rep. 516). *V.* PRODUCED.

“Publication” of a DESIGN; *V. Blank v. Footman*, 57 L. J. Ch. 909; 39 Ch. D. 678; 59 L. T. 507; 36 W. R. 921.

The “Prior Publication” of an INVENTION which will invalidate a *Patent*, means the prior existence in this country of some document to which the public have access, containing such a description of the invention as will enable a practical man to carry it out from the description given (Terrell on Patents, 3 ed., 58); such access being of such a kind as to raise a reasonable probability that the knowledge on which the invention is based might have been obtained from the document (per Pearson, J., *Otto v. Steel*, 55 L. J. Ch. 198; 31 Ch. D. 241; 54 L. T. 157; 34 W. R. 289; disapproving of the *dicta* in *Lang v. Gisborne*, 31 L. J. Ch. 769; 31 Bea. 133, and *Plimpton v. Malcolmson*, 45 L. J. Ch. 505; 3 Ch. D. 531). *V.* ANTICIPATION: FIRST INVENTOR.

An AWARD is published, and “ready to be delivered,” as soon as it is completed and executed by the arbitrator (*Brooke v. Mitchell*, 6 M. & W. 473; Russell on Arb., 8 ed., 175); but, *semble*, even where the words used are “ready to be delivered” the Award may be by parol (*V.* DELIVER).

Publication of a BVE LAW; *V. Motteram v. Eastern Counties Ry*,

29 L. J. M. C. 57; 7 C. B. N. S. 58; *Fielding v. Rhyll*, 3 C. P. D. 272; Arnold on Municipal Corporations, 4 ed., 39.

A LABEL is published, quâ a Civil Action, when (its contents being known, or negligently unknown, *Emmeus v. Pottle*, 55 L. J. Q. B. 51; 16 Q. B. D. 354; 53 L. T. 808; 34 W. R. 116; *ethe, Vizetelly v. Mudie's Librery*, 1900, 2 Q. B. 170; 69 L. J. Q. B. 645) it is communicated to any one (even the libelled's wife, *Wenman v. Ash*, 13 C. B. 836), other than the person libelled; but the qualification contained in the last five words does not apply in Criminal proceedings for libel (*Steph. Cr.* 199; Odgers, 454). *Cp.*, quâ Civil libel, *Pallman v. Hill* (1891, 1 Q. B. 524; 60 L. J. Q. B. 299) with *Bovius v. Goblet* (1894, 1 Q. B. 842; 63 L. J. Q. B. 401). *Vf.*, Odgers, ch. 6: 10 Encyc. 535-540.

A forthcoming LOTTERY is published by publishing a Newspaper containing an advertisement of it (*King v. Smith*, 4 T. R. 414).

Publication of a RATE; *V. R. v. Whipp*, 4 Q. B. 141; 12 L. J. M. C. 64; *R. v. Wolferstan*, 1893, 2 Q. B. 451; 62 L. J. M. C. 148; 69 L. T. 429; 42 W. R. 176; 58 J. P. 133: Arch. P. L. Part 5.

Publication of a WILL. — *V. DELIVERY*: *Vincent v. Sodor and Man. Bp.*, 8 C. B. 905; 19 L. J. Ex. 366; *Johus v. Dickinson*, 8 C. B. 934: Re-Publication, or Re-Execution, *V. Re Truro*, 35 L. J. P. & M. 89; L. R. 1 P. & D. 201; *Re Rendle*, 68 L. J. P. D. & A. 125; *French v. Hoey*, 1899, 2 I. R. 472.

#### V. DEFINITIVE.

**PUBLISHER.** — "Publisher," ss. 13, 16, 24, Copyright Act, 1842. 5 & 6 V. c. 45, means the first Publisher (*Weldon v. Dicks*, 10 Ch. D. 247; 48 L. J. Ch. 201; *Coote v. Judd*, 23 Ch. D. 727; 53 L. J. Ch. 36).

**PUER.** — A limitation to "seniori puero" of the body of A. has been construed as of either sex, and that an eldest daughter took before a younger son (*Hunfreston's Case*, Dyer, 337). *Vf.*, Hargrave's n 3 to Co. Litt. 176 b. *Cp.*, ELDEST: HEIRS OF THE BODY.

**PUFFER.** — A "Puffer" at a sale by auction of lands (and, *semble*, generally) means, "a person appointed to bid on the part of the Owner" (s. 3, 30 & 31 V. c. 48): *Vth, Shimmin v. Bellew*, Ir. Rep. 1 Eq. 289. *Vf.*, RESERVED BIDDING.

Quâ this word in a Pleading; *V. Jones v. Quinn*, 2 L. R. Ir. 516.

**PUISNE.** — A Puisne JUDGE in England, was one of the Justices of the old Courts of King's Bench, or Common Pleas, or one of the Barons of the old Court of Exchequer, other than the Chief (3 Bl. Com. 41, 45).

Quâ Jud. Act (Ir) 1887. " 'Puisne Judges of the High Court,' shall mean, Judges of the High Court who are not *ex officio* Judges of the Court of Appeal" (s. 5).

A PUISNE MORTGAGEE or Incumbrancer, is a mtgee other than and subordinate to the First Mtgee, from whom accordingly he may purchase the mortgaged property when the First Mtgee is selling under a power of sale (*Shaw v. Bunny*, 34 L. J. Ch. 257; 33 Bea. 494; 2 D. G. J. & S. 468). As to the Redemption of first mtgee by Puisne Mtgee, *J. Fisher*, ss. 982, 1712, 1954; 1934, 1935.

*Cp.* MESNE: PREMIER.

**PULL DOWN.** — *V.* DEMOLISH: TAKE DOWN: UNNECESSARY INCONVENIENCE.

**PUNCTUAL.** — Where a thing has to be done “punctually” on a day named, that means, on the very day; any day after the day named is too late (*Leeds Theatre Co v. Broadbent*, 1898, 1 Ch. 343; 67 L. J. Ch. 135; 77 L. T. 665; 46 W. R. 230: *Hicks v. Gardner*, 1 Jur. 541). Therefore, a mortgage stipulation that it is not to be called in, or that its interest is to be reduced, if the interest is “punctually” paid, will only be operative if such interest is paid on or before the day or days named (*Ib.*). *Vf.* *Simpson v. Mauley*, cited CREDIT.

But for the purpose of a clause in a Charter-Party authorizing the ship-owner to withdraw the vessel if there be failure in “the punctual and regular payment” of the monthly hire, Bigham, J., held, that a tender, made immediately after a notice withdrawing the vessel because there had been one default, was not too late, such tender being only two days after the due day (*Nova Scotia Steel Co v. Sutherland Co*, 5 Com. Ca. 106).

*Cp.* “Duly paid,” sub DULY.

**PUPIL.** — *V.* INFANT.

**PUR AUTRE VIE.** — “By common speech, he which holdeth for terme of his owne life, is called tenant for terme of his life.” — *i.e.* TENANT FOR LIFE. — “and he which holdeth for terme of another’s life, is called tenant for terme of another man’s life,” — *i.e.* Tenant Pur Autre Vie (Litt. s. 56: *Vth*, Co. Litt. 41 b). *Vf.* Wms. R. P. 19: Challis, 325: Goodeve, 36: “Special Occupant,” sub SPECIAL.

Though an estate Pur Autre Vie is one of freehold (Litt. s. 57), yet it is not an “Estate of INHERITANCE” within s. 2, Dower Act, 1833, 3 & 4 W. 4, c. 105; nor, where it is severed from the inheritance, *e.g.* by a possible entail, is it “Equal to an Estate of Inheritance in Possession” within the same section (*Re Michell*, 1892, 2 Ch. 87; 61 L. J. Ch. 326; 66 L. T. 366; 40 W. R. 375).

**PURCHASE.** — Speaking technically, a person acquires by “Words of Purchase” and is a “Purchaser” when he obtains title in any other mode than by descent or devolution of law (Litt. s. 12: Co. Litt. 18 b: Fearné Cont. Rem. 79: Termes de la Ley: *Weeks v. Birch*, 69



L. T. 759); a devisee under a Will is accordingly a purchaser in law (Wms. R. P., ch. 4: *Vf*; Watson Eq. 201, 202). *Cp.* LIMITATION. *V.* BY PURCHASE: PURCHASER.

But in the Statute of Elizabeth (27 Eliz. c. 4, s. 2) relating to Fraudulent Conveyances as against those "as have *purchased*, or shall afterwards purchase" lands, tenements, and hereditaments, "the word 'Purchase,' of course, refers to cases of selling and purchasing in the ordinary and vulgar acceptation of the word, and not in the technical sense of any person who obtains lands otherwise than by descent" (May on Fraudulent Conveyances, 2 ed., 217). A "purchaser" under this statute, must be "a purchaser for money or other valuable consideration" (*Upton v. Bassett*, cited in *Tyque's Case*, 3 Rep. 83 a: *V.* VALUABLE. *Sv*, 56 & 57 V. c. 21, cited Good). This definition includes,—

Mortgagees, legal or equitable (*Dolphin v. Aglward*, L. R. 4 H. L. 486; 23 L. T. 636; *Lister v. Turner*, 5 Hare. 281), even if the mortgage be for a past consideration (*Barton v. Vanheythuyssen*, 11 Hare. 126; per Cranworth, C., *Bevan v. Oxford*, 6 D. G. M. & G. 520);

Lessees at rack-rent (*Goodright v. Moses*, 2 Bl. W. 1019);

Assignees of Leases (*Price v. Jenkins*, 5 Ch. D. 619; 46 L. J. Ch. 805; 37 L. T. 51; *Ex p. Doble*, 26 W. R. 407; 38 L. T. 183; *Harris v. Tubb*, 42 Ch. D. 79; *See, Price v. Jenkins*, dissented from in *Lee v. Matthews*, 6 L. R. Ir. 530. *Price v. Jenkins* does not apply to 13 Eliz. c. 5. *Re Ridler*, 22 Ch. D. 74; 52 L. J. Ch. 343; 31 W. R. 93; 48 L. T. 396; *Green v. Paterson*, 32 Ch. D. 104); and, *semble*, Sub-Lessees who covenant for performance of the lessee's obligations, *secus*, where there is no such covenant (*Shurmer v. Sedgwick*, 53 L. J. Ch. 87; 24 Ch. D. 597);

Children of a Widow, *quà* Marriage Settlement (*Newstead v. Scarles*, 1 Atk. 265; 9 App. Ca. 320 n: *Vthe, A-G. v. Jacobs-Smith*, cited VOLUNTEER); but not those of a Widower (*Re Cameron and Wells*, 57 L. J. Ch. 69; 37 Ch. D. 32);

Persons becoming partners with the owner under mutual obligations to work the land (*Shaw v. Standish*, 2 Vern. 326);

Trustees of a Creditors' Deed, when thereby taking a real interest (*Butterfield v. Heath*, 15 Bea. 408; 22 L. J. Ch. 270), not otherwise (*Cudell v. Bewley*, 15 W. R. 703). *Note. Butterfield v. Heath* was disapproved in *Re Foster and Lister* (inf);

Releasers of adverse claims (*Hill v. Exeter, Bp.*, 2 Taunt. 69);

"Marriage is a good consideration to make the Feme a Purchaser" (*Douglasse v. Waad*, 1 Ch. Ca. 99). As to a post-nuptial Settlement; *V. Re Foster and Lister*, 6 Ch. D. 87; 46 L. J. Ch. 480.

But the definition does *not* include,—

Judgment Creditors (*Bevan v. Oxford*, cited DISPOSING POWER: *Dolphin v. Aglward*, L. R. 4 H. L. 486; 23 L. T. 636);

Purchaser from Heir or Devisee of grantor (*Lewis v. Rees*, 3 K. & J. 132).

On this subject elaborately discussed, May on Fraudulent Conv., Part 3, ch. 2: *Va*, Seton, 2354.

In s. 91, Bankry Act, 1869, repld s. 47, Bankry Act, 1883, "Purchaser" means "Buyer" (*Re Pumfrey, Ex p. Hillman*, 10 Ch. D. 622; 48 L. J. Bank. 77; 27 W. R. 567; 40 L. T. 177), or rather, one who (in good faith on his part, *Muciatosh v. Pogose*, 1895, 1 Ch. 505; 64 L. J. Ch. 274; 72 L. T. 251) gives a *quid pro quo* (*Hance v. Harding*, 57 L. J. Q. B. 403; 20 Q. B. D. 732; 59 L. T. 659; 36 W. R. 629, explaining *Re Pumfrey*). *Va*, BOUGHT.

Qua Conv & L. P. Act, 1881, and Conv Act, 1882, "Purchaser," unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser lessee or mortgagee, or other person who, for valuable consideration, takes or deals for any property" (s. 2 (viii), Act, 1881; s. 1 (4 ii), Act, 1882); which includes an Equitable Mtgee (*Lloyd's Bank v. Bullock*, 1896, 2 Ch. 192; 65 L. J. Ch. 680; 74 L. T. 687; 44 W. R. 633). *Vf*; *Jones v. Barnett*, 1899, 1 Ch. 611; 68 L. J. Ch. 244; 80 L. T. 408; 47 W. R. 493. *V*. VALUABLE.

Property "PASSING" on death which is exempt from ESTATE DUTY if passing upon "a *bonâ fide* Purchase from the person under whose Disposition the property passes," s. 3, Finance Act, 1894, does not, in that exemption, include a policy on a Husband's life or the moneys payable under it at his death and which, by a *Post-Nuptial* Settlement, he has settled for the benefit of his Wife for life and afterwards upon other trusts, and which policy he had by the settlement covenanted to keep up and did keep up agreeably to such covenant (*A-G. v. Dobree*, 1900, 1 Q. B. 442; 69 L. J. Q. B. 223; 81 L. T. 607; 48 W. R. 413). *Vf*, MONEY'S WORTH: *A-G. v. Hawkins*, 45 S. J. 80; 70 L. J. Q. B. 195.

*Seemle*, where a person takes, in the same property, an equitable estate by election, and a legal estate by descent, he is not a "PURCHASER" within Inheritance Act, 1833, 3 & 4 W. 4, c. 106, ss. 2, 3 (*Wood v. Douglas*, 54 L. J. Ch. 421; 28 Ch. D. 327). *Vf*, *Blake v. Hynes*, 11 L. R. Ir. 284.

"Purchase" is used in its ordinary sense in the Mortmain Acts (*Philpott v. St. George's Hospital*, cited ERECT).

"Purchase," *bonâ fide* and without FRAUD or unfair dealing, of a *Reversionary Interest* which is not to be set aside "merely on the ground of undervalue" (s. 1, Sales of Reversions Act, 1867, 31 V. c. 4), includes, "every kind of Contract, Conveyance, or Assignment, under or by which any beneficial interest in any kind of property may be acquired" (s. 2): *Vh*, *Brenchley v. Higgins*, 82 L. T. 143; W. N. (1900) 242. *V*. REVERSION.

As to what is a "purchase" by a Co of its own SHARES; *V. Phosphate of Lime Co v. Green*, L. R. 7 C. P. 43; 25 L. T. 636, on *wher* per Ld Herschell, *Trevor v. Whitworth*, 12 App. Ca. 420, 421, by *wher* it is settled that a power to make such a purchase is ultra vires and void. *Vh*, Buckl. 584.

A special statutory power enabling a Corporation "to purchase, take, hold, receive, or enjoy," land in Mortmain, does not enable it to acquire land by devise (*British Museum v. White*, 2 Sim. & Stu. 594; 3 Moore & P. 689; *Nethersole v. Indigent Blind School*, L. R. 11 Eq. 1: 40 L. J. Ch. 26; 23 L. T. 723; 19 W. R. 174; *Chester v. Chester*, L. R. 12 Eq. 444; 19 W. R. 946); *secus*, if the power enables it to acquire land "by Will" (*Perring v. Trail*, L. R. 18 Eq. 88; 43 L. J. Ch. 775; 30 L. T. 248; 22 W. R. 512; *See, Luckraft v. Pridham*, 6 Ch. D. 205; 46 L. J. Ch. 744; 37 L. T. 204; 26 W. R. 33). *Vh*, 1 Jarm. 242.

So the power to a Trade Union "to purchase or take upon lease" land not exceeding 1 acre (s. 7, 34 & 35 V. c. 31), means, acquire by giving a consideration; it does not authorize an acquisition by devise (*Re Amos, Carrier v. Price*, 1891, 3 Ch. 159; 60 L. J. Ch. 570; 65 L. T. 69: 39 W. R. 550).

"Purchase or provide"; *V. PROVIDE*.

*V. BONÂ FIDE: BUY: BY PURCHASE: OPTION: PURCHASE FOR VALUE: PURCHASED: PURCHASER: SALE.*

"Purchase" held to mean "Agreement to Purchase" (*Long v. Millar*, cited BALANCE).

Purchase in the Army abolished by Royal Warrant, 20th July, 1871: *V. REGULATION: SALEABLE COMMISSION.*

**PURCHASE ANNUITY.** — Quà Purchase of Land (Ir) Act, 1891, 54 & 55 V. c. 48, "Purchase Annuity," means, an annuity for the repayment of an advance for the purchase of a HOLDING, made by the issue of stock under this Act" (s. 42).

*V. ANNUITY.*

**PURCHASE FOR VALUE.** — This phrase does not include a conveyance in consideration of marriage, in the implied covenants for title in a conveyance deed under s. 7, Conv & L. P. Act, 1881: *V. subs. A, s. 7, at end; subs. B, at end.*

Quà Land Charges Registration and Searches Act, 1888, 51 & 52 V. c. 51, "Purchaser for Value," includes, a mortgagee or lessee, or other person who, for valuable consideration, takes any interest in land, or in a charge on land; and 'Purchase' has a meaning corresponding with 'Purchaser'" (s. 4).

"Purchaser for Value without Notice," means, a purchaser of property from its legal owner to whom he has *bonâ fide* paid the consideration and from whom he has taken a legal conveyance, without having any

notice of any trust affecting the property (Godefroi, ch. 37; Lewin, ch. 31). *Cp.*, HOLDER IN DUE COURSE.

A BONÂ FIDE Purchaser for Value without Notice of Fraud, is within the protection of s. 5, 13 Eliz. c. 5, though the conveyance under which he gets title is itself fraudulent (*Halifax Banking Co v. Gledhill*, 1891, 1 Ch. 31; 60 L. J. Ch. 181). *Vf.* on Purchaser for Value without Notice, Kerr on Fraud and Mistake, 3 ed., 337; 10 Encyc. 588-593.

*V.* VALUABLE.

**PURCHASED.** — “Purchased,” in a devise of lands, *primâ facie*, means, lands acquired in any other way than by descent; therefore, a devise of lands testator has “purchased” will include those he has acquired by exchange (*Doe d. Meyrick v. Meyrick*, 2 L. J. Ex. 259; 1 Cr. & M. 820; 3 Tyr. 916).

An appointment by a married woman of “all funds and property which have been or shall be *purchased* out of the savings of property to which I have been or shall be entitled to my separate use,” does not include separate estate savings, standing to her account at her bankers (*Askew v. Rooth*, L. R. 17 Eq. 426; 43 L. J. Ch. 368).

Though “the Property,” in a V. & P. contract, would, probably, be an insufficient description, yet “Property *purchased*,” e.g. a receipt for a deposit “on Property purchased,” is sufficient, — “Property,” in that connection, meaning Real Property (*Shardlow v. Cotterill*, 20 Ch. D. 90; 51 L. J. Ch. 353; followed in *Plant v. Bourne*, cited *TUE*). *Cp.*, BALANCE.

Commission on all Goods “purchased”; *V.* BOUGHT.

“Purchased Manure”; *V.* MANURE.

“Purchased with money provided by Parliament”; *V.* PARLIAMENT.

*V.* PURCHASE.

**PURCHASER.** — *V.* PURCHASE: PURCHASE FOR VALUE: BONÂ FIDE: VALUABLE.

Quâ Inheritance Act, 1833, 3 & 4 W. 4, c. 106, “the Purchaser” shall mean, the person who last acquired the land otherwise than by DESCENT, or than by any escheat, partition, or inclosure, by the effect of which the land shall have become part of, or descendible in the same manner as, other land acquired by descent” (s. 1); *Vth.*, *Cooper v. France*, 19 L. J. Ch. 313; *Re Motson*, 1897, 2 Ch. 509; 66 L. J. Ch. 695.

“Any Purchaser,” s. 11, Sale of Farming Stock Act, 1816, 56 G. 3, c. 50, means, any purchaser from the tenant; and does not include a purchaser from the landlord under a distress for rent (*Hawkins v. Walrond*, 45 L. J. C. P. 772; 1 C. P. D. 280; 35 L. T. 210; 24 W. R. 824). *Vf.*; BEST PRICE.

“Purchaser”; Stat. Def., Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, s. 3; Heritable Securities (Scot) Act, 1894, 57 & 58 V. c. 44, s. 18.

Goods sold to the PREJUDICE OF THE PURCHASER, are those sold to the real buyer, though, quà the actual transaction, he acts by deputy (*Horler v. Scott*, 5 Q. B. D. 552; 49 L. J. M. C. 78; 42 L. T. 660; 28 W. R. 918; 44 J. P. 520; *Somersel v. Miller*, cited FORTHWITH, p. 755; *Garforth v. Esam*, 56 J. P. 521; 8 Times Rep. 243).

“Purchaser, Payee, or Incumbrancer”; *V. PAYEE*.

**PURE.**—*Butter* is “pure” though it has the addition of a little salt, or (per Ridley, J.) boracic acid added for the same reason as salt; and in a warranty between two tradesmen that the butter sold by the one to the other is “pure,” the question is, Was it “pure” in the sense in which that word is used in the trade (*Roose v. Perry*, 44 S. J. 503).

“Pure New Milk”; *V. Robertson v. Harris*, cited WRITTEN WARRANTY.

“Pure Personalty,” “Impure Personalty,” quà a Charitable Bequest; *V. Braumont v. Oliveira*, cited CHARITY, p. 296; *Re Holmes*, 63 L. T. 477; Tudor Char. Trusts, 62–65, 401 *et seq.*

“Pure and Wholesome Water,” s. 35, W. W. C. Act, 1847, 10 & 11 V. c. 17; *V. Milnes v. Huddersfield*, 56 L. J. Q. B. 1; 11 App. Ca. 511; 55 L. T. 617; 34 W. R. 761; 50 J. P. 676.

*V. ADULTERATED.*

**PURLIEU.**—“‘Purlue’ is all that ground which is neare any Forrest, which being made forrest by Henry the Second. Richard the First, or king John, were by perambulations granted by Henry the Third, severed again from the same” (Termes de la Ley, citing Manwood, Part 2, ch. 20). *Vf. Cowel.*

“Purlieu containeth such grounds which H. 2. R. 1. or king John, added to their ancient forests over other mens grounds, and which were disafforested by force of the Statute of Carta de Foresta, cap. 1, and cap. 3, and the perambulations and grants thereupon” (4 Inst. 303). “As to rights of Common in respect of purlieu, *V. R. v. Rodley*, Hard. 437; *Jenning v. Roocke*, Palm. 93” (Elph. 616, 617).

“Purlic Man, is he that hath lands within the purlieu, and being able to dispend forty shillings by the yeare of freehold, is upon these two points licensed to hunt in his owne purlieu” (Termes de la Ley, citing Manwood, Part 1, p. 151. & 177; 1 Jac. c. 27). *Vf. Cowel.*

**PURLOIN.**—“The words ‘purloin, embezzle,’ s. 97, 4 & 5 W. 4, c. 76, seem to point to absolute criminality” (per Coleridge, J., *Carpenter v. Mason*, cited WILFUL WASTE). *V. EMBEZZLE.*

**PURPORTING.**—When validity is given to anything “purporting” to be done in pursuance of a Power, a thing done under it may have validity though done at a time when the power would not be really exerciseable (*Dicker v. Angerstein*, 3 Ch. D. 600; 45 L. J. Ch. 754). In that case it was held that the proviso, following conditional Powers of

Sale in a mortgage, that a "Sale purporting to be made in pursuance" of the powers shall be valid as regards purchasers, enables the mortgagee to confer a good title on a *bonâ fide* purchaser even though the security be satisfied. *Cp.* PROVIDED ALWAYS.

*Note.* In the corresponding proviso in the statutory power of sale, the phrase for "purporting" is "professed exercise" (s. 21 (2), Conv & L. P. Act, 1881).

Writing "purporting" to be a Will; *V.* NATURE, p. 1244: *Re Broad*, 1901, 2 Ch. 86; 70 L. J. Ch. 601.

"Purporting," quâ a Criminal Offence, — *e.g.* engraving a Note "purporting" to be a Bank Note, s. 16. Forgery Act, 1861, 24 & 25 V. c. 98, — *semble*, means, "pretending." "An instrument purports to be that which, on the face of the instrument, it more or less accurately resembles. The definition of 'purporting' is the same whether applicable to the whole or to a part of an instrument. There must be a resemblance more or less accurate" (per Coleridge, J., *R. v. Keith*, 24 L. J. M. C. 110; 3 W. R. 412; 25 L. T. O. S. 118), *whc* shows that proof that a forged engraving "purports" to be what it is not is furnished by comparing it with a genuine one. *Vf.* *Hare v. Copland*, 13 Ir. Com. Law Rep. 426: PRETEND.

*V.* PURSUANCE.

**PURPOSE.** — "Any Purpose"; *V.* AVAILABLE.

"For Any Other Purpose"; *V.* *Re Norris*, W. N. (83), 35, 65: OTHER.

LIBERTY TO CALL to deliver, "or for Any Other Purpose whatsoever" would, probably, not justify a call to take in Cargo (per Herschell, C., *Glynn v. Margetson*, 1893, A. C. 351; 62 L. J. Q. B. 466).

Heredit "used EXCLUSIVELY" for a CHARITABLE PURPOSE; *V.* *Dublin Cemeteries v. Valuation Commr*, 1897, 2 I. R. 157: *Waterford v. Barton*, 1896, 2 I. R. 538.

"Purpose merely Charitable," s. 38, 5 & 6 V. c. 82; *V.* *A-G. v. Bayot*, 13 Ir. Com. Law Rep. 48.

"For the Purpose of"; *V.* CONSTITUTED: VIEW.

The "Purpose" of a Company is contrasted with its "Objects" in s. 1 (5), Comp Mem of Assn Act, 1890 (per Chitty, J., *Re Governments Stock Investment Co.* cited MAIN PURPOSE).

Society "for any Purpose of PROFIT," s. 2, 7 & 8 V. c. 110; *V.* *R. v. Whitmarsh*, 15 Q. B. 600; 19 L. J. Q. B. 469: *Beav v. Bromley*, 18 Q. B. 271; 21 L. J. Q. B. 354: *Moore v. Rawlins*, 6 C. B. N. S. 289; 28 L. J. C. P. 247: *Re Jones*, 1898, 2 Ch. 91; 67 L. J. Ch. 504; 78 L. T. 639; 46 W. R. 577, considering *Re Bristol Athenæum*, cited JOINT STOCK COMPANY.

Special Purpose; *V.* SPECIAL.

*V.* LAWFUL PURPOSE: PAROCHIAL PURPOSE: POST OFFICE: PUBLIC PURPOSE: PURPOSES.

**PURPOSES.** — “For ALL Purposes, Constables of the Aided Force,” s. 25 (1), 53 & 54 V. c. 45; *V. R. v. West Riding Co. Co.*, 1895, 1 Q. B. 805; 64 L. J. M. C. 145; 72 L. T. 520; 43 W. R. 386; 59 J. P. 340.

“For the Purposes of the Act”; *V. Grand Junction Canal Co v. Petty*, 57 L. J. Q. B. 572; 21 Q. B. D. 273; 36 W. R. 795; 52 J. P. 692, and cases therein cited: *Re Loc Gov Act*, 1888, cited ADMINISTRATIVE.

“The Purposes of *Agriculture*, and other *Rural Industries*”; Stat. Def., Agriculture and Technical Instruction (Ir) Act, 1899, 62 & 63 V. c. 50, s. 30.

Using premises “for the Purposes” of *Betting*; *V. USING*.

Buildings belonging to and “used for the Purposes” of a *Canal, Dock, or Railway*, s. 6, Metrop Bg Act, 1855, repld s. 201, London Bg Act, 1894; *V. North Kent Ry v. Badger*, 27 L. J. M. C. 106; 8 E. & B. 728; *Coole v. Lovegrove*, 1893, 2 Q. B. 44; 62 L. J. M. C. 153; 69 L. T. 19; 57 J. P. 647.

*County Purposes*; *V. GENERAL COUNTY PURPOSES: SPECIAL.*

*Crown Purposes*; *V. “Beneficial Occupation,”* sub BENEFICIAL.

“Purposes of *Gain*”; *V. GAIN.*

“*Mining Purposes*”; *V. MINING.*

“*Necessary for the Purposes*”; *V. NECESSARY.*

“The Purposes of *Sea Fisheries*”; Stat. Def., Agriculture and Technical Instruction (Ir) Act, 1899, 62 & 63 V. c. 50, s. 30.

“Money WHOLLY and exclusively laid out or expended for the Purposes of TRADE,” quâ *Income Tax Deduction*, Rule 1, applying to Cases 1 and 2, Sch D, s. 100, Income Tax Act, 1842, 5 & 6 V. c. 35; *V. Dillon v. Haverfordwest*, 1891, 1 Q. B. 575; 60 L. J. Q. B. 477; 64 L. T. 202; 47 W. R. 478; 55 J. P. 392; *Watson v. Royal Insrec.*, 1896, 1 Q. B. 41; 65 L. J. Q. B. 132; 66 *Ib.* 1; 73 L. T. 524; 44 W. R. 89; 59 J. P. 822; *Rhyunney Co v. Fowler*, 1896, 2 Q. B. 79; 65 L. J. Q. B. 524; 44 W. R. 651; *Vf*, SOLELY: PART. “Premises occupied for the Purpose of” Trade, &c. Rule 3 to Case 1, *Ib.*, means, premises so occupied by the person assessed (*Brickwood v. Reynolds*, 1898, 1 Q. B. 95; 67 L. J. Q. B. 26; 77 L. T. 456; 46 W. R. 130). “Purposes of Trade,” quâ *Inhabited House Duty*, s. 11, 32 & 33 V. c. 14; *V. Bank of India v. Wilson*, 3 Ex. D. 113; 47 L. J. Ex. 153.

Building, “used in Part for Purposes of Trade or Manufacture”; *V. PART*, p. 1411.

Railway “used for the Purposes of PUBLIC TRAFFIC”; *V. RAILWAY.*

Premises “used for the Purposes of the *Traffic* of a Railway”; *V. Elliott v. London Co. Co.*, cited TRAFFIC.

Lands “not required for the Purposes” of the UNDERTAKING, s. 127. Lands C. C. Act, 1845; *V. Betts v. G. E. Ry*, cited SUPERFLUOUS LAND.

Lands "taken or used for the Purposes of the Works," s. 133, Lands C. C. Act, 1845; *V. Putney v. Lond. & S. W. Ry.*, cited WORKS.

V. ALL INTENTS AND PURPOSES: DOMESTIC: GENERAL PURPOSES: MILITARY PURPOSES: POLICE: PUBLIC PURPOSE: PURPOSE: RELIGIOUS: SANITARY: SEWAGE: SHIPPING PURPOSES: VOID.

**PURPRESTURE.** — "By 'Purpresture' is meant, in its present acceptation, an encroachment upon the Crown, either upon part of the demesne lands, or upon the high roads, rivers, forts, or streets; and the difference between purprestures and nuisances consists in this, — that where the *jus privatum* of the Crown is invaded, it is a Purpresture; but where the *jus publicum* is violated, it is a Nuisance" (Dan. Ch. Pr. 1338, citing 2 Inst. 38, 272; Harg. Law Tracts, 84, 87; *Vf*, Co. Litt. 277 b; *Termes de la Ley*: Cowel: Manwood: Elph. 617).

V. NUISANCE: INTRUSION.

**PURPRISUM.** — "A close or enclosure; also the whole compass of a Manor" (Cowel).

**PURSER.** — "Purser" of the STANNARIES; Stat. Def., 32 & 33 V. c. 19, s. 2; 50 & 51 V. c. 43, s. 2.

**PURSUANCE.** — Notice of Action is in many instances required to be given prior to commencing proceedings for things done "In Pursuance," or "Under or By Virtue," or "In Execution" of a statute. In strictness, anything not authorized by a statute cannot be "in pursuance" or "under or by virtue" of it, whilst if authorized it would need no other protection. But if effect were given to such a construction it would altogether do away with the protection intended to be given; accordingly it is held that if any public or private body or person, charged with the execution of an Act of Parliament, or of any Public Duty or Authority (*F. s. 1, 56 & 57 V. c. 61*), honestly intends to put the law in motion and really and not unreasonably believes in the existence of facts, which, if existent, would justify his acting and acts accordingly, his conduct will be "in pursuance" or "under or by virtue" of the statute under which he believes he is acting, although he errs in such belief. The question whether there was in fact reasonable ground for such belief is a subordinate question and one very material to be pressed on the minds of the jury; but the presence or absence of such reasonable ground can only be relied on for the purpose of determining whether the belief was *bonâ fide* or not (*Hermann v. Seneschal*, 32 L. J. C. P. 43; 13 C. B. N. S. 392, and cases there cited: *Roberts v. Orchard*, 2 H. & C. 769; 33 L. J. Ex. 65; *Judge v. Selmes*, L. R. 6 Q. B. 724; 40 L. J. Q. B. 287; *Chamberlain v. King*, L. R. 6 C. P. 474, nom. *King v. Chamberlain*, 40 L. J. C. P. 273; *Agnew v. Jobson*, 47 L. J. M. C. 67; *Waterhouse v.*



*Keen*, 4 B. & C. 200; 6 D. & R. 257: *Mid. Ry v. Withington*, 52 L. J. Q. B. 689; 11 Q. B. D. 788: *Crge v. St. Pancras*, 1899, 1 Q. B. 693; 68 L. J. Q. B. 389; 80 L. T. 388: *Hughes v. Burkland*, 15 M. & W. 346; 15 L. J. Ex. 233: *Lea v. Facey*, 56 L. J. Q. B. 536; 19 Q. B. D. 352; 35 W. R. 721; 51 J. P. 756: *Rochfort v. Rynd*, 9 L. R. Ir. 204: *O'Dea v. Hickman*, 18 L. R. Ir. 233: *Sr. Thomas v. Stephenson*, 2 E. & B. 108; 22 L. J. Q. B. 258). *Vf*, *Wilberforce*, 87-98: *Maxwell*, 278: *Rose*. N. P. 1104, 1121, 1128, 1130-1134.

An omission to do, in pursuance of a statute, is on the same line, as regards notice of action, as an actual thing done (*Wilson v. Halifax*, L. R. 3 Ex. 114; 37 L. J. Ex. 44: *Joliffe v. Wallasey*, L. R. 9 C. P. 62; 43 L. J. C. P. 41).

As to when (apart from the question of Notice of Action) a thing is done "in pursuance" of an Act; *V. Armstrong v. Bowdidge*, 16 C. B. 358.

By *Public Authorities Protection Act*, 1893, 56 & 57 V. c. 61, a successful deft gets Costs as between Solr and Client of a "JUDGMENT" in proceedings brought "against any person for any act DONE in Pursuance or Execution" of a Statutory or other PUBLIC DUTY or Authority, or quà any alleged neglect or default therein (s. 1). a provision which applies to every ACTION, even though it be brought only for an Injunction to restrain a Public Authority from doing something (*Fielden v. Morley*, 1899, 1 Ch. 1; 67 L. J. Ch. 611; 79 L. T. 231; 1900. A. C. 133; 69 L. J. Ch. 314; 82 L. T. 29: *Harrop v. Ossett*, 1898, 1 Ch. 525; 67 L. J. Ch. 347; 46 W. R. 391; 78 L. T. 387; 62 J. P. 297: *Toms v. Clacton*, 78 L. T. 712; 46 W. R. 629; 62 J. P. 505); such Costs follow the jdgmt without any special direction (*North Metrop Tramways Co v. London Co. Co.*, 1898, 2 Ch. 145; 67 L. J. Ch. 449; 78 L. T. 711; 46 W. R. 554; 62 J. P. 488); but for GOOD CAUSE the judge may deprive even such a deft of Costs (*Westminster v. Bedford*, 44 S. J. 120: *Bostock v. Ramsey*, 1900, 2 Q. B. 616; 69 L. J. Q. B. 945; 83 L. T. 358; 64 J. P. 660). *Note*: the section does not apply to Interlocutory Applications, or to Appeals (*Fielden v. Morley*, sup). *V. PUBLIC AUTHORITY.*

EXPENSES "incurred in executing" the *Public Health Acts*; *V. Leith v. Leith Harbour Commrs.* 1899, A. C. 508; 68 L. J. P. C. 109; 81 L. T. 98: *Vf*, RIGHTS.

"Persons acting in the execution of this Act." s. 19, *Special Constables Act*, 1831, 1 & 2 W. 4, c. 41; *V. Bryson v. Russell*, 54 L. J. Q. B. 144; 14 Q. B. D. 720.

*V. CARRYING INTO EXECUTION: EXECUTION OF STATUTORY POWERS: IN EXERCISE: PURPORTING.*

**PURSUANT.**—Agreement "pursuant to the Highways Acts." *Sch Stamp Act*, 1891; *V. Cumberland Co. Co. v. Inl. Rev.*, 78 L. T. 679; 62 J. P. 407.

**PURSUER.** — *V.* PLAINTIFF.

Stat. Def. — 13 & 14 V. c. 36, s. 53; 31 & 32 V. c. 100, s. 2.

**PURSUIT.** — *V.* FRESH PURSUIT.

“Pursuit of Game”; *V.* SEARCH.

**PURVEYOR.** — Purveyor of Milk; *V.* DAIRYMAN.

**PURVIEW.** — “‘Purveiw,’ is a French word signifying a Gift or Grant, and *Pourveu que* a Condition; Sir Edward Coke often uses it for that part of an Act of Parliament which begins with ‘Be it enacted’” (‘owel).

**PUT.** — To create a thing, or to “put” a thing into a certain state or condition, is a very different thing from to “KEEP” it up, or to “keep” it in that state or condition; an agreement to “do” or to “put,” can only be broken once, but an agreement to “keep” is a continuing one: *e.g.* an agreement to “forthwith REPAIR,” or “forthwith put in repair,” is broken once for all (*Coward v. Gregory*, 36 L. J. C. P. 1; L. R. 2 C. P. 153; *V.* FORTHWITH), so, of an agreement to build a house within a stated period (*Jacob v. Down*, cited KEEP, p. 1038); but an agreement to “keep” such house in repair is continuing, and involves, *e.g.*, the practical revival of a waived agreement to build, because you cannot “keep” in repair that which is non-existent (*Ib.*).

**PUT ASHORE.** — *V.* LANDED: ON SHORE.

**PUT AWAY.** — “It shall not be lawful for any Master to *put away* or transfer his Apprentice to any other, or in any way discharge or dismiss him from his service” without consent of magistrates, s. 9, 56 G. 3, c. 139:—a master not having sufficient employment for a Parish Apprentice agreed with another tradesman that the Apprentice should work for him, he paying to the first master 5s. a week; held, a “putting away” within the section cited, although the apprentice, on one occasion, on demand, returned to his first master and worked for him for 10 days (*R. v. Wainfleet*, 9 L. J. M. C. 31; 11 A. & E. 656). *Vf.* *R. v. Shipton*, 6 L. J. O. S. M. C. 92; 8 B. & C. 88: PLACE OUT.

*V.* ASSIGN.

**PUT IN FORCE.** — An Execution is “put in force.” s. 163, Comp Act, 1862, by the Sheriff’s actual entry into possession under it (*Re London & Devon Biscuit Co*, L. R. 12 Eq. 190; 40 L. J. Ch. 574): “but where an execution is perfected by seizure before the commencement of the Winding-up, a sale after the commencement is not such a ‘putting in force’” (Buckl. 261, citing *Re Great Ship Co, Parry’s Case*, 4 D. G. J. & S. 63; 33 L. J. Ch. 245; 12 W. R. 139): *Vf.* *Re Opera*, W. N. (90) 104; 1891, 3 Ch. 260; 60 L. J. Ch. 839; 39 W. R. 705. *Vh.* PROCEEDING: DEBTOR.

Giving a Notice to TREAT is not "to put in force" compulsory powers within s. 16, Lands C. C. Act, 1845 (*Guest v. Poole, &c, Ry*, cited COMPULSORY POWERS).

*V. N. E. Ry v. Tynemouth*, 9 B. & S. 630.

**PUT IN PRACTICE.** — *Quà Patent*; *V. USE*.

**PUT INTO.** — *V. WRITING*.

**PUT OFF.** — To "put off" a bargain for the sale of goods, may mean, to postpone its completion, or to procure a resale of the goods to a third person; the first is the more ordinary meaning, but which is the meaning in a particular case is for the jury (*Thornton v. Charles*, 11 L. J. Ex. 302; 9 M. & W. 802).

*V. UTTER*.

**PUT ON BOARD.** — *V. TAKE ON BOARD; ON BOARD*.

**PUTCHER.** — A "Patcher," in the def of FIXED ENGINE *quà* Salmon Fishery Acts, "is a conical or funnel-shaped basket made of 20 straight rods fastened together at intervals by 4 or 5 hoops of decreasing size, each rod about half an inch or an inch thick and about 5 feet long and running lengthways from end to end of the basket. The length or depth of the basket is about 5 feet, the diameter about 20 inches at the mouth (where one end of each rod is fastened to the longest hoop at intervals of 3 inches) and 2 or 3 inches at the other end. The frame-work is loose or open, and the mouth and end are open so as to offer as little resistance to the tide as possible" (*Holford v. George*, L. R. 3 Q. B. 643; 37 L. J. Q. B. 187).

**PUTRID.** — "Putrid Solid Matter," s. 2, Rivers Pollution Prevention Act, 1876; *V. SOLID MATTER*.

**PYKE.** — *V. GORE*.

**PYROTECHNIC LIGHT.** — *V. The Orion*, 1891, F. 307; 60 L. J. P. D. & A. 90.

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**QUACK — QUALIFIED**


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**QUACK.** — A “Quack” is one who pretends to a skill or knowledge which he does not possess; therefore, to call a Practising Medical Man a “Quack,” or a “Quack-salver,” or an “Empiric,” or a “Mountebank,” is Slander *per se* (Odgers, 84, citing *Allen v. Eaton*, Rol. Ab. 54: *Goddart v. Haselfoot*, Ib.); so, to say of an Optician that he is “a Quack in Spectacle Secrets” (*Keyzor v. Newcomb*, 1 F. & F. 559).

As to what will be FAIR COMMENT justifying such expressions, *V. Hunter v. Sharp*, cited PUBLIC INTEREST.

**QUADRANTATA TERRÆ.** —  $\frac{1}{4}$  of an acre (Cowel: Elph. 598).

**QUADRUGATA TERRÆ.** — “A Team of Land which may be till’d with four Horses” (Cowel).

**QUALIFICATION.** — Where a stated Qualification, *e.g.* of a Director of a Co, is made a Condition Precedent, an appointment is void if the qualification is not possessed (*Jenner’s Case*, 47 L. J. Ch. 201; 7 Ch. D. 132).

Director shall “acquire his Qualification”; *V. Re Bolton*, 1894, 3 Ch. 356; 64 L. J. Ch. 27; 71 L. T. 284: *Re Anglo-Austrian Printing Co*, *Ex p. Isaacs*, 1892, 2 Ch. 158; 61 L. J. Ch. 481; 66 L. T. 593; 40 W. R. 518: *Re Bread Supply Assn*, 62 L. J. Ch. 376; 68 L. T. 434: *Re Herceyria Copper Co*, 1894, 2 Ch. 403; 63 L. J. Ch. 567; 70 L. T. 709; 42 W. R. 593: *See, Re Moore*, 1899, 1 Ch. 627; 68 L. J. Ch. 302; 80 L. T. 104; 47 W. R. 401. *Vh*, s. 3, Comp Act. 1900.

“Cease to hold” Qualification; *V. CEASE.*

“Future Qualification”; *V. FUTURE.*

“Household Qualification”; *V. HOUSEHOLD.*

“Lodger Qualification”; *V. LODGER.*

“Nature of Qualification”; *V. NATURE.*

“The SAME Qualification,” s. 4. Parliamentary Voters Registration Act, 1843. 6 V. c. 18, means, the same Property (*Burton v. Gery*, 17 L. J. C. P. 66; 5 C. B. 7; 10 L. T. O. S. 135).

*V. PROHIBITED.*

**QUALIFIED.** — An Apprentice bound to a Freeman of the Watermen’s Co, or to a registered Barge-owner, is a “qualified” APPRENTICE within s. 54, 22 & 23 V. c. cxxxiii (*Gosling v. Newton*, 1895, 1 Q. B. 793; 64 L. J. M. C. 160; 72 L. T. 500; 43 W. R. 559; 59 J. P. 406).

"Duly qualified CLERGYMAN," s. 48, 1 & 2 V. c. 56; *V. R. v. Poor Law Commrs*, 3 Ir. Com. Law Rep. 117. *Vj*, OFFICIATE.

A qualified FEE, is a FEE less absolute in duration than a FEE SIMPLE, and is spoken of by *Ld Coke* as synonymous with a BASE FEE, its most familiar example being a FEE TAIL (*Co. Litt.* 1 b).

Qualified *Indorsement*; *V. SANS RECOURS*.

"Qualified PILOT"; *V. The Carl XI*, 1892, P. 324; 61 L. J. P. D. & A. 111; *Stafford v. Dyer*, 1895, 1 Q. B. 566; 64 L. J. M. C. 191; 72 L. T. 114; *Mer Shipping Act*, 1894, s. 586.

"Qualified Practitioner," quâ *Legal Practitioners Act*, 1877, 40 & 41 V. c. 62, "means and includes, any serjeant-at-law, barrister-at-law, certificated solicitor, proctor, notary public, certificated conveyancer, special pleader, or draughtsman in equity" (s. 3). *Cp.* MEDICAL.

Qualified *Property* in animals *ferâ natura*, in the elements of nature, and in goods; *V. 2 Bl. Com.* 391 et seq. *V. SPECIAL*.

"Qualified Veterinary Surgeon"; *V. VETERINARY*.

A statement that a person is "*speciallly* qualified" as a Veterinary Practitioner, s. 17 (1), 44 & 45 V. c. 62, does not, necessarily, require a representation that he is possessed of some kind of diploma; a representation of having had special training to use veterinary skill is within the section; therefore, it is an offence within the section for a *Shoing Smith* to advertise his place as a "Veterinary Forge" (*Royal College Vet. Surgeons v. Robinson*, 1892, 1 Q. B. 557; 61 L. J. M. C. 146; 66 L. T. 263; 40 W. R. 412; 56 J. P. 313); *secus*, of "Veterinary Chemist" if used in the sense of preparing veterinary medicines for sale (*Royal College Vet. Surgeons v. Groves*, cited VETERINARY).

*V. DISQUALIFIED: DULY: OFFICER: QUALIFICATION. Cp.* ELIGIBLE.

**QUALIFIED TO ELECT.** — "Qualified to elect," s. 11 (3), *Mun Corp Act*, 1882, 45 & 46 V. c. 50, is not equivalent to "entitled to vote," in s. 51 of the same Act; and though, under the latter section, a person on the Register, however he got there, is "entitled to vote," he is not qualified to be elected as a Councillor, as being "qualified to elect to the office" (s. 11, subs. 3) unless, in fact, he really does possess the qualifications to elect that are prescribed by s. 9 (*Fliutham v. Roxburgh*, 55 L. J. Q. B. 472; 17 Q. B. D. 44); nor is a woman, "though entitled to vote," capable of being elected a County Councillor (*Beresford-Hope v. Sandhurst*, cited FEMALE).

**QUALIFY.** — An EXPERT Witness "qualifies" when he reads up, or otherwise masters, the details of the particular case on which he is to give evidence. As to the Allowance for this work, *V. R.* 9, Ord. 65, R. S. C., and thereon *Ann. Pr.*

**QUALITY.** — Quâ *Sale of Goods Act*, 1893, "Quality of Goods," includes their state, or condition" (subs. 1, s. 62).

"Character or Quality" of Goods, quà a Trade-Mark; *V. CHARACTER: FANCY WORD.*

Lands of a "Like Quality"; *V. LIKE.*

"Quality Marks" in a Bill of Lading; *V. Grant v. Norway*, 20 L. J. C. P. 93; 10 C. B. 665; *Cox v. Bruce*, 56 L. J. Q. B. 121; 18 Q. B. D. 147.

As to what is a fraudulent misrepresentation of the Quality of an article; *V. R. v. Ardley*, L. R. 1 C. C. R. 301; 40 L. J. M. C. 85, and cases there cited.

Similar Quality; *V. SIMILAR.*

*V. DYE: NATURE: QUANTITY AND QUALITY UNKNOWN: SORT.*

**QUAMDIU.** — "*Quamdiu* also is a word of limitation, for if a man grant a rent out of the mannor of D., *quamdiu* the grantor shall bee dwelling upon the mannor, this is good, or *quamdiu se bene gesserit*. And so by these words, *donec, quousque, usque ad, tamdiu, ubicunque*" (Co. Litt. 235 a).

"The word 'Quamdiu' implies a duration, without interruption or intermission. If Blackacre is granted to A. *quamdiu* B. suffers J. N. to enjoy Whiteacre, if B. enter into Whiteacre the grant of Blackacre ceaseth. Now, though B. suffer J. N. to re-enter and re-enjoy Whiteacre, yet the estate by the *quamdiu* is determined. And so, if lands be granted to A. and his heirs *quamdiu* B. hath heirs of his body, if B. die without heir of his body, the estate ceaseth; and though the wife of B. be enseint and after have a son, yet it shall not revive. That is the express case put by Yelverton in *Poole and Needham's Case*, in 6 Jac. B. R. 149; for it was a collateral determination which, being once interrupted, shall not be set on foot again. The true reason is, the *quamdiu* is a word of limitation of a continued uninterrupted estate. And indeed to have an estate cease and rise again, the proper words should be *toties quoties*, and not *quamdiu* which, as I said, implies a continued estate" (per Bridgman, C. J., *Holland v. Fisher*, Orl. Bridg. 202, 203). *V. TOTIES QUOTIES.*

**QUANTITY AND QUALITY UNKNOWN.** — *V. Tully v. Terry*, 42 L. J. C. P. 240; L. R. 8 C. P. 679; *The Ida*, 2 Asp. 551; 32 L. T. 541; *CONTENTS UNKNOWN: CLEAN BILL OF LADING.*

**QUANTITY SURVEYOR.** — A Quantity Surveyor, is a person "whose business consists in taking out in detail the Measurements and Quantities, from plans prepared by an architect, for the purpose of enabling Builders to calculate the amount for which they could execute the plans" (per Morris, J., *Taylor v. Hall*, 4 Ir. Rep. C. L. 476). There is no privity between him and the Builder whose tender is accepted; accordingly, he cannot recover his fees from such builder (*Taylor v.*

*Hull*), unless the builder's liability is shown by the arrangement between the parties or (probably) by a custom in the trade (*North v. Bassett*, 1892, 1 Q. B. 333; 61 L. J. Q. B. 177); nor, on the other hand, can he be sued by such builder for negligence in preparing the Bill of Quantities (*Priestley v. Stone*, 4 Times Rep. 730). Nor is there, necessarily and without express evidence of such a relationship, any privity between the Quantity Surveyor and the Building Owner, for the employer of the Quantity Surveyor is generally the Architect; therefore, the Builder has, generally, no claim against the Building Owner for the negligent preparation of the Bill of Quantities (*Scrivener v. Pask*, L. R. 1 C. P. 715), nor can the Quantity Surveyor, merely as such, recover his fees against the Building Owner (*Antisell v. Doyle*, 1899, 2 I. R. 275; *See, Moom v. Witney*, 5 Scott, 1; 3 Bing. N. C. 814).

**QUANTUM MERUIT.** — *Quantum Meruit*, is the reasonable amount to be paid for services rendered or work done, when the price therefor is not fixed by contract (3 Bl. Com. 161). *Vh, Cutter v. Powell*, 6 T. R. 320; 2 Sm. L. C. 1; *Sumpter v. Hedges*, 1898, 1 Q. B. 673; 67 L. J. Q. B. 545.

**QUARANTINE.** — *V. QUARENTINE.*

**QUARENTENA TERRÆ.** — “A Furlong; Co. Litt. 5 b; Spelm. It is also used in the secondary meaning of a furlong or shot (a division in the common field); Seebohm, Eng. Vil. Comm. 4; and for that reason, we suppose, ‘some hold that by that name land may be demanded’; Co. Litt. 5 b” (Elph. 617). *V. QUARENTINE: STADIUM.*

**QUARENTINE.** — “‘Quarentine’ is where a man dyeth seised of a manour place, and other Lands, whereof the wife ought to be endowed, then the woman may abide in the manour place, and there live of the store and profits thereof the space of forty dayes, within which time her Dower shall be assigned, as it appeareth in Magna Charta, cap. 6” (Termes de la Ley). *Vf, Cowel.*

“‘Quarentine’ is also the space of forty days wherein any person coming from foreign parts infected with the plague, is not permitted to land or come on shore” (Cowel). *Vh, 10 Encyc. 601-603.*

“‘Quarentine’ also signifies a Furlong” (Cowel). *Va, QUARENTENA TERRÆ.*

**QUARRELS.** — “As to this word (*Querelas*), it is to be known that Quarrels extend not only to actions as well real as personal, as it is held in 9 E. 44 a; but also to causes of actions and suits, as it is held in 39 H. 6, 9 b. So that, by release of all ‘Quarrels,’ not only actions depending in suit, but causes of action and suit also are released. . . . And this word Querela is derived a *querendo*, unde etiam *querens*, who is the

plaintiff; and Quarrels, Controversies, and Debates, are *synonima*, and of one and the same signification" (*Altham's Case*, 8 Rep. 153 a, 153 b). *Vf*, Co. Litt. 292 a: 'Termes de la Ley, *Quarels*.

**QUARRY.**—"The word 'Quarry' is in the *Encyclopædia Metropolitana* stated to be derived from the French word 'quarrière,' and the derivation is followed by this description: 'In the Latin of the lower ages, *quadraturus* was a stone-cutter, *qui marmora quadrat*, and hence "quarrière," the place where he quadrates or cuts the stone in squares, the place where the stone is cut in squares, generally a stone-pit,'—clearly, therefore, referring to a place upon or above, and not under, the ground" (per Turner, L. J., *Bell v. Wilson*, 35 L. J. Ch. 341; 1 Ch. 303; 14 W. R. 493; 14 L. T. 115); and, therefore, distinct from a "Mine" (*Durrill v. Roper*, 24 L. J. Ch. 779; 3 Drew. 294; 3 W. R. 467; 25 L. T. O. S. 302). "The authorities, both at Law and in Equity, concur in this, that if the operations carried on are in fact mining operations and not surface operations, — whatever may be the material gained, whether it be Slate, as here, Limestone, as in *R. v. Sedgley* (*V. MINE*), or Clay, as in *R. v. Brettell* (*Va, MINE*), — the criterion is, not the material obtained but, the mode in which it is obtained" (per Malins, V. C., *Cleveland v. Meyrick*, 37 L. J. Ch. 128). *Vf*, as to the difference between a Quarry and a Mine, MacS. 3-5.

Quà Factory and Workshop Acts, a "Quarry" is, "any place, not being a Mine, in which persons work in getting Slate, Stone, Coprolites, or other Minerals" (41 V. c. 16, Sch 4, Part 2, repld Sch 6, Part 2 (26), Factory and Workshop Act, 1901). *V. FACTORY.*

So, quà the Quarries Act, 1894, 57 & 58 V. c. 42, a "Quarry" means, "every place (not being a Mine) in which persons work in getting Slate, Stone, Coprolites, or other Minerals, and any part of which is more than 20 feet deep" (s. 1). Furnace Slag is not a "MINERAL," nor is a heap of it a "Quarry" within this def (*Scott v. Mid. Ry*, 61 J. P. 358; 13 Times Rep. 398).

The Workmen's Comp Act, 1897 (subs. 2, s. 7), adopts the def of "Quarry" contained in the Quarries Act, 1894.

Quà Quarry (Fencing) Act, 1887, 50 & 51 V. c. 19, "'Quarry,' includes, every pit or opening made for the purpose of getting Stone, Slates, Lime, Chalk, Clay, Gravel, or Sand; but not any natural opening" (s. 4).

*V. DELF: MINE:* "Open Mine," sub OPEN.

**QUART.** — Is  $\frac{1}{4}$ th of a GALLON (s. 15, 41 & 42 V. c. 49).

**QUARTER.** — A Quarter Measure is 8 BUSHELs (s. 15, 41 & 42 V. c. 49), *i.e.* 64 GALLONS.

**QUARTER OF A YEAR.** — "A 'Quarter of a Year' containeth, by legall computation, 91 dayes" (Co. Litt. 135 b). *Cp*, HALF A YEAR,



**QUARTER SESSIONS.** — “Court of Quarter Sessions”; Stat. Def., Interp Act, 1889, s. 13 (14).

“Quarter Sessions”; Stat. Def., 28 & 29 V. c. 121, s. 3; 31 & 32 V. c. 130, s. 3; Loc Gov Act, 1888, s. 100. — quæ Scotland, 46 & 47 V. c. 51, s. 68. — quæ Ireland, 53 & 54 V. c. 70, s. 98 (3).

“Quarter Sessions Borough”; *V.* Loc Gov Act, 1888, ss. 35, 100, on *whv*, *Re Dover and Kent Co. Co.*, 1891, 1 Q. B. 389; 60 L. J. Q. B. 314; 64 L. T. 421; 55 J. P. 248.

*Vh*, Archbold’s Practice of Quarter Sessions: Simey, *Ib.*: 10 Encyc. 605–610.

*V.* GENERAL OR QUARTER SESSIONS: NEXT: SEPARATE QUARTER SESSIONS: SESSIONS. *Cp*, PETTY SESSIONS.

**QUARTERLY.** — Where an annual rent, salary, or (*semble*) any other annual payment, has to be made “quarterly,” without more, that means, by four equal portions on the usual Quarter Days (*Fanaston v. Mackarly*, 2 Lev. 99). *Vf*, HALF YEARLY: *Cp*, YEARLY.

The power given, by s. 1, 5 V. c. 27, to Incumbents, with consent of Bishop and Patron, to lease glebe lands, is on the condition “that there be reserved on every such Lease, payable to the Incumbent for the time being of such benefice, *quarterly* in every year” during the term, the best and most improved yearly rent that can reasonably be gotten; that condition is imperative; and, therefore, where an Incumbent entered into an agreement to grant a lease at a rent “payable half-yearly,” the agreement could not be enforced, nor could the Court modify it so as to make it conform to the provisions of the statute (*Jenkins v. Green*, 28 L. J. Ch. 820; 27 Bea. 440).

A provision for a “Quarterly Account” is insufficient to make a Guarantee a continuing one; *V. Melville v. Hayden*, 3 B. & Ald. 593.

**QUASH.** — “To overthrow or annul” (Cowel), *e.g.* to quash an Indictment for defect on its face, or a Rate for illegality.

**QUAY.** — “Is a convenient place fitted on the Shore for the loading and unloading of Vessels; we commonly call it a WHARFE” (Cowel, *Koy*); but “‘Quay’ is a wider term than ‘Wharf’; it is almost tantamount to ‘STREET’” (per Crampton, J., *Belfast v. Tomb*, Smythe, 437).

*V.* DOCK: FACTORY: EX QUAY OR WAREHOUSE.

**QUEEN.** — This book professes to give the meaning of the English of Affairs as expounded by the English Judges and Parliament up to the end of the Nineteenth Century. That date very nearly coincides with the deeply lamented death of Her Most Gracious Majesty Queen Victoria, whose long and illustrious reign had accustomed the public records and publicists to speak of “The Queen” as transcending her

ancestors and as though she were not only a Model Ruler and the Type of Womanhood but also a Public Department. "King's Enemies" became "Queen's Enemies," "King's Peace," "Queen's Peace," and so with many like phrases. The idea of this book was formed in the twenty-second year of the reign, and written (for the most part) during the days, of our Good Queen, and it was indeed hoped that this edition might be published in her time. So it came about that "The Queen" is constantly used in these pages in the sense of Queen Victoria as typifying the Monarch of the British Empire; in that sense it is retained, and where so used the Monarch for the time being is of course intended: *V. CROWN: HIGH TREASON: MAJESTY: PRIVATE ESTATES: QUEEN'S ENEMIES: AS THE QUEEN DIRECTS.*

**QUEEN ANNE'S BOUNTY.** — *V. s. 12 (16), Interp Act, 1889.*

"The Queen Anne's Bounty Acts, 1706 to 1870"; *V. Sch 2, Short Titles Act, 1896.*

*V. FIRST FRUITS.*

**QUEEN'S ENEMIES.** — "The words 'the Queen's Enemies' relate, not to Robbers — for the consequences of whose attacks carriers are liable, unless their liability has been varied by statute or express contract — but in the case of an English ship, and, in other cases, to the Enemies of the Sovereign of the Shipowner" (1 Maude & P. 351, citing *Russell v. Niemann*, 17 C. B. N. S. 163; 34 L. J. C. P. 10: *The Heinrich*, L. R. 3 A. & E. 435; *The Teutonia*, L. R. 4 P. C. 171; 41 L. J. Adm. 57. *Va, The San Roman*, L. R. 3 A. & E. 583; 41 L. J. Adm. 72). Pirates, probably, are not included herein (1 Maude & P. 351, *n (h)*, 487: *See, Carver*, 12). *V. ENEMY: RESTRAINTS OF KINGS.*

**QUEEN'S REGULATIONS.** — *V. REGULATION.*

**QUEEN'S WAREHOUSE.** — *V. WAREHOUSE.*

**QUESTION.** — "Question in the Action"; *V. Norris v. Beazley*, 2 C. P. D. 80; 46 L. J. C. P. 169; *Horwell v. Gen. Omnibus Co*, 46 L. J. Ex. 700; 3 Ex. D. 365; *Byrne v. Brown*, 22 Q. B. D. 657.

By a "Question arising in any Cause or Matter," which may be referred under s. 56, Jud. Act, 1873, is meant a question that must necessarily arise for decision therein (*Weed v. Ward*, 58 L. J. Ch. 454; 40 Ch. D. 555); but that provision is replaced by ss. 13, 14, Arb Act, 1889, which are couched in wider language: *V. Hurlbatt v. Barnett*, cited ACCOUNT.

"Question arising in the Administration of" an Estate or Trust, R. 3 *g*, Ord. 55, R. S. C.; *V. Re Medland, Eland v. Medland*, 58 L. J. Ch. 572.

“Question arising out of, or connected with, the Contract,” s. 9, V. & P. Act, 1874, includes, “whatever could be done in Chambers upon a reference as to title under a decree where the contract was established” (*Re Burroughes and Lynn*, 46 L. J. Ch. 528; 5 Ch. D. 601; 25 W. R. 520; 36 L. T. 778: for the cases carrying out this principle, *V. Greenwood's Real Property Statutes*, 2 ed., 206–208: *Vf, Re Jackson and Woodburn*, 36 W. R. 396; 37 Ch. D. 44; 57 L. J. Ch. 243; 57 L. T. 753). *Cp*, COMPENSATION.

“The Question,” in the latter part of s. 41, Regn of Railways Act, 1868, 31 & 32 V. c. 119, means only, *the Question of Compensation* (*Re East London Ry*, 24 Q. B. D. 507; 63 L. T. 147; 38 W. R. 312).

“Difference . . . or any other Question,” s. 19, Regn of Railways Act, 1873, 36 & 37 V. c. 48, is confined to questions of account, compensation, and remuneration; and does not extend to the violation of an enactment (*Postmaster General v. Highland Ry*, 2 Ry & Can Traffic Ca. 34).

“Question of Law,” s. 14, Jud. Act, 1881, includes the question as to whether a Judge, not on the Election Petitions Rota, has power to amend a Petition (*Shaw v. Reckitt*, 1893, 2 Q. B. 59; 62 L. J. Q. B. 375; 69 L. T. 327; 41 W. R. 497; 57 J. P. 805). “Point of Law,” s. 58, Court of Probate Act, 1857, 20 & 21 V. c. 77; *V. Copeland v. Simister*, 1893, P. 16; 62 L. J. P. D. & A. 38; 68 L. T. 257; 41 W. R. 269: *Cp*, POINT OF SUBSTANCE.

Action in which *Title* “shall be in Question,” s. 58, 9 & 10 V. c. 95, repld s. 56 Co. Co. Act, 1888, means, where the Title shall really and *bonâ fide* be in question, as distinguished from the possibility of its coming in question under a general plea (*Latham v. Spedding*, 20 L. J. Q. B. 302; 17 Q. B. 440). *Vf*, TITLE: *Lilley v. Harvey*, 17 L. J. Q. B. 357; *Mountney v. Collier*, 22 L. J. Q. B. 124; 1 E. & B. 630; *Emery v. Barnett*, 27 L. J. C. P. 216; 4 C. B. N. S. 423. *Cp*, VALUE: ANNUAL VALUE, p. 88.

V. BROUGHT INTO QUESTION: DISPUTE: FACT: MATTER.

QUI TAM.—*V. POPULAR ACTION.*

QUIA EMPTORES.—The statute of *Quia Emptores*,—so called from its commencing words,—is 18 Edw. 1, c. 1; thereby was sanctioned the full and free alienation of FEE SIMPLE lands, but SUBINFEUDATION was forbidden and stopped. *Vh*, Wms. R. P. Part 1, chs. 3, 5, Part 2, ch. 5, Part 3, ch. 1: Goodeve, 20, 82 *n*, 87.

*Cp*, Statute de Donis, sub WESTMINSTER.

QUIA TIMET.—A Quia Timet Action is an action brought to prevent a wrong that is apprehended: *Vh*, *A-G. v. Manchester*, 1893, 2 Ch. 87; 62 L. J. Ch. 459.

**QUICK.**— A woman is “quick with child” when she has conceived (per Gurney, B., *R. v. Wycherley*, 8 C. & P. 264); the learned judge added, “ ‘With quick child,’ is when the child has quickened.”

**QUID PRO QUO.**— Is the CONSIDERATION of a Contract, — the giving of one thing of value for another thing of value (Cowel).

**QUIET ENJOYMENT.**— The question as to whether or not a Covenant for Quiet Enjoyment has been broken is “in every case a question of fact whether the quiet enjoyment of the land has or has not been interrupted; and where the ordinary and lawful enjoyment of the land is substantially interfered with by the acts of the lessor (or, other covenantor?), or those CLAIMING UNDER him, the covenant appears to us to be broken, although neither the TITLE to the land nor the POSSESSION of the land may be otherwise affected” (per Willes, J., *Dennett v. Atherton*, 41 L. J. Q. B. 165; L. R. 7 Q. B. 316). “I take that as an advance upon the older authorities. I accept it and act upon it” (per Lindley, L. J., *Robinson v. Kilvert*, 58 L. J. Ch. 396; 41 Ch. D. 88). But a mere “temporary inconvenience which does not interfere with the estate or title or possession,” is not a breach (per Lindley, L. J., *Manchester S. & L. Ry v. Anderson*, 1898, 2 Ch. 394; 67 L. J. Ch. 568; 78 L. T. 821). Observe, that *Dennett v. Atherton* was considered in *Sanderson v. Berwick-upon-Tweed*, 53 L. J. Q. B. 561; 13 Q. B. D. 547; 33 W. R. 67, and that those two cases and *Manchester, S. & L. Ry v. Anderson*, were considered in *Tebb v. Cave*, 1900, 1 Ch. 642; 69 L. J. Ch. 282; 82 L. T. 115; 48 W. R. 318.

This covenant does not embrace tortious acts (*Hayes v. Bickerstaffe*, Vaugh. 118; *Nash v. Palmer*, 5 M. & S. 379), unless expressly extended, e.g. to persons “PRETENDING TO CLAIM” (*Chaplin v. Southgate*, 10 Mod. 384), or unless such acts are those of the covenantor his heirs or exors or admors (Elph. 485), or of a specified person (Ib. 486). Nor does it guarantee unrestricted user (*Spence v. Marriott*, 1 B. & C. 457; 2 D. & R. 665; *Dennett v. Atherton*, sup), or freedom from unforeseen consequences (*Harrison v. Muncaster*, 1891, 2 Q. B. 680; 61 L. J. Q. B. 102; 40 W. R. 102; 65 L. T. 481).

It has been said that the covenant for Quiet Enjoyment can only extend to protect the purchaser from incumbrances and defects in the title of which he has no Notice (per Malins, V. C., *Hunt v. White*, 37 L. J. Ch. 326; 19 L. T. 141; 16 W. R. 478); but that case (which was never law in the United States) is over-ruled, and the covenant extends, — if its terms are wide enough, — to defects of title appearing on the conveyance itself (*Page v. Mid. Ry*, 1894, 1 Ch. 11; 63 L. J. Ch. 126).

*Vh*, Elph. 481–493; Woodf. 718–728; Touch. 166, 170–172; 36 S. J. 180, 42 Ib. 143; *Anderson v. Oppenheimer*, 49 L. J. Q. B. 708; 5 Q. B. D. 608; DEFAULT: DEMISE: INTERRUPTION: NEGLECT OR DEFAULT: PEACEABLY AND QUIETLY: THROUGH.

**QUIET IN HARNESS.** — “Quiet in Harness,” in a Warranty, refers rather to the behaviour than to the health of the horse (per Pollock, B., *Bush v. Freeman*, 3 Times Rep. 419).

“Proof that a horse is a good drawer only, will not satisfy a warranty that he is ‘a Good Drawer and pulls quietly in harness’; and the K. B. held that it was quite clear these were convertible terms, because no horse can be said to be a ‘Good Drawer’ if he will not pull quietly in harness, and therefore proof that he is merely a Good Puller will not satisfy the warranty, the word ‘good’ must mean, good in all particulars (*Coltherd v. Punchoon*, 2 D. & R. 10). And where a horse was warranted ‘Sound and Quiet in all respects,’ Abinger, C. B., held it to include the being Quiet in Harness (*Smith v. Parsons*, 8 C. & P. 199). But where the warranty was as follows, — ‘Received from A. £60 for a Black Horse, rising 5 years, Quiet to Ride and Drive, and warranted Sound up to this date or subject to the examination of a veterinary surgeon,’ — it was held that there was no warranty that the horse was Quiet to Ride and Drive (*Anthony v. Hulstead*, 37 L. T. 433)”: Oliphant on Horses, 4 ed., 121, 122.

**QUIETUS.** — “‘Quietus,’ acquitted, — Is a word used by the Clerk of the Pipe and Auditors in the Exchequer in their Acquittances or Discharges given to Accomptants.” (Cowel), e.g. a Sheriff, at the end of his year, carries in his Bill of Cravings (i.e. claim for expenses) and also accounts for what he may have received for the Crown, and gets his Quietus.

For the protection of purchasers of land against Crown Debts, a Quietus may be registered under s. 9, Judgments Act, 1839, 2 & 3 V. c. 11.

**QUIT.** — *V.* NOTICE TO QUIT: NOTICE, towards end.

**QUITCLAIM.** — This is a corruption of “quiet claim” (Litt. s. 445: *V.* REMISE). “‘Quite clayme, *quieta clamantia*,’ Is a Release or Acquitting of a man for any action that he hath, or might, or may have against him. Also a quitting of ones Claime or Title” (Cowel).

**QUIT RENT.** — “Rents of Assize are the certain established rent of the freeholders and ancient copyholders of a Manor, and which cannot be departed from: — those of Freeholders are frequently called Chief Rents, and both sorts are indifferently denominated Quit Rents, because thereby the tenant goes quit and free of all other services” (Woodf. 405, citing 2 Bl. Com. 42; Gilb. Rents. 38; Co. Litt. 143 b, Hargrave’s *n* 5): *Jf*, Litt. s. 117; Cowel, *Quit Rent*: Copinger and Munro on Rents, 17, 18; *North v. Strafford*, 3 P. Wms. 151 *n*: *Howitt v. Harrington*, 1893, 2 Ch. 497; 62 L. J. Ch. 571; 68 L. T. 703; 41 W. R. 664: *Re Maxwell*, cited IN CHARGE: CHIEF: RENT: FEE FARM.

**QUO WARRANTO.**—“Is a Writ that lies against him that usurps any FRANCHISE or Liberty” (Cowel), or Office. *Vh*, Short & Mellor’s Crown Office Practice: 10 Encyc. 629–642. *Cp*, PROHIBITION.

**QUORUM.**—Where a Quorum of Directors or Shareholders is prescribed, that means, imperatively, that no business shall be transacted unless the prescribed number, at least, be present (*Re Alma Spinning Co*, 50 L. J. Ch. 171; nom. *Bottomley’s Case*, 16 Ch. D. 681; following *Kirk v. Bell*, 16 Q. B. 290, and criticising *Thames Haven, &c, Co v. Rose*, 12 L. J. C. P. 90; 4 M. & G. 552): *Vf*, *Hemans v. Hotchkiss Co*, 1899, 1 Ch. 115; 68 L. J. Ch. 99.

Where a Quorum is to be fixed but none has actually been fixed; *V*. *Re Bank of Syria*, 1900, 2 Ch. 272; 69 L. J. Ch. 412; 83 L. T. 165; 1901, 1 Ch. 115; 70 L. J. Ch. 82.

In order that there may be a duly constituted Quorum of the DIRECTORS of a Co “it is necessary that they should act conjointly, and as a Board of Directors. I do not say that they are bound to meet at any particular place or any particular time; but they are bound to be together, as a Board, at the time the thing is ordered to be done” (per Bramwell, B., *D’Arey v. Tamar, &c, Ry*, 36 L. J. Ex. 37; L. R. 2 Ex. 158; 4 H. & C. 463; *vthe*, *Re Great Northern Salt Works*, 59 L. J. Ch. 288; 44 Ch. D. 472).

In a Commission, to be “of the Quorum,” means, that the persons so indicated are *sine quà non* to the proceedings (Cowel). *Note*. The Quorum clause no longer appears in the Commission of the Peace.

**QUOTE.**—Quote a Rate; *V*. **TO** BOOK, p. 206.

**QUOUSQUE.**—*V*. QUAMDIU.

A Seizure *Quousque*, is when a copyholder dies and no person comes in to claim Admittance to his tenement as his heir or devisee, then the Lord of the Manor may seize the tenement *until* some rightful person does so claim (*Doe d. Bover v. Trueman*, 9 L. J. O. S. K. B. 119; 1 B. & Ad. 736); but such seizure cannot be made until after three Proclamations in the Manor Court have been made, or a special notice given requiring the proper claimant to come in and be admitted and he has refused to do so (*Beighton v. Beighton*, 64 L. J. Ch. 796; 43 W. R. 685). This right of seizure may be barred by the Lord’s long acquiescence in a neglect to come in and claim (*Ecc. Commrs v. Parr*, 1894, 2 Q. B. 420; 63 L. J. Q. B. 784; 42 W. R. 561). *Vh*, Wms. R. P., Part 3, ch. 2: Goodeve, 329; 1 Watkins on Copyholds, 3 ed., 234, 2 Ib. 97; Scriven on Copyholds, 7 ed., 471; *Walters v. Webb*, 39 L. J. Ch. 677. *V*. UNTIL.

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**RABBITS — RACK-RENT**


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**RABBITS.** — *V.* DOMESTIC ANIMAL: GAME, p. 795: GROUND GAME.

**RACE.** — *V.* FOOT-RACE: HORSE RACE.

Racecourse; *V.* PLACE, p. 1486.

“Race HORSE”; Stat. Def., 19 & 20 V. c. 82, s. 12, the Act repealed by 37 & 38 V. c. 16.

Is a Regatta a “Public Race” within an Excise Exemption, *e.g.* s. 11, 6 G. 4, c. 81? *V. Ash v. Lynn*, 35 L. J. M. C. 159; L. R. 1 Q. B. 270.

**RACK-RENT.** — “‘Rack rent,’ is only a RENT of the full Value of the tenement, or near it” (2 Bl. Com. 43).

“Rack-rent, is rent of, or approaching to, the full Annual Value of the property out of which it issues” (Elph. 618); “a ‘Rack-rent,’ in legal language, means, a rent that represents the full Annual Value of the holding” (per Holmes, L. J., *Ex p. Connolly to Sheridan*, 1900, 1 I. R. 6: *V. LONG*). But on these two latter definitions it may be observed that “Annual Value,” primarily, means, *net* annual value (*V. ANNUAL VALUE*); whereas “Rack-rent,” or “Annual Rack-rent,” means gross rental as distinguished from net annual value (*Stevens v. Barnet Water Co*, 57 L. J. M. C. 82; 36 W. R. 924). *Seuble*, that Blackstone’s remains the correct definition.

*Vh, Re Elwes*, 28 L. J. Ex. 47; 3 H. & N. 719.

Quà Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, “‘Rack-rent,’ shall be construed to mean, any rent which shall not be less than  $\frac{2}{3}$ ds of the Full Improved Net Annual Value of any property” (s. 109): *Va*, 24 & 25 V. c. 133, s. 38 (3); P. H. Ireland Act, 1878, s. 2.

Quà Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, “‘Rack-rent’ shall mean, rent which is not less than  $\frac{2}{3}$ ds of the Full Net Annual Value of the property out of which the rent arises; and the ‘Full Net Annual Value,’ shall (save as regards any valuation for Poor Rates, or valuation for Assessments under this Act) be taken to be, the rent at which the property ought reasonably to be expected to let from year to year, free from all quit rent, head rent, ground rent, and usual tenant’s rates and taxes, and deducting therefrom the probable annual cost of the repairs, insurance, and other expenses (if any), necessary to maintain the same in a state to command such rent” (s. 1). *Vf, ANNUAL VALUE: FULL ANNUAL VALUE: NET.*

Quà P. II. Act, 1875 (V. s. 4), "Rack-rent" is defined as in 17 & 18 V. c. 103; "Full Net Annual Value" being defined as "Net Annual Value" in s. 1, 6 & 7 W. 4. c. 96 (V. ANNUAL VALUE).

Quà P. H. London Act, 1891 (V. s. 141), "Net" is dropped out of the def of "Rack-rent" and "Full Annual Value" is defined in language nearly resembling, but not identical with, that used for "Net Annual Value" in s. 1, 6 & 7 W. 4. c. 96.

**RADMANS: RADCHEMISTRES.**—V. COLEBERTI.

**RAGGED SCHOOL.**—Quà 32 & 33 V. c. 40, " 'Ragged School,' shall mean, any SCHOOL used for gratuitous education of children and young persons of the poorest classes, and for the holding of Classes and Meetings in furtherance of the same object, and without any pecuniary benefit being derived therefrom except to the teacher or teachers employed" (s. 2): *Vth, Bell v. Crane*, cited MAY, p. 1179. Cp, SUNDAY SCHOOL.

**RAIL.**—" 'Line of Rail,' has, I think, been held to include land covered by an embankment" (per Erle, J., *South Wales Ry v. Swansea*, 24 L. J. M. C. 34; 4 E. & B. 189).

**RAILROAD.**—V. *Fletcher v. London United Tramways Co*, cited RAILWAY, p. 1646.

**RAILWAY.**—The word "Railway" has no especial technical meaning, but is to be understood in its commonly received sense. Thus, in reference to the Ry and Canal Traffic Act, 1854, Brett, L. J., made the following observations.—"For instance, if additional points or sidings were requisite for safety at an existing junction, no ordinary person would say that the addition of a set of points or the laying of a siding rail would make a new railway; they would term it an adaptation or improvement of the existing railway: though an Order to make a single-line railway from A. to B. into a double-line railway would be considered by all ordinary persons of intelligence to be an Order to construct a substantially new line of railway or new railway" (*S. E. Ry v. Ry Commrs*, 50 L. J. Q. B. 211; 6 Q. B. D. 586). V. FACILITIES.

"Railway" is not synonymous with "Rails," and is not usually confined to a particular line of rails. "Railway," means far more than that. It includes the land taken and used for Ry purposes; goods brought along a Ry for shipment are carried or conveyed upon or along the Ry as soon as they cross the fence bounding the land acquired and used for railway purposes and continue to be so carried or conveyed until they leave such land (*Northumberland v. N. E. Ry*, 95 Law Times, 181, 182).

But there is a distinction between "Railway" and "RAILWAY STATION" (V. *Lond. & N. W. Ry v. Wiquin*, 2 Ry & Can Traffic Ca. 240).



A Station is no part of a Ry, nor are offices, warehouses, or other property, which are ancillary to its working; but sidings, turn-tables, and so much of the platform as is to be considered as the side of the railway, do form part of it (*South Wales Ry v. Swansea*, 24 L. J. M. C. 30; 4 E. & B. 189; *See, Lond. & N. W. Ry v. Llundudno*, inf).

Quà Ry Regulation Act, 1840, 3 & 4 V. c. 97, "Railway," extends, "to all Railways constructed under the powers of any Act of Parliament, and intended for the conveyance of Passengers, in or upon carriages drawn or impelled by the power of steam or by any other mechanical power" (s. 21). A Ry is not less a Ry within s. 13 of that Act because it has not yet been opened for passenger traffic (*R. v. Bradford*, 29 L. J. M. C. 171; Bell C. C. 268). *Note*: A power to make "any Railway," in an Act prior to the invention of steam locomotives, would comprise a railway to be worked by such engines (*Bishop v. North*, 12 L. J. Ex. 362; 11 M. & W. 426).

Quà Regulation of Railways Act, 1873, 36 & 37 V. c. 48, " 'Railway' includes, every Station, Siding, Wharf, or Dock, of or belonging to such railway, and used for the purposes of PUBLIC TRAFFIC" (s. 3). *Vf*, inf.

Other Stat. Def., quà Ry Regn Acts; — 5 & 6 V. c. 55, s. 21; 7 & 8 V. c. 85, s. 25; 31 & 32 V. c. 119, s. 2; 34 & 35 V. c. 78, s. 2.

Quà Ry and Canal Traffic Acts, "Railway," includes, "every Station of or belonging to such Railway used for the purposes of PUBLIC TRAFFIC"; and quà Part 2, Act of 1888, it includes a Canal (17 & 18 V. c. 31, s. 1; 51 & 52 V. c. 25, s. 36).

"The Railway Regulation Acts, 1840 to 1893," "The Railway and Canal Traffic Acts, 1854 to 1894"; *V. Sch* 2. Short Titles Act, 1896.

For other defs of "Railway" in Ry Acts, *V. Ry* C. C. Act, 1845, s. 3; Ry C. C. (Scotland) Act, 1845, s. 3; 13 & 14 V. c. 83, s. 38; 27 & 28 V. c. 120, s. 2, c. 121, s. 2; 29 & 30 V. c. 108, s. 2; Indian Guaranteed Railways Act, 1879, 42 & 43 V. c. 41, s. 1; 57 & 58 V. c. 12, s. 2; 59 & 60 V. c. 34, s. 12.

A Private Ry, is not a "Railway" so as to impose on its owner the rules of the Ry Acts as to Gates and Level Crossings (*Matson v. Baird*, 3 App. Ca. 1082). *Vf*, quà Level Crossings, TURNPIKE ROAD.

A short line of railway, part of a Dock undertaking and connecting the dock with other and independent railways, is a "Railway" within s. 3, Ry Comp Act, 1867, 30 & 31 V. c. 127 (*G. N. Ry v. Tahourdin*, 53 L. J. Q. B. 69; 13 Q. B. D. 320); and, under that Act, a "Railway" is still a railway though closed for traffic and its re-opening doubtful (*Midland Waggon Co v. Potteries, &c. Ry*, 50 L. J. Q. B. 6; 6 Q. B. D. 36); but if altogether abandoned as a railway, it would, probably, lose that character (per Stephen, J., *Ib.*).

"Railway," as used in s. 1 (5), Employer's Liability Act, 1880, 43 & 44 V. c. 42, is not restricted to a Ry worked under statutory powers: it is there used in a popular sense, and signifies any way upon which trains

pass by means of rails, including a temporary tramway used by a contractor for the passage of engines and trucks during the execution of his contract (*Doughty v. Firbank*, 52 L. J. Q. B. 480; 10 Q. B. D. 358). *V. TRAIN.*

Quà Workmen's Comp Act, 1897, " 'Railway,' means, the railway of any Ry Co to which the Regulation of Railways Act, 1873, applies; and includes, a LIGHT RAILWAY, made under the Light Railways Act, 1896; and 'Railway' and 'Railway Company' have the same meaning as in the said Acts of 1873 and 1896" (subs. 2, s. 7). Neither a Ry Bookstall, Hotel, or Refreshment Room, is part of a "Railway" within either of these defs (*Milner v. G. N. Ry*, 1900, 1 Q. B. 795; 69 L. J. Q. B. 427; 82 L. T. 187; 48 W. R. 387; 64 J. P. 291): *Vf*, *Fullick v. Evans*, 84 L. T. 413; *Fletcher v. London United Tramways Co*, 1902, 2 K. B. 269; 71 L. J. K. B. 653. *V. ANCILLARY.*

Quà Railway Employment (Prevention of Accidents) Act, 1900, 63 & 64 V. c. 27, " 'Railway,' means, any railway used for the purposes of PUBLIC TRAFFIC, whether passenger goods or other traffic; and includes, any works of the Ry Co connected with the railway" (s. 16).

Quà National Defence Act, 1888, 51 & 52 V. c. 31, " 'Railway,' includes any TRAMWAY, whether worked by animal or mechanical power, or partly in one way and partly in the other" (subs. 8, s. 4).

Other Stat. Def. — Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, Sch s. 1; Post Office (Duties) Act, 1847, 10 & 11 V. c. 85, s. 20; Telegraph Act, 1863, 26 & 27 V. c. 112, s. 3.

#### *V. PASSENGER RAILWAY : STREET RAILWAY : THE.*

LAND used ONLY "as a Railway constructed under the powers of any Act of Parliament for PUBLIC CONVEYANCE," s. 55, Loc Gov Act, 1858, 21 & 22 V. c. 98, — language which (per Wills, J., *Lond. & N. W. Ry v. Llandudno*, inf) was first used by s. 88, P. H. Act, 1848, and is now replaced by s. 211 (1 *b*), P. H. Act, 1875, — does not exclusively mean a Ry for Passengers; any Ry to which the PUBLIC has a right of access for the conveyance of themselves or their goods is a Ry "for Public Conveyance" (*R. v. Newport Dock Co*, 31 L. J. M. C. 266). But a Railway originally constructed by Private Arrangement is not a Ry "for Public Conveyance," although subsequently worked under an Act of Parliament (*N. E. Ry v. Leadgate*. 39 L. J. M. C. 65; L. R. 5 Q. B. 157); nor is a Street Tramway comprised in "Land used only" as a Ry (*Swansea Improvements Co v. Swansea*, 1892, 1 Q. B. 357; 61 L. J. M. C. 124; 66 L. T. 119; 56 J. P. 248).

Where, however, you have to deal with what is in fact a Ry within a Rating Act, then arises the further question, — What is included in "Land used only as a Ry" ? It includes all those things without which the Ry could not be used as a way; but does not include adjuncts which are only necessary for the convenience of business or similar purposes, — *e.g.* it includes the platforms, and so much of the station roof as covers a

portion of the line of rail, sidings, or platforms; it does not include the station generally, nor the cab drive, nor a cattle landing nor pens beyond the limits of the station, nor a crane in the goods yard (*S. Wales Ry v. Swansea*, sup; *Adamson v. Edinburgh, &c. Ry*, 2 Macq. 331; 1 Paterson, 544; *Lond. & N. W. Ry v. Llandudno*, 1897, 1 Q. B. 287; 66 L. J. Q. B. 232; 75 L. T. 659; 45 W. R. 350; 61 J. P. 55). In *thlc*, Wills, J., said, "Land used only as a Ry' is a very different expression from 'Line of Railway.'" *Vf*, *Williams v. Lond. & N. W. Ry*, 1899, 2 Q. B. 197; 68 L. J. Q. B. 883; on app. 1900, 1 Q. B. 760; 69 L. J. Q. B. 531; 82 L. T. 287; 64 J. P. 372.

*Cp*, MARKET GARDEN: LAND COVERED WITH WATER: PROPERTY OTHER THAN LAND.

Building "used for the purposes" of a Ry; *V*. PURPOSES.

"Necessary Land for making a Ry"; *V*. NECESSARY.

"In or about" a Ry; *V*. IN OR ABOUT: *Milner v. G. N. Ry*, sup.

*Vh*, Hodges on Railways: Browne & Theobald, lb.: Darlington on Ry Rates and Charges: 11 Encyc. 1-39.

**RAILWAY BILL.** — Stat. Def., 27 & 28 V. c. 120, s. 2, c. 121, s. 2.

**RAILWAY COMPANY.** — Quà Regulation of Railways Act, 1873, "Railway Company," includes, any person being the owner or lessee of, or working, any Railway in the United Kingdom, constructed or carried on under the powers of any Act of Parliament" (s. 3); *Vh*, *Greenock & Wemyss Bay Ry v. Caledonian Ry*, 3 Ry & Can Traffic Ca. 160.

Other Stat. Def., quà Ry Regn Acts; — 3 & 4 V. c. 97, s. 21; 5 & 6 V. c. 55, s. 21; 31 & 32 V. c. 119, s. 2; 34 & 35 V. c. 78, s. 2.

Quà Ry and Canal Traffic Acts, "Railway Company," "Canal Company," or "Railway and Canal Company," includes, "any person being the owner or lessee of, or any contractor working, any Railway or Canal or Navigation, constructed or carried on under the powers of any Act of Parliament"; and quà Part 2, Act of 1888, "Railway Company" includes, "a Canal Company, and Railway and Canal Company" (17 & 18 V. c. 31, s. 1; 51 & 52 V. c. 25, s. 36). *Vf*, s. 37 (2), of the latter Act.

A Ry Co which has no rolling stock, and whose line is wholly worked by another Co under a proportional mileage agreement, but maintaining and managing its own line, and collecting and forwarding its own traffic, and wholly employing and paying the staff engaged on its own line, is a "Railway Company" within Ry and Canal Traffic Act, 1854, and Regn of Railways Act, 1873 (*Central Wales Ry v. G. W. Ry*, 52 L. J. Q. B. 211; 10 Q. B. D. 231); so, a Canal Co, with statutory powers to construct railways on their quays and land and to charge reasonable tolls for their use, is a "Ry Co" within Ry and Canal Traffic Act, 1888, although not under the obligation as Carriers to admit the public (*Manchester Ship Canal Co v. Mid. Ry*, 10 Ry & Can Traffic Ca. 54).

Quà Ry Comp Act, 1867, "Railway Company," means, "a Company constituted by Act of Parliament, or by Certificate under Act of Parliament, for the purpose of constructing, maintaining, or working, a Railway (either alone or in conjunction with any other purpose)" (s. 3): *Vth, Re East & West India Dock Co*, cited CONSTITUTED.

For other defs of "Railway Company" in Ry Acts; *V. Ry (Conveyance of Mails) Act*, 1838, 1 & 2 V. c. 98, s. 19; 22 & 23 V. c. 59, s. 1; 27 & 28 V. c. 121, s. 51 (3); 29 & 30 V. c. 108, s. 2; 31 & 32 V. c. 18, s. 2; 42 & 43 V. c. 41, s. 1. — *Id.* 54 & 55 V. c. 2, s. 18.

Quà Workmen's Comp Act. 1897; *V. RAILWAY.*

Other Stat Def. — Cheap Trains Act, 1883, 46 & 47 V. c. 34, s. 8; Diseases of Animals Act, 1894, 57 & 58 V. c. 57, s. 59; Explosives Act, 1875, 38 & 39 V. c. 17, s. 108; National Defence Act, 1888, 51 & 52 V. c. 31, s. 4; Post Office Acts, 10 & 11 V. c. 85, s. 20, 45 & 46 V. c. 74, s. 17. — *Id.* 33 & 34 V. c. 36, s. 12.

"Railway Companies INCORPORATED by Act of Parliament," s. 199, Comp Act, 1862 (and which are excepted from being wound-up thereunder), include only a Co whose principal object is the construction (or working?) of a Railway (*Exmouth Docks Co*, 43 L. J. Ch. 110; L. R. 17 Eq. 181); a Tramway Co, is not within the exception (*Re Brentford & Isleworth Tramways Co*, 53 L. J. Ch. 624; 26 Ch. D. 527).

"Indian Ry Co"; *V. INDIAN.*

"Ry or other Public Co"; *V. PUBLIC COMPANY.*

*V. DEBENTURE*, at end: COMPANY.

**RAILWAY RATE.** — A "Rate," quà Part 2, Ry & Canal Traffic Act, 1888, includes, "tolls and dues of every description chargeable for the use of any Canal or by any Canal Co" (s. 36).

Railway Rates, "per Mile"; *V. MILE.*

**RAILWAY STATION.** — "This term is not in ordinary sense used as a description merely of the actual existing structures at a station; but as the description of a space actually set apart for, and generally used as, a resting-place for traffic, or a place for dealing with it in a particular way, although every part of the space is not covered with structures or used for passing along or for deposit" (per Brett, L. J., *S. E. Ry v. Ry Commrs*, 50 L. J. Q. B. 211).

*V. RAILWAY: STATION.*

**RAILWAY TIME.** — *V. OF THE CLOCK.*

**RAILWAY TRACK.** — In Canada, "Railway Track" is often used as including a line of street railway; and as used in item 173, s. 2, of the Canadian Act, 50 & 51 V. c. 39, it comprises all steel rails of the specified weight, whether used for ordinary railways or for tramways, the term "Railways Tracks," by the usage of Canadian draftsmen, being

equally applicable to both (*Toronto Ry v. Regina*, 1896, A. C. 551; 65 L. J. P. C. 110; 75 L. T. 234).

**RAISE.** — “Raise,” s. 83 (6), Metrop Bg Act, 1855, repld, s. 88 (6), London Bg Act, 1894, is not confined to raising above-ground, but includes raising a wall by adding to its foundation by under-pinning (*Standard Bank of British S. Africa v. Stokes*, 47 L. J. Ch. 554; 9 Ch. D. 68).

“A covenant to Raise a *Mineral*, means, *primâ facie*, to get or win; not to bring to the surface” (MacS. 219, citing *Senhouse v. Harris*, 5 L. T. 635; *Kinsman v. Jackson*, 42 Ib. 80; 28 W. R. 337, 601).  
V. WIN.

“Not to raise the Rent”; V. MOLEST: TERMINATE.

A power in a Co's Articles enabling the directors by debentures to “secure the repayment of or *raise* any money authorized to be borrowed,” authorizes them to issue debentures at a discount (*Re Anglo-Danubian Steam Nav. Co*, L. R. 20 Eq. 341; 44 L. J. Ch. 502), — “Raise” in such a connection being used “to prevent it being contended that the directors could only secure the repayment of the money borrowed” (per Jessel, M. R., *Ib.*). V. REPAYMENT.

As to power to a Receiver, in a Debenture-holder's action, to “raise” money so as to give priority over the Debentures; V. *Lathom v. Greenwich Ferry Co*, 72 L. T. 790; 2 Manson, 408; W. N. (95) 77.

“Borrow and raise”; V. BORROW.

“Raise and pay”; V. SEVERANCE: TO BE PAID.

Raise Obstructions and Wrecks; V. REMOVAL: REMOVE.

**RANKNESS.** — V. MODUS.

**RANSOM.** — “‘Ransome.’ *Redemptio* is here (Litt. s. 194) taken for a grand summe of money for redeeming of a great delinquent from some heynous crime, who is to be captivate in prison untill he payeth it” (Co. Litt. 127 a). Horne, in his *Mirror of Justices*, lib. 3, “makes this difference between Amerciament and Ransome, that Ransome is the redemption of a corporal punishment due by law” (Cowel).

“‘Ransome’ signifies properly the summe that is payd for the redeeming of one that is taken captive in warre; but it is used also for a summe of money paid for the pardoning of some great offence, and so it is used in the statute of 1 H. 4, c. 7, and in other statutes. Fine and Ransome going together; as in 23 Hen. 8, cap. 3, and elsewhere” (Termes de la Ley, *Ransome*). V. *Havelock v. Rockwood*, 8 T. R. 268; 11 Encyc. 44.

V. AMERCIAMENT: FINE AND RANSOM.

**RAPE.** — “‘Rape.’ *Raptus* is, when a man hath carnall knowledge of a woman by force and against her will” (Co. Litt. 123 b); or, as

expressed more fully, "Rape, is the carnal knowledge of any woman, above the age of 10 years, against her will; or of a woman child, under that age, with or against her will" (Hale P. C. 628).

"Rape is the act of having carnal knowledge of a woman without her conscious (*V. R. v. Camplin*, 1 Den. 89; 1 C. & K. 746: *R. v. Fletcher*, 28 L. J. M. C. 85) permission, such permission not being extorted by force, or fear of immediate bodily harm; but if such permission is given, the fact that it was obtained by fraud, or that the woman did not understand the nature of the act, is immaterial (*V. R. v. O'Shay*, 19 Cox C. C. 76). Provided that (1) a Husband (it is said) cannot commit rape upon his wife by carnally knowing her himself, but he may do so if he aids another person to have carnal knowledge of her; (2) a Boy, under 14 years of age, is conclusively presumed to be incapable of committing rape" (*Steph. Cr.* 185, 186). *Vf*, Arch. Cr. 862-865: *Rosc. Cr.* 771: 11 *Encyc.* 45-48.

"The essential words in an Indictment for Rape are *rapuit & carnaliter cognovit*; but *carnaliter cognovit*, nor any other circumlocution without the word *rapuit*, are not sufficient in a legal sense to express Rape: 1 H. 6, 1 a; 9 E. 4, 26 a" (Hale P. C. 628: *Vf*, 4 Bl. Com. 307). Possibly, the omission of "*carnaliter cognovit*" is cured by the verdict; but such omission is imprudent (3 *Russ. Cr.* 230, citing *R. v. Warren*, M. T. 1832).

#### V. CARNAL KNOWLEDGE: CONSENT.

*Note*: As to admissibility of the whole of a prosecutrix's speedy complaints, *V. R. v. Lillyman*, 1896, 2 Q. B. 167; 65 L. J. M. C. 195; 74 L. T. 730; 44 W. R. 654; 60 J. P. 536.

"'Rape of the Forest,' is Trespass committed in the Forest by violence" (Cowel).

A "Rape" "is part of a COUNTY, being in a manner the same with a HUNDRED, and sometimes contains in it more Hundreds than one" (Cowel). *V. WAPENTAKE. Cp, LATHE.*

**RAPINE.** — "To take a thing in private against the owners will, is, properly, THEFT; but to take it openly, or by violence, is Rapine" (Cowel): *Vf*, 4 Bl. Com. 243. *Cp, ROBBERY.*

#### RASCAL. — V. CHEAT.

**RASH AND HAZARDOUS.** — Stock Exchange speculations (*Ex p. Salaman*, 54 L. J. Q. B. 238; 14 Q. B. D. 936: *Cp, GAMING*), or Betting or Gambling (*Ex p. Thornber, Re Barlow*, W. N. (86) 207; 3 *Times Rep.* 218), or investing in an undeveloped and unproductive Mining Co (*Re Young*, W. N. (85), 12), or giving credit for goods to an unreasonable amount (*Re Rogers*, 13 Q. B. D. 438), or even transactions within the limits of legitimate commerce, when the article dealt in is liable to great fluctuations in price and the dealings are large and the trader's

means are small (*Re Heyne*, 2 Ch. 650; 15 W. R. 1158), is a "Rash and Hazardous Speculation" within s. 28 (3 *d*). Bankry Act, 1883. So, of almost any speculation by a Practising Solicitor outside his ordinary business (*Re Keays*, 36 S. J. 111; 9 Morr. 18). *Vf*, hereon *Ex p. Evans*, *Re Barnard & Rosenthal*, 31 L. J. Bank. 63; 6 L. T. 519; *Ex p. Downman*, 32 L. J. Bank. 49; 11 W. R. 577.

**RATE : RATES.** — Apart from any special def a "Rate" is an impost, usually for current and recurrent expenditure, spread over a district; and is distinct from an amount payable for work done upon or in respect of particular premises (*V. per Brett, L. J., Budd v. Marshall*, 50 L. J. Q. B. 24; 5 C. P. D. 481).

A lessor's covenant to pay "all Rates and Taxes chargeable in respect of the demised premises," held to include the Water Rate (*Direct Spanish Telegraph Co v. Shepherd*, 53 L. J. Q. B. 420; 13 Q. B. D. 202; 32 W. R. 717). As, however, the word "Rates" is here associated with "Taxes," it may, perhaps, be doubted whether the meaning of it should not have been confined to parochial or other such like public rates: *V. TAXES: DEDUCTIONS.* And in a subsequent case where a lessor covenanted to pay "all Rates, Taxes, and Impositions, whatsoever whether parliamentary, parochial, or imposed by the Corporation of London, or otherwise," it was held by the Court of Appeal (reversing the Divisional Court, acting upon the authority of *Direct Spanish Telegraph Co v. Shepherd*), that that case did not apply, and that the Water Rate was not included (*Badcock v. Hunt*, cited *IMPOSED*). In *this*, the Court of Appeal distinguished the words of the covenant from those used in the other case, but the drift of the judgments would seem to justify the statement that *Direct Spanish Tel. Co v. Shepherd* was not favourably regarded.

*V. ASSESSMENTS: BURDEN: CHARGES: DUTIES: IMPOSITION: OUTGOING: TAXES: BOROUGH*, p. 209.

Quà Jurisdiction in Rating Act, 1877, 40 & 41 V. c. 11, "Rate," means, any Rate, Tax, Duty, or Assessment, whether public, general, or local; and also any fund formed from the proceeds of any such rate, tax, duty, or assessment, or applicable to the same or like purposes to which any such rate, tax, duty, or assessment, might be applied" (s. 3).

"Rate" has received statutory definition in and for the following Acts;—

Agricultural Rates Act, 1896, 59 & 60 V. c. 16; *V. s. 9*:

Harbours, Docks, and Piers, Clauses Act, 1847, 10 & 11 V. c. 27; *V. s. 3*:

Isle of Man Harbours Act, 1883, 46 & 47 V. c. 9; *V. s. 5*:

Local Authorities Loans (Scot) Act, 1891, 54 & 55 V. c. 34; *V. s. 4*:

Loc Gov (Scot) Act, 1889, 52 & 53 V. c. 50; *V. s. 105*:

Local Loans Act, 1875, 38 & 39 V. c. 83; *V. s. 34*:

Militia Act, 1882, 45 & 46 V. c. 49; *V.* s. 53 (9):

Prison (Officers Superannuation) Act, 1878, 41 & 42 V. c. 63; *V.* s. 5:

Public Works Loans Act, 1875, 38 & 39 V. c. 89; *V.* s. 51:

Tithe Act, 1891, 54 & 55 V. c. 8; *V.* s. 6 (4).

“Gas Rate”; *V.* GAS.

“General Purposes Rate”; *V.* GENERAL PURPOSES.

“Highway Rate”; *V.* HIGHWAY.

“Last Rate”; *V.* LAST.

*V.* AVERAGE UNION RATE: COUNTY, p. 422: LOCAL RATE: OVER-RATE: PAROCHIAL RATE: POLICE: POOR RATE: PUBLIC HEALTH: PUBLIC TAX: TOWN RATE: WATER RATE.

*V.* Penfold on Rating: Castle, *ib.*: Mayer, *ib.*: 11 *Encyc.* 54-70.

Loans on Bonds “secured on Rates or Taxes” levied under an Act “by Municipal Corporations,” s. 3 (12), 47 & 48 V. c. 63; *V.* *Hutton v. Amun*, cited REAL SECURITY.

In *Carr v. Fowle* (1893, 1 Q. B. 251; 62 L. J. Q. B. 177; 68 L. T. 123; 41 W. R. 365; 57 J. P. 136) Collins, J., said that “OTHER,” in the exemption of Tithe Rent-charge, s. 4 (5), 49 & 50 V. c. 54, from “Parochial, County, or other Rate Charge or Assessment,” “was wide enough to include Land Tax.”

A Qualification, *e.g.* for Harbour Commr, depending on being rated to the Poor “by one or more Rate or Rates to the amount of £10 PER ANNUM,” means, being assessed on £10; it does not mean paying rates to that amount (*Easton v. Alee*, 31 L. J. Ex. 115; 7 H. & N. 452).

“Rate of INTEREST varying with the Profits,” s. 1, Bovill’s Act, 28 & 29 V. c. 86, repld s. 2 (3 *d*) and s. 3, Partnership Act, 1890; *V.* *Re Vince*, cited DUE ALLOWANCE.

“Current Rate”; *V.* CURRENT.

Agreement to pay RENT “at the rate of” so much PER ANNUM, does not imply a contract for a year (*Atherstone v. Bostock*, 10 L. J. C. P. 113; 2 M. & G. 511); *secus*, if the agreement is to take the premises “at the rent” of so much per annum (per Tindal, C. J., *ib.*).

*V.* as to “at the rate of.” *Salton v. New Beeston Co*, cited YEAR.

*V.* MAXIMUM: RAILWAY RATE: REASONABLE RATE: TOLL.

**RATEABLE.** — *Primâ facie*, “‘Rateable Property’ means, property in its nature capable of being rated” (per Lush, J., *R. v. Malden*, L. R. 4 Q. B. 326; 38 L. J. M. C. 125; 10 B. & S. 323); therefore, unoccupied houses would have to be included in the Parish Lists forming the basis or standard for a County Rate, s. 2, 15 & 16 V. c. 81 (*R. v. Hammersmith*, 7 W. R. 524; 33 L. T. O. S. 183), and so, of the Valuation List, under s. 14, 25 & 26 V. c. 103, as regards new houses completely finished and ready for occupation, but not actually occupied at the time the List is returned (*R. v. Malden*, *sup.*).

“Rated” not construed as “Rateable”; *V.* *R. v. Rose*, cited USUALLY.



**RATEABLE OCCUPATION.** — *V.* BENEFICIAL, pp. 180, 181: EXCLUSIVE OCCUPATION.

**RATEABLE VALUE.** — Probably, the general meaning of "Rateable Value" is the same as that provided for Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67; *V.* ANNUAL VALUE, p. 87.

"Rateable Value" has received statutory definition in and for the following Acts; —

Agricultural Rates Act, 1896, 59 & 60 V. c. 16; *V.* s. 9, on *whr*, *Lancashire Asylums Bd v. Manchester*, 1900, 1 Q. B. 458; 69 L. J. Q. B. 234; 82 L. T. 1; 48 W. R. 356; 64 J. P. 101, in *whr* "Rateable Value" was contrasted with "Assessable Value":

Agriculture and Technical Instruction (Ir) Act, 1899, 62 & 63 V. c. 50; *V.* s. 30:

Brine Pumping (Compensation for Subsidence) Act, 1891, 54 & 55 V. c. 40; *V.* s. 52:

Local Government Acts, 56 & 57 V. c. 73; *V.* s. 75: 61 & 62 V. c. 37; *V.* s. 109:

London Government Act, 1899; *V.* s. 34:

Purchase of Land (Ir) Act, 1891, 54 & 55 V. c. 48; *V.* s. 42:

Seed Potatoes Supply (Ir) Acts, 54 & 55 V. c. 1; *V.* s. 13: 58 & 59 V. c. 2; *V.* s. 14: 61 & 62 V. c. 50; *V.* s. 10.

*V.* GROSS: PLANTATION.

**RATED or ASSESSED.** — Under s. 6, Metrop Man. Act, 1855, a Vestry consisted of persons "rated or assessed." "An Assessment seems to me to speak of two operations. The Overseers first assess the rate for the whole parish — that is, they consider and determine the amount which is to be raised for the whole parish. That having been done the rate is assessed, but has not been made. The next operation is to calculate the amount for which each person is to be liable. But the mere calculation and fixing of the amount which each person is to pay does not impose any liability, for the rate has not been made; but when the amount has been assessed, the person is rated by putting the amount of the assessment into the rate-book. A person cannot really be assessed, so as in any way to be liable, until he has been rated; nor can he be rated until he has been assessed. The two words 'rated' and 'assessed,' therefore, describe the operation which makes a person liable to the rate. That seems to me to show that although the words in s. 6, are 'rated or assessed,' yet the proper way to read them is 'rated *and* assessed,' as having reference to one operation" (per Esher, M. R., *Mogg v. Clark*, 55 L. J. Q. B. 71; 16 Q. B. D. 79). It was held in that case that an owner (not himself the occupier) who has made an agreement to pay poor rates under s. 3, Poor Rate Assessment and Collection Act, 1869, is not a person "rated or assessed" within the section just referred to: *rtlic*,

*R. v. Soutter*, 1891, 1 Q. B. 57; 60 L. J. Q. B. 71; *Gordon v. Williamson*, 1892, 2 Q. B. 459; 61 L. J. Q. B. 820; 67 L. T. 214; 40 W. R. 692; 57 J. P. 166; *Va. Goodhew v. Williams*, 47 L. J. C. P. 313; 3 C. P. D. 382. *Note*: s. 6, sup was repealed by Loc Gov Act, 1894.

*Vf.* as to qualification depending on rating, *Easton v. Alce*, cited RATE, p. 1652.

“Taxed, charged, rated, assessed, or imposed”; *V.* CHARGED: ASSESSED: IMPOSED.

“Usually rated”; *V.* USUALLY.

**RATE-PAYER.** — “By persons *paying* to the Church and Poor must be understood persons *liable to pay*, though they may not have actually paid (*A-G. v. Foster*, 10 Ves. 339, 346); but it seems to be a necessary qualification that they should have been rated (*Edenborough v. Canterbury*, 2 Russ. 110), unless, perhaps, the name has been omitted by mistake, or there is the taint of fraud (*Ib.* 110, 111).” Lewin, 90.

“Ratepayer,” quà Public Libraries Acts, meant “every INHABITANT who would have to pay the Free Library Assessment in the event of the Act being adopted” (s. 3, 40 & 41 V. c. 54); that definition included Compound Householders, whose rates were paid for them under the Poor Rate Assessment and Collection Act, 1869 (*A-G. v. Croydon*, 58 L. J. Ch. 527). *Note*, 40 & 41 V. c. 54, was repealed by 53 & 54 V. c. 68, s. 1 of which prescribes who shall be voters quà these Acts.

Quà Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67, “‘Rate-payer,’ means, every person who is liable to any rate or tax in respect of property entered in any Valuation List” (s. 4).

In other Acts the def is, every person “for the time being assessed to, and paying rates for, the relief of the poor of the parish” (10 & 11 V. c. 61, s. 2; 15 & 16 V. c. 85, s. 52); but the def for Elementary Education Act, 1870, is, “every person who, under the provisions of the Poor Rate Assessment and Collection Act, 1869, is deemed to be duly rated” (s. 3).

Quà Scotland; *V.* 20 & 21 V. c. 70, s. 10; 39 & 40 V. c. 49, s. 3; 41 & 42 V. c. 51, s. 3; 52 & 53 V. c. 50, s. 105; — quà Ireland; *V.* 1 & 2 V. c. 56, s. 80.

**RATIFY.** — Ratification of a Contract “must be by an existing person on whose behalf a contract might have been made at the time” (per Charles, J., *Nichols v. Regent’s Canal Co*, 63 L. J. Q. B. 645, citing Willes and Byles, J.J., *Kolner v. Baxter*, 36 L. J. C. P. 94; L. R. 2 C. P. 174). *Vf.* *Falcke v. Scottish Insree*, 56 L. J. Ch. 707; 34 Ch. D. 234.

“Ratification requires, — (1) That the agent’s act must be one in the doing of which he purports to act for his principal; (2) The act must be of a kind which the agent was, at the time, empowered to do for his principal; (3) At the time of the ratification the principal must have

had the legal capacity of doing the act himself" (per Wright, J., *Firth v. Staines*, cited APPROVAL); the second of these requirements was regarded as *not* essential by the majority of the Court of Appeal (*Durant v. Roberts*, 1900, 1 Q. B. 629; 69 L. J. Q. B. 382; 82 L. T. 217; 48 W. R. 476), but that case was reversed in H. L. (nom. *Keighley v. Durant*, 1901, A. C. 240; 70 L. J. K. B. 662). *Cp.*, *Lyell v. Kennedy*, cited CESTUI.

*Cp.*, SANCTION.

A "Ratification" after full age of a contract made during Infancy, s. 5, 9 G. 4, c. 14, meant such a ratification as would make a person liable as principal for an act done by another in his name (*Harris v. Wall*, 1 Ex. 122; *Mawson v. Blanc*, 10 Ib. 210; 23 L. J. Ex. 342; *Maccord v. Osborne*, 45 L. J. C. P. 727; 1 C. P. D. 568). *Vj.* CORRECT. *Note:* No action can now be brought on such a ratification (s. 2, Infants Relief Act, 1874).

When a Will describes a Deed and proceeds to "ratify and confirm" it, the Deed is incorporated into the Will (*Sheldon v. Sheldon*, 1 Rob. Ecc. 89; *Stump v. Gaby*, 2 D. G. M. & G. 623; 22 L. J. Ch. 352; *Re Harris*, L. R. 2 P. & D. 83; 39 L. J. P. & M. 48). *Vj.* as to incorporation of documents in a Will, Wms. Exs. 86-90: Agnew on the Statute of Frauds, 343-350; *Re Garnett*, 1894, P. 90; 63 L. J. P. D. & A. 82; 70 L. T. 37; *Re Murray*, 1896, P. 65; 65 L. J. P. D. & A. 49; following *Re Howden*, 43 L. J. P. & M. 26. *Cp.*, REVIVE: CONFIRM.

**RATING.** — "Rating *Appeal*," quâ Ry and Canal Traffic Act, 1888, "means, an appeal against any Valuation List, or against any Poor Rate, or any other Local Rate" (s. 55).

"Rating *Authority*," quâ Public Works Loans Acts; *V.* 45 & 46 *V.* c. 62, s. 7 (4); 50 & 51 *V.* c. 37, s. 4.

**RATIONE.** — A liability to repair a HIGHWAY, or PUBLIC BRIDGE, *ratione tenuræ*, is where the liability to do the repair has from time immemorial attached to the occupancy of particular lands (13 Rep. 33; *Cuckfield v. Goring*, 1898, 1 Q. B. 865; 67 L. J. Q. B. 539; Glen on Highways, 2 ed., 131). *Vh.* and as to the evidence to prove such a liability, *Rundle v. Hearle*, 1898, 2 Q. B. 83; 67 L. J. Q. B. 741.

A liability to repair a Highway, *ratione clausuræ*, is where the owner of unenclosed lands lying next adjoining the highway, encloses such lands on both sides of the highway (*V.* Glen on Highways, 141).

**RATS.** — *V.* PERIL OF THE SEA, p. 1454.

**RAVISH.** — "Ravish," is a Term of Art (*V.* RAPE).

**READER.** — "The Reader, is he who reads in the Church of God, being also ordained to this that he may preach the Word of God to the people" (Phil. Ecc. Law, 90).

**READIEST.** — *V.* FIRST AND READIEST.

**READING.** — *V.* PUBLIC READING.

Reading Room; *V.* LIBRARY.

**READY.** — “I will be ready to”; held a covenant (*Walker v. Walker*, 1 Rol. Ab. 519, pl. 8).

*V.* READY AND WILLING.

**READY AND WILLING.** — “‘Ready and Willing’ imply not only the disposition, but the capacity, to do the act” (per Abinger, C. B., *De Medina v. Norman*, 11 L. J. Ex. 322; 9 M. & W. 827). “I cannot conceive any circumstance more indicative of want of readiness than incapacity” (per Bosanquet, J., *Lawrence v. Knowles*, 5 Bing. N. C. 399; 8 L. J. C. P. 210). “In common sense, the averment of Readiness and Willingness (by, *e.g.* plaintiffs) must be that the non-completion of the contract was not the fault of the plts, and that they were disposed and able to complete it if it had not been renounced by the defts” (per Campbell, C. J., *Cort v. Ambergate Ry*, 17 Q. B. 144). *Vf*, *Griffith v. Selby*, 23 L. J. Ex. 226; 9 Ex. 393.

*V.* READY.

**READY FOR SEA.** — *V.* *Pittegrew v. Pringle*, 3 B. & Ad. 520; *Graham v. Barras*, cited SAIL: *Bouillon v. Lupton*, cited SEAWORTHY.

**READY MONEY.** — A bequest of “Ready Money” includes cash at the Bankers, whether balance on current account, or on a deposit, or withdrawable after notice (*Parker v. Marchant*, 12 L. J. Ch. 385; 1 Phill. 356; *Langdale v. Whitfield*, 27 L. J. Ch. 797; *Taylor v. Taylor*, 1 Jur. 401; 1 Jarm. 769, *n*; *Tallent v. Scott*, W. N. (68) 236; *Stein v. Ritherdon*, 1b. 65), or cash at a Savings Bank of which notice of withdrawal has been given (*Re Powell*, Johns. 49): *secus*, of unreceived Dividends on Stock (*May v. Grave*, 18 L. J. Ch. 401; 3 D. G. & S. 462). But in *Cooke v. Wagster* (23 L. J. Ch. 496; 2 Sm. & G. 296), Stuart, V. C., said that *May v. Grave* was not reconcileable with *Parker v. Marchant*, nor with *Fryer v. Ranken* (9 L. J. Ch. 337; 11 Sim. 55; *Va*, Wms. Exs. 1052). In *Cooke v. Wagster* it was held that a Debt passed under a bequest of “Ready Money”; but that was under the peculiar wording of the Will; generally, neither an ordinary Debt nor money due on a Note of Hand will be included in “Ready Money” (*Re Powell*, *sup*). In Ireland, it has been held that money in the hands of a Sales-master, is not “Ready Money” (*Smith v. Butler*, 9 Ir. Eq. Rep. 398); and that “Ready Money in Bank” includes money on deposit withdrawable on demand, but not if previous notice is necessary (*Mayne v. Mayne*, 1897, 1 I. R. 324).

A bequest of “whatever remains of the Ready Money already men-

tioned," held, not to pass a sum of £1,000 Government Stock which was previously mentioned in the Will (*Bevan v. Bevan*, 5 L. R. Tr. 57).

*Vf*, *Browne v. Groombridge*, 4 Mad. 501; *Vaisey v. Reynolds*, 6 L. J. O. S. Ch. 172; 5 Russ. 12; *Smith v. Butler*, 3 J. & La T. 565; and as to admitting extrinsic evidence to widen the meaning of "Ready Money," *V. Knight v. Knight*, 30 L. J. Ch. 614; 2 Giff. 616.

*V. MONEY.*

**READY QUAY BERTH.**—Where by a Charter-Party, a ship, on arriving in port, is to go "to such *ready quay berth* as ordered by charterers," that means, that the charterers undertake, for the benefit of the shipowner, that a quay shall be "ready" as soon as the ship is ready to proceed to it (*Harris v. Jacobs*, 54 L. J. Q. B. 492; 15 Q. B. D. 247).

**READY TO BE DELIVERED.**—*V. PUBLICATION, of Award*, p. 1618.

**READY TO DISCHARGE.**—*V. "Arrived Ship,"* sub ARRIVE.

**READY TO LOAD.**—A ship to be "Ready to Load," or "Ready to receive Cargo," must be completely ready, and discharged in all her holds, so as to give the charterer complete control of every portion of the ship available for cargo (*Groves v. Volkart*, 1 Times Rep. 92, 454. *Va*, *Vaughan v. Campbell*, 2 Times Rep. 33; *Hick v. Tweedy*, 63 L. T. 765; 7 Times Rep. 144); and that Condition is not controlled by an Exception of "Dangers of the Seas" (*Smith v. Dart*, cited DANGERS: *Va*, THROUGHOUT), nor is its performance excused by bad weather (*Shubrick v. Selmond*, 3 Burr. 1637; *Smith v. Dart*, sup; *Glaholm v. Hays*, 10 L. J. C. P. 98; 2 M. & G. 257; *Oliver v. Fielden*, 18 L. J. Ex. 353; 4 Ex. 135; Abbott, 329), or other *vis major*, e.g. Quarantine (per *Ld Shand*, *White v. Winchester S. S. Co*, 13 Sess. Ca. 4th Ser. 536), or medical prohibition (*The Austin Friars*, 71 L. T. 27; 10 Times Rep. 633). *Cp*, *Granger v. Dent*, 1 Moo. & M. 475.

"For the calculation of LAY DAYS, it seems that there is no difference between 'Ready to load' and 'Ready *in berth* to load,' and it has been so held in an unreported case" (Scrutton, 99).

**REAL ACTION.**—" 'Action Real,' is that action whereby a man claims title to lands tenements or hereditis, in fee or for life: and these actions are possessory, or ancestor; possessory, of a man's own possession and seizin; or ancestor, of the possession or seizin of his ancestor" (Jacob, *Action: Vf*; *Termes de la Ley, Actions Real*). *Cp*. PERSONAL ACTION.

*Note.* Real and Mixed Actions (except Dower, *Quare Impedit*, and Ejectment) were abolished as from Dec 31, 1834 (s. 36, Real Property

Limitation Act, 1833); Dower and *Quare Impedit* were abolished as from Oct 9, 1860 (s. 26, Com. L. Pro. Act, 1860). Since the Jud. Acts there is no special form of action of EJECTMENT.

**REAL EFFECTS.** — “Do the words ‘Real Effects’ in law, mean Real Chattels only? No authority has been produced to show that they do. The natural and true meaning of ‘Real Effects,’ in common language and speech is, Real Property” (per Mansfield, C. J., *Hogan v. Jackson*, 1 Cowp. 307). “*Hogan v. Jackson* decided that ‘Real Effects’ mean Real Property” (per Parker, V. C., *Torrington v. Bowman*, 22 L. J. Ch. 236). *Vf*, 1 Jarm. 723, 724; 2 Ib. 283.

V. EFFECTS.

**REAL ESTATE.** — “Real Estate” is a Term of Art to be construed, as a general rule, technically (per Chitty, J., *Butler v. Butler*, 54 L. J. Ch. 197; 28 Ch. D. 66). It comprises all a person’s freehold and copyhold lands tenements and hereditals, including therein titles of honour and dignity, and also INCORPOREAL HEREDITAMENTS: but not including leaseholds for years (Wms. R. P. Introd.: *Va*, ESTATE).

Qua Wills Act, 1837, “Real Estate” extends to, “Manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant-right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal; and to any undivided share thereof, and to any estate right or interest (other than a chattel interest) therein” (s. 1). The phrase “other than a chattel interest” chiefly points to leaseholds for years: V. CHATELS.

V. PERSONAL ESTATE.

Leaseholds for *Lives*, pass under a gift of “Real Estate” (*Weigall v. Brome*, 6 Sim. 99).

Though a devise of “Real Estate” does not, *primâ facie*, include Leaseholds for *Years*, for they are only chattels (Co. Litt. 46 a: *Vf*, *Holmes v. Milward*, 47 L. J. Ch. 522; *Butler v. Butler*, sup), yet leaseholds for years may, by a context or the circumstances, be included in such a devise (*Swift v. Swift*, 29 L. J. Ch. 121; 1 D. G. F. & J. 160; *Gully v. Davis*, 39 L. J. Ch. 684; L. R. 10 Eq. 562). And so, where a testator being possessed of freeholds and long leaseholds at A., and of long leaseholds only at B., devised his “Real Estate” at A. and B., it was held that all the leaseholds passed (*Moose v. White*, 3 Ch. D. 763; 24 W. R. 1038: *Srthe. Butler v. Butler*, sup). So, in *Re Davison* (32 S. J. 273; 58 L. T. 304), North. J., followed *Moose v. White*, and further held that “Real Estate” was equivalent to “Land” as that latter word is used in s. 26, Wills Act, 1837; *Moose v. White* was also followed by Kekewich, J., *Re Uttermare*, W. N. (93) 158. *Vf*; Hawk. 33: 41 S. J. 24.

A general devise of “Real Estate,” or of “Lands,” and such like

expressions, includes real estate contracted to be purchased by the testator, but not actually conveyed to him (*Atcherley v. Vernon*, 10 Mod. 518); but unless the testator expresses a CONTRARY INTENTION, any unpaid purchase money is payable by the devisee (LOCKE KING'S ACTS, esp. s. 2, 30 & 31 V. c. 69). Such a devise will not include purchase money of property sold by the testator, but which he has not conveyed (*Knollys v. Shepherd*, 1 Jac. & W. 499); *secus*, where the sale is demanded after his death under an option given in his lifetime (*Draut v. Vause*, 11 L. J. Ch. 170; 1 Y. & C. Ch. 580).

A like devise formerly comprised Trust and Mortgage estates (*Braybroke v. Inskip*, 8 Ves. 435; *Bainbridge v. Ashburton*, 6 L. J. Ex. Eq. 73; 2 Y. & C. Ex. 347: *See*, "all my Real Estate," sub MY). But all trust and mortgage estates, devolving by death since Dec 31, 1881, go to the deceased's personal representatives "notwithstanding any testamentary disposition" (s. 30, Conv & L. P. Act, 1881), except Copyholds (s. 45, 50 & 51 V. c. 73: *Vth*, *Re Mills*, cited MY, p. 1238).

Devise of "All other my Real Estate in the County of L"; held, on the context, to pass two Advowsons in Gross (*Re Hodgson*, but *Cp*, *Crompton v. Jarratt*, both cases cited IX). *Va*, TITHES, at end.

Quâ Land Transfer Act, 1897, Part 1, "Real Estate" "shall not be deemed to include land of Copyhold Tenure or Customary Freehold in any case in which an Admission, or any act by the Lord of the Manor, is necessary to perfect the title of a purchaser from the customary tenant" (subs. 4, s. 1).

Other Stat. Def. — 4 & 5 V. c. 39, s. 29.

V. FEE: LAND: LANDED PROPERTY: REAL OR PERSONAL PROPERTY: REAL PROPERTY.

An action by an heir-at-law against an administratrix for an account of Rents received by her, is not "a Cause or Matter relating to Real Estate" within R. 1, Ord. 51, R. S. C. (*Re Staines*, 55 L. J. Ch. 913).

"INTEREST in the Nature of Real Estate," 24 & 25 V. c. 40; a Gale of Mines in the Forest of Dean is within this phrase (*Morgan v. Crawshay*, 40 L. J. M. C. 202; L. R. 5 H. L. 304).

"Real and Personal Estate" in the Administration and Probate Act (of Victoria), 1890, s. 97 (2), comprises only property within the Colony; and "DEBTS," in the same section, refers only to such as are properly chargeable upon such colonial property (*Henty v. Regina*, 1896, A. C. 567; 65 L. J. P. C. 94; 75 L. T. 106; following *Blackwood v. Regina*, cited PERSONAL ESTATE).

**REAL AND PERSONAL EFFECTS.** This phrase is "synonymous to SUBSTANCE" (per Mansfield, C. J., *Hogan v. Jackson*, 1 Cowp. 307).

In an Assignment for the Benefit of Creditors by Partners, of "ALL"

their "Real and Personal Estate and Effects," only the joint property of the assignors passes (*Re Lowden*, 10 L. T. 261).

#### V. REAL EFFECTS.

**REAL OR PERSONAL PROPERTY.** — In the language of conveyancers, all kinds of PROPERTY, and all kinds of proprietary rights, are comprehended in one or other of the two great classes into which such property and rights are divided; — (1) Real, or (2) Personal, Property (*V. 2 Bl. Com.: Intro. Ch. Wms. R. P.*). But in the Malicious Damage Act, 1861, 24 & 25 V. c. 97, s. 52, the phrase "any real or personal property whatsoever" relates only "to corporeal, tangible, visible property, and not to property which is incorporeal, invisible, and not tangible" (per Lopes, J., *Laus v. Eltringham*, 51 L. J. M. C. 15), and therefore a right to herbage, *e.g.* of freemen in a Town Moor, is not within the section (51 L. J. M. C. 13; 8 Q. B. D. 283): *Vf*, as to this section, WILFUL AND MALICIOUS.

It may probably be stated that "Real Property" and REAL ESTATE are synonymous, and that "Personal Property" is synonymous with PERSONAL ESTATE.

**REAL PRESENCE.** — The Church of England does not forbid the assertion of a "real, actual, objective," Presence in Holy Communion, for that does not affirm a Presence other than spiritual (*Sheppard v. Bennett*, 41 L. J. Ecc. 1; L. R. 4 P. C. 371): *Vthe* for much learning on the doctrine of the "Real Presence," especially as dealt with by the Book of Common Prayer.

#### V. SACRIFICE.

**REAL PROPERTY.** — *V. REAL OR PERSONAL PROPERTY.*

"Real Property," in Scotland, quâ Finance Act, 1894, "includes HERITABLE property" (subs. 9, s. 23).

"Real Property," s. 2, M. W. P. Act, 1882, comprises the power to enlarge a BASE Fee (*Re Drummond and Davies*, cited PROPERTY).

"Real Property," quâ Suen Dy Act, 1853; *V. PERSONAL PROPERTY.*

**REAL RENT HERITOR.** — *V. VALUED.*

**REAL REPRESENTATIVE.** — Quâ REAL ESTATE (except Copyholds) the PERSONAL REPRESENTATIVE of a person dying on or since Jan 1, 1898, is his or her Real Representative (Land Transfer Act, 1897, Part 1). *V. LEGAL REPRESENTATIVES: REPRESENTATIVE.*

**REAL RESIDENT HOLDER.** — Who is a "Real Resident Holder and Occupier" to whom a Beerhouse License may be granted, s. 1, Beerhouse Act, 1840, is a question of fact, and not of law. — he must be the RESIDENT, the HOLDER, and the OCCUPIER, in substance and fact (*Nie v. Nottingham Jus.*, 1899, 2 Q. B. 294; 68 L. J. Q. B. 854; 81 L. T. 41;



47 W. R. 628; 63 J. P. 628); and, *semble*, he cannot be resident unless he habitually sleeps in the premises (*R. v. Allmey*, 35 J. P. 534; *R. v. Manchester Jus.*, 1899, 1 Q. B. 571; 68 L. J. Q. B. 358; 47 W. R. 410; 63 J. P. 360).

**REAL SECURITY.**—The obvious meaning of this phrase is, a mortgage of the legal and equitable estate and interest in REAL ESTATE, including, it is submitted, FREE FARM lands. A power to invest on "Real Security" will not authorize trustees to invest on an Equitable, or Second, Mortgage (*Swaffield v. Nelson*, W. N. (76) 255; *Sheffield By Socy v. Aizlewood*, 44 Ch. D. 459; *Sr. Want v. Campaign*, 9 Times Rep. 254), nor on a Contributory Mtge especially when the power requires the trustees to invest "in their names" (*Webb v. Jonas*, 57 L. J. Ch. 671; 39 Ch. D. 660; 58 L. T. 882).

*Turnpike-Road Bonds*, secured by a mortgage or charge on tolls and toll-houses, are within a power enabling trustees to invest in Real Securities (*Robinson v. Robinson*, 21 L. J. Ch. 111; 1 D. G. M. & G. 247); but where a testator bequeathed all his securities for money "except Mortgages on real and leasehold security," it was held that mortgages of *Turnpike Tolls*, whether including toll-houses or not, were not within the exception, such mortgages not being within the ordinary meaning of the word "Mortgage" (*Carendish v. Carendish*, 55 L. J. Ch. 144; 30 Ch. D. 227; 53 L. T. 652).

*Sewers Bonds* charged on Sewers Rates, are not Real Securities (*Robinson v. Robinson*, 18 L. J. Ch. 73; 11 Bea. 371), nor are *Railway Debentures* (*Munt v. Leith*, 21 L. J. Ch. 719; 15 Bea. 524; *If, Harris v. Harris*, 29 Bea. 107, cited FUNDS, at end). *Harbour Bonds* secured by the revenues of the trust and with power to appoint a Receiver or Judicial Factor in case of default, but with no assignment of the Undertaking itself, are not "Real or Heritable Security" within s. 1 (b), Trustee Act, 1893, or the corresponding words in the Act for Scotland, s. 3 (10), 47 & 48 V. c. 63 (*Hutton v. Anman*, 1898, A. C. 289; 67 L. J. P. C. 49).

Though a freehold *Brick-field* is a Real Security in itself, yet so much of its improved value as is derived from the buildings and machinery on it, which are only applicable to the trade of brick-making, should not be estimated for the purpose of the investment of trust funds (*Leroyd v. Whiteley*, 57 L. J. Ch. 390; 12 App. Ca. 727; 58 L. T. 93; 36 W. R. 721).

Before the Trustee Act, 1888, *Leasolds for Years*, however long the term, were held not a "Real Security" (*Re Chennell*, 47 L. J. Ch. 583; 8 Ch. D. 492, 508; *Re Boyd*, 49 L. J. Ch. 808; 14 Ch. D. 626); nor even a long term for raising portions (*Leigh v. Leigh*, 56 L. J. Ch. 125; 35 W. R. 121; 55 L. T. 634; 3 Times Rep. 123; *Wh. Lewin*, 369, where it is suggested that a long term *at a pepper-corn rent* might be enlarged

into the fee simple. Conv & L. P. Act, 1881, s. 65; Conv Act, 1882, s. 11, and so be available as a Real Security). But by s. 9, Trustee Act, 1888, a trustee having power to invest trust money in "Real Securities," unless expressly forbidden by the trust instrument, may invest, and shall be deemed to have always had power to invest, on Mortgage of Leaseholds held for an unexpired term of not less than 200 years, — and not subject to a greater rent than 1s. a year, or to any right of redemption, or to any condition for re-entry except for non-payment of rent. That section is replaced by s. 5 (1), Trustee Act, 1893, which extends the def so as also to include any charge, or mtge of any charge, made under Improvement of Land Act, 1864, 27 & 28 V. c. 114.

*Vh*, Lewin, 360-375.

"Real Securities," in Ireland, include Leaseholds for lives renewable for ever (*Marleod v. Annesley*, 16 Bea. 600; 22 L. J. Ch. 633). *Vf*, FEE FARM.

Stat. Def. — Charitable Funds Investment Act, 1870, 33 & 34 V. c. 34, s. 3.

*V*. SECURITY.

**REALIZATION.** — As to "Realization" of a bankrupt's property, within s. 24 (3), Bankry Act, 1883; *V*. jdgmt of Ld Fitzgerald, *Board of Trade v. Block*, 58 L. J. Q. B. 116; 13 App. Ca. 570; 59 L. T. 734.

"Costs of Realization," means, the costs of actual sale, including an abortive sale when it is a step to realization (*Batten v. Wedgwood Co*, 28 Ch. D. 317; 54 L. J. Ch. 686; 52 L. T. 212; *Lathom v. Greenwich Ferry Co*, 72 L. T. 790); but, probably, the phrase does not include costs of PRESERVATION (*Vthlc: Sr, Perry v. Oriental Hotels Co*, L. R. 12 Eq. 126; 40 L. J. Ch. 420; 24 L. T. 495).

**REALIZE.** — If goods "realize" so much, then commission on excess: — As to what expenses may be deducted from gross proceeds in order to ascertain amount "realized"; *V. Ardree Oyster Co v. Ullmann*, Times. March 25, 1890.

Direction to sell goods to "realize" so much net cash; *V. NET*, p. 1266.

**REALIZED.** — By itself, and independently of s. 15, Bankry Act, 1890, the "Amount realized" on which a Trustee in Bankry is entitled to a percentage under s. 72 (1), Bankry Act, 1883, means, the amount realized by the trustee; it does not include a fund provided by the bankrupt's father wherewith to pay a composition (*Re Christie*, 1900, 1 Q. B. 5; 69 L. J. Q. B. 31; 81 L. T. 528; 48 W. R. 94).

Where Articles of Association of a Company provide that "no dividend shall be payable except out of realized *Profits*," the word "Realized" "must have its ordinary meaning, which, if not equivalent to 'Reduced

to actual cash in hand,' must at least be 'Rendered tangible for the purpose of division.' . . . The meaning of the word is the direct converse of 'Estimated' (per Kay, J., *Re Oxford Bg Socy*, 56 L. J. Ch. 102; 35 Ch. D. 502; 55 L. T. 598; 35 W. R. 116). *Cp.*, "Profits available for dividend," sub AVAILABLE.

"Realized Member" of a Building Society; *V. Re Norwich & Norfolk Bg Socy*, 45 L. J. Ch. 785.

**REALM.** — "The Custom of the Realm," means, the Common Law of England; *V.* CUSTOM.

"'Out of the realme,' (*id est*) *extra regnum*; as much to say, as out of the power of the king of England as of his crowne of England: for if a man be upon the Sea of England, he is within the kingdom or realme of England, and within the ligeance of the king of England, as of his crowne of England. And yet *ultim mare* is out of the jurisdiction of the common law, and within the jurisdiction of the lord admirall" (Co. Litt. 260 a, b). A little further on Coke seems to cite Littleton as using "Beyond the Sea" and "Out of the realm" as convertible terms; but in *King v. Walker* (1 Bl. W. 286) Wedderburn, arg., said "these expressions have usually (though inaccurately) been used as synonymous terms."

Probably, since and somewhat by force of 1 Jac. 1, c. 1, "the Realm," or "this Realm," in and since 1604, means, generally, "the Realms and Kingdoms of England, Scotland, and Ireland" (*Vh.*, *King v. Walker*, sup). France is also mentioned in the statute, but that, of course, had ceased to be practical. *V.* TERRITORIAL WATERS.

The "Realm," in the old Bankry Acts for England, meant, England and Wales, for those parts of the kingdom only were subject to the English bankry law (*Williams v. Nunn*, 1 Taunt. 270).

The words "Within this Realm," in the Statute of Monopolies (21 Jac. 1, c. 3), applies to all the UNITED KINGDOM (*Robinson's Patent*, 5 Moore P. C. 65; *Morgan v. Seaward*, 2 M. & W. 544; *Brown v. Annandale*, 8 Cl. & F. 437); but not to the Colonies (*Rolls v. Isaacs*, 51 L. J. Ch. 170; 19 Ch. D. 268).

*V.* BEYOND SEAS: ENGLAND: SEA: THREE ESTATES.

**REALTY.** — This word briefly expresses what is meant by REAL ESTATE, OR REAL PROPERTY.

**REASON.** — When a "Reason" has to be given for an act or for refraining from an act, and a discretion be given, such discretion is not less absolute (*R. v. London, Bp.*, and *Allcroft v. London, Bp.*, cited OPINION).

The mere fact that a PLAINTIFF Limited Co is in Liquidation, furnishes "reason to believe" that if unsuccessful it will be unable to pay the deft's costs, and therefore it ought to be ordered to give security for costs under s. 69, Comp Act, 1862 (*Northampton Coal Co v. Midland*

*Waggon Co.*, 7 Ch. D. 500; *Pure Spirit Co v. Fowler*, 59 L. J. Q. B. 537; 25 Q. B. D. 235).

He acts "against Law and Reason"; *F. UNWORTHY.*

*F. BY REASON: GOOD REASON: SPECIAL.*

**REASONABLE.**—It would be unreasonable to expect an exact definition of the word "Reasonable." Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic, sounds now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the verdict of a jury (or the decision of a judge sitting as a jury) usually determines what is "reasonable" in each particular case; but frequently reasonableness "belongeth to the knowledge of the law, and therefore to be decided by the justices" (Co. Litt. 56 b).

Where a *Contract* has to be performed (*Attwood v. Emery*, 26 L. J. C. P. 73; 1 C. B. N. S. 110; *Briddon v. G. N. Ry.*, 28 L. J. Ex. 51; *Hales v. Lond. & N. W. Ry.*, 32 L. J. Q. B. 292; 4 B. & S. 66; 11 W. R. 856; *Taylor v. G. N. Ry.*, L. R. 1 C. P. 385), or a duty discharged (*Goodwyn v. Chereley*, 28 L. J. Ex. 298; 4 H. & N. 631), within a *Reasonable Time* (or within no specified time, which connotes a reasonable time; *Nosotti v. Averbach*, 79 L. T. 414), such time will have to be determined according to the circumstances of the case, and with particular reference to the means and ability of the person by whom the contract is to be performed, or the duty discharged (*Postlethwaite v. Freelund*, 49 L. J. Q. B. 630; 5 App. Ca. 599; *Hick v. Raymond*, 1893, A. C. 22; 62 L. J. Q. B. 98, *Vhle per* Ld Herschell, *Carlton S. S. Co v. Castle Co.*, 1898, A. C. 490–492; *CUSTOMARY: Toms v. Wilson*, 32 L. J. Q. B. 33; *Ib.* 382; 4 B. & S. 455; 11 W. R. 117; *Brightly v. Norton*, 32 L. J. Q. B. 38; 3 B. & S. 305; 11 W. R. 167). An obligation to perform a *Contract* within "a reasonable time" does not require so speedy a fulfilment as one to be done "directly" or "as soon as possible" (Add. C. 125). *Vf*, *REASONABLE HOUR: USUAL AND CUSTOMARY MANNER.*

*Qua Sale of Goods Act*, 1893, " 'Reasonable Time,' is a question of fact" (s. 56).

Six years is a reasonable time within which to present a *Cheque* for payment, unless loss has been occasioned by unnecessary delay (*Robinson v. Hawksford*, 15 L. J. Q. B. 377; 9 Q. B. 52; *Laurs v. Rand*, 27 L. J. C. P. 76; 30 L. T. O. S. 286; *Re Bethell*, 34 Ch. D. 566; *Sr, Hare v. Henty*, 30 L. J. C. P. 302).

*Reasonable Time* after attaining 21 within which an *Infant's Settlement* can be repudiated; *V. Carter v. Silber*, 1892, 2 Ch. 278; 61 L. J. Ch. 401; *affd* in H. L. *nom. Edwards v. Carter*, 1893, A. C. 360; 63 L. J. Ch. 100; 69 L. T. 153.

A *Power to grant Mining Leases* for such *Terms* as to the donee "shall

seem reasonable and proper," authorizes a Lease for 99 years (*Taylor v. Mostyn*, 52 L. J. Ch. 848; 23 Ch. D. 583; 31 W. R. 3, 686; 48 L. T. 715).

"Reasonable Time" for serving a *Magistrate's Summons* prior to hearing; *V. R. v. Smith*, L. R. 10 Q. B. 604.

As to reasonable Time for service of *Notice to Produce*; *V. Rose*. N. P. 12.

As to what is a reasonable *Notice to Quit* in tenancies for less than a year; *V. Huffell v. Armistead*, 7 C. & P. 56; *Towne v. Campbell*, 16 L. J. C. P. 128; 3 C. B. 921; *Jones v. Mills*, 31 L. J. C. P. 66: And as to what is a reasonable *Notice to determine Service* in cases other than domestic; *V. Fairman v. Oakford*, 29 L. J. Ex. 459; 5 H. & N. 635; *Parker v. Ibbetson*, 27 L. J. C. P. 236; 4 C. B. N. S. 346; *Buckingham v. Surrey & Hants Canal Co*, 46 L. T. 885.

Four clear days are, generally speaking, a reasonable time for Unloading Ry Waggons at a Ry Station (*Mid. Ry v. Silks*, 9 Ry & Can Traffic Ca. 161; *Manchester, & Traders' Assn v. Lanc. & Y. Ry*, 10 Ib. 127; *Mid. Ry v. Bluck*, 10 Ib. 146).

Fares and Times between 6 P. M. and 8 A. M. for WORKMEN'S TRAINS "as appear to the Board of Trade reasonable," s. 3 (1 b), Cheap Trains Act, 1883, 46 & 47 V. c. 34; *V. Re London Reform Union and G. E. Ry*, 10 Ry & Can Traffic Ca. 280; *Re Metropolitan Ry*, 8 Ib. 32.

"Reasonable Apprehension"; *V. IMPOSSIBLE*.

"Fair and Reasonable Compensation," s. 5, Agricultural Holdings (England) Act, 1883; *V. Woodf*. 822.

The obligation of a LESSEE under s. 14, Conv & L. P. Act, 1881, to make "Reasonable Compensation" for breach of covenant, does not make him liable to pay anything that he would not have been liable to pay anterior to the statute, e.g., if the breach be non-repair, he is not liable to pay the lessor's Survey Fee (per Charles, J., *Skinnors Co v. Knight*, 1891, 2 Q. B. 542; 60 L. J. Q. B. 629; *Cp*, FULL COMPENSATION). But the expenses of Solicitor, and Surveyor or Valuer, are now provided for by s. 2 (1), Conv & L. P. Act, 1892; *Seth*, RELIEF. *Cp*, COMPULSORY POWERS.

Reasonable *Provision* for a Wife "having regard to the means both of the husband and wife," s. 5 (c), 58 & 59 V. c. 39, is  $\frac{1}{3}$ d of the Joint Income where there are no children (*Cobb v. Cobb*, 1900, P. 294; 69 L. J. P. D. & A. 125; 83 L. T. 716).

Reasonable Regulations by a Telegraph Co; *V. M<sup>c</sup>Andrew v. Electric Telegraph Co*, 25 L. J. C. P. 26; 17 C. B. 3.

"Reasonable Security"; *V. SECURITY*.

By s. 7, *Railway and Canal Traffic Act*, 1854, 17 & 18 V. c. 31, Railway and Canal Companies are empowered to make such *Conditions* with their customers respecting the receiving, forwarding, or delivering, goods, "as shall be adjudged, by the Court or Judge before whom any

question relating thereto shall be tried, to be *just and reasonable*." The question of reasonableness under that section is one of law and not of fact (*Simons v. G. W. Ry*, 26 L. J. C. P. 25, 33; 18 C. B. 805, 829); and the onus of showing reasonableness is on the Company (*Peck v. N. Staffordshire Ry*, 32 L. J. Q. B. 241; 10 H. L. Ca. 473). The solution of this question "will materially depend upon the nature of the articles to be conveyed, the degree of risk attendant upon their conveyance, the rate of charge made, and whether the Company was bound, by the common law or by statute, to carry the articles on being paid the customary hire, or whether it was in its powers to reject them altogether and refuse to carry them upon any terms. Whenever, in order to bring a Railway or Canal Company within the protection of a condition or special contract, it is necessary to construe it as excluding responsibility for losses occasioned by the Company's negligence and misconduct, the condition or special contract is unreasonable and unjust, and therefore void, unless an option is given to the customer to have the goods carried on the ordinary terms, at the ordinary rate. Where the terms of the condition are unconditional and would, if valid, protect the Company even in the case of the wilful misconduct of the defendant's own servants, the condition is unreasonable" (Add. C. 960). Applying these principles the following have been held to be

### Reasonable Conditions.

Non-liability of Company, for loss of market or other such like delay or detention (*White v. G. W. Ry*, 26 L. J. C. P. 158; 2 C. B. N. S. 7; *Beal v. S. Devon Ry*, 29 L. J. Ex. 441; 5 H. & N. 875; *Lord v. Mid. Ry*, 36 L. J. C. P. 170; L. R. 2 C. P. 339; *Sheridan v. Mid. G. W. Ry*, 24 L. R. Ir. 146); or for goods incorrectly described (*Lewis v. G. W. Ry*, 29 L. J. Ex. 425; 5 H. & N. 867); or for damage in transit to perishable goods, or from restiveness of animals (*Austin v. Manchester, S. & L. Ry*, 21 L. J. C. P. 179; 10 C. B. 475; *Beal v. S. Devon Ry*, sup; *Sheridan v. Mid. G. W. Ry*, sup), or from over-crowding (*Sheridan v. Mid. G. W. Ry*, sup); or when a special rate of freight lower than ordinary is taken (*Simons v. G. W. Ry*, 26 L. J. C. P. 25; 18 C. B. 805, esp. if a *bonâ fide* alternative be given to send the goods at the ordinary rate without condition. *Robinson v. G. W. Ry*, 35 L. J. C. P. 123; *Brown v. Manchester, S. & L. Ry*, 51 L. J. Q. B. 599; 52 *Ib.* 132; 53 *Ib.* 124; 9 Q. B. D. 230; 10 *Ib.* 250; 8 App. Ca. 703, or when the exemption does not include wilful misconduct, *Lewis v. G. W. Ry*, 47 L. J. Q. B. 131; 3 Q. B. D. 195); or precluding Company's liability unless claim sent in within 7 days after goods delivered (*Lewis v. G. W. Ry*, 29 L. J. Ex. 425; 5 H. & N. 867).

But the following (except when warranted by a specially low rate of freight, coupled with the option of sending at ordinary rate without condition) are

### Unreasonable Conditions.

Non-liability of Company for loss however occasioned (*Peck v. N. Staffordshire Ry*, 32 L. J. Q. B. 241; 10 H. L. Ca. 473; *Cohen v. S. E. Ry*, 2 Ex. D. 253; 46 L. J. Ex. 417, on *wher*, per *Id* Blackburn, *Doolan v. Mid. Ry*, 2 App. Ca. 804-807; and as to horses, &c, *V. M'Manus v. Lanc. & Y. Ry*, 28 L. J. Ex. 353; 4 H. & N. 327; *M'Canee v. Lond. & N. W. Ry*, 31 L. J. Ex. 65; 34 Ib. 39; 7 H. & N. 477; 3 H. & C. 343; *Ashendon v. L. B. & S. Ry*, 5 Ex. D. 190; *Gregory v. W. Midland Ry*, 33 L. J. Ex. 155; 2 H. & C. 944; *Rooth v. N. E. Ry*, 36 L. J. Ex. 83; L. R. 2 Ex. 173); or for loss, detention, or damage, through Insufficient Packing (*Simons v. G. W. Ry*, *sup*: *Garton v. Bristol & Exeter Ry*, 30 L. J. Q. B. 273; 1 B. & S. 112); or for loss of passenger's luggage "unless fully and properly addressed with the name and destination of the owner" (*Cutler v. N. London Ry*, 56 L. J. Q. B. 648; 19 Q. B. D. 64; 56 L. T. 639; 35 W. R. 575; 51 J. P. 774).

As to what is a *bonâ fide* and just *Alternative Rate*; *V. Dickson v. G. N. Ry*, 56 L. J. Q. B. 111; 18 Q. B. D. 176; 55 L. T. 868; 35 W. R. 202; 51 J. P. 388: and as to what words will give an option, *V. G. W. Ry v. McCarthy*, 56 L. J. P. C. 33; 12 App. Ca. 218; 56 L. T. 582; 35 W. R. 429; 51 J. P. 532.

As to presumption of reasonableness; *V. Rickett v. Mid. Ry*, 9 Ry & Can Traffic Ca. 107; 1896, 1 Q. B. 260; 65 L. J. Q. B. 274.

*Vf*, as to Carriers Act, and Ry and Canal Traffic Act, Add. C. 957: *Rosc. N. P.* 629-637; *Browne & Theobald on Railways*, 3 ed., 414-416.

V. CALCULATED TO BENEFIT: FAIR AND REASONABLE: REASONABLE: UNREASONABLE.

### REASONABLE ACTS.—V. Acts.

**REASONABLE AND PROBABLE CAUSE.**—"Reasonable and Probable Cause," s. 8, 7 & 8 G. 4, c. 29, repld s. 44, Larceny Act, 1861, relating to Threatening Letters, applies to the money demanded, and not to the accusation threatened (*R. v. Hamilton*, 1 C. & K. 212).

"Reasonable and Probable Cause" for detaining a Ship, s. 10, Mer Shipping Act, 1876, 39 & 40 V. c. 80, repld s. 460, Mer Shipping Act, 1894, is a question for the jury with the assistance of expert evidence; and the proper question to be left to the jury is, whether the facts in connection with the ship, which would have been apparent to a person of ordinary skill who had had, and had used, all means of examining and enquiring about her, would, in the opinion of the jury, have

given such person Reasonable and Probable Cause to suspect the safety of the ship on her outward and homeward voyage, and so to detain her for survey (*Thompson v. Farrer*, 51 L. J. Q. B. 534; 9 Q. B. D. 372). *Vf*, *Dixon v. Bd of Trade*, 3 Times Rep. 478. REASONABLY SUSPECTS.

The question, quâ False Imprisonment against a Police Officer, whether he had Reasonable and Probable Cause for making the arrest, or, quâ Malicious Prosecution, whether the prosecutor had Reasonable and Probable Cause for preferring the charge, is for the Judge (*Hailes v. Marks*, 30 L. J. Ex. 392; 7 H. & N. 56; *Lister v. Perryman*, 39 L. J. Ex. 177; L. R. 4 H. L. 521; *Panton v. Williams*, 10 L. J. Ex. 545; 2 Q. B. 194); where the facts are in dispute, it is for the Jury to find the facts, but whether those facts amount to Reasonable and Probable Cause is an inference to be drawn by the Judge (*Ib.*). *Vh*, *Rosc. N. P.* 869-873; *Add. T.* 222; 8 *Encyc.* 87-89; *Kelly v. Mid. G. W. Ry.*, *Ir. Rep.* 7 C. L. 8.

“Lawful or Reasonable Cause”; *V.* LAWFUL CAUSE.

“Reasonable or Sufficient Cause”; *V.* CAUSE: SUFFICIENT CAUSE.

*V.* REASONABLE CAUSE.

**REASONABLE AND PROPER.**—Particulars in an action for Infringement of a Patent will not be shown to be “Reasonable and Proper.” so as to justify Certificate of Costs for them under s. 29 (6), Patents, Designs, and Trade-Marks, Act, 1883, by merely showing that they were not unreasonable; the Court will satisfy itself as to whether they were “reasonable and proper” rather by the result, than by considering the position in which the litigant’s advisers were placed when settling the Particulars (*Germ Milling Co v. Robinson*, 55 L. T. 282; 3 Pat. Ca. 254; 2 Times Rep. 785). *Vf*, *Mandleberg v. Morley*, 64 L. J. Ch. 245; 72 L. T. 106; *Middleton v. Bradley*, 1895, 2 Ch. 716; 64 L. J. Ch. 888; 73 L. T. 81; 43 W. R. 684.

*V.* THINK FIT.

**REASONABLE CARE.** — *V.* ORDINARY CARE: REASONABLE DILIGENCE.

**REASONABLE CAUSE.**—The power of striking out a Pleading “on the ground that it discloses no Reasonable Cause of Action, or Answer,” R. 4, Ord. 25, R. S. C., “is only intended to be had recourse to in plain and obvious cases” (*Hubbuck v. Wilkinson*, 1899, 1 Q. B. 86; 68 L. J. Q. B. 34). *Vh*, *Ann. Pr.*

Reasonable Cause for Desertion; *V.* DESERTION: REASONABLE EXCUSE: CAUSE.

By the Scots Act, 1573, c. 55, “Quhatsmener persoun or personnis Joyuit in lauchfull Matrimonie, husband or wife, diuertis fra vtheris



company, without any reasonable cause alleged or deduced before any Judge and remains in their malicious obstinacy for the space of four years, and in the meantime refuses all proper admonitions," may have Divorce decreed against him or her:—a Spouse's conduct causing the other mental distress sufficient to interfere with health, and menaces causing well-founded apprehension of physical restraint (especially if culminating in an act of personal violence), is "Reasonable Cause" for leaving that spouse within this provision (*Mackenzie v. Mackenzie*, 1895, A. C. 384).

V. REASONABLE AND PROBABLE CAUSE.

REASONABLE CLAUSES.—V. PROPER CLAUSES.

REASONABLE COMPENSATION.—V. REASONABLE.

REASONABLE CONDITION.—V. REASONABLE.

REASONABLE COSTS.—A statutory power to Quarter Sessions to order "Reasonable Costs," means, that the Court itself must ascertain, before making the Order, that the costs ordered are reasonable; and though it may be assisted therein by sending the costs for taxation before making the Order, yet it cannot delegate its function by leaving a blank in the Order for the Taxing Master to fill up (*R. v. Wargrave*, 2 Nolan, 4 ed., 574; *R. v. Sweet*, 9 East, 25; *R. v. Skinn*, 1 Bott, 476). There is no difference in this respect between "Reasonable Costs" and "Costs incurred" (*Selwood v. Mount*, cited INCURRED).

Where an intended mortgagor agreed to pay the "Reasonable Costs" of the mortgagee's solicitor if the matter went off (which happened), held, that this did not include the expense of withdrawing the money from a banker and remitting it for payment (*Re Blakesley*, 32 Bea. 379).

REASONABLE DILIGENCE.—As to when "Reasonable Diligence" could not have discovered CONCEALED FRAUD, within s. 26, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; *V. Ecclesiastical Commrs v. N. E. Ry*, 4 Ch. D. 845; 36 L. T. 174; *Ashton v. Stock*, 6 Ch. D. 719; 25 W. R. 862; *Williams v. Raggett*, 46 L. J. Ch. 849; on the contrary, *V. Chetham v. Houe*, L. R. 9 Eq. 571; 39 L. J. Ch. 376; 22 L. T. 57; *Laurance v. Norreys*, 15 App. Ca. 210; 59 L. J. Ch. 681; 38 W. R. 753; *Willis v. Howe*, 50 L. J. Ch. 4; 1893, 2 Ch. 545; 62 L. J. Ch. 690. Quà Partnerships; *V. Rawlins v. Wickham*, 28 L. J. Ch. 188; 3 D. G. & J. 304; *Betjemann v. Betjemann*, 1895, 2 Ch. 474; 64 L. J. Ch. 641; 73 L. T. 2.

V. DUE DILIGENCE: ORDINARY CARE: "Contributory Negligence," sub NEGLIGENCE.

**REASONABLE EFFORTS.** — “Reasonable Efforts,” to effect Personal Service of a Writ, “do not simply mean ‘reasonable’ in the mind of the man who makes them according to his belief of the facts; but they mean ‘reasonable’ according to the actual facts” (per Pollock, C. B., *Flower v. Allan*, 33 L. J. Ex. 83; 2 H. & C. 688).

“Reasonable Efforts to obtain payment of the Debt,” s. 7, Bankry Act, 1869; *V. Re Tupper*, 9 Ch. 312; 22 W. R. 381; 30 L. T. 102.

**REASONABLE EXCUSE.** — The excuses for not causing a child to attend school which may be prescribed by bye-laws under s. 74, 33 & 34 V. c. 75, do not exhaust the instances of “Reasonable Excuse” (*Belper Case*, 51 L. J. M. C. 91; 9 Q. B. D. 259). That case also decides that a parent reasonably and fairly doing his best to send his truant child to school, has a “Reasonable Excuse” against a summons for a penalty for not causing the child to attend. Detaining a child at home to earn money necessary to the support of the family, is also a like “Reasonable Excuse” (*London School Bd v. Duggan*, 53 L. J. M. C. 104; 13 Q. B. D. 176; 32 W. R. 768). But where a child plays truant against the parent’s wish, that is not a “Reasonable Excuse” against an application for an Order for sending the child to school under s. 11, Elementary Education Act, 1876, 39 & 40 V. c. 79; a “Reasonable Excuse” under that section must be one of the two thereby prescribed (*Hewett v. Thompson*, 58 L. J. M. C. 60; 60 L. T. 268). *If*, s. 11, Education (Scot) Act, 1883, 46 & 47 V. c. 56.

“Reasonable Excuse” for Non-Vaccination, s. 29, 30 & 31 V. c. 84, includes, a reasonable belief that it would be injurious to the particular child (*Rutter v. Norton*, 57 J. P. 8; 37 S. J. 12; nom. *Rutter v. Newton*, 9 Times Rep. 35), and, Hawkins, J., added that, even if the defendant’s “arguments and evidence also tended to show that all vaccination is wrong, he still is entitled to be heard so far as his own child is concerned.” Note: A magisterial certificate of a parent’s, or other custodian’s, “Conscientious Objection” excuses from penalty for non-vaccination (s. 2, 61 & 62 V. c. 49).

As to what is a “Reasonable Excuse” (within s. 31, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85), justifying a wife in living separate from her husband; *V. Du Terreaux v. Du Terreaux*, 28 L. J. P. & M. 95; and *vice versa*, *Haswell v. Haswell*, 29 L. J. P. & M. 21. If a Wife, without a justifying cause, refuses sexual intercourse to her husband, that is a “Reasonable Excuse” for his Desertion of her (*Synge v. Synge*, cited DESERTION).

#### V. CAUSE.

If rent be only recently due and has not been demanded by the landlord, that is a “Reasonable Excuse,” in the mouth of a grantor of a *Bill of Sale*, for the non-production of the receipt for that rent within s. 7 (4), Bills of Sale Act, 1882 (*Ex p. Cotton*, 11 Q. B. D. 301: *Ex p. Wickens*,

cited MAINTENANCE, at end: *Va*, PRODUCE). *Note*: as to what is a covenant in contravention of this sub-section, *V. Burr v. Kingsford*, 56 L. T. 861, on *wher*, *Cartwright v. Regan*, 1895, 1 Q. B. 900; 61 L. J. Q. B. 507; 43 W. R. 650.

*Cp*, LAWFUL EXCUSE: REASONABLY.

**REASONABLE EXPECTATION.**—A person who begins business without capital and with a mortgage on all his assets, and who afterwards becomes bankrupt, has contracted his debts without “reasonable or probable ground of expectation of *being able to pay*” within s. 28 (3), Bankry Act, 1883 (*Ex p. White*, 54 L. J. Q. B. 384; 14 Q. B. D. 600; 33 W. R. 670: *VJ*, *Ex p. Downman*, 32 L. J. Bank. 49; 11 W. R. 577: *Ex p. Mortimore*, 30 L. J. Bank. 17; 3 D. G. F. & J. 599).

**REASONABLE EXPENSES.**—“Fees and Reasonable Expenses”; *V. ELECTRIC*.

**REASONABLE FACILITIES.**—*V. FACILITIES*.

**REASONABLE FARES.**—*V. REASONABLE*.

**REASONABLE FINE.**—As to what are “Reasonable Fines” within s. 1, Bg Socy Act, 1836, *V. Parker v. Butcher*, L. R. 3 Eq. 762; 36 L. J. Ch. 552: *Re Tierney*, Ir. Rep. 9 Eq. 1.

Reasonable Copyhold Fines; *V. Elton on Copyholds*, 2 ed., 175; Scriven, 182: 1 Watkins, 3 ed., 475.

*V. FINE*.

**REASONABLE HOUR.**—In a contract to sell and deliver 10 tons of oil “within the last 14 days of March”; the plaintiff tendered it at half-past eight on the evening of the last day of March. It was found that the tender had been made in time to give the defendant full opportunity to weigh, examine, and receive, the oil, but the defendant who was present declined to receive it on the ground that the tender was made at an unreasonable time; but it was held (Denman, C. J., diss.) that the tender had been made in time (Blackb. 225, citing *Startup v. Macdonald*, 6 M. & G. 593; 12 L. J. Ex. 477). In that case Parke, B., said, “Where a thing is to be done *anywhere*, a tender a convenient time before midnight is sufficient; where the thing is to be done at a *particular place*, and where the law implies a duty on the party to whom the thing is to be done to attend, that attendance is to be by daylight, and a convenient time before sunset.”

*V. REASONABLE*.

**REASONABLE INDEMNITY.**—*V. INDEMNITY*.

**REASONABLE LET.** — “Reasonable Let or Impediment”; *V. LET*, at end.

**REASONABLE MEANS.** — Taking “Reasonable Means” for enforcing Mine Regulations, s. 50, 50 & 51 V. c. 58; *V. Stokes v. Checkland*, cited *AGENT*.

**REASONABLE NOTICE.** — *V. REASONABLE*.

**REASONABLE PORTION.** — A Power to charge estates “with Reasonable Portions, or Fortunes, for Younger Children, and for their maintenance and education,” is sufficiently certain to be capable of execution; and the word “Reasonable” there, is applicable not only to the amount of the Portion, but also to the time and occasion on which the child would want it (*Edgeworth v. Edgeworth*, Beatty, 328).

**REASONABLE PROVISION.** — *V. REASONABLE*.

**REASONABLE RATE.** — A Reasonable RATE or Charge by a Railway Co, s. 1 (1), Ry and Canal Traffic Act, 1894, is to be judged on its merits, and “is not to be tried by its effect upon the trade of the persons who have to pay it” (per Collins, J., *Rickett v. Mid. Ry*, 9 Ry & Can Traffic Ca. 144; 65 L. J. Q. B. 277; 1896, 1 Q. B. 260).

**REASONABLE ROUTE.** — S. 11 (5), Regn of Railways Act, 1873; *V. East and West Junction Ry v. G. W. Ry*, 1 Ry & Can Traffic Ca. 331.

**REASONABLE SALVAGE.** — *V. SALVAGE*.

**REASONABLE SKILL.** — *V. SKILL*.

**REASONABLE SUM.** — Reasonable sum for Ry Services; *V. per Ld Shand, Mid. Ry v. Loseby*, cited *DIFFERENCE: Mid. Ry v. Sils*, 9 Ry & Can Traffic Ca. 161; *Mid. Ry v. Black*, 10 Ib. 142:—for *TERMINAL Charges*, s. 15, Regn of Railways Act, 1873, *V. Berry v. L. C. & D. Ry*, 4 Ry & Can Traffic Ca. 310; *Hall v. L. B. & S. Ry*, cited *INCIDENTAL. Cp, EXTRAORDINARY SERVICES*.

**REASONABLE TIME.** — *V. REASONABLE: REASONABLE HOUR*.

**REASONABLE USE.** — As to the reasonable use of premises by deft quà an allegation of nuisance; *V. Sanders-Clark v. Grosvenor Mansions Co.*, cited *NUISANCE*, p. 1299.

**REASONABLE WEAR.** — *V. WEAR AND TEAR*.

**REASONABLY.** — A Trustee who allows his Co-Trustee to advance trust funds upon an improvident or improper security, or “who swallows

wholesale what is said by his Co-Trustee," does not act "reasonably" or "honestly," within s. 3, Judicial Trustees Act, 1896, even though the Co-Trustee be the Solicitor to the trust nominated by the author of the trust and be a reliable person (*Re Turner*, 1897, 1 Ch. 536; 66 L. J. Ch. 282; 76 L. T. 116; 45 W. R. 495; *Re Second East Dulwich By Sory*, 68 L. J. Ch. 196; 79 L. T. 726; 47 W. R. 408). In making or allowing investments a trustee must act as a fairly prudent man would deal with his own money (*Re Stuart*, 1897, 2 Ch. 583; 66 L. J. Ch. 780; 46 W. R. 41).

So, a Trustee does not act "reasonably" if he allows his Co-Trustee to receive, and (without enquiry or good reason) to retain, trust funds (*Wynne v. Tempest*, cited INDEMNITY).

So, an Exor does not act "reasonably" if he does not advertise for Claims as soon as possible; and he will not get relief for parting with the Assets to beneficiaries after being served with a writ for a claim which, in the event, is substantiated, even though he honestly believed, and had some grounds for believing, that the claim was unfounded (*Re Kay*, cited TRUST). An Exor who, on reasonable grounds, refrains from bringing an action to recover a Debt due to his testator's estate, may not quite bring himself within the decision in *Clack v. Holland* (24 L. J. Ch. 13; 19 Bea. 262), but the spirit of Ld Romilly's remarks in that case ought to be applied, and if there was reasonable ground for believing that an action would have been "ineffectual," then, in not suing, the Exor would have acted "reasonably, and ought fairly to be excused" under s. 3 of the Act cited (*Re Roberts*, 76 L. T. 479); so, if, on the Will, there was a reasonable doubt as to whether the testator intended the debt to be called in at once (*Re Grindley*, 1898, 2 Ch. 593; 67 L. J. Ch. 624; 47 W. R. 53; 79 L. T. 105); so, of payment to legatees in ignorance of a claim against the estate (*Re Kay*, 41 S. J. 722), *secus* of such payments after commencement of an action to enforce the claim, although its extent was then unascertained (*Re Kay*, sup).

The words of the section are "has acted *honestly* and reasonably, and ought fairly to be excused"; but as in the large majority of cases of breach of trust so, generally, under this section "the word 'honestly' may be left out of consideration" (per Kekewich, J., *Perrins v. Bellamy*, 1898, 2 Ch. 521; 67 L. J. Ch. 649; 46 W. R. 682; 79 L. T. 109; affd 1899, 1 Ch. 797; 68 L. J. Ch. 397; 80 L. T. 478; 47 W. R. 417), in *whc* trustees, who were sued by a tenant for life for selling leaseholds without being thereunto authorized by a power, were relieved because they had acted "reasonably,"—they had sold thinking they had a power, had sold on the advice of a competent surveyor, and the sale was the best thing that could have been done for the benefit of all parties, and especially having regard to those in remainder who were the children of the tenant for life. On the other hand, an unreasonable, but honest, postponement of realizing non-trustee investments, is not excusable, not

even though, in some instances, profit has resulted from the postponement (*Racenshaw v. Barker*, 77 L. T. 712; 46 W. R. 296).

*Vf*, *Re De Clifford*, 69 L. J. Ch. 828; 1900, 2 Ch. 707; 83 L. T. 160. *Note*: that the claim for relief may be set up at the trial, though not made by the pleadings (*Singlehurst v. Tapscott S. S. Co*, 43 S. J. 717).

*Cp*, REASONABLE EXCUSE. *V*. BREACH OF TRUST.

Surveyor "reasonably believed" to be "able and practical"; *V*. SURVEYOR.

*V*. OUGHT: PROPERLY: REASONABLE.

**REASONABLY NECESSARY.**—A Trustee loses the protection of s. 17, Trustee Act, 1893, if he permits a Banker or Solicitor who receives trust money to retain it "longer than is reasonably necessary . . . to pay or transfer the same to the trustee" (subs. 3, s. 17); that proviso is as applicable to Scotland as to England, and must be exigently observed in spite of specious excuses by the banker or solicitor (*Wyman v. Paterson*, 1900, A. C. 271; 69 L. J. P. C. 32; 82 L. T. 473).

**REASONABLY PRACTICABLE.**—A direction that a set of affirmative and negative rules shall be observed "so far as is reasonably PRACTICABLE," will not, unless under very exceptional circumstances indeed, apply to the negative rules. "It is always possible *not* to do that which you are forbidden to do" (per Day, J., *Wales v. Thomas*, 55 L. J. M. C. 61; 16 Q. B. D. 340; 55 L. T. 400; 50 J. P. 516; 2 Times Rep. 53); and it was accordingly held in that case that the rule in s. 51, Coal Mines Regulation Act, 1872, 35 & 36 V. c. 76, prohibiting firing a shot into a mine until the men are out of it, is unqualified by the words at the commencement of the section that the rules thereby laid down "shall be observed so far as is reasonably practicable."

**REASONABLY REQUIRE.**—An agreement to give a Bill of Sale in such form as A. shall "reasonably require," means, IN ACCORDANCE WITH THE FORM prescribed by s. 9, Bills of S. Act, 1882 (*Furnicall v. Hudson*, 1893, 1 Ch. 335; 62 L. J. Ch. 178; 68 L. T. 378; 41 W. R. 358).

**REASONABLY SUSPECTS.**—Pawnbrokers Act, 1872, 35 & 36 V. c. 93, s. 34; *V. Howard v. Clarke*, 20 Q. B. D. 558.

**REBEL.**—"Thou art a Rebel"; held, not Slander (*Fountain v. Rogers*, Cro. Eliz. 878).

**REBELLION.**—A "Rebellion." *e.g.* in an Exception to a Fire Policy, involves the idea of an attempt to set up an USURPED POWER (per Mansfield, C. J., *Langdale v. Mason*, cited CIVIL COMMOTION).

"The difference between a Rebellious Mob and a Common Mob is that, the first is HIGH TREASON, the latter a RIOT or a FELONY" (per Wilmot, C. J., *Drinkwater v. Loudon Assree*, cited USURPED POWER).

Cowel says that a "'Rebellious Assembly,' is a gathering together of 12 persons, or more," for an unlawful purpose. (*CP*, UNLAWFUL ASSEMBLY.

V. LEVY WAR: RESTRAINTS OF KINGS.

**REBUILDING.** — "Rebuilding the Principal Mansion House on settled land," s. 13 (iv), S. L. Act. 1890, does not include repairs and improvements (*Re De Teissier*, 1893, 1 Ch. 153; 62 L. J. Ch. 552; 68 L. T. 275; 41 W. R. 186; *Re De Tabley*, 75 L. T. 328). But where the greater part of the mansion house is pulled down and re-constructed, though the re-construction be in a modernized and enlarged manner and the walls of another part are utilized therein, that is a "rebuilding" within the section (*Re Walker*, 1894, 1 Ch. 189; 63 L. J. Ch. 314; 70 L. T. 259). In that case North, J., dealing with this word, said, "I think it is a question of fact in each particular case. Supposing most of the house front were pulled down and a small part left and the rest of the house were re-built, it could not be said that there was not a 're-building.' Again, if the house were burnt and the walls were left standing and made use of in erecting the new house, there would none the less be a 're-building.' Nor would the introduction of alterations and enlargements make any difference in that respect. And I do not think it would make any difference if the site were slightly shifted. If the house were built at a distance that would be another matter. I do not think, however, it follows that every re-building would be a re-building authorized by the section. For example, supposing a tenant for life of a large estate or his predecessor had been content to live in some mere farmhouse or a small villa residence, if he were to erect a large mansion with all the requirements suited to his position as the owner of such an estate, I do not think that that ought to be considered a 're-building' within the enactment. I think there must be really a substantial re-building, and not merely alterations and enlargements." *Re Wright* (83 L. T. 159) is an example of what comes within these concluding words. V. ADDITION: IMPROVEMENT: per Lopes, L. J., *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23; 69 L. T. 393.

*Note:* As to whether settled money can be spent in pulling down and re-building houses; *V. Re Montagu*, 1897, 2 Ch. 8; 66 L. J. Ch. 345, 541; 45 W. R. 594; 76 L. T. 485, and cases there cited.

A Covenant to "re-build" a building on the same site as the existing one, does not, by the word "re-build," involve the obligation to re-build the new in the same manner, style, and shape, and with the same elevation, as the old building (*Low v. Innes*, 4 D. G. J. & S. 289; 11 L. T. 217; 10 Jur. N. S. 1037); but, *semble*, it imposes an obligation to com-

pletely take down all the old buildings and build new ones (*London v. Nash*, cited BUILDING LEASE).

A Power to grant a Lease "for the purpose of new building or effectually re-building and repairing" existing buildings, is not well executed if the lessee only covenants to "effectually repair" the buildings and to keep them repaired and upheld as need should require (*Doe d. Dymoke v. Withers*, 2 B. & Ad. 896: *seth* questioned by Jessel, M. R., *Truscott v. Diamond Rock-Boring Co*, cited IMPROVE).

**REBUTTER.** — " 'Rebouter' is a French word, and is in Latine *repellere*, to repell or barre " (Co. Litt. 365 a).

A Rebutter, in Pleading, was the deft's answer to the Plt's Sur-Rejoinder; a Sur-Rebutter was the plt's answer to the Rebutter (3 Bl. Com. 310).

**RECAPTION.** — " Is a second Distress of one formerly distreyned for the selfe same cause " (Termes de la Ley). *Vf*, Jacob: 11 Encyc. 81.

**RECEIPT.** — " No particular form of words is necessary to constitute a Receipt. The word 'settled,' or 'paid,' or any other word purporting to give a discharge, together with the signature of the creditor, or his mere signature on a document specifying the amount due without any other words indicating payment, is sufficient (*R. v. Martin*, 7 C. & P. 549; *Spowforth v. Alexander*, 2 Esp. 621; *R. v. Boardman*, 2 Moo. & R. 147; *R. v. Overton*, 23 L. J. M. C. 29) " : 11 Encyc. 82. *Cp*, RELEASE.

A Turnpike Ticket is a " Receipt " (*R. v. Fitch*, L. & C. 159), and a Bank Pass Book is an " Accountable Receipt " (*R. v. Smith*, 31 L. J. M. C. 154; L. & C. 168; *R. v. Moody*, 31 L. J. M. C. 156; L. & C. 173), within s. 23, Forgery Act, 1861, 24 & 25 V. c. 98; but a " Clearance " certificate from one branch of a Friendly Society to another, is not (*R. v. French*, 39 L. J. M. C. 58; L. R. 1 C. C. R. 217), nor is a Railway Scrip Certificate (*Clark v. Newsam*, 16 L. J. Ex. 296; 1 Ex. 131; *R. v. West*, 1 Den. 258).

" Receipt " of a Garnished Debt (to complete its attachment, s. 45 (2), Bankry Act, 1883), means, its actual receipt by the jdgmt creditor; a constructive receipt, *e.g.* its payment into Court to abide a Third-Party claim afterwards withdrawn, will not suffice (*Butler v. Wearing*, 17 Q. B. D. 182; *Vf. Re Trehearne*, 63 L. T. 323, *affd* 39 W. R. 116; 60 L. J. Q. B. 50; 63 L. T. 798).

Neither a simple Receipt, nor an Inventory of goods and Receipt for their purchase money, is a " Receipt " which, under s. 4, *Bills of Sale Act*, 1878, requires registration, *unless such Receipt, or Inventory and Receipt, make the title of the purchaser to the goods* (*Marsden v. Meadows*, 7 Q. B. D. 80; 50 L. J. Q. B. 536. *Va*, *Thompson v. Barrett*, 1 L. T. 268; *Allsop v. Day*, 31 L. J. Ex. 105; 7 H. & N. 457; *Byerley v. Precost*, L. R. 6 C. P. 144; *V.* those three cases commented on and



distinguished in *Ex p. Odell, Re Walden*, 10 Ch. D. 76; 48 L. J. Bank. 1, and *Re Baum, Ex p. Cooper*, 10 Ch. D. 313; 48 L. J. Bank. 40; but the authority of *Marsden v. Meadows* was established by H. L. in *Manchester, S. & L. Ry v. North Central Waggon Co.*, 13 App. Ca. 554. *Vf*; *Ex p. Blandford, Re Hood*, 37 S. J. 512, 602; ASSURANCE).

Quà *Stamp Act*, 1891, " 'Receipt' includes, any Note, Memorandum, or Writing, whereby any money amounting to £2 or upwards, or any bill of exchange or promissory note for money amounting to £2 or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand or any part of a debt or demand of the amount of £2 or upwards is acknowledged to have been settled satisfied or discharged, or which signifies or imports any such acknowledgement; and whether the same is or is not signed with the name of any person " (s. 101). "Those are words of the most wide and comprehensive kind" (per Russell, C. J., *A-G. v. Carlton Bank*, 68 L. J. Q. B. 791), and include receipts given by the Cashier of a Bank to its Solicitor, for moneys recovered or collected by the latter for the Bank, even though such Solr is, by the terms of his appointment, an OFFICER of the Bank who is entitled to his whole time and pays him an annual salary (*S. C.*, 1899, 2 Q. B. 158; 68 L. J. Q. B. 788; 81 L. T. 115; 47 W. R. 650; 63 J. P. 629). *Note*: In the Sch to the Act several Exemptions from the Stamp Duty are provided, the first and chief of which is a "Receipt given for money deposited in any Bank or with any Banker to be accounted for and expressed to be received of the person to whom the same is to be accounted for": as to Exemption 11, *V. London & Westminster Bank v. Inl. Rev.*, 1900, 1 Q. B. 166; 69 L. J. Q. B. 102; 81 L. T. 630; 48 W. R. 195.

"Receipt," ss. 54, 55, 56, Conv & L. P. Act, 1881; *V. Renner v. Tolley*, 68 L. T. 815; W. N. (93) 90.

"Receipt and Acceptance" of Goods; *V. ACCEPTANCE: Vf, Marshall v. Green*, 45 L. J. C. P. 153; 1 C. P. D. 35.

*V. AUTHORITY OR REQUEST: IN RECEIPT: RECEIPTS: STATUTORY: VACATE.*

**RECEIPTS.** — This is not a word applicable to corpus (*Troutbeck v. Boughey*, 35 L. J. Ch. 840; L. R. 2 Eq. 53). In that case Kindersley, V. C., said, "How could a receipt be given for a fee simple?" *Vf, Johnson v. Johnson*, 56 L. J. Ch. 326; 35 Ch. D. 345; 56 L. T. 163; 35 W. R. 329.

Receipts of Theatre; *V. Cadogan v. Lyric Theatre*, cited RENT, towards end.

*V. IN RECEIPT: INCOME.*

**RECEIVABLE.** — "I myself should have held that the words 'receivable' and 'PAYABLE' were the same thing, and that both were

equivalent to 'VESTED'; but I am happy to find that the judgment of the M. R. in *Hayward v. James* (29 L. J. Ch. 822; 28 Bea. 523), expresses exactly the same conclusion" (per Malins, V. C., *West v. Miller*, 37 L. J. Ch. 426; L. R. 6 Eq. 59). *Vf*, *Watson Eq.* 1228.

"Receivable" may be construed "received" (Wms. Exs. 938, citing *Re Dodgson*, 1 Drew. 440). In that case there was a gift over if any member of a CLASS died "before receiving" his share; held, that that phrase meant, "before being ENTITLED to receive."

*V.* RECEIVED: PAYABLE.

**RECEIVE.** — *V.* RECEIPT: RECEIVABLE: RECEIVING: PAYABLE.

A Building Socy cannot, in strictness, "receive" LOANS on deposit "in excess" of its statutory limits (s. 15, Bg Socy Act, 1874; s. 14, Bg Socy Act, 1894); but as that phrase is used in s. 43 of the 1874 Act, the personal liability on the Directors thereby enacted arises when some person duly accredited, *e.g.* frequently the Secretary, receives money on behalf of a Socy which, but for the prescribed limits, would be properly received by such Socy (*Cross v. Fisher*, 1892, 1 Q. B. 467; 61 L. J. Q. B. 609; 66 L. T. 448; 40 W. R. 265; 56 J. P. 372).

"Receives payment for a CUSTOMER of a Cheque crossed," s. 82, Bills of Ex. Act, 1882; *V.* PAYMENT.

"Ready to receive Cargo"; *V.* READY TO LOAD.

"Purchase, take, hold, receive, or enjoy" land in Mortmain; *V.* PURCHASE.

"Send out, deliver, remove, or receive," Spirits; *V.* SEND, at end.

**RECEIVED.** — In an executory gift over, "Received" should generally be read "RECEIVABLE," and accordingly as equivalent to PAYABLE (*West v. Miller*, 37 L. J. Ch. 423; L. R. 6 Eq. 59; 2 Jarm. 812 *et seq.*). "I take it to be now settled that where there is a gift of property to vest in a person at 21 or marriage, with a gift over in the event of such person dying before the same becomes 'payable,' or the legatee is 'entitled in possession,' these and all similar expressions mean no more than dying before the property becomes 'vested.' Here the word is 'Received,' that is 'Receivable.' But if one person has to pay, there must be another to receive, and 'receivable' must mean the same as 'payable,' so far as it refers to any period of time. . . . In all cases where there is a gift for life, followed by a gift in remainder, which is to vest at the attainment of a particular age, or upon any other event personal to the legatee in remainder, and then a gift over in the event of the latter dying before the legacy is 'payable,' 'receivable,' 'vested in possession,' or any other form is used which means 'paid' or 'received,' there all such expressions are to be taken as equivalent to 'VESTED'" (per Malins, V. C., *West v. Miller*, *sup.*). *Cp.* *Minors v. Battison*, 1 App. Ca. 428; 46 L. J. Ch. 2.

"When received"; *V.* WHEN.

Where a Charter-Party provides that the Bills of Lading shall be "CONCLUSIVE EVIDENCE of the amount of *Cargo* received," "received" means, "shipped on board" (*Lishman v. Christie*, 56 L. J. Q. B. 538; 19 Q. B. D. 333; 57 L. T. 552; 35 W. R. 744, which, *semble*, overrules *Pyman v. Burt*, Cab. & El. 207).

Guarantee for *Goods* "received" will, generally, import future goods and a future consideration; if necessary, evidence explanatory is admissible (*Colbourn v. Dawson*, 10 C. B. 765; 20 L. J. C. P. 154). *Vf*, HAVING.

Commission "on any *Money* received"; *V. Fisher v. Drewett*, 48 L. J. Q. B. 32; *Green v. Lucas*, 33 L. T. 584.

*Sums* "received" in the United Kingdom in respect of Securities elsewhere and chargeable with Income Tax under s. 100, Sch D, Case 4, Income Tax Act, 1842, do not include sums only constructively received in Great Britain, in yearly accounts of profits and loss (*Gresham Life Assree v. Bishop*, 1902, A. C. 287; 71 L. J. K. B. 618, weakening effect of, if not over-ruling, *Universal Life Assree v. Bishop*, 81 L. T. 422; 64 J. P. 5; 68 L. J. Q. B. 962; following *Scottish Mortgage Co of New Mexico v. McKelvie*, 24 Sc. L. R. 87, and *Norwich Union Fire Insree v. Magee*, 44 W. R. 384). (*Cp*, Income Tax cases, CARRY ON, pp. 264, 265.

"Received in"; *V. CAUSED BY*.

*V. ACTUALLY RECEIVED: MONEY RECEIVED: SERVED.*

**RECEIVER.** — Generally speaking, a Receiver "is an indifferent person between the parties appointed by the Court to receive the rents and profits of real estate, or to act in and collect personal estate or other things in question, pending the suit, where it does not seem reasonable to the Court that either party should do so; or where a party is incompetent to do so, as in the case of an Infant" (Dan. Ch. Pr. 1409).

"A Receiver means, a person who receives rents or other income, paying ascertained outgoings; but he does not manage the property in the sense of buying and selling or anything of that kind. . . . The Receiver merely takes the income and pays necessary outgoings; the MANAGER carries on the trade or business" (per Jessel, M. R., *Re Manchester & Milford Ry*, 49 L. J. Ch. 369; 14 Ch. D. 652, 653).

*Vh*, R. 16, Ord. 50, R. S. C., on *whv* Ann. Pr.: Kerr on Receivers: Dan. Ch. Pr. ch. 27; Seton, ch. 32: 11 Encyc. 83-102.

"Receiver by way of Equitable Execution," R. 15 *a*, Ord. 50, R. S. C.; *Vh*, Ann. Pr.

Mortgagee's Receiver; *V. s.* 24, Conv & L. P. Act, 1881: Fisher. s. 815.

Stat. Def. — 22 & 23 V. c. 52, s. 1; 57 & 58 V. c. 30, s. 23.

*V. OFFICIAL.*

A Receiver of Stolen Goods, is one who receives them "knowing them to be stolen" (4 Bl. Com. 132). *Vf*, RECEIVING.

**RECEIVER-GENERAL.** — Stat. Def., 35 & 36 V. c. 23, s. 3; 53 & 54 V. c. 21, s. 39.

**RECEIVER JUDGE.** — *V.* JUDGE.

**RECEIVING.** — As regards the criminal receiving of stolen goods, “a person is said to receive goods improperly obtained as soon as he obtains control over them from the person from whom he receives them.

“Where goods are received by a wife or servant, in the husband’s or master’s absence, with a guilty knowledge on the part of such wife or servant, the husband or master does not become a Receiver only by acquiring a guilty knowledge of the receipt of the goods by such wife or servant, and passively acquiescing therein; but he does become a Receiver with a guilty knowledge if, having such knowledge, he does any act approving of the receipt of the goods.

“Property ceases to be stolen or otherwise improperly obtained, within the meaning of this Article, as soon as it comes into the possession of the general or special owner, and if such general or special owner delivers it to some one who delivers it to a person who receives it knowing of the previous theft or other obtaining, such receiving is not an offence within this article” (Steph. Cr. 282).

*Vf*, Arch. Cr. 514–523; Rose. Cr. 778–789; 11 Encyc. 102–104.

Joint Tenant or Tenant in Common “receiving more than comes to his Just Share,” so as to be liable to an Account under s. 27, 4 Anne, c. 16, connotes an actual receiving, in money or kind, from a third party; a beneficial occupation by such a Tenant is not such a “receiving” (*Henderson v. Eason*, 21 L. J. Q. B. 82; 17 Q. B. 701).

**RECEIVING ORDER.** — This phrase, in s. 40 (*b*), Bankry Act, 1883, means, an Order, whether interim or not, “which takes the receipts out of the hands of the debtor, and leaves him no longer the power of satisfying claims for wages and salaries” (per Cave, *J.*, *Re Smith*, 55 L. J. Q. B. 291; 17 Q. B. D. 4; 54 L. T. 307; 34 W. R. 535).

**RECEPTION.** — “Reception Order”; *V.* ORDER, p. 1351.

**RECITAL.** — As to effect of Recitals on Operative Words, &c; *V.* Introductory Chapter: they may work ESTOPPEL *V.* WHEREAS.

*Vh*, Elph. ch. 10.

**RECITAL OF FACT.** — *V.* FACT.

**RECLUSE.** — “‘*Recluse*,’ *Reclusus*, *Heremita*, seu *Anchorita*, so called by the order of his religion; he is so mured or shut up, *quòd solus semper sit, et in clausurá suá sedet*; and can never come out of his place” (Co. Litt. 258 b; *V.* s. 431, Litt., for use of “Recluse”; *Vf*, Termes de la Ley).

**RECOGNIZANCE.** — “A Recognizance, is the Acknowledgment of a Debt due to the King, defeasible upon the happening of a certain event, viz. the appearance of the party in Court pursuant to the terms of the condition. In this respect, a Recognizance resembles a Bond in its nature” (per Wightman, arg. *R. v. Dover*, 1 Cr. M. & R. 733); that is an accurate statement of “the precise nature of Recognizances” (per Ridley, J., *Re Nottingham Corp*, cited AMERCIAMENT). *17*, 4 Cru. Dig. 95: Jacob: 11 Encyc. 105-107.

The Scotch equivalent is “Bond of Caution”; *V.* 31 & 32 V. c. 125, s. 58; 46 & 47 V. c. 3, s. 9: ENTER.

*V.* BAIL: BIND OVER: SURETY: SURETY OF THE PEACE.

**RECOGNIZE.** — “Act . . . which recognizes a pre-existing Contract of Sale,” s. 4 (3), Sale of Goods Act, 1893; *V.* *Abbott v. Wolsey*, 1895, 2 Q. B. 97; 64 L. J. Q. B. 587; 72 L. T. 581; 43 W. R. 513: ACCEPTANCE.

**RECOGNIZED.** — A Vessel registered as a British Ship at the time of action brought, but not so registered when the collision occurred, is not a “Recognized BRITISH SHIP,” quâ the action, within s. 19. Mer Shipping Act, 1854, repld s. 2 (2), Mer Shipping Act, 1894 (*The Andalusian*, 3 P. D. 182).

“Recognized *Efficient School*”; Stat. Def., 41 & 42 V. c. 16, s. 95; 1 Edw. 7, c. 22, s. 160 (2). *Cp.* CERTIFIED.

**RECOMMEND.** — *V.* PRECATORY TRUST.

“Held out or recommended”; *V.* HOLD OUT.

**RECONCILIATION.** — A Reconciliation of a Church, is an exception to the rule that a Church once consecrated cannot be re-consecrated, for there is a Re-Consecration after a Church has been polluted by the shedding of blood, *e.g.* on Oct 13, 1890, at St. Paul’s Cathedral after a suicide there (Phil. Ecc. Law, 1399: *17*, Ib. 1400, as to Re-Consecration).

**RECONSTRUCTION.** — “Reconstruction” of a Co, “is really a sale out-and-out, — a Voluntary Winding-up followed by an actual, complete, legal, sale of all the rights of the Co. It is a sale to a stranger. — a Co called into existence for the express purpose. The sale is as complete a legal sale as if the assets of the Co were sold to any person or corporation utterly unconnected with the Co” (per Kekewich, J., *Simpson v. Palace Theatre*, 69 L. T. 70). Accordingly, applying the principle of *Griffith v. Paget* (5 Ch. D. 894; 6 Ib. 515; 46 L. J. Ch. 493; 25 W. R. 523; 37 L. T. 141), a Reconstruction (in the absence of special authority) must provide for a *pro ratâ* distribution amongst all classes of shareholders in the old Co. But though the def in *Simpson’s Case*

is strictly so, yet, for many purposes, Reconstruction "involves something which is not out-and-out sale" (per Chitty, J., *Hooper v. Western Counties & S. Wales Telephone*, 41 W. R. 86; 68 L. T. 78). "Reconstruction differs from AMALGAMATION in that, as a rule, there is only one transferring Co, and the Co to which the property in question is transferred is practically the *same* Co with some alterations in its constitution" (Lindley Comp. 900), — a dictum approved and relied on in *Hooper's Case* (sup) to show that the Winding-up there was for an Amalgamation, and not for a "Reconstruction or Reorganization" within a Condition indorsed on a Co's Debentures. In the same case Chitty, J., said that "Reconstruction" is not a Term of Art. *Vf*, LIQUIDATION.

*Vh*. 1 Palm. Co. Prec. 1125; Hamilton, 589; Buckl. 426.

**RECONVEYANCE.** — A Reconveyance, is the document which a mtgor takes from his mtgee when he pays off a mtge. *V*. RENUNCIATION.

A Statutory Receipt is sometimes made to have a similar operation as a Reconveyance; *V*. STATUTORY: VACATE.

**RECORD.** — The Record of an Action is a memorial of the pleadings and acts in an action brought in a COURT OF RECORD (Co. Litt. 260 a, 117 b: *Vf*, Cowel: Jacob), and was formerly written on parchment (Ib. 260 a); but see now R. 30, Ord. 36, R. S. C.

The Issue accompanying a Judge's Order remitting an action to the County Court under 19 & 20 V. c. 108, s. 26, was a sufficient "Record" within s. 5, County Courts Act, 1867 (*Taylor v. Cass*, L. R. 4 C. P. 614).

No appeal in a CRIMINAL CAUSE save for Error "APPARENT upon the Record," s. 47, Jud. Act, 1873; *V. Payne v. Wright*, 1892, 1 Q. B. 104; 61 L. J. M. C. 114; 66 L. T. 148; 56 J. P. 564.

*V*. COURT OF RECORD: DEBT UPON RECORD.

MATTER of Record; *V. Saddlers' Case*, 4 Rep. 54 b.

Assurances by Matter of Record, are, (1) Act of Parliament, or (2) Grant from the Crown; to these formerly were added, (3) FINE, and (4) COMMON RECOVERY; *V. Saddlers' Case*, sup: 2 Bl. Com. ch. 21.

The *Public Record Office*, was established by Public Record Office Act, 1838, 1 & 2 V. c. 94, by s. 20 of which " 'Records,' shall be taken to mean, all rolls, records, writs, books, proceedings, decrees, bills, warrants, accounts, papers, and documents whatsoever, of a PUBLIC NATURE belonging to Her Majesty, or now deposited in any of the offices or places of custody" mentioned in s. 1 of the Act. *Vf*, Public Record Act, 1877, 49 & 41 V. c. 55.

The Public Record Office of Ireland, was established by Public Records (Ir) Act, 1867, 30 & 31 V. c. 70, s. 3 of which defines the "Records" included in the Act, a def extended by s. 4, 38 & 39 V. c. 59, but which extension is itself restricted by s. 4, 39 & 40 V. c. 58.

The *Record of Title Office* of Ireland, was established by 28 & 29 V. c. 88; *Vf*, 54 & 55 V. c. 66.

**RECORDED.** — “Recorded Estate”; Stat. Def., 28 & 29 V. c. 88, s. 2.

“Recorded Land”; Stat. Def., 28 & 29 V. c. 101, s. 3.

“Recorded Service”; Stat. Def., 61 & 62 V. c. 57, s. 1 (5).

**RECORDER.** — The Recorder of a Borough “sits as sole judge” of its Quarter Sessions (s. 165 (2), Mun Corp Act, 1882); his qualification, status, salary, and powers, are prescribed or provided for by ss. 163, 165-168, of that Act; *Vf*, 51 & 52 V. c. 23.

Stat. Def. — 8 & 9 V. c. 10, s. 11. — *Ir.* 13 & 14 V. c. 18, s. 51. — *Scot.* 50 & 51 V. c. 58, s. 76.

**RECOVER.** — The word “Recover” has a technical meaning in law whereby it signifies, to recover by action and by the judgment of the Court (*Th. Wigens v. Cook*, 28 L. J. C. P. 312; 6 C. B. N. S. 784; *Cream v. Ray*, 30 L. J. Ex. 110; *Cooper v. Pegg*, 24 L. J. C. P. 167; *Smith v. Edge*, 33 L. J. Ex. 9; 2 H. & C. 659; 12 W. R. 133; *Fergusson v. Davison*, 8 Q. B. D. 470; 51 L. J. Q. B. 266); but it is said that there are cases which may be found in which the word has been held to be used in the larger and more popular sense of recover by any legal means, which would include, e.g. a distress (per Willes, J., *Haines v. Welch*, 38 L. J. C. P. 118; L. R. 4 C. P. 91; 17 W. R. 163). In that case it was held that the word in s. 1, 14 & 15 V. c. 25, includes the right to distrain.

But the amount of a verdict is not “recovered” till judgment can be signed upon it (per Brett, J., *Ings v. Lond. & S.W. Ry.*, 38 L. J. C. P. 8; L. R. 4 C. P. 17; 17 W. R. 120). A Plaintiff does not “recover” a sum paid in under a successful Plea of Tender (*James v. Vane*, 29 L. J. Q. B. 169, over-ruling *Cooch v. Maltby*, 23 L. J. Q. B. 305); and, where there is a successful Set-Off, he only “recovers” the balance due to him after its allowance (*Ashcroft v. Foulkes*, 25 L. J. C. P. 202; 18 C. B. 261; *Beard v. Perry*, 31 L. J. Q. B. 180; 2 B. & S. 493, approved *Stooke v. Taylor*, 49 L. J. Q. B. 861; 5 Q. B. D. 569; 43 L. T. 200). But he does “recover” a sum paid into Court and which he accepts in satisfaction (*Parr v. Lillierap*, 1 H. & C. 615; 11 W. R. 94; 32 L. J. Ex. 150; *Boulding v. Tyler*, 32 L. J. Q. B. 85; 3 B. & S. 472).

So, money found due by an Award in an Action is “recovered” (*Cowell v. Amman Co.*, 34 L. J. Q. B. 161; 6 B. & S. 333).

But when a statute prescribes that a Penalty is to be “recovered” SUMMARILY before Justices within (say) 6 months after the offence, the time for the Complaint or Information is not thereby “specially limited” (i.e. there is no definite limitation) so as to exclude s. 11, 10 & 11 V. c. 43; and, if the Complaint or Information is made or laid within the proper

time, the matter may be heard and the penalty "recovered" after that time (*Morris v. Duncan*, 1899, 1 Q. B. 4; 68 L. J. Q. B. 49; 47 W. R. 96; 79 L. T. 379; 62 J. P. 823: *See, R. v. Mainwaring*, E. B. & E. 474; 27 L. J. M. C. 278). *Vf*, *ARISE*.

"Sum recovered"; *V. Johnson v. Harris*, 24 L. J. C. P. 40; 15 C. B. 357; *Dixon v. Walker*, 10 L. J. Ex. 43; 7 M. & W. 214; *James v. Vane*, 2 E. & E. 883; *Scott's Standard Co v. Northern Wheeleries Co*, 1899, 2 I. R. 34; *Myers v. Phelan*, 26 L. R. Ir. 218, 223. Quà the *County Court Scales of Costs*, this phrase means, the amount the plt gets by the action, including any amount that may have been paid him by the deft after action brought (*Keeble v. Bennett*, 1894, 2 Q. B. 329; 63 L. J. Q. B. 694; 42 W. R. 539; *White v. Headlands Co*, 1899, 1 Q. B. 507; 68 L. J. Q. B. 354; 80 L. T. 442; 47 W. R. 273, over-ruling *Bailey v. Watson*, 1898, 2 Q. B. 270; 67 L. J. Q. B. 802). The "Subject-matter," quà those Scales, is, in an Interpleader action, the value of the whole goods claimed, and (if any) the damages (*Studham v. Stanbridge*, 1895, 1 Q. B. 870; 64 L. J. Q. B. 473; 43 W. R. 543).

The proceeds of a sale in a mortgagee's hands, are not "recovered by any Distress, Action, or SUIT," within s. 42, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; therefore, arrears of interest for as far back as 20 years may be retained out of such proceeds (*Edmunds v. Waugh*, 35 L. J. Ch. 234; L. R. 1 Eq. 418; 14 W. R. 257; *Re Marshfield*, 34 Ch. D. 721; 56 L. J. Ch. 599; 56 L. T. 694; 35 W. R. 491; *V. Bv*); so, the Mtgor must pay all arrears of interest when he is claiming to redeem (*Dingle v. Coppen*, 1899, 1 Ch. 726; 68 L. J. Ch. 337). So, though a loan, the interest on which is to vary with trade profits, cannot be "recovered," if the borrower become bankrupt, until the general creditors are satisfied (s. 5, 28 & 29 V. c. 86, repld, s. 3, Partnership Act, 1890); yet this word does not extend to deprive the lender of such rights as he may have as mortgagee (*Ex p. Sheil, Re Louergan*, 4 Ch. D. 789; 46 L. J. Bank. 62; rejecting *Ex p. MacArthur*, 40 L. J. Bank. 86). In *Ex p. Sheil* (sup), James, L. J., said, "I think the word 'Recover' means recover, and does not mean 'RETAIN.'"

On that principle *Philpott v. Jones* (4 L. J. K. B. 65; 2 A. & E. 41; 4 N. & M. 14) decided that a debt for Spirituous Liquors was not "recovered," within the Sale of Spirits Act, 1750, 24 G. 2, c. 40, s. 12, by crediting an unappropriated payment therefor.

"Recover," s. 2, Real Property Limitation Act, 1833; *V. Grant v. Ellis*, 11 L. J. Ex. 228; 9 M. & W. 113; *Irish Land Commission v. Grant*, 10 App. Ca. 26.

"Recovered," may sometimes be read as "sued for" (*V. per Parke, B., Collins v. Hopwood*, 15 M. & W. 464; 16 L. J. Ex. 126). *Vf*, *Morris v. Duncan*, sup.

A power to a body to "recover," implies the power to sue by its



collective designation though not incorporated (*Mills v. Scott*, L. R. 8 Q. B. 496; 42 L. J. Q. B. 234).

"Recovered as Damages," in a Local Improvement Act incorporating Ry C. C. Act, 1845, and Towns Imp. Act, 1847, means, so recovered before Justices (*Blackburn v. Parkinson*, 28 L. J. M. C. 7; 1 E. & E. 71).

No "right to recover" a Solr's County Court Costs without taxation; *V. ALLOW.*

*V. RECOVERED OR PRESERVED: TO BE RECOVERED.*

**RECOVERABLE.** — In an undertaking by a Solicitor to his client that "should the damages or costs not be recoverable in this action, I shall charge you costs out of purse only," the result of the action, and not the solvency of the defendant therein, is referred to (*Re Stretton*, 15 L. J. Ex. 16; 14 M. & W. 806).

"Recoverable as a Penalty": *V. R. v. Lewis*, cited PENALTY.

*V. CLAIMED: MAINTAIN.*

**RECOVERED.** — *V. RECOVER.*

"Sum recovered"; *V. RECOVER.*

"When recovered"; *V. WHEN.*

**RECOVERED OR PRESERVED.** — The Charge for costs to which the COURT OR JUDGE is empowered, by s. 28, Solicitor's Act, 1860, 23 & 24 V. c. 127, to declare a solicitor entitled upon the property "Recovered or Preserved" by him, must be upon property recovered or preserved in some action, matter, or proceeding, in a Court of Justice (*Re Humphreys*, 1898, 1 Q. B. 520; 67 L. J. Q. B. 412; 78 L. T. 182; 46 W. R. 322). It may embrace the whole property saved by his exertions, and is not confined merely to his client's interest therein (*Bulley v. Bulley*, 47 L. J. Ch. 841; 8 Ch. D. 479; *Greer v. Young*, 52 L. J. Ch. 915; 24 Ch. D. 545; 31 W. R. 930; *Charlton v. Charlton*, 52 L. J. Ch. 971; 32 W. R. 91; over-ruling *Berrie v. Howitt*, 39 L. J. Ch. 119; L. R. 9 Eq. 1. *Vf, Scholey v. Peck*, 1893, 1 Ch. 709; 62 L. J. Ch. 658; 68 L. T. 118; 41 W. R. 508).

As to *when* and *by whom* property is "recovered" or "preserved"; *V. North v. Stewart*, 15 App. Ca. 452; *Baile v. Baile*, L. R. 13 Eq. 497; 41 L. J. Ch. 300; 20 W. R. 534; 26 L. T. 283, and cases there cited: *Re Wadsworth*, inf; *Re Knight*, 1892, 2 Ch. 368; 61 L. J. Ch. 399; 40 W. R. 460; *Briscoe v. Briscoe*, inf. Realty devised by a Will is "preserved" by proceedings by which the Will is validated for probate (*Ex p. Tweed*, 1899, 2 Q. B. 167; 68 L. J. Q. B. 794; 81 L. T. 1; 48 W. R. 5).

As to *what* is "Property" so "recovered or preserved"; *V. Birchall v. Pugin*, 44 L. J. C. P. 278; L. R. 10 C. P. 397; *Emden v. D'Oyley Carte*, 51 L. J. Ch. 371; 19 Ch. D. 311; 30 W. R. 17; *Re Wadsworth*,

54 L. J. Ch. 638; 29 Ch. D. 517: *Pinkerton v. Easton*, 42 L. J. Ch. 878; L. R. 16 Eq. 490: *Wilson v. Hood*, 3 H. & C. 148; 33 L. J. Ex. 204. The Costs recovered in an action, as well as the thing sued for, are such "Property" (*Dallow v. Garrold*, 54 L. J. Q. B. 76; 14 Q. B. D. 543; 33 W. R. 219), and so are Costs ordered to be repaid to the Client upon a successful Appeal (*Guy v. Churchill*, 35 Ch. D. 489; 56 L. J. Ch. 670; 57 L. T. 510; 35 W. R. 706; 3 Times Rep. 600); and so is an annual sum which has been secured to a wife under s. 32, 20 & 21 V. c. 85 (*Harrison v. Harrison*, 13 P. D. 180); and so is property which, by a compromise, has been partially defended from a claim (*Katcliff v. Swift*, 32 S. J. 787), or money received in compromise of an action (*Ross v. Burton*, 58 L. J. Ch. 442: *The Paris*, 1896, P. 77; 65 L. J. P. D. & A. 42), or money paid into Court, under Ord. 14, R. S. C., in an action afterwards compromised behind the back of plt's solr (*Moxon v. Sheppard*, 59 L. J. Q. B. 286; 24 Q. B. D. 627). An Easement, e.g. a claim of right to light, is *not* such "Property" (*Foxon v. Gascoigne*, 43 L. J. Ch. 729; 9 Ch. 654); nor is money paid into Court but not taken out and which, in the result, has to be paid back (*Westacott v. Bevan*, 60 L. J. Q. B. 536; 1891, 1 Q. B. 774).

*Vf.* Ann. Pr. notes to R. 3, Ord. 7, R. S. C.: 11 Encyc. 628-630: *Catlow v. Catlow*, 2 C. P. D. 362; *Ex p. Brown*, *Re Suffield and Watts*, 20 Q. B. D. 693; 58 L. T. 911; 36 W. R. 584, *vthle*, *Re Deakin*, cited COURT OR JUDGE: *Keeson v. Lurmore*, 61 L. T. 199; *Pelsall Co v. Lond. & N. W. Ry*, 8 Ry & Can Traffic Ca. 146. *Vf*, NOTICE, p. 1290.

*Note*: The Solr's personal representatives may present the petition (*Baile v. Baile*, sup), or his assignee (*Briscoe v. Briscoe*, 1892, 3 Ch. 543; 61 L. J. Ch. 665; 40 W. R. 621; 67 L. T. 116).

If the Solr takes an express security on the property he is not entitled to a Charging Order (*Groom v. Cheeseuright*, 1895, 1 Ch. 730; 64 L. J. Ch. 406; 72 L. T. 555; 43 W. R. 475); so he may lose his right by delay (*Roche v. Roche*, 29 L. R. Ir. 339): but the Court may, by a Charging Order on a fund in Court recovered by his exertions, aid the Solr's common law lien (*Re Born*, 1900, 2 Ch. 433; 69 L. J. Ch. 669).

*Vf.* CHARGING ORDER: PROPERTY.

#### RECOVERY. — *Vf.* COMMON RECOVERY.

A REWARD "on Recovery" of property (lost or stolen) and conviction of offender, without more, is payable only to the person "who is the original and meritorious cause of the recovery" and conviction (per Tindal, C. J., *Thatcher v. Englund*, 3 C. B. 262; 15 L. J. C. P. 243).

**RECOVERY OF LAND.** — An action for the "Recovery of Land," as mentioned in R. S. C., is equivalent to the old action of **EJECTMENT** to obtain possession; and does not include an action for Declaration of

Title (*Gledhill v. Hunter*, 49 L. J. Ch. 333; 14 Ch. D. 492; 28 W. R. 530; disapproving *Whetstone v. Dewis*, 45 L. J. Ch. 49; 1 Ch. D. 99).

A Foreclosure or Redemption action' is (except as hereafter stated) an action for recovery of land (*Heath v. Pugh*, 50 L. J. Q. B. 473; 51 Ib. 367; 6 Q. B. D. 345; 7 App. Ca. 235; *Hurlock v. Ashberry*, 51 L. J. Ch. 394; 19 Ch. D. 539; 30 W. R. 112; 45 L. T. 602); but not for the recovery of *possession* of land within R. 5, Ord. 42, R. S. C. (*Wood v. Wheeler*, 52 L. J. Ch. 144; 22 Ch. D. 281; 31 W. R. 117). And now, for the purposes of R. 2, Ord. 18, R. S. C., neither Foreclosure nor Redemption is to be "deemed an action for the recovery of land" (*V. provisoes added to the Rule by R. S. C., Dec 1885; Vth, Ann. Pr.*).

Proceedings for "Protection" or "Recovery" of Settled Land; *V. PROTECTION.*

*Vh*, 11 Encyc. 121-148.

**RECREATION.** — Rational Recreation; *V. ENTERTAINMENT.*

Re-Creation; *V. EXTENSION.*

**RECRUITER.** — Quà Army Act, 1881, a "Recruiter" is a person "authorized to enlist recruits in the Regular Forces" (subs. 1, s. 80). *V. MILITARY FORCES.*

**RECTIFY.** — "Altering the Register of a Company so as to make it conformable with a lawful transfer, is not to 'rectify' the Register under s. 35, Comp Act, 1862. That section only comes into operation when the Co improperly puts on the Register a name which ought not to be on it, or improperly refuses to put on the Register a name which ought to be on it" (per Lindley, L. J., *Re National Bank of Wales*, cited *SHARE*).

Rectification of Contracts; *V. Fry*, s. 787 *et seq*: Chitty on Contracts, 13 ed., ch. 27.

Rectification of Instruments generally; *V. Kerr on Fraud and Mistake*, Part 2.

*V. MISTAKE*, p. 1211.

**RECTOR.** — "Rector" signifies a Governor; and *Rector Ecclesie parochialis* is he that hath the Charge or Cure of a Parish ('church" (Cowel); but the appellation of "PARSON" (however it may be depreciated by familiar, clownish, and indiscriminate use) is the most legal, most beneficial, and most honourable, title that a parish priest can enjoy; because such a one (Sir Edward Coke observes), and he only, is said *vicem seu personam ecclesie gerere*" (1 Bl. Com. 384). *Vf*, 11 Encyc. 151-153.

As to the Rector's rights in the Church and Churchyard; *V. jdgmt of Blackburn, J., Greenstade v. Darby*, cited *PERPETUAL CURATE*: 1 Bl. Com. 384.

*V. CLERGYMAN: MINISTER: VICAR.*

**RECTORY.** — “By the grant of a Rectory, or Parsonage, will pass the house, the glebe, the tithes, and offerings, belonging to it. And by the grant of a Vicarage will pass as much as doth belong unto it, as the vicarage house, &c” (Touch. 93). “‘Rectory,’ *per se*, will carry the tithes and glebe,” whether used in an Order in Council or in a Conveyance; but it may be restricted by the context so as not to include either (*Wilson v. Lovelaud*, 7 Ir. L. R. 239, 237, 241, 242).

“The word ‘Rectory’ comprehends the parish church, with all its rights, glebes, tithes, and other profits whatsoever” (5 Cru. Dig., Title 35, ch. 6, s. 14). *Va*, Spelman: Cowel: Jacob, *Parsonage*: Elph. 617: 11 Encyc. 152.

*V. Adrowson.*

**RECUSANT.** — A Recusant, is one who obstinately refuses to frequent Divine Service in the Church of England (65th Canons Ecc. 1604). *Vf*, 35 Eliz. c. 1.

Popish Recusants convict; *V. 4 Bl. Com. 54 et seq*, 124.

*V. Brown v. Montreal Curé*, L. R. 6 P. C. 157; 44 L. J. P. C. 1.

**REDDENDUM.** — The Reddendum is the clause in a Lease whereby the rent is reserved, and commonly begins with the words “YIELDING AND PAYING.” *Vh*, 2 Bl. Com. 299: Redman, 110 *et seq*.

**REDEEM.** — Money expended by a Tenant for Life “in redeeming” Rent-charges created to defray expenses of Improvements under S. L. Act, 1882, “or otherwise providing for the payment thereof,” shall be treated as being for an IMPROVEMENT under S. L. Act, 1882, for which CAPITAL MONEY may be employed (s. 1, S. L. Act, 1887); that means, that there must be a “redeeming” from the principal money secured; and although, in so redeeming, you also pay interest and costs or may have to pay a bonus in order to redeem, all of which would be “money expended in redeeming” (*Re Egmont*, 59 L. J. Ch. 768; 45 Ch. D. 395; 63 L. T. 608; 38 W. R. 762: *Re Verney*, 1898, 1 Ch. 508; 67 L. J. Ch. 243; 78 L. T. 191; 46 W. R. 348). yet money spent by the Tenant for Life for the mere separate purpose of reducing interest, is not within the phrase (*Re Verney*, *sup*).

**REDEEMABLE.** — “Redeemable,” as applied to Debentures, imports, *primâ facie*, an OPTION to the Co, not an Obligation to redeem (*Re Chicago & N. W. Granaries Co*, 1898, 1 Ch. 263; 67 L. J. Ch. 109; 77 L. T. 677).

**REDEEMING STOCK.** — Quà 32 & 33 V. c. 102, this phrase, “and terms referring thereto, means, paying the portion of instalments of any Annuity which represents Capital” (subs. 3, s. 46).

**REDEMPTION.** — “Stat. Marlbridge, c. 3. ‘*Non Ideo puniatur dominus per redemptionem.*’ ‘Redemption’ is FINE: and *finis dicitur*

*quia finem litibus imponit*; the party redeems his offence for a sum of money, which makes an end of his transgression and of his imprisonment for it" (Dwar. 690, citing *Griesley's Case*, 8 Rep. 41 a).

Equity of Redemption; *V.* EQUITY.

**RED-HANDED.** — *V.* BLOODY HAND.

**RE-DISSEISIN.** — *V.* DISSEISIN.

**RE-DIVISION.** — "Re-Division of Fields"; *V.* INCLOSE.

**REDUCE.** — The power of a Co "to reduce" its Capital, s. 9, Comp Act, 1867, need not (as at one time held) be a rateable reduction over all classes of Capital but, authorizes every mode of reduction (*British & American Corp v. Couper*, 1894, A. C. 399; 63 L. J. Ch. 425; 70 L. T. 882; 42 W. R. 652).

Surrendering Assets, is not "reducing" Capital within that section (*Thomson v. Trustees Incorporation*, 1895, 2 Ch. 454; 65 L. J. Ch. 66; 73 L. T. 149; 44 W. R. 237).

**REDUCED BY PAYMENT.** — This phrase, in s. 7, County Court Act, 1867, meant "Reduced by payment before action brought" (*Osborne v. Homburg*, 1 Ex. D. 48; 45 L. J. Ex. 65; *Foster v. Usherwood*, 3 Ex. D. 1; 47 L. J. Ex. 30). That section is replaced by s. 65, Co. Co. Act, 1888; but the meaning is the same notwithstanding the introduction into the latter section of the phrase "at any time"; that phrase refers, probably, to the time for making the application to remit (*Hodgson v. Bell*, 24 Q. B. D. 525; 59 L. J. Q. B. 231; 62 L. T. 481; 38 W. R. 325).

*V.* OTHERWISE, p. 1371: PAYMENT. *Cp.* ADMITTED SET-OFF: ORIGINALLY.

**REDUCED INTO MONEY.** — The phrase in Legacy Duty Act, 1796, 36 G. 3, c. 52, s. 22, whereby duty is to be payable on the valuation of personalty "which shall not be reduced into money," means, which shall not be so reduced *during the administration* of the estate (*A-G. v. Dardier*, 52 L. J. Q. B. 329; 11 Q. B. D. 16).

**REDUCTION INTO POSSESSION.** — "Reduction into possession, by a Husband as regards Choses in Action, means, actual payment to the husband in his character of husband, not as trustee or what is equivalent to it. If the property has been paid to his agent, or so dealt with that the property is no longer a chose in action of the wife, but under the exclusive control of the husband; or has been, in the exercise of his exclusive control, placed by him in the hands of, or transferred to, other persons upon some trust inconsistent with the existence of the

wife's possible title by survivorship; that will be considered to be a Reduction into Possession" (2 Spence Eq. Jur. 478, cited by Fry, J., *Nicholson v. Drury Building Co*, 47 L. J. Ch. 194; 7 Ch. D. 48).

**RE-ENGAGEMENT.** — In an agreement to pay Commission on all "Re-Engagements" of a theatrical, or other like, artist, *e.g.* a Music Hall Singer, "Re-Engagement" has no definite legal meaning; it can only be explained by illustrations, and its meaning must be determined on the facts of each case as a question of fact (*Arnold v. Stratton*, 14 Times Rep. 537; *Robey v. Arnold*, *ib.* 220).

*V.* RENEWAL.

**RE-ENTRY.** — Right of; *V.* FIRST ACCRUED.

*V.* ENTRY: FORFEITURE.

**REEVE.** — *V.* BAILIFF.

**RE-EXCHANGE.** — "Re-exchange" is the measure of damage sustained by the holder of a dishonoured Bill of Exchange drawn in one country on a person in another country, and is payable in addition to the amount of the Bill (*Willans v. Ayers*, 47 L. J. P. C. 1; 3 App. Ca. 133). *Vh.*, Chalmers, 193: 11 Encyc. 157, 158.

**RE-EXECUTION.** — Of a Will; *V.* PUBLICATION.

**REFEREE.** — *V.* IN CASE OF NEED: OFFICIAL.

**REFERENCE.** — A power to an arbitrator to give the "Costs of the Reference," includes the Costs of the Award (*Re Walker and Brown*, 51 L. J. Q. B. 424; 9 Q. B. D. 434; 30 W. R. 703). And when the arbitration is by an agreement without action, "Costs of the Reference" include the agreement and those preliminaries which were necessary to bring the parties *ad idem*; but in a reference at Nisi Prius the "Costs of the Reference" begin with the reference itself, the prior costs being costs in the Cause (*Re Autothreptic Co and Hook*, 57 L. J. Q. B. 488; 21 Q. B. D. 182; 59 L. T. 632; 37 W. R. 15). *V.* ENTER.

When a Reference gives the arbitrator power to award the Costs of the reference, it is, *semble*, in his discretion whether they shall be on the High Court scale or the County Court scale; and when he says nothing as to that, the proper inference is that he means the High Court scale; and that is so though he finds for the plt for a sum not exceeding £50 in a Reference in an Action which provides that the Costs of the *Action* shall "abide the event." and which latter costs have accordingly to be on the Co. Co. scale (*Street v. Street*, 1900, 2 Q. B. 57; 69 L. J. Q. B. 574; 82 L. T. 648; 48 W. R. 450; over-ruling *Moore v. Watson*, 36 L. J. C. P. 122; L. R. 2 C. P. 314).

Reference "by Consent"; *V.* CONSENT: CAUSE.

*V.* ARBITRATION: DISPUTE.

**REFORM ACT.**—Representation of the People Act, 1832, 2 & 3 W. 4, c. 45.

**REFORMATORY.** — *V.* INEBRIATE: RETREAT.

**REFRESHER.**— Refreshers to Counsel; *V.* CLEAR, p. 323.

**REFRESHMENT.** — *V.* ENTERTAINMENT: PUBLIC REFRESHMENT.  
Refreshment-bar; *V.* INN.

**REFRESHMENT HOUSE.**—Qua Refreshment Houses Act, 1860, 23 & 24 V. c. 27, “all houses, rooms, shops, or buildings, kept open for Public Refreshment, RESORT and ENTERTAINMENT, at any time between the hours of 9 P. M. and 5 A. M. (not being licensed for the sale of beer, cider, wine, or spirits, respectively) shall be deemed Refreshment Houses” (s. 6); that def is applied to Public House Closing Act, 1864, 27 & 28 V. c. 64 (s. 4).

*V.* SHOP.

**REFUGE.**—*V.* ASYLUM: HARBOUR: RETREAT.

**REFUSAL.**—Justices do not “refuse” to do an act relating to the duties of their office (s. 5, 11 & 12 V. c. 44) merely because they will not do it; for when, fairly exercising a judicial discretion, they decline to do a thing, they do not “refuse” to do it (*R. v. Paynter*, 26 L. J. M. C. 102; 7 E. & B. 328; *R. v. Dayman*, 26 L. J. M. C. 128; 7 E. & B. 672), nor do they “refuse” when they do not hold their hands but, doing what they believe their duty, take what may be a wrong course (*Re Clee*, 21 L. J. M. C. 112). But when they decline jurisdiction, though through mistake (*R. v. Brown*, 26 L. J. M. C. 183; 7 E. & B. 757; *R. v. Phillimore*, 51 L. T. 205, over-ruling *R. v. Percy*, 43 L. J. M. C. 45; L. R. 9 Q. B. 64; *Va*, *R. v. Biron*, 54 L. J. M. C. 77; 14 Q. B. D. 474), or refrain from doing a ministerial act (per Crompton, J., *R. v. Dayman*, 26 L. J. M. C. 130, commenting on *R. v. Pilkington*, 2 E. & B. 546; nom. *Ex p. Grimes*, 22 L. J. M. C. 153; *Re Hartley*, 31 L. J. M. C. 232), they do “refuse” within the section.

An angry Wife of an Innkeeper who keeps a Constable outside the door whilst she lets him have a piece of her mind, but (that being done) admits him, does not, *semble*, “refuse” to admit the Constable within s. 16, Licensing Act, 1874; and at any rate, the Innkeeper being absent, she is not “acting by his *Direction*” within the section (*Caswell v. Worcestershire Jus.*, Times, 19th Dec 1889; 53 J. P. 820). Before there can be refusal within this section there must be reasonable ground shown for the request to enter (*Duncan v. Dowding*, 1897, 1 Q. B. 575; 66 L. J. Q. B. 362), *e.g.* a reasonable suspicion that something wrong is going on (*R. v. Dobbins*, 48 J. P. 182).

“Refusal of an APPLICATION,” R. 15, Ord. 58, R. S. C., means, a

simple refusal (*International Financial Socy v. Moscow Gas Co*, 47 L. J. Ch. 258; 7 Ch. D. 241), and does not include a case where the application partly succeeds and partly fails (*Shelfer v. City of London Electric Co*, 1895, 1 Ch. 287; 64 L. J. Ch. 216; 72 L. T. 34; 43 W. R. 238). *Ij*, Ann. Pr.

Shall "refuse to approve"; *V. APPROVE*.

"Refusal or Failure to give a *Consent*"; Stat. Def., Telegraph Act, 1892. 55 & 56 V. c. 59, s. 9.

As to what is a Refusal by a Company to *produce books* and papers to a shareholder which by statute he has a right to inspect, so as to ground an application for a Mandamus against the Co; *V. R. v. Wills & Berks Nav.*, 3 A. & E. 477; *R. v. London & St. Katharine Docks Co*, 44 L. J. Q. B. 4; *Se, Holland v. Dickson*, 37 Ch. D. 672; 57 L. J. Ch. 502.

"Refuse to reside"; *V. RESIDE*.

A refusal by an Assistant to *sell* food or a drug EXPOSED for sale, s. 17, Sale of Food and Drugs Act, 1875, is a refusal by his Employer, even though the latter be absent and the assistant be acting in disobedience to express orders (*Farley v. Higginbotham*, 42 S. J. 309; 104 Law Times, 410). *V.* a contrary principle applied under other sections of the same Act in cases cited KNOWINGLY, p. 1047.

*V. WILFUL REFUSAL: NEGLECT: OMISSION: OMIT: FIRST REFUSAL.*

**REFUSE.** — "Refuse of any Trade, Manufacture, or Business." s. 128, Metrop Man. Act, 1855, means, the leavings (comparatively worthless) of materials used for the peculiar purpose of any trade, manufacture, or business (*St. Martin's v. Gordon*, 60 L. J. M. C. 37; 1891, 1 Q. B. 61; 39 W. R. 295; 64 L. T. 243; 55 J. P. 437); therefore, it was there held that clinkers and other refuse produced by the light and heat generating furnaces of an Hotel, are not within the phrase, but are much more of the nature of Domestic Refuse. But ashes from coals burnt in the furnace of a steam-engine which is used only as a force or power for sawing and lifting wood, and other such matters, in a Piano Manufactory, is "Refuse" of the "Manufacture or Business" of piano making within this section (*Gay v. Cadby*, 46 L. J. M. C. 260; 2 C. P. D. 391; *while* Lindley, L. J., in *St. Martin's v. Gordon*, said was right, yet Esher, M. R., and Lopes, L. J., said they could not agree with it).

Notwithstanding s. 129, Metrop Man. Act, 1855, a magistrate's decision as to what is "Refuse" is appealable, as the question is one of law (*R. v. Bridge*, 59 L. J. M. C. 49; 24 Q. B. D. 609; 62 L. T. 297; 38 W. R. 464; 54 J. P. 629).

Clinkers produced by the business furnaces of a Laundry, are not "House Refuse" within s. 42, P. H. Act, 1875 (*London & Provincial Steam Laundry v. Willesden*, 1892, 2 Q. B. 271; 67 L. T. 499; 40 W. R. 557; 56 J. P. 696).

Qua P. H. London Act, 1891, "House Refuse," means, ashes, cinders,



breeze, rubbish, night-soil, and filth, but does not include Trade Refuse; 'Trade Refuse,' means, the refuse of any trade, manufacture, or business, or of any building materials; 'Street Refuse,' means, dust, dirt, rubbish, mud, road-scrappings, ice, snow, and filth" (s. 141). *V. Saunders v. Holborn*, 1895, 1 Q. B. 64; 64 L. J. Q. B. 101.

*V. IRON: RUBBISH: REFUSAL.*

**REFUSING TRUSTEE.**—*V. DECLINING TRUSTEE.*

**REGARD.**—"Regard being had to the Adequacy of the Security," s. 1, Redemption of Rent (Ir) Act, 1891, 54 & 55 V. c. 57, refers to security for the Rent, and not to security for an advance by the Land Commission (*Warren v. Richardson*, 30 L. R. Ir. 639). *Vh, O'Donnell v. Chearnley*, 32 L. R. Ir. 185.

Having regard to the Circumstances; *V. CIRCUMSTANCES.*

"Regard shall be had" to Earnings before the Accident; *V. Illingworth v. Walmsley*, cited AVERAGE WEEKLY EARNINGS.

Tenant for Life to "have regard" to the other Interests; *V. INTEREST.*

"Regard being had to the Scale of Allowances hereinafter contained," s. 1, 29 & 30 V. c. 31: *R. v. St. George's, Southwark* (56 L. J. Q. B. 652; 19 Q. B. D. 533; 35 W. R. 841; 52 J. P. 6), is over-ruled; and this phrase limited the discretion of the Vestry to the amount of allowance prescribed by the Scale, but it had full discretion to act within the Scale (*R. v. St. Pancras*, 24 Q. B. D. 371; 38 W. R. 311).

*V. DUE REGARD.*

**REGARDANT.**—Villein Regardant; *V. GROSS.*

**REGATTA.**—*V. RACE.*

**REGIMENTAL.**—Qua Army Act, 1881, "'Regimental,' means, connected with a Corps, or with any Battalion or other subdivision of a Corps" (subs. 17, s. 190).

Regimental Debts; *V. Regimental Debts Act*, 1893, 56 & 57 V. c. 5.

**REGISTER.**—Register of British Ships; *V. Mer Shipping Act*, 1894, ss. 5-13.

Register of Electors, or Voters; Stat. Def., Ballot Act, 1872, Sch 1. Rules 64, 65, 66; 35 & 36 V. c. 60, ss. 2, 28 (7); 46 & 47 V. c. 51, s. 64; 50 & 51 V. c. 9, s. 2 (4 e).

Register of Land; Stat. Def., 54 & 55 V. c. 66, s. 95: *V. LAND REGISTRY.*

"Register of Licenses"; Stat. Def., 35 & 36 V. c. 94, s. 77; 37 & 38 V. c. 69, s. 37.

"Register of Sasines"; Stat. Def., 31 & 32 V. c. 64, s. 2.

A Register of Shareholders in a Co, ss. 25, 35 Comp Act, 1862, may consist of a book or document (or more than one, *Weikersheim's Case*,

8 Ch. 831; 42 L. J. Ch. 435) "intended to be a Register, although the requirements of the Act of Parliament as to the keeping of the Register have not been exactly complied with; but I am not aware of any authority for saying that rough memoranda or sheets of paper, not intended as a Register at all, but intended as materials from which a Register may be prepared can be a Register" (per Lindley, L. J., *Re Agence Haras Co*, 63 L. J. Ch. 539, in *which* Allotment Sheets were rejected as a Register). The "Register" includes the entries of names of persons who have been, but have ceased to be, Members (*Boord v. African Co*, cited INSPECT).

"Register Tonnage," s. 9 (4), 30 & 31 V. c. 124, and "Registered Tonnage," s. 9 (3), *Ib.*, refer to the total gross tonnage as registered (*The Petrel*, 1893, P. 320; 62 L. J. P. D. & A. 92: *Vf*, *The Pilgrim*, 1895, P. 117; 64 L. J. P. D. & A. 78). Gross Tonnage; *V. GROSS. Vf. BURDEN.*

*V. REGISTRY.*

**REGISTERED.** — "Registered *Building*," quâ Marriage Act, 1898, 61 & 62 V. c. 58, means, "any building registered for solemnizing marriages therein under the Marriage Act, 1836" (s. 1).

Registered Company; *V. UNREGISTERED COMPANY.*

"Registered Land," "Unregistered Land"; Stat. Def., 54 & 55 V. c. 66, s. 95.

"Registered Medical Practitioner"; *V. MEDICAL.*

"Registered *NEWSPAPER*," quâ Post Office Act, 1891, 54 & 55 V. c. 46, "means, a Newspaper registered by the Postmaster-General for transmission by Inland Post" (s. 12).

Registered Office; *V. OFFICE.*

Registered Person; *V. MEDICINE.*

Registered Proprietor; *V. PROPRIETOR.*

Registered Society; *V. FRIENDLY SOCIETY*; Friendly Soc. Act, 1896, s. 106; Industrial and Provident Societies Act, 1893, ss. 3, 79.

Registered Tonnage; *V. REGISTER: BURDEN.*

Registered Trade-Mark:—If a person sells an article as a *TRADE-MARK* article and adds the word "Registered," or like phrase, that is a representation that the Trade-Mark has been registered within s. 105 (1), Patents, Designs, and Trade-Marks, Act, 1883 (subs. 2, *ib.*); but merely to employ the phrase "Trade-Mark" does not, necessarily, imply that registration has been obtained (*Sen Sen Co v. Brittons*, 1899, 1 Ch. 692; 68 L. J. Ch. 250; 80 L. T. 278; 47 W. R. 358, commenting on and explaining *Lewis v. Goodbody*, 67 L. T. 194).

**REGISTRAR.** — "Registrar" has received statutory definition varying according to the subject-matter of the Act in which the word is used, and which will generally be found in the Interp Clause of the Act. The following is a somewhat full list; —

23 & 24 V. c. 127, s. 1; 38 & 39 V. c. 87, s. 4; 39 & 40 V. c. 45, s. 3; 40 & 41 V. c. 56, s. 7; 44 & 45 V. c. 60, s. 1, c. 62, s. 2; 45 & 46 V. c. 31, s. 2; 47 & 48 V. c. 54, s. 3; 50 & 51 V. c. 43, s. 2; 51 & 52 V. c. 43, s. 186, c. 65, s. 4; 56 & 57 V. c. 39, s. 79; 57 & 58 V. c. 60, s. 4; 59 & 60 V. c. 25, s. 106. — *Scot.* 17 & 18 V. c. 80, s. 76; 36 & 37 V. c. 63, s. 1; 41 & 42 V. c. 43, s. 1. — *Ir.* 20 & 21 V. c. 60, s. 4, c. 79, s. 2; 21 & 22 V. c. 100, s. 3; 28 & 29 V. c. 50, s. 4; 29 & 30 V. c. 84, s. 1; 34 & 35 V. c. 22, s. 2; 53 & 54 V. c. 48, s. 3.

“Registrar-General,” of Births, Deaths, and Marriages, in England; *V.* 6 & 7 W. 4, c. 86, s. 2: in Scotland; *V.* 17 & 18 V. c. 80, ss. 2, 76; 26 & 27 V. c. 108, s. 30; 41 & 42 V. c. 43, s. 1. “Registrar-General,” of Births and Deaths in Ireland; *V.* 26 & 27 V. c. 11, ss. 3, 4.

“Registrar-General,” quâ Foreign Marriage Act, 1892, 55 & 56 V. c. 23, “means, the Registrar-General of Births, Deaths, and Marriages, in England” (s. 24).

*V.* BIRTH.

“County Court Registrar”; *V.* COUNTY COURT, at end.

*V.* LOCAL REGISTRAR.

**REGISTRATION.** — In the ordinary case of a purchase by a Jobber on the Stock Exchange of Shares requiring registration, “the contract of the Jobber is that, at the Settling Day, he will either take the shares himself and register the transfer, or that he will give the name of one or more transferees, to whom no reasonable objection can be made, who will accept and pay for the shares” (per Hatherley, C., *Cruse v. Paine*, 38 L. J. Ch. 225; 4 Ch. 441); but where the contract adds “with Registration guaranteed,” then it means, in addition, that the Jobber will either register himself or find a purchaser who will do so; therefore, the giving in by the Jobber to the Vendor’s Broker of the name of an acceptable transferee, does not discharge the Jobber until the transferee has actually registered the shares in his (the transferee’s) name, failing which the Jobber is bound to register in his own name and must indemnify the vendor for default (*S. C.*).

*V.* OFFICER.

**REGISTRY.** — *V.* REGISTER: OFFICE.

“Registry of Deeds,” “Registry of Judgments”; *V.* Local Registration of Title (*Ir.*) Act, 1891, 54 & 55 V. c. 66, s. 95.

“Port of Registry”; *V.* PORT.

**REGRATOR.** — “Forestaller’ is hee that buyeth corne, cattell, or other merchandize whatsoever is saleable, by the way as it commeth to Markets, Faires, or such like places to bee sold, to the intent that he may sell the same againe at a more high and deer price, in prejudice and hurt of the common-wealth and people” (*Termes de la Ley, Forestaller*).  
*Cp.* INGROSSER.

“ ‘Regrator’ is he that hath corn, victuals, or other things sufficient for his owne necessary need, occupation, or spending, and doth nevertheless ingrosse and buy up into his hands more corne, victuals, or other such things, to the intent to sell the same againe at a higher and deerer price, in faires, markets, or other such like places, whereof see the stat. 5 E. 6, c. 14, for he shall be punished as a forestaller ” (Termes de la Ley, *Regrator*). *Vh*, Cowel: *Jacob, Forestalling*.

By 7 & 8 V. c. 24, the offences of Forestalling, Regrating, and Engrossing, are abolished; but s. 4 preserves “ the offence of knowingly and fraudulently spreading, or conspiring to spread, any False Rumour with intent to enhance or deery the price of any goods or merchandize,” and also “ the offence of preventing, or endeavouring to prevent, by force or threats any goods wares or merchandize being brought to any fair or market ”: *vth*, per Fry, L. J., *Mogul Co v. McGregor*, 58 L. J. Q. B. 488; 23 Q. B. D. 621.

**REGRESS.** — *V*. INGRESS.

**REGULAR CLERGYMAN.** — A “ Regular CLERGYMAN of the Church of England ” does not merely mean one who is duly ordained; he must also be duly inducted, or licensed by the Bishop to perform Divine service or preach, and (if not in his own parish) he must have the consent of the rector or vicar (*Foundling Hospital v. Garrett*, 47 L. T. 230; 26 S. J. 631). In that case Brett, L. J., said that “ Regular ” Clergyman meant not only a Clergyman of the Church of England, “ but also a Clergyman who can, without ecclesiastical irregularity, perform duty ”; and Cotton, L. J., said, “ ‘ Regular Clergyman ’ at least requires that he shall be regular in performing Divine service, not only with reference to the doctrine he preaches, but as regards performing, in the proper way, the services ” in the place of his ministrations.

*V*. MINISTER: *Cp*, REGULAR MINISTER.

**REGULAR FORCES.** — *V*. MILITARY FORCES.

**REGULAR JOCKEY.** — *V*. JOCKEY.

**REGULAR LINE OF BUILDINGS.** — *V*. GENERAL LINE OF BUILDINGS.

**REGULAR MINISTER.** — “ Regular Minister of any Dissenting Congregation,” s. 28, 5 & 6 W. 4, c. 76, repld s. 12 (1*b*), Mun Corp Act. 1882; “ Regular Minister,” “ means, a Minister who is regularly invited by the congregation to accept the office of their Minister, and who accepts that office, — something quite different from a man who merely temporarily holds the office ” (per Mellor, J., *R. v. Oldham*, 38 L. J. Q. B. 125; 10 B. & S. 193; L. R. 4 Q. B. 290). In that case it appeared that Mr. Oldham carried on business at Wallingford. and was a deacon in the

Baptist chapel there, and had for some years been in the habit of preaching at Pangbourne and its neighbourhood; in Sept 1867, the congregation at Pangbourne (hearing he was retiring from business, which he did on 1st Sept 1868) invited him to become their Minister; he declined but subsequently agreed to preach to them every Sunday from 25th March 1868, to the end of that year, and he did so; on 29th Dec 1868, the Pangbourne congregation invited Mr. Oldham to continue the services for 1869, to which he agreed, but on the 7th Jan 1869, the congregation found, by looking at their chapel deed, that they were a Pædo-Baptist congregation and that their Minister must also be of that denomination, which Mr. Oldham was not, and therefore resolved that "we cannot invite Mr. Oldham to become our Regular Permanent Minister"; held, that at the municipal election for Wallingford on the 2nd Nov 1868, Mr. Oldham was not a "Regular Minister," and was not disqualified under the section cited from being elected a Town Councillor.

*Cp*, REGULAR CLERGYMAN.

**REGULAR NOTICE TO QUIT.**—*V.* NOTICE TO QUIT.

**REGULAR PAYMENT.**—*V.* PUNCTUAL.

**REGULAR TURNS OF LOADING.**—*V.* TURN.

**REGULARITY.**—The refusal by Governors of a CHARITY to accept a nominee on to their body, is not a matter "affecting the Regularity or Validity" of their proceedings (*R. v. Charity Commrs*, 1897, 1 Q. B. 407; 66 L. J. Q. B. 321; 76 L. T. 199; 45 W. R. 336).

**REGULARLY.**—*V.* FAIRLY: *Cp*, REASONABLY.

Payments guaranteed to be "regularly made"; *V. Simpson v. Manley*, cited CREDIT. *Cp*, PUNCTUAL.

**REGULATE.**—To "regulate" a Supply of Water, does not mean to shut it off altogether. Therefore, where an Act required the consumers of water to provide "proper Ball or Stop-cocks, or other Necessary Apparatus, for regulating" the supply, that did not include an out-of-door screw-down valve, whereby the water could be shut off from coming into a consumer's house (*Ward v. Felkestone W. W. Co*, 59 L. J. M. C. 65; 24 Q. B. D. 334).

A power to make a Bye Law to "regulate and govern" a trade, does not authorize the prohibition of such trade; "there is a marked distinction between the Prohibition or Prevention of a trade and the Regulation or governance of it; and, indeed, a power to 'regulate and govern' seems to imply the continued existence of that which is to be regulated or governed" (*Toronto v. Virgo*, 1896, A. C. 88; 65 L. J. P. C. 4: *Ontario v. Canada*, 65 L. J. P. C. 34; 1896, A. C. 348). *V.* PEACE.

Whenever an Act authorizes the making of rules for "regulating" matters under it, that does not validate a rule which creates a new jurisdiction (*King v. Henderson*, 1898, A. C. 720; 67 L. J. P. C. 134; 79 L. T. 37; 47 W. R. 157).

**REGULATION.** — "Regulation Price of a Commission" in the Army, and "Over-Regulation Price," prior to the Royal Warrant of 20th July 1871, abolishing Purchase in the Army; *V.* 34 & 35 *V.* c. 86, s. 3.

"Queen's Regulations"; Stat. Def., 44 & 45 *V.* c. 57, s. 43 (3).

"Treasury Regulations"; Stat. Def., Friendly Soc. Act, 1896, s. 106.

**REIMBURSE.** — *V.* TAKE AND APPROPRIATE.

"Reimbursement"; *V.* COLLATERAL.

Reimbursement for Improvements; *V.* IMPROVEMENT, pp. 922, 923.

**REINSTATE.** — When a Fire Policy gives the insurers an option to "reinstale or replace" the insured property instead of making payment for damage, "the word 'reinstale' applies to property which is damaged, and the word 'replace' to that which is destroyed" (per Cotton, L. J., *Anderson v. Commercial Union Assrce*, 55 L. J. Q. B. 149); and "when one is dealing with property in the nature of chattels, the term 'reinstale' means to replace the chattels not *in situ* but *in statu*; and all that the insurers are bound to do is to make the chattels as good as they were before the fire" (per Bowen, L. J., *Ib.*). Accordingly, it was held in that case that the insurer's option, as regards machinery, would not be affected by the mere fact that the building in which it was had been destroyed, or that the term of the assured had been determined.

**REJECTED.** — A Claim to be on a Burgess Roll is "rejected," s. 24, 1 *V.* c. 78, repld s. 47 (2), Mun Corp Act, 1882, if not allowed on it, although the cause of such non-allowance is the Overseer's neglect to send a Burgess List for revision (*R. v. Lichfield*, 1 Q. B. 453; 10 L. J. Q. B. 171).

**REJOINER.** — A Rejoinder, in Pleading, was the def't's answer to the plt's replication; a Sur-Rejoinder was the plt's answer to the Rejoinder (3 Bl. Com. 310).

**REJOINING GRATIS.** — *V.* *Winterbottom v. Lees*, 17 L. J. Ex. 217; 2 Ex. 325; *Cooke v. Blake*, 16 L. J. Ex. 151.

**RELATING.** — Statute "relating to" *Bankrupts*; *V.* *Dunn v. The Queen*, 18 L. J. M. C. 41; 12 Q. B. 1031.

Expenses "in relation to" a *Highway*; *V.* *R. v. Heath*, 6 B. & S. 578; 13 W. R. 805; 12 L. T. 492.

In *Compagnie Financière v. Peruvian Guano Co* (52 L. J. Q. B. 185; 11 Q. B. D. 55), Brett, L. J., defining words similar to those used in R. 12, Ord. 31, R. S. C., "relating to any *Matter in Question*," said; — "It seems to me that any document must be properly held to relate to matters in question in the action which not only would be evidence, but which it is not unreasonable to suppose does contain information which may, either directly or indirectly, enable a party either to advance his own case or to damage the case of his adversary. I used the expression, 'directly or indirectly,' because it seems to me that a document may be properly said to be material if it is one which would naturally lead a party to a chain of enquiry which would lead him to one of those results."

"Acts and things in relation to his *Property*"; *V. GENERALLY.*

"Cause or Matter relating to Real Estate"; *V. REAL ESTATE.*

"Agreement relating to the *Sale of Goods, Wares or Merchandize*," Exemption 2, Stamp Act, 1891, tit. *Agreement*, includes an Indemnity to a Broker against loss on re-sale of the goods purchased (*Curry v. Edensor*, 3 T. R. 524), or a Mem of Advance on goods handed over for immediate sale (*Southgate v. Bohn*, 16 L. J. Ex. 50; 16 M. & W. 34), or a Guarantee for price of goods to be supplied to a third person (*Warrington v. Furber*, 8 East, 242; *Sadler v. Johnson*, 16 L. J. Ex. 178; 16 M. & W. 775; *Chatfield v. Cox*, 21 L. J. Q. B. 279; 18 Q. B. 321; *St. Glover v. Halkett*, inf), or an Indemnity against the claim of a third person to goods sold (*Heron v. Granger*, 5 Esp. 269), or a Warranty of quality on sale of goods (*Skrine v. Elmore*, 2 Camp. 407; *Hughes v. Breeds*, 2 C. & P. 159), or an Agreement for sharing profit or loss on goods bought on a joint account (*Venning v. Leckie*, 13 East, 7), or for cancellation of a former sale and supply of goods on different terms (*Whitworth v. Crockett*, 2 Starkie, 431), or for supply of future goods (*Pinner v. Arnald*, 5 L. J. Ex. 1; 2 Cr. M. & R. 613; *Garr v. Scudds*, 11 Ex. 190). But the Exemption does not extend to a document in which the sale of goods is a secondary matter (*Smith v. Cator*, 2 B. & Ald. 778); and does not cover an ordinary Guarantee for Debt, for that involves no sale of goods (*Glover v. Halkett*, 26 L. J. Ex. 416; 2 H. & N. 487), nor does it exonerate a document which on other grounds requires a stamp (*Horsfall v. Key*, 17 L. J. Ex. 266; 2 Ex. 778).

A Condition of Sale empowering a Vendor to rescind the contract if any Objection should be made "as to the Title, Particulars, Conditions, or any other Matter or Thing relating or incidental to the *Sale*" which the Vendor is unable or UNWILLING to comply with, enables the Vendor to rescind on account of a requisition quâ a matter of Conveyance as well one quâ Title (*Re Deighton and Harris*, 1898, 1 Ch. 458; 67 L. J. Ch. 240; 78 L. T. 430; 46 W. R. 341; distinguishing *Bowman v. Hyland*, cited **WHATSOEVER**).

Agreement "in relation to the *Use or Hire of any Ship*"; *V. SHIP.*

**RELATION.** — “Relation” is a term in law, where in consideration of law two things or other things are considered so as if they were all one, and by this the thing subsequent is said to take his effect by relation at the time preceding” (*Termes de la Ley*). *Vf*, Cowel.

“Relation back,” is where a thing or act constructively relates back to an antecedent thing or act, *e.g.* a Trustee in Bankry is appointed in proceedings commencing with a Petition, but his Title to property in the bankry is deemed “to have relation back to, and to commence at the time of, the ACT OF BANKRUPTCY being committed on which a Receiving Order is made against him, or (if the bankrupt is proved to have committed more acts of bankruptcy than one) to have relation back to and to commence at the time of, the first of the acts of bankruptcy proved to have been committed by the bankrupt within 3 months next preceding the date of the presentation of the bankruptcy petition” (s. 43, Bankry Act, 1883; on *who* Wms. Bank. 171).

“In relation to”; *V*. RELATING.

**RELATIONS.** — The accurate meaning of “Relations,” or “Relatives,” is “Legitimate Relatives” (*Seale-Hayne v. Jodrell*, 1891, A. C. 304; 61 L. J. Ch. 70; 65 L. T. 57). But this word, like all other words involving *primâ facie* the idea of legitimacy, *e.g.* CHILD, ISSUE, WIFE, HUSBAND, BROTHER, NEPHEW, may include Illegitimate relations if such be designated (*Seale-Hayne v. Jodrell*, *sup*). So, a gift “to my Wife’s Relations as she may direct” (the wife being illegitimate, childless, and 47 years old) was held to mean, such persons as would have been the wife’s relations if she had been legitimate (*Re Deakin*, 1894, 3 Ch. 565; 63 L. J. Ch. 779; 71 L. T. 838; 43 W. R. 70); not, however, including an illegitimate child of one of such relations (*Ib.*).

A testamentary gift to a person’s “Relations” (or “Relation,” *Pyot v. Pyot*, 1 Ves. sen. 337), or “Relatives” (*Fielden v. Ashworth*, L. R. 20 Eq. 410; *Eagles v. Le Breton*, L. R. 15 Eq. 148; 42 L. J. Ch. 362), means, his NEXT OF KIN according to the Statutes of Distribution (*Crawys v. Colman*, 9 Ves. 324; *Lees v. Massey*, 8 W. R. 109; 2 Jarm. 120, a rule “not departed from on slight grounds,” *Ib.* 121); but it seems — (herein distinguished from “Heirs,” or “Legal Representatives,” where either expression is construed statutory next of kin) — PER CAPITA (*Ib.* 122; Lewin, 1028), and especially so where there are words directing equal distribution (2 Jarm. 123). But where the words were “to my Relatives, SHARE AND SHARE ALIKE, as the law directs,” it was held that the statutory next of kin *per stirpes* were indicated (*Fielden v. Ashworth*, *sup*). A husband or wife is not included, except that a wife might be included by a context (2 Jarm. 125). *Vf*, Watson Eq. 1407; *Hibbert v. Hibbert*, L. R. 15 Eq. 372; 42 L. J. Ch. 383.

Under a devise of freeholds to the “Relations on my Side,” all those



take who would be entitled to personal estate under the Statute of Distribution, as well in the Maternal, as in the Paternal, line (*Doe d. Thwaites v. Over*, 1 Taunt. 263).

Where there is an express reference to the Statute of Distribution, "Relations" take as tenants in common; otherwise, as joint tenants (*Eagles v. Le Breton*, sup).

Where a gift to Relations is preceded by a life estate, the class is to be determined at the death of the testator (*Eagles v. Le Breton*, sup: *Va. Doe d. Thwaites v. Over*, sup: *Lees v. Massey*, sup). (*Cp.* NEXT OF KIN.

"The objects of a gift to 'Relations' are not varied by its being associated with the word '*near.*' But where the gift is to the '*Nearest Relations,*' the next of kin will take, to the exclusion of those who, under the statute, would have been entitled by representation. Thus surviving brothers and sisters would exclude the children of deceased brothers and sisters, or a living child or grandchild, the issue of a deceased child or grandchild" (2 Jarm. 124: *Va. Watson Eq.* 1408).

Other qualifying adjectives, — *e.g.* "POOR." "POOREST," "DESERVING," "NECESSITOUS," — are, it is said, generally inoperative because too uncertain (2 Jarm. 126: *Vf. Sug. Pow.* 654, 655); but the contrary doctrine is strenuously argued for in a note to *Lewin*, 1021, 1022: *Va. POOREST.*

"Poor" has been held to have been used as a term of endearment and compassion, and to include a Countess who had not sufficient estate to support her dignity (*Anon.*, 1 P. Wms. 327: *Srth. Sug. Pow.* 654, 655).

Gifts to "Poor Relations," especially when the intention is to create a perpetual fund, are sometimes regarded as founding a CHARITY (*V. 2 Jarm.* 127; 1 Ib. 213, 214: *Vf. Wms. Exs.* 980: *Lewin*, 1027).

"Blood Relations"; *V. BLOOD.*

Where there is a Power of Appointment amongst Relations, then consider, — (1) Is the Power one giving the donee power to *select* some and exclude others? or (2) Is it one of *distribution* only? If the former, the donee may select any one or more of the relations whatever the kinship (*Harding v. Glyn*, 1 Atk. 468: *Grant v. Lynam*, 4 Russ. 292; 6 L. J. O. S. Ch. 129: *Wilson v. Duguid*, 53 L. J. Ch. 55; 24 Ch. D. 251); but if the latter (and, probably, it is more frequently the latter), then the class amongst which he may appoint is confined to the *statutory* Next of Kin of the person whose Relations are spoken of (*Pope v. Whitcombe*, 3 Mer. 689: *Lawlor v. Henderson*, Ir. Rep. 10 Eq. 150: *Re Deakin*, 1894, 3 Ch. 565; 63 L. J. Ch. 779; 71 L. T. 838; 43 W. R. 70), and on this point the rule has not been altered by the Powers Law Amendment Act, 1874, 37 & 38 V. c. 37 (*Re Deakin*, sup). In default of appointment the property, in the first case, will, *semble*, go to the NEXT OF KIN of the person whose relations are spoken of (*Harding v. Glyn*, and *Grant v. Lynam*, sup); in the second case, it will go to the *statutory* Next of Kin (*Re Deakin*, and *Wilson v. Duguid*, sup): and

in either case, the class is to be ascertained at the death of the donee of the Power (*Re Saville*, 14 W. R. 603). *Vh*, Sug. Pow. ch. 15: Farwell, 504 *et seq*: Lewin, 1027 *et seq*.

*Vh*, Chitty Eq. Ind. 7741-7744.

*V*. DEPENDANT: FRIENDS AND RELATIONS: NEAR RELATIONS: PRECATORY TRUST.

As to what is Evidence establishing a Relationship to a deceased, *V. Smith v. Tebbitt*, L. R. 1 P. & D. 354; 36 L. J. P. & M. 35; 15 L. T. 594; 15 W. R. 562: *Doe d. Jenkins v. Davies*, 10 Q. B. 314; 16 L. J. Q. B. 218: *Re Crawford and Lindsay Peerages*, 2 H. L. Ca 534: *Re Sussex Peerage*, 11 Cl. & F. 85.

"Financial Relations"; *V*. FINANCIAL.

**RELATIVE.** — *V*. RELATIONS.

Quà Lunacy Act, 1890, "Relative," means, a lineal ancestor or lineal descendant, or a lineal descendant of an ancestor not more remote than great-grandfather or great-grandmother" (s. 341); quà Registration of Births and Deaths "Relative," includes, a relative by marriage" (s. 48, 37 & 38 V. c. 88; s. 38, 43 & 44 V. c. 13).

**RELATOR.** — The Relator in an ACTION or an INFORMATION, is a person who is aggrieved in a matter of PUBLIC INTEREST, and who (1) satisfies the Attorney General that the subject-matter of the action is such as to justify the use of that officer's name, or who (2) satisfies the Court that the name of the Queen's Coroner and Attorney should be used in the Information: *Vh*, R. 5, Central Office Practice Rules: Ann. Pr. notes to R. 1, Ord. 1, R. S. C.: R. 20, Ord. 16, R. S. C.: 3 Bl. Com. 264, 427; 4 Ib. 308: Short & Mellor's Crown Office Practice, ch. 8, espy p. 292.

**RELEASE.** — "Release" is the giving or discharging of the right or action which any hath or claimeth against another, or his land" (*Termes de la Ley*: Cowel: Jacob: 11 Encyc. 210-219). "The distinction between a RECEIPT and a Release is, — the Release extinguishes the claim, and, when given, in itself annihilates the debt; but a Receipt is only evidence of payment, and if the proof be that no payment was made, it cannot operate as evidence of payment against such proof" (per Martin, B., *Bowes v. Foster*, 27 L. J. Ex. 266; 2 H. & N. 788).

*V*. SURRENDER.

"Release" may work a DISCLAIMER, though it would not be operative to convey any estate or interest, *e.g.* if two of three joint devisees of Copyholds "release" by deed to the third before taking, and in order not to take, Admittance (*Wellesley v. Withers*, 24 L. J. Q. B. 134; 4 E. & B. 750).

A "Release" under s. 3, 8 & 9 V. c. 106, must be by Deed (*Gilman v. Crowley*, 7 Ir. Com. Law Rep. 557).

As to when a document is a mere Covenant not to sue and is not a

Release; *V. Price v. Barker*, 24 L. J. Q. B. 133; 4 E. & B. 777; *Bateson v. Gosling*, 41 L. J. C. P. 53; L. R. 7 C. P. 9; *Hutton v. Eyre*, 6 Taunt. 289; 1 Marsh. 603; *Duck v. Mayeu*, 1892, 2 Q. B. 511; 62 L. J. Q. B. 69; 67 L. T. 547; 41 W. R. 56.

A DEED whereby for an agreed sum an Owner of land (the surface of which has been acquired by a Ry Co) agrees with the Co not to work the Minerals underneath, and undertakes to do all things necessary for vesting the same in the Co whenever required, and accepts the sum in satisfaction of all claims, is not a "Release, or RENUNCIATION, upon a SALE," and is not liable as such to the ad val. duty under the Stamp Act, 1891 (*G. N. Ry v. Inl. Rev.*, 1899, 2 Q. B. 652; 1901, 1 K. B. 416; 68 L. J. Q. B. 978; 70 L. J. K. B. 336). But a Deed on a Dissolution of Partnership whereby one partner, in consideration of a payment by the other to him, declares that the same "is in Full SATISFACTION" of all his claims and demands in respect of the partnership business and property, is either such a "Release or Renunciation," or it is a "CONVEYANCE on Sale" (*Garnett v. Inl. Rev.*, 81 L. T. 633). *Vf*, as to what is a Release quâ Stamp Duty, *Humphreys v. Inl. Rev.*, 81 L. T. 199.

V. DEMAND: PREVENT: REMISE.

**RELEGATION.** — Is a BANISHMENT for less than life, and does not work civil death (Co. Litt. 133 a). *Cp*, ABJURATION.

**RELIEF.** — "Relief," as used in the POOR LAW or in Orders thereunder, includes, among other things, the ministrations by ministers of religion (*R. v. Haslehurst*, 53 L. J. M. C. 127; 13 Q. B. D. 253; *R. v. Braintree Union*, 10 L. J. M. C. 76; 1 Q. B. 130).

"A Trust 'for the Relief of the Poor' has been construed to authorize an application of the funds to the building of a School-house, and the Education of the Poor of the parish" (Lewin, 612, citing *Wilkinson v. Malin*, 2 Tyr. 544, 570).

V. PAROCHIAL RELIEF.

As to a feudal "Relief"; *V. Co. Litt. 76 a*; *Termes de la Ley*: Cowel: Jacob: 2 Bl. Com. 64: 11 Encyc. 223.

"'Relief' and 'relieve,' are appropriate terms to describe the remedial action of the Court in cases where a PENALTY or FORFEITURE has been incurred, and which the Court thinks it equitable that the complainant should not lie under or suffer" (per Davey, L. J., *Nind v. Nineteenth Century Bg Socy*, 1894, 2 Q. B. 226; 63 L. J. Q. B. 640; 70 L. T. 831; 42 W. R. 481; 58 J. P. 732); therefore, it was held in that case that a LESSEE is not "relieved," under s. 14, Conv & L. P. Act, 1881, or s. 2 (1), Conv & L. P. Act, 1892, if he himself avoids a Forfeiture by remedying his breaches of covenant and making the necessary compensation. *Vf*, LEASE: UNREASONABLY.

Relief quâ BREACH OF TRUST; *V. REASONABLY.*

“Relief *claimed*”; *V. Litton v. Litton*, 3 Ch. D. 793; 24 W. R. 962; nom. *Linton v. Linton*, 46 L. J. Ch. 64; *Pascoe v. Richards*, 50 L. J. Ch. 337.

“Relief” quâ Petitions of Right Act, 1860; *V. s. 16*.

**RELIGION.** — “What is Religion? Is it not what a man honestly believes in and approves of and thinks it his duty to inculcate on others, whether with regard to this world or the next? A belief in any system of retribution by an over-ruling power? It must, I think, include the principle of gratitude to an active power who can confer blessings” (per Willes, J., *Baxter v. Langley*, 38 L. J. M. C. 5).

Direction for Education to be in the Protestant Religion; *V. EDUCATION*.

*V. CHRISTIAN RELIGION: ENTERED IN RELIGION: SPIRITUAL: UN-DUE INFLUENCE.*

**RELIGIOUS.** — A testamentary gift for “Religious Purposes,” or for “Religious Societies,” without naming them, is *primâ facie* for a CHARITABLE PURPOSE, and creates a good CHARITY (*Baker v. Sutton*, 1 Keen, 224; 5 L. J. Ch. 264; *Townsend v. Carus*, 13 L. J. Ch. 169; 3 Hare, 257; *Re White*, 1893, 2 Ch. 41; 62 L. J. Ch. 342; 68 L. T. 187; 41 W. R. 683; *Vf*, CONSERVATIVE). So, of the phrase “any other Religious Institution or Purposes” (*Wilkinson v. Lindgren*, 5 Ch. 570; 39 L. J. Ch. 722; 18 W. R. 961). *Secus*, where the Society indicated is only for Prayer and Devotion by its own Members (*Cocks v. Manners*, 40 L. J. Ch. 640; L. R. 12 Eq. 574).

A bequest for “Religious and Benevolent Societies or Objects” is good, as that means, Societies or Objects which are primarily Religious but are also Benevolent (*Re Lloyd*, 10 Times Rep. 66); had the conjunction been “or” instead of “and,” the bequest would have been void (*V. Or*); but Stirling, J., did not read “or” for “and,” and if driven to that then he held (by an interpretation supplied by a Codicil) that “benevolent” meant “charitable.”

*V. SERVICE OF GOD.*

A clause in an Endowed School Scheme requiring that the Rector for the time being of the parish shall *ex officio* be a Governor, is not a provision “respecting the Religious *Opinions* of the Governing Body” within the concluding words of s. 19, Endowed Schools Act, 1869 (*Re Hodgson’s School*, 3 App. Ca. 857; 47 L. J. P. C. 101; 38 L. T. 790).

“Place of Religious Worship”; *V. PLACE*, p. 1490: USUAL PLACE OF RELIGIOUS WORSHIP.

*V. EDUCATION: PUBLIC RELIGIOUS WORSHIP: WORSHIP.*

**RELINQUISH.** — “Relinquish” is not a Word of Art, and may be satisfied by an ABANDONMENT, or Non-Claim (*Home v. Booth*, 3 M. & G. 742; 11 L. J. C. P. 78).

Property which a Successor "shall be bound to relinquish, or be DEPRIVED of," s. 38, Sued Dy Act, 1853; *V. Le Marchant v. Ind. Rec.*, 45 L. J. Ex. 247; 1 Ex. D. 185.

**REM.** — An ACTION *in rem*, is one in which the subject-matter is itself sought to be affected, and in which "the claimant is enabled to ARREST the ship or other property, and to have it detained in the custody of officers of the law, until his claim has been adjudicated upon, or until security by bail has been given for the amount, or for the value of the property proceeded against, where that is less than the amount of the claim" (Carver, s. 684). The action is peculiar to the Courts of Admiralty, and affects generally a Ship, or Cargo, or Freight. *V.*, R. 7, Ord. 2, R. 10-14, Ord. 9, R. S. C.: Carver, ch. 19: Wms. & Bruce, Part 2, ch. 1.

"There is also an INFORMATION *in rem*, when any goods are supposed to become the property of the Crown, and no man appears to claim them, or to dispute the title of the king. As antiently in the case of treasure-trove, wrecks, waifs, and estrays, seised by the king's officer for his own use"; and enquiry thereupon made by Information for the owner, and him failing the property to be declared to belong to the crown (3 Bl. Com. 262).

**REMAIN.** — *V.* LEFT.

"Being out of England, remains out of England," s. 4 (*d*), Bankry Act, 1883, does not include a person whose home is out of England (*Ex p. Crispin*, 42 L. J. Bank. 65; 8 Ch. 374; 21 W. R. 492; 28 L. T. 483; *Ex p. Brandon, Re Trench*, 25 Ch. D. 500; 53 L. J. Ch. 576).

Bequest of Money which might "remain" (*Rogers v. Thomas*, 2 Keen, 8; *Barrett v. White*, 1 Jur. N. S. 652; 24 L. J. Ch. 724), or "whatever remains of my money" (*Dowson v. Gaskoin*, cited MONEY), held to pass the Residuary Personal Estate: *Vf, Re Maclean*, 11 Times Rep. 82. So, a bequest of "any Money that may remain," passed a reversionary interest in a sum charged on realty (*Stocks v. Barré*, Jolms. 54; 5 Jur. N. S. 537); and "any Money not mentioned in the aforesaid bequests that may be in my POSSESSION at my death," passed a reversionary interest in personalty (*Re Egan*, 1899, 1 Ch. 688; 68 L. J. Ch. 307).

Bequest to wife, absolute in the first instance, but followed by limitations which would cut down her estate to a life interest, is not saved from that cutting down by the limitations being prefaced by "whatever remains of my said estate and effects" (*Constable v. Bull*, 18 L. J. Ch. 302). But a clear absolute gift is, on the other hand, not cut down by a gift over of, *e.g.* "any BALANCE remaining" (*Lloyd v. Tweedy*, 1898 1 I. R. 5; *Vf, Monck v. Croker*. 1900, 1 I. R. 56).

*V.* REMAINDER: REST.

"Remain unmarried"; *V. Re Burlinson*, cited UNMARRIED.

Agreement by A. to let B. "remain" in the premises as Tenant during A.'s term; *V. Re King*, and *Wood v. Davis*, cited MOLEST. *Vf*, IN HIS HANDS: TERMINATE.

**REMAINDER.** — As used in a residuary clause in a Will this is a technical word, as is also the word "Residue." "Here the words are, 'All the Remainder and Residue of all his estate and effects, both real and personal,' — which includes all the testator's property. All the terms he makes use of, except the word 'effects,' are technical terms; for 'Remainder' is applicable to Real Estate, and 'Residue' to Personal Estate" (per Mansfield, C. J., *Hogan v. Jackson*, 1 Cowp. 308). *V. REMAIN: RESIDUE: REST.*

But "Remainder of my Personal Estate," may mean only a very small surplus, not including a large lapsed legacy (*A-G. v. Johnstone*, 2 Amb. 577: *Page v. Leapingwell*, 18 Ves. 466). *Cp.* OVERPLUS: SURPLUS.

Where a testator directed his debts to be paid out of a specified fund, and "the Remainder to be equally divided to my surviving children"; held, a gift of the residue of the specified fund, and not of the general residue (*Jull v. Jacobs*, 3 Ch. D. 703). *V. RESIDUE.*

"Remainder," as a technical term applicable to Realty, "is the residue of an estate at the same time appointed over, and must be grounded upon some PARTICULAR ESTATE given before, granted for years, or life, and so forth; and ought to begin in possession when the Particular Estate endeth" (Noy's Maxims, ch. 12: *Goodtitle v. Billington*, Dougl. 753). As distinguished from an Executory Devise, a Remainder "may be described to be an estate which is so limited as to be immediately expectant on the natural determination of a Particular Estate of freehold limited by the same instrument" (1 Jarm. 864). *Vf.* *Blackman v. Fysh*, 60 L. J. Ch. 666; 64 L. T. 590; 39 W. R. 520. *Cp.* "Contingent Remainder," sub CONTINGENT, "Vested Remainder," sub VESTED: REVERSION. *Vh.* Wms. R. P., Part 2, ch. 1, 2: Goodeve, 234: 2 Cru. Dig. Title 16.

Cross Remainders (*V. CROSS*) have been implied from the word "Remainder" (2 Jarm. 552).

Even before s. 28, Wills Act, 1837, a devise of "Reversion," or "Remainder," carried the fee (2 Jarm. 284; *sr.* 285).

"Like Remainder"; *V. LIKE.*

"Right in Remainder"; *V. RIGHT.*

*V. FOR WANT OF: FROM AND AFTER.*

**REMAINING.** — "Remaining" is an equivocal expression, which may more easily be construed as "other" than the word "surviving" (*Hughes v. Whitby*, Ir. Rep. 7 Eq. 99). *V. SURVIVOR.*

"Remaining Legatee"; held, to mean Surviving Legatee (*Sheridan v. O'Reilly*, 1900, 1 I. R. 386).

*V. DISPOSE OF.*

**REMATE.**—Remate Judgment; *V. Nouwion v. Freeman*, 15 App. Ca. 1; 59 L. J. Ch. 337; 62 L. T. 189; 38 W. R. 581.

**REMEDY.**—“Require the same to be remedied,” s. 46, Coal Mines Regulation Act, 1872, 35 & 36 V. c. 76; *V. R. v. Baker*, W. N. (78) 165.

**REMEMBRANCER.**—*V. CHIEF*: 12 & 13 V. c. 105, s. 38.

**REMISE.**—The usual form of words in a RELEASE, —“remise, release, and quit claim,” —are as old as Littleton; but the old, and true, form of “quit” was “quiet” (Litt. s. 445: *Vf*, QUITCLAIM).

“*Remisise, relaxâsse, et quietum clamâsse.*” Here Littleton sheweth, that there be three proper words of release, and bee much of one effect: besides, there is *renunciare, acquietare*, and there bee many other words of release; as if the lessor grants to the lessee for life, that he shall be discharged of the rent, this is a good release. *V. Sect. 532* (Co. Litt. 264 b; *Vf*, Ib. 291 a).

*V. DEMAND.*

**REMIT.**—To “remit,” *e.g.* money realized by the sale of goods, means, to send off the money in the ordinary manner; a person whose duty is to “remit” money or documents, discharges that duty as soon as he has, in the ordinary course and manner of business, sent it or them off; he is not responsible for accidents in the transit (*Comber v. Leyland*, 1898, A. C. 524; 67 L. J. Q. B. 884; 79 L. T. 180, *V. espy jdgmt of Ld Herschell*). *Cp*, TRANSMIT: AT ONCE: PROCEEDS.

Bill of Exchange “for the sole purpose of remitting” public revenue money, Stamp Act, 1891, Sch 1, *Bill of Exchange*, Exemption, 10; *V. London Clearing Committee v. Inl. Rev.*, 1896, 1 Q. B. 542; 65 L. J. Q. B. 253, 372; 74 L. T. 209; 44 W. R. 516; 60 J. P. 404.

**REMITTER.**—“Remitter is an antient terme in the law, and is where a man hath two titles to lands or tenements, viz., one a more antient title, and another a more latter title; and if he come to the land by a latter title, yet the law will adjudge him in by force of the elder title, because the elder title is the more sure and more worthie title. And then when a man is adjudged in by force of his elder title, this is sayd a Remitter in him” (Litt. s. 659: *Vth*, Co. Litt. 347 b. and Butler’s note, 299). *Vf*, *Termes de la Ley*: Cowel: Jacob: 3 Bl. Com. 19, 190: *Doe d. Daniell v. Woodroffe*, 10 M. & W. 608; 12 L. J. Ex. 147.

**REMOTE.**—A Remote Cause is the antithesis of PROXIMATE Cause.

Remote Damages are those “remotely resulting from the act complained of” (Sedgwick on Damages, ch. 3, *whv* hereon). *Va*, Beven, Bk. 1, ch. 3.

Void for Remoteness; *V. PERPETUITY.*

**REMOVAL.** — “The technical meaning of ‘Removal’ in 7 & 8 V. c. 101, is not the meaning which the word ‘Removal’ has in 16 & 17 V. c. 97” (per Cotton, L. J., *R. v. Pemberton*, 49 L. J. M. C. 31; 5 Q. B. D. 95).

In a proviso to a Marine Insurance, expenses “for Removal of Obstructions under statutory powers,” include expenses of removal paid as damages, as well as expenses for which the assured becomes directly responsible (*The North Britain*, 1894, P. 77; 63 L. J. P. D. & A. 33; *whc* approved in H. L., *The Engineer*, 1898, A. C. 382; 67 L. J. P. D. & A. 61). As to expenses of Harbour Authority in raising Wrecks, &c; *V. The Emerald*, 1896, P. 192; 65 L. J. P. D. & A. 69; 74 L. T. 645. *Vf*, REMOVE.

“Breakage during Removal”; *V. BREAKAGE*.

A Surrender of an Old License to induce Justices to grant a License for New Premises, is not a “Removal” of the old license under s. 50, Licensing Act, 1872 (*Lacey v. Laron*, 1899, A. C. 222; 68 L. J. Q. B. 480; 80 L. T. 473; 47 W. R. 497; 63 J. P. 371).

**REMOVE.** — To “remove” a thing, is not to blow it to atoms; therefore, where a Wreck in a Harbour, or its approaches, has to be dispersed by explosives, the expense of such a REMOVAL as that cannot be recovered under s. 56, Harbours, Docks, and Piers Clauses Act, 1847 (per Ld Macnaghten, *Arrow Co v. Tyne Commrs*, 1894, A. C. 508; 63 L. J. P. D. & A. 146; *Vf*, *Barracough v. Brown*, 1897, A. C. 615; 66 L. J. Q. B. 672; *Sc*, *Smith v. Wilson*, 1896, A. C. 579; 65 L. J. P. C. 66).

To “remove” Shell Fish “from a Fishery,” within 57 & 58 V. c. 26, or a Bye-Law thereunder, means, a sufficient taking up or severance of the fish for the purpose of taking it away (*Thomson v. Burns*, 66 L. J. Q. B. 176; 76 L. T. 58).

“Send out, deliver, remove, or receive,” Spirits; *V. SEND*, at end.

**REMUNERATION.** — “Remuneration” is a wider term than “SALARY.” “‘Remuneration,’ means, a *quid pro quo*. Whatever consideration a person gets for giving his services, seems to me a ‘Remuneration’ for them. Consequently, if a person was in receipt of a payment or of a percentage, or any kind of payment which would not be an actual money payment, the amount he would receive annually in respect of this would be ‘Remuneration’” (per Blackburn, J., *R. v. Postmaster General*, 1 Q. B. D. 663, 664). *Cp*, EMOLUMENT.

A School Board may provide “Salary or Remuneration” for its teachers, s. 35, Elementary Education Act, 1870; that may very well include the Board requiring their teachers to provide for themselves by contributing to a Superannuation Fund (*Phillips v. London School Bd*, 1898, 2 Q. B. 447; 67 L. J. Q. B. 874; 79 L. T. 50; 46 W. R. 658, *espy* jdgnt of Williams, L. J.).



**RENDER.** — To “render,” means, “to yield, give again, or return” (Jacob). *Vf*, Cowel.

“Rendering” rent free of impositions, amounts to a covenant (*Giles v. Hooper*, Carth. 135); *Sv*, 2 Platt, 87.

*V*. RESERVATION.

**RENEW.** — To “renew” a Bill or Note, does not, necessarily, import that a new or additional Bill or Note is to be given; such an instrument is “renewed” by the time for its payment being extended (*Russell v. Phillips*, 19 L. J. Q. B. 297; 14 Q. B. 892); but, generally, a Bill or Note “is renewed by another being taken in its place, the parties and the amount being the same, though perhaps in some cases the interest due on the first is added” (per Lindley, L. J., *Barber v. Mackrell*, 68 L. T. 29; 41 W. R. 341); the context, however, may show that the parties used “renew” in a merely colloquial sense (*S. C.*).

*V*. RENEWAL.

**RENEWABLE LEASE.** — *V. Hughes v. Twisden*, 55 L. J. Ch. 481; 54 L. T. 570; 34 W. R. 498. *Vf*, RENEWAL.

**RENEWAL.** — “‘The Renewal of a License,’ means, a License granted at a General Annual Licensing Meeting by way of renewal” (s. 74, Licensing Act, 1872). *Vh*. Paterson’s Licensing Acts: 7 Encey. 400, 401.

By Sch 2, Licensing Act, 1872, the Appeal to Quarter Sessions created by ss. 27, 28, 29, Alchouse Act, 1828, 9 G. 4, c. 61, is repealed, except in so far as those sections “relate to the Renewal of Licenses, or to the Transfer of Licenses under ss. 4 and 14 of the same Act”: — the tenant of a licensed house gave it up on the 29th Sept. and in the meantime, having received notice of opposition, purposely neglected to apply for a Renewal of his license at the Brewster Sessions held on the 26th Sept; the in-coming tenant applied for a license at the next Special Sessions held on the 10th Oct; this was refused and he appealed to Quarter Sessions: held, that such application was not for a new license, but was for a Renewal or Transfer of the old license, and therefore that the right of appeal was not taken away (*Thornton v. Clegg*, 24 Q. B. D. 132; 59 L. J. M. C. 6; 38 W. R. 160). But, quà Appeal, an application in respect of a house pulled down, is only a Renewal or Transfer within s. 14, Alchouse Act, 1828, when made by the “person duly licensed” therefor, *i.e.* the person who was the licensed holder of the Inn at the time when the premises were pulled down (*R. v. Yorkshire Jus.*, 1898, 1 Q. B. 503; 67 L. J. Q. B. 279; 78 L. T. 47; 62 J. P. 197). *V*. NEW LICENSE: NEW PREMISES: IN FORCE: TRANSFER.

A Renewal of a Beerhouse License may be applied for by a New Tenant under ss. 8, 19, Wine and Beerhouse Act, 1869, 32 & 33 V. c. 27 (*Symons v. Wedmore*, 1894, 1 Q. B. 401; 63 L. J. M. C. 44; 69 L. T.

801; 42 W. R. 301; 58 J. P. 197, in *whc* the previous cases are considered). If such a License was in force on 1st May 1869, and has not been allowed to drop, it must be renewed although no beer has been sold on the premises for a great number of years, the only grounds of refusal being those prescribed in s. 8 (*Mackrell v. Brentford Jus.*, 1900, 2 Q. B. 387; 69 L. J. Q. B. 748; 83 L. T. 31; 48 W. R. 648; 64 J. P. 663). *Vf*, LICENSED PERSON: *Cp*, *R. v. Cotham*, 1898, 1 Q. B. 802; 67 L. J. Q. B. 632; 78 L. T. 468; 46 W. R. 512; 62 J. P. 435.

The "Renewal" of a LEASE warranted by a PRACTICE, s. 110, Mun Corp Act, 1882, replacing s. 95, 5 & 6 W. 4, c. 76, does not mean that periodically a new lease on new terms has been granted nor that each renewal was on precisely the same terms as its predecessor, but "there must be such a species of uniformity as to show that, in point of fact, it is the same lease which was renewed" (per Romilly, M. R., *A-G. v. Yarmouth*, 21 Bea. 633; 3 W. R. 309; 25 L. T. O. S. 5).

An Agreement to grant a "renewed" Lease or Term, simpliciter, means, the renewing, as from the expiry of the original term, of such term for a like period and (with one exception) on the like terms (per Lyndhurst, C. B., *Price v. Asheton*, 4 L. J. Ex. Eq. 3; 1 Y. & C. Ex. 92, adopted by Bruce, J., *Lewis v. Stephenson*, 67 L. J. Q. B. 296; 78 L. T. 165). The exception as to terms is, that such renewed instrument will not, without clearly expressed words, include the agreement for renewal, the insertion of which would connote a perpetual renewal (per Bruce, J., *Lewis v. Stephenson*, citing *Iggulden v. May*, 7 East, 237; 9 Ves. 325; *Hyde v. Skinner*, 2 P. Wms. 196; *Baynham v. Guy's Hospital*, 3 Ves. 294:—for an example of such clear words, *V. Hare v. Burges*, 27 L. J. Ch. 86; 4 K. & J. 45: to the contrary, *Swinburne v. Milburn*, 54 L. J. Q. B. 6; 9 App. Ca. 844; 33 W. R. 325. *Vf*, AS OFTEN AS: FOR EVER: FROM TIME TO TIME). Therefore, an agreement for a term of 3 years, "with the OPTION of Renewal," gives the tenant the right to call for a further agreement for 3 years and on the like terms (except the clause for renewal) as those contained in the first agreement; but he must exercise that Option within a reasonable time before the expiration of the original term (*Lewis v. Stephenson*, sup). *Vf*, Redman, 23-25: SAME.

V. PERPETUAL INTEREST: RENEW: REPAIR. *Cp*, RE-ENGAGEMENT.

**RENOUNCE.**—*V.* RENUNCIATION.

**RENT.**—" 'Rents' be in divers manners, that is Rent Service, Rent Charge, and Rent Secke" (Termes de la Ley). *Vf*, 3 Cru. Dig. Title 28.

Probably, it may be said that the primary meaning of "Rent" is the sum certain, in gross, which a tenant pays his landlord for the right of occupying the demised premises (*Vh*, Co. Litt. 96 a, 141 b, 142 a: Jacob: Elph. 617-619: Woodf. 403: 11 Encyc. 230-236). Thus an agreement

to occupy part of premises on the terms of keeping the whole clean and paying the rates and taxes, is not an agreement to pay "Rent" e.g. within the Small Tenements Recovery Act, 1838, 1 & 2 V. c. 74 (*Re Richmond Jus.*, 10 Times Rep. 68: *Cp, Doe d. Edney v. Benham*, inf).

#### V. CERTAIN RENT.

A covenant to hold clear of all "Rents," includes a QUIT RENT (*Hammond v. Hill*, 1 Comyn, 180: *Vf, Re Maxwell*, cited IN CHARGE).

"The word *Rent*, in Powers of Leasing, is with great propriety construed to mean not money merely, but any return or equivalent adapted to the nature of the subject demised; therefore, upon a Lease of Mines, a due proportion of the produce may be reserved as a render in lieu of money, although the power requires a 'Rent' generally to be reserved" (Sug. Pow. 791, citing *Campbell v. Leach*, 2 Amb. 740: *Bussett's Case*, cited 2 Amb. 748).

"The words 'Rent' and 'Annual Value' are often used indiscriminately" (per Cleasby, B., *Sheffield W. W. Co v. Bennett*, 41 L. J. Ex. 240). In that case a Water-works Co were empowered to charge each house supplied, according to its "Rent" per annum; which was held to mean the money payment made by the tenant, less tenant's rates payable by the landlord (41 L. J. Ex. 233; 42 Ib. 121; L. R. 7 Ex. 409; 8 Ib. 196: *V. ANNUAL RENT: ANNUAL VALUE: FULL ANNUAL VALUE*).

Quà Real Property Limitation Acts, 1833 and 1874, "Rent," extends to "all heriots, and to all services and suits, for which a distress may be made, and to all annuities and periodical sums of money charged upon, or payable out of, any land (except moduses or compositions belonging to a Spiritual or Eleemosynary corporation sole)" (s. 1, R. P. L. Act, 1833); that includes Tithe Rent-Charge (*Irish Land Commission v. Grant*, 10 App. Ca. 14; 52 L. T. 228), also an ordinary RENT CHARGE (*Jones v. Withers*, 74 L. T. 572). A tenant who occupies his holding on the terms of sweeping the Parish Church, is one who pays "Rent" within that def and s. 8 of same Act (*Doe d. Edney v. Benham*, 14 L. J. Q. B. 342; 7 Q. B. 976: *Cp, Re Richmond Jus.*, sup).

"Rent," s. 2, R. P. L. Act, 1833, s. 1, R. P. L. Act, 1874, "must be confined to rents existing as an inheritance distinct from the land, and for which before the statute the party entitled might have had an assize; such as ancient Rents Service, FEE FARM Rents, or the like" (per Cur., *Grant v. Ellis*, 11 L. J. Ex. 232; 9 M. & W. 113: *Va, Ely v. Bliss*, 2 D. G. M. & G. 459), including a freehold or copyhold QUIT RENT (*Owen v. De Beauvoir*, 19 L. J. Ex. 177; 16 M. & W. 547; 5 Ex. 166: *Howitt v. Harrington*, 1893, 2 Ch. 497; 62 L. J. Ch. 571). *V. TITHES*.

In the same sense "Rent" is used in ss. 3, 4, 5, 7, and 15, R. P. L. Act, 1833, just cited; and whilst in the early part of s. 8 it is used in that sense, yet at the close of that section it means, Rent reserved under a Lease; and of the *seven* times the word is used in s. 9, in the first, fourth, and sixth times it means Rent Charge, whilst in the second,

third, fifth, and seventh times it means Rent Reserved (per Denman, C. J. delivering judgment of the Q. B., *Doe d. Angell v. Angell*, 15 L. J. Q. B. 193; 9 Q. B. 328; *Va. Baines v. Lumley*, 16 W. R. 674).

*Vf.* as to "Rent" in Real Property Limitation Act, 1833, Dart, 433, 434, and cases there cited.

Quà Conv & L. P. Act, 1881, "'Rent,' includes, yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise" (s. 2. ix); that shows that "Rent" is not used in the Act in its strict sense, and that it includes recurring payments not issuing out of the thing demised and for which, accordingly, there can be no Distress (per Williams, L. J., *Broune v. Peto*, cited OCCUPATION LEASE).

Quà S. L. Act, 1882, a like def is provided (subs. 10, ii, s. 2).

"Rent" has also received statutory definition in and for the following Acts:—

Apportionment Act, 1870, 33 & 34 V. c. 35; *Vf.* s. 5:

Chief Rents Redemption (Ir) Act, 1864, 27 & 28 V. c. 38; *Vf.* s. 1:

Copyhold Act, 1894, 57 & 58 V. c. 46; *Vf.* s. 94:

Land Law (Ir) Act, 1887, 50 & 51 V. c. 33; *Vf.* s. 8 (11):

Landlord and Tenant Law Amendment Act, Ireland, 1860, 23 & 24 V. c. 154; *Vf.* s. 1:

Poor Relief (Ir) Act, 1838, 1 & 2 V. c. 56; *Vf.* s. 124:

Purchase of Land (Ir) Act, 1885, 48 & 49 V. c. 73; *Vf.* s. 10:

Railway Rolling Stock Protection Act, 1872, 35 & 36 V. c. 50; *Vf.* s. 2.

"Rent," quà *ad val.* Duty on a LEASE under Stamp Act, 1891; *Vf. British Electric Traction Co v. Inl. Rev.*, 64 J. P. 805; 84 L. T. 84.

Where periodical payments in respect of a MINE are spoken of, "the phrases 'Rent' and 'ROYALTY' are figurative; you pay 'Rent' in one sense, it is true; but 'Rent' generally has been understood to be a return from the soil, and not to be a consumption or taking away of the soil; whereas, of course, where the soil consists of coal, or other minerals, you are actually taking it away" (per Halsbury, C., *Greville-Nugent v. Mackenzie*, 69 L. J. P. C. 3; 1900, A. C. 83).

Royalties are "Rent" within s. 1, Parochial Assessment Act, 1836, 6 & 7 W. 4, c. 96 (*R. v. Westbrook*, 16 L. J. M. C. 87; 10 Q. B. 178; 9 L. T. O. S. 21; *Sc. Taylor v. Evans*, 1 H. & N. 101; 25 L. J. Ex. 269).

A periodical payment for a PRIVILEGE or EASEMENT, *e.g.* a Factory Standing, is not "Rent" (*Hancock v. Austin*, 14 C. B. N. S. 634; 11 W. R. 833; 8 L. T. 429). So, payments for admission to, *e.g.* a Theatre, are not "Rents," or "PROFITS" of the place which can be reached by an EQUITABLE Execution, though the Receiver may prevent performances thereat (*Cadogan v. Lyric Theatre*, 1894, 3 Ch. 338; 63 L. J. Ch. 775; 71 L. T. 8).

As "Rent in *Arrear*"; *Vf.* DISTRESS.

"Rent of Assize"; *V. QUIT RENT.*

"At the Rent of" so much per ann.; *V. RATE.*

Rent Balance; *V. Edwards v. Bagster*, 2 M. & W. 221.

Chief Rent; *V. CHIEF.*

"Clear Yearly Rent"; *V. CLEAR.*

Rent due; *V. DUE.* Bequest of "all Rent and Arrears of Rent due on the said property"; held, to include an apportioned part of the Gale accruing at the testator's death (*Sealy v. Stowell*, Ir. Rep. 2 Eq. 326).

"Gas Rent"; *V. Re Peake, Ex p. Harrison*, 53 L. J. Ch. 977; 13 Q. B. D. 753; *Ex p. Birmingham & Staffordshire Gas Co*, 40 L. J. Bank. 52; L. R. 11 Eq. 615; *Ex p. Hill, Re Roberts*, 46 L. J. Bank. 116; 6 Ch. D. 63.

"Improved Rent"; *V. IMPROVE.*

"Rent having no Money Value"; *V. MONEY VALUE.*

"Rent of a TENANCY"; Stat. Def., 44 & 45 V. c. 49, s. 57.

*Note:* as to deductions from Rent, *V. PAYABLE.*

*V. ACTUALLY PAID: ANCIENT RENT: BEST RENT: CLEAR: CUSTOMARY RENT: DEAD RENT: FAIR RENT: GROSS: GROUND RENT: INCREASED RENT: JUDICIAL RENT: MOST RENT: NET: PEPPERCORN: PROFIT RENT: QUIT RENT: RACK RENT: RENTAL: RENTS: VALUED.*

**RENT CHARGE.** — A Rent Charge, is a Rent issuing out of land, not by virtue of any tenure or ownership but, by force of some RESERVATION by which also a power of DISTRESS is reserved if the Rent get into arrear; if no such power be reserved it was formerly a Rent Seck (Litt. ss. 217, 221; Co. Litt. 143 b, 147 a; Termes de la Ley, *Rents: Monypenny v. Monypenny*, 9 H. L. Ca. 137, 138; 11 Encyc. 230-236). But s. 5, 4 G. 2, c. 28, gave distress for arrears of Rent Seck, and such a Rent, accordingly, is now a Rent Charge (*Dodds v. Thompson*, L. R. 1 C. P. 133; 35 L. J. C. P. 97; 14 W. R. 476; Copinger & Munro on Rents, 10-17. *Vf, Re Gerard and Beecham*, 1894, 3 Ch. 295; 71 L. T. 272; 63 L. J. Ch. 695; 42 W. R. 678, quâ "Rent Charge" in Particulars of Sale. *Cp, CHIEF RENT*). A small rent arising out of a long term of years, cannot be called a "Rent Charge" (*Nicholls v. Bulwer*, L. R. 6 C. P. 281; 40 L. J. C. P. 82; 19 W. R. 282; 23 L. T. 542). *V. TENEMENT.*

Quâ Rep People Act. 1884, "Rent Charge," includes, a fee farm rent, a feu duty in Scotland, a rent seck, a chief rent, a rent of assize, and any rent or annuity granted out of land" (s. 11).

Other Stat. Def. — 19 & 20 V. c. 56, s. 47.

*Note:* Rent Charge in arrear for which no distress is available may be raised by an Order for sale or mortgage (*Hambro v. Hambro*, 1894, 2 Ch. 564; 63 L. J. Ch. 627; 70 L. T. 684; 43 W. R. 92; *Se. Blackburne v. Hope-Edwardes*, W. N. (1900) 175): — as to recovering arrears of Rent Charge in an Action of Debt, *V. Re Herbage Rents Charity*, 1896, 2 Ch.

811; 65 L. J. Ch. 871; 45 W. R. 74, and cases there cited: *Pertwee v. Townsend*, 1896, 2 Q. B. 129; 65 L. J. Q. B. 659; 41 S. J. 107, 140:— as to Apportionment of Rent Charge on eviction from part of the property by title paramount, *V. Hartley v. Maddocks*, 1899, 2 Ch. 199; 68 L. J. Ch. 496:— *semble*, WASTE cannot be restrained by an owner of Rent Charge (*Sandeman v. Rushton*, 61 L. J. Ch. 136; 66 L. T. 180).

“Rent Charge” to redeem which CAPITAL MONEY may be expended, s. 1, 50 & 51 V. c. 30, includes a bonus reasonably demanded for loss of interest in consequence of the redemption (*Re Egmont*, 59 L. J. Ch. 768; 45 Ch. D. 395; 63 L. T. 608; 38 W. R. 762; disapproving *Re Sudeley*, 37 Ch. D. 123; 57 L. J. Ch. 182).

V. GROUND RENT: RENT: TITHE RENTCHARGE.

**RENT FREE.**— A testamentary direction “to allow A. during his life to reside Rent Free” in a specified dwelling-house, is not the same thing as a gift of the house to A for life with a Condition that he shall LIVE AND RESIDE, or RESIDE, there; such a direction does not make A. a TENANT FOR LIFE, he is only entitled to reside in the house if he likes and is not entitled to let it (*Re Varley*, 68 L. T. 665; 62 L. J. Ch. 652).

**RENT PAYABLE.**— “Rent payable,” s. 11, 30 & 31 V. c. 142, means, the Rent payable between the litigant parties (*Brown v. Cocking*, 37 L. J. Q. B. 250; L. R. 3 Q. B. 672. V. as to “Value” in this section, *Elston v. Rose*, L. R. 4 Q. B. 4; 38 L. J. Q. B. 6: ANNUAL VALUE). *Vf*, PAYABLE, towards end.

**RENT SECK.**— V. RENT: RENT CHARGE.

**RENT SERVICE.**— V. RENT.

**RENTAL.**— “Annual Rental of the Settled Land,” s. 13 (iv), S. L. Act, 1890, includes interest of CAPITAL MONEY (*Re De Teissier*, 1893, 1 Ch. 153, 62 L. J. Ch. 552; 63 L. T. 275; 41 W. R. 186). *Vh, R. v. Walker*, cited REBUILDING.

V. ANNUAL RENT.

“Rental at which lands, &c, valued or rated,” s. 133, Lands C. C. Act, 1845; V. WORKS.

V. GROSS: NET: RENT.

**RENTED.**— House or land “*bonâ fide* rented,” s. 2, 6 G. 4, c. 57; *V. R. v. Pontefract*, 12 L. J. M. C. 81; 2 Q. B. 548: per Patteson, J., *R. v. St. Giles*, cited COMING.

**RENTS.**— “The primary meaning of ‘Rents’ is, rents accruing from year to year” (per Stirling, J., *Re Green*, 40 Ch. D. 615).

“The use of the word ‘Rents’ may in some cases show that the tes-

tator intended Leaseholds to be enjoyed in specie," and so displace the rule in *Howe v. Dartmouth*, 7 Ves. 137 (Watson Eq. 121, citing *Cufe v. Bent*, 5 Hare, 36: *Cp*, *Pickup v. Atkinson*, 4 Hare, 624; 15 L. J. Ch. 213: *Skircing v. Williams*, 24 Bea. 275: *Blann v. Bell*, 2 D. G. M. & G. 775; 21 L. J. Ch. 811; 5 D. G. & S. 658: *Vachell v. Roberts*, 32 Bea. 140). But where the devise includes "both freeholds and leaseholds, the use of the word 'Rents' is not a sufficient indication that the leaseholds should be enjoyed *in specie*, inasmuch as the word may be perfectly well satisfied by being attributed to the freeholds" (per Stirling, J., *Re Game*, 1897, 1 Ch. 881; 66 L. J. Ch. 505; 76 L. T. 450; 45 W. R. 472; following *Harris v. Poyner*, 21 L. J. Ch. 915; 1 Drew. 174, and *Craig v. Wheeler*, 29 L. J. Ch. 374; and rejecting *Crowe v. Crisford*, 17 Bea. 507, *Wearing v. Wearing*, 23 Ib. 99, and *Vachell v. Roberts*, sup). In *Pickup v. Atkinson* (sup), Wigram, V. C., held that "Rents" was not so sufficient, even where there are no freeholds to which the word could apply. *Cp*, RENTS AND PROFITS.

The reservation to the Lord of the Manor of "Rents," &c, in an Inclosure Act; held, insufficient to give him the mines under the allotments (*Townley v. Gibson*, 2 T. R. 701).

"Rents," s. 2, Apportionment Act, 1870; *V. Ellis v. Rowbotham*, cited PERIODICAL.

"Rents and Charges" in a mortgage of a Wharf; *V. Anderson v. Butler's Co*, W. N. (79) 163.

V. ANNUAL PROCEEDS: RENT.

**RENTS AND PROFITS.** — When, under a Contract for the Sale of Realty, the purchaser is to be entitled to all the rents and profits from the day appointed for COMPLETION, which time is delayed considerably, during which delay the vendor simply remains in possession without arrangement as to rent, the purchaser is nevertheless entitled to a fair occupation rent under the words "all Rents and profits" (*Metropolitan Ry v. Defries*, 2 Q. B. D. 189, 387). "Rents and Profits," in such a Contract, "mean, ordinary rents and profits, and not merely nominal rents and profits reserved upon leases for lives" (per Turner, L. J., *Hughes v. Jones*, 31 L. J. Ch. 88; 3 D. G. F. & J. 307), and, accordingly, it was there held that a vendor of a fee simple did not fulfil his agreement to let his purchaser "in to the receipt of the Rents and Profits" by handing over the rents proceeding from leases for lives which were less than the ordinary rents: *Inf*, Dart, 144. So, "Rents and Profits" of lands which comprise a QUARRY, include Royalties in respect of stone got from the quarry (*Leppington v. Freeman*, 65 L. T. 145; W. N. (91) 198).

"A Devise of the 'Rents and Profits,' or of the 'Income,' of lands passes the land itself both at law and in equity (*Cp*, ISSUES); a rule, it is said, founded on the feudal law, according to which the whole benefi-

cial interest in the land consisted in the right to take the rents and profits. And since 1 V. c. 26, such a devise carries the fee simple; but before that Act it carried no more than an estate for life unless words of inheritance were added" (1 Jarm. 797: *Sheridan v. O'Reilly*, 1900, 1 I. R. 386: *Cp. WHOLE*). An Advowson will pass under "Rents and Profits" (1 Jarm. 798). *Va*, Co. Litt. 4 b, cited PROFITS.

But in *Johnson v. Johnson* (56 L. J. Ch. 326; 35 Ch. D. 345; 56 L. T. 163; 35 W. R. 329), Stirling, J., refused to apply the doctrine just stated to the interpretation of s. 8, M. W. P. Act, 1870, 33 & 34 V. c. 93, and he held that the property of which, under that section, the "Rents and Profits" were to be for the separate use of married women, meant only such property as could be personally enjoyed by a married woman; and that accordingly no separate use was thereby declared of a fee-simple, and that an unacknowledged conveyance of a fee-simple by a married woman was not saved by the section from being invalid.

A Bequest of the "Interest, Dividends, and Profits," of personalty will sometimes be construed as an absolute gift of the corpus (*Jenings v. Baily* 22 L. J. Ch. 977; 17 Bea. 118: *Re L'Herminier*, 1894, 1 Ch. 675; 63 L. J. Ch. 496; 70 L. T. 727: *Vf*; INTEREST). So, of a gift of "the RESIDUE of Interest and Rents" (*Re Morgan*, 1893, 3 Ch. 222; 62 L. J. Ch. 789). So, a direction in a Will to pay a gross sum or debts out of "Rents and Profits" is often construed as a charge on the corpus (*Re Moore*, 19 L. R. Ir. 365: *Metcalfe v. Hutchinson*, 1 Ch. D. 591; 45 L. J. Ch. 210). In *this*, after reviewing the previous cases, Jessel, M R., said — "The result is, that you must find, on the face of the Will, a clear restriction of the general meaning of words directing you to raise a gross sum payable, immediately or at a day fixed, out of 'Rents and Profits', and the words are not otherwise to be read as annual rents and profits" (1 Ch. D. 598): for examples of such a restrictive context, *V. Henegay v. Andover*, 3 Y. & J. 360: *Philipps v. Philipps*, 8 Bea. 193: *Foster v. Smith*, 1 Phill. 629: *Re Green*, 40 Ch. D. 610; 58 L. J. Ch. 157 37 W. R. 300; 60 L. T. 314.

In *Re Martin* (W. N. (92) 120), North, J., held that a freehold house in which the testator carried on his business, passed under a devise and bequest of "the whole of the Rents and Profits *derived from the business*."

But observe that in a direction as to the payment or application of property, "the words 'Rents,' 'Issues,' 'Profits,' 'Interest,' 'Dividends,' and 'Proceeds,' are all applicable to a life interest, but not to the fee simple" (per Kindersley, V. C., *Troutbeck v. Boughey*, 35 L. J. Ch. 842; L. R. 2 Eq. 534: *Va*, *Crowe v. Crisford*, cited RENTS). Indeed "the most usual and proper meaning of 'Rents and Profits' is, *annual* rents and profits" (per Kindersley, V. C., *Lovat v. Leeds*, 2 Dr. & Sm. 77), and the rulings to the contrary before stated are exceptions, either founded on the feudal law, or reached by a course of "liberal" construc-



tion of which an account is given in *Allan v. Backhouse* (2 V. & B. 65); and of which liberal construction an example is, "that where a Term is created for the purpose of raising money out of the 'Rents and Profits,' if the trusts of the Will require that a gross sum should be raised, the expression 'Rents and Profits' will not confine the power to the mere annual rents, but the trustees are to raise it out of the estate itself by sale or mortgage" (per Eldon, C., *Bootle v. Blundell*, 1 Mer. 232, 233). *Id.*, 2 Jarm. 610-612.

*Cp.* RENTS.

As to powers and duties of Trustees to raise Fines on Renewals of Leases out of "Rents, Issues, and Profits," *V. Lewin*, 426 *et seq.*: as to raising Portions, *V. Ib.* 480, 481: *Smyth v. Foley*, 7 L. J. Ex. Eq. 34; 3 Y. & C. Ex. 142.

"Rents, Issues, and Profits," of Real Estate, are, of themselves, sufficient to include the proceeds of sale of a Next Presentation (per Turner, L. J., *Cust v. Middleton*, 34 L. J. Ch. 185).

A Rector who is enjoying, or has enjoyed, the right to Fees for Burials in a Churchyard (although the freehold of the churchyard is not in him and the churchyard has long been disused for burials), is the person entitled to the "Rents and Profits" of the Churchyard, under s. 70, Lands C. C. Act, 1845 (*Ex p. Rector of Liverpool*, 40 L. J. Ch. 65; L. R. 11 Eq. 15; *Ex p. Rector of St. Martin's, Birmingham*, 40 L. J. Ch. 69; L. R. 11 Eq. 23). *Id.*, 1898, P. 158.

"Net Rents and Profits"; *V. NET.*

**RENTS AND TOLLS.**—Quà application of Weights and Measures Act, 1878, 41 & 42 V. c. 49, to Scotland. " 'Rents and Tolls,' includes all stipends, feu duties, customs, casualties, and other demands whatsoever, payable in grain, malt, or meal, or any commodity or thing" (s. 71).

*V. TOLL.*

**RENUNCIATION.**—The Renunciation of a Bill of Exchange or Pro. Note which discharges it, must be in writing, unless it be delivered up to the Acceptor or Maker (s. 62 (1), Bills of Ex. Act, 1882); there, "Acceptor," or "Maker," includes his legal personal representatives, but not his legatee or devisee (*Edwards v. Walters*, 1896, 2 Ch. 157; 65 L. J. Ch. 557; 44 W. R. 547; 74 L. T. 396); the Renunciation must absolutely and unconditionally renounce the rights on the Bill or Note (*Re George*, cited ON DEMAND, p. 1333).

Renunciation of a Contract; *V. REVOKE.*

Renunciation by an Exor; *V. Wms. Exs.* Part 1, Bk. 3. ch. 6:

RETRACT.

There is no Conveyancing Instrument known to English law as a "Renunciation," in the sense in which that word is used in the Sch to

the Stamp Act, 1891; quâ that Act, there is a "Renunciation" upon a Letter of Allotment dealt with by the Sch, and there is a Renunciation of Probate by a nominated Exor which is not within the Sch. "In the law of Scotland, however, the term is well known and applied in, at least, three classes of cases, — (1) Renunciation by an Heir, which is similar to, but not the same as, a Renunciation by an Exor in England; (2) Renunciation by a Lessee of his lease, which is equivalent to the English SURRENDER; (3) Renunciation by a Mortgagee or Incumbrancer of certain heritable rights which he has acquired by way of mortgage, or hypothecation, or pledge, and in that sense Bell's Law Dictionary and Paterson's Compendium treat it as a translation of the English terms 'Reconveyance,' or 'Release.' In this last sense it appears to be used in the Sch (to the Stamp Act) not only under this title of 'Release' but also under the titles 'Mortgage' and 'Reconveyance.' As used in that Sch, 'Renunciation' may, I think, be regarded as the Scotch equivalent for the English 'Reconveyance,' or 'Release'" (per Phillimore, J., *G. N. Ry v. Inl. Rev.*, 68 L. J. Q. B. 983; 1899, 2 Q. B. 661). *V. RECONVEYANCE: RELEASE.*

*Cp.*, RESIGNATION: ABJURATION.

**REORGANIZATION.** — The Reorganization of a Co, means the same as, and not more than, its RECONSTRUCTION (per Chitty, J., *Hooper v. Western Counties Telephone Co*, 41 W. R. 84; 68 L. T. 78).

**REPAID.** — "Expense shall be repaid," may create an Obligation; *V. jdgmts of Herschell, C., and Ld Macnaghten, Arrow Co v. Tyne Commrs*, 1894, A. C. 508; 63 L. J. P. D. & A. 146; 71 L. T. 346. *Vf*, OWNER.

The Burial Board or Churchwardens have to maintain and repair a closed Churchyard or Burial-Ground, "and the Costs and EXPENSES shall be repaid" out of the Poor Rate "upon the CERTIFICATE of the Burial Board or Churchwardens," s. 18, 18 & 19 V. c. 128; — "It is contended that 'repaid' implies a Condition Precedent, and that before any one can be 'repaid' he must have paid something himself. No doubt, this is so. But, in practice, the reasonable construction of 'repaid' may, in such a case as this and under such a statute, well include payment of a sum for which a churchwarden has, by the authority of a vestry, himself become liable. I am of opinion that this is the reasonable construction, and that we are justified in holding, under the circumstances, that 'repaid' may include money for which a churchwarden has rendered himself liable, although he has not advanced the amount out of his own pocket" (per Pollock, B., *R. v. St. Mary, Islington*, 59 L. J. Q. B. 462; 25 Q. B. D. 523; 63 L. T. 226; 39 W. R. 10; 54 J. P. 807); "Costs and Expenses," in that connection, "are not only costs and expenses 'expended' but 'to be expended'" (per Smith, J., *Ib.*).

**REPAIR.**—To “repair” means, to make good defects, including renewal where that is necessary (*Inglis v. Buttery*, 3 App. Ca. 552), *i.e.* “patching, where patching is reasonably practicable; and, where it is not, you must put in a new piece” (per Ld Blackburn, *ib.* 579). In *the* the contract was to “carefully overhaul and repair” the plating of an iron ship; held, that that included withdrawing injured plates and substituting new ones where the plating could not properly be patched (*V. espy* jdgmt of Ld Hatherley). But “repair” does not connote a total reconstruction (*R. v. Epsom*, cited GOOD REPAIR).

The general principle for determining a tenant’s liability to “repair,” simpliciter, is that, “diminution in value, resulting from the natural operation of time and the elements, falls on the landlord; but the tenant must take care that the premises do not suffer more damage than the operation of these causes would effect; and he is bound, by reasonable applications of labour, to keep the house as nearly as possible in the same condition as when it was demised” (per Tindal, C. J., *Gutteridge v. Munyard*, 1 Moo. & R. 336; 7 C. & P. 129). But it has been held that a few cracks in the plastering not affecting the stability of the structure, or holes in the walls caused by driving in nails, are not breaches of a covenant to repair (per Cave, J., *Perry v. Chotzner*, 9 Times Rep. 488).

By an agreement to “repair” and keep in repair, there is no obligation to substitute new buildings for old (*Gutteridge v. Munyard*, sup: *Belcher v. McIntosh*, 8 C. & P. 720; 2 Moo. & R. 186; *Lister v. Lane*, 1893, 2 Q. B. 212; 62 L. J. Q. B. 583; 69 L. T. 176; 41 W. R. 626). But an agreement to “KEEP in repair” a house out of repair, means that the contracting party is first of all to put it in good repair having regard to its age and its class,—*i.e.* a house in Spitalfields would not be repaired in the same style as one in Grosvenor Square, and, *semble*, you are to take into consideration the condition of the premises at the time of the contract (*Stanley v. Towgood*, 6 L. J. C. P. 129, 3 Bing. N. C. 4; *Payne v. Haine*, 16 L. J. Ex. 130; 16 M. & W. 541; *Easton v. Pratt*, 33 L. J. Ex. 233; 2 H. & C. 683; *Saner v. Bilton*, 47 L. J. Ch. 267; 7 Ch. D. 815; 38 L. T. 281; 26 W. R. 394; *Lister v. Lane*, sup: *V. KEEP*). *Vf*, *Rose. N. P.* 727 *et seq*: *Woodf.* 627, 628; *Proudfoot v. Hart and Dashwood v. Magniac*, cited GOOD REPAIR.

To put premises in “*Habitable Repair*,” means to improve the state of repair, and render the premises reasonably fit for an ordinary occupier of such premises (*Belcher v. McIntosh*, sup).

#### V. PUT.

“The painting of a house is usually provided for by the express terms of a lease, but it would seem that some degree of *painting* is implied in the mere term ‘Repair.’ It has been ruled for instance, that under a covenant to ‘substantially repair, uphold, and maintain,’ a house, the covenantor is bound to keep up the inside painting (*Monk v. Noyes*,

1 C. & P. 265); but it has been also ruled, on a covenant, — as often as necessary well and sufficiently to repair, uphold, sustain, paint, glaze, cleanse, and scour, and keep and leave, the premises in such repair, reasonable wear and tear excepted, — that the tenant, if he has repaired within a reasonable time before leaving, is only bound, in addition to the repair of actual dilapidations, to clean the old paint, &c, and not to repaint (*Scales v. Lawrence*, 2 F. & F. 289). Questions of this kind will often be more questions of fact than of law; but if the painting be left to be included in the general term 'Repair,' the only legal obligation would seem to be to paint just as much as is necessary to keep the premises from actual deterioration" (Woodf. 630). To this effect is *Crawford v. Newton* and *Proudfoot v. Hart*, cited TENANTABLE REPAIR.

Painting the outside of a house is "Repair" within s. 7 (1), Workmen's Comp Act, 1897 (*Dredge v. Conway*, 70 L. J. K. B. 494; 1901, 2 K. B. 42; 84 L. T. 345; 49 W. R. 518, hereon over-ruling *Wood v. Walsh*, 1899, 1 Q. B. 1009; 68 L. J. Q. B. 492; 80 L. T. 345; 47 W. R. 504; 63 J. P. 212). But ordinary whitewashing, painting, and glazing, are not "Reparations" within a clause in a Settlement enlarging the powers of s. 25, S. L. Act, 1882, as to "rebuilding, reparation, or permanent IMPROVEMENT"; in such a connection, "Reparation," means, repairs of a substantial nature (*Re Egmont*, 44 S. J. 428).

*Vf*, Redman, 210-216: and as to "Substantial Repair," *Brown v. Trumper*, 26 Bea. 11.

Under a covenant to repair, the covenantor must *rebuild in case of fire*, unless there be the qualification "Damage by fire excepted" (*Bullock v. Dommitt*, 6 T. R. 650: *Pym v. Blackburn*, 3 Ves. 34. *Clark v. Glasgow Assree*, 1 Macq. H. L. 668: *Jacob v. Down*, cited KEEP). *Vf*, Woodf. 631.

The *Measure of Damages*, after the term has expired, for breach of a Tenant's covenant to repair is, not the diminution of proprietary value thereby caused but, the amount necessary to put the premises in repair (per Esher, M. R., *Joyner v. Weeks*, 60 L. J. Q. B. 510; 1891, 2 Q. B. 31; 65 L. T. 16; 39 W. R. 583; 55 J. P. 725: *Henderson v. Thorn*, 1893, 2 Q. B. 164; 62 L. J. Q. B. 586; 69 L. T. 430; 41 W. R. 509), whether the premises be re-let or not (*Joyner v. Weeks*, sup); but during the currency of the tenancy, the measure is, "the depreciation in the saleable value of the reversion" (per Wills, J., *Henderson v. Thorn*, sup). *Vf*, where the Tenant knows he is taking an Under-lease, *Conquest v. Ebbetts*, 1896, A. C. 490; 65 L. J. Ch. 808; 45 W. R. 50: *Ebbetts v. Conquest*, 44 S. J. 378.

A covenant by a Lessor to repair, "carries with it a license to the lessor to enter upon the premises of the lessee, and to occupy them for a reasonable time to do that which he has contracted to do" (per Fry, J., *Saner v. Bilton*, sup).

A covenant by a Lessee to "repair and *keep up*," does not disentitle

him to pull down and re-erect (*Re M'Intosh and Pontypridd Imp. Co.*, cited APPROVED PLAN).

*Vf*, as to Covenant to Repair, Fawcett, 313.

As to RELIEF against FORFEITURE for breach of the covenant; *V.* s. 14, Conv & L. P. Act, 1881; Conv & L. P. Act, 1892, on *wh* LEASE, p. 1070: NOTICE, pp. 1292, 1293.

Compulsory Drainage, which under P. H. Act, 1875, is chargeable to Trustees as Owners, is not "repair" to be borne by a TENANT FOR LIFE under a clause directing him to keep the premises in repair (*Re Barney*, 1894, 3 Ch. 562; 63 L. J. Ch. 676; 71 L. T. 180).

Repair a Road, a Railway, or a Highway; *V.* MAINTAIN: MAINTENANCE.

"Repair, form, and pave," a Street; *V.* FORM.

*V.* DILAPIDATION: GOOD CONDITION: GOOD REPAIR: LIABLE: PERFECT REPAIR: REPAIRS: TENANTABLE REPAIR: REBUILDING.

**REPAIRABLE.** — Highway "repairable by the Inhabitants at large"; *V. Rishton v. Haslingden*, cited STREET.

**REPAIRING LEASE.** — "The term 'Repairing Lease' has no very precise signification" (per Erle, C. J., *Easton v. Pratt*, 33 L. J. Ex. 234; 2 H. & C. 687). In that case the Exchequer Chamber (in the absence of a controlling context) held that a Lease, — containing a covenant by the Lessee "to repair, maintain, amend, and keep," the premises repaired (under which phrase "keep repaired" the lessee is bound to PUT the premises in repair, *Payne v. Haine*, cited KEEP), coupled with covenants by the Lessee to deliver up in good repair and to allow the lessor to enter and view and for the tenant to repair on notice, — was a good exercise of a Power to grant a "Repairing Lease." It would seem to follow that an Agreement to grant a "Repairing Lease" does not entitle the lessor to covenants for painting, papering, &c, at stated periods, on *wh* jdgmt of Jessel, M. R., *Truscott v. Diamond Rock-Boring Co.*, cited IMPROVE, where referring to *Easton v. Pratt* (sup) that learned judge said it was "a decision that the insertion of a Covenant by a tenant to repair and keep in repair the premises, makes the lease a Repairing Lease": *V.* REPAIR: TENANTABLE REPAIR: BUILDING LEASE.

"'Improve' and 'Repair' are not equivalent words" (per Brett, L. J., *Truscott v. Diamond Rock-Boring Co.*, cited IMPROVE).

**REPAIRS.** — "Repairs," s. 70, Church Building Act, 1818, 58 G. 3, c. 45, includes, not only repairs to the fabric of a church but also, the expenses necessary for the proper and decent performance of divine service, and the other offices to be performed therein and necessarily incident thereto (*R. v. Consistory Court*, 31 L. J. Q. B. 106; 2 B. & S. 339; 12 C. B. N. S. 220).

“Necessary Repairs”; *V. NECESSARY*, pp. 1254, 1255.

“Repairs and Necessaries” to a Ship; *V. ABBOTT*, Part 2, ch. 3: NECESSARIES.

**REPARATION.** — *V. REPAIR*: “Necessary Occasions,” sub NECESSARY, p. 1253.

**REPASS.** — *V. PASS AND REPASS*.

**REPAYMENT.** — “‘May secure the Repayment of’ (borrowed money) — a form of expression occurring in Railway Acts, which has been held to preclude the issue of securities at a discount” (per Jessel, M. R., *Anglo-Danubian Steam Nav. Co.*, 44 L. J. Ch. 503). *V. RAISE*.

“Bond given for the Repayment of Money,” Stamp Act, 1815, 55 G. 3, c. 184; Stamp Act, 1891, — “Repayment cannot apply to Commission or Interest” (per Platt, B., *Frith v. Rotherham*, 15 L. J. Ex. 136; 15 M. & W. 43).

**REPEAL.** — “‘Repealed’ is not to be taken in an absolute, if it appear upon the whole Act to be used in a limited, sense” (per Ellenborough, C. J., *R. v. Rogers*, 10 East, 573). But the general rule is, “that when an Act of Parliament is ‘repealed’ it must be considered (except as to transactions past and closed) as if it had never existed” (per Tenterden, C. J., *Surtrees v. Ellison*, 9 B. & C. 752). *Vf.* *R. v. Mawgan*, 8 A. & E. 499, 500; Dwar. 530–535; Maxwell, ch. 13, s. 3: s. 38, Interp Act, 1889.

**REPEAT.** — *V. MULTIPLY*.

Repeated Legacy; *V. CUMULATIVE*.

**REPLACE.** — *V. REINSTATE*.

**REPLEVIN.** — “‘Replevin’ is derived of *replegiare*, to redeliver to the owner upon pledges or suretie” (Co. Litt. 161 a; *Vf.* *Ib.* 145 b; *Termes de la Ley*: *Mounsey v. Dawson*, 6 A. & E. 756, 759–761).

*Vh.* Woodf. ch. 12, s. 1: Redman, ch. 7, s. 4: Fawcett, 283: 11 Encyc. 239–245.

**REPLICATION.** — A Replication, in Pleading, was the plt’s answer to the deft’s original plea (3 Bl. Com. 309, 310). Its place is taken by the modern REPLY.

**REPLY.** — *V. WAITING YOUR REPLY*.

“Reply.” R. 14, Ord. 21, R. S. C., does not include a Counter-Claim (*Street v. Gover*, 2 Q. B. D. 498; 46 L. J. Q. B. 582; 36 L. T. 766; 25 W. R. 750: *Alcoy v. Greenhill*, 1896, 1 Ch. 19; 65 L. J. Ch. 99; 73 L. T. 452; 44 W. R. 117). *V. PLEADING*.

“A ‘Reply Post Card,’ means, a Post Card of such a character that

the person receiving the same through the post may, without further payment, again transmit the same or a part thereof through the post" (s. 2, 45 & 46 V. c. 2); when so re-transmitted, it is to be deemed a "Postal PACKET" (Ib.).

**REPORT.** — "The above cargo is accepted on the Report and Samples of Scott & Co," is a warranty that the bulk is equal to the Report and Samples; and is not merely a representation that the Report is the genuine report of Scott & Co, and that the Samples were taken by them (*Russell v. Nicolopulo*, 8 C. B. N. S. 362).

V. SAMPLE: FAIR REPORT: SURVEYOR.

"Report" quâ Part 7, Mer Shipping Act, 1894; V. s. 492.

As to the Privilege of a fair and correct Report of Judicial Proceedings, *V. Kimber v. Press Assn*, 1893, 1 Q. B. 65; 62 L. J. Q. B. 152: of a Constable to Justices, *Andreues v. Nott Bower*, 1895, 1 Q. B. 888; 64 L. J. Q. B. 536: *Va*, PUBLIC MEETING: SHAMEFUL.

**REPRESENT.** — You may "represent" a state of things without making a direct communication thereon to the person affected thereby. Therefore, where a vendor of coals affixed a metal label to a sack of coal indicating that, when full, the sack contained  $\frac{1}{2}$  cwt; held, that he thereby "represented" that it did contain that weight, within s. 29, Weights and Measures Act, 1889, 52 & 53 V. c. 21 (*Franklin v. Godfrey*, 63 L. J. M. C. 239; 43 W. R. 46. *Cp*, WRITTEN WARRANTY). But the representation must be by the "seller"; for an unauthorized verbal representation by a servant no one is responsible; not the master because it was unauthorized, and not the servant because he is not the seller (*Roberts v. Woodward*, 59 L. J. M. C. 129; 25 Q. B. D. 412; 63 L. T. 200; 38 W. R. 770: *Sv*, SELLER); *secus*, when the representation is made by an agent in the course of his employ, for then it is the same as if made by the seller himself (*Baker v. Herd*, 58 J. P. 413; 10 Times Rep. 181).

V. HESITATE: MISREPRESENT: PATENT.

The Manager of a Theatre acting under the instructions of the proprietor, does not "represent, or cause to represent," the plays that are performed therein, within s. 2, Dramatic Copyright Act, 1833, 3 & 4 W. 4, c. 15 (*French v. Gregory*, 9 Times Rep. 548); but a person who, for a benevolent purpose, gets up a dramatic performance, is within the section (*Duck v. Mayen*, 8 Times Rep. 339, 737, cited also RELEASE).

**REPRESENTATION.** — V. FALSE REPRESENTATION: REPRESENT: WARRANTY.

"Upon any Representation or Assurance"; V. UPON.

"Representation," quâ Mer Shipping Act, 1894, "means, probate, administration, confirmation, or other instrument, constituting a person the executor, administrator, or other REPRESENTATIVE, of a deceased

person" (s. 742). *Va*, Finance Act, 1894, s. 22 (1 c); 28 & 29 V. c. 111, s. 2; Regimental Debts Act, 1893, 56 & 57 V. c. 5, s. 29.

"The Representation of the People Acts"; *V*. Rep People Act, 1884, s. 8; *Va*, Table of Abbreviations, ante.

**REPRESENTATIVE.**—A Solicitor is the representative of his client; but Counsel is not, for Counsel "has the whole conduct of the case, and can act even against the instructions of the client" (per Brett, M. R., *R. v. Greenwich Co. Co. Registrar*, 54 L. J. Q. B. 392; 15 Q. B. D. 54; 33 W. R. 671). In that case it was accordingly held that a Solicitor is a "Representative" within s. 17 (4), Bankry Act, 1883, and must be "authorized in writing" to entitle him to question a debtor at a public examination.

The signification of "Representative," when used in reference to the ownership of land, is a question of fact; it may mean HEIR, or DEVISEE, or EXECUTOR, or LEGATEE, deriving under an absolute owner, or (*e.g.* in Receipts for Rents) the Successor to a person having only a limited estate (*M'Aniffie v. Fitzsimons*, 26 L. R. Ir. 29, applying *Lyell v. Kennedy*, cited WRONGFULLY CLAIMING).

"Representative," is sometimes defined as one who has taken REPRESENTATION to a deceased person; *V*. 28 & 29 V. c. 111, s. 2; 33 & 34 V. c. 71, s. 3; 56 & 57 V. c. 5, s. 29.

*V*. REPRESENTATIVES: REAL REPRESENTATIVE.

"Representative LEGISLATURE." quâ Colonial Courts of Admiralty Act, 1890, 53 & 54 V. c. 27, "means, in relation to a BRITISH POSSESSION, a legislature comprising a Legislative Body of which at least one half are elected by inhabitants of the British Possession" (s. 15): *Va*, Colonial Laws Validity Act, 1865, 28 & 29 V. c. 63, s. 1.

**REPRESENTATIVES.**—"The ordinary legal sense of the term 'Representatives,' without the addition of 'legal,' or 'personal,' is exors or admors" (Wms. Exs. 993: *Re Crawford*, 2 Drew. 230; 23 L. J. Ch. 625: *Re Henderson*, 28 Bea. 656: *Leak v. MacDowall*, 3 N. R. 185: *Lindsay v. Ellicott*, 46 L. J. Ch. 878: *Re Ware*, 59 L. J. Ch. 717; 45 Ch. D. 269; 38 W. R. 767; 63 L. T. 52); but in *Re Horner*, *Eagleton v. Horner* (57 L. J. Ch. 211; 37 Ch. D. 695; 36 W. R. 348; 58 L. T. 103), Stirling, J., contextually construed "Representatives" as "Next of Kin" or as "Descendants." So, in a bequest to A. for life, and, at his death, the principal to be paid "to such children or *Representatives of Children* as he may leave," "Representatives" mean "Descendants" (*Herbert v. Forbes*, 1 L. J. Ch. 118). *Va*, *Booth v. Vicars*, 13 L. J. Ch. 147; 1 Coll. 6.

In *Lindsay v. Ellicott* (sup) Jessel, M. R., said that the rule and observations in *Re Crawford* do not apply where "Representatives" are to take derivatively, and he added,—"Where you have a class who take



under the Statute of Distribution as a primary class, and, by reason of some members being dead, another generation take under the Statute, the second class do take by representation. They represent a dead member of the class. Thus, where an intestate dies leaving brothers and sisters, and leaves children of a dead brother and sister, the children take as representing the dead brother and sister. Therefore, it is the very meaning of the word to describe the persons who take thus as statutory next of kin": accordingly, in a limitation to persons who would be entitled under the Statute "exclusive of A. and his Representatives," it was held that "Representatives" meant statutory next of kin.

In a proviso to a Bond enabling the Obligor or his "representatives" to DETERMINE the obligation, "representatives" includes the exs or ads of the obligor (*Re Silvester*, 1895, 1 Ch. 573; 64 L. J. Ch. 390; 72 L. T. 283; 43 W. R. 443).

NOTICE TO QUIT to a lessor, or lessee, "his representatives or Assigns"; *V. Easton v. Penny*, 67 L. T. 290; 41 W. R. 72.

V. LEGAL REPRESENTATIVES: NATURAL REPRESENTATIVES: PERSONAL REPRESENTATIVES: REAL REPRESENTATIVE: REPRESENTATIVE.

**REPRESENTING or PERFORMING.** — The words, "representing or performing" a dramatic piece or musical composition within the Copyright Act, 1842, 5 & 6 V. c. 45, s. 20, mean "that there must be publicity in the audience" (per Brett, M. R., *Wall v. Taylor*, 52 L. J. Q. B. 562: the judgment at this passage seems to have been incorrectly reported at 11 Q. B. D. 107: *V. Duck v. Bates*, 53 L. J. Q. B. 99). *V. Duck v. Bates*, on appeal, 53 L. J. Q. B. 338; 13 Q. B. D. 843; 50 L. T. 778; 32 W. R. 813; 48 J. P. 501, as to what would be publicity: *Vf*, "Place of Dramatic Entertainment," sub PLACE, p. 1485.

V. PERFORM: REPRESENT.

**REPRIEVE.** — " 'Reprieve,' may be derived from the French *Repris*, that is, taken back: so that to 'reprieve,' is properly to take back, or suspend, a Prisoner from the Execution and Proceeding of the Law for that time" (Cowel). *Vh*, 4 Bl. Com. ch. 31.

*Cp*, RESPITE: NOLLE PROSEQUI.

**REPRINTING.** — *V. PRINT.*

**REPRISAL.** — Letters of Marque or Reprisal; *V. LETTER.*

**REPRISES.** — " 'Reprises' are deductions, payments, and duties, that goe yearely and are payed out, of a mannour: As rent charge, rent secke, pensions, corodies, annuities, fees of stewards or baylives, and such like" (*Termes de la Ley*). *Vh*, *R. v. Shaw*, cited OUTGOING.

**REPRODUCTION.** — A COPY or "Reproduction," of a Painting Drawing or Photograph, s. 1, 25 & 26 V. c. 68, must be on some material

or thing which may be forfeited under s. 6; a Tableau Vivant representing a picture, is not a Copy or Reproduction of it (*Hanfstaengl v. Empire Palace*, 1894, 2 Ch. 1; 63 L. J. Ch. 417; 1894, 3 Ch. 109; 63 L. J. Ch. 681; in H. L. nom. *Hanfstaengl v. Baines*, 1895, A. C. 20; 64 L. J. Ch. 81). *V.* MULTIPLY.

**REPUBLICATION.**—A Codicil, or a subsequent Will, may republish a prior Will (*Allen v. Maddock*, 11 Moore P. C. 427), but to do so it must contain either an express republication, or some mention of the former Will from which may be gathered an intention to republish it (*Re Smith*, cited FEME). If there be such a republication, a LEGACY, void under s. 15, Wills Act, 1837, may be set up by a Codicil to which the legatee is not an attesting witness (*Anderson v. Anderson*, 41 L. J. Ch. 247; L. R. 13 Eq. 381; *Re Trotter*, 1899, 1 Ch. 764; 68 L. J. Ch. 363; 80 L. T. 647).

*Vf.* *Re Blackburn*, 59 L. J. Ch. 208; 43 Ch. D. 75: PUBLICATION, at end.

**REPUGNANT.**—That is repugnant which “is contrary to anything said before” (Jacob), *e.g.* a direction that a donee in fee (who is not a married woman) shall not sell the land given, is repugnant because the right to alienate is inherent in the gift. *Vf.* CONDITION: PROVISIO.

**REPUTED.**—As to excluding this word from GENERAL WORDS of a Conveyance; *V.* *Re Peck and London School Bd*, cited WAYS.

**REPUTED MANOR.**—*V.* MANOR.

**REPUTED MARRIAGE.**—*V.* MARRIAGE.

**REPUTED OWNER.**—*V.* POSSESSION, ORDER, OR DISPOSITION.

**REPUTED THIEF.**—“Reputed Thief,” s. 16, 3 G. 4, c. 55, repld s. 31, 3 & 4 W. 4, c. 19 (the latter repealed by 2 & 3 V. c. 71, s. 54), applied only to persons of general bad character, and not to a person suspected of a particular theft (*Cowles v. Dunbar*, Moo. & M. 37; 2 C. & P. 565).

**REPUTED WIFE.**—*V.* WIFE.

**REQUEST.**—*V.* AUTHORITY OR REQUEST: CONSENT: EARNEST: PRECATORY TRUST: REASONABLY REQUIRE.

“At the Request” of Urban Authority, s. 38, 10 & 11 V. c. 17; *V.* *Grand Junction W. W. Co v. Brentford*, 1894, 2 Q. B. 735; 63 L. J. Q. B. 717; 71 L. T. 240; 59 J. P. 51.

“On Request”; *V.* ON DEMAND.

“I request you to give A. credit for goods, and guarantee his pay-

ment for same," is an absolute Guarantee, and is not, by the use of the words "I request," determined by the death of the guarantor (*Bradbury v. Morgan*, 31 L. J. Ex. 462; 1 H. & C. 249).

"Instigation or Request"; *V. INSTIGATION.*

"Letter of Request"; *V. LETTER.*

**REQUIRE.** — In a contractual obligation whereby one party is to do or permit such things as the other may "require," the word means "reasonably require" (*Braunstein v. Accidental Insrce*, 31 L. J. Q. B. 17; 1 B. & S. 782).

"If Trustees be authorized and required, at the instance of the tenant for life, to invest the trust funds in the *purchase of Leaseholds*, they have no option if the tenant for life insist upon his right" (Lewin, 370, citing *Cadogan v. Essex*, 2 Drew. 227; 23 L. J. Ch. 487; *Beauclerk v. Ashburnham*, 8 Bea. 322): but if they are "required" to lend money to a husband on his personal security at the request of the wife, and the husband become insolvent, they are justified in refusing to lend, because the circumstances and position of the husband have so totally changed (*Boss v. Godsall*, 1 Y. & C. Ch. 617; *Va, Luther v. Bianconi*, 10 Ir. Ch. Rep. 194; *Costello v. O'Rourke*, Ir. Rep. 3 Eq. 172; *Vf, Lewin*, 335, 336, 370, 729, 730).

*V. CONSENT.*

Accounts, &c, which might be directed if a Charge had been made by a Partner, "or which the circumstances *may require*," s. 23 (2), Partnership Act, 1890; this latter alternative is only to be exercised in special cases; the rule to be acted on in ordinary cases is given in the preceding paragraph of the clause; and seeing that if a charge had been made the Assignee would not be entitled to Partnership Accounts (subs. 1, s. 31), so, under s. 23 (2), the Court will only direct such accounts in special cases (*Brown v. Hutchinson*, 1895, 2 Q. B. 126; 64 L. J. Q. B. 619; 73 L. T. 8; 43 W. R. 545).

*V. REASONABLY REQUIRE: REQUEST.*

**REQUIRED.** — The phrase "*is hereby required*" is directory only as regards a father's consent to the marriage of a minor under s. 16, Marriage Act, 1823, 4 G. 4, c. 76 (*R. v. Birmingham*, 8 B. & C. 29; 6 L. J. O. S. M. C. 67; 2 M. & R. 230). In giving judgment in that case Tenterden, C. J., said, — "The language of this section is merely to *require* consent; it does not proceed to make the marriage void if solemnized without consent" (cited by Tindal, C. J., *Cole v. Greene*, 13 L. J. C. P. 32): *V. SHALL.* But the provision in s. 29, Alehouse Act, 1828, that the Court hearing the appeal therein mentioned "is hereby required" to adjudge Costs, gives no discretion, and, if the events therein mentioned happen, the Court is called upon to give the litigant Licensing Justices indemnity costs (*R. v. Worcestershire Jus.*, 1900, 2 Q. B.

576; 69 L. J. Q. B. 826; 83 L. T. 272; 49 W. R. 89; 64 J. P. 707).  
*Vf. R. v. London Jus.*, cited PARTY: s. 20, Licensing Act, 1902.

A DIFFERENCE between Railway Companies is not, by Act of Parliament, "required or authorized" to be referred to arbitration within s. 8, Regn of Railways Act, 1873, 36 & 37 V. c. 48, when a Private Railway Act merely "confirms and makes binding" (*Cp*, OBLIGATORY) a provisional agreement, one of the clauses of which provides that all differences between the railway companies parties thereto shall be settled by arbitration (per Smith, J., *G. W. Ry v. Halesowen Ry*, 52 L. J. Q. B. 473: 4 Ry & Can Traffic Ca. 244, 245, adopted *R. v. Mid. Ry*, 56 L. J. Q. B. 585; 19 Q. B. D. 540; 57 L. T. 619; 51 J. P. 550; 5 Ry & Can Traffic Ca. 267): *Vf*, quà this section. *Portpatrick Ry v. Caledonian Ry*, 3 Ry & Can Traffic Ca. 189: *Waterford & Limerick Ry v. G. W. Ry*, Ib. 546: *G. W. Ry v. Central Wales Ry*, 5 Ib. 1.

When a Railway Company, or other body, is empowered by an Act of Parliament to take such lands "as may be required" for their undertaking; that means, such lands as the Company, or other body, may fairly think convenient for its purpose. "I cannot think that 'required' (in this connection) means, 'absolutely necessary.' 'Required' means, where the Company *bonâ fide* think and are of opinion that the lands are desirable. I think those cases of *Stockton, &c. Ry v. Brown* (9 H. L. Ca. 246) and *Kemp v. S. E. Ry* (41 L. J. Ch. 404; 7 Ch. 364) . . . really mean this, that the opinion of the railway authorities is to be the governing matter as to whether the things are for the advantage of the railway, if that opinion is an opinion *bonâ fide* expressed and *bonâ fide* laid before the Court" (per Brett, L. J., *Errington v. Metrop District Ry*, 51 L. J. Ch. 313; 19 Ch. D. 559: *City & S. London Ry v. London Co. Co.*, cited NECESSARY, towards end: *Vf*, per Ld Robertson, *Macfie v. Cullander Ry*, 67 L. J. P. C. 61: *G. W. Ry v. May*, cited SUPERFLUOUS LAND).

A contractual Monopoly by which A. agrees to "obtain and purchase" from B. all, *e.g.* water, "required" by A. in a specified undertaking, precludes A. from getting a supply in any other way than from B. even though such supply be gratuitous (*Kimberley W. W. Co v. De Beers Co*, 1897, A. C. 515; 66 L. J. P. C. 108; 77 L. T. 117).

"Authorized and required"; *V. R. v. Bristol Dock Co*, 6 B. & C. 181.

Rates "required" by law to be based on the Poor Rate; *V. N. E. Ry v. Scarborough*, 38 L. J. M. C. 65; L. R. 4 Q. B. 163.

Where Churchwardens are "directed and required" to raise a Rate, *e.g.* for Church Purposes, a duty is imposed on them to make the Rate; the assent of the vestry is not necessary, even though the Rate has to be made in vestry (*Rose v. Watson*, 1894, 2 Q. B. 90; 63 L. J. M. C. 108: 70 L. T. 906; 42 W. R. 523; 58 J. P. 589).

"If required"; *V. Wilson v. Kynock*, W. N. (77) 164: *Smith v. Pymon*, 7 Times Rep. 417. V. ADVANCE.

“Immediate Possession if required”; *V. IMMEDIATE POSSESSION.*

Sprags or props “where they are required,” R. 22, s. 49, Coal Mines Regn Act, 1887, means, “where they are necessary; and not where the workmen think they are necessary” (per Wills, J., *Gibbon v. Phillips*, 64 L. J. M. C. 42).

*V. AS REQUIRED.*

“Required to Calculate,” s. 31, Such Dy Act, 1853; *V. Re Cornwallis*, 25 L. J. Ex. 149; 11 Ex. 580.

“No longer required”; *V. USELESS.*

Title shall not be “required”; *V. INVESTIGATING, Note.*

**REQUISITION.**—*Quà* Conditions of Sale, a “Requisition” (or “ENQUIRY,” which is synonymous) on Title, is a request based on a defect in title (or its evidence) arising on the Abstract; an “Objection” may arise aliunde (per Blackburn, J., *Waddell v. Woolfe*, 43 L. J. Q. B. 138; L. R. 9 Q. B. 515). *V. INVESTIGATING, Note.*

**REREDOS.**—*V. Re St. John, Pendlebury*, 1895, P. 178: *Re St. Mark's*, 1898, P. 114: *Re Barsham*, 1896, P. 256.

**RESCIND.**—*V. REVOKE.*

**RESCUE.**—“‘Rescous,’ *Rescussus*, is an ancient French word comming from *rescourrer* (*id est*) *recuperare*, that is, to take from, to rescue or recover. *Rescous* is a taking away and setting at liberty against law a distresse taken, or a person arrested by the proces or course of law. And all is one, as to the point of the disseisin, to rescue the distresse after it is taken, and before hand to resist and withstand the taking of it; but yet it is no Rescous, until it be distreyned” (Co. Litt. 160 b: *Vh*, *Termes de la Ley*, *Rescous*: Woodf. 524: Redman, 384).

“Rescue, is the act of forcibly freeing a person from custody against the will of those who have him in custody. If the person rescued is in the custody of a *private* person, the offender must have notice of the fact that the person rescued is in such custody” (Steph. Cr. 99, 100: *Vf*, 4 Bl. Com. 131). *Vh*, 1 Russ. Cr. 904: Rosc. Cr. 790: Arch. Cr. 987. *Cp*, ESCAPE. *V. PRISON.*

**RESEMBLING.**—“The word ‘resembling’ means made, or apparently intended, to resemble” (Steph. Cr. 292: *Vh*, *R. v. Robinson*, 34 L. J. M. C. 176; L. & C. 604).

**RESERVATION.**—“‘Reservation’ is taken divers wayes. and hath divers natures, as sometimes by way of Exception, to keepe that which a man had before in him . . . Sometimes a reservation doth get and bring forth another thing which was not before . . . And note, that in ancient time, their reservations were as well (or for the more part) in victuals, whether flesh, fish, corne, bread, drinke, or what else, as in

money, untill at the last, and that chiefly in the raigne of King Henry I., by agreement. the reservation of victuals was changed into ready money, as it hath hitherto since continued" (Termes de la Ley).

"Note a diversitie betweene an EXCEPTION (which is ever of part of the thing granted and of a thing *in esse*) for which, *exceptis, salvo, proter*, and the like, be apt words; and a Reservation which is alwaies of a thing not *in esse*, but newly created or reserved out of the land or tenement demised" (Co. Litt. 47 a; V. Ib. 143 a: *State v. Wilson*, 42 Maine, 21: *Va*, Touch. 80, where it is said that a Reservation "doth, most commonly and properly, succeed the *Tenendum*, and is made by one or more of these words, *reddend'*, *reservand'*, *solvend'*, *faciend'*, *inveniend'*, or such like").

"In considering what is required by a power of leasing, we should bear in mind that rent, heriots, suit of mill, and suit of court, are, according to the legal sense and meaning of the word, *Reservations*. A privilege to the lessor to hawk, hunt, fish, or fowl, is not either a Reservation or an Exception in point of law" (Sug. Pow. 817).

Therefore a Leasing Power "so as the accustomed yearly *Rents and Reservations* be thereby reserved," would, *semble*, not authorize an Exception of the Mines, Minerals, Quarries, or such like (*Doe d. Douglas v. Lock*, 2 A. & E. 705; 4 L. J. K. B. 113; 4 N. & M. 807: *Vh*, Sug. Pow. 817, 818).

For an example of words of reservation operating as a grant; *V. Wickham v. Hawker*, 10 L. J. Ex. 153; 7 M. & W. 72: on the contrary, *Sutherland v. Heathcote*, cited LIBERTY OF WORKING: *Va*, *Pannell v. Mill*, cited ROYALTIES.

#### V. RESERVING: CONDITION.

**RESERVE.**—A direction to "reserve" the pure personalty for a Charitable Bequest, implies marshalling the assets (*Miles v. Harrison*, 9 Ch. 316; 43 L. J. Ch. 585: *Re Arnold*, 57 L. J. Ch. 682; 37 Ch. D. 637; 58 L. T. 469; 36 W. R. 424: 1 Jarm. 237, 238). *Cp*, EXCLUSIVELY.

#### V. RESERVED BIDDING: RESERVING.

**RESERVE FORCES.**—Quà Army Act, 1881, 44 & 45 V. c. 58, "Reserve Forces," means. the Army Reserve Force and the Militia Reserve Force" (subs. 9, s. 190): *V. ARMY: MILITIA*.

#### *Vf*, AUXILIARY: MILITARY FORCES: VOLUNTEER.

**RESERVE FUND.**—*V. Dent v. London Tramways Co*, 50 L. J. Ch. 190; 16 Ch. D. 344.

**RESERVED BIDDING.**—Where Conditions of Sale provide that the auction is made "subject to a Reserved Bidding," that does not give the right to bid up to the reserve price; *secus*, if the words were "a right to bid is reserved" (*Gilliat v. Gilliat*, 39 L. J. Ch. 142; L. R. 9 Eq. 60. explaining s. 5, Sale of Land by Auction Act, 1867, 30 & 31 V. c. 48).

Quà Sale of Goods Act, 1893, "where a right to bid is expressly reserved, but not otherwise, the SELLER or any one person on his behalf may bid at the AUCTION" (s. 58).

V. HIGHEST: PUFFER: WITHOUT RESERVE.

**RESERVING: RESERVED.** — " 'Reserving.' *Reserve* cometh of the Latine word *reservo*, that is, to provide for store; as when a man departeth with his land, he reserveth or provideth for himselfe a rent for his owne livelihood. And sometime it hath the force of *Saving* or *Excepting*. So as sometime it serveth to reserve a new thing, viz., a rent, and sometime to except part of the thing in *esse* that is granted" (Co. Litt. 142 b, 143 a. *Sr*, this passage criticised in the jdgmt in *Doe d. Douglas v. Lock*, 4 L. J. K. B. 120; 2 A. & E. 705: *Va*, RESERVATION. But a little further on in the jdgmt in *Doe d. Douglas v. Lock*. occurs this passage, — "It may be said, however, that if the person who creates the Power uses the word 'Reserving' in such a way as to make an Exception a Reservation, it must be so taken; but, we think, not necessarily").

"Reserved," s. 8, Game Act, 1831, 1 & 2 W. 4, c. 32, "is not used in a technical sense; it points to an arrangement between landlord and tenant; and the game might be reserved by Lease, by Deed, or by Parol contract" (per Lush, J., *Coleman v. Bathurst*, L. R. 6 Q. B. 369; 40 L. J. M. C. 134; 24 L. T. 426; 19 W. R. 848: Lush, J., was in a minority only as to whether the agreement there amounted to a Reservation).

Rent "reserved"; *V. Dibble v. Bowater*, cited *DUE*.

V. WITHOUT RESERVE.

**RESERVOIR.** — *V. LAND COVERED WITH WATER: TRIBUTARY.*

**RESIDE: RESIDENCE: RESIDENT.** — "Residence," "signifies a mans abode or continuance in a place" (Cowel, *Resiance*).

"What is the meaning of the word 'resides'? I take it that that word, where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats drinks and sleeps, or where his family or his servants eat drink and sleep" (per Bayley, J., *R. v. North Curry*, 4 B. & C. 959). "A man's Residence is where he habitually sleeps" (per Blackburn, J., *Oldham*, 1 O'M. & H. 158, citing *R. v. Norwood*, L. R. 2 Q. B. 457; 36 L. J. M. C. 91: *Sr*, *Walcot v. Botfield*, *inf*).

" 'Residence' has a variety of meanings according to the statute (or document) in which it is used" (per Erle, C. J., *Naef v. Mutter*, 31 L. J. C. P. 359). It is an "ambiguous word" and may receive a different meaning according to the position in which it is found (per Cotton, L. J., *Re Bowie, Ex p. Breull*, 50 L. J. Ch. 386; 16 Ch. D. 484).

A CONDITION to a gift of a house that the donee take actual possession of it "as and for his Residence and Place of Abode," and continue, during his life, to reside therein, does not imply that the donee must continue personally to live in the house; he will satisfy the condition by keeping up the house as a place of residence in which he, and (or ?) some of the members of his family occasionally dwell (*Warner v. Moir*, 53 L. J. Ch. 474; 25 Ch. D. 605; 17, 2 Jarm. 57, 58. It has however been said, "it would seem difficult to reconcile *Warner v. Moir* with *Walcot v. Botfield*, Kay, 534; 2 Eq. Rep. 758," Watson Eq. 1246. 17, *May v. May*, 44 L. T. 412). *Cp.* LIVE AND RESIDE: OCCUPATION, pp. 1311, 1312: PERSONAL OCCUPATION. Such a condition is void if it involves (1) the doing a wrong, (2) the omission of a duty, or (3) an encouragement to either (per Parker, C. J., *Mitchel v. Reynolds*, 1 P. Wms. 189; *Wilkinson v. Wilkinson*, 40 L. J. Ch. 242; L. R. 12 Eq. 604).

*Note: Semble.* such a Condition is inapplicable to an Infant (*Partridge v. Partridge*, cited OMIT), and void quâ a TENANT FOR LIFE, because it offends against s. 51, S. L. Act, 1882, as inducing him to abstain from exercising his powers under that act (*Re Paget*, 55 L. J. Ch. 42; 30 Ch. D. 161; 33 W. R. 898; 17, INDUCE). Where, therefore, a testator directed that his widow should be permitted to occupy his dwelling-house, and that if she ceased to reside there the annuity he gave her should be reduced, it was held (1) that she was Tenant for Life of the dwelling-house, and (2) that the reduction of the annuity was void as offending the section cited (*Re Eastman*, cited OCCUPATION). *See*, RENT FREE.

A power to "reside in" or "occupy" a building subject to a Condition. — *e.g.* to repair, — would seem to imply that the privilege once accepted is always accepted quâ the Condition: thus, where there was a power to A. to occupy a Mill so long as he thought proper, "he nevertheless keeping the premises in good and tenantable repair," and A. accepted, but the premises were afterwards totally destroyed by accidental fire; held, that A. was liable to re-instate the premises, and to pay rent therefor in the meanwhile, and could not escape that liability by declining any longer to occupy (*Gregg v. Coates*, 23 Bea. 33; 4 W. R. 735; 2 Jur. N. S. 964).

An Annuity to A., to cease when A. and B. cease to reside together, does not determine by the death of B. (*Sutcliffe v. Richardson*, 41 L. J. Ch. 552; L. R. 13 Eq. 606). *V.* USUAL PLACE OF ABODE.

A person "resides," quâ *Assessed Taxes*, not only where he sleeps but also at his place of business (*A-G. v. McLean*, 1 H. & C. 750; 32 L. J. Ex. 101; 11 W. R. 292; 8 L. T. 113). *V.* BE.

Residence, quâ *Income Tax Acts*; *V.* *A-G. v. Coote*, 4 Price, 183; *Va.* TEMPORARY: *San Paulo Ry v. Carter*, 1896, A. C. 31; 65 L. J. Q. B. 161; 73 L. T. 538; 44 W. R. 336; 60 J. P. 452; *Grainger v. Gough*, 1896, A. C. 325; 65 L. J. Q. B. 410; 74 L. T. 435; 44 W. R. 561; 60 J. P. 692; CARRY ON, pp. 264, 265; RESIDING.



In *Re Bowie, Ex p. Breull* (50 L. J. Ch. 385; 16 Ch. D. 484). James, L. J., held that a man "resides" within s. 59, *Bankruptcy Act*, 1869, "where he is to be found daily," e.g. a clerk would "reside" at his employer's place of business. But under the *Bankry Act*, 1883, — e.g. in s. 95, — it would seem that "Residence" means, where the person sleeps, or, at any rate, does not include the place where he carries on business; for R. 126, and the Forms in the Appendix to the Rules (*V. Notes to Forms Nos. 3, 4, and 5*) employ the word "resides" in a sense opposed to that of "place of business." *Wf*; "Place of Abode." sub PLACE, p. 1489.

Quà a *Bostardy* Application a woman may "reside" (s. 3, 35 & 36 *V. c. 65*) in the Petty Sessional Division to which she, for convenience and without improper motive, goes temporarily to reside for the purpose of making the application (*R. v. Hughes*, 26 L. J. M. C. 133; *Dears. & B. 188*); but going over night into a Division is not to "reside" there (*Vevers v. Mains*, 4 Times Rep. 724); and if, having made an unsuccessful Application, the woman goes to another Division to make a second Application because she hopes that there she will have a better chance of succeeding, she does not "reside" in the latter Division (*R. v. Myott*, 32 L. J. M. C. 138; 27 J. P. 119). If she has no settled residence, she "resides" where she happens to be (*Lawrence v. Inquire*, 33 J. P. 339; 20 L. T. 391). *V. CEASE.*

The "Residence" of a Grantor or an Attesting Witness, required to be verified on the registration of a *Bill of Sale*, may be where he usually sleeps; but for this purpose it is sufficient, and perhaps better, to state the place "where he is chiefly to be found" (per Pollock, C. B., *Attenborough v. Thompson*, inf), e.g. his place of business, or his master's place of business, where he performs his ordinary duties (*Hewer v. Cox*, 30 L. J. Q. B. 73; *Blackwell v. England*, 27 L. J. Q. B. 124; 8 E. & B. 541; 6 W. R. 59; *Attenborough v. Thompson*, 27 L. J. Ex. 23; 2 H. & N. 559; 6 W. R. 135), or, if not misleading, a man's Club address (*Dolcini v. Dolcini*, 1895, 1 Q. B. 898; 64 L. J. Q. B. 427; 43 W. R. 542). If he have more than one, it will be sufficient if one of his Residences be given and verified (*Greenham v. Child*, 59 L. J. Q. B. 27; 24 Q. B. D. 29; 38 W. R. 94; 61 L. T. 563; herein agreeing with Bacon, V. C., in *Re Moulson, Ex p. Knightly*, 51 L. J. Ch. 823, and dis-agreeing with him in *Wallis v. Smith*, W. N. (S2) 77. The point was ruled as stated by Coleridge, C. J. and Charles, J., *Hosking v. Wood*, 25th Jan 1893). A wide description of the *locality* of the residence may suffice if it gives such information as would enable a stranger to find the residence without unreasonable trouble (*Briggs v. Boss*, 37 L. J. Q. B. 101; L. R. 3 Q. B. 268; *Jones v. Harris*, 41 L. J. Q. B. 6; L. R. 7 Q. B. 157), so, even of an inaccurate description, if not such as to mislead persons of ordinary knowledge and intelligence (*Blount v. Harris*, 48 L. J. Q. B. 159; 4 Q. B. D. 603). The verified residence should be that at the time of

making the Affidavit (*Button v. O'Neill*, 48 L. J. C. P. 368; 4 C. P. D. 354); but, *semble*, the residence at the time of giving the Bill of S. may suffice (*Re Hewer*, 51 L. J. Ch. 904; 21 Ch. D. 871). An inaccurate description in the Bill of S. may be cured by the affidavit (*Jones v. Harris*, sup: *Blaiberg v. Parke*, 52 L. J. Q. B. 110; 10 Q. B. D. 90). V. OCCUPATION: ADDRESS: DESCRIPTION.

"Residence," s. 8, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42, means, home or domicile (*Lambe v. Smythe*, 15 L. J. Ex. 287; 15 M. & W. 434).

A person's place of business was his "Residence" under s. 6, *Com. L. Pro. Act*, 1852 (*Ablett v. Basham*, 25 L. J. Q. B. 239; 5 E. & B. 1019; following *Yardley v. Jones*, 4 Dowl. 45); and was at least, *prima facie* evidence of his residence within s. 2 of that Act (*Naef v. Mutter*, 31 L. J. C. P. 357). But in the Indorsement of a Writ under the R. S. C., where the plaintiff "resides" should be given as at his usual place of residence as distinguished from his place of business (*Re a Solicitor*, 5 Times Rep. 339); and so of a person's "Residence" under s. 9, *Com. L. Pro. (Ir) Act*, 1853 (*Tom v. Nagle*, 13 Ir. Com. Law Rep. App. xxxviii).

A *Company* is only "DOMICILED or ordinarily resident," within R. 1 (*c, e*), Ord. 11, R. S. C., where its PRINCIPAL OFFICE is (*Jones v. Scottish Acc. Insree*, 55 L. J. Q. B. 415; 17 Q. B. D. 421; *Vh, Newby v. Van Oppen Co*, 41 L. J. Q. B. 148; L. R. 7 Q. B. 293; 26 L. T. 164; *Carron Co v. Maclareu*, 5 H. L. Ca. 416; *Watkins v. Scottish Imperial Insree*, 58 L. J. Q. B. 495; *Haggin v. Comptoir d'Escompte*, 58 L. J. Q. B. 508; 23 Q. B. D. 519; 37 W. R. 733). *Vj*, RESIDING.

Though a Foreign Incorporated Co resides in England if it has a place of business there (*Haggin v. Comptoir d'Escompte*, sup; *sethc, Badcock v. Cumberland Gap Park Co*, 1893, 1 Ch. 362; 62 L. J. Ch. 247), yet that rule is not applicable to an individual or private firm (*Russell v. Cambefort*, 58 L. J. Q. B. 498).

A Ry Co "resided" within s. 97, *Com. L. Pro. Amendment Act (Ir)*, 1856, 19 & 20 V. c. 102, where it had a Station (*M'Mahon v. Irish N. W. Ry*, Ir. Rep. 5 C. L. 200).

#### V. CARRY ON: DWELL.

Temporary Residence without DOMICIL may be sufficient to found jurisdiction quà a Judicial Separation (*Armytage v. Armytage*, 1898, P. 178; 67 L. J. P. D. & A. 90; 78 L. T. 689).

Quà *Elementary Education* (Blind and Deaf Children) Act, 1893, 56 & 57 V. c. 42, "a Child resident in a school, or boarded out in pursuance of this Act, shall be deemed to be resident in the district from which the child is sent" (subs. 2, s. 15).

Quà s. 189, *Merchant Shipping Act*, 1854, repld s. 165, *Mer Shipping Act*, 1894, the residence of the Owner or Master of a Ship does not include a place of occasional business (*The Blakeney*, Swabey, 428).

Quà *Oxford University Act*, 1854, 17 & 18 V. c. 81, s. 48, a Fellow

of a College, having a living where he usually resided 9 miles from Oxford, but having also exclusive occupation of rooms at his College, in which rooms he frequently slept, was held not a "Resident" so as to be eligible as a member of the Congregation of the University (*R. v. Oxford*, L. R. 7 Q. B. 471).

Residence quâ a *Pauper Settlement* or a status of Irremoveability (s. 34, 39 & 40 V. c. 61) must be his home and fixed place of abode (*Holborn v. Chertsey*, 54 L. J. M. C. 53; 14 Q. B. D. 289; *Vf, Merthyr Tydvil v. Stepney*, 54 L. J. M. C. 12; *R. v. Abingdon*, 39 L. J. M. C. 153; L. R. 5 Q. B. 406; *R. v. Glossop*, 35 L. J. M. C. 148; L. R. 1 Q. B. 227; *R. v. St. Leonard's, Shoreditch*, 35 L. J. M. C. 48; L. R. 1 Q. B. 21; *Wolstanton v. Northwich*, 46 L. T. 528; *R. v. East Stonehouse*, 23 L. J. M. C. 137; 4 E. & B. 901). As to what is a Break of such a residence, *V. R. v. Stapleton*, 1 E. & B. 766; *Manchester v. Ormskirk*, 16 Q. B. D. 723; *R. v. St. Leonard's, Shoreditch*, sup: *Cambridge v. Edmonton*, 1900, 2 Q. B. 111; 69 L. J. Q. B. 584; 82 L. T. 495; 48 W. R. 559; 64 J. P. 533: As to a Child under 16, *V. West Ham v. St. Matthew*, 1894, A. C. 230; 63 L. J. M. C. 97; 70 L. T. 818; 42 W. R. 573; 58 J. P. 493.

"Justice having jurisdiction in the place where the Pauper resides," s. 14 (2), Lunacy Act, 1890; *V. R. v. Bell*, 1900, 2 Q. B. 391; 69 L. J. Q. B. 622; 82 L. T. 711; 64 J. P. 789.

Quâ *Representation of the People Acts* (V. Act, 1832, ss. 27, 32; Act, 1867, ss. 46, 4 (3): s. 27, Act, 1832, was repealed by Rep. People Act, 1884, but condition of residence has still an application, V. Registration Order, 1895, Sch 2, Part 1, ss. 8, 9, 11, 12, 14), Residence includes a dwelling-place always kept up by the vote-claimant though only occasionally resided in by himself personally (*Northallerton*, 1 O'M. & H. 170, 171, cited by Chitty, J., *Re Ingilby*, 6 Times Rep. 446; *Sr, Oldham*, 1 O'M. & H. 158; *Bewdley*, Ib. 175; *Whithorn v. Thomas*, 7 M. & G. 1; 14 L. J. C. P. 38), and especially so if it be the usual residence of his wife, for *ubi uxor ibi domus* (*Northallerton*, sup: *Great Marlow*, B. & Aust. 83; *Sv, R. v. Norwood*, L. R. 2 Q. B. 457; 36 L. J. M. C. 91). But such a constructive dwelling-place must be one which the vote-claimant is always able to enjoy personally and to which, whilst away, he has the *animus revertendi*. Therefore, a person in prison (*Powell v. Guest*, 34 L. J. C. P. 69; 18 C. B. N. S. 72; *Donnelly v. Graham*, 24 L. R. Ir. 127; *Sv, Charlton v. Morris*, 1895, 2 I. R. 541; *Holland v. Hagan*, Ib. 551), or prevented by duty from residing at his dwelling-place, e.g. a soldier away on duty (*Ford v. Hart*, L. R. 9 C. P. 273; 43 L. J. C. P. 24; 2 Hop. & Colt. 167), or a clerk or servant whose general duties compel him to live away (*Ford v. Drew*, 5 C. P. D. 59; 49 L. J. C. P. 172; *Beal v. Exeter*, 20 Q. B. D. 300; 57 L. J. Q. B. 128; 58 L. T. 407; 36 W. R. 507; 52 J. P. 501; *secus*, if sent away for only one night, *Beal v. Ford*, 3 C. P. D. 73; 47 L. J. C. P. 56; 2 Hop. &

Colt. 374), cannot be said to "reside" at such dwelling-place. So, of one who has, for however short a period, deprived himself of the dominion over his dwelling-place, *e.g.* a non-resident clergyman whose rectory-house has been assigned to the officiating curate (*Durant v. Carter*, L. R. 9 C. P. 261; 43 L. J. C. P. 17; 2 Hop. & Colt, 142), or a clergyman who has exchanged duty and residence (*Ford v. Pye*, L. R. 9 C. P. 269; 43 L. J. C. P. 21; 2 Hop. & Colt. 157). But a residence, if actual, is not less a residence because tortious (*Beal v. Ford*, sup). *Cp.*, "Inhabitant Occupier," sub INHABITANT. *Note:* Non-residence whilst being away on duty, for "not exceeding 4 months at any one time," has a statutory exemption (54 & 55 V. c. 11, making general the Police exemption of 50 & 51 V. c. 9); *Va.*, as to losing dominion by letting a dwelling-place as a furnished house for a like period, 41 & 42 V. c. 3. *Wh.*, 1 Rogers, 148 *et seq.*

As to what amounted to a Residence for 12 months sufficient to qualify a London Vestryman; *V. Stanford v. Williams*, 80 L. T. 490; 15 Times Rep. 316.

Quà *Small Dwellings Acquisition Act*, 1899, 62 & 63 V. c. 44, a person is not "resident in a house unless he is both the Occupier of, and Resident in, that house" (s. 10).

*V. DOMICIL: INHABITANT: OCCUPATION: OCCUPIER: ORDINARY RESIDENCE: PRIVATE DWELLING-HOUSE: REAL RESIDENT HOLDER.*

"Resident *Abroad*," quà obtaining from a plaintiff Security for Costs; *V. Ann. Pr.*, notes to R. 6, Ord. 65, R. S. C.: Dan. Ch. Pr. 84.

"Bonâ fide Residence"; *V. BONÂ FIDE.*

Residence and Non-Residence of the Clergy; *V. Phil. Ecc. Law*, 884-898: Residence Houses of the Clergy; *V. Ib.* Part 5, ch. 2.

"Now resides," "Now residing"; *V. Now*, p. 1297.

"Place of Residence"; *V. PLACE*, p. 1490.

"Return to reside in England"; *V. RETURN.*

Royal Residence; *V. ROYAL PALACE.*

The erection of huts for evicted tenants is inconsistent with a demise of land for the purpose of providing a "*Suitable Residence and Holding*" for a Clergyman (*Kehoe v. Lansdowne*, 1893, A. C. 451; 62 L. J. P. C. 97).

"Agents or Servants *usually* residing with" the Real Worker of Goods, so as to escape the PEDLAR's license, s. 23, 50 G. 3, c. 41, included only such agents and servants as resided in the same house as their employer as members of his family (*R. v. Mainwaring*, 10 B. & C. 66).

**RESIDENT MAGISTRATE.** — In Ireland, a "Resident Magistrate," means, a MAGISTRATE appointed in pursuance of the Constabulary (Ir) Act, 1836, 6 & 7 W. 4, c. 13 (s. 11 (6), 50 & 51 V. c. 20).

**RESIDENT PRIEST.** — A legacy to the "Resident Priest" of a locality, comprises one whose usual residence is elsewhere but who is the

duly appointed Resident Priest of the locality and who occasionally sleeps in the priest's house there, which house he keeps up, and who performs many religious services in the locality (*Re Ingilby*, 6 Times Rep. 446; 89 Law Times, 253, 254).

V. PRIEST.

RESIDENTIAL FLAT.—V. FLAT.

RESIDING.—A Turkish Corporation, by Turkish law established as a state Bank for the Ottoman Empire with its seat at Constantinople and power to establish branches, established a branch in London under the control of directors resident in England; held, that the Corporation was not a "person residing in the United Kingdom," quâ Income Tax, within s. 2, Sch D, 16 & 17 V. c. 34 (*A-G. v. Alexander*, 44 L. J. Ex. 3; L. R. 10 Ex. 20). But a Joint Stock Co having a registered office in London, from which also its affairs in the United Kingdom were managed by a board of English directors, and to which were sent transcripts of the Co's books and also the money for the dividends to English shareholders, was held to be "residing" in the United Kingdom within the section cited, although all the working operations of the Co were in Italy, where also all its profits were earned under the direction of a Board resident there, and where also its books and general moneys were kept (*Cesena Sulphur Co v. Nicholson*, 45 L. J. Ex. 281; 1 Ex. D. 428: at same reference *Va, Calcutta Jute Co v. Nicholson*, which was a similar case in India).

V. LIVING: RESIDE.

RESIDUARY BEQUEST or DEVISE.—V. REST.

RESIDUARY EXECUTOR.—V. PERSONAL ESTATE.

RESIDUARY LEGATEE.—A person appointed "Residuary Legatee" takes all the RESIDUE of the personal estate (*Langley v. Thomas*, 6 D. G. M. & G. 645; 5 W. R. 219).

Like LEGACY, "Residuary Legatee" has, *primâ facie*, reference only to personalty (*Windus v. Windus*, 26 L. J. Ch. 185; 6 D. G. M. & G. 549: *Re Spooner*, 21 L. J. Ch. 151; 2 Sim. N. S. 129: *Re Morris*, 71 L. T. 179: *Hamilton v. Foot*, Ir. Rep. 6 Eq. 572: *Gethin v. Allen*, 23 L. R. Ir. 236); contextually, however, it may extend to realty (*Hughes v. Pritchard*, 46 L. J. Ch. 840; 6 Ch. D. 24). but in that case there was a prior gift of the realty, and where there is no such a gift, *Hughes v. Pritchard* is not in point (*Re Methuen and Blore*, 50 L. J. Ch. 464: 16 Ch. D. 696). But the contextual widening of this phrase is supplied in such a case as where a testator directed his exors to sell specified landed property, and then gave legacies and made specific devises of other landed property, and concluded, "I constitute A. my Residuary Legatee." and there it was held that the land not specifically devised (after satisfying

the general purposes of the Will) went to A., and not to the heir-at-law (*Singleton v. Tomlinson*, 3 App. Ca. 404; 38 L. T. 653; 26 W. R. 722; *Re Sankey*, W. N. (89) 79; *Sv, Re Morris*, sup). *Vh*, 1 Jarm. 743; *Re Williams*, *Williams v. Acton*, 35 S. J. 24.

**RESIDUARY PERSONAL ESTATE.** — *V. Court v. Buckland*, 15 L. J. Ch. 214; 1 Ch. D. 605; 1 Jarm. 761 *et seq.*

**RESIDUE.** — *V. REMAINDER: REST: SURPLUS: WHAT IS LEFT.*

"A 'Residue' of personal estate, means, the personal estate which remains after payment of the testator's debts, funeral and testamentary expenses, and the costs of the administration of the estate, including the costs of an administration suit" (Dan. Ch. Pr. 842, citing *Trethewy v. Helyar*, 4 Ch. D. 53; 46 L. J. Ch. 125; *Fenton v. Wills*, 7 Ch. D. 33; *Blann v. Bell*, 7 Ch. D. 382; 47 L. J. Ch. 120; *Re Jones*, 10 Ch. D. 40), and after payment of the legacies. *If, Re Brook*, 13 W. R. 573; 12 L. T. 172; *Trott v. Buchanan*, 33 W. R. 339.

"Keep the Residue"; *V. KEEP*, at end.

An Appointment, of part of a fund subject to a Power, to A., B., and C., each taking a separate sum, followed by an Appointment to D. of the "Residue," will not, under "Residue," pass either of such sums which may lapse by the death of A., B., or C., in the appointor's lifetime (*Lakin v. Lakin*, 13 W. R. 704; 12 L. T. 517).

A gift of "Residue" following on a gift of the remainder of the testator's estate, does not nullify that latter gift (*Kilvington v. Parker*, 21 W. R. 121; *Bristow v. Masefield*, 31 W. R. 88).

The "Residue" of a fund, means, what remains after the withdrawal of a part; not a definite share of it (*Virian v. Mortlock*, 21 Bea. 252).

Bequest of "Residue and Remainder" of two mortgage debts; *V. Re Grainger*, 1900, 2 Ch. 756; 69 L. J. Ch. 789; *revid* in H. L. nom. *Higgins v. Dawson*, 1902, A. C. 1; 71 L. J. Ch. 132.

"Residue" in the sense of an arithmetical remainder; *V. Stokes v. Prance*, 67 L. J. Ch. 74; 1898, 1 Ch. 222.

"Residue of Interest and Rents"; *V. RENTS AND PROFITS.*

As to value of "Residue" for exercising a Power of Appointment; *V. Re Milner*, 1899, 1 Ch. 563; 68 L. J. Ch. 255; 80 L. T. 151; 47 W. R. 369.

Revocation of gift of "the Residue"; *V. Clarke v. Butler*, 1 Mer. 304.

"Residue of my Money," held to include stocks, shares, and securities for money (*Re Smith, Henderson-Roe v. Hitchins*, cited MONEY). The "Residue of Money." held a gift of the general residue (*Re White*, 51 L. J. P. D. & A. 40; 7 P. D. 65).

*V. Specific Bequest*, sub SPECIFICALLY.

"Residue of the said Sums" in a Settlement; *V. De Lisle v. Hodges*, 43 L. J. Ch. 385; L. R. 17 Eq. 440; *Cp, OVERPLUS.*

“Residue of a *Term*,” sale of; *V. LEASE.*

A devise of “Residue” of lands, though personalty was included in it, passed the fee even before s. 28, Wills Act, 1837 (*Murray v. Wise*, Pr. Ch. 264; 2 Vern. 564; *Tanner v. Wise*, 3 P. Wms. 295; *Tilley v. Simpson*, 2 T. R. 659; *Hopewell v. Ackland*, 1 Com. 164).

*V. CHATTELS; OUT OF THE RESIDUE.*

**RESIGNATION.** — “‘Resignation,’ *Resignatio*, is used particularly for the giving up of a BENEFICE into the hands of the Ordinary, otherwise, by the Canonists, termed *Renunciatio*. And though it signifie all one in nature with the word SURRENDER, yet it is by custome restrained to the yielding up a Spiritual Living, and ‘Surrender’ to the giving up of Temporal Lands into the hands of the Lord” (Cowel).

*Vh*, Phil. Ecc. Law, Part 2, ch. 13: Cripps’ Church and Clergy. 642–659.

A Resignation of an OFFICE, “implies that the party resigning has been elected into the Office which he resigns; a man cannot ‘resign’ that which he is not entitled to” (per Cockburn, C. J., *R. v. Blizard*, 36 L. J. Q. B. 21; L. R. 2 Q. B. 57).

*Cp*, RENUNCIATION.

**RESOLUTION.** — Quà Bankry Act, 1883, “‘Resolution,’ means, Ordinary Resolution,” and “‘*Ordinary* Resolution,’ means, a Resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution”: “‘*Special* Resolution,’ means, a Resolution decided by a majority in number and  $\frac{3}{4}$ ths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution” (s. 168).

“Resolution,” s. 72 (2), Bankry Act, 1883, means, the Resolution fixing the Trustee’s Remuneration, whether that be by the creditors or the committee of inspection (*Re Gallard*, 1892, 1 Q. B. 532; 61 L. J. Q. B. 425; 66 L. T. 452; 40 W. R. 385).

The Companies Act, 1862, “provides for three sorts of Resolutions; — (1) an *Ordinary* Resolution, which is that of a simple majority of members at a duly convened and constituted meeting; (2) a *Special* Resolution; (3) an *Extraordinary* Resolution. A *Special* Resolution, is a Resolution passed by  $\frac{3}{4}$ ths of the members present at a general meeting of which notice, specifying the intention to propose such resolution, has been duly given; and confirmed by a subsequent resolution, passed by a majority at a subsequent general meeting, of which notice has been duly given, held at an INTERVAL of not less than 14 days nor more than one month from the date of the first meeting (s. 51). A fresh notice should be given for the second meeting (*Alexander v. Simpson*, 43 Ch. D. 139; 59 L. J. Ch. 137). An *Extraordinary* Resolution is a Resolution passed by  $\frac{3}{4}$ ths of the members present at a general meeting of which notice

specifying the intention to propose such resolution has been duly given; but needs no confirmation (s. 129). In other words, an Extraordinary Resolution is the first step of a Special Resolution" (Smith's Company Law, 6 ed., 74. 75). A member may be present "in person or by proxy, in cases where, by the regulations of the Co. proxies are allowed" (s. 51). *Vh, Re Bridport Old Brewery Co*, 2 Ch. 191: *Re Silkstone Full Colliery Co*, 1 Ch. D. 38: *Vf, SPECIFY*.

"Special Resolution," quâ Canal Boats Act, 1877, 40 & 41 V. c. 60, means, "a resolution passed in manner provided by" s. 51, Comp Act, 1862 (s. 12).

Resolution of a Municipal Corporation to grant a Lease; *V. Drogheda v. Holmes*, 5 H. L. Ca. 460.

**RESORT.** — "To resort" to a place, *e.g.* s. 1. 16 & 17 V. c. 119. means, physically to go to a place other than your own in the sense of FREQUENTING it; sending letters and telegrams to a place, is not "resorting" thereto (*R. v. Brown*, 1895, 1 Q. B. 119; 64 L. J. M. C. 1; 72 L. T. 22; 43 W. R. 222; 59 J. P. 485; 11 Times Rep. 54: *Cp, BROTHEL*). So, one Member of a Club betting with other Members on the Club premises, does not "use" the Club for "betting with persons resorting thereto." within ss. 1, 3, 1b. (*Downes v. Johnson*, 1895, 2 Q. B. 203; 64 L. J. M. C. 238; 72 L. T. 728; 43 W. R. 556; 59 J. P. 487). *V. Murphy v. Arrow*, cited FOUND, p. 758.

"Open, keep, or use"; *V. USE*.

"Place of Resort"; *V. PLACE*, pp. 1484, 1485.

**RESPECT.** — *V. IN RESPECT OF*.

**RESPECTABLE.** — *V. RESPONSIBLE*.

**RESPECTIVE : RESPECTIVELY.** — "Respective," "respectively," are words of severance. Occurring in a testamentary gift to more persons than one, their effect is "to sort out" the devisees or legatees so that they take as TENANTS IN COMMON (*Re Moore*, 31 L. J. Ch. 368; 10 W. R. 315; 6 L. T. 43; wherein Wood, V. C., explained his own decision in *Re Hodyson*, 1 K. & J. 178: *Va, Sutcliffe v. Howard*, 38 L. J. Ch. 472; 17 W. R. 819; *Ice v. King*, 16 Bea. 46; 21 L. J. Ch. 560; *Davis v. Bennett*, 31 L. J. Ch. 337; *Vf, 2 Jarm. 257. 259; Wms. Exs. 1327*). But a devise to S. M. for life, remainder to the children of her body and the heirs of their "respective" bodies, creates a JOINT TENANCY in the children and several inheritances in tail (*Ex p. Tanner*, 20 Bea. 374; 24 L. J. Ch. 657); in which case it was also held that a tenancy in common in the children would have been created, if the devise had been to the children and the heirs of their bodies "respectively." because in that case the word "respectively" would have had reference to the whole estate. *Vf, Perry v. White*, 2 Cowp. 781; *Doe d. Patrick v. Royle*, 18 L. J. Q. B. 145; 13 Q. B. 100:



*Doe d. Littlewood v. Green*, 8 L. J. Ex. 65; 4 M. & W. 229; *Re Atkinson*, 1892, 3 Ch. 52; 61 L. J. Ch. 504; *Vanderplank v. King*, 3 Harc. 1; 12 L. J. Ch. 497; 7 Jur. 548; *Gordon v. Atkinson*, cited EACH; *Torrett v. Frampton*, Style, 434; Wms. Exs. 1329.

Cross-Remainders may be implied notwithstanding the use of these words (2 Jarm. 545, 551).

Sometimes "respective," and "respectively," are read into testamentary dispositions; *V. At*, p. 137.

In a Power of Sale to Trustees "and their *respective heirs and assigns*," "respective" was rejected as surplusage, so that surviving Trustees could make a title (*Jones v. Price*, 10 L. J. Ch. 195; 11 Sim. 557).

"In Court or in Chambers *respectively*," s. 39, Jud. Act, 1873, means "either in Court or in Chambers" (*Salm-Kyrburg v. Pomansky*, 53 L. J. Q. B. 428; 13 Q. B. D. 218; *Amstell v. Lesser*, 55 L. J. Q. B. 114; 16 Q. B. D. 189).

"Respective Owners or Occupiers," s. 150, P. H. Act, 1875, means, "all and every of them" (per Kekewich, J., *Handsworth v. Derrington*, 66 L. J. Ch. 694).

S. 10, Jud. Act, 1875, incorporating into the administration of Insolvent Estates and the winding-up of Companies the rules of Bankruptcy as to the "respective Rights of Secured and Unsecured Creditors," affects the rights of all classes of creditors *inter se* (*Re Whitaker*, 1900, 2 Ch. 676; 1901, 1 Ch. 9; 69 L. J. Ch. 774; 70 Ib. 6, over-ruling *Re Maggi, Winchouse v. Winchouse*, 51 L. J. Ch. 560; 20 Ch. D. 545).

**RESPITE.** — Respite is a delay, forbearance, or continuance, of time (Glanvil, l. 12, c. 9), *e.g.*, as used in a Copyhold Admittance, "but his Fealty was respited," or to "respite" the doing of HOMAGE (Cowel, *Respite of Homage*), or to "respite" an Appeal at Quarter Sessions, or "the Jury is respited, through defect of the Jurors" (3 Bl. Com. 354), or to "respite" execution of the judgment on a convict.

*V. ADJOURN. Cp. REPRIEVE.*

**RESPONDENT.** — The Respondent in a Matrimonial Cause is the defendant thereto. The Co-Respondent, is the ALLEGED adulterer who, in a suit by a husband, must be joined as a deft unless the Court "on SPECIAL Grounds" excuses (s. 28, Matrimonial Causes Act, 1857).

The deft to a Quarter Sessions Appeal, is called the Respondent; so, generally, of the deft to a Petition. So, of Appeals generally, the party (whether plt or deft) against whom the appeal is brought, is called the Respondent.

Qua Summary Prosecutions Appeals (Scot) Act, 1875. 38 & 39 V. c. 62, "the Respondent," means and includes, any PARTY to a cause other than the party appealing under this Act against the determination thereof by an Inferior Judge" (s. 2).

RESPONDENTIA. — *V.* BOTTOMRY BOND.RESPONSIBLE. — *V.* INDEMNIFY.

A Condition which exonerates a Carrier from being "responsible" for an article, extends to its damage as well as to its loss (*Pratt v. S. E. Ry*, 1897, 1 Q. B. 718; 66 L. J. Q. B. 418; 76 L. T. 465; 45 W. R. 503: *Van Toll v. S. E. Ry*, 31 L. J. C. P. 241; 12 C. B. N. S. 75).

"Responsible OFFICER," quâ the Customs, means and includes, "the Master, Mates, and Engineers, of any Ship; and, in the case of a ship carrying a Passenger Certificate, the Purser or Chief Steward; and, where the ship is manned by Asiatic seamen, the Serang or other leading Asiatic officer" (s. 3, 53 & 54 V. c. 56).

When a clause in a Lease (against Assignment without consent) provides that Consent shall not be refused to a "PERSON of responsibility or respectability," *semble*, a Municipal Corporation is not a "person" within the provision (*Harrison v. Barrow in Furness*, 63 L. T. 834; 39 W. R. 250).

*V.* UNREASONABLY.

A Bankrupt cannot "justly be held responsible" for his estate not paying 10s. in the £ (s. 8 (3), Bankry Act, 1890; s. 56 (1), 35 & 36 V. c. 58), if, being a Respondent in an Election Petition, he tried to stay the proceedings by offering to give up the seat, but which offer the judges declined and so the hearing lasted several days, the result being that the respondent was un-seated, and ordered to pay costs which proved heavy and his failure to pay which caused the bankry (*Re Davitt*, 1894, 1 I. R. 517).

**REST.** — Phrases in a will dealing with the residue of a person's property, — *e.g.* "Rest," "RESIDUE," and "REMAINDER," or either or any of such words, — are not merely most comprehensive in themselves, but will frequently enlarge the scope of other words in association with them.

A Residuary Bequest, always (*Cambridge v. Rous*, 8 Ves. 25: *Leake v. Robinson*, 2 Mer. 392: *Reynolds v. Kortright*, 18 Bea. 427), and a Residuary Devise, since Jan 1st 1838 (Wills Act, 1837, s. 25), carries not only everything not in terms disposed of, but "sweeps in everything" (*Sc. Springett v. Jenings*, 40 L. J. Ch. 348; 6 Ch. 333; distd *Re Mason*, 1901, 1 Ch. 619; 70 L. J. Ch. 343) which turns out to be undisposed of" (per Wood, V. C., *Bernard v. Minshull*, 28 L. J. Ch. 657: *Vf. Re Bagot*, 1893, 3 Ch. 348; 62 L. J. Ch. 1006; 69 L. T. 399: *Cogswell v. Armstrong*, 2 K. & J. 227: 1 Jarm. 761 *et seq.*: Theobald, ch. 19: Wms. Exs. 1319: As to Devises, Jarm. ch. 20: Lewin, 169, 170); except a Share of the Residue itself which, on failing, will go as undisposed of, unless it be the manifest intention of the testator that such lapsed share should belong to the donees of the residue (1 Jarm. 764: *Re Rhoades*, 54 L. J. Ch. 573; 29 Ch. D. 142; 33 W. R. 608: *Holgate v. Jennings*,

73 S. J. 303; following *Crawshaw v. Crawshaw*, 49 L. J. Ch. 662; 14 Ch. D. 817; 29 W. R. 68. *Vf*, *Re Ballance*, 58 L. J. Ch. 534; 42 Ch. D. 62; 37 W. R. 600, in *while* the conflicting cases from *Humble v. Shore*, 7 Hare, 247, downwards are succinctly stated by Kay, J.; and, probably, *Humble v. Shore*, and the cases following it, may now be regarded as definitely over-ruled by *Re Palmer*, 1893, 3 Ch. 369; 62 L. J. Ch. 988; 69 L. T. 477; 42 W. R. 151). *V. FALL*.

"All the Rest" (*Attree v. Attree*, 40 L. J. Ch. 192; L. R. 11 Eq. 280; 24 L. T. 121; 19 W. R. 464; *Dobson v. Bowness*, L. R. 5 Eq. 404), or "the Rest and Residue" (*Smyth v. Smyth*, 8 Ch. D. 561; 26 W. R. 736; 38 L. T. 633), may very well include and pass realty, even though found in association with words relating to personalty. In the latter case a gift of "my sheep and all the rest, residue, moneys, chattels, and all other my effects," was held (by Malins, V. C.) to pass realty. But in *Doe d. Hurrell v. Hurrell* (cited ESTATE AND EFFECTS) a gift of "all the Rest and Residue of my Estate" was, on the context, confined to personalty. *Vh*, *Marhant v. Twisden*, Gilb. Eq. Rep. 30; *Murray v. Wise*, cited RESIDUE, at end; *Meeds v. Wood*, 19 Bea. 215; 1 Jarm. 728.

Where Pecuniary Legacies are followed by a gift (by whatever words) of the Residue of the Real and Personal Estate, such residue is a mixed fund on which the legacies are charged proportionally and rateably (*Greville v. Brown*, 7 H. L. Ca. 697; *Gainsford v. Dunn*, 43 L. J. Ch. 403; L. R. 17 Eq. 405; *Re Bawden*, 1894, 1 Ch. 693; 63 L. J. Ch. 412; 70 L. T. 526; 42 W. R. 235). As to working out proportion of liability for Debts between such a residuary donee and specific legatees. *V. Raikes v. Boulton*, 29 Bea. 41; *Re Saunders-Davies*, 56 L. J. Ch. 492; 34 Ch. D. 482; *Re Bawden*, sup.

"All the Rest of my Money, however invested"; *V. Re Pringle*, 50 L. J. Ch. 689; 17 Ch. D. 819.

"Rest of my Residuary Estate"; *V. Re Judkin*, cited SEVERANCE.

As to the efficacy of "All the Rest" to pass the LEGAL ESTATE. *V. Re Brown and Sibly*, 24 W. R. 782.

*V. RESIDUE: REMAIN: ALL.*

A Rest, in taking an ACCOUNT, is a pause at which the net balance between receipts and expenses is ascertained, so that interest may be abated or charged according to the finding; *e.g.*, as between Mortgagee in Possession and his Mtgor, to reduce the principal on which interest is thenceforth to be debited, or (if it be shown that the principal has been more than paid) to charge the Mtgee with interest on the excess: *V. "Taking Accounts with Rests,"* Fisher, s. 1793 *et seq.*

Rests as between a Purchaser who has been let into possession and his unpaid Vendor; *V. Donovan v. Fricker*, Jacob, 165; *Neesom v. Clarkson*, 4 Hare, 104; *Patch v. Wild*, 7 Jur. N. S. 1181.

As between Tenant for Life and Remainder-man, *V. Re Chesterfield*, 52 L. J. Ch. 958; 24 Ch. D. 643.

**RESTITUTION.** — “ ‘Restitution, *Restitutio*,’ is the yielding up again, or restoring, of any thing unlawfully taken from another. But it is most frequently used in the Common Law for the setting him in possession of Lands or Tenements that hath been unlawfully disseised of them ” (Cowel).

Restitutio in integrum; *V. Western Bank of Scotland v. Addie*, L. R. 1 H. L. Sc. 145; *Adam v. Newbigging*, 57 L. J. Ch. 1066; 13 App. Ca. 308.

Restitution of Conjugal Rights; *F. Browne & Powles on Divorce*, 6 ed., ch. 4: 11 Encyc. 261-263. Disobedience to an Order for such Restitution, is equivalent to matrimonial DESERTION for 2 years (s. 5, 47 & 48 V. c. 68).

Writ of Restitution; *V. R. v. London*, L. R. 4 Q. B. 371; nom. *Walker v. London*, 38 L. J. M. C. 107.

**RESTORE.** — “ When the statute, 7 & 8 G. 4, c. 29, s. 57, says that the stolen property ‘ shall be restored,’ it may mean, the chattel stolen shall be restored; but at all events it means, the restoration of the right ” (per Patteson, J., *Scattergood v. Sylbester*, 15 Q. B. 511), and the right to the property re-vests on conviction of the thief, so that the owner can recover it even against one who purchased it in MARKET OVERT (*S. C.* 19 L. J. Q. B. 447; *Nickling v. Heaps*, 21 L. T. 754; *who* followed the principle of *Horwood v. Smith*, 2 T. R. 750 on 21 H. 8, c. 11: *Vf, Chichester v. Hill*, 52 L. J. Q. B. 160). The same ruling applies to the similar phrase in s. 100, Larceny Act, 1861 (*Bentley v. Filmont*, 57 L. J. Q. B. 18; 12 App. Ca. 471; 57 L. T. 854; 36 W. R. 481; 52 J. P. 68). In all the cases the principle was upheld that no Order for Restitution was or is necessary to perfect the statutory restoration of the right to the chattel. *Vh, Moss v. Hancock*, cited MONEY, p. 1217.

An obligation to “ restore ” a ROAD interfered with under compulsory powers, *semble*, is to make it as nearly as possible identical with the road before the interference (*R. v. Birmingham & Gloucester Ry*, 2 Q. B. 47; 10 L. J. Q. B. 322).

*V. MAKE GOOD: RESTITUTION.*

**RESTRAINING NOTICE.** — *V. Stop Order*, sub STOP.

**RESTRAINT.** — “ ‘Restraint,’ in a Marine Insurance, is the preventing the goods from being got away without laying hands upon them ” (per Brett, J., *Rodocanachi v. Elliott*, L. R. 8 C. P. 659; 9 Ib. 518; 42 L. J. C. P. 247; 43 Ib. 255). *Vh*, criticism by Cave, J., *Johnston v. Hogg*, 52 L. J. Q. B. 343.

*V. RESTRAINTS OF KINGS.*

**RESTRAINT OF TRADE.** — Though Contracts in Restraint of Trade were at first a horror to the Bench, so much so that when one was produced to Hull, J., he declared it contrary to the Common Law and

swore that had the plaintiff been present he would have sent him to prison until he had paid a fine to the King (2 Hen. 5. fol. 5, pl. 26), yet now the rule is, to construe the contracts and see if they are reasonable under all the circumstances of each particular case: if so, the Restraint may extend over the whole life of the Contractor (per Chitty, J., *Mills v. Dunham*, 1891, 1 Ch. 576; 60 L. J. Ch. 362), and it may extend over the whole world, if (in the altered circumstances of modern times and the nature of the business) such a restriction is reasonably required for the protection of the Contractee and is not injurious to the PUBLIC (*Nordenfelt v. Maxim Nordenfelt Co.*, 1894, A. C. 535; 63 L. J. Ch. 908; 71 L. T. 489; *wher*, 1893, 1 Ch. 630; 62 L. J. Ch. 273, for a luminous review of the previous authorities by Bowen, L. J., whose remarks were afterwards, in H. L., criticised by Lord Maenaghten). The doctrine of reasonableness as expounded in Nordenfelt's case applies not only to contracts on the Sale of a Business, but also to a contract for service (*Underwood v. Barker*, 1899, 1 Ch. 300; 68 L. J. Ch. 201; 80 L. T. 306; 47 W. R. 347; *Vf*, *Huynes v. Doman*, 68 L. J. Ch. 419; 1899, 2 Ch. 13).

*Vh*, Matthews on Restraint of Trade: Add. C. 87: Leake, 633: 11 Encyc. 265-269.

For an example of an unreasonable agreement, *V. Morse v. Fowler*, 44 S. J. 89; of a restraint being construed as personal to the contractee, *V. Davies v. Davies*, cited SO FAR AS, *whewa*, for a discussion of the judicial change of view quâ these agreements.

V. CARRY ON: GOODWILL: NEIGHBOURHOOD: USUAL.

**RESTRAINT ON ALIENATION.**—As to what words will operate as a Restraint on Alienation of property by a married woman, *V. Elph*, 301-303: 2 Jarm. 26 *n*: Watson Eq. 396: what will offend such a Restraint, *V. ALIENATION* and its cross-references: as to its removal, *V. BENEFIT*: as to the property being made liable for Costs, *V. Cox v. Bennett*, 1891, 1 Ch. 617; 60 L. J. Ch. 651; 64 L. T. 380: *Hood Barrs v. Heriot*, 1896, A. C. 174; 66 L. J. Q. B. 356: s. 2, M. W. P. Act, 1893, on *whv* INSTITUTED.

*Note*: A Restraint on Alienation (or, in other words, against ANTICIPATION) by a married woman "can never exist except as an accessory to a trust for a SEPARATE USE" (per Fry, L. J., *Stogdon v. Lee*, 1891, 1 Q. B. 661; 60 L. J. Q. B. 669; 64 L. T. 494; 39 W. R. 467), which case decided that such a trust cannot be inferred from a restraint alone. In a Settlement made *after* the M. W. P. Act, 1882, a Restraint is good without words creating Separate Use, because the statute itself supplies that (*Re Lumley*, 1896, 2 Ch. 690; 65 L. J. Ch. 837; 75 L. T. 236; 45 W. R. 147). *Va*, ESTOPPEL.

For the origin of the rule allowing this restraint, *V. per* Jessel, M. R., *Re Ridley*, 48 L. J. Ch. 563; 11 Ch. D. 645.

*Vh*, Matthews' Law relating to Married Women: Godefroi, ch. 30: Theobald, 560-563.

As to forfeiture on alienation by a beneficiary: *V*. FORFEITURE.

**RESTRAINTS OF KINGS.** — "The words 'Arrests, Restraints, and Detainments, of all Kings, Princes, and PEOPLE' (in a Marine Insurance), are properly applicable only to the ruling power of a country, and not to pirates or any other lawless power (*Nesbitt v. Lushington*, 4 T. R. 783). They apply, however, not only to hostile acts, but also to those which are committed by the government of which the assured is a subject; as, for instance, to the seizure of the vessel by the owner's government for the purpose of using her as a fire-ship (*Green v. Young*, 2 Raym. Ld. 840). or to the wrongful seizure of an English ship and cargo by a British ship of war (*Lozano v. Janson*, 2 E. & E. 160; 28 L. J. Q. B. 337; *Va*, *Stringer v. English and Scottish Mar. Insree*, L. R. 5 Q. B. 599; 38 L. J. Q. B. 321; 39 *Ib.* 214; 10 B. & S. 770), [or to an Embargo, for a temporary purpose, by a friendly government: *Aubert v. Gray*, 32 L. J. Q. B. 50; 3 B. & S. 163, 169].

"The detention of a neutral vessel within a blockaded port is, it seems, a 'Restraint of Princes' within the meaning of this clause (*Geipel v. Smith*, L. R. 7 Q. B. 404; 41 L. J. Q. B. 153; *Rodocanachi v. Elliott*, L. R. 8 C. P. 649; 9 *Ib.* 518; 43 L. J. C. P. 255)": 1 Maude & P. 488. *Vf*, *Crew v. G. Western S. S. Co*, 4 Times Rep. 148.

In variance of previous decisions (*V*. 1 Maude & P. 352), it seems now the rule, that a reasonable apprehension of Capture will justify delay under the usual Exception in Charter-parties of "Restraint of Princes and Rulers" (*The San Roman*, L. R. 5 P. C. 301; 42 L. J. Adm. 46; *The Heinrich*, L. R. 3 A. & E. 435; *Va*, *Geipel v. Smith* and *Rodocanachi v. Elliott*, sup: *Nobel Co v. Jenkins*, 1896, 2 Q. B. 326; 65 L. J. Q. B. 638; 75 L. T. 163; 12 Times Rep. 522; 1 Com. Ca. 436); "but, generally speaking, in order to justify a shipowner in putting an end to the Contract Voyage, there must be proof of more than a reasonable apprehension of Restraint" (per Kennedy, J., *Brunner v. Webster*, 5 Com. Ca. 174; 16 Times Rep. 217).

This Exception has "reference to the forcible interference of a State, or of the Government of a country, taking possession of the goods *manu forti*; and does not extend" to a detention under legal proceedings (per Martin. B., *Finlay v. Liverpool & G. Western S. S. Co*, 23 L. T. 251).

*Vh*, Abbott, 466, 503: Arn. ss. 832, 833: Carver, ss. 82, 233, 271.

*V*. ENEMY: QUEEN'S ENEMIES: POLITICAL.

**RESTRICTION.** — "Restrictions as to Expenditure"; *V. R. v. Plymouth*, cited SUBJECT TO.

**RESTRICTIVE COVENANT.** — *V*. RUN WITH THE LAND, *Note*.

**RESTRICTIVE INDORSEMENT.**—*V. s. 35*, Bills of Ex. Act, 1882: *Vf*, *Sigourney v. Lloyd*, cited USE.

*Cp*, SPECIAL.

**RESTS.**—Taking accounts with Rests; *V. REST*, at end.

**RESULT.**—In granting a New Trial where the Order is “the Costs of the Former Trial to abide the Result of the New Trial.” that means, that the costs of the former trial will have the same fate as those of the new trial; therefore, if the plt gets a verdict or jdgmt without costs in the new trial he will get no costs of the former trial (*Brotherton v. Metrop District Ry*, 1894, 1 Q. B. 666; 70 L. T. 218). *Cp*, EVENT.

Fees for “Results” in Schools; Stat. Def., 38 & 39 V. c. 96. s. 2.

**RESULTING.**—“Necessarily resulting”; *V. NECESSARILY*.

**RESULTING TRUST.**—A Resulting Trust is where property is ineffectually, or incompletely, conveyed, or where on a conveyance the beneficial interest in property is not completely disposed of; and accordingly the property, or the undisposed of beneficial interest in it, reverts to the person making the conveyance. It arises by implication when, *e.g.*, the document purporting to convey the property is legally void, or conveys the property as Trust property but declares no trust, or declares trusts which fail or do not exhaust the property; but in this lastly mentioned case, it has been said that “the ordinary and familiar” mode of creating a Resulting Trust “is by saying so on the face of the instrument” (per Halsbury, C., *Smith v. Cooke*, 1891, A. C. 299; 60 L. J. Ch. 610; 65 L. T. 1; 40 W. R. 67); though that can hardly be so (*Re Abbott*, 1900, 2 Ch. 326; 69 L. J. Ch. 539), for that would be an ULTIMATE TRUST, and the dictum quoted was, probably “a mere verbal slip” (8 L. Q. Rev. 108).

*Vh*, *Re West*, 1900, 1 Ch. 84; 69 L. J. Ch. 71: Lewin, ch. 9: Godefroi, ch. 11: 2 White & Tudor, 830–834: SUBJECT TO.

**RESULTING USE.**—“Whenever the Use limited by a deed expires, or cannot vest, it returns back to him who raised it, and is styled a Resulting Use” (Jacob). *Vh*, 2 Bl. Com. 335: Wms. R. P. Part 1, ch. 8: Goodeve, 272.

**RESUMED AREA.**—As to this phrase in New South Wales Crown Land Acts, *V. cases cited LEASEHOLD AREA*.

**RESUMPTION.**—“‘Resumption’ is a word used in the statute of 31 H. 6, c. 7, and is there taken for the taking againe into the Kings hands such lands or tenements as upon false suggestion or other error he had made livery of to an heire, or granted by patent unto auv man” (Termes de la Ley).

RETAIL. — *V.* TRAFFICKING: WHOLESALE.

Quà Licensing Acts (*F.* ss. 3, 74, 35 & 36 *V.* c. 94), the sale of Beer, Cider, or Perry, in any less quantity than  $4\frac{1}{2}$  gals. is selling By Retail (4 & 5 *W.* 4, c. 85, s. 19; 35 & 36 *V.* c. 94, ss. 74, 77); but as regards Spirits, there seems no definition in these Acts, so that each case must be decided on its own circumstances (Paterson's Licensing Acts, 13 ed., 12, 144).

Under the Spirits Act, 1880, 43 & 44 *V.* c. 24, s. 104, "the sale of Spirits in any quantity less than 2 gals., or less than 1 doz. reputed quart bottles, shall be deemed sale By Retail." That def is applied to Foreign Wine, quà Refreshment Houses Act, 1860 (s. 4), and to Sweets, Made Wines, Mead, and Metheglin, quà Excise Act, 1860, 23 & 24 *V.* c. 113 (s. 7). *Vf.* Beerhouses (*Ir*) Act, 1864, 27 & 28 *V.* c. 35, s. 15.

By the Sch to 6 *G.* 4, c. 81, a Retailer of Beer (other than an Inn-keeper) is defined as "Every person, not being a Brewer of Beer, who shall sell Strong Beer only in casks, containing not less than  $4\frac{1}{2}$  gallons Imperial Standard Gallon Measure, or in not less than 2 dozen reputed Quart Bottles at one time, to be drank or consumed elsewhere than on his her or their premises." This provision relating to Quart Bottles no longer obtains: if the quantity sold at one time be  $4\frac{1}{2}$  gals. or more, it is not sold "by Retail," though it be delivered in pint or half-pint bottles (*Fairclough v. Roberts*, 24 *Q. B. D.* 350; 59 *L. J. M. C.* 54; 38 *W. R.* 330; 62 *L. T.* 700; 54 *J. P.* 421; 6 *Times Rep.* 180: WHOLESALE). *Scmble*, this principle would also apply to the similar provision in the Spirits Act, 1880, cited above. *Vf.* RETAILER.

Person "licensed to sell Beer by retail" who, under s. 18, Game Act, 1831, 1 & 2 *W.* 4, c. 32, is disqualified from having a license to sell Game, means, a person who *for the time being* is licensed to sell Beer by Retail: the disqualification is not confined to Beerhouse keepers (a trade introduced the previous year, 1830, by 1 *W.* 4, c. 64), but it also includes persons holding a Grocer's License for selling Beer under s. 1, 26 & 27 *V.* c. 33 (*Shoolbred v. St. Pancras Jus.*, 24 *Q. B. D.* 346; 59 *L. J. M. C.* 63; 38 *W. R.* 399; 54 *J. P.* 231).

A Covenant, made in 1854, not to carry on the trade of "an hotel or tavern-keeper, publican, or beer-shop keeper, or *Seller by Retail* of wine, beer, spirits, or spirituous liquors," was held not broken by selling wines and spirits, *in bottles*, by virtue of a license under 24 & 25 *V.* c. 21, s. 2, because, at the time the covenant was entered into, that would not have been a selling by retail, for at that time the only sellers of Beer, Spirits, or Wine, *by retail*, were hotel or tavern keepers (per James, *V. C.*, *Jones v. Bone*, *L. R.* 9 *Eq.* 674; 39 *L. J. Ch.* 405; 23 *L. T.* 304; 18 *W. R.* 489; *Cp.*, *Fielden, or Feilden v. Slater*, cited SPIRITUOUS LIQUOR). *Jones v. Bone* is, accordingly, not of general application; and a covenant that "no public-house, beer-house, or house for the sale of beer wine or spirituous liquors, shall be erected, nor shall the trade of an innkeeper,



victualler, or *Retailer of Wines Spirits or Beer*, be carried on," is broken by opening a Bar at a Theatre, at which frequenters to the theatre may obtain wines, spirits, or beer (*Buckle v. Fredericks*, 44 Ch. D. 244; 38 W. R. 742; *Cp*, COFFEE HOUSE). *Vf*, RETAILER.

*Simons v. Parren* (4 L. J. C. P. 41; 1 Bing. N. C. 126, 272, and cited as to "Retailer of Beer," Woodf. 709), can scarcely be of any use on a question of construction, for it was determined on a point of pleading.

MARGARINE is not sold "by Retail," s. 6, Margarine Act, 1887, by being spread on bread, which bread, with the margarine on it, is sold in a Restaurant for consumption there (*Moore v. Pearce*, 1895, 2 Q. B. 657; 65 L. J. M. C. 7; 73 L. T. 400; 44 W. R. 94; 59 J. P. 805).

Retailing Poisons; *V. KEEP OPEN*.

**RETAIL BAKEHOUSE.** — Quà, and by, s. 102, Factory and Workshop Act, 1901, " 'Retail Bakehouse,' means any BAKEHOUSE or Place (not being a FACTORY) the bread, biscuits, or confectionery, baked in which are sold, not wholesale but, by Retail in some Shop or Place occupied with the Bakehouse."

**RETAIL LICENSE.** — In a contract relating to the sale of a public-house, "Retail License" means, the ordinary Retail License, without any Condition whatever (*Modden v. Snowball*, 4 D. G. F. & J. 143; 29 Bea. 641; 31 L. J. Ch. 44; 10 W. R. 24; 5 L. T. 299).

**RETAILER.** — Retailer of Beer; *V. RETAIL*.

"If a person takes a house, or part of a house, either in his own name or the name of any other person, and then, either personally or by his agent, makes sales of Spirits by Retail, he carries on business there as a Retailer of Spirits, notwithstanding he keeps no spirits there, and the spirits which he sells there are kept in and delivered from a store in another town where he carries on the business of a Wine and Spirit Merchant" (*Stallard v. Marks*, 47 L. J. M. C. 91; 3 Q. B. D. 412; 38 L. T. 566; 26 W. R. 694): *Vf*, RETAIL. *Stallard v. Marks*, also shows that the assistant employed at such a place is not a "bonâ fide Traveller" within the proviso to s. 17, 30 & 31 V. c. 90; *V. TRAVELLER*.

Quà the Tobacco Acts, 1840 and 1842, "Manufacturer of, Dealer in, and Retailer of, TOBACCO," includes, "manufacturers of, dealers in, and retailers of, SNUFF, and Snuff Millers" (s. 14, 5 & 6 V. c. 93).

**RETAIN.** — A testamentary direction to "retain and SET APART" a percentage of profits of a business as a Reserve Fund against losses and contingencies, is a direction for ACCUMULATION within the Thellusson Act, and, if there be no direction for payment of debts, it is void after 21 years (*Re Cox*, W. N. (1900) 89).

To "retain" property, means, to keep it (per Patteson, J., *Glaholm v. Rowntree*, 6 A. & E. 717). *Cp*, RECOVER.

'To retain' is, 'to keep in pay,' 'to hire' (per Parke, B., *Elderton v. Emmens*, 6 C. B. 176); but not, necessarily, to find actual and appropriate employment; the consideration must be paid whether the person retained be employed or not: *V. EMPLOY.* Yet, *semble*, "the word 'retain' does not, necessarily, show that there was a consideration" (per Ashhurst, J., *Elsee v. Gutward*, 5 T. R. 151).

A Solicitor, though "retained" for an action, "need not be employed throughout its course" (per Truro, C., *Emmens v. Elderton*, 4 H. L. Ca. 629); but if there be an agreement to retain at so much *per annum*, that imports a retainer for one year at least (*Emmens v. Elderton*, 4 H. L. Ca. 624; 13 C. B. 495).

An agreement to retain A. as one's "Permanent" Solicitor, imports no durable appointment, and the principal is not precluded from withdrawing the retainer; for "permanent," in such an agreement, denotes no more than a general, as distinguished from an occasional, employment (*Ib.* 4 C. B. 479; 13 C. B. 495). *Vf.* Add. C. 866.

Trust property "still retained"; *V. STILL.*

As to an Exor's Right of Retainer to pay his own claim against his testator's estate in priority to other creditors; *V. Wms. Exs.* 884: *Re Giles*, 1896, 1 Ch. 956; 65 L. J. Ch. 419: *Re Taylor*, 1894, 1 Ch. 671; 63 L. J. Ch. 424: *Trevor v. Hutchins*, 1896, 1 Ch. 844; 65 L. J. Ch. 738: *Re Beeman*, 1896, 1 Ch. 48; 65 L. J. Ch. 190: *Re Gilbert*, 1898, 1 Q. B. 282; 67 L. J. Q. B. 229: *Re Hayward*, 49 W. R. 296; 1901, 1 Ch. 221; 70 L. J. Ch. 156: AGENT AND PATIENT: SECURED CREDITOR: TAKE AND APPROPRIATE.

Pauper Child under 16 to "retain" his Parent's Settlement; *V. CHILD*, p. 307.

Retaining WALL; *V. Stevens v. Metrop District Ry*, 54 L. J. Ch. 737; 29 Ch. D. 60.

**RETIRE.** — "If an Acceptor 'retires' a Bill at maturity, he takes it entirely from circulation, and the Bill is, in effect, paid; but if an Indorser 'retires' it, he merely withdraws it from circulation in so far as he himself is concerned, and may hold the Bill with the same remedies as he would have had, had he been called upon in due course, and had paid the amount to his immediate Indorsee" (per Jervis, C. J., *Elsam v. Denny*, 23 L. J. C. P. 190; 15 C. B. 87: *rthe, Bell v. Buckley*, 11 Ex. 631; 25 L. J. Ex. 163).

Retire from a Partnership; *V. WITHDRAW.*

**RETIRED PAY.** — *V. Re Ward*, cited INCOME: GRATUITY: PENSION.

**RETIREMENT.** — "Retirement" of an Army Officer; *V. Johnstone v. Cox*, 16 Ch. D. 571; 29 W. R. 351; 50 L. J. Ch. 216; 43 L. T. 690.

**RETIRING TRUSTEE.** — "Trustees by paying money into Court *retire* from their trust, and cannot thereafter exercise the powers of the

trust" (Lewin, 412, 413, citing *Re Coe*, 4 K. & J. 199: *Re Williams*, 4 Ib. 87: *Re Teggy*, 15 L. T. 236; 15 W. R. 52: *Re Nettlefold*, 59 L. T. 315: *Re Mulqueen*, 7 L. R. Ir. 127). *Va*, DECLINING TRUSTEE.

**RETRACT.** — "A Condition of Sale that no person shall retract his bidding was originally suggested to me by the case of *Payne v. Cave* (3 T. R. 148), and it has now become a common condition. But I always thought it one that could not be enforced. In *Jones v. Nanney* (13 Price, 99), Mr. Baron Wood suggested the difficulties. . . . But such a condition in a sale by Order of the Court is binding on the persons who consent to the sale, and upon their agents (*Freer v. Rimmer*, 14 Sim. 391)." Sug. V. & P. 14.

Retraction of RENUNCIATION of Probate; *V. Re Stiles*, 67 L. J. P. D. & A. 23; 1898, P. 12: *Re Thacker*, 1900, P. 15; 69 L. J. P. D. & A. 1.

**RETREAT.** — Quà Inebriates Acts (*V. INEBRIATE*), a "Retreat," means, a house licensed by the Licensing Authority . . . for the reception, control, care, and curative treatment, of HABITUAL Drunkards" (s. 3 (3*b*), 42 & 43 V. c. 19).

*V. ASYLUM.*

**RETROSPECTIVE.** — "*Nova constitutio futuris formam imponere debet, non præteritis*" (2 Inst. 292), *i.e.* unless there be clear words to the contrary, statutes do "not apply to a past, but to a future, state of circumstances" (per Alderson, B. *Moon v. Durdan*, 2 Ex. 40): *Vf. Re Chapman*, cited SHALL. *Vh*, BROUGHT: HAS BEEN: IS: MAINTAIN: SHALL HAVE BEEN: Maxwell, ch. 8, s. 4: Broom's Maxims. ch. 1, s. 2.

**RETURN.** — This word in the Limitation Act, 1623, 21 Jac. 1, c. 16, does not imply that a plaintiff, — beyond seas when the cause of action arose, — has been in this country before; for, as regards a plaintiff who was never in this country before, it means, coming within the jurisdiction having been beyond seas when the cause of action arose (*Strithorst v. Græme*, 3 Wils. 145; 2 Bl. W. 723: *Lafond v. Raddock*, 22 L. J. C. P. 217; 13 C. B. 813: *Pardo v. Bingham*, 39 L. J. Ch. 170; 4 Ch. 735). *Cp*, ABSENT.

A Condition to a legacy, that the legatee "return" to a place, means, that he come back to that place; and the condition is not performed if he die, or is lost at sea, whilst returning (*Priestley v. Holgate*, 26 L. J. Ch. 448; 3 K. & J. 286: *Sprigg v. Sprigg*, 2 Vern. 394). So, if the word is "arrive" (*Burgess v. Robinson*, 3 Mer. 7). *Vh*, 2 Jarm. 12, 13.

An appointment of A. as Exor of a Will "if and when he shall return to England," becomes effective on his returning to England for a visit of 6 months, though that be 8 years after the death of the testator and though A. (during such visit) remains domiciled out of England at the place whence he came (*Re Arabib and Class*, cited LITIGATION); in the

Coleridge, C. J., pointed out that the reading might have been different if the words had been "return to reside in England."

"Return to his Work"; a person is prevented "from returning to his work" in a Factory who, though he returns to the Factory, is incapable to work when there (*Lakeman v. Stephenson*, 37 L. J. M. C. 57; L. R. 3 Q. B. 192; 9 B. & S. 54).

A "Return" of Election Expenses, if *bonâ fide*, is a "Return" within s. 33 (5), Corrupt and Illegal Practices Prevention Act, 1883, though it be not a "true Return" as prescribed by subs. 1 of the same section (*Mackinnon v. Clark*, 1898, 2 Q. B. 251; 67 L. J. Q. B. 68, 763; 79 L. T. 83; 47 W. R. 19).

Quâ Taxes Management Act, 1880, 43 & 44 V. c. 19, " 'Return,' includes, any list, statement, declaration, account, schedule, or estimate in writing, by whomsoever made, or from whomsoever required, in conformity with the directions of this Act or the Tax Acts " (s. 5).

The Return to a Writ, or Commission, is a Certificate from the proper person of what has been done under it (Cowel: Jacob).

V. PROCURE: SALE ON TRIAL.

**RETURN DAY.** — In County Court proceedings, the "Return Day" means, the day *originally* appointed for the hearing (*R. v. Leeds Co. Co.*, 55 L. J. Q. B. 365; 16 Q. B. D. 691; 54 L. T. 873; 34 W. R. 487; *Vf*, Co. Co. Act, 1888, s. 186).

V. DAY OF HEARING.

**RETURNED NOTE.** — " 'Returned Note' is an expression which is perfectly understood in the City of London to designate a Note which has been dishonoured " (per Bolland, B., *Hedger v. Steavenson*, 2 M. & W. 808; 6 L. J. Ex. 192).

**RETURNING FROM.** — V. GOING TO.

**RETURNING OFFICER.** — Quâ Municipal Elections, "Returning Officer," means, "the Mayor, or other Officer, who, under the law relating to Municipal Elections, presides at such elections" (subs. 1, s. 20, 35 & 36 V. c. 33: *Vf*, 35 & 36 V. c. 60, s. 2). The Mayor of a Municipal Borough divided into Wards is not the "Returning Officer" (s. 88 (2), 45 & 46 V. c. 50, *cp.*, s. 53) for a Ward thereof; even if, through his decision, an election of Councillor for that Ward is, in fact, decided, *v.g.* when he declares a Candidate for a Ward disqualified and, as a consequence, only as many candidates remain as there are vacancies to fill (*Harmon v. Park*, 50 L. J. Q. B. 227; 6 Q. B. D. 323; 44 L. T. 81; 29 W. R. 750). V. CONDUCT.

Quâ Parliamentary Elections, "Returning Officer," applies "to every person or persons to whom, by virtue of his or their Office under any law custom or statute, the execution of any writ or precept doth or shall

belong for the election of a Member or Members to serve in Parliament, by whatever name or title such person or persons may be called" (s. 101, 6 & 7 V. c. 18). *Id.*, 17 & 18 V. c. 102, s. 38.

Quà Salmon Fishery Acts, "Returning Officer," means, "the Chairman of any Board of Conservators, or any person appointed by writing under his hand, to conduct the elections of Boards of Conservators in the manner" prescribed (s. 4, 36 & 37 V. c. 71).

**RE-VALUATION.** — *V.* GENERAL RE-VALUATION.

**REVELAND.** — *V.* TAINLAND.

**REVENUE.** — *V.* PROFITS.

Land belonging to an Educational Institution, worked profitably for farming purposes by the Institution, is not one of its "*Dependencies*" within subs. 6, Art. 712, Municipal Code of Quebec; it is possessed in order "to DERIVE a Revenue therefrom" within subs. 3 of the same Article, and is therefore not exempt from taxation (*Quebec Seminaire v. Limoilou*, 1899, A. C. 288; 68 L. J. P. C. 34; 80 L. T. 331, herein approving *St. Gabriel v. Les Sœurs de la Congrégation*, 12 Canada S. C. Rep. 45, and over-ruling *Verdun v. Les Sœurs de Notre Dame*, Dorion's App. Ca. 163, and *St. Roch v. Quebec Seminary*, 10 Quebec Law Rep. 335).

"Revenue Charge"; *V. Hutton v. West Cork Ry*, 52 L. J. Ch. 377. 689; 23 Ch. D. 654; 48 L. T. 626; 49 L. T. 420; 31 W. R. 542, 827; *Mil. G. W. Ry v. Dublin & Meath Ry*, 4 Ry & Can Traffic Ca. 145.

Revenue Credit; *V. Bishop v. Smyrna & Cassaba Ry*, 1895, 2 Ch. 596; 64 L. J. Ch. 806.

*Inland Revenue*; *V.* INLAND.

Revenue Laws; *V.* GAME LAWS.

**REVENUES.** — "PROPERTY, ASSETS, and Revenues," in a Co's Debentures; *V. Page v. International Agency*, 62 L. J. Ch. 610; 68 L. T. 435; UNDERTAKING.

**REVEREND.** — This is not a Title of honour or dignity; but merely a laudatory epithet or mark of respect, which people may inscribe on the tombstone of, e.g. a Wesleyan Minister (*Keet v. Smith*, 45 L. J. P. C. 10; 1 P. D. 73).

**REVERSE.** — "Stop and reverse"; *V.* SLACKEN.

The reversal of a Jdgmt, "is the making it void for error" (Jacob).

**REVERSION.** — "A 'Reversion' has two intendments, — the one is, an Estate left continuing during the PARTICULAR ESTATE, which is the most common sense; the other is, the returning of the land after the particular estate ended, which is the natural sense of the word according to the definition of the Latin-tongue, so that the Reversion of the land

and the Land when it reverts is all one" (per Staunford, J., *Throckmerton v. Tracy*, 1 Plowd. 160 a).

" 'Reversion,' *Reversio* commeth of the Latine word *revertor*, and signifieth a returning againe" (Co. Litt. 142 b). A "Reversion" is the undisposed of interest in land which reverts to the grantor after the exhaustion of the particular estates, — *e.g.* for years, for life, or in tail, — which he may have created. "There cannot, in the usual and proper sense of the term, be a Reversion expectant upon an estate in fee-simple" (per Selborne, C., *A-G. Ontario v. Mercer*, 52 L. J. P. C. 86; 8 App. Ca. 767); and though in the Writ of Escheat the word "revert" is employed, yet an Escheat is not properly a Reversion (Ib.).

A REMAINDER, on the other hand, is that "residue of an estate in land, depending upon a particular estate and created together with the same; and in law *Latine* it is called *remanere*" (Co. Litt. 49 a); *e.g.* a grant of an estate for life to A. and subject thereto to B. in fee; the estate of B. is a Remainder.

*Vf*, *Termes de la Ley*: Jacob: 2 Bl. Com. ch. 11: 2 Cru. Dig., Title 17: Wms. R. P. Part 2, ch. 1: Goodeve, 234, 235.

In brief, the meaning of, and difference between, these words are expressed as follows, — The Reversion is what is left; and the Remainder is that which is created by the grant after the existing possession. Both words are technical phrases. And though it is said in the Touchstone (p. 249) that "a Reversion may be granted by the name of Remainder, or a Remainder by the name of a Reversion"; yet it needs a very strong context for such a construction. Thus the word "Reversion" as used in s. 8, Prescription Act, 1832, will not be read as including "Remainder" (*Symons v. Leuker*, 54 L. J. Q. B. 480; 15 Q. B. D. 629; 33 W. R. 875; 1 Times Rep. 564. *Vf*, *Laird v. Briggs*, 50 L. J. Ch. 260; 19 Ch. D. 22).

As to effect of a grant of "the Reversions" in a conveyance of the Fee Simple; *V. Burton v. Barclay*, 9 L. J. O. S. C. P. 231; 7 Bing. 745.

As to whether the word "Reversion" will raise Cross-Remainders; *V. 2 Jarm. 553*.

Even before s. 28, Wills Act, 1837, a devise of "REMAINDER" or "Reversion" carried the fee (2 Jarm. 284; *Se*, 285).

Contingent Remainder; *V. CONTINGENT*.

*V. IMMEDIATE REVERSION: LEASEHOLD REVERSION: PERSON ENTITLED: POSSESSION: PURCHASE*.

"Run with the Reversion"; *V. RUN WITH THE LAND*.

**REVERT.** — Property to "revert to the debtor," s. 35, Bankry Act, 1883; *V. Bailey v. Johnson*, 40 L. J. Ex. 189; 41 Ib. 211; L. R. 6 Ex. 279; 7 Ib. 263; *Vth, Ex p. Morier*, 12 Ch. D. 491.

"Then the same to revert back"; *Re Norman*, W. N. (79) 175

*Vf*, FRIENDS AND RELATIONS.

**REVIEW.** — It is not to “Review” a Weekly Payment under clause 12, Sch 1, Workmen’s Comp Act, 1897, to show that it was wrong; that would be obtaining an appeal against the award; to “review,” here, means, if the Workman gets well or better or worse, or some change of circumstances arises, since the award, then it may be modified (*Crossfield v. Tavian*, 1900, 2 Q. B. 629; 69 L. J. Q. B. 790; 82 L. T. 813; 48 W. R. 609).

**REVISING.** — “Revising Authority,” quâ Elections (Scot) Corrupt and Illegal Practices Act, 1890, 53 & 54 V. c. 55, “means, the Sheriff” (s. 2).

“Revising Barrister”; *V. BARRISTER.*

**REVIVE.** — Revival of a revoked Will; *V. McLeod v. McNab*, cited CONFIRM: *Re Dennis*, 1891, P. 326; *Re Chilcott*, 1897, P. 223; 66 L. J. P. D. & A. 108; 77 L. T. 372; 46 W. R. 32; RATIFY: PUBLICATION, at end.

**REVOKE.** — “‘Revocation,’ is the calling back of a thing granted” (Cowel: Jacob).

As to what amounts to a Rescindment, Renunciation, or Revocation, of a Contract; *V. Hochster v. De la Tour*, 22 L. J. Q. B. 455; 2 E. & B. 678, on *whch*, *Johnstone v. Milling*, 16 Q. B. D. 460; 55 L. J. Q. B. 162; Add. C. 155 *et seq*: Leake, 681 *et seq*.

A clause of Redemption in a Mortgage, is not a “Power of Revocation” within the Mortmain Acts, 9 G. 2, c. 36, s. 1, 9 G. 4, c. 85, s. 1. 51 & 52 V. c. 42, subs. 3 s. 4 (*Doe d. Graham v. Hawkins*, 2 Q. B. 212; 10 L. J. Q. B. 285).

As to what is a Revocation of a Will; *V. Wms. Exs. 107 et seq*: Jarm. ch. 7: BURN: DESTROY: TEAR. Whatever is done, the *animus recocandi* is essential; *V. DEPENDENT.* To draw a pen through several parts of a Will, to write on it “*This is revoked*,” and then throw it into the waste-paper basket, is not a Revocation (*Cheese v. Lorejoy*, 46 L. J. P. D. & A. 66; 2 P. D. 251; 25 W. R. 853). *If*, *Codell v. Wilcocks*, 1898, P. 21; 67 L. J. P. D. & A. 8; 78 L. T. 83; 46 W. R. 394; *Chichester v. Quatrejajas*, 1895, P. 186; 64 L. J. P. D. & A. 79; 72 L. T. 475; 43 W. R. 667; *Re Hodykinson*, 62 L. J. P. D. & A. 116; 1893. P. 339; *Re Gilbert*, 1893, P. 183; 62 L. J. P. D. & A. 111; *Margary v. Robinson*, 56 L. J. P. D. & A. 42; 12 P. D. 8. A general revoking clause revokes all previous Wills, including such as may have executed a Power of Appointment (*Sotheran v. Deuing*, 20 Ch. D. 99; *Re Kingdon*, 55 L. J. Ch. 598; 32 Ch. D. 604; *Cadell v. Wilcocks*, sup). *V. CANCEL.*

**REVOLT.** — “Make Revolt in a Ship,” 11 & 12 W. 3. c. 7, s. 9, would not include force used against the Master to prevent him from committing unlawful homicide (*R. v. Rose*, 2 Cox C. C. 329; *The Shepherdess*, 5 Rob. C. 266).

**REWARD.**—The practice which sprang up at Mercer's Hospital, Dublin, and continued till 1868, of buying, at the market price of the day, the appointment of Physician or Surgeon to the Hospital and paying part of the purchase money amongst the medical Board (*i.e.* the Physicians and Surgeons at the time attending the Hospital) and the residue to the Retiring Physician or Surgeon, or his representatives on a death vacancy, was a contravention of the statute providing that Physicians and Surgeons should attend "without Fee or Reward"; for it was a "Reward" to the physicians and surgeons attending the hospital who, by the position which their services gave them, acquired a direct pecuniary benefit by appointing, so far as they could do so, an incoming physician or surgeon who bought the place at the market price in which they shared" (per Johnson, J., *R. v. Auchinleck*, 28 L. R. Ir. 424, 425).

"Reward" for a Vote, *e.g.* 5 & 6 W. 4, c. 76, s. 54, includes giving an EMPLOYMENT (*Harding v. Stokes*, 5 L. J. Ex. 178; 2 M. & W. 233).

"Pecuniary Reward"; *V. MONEY*, p. 1217.

As to an offer of a "Reward"; *V. Carlill v. Carbolic Smoke Ball Co*, cited GAMING CONTRACT: OFFER.

*V. MILITARY REWARD: RECOVERY.*

**RICE.** — *V. CORN.*

**RICH.** — *V. PROVE.*

**Duke of RICHMOND'S ACT.** — Regulation of Railways Act, 1868, 31 & 32 V. c. 119.

**RIDE.** — A horse ridden does not include a horse driven; *e.g.* a Yeomanry Officer was exempt from Turnpike Toll in respect of the horse "rode by him in going to or returning from" exercise, &c (s. 32, 3 G. 4, c. 126); but if, instead of riding his horse, he drove it in a gig, the horse was not exempt from Toll (*Humphrey v. Bethel*, 35 L. J. M. C. 150; L. R. 1 C. P. 215; 30 J. P. 231; H. & R. 221). *Cp.* DRIVE: OVER-DRIVE.

**RIDER.** — *V. DRIVE.*

**RIDGE.** — *V. SELION.*

**RIDING.** — Quia Prison Act, 1877, 40 & 41 V. c. 21, "Riding," means, any Riding, Division, or Parts, of a County, having a separate Court of Quarter Sessions" (s. 58).

"The Three Ridings" of Yorkshire; *V. Yorkshire Registries Act*, 1884, 47 & 48 V. c. 54, s. 3.

**RIGGING.** — "Rigging the Market," is going into the market pretending to buy shares by a person whom you put forward to buy them,



who is not really buying them but only pretending to buy them, in order that they may be quoted in the public papers as bearing a premium which premium is never paid" (per Malins, V. C., *Rubery v. Grant*, 42 L. J. Ch. 20; L. R. 13 Eq. 447). *Vh, R. v. Berenger*, 3 M. & S. 67; *R. v. Aspinall*, 46 L. J. M. C. 145; 2 Q. B. D. 48; *Scott v. Brown*, 1892, 2 Q. B. 724; 61 L. J. Q. B. 738; 67 L. T. 782.

V. POOL: PRICE.

**RIGHT.**—“ ‘Right,’ *Jus, sive rectum*, (which Littleton often useth) signifieth properly, and specially in writs and pleadings, when an estate is turned to a right, as by discontinuance, disseisin, &c, where it shall bee said, *quòd jus descendit et non terra*. But (Right) doth also include the estate *in esse* in conveyances; and therefore if tenant in fee simple make a lease for yeares, and release all his right in the land to the lessee and his heires the whole estate in fee simple passeth. And so commonly in fines, the right of the land includeth and passeth the state of the land; as *A. cognovit tenementa predicta esse jus ipsius, B., &c.* And the statute (West. 2, c. 3) saith, *jus suum defendere*, (which is) *statum suum*. And note that there is *jus recuperandi, jus intrandi, jus habendi, jus retinendi, jus percipiendi, jus possidendi*” (Co. Litt. 345 a, b; *Vh, Elph.* 204–209).  
V. JUS.

“ ‘Right’ is where one hath a thing that was taken from another wrongfully, as by disseisin, discontinuance, or putting out, or such like, and the challenge or claime that he hath who should have the thing, is called Right” (Termes de la Ley, *Droit*).

The saving of every “Right, Claim, Privilege, Franchise, Exemption, or Immunity,” in s. 179, Thames Conservancy Act, 1857 (20 & 21 V. c. cxlvii), means a vested right of property, not a mere general right as one of the public (*Kearns v. Cordwainers’ Co*, 28 L. J. C. P. 285; 6 C. B. N. S. 388). *Vf, PRACTICE*.

Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66. “ ‘Right,’ includes, estate, interest, equity, and power” (s. 95). *Va, “Rights,”* Trustee Act, 1893, s. 50.

“ ENJOYMENT *as of* Right,” s. 5, Prescription Act, 1832, 2 & 3 W. 4, c. 71, means, “an Enjoyment had, not secretly or by stealth or by tacit sufferance or by permission asked from time to time on each occasion or even on any occasions of using it; but an Enjoyment had, openly and notoriously (without particular leave at the time) by a person claiming to use it as a Matter of Right, whether by User though not strictly legal, or by Deed conferring the right, or by Parol if claimed by user for 20 years” (*Tickle v. Brown*, 5 L. J. K. B. 123; 4 A. & E. 382); but “I cannot understand why enjoyment ‘by tacit sufferance’ for the prescribed period should not confer a right” (per Cozens-Hardy, J., *Gardner v. Hodgson’s Co*, 69 L. J. Ch. 373; 1900, 1 Ch. 592; jdgmt revd.: 1901, 2 Ch. 198). *Vf, Olney v. Gardiner*, 8 L. J. Ex. 102; nom. *Onley*

v. *Gardiner*, 4 M. & W. 496; *Arkwright v. Gell*, 8 L. J. Ex. 201; 5 M. & W. 203; *Kinlock v. Neville*, 10 L. J. Ex. 248; 6 M. & W. 795; *Mason v. Shrewsbury & Hereford Ry.*, L. R. 6 Q. B. 578; *Ladyman v. Greve*, 6 Ch. 763; *Outram v. Maude*, 17 Ch. D. 405; 50 L. J. Ch. 785; *Chamber Colliery Co v. Hopwood*, 55 L. J. Ch. 859; 32 Ch. D. 549; *Tone v. Preston*, 24 Ch. D. 739; 53 L. J. Ch. 50: ACTUALLY ENJOYED.

"*Claiming Right*," s. 2. Prescription Act, 1832, has the same meaning as "*As of Right*" in s. 5 (*Tickle v. Brown*, sup).

"*Touching the Right*" to Tithes, s. 45, Tithe Act, 1836, does not mean "touching the TITLE to Tithes as between rival claimants" but, connotes only questions relating to the titheability of particular lands (*Shepherd v. Londonderry*, cited HINDER).

Right "acquired or accrued"; *V.* ACQUIRE: ACCRUE.

"Rights," &c, "*occupied or enjoyed*"; As to what rights of road, water-course, &c, will pass in a conveyance under the general words "All Rights, &c, to the said hereditals belonging, or occupied or enjoyed therewith, or reputed as part parcel or member thereof"; *V. Watts v. Kelson*, 40 L. J. Ch. 126; 6 Ch. 166; *Kay v. Orley*, 44 L. J. Q. B. 210; L. R. 10 Q. B. 360; *Thomas v. Owen*, 20 Q. B. D. 231; *Bayley v. G. W. Ry.*, 26 Ch. D. 434; *Roe v. Siddons*, 22 Q. B. D. 224: APPURTENANCES: RIGHTS.

"Right of *Pasturage* usually enjoyed"; *V. Musgrave v. Inclosure Commrs.* L. R. 9 Q. B. 162; 43 L. J. Q. B. 80: PASTURAGE.

Right of Re-Entry; *V.* FIRST ACCRUED: *Va.*, 17 & 18 V. c. 89, s. 12.

"Right in Remainder," s. 20, Real Property Limitation Act, 1833, does not include a Power of appointing Uses (*Re Devon*, 1896, 2 Ch. 562; 65 L. J. Ch. 810; 75 L. T. 178; 45 W. R. 25). "No real property lawyer in 1833 would have spoken of a Power of appointing Uses as an 'ESTATE, INTEREST, Right, or Possibility'" (per Chitty, J., *Ib.*).

"Right or Penalty," s. 230, Bankry Act, 1861. 24 & 25 V. c. 134; *V. R. v. Smith*, 31 L. J. M. C. 105; 9 Cox C. C. 110; *Graham v. Robinson*, L. R. 2 Q. B. 387.

"Rights, Powers, or Privileges," s. 50, 21 & 22 V. c. 98 and s. 166, P. H. Act, 1875, do not connote contractual Rights, &c, but, refer to something in the nature of a FRANCHISE (*Fearon v. Mitchell*, L. R. 7 Q. B. 690; 41 L. J. M. C. 170; *Spurling v. Bantoft*, 1891, 2 Q. B. 384; 60 L. J. Q. B. 745; 65 L. T. 584; 40 W. R. 157; 56 J. P. 132). *Vf.*, RIGHTS.

"Right, Privilege, Obligation, or Liability," s. 38 (2c), Interp Act, 1889; *V. Heston & Isleworth v. Grout*, cited DONE. The power of a Bankrupt to apply for his Discharge under the Act in operation when his bankry was adjudicated is such a "Right" (*Ex p. Raison*, 60 L. J. Q. B. 206; 63 L. T. 709; 39 W. R. 271; 8 Morrell, 11).

"Right or Liability INCURRED," s. 343 (b), P. H. Act, 1875; *I. Barnes v. Edleston*, 45 L. J. M. C. 162; 1 Ex. D. 102; 33 L. T. 822.

V. A: ABANDONMENT: BILL OF RIGHTS: EXCLUSIVE RIGHT: FIRST ACCRUED: IN HIS OWN RIGHT: PETITION: PUBLIC RIGHT: RIGHTS: RIGHTS AND CREDITS: SHARE: THE.

**RIGHT AHEAD.** — "Right ahead," as used in the Regns for Preventing Collisions at Sea; *V. The Fire Queen*, 56 L. J. P. D. & A. 90; 12 P. D. 147; 57 L. T. 312; 36 W. R. 15.

**RIGHT AND TITLE.** — The addition to a devise of lands of all testator's "Right and Title" thereto, would even before the Wills Act, 1837, pass the fee (*Sharp v. Sharp*, 4 Moore & P. 445); so of the word "Interest" therein (*Andrew v. Southouse*, 5 T. R. 292; 2 Jarm. 285).

**RIGHT AT LAW.** — V. RIGHT IN EQUITY.

**RIGHT CLOSE.** — Writ of, V. SOGAGE.

**RIGHT DELIVERY.** — Payment of Freight "on Right Delivery of the Cargo," means, that the payment and delivery are to be concurrent acts (*Paynter v. James*, L. R. 2 C. P. 348).

**RIGHT HEIR MALE.** — *V. Re Grayson*, 48 L. J. Ch. 354; *Dawes v. Ferrers*, 2 P. Wms. 1; 8 Vin. Ab. 317.

**RIGHT HEIRS.** — "In my judgment the expression 'my own right heir,' or 'right heirs,' means, according to the law of England, the heir or heirs of the testator at Common Law" (per Fry, J., *Re Garland*, 47 L. J. Ch. 714; 9 Ch. D. 213), who, if more than one, e.g. females, take as joint tenants (*Berens v. Fellowes*, 56 L. T. 391; 35 W. R. 356; 3 Times Rep. 425: *Vf*, PARCENERS).

A devise to the "right heirs" of Husband and Wife, is one to the child of both answering the description of heir to each; and, if no preceding estate be given to the father and mother, such child takes as a PURCHASER (*Roe v. Quartley*, 1 T. R. 630).

*Vh*, *Hawes v. Hawes*, 14 Ch. D. 614.

In *Powell v. Boggis* (14 W. R. 670), "right heirs" was construed as exors and admors.

V. HEIR, pp. 858, 860.

**RIGHT IN EQUITY.** — A Right in Equity, as distinguished from a Right at Law, is a right, not by the COMMON LAW or by Statute but, which until recent times could only be enforced by the Court of Chancery, — a Court now absorbed into, and forming a Division of, the High Court. Starting to redress the rigidity of legal rules (*V. Termes de la Ley*, *Equitie*), the guiding light of Equity was originally the discretion

of the Chancellor. "Equity is a roguish thing: for Law we have a measure, know what to trust to: Equity is according to the Conscience of him that is Chancellor, and as that is larger or narrower so is Equity. 'Tis all one as if they should make the standard for the measure we call a Foot, a Chancellor's foot" (Selden's Table Talk). But long before Blackstone's time, Equity became, and has remained, "a laboured connected system, governed by established rules and bound down by precedents from which its Courts do not depart" (3 Bl. Com. 432). *Vh*, Story: Watson Eq.: Snell's Equity.

Notwithstanding the union of the old Courts of Law with the Court of Chancery effected by the Judicature Acts (*V. JUDICATURE*), and the assimilation of jurisdiction by ss. 24, 25, Jud. Act, 1873, the old phraseology of Right at Law as distinct from Right in Equity remains of practical importance.

An Agreement whereby a "Right in Equity" to PERSONAL CHATTELS is conferred, is a Bill of Sale (s. 4, Bills of S. Act, 1878); that means, a Right in Equity as distinct from a Right at Law (*Ex p. Hubbard, Re Hardwick*, 55 L. J. Q. B. 490; 17 Q. B. D. 690; 35 W. R. 2). Therefore, a Building Agreement which provides that all materials brought by the builder on the land shall become the property of the building-owner, is *not* a Bill of Sale (*Reeves v. Barlow*, cited BILL OF SALE); so, of a document which gives an Agent a COVER on goods which may come to his hands (*Morris v. Flipo*, 1892, 2 Ch. 352; 61 L. J. Ch. 518; 66 L. T. 320; 40 W. R. 492); for neither of those documents gives any right to any goods until the happening of some future event, and, if and when such future event happens, the right to the goods is *at Law*, agreeably to *Ld Bacon's 14th Maxim, Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio procedens quæ sortiatu effectum interreniente novo actu: Vh, Holroyd v. Marshall*, 33 L. J. Ch. 193; 10 H. L. Ca. 191; 7 L. T. 172; 11 W. R. 171; 9 Jur. N. S. 213, on *wher, Tailby v. Official Receiver*, cited VAGUE. Compare *Reeves v. Barlow*, *sup*, with *Climpson v. Coles*, cited LICENSE.

*V. BY LAW: EQUITY.*

**RIGHT OF ACTION.** — "A 'Right of Action,' is not the power of bringing an action. Anybody can bring an action though he has no right at all. The meaning of the phrase is that, the person has a RIGHT or Claim before the action, which is determined by the action to be a valid Right or Claim" (per Esher, M. R., *A-G. v. Sudeley*, 1896, 1 Q. B. 354; 65 L. J. Q. B. 285).

*V. CHOSE IN ACTION.*

**RIGHT OF APPEAL.** — "Right of Appeal," *e.g.* s. 6, 38 & 39 V. c. 50, is not limited to a Right of Appeal expressly given by statute, but includes a case where a judge has given leave to appeal (*Turner v. G. H. Ry.* 46 L. J. Q. B. 226; 2 Q. B. D. 125).

**RIGHT OF COMMON.**—This expression as used in s. 1, Prescription Act, 1832, 2 & 3 W. 4, c. 71, does not include Rights in Gross, “but contemplates only those more usual and ordinary Rights of Common and *profit à prendre* which are in some way appurtenant to land, and are limited to the wants of a dominant tenement” (per Cur., *Shuttleworth v. Le Fleming*, 34 L. J. C. P. 311; 19 C. B. N. S. 687).  
V. COMMON.

**RIGHT OF SALE.**—A contractual “Right of Sale” of an article, or “Right to Sell” it, simply means that the person taking such Right is constituted an Agent for the sale of the article; it does not also mean that the person giving the Right contracts to supply the article (*Fox v. Smith*, 6 L. R. Ir. 319); *Seemle*, if “the,” and not merely “a” Right of Sale be given that imports a sole or exclusive agency (per Ball, C., *Ib.*).  
V. A: THE: EXCLUSIVE RIGHT.

**RIGHT OF WAY.**—This phrase has (1) a Legal, and (2) a Popular, meaning. In its legal sense, it connotes the right or easement which one man has over the land of another, and, in that sense, a man cannot have a Right of Way over his own land: but in its popular sense, “Right of Way” means, the right of passing over a particular road or place which, of course, is inherent in the ownership of such road or place. For a discussion as to the sense in which the phrase is used quâ the right, given by s. 55, Ry C. C. Act, 1845, to recover against a Ry Co for special damage done by their interference with a ROAD, *V. Llewellyn v. Glamorgan Vale Ry*, 1898, 1 Q. B. 473; 67 L. J. Q. B. 305; 78 L. T. 70; 46 W. R. 290.

V. WAY: WAYS.

**RIGHT TO BID RESERVED.**—*V. RESERVED BIDDING.*

**RIGHTS.**—“Rights or Interests, arising from or in connection with” the production of a Literary or Artistic Work, which “are *subsisting and valuable*” at the date of an Order in Council under the International Copyright Acts (proviso to s. 6, 49 & 50 V. c. 33), means, quâ “Rights,” such legal rights as those of a Translator or Adapter; but “Interests” have a much wider meaning and include, *e.g.* the Interest of the owner of a Trade-Mark to advertise it, or of a Publisher to sell his stock of the work or to produce a second edition, or of a Bandmaster “to recoup and to obtain a return for the outlay he has been put to in purchasing a piece of music, in training his band, in its performance, and (possibly) adapting it to its different parts for his men” (*Moul v. Groenings*, 1891, 2 Q. B. 443; 60 L. J. Q. B. 715; 65 L. T. 327; 39 W. R. 691, *espy* jdgmt of Smith, J.: *Schauer v. Field*, 1893, 1 Ch. 35; 62 L. J. Ch. 72; 68 L. T. 81; 41 W. R. 201). Whether such a “Right or Interest” is “subsisting and valuable” is a question of fact in each case, on *whv* the cases just cited.

The "Rights" which were extinguished by s. 20, Artizans and Labourers Dwellings Improvement Act, 1875, 38 & 39 V. c. 36, repled s. 22, 53 & 54 V. c. 70, include inchoate or nascent rights; their deprivation is "Loss" to be compensated (*Barlow v. Ross*, 24 Q. B. D. 381; 59 L. J. Q. B. 183; 62 L. T. 552; 38 W. R. 372; 54 J. P. 660; 6 Times Rep. 200). *V. RIGHT.*

A statutory reservation of "all Rights *accrued*" under a repealed statute, does not save a mere right to take advantage of the repealed statute without anything done by the person seeking to set up such right (*Abbott v. Minister for Lands*, 72 L. T. 402; 1895, A. C. 425; 64 L. J. P. C. 167). *V. ACCRUE.*

The "Rights, Privileges, or Duties," of a Municipal Corporation, the Costs of defending which may (without extraneous sanction) be paid out of the Borough Fund, are those relating to its existence, powers, or property (*A-G. v. Brecon*, 10 Ch. D. 204; 48 L. J. Ch. 153; 40 L. T. 52; 27 W. R. 332); not such matters as an alteration in the price of gas to be supplied for public lighting (*A-G. v. Swansea*, 1898, 1 Ch. 602; 67 L. J. Ch. 356; 78 L. T. 412; 46 W. R. 534; 62 J. P. 408). *Vf. RIGHT: Leith v. Leith Harbour Commrs*, cited PURSUANCE: NECESSARILY.

"Property and Rights" in a Co's mortgaging powers; *V. PROPERTY*, p. 1584.

*V. CIVIL RIGHTS: CUSTOMARY RIGHTS: NATURAL RIGHTS.*

**RIGHTS AND CREDITS.** — A Bequest of "Rights and Credits" will pass the general personal estate (*Hutchinson v. Hutchinson*, 13 Ir. Eq. Rep. 322).

**RIGOROUS.** — "Rigorous Imprisonment," s. 18, 47 & 48 V. c. 31, probably, refers to s. 53 of the Indian Penal Code (Act XLV. of 1860), wherein it is defined to mean, Imprisonment "with Hard Labour." By s. 73 of the Indian Penal Code, on a conviction for an offence punishable with "rigorous imprisonment," the Court may order solitary confinement during a portion of the imprisonment to which he is sentenced. *V. SENTENCE.*

**RING AWASH.** — *V. STOCK AWASH.*

**RINGING THE CHANGES.** — This trick amounts to THEFT (*R. v. Hollis*, 12 Q. B. D. 25; 53 L. J. M. C. 38).

**RIOT.** — "'Riot' is where three (at the least) or more, do some unlawfull act; as to beat a man, enter upon the possession of another, or such like" (Termes de la Ley). *Vf*; 2 Hawk. P. C. 622; Jacob: 11 Encyc. 291-294.

"A Riot is an unlawful assembly which has actually begun to execute the purpose for which it assembled, by a breach of the peace, and to the terror of the public; or a lawful assembly may become a Riot if the persons assembled form and proceed to execute an unlawful purpose to

the terror of the people, although they had not that purpose when they assembled" (Steph. Cr. 49, 50). *Vf*, *State v. Russell*, 45 N. Hamp. 84.

*Vf*, Arch. Cr. 1045: Rose. Cr. 793: REBELLION: ROUT: UNLAWFUL ASSEMBLY. *Cp*, CIVIL COMMOTION: LEVY WAR.

**RIOTOUSLY.** — Compensation may be given for damage occasioned "by any persons *riotously and tumultuously* assembled together," s. 2 (1), Riot (Damages) Act, 1886, 49 & 50 V. c. 38, though the assembly be in a private place (*Gunter v. Metrop. Police*, 5 Times Rep. 58).

**RIPARIAN.** — "‘Ripariæ,’ from *Ripa*, a Bank; in the Stat. Westm. 2, c. 47. Signifies Water or River running between the Banks, be it salt or fresh, 2 Inst. fol. 478" (Cowel).

"Riparian Authority," *quà* and by s. 112, P. H. London Act, 1891, "means any SANITARY Authority under this Act, and any Sanitary Authority under the Public Health Act, 1875, whose district, or part of whose district, forms parts of, or abuts on, any part of the said Port [of London], and any Conservators, Commissioners, or other persons having authority in or over any part of the said Port."

A Riparian Owner is one whose land abuts on, and is part of the bank of, a RIVER or STREAM, whether it be tidal or non-tidal (*Lyon v. Fishmongers Co*, 46 L. J. Ch. 68; 1 App. (Ca. 662). "I am of opinion that private riparian rights may and do exist in a tidal navigable river. The most material differences between the stream above and the stream below the limit of the tides are, that in an estuary or arm of the sea there exist, by the Common Law, public rights in respect of navigation and otherwise which do not generally (in this country) exist in the non-tidal parts of the stream; and that the *fundus* or Bed of the non-tidal parts of the stream belongs, generally, to the riparian proprietors, while in the estuary it belongs, generally, to the Crown" (per Ld Selborne, *ib*. 1 App. Ca. 682; 46 L. J. Ch. 78): *wherof*, as to the rights of riparian owners and the foundation of those rights: *Va*, *Bickett v. Morris*, L. R. 1 Sc. & D. App. 47: *Orr Ewing v. Colquhoun*, 2 App. Ca. 839: Angell on Watercourses.

**RISK.** — "The fallacy in the defendant's argument arises from the double meaning of the word 'Risk.' That means, both the voyage commenced with necessary conditions to make the under-writers liable, and also the chance of loss during its performance" (per Bramwell, L. J., *Bradford v. Symondson*, 7 Q. B. D. 464; 50 L. J. Q. B. 586: *Rodocarachi v. Elliott*, L. R. 8 C. P. 663, 667, 668: *F. LOST OR NOT LOST*). "It is said that the Risk on a vessel, under a policy to a place generally without any provision as to her safety there, terminates on the vessel being safely anchored at her Port of Destination, in the usual place and manner; and this, I think, is the correct rule" (per Amphlett, B., *Stone v. Marine Insree*, 1 Ex. D. 86; 45 L. J. Ex. 361).

"Including *Risk of Craft*"; *V. Gen. Insree of Trieste v. Royal Ex. Assree*, 2 Com. Ca. 144. "Including *all Risks of Craft* to and from the Vessel" will cover carriage in a Lighter belonging to the assured (per Mathew, J., *Paul v. N. America Insree*, 15 Times Rep. 534, rejecting *Sparrow v. Caruthers*, 2 Stra. 1236, and *Strong v. Natally*, 1 B. & P. N. R. 16).

"Including *all Risks whatsoever* . . . until safely delivered to Consignees"; this clause (called the *Warehouse to Warehouse Clause*) is so usually inserted in Marine Policies on Goods that it is incorporated into a Re-Insree in the usual form (*Marten v. Nippon Insree*, 3 Com. Ca. 164).

"Taking up a Risk"; *V. Byas v. Miller*, 3 Com. Ca. 40.

*Land Risk*; *V. SEA INSURANCE.*

*V. INTERIOR: MERCHANT'S RISK: OBVIOUS: OWN RISK: OWNER'S RISK: PASSENGER'S RISK: SHIP'S RISK: STEAM NAVIGATION: WITHOUT RISK.*

**RISK BEGINS TO RUN.—***V. ATTACHES.*

**RISK OF BOATS.**—"Save Risk of Boats, so far as Ships are liable thereto," engrafted on an Exception of Perils of the Sea, does not take away that Exception quâ goods put into a boat and intended to be thereby conveyed from ship to shore but lost by a PERIL OF THE SEA (*Johnston v. Benson*, 4 Moore C. P. 90).

**RISK OF COLLISION.**—In Art. 14 of Regulations for Preventing Collisions at Sea, 1879, repld Art. 17, Regns, &c, 1897, "Risk of Collision," means, "a probability or reasonable chance of collision" (1 Maude & P. 599, citing *The Sylph*, 2 Spinks, 75: *The Ericsson*, Swabey, 38: *The Mangerton*, Ib. 120).

*V. COLLISION.*

**RISK OF CRAFT.—***V. RISK: WITHOUT RISK.*

**RISKS OF THE SEA.**—"All Risks and Dangers of the Sea, &c"; *V. Castle v. Playford*, L. R. 7 Ex. 98; 41 L. J. Ex. 44; 26 L. T. 315; 20 W. R. 440: PERIL OF THE SEA.

**RITE.**—"The terms 'Rite' and 'Ceremony,' as used in the first Prayer Book and from thence imported into our Present Prayer Book, are terms, so to speak, of Ecclesiastical and Ritual Art; and must be construed with reference to their use in contemporaneous and other works of writers upon Ritual, unless they receive a different meaning from a comparison of other passages or parts in the Prayer Book or Statute in which they are found" (per Sir R. Phillimore, *Martin v. Markonochie*, L. R. 2 A. & E. 130). "There is no doubt that the terms 'Rites and



Ceremonies' are sometimes used in the sense contended for by the defts," — *i.e.* an Entire Service, such as Masses for the Dead, or Services for particular Festivals; or Customs, such as Creeping to the Cross, and the like, which were abolished at the Reformation, — "but, on the whole, the result of my examination of the authorities leads me to the conclusion that there is a legal distinction between a 'Rite' and a 'Ceremouy'; the former consisting in Services expressed in words, the latter in gestures or acts preceding, accompanying, or following, the utterance of these words" (Ib. 135, 136). The actual decision in that case was reversed by the P. C. (L. R. 4 A. & E. 279; 38 L. J. Ecc. 1), but, *semble*, without affecting the above definitions. *Vf*, ORNAMENT.

V. DIVINE SERVICE: MINISTRATION: SACRIFICE.

**RIVER.** — V. SEA: STREAM: THAMES.

As to what is to be considered River as distinguished from what is SEA; *V. Horne v. Mackenzie*, 6 Cl. & F. 628: MOUTH: NAVIGABLE: TIDAL RIVER.

"River," *quà* Clyde Navigation Act, 1858; *V. Clyde Nav. v. Laird*, 8 App. Ca. 658.

*Quà* Drainage (Ir) Act, 1842, 5 & 6 V. c. 89, "River," extends "to all rivers, lakes, canals, streams and estuaries" (s. 159): *quà* Land Drainage Acts, 1847, "rivulets" is added to that def (10 & 11 V. c. 38, s. 20, c. 113, s. 17).

*Quà* Fisheries (Ir) Acts, 1842, and 1850, "River," extends "to tributaries of rivers, and to all other streams and watercourses" (13 & 14 V. c. 88, s. 1, enlarging def in 5 & 6 V. c. 106, s. 113).

*Quà* SALMON Fisheries Acts, "'River,' shall include such portion of any stream or lake, with its TRIBUTARIES, and such portion of any estuary sea or sea-coast, as may from time to time be declared (in manner hereinafter provided) to belong to such River: 'Salmon River,' shall mean, any River, as above defined, frequented by salmon or young of salmon" (s. 3, 28 & 29 V. c. 121: on *whv. R. v. Grey*, 35 L. J. M. C. 198; 7 B. & S. 434; L. R. 1 Q. B. 469; 14 L. T. 477; 14 W. R. 671; 12 Jur. N. S. 685); *Vf*, as to "Salmon River," 41 & 42 V. c. 39, ss. 5, 6.

*Quà* Salmon Fisheries (Scot) Act, 1862, 25 & 26 V. c. 97, "River, shall include tributaries, and any lake from or through which any river flows" (s. 2).

*Quà* Trout (Scot) Acts, 1845, and 1860, "River," "Water," or "Loch," means and includes, "any stream, burn, mill-pool, mill-lead, mill-dam, sluice, pond, cut, canal, and aqueduct, and every other collection or run of water in which trouts and other fresh water fish breed, haunt, or are found or preserved" (8 & 9 V. c. 26, s. 10; 23 & 24 V. c. 45, s. 9).

Rivers and Lake Improvements, Sch 3, British North America Act, 1867; *V. A-G. Canada v. A-G. Ontario*, cited EXCLUSIVE RIGHT.

"Perils of Rivers," held, in America, to include Canal Navigation in a Marine Insure (*Protection Insree v. Wilson*, 6 Ohio St. 553).

V. SEVERAL FISHERY.

RIVER FISH. — V. FRESHWATER FISH.

ROAD. — "The word 'Road,' used in a Public Act, means, in my opinion, a PUBLIC ROAD, — a road over which the PUBLIC have rights" (per Bramwell, B., *Curtis v. Embery*, 42 L. J. M. C. 40; L. R. 7 Ex. 369; 21 W. R. 143), *i.e.* a road "open to all Her Majesty's subjects" (per Halsbury, C., *Caledonian Ry v. Turcan*, 67 L. J. P. C. 71).

But the context will not infrequently show that "Road" is used loosely as including both Public and Private roads, *e.g.* in ss. 39, 42–51, Ry C. C. (Scot) Act, 1845, and the corresponding sections in the Act for England. Yet, even in such cases, the Private Road so indicated means a WAY over which some strangers to the ownership of land have private rights; it does not include a drive or path or mode of access to a messuage which is within the CURTILAGE of such messuage (*Caledonian Ry v. Turcan*, 1898, A. C. 256; 67 L. J. P. C. 69).

A Road, generally, includes its Footpaths (per Parke and Taunton, JJ., *Loveridge v. Hodsoll*, 2 B. & Ad. 602). V. FOOTPATH.

"Roads" in s. 32, Ry C. C. Act, 1845, does not include a Tram, or Rail, Road (*Morris v. Tottenham Ry*, 1892, 2 Ch. 47; 61 L. J. Ch. 215); in s. 53, *ib.*, "Road," "means, road other than that to be made or changed under the Act" (per Wightman, J., *Tanner v. South Wales Ry*, 5 E. & B. 628).

Stat. Def. — 33 & 34 V. c. 70, s. 2, c. 78, s. 3; 50 & 51 V. c. 65, s. 12. — *Id.* 14 & 15 V. c. 92, s. 25.

V. CART ROAD: HIGHWAY: MAIN ROAD: PUBLIC ROAD: ROADS: STATUTE LABOUR: STREET: TURNPIKE ROAD.

As to an implied grant of Right of Way; V. ABUT.

Nautically, "a 'Road' is an open passage of the SEA, that receives its denomination commonly from some part adjacent, which, though it lie out at sea yet, in respect of the situation of the land adjacent and the depth and wideness of the place, is a safe place for the common riding or anchoring of Ships; as Dover Road, Kirkley Road, Hung Road" (Hale, *De Portibus Maris*, ch. 2). *Cp.* PORT: HAVEN.

"Road Authority," quâ Tramways Act, 1870, 33 & 34 V. c. 78; V. s. 3, on *wh.*, *Wolverhampton Tramways Co v. G. W. Ry*, 56 L. J. Q. B. 190; 56 L. T. 892. Such Road Authority does not lose its character or privileges by entering into an agreement (under s. 11 (4), *Loc Gov Act*, 1888) for the repair of MAIN ROADS by the District Council (*Stockport & Hyde v. Chester County Council*, 61 L. J. Q. B. 22; 65 L. T. 85; 39 W. R. 606; 55 J. P. 808).

"Road Authority"; Other Stat. Def., Gas and Waterworks Facilities

Act, 1870, 33 & 34 V. c. 70, s. 2: Locomotives Amendment (Scot) Act, 1878, 41 & 42 V. c. 58, s. 9: Probate Duties (Scot and Ir) Act, 1888, 51 & 52 V. c. 60, s. 3 (3): Telegraph Act, 1892, 55 & 56 V. c. 59, s. 9.

**ROADS.**—“Dangers of Roads” in the Exceptions in a BILL OF LADING; *V. Rothschild v. Royal Mail Steam Packet Co*, 21 L. J. Ex. 275, 276; 7 Ex. 734: DANGERS.

“Roads” in a *Mining Lease*; *V. Beaufort v. Bates*, 31 L. J. Ch. 481; 3 D. G. F. & J. 381; 10 W. R. 200; 6 L. T. 82.

*V. ROAD.*

**ROADSIDE WASTE.**—“Roadside Waste,” s. 11 (1), Loc Gov Act, 1888, does not include large strips of waste land which are private property, even though they lie open to and adjoin a HIGHWAY (*Curtis v. Kesteven Co. Co.*, 60 L. J. Ch. 103; 45 Ch. D. 504; 63 L. T. 543; 39 W. R. 199).

Quà presumption of ownership; *V. Gery v. Redman*, 45 L. J. Q. B. 267; 1 Q. B. D. 161.

**ROADWAY.**—Quà London Bg Act, 1894, “‘Roadway,’ in relation to any STREET or WAY, means and includes, the whole space open for TRAFFIC, whether carriage traffic and foot traffic or foot traffic only” (subs. 3, s. 5).

*V. CENTRE: PAVE: PRESCRIBED.*

**ROAST.**—“Roasted Chicory,” “Roaster of Chicory”; *V. DRIED CHICORY.*

**ROB.**—*V. ROBBERY.*

To say of a man “thou hast robbed a Church,” implies that the act was in a felonious manner and is actionable, especially if the speaker goes on to indicate a material robbery, *e.g.* by adding “and thou hast pulled off the lead” (*Benson v. Morley*, Cro. Jac. 153). *V. SACRILEGE.* So, to say of the plt that he has “robbed” another, is actionable Slander *per se*, for that word sufficiently describes an offence punishable by law (*Tomlinson v. Brittlebank*, 4 B. & Ad. 630; 2 L. J. K. B. 105).

**ROBBERS.**—“The nature of the transaction” (a Bill of Lading) “shows clearly therefore that the word ‘Robbers’ means, not ‘Thieves’ but, robbers *by force* to whom the term is more usually applied, although in common parlance it is often applied to every description of theft. It is explained also by the word with which it is associated, ‘Pirates,’ who certainly take by force and not by stealth. We have no doubt therefore that, in this Bill of Lading, this is the proper meaning of the word ‘Robbers’; and this being so, the loss in this case was not by Robbers” (per Pollock, C. B., *Rothschild v. Royal Mail Steam Packet Co*, cited *ROADS: Vh*, 1 Maude & P. 353). *V. THIEVES: DANGERS: ROBBERY.*

**ROBBERY.** — “ ‘*Robberie.*’ *Roboria*, properly is when there is a felonious taking away of a man’s goods from his person ” (Co. Litt. 288 a).

“ ‘*Robberie*’ is when a man taketh anything from the person of another feloniously ” (Termes de la Ley: *Vf*, Cowel: Jacob).

“ If a man take any thing, how little soever it be, from a man’s person, feloniously, it is called *Robbery* ” (Doctor and Student, Di. 1, ch. 8).

Robbery is Theft, with the additional circumstance that the thing taken “ is on the body or in the immediate presence of the person from whom it is taken, and that the taking is by actual violence intentionally used to overcome or prevent his resistance, or by threats of injury to his person, property, or reputation ” (Steph. Cr. 224). *Vf*, *R. v. Francis*, cited IMMEDIATELY.

*Vf*, Arch. Cr. 488; Rosc. Cr. 800.

*Cp*, PIRACY: RAPINE: ROB: ROBBERS: THEFT: THIEVES.

**ROD.** — A “ Rod, Pole, or Perch, in length,” is  $5\frac{1}{2}$  Imperial Standard Yards (s. 11, 41 & 42 V. c. 49). *V*. YARD.

A Square Rod, Pole, or Perch, is  $30\frac{1}{4}$  Square Yards (s. 12, *Ib.*).

**ROD AND LINE.** — Quà Salmon Fishery Acts, “ Rod and Line,” means, “ single rod and line ” (s. 4, 36 & 37 V. c. 71). *Va*, A.

A Night-line is an “ INSTRUMENT or DEVICE ” to catch fish, within s. 36, 28 & 29 V. c. 121, and is not within the exception of a “ Rod and Line,” nor is its use excused by a License to use a Rod and Line (*Williams v. Long*, 37 S. J. 253; 57 J. P. 217).

*Cp*, “ Net and Coble,” sub NET.

**ROGUE AND VAGABOND.** — For the catalogue of those who are “ Rogues and Vagabonds ”; *V*. s. 4, Vagrancy Act, 1824, 5 G. 4, c. 83; 1 & 2 V. c. 38, s. 2; 34 & 35 V. c. 108, s. 7; 36 & 37 V. c. 38, s. 3; 61 & 62 V. c. 39: Steph. Cr. 130: 12 Encyc. 401–404: CHARGEABLE.

“ ‘*Rogue,*’ signifies an idle sturdy Beggar ” (Cowel). For an early, if not the first, definition of “ Roges, Vacaboundes, and Sturdy Beggars,” *V*. s. 5, 14 Eliz. c. 5. For a history of the legislation hereon, *V. A-G. v. Merthyr Tydvil*, cited IDLE AND DISORDERLY PERSON.

*V*. CONJURATION: FORTUNES: FOUND: INCORRIGIBLE ROGUE: VAGABOND.

“ Thou art a Traitorly Rogue,” is actionable Slander (*Brunt v. Spencer*, 2 Keble, 47).

“ *Rogue Money*,” in Scotland, was a fund assessed by the Freeholders of shires to defray the charges of apprehending, subsisting, and prosecuting criminals (11 G. 1, c. 26); its assessment, collection, and management was transferred to the Commrs of Supply by the Rep. People (Scot) Act, 1832 (s. 44), and its mode of assessment and purposes were

amended by 2 & 3 V. c. 65, which latter Act was repealed by s. 34, Police (Scot) Act, 1857, 20 & 21 V. c. 72, the provisions of which Act supply the place of Rogue Money.

**ROLLING STOCK.**—Quà Railway Rolling Stock Protection Act, 1872, 35 & 36 V. c. 51, “ ‘Rolling Stock,’ includes, waggons, trucks, carriages of all kinds, and locomotive engines used on railways ” (s. 2).

*Vh, Easton Estate Co v. Western Wagon Co, cited WORK.*

**ROLLS.**—*V. FRENCH BREAD.*

**ROLT'S ACT.**—Chancery Regulation Act, 1862, 25 & 26 V. c. 42, repealed by 46 & 47 V. c. 49.

**ROMILLY'S ACTS.**—Charities Procedure Act, 1812, 52 G. 3, c. 101:

Corruption of Blood Act, 1814, 54 G. 3, c. 145:

Treason Act, 1814, 54 G. 3, c. 146.

**Lord ROMILLY'S ACTS.**—Administration of Estates Act, 1833, 3 & 4 W. 4, c. 104:

Leases Act, 1849, 12 & 13 V. c. 26, amended by 13 & 14 V. c. 17:

Judgments (Ir) Act, 1849, 12 & 13 V. c. 95:

Registration of Assurances (Ir) Act, 1850, 13 & 14 V. c. 72.

**RONCARIA.**—“*Roncaria* or *Runcaria* signifieth land full of brambles and briars, and is derived of *roncier*, the French word which signifieth the same, and as much as *sentietum*” (Co. Litt. 5 a).

**ROOD.**—A Rood of Land is “1210 square yards, according to the Imperial Standard Yard” (s. 12, 41 & 42 V. c. 49). *V. YARD.*

Rood, Rood Loft, Rood Beam, in a Church; *V. St. John the Baptist, Timberhill, 1895, P. 71.*

**ROOFED IN.**—Houses had been completely roofed in, but they had shop projections with flat roofs, which roofs had only been covered with wood and had not received their intended zinc coverings; held, that the houses were “roofed in” within a Building Agreement (*Louther v. Heaver, 58 L. J. Ch 482; 41 Ch. D. 248*). *Cp, Johnston v. Ewing, cited ERECTED.*

**ROOT.**—*V. PRODUCT.*

A good Root of TITLE to Realty requires, as a general rule, that the “first abstracted documents should purport to deal with the entire legal and equitable estates in the property; or should, at least, afford *primâ facie* evidence that the title to such legal and equitable estates was, at the date of such documents, consistent with the title as subsequently

deduced; they should not be dependent for their validity upon any previous instrument; and should contain nothing raising a fair doubt whether the parties claiming the interests there purported to be dealt with were in fact entitled so to deal with them" (Dart, 338).

**ROPE WORKS.** — *V.* NON-TEXTILE FACTORIES.

**ROS.** — *V.* BRUERA.

**ROSE'S ACT.** — Parochial Registers Act, 1812, 52 G. 3, c. 146.

**ROTATION.** — "Any Rotation"; *V.* LIBERTY TO CALL.

**ROUGH DRAFT.** — A document may be a perfected Agreement though headed "Rough Draft" (*Gray v. Smith*, 58 L. J. Ch. 803; 43 Ch. D. 208).

**ROUND BALE.** — *V.* BALE.

**ROUNDING.** — *V.* POINT.

**ROUT.** — " 'Rout,' is when people doe assemble themselves together, and after doe proceed, or ride, or goe forth, or doe move by the instigation of one or more who is their leader: This is called a Rout, because they doe move and proceed in Routs and numbers.

"Also where many assemble themselves together upon their owne quarels and braules: as if the inhabitants of a Towne will gather themselves together to breake hedges, pales or such like, to have Common there, or to beat another that hath done to them a common displeasure, or such like, that is a Rout, and against the law, although they have not done or put in execution their mischievous intent. See the statute 1 Ma. c. 5" (*Termes de la Ley*).

"A Rout is an unlawful assembly which has made a motion towards the execution of the common purpose of the persons assembled" (*Steph. Cr.* 49).

*V.* Arch. Cr. 1045: *Rosc. Cr.* 798: RIOT: UNLAWFUL ASSEMBLY.

**ROUTE.** — *V.* REASONABLE ROUTE.

**ROVER.** — Rover at Sea; *V.* PIRATE.

**ROYAL.** — *V.* CROWN: MAJESTY.

**ROYAL ARMS.** — As to what is such a resemblance to the "Royal Arms" as to be inadmissible as part of a TRADE-MARK, *V. Re König and Ebhardt*, cited ROYAL CROWN.

**ROYAL ASSENT.** — As to the Royal Assent which is the final sanction to perfect an Act of Parliament, *V.* 1 Bl. Com. 184: PREROGATIVE.

**ROYAL BURGH.** — *V.* BURGH.

**ROYAL COURTS OF JUSTICE.** — *V.* 42 & 43 *V.* c. 78, s. 28.

**ROYAL CROWN.** — “What is a ‘Royal Crown’?” — inadmissible as part of a TRADE-MARK — “It appears to me that it is that which appears on the Royal Arms, and is perfectly familiar to us all, and may be described as, a circlet surmounted by two arches” (per Stirling, *J.*, *Re König and Ebhardt*, 1896, 2 Ch. 236; 65 L. J. Ch. 404).

**ROYAL FISH.** — The Sturgeon, Porpoise, and Whale only: not Salmon, or Lamprey (Hale, *De Jure Maris*, ch. 7). Blackstone omits the Porpoise (1 Com. 290).

**ROYAL FRANCHISE.** — *V.* FRANCHISE.

**ROYAL MINES.** — *V.* Note at end of MINE: ROYALTIES.

**ROYAL PALACE.** — A Royal Palace is a “house” belonging to the Reigning Monarch as part of the Royal possessions (33 H. 8, c. 12); but in order that it may be exempt from the execution of Civil Process it must be a house where the Monarch is “then demurrant or abiding, in his Royal Person” (s. 1, *Ib.*: *A-G. v. Dakin*, L. R. 4 H. L. 338; 39 L. J. Ex. 113). When a house has been a Royal Residence and is kept up as Hampton Court Palace is, — *e.g.* is provided out of the Civil List with a Guard of honour and a Chaplain, and the Monarch has a pew in its Chapel, and the gardens and vinerias are kept in order at the royal expense and partly for the royal enjoyment, — that is strong evidence that it is still a Royal *Palace*, but it is insufficient to constitute it a Royal *Residence*, which means, a Palace to which the Monarch “could immediately return and reside in his own person, if he were pleased to do so” (per Ellenborough, C. J., *Winter v. Miles*, 10 East, 580); therefore, Hampton Court Palace, though a Royal Palace, is not a Royal Residence (*A-G. v. Dakin*, *sup.*): but in 1809, Kensington Palace was a Royal Residence (*Winter v. Miles*, *sup.*), and Holyrood Palace is so now (*Strathmore v. Laing*, 2 Wilson & Shaw, 6). The Tower was a Royal Palace within 33 H. 8, c. 12 (*R. v. Burchet*, 3 Inst. 140), though it could hardly now be called a Royal Residence.

**ROYAL PARKS.** — *V.* PARK.

**ROYAL PREROGATIVE.** — *V.* PREROGATIVE.

**ROYAL RESIDENCE.** — *V.* ROYAL PALACE.

**ROYAL VOYAGE.** — *V.* VOYAGE.

**ROYALTIES.** — “In its primary and natural sense ‘Royalties’ is merely the English translation or equivalent of ‘*Regalitates*,’ ‘*Jura*

*regalia*, 'Jura regia.' 'Regalia' and 'regalitates,' according to Du-cange, are 'jura regia'; and Spelman (Gloss. Arch.) says, '*Regalia dicuntur jura omnia ad fiscum spectantia*.' The subject was discussed with much fullness of learning in *Dyke v. Walford* (5 Moore P. C. 434), where a Crown grant of *jura regalia*, belonging to the County Palatine of Lancaster, was held to pass the right to *bona vacantia*. 'That it is a *jus* (said Mr. Ellis in his able argument, *Ib.* p. 480) is indisputable; it must also be *regale*; for the Crown holds it generally through England by Royal prerogative and it goes to the successor of the Crown, not to the heir or personal representative of the sovereign. It stands on the same footing as the right to escheats, to the land between high and low water mark, to felons' goods, to treasure trove and other analogous rights.' With this statement of the law their Lordships agree" (per Selborne, C., *A-G. Ontario v. Mercer*, 52 L. J. P. C. 89; 8 App. Ca. 767). So "Royalties," in a grant from the Crown, will include gold and silver mines (*A-G. British Columbia v. A-G. Canada*, 58 L. J. P. C. 92; 14 App. Ca. 295; *Vf, Mines Case*, 1 Plowd. 330). *Vf, Listowel v. Gibbings*, 9 Ir. Com. Law Rep. 223.

In *Keble v. Hickringill* (11 Mod. 74) the Court said that "Royalty" included Free WARREN; but in *Pannell v. Mill* (3 C. B. 633), Channell, arg., said that "*Pickering v. Noyes* (4 B. & C. 639) is a distinct authority to show that 'Royalties' will not include Free Warren." In either view a RESERVATION in a Lease of all timber trees, &c, "and also all Royalties whatsoever to the premises belonging or in anywise appertaining," will not reserve a right to enter on the lands to pursue kill and take Birds of Warren (*Pannell v. Mill*, 3 C. B. 625; 16 L. J. C. P. 91).

In its secondary senses the word "Royalties" signifies, in mining leases, that part of the *reddendum* which is variable, and depends upon the quantity of minerals gotten (*A-G. Ontario v. Mercer*, sup: *Vh, Greville-Nugent v. Mackenzie*, cited RENT: *Listowel v. Gibbings*, sup); or the agreed payment to a patentee on every article made according to the patent, on *whv Re Graydon*, cited PERSONAL LABOUR.

The power to appoint a gamekeeper given, by 22 & 23 Car. 2, c. 25, to lords of "*Manors and other Royalties*," was limited, so far as "Royalties" were concerned, to such Royalties as were inferior to Manors (*Ailesbury v. Pattison*, 1 Doug. 28).

**RUBBISH.** — "Rubbish," s. 11, Harbours Act, 1814, 54 G. 3, c. 159, can only be made applicable to deposits of such a nature and of such a quantity as can be washed down to the sea (*United Alkali Co v. Simpson*, 1894, 2 Q. B. 116; 63 L. J. M. C. 141; 71 L. T. 258; 42 W. R. 509; 58 J. P. 607).

"Rubbish," 57 G. 3, c. 29, s. 59, are things which have become valueless to the owner and the property in which he has abandoned (*Filbey v. Combe*, 2 M. & W. 677; 6 L. J. M. C. 132).



"Dust, Ashes, and Rubbish" of "houses and tenements of Inhabitants," s. 87, 10 & 11 V. c. 34, did not comprise dust, ashes, or rubbish, of Manufactories (*Lyndon v. Stanbridge*, 26 L. J. Ex. 386; 2 H. & N. 45: *Vf*, REFUSE).

**RULE.** — "Good Rule and Government": *V. PEACE.*

"Rule," or "Order," s. 18, 1 & 2 V. c. 110; *V. Shaw v. Neale*, 6 H. L. Ca. 581; 27 L. J. Ch. 444; 6 W. R. 635: *Vf*, RECOVERED OR PRESERVED.  
*V. GENERAL RULE.*

**RULES.** — Stat. Def., 38 & 39 V. c. 60, s. 4; 50 & 51 V. c. 57, s. 19; 56 & 57 V. c. 39, s. 79.

"Rules of Court"; *V. s. 14*, Interp Act, 1889: *Vf*, Arb. Act, 1889, s. 27; Jud. Act, 1873, s. 100; Jud. Act (Ir) 1877, s. 3; Parliamentary Elections Act, 1868, 31 & 32 V. c. 125, s. 3.

"Rule-Making Authority," "Statutory Rules"; *V. 56 & 57 V. c. 66*, s. 4.

*V. BYE LAW.*

**RULES or BYE LAWS.** — As to what are "Rules or Bye Laws of the Employer," s. 1 (4), Employers Liability Act, 1880, 43 & 44 V. c. 42; *V. Whatley v. Holloway*, 6 Times Rep. 190. In that case Fry, L. J., referring to the compromises manifest in the statute, said, "Every word represents a conflict or struggle of thought"; and therefore, he said, the Act was to be construed with great care.

**RUM.** — "Rum," sold simply as such, must not be reduced more than 25 degrees under proof (Sale of Food and Drugs Act Amendment Act, 1879, 42 & 43 V. c. 30, s. 6); *Sc*, GIN.

**RUN.** — "Trains to run in conjunction" with other trains; *V. Caledonian Ry v. G. N. Ry*, 2 Ry & Can Traffic Ca. 383.

**RUN WITH THE LAND.** — "A Covenant is said to 'Run with the Land' when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that land. A covenant is said to 'Run with the Reversion' when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that reversion" (Woodf. 172, citing *Spencer's Case*, 5 Rep. 16 a: *Vth*, 1 Sm. L. C. 65).

Under a Lease, "no covenant runs with the land except it touch the thing demised" (per Martin, B., *Sterens v. Copp*, L. R. 4 Ex. 25; 38 L. J. Ex. 31; 17 W. R. 166; 19 L. T. 454). *V. TOUCH.*

*V. as to what covenants run with the land*, Platt Cov.. Part 4. ch. 1. s. 5: Pollock's Principles of Contract, 7 ed., 237 *et seq*: Woodf. 172 *et seq*: Add. C. 208 *et seq*: Leake, 1037: *Austerberry v. Oldham*, cited HIGHWAY, p. 878: "Privity of Estate," PRIVY: ASSIGNS: SPIRITUOUS LIQUOR.

*Note.* A purchaser with notice, is charged with a covenant (*Tulk v. Moxhay*, 11 Bea. 571; 18 L. J. Ch. 83), if it be of a restrictive character (*Haywood v. Brunswick Bg Socy*, 51 L. J. Q. B. 73; 8 Q. B. D. 403; *Hall v. Erwin*, 57 L. J. Ch. 95; 37 Ch. D. 74; *Lond. & S. W. Ry v. Gomm*, 51 L. J. Ch. 530; 20 Ch. D. 562; *Mackenzie v. Childers*, 59 L. J. Ch. 188; 43 Ch. D. 265; *Andrew v. Aitken*, 52 L. J. Ch. 294; 22 Ch. D. 218; *Warton v. Robinson*, 29 S. J. 606, 607).

**RUNAGATE.** — To call one a “Runagate” is not Slander unless there be special damage (*Cockaine v. Hopkins*, 2 Lev. 214).

**RUNCARIA.** — *V.* RONCARIA.

**RUNCORN.** — *V.* MANCHESTER.

**RUNNING AGREEMENT.** — Quà Mer Shipping Act, 1894, a Running Agreement with the crew of a Foreign-going Ship (*V.* FOREIGN) is, where the voyages of the ship average less than 6 months in duration, and the agreement extends over two or more voyages (subs. 5, s. 115: *Vh*, subss. 6, 7, 8, 9 of this section).

**RUNNING AWAY.** — The act of vagrancy by “Running Away” and leaving wife or child chargeable to the parish, s. 4, Vagrancy Act, 1824, may be committed by walking away; but “in order to be within the meaning of the statute, the person must either abscond or so conceal himself that the parish authorities cannot find him, or he must absent himself by going a long distance” (per Erle, C. J., *Cambridge v. Parr*, 30 L. J. M. C. 242; 10 C. B. N. S. 99; 25 J. P. 518). *Note:* the offence is not complete until the wife or child becomes chargeable (*Reeve v. Yeates*, 31 L. J. M. C. 241; 1 H. & C. 435).

*V.* DESERTION: PERSISTENT.

**RUNNING DAYS.** — “The meaning of ‘Running Days’ is that the freighter shall not waste time in loading and unloading” (per Abinger, C. B., *Pringle v. Mollett*, 6 M. & W. 83).

“Working days vary in different ports and different countries; and merchants and ship-owners, thinking it would be desirable to count LAY DAYS irrespective of the particular customs of particular ports, introduced the phrase ‘Running Days’ as distinguished from Working Days. The phrase ‘Running Days’ is a well-known nautical phrase, and means, all the days in which in ordinary course the ship is running, and by that phrase is meant the whole of every day, during both day and night. They are the days during which if the ship were at sea she would be running. Therefore ‘Running Days’ comprehends every day, including Sundays and holidays. In *Brown v. Johnson* (11 L. J. Ex. 373; 10 M. & W. 331), Ld Abinger said, ‘I think the word *Days* and *Running Days* mean the same thing — namely, consecutive days, unless there be

*some particular custom*” (per Esher, M. R., *Neilsen v. Wait*, 55 L. J. Q. B. 89; 16 Q. B. D. 72: In *Neilsen v. Wait* a special custom of the port of Gloucester was affirmed by which “Running Days” does not mean consecutive days).

As to day from which Running Days are to be calculated; *V. Davies v. M'Veagh*, 48 L. J. Ex. 686; 4 Ex. D. 265: *Murphy v. Coffin*, 12 Q. B. D. 87; *vthc, The Curisbrook*, 59 L. J. P. D. & A. 37; 15 P. D. 98: *Pyman v. Dreyfus*, 24 Q. B. D. 152; 59 L. J. Q. B. 13. Hereon, observe that these Days mean, days of the week, and not periods of 24 hours (*The Katy*, 1895, P. 56; 64 L. J. P. D. & A. 49; 71 L. T. 709; 43 W. R. 290: *Cp, DAY*); but, in the absence of a fixed day, a charterer is entitled to “a fair working day” on which to begin (*Commercial S. S. Co v. Boulton*, L. R. 10 Q. B. 346; 33 L. T. 707), yet if once a day is treated as a LAY DAY (no matter how little of its working time remains), the Running Days begin (*The Katy*, sup), so, *semble*, a charterer should not, unless obliged, begin loading or unloading late on a Saturday afternoon.

*V. DAYS: WORKING DAYS: DEMURRAGE.*

**RUNNING FREE.** — In the Regulations for Preventing Collisions at Sea, 1879, “Running Free” is probably used as opposed to CLOSE-HAULED (1 Maude & P. 599). *Vh, The Privateer*, 9 L. R. Ir. 105.

**RUNNING LANDING NUMBERS.** — “These words are in practice treated as referring to the order in which bales are entered in the dock landing book” (Lowndes, 200).

**RUNNING POWERS.** — *V. Ayles v. S. E. Ry*, 37 L. J. Ex. 104; L. R. 3 Ex. 146.

**RURAL.** — “Rural Authority”; Stat. Def., Loc Gov Act, 1888, s. 100; Open Spaces Act, 1887, 50 & 51 V. c. 32, s. 1; P. H. Act, 1875, s. 5; P. H. Act, 1890, s. 11.

Rural *Deans*, “seem to have been deputies of the Bishop, planted all round his diocese better to inspect the conduct of the Parochial Clergy” (1 Bl. Com. 383, 384); their duties “are now clearly those of inspection and report only, and are ancillary to, and not conflicting with, those of the Archdeacon” (Phil. Ecc. Law, 213). *Cp, DEAN.* Stat. Def., 34 & 35 V. c. 43, s. 3.

“Rural District,” “Rural Sanitary District”; *V. DISTRICT.*

Rural *Industries*; *V. PURPOSES.* *Cp, INDUSTRIAL EMPLOYMENT.*

“Rural Parish,” quâ Loc Gov Act, 1894, means, “every Parish in a Rural Sanitary DISTRICT” (subs. 2, s. 1).

“Rural Sanitary Authority”; *V. SANITARY.*

**RUSCARIA.** — “A man grants *omnes ruscarius suas*. the soile where *rusci*, i.e. kne-holme, or butcher's prickes, or broome doe growe shall

passe, and so in the verse in the Register it is called; but in F. N. B., fol. 2, in the verse *pischaria* is put instead of *ruscaria*" (Co. Litt. 5 a).

**Lord John RUSSELL'S ACTS.**—Corporation and Test Act, 9 G. 4, c. 17:

Representation of the People Acts, 1832, 2 & 3 W. 4, cc. 45, 65, 88:

For the reform of Municipal Corporations, 5 & 6 W. 4, c. 76:

Tithe Act, 1836, 6 & 7 W. 4, c. 71:

Marriage Act, 1836, 6 & 7 W. 4, c. 85:

Births and Deaths Registration Act, 1836, 6 & 7 W. 4, c. 86:

For the removal of Jewish Disabilities, 8 & 9 V. c. 52.

**RUSSELL-GURNEY'S ACTS.**—Criminal Law Amendment Act, 1867, 30 & 31 V. c. 35:

Larceny Act, 1868, 31 & 32 V. c. 116:

Medical Act, 1876, 39 & 40 V. c. 41, enabling women to take Medical Degrees.

**RUST.**—As to the frequent exception in a Bill of Lading of "Rust, Leakage, and Breakage"; *V. LEAKAGE AND BREAKAGE.*

**Lord RUTHERFURD'S ACTS.**—Entail Amendment Act, 1848, 11 & 12 V. c. 36:

Court of Session Act, 1850, 13 & 14 V. c. 36.

**RUTLAND.**—Statute of Rutland; *V. DIVIDEND.*

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## SACRAMENT — SAFE

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**SACRAMENT.** — “The word *Sacramentum* signified, in its general meaning, an OATH. The later Fathers of the Church applied the term to designate a Holy Mystery. The English Church expresses most clearly the Catholic Doctrine defining a Sacrament to be, ‘an Outward and Visible Sign of an Inward Spiritual Grace given unto us, ordained by Christ Himself, as a means whereby we receive the same, and a pledge to assure us thereof’” (Phil. Ecc. Law, 483).

V. CHURCH: RITE.

**SACRIFICE.** — V. GENERAL AVERAGE SACRIFICE.

“Sacrifice” has been applied to the Lord’s Supper by Divines of eminence, not in the sense of a true propitiatory or Atoning Sacrifice effectual as a Satisfaction for sin but, in the sense of a RITE which calls to remembrance and represents before God the one True Sacrifice (*Sheppard v. Bennett*, L. R. 4 P. C. 371; 41 L. J. Ecc. 1). But in the 39 Articles “Sacrifice” means *the* Atoning Sacrifice (*Voysey v. Noble*, 40 L. J. Ecc. 22). V. REAL PRESENCE.

**SACRILEGE.** — Sacrilege is the “felonious taking of any goods out of a Parish Church, or other Church or CHAPEL” (s. 10, 1 Edw. 6. c. 12: 2 Hale P. C. 365); and such goods are not confined to things used for Divine Service, — the felonious taking of anything out of (or belonging to, *Benson v. Morley*, cited ROB) a Church or Chapel, which taking is a “violation of the sanctity of the place,” is Sacrilege (*R. v. Catherine Rourke*, Russ. & Ry. 386); in *this* the woman was convicted at Kingston Lent Assizes, 1819, of stealing an iron pot (value 6*l.*) used for burning charcoal to air the vaults of the church, and a snatch-block (value 4*s.*) for raising weights when the bells wanted repairing; and the judges (Easter Term, 1819) were unanimously of opinion “that a Capital Sentence ought to be passed on the prisoner.” *Note*: Sacrilege is now punished by s. 50, Larceny Act, 1861, which, moreover, extends the offence to “Meeting-house, or other Place of Divine Worship,” as well as to a Church or Chapel. *Th*, 2 Russ. Cr. Bk. 3, ch. 2: Arch. Cr. 606, 607: Rose. Cr. 816: Jacob.

**SACRISTAN.** — V. SEXTON.

**SADDLE.** — V. BELONGING.

**SAFE.** — “Safe and practicable” for Navigation; V. *The Oporto*, 66 L. J. P. D. & A. 12, 49; 1897, P. 249; 75 L. T. 599.

**SAFE CUSTODY.**—“Safe Custody,” s. 76, Larceny Act, 1861; *V. R. v. Cooper*, 43 L. J. M. C. 89; L. R. 2 C. C. R. 123; 38 J. P. 341; *R. v. Fullagar*, 41 L. T. 448; 44 J. P. 57; *R. v. Newman*, 51 L. J. M. C. 87; 8 Q. B. D. 706.

*V. EXPRESSLY FOR SAFE CUSTODY.*

**SAFE LOADING PLACE.**—A place where a vessel can be rendered safe for loading by reasonable measures of precaution, is a “Safe Loading Place” within the terms of a Charter Party (*Smith v. Dart*, 14 Q. B. D. 105; 54 L. J. Q. B. 121; 52 L. T. 218; 33 W. R. 455; 1 Times Rep. 99).

**SAFE PORT.**—“It seems that a PORT into which a ship cannot enter when fully laden is not a ‘Safe Port’” (1 Maude & P. 320, *n*, citing *General Steam Nav. Co v. Slipper*, 11 C. B. N. S. 493; 31 L. J. C. P. 185. *Vf*; MANCHESTER: *Capper v. Wallace*, 49 L. J. Q. B. 350; 5 Q. B. D. 163); and that meaning cannot be widened by a local custom to lighten ships to enable them to go to the place named as a “Safe Port” (*Reynolds v. Tomlinson*, 1896, 1 Q. B. 586; 65 L. J. Q. B. 496; following *The Alhambra*, 50 L. J. P. D. & A. 36; 6 P. D. 68). And, “although the ship can physically get into it (as far as navigation and what may be called the natural incidents are concerned), yet if that would be at the certain risk of confiscation, then the place is not a ‘Safe Port’” (per Blackburn, J., *Ogden v. Graham*, 31 L. J. Q. B. 29; 1 B. & S. 773).

*Va*, *Duncan v. Köster, The Teutonia*, 41 L. J. Adm. 57; L. R. 4 P. C. 171; *Nobel Co v. Jenkins*, cited RESTRAINTS OF KINGS: *Smith v. Dart*, cited SAFE LOADING PLACE: HARBOUR.

*V. NEAR THERETO AS SHE MAY SAFELY GET.*

**SAFELY.**—*V. NEAR THERETO AS SHE MAY SAFELY GET.*

“Safely and securely,” in a Declaration in Bailment, meant “with due care” (*Ross v. Hill*, 15 L. J. C. P. 182; 3 Dowl. & L. 788; 2 C. B. 877).

**SAFETY.**—As to the usual phrase in a Marine Insurance, “until she hath moored at anchor 24 hours in Good Safety”; *V. Lidgett v. Secretan*, L. R. 5 C. P. 190; 39 L. J. C. P. 196; 22 L. T. 272, and the authorities there cited and discussed: Arn. ss. 488–491.

As to a Warranty of a Ship’s “Safety,” or being “Well,” on a stated day; *V. Blackhurst v. Cockell*, 3 T. R. 360.

“Safety Cartridges.” quâ Explosives Act, 1875, 38 & 39 V. c. 17, “means, Cartridges for Small Arms of which the case can be extracted from the small arm after firing, and which are so closed as to prevent any explosion in one cartridge being communicated to other cartridges” (s. 108).

“Place of Safety”; *V. PLACE*, p. 1490.

**SAID.** — “Said,” or “the said,” has reference to the last antecedent (*Esdaile v. Maclean*, 15 M. & W. 277; 16 L. J. Ex. 71: *Va. Wigmore v. Wigmore*, W. N. (72) 93), e.g., *V. Hull v. Warren*, 9 H. L. Ca. 420. But, on a context, an opposite conclusion was reached in *R. v. Countesthorpe*, 2 B. & Ad. 487, and in *Healy v. Healy*, Ir. Rep. 9 Eq. 418.

V. AFORESAID: DEMISED. Cp, SUCH.

**SAID APPEAL.** — *V. li. v. Eyre*, 7 E. & B. 619; 26 L. J. M. C. 125.

**SAID CHILDREN.** — *V. Dickason v. Foster*, 4 L. T. 628.

**SAID COMMISSIONERS.** — Quà Drainage (Ir) Act, 1845, 8 & 9 V. c. 69, “said Commissioners,” means, “the Commissioners, or any two of them, acting in execution of the said recited Act (5 & 6 V. c. 89) and this Act” (s. 21).

**SAID ESTATE.** — *V. Markham v. Hutt*, W. N. (66) 17.

**SAID TRUSTEES.** — “The power of appointment of New Trustees is sometimes given ‘to the said Trustees,’ and then the question arises whether a sole survivor can appoint. It is conceived that ‘the said Trustees’ means, the persons or person representing the trust for the time being under the Settlement, and that the survivor can therefore exercise the power” (Lewin, 787).

**SAIL.** — “It is clear that a warranty to ‘sail,’ without the word ‘from,’ is not complied with by the vessel’s raising her anchor, getting under sail, and moving onwards, unless at the time of the performance of these acts she has everything ready for the performance of the voyage, and such acts are done as the commencement of it, nothing remaining to be done afterwards” (per Abbott, C. J., *Lang v. Anderdon*, 3 B. & C. 499; 3 L. J. O. S. K. B. 62: *vthe, Graham v. Barras*, 5 B. & Ad. 1011; 3 N. & M. 125).

“‘Sail’ is a technical word, and means ‘Start on Voyage’” (per Byles, J., *Barker v. McAndrew*, 34 L. J. C. P. 195; 18 C. B. N. S. 759: *Vh*, 1 Maude & P. 500: *Thompson v. Gillespy*, 24 L. J. Q. B. 340; 5 E. & B. 209). “A vessel has sailed the moment she is unmoored and got UNDER-WAY, in complete preparation for the voyage, *with the purpose* of proceeding to sea without further delay at the Port of Departure. Ld Mansfield said, ‘To constitute a Sailing under this Warranty, the vessel at the time of sailing must be, *in the contemplation of the Captain*, at absolute and entire liberty to proceed to her Port of Delivery in a mathematical line if it were possible’ (*Thehusson v. Staples*, 1 Doug. 366. n). — referring, probably, to her being ready so far as her preparations and equipments for the voyage are concerned” (Phillips on Insree, s. 772, cited and adopted by Mathew, J., *Seu Insree v. Blogg*, 1898, 1 Q. B. 27;

2 Ib. 398; 67 L. J. Q. B. 22, 757; 3 Com. Ca. 5, 218; 47 W. R. 71: *If*, READY FOR SEA). Therefore, where a vessel, being fully equipped, left her moorings with the intention of proceeding to sea, she was held to have then sailed, although, owing to the wind, she stayed for two days about half a mile nearer the mouth of the harbour (*Cockrane v. Fisher*, 4 L. J. Ex. 328; 1 Cr. M. & R. 809); *secus*, where the movement from the mooring towards the mouth of the harbour was merely for the more convenient sailing at a later time (*Sea Insree v. Blogg*, *sup*), or where the vessel starts but, being under-manned, is compelled to put back (*Sharp v. Gibbs*, 1 H. & N. 801).

An Agreement "to sail," without more, means, to sail at once, *i.e.* within a reasonable time "having regard to the weather and the possibility of moving the ship" (per Esher, M. R., *Oriental S. S. Co v. Tylor*, 63 L. J. Q. B. 131; 1893, 2 Q. B. 518).

*Cp*, LEAVE: but "DEPART," and "DESPATCH," are, *semble*, synonymous with "Sail."

"Now sailed, or about to sail"; *V.* Now, towards end.

*If*, FINAL SAILING: VOYAGE.

**SAIL WITH CONVOY.** — *V.* CONVOY.

**SAILING.** — *V.* SAIL: FINAL SAILING.

**SAILING VESSEL.** — Sailing Vessel "under-way," or "at anchor"; *V.* *The Indian Chief*, 14 P. D. 24; 58 L. J. P. D. & A. 25; 60 L. T. 240, cited UNDER-WAY.

*V.* VESSEL. *Cp*, STEAMSHIP.

**SAILOR.** — *V.* SEAMAN: MARINER.

**ST. LAWRENCE.** — "St. Lawrence" is considered to include both the gulf and river of that name (*Birrell v. Dryer*, 9 App. Ca. 345).

**Lord ST. LEONARDS' ACTS.** — Wills Act Amendment Act, 1852, 15 & 16 V. c. 24:

Land Tax Redemption (No. 2) Act, 1853, 16 & 17 V. c. 117:

Law of Property Amendment Acts, 1859, and 1860, 22 & 23 V. c. 35; 23 & 24 V. c. 38:

Crown Debts and Judgments Act, 1860, 23 & 24 V. c. 115:

Sale of Land by Auction Act, 1867, 30 & 31 V. c. 48.

*If*, SUGDEN'S ACTS.

**SAKE.** — "The priviledge called 'Sake' is for a man to have the americiaments of his tenants in his owne Court" (Termes de la Ley).

*Cp*, SOKE.

**SALARY.** — "'Salarie' is a word often used in our bookes, and it signifies a recompence or consideration given unto any man for his paines



bestowed upon another mans businessse" (Termes de la Ley, *Salarie*). *Vf*, Jacob.

The earnings of a Commercial Traveller, whose employment is at so much a year terminable by a week's notice, are "Salary" within s. 53 (2), Bankry Act, 1883 (*Ex p. Brindle*, 56 L. T. 498; 35 W. R. 596). *Vf*, INCOME.

"Salary or Remuneration"; *V*. REMUNERATION.

"Salary," quâ County Officers and Courts (Ir) Amendment Act, 1885, 48 & 49 V. c. 71; *V*. s. 1.

*V*. FULL SALARIES: IN RECEIPT: WAGES. *Cp*, STIPEND.

**SALE.**—"Sale" undoubtedly, in general, implies an EXCHANGE for money; and is so defined in Benjamin on Sale" (per Wills, J., *Coats v. Inl. Rev.*, 66 L. J. Q. B. 436; affd lb. 732; 1897, 2 Q. B. 423: *Vf*, *G. N. Ry v. Inl. Rev.*, cited RELEASE: *Paine v. Cork Co.*, cited SELL). Probably, that rule applies to Trustees acting under an ordinary Power of Sale; but the Court may, under s. 120 (a), Lunacy Act, 1890, authorize a sale of a lunatic's realty in consideration of a Perpetual Rent-charge (*Re Ware*, 1892, 1 Ch. 344; 61 L. J. Ch. 279; 66 L. T. 389).

"Sale" is co-relative to 'Purchase'" (per Channell, J., *West London Syndicate v. Inl. Rev.*, cited EQUITABLE), and "*primâ facie*, means, a sale effectual in point of law, including the execution of a contract where the law requires a contract in writing" (per Buckley, J., *Rosenbaum v. Belson*, cited PROCURE).

"A 'Sale' supposes a Seller, and also, I think, a Conveyance" (per Bramwell, B., *A-G. v. Wyndham*, 1 H. & C. 574; 32 L. J. Ex. 6: *Cp*, *Deun v. Diamond*, 4 B. & C. 243). *V*. DISPOSITION.

"A Sale implies that there shall be one who sells and another who buys" (per Cockburn, C. J., *King v. England*, 33 L. J. Q. B. 145; 4 B. & S. 782); accordingly, it was held in that case, that a landlord does not "sell" distrained goods, within s. 2, 2 W. & M., sess. 1, c. 5, if he tokes them at their appraised value, a proceeding which will not give him the property in goods distrained belonging to a third person. But in some circumstances, *e.g.* under s. 8, Heritable Securities (Scot) Act, 1894, 57 & 58 V. c. 44, a man may be both seller and buyer (*Inl. Rev. v. Tod*, cited DECREE).

"The word, 'Sale,' virtually includes within it the word 'MORTGAGE,' which is practically a sale" (per Romilly, M. R., *Bennett v. Wyndham*, 23 Bea. 526); accordingly, it was there held that a prohibition against raising a charge by sale prevented its being done by mortgage.

Quâ Land Law (Ir) Act, 1881, 44 & 45 V. c. 49, "'Sale,' 'sell,' and cognate words, include, 'alienation,' and 'alienate,' with or without VALUABLE consideration" (s. 57).

Quâ and by s. 8, Tithe Rent-charge (Ir) Act. 1900, 63 & 64 V. c. 58, "Sale" "does not include a Mortgage, or a Marriage or other Family

Settlement or Arrangement, or a sale in any Court to the owner of the land sold."

Goods are not "sold" within s. 1, Mercantile Law Amendment Act, Scotland, 1856, 19 & 20 V. c. 60, until the purchaser has acquired an enforceable *ius ad rem* in respect of such goods (*Seuth v. Moore*, 55 L. J. P. C. 54; 11 App. Ca. 350).

Quà Sale of Goods Act, 1893, " 'Sale,' includes, a Bargain and Sale, as well as a Sale and Delivery " (s. 62). *Vh*, Chalmers on the Act: 11 Encyc. 349-360.

The supply at a price by a CLUB to one of its members of Intoxicants to be consumed by him off the premises, is not a "sale" within s. 3, Licensing Act, 1872 (*Graff v. Evans*, 51 L. J. M. C. 25; 8 Q. B. D. 373; 30 W. R. 380; 46 L. T. 347; 46 J. P. 262: *Newell v. Hemingway*, 58 L. J. M. C. 46; 60 L. T. 544; 53 J. P. 324). *V. DRUNKEN PERSON.* As to Place of Sale, *V. inf.*

Where goods are "sold" under a *fi. fa.*, the 14 days from the time of their "sale," under s. 87, Bankry Act, 1869, repld s. 46, Bankry Act, 1883, will begin to run when the sale is *completed* which the writ authorizes, *i.e.* the end of the last day of sale (*Jones v. Parsell*, 52 L. J. Q. B. 672; 11 Q. B. D. 430: *Re Cripps, Ross, & Co*, 58 L. J. Q. B. 19). *V. "Proceeds of Sale," inf.*

As to when a sale is *perfected* within ss. 6-9, Sale of Food and Drugs Act, 1875; *V. Kirk v. Coates*, 55 L. J. M. C. 182; 16 Q. B. D. 49: *Fecitt v. Walsh*, 60 L. J. M. C. 143; 1891, 2 Q. B. 304; 55 J. P. 726.

When a statute directs an Officer to sell goods he has *levied under an Execution*, that involves that such a sale gives the purchaser a good Title to the goods, even as against their true owner, *e.g.* the sale contemplated by s. 87, Bankry Act, 1869 (per Mellish, L. J., *Ex p. Villars*, 43 L. J. Bank. 76: 9 Ch. 432), or the sale by the Bailiff directed by the concluding words of s. 156, Co. Co. Act, 1888 (*Goodlock v. Cousins*, 1897, 1 Q. B. 558; 66 L. J. Q. B. 360: 76 L. T. 313; 45 W. R. 369), or the sale of a Distress under 2 W. & M. sess. 1, c. 5 (*V. per Cockburn, C. J., King v. England*, 33 L. J. Q. B. 145; 4 B. & S. 782).

So quà Real Estate, "a Common Law Power enables the Donee to pass the LEGAL ESTATE; but it is the execution, not the creation, of the Power which effects the transmutation of estate. The legal estate before the execution remains in the creator of the power or his grantee or heir at law, as the case may be. Thus, a devise by A. that his exors do sell his lands, gives the exors a power to pass the legal estate to the purchaser; the exors themselves take no estate—that descends to the heir at law until the power is executed—but they have the power of nominating the purchaser as the person to take the legal estate, and, on their doing so, the estate at once vests in him in the same way as if the testator had named him as his devisee (*Stafford v. Buckley*, 2 Ves. sen.

179: *Warneford v. Thompson*, 3 Ves. 513; *Smith v. Camelford*, 2 Ves. 698) : Farwell, 1, 2.

*Vf*, inf as to Powers of Sale.

*Commission* on sale of Leaseholds, calculation of; *V. Biggs v. Gordon*, 8 C. B. N. S. 638.

*Contract* relating to the sale of Goods; *Matter* relating or incidental to sale of Leaseholds; *V. RELATING.*

*V. CONTRACT OF SALE: FAULTS: HOLD.*

"Contract of Sale of LAND," s. 1, V. & P. Act, 1874, includes a Contract for a LEASE, the context of the phrase being s. 2, the first rule of which relates to Leases (*Jones v. Watts*, 43 Ch. D. 574; 62 L. T. 471; 38 W. R. 725): *V. VENDOR.* But as to whether a Power of Sale includes a power to grant Leases, *V. Jervoise v. Clarke*, 6 Mad. 96: *Evans v. Jackson*, 8 Sim. 217.

"Sales under the *Lands C. C. Act*," &c, R. 11, Sch 1, Part 1, Solrs Rem Ord, mean, "Transactions" (*Re Burdekin*, 1895, 2 Ch. 136; 64 L. J. Ch. 561; 72 L. T. 639; 43 W. R. 534, *V. espy* jdgmt of Lopes, L. J.).

"*Conveyance* on Sale"; *V. CONVEYANCE: DECREE.*

*Covenant* against "the sale of Liquors"; *V. PUBLIC HOUSE.*

*Covenant* against "the Sale," as compared with one against being a "Seller by Retail," of Spirituous Liquors; *V. SPIRITUOUS LIQUOR: RETAIL.*

*V. DISPOSITION*, as to "Sale, Mortgage, or other Disposition."

"Sale, Mortgage, or Charge"; *V. MORTGAGE OR CHARGE.*

*Place* where a Contract of Sale is made; *V. MADE.*

*Place* of Sale of *Intoxicants*; *V. Pletts v. Campbell*, 1895, 2 Q. B. 229; 64 L. J. M. C. 225; 43 W. R. 634; 73 L. T. 344; 59 J. P. 502, disapproving *Stretch v. White*, 25 J. P. 485: but *Pletts v. Campbell* was distd in *Pletts v. Beattie*, 1896, 1 Q. B. 519; 65 L. J. M. C. 86; 74 L. T. 148; 60 J. P. 185: *Vf*, *Morrison v. Stubbs*, 61 J. P. 486: *Stephenson v. Rogers*, 80 L. T. 193. *Cp*, EXPOSE.

*POWER OF ATTORNEY*, as to construction of clause in, empowering sales; *V. Hawksley v. Outram*, 1892, 3 Ch. 359; 62 L. J. Ch. 215; 67 L. T. 804: such a power does not authorize a PLEDGE (*Tonmenjoy Coondoo v. Watson*, cited NEGOTIATE).

*Power of Sale*; *V. sup.*

Power to "make Sales and Arrangements"; *V. ARRANGEMENT.*

Power enabling a Sale or Exchange of property, authorizes its PARTITION.

Power of Sale, generally, authorizes a MORTGAGE (*V. Farwell*, 558; *Vf*, *Ib.* ch. 16: ante, p. 1781).

Power to raise money by "Sale or Mortgage," authorizes a Mortgage with a Power of Sale (*Bridges v. Longman*, 24 Bea. 27: *V. Farwell*, 449).

"*Proceeds* of Sale," s. 87, Bankry Act, 1869, meant, the amount actually realized by the sale (*Turner v. Bridgett*, 51 L. J. Q. B. 374;

8 Q. B. D. 392), as distinguished from money paid to the sheriff for, and with the assent of, the exon creditor to prevent a sale (*Ex p. Brooke*, 9 Ch. 301; 43 L. J. Bank. 49; *Stock v. Holland*, 43 L. J. Ex. 112; L. R. 9 Ex. 147).

A Guarantee for the deficiency of a secured debt remaining after the "sale" of the *Security*, is not available until such sale is completed (*Moor v. Roberts*, 3 C. B. N. S. 830). *Cp.* BOUGHT.

V. BY WEIGHT: FOR SALE: PURCHASE: RETAIL: SAMPLE: SELLER: SELLER.

**SALE ON TRIAL.** — "Other instances of sales, dependent on conditions precedent, are afforded by 'Sales on Trial,' or 'Approval,' and by the bargain known as 'Sale or Return.' In the former class of cases there is no sale till the approval is given, either expressly, or by implication resulting from keeping the goods beyond the time allowed for trial. In the latter case the sale becomes absolute, and the property passes only after a reasonable time has elapsed, without the return of the goods" (Benj. 590, 591, cited with approval *Elphick v. Barnes*, 5 C. P. D. 326; 49 L. J. C. P. 701). But, *semble*, sales on "Approval" are now put on the same footing as those "on Sale or Return" by R. 4, s. 18, Sale of Goods Act, 1893.

In sales "on Trial," the Buyer has the whole of the agreed time in which to exercise his OPTION (Benj. 591); and, in the absence of negligence on his part, the loss of the subject-matter before that time falls on the seller (*Elphick v. Barnes*, *sup.*).

In the bargain "Sale or Return," the Receiver of the goods solely has the Option of returning them; the Supplier cannot demand their return, and can only sue for their price or value (per Esher, M. R., *Kirkham v. Attenborough*, 1897, 1 Q. B. 201; 66 L. J. Q. B. 149; 75 L. T. 543; 45 W. R. 213). The property passes to such receiver and the transaction is concluded when (1) he signifies acceptance to the seller, or (2) he retains the goods (without notice of rejection) beyond the fixed time, or (where there is no time fixed) beyond a reasonable time, or (3) he does any "act adopting the transaction" (R. 4, s. 18, Sale of Goods Act, 1893); and such lastly mentioned act means, some act "inconsistent with anything except his being the purchaser" (per Lopes, L. J. *Kirkham v. Attenborough*, *sup.*), *e.g.*, as held in that case, pledging the goods.

*Vf.* *Moss v. Sweet*, 16 Q. B. 493; 20 L. J. Q. B. 167; *Ray v. Barker*, 4 Ex. D. 279; 48 L. J. Ex. 569; *Ex p. Wingfield*, 10 Ch. D. 591; *Harper v. Granville-Smith*, 7 Times Rep. 284; Benj. 591, 592.

Where a time is specified in a "Sale or Return" bargain, it will be reckoned from the receipt of the goods by the buyer (*Jacobs v. Harbach*, 2 Times Rep. 419).

**SALE OR RETURN.** — V. SALE ON TRIAL.

**SALEABLE COMMISSION.** — “Saleable Commission” in the Army, prior to the Royal Warrant of 20th July 1871, abolishing Purchase in the Army; Stat. Def., 34 & 35 V. c. 86, s. 3. *V. REGULATION.*

**SALEABLE UNDERWOOD.** — What were “Saleable Underwoods” within 43 Eliz. c. 2, was a question of fact (*R. v. Narberth North*, 9 A. & E. 815; *Vf, R. v. Mirfield*, 10 East, 224; *R. v. Ferrybridge*, 1 B. & C. 379–383, *n*); and in *Fitzhardinge v. Pritchett* (36 L. J. M. C. 49; L. R. 2 Q. B. 135) it was held that Beech trees of 30 years’ growth might be cut and managed as “Saleable Underwood” so as to be rateable under that statute.

*Note:* the provisions of that statute as to “saleable underwoods” were repealed by Rating Act, 1874. *V. PLANTATION.*

As to what passes under a Grant of “Saleable Underwoods”; *V. WOOD:* Touch. 95.

*V. UNDERWOOD: PROPERTY OTHER THAN LAND.*

**SALICETUM.** — “*Salicetum* doth signifie a wood of willowes, *ubi salices crescent.* These trees in our bookes are called *sawces*” (Co. Litt. 4 b).

**SALIVA.** — “By the grant of the boillourie of salt, it is said that the soile shall passe, for it is the whole profit of the soile. And this is called *saliva*, of the French word *salure* for a salt-pit; and you may read *de saliva* in Domesday, and *selda* signifieth the same thing; and where you shall reade in records *de lacertâ in profunditate aque salsa*, there *lacerta* signifieth a fathom” (Co. Litt. 4 b). But a little further on it is said, “*Selda* is a wood of sallows, willows, or withies”; *Va, SELDA:* Touch. 95. Cowel gives the word as “*Salina.*” and, sub *selda*, thought Coke mistaken in taking “*selda*” for a salt pit.

**SALMON.** — Quâ Salmon and Freshwater Fisheries Acts, “Salmon,” includes “all migratory fish of the genus Salmon; — whether known by the names hereinafter mentioned, *i.e.* salmon, coek or kipper, kelt, laurel, girling, grilse, botcher, blue coek, blue pole, fork tail, mort, peal, hering peal, may peal, pugg peal, harvest coek, sea trout, white trout, sewin, buntling, guiniad, tubs, yellow fin, sprod, herling, whiting, bull trout, whitling, scurf, burn tail, fry, samlet, smoult, smelt, skirling or scarling, parr, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, brondling; or by any other local name” (s. 4. Salmon Fishery Act, 1861, 24 & 25 V. c. 109). In s. 9 of that Act, “Salmon,” includes “TROUT, CHAR, and all FRESHWATER FISH” (s. 9, 41 & 42 V. c. 39). *V. SEA FISH.*

Quâ Salmon Fisheries (Scot) Acts, “Salmon,” means and includes, “salmon, grilse, sea trout, bull trout, smolts, parr, and other migratory fish of the salmon kind” (s. 2, 25 & 26 V. c. 97).

Quà Fisheries (Ir) Acts, "Salmon," extends to and includes, "grilse, peall, sea trout, saulets, par, and all other fish of the salmon kind, and the spawn and fry thereof" (s. 1, 13 & 14 V. c. 88).

V. FRY: YOUNG SALMON.

"'Salmon, Trout, and Char,' shall include part of any such fish respectively" (s. 6, d, 55 & 56 V. c. 50).

"Salmon *Conservators*"; Stat. Def., 51 & 52 V. c. 54, s. 14.

"The Salmon Fisheries (Scotland) Acts, 1828 to 1868," "The Salmon and Fresh water Fisheries Acts, 1861 to 1892"; V. Sch 2, Short Titles Act, 1896.

"Salmon *Fishing*"; V. NET.

"Salmon *River*"; V. RIVER.

V. FISHERY: FISHING.

**SALT.** — In the memorandum of a Policy of Insurance, "Salt" does not include Saltpetre (1 Park, 245: 2 Arn. s. 883).

To "Salt an Invoice," means, the addition of a commission to the price at which goods have been purchased (*Ex p. Johnson*, 30 L. J. Bank. 38).

**SALVAGE.** — "The taking care of goods left by the tide upon the banks of a navigable river, communicating with the sea, may in a vulgar sense be said to be Salvage; but it has none of the qualities of Salvage, in respect of which the laws of all civilized nations, the laws of OLERON and our own laws in particular, have provided that a recompense is due for the saving, and our law has also provided that this recompense should be a lien upon the goods which have been saved" (per Eyre, C. J., *Nicholson v. Chapman*, 2 Bl. H. 257), *i.e.* "the service must be successful" (*The Edward Hawkins*, 31 L. J. P. M. & A. 46).

"Salvage, in its simple character, is the service which those who recover PROPERTY from loss or danger at SEA, render to the owners, with the responsibility of making restitution, and with a lien for their reward. It is personal, in its primary character at least" (per Ld Stowell, *The Thetis*, 3 Hagg. Adm. 48: *Vf, Aitchison v. Lohre*, 4 App. Ca. 755; 49 L. J. Q. B. 123).

*Life Salvage*; V. ss. 544, 545, Mer Shipping Act, 1894: BELONGING: *The Pacific*, cited PART, p. 1412.

By the original law of the Admiralty Court, Salvage is claimable only for a SHIP, her Apparel and Cargo (including flotsam, jetsam, and lagan), and the Wreck of these, and Freight; by statute, Life Salvage is added (*The Gas Float Whitton No. 2*, 1896, P. 42; 65 L. J. P. D. & A. 17; 44 W. R. 263; *affd* in H. L., 1897, A. C. 337; 66 L. J. P. D. & A. 99; 76 L. T. 663).

Quà Part 9, Mer Shipping Act, 1894, "'Salvage,' includes, all expenses properly incurred by the Salvor in the performance of the Salvage Services" (s. 510).

"Salvage due under this Act," s. 552, Mer Shipping Act, 1894, refers to all cases in which Salvage may become payable by the decree of any Court having jurisdiction under the Act to determine salvage disputes (*The Fulham*, 1899, P. 251; 68 L. J. P. D. & A. 75; 47 W. R. 598; 81 L. T. 19).

"Reasonable amount of Salvage," ss. 458, 460, Mer Shipping Act, 1854, repld ss. 546, 547, Mer Shipping Act, 1894; *V. Beardnell v. Beeson*, 9 B. & S. 315.

Principles governing the Amount of Salvage; *V. The William Beckford*, 3 Rob. C. 355; *The Glengyle*, 1898, P. 97; 1898, A. C. 519; 67 L. J. P. D. & A. 12, 48, 87; 78 L. T. 801; 46 W. R. 308.

An agreement to equitably apportion Salvage, is not an agreement to "abandon" Salvage, within s. 182, Mer Shipping Act, 1854, repld s. 156, Mer Shipping Act, 1894 (*The Wilhelm Tell*, 1892, P. 337; 61 L. J. P. D. & A. 127).

Salvage "for Owners' and Charterers' Equal Benefit," "means, the NET pecuniary result of salvage operations" (per Bigham, J., *Booker v. Pocklington S. S. Co.*, 1899, 2 Q. B. 694; 69 L. J. Q. B. 10; 81 L. T. 524).

*Vh.*, Park, ch. 8: Kennedy on Salvage: Abbott, Part 3, ch. 10: Carver, Part 2, ch. 11: Fisher, Part 3, ch. 1, s. 2, subs. 8, Part 5, ch. 5, s. 2.

*V. DURESS: SALVOR: TOWAGE: WITHOUT BENEFIT OF SALVAGE.*

"A TOTAL LOSS, in the language of *Fire Insree*, does not mean, as in Marine Insree, the total destruction of the property, but its destruction or injury to such an extent as to render the insurer liable to pay the total sum insured. A ship may be, and perhaps often is, caught by a hurricane and lost with all hands on board; but a fire rarely totally destroys the insured property. The residue remaining after the fire is termed the Salvage" (Bunyon on Fire Insree, 4 ed., 168).

Salvage allowances and lien to Mtgees, Trustees, &c. quâ outlay in preserving the subject-matter of the mtge, trust, &c; *V. Fisher*, ss. 524-530: *Securities & Properties Corp v. Brighton Alhambra*, 62 L. J. Ch. 566; 68 L. T. 249: *Re Montagu*, cited REBUILDING: *Re Waldegrave*, W. N. (99) 240.

But the general principle is that the doctrine of Maritime Salvage "has no application to goods on land, nor to anything except ships or goods in peril at sea. With regard to ordinary goods on which labour or money is expended with a view of saving them or benefiting the owner, there can be only one principle upon which any claim for repayment can be based — and that is, if you can find facts from which the law will imply a contract to repay or to create a lien" (per Bowen, L. J., *Falcke v. Scottish Insrer*, 56 L. J. Ch. 714; 34 Ch. D. 249: *Vj*; *Re Winchilsea*, 58 L. J. Ch. 20; 39 Ch. D. 168).

**SALVOR.** — Quâ Mer Shipping Act, 1894, "Salvor." means (in the case of salvage services rendered by the officers or crew, or part of the

crew, of any ship belonging to Her Majesty) the person in command of that ship" (s. 742).

**SAME.** — "The same," generally refers to the last preceding antecedent (Co. Litt. 20 b, 385 b); but need not, necessarily, mean the whole of the premises indicated (*Rolfe v. Thompson*, cited **SAMPLE**).

As to the antecedent to which "the same" refers; *V. Huskisson v. Leferre*, 26 Bea. 160; but "the word 'same' may grammatically refer to more than one antecedent" (per Jessel, M. R., *Court v. Buckland*, 45 L. J. Ch. 216; 1 Ch. D. 605). A devise of "my estate called L." to A. for life, "and after his decease I give *the same*" unto B., without words of limitation, was held to give B. only a life interest (*Doe d. Lean v. Lean*, 10 L. J. Q. B. 60; 1 Q. B. 229). But this case was on a Will made previously to the Wills Act, 1837, and seems to have turned on the word "ESTATE" as implying merely local situation, rather than as laying down that because A. was to have a life estate, therefore B. was to have "the same": *Vf*, 2 Jarm. 282.

"Unless *the same* shall have been otherwise determined," s. 25, Comp Act, 1867; *V. per* Ld Herschell, *Ooregum Co v. Roper*, cited **OTHERWISE**, p. 1373.

The antecedent of "the same" in s. 9, 41 V. c. 16, is "MACHINERY," and not merely the part in motion, and therefore it was an offence within that section to employ a child under 14 to clean the fixed part of machinery in motion (*Pearson v. Belgian Mills*, 1896, 1 Q. B. 244; 74 L. T. 101; 65 L. J. M. C. 48; 44 W. R. 334; 60 J. P. 151), and to the same effect is the replacing provision, s. 13, Factory and Workshop Act, 1901, which avoids the use of "the same."

"Same **BUSINESS**," covenant against; *V. Ashby v. Wilson*, cited **COFFEE-HOUSE**. To **CARRY ON** "the same Business," does not mean that it must be done in a Shop; it means, selling similar goods (*Brampton v. Beddoes*, 11 W. R. 268; 13 C. B. N. S. 538; 7 L. T. 679).

"Same **Cause**"; *V. CAUSE*.

"Same **Circumstances**"; *V. inf.*

"Same **Conditions**"; *V. inf.*

"Same **Covenants**"; *V. inf.*

"Same **Curtilage**," in def of **DRAIN**, s. 250, Metrop Man. Act, 1855; *V. CURTILAGE*.

"Same **Description**," of Goods; *V. G. W. Ry v. Sutton*, *inf.*

"Same **FORM**"; *V. inf.*

"Same **Ground**," in a Commercial Traveller's contract of service; *V. Mumford v. Gething*, 29 L. J. C. P. 105; 7 C. B. N. S. 305.

"Same **INTEREST**"; — "Numerous persons having the Same Interest," R. 9, Ord. 16, R. S. C., includes only those who have a common interest in some property or proprietary right; the phrase does not include persons who may be assumed to be interested in a tort (*Temperton v. Russell*,



1893, 1 Q. B. 435; 62 L. J. Q. B. 412; 68 L. T. 425; 41 W. R. 321). Growers of fruit, flowers, &c, who use Covent Garden Market have such a proprietary right in the Cart Stands in the Market; for under the Regulation of Covent Garden Market Act, 1828, 9 G. 4, c. cxiii, they have preferential rights to resort to such Stands (*Ellis v. Bedford*, 1899, 1 Ch. 494; 68 L. J. Ch. 289; 80 L. T. 332; 47 W. R. 385; affd in H. L. 70 L. J. Ch. 102; 1901, A. C. 1). *Vf*, *Wood v. McCarthy*, 1893, 1 Q. B. 775; 62 L. J. Q. B. 373; 69 L. T. 431; 41 W. R. 523.

"Same Manner," "Same Time and Manner," "Same Terms and Conditions"; *V. AFORESAID: FEME. Cp, MANNER.*

"Same Offence," s. 6, Habeas Corpus Act, 1679, 31 Car. 2, c. 2; *V. A-G. Hong Kong v. Kwok-a-Sing*, 42 L. J. P. C. 64; L. R. 5 P. C. 179.

"The expression 'Passing only over the same *Portion of the Line*,' s. 90, Ry C. C. Act, 1845, appears to us to mean, passing between the same points of departure and arrival, and passing over no other part of the line. This is the natural interpretation of the words; it was adopted by Cranworth, C., in *Finnie v. Glasgow Ry* (2 Macq. 77), and by the Court of Session in the recent case of *Murray v. Glasgow & S. W. Ry* (11 Sess. Ca. 205); and there is no decision in which any other interpretation has been put on the expression" (per Lindley, L. J., delivering judgment of C. A., *Manchester, S. & L. Ry v. Denaby Main Co*, 54 L. J. Q. B. 110; 14 Q. B. D. 209; affd by H. L., 55 L. J. Q. B. 181; 11 App. Ca. 97).

And the immediately following "expression 'Under the same *Circumstances*,' must now be taken to mean, under like circumstances as regards the services performed by the Railway Company in receiving, carrying, and delivering, the goods, — *V. G. W. Ry v. Sutton*, 38 L. J. Ex. 177; L. R. 4 H. L. 226; *Lond. & N. W. Ry v. Evershed*, 48 L. J. Q. B. 22; 47 Ib. 284; 46 Ib. 289; 3 App. Ca. 1029; 3 Q. B. D. 134, 254" (per Lindley, L. J., *Manchester, S. & L. Ry v. Denaby Main Co*, sup). *Vf*, *Hull, &c, Ry v. Yorkshire, &c, Coal Co*, 56 L. J. Q. B. 261.

"Same Premium and Conditions"; *V. WARRANTED HIGHEST RATE. Cp, SUBJECT TO.*

"Same Qualification"; *V. QUALIFICATION.*

"Same Rent and Covenants," "Same Form"; "On the whole, it is indisputably settled that the words 'Under the same Rent and Covenants' are not, of themselves, sufficient to include the covenant for RENEWAL. Nor will a covenant to grant a lease 'in the same FORM' include the covenant for Renewal" (1 Platt, 724; *Vf*, Ib. 713-724).

"Same or similar Services," s. 27 (2), Ry & Canal Traffic Act, 1888, 51 & 52 V. c. 25; *V. Mansion House Assn v. Lond. & S. W. Ry*, 1895, 1 Q. B. 927; 64 L. J. Q. B. 529; 72 L. T. 507; 9 Ry & Can Traffic Ca. 20.

"Same State of Investment"; *V. Re Morris, Bucknill v. Morris*, 54 L. J. Ch. 388; 52 L. T. 462; 33 W. R. 445; W. N. (85) 31: INVESTMENT.

In the "same STREET"; *V. A-G. v. Edwards*, cited IN, p. 925.

"Same Town or Place"; *V. TOWN*.

"Same Transaction, or series of transactions," R. 1, Ord. 16, R. S. C.; *V. Stroud v. Lawson*, 1898, 2 Q. B. 44; 67 L. J. Q. B. 718; 46 W. R. 626; 78 L. T. 729: *Oxford and Cambridge Universities v. Gill*, 1899, 1 Ch. 55; 68 L. J. Ch. 34; 79 L. T. 338: *Drineqbier v. Wood*, 1899, 1 Ch. 393; 68 L. J. Ch. 181; 79 L. T. 548; 47 W. R. 252: *Ellis v. Bedford*, sup.

"Upon the same Trusts and Purposes"; *V. Re North*, 76 L. T. 186; discussing *Re Perkins*, 67 L. T. 743.

"Same VOYAGE"; *V. Gether v. Capper*, 15 C. B. 696; 24 L. J. C. P. 69; 25 lb. 260.

*V. LIKE*: SIMILAR.

**SAMPLE.** — "A sale by Sample, only has reference to the *quality* of the article sold" (per Parke, B., *Nichol v. Godts*, 23 L. J. Ex. 315; 10 Ex. 191). In that case the contract was for "Foreign Refined Rape Oil, warranted only equal to Samples," and it was held that the buyer was not bound to accept Oil which corresponded with the samples, but was not Foreign Refined Rape Oil. *Va, Azemar v. Casella*, 36 L. J. C. P. 263; L. R. 2 C. P. 677: and *Cp, Heyworth v. Hutchinson*, 36 L. J. Q. B. 270; L. R. 2 Q. B. 447.

But a sale "per Sample," simpliciter, is a warranty that the bulk shall be equal to the sample (*Parker v. Palmer*, 4 B. & Ald. 387); yet a sale by Sample does not exclude implied warranty of merchantable quality respecting such matters as the sample would not disclose to a purchaser using ordinary skill and diligence (*Mody v. Gregson*, 38 L. J. Ex. 12; L. R. 4 Ex. 49: *Drummond v. Van Ingen*, 56 L. J. Q. B. 563; 12 App. Ca. 284; 57 L. T. 1; 36 W. R. 20). *V. REPORT*.

Qua Sale of Goods Act, 1893, a sale by Sample implies, "That the bulk shall correspond with the sample in quality"; that "the buyer shall have a reasonable opportunity of comparing the bulk with the sample"; and "that the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample" (s. 15).

*V. Perkins v. Bell*, cited ACCEPTANCE.

The "Sample," e.g. of MILK, to be forwarded to the Analyst under s. 3, 42 & 43 V. c. 30, need not be *all* the Sample procured by the Inspector (*Rolfe v. Thompson*, 1892, 2 Q. B. 196; 61 L. J. M. C. 184; 67 L. T. 295; 56 J. P. 425); and, when a Sample is procured under that section, the Inspector need not deliver a third of it to the seller under s. 14, 38 & 39 V. c. 63 (*Rouch v. Hall*, 50 L. J. M. C. 6; 6 Q. B. D. 17; 44 L. T. 183; 29 W. R. 304). *V. ARTICLE DEMANDED*: PREJUDICE OF PURCHASER.

**SANCTION.** — "Sanction" not only means prior APPROVAL; generally, it also means, Ratification (*Re De la Warr*, 16 Ch. D. 587; 50

L. J. Ch. 383; 51 Ib. 407; 29 W. R. 350; 44 L. T. 56: *the* was on s. 17, Settled Estates Act, 1877, repld s. 36, S. L. Act, 1882, where the word is "APPROVE"). *V.* RATIFY. *CP.* AUTHORIZE.

But the regulation, R. 317, Bankry Rules, 1886, that no Member of a Committee of Inspection shall derive PROFIT from any transaction in the bankry "except under and with the Sanction of the Court," means, that the sanction must be obtained *before* the transaction is commenced (*Re Gallard*, 1896, 1 Q. B. 68; 65 L. J. Q. B. 199; 73 L. T. 457; 44 W. R. 121). *CP.* CONSENT: PERMISSION. So, the "Sanction" of the Court or Committee of Inspection, under s. 12 (1, 4), Comp Winding-up Act, 1890, must, as a rule, be obtained beforehand (*Re London Metallurgical Co*, 1897, 2 Ch. 262; 66 L. J. Ch. 635; 76 L. T. 829; 45 W. R. 601).

"Sanction," by a Liquidator, of a Transfer of Shares, s. 131, Comp Act, 1862, "means, approval; and implies a power of disapproval" (per Lindley, L. J., *Re National Bank of Wales*, cited SHARE).

**SANCTUARY.** — Sanctuary was "a privileged place by the Prince for the safeguard of mens lives which are offenders, being founded upon the law of mercie, and upon the great reverence, honour, and devotion which the Prince beareth to the place whereunto hee granteth such a privileged" (Termines de la Ley: *Vf*, Cowel: Jacob: 4 Bl. Com. 332, 365, 436). But "no Sanctuary, or Privilege of Sanctuary, shall be hereafter admitted or allowed in any case" (s. 7, 21 Jac. 1, c. 28, an Act repealed by 26 & 27 V. c. 125, without reviving this privilege, *V.* s. 1).

**SANITARY.** — "Sanitary Act"; Stat. Def., 46 & 47 V. c. 37, s. 2: "Sanitary Acts," *V.* P. H. Act, 1875, s. 4, and Sch 5, Part 1.

"Sanitary Authority"; Stat. Def., Alkali, &c, Works Regn Act, 1881, 44 & 45 V. c. 37, ss. 27, 29; Allotments Act, 1887, 50 & 51 V. c. 48, s. 17; Canal Boats Act, 1877, 40 & 41 V. c. 60, s. 14; Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, s. 93; London (Equalization of Rates) Act, 1894, 57 & 58 V. c. 53, s. 4; P. H. Ireland Act, 1878, s. 2; P. H. London Act, 1891, s. 99; Rivers Pollution Prevention Act, 1876, 39 & 40 V. c. 75, ss. 20, 21, 22; 54 & 55 V. c. 40, s. 52: "RURAL Sanitary Authority," P. H. Act, 1875, s. 5; 40 & 41 V. c. 60, s. 14; 41 & 42 V. c. 77, s. 38; 53 & 54 V. c. 70, ss. 93, 96. — *Id.* 46 & 47 V. c. 60, s. 3: "URBAN Sanitary authority," P. H. Act, 1875, s. 5; 38 & 39 V. c. 17, ss. 108, 116; 40 & 41 V. c. 60, s. 14; 41 & 42 V. c. 77, s. 38; 53 & 54 V. c. 70, ss. 93, 96; 55 & 56 V. c. 59, s. 9. *V.* PORT.

"Any General Act relating to Water Works, or any Act for improving the Sanitary CONDITION of Towns and Populous Districts," s. 93, W. W. C. Act, 1847, is not restricted to a Sanitary Act relating to the conduct of Water Works; the phrase must receive its plain and literal interpretation as indicating an Act for the PUBLIC welfare and for the

health of the community, *e.g.* the Public Health (Building in Streets) Act, 1888, 51 & 52 V. c. 52 (*Grand Junction W. W. Co v. Hampton*, 79 L. T. 176; 67 L. J. Q. B. 903).

“Sanitary CONVENIENCE,” quâ Public Health Acts, “includes, urinals, waterclosets, earth-closets, privies, ashpits, and any similar convenience” (P. H. Act, 1890, s. 11; P. H. London Act, 1891, s. 1-11, which latter omits “ashpits”).

“Sanitary *District*”; *V. DISTRICT.*

“Sanitary *Inspector*”; Stat. Def., P. H. Scotland Act, 1897, s. 3.

“Sanitary PURPOSES,” quâ Public Health Acts, “means, any object or purposes of the Sanitary Acts” (P. H. Act, 1875, s. 4; P. H. Ireland Act, 1878, s. 2).

“Sanitary *Work*,” quâ Public Health Acts, “*means*, any existing or future building or work constructed by, or vested in or under the control of, a Local Authority under the powers or for the purposes of so much” of the P. H. Act, 1875, “or of any General or Local Act or Provisional Order, as relates to the construction or maintenance of any Works of Sewerage, Drainage, Sewage Disposal, Lighting, or Water Supply; and *includes*, any fixtures, pipes, fittings, or apparatus, connected with any such work and belonging to or used by the Local Authority” (s. 2, 46 & 47 V. c. 37).

**SANS RECOURS.** — An Indorsement of a BILL OF EXCHANGE or Promissory Note (*V. ENDORSE*), with the added words “Sans Recours,” or “Without Recourse to me,” exonerates the Indorser from responsibility (Byles, 181); so, in the United States, of “at the Indorsee’s OWN RISK” (*Rice v. Stearns*, 3 Mass. 225; *Mott v. Hicks*, 1 Cowen, 512; Byles, 6th American ed., 242). But it transfers the Indorser’s own interest in the document (per Patteson, J., *Morris v. Walker*, 15 Q. B. 598).

An Indorsement of a BILL OF LADING directing the shipowner to deliver to the Indorsee, “looking to him for all Freight, Without Recourse to us,” exonerates the Indorser from liability to Freight, if it be proved that the shipowner accepted the Indorsement; but such proof is not furnished by merely proving that the Indorsement was on the Bill when that document was handed to the Master; it must be proved that he saw and accepted the Indorsement (*Lewis v. McKee*, 36 L. J. Ex. 6; 38 Ib. 62; L. R. 2 Ex. 37; 4 Ib. 58).

**SATISFACTION.** — “*Nota*, ‘in satisfaction,’ and ‘in full satisfaction’ is all one” (Co. Litt. 213 a). *Vf*, ACCORD: GREE: FOR, towards end.

A DEED acknowledging a payment “in Full Satisfaction” (or, *semble*, “in Satisfaction”) of rights, may amount to a Release, and, if those rights relate to property, it may amount to a “CONVEYANCE on Sale” (*Garnett v. Inl. Rev.*, cited RELEASE).

“Satisfaction” to be made for taking the SURFACE of land, *e.g.* for a Canal, includes an obligation to make compensation for the subjacent minerals which must be left for support (*Lond. & N. W. Ry v. Erons*, 1893, 1 Ch. 16; 62 L. J. Ch. 1; 67 L. T. 630; 41 W. R. 149). *V. SOIL.*

“Satisfaction for all DAMAGE,” s. 16, Ry C. C. Act, 1845; *V. Re Gower’s Walk Schools v. London, Tilbury & Southend Ry*, 59 L. J. Q. B. 162; 24 Q. B. D. 326; 62 L. T. 306; 38 W. R. 343; 6 Times Rep. 390: “Compensation for any Damage”; *V. Colae v. Summerfield*, 1893, A. C. 187; 62 L. J. P. C. 64; 68 L. T. 769.

“Making or tendering Satisfaction” for damage done in the exercise of statutory powers, does not imply a Condition Precedent to the right of entry; but means that the act shall not be done without compensation being made (*Lister v. Lobley*, or *Horsley*, 6 L. J. K. B. 200; 7 A. & E. 124; *Bentley v. Manchester, S. & L. Ry*, 1891, 3 Ch. 222; 60 L. J. Ch. 641).

To “make Satisfaction” to a Creditor, s. 36, Judgments Act, 1838, 1 & 2 V. c. 110, is to pay his debt (*Hitching*, or *Kitching v. Croft*, 10 L. J. Q. B. 18; 12 A. & E. 586); in scarcely any connection could the term also connote that the debtor is to obtain the goodwill and pleasure of his creditor (*Eagleton v. East India Co*, 3 B. & P. 55).

“When a testator gives a direction that a particular thing shall be taken by any one ‘in or towards Satisfaction’ of his Share, and the thing spoken of exists and belongs to the testator, I cannot doubt that, according to the plain and obvious meaning, he *gives* that thing; and this plain meaning is not controlled or varied, but rather corroborated, by adding such words as ‘and shall be brought into HOTCHPOT and accounted for accordingly’” (per Rigby, L. J., *Re Cosier*, 1897, 1 Ch. 325; 66 L. J. Ch. 236; *See, S. C.* in H. L. nom. *Wheeler v. Humphreys*, 1898, A. C. 506; 67 L. J. Ch. 499).

As to the doctrine of Satisfaction of *Legacies*; *V. ADEPTION*: 2 White & Tudor, 366–415; Wms. Exs. 1183 *et seq.*; Theobald, 666–684.

When a STREET has been in the possession of a Local Authority for a considerable time and they have done nothing, it must be assumed that it is sewered to their “Satisfaction,” s. 150, P. II. Act, 1875, “although, as a matter of fact, they have not come to such a determination at all” (per Kekewich, J., *Handsworth v. Derrington*, cited SEWERED, stating effect of jdgmt of Esher, M. R., *Bonella v. Twickenham*, 57 L. J. M. C. 1; 20 Q. B. D. 63; 58 L. T. 299; 36 W. R. 50; *Vj*, *Rishton v. Haslingden*, cited STREET, and consider *Simmonds v. Fulham*, 1900, 2 Q. B. 188; 69 L. J. Q. B. 560; 82 L. T. 497; 48 W. R. 574; 64 J. P. 548, wherein *Bonella v. Twickenham* was distd). In *Handsworth v. Derrington*, the sewerage was held not to have been done to such “Satisfaction.” *Vj*; FRONTING, Note.

A thing to be done if it appear “to the Satisfaction of” the Judge

that it ought to be done, does not exempt his ruling from being reviewed (*Beaufort v. Crawshaw*, cited PERMANENT).

*V.* SATISFACTORY: SACRIFICE.

**SATISFACTORY.** — Where one party has to perform a contractual obligation to the "SATISFACTION" of the other, *e.g.* furnish "Proof satisfactory" of death or accident, this does not give that other the power to act capriciously, — he can only ask for a reasonable fulfilment of the obligation (*Braunstein v. Accidental Insree*, 31 L. J. Q. B. 17; 1 B. & S. 782; *See*, quà a Works Contract, *Stadhard v. Lee*, 32 L. J. Q. B. 75; 3 B. & S. 364). So, a condition to furnish a Title "satisfactory" to the purchaser, only entitles him to make usual objections (*Lord v. Stephens*, 1 Y. & C. Ex. 222). So, services or conduct to the "Satisfaction" of an employer, means, such as ought reasonably to satisfy him, of which the jury are to judge (per Esher, M. R., *Petty v. Ophir Concessions*, Times, 17th Dec 1890).

As to an Architect's Certificate of satisfactoriness; *V.* CERTIFICATE.

"Satisfactory Evidence," s. 64, Tithe Act, 1836, 6 & 7 W. 4, c. 71; though under this section a sealed copy of a Tithe Commutation Map is "Satisfactory Evidence" of its accuracy, that is only so for the purposes of the Act, and not on questions of ownership (*Wilberforce v. Hearfield*, 46 L. J. Ch. 584; 5 Ch. D. 709). *V.* SUFFICIENT EVIDENCE.

Satisfactory Proof, quà a Life Policy; *V.* *Moore v. Woolsey*, 24 L. J. Q. B. 40; 4 E. & B. 243. *V.* PROVE.

*V.* CORRECT.

**SATISFACTORILY SOLD.** — *V.* CAUTION.

**SATISFIED.** — "I desire it to be understood as my clear opinion that a Term does not become 'satisfied,' within 8 & 9 V. c. 112, unless the beneficial interest in the charge secured by the term, the beneficial interest in the whole charge, and the beneficial interest in the whole estate, are united and merged in one person" (per James, L. J., *Anderson v. Pignet*, 42 L. J. Ch. 312; 8 Ch. 180; 27 L. T. 740; 21 W. R. 150; *Va.*, cases there cited, and *Show v. Johnson*, 30 L. J. Ch. 646; 1 Dr. & Sm. 412; 4 L. T. 461; 9 W. R. 629).

To be "satisfied" with a state of things, means, to be honestly satisfied in your own mind; it does not, by itself, mean that reasonable care is to be taken to make enquiries before being satisfied, *e.g.* a constable acts properly if he is, in his own mind, honestly "satisfied that it is necessary for the public safety or the welfare of an alleged lunatic" to remove the latter to a Workhouse under s. 20, Lunacy Act, 1890 (*Harvard v. Frost*, 14 Times Rep. 306).

"Satisfied *his Contempt*." 53 G. 3, c. 127; *V.* *Dean v. Green*, 8 P. D. 79; *Ex p. Bell Cox*, 20 Q. B. D. 1; nom. *Cox v. Hakes*, 15 App. Ca. 506; 60 L. J. Q. B. 89.

Exon "withdrawn, satisfied, or stopped"; *V.* WITHDRAWN.

**SAVE.** — “Can Save”; *V. LEFT.*

Despatch Money for time “saved”; *V. DESPATCH.*

**SAVINGS.** — “Savings” of Income of Trust Funds, may well bear the sense of, something in the hands of the trustees not paid over; and includes a proportionate part of an Annuity for the time being between the last payment and the death of the annuitant (*Re Rosenthal*, 6 W. R. 139).

Wife’s Savings; *V. Finlay v. Darling*, cited ENTITLED, p. 630: *Askew v. Rooth*, cited PURCHASED.

“Savings, Provisoos, and Indemnities,” 6 G. 3, c. 53; *V. Miller v. Salomons*, 21 L. J. Ex. 161; 7 Ex. 475, on app. *Salomons v. Miller*, 22 L. J. Ex. 169; 8 Ex. 778.

Savings Banks, are of, at least, three kinds, (1) Post Office Savings Bank, on *whv*, The Post Office Savings Bank Acts, 1861 to 1893 (*V. Sch 2*, Short Titles Act, 1896); (2) Trustee Savings Banks, on *whv*, The Trustee Savings Banks Acts, 1863 to 1893 (*lb.*); (3) Seamen’s Savings Bank, on *whv*, s. 148, Mer Shipping Act, 1894.

When an Act speaks of a “Savings Bank,” the phrase is generally defined to mean the two firstly mentioned kinds of Savings Bank, *e.g.* 45 & 46 V. c. 51, s. 14; 54 & 55 V. c. 21, s. 16; 56 & 57 V. c. 69, s. 5; 57 & 58 V. c. 47, s. 16; but *quà* Mer Shipping Act, 1894, “‘Savings Bank,’ means, a Seamen’s Savings Bank under this Act, or a Trustee Savings Bank, or a Post Office Savings Bank” (s. 141).

“Savings Bank ANNUITY,” “Savings Bank INSURANCE”; Stat. Def., 56 & 57 V. c. 69, s. 5.

“Savings Bank Authority,” “means, as regards any Trustee Savings Bank, the Trustee of that Bank; and as regards the Post Office Savings Bank, the Postmaster-General” (56 & 57 V. c. 69, s. 5; 43 & 44 V. c. 36, s. 5).

“Savings Bank YEAR,” “means, with reference to a Trustee Savings Bank, the year ending on the 20th day of November; and with reference to the Post Office Savings Bank, the year ending on the 31st day of December” (s. 5, 56 & 57 V. c. 69; s. 11 (4), 54 & 55 V. c. 21; s. 14, 45 & 46 V. c. 51).

**SAWCES.** — *V. SALICETUM.*

**SAY.** — “Say ABOUT”: “In *McConnel v. Murphy* (L. R. 5 P. C. 203; 21 W. R. 609; 28 L. T. 713) where the sale was ‘of all the spars manufactured by A. say about 600,’ the words ‘say about 600’ were held to be words of expectation and estimate only, not amounting to an understanding that the quantity should be 600. The effect of the word ‘say’ when prefixed to the word ‘about’ was considered as emphatically marking the vendor’s purpose to guard himself against being supposed to have made any absolute promise as to quantity” (*Benj.*

684: *Va*, Blackb. 216). But in a Charter-Party a contract to deliver "a full and complete cargo . . . say about" a specified quantity, the words "say about" would bear a different meaning from what they would in an ordinary contract, and would not be mere words of expectation, but are words of limitation and therefore of contract (*Morris v. Levison*, 45 L. J. C. P. 409; 1 C. P. D. 155; 34 L. T. 576; 24 W. R. 517; *V. Abbott*, 241: Blackb. 216).

"Say *From*": In a contract for sale "say from 1,000 to 1,200 gallons," these are words of expectation (*Gwillim v. Daniel*, 4 L. J. Ex. 174; 2 Cr. M. & R. 61). But in *Tanvaco v. Lucas* (28 L. J. Q. B. 150, 301; nom. *Tanvaco v. Lucas*, 1 E. & E. 582), a contract for "about 2,000 quarters, say from 1,800 to 2,200 quarters," was, in view of its other stipulations, construed as fixing a minimum and maximum limit.

"Say, *not less than*": In a contract for sale of wool "Say not less than 100 packs," these are not mere words of expectation; but amount to a contract to deliver at least that quantity (*Leeming v. Snaith*, 16 Q. B. 275; 20 L. J. Q. B. 164: *Va*, *Bourne v. Seymour*, 24 L. J. C. P. 202; 16 C. B. 337: NOT LESS).

If against the total of the items of a Solr's Bill he adds "say" a lesser sum than the total, yet still it is that total which is the amount of the bill quâ the costs of its taxation (*Re Carthew*, 54 L. J. Ch. 134).

*If*, as to the use of the word "Say," *Philips v. Astling*, 2 Taunt. 211.

V. MORE OR LESS: THEREABOUTS.

**SCAFFOLDING.** — BUILDING, exceeding 30 feet in HEIGHT, "CONSTRUCTED or repaired by means of a Scaffolding," s. 7 (1), Workmen's Comp Act, 1897, is a phrase exactly copied from s. 23 (2), Factory and Workshop Act, 1895, 58 & 59 V. c. 37, and which appeared in a slightly different form in the Sch to 57 & 58 V. c. 28. Quâ the firstly mentioned Act it has occasioned much difficulty. Probably, whether any particular building arrangement is a "Scaffolding" or not, is a mixed question of law and fact: the inclination, probably, being to support the conclusion reached at the trial (*Hoddinott v. Newton*, 1901, A. C. 49; 70 L. J. Q. B. 150; 84 L. T. 1; 49 W. R. 380; *Ferguson v. Green*, 17 Times Rep. 41; 1901, 1 Q. B. 25; 70 L. J. Q. B. 21; 83 L. T. 461; 49 W. R. 105; 64 J. P. 819).

It is clear that a "Scaffolding" may be inside as well as outside a building (*Hoddinott v. Newton*, sup), and in *Maude v. Brook* (1900, 1 Q. B. 575; 69 L. J. Q. B. 322; 82 L. T. 39; 48 W. R. 290; 64 J. P. 181), Smith and Rigby, L. J.J., held that that construction extends to the inside of a room in a building; but it is submitted that the preferable opinion was given by Collins, L. J., when, in the same case, he said. "In my opinion the Scaffolding contemplated by the statute is, one system of scaffolding for the whole building by means of which it is being constructed or repaired."



A ladder placed outside a building one end of a plank being tied to one of its rungs, is not a "Scaffolding" (*Wood v. Walsh*, cited *REPAIR*); but planks and trestles may be a "Scaffolding" (*Hoddinott v. Newton*, sup), and in *Maude v. Brook* (sup) the majority of the Court held that trestles with loose planks laid across to enable the workman to plaster the ceiling of a room 9 feet high, formed a "Scaffolding"! *See*, the jdgmt of Collins, L. J.

*Vf*, *Veazey v. Chattle*, 1902, 1 K. B. 494; 71 L. J. K. B. 252; 85 L. T. 574; 50 W. R. 263; 66 J. P. 389: *Marshall v. Rudeforth*, 1902, 2 K. B. 175; 71 L. J. K. B. 781: PLANT.

**SCANDALOUS.** — A pleading is "Scandalous," R. 27, Ord. 19, R. S. C., which alleges anything unbecoming the dignity of the Court to hear, or is contrary to good manners, or which charges a crime immaterial to the issue. But the statement of a scandalous fact that is material to the issue is not a scandalous pleading (*Millington v. Loring*, 50 L. J. Q. B. 214; 6 Q. B. D. 190; 29 W. R. 207: *Christie v. Christie*, 2 L. J. Ch. 544; 8 Ch. 499). *If*, Ann. Pr.

For examples of Scandalous pleading; *V. Blake v. Albion Assree*, 45 L. J. C. P. 663; 24 W. R. 677: *Lee v. Ashwin*, 1 Times Rep. 291: *Coyle v. Cuming*, 27 W. R. 529: *Duncan v. Vereker*, W. N. (76) 64: *Bright v. Marner*, W. N. (78) 211. *Cp*, FRIVOLOUS OR VEXATIOUS.

**SCENE.** — Representation of "any Scene or Object," s. 2, Fine Arts Copyright Act, 1862, 25 & 26 V. c. 68; *V. Hanfstuengl v. Empire Palace*, 63 L. J. Ch. 455.

**SCHEDULE.** — *V. INVENTORY*; TERRIER.

As to when a Schedule is restrictive, *V. SET FORTH*.

**SCHEME.** — "Scheme of ARRANGEMENT of his AFFAIRS": *V. Bankry Act*, 1890, ss. 3, 6: *Wms. Bank. 62 et seq*: Baldwin, 635 *et seq*. *Cp*, "Deed of Arrangement," sub DEED: CESSION.

Scheme of Arrangement quà Companies; *V. Joint Stock Companies Arrangement Act*, 1870, 33 & 34 V. c. 104: Buckl. 630: 2 Palmer Co. Prec. 783. *Cp*, RECONSTRUCTION.

"A Scheme *legally established*," s. 29, 18 & 19 V. c. 124, means, a document, sanctioned by some properly constituted authority, containing directions for the administration of a CHARITY; and does not include the Instrument of Foundation of the Charity (*Re Mason's Orphanage*, 1896, 1 Ch. 54; 65 L. J. Ch. 439; 74 L. T. 161; 44 W. R. 339).

Stat. Def. — 52 & 53 V. c. 40, s. 17.

**SCHISM.** — They are guilty of Schism who "separate themselves from the Communion of Saints, as it is approved by the Apostles' rules in the Church of England, and combine themselves together in a New Brotherhood; accounting the Christians who are conformable to the doc-

trine government rites and ceremonies of the church of England to be profane, and unmeet for them to join with in Christian Profession" (9th, Canons Eccl. 1604).

**SCHOFIELD'S ACT.**—Parliamentary Costs Act, 1865, 28 & 29 V. c. 27.

**SCHOLAR.**—To say of a PHYSICIAN "thou wert never Scholar, and art not worthy to speak to a Scholar," is Slander *per se*, although it be urged that "a Physitian may be no good Scholar and yet a good Physitian" (*Cawdry v. Highley*, cited FOOL).

**SCHOLARSHIP.**—Quà Oxford University Act, 1854, 17 & 18 V. c. 81, "Scholarship," includes, "the Bursaries appropriated to any College in Scotland" (s. 48): quà Welsh Intermediate Education Act, 1889, 52 & 53 V. c. 40, "'Scholarship,' includes Exhibition, or other Educational EMOLUMENT" (s. 17): *V.* EDUCATIONAL ENDOWMENT.

**SCHOOL.**—Stat. Def., 17 & 18 V. c. 81, s. 48; 25 & 26 V. c. 43, s. 10; 31 & 32 V. c. 118, s. 2; 40 & 41 V. c. 48, s. 2; 56 & 57 V. c. 42, s. 15; 62 & 63 V. c. 32, s. 14. — *Ir.* 61 & 62 V. c. 30, s. 3 (10).

"Burgh School"; *V.* BURGH.

"School House"; Stat. Def., 8 & 9 V. c. 118, s. 167; 33 & 34 V. c. 75, s. 3; 51 & 52 V. c. 42, s. 6.

"School of Learning," 43 Eliz. c. 4, includes a school for the education of gentlemen's sons (*A-G. v. Lonsdale*, 1 Sim. 109; *Va, A-G. v. Nash*, 3 Bro. C. C. 588).

"Other Schools"; *V. Re Stockport Schools*, cited OTHER, p. 1365.

"School Board Rate"; Stat. Def., 60 & 61 V. c. 16, s. 1 (2).

"School Year"; Stat. Def., 54 & 55 V. c. 56, s. 10.

*V.* CERTIFIED: CHARITY SCHOOL: DISCIPLINE: EDUCATION: ELEMENTARY: ENDOWED: FREE GRAMMAR SCHOOL: GRAMMAR SCHOOL: HOUSE, p. 894: NON-VESTED NATIONAL SCHOOL: PARISH SCHOOL: PUBLIC ELEMENTARY SCHOOL: PUBLIC SCHOOL: RAGGED SCHOOL: RECOGNIZED: SCIENCE: SUNDAY SCHOOL: TECHNICAL: VOLUNTARY SCHOOL.

"The School Sites Acts"; *V.* Sch 2, Short Titles Act, 1896.

**SCHOOLMASTER.**—*V.* MASTER: TUTOR.

**SCIENCE.**—"Science," in its general meaning is not confined to pure or speculative science but, includes applied science (per *Ld Macnaghten, Ind. Rev. v. Forrest*, 15 App. Ca. 353, 354; 60 L. J. Q. B. 290).

Quà Public Libraries (*Ir*) Acts (*V.* PUBLIC LIBRARY), "Science and Art," and "Schools of Science and Art," "include the science and art of Music, and schools of Music, respectively" (s. 3, 40 & 41 V. c. 15).

*V.* ART.

Scientific Societies Act. 1843, 6 & 7 V. c. 36, s. 1, exempts from *Local*

*Rates* premises "belonging to any society instituted for purposes of *Science, Literature, or the Fine Arts, exclusively*," if supported wholly or in part by annual VOLUNTARY CONTRIBUTIONS, and not making (and the rules of which expressly prohibit, *R. v. Jones*, inf) any "dividend, gift, division, or bonus, in money," to its members; and which has obtained a certificate from the Registrar of Friendly Societies.

The following societies have been held *exempt*:—

Royal Manchester Institution (*R. v. Manchester*, 20 L. J. M. C. 113; 16 Q. B. 449): The Linnean Society of London (*Linnean Socy v. St. Anne, Westminster*, 23 L. J. M. C. 148; 3 E. & B. 793): The Royal Medical and Chirurgical Society of London (*R. v. Royal Med. and Chir. Socy*, 21 J. P. 789; 30 L. T. O. S. 133): The Birmingham New Library (*Ex p. Birmingham*, 18 L. J. M. C. 89; nom. *Churchwardens of Birmingham v. Shaw*, 10 Q. B. 868): The Bradford Library and Literary Society (*R. v. Bradford Library*, 28 L. J. M. C. 73; 5 Jur. N. S. 513; nom. *Bradford Library Socy v. Churchwardens of Bradford*, 1 E. & E. 88): The Liverpool Library (*Liverpool Library v. Liverpool*, 29 L. J. M. C. 221): The Royal College of Music (*Royal Coll. Music v. Westminster*, 1898, 1 Q. B. 809; 67 L. J. Q. B. 540; 78 L. T. 441; 62 J. P. 357). *See*, as to some of the foregoing, *Savoy v. Art Union*, 1896, A. C. 296; 65 L. J. M. C. 161; 74 L. T. 497; 45 W. R. 34; 60 J. P. 660.

The following societies have been held *not exempt*:—

The Religious Tract Society (*R. v. Jones*, 15 L. J. M. C. 129; 8 Q. B. 719, the precise ground of that decision was that the rules of the Society did not expressly prohibit dividends to members; but Denman, C. J., at the conclusion of his judgment, said "Upon the words of this statute I greatly doubt whether, under the words 'literary societies,' a religious society can be included": *V. that dictum* cited with approval, *Scott v. St. Martin-in-the-Fields*, 25 L. J. M. C. 42; 5 E. & B. 558): a Society for the purposes of Education (*R. v. Pocock*, 15 L. J. M. C. 132; 8 Q. B. 729; *R. v. Temple*, 22 L. J. M. C. 129; 2 E. & B. 160): a Society, — *e.g.* The Russell Institution, or the Cambridge Philosophical Society, — one of whose staple objects is to provide a news-room; for readers of the news of the day are not, whilst so employed, "cultivating science, literature, or the fine arts" (*Russell Institution v. St. Giles and St. George, Bloomsbury*, 23 L. J. M. C. 65; 3 E. & B. 416; *Purchas v. Holy Sepulchre*, 24 L. J. M. C. 9; 4 E. & B. 156): a Society whose primary object is the private convenience or amusement of its members (*R. v. Brandt*, 20 L. J. M. C. 119; 16 Q. B. 462; *R. v. Gaskell*, 21 L. J. M. C. 29; 16 Q. B. 472), or one of whose objects is to give to individuals the practical benefits of science (*Jenner Institute v. St. George's*, 69 L. J. Q. B. 814; 83 L. T. 344; *Vf*, *R. v. Institution of Civil Engineers and Re Royal College of Surgeons*, inf): The Birmingham News Room (*R. v. Phillips*, 17 L. J. M. C. 83; 8 Q. B. 745): The Greenwich Society for the Acquisition and Diffusion of Useful Knowledge (*Purvis*

v. *Trail*, 18 L. J. M. C. 57; 3 Ex. 344): The London Art Union (*Savoy v. Art Union*, sup): The London Library (*Clarendon v. St. James, Westminster*, 20 L. J. M. C. 213; 10 C. B. 806): The Royal Agricultural Society (*Royal Agricultural Socy v. St. George, Hanover Sq.*, 39 S. J. 557): The United Service Institution (*R. v. St. Martin-in-the-Fields*, 21 L. J. M. C. 53; 17 Q. B. 149): The Zoological Society (*R. v. Zoological Socy*, 23 L. J. M. C. 139; nom. *Marylebone Vestry v. Zoological Socy*, 3 E. & B. 807): The Working Men's Educational Union, one of whose objects was the discussion of social and political subjects after the manner of a debating club (*Scott v. St. Martin-in-the-Fields*, sup): The Institution of Civil Engineers; for "Science" ceases to be science, within the meaning of the exemption, when it is acquired, communicated, or made use of, for the advantage of an individual, or of the members of a particular profession or section of the public (*R. v. Institution of Civil Engineers*, 49 L. J. M. C. 34; 5 Q. B. D. 48; 28 W. R. 253: in *the Field, J.*, said, "No doubt it has been thought that the Court of Queen's Bench, in some of the earlier cases, carried the exemption at least to its furthest limits, but all the later cases are in favour of its stricter limitation").

One of the exemptions from *Property Duty* in s. 11 (3), Customs and Inland Revenue Act, 1885, 48 & 49 V. c. 51, is for property legally APPROPRIATED and applied "for the promotion of Education, Literature, Science, or the Fine Arts." The word "exclusively" does not appear here; "but, I apprehend that the meaning of this clause of exemption is that the property or income shall be, if not exclusively, yet certainly in the main and as its chief object, devoted to the promotion of education, literature, science, or the fine arts" (per Lord President, *Soc'y of Writers to the Signet v. Inl. Rev.*, 14 Sess. Ca. 4th Ser. 34); accordingly, it was there held that the property of the Society of Writers was not exempt. But though that rule of interpretation was adopted in *Re Institution of Civil Engineers* (19 Q. B. D. 610; 20 Ib. 621; 56 L. J. Q. B. 576; 57 Ib. 353; 36 W. R. 523, 598; affd in H. L. nom. *Inl. Rev. v. Forrest*, 60 L. J. Q. B. 281; 15 App. Ca. 334; 39 W. R. 33; 54 J. P. 772), yet, on the facts, the majority of the Court of Appeal held that that Institution was exempt from the Property Duty. And though in that case Coleridge, C. J., and Field, J. (in Q. B. D.), Lopes, L. J. (in C. A.), and Halsbury, C. (in H. L.), held that the absence of "exclusively" made no difference, yet as the judgment in the Q. B. D. was over-ruled and neither that of Lopes, L. J., nor that of Halsbury, C., was adopted, it would seem that the absence of that word did make some difference, and, to some extent, explains why the property of the Civil Engineers Institution is not exempt from Local Rates, but is exempt from Property Duty. Without that explanation it seems difficult to reconcile the two cases: *Wl*, jdgmt of Kay, L. J., *Art Union v. Savoy*, 63 L. J. M. C. 263; 1894. 2 Q. B. 617.

The holding of Examinations with the view to granting professional qualifications, is not for "Promotion of Science"; therefore the property of the Royal College of Surgeons is not exempt under the section last considered, except as to such minor parts thereof, *e.g.* the Museum, as can be shown to be for scientific purposes (*Re Royal College of Surgeons*, 1899, 1 Q. B. 871; 68 L. J. Q. B. 613; 80 L. T. 611; 47 W. R. 452: *Vf*, *Jenner Institute v. St. George's*, sup).

V. EDUCATION: JOINT STOCK COMPANY: SCIENTIFIC: Cp, LITERARY.

**SCIENTER.** — "Scienter," is the prior KNOWLEDGE of the quality or condition of a thing, *e.g.* in an action against the owner of a dog for damage caused by the dog biting Mankind, you must prove the Scienter, *i.e.* that the owner knew of his dog's propensity to bite Mankind (*Osborn v. Chocqueel*, 1896, 2 Q. B. 109; 65 L. J. Q. B. 534): *Vh*, *Rosc. N. P. 777: Add. T. 133.* Quà such damage to Cattle or Sheep, the Scienter is not necessary (s. 1, Dogs Act, 1865, 28 & 29 V. c. 60).

In an action on an Express Warranty, Scienter is immaterial and irrelevant, *e.g.* proof that the SELLER of goods knew that they were not according to warranty is not required (*Williamson v. Allison*, 2 East, 446).

**SCIENTIFIC.** — "Literary or Scientific Institution"; *V. LITERARY.*  
"Scientific Investigation"; *V. PROLONGED EXAMINATION.*

*V. SCIENCE.*

**SCOLD.** — "'Scolds,' in a legal sense, are troublesome and angry women, who, by their brawling and wrangling amongst their neighbours, break the public peace, increase discord, and become a public nuisance to the neighbourhood" (Jacob, adopted in *United States v. Royall*, 3 Cranch, 622).

**SCOT.** — Scot is "a customary contribution laid upon all subjects according to their ability" (Spelm. 505: *Va*, Cowel). In *Waller v. Andrews* (7 L. J. Ex. 67; 3 M. & W. 312), "Scots," in a tenant's agreement to pay all outgoing, rates, taxes, scots, &c, was treated as an extensive word, and was held to include an extraordinary ASSESSMENT by the Commissioners of Sewers for work of permanent benefit (*Vh*, 2 Platt, 170). *V. OUTGOING.*

In *Termes de la Ley*, "Scot" is not spoken of as a contribution or burden; the definition there given is, "· Scot, that is to be quit of a certain Custome, as of common tallage made to the use of the Sheriffe or Bayliffe."

**SCOT AND LOT.** — Those who pay "Scot and Lot," are those who pay to Church and Poor (per Hardwicke, C. *A-G. v. Parker*, 3 Atk. 557; 1 Ves. 43). *Cp*, SCOT: LOT AND COPE.

But, probably, the primary meaning is to *pay* Scot, *i.e.* one's portion of local taxation, and to *bear* Lot, *i.e.* to serve in turn the local offices (*V. Creasy on the Constitution*, 3 ed., 271). "Bear" is, however, applied to both, as in the phrase "bearing neither Scot, Lot, nor other Charges" (*Cowel, Scot*).

*Vf*, as to Scot and Lot Boroughs, *Hallam's Const. Hist.*, 8 ed., 40-47.

**SCOTALE.** — "Scotale" is an extortion prohibited by the statute of *Charta de Foresta* c. 7, and it is where any officer of the Forest keeps an ale-house, to the intent that he may have the custome of the inhabitants within the Forrest to come and spend their money with him, and for that he shall winke at their offences committed within the Forrest" (*Termes de la Ley: Vf*, *Cowel*).

**SCOTCH EDUCATION DEPARTMENT.** — *V. s.* 12 (7), *Interp Act*, 1889.

**SCOTLAND.** — "Coasts of Scotland"; *V. COAST*.

**SCOUNDREL.** — *V. CHEAT*.

**SCRIP.** — Strictly speaking, the "Scrip," or "Scrip Certificate," of a Co, is a Certificate, transferable by delivery, entitling its holder to *become* a Shareholder or Bondholder in respect of the shares or bonds therein mentioned.

"In some companies nothing is required to convert scrip-holders into shareholders. Companies constituted on this principle are called Scrip Companies, and, in them, Scrip and Shares are synonymous. . . . Usually, however, a person entitled to Scrip, does not acquire the rights of an actual Shareholder until his scrip certificates have been delivered up and exchanged for share certificates, nor until his name has been inserted upon the Co's register of shareholders" (*Lindley Comp.* 66).

It has been said that "Scrip" quâ companies under *Comp Act*, 1862, has "ceased to exist, and has been abolished by the legislature" (per *Turner, L. J.*, *Elkington's Case*, 36 *L. J. Ch.* 595; 2 *Ch.* 518): *Sc*, last par of this def. In its original sense, "Scrip" is still used quâ *Foreign Loans* (*Goodwin v. Roberts*, 1 *App. Ca.* 476; 45 *L. J. Ex.* 748), *Banking Companies* (*Rumball v. Metropolitan Bank*, 2 *Q. B. D.* 194; 46 *L. J. Q. B.* 346), and *Railway Companies* (*McIlraith v. Dublin Trunk Ry*, 7 *Ch.* 134; 41 *L. J. Ch.* 262), and those cases show that such Scrip is **NEGOTIABLE**. *Note*: the *jdgmt* in *Goodwin v. Roberts* (sup) when in *Ex. Cham.* (44 *L. J. Ex.* 157; *L. R.* 10 *Ex.* 337), contains a review of the history of the law quâ *Negotiable Instruments*.

"Scrip" is popularly used as meaning, the **CERTIFICATE** of actual Shares in a Co (per *Turner, L. J.*, *Elkington's Case*, sup).

Receipt on Scrip certificate; *V. London & Westminster Bank v. Inl. Rev.*, cited **RECEIPT**.

**SCRIVENER.** — A “Scrivener” is a person to whom money or other property is entrusted for the purpose of lending it out to others, at a profit payable to his principal, but also at a commission or bonus for himself whereby he seeks, wholly or in part, to gain his livelihood (*Harrison v. Harrison*, 1 Esp. 555; *Lott v. Melville*, 3 Sc. N. R. 346; 9 Dowl. 882; 3 M. & G. 52; *Ex p. Malkin*, 1 Rose. 406; 2 Ib. 27; *Hutchinson v. Gascoigne*, Holt N. P. 507; *Ex p. Gem*, 2 Mont. D. & D. 99; 5 Jur. 683: per Parké, B., *Wilkinson v. Cundlish*, 19 L. J. Ex. 166; 5 Ex. 97; *Ex p. Dufaur*, 20 L. J. Bank. 38; 2 D. G. M. & G. 246). In *Adams v. Malkin* (3 Camp. 539, 540), Gibbs, C. J., citing Boswell’s Life of Johnson, said, that Jack Ellis was the last of the separate profession of Scriveners; and the reporter adds this note from the Life, — “Johnson; loq. It is wonderful, Sir, what is to be found in London. The most literary conversation that I ever enjoyed was at the table of Jack Ellis, a money Scrivener, behind the Royal Exchange, with whom, at one period, I used to dine generally once a week.”

*Note:* the business of a Scrivener is not within the ordinary scope of the business of a SOLICITOR (*Harman v. Johnson*, 22 L. J. Q. B. 297; 2 E. & B. 61). As to the position that a Solr occupies quâ money entrusted to him for investment, *V. Dooby v. Watson*, 57 L. J. Ch. 867; 39 Ch. D. 183.

V. CHEVISANCE.

**SCULPTURE.** — “Matter of INVENTION in Sculpture,” s. 1, Sculpture Copyright Act, 1814, 54 G. 3, c. 56, includes, original Casts of fruit, flowers, or leaves (*Caproni v. Alberti*, 40 W. R. 235; 65 L. T. 785; 8 Times Rep. 146).

**SCUTAGE.** — “‘Escuage,’ is called in Latine ‘Scutagium,’ that is, Service of the Shield” (Termes de la Ley, *Escuage*).

SCUTIGER. — V. ESQUIRE.

**SEA.** — “The Sea is either that which lies within the body of a COUNTY, or without.

“The part of the Sea which lies not within the body of a County, is called the Main Sea, or Ocean. V. HIGH SEAS.

“The narrow sea, adjoining to the COAST of England, is part of the wast and demesnes and dominions of the King of England, whether it lie within the body of any County or not. V. SEA COAST.

“This is abundantly proved by that learned treatise of Master Selden called *Mare Clausum*; and therefore I shall say nothing therein, but refer the reader thither” (Hale, *De Jure Maris*, ch. 4).

Quâ Sea Fisheries Regn Act, 1888, 51 & 52 V. c. 54, “‘Sea,’ includes, the Coast up to HIGH WATER Mark” (s. 14).

The Thames at Woolwich is not “the Sea” within s. 1. Burial of Drowned Persons Act, 1808, 48 G. 3, c. 75 (*Woolwich v. Robertson*, 50

L. J. M. C. 87; 6 Q. B. D. 654). In that case Mathew, J., said, " 'Sea' is used, in this Act, in its ordinary and popular sense, and, in that sense, 'Sea' is always used as distinguished from 'RIVER.'" *Cp.*, CREEK.

"At Sea"; *V.* MARINER.

Ship "proceeding to Sea"; *V.* PROCEED TO SEA.

*V.* BEYOND SEAS: PERIL OF THE SEA: REALM.

**SEA BIRD.**—*V.* WILD BIRD.

**SEA COAST.**—"The COAST is, properly, not the SEA but, the land which bounds the Sea; it is the limit of the Land Jurisdiction, and of the parishes and manors (bordering on the sea) which are part of the land of the County. This limit, however, and its character, varies according to the state of the Tide; when the tide is in and covers the land, it is Sea; when the tide is out, it is Land as far as low-water mark: between high and low water mark it must, therefore, be considered as *divisum imperium*" (per Sir J. Nicholl, *R. v. Forty Nine Casks of Brandy*, 3 Hagg. Adm. 275). *V.* ENGLAND: FORESHORE: SHORE.

*Note.* As to the 3 miles from the Coast over which the Sea Jurisdiction extends, *V.* *R. v. Keyn*, 46 L. J. M. C. 17; 2 Ex. D. 63, and the numerous authorities therein cited: *R. v. Cunningham*, Bell C. C. 72: TERRITORIAL WATERS.

"Sea," or "Sea Coast," quâ Fisheries (Ir) Act, 1846, 9 & 10 V. c. 3, extends "to all places where the tide ebbs and flows" (s. 87).

"Sea Coast and Inland Fisheries," s. 91, British North America Act, 1867; *V.* *A-G. Canada v. A-G. Ontario*, cited EXCLUSIVE RIGHT.

**SEA FISH.**—"On looking at the Acts of Parliament, I find the terms 'Floating Fish' and 'Shell Fish' (10 & 11 W. 3, c. 24), and that 'Floating Fish' is used in contradistinction to 'Shell Fish' (31 G. 3, c. 51, s. 2), and 'Sea Fish' synonymously with 'Floating Fish'" (per Ellenborough, C. J., *Bridger v. Richardson*, 2 M. & S. 572); in the opinion of the Court was (though a decision thereon was unnecessary) that "Sea Fish" in 3 Jac. 1, c. 12, meant Floating Fish, and did not include Shell Fish.

SALMON, is not a "Sea Fish" within s. 4, Fisheries (Ir) Act, 1842, 5 & 6 V. c. 106 (*R. v. Mayo Jus.*, 20 L. R. Ir. 69).

Quâ Sea Fisheries Acts, "Sea Fish" does "not include SALMON as defined by any Act relating to Salmon; but save as aforesaid" means, "fish of all kinds found in the SEA," and includes, "Lobsters, Crabs, Shrimps, Prawns, Oysters, Mussels, Cockles, and other kinds of crustaceans and shell fish" (s. 14, 51 & 52 V. c. 54: *V.* s. 5, 31 & 32 V. c. 45). *V.* SHELL FISH.

**SEA FISHERMAN.**—Quâ Sea Fisheries Acts, "Sea Fisherman." means, a person whose occupation is to catch "SEA FISH" as that latter



phrase is defined for those Acts (s. 5, 31 & 32 V. c. 45; s. 28, 46 & 47 V. c. 22).

**SEA FISHERY.** — *V. FISHERY.*

"The Sea Fisheries Acts, 1843 to 1893"; *V. Sch* 2, Short Titles Act, 1896.

Sea Fishery Officers; *V. s.* 8, 31 & 32 V. c. 45: British Sea Fishery Officers, and Foreign Sea Fishery Officers; *V. s.* 11, 46 & 47 V. c. 22.

"Purposes of Sea Fisheries"; *V. PURPOSES.*

**SEA FISHING.** — Quà Sea Fisheries Acts, "Sea Fishing," means, the act of catching "SEA FISH" as that latter phrase is defined for those Acts (s. 5, 31 & 32 V. c. 45; s. 28, 46 & 47 V. c. 22).

"Sea Fishing BOAT," quà Sea Fisheries Acts, "includes, every Vessel, of whatever size and in whatever way propelled, which is used by any person in Sea Fishing, or in carrying on the business of a SEA FISHERMAN" (s. 5, 31 & 32 V. c. 45; s. 28, 46 & 47 V. c. 22; s. 9, 56 & 57 V. c. 17). *Cp.*, "Fishing Boat," sub **FISHING.**

**SEA FLOOD.** — *V. INFRA.*

**SEA-GOING.** — A Stevedore "is not, in any sense, a Seaman or a Sea-Going Person" (per Wills, J., *R. v. City of London Court*, cited **SEAMAN**).

A "Sea-Going" SHIP, s. 109, Mer Shipping Act, 1854, ss. 260, 261, Mer Shipping Act, 1894, means, a Ship which goes to SEA, using that word in its widest meaning, and does not include a vessel plying upon, or in the estuary of, a River (*Salt Union Co v. Wood*, 1893, 1 Q. B. 370; 62 L. J. M. C. 75; 68 L. T. 92; 41 W. R. 301; 57 J. P. 201).

**SEA GREENS.** — Sea Greens are "grounds overflowed by the Sea in Spring Tides" (Jacob).

**SEA GROUNDS.** — By the grant of "Sea Grounds," the soil, and not an easement merely, passes; "for, generally speaking, the soil passes by the word 'Ground'; as by the word 'Wood,' the soil in which the Wood grows passes" (per Bayley, J., *Scrutton v. Brown*, 4 B. & C. 496).

**SEA INSURANCE.** — Quà Revenue Act, 1884, 47 & 48 V. c. 62. "Sea Insurance," includes, "any insurance of Goods Wares or Merchandise or Property of any description whatever, for any Transit which includes (not only a Sea Risk but also) any Land Risk from the commencement of such transit to the place of Shipment or from the place of Discharge of the ship to the ultimate destination covered by the insurance, or in warehouse while waiting or being forwarded for shipment, or after discharge and while waiting to be forwarded, or being forwarded to the ultimate destination covered by the insurance, or any other land risk incidental to the transit insured" (s. 8) *Cp.*, SHIP'S RISK.

"Policy of Sea Insurance"; *V. POLICY.*

**SEA POSTAGE.** — *V.* POSTAGE.

**SEA SHORE.** — *V.* FORESHORE: SEA COAST: SHORE.

**SEA WALL.** — *V.* *Keighley's Case*, 10 Rep. 139: *Hudson v. Tabor*, 2 Q. B. D. 290; 46 L. J. Q. B. 463: *Fobbing Commrs v. Regina*, 56 L. J. M. C. 1; 11 App. Ca. 449.

**SEAL.** — A Seal is essential to a DEED.

“Under the hands and seals”; an impression made with ink, by means of a wooden block, is a sufficient sealing (*R. v. St. Paul, Covent Garden*, 14 L. J. M. C. 109; Sug. Pow. 231, 232: *Sprange v. Barnard*, 2 Bro. C. C. 585). “And if the party seal the deed with any seal besides his own, or with a stick, or any such like thing which makes a print, it is good” (Touch. 57). In *Re Sandilands* (L. R. 6 C. P. 411; nom. *Re Mayer*, 40 L. J. C. P. 201), it was held that a deed was proved to have been “sealed,” though no seal was affixed to it, because pieces of ribbon were inserted in the parchment opposite to the signatures on which seals were to have been put, and the attestation clause stated the deed to have been “signed, sealed, and delivered”; but, when cited, that case seems always to be distinguished as an exceptional application of an undoubted principle (*V. National Provincial Bank v. Jackson*, 33 Ch. D. 1; 55 L. T. 458; 34 W. R. 597: *Re Balkis Co*, 58 L. T. 300: *Re Smith*, 67 L. T. 64).

As to when the seal to a deed by an Incorporated Co may, by an outside person, be assumed to have been properly affixed, *V. County of Gloucester Bank v. Rudry*, cited GOODWILL, p. 829; distinguishing *D'Arcy v. Tamar, &c, Ry*, cited QUORUM: *If, Re Bank of Syria*, cited QUORUM.

*V. L. S.*: SIGNED.

Qua Seal Fishery Act, 1875, 38 & 39 V. c. 18, “‘Seal,’ means, the harp or saddleback seal, the bladdernosed or hooded seal, the ground or bearded seal, and the floe seal or floe rat; and includes, any animal of the seal kind which may be specified in that behalf by an Order in Council under this Act” (s. 6).

Seal Fishery (North Pacific) Act, 1895, 58 & 59 V. c. 21, applies “to the animal known as the fur seal, and to any marine animal specified in that behalf by an Order in Council” (subs. 1, s. 7).

**SEALED.** — The Seal of a Court, with the words “Sealed with the Seal of the Court,” proves itself, and will be taken judicial notice of (*Doe d. Duncan v. Edwards*, 8 L. J. Q. B. 98; 9 A. & E. 554; 1 P. & D. 408).

As to when the Court whose seal is to be used has no seal; *V. Re Court Bureau Co*, W. N. (91) 9.

**SEAM.** — *V.* VEIN OR SEAM: IRON.

**SEAMAN.**—Quà Mer Shipping Act, 1894, “‘Seaman.’ includes every person (except Masters, Pilots, and Apprentices duly indentured and registered) employed or engaged in any capacity on Board any SHIP” (s. 742: *Vth, The Wilhelm Tell*, 61 L. J. P. D. & A. 128). But “the employment must be to do the work of the SHIP (per Jeune, P., *The Ruby*, 1898, P. 59; 67 L. J. P. D. & A. 28); therefore a SHIP’S HUSBAND is not a “Seaman” within s. 10, 24 & 25 V. c. 10 (S. C.). “A seaman may well be held to be ‘EMPLOYED or engaged . . . on Board’ ship, although at the particular point of time he may have been sent ashore on duties connected with the ship, such as obtaining stores or provisions, or taking a letter to the ship’s agent” (per Russell, C. J., *R. v. Lynch*, 1898, 1 Q. B. 61; 67 L. J. Q. B. 59; 77 L. T. 568; 46 W. R. 205). A Stevedore “is not, in any sense, a Seaman or a Seagoing Person” (per Wills, J., *R. v. City of London Court*, 59 L. J. Q. B. 429); but, quà the right to a Maritime LEX for WAGES, a Care-taker, of a vessel in dock for repairs preparatory to a voyage, is a Seaman (S. C. 59 L. J. Q. B. 427; 25 Q. B. D. 339), even though such care-taker be a woman (*The June and Matilda*, 1 Hagg. Adm. 187). *Vf, CREW.*

The exception of “Seamen” from the Conspiracy and Protection of Property Act, 1875 (V. s. 16), does not avail for sea-faring men generally, but only for such as are actually “employed or engaged” within the def of “Seaman” in s. 742, Mer Shipping Act, 1894 (*R. v. Lynch*, sup).

“Seaman,” in the Navy; Stat. Def., Seamen’s Clothing Act, 1869, 32 & 33 V. c. 57, s. 3: “Seaman or Marine.” 28 & 29 V. cc. 72, 73, 111, s. 2.

In a warranty in the margin of a Marine Policy, “Seamen besides Passengers,” means, persons belonging to the ship’s company, including cook, surgeon, boys, &c (*Bean v. Stupart*, 1 Doug. 14).

“Distressed Seamen”; *V. PASSENGER.*

Advance Notes; *V. ADVANCE.*

“Seaman’s Property”; Stat. Def., 32 & 33 V. c. 57, s. 3.

*V. BRITISH SEAMAN: DEDUCTION: DRUNK: HOME: MARINER.*

**SEARCH.**—To “enter or be,” on land “in Search or Pursuit of Game,” &c, s. 30, Game Act, 1831, 1 & 2 W. 4, c. 32, the Game sought for must be live game (*Kenyon v. Hart*, 34 L. J. M. C. 87; 6 B. & S. 249; *Tanton v. Ferris*, 43 J. P. 784; 68 Law Times, 37); but if the Justices find that the shooting from outside the land and the entering to pick up the game, is all one connected act they will be upheld if they reach the conclusion that there was a “Pursuit” of Game within the section, which pursuit began whilst the Game was alive (*Osmond v. Meadows*, 31 L. J. M. C. 238; 12 C. B. N. S. 10; 6 L. T. 290; 10 W. R. 537: *Sr. obs* in *Kenyon v. Hart*, sup), and that is so though there be an interval of some hours between the shooting and the entry and at the time of the entry some other person may have taken away the dead game (*Horn v. Raine*,

78 L. T. 654; 67 L. J. Q. B. 533; 62 J. P. 420). *Vh, Dyer v. Park*, 38 J. P. 294.

*V. ENTERING OR BEING.*

A Reservation of power "to search for, dig, bore, sink, win, work, lead and carry away," Minerals, must be exercised by under-ground mining (*Bell v. Wilson*, cited *MINE*, p. 1204).

Quà Registration of Births and Deaths, "General Search," means, "a Search during any number of successive hours, not exceeding six, without stating the object of the search"; and "Particular Search," means, "a Search over any period, not exceeding five years, for any given entry" (s. 42, 37 & 38 V. c. 88; s. 32, 43 & 44 V. c. 13).

A similar provision is made quà Marriages in Ireland (s. 3, 26 & 27 V. c. 90).

*V. WARRANT.*

**SEASON.** — "Shipment during the Season"; *V. SHIPMENT.*

*V. ENGAGEMENT.*

**SEASONABLE TIME.** — In the claim of a Custom to walk and ride over certain arable land at all Seasonable Times, what is a "Seasonable Time" is a question partly of law and partly of fact; but when the corn is standing on the land is not a "Seasonable Time" for the exercise of such a Custom (*Bell v. Wardell*, Willes, 202).

**SEASONABLE WOOD.** — *Seemble*, "Seasonable Wood" is as nearly as possible equivalent to "COPPICE" (*V. per Kay*, L. J., *Dashwood v. Magniac*, cited *TIMBER*).

**SEAWORTHY.** — By being Seaworthy "is meant that the ship shall be in a fit state as to repairs, equipment, and crew, and in all other respects, to encounter the ordinary perils of the voyage insured, at the time of sailing upon it. If the assurance attaches before the voyage commences, it is enough that the state of the ship be commensurate to the then risk; and, if the voyage be such as to require a different complement of men, or state of equipment in different parts of it, — as if it were a voyage down a canal or river and thence across to the open sea, — it would be enough if the vessel were, at the commencement of each stage of the navigation, properly manned and equipped for it. But the assured makes no warranty to the underwriters that the vessel shall continue seaworthy, or that the master or crew shall do their duty during the voyage, and their negligence or misconduct is no defence to an action on the policy where the loss had been immediately occasioned by the perils insured against" (per Parke, B., delivering the judgment in *Dixon v. Sadler*, 5 M. & W. 414; 9 L. J. Ex. 50; affd 8 M. & W. 895; adopted *Biccard v. Shepherd*, 14 Moore P. C. 494: *Bouillon v. Lupton*, 15 C. B. N. S. 113; 33 L. J. C. P. 37: *Davidson v. Burnand*, L. R. 4 C. P. 117:

*Quebec Mar. Insree v. Commercial Bank of Canada*, L. R. 3 P. C. 234; 39 L. J. P. C. 53; and *Hedley v. Pinkney Co*, inf. *Vf*, *Ballantyne v. Mackinnon*, 1896, 2 Q. B. 455; 65 L. J. Q. B. 395, 616; 75 L. T. 95; 45 W. R. 70). Insufficient ventilation of a Cattle Ship, or an insufficiency of men to attend to the cattle, is a breach of a warranty of Seaworthiness (*Sleigh v. Tyser*, 69 L. J. Q. B. 626; 1900, 2 Q. B. 333; 82 L. T. 804).

“An exception from loss from unseaworthiness does not restrict the implied warranty (*Quebec Mar. Insree v. Commercial Bank of Canada*, sup). Where the ship is not seaworthy when she sails on her voyage, this is not remedied by her becoming so afterwards and before loss (*S. C.*; following *Forshaw v. Chabert*, 3 Brod. & B. 158, and over-ruling *Weir v. Aberdeen*, 2 B. & Ald. 320, 324, on this point).” Rosc. N. P. 424.

The ordinary Exceptions of Accidents, &c, in a Bill of Lading, do not apply until the voyage has commenced, and therefore the implied warranty of Seaworthiness is not excluded by them (*Steel v. State Line S. S. Co*, 3 App. Ca. 72; *Tattersall v. National S. S. Co*, 53 L. J. Q. B. 332; 12 Q. B. D. 297; *The Glenfruin*, 54 L. J. P. D. & A. 49; 10 P. D. 103; 52 L. T. 769; 33 W. R. 826), not even when the Exceptions are couched in very wide terms (*Maori King v. Hughes*, 1895, 2 Q. B. 550; 64 L. J. Q. B. 744; 65 *Ib.* 168; 73 L. T. 141; 44 W. R. 2).

For express clauses which will limit the implied warranty; *V. The Cargo ex Laertes*, 56 L. J. P. D. & A. 108; 12 P. D. 187; 57 L. T. 502; 36 W. R. 111. *Sr*, DANGERS: GOOD SHIP.

Where a Charter-Party voyage is divided into stages of navigation, the warranty attaches at the commencement of each stage (*Thin v. Richards*, 1892, 2 Q. B. 141; 62 L. J. Q. B. 39; 66 L. T. 584; 40 W. R. 617).

“The warranty of Seaworthiness has always been relative. Though absolute when it attaches, its precise extent and limitations are relative and vary according to the standard which the parties must have been supposed to contemplate as applicable to the adventure” (per Collins, L. J., *The Vortigern*, 1899, P. 158, 159; 68 L. J. P. D. & A. 57; 4 Com. Ca. 165; 80 L. T. 382; 47 W. R. 437, instancing *Burges v. Wickham*, 33 L. J. Q. B. 17; 3 B. & S. 669).

The implied obligation of the Owner to use all reasonable means to insure the “Seaworthiness of the Ship, for the Voyage,” s. 5, Mer Shipping Act, 1876, repld, s. 458, Mer Shipping Act, 1894, applies only to equipment; a ship is not unseaworthy within this phrase by reason of non-employment or mis-employment of appliances, if the appliances are at hand for use (*Hedley v. Pinkney Co*, 1894, A. C. 222; 63 L. J. Q. B. 419; 70 L. T. 630; 42 W. R. 497).

*Vf*, *Small v. Gibson*, 20 L. J. Q. B. 152; 16 Q. B. 128; nom. *Gibson v. Small*. 4 H. L. Ca. 353; *Clayham v. Langton*, 34 L. J. Q. B. 46;

5 B. & S. 729: *Gilroy v. Price*, 1893, A. C. 56; 68 L. T. 302; 7 Asp. 314: *Dobell v. Rossmore Co*, 1895, 2 Q. B. 408; 64 L. J. Q. B. 777: *Queensland Bank v. P. & O. Steam Nav.*, 1898, 1 Q. B. 567; 67 L. J. Q. B. 402; 46 W. R. 324; 78 L. T. 67; 2 Com. Ca. 228: *The Pentland*, 13 Times Rep. 430: Park, ch. 11: Abbott, 376-389: Arn. ss. 686-726: Scrutton, 69-74: Carver, ss. 17, 144: 8 Encyc. 169-172.

V. DUE DILIGENCE: READY FOR SEA.

**SECOND COUSIN.** — A testamentary gift to "Second Cousins" of the testator, applies only to persons having the same great-grandfather or great-grandmother as himself, unless the nature of the gift or the wording of the Will, shows that other persons were meant to be included (*Re Parker, Bentham v. Wilson*, 49 L. J. Ch. 587; 50 Ib. 639; 15 Ch. D. 528; 17 Ib. 262; 28 W. R. 823; 29 Ib. 855; 44 L. T. 885, *wher.*, for obs by Jessel, M. R., on *Mayott v. Mayott*, 2 Bro. C. C. 125: *Vf, Bridgnorth v. Collins*, 15 Sim. 538). But where there are no real "Second Cousins," then First Cousins once removed will take; but not first cousins twice removed (*Slade v. Fooks*, 8 L. J. Ch. 41; 9 Sim. 386: *Re Bonner, Tucker v. Good*, 51 L. J. Ch. 83; 19 Ch. D. 201: *Wilks v. Bannister*, 54 L. J. Ch. 1139; 30 Ch. D. 512: Wms. Exs. 965).

*Vf, Charge v. Goodyer*, 3 Russ. 140: *Glazier v. Foyster*, 39 S. J. 656: 99 Law Times, 284.

V. COUSIN: FIRST COUSIN.

**SECOND DEGREE.** — V. PRINCIPAL IN SECOND DEGREE.

**SECOND EDITION.** — V. BOOK, p. 205.

**SECOND HAND.** — Quà Part 4, Mer Shipping Act, 1894, " 'Second Hand.' means, with respect to a FISHING Boat, the Mate, or person next to the skipper, in authority or Command on board the boat" (s. 370).

**SECOND MARRIAGE.** — V. BIGAMY: MARRY: WIDOW.

"So long as she continues unmarried"; V. UNMARRIED.

**SECOND MORTGAGE.** — V. PUISNE.

**SECOND OFFENCE.** — "When a 'Second Offence' is the subject of distinct punishment, it is an offence committed after *conviction* of a first" (Maxwell, 427, citing 2 Inst. 468: *Vf*, 1 Hale P. C. 686); and a penalty for a Second Offence can only be inflicted where both convictions are under the same enactment, although each might be supported by the same evidence (*Ex p. Authers, or Authers*, 58 L. J. M. C. 62; 22 Q. B. D. 345; 60 L. T. 454).

**SECOND SON.** — V. FIRST SON: SEVENTH.

**SECONDARY.** — “ ‘Secondary’ is the technical medical word for a disease which is not the primary cause of death. If a man falls through the ice and is drowned, that is death by Accident; but if he walks home in his wet clothes, and catches a cold which settles on his lungs, and he dies, that is death from a ‘Secondary Cause’ ” (per Mellish, arg. *Smith v. Accident Insree*, 39 L. J. Ex. 214; L. R. 5 Ex. 302, *17*, jdgmt Kelly, C. B.: the case, however, was decided on another point. *Vo, Fitton v. Accidental Death Insree*, 34 L. J. C. P. 28; 17 C. B. N. S. 122).  
**V. ACCIDENT.**

Secondary *Conveyance*; Secondary *Evidence*; **V. PRIMARY.**

**SECRET COMMISSION.** — **V. BRIBERY: SECRET PROFIT.**

**SECRET DISPOSITION.** — “Secret Disposition of the DEAD BODY of the said child,” to conceal the birth thereof, s. 60, 24 & 25 V. c. 100; these words “include cases in which the body is placed in a situation where it is not likely to be found, except by accident or upon search; although the body is in no way concealed from any one who happens to go to that place” (Steph. Cr. 170, citing *R. v. Brown*, L. R. 1 C. C. R. 244; 39 L. J. M. C. 94; 22 L. T. 484; *Va, R. v. Perry*, Dears. 471; 24 L. J. M. C. 137; *R. v. Cook*, 22 L. T. 216. In a note, the learned author asks, — “If a woman were to leave a child’s body by night in the middle of a street, or to drop it by day in a crowd of people, there would be an effectual concealment of the birth, but would there be a ‘Secret Disposition’ of the body?”).

**SECRET PROFIT.** — In all fiduciary relationships, — *e.g.* Cestui que Trust and Trustee, Company and its Directors, Master and Servant, Principal and Agent, — the fundamental rule is that, the person entrusted with, or employed to discharge, a duty, is not to make a Secret Profit thereby, for “a Watch-Dog has no right, without the knowledge of his master, to take a sop from a possible Wolf” (per Bowen, L. J., *Re North Australian Co*, 1892, 1 Ch. 341; 61 L. J. Ch. 135); the sop belongs to the master.

Quà Cestui que Trust and Trustee; **V. Lewin**, ch. 10; Godefroi, ch. 13:

Company and its Directors; Hamilton, 378-381: *Re Sale Hotel Co*, 78 L. T. 368; *Gluckstein v. Barnes*, 1900, A. C. 240; 69 L. J. Ch. 385:

Master and Servant, — and

Principal and Agent; **V. BRIBERY:** *Morison v. Thompson*, 43 L. J. Q. B. 215; L. R. 9 Q. B. 480; 30 L. T. 869; 22 W. R. 859; *De Bussche v. Alt*, cited **ACQUIESCENCE:** per Bowen, L. J., *Boston Deep Sea Fishing Co v. Ansell*, 39 Ch. D. 363, 364; 59 L. T. 345; **MANAGING OWNER.**

**SECRET TRUST.** — “When property is vested in a person for purposes not declared by the instrument devising or granting it, and it appears that but for the testator’s or grantor’s confidence that those pur-

poses would be fulfilled the devise or grant would not have been made, a Secret Trust is created; and, on the ground that fraud would be committed by the devisee or grantee if he did not fulfil those purposes, that trust may in Equity be enforced against him" (Godefroi, ch. 12, *who* hereon).

*Th. Re Stead*, 1900, 1 Ch. 237; 69 L. J. Ch. 49; 81 L. T. 751; 48 W. R. 221, and cases there cited: Lewin, 64.

**SECRETARY.** — Stat. Def., Comp C. C. Acts, 1845, s. 3; Vestries Act, 1850, 13 & 14 V. c. 57, s. 4. — *Scot.* 20 & 21 V. c. 71, s. 3; 25 & 26 V. c. 54, s. 1; 57 & 58 V. c. 58, s. 54; 60 & 61 V. c. 38, s. 3.

Note signed "for A. B. & Co, — C. D., Secretary," does not make the Secretary personally liable (*Alexander v. Sizer*, 38 L. J. Ex. 59; L. R. 4 Ex. 102). If, however, a person signs in a way so as to make himself individually liable, he will not escape liability by adding "Secretary" to his signature (*Bottomley v. Fisher*, 1 H. & C. 211; 31 L. J. Ex. 417). *Cp.* MANAGER: DIRECTOR.

A Promissory Note to the "Secretary for the TIME BEING" of a Co or other body, is bad because the payee is uncertain, for it cannot be known at the making of the document who will be Secretary when it matures (*Storm v. Stirling*, 3 E. & B. 832; 23 L. J. Q. B. 298). *Vf.* *Timms v. Williams*, 3 Q. B. 413; 11 L. J. Q. B. 210.

*V.* CHIEF: COLONIAL.

**SECRETARY OF GRAND JURY.** — Stat. Def., *Ir.* 40 & 41 V. c. 49, s. 3; 41 & 42 V. c. 24, s. 1; 46 & 47 V. c. 42, s. 13 (3). *V.* GRAND JURY.

**SECRETARY OF STATE.** — The general Stat. Def. of this phrase is provided by s. 12 (3), Interp Act, 1889.

*Quà* Conversion of India Stock Act, 1887, 50 & 51 V. c. 11, *V.* s. 9; Diplomatic Salaries, &c, Act, 1869, 32 & 33 V. c. 43, *V.* s. 3; East India Loan Act, 1893, 56 & 57 V. c. 70, *V.* s. 2; East India Unclaimed Stock Act, 1885, 48 & 49 V. c. 25, *V.* s. 2; Indian Railways Act, 1894, 57 & 58 V. c. 12, *V.* s. 2; Oude and Rohilkund Railway Purchase Act, 1888, 51 & 52 V. c. 5, *V.* s. 2; South Indian Railway Purchase Act, 1890, 53 & 54 V. c. 6, *V.* s. 2. — *Ir.* 39 & 40 V. c. 77, s. 20.

"Secretary of State for War," "Secretary of State for the War Department"; Stat. Def., 30 & 31 V. c. 98, s. 3, c. 128, s. 3, c. 140, s. 2; 35 & 36 V. c. 68, s. 16; 37 & 38 V. c. 92, s. 5; 51 & 52 V. c. 32, s. 11. — *Ir.* 31 & 32 V. c. 60, s. 2.

*Vf.* ONE, towards end.

**SECURE.** — The direction in s. 32, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85, to "secure" a gross or annual sum to a wife, does not authorize an Order for payment direct to the wife; but means, that the



sum is to be secured in such a way as to provide for her (*Medley v. Medley*, 51 L. J. P. D. & M. 74; 7 P. D. 122).

The words "or otherwise secure," in s. 10, Distress for Rent Act, 1737, 11 G. 2, c. 19, enlarge the word "impound" with which they are there associated, and give it a wider meaning than if it had been used alone (per Tindal, C. J., *Thomas v. Harries*, 1 M. & G. 702; 9 L. J. C. P. 308; 1 Sc. N. R. 524: *Vf*, *Jones v. Beirustein*, cited POSSESSION, p. 1516). *V.* IMPOUND.

"I hereby *undertake* to secure the moneys you may have advanced or may hereafter advance"; held, insufficient, as not necessarily showing anything beyond a past consideration (*Raikes v. Todd*, 8 L. J. Q. B. 35; 8 A. & E. 846). *Cp.*, ADVANCE: GIVEN: HAVING.

### SECURED. — *V.* AMOUNT.

On a sale of a Leasehold Ground-Rent it was described as "*amply* secured"; it was really secured by an Underlease which was for a longer term than the lessor had, and therefore operated as an Assignment of the original lease, and there was no power of distress; but the Conditions stated that the purchaser should not object by reason of the term being in excess of the term granted by the original lease, inasmuch as the deeds "may be inspected for 10 days immediately preceding the day of sale by intending purchasers": the purchaser was, under those Conditions, held bound to complete, although it was certainly doubtful whether the Ground-Rent was properly secured (*Smith v. Watts*, 28 L. J. Ch. 220; 4 Drew. 338). *Cp.*, WELL SECURED.

Sum "secured by an EXPRESS Trust," s. 10, 37 & 38 V. c. 57; *V. Re Davis*, cited LEGACY: *Williams v. Williams*, 1900, 1 Ch. 152; 69 L. J. Ch. 77; 81 L. T. 804; 48 W. R. 245.

**SECURED CREDITOR.** — A "Secured Creditor" is one who has security for his debt; *V.* SECURITY.

In language nearly identical with that in the Bankry Act of 1869 (s. 16, subs. 5), the Bankry Act, 1883 (s. 168), defines a "Secured Creditor," for bankry purposes, as, "a person holding a Mortgage, Charge, or Lien, on the property of the *debtor*, or any part thereof, as a Security for a debt due to him from the debtor": *Va*, s. 4, Bankry (Ir) Amendment Act, 1872. Accordingly, such a "Secured Creditor," *e.g.* in s. 9, Bankry Act, 1883, cannot be defined as a person holding a security as against the whole or some part of the debtor's estate; that definition would be too wide; the SECURITY must be of the kind prescribed, *i.e.* (1) MORTGAGE, (2) CHARGE, or (3) LIEN, "on the property of the Debtor," on *whc*, *Re Perkins*, 59 L. J. Q. B. 226; 24 Q. B. D. 613; "the Debtor" being the bankrupt, and therefore a petitioning creditor against a Surety to him, is not a "Secured Cr." quâ such proceedings, by holding an unrealized security from his Principal Debtor

(*Re Hodges*, 3 Manson, 329). The appointment of one of the plaintiffs (judgment creditors) as Receiver, without security, of the stock in trade of the defendant, does not make the plaintiffs "Secured Creditors" as against a Bankry Trustee (*Re Dickinson, Ex p. Charrington*, 22 Q. B. D. 187; 58 L. J. Q. B. 1: *cthc, Re Potts, Ex p. Taylor*, 1893, 1 Q. B. 618; 62 L. J. Q. B. 392; 69 L. T. 74; 41 W. R. 337). So, generally of a Receiver (*Croshaw v. Lyndhurst Ship Co*, 1897, 2 Ch. 154; 66 L. J. Ch. 576; 76 L. T. 553; 45 W. R. 570); so, of a Sequestrator who has not obtained an Order for sale (*Re Hastings*, 61 L. J. Q. B. 654; 67 L. T. 234). So, an Indorsee from the Payee of a Promissory Note collaterally secured by a Guarantee which guarantee is transferred to him, does not hold the guarantee as a security on the property of the Payee; and, on the bankry of the latter, may prove without deducting the value of the guarantee (*Re Hallett*, 63 L. J. Q. B. 676; 1894, 2 Q. B. 256; 70 L. T. 891).

In an Administration of a deceased's estate, or of a Liquidating Co, the phrase "Secured and Unsecured Creditors," &c, in s. 10, Jud. Act, 1875, incorporates the bankry rule which provides for payment of debts *pari passu*, except wages and rates and taxes (*Re Whitaker*, 1901, 1 Ch. 9; 70 L. J. Ch. 6, over-ruling *Re Maggi, Winehouse v. Winehouse*, 51 L. J. Ch. 560; 20 Ch. D. 545; 30 W. R. 729, and *Smith v. Morgan*, 49 L. J. C. P. 410; 5 C. P. D. 337). An Exor's right of retainer (*V. RETAIN*) does not make him a "Secured Cr." within this section (*Lee v. Nuttall*, 12 Ch. D. 64, 65).

Secured Creditor quâ proving in a Bankry or Co's Winding-up, includes a mtgee who has realized the mtged property (*Re London, &c, Hotels Co*, 1892, 1 Ch. 639; 61 L. J. Ch. 273; 66 L. T. 19; 40 W. R. 298).

*V. CREDITOR.*

#### SECURELY. — *V. SAFELY.*

The Side Entrance itself of a Disused Mine must be "securely fenced," s. 13, 35 & 36 *V. c. 77*, whether on enclosed ground or not (*Foster v. Owen*, 62 L. J. M. C. 7; 67 L. T. 712; 41 W. R. 240; 57 J. P. 87).

**SECURITIES.** — *V. GOVERNMENT SECURITIES: PUBLIC SECURITIES: REAL SECURITY: SECURITY: SECURITY FOR MONEY: STOCKS.*

"Securities," s. 16, Bankry Act, 1869; *V. Re Frith*, 48 L. J. Bank. 122; 12 Ch. D. 337. "Securities" to be specified in a Bankry Proof of Debt, includes Bills given as collateral security for a mtgee, even though they are not being included in the proof (*Re Ruthen*, 5 Manson, 227).

Stat. Def. — Bankry (Scot) Act, 1856, 19 & 20 *V. c. 79*, s. 4; Conv & L. P. Act. 1881, s. 2 (xiv); Conveyancing (Scot) Act, 1874, 37 & 38 *V. c. 94*, s. 3; Court of Chancery (Funds) Act. 1872, 35 & 36 *V. c. 44*, s. 3; Mortgage Debenture (Amendment) Act, 1870, 33 & 34 *V. c. 20*, s. 4; S. L. Act, 1882, s. 2 (10, viii); Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 *V. c. 101*, s. 3; Trustee Act, 1893, s. 50.

A power of *Investment* in such "Securities" as may be thought proper, does not authorize the purchase of a limited Banking Co's Shares not fully paid-up (*Murphy v. Doyle*, cited FUNDS, towards end). Note: that "Securities," quâ Conv & L. P. Act, 1881, S. L. Act, 1882, and Trustee Act, 1893 (*V. sup.*), "includes, Stocks, Funds, and Shares."

"Securities," quâ a Banker's General LIEN, mean, "such securities as Promissory Notes, Bills of Exchange, Exchequer Bills, Coupons, Bonds of Foreign Governments," &c but, *semble*, not Title Deeds (*Wylde v. Radford*, 33 L. J. Ch. 53; 9 L. T. 471; 9 Jur. N. S. 1169; 12 W. R. 38).

"Other Securities," s. 12, Judgments Act, 1838, 1 & 2 V. c. 110, "I think, means, only Securities *ejusdem generis* with the Securities particularly mentioned in the section; and I doubt whether the section can be held to apply to goods in PLEDGE" (per North, J., *Re Rollason*, 56 L. J. Ch. 769; 34 Ch. D. 495; 56 L. T. 303; 35 W. R. 607). So, a bequest of "Foreign Bonds and other Securities," was held to pass Foreign Securities only, although the testator had large investments in British Funds (*Ferguson v. O'Gilby*, 2 Dr. & War. 548). *Vf*, SECURITY FOR MONEY.

A testamentary direction that funds shall be invested in, *e.g.* Consols, "and in *no other Securities*," ought to be observed by the Court even as regards CASH UNDER THE CONTROL OF THE COURT (*Re Orey*, 1900, 2 Ch. 524; 69 L. J. Ch. 804, herein not following *Re Wedderburn*, 47 L. J. Ch. 743; 9 Ch. D. 112).

**SECURITY.** — A "Security," speaking generally, is anything that makes the money more assured in its payment or more readily recoverable; as distinguished from *e.g.* a mere I. O. U. which is only evidence of a debt. *V.* SECURITIES.

Thus, Bank Notes, Bills of Exchange, Promissory Notes, and Cheques, are "Securities" (Byles, *V. espy* Preface to 1 ed.). *Vf*, *Brown v. Int. Rev.*, cited MARKETABLE SECURITY: SECURITY FOR MONEY: *Se*, SECURITY FOR DEBT.

And writing is not necessary; for a parol deposit of deeds to secure a debt creates an Equitable Mortgage (Fisher, 16 *et seq.*: Coote, ch. 31) and is obviously a "Security."

"Security," quâ Local Loans Act, 1875, 38 & 39 V. c. 83, "means, any debenture, debenture stock, annuity certificate, coupon, or stock certificate to bearer, issued under this Act" (s. 34); quâ Public Works Loans Act, 1875, 38 & 39 V. c. 89, "'Security,' includes, a mortgage" (s. 51); quâ Public Works Loans Act, 1899, 60 & 61 V. c. 51, "'Security of a Local Rate,' includes, a security guaranteed by any such Local Rate" (s. 12).

A *Foreign Attachment* out of the Lord Mayor's Court (*Lery v. Lovell*, 49 L. J. Ch. 305; 14 Ch. D. 234; 28 W. R. 602), or an attachment in

the Tolzey Court of Bristol (*Ex p. Secur*, 51 L. J. Ch. 448; 17 Ch. D. 74), gives no "Security" for the debt sued for, the object of either process being merely to compel the appearance of the defendant.

A *Garnishee Order*, as soon as served on the garnishee, created a "Security" to the judgment creditor on the debt therein comprised; *V. CHARGE* for cases hereon: but the Order must now be completed "by receipt of the debt" to be good as against bankruptcy (Bankry Act, 1883, s. 45).

*Money paid into Court* to abide the event of an action is a Security to the other litigant who, if he succeeds, becomes thereby a SECURED CREDITOR (*Ex p. Tate, Re Keyworth*, 43 L. J. Bank. 102; nom. *Ex p. Banner, Re Keyworth*, 9 Ch. 379; 30 L. T. 620; *Ex p. Bouchard, Re Meojen*, 48 L. J. Bank. 105; 12 Ch. D. 26; *Re Ford*, 1900, 2 Q. B. 211; 69 L. J. Q. B. 690; 81 L. T. 648; 48 W. R. 688), even though there be a denial of liability by the payer (*Re Gordon*, 1897, 2 Q. B. 516; 66 L. J. Q. B. 768; 46 W. R. 31).

A *Seizure of Goods* under a *fi. fu.* (even before sale) gave the execution creditor a "Security" within s. 12, Bankry Act, 1869 (*Slater v. Pinder*, 40 L. J. Ex. 146; 41 Ib. 66; L. R. 6 Ex. 228; 7 Ib. 95; 19 W. R. 778; 20 Ib. 441; *Ex p. Rocke, Re Hull*, 40 L. J. Bank. 70; 6 Ch. 795; 19 W. R. 1129; 25 L. T. 287); but no such security was created until seizure (*Ex p. Williams*, 41 L. J. Bank. 38; 7 Ch. 314; 20 W. R. 430); and when the *fi. fu.* was for a sum exceeding £50 and was against a trader, it was defeasible under s. 87. An execution against goods, to be good against bankruptcy, must now be "completed by Seizure and Sale" (Bankry Act, 1883, s. 45: *Vth*, ss. 46, 145).

Seizure of Land under an *elegit* (*Ex p. Abbott, Re Gourlay*, 50 L. J. Ch. 80; 15 Ch. D. 447), or lodging an *elegit* with a Sheriff who is remaining in possession under a former *elegit* (*Ex p. Shaw*, W. N. (84) 60), or the appointment of a Receiver (*Ex p. Evans, Re Watkins*, 49 L. J. Bank. 7; 13 Ch. D. 252; 28 W. R. 127; 41 L. T. 565), gives a Security on land within the Bankry Act, 1869, which is not taken away by s. 45, Bankry Act, 1883. But that latter section is fatal to a Receivership of goods (*Re Dickinson, Ex p. Charrington*, 58 L. J. Q. B. 1; 22 Q. B. D. 187), and *elegit* does not now extend to goods (s. 146, Bankry Act. 1883); *V. SECURED CREDITOR.*

A *Verdict* before judgment, is probably not a "Security" (*Jones v. Thompson*, 27 L. J. Q. B. 234; E. B. & E. 63); but "a Judgment is, in every sense of the word, a Security to a creditor for payment of his claim" (per Kelly, C. B., *West Ham v. Owens*, 42 L. J. M. C. 29; L. R. 8 Ex. 37).

A power to Borrow on "ANY Security" of a Co, authorizes a charge on UNCALLED CAPITAL (*Newton v. Anglo-Australian Co*, 1895, A. C. 244; 64 L. J. P. C. 57; 72 L. T. 305; 43 W. R. 401; *Vf*, PROPERTY, p. 1584).

"FOREIGN Security"; *V. s. 82 (1b)*, Stamp Act, 1891.

Landlord's security for Rent in the Liquidation of a Co; *V. Re Oak Pits Co*, 51 L. J. Ch. 768; 21 Ch. D. 322; 30 W. R. 760: *Re New Oriental Bank*, 1895, 1 Ch. 753; 64 L. J. Ch. 439; 72 L. T. 419; 43 W. R. 523.

LOAN "upon Security of any Lands," s. 1, 2 & 3 V. c. 37, did not comprise a Warrant of Attorney to enter up judgment for money borrowed, though, when entered up, the judgment would be a charge on land under s. 13, 1 & 2 V. c. 110 (*Lane v. Horlock*, 16 L. J. Q. B. 87).

"REASONABLE Security" for payment of so much in the £, s. 3 (9), Bankry Act, 1890, does not contemplate the requirement of such a Security as a prudent person would require for the re-payment of a loan; the phrase means, a reasonable Chance, or Commercial Probability, that the required payment will be made, or that the money therefor will be realized by the Scheme of Arrangement (per Williams, J., *Re Bottomley*, 10 Morr. 262).

V. APPROVED SECURITIES: CHARGE: HERITABLE: LIEN: MARKETABLE SECURITY: MORTGAGE: NEGOTIABLE: PERSONAL SECURITY: REAL SECURITY: SECURED CREDITOR: SECURITY FOR MONEY: SUBSTITUTED: VALUABLE.

**SECURITY FOR COSTS.** — "Security for Costs," R. 6, Ord. 65, R. S. C.; *Vh*, Ann. Pr.

**SECURITY FOR DEBT.** — A Building Agreement which forfeits to the landlord the materials which may be brought on the land on breach by the builder of his obligations, is not a LICENSE to take possession of chattels as "Security for Debt," and therefore is not a BILL OF SALE requiring registration under s. 4, Bills of S. Act, 1878 (*Brown v. Bateman*, 36 L. J. C. P. 134; L. R. 2 C. P. 272; *Blake v. Izard*, 16 W. R. 108; *Ex p. Newitt, Re Garrud*, 51 L. J. Ch. 381; 16 Ch. D. 522; *Reeves v. Barlow*, 53 L. J. Q. B. 192; 11 Q. B. D. 610; 12 lb. 436). *Vh, Ex p. Jay, Re Harrison*, 14 Ch. D. 19; *Re Yates, Batchelder v. Yates*, 57 L. J. Ch. 697; 38 Ch. D. 112; 59 L. T. 47; 36 W. R. 563; *Climpson v. Coles*, cited LICENSE: AUTHORITY OR LICENSE. *Se, Church v. Sage*, 67 L. T. 800; 41 W. R. 175.

An Assignment of "all Book and other Debts, and all Securities for such Debts"; held, not to pass an honoured cheque, uncashed at the date of the assignment, which had been given for a debt which, if unpaid, would have passed (*Hadley v. Hadley*, cited PAYMENT, p. 1435).

**SECURITY FOR MONEY.** — Mortgages are "Securities for Money" (*Dicks v. Lambert*, 4 Ves. 725; *Ogle v. Knipe*, L. R. 8 Eq. 434; 38 L. J. Ch. 692). So, a bequest of "Securities for Money" will *primâ facie* pass Stock in the Funds (*Bescoby v. Pack*, 1 Sim. & St. 500; 2 L. J. O. S. Ch. 17): but not Bank Stock (*lb.*: *Ogle v. Knipe*, sup:

*Re Maitland*, 74 L. T. 274); nor Shares in a Company (*Hulleston v. Gouldsbury*, 10 Bea. 547; *Re Maitland*, sup: *M'Donnell v. Morrow*, 23 L. R. Ir. 591); nor an unpaid Legacy (*Re Mason*, 34 Bea. 494; 34 L. J. Ch. 603). Such a bequest will pass a Vendor's Lien for unpaid purchase-money (*Callow v. Callow*, 58 L. J. Ch. 698; 42 Ch. D. 550; *Sr, Goold v. Teague*, 7 W. R. 84; 32 L. T. O. S. 251; 5 Jur. N. S. 116, *sethle* disapproved, Sug. V. & P. 684; Dart, 827, *n*). So it will pass a Life Policy (*Laurance v. Galsworthy*, 3 Jur. N. S. 1049); also Bonds (*Dicks v. Lambert*, sup: *Mainland v. Uppjohn*, 41 Ch. D. 142; 58 L. J. Ch. 366), and Bills of Exchange, Promissory Notes, and Cheques (*Barry v. Harding*, 1 J. & La T. 475); but not Bank Notes, for they are Money (*Southcot v. Watson*, 3 Atk. 233). It would not pass money merely evidenced as due by an I. O. U. (*Barry v. Harding*, sup); nor a sum shown to be due by a Banker's Deposit Note (*Hopkins v. Abbott*, 44 L. J. Ch. 316; L. R. 19 Eq. 222); still less a mere Debt (*Re Mason*, 34 L. J. Ch. 603; 11 Jur. N. S. 835); but it would seem that money due on a Judgment would pass (*West Ham v. Ovens*, 42 L. J. M. C. 29; L. R. 8 Ex. 37). *Vh*, Wms. Exs: 1056.

A bequest of "Securities for Money," prior to the Conv & L. P. Act, 1881, if uncontrolled by context, passed the legal estate in mortgaged hereditaments (1 Jarm. 699: Wms. Exs. 1056: Lewin, 244: *Rippen v. Priest*, cited MORTGAGE); *Sc*, s. 30 of that Act as regards testators dying after Dec 31st 1881.

"Securities for Money," s. 12, Judgments Act, 1838, 1 & 2 V. c. 110, includes an exon debtor's Life Policy (*Stokoe v. Cowan*, 30 L. J. Ch. 882; 29 Bea. 637: *sthe*, not followed in Ireland, *Alleyn v. Darcy*, 5 Ir. Ch. Rep. 55: *Re Sargeant*, 7 L. R. Ir. 66); it is doubtful whether this phrase includes Exchequer Bills (*Ex p. Chaplin*, 3 Y. & C. 397). *Vf*, SECURITIES.

"Security for the Payment of Money," s. 3, Bills of Sale Act, 1882, is made "whenever the grantor binds himself to pay money to the grantee, whatever may be the reason" (per Esher, M. R., *Hughes v. Little*, 56 L. J. Q. B. 98; 18 Q. B. D. 32; 55 L. T. 476; 35 W. R. 36). *Vf*, *Manchester, S. & L. Ry v. North Central Wagon Co*, 58 L. J. Ch. 219; 13 App. Ca. 551; 59 L. T. 730; 37 W. R. 305.

"Security for Payment of Money," s. 1, Carriers Act, 1830, 11 G. 4 & 1 W. 4, c. 65, does not include an incomplete Bill of Exchange (*Stoessiger v. S. E. Ry. S E. & B.* 519; 23 L. J. Q. B. 293: *Vf*, *McCall v. Taylor*, 19 C. B. N. S. 301; 34 L. J. C. P. 365).

Generally, an incomplete Bill of Exchange is not a Security for Money or for Payment of Money (*R. v. Hart*, 6 C. & P. 106: *Goldsmid v. Hampton*, 5 C. B. N. S. 94); but where Acceptances were placed in an agent's hands which needed only his own name as Drawer to make them complete, it was held that they were, in his hands, "Securities for the Payment of Money," within s. 75, Larceny Act, 1861, 24 & 25 V. c. 96

(*R. v. Bowerman*, 1891, 1 Q. B. 112; 60 L. J. M. C. 13; 63 L. T. 532; 39 W. R. 207; 55 J. P. 373).

“Bond, Covenant, or Instrument,” “being the only, or principal, or primary, Security” for Money, Stamp Act, 1891, Sch 1; *V. INSTRUMENT: United Realization Co v. Int. Rev.*, 1899, 1 Q. B. 361; 68 L. J. Q. B. 218; 79 L. T. 556; 47 W. R. 381.

*V. MONEY: SECURITY.*

**SEDITION.**—Sedition, is the attempt “to bring into hatred or contempt the person of” the Reigning Monarch, “or the Government and Constitution of the United Kingdom as by law established, or either House of Parliament, or to excite His Majesty’s subjects to attempt the alteration of any matter in Church or State as by law established otherwise than by lawful means” (s. 1, Criminal Libel Act, 1819, 60 G. 3 & 1 G. 4, c. 8); “or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst Her Majesty’s subjects, or to promote feelings of ill-will and hostility between different classes of such subjects” (Stephen Cr. 65).

*Vh.* *R. v. Lambert*, 2 Camp. 398: *R. v. Vincent*, 9 C. & P. 91: Arch. Cr. 938-951.

As to what are Seditious Words, *V. Odgers*, ch. 19.

**SEDUCTION.**—*V. SERVANT*, at end.

Seduction of a Wife, gave rise at Common Law to the action for Criminal Conversation (3 Bl. Com. 139, 140); but that action was abolished by 20 & 21 V. c. 85, s. 59, and by s. 33, *Ib.*, a husband may, in a matrimonial cause, claim damages from an adulterer.

*Cp.* ABDUCTION.

**SEE.**—*V. DIOCESE.*

Stat. Def.—*Ir.* 14 & 15 V. c. 73, s. 1.

**SEE BACK.**—“See Back,” on the face of a Railway Cloak Room Ticket and printed thereon in such a way as to give reasonably sufficient intimation that there are Conditions on the back (which is a question for the jury), gives to the person taking it notice of the Conditions on the back of it, under which the article is accepted for custody (*Parker v. S. E. Ry*, 46 L. J. C. P. 768; 2 C. P. D. 416); and it follows that a similar notification on any other Ticket would charge the person taking it with notice of the Conditions on its back. But the “See Back,” or “See Over,” must not be in small type (per Wright, J., *G. N. Ry v. Palmer*, 1895, 1 Q. B. 862; 64 L. J. Q. B. 320; 72 L. T. 287; 43 W. R. 316). The ticket must not be folded up so that the intimation is not visible unless the ticket is opened and read (*Richardson v. Rowntree*, 1894, A. C. 217; 63 L. J. Q. B. 283; 70 L. T. 817). *Vf.* *Stirling v. Lond. & S. W. Ry*, 12 Times Rep. 69; *Roche v. Cork Ry*, 24 L. R. Ir. 255. 257; *Kent v. Mid. Ry*, 44 L. J. Q. B. 18; L. R. 10 Q. B. 1; 23 W. R. 25.

**SEE FIT.** — *V.* THINK FIT.

**SEED.** — *V.* BLOOD.

**SEED BARLEY.** — *V.* BARLEY.

**SEEDS.** — “To Dye Seeds”; *V.* DYE.

“To kill Seeds,” quâ 32 & 33 V. c. 112, “means, to destroy, by artificial means, the vitality or germinating power of such seeds” (s. 2).

**SEEK.** — “Seek a livelihood”; *V.* LIVELIHOOD.

“Seeks only”; *V.* ONLY.

**SEEM MEET.** — A power to justices “to make such Order thereon as to them shall seem meet,” s. 44, Highway Act, 1835, 5 & 6 W. 4, c. 50, does not authorize an Order for illegal charges (*Barton v. Piggott*, 44 L. J. M. C. 5; L. R. 10 Q. B. 86). *Vf*, THINK FIT.

**SEIGNIOR.** — The Lord of a Manor (Cowel): “Seignior in Grosse,” “is a Lord, but of no Mannor, and therefore can keep no Court” (Ib.): “Seignory,” a Manor or Lordship (Ib.). *Vf*, GROSS, p. 839: 11 Encyc. 453, 454.

**SEIZE.** — *V.* SEIZURE.

**SEIZED.** — This word, in its relation to real estate, is “one of the most technical words in our law — a word that has no meaning except technical. It has not got into vernacular use that I am aware of” (per James, L. J., *Leach v. Jay*, 47 L. J. Ch. 877: *Vf*, *Kilwick v. Maidman*, 1 Burr. 107).

“‘Seisin,’ or *seison*, is common aswel to the English as to the French, and signifies in the common law possession, whereof *seisina* a Latin word is made, and *seisire*, a verbe” (Co. Litt. 153 a); actual entry is, generally speaking, necessary to make a seizin (2 Bl. Com. 209: ENTITLED; Co. Litt. 29 a, *Sc*, the exceptions there stated and Hargrave’s note thereon, also Co. Litt. 31 a. *Va*, Cowel, *Seisin*: Wms. R. P. Part 1, ch. 7: 11 Encyc. 454–456). Therefore, a devise of “all real estate of which I may die seized,” will not pass real estate to which the testator is entitled, but of which he has not acquired the actual possession (*Leach v. Jay*, 47 L. J. Ch. 876; 9 Ch. D. 42; 39 L. T. 242; 27 W. R. 99). *Vf*, *Re Huddleston*, 1894, 3 Ch. 595; 64 L. J. Ch. 160; 43 W. R. 139: ACTUAL SEIZIN.

But though “seized” is a strong technical expression and has its proper relation only to realty, yet if it be the only word relating to realty in a testamentary gift the other expressions of which relate to personalty, it will not be sufficient to pass realty (*Jones v. Robinson*, 47 L. J. C. P. 673; 3 C. P. D. 344).

A Gift of all Freehold hereditis in A. of which testator was “seized or possessed” under a specified Settlement; held to pass a share in the



proceeds of sale of freeholds in A. to which share (but not to any freeholds) the testator was entitled under the Settlement (*Re Lowman*, 1895, 2 Ch. 348; 64 L. J. Ch. 567; 72 L. T. 816).

A Recital that a person is "seized of or otherwise well entitled to" a property, does not operate as an estoppel that he is seized of the legal estate (*Heath v. Crealock*, 10 Ch. 22; 44 L. J. Ch. 157): *Cp*, FACT: ENTITLED, p. 628.

An allegation in a Pleading that a person was "seized" of property, is ambiguous, but, after verdict to that effect, it is a sufficient allegation of a Seizin in Fee (*Harris v. Bearan*, 4 Bing. 646).

An allegation of a Seizin in Fee, virtually includes an occupation of the property, unless the contrary be shown (*Bullard v. Harrison*, 4 M. & S. 387, 392), and, certainly, does not imply that the property was not then under lease (*Johnson v. Faulkner*, 2 Q. B. 925; 11 L. J. Q. B. 193).

Quâ Lunacy Acts and Trustee Acts, "Seized" is applicable to or includes "any *vested* estate for life or of a greater description, and shall extend to estates at Law and in Equity, in Possession or in Futurity, in any Lands" (13 & 14 V. c. 60, s. 2; 54 & 55 V. c. 65, s. 28).

"Seized in FEE SIMPLE," in the exception to 17 G. 3, c. 26. for the Registration of Annuities, included a Tenant for Life with a GENERAL POWER of appointment (*Halsey v. Hales*, 7 T. R. 194).

"Seized of the FREEHOLD and INHERITANCE"; *V. Malmesbury v. Malmesbury*, 31 Bea. 407.

"Seized or entitled," s. 78, District Courts New South Wales Act, 1858; *V. Godfrey v. Poole*, 57 L. J. P. C. 78; 13 App. Ca. 497; 58 L. T. 685.

"Seized of or entitled in fee," s. 17, 1 W. 4, c. 65; *V. Re Clark*, 14 W. R. 378; 1 Ch. 292; 35 L. J. Ch. 314; 13 L. T. 732.

Covenant "to stand seized"; *V. 4 Cru. Dig.* 106-112.

*V. ENTITLED: SEIZIN.*

Meat is not "seized" within ss. 116, 117, P. H. Act, 1875, if, having been purchased, it is, with the consent of the purchaser, taken by an inspector of Nuisances to a Justice for condemnation (*Winter v. Hind*, 52 L. J. M. C. 93; 10 Q. B. D. 63). So, as to an Article "seized," s. 47, 54 & 55 V. c. 76; *V. per Hawkins, J., R. v. Dennis*, 1894, 2 Q. B. 458; 63 L. J. M. C. 166; 71 L. T. 436; 42 W. R. 586; 58 J. P. 622. *Vj*, *Billing v. Prebble*, cited BELONG.

*V. SEIZURE.*

**SEIZED JOINTLY.** — This phrase in s. 10, Trustee Act, 1850, 13 & 14 V. c. 60, is not to be construed as referring only to a strictly legal JOINT TENANCY, but will include PARCENERS (*Re Greenwood*, 54 L. J. Ch. 623; 27 Ch. D. 359).

**SEIZIN.** — *V. SEIZED: ACTUAL SEIZIN: PRIMER SEISIN.*

"Instrument of Seizin"; *V. Eglinton Trustees v. Inl. Rev.*, 3 H. & C.

871; 34 L. J. Ex. 225. In that case Pollock, C. B., said the Scotch equivalent for "Seizin" is "Sasine" (3 H. & C. 887).

*V. Williams on Seisin.*

The Seisin of Chattels, *V. 1* L. Q. Rev. 324: The Mystery of Seisin, 2 *Ib.* 481: The Beatitude of Seisin, 4 *Ib.* 24, 286.

**SEIZURE.** — The ordinary and natural meaning of "Seizure" is a forcible taking possession (per Cave, J., *Johnston v. Hogg*, 52 L. J. Q. B. 343; 10 Q. B. D. 432. *Va, Vinter v. Hind*, 52 L. J. M. C. 93: 10 Q. B. D. 63; *Sethle, Mallinson v. Carr*, cited KNOWINGLY, p. 1046).

Seizure of part of the goods in the house by virtue of a *fi. fa.* in the name of the whole, is a good seizure of all (per Holt, C. J., *Cole v. Davis*, 1 Raym. Ld. 724. *Va, Gladstone v. Padwick*, 40 L. J. Ex. 154; L. R. 6 Ex. 203).

An execution against Lands is "completed by Seizure," within s. 45 (2), Bankry Act, 1883, as soon as the sheriff has delivered the lands to the execution creditor (*Re Hobson*, 55 L. J. Ch. 754; 33 Ch. D. 493; 55 L. T. 255; 34 W. R. 786: *Cp, DELIVERED IN EXECUTION*).

*V. ACTUAL: EXECUTED: QUOUSQUE: SEIZED.*

In a warranty by owners of a ship against "CAPTURE and Seizure," in a Marine Insurance, the word "Seizure" has its ordinary and natural meaning and is not a Term of Art, and includes the forcible taking possession of a vessel and abandoning her as soon as the cargo has been plundered; "Seizure" is not equivalent to, but is less exigent than, "Capture," as the latter word involves the idea of keeping what has been seized (*Johnston v. Hogg*, *sup*, and *dicta* there cited). "Seizure" even in this connection is not confined to a belligerent, hostile, or wrongful, seizure (*Powell v. Hyde*, 25 L. J. Q. B. 65; 5 E. & B. 607: *Kleinwort v. Shepard*, 28 L. J. Q. B. 147; 1 E. & E. 447: *Cory v. Burr*, 51 L. J. Q. B. 95, 468; 52 *Ib.* 657; 8 Q. B. D. 313; 9 *Ib.* 463; 8 App. Ca. 393). *Vf, Robinson Gold-Mining Co v. Alliance Assrce*, 1902, 2 K. B. 489; 71 L. J. K. B. 942.

It has been said in America that a "Capture" is a taking by Military Power; a "Seizure" a taking by Civil Authority (*United States v. Athens Armory*, 2 Abb. 137).

*V. ARREST.*

**Lord SELBORNE'S ACT.** — Powers of Appointment Act, 1874, 37 & 38 V. c. 37.

*Vf, PALMER ACT.*

**SELDA.** — Cowel gives these various meanings to "Selda," — a seat or stool; a window; a shop, shed, or stall; and says that "Selda, also in Doomsday signifies a Wood of Sallows, Willows, and Withyes." *Vf, SALIVA.*

**SELECT.** — *V.* APPROPRIATE.

Power to select; *V.* RELATIONS.

*Cp.*, ELECTION.

**SELF.** — “For Firm and Self”; *V.* FOR, p. 741.

“Self-governing COLONY,” quâ Colonial Boundaries Act, 1895, 58 & 59 V. c. 34, means, Canada, Newfoundland, New South Wales, Victoria, South Australia, Queensland, Western Australia, Tasmania, New Zealand, Cape of Good Hope, or Natal (s. 1 and Sch).

Self Defence; *V.* 3 Bl. Com. 3, 4 Ib. 183: Steph. Cr. Art. 200. “Son Assault Demesne”; *V.* DEMESNE, at end.

Self Murder; *V.* SUICIDE: 4 Bl. Com. 189.

**SELION.** — “By the grant of a selion of land, *selio terre*, a ridge of land which containeth no certainty, for some be greater and some be lesser; and by the grant *de unâ porcâ*, a ridge doth passe. *Selio* is derived of the French word *sellon*, for a ridge” (Co. Litt. 5 b: *Va*, Termes de la Ley: Cowel). *V.* PORCA TERRE: BUTT.

**SELL.** — *V.* ASSIGN: ATTEMPT: CONVEY: MORTGAGE, towards end: PARTITION: SALE: SELLER: VEND.

A Power to “sell, means, in the absence of any context, a power to sell *for money*; and a person who exercises such a power is bound to sell for money” (per Stirling, J., *Paine v. Cork Co*, 69 L. J. Ch. 158: *V.* Coats v. *Inl. Rev.*, and *Le Ware*, cited SALE). The power to “sell” of a Liquidator in the Winding-up of a Co is so restricted under s. 95, Comp Act, 1862, except as it is widened by s. 161; that latter section is the limit of his power thereunder and it is not competent for a Co, even by its Articles, to confer additional power or to deprive Dissident Shareholders of their rights under the section (*Paine v. Cork Co*, 1900, 1 Ch. 308; 69 L. J. Ch. 156; 82 L. T. 44; 48 W. R. 325); but where a sale is under the *Mem of Assn*, *V.* *Doughty v. Lomagunda Reefs*, 1902, 2 Ch. 837; 71 L. J. Ch. 888.

An authority to “sell” property includes an authority to sign a binding contract therefor (*Rosenbaum v. Belson*, cited PROCURE).

As to Power to sell, *Vf*, SALE.

“Sell or expose for sale” Goods; *V.* EXPOSE.

“Sell, publish, or expose to sale,” any Printed Book; *V.* IMPORT FOR SALE.

“Sells Intoxicating Liquor,” s. 13, Licensing Act, 1872; *V.* SUFFER.

Quâ Public Parks (Scot) Act, 1878, 41 & 42 V. c. 8, “sell” includes, “convey by way of FEU or contract of ground annual” (s. 27).

**SELLER.** — Quâ Sale of Goods Act, 1893, “‘Seller’ means, a person who sells, or agrees to sell, Goods” (subs. 1, s. 62): the “Seller” of Goods quâ Part 4, of that Act, “includes, any person who is in the

position of a Seller, *e.g.* an Agent of the Seller, to whom the Bill of Lading has been indorsed, or a Consignor or Agent who has himself paid, or is directly responsible for, the price" (subs. 2, s. 38). *V. SCIENTER: UNPAID SELLER.*

The PERSON who is the "Seller" of POISON within s. 17, Pharmacy Act, 1868, 31 & 32 V. c. 121, is the person who keeps the shop, or actually conducts the business of the place, where the sale is transacted, even though he only sell the article on commission for another person, living elsewhere and having no control over the shop or place (*Templeman v. Trafford*, 51 L. J. M. C. 4; 8 Q. B. D. 397); under s. 15 of that Act the "Seller" includes a shopkeeper's assistant who performs the physical act of transfer (*Pharmaceutical Socy v. Wheeldon*, 59 L. J. Q. B. 400; 24 Q. B. D. 683; 62 L. T. 727; 54 J. P. 407: *Vf*, *Pharmaceutical Socy v. London & Prov. Supply Assn.*, cited PERSON). But if a Florist receives an order for a poison, *e.g.* a Weed-killer, which order he merely sends on to the manufacturer, receiving from the latter a commission on the order, the florist is not the "seller" within s. 15 (*Pharmaceutical Socy v. White*, 1900, 1 Q. B. 454; 69 L. J. Q. B. 289; 81 L. T. 821; 48 W. R. 335; 64 J. P. 168).

So, quâ Sale of Food and Drugs Act, 1875, s. 6, the PERSON who is the "Seller" of an article "not of the nature, substance, and quality," demanded, may be a servant of the tradesman, although his subordinate position precludes him from having been the person who had purchased the article for sale and whereby (possibly) he is deprived of the defence furnished by s. 25 (*Hotchin v. Hindmarsh*, 1891, 2 Q. B. 181; 60 L. J. M. C. 146; 39 W. R. 607; 55 J. P. 775: *Brown v. Foot*, cited KNOWINGLY: *Vf*, WRITTEN WARRANTY).

*V. NATURE: REPRESENT.* But *cp*, *Williamson v. Norris*, 79 L. T. 415; 47 W. R. 94; 62 J. P. 790; 68 L. J. Q. B. 31, on s. 3, Licensing Act, 1872.

*Cp*, *VENDOR.*

**SELWYN'S ACT.** — Probate Duty Act, 1859, 22 & 23 V. c. 36.

**SEMBLE.** — It seems.

**SEND.** — "A threatening letter is 'sent' when it is dropped in the way of the person for whom it is destined, so that he may pick it up (*R. v. Jepson*, *R. v. Lloyd*, 2 East P. C. 1115, 1122: *R. v. Wagstaff*, Russ. & Ry. 398); or is affixed in some place where he would be likely to see it (*R. v. Williams*, 1 Cox C. C. 16); or is placed on a public road near his house so that it may, however indirectly, reach him, which it eventually does after passing through several hands (*R. v. Grimwade*, 1 Den. 30. *Va*, *R. v. Jones*, 5 Cox C. C. 226): although in none of these cases would the paper be popularly said to have been 'sent'" (Maxwell, 336). But to "send" a threatening letter within the BLACK ACT did

not include its being *taken* by the writer (*R. v. Hammoud*, Leach, 444).

Notices of Chargeability or of Appeal were authorized to be sent "By Post or otherwise" (s. 79, 4 & 5 W. 4, c. 76; s. 10, 14 & 15 V. c. 105); they were, accordingly, "sent," within s. 9, 11 & 12 V. c. 31, on the day when in the ordinary course of post they ought to have been delivered (*R. v. Slawstone*, 21 L. J. M. C. 145; 18 Q. B. 388; *R. v. Richmond*, 27 L. J. M. C. 197; E. B. & E. 253; 31 L. T. O. S. 115).

As regards all Acts passed after Dec 31st 1889, a document is served "By Post," "by properly addressing, pre-paying, and posting, a letter containing the document, and (unless the contrary is proved) to have been effected at the time at which the letter would be delivered in the ordinary course of post" (s. 26, Interp Act, 1889). *V. ORDINARY COURSE.*

"Send out, deliver, remove, or receive," Spirits exceeding the quantity of 1 gallon without a Permit, ss. 105, 107, 43 & 44 V. c. 24; *V. Leese v. Jennings*, 79 L. T. 300.

**SENIOR.** — *V. ELDEST: PREMIER.*

"Senior Alderman," s. 64, Mun Corp (Ir) Act, 1840, 3 & 4 V. c. 108, means, senior in actual office (*Gribbin v. Kirker*, Ir. Rep. 7 C. L. 30).

**SENTENCE.** — A covenant in a Charter-Party to employ a captured ship "as soon as Sentence of Condemnation shall have passed," connotes that the Sentence must be a legal one (*Unwin v. Wolseley*, 1 T. R. 674).

"Sentence of IMPRISONMENT," quâ Colonial Prisoners Removal Act, 1884, 47 & 48 V. c. 31, "means, any sentence involving confinement in a PRISON, whether combined or not with labour, and whether known as penal servitude, imprisonment with hard labour, rigorous imprisonment, imprisonment, or otherwise; and includes, a sentence awarded by way of commutation, as well as an original sentence passed by the Court" (s. 18).

*V. DEFINITIVE.*

**SENTICETUM.** — *V. RONCARIA.*

**SEPARATE.** — The condition of an Annuity in a Separation Deed provided that the annuity should be payable during the joint lives of the husband and wife so long as they should "live separate"; held, that an occasional COHABITATION was not a breach of such latter part of the condition; to do that the evidence must show a joint intention of continuing to live together (*Robinson v. Robinson*, 89 Law Times. 119; *Rowell v. Rowell*, 1900, 1 Q. B. 9; 69 L. J. Q. B. 55; 81 L. T. 429).

*V. LIVING APART: NEGLECT: SEPARATELY: Cp, ASSOCIATE.*

## SEPARATE BLDG. 1826 SEPARATE PROP'TY

**SEPARATE BUILDING.** — *V.* DISTINCT.

**SEPARATE BUSINESS.** — Of a Wife; *V.* SEPARATELY.

**SEPARATE COVENANT.** — Where A. covenants with B. "and as a Separate Covenant" with C. to do or refrain from doing a certain thing, "Separate" is a technical word equivalent to the technical word "SEVERAL," and clearly connotes a several obligation (*Keightley v. Watson*, 3 Ex. 716, 720, 721; 18 L. J. Ex. 339); but, *semble*, "as a distinct covenant" is not such a technical phrase (*Hopkinson v. Lee*, 6 Q. B. 964; 14 L. J. Q. B. 101: *vtlhc* considered in *Keightley v. Watson*).

*V.* COVENANT: JOINTLY AND SEVERALLY: SEVERAL COVENANT.

**SEPARATE DWELLING-HOUSE.** — *V.* DISTINCT: DWELLING-HOUSE.

**SEPARATE ESTATE.** — *V.* SEPARATE PROPERTY: SEPARATE USE.

**SEPARATE MAINTENANCE.** — A provision for a Married Woman for "Separate Maintenance" may make it for her SEPARATE USE (*Re Tharp*, 3 P. D. 76). *Vf*, COMFORTABLE MAINTENANCE.

**SEPARATE OCCUPATION.** — Separate Occupation, entitling a person to be separately rated, depends on his occupation, and has nothing to do with structural division (*Allechurch v. Hendou*, 1891, 2 Q. B. 436; 61 L. J. M. C. 27; 65 L. T. 450; 40 W. R. 86). In that case, Esher, M. R., said, "'Structural Division,' is a phrase invented by the judges at a time when, in the statute of Elizabeth as to the Poor Rate and in the Franchise Acts, they were labouring to determine what was to be an Occupation which (in one case) would give a liability to be rated and (in the other) the right to the franchise. The phrase was in use for a long time," but now "is an exploded phrase and an exploded doctrine for all purposes whatever." *V.* HOUSE, p. 893; OCCUPATION, p. 1311.

**SEPARATE PRISON JURISDICTION.** — *V.* JURISDICTION.

**SEPARATE PROPERTY.** — This phrase in s. 1, M. W. P. Act, 1882, does not comprise property over which a married woman has a GENERAL POWER of Appointment (*Re Armstrong*, 55 L. J. Q. B. 578; 21 Q. B. D. 264; 34 W. R. 709; 2 Times Rep. 745: *Vh*, *Re Roper*, 39 Ch. D. 482, *vtlhc* per Lindley, M. R., *Re Hughes*, cited FEME: *Mayd v. Field*, 3 Ch. D. 587); nor property subject to a RESTRAINT ON ALIENATION (*Leak v. Driffield*, 59 L. J. Q. B. 89; 24 Q. B. D. 98; 61 L. T. 771; 38 W. R. 93: *Braunstein v. Lewis*, 64 L. T. 265: *Pelton v. Harrison*, 1891, 2 Q. B. 422; 60 L. J. Q. B. 742; 65 L. T. 514; 39 W. R. 689; *vtlhc*, *Re Wheeler*, 1899, 2 Ch. 717; 68 L. J. Ch. 663).

## SEPARATE PROP'TY 1827 SEPARATE USE

"Separate Property," s. 7, M. W. P. Act, 1870; *V. Re Davies*, cited LESS.

A Contingent Remainder is not such property (*Re Shakespear, Deakin v. Lakin*, 55 L. J. Ch. 44; 30 Ch. D. 169; 53 L. T. 145; 33 W. R. 744); but a Vested Remainder is (*Loibl v. Fraser*, 37 S. J. 601).

*V. JOINT TENANCY*, towards end.

*Note.* As to binding Separate Property by contract, *V. M. W. P. Act*, 1893, which, as from its date, nullifies hereon such cases as *Re Shakespear*, sup, and *Palliser v. Gurney*, 56 L. J. Q. B. 546; 19 Q. B. D. 519; 35 W. R. 760.

ALIMONY is not "separate" property in the sense that it is chargeable by the wife with her debts (*Anderson v. Hay*, 7 Times Rep. 113). *V. JUDGMENT.*

"Criminal Proceedings for the protection and security" of a wife's "own Separate Property," s. 12, M. W. P. Act, 1882, do not include a prosecution for Libel (*R. v. Lord Mayor of London*, 16 Q. B. D. 772; 55 L. J. M. C. 118).

*V. SEPARATE USE.*

**SEPARATE PUBLICATION.** — *V. SEPARATELY: PUBLICATION.*

**SEPARATE QUARTER SESSIONS.** — As to this phrase in s. 150, Mun Corp Act, 1882, 45 & 46 V. c. 50; *V. St. Lawrence, Rams-gate v. Kent Jus.*, 51 J. P. 262; 3 Times Rep. 519.

*V. QUARTER SESSIONS.*

**SEPARATE USE.** — A "Separate Use" was the creation of Courts of Equity; it is applicable to both Real and Personal Property; its effect is to give a married woman, with respect to the property subject to it, "an independent personal status, and to make her, in Equity, a Feme Sole (*V. FEME*). It is of the essence of the Separate Use, that the married woman shall be independent of, and free from the control and interference of, her husband. With respect to Separate Property, the feme covert is, by the form of trust, released and freed from the fetters and disability of coverture, and invested with the rights and powers of a person who is *sui juris*. To every estate and interest held by a person who is *sui juris*, the Common Law attaches a right of alienation; and accordingly, the right of a feme covert to dispose of her Separate Estate was recognized and admitted from the beginning until Ld Thurlow devised the clause against anticipation (*V. Hulme v. Tenant*, cited *FEME: Parkes v. White*, 11 Ves. 209, 221; *V. RESTRAINT ON ALIENATION*). It would be contrary to the whole principle of the doctrine of Separate Use to require the consent or concurrence of the husband in the act or instrument by which the wife's Separate Estate is dealt with or disposed of" (per Westbury, C., *Taylor v. Meads*, 34 L. J. Ch. 207; 4 D. G. J. & S. 603, 604).

“What words create a trust for Separate Use, has often been a subject of dispute. The principle of construction is stated to be, that the marital right is not to be excluded except by expressions which leave no doubt of the intention” (2 Jarm. 24, *n*: *Va*, Elph. 297).

“‘Separate’ is the proper technical word for excluding the marital right: ‘Sole’ is not equivalent; and *primâ facie* a devise or bequest direct to a *single* woman (including the testator’s widow) for her ‘sole’ use will not create a separate estate” (2 Jarm. 25, *n*, citing *Gilbert v. Lewis*, 1 D. G. J. & S. 38; 32 L. J. Ch. 347: *Lewis v. Matthews*, L. R. 2 Eq. 177; 35 L. J. Ch. 638). *Vf*; SOLE: OWN SOLE USE.

But “no particular form of words is *necessary* in order to vest property in a married woman to her Separate Use. That intention though not expressed in terms, may be inferred from the nature of the provisoes annexed to the gift” (per Brougham, C., *Stanton v. Hall*, 2 Russ. & My. 180).

If, too, the woman were married, or her marriage were in contemplation, at the date of the instrument to be construed, that fact would be of importance, as it would induce the Court the more readily to believe that words pointing to an independent enjoyment were intended to create a Separate Use (2 Jarm. 25, *n*: *Va*, cases hereon collected, Elph. 298, 299).

For the cases as to what words have been held to create a Separate Use; *V*. 2 Jarm. 24, *n*: Theobald, 558: Elph. 297–301: Lewin, 922–924: Watson Eq. 388–390: Story, s. 1382: Matthews’ Law of Married Women. *Va*, COMFORTABLE MAINTENANCE: SEPARATE MAINTENANCE.

“Property acquired by a married woman and becoming her Separate Estate by virtue of the M. W. P. Act, 1882, is not ‘property settled to her Separate Use’ within the meaning of these words as used in an exception to a covenant for settling a wife’s future property in a Settlement before 1883” (Elph. 296, citing *Re Stonor*, 24 Ch. D. 195; 52 L. J. Ch. 776: *Va*, *Re Whitaker*, 56 L. J. Ch. 251; 34 Ch. D. 227; 35 W. R. 217). In a discussion of the lastly cited case (31 S. J. 376, 377), it has been said that “the practical effect of the decision is that the words ‘for her separate use’ should be always added after a gift, limitation, or bequest, to a married woman.”

#### V. SEPARATE PROPERTY.

*Semble*, a gift to a married woman for her “Separate Use,” will not take the property out of a *Covenant to settle* (3 Davidson’s Prec., 3 ed., 199, 200: *Re Alnutt, Pott v. Brassey*, 52 L. J. Ch. 299; 22 Ch. D. 275; differing from *Re Mainwaring*, L. R. 2 Eq. 487. *Va*, *Scholfield v. Spooner*, 26 Ch. D. 94).

*V*. OWN USE AND BENEFIT: PARAPHERNALIA: PIN MONEY: RESTRAINT ON ALIENATION: SAVINGS.

**SEPARATELY.** — A wife may engage in or carry on an Employment, Trade, or Occupation, “separately from her husband,” s. 2, M. W. P.



Act, 1882, in the house in which they are living together; "separately," in that connection, does not mean "bodily separate" but, means, without the husband's interference (*Ashworth v. Outram*, 46 L. J. Ch. 687; 5 Ch. D. 923; 37 L. T. 85; 25 W. R. 896; *Lovell v. Newton*, 4 C. P. D. 7; 27 W. R. 366; *Re Dearmer*, 53 L. T. 905; as to proof, *V. Re Whittaker*, 21 Ch. D. 657; 51 L. J. Ch. 737). So, in order to render a wife subject to the Bankry Laws (s. 1 (5), *Ib.*), she must not only have Separate Estate but also "carry on a TRADE separately from her husband," *i.e.* her trade must be one in which the husband has no share or right of interference (*Re Helsby*, 63 L. J. Q. B. 261; 69 L. T. 864); but "separately" does not mean that the husband may not help (and help very much) in carrying on the wife's trade (*Re Edwards*, 11 Times Rep. 338; 43 W. R. 509). It is not carrying on a "trade" within this enactment for a woman to let rooms in her house, she supplying no food to such lodgers (*Re Parkinson*, 9 Times Rep. 388). *V. CARRY ON*, pp. 266, 267.

"Neglect causing a Wife to leave and live separately and apart"; *V. NEGLECT*.

By Bills of Sale Act, 1878, s. 7, "No Fixtures or Growing Crops shall be deemed, under this Act, to be 'separately assigned or charged' by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such Fixtures are affixed, or in the land on which such Crops grow, is also conveyed or assigned to the same persons or person. The same rule of construction shall be applied to *all* deeds or instruments including Fixtures or Growing Crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any Bankruptcy, Liquidation, Assignment for the Benefit of Creditors, or Execution of any process of any Court, which shall take place or be issued after the commencement of this Act." *Vth, Re Yates, Batcheldor v. Yates*, 57 L. J. Ch. 697; 38 Ch. D. 112; 59 L. T. 47; 36 W. R. 563; *Small v. National Prov. Bank*, 1894, 1 Ch. 686; 63 L. J. Ch. 270; 70 L. T. 492; 42 W. R. 378; *Re Brooke*, 1894, 2 Ch. 600; 64 L. J. Ch. 21; *Re Calvert*, 1898, 2 I. R. 501. A mtge, whether of freeholds or leaseholds, which comprises Fixtures and which gives the mtgee power to sell the Fixtures separately from the land, amounts to a BILL OF SALE quâ the Fixtures (*Johns v. Ware*, 1899, 1 Ch. 359; 68 L. J. Ch. 155; 80 L. T. 112; 47 W. R. 202; *Re Yates*, sup).

Part of a HOUSE "separately occupied as a dwelling"; *V. DWELLING-HOUSE: SEPARATE OCCUPATION*.

Lodgings occupied "separately and as Sole Tenant." s. 4 (2), Rep People Act, 1867. s. 4 (2), Rep People (Ir) Act, 1868, s. 4, Rep People (Scot) Act, 1868; *Vh*, s. 6 (3), 41 & 42 V. c. 26; *Fitzgeruld v. Kinsella*,

18 W. R. 149: LODGER, p. 1120. If a man's wife lodges with him, he none the less occupies "separately and as sole tenant" (*Hamilton v. Paton*, W. N. (99) 175).

BOOK "separately published." s. 2, Copyright Act, 1842, includes each one of a series of literary compositions, clearly distinguishable from one another, although published in one volume and under one general title (*Johnson v. Newnes*, 1894, 3 Ch. 663; 63 L. J. Ch. 786; 43 W. R. 572). As to what is publishing an essay, &c, "separately or singly," within s. 18, *Ib.*; *V. Mayhew v. Maxwell*, 1 J. & H. 312; *ethc*, and hereon, *Cor v. Land and Water Co.* L. R. 9 Eq. 329, 330: *Vf*, *Smith v. Johnson*, 33 L. J. Ch. 137; 9 L. T. 437: PERIODICAL: PUBLICATION.  
 V. SEPARATE.

**SEPARATION.** — V. JUDICIAL SEPARATION: LIVING APART: SEPARATE: *Cp*, ASSOCIATE.

Allowance during separation; V. DURING.

"Separation of the Crop"; *V. Black v. Clay*, cited DETERMINATION.

Separation Deed; V. ALIMONY: COMMENCED: CONDONATION: USUAL.

**SEPTUM.** — "An Inclosure, a Close; and is so called because it is encompassed *cum sepe et fossa*, with a hedge and a ditch, or, at least, with a hedge" (Cowel); "it signifies any place paled in" (Jacob).

**SEPULCHRE.** — "Sépulture Ecclésiastique"; *V. Brown v. Montreal Curé*, L. R. 6 P. C. 157; 44 L. J. P. C. 1.

**SEQUESTRATION.** — "'Sequestration' is the setting aside of a thing in controversie from the possession of both those that contend for it" (Termes de la Ley): it is *Voluntary*, when both parties consent: *Necessary*, when ordered by a Judge (Cowel).

The Sequestration of a BENEFICE "is this, that the proceeds of the Benefice are taken by an officer appointed by the Bishop for the purpose; but, in other respects, the position of the Incumbent, except so far as it may be expressly altered by the statute, remains the same" (per Chitty, J., *Lawrence v. Edwards*, cited MINISTER). *Vf*, as to the effect of a Sequestration of a Benefice, *Re Lawrence*, 1896, P. 244: *Lawrence v. Adams*, 75 L. T. 410: *Pack v. Tarpley*, 8 L. J. M. C. 93; 9 A. & E. 468: Phil. Ecc. Law, 1003-1012, 1074.

"'Sequestration' is a word large enough to apply to all Sequestrations" (per North, J., *Re Wanzer*, 60 L. J. Ch. 494); and as used in s. 163, Comp Act, 1862, includes a Scotch proceeding in sequestration by a landlord against a tenant for future rent (*Ib.*, 1891, 1 Ch. 305; 60 L. J. Ch. 492; 39 W. R. 343). AN ARREST of a vessel by the Admiralty Court is also a "Sequestration" within that section (*Re Australian Nav. Co.* L. R. 20 Eq. 325; 44 L. J. Ch. 676; on *wher*, *Re Belfast Co*, 1894, 1 I. R. 331).

Sequestration to enforce payment into Court or other act; *V. R.* 6 and 7, Ord. 43, R. S. C., on *wher*, Ann. Pr.

"Sequestration," in Scotland, sometimes is equivalent to "Liquidation," *e.g.* s. 3 (3), 49 & 50 V. c. 23.

Sequestrator; *V. CREDITOR*, p. 434.

**SERIAL.** — *V. Johnson v. Newnes*, cited SEPARATELY: PERIODICAL.

**SERIOUS.** — What is "Serious and WILFUL MISCONDUCT" of a Workman, s. 1 (2), Workmen's Comp Act, 1897, is a question of fact having regard to the whole matter of each case; breach of Rules, even those under the Coal Mines Regn Act, 1887, does not, necessarily, constitute such Misconduct (*Rumboll v. Nunnery Colliery Co*, 80 L. T. 42; 63 J. P. 132). *Vf, Rees v. Powell Duffryn Co*, 64 J. P. 164: *Reeks v. Kynoch*, 18 Times Rep. 34: *John v. Albion Co*, 18 Times Rep. 27: EMPLOYMENT: MISCONDUCT.

**SERJEANT-AT-ARMS.** — *V. G. v. L.*, 1891, 3 Ch. 127, *n*; 60 L. J. Ch. 706, *n*: 3 Bl. Com. 444.

**SERJEANT-AT-LAW.** — *V.* 3 Bl. Com. 27: 6 Bing. N. C. 232-239. *V. PREMIER*.

**SERJEANTY.** — " 'Grand Serjeanty,' is where a man holdeth of the King certaine land by the Service of carrying his Banner or Lance, or to leade his Host, or to be his Carver or Butler at his Coronation.

" 'Petit Serjeanty,' is when one holdeth of the King, paying to him yeerly a Bow, a Sword, a Speare, and such like, and that is but SOGAGE, in effect " (Termes de la Ley, *Grand Serjeanty*). Later on (*Petit Serjeanty*) the learned author says that the Bow should be "without string."

*Vf, quà Grand Serjeanty*, Litt. ss. 153-158; Co. Litt. 105 b-108 a; 2 Bl. Com. 73 *et seq.*:—*quà Petit Serjeanty*, Litt. ss. 159-161; Co. Litt. 108 a-108 b; 2 Bl. Com. 81 *et seq.*

*Note*: 12 Car. 2, c. 24, which converted the old Military Tenures (of which Serjeanty was one) into FREE AND COMMON SOGAGE, preserved the Honorary Service of Grand Serjeanty.

*V. TENURE*.

**SERVANT.** — In determining whether a person is entitled to participate in a *Bequest* to "Servants" regard must be had to, —

1. The Nature of the Service;
2. Its duration;
3. Its conditions.

1. It seems an obvious thing to say that there must be the relationship of master and servant between the testator and the person claiming as "servant"; therefore, a coach-man supplied, with a carriage and horses,

by a job-master is not a "servant" of the job-master's customer (*Chilcot v. Bromley*, 12 Ves. 114: *Cp*, *Howard v. Wilson*, 4 Hagg. Ecc. 107: *Wms. Exs.* 1007). When, however, there is the relationship of master and servant, the word "Servants," in a bequest and uncontrolled by a context, is very comprehensive. Thus a Land Agent and House Steward, who resided out of the testator's house and had a salary of £300 a year, with permission to use his unemployed time as land agent to several large neighbouring landed proprietors, was held to be included in a bequest to "all my Servants and day labourers" (*Armstrong v. Clavering*, 27 Bea. 226: *Sr*, *Townshend v. Windham*, inf). So an out-door servant, continuously employed at weekly wages, is within a legacy to "servants"; but a person employed at weekly wages, only a few months in the year, to carry letters to the post is not within the phrase (*Thrupp v. Collett*, 26 Bea. 147).

2. When a testator gives to his servants a year's wages, those, and only those, *hired* by the year are included;—the time when the wages have been paid being only useful to determine the nature of the hiring, and being immaterial where the hiring can otherwise be proved to have been a yearly one (*Booth v. Dean*, 2 L. J. Ch. 162; 1 My. & K. 560: *Bluckwell v. Pennant*, 22 L. J. Ch. 155; 9 Hare, 551).

3. A bequest to "Servants," *simpliciter*, includes, as a general rule, those, and only those, who pass their whole time in the testator's service; and does not include such servants as Stewards of Courts or persons occasionally employed (*Townshend v. Windham*, 2 Vern. 546: *Thrupp v. Collett*, sup: *Cp*, *Armstrong v. Clavering*, sup); but a regular servant's temporary absence would not disentitle him (*Herbert v. Reid*, 16 Ves. 486). So, service being the cause of such a bequest, only those servants who are in the testator's service at the time of his death (from which date his Will generally speaks) are, as a general rule, entitled under a bequest to "servants" (*Jones v. Henley*, 2 Ch. Rep. 162); though, of course, if the phrase, controlled and properly construed by its context, is *designatio personarum*, a person so designated would take whether in the service or not at the testator's decease (*Parker v. Marchant*, 11 L. J. Ch. 223; 1 Y. & C. Ch. 290, cited 1 Jarm. 325, for the proposition that a gift to "servants," *simpliciter*, means servants *at the date of the Will*; *Va*, Theobald, 248: but it is submitted that the rule to be deduced from *Jones v. Henley* and *Parker v. Marchant* is as here stated: *Va*, *Re Sharland*, 1896, 1 Ch. 517; 65 L. J. Ch. 280; 74 L. T. 20: *Wms. Exs.* 1009). When indeed the condition of being in the service "at the time of my decease" is expressly annexed to a gift to "servants," then it is essential to any one taking thereunder that the contract for service should be absolutely unbroken by both of the parties thereto at the time of the decease; and a wrongful dismissal by the master or a rescission by the servant, or other determination of the service, however reached, in the testator's lifetime, would prevent a person from claiming

under such a conditional bequest to "servants" as that just mentioned (*Dartlow v. Edwards*, 32 L. J. Ex. 51; 1 H. & C. 547; 6 L. T. 905; 10 W. R. 700; *Venes v. Marriott*, 31 L. J. Ch. 519; *Note*, "living with me" does not mean "living in my house," but means "living in my service": per Turner, V. C., *Blackwell v. Pennant*, sup). The condition of being on testator's "domestic establishment," is not fulfilled in the case of a head gardener living in one of the testator's cottages but not dictated by him (*Ogle v. Morgau*, 1 D. G. M. & G. 359; 16 Jur. 277).

V. DOMESTIC SERVANT: HOUSEHOLD, at end: MENIAL SERVANT.

Though the priority in *Bankruptcy* which "Servants" have long had to payment of their wages (*V.* now s. 40 (b), Bankry Act, 1883) was doubtless intended primarily for, yet it is not the exclusive privilege of, domestic servants. Therefore a Commercial Traveller (*Ex p. Neal*, Mont. & M'A. 194), or a Mate of a Vessel (*Ex p. Homberg*, 2 Mont. D. & D. 642; 6 Jur. 898), or a Seaman (*Re Dawson*, 1 Fon. B. C. 229), is within the word "servant" as so used in the Bankry Act. But though a yearly hiring is not necessary to constitute a "servant" within the section just referred to, yet there must be a general and continuous hiring as distinguished from a mere transitory engagement. Therefore a coach-guard and servants at a weekly salary (*Ex p. Skinner*, Mont. & B. 417; 3 Dea. & C. 332), or an accountant occasionally employed (*Ex p. Butler*, 28 L. T. O. S. 375), or a public singer (*Ex p. Harcourt*, 31 L. T. O. S. 188), or a non-resident music-master or a drill-master to a school, who attends the school to give lessons at so much per lesson (*Ex p. Walter*, 42 L. J. Bank. 49; L. R. 15 Eq. 412; 21 W. R. 523), is not within the section. *Note*: by s. 1 (1 c), 51 & 52 V. c. 62 "Wages of any LABOURER or WORKMAN, not exceeding £25, whether payable for time or for piece work," are now entitled to the priority, an enactment which supersedes such discussions as those in *Ex p. Allsop*, 32 L. T. 433; *Re Field*, 4 Morr. 63.

"Servant," quâ Poor Law Officers Superannuation Act, 1896, 59 & 60 V. c. 50, "includes every servant regularly employed at WAGES" by any Authority charged with the administration of the relief of the poor (s. 19).

The Secretary of a Company in receipt of a salary of £50 a quarter and subject to dismissal at a quarter's notice, is not a "Servant, Labourer, or Workman," within the Wages Attachment Abolition Act, 1870, 33 & 34 V. c. 30 (*Gordon v. Jennings*, 51 L. J. Q. B. 417). In *the Grove, J.*, said, "In one sense a Secretary of State is a 'servant,' but it could not have been intended that this Act should apply to such a case."

Every person actually engaged in the performance of a contract of carriage, is a "Servant" of the *Carrier* within s. 8, Carriers Act, 1830, 11 G. 4 & 1 W. 4, c. 68; and therefore where a Carrier employs a person, e.g. the proprietor of a receiving house, and such person employs an

assistant, such assistant is a "servant" in the employ of the Carrier within the section (*Machin*, or *Machu v. Lond. & S. W. Ry*, 17 L. J. Ex. 271; 2 Ex. 415). And "where a person is employed by two railways, and receives goods without any instructions as to the railway by which they are to be sent, it may be that the goods are not received for either of the railways; but when he has determined by which railway they are to be sent, he then holds them for that railway" (per Esher, M. R., *Stephens v. Lond. & S. W. Ry*, 56 L. J. Q. B. 173; 18 Q. B. D. 121; 56 L. T. 226; 35 W. R. 161; 51 J. P. 324, citing *Syms v. Chaplin*, 6 L. J. K. B. 25; 5 A. & E. 634).

"Servants," s. 7, Ry and Canal Traffic Act, 1854, include Agents employed by a Ry Co to do work which it is under contract to execute (*Doolan v. Mil. Ry*, 2 App. Ca. 792; approving *Machin v. Lond. & S. W. Ry*, sup).

As to who is a "Servant or other Person" who may dwell in a house for its protection without rendering it liable to the *Inhabited House Duty*, s. 13 (2), 41 V. c. 15, seems to have been very much a question for the Tax Commrs: therefore, where they found that a Cashier resided (alone) as a caretaker and was such a "Servant or other person," the Court refused to disturb their finding (*Rolfe v. Hyde*, 50 L. J. Q. B. 481; 6 Q. B. D. 673); but in a very similar case (the clerk care-taker, however, having his wife children and a servant with him), the Court of Appeal reversed the finding of the Commrs, and held that the building was liable to the Duty (*Yewens v. Noakes*, 50 L. J. Q. B. 132; 6 Q. B. D. 530). Apparently to remedy that uncertainty, s. 24, Customs and Inland Revenue Act, 1881, 44 & 45 V. c. 12, refers to the section just cited, and enacts that "the term 'Servant' shall be deemed to mean and include, only a Menial or Domestic Servant employed by the occupier; and the expression 'Other Person' shall be deemed to mean, any person of a similar grade or description not otherwise employed by the occupier, who shall be engaged by him to dwell in the house or tenement solely for the protection thereof": *Vth*, *Weguelin v. Wyatt*, 54 L. J. Q. B. 308; nom. *Weguelin v. Wayall*, 14 Q. B. D. 838; *London Library v. Carter*, 6 Times Rep. 161; 34 S. J. 231. *Vf*; DOMESTIC SERVANT: MENIAL SERVANT.

"Clerk or Servant"; *V. CLERK*, p. 325.

Servant quâ action for Seduction; *V. Rose*. N. P. 895 *et seq*: Add. T. 586-592.

*V. FARM SERVANT: MALE SERVANT: OFFICER*, p. 1326: *POSSESSION: SERVANT IN HUSBANDRY: SERVANTS: WORKMAN*.

**SERVANT IN HUSBANDRY.**—A "Servant in Husbandry" is a person, whether male or female, whose *chief* employment is in works of husbandry; *i.e.* the culture or keeping of the ground, or the management or working of horses or cattle, or the gathering in of crops, or any other work strictly pertaining to the manual labour required by farmers.

Therefore a Farm Bailiff is not (*Davis v. Berwick*, 3 E. & E. 549; 30 L. J. M. C. 84), but a Dairy-maid, who also does household work, is a Servant in Husbaldry (*Ex p. Hughes*, 23 L. J. M. C. 138). *Cp.* AGRICULTURAL.

#### V. FARM SERVANT.

**SERVANTS.** — “If a man have a licence for himself ‘and his Servants’ to hunt in a chase, park, or warren, at his pleasure; this is a licence of profit; for by vertue of those words ‘for himself and his servants,’ the grantee hath a property in the thing hunted, because he may justify hunting by his servants, which is more than a licence of pleasure” (*Manwood, Hunting*, pl. 17. *Vf.* *Wickham v. Hawker*, 10 L. J. Ex. 153; 7 M. & W. 72: FREED LIBERTY). *Vf.* HUNTING: PROFIT A PRENDRE.

**SERVE.** — To “serve,” or to “contract to serve,” connotes becoming a servant to some one else. “There is a very plain distinction between becoming the servant of an individual, and contracting to do certain specific work. The same person may contract to do work for many others, and cannot, with any propriety, be said to have contracted to ‘serve’ each of them” (per Bayley, J., *Hardy v. Ryle*, 9 B. & C. 611, 612).

An Industrial Trainer living in a Work-house does not “serve” the Master of the Work-house, within s. 3. Rep People Act, 1884, nor does a Soldier so “serve” under every one of superior rank to himself in the same regiment (*Adams v. Ford*, 55 L. J. Q. B. 13; 16 Q. B. D. 239; 53 L. T. 666; 34 W. R. 64; 49 J. P. 711; *Atkinson v. Collard*, 55 L. J. Q. B. 19; 16 Q. B. D. 254; 53 L. T. 670; 34 W. R. 75; 50 J. P. 23). A Farm Labourer who by the terms of his hiring is allowed, but not obliged, to occupy a cottage on the farm, does not occupy it *by virtue of Service* (*Marsh v. Estcourt*, 59 L. J. Q. B. 100; 24 Q. B. D. 147).

A Successive Occupation partly by Service and partly as an Ordinary Tenant, qualifies for the parliamentary franchise (*Nicholson v. Yeoman*, cited SUCCESSIVE). In *the*, Coleridge, C. J., said, “It is a satisfaction to the Court to find that this question has been (*Torish v. Clark*, 18 L. R. Ir. 285) decided in the same manner as this Court now decides it.”

#### V. INHABIT.

Notice to be “served”; *V.* SERVED.

Service of Notice of Appeal from Justices; *V.* COURT OF SUMMARY JURISDICTION.

An Apprentice “duly and truly” serves his Master, quâ a qualification to Membership of a Company or other Privilege, if, with his master’s consent, he is actually employed otherwise than by the Master (*Richardson v. Colne Fishery Co*, 77 L. T. 501).

**SERVED.** — A Notice may generally be either in writing or oral: if directed to be “given,” or is spoken of as to be “received” (*Thompson*

v. *Ayling*, 19 L. J. Ex. 55; 4 Ex. 614), it may be in either of those modes; but if it is to be "left" or "served," then there is an implication that the notice is to be written (*Wilson v. Nightingale*, 15 L. J. Q. B. 309; 8 Q. B. 1034; *R. v. Shurmer*, 55 L. J. M. C. 153; 17 Q. B. D. 323; 55 L. T. 126; 34 W. R. 656; 50 J. P. 743, espy jdgmt of Coleridge, C. J., in *thle*). But "serve," does not enjoin *personal* service; and, as used in R. 186, Bankry Rules, 1886, a prepaid registered letter suffices (*Re McGrath*, 24 Q. B. D. 466). *Vf*, s. 26, Interp Act, 1889.

So, there is a sufficient notice, under s. 31, Vaccination Act, 1867, if the Justices are satisfied that it has reached the right person (*Holloway v. Coster*, 1897, 1 Q. B. 347; 66 L. J. Q. B. 293; 76 L. T. 57; 45 W. R. 319; 61 J. P. 218); so, of a notice to be "served ON" the holder of a License under s. 42, Licensing Act, 1872 (*Ex p. Portingell*, 1892, 1 Q. B. 15; 61 L. J. M. C. 1; 65 L. T. 603; 40 W. R. 102; 56 J. P. 276). In *thle*, Esher, M. R., said, "I think the expression 'serve on' is equivalent to 'give or deliver unto,'" which latter words do not connote personal service (*R. v. Leicester Freeman*, 15 Q. B. 671). *Seamble*, a notice may be "delivered" without being in writing: *V. DELIVER*.

"Served by Post"; *V. BY POST: ORDINARY COURSE: SEND*.

*V. NOTICE*.

The statement that a man has "served" a PUBLIC ANNUAL OFFICE to which he was "DULY and legally appointed," imports that he executed the Office "for himself and on his own account" within s. 6, 3 & 4 W. & M. c. 11 (*R. v. Anderson*, 16 L. J. M. C. 25; 9 Q. B. 663).

An Execution "served" has the same meaning as an Execution "EXECUTED" within s. 9, 21 Jac. 1, c. 19 (per Patteson, J., *Wray v. Egremont*, 4 B. & Ad. 125).

*V. SERVICE*.

**SERVI.** — *V. VILLANI*.

**SERVICE.** — "In my service at the time of my decease"; *V. SERVANT*.

In feudal times, and still quà Copyholds, "Service" "is that Service which the Tenant, by reason of his FEE, oweth unto his Lord" (Cowel). *Cp*, *SUIT*, at end.

"Service of the Church"; *V. "Open Prayer,"* sub *OPEN*.

Service of NOTICE; *V. SERVED: Vf*, Bankry Rules, 1886, R. 89-92; Comp Act, 1862, Sch 1, Table A, Art. 95-97, Sch 2, Form B, Art. 35, 36; Conv & L. P. Act, 1881, s. 67; 27 & 28 V. c. 114, s. 7.

"Service by Post"; *V. BY POST*.

"Service" by a Ry Co; *V. INCIDENT*.

Service Franchise; *V. SERVE*.

*V. ACTUAL MILITARY SERVICE: CHRISTIAN SERVICE: DIVINE SERVICE: KNIGHT'S SERVICE: MILITARY SERVICE: NAVAL SERVICE: ON ACTIVE SERVICE: PRISON: PUBLIC SERVICE: RECORDED: SERVE: SERVICES: SUBSTITUTED: TENURE: WHOLE.*



**SERVICE LINE.** — Quà Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, “ ‘Service Line,’ means, any Electric Line through which ENERGY may be supplied, or intended to be supplied, by the Undertakers to a CONSUMER, either from any MAIN or directly from the premises of the Undertakers ” (Sch. s. 1).

**SERVICE OF GOD.** — A bequest for “ the Service of God ” (*Re Darling*, 1896, 1 Ch. 50; 65 L. J. Ch. 62; 73 L. T. 382), or for “ the Service of my Lord and Master, and, I trust, Redeemer ” (*Powerscourt v. Powerscourt*, 1 Moll. 616), is a good CHARITY.

V. RELIGIOUS.

**SERVICE OF THE SHIP.** — Master, Seaman, or Apprentice, receiving “ Hurt or INJURY in the Service of the Ship,” s. 228, Mer Shipping Act, 1854, repld, s. 207, Mer Shipping Act, 1894, includes an injury received from an occurrence causing the wreck of the ship (*Lord Advocate v. Grant*, 1 Sess. Ca. 4th Ser. 447). *Vf*, 1 Maude & P. 208, *n* (i).

*Cp* the above sections with s. 138, P. H. Act, 1875; s. 152, P. H. Ireland Act, 1878; s. 83, P. H. London Act, 1891; s. 179, P. H. Scotland Act, 1897.

**SERVICEABLE.** — “ Good and Serviceable Repair ”; V. GOOD REPAIR.

**SERVICES.** — *V.* CUSTOM: SERVICE.

Annuity for “ Services and collecting rents ”; *V. Re Muffett*, 56 L. J. Ch. 600; 39 Ch. D. 534; 56 L. T. 685; 51 J. P. 660.

Per-centage to Directors on Net Profits of a Co “ as remuneration for their Services,” connotes that the transactions from which such profits arise should, generally, be attributable to the ordinary working of the Co by the Directors (*Frames v. Bultfontein Mining Co*, cited NET, p. 1266).

“ Entire Services ”; *V.* ENTIRE: WHOLE.

“ Services incidental to the duty of a Carrier ”; *V.* INCIDENT.

Salvage Services; *V.* SALVAGE.

“ Same or Similar Services ”; *V.* SAME.

**SERVIENT.** — Servient Tenement; *V.* EASEMENT.

**SERVITUDE.** — *V.* EASEMENT, at end.

“ Penal Servitude ”; *V.* PENAL.

**SESSIONAL DIVISION.** — Stat. Def., 48 & 49 V. c. 23. s. 23.

**SESSIONS.** — “ ‘ Sessions,’ in our law, is a sitting of Justices in Court upon their Commission, as the Sessions of OYER AND TERMINER ” (*Termes de la Ley*). *Cp.* TO BE PASSED.

“ Sessions,” s. 35 (5), Loc Gov Act, 1888; *V. Re Dover and Kent Co. Co.*, cited QUARTER SESSIONS.

Next Quarter Sessions; *V.* NEXT.

"Court of Session"; *V.* COURT.

*V.* GENERAL OR QUARTER SESSIONS: PETTY SESSIONS: PRESENTMENT: SITTING: SPECIAL.

**SET.**—To "set" premises is, *semble*, nearly, if not quite, the same as to "LET" them: a lessee's covenant not to "let, set, or demise," the premises "for the whole or any part of the term," restrains an Assignment as well as an Underlease (*Greenaway v. Adams*, 12 Ves. 395); but where the covenant merely forbade the lessee to "set or let" the premises, the Court of Appeal in Ireland held that the natural and legal meaning of those words was to prohibit an Underlease but did not extend to an Assignment, there being no additional words (as in *Greenaway v. Adams*) to give them that further meaning (*Re Doyle and O'Hara*, 1899, 1 I. R. 113). *Cp.* ASSIGN.

**SET APART.**—To "set apart" land for a particular purpose, does not require that the setting apart should be irrevocable (*Re Ponsford and Newport School Bd*, 1894, 1 Ch. 454; 63 L. J. Ch. 278; 70 L. T. 502; 42 W. R. 358). Therefore, land acquired by a private Cemetery Co for the purpose of a BURIAL Ground, which they have adapted for that purpose by inclosing it and providing it with a chapel and using part of it for burials, is "set apart for the purposes of interment," within s. 1, 44 & 45 V. c. 34, as amended (and also applied to 47 & 48 V. c. 72) by ss. 2 and 4, 50 & 51 V. c. 32, although the land has never been consecrated; and the Co has power to sell or let any part of it (*Ib.*); *seens*, as regards the site of a Church where intramural interment has taken place (*Re Ecclesiastical Commrs and New City of London Brewery*, 1895, 1 Ch. 702; 64 L. J. Ch. 646; 72 L. T. 481; 43 W. R. 457; 11 Times Rep. 296; followed in *A-G. v. London Parochial Charities*, 1896, 1 Ch. 541; 65 L. J. Ch. 242).

"Retain and set apart"; *V.* RETAIN.

**SET FIRE.**—In Arson, "as to what constitutes 'setting fire,' it is not necessary that flame should be seen (*R. v. Stallion*, 1 Moody, 398); but it is not sufficient that wood should be scorched black (*R. v. Russell*, C. & M. 541). It is sufficient if the wood has been at a red heat (*R. v. Parker*, 9 C. & P. 45). I suppose the question is, whether the thing burnt has, or has not, begun to be decomposed by the action of the fire" (*Steph. Cr.* 318, *n* 3). *Vf.* Arch. Cr. 616-663: *Rosc. Cr.* 248-259: BURN: FIRE.

**SET FORTH.**—It is submitted that where there are, in the operative part of a deed, clear and unambiguous words of description of the lands or chattels to be thereby conveyed, such words will not be restricted by a statement that such lands or chattels are "described," or "men-

tioned," or "specified," or "set forth," in a Schedule which gives an imperfect enumeration (*Walsh v. Trevanion*, 19 L. J. Q. B. 458; 15 Q. B. 733; *Re Royal Marine Hotel Co*, 1895, 1 I. R. 368; *Baker v. Richardson*, 6 W. R. 663; *Cp, Goodtitle v. Southern*, and like cases, cited OCCUPATION, p. 1312). But this principle was not applied in *Wood v. Rowcliffe* (20 L. J. Ex. 285; 6 Ex. 407), where it was held that a Bill of Sale of "all the household goods of every kind and description whatsoever in A., more particularly mentioned and set forth in" a Schedule, only passed the goods mentioned in the Sch; and that, indeed, will be the effect if it can be seen that the intention was that the Sch should be an exhaustive enumeration (*Walsh v. Trevanion*, sup). *Vf, Re Craig*, Ir. Rep. 4 Eq. 158: GENERALITY.

#### V. TRULY SET FORTH.

**SET OFF.** — A legal Set-Off is, — "Where there are mutual debts (*V. DEBT*) between the plaintiff and defendant, or if either party sue or be sued as exor or admor (where there are mutual debts between the testator or intestate and either party), one debt may be set against the other" (s. 13, 2 G. 2, c. 22; s. 4, 8 G. 2, c. 24). *V.* now as to Set-Off and Counter-Claim, R. 3, Ord. 19, R. S. C., and notes thereon in Ann. Pr.: 11 Encyc. 478, 479. As used in R. S. C., "Set-Off," and "Counter-Claim," "confer definite and independent remedies upon a debt against the plt" (per Brett, L. J., *Pellas v. Neptune Marine Insree*, 5 C. P. D. 39); probably, a "Counter-Claim" may be defined as, a Claim independent of, and separable from, the plt's claim and which formerly would have had to be enforced by a cross action.

#### V. ADMITTED SET-OFF.

In the application of the Factors Act, 1889, to Scotland, "Set off" means and includes "Compensation" (s. 1, 53 & 54 V. c. 40). *V. FACTOR.*

**SET OUT.** — Where an Award under the Inclosure Act, 1845, § 8 & 9 V. c. 118, after making compensation to the Lord of the Manor, proceeds to "set out, allot, and award," other parts of the Common to other persons, those words convey the whole LEGAL ESTATE in the several allotments, to the exclusion of the Lord (*Simcoe v. Pethick*, 1898, 2 Q. B. 555; 67 L. J. Q. B. 919; 79 L. T. 432, considering *A-G. v. Meyrick*, 1893, A. C. 1; 62 L. J. Ch. 313; 68 L. T. 174; 57 J. P. 212).

"Setting out of Souldiers," 43 Eliz. c. 4 (*V. CHARITY*), *semble*, means, to raise or equip (*Re Stephens*, W. N. (92), 140).

#### SET OVER. — *V. ASSIGN: UNDERLEASE.*

**SET UP.** — Trade, &c, "Set up and commenced," s. 100, Sch D. Case 1, R. 1, Income Tax Act, 1842, 5 & 6 V. c. 35; *V. Ryhope Co v. Foyer*, 7 Q. B. D. 485; 45 L. T. 404; 30 W. R. 87.

“Set up or CARRY ON the business or profession of a SURGEON”; *V. Palmer v. Mallett*, 36 Ch. D. 411; 57 L. J. Ch. 226; 58 L. T. 64; 36 W. R. 460; or business of a *House Agent*, *V. Farebrother v. England*, 92 Law Times, 129.

A Power of Advancement to “set up in business” a beneficiary, does not authorize an advance to pay debts, or (if the beneficiary be a woman) to set up her husband in business (*Talbot v. Marshfield*, cited ADVANCEMENT).

MACHINERY “set up,” means, generally, completed, *e.g.* in a contract to “deliver and set up” (*Armitage v. Haigh*, 9 Times Rep. 287). *V. ERECT: ERECTED.*

“Erect or set up” a Foreign Lottery, 9 G. 1, c. 19, s. 4; *V. FOREIGN.*

**SETTING DOG.** — “A ‘Setting Dog,’ means, any dog who stops at his Game” (per Buller, J., *Briarly v. Athorpe*, 5 B. & Ald. 321, *n*); but *quà* s. 4, 5 Anne, c. 14, “it is essential that it must be kept or used to kill game” (*Ib.: Hayward v. Horner*, 5 B. & Ald. 317). *Cp.* GREYHOUND.

**SETTLE.** — As to construction of Covenants to settle property; *V. AGREED AND DECLARED: ALREADY: DURING: ENTITLED: SETTLED:* Elph. ch. 31; Vaizey, ch. 4, ss. 10, 11: “Interest which shall fall into possession,” *Sweetapple v. Horlock*, 48 L. J. Ch. 660; 11 Ch. D. 745; *Re Jackson*, 13 Ch. D. 189.

A general covenant to settle, will not embrace an interest that would be subject to FOREIGN thereby (*Re Crawshaw*, 60 L. J. Ch. 583; 1891, 3 Ch. 176; 65 L. T. 72; 39 W. R. 682).

As to what is a sufficient CONSIDERATION for a covenant to settle; *V. Stephens v. Green*, 1895, 2 Ch. 148; 64 L. J. Ch. 546; 72 L. T. 574; 43 W. R. 465.

As to construction of Marriage Articles, and the Form of Settlement in pursuance of such Articles; *V. Elph. ch. 32: Vaizey, ch. 4: 44 S. J. 357, 358: Grier v. Grier. L. R. 5 H. L. 688: Re Gundry, 1898, 2 Ch. 504; 67 L. J. Ch. 641: Viditz v. O'Hagan, 1899, 2 Ch. 569; 68 L. J. Ch. 553, *revid*, 1900, 2 Ch. 87; 69 L. J. Ch. 507; 82 L. T. 480; 48 W. R. 516.*

As to construction of Testamentary Directions to settle Realty; *V. 2 Jarm. 344-355; and Personality, Ib. 567, 578: Loch v. Bagley, L. R. 4 Eq. 122.*

*V. STRICT ENTAIL: STRICT SETTLEMENT.*

“I do hereby settle on my wife,” certain property, held by Malins, V. C., to create a valid Declaration of Trust, though the Document was ineffectual as an Assignment (*Baddeley v. Baddeley*, 48 L. J. Ch. 36; 9 Ch. D. 113; *Srthe, Hayes v. Alliance Assree*, 8 L. R. Ir. 149). It is, however, now well settled that “an intention to give or assign will not

be aided in Equity unless the act of gift or assignment, in pursuance of such intention, is complete, or unless the donor has done all in his power to make it complete" (2 White & Tudor, 859, and cases there cited).

V. COMING.

**SETTLED.** — A fund bequeathed to a married woman for her SEPARATE USE, is otherwise "settled" within an exception in a covenant to Settle (*Kane v. Kane*, 50 L. J. Ch. 72; 16 Ch. D. 207): V. ALREADY.

Settled, or Stated, ACCOUNT; V. Dan. Ch. Pr. 418: R. 8, Ord. 20, R. S. C., on *whv* Ann. Pr.

"The meaning of a 'Settled' ESTATE, whether in legal or popular language, as contradistinguished from an estate in FEE SIMPLE, is understood to be one in which the powers of alienation, of devising, and of transmission according to the ordinary rules of descent, are restrained by the limitations of the Settlement: it would be a perversion of language to apply the term 'settled' to an estate taken out of settlement, and brought back to the condition of an estate in fee simple" (per Cockburn, C. J., delivering the jdgmt in *Micklethwait v. Micklethwait*, 28 L. J. C. P. 127; 4 C. B. N. S. 858; affd 29 L. J. C. P. 75). In the phrase to be construed was in a Shifting Clause in a Will, in the event of a second son succeeding to "the property settled on the marriage" of his father.

"Settled Estates," quâ Settled Estates Act, 1877, signifies, "all hereditaments of any tenure, and all estates or interests in any such hereditaments, which are the subject of a SETTLEMENT" (s. 2); *Vth, Re Dendy*, 46 L. J. Ch. 417; 4 Ch. D. 879; 25 W. R. 410: *Re Laing*, 35 L. J. Ch. 282; L. R. 1 Eq. 416; 14 W. R. 328: *Re Morgan*, 49 L. J. Ch. 577: *Re Horn*, 29 L. T. 830: *Re Shepherd*, 39 L. J. Ch. 173; L. R. 8 Eq. 571; 21 L. T. 525: *Collett v. Collett*, L. R. 2 Eq. 203: *Re Greene*, 11 L. T. 301: *Re Goodwin*, 3 Giff. 620: *Re Williams*, 20 W. R. 967: SUCCESSION. When an INFANT is owner, the land is "Settled Estate" within that def (s. 41, Conv & L. P. Act, 1881, on *whv, Liddell v. Liddell*, 52 L. J. Ch. 207; 31 W. R. 238: *Re Sparrow*, 1892, 1 Ch. 412; 61 L. J. Ch. 260; 66 L. T. 276; 40 W. R. 326).

"Settled LAND," quâ S. L. Act, 1882, is "Land, and any estate or interest therein, which is the subject of a SETTLEMENT" (subs. 3, s. 2); *Vth, Re Wells*, 48 L. T. 859; 31 W. R. 764: *Re Horne*, 57 L. J. Ch. 790; 39 Ch. D. 84: *Re Fremie*, 1894, 1 Ch. 1; 63 L. J. Ch. 139; 69 L. T. 613; 42 W. R. 119: *Ex p. Castle Bytham*, 1895, 1 Ch. 348; 64 L. J. Ch. 116; 71 L. T. 606; 43 W. R. 156: *Ex p. Bath and Wells, Bp.* 1899, 2 Ch. 138; 68 L. J. Ch. 524; 81 L. T. 69. When an INFANT is owner, the land is "Settled Land" (s. 59, *Ib.*, on *whv, Liddell v. Liddell*, and *Re Sparrow*, *sup.*). "Settled Land" in s. 13 (4), S. L. Act, 1890, "comprises all the land which is in the Settlement upon the same trusts" (per Smith, L. J., *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 32).

Quà, and by, s. 6, Land Transfer Act, 1897, the above def of "Settled Land" is made applicable to that section. It is also applicable to the Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66 (V. s. 95).

"The Settled Land Acts, 1882 to 1890"; V. Sch 2, Short Titles Act, 1896. *Note*: as to the policy of these Acts, V. per Ld Macnaghten, *Bruce v. Ailesbury*, 1892, A. C. 356; 62 L. J. Ch. 95.

"Settled PROPERTY," quà Part 1, Finance Act, 1894, "means property comprised in a SETTLEMENT . . . , whether relating to Real Property or Personal Property, which is a 'Settlement' within the meaning of s. 2, S. L. Act, 1882, or, if it related to Real Property, would be a 'Settlement' within the meaning of that section; and includes a Settlement effected by a Parol Trust" (subs. 1 *h*, *i*, s. 22); *Vth*, *A-G. v. Owen*, and *A-G. v. Coulson*, 1899, 2 Q. B. 253; 68 L. J. Q. B. 779; 81 L. T. 121; 63 J. P. 611: as "Settled Property" is used in s. 5 (1) of the Act, V. *Re Webber*, 1896, 1 Ch. 914; 65 L. J. Ch. 544: as used in s. 5 (2), V. *Re Studdert*, 1900, 2 I. R. 400; affd in H. L. nom. *Inl. Rev. v. Priestley*, 1901, A. C. 208; 70 L. J. P. C. 41: *Inl. Rev. v. Stewart*, W. N. (98), 198.

Property settled "before" Finance Act, 1894, as used in s. 21 (1); V. *A-G. v. Dodington*, 1897, 2 Q. B. 373; 66 L. J. Q. B. 684; 77 L. T. 299; 45 W. R. 657; 61 J. P. 644; 13 Times Rep. 533.

In the application of the Finance Act, 1894, to Scotland "settled property" shall not include property held under Entail" (s. 23).

"Property settled," s. 5, Matrimonial Causes Act, 1859; V. *Dormer v. Ward*, cited PROPERTY, p. 1585: SETTLEMENT.

Bequest by a Wife of her husband's "Settled Funds"; V. *Moysey v. Stuart*, 23 L. T. 644.

#### V. NOT SETTLED: TO BE SETTLED.

Insrce to pay "same Percentage on this policy as may be settled" by another Office, means, that when that other Office has agreed the amount of loss and accepted liability and nothing remains to be done except to pay, then it has "settled" the amount of the claim on its policy; but there is no such settlement if the amount of loss by the insured has been ascertained by arbitration, but the insured's claim is defeated by its own fraudulent exaggeration (*Beauchamp v. Faber*, 3 Com. Ca. 308).

#### V. RECEIPT.

**SETTLEMENT.** — Quà *Settled Land Acts*, a "Settlement," is "any Deed, Will, Agreement for a Settlement or other agreement, Covenant to Surrender, Copy of Court Roll, Act of Parliament, or other INSTRUMENT, or any number of instruments, whether made or passed before or after or partly before and partly after the commencement of this Act (S. L. Act, 1882), under or by virtue of which instrument or instruments any LAND, or any estate or interest in land, stands for the time being limited to, or in trust for, any persons by way of SUCCESSION" (s. 2 (1), S. L. Act, 1882); and "every Instrument whereby a TENANT FOR LIFE,

—in consideration of Marriage or as part or by way of any Family Arrangement, not being a security for payment of money advanced, — makes an Assignment of, or creates a Charge upon, his estate or interest under the Settlement, is to be deemed one of the instruments creating the Settlement; and not an instrument vesting in any person any right as Assignee for Value within the meaning or operation of " s. 50, S. L. Act, 1882 (s. 4, 53 & 54 V. c. 69). *Note*: where the "Settlement" under the S. L. Acts, is created by more Instruments than one it is frequently called a *Compound Settlement*.

The Original Settlement alone is "the Settlement" within the above def (*Re Knowles*, 54 L. J. Ch. 264; 27 Ch. D. 707; 51 L. T. 655; 33 W. R. 364. *V. Re Byng*, 1892, 2 Ch. 219; 61 L. J. Ch. 511; 66 L. T. 754; 40 W. R. 457: UNDER): *Sv, Re Ailesbury and Iveagh*, 1893, 2 Ch. 345; 62 L. J. Ch. 713; 69 L. T. 101; 41 W. R. 644: *Re Mundy and Roper*, 1899, 1 Ch. 275; 68 L. J. Ch. 135; 79 L. T. 583; 47 W. R. 226: *Vh, Re Freme*, 1894, 1 Ch. 1; 63 L. J. Ch. 139; 69 L. T. 613; 42 W. R. 119.

*Vf*, on the above def, and as to what is a Compound Settlement, *Re Ailesbury and Iveagh*, sup: *Re Meade*, 1897, 1 I. R. 121: *Re Tibbits*, 1897, 2 Ch. 149; 66 L. J. Ch. 660; 77 L. T. 88; 46 W. R. 3: *Re Monson*, 67 L. J. Ch. 176; 1898, 1 Ch. 427; 78 L. T. 225; 46 W. R. 330: *Re Powys-Keck and Hart*, 1898, 1 Ch. 617; 67 L. J. Ch. 331; 78 L. T. 287; 46 W. R. 389: *Re Du Cane and Nettlefold*, 1898, 2 Ch. 96; 67 L. J. Ch. 393; 78 L. T. 458; 46 W. R. 523.

A married woman's RESTRAINT ON ALIENATION does not create a "Settlement" within this def (*Bates v. Kesterton*, 1896, 1 Ch. 159; 65 L. J. Ch. 108; 73 L. T. 656; 44 W. R. 150); nor does a limitation to her for life, remainder as she may appoint, remainder to herself in fee (*Re Pooock and Prankerd*, 1896, 1 Ch. 302; 65 L. J. Ch. 211; 73 L. T. 706; 44 W. R. 247: *Sv, S. C. sub TENANT FOR LIFE*).

"Settlement" in ss. 32, 33, S. L. Act, 1882, is not to be read in the strict sense of s. 2 (1), but rather in the wide and popular way of "settled" in s. 69, Lands C. C. Act, 1845 (*Ex p. Castle Bytham*, 1895, 1 Ch. 348; 64 L. J. Ch. 116; 43 W. R. 156; 71 L. T. 606: *Re Byron*, 53 L. J. Ch. 152; 23 Ch. D. 171; 48 L. T. 515; 31 W. R. 517).

The *Finance Act*, 1894, by s. 22 (1 *i*), adopts the def of "Settlement" as given in s. 2, S. L. Act, 1882; *Vth, A-G. v. Fairley*, 1897, 1 Q. B. 698; 66 L. J. Q. B. 454; 76 L. T. 526; 45 W. R. 589, the ruling in *wh* is confirmed by s. 14, Finance Act, 1898, on *wh*, *A-G. v. Clarkson*, 1900, 1 Q. B. 156; 69 L. J. Q. B. 81; 81 L. T. 617; 48 W. R. 216.

#### V. SETTLED.

Quà, and by, s. 47, *Bankry Act*, 1883, "Settlement" includes, "any conveyance or transfer of property," and, as used in that section, "is not confined to a regular Settlement with trusts declared and other usual attributes to a formal settlement, but may include any mere transfer of property, where the object is to preserve the property (whatever its

form) for the enjoyment of another person" (per Cave, J., *Re Player*, No. 2, 54 L. J. Q. B. 556). Therefore, a gift of money to be invested in a particular manner, e.g. in Shares in a Ship, is a "Settlement" within the section (*Re Player*, No. 1, 54 L. J. Q. B. 553; 53 L. T. 768); but a gift of money to a child for maintenance, or even to set him up in business, is not (*Re Player*, No. 2, 54 L. J. Q. B. 554; 15 Q. B. D. 682). So, the gift of an important chattel intended to be preserved by the donee, e.g. a present of diamonds by a man to his wife, is such a "Settlement," and so of money given to buy such a chattel (*Ex p. Brown*, *Re Vansittart*, 1893, 1 Q. B. 181; 62 L. J. Q. B. 277; 67 L. T. 592; 41 W. R. 32; *Re Tankard*, 1899, 2 Q. B. 57; 68 L. J. Q. B. 670; 80 L. T. 500; 47 W. R. 624). *Vf*, *Ex p. Todd*, 19 Q. B. D. 187; *Re Plummer*, 1900, 2 Q. B. 790; 69 L. J. Q. B. 936; 83 L. T. 387; 48 W. R. 634; *Re Harrison and Ingram*, 1900, 2 Q. B. 710; 69 L. J. Q. B. 942; 83 L. T. 189; 49 W. R. 2.

Quà a clause in an *Inclosure Act*, "Settlement" has been held to include limitations in a copyhold surrender and grant (*Doe d. Sweeting v. Hellard*, 9 B. & C. 803).

"Any Settlement," s. 19, *Married Women's Property Act*, 1882 (with which nothing in the Act is to INTERFERE) includes a Settlement which is only binding on the husband, e.g. one to which the wife was a party when she was an INFANT (*Re Stonor*, 52 L. J. Ch. 776; 24 Ch. D. 195; *Stevens v. Trevor-Garrick*, 1893, 2 Ch. 307; 62 L. J. Ch. 660; *Hancock v. Hancock*, 57 L. J. Ch. 396; 38 Ch. D. 78; *Buckland v. Buckland*, 1900, 2 Ch. 534; 69 L. J. Ch. 648; 82 L. T. 759; 48 W. R. 637; *Note, Re Queade*, 54 L. J. Ch. 786; 33 W. R. 817, is over-ruled).

"Settlements," s. 5, *Matrimonial Causes Act*, 1859; *V. Worsley v. Worsley*, L. R. 1 P. & M. 648; 38 L. J. P. & M. 43; *Jump v. Jump*, 8 P. D. 159; 52 L. J. P. D. & A. 71; *Chalmers v. Chalmers*, 68 L. T. 28; *Dormer v. Ward*, cited PROPERTY, p. 1585; *Hubbard v. Hubbard*, 1901, P. 157; 70 L. J. P. D. & A. 34.

Wife's Equity to a Settlement; *V. EQUITY*.

Quà *Stamp Acts*, a Settlement is, "any INSTRUMENT, whether voluntary or upon any good or valuable consideration, other than a *bonâ fide* pecuniary consideration, whereby any *Definite and Certain Principal Sum of Money* (whether charged or chargeable on lands or other hereditaments or heritable subjects or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any *Definite and Certain Amount of Stock*, or any Security, is settled or agreed to be settled in any manner whatsoever" (*Sch Stamp Acts*, 1870, and 1891): as to the words italicized, *V. Sanville v. Inl. Rev.*, 23 L. J. Ex. 270; 10 Ex. 159; *Onslow v. Inl. Rev.*, 1891, 1 Q. B. 239; 60 L. J. Q. B. 138; 39 W. R. 373; DEFINITE. Nothing "is settled or agreed to be settled," within that def, where proceeds of realty subject to a Settlement are invested in Stock, and then (on the appointment of a New Trustee) there



is made the ordinary vesting declaration quâ the Stock (*Masserene v. Inl. Rev.*, 1900, 2 I. R. 138): *Vf*, *Re Stucley*, L. R. 5 Ex. 85; 39 L. J. Ex. 86.

*Vh*, Vaizey: Wolstenholme Conveyancing Acts: 11 Encyc. 480-525.

"Settlement" has also received statutory definition in and for the following Acts; —

Ancient Monuments Protection Act, 1882, 45 & 46 V. c. 73; *V*. s. 11:

Harbours and Passing Tolls Act, 1861, 24 & 25 V. c. 47; *V*. s. 2:

Labourers (Ir) Act, 1885, 48 & 49 V. c. 77; *V*. s. 23:

Land Drainage Act, 1861, 24 & 25 V. c. 133; *V*. s. 6 (4):

Landed Property (Ir) Improvement Act, 1860, 23 & 24 V. c. 153; *V*. s. 6:

Landlord and Tenant (Ir) Act, 1870, 33 & 34 V. c. 46; *V*. s. 70:

Leases for Schools (Ir) Act, 1881, 44 & 45 V. c. 65; *V*. s. 1:

Leasing Powers Act for Religious Worship in (Ir), 1855, 18 & 19 V. c. 39; *V*. s. 1:

Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66; *V*. s. 95:

Record of Title Act (Ir), 1865, 28 & 29 V. c. 88; *V*. s. 2.

*V*. DEED: EQUITY: MARRIAGE SETTLEMENT: PROTECTOR OF THE SETTLEMENT: STRICT SETTLEMENT: TRUSTEE: VOID: VOLUNTARY SETTLEMENT.

The Act of Settlement, is 12 & 13 W. 3, c. 2; *V*. Sch 1, Short Titles Act, 1896.

*V*. BRITISH SETTLEMENT.

Pauper Settlement; *V*. CHILD, towards end: PARISH: PAUPER: RESIDENCE: TERM: WIDOWED MOTHER.

**SETTLER.** — *V*. SQUATTER.

**SETTLOR.** — "Settlor, Disponer," s. 2, Suen Dy Act, 1853; *V*. *A-G. v. Maule*, 56 L. T. 611; 3 Times Rep. 236.

**SEVEN, 14 or 21 YEARS.** — *V*. OR, p. 1347.

**SEVENTH.** — *Semble*, a gift to a person's 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, &c, Child, indicates the person to take according to the order of his birth (*West v. Primate of Ireland*, 3 Bro. C. C. 148).

**SEVERAL.** — Sometimes read "RESPECTIVELY"; *V*. *Woodstock v. Shillito*, 6 Sim. 416: 1 Jarm. 505.

A Building Contract to do the "several works" therein mentioned or referred to, will not be read distributively as if "several" were "respective"; "several," in such a connection, means, "divers" and comprehends "all the works that are to be done, and not each portion of them" (per Mathew, J., *Cunliffe v. Hampton Wick*, 2 Hudson, 263), so that the time during which the builder is to make good defects, runs

from the COMPLETION of *all* the works, and not from the completion of that part where the defect arises (*Ib.*).

*V.* JOINT: JOINTLY AND SEVERALLY: SEPARATE COVENANT: SEVERALTY.

**SEVERAL COVENANT.** — A Several Covenant is “a covenant by two or more severally, *i.e.* separately” (Jacob): *Vf*, Platt Cov. 115. *V.* SEPARATE COVENANT: *Cp*, JOINT.

**SEVERAL FISHERY.** — *V.* FISHERY.

“Several Fishery” is not a Term of Art (*Holford v. Bailey*, cited *Sole*, at end).

Quà Fisheries (Ir) Acts (and, *semble*, of general acceptance), “Several Fisheries,” means and includes, “all Fisheries lawfully possessed and enjoyed, as such, under any title whatsoever (being a good and valid title at law) exclusively of the PUBLIC by any person or persons, whether in Navigable waters or in waters Not Navigable, and whether the soil covered by such waters be vested in such person or persons or in any other person or persons” (s. 1, 13 & 14 *V.* c. 88: *Vf*, s. 114, 5 & 6 *V.* c. 106).

*Note.* The owner of a Several Fishery in a Public Navigable River is, *primâ facie*, owner of the BED of the river (*Hindson v. Ashby*, 1896, 2 Ch. 1; 65 L. J. Ch. 515; 74 L. T. 327; 60 J. P. 484). So, of a Several Fishery on the FORESHORE (*A-G. v. Emerson*, 1891, A. C. 649; 61 L. J. Q. B. 79; 65 L. T. 564; 55 J. P. 709), or in a Non-navigable River (*Ecroyd v. Coulthard*, 66 L. J. Ch. 751; 67 *Ib.* 458; 1898, 2 Ch. 358; 78 L. T. 702). *Vf*, *Hanbury v. Jenkins*, 70 L. J. Ch. 730: FISHERY, p. 727.

**SEVERAL PASTURAGE.** — *V.* PASTURAGE.

**SEVERAL TENANCY.** — *V.* ENTIRE.

**SEVERALLY.** — A gift to two or more “severally,” or with a limitation to their heirs “as they shall severally die” (*Sheppard v. Gibbons*, 2 Atk. 441) creates a tenancy in common.

*V.* JOINTLY AND SEVERALLY: SUCCESSIVELY.

**SEVERALTY.** — “He that holds lands or tenements in Severalty, or is Sole Tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him in point of interest during his estate therein” (2 Bl. Com. 179).

*V.* SEVERAL.

**SEVERANCE.** — A Contingent Legacy only bears interest from its vesting, unless a Severance of it be directed *for the benefit of the legatee*, as distinguished from severance as a mere facility in distribution (*Festing v. Allen*, 5 Hare, 575; *Dundas v. Wolfe-Murray*, 32 L. J. Ch.

151; 1 H. & M. 425: *Re Judkin*, 53 L. J. Ch. 496; 25 Ch. D. 743: *Re Dickson*, 54 L. J. Ch. 212, 510: *Re Medlock*, 55 L. J. Ch. 738). A direction "from and after" the death of a Tenant for Life to "raise and pay" a contingent legacy, does not create such a severance (*Re Inman*, 1893, 3 Ch. 518; 69 L. T. 374; 62 L. J. Ch. 940). *Cp.*, TO BE PAID.

As to how severance of a JOINT TENANCY may be effected, *V.* Partition Acts, 1868 and 1876: *Re Wilks*, 1891, 3 Ch. 59; 60 L. J. Ch. 696; 65 L. T. 184; 40 W. R. 13: *Palmer v. Rich*, 1897, 1 Ch. 134; 66 L. J. Ch. 69; 75 L. T. 484; 45 W. R. 205: Seton, ch. 46: Goodeve, ch. 9: Wms. R. P., Part 1, ch. 6: PARTITION.

Severance of land by a Railway; *V.* MATERIAL DETRIMENT.

**SEVERED.** — Where the owner of land occupies it himself and demises the right of sporting to another, that right is "severed" from the occupation of the land within s. 6 (2), Rating Act, 1874, 37 & 38 V. c. 54 (*Kenrick v. Guilsfield*, 49 L. J. M. C. 27; 5 C. P. D. 41, distinguishing *R. v. Battle*, 36 L. J. M. C. 1; L. R. 2 Q. B. 8).

**SEVERN.** — Severn "is a wild unruly river, and many times shifts its channel" (Hale, *De Jure Maris*, ch. 4).

*V.* TRIBUTARY: CREEK.

**SEWAGE.** — Quà *Metrop Man. Act*, 1858, 21 & 22 V. c. 104, "Sewage," means and includes, "the contents of the Sewers before" such contents have been deodorized (s. 32: *V.* DEODORIZE).

There is no prescribed def of "Sewage" in the P. H. Act, 1875, but, quà that Act, it includes liquids (not injurious to health) coming from manufacturing processes, as well as ordinary house sewage (per Charles, J., *Peebles v. Oswaldthistle*, 66 L. J. Q. B. 106; 1897, 1 Q. B. 384; revd on another point nom. *Pasmore v. Oswaldtwistle*, 1898, A. C. 387; 67 L. J. Q. B. 635; and followed on this point in *Eastwood v. Honley*, 1900, 1 Ch. 781; 69 L. J. Ch. 470; 83 L. T. 22; 48 W. R. 614; 64 J. P. 792).

*V.* FILTHY WATER.

Where the effluent water from a sewage farm flows into a pool, the cleansing levelling and concreting the bottom of that pool to prevent the accumulation of Sewage, is a work "for Sewage PURPOSES" within s. 32, P. H. Act, 1875 (*Wimbleton v. Croydon*, 56 L. J. Ch. 159; 32 Ch. D. 421; 55 L. T. 106).

**SEWER.** — " 'Sewer,' comes from the word to 'sew,' i.e. to drain, and has a much more extended signification; embracing works on the largest scale, such as draining the Fens of Lincolnshire by means of canals, &c" (per Kindersley, V. C., *Sutton v. Norwich*, 27 L. J. Ch. 742, cited by Byrne, J., *Newcastle-upon-Tyne v. Houseman*, 43 S. J. 140; 63 J. P. 87); in *thle* the Ouseburn (a tidal stream) was held to be

included in "Sewer" as used in s. 63, Newcastle-upon-Tyne Improvement Act, 1870.

As used in the Statute of Sewers, 23 H. 8, c. 5, a Sewer, "is a fresh water trench, compassed in on both sides with a bank, and is a small current or little river" (Callis, 80); "a passage or gutter to carry water into the Sea or a River" (Cowel). But more largely, it has been said that "Sewer" properly means, "a Sea-fence, a protection against sea tides, whatever its construction" (per Toulmin Smith, cited in note E. B. & E. 426, where also is cited Spelman's derivation). It certainly included a Wall (*Isle of Ely Case*, 10 Rep. 140), and in that comprehensive sense it is used in ss. 68, 204, Metrop Man. Act, 1855 (*Poplar v. Knight*, E. B. & E. 408; 28 L. J. M. C. 37). *Cp.*, GUTTER.

A "Sewer" is, *primâ facie*, a Common Sewer, and "is Common and Public in its nature" (per Buller, J., *Dore v. Gray*, 2 T. R. 365).

Broadly speaking and as now most frequently used, "Sewer" means, the duct that carries away the sewage of more houses, or other buildings, than one; as contrasted with "Drain" draining only one: *V.* DRAIN, p. 571.

For the Stat. Def. of "Sewer" as used in the P. H. Act, 1875, *V.* DRAIN; a def repeated in P. H. Ireland Act, 1878, s. 2, and adopted for P. H. Act, 1890 (*V.* subs. 3, s. 11), and for 55 & 56 V. c. 57 (*V.* s. 5), a similar def having been previously provided for Metrop Man. Act, 1855 (*V.* s. 250).

As used in the P. H. Act, 1875, "Sewer" should receive "the largest possible interpretation" (per Kay, J., *Acton v. Batten*, 54 L. J. Ch. 251; 28 Ch. D. 283; 52 L. T. 17; 49 J. P. 357); but even so, it means something that *carries away* Sewage or Surface Water, which a Cesspool, though it drains several houses, does not (*Meader v. West Cowes*, 1892, 3 Ch. 18; 61 L. J. Ch. 561; 67 L. T. 454; *Button v. Tottenham*, 78 L. T. 470; *Vh.*, *Durrant v. Branksome*, cited FILTHY WATER). A Man-hole is part of a "Sewer" (*Swanston v. Twickenham*, 48 L. J. Ch. 623; 11 Ch. D. 838); but a rising main sewer, sewage carriers and effluent culverts for Sewage Farm purposes, are not entitled to the exemption from Rates as is an ordinary underground "Sewer," for they are adjuncts to the farm and capable of BENEFICIAL Occupation (*Leicester v. Beaumont Leys*, 70 L. T. 659; 63 L. J. M. C. 176; *Ystradyfodwg v. Newport*, 1900, 1 Q. B. 365; 69 L. J. Q. B. 280; 82 L. T. 58; 48 W. R. 382; 64 J. P. 293). *Vf.*, *R. v. Godmanchester*, 35 L. J. Q. B. 125; L. R. 1 Q. B. 328; 5 B. & S. 886; *London Co. Co. v. Erith*, cited BENEFICIAL, p. 181.

"Existing Sewer"; *V.* EXISTING.

"Sewer made by any person for his *own profit*," s. 13 (1), P. H. Act, 1875; *V.* OWN PROFIT.

"Sewer made and used for the purpose of draining, preserving, or improving, LAND, under any Local or Private Act of Parliament," s. 13 (2), P. H. Act, 1875, includes, a Sewer made by a Ry Co pursuant to s. 68,

Ry C. C. Act, 1845, if that Act be expressly incorporated into the Co's Special Act (*Lond. & N. W. Ry v. Runcorn*, 1898, 1 Ch. 561; 67 L. J. Ch. 28, 324; 78 L. T. 343; 46 W. R. 484; 62 J. P. 643).

"Sewer" as used in Metrop Man. Act, 1855; *V. Bateman v. Poplar*, 56 L. J. Ch. 149; 33 Ch. D. 360; 55 L. T. 374; 2 Times Rep. 860; 4 Ib. 137; *Pilbrow v. St. Leonard, Shoreditch*, 1895, 1 Q. B. 33, 433; 64 L. J. M. C. 29, 130; 72 L. T. 135; 43 W. R. 342; 59 J. P. 68; *St. Martin-in-the-Fields v. Bird*, 1895, 1 Q. B. 428; 64 L. J. Q. B. 230; 71 L. T. 868; 43 W. R. 194; 60 J. P. 52; *Kershaw v. Taylor*, 1895, 2 Q. B. 471; 64 L. J. M. C. 245; 73 L. T. 274; 44 W. R. 28; 59 J. P. 726; *Florence v. Paddington*, W. N. (95) 143; 12 Times Rep. 30; *R. v. St. Matthew, Bethnal Green*, 1896, 2 Q. B. 319; 1898, A. C. 190; 65 L. J. M. C. 215; 67 L. J. Q. B. 234; 75 L. T. 60; 44 W. R. 697; 46 Ib. 353; 60 J. P. 582; 62 Ib. 116, 532; 12 Times Rep. 448, 521; 14 Ib. 68; *Holland v. Lazarus*, 61 J. P. 262; 66 L. J. Q. B. 285; *Greater London Property Co v. Foot*, 1899, 1 Q. B. 972; 68 L. J. Q. B. 628; 80 L. T. 390; 47 W. R. 541; 63 J. P. 420; 15 Times Rep. 311.

*Seemble*, Once a Sewer, always a Sewer; *V. St. Leonard, Shoreditch v. Phelan*, 1896, 1 Q. B. 533; 65 L. J. M. C. 111; 74 L. T. 285; 44 W. R. 427; 60 J. P. 244; *Appleyard v. Lambeth*, 76 L. T. 442; 66 L. J. Q. B. 27, 347.

"Sewer Authority"; Stat. Def., 28 & 29 V. c. 75, s. 3, repealed by P. H. Act, 1875, and Sewer Authorities replaced by the Authorities mentioned in Part 2, thereof.

Commissioners of Sewers; *V. Termes de la Ley, Sewers*.

*V. FRONTING, Note: MAKE: NECESSARY.*

**SEWERED.** — "What is meant by a STREET being 'Sewered,' s. 150, P. H. Act, 1875, is, that it is 'sewered as a Street,' as a certain space devoted to traffic with an interval between the houses, and as comprising the houses on either side. It would be wrong to say a street is 'sewered' when all you have is a series of sewers draining some of the houses on one side in one direction, and the houses of another side in another direction, not forming part of one system" (per Kekewich, J., *Handsworth v. Derrington*, 1897, 2 Ch. 438; 66 L. J. Ch. 691; 77 L. T. 73; 61 J. P. 518). *V. SATISFACTION, towards end.*

**SEX.** — Ownership of Lands will not qualify a woman to be put on the Parochial Electoral Register under the Loc Gov Act, 1894; not because that conclusion is opposed to s. 3 (2), which says that "no person shall be disqualified *by sex*," but because a woman-owner not being on the Parliamentary Register, is not in conformity with s. 2 (1), — that non-conformity is a fact, and is not less a fact because *it* results from sex (*Draax v. Ffooks*, 1896, 1 Q. B. 238; 65 L. J. Q. B. 270; 74 L. T. 43; 44 W. R. 393; 60 J. P. 214). *V. PAROCHIAL ELECTOR: Cp. R. v. Crosthwaite*, cited PERSON, p. 1466.

*V. FEMALE: GENDER: LEGAL INCAPACITY: PROHIBITED: PUER.*

**SEXTON.** — “The Sexton, segsten, segerstane, sacristan (*sacrista*, the keeper of the holy things belonging to the divine worship) seems to be the same with the Ostiarius (*V. OSTIARY*) in a Roman Church” (Phil. Ecc. Law, 1516). *Vf*, 62 J. P. 291; *St. Margaret, Rochester v. Thompson*, 40 L. J. C. P. 213; L. R. 6 C. P. 445; *White v. Norwood Burial Bd*, 55 L. J. Q. B. 63; 16 Q. B. D. 58.

**SHACK.** — “‘Shack’ is a peculiar name of Common, used in the Countrey of Norfolk; and Cattell go to Shack, is as much to say, as to goe at liberty, or to goe at large” (Termes de la Ley). *Vf*, *Corbet’s Case*, 7 Rep. 5 a; *Cheesman v. Hardham*, 1 B. & Ald. 710, 711.

**SHAFT.** — Quà the Acts relating to Mines, “Shaft” includes, Pit; V. 35 & 36 V. c. 77, s. 41; 50 & 51 V. c. 58, s. 75.

*V. WORKING SHAFT.*

**Lord SHAFTESBURY’S ACT.** — Liberty of Religious Worship Act, 1855. 18 & 19 V. c. 86.

**SHALL.** — Too much care cannot be employed in using or construing this word. Its various meanings range under two general classes according as it is used, —

I. As implying *futurity*; or

II. As implying a *mandate*, or giving *permission* or *direction*.

I. If something is agreed to be done if or when something else “shall” happen, this contemplates futurity; and things that have happened and are existent at the time of the agreement will not accomplish the condition precedent to the fulfilment of the agreement. Thus where by a Marriage Settlement certain specific property belonging to the lady was settled, and in a subsequent part of the settlement there was a covenant to settle all property to which the lady “at any time during the said intended coverture *shall become* seized, possessed of, or entitled unto”; it was held that this covenant did not include property to which the lady was entitled at the date of the settlement and which was not specifically mentioned therein (*Wilton v. Colvin*, 3 Drew. 617; 25 L. J. Ch. 850; 27 L. T. O. S. 289; in *which* the previous authorities are very fully reviewed: *Va, Archer v. Kelly*, 29 L. J. Ch. 911).<sup>5</sup> Where, however, there is one title to a property at the date of the settlement but that title becomes changed into another and a larger title, then the idea of futurity is accomplished, and property so circumstanced would be comprised in a covenant to settle future acquired property; *e.g.* where a tenant in remainder at the date of the settlement becomes a tenant in possession after the settlement (*Maclurean v. Lane*, 7 W. R. 135; 5 Jur. N. S. 56). *Vf*, ENTITLED, pp. 629, 630.

“Shall *be born*,” in the absence of a context, are words of futurity; and, in a Will, mean persons born after its date (*Gibbons v. Gibbons*, 50 L. J. P. C. 45; 6 App. Ca. 471).

Sometimes, however, “shall” includes past time. Thus, in a divesting clause, if donee of property “shall *become bankrupt*,” seems “to mean, simply being bankrupt” (per Kindersley, V. C., *Seymour v. Lucas*, 29 L. J. Ch. 843; 1 Dr. & Sm. 177); and in such a case it is immaterial whether the bankruptcy has happened before, or shall have happened after, the making of the instrument (*Seymour v. Lucas*, sup: *Manning v. Chambers*, 1 D. G. & S. 282; 16 L. J. Ch. 245; per Lindley, L. J., *Re Akeroyd*, 63 L. J. Ch. 32; 1893, 3 Ch. 363: *V. HEREAFTER*): *Va, TO BE BORN*. So, too, in an independent (as distinguished from a substitutionary) testamentary gift to the issue of a deceased member of a Class, the words “shall die” or “shall happen to die” do not, necessarily, point to a future death, so as inevitably to exclude the issue of a member of the class who may have died before the date of the Will (*Loring v. Thomas*, 30 L. J. Ch. 789; 1 Dr. & Sm. 497: *Christopherson v. Naylor*, cited *SHARE: V<sub>f</sub>*, 2 Jarm. 771). So, where there is a bequest to two or more named persons at 21, and if either “shall die” under that age then his share to go to the survivor or survivors; if one be dead at the date of the Will, his share goes to the survivor or survivors (*Re Sheppard*, 1 K. & J. 269). So, “a SURRENDER to such uses as the testator ‘shall’ by Will appoint, applied to a Will antecedently executed, it being considered that the Surrender referred to that Will which should be in existence at testator’s death” (1 Jarm. 58, citing *Spring v. Biles*, 1 T. R. 435, *n*). So, s. 1, 9 & 10 V. c. 66, excluded from the period necessary to give a Pauper a status of irremovability the time during which he “shall” receive relief from a parish in which he did not reside; held, that that included a case where such relief had been given before the Act passed (*R. v. Christchurch*, 12 Q. B. 149; 18 L. J. M. C. 28).

On the other hand, when a statute makes an alteration in the law and says it “shall” have effect, without more, that is a reason for not giving the alteration a retrospective operation (*Re Chapman*, 1896, 1 Ch. 323; 65 L. J. Ch. 170; 73 L. T. 658; 44 W. R. 311; revd on another point. 1896, 2 Ch. 763; 65 L. J. Ch. 892; 75 L. T. 196; 45 W. R. 67). *V<sub>f</sub>*, as to retrospective operation of statutes, *RETROSPECTIVE*.

II. Whenever a statute declares that a thing “shall” be done, the natural and proper meaning is that a peremptory mandate is enjoined. But where the thing has reference to —

- a. The time or formality of completing any Public act, not being a step in a litigation, or accusation; or,
- b. The time or formality of creating an Executed contract whereof the benefit has been, or but for their own act might be, received by individuals or private companies or private corporations, —

the enactment will generally be regarded as merely directory, unless there be words making the thing done void if not done in accordance with the prescribed requirements.

The word "Shall" has been held, in the following cases, only

### Directory :

As regards the time fixed for the appointment of Overseers under 43 Eliz. c. 2, s. 1 (*R. v. Sparrow*, 2 Stra. 1123), or under 54 G. 3, c. 91 (*R. v. Staffordshire*, 10 L. J. M. C. 166; nom. *R. v. Sneyd*, 9 Dowl. 1001); and as regards the time fixed by 8 G. 4, c. xxix, for the Election of Guardians for the Borough of Norwich (*R. v. Norwich*, 1 B. & Ad. 310), by 13 G. 3, c. 78, s. 1, for appointment of Surveyors of Highways (*R. v. Denbighshire*, 4 East, 142), or by 54 G. 3, c. 84, s. 1, for holding Quarter Sessions (*R. v. Leicester*, 5 L. J. O. S. M. C. 95; 7 B. & C. 6); "and there can be no doubt that the same construction will be put upon" the statutes (11 G. 4 & 1 W. 4, c. 70, s. 35; 4 & 5 W. 4, c. 47), regulating the time for holding Quarter Sessions (*F. 4 Chitty's Statutes*, 3 ed., 154, citing Dickinson on Quarter Sessions, 65. All the various statutes as to the time for holding Quarter Sessions have always been held directory, Dick. Q. S., 6 ed., 65):

As regards the transmission of a Conviction by justices to the next Quarter Sessions, under 7 & 8 G. 4, c. 30, s. 40 (*Charter v. Greame*, 13 Q. B. 216; 18 L. J. M. C. 78):

As regards the time for delivering Burgess Lists and holding Courts for their revision under the Municipal Corporation Act (5 & 6 W. 4, c. 76), s. 18, repled Mun Corp Act, 1882, Part 3 (*R. v. Rochester*, 27 L. J. Q. B. 45; 7 E. & B. 910; *Hunt v. Hibbs*, 29 L. J. Ex. 222; 5 H. & N. 123):

As regards the time and manner of making out (under ss. 5, 13) the Lists of persons entitled to vote, or (under ss. 47, 48, Parliamentary Voters Registration Act, 1843, 6 V. c. 18) the time when the Lists of Voters are to be signed and delivered to the sheriff or returning officer (*Morgan v. Parry*, 25 L. J. C. P. 141; 17 C. B. 334; *Brunfitt v. Bremner*, 30 L. J. C. P. 33; 9 C. B. N. S. 1; *Vf. Wells v. Stanforth*, 55 L. J. Q. B. 12; 16 Q. B. D. 244; 54 L. T. 183; 50 J. P. 631):

As regards stamping the Official Mark on the back of a Ballot Paper (*Akers, or Ackers v. Howard*, 55 L. J. Q. B. 273; 16 Q. B. D. 739; 54 L. T. 651; 34 W. R. 609; 50 J. P. 519):

As regards the time for depositing the valuation list and transmitting it to the Assessment Committee pursuant to s. 42, Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67 (*R. v. Ingall*, 46 L. J. M. C. 113; 2 Q. B. D. 199); the time for delivering to the Commissioners of Stamps a return of the names and places of abode of the partners in a Banking Co pursuant to s. 5, 7 G. 4, c. 46 (*Bosanquet v. Woodford*, 13 L. J. Q. B. 93; 5 Q. B. 310; D. & M. 419; *Steward v. Dunn*, 13 L. J. Ex. 324; 12 M. & W. 655; 1 Dowl. & L. 642); the time for registering at the County Court a



### Directory :

married woman's Protection Order pursuant to s. 21, 20 & 21 V. c. 85 (*Re Farraday*, 31 L. J. P. & M. 7; 2 Sw. & Tr. 369):

As regards the 3 calendar months after Avoidance of a Benefice within which the Bishop is to direct the surveyor to report upon dilapidations under s. 29, Ecclesiastical Dilapidations Act, 1871, 34 & 35 V. c. 43 (*Caldow v. Pixell*, 46 L. J. C. P. 541; 2 C. P. D. 562):

As regards the requirement of 33 H. 8, c. 39, that Bonds to the King shall be made payable to him, his heirs or *executors*, a Bond to him, his heirs or *successors* being held to be within the statute (*Yale v. The King*, 6 Brown P. C. 27, 28):

As regards Consent of father to the marriage of a minor under s. 16, Marriage Act, 1823, 4 G. 4, c. 76 (*R. v. Birmingham*, 8 B. & C. 29; 6 L. J. O. S. M. C. 67; 2 M. & R. 230):

As regards the Form of making a Poor Rate, under s. 2, Parochial Assessments Act, 1836, 6 & 7 W. 4, c. 96, — except the signature of Justices which is peremptory (*R. v. Fordham*, 11 A. & E. 73; 9 L. J. M. C. 3):

As regards the obligation to produce Overseers' Certificate, under s. 2, Beerhouse Act, 1840, 3 & 4 V. c. 61, prior to the Excise granting a License to sell beer, &c, under that statute (*Thompson v. Harvey*, 28 L. J. M. C. 163; 4 H. & N. 254):

As regards the Questions to be asked a Recruit under s. 55, Mutiny Act, 13 & 14 V. c. 5, that Act repealed by 38 & 39 V. c. 66, and these Questions replaced by s. 80, Army Act, 1881 (*Wolton v. Gavin*, 16 Q. B. 48; 20 L. J. Q. B. 73):

As regards the Particulars to be stated in a doctor's certificate for the detention of a Lunatic under s. 46, 8 & 9 V. c. 100, repld s. 28 (2), Lunacy Act, 1890 (*Re Shuttleworth*, 16 L. J. M. C. 18; 9 Q. B. 651):

As regards taking Security on an appointment by Quarter Sessions of a County Treasurer under County Rates Act, 1738, 12 G. 2, c. 29, s. 6 (*R. v. Patteson*, 4 B. & Ad. 9; 2 L. J. K. B. 33; 1 N. & M. 612):

As regards the Court of Bankry, "one would not hold it to be obligatory if it could be avoided" (per Esher, M. R., *Re Thurlow*, 64 L. J. Q. B. 481), in *whic* it was held that "shall adjudge," s. 20 (1), Bankry Act, 1883, does not deprive the Court of the power to adjourn given by subs. 2, s. 105 (1895, 1 Q. B. 724; 64 L. J. Q. B. 479; 72 L. T. 642; 43 W. R. 403: *Sv, Re Pinfold*, p. 1855, post). So it was directory as regards the Formalities prior to a Sale by a Bankruptcy Assignee under s. 7, 1 G. 4, c. 119 (*Doe d. Phillips v. Evans*, 2 L. J. Ex. 179; 1 Cr. & M. 450; 3 Tyr. 339), and is so as regards s. 72 (1), Bankry Act, 1883 (per Esher, M. R., *Re Gallard*, 1892, 1 Q. B. 532; 61 L. J. Q. B. 425; 66 L. T. 452; 40 W. R. 385):

### Directory :

As regards the things to be done by a Local Board before entering into a Contract under s. 85, P. H. Act, 1848 (*Nowell v. Worcester*, 9 Ex. 457; 23 L. J. Ex. 139: *See, Friend v. Dennett*, inf, p. 1856, and *Note* inf) :

As regards the requirement in a Local Improvement Act that all contracts should be signed by the Commissioners, or any three of them, or by their Clerk (*Cole v. Greene*, 13 L. J. C. P. 30; 6 M. & G. 872) :

As regards Registration of Mortgages and Charges of a Joint Stock Co, under s. 43, Comp Act, 1862 (*Ex p. Vulpy & Chaplin*, 7 Ch. 289: *Wright v. Horton*, 56 L. J. Ch. 873; 12 App. Ca. 371; 56 L. T. 782; 36 W. R. 17; 52 J. P. 179) :

As regards the provision of s. 108 of the statute (6 & 7 W. 4, c. cviii) incorporating the Thames Haven Dock & Ry Co, that the business of the Company should be carried on by *twelve* Directors (*Thames Haven Dock & Ry v. Rose*, 12 L. J. C. P. 90; 4 M. & G. 552; 5 Sc. N. R. 524: *the* not followed in *Re Alma Spinning Co*, cited QUORUM) :

As regards the provisions in a private Act as to the mode of keeping the Register of Proprietors in an Incorporated Co (*Southampton Dock Co v. Richards*, 1 M. & G. 448: *London Grand Junction Ry v. Freeman*, 2 Ib. 606) :

As regards the Countersigning by Secretary, of a bill or note of a Joint-Stock Co, pursuant to s. 45, 7 & 8 V. c. 110 (*Allen v. Sea Assree*, 9 C. B. 574; 19 L. J. C. P. 305: *Aggs v. Nicholson*, 1 H. & N. 165; 25 L. J. Ex. 348) :

As regards s. 4, 1 & 2 V. c. 117 (*Goodman v. De Beauvoir*, 4 Ry Ca. 384).

*Note.* If a statute directs the time or manner of doing a thing, the penalty (if any) for non-compliance with the direction will be incurred, though such non-compliance may not affect the validity of the act (*Hunt v. Hibbs*, 29 L. J. Ex. 222; 5 H. & N. 123). *Vf*, DIRECT.

For an example of a peremptory "shall" being controlled otherwise by a context, *V. York & North Mid Ry v. The Queen*, 1 E. & B. 863.

*Cp*, MUST.

The word "Shall" and words in their ordinary meaning obligatory, have, in the following cases, been held,

### Peremptory :

As regards the 3 days, inclusive of Sunday, within which an Appeal Case from Justices "shall" be transmitted to the Court and notice given to the respondent, pursuant to s. 2, 20 & 21 V. c. 43 (*Peacock v. The Queen*, 4 C. B. N. S. 264; 27 L. J. C. P. 224: *Woodhouse v. Woods*, 29 L. J. M. C. 149: *Morgan v. Edwards*, Ib. 108: *Pennell v. Uxbridge*, 31 L. J. M. C. 92: *Vf*, TRANSMIT), except where the appellant has done

### Peremptory :

all that he can in order to comply with the statute (*V. jdgmt Morgan v. Edwards*), and is hindered by the offices of the Court being closed (*Mayer v. Harding*, L. R. 2 Q. B. 410; 9 B. & S. 27, note *a*; 17 L. T. 140; 32 J. P. 421), or by respondent not being to be found, and service of notice of appeal in that case being effected on his solicitor within the 3 days (*Syred v. Carruthers*, 27 L. J. M. C. 273; E. B. & E. 469) :

As regards requirement in R. 18, Summary Jurisdiction Rules, 1886, that application for Special Case "shall be made in writing" (*South Staffordshire W. W. Co v. Stone*, 19 Q. B. D. 168; 56 L. J. M. C. 122; 57 L. T. 368; 36 W. R. 76; 51 J. P. 662; *Lockhart v. St. Alban's*, 21 Q. B. D. 188; 57 L. J. M. C. 118; 36 W. R. 800; 52 J. P. 420) :

As regards Notice of Appeal under s. 8, Mayor's Court of London Procedure Act, 1857, the time for which cannot be extended (*Kirby v. N. British Insree*, 1896, 2 Q. B. 99; 65 L. J. Q. B. 527), and so of the deposit for security for costs under the same section (*Morgan v. Bowles*, 1894, 1 Q. B. 236; 63 L. J. Q. B. 84) :

As regards the time for an Appeal from County Court and giving security for its costs under s. 14, 13 & 14 V. c. 61 (*Stone v. Dean*, 27 L. J. Q. B. 319; E. B. & E. 504; *Va, Barker v. Palmer*, 51 L. J. Q. B. 110: *Note*, this section repealed, and its provisions replaced by s. 120. Co. Co. Act, 1888, and *vth* R. 12, 16, Ord. 59, R. S. C.) :

As regards Adjudication in Bankry (s. 20 (1), Bankry Act, 1883) being consequent when the creditors have not availed themselves of the opportunity by that section given them of deciding otherwise (*Re Pinfold*, 1892, 1 Q. B. 73; 61 L. J. Q. B. 161: *See, Re Thurlow*, p. 1853, ante) :

As regards the 21 days, within which, after its receipt, the Bishop is to send to an accused clergyman a copy of the complaint against him, pursuant to s. 9, Public Worship Regulation Act, 1874, 37 & 38 V. c. 85 (*Howard v. Bodington*, 2 P. D. 203) :

As regards the time for Taxing costs under s. 3, Parliamentary Costs Act, 1865, 28 & 29 V. c. 27 (*Williams v. Swansea Canal Nav.*, 37 L. J. Ex. 107; L. R. 3 Ex. 158) :

As regards the provision, s. 1, Justices' Clerks' Fees Act, 1753, 26 G. 2, c. 14, that table of Justices' Clerks' Fees should be made at one Quarter Sessions and should be approved at "the next succeeding Quarter Sessions" (*Bowman v. Blyth*, 26 L. J. M. C. 57; 27 Ib. 21; 7 E. & B. 26, 47) :

As regards Confirmation of Provisional License under s. 22, Licensing Act, 1874, when the premises are built "IN ACCORDANCE WITH THE PLANS," &c (per Coleridge, C. J., *R. v. London Jus.*, cited LICENSE) :

### Peremptory :

As regards the number of Overseers to be appointed by 43 Eliz. c. 2, s. 1 (*R. v. Lordale*, 1 Burr. 445):

As regards Fine to be imposed "not less" than a stated amount; *V. NOT LESS*:

As regards Indorsement on Appeal Case stated by Revising Barrister pursuant to s. 42, 6 V. c. 18 (*Wanklyn v. Woollett*, 16 L. J. C. P. 144; 4 C. B. 86: *Sr, Burton v. Brooks*, 21 L. J. C. P. 7; 11 C. B. 41; 2 Lutw. 197, and *McKeowne v. Bradford*, 7 Ir. Jur. N. S. 169):

As regards the Form of a Municipal Nomination Paper under s. 1 (2), 38 & 39 V. c. 40, repealed (*Henry v. Armitage*, 52 L. J. Q. B. 165; *revid*, but only on the facts, 32 W. R. 192):

As regards the requirements for creating a Mortgage of a Ship under ss. 55, 66, Mer Shipping Act, 1854, *repld* ss. 24, 31, Mer Shipping Act, 1894 (*Liverpool Borough Bank v. Turner*, 29 L. J. Ch. 827; 30 Ib. 379: *Sr*, "Beneficial Interest," sub BENEFICIAL):

As regards requirement that contracts above £10 by Local Board should be under Seal, &c, pursuant to s. 85, P. H. Act, 1848 (*Frend v. Dennett*, 27 L. J. C. P. 314; 4 C. B. N. S. 576: *Sr, Nowell v. Worcester*, *sup*, p. 1854. and *Note inf*); and now, under s. 174, P. H. Act, 1875, that every contract by Urban Authority above £50 shall be under seal (*Young v. Royal Leamington Spa*, 51 L. J. Q. B. 292; 52 Ib. 713; 8 App. Ca. 517, following *Hunt v. Wimbledon*, 48 L. J. C. P. 207; 4 C. P. D. 48. *Va*, EXCEED: *Melliss v. Shirley*, 16 Q. B. D. 446), and shall specify its work, materials, matter or things, price, time for performance, and pecuniary penalty for non-performance (*British Wire Co v. Prescott*, 1895, 2 Q. B. 463; 73 L. T. 383; 64 L. J. Q. B. 811; 44 W. R. 224; 59 J. P. 552):

As regards Registration in Natal of document regulating Community of Goods between Spouses (*Taylor v. Sturrock*, cited VOID):

As regards the provisions for Arbitration in s. 180, P. H. Act, 1875 (*Re Gifford and Bury*, 57 L. J. Q. B. 181; 20 Q. B. D. 368; 58 L. T. 522; 36 W. R. 468; 52 J. P. 119):

As regards an Arbitration Agreement; *V. Crump v. Adney*, 2 L. J. Ex. 150; 1 Cr. & M. 355; 3 Tyr. 270:

As regards the formalities of Sealing and Signature by Directors of contracts by Incorporated Ry and Dock Companies (*Cope v. Thames Haven Dock & Ry*, 18 L. J. Ex. 345; 3 Ex. 841: *Diggie v. London & Blackwall Ry*, 19 L. J. Ex. 308; 5 Ex. 442: *Finlay v. Bristol & Exeter Ry*, 21 L. J. Ex. 117; 7 Ex. 409. *V. Note, inf*):

As regards the ordinary requirement in a Building Contract against Extras without written instructions of the Architect (*Lamprell v. Billesey Union*, 18 L. J. Ex. 282; 3 Ex. 283):

*Semble*, as regards the notice by a tenant of an intended claim under s. 7, Agricultural Holdings (England) Act, 1883 (*Schofield v. Hincks*, 37 W. R. 157).

*Note.* — It was said by counsel in *Young v. Royal Leamington Spa*, sup, that *Nowell v. Worcester*, sup, might be considered as over-ruled by *Frend v. Dennett*, sup. But it is submitted that the two cases are quite in harmony. The first case (*Nowell v. Worcester*) decided that the preliminaries which a local board were required to observe under s. 85, P. H. Act, 1848, before entering into a contract were directory and, so to speak, a matter between themselves and their constituents: but the latter case (*Frend v. Dennett*) decided that the *contract itself* must be vouched in the manner prescribed by the section.

It seems difficult to reconcile *Cope v. Thames Haven Dock & Ry*, and the other two cases cited with it *supra*, with *Cole v. Greene*, *Allen v. Sea Assurance*, and *Aggs v. Nicholson*, sup, or with sound reasoning. There seems to be no PUBLIC POLICY (like that so forcibly dwelt on in the judgment of Lindley, L. J., in *Young v. Royal Leamington Spa*) in letting a Ry Co keep an advantage for which they have not paid, simply because the contract under which they have obtained that advantage happens to lack the formality required by the Act establishing the Company. The cases now under criticism seem those referred to by Lindley, L. J. (51 L. J. Q. B. 296), where, referring to executed contracts for corporations, he says, — “The cases on this subject are very numerous and conflicting, and they require review and authoritative exposition by a Court of Appeal.”

There is no magic in incorporation as distinguished from any other mode of association for private profit; and it is suggested that *Cope v. Thames Haven Dock & Ry* and other similar cases should be over-ruled, and that the rule of such cases as *Aggs v. Nicholson* should be adopted for all kinds of association for private purposes, whether by incorporation or otherwise, so that the canon of construction should run thus: —

In a contract entered into by a *public* body, whether corporate or incorporate, for the public benefit, the formalities which the legislature says “shall” be observed are obligatory, and in their absence no rights arise whether the contract be executed or executory: But

In a contract entered into by a *private* association, whether corporate or incorporate, the formalities prescribed (whether by statute, articles of association, or otherwise) for the validation of its contracts are matters chiefly exigent as between the direction and its constituents; and therefore if the contract be *executed* the private association must pay on the assumpsit *quasi ex contractu*, even if not *ex contractu*, though the prescribed contract formalities may be absent; but no rights would arise out of such a contract the prescribed formalities of which were absent so long as such contract remained merely *executory*. *Vh*, obs of Brett, L. J., in *Hunt v. Wimbledon*, 48 L. J. C. P. 211: *Henderson v. Australian Royal Mail Steam Co*, 5 E. & B. 409; *Sc*, *Church v. Imperial Gas Light and Coke Co*, 7 L. J. Q. B. 118; 6 A. & E. 858.

For a curious instance of “shall” being used, in the same section, as compulsory and also as optional, *V*, per Bowen, L. J., *Cooke v. New*

*River Co.*, 57 L. J. Ch. 389; 38 Ch. D. 56; 58 L. T. 830; on app, 14 App. Ca. 698.

*V. SHALL AND LAWFULLY MAY: MAY: Vj*, Maxwell, 286-303: Wilberforce, 193-206.

"Shall" read "should"; *V. Lomar v. Holmeden*, 3 P. Wms. 176.

**SHALL AND LAWFULLY MAY: SHALL AND MAY: SHALL AND MAY AND THEY ARE HEREBY EMPOWERED.** — "The words '*Shall and Lawfully May*' are, in their ordinary import, *obligatory*, and ought, according to established rule, to have that construction, unless it would lead to some absurd or inconvenient consequence, or be at variance with the intent of the legislature, to be collected from other parts of the Act" (per Parke, B., delivering the judgment in *Chapman v. Milvain*, 19 L. J. Ex. 230; 1 L. M. & P. 209; 5 Ex. 61). Accordingly, it was held that those words in s. 9, Country Bankers Act, 1826, 7 G. 4, c. 46, rendered it necessary for actions by or against a Banking Company to be brought in the name of its Public Officer. *Va, Steward v. Greaves*, 10 M. & W. 711; 12 L. J. Ex. 109: *Re London & Eastern Banking Corporation*, 27 L. J. Ch. 457; 2 D. G. & J. 484; 4 K. & J. 273: *Watts v. Shuttleworth*, 5 H. & N. 243; 29 L. J. Ex. 229.

So the words "*Shall and May*," in 7 & 8 V. c. 110, s. 66, were held obligatory (*V. MAY*, p. 1175). But though for the offence of allowing an unauthorized person to act in his name, a Solicitor "*shall and may* be struck off the Roll, and for ever after disabled from practising," s. 32, 6 & 7 V. c. 73; yet the infliction of so heavy a penalty has been held not imperative, so that a lesser punishment might be imposed (*Re Grayston*, 4 Times Rep. 749; 58 L. J. Q. B. 451, n: *Re Lamb*, 58 L. J. Q. B. 450; 23 Q. B. D. 477, on *whlev*, *Re Kingdon and Wilson*, 1902, 2 Ch. 242; 71 L. J. Ch. 604: *Re Sykes*, 34 S. J. 285: Times, 19th Feb 1890): on the other hand, "*shall and may*" has been held imperative (*Re Two Solicitors*, 28 S. J. 90: *Re Eede*, 59 L. J. Q. B. 376; 25 Q. B. D. 228; 38 W. R. 683: *Re Kelly*, 1895, 1 Q. B. 180; 64 L. J. Q. B. 129; 71 L. T. 843; 43 W. R. 191).

The words in Poor Relief Act, 1819, 59 G. 3, c. 12, s. 17, whereby Churchwardens and Overseers "*Shall and May and they are hereby Empowered*" to accept, take, and hold, real property belonging to a parish, are imperative (*St. Nicholas, Deptford v. Sketchley*, 17 L. J. M. C. 17; 8 Q. B. 394).

*V. SHALL: MAY: IT SHALL BE LAWFUL.*

**SHALL AND MAY BE LAWFUL.** — *V. IT SHALL BE LAWFUL.*

**SHALL AND WILL.** — "Shall and will release," *semble*, is not an actual RELEASE, but only a covenant to release (per Holroyd, J., *Thomas v. Courtney*, 1 B. & Ald. 8).

**SHALL BE.** — “Shall be begotten”; *V.* TO BE BORN.

“Shall be born”; *V.* SHALL, p. 1851; TO BE BORN.

“Shall be brought”; *V.* BROUGHT.

“Shall be settled”; *V.* AGREED AND DECLARED: SETTLED.

**SHALL BECOME.** — *V.* BECOME.

“Shall become entitled”; *V.* ENTITLED.

**SHALL HAVE BEEN.** — This phrase gives a statute a RETROSPECTIVE operation, *e.g.* a married woman whose husband “shall have been” convicted of an AGGRAVATED Assault upon her, s. 4, 58 & 59 V. c. 39 (*Lane v. Lane*, 65 L. J. P. D. & A. 63; 1896, P. 133; 74 L. T. 557).

*V.* *R. v. Birwistle*, 58 L. J. M. C. 158: *Cp.* HAS BEEN: IS.

**SHALL THINK FIT.** — *V.* THINK FIT.

**SHAMEFUL.** — A correct newspaper report headed “Shameful Conduct” is Libel, though the report itself be protected (*Clement v. Lewis*, 3 Brod. & B. 297; 3 B. & Ald. 702).

**SHAPE.** — “Shape or Configuration” of an article of manufacture, preamble to s. 2, 6 & 7 V. c. 65, repld, s. 60, Patents, &c. Act, 1883 (*V.* DESIGN); *V.* *Millingen v. Picken*, 1 C. B. 799; 14 L. J. C. P. 254; *Rogers v. Driver*, 20 L. J. Q. B. 31; 16 Q. B. 102; *Windsor v. Smith*, 11 W. R. 323; 7 L. T. 776; *Margetson v. Wright*, 2 D. G. & S. 420; *Moody v. Tree*, 40 W. R. 558.

*V.* PATTERN.

**SHARE.** — “Share,” *prima facie*, would not apply to Real Estate” (per Turner, V. C., *Stokes v. Salomons*, 9 Hare, 83; 20 L. J. Ch. 343).

Where there is a testamentary gift to two or more, and the Will speaks of the “Share” of either, a TENANCY IN COMMON is created (*Guat v. Laurence*, Wight. 395; *Ire v. King*, 21 L. J. Ch. 560; 16 Bea. 46; *Hobgen v. Neale*, L. R. 11 Eq. 48). So, a bequest in shares to be appointed by a person who is not named, or who fails to appoint, creates a tenancy in common in equal shares (1 Jarm. 361, citing *Robinson v. Wheelwright*, 21 Bea. 214; *Salisbury v. Denton*, 26 L. J. Ch. 851; 3 K. & J. 529).

A Substitutional bequest of a legatee’s “Share” will not take effect if the legatee die in the testator’s lifetime, because in that case the legatee could not take a share (*Re Roberts*, *Tarleton v. Bruton*, 53 L. J. Ch. 1023; 27 Ch. D. 346; affd 30 Ch. D. 234; 53 L. T. 432, following *Stewart v. Jones*, 3 D. G. & J. 532, and dissenting from *Unsworth v. Speakman*, 46 L. J. Ch. 608; 4 Ch. D. 620). But would this be so if the legatee were a child of the testator, leaving issue living at testator’s death? *V.* s. 33, Wills Act, 1837. Observe also that *Re Roberts* and *Stewart v. Jones* were distd in *Re Pinhome*, 1894, 2 Ch. 276; 63 L. J. Ch. 607; 42

W. R. 438; 70 L. T. 901, *while* was followed in *Re Powell*, 1900, 2 Ch. 525; 69 L. J. Ch. 788; 83 L. T. 24. *Va*, *Re Sheppard*, 1 K. & J. 269, cited SHALL, p. 1851; *Neatherway v. Fry*, Kay, 182; 23 L. J. Ch. 222; 2 Jarm. 767.

Where a CLASS of beneficiaries under a Will is to be ascertained at the testator's death (or, *semble*, at any other definite time), but the period of distribution is postponed to a later time, a substitutional gift of the "Shares" of deceased beneficiaries applies, *primâ facie*, only to beneficiaries who become members of the Class and die before the period of distribution (per North, J., *Re Hannam*, 1897, 2 Ch. 39; 66 L. J. Ch. 471; 76 L. T. 681; 45 W. R. 613; vindicating *Thornhill v. Thornhill*, 4 Mad. 377, and the opinion of Romilly, M. R. in *Ive v. King*, *sup*, and in *King v. Cleaveland, No. 1*, 28 L. J. Ch. 74; 26 Bea. 26; and distinguishing *Smith v. Smith*, 6 L. J. Ch. 175; 8 Sim. 353, *Collins v. Johnson*, 4 L. J. Ch. 226; 8 Sim. 356. *n*, *Jones v. Frewin*, 12 W. R. 369, and *Hubergham v. Ridehalgh*, 39 L. J. Ch. 545; L. R. 9 Eq. 395).

As to the value of the word "Share," in a substitutionary bequest to the issue of a deceased member of a class, for the purpose of avoiding the Rule in *Christopherson v. Naylor* (1 Mer. 320; 2 Jarm. 771, *i.e.* that persons claiming as substitutionary legatees must point out the original legatee in whose place they demand to stand, and such original legatee must have been living at the date of the Will, *e.g.* under a gift to children with a substitution of their issue of any as "shall happen to die in my lifetime," only the issue of the children living at the date of the Will can claim); *V. Re Smith* (in note to *Re Sibley*), 5 Ch. D. 494; 46 L. J. Ch. 387; *etc*, *Re Webster*, 52 L. J. Ch. 769; 23 Ch. D. 737; But *Re Smith* was not followed by Stirling, J., in *Re Chinery* (57 L. J. Ch. 804; 39 Ch. D. 614), nor by the Court of Appeal in *Re Musther* (59 L. J. Ch. 296; 43 Ch. D. 569), nor by North, J., in *Re Brown* (58 L. J. Ch. 420): *Vf*, *Re Wood*, 1894, 3 Ch. 381; 63 L. J. Ch. 790.

Issue to take Parent's Share; *V. Issur*.

*Vf*, as to Substitutionary gifts, Hawk. ch. 19.

As to value of "Share" for construing legacy as VESTED; *V. 1 Jarm.* 856.

The "share" of a Residuary Legatee, consists of what remains after all equities between him and the estate have been settled (*Willes v. Greenhill*, 29 Bea. 376).

"Share" does not carry an accruing share (2 Jarm. 711; Wms. Exs. 1082), unless aided by the context (2 Jarm. 712, 713); but "it seems that 'Share and Interest' will carry accrued shares proprio vigore" (Ib. 714), *e.g.* an assignment of "all the Part, Share, and Interest," of A. in a reversionary bequest, carried an accrued share (*Re Lawrence*, 45 S. J. 78). *Vf*, ACCRUE.

A Devise of "my Share" would, even before the Wills Act, 1837, generally carry the fee (2 Jarm. 285): *Vh*, *Orange v. Martyn*, W. N. (86) 8.



Agreement by a father in Marriage Articles to leave the bride "A share" of his property, does not mean an equal share; it means "some share:—some part," and is satisfied by a substantial legacy (*Re Firkus*, 1900, 1 Ch. 331; 69 L. J. Ch. 161; 81 L. T. 749; 48 W. R. 250); if the phrase were "her share" it would, probably, mean, the share of his Personality to which his daughter would be entitled if he were to die intestate (*Larer v. Fielder*, 32 L. J. Ch. 365; 32 Bea. 1).

"Equal Child's Share"; *V. EQUAL*.

"Part" or "Share"; *V. PART*, towards end.

Where a "Power simply authorizes an Appointment of the Shares to be taken by the objects, the Power necessarily ceases when there is only one object, for he, of course, must take the whole" (Sug. Pow. 416).

*V. PARTICIPATE*.

"Share" in a *Company*; *V. per* Farwell, J., *Borland's Trustee v. Steel*, 1901, 1 Ch. 279; 70 L. J. Ch. 51.

Under a bequest of "Shares" in a Co, the Co's Ordinary Stock, as well as Shares, will pass (*Trinder v. Trinder*, L. R. 1 Eq. 695; *Morrice v. Aylmer*, 44 L. J. Ch. 214; 45 Ib. 614; 10 Ch. 148; L. R. 7 H. L. 717), but not DEBENTURE STOCK (*Re Bodman*, 1891, 3 Ch. 135; 61 L. J. Ch. 31; 65 L. T. 522; 40 W. R. 60), unless there is nothing else to satisfy "Shares" (*Re Weeding*, 1896, 2 Ch. 364; 65 L. J. Ch. 743; 74 L. T. 651; *Vf*, DEBENTURE, towards end). A bequest of "two Ordinary Shares" in the G. N. Ry of Ireland, was held to mean £200 of its Stock, the Co never having had Shares but Stock only, and proof being furnished that £100 Stock was often referred to as one share (*Braunigan v. Murphy*, 1896, 1 I. R. 418).

A bequest by a shareholder of all and every his "Shares and Interest" in an Insree Co, "and all the ADVANTAGES to be derived therefrom," did not pass a Policy on his own life effected with the Co, even though he was obliged to effect it and part of its bonuses had to be added to the capital of the Co (*Harrington v. Moffat*, 22 L. J. Ch. 775; 4 D. G. M. & G. 1).

Parol Evidence to explain "Shares" in a Co was rejected in *Millard v. Bailey*, L. R. 1 Eq. 378; 35 L. J. Ch. 312.

"Shares, Stock," &c. in an Investment Clause; *V. DEBENTURE*, at end: MORTGAGE, pp. 1228, 1229.

A bequest of a "Share, Right, and Interest" in the GOODWILL of a Partnership, and in its real and personal estate, does not pass a debt due to the testator from the partnership (*Re Beard, Simpson v. Beard*, 57 L. J. Ch. 887; 58 L. T. 629; 36 W. R. 519; distd, *Re Barfield*, 84 L. T. 28).

A "Share" in a Co, "does not denote rights only, it denotes obligations also; and when a Member transfers his Share he transfers all his rights and obligations as a shareholder as from the date of the transfer. He does not transfer rights to dividends or bonuses already de-

clared, nor does he transfer liabilities in respect of calls already made; but he transfers his rights to future payments and his liabilities to future calls" (per Lindley, L. J., *Re National Bank of Wales*, 66 L. J. Ch. 225, 226); therefore, a TRANSFER with the SANCTION of the Liquidator under s. 131, Comp Act, 1862, makes the transferee a "Present" Member, and the transferor a "Past" Member of a Liquidating Co within s. 38 (S. C., 1897, 1 Ch. 298; 66 L. J. Ch. 222; 76 L. T. 1; 45 W. R. 401).

An Agreement for Transfer of "Shares" in a Co about to be formed, means, in the absence of a contrary stipulation, that the Co's Shares must in all respects be equal (*McIlquham v. Taylor*, 1895, 1 Ch. 53; 63 L. J. Ch. 758; 71 L. T. 679).

*Semble*, it is doubtful whether, on an agreement to purchase shares in a Co, there is an implied condition that the Co shall be in existence at the stipulated time for delivery; *V. Nicholl v. Carey*, 11 Times Rep. 526.

Allotment Letters may, if there be no Shares, be regarded as a good execution of an order to buy "Shares" in a specified Co (*Mitchell v. Newhall*, 15 L. J. Ex. 292; 15 M. & W. 308).

"Share" is not infrequently interpreted to include Stock; *V.* 30 & 31 V. c. 127, s. 3; 46 & 47 V. c. 30, s. 2. — *Scot.* 13 & 14 V. c. 83, s. 38; 30 & 31 V. c. 126, s. 3.

Purchase by a Co of its own shares; *V.* PURCHASE, p. 1623.

"Share Capital," quâ Light Railways Act, 1896, 59 & 60 V. c. 48, "includes, any CAPITAL, whether consisting of Shares or of Stock, which is not raised by means of borrowing" (s. 28).

"Share of PROFITS," s. 2 (3d), Partnership Act, 1890; *V. Re Young*, 1896, 2 Q. B. 484; 65 L. J. Q. B. 681; 75 L. T. 278; 45 W. R. 96.

"Share Warrant"; *V.* Comp Act, 1867, ss. 27-30: "Share Warrant to Bearer"; *V.* s. 4. Finance Act, 1899, 62 & 63 V. c. 9.

*V.* STOCK.

**SHARE AND SHARE ALIKE.** — The phrase "Share and Share alike" has the same meaning as "equally to be divided" (Sug. Pow. 656, citing *Phillips v. Garth*, 3 Bro. C. C. 64; *Elmsley v. Young*, 2 My. & K. 780), and the beneficiaries take as TENANTS IN COMMON (*Rudge v. Barker*, Ca. t. Talb. 124; *Heathe v. Heathe*, 2 Atk. 122; *Perry v. Woods*, 3 Ves. 204a; *Ashford v. Haines*, 21 L. J. Ch. 496; 2 Jarm. 257; Wms. Exs. 1327). *V.* ALIKE: EQUALLY.

Accordingly, this phrase, as a context, will control such words as "Legal Representatives" to mean Next of Kin (*King v. Cleveland*, cited LEGAL REPRESENTATIVES, p. 1082).

But this phrase may, like "EQUALLY," be controlled by a strong context to create a Joint Tenancy (*Armstrong v. Eldridge*, 3 Bro. C. C. 215, 216).

There may be a Tenancy in Common as regards the persons designated, but a Joint Tenancy as between substitutionary issue; thus, a gift to

"Sons and Daughters who shall be then living and the Issue of any then dead (such Issue standing *in loco parentis*), share and share alike," was held by North, J., to be a tenancy in common as between the sons and daughters and issue, but that the issue, as between themselves and quâ the share they took, were joint tenants, there being no words of severance as between *them* (*Re Yates*, 1891, 3 Ch. 53; 64 L. T. 819; 39 W. R. 573).

V. RELATIONS.

**SHARE-BROKER.** — A person who occasionally sold shares for friends was held not a "Share-broker" within the late Bankry definition of "TRADER" (*Re Cleland*, cited GOODS OR COMMODITIES).

V. BROKER: *Cp.* JOBBER.

**SHAREHOLDER.** — "Shareholder," quâ 7 & 8 V. c. 110, repealed by Comp Act, 1862; *V. Bailey v. Universal Provident Assn*, 1 C. B. N. S. 557; 26 L. J. C. P. 87; *Wilkinson v. Anglo-Californian Co*, 18 Q. B. 728; 21 L. J. Q. B. 327.

Quâ Comp C. C. Acts, "Shareholder," means, "Shareholder, Proprietor, or MEMBER, of the Company; and, in referring to any such Shareholder, expressions properly applicable to a PERSON shall be held to apply to a Corporation" (8 & 9 V. c. 16, s. 3, c. 17, s. 3). *Vth*, and for a comparison between "Shareholder" and "Subscriber," *Galvanized Iron Co v. Westoby*, 21 L. J. Ex. 302; 8 Ex. 17; *Waterford Ry v. Pidcock*, 22 L. J. Ex. 146; 8 Ex. 279.

Quâ Comp Act, 1862, "Shareholder," "only means the person who holds the shares by having his name on the register" (per Chitty, J., *Re Wala Wynaad Mining Co*, 52 L. J. Ch. 88; 21 Ch. D. 849; 30 W. R. 915). *Vf*, *Portal v. Emmens*, 46 L. J. C. P. 179; 1 C. P. D. 664; *Kipping v. Todd*, 47 L. J. C. P. 617; 3 C. P. D. 350; *Burke v. Lechmere*, L. R. 6 Q. B. 297; 40 L. J. Q. B. 98.

V. HOLDING: IN HIS OWN RIGHT: *Cp.* STOCKHOLDER.

Stat. Def. — Burghs Gas Supply (Scot) Act, 1876, 39 & 40 V. c. 49, s. 3.

**SHARES.** — V. SHARE: STOCK: STOCKS.

**SHAWE.** — V. GRAVA.

**SHEBEEN.** — Quâ Public Houses Act Amendment (Scot) Act, 1862, 25 & 26 V. c. 35, "Shebeen," means and includes, "every house, shop, room, premises, or place, in which spirits, wine, porter, ale, beer, cyder, perry, or other exciseable liquors, are trafficked in by RETAIL, without a Certificate and Excise License in that behalf" (s. 37). V. INN: TRAFICKING.

**SHED.** — Arson of "Hovel, Shed, or Fold," s. 1, 7 & 8 V. c. 62, repld s. 11, Malicious Damage Act, 1861, 24 & 25 V. c. 97; a "Shed," there, connotes its popular meaning of a temporary building for stowing away things (*R. v. Amos*, 20 L. J. M. C. 103; 5 Cox C. C. 222).

**SHEEP.** — *V.* CATTLE. It was at one time held that an Indictment for stealing a "Sheep" was not supported by proof of stealing a LAMB (*R. v. Loom*, Moody, 160); but that was over-ruled by *R. v. Spicer* (1 Den. 82).

**SHEEPHEAVES.** — "Small plots of pasture often in the middle of a waste . . . the soil of which may or may not be in the lord, but the pasture is certainly a private property, and is leased and sold as such" (Cooke, Inclosure Acts, 44).

**SHEEPWALK.** — *V.* FOLDCOURSE.

**SHEET OF LETTER-PRESS.** — As to this phrase in def of "Book," Copyright Act, 1842; *V. Hildesheimer v. Dunn*, 64 L. T. 452; W. N. (91) 66; *Hollinrake v. Truswell*, 1894, 3 Ch. 420; 63 L. J. Ch. 719; 71 L. T. 419; *Clementi v. Golding*, 2 Camp. 25; 11 East, 244; *Hime v. Dale*, 2 Camp. 27 n; *White v. Geroch*, 2 B. & Ald. 298; 1 Chitty, 26.

**SHEET OF MUSIC.** — *V.* COPY.

**SHELL FISH.** — Quà Sea Fisheries Regn Acts, "Shell Fish," includes, "all kinds of molluses and crustaceans" (s. 1 (3), 57 & 58 V. c. 26).

*Semble*, that the right in the public to take shell fish on the sea shore does not include a right to take away shells which are thrown upon the sea shore (*Bagott v. Orr*, 2 B. & P. 472).

*V.* SEA FISH: FISH.

**SHERIFF.** — *Vh*, Co. Litt. 109 b, 168 a: 1 Bl. Com. 339, 4 Ib. 292: Jacob: 11 Encyc. 530-535.

"Sheriff," quà Bankry Act, 1883, includes "any Officer charged with the EXECUTION of a Writ or other Process" (s. 168), *i.e.* the Officer analogous to the Sheriff: and therefore when the Serjeant-at-Mace, having a levy warrant to execute from the Lord Mayor's Court, finds an Officer in possession under a *fi. fa.*, and (according to custom) entrusts that officer with the warrant to realize the amount leviable thereunder, the Serjeant-at-Mace is the officer to be served with notice under s. 46 (2), Bankry Act, 1883 (*Ex p. Warren, Re Holland*, 54 L. J. Q. B. 320; 15 Q. B. D. 48; 53 L. T. 68; 33 W. R. 572). That latter section is replaced by s. 11, Bankry Act, 1890, under subs. 2 of which neither the Bailiff who levies nor the Man in Possession is the "Sheriff" within the

above def, for neither is "charged with the Execution" of the *fi. fa.* (*Bellyse v. McGinn*, 1891, 2 Q. B. 227; 65 L. T. 318).

A def similar to that contained in s. 168, Bankry Act, 1883, is provided for Sale of Goods Act, 1893 (*V.* subs. 2, s. 26), and for Stannaries Act, 1887, 50 & 51 V. c. 43 (*V.* s. 2).

Quà Lands C. C. Act, 1845 (*V.* s. 3), and Ry C. C. Act, 1845 (*V.* s. 3) the def includes, "UNDER-SHERIFF, or other legally competent Deputy."

Other Stat. Def. — 23 & 24 V. c. 112, s. 47; 25 & 26 V. c. 93, s. 3. — *Ir.* 34 & 35 V. c. 65, s. 3; 60 & 61 V. c. 20, s. 7.

"Sheriff," as respects Scotland in Acts passed after 1st Jan 1890, includes a Sheriff Substitute (s. 28, Interp Act, 1889); for the prior stat defs, *V.* 27 & 28 V. c. 33, s. 2; 31 & 32 V. c. 101, s. 3; 39 & 40 V. c. 70, s. 51: for defs subsequent to the Interp Act, *V.* 54 & 55 V. c. 32, s. 7; 55 & 56 V. c. 55, s. 4; 56 & 57 V. c. 52, s. 2; 57 & 58 V. c. 40, s. 7. *V.* CHAIRMAN.

"Sheriff of Chancery," "Sheriff Clerk of Chancery"; Stat. Def., 31 & 32 V. c. 101, s. 3.

"Sheriff's Small Debt Court," means, the Court established under Small Debt (Scot) Act, 1837, 7 W. 4 & 1 V. c. 41; *e.g.* s. 3, 40 & 41 V. c. 28.

"Sheriff Substitute," quà Small Debt (Scot) Act, 1837, includes, Steward Substitute (s. 37).

"Offence" by Sheriff; *V.* OFFENCE.

"Officer of a Sheriff"; *V.* OFFICER, p. 1327.

**SHERIFF CLERK.** — In Acts relating to Scotland, "Sheriff Clerk" includes Steward Clerk (s. 7, Interp Act, 1889).

*Vf.* 55 & 56 V. c. 17, s. 3; 58 & 59 V. c. 36, s. 7.

**SHERIFFDOM.** — In Acts relating to Scotland, "Sheriffdom" includes a Stewartry (s. 7, Interp Act, 1889). *Vf.* COUNTY: SHIRE.

**SHERRY.** — *V.* "Foreign Wine," sub FOREIGN.

**SHEW.** — *V.* SHOW, and following defs.

**SHEWN.** — *V.* SHOWN.

**SHIFTING CLAUSE.** — *Vh.* Butler's note to Co. Litt. 327a: Vaizey, 1262: *Fleeming v. Howden*; L. R. 1 Sc. & D. App. 372: *Buckhurst Peerage*, 2 App. Ca. 1: Such a clause is to be construed, "if not strictly, at all events not so as to carry it beyond the purpose for which it was designed" (per Turner, L. J., *Langdale v. Briggs*, 8 D. G. M. & G. 391; 26 L. J. Ch. 27: *Vf.* *Hearle v. Hicks*, 8 Bing. 475; 1 Cl. & F. 20; 6 Bligh, N. S. 37: *Leslie v. Rother*, 1894, 2 Ch. 499; 63 L. J. Ch. 617; 71 L. T. 134). *Cp.* FORFEITURE.

SHIFTING LIEN. — *V. IN OR UPON: VU, LIEN.*

SHIFTING USE. — *V. SPRINGING.*

**SHIP.** — “Ship,” technically taken, designates a particular species of SEA-GOING vessel, square-rigged throughout, which carries three masts with tops and yards to each of them. It has also a generic sense, as designating a vessel of burden, irrespective of rig, and without regard to the particular means of locomotion (1 Arn., 5 ed., 18, 19. *Vf, Hill v. Patten*, 8 East, 375; *Forbes v. Aspinall*, 13 East, 323).

Qua Mer Shipping Acts, “‘Ship’ shall include every description of VESSEL used in NAVIGATION, not propelled by oars” (s. 2, Mer Shipping Act, 1854, replaced and re-enacted by s. 742, Mer Shipping Act, 1894). In *Re Ferguson* (40 L. J. Q. B. 110; L. R. 6 Q. B. 291; 19 W. R. 746). Blackburn, J. (pointing out that “include” in that def did not connote an exclusive application), said, — “Whether a ship is propelled with oars or not, she is still a ship. Most small vessels use something of the kind to propel them. The vessels which came over in the Armada, with perhaps a thousand men on board, were rowed by hundreds of slaves. Yet no one could say they were not Ships. I can only suggest that ‘Every vessel that substantially goes to SEA is a Ship.’ I do not mean to say that every little boat that goes a mile or two outside a harbour is a ship, but that where it is really and substantially the business of a vessel to go to SEA, it is a ship. If the absence of oars were the test of a ship, this would take in the case of river steamers which never go to sea. Whenever the vessel is substantially a SEA-GOING vessel, whether it be decked or not decked, it would be a Ship,” within the meaning of the Merchant Shipping Act. Accordingly, in that case it was held that a Coble of 10 tons burthen, 24 feet in length, decked forward only, with two moveable masts and a sail for each, and which coble was accustomed to go 20 miles out to sea, and was usually under sail, but was sometimes propelled by oars, was a “Ship.” But a vessel to be a “Ship” within the def. need not, necessarily, have been to sea. A launched unfinished vessel intended for navigation is a “Ship” (*The Andalusian*, 46 L. J. P. D. & A. 77; 2 P. D. 231; 3 Ib. 182); so is a Coble (*Re Ferguson*, sup: *Ex p. Hutchinson*, W. N. (71) 30); so, a Mud-Hopper, used for dredging purposes, not fitted with oars or other means of propulsion, and generally moved by towing, is a “Ship” (*The Mae*, 51 L. J. P. D. & A. 81; 7 P. D. 126). But a small electric Steam Launch, drawing 3 feet and used for pleasure on the artificial foreshore sea-water lake at Southport, is not such a “Ship” because it is not “USED in Navigation” (*R. v. Southport*, 62 L. J. M. C. 47; nom. *Southport v. Morris*, 1893, 1 Q. B. 359; 68 L. T. 221; 41 W. R. 382; 57 J. P. 231). So, a stationary Beacon, e.g. a Gas Float, is not a “Ship or Boat” within s. 458, Mer Shipping Act, 1854, repld s. 546, Mer Shipping Act, 1894 (*The Gas Float Whitton*, cited WRECK, towards end: *V. SALVAGE*).

*Note:* the Mer Shipping Act, 1854, was, generally speaking, only applicable to BRITISH SHIPS; *Vh, Union Bank of London v. Lenanton*, 47 L. J. C. P. 409; 3 C. P. D. 243: SHIPS AND VESSELS. *See, Chalmers v. Scopenich*, 1892, 1 Q. B. 735; 61 L. J. M. C. 117; "ANY Ship," s. 111, Mer Shipping Act, 1894, includes a Foreign, as well as a British, ship (*R. v. Stewart*, 1899, 1 Q. B. 964; 68 L. Q. B. 582; 80 L. T. 660; following *Hart v. Alexander*, 36 Sc. L. R. 64; *Va, The Mecca*, inf).

A def like that in the Mer Shipping Acts has been provided for "Ship" quâ and by the following Acts; —

Admiralty Court Act, 1861, 24 & 25 V. e. 10; *V. s. 2*;

Factory and Workshop Act, 1901; *V. s. 104*;

Merchant Shipping (Liability of Shipowners) Act, 1898; 61 & 62 V. c. 14; *V. s. 4*.

Quâ Court of Admiralty (Ir) Act, 1867, 30 & 31 V. c. 114, the def is "any description of Vessel used in Navigation, not *exclusively* propelled by oars" (s. 2); whilst in Explosives Act, 1875, 38 & 39 V. c. 17, it is, "every description of Vessel used in *Sea* Navigation, whether propelled by oars *or otherwise*" (s. 108), a def (minus the word "sea") adopted for Petroleum Act, 1871, 34 & 35 V. e. 105 (s. 2).

But quâ P. H. Scotland Act, 1897, the def is wider still, and, there, "‘Ship’ includes, any sailing or steam ship, vessel, or boat, not belonging to Her Majesty or any Foreign Government" (s. 3); quâ Territorial Waters Jurisdiction Act, 1878, 41 & 42 V. c. 73, the def is, "every description of ship, boat, or other floating craft" (s. 7); and, *semble*, the climax is reached by that for Foreign Enlistment Act, 1870, 33 & 34 V. c. 90, where the def of "Ship" includes, "any description of boat, vessel, floating battery, or floating craft; also any description of boat, vessel, or other craft or battery, made to move either on the surface of, or under, water, or sometimes on the surface of and sometimes under water" (s. 30).

Other Stat. Def. — Naval Prize Act, 1864, 27 & 28 V. c. 25, s. 2; Post Office (Offences) Act, 1837, 1 V. c. 36, s. 47; Seaman’s Fund Winding-up Act, 1851, 14 & 15 V. c. 102, s. 2.

"Ship," and also "Vessel," in the County Courts Admiralty Jurisdiction Acts, 1868 and 1869 (31 & 32 V. c. 71; 32 & 33 V. c. 51), have the same meaning as "Ship" in the Merchant Shipping Act, 1854, and do not give jurisdiction to try collisions between barges propelled by oars only (*Everard v. Kendall*, 39 L. J. C. P. 234; L. R. 5 C. P. 428).

#### V. DAMAGE: DAMAGE BY COLLISION.

The Bills of Sale Acts are not *in pari materia* with the Merchant Shipping Acts, and the exemption from Registration of an Assignment of a "Ship or Vessel" under the former Acts (s. 4, Bills of S. Act, 1878), is not confined to such ships or vessels as require registration under the Merchant Shipping Acts (*Union Bank of London v. Lenanton*, 47 L. J. C. P. 409; 3 C. P. D. 243; *Gapp v. Bond*, 19 Q. B. D. 200; 56 L. J.

Q. B. 438; 57 L. T. 437; 35 W. R. 683; 3 Times Rep. 621); *this* shows that the exemption, quâ Bills of Sale, includes a dumb barge propelled by oars.

A Ship may cease to be a Ship, *e.g.* by being converted into a Coal-hulk (*European & Australian Royal Mail Co v. P. & O. Co*, 14 L. T. 704; *et sic*, *The Gas Float Whitton*, sup). *Seemle*, a ship temporarily sunk remains a "Ship" quâ an Insrce against "Collision with any Ship" (*Chandler v. Blogg*, cited COLLISION).

"Ship," by itself, is, probably, equivalent to "Ship and its APPURTENANCES" (per Abbott, C. J., *Gale v. Laurie*, 5 B. & C. 156: per Wills, J., *Re Salmon and Woods*, *Ex p. Gould*, 2 Morr. 137). Whether that is precisely so or not, a liability measured by the value of the "Ship" in question (*Gale v. Laurie*, sup), or a mortgage of a "Ship" (*Re Salmon and Woods*, sup: *Coltman v. Chamberlain*, 59 L. J. Q. B. 563; 25 Q. B. D. 328; 39 W. R. 12), includes everything without which it would not be prudent to send the ship to sea. *e.g.* fishing stores and gear, spare sails, duplicate anchors, steering apparatus, lights for lighting the vessel, &c.

"Ship," quâ a Marine Insrce, includes, the OUTFIT of a Ship, *e.g.* coals, stores, and provisions (*Forbes v. Aspinall*, 13 East, 325: *Brough v. Whitmore*, 4 T. R. 210: *The Glenlivet*, 1893, P. 172). *Cp*, HULL: *V. FURNITURE*.

"Ship and Equipment," quâ Foreign Enlistment Act, 1870, 33 & 34 V. c. 90, includes, "a ship and everything in or belonging to a ship" (s. 30).

"Ship" will sometimes be read as "Owners of the ship," *e.g.* damage to "Ship" by COLLISION, includes damage which the owners have sustained by her detention as well as her injury (*Heard v. Holman*, 34 L. J. C. P. 239; 19 C. B. N. S. 1; 12 L. T. 455; 13 W. R. 745).

"ANY Ship," ss. 4, 5, 6, 7 and 10, Admiralty Court Act, 1861, 24 & 25 V. c. 10. means, any ship anywhere, whether British, Colonial, or Foreign (*The Mecca*, 1895, P. 95; 64 L. J. P. D. & A. 40; 71 L. T. 711; 43 W. R. 209).

"Arrived Ship": *V. ARRIVE*.

"Ship of a FOREIGN State," quâ Mail Ships Act, 1891, 54 & 55 V. c. 31, "means, a ship entitled to sail under the flag of a Foreign State" (s. 9).

"Her Majesty's Ships"; *V. ONE*, towards end: "Any of Her Majesty's Ships of War," *V. 27 & 28 V. c. 25*, s. 2: "Ship of War," *V. 27 & 28 V. c. 24*, ss. 2, 3.

"Ship laden with a GRAIN cargo"; Stat. Def., Mer Shipping Act, 1894, s. 456.

"Ship lost or not lost"; *V. LOST OR NOT LOST*.

"Ship stranded, sunk, or burnt"; *V. BURN: STRANDING*.

"Ship trading"; *V. TRADING*.

"Agreement made in relation to the *Use or Hire of Any Ship*,"



s. 2 (1), 32 & 33 V. c. 51, includes a Charter-Party (*The Alina*, 5 Ex. D. 227), and also a Bill of Lading (*Pugsley v. Ropkins*, 1892, 2 Q. B. 184; 61 L. J. Q. B. 645; 40 W. R. 596; 67 L. T. 369). *V. ADMIRALTY CAUSE.*

*V. BRITISH SHIP: COASTING VESSEL: COLLISION: COMMAND: DISBURSEMENTS: EMIGRANT: FOREIGN: GABBERT: GOOD SHIP: HOME-TRADE SHIP: PASSENGER SHIP: SEA-GOING: SHIPS AND VESSELS: STEAMSHIP: UNSAFE: VESSEL.*

**To SHIP.**— Dues on Timber “shipped or unshipped within the Harbour or River”; held, that to attach a tow-rope to a log of timber, or a number of logs loosely connected, at one of the ends for the purpose of towing, is not to “ship” the Timber; and that to cast off the tow-rope is not to “unship” it: *qy*, whether a Raft of Logs so constructed as to be capable of being navigated, can be said to be “unshipped” when, on reaching its destination, it is taken to pieces and landed (*Clyde Nav. v. Laird*, 8 App. Ca. 658).

*V. SHIPPED: UNSHIPING.*

**SHIP DAMAGE.**— In a Charter-Party between the East India Company and the owners of a ship taken into their service was the following clause, “But nevertheless the said part owners shall not be charged with any sum of money in respect of goods damaged on board the said ship, either in her outward or homeward-bound voyage, but such as shall, by the condition and appearance of the package thereof, or by some other reasonable proof, appear to be Ship Damage”; part of the homeward-bound cargo was damaged in a storm; held, that this was not “Ship Damage,” within the meaning of the clause, which is imputable only to such damage as happens by the insufficiency of the ship, or the neglect of those who have charge of her (*East India Co v. Tod*, 1 Brown P. C. 405).

**SHIP LETTER.**— Quà Post Office (Offences) Act, 1837, 1 V. c. 36, “Ship Letter,” means, “a Letter transmitted inwards or outwards over seas by a Vessel not being a PACKET Boat” (s. 47).

**SHIP MONEY.**— “Ship Money” (s. 2, 16 Car. 1, c. 14) was an imposition charged on the ports, towns, cities, boroughs, and counties, of this realm to provide and furnish ships for the King’s service (Preamble, *ib.*). In *R. v. Hampden* (3 State Trials, 825) it was decided “that when the good and safety of the Kingdome in generall is concerned and the whole Kingdome in danger, the King might by Writ under the Great Seale of England command all the Subjects of this his Kingdome at their charge to provide and furnish such number of Ships with Men Victuals and Munition, and for such time as the King should thinke fit, for the defence and safeguard of the Kingdome from such danger and

perill, and that by Law the King might compell the doing thereof in case of refusall or refractarinesse; and that the King is the sole Judge both of the danger and when and how the same is to be prevented and avoided" (Preamble, 16 Car. 1, c. 14); for "the Dominion of the Sea, as it is an antient and undoubted Right of the Crown of England, so it is the best security of the land; it is impreguable so long as the sea is well guarded. . . . The Wooden Walls are the best walls of this kingdom" (per Coventry, L. K., *R. v. Hampden*, 3 State Trials, 837, 838). But that decision and the prior extrajudicial opinions, "were and are contrary to and against the Laws and Statutes of this Realm, the right of property, the liberties of the Subjects, former resolutions in Parliament, and the Petition of Right made in the third yeare of the Reign of his Majestie that now is" (s. 2, 16 Car. 1, c. 14).

**SHIP PAPERS.** — Quà Naval Prize Act, 1864, 27 & 28 V. c. 25, " 'Ship Papers,' includes, all books, passes, sea briefs, charter-parties, bills of lading, cockets, letters, and other documents and writings, delivered up or found on board a captured ship" (s. 2).

*V.* SHIPPING DOCUMENTS.

**SHIPBUILDING YARD.** — By s. 93 and Sch 4, Part 2 (24), Factory and Workshop Act, 1878, repld Sch 6, Part 2 (25), Factory and Workshop Act, 1901, "Non-Textile Factories and Workshops," includes " 'Shipbuilding Yards,' i.e. any premises in which any ships, boats, or vessels, used in NAVIGATION, are made, finished, or repaired"; "the legislature contemplated by that expression premises in which something like the BUSINESS of building or repairing ships was being carried on, and not that the repair of a single ship should constitute the whole premises where it is being carried on a 'Shipbuilding Yard'" (per Romer, L. J., *Spencer v. Livett*, 69 L. J. Q. B. 341). Accordingly, it was there held that a ship under repair in a DOCK, is not a "FACTORY" within s. 7 (2), Workmen's Comp Act, 1897 (1900, 1 Q. B. 498; 69 L. J. Q. B. 338; 82 L. T. 75; 48 W. R. 323; 64 J. P. 196). *Vf*, subs. 3 of the latter section.

**SHIPMENT.** — *V. Caffin v. Aldridge*, cited CARGO.

"Shipment," "For Shipment," is equivalent to "To be shipped"; *V.* SHIPPED.

"Shipment by Steamer or Steamers," "means, that if a considerable portion of the goods under the contract in question are shipped by steamer within the time, that is to be a Shipment which will satisfy the contract, and one which the purchaser cannot reject because another portion is not shipped in time" (per Mellish, L. J., *Brundt v. Lawrence*, 46 L. J. Q. B. 237; 1 Q. B. D. 344). *Vf*, *Reuter v. Sala*, 4 C. P. D. 239.

Goods sold "for Shipment" to a named place, means a real shipment; therefore, where alkali was sold "for shipment to France," and the buy-

ers directed their carrying vessel to touch at Treport but to carry on the cargo to London, that was merely going through the form of a shipment to France, and was a breach of the contract (*Berk v. Day*, 13 Times Rep. 475).

“Shipment *during the Season*” to Cronstadt; held to mean, “not the average or ordinary time at which the River Neva was closed by ice (if, indeed, it were possible to ascertain it) but, the actual time at which, in that particular year, it was closed” (*Lessing v. Horsley*, 7 Times Rep. 352).

#### V. STEAMSHIP.

**SHIPOWNER.**—Quà Part 7, Mer Shipping Act, 1894, “Shipowner,” includes the MASTER of the ship, and every other person authorized to act as Agent for the OWNER, or entitled to receive the freight, demurrage, or other charges, payable in respect of the ship” (s. 492, adopted from s. 66, 25 & 26 V. c. 63).

**SHIPPED.**—“To be shipped,” means, to be put on board (*Bowes v. Shand*, or *Shand v. Bowes*, 46 L. J. Q. B. 561; 2 App. Ca. 455, distinguishing *Alexander v. Vanderzee*, L. R. 7 C. P. 530; *Wancke v. Wingenren*, 58 L. J. Q. B. 519. *Ih*, Benj. 569).

“Shipped on board”; *V. RECEIVED.*

“Shipped *for Exportation*”; *V. EXPORTATION.*

“Shipped *for Sale*”; *V. Witham v. Fane*, W. N. (81) 79.

“Goods shipped”; *V. Ribble Nav. Co v. Hargreaves*, 25 L. J. C. P. 97; 17 C. B. 385.

#### V. ON BOARD: TO SHIP.

**SHIPPER.**—The “Shipper” of goods, “means, the man who puts the goods into the vessel, with the intention of taking them to their destination” (per Jervis, C. J., *Ribble Nav. Co v. Hargreaves*, 25 L. J. C. P. 99; 17 C. B. 405).

#### SHIPPER'S RISK.—*V. SHIP'S EXPENSE.*

**SHIPPING DOCUMENTS.**—*V. Tamraco v. Lucas*, 30 L. J. Q. B. 234; 31 Ib. 296; 1 B. & S. 185; 3 Ib. 89; *North of England Oil Cake Co v. Archangel Insree*, L. R. 10 Q. B. 254; 44 L. J. Q. B. 121.

“All the Shipping Documents”; *V. Cederberg v. Borries*, cited *ALL*, at end.

#### V. SHIP PAPERS.

#### SHIPPING NECESSARIES.—*V. NECESSARIES: DISBURSEMENTS.*

**SHIPPING PURPOSES.**—Quà Harbours and Passing Tolls, &c. Act, 1861, 24 & 25 V. c. 47, “Shipping Purposes,” includes, “the constructing or doing any work or thing that conduces to the safety or con-

venience of ships, or that facilitates the shipping or unshipping of goods, and the management and superintending the same; and shall also include, the maintenance of any lifeboat, or other means of preserving life in case of shipwreck" (s. 2).

**SHIPPING VALUE.** — In a Marine Insree, "Shipping Value," "includes, not only the cost but, the premiums of insurance" (per Blackburn, J., *Anderson v. Morice*, L. R. 10 C. P. 614).

**SHIPS AND VESSELS.** — The Order in Council of 18th Feb 1854, exempted from compulsory pilotage "*Ships and Vessels* trading to ports between Boulogne and the Baltic on their outward passages"; *British* ships and vessels are alone comprised in that exemption (*The Vesta*, 51 L. J. P. D. & A. 25; 7 P. D. 240).

V. SHIP: VESSEL.

**SHIP'S EXPENSE.** — "Goods to be transhipped and forwarded at Ship's Expense"; *V. Stuart v. British & African Steam Nav. Co*, 32 L. T. 257: SHIP'S RISK: OWNER'S RISK.

**SHIP'S HUSBAND.** — A Ship's Husband — who is frequently but not necessarily a part owner — is an Agent "to do what is necessary to enable the Ship to prosecute her voyage and earn freight" (*Barker v. Highley*, 32 L. J. C. P. 270; 15 C. B. N. S. 27), and generally to act for the owners "in regard to all the affairs of the ship in the Home Port" (Story on Agency, s. 35). *Th*, Abbott, 100 *et seq*: Carver, s. 36.

As such, a Ship's Husband is not a SEAMAN.

**SHIP'S RISK.** — A Charter-Party provided that the cargo should be taken from the shore to the ship "At the Ship's Risk"; in the course of transit of the cargo from the shore to the ship a portion of the cargo was lost, not by the negligence of the shipowner; the Charter-Party contained the usual clause excepting loss occasioned by "Perils of the Sea": in an action against the shipowner to recover the value of the portion of the cargo lost: held, that the meaning of "At the Ship's Risk," was to place the goods during their transit from the shore to the ship in the same position as if they were on board; and that, as the cargo was lost by the Perils of the Sea, the loss came within that exception, and the action could not be maintained (*Nottebohm v. Richter*, 56 L. J. Q. B. 33; 18 Q. B. D. 63; 35 W. R. 300; 3 Times Rep. 30).

*Cp*, Land Risk, sub SEA INSURANCE.

V. SHIP'S EXPENSE: OWNER'S RISK: RISK.

**SHIPWRECK.** — V. WRECK.

**SHIRE.** — V. COUNTY.

Qua Berwickshire Courts Act, 1853, 16 & 17 V. c. 27, "Shire," or "SHERIFFDOM," includes "Commissariat" (s. 1).

**SHOOT.** — To “shoot at” a person, ss. 11 and 12, 9 G. 4, c. 31, repld s. 18, 24 & 25 V. c. 100, may be done by presenting a loaded gun barrel at him and discharging it by striking the percussion cap on it with some hard substance, *e.g.* a pocket knife (*R. v. Coates*, 6 C. & P. 394).

Attempt to shoot; *V.* ATTEMPT.

*Cp*, LOADED ARM.

**SHOOTING.** — *V.* FOWLING: HUNTING.

**SHOP.** — The word “Shop” implies a place where a *retail trade* is carried on; a Blacksmith’s shop is rather a WAREHOUSE than a Shop (*R. v. Chapman*, 7 J. P. 132), so of a Carpenter’s shop (per Alderson, B., *R. v. Sanders*, 9 C. & P. 79).

“In order to constitute a *Shop*, there must be some structure of a more or less permanent character” (per Mellor, J., *Hooper v. Kenshole*, 46 L. J. M. C. 162; 2 Q. B. D. 127: *Vf*, PLACE, p. 1484); it must be “something more than a mere place for sale; it imports a place for storing also, where the commodities admit of storing” (per Mellor, J., *Pope v. Whalley*. 34 L. J. M. C. 80; 6 B. & S. 303: *Va*, *Llandaff Co v. Lyndon*, 30 L. J. M. C. 105; 8 C. B. N. S. 515: *Fearon v. Mitchell*, 41 L. J. M. C. 170; L. R. 7 Q. B. 690: *McHole v. Davies*, 45 L. J. M. C. 30; 1 Q. B. D. 59). These cases were on the phrase “Own Shop” as used in the exception to s. 13, Markets and Fairs Clauses Act, 1847, 10 V. c. 14, and they are here referred to thereon; but they seem of general application. A vessel moored in a canal is not a “Shop” within the exception (*Wiltshire v. Baker*, 31 L. J. M. C. 10, *n*; 5 L. T. 355); but a wooden shed affixed to a house and supported on wooden posts is within it (*Ashworth v. Heyworth*, 10 B. & S. 309; L. R. 4 Q. B. 316; 38 L. J. M. C. 91: *Va*, *Wiltshire v. Willett*, 31 L. J. M. C. 8; 11 C. B. N. S. 237; 5 L. T. 355). *Vf*, MARKET OVERT.

If a photographer takes a private house on the ground floor of which he displays and sells photographs, albums, or such like things, he converts the house into a shop, even though he make no structural alteration in the building (*Wilkinson v. Rogers*, 2 D. G. J. & S. 62; 12 W. R. 119, 284: *V.* CONVERT).

“A Tavern would not come within the definition of ‘Shop,’” in an exception from a covenant requiring a property generally to be used for private houses (per Huddleston, B., *Coombs v. Cook*, Cab. & El. 75: *Vf*; *Hall v. Box*, 18 W. R. 820: Dart, 138: *Cp*, *Savoy Hotel Co v. London Co. Co.* inf).

Conversely, although LICENSED PREMISES “might, for some purposes, in strictness be called a ‘Shop,’ because goods in the shape of beer, spirits, &c, are sold therein by retail, it is not, necessarily, a ‘Shop’ within the House Tax Acts” (per Ld Brampton, *Grant v. Langston*, 69 L. J. P. C. 73, also cited HOUSE, p. 893).

A Market Stall is not a “Shop” within s. 30, Municipal Corporations

(Ir) Act, 1840, 3 & 4 V. c. 108 (*Lovell v. Callaghan*, 1894, 2 I. R. 346).

There is no law in Scotland, — as there certainly is none in England, — whereby, on a Lease of a "Shop," there is an inherent prohibition against the use of it occasionally for the sale of goods by Public AUCTION (*Keith v. Reid*, L. R. 2 Sc. & D. App. 39).

"Shop for the sale of any Goods or Commodities other than Foreign Wine," s. 3, Refreshment Houses Act, 1860, 23 & 24 V. c. 27, includes the premises of a Brewer who has a Spirit Dealer's Retail License, or (probably) who has a Brewer's License to sell beer WHOLESALE (*R. v. Bishop*, 50 J. P. 167).

Quà *Pawnbrokers Act*, 1872, 35 & 36 V. c. 93, " 'Shop,' includes, dwelling-house and warehouse, or other place of business, or place where business is transacted " (s. 5). *Vf*, PAWN.

Quà *Shop Hours Act*, 1892, 55 & 56 V. c. 62, "Shop," "means, Retail and Wholesale shops, markets, stalls, and warehouses, in which Assistants are employed for HIRE; and includes, Licensed PUBLIC HOUSES and REFRESHMENT HOUSES of any kind" (s. 9). Within that def, a Newspaper Stall may, for some purposes, be a "Shop" (*Smith v. Kyle*, 71 L. J. K. B. 16); and an Hotel, even of such a superior character as the Savoy Hotel, London, is a "Public House" (*Savoy Hotel Co v. London Co. Co.*, 1900, 1 Q. B. 665; 69 L. J. Q. B. 274; 82 L. T. 56; 48 W. R. 351; 64 J. P. 262; *Cp*, *Coombs v. Cook*, sup). "IN OR ABOUT a Shop," s. 3, *ib.*, means, in or about a shop or its business; therefore, it is an offence against this section to employ a YOUNG PERSON more than 74 hours a week, whether in a shop or about its business (*Collman v. Roberts*, 1896, 1 Q. B. 457; 65 L. J. M. C. 63; 74 L. T. 198; 44 W. R. 445; 60 J. P. 184).

"Shop," s. 3, 24 & 25 V. c. 97, is not, necessarily, a completed building (*R. v. Manning*, cited BUILDING, p. 228).

"Open Shop"; *V*. KEEP OPEN.

*V*. OFFICE, p. 1325; *Cp*, BEER-HOUSE with BEER-SHOP.

**SHOP FRONT.** — A condition in a letting agreement related to a "Shop Front"; held, that that phrase was not explainable by another document relating to the same premises (*Doe d. Nash v. Birch*, 1 M. & W. 402; 5 L. J. Ex. 185).

"Shop Front," s. 26 (2, 5), Metropolitan Bg Act, 1855, repld s. 73 (3, 8), London Bg Act, 1894; *V*. *St. Mary, Islington v. Goodman*, 58 L. J. M. C. 122; 23 Q. B. D. 154; 61 L. T. 44.

**SHOPKEEPER.** — *V*. MERCHANT.

**SHORE.** — The Shore of the Sea "is that ground that is between the ordinary high-water and low-water mark. This doth, *primâ facie*

and of Common Right, belong to the King, both in the Shore of the SEA and in the Shore of the ARMS of the Sea" (Hale, *De Jure Maris*, ch. 4). *Vf*, Callis, 54. BANK: CREEK: MARETTUM.

"The rule of the Civil Law was, *Est autem littus maris quatenus hybernus fluctus maximus excurrit*. This is certainly not the doctrine of our law. All the authorities concur in the conclusion that the right (of the Crown to the Sea-shore) is confined to what is covered by 'Ordinary' tides. By *hybernus fluctus maximus* is clearly meant Extraordinary high tides, though, speaking with physical accuracy, the winter tide is not, in general, the highest. Land covered only by these extraordinary tides is not what is meant by the Sea Shore" (per Cranworth, C., *A-G. v. Chambers*, 23 L. J. Ch. 666; 4 D. G. M. & G. 206; 2 W. R. 636). The phrase "Ordinary Tides," in this connection, does not include the Spring tides at the Equinox, although happening in the usual order of nature; it means, those tides which are of common occurrence (per Alderson, B., and Maule, J. *lb.*).

"Ordinary Tides, or Nepe Tides," are those "which happen between the full and change of the Moon; and this is that which is properly *Littus maris*, sometimes called MARETTUM, sometimes WARETTUM" (Hale, *De Jure Maris*, ch. 6), and the precise meaning of that rule is, that the *medium filum* of all tides throughout the year, — including the Spring tides and the ordinary Equinoctial tides, — gives the limit, in the absence of usage, to what is the Sea Shore (*A-G. v. Chambers*, sup: *Low v. Govett*, 1 L. J. K. B. 224; 3 B. & Ad. 863). *Vf*, Hall on the Sea Shore, 8 *et seq.*

*Cp*, FORESHORE.

"Shore," denotes that specific portion of the Soil by which the Sea is confined to certain limits. That term is wholly inapplicable to the grant of a Privilege or Easement; it, of necessity, comprehends the soil itself. . . . The Crown, by the grant of the 'Sea Shore,' would convey, not that which at the time of the grant is between the high and low water marks, but that which from time to time shall be between these two termini. Where the grantee has a freehold in that which the Crown grants, his freehold shifts as the Sea recedes or encroaches" (per Bayley, J., *Scrutton v. Brown*, 4 B. & C. 496, 498).

"Shore," quâ Thames Conservancy Act, 1894, "means, the shores of the Thames so far as the tide flows and re-flows between high and low water marks at ordinary tides" (s. 3). *F. BED.*

In the absence of evidence to the contrary, the Shore is EXTRA-ROCHIAL (*R. v. Musson*, 27 L. J. M. C. 100; 8 E. & B. 900). Modern usage is admissible to show that it is parcel of an adjoining MANOR (*Beaufort v. Swansea*, 3 Ex. 413).

"Shore RISK"; *V. INTERIOR.*

*V. KELP-SHORE: ON SHORE: ON THE SHORE: STRAND.*

**SHORT BLAST.**—“Short Blast,” means, “a blast of about one second’s duration” (Art. 28, Regns for Preventing Collisions at Sea, 1897); a “Prolonged Blast” is “a blast of from 4 to 6 seconds’ duration” (Art. 15, *Ib.*).

**SHORT INTEREST.**—In a Marine Insrce, “‘Short Interest’ means, no more than a Short Profit on the Cargo to the extent of the whole sum insured” (per Ellenborough, C. J., *Eyre v. Glover*, 16 East, 220).

**SHORT NOTICE.**—“‘Short Notice of Trial,’ in any Order or Consent, shall be taken to mean, 4 days” (s. 103, Com. Law Pro. Amendment Act, 1r., 1853, 16 & 17 V. c. 113); a def of general acceptation. So, quâ R. S. C., “‘Short Notice of Trial’ shall be 4 days notice, unless otherwise ordered” (R. 14, Ord. 36): 10 days is the ordinary notice (*Ib.*), except under Ord. 18 *a*, when the notice is 21 days (R. 2).

**SHORT TITLE.**—It is believed that the modern practice of giving a short descriptive title to an Act of Parliament began with the Clauses Consolidation Acts of 1845. The Short Titles of existing Acts prior thereto, and of subsequent Acts which have not in themselves a short title, are provided by The Short Titles Act, 1896.

**SHOW.**—“Show his Ticket”; *V. DELIVER.*

**SHOW A LIGHT.**—To “show from her stern . . . a White, or Flare-up, Light,” by a Ship which is being OVERTAKEN, Art. 10, Regns for Preventing Collisions at Sea, 1897, connotes that the flashing of a light (a thing done on a sudden) is sufficient; but a fixed light may also be sufficient (per Hannen, P., *The Stakesby*, 59 L. J. P. D. & A. 72; 15 P. D. 166; 63 L. T. 115; 39 W. R. 80; *Soth, The Breadalbane*, 7 P. D. 186; 46 L. T. 204, *The Pacific*, 53 L. J. P. D. & A. 67; 9 P. D. 124, and *The Imbro*, 58 L. J. P. D. & A. 49; 14 P. D. 73; 60 L. T. 936; 37 W. R. 559). If a Flash Light is used, “one short exhibition is not sufficient for the safety of the vessels; the light should be shown from time to time so long as the vessel in which it is shown continues to be an Overtaken one” (per Hannen, P., *The Essquibo*, 13 P. D. 53; 58 L. T. 596). “Where a Fixed Light is permissible, care must be taken that it shall not be visible over the space where the side lights can be seen” (Abbott, 14 ed., 931, citing *The Main*, cited OVERTAKEN: *The Imbro*, sup: *The Palinurus*, 57 L. J. P. D. & A. 21; 13 P. D. 14; 58 L. T. 533).

**SHOW CAUSE.**—Where a party has to “Show Cause,” that, by necessary implication, allows the other side to answer (per Brett, L. J., *Davis v. Spence*, 1 C. P. D. 721; *Girvin v. Grepe*, 49 L. J. Ch. 63; 13 Ch. D. 174; *Sethle*, for cases to the contrary).

“Cause Shown”; *V. CAUSE: SHOWN.*



**SHOW OF BUSINESS.** — *V.* OUTWARD MARK.

**SHOW OF HANDS.** — *V.* VOTE.

**SHOWN.** — *Primâ facie* evidence, — that a child is “not shown” to be unfit to be vaccinated, &c, s. 31, 30 & 31 *V. c.* 84, — is given by proving that there has been no Notification of the vaccination (*Over v. Harwood*, 1900, 1 *Q. B.* 803; 69 *L. J. Q. B.* 272; 48 *W. R.* 608; 64 *J. P.* 326).

*V.* SHOW CAUSE.

**SHRIMPS.** — *V.* SEA FISH.

**SI CONTINGAT.** — *V.* IR.

**SICA.** — “‘Sica, Sicha,’ a DITCH” (*Jacob*).

**SICH.** — “Is a little current of water which is dry in summer; a water furrow or gutter” (*Jacob*).

**SICK.** — A Bequest for “Sick, Aged, and Impotent Persons,” held to indicate that Hospital, not Educational, purposes were intended (*A-G. v. Northumberland*, 5 *Times Rep.* 237, 719).

Persons “not under 50 years of age” are “aged” within 43 *Eliz. c.* 4 (*Re Wall, Pomeroy v. Willway*, 42 *Ch. D.* 510; 59 *L. J. Ch.* 172; 61 *L. T.* 357). *Vf*, *Thompson v. Corby*, 27 *Bea.* 649; 8 *W. R.* 267: *Re Dudgeon*, 74 *L. T.* 613: *Browne v. King*, 17 *L. R. Ir.* 454.

A bequest for pensioning “Old and Worn-out Clerks” of a firm, is a good CHARITY; it comes within both of the words “aged” and “impotent” in 43 *Eliz. c.* 4 (*Re Gosling*, 48 *W. R.* 300; 16 *Times Rep.* 152; *W. N.* (1900) 15).

**SICKNESS.** — “Sickness,” means, disease (per Campbell, C. J., *R. v. Huddersfield*, 26 *L. J. M. C.* 171); therefore, pregnancy is not, of itself, “Sickness” within s. 4, Poor Removal Act, 1846, 9 & 10 *V. c.* 66 (*S. C.* 26 *L. J. M. C.* 169; 7 *E. & B.* 794); but a woman may be “ill” from pregnancy, *V.* ILL.

Incurable Blindness is such a “Sickness” (*R. v. Bucknell*, 3 *E. & B.* 587; 2 *W. R.* 427; 23 *L. T. O. S.* 142); but is Lunacy such a “Sickness”? *Vth*, *R. v. Manchester*, 26 *L. J. M. C.* 1; 6 *E. & B.* 919.

Lunacy is “Sickness” within the relief clause in the Rules of a FRIENDLY SOCIETY (*Burton v. Eyden*, 42 *L. J. M. C.* 115; *L. R.* 8 *Q. B.* 295; 37 *J. P.* 693, in *whc* Archibald, J., said, “There can be no doubt that Insanity is a species of Sickness”: *Va*, *R. v. Swindon*, 42 *J. P.* 407).

Inability to work from mere old age, is not “Sickness” (*Dunkley v. Harrison*, 51 *J. P.* 227).

"Sickness, or other SUFFICIENT CAUSE," enabling a County Court Judge to suspend or stay judgment, order, or execution, s. 153, Co. Co. Act, 1888, connotes that the "other Sufficient Cause" must be "an external cause which would, for instance, prevent the debtor from exercising his industry" (per Wills, J., *Attenborough v. Henschell*, 1895, 1 Q. B. 833; 64 L. J. Q. B. 255; 72 L. T. 192; 43 W. R. 283; 59 J. P. 150); that case decides that there must be something more than a mere inability to pay.

"Permanent Sickness"; *V. PERMANENT.*

*I. DISEASE: ILLNESS: CAUSED BY: UNSOUND MIND: 11 Ency. 549-551.*

**SIDE.** — "No doubt, in a certain context, the word 'Side' might be so used as to be shown, by that context, to be contra-distinguished from the top, or bottom, or end, of a subject of quadrilateral or any other figure. But for this purpose a determining context is necessary. In the absence of such a context, it is accurate, both in scientific and in ordinary language, to say that a quadrilateral table has four sides. In the (Communion) Rubrics not only is there no context to exclude the application of that term to the shorter as well as the longer sides, but the effect of the context is just the reverse" (per Cairns, C., delivering judgment of P. C., *Ridsdale v. Clifton*, 2 P. D. 341; 46 L. J. P. C. 60, 61; 36 L. T. 865; *Sythe, Read v. Lincoln, Bp.*, cited NORTH SIDE).

"The Side or Sides of any *Carriage-way or Cartway*," s. 51, 27 & 28 V. c. 101, means, any land forming part of the Highway, though not part of the metalled road; but does not include land not part of the highway, though by the side of the road (*Easton v. Richmond*, 41 L. J. M. C. 25; L. R. 7 Q. B. 69). A similar construction was given to "Sides" of a Turnpike Road in s. 5, 9 G. 4, c. 77 (*Beckett v. Upton*, 5 E. & B. 629; 25 L. J. Q. B. 70; 4 W. R. 52; 26 L. T. O. S. 88; 19 J. P. 741).

To speak of a thing being on the "Side" of some other thing, "contemplates some degree of proximity" (per Fry, L. J., *Ravensthorpe v. Hinckeliffe*, 59 L. J. M. C. 22; 24 Q. B. D. 168). "It is doubtful, to say no more, whether a building 300 or 400 yards distant from another building can be said to be on one *side* of it," within s. 3, 51 & 52 V. c. 52, which prohibits the bringing forward of a building beyond the FRONT MAIN WALL of the house or building "on either side" of it (*Ib.*); but a finding by Justices that a house 64 feet from another house is on the "side" of that other, will not be interfered with (*Warren v. Mustard*, 61 L. J. M. C. 18; 66 L. T. 26; 56 J. P. 502), yet, *semble*, a similar decision by a Local Board of Health would be reversed (*R. v. Ormesby*, 43 W. R. 96). *Vf, A-G. v. Edwards*, 1891, 1 Ch. 194; 63 L. T. 639.

Building "erected on the side of a NEW STREET," s. 85, Metrop Man.

Act, 1862, includes a building erected at a corner formed by the junction of an old and a new street, although its main entrance is in the old street (*London Co. Co. v. Lawrence*, 1893, 2 Q. B. 228; 62 L. J. M. C. 176; 69 L. T. 344; 41 W. R. 688; 57 J. P. 617). *Vf*, IN.

“This side” of; *V. GIBRALTAR*.

“Relations on my Side”; *V. RELATIONS*.

**SIDELINGS.** — Are “meers betwixt or on the sides of ridges of arable land” (Jacob).

**SIDING.** — “Siding, or Branch Railway, not belonging to the Co,” s. 4, Ry and Canal Traffic Act, 1894; *V. North Staffordshire Ry v. Salt Union*, 10 Ry & Can Traffic Ca. 161; *Salt Union v. North Staffordshire Ry*, Ib. 179; *Portway v. Colne Valley, &c, Ry*, Ib. 211; *Pidcock v. Manchester, S. & L. Ry*, 9 Ib. 45.

**SIDEWAY.** — *V. CAUSEWAY*.

**SIGHT.** — *V. AT SIGHT: PRESENCE*.

“Loss of Sight in Both Eyes,” in an Accident Insree. means, totally blind; therefore, where the insured was a one-eyed man when the insree was effected, and the insurer by himself or his agent knew of that fact, and after the insree the insured loses by accident the sight of his only eye, he is entitled to recover the amount payable under the policy as on the “loss of sight in both eyes” (*Bawden v. London, &c, Assree*, 1892, 2 Q. B. 534; 61 L. J. Q. B. 792).

**SIGN.** — *V. SKY SIGN*.

**SIGNED: SIGNATURE.** — Speaking generally, a Signature is the writing, or otherwise affixing, a person’s name, or a mark to represent his name, by himself or by his authority (*R. v. Kent Jus.*, 42 L. J. M. C. 112; L. R. 8 Q. B. 305), with the intention of authenticating a document as being that of, or as binding on, the person whose name or mark is so written or affixed. In *Morton v. Copeland* (16 C. B. 535), Maule, J., said, “Signature, does not, necessarily, mean writing a person’s Christian and surname, but any mark which identifies it as the act of the party,” but the reporter adds in a note, “provided it be proved or admitted to be genuine, and be the accustomed mode of signature of the party.”

Without more, “to sign” is not the same as “to SUBSCRIBE.”

The minute requisite of a Signature will vary according to the nature of the document to which it is affixed; *e.g.* —

1. Deeds;
2. Wills;
3. Contracts;
4. Bills of Exchange and Promissory Notes;

5. Solicitors' Bills;
6. Electioneering Paper
7. Judge's Orders and Legal Proceedings;
8. Office Copies:—

and "in every case where a statute requires a particular document to be signed by a particular person, it must be a pure question on the construction of the statute whether the signature by an AGENT is sufficient" (per Bowen, L. J., *Re Whitley*, 55 L. J. Ch. 541; 32 Ch. D. 337; 54 L. T. 912; 34 W. R. 505: *Inf*, inf).

1. *Deeds*. — At common law "a Deed may be good, albeit the party that doth seal it doth never set his name or his mark to it, so as it be duly sealed and delivered" (Touch. 60). Since the Statute of Frauds (29 Car. 2, c. 3), however, it has been a question whether a deed is within its provisions as being an "agreement" and therefore required to be signed. Blackstone thinks it is (2 Com. 306), and herein he is cited and followed by Hilliard in his Edition of the Touchstone (*n.* 2, p. 56). Mr. Preston, on the contrary, thinks that a Deed is not within the Statute and does not require signing (Touch. *n.* 24, Preston's Ed.). In *Cooch v. Goodman* (11 L. J. Q. B. 225; 2 Q. B. 580), the point was discussed but not decided; and in *Aveline v. Whisson* (4 M. & G. 801; 12 L. J. C. P. 58), the point was conceded in the negative without argument. This view was strengthened in *Cherry v. Heming* (19 L. J. Ex. 63), where all the judges (Parke, Alderson, Rolfe, and Platt) gave it as their opinion (*obiter*) that a Deed is not within the Statute and does not require signing. Thus the weight of authority is against the necessity of signature to a Deed; still, "it would certainly be most unwise to raise the question by leaving any Deed sealed and delivered, but not signed" (Wms. R. P. 127). If it should ultimately be held that a Deed generally must be signed, then, as also in all those particular cases where signature is expressly required, it would seem that the kind of signature may be the same as that required to Wills.

2. *Wills*. — S. 9, Wills Act, 1837, requires that all Wills "shall be signed at the Foot or end thereof by the testator or by some other person in his presence and by his direction." Perhaps the most common error as regards the requisites of this signature is the tracing a former signature with a dry pen. This generally happens where there have been alterations made in a Will since its execution and where accordingly a re-execution of the Will is necessary, but "it cannot be too well understood that tracing with a dry pen is not equivalent to a signature" (per Cresswell, J. O., *Re Cunningham*, 29 L. J. P. M. & A. 71). It will be observed that a dry pen adds nothing to a document, makes no mark or sign upon it: hence its inutility. But when there is a mark or sign (or, *semble*, a SEAL, per Bayley, B., *Doe d. Phillips v. Evans*, 2 L. J. Ex. 183: *St*, *Re Byrd*, inf), made to a Will, which mark or sign was intended by the testator to be, or to stand for, his name, then

the Court is not nice as to the kind of mark or sign which is employed. "Whether the mark is made by a pen, or some other instrument cannot make any difference"; and therefore a stamped impression of a testator's signature is sufficient (*Jenkyns v. Gaisford*, 32 L. J. P. M. & A. 122; 3 Sw. & Tr. 93; 11 W. R. 854). The mark of the testator (and, it seems, whether he can or cannot write) is a sufficient signature even though his name is not placed against the mark (*Re Field*, 3 Curt. 752; *Baker v. Dening*, 8 A. & E. 94; nom. *Taylor v. Dening*, 2 Jur. 775; and, particularly, *Re Bryce*, 2 Curt. 325), or even where a wrong name is written against the mark; for in that case "the execution is perfect as soon as the mark is affixed," and therefore, "it matters not what some one else may have written against the mark" (per Cresswell, J. O., *Re Douse*, 31 L. J. P. M. & A. 172: *Va*, *Re Clarke*, 27 Ib. 18). So, if a testator, or witness, writes a name, *not his or her real name*, but intended to represent that real name, the signature will be good. Thus where a woman whose name was "Glover" signed her name as "Reed" (that being the name of her deceased first husband) the signature was held good (*Re Glover*, 5 Notes of Ca. 553; 11 Jur. 1022); and signature in an assumed name is good (*Re Redding*, 2 Rob. Ecc. 339; 14 Jur. 1052). But errors of this kind appear only to be good when done by mistake; and where an attesting witness signed her husband's name instead of her own, it having been desired that the Will should have the appearance of being attested by the husband, the signature was held invalid (*Pryor v. Pryor*, 29 L. J. P. M. & A. 114; *Re Leverington*, 55 L. J. P. D. & A. 62; 11 P. D. 80). *Vf*, SUBSCRIBE: PRESENCE.

Signature by *initials* is good (*Re Wingrove*, 15 Jur. 91; *Re Savory*, Ib. 1042; *Re Hinds*, 16 Ib. 1161). Affixing a Seal, it has been said, is not a signing (*Re Byrd*, 3 Curt. 117; *Vf*, 1 Jarm. 78; *Sr*, per Bayley, B., *Doe d. Phillips v. Evans*, sup). The hand of a testator may be guided if he is unable from illness to do without that aid (*Wilson v. Beddard*, 12 Sim. 28); but the ceremony of execution must be complete whilst the testator is living, for where an intending testator tries to sign his Will, but fails from weakness, the court has no power to decree probate (*Re Wilson*, 2 Curt. 854). *Vf*, 1 Jarm. 82, 78, 79; Wms. Exs. 78; and as to what is an acknowledgment of a testator's signature to a Will, *V*. ACKNOWLEDGMENT.

3. *Contracts*. — At common law a Contract did not require any writing; but by the Statute of Frauds a great many Contracts must be in writing and "signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized," a provision which, quâ s. 17 of the Statute, is replaced in similar terms by s. 4. Sale of Goods Act, 1893. Observe, first, who is to sign, — "the party to be charged"; the signature of the person seeking to enforce the contract is not necessary (*Laythorp v. Bryant*, 2 Bing. N. C. 735; *Vth*, Sug. V. & P. 129); therefore, a written signed proposal with the necessary details to support a Contract, accepted

by word of mouth, may be enforced by the acceptor against the proposer, though an agreement based on the proposal could not be enforced against such an acceptor (*Warner v. Willington*, 3 Drew. 523; 25 L. J. Ch. 662; *Smith v. Neale*, 2 C. B. N. S. 67; 26 L. J. C. P. 143; 29 L. T. O. S. 93; *Liverpool Banking Co v. Eccles*, 28 L. J. Ex. 122; *Peek v. North Staffordshire Ry*, 29 L. J. Q. B. 97). As to the character of the requisite signature to a contract; — In the first place, all that has been said as to the signature of a Will by a stamped impression, or a mark, or initials, or (it seems) a wrong name, is equally applicable to the signature of a Contract under the Statute of Frauds (*V.* cases collected Add. C. 38, 39: Leake, 234; but “whether a signature by initials would suffice, seems not to have been decided expressly,” Benj. 220). But in a Contract, the latitude as to the manner of signing is carried much farther than in a Will. The signature may appear at the top or bottom or in the body of the contract (*Knight v. Crockford*, 1 Esp. 189; *Sims v. Landray*, 1894, 2 Ch. 318; 63 L. J. Ch. 535; 70 L. T. 530; 42 W. R. 621); and a learned judge has even stated the rule thus widely, — “If the name appears on the contract and be written by the party to be bound, or by his authority, and issued *or accepted* by him, or intended by him as the memorandum of a contract, that is sufficient” (per Blackburn, J., *Durrell v. Evans*, 31 L. J. Ex. 345; 1 H. & C. 174, in *whc* the previous cases hereon were collected: *Sethc, Murphy v. Böese*, L. R. 10 Ex. 126; 44 L. J. Ex. 40; *Va*, Rosc. N. P. 316: Dart, 269–272). Thus, in *Schneider v. Norris* (2 M. & S. 286, following *Saunderson v. Jackson*, 2 B. & P. 238), the name of the seller was printed on a bill of parcels, but he wrote thereon the name of the purchaser, and that was held to be an adoption by the seller of his own printed name, and a signature within the Statute of Frauds. Assuming that case to be the law then, *à fortiori*, tracing a former signature with a dry pen, though not a sufficient signing of a Will, would be a sufficient signature to a Contract. *Schneider v. Norris* has, however, not passed entirely unquestioned, for in *Jenkyns v. Gaisford* (sup), Cresswell, J. O., said, “I always had some scruple about that case.” Still *Schneider v. Norris* was repeatedly cited as an authority in *Durrell v. Evans* (sup), and was followed in *Tourret v. Cripps* (48 L. J. Ch. 567; 27 W. R. 706) and in *Evans v. Hoare* (1892, 1 Q. B. 593; 61 L. J. Q. B. 470; 66 L. T. 345; 40 W. R. 442): *Va*, *Jones v. Victoria Dock Co*, 46 L. J. Q. B. 219; 2 Q. B. D. 314: *Hucklesby v. Hook*, W. N. (1900) 45: *Bleakley v. Smith*, 11 Sim. 150: Blackb. 66–72; Benj. ch. 7: NOTE.

Generally speaking, all contractual documents may be signed by a duly authorized AGENT (per Blackburn, J., *R. v. Kent Jus.*, 42 L. J. M. C. 112; L. R. 8 Q. B. 305; per Bowen, L. J., *Re Whitley*, sup: *Browne v. Kinsella*, 24 L. R. Ir. 98).

An Auctioneer is Agent to sign for Vendor and Purchaser, quâ the Statute of Frauds (*Emmerson v. Heelis*, 2 Taunt. 38; *Glengall v. Bar-*

ward, 6 L. J. Ch. 25: *Sims v. Landray*, sup, on *wher*, *Potter v. Peters*, 64 L. J. Ch. 359. 360; 72 L. T. 624); but the authority does not extend to the Clerk of the Auctioneer, and even the Auctioneer must sign not later than at the end of the auction (*Bell v. Balls*, 1897, 1 Ch. 663; 66 L. J. Ch. 397; 76 L. T. 254; 45 W. R. 378). So, documents under the Companies Act, 1862, do not need a personal signature, and therefore a Memorandum of Association may be signed by an Agent, who need not be authorized by deed (*Re Whitley*, sup). So, of a Building Socy's INSTRUMENT OF DISSOLUTION (*Dennison v. Jeffs*, 1896, 1 Ch. 611; 65 L. J. Ch. 435; 74 L. T. 270; 44 W. R. 476; disapproving *Second Edinburgh Socy v. Aitken*, 19 Sess. Ca. 4th Ser. 603; 29 Sc. L. R. 456).  
*Vf*, IN WRITING.

But an ACKNOWLEDGMENT under Ld Tenterden's Act, 9 G. 4, c. 14, to take a case out of the Statute of Limitations, must be signed by the person himself (*Hyde v. Johnson*, 5 L. J. C. P. 291; 3 Sc. 289; 2 Bing. N. C. 776: *Williams v. Mason*, 21 W. R. 386): *Va*, HIMSELF: HIS HAND: OWN CONSENT: *Toms v. Cuming*, inf. sub "*Electioneering Papers*."

As to when the individual signature of a Partner will bind his Firm; *V. Brogden v. Metropolitan Ry*, 2 App. Ca. 666.

4. *Bills of Ex. and Promissory Notes*. — "No person is liable as Drawer, Indorser, or Acceptor, of a *Bill* who has not signed it as such: provided that

"(1) Where a person signs a Bill in a Trade or Assumed name, he is liable thereon as if he had signed it in his own name:

"(2) The signature of the name of a Firm, is equivalent to the signature by the person so signing of the names of all persons liable as partners in that Firm"

(s. 23. Bills of Ex. Act, 1882); and so of the Maker or Indorser of a Promissory Note (s. 89, *Ib.*).

"(1) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

"(2) In the Case of a Corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal" (s. 91, *Ib.*).

As to signature PER PROCURATION; *V. s.* 25, *Ib.*; and by an Agent. s. 26.

5. *Solicitor's Bills, &c.* — By s. 37, 6 & 7 V. c. 73, no action can be brought on a Solicitor's Bill until one month after its delivery. "and which Bill shall either be *subscribed* with the *proper hand* of such Solicitor (or in case of a partnership, by any of the partners, either with his own name or with the name or style of such partnership), or of the executor, administrator, or assignee, of such Solicitor, or be enclosed in or accom-

panied by a letter, subscribed in like manner, referring to such Bill"; *17th, Re Bush*, 14 L. J. Ch. 6; 8 Bea. 66; *Pilgrim v. Hirschfeld*, 12 W. R. 51; *Penley v. Anstruther*, 52 L. J. Ch. 367; *Ingle v. M. Cutchan*, 53 L. J. Q. B. 311; 12 Q. B. D. 518.

The doctrine of *Durrell v. Evans*, sup, p. 1882, as expressed in *Evans v. Hoare*, sup, is applicable to Agreements IN WRITING relating to a Solr's Costs (*Re Frappe*, 62 L. J. Ch. 477; 1893, 2 Ch. 284; 68 L. T. 558; 41 W. R. 417).

6. *Electioneering Papers*. — Signatures to Electioneering Papers have a few special requirements distinct from other classes of signatures. In the first place, an Objector must sign the Objection HIMSELF, and not by an Agent (*Toms v. Cuming*, 7 M. & G. 88; 14 L. J. C. P. 67; *Lewis v. Roberts*, 31 L. J. C. P. 51; 11 C. B. N. S. 23); but a Claim to vote need not be personally signed by the Claimant (*Davies v. Hopkins*, 27 L. J. C. P. 6; *Brown v. Tombs*, 1891, 1 Q. B. 253; 60 L. J. Q. B. 38; 64 L. T. 114; 55 J. P. 359). So, the signature to a Voting Paper, *semble*, need not be a personal act, for in *R. v. Avery* (21 L. J. Q. B. 430), Campbell, C. J., said, "the burgess is to sign, or to have another to write his name for him in the shape of a signature." This was, however, an obiter dictum; the point decided in that case being that where a party is required merely to sign his name to an electioneering paper, his usual mode of signature is sufficient. If, however, there were only an initial for the *Surname*, this would seem not enough; for the object of this kind of signature is not merely to authenticate the document but also to give strangers notice who is the party by whom the signature is made. Accordingly, in the days of open voting, a voting paper had to be signed by the voter's *correct name*; with this exception, if the Burgess Roll mentioned him by a wrong name he might vote in the name by which he was therein mentioned (*R. v. Thwaites*, 22 L. J. Q. B. 238). And so, if a mark be used to sign an Electioneering Paper, it would seem that there must be the correct name of the person written against the mark; for a mere mark would not, *semble*, complete such a signature, as it would if the document were a Will or Contract. For the same reason the legibility of the signature, though wholly immaterial in a Will or Contract if it can be in any manner identified, may become an objection to a signature to an Electioneering Paper; but if such a signature is illegible by itself, but can be made out by reference to the register of voters or other extraneous public document, it will be sufficient (*Trotter v. Walker*, 32 L. J. C. P. 60). It appears, however, from that case that if the illegibility were purposely in order to deceive, or if it were an utter illegibility, the signature to an electioneering paper would not be sufficient. The rule laid down in *Jenkyns v. Gaisford*, sup (*i.e.* that a stamped impression of a signature to a Will is sufficient) has been extended to signatures of electioneering papers (*Bennett v. Brumfitt*, 37 L. J. C. P. 25); but, *semble*, an Objector must himself, with his own hand,



impress his signature (*Toms v. Cuming*, sup). Where the CHRISTIAN NAME is required to be given, it is not necessary that it should be written at full length; a well known contraction will be sufficient (*R. v. Bradley*, 30 L. J. Q. B. 180). In *the Wightman and Hill, J.J.*, said (*obiter*) that a mere initial for the Christian name would not be sufficient; but the contrary was held in *Bowden v. Besley* (57 L. J. Q. B. 473; 21 Q. B. D. 309; 59 L. T. 219; 36 W. R. 889; 52 J. P. 536), if, as in that case, the person signing is sufficiently identified thereby: *Vf*, NAME. Where an Objector delivers to Overseers a list of the persons he objects to (instead of giving a separate notice in respect of each person), the list is well signed though the signature of the Objector thereon precedes, instead of following, the list of names (*Sutton v. Wade*, 1891, 1 Q. B. 269; 60 L. J. Q. B. 28; 63 L. T. 588; 39 W. R. 223).

A Revised List of Voters is "signed" by the Revising Barrister, the Clerk of the Peace, or Town Clerk (6 V. c. 18, ss. 41, 47, 48), by the official manually writing his own name (per Byles, J., *Brumfitt v. Bremner*, 30 L. J. C. P. 33; 9 C. B. N. S. 1).

7. *Judge's Orders and Legal Proceedings.*—A Judge's Order is well signed by a stamped similitude of the Judge's signature being impressed thereon by his clerk at chambers (*Blades v. Lawrence*, 43 L. J. Q. B. 133; L. R. 9 Q. B. 374).

But Particulars in a County Court Action are not "signed" by the Plaintiff's Solicitor, so as to entitle him to the costs thereof, if his name is only lithographed thereon (*R. v. Fitzroy-Couper*, 59 L. J. Q. B. 26; 24 Q. B. D. 60; 38 W. R. 207; in the Appeal Court, Esher, M. R., was for reversing this decision, but Fry, L. J., agreed with it, and so the appeal fell through, 59 L. J. Q. B. 265; 24 Q. B. D. 533; 38 W. R. 408; 62 L. T. 583); but his name written by his authorized Clerk suffices (*France v. Dutton*, 1891, 2 Q. B. 208; 60 L. J. Q. B. 488; 39 W. R. 716; 64 L. T. 793; *Va*, R. 10 a, Ord. 6, Co. Co. Rules, 1892).

Notice of a Poor Rate Appeal is to be signed by the Appellant or his "Attorney on his behalf," Poor Rate Act, 1801, 41 G. 3, c. 23, s. 4; that is complied with if the Notice be signed, in the Appellant's name and with his authority, by his Solr's Clerk (*R. v. Kent Jus.*, 42 L. J. M. C. 112; L. R. 8 Q. B. 305; 21 W. R. 635; 37 J. P. 644). *Seemle*, that a Notice is not a Condition Precedent to Quarter Sessions entering and respiting the Appeal (*R. v. De Grey*, 1900, 1 Q. B. 521; 69 L. J. Q. B. 341; 82 L. T. 324; 48 W. R. 348; 64 J. P. 375).

The signature of a Town Clerk to a Notice under s. 266. P. H. Act, 1875, is well made by its being printed thereon (*Brydges v. Dix*, 7 Times Rep. 215, in *whc*, *R. v. Fitzroy-Couper*, sup, was commented on as being only of special application).

8. *Office Copies.*—By s. 45, Insolvent Debtor's Act (1 G. 4, c. 119), it was provided that proceedings thereunder should be proved by "a true copy, signed by the Officer certifying the same to be a true copy"; and

it was held, upon a liberal construction, that such a requirement would be satisfied by the office copy being vouched by the seal of the court (per Bayley, B., *Doe d. Phillips v. Evans*, 2 L. J. Ex. 181, 183).

“Last Annual Balance Sheet, signed”; *V. LAST.*

**SIGNED, ENTERED, OR OTHERWISE PERFECTED.**—

This phrase in R. 130, Bankry Rules, means, that the time for appealing a Bankry Order begins as soon as the Order becomes operative (*Re Helsby*, 1894, 1 Q. B. 742; 63 L. J. Q. B. 265; 70 L. T. 144; 42 W. R. 218).

**SIGNED, SEALED, AND DELIVERED.**— A *Will* signed and sealed by the testator, duly attested, and declared by the testator to be his Will, is a good execution of a Power requiring him to execute it by an Instrument in Writing, “signed, sealed, and delivered,” by him (*Smith v. Adkins*, 41 L. J. Ch. 628; L. R. 14 Eq. 402). *V. DELIVERY.*

A *Policy* “signed, sealed, and delivered.” is complete and binding as against the party executing it, though, in fact, it remains in his possession, unless there is some particular act required to be done by the other party to declare his adoption of it; and it is not necessary that the assured should formally accept or take away the Policy in order to make the Delivery complete (*Xenos v. Wickham*, 36 L. J. C. P. 313; L. R. 2 H. L. 296). *Vf, Standing v. Bowring*, 31 Ch. D. 282; *Babington v. O'Connor*, 20 L. R. Ir. 254.

**SILENCE.**— Mere silence, in the negotiation of a contract, is not the same as to SUPPRESS when there is a duty to disclose, which latter would avoid the contract (per Chitty, J., *Turner v. Green*, 64 L. J. Ch. 539; 1895, 2 Ch. 205, citing per Campbell, C., *Walters v. Morgan*, 3 D. G. F. & J. 718). *Vf, M'Kenzie v. British Linen Co*, 6 App. Ca. 82.

*V. MATERIAL EVIDENCE: STANDING BY.*

**SILK.**— Silk watch-guards and silk dresses are included in the phrase “Silks in a manufactured or unmanufactured state” as used in s. 1, Carriers Act, 1830 (*Bernstein v. Baxendale*, 28 L. J. C. P. 265; 6 C. B. N. S. 259; over-ruling *Dacey v. Mason*, C. & M. 50). So also is silk hose (per Willes, J., citing *Hart v. Baxendale*, in *Bernstein v. Baxendale*, 28 L. J. C. P. 267). So also is elastic silk webbing, composed of  $\frac{1}{3}$ rd silk and  $\frac{2}{3}$ rds india rubber and cotton, the silk being the most valuable of the materials and the webbing being called in the trade “silk web” as distinguished from cotton web (*Brunt v. Mid. Ry*, 33 L. J. Ex. 187; 2 H. & C. 889; 12 W. R. 380). The statute speaks of silks “wrought up or not wrought up with other materials”; but that does not mean that any fabric that has silk in it, is necessarily “silk” within the meaning of the Act. The Court in *Brunt v. Mid. Ry* (sup) refused to define how much admixture of silk would make a fabric “silk,” and held that

in cases of doubt it would be a question for the jury. Pollock, C. B., said, "The line is shifted according to circumstances." But the summary of the facts in that case as given in the judgment of Martin, B., seems to supply as good an indication as could probably be stated as to what the test should be: he said, "We have here a fabric of which the most valuable portion is silk; the face of it is silk and the object of the manufacturer is to give it a face of silk; and an ignorant person would say it was silk."

"*Soft or Organzine Silk*"; *V. Elliott v. Turner*, 15 L. J. C. P. 49: 2 C. B. 446.

*V. WASTE SILK.*

**SILVA CÆDUA.** — "'*Sylva Cædua*,' wood under 20 years growth; Coppice-wood" (Cowel). *Vf, SYLVA.*

**SILVER.** — "Silver" in s. 1, Revenue Act, 1867, 30 & 31 V. c. 90, does not mean pure silver, but merely what in common parlance is called silver (*Young v. Cook*, 47 L. J. M. C. 28; 3 Ex. D. 101).

*V. METALS: MINE, Note at end: GILD AND SILVER: PLATE.*

**SIMEON'S ACTS.** — Administration of Estates Act, 1798, 38 G. 3, c. 87:

Transfer of Stock Act, 1800, 39 & 40 G. 3, c. 36.

**SIMILAR.** — "*Similar Business*"; *V. Drew v. Guy*, 1894, 3 Ch. 25: 63 L. J. Ch. 547; 71 L. T. 220; 58 J. P. 803: SAME.

"*Similar Covenants*"; *V. Re Tebb*, W. N. (79) 100: SAME: RE-NEWAL.

"*Similar Houses*," in a V. & P. contract; *V. Re Hare and O'More*, 45 S. J. 79; 70 L. J. Ch. 45.

"*Similar License*" in def of "*New License*"; *V. R. v. Antrim Jus.*, cited NEW LICENSE.

Dock Charges for ARTICLES of a "*Similar Nature*, Package, Value, and Quality"; *V. Southampton Dock Co v. Hill*, 16 C. B. N. S. 567; 12 W. R. 806; 10 L. T. 462.

"*Similar Services*"; *V. SAME.*

"*Similar Structure*"; *V. PIER.*

*V. LIKE: SUCH.*

**SIMONY.** — "Simony, is the corrupt PRESENTATION of any one to an Ecclesiastical Benefice, for money, gift, or reward" (2 Bl. Com. 278: 4 Ib. 62). *Vh, Wright v. Davies*, 46 L. J. C. P. 41; 1 C. P. D. 638: *Lee v. Flack*, 1896, P. 145; Phil. Ecc. Law, 854-878: Jacob.

*V. CORRUPT: IMMORAL.*

**SIMPLE CONTRACT.** — "Debts by Simple CONTRACT, are such where the contract upon which the obligation arises is neither ascer-

tained by Matter of RECORD, nor yet by DEED or Special Instrument, but mere oral evidence, the most simple of any; or by Notes unsealed, which are capable of more easy proof, and (therefore only) better, than a verbal promise" (2 Bl. Com. 465, 466). *Cp*, SPECIALTY.

**SIMPLE FEE.** — *V.* FEE SIMPLE.

**SIMPLE LARCENY.** — "Simple Larceny is 'the felonious taking, and carrying away, of the personal goods of another'" (4 Bl. Com. 229), *i.e.* THEFT. So, in the application of 45 & 46 V. c. 56, to Scotland "Simple Larceny' means Theft" (s. 36).

**SIMPLE TRUST.** — "The *Simple* Trust is where property is vested in one person *upon trust* for another; and the nature of the trust, not being prescribed by the settlor, is left to the construction of law. In this case the CESTUI QUE TRUST has *jus habendi*, or the right to be put into actual possession of the property, and *jus disponendi*, or the right to call upon the trustee to execute conveyances of the LEGAL ESTATE as the Cestui que Trust directs.

"The *Special* Trust, is where the machinery of a trustee is introduced for the execution of some purpose particularly pointed out, and the trustee is not, as before, a mere passive depository of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as where a conveyance is to trustees upon trust to sell for payment of debts" (Lewin, 16).

*Cp*, CONSTRUCTIVE: RESULTING TRUST.

**SIMULTANEOUSLY.** — When it is said that the FIRST PUBLICATION of a BOOK may take place "simultaneously" in the United Kingdom *and* elsewhere, that means, on the same day (*Cocks v. Purday*, 17 L. J. C. P. 273; 5 C. B. 860: *Boosey v. Purday*, 18 L. J. Ex. 378; 4 Ex. 145).

**SINE DIE.** — *V.* WITHOUT DAY.

**SINE QUA NON.** — *V.* CAUSA CAUSANS.

**SINECURE.** — When a Clerk in Holy Orders has a Living without Cure of Souls, he has a Sinecure, *e.g.* if a Clerk presented is distinct from the Vicar (1 Bl. Com. 386). *Vf*, CANON.

**SINGING.** — *V.* PUBLIC SINGING: PUBLIC BALL.

**SINGLE ARBITRATOR.** — *V.* *Re Eyre and Leicester*, cited ARBITRATION, towards end.

**SINGLE LETTER.** — Quà Post Office (Offences) Act, 1837, 1 V. c. 36, "Single LETTER," means, "a letter consisting of one sheet or piece of paper, and under the weight of an ounce" (s. 47).

*Notr.* The "Single Letter" of the def suggests a "DOUBLE" and a "TREBLE" Letter, and recalls that, when Queen Victoria ascended the throne, postage was charged on a letter, not only according to its weight and the distance of its journey but also, according as to whether it contained or not one or more enclosures, a regulation involving a frequent examination of letters by the light of a candle.

**SINGLE POSTAGE.** — " 'Single POSTAGE' shall mean, the postage chargeable for a SINGLE LETTER" (s. 47, 1 V. c. 36).

**SINGLE PRIVATE DRAIN.** — *V.* DRAIN.

**SINGLE WOMAN.** — A "Single Woman," within the Bastardy Laws Amendment Act, 1872. 35 & 36 V. c. 65. s. 3, includes a Widow (*Antony v. Cardenham*, Fort. 309; 2 Bott, 6 ed., 194; *R. v. Wymondham*, 12 L. J. M. C. 74; 2 Q. B. 541; 2 G. & D. 690), and also a Married Woman living apart from her husband (*R. v. Pilkington*, 2 E. & B. 546; nom. *Ex p. Grimes*, 22 L. J. M. C. 153; *R. v. Collingwood*, 17 L. J. M. C. 168; 12 Q. B. 681); but not a woman single at the time of the birth of her child who has since married and is living with her husband (*Stacey v. Lintell*, 48 L. J. M. C. 108; 4 Q. B. D. 291; 27 W. R. 551; 43 J. P. 510), even though she took out the summons before her marriage, and service of it was prevented by the putative father (*Tozer v. Lake*, 4 C. P. D. 322; 41 L. T. 280; 43 J. P. 656).

*V.* FEME: SPINSTER: UNMARRIED.

**SINGLY.** — Publishing "separately or singly"; *V.* SEPARATELY.

**SINGULAR.** — In Acts of Parliament passed after 1850, the singular includes the plural, and *vice versa* (s. 1 *b*, Interp Act, 1889).

**SINK.** — "Warranted free from particular average unless the Ship is stranded, *sunk*, or burnt"; a ship is not "sunk" within this phrase if she springs a leak and thereby takes in a great deal of water which presses her down very low and much wets the cargo, but notwithstanding which she gets into port (*Bryant & May v. London Assree*, 2 Times Rep. 591). *V.* STRANDING: BURN.

" 'Sink into the Residue,' points to a charge which had been previously provided out of the fund in which it was to sink; otherwise the expression 'sink into the residue' would hardly be appropriate" (per Cranworth, C., *Johnson v. Webster*, 4 D. G. M. & G. 483; 24 L. J. Ch. 302; 3 W. R. 84; 24 L. T. O. S. 178). *V.* FALL.

*V.* EASEMENT: SEARCH.

**SINKING FUND.** — "Sinking Fund" for the redemption of Debentures, does not, necessarily, connote accumulation at compound

interest, or any like mode of application (*Re Chicago & N. W. Granaries Co.*, 1898, 1 Ch. 263; 67 L. J. Ch. 109; 77 L. T. 677).

**SIR.** — *V.* DEAR SIR.

**SIREN.** — A kind of fog signal; *V.* LIGHTHOUSE

**SISTER.** — *V.* BROTHER.

**SITE.** — “The term ‘Site,’ in relation to a house, building, or other erection, shall mean, the whole space to be occupied by such house, building, or other erection, between the level of the bottom of the foundations and the level of the BASE of the walls” (s. 14, Metrop Man. Act, 1878). That definition, provided for Part II. of the Act cited, was applied to a Bye Law made by the Metrop Bd of Works (*Blashill v. Chambers*, 14 Q. B. D. 479).

A like def is provided for P. H. Ireland Act, 1878; *V.* s. 41.

**SITTING.** — “To lose £10 at one ‘Time’ is to lose it by a single stake or bet; to lose at one ‘Sitting’ is to lose it in a course of play where the company never parts, though the person may not be actually gaming the whole time” (per Blackstone, J., *Bones v. Booth*, 2 Bl. W. 1226). Therefore money won between one evening and the next in a continuous bout of gaming, except when the party adjourned to dine together, was won at one “Sitting,” within s. 2, 9 Anne, c. 14 (*S. C.*). That was an action in which the losing party sued to recover back his losings; and it was there suggested that had the action been brought by an Informer (*V.* the section), the Court would have held the Sitting broken into two by the dinner. *Cp.* ONE TIME.

Quà Vice Admiralty Courts Act Amendment Act, 1867, 30 & 31 V. c. 45, “‘Sit’ or ‘Sitting,’ shall mean, sit or sitting for the exercise of judicial powers, whether in Court or in Chambers” (s. 3).

*V.* SESSIONS.

**SITUATE.** — *V.* IN: *Crompton v. Jarratt*, 54 L. J. Ch. 1109; 30 Ch. D. 298; *Hibou v. Hibou*, cited MESSAGE.

“Wheresoever situate.” is a context which may make EFFECTS comprise realty (*Hall v. Hall*, 1892, 1 Ch. 361; 61 L. J. Ch. 289; 40 W. R. 277; 66 L. T. 206).

*V.* LOCALLY SITUATE.

**SITUATION.** — That is a sufficient description “of the Situation of the House or Shop” — in a Notice of application for a License under s. 7, Wine and Beerhouse Act, 1869, 32 & 33 V. c. 27 — which gives a reasonable identification; such identification will vary according to the circumstances of the locality in which the house or shop is, *e.g.* if the

locality be a little village it would be sufficient to state that it is situated in that village, or, if a small town, enough will generally be done if the street of that town be given (*R. v. Penkridge Jus.*, cited DESCRIPTION); but if the house or shop has a number such number should be given.

“Situation of the Property in respect of which he is enrolled,” Form 2, Sch. Municipal Elections Act, 1875, 38 & 39 V. c. 40: *F. Soper v. Basingstoke*, 46 L. J. C. P. 422; 2 C. P. D. 440. That Form is replaced by Form I. Sch 8, Mun Corp Act, 1882, which does not retain this phrase.

#### V. PUBLIC SITUATION.

**SIX MONTHS.** — “A Six months” NOTICE TO QUIT, means, a notice served six months prior to the day the tenancy is to be determined, and is not, necessarily, equivalent to a “half-year’s” notice, six lunar months may frequently suffice (*Walker v. Constable*, 3 Wils. 25; *Floccer v. Darby*, 1 T. R. 159; *Rogers v. Hull Dock Co.* 34 L. J. Ch. 165; *Wilkinson v. Calcvert*, 47 L. J. C. P. 679; 3 C. P. D. 360; *Barlow v. Teal*, 54 L. J. Q. B. 400; 15 Q. B. D. 501; 1 Times Rep. 491. *See R. v. Chawton*, cited MONTH: *Morgan v. Davies*, 3 C. P. D. 260; 39 L. T. 60). Of course, if 6 “calendar” months are stipulated, the months must be reckoned by the Calendar notwithstanding a local custom to the contrary (*Travers v. Mason*, 45 W. R. 77).

#### V. BY LAW: CALENDAR MONTH: HALF A YEAR: MONTH.

#### SIXTH. — V. SEVENTH.

**SKETCH.** — Quia Official Secrets Act, 1889, 52 & 53 V. c. 52. “‘Sketch,’ includes, any PHOTOGRAPH, or other mode of representation, of any place or thing” (s. 8).

**SKILL.** — When a skilled person “is employed, there is on his part an implied warranty that he is of skill *reasonably competent* to the task he undertakes, — *spondes peritiam artis*” (*Harmer v. Cornelius*, 5 C. B. N. S. 246; 28 L. J. C. P. 85); *i.e.* not the very highest skill (*Rich v. Pierpoint*, 3 F. & F. 35) but, “that ordinary degree of skill and knowledge which would reasonably be expected” from one acting in the particular employment and circumstances (*Jenkins v. Betham*, 15 C. B. 189).

*Vh*, quia the Medical Profession, *Lamphier v. Phipos*, 8 C. & P. 479; *Rich v. Pierpoint*, sup: — A Solicitor, *Godefroy v. Dalton*, 6 Bing. 468; *Donaldson v. Haldane*, 7 Cl. & F. 762; *Purress v. Landell*, 12 Ib. 91; *Lewis v. Collard*, 23 L. J. C. P. 32; 14 C. B. 208: — A Parliamentary Agent, *Bulmer v. Gilman*, 4 M. & G. 108: — An Architect, *Le Lievre v. Gould*, 1893, 1 Q. B. 491; 62 L. J. Q. B. 353; *Rogers v. James*, 2 Hudson, 113: — A Surveyor and Valuer, *Jenkins v. Betham*, sup: *Turner v. Goulden*, 43 L. J. C. P. 60; L. R. 9 C. P. 57: — A House

Agent, *Heys v. Tindall*, 30 L. J. Q. B. 362; 1 B. & S. 296; — A Scene Painter, *Harmer v. Cornelius*, sup.

*Cp.* NEGLIGENCE: ORDINARY CARE.

**SKIMMED MILK.** — “Skimmed Milk,” means, MILK from which the cream which naturally rises to the surface has been skimmed in the ordinary manner; therefore, where the evidence only shows that the milk has been deprived of its butter fat, there is a “Disclosure” of that alteration (s. 9, 38 & 39 V. c. 63) if it is described as “Skimmed Milk” (*Jones v. Davies*, 69 L. T. 497; 57 J. P. 808; *Platt v. Tyler*, 58 J. P. 71); *secus*, if the evidence shows that the butter fat has been extracted to a greater extent than would result from mere skimming, *e.g.* by a Separator (*Petchey v. Taylor*, 78 L. T. 501; 62 J. P. 360). *V.* ABSTRACTION.

**SKIN.** — In the Mem of a Policy of Marine Insree it has been held in the United States that “Skins” includes Deerskins (*Bakewell v. United Insree*, 2 Johns. C. A. 246), but that “Skins and Hides” does not include FURS (*Astor v. Union Insree*, 7 Cowen, 202).

**SKY SIGN.** — Stat. Def., s. 125, London Bg Act, 1894, replacing s. 2, London Sky Signs Act, 1891; *Vh*, *London Co. Co. v. Carwardine*, 68 L. T. 761; 57 J. P. 181; 62 L. J. M. C. 40; *R. v. Vaughan*, 12 Times Rep. 193, on *wher*, *London Co. Co. v. Savoy Hotel Co*, 12 Times Rep. 468; *Tussaud v. London Co. Co.*, 57 J. P. 184; 9 Times Rep. 64.

**SLACK.** — *V.* IRON.

**SLACKEN.** — The obligation, where there is Risk of COLLISION, to “slacken speed, or stop and reverse if necessary,” Art. 18, Regns for Preventing Collisions at Sea, 1884, repld Art. 23 of the Regns of 1897, does not connote an instantaneous compliance; “a short, but a very short, time must be allowed” (*The Ngapoota*, 1897, A. C. 391; 66 L. J. P. C. 88, approving *The Emmy Haase*, 53 L. J. P. D. & A. 43; 9 P. D. 81).

**SLANDER.** — A Slander is falsely and maliciously —

1. To speak words whereby a punishable crime, or a contagious or filthy disease, is imputed to another, or whereby “unchastity or adultery” is imputed “to any woman or girl” (54 & 55 V. c. 51), or to speak words which may tend to disinherit or deprive another of an estate, or which are defamatory quâ another’s office, profession, or trade; in either of these cases the law implies INJURY, and an action is maintainable without SPECIAL Damage:

2. To speak defamatory words of another in consequence whereof he or she sustains some actual Special Damage, capable of appreciation in money.



Slander of TITLE, is falsely and maliciously to write or speak defamatory words affecting the title of another to real or personal property.

*V. WORDS: INNUENDO.* *Cp.*, LIBEL, *infra* for reference to treatises on Libel and Slander.

**SLAUGHTERER.** — Quà P. H. London Act, 1891, “ ‘Slaughterer of Cattle or Horses,’ means, a person whose business it is to kill any description of CATTLE or HORSES, Asses, or Mules, for the purpose of the flesh being used as butcher’s meat ” (s. 141, replacing s. 12, 37 & 38 V. c. 67); a like def is provided for P. H. Scotland Act, 1897 (s. 3). *Cp.*, KNACKER. *V.* SLAUGHTER-HOUSE.

**SLAUGHTER-HOUSE.** — Quà P. H. Act, 1848, “Slaughter-house,” means and includes, “the buildings and places commonly called slaughter-houses and knackers’ yards, and any building or place used for slaughtering CATTLE, HORSES, or animals of any description, for SALE ” (s. 2; replaced and re-enacted by s. 4, P. H. Act, 1875); a like def is provided for P. H. Ireland Act, 1878 (s. 2); but quà P. H. London Act, 1891 (s. 141), and quà P. H. Scotland Act, 1897 (s. 3), “ ‘Slaughter-house’ means, any building or place used for the purpose ” of the business of SLAUGHTERER as therein defined. *Cp.*, KNACKER.

“Slaughter-house,” as used in s. 126, Towns Improvement Clauses Act, 1847, and Loc Gov Act, 1858, includes, not merely the premises where the actual slaughtering of cattle takes place but also, the premises used for processes connected with or incident to the slaughtering (*Hides v. Littlejohn*, 74 L. T. 24).

“Place for slaughtering”; *V.* PLACE, towards end.

As to what is a valid regulating Bye Law; *V. Collman v. Mills*, cited PERMIT.

The business of a slaughter-house keeper is not, *per se*, “offensive” (*Rapley v. Smart*, cited OFFENSIVE, p. 1320).

*Vh.*, 11 Encyc. 560, 561.

**SLAVE COURT.** — “Slave Court,” “British Slave Court”; Stat. Def., 36 & 37 V. c. 88, s. 2.

**SLAVE-TRADING.** — “Each of the following acts, and every contract to do any one of them, is an act of slave-trading: — (a) To deal or trade in, purchase, sell, barter, or transfer, slaves or persons intended to be dealt with as slaves: (b) To carry away or remove slaves or other persons as or in order to their being dealt with as slaves: (c) To import or bring into any place whatsoever slaves or other persons as or in order to their being dealt with as slaves: (d) To ship, tranship, embark, receive, detain, or confine on board any vessel, slaves or other persons, for the purpose of their being carried away or removed as or in order to their being dealt with as slaves; or for the purpose of their being imported into any

place whatever as or in order to their being dealt with as slaves: (e) To fit out, man, navigate, equip, despatch, use, employ, let, or take to freight, or on hire, any vessel, in order to do any act of slave-trading before mentioned: (f) To lend or advance, or become security for the loan or advance of, money, goods, or effects, employed or to be employed in any act of slave-trading before mentioned: (g) To become guarantee or security for agents employed, or to be employed, in any act of slave-trading before mentioned: (h) To engage in any other manner in any act of slave-trading before mentioned, directly or indirectly, as a partner, agent, or otherwise: (i) To ship, tranship, lade, receive, or put on board of any vessel, money, goods, or effects, to be employed in any act of slave-trading before mentioned: (j) To take the charge or command, or to navigate, or enter and embark on board any vessel in any capacity, knowing that such vessel is employed in any act of slave-trading before mentioned, or is intended to be so employed upon the voyage or upon the occasion in which the embarkation takes place: (k) To insure slaves or property employed or intended to be employed in slave-trading" (Steph. Cr. 77, 78, epitomising Slave Trade Act, 1824, 5 G. 4, c. 113, s. 2). *V. Ib.* Art. 114, as to Piratical Slave Trading. *Vf. Arch. Cr.* 512: *Rose. Cr.* 744.

Quà Slave Trade Act, 1873, 36 & 37 V. c. 88, " 'Slave Trade,' when used in relation to any particular treaty, does not include anything declared by such treaty not to be comprised in the term or in such treaty" (s. 2).

#### V. EXISTING.

**SLAVERY.** — *V.* per Hargrave, arg. *Sommersett's Case*, 20 State Trials, 25, 26.

#### SLIDING SCALE ACT. — *V.* BOUGHT: PEEL'S ACTS.

**SLIP.** — "The 'Slip' (quà a Marine Policy), is in practice the complete and final contract between the parties, fixing the terms of the insurance and the premium; and neither party can, without the assent of the other, deviate from the terms thus agreed on without a breach of faith, for which he would suffer severely in his credit and future business" (per Blackburn, J., *Ionides v. Pacific Insree*, L. R. 6 Q. B. 684. *Vj. Cory v. Patton*, L. R. 7 Q. B. 308; 9 Ib. 577; 41 L. J. Q. B. 195 n; 43 Ib. 181; *Morrison v. Universal Marine Insree*, L. R. 8 Ex. 199; 42 L. J. Ex. 115). It is, however, not a "Policy of Insree" at all, and therefore not a "Policy of Sea Insree" within the Stamp Act, 1891, nor is it even a contract to issue a policy; "it is a Contract of Sea Insree not enforceable" (per Mathew, J., *Home Marine Insree v. Smith*, 1898, 1 Q. B. 829; affd 1898, 2 Q. B. 351; 67 L. J. Q. B. 554, 777; 78 L. T. 734; 46 W. R. 661).

As to its admissibility to explain what policies are referred to in a Re-

Insree; *V. Lower Rhine Insree v. Sedgwick*, cited ORIGINAL POLICY. *Vf, Royal Exchange Assree v. Tol*, 8 Times Rep. 669.

As to effect of the "Slip" quâ Fire Insree; *V. Thompson v. Adams*, 23 Q. B. D. 361.

"Accidental Slip or Omission"; *V. ACCIDENTAL: MISTAKE.*

**SLIT.** — Any division of the flesh or gristle of the nose, whether perpendicular or transverse, was a "slitting" within the COVENTRY ACT (*R. v. Carrol*, 1 East P. C. 395; Leach. 55: *Vf, R. v. Coke*, 1 East P. C. 396).

**SLOPS.** — Slops to Seamen, are articles of clothing, tobacco, &c, supplied to Seamen by the Master of a Ship during a voyage; *Vh, The Parkdale*, 1897, P. 53; 66 L. J. P. D. & A. 10; 75 L. T. 597; 45 W. R. 368.

**SMALL.** — It is laid down in Com. Dig. 'Franchise' (F.), 13, that "a Corporation which has a head may give a personal command, and do small acts without deed — as it may retain a servant, a cook, butler," &c. As regards the working of the P. H. Act, 1875, the Legislature "intended to get rid of any discussion as to what were Small Matters" (per Brett. L. J., *Hunt v. Wimbledon*, 48 L. J. C. P. 212), and therefore by s. 174 has put the limit at £50: *Vj, SHALL*, p. 1856: *Sv, Eaton v. Basker*, cited EXCEED.

Bequest of "Small Balance"; *V. BALANCE.*

Small Debt Court; *V. SHERIFF.*

"The Small Debt (Scotland) Acts, 1837 to 1889"; *V. Sch 2, Short Titles Act, 1896.*

A Small Dwelling, quâ Small Dwellings Acquisition Act, 1899, 62 & 63 V. c. 44, is "where in the opinion of the Local Authority, the MARKET VALUE of the house" does not exceed £400 (subs. 1, s. 1).

The representation by a Vendor of Leasehold property that the term is renewable on payment of a "Small Fine" is indefinite and puts the purchaser upon enquiry; but it may be fraudulent (*Fenton v. Browne*, 14 Ves. 149: Dart. 111).

"A Small HOLDING," quâ Purchase of Land (Ir) Act, 1891, 54 & 55 V. c. 48, "means a holding of a rateable value of less than £10, or any higher sum fixed by the Congested Districts Board" (s. 42): quâ Small Holdings Act, 1892, 55 & 56 V. c. 31, a "Small Holding," means land acquired by a County Council under and for the Act, "and which exceeds one acre, and either does not exceed 50 acres or (if exceeding 50 acres) is of an annual value for the purposes of the Income Tax not exceeding £50" (subs. 2, s. 1).

Small Tithes; *V. TITHES.*

**SMITE.** — "A threatening posture, though an ASSAULT at Common Law even without a blow, is not a 'Smiting'" within s. 2 of the Act

against quarrelling and fighting in Churches and Churchyards, 5 & 6 Edw. 6, c. 4 (*Jenkins v. Barrett*, 1 Hagg. Ecc. 15). *Vh, Wilson v. Greaves*, 1 Burr. 240.

*V. BRAWLING.*

**SMOKE.** — *V. NUISANCE.*

**SNARE.** — “Snare . . . or other like Instrument”; *V. Jones v. Davies*, cited *OTHER*, p. 1365. In that case Day, J., said, “A Snare is an instrument of destruction; it is not a Net; neither is a Net a Snare.”  
*Cp. ENGINE: V. NET.*

**SNATCH.** — *V. STROKEHALL.*

**SNOW.** — *V. DUST: NUISANCE.*

**SNUFF.** — Quà Tobacco Acts, 1840, and 1842, “Snuff,” includes, “all snuff work and snuffs of every description, except where, in terms or by the context, a more limited construction shall appear to be intended” (s. 14, 5 & 6 V. c. 93).

**SO.** — “So,” when used in connection with something to be done, — *e.g.* “so completed,” or “so altered,” — imports the doing of the thing in the manner and so as to satisfy the requirements previously prescribed (*V. per Smith, J., G. W. Ry v. Halesowen Ry*, 52 L. J. Q. B. 479: *Vj, Dyke v. Gower*, cited *MILK*).

“So devised,” means “hereinbefore devised” (*Giles v. Melsom*, L. R. 6 H. L. 24; 42 L. J. C. P. 122).

**SO AS.** — “So as not to violate”; *V. VIOLATE.*

**SO DOING.** — “For so doing”; *V. Paterson v. Gas Light & Coke Co.* cited *NEW OCCUPIER.*

**SO FAR AS.** — A perfect Direction or Convention, wrong in itself, is not vitalized by a proviso that it is to be operative only “so far as,” “so long as,” or “as near as,” the rules of law will permit; nor will such phrases, by themselves, control the construction: — but where there is a Covenant to Settle property, or it can be seen that a Trust is Executory, these and such like phrases may have application to prevent an infraction of the law. *e.g.* to avoid a construction of a bequest of chattels as heir-looms that would be obnoxious to the rule against perpetuities (*Potts v. Potts*, 3 J. & La T. 353; 1 H. L. Ca. 671). *Vh, Tollemache v. Coventry*, 2 Cl. & F. 611; 8 Blygh, N. S. 547; *Scarsdale v. Curzon*, 29 L. J. Ch. 249; 1 J. & H. 40 (*while* contains an elaborate discussion of the cases by Wood, V. C.): *Christie v. Gosling*, 35 L. J. Ch. 667; *Churchill v. Churchill*, L. R. 5 Eq. 49, 50; 37 L. J. Ch. 96; *Talbot v.*

*Jevers*, L. R. 20 Eq. 255; *Harrington v. Harrington*, 40 L. J. Ch. 716; L. R. 5 H. L. 87; *Exmouth v. Praed*, 52 L. J. Ch. 420; 23 Ch. D. 158; *Re Johnson*, *Cockerell v. Esser*, 53 L. J. Ch. 645; 26 Ch. D. 538; *Re Hill*, 86 L. T. 336.

So a covenant in RESTRAINT OF TRADE too wide in its terms and therefore inoperative, is not saved by being expressed to be "so far as the law allows"; the parties must themselves agree and properly state the limits of time and space within which the covenant is to operate (*Davies v. Davies*, 36 Ch. D. 359; 56 L. J. Ch. 962; 36 W. R. 86).

"So far as applicable"; *V. APPLICABLE.*

Maritime Lien for DISBURSEMENTS or Liabilities, as well as WAGES. "so far as the Case permits," s. 1, 52 & 53 V. c. 46, repled s. 167 (2). Mer Shipping Act, 1894; *V. Morgan v. Castlegate S. S. Co*, cited "Maritime Lien," sub LIEN, p. 1099.

"So far as Circumstances admit"; *V. Westcott v. Stewart*, 1898. 1 Q. B. 552; 67 L. J. Q. B. 421; 78 L. T. 256; 46 W. R. 379; 62 J. P. 229.

"So far as is reasonably practicable"; *V. REASONABLY PRACTICABLE.*  
*V. POSSIBLE.*

**SO ILL.** — "So ill as not to be able to travel"; *V. ILL.*

**SO LONG AS.** — *V. QUAMDIU.*

**SO NEAR THERETO.** — *V. NEAR THERETO AS SHE MAY SAFELY GET.*

**SO SOON AS.** — *V. WHEN.*

Portions to be paid "as soon as CONVENIENTLY could be." construed "presently," because, under the circumstances, "it was then convenient they should have their portions" (*Trafford v. Ashton*, 1 P. Wms. 419).

**SO THAT.** — *V. IF: Re Jones*, cited DISPOSAL.

**SO VALUED.** — Security "so valued," Sch 2, R. 12 *a.* Bankry Act, 1883, refers to R. 11. and means, "the Assessed Value in the Proof" (*Re Vautin*, 1899, 2 Q. B. 549; 68 L. J. Q. B. 971, considering *Ex p. Taylor*, 13 Q. B. D. 128).

**SOBER AND TEMPERATE HABITS.** — The question as to whether a man is of "Sober and Temperate Habits," within a declaration leading to a Life Policy, is peculiarly one for the jury (*Life Assn of Scotland v. McBlain*, Ir. Rep. 9 Eq. 176).

*V. STRICTLY TEMPERATE.*

**SOCAGE.** — "To hold in Socage, is to hold of any Lord lands or tenements, yeelding to him a certaine rent by the yeare for all manner

of services." of which tenure there were three kinds, — (1) Socage in Free Tenure, (2) Socage in Ancient Tenure, (3) Socage in Base Tenure: —

"Socage in *Free Tenure*, is when one holdeth of another by FEALTY and certaine rent for all manner of services;

"Socage of *Ancient Tenure*, is that where the people held in ANCIENT DEMESNE, which use no other writ to have then the writ of Right close, which shall be determined according to the custome of the Mannour, and the Monstraverunt, for to discharge them when their Lord distreyneth them for to doe other services that they ought not to doe;

"Socage in *Base Tenure*, is where a man holdeth in ancient demesne that may not have the Monstraverunt, and for that it is called the base tenure" (*Termes de la Ley*).

*Vh*, Litt. ss. 117–132: *Co. Litt.* 85 b–93 b: FRANK FERME.

Socage in Free Tenure came to be called FREE AND COMMON SOCAGE, and was the origin of modern FREEHOLD; *Vh*, *Wms. R. P.* Part 1, ch. 5.

**SOCHEMANS: SOKEMANNI.** — *V. COLEBERTI.* "Socmans, alias Sokemans, *Socmanni*," are such Tenants as hold their lands and tenements by SOCAGE tenure, of which there are several kinds, viz. *Sokemans* of Frank-tenure; *Sokemans* of Base-tenure; and *Sokemans* of ANCIENT DEMESNE, which last seem most properly to be called *Socmans*" (*Cowel*): *Vf*, *Termes de la Ley*, *Sockmanns*.

**SOCIETIES.** — "Such Charities, Societies, and Institutions, . . . as S. shall nominate"; *V. Re Douglas*, 56 L. J. Ch. 913; 35 Ch. D. 472; 56 L. T. 740; 35 W. R. 786.

**SOCIETY.** — *V. BUILDING SOCIETY: TERMINATING: FRIENDLY SOCIETY: INDUSTRIAL AND PROVIDENT SOCIETY.*

Quà and by s. 28, *Friendly Soc. Act*, 1875, "Society," includes, "all Industrial Assurance Companies assuring the payment of money on the death of children under the age of 10 years"; *Vth*, *Newbold Socy v. Barlow*, 1893, 2 Q. B. 128; 62 L. J. M. C. 124; 68 L. T. 798; 41 W. R. 543; 57 J. P. 565.

Other Stat. Def. — *Friendly Soc. Act*, 1875, s. 30; 46 & 47 V. c. 47, s. 2.

An Industrial or Provident "Society" is not a Company (*G. N. Ry v. Coal Co-operative Socy*, cited COMPANY, towards end).

**SOCKE.** — "Socke" (*Termes de la Ley*, *Priviledges*), or "Sok" (*Ib.*, *Sok*), "that is suit of men in your Court, according to the custome of the realme" (*Ib.*, *Sok*: *Vf*; 2 *Inst.* 230). *V. SOKE.*

**SODOMY.** — "Every one commits the felony called Sodomy who (a) carnally knows any animal; or (b) being a male, carnally knows

any man or any woman (per annum)" (Steph. Cr. 114). *Vf.* Arch. Cr. 879-881: Rose. Cr. 828: 1 Encyc. 27: Cowel, *Buggery*: INFAMOUS CRIME.

**SOIL.** — This word (and notably in Inclosure Acts) frequently means the SURFACE of the land only, and does not include MINERALS (*Wakefield v. Buccleuch*, 36 L. J. Ch. 179; L. R. 4 Eq. 613; 15 W. R. 247; 15 L. T. 462, following *Pretty v. Solby*, 26 Bea. 606; 33 L. T. O. S. 72. *Wakefield v. Buccleuch* was reversed, L. R. 4 H. L. 377; 39 L. J. Ch. 441, but on another ground, *V. espy* jdgmt of Hatherley, C.); but in the absence of a context it would mean down to the centre of the earth (*Vh. Micklethwait v. Winter*, 20 L. J. Ex. 313; 6 Ex. 644; *Townley v. Gibson*, 2 T. R. 701): *Vf.* *Lond. & N. W. Ry v. Evans*, cited SATISFACTION.

Power to "open and break up Soil and PAVEMENT" of Streets, &c.: *V. OPEN*, p. 1342.

*V. BED*: DUST: SUBSOIL: WATER.

**SOJOURN.** — A Sojourning means something more than "traveling," and applies to a temporary, as contradistinguished from a permanent, residence (*Henry v. Bull*, 1 Wheaton. 5). *Cp.* GUEST.

**SOKE.** — A manor or lordship (Elph. 620, citing Spelm., *Soca*; for example *V. Beauchamp v. Winn*, L. R. 6 H. L. 213). *Vf.* Jacob.

*V. SOCKE.* *Cp.* SAKE.

**SOKEMANNI.** — *V. SOCHEMANS.*

**SOLD.** — *V. BOUGHT*: LAID UP: PURCHASED: SALE.

**SOLDIER.** — A militiauan "is a soldier to all intents and purposes" (per Campbell, C. J.), and within the proviso to s. 1, Poor Removal Act, 1846, 9 & 10 V. c. 66 (*Horton v. Leeds*, 25 L. J. M. C. 38; 5 E. & B. 595); but a workman employed in an Army Works Corps was held not to be a Soldier, though he be subject to the Mutiny Act (*Cook v. Paxton*, 4 H. & N. 368; *Sr.* s. 190 (6), Army Act. 1881, inf).

A person in the military service of the late East India Company, was a "Soldier" within s. 11, Wills Act. 1837 (*Re Donaldson*, 2 Curt. 386): *V. ACTUAL MILITARY SERVICE.* *Cp.* ON ACTIVE SERVICE.

Quà Army Act, 1881, "'Soldier,' does not include an OFFICER as defined by this Act, but (with the modifications in this Act contained in relation to Warrant Officers and Non-Commissioned Officers) does include a Warrant Officer not having an honorary Commission, and a Non-Commissioned Officer, and every person subject to Military Law during the time that he is so subject" (subs. 6, s. 190).

"The persons subject to Military Law as Soldiers," are enumerated in s. 176, Army Act, 1881; an Army Pensioner acting as Canteen Sergeant

or Steward is included therein (*Ex p. Flint*, 33 W. R. 936); *17. Marks v. Frogley*, 1898. 1 Q. B. 888; 67 L. J. Q. B. 605; 78 L. T. 607; 46 W. R. 548: TRAINING. As to what is Military Law, *V. Ex p. Milligan*, 4 Wallace. 141. 142: MARTIAL LAW.

Quà Pensions and Yeomanry Pay Act, 1884, 47 & 48 V. c. 55, " 'Soldier.' includes, a discharged soldier " (s. 7).

#### V. POLICE.

**SOLE.** — The way in which this word (when used quà benefits to be taken by married women) has been judicially interpreted, is not a little curious.

Mr. Hawkins in his Treatise on Construction of Wills (p. 116) lays it down broadly that, " a gift to or for the sole *Use or Benefit* of a woman means, *primâ facie*, Separate Use "; *i.e.* that " sole " and " separate, " in this connection are synonymous terms. For this he cites several authorities: *Va, Barnes v. Forsyth*, 1 W. R. 142; 20 L. T. O. S. 244.

But in *Gilbert v. Lewis* (32 L. J. Ch. 347; 1 D. G. J. & S. 38; 11 W. R. 223), Westbury, C., on a review of the same authorities came to an opposite conclusion; and, in a dictum, intimated that a mere gift to the " sole " use of a woman would not give her a separate estate.

That dictum, however, was cited by Mr. Hawkins (p. 118) only to discredit it; adding that. " In *Ex p. Killick* (3 Mont. D. & D. 487), Knight-Bruce, V. C., said, ' I apprehend it is clear that when property is given to a woman whether married or unmarried, for her own *sole* use and benefit, it is vested in her for her separate use, free from the control of the marital right. ' "

In *Spirett v. Willows* (34 L. J. Ch. 365; 1 Ch. 520; 13 W. R. 329), Ld Westbury re-asserted the doctrine of *Gilbert v. Lewis*; and in *Massy v. Rowen* (L. R. 4 H. L. 288) it was again decided that the word " sole, " is not equivalent to " separate " use unless such a meaning is plainly deducible from the context (*e.g.* as in *Re Tarsey*, 35 L. J. Ch. 452; L. R. 1 Eq. 561). But yet in *Re Fox* (28 S. J. 738), Chitty, J., whilst deferring to *Massy v. Rowen*, said that some meaning must be attached to the word " sole. " and if from the rest of the Will no other meaning could be gathered, then the word was equivalent to " separate. " This, if correct, would seem to shift the onus as laid down in *Massy v. Rowen*, under which a context was required to give " sole " the meaning of " separate " : *Va, SEPARATE USE*: 1 White & Tudor, 662; Seton, 899.

" For her sole *Use and Disposal*, " excludes the marital right and gives the wife a Separate Use (*Prichard v. Ames*, T. & R. 222; *Bland v. Dawes*, 50 L. J. Ch. 252; 17 Ch. D. 794). *V. DISPOSAL*. So, a Jointure, in a Marriage Settlement, " without power of anticipation, " the intended wife's " sole and separate receipt to be a complete and ONLY discharge, " gives the wife a Separate Use with a restraint on alienation (*Re Molyneux*, Ir. Rep. 6 Eq. 411).



Under a limitation to trustees to the use of a married woman, "for her own sole and separate use," the legal estate will pass to her notwithstanding that phrase (*Williams v. Waters*, 14 M. & W. 166).

"For her Sole Use," in a *Life Policy* effected by a Married Woman; *V. Re Suse, Ex p. Dever*, 18 Q. B. D. 660; 56 L. J. Q. B. 552; 3 Times Rep. 400.

"Sole and unmarried," "Sole and intestate"; *V. UNMARRIED.*

Feme Sole; *V. FEME.*

"Sole and Exclusive FISHERY," is equivalent to "SEVERAL FISHERY" (*Holford v. Bailey*, 18 L. J. Q. B. 109; 13 Q. B. 426). So, "Sole" is synonymous with a "Several" right of Pasturage (*Hopkins v. Robinson*, 2 Lev. 2).

**SOLE AGENT.**—Where A. appoints B. as his "Sole Agent" in a district, A. is not entitled to appoint any other agent in that district, nor to effect therein any sales or transactions connected with his business except through B.'s agency (*Snelgrove v. Ellringham Colliery Co*, 45 J. P. 408). But an agreement that B. shall be merely the "Sole Agent" of a business, though for a defined period, does not import that the business shall be continued during that period (*Rhodes v. Forwood*, 1 App. Ca. 256; 47 L. J. Ex. 396; *Emanuel v. Fermière de Vichy Cie*, W. N. (89) 150; *Hamlyn v. Wood*, 1891, 2 Q. B. 488; 60 L. J. Q. B. 734; 65 L. T. 286; 40 W. R. 24; *See, Turner v. Goldsmith*, cited AGENT, at end).

(*p.*, "Exclusive Right" to supply goods, sub EXCLUSIVE RIGHT; "Entire Services," sub ENTIRE; "Whole Time," sub WHOLE.

As to Revocation of a Sole Agency, *V. Fynion's Case*, 8 Rep. 81 b; *Doward v. Williams*, 6 Times Rep. 316; *Noah v. Owen*, 2 Ib. 364.

**SOLE CORPORATION.**—*V. CORPORATION.*

**SOLE EXECUTOR.**—"It seems doubtful whether even the appointment, by subsequent Will, of a 'Sole Executor' amounts, *per se*, to a revocation of the first. *V.* for revocation, *Re Lowe*, 3 Sw. & Tr. 478; 33 L. J. P. M. & A. 155; *Re Baily*, L. R. 1 P. & M. 628;—*Contra, Geaves v. Price*, 3 Sw. & Tr. 71; 32 L. J. P. M. & A. 113; *Re Lapse*, 2 Sw. & Tr. 442; 31 L. J. P. M. & A. 169; *Re Morgan*, L. R. 1 P. & D. 323." 1 Jarm. 175.

**SOLE FISHERY.**—*V. SOLE: FISHERY.*

**SOLE HEIR.**—"I make my cousin, Giles Bridges, my *Sole Heir* and my Executor"; held to pass testator's lands and the fee simple therein (*Taylor v. Web*, Style. 301, 307, 319 and *Marret v. Sly*, 2 Sid. 75, cited and commented on in note (*d.*). 1 Jarm. 357; *Va. Doe d.*

*Gillard v. Gillard*, cited EXECUTOR: *Va*, *Parker v. Nickson*, 32 L. J. Ch. 397; 1 D. G. J. & S. 177: ACKNOWLEDGE).

**SOLE NAME OF A DECEASED PERSON.** — These words, at commencement of s. 25, Trustee Act, 1850, include the case of stock in the name of two deceased persons as being in the name of the survivor (Seton, 4 ed., 523: *Vh*, Seton, 6 ed., 1253, commenting on the replacing clause, s. 35, Trustee Act, 1893). *V. SOLE TRUSTEE.*

**SOLE PASTURAGE.** — *V. SOLE.*

**SOLE TENANT.** — *V. SEPARATELY: SEVERALTY.*

**SOLE TRUSTEE.** — This phrase in s. 23, Trustee Act, 1850, 13 & 14 V. c. 60, included two or more Trustees who were solely entitled to any trust property (*Re Hartull*, 21 L. J. Ch. 384; 5 D. G. & S. 111: *Re Hyatt*, 51 L. J. Ch. 742; 21 Ch. D. 846: *Vh*, Lewin, 814: Watson Eq. 1020). *Note*: this section and s. 24 are replaced by s. 35, Trustee Act, 1893.

**SOLELY.** — Building “used solely” for a Literary or Scientific Institution, R. 6, s. 61, Income Tax Act, 1842; *V. Musgrave v. Dundee Magistrates*, cited LITERARY.

House occupied “solely” for TRADE or BUSINESS, s. 13 (1, 2), Customs and Inl. Rev. Act, 1878, 41 V. c. 15, does not include a house occupied not only for business but also for the actual dwelling of persons, not mere caretakers, who are the servants of the occupier (per Charles, J., *Lambton v. Kerr*, 1895, 2 Q. B. 233; 64 L. J. Q. B. 749; 43 W. R. 541). *Vj*, *Grant v. Langston*, cited HOUSE, p. 895: PURPOSES: SERVANT, towards end.

A Vehicle sometimes used for the purpose of advertising, — being (as one sometimes sees) painted and placarded as an advertisement, or used for carrying about a band in order to make public announcement, — is not used “solely” in the course of Trade so as to give exemption from duty, within s. 19 (6), Inland Revenue Act, 1869, 32 & 33 V. c. 14 (*Speak v. Powell*, 43 L. J. M. C. 19; L. R. 9 Ex. 25).

*V. WHOLLY.*

**SOLEMNIZATION.** — The “Solemnization” of a MARRIAGE, — as the word is used in a Marriage Settlement as thus, “until the solemnization of the said intended marriage,” — means, the consummation of a valid and effectual marriage; and the uses or trusts “until” that event are not defeated by the solemnization of an illegal marriage, although it may seem that an illegal marriage was in the contemplation of the parties (*Chapman v. Bradley*, 33 L. J. Ch. 139; 33 Bea. 61; 4 D. G. J. & S. 71; 12 W. R. 140: *Pawson v. Brown*, 49 L. J. Ch. 193; 13 Ch. D. 202:

*Neale v. Neale*, 79 L. T. 629; 15 Times Rep. 20; *Addington v. Mellor*, 29 S. J. 131).

As to this Solemnization generally. *V. Phil. Ecc. Law*, ch. 7: 11 Encyc. 567-572.

**SOLEMNLY.**—Where a thing, *e.g.* an oath, has to be done “solemnly,” that “does not merely mean religiously, but means with all due solemnities” (per Brett, M. R., *A-G. v. Bradlaugh*, 54 L. J. Q. B. 213, 219-221; 14 Q. B. D. 667).

**SOLICIT.**—Soliciting a Servant to defraud his Master: *V. R. v. De Kromme*, 66 L. T. 301; 56 J. P. 682.

*V. ACCESSORY: Cp, AID OR ABET.*

An Agreement not to “curry or solicit” custom within a named district, is broken by a letter soliciting business received in the district though posted outside it (*Cullard v. Taylor*, 3 Times Rep. 698). *V. CARRY ON*, pp. 265, 266.

To obtain contributions to a Silver Watch Club is to “solicit, take, or receive, an order” for silver, within s. 17, Revenue Act, 1867, 30 & 31 V. c. 90 (*Killick v. Graham*, 1896, 2 Q. B. 196; 65 L. J. M. C. 180; 75 L. T. 29; 44 W. R. 669; 60 J. P. 534).

*Vf. CALL UPON: TRAVELLER.*

**SOLICITOR.**—*V. ATTORNEY.*

“Solicitor,” in England, means, “Solicitor of the Supreme Court of Judicature in England” (s. 4, 40 & 41 V. c. 25; s. 4, 51 & 52 V. c. 65; *Vf.*, 44 & 45 V. c. 44, s. 1); so, in Ireland, the def is, Solicitor of the Court of Judicature in Ireland (s. 78, Jud. Act (Ir), 1877); the Scotch equivalent is “Law Agent,” or “Enrolled Law Agent” (45 & 46 V. c. 49, s. 52 (5); 46 & 47 V. c. 51, s. 68), or “Writer, or Agent” (41 & 42 V. c. 49, s. 74), and so, the Annual Certificate to be taken out by an English or Irish “Solicitor” bears the same Stamp Duty as that for a Scotch “Law Agent, or Writer to the Signet” (Sch 1. Stamp Act, 1891, tit. *Certificate*).

In a High Court action, a Solr to one of the parties remains his Solr as long as anything more has to be done in the action, unless his authority is revoked (*Pole v. Dirk*, 29 Ch. D. 351; 54 L. J. Ch. 940; 52 L. T. 457; 33 W. R. 585); but that case left it doubtful as to whether the Solr’s authority continued until the expiration of the time for appealing to the Court of Appeal. That doubt is solved by R. 3, Ord. 7, R. S. C., which provides that, if there be no Change of Solr, the “Solicitor shall be considered the Solr of the party until the final conclusion of the Cause or Matter, whether in the High Court or the Court of Appeal.” But that doctrine only applies to the High Court; a Notice of appeal against a Bastardy Order is not well served on the Solr who obtained the Order.

unless such service is ratified by the applicant (*R. v. Oxfordshire Jus.*, 1893, 2 Q. B. 149; 62 L. J. M. C. 156; 41 W. R. 615; 57 J. P. 712): *Vf*; per James, L. J., *Saffron Walden Socy v. Rayner*, 49 L. J. Ch. 467, but yet s. 45, S. L. Act, 1882, speaks of Notice being given "to the Solr for the Trustees, if any such solr is known to the Tenant for Life."

As to general authority of a Solr, or Counsel, to effect a Compromise for his client, *V. Swinfen v. Swinfen*, 25 L. J. C. P. 303; 26 *Ib.* 97.

"A Solicitor," s. 56, Conv & L. P. Act, 1881; *V. A.*

"Permanent Solicitor"; *V. RETAIN.*

"Solicitor for Minors and Lunatics"; Stat. Def., Lunacy Regulation (Ir) Act, 1871. 34 & 35 V. c. 22, s. 2.

"Solicitor to the Treasury"; Stat. Def., Petitions of Right (Ir) Act, 1873, 36 & 37 V. c. 69, s. 4.

Solicitor and Client Costs, are the Costs of all things which a Solr does in the fair and reasonable discharge of his duty to his client; and (if in an action) such Costs are not confined to such things as are taxable against the opposite party if his client is successful in the litigation, and which latter costs are called PARTY COSTS. *Vf*, COSTS.

"Profit Costs"; *V. PROFIT: Vf. PROFESSIONAL CHARGES.*

DEFAULT IN PAYMENT by a Solr of Costs for Misconduct. &c, s. 4 (4), Debtors Act, 1869; *V. Re Strong*, 32 Ch. D. 342; 55 L. J. Ch. 553: *Vf*, OFFICER, p. 1325.

*Seemle*, the offence of "wilfully and falsely *pretending to be*" a Solicitor, s. 12, 37 & 38 V. c. 68, is committed if an unqualified person acts in such a way as to induce the reasonable belief that he is claiming to act or threatens to act as though he were a duly qualified Solr, and especially is this so if the thing he claims or threatens to do could lawfully be done only by a duly qualified Solr, *e.g.* take proceedings for another person (*Re Yandell*, 74 Law Times, 436; *Re Fawkes*, 75 *Ib.* 66; *Re Moss*, 19 Law Journal, 126; *Re Derome*, *Ib.* 776; 29 S. J. 157; *Re Martin*, 35 S. J. 88, all of which are magistrate's cases); but a conviction was refused where the alleged pretence consisted of a letter saying that the writer had "instructions" to take out a County Court Summons if a sum applied for was not paid (*Re Gennari*, 76 Law Times, 187). The pretence is chiefly a question of fact for the Justices (*Law Society v. Bedford*, 49 J. P. 215, in *whc* the alleged pretence resembled that in *Re Gennari*). So, if a creditor, when applying to his debtor, threatens to take proceedings for the recovery of the debt, a conviction against the creditor for "pretending to be" a Solicitor cannot be supported (*Symonds v. Law Society*, 49 J. P. 212). So, a Law Stationer acting for a Solr in obtaining Probate of a Will, does not "act as" a Solr within s. 26, 23 & 24 V. c. 127 (*Law Society v. Waterlow*, 8 App. Ca. 407; 52 L. J. Q. B. 674; 49 L. T. 141; 31 W. R. 754); nor does a Process Server who prepares an Affidavit of Service which he sends to the Solr employing him (*Re*

*Louis*, 1891, 1 Q. B. 649; 60 L. J. Q. B. 500; 64 L. T. 565; 39 W. R. 511). *Vf*, PRACTISE: CRIMINAL PRISONER.

"The Solicitors Acts, 1839 to 1894," "The Solicitors (Ireland) Acts, 1849 to 1881"; *V. Sch* 2, Short Titles Act, 1896.

*V. APPRENTICE: AS SOLICITORS: AVOUÉ: CLIENT: COUNSEL: COUNTY SOLICITOR: MAINTAIN: OFFICER: OFFICIAL: SCRIVENER, Note.*

*Vh*, Cordery on Solicitors: Poley, *lb.*: 11 Encyc. 572-630.

**SOLID MATTER.** — Quà Rivers Pollution Prevention Act, 1876, 39 & 40 V. c. 75, " 'Solid Matter,' shall not include particles of matter in suspension in water " (*s.* 20); *Vth*, *Ribble River Committee v. Halliwell*, 1899, 2 Q. B. 385; 68 L. J. Q. B. 984; 81 L. T. 38; 48 W. R. 22; 63 J. P. 708, in *whcv* jdgmt of Williams, L. J., as to the time of testing.

*Cp*, FILTHY WATER: POLLUTING.

**SOLIDATA TERRÆ.** — 12 acres (*Elph.* 620).

**SOLINUM.** — "*Unum solinum* or *solinus terre* in Domesday booke containeth two plow-lands and somewhat lesse than an halfe; for there it is said, *septem solini*, or *solina terre sunt 17 carucat'*" (*Co. Litt.* 5 a). Hargrave's note to this passage is, — "Some think, that *solinus terre* was frequently synonymous with *carucata terre*. See *Somn. Rom. Ports*, 82. *Cowel Interpr. ed. 1727*, *voc. solinus terre.*" *Vf*, *Elph.* 620.

**SOLLAR.** — The lower part of a house — a room (*Elph.* 620, citing *Spelm. Solarium*).

**SOLUBLE.** — *V. INSOLUBLE.*

**SOME.** — A bequest of "some of my best linen" — is uncertain and void (*Peck v. Halsey*, 2 P. Wms. 387; cited 1 *Jarm.* 358).

"Some suit or action," in *s.* 4, Prescription Act, 1832, 2 & 3 W. 4, *c.* 71, means generally, *any* suit or action in which the claim shall have been or shall be brought into question (*Cooper v. Hubbuck*, 31 L. J. C. P. 323; 12 C. B. N. S. 456, and cases there cited).

*V. ANY: NONE.*

**Lord SOMERS' ACT.** — 7 & 8 W. 3, *c.* 25, — *s.* 7, against creation of Fagot Votes.

**SOMERVILLE'S ACT.** — Representation of the People (Ir) Act 1850, 13 & 14 V. c. 69.

**SOMETIME.** — " 'Sometime' is in some places put for the time just past, and 'Late' for the time past long since; for which reason 'late,' used in the sense of 'sometime,' may be well permitted, and especially in Counts, which, if they have matter of substance, shall never abate " (*Wrotlesley v. Adams*, *Plowd.* 190).

**SON.**—The word "Son" is quite as flexible as the word "Heir," and can as easily be read "Issue Male" as the word "Heir" can be turned into "Son" (*Jenkins v. Clinton*, 26 Bea. 108; nom. *Jenkins v. Hughes*, 30 L. J. Ch. 870). *V.* DEFAULT: HEIR, pp. 859, 860: ISSUE: MALE.

"If the word 'Son' be used, not as a *designatio personæ* but, with the view to the whole CLASS, or as comprising the whole of the Male Descendants severally and successively, then it is the manifest intention of the testator to give an Estate Tail" (per Bayley, J., *Mellish v. Mellish*, 2 B. & C. 533).

For a collection and discussion of the cases upon the construction of "Son" as a word of LIMITATION, *V.* 2 Jarm. 401 *et seq.*: *Seth. Beauchant v. Usticke*, W. N. (80) 14. Whenever that word is so construed it creates an estate in Tail Male (*Mellish v. Mellish*, *sup.*: 2 Jarm. 400; *Va.*, Watson Eq. 1390).

As to a limitation in a *Deed*, as compared with one in a *Will*, to a particular son; *V.* Watson Eq. 1385.

As to a devise to "a Son"; *V.* *Ashburner v. Wilson*, cited ONE.

In an appointment of the remainder of a fund "to be equally divided among my Sons," the sons take as a Class (*Fitzroy v. Richmond*, 28 L. J. Ch. 750; 27 Bea. 190).

"Either Sons or Daughters," following ISSUE, will control "Issue" to mean "Children" (*Farrant v. Nichols*, 15 L. J. Ch. 259; 9 Bea. 327).

"Sons and Daughters," mean legitimate ones; unless those that are illegitimate are indicated (*Vh.* *Edmunds v. Pessey*, 29 Bea. 235; 30 L. J. Ch. 279; *Re Fish*, 1894, 2 Ch. 83; 63 L. J. Ch. 437; 70 L. T. 825; 42 W. R. 520: DAUGHTER: CHILD: NEPHEW: RELATIONS).

"Who being a Son or Sons shall attain 21," in a limitation which contemplates all the children, will not exclude daughters (*Re Daniel*, 45 L. J. Ch. 105; 1 Ch. D. 375).

*Vh.* Chitty Eq. Ind. 7678-7684.

*V.* ELDEST: FIRST SON: OTHER SONS.

**SON ASSAULT DEMESNE.**—*V.* DEMESNE, at end.

**SON TORT.**—Executor de son tort; *V.* EXECUTOR.  
Trustee de son tort; *V.* TRUSTEE.

**SONG.**—*V.* DRAMATIC: PUBLIC SINGING.

**SOON AS.**—*V.* POSSIBLE: SO SOON AS.

**SOONER DETERMINATION.**—May be rejected as insensible; *V.* TERM.

**SORCERY.**—*V.* CONJURATION: WITCH: WITCHCRAFT. Cowel defines the old offence of Sorcery as "Divination by Lots."

**SORT.**—"Sort," in the expression "kind or sort," is, probably, synonymous with "QUALITY" or "NATURE" (*V.* DYE).

**SOUGH.**—A Sough is an underground Drain or Watercourse (*Chamber Colliery Co v. Hopwood*, 32 Ch. D. 555, 556). *Vf.* *Arkwright v. Gell*, 8 L. J. Ex. 201; 5 M. & W. 203.

**SOUND.**—"I think the word 'Sound,'"—in a warranty of a horse.—"means that the animal is sound and free from disease at the time he is warranted" (per Parke, B., *Kiddell v. Burnard*, 9 M. & W. 670; 11 L. J. Ex. 269; C. & M. 291). In the same case Alderson, B., said, "The word 'Soundness' is explained and qualified by reference to the purposes for which the warranty is given. Any disease, therefore, which tends to impede the use for which the horse is designed, is an unsoundness." "use," there, meaning present use (*Elton v. Brogden*, 4 Camp. 281). Thus, a Cough, unless it be of quite a temporary character, is unsoundness (*Shillitoe v. Clavidge*, 2 Chitty, 425; *Elton v. Brogden*, sup); but in *Garment v. Barrs* (2 Esp. 673) Eyre, C. J., held that a temporary injury or hurt capable of being speedily cured or removed, is not unsoundness.

Mere badness of shape, though rendering a horse incapable of work, is not unsoundness (per Alderson, B., *Dickinson v. Follett*, 1 Moo. & R. 299); but convexity in the cornea of the eye, making the horse short-sighted and given to shying, is unsoundness (*Hollyday v. Morgan*, 28 L. J. Q. B. 9; 1 E. & E. 1).

Neither Roaring (*Bassett v. Collis*, 2 Camp. 523; *Onslow v. Eames*, 2 Starkie, 81), nor Crib-biting (*Broennenburgh v. Haycock*, Holt N. P. 630), is unsoundness.

Bone spavin in the hock is unsoundness, though producing no present apparent lameness (per Tindal, C. J., *Watson v. Denton*, 7 C. & P. 85); so is a visible splint on the fore leg, producing subsequent lameness, though the warranty be limited to the condition "at the time of the contract," because the jury found that the seeds of unsoundness were then existing (*Margetson v. Wright*, 1 L. J. C. P. 128; 8 Bing. 454; 1 Moore & S. 622).

A nerved horse (*Best v. Osborne*, Ry. & Moo. 290), or one chest-foundered (*Atterbury v. Fairmanner*, 8 Moore C. P. 32), is unsound.

A receipt "for a grey four-year-old colt, warranted sound in every respect," is a warranty only for the soundness, not for the age (*Budd v. Fairmanner*, 1 L. J. C. P. 16; 8 Bing. 48; 1 Moore & S. 74).

*Vf.* Add. C. 560: Rose. N. P. 486; Benj. 612: Oliphant's Law of Horses, ch. 4.

*V.* VICE: WARRANTED SOUND.

*Note.* What was once regarded as a doctrine that a "Sound Price," *i.e.* a full price, implied a Warranty, was rejected by Mansfield, C. J., as a popular error (*V. note to Broennenburgh v. Haycock*, sup).

Breach of Contract "sounding in Damages"; *V. LIQUIDATED DAMAGES*, p. 1105.

**SOURCE.** — "Source of Water Supply," quâ P. H. London Act, 1891, "means, any stream, reservoir, aqueduct, pond, well, tank, cistern, pump, fountain, or other work or means for the supply of water, whether actually used or capable of being used for the supply of water or not" (s. 141).

**SOUTH AFRICA.** — For Union of. *V. South Africa Act, 1877, 40 & 41 V. c. 47. V. AS THE QUEEN DIRECTS.*

*V. SELF.*

**SOUTH SEA.** — *V. BUBBLE ACT.*

**SOVEREIGN.** — *V. CROWN: QUEEN.*

"Sovereign of the house" (Litt. s. 202), "is the chiefe of the house" (Co. Litt. 136 b).

**SOWING.** — *V. PLOUGHING.*

**SPACE.** — "Space occupied by the Goods," s. 85 (2). Mer Shipping Act, 1894, means (when the "Goods" are Horses or Cattle) the space occupied by the animals with reasonable facilities for their movements (*Richmond Hill S. S. Co v. Trinity House*, 1896, 2 Q. B. 134; 65 L. J. Q. B. 561; 75 L. T. 8; 45 W. R. 6).

"Open Space"; *V. OPEN*, p. 1341.

**SPARE.** — What can be "spared"; *V. Beverley v. A-G.*, 15 Bea. 546; revd 27 L. J. Ch. 66; 6 H. L. Ca. 310. *Cp. LEFT.*

**SPAWN.** — *V. FRY: OYSTER SPAT.*

**SPEAKER.** — Quâ Parliamentary Elections Act, 1868, 31 & 32 V. c. 125, "Speaker" shall be deemed to include Deputy Speaker; and, when the Office of Speaker is vacant, the Clerk of the House of Commons, or any other Officer for the time being performing the duties of the Clerk of the House of Commons, shall be deemed to be substituted for and to be included in the expression 'the Speaker'" (s. 4).

**SPECIAL.** — A *Special Act of Parliament*, is one that is "directed towards a special object, or special class of objects" (per Ld Hatherley, *Gurnett v. Bradley*, 3 App. Ca. 950; 48 L. J. Q. B. 188); its antithesis is, a General or PUBLIC ACT OF PARLIAMENT: *Vh. R. v. D'Oyly*, 12 A. & E. 139; *Baird v. Tunbridge Wells*, 1894, 2 Q. B. 867; 64 L. J.



Q. B. 145; 1896, A. C. 434; 65 L. J. Q. B. 451; *Hill v. Haire*, 1899, 1 I. R. 87. "The rule that a Special Act is not repealed by a subsequent General Act, unless an intention to repeal is expressed or necessarily implied, is laid down in numerous cases, of which *Hawkins v. Gathercole* (24 L. J. Ch. 332; 6 D. G. M. & G. 1), *Thorpe v. Adams* (40 L. J. M. C. 52; L. R. 6 C. P. 125), and *Fitzgerald v. Champneys* (30 L. J. Ch. 777) are good examples" (per Smith, L. J., *Baird v. Taunbridge Wells*, 64 L. J. Q. B. 151).

"Special Act": Stat. Def., 8 & 9 V. cc. 16, 18, 20, s. 2; 10 & 11 V. cc. 14, 15, 16, 17, 34, 65, 89, s. 2; 34 & 35 V. c. 113, s. 3; 36 & 37 V. c. 48, s. 3; 37 & 38 V. c. 40, s. 4; 62 & 63 V. c. 19, s. 1. — *Scot.* 8 & 9 V. cc. 17, 19, 33, s. 2; 16 & 17 V. c. 93, s. 2. — *Ir.* 34 & 35 V. c. 109, s. 3.

"Special Advertisement" of a Notice under Roads and Bridges (*Scot.* Act, 1878, 41 & 42 V. c. 51, means an advertisement thereof "published once in at least two LOCAL NEWSPAPERS" (s. 3); under County Voters Registration (*Scot.* Act, 1861, 24 & 25 V. c. 83, such an advertisement "shall be inserted once in at least two NEWSPAPERS published in the county, or, if there be no newspaper or only one newspaper published therein, in any newspaper or newspapers published in a county adjoining thereto" (s. 2).

"Special Application or Appropriation" of Donation to a CHARITY. s. 62, Charitable Trusts Act, 1853; *V. Sons of Clergy Corp v. Skinner*, 1893, 1 Ch. 178; 62 L. J. Ch. 148; 67 L. T. 751; 41 W. R. 461.

"Special AREAS" in Vermin Destruction (Victoria) Act, 1890: *V. King v. Cheyne*, 1900, A. C. 622; 69 L. J. P. C. 136.

A Special *Case*, is a written statement of the facts in a litigation, agreed to by the parties, so that the Court may decide the questions in issue according to law: *V. VERDICT.* *Vh.* 3 Bl. Com. 378: Ord. 34, R. S. C., on *whr* Ann. Pr.

"Special Cause" for (in Ireland) depriving a successful litigant of costs after a trial by jury, s. 53, 40 & 41 V. c. 57:—In an action of Seduction the woman was 35 years of age and readily consented, the parties were poor, and the jury only gave £10 damages, which the presiding judge thought as much as could have been reasonably expected; held, that there was no "Special Cause" for depriving the plaintiff of costs (*Wilson v. McMain*, 20 L. R. Ir. 582: *Cp.* GOOD CAUSE).

The "Special Circumstances" sufficient to enable a client to get taxation of his *Solicitor's Bill* after payment (6 & 7 V. c. 73, s. 41), may be matters appearing on the face of the Bill (*Re Robinson*, L. R. 3 Ex. 4; 37 L. J. Ex. 11), and must, speaking generally but not exhaustively, consist of pressure, or there must be a specified overcharge so gross as to amount to fraud (*Re Harrison*, 16 L. J. Ch. 170; 10 Bea. 57: *Re Lacey*, 53 L. J. Ch. 287; 25 Ch. D. 301: *Re Boycott*, 55 L. J. Ch. 835; 29 Ch. D. 571). The majority of the Court of Appeal in *Re Boycott* ad-

hered to this rule (which culminated in *Re Harrison*), and therefore the disapproval of it in *Re Dearden* (23 L. J. Ex. 14), and in *Re Newman* (36 L. J. Ch. 843; 2 Ch. 707; 15 W. R. 1189) is much lessened. But in *Re Norman* (55 L. J. Q. B. 202; 16 Q. B. D. 673; 54 L. T. 143; 34 W. R. 313) and *Re Cheesman* (1891, 2 Ch. 289; 60 L. J. Ch. 714; 64 L. T. 602; 39 W. R. 497) the Court of Appeal declined to be bound by any rigid rule defining these "Special Circumstances." *Vf, Watson v. Rodwell*, 11 Ch. D. 150; 48 L. J. Ch. 209; *Re Griffith*, 53 L. J. Ch. 303. Charging a Scale Fee where none applicable is a "special circumstance" (*Re Pybus*, 56 L. J. Ch. 921; 35 Ch. D. 568; 57 L. T. 362; 35 W. R. 770). So, where, on payment, a right to tax is reserved (*Re Williams*, 65 L. T. 68; *Cp*, UNDER PROTEST). *Vh*, 11 Encyc. 615-618.

Special Circumstances under s. 37, 6 & 7 V. c. 73, justifying an allowance to a Solr of Costs of Taxation though  $\frac{1}{6}$ th of his Bill is knocked off; *V. Re Paull*, 53 L. J. Ch. 871; 54 Ib. 134; 27 Ch. D. 485; 32 W. R. 940; 50 L. T. 585; 51 L. T. 435; *Re Mackenzie*, 69 L. T. 751; 41 W. R. 530; *Sr, Re Cartheu*, 53 L. J. Ch. 927; 54 Ib. 134; 27 Ch. D. 485; 32 W. R. 940; 51 L. T. 435.

Protracted litigation is a "Special Circumstance" within R. 15, Ord. 58, R. S. C. (*Va*, R. 113, Bankry Rules, 1883), justifying an unusually large deposit as *Security for Costs* on an Appeal (*Re McHenry*, 55 L. J. Q. B. 496; 17 Q. B. D. 351; 35 W. R. 20; *srthe, Re Phillips*, 1896. 2 Q. B. 122; 65 L. J. Q. B. 648). Insolvency, or other proved inability to pay costs of appeal if the appellant should be unsuccessful, is generally the "Special Circumstance" acted on under Rule 15 for ordering a deposit as security for costs on an appeal to the Court of Appeal, but the Rule is not confined to such cases (*Weldon v. Maples*, 57 L. J. Q. B. 224; 20 Q. B. D. 331; 57 L. T. 672; 36 W. R. 154; *Brooke v. Kavanagh*, 21 L. R. Ir. 474; *Srth, McDougall v. Copestake*, 34 S. J. 347). If the appeal is seen to be frivolous (*Usill v. Hales*, 47 L. J. C. P. 380; 3 C. P. D. 206), or the appellant be a foreigner having no assets in England (*Grant v. Banque Franco-Egyptienne*, 47 L. J. C. P. 41), there would be such a "Special Circumstance." *Vf*, Ann. Pr.

Special Circumstances for *Stay of Execution* pending an application for a New Trial: *V. Monk v. Bartram*, 1891, 1 Q. B. 346; 60 L. J. Q. B. 267; 64 L. T. 45; 39 W. R. 310.

"Special Circumstances," s. 73, Court of Probate Act, 1857, 20 & 21 V. c. 77; *V. Re Wensley*, 51 L. J. P. D. & A. 21; 7 P. D. 13; *Re Clayton*, 55 L. J. P. D. & A. 26; 11 P. D. 76; 34 W. R. 444; 50 J. P. 263; *Re Grundy*, 37 L. J. P. & M. 21; L. R. 1 P. & D. 459; *Re Richardson*, 40 L. J. P. & M. 36; L. R. 2 P. & D. 244; *Re Woodfall*, 42 L. J. P. & M. 64; L. R. 3 P. & D. 108; *Re Hale*, 44 L. J. P. & M. 45; *Re Bond*, 23 W. R. 597; 33 L. T. 71; *Re Furrands*, 24 W. R. 1018; *Wells v. Brook*, 25 W. R. 463; *Re Clarke*, Ib. 82; 46 L. J. P. D. & A. 16; *Re Turner*, 56 L. J. P. D. & A. 41; 12 P. D. 18; 57 L. T.

372; 35 W. R. 384; *Re Eccles.*, 61 L. T. 652; W. N. (89) 198; *Re Minshull*, 14 P. D. 151; *Re Wash.*, 1892, P. 230; 61 L. J. P. D. & A. 123; 67 L. T. 355; *Re Crawshaw*, 1893, P. 108; 62 L. J. P. D. & A. 91; 68 L. T. 260; 41 W. R. 303; *Re Shoosmith.*, 1894, P. 23; 63 L. J. P. D. & A. 64; 70 L. T. 809; *Re Peck*, 29 L. J. P. M. & A. 95; 2 Sw. & Tr. 506, followed in *Re Hurling*, 1900, P. 59; 69 L. J. P. D. & A. 32; 81 L. T. 791; *Re Potter*, 1899, P. 265; 68 L. J. P. D. & A. 97; 81 L. T. 234.

"Special Circumstances" in NAVIGATION, within Articles 27 and 29. Regns for Preventing Collisions at Sea, 1897; *V. The Sanspareil*, 1900, P. 267; 69 L. J. P. D. & A. 127; 82 L. T. 606.

The "Special Circumstances" justifying a *Change of Venue* of an Election Petition (s. 11 (11), Parl. El. Act, 1868) include local intimidation (*Sligo*, 1 O.M. & H. 300), or a great saving of expense (*Arch v. Bentinck*, 18 Q. B. D. 548; 56 L. J. Q. B. 458; 56 L. T. 360; 35 W. R. 476); but something more than mere inconvenience must be shown (*Turkesbury*, 49 L. J. C. P. 685; 5 C. P. D. 544; *Cirencester*, 1893, 1 Q. B. 245; 62 L. J. Q. B. 231). *Vh. Stepney*, 37 S. J. 29.

Special Commissioners; *V. COMMISSIONERS.*

Special Constables are persons (not legally exempt from serving as Constables) who are resident in a disquieted parish, township, or place, or its neighbourhood, whom two or more justices shall call upon to act as Special Constables (s. 1, Special Constables Act, 1831, 1 & 2 W. 4, c. 41; *R. v. Vincent*, 9 C. & P. 91; *R. v. Porter*, *ib.* 778); but "all persons willing to act," wherever resident, may be appointed (s. 1, Special Constables Act, 1835, 5 & 6 W. 4, c. 43). A Special Constable has all the authority of an ordinary CONSTABLE, and remains a constable until his services are determined under s. 9, 1 & 2 W. 4, c. 41 (*R. v. Porter*, *sup.*).

As to the "Special Contract" prescribed in s. 6, *Carriers Act*, 1830, and in s. 7, *Ry and Canal Traffic Act*, 1854; *V. Peck v. North Staffordshire Ry*, 32 L. J. Q. B. 241; 10 H. L. Ca. 473; *Lewis v. G. W. Ry*, 47 L. J. Q. B. 131; 3 Q. B. D. 195; *Kirby v. G. W. Ry*, 18 L. T. 658.

The "Special Contract" under the *Pawnbrokers Act*, 1872, 35 & 36 V. c. 93, does not prevent the pawnbroker from recovering the balance of his loan remaining due after the sale of the pledge (*Jones v. Marshall*, 59 L. J. Q. B. 123; 24 Q. B. D. 269).

"Special Contract," s. 18, *Prisons Act*, 1842, 5 & 6 V. c. 98; *V. Bramston v. Colchester*, 6 E. & B. 246; 25 L. J. M. C. 73; 4 W. R. 491.

"Special County Account," "Special County Purposes": Stat. Def., *Loc Gov Act*, 1888, s. 68. *Cp. GENERAL COUNTY PURPOSES.*

"Special DAMAGE," in Contract or in Tort, when shown and how pleaded, *V. jdgmt by Bowen, L. J., Ratcliffe v. Evans*, 1892, 2 Q. B. 524; 61 L. J. Q. B. 535; 66 L. T. 794; 40 W. R. 578. That learned

judge there points out that "such Damage is called variously in old authorities 'Express Loss,' 'Particular Damage' (*Cane v. Golding*, Style, 169, 176), 'Damage in Fact,' 'Special or Particular Cause of Loss' (*Laure v. Harwood*, Cro. Car. 140; *Tasburgh v. Day*, Cro. Jac. 484)": also that "Special Damage" has been used to denote the actual and particular loss to an individual from a Public Nuisance (*Ireson v. Moore*, 1 Raym. Ld, 486; *Rose v. Groves*, 12 L. J. C. P. 251; 5 M. & G. 613). *Vf*, SLANDER.

"Special Directions" from Guardians authorizing a prosecution under the Vaccination Acts; *V. R. v. Brocklehurst*, 1892, 1 Q. B. 566; 61 L. J. M. C. 48; 65 L. T. 714; 40 W. R. 64; 56 J. P. 182; 17 Cox C. C. 409.

"Special Executor": *V. PERSONAL REPRESENTATIVES.*

"Special Expenses," s. 68, Loc Gov Act, 1888; *V. Bury St. Edmunds v. West Suffolk Co. Co.*, 1898, 2 Q. B. 246; 67 L. J. Q. B. 750; 78 L. T. 624; 47 W. R. 16; 62 J. P. 486.

"Special Expenses," ss. 229, 230, P. H. Act, 1875; *V. Darenth Valley v. Dartford*, 56 L. J. Q. B. 615; 19 Q. B. D. 270; 57 L. T. 233; 36 W. R. 43; *Lanc. & Y. Ry v. Bolton*, 15 App. Ca. 323; 60 L. J. Q. B. 118; *Sheffield v. Bradfield*, 7 Times Rep. 571; *Jersey v. Urbridge*, cited GENERAL EXPENSES: *Horn v. Sleaford*, 1898, 2 Q. B. 358; 67 L. J. Q. B. 724; 78 L. T. 722; 62 J. P. 502.

"Special Grounds" justifying an Order for Costs on the Higher Scale (R. 9, Ord. 65, R. S. C.) must relate to the importance or difficulty of the cause or matter, *e.g.* as requiring a class of witnesses more than usually expert and expensive; but the largeness of the amount involved, and charges of misrepresentation or fraud, are not such Grounds (*Williamson v. N. Staffordshire Ry*, 55 L. J. Ch. 938; 32 Ch. D. 399; 55 L. T. 452; *Paine v. Chisholm*, 1891, 1 Q. B. 531; 60 L. J. Q. B. 413; 39 W. R. 353; *Assets Development Co v. Close*, 1900, 2 Ch. 717; 69 L. J. Ch. 715; 83 L. T. 162). *Vf*, Ann. Pr.

"Special Grounds" for admitting further evidence on an Appeal, R. 4, Ord. 58, R. S. C.; *V. Re Chennell*, 47 L. J. Ch. 583; 8 Ch. D. 492; *Arnison v. Smith*, 58 L. J. Ch. 645; Ann. Pr.

"Special Grounds" for excusing a Husband from joining a Co-Respondent in a Divorce Action, s. 28, 20 & 21 V. c. 85, must be shown by satisfactory affidavits (*Jones v. Jones*, 65 L. J. P. D. & A. 101; 1896, P. 165), one by the husband, uncorroborated, being insufficient (*Barber v. Barber*, 65 L. J. P. D. & A. 58; 1896, P. 73). As to what are such Grounds, *V. Hooke v. Hooke*, 27 L. J. P. & M. 61; 1 Sw. & Tr. 183; *Quicke v. Quicke*, 31 L. J. P. & M. 28; 2 Sw. & Tr. 419; *Jinkings v. Jinkings*, L. R. 1 P. & D. 330; *Saunders v. Saunders*, 66 L. J. P. D. & A. 57; 1897, P. 89.

*Vf*, "Special Leave" and "Special Reasons," inf.

A Special "Indorsement" of a BILL OF EXCHANGE, "specifies the

person to whom, or to whose order, the Bill is to be payable" (s. 34 (2), Bills of Ex. Act, 1882). *Vh*, Chalmers, 111; Byles, 178-182. *Cp*, RESTRICTIVE INDORSEMENT.

A Special Indorsement of a Writ, under R. 6, Ord. 3, R. S. C., must contain particulars of goods, &c, sued on, giving dates, so as to clearly show what the action is for (*Parpaite v. Dickinson*, 38 L. T. 178; 26 W. R. 479; *Walker v. Hicks*, 47 L. J. Q. B. 27; 3 Q. B. D. 8; *Godden v. Corsten*, W. N. (79) 190), or a reference to an account rendered giving such particulars (*Aston v. Hurwitz*, 41 L. T. 521). For examples, *V*. Appendix C. s. 4, of the Rules; *Va*, *Smith v. Wilson*, 49 L. J. C. P. 96; 4 C. P. D. 392; 5 Ib. 25; *Bickers v. Speight*, 22 Q. B. D. 7; 58 L. J. Q. B. 42; 37 W. R. 139; Ann. Pr.: 11 Encyc. 643-648.

Special Jurors; *V*. s. 6. Juries Act, 1870, 33 & 34 V. c. 77, the Sch to which contains the Exemptions.

Where a thing cannot be done "without Special Leave," that means, "without leave granted on Special Grounds" (*Thompson v. Partridge*, 4 D. G. M. & G. 796; 2 W. R. 113; 23 L. J. Ch. 158; 22 L. T. O. S. 181; *Re Malcolmson*, Ir. Rep. 10 Eq. 488). *Vf*, "Special Grounds," sup.

The 'Special License' mentioned in the Statute of Marlbridge, 52 H. 3, c. 23, s. 2, is commonly expressed by the well-known phrase 'WITHOUT IMPEACHMENT OF WASTE' (*Woodhouse v. Walker*, 49 L. J. Q. B. 611; 5 Q. B. D. 404).

Marriage by Special License; *V*. 25 H. S. c. 21: the right of the Archbishop of Canterbury to grant these Licenses is preserved by s. 20, Marriage Act, 1823, 4 G. 4, c. 76, and by s. 1, Marriage Act, 1836, 6 & 7 W. 4, c. 85. *Vh*, *Doe d. Egremont v. Grazebrook*, 12 L. J. Q. B. 221; 4 Q. B. 406; 3 G. & D. 334; Phil. Ecc. Law, 612, 613.

"Special Limits"; *V*. GENERAL LIMITS.

"Special Meeting," connotes that the persons to be convened shall have notice of the purpose of the meeting (per Alderson, B., *Cuthill v. Kingdom*, 1 Ex. 504).

The "Special Occasion" for giving an Innkeeper an extension of hours (s. 29, 35 & 36 V. c. 94), must be determined by the Justices to whom the application is made (*Derine v. Keeling*, 34 W. R. 718; 50 J. P. 551; 2 Times Rep. 692). *Vf*, "Special Permission," inf.

"Special Occupant" of an estate *PUR AUTRE VIE*. ss. 3, 6, Wills Act, 1837; *V*. *Mountcashell v. More-Smyth*, 1896, A. C. 158; 65 L. J. P. C. 12; 74 L. T. 321; *Re Sheppard*, 1897, 2 Ch. 67; 66 L. J. Ch. 445; 76 L. T. 756; 45 W. R. 475; *Re Mitchell*, 1892, 2 Ch. 87; 61 L. J. Ch. 326; 66 L. T. 366; 40 W. R. 375; *Northen v. Carnegie*, 28 L. J. Ch. 930; 4 Drew. 587; *Wall v. Byrne*, 2 J. & La T. 118; *King v. King*, 1899, 1 L. R. 30.

"Special Order"; *V*. Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, Sch s. 1; Factory and Workshop Act, 1901, s. 156; *Cp*, "Special Act," sup.

"Special *Permission*" for keeping Licensed Premises open during particular times; *V. s. 6, Public Houses Acts Amendment (Scot) Act, 1862, 25 & 26 V. c. 35; s. 2, 50 & 51 V. c. 38. Vj, "Special Occasion," sup.*

Special *Power of Appointment*, how executed; *V. POWER: Re Hayes, 69 L. J. Ch. 691; Re Huddleston, cited MY: Re Sharland, 1899, 2 Ch. 536; 68 L. J. Ch. 747; 81 L. T. 384; Farwell, ch. 5. Cp. GENERAL POWER.*

Special *Property* in Animals *feræ naturæ*, and goods; *V. 2 Bl. Com. 391 et seq.*

Notice specifying "Special *Purpose*" of a Vestry Meeting, s. 1, 58 G. 3. c. 69; *V. R. v. Powell, 42 L. J. M. C. 129; L. R. 8 Q. B. 403; Rand v. Green, 30 L. J. C. P. 80; 9 C. B. N. S. 470; Smith v. Deighton, 8 Moore P. C. 179.*

"Special *Reason*"; *V. IF THEY SHALL THINK FIT.*

"Special *Reasons*," for modifying the rules relating to the Discharge of a Bankrupt, s. 8 (2), Bankry Act, 1890; *V. Re Stevens, 1898, 2 Q. B. 495; 67 L. J. Q. B. 932; 79 L. T. 80; 47 W. R. 61, who shows that a recommendation to mercy by a jury, would not be such a Reason.*

Special *Resolution*; *V. RESOLUTION.*

Special *Services* by a Railway Co; *V. Lane. & V. Ry v. Gidlow, cited "Services Incidental," sub. INCIDENT.*

A Special *Sessions* of Justices, is a Special Petty Sessions called for some particular purpose; *Vh. s. 3, 32 & 33 V. c. 47; s. 7, 7 & 8 V. c. 33: where there is no statutory provision the Clerk gives a reasonable convening notice (R. v. Worcestershire Jus., 2 B. & Ald. 228). Special Sessions for transferring Alehouse Licenses; *V. ss. 4, 5, Alehouse Act, 1828, 9 G. 4, c. 61:—for revising Jury Lists; V. s. 10, Juries Act, 1825, 6 G. 4, c. 50:—for hearing Poor Rate Appeals, s. 6, Parochial Assessments Act, 1836, 6 & 7 W. 4, c. 96, on who Stone, tit. Poor Rates.**

"Special *Session*"; Stat. Def., Licensing Act, 1872, s. 77; 53 & 54 V. c. 59, s. 12 (9).

Special *Tail*; *V. TAIL.*

A Special *Train* is not, necessarily, one ordered by a passenger or a body of passengers; but includes a train specially provided by a Railway Company in substitution for, or in addition to, their ordinary service (*Walker v. Lond. & S. W. Ry, Times, 18th May 1882*): *Va, ORDINARY TRAIN: TRAIN.*

Special *Trust*; *V. SIMPLE TRUST.*

Special *Verdict*; *V. VERDICT.*

The "Special and Distinctive *Word or Words*," capable of registration under s. 10, Trade Marks Registration Act, 1875, must have been used before the Act, solely and not in combination with any device, *i.e.* the word or words must alone have been the trade-mark (*Re Palmer,*

24 Ch. D. 501; *Re Chorlton*, 53 L. T. 337; 34 W. R. 60); and not one indicating a person, or type, or giving a description of the article (*Re Harrison*, 59 L. J. Ch. 22; 42 Ch. D. 691). *Vf.* DISTINCTIVE.

**SPECIALLY.** — “Specially authorized Societies,” s. 8 (5). Friendly Soc. Act, 1875; *V. Peat v. Fowler*, 55 L. J. Q. B. 271; 34 W. R. 366: FRIENDLY SOCIETY.

“Specially indorsed” Writ; *V. Special Indorsement*, sub SPECIAL: R. 6, Ord. 3, R. 1, Ord. 14, R. S. C., and thereon Ann. Pr.

“Specially limited”; *V. Morris v. Duncan*, cited RECOVER.

“Specially qualified”; *V. QUALIFIED: EXPERT: SKILL.*

**SPECIALTY.** — A “Specialty” is a contract under SEAL; and a “Specialty Debt” is an obligation secured by such a contract. *e.g.* a Bond, or Mortgage. So, also an obligation arising under a statute is a “Specialty” within the meaning of the Statutes of Limitation; *e.g.* an action under 2 Edw. 6, for carrying away corn without setting out tithes (*Talory v. Jackson*, Cro. Car. 513); an action for an Escape (*Jones v. Pope*, 1 Wms. Saund. 36); or for Calls on a Shareholder in a Co formed by Act of Parliament (*Cork & Brandon Ry v. Goode*, 22 L. J. C. P. 198; 13 C. B. 826), or under the Comp Act, 1862 (ss. 16, 75, 90, 131; *Buck v. Robson*, 39 L. J. Ch. 821; L. R. 10 Eq. 629); or Debentures issued by a Co under statutory powers (*Re Cornwall Ry*, 1897, 2 Ch. 74; 66 L. J. Ch. 561; 76 L. T. 832; 46 W. R. 5); or for Dues authorized by Parliament (*Shepherd v. Hills*, 25 L. J. Ex. 6; 11 Ex. 55). But a penalty under a Bye-law of a Co founded by Charter under the Great Seal, is not a “Specialty,” for such a liability springs out of the member’s implied consent to obey the bye-laws, which is in effect a contract without specialty (*Tobacco Pipe Co v. Loder*, 20 L. J. Q. B. 414; 16 Q. B. 765); so also the mere recital in a deed of a simple contract debt does not make the debt a specialty (*Icens v. Elwes*, 24 L. J. Ch. 249; 3 Drew. 25), so, of an acknowledgment by deed of such a debt (*Brook v. Harwood*, 37 L. J. Ch. 209; 3 Ch. 225); but if the deed secures such debt, the debt merges and becomes a Specialty (*Commrs of Stamps v. Hope*, 1891, A. C. 476; 60 L. J. P. C. 44; 65 L. T. 268), so if the deed agrees to give a specialty security (*Saunders v. Milsome*, L. R. 2 Eq. 573).

As to Rent; *V. Kidd v. Boone*, 40 L. J. Ch. 531; L. R. 12 Eq. 89; *Re Hastings*, 47 L. J. Ch. 137; 6 Ch. D. 610.

The action of DEBT upon “Bonds and Specialties” given by 3 W. & M. c. 14, against Heirs and Devisees of Obligor, did not extend to damages on a covenant, for the context limited the “Specialties” to those on which the action of Debt lay (*Wilson v. Kaubley*, 7 East, 128).

*Cp.* PAROL: SIMPLE CONTRACT.

**SPECIE.** — Quà a Marine Insree where goods are insured against TOTAL LOSS free of AVERAGE, “it is well settled that if the Goods in-

sured arrive at the Port of Destination existing *in specie*, the Underwriters are not liable although the goods are of no value whatever. Some question has arisen as to the meaning of 'Specie.' The primitive meaning of the word is, undoubtedly, 'Appearance'; and it is in this sense that it is commonly applied to Memorandum articles. Thus, if a box of a chariot is lost and nothing but the wheels remain, these cannot be said to have the appearance of a chariot, and, consequently, the article no longer exists *in specie*, and the underwriters are liable as for a TOTAL LOSS with Salvage (*Judah v. Randal*, 2 Caines Ca. 324). But it has been held that the value of the article has nothing to do with its existence *in specie*. Thus, fish though absolutely spoiled (*Cocking v. Fraser*, Park, 247), and corn which was putrid (*Neilson v. Columbian Insree*, 3 Caines Rep. 108), were both held to exist *in specie*. And pork has been held not to lose its identity by being roasted (*Skinner v. Western Marine Insree*, 19 La. 273)": Parsons Maritime Law, 381, cited by Mellish arg. *Duthie v. Hilton*, L. R. 4 C. P. 141; *If, Cambridge v. Anderton*, 2 B. & C. 691; *Saunders v. Baring*, 34 L. T. 419; *The Knight of St. Michael*, 14 Times Rep. 191.

But there is now (at least in England) a perfectly well-known test applicable to such cases as those just referred to. "That test is, whether, as a matter of business, the NATURE of the thing has been altered. The Nature of a thing is not, necessarily, altered because the thing itself has been damaged; wheat or rice may be damaged, but may still remain the things dealt with as wheat or rice in business. But if the Nature of the thing is altered and it becomes, for business purposes, something else so that it is not dealt with by business people as the thing which it originally was, — if it is so changed in its nature by the Perils of the Sea as to become an unmerchable thing which no buyer would buy and no honest seller would sell, — then there is a TOTAL LOSS" (per Esher, M. R., *Asfar v. Blundell*, 1896, 1 Q. B. 127, 128; 65 L. J. Q. B. 141).

**SPECIFICALLY: SPECIFIC.** — A mortgage or charge "specifically affecting" the property of a Joint Stock Co, s. 43, Comp Act, 1862, means one created by the Company itself (*Re General Horticultural Co*, 29 S. J. 555).

"Specifically bequeathed": *V. BEQUEATHED*, and *Specific Bequest*, *inf.*

The statute establishing Poor Rates (43 Eliz. c. 2) imposed no liability on any mines, except coal mines (*Morgan v. Crawshay*, 40 L. J. M. C. 202; L. R. 5 H. L. 304). The Rating Act, 1874 (37 & 38 V. c. 54, s. 3), made all mines assessable to the poor rate; but, by s. 8, a lessee, till then exempt from being rated, became during the continuance of his lease entitled to deduct from his rent one-half of the rate unless he had "specifically contracted to pay such rate in the event of the abolition of the said exemption." A lessee of an iron mine who became liable to poor



rate under that latter Act, and who before its passing had contracted to pay his rent "free from all deductions whatsoever" and also to pay "all manner of taxes, rates, assessments, charges, and impositions whatsoever, parliamentary or parochial, which now are or which shall at any time hereafter" be payable in respect of the mine, was held *not* to have "specifically" contracted himself out of the benefit of s. 8 (*Chaloner v. Bolckow*, 47 L. J. C. P. 562; 3 App. Ca. 933; *Deroushire v. Barrow Haematite Steel Co*, 46 L. J. Q. B. 435; 2 Q. B. D. 286; *V. IMPOSITION*). "The meaning of the word 'specific' is the reverse of 'general.' You cannot give to a general covenant the force of a specific agreement with regard to a particular tax; and a covenant in a lease to pay 'all taxes, rates, assessments, charges, and impositions whatsoever' cannot be regarded as a 'specific' covenant" (per Ld Hatherley, *Chaloner v. Bolckow*, sup).

The words "Household furniture and effects, Implements of husbandry," in a Schedule to a Bill of Sale, do not "specifically" describe such goods within s. 4. Bills of Sale Act, 1882; for the word requires "that amount of separation of one class of articles from another which any business inventory would give" (per Brett, M. R., *Roberts v. Roberts*, 53 L. J. Q. B. 313; 32 W. R. 605; 13 Q. B. D. 794). So, a Bill of Sale, by a picture dealer, stating Pictures as being so many. — e.g. 300 Oil Pictures in gilt frames, 20 water-colour pictures, — would be insufficient (*Witt v. Banner*, 20 Q. B. D. 114; 36 W. R. 115; 57 L. J. Q. B. 141; 58 L. T. 34; 3 Times Rep. 759). But in a Bill of Sale by a private person, "12 Oil Paintings in gilt frames" was held sufficiently specific (*Cooper v. Huggins*, 34 S. J. 96). Ordinary cows are not specifically described as "21 Milch Cows" if nothing more be added (*Carpenter v. Deen*, 23 Q. B. D. 566; 61 L. T. 860; 5 Times Rep. 647); but in that case Lopes, L. J. (who dissented from the decision), said that Sheep should be more definitely described, and that Horses are customarily described by their colour, e.g. "Bay Mare." "Chestnut Gelding." *Carpenter v. Deen* was followed in *Davies v. Jenkins* (1900, 1 Q. B. 133; 69 L. J. Q. B. 187; 81 L. T. 788; 48 W. R. 286). In the case of a small farm in Wales, a description of "All my Farming Stock, comprising 4 Horses, 5 Cows," and mentioning other animals by number only and defining them in no other way, was held sufficient (*Jones v. Roberts*, 34 S. J. 254); in *this* the identification was aided by the localizing words "all my farming stock" (*Vh*, per Cotton, L. J., *Carpenter v. Deen*, sup). So, by "Roan horse, Drummer; brown mare and foal; 3 rade carts," the chattels were "specifically described" (*Hiekley v. Greenwood*, 59 L. J. Q. B. 113; 25 Q. B. D. 277; 63 L. T. 288; 38 W. R. 686). So, where a Bill of S., under the heading "Study," had an item of "1800 Volumes of Books, as per catalogue," which catalogue was not annexed, it was held that the books were "specifically described" within the section (*Davidson v. Carlton Bank*, 1893, 1 Q. B. 82; 62 L. J. Q. B. 111; 67 L. T. 641; 41

W. R. 132). *17; Seed v. Bradley*, cited "Maintenance of the Security," sub MAINTENANCE, p. 1143.

To deny "specifically" a statement in a Pleading, R. 13, Ord. 19. R. S. C., you "must deal specifically with each allegation of fact" of which you do not admit the truth (R. 17, Ib.). *17th, Thorp v. Holdsworth*, 3 Ch. D. 637; 45 L. J. Ch. 406; *Harris v. Gamble*, 7 Ch. D. 877; 47 L. J. Ch. 344; *Adkins v. North Metrop Tramways*, 63 L. J. Q. B. 361; 10 Times Rep. 173; Ann. Pr.: *Cp*, NEGATIVE PREGNANT.

"Specifically devised": *V. Giles v. Melsom*, L. R. 6 H. L. 24; 42 L. J. C. P. 122.

A Specific Bequest, "in the first place, is a *part* of the testator's property. A General Bequest may or may not be a part of the testator's property. A man who gives £100 money or £100 stock, may not have either the money or the stock, in which case his exors must raise the money or buy the stock; or he may have money or stock sufficient to discharge the legacy, in which case the exors would probably discharge it out of the actual money or stock. But in the case of a General legacy it has no reference to the actual state of the testator's property, it being only supposed that the testator has sufficient property which, on being realized, will procure for the legatee that which is given to him; while in the case of a Specific bequest it must be of a part of the testator's property itself. In the next place, it must be a part emphatically, as distinguished from the whole. It must be what has been sometimes called, a severed or distinguished part. It must not be the whole, in the meaning of being the totality of the testator's property, or the totality of the general residue of his property after having given legacies out of it. But if it satisfy both conditions, — that it is (1) a part of the testator's property itself, and (2) is a part as distinguished from the whole or from the whole of the residue, — then it appears to me to satisfy everything that is required to treat it as a Specific Legacy. I hope the definition which I have attempted to give will be more successful than those which have been attempted before, but I can only express that hope with some degree of trepidation" (per Jessel, M. R., *Bothamley v. Sherson*, L. R. 20 Eq. 308, 309; 44 L. J. Ch. 590, 591). But a Residuary Devise is specific in its nature, quâ Marshalling Assets (*Hensman v. Fryer*, 3 Ch. 420; 37 L. J. Ch. 97; 16 W. R. 162), and quâ LOCKE KING'S ACTS (*Gibbins v. Eyden*, L. R. 7 Eq. 371; 38 L. J. Ch. 377; 17 W. R. 481; 20 L. T. 516; *Hannington v. True*, 33 Ch. D. 197; 55 L. J. Ch. 914; 35 W. R. 103; 55 L. T. 549).

Specific LEGACY; *V. per Selborne, C., Robertson v. Broadbent*, 8 App. Ca. 812; 53 L. J. Ch. 266; *Re Huddleston*, 1894, 3 Ch. 595; 64 L. J. Ch. 157; 43 W. R. 139; INVESTED; SUM; Wms. Exs. 1019; Theobald, 112.

"Specific Cause" of Profits falling short, No. 4, 3rd set of Rules,

Sch D, s. 100, Income Tax Act, 1842, 5 & 6 V. c. 35; *V. Ryhope Co v. Foyer*, 7 Q. B. D. 485; 45 L. T. 404.

"Specific Goods," quâ Sale of Goods Act, 1893, means, "goods identified and agreed upon at the time a Contract of Sale is made" (subs. 1, s. 62).

"Specific Performance of a Contract, is its actual execution according to its stipulations and terms; and is contrasted with Damages or Compensation for the non-execution of the contract" (Fry, s. 3). *Vh. Fry*, passim; Story, ss. 712-793; 2 White & Tudor, 416-534; 11 Encyc. 653-688.

A "Specific Sum," charged by Settlement on realty and exempt from Legacy Duty by the proviso to s. 4, Legacy Duty Act, 1805, 45 G. 3, c. 28, is not confined to a precise amount fixed by the Settlement, but includes an amount named by the Settlement which may be reduced by the donee of a power thereunder. *e.g.* a power to appoint a rent-charge *not exceeding* £700 a year (*A-G. v. Hertford*, 14 L. J. Ex. 266; 14 M. & W. 284; *Pickard v. A-G.*, 9 L. J. Ex. 329; 6 M. & W. 348).

Specific Trust; *V. PARTICULAR TRUST.*

*V. SPECIFY.*

**SPECIFICATION.** — The Specification to accompany an application for the grant of a PATENT may be either (1) Provisional, or (2) Complete (s. 5, 46 & 47 V. c. 57): Form B in Sch I to that Act is that of a Provisional Specification; Form C that of a Complete Specification. *Vh.*, per Halsbury, C., *Vickers v. Siddell*, 60 L. J. Ch. 105; 15 App. Ca. 496; *Nuttall v. Hargreaves*, 1892, 1 Ch. 23; 61 L. J. Ch. 94; 65 L. T. 597; 40 W. R. 200.

*V. QUANTITY SURVEYOR.*

**SPECIFIED.** — "Specified Article"; *V. ARTICLE.*

"Specified Person," in def of PROMISSORY NOTE: *V. Storm v. Stirling*, cited SECRETARY.

*V. SET FORTH.*

**SPECIFY.** — A Marine Policy issued by an Association and signed by A. B., Manager, "per procurement of the several members of the Association every member bearing his equal proportion according to the sums mutually insured therein," and which did not by itself afford the means of ascertaining who the insurers were to be, did not "specify" the Names of the Subscribers or Underwriters within the meaning of s. 7, 30 V. c. 23 (*Re Arthur Average Assn*, 44 L. J. Ch. 569; 10 Ch. 542; *Vh. Smith v. Anderson*, 15 Ch. D. 247). But as regards the statute (35 G. 3, c. 63, s. 2) the language of which was employed in s. 7, 30 V. c. 23, it has been held that if the insurers constitute a firm, the name of the firm will be a sufficient specification of the subscribers

(*Reid v. Allan*, 19 L. J. Ex. 39; 4 Ex. 326; *Dowdall v. Allan*, 19 L. J. Q. B. 41; referring to which cases it has been said, "it may easily be held that a partnership name is a sufficient specification"; per James, L. J., *Re Arthur Accepage Assn.*, 44 L. J. Ch. 576).

Order by Ry Commrs requiring a Ry or Canal Co to "specify the *Nature and Detail* of such other Expenses," s. 14, Regn of Railways Act, 1873; *V. NATURE*, p. 1242.

"Notice specifying *Particular Breach*," s. 14, Conv & L. P. Act, 1881; *V. NOTICE*, p. 1292.

Where a Co agrees to sell its Undertaking and a part of the bargain is that the Directors and Secretary shall receive from the purchaser compensation for loss of Office, and the Notice to Shareholders of a meeting to sanction the agreement refers to the agreement simply as "an agreement for the Sale of the Undertaking and Assets," the Notice does not sufficiently "specify the PURPOSE for which the meeting is called" within s. 71, Comp C. C. Act, 1845, even though it be followed by a circular which states that "the Directors and Secretary have agreed to retire on being paid a lump sum as compensation for their loss of office" (*Kaye v. Croydon Tramways Co.*, 1898, 1 Ch. 358; 67 L. J. Ch. 222; 78 L. T. 237; 46 W. R. 405).

The Notice "specifying the intention to propose" a *Special RESOLUTION*, under s. 51, Comp Act, 1862, must fairly state the nature and object of the Resolution, so that it may be "intelligible to the minds of the class of men to whom the notice is addressed" (per Chitty, J., *Henderson v. Bank of Australasia*, 59 L. J. Ch. 796; 45 Ch. D. 330). *Vh*, *Re Bridport Old Brewery Co.*, 2 Ch. 191; *Re Silkstone Fall Co.*, 1 Ch. D. 38; *Imperial Bank of China v. Bank of Hindustan*, 6 Eq. 91; 1 Palmer Co. Prec., Forms 450 *et seq.*

*V. SPECIFIC.*

**SPEECH.** — Report of, *V. AUTHOR.*

**SPEED.** — *V. CONVENIENT SPEED: MODERATE SPEED.*

**SPEND.** — "Does not spend"; *V. LEFT.*

*V. EXPEND.*

"Spending *Authority*"; Stat. Def., Agricultural Rates Act, 1896, 59 & 60 V. c. 16, s. 9, and Sch.

**SPENT MADDER.** — *V. Turner v. Muecklow*, 8 Jur. N. S. 870; 6 L. T. 690.

**SPINSTER.** — "Spinster," is the addition usually given to all unmarried Women from the Viscount's Daughter downward" (Cowel).

A bequest for "Spinsters" is Charitable (*Thompson v. Corby*, 27 Bea. 649; 8 W. R. 267). *CP*, WIDOW.

Following, and a little amplifying, the rule on the phrase WITHOUT HAVING BEEN MARRIED, Romer, J., held that an ultimate trust, in a Marriage Settlement, on the wife's Next-of-kin as if she had died "a Spinster and intestate," excluded only the husband, and that her child by a former marriage was entitled (*Re Forbes*, W. N. (99) 6).

V. FEME: UNMARRIED.

**SPIRIT GROCER.** — *V. s.* 81, Licensing Act, 1872, 35 & 36 *V.* c. 94: *Dowling v. O'Loughlin*, Ir. Rep. 11 C. L. 488.

**SPIRIT MERCHANT.** — *V.* MERCHANT.

**SPIRITS.** — "We think that nothing can be taken to be 'Spirits' within the meaning of 6 G. 4, c. 80 (*V. s.* 101), which does not come under the definition of an inflammable liquid produced by distillation, either pure or mixed only with ingredients which do not convert it into some article of commerce not known in common parlance under the generic appellation of 'Spirits'" (per Pollock, C. B., delivering the judgment, *A-G. v. Bailey*, 17 L. J. Ex. 12; 1 Ex. 281). It was there also said that 7 W. 4, c. 72, and 5 & 6 V. c. 25, were strongly confirmatory of this view; and it was held that Sweet Spirits of Nitre were not "Spirits" within the enactment.

By s. 6, Inland Revenue Act, 1868, 31 & 32 V. c. 124, "Spirits" as used in ss. 17, 18, Illicit Distillation (Ir) Act, 1831, 1 & 2 W. 4, c. 55, includes "all Spirits whatsoever, whether completely distilled or otherwise."

Quà Refreshment Houses Act, 1860, 23 & 24 V. c. 27, "Any FERMENTED Liquor containing a greater proportion than 40 per cent of PROOF Spirit shall be deemed and taken to be " 'Spirits'" (s. 21).

Quà Spirits Acts, 1880, 43 & 44 V. c. 24, " 'Spirits,' means, Spirits of any description; and includes, all liquors mixed with spirits, and all mixtures, compounds, or preparations, made with spirits" (s. 3); and " 'Spirits of Wine,' means, rectified spirits of the strength of not less than 43 degrees above proof" (Ib.).

V. BRITISH SPIRITS: FOREIGN: LOW WINES: PLAIN SPIRITS: SPIRITUOUS LIQUOR. *Cp.* BEER.

**SPIRITUAL.** — "Temporal or Spiritual Injury, Damage, Harm, or Loss," s. 2, Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51; — A Priest may "throw the whole weight of his character into the scale; but he may not appeal to the fears, or terrors, or superstition, of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or disadvantage, or of punishment hereafter. He must not, *e.g.* threaten to excommunicate, or to withhold the Sacraments, or to expose the party to any other religious disability, or denounce the voting for any particular

candidate as a sin, or as an offence involving punishment here or hereafter" (per Fitzgerald, J., *Longford*, 2 O'M. & H. 16: *Va, Tipperary*, Ib. 31).

Corporation Spiritual; *V. CORPORATION.*

"Law Spiritual': That is the Ecclesiasticall Lawes allowed by the lawes of this realm, viz. which are not against the Common Law (whercof the King's prerogative is a principal part), nor against the statutes and customes of the realm: and regularly, according to such ecclesiasticall lawes, the Ordinarie and other ecclesiasticall judges doe proceed in causes within their comusance" (Co. Litt. 344a). *CP*, "Law Temporal." sub TEMPORAL.

Lord Spiritual; *V. PARLIAMENT: PEER.*

*V. ECCLESIASTICAL PERSON: RELIGION.*

**SPIRITUALISM.**—*V. Monck v. Hilton*, cited PALMISTRY: OTHERWISE, p. 1370.

**SPIRITUALITY.**—"Spiritualities of a Bishop, *Spiritualia Episcopi*, are those Profits which he receives as a Bishop, not as a Baron of the Parliament. Such are the duties of his Visitation, his benefit growing from ordaining and instituting Priests, Prestation Money, that is, *subsidiium charitativum* which upon reasonable cause he may require of his Clergy, and the benefit of his Jurisdiction" (Cowel). *Vf*; TEMPORALITY.

**SPIRITUOUS LIQUOR.**—A covenant not to use premises "as an Inn, Public-house, or Tap-room, or for the SALE of Spirituous Liquors, or ale, or beer," is broken if such Liquors, &c, are sold in any form or manner, *e.g.* in bottles (*Fielden*, or *Feilden v. Slater*, 38 L. J. Ch. 379; L. R. 7 Eq. 523; 20 L. T. 112; 17 W. R. 485: *CP*, *Jones v. Bone*, cited RETAIL). *V. PUBLIC HOUSE.*

A Covenant in the Lease of a tied Public-house that the Lessee shall purchase his beverages from the Lessor, implies, as a condition, that the Lessor shall be willing to supply the same of a good marketable kind (*Luker v. Dennis*, 7 Ch. D. 227; 47 L. J. Ch. 174: *Jf*, *Doe d. Calvert v. Reid*, 10 B. & C. 849; 8 L. J. O. S. K. B. 328). Such a covenant, if made with the Lessor "and his ASSIGNS," will RUN WITH THE LAND (*Clegg v. Haulds*, 59 L. J. Ch. 477; 44 Ch. D. 503; 38 W. R. 433; 6 Times Rep. 233), even when the Assigns of the Lessee are not named (*White v. Southend Hotel Co.* 1897, 1 Ch. 767; 66 L. J. Ch. 387). And where the covenant is to purchase from "the Lessor, or his firm, or his or their SUCCESSORS IN BUSINESS," that means what it says, and so long as the lessor can and will supply he is the person entitled to the covenant; failing him, then his "Successors in Business" are entitled thereto, and you cannot read into the covenant "his exors admors or assigns" after the word "Lessor," although the lease provides that "where the context allows" you may do so, for the context there does not allow the

insertion of those words (*Birmingham Breweries v. Jameson*, 67 L. J. Ch. 403; 78 L. T. 512; *Vf, Manchester Brewery Co v. Coombs*, 82 L. T. 347; 1901, 2 Ch. 608; 70 L. J. Ch. 814). A similar conclusion will be reached if the intention is clear that the benefit of such a covenant is to go with the business of the covenantee, even though his "Successors and Assigns" are not mentioned (*John v. Holmes*, cited *ASSIGNS*, p. 131).

*Vf*, EXCLUSIVE RIGHT.

Quà North Sea Fisheries Act, 1893, 56 & 57 V. c. 17, " 'Spirituous Liquors,' shall include, every liquid obtained by distillation, and containing more than 5 per centum of alcohol " (s. 9). *V. SPIRITS*.

"Spirituous Liquors" in the first part of s. 12, Tippling Act, 24 G. 2, c. 40 (probably) means (as it does in the subsequent part of the section) distilled spirituous liquors, so that wine, beer, &c, are not included in the section, but only "Spirits" in the popular meaning of that word, *e.g.* brandy, whisky, gin. The section extends to Spirits mixed with water (*Scott v. Gillmore*, 3 Taunt. 226; *Gilpin v. Rendle*, cited 4 C. & P. 368, 369, *n*); but in *Wygott v. Mackenzie* (44 S. J. 583, 584), Grantham, J., divided soda-water from the whisky with which it was mixed, and gave judgment for the value of the soda-water. The section is amended by 25 & 26 V. c. 38. *Vf*, INTOXICATING LIQUOR: ITEM: ONE TIME.

**SPITTING OF BLOOD.** — "Spitting of Blood," in a Life Insree Proposal, means, spitting of blood from some disease; but if the proposer suffers from spitting of blood, without knowing the cause, the fact should be stated (*Geach v. Ingall*, 14 M. & W. 95; 15 L. J. Ex. 37).

**SPITTLE-HOUSE.** — " 'Spittle-house,' mentioned in the Act for Subsidies, 15 Car. 2, c. 9, is a corruption from HOSPITAL, and signifies the same thing; or it may be taken from the Teutonic 'Spital,' which denotes an Hospital or Alms-house" (Cowel).

**SPLIT.** — Splitting, or Dividing, causes of action; *V. CAUSE OF ACTION*.

Conveyances of realty are void when made "to multiply Voices, or to split or divide the interest" "among several persons to enable them to vote at elections," s. 7, 7 & 8 W. 3, c. 25; that enactment was "merely declaratory of the common law, and avoids such conveyances only as are actually tainted with fraud" (1 Rogers, 226, *whv* for cases supporting that proposition). *Vf*, s. 4, Rep People Act, 1884, on *whv* 1 Rogers, 229, 230.

**SPOIL.** — "Without impeachment of waste, *except Spoil or Destruction* "; as to the force of this exception, *V. per Romilly, M. R., Vincent v. Spicer*, 25 L. J. Ch. 591; 22 Bea. 380.

*V. WILFUL AND MALICIOUS* — *CP. BOGTY: PRIZE*.

**SPOLIATION.** — “Spoliation, is an injury done by one Clerk or Incumbent to another, in taking the fruits of his Benefice without any right thereunto, but under a pretended title” (3 Bl. Com. 90).

**SPONTE.** — *V.* WILLINGLY.

**SPORTING.** — *V.* HUNTING.

A “Sporting Paper or Periodical,” in a restrictive agreement on the sale of such a paper as *Bell's Life*, does not include one devoted to athletic sports and which deliberately excludes all racing and betting intelligence, *e.g.* the *Athletic News* (*McFarlane v. Hulton*, cited PUBLICATION).

**SPRAG.** — *V.* MATERIALS.

**SPRAYING.** — Quà Seed Supply and Potatoe Spraying (Ir) Act, 1898, 61 & 62 V. c. 50, “ ‘Spraying Machine,’ means, any machine for spraying potatoes for the purpose of preventing or curing disease therein; and ‘Spraying Material,’ means, any material used in such machines” (s. 10).

**SPRING.** — “What is a Spring (of water)? Is it where a defined channel of water first starts?” (per Herschell, C., *Bradford v. Pickles*, 64 L. J. Ch. 102). “A ‘Spring of Water,’ both in law and ordinary language, is a definite source of water. When we talk of a Spring of Water we mean a source of water of a definite, or nearly definite, area. The word ‘Spring’ comes from the water springing or bubbling up. It may be an underground spring which supplies a Well, and we say that water ‘wells up.’ It may be above the ground, *e.g.* the ordinary spring from which a small stream or rivulet runs. But those are definite things. A Spring of Water, means, a source of water of a definite and well-marked extent existing in nature” (per Jessel, M. R., *Taylor v. St. Helen's*, cited WATERCOURSE). *Vf.* STREAM: Callis, 83. *Cp.* PUBLIC WELL.

“Spring Tide”; *V.* SHORE: TIDE: 26 & 27 V. c. 114, s. 19.

**SPRINGING.** — EXECUTORY limitations of realty in a WILL are called “Executory Devises,” — in a DEED they are called “Springing or Shifting Uses” (Challis, R. P., 2 ed., 65, 66). “Phrases which properly refer to the mode of their limitation are, in practice, often confused or used interchangeably with phrases which properly refer to the nature of the interest taken under such limitations. This usage is especially frequent with respect to Executory Devises, *e.g.* an Executory Interest arising by Executory Devise, is often briefly styled an ‘Executory Devise’” (1b.). A “Springing Use” is an estate in realty which arises, by its own vigour, on the happening of an event or series of events, and which



takes unto itself the legal estate in the realty by virtue of the Statute of Uses, 27 H. 8, c. 10.

*Vh*, Wms. R. P., Part 2, ch. 3: "Contingent Remainder." sub CONTINGENT.

**SPRING-RICE'S ACT.** — Executors Act, 1830, 11 G. 4 & 1 W. 4, c. 40.

**SPRUCE BEER.** — *V*. BEER.

**SQUARE.** — S. 5, 27 G. 3, c. 28, imposed a Duty on all Cast-plate Glass which was to be "squared into plates of a superficies not less than 1485 inches"; whereon Eyre, C. B. (*A-G. v. Cast-Plate Glass Co*, 1 Anstr. 44), said, "I have no doubt in saying, that the legislature used the word 'Square' not in the strict, but in the common acceptation, confining it to rectangular, but not to equilateral, figures." *Cp*, SQUARE MILE.

Quà London Bg Act, 1894, "'Square,' applied to the measurement of the AREA of a Building, means, the space of 100 superficial feet" (subs. 23, s. 5, a def adapted from 7 & 8 V. c. 84, s. 2).

**SQUARE BALE.** — *V*. BALE.

**SQUARE MILE.** — The Land Act Amendment Act, 1875, of New South Wales, 39 V. No. 13, s. 31, provides that the holder of Crown lands under lease for pastoral purposes, may, in virtue of intended improvements, apply for the right of pre-emption of such land, "provided that no such application to purchase as aforesaid shall be made for more than one Square Mile within each block of 5 Miles Square out of each lease, or a proportionate quantity out of any holding of less area"; held, that "Square Mile" and "Miles Square" meant, areas of those dimensions, and not land geometrically square (*Robertson v. Day*, 49 L. J. P. C. 9; 5 App. Ca. 63). *Cp*, SQUARE.

**SQUATTER.** — A Squatter, in unsettled lands of a Colony, means, "a person who has taken possession of a piece of land and occupied it by buildings or by cultivation, and has, by so taking possession of it, asserted a right to it" (*Hoggan v. Esquimalt & Nanaimo Ry*, 1894, A. C. 429; 63 L. J. P. C. 99; 70 L. T. 888). *Semble*, "Settler" is synonymous (*Ib*).

**STAB.** — *V*. CUT: WOUND. *Cp*, SLIT.

**STABLE.** — *Semble*, a "Stable" is a place for Horse; a Cow-house is not a "Stable" (*R. v. Haughton*, cited OUTHOUSE); nor is a Lumber-shed, though originally built for and used as a stable (*R. v. Colley*, 2 Moo. & R. 475).

Stables, as part of a dwellinghouse, quà House Tax; *V*. BELONGING, p. 178.

Training Stables; *V. Lambton v. Kerr*, cited BELONGING: SOLELY.  
 "Stable" belonging to a specified house; *V. Maitland v. Mackinnon*,  
 cited BELONGING.

*V. MANSION: NUISANCE: WORKPLACE.*

**STABLESTAND.** — " 'Stablestand' is a terme of the Forrest lawes, and it is when one is found standing in the Forest with his bow bent ready to shoot at any Deere, or with his Greyhounds in a lease ready to slip" (*Termes de la Ley*, citing Manwood, 133 b). *Vf, Cowel.*

**STACK.** — Stack of Hay; *V. COCK OF HAY.*

A quantity of Straw packed on a lorry, in course of transmission to market, and left for the night in the yard of an Inn, is not a "Stack of Straw" within "Stack of corn, grain, pulse, tares, hay, straw, haulm, stubble," s. 17, Malicious Damage Act, 1861, 24 & 25 V. c. 97 (*R. v. Satchwell*, 42 L. J. M. C. 63; L. R. 2 C. C. R. 21; 28 L. T. 569; 21 W. R. 642).

A score of Faggots piled one upon another in a loft, is not a "Stack of Wood" within s. 17, 7 & 8 G. 4, c. 30, repled s. 17, Malicious Damage Act, 1861 (*R. v. Aris*, 6 C. & P. 348).

**STADIUM.** — "By the grant of *Stadium, Ferlingus, or Quarentena terre*, doth pass a furlong or furrow long, which anciently was the 8th part of a mile" (*Touch*, 96: *Va*, Co. Litt. 5 b). "And *de ferlingis et quarentenis* you shall read divers times in the book of Domesday" (Co. Litt. 5 b).

*V. QUARENTINE.*

**STAFF.** — *V. PERMANENT.* .

**STAGE.** — *V. ENTERTAINMENT.*

Where a Court, Judge, or Arbitrator, has the power, *e.g.* to amend, strike out, refer, state a case, &c, "at any Stage of the Proceedings," the power applies so long as anything remains to be done to complete the Jdgmt or Award, *e.g.* the assessment of damages after jdgmt determining the liability (*The Duke of Buccleuch*, 1892, P. 201; 61 L. J. P. D. & A. 57; 40 W. R. 455: per Halsbury, C., *Tabernacle Bg Socy v. Knight*, 1892, A. C. 298; 62 L. J. Q. B. 50; 67 L. T. 483; 41 W. R. 207). But where the proceedings are complete, *e.g.* when the Award has been made in an arbitration, the power is gone (*Re Palmer and Hosken*, 1898, 1 Q. B. 131; 67 L. J. Q. B. 1; 77 L. T. 350; 46 W. R. 49). *Cp, PENDING.*

Every CULPRIT, and his or her wife or husband, is "a Competent Witness for the DEFENCE at every Stage of the Proceedings" (s. 1, *Crim. Ev. Act*, 1898), *i.e.* at every stage where a denial may be pleaded; therefore, a Culprit cannot be sworn and give evidence before the Grand Jury

(*R. v. Rhodes*, 1899, 1 Q. B. 77; 68 L. J. Q. B. 83; 79 L. T. 360; 47 W. R. 121; 62 J. P. 774), nor, *semble*, in Indictable cases, before the committing Justices (per Hawkins, J., *Anon.*, 43 S. J. 36).

Goods remain in "a *Stage, Process or Progress, of Manufacture*," s. 3, 7 & 8 G. 4, c. 30, if they be not brought into a condition fit for sale, although their texture be complete (*R. v. Woodhead*, 1 Moo. & R. 549).

**STAGE CARRIAGE.**—Quà Metropolitan Public Carriage Act, 1869, 32 & 33 V. c. 115, "Stage Carriage," means, "any carriage for the conveyance of Passengers, which plies for HIRE in any Public Street Road or Place within the limits of this Act, and in which the passengers or any of them are charged to pay separate and distinct, or at the rate of separate and distinct, fares for their respective places or seats therein" (s. 4). *V.* METROPOLITAN: HACKNEY CARRIAGE: OMNIBUS: CAB: STAGE WAGGON.

Other Stat. Def.—Dublin Carriage Act, 1853, 16 & 17 V. c. 112, s. 80.

**STAGE PLAY.**—Quà Theatres Act, 1843, 6 & 7 V. c. 68, "Stage Play," includes, "every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other ENTERTAINMENT of the Stage, or any part thereof; Provided always, that nothing herein contained shall be construed to apply to any theatrical representation in any booth or show which, by the Justices of the Peace or other persons having authority in that behalf, shall be allowed in any lawful FAIR, feast, or customary meeting of the like kind" (s. 23). A Duologue is within that def (*Thorne v. Colson*, 25 J. P. 101). Dancers descending from rocks on to the stage with daggers in their hands and dancing in mimic warfare, the conclusion of the dance being accentuated by some of the dancers standing in triumph over the others, and who retire at the approach of a new set of dancers with palm leaves in their hands, the latter making an avenue to receive a première danseuse who dances a pas senl, and then all form a group with palm leaves and other stage properties, is, *semble*, a "Stage Play"; but whether such, or any such like, performance is or is not a Stage Play is rather a question of fact than of law (*Wigan v. Strange*, 35 L. J. M. C. 31; L. R. 1 C. P. 175; II. & R. 41; 13 L. T. 371; 14 W. R. 103). *V.* DRAMATIC.

**STAGE WAGGON.**—By a Local Turnpike Act (4 G. 4. c. xxx), persons who had paid any toll for the passing of any horse and carriage through a toll-gate, were exempt from paying toll again that day, but it was provided that the tolls payable in respect of horses drawing any "Stage-Coach, Diligence, Van, Caravan, *Stage-Waggon*, or other Stage-Carriage," should pay on re-passing; held, that "Stage-Waggon" signified a Waggon that went and returned regularly from a fixed place to

some other fixed place, at certain definite times (*R. v. Ruscoe*, 7 L. J. M. C. 94; 8 A. & E. 386; 3 N. & P. 428).

V. STAGE CARRIAGE.

STAGNUM. — V. POOL: GURGES.

STALE. — Stale Demand; *V. Re Sharpe*, 1892, 1 Ch. 154; 61 L. J. Ch. 193; 65 L. T. 76, 806; 40 W. R. 241, and cases there cited: WAIVER.

STALL. — The continuous occupation of a portion of a Market by an erection placed there for the purpose of selling goods, is a "Stall" for which Stallage is payable although the soil be not interfered with; therefore, a wooden or wicker basket (called in Norfolk, a "Ped"), having a lid which turns back, and which, when supported by a stool or pieces of wood not fixed in the soil, forms a table upon which goods are exposed for sale, is a "Stall" (*Great Yarmouth v. Groom*, 32 L. J. Ex. 74; 1 H. & C. 102; 7 L. T. 161; 8 Jur. N. S. 677). *Vf, Caswell v. Cook*, 31 L. J. M. C. 185; 11 C. B. N. S. 637.

STALLAGE AND PICKAGE. — "Stallage, is the right of putting up a stall in a fair or market, and also the money paid to the owner of the soil for so doing; Pickage, is the right of picking up the soil for that purpose, and the money paid to the owner of the soil for so doing" (Elph. 620, citing Spelm. *Stallagium*: *R. v. Maydenhead*, Palm. 76; 2 Rol. Rep. 155. *Vh, Great Yarmouth v. Groom*, cited STALL).

"'Stallage,' that is to be quit of a certaine custome exacted for the street taken or assigned in Faires and Markets." "'Piccage,' is the payment of money, or the money payd, for the breaking of the ground to set up boothes and standings in Faires" (Termes de la Ley).

STAMP. — Quà Stamp Acts, "'Stamp,' means as well a stamp impressed by means of a die as an adhesive stamp" (s. 122, Stamp Act, 1891; s. 2 (5), Stamp Act, 1870); Excise Labels are included in that def (s. 23, Stamp Act, 1891). *Vf, 54 & 55 V. c. 38, s. 27; 33 & 34 V. c. 98, s. 2 (10). Va, STAMPED. Cp, MARK.*

Quà Weights and Measures Act, 1878, 41 & 42 V. c. 49, "'Stamping,' includes, casting, engraving, etching, branding, or otherwise marking, in such manner as to be, so far as practicable, indelible; and the expression 'Stamp,' and other expressions relating thereto, shall be construed accordingly" (s. 70).

Fictitious Stamp; *V. LAWFUL EXCUSE.*

STAMPED. — Quà Stamp Acts, "'Stamped,' with reference to INSTRUMENTS and Material, applies as well to Instruments and Material impressed with stamps by means of a die as to Instruments and Mate-

rial having adhesive stamps affixed thereto" (s. 122, Stamp Act, 1891; s. 2 (6), Stamp Act, 1870): *Vf*, 54 & 55 V. c. 38, s. 27; 33 & 34 V. c. 98, s. 2 (11). *Va*, STAMP.

"Duly stamped"; *V*. DULY.

"Properly Stamped"; *V*. PROPERLY.

"Stamped Forms"; Stat. Def., 21 & 22 V. c. 100, s. 3.

**STAND.** — "Standing in my name," marks a bequest as SPECIFIC (*Gordon v. Duff*, 3 D. G. F. & J. 662; 4 L. T. 598; 7 Jur. N. S. 746; 9 W. R. 643).

"Standing to the credit"; *V*. CREDIT.

Shares "Standing in his own right"; *V*. IN HIS OWN RIGHT.

Valuation of a Partner's Share as the same "stood" at a stated date; held to mean as it stood in the books of the partnership (*Blissett v Daniel*, 10 Hare, 511).

Machinery, &c, "standing" on premises; *V*. ERECTED.

"Standing NETS"; *V*. STOP.

"Standing Orders"; *V*. ORDER, p. 1351.

*V*. STANDING BY.

**STANDARD.** — " 'Estandard or Standard,' signifieth an ensigne in war; but it is also used for the principall or standing measure of the King" (Termes de la Ley, *Estandard*): *Vf*, Cowel. *Cp*, BANNER.

The "Standard Amount," quā adjustment of rent between occupier and landlord in consequence of agricultural grant and change in incidence of rate (s. 54, Loc Gov (Ir) Act, 1898), "means, in relation to any HOLDING, a sum equal to what is produced by a rate on the rateable value of the holding in the standard FINANCIAL YEAR, according to the standard rate of Poor Rate or County Cess, as the case requires" (subs. 6).

Standards of Fineness of Gold, Silver, and Bronze, Coins; *V*. Coinage Acts, 1870 and 1891, 33 & 34 V. c. 10; 54 & 55 V. c. 72.

Standard Gold and Silver Ware; *V*. Gold and Silver Wares Acts, 1844 and 1854, 7 & 8 V. c. 22; 17 & 18 V. c. 96. *Vf*, Plate Assay (Ir) Act, 1807, 47 G. 3, Sess. 2, c. 15; Plate (Scot) Act, 1836, 6 & 7 W. 4, c. 69.

For the Standard Weights and Measures of the United Kingdom, and how they were constructed, *V*. Weights and Measures Act, 1878, 41 & 42 V. c. 49, and its Schedules: on s. 24, *V. Bellamy v. Pow*, 12 Times Rep. 527; 60 J. P. 712. *V*. WEIGHT.

**STANDELL.** — "Is a young store Oak-Tree, which may in time make TIMBER" (Cowel); this is correct "if the word 'Oak' is expunged" (*note to Herring v. St. Paul's*, 3 Swanst. 514, where it is said, that, "as increasing the 'store' of timber, a Standell is denominated a 'Storer'").

**STANDING BY.**—“Standing by” is that ACQUIESCENCE in an Infringement of a Right which would make it fraudulent in the Possessor of the right to afterwards set up his right; and, firstly, the Infringer must have made a mistake as to his legal rights; secondly, he must have expended some money or have done some act (not, necessarily, upon the Possessor’s land) on the faith of his mistaken belief; thirdly, the Possessor of the legal right must know of the existence of his own right which is inconsistent with the right claimed by the Infringer; fourthly, the Possessor of the legal right must know of the Infringer’s mistaken belief of his rights: lastly, the Possessor of the legal right must have encouraged the Infringer in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right (per Fry, J., *Willmott v. Barber*, 15 Ch. D. 105, 106; 49 L. J. Ch. 792; applied in *Civil Service Musical Instrument Assn v. Whiteman*, 68 L. J. Ch. 484; 80 L. T. 685; 63 J. P. 441).

V. SILENCE: WAIVER.

**STANHOPE.**—V. TALFOURD’S ACTS.

**STANLAW.**—V. LAW OR LAWE.

**STANNARIES.**—“The Stannaries” of Devon and Cornwall; V. Stannaries Acts, 1869 and 1887, 32 & 33 V. c. 19; 50 & 51 V. c. 43. Stannaries Court abolished by 59 & 60 V. c. 45.

**START.**—Start on a Voyage; V. SAIL.

**STATE.**—“State-inspected SCHOOL,” quâ Truck Amendment Act, 1887, 50 & 51 V. c. 46. “means, any ELEMENTARY school inspected under the direction of the Education Department in England or Scotland, or of the Board of National Education in Ireland” (s. 7).

V. STATES.

**STATED ACCOUNT.**—V. SETTLED.

**STATED PERIOD.**—V. PERIODICAL: CERTAIN TIME.

**STATEMENT OF AFFAIRS.**—The Statement required to be made and signed by a liquidating or compounding Debtor under the Bankry Act, 1869, meant a full complete and detailed disclosure, not only of the affairs of his own business, but also and to the same extent of any other (even solvent) business in which he may have been a partner (*Ex p. Amor*, 52 L. J. Ch. 138; 21 Ch. D. 594; 31 W. R. 282; 48 L. T. 16).

Quâ Bankry Act, 1883; V. s. 16, on *who* Wms. Bank. 59: Baldwin, 164.

**STATEMENT OF CLAIM.**—V. PLEADING.

STATEMENT OF FACT. — *V.* FACT: FALSE STATEMENT.

**STATES.** — Quà the COMMONWEALTH of Australia, “ ‘The States,’ shall mean, such of the Colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia including the Northern Territory of South Australia, as for the time being are parts of the Commonwealth, and such Colonies or Territories as may be admitted into, or established by, the Commonwealth as States; and each of such parts of the Commonwealth shall be called ‘a State’: ‘Original States,’ shall mean, such States as are parts of the Commonwealth at its establishment ” (s. 6, 63 & 64 V. c. 12).

**STATION.** — A Condition on a Ry Excursion Ticket that if “used for any other Station than that named. the Ticket will be forfeited.” means what it says (*G. N. Ry v. Palmer*, 1895, 1 Q. B. 862; 64 L. J. Q. B. 316; 72 L. T. 287; 43 W. R. 316; 59 J. P. 166).

There must be something very exceptional in its circumstances to make a SIDING a “Station” within s. 14, Regn of Railways Act, 1873 (*Pelsall Coal Co v. Lond. & N. W. Ry*, 7 Ry & Can Traffic Ca. 36, *whc, semble*, over-rules *Harborne Ry v. Lond. & N. W. Ry*, 2 Ib. 169).

“TRAFFIC to and from the Stations of each Co”; *V. Central Wales Ry v. Lond. & N. W. Ry*, 4 Ry & Can Traffic Ca. 101.

*V.* COMPETITIVE: RAILWAY STATION.

“Station,” quà Army Chaplains Act, 1868, 31 & 32 V. c. 83, means and includes, “any Camp, Barrack, Hospital, or Arsenal, and property adjacent thereto, the site whereof is held by, or in trust for, Her Majesty” (s. 2).

“Station beyond the Seas,” quà Army Act, 1881, “includes, any place where any of Her Majesty’s Forces are serving out of the UNITED KINGDOM, the CHANNEL ISLANDS, and Isle of Man” (subs. 25, s. 190). *V.* BEYOND SEAS.

Polling Station; *V.* POLLING.

“Stations of the Cross”; *V. Re St. Mark’s*, 1898, P. 114.

**STATION TO STATION.** — An ordinary contract (and though not as Common Carriers) to carry from “Station to Station.” involves an obligation to unload and deliver at the receiving station, or at least to provide proper appliances for that purpose (per Hawkins, J., *Royal National Lifeboat Inst. v. Lond. & N. W. Ry*, 3 Times Rep. 601).

**STATIONARY.** — To be “stationary,” within Art. 9 of the Regns for Preventing Collisions at Sea, 1863 (*Va*, Art. 9, Regns, 1897), a Fishing Vessel must not have more way on than is necessary to keep herself under command whilst attached to her nets. If it is necessary, even for the purpose of rendering her fishing more effective, that she should have more way on, she is not “stationary,” and must carry the lights of a

vessel UNDER-WAY (*The Duvelm*, 53 L. J. P. D. & A. 81; 9 P. D. 164; 32 W. R. 970; *Vthc, The Tweeddale*, 58 L. J. P. D. & A. 41; 14 P. D. 164; 61 L. T. 371; 37 W. R. 783). *Vf*; *The Edith*, Ir. Rep. 10 Eq. 345. *Cp.* STRANDING.

*V.* FIXED ENGINE.

**STATUARY.** — “Statuary,” obviously includes a Marble Bust chiselled by an artist or a Marble full-length Figure; *secus*, of a Terra Cotta Bust which cannot, without averment on the record, be brought within even a trade meaning of “statuary” (*Sutton v. Ciceri*, 15 App. Ca. 144; 62 L. T. 742).

**STATUE.** — *V.* PUBLIC STATUE.

**STATUS.** — “Alteration in the status” of members of a Co, s. 131, Comp Act, 1862; *V. Re National Bank of Wales*, cited SHARE.

**STATUTE.** — Is, in its primary meaning, synonymous with ACT OF PARLIAMENT.

Quà Grammar Schools Act, 1840, 3 & 4 V. c. 77, “‘Statutes,’ shall mean and include, all written rules and regulations by which the school, schoolmasters, or scholars, are shall or ought to be governed, whether such rules or regulations are comprised in, incorporated with, or authorized by, any Royal or other Charter or other Instrument of Foundation Endowment or Benefaction, or declared or confirmed by Act of Parliament or by Decree of any Court of Record; and also all rules and regulations which shall be unwritten and established only by usage or reputation” (s. 25).

Quà Cambridge University Act, 1856, 19 & 20 V. c. 88, “Statutes,” includes, “all ordinances and regulations of the University, and all ordinances and regulations contained in any Charter, Deed of Composition, or other Instrument of Foundation or Endowment, of a College; and all bye-laws ordinances and regulations” (s. 50).

**STATUTE ADULT.** — Quà Part 3, Mer Shipping Act, 1894, “‘Statute ADULT,’ shall mean, a person of the age of 12 years or upwards; and two persons between the ages of 1 and 12 years shall be treated as one Statute Adult” (subs. 2, s. 268).

**STATUTE LABOUR.** — “Statute Labour,” “Statute Labour Road”; Stat. Def., Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, s. 3.

**STATUTE MERCHANT.** — This, as also Statute Staple, was a form of security for money formerly much in use: *Vh*, Termes de la Ley: Jacob, *Statute*: 2 Bl. Com. 160: 2 Cru. Dig. Title 14.



**STATUTE OF DISTRIBUTION.** — 22 & 23 Car. 2, c. 10.

Devise of all testator's realty and personalty to the "person or persons who under the Statute of Distribution of Effects of Intestates would have been entitled thereto" if he had died intestate; held to mean, that the law would divide his property for him, and therefore that the realty went to the heir (*Kühne v. Hudson*, 39 S. J. 468). *Cp.* NEXT OF KIN.

**STATUTE OF FRAUDS.** — 29 Car. 2, c. 3.**STATUTE OF USES.** — 27 H. 8, c. 10.**STATUTE STAPLE.** — *V.* STATUTE MERCHANT.**STATUTORY.** — "Statutory Declaration"; *V.* DECLARATION.

"Statutory DEFENCE," R. 18 *a*, Ord. 10, County Court Rules, 1889, includes a defence based on want of NOTICE under Employers' Liability Act, 1880 (*Conroy v. Peacock*, 1897, 2 Q. B. 6; 66 L. J. Q. B. 425; 76 L. T. 465); so, of a defence under s. 4, Sale of Goods Act, 1893 (*Brutton v. Branson*, 1898, 2 Q. B. 219; 67 L. J. Q. B. 827; 79 L. T. 247); so, of a defence to a Solr's claim that he has not delivered a proper Bill (*Lewis v. Burrell*, 77 L. T. 626). *Note:* as to what is a sufficient compliance with the Rule, *V. Eaton v. Tapley*, 1899, 1 Q. B. 953; 68 L. J. Q. B. 638; 47 W. R. 463; 80 L. T. 797.

Statutory *Duty*; *V.* PURSUANCE: PUBLIC DUTY.

Statutory RECEIPT by a Building Socy; *V.* Bg Socy Act, 1874, s. 42, and Sch, on *whv*, *Fourth City Bg Socy v. Williams*, 49 L. J. Ch. 245; 14 Ch. D. 140: *Robinson v. Trevor*, 53 L. J. Q. B. 85; 12 Q. B. D. 423; *Sangster v. Cochrane*, 54 L. J. Ch. 301; 28 Ch. D. 298: *Hosking v. Smith*, 58 L. J. Ch. 367; 13 App. Ca. 582: *quà* Yorkshire Registries Act, 1884, 47 & 48 V. c. 54; *V.* s. 3.

"Statutory Rules"; *V.* RULES.

"Statutory TENANCY," *quà* Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "includes judicial lease under the Land Law (Ir) Act, 1881, and any Act Amending the same; and any tenancy in respect of which a JUDICIAL RENT has been fixed under any of those Acts" (s. 95).

**STAUNCH.** — *V.* TIGHT.

**STAY.** — "Stay of Execution," means to suspend the enforcement of a Jdgmt or Order until something else happens, *e.g.* an Appeal can be heard: *Vh*, SPECIAL, p. 1910: notes Ann. Pr. to R. 17, Ord. 42, R. S. C.: R. 16, Ord. 58, on *whv* Ann. Pr.

"Stay of Proceedings," means such a suspension (R. 16, Ord. 58, R. S. C.), but, probably, the phrase is more frequently used as meaning to restrain or stop the proceedings definitely; *V.* s. 24 (5), Jud. Act, 1873, on *whv* Ann. Pr., *whva* on Summons to Stay.

**STAY AND TRADE.** — A Policy which covers a Ship during “her Stay and Trade,” at a place, means, during her stay there for the purposes of trade; and a stay for a purpose unconnected with trade is a deviation (*African Merchants v. British & Foreign Marine Insrce*, 42 L. J. Ex. 60; L. R. 8 Ex. 154). *V. DEVIATE.*

**STEAL.** — *V. THEFT.*

**STEAM BRIDGE.** — Steam Ferry Boats working in chains, are commonly called Steam Bridges; *V. PASSENGER STEAMER.*

**STEAM ENGINE.** — *V. ENGINE: ERECT.*

**STEAM LAUNCH.** — Quà Thames Conservancy Act, 1894, “ ‘Steam Launch,’ includes, any VESSEL propelled by steam, electricity, or other mechanical power, not being used solely as a Tug or for the Carriage of Goods, and not being certified by the Board of Trade as a PASSENGER STEAMER to carry 200, or more, passengers ” (s. 3). *Cp.* HOUSE BOAT.

*V. STEAM VESSEL: STEAMSHIP.*

**STEAM NAVIGATION.** — The breakdown of an Engine, the disabling of a Screw, and things of that kind, are RISKS of Steam NAVIGATION (per Coleridge, C. J., *Mercantile S. S. Co v. Tyser*, 7 Q. B. D. 73; 29 W. R. 790).

**STEAM VESSEL.** — Quà Regns for Preventing Collisions at Sea, 1897. and by their Preliminary Rules, “ Steam Vessel,” includes, “ any VESSEL propelled by machinery.”

*Cp.* STEAM LAUNCH: STEAMSHIP.

**STEAMSHIP: STEAMER.** — In a Bill of Lading, a Steamship or Steamer means, a SHIP in which the principal motive-power during the voyage is steam. “ I am very far from saying that where it is convenient, as it often is, for a steam vessel to use sailing power instead of steam power when the wind happens to be favourable, it is necessary that the vessel should be at all times and under all circumstances propelled by steam; but the meaning of a vessel being a Steamship is that the principal motive-power used shall be the power of steam, and not sails ” (per Cockburn, C. J., *Fraser v. Telegraph Construction Co*, L. R. 7 Q. B. 568; 41 L. J. Q. B. 250).

*V. PASSENGER STEAMER: SAILING VESSEL: STEAM LAUNCH: STEAM VESSEL.*

“ Shipment by Steamer ”; *V. SHIPMENT.*

**STEEL.** — *V. IRON.*

**STEER.** — *V. CATTLE.*

**STEERAGE PASSAGE.** — Quà Part 3, Mer Shipping Act, 1894, “ ‘Steerage Passage,’ shall include, passages of all PASSENGERS except Cabin Passengers ” (subs. 4, s. 268): *V. Morriss v. Howden*, cited PASSAGE BROKER: STEERAGE PASSENGER.

**STEERAGE PASSENGER.** — Quà Part 3, Mer Shipping Act, 1894, — unless the context otherwise requires, — “ ‘Steerage Passenger,’ shall mean, all PASSENGERS except Cabin Passengers; and persons shall not be deemed *Cabin Passengers* unless, —

- “ (a) the space allotted to their exclusive use is in the proportion of, at least, 36 clear superficial feet to each STATUTE ADULT; and
- “ (b) they are messed throughout the voyage at the same table with the MASTER, or First Officer, of the ship; and
- “ (c) the fare contracted to be paid by them is in the proportion for every week of the length of the voyage (as determined under this Part of this Act for Sailing Vessels) of 30s. if the voyage of the ship is from the BRITISH ISLANDS to a port south of the Equator, and 20s. if the voyage of the ship is from the British Islands to a port north of the Equator; and
- “ (d) they have been furnished with a duly signed contract ticket in the form prescribed by the Board of Trade for Cabin Passengers ” (subs. 3, s. 268).

**STELL NET.** — *V. NET: STOP.*

**STENT NET.** — *V. NET.*

**STEP.** — An application *to the Court* by a deft for an extension of the time for delivering Defence, is a “ Step in the Proceedings ” within s. 4, Arb Act, 1889 (*Ford's Hotel Co v. Bartlett*, 1896, A. C. 1; 65 L. J. Q. B. 166; 73 L. T. 665; 44 W. R. 241); *secus*, if such time is obtained by consent without any such application (*Chappell v. North*, 1891, 2 Q. B. 252; 60 L. J. Q. B. 554; 65 L. T. 23; 40 W. R. 16; *Brighton Marine Co v. Woodhouse*, 1893, 2 Ch. 486; 62 L. J. Ch. 697; 68 L. T. 669; 41 W. R. 488). So, a Summons for Particulars, or an Order for Interrogatories, though obtained on a summons by the adversary, is a “ Step ” (*Chappell v. North*, *sup*), so, of attending on the adversary’s Summons for Directions (*County Theatres Co v. Knowles*, 1902, 1 K. B. 480; 71 L. J. K. B. 351; 86 L. T. 132); but merely requiring a Statement of Claim is not a “ Step ” (*Ives v. Willans*, 1894, 2 Ch. 478; 63 L. J. Ch. 521; 70 L. T. 674; 42 W. R. 396). So, an application to the Court for Security for Costs, is a “ Step ” (*Adams v. Cattley*, 66 L. T. 687; 40 W. R. 570); but merely filing affidavits in answer to a motion for Receiver is not (*Zalimoff v. Hammond*, 1893, 2 Ch. 92; 67 L. J. Ch. 370; 78 L. T. 456).

A Solicitor's letter before action is not a Step in the action (*Longstaffe v. Woodrofe*, 38 S. J. 275).

V. FRESH STEP.

**STEP-CHILDREN.** — V. CHILD, p. 303.

**STEP-DAUGHTER.** — A bequest of residue to testator's "Step-daughter," held, valid in favour of a daughter by his supposed wife, though such woman had a husband living at the time of the marriage ceremony between her and the testator and which husband was living at testator's death (*Wilkinson v. Joughin*, 35 L. J. Ch. 684; L. R. 2 Eq. 319).

V. DAUGHTER.

**STEREOTYPE.** — V. PRINT.

**STERN.** — V. AT OR NEAR.

**STETHE** or **STEDE.** — "*Stethe* or *Stede* betokeneth properly a banke of a river, and many times a place, as *stowe* doth" (Co. Litt. 4 b).

**STEVEDORE.** — V. EMPLOYED: SEA-GOING.

**STEWARD.** — Steward "is a word of many significations," but in s. 78, Litt., "it signifieth an officer of justice, viz., a Keeper of Courts, &c" (Co. Litt. 61 a, b; *whr*). *Va*, Cowel: Jacob.

Quà S. L. Act, 1882, " 'Steward,' includes, DEPUTY Steward, or other proper Officer, of a Manor" (subs. 10, vi, s. 2): quà Stamp Act, 1891, " 'Steward' of a Manor, includes Deputy Steward" (s. 122): quà Copyhold Act, 1894, " 'Steward,' includes, a Deputy Steward and a Clerk of a Manor, and any person for the time being filling the character of or acting as Steward, whether lawfully entitled or not" (s. 94).

**STEWARTRY.** — V. COUNTY, p. 420: SHERIFFDOM.

**STICHE.** — A SELION (Elph. 621, citing Spelm. *Selio*).

**STILL.** — "Still Nets"; V. STOP: NET.

Quà Spirits Act, 1880, 43 & 44 V. c. 24, " 'Still,' includes any part of a Still, and any distilling apparatus whatever, for distilling or making SPIRITS" (s. 3).

Trust property "still retained" by a trustee, s. 8 (1), Trustee Act, 1888, means, property which, at the time of action brought, the trustee actually has or has the power of getting (*Thorne v. Heard*, 1895, A. C. 495; 64 L. J. Ch. 652; *Re Page*, 1893, 1 Ch. 304; 62 L. J. Ch. 592; 41 W. R. 357). V. CONVERT: RETAIN.

**STINT.** — Common of Pasture “without Stint,” or “Sans Nombre,” does not mean that you are entitled to depasture on the Common as many commonable animals as you please (*Mellor v. Spateman*, Wms. Saund., 6 ed., 339, 340, 346); it connotes that the number is “unmeasured” (3 Bl. Com. 239), *i.e.* not precisely ascertained. If there is no precise regulation, the number of animals cannot exceed those which are, or could be, ordinarily LEVANT AND COUCHANT on the land to which the right is annexed (*Morley v. Clifford*, 51 L. J. Ch. 687; 20 Ch. D. 753).

**STIPEND.** — A Bequest of “£100 for Masses for the repose of my soul at the Stipend of 5s. each”; held, in Ireland, as meaning “at the Price” of, &c. and as not involving any attempt to create a PERPETUITY (*Phelan v. Slattery*, 19 L. R. Ir. 177).

“One Year’s Stipend”; *V. ONE*, at end.

**STIPENDIARY.** — Stipendiary Lands; *V. FEUD*.  
Stipendiary Magistrate; *V. MAGISTRATE*.

**STIPULATED.** — A BILL OF SALE payable “ON DEMAND,” provides no “stipulated Time of Payment” within the meaning of the Form prescribed by the Schedule to Bills of Sale Act, 1882, and is void (per Brett, M. R., and Fry, L. J., *Melville v. Stringer*, 53 L. J. Q. B. 482; 13 Q. B. D. 392; 50 L. T. 774; 32 W. R. 890; *Hetherington v. Groome*, 53 L. J. Q. B. 576; 13 Q. B. D. 789; 51 L. T. 412; 33 W. R. 103; *Furnivall v. Hudson*, 1893, 1 Ch. 335; 62 L. J. Ch. 178; 68 L. T. 378; 41 W. R. 358). The essence of the thing is that “the time must be definitely stated. Therefore, an agreement to pay ‘on demand,’ or on the happening of an uncertain event, or to pay a sum for which the grantor might become liable under a guarantee, will not do in a Bill of Sale” (per Lindley, M. R., *De Braam v. Ford*, 69 L. J. Ch. 85); but an agreement to pay “ON OR BEFORE” a fixed day will do (*S. C.*, 1900, 1 Ch. 142; 69 L. J. Ch. 82; 81 L. T. 568). *Vf*, as to what is a compliance with this requirement, *Edwards v. Marston*, 1891, 1 Q. B. 225; 60 L. J. Q. B. 202; 64 L. T. 97; 39 W. R. 165, also cited BALANCE.

As to a Condition of Sale that expenses of re-sale, &c. shall be recoverable as “Stipulated Damages,” — “Opinions have differed whether the party should only be allowed to recover what damage he had really sustained (*Randal v. Everest*, Moo. & M. 41: *V. Boys v. Ansell*, 5 Bing. N. C. 390), or the stipulated sum (*Crisdee v. Bolton*, 3 C. & P. 240). But such a Condition does not preclude the seller from maintaining an action for general damages, where the purchaser breaks off from the contract altogether. It applies in case of a breach of any of the particular Conditions (*Jeely v. Grew*, 6 N. & M. 467)”: Sug. V. & P. 39, 40. *Vj*; LIQUIDATED DAMAGES.

*Semble*, "it is stipulated" imports an Agreement or Covenant, but not a CONDITION; yet if the phrase is "it is stipulated and conditioned," it will operate both as an Agreement or Covenant, and a Condition (*Doe d. Henniker v. Watt*, 8 B. & C. 308).

V. EXPRESSLY STIPULATED.

STIPULATION.—*V. Hill v. Fox*, 4 H. & N. 364.

STIRPES.—*V. PER STIRPES*.

STOCK.—"The term 'Stock' or 'Capital Stock' which is used in ss. 61-64, Comp. C. C. Act, 1845, 8 V. c. 16, obviously is derived from the consideration that these were what were called joint stock companies, and that 'stock' was the short name for 'joint stock'; and 'joint stock' in my opinion is only another name for 'shares,' because the owner of part of the capital of a Company is an owner of a part of the joint stock or an owner of a share of the joint stock. The use of the term 'Stock,' appears to me merely to denote that the Company have recognized the fact of the complete payment of the shares, and that the time has come when those shares may be assigned in fragments, which for obvious reasons could not be permitted before; but that stock shall still be, *e.g.* the qualification of directors, who must possess twenty shares or whatever the number may be, and that the meetings shall be of the persons entitled to this stock, who shall meet as shareholders and vote as shareholders in the proportion of shares which would entitle them to vote before the consolidation into stock. It appears to me that the doubt which has arisen as to the identity of stock and shares has sprung from this circumstance, that it has been supposed, without sufficient attention having been paid to these provisions, that stock in a railway had some sort of analogy to stock in the public funds. It has none whatever. It is possible that *Debenture Stock* in a Railway Company may be said to have some analogy to stock in the public funds; but the joint stock capital of a Company is a perfectly different thing from stock in the public funds. In my opinion, when, in that state of things, a man has an interest in a railway, and is an owner of stock in a railway, he is said to be a Shareholder in the Company, and would call himself a shareholder in the Company" (per Cairns, C., *Morrice v. Aylmer*, 41 L. J. Ch. 214; 10 Ch. 148; affd 45 L. J. Ch. 614; L. R. 7 H. L. 717). It was accordingly held in that case, that a bequest of "Shares" in a Railway carried testator's Stock in that railway: *Vf*, SHARE.

*Vf*, as to a bequest of "Stock," *Collison v. Curling*, 9 Cl. & F. 88; *Kirby v. Potter*, 4 Ves. 750; *Sibley v. Perry*, 7 Ves. 522-534; *Measure v. Carleton*, 30 Bea. 538; *Grant v. Mussett*, 8 W. R. 330; 2 L. T. 133; STOCKS: BANK STOCK.

"All my Stock standing in my name in various Companies, together with all Bonds, &c"; *V. Re Parrott*, 53 L. T. 12; W. N. (85) 127.

“Government or other Stock,” s. 201, Bankry Act, 1849, includes Ry Shares (*Ex p. Copeland*, 22 L. J. Bank. 17; 2 D. G. M. & G. 914).

“‘Stock’ cannot be considered as MONEY” (*Nightingall v. Devismv.*, 1 Bl. W. 684); so an agreement to pay a per-centage on all “Money” received through A.’s means, does not entitle him to receive the per-centage on a transfer of Stock obtained by him (*Jones v. Brinley*, 1 East, 1).

Quà Trustee Act, 1850, “‘Stock,’ shall mean any fund, annuity, or security, transferable in books kept by any Company or Society established or to be established, or transferable by deed alone or by deed accompanied by other formalities, and any share or interest therein” (s. 2); a def which includes Shares in a Joint Stock Co (*Re Angelo*, 5 D. G. & S. 278), even though not fully paid-up (*Re New Zealand Trust Co*, 1893, 1 Ch. 403; 62 L. J. Ch. 262; 68 L. T. 593; 41 W. R. 457): quà Trustee Act, 1893, “‘Stock,’ includes fully paid-up Shares,” and, as regards Vesting Orders, “includes any fund; annuity, or security, transferable in books kept by any Company or Society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein” (s. 50); *semble*, *Re New Zealand Trust Co* (sup) “holds good under the Act of 1893, so far as Vesting Orders are concerned” (Seton, 1218).

“Stock” has also received statutory definition in and for the following Acts;—

Authorities Loans (Scot) Act, 1891, 54 & 55 V. c. 34; *V.* s. 4:

Local Government (Stock Transfer) Act, 1895, 58 & 59 V. c. 32; *V.* s. 1 (2):

Lunacy Act, 1890; *V.* s. 341:

Lunacy Regn (Ir) Act, 1871, 34 & 35 V. c. 22; *V.* s. 2:

Metropolitan Board of Works (Loans) Act, 1869, 32 & 33 V. c. 102; *V.* ss. 16, 46:

Metropolitan Board of Works (Money) Act, 1885, 48 & 49 V. c. 50; *V.* s. 27:

National Debt Act, 1870, 33 & 34 V. c. 71; *V.* s. 3: 3% Stock, 2½% Stock; *V.* National Debt (Conversion of Stock) Act, 1884, 47 & 48 V. c. 23, s. 9:

Stamp Act, 1891; *V.* s. 122, on *whv*, *Furness Ry v. Inl. Rev.*, 33 L. J. Ex. 173; nom. *Ulverstone & Lancaster Ry v. Inl. Rev.*, 2 H. & C. 855.

“Government Stock, Funds, or Annuities.” “Stock or Shares of any Public Co,” s. 14, Judgments Act, 1838, 1 & 2 V. c. 110; *V.* *Morris v. Manesty*, 7 Q. B. 674; 14 L. J. Q. B. 285.

“Shares, Stock,” &c, in an Investment Clause; *V.* DEBENTURE, at end: MORTGAGE, p. 1228.

*V.* COLONIAL: FOREIGN: GOVERNMENT STOCK: JOINT STOCK: NOMINAL: PUBLIC STOCKS: REDEEMING STOCK.

As to distinction between Ordinary Stock and Debenture St ek, *V.*

*Morrice v. Aylmer*, sup: *Re Bodman*, cited DEBENTURE STOCK: 1 Palmer Co. Prec. ch. 14.

As to effect of converting Shares into Stock; *V. s. 29, Comp Act, 1862: Morrice v. Aylmer*, sup.

“Stock liable to be converted”; *V. LIABLE.*

*V. FARMING STOCK: LIVE AND DEAD STOCK.*

A devise to A. and his “Stock,” passed the FEE SIMPLE (*Cowden v. Clerke*, Hob. 33).

**STOCK AWASH.** — Anchor carried “Stock awash,” R. 20, Thames By-laws, 1872, altered to “Ring awash” by R. 11, Thames By-laws, 1898; *V. The J. R. Hinde*, 1892, P. 231; 61 L. J. P. D. & A. 91; *The Six Sisters*, 1900, P. 302; 69 L. J. P. D. & A. 139; *The Hornet*, 1892, P. 361.

**STOCK CERTIFICATE.** — *V. National Debt Act, 1870, 33 & 34 V. c. 71, Part 5: “Stock Certificate to Bearer”; Stat. Def., Stamp Act, 1891, s. 108; Finance Act, 1899, 62 & 63 V. c. 9, s. 4 (4).*

**STOCK IN THE FUNDS.** — *V. FUNDS.*

**STOCK IN TRADE.** — It is submitted that this phrase comprises all such chattels as are acquired for the purpose of being sold, or let to hire, in a person’s trade. Setting aside a mere dictum in *Elliott v. Elliott* (9 M. & W. 23; 11 L. J. Ex. 3), the only authority on the interpretation of this phrase, standing alone, seems to be *Re Richardson* (50 L. J. Ch. 488; 44 L. T. 404). In that case the testator was a barge-builder, and, according to the custom of that trade, he would sometimes, on the sale of a new barge, accept an old one in part payment which he would repair and let out on hire; at the time of his death, he had 5 of such barges: held, that these barges passed under a bequest of his “Stock-in-Trade as a barge-builder.”

On a dissolution of a partnership, “the Stock-in-Trade, Property, and Effects, of the business” had to be valued and a proportion thereof paid for to the retiring partner; held, that Goodwill was not to be included as within the phrase (*Chapman v. Hayman*, 1 Times Rep. 397); *See, Re David and Matthews*, cited GOODWILL, p. 828.

*V. Dean v. Brown*, cited OTHER, p. 1362: THAT IS TO SAY.

A bequest of “MY Stock in Trade and Trade Debts” passes it and them as existing at the death of the testator (*Ferguson v. Ferguson*, Ir. Rep. 6 Eq. 199, in *whc* Sullivan, M. R., rested his jdgmt mainly on *Goodlad v. Burnett*, cited MY).

Stat. Def. — 27 V. c. 18, s. 9, quâ the then Duty on Fire Insrees. repealed by 32 & 33 V. c. 14, s. 12, and Sch C.

**STOCK ON FARM.** — Is synonymous with FARMING STOCK.



**STOCKBROKER.**—*V.* BROKER: SHARE-BROKER.  *Cp.* JOBBER.

**STOCKHOLDER.**—“Stockholder,” generally, means a Holder of Stock duly registered, *e.g.* Colonial Stock Act, 1877, 40 & 41 V. c. 59, s. 26; National Debt Act, 1870, 33 & 34 V. c. 71, s. 3: *Va.* SHAREHOLDER: STOCK.

Quà Local Authorities Loans (Scot) Act, 1891, 54 & 55 V. c. 34, “Stockholder,” simply means “a holder” of Stock created thereunder (subs. 1, s. 4).

**STOCKS.**—“According to the Stocks”; *V.* PER STIRPES.

“Stocks, Shares, or Securities, of any Co *paying a dividend*,” —as to what investments are authorized under these words; *V.* *Consterdine v. Consterdine*, 31 Bea. 330; 31 L. J. Ch. 807.

*V.* PUBLIC STOCKS.

**STONE.**—Blocks cut with wedges from a quarry, and then reduced to certain dimensions and squared to be used as sleepers, are (in an Act imposing Toll) “Stone,” as distinguished from “Merchandize” (*Fisher v. Lee*, 12 A. & E. 622; 10 L. J. Q. B. 1); but Coprolites are “Goods Wares or Merchandize,” as distinguished from “Stone” (*Dant v. Moore*, 9 L. T. 381: *V.* MINE).

*V.* GOODS, WARES, AND MERCHANDIZE: MINE.

A Stone Avoirdupois, is 14 Imperial Standard Pounds (s. 14, 41 & 42 V. c. 49): *V.* POUND.

**STOP.**—EXECUTION “withdrawn, satisfied, or stopped”; *V.* WITHDRAWN.

To “stop up” a HIGHWAY, s. 2, 55 G. 3, c. 68, did not include a power to narrow a road (*R. v. Milverton*, 6 L. J. M. C. 73; 5 A. & E. 841; 1 N. & P. 179); power to widen was given by s. 16, 13 G. 3, c. 78. *Vf.* s. 84, Highway Act, 1835, 5 & 6 W. 4, c. 50, authorizing a stopping-up “either entirely or reserving a bridle-way or foot-way along the whole or any part or parts thereof.”

“Stop and reverse”; *V.* SLACKEN.

“Stop NETS, Still Nets, or Standing Nets,” in an Irish Act against killing young spawn and fry of eels and salmon, 10 Car. 1, c. 14; *V.* *Freen v. Orr*, Long. & Town. 622, 623, 624. *Va.* FIXED ENGINE.

A Stop ORDER, is an *ex parte* Order, on a fund in Court, obtained by a person (not, necessarily, a party to the action or matter) claiming the same or a share thereof or a lien or charge thereon, and which prohibits dealings with the fund without notice to the person obtaining the Order (Dan. Ch. Pr. ch. 23, s. 4; Seton, ch. 28, s. 3: R. 12, 13. Ord. 46, R. S. C.). A *Distringas*, was a writ issued from the Court of Exchequer having a like effect on stock or shares in a Public Company; in its stead.

a new writ of Distringas was provided by s. 5, 5 V. c. 5, which was only issuable against the Bank of England; that section was repealed by 55 & 56 V. c. 19 (*Va.*, R. 2, Ord. 46, R. S. C.), and the chief effect of a Distringas is now obtained by a Restraining Notice under R. 4, Ord. 46, R. S. C., which applies to "any stock standing in the books of a Company," on *whr* Dan. Ch. Pr. ch. 23, s. 3. *Cp.*, CHARGING ORDER.

*Cp.*, SUSPEND.

**STOPPAGE.** — "Stoppage of *Trains*," in a Charter-Party; *V. The Village Belle*, cited CIVIL COMMOTION.

"Stoppage *in Transitu*," is when goods have been consigned on credit and the Consignee has become bankrupt, or failed, or has declared himself insolvent (*V. per Mellish*, L. J., *Ex p. Chalmers*, 8 Ch. 289), the Consignor may, in many cases, countermand delivery and, before or at their arrival at the place of destination, may cause them to be delivered to himself or to some other person for his use (Abbott, Part 3, ch. 9): *Vf.*, ss. 44-46, Sale of Goods Act, 1893: Carver, Part 2, ch. 15: Blackb. Part 3, ch. 1: Add. C. 534: Rosc. N. P. 975: Wms. Bank. 195: *Wiseman v. Vandeputt*, Tudor's L. C. M. L. 410: 11 Encyc. 743-746.

"Strikes or Stoppages" of *Workmen*; *V. Stephens v. Harris*, cited STRIKE.

**STORAGE.** — "Storage Charges" comprise the cost of putting into store and the rent of the place hired; they do not include expenditure on the goods themselves," *e.g.* the cost of fodder and food to cattle is not within "Storage Charges" in R. 10 *c*, York-Antwerp Rules, 1890 (per Bigham, J., *Anglo-Argentine Agency v. Temperley Co.*, cited GENERAL AVERAGE).

**STORE.** — Stat. Def., Explosives Act, 1875, 38 & 39 V. c. 17, s. 108. *Cp.*, WAREHOUSE.

**STOREHOUSE.** — "Storehouse," s. 26, 26 & 27 V. c. 65; *V. Pearson v. Holborn*, 1893, 1 Q. B. 389; 62 L. J. M. C. 77; 68 L. T. 351; 57 J. P. 169.

**STORER.** — *V. STANDELL.*

**STORES.** — *V. IRON: TACKLE.*

*Seemble.* "Stores," in Maritime documents, does not include Cattle (Stevens on Stowage, 6 ed., s. 1061). *Cp.*, GOODS.

Quà Public Stores Act, 1875, 38 & 39 V. c. 25, "Stores," includes all Goods and Chattels, and any single store or article" (s. 2; a def exactly like that in s. 3, 30 & 31 V. c. 128, which latter def is saved from repeal by 38 & 39 V. c. 25, Sch 2).

"Arms, Munitions of War, and Stores"; *V. ARMS.*

"Stores and other Effects"; *V. EFFECTS*, at end.

**STOREY.**—Qua London Bg Act, 1894, —

“*Basement Storey*,” “means, any Storey of a BUILDING which is under the Ground Storey” (subs. 12, s. 5):

“*Ground Storey*,” “means, that Storey of a Building to which there is an entrance from the outside on or near the level of the ground, and where there are two such Storeys, then the lower of the two; Provided that no Storey of which the upper surface of the floor is more than 4 feet below the level of the adjoining pavement shall be deemed to be the Ground Storey” (subs. 11, s. 5):

“*First Storey*,” “means, that Storey of a Building which is next above the Ground Storey; the successive Storeys above the First Storey being the *Second Storey*, the *Third Storey*, and so on to the Topmost Storey” (subs. 13, s. 5):

“*Topmost Storey*,” “means, the uppermost Storey in a Building, whether constructed wholly or partly in the roof or not” (subs. 14, s. 5).

As regards the last of these definitions, *semble*, it is of general acceptance, for a “Storey” need not, necessarily, be a room with four vertical walls; a room built into the roof is a “Topmost Storey” (*Foot v. Hodgson*, 59 L. J. Q. B. 343; 25 Q. B. D. 160).

House “let in different Storeys, Tenements, Lodgings, or Landings,” R. 6, Sch B, House Tax Act, 1808, 48 G. 3, c. 55; *V. per* Ld Brampton, *Grant v. Langston*, cited HOUSE, p. 893.

**STOW.**—A valley (Co. Litt. 4 b); but a few lines further down “Stowe” is said to signify a place.

**STOWAGE.**—“Improper Stowage”; *V. IMPROPER NAVIGATION*.  
*Vh*, Stevens on Stowage.

**STRAIGHTEN.**—“Straightening of Fences”; *V. INCLOSE*.

**STRAND.**—“‘Stround’ is a Saxon word, signifying a SHORE or BANK of a Sea or any great River” (Cowel).

**STRANDING.**—In a Marine Insurance, “a touch and go” is not a Stranding; “in order to constitute a Stranding, the Ship must be stationary” (per Ellenborough, C. J., *Maedougle v. Royal Exchange Assree*, 1 Starkie, 130; 4 M. & S. 503). “If the ship merely touches or strikes and gets off again, how much soever she may be injured, she is not stranded; but if she settles and remains for any time, this is a Stranding, without reference to the degree of damage which she sustains (*Harman v. Vaux*, 3 Camp. 429). A resting for 15 or 20 minutes has been held to be a Stranding, whether it be upon a bank or a rock (*Baker v. Towry*, 1 Starkie, 436). It is not, however, every stationary taking the ground that constitutes a Stranding. Thus, where a vessel takes the ground in the ordinary and usual course of navigation and management

in a tidal river or harbour, upon the ebbing of the tide, or from a natural deficiency of water, so that she may float again upon the flow of the tide or increase of the water, this is not a Stranding within the meaning of the Memorandum (*Magnus v. Buttemer*, 11 C. B. 876; 21 L. J. C. P. 119; 2 Kent Com. 323, n. (c): *Va, Corcoran v. Gurney*, 1 E. & B. 456; 22 L. J. Q. B. 113). So, when a vessel took the ground several times in going up a harbour in the ordinary course of navigation from the shallowness of the water, this was held to be no Stranding (*Hearne v. Edmunds*, 1 Brod. & B. 388). Similarly, where a vessel took the ground in a tidal harbour, where it was intended she should do so at the time she was moored, and was injured by striking against some hard substance, this was considered not to be a Stranding (*Kingsford v. Marshall*, 8 Bing. 458; 1 L. J. C. P. 135; 1 Moore & S. 657). *Vf, Bryant & May v. London Assree*, 2 Times Rep. 591.

“But it is otherwise where the ground is taken under circumstances of such an accidental and unforeseen character as not to be in the usual course of navigation (*V. jdgmt of Ld Tenterden, Wells v. Hopwood*, 3 B. & Ad. 20; *Letchford v. Oldham*, 5 Q. B. D. 538; 49 L. J. Q. B. 458). And where a ship was improperly fastened to a pier in a basin, so that she took the ground, and, when the tide left her, she fell over and was bilged, this was held to be Stranding (*Carruthers v. Sydebotham*, 4 M. & S. 77; *Va, Bishop v. Pentland*, 7 B. & C. 219; 6 L. J. O. S. K. B. 6). So, where the water being drawn off from an inland navigation for the purpose of repairing it, a vessel settled accidentally upon some piles which were not previously known to be there (*Rayner v. Godmond*, 5 B. & Ald. 225); where a vessel, having struck upon an anchor in a harbour, was injured and in danger of sinking, and was thereupon hauled higher up the harbour and drawn upon the ground, where she remained for some time (*Barrow v. Bell*, 4 B. & C. 736; 4 L. J. O. S. K. B. 47); where a ship under stress of weather made a tidal harbour, but it being low water she grounded there (*Corcoran v. Gurney*, sup); and where a ship was run aground for the purpose of preventing further mischief (*De Mattos v. Saunders*, L. R. 7 C. P. 570); these were all held to be cases of Stranding”: 1 Maude & P. 496. So, where a Thames barge was run ashore, partly from fear she would sink and partly for repair, that was held to be a Stranding (per Day, J., *Russell v. Lodge*, 6 Times Rep. 353; 89 Law Times, 120).

“The stranding of a LIGHTER, in the legal technical sense of ‘stranding,’ is an event of very frequent occurrence on a flat shore. The mere taking of the ground and remaining there a short time and then getting off again, would be held a ‘Stranding’” (per Tindal, C. J., *Hoffman v. Marshall*, 2 Bing. N. C. 390).

The Warrantly against AVERAGE, in an Insree on Cargo, “unless the ship be stranded, sunk, or burnt,” is not deleted if the stranding, &c, happens when the goods are not on board (*The Alsace and Lorraine*,

1893, P. 209; 62 L. J. P. D. & A. 107; 69 L. T. 261; 42 W. R. 112; *Vf, The Glenlivet*, 1893, P. 164; 62 L. J. P. D. & A. 55, also cited BURN).

V. PERIL OF THE SEA: SINK: STATIONARY.

**STRANGER.** — “Stranger,” may be derived from the French, *Estrangier, aliena*. It signifies generally in our language, a man born out of the Land, or unknown; but in the Law, it hath a special signification, for him that is not privy or party to an act. As a *stranger* to a Judgment, is he to whom a Judgment doth not belong; and in this sense it is directly contrary to PARTY or PRIVY” (Cowel). V. CONSIDERATION.

**STRANGERS IN BLOOD.** — Persons who have the legal *status* of “Children” by virtue of a foreign law, applicable to their case, are not “Strangers in Blood,” but are “Children” for the purpose of assessment to Legacy Duty (*Skottowe v. Young*, 40 L. J. Ch. 366; L. R. 11 Eq. 474; *Va, Re Goodman*, 50 L. J. Ch. 425; 17 Ch. D. 266; *Re Grove*, 40 Ch. D. 216). But where by the foreign law children, illegitimate by the law of England, are not admitted to the full status of lawful children but are merely recognized as entitled to the rights of natural children, such persons are not “Lineal Issue” but are “Strangers in Blood” (*Re Atkinson*, 51 L. J. Ch. 452; 21 Ch. D. 100). In that case the point was raised in argument but not referred to in the judgment, as to whether children illegitimate by the law of England, can, under any circumstances, be other than “Strangers in Blood” for the purpose of succession to *Real* estate in England. V. CHILD.

**STRAW.** — Stubble, or, as it is called in Cambridgeshire, Haulm, is not “Straw” within s. 17, 7 & 8 G. 4, c. 30 (*R. v. Reader*, 4 C. & P. 245). In the replacing enactment, s. 17, 24 & 25 V. c. 97, “haulm” and “stubble” are used as well as “straw.”

**STRAY.** — Animals “straying” on a Highway, “implies that they were not in charge of some one who had control over them” (per Blackburn, J., *Lawrence v. King*, cited LYING ABOUT).

V. ESTRAY.

**STREAM.** — “‘Stream,’ is properly a current of waters running over the level at random, and be not kept in with Banks or Walls; and so Linwood saith, that *flumen* which is a stream *nihil aliud est quam ipsa aqua*” (Callis, 83).

“‘Stream,’ in its primary and natural sense, denotes a body of water having, as such body, a continuous flow in one direction. It is frequently used to signify running water at places where its flow is rapid as distinguished from its sluggish current in other places. I see no reason to

doubt that a subterraneous flow of water may, in some circumstances, possess the very same characteristics as a body of water running on the surface; but, in my opinion, water, whether falling from the sky or escaping from a spring, which does not flow onward with any continuity of parts but becomes dissipated in the earth's strata and simply percolates through or along those strata until it issues from them at a lower level, through dislocation of the strata or otherwise, cannot with any propriety be described as a Stream" (per *Ld Watson, McNab v. Robertson*, 1897, A. C. 134; 66 L. J. P. C. 28; 75 L. T. 666; 61 J. P. 468). In accordance with that def, the majority of the H. L. held that, a grant, in a Lease, of "the right to the water in the said Ponds and in the Streams leading thereto," did not include the water in a tiled drain in the lessor's adjoining land which drain intercepted water that otherwise would have found its way into the ponds. *Halsbury, C.*, was the dissenting peer and he said, "Though it be true that the word 'Stream,' in its more usual application, does point to a definite stream within defined banks, I do not think it is confined to that meaning. We speak of a stream of tears flowing from the eyes, and we speak of blood streaming from a vein."

"A Stream of Water, in law, is water which runs in a defined course. It is that which is capable of diversion; and it has been held that it does not include the percolation of water below ground" (per *Jessel, M. R., Taylor v. St. Helen's*, cited WATERCOURSE). *Cp, SPRING.*

Contextually, a grant of "all Streams" has been held to mean, all Water in the land granted (*Whithead v. Parks*, 27 L. J. Ex. 169; 2 H. & N. 870).

Quà *Rivers Pollution Prevention Act, 1876*, 39 & 40 V. c. 75, an elaborate def of "Stream" is provided by s. 20, on *whv, Ribble River Committee v. Croston*, 1897, 1 Q. B. 251; 66 L. J. Q. B. 384; 45 W. R. 348.

"Stream" is used synonymously with "RIVER" in s. 27, *Salmon Fishery Act, 1861*, 24 & 25 V. c. 109 (*Rolle v. Whyte*, L. R. 3 Q. B. 305; 37 L. J. Q. B. 118; 8 B. & S. 116).

Quà *W. W. C. Act, 1847*, "Streams," includes, "springs, brooks, rivers, and other running waters" (s. 3); "Owners or Occupiers" of a Stream, within s. 6 of that Act, are the Owners and Occupiers of that portion of it with which a Water Co may be interfering (*Bush v. Troubridge Water Co*, cited TAKE, *whva*, as to "take or use" a Stream).

"All persons may float saw logs, and other timber rafts and craft, down all Streams in Upper Canada during the spring, summer, and autumn, freshets," s. 15, *Consolidated Statutes of Upper Canada*, c. 48; held, that "all Streams" includes, not only streams floatable at all places but also, streams having a sufficient body of water above and below a natural impediment, although that natural impediment renders the stream, at that

particular spot, practically unfloatable (*Caldwell v. McLaren*, 53 L. J. P. C. 33; 9 App. Ca. 392).

"Stream," s. 97, 14 G. 3, c. 96, only applied to Artificial Streams (*Smith v. Barnham*, 1 Ex. D. 419, cited WATERCOURSE).

"Navigable Stream"; *V. NAVIGABLE*.

**STREET.** — The primary meaning of "Street" is a public (or private, *St. Mary, Islington v. Barrett*, 43 L. J. M. C. 85; L. R. 9 Q. B. 278; *Mid. Ry v. Watton*, 55 L. J. M. C. 99; 17 Q. B. D. 30; 54 L. T. 482; 34 W. R. 524; 50 J. P. 405) roadway (including its foot-paths, if any) running in front of houses or buildings, of a sufficient length and in such a continuous line, as to give the roadway the character of a "Street"; and such a roadway is more emphatically a "Street" if it has a continuous line of houses on *each* side of it. The houses need not be actually contiguous but must be so near to each other as to form a continuous line.

*Note.* In *Robinson v. Barton*, 53 L. J. Ch. 231; 8 App. Ca. 798, Ld Blackburn said that the popular and ordinary sense of the word "Street" is, a HIGHWAY *with houses on each side*. It is submitted that the legal and ordinary sense of the word "Street," does not require that there should be houses on each side of the roadway; nor that such roadway should, necessarily, be a highway. Thus in *Portsmouth v. Smith* (53 L. J. Q. B. 95; 13 Q. B. D. 184) Brett, M. R., said, "The word 'Street,' when popularly used, means a *Thoroughfare*, bounded *either on one or both sides* by houses": *Va*, obs of Ld Blackburn in *Portsmouth v. Smith*, when in H. L. 54 L. J. Q. B. 475; 10 App. Ca. 364; *Jowett v. Idle*, 36 W. R. 138, 530; 4 Times Rep. 101, 442; *Battersea v. Palmer*, cited NEW STREET, p. 1273. But, *semble*, that "roadway" should be the phrase instead of "thoroughfare," for a *cul de sac* is a Street and may be a Public Street: *V. Souch v. East London Ry*, 42 L. J. Ch. 477; L. R. 16 Eq. 108; per Esher, M. R., *Davis v. Greenwich*, 1895, 2 Q. B. 219; 64 L. J. M. C. 257; 72 L. T. 674.

Assuming that houses exist in such number and position as to impart the character of "street" to the locality, then the natural and *primâ facie* sense of the word "Street" is the *Roadway* (per Selborne, C., *Robinson v. Barton*, 53 L. J. Ch. 230). So, Jessel, M. R., in *Taylor v. Oldham* (46 L. J. Ch. 109; 35 L. T. 699; 4 Ch. D. 408) said, —

"The definition of a 'Street' is correctly laid down in the Imperial Dictionary:—'The street itself is no doubt, properly, *the paved or prepared road*; that is the street. It sometimes includes the houses along each side of it. But that is not its proper meaning. It is called a street even without houses. There are some streets with no houses. But the usual common meaning of the word *Street* is, — a road with houses on one or both sides of it.'"

It may be doubted whether, in any sense that would (except under an

interpretation clause, or except where a roadway, e.g. a BRIDGE, is a mere connecting link in a street, *Beaver v. Manchester*, 26 L. J. Q. B. 311) be recognized by the Courts, a ROADWAY would, in its primary meaning, be held a "Street," without houses or buildings (*Vf, R. v. Platts*, 49 L. J. Q. B. 848; *McIntosh v. Roufford*, 5 Times Rep. 643); but the definition from the Imperial Dictionary, having received the approval of Jessel, M. R., is cited for the purpose of supporting the proposition, that it is the roadway which is the "Street," in the primary acceptance of that word (*Va, L. C. & D. Ry v. London*, 19 L. T. 250).

But when we have arrived at that conclusion we have, for practical purposes, to acknowledge that "Street" is a most flexible and ambiguous word depending on its context.

"In s. 149, P. H. Act, 1875, and the sections which follow it, the word 'Street' manifestly has the same sense as when we speak of a man going out of his house into the street"; i.e. its primary meaning of the roadway (per Selborne, C., *Robinson v. Barton*, 53 L. J. Ch. 229; 8 App. Ca. 798; *Va, Mil. Ry v. Watton*, sup: *Richards v. Kessick*, 57 L. J. M. C. 48; 59 L. T. 318; 52 J. P. 756; *Coverdale v. Charlton*, 48 L. J. Q. B. 128; 4 Q. B. D. 104; 40 L. T. 88; 43 J. P. 268; *R. v. Fullford*, inf). *V. VEST*, as to what extent the soil under, and air over, "Streets," vest in local authorities; and, if there be no such vesting, the soil is vested in the adjoining owners, and is not divested by general words in a Royal Grant (*Salt Union v. Harvey*, 61 J. P. 375).

But s. 157, P. H. Act, 1875, whilst manifestly comprising the roadways of "streets," also includes the power of making Bye Laws for regulating "the buildings erected or to be erected on each side of them — the whole construction — every part of those buildings external and internal" (per Selborne, C., *Robinson v. Barton*, sup: *Baker v. Portsmouth*, 47 L. J. Ex. 223; 3 Ex. D. 157. *V. Robinson v. Barton*, as to what particularity is required in the Bye Laws to justify a Local Authority to compel removal of disapproved buildings; *V. NEW STREET*). So, where the City of London was empowered to take land for the purpose of forming a new "Street" to the Metropolitan Meat Market, it was held that that meant not merely land for the roadway but enough for houses on both its sides (*Galloway v. London*, 35 L. J. Ch. 477; L. R. 1 H. L. 34; *vthe, Donaldson v. South Shields*, cited STREET WORKS: *Vf, L. C. & D. Ry v. London*, 19 L. T. 250).

Quà P. H. Act, 1875, the general def is contained in s. 4, whereby " 'Street,' includes, any highway (not being a turnpike road), and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not"; a def adopted by P. H. Act, 1890 (subs. 3, s. 11), and, leaving out the words in the parentheses, adopted by P. H. Ireland Act, 1878 (s. 2), in which latter form it is adopted for P. H. London Act, 1891 (s. 141), and for P. H. Scotland Act, 1897 (s. 3), but the defs in these two lastly men-



tioned Acts add, "and *whether or not there are houses in such street.*" *Vh, Nutter v. Accrington*, 48 L. J. Q. B. 487; 4 Q. B. D. 375; 40 L. T. 802; 43 J. P. 635; *R. v. Goole*, 1891, 2 Q. B. 212; 60 L. J. Q. B. 617; 64 L. T. 595; 39 W. R. 608; 55 J. P. 535; *Fenwick v. Croydon*, 1891, 2 Q. B. 216; 60 L. J. M. C. 161; 40 W. R. 124; 55 J. P. 470; *Baird v. Tunbridge Wells*, or *Tunbridge Wells v. Baird*, 1896, A. C. 434; 64 L. J. Q. B. 145; 65 Ib. 451; 74 L. T. 385; 60 J. P. 788. These definitions include a Private Road (*Hill v. Wallasey*, 1894, 1 Ch. 133; 63 L. J. Ch. 1; 69 L. T. 641; 42 W. R. 81).

Quà Private Street Works Act, 1892, 55 & 56 V. c. 57, " 'Street,' means (unless the context otherwise requires), a Street as defined by the Public Health Acts, and *not being a highway* repairable by the inhabitants at large " (s. 5). *Vh, Rishton v. Huslingden*, 1898, 1 Q. B. 294; 67 L. J. Q. B. 387; 77 L. T. 620; 62 J. P. 85, explaining *Handsworth v. Taylor*, 69 L. T. 798.

Quà Metrop Man. Act, 1855, " 'Street,' shall apply to and *include*, any highway (except the carriage way of any turnpike road), and any road, bridge (not being a county bridge), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley, or passage " (s. 250), which def was subsequently amplified so as to include "any mews and a part thereof " (s. 112, Metrop Man. Act, 1862). *Vh, Ellis v. London Co. Co.*, 67 L. T. 558; 57 J. P. 24; *Arter v. Hammersmith*, 1897, 1 Q. B. 646; 66 L. J. Q. B. 460; 76 L. T. 390; 45 W. R. 398; 61 J. P. 279. "Street" in s. 53, Metrop Man. Act, 1862, includes new, as well as old, streets (*St. John, Hampstead v. Cotton*, 55 L. J. Q. B. 213; 56 Ib. 225; 12 App. Ca. 1; 56 L. T. 1; 35 W. R. 505; 51 J. P. 340, following *Sheffield v. Fulham*, 1 Ex. D. 395, and dissenting from *Sawyer v. Puddington*, 40 L. J. M. C. 8; L. R. 6 Q. B. 164). As to s. 78, Metrop Man. Act, 1855, *V. St. John, Hampstead v. Hoopel*, 54 L. J. M. C. 147; 15 Q. B. D. 652; 1 Times Rep. 584.

The above defs in the Metrop Man. Acts, are blended in London Bg Act, 1894, thus, " 'Street,' means and includes, any highway, and any road, bridge, lane, mews, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, mews, footway, square, court, alley, or passage " (subs. 1, s. 5). *Vh, Wood v. London Co. Co.*, 64 L. J. M. C. 276; 73 L. T. 313; 44 W. R. 144; 59 J. P. 615; *sethe, Armstrong v. London Co. Co.*, 1900, 1 Q. B. 416; 69 L. J. Q. B. 267; 81 L. T. 638; 64 J. P. 197; 48 W. R. 367; *Vf, COMMENCEMENT.*

*Va, Metropolitan Gas Act*, 1860, 23 & 24 V. c. 125, s. 4:

*Metropolitan Streets Act*, 1867, 30 & 31 V. c. 134, s. 3:

*Thames Embankment Act*, 1862, 25 & 26 V. c. 93, s. 3.

Quà Gasworks Clauses Act, 1847, 10 & 11 V. c. 15, " 'Street,' shall include, any square, court, or alley, highway, lane, road, thoroughfare,

STREET REFUSE.—*V.* REFUSE.

**STREET WALKER.**—Is synonymous with NIGHT-WALKER in its meaning of “a woman walking the streets to pick up men” (*R. v. Bootie*, 2 Burr. 864, 865).

**STREET WORKS.**—A compulsory power to take land for “Street Works” is different from such a power to take land for a “Street”; the ruling in *Galloway v. London* (cited STREET, p. 1948), does not apply to a power to take land for “Street Works,” which only includes land necessary for the formation of a Street, and not land on its side merely required for recoupment purposes (*Donaldson v. South Shields*, 68 L. J. Ch. 102, 162; 79 L. T. 685).

*V.* WORKS.

**STRICT DUTY.**—Costs incurred by an Exor who (to meet a possible charge of *devastavit*) separately defends an action brought jointly against residuary legatees and himself, are not “an outlay in the Strict Line of his Duty” within the rule (Lewin, 762), entitling him to reimbursement by his cestui que trust (*Hosegood v. Pedlar*, 66 L. J. Q. B. 18).

*V.* DUTY.

**STRICT ENTAIL.**—“Where lands are directed to be settled on A. and his heirs ‘in Strict Entail,’ there seems little doubt that A. ought to be made tenant for life only” (2 Jarm. 354, citing *Graves v. Hicks*, 11 Sim. 536; 5 L. J. K. B. 142; 5 A. & E. 38: *Woolmore v. Burrows*, 1 Sim. 526); and, as it should seem, “with remainder to his first and other sons successively in tail general, with remainder to his daughters as tenants in common in tail general, &c” (Lewin, 129, citing *Sealey v. Starwell*, Ir. Rep. 9 Eq. 499).

*V.* STRICT SETTLEMENT: CLOSELY ENTAILED: ENTAIL.

**STRICT SETTLEMENT.**—As to what this phrase means and what limitations would be inserted in the execution of a direction for a “Strict Settlement”; *V. Douglas v. Congreve*, 8 L. J. Ch. 55; 1 Bea. 71: *Bankes v. Le Despencer*, 11 Sim. 508; 12 L. J. Ch. 293; 2 Jarm. 344, 345. *n* (*e*), 354–356: *V. Ib.* 577 as to annexing personalty to realty in strict settlement. *If*, Vaizey, 1172.

In the common form of a Settlement pursuant to a direction for a “Strict Settlement.” the tenant for life would be made unimpeachable for Waste (per Wood, V. C., *Davenport v. Davenport*, 33 L. J. Ch. 36; 1 H. & M. 779; *See*, Lewin, 577, 578); “but where the executory trust *in terms* gives the first taker a life estate, he is not made dispunishable for Waste” (2 Jarm. 345. *n*, citing *Davenport v. Davenport*, *sup*:

*Stanley v. Coulthurst*, L. R. 10 Eq. 259; 39 L. J. Ch. 650). *V. WITH-  
OUT IMPEACHMENT OF WASTE.*

Where a Will of Personalty directed "the girls' shares to be settled on themselves strictly," Romilly, M. R., held, that the income of each share should, during the joint lives of one of the "girls" and her husband, be paid to her for her life, for her SEPARATE USE and without power of anticipation; and if she died first, her share to go as she should by Will appoint, or, failing appointment, to her NEXT OF KIN, but, if she survived her husband, then her share to be for herself absolutely (*Loch v. Bagley*, L. R. 4 Eq. 122; 15 W. R. 1103).

*V. SETTLEMENT: STRICT ENTAIL.*

**STRICTLY TEMPERATE.** — *V. Thomson v. Weems*, 9 App. Ca. 671.

*V. SOBER AND TEMPERATE HABITS.*

**STRIKE.** — "There is no authority which gives a legal definition of the word 'Strike'; but I conceive the word means, a refusal by the whole body of workmen to work for their employers, in consequence of either a refusal by the employers of the workmen's demand for an increase of wages, or of a refusal by the workmen to accept a diminution of wages when proposed by their employers" (per Kelly, C. B., *King v. Parker*, 34 L. T. 889), or, *semble*, such a refusal in consequence of any dispute between masters and men relating to the employment; in short, "a 'Strike' is properly defined as, a simultaneous cessation of work on the part of the workmen" (per Hannen, J., *Farrer v. Close*, L. R. 4 Q. B. 612).

An excuse for delay in fulfilling a contract on the ground of a "Strike" by workmen, means a Strike against the employer; not a mere refusal to work because an infectious disease is prevalent, or the weather is hot or wet, or such like excuse (*Stephens v. Harris*, 57 L. J. Q. B. 203; 3 Times Rep. 720: *Re Richardsons and Samuel*, cited LOCK-OUT).

An Exception as to LAY DAYS, in a Charter-Party, of "Strikes of Workmen," does not exonerate the charterers from liability for delay if, by any reasonable efforts, they can take delivery, even though there be a Strike at the Port of Discharge (*Bulman v. Fenwick*, 1894, 1 Q. B. 179; 63 L. J. Q. B. 123; 69 L. T. 651). *Cp.* *Dobell v. Green*, cited AS ORDERED: DETENTION BY ICE: DETENTION BY RAILWAYS. *V. CUSTOMARY: Saxon S. S. Co v. Union S. S. Co*, cited COLLIERY WORKING DAY: *Hick v. Raymond* and *Carlton S. S. Co v. Castle Co*, cited REASONABLE: *Budgett v. Binnington*, cited DEMURRAGE.

*Vh.* *Hoyle v. Oldham*, 1894, 2 Q. B. 372; 63 L. J. M. C. 178: *Allen v. Flood*, cited MALICE.

*V. BOYCOTT: INTIMIDATE: LAWFUL PURPOSE: SUDDEN: TRADE UNION.*

**STROKEHALL.** — Quà SALMON Fisheries Acts. "Strokehall, or Snatch," means and includes, "any instrument or device (whether used with a ROD AND LINE or otherwise) for the purpose of foul hooking any fish" (s. 4, 36 & 37 V. c. 71).

*Op.*, FIXED ENGINE.

**STRONG.** — *V.* TIGHT.

With Strong Hand; *V.* FORCE.

"Strong Presumption"; *V.* PRESUMPTION.

**STRUCTURAL CONVENIENCE.** — "Want of Structural Convenience." s. 94, P. H. Act, 1875; *V. Kinson Co v. Poole*, 1899, 2 Q. B. 41; 68 L. J. Q. B. 819; 81 L. T. 24; 47 W. R. 607; 63 J. P. 580. There is no nuisance attributable to want of, or defect in, a "Structural Convenience." if it arises from the want of proper cleansing (*Barnett v. Laskey*, cited CLEANSE).

**STRUCTURAL DIVISION.** — *V.* SEPARATE OCCUPATION: HOUSE, p. 893.

**STRUCTURAL EXPENSES.** — *V.* EXPENSES.

**STRUCTURE.** — *V.* BUILDING: ERECTION.

Quà Metrop Man. Acts, "no special meaning can be given to the word 'Structure,' or 'Erection,' as something distinct from a 'Building'" (per Pollock, B., *London Co. Co. v. Pearce*, 1892, 2 Q. B. 111; 66 L. T. 685; 40 W. R. 543; 56 J. P. 790). Therefore, "any Wooden Structure or Erection of a moveable or temporary character," s. 13, Metrop Man. Act, 1882, repld s. 84, London Bg Act, 1894, does not include a Builder's Pay Office running on wheels so as to be moveable from place to place as occasion requires (*S. C.*), nor a steam Round-about Caravan and Shooting Gallery (*Hall v. Smallpiece*, 59 L. J. M. C. 97 · *Vf*, *London Co. Co. v. Humphreys*, 1894, 2 Q. B. 755; 63 L. J. M. C. 215; 71 L. T. 201; 43 W. R. 13; 58 J. P. 734). As to the proviso to this section, *V. London Co. Co. v. Candler*, cited USE.

Quà London Bg Act, 1894, there is no general statutory definition of "Structure," and, probably, no complete def can be given, but generally in this Act it connotes something of a permanent nature, *e.g.* "Structure, or Work" (ss. 78, 145) does not include the temporary seating of a completed building; so, of "Structure," s. 82; but, probably, in s. 83 and Part III, "Structure" has a wider meaning (*Fenner v. McDonnell*, 1897, 1 Q. B. 421; 66 L. J. Q. B. 273; 45 W. R. 267; 76 L. T. 152: *Vf*, *Elliott v. London Co. Co.*, cited TRAFFIC). As regards *Dangerous Structures*, Part IX, *Ib.*, "'Structure' includes, any building, wall, or other structure, and anything affixed to or projecting from any building

wall or other structure" (s. 102). *Note:* as to the powers of the County Council under Part IX. *V. Crisp v. London Co. Co.*, 1899, 1 Q. B. 720; 68 L. J. Q. B. 499; 80 L. T. 654; 63 J. P. 484.

*V. PARTY STRUCTURE: PIER.*

**STUBBLE.** — *V. STRAW.*

**STUCCO-WORK.** — *V. PLASTERING.*

**STUFF.** — *V. HOUSEHOLD.*

**STURDY BEGGAR.** — *V. VAGABOND.*

**STURGES-BOURNE'S ACTS.** — Vestries Act, 1818, 58 G. 3, c. 69:

Poor Relief Act, 1819, 59 G. 3, c. 12.

**SUB-ACCOUNTANT.** — *V. PRINCIPAL ACCOUNTANT.*

**SUB-DEACON.** — "The Sub-Deacon is he who delivers the vessels to the DEACON, and assists him in the administration of the Sacrament of the Lord's Supper" (Phil. Ecc. Law, 89).

**SUBINFEUDATION.** — Subinfeudation was a grant by an inferior feudatory lord of a part of his land to be held by feudal services as of himself, and not as of the lord paramount (2 Bl. Com. 91; Wms. R. P. Part 1, ch. 2, 3). The practice was finally stopped by the statute *Quia emptores*, 18 Edw. 1, c. 1.

**SUBJACENT.** — *V. ADJACENT.*

**SUBJECT.** — *V. BRITISH SUBJECT: LIBERTY OF THE SUBJECT: ORIGINAL SUBJECT.*

Stat. Def. — Legitimacy Declaration Act (Ir), 1868, 31 & 32 V. c. 20, s. 10.

**SUBJECT AS AFORESAID.** — As to the effect of this phrase on a Residuary Devise or Bequest; *V. Booth v. Coulton*, 5 Ch. 684; 39 L. J. Ch. 622; 18 W. R. 877. *Vf*, SUBJECT TO.

*V., R. v. Local Govt Bd*, 54 L. J. M. C. 104; 15 Q. B. D. 70; 53 L. T. 194; 49 J. P. 580.

**SUBJECT-MATTER.** — *V. Studham v. Stanbridge*, cited RECOVER.

**SUBJECT THERETO.** — The ordinary and grammatical construction of "and subject thereto" is that, it refers to the immediate antecedent in the same sentence" (per Ld Wensleydale, *Gray v. Golding*, 8 W. R. 371; 2 L. T. 198).

*V. SUBJECT TO.*

**SUBJECT TO.**—There is a marked distinction between a testamentary gift “for,” and one “subject to,” a particular purpose. If the particular purpose fail, then, if the gift be “for” that purpose, there will be a RESULTING TRUST for the heir or next of kin, as the case may be, or (where there is a residuary clause) the gift will fall into the residue; *scens*, if the gift be “subject to” the purpose (per Eldon, C., *King v. Denison*, 1 V. & B. 272; *Vf*, Lewin, 168, and cases there cited. But “for” has been read “charged with,” *Abrams v. Winshup*, 3 Russ. 350. *Ih*, 1 Jarm. 566, 569).

“Where lands are devised to trustees ‘subject to,’ or ‘charged with,’ the payment of a yearly sum of money, a legal Rent-Charge is, it seems, created (*Buttery v. Robinson*, 3 Bing. 392; 4 L. J. O. S. C. P. 108; *Ramsay v. Thorngate*, 16 Sim. 575; 18 L. J. Ch. 238). But where real and personal property together are so given, it is a personal annuity (*Taylor v. Martindale*, 12 Sim. 158; 10 L. J. Ch. 339; *Parsons v. Parsons*, L. R. 8 Eq. 260), unlike rent reserved on a demise of realty and chattels, which issues out of the land alone (*Farewell v. Dickinson*, 6 B. & C. 251; 9 D. & R. 245)”: 2 Jarm. 306, *n* (f).

A devise of lands “subject to and charged with” a Rent-Charge or Annuity, charges the corpus of the land with the Rent-Charge or Annuity; and, in a proper case, the Court will order arrears to be raised by mortgage of the lands (*Re Tucker*, 1893, 2 Ch. 323; 62 L. J. Ch. 442; 69 L. T. 85; 41 W. R. 505). So, of the bequest of an Annuity out of a fund and “subject thereto” the fund to be held upon trusts (*Birch v. Sherratt*, 36 L. J. Ch. 925; 2 Ch. 644; 16 W. R. 30). *Vf*, SUBJECT AS AFORESAID.

Formerly, “subject to” a MORTGAGE or CHARGE, in a devise of lands, were simply descriptive words, and did not indicate that the devisee was to take *cum onere* (*Serle v. St. Eloy*, 2 P. Wms. 386, on *whew*, *Mellish v. Vallins*, 2 J. & H. 203; *Keogh v. Keogh*, Ir. Rep. 8 Eq. 459, 460); but now they are treated as conditional (*Keogh v. Keogh*, Ir. Rep. 8 Eq. 449; *Upton v. Hardman*, 9 Ib. 162, 163). The rule in *Serle v. St. Eloy* was not applied to bequests of personalty; therefore, such a bequest “subject to” the payment of testator’s debts, imported a direction for the payment out of that personalty of mortgage debts on realty (*Mellish v. Vallins*, 2 J. & H. 194; 31 L. J. Ch. 592), and the principle of that latter case quâ “subject to” remains although “debts,” in such a connection, does not now include mtge debts (*F. DEBTS*).

Sometimes “subject to” a mortgage or charge, in a devise, will even now be regarded as descriptive (*Johnson v. Webster*, 4 D. G. M. & G. 487).

A bequest “subject to” payment of debts, &c, does not make the legatee personally liable (*Re Cowley*, 53 L. T. 494).

In an *Assignment of a Lease* “subject to” its rent and covenants, no covenant is implied by the assignee to indemnify the assignor against the

rent and covenants; the words "subject to," in that connection, being words of qualification and not of contract (*Wolveridge v. Steward*, 3 L. J. Ex. 360; 1 Cr. & M. 644; 3 Moore & S. 561; *Vthe*, cited Woodf. 274; Elph. 420; and *Vth, Moule v. Garrett*, L. R. 5 Ex. 132).

CONVEYANCE on Sale "subject (either certainly or contingently) to the payment of any money or stock," is chargeable with *ad val.* Stamp Duty on such money or stock (s. 57, Stamp Act, 1891); the object of that provision (like the provisions it replaces, *V. TO BE*) is "that, upon every purchase, *ad val.* duty shall be paid on the entire consideration which, either directly or indirectly, represents the value of the free and unincumbered corpus of the subject-matter of sale" (*Mortimore v. Inl. Rev.*, cited DEFINITE); therefore, where such subject-matter is a Conveyance on Sale of a Leasehold, neither the entire rent nor an apportioned part of it is at all liable to *ad val.* duty, for it is an incident of the corpus and inseparable from it (*Swayne v. Inl. Rev.*, 69 L. J. Q. B. 63; 1900, 1 Q. B. 172; 81 L. T. 623; 48 W. R. 197).

"Where a *Proposal or Tender* is accepted 'Subject to' the terms of a Contract being arranged and drawn up for signature, there is no concluded bargain until the terms have been arranged and a written contract executed. But an acceptance enclosing a more formal memorandum for signature is sufficient, if the memorandum contains no new terms" (Add. C. 14, and cases there cited: Woodf. 111, 112: *Va, Wilcox v. Redhead*, 49 L. J. Ch. 539; *May v. Thompson*, 51 L. J. Ch. 917; 20 Ch. D. 705; *Wood v. Silcock*, 32 W. R. 845). *V. FINAL ARRANGEMENTS.*

So, if the Court can see, from the subject-matter and the correspondence of the parties throughout, that all the essential terms of a bargain have been agreed upon and have been set down in writing (in the correspondence or otherwise), and have been signed by the party to be charged, then there is a binding contract, and the Statute of Frauds (in those cases to which it applies) has been complied with, notwithstanding that the correspondence or other writing speaks of a future formal contract to be executed between the parties (*Fowle v. Freeman*, 9 Ves. 351; *Rossiter v. Miller*, 3 App. Ca. 1124; 48 L. J. Ch. 10; *Hussey v. Horne-Payne*, 4 App. Ca. 311; 48 L. J. Ch. 846; *Lewis v. Brass*, 3 Q. B. D. 667; *Bonnewell v. Jenkins*, 8 Ch. D. 70; 47 L. J. Ch. 758; *Chipperfield v. Carter*, 72 L. T. 487; *Filby v. Hounsell*, 1896, 2 Ch. 737; 65 L. J. Ch. 852; 75 L. T. 270; *North v. Percival*, 1898, 2 Ch. 128; 67 L. J. Ch. 321; 46 W. R. 552).

But when the subject-matter is the *Sale of Realty* or an Interest in Realty (and still more strongly when it is the *granting of a Lease*, per Jessel, M. R., *Winn v. Bull*, inf), then, if the letters or other informal writing contain nothing as to conditions and would simply amount to an "OPEN" contract, and if such letters or writing say that the transaction is "subject to the preparation and approval of a formal contract." or "subject to a formal contract being prepared and signed by both parties

as approved by their solicitors," or "subject to a contract to be settled," or "subject to a proper contract," or such like words, then there is no concluded bargain until the prescribed contract is executed (*Wian v. Bull*, 7 Ch. D. 29; 47 L. J. Ch. 139; *Donnison v. People's Café Co.*, 45 L. T. 187; *Hawkesworth v. Chaffey*, 55 L. J. Ch. 335; 54 L. T. 72; *Hurrey v. Barnard's Inn*, 50 L. J. Ch. 750; 29 W. R. 923; *Brien v. Swainson*, 1 L. R. Ir. 135. Note, *Lloyd v. Nowell*, 1895, 2 Ch. 744; 64 L. J. Ch. 744, can hardly be classed here, for it related to the sale of an existing lease, and it seems difficult to reconcile it with *Bonnewell v. Jenkins*, sup. a case of superior authority).

So, if it is stated in so many plain and express terms that there shall be no concluded bargain until the formal contract is executed between the parties, then such formal contract is essential (*Chinnock v. Ely*, 34 L. J. Ch. 399; 4 D. G. J. & S. 638; per *Ld Hatherley*. *Rossiter v. Miller*, sup).

So, where the acceptance of an offer is accompanied by written conditions constituting further terms, the acceptance is not final (*Crossley v. Maycock*, 43 L. J. Ch. 379; L. R. 18 Eq. 180; *Jones v. Daniel*, 1894, 2 Ch. 332; 63 L. J. Ch. 562; 70 L. T. 588; 42 W. R. 687).

So, the conduct of the parties, — *e.g.* correspondence subsequent to letters which in themselves would have created a concluded bargain but which subsequent correspondence treats the matter as still the subject of negotiation, — may show that there has been no concluded bargain (*Hussey v. Horne-Payne*, sup: the opposite dictum of *Cotton, L. J.*, in *Bolton v. Lambert*, 41 Ch. D. 295; 58 L. J. Ch. 425; 37 W. R. 434, is not well founded, per *Kay, J.*, *Bristol Aerated Bread Co v. Maggs*, 59 L. J. Ch. 472; 44 Ch. D. 616; 62 L. T. 416; 38 W. R. 393; *Vf*, *May v. Thompson*, 51 L. J. Ch. 917; 20 Ch. D. 705; *Bellamy v. Debenham*, 1891, 1 Ch. 412; 60 L. J. Ch. 166; 64 L. T. 478; 39 W. R. 257). Asking the other party to say from what time "the purchase is to date," does not re-open an otherwise concluded bargain (*Simpson v. Hughes*, 66 L. J. Ch. 334; 76 L. T. 237).

*Vf*, as to when a contract is completed by a correspondence, per *Plumer, V. C.*, *Stratford v. Bosworth*, 2 V. & B. 341; per *Jessel, M. R.*, *Williams v. Brisco*, 22 Ch. D. 448; 48 L. T. 198; per *Kekewich, J.*, *Wylson v. Dunn*, 34 Ch. D. 576; *Cluck v. Wood*, 9 Q. B. D. 276; *Redman*, 138-141; *Woodf.* 111, 112.

"Subject to Insurance"; *V.* FREIGHT IN ADVANCE SUBJECT TO INSURANCE.

A Re-Insure "subject to," or "with the same," terms as another Policy, incorporates those terms (*General Insuree of Trieste v. Royal Exchange Assuree*, 2 Com. Ca. 144; *Walker v. Uzielli*, 1 Ib. 452).

"Subject to the Laws and Statutes now in force," 1 Jac. 2, c. 22; *V.* *R. v. St. James, Westminster*. 5 A. & E. 391.

"Subject to Military Law"; *V.* SOLDIER.

"Subject to the Provisions of this Act," s. 19. *Jud. Act*, 1873; *V.*



*Ormerod v. Todmorden*, 51 L. J. Q. B. 348; 8 Q. B. D. 664; 30 W. R. 808.

Subject to a Malady, quà a Life Policy, means, to be liable to it (*Chattock v. Shawe*, 1 Moo. & R. 498). *Cp.*, AFFLICTED.

"Subject to a Reserved Bidding"; *V.* RESERVED BIDDING.

Appointment of Fishery Officers "subject to Restrictions, &c, as to expenditure," s. 6 (1), 51 & 52 V. c. 54, implies such restrictions as were made at the time of the appointment (*R. v. Plymouth*, 1896, 1 Q. B. 158; 65 L. J. Q. B. 258).

"Subject to Survey"; *V.* SURVEY.

**SUB-LEASE.** — *V.* UNDERLEASE.

**SUBMISSION.** — Quà Arb Act, 1889, a "'Submission,' means, a Written Agreement to submit present or future differences to ARBITRATION, whether an arbitrator is named therein or not" (s. 27). "Written Agreement," there, means, a perfected agreement to which the parties are *ad idem* and which is embodied IN WRITING, *i.e.* an agreement evidenced by the parties' signatures (*Coerleon Tin Plate Co v. Hughes*, 60 L. J. Q. B. 640; 65 L. T. 118; 7 Times Rep. 619), or by which they are otherwise bound, *e.g.* an Insurer by the terms of his Policy on which he is suing (*Baker v. Yorkshire Insree*, 1892, 1 Q. B. 144; 61 L. J. Q. B. 838; 66 L. T. 161), or a Litigant by his Counsel's indorsement on his brief (*Aitken v. Batchelor*, 62 L. J. Q. B. 193; 68 L. T. 530). *Vf.*, *Re Smith and Nelson*, cited IRREVOCABLE.

S. 2, Arb Act, 1889, is enlarged by s. 25, so that "Submission," in s. 2, includes past as well as future agreements to arbitrate (*Re Williams and Stepney*, 1891, 2 Q. B. 257; 60 L. J. Q. B. 636; 65 L. T. 208; 39 W. R. 533; *et hie*, *Re Wilson and Eastern Counties Nav. Co*, 1892, 1 Q. B. 81; 61 L. J. Q. B. 237; 65 L. T. 853).

"Agreement or Submission to Arbitration by consent," s. 17, Com. L. Pro. Act, 1854; *Vh*, *Wadsworth v. Smith*, 40 L. J. Q. B. 118; L. R. 6 Q. B. 332: CONSENT: INSTRUMENT IN WRITING. A Submission under s. 25, Lands C. C. Act, 1845, is not within the phrase (*Re Harper and G. E. Ry*, L. R. 20 Eq. 39, explaining *Ex p. Harper*, L. R. 18 Eq. 539).

Act of Submission, 23 H. 8, c. 14.

**SUBMITTED TO.** — *V.* ACQUESCENCE: CONSENT: STANDING BY.

**SUBORDINATE.** — One who is "subordinate" to another, is in the same relationship to third parties as that other; therefore, a Resident Engineer, who is "subordinate" to a Chief Engineer, is no more an agent of the contractor or contractee (*e.g.* for building works), than is the chief engineer (*Re Rio Flour Mills and De Morgan*, 8 Times Rep. 108, 292).

Subordinate Occupation; *V.* per Ld Davey, sub EXCLUSIVE OCCUPATION.

**SUBORNATION OF PERJURY.**—“Subornation of Perjury, is procuring a person to commit a perjury, which he actually commits in consequence of such procurement” (Steph. Cr. 95). *V. PERJURY.*

*Vf*, Arch. Cr. 1017-1019; Rose. Cr. 740, 741.

**SUBROGATION.**—“‘Subrogation,’ is the substitution of another person in the place of a CREDITOR to whose rights he succeeds in relation to the debt. Personal Subrogation is of two sorts, (1) Conventional, and (2) Legal. The difference between them in regard to the effects of Subrogation in general, results only from the modifications of rights which are constituted by express agreement. Subrogation differs from Delegation in this respect, that it is the substitution of a New Creditor; whereas Delegation introduces a New Debtor in the place of the former, who is discharged. Subrogation differs from a TRANSFER or Assignment of a debt, and from Delegation, in the circumstance that it does not, necessarily, depend upon the creditor, but may be made independently of him. It is, properly speaking, but a fictitious cession made to one who has a right to offer payment; it is not a true cession nor sale of a debt, but such as is conceded by law and may have effect by operation of law and the act of the debtor, even without the consent of the creditor from whom the debt proceeds” (Dixon on Subrogation, 1).

*Vh*, Pothier on Obligations, by Evans, 160, cited *Commercial Union Assree v. Lister*, 9 Ch. 485: per Selborne, C., *Blackburn Bg Socy v. Cunliff*, 22 Ch. D. 70, 71; 52 L. J. Ch. 96; 48 L. T. 39; 31 W. R. 99, cited by Chitty, J., *Neath Bg Socy v. Luce*, 43 Ch. D. 164; 59 L. J. Ch. 7; 61 L. T. 616; 38 W. R. 124. For an example, *V. Re Kensington*, 29 Ch. D. 527; 54 L. J. Ch. 1085; 53 L. T. 19; 33 W. R. 689. *Vf*, *King v. Victoria Insree*, 1896, A. C. 250; 65 L. J. P. C. 38; 74 L. T. 206; 44 W. R. 592; *Ecclesiastical Commrs v. Pinney*, 1900, 2 Ch. 736; 69 L. J. Ch. 844; 83 L. T. 384; 49 W. R. 82.

*Cp*, NOVATION.

**SUBSCRIBE.**—“‘Subscribe,’ means, to write under something,” in accordance with prescribed regulations where any such exist (per Brett, M. R., *A-G. v. Bradlaugh*, 54 L. J. Q. B. 213; 14 Q. B. D. 667: *Vf*, *Coon v. Rigden*, 4 Colorado, 282). But though this is the strict primary meaning of the word, it may sometimes, *e.g.* qua the attestation of a Will, be construed as, “to give assent to, or to attest” or “written upon” (*Roberts v. Phillips*, 24 L. J. Q. B. 171; 4 E. & B. 450; *Re Streetley*, 1891, P. 172; 60 L. J. P. D. & A. 56; 39 W. R. 432).

“Subscribe,” very frequently means, to pay money; and then it means, (1) to have made an actual payment, or (2) to agree to contribute (*Thames Tunnel Co v. Sheldon*, 6 B. & C. 341).

Qua a JOINT STOCK COMPANY, 7 & 8 V. c. 110 (repealed by Comp Act, 1862), defined “Subscriber” as meaning, “any person who shall have

agreed in writing to take, or have taken, any shares in a proposed company or in a company formed, and who shall not have executed the Deed of Settlement, or a deed referring thereto" (s. 3).

An obligation to "subscribe for" Shares, does not, as a general rule, connote that they must be taken personally; the obligation will be satisfied if the obligor procures an allotment of the agreed number of shares to persons approved by the Directors of the Co (*Re London & Colonial Finance Corp*, 77 L. T. 146; 13 Times Rep. 576). *Vf*, UNDERWRITE.

A statement in a Prospectus of a Co, that Share Capital has been "subscribed," is not satisfied by the fact that fully paid-up shares have been allotted in payment for property or services (*Arnison v. Smith*, 41 Ch. D. 348; 5 Times Rep. 413).

"Subscribe" to an Undertaking, s. 8, Comp C. C. Act, 1845; *V. Burke v. Lechmere*, L. R. 6 Q. B. 297; 40 L. J. Q. B. 98.

*V. ATTEST: SIGNED.*

#### SUBSCRIBER. — *V. SHAREHOLDER.*

"Subscriber"; *V. Ex p. Cookney*, 28 L. J. Ch. 12; 3 D. G. & J. 170; 26 Bea. 6; 32 L. T. O. S. 82.

A right of Voting, *e.g.* for a schoolmaster, given to "Subscribers," is exercisable only by BONÂ FIDE subscribers, not by those who come with their money *pro hac vice* (*Nott v. Williams*, 48 W. R. 316).

**SUBSCRIPTION or CONTRIBUTION.** — A "Subscription or Contribution" for any plate, prize, or sum of money, to be awarded to the winner "of any lawful game, sport, pastime, or exercise," is excepted from the operation of the Gaming Act, 1845, 8 & 9 V. c. 109, and is legal and irrevocable (*V. proviso to s. 18*). But to be within that proviso the "Subscription or Contribution" must not itself be a Wager; and therefore if each of two or more persons stake money to form a fund for which they are to compete in a lawful game, *e.g.* a foot-race, that is a Wager, and not a "Subscription or Contribution" within the proviso (*Diggle v. Higgs*, 46 L. J. Ex. 721; 2 Ex. D. 422, over-ruling *Batty v. Marriott*, 17 L. J. C. P. 215; *Va, Trimble v. Hill*, 5 App. Ca. 342). So, if two men, each owning a horse, agree to ride a race each on his own horse and the winner to have both horses, that is not a "Subscription or Contribution" (*Coombes v. Dibble*, 35 L. J. Ex. 167; L. R. 1 Ex. 248; 4 H. & C. 375).

So, if two or more persons play at a lawful game for money, but *do not at the time stake the money*, that is not a "Subscription," but a mere bet upon which no action will lie (*Parsons v. Alexander*, 24 L. J. Q. B. 277; 5 E. & B. 263). So, the common "Sweep" on a horse-race, is not within the above exception but, is a lottery and illegal (*Allport v. Nutt*, 14 L. J. C. P. 272; 1 C. B. 989; *Gatty v. Field*, 15 L. J. Q. B. 408; 9 Q. B. 431).

*V. GAMING CONTRACT: VOLUNTARY CONTRIBUTIONS.*

**SUBSEQUENT.** — As to the value of this word in a covenant, in a Marriage Settlement, to settle after-acquired property; *V. Re Garnett*, 55 L. J. Ch. 773; 33 Ch. D. 300; 55 L. T. 562.

“Each subsequent £100 of rent”; *V. EACH.*

*Cp.*, SUCCEEDING.

**SUBSEQUENT ACTION.** — A second action commenced after the issue of the Writ but before judgment obtained in a first action, was held to be a “Subsequent” Action within ss. 2 and 5. M. W. P. Act, 1874 (*Fear v. Castle*, 51 L. J. Q. B. 279; 8 Q. B. D. 380).

A “subsequent action for Infringement” of a Patent which will carry Costs as between Solr and Client, s. 31, 46 & 47 V. c. 57, means, an action quâ the same Patent commenced after one in which the Court or Judge has, under the section, certified the validity of the Patent (*Automatic Weighing Machine Co v. International Hygienic Sory*, 6 Pat. Ca. 475; *Saccharin Corp v. Anglo-Continental Co*, W. N. (1900) 95).

*V.* ACTION.

**SUBSEQUENT ASSIGNMENT.** — “Subsequent,” s. 4, Fine Arts Copyright Act, 1862, 25 & 26 V. c. 68, means, subsequent to the first entry; therefore, it is not necessary, under that section, to register the assignment of a copyright to the person who first makes the entry of it (*Troitzsch v. Rees*, 3 Times Rep. 773; *Vj. Ex p. Walker, Re Graves*, L. R. 4 Q. B. 715; 39 L. J. Q. B. 31; 10 B. & S. 680).

*V.* ASSIGNMENT.

**SUBSEQUENT OVERSEERS.** — *V.* SUCCEEDING.

**SUBSIDENCE.** — *V.* CAUSE OF ACTION, p. 277.

**SUBSIDY.** — “‘Subsidy. *Subsidium*,’ signifies an Ayd. Tax, or Tribute, granted by Parliament to the King, for the urgent occasions of the Kingdom, to be levyed of every Subject according to the rate of his Land or Goods, after four shillings in the pound for Land, and two shillings eight pence for Goods” (Cowel: *Vh.*, 2 Bl. Com. 307–316).

Quâ Mail Ships Act, 1891, 54 & 55 V. c. 31, “‘Subsidy,’ includes a payment for the performance of a contract” (s. 9).

**SUBSIST.** — Limitations continue to “subsist,” quâ exemption from Estate Duty under s. 5 (3), Finance Act, 1894, so long as there is any estate created by the Settlement which has not come to an end (per Williams, J., *A-G. v. Wood*, 1897, 2 Q. B. 102; 66 L. J. Q. B. 522; 76 L. T. 654; 45 W. R. 663).

**SUBSISTING.** — Trusts “subsisting and capable of taking effect”; *V. Smyth-Pigott v. Smyth-Pigott*, W. N. (84) 149.

Rights or Interests “subsisting and valuable”; *V.* RIGHTS.

*Cp.*, EXISTING.

**SUBSOIL.** — “ ‘Subsoil’ includes, *primâ facie*, all that is below the actual SURFACE down to the centre of the earth (*V. Cox v. Glue*, 17 L. J. C. P. 162; 5 C. B. 549; 10 L. T. O. S. 374). It is, therefore, a wider term than ‘MINES’ or ‘QUARRIES,’ or even than ‘Minerals’ (*V. Atkinson v. King*, 2 L. R. IR. 339). And an exception of ‘Coals and Coal Mines’ will only comprise that portion of the Subsoil which actually consists of Mines of Coal, and will not comprise any intervening or other strata (*V. Ramsay v. Blair*, 1 App. Ca. 704)”: MacS. 20.

*V. LAND: MINE: SOIL: VEST: Metropol Ry v. Fowler*, and *Farmer v. Waterloo & City Ry*, cited APPROPRIATE.

**SUBSTANCE.** — “What is ‘Substance’? It is *every property* a man has. So, in the statute 4 & 5 P. & M. c. 8, for the punishment of such as shall take away maidens that be inheritors, the word ‘Substance’ is made use of and means, *worldly wealth*”; “ ‘Substance’ includes everything that can be turned into money” (per Mansfield, C. J., *Hogben v. Jackson*, 1 Cowp. 307). *V. WORLDLY ESTATE: WORLDLY GOODS.*

A covenant to settle “Fortune or Substance,” embraces real estate (*Scully v. Scully*, Sug. Prop. 104: *Vf*, FORTUNE). In *Maitland v. Adair* (3 Ves. 231, cited 1 Jarm. 742), “my Fortune” was, by a context, confined to personalty. *Vf*, as to “Fortune,” *Bacon v. Cosby*, 20 L. J. Ch. 213; 4 D. G. & S. 261: “Future Fortune”; *V. FUTURE.*

“Substance” contrasted with “MATTER”; *V. DESTRUCTIVE.*

“Nature, Substance, or Quality”; *V. NATURE.*

“Substances”; *V. MINE*, at end.

“Hard and Incombustible Substances”; *V. WALL.*

In a defence to a Libel on a newspaper report of a trial, it is not a sufficient justification to say that the report was “in Substance” a true report and account of the trial (*Flint v. Pike*, 4 B. & C. 473; *wher* for obs on that phrase).

“Defect in Substance,” s. 1, Sum Jur Act, 1848; *V. Rodgers v. Richards*, 1892, 1 Q. B. 555; 66 L. T. 261; 40 W. R. 331; 56 J. P. 281; 17 Cox C. C. 474. *Up*, VARIANCE.

*V. POINT OF SUBSTANCE.*

**SUBSTANTIAL.** — A *House* was described as “Substantial and Convenient,” and having five bed-rooms; held, not a misdescription, although the house was out of repair, and the walls in some places were only half-brick thick, and some of the bed-rooms extremely small inner rooms, and without fireplace: “The description is of a ‘Substantial and Convenient Dwelling-house,’ a description so relative in its terms as to afford abundant opportunity for a conflict of evidence as to matters which are rather matters of opinion than of fact” (per Stuart, V. C., *Johnson v. Smart*, 2 Giff. 151, 156; 2 L. T. 307; 6 Jur. N. S. 815).

The Poor Relief Act, 1601, 43 Eliz. c. 2. s. 1. requires that persons

appointed Overseers shall be "Substantial *Householders*." Where, however, a district contained only three houses, two of which were occupied by poor labourers, it was held that the appointment of all the three householders was good (*R. v. Stubbs*, 2 T. R. 395). In delivering the judgment of the Court in that case, Ashhurst, J., said, "The word 'Substantial' is a relative term. If there were a great many opulent farmers, there the appointment of a day-labourer might be improper; but here there were no other persons to serve. They are both householders with some land annexed to their houses, and one of them a proprietor. No better persons can be had than the place affords; and the want of them is no reason why the poor should not be provided for." But a servant occupying a tenement in part payment for his services, is not such a Householder (*R. v. Spurrell*, L. R. 1 Q. B. 72; 35 L. J. M. C. 74; 13 L. T. 364; 12 Jur. N. S. 208; 14 W. R. 81). *Vf*, OCCUPIER.

A "Substantial *Inhabitant*," liable to serve the office of Rate Collector under 11 G. 3, c. 29, must have been a resident inhabitant (*Donne v. Martyr*, 6 L. J. O. S. K. B. 246; 8 B. & C. 62; 2 M. & R. 98). *Vf*, RESIDE: INHABITANT.

"Substantial *Repair*"; *V*. REPAIR: GOOD REPAIR.

"Substantial *Wrong or Miscarriage*," R. 6, Ord. 39, R. S. C.; *V*. *Bray v. Ford*, 1896, A. C. 44; 65 L. J. Q. B. 213; 73 L. T. 609.

**SUBSTANTIALLY.** — WORKS "substantially commenced"; *V*. *A-G. v. Bournemouth*, 71 L. J. Ch. 730; 1902, 2 Ch. 714; in *who* also *Re Dudley Trams Co*, cited CONCLUSIVE EVIDENCE, was disapproved.

Substantially infringe a Patent; *V*. per Grove, J., *Young v. Rosenthal*, 1 Pat. Ca. 33, 41.

**SUBSTITUTE.** — "Substitute, *Substitutus*," One placed under another to transact or do some business" (Cowel).

"Substitute for Beer"; *V*. BEER.

**SUBSTITUTED.** — "Collateral, or Auxiliary, or Additional, or Substituted, SECURITY," Stamp Act, 1891, Sch 1, clause 2, *Mortgage*; where a Trust Deed of a Co is to secure Debentures or Debenture Stock with power to surrender or withdraw part of the property therein comprised, and only a *small* part of such property is surrendered or withdrawn and in lieu thereof another small property is conveyed to the trustees but without any covenant for payment of the debentures or debenture stock or any declaration of trust of the newly assured property, such latter conveyance is a "Substituted Security" for the whole amount of the debentures or debenture stock, and the *ad val.* duty of 6*d.* per £100 has to be paid thereon (*Gartsides Co v. Inl. Rev.*, 82 L. T. 686). *Vf*, *City of London Brewery v. Inl. Rev.*, 1899, 1 Q. B. 121; 68 L. J. Q. B. 62; 79 L. T. 648; 47 W. R. 216.

"Substituted Service" of a Writ, Ord. 10, R. S. C.; *V*. Ann. Pr.

**SUBSTITUTION.** — *V.* ADDITION: LIEU: NOVATION: SUBROGATION.

Fixtures, Plant, &c, "in substitution" of others, s. 6 (2), Bills of Sale Act, 1882; *V. London & Eastern Counties Loan Co v. Creasy*, cited PLANT.

**SUBSTITUTIONAL.** — As to construction of Substitutional Gifts; *V. 2 Jarm.* 771-782: SHARE, and esp'y *Christopherson v. Naylor*, there cited.

Substitutional Legacy; *V.* CUMULATIVE.

**SUBTERRANEAN WATER.** — *V.* DEFINED CHANNEL: WATERS. *Vh, Grand Junction Canal Co v. Shugar*, 6 Ch. 483; *Popplewell v. Hodgkinson*, 38 L. J. Ex. 126; L. R. 4 Ex. 248; *Ballard v. Tomlinson*, 54 L. J. Ch. 454; 29 Ch. D. 115; 52 L. T. 942; 33 W. R. 533.

**SUCCEED.** — *V. Bagot v. Legge*, 34 L. J. Ch. 156.

"If any person shall have succeeded to any Trade," &c, No. 4, 3rd set of Rules, Sch D, s. 100, Income Tax Act, 1842, 5 & 6 V. c. 35; *V. Ryhope Co v. Foyer*, 7 Q. B. D. 485; 45 L. T. 404.

**SUCCEEDING.** — The phrase "Succeeding Overseers," s. 11, Poor Relief Act, 1743, 17 G. 2, c. 38, is not confined to Overseers who immediately succeed those who made the Rate; "succeeding," there, *semble*, means "SUBSEQUENT" (*East Dean v. Everett*, 30 L. J. M. C. 117; 3 E. & E. 574; 9 W. R. 312; 3 L. T. 700; 25 J. P. 565). *Cp.* SUCCESSIVE.

So, "succeeding" is sometimes, by an interp clause, made synonymous with "subsequent," *e.g.* " 'Succeeding Year,' shall be deemed to refer to a year *subsequent* to the year 1851 " (s. 117, 13 & 14 V. c. 69).

**SUCCESSION.** — A devise to A. "and his children *in succession*," gives A. an estate tail (*Tyrone v. Waterford*, 29 L. J. Ch. 486; 1 D. G. F. & J. 613).

*Quà Succession Duty*, "Every past or future *Disposition* of property, by reason whereof any person has or shall become BENEFICIALLY ENTITLED to any property, or the income thereof, UPON the death of any person dying after the time appointed for the commencement of this Act (19th May 1853), either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every *Devolution by Law* of any beneficial interest in property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such *Disposition* or *Devolu-*

tion a 'Succession'; and the term 'Successor' shall denote the person so entitled; and the term 'PREDECESSOR' shall denote the settlor, disponent, testator, obligor, ancestor, or other person, from whom the interest of the Successor is or shall be derived" (s. 2, 16 & 17 V. c. 51). "In framing that Act the word 'Succession' was adopted for the purpose of denoting any property passing upon death from one person to another by virtue of any Gift or Descent, or of any Contract, *not being a bonâ fide contract of purchase or loan*" (per Westbury, C., *Floyer v. Bankes*, 33 L. J. Ch. 3; 3 D. G. J. & S. 306); and it does not include a conveyance or assignment by way of *bonâ fide* sale (*Fryer v. Morland*, 45 L. J. Ch. 817; 3 Ch. D. 675: *A-G. v. Brown*, 41 S. J. 454: *See, De Rechberg v. Beeton*, 38 Ch. D. 192). *Vfj*, *A-G. v. Littledale*, 40 L. J. Ex. 241; L. R. 5 H. L. 290: *A-G. v. Middleton*, 27 L. J. Ex. 229; 3 H. & N. 125: *A-G. v. Sibthorp*, 28 L. J. Ex. 9; 3 H. & N. 424: *A-G. v. Braybrooke*, 9 H. L. Ca. 150; 31 L. J. Ex. 177: *Solicitor-General v. Law Reversionary Socy*, 42 L. J. Ex. 146; L. R. 8 Ex. 233: *A-G. v. Mander*, 74 L. T. 103; 65 L. J. Q. B. 246; 44 W. R. 413: *A-G. v. Wolverton*, 1897, 1 Q. B. 231; 66 L. J. Q. B. 202; nom. *Wolverton v. A-G.*, 1898, A. C. 535; 67 L. J. Q. B. 829; 79 L. T. 58; 47 W. R. 97: Dart, 314-318, 667-669.

"Succession," as above defined, includes "an increase of benefit in property" (per Lindley, L. J., *A-G. v. Robertson*, 1893, 1 Q. B. 293; 62 L. J. Q. B. 282; 68 L. T. 371; 41 W. R. 241), *e.g.*, as held in *thlc*, where income is to wife for life, remainder to husband for life, and, in default of issue, to wife absolutely, — there, the increased benefit taken by the wife on surviving her husband (there being no issue) is a "Succession."

For clause in a Settlement exonerating a Jointress from herself paying Such Dy, *V. Floyer v. Banks*, *sup.*

As to what words will exonerate a Beneficiary from Such Dy, *V.* CLEAR: DEDUCTION.

"Succession," s. 6, 52 & 53 V. c. 7; *V. A-G. v. Aberdare*, 1892, 2 Q. B. 684; 61 L. J. Q. B. 615: *Vfj*; WHOLLY.

*V.* PREDECESSOR: DERIVE: DISPOSITION: INHERIT: LEGACY DUTY: UNDER.

"*By way of Succession.*" The provision in s. 2 (1), S. L. Act, 1882, that an instrument limiting or declaring trusts "for any persons By way of Succession" is a Settlement, is adopted from s. 2, Settled Estates Act, 1877, which adopted it from s. 1, 19 & 20 V. c. 120: *Vh, Re Birtle*, 11 W. R. 739; 32 L. J. Ch. 439: *Re Bardin*, 7 W. R. 711; 28 L. J. Ch. 840: *Re Goodwin*, 3 Giff. 620: *Re Horn*, 29 L. T. 830: *Collett v. Collett*, L. R. 2 Eq. 203; 35 Bea. 312: *Re Laing*, 35 L. J. Ch. 282; L. R. 1 Eq. 416: *Re Shepherd*, 39 L. J. Ch. 173; L. R. 8 Eq. 571: *Carlyon v. Truscott*, L. R. 20 Eq. 348; 44 L. J. Ch. 186: *Re Morgan*, L. R. 9 Eq. 588: *Beioley v. Carter*, 38 L. J. Ch. 92, 283; 4 Ch. 230: *Re Morgan*,



49 L. J. Ch. 577: Middleton on Settled Estates, 3 ed., 28, 29: Carson's Real Property Statutes, 625, 626.

*V.* SUCCESSOR.

"Intestate Succession"; *V.* INTESTATE.

**SUCCESSIVE.**—A "Successive OCCUPIER," quâ the Parliamentary Franchise, is one who occupies premises, in the same Borough, or Division of a County, "in Immediate succession" (s. 28, Rep People Act, 1832; s. 26, Rep People Act, 1867); but such premises may be partly by virtue of Service and partly under Ordinary Tenancies, or wholly by or under either mode of occupation (*Torish v. Clark*, 18 L. R. Ir. 285; followed in *Nicholson v. Yeoman*, 24 Q. B. D. 145; 59 L. J. Q. B. 104; 61 L. T. 813; 54 J. P. 166). The successive occupation of LODGINGS must be in "the same house" (s. 6, 41 & 42 V. c. 26). *V.* "Nature of Qualification," sub NATURE. *Cp.* SUCCEEDING.

A "Successive OWNER," liable to an Improvement Rate, includes a mtgee in possession (*Blackburn v. Micklethwait*, 54 L. T. 539; 50 J. P. 550).

**SUCCESSIVELY.**—"In many cases devises to several persons *successively*, have been contended to be void on account of the uncertainty respecting the order in which the objects are to take. Where the devise is to several specified individuals in succession, the obvious rule is to hold them to be entitled in the order in which their names occur. If it be to a class of persons, constituted such in virtue of birth,—as to children, sons, or brothers,—then priority according to seniority of age may be presumed to be intended. And the circumstance of a condition being imposed on the devisees has been held not to vary the order in which they are successively entitled" (1 Jarm. 374, and *V.* cases there cited).

A devise "to the first son of T. severally and successively in tail male" must be read, "to the first, *and every other*, son," as otherwise "severally and successively" would be without meaning (*Parker v. Tootal*, 34 L. J. Ex. 198; 11 H. L. Ca. 143; *Vth*, 1 Jarm. 528, 2 Ib. 407).

Custom of a Manor on grant for lives "successively"; *V.* *Doe d. Nepean v. Goddard*, 1 B. & C. 522.

**SUCCESSOR.**—Is "he that followeth or cometh in another's place" (Jacob).

Quâ Bankry (Scot) Act. 1856, 19 & 20 V. c. 79, " 'Successor,' shall include, all persons who have succeeded to any property which was vested in a party deceased at the time of his death.—whether as heirs, heirs apparent, trustees under voluntary conveyances, representatives by deed or otherwise, executors, administrators, or nearest of kin, or as assignees, or legatees; and shall also include singular successors where they have acquired the right" (s. 4).

Quà Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, "Successors," includes, "heirs, dispoñees, assignees legal as well as voluntary, executors, and representatives" (s. 3).

Quà Landed Property (Ir) Improvement Act, 1860, 23 & 24 V. c. 153; *V*. s. 9.

*V*. SUCCESSION: SUCCESSORS: CLERGYMAN.

**SUCCESSORS.** — A Devise to A. "and his Successors," even prior to the Wills Act, 1837, passed the fee simple (*Webb v. Herring*, 1 Rolle, 399, pl. 25; 8 Vin. Ab. 209, pl. 1; 3 Bulst. 194: *A-G. v. Gilbert*, 10 Bea. 517); so, a bequest of personalty to an Earl, "and to his successors, *and to be enjoyed with and go with the title*," is an absolute gift notwithstanding the words italicized (*Re Johnston, Cockevell v. Essex*, 53 L. J. Ch. 645; 26 Ch. D. 538; 32 W. R. 634).

But a Grant "to any natural person, to have and to hold to him and his Successors. — by this he hath only an estate for his life" (*Touch. 106: Va, Co. Litt. 8 b*).

In a conveyance of a fee simple to a Corporation the apt words of limitation are "and their Successors"; and in the case of a Corporation Sole, "without these words, *Successors*, there passeth no inheritance" (*Co. Litt. 8 b; Vth, Ib. 94 b: Va, FEE SIMPLE*).

A Devise to a Minister of Religion "and his successors," e.g. "to T. W., Minister of the Roman Catholic Chapel at Kendal, and to his successors for ever," is a devise for the benefit of the office held, not of the person named, and was void under the Statute of Mortmain (*Thornber v. Wilson*, 24 L. J. Ch. 667; 3 Drew. 245). So, land awarded, under an Enclosure Act, to A. as "Vicar, and his successors," goes to him only in his corporate capacity, "successors" being only a word limiting the fee simple and not having the effect of making the land "SETTLED" (*Ex p. Castle Bytham*, 1895, 1 Ch. 348; 64 L. J. Ch. 116; 43 W. R. 156).

"Successors in Estate," quà Glebe Lands Leasing Powers (Ir) Act, 1857, 20 & 21 V. c. 47, means, "the persons entitled, for the time being after the Lessor, to the receipt of the rents of the lands comprised in any lease made under this Act" (s. 2): *Vf*, s. 1, 18 & 19 V. c. 39.

*V*. SUCCESSOR.

**SUCCESSORS IN BUSINESS.** — Neither partner of a dissolved firm is the "Successor" in business of such firm, when each partner goes his own way and carries on business for himself (*Eaton v. Western*, 52 L. J. Q. B. 41; 9 Q. B. D. 636).

"Successors in business," quà a Lessee's covenant to purchase goods of his Lessor; *V. Birmingham v. Jameson, Manchester Brewery Co v. Coombs*, and *John v. Holmes*, cited SPIRITUOUS LIQUOR.

**SUCH.** — "Such," like "SAID," generally refers to its last antecedent (*Vh, per Halsbury, C., Ex p. Barnes*, 1896, A. C. 150).

"Such," in Statutes; *V. Dwar.* 601.

"Such," in Testamentary Gifts of a substitutional character; *V. West v. Orr*, 47 L. J. Ch. 294; 8 Ch. D. 60; *Heasman v. Pearce*, 7 Ch. 285; *Miller v. Chapman*, 24 L. J. Ch. 409, discussed 2 Jarm. 779, 780.

As to "Such," wrongly used; *V. Elph.* 82, 403.

"Such as shall survive," in a devise to a CLASS, construed as, the others or other of them (*Re Tharp*, 33 L. J. Ch. 59; 1 D. G. J. & S. 453). *V. SURVIVOR.*

Power to appoint to "Such" of a CLASS, "authorizes exclusion, unless a contrary intention appear" (Farwell, 363, cited by Jessel, M. R., *Re Veale*, 46 L. J. Ch. 800 n; 4 Ch. D. 64). *Cp.* ALL AND EVERY: AMONG.

"Such Bankrupt," s. 23, 5 & 6 V. c. 122; *V. Norton v. Walker*, 18 L. J. Ex. 234; 3 Ex. 480.

"Such Bill," s. 38, Solicitors Act, 1843, 6 & 7 V. c. 73, refers back to the Bill to be delivered under s. 37, and means a Bill as between Solicitor and Client (*Re Cowdell*, 52 L. J. Ch. 246; following *Re Grundy*, 50 L. J. Ch. 467; 17 Ch. D. 108; 29 W. R. 581).

"Such Certificate," proviso to s. 5, 28 & 29 V. c. 27; *V. Williams v. Swansea Canal Nav. Co.*, 37 L. J. Ex. 107; L. R. 3 Ex. 158.

"Such Child"; *V. Rye v. Rye*, 1 L. R. Ir. 413.

"Such Covenants" as in Original Lease; *V. Haywood v. Silber*, 30 Ch. D. 404; 34 W. R. 114: LIKE.

"Such Craft," s. 66, Watermen's and Lightermen's Amendment Act, 1859, 22 & 23 V. c. cxxxiii, means "each" craft (*Elmore v. Hunter*, 3 C. P. D. 116; 47 L. J. M. C. 8).

"Such Deed," s. 198, Bankry Act, 1861; *V. Ames v. Colnaghi*, 37 L. J. C. P. 159; L. R. 3 C. P. 359.

"Such Dismissal," in a Justice's Certificate dismissing a Complaint; *V. Skuse v. Davis*, 10 A. & E. 635; 8 L. J. M. C. 75.

"Such Issue"; *V. Re Hutchinson*, 55 L. J. Ch. 574; W. N. (86) 63: and whether prospective or retrospective, *V. 2 Jarm.* 65; *Strutt v. Braithwaite*, 21 L. J. Ch. 609; 5 D. G. & S. 369; *Hope v. Potter*, 3 K. & J. 206; *Harley v. Mitford*, 21 Bea. 280. "IN DEFAULT of such Issue"; *V. 2 Jarm.* 454-457; *Re Lowman*, 1895, 2 Ch. 348; 64 L. J. Ch. 567; 72 L. T. 816.

"Such," s. 9, Lands C. C. Act, 1845, in the phrase "Compensation to be paid for any permanent damage or injury to any such Lands," is to be rejected as insensible (*Stone v. Yeoril*, 24 W. R. 1073; 45 L. J. C. P. 657; 34 L. T. 874).

"Such Lands," s. 94, Lands C. C. Act, 1845, applies to all intersected lands, whether in a TOWN or not (*Eastern Counties Ry v. Marriage*, 31 L. J. Ex. 73; 9 H. L. Ca. 32).

"Such Liquor to bonâ fide TRAVELLERS," or to LODGERS, s. 10, Li-

censing Act, 1874, means, liquor to be consumed *on* the premises by the person supplied (*Mountifield v. Ward*, 1897, 1 Q. B. 326; 66 L. J. Q. B. 246; 76 L. T. 202; 45 W. R. 288; 61 J. P. 216).

"Such *List*." ss. 15 and 48, 5 & 6 W. 4, c. 76, "does not, necessarily, mean a correct and perfect list, but a list of such a kind and description as the Act requires" (per Patteson, J., *King v. Burrell*, 12 A. & E. 468). For a similar interp of "such," but in another context, *V.* per Wightman, J., *R. v. Randall*, 4 E. & B. 569.

"Such *Mines*," s. 80, Ry C. C. Act, 1845; *V. Midland Ry v. Miles*, 30 Ch. D. 634; 53 L. T. 381; 34 W. R. 136.

"Such *Order*," s. 15, Judgments Act, 1838, 1 & 2 V. c. 110, means, a Charging Order  *nisi*; therefore, when the Order has been made absolute it cannot be rescinded under that section (*Jeffryes v. Reynolds*, 52 L. J. Q. B. 55; *Drew v. Lewis*, 1891, 1 Q. B. 450; 60 L. J. Q. B. 264).

"Such *other Order* as to the Court shall seem meet," in the prayer of a petition for winding-up a Co under supervision, enables the Court (petitioner being willing) to make a Compulsory Order (*Re Electric & Magnetic Co*, 50 L. J. Ch. 491).

A gift of "such *Parts*" of testator's property as the legatee may desire, enables the legatee to take the whole; and if the gift embraces only a class of testator's property, then the whole of such class may be appropriated by the legatee (*Arthur v. Mackinnon*, 48 L. J. Ch. 534; 11 Ch. D. 385). *V.* APPROPRIATE: PART: WHAT IS LEFT.

Power to let "such *Parts*" of testator's property "as have been usually granted or demised"; *V. Doe d. Bligh v. Colman*, 1 Bing. 28; *Va*, ANY, p. 95.

"Such *Prosecution*"; *V.* PROSECUTION.

"Such *General or Quarter Sessions*," s. 14, Vagrancy Act, 1824, 5 G. 4, c. 83, refers to the kind of Court, and not the individuals constituting a particular Sessions (*R. v. Warwickshire*, 4 L. J. M. C. 62; 4 N. & M. 370; 2 A. & E. 768).

"Such *Trusts* as are hereinafter declared"; *V. Hindle v. Taylor*, 5 D. G. M. & G. 592; *Va*, HEREIN.

"Such and the like *Trusts*"; *V.* LIKE.

"Such *Warrant of Attorney*," s. 4, 3 G. 4, c. 39, refers only to the Warrants of Attorney mentioned in the preceding sections (*Morris v. Mellin*, 6 B. & C. 446).

**SUDDEN.** — A STRIKE does not, of itself, create a "Sudden and Urgent NECESSITY" within s. 54, Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76 (*A-G. v. Merthyr Tydfil*, 1900, 1 Ch. 516; 69 L. J. Ch. 299; 48 W. R. 403; 82 L. T. 662; 64 J. P. 276).

**SUE.** — "To sue," *e.g.* by a Guardian for an Infant, is "sufficiently significant of a defendant; for 'to sue' is nothing more than 'to take

care of, or take upon one, the defence or tuition of the cause for the infant, or on his behalf.' And these words 'to sue' may be applied indifferently either to the demandant or plaintiff, or to the tenant or defendant, for the suit of one party or of the other must be followed. And the words 'to sue,' not only signify 'to PROSECUTE,' but also 'to defend,' or to do something which the law requires for the better prosecution or defence of the cause" (*Hesketh v. Lee*, 2 Saund. 95). *Cp.* DEFEND.

" 'To sue,' generally speaking, means, to bring actions" (per Bayley, J., *Guthrie v. Fisk*, 3 B. & C. 183); accordingly it was there held that a power to a Co "to sue" in the name of their Officer, does not enable that Officer to be a good petitioning creditor in bankry on behalf of the Co, — a rule that was followed in *Re Nance*, 1893, 1 Q. B. 590; 62 L. J. Q. B. 500; 68 L. T. 733; 41 W. R. 370. *V.* SUIT.

Not to sue for future Conjugal Offence; *V.* COMMENCED.

"Sue forth"; *V.* *Re Rowe*, cited ISSUE OF ORDERS, p. 1015.

**SUE AND LABOUR.** — As to construction of the "Sue and Labour" Clause in a Marine Insurance; *V.* *Uzielli v. Boston Insree*, 54 L. J. Q. B. 142; 15 Q. B. D. 11; 52 L. T. 787; 33 W. R. 293; *Lysaght v. Coleman*, 1895, 1 Q. B. 49; 64 L. J. Q. B. 175; 71 L. T. 830; 7 Asp. 552; 11 Times Rep. 10; *The Pomeranian*, 1895, P. 349; 65 L. J. P. D. & A. 39; 1 Maude & P. 490; Arn. ss. 22, 864–874; 8 Encyc. 202, 203.

**SUEZ.** — Quà Imperial Defence Act, 1888, 51 & 52 V. c. 32, and by s. 11 thereof, " 'Suez Canal Shares,' means, the Suez Canal Shares held by the Treasury in pursuance of the Suez Canal Shares Act, 1876." 39 & 40 V. c. 67. *Note:* that latter Act, in its preamble, gives the text of the agreement for the purchase of these Shares by the Disraeli Ministry.

**SUFFER.** — An Annuity, or other life interest, only enjoyable until the beneficiary shall "suffer" anything to deprive him of the right of receiving it, is forfeited by a Garnishee Order served on the trustees (Lewin, 111, citing *Bates v. Bates*, W. N. (84) 129; *sthe* not followed in *Sutton v. Goodrich*, 80 L. T. 765, if it covered moneys actually in the trustees' hands); or by a Judgment Creditor obtaining a Charging Order (*Roffey v. Bent*, L. R. 3 Eq. 759), or registering his judgment as a mortgage against the lands (*Re Moore*, 17 L. R. Ir. 549); or the appointment of a Receiver (*Re Detmold*, 58 L. J. Ch. 495; 40 Ch. D. 585); or by a Bankry when the act of bankry is such as (under the old practice) neglecting to comply with a debtor's summons (*Ex p. Eyston*, 47 L. J. Bank. 62; 7 Ch. D. 145). *Vf.* *Re Sartoris*, cited WOULD: *se.* *Ex p. Daves*, cited WOULD

*V.* PERMIT: PERMISSION.

There is no real distinction between "permit" and "suffer" in the Licensing Act, 1872, 35 & 36 V. c. 94 (per Stephèn, J., *Bond v. Erans*,

57 L. J. M. C. 108; 21 Q. B. D. 249; 59 L. T. 411; 36 W. R. 767; 52 J. P. 613; *Va.* per Mathew, J., *Somerset v. Wade*, 1891, 1 Q. B. 574; 63 L. J. M. C. 127; 42 W. R. 399; 70 L. T. 452; 58 J. P. 231). Some of the sections of that Act (*e.g.* s. 14, and subs. 1, s. 16), deal with offences "KNOWINGLY" done, and in those cases, of course, knowledge by the licensed person would be an ingredient in the offence. But in other sections (*e.g.* ss. 13, 15, 17) "knowingly" does not occur; but still an offence of "permitting," or "suffering," is not committed unless the licensed person "knows of its existence, or connives at it, or wilfully shuts his eyes to it" (per Mathew, J., *Somerset v. Wade*, *sup.*). In that case the innkeeper proved that he really did not know that the drunken person was drunk, and the Justices were upheld in dismissing the summons for "permitting" drunkenness. That ruling seems, at first sight, inconsistent with *Cundy v. Le Cocq* (cited DRUNKEN PERSON), but the conviction there was on the express words of the section for "selling liquor to a drunken person"; *V.* per Collins, J., *Somerset v. Wade*, *sup.*

Personal knowledge is not absolutely essential; therefore, under s. 17, Licensing Act, 1872, a licensed person "suffers GAMING," if he, or his *servant in charge*, knows, or ought to know, that gaming is going on (*Bosley v. Davies*, 45 L. J. M. C. 27; 1 Q. B. D. 84; 39 J. P. 774; *Redgate v. Hughes*, 45 L. J. M. C. 65; 1 Q. B. D. 89; 40 J. P. 70; *Crabtree v. Hole*, 43 J. P. 799; *Bond v. Evans*, *sup.*), but not, *semble*, if the knowledge be confined to an irresponsible person not in charge. *e.g.* a potman (*Somerset v. Hart*, 53 L. J. M. C. 77; 12 Q. B. D. 360; *Sr.*, *Collman v. Mills*, cited PERMIT).

Again, to "permit," or to "suffer," is not confined to a passive sense; therefore, under s. 13, Licensing Act, 1872, a licensed person "permits" drunkenness who supplies with more drink a person who he knows or ought to know is drunk (*Edmunds v. James*, 1892, 1 Q. B. 18; 61 L. J. M. C. 56; 65 L. T. 675; 40 W. R. 140; 56 J. P. 40; *Sr.*, TAKE PLACE); on the other hand, that is so if he allows such a person to remain on his premises, even though no liquor be served there to such person (*Hope v. Warburton*, 1892, 2 Q. B. 134; 61 L. J. M. C. 147; 66 L. T. 589; 40 W. R. 510; 56 J. P. 328).

*Note.* The above prohibition against gaming extends to the licensed person himself and his private friends (*Patten v. Rhymer*, 29 L. J. M. C. 189; 3 E. & E. 1; 8 W. R. 496; 2 L. T. 352; 24 J. P. 342); but the licensed person who is himself drunk, cannot, under s. 13, be convicted of "permitting" drunkenness (*Warden v. Tye*, 46 L. J. M. C. 111; 2 C. P. D. 74; 35 L. T. 852; *Cp.*, LICENSED PREMISES).

*Vf.* ALLOW: *Cp.*, OMISSION.

Building "made or suffered to continue"; *V.* *Pearson v. Kingston-upon-Hull*, 35 L. J. M. C. 36; 3 H. & C. 921.

"A man cannot be said to 'suffer' that which he has no right to prevent" (per Field, J., *R. v. Staines*, 60 L. T. 261; 53 J. P. 358); there-

fore, a Local Board does not "cause or suffer" SEWAGE to flow into the Thames, within s. 64, 29 & 30 V. c. 89, if persons who have a prescriptive right to use the sewers vested in the Board do use them to carry sewage into that river (*S. C.*).

"Cause or suffer to be conveyed or to flow" into any Stream, &c, any gas washings; *V. Hipkins v. Birmingham Gas Co.*, 5 H. & N. 74; 6 Ib. 250. *Cp.*, CAUSE OR PERMIT: WILFULLY SUFFER.

"Duly done or suffered"; *V. DONE.*

**SUFFER JUDICIAL PROCEEDING.** — A debtor in difficulties owing large sums to his father-in-law consulted his father-in-law's solicitor, who told him he could only act for the father-in-law, and that the debtor must take his own course; the solicitor issued a writ for the father-in-law's claim, to which the debtor did not appear; judgment by default was obtained and debtor's goods were seized under an *elegit* and delivered to the father-in-law; the debtor then filed a liquidation petition, employing therein his father-in-law's solicitor; held, that the debtor had not "suffered" a judicial proceeding within s. 92, Bankry Act, 1869 (*Ex p. Lancaster*, 53 L. J. Ch. 1123; 25 Ch. D. 311).

**SUFFERANCE.** — *V. PERMISSION: BY WHOSE.*

"There is a great diversity between a TENANT AT WILL and a Tenant at Sufferance; for Tenant at Will is always by right, and Tenant at Sufferance entred by a lawfull lease, and holdeth over by wrong. A Tenant at Sufferance is he that at the first came in by lawfull demise, and after his estate ended continueth in possession and wrongfully holdeth over" (*Co. Litt.* 57 b). *Vh.*, 1 Cru. Dig. Title 9: *Rouse's Case*, Tudor's L. C. R. P. 1.

A Sufferance WHARF, is a Wharf in the Port of London the limits of which were set out by an Order or Minute of the Commrs of Customs dated May 13, 1789, amongst which are, — Fenning's Wharf, Topping's Wharf, Chamberlain's Wharf, Cotton's Wharf, the Depot Wharf, Hay's Wharf, Beal's Wharf, Carpenter Smith's Wharf, Griffin's Wharf, Gun and Shot Wharf, Symon's Wharf, Pickle Herring Upper Wharf, Pickle Herring Lower Wharf, Mark Brown's Wharf, Davis' Wharf, Hartley's Wharf, and Butler's Wharf (11 V. c. xviii.), on *whr.*, *Barber v. Meyerstein*, 39 L. J. C. P. 187; L. R. 4 H. L. 317.

**SUFFICE.** — *V. IT SHALL SUFFICE.*

**SUFFICIENT.** — *V. INSUFFICIENT.*

**SUFFICIENT CAUSE.** — As to what is "other Sufficient Cause," within s. 7 (3), Bankry Act, 1883, for refusing to make a Receiving Order; *V. Ex p. Dixon*, 53 L. J. Ch. 769; 13 Q. B. D. 118; 50 L. T. 414; 32 W. R. 837: *Ex p. Oram, Re Watson*, 15 Q. B. D. 399; 33 W. R. 890; 52 L. T. 785; 2 Morr. 199: *Re Robinson*, 22 Ch. D. 816: *Re*

## SUFFICIENT CAUSE 1974 SUFF'NT DISTRESS

*Otway*, 1895, 1 Q. B. 812; 64 L. J. Q. B. 521; 72 L. T. 452, *vtbc*,  
*Re Leonard*, 1897, 1 Q. B. 473; 65 L. J. Q. B. 393; 74 L. T. 183; 44  
W. R. 438: *Re Jubb*, 1897, 1 Q. B. 641; 66 L. J. Q. B. 452: *Re Shaw*,  
83 L. T. 487.

As to what is "Sufficient Cause" for non-payment of rate within s. 256,  
P. H. Act, 1875; *V. Sheffield W. W. Co v. Sheffield Corp*, 55 L. J. M. C.  
40; 54 L. T. 179; 34 W. R. 153; 50 J. P. 6; 2 Times Rep. 110, dis-  
tinguishing *Sandygate v. Pledge*, 14 Q. B. D. 730.

It is not a "Sufficient Cause," s. 305, P. H. Act, 1875, against an  
Order under that section (authorizing a Local Authority to enter a house  
for the purpose of constructing a Sufficient Water-Closet, their Notice,  
under s. 36, not having been complied with), to show that the existing  
sanitary arrangements are sufficient: the Justices cannot review the Or-  
der if it is correct in itself and its conditions precedent have been com-  
plied with, the only appeal being to the Local Government Bd under  
s. 268 (*Robinson v. Sunderland*, 1899, 1 Q. B. 751; 68 L. J. Q. B. 330;  
80 L. T. 262). *V. APPEAR: SUFFICIENT PRIVY.*

As to what is an entry in, or omission from, a Register of Share-  
holders "without Sufficient Cause" within s. 35, Comp Act, 1862; *V.*  
*Buekl*, 115.

Removal from Register of "any entry made without Sufficient Cause,"  
s. 90 (1), Patents Designs and Trade Marks Act, 1883, does not mean  
that there must be an absence of Sufficient Cause at the time of the regis-  
tration; "if an entry is at any time on the Register without sufficient  
cause, however it got there, it ought to be treated as covered by the words  
of the section" (*Re Batt*, 1898, 2 Ch. 441; 67 L. J. Ch. 579; 79 L. T.  
208; *affd* in H. L. nom. *Batt v. Dunnett*, 68 L. J. Ch. 557; 1899, A. C.  
428; 81 L. T. 94).

"Good and Sufficient Cause"; *V. GOOD CAUSE.*

"Sickness or Other Sufficient Cause"; *V. SICKNESS.*

"Reasonable or Sufficient Cause"; *V. CAUSE. Cp, REASONABLE AND  
PROBABLE CAUSE.*

*Cp, SUFFICIENT REASON.*

**SUFFICIENT CERTIFICATE.** — "Good and Sufficient CERTIFI-  
CATE" of a Life (in a lease for Lives) being still alive; *V. Randle v.*  
*Lory*, 6 A. & E. 218.

**SUFFICIENT DEBT.** — A Right in Equity to a sum of money,  
though not a DEBT in law, is a "Sufficient" debt to support a petition  
under s. 125, Bankry Act, 1883 (*Re Outram*, 63 L. J. Q. B. 308; 69 L. T.  
767; 10 Times Rep. 54).

**SUFFICIENT DISTRESS.** — It is submitted that goods available  
as a "Sufficient DISTRESS," means, goods of such value in the aggregate



## SUFF'NT DISTRESS 1975 SUFF'NT FACILITIES

as may reasonably be estimated to be sufficient, when sold, to pay the rent due together with all expenses of levy and sale: *Vh, Parrey v. Duncan*, 7 Bing. 243; Moo. & M. 533: *Inkop v. Morchurch*, 2 F. & F. 501: *Gillum v. Arkwright*, 16 L. T. O. S. 88. *Cp*, EXCESSIVE.

A Tithe Owner in estimating whether he had a "Sufficient Distress," s. 82, Tithe Act, 1836, had to include the prospective value of growing crops, although not capable of present realization (*Ex p. Arnison*, L. R. 3 Ex. 56; 37 L. J. Ex. 57). *V*. now as to recovery of tithe rent charge, s. 2, Tithe Act, 1891.

**SUFFICIENT EVIDENCE.** — Anything which is duly prescribed as "Sufficient Evidence" of a fact, is enough evidence thereon to go to the jury; but the other side is not precluded from controverting it by other evidence (*Barracough v. Greenhough*, 36 L. J. Q. B. 251; 8 B. & S. 623; L. R. 2 Q. B. 612); but a Certificate of Justices which (by s. 17, Lands C. C. Act, 1845) is "Sufficient Evidence" that the capital of an Undertaking has been subscribed, is, *semble*, conclusive evidence thereof (per Jessel, M. R., *Ystalyfera Iron Co v. Neath Ry*, L. R. 17 Eq. 142; 43 L. J. Ch. 476; 22 W. R. 149; 29 L. T. 662). *Va*, *Bishop v. Helps*, cited *By Post*.

So, an Order of Discharge which was "'Sufficient Evidence' of a bankry and of the validity of the proceedings thereon," s. 49, Bankry Act, 1869, was conclusive evidence (*Lewis v. Leonard*, 28 W. R. 719; 49 L. J. Ex. 308; 5 Ex. D. 165; 42 L. T. 351).

An Analyst's Certificate is "'Sufficient Evidence' of the facts therein stated," s. 21, 38 & 39 V. c. 63, but it is not conclusive and may be rebutted (*Hewitt v. Taylor*, 1896, 1 Q. B. 287; 65 L. J. M. C. 68; 74 L. T. 51).

So, though a Certificate of a Co's required Capital having been subscribed or paid-up and an Order for Borrowing made, is "Sufficient Evidence" of the fact (s. 40, Comp C. C. Act, 1845), yet "it would not be conclusive evidence as between the Directors and the Co if no such Order had been made; still it would be sufficient evidence upon which any lender might reasonably act" (per Wood, V. C., *Fontaine v. Carmarthen Ry*, L. R. 5 Eq. 323).

A Receipt in a Deed or indorsed thereon, is "Sufficient Evidence," in favour of a subsequent PURCHASER, of the payment of the consideration (s. 55, Conv & L. P. Act, 1881: *Vh, Lloyd's Bank v. Bullock*, 1896, 2 Ch. 192; 65 L. J. Ch. 680; 74 L. T. 687; 44 W. R. 633).

*V*. CONCLUSIVE EVIDENCE: EVIDENCE: PRIMÁ FACIE EVIDENCE: SATISFACTORY.

*Note*, that *Re Dudley Trams Co*, cited CONCLUSIVE EVIDENCE, was disapproved *A-G. v. Bournemouth*, 71 L. J. Ch. 730; 1902, 2 Ch. 714.

**SUFFICIENT FACILITIES.** — *V*. FACILITIES,

## SUFFICIENT INCOME 1976 SUFFICIENT REASON

**SUFFICIENT INCOME.** — *V. Re Pedrotti*, 29 L. J. Ch. 92; 27 Bea. 583; distd by Farwell, J., *Re Richards*, 71 L. J. Ch. 66; 1902, 1 Ch. 76; 85 L. T. 452; 50 W. R. 90.

**SUFFICIENT LOAD.** — *V. ADEQUATE.*

**SUFFICIENT PASTURE.** — The measure of what is Sufficient Pasture (*sufficientem pasturam quantum pertinet ad tenementa sua*, Statute of Merton, 20 H. 3, c. 4), to be left by a Lord of a Manor when he makes an IMPROVEMENT is, that amount which will be sufficient for the full enjoyment by all the Commoners of all their existing rights, whether such rights are likely to be exercised or not (*Robertson v. Hartopp*, 59 L. J. Ch. 553; 43 Ch. D. 484; 62 L. T. 585; in *the Lake v. Plaxton*, 10 Ex. 196; 24 L. J. Ex. 52, and *Luscelles v. Onslow*, 2 Q. B. D. 433; 46 L. J. Q. B. 333, were questioned, and not followed).

*V. PASTURE.*

**SUFFICIENT PRIVY.** — “A Sufficient Watercloset, Earthcloset, or Privy,” s. 35, P. H. Act, 1875, does not mean a “separate” convenience for each house; if one is, in fact, “sufficient” for two or more houses in common, the statute is satisfied (*R. v. Clutton*, 48 L. J. M. C. 135; 4 Q. B. D. 340).

Under the same words in s. 36, *Ib.*, the Local Authority cannot pass a general resolution requiring a particular kind of convenience to be furnished: it can only require a “sufficient” convenience in each case (*Wood v. Widnes*, 1898, 1 Q. B. 463; 66 L. J. Q. B. 797; 67 *Ib.* 254; 77 L. T. 779; 62 J. P. 117; following *Tinkler v. Wandsworth*, 27 L. J. Ch. 342; 2 D. G. & J. 261: *Cp.*, *Ex p. Whitchurch* and other cases sub NECESSARY, pp. 1254, 1255). *V. SUFFICIENT CAUSE.*

The magistrate has no power to question an Order, under s. 81, Metrop Man. Act, 1855, for a “Sufficient Watercloset or Privy,” &c; his power thereunder is to determine whether or not the Order has been complied with (*St. James, Clerkenwell v. Feary*, 59 L. J. M. C. 82; 24 Q. B. D. 703; 62 L. T. 697; 54 J. P. 676).

**SUFFICIENT REASON.** — The “Sufficient Reason” which, under s. 11, Com. L. Pro. Act, 1854, repld s. 4, Arb Act, 1889, would induce the Court not to stay an action regarding matters which the parties have agreed shall be determined by Arbitration, includes cases where Fraud or Immorality is charged and the person so charged objects to arbitration (*Russell v. Russell*, 14 Ch. D. 471; 49 L. J. Ch. 268; *Barnes v. Youngs*, 1898, 1 Ch. 414; 67 L. J. Ch. 263; 46 W. R. 332), or where defendant’s object is delay (*Lury v. Pearson*, 1 C. B. N. S. 639), or he has obtained time to plead on terms of accepting short notice of trial (*Smith v. British Marine*, W. N. (83) 176), or where submission has been revoked (*Randell*

v. *Thompson*, 1 Q. B. D. 748; 45 L. J. Q. B. 713), or the arbitrator chosen is not impartial (*Pickthall v. Merthyr*, 2 Times Rep. 805).

The cases in which such "Sufficient Reason" can be shown are few and exceptional (*Russell v. Russell*, sup).

"Good and Sufficient Reason" for ARREST of a Ship, R. 18, Ord. 29, R. S. C.; *V. The Crimdon*, 1900, P. 171; 69 L. J. P. D. & A. 103; 82 L. T. 660; 48 W. R. 623.

"Good and Sufficient Reason" for Lessor withholding Assent to an Assignment of a Lease; *V. UNREASONABLY*.

*Cp.*, GOOD CAUSE: GOOD REASON: SUFFICIENT CAUSE.

**SUFFICIENT SECURITY.**—The "Sufficient Security" which a plaintiff Co may be ordered to give under s. 69, Comp Act, 1862, is the amount of the probable costs which the debt will be put to (*Imperial Bank of China v. Bank of Hindustan*, 35 L. J. Ch. 678; 1 Ch. 437; 14 W. R. 811; *Dominion Brewery v. Foster*, 77 L. T. 507: in *thc*, security for £600 was ordered).

"Sufficient Security," quà a Solr's duty respecting an Investment, means, sufficient in point of law, and does not comprehend an enquiry as to value (*Hayne v. Rhodes*, 8 Q. B. 342; 15 L. J. Q. B. 137).

**SUFFICIENT WATER.**—When a Charter-party provides that the ship shall "discharge in a dock as ordered on arriving, *if sufficient water*, or so NEAR THEREUNTO AS SHE MAY SAFELY GET, always afloat"; the words "if sufficient water," "are introduced in the interest of the shipowner, and restrict the generality of the power to name a dock. The obligation of the shipowner is to proceed to the dock named if there is sufficient water to enter the dock *when the order is given*; and if there is not then sufficient water, the ship is not bound to discharge in the dock named" (per Cave, J., *Allen v. Coltart*, 52 L. J. Q. B. 688; 11 Q. B. D. 782).

**SUFFICIENT WATERCLOSET.**—*V.* SUFFICIENT PRIVY.

**SUFFICIENT WAYLEAVE.**—*V.* WAY,

**SUFFRAGAN.**—"Suffragan,' is a word used in 26 H. 8, c. 14, and it signifies a titular Bishop appointed to helpe and assist the Bishop of the Diocesse in his spirituall function" (Termes de la Ley); "a vicegerent of a Bishop" (2 Inst. 79). *Vh*, Phil. Eec. Law, 76-80.

**SUGAR.**—Quà Inl. Rev. Act, 1880, 43 & 44 V. c. 20, "'Sugar,' means, any saccharine substance, extract, or syrup; and includes, any material capable of being used in brewing except malt or corn" (s. 2); quà Spirits Act, 1880, 43 & 44 V. c. 24, "'Sugar,' includes, any saccharine substance or syrup manufactured from any material from which sugar can be manufactured" (s. 3).

*Vh*, 30 V. c. 10.

**SUGDEN'S ACTS.** — Illusory Appointments Act, 1830, 11 G. 4 & 1 W. 4, c. 46:

Debts Recovery Act, 1830, 11 G. 4 & 1 W. 4, c. 47:

Infants Property Act, 1830, 11 G. 4 & 1 W. 4, c. 65:

To improve Chancery Practice, 1 W. 4, cc. 36, 46, 47, and 60; 2 & 3 W. 4, c. 58; 5 & 6 W. 4, cc. 16 and 17 (*Vh*, Jemmett's Equity Administration Acts, 2 ed.):

Judgments Act, 1839, 2 & 3 V. c. 11, amended by 18 & 19 V. c. 15:

Judgments (Tr) Act, 1844, 7 & 8 V. c. 90.

*Vf*, ST. LEONARDS' ACTS.

**SUGGESTION.** — *V*. CHARGE OF FRAUD.

**SUICIDE.** — "Suicide" does not, necessarily, involve the idea of a felonious self-destruction. To "COMMIT suicide" is for a person voluntarily to do an act (or, as it is submitted, to refrain from taking bodily sustenance), for the purpose of destroying his own life, being conscious of that probable consequence, and having, at the time, sufficient mind to will the destruction of life (*Clift v. Schwabe*, 17 L. J. C. P. 2; 3 C. B. 437). In that case the meaning of this word is elaborately discussed, and its history is very learnedly treated by Pollock, C. B., who, however, was in the minority of the Ex. Cham. in upholding the direction of Cresswell, J., at the trial that "Suicide" meant the voluntary self-destruction of a man who at the time was "able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent." The opposite view, and the one which received the sanction of the majority of the Court, is thus expressed by Patteson, J., "Now the words themselves," — words appearing in a Life Policy, and exonerating the insurers if the insured should "commit suicide," — "are large enough to embrace all self-destruction as well as self-murder; not, indeed, as was admitted in *Borrodulle v. Hunter* (12 L. J. C. P. 225; 5 M. & G. 639), to embrace cases of mere accident, or of insanity extending to unconsciousness of the act done or of its physical consequences — because such cases, although comprehended in the very words themselves, cannot be considered to have been in the contemplation of the contracting parties — but clearly embracing an act of self-destruction committed by a person who was aware of the probable consequence of the act, and intended that consequence to follow." *Clift v. Schwabe* was followed in *Dufaur v. Professional Life Assrec*, 25 Bea. 599; 27 L. J. Ch. 817; 32 L. T. O. S. 25. *Vf*, Rosc. N. P. 451; Steph. Cr. 165, 166; 1 Encyc. 18, 19.

*V*. DIE BY HIS OWN HANDS: FELO DE SE: MURDER.

**SUING.** — *V*. SUE AND LABOUR.

**SUIT.** — Though it has been said that "Suit" is a term of wider signification than "ACTION," and may include proceedings on a Petition

(*Re Wallis*, 23 L. R. Ir. 7: *V. DECREE: Sr, Guthrie v. Fisk*, cited *SUE*), yet, generally speaking, the two words are very nearly synonymous (*V. s. 100, Jud. Act, 1873; s. 3, Jud. (Ir) Act, 1877*), and (except by an interp clause) neither includes a Petition (*V. SUE: ACTION*). So, a mtgee's petition for payment out of a fund in Court, is not a "Suit" to recover interest, within s. 42, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27 (*Edmunds v. Waugh*, L. R. 1 Eq. 418; 14 W. R. 257; 13 L. T. 739; 35 L. J. Ch. 234: *Re Marshfield*, 34 Ch. D. 721; 56 L. J. Ch. 599; 35 W. R. 491; 56 L. T. 694: *Sv, Re Stead*, 2 Ch. D. 713); still less is the mtgee's right of retainer out of proceeds of sale such a Suit (*Re Marshfield*, sup). *V. RECOVER.*

As to the effect of "Action" and "Suit" being used together; *V. Sutton v. Sutton*, cited *CHARGED UPON.*

"And for this word (Sectas) it is to be known that by release of all 'Suits,' executions are barred, for none shall have execution without suit or prayer" (*Altham's Case*, 8 Rep. 153 b). *V. ACTIONS.*

A "Suit or PROCEEDING," under s. 20, Church Discipline Act, 1840, 3 & 4 V. c. 86, is only commenced when the accused is served with a citation under ss. 9, 10 (*Ditcher v. Denison*, 6 W. R. 342; 31 L. T. O. S. 61).

Quà Crown Suits, &c, Act, 1865, 28 & 29 V. c. 104, "'Suit,' or 'CAUSE,' means a suit, or cause, commenced by Information" (s. 6).

Other Stat. Def. — 19 & 20 V. c. 77, s. 1, c. 92, s. 2; 20 & 21 V. c. 60, s. 4; 30 & 31 V. c. 44, s. 2.

"Costs of Suit" will not include costs of arranging or carrying out a Compromise (*Lancaster v. Lancaster*, 1896, P. 118; 65 L. J. P. D. & A. 34).

"Suit of Court," is that attendance which the Feudatory Tenant owes to his Lord's Court (Cowel, *Suit*: Jacob, *Suit*: 12 Encyc. 19). *Cp, SERVICE.*

*V. CRIMINAL SUIT: FRESH SUIT: PROCEEDING.*

**SUITABILITY.** — "The suitability of the premises," s. 9, Licensing Act (Ir), 1874, 37 & 38 V. c. 69, "means, suitability for the business of the sale of spirits (to be consumed elsewhere than on the premises) being conducted therein in a peaceable and orderly manner, and so that the premises shall be reasonably subject to such entry and inspection by the police as is authorized by law. The subject-matter which is to have the character of 'suitability' is, not the 'neighbourhood' but, the premises, *i.e.* (1) the structure itself, and (2) the place upon which that structure is erected" (per Palles, C. B., *R. v. Tyrone Jus.*, 1895, 2 I. R. 184).

**SUITABLE.** — Wheels "suitable only to run on the Rail" of a Tramway, s. 62, Tramways Act, 1870, 33 & 34 V. c. 78: *V. Manchester v. Andrews*, 5 Times Rep. 470.

“Suitable *Home*”; *V.* HOME.

“Other Suitable *Material*,” in a Patent Specification; *V. Ralston v. Smith*, 11 H. L. Ca. 223; 35 L. J. C. P. 49; in a like connection, “Any other Suitable Driving Motion”; *V. Marsden v. Moser*, 73 L. T. 667; 13 Pat. Ca. 24.

“Suitable *Residence and Holding*”; *V.* RESIDE.

“Suitable to”; *V.* CORRESPOND.

**SUITABLY.**—*V.* PROVIDE SUITABLY.

**SUITORS.**—Stat. Def., Courts of Justice Building Act, 1865, 28 & 29 V. c. 48, s. 2.

**SULING.**—*V.* SWOLING.

**SULLERYE.**—“Signifieth a plow-land” (Co. Litt. 5a). *V.* PLOW-LAND.

**SULLINGS.**—“Sullings are taken for elders,” *i.e.* elder trees (Co. Litt. 4b).

**SUM.**—“Provided the Sum or Damages sought to be recovered shall not exceed £50”; “Sum,” in such a connection, means “Debt” (*Joule v. Taylor*, 21 L. J. Ex. 31; 7 Ex. 58).

A bequest of “the Sum of” a named amount in a named Investment, is, to some extent, an indication that the bequest is DEMONSTRATIVE; whilst the absence of such phrase rather indicates that the bequest is SPECIFIC (per North, J., *Re Pratt*, 1894, 1 Ch. 491; 63 L. J. Ch. 487; 70 L. T. 489, commenting on *Mytton v. Mytton*, 44 L. J. Ch. 18; L. R. 19 Eq. 30).

“Sum of Money,” quâ *ad val.* Stamp Duty, will, generally, mean the Principal sum; not a sum compounded of principal and interest (*Pruesing v. Ing*, 4 B. & Ald. 204).

“Net Sum”; *V.* CLEAR.

*V.* PERIODICAL: REASONABLE SUM: RECOVER: SUMS.

**SUM ADJUDGED.**—The “Sum Adjudged” to be paid on a Conviction, “refers to the sum in which the party is convicted, and does not include the costs” (per Crompton, J., delivering the judgment, *R. v. Warwickshire Jus.*, 25 L. J. M. C. 119; 6 E. & B. 837). But quâ Sum Jur Act, 1879, 42 & 43 V. c. 49. “the expressions ‘Sum adjudged to be paid by a Conviction’ and ‘Sum adjudged to be paid by an Order,’ respectively, include any costs adjudged to be paid by the Conviction or Order, as the case may be, of which the amount is ascertained by such Conviction or Order” (s. 49). *V.* ASCERTAINED: OPINION, p. 1343.

“Sum adjudged,” s. 135, P. H. Act, 1848 (repld s. 269, P. H. Act,

1875, which does not repeat the phrase) means, the sum in respect of which the adjudication was made, *i.e.* the sum adjudicated upon (*Ricardo v. Maindenhead*, 2 H. & N. 257).

**SUM CERTAIN.** — “Sum Certain,” s. 28, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42, is, probably, not construed so strictly as “CERTAIN TIME”; *semble*, it is immaterial how the “Sum” becomes “certain,” it being “certain” when ascertained under the written INSTRUMENT (*Geake v. Ross*, 44 L. J. C. P. 315; *Mildmay v. Methuen*, 3 Drew. 91; *Sv. Hill v. South Staffordshire Ry*, 43 L. J. Ch. 556; L. R. 18 Eq. 154, and per Jessel, M. R., *Ward v. Eyre*, 49 L. J. Ch. 659. *V. DEMAND: LIQUIDATED DEMAND*). But an assessment under s. 68, Lands C. C. Act, 1845, does not make the amount of it a “Sum Certain” within the section, so as to carry interest (per Collier, Co. Co. Judge, *Erans v. Lond. & N. W. Ry*, 31 S. J. 333; *Vf, Re Peruvian Guano Co*, 63 L. J. Ch. 822). Nor does the phrase cover a sum which is liable to subsequent adjustment, for “Sum Certain” “must be a certain sum which is due absolutely and in all events from the one party to the other, though it may not come, strictly speaking, within the term ‘DEBT’” (per Herschell, C., *L. C. & D. Ry v. S. E. Ry*, 1893, A. C. 429; 63 L. J. Ch. 93; 69 L. T. 637; 58 J. P. 36).

A sum payable by a Bill of Exchange or Promissory Note is a “Sum Certain,” within the Bills of Ex. Act, 1882, “although it is required to be paid —

“(a) With interest.

“(b) By stated instalments.

“(c) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

“(d) According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the Bill” or Note (ss. 9, 89).

*V. CERTAIN TIME: DEFINITE.*

**SUM CLAIMED.** — “Sum Claimed,” s. 460, Mer Shipping Act, 1854, repld s. 547, Mer Shipping Act, 1894, means, “the sum asked before the proceedings commenced” (per Dr. Lushington, *The William and John*, 32 L. J. P. M. & A. 103; Brown. & Lush. 49).

“Sum *in Dispute*,” s. 464, Mer Shipping Act, 1854, repld s. 549, Mer Shipping Act, 1894, does not mean the sum awarded by Justices, and appealed against, but means the sum originally in litigation (*The Andrew Wilson*, 32 L. J. P. M. & A. 104; Brown. & Lush. 56). *Vf, The Generous*, L. R. 2 A. & E. 57; 37 L. J. Adm. 37.

**SUM EMPLOYED.** — “Sum employed as Capital”; *V. CAPITAL EMPLOYED.*

**SUM IN DISPUTE.** — *V.* SUM CLAIMED.

**SUM OF MONEY.** — *V.* SUM.

Default in "payment of a sum of money"; *V.* PAYMENT, p. 1437.

**SUM PERIODICALLY.** — *V.* PERIODICAL.

**SUM PREVIOUSLY OFFERED.** — *V.* PREVIOUSLY.

**SUM RECOVERED.** — *V.* RECOVER: SUM.

**SUMMARILY.** — Where any Act (coming into operation after 31st Dec 1879) prescribes that an offence is to be prosecuted, or a fine is to be recovered, "summarily, or on summary conviction," or that money is to be recovered "before a Court of Summary Jurisdiction," or "summarily," or "in a summary manner," in either case the SUMMARY JURISDICTION Acts apply (s. 51, 42 & 43 V. c. 49).

Quà disputes as to Salvage, under Mer Shipping Act, 1894, which are to be determined "summarily" (s. 547), that means, in England, the County Court; in Scotland, the Sheriff's Court; in Ireland, the arbitration by two Justices, or a Stipendiary Magistrate, or a Recorder, or the Chairman of Quarter Sessions (subs. 4).

Forfeitures Costs and Expenses recoverable under P. H. Act, 1875, "in a summary manner," are recoverable under the Summary Jurisdiction Acts (s. 251), or, if "below £50" may (at the option of the Local Authority) be recovered in the County Court (s. 261); so, quà P. H. London Act, 1891 (s. 117): quà P. H. Ireland Act, 1878, *V.* s. 249, and quà P. H. Scotland Act, 1897, *V.* s. 153.

Costs of an appeal to Quarter Sessions (enforceable by a Justice's warrant of distress), are "recoverable summarily before a Justice of the Peace" within s. 4 (2), Debtors Act, 1869 (*li. v. Pratt*, L. R. 5 Q. B. 176; 39 L. J. M. C. 73).

An Offence "dealt with summarily," s. 46 (1, 7), Army Act, 1881, 44 & 45 V. c. 58, is equally so "dealt with" whether the accused be acquitted or convicted (*Ex p. Brown*, 37 S. J. 27). *Vf.* DEAL WITH.

**SUMMARY CONVICTION.** — A Summary Conviction, is a Conviction before a COURT OF SUMMARY JURISDICTION, or, in other words, one under the Summary Jurisdiction Acts; *V.* 42 & 43 V. c. 19, s. 3; 55 & 56 V. c. 4, s. 7.

**SUMMARY JURISDICTION.** — "Summary Jurisdiction"; Stat. Def., *lr.* 14 & 15 V. c. 93, s. 44, — *Scot.* 60 & 61 V. c. 48, s. 2.

"The Summary Jurisdiction Act, 1848," is 11 & 12 V. c. 43 (s. 13 (6), Interp Act, 1889): *V.* JERVIS' ACTS.

The Summary Jurisdiction Acts; *V.* s. 13 (7, 8, 9, 10), Interp Act, 1889: *Vf.* Table of Abbreviations *ante*; 60 & 61 V. c. 48.

*V.* COURT OF SUMMARY JURISDICTION.



"Questions of Law which arise in the Exercise of Summary Jurisdiction by Justices," 20 & 21 V. c. 43; *V. Sweetman v. Guest*, 37 L. J. M. C. 59; L. R. 3 Q. B. 262; 16 W. R. 426; 18 L. T. 52.

"OFFICER of a Court of Summary Jurisdiction"; *V. s.* 8, 44 & 45 V. c. 24.

*Vh*, Stone: Atkinson's Magistrates Annual Practice: 12 Encyc. 28-33.

**SUMMARY MANNER.** — *V.* SUMMARILY.

**SUMMONED.** — *V.* CONVENE.

**SUMMONS.** — A Summons is the process by which a PROCEEDING is commenced or by which (generally) a STEP therein is taken, *e.g.* a Chamber Summons, a County Court Summons, a Magistrate's Summons; *Va*, ORIGINATING: WRIT OF SUMMONS. *Cp*, WARRANT.

"Summons," by itself, will, probably, not include a Writ of Summons (*Towne v. Limerick S. S. Co*, 5 C. B. N. S. 730; 28 L. J. C. P. 217).

**SUMS.** — *V.* MONEY: MONEY DUE: SUM.

**SUNDAY.** — In the early days of Queen Elizabeth it was held that whether a day is a Sunday, or not, is triable "per paies ou calend" (Dyer, 182, pl. 55), but later on in the same reign it was ruled that the ALMANAC was sufficient (*Page v. Faucet*, Cro. Eliz. 227).

"Sunday," s. 1, Sunday Closing (Wales) Act, 1881, 44 & 45 V. c. 61, has only its ordinary meaning, and does not include Christmas Day (*Forsdike v. Colquhoun*, 11 Q. B. D. 71; 49 L. T. 136).

As to when Sunday is included or excluded in a computation of time; *V.* DAYS, on *wharf*, *Ex p. Hicks*, 44 L. J. Bank. 106; L. R. 20 Eq. 143; *Re Gilbert*, 46 L. J. Bank. 80; 4 Ch. D. 794; HOLIDAY: 12 Encyc. 34.

As to Sunday Observance Act, 1677; *V.* INSTITUTED: LABOURER: NECESSITY: ORDINARY CALLING, on *wharf*, *Blossome v. Williams*, 3 B. & C. 232: OTHER, p. 1360: PROCESS: TRADE: WORKMAN: *Va*, Phil. Ecc. Law, Part 3, ch. 12.

As to Sunday Observance Act, 1780; *V.* DISORDERLY: ENTERTAINMENT: KEEPER: MASTER: PROFANENESS.

Quà Factory and Workshop Act, 1901; *V.* ss. 34, 47, 48. As to the *Holidays*, quà that Act; *V.* s. 35.

"Traffic on Sunday"; *V.* TRAFFIC.

*Note.* As to Sunday being originally a Feast Day and subsequently assuming the rigidity of the Hebrew Sabbath, *V.* 185 Quarterly Review, 36: *Va*, 12 Encyc. 35.

**SUNDAY SCHOOL.** — Quà 32 & 33 V. c. 40. " 'Sunday School,' shall mean, any SCHOOL used for giving RELIGIOUS Education gratui-

## SUNDAY SCHOOL 1984 SUPERFLUOUS LAND

tously to children and young persons on Sunday, and, on Week Days, for the holding of classes and meetings in furtherance of the same object, and without pecuniary profit being derived therefrom" (s. 2). *Cp.* RAGGED SCHOOL.

**SUNK.** — *V.* SINK.

**SUNKEN WRECK.** — Part of the frame of a Ship sunk beneath the surface of the sea and partially embedded in the ground, and also a quantity of iron ore that had formed part of the Cargo of a ship, are "Sunken Wreck" within the Collision Clause of a Marine Insrce (*The Munroe*, 1893, P. 248). *V.* WRECK.

**SUNRISE.** — *V.* "Daytime," sub DAY.

**SUNSET.** — The Court does not take judicial notice of the ALMANAC for determining what was the hour of Sunset on a particular day; that is a fact to be proved (*Collier v. Nokes*, 2 C. & K. 1013). "Sunset," in the Regulations for Lighting-up Bicycles, s. 85, Loc Gov Act, 1888, means, Sunset according to the particular locality; not according to Greenwich or Dublin Mean Time as provided by the statutory def of "TIME" (*Gordon v. Cann*, 68 L. J. Q. B. 434; 80 L. T. 20; 47 W. R. 269; 63 J. P. 324). *Vf.* "Daytime," sub DAY.

**SUPERANNUATION.** — *V.* *Hobson v. Hull*, 4 E. & B. 986; 24 L. J. Q. B. 251.

"The Superannuation Acts, 1834 to 1892"; *V.* Sch 2, Short Titles Act, 1896. Quà those Acts, "'Superannuation Allowance,' includes, any pension or superannuation, or other retiring allowance" (s. 4, 55 & 56 *V. c.* 40).

**SUPERCARGO.** — A Supercargo is a person employed to go with a Cargo on voyage and oversee it and dispose of it to the best advantage (*Jacob*); and, "unless his authority be expressly or impliedly restrained, must, from the nature of his employment, be invested with a complete control over the cargo, and everything which immediately concerns it; that must embrace its destination" (per *Ellenborough, C. J.*, *Davidson v. Gwynne*, 12 East, 396).

**SUPERFICIAL YARD.** — As used in a building contract; *V.* *Symonds v. Lloyd*, 6 C. B. N. S. 691.

*V.* YARD.

**SUPERFLUOUS LAND.** — "I think the cases of the *G. W. Ry v. May* (43 L. J. Q. B. 233; L. R. 7 H. L. 283), *Hooper v. Bourne* (46 L. J. Q. B. 509; 47 Ib. 437; 49 Ib. 370; 2 Q. B. D. 339; 3 Ib. 258; 5 App. Ca. 1; 28 W. R. 493; 42 L. T. 97), and *Betts v. G. E. Ry* (47

## SUPERFLUOUS LAND 1985 SUPERFLUOUS LAND

L. J. Ex. 461; 49 Ib. 197; 3 Ex. D. 182), have now settled, beyond all controversy, what the meaning of 'Superfluous Land' (in ss. 127, 128, Lands C. C. Act, 1845) is. The test is, whether or not there is *bonâ fide* reason to believe that within no very distant time — it may be years — but that within a reasonable time, having regard to the nature of the undertaking, it will be REQUIRED for the purposes of the Undertaking" (per Manisty, J., *Hobbs v. Mid. Ry*, 51 L. J. Ch. 325; 20 Ch. D. 418).

"Slips of land above and below a tunnel are not superfluous lands" (per Jessel, M. R., *Rosenberg v. Cook*, 51 L. J. Q. B. 172; 8 Q. B. D. 162, summarizing *Re Metrop District Ry & Cosh*, 49 L. J. Ch. 277; 13 Ch. D. 607; 42 L. T. 73; 28 W. R. 685); nor land under arches which carry a railway (*Mulliner v. Mid. Ry*, 48 L. J. Ch. 258; 11 Ch. D. 611); nor Mines under a surface required, or which may be required, for the undertaking (*Hooper v. Bourne*, sup). But the whole of the land beyond the boundary wall of a railway is "superfluous," even though that wall be also a retaining wall thicker at the base than at the surface, and though part of such land would be within a line drawn on the surface vertically above the line of the footings of the wall (*Ware v. L. B. & S. Ry*, 52 L. J. Ch. 198).

*Vf*, *Tomlin v. Budd*, 43 L. J. Ch. 627; 22 W. R. 529; *Glasgow Union Ry v. Caledonian Ry*, L. R. 2 Sc. & D. App. 160.

When a Company sells, or offers to sell, lands as "Superfluous," that is conclusive as regards the rights of pre-emption of the adjoining owner (*Lond. & S. W. Ry v. Blackmore*, 39 L. J. Ch. 713; L. R. 4 H. L. 610; *svthe*, *Macfie v. Callander Ry*, 1898, A. C. 270; 67 L. J. P. C. 58; 78 L. T. 598). But a mere sale to another Company or to an individual (and *a fortiori* a mere negotiation, *Macfie v. Callander Ry*, sup) without giving the adjoining owner his chance of pre-emption, — though *primâ facie* evidence that the land is "Superfluous" (and in any view such a sale is *ultra vires*), — does not conclusively show that the land is "Superfluous" (*Hobbs v. Mid. Ry*, 51 L. J. Ch. 320; 20 Ch. D. 418; *Dunhill v. N. E. Ry*, 1896, 1 Ch. 121; 65 L. J. Ch. 178; 73 L. T. 644; 44 W. R. 231; 60 J. P. 228, *whic* held that *Carrington v. Wycombe Ry*, 37 L. J. Ch. 213; 3 Ch. 377, is not inconsistent with *Hobbs v. Mid. Ry*: *Vf*, *Beauchamp v. G. W. Ry*, 37 L. J. Ch. 74; 38 Ib. 162; 3 Ch. 745). If, indeed, the sale be made under statutory compulsion, then it is no evidence at all that the land is "Superfluous" (*Dunhill v. N. E. Ry*, sup).

But if the whole Undertaking is abandoned, none of the land acquired for it can be "superfluous," and the sections above cited are inapplicable (*Re Duffy*, 1897, 1 I. R. 307): "the distinction between lands *abandoned* and lands *superfluous* is this, — In the first case, the main line has never been constructed, or, if constructed, has been left derelict; in the second case, the line has been constructed, or lands on which are to be made the necessary works of the line have been taken up, and, along with these,

other lands have been taken which are found not to be required for the purposes of the Undertaking" (per Ross, J., *Re Duffy*, sup, citing in support *Smith v. Smith*, L. R. 3 Ex. 282; 38 L. J. Ex. 37).

V. ABSOLUTELY SELL.

**SUPERINTEND.** — V. MANAGE.

**SUPERINTENDENCE.** — A "person who has Superintendence entrusted to him" quâ Employers' Liability Act, 1880, "means a person whose sole, or principal, duty is that of superintendence, and who is not, ordinarily, engaged in MANUAL LABOUR" (s. 8); a Gang-way man is not within the phrase as used in subs. 2, s. 1 (*Shaffers v. General Steam Nav. Co*, 52 L. J. Q. B. 260; 10 Q. B. D. 356; 48 L. T. 228; 31 W. R. 656). Vh, *Kellard v. Rooke*, 57 L. J. Q. B. 599; 21 Q. B. D. 367; 36 W. R. 875; 52 J. P. 820; *Tate v. Latham*, 1897, 1 Q. B. 502; 66 L. J. Q. B. 349; 76 L. T. 336; 45 W. R. 400.

Cp, CONFORM.

"Board of Superintendence"; V. BOARD.

**SUPERINTENDENT.** — Quâ Mer Shipping Act, 1894, "'Superintendent,' shall so far as respects a BRITISH POSSESSION, include, any Shipping Master, or other Officer, discharging in that Possession the duties of a Superintendent" (s. 742).

Other Stat. Def. — 47 & 48 V. c. 64, s. 16. — *Scot.* 20 & 21 V. c. 71, s. 3; 23 & 24 V. c. 92, s. 2; 25 & 26 V. c. 54, s. 1; 30 & 31 V. c. 52, s. 11.

"Superintendent of POLICE," quâ application to Ireland of Licensing Act, 1872, V. s. 77, Ib.

**SUPERINTENDING.** — "Superintending Architect of Metropolitan Buildings"; V. s. 136 (1), London Bg Act, 1894.

**SUPERIOR.** — Quâ Conveyancing (Scot) Act, 1874, 37 & 38 V. c. 94, "'Superior,' shall include, the Crown, the Prince and Steward of Scotland, and all subject superiors, and shall also include mid-superiors; 'Superiority,' shall include, mid-superiority" (s. 3); quâ Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, "Superior," includes heirs, successors, and representatives of such superior (s. 3).

V. VASSAL.

**SUPERIOR COURT.** — It is submitted that, "Superior Court" is to be construed historically and that, in its primary meaning, it connotes a Court having an inherent jurisdiction, in England, to administer justice according to law, as and being a part of, or descended from, and as exercising part of the power of, the *Aula Regia*, established by William the First, which had universal jurisdiction in all matters of right and

wrong throughout the Kingdom, and over which, in its early days, the King presided in person (3 Bl. Com. 37-60). An Inferior Court is one, limited as to its area and also limited, as to its jurisdiction and powers, to those matters and things which are expressly deputed to it by its document of foundation or by a legal CUSTOM (*London v. Cor.*, cited INFERIOR COURT, and the cases there cited by Willes, J.).

Before the Judicature Acts, the more principal Superior Courts were, "the Lords House in Parliament, the Chancery, King's Bench, Common Pleas, and Exchequer" (Bac. Ab. *Courts*, D, 1: *If*, 3 Bl. Com. 37-46). As there are degrees in the Peerage yet each member is a Peer, so of the Superior Courts. At one time, Error lay from the C. P. to the K. B., but that did not "in the slightest degree interfere with the doctrine that the C. P. was a Superior Court" (per Erle, C. J., *Ex p. Fernandez*, 30 L. J. C. P. 329; 10 C. B. N. S. 28). So, diversity of jurisdiction in some matters cannot be material, for the above mentioned well-known Superior Courts had, in important matters, special and separate jurisdictions without affecting their status as Superior Courts. Neither does a limited area, of itself, prevent a Court from being Superior; for the Palatine Courts are Superior Courts, "originally belonging, as they did, to the Lords Palatine to whom the Crown had granted their Counties, to hold to them and their heirs 'ita libere ad gladium sicut ipse Rex tenebat Angliam ad Coronam,' and who possessed *jura regalia* there," and (herefor citing Gilbert's Hist. of C. P. 190) "were Superior Courts, within their jurisdiction, in as ample a manner as a Court of Westminster" (per Willes, J., *Ex p. Fernandez*, 30 L. J. C. P. 339; 10 C. B. N. S. 55, 56).

Reverting to and in confirmation of the submission in the first paragraph of this def, it is to be observed that the Court of Assize is a Superior Court (*Ex p. Fernandez*, 30 L. J. C. P. 321; 10 C. B. N. S. 3), for "it is clear that the Justices in Eire (or Eyre) were a Court of equal degree with the Aula Regia. The Aula Regia was where the King was present; and the Justices in Eire were sent abroad into the different counties with all the powers and authorities of the Aula Regia, superseding all the local tribunals wherever they came. It is not at all necessary to maintain that Judges of Assize are of equal degree with the Justices in Eire: but all the books which treat of the subject agree that they possess and exercise many of the rights, privileges, and authorities of those whose functions they have superseded" (per Erle, C. J., *Ib.*, 10 C. B. N. S. 29, 30; 30 L. J. C. P. 329).

On the other hand, great antiquity and importance do not, *per se*, constitute a Court a Superior Court, for the Lord Mayor's Court of London is an Inferior Court (*V. INFERIOR*).

The Court of Admiralty was not one of the "Superior Courts of Law or Equity at Westminster," within s. 226, Com. L. Pro. Act. 1852 (*Milburn v. Lond. & S. W. Ry.*, 40 L. J. Ex. 1; L. R. 6 Ex. 4).

"Superior Court," s. 9, 31 & 32 V. c. 71, means "Superior Court having Admiralty jurisdiction," which, *semble*, the Q. B. D. is not but the Cinque Ports Court is (*Rockett v. Chippingdale*, 7 Times Rep. 449).

*Vh. Hewitt v. Cory*, 39 L. J. Q. B. 279; L. R. 5 Q. B. 418.

Stat. Def. — 8 & 9 V. cc. 16, 18, 20, s. 3; 10 & 11 V. cc. 14, 15, 16, 17, 27, 34, 65, 89, s. 3; 22 & 23 V. c. 63, s. 5; 24 & 25 V. c. 11, s. 4; 34 & 35 V. c. 41, s. 4; 36 & 37 V. c. 48, s. 3; 38 & 39 V. c. 87, s. 4. — *Tr.* 12 & 13 V. c. 91, s. 89, c. 97, s. 133; 20 & 21 V. c. 79, s. 2.

Quà Army Act, 1881, " 'Superior Court,' in the United Kingdom, means, Her Majesty's High Court of Justice, in England; the Court of Session, in Scotland; and Her Majesty's High Court of Justice, at Dublin " (subs. 29, s. 190); to a similar effect is the def in s. 55, Ry and Canal Traffic Act, 1888, 51 & 52 V. c. 25.

Other Stat. Def. — 44 & 45 V. c. 69, s. 39; 49 & 50 V. c. 57, s. 1; 53 & 54 V. c. 70, ss. 93, 95.

"Superior Court of Appeal," quà Ry and Canal Traffic Act, 1888, "means, as regards England, Her Majesty's Court of Appeal; as regards Scotland, the Court of Session in either Division of the Inner House; and as regards Ireland, Her Majesty's Court of Appeal" (s. 55). *Vf. COURT*, p. 425.

"Superior Courts of Great Britain and Ireland"; *V. Appellate Jurisdiction Act*, 1876, 39 & 40 V. c. 59, s. 25.

"Superior Courts of Law"; *V. Sum Jur Act*, 1857, 20 & 21 V. c. 43, s. 1. *Vf. COURT*, p. 426.

*Cp. COURT: COURT OF RECORD: HIGH COURT: JUDGE: SUPREME COURT.*

**SUPERIOR INTEREST.** — The "Superior Interests" which are to be extinguished on the sale or redemption of land in Ireland (under the Land Purchase Acts or 54 & 55 V. c. 57), are defined by s. 31 (8), 59 & 60 V. c. 47; on *whc. Re Alexander*, 1900, 1 I. R. 20; *Re Owen*, *Ib.* 151.

*V. INTEREST.*

**SUPERIOR OFFICER.** — Stat. Def., Army Act, 1881, s. 190 (7); Naval Discipline Act, 1866, s. 86.

*V. OFFICER.*

**SUPERIOR TRADESMAN.** — *V. INFERIOR TRADESMAN.*

**SUPERSEDE.** — "A Compulsory Order 'supersedes' a Voluntary Winding-up (of a Co) as from the date of the Order; but that does not mean that it entirely puts an end to everything that has been previously done in the voluntary winding-up" (per Cotton, L. J., *Thomas v. Lionite Co*, 50 L. J. Ch. 544; 17 Ch. D. 250).

*V. WINDING-UP.*

**SUPERSTITIOUS.** — Masses for the Dead are contrary to 1 Edw. 6, c. 14, and a gift therefor, by a person domiciled in England, is void as being a Superstitious Use (*West v. Shuttleworth*, 2 My. & K. 684; 4 L. J. Ch. 115), even though the persons to receive the gift, and by whom the masses are to be performed, are resident where such a legacy is lawful (*Re Elliott*, 39 W. R. 297). In Ireland (*Reed v. Hodgens*, 7 Ir. Eq. Rep. 17), and some parts of Greater Britain (*Re Elliott*, sup), a bequest for Masses for the Dead is not "superstitious"; there, its peril is that it may be a PERPETUITY, e.g. one to the Primate of Ireland and his successors for ever (*Dillon v. Reilly*, Ir. Rep. 10 Eq. 152). *Vf*, *Morrow v. M'Conville*, 11 L. R. Ir. 236; *Small v. Torley*, 25 Ib. 388; for cases where this latter peril was escaped, *V. Reichenbach v. Quin*, 21 L. R. Ir. 138; *Bradshaw v. Jackman*, cited CONVENT: *Phelan v. Slatery*, cited STIPEND.

*Cp*, CHARITABLE USE.

**SUPERVISION.** — "Board of Supervision"; *V. BOARD*.  
*V. WINDING-UP*.

**SUPPLEMENTAL.** — A Deed expressed to be "supplemental" to a previous deed, will, since the Conv & L. P. Act, 1881, have effect as though it had been endorsed on the previous deed or contained a full recital thereof (s. 53). *Cp*, ANNEX: PRIMARY.

**SUPPLIED.** — "Goods supplied," as used in the consideration for a guarantee; held, to mean, "Goods to be supplied," so that the guarantee was not for a past consideration (*Hoad v. Grace*, 31 L. J. Ex. 98; 7 H. & N. 494). *Vf*, GIVEN.

"Persons supplied with Water," within a W. W. Co's Act, includes an Owner whose house is tenanted if such owner be liable to pay the Water Rate (*Brock v. Harrison*, 1899, 1 Q. B. 958; 68 L. J. Q. B. 730; 80 L. T. 568; 47 W. R. 541; 63 J. P. 455).

*V. WELL SUPPLIED: SUPPLY*.

**SUPPLY.** — To "supply" anything, — e.g. Water, — means. passing it from one who has it to those who want it; you may "PROVIDE" a thing for yourself, but that is not "supplying" it (*West Surrey Water Co v. Chertsey*, 1894, 3 Ch. 513; 63 L. J. Ch. 806; 71 L. T. 368; 43 W. R. 6).

But a Local Authority "supply water within their District," s. 54. P. H. Act. 1875, when they have taken upon themselves the burden of carrying out the Water Supply sections of the Act, although the delivery of the water has not actually begun nor are their works completed (*Jones v. Conway, & Co, Water Board*, 1893, 2 Ch. 603; 62 L. J. Ch. 767; 69 L. T. 265; 41 W. R. 616; 57 J. P. 501).

“The case of *East London W. W. Co v. St. Matthew, Bethnal Green* (cited PARTY, p. 1419) shows what, in such an Act as this, — a W. W. Co’s Act, — is the meaning of the words ‘Works NECESSARY for supplying water’: and that they include, works necessary for preventing waste of water” (per Esher, M. R., *Chapman v. Fyldie W. W. Co*, 1894, 2 Q. B. 599; 64 L. J. Q. B. 15; 71 L. T. 539; 43 W. R. 1; 59 J. P. 5); “the expression ‘supplying water’ includes, the power of regulating the supply” (per Esher, M. R., *East London W. W. Co v. St. Matthew*, sup), by e.g. stop-valves and guard boxes. *V. WATER WORKS.*

“Source of Water Supply”; *V. SOURCE.*

The point of “Supply” of Gas, s. 6, Metropolis Gas Act, 1860, is the meter from which the gas passes into the customer’s pipes (*Gaslight & Coke Co v. South Metrop Gas Co*, 58 L. T. 899; 36 W. R. 455; 56 L. J. Ch. 858; *Imperial Gaslight Co v. West London Gas Co*, 56 L. J. Ch. 862 *n.* *V.* those cases, and also *Gaslight & Coke Co v. South Metrop Gas Co*, 62 L. T. 126; 62 L. J. Ch. 123, as to “Supply gas for sale” in same section).

*V. AREA: CONTRACT TO SUPPLY: GENERAL SUPPLY.*

**SUPPORT.** — A bequest “to Support” an INSTITUTION does not offend the law of Mortmain (*Re Hedgman, Morley v. Croxon*, 8 Ch. D. 156; Tudor Char. Trusts, 410, 413; 1 Jarm. 230). *V. FOUND: MAINTENANCE*, p. 1143.

An agreement between a Borough and the County in which it is situate whereby the Borough pays the County so much a head for the “Support and Maintenance” of the Prisoners from the Borough, includes within that phrase the expense of keeping up the County Prison, as well as the prisoners’ houseroom, food, clothing, bedding, and fuel; but not the expenses of conveying prisoners, or of their prosecution, or of keeping up County Lock-up Houses (*R. v. Gravesend*, 5 E. & B. 459). *Cp. R. v. Birmingham*, cited PROSECUTION.

“Maintenance and Support” of Wife; *V. MAINTENANCE*, p. 1142.

*V. TOWARDS.*

“Support,” quâ P. H. Act, 1875 (Support of Sewers) Amendment Act, 1883, 46 & 47 V. c. 37, “includes, vertical and lateral support” (s. 2).

As to right of support from neighbouring soil and houses; *V. Gale*, Part 3, ch. 4: Tudor’s L. C. R. P. 784 *et seq.*: *Popplewell v. Hodgkinson*, 38 L. J. Ex. 126; L. R. 4 Ex. 248; *Jordeson v. Sutton Gas Co*, 1899, 2 Ch. 217; 68 L. J. Ch. 457; 80 L. T. 815; *New Moss Colliery Co v. Manchester, S. & L. Ry*, 1897, 1 Ch. 725; 66 L. J. Ch. 381; 76 L. T. 231; 45 W. R. 493; *Hamilton v. Graham*, L. R. 2 Sc. & D. App. 166.

**SUPPOSED.** — “‘The supposed Cause of Action, (in a Pleading) means, the ALLEGED cause” (per Alderson, B., *Eavestaff v. Russell*, 10



M. & W. 366; *S. C.* 12 L. J. Ex. 176: *Vf*, *Scadding v. Eyles*, 9 Q. B. 860, 862; 15 L. J. Q. B. 364).

“Supposed to be,” when prefacing a Quantity; *V. Davis v. Shepherd*, 35 L. J. Ch. 581; 1 Ch. 410; 15 L. T. 122.

*V.* ENTITLED TO VOTE.

**SUPPOSITION.** — *V.* FAIR AND REASONABLE.

**SUPPRESS.** — To “suppress” anything, is to put a stop to it when actually existing, and does not extend to preventing it by suppressing what may lead to it (*Chelsea v. King*, 34 L. J. M. C. 9; 17 C. B. N. S. 625).

“Fraud, or Suppression, or CONCEALMENT,” of a MATERIAL FACT, on which to revoke an Order of Release under s. 82 (3), Bankry Act, 1883, must be such Suppression or Concealment as has in it some element of fraud (per Wright, J., *Re Harris*, 68 L. J. Q. B. 771; 1899, 2 Q. B. 97; 80 L. T. 499).

**SUPRA PROTEST.** — Acceptance, or Payment, of Bill “for Honour supra protest”; *V.* HONOUR: Chalmers, 226 *et seq*: Byles, 273 *et seq*, 309.

**SUPREMACY.** — Act of Supremacy, 1 Eliz. c. 1.

**SUPREME COMMAND.** — “I give them Supreme Command,” in a father’s memorandum on his son’s contemplated marriage, may amount to a Deed of Gift but not to a Will (*Re Halpin*, Ir. Rep. 8 Eq. 567).

**SUPREME COURT.** — “The Supreme Court of this kingdom is the High Court of Parliament, consisting of king, lords, and commons, who are invested with a kind of omnipotency in making new laws, repealing and reviving old ones; and it is on the right balance of these three depends the well-being, and indeed the very being, of our constitution” (Bac. Ab. *Courts*, D, 1). *V.* PARLIAMENT.

*V.* now s. 13 (1), Interp Act, 1889.

Quà India; *V.* Army Act, 1881, 44 & 45 V. c. 58, s. 190 (30).

*Cp.*, COURT: HIGH COURT: JUDGE: SUPERIOR COURT.

**SURCHARGE.** — To “surcharge” a Common, is “putting more cattle therein than the pasture and herbage will sustain, or the party hath a right to do” (3 Bl. Com. 237). *Vh*, *Selwyn N. P. Common*: STINT.

“Surcharge and Falsify” a settled account; *V.* Dan. Ch. Pr. 420.

**SURETY.** — *V.* GUARANTEE.

In the application of Employers and Workmen Act, 1875, 38 & 39 V. c. 90, to Scotland, “‘Surety,’ means, Cautioner” (s. 14). *Vj*, ENTER: RECOGNIZANCE.

**SURETY OF THE PEACE.** — Is an acknowledgment of a bond to the Crown, taken by a competent Judge or Magistrate, as a surety that the Peace shall be kept by a particular person or persons: *Vh*, Jacob: 4 Bl. Com. ch. 18: Stone, *Surety of the Peace*. For an early example, 17 Acts. xvii. 9.

*V*. ENTER: GOOD BEHAVIOUR: PEACE: RECOGNIZANCE.

**SURFACE.** — “ ‘Surface,’ or superficies, *primâ facie*, means, of course, nothing more than the mere *vestimenta terræ*” (MacS. 19); “the top of the earth and whatsoever is upon the face thereof” (Cowel, *Superficies*). *Vh*, *Wakefield v. Buceleuch*, cited SOIL: *Sr*, *Lond.* & *N. W. Ry v. Evans*, cited SATISFACTION: SUPPORT. *Cp*, VEST.

For the Canons of Construction of Inclosure Acts, where Surface and Minerals are severed, *V. Bell v. Dudley*, 1895. 1 Ch. 182; 64 L. J. Ch. 291; 72 L. T. 14; 43 W. R. 122; 59 J. P. 199.

“Surfaces,” in a Patent Specification; *V. Barber v. Grace*, 17 L. J. Ex. 122; 1 Ex. 339.

**SURFACE DAMAGE.** — “The expression ‘Surface Damage’ is a term well known in the North of England in the colliery districts. It is damage to the crops by using the surface, or by the smoke coming from the colliery works or pit-heaps, in respect of which compensation is payable under leases or reservations of coal, or where lords work coal by custom under copyhold lands. It is difficult to say that the injury to the foundations of a house extending to the walls and roof of the house, or the subsidence of the soil partially or wholly destroying the future fertility of the soil, is a Surface Damage; it may be damage to the house and land, but not Surface Damage” (*Allaway v. Wagstaff*, 4 H. & N. 688; 29 L. J. Ex. 58; *Vf*, *Neill’s Trustees v. Dixon*, 7 Sess. Ca. 4th Series, 741).

*V*. DAMAGE.

**SURGEON.** — “In strictness, to act as a Surgeon something must be done by the hand” (per Knight-Bruce, L. J., *Ex p. Crabb, Re Palmer*, 25 L. J. Bank. 49).

“A Surgeon, formerly, was a mere operator, who joined his practice to that of a Barber. In latter times all that has been changed, and the profession has risen into great and deserved eminence. But the business of a Surgeon is, properly speaking, with external ailments and injuries of the limbs” (per Best, C. J., *Allison v. Haydon*, 4 Bing. 621). But “with a view to the recovery of a patient in a case of that description, he may, perhaps, prescribe and dispense medicine” (Ib.: *Va*, per Cresswell, J., *Apothecaries Co v. Lotinga*, 2 Moo. & R. 499). *V*. APOTHECARY.

Surgeons were formerly a sad lot; *V*. 34 & 35 H. 8, c. 8. *Sc*, INFERIOR TRADESMAN.

The company of Surgeons and Barbers was constituted and regulated by 32 H. 8, c. 42, which union was dissolved by 18 G. 2, c. 15, which statute incorporated, and contained regulations as to, the surgeons of London. The Royal College of Surgeons of England was incorporated by Charter, 14 Sept 1843, the subsequent Charters being 18 March 1852, 8 Sept 1859, and 20 July 1888: "Royal College of Surgeons of Scotland"; *V.* 21 & 22 V. c. 90, s. 50, the power under which section of forming such a College has not yet been exercised: The Royal College of Surgeons in Ireland was incorporated by Charter, 9 March 1784, revoked and new Charter granted 19 Sept 1828, the subsequent Charters being 24 Jan 1844, 31 Oct 1883, and 23 May 1885.

As to falsely pretending to be a Surgeon; *V.* PHYSICIAN.

Practising as a Surgeon; *V.* PRACTISE: CARRY ON.

Certifying Surgeons, quâ Factory and Workshop Act, 1901; *V.* Part 8 (ii).

*V.* "Medical Practitioner," sub MEDICAL.

**SURGERY.** — *V.* PHYSIC.

**SURGICAL.** — *V.* MEDICAL.

**SURNAME.** — It seems that a bequest to a class of the "Surname" of a particular person, is more readily construed as indicating the "Family" or "Stock" of that person than if the word "NAME" were used (2 Jarn. 143, citing *Carpenter v. Bott*, 15 Sim. 606; 16 L. J. Ch. 433).

*V.* Name and Arms Clause, sub NAME.

A Candidate's Surname, *e.g.* in a Nomination for Town Councillor, may be sufficiently stated though inaccurately spelt, *e.g.* Millar for Miller (*Miller v. Everton*, 59 J. P. 358; 64 L. J. Q. B. 692; 72 I. T. 838).

**SURPLICE FEES.** — "Those fees and dues which go by the name of 'Surplice Fees,' being fees on interments, burials, marriages, and the like. With respect to Surplice Fees it is said that none are due to the Minister as of common right, but depend on special custom only" (2 Steph. Bl. 743; cited and adopted by Kay, J., *Stewart v. West Derby Burial Bd*, 56 L. J. Ch. 434; 34 Ch. D. 339; 56 L. T. 380; 35 W. R. 268).

**SURPLUS.** — "It is to the particular language and to the circumstances of each Will that we must look in order to see whether the word 'Surplus,' or 'RESIDUE,' is to be taken as indicating Surplus or Residue properly so called, or merely as indicating" a share of a particular fund (per Cranworth, C., *Southmolton v. A-G.*, 5 H. L. Ca. 26).

"Surplus" will not always be construed as "Overplus," in the wide

sense of whatever shall turn out to be the Overplus (*Page v. Leapingwell*, 18 Ves. 466). *Cp.* OVERPLUS: REMAINDER.

"Surplus" widens the meaning of "Rents, Issues, and Profits," in a residuary devise, *e.g.* of "Residuary or Surplus Rents, Issues, and Profits" (*Cust v. Middleton*, 34 L. J. Ch. 185: *Va.*, per Hardwicke, C., *Sherrard v. Harborough*, Amb. 164).

"Surplus ASSETS," in the Winding-up of a Co, has no fixed legal meaning. The phrase may mean, the assets remaining (1) after payment of the Co's liabilities and the costs of winding-up, or (2) after those payments and recoupment of capital (*Re New Transvaal Co*, 1896, 2 Ch. 751; 65 L. J. Ch. 868, in *whic* the latter meaning was adopted, and the same was followed in *Re Peabody Co*, 104 Law Times, 128). *Vf.*, *Re Anglo-Continental Corp*, cited WINDING-UP: *Re Crichton's Oil Co*, 1902, 2 Ch. 86; 71 L. J. Ch. 531. *V.* DISTRIBUTED.

"Surplus Land": *V.* SUPERFLUOUS LAND.

"Surplus Money": held, contextually, to pass South Sea Stock and 3¼ Per Cents (*Newman v. Newman*, 26 Bea. 218). *Va.* MONEY, 1215, 1216.

**SURPLUSAGE.** — " 'Surplusage' comes of the French 'Surplus,' that is, an overplus, and signifies in the law an addition of more than needs which sometimes is the cause that a writ shall abate, but in pleading many times it is absolutely voyd, and the residue of the plea shall stand good " (Termes de la Ley).

**SURRENDER.** — " 'Surrender,' *sursum redditio*, properly is a yeelding up an estate for life or yeares to him that hath an immediate estate in reversion or remainder, wherein the estate for life or yeares may drowne by mutuall agreement betweene them " (Co. Litt. 337 b; *Vth*, Butler's note, 294, where it is said " a *surrender* differs from a *release* in this respect, that the release operates by the greater estate's descending upon the less, — a *surrender* is the falling of a less estate into a greater "). *Vh*, Co. Litt. 338 a, *et seq.*: Touch. ch. 17: 4 Cru. Dig. 84: 12 Encyc. 54-60: *Burton v. Barclay*, 9 L. J. O. S. C. P. 238; 7 Bing. 757: *Cp.*, RELEASE: RENUNCIATION: RESIGNATION.

Surrender " by Act or Operation of Law," s. 3, Statute of Frauds, is " where the owner of a PARTICULAR ESTATE has been a party to some act, the validity of which he is by law afterwards estopped from disputing, and which would not be valid if his particular estate had continued to exist " (per Parke, B., delivering the jdgmt, *Lyon v. Reed*, 13 L. J. Ex. 381; 13 M. & W. 285); or, in other words, such a Surrender (as distinguished from a Surrender by Deed, 8 & 9 V. c. 106, s. 3) is where the parties accomplish a state of things (other than a mere Agreement to surrender, or a cancellation) which is inconsistent with the continuance of the particular estate. Examples of such a Surrender are, —

1. A valid, not voidable, and perfected, Re-Demise between the same landlord and tenant (*Nicholls v. Atherstone*, 16 L. J. Q. B. 371; 10 Q. B. 944; *Easton v. Penny*, 67 L. T. 290; 41 W. R. 72), "even for a shorter term than the old term, if the new term coincides with any part of the old" (per Willes, J., *Phené v. Popplewell*, 31 L. J. C. P. 235; 12 C. B. N. S. 334), and which re-demise may be by parol (*Nicholls v. Atherstone*, sup; *Fenner v. Blake*, 1900, 1 Q. B. 426; 69 L. J. Q. B. 257; 82 L. T. 149; 48 W. R. 392) if for a term grantable by parol (*Forquet v. Moore*, 22 L. J. Ex. 35; 7 Ex. 870), though the old demise was by deed (*Whitley v. Gough*, Dyer, 140, pl. 43). A mere agreement for a re-demise will not suffice (*Forquet v. Moore*, sup):

2. "An agreement between a landlord and tenant that the tenancy shall be put an end to, if such agreement is acted on by a *change of possession*. In my opinion, it is quite immaterial whether the landlord himself takes possession or a third person" (per Keating, J., *Phené v. Popplewell*, sup. *Vh*, *Thomas v. Cook*, 2 B. & Ald. 119; 2 Starkie, 408; *Dodd v. Acklom*, 13 L. J. C. P. 11; 6 M. & G. 672; *Grimman v. Legge*, 8 B. & C. 324; *Doe d. Hudlestone v. Johnstone*, M'Cle. & Y. 141; *Johnstone v. Hudlestone*, 4 B. & C. 922; *Bessel v. Landsberg*, 14 L. J. Q. B. 355; 7 Q. B. 638; *Griffith v. Hodges*, 1 C. & P. 419; *Redpath v. Roberts*, 3 Esp. 225). A mere agreement to surrender (per Brett, L. J., *Oastler v. Henderson*, 46 L. J. Q. B. 607; 2 Q. B. D. 577; 37 L. T. 22; *Re Panther Lead Co*, 1896, 1 Ch. 978; 65 L. J. Ch. 499; 44 W. R. 573), or the mere acceptance of key, without some act of taking possession, will not suffice (*Oastler v. Henderson*, sup, in *whc*, Brett, L. J., explained *Phené v. Popplewell*, sup; *Wallis v. Hands*, 1893, 2 Ch. 75; 62 L. J. Ch. 586; 68 L. T. 428; 41 W. R. 471; *Furnivall v. Grove*, 30 L. J. C. P. 3; 8 C. B. N. S. 496; *Cannan v. Hartley*, 19 L. J. C. P. 323; 9 C. B. 634; *Whitehead v. Clifford*, 5 Taunt. 518):

3. Resumption of Possession by the landlord without opposition by the tenant (*Walls v. Atcheson*, 3 Bing. 462):

4. Though Cancellation of a Lease is not, of itself, a Surrender by Operation of Law (*Doe d. Courtail v. Thomas*, 9 B. & C. 288), yet it may be important collateral evidence thereof (*Walker v. Richardson*, 2 M. & W. 882; 6 L. J. Ex. 229; *Darison v. Gent*, 1 H. & N. 744; 26 L. J. Ex. 122).

*Vh*, Redman, ch. 8, s. 4; Fawcett, ch. 6, s. 2 (2); Woodf. ch. 8, s. 3: Foa on Landlord and Tenant, ch. 4; 2 Sm. L. C. 917. *Cp*, MERGER.

Surrender of Copyholds and Admittance thereon, is the method of conveyance of Copyholds, inter vivos: *Vh*, 2 Bl. Com. ch. 22: Wms. R. P., Part 3, ch. 2: Goodeve, 323-327. *Note*: the need of a Surrender to the Use of a Will was abolished by 55 G. 3, c. 192, repld s. 3, Wills Act, 1837.

"Surrender or Extinction" of Prior Interests; *V*. EXTINCTION.

Surrender of Shares, as to resolution for; *V. Eichbaum v. Chicago Grain Elevators*, 1891, 3 Ch. 459; 61 L. J. Ch. 28; 65 L. T. 704; 40 W. R. 153.

**SURRENDERED.** — *V.* DEEMED TO HAVE BEEN SURRENDERED.

“Liable to be surrendered”; *V. Re Galwey*, cited BOUND.

**SURROGATE.** — “Is he who is appointed in the stead of another, most commonly of a Bishop or his Chancellor” (Termes de la Ley).

**SURVEY.** — *V.* VIEW.

A demise of land at an Acreage Rent, “subject to Survey,” means, that the acreable contents shall be ascertained by actual measurement for the purpose of fixing the amount of rent (*Persse v. Malcolmson*, 1r. Rep. 5 C. L. 572).

**SURVEYOR.** — Quà Metrop Man. Acts, “Surveyor.” includes, “any Officer called or to be called ‘Engineer’” (s. 112, 25 & 26 V. c. 102): District Surveyor, quà London Bg Act, 1894, *V.* Part 13.

Quà P. H. Act, 1875, “‘Surveyor,’ includes, any person appointed by a Rural Authority to perform any of the duties of Surveyor under this Act” (s. 4). But that wide def does not extend to the “Surveyor” to be appointed by an Urban Authority under s. 189, and “the Surveyor” who, in an Urban District, has to make the report mentioned in s. 16, does not include a person temporarily appointed to perform the duties of a Surveyor and who is subject to dismissal at a week’s notice (*Lewis v. Weston-super-Mare*, 58 L. J. Ch. 39; 40 Ch. D. 55; 59 L. T. 769; 37 W. R. 121). The meaning of “Surveyor” in P. H. Act, 1875, is adopted for the other P. H. Acts; *V.* P. H. Act, 1890, s. 11 (3); 55 & 56 V. c. 57, s. 5.

Other Stat. Def. — Ecclesiastical Dilapidations Act, 1871, 34 & 35 V. c. 43, s. 3; Ry C. C. Act, 1845, 8 & 9 V. c. 20, s. 3; Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, s. 3; Taxes Management Act, 1880, 43 & 44 V. c. 19, s. 5.

“Surveyor of Taxes”; *V.* Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67, s. 4.

The individual members of a District Council are not Surveyors of Highways, within s. 46, Highway Act, 1835 (*Buckley v. Hanson*, 42 S. J. 198; 77 L. T. 664; 62 J. P. 119).

The “Surveyor or Valuer” whose Report as to the value of property will exonerate Trustees if they “reasonably believe” him “to be an Able, Practical, Surveyor or Valuer,” s. 8 (1), Trustee Act, 1893, must be one employed and instructed by the trustees in the very matter to which the Report relates, and the Report must advise the trustees as to the particular investment (*Re Walker*, 59 L. J. Ch. 386).

“County Surveyor”; *V.* COUNTY.

*V.* OUTGOING SURVEYOR: QUANTITY SURVEYOR.

**SURVIVE.** — “Survive” imports that the person who is to survive must be living at the death of the person whom, or at the happening of the event which, he is to survive (*Gee v. Liddell*, 35 L. J. Ch. 640; L. R. 2 Eq. 341; *Wh*, 2 Jarm. 691).

In that case Romilly, M. R., said, “My opinion is, that the meaning of the word ‘Survive’ or ‘Survivor’ imports that a person who is to survive must be living at the time of the event which he is to survive. I have consulted several dictionaries on this subject. I have consulted Johnson and Richardson, and the authorities cited by them; and in all instances it appears to me to mean to ‘outlive,’ that is, to be alive at the time of a particular event, or the death of a particular person, which event or person the other is to survive. It is true that Dr. Johnson puts as one of the meanings, ‘to live after another’ . . . But all the passages from the English writers cited tend to the conclusion that the person who survives an event, must be living at the time when that event takes place, and that ‘to live after,’ is somewhat ambiguous in itself.” On a context, “survive” has been construed “to live after” (*Re Clark*, 13 W. R. 115; 3 D. G. J. & S. 111; *sethe*, per Chitty, J., *Re Delany*, 39 S. J. 468). *Wh*, *Reed v. Braithwaite*, L. R. 11 Eq. 514; 40 L. J. Ch. 355; *Ranelagh v. Ranelagh*, 2 My. & K. 441; 1 L. J. Ch. 183.

Bequest, in remainder after life interests, for “surviving sister or sisters of my wife, or their heirs”; held, that “surviving” meant, surviving the Testator (*Stannard v. Burt*, 52 L. J. Ch. 355): *Vf*, *Spurrell v. Spurrell*, 22 L. J. Ch. 1076; 11 Hare, 54. In a similar bequest, “surviving” was held to mean, surviving the Tenant for Life (*Re Fox*, 13 W. R. 1013; *Va*, *Littlejohns v. Household*, 21 Bea. 29; *Re Benn*, 29 Ch. D. 839).

A gift to a CHILD, or other ISSUE, of a testator, does not LAPSE by death in the testator’s lifetime if he or she leave issue, living at the testator’s death, but shall take effect as if the death of the Child or other Issue of the testator had happened immediately after his death (s. 33, Wills Act, 1837); therefore, where a testator directs that in case A. (his daughter) shall “survive” him, her share shall be part of the funds comprised in her Marriage Settlement, and she dies in his lifetime leaving issue living at his death, the share intended for her becomes part of the Settlement funds (*Re Hone*, 31 W. R. 379; 52 L. J. Ch. 295; 22 Ch. D. 663; 48 L. T. 266).

#### V. SURVIVOR: SURVIVING TRUSTEE.

**SURVIVING CHILDREN.** — This phrase includes a sole surviving child (*Re Brown*, W. N. (96), 164). *Vf*, SURVIVOR: CHILD, p. 306.

**SURVIVING SISTERS.** — *V. Carver v. Burgess*, 24 L. J. Ch. 401; 18 Bea. 541.

**SURVIVING TRUSTEE.**—*V. Sharp v. Sharp*, 2 B. & Ald. 405, stated Lewin, 776: *If*, Lewin, 783, 785. *Cp.*, CONTINUING TRUSTEE.

A Power to "Survivors" cannot be executed by last Survivor; but a Power to three or more "and the Survivor of them" may be executed by the Survivors (Lewin, 719: SURVIVOR).

A "Surviving Trustee," whose representatives may appoint a New Trustee, s. 31 (1), Conv & L. P. Act, 1881, repled s. 10 (1), Trustee Act, 1893, must survive, not only his nominated colleagues but also, his testator (*Nicholson v. Field*, 1893, 2 Ch. 511; 62 L. J. Ch. 1015; 69 L. T. 299; 42 W. R. 48). *If*, LAST.

**SURVIVOR.**—*V. SURVIVE.*

"Survivor" is "a word which has caused, perhaps, more difficulty in the interpretation of Wills than any other in the language" (per Rigby, L. J., *Re Pickworth*, cited ERNER).

"The word 'Survivor' may be either a word of limitation of an estate (denoting the interest certain persons are to take), or it may denote a class of persons" (Theobald, 594).

"If there is a life estate followed by a gift to a number of persons or, the Survivors of them, the general rule of construction is that the word 'Survivors' means, those who survive the Tenant for Life; if there is not a life estate, then, *prima facie* as a general rule, it refers to those who survive the Testator" (per Cotton, L. J., *Ralph v. Carrick*, 48 L. J. Ch. 810; 11 Ch. D. 873); or, as it may be otherwise stated, "the word 'Survivors' refers commonly to the time of division" (per Kay, J., *Re Mortimer*, 54 L. J. Ch. 415). This is sometimes called the Rule in *Cripps v. Wolcott* (4 Mad. 11); and it applies as well to Realty as to Personalty (*Re Gregson*, 34 L. J. Ch. 41; 2 D. G. J. & S. 428: *Howard v. Collins*, L. R. 5 Eq. 349). *If*, as to Period of Survivorship, Hawk. 260 *et seq.*; 2 Jarm. 720-751: Theobald, 595-600; and for a context leading to the same conclusion as *Cripps v. Wolcott*, *V. Wordsworth v. Wool*, 9 L. J. Ch. 29; 1 H. L. Ca. 129.

"Survivors," generally speaking, includes "Survivor," and should be read as equivalent to "Survivors or Survivor" (*V. Re Mortimer*, sup: *Hearn v. Baker*, 2 K. & J. 383: *If*, SURVIVING CHILDREN). "But a discretionary power to four Trustees 'and the survivors of them' cannot, it seems, be executed by the last survivor" (Lewin, 719, citing *Hibbard v. Lamb*, 1 Amb. 309); though if it be given to "the survivor," it could be executed by the survivors who might be left after the death of one (Lewin, 719). *If*, SURVIVING TRUSTEE.

**Read as "Other."**

"The question whether the word 'Survivor' (in a Will) is to be read as 'Other' has been the subject of innumerable cases; but there is one never failing guide to all the authorities, viz., — it is the duty of the



## Read as "Other":—

Court to ascertain what the meaning of the testator is, and if it can satisfy itself that the word ought to be read as 'Other,' it is right to substitute the one word for the other" (per Bacon, V. C., *Re Johnson*, 53 L. J. Ch. 1117); but "when unexplained by other parts of the Will, it is to be interpreted according to its strict and literal meaning" (2 Jarm. 689). *Vf*, *King v. Frost*, inf, p. 2000.

For an elaborate discussion of the cases hereon, *V*. 2 Jarm. 689-710; *Vf*, Wms. Exs. 1332-1334: Theobald, 600-604: Watson Eq. 1221-1227.

*Va*, *Crowther v. Evans*, 13 L. T. 271; *Waite v. Littlewood*, 8 Ch. 70; *Lucena v. Lucena*, 47 L. J. Ch. 203; 7 Ch. D. 255; *Re Horner, Pomfret v. Graham*, 51 L. J. Ch. 43; 19 Ch. D. 186; *Re Benn*, 29 Ch. D. 839; *Re Palmer*, L. R. 19 Eq. 320; 44 L. J. Ch. 247. "In *Re Palmer*, I referred to several cases all of them authorities in favor of reading 'Survivor' as 'Other,' when it was requisite to do so in order to give effect to the intention. There is no magic in the word 'Survivor'" (per Malins, V. C., *Cross v. Maltby*, L. R. 20 Eq. 382).

Besides the general rule above enunciated there is, probably, no general rule that can be relied on for construing "Survivor" as "Other" besides the following one, stated by Mr. Hawkins in his work on Construction of Wills (p. 202),—

"Where there is a gift to several, or to a class, as tenants in common in tail, with remainder as to the share of each to the 'survivors' or 'surviving' devisees in tail, with a limitation over on failure of issue of *all* the devisees, the words 'survivor' or 'surviving' will be construed as 'other,' so as to create cross-remainders among the devisees by express limitation; either in a Deed or Will (*Doe v. Wainewright*, 5 T. R. 427; *Cole v. Sewell*, 2 H. L. Ca. 186; *Smith v. Osborne*, 6 H. L. Ca. 375)."

But in *Re Bowman, Whytehead v. Boulton* (41 Ch. D. 531; 37 W. R. 583), Kay, J., said, "It seems to me that the decisions establish the following propositions, — (1) Where the gift is to A. B. and C. equally, for their respective lives, and after the death of any to his children, but if any die without children to the survivors for life, with remainder to their children, only children of survivors can take under the gift over; (2) If, to similar words, there is added a limitation over if *all* the tenants for life die without children, then the children of a predeceased tenant for life participate in the share of one who dies without children after their parent; (3) They also participate, *although there is no general gift over*, where the limitations are to A. B. and C. equally, for their respective lives, and after the death of any to his children, and, if any die without children, to the surviving tenants for life and their respective children *in the same manner as their original shares.*"

*V*. this last proposition acutely examined and dissented from, 33 S. J. 572; *Va*, *Re Bowman*, sup, distd in *Re Rubbins*, 79 L. T. 313, and criticised in *Re Robson*, W. N. (99) 260.

## Read as "Longest Liver."

When "Survivor" "is applied to a CLASS of persons, and individuals of that class are named, the natural and obvious meaning of the word is, the Longest Liver of those who are named" (per Westbury, C., *Taaffe v. Connee*, 10 H. L. Ca. 77: *et sic* discussed and distd, *Foley v. Gallagher*, 2 L. R. Ir. 389).

In *Re Hill to Chapman* (53 L. J. Ch. 541; 54 Ib. 595), an unsuccessful attempt was made to induce the Court to read "Survivor" as equivalent to "Longest Liver": *Vf, Re Pickworth*, cited EITNER. The rule, in this connection, is thus stated by Turner, L. J., in *White v. Baker* (29 L. J. Ch. 577; 2 D. G. F. & J. 55), — "Where there is a bequest to A. for life, and after his death to B. and C., 'or the survivor of them,' some meaning must be attached to the words 'the survivor.' They may refer to any one of three events, —

"1. To one of the persons named surviving the other;

"2. To one of them only surviving the testator; or

"3. To one of them only surviving the tenant for life: and in the absence of any indication to the contrary they are taken to refer to the latter event, as being the more probable one to have been referred to." *V. Jdgmt of Cotton, L. J., Re Hill to Chapman*, sup, for a criticism on *White v. Baker: Vf, Scurfield v. Howes*, 3 Bro. C. C. 90: *Re Hunter*, L. R. 1 Eq. 295.

The word "Survivors," "does not mean 'Longest Livers' in the general sense, but those who are living when the particular event contemplated happens" (per Kay, J., *Re Mortimer, Griffiths v. Mortimer*, 54 L. J. Ch. 415; 33 W. R. 441). On the words of the Will under consideration in *Re Mortimer*, it was held that on the death of the last survivor of a class of tenants for life who were to take *inter se* by survivorship, the capital fell into the residue and did not belong to the estate of such last survivor. The learned judge followed *Nevill v. Boddam* (29 L. J. Ch. 738; 28 Bea. 554) and *Re Corbett* (29 L. J. Ch. 458; Johns. 591; 8 W. R. 257); and commented on *Maden v. Taylor* (45 L. J. Ch. 569) and *Davidson v. Kimpton* (18 Ch. D. 213; 29 W. R. 912). *Va*, per North, J., *Askew v. Askew* (57 L. J. Ch. 629; 36 W. R. 620), and per Privy Council, *King v. Frost* (15 App. Ca. 548; 60 L. J. P. C. 17). But in *Re Roper* (41 Ch. D. 409; 58 L. J. Ch. 439; 33 S. J. 350) Chitty, J., differed from *Re Mortimer*, *Re Corbett*, and *Askew v. Askew*, and, following *Maden v. Taylor* and *Davidson v. Kimpton*, construed "survivors" as "longest livers": *Va, Browne v. Rainsford*, Ir. Rep. 1 Eq. 384: per Monroe, J., *Re Hutchins*, 19 L. R. Ir. 223. In *Ranelagh v. Ranelagh* (41 W. R. 549), Chitty, J., repented of his decision in *Re Roper*, and followed *King v. Frost*.

*V. generally as to limitations to "Survivors," Jarm. ch. 47.*

In *Crozier v. Fisher* (4 Russ. 398; 6 L. J. O. S. Ch. 118), "Survivors," in a bequest to Children, was contextually held to mean, surviving so as to attain their respective ages of 21.

A limitation to A. B. and C., "and the survivors or survivor of them and the heirs of such survivor," makes A. B. and C. joint-tenants for life, with a contingent remainder in fee to the survivor (2 Jarm. 298; *Vf*, Ib. 251, *n*); so, of a limitation to A. B. and C. "as joint tenants and not as tenants in common, and to the survivor or longest liver of them his heirs and assigns" (*Quarm v. Quarm*, 1892, 1 Q. B. 184; 61 L. J. Q. B. 154; 66 L. T. 418; 40 W. R. 302).

*Vh*, Chitty Eq. Ind. 8012-8038.

#### SURVIVORSHIP. — *V*. BENEFIT OF SURVIVORSHIP.

**SUSCEPTIBLE.** — GOODWILL is "a matter Susceptible of Valuation" within Partnership Articles (*Stewart v. Gladstone*, 47 L. J. Ch. 427; 10 Ch. D. 626).

**SUSPECTED.** — Quà Diseases of Animals Act, 1894, 57 & 58 V. c. 57, " 'Suspected,' means, suspected of being diseased" (s. 59).

"Suspected of Evil"; *V*. WALK.

*V*. REPUTED THIEF.

**SUSPEND.** — Where there is a clause in a Lease that in case of fire the rent shall be "suspended" until the premises are re-instated, it might be contended that "suspended" means only "postponed"; but more reasonably it means "temporarily released." In this sense the word is obviously used in the following passage from the judgment in *Morrison v. Chadwick* (18 L. J. C. P. 192; 7 C. B. 283),—"The eviction by a landlord of his tenant from a part of the premises creates a *Suspension* of the entire rent *during the continuance of the eviction* until the tenant enters and resumes the possession — see the authorities cited in 1 Wms. Saund. 204, *n* 2" (*Va*, SUSPENSE). But it would avoid dispute to provide that the rent shall "cease and be suspended" or shall "be suspended and cease to be payable."

As to suspending a bankrupt's Order of Discharge; *V*. s. 8, Bankry Act, 1890: Wms. Bank. 92: Baldwin, 592.

Notice by a debtor that he "has suspended, or is about to suspend, Payment," Bankry Act, 1883, s. 4 (1 *h*); "To 'suspend,' in its natural signification, rather means, something which may not be permanent than that which is. *A fortiori*, of course, a perpetual stoppage of payment would be a Suspension, and something more; but to say that 'Suspension' can mean nothing in this context but a necessarily permanent stoppage of payment, is a proposition to which I cannot agree" (per *Ld Selborne*, *Crook v. Morley*, 1891, A. C. 316 · 61 L. J. Q. B. 98; 65 L. T. 389). *Vf*, NOTICE, p. 1291.

*Semble*, the execution by a debtor of a Deed of Arrangement, was a "Suspension of Payment" within ss. 211, 225, Bankry Act, 1849 (*Phillips v. Surridge*, 9 C. B. 743; 19 L. J. C. P. 337).

As to the old doctrine, an Action Personal once suspended always suspended, *V. Ford v. Beech*, 11 Q. B. 867; 17 L. J. Q. B. 116, and cases there cited. *Cp*, FORBEAR.

*Cp*, POSTPONE: STOP.

**SUSPENSU.** — " 'Suspension' or 'Suspense,' is a temporal," *i.e.* temporary, "stop of a Mans Right" (Cowel).

"Suspence commeth of *suspendeo*, and in legall understanding is taken when a seignorie, rent, profit apprender, &c, by reason of unittie of possession of the seignorie, rent, &c, and of the land out of which they issue, are not *in esse* for a time, *et tunc dormiunt*, but may be revived or awaked. And they are said to be extinguished when they are gone for ever, *et tunc moriuntur*, and can never be revived; that is, when one man hath as high and perdurable an estate in the one as in the other" (Co. Litt. 313 a). As to Suspension, *V. Burton v. Barclay*, 9 L. J. O. S. C. P. 239; 7 Bing. 759: SUSPEND: *Cp*, MERGER.

As to Suspension of the Clergy; *V. Phil. Ecc. Law*, 1072.

"Suspension in Water"; *V. SOLID MATTER*.

**SUSTAIN.** — *V. UPHOLD*.

**SUSTAINED.** — "Costs sustained by reason of"; *V. BY REASON*.

**SUZERAIN.** — *V. 12 L. Q. Rev.* 215.

**SWALLETS.** — "Funnel-shaped fissures in the rock forming the Mendip Hills" (Dart, 416).

**SWEAR.** — *V. OATH: PERJURY*.

**SWEATING.** — The term "Sweating System" is obviously figurative. "It involves a system oppressive to the workman whereby an unconscionable or unjust profit is wrung from the 'sweat of his brow by paying him insufficient wages for his work. There is, generally, a middleman taking advantage of the circumstances in which the workman is placed and grinding down, for his own profit, below the fair rate the wages of those employed. . . . Where the system prevails the epithet 'pernicious' is not at all too strong" (per Chitty, J., *Collard v. Marshall*, 1892, 1 Ch. 571; 61 L. J. Ch. 268; 66 L. T. 248; 40 W. R. 473).

**SWEEP.** — *V. EVENT*, p. 650: SUBSCRIPTION OR CONTRIBUTION.

**SWEEPAGE.** — *V. HERBAGE*.

**SWEETS.**—“In the construction of any enactment relating to the Revenue of Excise, the expression ‘Sweets, or Made Wines’ shall mean, any liquor which is made from fruit and sugar, or from fruit or sugar mixed with any other material, and which has undergone a process of fermentation in the manufacture thereof” (s. 28, Revenue Act, 1889, 52 & 53 V. c. 42): for the previous def. *V.* s. 40, 43 & 44 V. c. 20.

Quà Wine and Beerhouse Act Amendment Act, 1870, 33 & 34 V. c. 29, “‘Sweets,’ includes, sweets, made wines, mead, and metheglin” (s. 3).

*V.* WINE.

**SWINDLER.**—A Swindler is “a Cheat, one who lives by cheating” (Jacob).

*V.* CHEAT: TOUT.

**SWINE.**—*V.* CATTLE.

**SWOLING.**—A Swoling, or Suling, of land “is the same with *Carucata terra*” (Cowel). *V.* CARUCATA.

**SWORN APPRAISER.**—“Sworn Appraisers,” *e.g.* by whom a distress under the Tithe Act, 1836, had to be valued, must be reasonably competent, but need not be professional, appraisers (*Roden v. Eytton*, 6 C. B. 427).

*V.* APPRAISER.

**SYLVA.**—“‘*Sylva cædua*,’ as a rule, is equivalent to COPPICE” (per Bowen, L. J., *Dashwood v. Magniac*, cited TIMBER). *Vf*, 45 Edw. 3, c. 3: SILVA CÆDUA.

**SYMBOL.**—*V.* TRADE-MARK, towards end.

**SYNDICATE.**—*Seemle*, “Syndicate” is not equivalent to Firm, Company, or Partnership: its use in connection with a Marine Underwriting will not convert a liability, otherwise several, into a joint liability (*Tyser v. Shipowners’ Syndicate*, 1896, 1 Q. B. 135; 65 L. J. Q. B. 238; 73 L. T. 605; 44 W. R. 207).

Probably, “Syndicate” first came into the law relating to Companies in *New Sombrero Co v. Erlanger*, 48 L. J. Ch. 73; 3 App. Ca. 1218, *wher* as to the liabilities of a Syndicate in promoting a Company.

**SYNODAL.**—“Is a tax paid in money to the Bishop or his Arch-deacon, by the Inferior Clergy, at their Easter Visitation” (*Termes de la Ley*).

**SYSTEM.**—Death from Causes “arising within the System of the insured”; *V.* ARISING: SECONDARY.

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## TABERNACLE — TAIL

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**TABERNACLE.** — *Semble*, a Tabernacle for the reception of the Reserved Sacrament is not a lawful Church ORNAMENT (*Kensit v. St. Ethelburga*, 1900, P. 80).

**TABLE.** — *V. COMMUNION.*

**TABLEAUX VIVANTS.** — *V. Hanfstaengl v. Empire Palace*, cited COPY, p. 409.

**TACK.** — “Tack,” is the Scotch term for LEASE; *Sv*, discussion by counsel, *Sweetmeat Co v. Ind. Rev.*, 64 L. J. Q. B. 88.

“A Fearme, in the north parts, is called a Tacke” (Co. Litt. 5a). *V. FARM.*

To take in Cattle to tack, is to AGIST them.

Tacking a Mortgage, is the doctrine that enables a mtgee who is secured by the LEGAL ESTATE, to tack on to that security another security which he holds on the same property and so give the latter security priority over a mesne incumbrance prior in date thereto, if he took his other security without notice of the mesne incumbrance to be so displaced: *17*, Fisher, Part 5, ch. 3, ss. 2, 3. *Cp*, CONSOLIDATE, at end.

*Note*: the doctrine does not extend to lands in Yorkshire (s. 16, 47 & 48 V. c. 54); its general application was disallowed by s. 7, V. & P. Act, 1874, but that section was repealed by s. 129, 38 & 39 V. c. 87.

**TACKLE.** — “It has been said that by the words ‘Tackle, Furniture, Apparel, and all other her Instruments, thereunto belonging,’ the Boats of a Ship are not transferred (Molloy, *De Jure Mar.*, B. 2, c. 1, s. 8). And it has been held that Ballast is not part of the Furniture of a Merchant Ship (Ib.: *Kyuter’s Case*, 1 Leon. 46); and that under the words ‘Stores, Tackle, Apparel, &c,’ Kintlage does not pass (*Lano v. Neule*, 2 Starkie, 105)”: 1 Maude & P. 53, *n* (x). *V. FURNITURE.*

An insurance upon a ship, employed in the Greenland trade, on “ship, tackle, apparel, and furniture,” does not by the usage of the trade cover the fishing tackle (*Hoskins v. Pickersgill*, 3 Doug. 222).

**TAIL.** — To hold in Fee Tail, or in Tail, is “where a man holdeth certaine lands or tenements to him and to his heires *of his body* begotten”

(Termes de la Ley): that is a General Tail. A Special Tail is one that "is restrained to certain heirs of his body, and does not go to all of them in general" (Wms. R. P., Part 1, ch. 2), e.g. heirs of his body by a specified woman, or Tail Male.

*Vh*, Litt. ss. 13-31: Co. Litt. 18 b-27 b: 2 Bl. Com. 110-119: Wms. R. P., Part 1, ch. 2: Goodeve, ch. 3: Challis, ch. 20: WESTMINSTER.

"Tail Male"; *V. Treror v. Treror*, 11 L. J. Ch. 417; 13 Sim. 108; 1 H. L. Ca. 239.

Special Tail Male; *V. Pelham-Clinton v. Newcastle*, 49 W. R. 12; 69 L. J. Ch. 875; 83 L. T. 627; affd 1902, 1 Ch. 34; 71 L. J. Ch. 53; 85 L. T. 439; 50 W. R. 83.

"Tenant in fee taile after possibility of Issue extinct" is, where tenements are given to a man and to his wife in Especiall Taile, if one of them die without issue, the survivor is tenant in tail after possibility of issue extinct. And if they have issue, and the one die, albeit that, during the life of the issue, the survivor shall not be said tenant in tail after possibilitie of issue extinct; yet if the issue die without issue, so as there be not any issue alive which may inherit by force of the taile, then the surviving party of the donees is tenant in taile after possibilitie of issue extinct" (Litt. s. 32; *Vf*, Ib. ss. 33, 34: Co. Litt. 27 b-28 b: *Bowles's Case*, 11 Rep. 79 b: 2 Bl. Com. 124, 125). Such a person is a TENANT FOR LIFE (Termes de la Ley, *Taile after possibility*), so, quà Settled Estates Act, 1877 (s. 2), and S. L. Act, 1882 (subs. 1, vii, s. 58); as to his "qualities and priviledges," *V. Co. Litt. 27 b, 28 a. Vh. Wms. R. P., Part 1, ch. 2: Goodeve, ch. 3: Challis, ch. 20.*

#### V. TENANT IN TAIL.

**TAINI.** — "*Taini*, or *thaini medioeres*," in Domesday, "were freeholders, and sometime called *milites regis*, and their land called *tainland*. . . . But *thainus regis* is taken for a baron" (Co. Litt. 5 b: *Vf*, Termes de la Ley, *Thannus*). V. TAINLAND.

**TAINLAND.** — "In the book of *Domesday*, land holden by knight's service was called Tainland, and land holden by socage was called Reveland" (Co. Litt. 86 a). But at 5 b, Co. Litt., it is said that land of freeholders generally was called Tainland; V. TAINI.

#### TAKE. — V. ACQUIRE: INHERIT.

"I think it will be found that in the Lands C. C. Act, 1845, the word 'take' is used in more than one sense. In the first section the word seems to be used in a general sense. In the preambles to sections 6 and 16 a distinction is drawn between 'purchase of lands by agreement,' and 'the purchase and taking of lands otherwise than by agreement.' In s. 68 the word 'taking' occurs, and it is clear, from *Burkinshaw v. Birmingham & Oxford June. Ry* (20 L. J. Ex. 246; 5 Ex. 475), that in that section 'take' means, actually take, as distinct from serving a notice

to treat or any other kind of constructive taking. Looking at the Lands Clauses Act as a whole, and looking at common parliance and at the language of most Acts which give compulsory powers to public bodies, I think we may say that the word 'take' ought not to be confined to taking of actual possession. When we turn to the Metropolitan Street Improvements Act, 1877 (40 & 41 V. c. cexxxv), and compare the preamble in which the use of the word 'take' is general, with s. 5, and especially with s. 31 where the word 'take' is obviously used in a larger sense, I think the safer construction is that 'take' means, either take from the landlord what the landlord has got, — namely, his Title, — or take from the tenant and occupier what the tenant and occupier has got, — namely, Possession" (per Bowen, L. J., *Spencer v. Metrop Bd of Works*, 52 L. J. Ch. 258; *See*, as to acquiring the landlord's title, obs of Jessel, M. R., *Ib.* p. 253). Therefore, the conditions imposed by s. 33. Metropolitan Street Improvements Act, 1877, prior to the Authority "taking" lands, need not be complied with prior to proceeding with the preliminaries to acquiring title to such lands, such as serving notice to treat and summoning a jury (*Spencer v. Metrop Bd of Works*, 52 L. J. Ch. 249; 22 Ch. D. 142; 47 L. T. 459; 31 W. R. 347).

Lands entered upon and used by a Company, under s. 85, Lands C. C. Act, 1845, are lands "taken" within s. 80 of that Act (*Charlton v. Rolleston*, 54 L. J. Ch. 233; 28 Ch. D. 237; 51 L. T. 612).

*Vf. R. v. Manley-Smith*, 67 L. T. 197; 40 W. R. 333; 56 J. P. 729; *Church v. London School Bd*, 8 Times Rep. 310.

As to how far tunnelling under, or arching over, property is a "Taking"; *V. Sparrow v. Oxford, Worc. & Wolver. Ry*, 2 D. G. M. & G. 94; 16 Jur. 703; 19 L. T. O. S. 131; *Pinchin v. London & Blackwall Ry*, 5 D. G. M. & G. 851; 24 L. J. Ch. 417; 24 L. T. O. S. 125, 196; 3 W. R. 52, 125; *Re Metrop District Ry and Cosh*, 13 Ch. D. 607; 49 L. J. Ch. 277; 42 L. T. 73; 28 W. R. 685; *Tiverton Ry v. Loosemore*, 9 App. Ca. 480; 53 L. J. Ch. 812; 50 L. T. 637; 32 W. R. 929; 48 J. P. 372.

Lands "taken or used for the Purposes of the Works," s. 133, Lands C. C. Act, 1845; *V. Putney v. Lond. & S. W. Ry*, cited WORKS.

To divert part of a Stream by a Water Works Co, is not "to take or use" the Stream within s. 6, 10 V. c. 17; such diversion merely "INJURIOUSLY AFFECTS" the land (*Bush v. Trowbridge Water Co*, 44 L. J. Ch. 235, 645; L. R. 19 Eq. 291; 10 Ch. 459).

#### V. COMPULSORY POWERS: PURCHASE.

A direction to trustees "to take a House" for the residence of Minors, will, if not followed, entitle the minors to the money which ought to have been so expended (*Hutchinson v. Rough*, 40 L. T. 289).

To "take and use" a Surname; *V. SURNAME: NAME.*

"Take or use" the Title of a Profession; *V. VETERINARY.*

*Game* is "taken" when it is snared, though it be neither killed nor removed (*R. v. Glover*, Russ. & Ry. 269).



*Oysters* "taken within the waters of some Foreign State," proviso 1, s. 4, 40 & 41 V. c. 42, applies to oysters originally taken in foreign waters although they may have been relaid in England and stored for so long as 4 months (*Robertson v. Johnson*, 1893, 1 Q. B. 129; 62 L. J. M. C. 1; 67 L. T. 560; 41 W. R. 223; 57 J. P. 39: *Va, Guyer v. The Queen*, cited GAME, p. 795).

"Take" *Salmon* (s. 22, 36 & 37 V. c. 71), or Trout or Char (s. 7, 41 & 42 V. c. 39); *V. Gazard v. Cooke*, 55 J. P. 102: *Stead v. Tillotson*, 69 L. J. Q. B. 240; 48 W. R. 431; 64 J. P. 343. *Vf*, FOR, p. 740.

Chattels or Money are "taken" from the Owner, so as to constitute a THEFT, if obtained by frightening him (*R. v. McGrath*, 39 L. J. M. C. 7; L. R. 1 C. C. R. 205: *R. v. Lovell*, 50 L. J. M. C. 91; 8 Q. B. D. 185; 44 L. T. 319; 30 W. R. 416).

*Vf*, TAKE AND CARRY AWAY.

"Take" a *Girl* under 16 "out of the possession and against the will of her father or mother," &c, s. 20, 9 G. 4, c. 31, repled s. 55, 24 & 25 V. c. 100; "take," in this connection, does not imply force, actual or constructive; it means, being a party to the father, &c, being deprived of the possession of the girl, her willingness being immaterial (*R. v. Mantelou*, 22 L. J. M. C. 115; *Dears*. 159: *R. v. Timmins*, 30 L. J. M. C. 45). *V*. POSSESSION.

*Semble*, a Threatening Letter is not "sent" if taken by the writer: *V*. SEND.

"Take" *Legal Proceedings*, is to commence them; *V. Re Martin*, cited SOLICITOR.

**TAKE AND APPROPRIATE.** — The power to Guardians "to take and appropriate" a pauper's property to "reimburse themselves" the expenses of his burial and 12 months' maintenance, s. 16, 12 & 13 V. c. 103, only constitutes them ordinary (not preferential) creditors, and their claim does not interfere with the right of the pauper's exor to RETAIN quâ his own claim (*Laver v. Botham*, 1895, 1 Q. B. 59; 64 L. J. Q. B. 110; 71 L. T. 570; 43 W. R. 25; 59 J. P. 454).

**TAKE AND CARRY AWAY.** — For the purposes of the offence of THEFT, "a *thing* is said to be taken and carried away when every part of it is moved from that specific portion of space which it occupied before it was moved (although the whole of it may not be moved from the whole of the space which it occupied), and when it is severed from any person or thing to which it was attached in such a manner that the taker has, for however short a time, complete control of it.

"An *animal* is said to be taken and driven or led away when it is caused to move from the place where it was before" (*Steph. Cr.* 213, 214).

*Vf*, Arch. Cr. 412, 432: *Rosc. Cr.* 556: ASPORTATION.

"' *Felonice cepit et asportavit*, feloniously took and carried away,' are necessary to every indictment" for Theft (4 Bl. Com. 307).

**TAKE AWAY.** — Not to “take away, or do business for,” A’s clients;  
*V. CLIENT.*

*V. LEAD AWAY.*

**TAKE CARE.** — “Take care of and provide”; *V. PRECATORY TRUST.*

**TAKE DOWN.** — A House or Building, or its front, is not “taken down in order to be rebuilt or altered,” s. 155, P. H. Act, 1875, unless substantially the whole is removed; each case depends on its own circumstances, but a large structural alteration, involving the removal of no more than  $\frac{3}{4}$ ds of the house or building or front, is not a “taking down” within the section (*A-G. v. Hatch*, 1893, 3 Ch. 36; 62 L. J. Ch. 857; 69 L. T. 469; 57 J. P. 825). *Cp.* NEW BUILDING.

*V. DEMOLISH: UNNECESSARY INCONVENIENCE.*

**TAKE IN.** — *V. AGIST.*

**TAKE IN EXECUTION.** — “The ordinary meaning of ‘taken in execution’ is, that the goods have been SEIZED by the sheriff; and, in ordinary language, a sheriff who has seized goods under a *fi. fu.* is said to have ‘taken them in execution,’” *e.g.* as the phrase is used in s. 195, 35 G. 3, c. 73 (per Bigham, J., *Marylebone Vestry v. Sheriff of London*, 1900, 1 Q. B. 114; *affd* 1900, 2 Q. B. 591; 69 L. J. Q. B. 848; 64 J. P. 628).

The protection given to landlords by Landlord and Tenant Act, 1709, 8 Anne, c. 18, s. 1, that no goods shall “be taken BY VIRTUE of any execution” until the rent is paid, only applies where the goods are removed or sold (*White v. Binstead*, 22 L. J. C. P. 115; *Cocker v. Musgrove*, 9 Q. B. 223); because that statute was “only intended to give a landlord a remedy when deprived of his rights by removal” (per Jervis, C. J., *White v. Binstead*, *sup.*: *Vf.*, per Williams, L. J., *Marylebone Vestry v. Sheriff of London*, *sup.*).

*V. EXECUTION. Cp., LEVY.*

**TAKE IN SATISFACTION.** — *V. Re Cosier*, cited SATISFACTION.

**TAKE ON BOARD.** — An obligation to “take on board” certain goods, is more exigent than to “put on board,” and connotes that whatever care is required to be taken to ship the goods safely and securely must be taken by the obligor (per Cresswell, J., *Cooke v. Wilson*, 1 C. B. N. S. 163).

**TAKE OR DEMAND.** — For a SHERIFF, &c, to “take or DEMAND” more than his fees, is punishable under s. 29 (2*b*), Sheriffs Act, 1887, 50 & 51 V. c. 55; he would “take” such excess if he appropriated thereto the moneys already in his hands (per Fry, L. J., *Woolford’s Trustee v.*

*Levy*, 61 L. J. Q. B. 551); to "demand" extortionately, he must, *semble*, demand peremptorily or insistingly, — merely asserting his right to such excess, *e.g.* by claiming it in an account which he offers to submit to taxation, is not making such a "demand" (*S. C.*, 1892, 1 Q. B. 772; 61 L. J. Q. B. 546; 66 L. T. 812; 40 W. R. 483; 56 J. P. 694). In that case, Kay, J., expressed an opinion *obiter* that such "demand" only applied if money was extorted beforehand by the Officer as a condition of his doing his duty, but that opinion was not approved by the Court of Appeal (per Fry and Lopes, L. J. J., *Lee v. Dangar*, 1892, 2 Q. B. 337; 61 L. J. Q. B. 780; 66 L. T. 548; 40 W. R. 469; 56 J. P. 678).

V. EXTORTION.

**TAKE OR DESTROY.** — A penalty for "taking or destroying" the spawn of fish (*Bridger v. Richardson*, 2 M. & S. 568), or for "taking or killing" fish (*R. v. Mallinson*, 2 Burr. 679), means, an improper taking, and not, *e.g.*, removing spawn from one bed to another.

**TAKE PLACE.** — The mere supply of liquor to a drunken person was held as not permitting drunkenness "to take place," within s. 13, 35 & 36 V. c. 94 (per Surrey Sessions, *Smith v. Eldridge*, 48 J. P. 25); *Sr, Edmunds v. James*, cited SUFFER.

**TAKE POSSESSION.** — "Take possession," "Take effect in possession"; V. POSSESSION.

**TAKE UP.** — "Take up money at interest"; V. BORROW.  
Taking up a RISK; *V. Byas v. Miller*, 3 Com. Ca. 40.

**TAKEN.** — V. TAKE.

**TAKER.** — V. INHERITOR.

**TALE QUALE.** — *V. Wieler v. Schilizzi*, 17 C. B. 619; 25 L. J. C. P. 89; cited *Jones v. Just*, L. R. 3 Q. B. 204, 205; 37 L. J. Q. B. 94.

**TALES.** — A *Tales*, is when the Jury impannelled do not appear, or, appearing, are challenged, "in this case the Judge upon petition granteth a supply to be made by the Sheriffe of some men there present equal in reputation to those that were impannelled; and hereupon the very act of supplying is called a *Tales de circumstantibus*" (*Termes de la Ley*).

*Vh, Arch. Cr.* 177, 178: *Rosc. Cr.* 184: CHALLENGE.

**TALFOURD'S ACTS.** — 2 & 3 V. c. 54, repealed and replaced by Custody of Infants Act, 1873, 36 & 37 V. c. 12:

Copyright Act, 1842, 5 & 6 V. c. 45, which is sometimes called Earl Stanhope's Act.

**TALLAGE.** — "'Taxe, and Tallage,' are payments as tenths, fifteenes, subsidies, or such like, granted to the King by Parliament. The tenants

in ANCIENT DEMESNE are quite of these Taxes and Tallages granted by Parliament, except that the King doe taxe ancient demesne, as he may when he thinkes good for some great cause" (*Termes de la Ley, Taxe and Tallage: Vj, Cowel*). But this exemption of tenants in Ancient Demesne does not extend to local taxation levied by authority of Parliament, *e.g.* County Rate, Poor Rate, &c. for such taxation is not granted by Parliament to the Crown but is for the benefit of the particular locality (*R. v. Aylesford, 2 E. & E. 538; 29 L. J. M. C. 83*).

**TALWOOD.** — "Talwood' is a term used in the statutes of 34 & 35 H. 8, c. 3, and 7 E. 6, c. 7, and 43 Eliz. c. 14, and it signifies such wood as is cut into short billets, for the sizing whereof those statutes were made" (*Termes de la Ley*).

**TAMDIU.** — *V.* QUAMDIU.

**TANGIBLE.** — *V.* LOCALLY SITUATE.

**TAPERING.** — "Tapering,' means, gradually converging to a point" (per Ellenborough, C. J., *R. v. Metcalf, 2 Starkie, 250*); therefore, it was held in that case that, if a Patent is for a "tapering" brush and the Specification shows that the bristles of the brush would be of unequal length not converging to a point, the Patent is bad.

**TARRY.** — *V.* ELOPE.

**TASTE.** — *V.* VERTU.

**TAUT.** — *V.* TIGHT.

**TAVERN.** — *V.* ALEHOUSE: HOTEL, at end: PUBLIC HOUSE.

**TAX.** — *V.* TALLAGE: TAXES. *Cp.* IMPOST.

Quà Taxes Management Act, 1880, 43 & 44 V. c. 19, "Tax Acts,' means and includes, any Act or part of any Act relating to the Assessment, of any person land tenement heritage property or profits whatever, to the Income Tax or to the Inhabited House Duties" (s. 5).

**TAXABLE.** — Actual Value of a Railway "taxable"; *V. St. John v. Central Vermont Ry, cited VALUE*.

**TAXATION.** — *V.* DIRECT TAXATION: LOCAL TAXATION.

**TAXED.** — *V.* CHARGED: RATED OR ASSESSED.

**TAXED CART.** — *V. Williams v. Lear, 41 L. J. M. C. 76; L. R. 7 Q. B. 285; 25 L. T. 906; 36 J. P. 644; dissenting from Purdy v. Smith, 28 L. J. M. C. 150; 1 E. & E. 511; 7 W. R. 306.*

**TAXED COSTS.** — An agreement to pay a Solr's "Taxed Costs," means, *primâ facie*, that the Costs must be taxed by one of the Masters of the High Court (*Morgan v. West, 14 L. J. Ex. 3; 13 M. & W. 388*).

*V.* COSTS.

**TAXES.** — “When ‘Taxes’ are generally spoken of, — if the subject-matter will bear it, — they shall be intended Parliamentary Taxes given to the Crown” (per Holt, C. J., *Brewster v. Kidgill*, 12 Mod. 167: *Vf*; *R. v. Aylesford*, cited TALLAGE); and the word will include subsequent taxes of the same nature as those in being at the date of the document to be construed, but not those of a different nature (*Brewster v. Kidgill*, sup; nom. *Brewster v. Kitchin*, 1 Raym. Ld, 317; nom. *Brewster v. Kitchell*, 1 Salk. 198: *Vf*, Woodf. 590, 591).

The cases relating to covenants in Leases for payment of Taxes, RATES, ASSESSMENTS, IMPOSITIONS, BURDENS, CHARGES, DUTIES, and other OUTGOINGS, seem, at first sight, to run into one another; and it certainly needs a little care to harmonize them. Of course, as regards the ordinary public Taxes and the ordinary parochial Rates no difficulty of construction can well arise. Such payments would be covered by a covenant to pay Taxes and Rates. But there are a variety of things of a structural kind, — *e.g.* the cost of abating a nuisance, or of paving the path in front of the tenement, — which though primarily chargeable upon or payable by the landlord may, or may not, be thrown upon the tenant according to the more or less comprehensiveness of his covenant to pay the outgoings in respect of the property demised. It may, perhaps, be safely laid down that, where a case is not covered by authority, the growing tendency is not to throw exceptional burdens upon the tenant (esp'y where he holds at a rack-rent; *V.* per Jessel, M. R., *Allum v. Dickinson*, 52 L. J. Q. B. 191; 9 Q. B. D. 632), unless he has entered into a clear covenant to bear such burdens. And it is also probably true to say that such burdens are neither Taxes, nor Rates, nor are they “Assessments,” nor (possibly) “Impositions,” when those words are used in collocation with “Taxes” or “Rates” (*Hartley v. Hudson*, 48 L. J. C. P. 751; 4 C. P. D. 367; *Wilkinson v. Collyer*, 53 L. J. Q. B. 278; 13 Q. B. D. 1; *Tidswell v. Whitworth*, 36 L. J. C. P. 103; L. R. 2 C. P. 326): *Sr.* IMPOSITION.

The practical corollary to the last proposition is, that where a tenant's covenant only embraces “Taxes, Rates, and Assessments,” he will not be liable, thereupon, to pay for exceptional works the costs of which are, by the legislature, imposed on the landlord.

But the tenant's covenant is frequently wider than this (containing, as they are sometimes called, Words of Indemnity), and it is then that difficulty arises. To solve a difficulty of this kind a somewhat close attention to the decided cases is needed. The leading case in favour of the landlord is *Thompson v. Lapworth*, whilst that for the tenant is *Tidswell v. Whitworth*. Both cases were decided by the same Court of C. P., consisting of Bovill, C. J., and Willes, Keating, and Montague Smith, JJ., — *Thompson v. Lapworth* being a few months later than *Tidswell v. Whitworth*. Both cases are dealt with inf.

## Cases in Landlord's Favour:—

Where a lessee covenanted to pay rent free from "all parliamentary parochial and other rates, assessments, deductions, or abatements," and also to pay "all taxes, rates, *duties*, levies, assessments, and payments whatsoever which then were, or during the term might be, rated, levied, assessed, or imposed, upon or payable in respect of" the demised premises, he was held not entitled to deduct from his rent a payment made by him to a Local Board for paving, which but for the terms of the lease he would have been entitled to deduct (*Payne v. Burrigge*, 12 M. & W. 727; 13 L. J. Ex. 190: *Va, Sweet v. Seuyer*, 2 C. B. N. S. 119, *whc* had the word "Burdens"). So, where the reservation of rent was "clear of all deductions in respect of land-tax, sewers-rate, and all other taxes, rates, and deductions, whatsoever," and the tenant covenanted to "pay and discharge all taxes, rates, *duties*, and assessments, whatsoever which during the continuance of this present demise shall be taxed, assessed, or imposed, *on the tenant or landlord*, of the premises hereby demised in respect thereof, whether parliamentary, parochial, or otherwise (except property or income-tax)"; held, that these words threw the cost of paving, under 18 & 19 V. c. 120, s. 105, and 25 & 26 V. c. 102, ss. 77 and 96, on the tenant (*Thompson v. Lapworth*, L. R. 3 C. P. 149; 37 L. J. C. P. 74; 16 W. R. 312: *Wix v. Rutson*, 1899, 1 Q. B. 474; 68 L. J. Q. B. 298: *Farlow v. Stevenson*, 1900, 1 Ch. 128; 69 L. J. Ch. 106; 81 L. T. 589; 48 W. R. 213); so of expense (under same statutes) of connecting house drains with sewer (*Clayton v. Smith*, 11 Times Rep. 374).

So, where the tenant covenanted to "bear pay and discharge" certain specified taxes and rates, "and all other taxes, rates, *duties*, and assessments, whatsoever, whether parliamentary, parochial, or otherwise, taxed, charged, rated, assessed, or imposed, upon the said demised premises or any part thereof *or upon the landlords or tenants* in respect thereof"; held, that the tenant was liable to pay the expense of abating a nuisance as directed by Justices by an Order obtained by a Sanitary Authority under s. 96, P. H. Act, 1875 (*Budd v. Marshall*, 50 L. J. C. P. 24; 5 C. P. D. 481: *Vf*, DUES); and a similar conclusion was reached where the covenant omitted the italicized words (*Brett v. Rogers*, 1897, 1 Q. B. 525; 66 L. J. Q. B. 287; 76 L. T. 26; 45 W. R. 334. *Vf*, IN RESPECT OF: *Antil v. Godwin*, cited OUTGOING, p. 1378).

So, where the tenant covenanted to pay "all rates, taxes, *charges*, and assessments, whatsoever which now are or may be charged or assessed upon the said premises or any part thereof, or *upon any person* or persons in respect thereof (land tax and property tax excepted)"; held, that the tenant was liable for the expense of sewerage, levelling, paving, &c, a street, pursuant to s. 69, P. H. Act, 1848 (*Hartley v. Hudson*, 48 L. J. C. P. 751; 4 C. P. D. 367: *Cp, Rawlins v. Biggs*, inf), and so, of the

### Cases in Landlord's Favour:—

expense of remedying a Nuisance arising from the drains of the house (*Smith v. Robinson*, 1893, 2 Q. B. 53; 62 L. J. Q. B. 509; 69 L. T. 434; 41 W. R. 588).

So, where the tenant covenanted "to bear pay and discharge the sewers' rate, tithes, rent-charge in lieu of tithes, and all other taxes, rates, assessments, and *outgoings*, whatsoever which at any time or times during the said demise should be taxed, rated, charged, assessed, or imposed, upon the said demised premises, or any part thereof, or upon the landlord or tenant in respect thereof, or on the rent thereby reserved"; held, that the tenant was liable to pay for the expense of connecting his house-drain with the main sewer, pursuant to s. 10, Sanitary Act, 1866, 29 & 30 V. c. 90 (*Crosse v. Raw*, 43 L. J. Ex. 144; L. R. 9 Ex. 209: *Vf*, *OUTGOING*). So, where the words were "IMPOSITIONS and Outgoings," that covered structural works done under the Factory and Workshop Act, 1891 (*Arding v. Economic Printing Co*, 79 L. T. 622).

*Vf*, *Waller v. Andrews*, cited *SCOT*.

### Cases in Tenant's Favour.

But where the tenant covenanted "to pay and discharge all taxes, rates, assessments, and impositions, whatsoever (except property or income tax), payable IN RESPECT OF the demised premises"; held, that he was not liable to pay the expense of paving the street opposite his house, which, under the Manchester General Improvement Act, 1851, had been done by the Corporation, and charged to the landlord (*Tidswell v. Whitworth*, 36 L. J. C. P. 103; L. R. 2 C. P. 326, on *whcv*, *Farlow v. Stevenson*, sup). So, where the tenant covenanted to pay "all and all manner of taxes, rates, *charges*, assessments, and impositions, whatsoever (except land tax and landlord's property tax), at any time during the said term to be charged, assessed, or imposed, on the said premises thereby demised, or in respect thereof or of the said rent as aforesaid by authority of Parliament, or otherwise howsoever"; held, that he was not liable for the expense of abating a nuisance on the premises under the P. H. Act. 1875 (*Rawlins v. Biggs*, 47 L. J. C. P. 487; nom. *Rawlins v. Briggs*, 3 C. P. D. 368); and so of a like expense where the tenant covenanted to pay "all rates, taxes, and assessments, whatsoever which now are or during the said term shall be imposed or assessed upon the said premises, or the landlord or tenant in respect thereof, by authority of Parliament or otherwise (except the landlord's property tax)" (*Lyon v. Greenhow*, 8 Times Rep. 457). So, where (as in *Thompson v. Lapworth*, sup), a liability for the cost of paving, under the Metropolis Local Management Acts, was sought to be thrown on the tenant, the following words of his covenant were held insufficient for that purpose,—to pay "the sewers and main drainage

### Cases in Tenant's Favour:—

rates and other district rates and assessments whatsoever, whether parliamentary, parochial, or otherwise, which now are or which at any time during the said term shall be taxed, rated, charged, assessed, or imposed, upon the said demised premises or any part thereof, or upon or payable by the occupier or tenant in respect thereof" (*Allum v. Dickinson*, 52 L. J. Q. B. 190; 9 Q. B. D. 632). And a like ruling, in reference to the same statutes and in respect of a similar cost, was arrived at where the tenant covenanted to pay "all rates, taxes, and assessments, payable in respect of the premises during the tenancy (except land tax and landlord's property tax)" (*Wilkinson v. Collyer*, 53 L. J. Q. B. 278; 13 Q. B. D. 1; *Baylis v. Jiggins*, 1898, 2 Q. B. 315; 67 L. J. Q. B. 793; 79 L. T. 78).

V. ASSESSED: CHARGED: IMPOSED: RATED OR ASSESSED: EXPENSES.

### How the Cases may be Reconciled.

It will be observed that the covenant in *Payne v. Burridge*, *Thompson v. Lapworth*, *Budd v. Marshall*, and *Brett v. Rogers* threw on the tenant the burden of paying all "Duties"; and the comprehensiveness of that word is especially pointed out in the judgments of Bramwell and Baggallay, L. J., in *Budd v. Marshall*. In *Hartley v. Hudson* the tenant covenanted to pay all "Charges"; whilst in *Crosse v. Raw* and *Arding v. Economic Printing Co* there was the still more comprehensive word "Outgoings."

On the other hand, in the cases (except *Tidswell v. Whitworth* and *Raclins v. Biggs*) where the tenant escaped, the covenant did not go beyond "Rates, Taxes, and Assessments" (as the controlling words), and exceptional payments of the kind under discussion are not comprised in either term of that phrase. As to *Tidswell v. Whitworth*, V. IMPOSITION.

Besides, in some of the landlord cases, the words of the tenant's covenants provided for the payment by him of the obligations, *whether charged on the landlord or tenant*; whilst in the tenant's cases (except *Baylis v. Jiggins* and *Lyon v. Greenhow*) the covenant was either silent as to this, or only embraced such obligations as were "payable by the occupier or tenant." The importance of this distinction is pointed out by Lindley, J., in *Hartley v. Hudson*; but in *Baylis v. Jiggins* (sup) Channell, J., referred to this distinction as a dictum only, and refused to hold the tenant liable though the words there were "rates, taxes, and assessments . . . which shall be imposed or assessed upon the premises, or the landlord or tenant in respect thereof, by authority of Parliament or otherwise": *Va*, *Lyon v. Greenhow*, sup. Indeed, it is difficult to see how such merely adjectival phrases as those just italicized can enlarge



### How the Cases may be Reconciled:—

the essential meaning of the substantive words to which they are added so as to vary the meaning of those words.

It remains to notice *Rawlins v. Biggs* (one of the tenant's cases). *Hartley v. Hudson* shows that such an exceptional payment as now under discussion is a "Charge," and it seems a little difficult to see how the learned judge who decided *Hartley v. Hudson* was able to say in *Rawlins v. Biggs* that it was not "charged, assessed, or imposed, on the premises thereby demised, or in respect thereof."

As to Contracts in Leases as to Taxes, &c; *Vf*, CHARGED: Woodf. ch. 15 *et seq*: Redman, ch. 5, s. 16: Fawcett, ch. 4, s. 9.

It is held, in Ireland, that a Lessee's covenant to pay rent "clear and above all Taxes, Charges, and Impositions whatsoever (Quit Rent and Crown Rent excepted)," only includes charges on the property, and does not exonerate the Lessor from his liability, in Ireland, to a deduction for Poor Rate, that being a personal burden (*Palmer v. Power*, 4 Ir. Com. Law Rep. 191); and, by a like reason, where the Lessor covenants to pay "all Taxes, Charges, and Impositions," the Lessee cannot deduct a Local Improvement Rate levied on him under s. 167, Towns Improvement Clauses Act, for that also is a personal burden, and the Lessor is not liable to its deduction (*Gloster v. Murphy*, 1894, 2 I. R. 49). *Vf*, OVER AND ABOVE.

### In Wills.

As to when a testamentary direction to pay Income free of Taxes will include Income Tax; *V*. DEDUCTION: 1 Jarm. 187, *n*. Such a direction will include Legacy Duty (*Louch v. Peters*, cited OUTGOING, p. 1380). As to exemption from apportionment of Estate Duty, *V. Fitzhardinge v. Jenkinson*, cited DEDUCTION, p. 485.

A direction, in a Will, to make deductions from the income of a tenant for life for "Taxes or otherwise," will include the cost of drainage works under s. 73, Metrop Man. Act, 1855 (*Re Crawley, Acton v. Crawley*, 54 L. J. Ch. 652; 28 Ch. D. 431; 52 L. T. 460; 33 W. R. 611; 49 J. P. 598).

"Rates, Taxes, and Deductions," quâ a statutory sum in lieu of Tithes; *V. Chatfield v. Ruston*, cited OUTGOING, p. 1378.

*V*. PARLIAMENTARY: PAROCHIAL TAX: PUBLIC TAX.

**TAXING MASTER.**—Quâ R. S. C. " 'Taxing Master,' or 'Taxing Officer,' refers to and includes the Masters of the Supreme Court for the time being acting as Taxing Masters of the Taxing Department of the Central Office of the Supreme Court, or other person whose duty it is to tax costs in any Division or Department of the Supreme Court "

(R. I. Ord. 71, as amended by R. S. C. January, 1902). Quà Supreme Court Fund Rules, 1894, " 'Taxing Officer' means, Taxing Master in the Chancery Division of the Court, and the Master, or person whose duty it is to tax the Costs, in the other Divisions, or in Lunacy," it being added that, in causes and matters in a District Registry, " Taxing Officer " means District Registrar (R. 3: on *whr*, *Wilson v. Alltree*, 53 L. J. Ch. 989; 27 Ch. D. 242; 32 W. R. 897).

In a County Court, the Taxing Officer is the Registrar (s. 118, Co. Co. Act, 1888).

**TAYLOR'S ACT.** — Michael Angelo Taylor's Act, is 57 G. 3, c. xxix: *Vth. Gard v. Commrs of Sewers*, 54 L. J. Ch. 698; 28 Ch. D. 486; 52 L. T. 827: *Summers v. Holborn*, 1893, 1 Q. B. 612; 62 L. J. M. C. 81; 68 L. T. 226; 41 W. R. 445; 57 J. P. 326: *Wyatt v. Gems*, 1893, 2 Q. B. 225; 62 L. J. M. C. 158; 69 L. T. 456; 42 W. R. 28; 57 J. P. 665: *Keep v. St. Mary, Newington*, 1894, 2 Q. B. 524; 63 L. J. Q. B. 369; 70 L. T. 509; 58 J. P. 748.

V. OBSTRUCT.

**TEA.** — Tea Dealer; *V. Fitz v. Hes*, cited COFFEE-HOUSE.

V. GREEN TEA.

**TEACH AND INSTRUCT.** — In the case of an outdoor apprenticeship there is an implication that the master is to perform his covenant " to teach and instruct " at the place where he and his apprentice and the latter's parent resided at the date of the deed (*Eaton v. Western*, 52 L. J. Q. B. 41; 9 Q. B. D. 636; 47 L. T. 593: over-ruling *Royce v. Charlton*, 8 Q. B. D. 1; 30 W. R. 274); but it would seem there would be no such implication in an indoor apprenticeship (*Eaton v. Western*, sup).

**TEACHER.** — Quà Elementary Education Act, 1870, 33 & 34 V. c. 75, " 'Teacher,' includes, assistant teacher, pupil teacher, sewing mistress, and every person who forms part of the educational staff of a school " (s. 3); quà Education (Scot) Act, 35 & 36 V. c. 62, the def is the same except that it adds and begins with " schoolmaster, schoolmistress " (s. 1).

V. CERTIFICATED: CLASSED.

**TEAME.** — V. THEME.

Team of Land; V. QUADRUGATA TERRÆ.

**TEAM-WORK.** — A lessee's covenant, in an Agricultural Lease, to provide " Team-work," extends to other than agricultural work, e.g. hauling coals; but it does not oblige the lessee to find a cart, plough, or other machine, that may be necessary for the performance of the work (*Marlborough v. Osborn*, 33 L. J. Q. B. 148; 5 B. & S. 67).

**TEAR : TEARING.** — A Will may be revoked by “tearing” it (s. 20, Wills Act, 1837), a word which includes “cutting.” The “tearing,” or “cutting,” need not be of the whole Will; tearing or cutting off its principal part, *e.g.* either of the necessary signatures (*Hobbs v. Knight*, 1 Curt. 768), or even the seal, when it has been executed under seal (*Price v. Powell*, 3 H. & N. 341; *nom. Price v. Price*, 27 L. J. Ex. 409), is sufficient (1 Jarm. 141; *Va*, *Ib.* 131); but it is doubtful whether tearing in a fit of anger is a revocation, if the testator afterwards puts the pieces together as well as he can (*Re Colberg*, 2 Curt. 832), and if the tearing is only partial and (with the assent of the testator) is arrested before the material part of the Will is injured, there is no such tearing as will work revocation (*Doe d. Perkes v. Perkes*, 3 B. & Ald. 489). “Cutting out a particular clause, or the name of a legatee, is a revocation *pro tanto* only” (1 Jarm. 141). *Vh*, *Mills v. Millward*, 59 L. J. P. D. & A. 23; 15 P. D. 20.

Erasing the signature with a knife is a “tearing” that revokes (*Re Morton*, 56 L. J. P. D. & A. 96; 12 P. D. 141; 57 L. T. 501; 35 W. R. 735; 51 J. P. 680); but would that be so if the erasure were made with a pen?

**V. DESTROY : CANCEL : BURN.**

A tearing burning or destroying, effective to revoke, must be made by the testator or by his authority (*Re Leigh*, 61 L. J. P. D. & A. 124; 1892, P. 82; *Mills v. Millward*, *sup*: *Margary v. Robinson*, cited REVOKE).

**V. WEAR AND TEAR.**

**TECHNICAL.** — By s. 3, 54 & 55 V. c. 4, “Technical Education” in s. 1, Local Taxation (Customs and Excise) Act, 1890, includes both “Technical Instruction” and “Manual Instruction” within the meaning of the Technical Instruction Acts, of which phrases *quà* those Acts the def is as follows, —

“‘Technical Instruction,’ shall mean, instruction in the principles of Science and Art applicable to Industries, and in the application of special branches of science and art to specific industries or employments. It shall *not* include teaching the *practice* of any Trade or Industry or Employment; but, save as aforesaid, shall include, instruction in the branches of science and art with respect to which grants are, for the time being, made by the Department of Science and Art, and any other form of instruction (including modern languages, and commercial and agricultural subjects) which may, for the time being, be sanctioned by that Department by a Minute laid before Parliament, and made on the representation of a Local Authority that such a form of instruction is required by the circumstances of its district:

“‘Manual Instruction,’ shall mean, instruction in the use of tools, processes of agriculture, and modelling in clay wood or other material” (s. 8. 52 & 53 V. c. 76).

Those definitions are also provided for Scotland, with the addition that the sanction for Local Authority requirements may be, not only by the Department of Science and Art but also, "by the Scotch Education Department" (s. 4, 55 & 56 V. c. 63). *Vf*, 50 & 51 V. c. 64, s. 12.

For Wales and Ireland, the above definitions are blended, so that "Technical Education" quà Wales and "Technical Instruction" quà Ireland, include all that in the Acts for England and Scotland are called "Manual Instruction" as well as "Technical Instruction." So treated "Technical Instruction" quà the legislation for Ireland resembles (with some variations) that provided by 52 & 53 V. c. 76 (*Vf*. 62 & 63 V. c. 50, s. 30).

"Technical Education," quà Welsh Intermediate Education Act, 1889, 52 & 53 V. c. 40, "includes, instruction in —

- "(i) Any of the branches of science and art with respect to which grants are for the time being made by the Department of Science and Art;
- "(ii) The use of tools, and modelling in clay wood or other material;
- "(iii) Commercial arithmetic, commercial geography, book-keeping, and shorthand;
- "(iv) Any other subject applicable to the purposes of agriculture, industries, trade, or commercial life and practice, which may be specified in a scheme, or proposals for a scheme, of a Joint Education Committee as a form of instruction suited to the needs of the district;

but it shall *not* include teaching the *practice* of any Trade or Industry or Employment" (s. 17). *Cp*, INTERMEDIATE.

*V*. EDUCATION.

"Technical *School*," quà Technical Schools (Scot) Act, 1887, 50 & 51 V. c. 64, "means, a School, or department of a school, in which Technical Instruction is given" (s. 12).

**TECHNICALITY.** — *V*. EQUITY: FORMAL.

**TEINDS.** — "Court of Teinds"; *Scot*. 39 & 40 V. c. 11, s. 2.

*V*. FISH TEINDS.

**TELEGRAM.** — Quà, and by, s. 11, Post Office (Protection) Act, 1884, 47 & 48 V. c. 76, " 'Telegram,' means, a written or printed MESSAGE or Communication sent to, or delivered at, a Post Office or the Office of a Telegraph Company, for transmission by TELEGRAPH; or delivered by the Post Office or a Telegraph Company as a message or communication transmitted by telegraph."

Quà Telegraph Act, 1869, 32 & 33 V. c. 73, " 'Telegram,' shall mean, any Message or other Communication transmitted or intended for trans-

mission, by a Telegraph" (s. 3); that def is adopted for Electric Lighting Act, 1882, 45 & 46 V. c. 56 (s. 32).

V. POST LETTER.

**TELEGRAPH.** — Quà Telegraph Acts, "Telegraph," "means, a wire or wires used for the purpose of telegraphic communication, with any casing coating tube or pipe inclosing the same, and any apparatus connected therewith for the purpose of telegraphic communication"; and includes "any apparatus for transmitting messages or other communications by means of electric signals" (26 & 27 V. c. 112, s. 3; 32 & 33 V. c. 73, s. 3); a def adopted for and by s. 11, 47 & 48 V. c. 76 (V. TELEGRAM).

That def includes a Telephone (*A-G. v. Edison Telephone Co*, 50 L. J. Q. B. 145; 6 Q. B. D. 244; 43 L. T. 697; 29 W. R. 428). "The result of the definition seems to be that, any apparatus for transmitting MESSAGES by electric signals, is a Telegraph, whether a wire is used or not, and that any apparatus of which a wire used for telegraphic communication is an essential part, is a Telegraph, whether the communication is made by electricity or not. It would include, on the one hand, electric signals made, if such a thing were possible, from place to place, through the earth or the air; and, on the other hand, a set of common bells worked by wires pulled by the hand, if they were so arranged as to constitute a code of signals. . . . The various affidavits filed give a complete history of the word 'Telegraph,' and show that, from the first invention of semaphores till within the last few years, no contrivance of the sort did literally write at a distance, but that the word was applied to a variety of contrivances which, by signals perceptible sometimes by the sense of sight and sometimes by the sense of hearing, conveyed intelligence to great distances in a much shorter time than a letter could be carried" (per Stephen, J., delivering the jdgmt *S. C.* 50 L. J. Q. B. 147, 148; 6 Q. B. D. 249).

"The Telegraph Acts, 1863 to 1892"; V. Sch 2, Short Titles Act, 1896.

"Telegraph Company"; V. 32 & 33 V. c. 73, s. 3; 47 & 48 V. c. 76, s. 11.

Telegraph Post; V. Post.

Vh, 12 Encyc. 87-94.

**TELEGRAPHIC AUTHORITY.** — When a Shipbroker signs a Charter-Party as Agent for a named principal "by Telegraphic Authority," it is well understood in the trade that he negatives an implication of a warranty of the extent of his authority further than warranting that he has had a telegram which, if correct, authorizes such a Charter as that which he is signing (*Lilly v. Smales*, 1892, 1 Q. B. 456; 40 W. R. 544).

**TELEGRAPHIC LINE.** — Quà Telegraph Acts, “ ‘Telegraphic Line,’ means, telegraphs, posts, and any work (within the meaning of the Telegraph Act, 1863), and also any cables, apparatus, pneumatic or other tube, pipe, or thing whatsoever, used for the purpose of transmitting telegraphic Messages, or maintaining telegraphic communication; and includes, any portion of a telegraphic line ” as above defined (s. 2, 41 & 42 V. c. 76); a def adopted for Electric Lighting Act, 1888, 51 & 52 V. c. 12 (subs. 5, s. 4), and for Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19 (Sch, s. 1), which latter also provides that a Telegraphic Line “ shall be deemed to be INJURIOUSLY AFFECTED, where telegraphic communication by means of that line is, whether through induction or otherwise, in any manner affected.”

**TELEPHONE.** — *V.* MESSAGE: TELEGRAPH: TRANSMIT.

**TEMPERANCE.** — Temperance Hotel; *V.* HOTEL: INN.

**TEMPERATE.** — *V.* SOBER AND TEMPERATE HABITS: STRICTLY TEMPERATE.

**TEMPEST.** — “ Damage by Tempest ”; *V.* WEAR AND TEAR.

**TEMPORAL.** — Corporation Temporal; *V.* CORPORATION.

A Testamentary gift of “ Temporal *Effects*,” held to include realty (*Re Sheridan*, 17 L. R. Ir. 179).

“ Temporal *Estate* ” is synonymous with WORLDLY ESTATE. *Vf*, *Tanner v. Wise*, 3 P. Wms. 295; nom. *Tanner v. Morse*, Ca. t. Talb. 284; *Grayson v. Atkinson*, 1 Wils. 333, *whic* is commented on 1 Jarm. 724. These cases show that a devise of all testator’s “ Temporal Estate,” or “ Worldly Estate,” would even before s. 28, Wills Act, 1837, pass the FEE SIMPLE.

“ ‘ Law temporal.’ Which consisteth of three parts, viz. First, on the Common Law, expressed in our bookes of law, and judicvall records. Secondly, on Statutes contained in acts and records of parliament. And thirdly, on Customes grounded upon reason, and used time out of minde; and the construction and determination of these doe belong to the judges of the realme ” (Co. Litt. 344 a). *Cp*, “ Law spiritual,” sub SPIRITUAL.

**TEMPORALITY.** — “ Temporalities of Bishops, *Temporalia Episcoporum*, be such revenues lands and tenements, and lay fees, as have been laid to Bishops Sees by Kings and other great Personages of this Land from time to time, as they are Barons and Lords of the Parliament ” (Cowel).

Quà Bishops Resignation Act, 1869, 32 & 33 V. c. 111, “ ‘ Temporalities,’ shall include, all real and personal property held by any Archbishop or Bishop, as such, and all fees and emoluments receivable by him by

virtue of his office: 'Spiritualities,' shall include, all episcopal and other jurisdiction, of whatever description, exercisable by an Archbishop or Bishop" (s. 14).

*V.* SPIRITUALITY.

**TEMPORARY.** — What is a HOLDING let "for the Temporary Convenience, or to meet a Temporary Necessity" of Landlord or Tenant which (by subs. 7, s. 58) is excepted from Land Law (Ir) Act, 1881, is a mixed question of law and fact in each case, the purpose or motive of the letting being within the knowledge of both parties at the time of making the contract (*Driscoll v. Riordan*, 16 L. R. Ir. 235). *Vf*, *Butterly v. Carroll*, 26 L. R. Ir. 93; *Mooney v. Willcocks*, 28 Ib. 113; *Hughes v. Doyne*, 32 Ib. 31.

A Temporary NUISANCE gives a Reversioner no cause of action; *Vh*, *Mumford v. Oxford, &c, Ry*, 25 L. J. Ex. 265; 1 H. & N. 34; *Mott v. Shoolbred*, 44 L. J. Ch. 380; L. R. 20 Eq. 22; *Jones v. Chappell*, 44 L. J. Ch. 658; L. R. 20 Eq. 539; *Cooper v. Crabtree*, 51 L. J. Ch. 544; 20 Ch. D. 589.

RESIDENCE for a "Temporary Purpose," quâ Income Tax Acts; *V.* *A-G. v. Coote*, 4 Price, 183.

Temporary Stop; *V.* SUSPEND: SUSPENSE.

*Cp*, PERMANENT: TERMINATING.

**TENANCY.** — Quâ Land Law (Ir) Act, 1881, 44 & 45 V. c. 49. " 'Tenancy,' means, the interest in a HOLDING of a Tenant, and his successors in title, during the continuance of a tenancy; and 'Rent of a Tenancy,' means, the rent for the time being payable by such tenant or some one or more of his successors" (s. 57); a def adopted for 55 & 56 V. c. 65 (s. 7).

"Contract of Tenancy"; *V.* YEAR TO YEAR.

*V.* FUTURE: JOINT TENANCY: ORDINARY TENANCY: PRESENT: STATUTORY: TENANT IN COMMON.

**TENANCY IN COMMON.** — *V.* TENANT IN COMMON.

**TENANT.** — In its feudal acceptation, "Tenant" has five significations; it signifies (1) the Estate held; (2) the TENURE of the land; (3) Performance of the obligations; (4) to be bound; and (5) "to deeme or judge" (Co. Litt. 1 a, b; *Vf*, 2 Bl. Com. ch. 5).

These significations remain quâ COPYHOLD land and, to some extent, in the familiar relationship of Landlord and Tenant; but "Tenant" has come to mean, in its primary signification, ownership, one who holds or owns realty, and in that sense the word is usually associated with other words denoting the quality of the ownership, e.g. Tenant in FEE SIMPLE, Tenant in TAIL, TENANT FOR LIFE, TENANT FOR YEARS, Tenant PUR AUTRE VIE, TERRE TENANT: VASSAL.

Quà Copyhold Act, 1894, 57 & 58 V. c. 46, " 'Tenant' —

" (a) includes, all persons holding by Copy of Court Roll, or as Customary Tenants, or holding land subject to any manorial right or incident, and whether the land is held to them and their heirs or to two or more in succession, or for life or lives or years, and whether the land is held of a manor or not; and

" (b) includes, a surrenderee by way of mortgage, under a surrender entered on the Court Rolls, in possession or in receipt of the rents and profits of the land; and

" (c) where land is held in undivided shares, means, the person, for the time being, in receipt of at least two-thirds of the value of the rents and profits of the land " (s. 94).

Quà Purchase of Land (Ir) Act, 1885, 48 & 49 V. c. 73, "Tenant," includes, "a tenant holding under a FEE FARM grant" (s. 26).

In the ordinary relationship of Landlord and Tenant, "a Tenant is a person who holds of another; he does not, necessarily, occupy. In order to occupy, a party must be personally resident by himself or his family" (per Littledale, J. *R. v. Ditchet*, 9 B. & C. 183); *See*, as to the latter sentence, OCCUPATION.

The assignee of a lessee (*Doe d. Whitfield v. Roe*, 3 Taunt. 402; *Williams v. Bosanquet*, 1 Brod. & B. 238), or a sub-lessee (*Doe d. Wyatt v. Byron*, 14 L. J. C. P. 207; 1 C. B. 623; 3 Dowl. & L. 31), was a "tenant" within s. 210, Com. L. Pro. Act, 1852; and so of ss. 172, 173, *ib.*, and R. 25, Ord. 12, R. S. C.: *Vh*, LANDLORD.

Quà Agricultural Holdings (England) Act, 1883, 46 & 47 V. c. 61, " 'Tenant,' means, the holder of land, under a landlord, for a term of years, or for lives, or for lives and years, or from year to year"; and "includes, the exors, admors, assigns, legatee, devisee, or next-of-kin, husband, guardian, committee of the estate or trustees in bankruptcy, of a tenant, or any person deriving title from a tenant; and the right to receive compensation in respect of any improvement made by a tenant shall enure to the benefit of such exors, admors, assigns, and other persons as aforesaid" (s. 61). In ss. 1-28, and s. 57, "Tenant," means, "a Tenant claiming compensation *under this Act*" (per Smith, L. J., *Newby v. Eckersley*, 68 L. J. Q. B. 264), and although s. 57 says that a tenant shall not claim "OTHERWISE than in manner authorized by this Act," that only relates to a Claim made under the Act, and not where the claim is based on an outside agreement (*S. C.*, 1899, 1 Q. B. 465; 68 L. J. Q. B. 261; 80 L. T. 314; 47 W. R. 245; *Re Pearson and Anson*, 1899, 2 Q. B. 618; 68 L. J. Q. B. 878; 81 L. T. 289; 48 W. R. 154; 63 J. P. 677). *Cp.* LANDLORD: *V. HOLDING.*

Quà Agricultural Holdings (Scotland) Act, 1883, 46 & 47 V. c. 62, " 'Tenant,' means, the holder of land under a LEASE," and "includes, the exors, admors, assignees, legatee, disponee, or next-of-kin, husband,



guardian, curator bonis, or trustees in bankruptcy, of a tenant" (s. 42).  
*Cp.* LANDLORD.

"Tenant" has also received statutory definition in and for the following Acts;—

Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 V. c. 26; *V.* s. 4:

Railway Rolling Stock Protection Act, 1872, 35 & 36 V. c. 50; *V.* s. 2:

Removal Terms (Scot) Act, 1886, 49 & 50 V. c. 50; *V.* s. 3:

Sheriff Courts (Scot) Act, 1853, 16 & 17 V. c. 80; *V.* s. 50.

For the Stat. Defs. relating to the Land Laws for Ireland, *V.* 23 & 24 V. c. 153, s. 34, c. 154, s. 1; 33 & 34 V. c. 46, s. 70; 34 & 35 V. c. 92, s. 1; 44 & 45 V. c. 49, s. 57 (on *whv*, *Cowell v. Buchanan*, 30 L. R. Ir. 382); 55 & 56 V. c. 65, s. 7; 59 & 60 V. c. 47, s. 48.

To occupy "as Tenant," within the Acts conferring the parliamentary franchise, involves the idea of some permanent occupation (*e.g.* a Market Stall, *Hall v. Metcalfe*, cited OCCUPATION, p. 1313) and independent interest, and "excludes some occupations of less independence, such as of servants for their service, *e.g.* the porter to a lodge, the gardener at a dwelling in the garden, and also such as that of a surgeon to a hospital of rooms therein (*Dobson v. Jones*, 5 M. & G. 112; 13 L. J. C. P. 126), also the occupation of premises by objects of a charity, occupying under the permission of the trustees of the charity as in *Heartley v. Banks* (28 L. J. C. P. 144; 5 C. B. N. S. 40; 7 W. R. 342), and *Davis v. Waddington* (7 M. & G. 37; 14 L. J. C. P. 45)" (per Erle, C. J., *Cook v. Humber*, 31 L. J. C. P. 77; 11 C. B. N. S. 33). *Vf.*, *Rogers v. Harvey*, 5 C. B. N. S. 3; 28 L. J. C. P. 17; 7 W. R. 17: *Smith v. Seghill*, L. R. 10 Q. B. 422; 44 L. J. M. C. 114: *Hughes v. Chatham*, 1 Lutw. 57; 5 M. & G. 54; 13 L. J. C. P. 44: *Bridgewater v. Durant*, 11 C. B. N. S. 7: *Fryer v. Bodenham*, L. R. 4 C. P. 529; 38 L. J. C. P. 185; 19 L. T. 645: *Durant v. Carter*, 43 L. J. C. P. 17; L. R. 9 C. P. 261, *vthlc*, *Rowland v. Pritchard*, 62 L. J. Q. B. 319; 68 L. T. 586: *Ford v. Pyle*, 43 L. J. C. P. 21; L. R. 9 C. P. 269: *Hollands v. Chambers*, 32 L. R. Ir. 156: *Rogers*, Part 1, ch. 2. *Sv.* SERVICE.

Bankruptcy, does not deprive a tenant of his status of Occupation "as Tenant," quâ the franchisee, if, in fact, his occupation goes on undisturbedly and he continues paying the rent as before (*Maekay v. McGuire*, 1891, 1 Q. B. 250; 60 L. J. Q. B. 24; 64 L. T. 83; 39 W. R. 109; 55 J. P. 214).

"Tenant or Occupier," entitled to vote for Conservators, s. 15, Wimbledon and Putney Commons Act, 1871; *V. Purves v. Wimbledon Common Conservators*, 62 L. T. 529.

"Tenant whose term has expired"; *V.* EXPIRE.

*V.* DESIRABLE.

**TENANT AT WILL.**— "Tenant at Will is, where lands or tenements are let by one man to another, to have and to hold to him at the

will of the lessor, by force of which lease the lessee is in possession" (Litt. s. 68; *Vth*, Co. Litt. 55 a). *Vh*, *Wright v. Tracey*, and *Brew v. Conole*, cited LESS. *Cp.* SUFFERANCE.

"Tenant at Will." s. 7, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27, "applies to Tenant at Will simply, and does not include a tenancy where there is a clog upon the lessor exercising his will" (per Esher, M. R., *Warren v. Murray*, 1894, 2 Q. B. 648; 64 L. J. Q. B. 42; 71 L. T. 458; 43 W. R. 3), *e.g.* a right in equity to demand a lease for a term of years. *Vf.* "Cestui que trust," sub CESTUI.

TENANT BY THE CURTESY. — *V.* CURTESY.

**TENANT FOR LIFE.** — A Tenant for Life is, as the phrase implies, one who is entitled to the benefit of property for the term of his, or some other person's, life. "Estates for Life, expressly created by deed or grant, are where a lease is made of lands or tenements to a man, to hold for the term of his own life, or for that of any other person, or for more lives than one: in any of which cases he is stiled Tenant for Life; only, when he holds the estate by the life of another, he is usually called Tenant *PUR AUTRE VIE*" (2 Bl. Com. 120. cited by Chitty, J., *Blaydes v. Selby*, 7 Times Rep. 567). — a def which is not confined to an estate under a lease, but applies whatever be the document creating the estate.

*V.* LIVE AND RESIDE: RENT FREE: RESIDE.

Quà Settled Land Act, 1882, "The person who is for the time being, under a Settlement, beneficially entitled to POSSESSION of Settled LAND for his life, is, for the purposes of this Act, the Tenant for Life of that land, and the Tenant for Life under that settlement" (subs. 5, s. 2): *Va*, s. 58, *lb.*, for an enumeration of other limited owners who have like powers under the act as Tenants for Life. Speaking broadly, the result of these enactments is that the person intended to have the INCOME of the land, is the Tenant for Life for the time being (Co. Litt. 42 a, cited by North, J., *Re Carne*, cited OCCUPATION, p. 1312: *Re Jones*, 53 L. J. Ch. 807; 26 Ch. D. 736: *Sr*, *Re Edwards*, cited OCCUPATION); and though his title be only equitable he should (subject to reasonable safeguards) be let into possession and have the custody of the deeds (*Re Wythes*, 1893, 2 Ch. 369; 62 L. J. Ch. 663; 68 L. T. 520; 41 W. R. 375): *Vf.* *Hope v. D'Hedouville*, 1893, 2 Ch. 361; 62 L. J. Ch. 589; 68 L. T. 516; 41 W. R. 330.

As to those who are, or have the powers of, a Tenant for Life under S. L. Act, 1882, ss. 58-63 (and quà s. 63, V. s. 7, S. L. Act, 1884); *V* *Re Jones*, sup: *Re Buccleuch*, 54 L. J. Ch. 401; 55 *Ib.* 107; 31 Ch. D. 135; 53 L. T. 733; 34 W. R. 169, followed *Re Richardson*, 1900, 2 Ch. 778; 69 L. J. Ch. 804: *Re Searle*, 1900, 2 Ch. 829; 69 L. J. Ch. 712; 83 L. T. 364: *Williams v. Jenkins*, 1893, 1 Ch. 700; 62 L. J. Ch. 665; 68 L. T. 251; 41 W. R. 489: *Vine v. Rudge*, No. 2. 1896. 1 Ch. 37;

65 L. J. Ch. 103; 73 L. T. 655: *Re Pocock and Prankerd*, 1896, 1 Ch. 302; 65 L. J. Ch. 211; 73 L. T. 706; 44 W. R. 247.

On the contrary; *V. Re Hazle*, 53 L. J. Ch. 574; 54 Ib. 628; 29 Ch. D. 78; 52 L. T. 947; 33 W. R. 759: *Re Atkinson*, 31 Ch. D. 577; 54 L. T. 403; 34 W. R. 445: *Re Strangways*, 34 Ch. D. 423; 56 L. J. Ch. 195; 55 L. T. 714; 35 W. R. 83, *svthle distd*, *Re Martyn*, 69 L. J. Ch. 733; 83 L. T. 146: *Re Horne*, 39 Ch. D. 84; 57 L. J. Ch. 211; 58 L. T. 103; 36 W. R. 348: *Re Edwards*, *sup.* *Re Hazle* was on the phrase "Tenant for years determinable on Life."

*Note.* The powers of a Tenant under the S. L. Acts, are not to be prohibited or curtailed (s. 51, S. L. Act, 1882): *V. INDUCE.*

Quà, and by, s. 6, Land Transfer Act, 1897, 60 & 61 V. c. 65, "Tenant for Life" has "the same meaning as in the Settled Land Acts, 1882 to 1890"; so, quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66 (s. 95).

"Tenant for Life," s. 24, Sewers Act, 1833, 3 & 4, W. 4, c. 22, is not confined to a person holding for his own life but, includes a tenant *PUR AUTRE VIE* (*Blaydes v. Selby*, 7 Times Rep. 567).

*V.* "Tenant in Tail after possibility of issue extinct," sub *TAIL.*

As to the phrase "Tenant for life *in possession*"; *V. Re Wright to Marshall*, 54 L. J. Ch. 60; 28 Ch. D. 93; 51 L. T. 781; 33 W. R. 304.

As to constructive Gift Over on death of Tenant for Life; *V. DEATH.*

As to date of ascertaining person to take after a Tenant for Life; *V. DEATH: WIFE.*

*Vh*, 2 Bl. Com. ch. 8: *Wms. R. P.*, Part 1, ch. 1: *Goodeve*, ch. 2: 7 *Encyc.* 424-436.

**TENANT FOR YEARS.** — "If tenements be let to a man for terme of halfe a yeare, or for a quarter of a yeare," he is a Tenant for Years (Litt. s. 67); but, *semble*, that was an old ruling quà the Writ of Waste (Co. Litt. 54 b). Ordinarily, nothing less than a yearly tenancy will satisfy the phrase "Tenant for years," or "Tenant for a term of years." Thus, a yearly tenancy is enough quà Landlord and Tenant Act, 1730, 4 G. 2, c. 28, s. 1 (*Lake v. Smith*, 1 B. & P. N. R. 174); but not a weekly tenancy (*Lloyd v. Rosbee*, 2 Camp. 453), nor a quarterly tenancy (*Wilkinson v. Hall*, 3 Bing. N. C. 531).

*V. YEAR TO YEAR.*

**TENANT IN COMMON.** — "Tenants in Common are they, which have lands or tenements in fee simple, fee taile, or for terme of life, &c, and they have such lands or tenements by severall titles, and not by a joynt title, and none of them know of this his severall, but they ought by the law to occupie these lands or tenements in common, and *pro indiviso* to take the profits in common. And because they come to such lands or tenements by severall titles, and not by one joynt title, and their occupa-

tion and possession shall be by law between them in common, they are called Tenants in Common" (Litt. s. 292).

"A limitation to, or trust for, several, either nominatim or as a class, with any words implying a distinctness of interest, makes them tenants in common: Co. Litt. 188 b" (Elph. 284: *Vf*, 2 Jarm. ch. 32), e.g. EQUALLY: SHARE AND SHARE ALIKE. They take PER CAPITA.

*V.* JOINT TENANT: PARTNERSHIP: RECEIVING.

**TENANT IN TAIL.** — Tenant in Tail "is where a man holdeth certaine lands or tenements to him and to his heires of his body begotten" (Termes de la Ley, *Taile*). *V.* HEIR: HEIRS OF THE BODY: TAIL.

Quà Fines and Recoveries Act, 1833, "'Tenant in Tail,' shall mean, not only an ACTUAL TENANT IN TAIL, but also a person who (where an Estate Tail shall have been barred and converted into a BASE Fee) would have been Tenant of such estate tail if the same had not been barred" (s. 1).

Quà the same Act, "'Tenant in Tail entitled to a Base Fee,' shall mean, a person entitled to a Base Fee, or to the ultimate beneficial interest in a Base Fee, and who (if the Base Fee had not been created) would have been Actual Tenant in Tail" (s. 1).

"Tenant in Tail after possibility of issue extinct"; *V.* TAIL.

**TENANT-RIGHT.** — Away-going future crops fall strictly within the meaning of the words "Tenant-Right yet to come," as contained in a Bill of Sale (*Petch v. Tutin*, 15 L. J. Ex. 280).

*Vh.* 12 Encyc. 98-111.

**TENANT'S FIXTURES.** — *V.* FIXTURES.

**TENANTABLE REPAIR.** — Under an obligation to keep premises in "Tenantable Repair," decorative repair is not included; papering, always, and painting, unless needed for the protection of the property, are decorative repairs; nor does the obligation extend to repairing, or restoring, what is worn out by age (*Crawford v. Newton*, 36 W. R. 54: *Proudfoot v. Hart*, 59 L. J. Q. B. 389; 25 Q. B. D. 42: *Vf*, *Wood v. Walsh*, and *Stanley v. Towgood*, cited REPAIR); but Waste, whether voluntary or permissive is a breach of the obligation (*Proudfoot v. Hart*, sup). "I entirely agree with what was said by Lopes, L. J., in the course of the argument, that 'Good Tenantable Repair of a house, is such repair as (taking into account the age of the house, the character of the house, and the locality in which the house is situated) a reasonably minded tenant of the class of tenants who would be likely to want such a house might reasonably require in order to make the house fit for his occupation'" (per Esher, M. R., *Proudfoot v. Hart*, sup).

*Vf*, *Moxon v. Townsend*, 2 Times Rep. 717: per Brett, L. J., *Truscott v. Diamond Rock-Boring Co.* cited NECESSARY, p. 1254.

*Cp.* GOOD CONDITION: GOOD REPAIR: PERFECT REPAIR: REPAIR.

**TEND.** — “Tending to induce”; *V.* INDUCE.

**TENDER.** — “‘*To tender* (de *tender*),’ or *tendre*, is a word common both to the *English* and *French*, in *Latine offerre*; and in that sense, and with that *Latyn* word it is alwayes used in the common law” (Co. Litt. 211 a). *Vf*; Cowel.

As to requisites of a Tender, *V.* Co. Litt. 207 a, 208 a; Rose. N. P. 701–705; 12 Encyc. 117–121; *Blumberg v. Life Interests Corp*, 1897, 1 Ch. 171; 1898, 1 Ch. 27; 66 L. J. Ch. 127; 67 *Ib.* 118; 77 L. T. 506: UNDER PROTEST.

All the precision of a strict legal Tender is not required in “tendering” Rates to Overseers under s. 30, Rep People Act, 1832 (per Maule, J.); but merely saying “I am prepared to pay them” is not sufficient (*Bishop v. Smedley*, 15 L. J. C. P. 73; 2 C. B. 90).

In R. 48, 49, and 50, Ord. 39, B, County Court Rules, 1892, “Tender” and “Payment into Court” are used as convertible terms (*The Vulcan*, cited FINAL DECREE).

“Making or tendering”; *V.* SATISFACTION.

On a Sale by Tender, “a Tender ought to be something which takes effect of itself and binds the tenderer in any event” (per Rigby, L. J., *South Hetton Coal Co v. Haswell Co*, 67 L. J. Ch. 239); therefore, where an Invitation for tenders states that “the *Highest Net Money Tender*” will be accepted, the inviter is not bound to accept an offer of “such a sum as will exceed by (a stated amount) the amount offered” by any other tenderer (*S. C.*, 1898, 1 Ch. 465; 67 L. J. Ch. 238; 78 L. T. 366; 46 W. R. 355). *Vf*, SUBJECT TO.

“Tender his Vote”; *V.* VOTE.

**TENEMENT.** — A Tenement, is a HOLDING of real property, — using the word “holding” in its wide-meaning of the possession of realty, or of something issuing out of or being part of realty, and not as restricted by any statutory interpretation.

“‘Tenement,’ includeth, not only all corporate inheritances, which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning or annexed to or exercisable within the same . . . as, Rents, Estovers, Commons, or other Profits whatsoever. granted out of land” (Co. Litt. 20 a; applied in *Martyn v. Williams*, and *Hastings v. N. E. Ry*, cited LEASEHOLD REVERSION). *Vf*; inf.

“The most comprehensive words of description applicable to Real Estate, are ‘Tenements and Hereditaments,’ as they include every species of realty, as well corporeal as incorporeal” (1 Jarm. 777: *Vf*; Co. Litt. 6 a, 19 b, 20 a). And it is said that “by the grant of all Tenements, will pass as much as by the grant of all Hereditaments” (Touch. 91); but hereon Preston, in his Ed. of the Touchstone, says “this proposition is too general,” and Ld Coke says that “Tenement” is a large word to grant realty, but “HEREDITAMENT” is the largest (1 Inst. 6).

“ ‘Tenement,’ though in its vulgar acception it is only applied to houses and other buildings, yet in its original, proper, and legal sense, it signifies everything that may be holden, provided it be of a permanent nature; whether it be of a substantial and sensible, or of an unsubstantial ideal kind” (2 Bl. Com. 16, cited by Ld Chelmsford, *Beauchamp v. Winn*, L. R. 6 H. L. 241: *Va*, Touch. 91). Thus, this word will include a Rabbit WARREN (*R. v. Piddletrenthide*, 3 T. R. 772), or an ADVOWSON (*Westfaling v. Westfaling*, 3 Atk. 460: *Gully v. Exeter, Bp.*, 4 Bing. 290; 5 L. J. O. S. C. P. 178: *Sr*, *Kensey v. Langham*, Ca. t. Talb. 145 n. e), or statutory local Coal Duties (per Martin, B., *A-G. v. Black*, L. R. 6 Ex. 82); and may include TITHES (*Powell v. Bull*, 1 Comyn, 265: *R. v. Skingle*, 1 Stra. 100: *R. v. Barker*, 6 A. & E. 388: *R. v. Ellis*, 3 Price, 323: *Sr. R. v. Nevill*, 8 Q. B. 452; 15 L. J. M. C. 33); and includes a PROFIT A PRENDRE (*Doe d. Hanley v. Wood*, 2 B. & Ald. 724: *Muskett v. Hill*, 5 Bing. N. C. 694; 9 L. J. C. P. 201: *Martyn v. Williams*, 26 L. J. Ex. 117; 1 H. & N. 817). So, “a DIGNITY, whether it be granted of a place or not, is a ‘Tenement’ within the Statute De Donis, and consequently not forfeited on an attainder for felony” (per Chitty, J., *Re Rivett-Carnac’s Will*, 54 L. J. Ch. 1076; 30 Ch. D. 136, citing *R. v. Knollys*, 2 Salk. 509; 1 Raym. Ld, 10, and *Ferrer’s Case*, 2 Eden, 373: *Sr* this decision adversely criticized, Hood & Challis on Conveyancing, 6 ed., 277).

A Freehold RENT CHARGE, is within the words “Freehold Lands, or Tenements,” in s. 18, Rep People Act, 1832 (*Druitt v. Christchurch*, Colt. Reg. Ca. 328: *Dodds v. Thompson*, L. R. 1 C. P. 133; 35 L. J. C. P. 97; 14 W. R. 476).

“An annuity in fee, not being a rent charge, is an Hereditament, but not a Tenement; neither is a Condition a Tenement, but it is an Hereditament, 3 Rep. 2; 2 Bl. Com. 17; Salk. 239”; Tenement “doth not comprehend a personal Annuity in fee; and an Annuity for life is neither a Tenement or Hereditament; and an Office for life is a Tenement, and not an Hereditament” (Preston’s Addns. to Touch. 91).

On the other hand, “Tenement” sometimes receives its popular meaning of “HOUSE” (*Yorkshire Insrce v. Clayton*, 51 L. J. Q. B. 82; 8 Q. B. D. 421). “The common people still use the word, as in the days of Blackstone, to mean a House” (per Cotton, L. J., *Dushwool v. Ayles*, 55 L. J. Q. B. 10); or it may, even now, sometimes be the equivalent of “Dwelling-house” (*Minijie v. Banger*, 55 L. J. Q. B. 10; W. N. (85) 189; per Bramwell, B., *Cornish v. Cleife*, 3 H. & C. 450, 451; 34 L. J. Ex. 21).

“With respect to the word ‘tenements’ or *tenementa*, in Co. Litt. 20 a, it is stated, ‘This is the only word which the said Statute of Westm. 2, that created estates taile, useth; and it includeth not only all corporate inheritances, which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning or annexed to or exercis-

ible within the same, though they lie not in tenure, therefore all these without question may be intailed.' That is a proper legal definition of 'Tenement.' I think 'Tenement,' when used at all in connection with a house or room, must mean something of the same kind, or of the same character, and a thing absolutely immoveable from the land" (per Martin, B., *Fredericks v. Howie*, 31 L. J. M. C. 249; 1 H. & C. 381; 6 L. T. 544: *Vf, R. v. Manchester W. W. Co*, 1 B. & C. 630; *R. v. East London W. W. Co*, 21 L. J. M. C. 49; 17 Q. B. 512; *Colebrooke v. Tickell*, 4 A. & E. 916; 5 L. J. K. B. 180; *Sr, R. v. Shrewsbury Gas Co*, 1 L. J. M. C. 18; 3 B. & Ad. 216). In *Fredericks v. Howie*, it was held that a portable booth used by strolling players is not a "Tenement," within s. 46, Metropolitan Police Act, 1839, 2 & 3 V. c. 47, which prohibits keeping, &c, "any House or other Tenement" as an unlicensed theatre. *V. PLACE*, p. 1484.

So, "Tenement" in s. 167, Towns Improvement Clauses Act, 1847, 10 & 11 V. c. 34, means, property capable of visible and physical occupation, and does not include a Several Fishery (*Redington v. Millar*, 24 L. R. Ir. 65); and, *semble*, "Tenements," in s. 87 of the same Act, does not include Manufactories (*Lyndon v. Standbridge*, 26 L. J. Ex. 386; 2 H. & N. 45).

"Tenement," s. 3, Lands C. C. Act, 1845, as affected by its context "of any Tenure"; *V. G. W. Ry v. Swindon & Cheltenham Ry*, cited HEREDITAMENT, p. 869. *Vf, TENURE*.

"Lands, Tenements, and Heredits," 27 Eliz., c. 4, includes Copyholds (*Doe d. Tunstall v. Bottriell*, 5 B. & Ad. 131).

"Lands, Tenements, or Heredits," s. 4, Land Tax Act, 1797, 38 G. 3, c. 5, does not include a Water Co's Mains (*Chelsea W. W. Co v. Bowley*, 17 Q. B. 358; 20 L. J. Q. B. 520); but those words do comprise the arched tunnel of the Metropolitan Ry running under public roadways (*Metrop Ry v. Fowler*, 1893, A. C. 416; 62 L. J. Q. B. 553; 69 L. T. 390; 42 W. R. 270). *Vh, Southport v. Ormskirk*, cited EASEMENT, p. 596.

For a collection of cases on "Tenement" as used in Poor Relief Act, 1662, 13 & 14 Car. 2, c. 12. *V. 3 Chitty's Statutes*, 3 ed., 1034. Those decisions gave the word "a much larger construction than the legislature intended" (per Denman, C. J., *R. v. Talcaster*, 4 B. & Ad. 708).

"Lands or Tenements," s. 8, Statute of Frauds, does not comprise personality (*Nab v. Nab*, 10 Mod. 404; *Fordyce v. Willis*, 3 Bro. C. C. 577).

"Tenement," s. 23, Truck Act. 1831; *V. Chawner v. Cummings*, cited ARTIFICER.

House "divided into and let in *different* tenements," quâ Inhabited House Duty; *V. DIVIDE: London & Westminster Bank v. Smith*, 85 L. T. 747.

Dominant, contrasted with Servient, Tenement; *V. EASEMENT*.

“Tenement Factory,” “Tenement Workshop”; *V. FACTORY.*

Annual Value of “Tenement supplied with Water,” s. 68, W. W. C. Act, 1847, 10 & 11 V. c. 17; *V. Grand Junction W. W. Co v. Davies*, cited ANNUAL VALUE, p. 87.

“Other Tenements”; *V. OTHER*, p. 1364: PROPERTY OTHER THAN LAND.

**TENENDUM.** — The Tenendum of a Deed has the same office as the HABENDUM, and commences with the words “To hold”: *V. HAVE AND TO HOLD*: 2 Bl. Com. 298, 299.

**TENOR.** — “Tenor of Writs, Records, &c, is the substance or purport of them; or a Transcript or copy. Tenor of a Libel hath been held to be, a transcript which it cannot be if it differs from the libel, and *juxta tenorem* imports it; but not *ad effectum*, &c, for that may import an identity in sense but not in words: 2 Salk. 417. In action of Debt, brought upon a Judgment in an inferior court, if the defendant pleads *nul tiel record*, the Tenor of the record only shall be certified; and, by Hale, C. J., it may be the same on Certiorari’s: 3 Salk. 296. A return of the Tenor of an Indictment from London, on a Certiorari to remove the Indictment, is good by the City Charter; but in other cases it is usual to certify the record itself: 2 Hawk. P. C. ch. 27, ss. 26, 76” (Jacob).

In Libel the law attaches a technical meaning to the word “Tenor,” as signifying either an exact copy, or a statement of the Libel verbatim. “‘Tenor’ has so strict and technical a meaning as to make it necessary to recite verbatim” (*R. v. May*, 1 Doug. 194); but the expression “MANNER AND FORM” means nothing more than a substantial recital (*Wright v. Clements*, 3 B. & Ald. 503). “There is a distinction to be observed between the legal terms ‘Tenor’ and ‘Form,’ and the setting out of an instrument ‘according to the Tenor’ or ‘according to the Form.’ ‘Tenor’ has a stricter sense than ‘Form.’ In the former case, an instrument must be set out *in hęc verba*, but where a Form is to be pursued the same strictness is not required” (per Crampton, J., *Mount-Cashell v. O’Neill*, 2 Ir. Com. Law Rep. 454). In the same strict way “Tenor” is construed in America (*Commonwealth v. Stevens*, 1 Mass. 203: *Commonwealth v. Wright*, 1 Cush. 46; *People v. Warner*, 5 Wend. 273).  
*See, IN ACCORDANCE WITH THE FORM.*

The Maker of a PROMISSORY NOTE, engages that he will pay it “according to its Tenor” (s. 88, Bills of Ex. Act, 1882), *i.e.* according to its exact import (*Good v. Walker*, 61 L. J. Q. B. 736).

An allegation that an ACCEPTANCE was presented “according to its Tenor and Effect,” imports its due presentation and at its particular place of presentation (*Huffam v. Ellis*, 3 Taunt. 415; *Bush v. Kinnear*, 6 M. & S. 210).



"According to the Tenor of the *Title Deeds*," following a description of property devised, *semble*, does not enlarge the devise and is merely part of the description (*Sturgis v. Dunn*, 19 Bea. 135).

Executor "according to the Tenor" of a *Will*, is a phrase distinguishing an Exor of a Will from one thereby appointed, and means, a person not nominated as Exor but who is directed by a Will to do one or more of the acts which are competent to, and fall within the office of, the Exor nominated (*Re Manly*, 3 Sw. & Tr. 56; 31 L. J. P. M. & A. 198; *Re Punchard*, L. R. 2 P. & D. 369; 41 L. J. P. & M. 25: *et hlc*, *Re McKane*, 21 L. R. Ir. 1). For instances of such an Exor, *V. Re Manly*, sup: *Re McKane*, sup: *Re Spotten*, 5 L. R. Ir. 403; *Re Leren & Melville*, 59 L. J. P. D. & A. 35; 15 P. D. 22: *Re Wilkinson*, 1892, P. 227; 61 L. J. P. D. & A. 134; 67 L. T. 328: On the contrary, *V. Re Oliphant*, 30 L. J. P. M. & A. 82; 1 Sw. & Tr. 525: *Boardman v. Stanley*, Ir. Rep. 6 Eq. 590: *Re Punchard*, sup: *Re Lowry*, 43 L. J. P. & M. 34; L. R. 3 P. & D. 157: *Smith v. Kerrane*, Ir. Rep. 11 Eq. 447. *Vh*, Wms. Exs. 189.

**Lord TENTERDEN'S ACTS.** — Statute of Frauds Amendment Act, 1828, 9 G. 4, c. 14, amended by s. 13, 19 & 20 V. c. 97:

Prescription Act, 1832, 2 & 3 W. 4, c. 71:

Tithe Act, 1832, 2 & 3 W. 4, c. 100.

**TENTHS.** — *V. TITHES.*

**TENURE.** — "The word 'Tenure' signifies the relation of TENANT to Lord" (per Selborne, C., *A-G. Ontario v. Mercer*, 52 L. J. P. C. 85; 8 App. Ca. 767); "the service whereby lands and tenements be holden" (Co. Litt. 1 a).

For an account of the Old English Tenures, *V. Littleton's Tenures*: Co. Litt. 1-141 b: 2 Bl. Com. ch. 5: ARABANT: AUMONE: BASE: BURGAGE: CAPITE: CHIVALRY: COPYHOLD: CORNAGE: ESCUAGE: FRANK-ALMOIGN: KNIGHT'S SERVICE: SERJEANTY: SOCAGE: TERRA.

By s. 1, 12 Car. 2, c. 24, the Ancient English Tenures were abolished and turned into FREE AND COMMON SOCAGE, except Frank-Almoign and Copyhold, and some of the Honorary Services of Grand Serjeanty.

The chief Tenures of present importance are Freehold, Copyhold, Leasehold, Borough English, and Gavelkind. *Vh*, 2 Bl. Com. ch. 6: Wms. R. P., Part 1, ch. 5, Parts 3, 4: Goodeve, ch. 4, 6, 12: Scriven on Copyholds: Elton, *Ib.*: Robinson on Gavelkind: 2 Encyc. 123-128.

*Cp*, TENANT.

Land or Hereditals of "any," or "whatever" tenure; *V. HEREDITAMENT*, p. 869; LAND, pp. 1053, 1054: the cases there cited show that "tenure" has been relied on to include leaseholds for years in a definition which otherwise would have only included realty; but in *Wilson v. Hood* (3 H. & C. 148; 33 L. J. Ex. 204) the word had the converse

effect of showing that realty was included in a phrase which at first sight indicated only personalty.

*Ratione tenuræ*; *V. RATIONE.*

**TERM.**—The primary signification of "Term" is, Term for Years (*Cavanagh v. Morrisson*, 1 Fox & Smith, 81).

"It is said by my Lord Coke, that the word 'Term,' though it is more properly applied to a term for Years, yet may mean an Estate for Life, and it is plainly in this deed used in that sense: the trustees are to permit Robert Dormer to receive the profits during the term of his life; and the estate to the children is not to commence till the end, or other sooner determination, of the said term, which by referring the relative to the last antecedent, must mean the term of his life: as to the words '*Sooner Determination*,' inserted after the estate for life, these are insensible and may be rejected; they were probably thrown in, *currente calamo*, or by following a Precedent, and if the Precedent was before the Reformation, when there was a civil death (as well as a natural) by entering into religion, it might then have a meaning" (per Hardwicke, C., *Smith v. Packhurst*, 3 Atk. 137). *Va, Wrotlesley v. Adams*, 1 Plowd. 198.

The Term of a Lease may, for some purposes, end on one day, and, for other purposes, on another day (*St. Germain v. Willan*, 2 B. & C. 216).

"The word 'Term,' in a covenant in a lease, may signify either the time or the estate granted" (Woodf. 153: *Cottee v. Richardson*, 21 L. J. Ex. 52; 7 Ex. 143, 151).

"Term," in an Agreement for a Lease, will generally mean, the period or space of time agreed for; so that the actual grant of the lease is not a Condition Precedent to the stipulations relating to the "term" (*Wood v. Copper Miners' Co*, 14 C. B. 467; 23 L. J. C. P. 209: *Bowes v. Croll*, 6 E. & B. 255; 4 W. R. 484; 27 L. T. O. S. 77: *Martin v. Smith*, 43 L. J. Ex. 42; L. R. 9 Ex. 50).

"Term," s. 65, Conv & L. P. Act, 1881; *V. s. 11, Conv Act, 1882.*

Covenant not to part with "any Part of the Term"; *V. ASSIGN.*

During the Term; *V. DURING.*

Where a "Term" of periods of time is spoken of, successive time is implied. Therefore, residence for "a term of 3 years," to give a Pauper Settlement under s. 34. 39 & 40 V. c. 61, must be for three whole consecutive years, without receiving relief or otherwise coming within the proviso to s. 1, 9 & 10 V. c. 66 (*Dorchester v. Weymouth*, 55 L. J. M. C. 44; 16 Q. B. D. 31; 54 L. T. 52; 50 J. P. 310: *St. Olave's v. Canterbury*, 1897, 1 Q. B. 682; 66 L. J. Q. B. 471; 76 L. T. 517; 45 W. R. 529; 61 J. P. 371, *whic* over-rules *R. v. Hartfield*, 21 L. J. M. C. 65; 17 Q. B. 746). *V. PATIENT.*

"Estate, Term, and Interest"; *V. ESTATE AND INTEREST.*

**TERM CERTAIN.**—"Term or number of years certain," 1 G. 4, c. 87, s. 1;—a tenancy for 99 years determinable on lives is not within

this phrase (*Doe d. Pemberton v. Roe*, 7 B. & C. 2; 5 L. J. O. S. K. B. 289), nor is a tenancy from quarter to quarter determinable by a 3 months' notice, or on the tenant losing his beer license (*Doe d. Carter v. Roe*, 12 L. J. Ex. 27; 10 M. & W. 670).

**TERMINABLE.** — Terminable Annuities; *V. Sch*, National Debt and Local Loans Act, 1887, 50 & 51 V. c. 16. *Cp*, PERPETUAL ANNUITY.

"Terminable Mortgage," quâ 50 & 51 V. c. 23, "means, any mortgage created for securing the repayment of any loan by annual instalments. payments in the nature of a rent-charge, or otherwise, in a limited number of years" (s. 3).

**TERMINAL.** — "Consumer's Terminals," quâ Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, "means, the ends of the electric lines, situate upon any consumer's premises and belonging to him, at which the supply of ENERGY is delivered from the Service Lines" (Sch, s. 1). *V. CONSUMER.*

"Terminal Charges," quâ Ry and Canal Traffic Act, 1888, "includes, charges in respect of stations, sidings, wharves, depots, warehouses, cranes, and other similar matters, and of any services rendered thereat" (s. 55). *Cp*, "Services incidental," sub INCIDENTAL: EXTRAORDINARY SERVICES.

"Terminal Station," quâ Manchester, S. & L. Ry, does not include "a Junction between the Railway and a SIDING not belonging to the Co, or (in respect of merchandize passing to or from such siding) any station with which such siding may be connected": *Vh, Manchester, S. & L. Ry v. Pidcock*, 10 Ry & Can Traffic Ca. 150; *Pidcock v. Manchester, S. & L. Ry*, 9 Ib. 45.

**TERMINATE.** — An agreement for letting whereby the landlord agreed that he would not "raise the rent, nor terminate the tenancy" of the tenant or his wife; held, a demise for the lives of the tenant or his wife (*Mardell v. Curtis*, 43 S. J. 587). *Vf*, MOLEST: REMAIN.

**TERMINATING.** — A "Terminating Society," quâ Building Societies Acts, "means, a Society which, by its rules, is to terminate at a fixed date, or when a result, specified in its rules, is attained; a 'Permanent Society,' means, a Society which has not, by its rules, any such fixed date or specified result at which it shall terminate" (s. 5, 37 & 38 V. c. 42).

*Cp*, PERMANENT: TEMPORARY.

**TERMINATION.** — *V. DETERMINATION.*

Termination of Risk; *V. RISK.*

**TERMS.** — "Contract which, according to the Terms thereof, OUGHT to be performed within the jurisdiction," R. 1 (e), Ord. 11, R. S. C.,

does not mean that the place of performance is to be stated in terms; it suffices if such place appears from the contract and its circumstances (*Reynolds v. Coleman*, 56 L. J. Ch. 903; 36 Ch. D. 453; 57 L. T. 588; 35 W. R. 813). *Vf*, WITHIN THE JURISDICTION.

"On such Terms," &c; *V*. JUST.

In an agreement between two Ry Companies giving Running Powers to one Co over the other's lines "on Terms to be agreed on," "Terms" includes, not only the money payment but, the traffic arrangements necessary for regulating the joint traffic (*Swansea Improvements Co v. Swansea & Mumbles Ry*, 3 Ry & Can Traffic Ca. 339, 359). *Vh*, *Taff Vale Ry v. Barry Dock & Ry Co*, 7 Ib. 52.

*V*. MODERATE TERMS: SAME: USUAL.

**TERRA.** — "'Terra' was formerly used as the ordinary term of a grant of an extensive territory" (per James, arg. *Beaufort v. Swansea*, 3 Ex. 415); "it may embrace, as appears from the authorities cited by Mr. James, as much as the word 'MANOR' may" (per Parke, B., Ib. 425).

Terra Affirmata, — Land let to farm (Jacob).

Terra Assisa, — *V*. ASSISUS.

Terra Boscalis, — Woody lands (Jacob).

Terra Culta, — Land tilled or manured; Inculta, uncultivated (Cowel).

Terra Debilis, — Weak or barren ground (Jacob).

Terra Dominica, — *V*. DEMESNE.

Terra Excultabilis, — Land that may be tilled (Cowel).

Terra Frusca, — Land that hath not lately been ploughed (Cowel).

Terra Giliforata, — Land held by the payment of a gilliflower (Cowel).

Terra Hydata, — Land subject to payment of hydage (Jacob).

Terra Inculta, — *V*. Terra Culta, sup.

Terra Lucrabilis, — Land gained from the Sea, or enclosed from a Waste (Cowel).

Terra Nova, — Land newly converted from Wood to Arable (Cowel).

Terra Puturata, — Forest land held by the tenure of furnishing meat to the Keepers of the forest (Cowel).

Terra Regis, — *V*. ANCIENT DEMESNE.

Terra Sabulosa, — Gravelly or sandy ground (Cowel).

Terra Testamentalis, — Land deviseable by Will (Jacob).

Terra Vestita, — Land sown with corn (Cowel).

Terra Villanorum, — *V*. NEATLAND.

Terra Wainabilis, — Tillable land (Cowel: Jacob). *Cp*. PLOW-LAND.

Terra Warcennata, — Land having Free Warren (Jacob).

*I*. LAND: PORCA TERRÆ: QUADRUGATA TERRÆ: QUARENTENA TERRÆ.

**TERRAGE.** — A customary due "for the necessary unloading of goods before they come up to the common quay" (Hale, *De Portibus Maris*, ch. 6).

**TERRE TENANT.** — “Tenants of the Freehold,” as distinguished from Tenants for Years, “always are in law intended within these words Tertenants” (*Brediman’s Case*, 6 Rep. 58 b; cited *Re Herbage Kents Charity*, 1896, 2 Ch. 820; 65 L. J. Ch. 878). “‘Terre Tenant,’ is he who has the actual possession of the land, which we otherwise call the OCCUPATION” (Cowel: *Vf*, 2 Bl. Com. 91); but that is a misconception, for “it appears from a note to *Jeffreson v. Morton* (2 Saund. 9, n 9) that it generally means, the owner of the FREE SIMPLE” (per Crampton, J., *Carroll v. Cooke*, 1 Jebb & Sy. 41).

**TERRESTRES.** — *V. FOWL.*

**TERRIER.** — “‘Terrar,’ *Terrarium vel catalogus terrarum*, is a Book or Roll, wherein the several Lands either of a single Person, or of a Town, are described, containing the quantity of Acres, Boundaries, Tenants Names, and such like, 18 Eliz. c. 17” (Cowel). *V. R. v. Hall*, cited COMMUNICANT, as to the admissibility in evidence of an ancient terrier.

*V. INVENTORY.*

**TERRITORIAL WATERS.** — Quà Territorial Waters Jurisdiction Act, 1878, 41 & 42 V. c. 73, “‘the Territorial Waters of Her Majesty’s Dominions,’ in reference to the SEA, means, such part of the Sea adjacent to the Coast of the United Kingdom, or the coast of some other part of Her Majesty’s Dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty; and, for the purpose of any offence declared by this Act to be within the jurisdiction of the Admiral, any part of the Open Sea within 1 marine league of the coast, measured from low-water mark, shall be deemed to be Open Sea within the Territorial Waters of Her Majesty’s Dominions” (s. 7).

That def is adopted quà North Sea Fisheries Act, 1893, 56 & 57 V. c. 17 (s. 9).

*Vh. R. v. Keyn*, cited SEA COAST: ENGLAND: REALM: 12 Encyc. 131-135. *Cp.* WATERS.

**TERROR.** — *V. DURESS.*

**TEST.** — Corporation and Test Act; *V. RUSSELL’S ACTS.*

Test Action; *V. Amos v. Chadwick*, 47 L. J. Ch. 871; 9 Ch. D. 459; *Bennett v. Bury*, 49 L. J. C. P. 411; 5 C. P. D. 339.

Test Ballot; *V. Britt v. Robinson*, cited PROCURE.

**TESTAMENT.** — “A Testament is the true declaration of our last Will, of that wee would to be done after our death” (*Termes de la Ley*). *Vf*, *Lemage v. Goodban*. 35 L. J. P. & M. 30; L. R. 1 P. & D. 62; per Davey, L. J., *Re Elcom*. 1894, 1 Ch. 303; 63 L. J. Ch. 397; 70 L. T. 54; 42 W. R. 279.

Littleton (s. 167) uses "Testament" as applicable to a devise of lands and tenements: but Coke's commentary thereon is, "But in law most commonly, *ultima voluntas in scriptis* is used, where lands or tenements are devised, and *testamentum*, when it concerneth chattels" (Co. Litt. 111 a). *Vf*, Wms. Exs. 6: DEVISE.

"Testament" includes a Will, CODICILS, &c; "Instrument" signifies the Will alone (*Fuller v. Hooper*, 2 Ves. sen. 242). *V*. INSTRUMENT: PART. p. 1412: WILL: WRITING.

A testamentary gift to an individual or a class, in like manner as he or they are entitled under the "Will" of A.; there, "Will" means, the whole testamentary instruments including codicils (*Pigott v. Wilder*, 26 Bea. 92).

A Deed of Gift executed as a Will and proved by extrinsic evidence to be intended to operate after the death of the grantor, is entitled to probate as a Will (*Re Slinn*, 59 L. J. P. D. & A. 82; 15 P. D. 156). *Vf*, *Milnes v. Foden*, 59 L. J. P. D. & A. 62; 15 P. D. 105.

Stat. Def. — New Parishes Act, 1844. 7 & 8 V. c. 94, s. 7.

As to when a Will is to be construed as *Conditional*, *i.e.* to take effect on the happening or not happening of a certain event, *V. Re Spratt*, 1897, P. 28; 66 L. J. P. D. & A. 25; 75 L. T. 518; 45 W. R. 159, in *whc* *Jeune*, P., reviewed the previous cases: *Halford v. Halford*, 1897, P. 36; 66 L. J. P. D. & A. 29; 75 L. T. 520.

*Note.* A Will speaks from the death of the testator unless a CONTRARY INTENTION appears (s. 24, Wills Act, 1837); as to Deeds, &c, *V*. FROM HENCEFORTH.

**TESTAMENTARY CAPACITY.** — *V*. UNSOUND MIND: UNDUE INFLUENCE.

**TESTAMENTARY ESTATE.** — This phrase in a gift of "personal and testamentary estate" carries the realty, as otherwise it would be inoperative (*Smith v. Coffin*, 2 Bl. H. 444; *Roe d. Penwarden v. Gilbert*, 3 Brod. & B. 85; *Doe d. Evans v. Walker*, 19 L. J. Q. B. 293; 15 Q. B. 28; 1 Jarm. 725). In *thlc* *Campbell*, C. J., said, "I think the words 'my Testamentary Estate' mean to include all that I can dispose of. They are *primâ facie* sufficiently large to carry both the realty and personalty."

*V*. ESTATE.

**TESTAMENTARY EXPENSES.** — "Testamentary Expenses," are those which are incident to the proper performance of the duty of an executor (*Sharp v. Lush*, 48 L. J. Ch. 231; 10 Ch. D. 468: *Vh. Brougham v. Poulett*, 19 Bea. 134: *Re Young*, 44 L. T. 499), including the Probate Duty, and (possibly) Estate Duty when it is the substitute for Probate Duty, *i.e.* so far as Personal Estate is concerned (*Re Clemow*, 1900, 2 Ch. 182; 69 L. J. Ch. 522; 82 L. T. 550; 48 W. R. 541: *Re*

*Treasure*, 1900, 2 Ch. 648; 69 L. J. Ch. 751; 83 L. T. 142; 48 W. R. 696); *secus*, of Estate Duty quâ Real Estate (*Re Palmer*, W. N. (1900) 9; *Re Sharman*, 1901, 2 Ch. 280; 70 L. J. Ch. 671). The phrase does not include the costs of a Transfer of Mtge (*Sewell v. Bishop*, 68 L. T. 323; 62 L. J. Ch. 615).

The costs of all proper parties to proceedings for determining the scope of, or ascertaining the persons entitled to, a Gift, are "testamentary expenses," especially when the difficulty arises from the language of the Will (*Morrell v. Fisher*, 4 D. G. & S. 422; *Re Groom*, 1897, 2 Ch. 407; 66 L. J. Ch. 778; 77 L. T. 154; *Re Baumgarten*, 82 L. T. 711); but, generally, the costs of ascertaining the person entitled to a legacy, &c, are payable thereout (R. 14 b, Ord. 65, R. S. C.: *Re Lyckett*, 13 Times Rep. 373).

The costs of an Administration Action are "testamentary expenses" (*Miles v. Harrison*, 43 L. J. Ch. 585; 9 Ch. 316; *Harloe v. Harloe*, 44 L. J. Ch. 512; L. R. 20 Eq. 471; 33 L. T. 247, in *whic* Hall, V. C. refused to follow *Gilbertson v. Gilbertson*, 34 Bea. 354, and *Stringer v. Harper*, 26 Ib. 585; 28 L. J. Ch. 643; *Miles v. Harrison* and *Harloe v. Harloe* were followed in *Sharp v. Lush*, sup, *Penny v. Penny*, 48 L. J. Ch. 691; 11 Ch. D. 440, and in *Re Chapman*, 71 L. T. 778; 11 Times Rep. 94; *Va, Lees v. Lees*, Ir. Rep. 6 Eq. 259; *Broune v. Groombridge*, 4 Mad. 495, on *whic*, *Kilford v. Blaney*, 31 Ch. D. 56; 55 L. J. Ch. 185); but where such costs are increased by the administration of real estate such increase is borne by the real estate (*Patching v. Barnett*, 51 L. J. Ch. 74; *Re Copland*, 44 W. R. 94; *Se, Re Middleton*, 50 L. J. Ch. 525; 30 W. R. 293).

So, the costs of a successful opposition to a Will (*Re Clemow*, sup), or even of an unsuccessful opposition to a Will the proof of which has been established under a compromise, one of the terms of which was that such costs should be paid out of the estate, are "testamentary expenses" (*Brown v. Burdett*, 53 L. J. Ch. 56); *secus*, where no such terms have been arranged (*Re Prince*, 1898, 2 Ch. 225; 67 L. J. Ch. 531; 47 W. R. 25), except quâ the costs of the exors in upholding the Will (*Ib.*). *Semble*, that costs of properly requiring proof of Will in solemn form (when only cross-examination and non-contentiously producing additional evidence is resorted to) would be "testamentary expenses" (per Stirling, J. *Ib.*).

In *Re Clemow* (sup) the question arose on a direction in Clemow's Will to pay his "*Widow's* testamentary expenses"; the widow died intestate; held, that the costs of obtaining Letters of Administration to her estate were part of her "testamentary expenses," although there was no testament, for " 'testament' has ceased to have its purely etymological meaning," and "testamentary expenses," in such a direction, means. expenses relating to the administration of deceased persons; the widow's estate being wholly personalty, it was also held that Estate Duty thereon was also payable by Clemow's trustees. *Vf, Re Treasure*, sup.

By s. 125 (7), Bankry Act, 1883, "testamentary expenses incurred in and about the debtor's estate" by the legal personal representative of a deceased insolvent debtor, are a preferential debt upon the estate; held, by Judge Holl at Newcastle-upon-Tyne County Court, that these words include, not merely the cost of obtaining probate but also, the reasonable expenses of investigating the position of the debtor's affairs, and generally of administering his estate prior to the bankruptcy Administration Order (*Re Turnbull*, 29 S. J. 557). The phrase also includes costs properly incurred in an Administration Action (*Re York*, 36 Ch. D. 233; 56 L. J. Ch. 552; 56 L. T. 704; 35 W. R. 609; *Re Chapman*, sup).

Funeral expenses, the ascertaining testator's debts and their amounts (including rent current at the decease), and the costs of warehousing specific legacies, are "testamentary expenses" (*Sharp v. Lush*, sup).

#### V. EXECUTORSHIP EXPENSES.

"Testamentary Expenses," s. 6, Intestates' Estates Act, 1890, 53 & 54 V. c. 29, "is merely a slip in draughtsmanship, and really means, expenses of administration" (per Chitty, J., *Re Twigg*, 1892, 1 Ch. 579; 61 L. J. Ch. 444; 66 L. T. 604; 40 W. R. 297).

**TESTAMENTARY GUARDIAN.**—Is a Guardian of an Infant appointed by Will; the need of, and the power of appointing, whom being shown and first enacted by 12 Car. 2, c. 24, which abolished Guardianship in Chivalry and converted the old tenures into FREE AND COMMON SOCAGE (1 Bl. Com. 462; Simpson on Infants, ch. 11, s. 4). By that statute the power was solely in the Father and he still has the primary authority; but the Mother, in certain cases, may, by deed or will, appoint a Guardian (s. 3, Guardianship of Infants Act, 1886). *Vf*, Eversley on Domestic Relations, Part 3, ch. 2, s. 3.

#### V. INFANT: WARD.

#### TESTAMENTARY MATTER.—*V*. MATTER.

**TESTAMENTARY OFFICE.**—Quà Probates and Letters of Administration Act (Ir) 1857, 20 & 21 V. c. 79, "The Testamentary Office,' shall mean, the Public Registry attached or belonging to Her Majesty's Court of Probate under this Act, and the offices connected therewith" (s. 2).

**TESTATOR.**—"Testator," s. 2, Real Estates Charges Act, 1867, 30 & 31 V. c. 69, has its general meaning, and applies to any deceased person who has made a Will; even where such Will has not disposed of the testator's beneficial interest in the lands upon which a lien for unpaid purchase money exists (*Dowdall v. M'Cartan*, 5 L. R. Ir. 313, 642).

#### V. INTESTATE.

**TESTATUM.**—The Testatum Clause of a Deed, is that beginning "Now this Indenture witnesseth"; the subsequent like clauses, when



there are more than one, are also testatum clauses. Its office is to witness to the operative act to be effectuated by the deed.

**TESTE.**— Its *testr*, is “that part of a Writ wherein the date is contained” (Jacob). *Vh*, 1 Bl. Com. 179, 3 Ib. 274: 12 Encyc. 136.

A Will is proved, (1) in Common Form by affidavit, or (2) Per Testes, *i.e.* in Solemn Form by calling the witnesses before the Court (2 Bl. Com. 508): *Vh*, Wms. Exs. 266, 274: COMMON FORM BUSINESS.

**TESTER.**— “Licensed Tester” of Anchors and Chain Cables, means, “every Body of persons for the time being holding a license under this Act for the testing of anchors and chain cables in respect of any testing establishment” (s. 7 (1), 62 & 63 V. c. 23). For the Bodies to be licensed, *V. s.* 5 and Sch 1, *Ib.*; and for the Tests and Mode of Testing, *V. ss.* 8, 9, and Sch 2, *Ib.*

**TESTIMONIUM.**—The Testimonium Clause of a document, is that at its end beginning with “In Witness,” or “As Witness.” *Vh*, Co. Litt. 6 a.

In Scotland, this is called the Testing Clause, on *whv*, *Blair v. Assets Co*, 1896, A. C. 409.

**TESTIMONY.**—Proof by “Testimony,” in the Civil Code of Quebec, means, proof by Oral Evidence (*Forget v. Baxter*, 1900, A. C. 467; 69 L. J. P. C. 101; 82 L. T. 510).

**TEXTILE.**— *V. FACTORY: NON-TEXTILE FACTORIES.*

**THAINUS.**— *V. TAINI.*

**THAMES.**—Quà Thames Conservancy Act, 1894, “the Thames,” means and includes, so much of the Rivers Thames and Isis, respectively, as are between the town of Cricklade, in the County of Wilts. and an imaginary straight line drawn from the entrance to Yantlet Creek, in the County of Kent, to the City Stone opposite to Canvey Island, in the County of Essex; and so much of the River Kennet as is between the common landing-place at Reading, in the County of Berks, and the River Thames; and so much of the River Lee and Bow Creek, respectively, as are below the south boundary-stones in the Lee Conservancy Act, 1868, mentioned; and all locks, cuts, and works, within the said portions of Rivers and Creeks. Provided that no dock, lock, canal, or cut, existing at the passing of this Act and constructed under the authority of Parliament and belonging to any Body Corporate established under such authority, and no bridge over the River Thames or the River Kennet belonging to or vested in any County Council or Municipal Authority or to or in any Railway Company, shall be deemed to form part of the Thames” (s. 3). For the previous defs, *V. s.* 29 & 30 V. c. 89, s. 2; 48 & 49 V. c. 76, s. 29. *V. CONSERVATOR: CREEK.*

Qua Watermen's and Lightermen's Amendment Act, 1859, 22 & 23 V. c. cxxxiii., "Thames" extends "from and opposite to and including Teddington Lock, in the Counties of Middlesex and Surrey, to and opposite to and including Lower Hope Point, near Gravesend, in the County of Kent; and to all docks, canals, creeks, and harbours, of or out of the said River, so far as the tide flows therein" (s. 8).

"Bed of the Thames"; *V. BED.*

In *Leary v. Steeves* (Times, Dec 15, 1881), where the owners of a Bill of Lading had the right to intercept the ship "at the Mouth of the Thames," the jury found that the "Mouth of the Thames" included East Oaze Buoy, off the Mouse Light; the witnesses for the Plaintiffs (in whose favour the verdict was found) stated that, in their opinion, "Mouth of the Thames" was a considerable space of water, the eastern limit of which was between Shoeburyness and Sheerness; one witness gave the western limit as a line between Foulness and Warden Point.

As to what is navigating a Steamboat "on the River"; *V. Rolles v. Newell*, cited *WORKED.*

**THANE.** — *V. TAINI:* Cowel, *Thane or Theyne.*

**THAT IS TO SAY.** — "That is to say" is the commencement of an ancillary clause which explains the meaning of the principal clause. It has the following properties: — (1) it must not be contrary to the principal clause; (2) it must neither increase nor diminish it; (3) but where the principal clause is general in terms it may restrict it: *V.* this explained with many examples, *Stukeley v. Butler*, Hob. 171: *Va, Harrington v. Pole*, Dy. 77 b, pl. 38" (Elph. 622). *Sv, Bradley v. Newcastle Pilots*, 2 E. & B. 427; 23 L. J. Q. B. 35.

A Policy on a Corn Dealer's "STOCK IN TRADE, *consisting of* corn, seed, hay, straw, fixtures, and utensils in business," was confined to these enumerated things, and did not extend to hops and matting, although such latter things would, but for the restrictive words, have come within "Stock in Trade" (*Joel v. Harvey*, 5 W. R. 488; 29 L. T. O. S. 75).

In *Gover v. Davis* (30 L. J. Ch. 505; 29 Bea. 225) a bequest of "also the whole of my PROPERTY and Effects, *that is to say*, my box, clothing, and bedding, &c, &c," was held to pass a reversionary interest in a residuary estate; and in like manner Wood, V. C., held that the wide generality of "my personal property" was not cut down by being immediately followed by "*consisting of* money and clothes" (*Dean v. Gibson*, 36 L. J. Ch. 657; L. R. 3 Eq. 713).

*V. NAMELY:* *COMPRISING:* *CONSISTING:* *VIDELICET.*

**THE.** — A Reservation of full and free liberty to take "the Coal," &c, is not exclusive (*Sutherland v. Heathcote*, cited *LIBERTY OF WORKING*).

"The Credit," in a Guarantee, points to a definite credit, — "some-

thing ascertained and known" (per Bramwell, B., *Broom v. Batchelor*, 25 L. J. Ex. 299; 1 H. & N. 255; but the majority of the Court was against him in the conclusion, partly led up to by the dictum just cited).

Where the annual value of "the *House* occupied by" a brewer does not exceed £10 the beer brewed by him is not chargeable with duty (s. 33 (3), Inland Revenue Act, 1880, 43 & 44 V. c. 20). This means the house occupied by him *in which he lives* (*Tippett v. Hart*, 52 L. J. M. C. 41; 10 Q. B. D. 483). The words italicized do not actually appear in the judgment in the case cited; but they embody its principle. — Pollock, B. observing, "It was intended to get at the status of the man who brews."

Costs out of "the *Estate*," in an Order by the H. L. in an appeal in a Probate Action; held, to mean, only the PERSONAL ESTATE, as it was only over that that the Court appealed from had jurisdiction (*Charter v. Charter*, 24 W. R. 874; 45 L. J. Ch. 705; 34 L. T. 412). But, possibly, that ruling may be varied by Part 1, Land Transfer Act, 1897.

"The *Justice*," to hear a summons under s. 31, Vaccination Act, 1867, need not be the same Justice who signed the summons (*Southcombe v. Yeovil*, 1897, 1 Q. B. 343; 66 L. J. Q. B. 294; 76 L. T. 58; 45 W. R. 318; 61 J. P. 230).

"The *Minister*"; V. MINISTER.

"The *Property*" in goods does not pass to an Indorsee in blank of a Bill of Lading (who merely takes as a pledgee), so as to render him liable for freight under s. 1, Bills of Lading Act, 1855, 18 & 19 V. c. 111; nor (*semble*, per Ld Blackburn) would any pledgee or mortgagee be so liable (*Sewell v. Burdick*, 54 L. J. Q. B. 156; 10 App. Ca. 74).

"The *Property*," when not a sufficient description in a V. & P. Contract; *V. Shardlow v. Cotterill*, cited PURCHASED: *McMurray v. Spicer*, 37 L. J. Ch. 505; L. R. 5 Eq. 527: *secus*, *Plant v. Bourne*, 1897, 2 Ch. 281; 66 L. J. Ch. 643; 76 L. T. 820; 46 W. R. 59.

"The *Railway*"; *V. Bristol & Exeter Ry v. Garton*, 8 H. L. Ca. 477; 30 L. J. Ex. 241; 3 L. T. 251.

"The *Right* to any Relief claimed," R. 1, Ord. 16, R. S. C. and R. 1. Ord. 3, Co. Co. Rules, 1889, means, that several plaintiffs may only be joined when claiming the same relief (*Smurthwaite v. Hannay*, 1894, A. C. 494; 63 L. J. Q. B. 737; 71 L. T. 157; 43 W. R. 113; *Carter v. Rigby*, 1896, 2 Q. B. 113; 65 L. J. Q. B. 537; 74 L. T. 744; 44 W. R. 566).

"The *exclusive Right*"; V. EXCLUSIVE RIGHT.

V. A.: FISHERY, p. 728: RIGHT OF SALE.

**THEATRE.** — V. Theatres Act, 1843, 6 & 7 V. c. 68, of which ss. 1, 18, and 25, and part of s. 2, were repealed by 37 & 38 V. c. 96, and part of s. 19 was repealed by 55 & 56 V. c. 19. V. PLACE, p. 1484: STAGE PLAY.

"Theatres," s. 72 (4), Licensing Act, 1872, does not include a Music Hall (*R. v. Int. Rev.*, 57 L. J. M. C. 92; 21 Q. B. D. 569; 59 L. T. 378; 36 W. R. 696; 52 J. P. 390): *Vf*, *Fredericks v. Howie*, cited PLACE, p. 1484, and TENEMENT, p. 2029.

*Vh*, 12 Encyc. 138-140: Williamson's Licensing Law.

**THEFT.** — "Theft" is a wrongfull taking away of another mans goods, but not from his person, with a mind to steal them against his will whose goods they were" (Termes de la Ley, *Larcenie*): *Vf*, TAKE AND CARRY AWAY. The taking must be *animo furandi*, "or, as the Civil Law expresses it, *lucri causa*" (4 Bl. Com. 232). For an example of what is *not* such a taking, *V. R. v. Bailey*, L. R. 1 C. C. R. 347; 41 L. J. M. C. 61; 25 L. T. 882; 20 W. R. 302: and of what *is*, *V. It. v. Middleton*, L. R. 2 C. C. R. 38; 42 L. J. M. C. 73; 28 L. T. 777.

"Theft is the act of dealing, from any motive whatever, unlawfully and without claim of right, with anything capable of being stolen, in any of the ways in which theft can be committed, with the intention of permanently converting that thing to the use of any person other than the general or special owner thereof" (Steph. Cr. ch. 35, *whv* for qualifications). *Vf*, *Rosc. Cr.* 548-594: *Arch. Cr.* 396-486; 7 Encyc. 306-319.

*Cp*, EMBEZZLE: PETTY LARCENY: RAPINE: ROBBERY. *Vf*, THIEF: THIEVES.

**THEFT-BOTE.** — *V. BOTE.*

**THEIR.** — In *Boreham v. Bignall* (19 L. J. Ch. 461; 8 Hare, 131), a substitutional gift to "their Children" was held by Wigram, V. C., as conclusively showing that one wife only of the first beneficiary was in the contemplation of the testator, and that that wife must have been the one living at the date of the Will. *V. WIFE. Va*, AT, p. 137.

"Their Children"; held to mean, "their respective children" (*Arrow v. Mellish*, 1 D. G. & S. 355: *Wills v. Wills*, cited AT THEIR DEATH).

In a covenant by two or more for themselves, "their *exs, ads, and ass<sup>s</sup>*," the word "their" is necessarily read distributively, because the parties do not anticipate that they will have the same *exs, &c*; but the word will not convert a covenant otherwise joint into a separate covenant (*Whyte, or White v. Tyndall*, 13 App. Ca. 263; 57 L. J. P. C. 114; 58 L. T. 741; 52 J. P. 675).

"Their *lives*"; *V. JOINT LIVES.*

**THELLUSSON'S ACT.** — Accumulations Act, 1800, 39 & 40 G. 3, c. 98. This Act does not derive its popular name from a legislator, but because its need was shown by the eccentric and impolitic ACCUMULATION of Income of the estate of a deceased person which the skill of

Mr. Thellusson's professional advisers enabled him, as the law then stood, to legally direct by his Will: *V. ELDEST.*

*V. LOUGHBOROUGH'S ACT.*

**THEM.** — "Them" refers to its last antecedent; and for an application of that rule, *V. Gray v. Garman*, 2 Hare, 268; 12 L. J. Ch. 259.

**THEME.** — "Theme" (sometimes written *theame* corruptly) is an old Saxon word, and signifieth *potestatem habendi in nativos sive villanos, cum eorum sequelis, terris, bonis et cutallis*. But *teame*, sometime corruptly written *theame*, is of another signification; for it is also an old Saxon word, and signifieth where a man cannot produce his warrant of that which hee bought according to his voucher" (Co. Litt. 116 a). *Vf*; Cowel, *Trame*.

*Cp.*, TEAME.

**THEN.** — "If property be given upon certain events to such persons as shall *then* be next of kin or relations of the testator, the persons standing in that relation *at the period in question*, — whether so or not (or not solely so) at the death of the testator, — are, upon the terms of the gift, entitled. But if the gift is, not to those who will then be, but to those who will or would then be entitled as, next of kin by statute, the word 'then' will be understood as referring to the period when they will be entitled in possession. The persons to take will be, not those who would have been entitled if the testator had then died but, those who would *then* be entitled if the testator, when he died, had died intestate" (2 Jarman, 139, 140).

The cases cited in Jarman for that proposition were thus dealt with by Thesiger, L. J., in *Mortimore v. Slater* (47 L. J. Ch. 136; 7 Ch. D. 329; *affd* in H. L. nom. *Mortimore v. Mortimore*, 48 L. J. Ch. 470; 4 App. Ca. 448): — "The cases seem to me to divide themselves into three classes. The first of those classes is the one where the word 'then,' as an adverb of time, is attached to the description of the class; and in that case, as in *Wharton v. Barker* (4 K. & J. 483, followed in *Valentine v. Fitzsimons*, 1894, 1 I. R. 93), and *Long v. Blackall* (3 Ves. 486), it was decided that the word 'then' imported the time at which the class so described is to be ascertained. *Wheeler v. Addams* (17 Bea. 417), is to a certain extent an exception to that rule; but I think that may be explained, because we find that in that case there is a reference in the limitation to one of the persons who had been a tenant for life before the limitation came into force.

"The second class of cases consists of those where words of futurity, but without the adverb of time, are attached to the description of the class, and in that class of cases we find no distinction drawn, but in every one of them we find that it was held that the words must speak from the

time of the testator's death. The cases cited on that point have been *Holloway v. Holloway* (5 Ves. 399), and *Doe v. Lawson* (3 East, 292).

"The third class of cases is that where the word 'then,' the adverb of time, is used, but where you find it used not in connection with the description of the class but in connection with the time at which the estate is to come into being. In that class of cases also, without any exception, we find it decided that you are to look at the class at the time of the testator's death. That is to be found in *Cable v. Cable* (16 Bea. 507), in *Bullock v. Downes* (9 H. L. Ca. 1), and in *Day v. Day* (4 Ir. Rep. Eq. 385); and it is to be observed that in all these cases we do not find that any distinction is drawn from the use of the additional words, 'as if he had died intestate,' but the point which has been looked at by the learned Judges who decided those cases has been whether the word 'then' is attached to the description of the class, or to the time when the estate is to come into possession."

"Moreover, 'then' has more meanings than one, each equally common: it may mean 'at that time' or 'in that case'; and, unless the latter meaning be excluded by the context, it will be adopted rather than construe 'next of kin according to the Statute' (the Statute being expressly referred to), as meaning something different from what the Statute says it means" (2 Jarm. 140, and cases there cited).

"Then," used twice in the same sentence, construed in the first instance as pointing to the event, and in the second as an adverb of time (*Gill v. Barrett*, 29 Bea. 372).

"Then," construed as an adverb of time, not of contingency (*Baker v. Lucas*, 1 Molloy, 481).

"Then," as an adverb of time, generally refers to the last antecedent (*Archer v. Jegone*, 8 Sim. 446; 6 L. J. Ch. 340; *Palmer v. Orpen*, 1894, 1 I. R. 32; *Re Dundalk & Enniskillen Ry*, 1898, 1 I. R. 232). *Vh*, *Heasman v. Pearse*, cited *SUCH*.

*V. Humfrey v. Humfrey*, 31 L. J. Ch. 622; 2 Dr. & Sm. 49; *Blight v. Hartnoll*, No. 2. 51 L. J. Ch. 162; 19 Ch. D. 294; *Pinder v. Pinder*, 28 Bea. 44; 29 L. J. Ch. 527; *Druitt v. Seaward*, 31 Ch. D. 234; 55 L. J. Ch. 239; 34 W. R. 180; *Re Milne*, 56 L. J. Ch. 543; 56 L. T. 852; 57 Ib. 828; *Boraston's Case*, 3 Rep. 19; Wms. Exs. 987; 84 Law Times, 114.

"Then" may be used as equivalent to "further," e.g. where there is a testamentary direction for payment of debts, and "then" a demise of lands (*Willan v. Lancaster*, 2 Jarm. 595).

#### V. THEN LIVING: EITHER.

"Then." in a Pleading, generally means, "at that time" (*V. per Bosanquet, J., Thornton v. Fenyns*, 1 M. & G. 184, 190); but sometimes it is ambiguous (*Stead v. Poyer*, 1 C. B. 782; 14 L. J. C. P. 251).

"The then VALUE"; *V. London Street Tramways Co v. London Co. Co.*, cited *TRAMWAY*.

"*Then and there*," refers to the time and place last before mentioned (*Garret v. Johnson*, 1 Raym. Id, 576: *Vh, Davies v. The King*, 10 B. & C. 89). *Cp, R. v. Brownlow*, cited INSTANTLY: *Derecourt v. Corbishley*, cited THEREUPON.

**THEN IN BEING.**—*V. Leuder v. Duffey*, 17 L. R. Ir. 279; 13 App. Ca. 294.

**THEN LIVING.**—“Where life interests are bequeathed to several persons in succession, terminating with a gift to a class of objects ‘then living,’ the word ‘then’ is held to point to the period of the death of the person last named (whether he is or is not the survivor of the several legatees for life), and is not considered as referring to the period of the determination of the several prior interests” (1 Jarm. 851 *n*, and cases there cited. *Vf, Wms. Exs.* 1331: *Watson Eq.* 1224–5. 1377: *Britnell v. Walton*, W. N. (69) 238: *Heasman v. Pearce*, cited SUCH: *Cooper v. Macdonald*, 42 L. J. Ch. 539; L. R. 16 Eq. 258: *Cobden v. Bagwell*, 19 L. R. Ir. 168: *Chitty Eq. Ind.* 7385–7388).

“Other Children then living,” may be modified by a subsequent proviso that grandchildren should take the share “the parent would have taken if living”; *V. Re Blantern*, W. N. (91) 54.

“Then living,” quâ the Rule against PERPETUITIES; *V. Re Wood*, 1894, 3 Ch. 381; 63 L. J. Ch. 790; 71 L. T. 413.

*V. LIVING: THEN.*

**THEN SURVIVING.**—Burgesses “at that time surviving and remaining,” to elect to vacancies in a Borough Council granted by Charter; held, to mean Burgesses for the TIME BEING (*R. v. Devonshire*, 1 B. & C. 618).

**THENCEFORTH.**—“Thenceforth,” after an event, has the same meaning as “FROM AND AFTER” (*Farrer v. Billing*, 2 B. & Ald. 177); and it, or its equivalent “thenceforward,” will not have a retroactive operation (*R. v. Madeley*, 15 Q. B. 49; 19 L. J. M. C. 188).

**THENECIUM.**—A hedge-row or dike-row (Cowel).

**THEOLONIO.**—A TOLL: *Vh, Holcroft v. Heel*, 1 B. & P. 400, cited arg. *Egremont v. Saul*, 6 A. & E. 924; 6 L. J. K. B. 205: *Cp. CUSTOM.* “Theolonium, is a barbarous word” (*Hill v. Priour*, 2 Show. 35).

**THERE.**—“Then and there”; *V. THEN*, at end.

**THEREABOUTS.**—By a Charter-Party a defendant undertook to load a vessel “of the measurement of 180 to 200 tons *or thereabouts*”; held, he was not exonerated because the vessel happened to be 257 tons

burthen (*Windle v. Barker*, 25 L. J. Q. B. 349; nom. *Barker v. Windle*, 6 E. & B. 675). *V.* MORE OR LESS.

“Or thereabouts,” when qualifying an estimated quantity of *Mines*, ought to be construed in the same way as if applied to the surface (*Davis v. Shepherd*, 35 L. J. Ch. 581; 1 Ch. 410; 15 L. T. 122). *V.* MORE OR LESS.

A bequest of “£3000 *or thereabouts*,” to be raised by accumulating income, is not void for uncertainty (*Oddie v. Brown*, 28 L. J. Ch. 542; 4 D. G. & J. 179, diss. Knight-Bruce, L. J.: *Vth*, 1 Jarm. 358).

*V.* SAY.

**THEREAFTER.** — “Thereafter made”; *V. Re Manning*, cited MADE, p. 1133.

*V.* HEREAFTER: SHALL, p. 1851.

**THEREAFTER TO BE BORN.** — A testamentary gift to a CLASS composed of persons who may be living at a future event, or “thereafter,” or “afterwards,” to be born, is an EXECUTORY Gift, and not a CONTINGENT Remainder, so that all the members of the class, whenever born, are entitled to share (*Miles v. Jarvis*, 52 L. J. Ch. 796; 24 Ch. D. 633, following *Re Lechmere and Lloyd*, 18 Ch. D. 524, and rejecting *Brackenburg v. Gibbons*, 2 Ch. D. 417). In *Dean v. Dean* (60 L. J. Ch. 553; 1891, 3 Ch. 150; 65 L. T. 65; 39 W. R. 568), Chitty, J., also followed, *Re Lechmere and Lloyd*, the words before him being, a devise to A. for life, and on his death to such of his children then living “as either before or after” his death should attain 21. *Vth*, *Ferguson v. Ferguson*, 17 L. R. Ir. 552: 40 & 41 V. c. 33.

**THEREBY.** — “Thereupon and thereby”; *V.* THEREUPON.

**THEREOF.** — “According to the ordinary rule of grammatical construction the word ‘thereof’ must apply to the last antecedent” (per Cockburn, C. J., *Perry v. Davis*, 3 C. B. N. S. 776).

*Vth*, *Re Phillips*, 66 L. J. Ch. 714: *Llewellyn v. Glamorgan Vale Ry*, cited OWNER, p. 1390.

**THERETO.** — “Thereto,” s. 3, Prescription Act, 1832, 2 & 3 W. 4, c. 71, does not refer to “dwelling-house,” &c, but to “access and use of light”; and “the right thereto” in the section, means, “the right to the same access and use of light to and for any dwelling-house, workshop, or other building” (per Fry, L. J., *Scott v. Pape*, 55 L. J. Ch. 432; 31 Ch. D. 554; 54 L. T. 399; 34 W. R. 465; 50 J. P. 645). *Vth*, *Greenwood v. Hornsey*, 33 Ch. D. 471.

“Thereto adjoining”; *V.* ADJOIN.

“Thereunto belonging”; *V.* BELONGING: ENJOYED.



**THERETOFORE.**—*V. R. v. G. W. Ry*, 28 L. J. M. C. 246; *Portsmouth v. Smith*, 53 L. J. Q. B. 92; 54 *Ib.* 473; 13 Q. B. D. 184; 10 App. Ca. 364.

“Theretofore usually demised”; *V. USUALLY.*

**THEREUNTO.**—*V. THERETO.*

**THEREUPON.**—It is as nearly accurate as possible to say that, in its primary sense, “thereupon” is the equivalent of “IMMEDIATELY” (*Vaughan v. Watt*, 9 L. J. Ex. 272; 6 M. & W. 492). But “whereupon” confers a right without involving the idea of any time within which it is to be claimed or enforced (*Burslem v. Attenborough*, 42 L. J. C. P. 102; L. R. 8 C. P. 122).

“Thereupon, deft gave plt in charge of a policeman,” in a Pleading; held, that “thereupon” was equivalent to “then and there” (*Derecourt v. Corbishley*, 5 E. & B. 188; *Vf*, THEN, at end); but, in another context, “thereupon” was regarded as the equivalent of “in consequence of” (*Groux Co v. Cooper*, 8 C. B. N. S. 814).

“Thereupon and thereby”; *V. these terms distinguished*, *Atkinson v. Raleigh*, 3 Q. B. 79; 11 L. J. Q. B. 165; 2 G. & D. 611.

*V. UPON.*

**THEREWITH.**—Land occupied “TOGETHER WITH” a house, &c (s. 25, Rep People Act, 1832), or House, &c, with any land “occupied therewith,” s. 27, *Ib.*; “therewith,” in that connection, has reference more to time than to locality; therefore, land at a distance from, if occupied at the same time as and used with, a house, &c, can be estimated for the purpose of making up a £10 borough qualification, provided the land and building be so occupied by the claimant during the qualifying year “as owner,” or “as tenant under the same landlord” (*Capell v. Aston*, 8 C. B. 1; *Collins v. Thomas*, 22 L. J. C. P. 38; 12 C. B. 639; 2 Lutw. 219; *Saunders v. Searson*, 50 L. J. C. P. 117; 29 W. R. 289).

“Lands held therewith,” s. 49, Lands C. C. Act, 1845; *V. Holt v. Gas Light & Coke Co*, 41 L. J. Q. B. 351; L. R. 7 Q. B. 728.

“Together with all Ways, &c, and APPURTENANCES . . . therewith used, possessed, occupied, or enjoyed, or accepted reputed taken or known as part parcel or member thereof, or as appurtenant or belonging thereunto,” “are words quite large enough to convey the adjoining road *usque ad medium filum viæ*” (per Willes, J., *Simpson v. Dendy*, 8 C. B. N. S. 468).

“Ways now used therewith”; *V. WAYS.*

*V. TOGETHER WITH.*

**THESE PRESENTS.**—A clause in a mortgage empowered the mortgagee (who was a solicitor) to charge for all business done by him “in or about these presents”; held, that this did not enable him to charge

for business relating to the mortgaged property done by him subsequent to the mortgage; " 'these presents' mean, not the property, but 'this DEED'" (per Kay, J., *Field v. Hopkins*, 59 L. J. Ch. 174; 44 Ch. D. 529; 62 L. T. 774). *V. Mortgagee's Legal Costs Act, 1895, cited PROFIT.*

**THIEF.** — To call a man a "Thief" is Slander, and needs no innuendo (*Blumley v. Rose*, 1 Roll. Ab. 73; *Slowman v. Dutton*, 10 Bing. 402; 17; Odgers, 131); but the context or circumstances may show that it was a mere vague word of abuse not actionable (Odgers, 114, 115).

*V. FELON: REPUTED THIEF: THEFT.*

**THIEVES.** — The Exception of "Thieves" in a Bill of Lading, generally means the same as in a Marine Insurance, and only applies to thieves *external* to the ship (*Taylor v. Liverpool & G. W. Steam Co.*, 43 L. J. Q. B. 205; L. R. 9 Q. B. 546; 22 W. R. 752; 30 L. T. 714). In that case Archibald, J., said (43 L. J. Q. B. 208), "No doubt these words, 'Pirates, Robbers, Thieves,' were copied originally from the ordinary Policy of Insurance, and in that Policy the word 'Thieves' refers only to a theft with violence; and as it is capable of that meaning so also it is capable of another meaning, that is, as meaning a *furtum* merely, a furtive theft. If it has that ambiguous meaning, we must consider the meaning it has finally acquired in the ordinary Policy of Insurance; and the defts (the ship-owners) not having made it clear that this is an exception for their benefit, we must hold that it has the more restrictive meaning as in the Policy of Insurance." Even if the Exception is "Thieves of whatever kind, whether on board or not, or by land or sea," it will not relieve the shipowner from liability for thefts committed by servants of the ship, *e.g.* the stevedore's men (*Steinman v. Angier Line*, 1891, 1 Q. B. 619; 60 L. J. Q. B. 425; 64 L. T. 613; 39 W. R. 392). In *this* Bowen, L. J., said, "About the middle of the 17th century the word 'Thieves' found its way into the list of marine casualties against which insurances were effected, and from this time forth there has been a recurring discussion, both in England and in America, as to the extent to which, in policies of insurance, effect ought to be given to this special stipulation. 'Robbery' imports violence; but 'Theft,' which properly speaking does not, may be of several kinds. There may be, the assailing thief from outside, the thief who breaks through and steals; there may be a thief on board among those who are lawfully on board; there may, lastly, be a thief among the crew. The controversy has principally turned upon the question whether the term 'Thieves' ought not to be confined to the first of these categories, viz. the depredators *outside* the ship."

*V. ROBBERS: ROBBERY: THEFT.*

**THING.** — *V. ARTICLE: OTHER*, pp. 1364, 1367: **THINGS.**

"Thing," in such a phrase as "Building, Erection, or Thing" in a statutory prohibition, will, generally, be read *ejusdem generis*; thus,

a lot of stones placed one upon another in the bed of a river but not fastened or cemented together, was not a "Thing" within such a phrase (*Colbran v. Barues*, 11 C. B. N. S. 246).

Destructive thing; *V.* DESTRUCTIVE.

Navigable thing; *V.* NAVIGABLE.

**THING IN ACTION.** — *V.* CHOSE IN ACTION.

**THINGS.** — A bequest of "all Things," in a particular house, will not pass bonds and other choses in action (*Popham v. Aylesbury*, 1 Amb. 68: *Vth*, Wms. Exs. 1041, *n* (l)).

A residuary bequest of "all Things not before bequeathed," will not pass testator's share in leaseholds (*Cook v. Oakley*, 1 P. Wms. 302, cited 1 Jarm. 751, *whv*). But where there was a bequest of leaseholds, household goods, wearing apparel, tools, moneys, bonds, bills and debts, "and all Things that I may possess at my decease"; held, that freeholds passed (per North, J., *Re Turner*, *Arnold v. Blades*, 36 S. J. 28, citing *Smyth v. Smyth*, 8 Ch. D. 567, 568: *See*, *Stuart v. Bute*, 1 Dow 73, in *whc* "Things" was confined to matters *ejusdem generis*).

A bequest of all "other Things," has a very wide meaning (*Trafford v. Berrige*, 1 Eq. Ca. Ab. 201). *Vf*, EVERY THING ELSE: EVERYTHING.

"Other Valuable Things"; *V.* VALUABLE, towards end.

*Cp*, EFFECTS.

"Goods, merchandize, or other things whatsoever"; *V.* OTHER, p. 1368.

"Things duly done"; *V.* DULY.

**THINK FIT.** — *V.* IF THEY SHALL THINK FIT: GENERAL POWER.

A power to Trustees to INVEST in such securities as they "think fit," means, such as they "honestly, though imprudently, think fit" (*Re Smith*, 1896, 1 Ch. 71; 65 L. J. Ch. 159; 73 L. T. 604; 44 W. R. 270; *Re Brown*, 54 L. J. Ch. 1134; 29 Ch. D. 889; *Lewis v. Nobbs*, 47 L. J. Ch. 662; 8 Ch. D. 591). *Cp*, DISCRETION.

So, a power to PARDON on such conditions as to the donee of the power "may seem fit" is not invalid on the ground that it would legalize torture and mutilation, for "barbarous practices are impliedly excluded" (*Watson's Case*, 9 A. & E. 783).

*Vf*, SEEM MEET.

In a LEASE executed under a Power to Lease "with or without fine, and rendering such rents and services as the donee should think fit," no rent whatever need be reserved (*Talbot v. Tipper*, Skinner, 427: *Re Molton*, 2 Ir. Com. Law Rep. 634; *Muskerry v. Chinerny*, L. & G. t. Sug. 185; nom. *Sheehy v. Muskerry*, 7 Cl. & F. 1; 2 Jebb & Sy. 300; 1 H. L. Ca. 576; Sug. Pow. 433-436, 816). If the power were "rendering such yearly rents" &c, possibly the rule would be different (*Talbot v. Tipper*, sup).

"As shall seem REASONABLE AND PROPER," imports as wide an authority as, "as he shall think fit" (*Taylor v. Mostyn*, 52 L. J. Ch. 853; 23 Ch. D. 583).

**THINK NECESSARY.** — *V.* NECESSARY, p. 1255.

**THINK PROPER.** — *V.* THINK FIT: REASONABLE AND PROPER: GENERAL POWER.

**THIRD.** — *V.* SEVENTH.

Third PARTV; *V.* s. 24 (3), Jud. Act, 1873: s. 6, Ord. 16, R. S. C., on *whv* Ann. Pt.

**THIRDS.** — By a Settlement a provision out of real and personal estate, was made for the wife "in lieu of Dower or Thirds"; held, the husband having died intestate, that the provision was in satisfaction of Dower out of realty and of Thirds out of personalty, and that the wife could claim nothing under the Statute of Distribution (*Thompson v. Watts*, 31 L. J. Ch. 445; 2 J. & H. 291; 6 L. T. 817); but the language of the Settlement may confine that ruling to the property comprised therein (*Sambourne v. Barry*, Ir. Rep. 6 Eq. 28).

**THIRTY-NINE ARTICLES.** — *Vh*, and as to their meanings, *Voysey v. Noble*, 40 L. J. Ecc. 11; L. R. 3 P. C. 357. The general rules for their exposition are, —

"On the one hand, to ascertain the true construction of those Articles of Religion and Formularies, referred to in each charge, according to the legal rules for the interpretation of statutes and written instruments; and, on the other hand, to ascertain the plain grammatical meaning of the passages which are charged as being contrary to, or inconsistent with, the doctrine of the Church" (per Westbury, C., delivering the jdgmt in the "Essays and Reviews" cases, *Williams v. Salisbury, Bp. and Wilson v. Fendall*, 2 Moore P. C. N. S. 424). But the Court "is not compelled, as in cases affecting the right to property, to affix a definite meaning to any given Article of Religion the construction of which is fairly open to doubt, even should the Court itself be of opinion (on argument) that a particular construction was supported by the greater weight of reasoning" (per Hatherley, C., delivering the jdgmt, *Voysey v. Noble*, 40 L. J. Ecc. 21; L. R. 3 P. C. 385). "It is a very different thing where the authority of the Articles is totally eluded, and the party deliberately declares the intention of teaching doctrines contrary to them" (per Ld Stowell, *His Majesty's Procurator v. Stone*, 1 Hagg. Con. 429); and in order to establish such a contrary teaching it is not necessary to show a contradiction, *totidem verbis*, of some passage in the Articles (*Voysey v. Noble*, sup).

**THIS.** — “This,” is a simple word of relation, and its ordinary grammatical meaning will not be extended so as to include something else than that to which it relates (*Bryson v. Russell*, 54 L. J. Q. B. 144; 14 Q. B. D. 720; 52 L. T. 208; 33 W. R. 34; 49 J. P. 293).

When a clause in an Act of Parliament speaks of “this Act,” that means, “the whole of the enactments in the Act” (per Esher, M. R., *Re Williams and Stepney*, cited SUBMISSION).

“This Act,” quâ Explosives Act, 1875, 38 & 39 V. c. 17, “includes, any license, certificate, byelaw, regulation, rule, and order, granted or made in pursuance of this Act” (s. 108).

“This Side”; *V. GIBRALTAR.*

**THOROUGHFARE.** — “Nearest Public Thoroughfare”; *V. NEAREST.*

*V. HIGHWAY: PUBLIC HIGHWAY: OBSTRUCT.*

**THOUSAND.** — Evidence of usage is admissible to show that “Thousand,” in a contract, means some other figure than 1000, *e.g.* 1200 (*Smith v. Wilson*, 1 L. J. K. B. 194; 3 B. & Ad. 728).

**THREAT.** — “It is the essence of a Threat that it be made for the purpose of intimidating, or overcoming, the will of the person to whom it is addressed” (per Lush, J., *Wood v. Bowron*, cited INTIMIDATE).

A Threat of Legal Proceedings, s. 32, Patents, Designs, and Trade Marks Act, 1883, need not relate only to acts already committed, but may also be contingent warnings directed to future acts; and is not less a Threat because made in a Solr’s letter “WITHOUT PREJUDICE” (per Kekewich, J., *Kurtz v. Spence*, 57 L. J. Ch. 238; 58 L. T. 438, explaining *Challender v. Royle*, 56 L. J. Ch. 995; 36 Ch. D. 425; *Vf. CIRCULARS*), or in a letter or notice of a general character (*Johnson v. Edge*, 1892, 2 Ch. 1; 61 L. J. Ch. 262) not referring to any patent (*Douglass v. Pintsch Co*, 75 L. T. 332; 65 L. J. Ch. 919; 45 W. R. 108). But “to threaten is one thing; to circulate threats by some one else, is another and different thing. *Primâ facie*, at all events, this statement is true. Evidence may be adduced to prove that the circulation of threats by some one else, is only a cloak to conceal threats really made by the person who circulates them” (per Lindley, M. R., *Ellam v. Martyn*, 68 L. J. Ch. 125; 79 L. T. 510; 47 W. R. 212). *Vf. Combined Weighing Machine Co v. Automatic Weighing Machine Co.* 42 Ch. D. 665; 58 L. J. Ch. 709; *Barrett v. Day*, 43 Ch. D. 435; 59 L. J. Ch. 464; *Skinner v. Shew*, 62 L. J. Ch. 196; 1893, 1 Ch. 413; 67 L. T. 696; 41 W. R. 217; **DUE DILIGENCE.** *Note:* as to Measure of Damages, *V. Skinner v. Perry*, 1894, 2 Ch. 581; 63 L. J. Ch. 826; 71 L. T. 110; **AGGRIEVED,** p. 57.

Threat “to limit the number of his Apprentices, or the number or description of his Journeymen, Workmen, or Servants,” s. 3, 6 G. 4,

c. 129: *V. Walsby v. Anley*, 30 L. J. M. C. 121; 9 W. R. 271; *Shelbourne v. Oliver*, 30 L. T. 630; *O'Neill v. Kruger*, 12 W. R. 47; *Skinner v. Kitch*, 36 L. J. M. C. 116; L. R. 2 Q. B. 393: MOLEST.

*V.* ACCUSE: BESET: INTIMIDATE: MENACE.

**THREATENING.**—*Qua* Peace Preservation (Ir) Act, 1870, 33 & 34 V. c. 9, and by s. 3 thereof, “ ‘Threatening LETTER’ and ‘Threatening NOTICE,’ shall respectively mean and include, any letter or notice written, posted, published, circulated, sent, delivered, or uttered, contrary to ” 1 & 2 W. 4, c. 44, s. 3, or 24 & 25 V. c. 97, s. 50, or 24 & 25 V. c. 100, s. 16.

**THREE ESTATES.**—The Three Estates of the REALM, are (1) the Lords Spiritual, (2) the Lords Temporal, and (3) the Commons; *V.* PARLIAMENT.

**THREE TIMES GREATER.**—Houses and Buildings are to pay Lighting Rate “Three Times Greater” than Land (s. 33, 3 & 4 W. 4, c. 90): this does not mean “greater than by three times,” but means, “three times greater than,” so that if the whole rate be treated as 6*d.*, Land would pay 1½*d.*, *i.e.* one-fourth (*R. v. Somersetshire*, 22 J. P. 431; *R. v. S. E. Ry*, 19 L. J. N. C. 121; *Vf*; *R. v. Mid. Ry*, 44 L. J. M. C. 137; L. R. 10 Q. B. 389). *V.* PROPERTY OTHER THAN LAND.

**THRESHING MACHINE.**—*V.* MACHINE: IMPLEMENT OF HUSBANDRY.

**THROAT.**—In an Indictment for Murder by cutting the “Throat” of the deceased, — “Throat” is that which is commonly called the throat, and is not confined to that part of the neck which is scientifically called the throat; therefore, the allegation is proved by showing that the jugular vein was divided, although the carotid artery was not cut (*R. v. Edwards*, 6 C. & P. 401).

**THROUGH.**—Under a grant of way from A. to B. “*in, through, and along,*” a particular way, the grantee is not justified in making a transverse road *across* the same (*Senhouse v. Christian*, 1 T. R. 560; *Vh*, *Wimbledon Common Conservators v. Dixon*, 1 Ch. D. 370; 45 L. J. Ch. 353; 24 W. R. 466; 33 L. T. 679). *V.* ACROSS.

The power enabling a Local Authority (s. 16, P. H. Act, 1875) to carry a Sewer “*into, through, or under,*” lands, is not confined to carrying it underground (*Roderick v. Aston*, 46 L. J. Ch. 802; 5 Ch. D. 328).

“*Through, over, or under,*” in a reservation of Wayleave Royalty; *V. G. W. Ry v. Rous*, L. R. 4 H. L. 650; 39 L. J. Ch. 553; 19 W. R. 169; 23 L. T. 360.

“Person through whom another person is said to claim,” *qua* Real

Property Limitation Act, 1833, means, "any person by, through, or under, or by the act of, whom the person so claiming became entitled to the estate or interest claimed as heir, issue in tail, tenant by the curtesy of England, tenant in dower, successor, special or general occupant, exor, admor, legatee, husband, assignee, appointee, devisee, or otherwise; and also any person who was entitled to an estate or interest to which the person so claiming, or some person through whom he claims, became entitled as lord by escheat" (s. 1). *V. PERSON.*

An INTERRUPTION is done by a person claiming "through" a covenantor for QUIET ENJOYMENT if such person acquires title by any act of Commission on the part of the covenantor, *e.g.* by such covenantor *consenting* to a jdgmt in an action of Ejectment by such person against him to which the covenantor had a good defence (*Cohen v. Tannar*, 1900, 2 Q. B. 609; 69 L. J. Q. B. 904; 83 L. T. 64; 48 W. R. 642); *secus*, if the covenantor's sin is one of Omission only, *e.g.* DEFAULT in performing his own covenant, or, probably, if he merely allows jdgmt to go by default against him (*Kelly v. Rogers*, 1892, 1 Q. B. 910; 61 L. J. Q. B. 604; 40 W. R. 516). *Note: semble*, that "through" is the best word for the covenantee in the phrase "claiming by, from, through, or under" the covenantor. *Vf, CLAIMING UNDER.*

"Through the Intervention"; *V. INTERVENTION.*

"Persons claiming through a Member"; *V. PERSON.*

**THROUGH TOLL.**—*V. Warwick and Birmingham Canal Nav. v. Birmingham Canal Nav.*, cited TOLL.

**THROUGH TRAFFIC.**—In a Railway sense, "LOCAL TRAFFIC," means, TRAFFIC arising and terminating on the railways of the Co spoken of: "Through Traffic," means, Traffic passing to from or over such railways from to or over the railways of any other Co: *Vh*, s. 25. Ry and Canal Traffic Act, 1888.

In an agreement by one Ry Co to work another Co's line "so as to develope and accommodate, not merely the Through Traffic, but also the Local Traffic of the district to be served by the railway,"—"Through Traffic" means, such Traffic as that for which the railway provides the shortest and most convenient route, and not that which may be more conveniently or economically carried by any other route (*Eastern & Midlands Ry v. Mid. Ry*, 5 Ry & Can Traffic Ca. 235). *Vf*, as to "Through Traffic" in an agreement, *Central Wales Ry v. Lond. & N. W. Ry*, 4 Ry & Can Traffic Ca. 101.

"Through Traffic Rate and Route," s. 11, Regulation of Railways Act, 1873, 36 & 37 V. c. 48; *V. Central Wales Ry v. G. W. Ry*, 52 L. J. Q. B. 211; 10 Q. B. D. 231; 4 Ry & Can Traffic Ca. 110, following *Greenock and Wemyss Bay Ry v. Caledonian Ry*, 3 Ry & Can Traffic Ca. 145; *Belfast Central Ry v. G. N. Ry, Ireland*, 4 Ry & Can Traffic Ca. 159. *Vf, FORWARDING CO: USING.*

**THROUGHOUT.**—Where a Vessel was to sail for her Loading Port by 15th March, “the Act of God . . . throughout this Charter-Party, always excepted,” and was prevented by an Act of God from sailing till 18th March; held, that “throughout” might exonerate the shipowner from liability for not sailing on the 15th, but did not affect the Condition upon the performance of which the charterer contracted to load the ship (*Crookewit v. Fletcher*, 26 L. J. Ex. 153; 1 H. & N. 893).

**TICKET.**—*V.* SEE BACK.

“Deliver up” his Ticket; *V.* DELIVER.

Ticket of Leave; *V.* 16 & 17 V. c. 99, s. 9; 27 & 28 V. c. 47, ss. 4, 10, and Sch A; 54 & 55 V. c. 69, s. 5.

**TIDAL LAND.**—Quà Ry C. Act, 1863, 26 & 27 V. c. 92, “‘Tidal Lands,’ means, such parts of the bed, shore, or banks, of a TIDAL WATER as are covered and uncovered by the flow and ebb of the tide at Ordinary Spring Tides” (s. 3): *V.* SHORE.

*Va.* Isle of Man Harbours Act, 1872, 35 & 36 V. c. 23, s. 3.

**TIDAL RIVER.**—“That is called an Arm of the Sea where the sea flows and reflows, and so far only as the sea flows and reflows” (Hale, *De Jure Maris*, 12; Hargr. Tracts, Pt. 1, ch. 5, p. 17 *et seq.*). Therefore, a RIVER is a Tidal River in such parts only as are within the regular ebb and flow of the highest tides (*Reece v. Miller*, 51 L. J. M. C. 64; 8 Q. B. D. 626: *Vf.* *Mussett v. Burch*, 35 L. T. 486: *Hudson v. McRae*, 33 L. J. M. C. 65; 4 B. & S. 585: *Hargreaves v. Diddams*, 44 L. J. M. C. 178; L. R. 10 Q. B. 582).

Quà Ry C. Act, 1863, “‘Tidal River,’ means, any part of a river within the flow and ebb of the tide at Ordinary Spring Tides” (s. 3). *Cp.* TIDAL LAND.

*V.* NAVIGABLE.

**TIDAL WATER.**—Quà Ry C. Act, 1863, “‘Tidal Water,’ means, any part of the SEA, or any part of a RIVER within the flow and ebb of the tide at Ordinary Spring Tides” (s. 3): to a like effect is the def in s. 3, 35 & 36 V. c. 23; s. 108, 38 & 39 V. c. 17.

Quà Mer Shipping Act, 1894, “‘Tidal Water,’ means, any part of the Sea, and any part of a River within the ebb and flow of the tide at Ordinary Spring Tides, and not being a HARBOUR” (s. 742): to a like effect is the def in s. 3, 40 & 41 V. c. 16.

Quà Salmon Fisheries Acts, “‘Tidal Waters,’ shall include, the Sea, and all rivers, creeks, streams, and other water, as far as the tide flows and reflows” (s. 4, 24 & 25 V. c. 109).

**TIDE.**—*V.* AT ALL TIMES OF TIDE: NAVIGABLE: NEAP: SHORE.  
“Tide Permitting”; *V.* PERMITTING.



**TIED HOUSE.**—A “Tied House” usually connotes an INN or BEER-HOUSE rented from a person or firm from whom the tenant is, by agreement, compelled to purchase liquors or other commodities to be therein consumed or sold. *Wh. Rice v. Noakes*, cited MORTGAGE, p. 1227; affd in H. L. 1902, A. C. 24; 71 L. J. Ch. 139.

As to assigning the agreement; *V. SPIRITUOUS LIQUOR.*

Rateable Value of; *V. Bradford v. White*, cited ANNUAL VALUE, p. 87, *va.*, p. 88; *Re London Co. Co. and City of London Brewery Co.*, cited TRADE INTEREST.

**TIGH.**—“‘Tigh, or ‘Teage,’ a close or enclosure, a croft” (Cowel).

**TIGHT.**—“The representation that the ship is ‘Tight, Staunch, and Strong, and every way fitted for the voyage,’ seems to be equivalent to the warranty of seaworthiness and fitness, which is implied by law on the part of the shipowner” (Carver, s. 144 and cases there cited). *V. SEAWORTHY.*

**TILL.**—*V. UNTIL.*

**TILLAGE.**—“Tillage” and “AGRICULTURAL” land are synonyms (Co. Litt. 85 b, cited by Willes, J., *Vigar v. Dudman*, 40 L. J. C. P. 229; L. R. 6 C. P. 470). To constitute a conversion of land into Tillage “there must be a breaking of the soil for agricultural purposes; a Garden and Orchard, for the purposes of TITHES, have always been considered different from Agricultural Land, for Agricultural Tithes are Great Tithes, — the Tithes on a Garden or Orchard are Small Tithes. Tillage involves ploughing or something analogous (*V. Johnson’s Diet.* by Latham, and Webster’s Dict.). A distinction is made between ‘Tillage,’ ‘PASTURE,’ ‘GARDEN,’ and ‘Orchard,’ in 14 & 15 H. 8, c. 1, 27 H. 8, c. 22, and 5 & 6 Edw. 6, c. 5” (per Charles arg. *Ib.*). The planting of land with trees is not a conversion of it into Tillage, nor is the building of a house and using part of the land as an orchard, or, *semble*, as a garden for the convenience of the house, such a conversion (*S. C.* 42 L. J. C. P. 297; L. R. 6 H. L. 212).

**TIMBER.**—“By the term ‘Timber’ is meant properly such trees *only* as are fit to be used in building and repairing houses; thus Oak, Ash, and Elm, trees are considered ‘timber’ in all places, and under whatsoever circumstances they are grown (Co. Litt. 53 a: *Craig on Trees and Woods*, 11). But only trees of not less than 6 inches in diameter or 2 feet girth (allowing for irregularities of shape), appear to be reckoned or considered as ‘Timber’ (*Whitty v. Dillon*, 2 F. & F. 67)”: Woodf. 657. And no wood “is timber until of 20 years’ growth” (*Dunn v. Bryan*, Ir. Rep. 7 Eq. 143; Dart, 149, 150, citing *Foster v. Leonard*, Cro. Eliz. 1, and referring further as to what are, and what are not, timber trees to *Honywood v. Honnywood*, 43 L. J. Ch. 652; L. R. 18 Eq. 306).

"Many descriptions of trees, which are not generally considered as timber, are so in some places by the custom of the country, *being there used for the purpose of building*; thus it has been laid down that Horsechestnuts, Limes, Birch, Beech (*R. v. Minchinhampton*, 3 Burr. 1309), Asp, Walnut trees, and the like, may under such circumstances be deemed Timber, and are therefore protected by the law as such (*Chandos v. Talbot*, 2 P. Wms. 606; *Palmer's Case*, Co. Litt. 53 a, Hargrave's note 349). It has been determined that, in the county of York, Birch trees are timber, because they are used in that county for building sheep-houses, cottages, and such mean buildings (*Cumberland's Case*, Moore, 812): and it would seem that, in Hampshire, Willows have been considered as 'Timber' by the custom of the country (*Layfield v. Cowper*, 1 Wood, 330; *Gruffly v. Pindar*, Hob. 219)": Woodf. 658. *Vf, Gordon v. Woodford*, 27 Bea. 607; 29 L. J. Ch. 222; 1 L. T. 260: Sug. V. & P. 32. To the like effect is the passage in Dart already referred to, where it is laid down that "Timber" includes, "by local custom, Beech and various other trees; even trees which are primarily *fruit trees*, as Cherry, Chestnut, and Walnut (*Chandos v. Talbot*, sup)." So White-thorn may be Timber (*Palmer's Case*, sup). But though Dart does not mention the condition italicized in the passage extracted from Woodfall, viz. that to bring trees, not usually regarded as "timber," within that word, they must by the custom be "used for the purpose of building," yet, it would seem, that that at least is an important element in such a construction.

Beech trees are Timber in Buckinghamshire, but not in Oxfordshire (*Dashwood v. Magniac*, 1891, 3 Ch. 306; 60 L. J. Ch. 809; 65 L. T. 811).

Where Beech trees—or, as it should seem, any other trees—are by the custom of the country, and having regard to their nature and age, "Timber," "no evidence can be received to qualify its character of timber by showing that it was not deemed to be such in the county unless the tree contained 10 feet of solid wood" (Woodf. 658, citing *Aubrey v. Fisher*, 10 East, 446: *Chandos v. Talbot*, sup: Co. Litt. 53).

Larch trees are not Timber, except by a local custom (per Kay, L. J., *Dashwood v. Magniac*, sup: *Re Harrison*, 54 L. J. Ch. 617, 618).

"Although Pollards have been said not to be timber (Plowd. 470: Craig on Trees, 12, 13: *Phillipps v. Smith*, 15 L. J. Ex. 201; 14 M. & W. 589), yet, Lord King inclined to think them timber, provided their bodies were sound and good: and in an action to recover the value of Pollards under the description of 'timber and timber-like trees,' the plaintiff recovered a verdict (*Rabbett v. Raikes*, Suffolk Sum. Ass. 1803, cor. Macdonald, C. B.: *Channon v. Patch*, 5 B. & C. 897)": Woodf. 658. Dart says (149, 150), "As a general rule, Pollards would seem not to be timber; if sound, however, they may be timber by local custom"; but a little further down the latter page (and citing *Rabbett v. Raikes*, sup,

and 2 P. Wms. 606), it is said that timber and timber-like trees "would seem to include sound Pollards" (*Va*, Sug. V. & P. 32).

*Vh*, Craig on Trees and Woods, 11: Jacob: 12 Encyc. 142, 143: *Cp*, STANDELL: UNDERWOOD.

Under the words of a grant of "timber and timber-like trees now growing and being or which shall hereafter grow and be upon the said lands," Romilly, M. R., held that "thinnings" were included, and that it was for the grantee to determine what should be cut (*Gordon v. Woodford*, sup).

A devise for Life carries the "immediate right to the UNDERWOOD, though not to other WOOD" (per Leach, V. C., *Butler v. Borton*, 5 Mad. 43); therefore, an exception, from such a devise, to trustees to take "Timber or Wood" for repairs, does not include Underwood, for the exception connotes wood to which the Tenant for Life would not be entitled (*S. C.*).

ORNAMENTAL TIMBER was distinguished from ordinary Timber in *Magennis v. Fallon*, 2 Molloy, 590: *Va*, *Ford v. Tynte*, 2 D. G. J. & S. 127.

Timber "shipped or unshipped"; *V. TO SHIP*.

*V. TIMBERS*.

**TIMBER DUES.** — *V. Burstall v. Baptist*, 21 W. R. 485.

**TIMBER ESTATE.** — This phrase was first employed in *Ferrand v. Wilson* (4 Hare, 373; 15 L. J. Ch. 48). It has been said that a Timber Estate is, "an estate in which trees are cut, not for the immediate wants of the owner or for the value of the trees themselves but, to preserve the estate by allowing the natural succession to grow up" (per Rigby arg. *Dashwood v. Magniac*, 60 L. J. Ch. 813). In *thlc* Bowen, L. J. (in a characteristically learned and lucid jdgmt), defined a Timber Estate as one "which is cultivated merely for the produce of saleable timber, and where the timber is cut periodically": *Sr*, per Kay, L. J., *Ib*.

"The whole essence of a Timber Estate is that there should be a regular course of cultivation; the main object being that the timber should produce for the Tenant for Life income at periodical intervals" (per Stirling, J., *Pardoe v. Pardoe*, cited WASTE).

*V. TIMBER: WASTE.* *Cp*, MINERAL ESTATE.

**TIMBER YARD.** — *V. Haddock v. Humphrey*, cited WHARF.

**TIMBERLODE.** — "A Service by which Tenants were to carry timber from the woods to the Lord's house" (Jacob: *V. Cowel*).

**TIMBERS.** — "Main Timbers," in a covenant to repair, will include Iron Beams which are used as substitutes for timbers (*Manchester Bonding Warehouse Co v. Carr*, 49 L. J. C. P. 812; 5 C. P. D. 507).

**TIME.** — “Whenever any expression of Time occurs in any Act of Parliament, Deed, or other legal Instrument, the time referred to shall, unless it is otherwise specifically stated, be held, in the case of Great Britain, to be Greenwich Mean Time; and, in the case of Ireland, Dublin Mean Time” (s. 1, Statutes (Definition of Time) Act, 1880, 43 & 44 V. c. 9). *V.* DAY: OF THE CLOCK: SUNSET.

There is, probably, no general rule, in computing time from an act or event, that the day is to be inclusive or exclusive; it depends on the reason of the thing according to the circumstances (*Lester v. Garland*, 15 Ves. 248); but, referring to that case, Bayley, J., said, “All the authorities on the subject are reviewed by Sir W. Grant who takes this distinction, — that where the act done from which the computation is made is one to which the party against whom the time runs is privy, the day of the act done may reasonably be included; but where it is one to which he is a stranger, it ought to be excluded” (*Hardy v. Ryle*, 9 B. & C. 608). Accordingly, it was there held that where the action against a Justice had, under 24 G. 2, c. 44, s. 8, to be brought “WITHIN 6 calendar months after the act committed,” the day of doing the act by the Justice was excluded. *Vf*, FROM.

The computation of time in Criminal Matters is governed by the same rule as in Civil Matters (*Radcliffe v. Bartholomew*, cited CALENDAR MONTH).

“Time of the Essence of the Contract”; *V.* ESSENCE.

Claim “consequent on Loss of Time”; *V.* LOSS.

Reasonable Time; *V.* REASONABLE.

*V.* AT ALL TIMES: AT ANY TIME: AT THE PRESENT TIME: AT THE TIME OF: CERTAIN TIME: CLEAR: CONVENIENT TIME: FORT-NIGHT: HOUR: LIMITATION: MEMORY: MONTH: ONE TIME: PERIOD: SITTING: STIPULATED: TERM: WEEK.

*Vh*, Woolrych on Legal Time: 12 Encyc. 143–166.

**TIME BARGAIN.** — A “Time BARGAIN” is not, necessarily, a GAMING CONTRACT. “If I buy a crop of apples which grow next year on a particular tree, that is a ‘Time Bargain,’ but it is not invalid” (per Bramwell, L. J., *Thacker v. Hardy*, 48 L. J. Q. B. 297; 4 Q. B. D. 685). But the usual meaning of “Time Bargain,” as used on the Stock Exchange, is that it is a contract to pay “Differences,” *i.e.* to receive or pay the difference between the price of the subject-matter at one time and its price at another time, — and then it is a Gaming Contract (*Grize-wood v. Blane*, 21 L. J. C. P. 46; 11 C. B. 538; *Rourke v. Short*, 5 E. & B. 904; 25 L. J. Q. B. 196; *Thacker v. Hardy*, *sup.*). *Vh*, *Hibblewhite v. M'Morine*, 8 L. J. Ex. 271; 5 M. & W. 462; *Coles v. Bristowe*, 38 L. J. Ch. 81; *Maxsted v. Paine*, 38 L. J. Ex. 41; Stutfield on Betting, Time Bargains, and Gaming, 94.

**TIME BEING.** — The phrase “For the time being” may, according to its context, mean the time present, or denote a single period of time;

but its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the future, and which may (and probably will) vary from time to time (*Ellison v. Thomas*, 31 L. J. Ch. 867; 32 L. J. Ch. 32; 1 D. G. J. & S. 18; 2 Dr. & Sm. 111; *Coles v. Pack*, 39 L. J. C. P. 63; L. R. 5 C. P. 65).

A testamentary gift in remainder to testator's "Next of Kin for the time being," means the next of kin living at his death (*Moss v. Dunlop*, Johns. 490).

Where rights are to be enforced by, or penalties are to be paid to, *Officers* (whether parochial or otherwise) "for the time being," that connotes Officers who are such when the action is commenced, not those who were such when the right arose or the penalty was incurred (*Addy v. Woolley*, 8 Taunt. 691; *Doe d. Higgs v. Terry*, 4 A. & E. 274; 5 L. J. M. C. 27; *Graves v. Colby*, 9 A. & E. 356; 8 L. J. Q. B. 57).

"Owner for the time being" of Shares in a Co; held, not to include a holder who had sold his Shares after a Call made, but before it was payable (*Aylesbury Ry v. Thompson*, 2 Ry. Ca. 668; *See, London & Brighton Ry v. Fairclough*, 10 L. J. C. P. 133; 2 M. & G. 674; 3 Sc. N. S. 68).

As to the effect of making a PROMISSORY NOTE payable to the Secretary "for the time being" of a named Socy or Co; *V. Storm v. Stirling*, cited SECRETARY.

A direction to pay Calls on Shares which, at or after his death, might be or become due in respect of Shares "for the time being" constituting part of testator's Residuary Personal Estate; held, to apply to Calls on Shares held by the testator at his death, but not to Shares afterwards acquired by the Trustees (*Bevan v. Waterhouse*, 46 L. J. Ch. 331; 3 Ch. D. 752).

"Amount for the time being secured," s. 15 (2), Bg Socy Act, 1874; *V. Re Neath By Socy*, cited AMOUNT.

Persons who are "for the time being" Trustees under s. 2 (8), Settled Land Act, 1882, are those expressly appointed for the purposes of the Act, or else have, at the time of the proposed sale thereunder, a present and immediate power to sell or consent to a sale (*Wheelwright v. Walker*, 52 L. J. Ch. 274; 23 Ch. D. 752). *Vf*, ss. 16, 17, S. L. Act, 1890.

"It has been said that if a power to vary the rights of parties be communicated to the 'Trustees for the time being,' it cannot be exercised by a single trustee" (Lewin, 718, citing *Lancashire v. Lancashire*, 2 Phill. 664).

A Power of Sale to the "Trustees for the time being," is (by virtue of s. 30, Conv & L. P. Act, 1881), exercisable by the exors of the last surviving trustee (*Re Pirton and Tony*, 46 W. R. 187).

"For the time being," s. 5, Trade Marks Registration Act, 1875; *V. Wood v. Lambert*, 29 S. J. 455.

**TIME IMMEMORIAL.**—V. TIME OUT OF MIND.

**TIME OF PAYMENT.**—V. STIPULATED.

**TIME OR SITTING.**—S. 2, Anne, c. 14; V. SITTING.

**TIME OUT OF MIND.**—“Some have said that ‘Time out of mind’ should be said from time of limitation in a writ of right; that is to say, from the time of King Richard the First after the Conquest” (Litt. s. 170), *i.e.* A.D. 1189. V. LONG.

The synonym of this phrase is “Time Immemorial”: “the expression Time Immemorial,’ or ‘Time whereof the MEMORY of man runneth not to the contrary,’ is now, by the law of England, in many cases considered to include and denote the whole period of time from the reign of King Richard the First” (Prescription Act, 1832, 2 & 3 W. 4, c. 71, preamble). *Vh*, Gale, 7 ed., 167; Goddard, 5 ed., 190.

V. PRESCRIPTION.

**TIME PIECE.**—“Time Pieces,” s. 1, Carriers Act, 1830, includes a Chronometer (*Le Couteur v. Lond. & S. W. Ry*, cited PERSONAL LUGGAGE).

**TIME POLICY.**—“A Time Policy is one in which the RISK is limited by time alone” (Arn. ch. 16, *whv*). Cp, VOYAGE.

**TIME TABLES.**—V. *Leslie v. Young*, cited BOOK, p. 204.

**TIME TO TIME.**—V. FROM TIME TO TIME:

**TIMES.**—V. AT ALL TIMES: AT ALL TIMES OF TIDE: TIME.

**TINKER.**—V. PEDLAR.

**TIPPLING ACT.**—Sale of Spirits Act, 1750, 24 G. 2, c. 40; amended by 25 & 26 V. c. 38. V. ITEM: ONE TIME: RECOVER: SPIRITUOUS LIQUOR.

**TIPSTAFF.**—V. *G. v. L.*, 1891, 3 Ch. 128, *n*; 60 L. J. Ch. 706, *n*; 64 L. T. 732, *n*.

**TITHE.**—V. TITHES.

**TITHE FREE.**—If property is sold “Tithe Free,” that is a material statement, and the purchaser is not bound to complete if it be untrue (*Ker v. Clobury*, MS. Sug. V. & P. 321, correcting *Stanhope’s Case*, cited *Drewe v. Hanson*, 6 Ves. 678).

**TITHE OWNER.**—Stat. Def., Tithe Act, 1836, 6 & 7 W. 4, c. 71, s. 12; Extraordinary Tithe Redemption Act, 1886, 49 & 50 V. c. 54, s. 14; Tithe Act, 1891, 54 & 55 V. c. 8, s. 9.

**TITHE PAYER.** — Stat. Def., Extraordinary Tithe Redemption Act, 1886, s. 14.

**TITHE RENTCHARGE.** — Stat. Def., Tithe Act, 1891, 54 & 55 V. c. 8, s. 9 (2); 62 & 63 V. c. 17, s. 2. — *Ir. Tithe Rentcharge (Ir) Act*, 1838, 1 & 2 V. c. 109; 50 & 51 V. c. 33, s. 34; 54 & 55 V. c. 66, s. 95.

*V. TITHES. Cp, RENT CHARGE.*

“Expenses, Rentcharge, or other sums, to be recovered as Tithe Rentcharge,” s. 10 (4), 54 & 55 V. c. 8, *Ij*, s. 2, includes Redemption Charges and Expenses (*R. v. Paterson*, 1895, 1 Q. B. 31; 64 L. J. Q. B. 20; 43 W. R. 127).

“Owner of Tithe Rentcharge”; *V.* 62 & 63 V. c. 17, s. 2. — *Ir.* 32 & 33 V. c. 42, s. 32.

**TITHES.** — “Tithes is an Ecclesiastical Inheritance collateral to the estate of the land, and, of their proper nature, due only to an Ecclesiastical Person by the Ecclesiastical Law” (*Priddle’s Case*, 11 Rep. 13*b*); and were “the tenth part of all Fruits, *Predial, Personal, and Mirt*, which are due to God, and consequently to his Churches Ministers for their Maintenance” (Cowel). *Ij*, Jacob: 2 Bl. Com. 23–32; 3 Cru. Dig. Title 22: 12 Encyc. 167–180: COMMUTATION.

“*Predial* Tithes, were such as arise merely and immediately from the ground; as Grain of all sorts, Hay, Wood, Fruit, Herbs :

“*Mirt* Tithes, were those which arise, not immediately from the ground but, from things immediately nourished by the ground, as by means of goods depastured thereupon, or otherwise nourished with the fruits thereof; as Colts, Calves, Lambs, Chicken, Milk, Cheese, Eggs :

“*Personal* Tithes, were such profits as do arise by the honest labour and industry of man, employing himself in some personal work, artifice, or negotiation; being the tenth part of the clear gain after charges deducted” (Phil. Ecc. Law, 1148).

As to what were “Great,” as distinguished from “Small,” Tithes, *V. Daws v. Benn*, 1 B. & C. 751: TILLAGE.

Compensation for, and Commutation of, Tithes are provided for by the Tithe Act, 1836, 6 & 7 W. 4, c. 71, quâ which Act, “‘Tithes,’ shall mean and include, all uncommuted tithes, portions and parcels of tithes, and all moduses, compositions real and prescriptive, and customary payments” (s. 12).

Quâ Church Building Act, 1851, 14 & 15 V. c. 97, “‘Tithes,’ shall mean and include, all commuted or uncommuted tithes, rent-charges in lieu of tithe, portions and parcels of tithes, and all moduses, compositions real and prescriptive, and customary payments” (s. 29).

Quâ District Church Tithes Act, 1865, 28 & 29 V. c. 42, “‘Tithes,’ shall include, commutation rent-charges, and all moduses, compositions, prescriptive and other payments, or redemption money, in lieu of tithes” (s. 2).

Other Stat. Def. — 4 & 5 V. c. 39, s. 29; 19 & 20 V. c. 104, s. 33.

“The Tithe Acts, 1836 to 1891”; *V. Sch* 2, Short Titles Act, 1896.

*Note.* A Landlord cannot now contract himself out of his liability to pay Tithe Rent Charge (s. 1 (1), Tithe Act, 1891, 54 V. c. 8).

*Extraordinary Tithe*, is that charge which, under the Tithe Commutation Acts, might be imposed on hop grounds, orchards, fruit plantations, and market gardens; it is now called “EXTRAORDINARY CHARGE” (Extraordinary Tithe Redemption Act, 1866, 49 & 50 V. c. 54, preamble).

Extra-parochial Tithe; *V. 1 Bl. Com.* 283, 284.

“Tithes” in Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27, is confined to Tithes as between adverse claimants to Tithes (*Grant v. Ellis*, 11 L. J. Ex. 228; 9 M. & W. 113; *Ely v. Cash*, 15 L. J. Ex. 341; 15 M. & W. 617; *Ely v. Bliss*, 2 D. G. M. & G. 459; *Bunbury v. Fuller*, 23 L. J. Ex. 29; 9 Ex. 128). *V. Payne v. Esdaile*, 58 L. J. Ch. 299; 13 App. Ca. 613; 37 W. R. 273; 59 L. T. 568.

Tithes in A., will pass under a devise of “LAND” in A., if there be no land there belonging to testator (*Ashton v. Ashton*, 3 P. Wms. 386; Ca. t. Talb. 152); so they may, or may not, be included in “my REAL ESTATES” (*Evans v. Evans*, 17 Sim. 86; 14 Jur. 383).

*V. COMPOSITION: OUTGOING*, p. 1378: TITHE RENTCHARGE.

#### TITHING.—*V. HUNDRED.*

A Tithing was, “in its first appointment, the number or company of ten men with their families, held together in a society, all being bound for the peaceable behaviour of each other” (Jacob).

**TITLE.**—“‘Title’ properly (as some say) is, when a man hath a lawful cause of entry into lands whereof another is seised, for the which hee can have no action, as title of condition, title of mortmaine, &c. But legally this word (Title) includeth a Right also, as you shall perceive in many places in Littleton: and Title is the more generall word; for every Right is a Title, but every Title is not such a Right for which an action lieth; and therefore *Titulus est justa causa possidendi quod nostrum est*, and signifieth the meanes whereby a man commeth to land, as his title is by Fine or by Feoffment, &c” (Co. Litt. 345b: *Vh*, Elph. 205).

“The word ‘Title’ has different meanings. In one sense, it may import whether a party has a right to a thing which is admitted to exist; or it may mean, whether the thing claimed does in fact exist” (per Coleridge, J., *Adey v. Trinity House*, 22 L. J. Q. B. 4; nom. *R. v. Everett*, 1 E. & B. 273).

When a certain number of years’ Title to REALTY has to be shown, *e.g.* a Forty Years’ Title, “that means, a Title deduced for 40 years and for so much longer as it is necessary to go back in order to arrive at a point at which the title can properly commence. The title cannot commence *in nubibus* at the exact point of time which is represented by 365 days



multiplied by 40. It must commence at or before the 40 years with something which is in itself, or which it is agreed shall be, a proper Root of Title" (per North, J., *Re Cox and Nere*, 1891, 2 Ch. 118).

As to what is an Objection to "Title" within Conditions of Sale of Realty; *V. Forbes v. Peacock*, 13 L. J. Ch. 46; 12 Sim. 528, disapproving *Bentham v. Wiltshire*, 4 Mad. 44, and *Page v. Adam*, 4 Bea. 269; *Price v. Macaulay*, 2 D. G. M. & G. 339; 19 L. T. O. S. 238; *Ashburner v. Sewell*, 1891, 3 Ch. 405; 60 L. J. Ch. 784; 65 L. T. 524; 40 W. R. 169, *whlec*, on the distinction between an Objection to Title and an ERROR. *Vf*, Dart, 179.

As to Conditions prohibiting Objections, *V. INVESTIGATING: Sprutt v. Jeffery*, *inf*.

Bad Title; *V. BAD. Cp*, GOOD TITLE.

Title Deeds; *V. INFORMATION*, towards end.

*V. ABSTRACT: BEST TITLE: DEDUCE: DEMISE: POSSESSORY: PRETENCED.*

Quà Registration of Assurances (Ir) Act, 1850, 13 & 14 V. c. 72, " 'Title,' shall extend to a Power or Right to convey or otherwise affect lands" (s. 64).

A direction that goods bequeathed are "to be enjoyed with and go with the Title" of real or leasehold property, will not create an executed or executory trust, or cut down the legatee's interest in the goods to a life estate (*Re Johnson*, 53 L. J. Ch. 645; 26 Ch. D. 538, in *whc* were cited the previous cases on the construction of a gift of Chattels to go with a Title). *V. HEIRLOOM.*

"Title accepted," "Will not enquire into" Title; *V. Sprutt v. Jeffery*, 10 B. & C. 249. *Va*, INVESTIGATING.

Title "accrued"; *V. ACCRUE.*

Title "to be approved"; *V. SUBJECT TO.*

"Title" does not come "in QUESTION," within ss. 56, 60, County Courts Act, 1888, where the claim arises in respect of the possession of a HEREDITAMENT the right to which possession is not seriously disputed. *e.g.* an ordinary action of Trespass (*Hawkins v. Rutter*, 1892, 1 Q. B. 668; 61 L. J. Q. B. 146; 40 W. R. 238): *secus*, when so disputed (*Howorth v. Sutcliffe*, 1895, 2 Q. B. 358; 44 W. R. 33; 64 L. J. Q. B. 729). The Title to the land is not "in question" in an action for Rent Charge issuing out of such land (*Bassano v. Bradley*, 1896, 1 Q. B. 645; 65 L. J. Q. B. 479; 44 W. R. 576).

Covenants for Title:—As to the qualification of a Vendor's Covenant implied by s. 7 (1, A). Conv & L. P. Act, 1881; *V. David v. Sabiu*, 1893, 1 Ch. 523; 62 L. J. Ch. 347; 68 L. T. 237; 41 W. R. 398. As to other Covenants for Title, *V. FURTHER ASSURANCE: INCUMBRANCE: QUIET ENJOYMENT.* As to the construction of these Covenants, *V. Elph. ch. 30: PURCHASE FOR VALUE.*

Slander of Title; *V. SLANDER: TRADE LABEL; Odgers*, ch. 5.

“Title to Toll”; *V. Hunt v. G. N. Ry*, cited TOLL.

“Formerly it was not so, but now the Title of an ACT OF PARLIAMENT forms part, and a very important part, of the Act” (per Lindley, M. R., *Fielden v. Morley*, cited PURSUANCE: *Vf, A-G. v. Margate Pier Co*, cited PUBLIC DUTY). *V. SHORT TITLE*.

“Title, ADDITION, or DESCRIPTION”; Stat. Def., quà Dentists Act, 1878; *V. Medical Act*, 1886, 49 & 50 V. c. 48, s. 26.

“There can be, in general, no Copyright in the Title or Name of a Book” (per James, L. J., and Jessel, M. R., *Dicks v. Yates*, 50 L. J. Ch. 816; 18 Ch. D. 93: *Vf, Hollinrake v. Truswell* and *Maxwell v. Hogg*, cited COPYRIGHT); though the Title or Name may be a TRADE-MARK (*Dicks v. Yates*, 50 L. J. Ch. 809; 18 Ch. D. 76: on *whv Mack v. Petter*, 41 L. J. Ch. 781; L. R. 14 Eq. 431: *Kelly v. Byles*, 49 L. J. Ch. 181; 13 Ch. D. 682).

Title of Honour; *V. DIGNITY: Cowley v. Cowley*, 1900, P. 118, 305; 1901, A. C. 450; 69 L. J. P. D. & A. 59, 121; 70 Ib. 83: *Re Rivett-Carnac*, cited INCORPOREAL HEREDITAMENT.

**TO.** — Where a verb of obligation is put in the infinitive mood, — *e.g.* the tenant “to paint” once every fifth year, — an agreement, or covenant, would obviously be created.

“To,” or its equivalent “Unto,” or “From,” a time or place, generally but not necessarily, excludes the time or place mentioned (*Hulsey's Case*, Latch, 183: *R. v. Gamlingay*, 3 T. R. 513; *sethle, R. v. Knight*, 7 B. & C. 413). *Vf. FROM: Cp, UNTIL*.

“To” will often mean “TOWARDS.” The plaintiff effected a Marine Policy, subject to rules one of which was, that ships were not to sail from any port on the east coast of Great Britain to any port in the Belts between the 20th Dec and 15th Feb. The plaintiff's vessel sailed on the 8th Feb for a port in the Belts, and was lost; held, that the rule in question was a Warranty and not an Exception; and that the word “to” in the rule meant “towards,” and not “arriving at” (*Colledge v. Harty*, 6 Ex. 205; 20 L. J. Ex. 146).

Injury “to” a thing; *V. Burger v. Indemnity, &c Assrce*, cited IN RESPECT OF.

**TO AND AMONGST.** — *V. AMONG.*

**TO ARRIVE.** — *V. ARRIVE.*

**TO BE.** — This phrase is one of futurity, and may (1) create a covenant, (2) impose a qualification of, or condition precedent to, a covenant, or (3) imply a stipulation, or (4) go to define the condition of a gift, or of a state of things.

1 and 2. When a clause in a Deed prescribing something to be done or permitted, is introduced by “To be,” or a participle, the effect, speak-

ing generally, is to create either a Covenant on the part of the person by whom the thing is to be done or permitted, or to impose a Condition Precedent on, or a Qualification of, some covenant in the deed. The context determines which of these meanings is to prevail. Thus, where rent is "to be paid" (*Bower v. Hodges*, 22 L. J. C. P. 194; 13 C. B. 765), or if the ordinary words at the commencement of the reddendum of a Lease, — "Yielding and Paying," — are used (Elph. 419, 420, 464-466; Touch. 162; *Sear v. House Property Co.*, 50 L. J. Ch. 77; 16 Ch. D. 387), a covenant to pay is created. But where a tenant covenants to repair, he "to be allowed," or the lessor "allowing," necessary timber, such latter clause prescribes a condition precedent, or qualification, of the covenant to repair (*Thomas v. Cadwallader*, Willes, 496; 17. Elph. 420, 421, 464-466; Woodf. 169, 170, 178).

3. The ad val. Stamp Duty on a CONVEYANCE on Sale, subject to a mortgage, was chargeable, not only on the purchase money, but also on the mtge debt if it was "to be afterwards paid by the purchaser" (55 G. 3, c. 184, Sch); that meant, cases where it was stipulated that the Purchaser should pay it (*Chandos v. Inl. Rev.*, 6 Ex. 464; 20 L. J. Ex. 269). To remedy that ruling *V. s.* 10, 16 & 17 *V. c.* 59; s. 73, Stamp Act, 1870; s. 57, Stamp Act, 1891, on *whv*, *Mortimore v. Inl. Rev.* and *Swayne v. Inl. Rev.*, cited SUBJECT to, p. 1957.

4. A Condition of a gift is prescribed by "To be" in such a phrase as TO BE BORN.

*V.* NOT TO BE: GIVEN: SUPPLIED.

**TO BE APPROVED.** — Title "to be approved by my solicitor"; *V. Clack v. Wood*, 9 Q. B. D. 276, also cited SUBJECT to.

**TO BE BORN.** — The ordinary primary legal meaning of "to be born," or "to be begotten," includes past as well as future children (*Dodd. James v. Hallett*, 1 M. & S. 124; *Cp.* TO BE PASSED), and the introduction of the word "HEREAFTER" does not alter that rule of construction (per Chatterton, *V. C.*, *Harrison v. Harrison*, Ir. Rep. 10 Eq. 296). That construction, however, may, by a context, give way to the ordinary meaning of the English language whereby those phrases express futurity (per Fry, L. J., *Locke v. Dunlop*, 57 L. J. Ch. 1015; 39 Ch. D. 387; 59 L. T. 688). That case was an instance in which the latter construction was adopted.

"Gifts to, or trusts for, children 'to be born,' or 'to be begotten,' include those already born or begotten; and *e contra*" (Elph. 328; *Va*, lb. 236).

In class gifts to children "to be born," or "to be begotten," "the established rule is, that if the gift be immediate, so that it would, but for the words in question, have been confined to children (if any) existing at the testator's death, they will have the effect of extending it to *all* the children who shall ever come into existence; since in order to give to the

words in question *some* operation, the gift is necessarily made to comprehend the whole" (2 Jarm. 178).

"This rule of construction, however, does not apply to general pecuniary legacies, where the effect of letting in children born after the death of the testator would be to postpone the distribution of the general estate (out of which the legacies are payable), until the death of the parent of the legatees" (Ib. 179).

"It seems to be established, too, that the expression children 'to be born,' or 'to be begotten,' when occurring in a gift under which *some* class of children born after the death of the testator would, independently of this expression of futurity, be entitled, so that the words may be satisfied without departing from the ordinary construction, that construction is unaffected by them" (Ib. 180).

"It has been decided, too, that the words 'which shall be begotten,' or 'to be begotten,' annexed to the description of children or issue, do not *confine* the devise to future children; but that the description will, notwithstanding these words, include the children or issue in existence before the making of the Will" (Ib. 181): "and it seems that even the words 'hereafter to be born' will not exclude previously-born issue" (Ib. 182).

In *Gilbert v. Boorman* (11 Ves. 238), Grant, M. R., held that a gift of Residue to A. "and all the other children *hereafter* to be born" of B., on attaining 21, excluded all children born after one of them had attained 21.

*Vh.* Chitty Eq. Ind. 7771-7774.

*V.* BORN: HATH: WIEN.

**TO BE CANCELLED.** — Charter party "to be cancelled" in certain events; *V. Adamson v. Newcastle Steamship Insree*, 48 L. J. Q. B. 670; 4 Q. B. D. 462.

*V.* CANCEL.

**TO BE CONSUMED.** — *V.* ON THE PREMISES.

**TO BE DECIDED.** — *V.* GENERAL LINE OF BUILDINGS: DECIDE.

**TO BE DISPOSED OF.** — *V.* DISPOSE OF

**TO BE DIVIDED.** — *V.* DIVIDE.

**TO BE ENTAILED.** — *V. Jervoise v. Northumberland*, 1 Jac. & W. 559: TO BE SETTLED: SETTLE: COURSE.

**TO BE EXECUTED.** — A *fi. fa.* delivered to a sheriff for execution, but which before seizure is stayed until further orders, and on which subsequently the sheriff is ordered to proceed, is not delivered "to be executed," within s. 16, Statute of Frauds, 29 Car. 2, c. 3, until the latter order (*Hunt v. Hooper*, 13 L. J. Ex. 183; 12 M. & W. 664).  
*V.* EXECUTED.

TO BE INHABITED. — *V.* INHABITED.

**TO BE LEFT TILL CALLED FOR.** — *V.* *Chapman v. G. W. Ry*, 5 Q. B. D. 278; 49 L. J. Q. B. 420; 42 L. T. 252; 28 W. R. 566; 44 J. P. 363.

**TO BE PAID.** — This phrase, in an Agreement inter partes, creates a covenant to pay (*Bower v. Hodges*, 22 L. J. C. P. 194; 13 C. B. 765).

In a Will it is generally synonymous with PAYABLE; *Vj*, 1 Jarm. 837. In *Martineau v. Rogers* (25 L. J. Ch. 398; 8 D. G. M. & G. 328), "to be paid" was construed "VESTED."

A direction that a legacy to a married woman is "to be paid" to her, nullifies a RESTRAINT ON ALIENATION (*Re Fearon*, 45 W. R. 232, applying *Re Bown*, 53 L. J. Ch. 881; 27 Ch. D. 411; 50 L. T. 796; 33 W. R. 58), so, where the direction is "to raise and pay": *scens*, where the legacy is "to be held upon trust" for the married woman (*Re Grey*, 56 L. J. Ch. 511; 34 Ch. D. 712; 56 L. T. 350; 35 W. R. 560). *Vj*, Godefroi, 587, 588.

*V.* PAID.

**TO BE PASSED.** — "Any Act *to be* passed in the present Session of Parliament," *semble*, means the same as "any Act *passed* in the present Session"; for "the Session is a thing of continuity; therefore, when the legislature speak of any Act *to be* passed in that Session, they mean, any Act that shall be passed from the commencement to the conclusion of the Session, embracing both the past and future portions of it" (per Ellenborough, C. J., *Nares v. Rowles*, 14 East, 518). (*Cp.* PASSING: TO BE BORN.

TO BE PERFORMED. — *V.* WITHIN THE JURISDICTION.

**TO BE RECOVERED.** — "When a statute gives a 'penalty to be recovered before Justices of the Peace,' but prescribes no method of recovering it, the proper method is by Indictment" (Dwar. 673, citing Salk. 606).

*V.* RECOVER.

**TO BE SETTLED.** — In a direction to "settle or entail" an estate, the Court "would be justified in construing the words 'settled or entailed' as words intended to denote and signify that series of limitations and estates which the Settlor has referred to and designated by the term 'Settlement' or 'Entail'" (per Ld Westbury, *Sackville-West v. Holmesdale*, 39 L. J. Ch. 514; L. R. 4 H. L. 566). *V.* TO BE ENTAILED.

"To be settled"; held to create an EXECUTORY trust (*Ballance v. Lamphier*, 42 Ch. D. 62; 58 L. J. Ch. 534; 37 W. R. 600; 61 L. T. 158). *Vj*, SETTLED.

TO BE SHIPPED. — *V.* SHIPPED.

TO BE TRANSFERRED. — *V.* TRANSFER.

TO BEARER. — *V.* BEARER.

TO HAVE AND TO HOLD. — *V.* HAVE AND TO HOLD.

TO OR FROM. — *V.* INTO.

**TO ORDER.** — If a warehouseman gives a Warrant of goods to be held "To Order" of A., and, without getting the Warrant, delivers the goods at A.'s request to some one other than the holder of the Warrant, the warehouseman will be responsible for the goods to the innocent holder for value of the Warrant (*London & County Bank v. Fulford*, 2 Times Rep. 703).

*V.* ORDER: NEGOTIABLE.

TO THE EFFECT. — *V.* IN THE FORM: TENOR.

**TO THE EXTENT.** — A guarantee for goods "to the extent of" a specified sum, means, "NOT EXCEEDING" that sum, and does not fix the sum as the minimum of the supply of goods (*Dimmock v. Sturla*, 14 M. & W. 758; 15 L. J. Ex. 65).

**TO WIT.** — *V.* MEMORANDUM: NAMELY.

The County, &c, named in the margin of an Indictment, *e.g.* "Gloucestershire, To Wit," "shall be taken to be the Venue for all facts stated in the body of such Indictment," except when local description is required (s. 23, Criminal Procedure Act, 1851, 14 & 15 V. c. 100).

**TOBACCO.** — Quà the Tobacco Acts, 1840 and 1842, "Tobacco," includes, "tobacco stalks, tobacco flour, returns of tobacco, and segars, and tobacco of every description" (s. 14, 5 & 6 V. c. 93).

Quà, and by, s. 5, Finance Act, 1896, "Tobacco," "includes, cigars, cigarillos, cigarettes, and snuff."

"Tobacco Works"; *V.* NON-TEXTILE FACTORIES.

"Fit for Sale"; *V.* FIT FOR.

**TOFT.** — " 'Toft' is a place wherein a house once stood, but it is now all fallen, or puld downe" (Termes de la Ley): *Vf*, *Hill v. Grange*, Plowd. 170; *Skidmore v. Boucheiv*, 2 Show. 93; Cowel.

"Toft is the place where a house has been, and now there is none, and the site of the house can be seen, and by this name it will pass in a grant: 21 Ed. 4, 52, Pl. 15; Touch. 95. Spelman says that the house must have been in the country" (Elph. 622).

**TOGETHER WITH.** — This phrase does not mean "and also," but "at the same time as"; therefore, a Bill of Sale and its affidavit must be

registered simultaneously (*Grindell v. Brendon*, 28 L. J. C. P. 333; 6 C. B. N. S. 698). *V. THEREWITH.*

Testator's name "together with" devisee's own Surname; *V. Name and Arms Clause*, sub *NAME.*

Devise of rent of A., to C. B. for life and, after his death, the same rent "together with" testator's other rents to X. Y.; held, on review of the Will, that "together with" did not incorporate the time when the gift of the other rents was to become operative, and that X. Y. took them on the death of the testator (*Doe d. Annandale v. Brazier*, 5 B. & Ald. 64).

*V. WITH.*

**TOLERATED.**—Place of Religious Worship, "tolerated by law on Sundays"; *V. USUAL PLACE OF RELIGIOUS WORSHIP.*

**TOLERATION ACT.**—1 W. & M. c. 18, confirmed by 10 Anne, c. 2; *Vh, PUBLIC ACT OF PARLIAMENT.*

**TOLL.**—"Toll," or *Tolnetum* (or *THEOLONIO*), is a sum of money which is taken in respect of some benefit (per Bramwell and Willes, arg., citing Com. Dig. *Toll*, in *Adey v. Trinity House*, 22 L. J. Q. B. 3),—the benefit being, the temporary use of land,—*e.g.* FAIR OR MARKET TOLLS, TOLL THOROUGH, TOLL TRAVERSE, ANCHORAGE TOLL, and Harbour Tolls (*Mayor of Exeter v. Warren*, 5 Q. B. 773; *The London Wharves*, 1 Bl. W. 581). Therefore, Harbour Rates (under a Private Act) are "Tolls" (*Adey v. Trinity House*, 22 L. J. Q. B. 3; nom. *R. v. Everett*, 1 E. & B. 273); but payments to a Railway Company for the use of locomotive power, as distinguished from the use of their railway, are not (*Hunt v. G. N. Ry*, 20 L. J. Q. B. 349; 2 L. M. & P. 268).

Quà *Ry C. C. Act*, 1845, "Toll," unless there is something in the subject or context repugnant, includes, "any rate or charge, or other payment, payable under the special Act, for any passenger, animal, carriage, goods, merchandize, articles, matters, or things, conveyed on the railway" (s. 3); so of "Toll" quà *Ry C. C. (Scot) Act*, 1845 (s. 3).

*Semble*, the proper sense of the word "Toll," as applied to a *Ry.* is a payment in respect of the use of the railway itself,—the person paying the toll being himself the carrier of the goods or persons along the railway (*Wallis v. Lond. & S. W. Ry*, 39 L. J. Ex. 57; L. R. 5 Ex. 62; *Brown v. G. W. Ry*, 9 Q. B. D. 744; 51 L. J. Q. B. 529; *North Central Wagon Co v. Manchester, S. & L. Ry*, 55 L. J. Ch. 780; 56 Ib. 609; 58 Ib. 219; 32 Ch. D. 477; 35 Ib. 191; 13 App. Ca. 554), and those cases show that that is the meaning of the word as used in ss. 95-97, *Ry C. C. Act*, 1845. A Railway Co's carrier charge is therefore not a Toll: *V.* lastly cited cases and *Gorton v. Bristol & Ex. Ry*, 1 B. & S. 112; 30 L. J. Q. B. 273, and *Pryce v. Mon. Ry*, 49 L. J. Ex. 130; 4 App. Ca. 197, for distinction between "Charges" and "Tolls." "Tolls" in s. 90, *semble*,

applies to traffic generally, and is not limited to Tolls strictly so called (*Evershed v. Lond. & N. W. Ry*, 46 L. J. Q. B. 289; 47 Ib. 284; 48 Ib. 22; 3 Q. B. D. 134; 3 App. Ca. 1029); but (per Bramwell, L. J., in *thlc*), the "word does not include a charge for cartage or collection; it only includes charges for receiving upon transit along, and delivery from, the Railway, of the goods entrusted to the Company" (47 L. J. Q. B. 285). "Tolls" in s. 86, and in the exactly corresponding s. 79, Ry C. C. (Scot) Act, 1845; *V. Highland Ry v. Jackson*, 3 Sess. Ca. 4th Ser. 850; *Aberdeen Commercial Co v. G. N. Scotland Ry*, 3 Ry & Can. Traffic Ca. 229. "Tolls" in s. 87, Ry C. C. Act; *V. Simpson v. Denison*, 10 Hare, 60; *G. N. Ry v. South Yorkshire Ry*, 9 Ex. 644; 23 L. J. Ex. 186; 23 L. T. O. S. 147.

"Tolls," s. 11, Regn of Railways Act, 1873, 36 & 37 V. c. 48, is not to be restricted to Tolls payable according to a mileage scale or specified to be maximum tolls, but includes tolls levied for the use of a railway or canal (*Warwick & Birmingham Canal Nav. v. Birmingham Canal Nav.*, 3 Ry & Can Traffic Ca. 113).

Tolls, quà Fairs and Markets; *V. Caswell v. Cook*, 11 C. B. N. S. 637; 31 L. J. M. C. 185; *vthc*, *Londonderry v. McElhinney*, Ir. Rep. 9 C. L. 61.

"Tolls," s. 4, Land Tax Act, 1797, 38 G. 3, c. 5; *V. Charing Cross Bridge Co v. Mitchell*, 24 L. J. Q. B. 249; 4 E. & B. 549.

"Tolls" quà Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, includes "PONTAGES; and also any sum payable in respect of any exemption from, or relinquishment of, tolls" (s. 3).

Turnpike Tolls; Stat. Def., 7 & 8 V. c. 91, s. 114. *V.* TURNPIKE ROAD.

STALLAGE may pass under the word "Toll" (*Bennington v. Taylor*, 2 Lutw. E. ed. 1718, 642; *Hickman's Case*, 2 Rol. Ab. 123; *Hill v. Priour*, 2 Show. 34; *Lockwood v. Wood*, 6 Q. B. 31; 10 L. J. Q. B. 100; 13 Ib. 365).

As to construction of an Exemption from Toll; *V. Hill v. Priour*, *sup.* *Vh*, *Termes de la Ley*, *Tol* or *Tolne*; Cowel: Jacob: 12 Eneye. 185-187.

*V.* CUSTOM: RATE: RENTS AND TOLLS: WITH ALL LIBERTIES

**TOLL GATES.** — Turnpike Toll Gates; Stat. Def. 7 & 8 V. c. 91, s. 114.

**TOLL HOUSE.** — *V.* PUBLIC HOUSE, at end.

**TOLL THOROUGH.** — Is a toll for passing along a public highway, whether the highway be a road, a river, a ferry, a bridge, or the sea: and it cannot be claimed by prescription, but must be supported (if at all) by a good consideration performed in respect of the precise locality where the toll is claimed, *e.g.* the reparation of *the* highway on which the toll



is claimed (Gunning on Tolls, 2-25: *Smith v. Shepherd*, Cro. Eliz. 710; *Hill v. Smith*, 4 Taunt. 520: *V. ANCHORAGE TOLL*). *Vh, Brecon Markets Co v. Neath & Brecon Ry*, 41 L. J. C. P. 257; 42 Ib. 63; L. R. 7 C. P. 555; 8 Ib. 157. *Cp, TOLL TRAVERSE*.

**TOLL TRAVERSE.** — Is a toll payable for passing over the soil of another, or over soil which, though now a public highway, was once private, and which (as a matter of precise proof, or as a legal presumption) was dedicated subject to the toll. It can be claimed by prescription, and, like a Market Toll, may vary in amount according to the varying value of money (Gunning on Tolls, 26-42: *Pelham v. Pickersgill*, 1 T. R. 660; *Lawrence v. Hitch*, 37 L. J. Q. B. 209; L. R. 3 Q. B. 521; 9 B. & S. 467). *Vh, Brecon Markets Co v. Neath & Brecon Ry*, cited **TOLL THOROUGH**; and on the difference between Toll Thorough and Toll Traverse, *V. R. v. Salisbury*, 8 A. & E. 716.

*Cp, MODUS*.

**TO-MORROW.** — *V. Duncan v. Topham*, 8 C. B. 225; 18 L. J. C. P. 310.

**TON.** — “A Ton shall consist of 20” Cwts. (s. 14, 41 & 42 V. c. 49). A contract for the sale of goods by “the Ton, long weight,” is good, as “the Ton, long weight,” though it consists of 240,000 lbs. avoirdupois and is more than 20 cwt. statutory measure, is yet a Multiple of the standard pound, within s. 9, Weights and Measures Act, 1824, 5 G. 4, c. 74 (*Giles v. Jones*, 24 L. J. Ex. 261; 11 Ex. 393). *V. MULTIPLE*.

“Tons Burden”; *V. BURDEN*.

**TONNAGE.** — Tonnage was “a Custome or Impost paid to the King for merchandise carried out, or brought in ships, or such like vessels, according to a certain Rate upon every Tun” (Cowel).

*V. GROSS: REGISTER*.

“Tonnage, Timber, Stores, or other Goods,” s. 85 (1), Mer Shipping Act, 1894; *V. GOODS*, p. 822.

**TOO.** — No. 20 of the River Tyne Bye-Laws, 1884, without laying down a hard-and-fast rule, means, that the Incoming Vessel is not to come in “Too Near,” *i.e.* that she must give room enough, and “she must not run up so close as only to leave just room” (per Esher, M. R., *The John O’Scott*, 1897, P. 64; 66 L. J. P. D. & A. 47; 76 L. T. 222; 8 Asp. 235, interpreting *The Harvest*, 11 P. D. 90).

**TOOKE.** — *V. HORNE-TOOKE’S ACT*.

**TOOL.** — *V. MACHINE: MATERIALS*.

**TOOT AND HAUL.** — *V. NET*, p. 1265.

TOP. — *V.* LOP.

TOPMOST STOREY. — *V.* STOREY.

TORRA. — “Torra,” or “Tor,” a mount or hill (*Jacob*).

TORRENS' ACT. — Artizans and Labourers Dwellings Act, 1868, 31 & 32 V. c. 130, which, with the cognate subsequent Acts, is repealed and replaced by Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70.

TORT. — “A ‘Tort’ has been defined as a Wrong independent of Contract. It may also be defined as the infringement, without lawful excuse, of a right vested in some determinate person, either personally or as a member of the community, and available against the world at large, or against some person or body exercising public functions as such, whereby damage is caused to such determinate person, either intentionally or as a natural consequence of the infringement” (*Add. T. 1*); or, more briefly, a Tort, is an act or omission giving rise, in virtue of the Common Law Jurisdiction of the Court, to a civil remedy which is not an action of Contract (*Pollock on Torts, 6 ed., 5*).

“Action founded on Tort,” s. 5, Co. Co. Act, 1867, repld s. 116, Co. Co. Act, 1888; — an action of Detinue, or Trover, is within this phrase (*Bryant v. Herbert, 47 L. J. C. P. 670; 3 C. P. D. 389; 26 W. R. 898; Cohen v. Foster, 61 L. J. Q. B. 643; 66 L. T. 616*); so is an action by a Bailor against a Bailee for not safely keeping the thing bailed (*Turner v. Stallibrass, 1898. 1 Q. B. 56; 67 L. J. Q. B. 52; 46 W. R. 81; 77 L. T. 482*); so is an action against a Carrier for delivering goods to an insolvent consignee after notice of a stoppage *in transitu* (*Pontifex v. Mid. Ry, 47 L. J. Q. B. 28; 3 Q. B. D. 23*), or for personal injuries to his passenger occasioned by negligence (*Taylor v. Manchester, S. & L. Ry, and Kelly v. Metrop Ry, cited CONTRACT, p. 392; V. Meux v. G. E. Ry, cited LUGGAGE*). *Cp.* “Action founded on Contract,” sub CONTRACT: *Va*, FOUNDED ON.

“Action of Tort,” s. 10, Co. Co. Act, 1867; Trover is within this phrase (*Clapham v. Oliver, 30 L. T. 365*).

Proceedings under s. 23, 41 & 42 V. c. 77, for expenses to Highway caused by EXTRAORDINARY TRAFFIC, are founded on Tort, and cease on the death of the causator (*Story v. Sheard, 61 L. J. M. C. 178; 1892, 2 Q. B. 515; 67 L. T. 423; 41 W. R. 31; 56 J. P. 760*).

Executor *de son tort*; *V.* EXECUTOR.

*Cp.* MISFEASANCE.

TORTURE. — *V.* Cruelty to Animals, sub CRUELTY, pp. 444, 445.

TOTAL INCOME. — *V.* INCOME.

**TOTAL LOSS.**—Quà a Marine Insrce, “the ‘Total Loss’ of the thing insured is, the absolute destruction of it by the Wreck of the Ship” (per Mansfield, C. J., *Cocking v. Fruser*, cited SPECIE, *wher*’).

“Since the days of *Davy v. Milford* (15 East, 559, on *wher*, *Janson v. Ralli*, 25 L. J. Q. B. 300; 6 E. & B. 422), it seems that the expression, ‘Total Loss,’ is an ambiguous one; it may mean a total loss of the whole subject-matter of insurance, or a total loss of part” (per Byles, J., *Wilkinson v. Hyde*, 3 C. B. N. S. 46; 27 L. J. C. P. 120).

A Total Loss is either (1) Actual, or (2) Constructive. — *Actual*, when the subject-matter of insurance is either wholly destroyed, or so damaged that it would be IMPRACTICABLE to repair the injury (Maude & P. 525: *Moss v. Smith*, 9 C. B. 103); *Constructive*, when the subject-matter, although still in existence, is either actually lost to the owners, or beneficially lost to them and notice of abandonment has been given to the underwriters (Maude & P. 528). Quà a Policy, there is a Constructive Total Loss when the ship goes to the bottom of the sea, though the underwriters may, by mechanical skill and appliances, bring her up again (*The Blairmore*, 1898, A. C. 593; 67 L. J. P. C. 96; 79 L. T. 217).

The Total Loss of a ship by ABANDONMENT cannot be converted into Partial Loss by recapture or restoration *after* action brought (*Ruys v. Royal Exchange Assree*, 1897, 2 Q. B. 135; 66 L. J. Q. B. 534; 77 L. T. 23).

Quà Bottomry Bond; *V. Loss*.

*Vh*, *Cunningham v. Maritime Insrce*, 1899, 2 I. R. 257; *Cossmann v. West*, 57 L. J. P. C. 17; 13 App. Ca. 160; 58 L. T. 122; 6 Asp. 233; *Allen v. Sugrue*, 8 B. & C. 561; *Adams v. Mackenzie*, 13 C. B. N. S. 442; 32 L. J. C. P. 92; 2 Arn. Part 3, ch. 6: 8 Encyc. 183–191.

Value of Ship how ascertained quà a Constructive Total Loss; *V. Henderson v. Shankland*, 1896, 1 Q. B. 525; 65 L. J. Q. B. 340; 74 L. T. 238; 44 W. R. 401, approving the dictum in *Arnold*, s. 1024, that “New for Old” allowance is not applicable where no repairs are done.

*V. CASTAWAY: LOSS: PARTIAL LOSS: SPECIE.*

*Cp*, “Wholly disabled,” sub WHOLLY.

**TOTIES QUOTIES.**—“As often as” (Cowel). *V. AS OFTEN AS: FROM TIME TO TIME: QUAMDIU.*

**TOUCH.**—As to the meaning of a Covenant “touching the Land”; *V.* per Charles, J., *Fleetwood v. Hull*, 58 L. J. Q. B. 341; 23 Q. B. D. 35; 60 L. T. 790; 37 W. R. 714, approved by Lindley, L. J., *White v. Southend Hotel Co*, 1897, 1 Ch. 767; 66 L. J. Ch. 387: *V. RUN WITH THE LAND.*

An Arbitration Clause that all disputes, &c, “touching These Presents, or any clause matter or thing herein contained, or the construction thereof”; held, to include, not only the construction of the document

itself, but also the question whether the acts complained of were or were not within the matters referred to arbitration (*Willesford v. Watson*, 42 L. J. Ch. 447; 8 Ch. 478; *svthe*, *Piercy v. Young*, 14 Ch. D. 200; *V.* both cases cited in the jdgmt in *De Ricci v. De Ricci*, 1891, P. 378; 61 L. J. P. D. & A. 17).

“Touching the Right”; *V.* RIGHT.

*Cp.*, AFFECT: AFFECTING.

**TOUCH-AND-GO.** — *V.* STRANDING.

**TOURNE.** — *V.* TURNE.

**TOUT.** — In a libel action (June 13, 1893) Day, J., said that “the true meaning of the word ‘Tout’ is simply, a person who obtains business by solicitation; and not, necessarily, a SWINDLER, though no doubt he might combine the occupations” (37 S. J. 567). In *Asch v. Financial News* (Times, June 13, 1893; Odgers, 119), a jury found the word not libellous.

**TOW.** — *V.* LIBERTY TO TOW.

A tug towing a vessel UNDER-WAY, though having her anchor on the ground yet not held thereby, must carry Towing Lights as prescribed by Art. 3, Regns for Preventing Collisions at Sea, 1897 (*The Romance*, cited AT ANCHOR).

**TOWAGE.** — “‘Towage, *Towagium*,’ Is the towing or drawing a Ship or Barge along the water by men or beasts on land, or by another ship or boat fastned to her” (Cowel). *V.* TOWING-PATH.

“Without attempting any definition which may be universally applied, a Towage Service may be described as, the employment of one VESSEL to expedite the voyage of another when nothing more is required than the accelerating her progress” (per Dr. Lushington, *The Princess Alice*, 3 Rob. W. 138; *Vf.*, *The Charlotte*, Ib. 71; *The Strathnaver*, 1 App. (C. 58); and are not the subject of a Maritime LIEN (*Westrup v. Great Yarmouth Co*, 59 L. J. Ch. 111; 43 Ch. D. 241).

In another sense, Towage, is a Shore-duty, “for the liberty of Vessels up to the Port” (Hale, *De Portibus Maris*, ch. 6); “also that money, or other recompence, which is given by bargemen to the owner of the ground next a River where they tow a Barge, or other Vessel” (Cowel).

*Vf.*, Jacob: 12 Encyc. 197–199.

**TOWARDS.** — A bequest of an Annuity to A, “towards the support of her children until they attain 21”; held, merely descriptive of the motive of the gift, and that the annuity continued after the children attained 21 (*Farr v. Hennis*, W. N. (80) 194). *V.* SUPPORT.

In pleading a WAY to a place, the word anciently used was “UNTO”

the place, but "towards" has been introduced in modern times (per Littledale, J., *Simpson v. Leathwaite*, 3 B. & Ad. 230, 231): the reason for using the latter, and less rigid, word being shown by Kenyon, C. J., in *Wright v. Rattray*, 1 East, 381.

From A. "towards and unto" B., in an Indictment for Non-repair of a Highway; *V. R. v. Downshire*, 5 L. J. K. B. 50; 4 A. & E. 232; 5 N. & M. 662. V. To.

**TOWER.** — "District of Tower," in Sch B, Metrop Man. Act, 1855; *V. R. v. Great Tower Hill Trustees*, 14 L. T. 792.

**TOWING-PATH.** — *V. Grand Junction Canal Co v. Petty*, cited PUBLIC ROAD: *Lea Conservancy v. Button*, 51 L. J. Ch. 17; 6 App. Ca. 685; *Winch v. Thames Conservators*, 43 L. J. C. P. 167; L. R. 9 C. P. 378.

**TOWN.** — "By the name of a towne, villa, a mannor may passe" (Co. Litt. 5 a).

"Towne (ville)." "*Villa est ex pluribus mansionibus vicinata, et collata ex pluribus vicinis.* If a towne be decayed so as no houses remaine, yet it is a towne in law. And so if a borough be decayed, yee shall it send burgesses to the parliament, as Old Salisbury and others doe." — but the glory of Old Sarum was extinguished by the Rep People Act, 1832 — "It cannot be a towne in law, unlesse it hath, or in time past hath had, a church and celebration of divine service, sacraments, and burials" (Co. Litt. 115 b: *Vf*, 1 Bl. Com. 114). In *Elliott v. S. Devon Ry* (17 L. J. Ex. 262) Parke, B., said that the legal meaning of the word "Town" was "a place with a constable, or a church." V. BOROUGH: TOWNSHIP: VILL: VILLAGE.

But generally in modern legislation, — e.g. ss. 93, 128, Lands C. C. Act, 1845; s. 11, Ry C. C. Act, 1845; Towns Improvement Clauses Act, 1847, 10 & 11 V. c. 34, — "Town" is not restricted by its legal meaning, but is expounded popularly and means, the space which, for the time being, is covered by, or occupied as accessory to, houses collected together in a mass, and in sufficient number to be ordinarily designated as a Town; and includes unbuilt-on lands that may lie within the ambit of such collected mass of houses (*Elliott v. S. Devon Ry*, 17 L. J. Ex. 262; 2 Ex. 725; *R. v. Cottle*, 20 L. J. M. C. 162; 16 Q. B. 412; *Lond. & S. W. Ry v. Blackmore*, 39 L. J. Ch. 713; 23 L. T. 504; 19 W. R. 305; L. R. 4 H. L. 610; *Collier v. Worth*, 1 Ex. D. 464; 40 J. P. 808; *Deards v. Goldsmith*, 40 L. T. 328); but not lands outside such ambit, though within a borough (*Carington v. Wycombe Ry*, 3 Ch. 377; 37 L. J. Ch. 213; 18 L. T. 96; 16 W. R. 494; *Coventry v. L., B. & S. Ry*, L. R. 5 Eq. 104; 37 L. J. Ch. 90; 16 W. R. 267; *Falkner v. Somerset & Dorset Ry*, L. R. 16 Eq. 458; 42 L. J. Ch. 851). *Vf*, Dart,

860, 861: Lloyd on Compensation, 6 ed., 37; Woolf. & Middleton, Ib. 208, 249, 274; Brown & Allan, Ib. 282; Cripps, Ib., 4 ed., 40, 264.

Observe further, that in modern Acts, "Town" will frequently be an expanding word, and not tied to the limits of the locality indicated at the time of its use. Thus, a prohibition in the Rochdale Market Act, 1822, against selling marketable commodities within the "Town" of Rochdale elsewhere than in the Market, means, the growing town of Rochdale, and not merely that town as it was in 1822 (*Killmister v. Fitton*, 53 L. T. 959).

An Auctioneer may (without other than his Auctioneer's License) sell by SAMPLE exciseable commodities if their owner is licensed for their sale "in the SAME Town or Place," s. 14, 27 & 28 V. c. 56; that means, "same Town" in its popular designation, and although (save for the Thames) there are houses all the way from the City of London to Sydenham, yet the City and Sydenham are not "in the same Town," within that section (*Cusey v. Rose*, 82 L. T. 616).

"Town," as defined by the Licensing Acts; *V.* 35 & 36 V. c. 94, s. 74; 37 & 38 V. c. 49, s. 32. — *Ir.* 37 & 38 V. c. 69, s. 37.

"Town" in a Turnpike Act; *V. R. v. Cottle*, 20 L. J. M. C. 162; 16 Q. B. 412.

Whether a place, in Ireland, is a "Town" so as to constitute one of the requisites for making a HOLDING in its neighbourhood a "TOWN PARK," s. 58, Land Law (Ir) Act, 1881, 44 & 45 V. c. 49, depends on whether it can be fairly described in ordinary language as a Town, and whether there are living in the place people who want land for their own accommodation and who are willing to pay for it more than its ordinary value (*Re Archer and Caledon*, 1894, 2 I. R. 473, on *whew*, *M'Conn v. Downshire*, Ib. 611).

For Ireland, "Town" has received many statutory definitions, *e.g.* 9 & 10 V. c. 87, s. 2; 13 & 14 V. c. 68, s. 24, c. 69, s. 117; 15 & 16 V. c. 63, s. 45; 17 & 18 V. c. 103, s. 1, on *whew*, *R. v. Loe Gov Bd*, 2 L. R. Ir. 316; 18 & 19 V. c. 40, s. 3; 20 & 21 V. c. 47, s. 2; 31 & 32 V. c. 49, s. 25; 32 & 33 V. c. 28, s. 4; 34 & 35 V. c. 109, s. 3; 46 & 47 V. c. 33, s. 8; 59 & 60 V. c. 54, s. 34; 61 & 62 V. c. 37, s. 109.

Quà Lands Valuation (Scotland) Act, 1854, 17 & 18 V. c. 91, "Town," shall extend to and include, all BURGHS, as well royal and parliamentary burghs as burghs of barony or regality, and all other burghs whatsoever, and generally all places situate within a county forming an area of assessment distinct from such county" (s. 42).

In Fiji, a Town is constituted by the Governor's Proclamation; *Vh*, *Smart v. Suva*, 1893, A. C. 301; 62 L. J. P. C. 88; 68 L. T. 774.

"Town," in an Agreement in RESTRAINT OF TRADE, is to be construed in a popular sense, and the introduction of that word in such a phrase as "within the limits of the Town of A." is very little, if at all,

different from "within the limits of A." (per Kekewich, J., *Houghton v. Staines*, Times, Nov. 19, 1894).

"Town" in an Indictment; *V. R. v. Fisher*, 8 C. & P. 612.

"Town Corporate"; *V. "Borough or Place,"* sub *BOROUGH*, p. 209: CORPORATE.

"Town Police Clauses Acts, 1847 to 1889"; *V. Sch 2*, Short Titles Act, 1896.

"Post Town"; *V. Post*.

**TOWN CLERK.**—As to his appointment, &c, *V. s. 17*, Mun Corp Act, 1882; s. 78, Town Councils (Scot) Act, 1900; s. 93, Mun Corp (Ir) Act, 1840, 3 & 4 V. c. 108.

Stat. Def.—6 & 7 V. c. 18, ss. 56, 101.—*Scot.* 16 & 17 V. c. 93, s. 2; 18 & 19 V. c. 88, s. 36; 35 & 36 V. c. 33, Sch; 57 & 58 V. c. 58, s. 54.—*Ir.* 13 & 14 V. c. 69, s. 117; 19 & 20 V. c. 98, s. 2; 31 & 32 V. c. 112, s. 30; 35 & 36 V. c. 33, Sch, c. 60, s. 28.

**TOWN COMMISSIONERS.**—*V. COMMISSIONERS*, p. 344.

**TOWN COUNCIL.**—Stat. Def., 20 & 21 V. c. 81, s. 29.—*Scot.* 16 & 17 V. c. 93, s. 2; 19 & 20 V. c. 58, s. 48; 23 & 24 V. c. 105, s. 4.—*Ir.* 9 & 10 V. c. 110, s. 88; 12 & 13 V. c. 97, s. 133; 15 & 16 V. c. 63, s. 45; 19 & 20 V. c. 98, s. 2.

**TOWN FUND.**—Stat. Def., *Ir.* 9 & 10 V. c. 87, s. 2; 18 & 19 V. c. 40, s. 3.

**TOWN PARK.**—"Any demesne land, or any HOLDING ordinarily termed 'Town-Parks' adjoining or near to any City or TOWN," s. 15 (1), Landlord and Tenant (Ir) Act, 1870, 33 & 34 V. c. 46; s. 58 (2), Land Law (Ir) Act, 1881, 44 & 45 V. c. 49: "It is difficult to imagine any Town-Park which does not, in course of management, receive the use similar to what a FARM receives. The growth of oats and feeding of cattle are ordinary uses of a Town-Park and Farm" (per Walker, C., *Daly v. Wright*, 32 L. R. Ir. 10).

**TOWN RATE.**—Stat. Def., *Ir.* 9 & 10 V. c. 87, s. 2; 18 & 19 V. c. 40, s. 3; 29 & 30 V. c. 90, s. 57.

**TOWNSHIP.**—*V. Elph.* 624-626: HAMLET.

"Township," s. 1, Beerhouse Act, 1840, 3 & 4 V. c. 61; *V. Preston v. Buckley*, 39 L. J. M. C. 105; L. R. 5 Q. B. 391.

"PARISH or Township," quâ Parliamentary Voters Registration Act, 1843, 6 V. c. 18, extends to and means, "every parish, township, village, hamlet, district, or place, maintaining its own Poor" (s. 101).

**TRACK.**—*V. RAILWAY TRACK.*

**TRADE: TRADESMAN.** — Formerly "Trade" was used in the sense of an "Art or Mystery," e.g. that of a Brewer (V. ART), or a Tailor (*Norris v. Staps*, Hob. 211: *Vf*; INFERIOR TRADESMAN), but now "Trade" "has the technical meaning of buying and selling" (per Willes, J., *Harris v. Amery*, 35 L. J. C. P. 92; L. R. 1 C. P. 148: *Va*, 2 Bl. Com. 476; s. 19, 41 & 42 V. c. 49: per Halsbury, C., *San Paulo Ry v. Carter*, 1896, A. C. 38; 65 L. J. Q. B. 163: per Ld Davey, *Grain-ger v. Gough*, 1896, A. C. 325; 65 L. J. Q. B. 418: *Cp*, COMMERCE). Thus, a covenant in a Lease not to carry on any "Offensive Trade," does not prohibit a Private Lunatic Asylum, "Trade," in such a connection, being only applicable to a business of buying and selling (*Doe d. Wetherell v. Bird*, cited OFFENSIVE, p. 1320).

But "Trade" "may have a larger meaning so as to include Manufactures" (*Comurs of Taxation v. Kirk*, cited DERIVE, at end). So, the business of a Telegraph Co, is a "Trade" qua<sup>t</sup> House Duty (*Bank of India v. Wilson*, cited DWELLING-HOUSE, p. 591; diss. Cleasby, B.). *Vf*, APPRENTICE.

It is not essential to a "Trade" that the persons carrying it on should make, or desire to make, a profit (per Coleridge, C. J., *Re Law Reporting Council*, 58 L. J. Q. B. 95; 22 Q. B. D. 279, *whvu*, inf: *sv*, per Halsbury, C., and Ld Davey, sup).

"The term 'Tradesman' (s. 1, Sunday Observance Act, 1677) cannot be extended by a reasonable construction to a FARMER" (per Cockburn, C. J., *R. v. Silvester*, 33 L. J. M. C. 80; nom. *R. v. Cleworth*, 4 B. & S. 927: *Cleworth v. Leigh*, 12 W. R. 375), nor to a Hairdresser or Barber (*Palmer v. Snow*, 1900, 1 Q. B. 725; 69 L. J. Q. B. 356; 82 L. T. 199; 48 W. R. 351; 64 J. P. 342). *Vf*, OTHER, p. 1360.

A Co "established for any Trade or Business," s. 11 (5), Customs and Inl. Rev. Act, 1885, 48 & 49 V. c. 51, may be one not anticipating profit (*Re Law Reporting Council*, sup); *secus* of the same phrase in s. 13 (2), 41 V. c. 15, because there it is added "by which the occupier seeks a LIVELIHOOD or Profit" (*London Library v. Carter*, 6 Times Rep. 161; 34 S. J. 231: *British Institute of Preventive Medicine v. Styles*, 11 Times Rep. 432: *Vh*, *Scotland Free Church v. Bain*, cited HALL). *Vf*, SOLELY.

"Trade or Business" carried on for which license required, s. 3, 30 & 31 V. c. 90; *V*. per Collins, J., *Killick v. Graham*, 1896, 2 Q. B. 196, 65 L. J. M. C. 180; 75 L. T. 29; 44 W. R. 669; 60 J. P. 534.

An Agreement, in RESTRAINT OF TRADE, not to carry on "any Trade or Business," means, trade or business of a kind and manner of operation similar to that of the contractee (*Moenich v. Fenestre*, 67 L. T. 602; 61 L. J. Ch. 737). *Vf*, PREVIOUSLY.

*V*. BUSINESS: CALLING: CARRY ON: IN HIS TRADE OR BUSINESS: PUBLIC TRADE OR BUSINESS.

"Trade or Commerce"; *V*. CIVIL RIGHTS.



"Trade or DEALING for Gain or Profit," forbidden to a "SPIRITUAL Person," s. 3, 57 G. 3, c. 99, repld s. 29, Pluralities Act, 1838, 1 & 2 V. c. 106, includes the business of a Banker (*Hall v. Franklin*, 3 M. & W. 259; 7 L. J. Ex. 110). *Note.* The curious practical decision in *the* was remedied by s. 1, 1 V. c. 10; *Va*, s. 1, 4 V. c. 14.

"Trade, *Manufacture, Adventure, or Concern*," No. 1, 1st set of Rules, Sch D to s. 100, Income Tax Act, 1842, 5 & 6 V. c. 35; *V. Ryhope Co v. Foyer*, 7 Q. B. D. 485; 45 L. T. 404: *Vf*, PURPOSES.

"Profession, Trade, Employment, or Vocation," Sch D to s. 2, Income Tax Act, 1853, is used in the larger sense of BUSINESS (per Esher, M. R., *Grainger v. Gough*, 1895, 1 Q. B. 71; 64 L. J. Q. B. 193; revd in H. L. without affecting this dictum, 1896, A. C. 325; 65 L. J. Q. B. 410).

As to what is carrying on a trade in breach of a restrictive covenant, *V. CARRY ON*, pp. 265, 266; BUTCHER: CLIENT: COFFEE-HOUSE: INN-KEEPER: LADIES' OUTFITTER.

"Trade" carried on by a Married Woman: *V. SEPARATELY: CARRY ON*, p. 266.

The exemption from License Duty for Vehicles used "IN THE COURSE of Trade or *Husbandry*," given by s. 19 (6), 32 & 33 V. c. 14, does not extend to vehicles belonging to a Circus Proprietor and used by him for carrying his performers and making displays (*Speak v. Powell*, 43 L. J. M. C. 19; L. R. 9 Ex. 25; 29 L. T. 434). *Cp*, CARRIAGE: VEHICLE.

Every Weighing Instrument is "*used for Trade*," within s. 1 (1), 52 & 53 V. c. 21, which is employed in relation to a contract for sale of goods, *e.g.* a Weighing Machine at Smelting Works (*Crick v. Theobald*, 64 L. J. M. C. 216; 72 L. T. 807; 59 J. P. 502; 11 Times Rep. 445).

"*Trade in or sell* any article composed wholly or in part of GOLD or SILVER," s. 1, 30 & 31 V. c. 90; *V.* per Collins, J., *Killick v. Graham*, *sup.*

*V. HABITUAL: INFERIOR TRADESMAN: LAWFUL TRADE: OFFENSIVE: PUBLIC TRADE OR BUSINESS: TRADER: TRADING: USAGE OF TRADE: USE.*

### TRADE COMBINATION. — *V. COMBINATION.*

TRADE DEBTS. — "My Trade Debts"; *V. STOCK-IN-TRADE*, towards end.

*V. Tailby v. Official Receiver*, cited ALL, p. 69; *Hadley v. Hadley*, cited PAYMENT, p. 1435.

TRADE DESCRIPTION. — Quà Merchandise Marks Act, 1887. "Trade Description," means, any description, statement, or other indication, direct or indirect,

## TRADE DESCRIPTION 2080 TRADE MACHINERY

- (a) as to the number, quantity, measure, gauge, or weight, of any goods, or
- (b) as to the place or country in which any goods were made or produced, or
- (c) as to the mode of manufacturing or producing any goods, or
- (d) as to the material of which any goods are composed, or
- (e) as to any goods being the subject of an existing patent, privilege, or copyright;

and the use of any figure, word, or mark, which, according to the Custom of the Trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a Trade Description within the meaning of this Act" (subs. 1, s. 3). *Cp.* FALSE TRADE DESCRIPTION: INTENT TO DEFRAUD: TRADE-MARK.

As "applied" within the meaning of s. 5 (1 *d*) of the Act, it is not limited to a Trade Description used in an actual physical connexion with goods; therefore, falsely to invoice a "BARREL" of Beer which is not a Barrel, is an offence within this latter section (*Budd v. Lucas*, 1891, 1 Q. B. 408; 60 L. J. M. C. 95; 64 L. T. 292; 39 W. R. 350; 55 J. P. 550); so, to falsely say of a Ham that it is Scotch (*Coppen v. Moore*, 1898, 2 Q. B. 306; 67 L. J. Q. B. 689; 78 L. T. 520; 46 W. R. 620; 62 J. P. 453). *Sr.* *Langley v. Bombay Tea Co*, 1900, 2 Q. B. 460; 69 L. J. Q. B. 752; 83 L. T. 175; 49 W. R. 27.

*Vf.* *Cameron v. Wiggins*, W. N. (1900) 253.

**TRADE ESTABLISHMENT.** — *V.* per Hannen, J., *Kent v. Astley*, cited FACTORY. *Cp.* TRADING ESTABLISHMENT.

**TRADE FIXTURES.** — *V.* FIXTURES.

**TRADE INTEREST.** — The "Trade Interest" which, under s. 36 (3), Tower Bridge Southern Approach Act, 1895, 58 & 59 V. c. cxxx, is to be excluded from the "Initial Valuation" of property within the betterment area, "refers to GOODWILL, Expectation of Profit, and any other similar matters, and to estimates based on takings and payments" (*Re London Co. Co. and City of London Brewery Co*, 1898, 1 Q. B. 393; 67 L. J. Q. B. 385; 77 L. T. 463; 46 W. R. 172; 61 J. P. 808).

**TRADE LIBEL.** — *V.* *Wren v. Weild*, 38 L. J. Q. B. 327; L. R. 4 Q. B. 730; *Halsey v. Brotherhood*, 49 L. J. Ch. 786; 51 Ib. 233; 15 Ch. D. 514; 19 Ch. D. 386: THREAT: Odgers, ch. 5.

**TRADE MACHINERY.** — Stat. Def., Bills of Sale Act, 1878, s. 5; Bills of Sale (Ir) Act, 1879, s. 5: *Vth.* Reed, 96: FIXED MOTIVE POWERS.

*V.* MACHINERY: PLANT.

**TRADE MARK.** — “The essence of a Trade Mark is that it is some distinctive thing which points out that the goods are the goods of A. B.” (per Kay, J., *Richards v. Butcher*, 1891, 2 Ch. 536: *Vf*, *Re Hopkinson*, 1892, 2 Ch. 116; 61 L. J. Ch. 387; 66 L. T. 487). *Cp*, TRADE DESCRIPTION.

As to when a Word (other than a “Fancy” or “Invented” word, *V*. FANCY WORD) may be a Trade Mark, or part of a Trade Mark; *V*. *Raggett v. Findlater*, 43 L. J. Ch. 64; L. R. 17 Eq. 29; on *wher*, *Reinhardt v. Spalding*, 49 L. J. Ch. 57; 28 W. R. 300; *Re Clement*, 1900, 1 Ch. 114; 69 L. J. Ch. 52; 81 L. T. 400.

Quà Merchandise Marks Act, 1887, “ ‘Trade Mark,’ *means*, a Trade Mark registered in the Register of Trade Marks kept under the Patents, Designs, and Trade Marks Act, 1883; and *includes*, any Trade Mark which, either with or without registration, is protected by law in any BRITISH POSSESSION or FOREIGN State to which the provisions of s. 103, Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable” (subs. 1, s. 3).

Quà Patents, &c, Act, 1883; *V*. s. 64, amended by s. 10, 51 & 52 *V*. c. 50, on *whv*, CALCULATED TO DECEIVE: DISTINCTIVE: ESSENTIAL: FANCY WORD: INDIVIDUAL: NAME: PUBLIC USE: REGISTERED: SPECIAL, p. 1914: WORD. *Cp*, TRADE NAME.

Quà Hop (Prevention of Frauds) Act, 1866, 29 & 30 *V*. c. 37, “ ‘Trade Mark’ or ‘Symbol,’ shall include, any arms, or coat of arms, of any County, City, Borough, Town, or District, or any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, or other work of any other description, lawfully used by any person to denote that the hops in any bag or pocket were grown or produced by such person in any particular parish, county, or place, or to denote the said hops to be of a particular quality or description” (s. 1).

*Vh*, Kerly on Trade Marks: Sebastian, *Ib.*: 12 Encyc. 222-234.

**TRADE NAME.** — A Trade Name may be, and often is, a TRADE MARK, but it has a wider application than that. In its wider sense, it means, the name under which a person (or company) carries on, and has habitually carried on, his business, and by which he is known in the trade or business to which his business belongs, and which accordingly distinguishes the nature, quality, and fame, of his goods and dealings. “It should never be forgotten that the sole right to restrain anybody from using any name he likes in the course of any business he chooses to carry on, is a right *in the nature of* a Trade Mark, *i.e.* a man has a right to say, — ‘you must not use a name, whether fictitious or real, — you must not use a description, whether true or not, — which is intended to represent, or calculated to represent, to the world that your business is my business, and so by a fraudulent mis-statement deprive me of the profits of the business which would otherwise come to me.’ . . . An individual

plaintiff can only proceed on the ground that, having established a business reputation under a particular name, he has a right to restrain any one else from injuring his business by using that name" (per James, L. J., *Levy v. Walker*, 10 Ch. D. 447, 448; 48 L. J. Ch. 278; 27 W. R. 370; 39 L. T. 654).

*Vh*, *Burgess v. Burgess*, 22 L. J. Ch. 675; 3 D. G. M. & G. 896; 21 L. T. O. S. 53; *Turton v. Turton*, 58 L. J. Ch. 677; 42 Ch. D. 128; 61 L. T. 571; 38 W. R. 22; *Jamieson v. Jamieson*, 42 S. J. 197; *Pinet v. Pinet*, 1898, 1 Ch. 179; 67 L. J. Ch. 41; 77 L. T. 613; 46 W. R. 506; *Montgomery v. Thompson*, 1891, A. C. 217; 60 L. J. Ch. 757; 64 L. T. 748; *Birmingham Vinegar Co. v. Powell*, 1897, A. C. 710; 66 L. J. Ch. 763; 76 L. T. 792; *Saxlehner v. Appollinaris Co*, 1897, 1 Ch. 893; 66 L. J. Ch. 533; 76 L. T. 617; *Parsons v. Gillespie*, 1898, A. C. 239; 67 L. J. P. C. 21.

As to restraining the Registration of a Co taking a name similar to that of an existing Co, *V. Hendriks v. Montagu*, 50 L. J. Ch. 456; 17 Ch. D. 638; *Tussaud v. Tussaud*, 59 L. J. Ch. 631; 44 Ch. D. 678.

**TRADE PURPOSES.**—“For the purposes of trade”; *V. PURPOSES.*

**TRADE REFUSE.**—*V. REFUSE.*

**TRADE REGULATION.**—*V. REGULATE.*

**TRADE UNION.**—Quà Trade Union Acts, 1871 and 1876, “‘Trade Union,’ means, any combination, whether temporary or permanent, for regulating the relations between Workmen and Masters, or between Workmen and Workmen, or between Masters and Masters, or for imposing restrictive conditions on the conduct of any TRADE or BUSINESS, whether such combination would or would not, if the Principal Act (*i.e.* the Act of 1871) had not been passed, have been deemed to have been an Unlawful Combination by reason of some one or more of its purposes being in RESTRAINT OF TRADE” (s. 16, 39 & 40 V. c. 22).

A FRIENDLY SOCIETY which is also a Trade Union, is a valid Friendly Soey quà such of its objects as are Friendly Soey objects, though not so as regards other objects which are in Restraint of Trade (*Swaine v. Wilson*, 59 L. J. Q. B. 76; 24 Q. B. D. 252; 62 L. T. 309; 38 W. R. 261; 54 J. P. 484; *See, Old v. Robson*, 59 L. J. M. C. 41).

As to ordinary Trade Unions and also as to Trade Assns of Employers, *V. Rigby v. Connol*, 14 Ch. D. 482; 49 L. J. Ch. 328; 28 W. R. 650; *Chamberlain Co v. Smith*, 1900, 2 Ch. 605; 69 L. J. Ch. 783; 49 W. R. 91; 83 L. T. 238; *Taff Vale Ry v. Amalgamated Soey of Ry Servants*, 70 L. J. K. B. 905; 1901, A. C. 426; 85 L. T. 147; 50 W. R. 44; 65 J. P. 596.

*V. BESET: BOYCOTE: INTIMIDATE: THREAT.*

“Provident Benefits” of a Trade Union; *V. PROVIDENT*.  
*Wh*, Wright on Conspiracy: 12 Encyc. 234-241: 44 S. J. 729.

**TRADER.** — “Traders,” quâ Bankry Laws, were broadly stated as “such as live by buying and selling” (s. 1, 1 Jac. 1, c. 15). That broad definition was amplified and made more precise by subsequent legislation; and for an enumeration of persons who formerly were liable to be adjudicated Bankrupt as “Traders,” *V. Sch 1*, Bankry Act, 1869; and for the cases thereon. *V. Robson*, 3 ed., 100-102. *Vf*, quâ Ireland, 20 & 21 V. c. 60, s. 90; 35 & 36 V. c. 58, s. 4.

“Trader,” s. 5, Bovill’s Act, 28 & 29 V. c. 86, included a trading Joint Stock Co (*Re House Improvement & Supply Assn*, Times, Jan 29, 1890).

“Being a Trader”; *V. BEING*.

Quâ Ry and Canal Traffic Act, 1888, “‘Trader,’ includes, any person sending, receiving, or desiring to send, MERCHANDIZE by railway or canal” (s. 55).

*V. TRADE: TRADERS: TRADING PERSON: ORDINARY CALLING.*

**TRADERS.** — In *Tenant v. Swansea Harbour Trustees* (3 Times Rep. 129), “Traders” of a person, were held to mean all persons having dealings with him, *i.e.* his CUSTOMERS.

**TRADESMAN.** — *V. TRADE.*

**TRADING.** — “Trading,” s. 379 (3), Mer Shipping Act, 1854, repld s. 625 (3), Mer Shipping Act, 1894, means, “for the time being Trading,” or “when Trading”; and does not mean that a Ship must be constantly trading to Brest, &c, in order to obtain the exemption from compulsory pilotage which the section provides (*Courtney v. Cole*, 19 Q. B. D. 447: 56 L. J. M. C. 141; 57 L. T. 409; 36 W. R. 8; 52 J. P. 20; 6 Asp. 169: *Vf*, *The Wesley*, Lush. 268: *The Sutherland*, 56 L. J. P. D. & A. 95; 12 P. D. 154; 57 L. T. 631; 36 W. R. 13: *The Rutland*, 1896, P. 281; 1897, A. C. 333; 65 L. J. P. D. & A. 91; 66 Ib. 105; 76 L. T. 662, in *whle Lopes*, L. J., said, “I take a ‘SHIP Trading,’ or a ‘Trading Ship,’ to be a Ship carrying cargo as contradistinguished from a ship not carrying cargo, *e.g.* a yacht or a man-of-war”: *The Columbus*, 80 L. T. 203: *Sv*, *The Glanystwyth*, cited COASTING TRADE). *Wh*, EUROPE.

“Trading Inwards,” “Trading Outwards”; *V. Mersey Docks v. Henderson*, 58 L. J. Q. B. 152; 13 App. Ca. 595: *Cross v. Pagliano*, L. R. 6 Ex. 9: *Mersey Docks v. Twigge*, cited BEYOND SEAS. In *The Hanna* (cited PASSENGER), “Dr. Lushington appears to have held that ‘trading to,’ meant ‘trading between,’ and applied to outward, as well as inward, voyages” (per Jeune, P., *The Columbus*, sup).

“Trading or DEALING,” 39 & 40 G. 3, c. 104; *V. LIVELIHOOD*. *Va*, “Trade or Dealing,” sub TRADE.

**TRADING AND OTHER PUBLIC COMPANIES.** — This phrase, in s. 5, Apportionment Act, 1870, includes any Public Company, but not a Private Partnership (*Re Griffith, Carr v. Griffith*, 12 Ch. D. 655).

V. PUBLIC COMPANY.

**TRADING CAPITAL.** — V. CAPITAL.

**TRADING ESTABLISHMENT.** — In an agreement in RESTRAINT OF TRADE, "Trading Establishment" means, any business contrary to the intention of the agreement and which would be likely to interfere with the trade acquired under the agreement (*Avery v. Langford*, 23 L. J. Ch. 837; *Kay*, 663).

(*q.*) TRADE ESTABLISHMENT.

**TRADING PERSON.** — A person who goes from the town in which he resides, and takes a room at another town, and there sells goods which are brought direct from the town of his residence, is a "Trading Person going from town to town" within s. 6, 50 G. 3, c. 41 (*Manson v. Hope*, 31 L. J. M. C. 191; 2 B. & S. 498, following *A-G. v. Tongue*, 12 Price, 51; *A-G. v. Woolhouse*, *Ib.* 65; 1 Y. & J. 463; *Dean v. King*, 4 B. & Ald. 517). *Vf.* *R. v. Turner*, 4 B. & Ald. 510: HAWKER.

**TRAFFIC.** — Quà Ry and Canal Traffic Act, 1854, "Traffic," includes, "not only Passengers and their Luggage, and Goods Animals and other things conveyed by any Railway Co or Canal Co or Railway and Canal Co, but also Carriages, Waggon, Trucks, Boats, and Vehicles of every description adapted for running or passing on the railway or canal of any such Co" (s. 1). As "Traffic" is used in s. 2; *V. East & West India Dock Co v. Shaw*, 39 Ch. D. 524; 57 L. J. Ch. 1038; 60 L. T. 142; 6 Ry & Can Traffic Ca. 94. V. FACILITIES: MERCHANDIZE TRAFFIC.

Quà Regn of Railways Act, 1873, and by s. 3, "Traffic" is defined in nearly the same terms as in s. 1, Ry and Canal Traffic Act, 1854.

Quà National Defence Act, 1888, 51 & 52 V. c. 31, "'Traffic,' includes Persons, Animals, Goods, and things of every description, which are ordinarily carried, or are required by virtue of this Act to be received and forwarded, on a railway" (subs. 8, s. 4).

In an Agreement by one Ry Co to work a Line so "as fairly and EFFICIENTLY to develop the Traffic" of another Ry, "Traffic" was held to apply to THROUGH TRAFFIC as well as LOCAL TRAFFIC (*East London Ry v. L. B. & S. Ry*, 2 Ry & Can Traffic Ca. 413).

V. ARISING: DEVELOP: STATION.

Receipts from all "Traffic conveyed on the Railway"; "I agree that all things incidental to the Traffic are part of the gross receipts, and I think the receipts of the Cloak Room, and of warehousing, are part of the receipts for carrying the Traffic on the line; but I cannot agree that the

receipts from Telegrams are part of those gross receipts" (per Blackburn, J., *R. v. Coleridge*, 45 L. J. Q. B. 654); and Telegram receipts were held not within the phrase, as used in an agreement between two Ry Companies.

Land to be used only for *Convenience* of Traffic; *V. Harris v. Loud. & S. W. Ry*, cited NECESSARY, p. 1252.

A Coal Merchant's Office on a Ry Co's wharf, used for the clerical work connected with the coal consigned to him by the Co, is "used for the purposes of, or in connection with, the Traffic" of such Co, within s. 86, London Bg Act, 1894 (*Elliott v. London Co. Co.*, 1899. 2 Q. B. 277; 68 L. J. Q. B. 837; 81 L. T. 155; 63 J. P. 645). *V. PURPOSES.*

"Like Traffic"; *V. LOWEST RATE.*

Traffic relates to "Peace, Order, and Good Government"; *V. PEACE.*

To "OPEN" a Factory or Workshop "for Traffic on SUNDAY" (contrary to the condition of the exception quâ Jews in s. 51, Factory and Workshop Act, 1878, repled s. 48, Factory and Workshop Act, 1901), there must be something in the nature of Trade or Commerce; work behind closed doors is not such "Traffic," *secus*, if CUSTOMERS come in and go out as they usually do on a week day; therefore, to send articles to be worked upon, or to fetch them away, in pursuance of *prior* arrangements, is not within the phrase (*Goldstein v. Vaughan*, 1897, 1 Q. B. 549; 66 L. J. Q. B. 380; 76 L. T. 262; 45 W. R. 399; 61 J. P. 277).

"STREET for Carriage Traffic," s. 7, London Bg Act, 1894; *V. Wood v. London Co. Co.*, 64 L. J. M. C. 276; 73 L. T. 313; 44 W. R. 144; 59 J. P. 615.

Street "for Foot Traffic only," s. 8, Metrop Man. Act, 1882; *V. London Co. Co. v. Davis*, 64 L. J. M. C. 212; 43 W. R. 574; 59 J. P. 583.

*V. EXTRAORDINARY TRAFFIC: LOCAL TRAFFIC: PUBLIC TRAFFIC: THROUGH TRAFFIC: TRAFFICKING.*

**TRAFFICKING.** — Quâ Public Houses Acts Amendment (Scot) Act, 1862, 25 & 26 V. c. 35, "Trafficking," means and includes, "bartering, selling, dealing in, trading in, exposing or offering for sale, by RETAIL" (s. 37).

*V. HAWK: SHEBEEEN: TRAFFIC.*

**TRAIN.** — A series of trucks propelled by hydraulic power into a Goods Station, is a "Train upon a Railway" within s. 1 (5). Employers' Liability Act, 1880 (*Cox v. G. W. Ry*, 9 Q. B. D. 106). This phrase is very comprehensive. "I should think, speaking in a general way, that the legislature meant that a locomotive engine by itself, or anything that was drawn along a railway or was in course of being drawn along a railway by that locomotive engine, should be included in a 'Train.' I doubt very much whether it would depend upon the number of carriages or the

number of vehicles going upon wheels which the locomotive was taking along the railway. I should think the legislature intended a very wide scope to be given to the use of these words" (per Halsbury, C., *McCord v. Cammell*, 1896, A. C. 64; 65 L. J. Q. B. 205). *V.* RAILWAY: CHARGE OR CONTROL: CONTROL.

*V.* CHEAP TRAIN: ORDINARY TRAIN: PASSENGER TRAIN: "Special Train," sub SPECIAL.

**TRAINER.** — A Trainer of Horses, is one who trains horses for other persons for profit; one who only trains his own horses does not commit a breach of an Injunction restraining him from "carrying on the business of a Trainer of Horses upon the Down" (*Lancashire v. Hunt*, 11 Times Rep. 275).

**TRAINING.** — Yeomanry and Volunteers are being "trained or exercised" with the Regular Forces, s. 176 (7, 8), Army Act, 1881, as soon as they fall in and form up as a regiment under arms and under command in order to be so trained or exercised, and they remain "subject to Military Law as Soldiers" as long as the regiment remains under arms and under command, *i.e.* until the regiment or particular company has reached its homeward destination and has been finally dismissed (*Marks v. Frogley*, cited SOLDIER).

*V.* STABLE.

**TRAITOR.** — *V.* TREASON: FREE PARDON.

**TRAMCAR.** — *V.* COACH.

**TRAMMEL.** — *V.* MESH.

**TRAMROAD.** — *V.* TRAMWAY.

**TRAMWAY.** — Quia Tramways (Scot) Act, 1861, 24 & 25 V. c. 69, " 'Tramways,' shall mean and include, any tramroad or tramway, whether temporary or permanent, formed of iron, stone, or other material, and laid down level with the surface of any turnpike or statute labour road under the provisions of this Act" (s. 2).

Quia Conveyance of Mails Act, 1893, 56 & 57 V. c. 38, " 'Tramway,' means, a Tramway authorized by an Act to be constructed wholly along public roads or streets without any deviation therefrom"; " 'Tramroad,' means, any tramroad or tramway which is not a 'tramway' as herein-before defined, and includes, a tramway or LIGHT RAILWAY constructed under the Tramways (Ireland) Acts, 1860 to 1891. or the Railways (Ireland) Act, 1890" (s. 5).

*V.*; Tramways Act, 1870, 33 & 34 V. c. 78; Military Tramways Act, 1887, 50 & 51 V. c. 65; 62 & 63 V. c. 19, Sch, s. 1. — *Ir.* 46 & 47 V. c. 43, s. 25; 55 & 56 V. c. 27, s. 4; "The Tramways (Ireland) Acts,



1860 to 1895," *V. Sch 2*, Short Titles Act, 1896. *Cp*, STREET RAILWAY.

*V. North Metropolitan Tramways Co v. London Co. Co.*, cited UNDERTAKING: CART ROAD.

A power to a Municipal Authority to work "Tramways" does not include ordinary Omnibuses (*A-G. v. London Co. Co.*, *W. N.* (1900) 100; aff'd in *H. L.* 71 *L. J. Ch.* 268; 1902, *A. C.* 165; 86 *L. T.* 161; 50 *W. R.* 497; 66 *J. P.* 340).

The "VALUE of the Tramway" as restricted by s. 43, Tramways Act, 1870, means, such sum as it would cost to construct and establish it, minus its depreciation; and no account is to be taken of the present profits or rental value of the Undertaking (*London Street Tramways Co v. London Co. Co.*, 1894, *A. C.* 489; 63 *L. J. Q. B.* 769; 71 *L. T.* 301; *Edinburgh Street Tramways Co v. Edinburgh*, 1894, *A. C.* 456; 63 *L. J. Q. B.* 769. *Vf*, *Toronto Street Ry v. Toronto*, 1893, *A. C.* 511; 63 *L. J. P. C.* 10; *Stockton v. Kirkleatham*, cited PRICE.

*Vh*, 12 *Encyc.* 242-252.

**TRANSACT BUSINESS.** — Going into two shops, and possibly buying tobacco in the one and certainly buying bacon for his own consumption in the other, is not "transacting business" by a member of a Benefit Society, within a Rule forfeiting Sick-pay (*Wallis v. Lomas*, *Times*, Feb 10, 1890).

"In any way deal or transact business"; *V. Mills v. Dunham*, cited CUSTOMER.

*V. BUSINESS.*

**TRANSACTION.** — "Contract, Dealing, or Transaction"; *V. CONTRACT.*

"Transaction," in the Canada Civil Code; *V. King v. Pinsonneault*, *L. R.* 6 *P. C.* 245; 44 *L. J. P. C.* 42.

"Transaction," *R.* 8, *Sch 1*, *Solrs Rem Ord*, means, "Sale," so that on each sale under £100 the *Solr* is entitled to the Scale Fee of £3, though on several sales the same Title applies to each (*Re Thomas*, 1900, 1 *Ch.* 454; 69 *L. J. Ch.* 219; 82 *L. T.* 105; 48 *W. R.* 299).

"Same Transaction"; *V. SAME.*

**TRANSCRIPT.** — *V. TENOR.*

**TRANSFER.** — The operative verb "Transfer," "is one of the widest terms that can be used" (per James, *L. J.*, *Gathercole v. Smith*, 50 *L. J. Ch.* 672; 17 *Ch. D.* 1; *Vf*, per Erle, *J.*, *R. v. General Cemetery Co*, 6 *E. & B.* 419. *V. TRANSFERABLE.* *Cp*, SUBROGATION.

"Transfer," may, contextually, cut down a testamentary gift to personality; *V. Saumarez v. Saumarez*, 4 *My. & C.* 331; *Stokes v. Salomons*, 9 *Hare*, 83; 20 *L. J. Ch.* 343.

A devise of Copyholds to trustees "to be transferred" by them to A. on the happening of an event, gives them only an estate determinable on the event happening, and thereon the legal estate goes to A. (*Doe d. Player v. Nicholls*, 1 B. & C. 336).

Quà Lunacy Act, 1890, " 'Transfer,' includes, assignment, payment, and other disposition; and the execution and performance of every assurance and act to complete a transfer" (s. 341). *Vf*, 34 & 35 V. c. 22, s. 2.

"Transfer," e.g. of a debt, "does not necessarily mean Absolute Transfer" (per Cotton, L. J., *Re Combined Weighing Co*, 43 Ch. D. 104; 59 L. J. Ch. 27).

An Agreement accompanying a deposit of a registered BILL OF SALE, by way of equitable sub-mortgage, is a "Transfer or Assignment" of the Bill of S. within s. 10, Bills of S. Act, 1878, and need not be registered (*Re Parker, Ex p. Turquand*, 54 L. J. Q. B. 242; 14 Q. B. D. 636); but a transfer of a Co's charge on Chattels requires registration, though the Charge itself be exempt (*Jarvis v. Jarvis*, 63 L. J. Ch. 10; 69 L. T. 412).

A document accompanying an actual PLEDGE of goods is not a "Transfer" requiring registration as a Bill of Sale (*Re Hull, Ex p. Close*, 54 L. J. Q. B. 43; 14 Q. B. D. 386; 51 L. T. 795; 33 W. R. 228; *Vf, Ex p. Hubbard, Re Hardwick*, 17 Q. B. D. 695; 55 L. J. Q. B. 490; *Charlesworth v. Mills*, 1892, A. C. 231; 61 L. J. Q. B. 830; 66 L. T. 690; 41 W. R. 129). *Cp*, LICENSE.

A gift of money is a "Transfer of Property" within s. 47 (3), Bankry Act, 1883 (*Re Player, Ex p. Harvey, No. 1*, 54 L. J. Q. B. 553; *Vf*, SETTLEMENT). So a Conveyance of Shares in consideration of natural love and affection, is a "Transfer" within ss. 14, 15, 16, Comp C. C. Act, 1845; and is not a "TRANSMISSION" within ss. 18, 19 (*Copeland v. N. E. Ry*, 6 E. & B. 277; *the, Nannev v. Morgan*, 35 Ch. D. 603, 604; 37 Ib. 357; 56 L. J. Ch. 807; 57 Ib. 315).

Bankruptcy on a creditor's petition is not an Assignment or Transfer within a clause of FORFEITURE contemplating a voluntary act by the beneficiary (*Doe d. Goodbehere v. Bevan*, 3 M. & S. 353; *Lear v. Leggett*, 2 Sim. 479), even though it proceed on a declaration of insolvency (*Graham v. Lee*, 23 Bea. 388): but where there is a *cessio honorum* in bankruptcy, insolvency, or liquidation, based on the beneficiary's petition, then there is such a Transfer (*Shee v. Hale*, 13 Ves. 409; *Re Amherst*, 41 L. J. Ch. 222; L. R. 13 Eq. 464; *Vthlc* distd in *Ex p. Dawes*, cited WOULD).

Land Transfer Acts, 1875 and 1897; 38 & 39 V. c. 87, 60 & 61 V. c. 65.

" 'Transfer of a License,' means, a Transfer made in Special Sessions in exercise of the power granted to Justices by s. 4, 9 G. 4, c. 61" (s. 74, Licensing Act, 1872). *Vf*, RENEWAL. *Note*. The requirement of Notice on a "Transfer of a License," s. 40 (2), Licensing Act, 1872,

does not apply to an application under s. 14, 9 G. 4, c. 61 (*R. v. Hughes*, 1893, 2 Q. B. 530; 62 L. J. M. C. 150; 42 W. R. 94).

"Transfer of a *Mortgage*," quâ Stamp Duty; *V. Wale v. Ind. Rev.*, 48 L. J. Ex. 574; 4 Ex. D. 270; 41 L. T. 165; *Humphreys v. Ind. Rev.*, 81 L. T. 199.

"Transfer" of the *Patronage Right* in a Benefice; *V. Benefices Act*, 1898, 61 & 62 V. c. 48, s. 1.

Transfer of *Shares*; *V. SHARE*.

Where a SHIP is transferred by separate Bills of Sale from the several owners of shares therein, each Bill of Sale is a "Transfer" on which is payable the Registration Fee prescribed by s. 3, 61 & 62 V. c. 44 (*Harrowing S. S. Co v. Toohy*, 1900, 2 Q. B. 28; 69 L. J. Q. B. 447; 82 L. T. 677).

"Transfer" of *Stock*, quâ Trustee Acts, "includes the performance and execution of every deed, power of attorney, act, and thing, on the part of the transferor to effect and complete the title in the transferee" (s. 50, Trustee Act, 1893).

*V. ASSIGN: CONVEYANCE: DECREE: DISPOSE OF: LEGALLY: NEGOTIATE: TRANSMISSION: UNDERLEASE.*

**TRANSFERABLE.** — An interest which by statute or otherwise is made "not transferable" cannot be parted with either by act of parties or by operation of law (*Gathercole v. Smith*, 50 L. J. Ch. 671; 17 Ch. D. 1; 29 W. R. 434). In that case, Lush, L. J., said, "The word 'transferable' is of the widest possible import, and includes *every* means by which the property may be passed from one person to another."

**TRANSFeree.** — A Transferee is the person to whom any property or right is transferred: *V. TRANSFER*.

The Transferee of a Bill or Note, is the person to whom it is negotiated and who becomes its HOLDER: *V. NEGOTIATE*.

"Transferee," s. 31 (4), Bills of Ex. Act, 1882; *V. Good v. Walker*, 61 L. J. Q. B. 736.

**TRANSFEROR.** — A Transferor is the person who transfers any property or right: *V. TRANSFER*.

The Transferor of a Bill or Note, is the HOLDER of it who negotiates it: *V. NEGOTIATE*.

"(1) Where the Holder of a Bill, payable to Bearer, negotiates it by Delivery without indorsing it, he is called 'a Transferor by DELIVERY.'

"(2) A Transferor by Delivery is not liable on the instrument.

"(3) A Transferor by Delivery who negotiates a Bill, thereby warrants to his immediate Transferee, being a Holder for Value, that the Bill is what it purports to be, that he has a right to trans-

fer it, and that at the time of transfer he is not aware of any fact which renders it valueless”

(s. 58, Bills of Ex. Act, 1882) : and so of a Note (s. 89, *Ib.*).

**TRANSFERRED.** — *V. LEGALLY : TRANSFER.*

Legacies “to be transferred”; *V. Lambert v. Lambert*, 11 Ves. 607.

**TRANSHIPMENT.** — Due Diligence in Transhipment is not accomplished if the transhipment be delayed, *e.g.* in order to save cost of lighters or money which might have to be paid for freight; for the goods ought not to be delayed for such a reason (per Erle, C. J., *Carali v. Xenos*, 2 F. & F. 740).

“PARTIAL LOSS from Transhipment,” in a Marine Policy; *V. per* Matthew, J., *Pink v. Fleming*, cited CONSEQUENT.

“Risk of Transhipment”; *V. Australian Agricultural Co v. Saunders*, cited INSURED ELSEWHERE.

**TRANSIT.** — *V. DELAY IN TRANSIT.*

Stoppage in Transitu; *V. STOPPAGE.*

**TRANSLATION.** — “‘Translation,’ in common sense, signifies the version out of one language into another; but in a more confined, denotes the setting from one place to another; as to remove a Bishop from one Diocese to another is called ‘translating’” (Cowel).

As distinguished from an Imitation or Adaptation, a “Translation” of a Book or Play, within the International Copyright Acts, should be a full and faithful (not, necessarily, a literal) representation of the whole Book or Play, so “that the English people should have the opportunity of knowing the foreign work as accurately as it is possible to know it by the medium of a version in English” (*Wood v. Chart*, L. R. 10 Eq. 193; 39 L. J. Ch. 641; 22 L. T. 432; 18 W. R. 822; *Vf, Lauri v. Renad*, 1892, 3 Ch. 402; 61 L. J. Ch. 580; 67 L. T. 275; 40 W. R. 679).

**TRANSMISSIBLE.** — A Bequest of Residue to the persons who “shall become entitled to a vested Transmissible INTEREST,” means an Interest “capable of transmission *after death*” (per Stirling, J., *Re Jodrell*, W. N. (89) 230; 34 S. J. 129; a def unaffected by the reversal of the jdgmt, 1891, A. C. 304; 61 L. J. Ch. 70). *Vf, Nannock v. Horton*, 7 Ves. 402.

**TRANSMISSION.** — “Transmission” of the property in a ship, other than by TRANSFER, s. 58, Mer Shipping Act, 1854, repld s. 27, Mer Shipping Act, 1894, means, “transmission by operation of law, unconnected with any direct act of the party to whom the property is transmitted”; and therefore “a sale by Licitation is not such a Transmission” (*Chasteauneuf v. Capeyron*, 51 L. J. P. C. 41; 7 App. Ca. 127). So, “Transmission” of Company Shares is effected by devolution of law, as distinguished from a “Transfer,” which is accomplished by the act of

parties; and therefore where Table A Comp Act, 1862, applies *simpliciter*, a trustee in bankruptcy is not subject to Art. 10 of that Table (*Re Bentham Mills Co*, 48 L. J. Ch. 671; 11 Ch. D. 900; 41 L. T. 10; 28 W. R. 26).

"Transmission of the Goods," in an Exception in a Bill of Lading; *V. Hayn v. Culliford*, 3 C. P. D. 417, 418; 47 L. J. C. P. 759; affd 4 C. P. D. 182; 48 L. J. C. P. 372; 40 L. T. 536; 27 W. R. 541.

A Foreign Executorship creates no "Transmission of Interest or Liability" within R. 4, Ord. 50, Judicature Rules, 1875, repld, R. 4, Ord. 17, R. S. C.; representation must be obtained in England (per North, J., *Morrice v. Smart*, 26 S. J. 752, repudiating the inaccurately reported decision in *Jameson v. Marshall*, 46 L. T. 480). A Bankry Receiving Order against a party to an action, does not cause such "a Change or Transmission of Interest or Liability," so as to require the addition of the Official Receiver as a party (*Re Berry*, 1896, 1 Ch. 939; 65 L. J. Ch. 245; 74 L. T. 306; 44 W. R. 346).

Transmission of Shares; *V. TRANSFER.*

**TRANSMIT.** — "To Transmit," — *e.g.* an Appeal Case under s. 2, 20 & 21 V. c. 43, — means, to lodge it, *i.e.* accomplish its proper and actual reception; merely sending it off does not suffice (*Aspinall v. Sutton*, 1894, 2 Q. B. 349; 63 L. J. M. C. 205; 58 J. P. 622; *Vf*, FIRST: SHALL, pp. 1854, 1855). But to "transmit" a RETURN of Personal Expenses under s. 33 (1, 5), Corrupt and Illegal Practices Prevention Act, 1883, means to REMIT, *i.e.* to send it off (*Mackinnon v. Clark*, 1898, 2 Q. B. 251; 67 L. J. Q. B. 763; 79 L. T. 83; 47 W. R. 19). *V. DAYS.*

When a person speaks into a Telephone, "he sends what he says through the wire, *i.e.* transmits it" (*A-G. v. Edison Telephone Co*, 50 L. J. Q. B. 153; 6 Q. B. D. 244), in *who* it was held that a Telephone is an "apparatus for transmitting MESSAGES or other Communications" within s. 3, Telegraph Act, 1869, 32 & 33 V. c. 73.

**TRANSPORTATION.** — For the meaning and effect of the punishment of Transportation and its regulations; *V. Transportation Acts*, 1824 and 1825, 5 G. 4, c. 84, 6 G. 4, c. 69; s 15, 16 & 17 V. c. 99; *Bullock v. Dodds*, 2 B. & Ald. 258; Jacob: 12 Encyc. 253.

Penal Servitude is substituted; *V. PENAL.*

**TRAVEL.** — " ' Travelling, ' in a large sense, means, a going from one place to another " (per Ellenborough, C. J., *White v. Beazley*, 1 B. & Ald. 171); therefore, a coach and horses hired to take a party from Portsmouth to the theatre at Portsmouth (a distance of 2 miles upon a public road) was held a "travelling" within s. 8, 48 G. 3, c. 98; and so, of a chaise and horses hired to take a party out to dinner and fetch back (*S. C. : Vf*, *Ramsden v. Gibbs*, 1 B. & C. 319). *V. TRAVELLER.*

"Travelling Post"; *V. POST.*

**TRAVELLER.** — There are, at least, four classes of "Travellers."

1. A person cannot be a "BONÂ FIDE Traveller," within the Licensing Acts, "unless the place where he lodged during the preceding night is, at least, *three miles* distant from the place where he demands to be supplied with liquor, such distance to be calculated by the NEAREST Public Thoroughfare" (37 & 38 V. c. 49, s. 10; *Vth, Coulbert v. Troke*, 45 L. J. M. C. 7; 1 Q. B. D. 1: *Cowap v. Atherton*, 1893, 1 Q. B. 49; 68 L. T. 88; 41 W. R. 158; 57 J. P. 8. *Cp, DISTANCE*). For the decisions on this phrase prior to the statutory definition just quoted, *V. Taylor v. Humphreys*, 30 L. J. M. C. 242; 10 C. B. N. S. 429; 28 J. P. 793; *Taylor v. Humphries*, 34 L. J. M. C. 1; 17 C. B. N. S. 539, followed in *Davis v. Scrase*, 38 L. J. M. C. 79; L. R. 4 C. P. 172: *Fisher v. Howard*, 34 L. J. M. C. 42; *Peache v. Colman*, 35 L. J. M. C. 118; L. R. 1 C. P. 324; *Peplow v. Richardson*, L. R. 4 C. P. 168; 33 J. P. 407. Whether business or pleasure be the object of the traveller, was (*Taylor v. Humphries*, sup: *Atkinson v. Sellers*, 28 L. J. M. C. 12; 5 C. B. N. S. 442; 23 J. P. 71), and still is, wholly immaterial, nor is it material that he has, or has not, a *bonâ fide* thirst (per Cave, J., *Oldham v. Sheasby*, 60 L. J. M. C. 81; 55 J. P. 214); but if his main object in travelling is to get a drink during prohibited hours, then he is not a "bonâ fide" traveller (*Penn v. Alexander*, cited BONÂ FIDE: *Sc, Williams v. McDonald*, inf: TRAVEL). *Vh, Copley v. Burton*, 39 L. J. M. C. 141; L. R. 5 C. P. 489: *Morgan v. Hedger*, L. R. 5 C. P. 485; 40 L. J. M. C. 13: *Roberts v. Humphreys*, L. R. 8 Q. B. 483; 42 L. J. M. C. 147.

2. Persons at a railway station "arriving at, or departing from, such station by railroad," are for the purposes of the Licensing Acts on the same level as *bonâ fide* travellers (37 & 38 V. c. 49, s. 10). Their motive, though it be that of getting drink, is immaterial (*Williams v. McDonald*, 1899, 2 Q. B. 308; 68 L. J. Q. B. 678; 63 J. P. 501: *Sr, Penn v. Alexander*, sup).

3. Commercial Traveller, *i.e.* "a man who travels about the country, soliciting orders which are sent to the employer" (per Grantham, J., *Killick v. Graham*, 1896, 2 Q. B. 196; 65 L. J. M. C. 180; 75 L. T. 29; 44 W. R. 669; 60 J. P. 534). One who spends most of his time in attending race meetings as a backer of horses, but who also solicits orders for hops, receiving a commission therefor, is a Commercial Traveller (*Matthews v. Buchanan*, 5 Times Rep. 373). A Commercial Traveller is also indicated in the exemption from certain Excise Penalties given by the proviso to s. 17, 30 & 31 V. c. 90 to "a *bonâ fide* Traveller taking orders for goods which his employer is duly licensed to deal in or sell." A stationary agency is not within that exemption (*Stallard v. Marks*, cited RETAILER); but one who is an employed Traveller, and who really travels, is none the less entitled to the exemption because he takes orders during a temporary pause on his journeys (Bowen, arg. *Ib.*), or because

he, independently of his employer, occupies an office at which he occasionally takes orders (*Stuckbery v. Spencer*, 55 L. J. M. C. 141). On the other hand, an agent who acts for a person at a distance, but who only solicits orders in the town where he resides, is not a "*bonâ fide* traveller" within the exemption (*Killick v. Graham*, sup): *Vf, SOLICITR. Note*: the employer of a commercial traveller is not bound to keep him travelling (*Lagerwall v. Wilkinson*, 80 L. T. 55).

4. A traveller, or such like person, entitled at common law to be received as a GUEST in an INN, does not include a person resident in the same country town as that in which the Inn is situate and "merely walking about the town for his own recreation and amusement" (*R. v. Rymer*, 46 L. J. M. C. 108; 2 Q. B. D. 136, citing *R. v. Luellin*, 12 Mod. 445). The length of time that a man may remain at an Inn does not affect his character as a traveller; unless he be received for a definite term under a special contract (Add. C. 684), or has stayed long enough to show that his travelling days are done (*Lamond v. Richard*, 1897, 1 Q. B. 541; 66 L. J. Q. B. 315; 76 L. T. 141; 45 W. R. 289; 61 J. P. 260). So, "it is not at all necessary that he should be travelling a long journey" (*Orchard v. Bush*, cited GUEST).

"Such Liquor to *bonâ fide* Travellers"; *V. SUCH*.

**TRAVERSE.** — To traverse; "‘Travers’ sometimes signifieth to deny, sometimes to overthrow or undoe a thing done" (Termes de la Ley, *Travers, whv*, for illustrations: *Va*, Cowel: Jacob).

*V. TOLL TRAVERSE*.

**TRAWL.** — Trawl, or Trawl Net; *V. Colbeck v. Ashfield*, 67 L. J. Q. B. 333; 46 W. R. 302; 62 J. P. 214.

**TREASON.** — "‘Treason’ is in two manners, that is to say, Grand Treason, and Petit Treason" (Termes de la Ley). Grand Treason; *V. HIGH TREASON*. "‘Petit Treason,’ is when a Servant kills his Master, a Wife her Husband; or when a Secular or Religious man kills his Prelate or Superior to whom he owes faith and obedience; and in how many other cases Petit Treason may be committed, see Crompton’s Justice of the Peace" (Cowel). *Note*, Petit Treason is now "deemed to be Murder only, and no greater offence" (s. 2, 9 G. 4. c. 31).

"I have looked over a great number of statutes in order to ascertain the sense in which the word ‘Treason’ is used and understood, and I find that the word, standing by itself, has invariably been used to signify High Treason" (per Blackburne, C. J., *O’Brien v. The Queen*, 1 Irish Jurist O. S. 176).

The Statute of Treasons, 25 Edw 3, st. 5, c. 2.

Treason Felony; *V. Treason Felony Act*, 1848. 11 & 12 V. c. 12, esp. s. 3: on *whv*, *Mulcahy v. The Queen*, L. R. 3 H. L. 306.

**TREASURE TROVE.** — “ ‘Treasure trove’ is when any money, gold, silver, plate, or bullion, is found in any place, and no man knoweth to whom the property is, then the property thereof belongeth to the King, and that is called ‘Treasure trove,’ that is to say, Treasure found. But if any Mine of metall be found in any ground, that alway pertaineth to the Lord of the soile, except it be a mine of gold or silver, which shall be alway to the King, in whose ground soever they be found ” (Termes de la Ley). *Vf*, 1 Bl. Com. 295; Jacob: 12 Encyc. 264; MINE, *Note*, at end.

As to the offence of concealing Treasure Trove; *V*. Steph. Cr. 274; Arch. Cr. 966.

The jurisdiction of the coroner is limited to enquiring who was, or was suspected to be, the finder of the Treasure (*A-G. v. Moore*, 1893, 1 Ch. 676; 62 L. J. Ch. 607; 68 L. T. 574; 41 W. R. 294).

**TREASURER.** — “ Any Treasurer, Collector, Officer, or other Person, appointed ” by a Local Authority to sue, includes a BANKER; and, if no special mode of appointment be prescribed, his employment is equivalent to appointment (*Frost v. Bolland*, 5 B. & C. 611). *Cp*, *Williams v. Golding*, cited OTHER, p. 1365.

“ Treasurer ” has received statutory definition in and for the following Acts; —

Burghs Gas Supply (Scot) Act, 1876, 39 & 40 V. c. 49; *V*. s. 3:

Burgh Harbours (Scot) Act, 1853, 16 & 17 V. c. 93; *V*. s. 2:

Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55; *V*. s. 4:

County Courts Act, 1888, 51 & 52 V. c. 43; *V*. s. 186:

Grand Jury (Ir) Act, 1853, 16 & 17 V. c. 136; *V*. s. 21:

Grand Jury (Ir) Act, 1856, 19 & 20 V. c. 63; *V*. s. 19:

Police Act, 1890, 53 & 54 V. c. 45; *V*. s. 34:

Police (Scot) Act, 1890, 53 & 54 V. c. 67; *V*. s. 30:

Prison Act, 1865, 28 & 29 V. c. 126; *V*. s. 4:

Refreshment Houses (Ir) Act, 1860, 23 & 24 V. c. 107; *V*. s. 47:

Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51; *V*. s. 3:

Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103; *V*. s. 1:

Valuation (Ir) Act, 1852, 15 & 16 V. c. 63; *V*. s. 45:

Weights and Measures Act, 1878, 41 & 42 V. c. 49; *V*. s. 85.

“ Treasurer of the County ”; *Ir*. 19 & 20 V. c. 68, s. 2; 38 & 39 V. c. 63, s. 34; 40 & 41 V. c. 49, s. 3; *V*. COUNTY.

The Treasurer of a Friendly Socy is not, as such, its “ CLERK or Servant ” within s. 68, 24 & 25 V. c. 96 (*R. v. Tyree*, 38 L. J. M. C. 58; L. R. 1 C. C. R. 177; 19 L. T. 657; 17 W. R. 334). The office should not be filled by an Incorporated Co; if in fact such a Co has been the treasurer, the winding-up of the Co is not an “ Insolvency ” so as to entitle the Socy to the preference given by s. 15 (7), 38 & 39 V. c. 60 (*Re West of England & S. Wales District Bank*, 48 L. J. Ch. 577; 11 Ch. D. 768). *Vf*, *Barrett v. Markham*, cited WITHHOLD.



**TREASURY.**—*V.* s. 12 (2), Interp Act, 1889.

“ ‘The Treasury *Chest Fund*’ includes, all balances in Treasury chests or in the hands of persons acting as paymasters for the said Fund ” (s. 6, Treasury Chest Fund Act, 1877, 40 & 41 V. c. 45).

*V.* REGULATION.

The “ Treasury *Solicitor* ” is “ a Corporation Sole by the name of ‘ The Solicitor for the affairs of Her Majesty’s Treasury,’ and by that name shall have perpetual succession; with a capacity to acquire and hold, in that name, lands, government securities, shares in any public company, securities for money, and real and personal property of every description, to sue and be sued, to execute deeds using an official seal, to make leases, to enter into engagements binding on himself and his successors in office, and to do all other acts necessary or expedient to be done in the execution of the duties of his office ” (s. 1, Treasury Solicitor Act, 1876, 39 & 40 V. c. 18).

“ Treasury *Warrant*,” quā Post Office Act, 1870, 33 & 34 V. c. 79, “ means, a Warrant under the hands of the Treasury ” (s. 2).

**TREAT.**—A Notice to Treat, s. 18, Lands C. C. Act, 1845, is an Inchoate Contract for the sale and purchase of the land included in it, which becomes consummate when the price is fixed by agreement, arbitration, or the verdict of a jury (per Cottenham, C., *Adams v. London & Blackwall Ry*, 19 L. J. Ch. 559, 560; 2 Mac. & G. 132: *Harding v. Metrop Ry*, 7 Ch. 158; 41 L. J. Ch. 372); when given, the owner can compel its consummation (*Ib.*: *Fotherby v. Metrop Ry*, L. R. 2 C. P. 188; 36 L. J. C. P. 88).

*Vh.* Lloyd on Compensation, ch. 3: Woolf & Middleton, *Ib.* 35–44, 705: Browne & Allan, *Ib.* 33–49, 809: Cripps, *Ib.* ch. 6: Jepson on Lands Clauses Act, 2 ed., 93–107: COMPULSORY POWERS: PUT IN FORCE.

**TREAT AND VIEW.**—An advertisement inviting applications for purchase to be made to A. “ to treat and view,” gives A. “ authority to negotiate and to make and receive proposals, but not to conclude a sale ” (per Bovill, C. J., *Godwin v. Brind*, 39 L. J. C. P. 122; L. R. 5 C. P. 299 *u*). *Cp.* INTRODUCE: PROCURE, at end.

*V.* VIEW.

**TREATING.**—For the definition of Treating at Parliamentary Elections, *V.* s. 1, Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51; a def adopted for Municipal Elections by s. 2, 47 & 48 V. c. 70; and (for Scotland) by s. 2, 53 & 54 V. c. 55. This def replaced that in s. 4, Corrupt Practices Prevention Act, 1854, 17 & 18 V. c. 102. *Vh.* Leigh & Le Marchant, 4 ed., 25–29: Mattinson & Macaskie, 2 ed., 39–53: 2 Rogers, ch. 10.

*Vf.* Arch. Cr. 1187: Rose. Cr. 297.

**TREATY.** — Quà International Copyright Act, 1886, 49 & 50 V. c. 33, “ ‘Treaty,’ includes, any Convention or Arrangement ” (s. 11); quà Slave Trade Acts it “ includes, any Convention, Agreement, Engagement, or Arrangement ” (s. 2, 36 & 37 V. c. 59; s. 2, 36 & 37 V. c. 88).  
 “ Existing Slave Trade Treaty ”; *V. EXISTING.*

**TREBLE.** — Treble *Costs* are abolished; where given by a Public Act, the party entitled to them is entitled to “ Full and Reasonable Indemnity ” Costs (s. 2, 5 & 6 V. c. 97; on *whv* INDEMNITY); if given by a Local or Personal Act, he is entitled to Party and Party Costs “ and no more ” (s. 1).

Quà Post Office (Offences) Act, 1837, 1 V. c. 36, “ Treble Letter,” means, “ a LETTER consisting of more than two sheets or pieces of paper whatever the number, under the weight of an ounce ”; “ Treble Postage,” means, “ three times the amount of Single Postage ”; “ Treble the Duty of Postage,” means, “ three times the amount of the postage to which the letter to be charged would otherwise have been liable according to the rates of postage chargeable on letters ” (s. 47).

*Cp.* DOUBLE.

**TREES.** — “ Where the Grant is of all a man’s ‘Trees,’ there shall pass no more of the soil but so much as shall serve for the nutriment of the ‘Trees,’ and the owner of the soil shall have the grass growing thereupon also ” (Touch. 95). *V. WOOD.*

“ The word ‘Trees,’ generally speaking, means, wood applicable to buildings, and does not include orchard trees ” (per Littledale, J., *Bullen v. Denning*, 5 B. & C. 851); and an exception in a Lease of “ Trees,” “ means, trees useful for their wood ” (per Mansfield, C. J., *Wyndham v. Way*, 4 Taunt. 318), and will not, as a rule, extend to *fruit* trees, unless specially named; and neither an exception, nor a grant, of “ Timber Trees and other Trees ” will pass fruit trees (*Bullen v. Denning*, sup, *whv* for the old cases hereon), even though the phrase goes on to say “ but not the annual fruit thereof,” for “ fruit,” there, refers to the mast of timber trees (*Ib.*: *Va.*, Dart, 150). *V. FRUIT: TIMBER.*

*Vh.* Craig on Trees and Woods, *passim.*

Overhanging trees; *V. LOP.* *Vf.* NUISANCE, p. 1300.

**TRELLIS.** — A trellis-work screen held a “ building ” (*Wood v. Cooper*, cited BUILDING, p. 226).

**TRENCH.** — “ Drains, Trenches, or Watercourses ”; *V. WATER-COURSE.*

**TRESPASS.** — “ ‘ Trespass,’ signifies any transgression of the law under Treason, Felony, or Misprision of either ” (Cowel: *Vf.*, Jacob).

“ A Trespass, is an injury committed with violence; and this violence may be either actual or implied; and the law will imply violence, though none is actually used, where the injury is of a direct and immediate

kind, and committed on the person, or tangible and corporeal property, of the plaintiff. Of actual violence, an Assault and Battery is an instance; of implied, a peaceable but wrongful entry upon the plaintiff's land" (Stephen on Pleading, ch. 1). *Vh, Scott v. Shepherd*, 1 Sm. L. C. 480; Rosc. N. P. 910-931; Add. T. 360, 497; 12 Encyc. 279-283.

Trespass on the case; *V. CASE.*

Action of Trespass *de bonis asportatis*; *V. TROVER.*

*V. WILFULLY TRESPASS.*

**TRIAL : TRIED.**— A "Trial" is the conclusion, by a competent Tribunal, of questions in issue in legal proceedings, whether civil or criminal. Therefore, the hearing of the reference of an action "and all matters in difference" is not a Trial within s. 1, 17 & 18 V. c. 34 (*Hall v. Brand*, 53 L. J. Q. B. 19; 12 Q. B. D. 39; *Sv, Munday v. Norton*, and *Patten v. West of England Iron Co*, cited *ARBITRATION*). But an indictment for non-repair of a highway is "tried" within s. 95, Highway Act, 1835, if the defendants plead guilty (*R. v. Haslemere*, 32 L. J. M. C. 30; 3 B. & S. 313). It has been held that an assessment of damages by a jury on a judgment by default is not a Trial within R. 1, Ord. 65, R. S. C. (*Gath v. Howarth*, 28 S. J. 427; W. N. (84) 99); but in citing that case under the Rule, the Annual Practice says that the decision is not acted on. Such an assessment is a Trial within s. 1, Jud. Act, 1890 (*Radam's Microbe Killer v. Leather*, 1892, 1 Q. B. 85; 61 L. J. Q. B. 38; 65 L. T. 604; 40 W. R. 83).

The hearing of a Summons under s. 10, Comp (Winding-up) Act, 1890, is not "the Hearing or Trial of an ACTION upon notice," so as to entitle a Solicitor to the fee for Instructions for Brief, under Item 81, Appx. N, R. S. C. (*Re Anglo-Austrian Printing Union*, 1894, 2 Ch. 622; 63 L. J. Ch. 632; 71 L. T. 331; 42 W. R. 648); but it is a MATTER, within R. 27 (48), Ord. 65, R. S. C. (*Ib.*). Such a Summons if not a "Trial of an Action" is, *semble*, a "Trial of an ISSUE OF FACT," within Item 81 (*Re Consolidated Exploration Co*, 1899, 2 Ch. 599; 68 L. J. Ch. 752), in *which* the fee was allowed on a question upon a Guarantee which was directed to be tried without even a summons being taken out.

*V. COMMITTED FOR TRIAL : REFERRED : SALE ON TRIAL : VERDICT.*

**TRIBUNAL.**— Referring to the rule, as to the immunity for words written or spoken by a witness in a Court, laid down by the Exchequer Chamber in *Dawkins v. Rokeby* (42 L. J. Q. B. 69; L. R. 8 Q. B. 255; affd 45 L. J. Q. B. 8; L. R. 7 H. L. 744), Fry, L. J., said, "I accept that, with this qualification that I do not like the word 'Tribunal.' The word is ambiguous, because it has not, like 'Court,' any ascertainable meaning in English law" (*Royal Aquarium v. Parkinson*, cited *COURT*, p. 424).

**TRIBUTARY.**— A "Tributary" to a RIVER *quà* Salmon Fishery Act, 1873, 36 & 37 V. c. 71, is, another stream which flows into it in an

unimpounded course; and does not include a stream which would have been a tributary but for the fact that its waters are lawfully impounded and used by a Water Company, and only the surplus unused waters of which find their way into the old course of the stream (*Harbottle v. Terry*, 52 L. J. M. C. 31; 10 Q. B. D. 131).

In that case, Stephen, J., in giving judgment said,—"Is a pond fed by a stream, and running into a larger stream or river, to be called a 'tributary' of the larger stream? Ordinarily, one would say, no. Ordinarily, by 'tributary,' one means a stream running into another stream. It is not a very exact word, but it has a not very indefinite popular meaning. It is rather by instances that its meaning can be arrived at. I gave as an instance a stream dammed up into a series of pools, and running on through them from one to the other continuously, as being in my opinion a 'tributary.' And again, such a piece of water as Loch Neagh in Ireland, and another lake near Waterville in County Kerry. But take the Serpentine,—it would be a strong thing to call it a 'tributary' of the Thames, and still more so to call the Round Pond one; yet some of their water finds its way into the Thames."

But a river flowing into a river which latter flows into another river, is a "tributary" of this last river (*Hall v. Reid*, 52 L. J. M. C. 32, *n*: 10 Q. B. D. 134, *n*), and so an unnamed stream which flows into a brook which flows into a river which flows into another river, is a "tributary" of this last river (*Evans v. Owen*, 1895, 1 Q. B. 237; 64 L. J. M. C. 59; 72 L. T. 54; 43 W. R. 237).

Where the Secretary of State's Certificate defined the Severn Fishery District as "so much of the River Severn and of the Rivers Vyrynw and Teme, and of all *other* Tributaries of the River Severn as are situate in the counties specified," it was held that "other Tributaries" meant direct Tributaries, as the Vyrynw and Teme are (*Merricks v. Cadwallader*, 51 L. J. M. C. 20). But this decision has been superseded by a Certificate of Sept 20, 1882, which drops the phrase "other tributaries" and speaks of the Severn and its "Tributaries"; thereby an unnamed stream which flows into a brook which flows into a river which flows into the Severn, is a "tributary" of the Severn (*Evans v. Owen*, *sup*). The Vyrynw Reservoir which supplies Liverpool with water, is not a tributary of the Severn (*George v. Carpenter*, 1893, 1 Q. B. 505; 68 L. T. 714; 41 W. R. 366; 57 J. P. 311).

**TRICYCLE.** — *V. LOCOMOTIVE.*

**TRIFLING.** — Offence "of so trifling a nature" that punishment is inexpedient, *s. 16*, Sum Jur Act, 1879; *V. Phillips v. Evans*, 1896, 1 Q. B. 305; 65 L. J. M. C. 101; 74 L. T. 314; 44 W. R. 429; 60 J. P. 120.

*Cp.* TRIVIAL: VENIAL.

**TRINITY HOUSE.** — Quà Mer Shipping Act, 1894, “The Trinity House, shall mean, the Master, Wardens, and Assistants, of the Guild Fraternity or Brotherhood of the Most Glorious and Undivided Trinity and of St. Clement, in the parish of Deptford Strond, in the County of Kent, commonly called ‘The Corporation of the Trinity House of Deptford Strond’” (s. 742). *Va*, s. 3, Thames Conservancy Act, 1894.

*V*, CINQUE PORTS.

**TRINITY HOUSE OUTPORT DISTRICTS.** — Quà Merchant Shipping Acts, “The Trinity House Outport Districts,” comprises “any Pilotage District for the appointment of pilots within which no Particular Provision is made by any Act of Parliament, or Charter” (s. 370 (3), Mer Shipping Act, 1854, repled, s. 618 (1, iii), Mer Shipping Act, 1894); Ipswich is within that definition (*Hadgraft v. Hewitt*, L. R. 10 Q. B. 350; 44 L. J. M. C. 140). *V*, PARTICULAR PROVISION.

*Vh*, *The Winestead* and *The Glanystwyth*, cited COASTING TRADE.

**TRINKETS.** — “Trinkets” are small articles for personal adornment, or wear, or even use when its object is essentially ornamental. Ivory bracelets, ornamental shirt pins, gilt rings, brooches, tortoise-shell and pearl portinonmaies, and scent-bottles, are “Trinkets” within s. 1, Carriers Act, 1830, but a plain German-silver fusee box is not (*Bernstein v. Barendale*, 28 L. J. C. P. 265; 6 C. B. N. S. 259). So, ivory fans are included in a bequest of “Trinkets” (*A-G v. Hurley*, 7 L. J. O. S. Ch. 31; 5 Russ. 173).

*V*, PERSONAL ORNAMENTS.

**TRIPTYCH.** — *V. St. John, Pendlebury*, 1895, P. 178.

**TRIVIAL.** — Whether a sub-letting is “trivial” within s. 4, Land Law (Ir) Act, 1887, 50 & 51 V. c. 33, is a question of degree in each case, into the determination of which the relative proportions existing between the size and rent of the sub-letting and the size and rent of the HOLDING enter largely as elements, though not as absolute tests (*Re Ward and Corballis*, 1894, 2 L. R. 637), so, of the character of the sub-letting, *e.g.* a sub-let of 3 roods and 11 perches of a let of 151 acres, the portion sub-let having on it a tar factory and sub-let at a rent of £20, is not “Trivial” (*Martin v. Purcell*, 28 L. R. Ir. 470).

*Cp*, TRIFLING.

**TRONAGE.** — “The King’s duty for the weighing of wooll at the King’s beam, in all Ports wherein woolls were exported” (Hale, *De Portibus Maris*, ch. 6).

*Cp*, PESAGE.

**TROUBLE.** — The “trouble” of an executorship does not cease by the mere institution of an Administration Action; nor, accordingly, an

Annuity given to an executor for his trouble in superintending testator's affairs (*Baker v. Martin*, 8 Sim. 25).

A sum or annuity bequeathed to an exor "for his Trouble," is a LEGACY liable to duty (*Thorley v. Massam*, cited GIFT).

**TROUT.**—Quà Fisheries (Ir) Acts, "Trout," extends to and includes, "pollen or fresh water herring, and all fish of the trout kind, and the spawn and fry thereof" (s. 1, 13 & 14 V. c. 88).

*V.* FRESH WATER FISH: SALMON.

**TROVE.**—*V.* TREASURE TROVE.

**TROVER.**—The Action of Trover (now frequently called an Action for Conversion of Goods), is one of that genus of actions that were formerly called Actions on the CASE. It lies where the deft has converted or appropriated the plt's goods to his (the deft's) use, or has otherwise wrongfully deprived the plt of their use and possession.

As to what is such a Conversion; *V. Hollins v. Fowler*, 44 L. J. Q. B. 169; L. R. 7 H. L. 757; *Consolidated Co v. Curtis*, 1892, 1 Q. B. 495; 61 L. J. Q. B. 325; 40 W. R. 426; 56 J. P. 565.

*Vth, Cooper v. Chitty*, 1 Bl. W. 65; *Gordon v. Harper*, 7 T. R. 9; *Termes de la Ley*: Jacob: 3 Bl. Com. 152, 153; *Rosc. N. P.* 934–981; *Add. T.* 498–507; 3 *Encyc.* 360–362. *Cp.* DETINUE.

As used in s. 3, Limitation Act, 1623. 21 Jac. 1, c. 16, the claim for "Trover" begins to run from the Conversion, not from its discovery (*Granger v. George*, 5 B. & C. 149). *Vf.* CAUSE OF ACTION.

Interest, beyond Damages, may be given in "all actions of Trover, or Trespass *de bonis asportatis*," s. 29, 3 & 4 W. 4, c. 42; *Vth, Phillips v. Homfray*, 1892, 1 Ch. 465; 61 L. J. Ch. 210; 66 L. T. 657. *Cp.* DEMAND.

**TRUCK ACT.**—Truck Act, 1831, 1 & 2 W. 4, c. 37; amended by 50 & 51 V. c. 46, 59 & 60 V. c. 44.

*V.* AGREEMENT: ARTIFICER: BUTTY COLLIER: CONTRACT TO SUPPLY: MATERIALS: MEDICINE: PAYMENT, pp. 1437, 1438.

**TRUCK-MASTER.**—To write of a man that he is a "Truck-Master," is a Libel (*Homer v. Taunton*, 29 L. J. Ex. 318; 5 H. & N. 661); in giving the jdgmt, Pollock, C. B., said the word was not then to be found in any English Dictionary.

**TRUE.**—When a contract, —*e.g.* a Life Policy, —proceeds on the basis that statements made by the party to be benefited thereunder are "true," it will be avoided if any material statement is untrue in fact, even though it be made in good faith and be not untrue to the knowledge of the party making it (*Macdonald v. Law Union Insree*, 43 L. J. Q. B. 131; L. R. 9 Q. B. 328). *V.* CORRECT: UNTRUE.

**TRUE AND ANCIENT RENT.** — *V. Mountjoy's Case*, 5 Rep. 3 b; cited Sug. Pow. 730.

**TRUE BILL.** — “ ‘*Billa Vera*,’ is a Term of Art” indorsed by the GRAND JURY on an INDICTMENT; and signifies, “that the presenter hath furnished his presentment with probable evidence and worthy of farther consideration: And thereupon the party presented is said to stand indicted of the crime, and so bound to make answer unto it, either by confessing or traversing the indictment” (Cowel, *Billa Vera*). *Vj*; 4 Bl. Com. 305, 306.

The antithesis is “*Ignoramus*,” “a word properly used by the Grand Inquest . . . and written upon the Bill when they mislike the evidence as defective, or too weak, to make good the presentment; the effect of which word so written is, that all farther enquiry upon that party for that fault is thereby stopped, and he delivered without further answer” (Cowel). The phrase now generally used is “Not a True Bill.”

**TRUE COPY.** — A “True Copy” does not mean an absolutely exact copy; but it means that the copy shall be so true that nobody can by any possibility misunderstand it (per Bacon, C. J., *Re Hewer*, 51 L. J. Ch. 905; 21 Ch. D. 871). In that case a Bill of Sale was held well registered though there was a clerical error in the registered copy of it (*Va, Sharp v. McHenry*, 38 Ch. D. 428; 57 L. J. Ch. 961; 57 L. T. 606; 3 Times Rep. 847; *Tuck v. Southern Counties Deposit Bank*, 37 W. R. 769; 58 L. J. Ch. 699; 42 Ch. D. 471); so, though the date be omitted in the copy if the omission be supplied by the affidavit (*Thomas v. Roberts*, 67 L. J. Q. B. 478; 1898, 1 Q. B. 657; 78 L. T. 712). But a served copy of an Order of Court is not a true one, for the purpose of attachment for disobedience, if the title of the cause or matter be omitted (*Re Holt*, 11 Ch. D. 168).

As to “True Copy” of a Trader-debtor Summons under Bankry Act, 1849; *V. Re Tindall*, 24 L. J. Bank. 18; 6 D. G. M. & G. 741.

*V. COPY.* *Cp*, TRANSLATION.

**TRUE FAITH.** — As to the old Abjuration Oath “upon the True Faith of a Christian”; *V. Miller v. Salomons*, 21 L. J. Ex. 161; 22 Ib. 169; 7 Ex. 475; 8 Ib. 778.

**TRUE INVENTOR.** — *V. FIRST INVENTOR.*

**TRUE OWNER.** — This expression “has a technical meaning in Bankruptcy, and means a person who has acquired (by mortgage, purchase, or otherwise) the Beneficial Interest in personal chattels as distinguished from the vendor, mortgagor, or grantor, who is allowed to retain possession of them, and is by means of such possession the Reputed or Apparent owner” (Robson, 860, *n* (y)). *Vh*, Ib. 519 *et seq*: Baldwin,

327 *et seq.*; Wms. Bank. 215 *et seq.*; CONSENT: POSSESSION ORDER OR DISPOSITION.

As to whether the phrase "True Owner" in the Reputed Ownership Clause includes a Bare Trustee; *V. Lewin*, 250; *Re Mills*, 1895, 2 Ch. 564; 64 L. J. Ch. 708; 73 L. T. 229; 44 W. R. 21.

An unregistered absolute Bill of Sale of Chattels, will prevent its giver from being the "True Owner" of the chattels, s. 5, Bills of Sale Act, 1882; and a subsequent registered Bill of Sale of the same chattels will thereby be defeated (*Tuck v. Southern Counties Deposit Bank*, 37 W. R. 769; 58 L. J. Ch. 699; 42 Ch. D. 471). But in an unreported case, decided before the lastly cited case, Pollock, B., held, that the grantor of a Bill of Sale, given by way of mortgage, remained the "True Owner" of the goods comprised therein, so long as he remained in possession of such goods; and that, therefore, a second Bill of S. registered before a prior one, took precedence of that prior one under s. 10, Bills of S. Act, 1878 (*Price v. Russell*, April 12, 1889).

A grantor of a Bill of S. by way of mortgage, remains the True Owner of the goods quâ the Equity of Redemption (*Thomas v. Searles*, 1891, 2 Q. B. 408; 60 L. J. Q. B. 722; 65 L. T. 39; 39 W. R. 692); on the other hand, the True Owner includes the legal owner of the chattels, whether he be also the beneficial owner or only a trustee (*Ex p. Williams, Re Sarl*, 1892, 2 Q. B. 591; 67 L. T. 597).

A Partner in, or other joint owner of, goods is the "True Owner" of his share in the goods within s. 5, Bills of Sale Act, 1882 (*Re Tamplin, Ex p. Barnett*, 59 L. J. Q. B. 194; 62 L. T. 264; 38 W. R. 351).

**TRUE RETURN.** — *V. RETURN.*

**TRULY.** — "Well and truly administer"; *V. ADMINISTER.*

"Truly engraved with the Name of the Proprietor"; *V. NAME.*

Apprentice to "duly and truly serve"; *V. SERVE.*

**TRULY SET FORTH.** — The Bills of Sale Act, 1878, s. 8, requires the CONSIDERATION of a Bill of Sale to be "set forth" therein, and s. 8, Bills of S. Act, 1882, requires the consideration to be "truly set forth." The adverb here does not add to the sense (per Smith, J., *Staniforth v. Capon*, 2 Times Rep. 493).

Under either Act, the requirement is, that the consideration (but not the sum secured, *Ex p. Challinor, Re Rogers*, 16 Ch. D. 260; 51 L. J. Ch. 476; 29 W. R. 205), shall truly and fairly, according to the ordinary dealings of honest men, appear on the face of the document (*Roberts v. Roberts*, 53 L. J. Q. B. 313; 50 L. T. 351; 13 Q. B. D. 794; 32 W. R. 605; *Ÿ*, per Rigby, L. J., *Darlow v. Bland*, 1897, 1 Q. B. 125; 66 L. J. Q. B. 157; 75 L. T. 537; 45 W. R. 177).

Thus, moneys really paid at the request of the grantor to satisfy a debt, due from the grantor, may be stated to have been paid to him (*Ex p.*



*National Mercantile Bank, Re Haynes*, 49 L. J. Bank. 62; 15 Ch. D. 42; 28 W. R. 848: *Ex p. Challinor*, sup: *Hamlyn v. Betteley*, 5 C. P. D. 327; 49 L. J. C. P. 465: *Ex p. Bolland, Re Roper*, 21 Ch. D. 543; 52 L. J. Ch. 113: *Va, Carrard v. Meek*, 50 L. J. Q. B. 187: *Staniforth v. Capon*, sup); but, to bring a case within the doctrine of those decisions, the debt so paid must be absolute, prior to the execution of the Bill of S.; therefore, a deduction in respect of a mere inchoate liability as, e.g. for mortgagee's expenses in relation to the security (*Ex p. Firth, Re Cowburn*, 19 Ch. D. 419; 51 L. J. Ch. 473: *Hamilton v. Chainé*, 7 Q. B. D. 319; 50 L. J. Q. B. 456: *Ex p. Charing Cross Bank, Re Parker*, 16 Ch. D. 35; 50 L. J. Ch. 157: *Richardson v. Harris*, 22 Q. B. D. 268; 37 W. R. 426. *Sv, Re Cann, Ex p. Hunt*, 13 Q. B. D. 36), or for commission on the loan (*Hamilton v. Chainé*, sup), or for prospective interest (*Ex p. Charing Cross Bank, Re Parker*, sup), or for an agreement to make a future payment (*Ex p. Rolph, Re Spindler*, 19 Ch. D. 98; 51 L. J. Ch. 88; 30 W. R. 52), or a liability on an immature Acceptance held by the grantee of the Bill of S. (*Richardson v. Harris*, sup: *semble*, otherwise if applied in payment of the grantee's immature liability to a third party, *Re Wiltshire*, cited Now, p. 1296), cannot be regarded as money paid to the grantor, and if such statement be the only reference to such a deduction the consideration will not be either "truly set forth" or "set forth." But, on the other hand, if the debt be absolute before the execution of the Bill of S., then, though it be due to the grantee himself, it will be properly stated as money paid to the grantor, for an allowance to him in account is equivalent to PAYMENT (*Credit Co v. Pott*, 6 Q. B. D. 295; 50 L. J. Q. B. 106; 29 W. R. 326: *Ex p. Johnson, Re Chapman*, 26 Ch. D. 338; 53 L. J. Ch. 762; 50 L. T. 214: *Ex p. Nelson*, 55 L. T. 819; 35 W. R. 264); *à fortiori* if the whole of the new advance be actually made, although made on the understanding (duly carried out) that the old debt to the grantee shall be paid within a very short time (*Thomas v. Searles*, cited TRUE OWNER).

A Bill of S., given in substitution for a prior defective one, and which contained no reference to that prior document, but stated the pecuniary consideration as "*now paid*," was held to truly set forth the consideration (*Ex p. Allam, Re Monday*, 14 Q. B. D. 43: *Va, Re Davies*, 77 L. T. 567: *Sv, Ex p. Berwick*, 29 W. R. 292). As to "*now paid*," and "*now due*," *Vf, Now*, p. 1296.

#### F. PAID: PAYMENT.

Where a Bill of S. was prepared by the grantor's solicitor, and the consideration was a truly stated antecedent debt which the grantor was unable to pay and "in order to induce the grantee not to institute proceedings" the grantor had agreed to make the Bill of S.; held, that the consideration was truly set forth, although the grantee had not threatened proceedings (*Ex p. Winter*, 25 S. J. 333).

The consideration must be truly set forth in the Bill of S. itself; and

an incorrect or imperfect statement of it there, cannot be rectified by reference to a receipt endorsed on it (*Ex p. Charing Cross Bank, Re Parker*, sup).

*Note:* Though s. 8, Bills of S. Act, 1878, uses the phrase "set forth" the Consideration, s. 10 (3) requires a Defeasance to be "*truly set forth.*"

**TRUST.**— "Trust," ss. 7, 8, Statute of Frauds, includes a *Use* (*Bushell v. Burland*, Holt, 733); but a mere agency to buy property, is not a "Trust" or "Confidence," within those sections (*Cave v. Mackenzie*, 46 L. J. Ch. 564).

#### V. MANIFESTED.

Where Realty is devised "Upon Trust," or "In Trust," and there are no active duties to perform, "the term 'Trust' would be read, not in its modern sense but, in the old sense in which it was understood before and in the Statute of Uses, 27 H. 8, c. 10, which admitted of no difference between 'Uses' and 'Trusts'" (per Chitty, J., *Re Brooke*, cited LEGAL ESTATE). *V. USE.*

The word "Trust" is not necessary to create a Trust, nor will its use necessarily create one (1 Jarm. 569: Lewin, 161); but its use is frequently most useful in showing that a trust is intended (per Chitty, L. J., *Hill v. Hill*, 66 L. J. Q. B. 335).

"As the doctrines of Trusts are equally applicable to Real and Personal Estate, and the principles that govern the one will be found, *mutatis mutandis*, to govern the other, we cannot better describe the nature of a Trust, generally, than by adopting Lord Coke's definition of a 'Use,' the term by which, before the Statute of Uses, a Trust of lands was designated. A Trust, in the words applied to the Use, may be said to be — 'a confidence reposed in some other, which is not issuing out of the land, but as a thing collateral, annexed in privitie to the estate of the land, and to the person touching the land' (Co. Litt. 272 b)": Lewin, 11.

Quà Trustee Act, 1893, " 'Trust,' does not include the duties incident to an estate conveyed by way of MORTGAGE; but, with this exception, the expressions 'Trust,' and 'TRUSTEE,' include IMPLIED and CONSTRUCTIVE Trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of PERSONAL REPRESENTATIVE of a deceased person" (s. 50). That def (taken in great part from s. 2, Trustee Act, 1850) includes a Mtgor (owner of the fee simple) who has given a Declaration to his Equitable Mtgee that he will hold all his estate in trust for the mtgee; and if it be added that the mtgee may remove the mtgor from the trust and appoint new trustees, the mtgee in doing so may, by s. 12 (1), Trustee Act, 1893, divest the legal estate the mtgor had at the time of the mtgee out of the mtgor and vest it in his (the mtgee's) nominee as against a subsequent legal mtgee (*London and County Bank v. Goddard*. 1897, 1 Ch. 612; 66 L. J. Ch.

261; 76 L. T. 277; 45 W. R. 310); "any Trust" in that latter section is not to be limited to substantial trusts (*Ib.*).

Quà Judicial Trustees Act, 1896, 59 & 60 V. c. 35, "the Administration of the property of a deceased person (whether a testator or intestate) shall be a Trust, and the exor or admor a Trustee" (subs. 2, s. 1). "Therefore, clearly s. 3 (which gives the Court power to relieve for BREACH OF TRUST) applies to the case of an exor who has been guilty of a DEVASTAVIT" (per Romer, J., *Re Kay*, 1897, 2 Ch. 518; 66 L. J. Ch. 759; 46 W. R. 74): *Uf*, REASONABLY.

Quà Lunacy Act, 1890, " 'Trust,' and 'Trustee,' include, Implied and Constructive Trusts, and cases where the trustee has some beneficial interest, and also the duties incident to the office of Personal Representative of a deceased person; but not the duties incident to an estate conveyed by way of Mortgage" (s. 341).

Quà "Trusts (Scotland) Acts, 1861 to 1891" (*V. Sch* 2, Short Titles Act, 1896), " 'Trust,' shall mean and include, any Trust constituted by any Deed or other Writing, or by Private or Local Act of Parliament, or by Resolution of any Corporation or Public or Ecclesiastical Body, and the appointment of any tutor, curator, or judicial factor, by deed decree or otherwise: 'Trustee,' shall include, tutor, curator, and judicial factor" (s. 2, 47 & 48 V. c. 63; s. 2, 54 & 55 V. c. 44; s. 2, 61 & 62 V. c. 42).

There is no inherent relationship of Trust or Agency between Co-Owners (*Kennedy v. De Trafford*, 66 L. J. Ch. 413; 1897, A. C. 180; 76 L. T. 427; 45 W. R. 671).

As to a DIRECTOR of a Co; *V. TRUSTEE*.

"Subject to any Trusts existing," s. 109, British North America Act, 1867, though not connoting strict trusts yet does import some contractual or legal duty to make the payments there referred to (*A-G. Canada v. A-G. Ontario*, 1897, A. C. 199; 66 L. J. P. C. 17).

"Declaration of Trust"; *V. DECLARATION*.

"Like Trusts"; *V. LIKE*.

For a view of the Rise and Progress of Trusts, *V. Lewin*, 1-12; for a Classification, *V. Lewin*, ch. 2, s. 1, and per Bowen, L. J., *Soar v. Ashwell*, 1893, 2 Q. B. 395; on Trusts generally, *V. 1 Cru. Dig.*, Title 12; Lewin: Godefroi: 2 White & Tudor, 693-802; Watson Eq. 959-1022; 15 L. Q. Rev. 294.

*V. BREACH OF TRUST: CHARITABLE PURPOSE: COMMISSION: CONSTRUCTIVE: DISTINCT: EXECUTED: EXPRESS: IN TRUST: INTRUSTED: NOTICE: PARTICULAR TRUST: PRECATORY TRUST: RESULTING TRUST: SECRET TRUST: SIMPLE TRUST: UPON TRUST.*

**TRUST ESTATE.**—A substitutional gift of "my Trust Estate," held to include the corpus of past accumulations (*Re Travis*, 1900, 2 Ch. 541; 69 L. J. Ch. 663; 83 L. T. 241).

**TRUST FUNDS.**—“Trust Funds,” in its ordinary acceptation and as used in s. 3, Trust Investment Act, 1889, repld s. 1, Trustee Act, 1893, is not confined in its meaning to cash awaiting investment but, “signifies funds belonging to the Trust, including money invested on security or otherwise as well as uninvested cash” (per Ld Watson, *Hume v. Lopes*, 1892, A. C. 112; 61 L. J. Ch. 423; 66 L. T. 425; 40 W. R. 593); therefore, the power to VARY extends to all investments whether made under the Act or not (*S. C.*).

#### V. FUNDS.

**TRUSTEE.**—A Trustee, is one who holds the “Ownership or Possession of, or dominion over, the subject of the Trust, but is bound to allow the beneficial enjoyment or usufruct of that subject to be reaped by another who is called the *Cestui que Trust*, or BENEFICIARY” (Godefroi, 2). *Vf*, TRUST.

As to who may be a Trustee; *V. Lewin*, ch. 3, s. 2; *Re Stamford*, 1896, 1 Ch. 288; 65 L. J. Ch. 134; 73 L. T. 559; 44 W. R. 249.

As to the Estate taken by Trustees in view of the phrases that may be employed in the instrument creating the Trust; *V. LEGAL ESTATE.*

As to when a devise is implied in the word “Trustee”; *V. Lewin*, 229.

Quà Trustee Act, 1888, 51 & 52 V. c. 59, “‘Trustee,’ shall be deemed to include an exor or admor, and a trustee whose trust arises by Construction or Implication of law as well as an EXPRESS trustee; but not the Official Trustee of charitable funds” (s. 1). A DIRECTOR of a Co is within that def and, as such, entitled to the protective limitation given by s. 8 (*Re Lauds Allotment Co*, 1894, 1 Ch. 616; 63 L. J. Ch. 291; 70 L. T. 286; 42 W. R. 404), for “though Directors are not trustees from the mere fact of being Directors, yet they have always been considered and treated as trustees of money which comes to their hands or which is actually under their control” (per Lindley, L. J., *ib.*); but s. 8 is not available to a Trustee in Bankry (*Re Cornish*, 1896, 1 Q. B. 99; 65 L. J. Q. B. 106; 73 L. T. 602; 44 W. R. 161). *Vf*, *Gardner v. Cowles*, 3 Ch. D. 304; *Re Findlay*, 32 Ch. D. 221, 641; 55 L. J. Ch. 395.

The Trust Investment Act, 1889, 52 & 53 V. c. 32, by its s. 9, provided a def the same as that in the Act of 1888, down to and including the words “express trustee”; the Trustees of a Charity were held within that def, but not the Trustees of a Building Socy, the latter being rather agents for carrying on the business of the Socy (*Manchester Infirmary v. A-G.*, 59 L. J. Ch. 370; 43 Ch. D. 420, 431; *Re National Permanent Bg Socy*, 59 L. J. Ch. 403; 43 Ch. D. 431; 62 L. T. 596; 38 W. R. 475).

The Trustee Act, 1893, provides an amended def (*V. TRUST*). It repealed the Act of 1888, except ss. 1 and 8. and repealed Trust Investment Act, 1889, except ss. 1 and 7.

A Mortgagee having surplus sale moneys in hand, is a “Trustee” of

them within the Trustee Acts (*Robertson v. Norris*, 1 Giff. 421; 30 L. T. O. S. 253; *Roberts v. Ball*, 24 L. J. Ch. 471; *Re Hardley*, 10 Ch. D. 664; 48 L. J. Ch. 335; 40 L. T. 109; 27 W. R. 587; *Re Walthampton*, 26 Ch. D. 391; 53 L. J. Ch. 1000; 51 L. T. 280; 32 W. R. 874).

A Vendor who has covenanted to surrender Copyholds is a "Trustee" within the Trustee Acts (*Re Cuming*, 5 Ch. 72; 18 W. R. 157; *Re Powis*, 29 S. J. 373).

Quà Bankry Act, 1883, " 'Trustee,' means, the trustee in bankruptcy of a debtor's estate " (s. 168); therefore, the powers given to a "Trustee" by s. 27 are not applicable to the Trustee of an Arrangement under s. 18 (*Re Grant*, 55 L. J. Q. B. 369; 3 Morr. 118; 17 Q. B. D. 238; 34 W. R. 539). "Trustee" as used in s. 162 (2); *V. Re Chudley*, 14 Q. B. D. 405; *Re Cornish*, sup. "Trustee in Bankruptcy," quà Friendly Soc Act, 1896, includes, "a Judicial Factor in Scotland, and an Assignee in Ireland" (subs. 2, s. 35).

Quà Larceny Act, 1861, "Trustee," means, "a trustee on some EXPRESS Trust created by some Deed, Will, or Instrument in Writing"; and includes "the HEIR or PERSONAL REPRESENTATIVE of any such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an exor and admor, and an official manager, assignee, liquidator, or other like officer, acting under any present or future Act relating to Joint Stock Companies, Bankruptcy, or Insolvency" (s. 1); that includes a Secretary to a Savings Bank (*R. v. Fletcher*, 31 L. J. M. C. 206; L. & C. 180).

"Trustee" has also received statutory definition in and for the following Acts;—

Allotments Extension Act, 1882, 45 & 46 V. c. 80; *V.* s. 1:

Charitable Trustees Incorporation Act, 1872, 35 & 36 V. c. 24; *V.* s. 14:

Charitable Trusts Act, 1853, 16 & 17 V. c. 137; *V.* s. 66:

Companies Act, 1886, 49 & 50 V. c. 23; *V.* s. 3 (3):

Finance Act, 1894, 57 & 58 V. c. 30; *V.* s. 23:

Grammar Schools Act, 1840, 3 & 4 V. c. 77; *V.* s. 25:

Loc Gov Act, 1894, 56 & 57 V. c. 73; *V.* s. 75:

Lunacy Act, 1890; *V.* TRUST:

Mun Corp Act, 1882, 45 & 46 V. c. 50; *V.* s. 7:

Mun Corp (Ir) Act, 1840, 3 & 4 V. c. 108; *V.* s. 215:

Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51; *V.* s. 3:

Sale of Advowsons Act, 1856, 19 & 20 V. c. 50; *V.* s. 1:

Savings Banks Act, 1880, 43 & 44 V. c. 36; *V.* s. 5: it is doubtful whether its President is a "Trustee and Manager" of a SAVINGS Bank. *V. Re Carliff Savings Bank*, 1892, 2 Ch. 100; 61 L. J. Ch. 357; 66 L. T. 317; 40 W. R. 538:

Succession Duty Act, 1853, 16 & 17 V. c. 51; *V.* s. 1:

Tramways (Scot) Act, 1861, 24 & 25 V. c. 69; *V.* s. 2:

Trusts (Scot) Acts: *V.* TRUST.

“The Trustee Appointment Acts, 1850 to 1890”; “The Trustee Savings Banks Acts, 1863 to 1893”; *V.* Sch 2, Short Titles Act, 1896.

“Trustees” for executing an Act for *Paring, &c.*, s. 2, 20 & 21 *V.* c. 50; *V. Swinford v. Keble*, 35 *L. J. Q. B.* 185; *L. R.* 1 *Q. B.* 549; 7 *B. & S.* 573.

“Commissioners, Trustees,” &c; *V.* COMMISSIONERS.

A Conveyance “As Trustee,” implies a covenant against having made INCUMBRANCES (s. 7 (F), Conv & L. P. Act, 1881).

A Trustee De Son Tort, is one who acquires the possession of or dominion over trust property, or to whom such property comes and who chooses to take upon himself the business of a trustee in relation to such property; he cannot, for his own benefit, say that he had no right to act as a trustee (*Rackham v. Siddall*, 16 *Sim.* 297; 1 *Mac. & G.* 607), and his liability is the same as a trustee regularly appointed (*ib.*: *Pearce v. Pearce*, 25 *L. J. Ch.* 893; 22 *Bea.* 248; *Hennessey v. Bray*, 33 *Bea.* 96, 102).

“Elected Trustees,” quâ Sale of Advowsons Act, 1856, 19 & 20 *V.* c. 50; *V.* s. 1.

“Trustees or Governing Body,” quâ Roman Catholic buildings registered for Marriages, includes “the Bishop or Vicar General of the diocese” (s. 1 (3), 61 & 62 *V.* c. 58).

Trustees of Inheritance; *V.* INHERITANCE.

“Trustees of the SETTLEMENT,” quâ SETTLED Land Acts; Stat. Def., S. L. Act, 1882, s. 2 (8), enlarged by S. L. Act, 1890, s. 16; adopted quâ and by s. 6, Land Transfer Act, 1897, and by 54 & 55 *V.* c. 66, s. 95: *Th. Wheelwright v. Walker*, 52 *L. J. Ch.* 274; 23 *Ch. D.* 752; *Re Garnett-Orme to Hargreaves*, 53 *L. J. Ch.* 196; 25 *Ch. D.* 595; *Constable v. Constable*, 55 *L. J. Ch.* 491; 32 *Ch. D.* 233; 54 *L. T.* 608; 34 *W. R.* 470.

Trustees for the Time Being; *V.* TIME BEING.

*V.* ACTING TRUSTEE: BARE TRUSTEE: CONTINUING TRUSTEE: CREDITOR: DECLINING TRUSTEE: EXISTING: GRATUITOUS: JUDICIAL TRUSTEE: LAST: NEW TRUSTEE: OFFICIAL: OTHER TRUSTEE: SOLE TRUSTEE: SURVIVING TRUSTEE: TRUST: UPON TRUST.

**TRUSTING.** — *V.* PRECATORY TRUST.

**TRUTH.** — “Plead Guilty or admit the Truth of the Information or Complaint,” s. 19, Sum Jur Act, 1879; *V. R. v. Essex Jus.*, 1892, 1 *Q. B.* 490; 61 *L. J. M. C.* 120; 66 *L. T.* 676; 40 *W. R.* 446; 56 *J. P.* 375.

**TUMBRELL.** — “Is an Engine of Punishment which ought to be in every Liberty that hath View of Frankpledge for the correction of SCOLDS and unquiet Women” (Cowel).

**TUMULTUOUSLY.** — *V.* RIOTOUSLY.

**TUNNEL.** — Stat. Def., 17 & 18 V. c. 15, s. 2.

*V. Hill v. Mid. Ry*, cited HEREDITAMENT, p. 870; *Bevan v. London Portland Cement Co*, 67 L. T. 615.

**TURBARY.** — “Common of Turbary is a right to dig turves (*i.e.* peat, not green turf) in another man’s land, or in the lord’s waste, for fuel to burn in the house; and therefore it is appendant or appurtenant to a house only, and not to land; 5 Assis. 9: *Tyrringham’s Case*, 4 Rep. 36 b; Tudor’s L. C. R. P.: *O’Hare v. Fahy*, 10 Ir. Com. Law Rep. 318. It cannot be dug for sale; *Valentine v. Penny*, Noy, 145; *Hayward v. Camington*, 1 Sid. 354; 1 Lev. 231; 2 Keble, 290, 311. And it does not give a right to take green turf for making grass plots, or repairing the hedges or fences of a garden: *Wilson v. Willes*, 7 East, 121: Wms. on Rights of Common, 187” (Elph. 627).

As to what words in an Inclosure Award will vest the legal estate in the soil for the purposes of turbary, *V. Simcoe v. Pethick*, cited SET OUT, and cases therein cited.

“‘Turbaria,’ is also taken sometimes for the ground where turves are digged” (Cowel).

*V.* MOSSES: SUFFICIENT PASTURE.

**TURF MOSS.** — “I am of opinion that by a grant of ‘Bogs and Turf-Mosses’ simply, the soil and freehold in both would pass” (per Brady, C. B., *Boyle v. Olpherts*, 4 Ir. Eq. Rep. 249); “I believe it cannot be disputed that ‘Bog’ simply means the soil, and not a mere right of turbary” (per Pennefather, B., *Ib.*). So, a demise of a “Bog,” as such, gives the lessee the right to cut and sell turf, when there is no other mode of enjoying the Bog (*Coppinger v. Gubbings*, 3 J. & La T. 397).

An Irish Bog, even one of 400 acres, within the ambit of the boundaries of the parcels in a Lease, will pass with those parcels, though the stated admeasurements would exclude it (*Jack v. McIntyre*, 12 Cl. & F. 151; stated Sug. Prop. 536).

**TURN.** — A “Turn” of Patronage to a Church; *V. Keen v. Denny*, 1894, 3 Ch. 169; 64 L. J. Ch. 55; 71 L. T. 566; 43 W. R. 39, and authorities there cited.

*V.* TURNE.

“In ‘Turn,’ in a Charter-Party, means (unless explained by the evidence) in the order of readiness (*Robertson v. Jackson*, 15 L. J. C. P. 28; 2 C. B. 412; *Lawson v. Burness*, 1 H. & C. 396; *King v. Hinde*, 12 L. R. Ir. 113).

“*In Turn to Deliver*”; As to what evidence of usage will enable the Court to construe these words in a Charter-Party in a particular way, *V. Robertson v. Jackson*, sup. *Vh*, 1 Maude & P. 295.

"*In Regular Turns of Loading*"; As to what evidence is admissible to explain this phrase, *Cp, Leidemann v. Schultz* (23 L. J. C. P. 17; 14 C. B. 38) with *Hudson v. Clementson* (25 L. J. C. P. 234; 18 C. B. 213); *Vh, Lawson v. Burness and King v. Hinde*, sup: 1 Maude & P. 295; Carver, s. 620: 6 Encyc. 506.

"*Loading in Turn*"; *V. Taylor v. Clay*, 16 L. J. Q. B. 44; 9 Q. B. 713.

*Vf. Abbott*, 295-297.

**TURN LOOSE.** — *V. Loose.*

**TURN OUT.** — In a clause in an Apprenticeship Indenture, a "Turn-Out" of the master's workmen includes a Lock-Out by him as well as a STRIKE; and if the Indenture enables the master to stop the apprentice's wages during a "Turn-Out," the stipulation is so unfair against the apprentice that the indenture cannot be enforced against him (*Corn v. Matthews*, 1893, 1 Q. B. 310; 62 L. J. M. C. 61; 68 L. T. 480; 41 W. R. 262; 57 J. P. 407; *Meakin v. Morris*, 53 L. J. M. C. 72; 12 Q. B. D. 352); *secus*, of a like provision if the stand-still is through "ACCIDENT beyond the master's control" (*Green v. Thompson*, 1899, 2 Q. B. 1; 68 L. J. Q. B. 719; 80 L. T. 691; 48 W. R. 31; 63 J. P. 486). *Vh*, 44 S. J. 38; Austin on Apprentices, 98.

Agreement not to "turn out" Tenant as long as he duly pays his rent; *V. Browne v. Warner*, cited MOLEST, towards end.

**TURN ROUND.** — *V. The John Holloway*, and *The River Derwent*, cited CROSSING.

**TURN.** — The privilege of the Turne is the power to hold a Court within the precinct of the same authority as the Sheriff's Turne; and whosoever hath the Leet hath this privilege (*Termes de la Ley. Turne del Viscont*).

**TURNER'S ACT.** — For facilitating Chancery Procedure, 13 & 14 V. c. 35; repealed by 46 & 47 V. c. 49.

**TURNPIKE ROAD.** — "A 'Turnpike-road' means a road having toll-gates or bars on it, which were originally called 'turns' and were first constructed about the middle of the 18th century. Certain individuals, with the view to the repair of particular roads, subscribed among themselves for that purpose, and erected gates upon the roads, taking tolls from those who passed through them. These were violently opposed at first, and petitions were presented to Parliament against them; and Acts were in consequence passed for their regulation. This was the origin of turnpike roads. The distinctive mark of a turnpike-road is the right of turning back any one who refuses to pay toll" (per Abinger, C. B., *Northam Bridge Co v. London & Southampton Ry*, 6 M. & W.



438; 9 L. J. Ex. 166; 4 Jur. 892; 1 Ry Ca. 672: *Va. R. v. East & West India Docks & Birmingham Ry*, 22 L. J. Q. B. 380; 2 E. & B. 466: per Lawrence, J., *R. v. Staffordshire Canal Nav.*, 8 T. R. 350).

Dedication of a road to the public, reserving Tolls which are gathered by means of Toll-bars, does not make the road a Turnpike Road, unless the scheme have legislative sanction (*Austerberry v. Oldham*, 29 Ch. D. 750; 55 L. J. Ch. 633; 53 L. T. 543; 33 W. R. 807; 49 J. P. 532: *Mid. Ry v. Watton*, 55 L. J. M. C. 99; 17 Q. B. D. 30; 54 L. T. 482; 34 W. R. 524; 50 J. P. 405).

Stat. Def. — 7 & 8 V. c. 91, s. 114; Ry C. C. Act, 1845, s. 3. — *Scot.* 41 & 42 V. c. 51, s. 3.

“A Turnpike Road is a HIGHWAY” (per Blackburn, J., *Sunk Island Turnpike Road Trustees v. Patrington*, 1 B. & S. 756, cited by Bramwell, L. J., *R. v. French*, 48 L. J. M. C. 176; 4 Q. B. D. 509).

As to the distinction between a Turnpike Road and a HIGHWAY; *V.* per Ld Blackburn, *West Riding Ins. v. The Queen*, 53 L. J. M. C. 47; 8 App. Ca. 790.

As to exemption from Tolls; *V.* CLERGYMAN: USUAL PLACE OF RELIGIOUS WORSHIP.

“Turnpike Road or PUBLIC HIGHWAY,” s. 46, Ry C. C. Act, 1845, does not include a Public Footpath (*R. v. Bezeley Heath Ry*, 1896, 2 Q. B. 74; 65 L. J. Q. B. 469; 74 L. T. 540; 44 W. R. 501; 60 J. P. 454).

“Turnpike or Public Carriage Road,” s. 47, Ry C. C. Act, 1845, ss. 5, 6, Ry C. C. Act, 1863, is of general application, and is not limited to such similar roads as are specifically mentioned in the Special Act of the particular railway (*R. v. Longe*, 66 L. J. Q. B. 278).

The obligation on a Ry Co not to go over a Level Crossing of a Turnpike Road faster than 4 miles an hour, s. 48, Ry C. C. Act, 1845, will be enforced by Injunction; a faster rate will not be excused on the ground of being less inconvenient to the public (*A-G. v. Lond. & N. W. Ry*, 1900, 1 Q. B. 78; 69 L. J. Q. B. 26; 63 J. P. 772).

A Disturnpiked Road becomes a MAIN ROAD (s. 13, 41 & 42 V. c. 77). *V.* CEASE.

**TURNPIKE TRUST.** — Stat. Def., 7 & 8 V. c. 91, s. 114.

*Vh.* *Sunk Island Turnpike Road Trustees v. Patrington*, 1 B. & S. 747; 31 L. J. M. C. 18.

**TUTOR.** — “Tutor” is not a correct description of a Schoolmaster quâ Bills of Sale Acts (*Lee v. Turner*, 20 Q. B. D. 773; 59 L. T. 320).

**TWAITE.** — “*Twaite* signifieth a wood grabbed up, and turned to arable” (Co. Litt. 4 b).

**TWELVE-MONTH.** — “‘A Twelve-month’ includes all the year according to the Kalendar; but ‘Twelve months’ shall be reckoned ac-

ording to twenty-eight days to each month" (*Catesby's Case*, 6 Rep. 62 a: *Va*, 2 Bl. Com. 141: Dwar. 674, 675). *V.* MONTH: YEAR.

A Hiring Agreement "for twelve months *certain*, after which time either party shall be at liberty to determine the agreement by giving the other a three months' notice," means, that at the end of the twelve months either party may (without notice) determine the agreement, and that the stipulation as to notice applies only if the engagement be prolonged beyond the twelve months (*Langton v. Carleton*, L. R. 9 Ex. 57; 43 L. J. Ex. 54).

**TWO JUSTICES.** — *V.* JUSTICE.

**TYPE-WRITING.** — *V.* PRINT.

**TYTHING.** — *V.* TITHING.

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## UBERRIMA FIDES — ULTRA VIRES

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**UBERRIMA FIDES.**—When required quâ Contracts; *V.* per Romer, L. J., *Seaton v. Heath*, cited INSURANCE.

**UBICUNQUE.**—*V.* QUAMDIU.

**ULTIMATE TRUST.**—An Ultimate Trust is, probably, that trust of a series of trusts which is the last prescribed, *e.g.* as distinguished from a RESULTING TRUST.

**ULTRA VIRES.**—A thing is done by a Public Authority, a Company, or a Fiduciary Person, *ultra vires*, when it is not within the scope of the powers entrusted to such Authority, Company, or Person. The difficulty of applying that definition arises when the circumstances are complex, *e.g.* if the Directors of a Ry Co should purchase for the Co a quantity of “green spectacles as a speculation,” that would be clearly *ultra vires* (per Campbell, C. J., *Norwich v. Norfolk Ry*, 4 E. & B. 443); but if such a Board were to build a theatre or chapel, it would, *semble*, be *ultra* or *intra* their powers according to circumstances; “it might be a speculation separate from the railway, and prohibited; or, if works (for the railway) were wanted in a waste place and the Co found it to be for their interest to build a Town and supply it with all requisites of inhabitancy, and (in order to secure a permanent supply of workmen of skill and responsibility) added a chapel and a theatre, with religious and secular instruction, it might be for the purpose of the railway, and valid, and, though distantly connected, the outlay might be found eventually to increase the profit from the traffic” (per Erle, J., *Ib.* 415).

So, gratuities to Officers and Servants of an ordinary trading Co, when made as mere gratuities, are *ultra vires*, *e.g.* if made when the business of the Co is no longer carried on; *secus*, if reasonably in the nature of stimulants to exertion for the benefit of the Co (*Hutton v. West Cork Ry*, 52 L. J. Ch. 689; 23 Ch. D. 654; 31 W. R. 827).

For cases on Bye Laws; *V.* PEACE.

*Vh.* Brice on Ultra Vires: 12 Encyc. 360-366.

Observe, that “the words ‘*Ultra Vires*’ and ‘*Illegality*’ represent totally different and distinct ideas. It is true that a Contract may have both these defects; but it may also have one without the other, *e.g.* a Bank has no authority to engage, and usually does not engage, in benevolent enterprises. A subscription made by authority of the Board

of Directors and under the corporate seal, for the building of a church or college or an almshouse, would be clearly *ultra vires*, but it would not be illegal. If every corporation should expressly assent to such an application of the funds, it would still be *ultra vires* but no wrong would be committed and no public interest violated" (*Bissell v. Michigan Southern Ry.*, New York Rep. 258, cited Brice, 2 ed., 51).

*Cp.*, ILLEGAL.

**UMPIRE.** — The true meaning of "Umpire" is a person to decide between two arbitrators; but it may be used as synonymous with "Arbitrator," e.g. where the submission is to an "Arbitrator or Umpire" (*Re Eyre and Leicester*, 1892, 1 Q. B. 136; 61 L. J. Q. B. 438; 65 L. T. 733; 40 W. R. 203).

*Vh.*, *Gould v. Sharpington Syndicate*, cited CALL UPON.

The Scotch equivalent is "Oversman"; *V. s.* 109 (3), 38 & 39 *V. c.* 17.

**UNABLE.** — *V.* UNWILLING.

"Unable to act"; *V.* INABILITY.

A Co "unable to pay its debts," s. 79 (4), Comp Act, 1862, connotes that the inability "must be inability to pay debts absolutely due, i.e. debts on which a creditor can go to the Co and instantly demand to be paid" (per James, V. C., *Re European Life Assree*, 39 L. J. Ch. 326; L. R. 9 Eq. 127). *Vh.*, s. 80, Comp Act, 1862; and quâ Life Assree Companies, s. 21, 33 & 34 *V. c.* 61. *Cp.*, INSOLVENT.

**UNABLE OR UNWILLING.** — As to this phrase in Conditions of Sale; *V.* UNWILLING.

**UNADULTERATED.** — *V.* ADULTERATION: AS UNADULTERATED.

**UNADVANCED.** — "Unadvanced Member" of a Building Society; *V. Re Middlesborough By Socy*, 58 L. J. Ch. 771; 53 L. T. 203; 5 Times Rep. 516. *V.* WITHDRAWAL.

**UNANIMOUS.** — "Unanimous" determination of Creditors and Contributories, R. 63 (2), Companies Winding-up Rules, 1890, refers to the unanimity of all the creditors and contributories at the meetings, and not to unanimity in the result of the two meetings (*Re Johannesburg Land and Gold Trust.* cited MAY, p. 1177).

**UNAPPRECIABLE.** — *V.* INAPPRECIABLE.

**UNAVOIDABLE.** — Unavoidable *Accident*; *V.* INEVITABLE.

"It has been decided that a Condition of Sale for payment of interest, if by reason of any 'Unavoidable Obstacle,' the contract could not be completed by a day named, did not apply to a delay occasioned by the state of the title; and therefore interest was not payable under the Condition" (Sug. V. & P. 635, citing *Birch v. Podmore*, unreported). So, of

the phrase "Unforeseen or Unavoidable Obstacles" (*Monk v. Huskisson*, 4 Russ. 121 *n*; *Seth*, Sug. V. & P. 635). *Vf*, Dart, 719.

"Unavoidable Hindrance," is very unusual in a Charter-Party Exception (per Esher, M. R., *Crawford v. Wilson*, 12 Times Rep. 171; 1 Com. Ca. 277, *wher* for an example of such a Hindrance: *Va. Gardiner v. Macfarlane*, cited CONTROL).

**UNBAPTIZED.** — A child baptized with water in the name of the Trinity by a Wesleyan minister, not authorized to administer the Rite of Baptism, is not "unbaptized" within the Burial Service, as incorporated into the Uniformity Act, 13 & 14 Car. 2, c. 4 (*Escott v. Mastin*, B. & F. 4: 2 Curt. 692).

*Note.* As to the Rite of Baptism. *V.* Phil. Ecc. Law, Part 3, ch. 2.

**UNBORN.** — "Unborn," in s. 30, Trustee Act, 1850, repld s. 31. Trustee Act, 1893, means, "non-existent in the character to entitle a person to the property in question" (per Jessel, M. R., *Basnett v. Moran*, 44 L. J. Ch. 559; L. R. 20 Eq. 185). Among other illustrations the learned judge said, "In a sense, the future heir-at-law of a living person, although he may be a living man, is not a living heir. As heir, he comes into existence at a future period." *Vh*, Dan. Ch. Pr. 1781.

*V.* BORN: LIVING: TO BE BORN.

**UNBUILT.** — "Open and unbuilt upon"; *V.* OPEN, p. 1341.

**UNCALLED CAPITAL.** — Uncalled Capital is not "PROPERTY." *V.* p. 1584; *Vf*, UNDERTAKING.

**UNCERTAIN.** — "Uncertain INTEREST" in Land. s. 3. Statute of Frauds, relates "only to Interests which are uncertain as to the time of their duration" (per Lee, C. J., and Denison, J., *Wood v. Lake*, Sayer, 3).

Uncertain Rent; *V.* CERTAIN RENT.

*V.* VAGUE.

**UNCLEANNES.** — *V.* IMMORAL.

**UNCONDITIONAL.** — "Unconditional Order in Writing," to constitute a BILL OF EXCHANGE; *V.* *Barins v. London & S. W. Bank*, 1900, 1 Q. B. 270; 69 L. J. Q. B. 164; 81 L. T. 655; 48 W. R. 211; 5 Com. Ca. 1.

Where there was a testamentary direction to A. to pay debts and legacies and other matters, "and to enable him to do all this, I bequeath unconditionally unto him all my estates and landed property"; held, that "unconditionally," did not mean without any condition annexed as to the payment of legacies but, meant an absolute ownership of the fee simple for the purpose of doing that which he is ordered to do (*Thomson v. Eastwood*, 2 App. Ca. 215, 229).

**UNCONSCIONABLE BARGAIN.**— *V.* EXPECTANT HEIR: UNDERVALUE: USURY.

**UNCONTROLLED.**— *V.* DISCRETION. *Cp.* CONTROL.

**UNDER.**— *Seemle.* a power to carry pipes, &c, Across a Public Road is different from a power to carry them “under” the road (*S. E. Ry v. European, &c. Telegraph Co*, 9 Ex. 363; 23 L. J. Ex. 113). *Cp.* UNDERGROUND.

“Acting under”: *V.* ACTING.

Where a Special Act incorporates a Public Act, things done pursuant to the latter are DONE “under” the former (*Lond. & N. W. Ry v. Run-corn*, cited SEWER).

“ENTITLED under,” *e.g.* a Will: *V. Collingwood v. Stanhope*, L. R. 4 H. L. 43; 38 L. J. Ch. 421; 17 W. R. 537: *Re Crawshay*, cited SETTLE.

*Co* “incorporated under” an Act; *V.* BY.

Money paid “under an Execution . . . to avoid Sale,” s. 11 (2), Bankry Act, 1890 (superseding *Re Pearson*, 3 Morr. 187), must be (1) the exon Debtor’s own money, (2) paid under direct stress of the execution, and (3) to avoid an actual sale, and not a mere re-seizure (*Bower v. Hett*, 1895, 2 Q. B. 337; 64 L. J. Q. B. 772; 43 W. R. 557).

Guarantee of payment “under the said Policy.” does not include a payment under an arrangement “in lieu of” the Policy (*Mortgage Insree v. Pound*, 64 L. J. Q. B. 394; 65 *Ib.* 129).

“Passing under”: *V.* PASSING.

BURIAL Ground sold “under the authority of any Act,” s. 5, 47 & 48 V. c. 72; *V. A-G. v. London Parochial Charities*, cited SET APART.

“Sales under the Lands C. C. Act”; *V.* SALE.

Property “vested under” an Act; *V.* VESTED.

A WORKMAN “works under a contract with an EMPLOYER,” s. 10, 38 & 39 V. c. 90, even though he “has not contracted directly with an employer but has been engaged by an agent of the employer to work for the employer, viz. by a butty-man or a ganger, or to meet the case of an apprentice, or other similar cases” (per Smith, L. J., *Marrow v. Flimby, &c. Co*, 1898, 2 Q. B. 588; 67 L. J. Q. B. 976; 79 L. T. 397): “There is one obvious instance of such working under a contract, viz., that of a volunteer, who, without communication with the employer, gives his services either to supplement or replace the workman actually employed” (per Rigby, L. J., *Ib.*).

Property the subject of a Power of Appointment, passes “under or By VIRTUE” of the Power, and not of the instrument exercising it (*A-G. v. Chapman*, 1891, 2 Q. B. 526; 60 L. J. Q. B. 602; 40 W. R. 79, citing *Charlton v. A-G.*, *Braybrooke v. A-G.*, *A-G. v. Floyer*, and *A-G. v. Smythe*, cited PREDECESSOR: per Wright, J., on def of SETTLEMENT,

*A-G. v. Dodington*, 66 L. J. Q. B. 441; on app. *Ib.* 684; 1897, 2 Q. B. 373).

“Under or by virtue”; *V.* PURSUANCE.

*V.* IN RESPECT OF.

“Under Arrest”; *V.* ARREST.

“Under Command”; *V.* COMMAND.

“Under Control”; *V.* CONTROL.

Place of Profit “under the Co”; *V. Astley v. New Tivoli*, cited PLACE, p. 1490.

“Salvage under this Act”; *V.* SALVAGE.

“Under the Same Circumstances”; *V.* SAME, p. 1789.

*V.* CLAIMING UNDER: THROUGH: UNLESS: WITHIN OR UNDER.

**UNDER BOOK PILOT.** — *V.* PILOT.

**UNDER DECK.** — *V. Royal Exchange Co v. Dixon*, 12 App. Ca. 11; 56 L. J. Q. B. 266; 56 L. T. 206; 35 W. R. 461.

**UNDER GARDENER.** — *V.* GARDENER.

**UNDER HAND.** — Agreement “under hand only” (quâ Stamp, on *whv* EVIDENCE OF A CONTRACT) means, otherwise than by DEED: therefore, an unsigned document embodying the binding terms of a contract, requires an Agreement Stamp (*Walker v. Rostron*, 11 L. J. Ex. 173; 9 M. & W. 411; *Chadwick v. Clarke*, 14 L. J. C. P. 233; 1 C. B. 700). In *thlc* Cresswell, J., said, “an unsigned agreement may be binding provided it does not require a signature by the Statute of Frauds.”

*V.* SIGNED.

“Under his hand”; *V.* HIS HAND.

**UNDER PAIN.** — “Under Pain of forfeiting Body and Goods”; *V.* FELONY.

**UNDER PROTEST.** — *Appearance* to a Writ “Under Protest” is one denying the obligation to appear at all, *e.g.* when the Jurisdiction of the Court is objected to (*The Vivar*, 2 P. D. 29; 35 L. T. 782; 25 W. R. 453; *Mayer v. Claretie*, 7 Times Rep. 40; *Firth v. Palmer*, 62 L. J. Q. B. 403; 1893. 1 Q. B. 768; 69 L. T. 383; 41 W. R. 493), or a Partner “may enter an appearance Under Protest, denying that he is a partner” (R. 7, Ord. 48 A, R. S. C.). As to a Conditional appearance, *V.* Ann. Pr. notes to R. 30, Ord. 12, R. S. C.

*Payment Under Protest*: “It is said that the money was received by the petitioner and the receipt given Under Protest. These words are often used on these occasions, but they have no distinct technical meaning, unless accompanied with a statement of circumstances, showing that they were used by way of notice or protest, reserving to the party by

reason of such circumstances, a right to a taxation, notwithstanding such payment. The words have no distinct meaning by themselves, and amount to nothing unless explained by the proceedings and circumstances" (per Langdale, M. R., *Re Massey*, 8 Bea. 462: *Va, Re Dearden*, 23 L. J. Ex. 14; 9 Ex. 210; 17 Jur. 993; 23 L. T. O. S. 90; 2 W. R. 18). *Vf, Re Cheesman*, and *Re Williams*, cited SPECIAL under "Special Circumstances" justifying the taxation of a Solr's Costs after payment.

"A TENDER may be effectually made 'Under Protest'; which imports, not to impose a CONDITION on acceptance of the money but, merely to prevent the fact of payment operating as an admission of the claim" (Leake, 746, citing *Scott v. Uxbridge Ry.*, L. R. 1 C. P. 596; 35 L. J. C. P. 293; *Sweny v. Smith*, L. R. 7 Eq. 324; 38 L. J. Ch. 446; *Greenwood v. Sutcliffe*, 1892, 1 Ch. 1; 61 L. J. Ch. 59; 65 L. T. 797; 40 W. R. 214).

**UNDERGROUND.** — A statutory power to lay, *e.g.* pipes or wires, "underground" in streets, involves authority to open the streets for that purpose (*Montreal v. Standard Light Co.*, 1897, A. C. 527; 66 L. J. P. C. 113; 77 L. T. 115). *Cp.* UNDER.

"Underground BAKEHOUSE"; Stat Def., 1 Edw. 7, c. 22, s. 101 (3). *Vh, Schwerzerhof v. Wilkins*, cited USED.

"Underground Room," quâ and by s. 96, P. H. London Act, 1891, "includes, any room of a house the surface of the floor of which room is more than 3 feet below the surface of the footway of the adjoining street or of the ground adjoining or nearest to the room." *Cp.*, "Ground Storey," sub STOREY.

Underground TRESPASS; *V. Bulli Coal Mining Co v. Osborne*, 1899, A. C. 351; 68 L. J. P. C. 49.

Underground Water; *V. SUBTERRANEAN WATER: INJURIOUSLY AFFECTED*, p. 975; *Acton v. Blundell*, cited INJURY.

**UNDERLEASE.** — "An assurance for a period less than the whole term, is an Underlease, and not an assignment (*Cottee v. Richardson*, cited TERM); though an assurance purporting to be an Underlease, but which comprises the whole term, may be an Assignment (*Langford v. Selmes*, 3 K. & J. 220; *Beardman v. Wilson*, 38 L. J. C. P. 91; L. R. 1 C. P. 57)": per Cur. *Bryant v. Hancock*, cited ASSIGNS, p. 131.

"Underlease," quâ Conv & L. P. Act, 1881; *V. LEASE*, p. 1071.

"Underlease," "Underlease in Perpetuity"; Stat Def., Renewable Leasehold Conversion Act for Ireland, 12 & 13 V. c. 105, s. 38.

Though a Covenant against Assigning is not broken by an Underlease (*V. ASSIGN*); yet a covenant against underletting will, generally, restrain an assignment (*Greenaway v. Adams*, 12 Ves. 395; *Srthe, Re Doyle and O'Hara*, cited SET).



A covenant not to "underlease" is broken by a letting from year to year (*Timms v. Baker*, 49 L. T. 106).

"Letting *Lodgings* has been held not to be a breach of a covenant not 'to grant any Underlease for any term whatsoever, or let, assign, transfer, set over, or otherwise part with,' without the license of the lessor; for 'the covenant,' said Lord Ellenborough, 'can only extend to such under-letting as a license might be expected to be applied for; and whoever heard of a license from a landlord to take in a lodger?' (*Doe d. Pitt v. Laminy*, 4 Camp. 77). But the same learned judge ruled otherwise where the covenant was not to let the premises, *or any part* thereof (*Roe v. Sales*, 1 M. & S. 297), and the ruling itself has been questioned in a later case (per Parke & Alderson, BB., *Greenslade v. Tapscott*, 1 Cr. M. & R. 59; 3 L. J. Ex. 328; 4 Tyr. 566), where land was suffered to be occupied by more persons than one. On principle it would seem that if the covenant be not to sublet the premises *or any part*, the letting *Lodgings* would be a breach; otherwise not" (Woodf. 699, 700).

*Vf.* Redman, 284, 285: Fawcett, 384, 385.

Merely letting a purchaser into possession of leaseholds he paying no rent and incurring no tenant's obligations to the vendor, is not an Assignment of the term, nor is it an Under-letting of the premises, within a clause of Forfeiture (*Horsey v. Steiger*, cited LIQUIDATION); but such an act would be a forfeiture if the covenant were extended to not "parting with the possession" of the premises (*Id.*), on which latter phrase *vf.* ASSIGN.

V. DERIVATIVE LEASE: LEASE: LEASEHOLD REVERSION: UNREASONABLY.

UNDER-LESSEE. — V. UNDERLEASE: LEASE.

UNDERMAN. — Undermanning makes a Ship "UNSAFE" within s. 459, Mer Shipping Act, 1894 (60 & 61 V. c. 59).

UNDERPIN. — *V.* *Sterens v. Metrop District Ry*, 54 L. J. Ch. 737; 29 Ch. D. 60, *espy* jdgmt of Baggallay. L. J.

UNDER-SHERIFF. — "Sheriff, or Under-Sheriff," s. 46, Juries Act, 1825, 6 G. 4, c. 50, does not include a person acting as Under-Sheriff, there being another person holding the formal appointment (*Williams v. Thomas*, 19 L. J. Ex. 50; 4 Ex. 479).

UNDERSTOOD. — *Semble*, "it is understood" connotes the same as "it is agreed" (*Higginson v. Weld*, 14 Gray, 170); but in *Hill v. Fox* (4 H. & N. 364) the Court said, "It is difficult to say what an 'Understanding' is." It has been said that "understandings are always misunderstood."

UNDERTAKE. — The meaning of R. 6, Solrs Rem Ord, giving a Solicitor power to elect his mode of remuneration "before undertaking

any business," is, "that after a Solicitor has accepted the employment and done *any* work in it for his client for which he could charge him if the Scale did not apply, he has *undertaken* the business, and it is too late for him to elect under R. 6" (per Kay, J., *Re Allen*, 56 L. J. Ch. 8; affd *Ib.* 487; 34 Ch. D. 433; 56 L. T. 6; 35 W. R. 218; *Re Metcalfe*, 57 L. J. Ch. 82; 36 W. R. 137; *Va. Hester v. Hester*, 56 L. J. Ch. 247; 34 Ch. D. 607; 55 L. T. 862; 35 W. R. 233; *Re Love*, 40 Ch. D. 637; 58 L. J. Ch. 272; *Re Stewart*, 41 Ch. D. 494; 60 L. T. 737; 37 W. R. 484). *V.* BUSINESS.

"Undertake, execute, hold, or enjoy," a Contract, s. 1, House of Commons (Disqualification) Act, 1782. 22 G. 3, c. 45, means, quâ "undertake," to enter into; quâ "execute," to take on oneself the execution of another's contract; quâ "hold," to take a transfer of another's contract; and quâ "enjoy," a *cestui que trust* who is to enjoy the benefit of the contract: but the phrase does not, under any or either of its words, include a contract which has been executed and under which nothing remains to be done except paying the contractor (*Royse v. Birley*, cited PUBLIC SERVICE, espy jdgmt of Brett, J.).

#### UNDERTAKER. — *V.* PROMOTER.

Quâ the Clauses Acts, "Undertakers," or "Promoters of the Undertaking," means, the parties, by the Special Act, empowered to execute or construct the works contemplated by, or carry into effect the purposes of, the Special Act: *V.* Lands C. C. Act, 1845, s. 2; Lands C. C. (Scot) Act, 1845, s. 2; Markets and Fairs Clauses Act, 1847, 10 & 11 V. c. 14, s. 2; Gas Works Clauses Act, 1847, 10 & 11 V. c. 15, s. 2; W. W. C. Act, 1847, 10 & 11 V. c. 17, s. 2; Harbours, Docks, and Piers, Clauses Act, 1847, 10 & 11 V. c. 27, s. 2. *Cp.* UNDERTAKING.

*Va.* Burgh Harbours (Scot) Act, 1853, 16 & 17 V. c. 93, s. 6; Electric Lighting Act, 1882, 45 & 46 V. c. 56, s. 2; Telegraph Act, 1878, 41 & 42 V. c. 76, s. 2.

Quâ Workmen's Comp Act, 1897, "Undertakers," in the case of a RAILWAY, means, the Ry Co; in the case of a FACTORY, QUARRY, or Laundry, means, the Occupier thereof, within the meaning of the Factory and Workshop Acts, 1878 to 1895; in the case of a MINE, means the Owner thereof, within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be; and in the case of an ENGINEERING WORK, means, the person undertaking the construction, alteration, or repair; and in the case of a BUILDING, means, the persons undertaking the construction, repair, or demolition" (subs. 2, s. 7): quâ "Factory," *V.* s. 38, Interp Act, 1889, which applies hereto the provisions of the Factory and Workshop Act, 1901, on *whr* FACTORY: Dock. A person who merely supplies the labour for a Building is not such an "Undertaker" (*Percival v. Garner*, 1900, 2 Q. B. 406; 69 L. J. Q. B. 824; 64 J. P. 500; 16 Times Rep.

396); *Secus*, of a Sub-Contractor (*Cooper v. Wright*, 1902, A. C. 302; 71 L. J. K. B. 642, over-ruling *Cass v. Butler*, 1900, 1 Q. B. 777; 69 L. J. Q. B. 362, and *Cooper v. Davenport*, 16 Times Rep. 266), or a person who independently contracts to construct, repair, or demolish, a substantial part of a Building (*Mason v. Dean*, 1900, 1 Q. B. 770; 69 L. J. Q. B. 358; 82 L. T. 139; 48 W. R. 353; 64 J. P. 244). The owners of a SHIP which is being discharged on to a Quay of a Dock, are "Undertakers" (*Merrill v. Wilson*, cited Dock). *Vf*, *Carrington v. Bannister*, 83 L. T. 457; *Knight v. Cubitt*, 71 L. J. K. B. 65; 1902, 1 K. B. 31; 85 L. T. 526; 50 W. R. 113; *Bartell v. Gray*, 71 L. J. K. B. 115; 1902, 1 K. B. 225; 85 L. T. 658; 50 W. R. 310; 66 J. P. 308: ANCILLARY.

**UNDERTAKING.**—Quà the Clauses Acts of a general character, "Undertaking" means, the Undertaking or Works, of whatever nature, which shall, by the Special Act, be authorized to be executed: *V*. Comp C. C. Act, 1845, s. 2; Comp C. C. (Scot) Act, 1845, s. 2; Lands C. C. Act, 1845, s. 2; Lands C. C. (Scot) Act, 1845, s. 2: quà Commrs Clauses Act, 1847, 10 & 11 V. c. 16, the def is "Undertaking or Works, of whatever nature, which shall, by the Special Act, be authorized to be executed or carried on" (s. 2).

Quà Lands C. C. Act, 1845, "Undertaking," means, an undertaking of a Public nature; and does not include such an undertaking as the Westminster Palace Hotel (*Wale v. Westminster Palace Hotel Co.* 8 C. B. N. S. 276), or Sion College (*Re Sion College, Ex p. London Corp.*, 31 S. J. 378; 55 L. T. 589). *V*. PUBLIC UNDERTAKING.

"Undertaking" has also received statutory definition in and for the following Acts;—

Electric Lighting Act, 1882, 45 & 46 V. c. 56; *V*. s. 2:

Gas Works Clauses Act, 1847, 10 & 11 V. c. 15; *V*. s. 2:

Markets and Fairs Clauses Act, 1847, 10 & 11 V. c. 14; *V*. s. 2:

Railway Clauses Acts, 1845, 8 & 9 V. cc. 20, 33; *V*. s. 2:

Telegraph Acts, 31 & 32 V. c. 110, s. 3; 32 & 33 V. c. 73, s. 3; 41 & 42 V. c. 76, s. 2:

W. W. C. Act, 1847, 10 & 11 V. c. 17; *V*. s. 2.

"Undertaking," quà London Street Tramways Act, 1870, 33 & 34 V. c. clxxi; *V. North Metropolitan Tramways Co v. London Co. Co.*, 72 L. T. 586; 43 W. R. 552; 11 Times Rep. 419; 59 J. P. 697; affd 60 J. P. 23.

"Undertaking," in a Charge contained in a Mortgage Debenture given by a Co, would generally be held to cover all its present and future acquired Property (*Re Panama Co*, 5 Ch. 318; 39 L. J. Ch. 482; *Re Florence Land Co*, 48 L. J. Ch. 145; 10 Ch. D. 530; *Re Mersey Wood Co*, 1 Times Rep. 566; *Se, Re New Clydach Iron Co*. L. R. 6 Eq. 514. *Vh*, Buckl. 185, 186; 1 Palmer Co. Prec. 772); but not its

*Uncalled Capital* (*King v. Marshall*, 34 L. J. Ch. 163; 33 Bea. 565; 12 W. R. 971; *Re Marine Mansions Co.*, L. R. 4 Eq. 601; 37 L. J. Ch. 113; *Id.*; *Re West Lancashire Ry.*, 63 L. T. 56). Yet, even as regards uncalled capital, when a Co has power to sell its "Undertaking" there is nothing to prevent the directors from calling up the outstanding capital and selling the proceeds (*New Zealand Gold Co v. Peacock*, 1894, 1 Q. B. 622; 63 L. J. Q. B. 227; 70 L. T. 110). And though it be incorrect to speak of a solvent Co's property as ASSETS, yet if that word be used in a Co's Mtge Debenture or Charge it would include uncalled capital (s. 38, Comp Act, 1862: *Morris' Case*, 7 Ch. 200, 204; 8 Ib. 800: *Webb v. Whiffin*, L. R. 5 H. L. 711, 724, 735: *Re Pyle Works*, 59 L. J. Ch. 489; 44 Ch. D. 534: *Id. No. 2*, 1891, 1 Ch. 173; 60 L. J. Ch. 114: *Page v. International Agency*, 62 L. J. Ch. 610; 68 L. T. 435). Note: an effective Charge on Uncalled Capital cannot be made if the Call is prevented from being made by a Resolution under s. 5, Comp Act, 1879 (*Re Mayfair Property Co.*, 1898, 2 Ch. 28; 67 L. J. Ch. 337; 46 W. R. 199). *V. FLOATING SECURITY.*

"Undertaking," quâ a Railway Debenture; *V. Doe d. Myatt v. St. Helen's Ry.*, 11 L. J. Q. B. 6; 2 Q. B. 364: *Gardner v. L. C. & D. Ry.*, 36 L. J. Ch. 323; 2 Ch. 201: on *whch* 1 Jarm. 224, 225, and, espy as to the meaning and application of the leading case of *Gardner v. L. C. & D. Ry.*, *V. Redfield v. Wickham*, 13 App. Ca. 474: *Re David*, 43 Ch. D. 27; 59 L. J. Ch. 87: *Re Yerbury*, 62 L. T. 55: *Re Parker*, 39 W. R. 346; 1891, 1 Ch. 682; 60 L. J. Ch. 195: *Re Portsmouth Tramways Co.*, 1892, 2 Ch. 366; 61 L. J. Ch. 462: *Re Crossley*, 1897, 1 Ch. 934; 66 L. J. Ch. 560; 76 L. T. 419; 45 W. R. 615. *Va.*, *Legg v. Mathieson*, 29 L. J. Ch. 385; 2 Giff. 71: *Furness v. Caterham Ry.*, 27 Bea. 361; 7 W. R. 660: *Re Southern Ry.*, 17 L. R. Ir. 127: *Re Bagnalstown & Wexford Ry.*, Ir. Rep. 1 Eq. 275: *Blaker v. Herts & Essex W. W. Co.*, 41 Ch. D. 399; 58 L. J. Ch. 497, on *whch*, *Re Barton-upon-Humber Water Co.*, 42 Ch. D. 585.

#### V. UNDERTAKER.

"Undertaking any Business": a Solicitor "undertakes" business, and is deprived of his option under R. 6, Solrs Rem Ord as soon as he does anything, or advises, in relation to it: *V. UNDERTAKE.*

An I. O. U. may be (*R. v. Chambers*, 41 L. J. M. C. 15; L. R. 1 C. C. R. 341; 25 L. T. 507), and a Guarantee by way of suretyship (*R. v. Reed*, 2 Moody, 62: *R. v. Stone*, 2 C. & K. 364) or against negligence and dishonesty (*R. v. Joyce*, 34 L. J. M. C. 168; L. & C. 576) is, an "Undertaking for the payment of money" within s. 23, Forgery Act, 1861, 24 & 25 V. c. 98.

**UNDERVALUE.** — The sale of a Reversion cannot "be opened or set aside merely on the ground of Undervalue" (s. 1, 31 V. c. 4); there must be "Fraud or Unfair Dealing" (*Ib.*). But "it is obvious that the

words 'merely on the ground of Undervalue' do not include the case of an undervalue so gross as to amount of itself to evidence of fraud; and in *Aylesford v. Morris* (42 L. J. Ch. 548; 8 Ch. 490) Ld Selborne said that this Act 'leaves Undervalue still a material element in cases in which it is not the sole equitable ground for relief' (per Kay, J., *Fry v. Lane*, cited FRAUD).

Undervalue in a sale by a mortgagee must be so gross as to amount to evidence of fraud to justify setting aside the sale (*Dovey v. Durrant*, 26 L. J. Ch. 830; 1 D. G. & J. 535; *Warner v. Jacob*, 51 L. J. Ch. 642; 20 Ch. D. 220).

**UNDER WAY.** — Quà Regulations for Preventing Collisions at Sea, 1879; "A vessel making way through the water is under way. A sailing vessel hove-to is under way (*The Rosalie*, 5 P. D. 245; 50 L. J. P. D. & A. 3; *The City of London*, Swabey, 248). A vessel driven from her anchors in a gale of wind, even if wholly unmanageable, is under way (*The George Arkle*, Lush. 382; *Sr, The Buckhurst*, cited INEVITABLE); and a vessel dropping with the tide, although she may have an anchor overboard, is under way so long as she is not held by her anchor (*The Esk*, L. R. 2 A. & E. 350; 38 L. J. Adm. 33)": 1 Maude & P. 589. "The true criterion as to the application of the Regulation must be, whether the vessel be actually holden by, and under the control of, her anchor or not. The moment she ceases to be so, she is in the category of a vessel 'Under way' and must carry the appointed coloured lights" (per Sir R. Phillimore, *The Esk*, L. R. 2 A. & E. 353; 38 L. J. Adm. 34). *Vf, The Romance*, cited AT ANCHOR: TOW.

Quà Regns for Preventing Collisions at Sea, 1897, a Vessel is "Under way" "when she is not at anchor, or made fast to the shore, or aground"; *V, the Preliminary Rules thereto.*

A sailing barge having her mast lowered, her anchor on the ground and dredging down Thames, is not a Sailing vessel "Under way," within Art. 6, Rules for the Navigation of the River Thames, 1880 (*The Indian Chief*, 58 L. J. P. D. & A. 25; 14 P. D. 24; 60 L. T. 240), nor is she "At Anchor" within Art. 7 (*Ib.*).

*V, COMMAND: SAIL: STATIONARY.*

**UNDERWOOD.** — Generally speaking the term "Underwood" is applied to a species of wood which grows expeditiously and sends up many shoots from one stool, the root remaining perfect from which the shoots are cut, and producing new shoots, and so yielding a succession of profits (per Bayley, J., *R. v. Ferrybridge*, 1 B. & C. 384; *Vf, Note*, 379-383, *Ib.*). *V, SALEABLE UNDERWOOD.*

"Underwood is in the nature of a crop. It may be cut by the tenant at the periodical times which usage or the custom of the country has established, but not before or after those times (*Humphreys v. Har-*

ri<sup>son</sup>, 1 Jac. & W. 581; *Brydges v. Stephens*, 6 Mad. 279): Redman, 244.

“Cut as Underwood”; *V. Dashwood v. Magniac*, cited **TIMBER**.  
*V. COPPICE: TREES: WOOD.*

**UNDERWRITE.** — *V. POLICY.*

To “Underwrite” shares, does not mean to “place” them (*V. TO PLACE*), but means, “agreeing to take so many shares as are specified in the underwriting contract, if the public do not subscribe for them” (per Lindley, L. J., *Re Licensed Victuallers’ Assn*, 58 L. J. Ch. 470; 42 Ch. D. 1; 37 W. R. 674; 5 Times Rep. 369), or, in other words, “to take an Allotment of such part of the shares as should not be applied for by the public” (per Stirling, J., *Re London-Paris Financial Corp*, 13 Times Rep. 331), or, “to ‘underwrite’ shares, involves an obligation to take *ut par* so many as others do not take” (per Lindley, L. J., *Ib.*, 13 Times Rep. 570, 571).

*Note.* A Co may (upon offering shares to the public) pay commission for underwriting its shares if so authorized by its Articles and disclosed in the Prospectus, and the amount or rate of commission authorized is not exceeded (s. 8, Comp Act, 1900). *Vh, Metropolitan Coal Consumers Assn v. Scrimgeour*, 1895, 2 Q. B. 604; 65 L. J. Q. B. 22, and cases there distd: *Hilder v. Dexter*, 71 L. J. Ch. 781; 1902, A. C. 474; 87 L. T. 311; 7 Com. Ca. 258.

*V. DISCOUNT: ON ALLOTMENT: SUBSCRIBE.*

**UNDERWRITER.** — *V. UNDERWRITE: POLICY.*

**UNDESIRABLE.** — *V. DESIRABLE.*

**UNDISPOSED OF.** — “Sum remaining undisposed of”; *V. McCabe v. Galsworthy*, W. N. (74) 161.

*V. LEFT.*

**UNDISTRIBUTED.** — ASSETS of a Co appropriated to the maintenance and development of the Co’s property and the gradual paying off its Debentures under a Scheme sanctioned under the Joint Stock Companies Arrangement Act, 1870, are not “Undistributed Assets” within s. 15 (3), Comp Winding-up Act, 1890 (*Re Land Mortgage Bank of Florida*, 1898, 1 Ch. 444; 67 L. J. Ch. 183; 78 L. T. 156; 46 W. R. 333).

*Cp.* “Surplus Assets.” sub **SURPLUS**.

**UNDIVIDED.** — “Undivided Share,” s. 2 (10, i), Settled Land Act, 1882; *V. LAND*, p. 1055.

**UNDUE INFLUENCE.** — Influence to be “undue,” so as to vitiate a gift, is of two classes according as the gift is

1. *Inter Vivos*;
2. *Testamentary*.

1. In gifts *inter vivos* a presumption against the gift arises in cases where subsists either of the following relationships; — Parent and Child: Doctor and Patient: Confessor and Penitent: Trustee and Cestui Que Trust: or Guardian and Ward. Gifts *inter vivos* brought about by the influence of the superior in any such case will be void, unless the donee proves that the donor was placed “in such a position as would enable him to form an entirely free and unfettered judgment independent altogether of any sort of control” (*Archer v. Hudson*, 7 Bea. 560; 13 L. J. Ch. 380; *Rhodes v. Bate*, 35 L. J. Ch. 267; 1 Ch. 252; *Parfitt v. Lawless*, 41 L. J. P. & M. 70; L. R. 2 P. & D. 462). *Vh*, the leading case, *Huquein v. Baseley*, 14 Ves. 273; 1 White & Tudor, 247; *Vf*, *Allcard v. Skinner*, 56 L. J. Ch. 1052; 36 Ch. D. 145; 57 L. T. 61, the obs of Bowen, L. J., in *whc* were applied in *Powell v. Powell*, 1900, 1 Ch. 243; 69 L. J. Ch. 164; 82 L. T. 84; *Morley v. Loughnan*, 1893, 1 Ch. 736; 62 L. J. Ch. 515; 68 L. T. 619.

But the presumption does not arise where the relationship is Husband and Wife (*Grigby v. Cox*, 1 Ves. sen. 517; *Nedby v. Nedby*, 21 L. J. Ch. 446; 5 D. G. & S. 377; *Barron v. Willis*, 1899, 2 Ch. 578; 68 L. J. Ch. 604, *whc* was revd on another point, 1900, 2 Ch. 121; 69 L. J. Ch. 532; 82 L. T. 729; 48 W. R. 579), though gifts by Wife to Husband may, sometimes, be regarded with jealousy (*Nedby v. Nedby*, sup). *Cp*, IMPORTUNITY: DON.

“Gifts *inter vivos* by a Client to a Solicitor are always void” (per Kindersley, V. C., *Tomson v. Judge*, 24 L. J. Ch. 787; 3 Drew. 306, *whc* for review of the previous authorities commencing with the leading case of *Wolles v. Middleton*, 1 Cox Ch. 112); and nothing but a prior severance of the confidential relation will save such gifts (*Morgan v. Minett*, 6 Ch. D. 638): the rule is the same if the gift be to the Wife of the Solr (*Goddard v. Carlisle*, 9 Price, 169; *Liles v. Terry*, 1895, 2 Q. B. 679; 65 L. J. Q. B. 34; 73 L. T. 428; 44 W. R. 116). *Vf*, *Barron v. Willis*, sup. *Note*: the rule as to *purchases* by a Solicitor from his Client is not so strict; *V. Tomson v. Judge*, sup.

*Vf*, Watson Eq. ch. 5: May on Fraudulent Dispositions, Part 5, ch. 5: Dart, 23, 35 *et seq.*: 1 White & Tudor, 247–288; 12 Encyc. 369–371.

2. But the law regarding testamentary gifts is very different. “The natural influence of the parent or guardian over the child, the husband over the wife, or the attorney over the client, may lawfully be exerted to obtain a Will or Legacy, so long as the testator thoroughly understands what he is doing and is a free agent. There is nothing illegal in the parent or husband pressing his claims on a child or wife, and obtaining a recognition of those claims in a legacy, provided that that persuasion stop short of coercion, and that the volition of the testator, though biassed and impressed by the relation in which he stands to the legatee, is not overborne and subjected to the domination of another. ‘The influence which will set aside a Will,’ says Mr. Justice Williams (Wms. Exs. 40). ‘must

amount to Force and Coercion, destroying free agency; it must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act; further there must be proof that the act was obtained by this coercion, by importunity which could not be resisted, that it was done merely for the sake of peace, so that the motive was tantamount to Force and Fear” (per Penzance, J. O., *Parfitt v. Lawless*, sup).

“In order to have something to guide us in our enquiries on this very difficult subject, I am prepared to say that Influence in order to be *undue*, within the meaning of any rule of law which would make it sufficient to vitiate a Will, must be an Influence exercised either by Coercion or by Fraud. In the interpretation, indeed, of these words some latitude must be allowed. In order to come to the conclusion that a Will has been obtained by Coercion, it is not necessary to establish that actual violence has been used or even threatened. The conduct of a person in vigorous health towards one feeble in body, even though not unsound in mind, may be such as to excite terror and make him execute as his Will an instrument which, if he had been free from such influence, he would have not executed. Imaginary terrors may have been created sufficient to deprive him of free agency. A Will thus made may, possibly, be described as obtained by Coercion. So, as to Fraud. If a wife, by falsehood, raises prejudices in the mind of her husband against those who would be the natural objects of his bounty, and by contrivance keeps him from intercourse with his relatives, to the end that these impressions which she knows he had thus formed to their disadvantage may never be removed,—such contrivance may, perhaps, be equivalent to positive fraud and may render invalid any Will executed under false impressions thus kept alive. It is, however, extremely difficult to state in the abstract what acts will constitute Undue Influence in questions of this nature. It is sufficient to say that, allowing a fair latitude of construction, they must range themselves under one or other of these heads, Coercion or FRAUD” (per Cranworth, C., *Boyse v. Rossborough*, 6 H. L. Ca. 48, 49).

So, in directing the jury in *Wingrove v. Wingrove* (55 L. J. P. D. & A. 8; 11 P. D. 82; 34 W. R. 260; 50 J. P. 56) Hannen, P., said.—

“All men are familiar with the word ‘Influence.’ They speak of one person having ‘unbounded influence’ over another, and they speak of good influences and evil influences; but there may be what is commonly called ‘unbounded influence,’ or there may be good influence or evil influence, and yet such influence may not be ‘undue’ in the legal sense of the word. There may be the immoral influence of a person of one sex over a person of the other sex which would result in the person subject to such influence yielding to it in a manner which would be very deplorable as regards testamentary disposition; or there may be the case of a person who in the



relationship of companion to another of the same sex indulges the inclination of his or her friend for evil courses, and by that means obtains a pernicious influence over him in respect of the disposition of property; and yet it may be that in neither of those cases is there anything which the law would regard as 'undue' influence. To render influence legally 'undue' there must be Coercion. A testator or testatrix may have been induced to make a Will of which every disinterested person would disapprove, and yet that Will may be in law a perfectly valid one. To establish Undue Influence, it must be shown that the testator or testatrix has been coerced to do an act which he or she did not desire to do. Of course this coercion may be of different kinds. To take an extreme case, there may be coercion with actual violence; or it may exist without anything of that sort. From advanced age, or from some other cause, a person may be so weakened that, upon a thing being pressed upon him, he becomes so fatigued in brain as to consent to do it, though it is an act with which his brain does not go. Influence which brings about the execution of a Will by a person in such a condition will be 'Undue Influence,' because it will amount to coercion; but the fact of a person making a Will being influenced in so doing by mistaken, or even immoral, considerations on his own part or on that of the person influencing him, would not be enough to invalidate a Will. The state of things which is sufficient to establish undue influence must show that the Will was not the expression of the will of the testator, but something which he has been made to represent as his will; and therefore, if it is shown that the testator's own wishes are expressed in his Will, the fact that the Will is not such as would meet with approbation, or the fact that right-minded persons must condemn the conduct of the person influencing the testator to execute it, will not be enough to establish undue influence.

"There is another general proposition which I think it desirable to bring under your notice — namely, that in cases of Undue Influence it is not enough to show that the person charged with having exercised such influence had power over the mind of the testator, but it is necessary to prove that such power was exercised in the particular case, and that the testator was thereby induced to make the Will."

For the def. of "Undue Influence," at Parliamentary Elections, *V. Corrupt and Illegal Practices Prevention Act, 1883*, 46 & 47 V. c. 51, s. 2; adopted for Municipal Elections by s. 2, 47 & 48 V. c. 70; *Va*, s. 77, 45 & 46 V. c. 50; s. 2, 53 & 54 V. c. 55. *Vh*, Leigh & Le Marchant, 4 ed., 29-37: Mattinson & Macaskie, 2 ed., 53-61: 2 Rogers, ch. 11: SPIRITUAL.

**UNDUE MEANS.**— "An Award is procured by 'Undue Means,' s. 2, 9 & 10 W. 3, c. 15, if it is arrived at by a departure from natural justice in ascertaining the facts, as Wilson, J., suggests in *Morgan v. Mather*, 2 Ves. 18" (per Denman, C. J., *Re Plews and Middleton*, 6 Q. B.

852; 14 L. J. Q. B. 139), *e.g.*, as held in *thlc*, if the arbitrators carry on examinations separately, instead of jointly.

**UNDUE PREFERENCE.** — “Undue Preference,” s. 8 (3*i*), Bankruptcy Act, 1890 (replacing s. 28 (3*f*), Bankry Act, 1883), includes, every FRAUDULENT PREFERENCE, and “a good deal more” (per Lindley, L. J., *Re Skeggy*, 59 L. J. Q. B. 546; 25 Q. B. D. 505): if a bankrupt “interferes in any way in order to give an advantage to one creditor over the others, he is guilty of giving an Undue Preference,” within the section (per Esher, M. R., *lb.*: *Vf*, *Re Bryant*, 1895, 1 Q. B. 420; 64 L. J. Q. B. 417; 72 L. T. 133). V. A: MOTIVE: VIEW.

“Undue or Unreasonable Preference or Advantage,” “Undue or Unreasonable Prejudice or Disadvantage,” s. 2, Railway and Canal Traffic Act, 1854; — These words “must, it appears to me, be a Preference or Prejudice with reference to competing parties — an inequality, an unfairness with reference to others, or a prejudice to other works — and cannot apply to the suggestion that, because there are excessive charges, a prejudice arises” (per Huddleston, B., *R. v. Ry Commrs*, 58 L. J. Q. B. 239, 240); by s. 55, Ry and Canal Traffic Act, 1888, “‘Undue Preference,’ includes, an Undue Preference or an Undue or Unreasonable Prejudice or Disadvantage, in any respect, in favour of or against any person or particular class of persons, or any particular description of traffic.”

*Vh*, *Ransome v. Eastern Counties Ry*, 26 L. J. C. P. 91; 29 *Ib.* 329; 1 C. B. N. S. 437; 8 *Ib.* 709; 1 Ry & Can Traffic Ca. 63, 109, 155: *Ox-lade v. N. E. Ry*, 26 L. J. C. P. 129; 1 C. B. N. S. 454; 28 L. T. O. S. 340: *Re Caterham Ry*, 1 C. B. N. S. 410; 26 L. J. C. P. 161: *Baxendale v. N. Devon Ry*, 30 L. T. O. S. 134; *Harris v. Cockermonth Ry*, 27 L. J. C. P. 162; 3 C. B. N. S. 693; 30 L. T. O. S. 273: *Garton v. G. W. Ry*, 28 L. J. C. P. 158: *Garton v. Bristol & Exeter Ry*, 28 L. J. Ex. 169; 30 L. J. Q. B. 273: *Nicholson v. G. W. Ry*, 28 L. J. C. P. 89; 5 C. B. N. S. 366; 7 W. R. 49: *Baxendale v. G. W. Ry*, 28 L. J. C. P. 81; 5 C. B. N. S. 336; 7 W. R. 64: *Hungerford Market Co v. City Steam Boat*, 30 L. J. Q. B. 25; 3 E. & E. 365: *Denaby Main Co v. Manchester, S. & L. Ry*, 11 App. Ca. 97: *R. v. Ry Commrs*, 22 Q. B. D. 642: *West v. Lond. & N. W. Ry*, 1 Ry & Can Traffic Ca. 166: *Pickford v. Caledonian Ry*, *Ib.* 252: *Palmer v. L. B. & S. Ry*, *Ib.* 271: *Parkinson v. G. W. Ry*, *Ib.* 280: *Napier v. Glasgow & S. W. Ry*, *Ib.* 292: *Diphwys Slate Co v. Festiniog Ry*, 2 *Ib.* 73: *Beeston Brewery Co v. Mid. Ry*, 5 *Ib.* 53: *Skinningroce Co v. N. E. Ry*, *Ib.* 244: *Distingu-ton Iron Co v. Lond. & N. W. Ry*, 6 *Ib.* 108: *Liverpool Corn Trade Assn v. Lond. & N. W. Ry*, cited PUBLIC: *Ford v. Lond. & S. W. Ry*, 60 L. J. Q. B. 130: *North Lonsdale Co v. Furness Ry*, 60 L. J. Q. B. 419: *Phipps v. Lond. & N. W. Ry*, 1892, 2 Q. B. 229; 61 L. J. Q. B. 379; 66 L. T. 721; 8 Ry & Can Traffic Ca. 83: *Liverpool Corn Traders Assn v. G. W. Ry*, 8 Ry & Can Traffic Ca. 114: *Mansion House Assn v.*

*Lond. & S. W. Ry*, 1895, 1 Q. B. 927; 64 L. J. Q. B. 529; 72 L. T. 507.

*Vf*, Browne & Theobald on Railways, 407; 1 Hodges, *Ib.*, 7 ed., 487: FACILITIES.

**UNEMANCIPATED.** — A statement, in Grounds of Appeal, that a Pauper is “unemancipated” negatives every mode of Emancipation (*R. v. Rothwell*, cited EMANCIPATION).

**UNEXHAUSTED IMPROVEMENT.** — As between Landlord and Tenant; *V. IMPROVEMENT*, p. 922.

**UNEXPIRED.** — Lessee or Assignee of “the unexpired Residue, whatever it may be, of any Term originally created for a period of not less than 60 years (whether determinable on a Life or Lives or not),” s. 5, Rep People Act, 1867, 30 & 31 V. c. 102; *V. Trotter v. Watson*, 38 L. J. C. P. 100; L. R. 4 C. P. 434.

“Residue unexpired of not less than 200 years of a Term,” s. 65 (1), Conv & L. P. Act, 1881; *Vth*, s. 11, Conv Act, 1882.

*V. EXPIRATION.*

**UNFAIR.** — *V. FAIR AND REASONABLE: UNREASONABLY.*

Unfair Competition; *V. Mogul Co v. McGregor and Ajello v. Worsley*, cited MALICE.

Fraud or Unfair Dealing; *V. FRAUD: Brenchley v. Higgins*, 82 L. T. 143; 83 *Ib.* 751; 70 L. J. Ch. 788.

**UNFINISHED.** — *V. MATERIALS.*

**UNFIT.** — Bankruptcy renders a Trustee “unfit” (Lewin, 779, citing *Re Roche*, 1 Con. & L. 306; 2 Dr. & War. 287). But if the power of appointing new Trustees “be worded ‘in case the Trustee shall become incapable to act,’ without the addition of the words ‘or unfit,’ a Bankrupt Trustee is not within the description; for by ‘incapable’ is meant personal incapacity, and not pecuniary embarrassment” (Lewin, 779, citing *Re Watts*, 9 Hare, 106; 20 L. J. Ch. 337; *Turner v. Maule*, 15 Jur. 761; *Re East*, 8 Ch. 735; 42 L. J. Ch. 480). Bankruptcy is none the less “unfitness” because occasioned by misfortune (*Re Adams*, 12 Ch. D. 634; 48 L. J. Ch. 615; *Va, Re Barker*, 1 Ch. D. 43; 45 L. J. Ch. 52; *Re Hopkins*, 19 Ch. D. 61); but on obtaining his Discharge and ceasing to be impecunious, a Bankrupt Trustee is no longer “unfit” (*Re Bridgman*, 29 L. J. Ch. 844; 1 Dr. & Sm. 164).

Temporary Absence abroad is not “unfitness” (*Re Moravian Socy*, 26 Bea. 101; 4 Jur. N. S. 703); *seus*, of a settled residence abroad (*Mesnard v. Welford*, 22 L. J. Ch. 1053; nom. *Mennard v. Welford*, 1 Sm. & G. 426: in the the word was “incapable”).

*V. INABILITY: INCAPABLE: PAID OFFICER.*

To impute that an Overseer is "unfit to be trusted with money" is Libel (*Cheese v. Scales*, 12 L. J. Ex. 13; 10 M. & W. 488).

**UNFITNESS.** — *V.* DUE CAUSE: UNFIT.

**UNFORESEEN.** — An "unforeseen *Calamity*," in an exception excusing the employment of a Music Hall Artist, does not arise by a sale of the hall by its mortgagees (*Phillips v. Hull Alhambra Co*, 17 Times Rep. 40; 70 L. J. Q. B. 26; 1901. 1 Q. B. 59; 83 L. T. 431).

"Unforeseen *Cause*"; *V.* *Hills v. Sughrue*, 15 M. & W. 253.

"Unforeseen *Circumstances*," in an Exception in a Charter-Party; *V.* *Donaldson v. Little*, 10 Sess. Ca. 4th Ser. 413. *Semble*, slackness of trade is not within the phrase (*Dirkenson v. Funshaw*, 7 Times Rep. 576; affd 8 Ib. 271).

"Unforeseen *Obstacle*"; *V.* UNAVOIDABLE.

*V.* INEVITABLE.

**UNHEALTHY.** — *V.* INCOMMODIOUS: INJURIOUS TO HEALTH.

**UNIFORMITY.** — The Acts of Uniformity, 2 & 3 Edw. 6. c. 1; 1 Eliz. c. 2; 13 & 14 Car. 2, c. 4; 35 & 36 V. c. 35, s. 1.

**UNIMPROVED.** — "Unimproved state"; *V.* PLANTATION.

**UNINCORPORATE.** — "Body Unincorporate," quâ Part 2. Customs and Inl. Rev. Act, 1885; *V.* s. 12.

*V.* CORPORATE: INCORPORATED.

**UNINSURED.** — "Warranted uninsured," in a Marine Policy, is infringed by an Honour Policy, though such latter policy is void under Marine Insurance Act, 1745, 19 G. 2, c. 37 (per Kennedy, J., *Roddick v. Indemnity Insree*, 1895, 1 Q. B. 836; 64 L. J. Q. B. 423); but this point was not necessary to the actual decision, and, though that decision was affirmed in the Court of Appeal on other grounds, the ruling of Kennedy, J., on this point was questioned (1895, 2 Q. B. 380; 64 L. J. Q. B. 733; 72 L. T. 860).

*V.*; as to this kind of Warranty, *General Insree of Trieste v. Cory*, 1897, 1 Q. B. 335; 66 L. J. Q. B. 313; 2 Com. Ca. 58.

**UNINTERRUPTEDLY.** — *V.* FAIRLY.

**UNION.** — Quâ Union of Benefices Act, 1860. 23 & 24 V. c. 142. "Union of BENEFICES," except there be a repugnant context, means, "such an union of two or more contiguous Benefices with one another; or such an union of a Benefice or Benefices with a Spiritual Sincure Rectory or Spiritual Sincure Rectories, Vicarage or Vicarages," contiguous to such Benefice or Benefices, and situate in the Metropolis (ss. 2, 1); and "United PARISH," means, "the Parishes which, in consequence of

an union of Benefices, shall have become united for ecclesiastical purposes under this Act" (s. 2). *Wh. Phil. Ecc. Law, Part 2, ch. 14: 12 Encyc. 375.*

"Contributory Union"; *V. 38 & 39 V. c. 96, s. 2.*

"Union," quâ Poor Law purposes, s. 1, 24 & 25 *V. c. 55*; s. 109. 4 & 5 *W. 4, c. 76*; *V. Muchynlleth v. Pool, L. R. 4 Q. B. 592: R. v. Bristol. 18 L. J. M. C. 132; 13 Q. B. 405; affd 19 L. J. M. C. 116: R. v. Priest Hutton, 17 Q. B. 59; 20 L. J. M. C. 226.*

Stat. Def. — 34 & 35 *V. c. 108, s. 3*; 36 & 37 *V. c. 86, s. 27*; 37 & 38 *V. c. 88, s. 48*; 38 & 39 *V. c. 55, s. 4*; 53 & 54 *V. c. 5, s. 341*; 59 & 60 *V. c. 50, s. 19*. — *Ir. 52 & 53 V. c. 56, s. 9.*

"Union," quâ Valuation (Metropolis) Act, 1869, "means, any union of parishes, and any parish for which there is a separate Assessment Committee" (s. 4).

"Poor Law Union"; *V. s. 16 (2, 4), Interp Act, 1889.*

*V. TRADE UNION.*

**UNION FUNDS.** — Stat. Def., 41 & 42 *V. c. 74, s. 76*; 57 & 58 *V. c. 57, s. 71 (8).*

**UNIT.** — "Unit of Entry," quâ Customs Tariff Amendment Act, 1860, 23 & 24 *V. c. 22*, means, "the number of packages or animals or quantity of goods made chargeable with the rate of 1*l.* in manner hereinafter provided" (s. 17).

**UNITED KINGDOM.** — The primary meaning of the "United Kingdom" is GREAT BRITAIN and Ireland; including, as part of England, the Isle of Wight (Callis, 43, 44): but the phrase does not include the CHANNEL ISLANDS, or the Isle of Man.

The phrase, as now used, originated with the Union with Ireland Act, 1800, 39 & 40 *G. 3, c. 67*, which united "the two kingdoms of Great Britain and Ireland" "into one kingdom, by the name of 'The United Kingdom of Great Britain and Ireland,'" — words, as the Act throughout shows, embracing no more than what is ordinarily known as Great Britain and Ireland, as distinct from the Channel Islands and Man. In accord with this are the interpretation clauses in which "United Kingdom" is defined; *e.g.*, 1 *V. c. 36, s. 47*; 3 & 4 *V. c. 96, s. 71*; 13 & 14 *V. c. 93, s. 2*; 14 & 15 *V. c. 102, s. 2*; 17 & 18 *V. c. 104, s. 2*; 20 & 21 *V. c. 60, s. 4*; 24 & 25 *V. c. 134, s. 229*; 30 & 31 *V. c. 82, s. 5*; 32 & 33 *V. c. 104, s. 6*; 38 & 39 *V. c. 22, s. 12*; *Sc. 12 & 13 V. c. 33, s. 3*; 15 & 16 *V. c. 44, s. 3*; 18 & 19 *V. c. 119, s. 3*; 33 & 34 *V. c. 90, s. 30*; 41 & 42 *V. c. 73, s. 7.*

So, apart from Interp Clauses, the use of "United Kingdom" in statutes shows that only Great Britain and Ireland, and not the Channel Islands or Man, are included therein; *V. BEYOND SEAS: BRITISH*

ISLANDS: BRITISH NEWSPAPER: HOME-TRADE SHIP: STATION: MER SHIPPING ACT, 1894, s. 4 (1 *a*, 1 *b*).

But its popular meaning may be wider. "I have no hesitation in saying that Jersey is, in popular language, a part of the United Kingdom" (per Mathew. J., *Stoneham v. Ocean Railway & Gen. Insrce*, 19 Q. B. D. 239; 57 L. T. 236; 35 W. R. 716). That was a case on a Policy which gave an insurance against "any bodily injury caused by any external accident happening within the United Kingdom, or on the Continent of Europe, or whilst proceeding from one European port to another in a decked vessel"; the insured was drowned off Jersey, and it was held that the insurer was liable on the policy. But Cave, J., in giving his judgment said, "Some light is thrown on this question by one of the Conditions indorsed on the Policy; 'this Policy shall be void if the assured shall travel beyond the limits of Europe, or shall embark in any vessel with the intention of going beyond such limits.' That provision means that the policy shall be in force *in Europe*, and Jersey is in Europe." *Semble*, therefore, that the dictum that Jersey is comprised in "United Kingdom" was either not necessary to the decision, or otherwise that it was so controlled by the context. If this be not the explanation then it seems difficult to reconcile the dictum with the decision of all the judges present in Easter Term, 1832, whereby it was held that "United Kingdom," in s. 76, 7 & 8 G. 4, c. 29 (where the phrase stands unaffected by the context), did not include Jersey (*R. v. Prowes*, 1 Moody, 349: *vthe. R. v. Madge*, 9 C. & P. 29).

*Va.* "Part of the United Kingdom," sub PART, p. 1412.

*Note.* From the Union with Scotland Act, 1706, 6 Anne, c. 11, to Union with Ireland Act, 1800, 39 & 40 G. 3, c. 67, "United Kingdom," meant Great Britain (s. 1, 6 Anne, c. 11).

*Cp.* ENGLAND: INLAND. *V.* LOCALLY SITUATE: WITHIN.

UNITED PARISH. — *V.* UNION.

UNITED WORKHOUSE. — *V.* WORKHOUSE.

UNITY. — Unity of Persons, *e.g.* Husband and Wife, on *whr Earle v. Kingscote*, cited NEED NOT.

"Unity of Possession," is where a man has two estates or rights in land and holds them both in his own hands (Cowel: Jacob). *Vh, Pyger v. Carter*, cited NECESSARY, p. 1252: *Barnes v. Louch*, 48 L. J. Q. B. 756; 4 Q. B. D. 494: *Watts v. Kelson*, *Kay v. Oxley*, and *Bayley v. G. W. Ry*, cited RIGHT, p. 1758: *Thomson v. Waterlow*, *Langley v. Hammond*, *Barkshire v. Grubb*, and *Brown v. Alabaster*, cited WAYS.

UNIVERSAL APPLICATION. — British Laws of "universal application"; *V. Jer v. McKinney*, 58 L. J. P. C. 67.

**UNIVERSAL HEIR.** — “What we call ‘Executor and Residuary Legatee,’ is, in the Civil Law, ‘Universal Heir.’ . . . The proper term, in the Civil Law, as to goods, is *heres testamentarius*, and ‘EXECUTOR’ is a barbarous term unknown to that law; therefore, a person named as ‘Universal Heir’ in a Will, in my opinion, would have a right to” probate (per Hardwicke, *C. Audouin v. Poiblane*, 3 Atk. 299).

**UNIVERSITY.** — “University,” in a Cambridge Rating Act, held to mean, the University for the time being, so as to include Colleges incorporated into the University after the Act (*Downing College v. Purchas*, 3 B. & Ad. 162).

Qua Universities of Oxford and Cambridge Acts, “The University,” means, the University of Oxford, or that of Cambridge, as the case shall require (40 & 41 V. c. 48, s. 2; 43 & 44 V. c. 11, s. 2).

“The Universities and College Estates Acts, 1858 to 1880”; *V. Sch 2*, Short Titles Act, 1896.

*V. COLLEGE: EMOLUMENT: PROFESSOR.*

**UNJUST.** — Scales and Weights are not “Light or Unjust,” s. 3, 22 & 23 V. c. 56, repld ss. 25 and 48, 41 & 42 V. c. 49, if an inaccuracy in them is against the seller (*Booth v. Shadgett*, 42 L. J. M. C. 98; nom. *Brooke v. Shadgate*, L. R. 8 Q. B. 352). If Scales or a Weighing Machine become, *e.g.* by wear, affected so as to require adjustment and to effect such adjustment something is added, they or it may not be “unjust” (*Lond. & N. W. Ry v. Richards*, 2 B. & S. 326; *G. W. Ry v. Bailie*, cited CORRECT; *secus*, if imperfect, and only to be rectified by a temporary adjustment (*Carr v. Stringer*, 9 B. & S. 238; 37 L. J. M. C. 120; L. R. 3 Q. B. 433).

A Weighing Machine is “False or Unjust” within s. 25, 41 & 42 V. c. 49, if paper is, however honestly, placed under its scoop causing the machine to indicate a weight of the commodity sold greater by the weight of the paper than its own weight (*Lane v. Rendall*, 1899, 2 Q. B. 673; 69 L. J. Q. B. 8; 81 L. T. 445; 48 W. R. 153; 63 J. P. 757).

*Vh, R. v. Baxendale*, 44 J. P. 763; *Horder v. Roberts*, *ib.* 256. *Cp, G. W. Ry v. Bailie*, *sup.*

**UNJUSTIFIABLE EXTRAVAGANCE.** — As to what is “Unjustifiable Extravagance in living” (s. 28 (3*d*), Bankry Act, 1883); *V. Ex p. Thorner, Re Barlow*, W. N. (86) 207.

**UNKNOWN.** — *V. CONTENTS UNKNOWN: QUANTITY AND QUALITY UNKNOWN: CLEAN BILL OF LADING.*

**UNLAWFUL.** — A thing may be unlawful in two senses, (1) as unenforceable by law, (2) as punishable by law; *e.g.* an agreement for sexual immorality would furnish no right of action between the parties,

but is not punishable (per Bramwell, B., *Cowan v. Milbourn*, 36 L. J. Ex. 126; L. R. 2 Ex. 236). (*v.* ILLEGAL: ULTRA VIRES: UNLAWFUL GAMING.

**UNLAWFUL ASSEMBLY.** — “Three or more may commit an unlawful assembly, a riot, or a rout” (Co. Litt. 257 a). (*v.* REBELLION.

“An Unlawful Assembly is an assembly of three or more persons, (a) with intent to commit a crime by open force; or (b) with intent to carry out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it” (Steph. Cr. 48, 49). (*v.* Arch. Cr. 1043; Rosc. Cr. 798: 1 Encyc. 343. (*v.* Steph. Cr. 56, as to Unlawful Drilling.

*v.* RIOT: ROUT.

**UNLAWFUL COPIES.** — “Unlawful Repetitions, Copies, and Imitations.” s. 11, Fine Arts Copyright Act, 1862, 25 & 26 V. c. 68, is a “phrase not well considered, but it means Copies, &c, wrongfully made, *i.e.* without the necessary consent” (per Esher, M. R., *Tuck v. Priester*, 56 L. J. Q. B. 561; 19 Q. B. D. 629; 36 W. R. 93: *Vh, Pollard v. Photographic Co*, 40 Ch. D. 345).

*v.* COPY.

**UNLAWFUL GAMING.** — “At common law no Game was in itself unlawful” (per Hawkins, J., *Jenks v. Turpin*, 53 L. J. M. C. 167). But as Common Gaming Houses were prohibited by the common law, all gaming (even at lawful games) in a common Gaming House is “Unlawful Gaming” within s. 4, 17 & 18 V. c. 38 (*Jenks v. Turpin*, 53 L. J. M. C. 161; 13 Q. B. D. 505). (*v.* ILLEGAL: UNLAWFUL.

No “game of mere skill” is now unlawful *per se* (8 & 9 V. c. 109, s. 1). “The Unlawful Games now are, — Ace of Hearts, Pharaoh, Bassett, Hazard, Passage, Roulette, every game of Dice (except Backgammon), and every game of Cards which is not a game of mere skill; and, I incline to add, any other mere game of chance” of which Baccarat is certainly one (per Hawkins, J., *Jenks v. Turpin*, 53 L. J. M. C. 170: *Va*, same judgment for an elaborate history of the laws relating to Unlawful Gaming; *vthe, Fairtlough v. Whitmore*, cited BACCARAT).

It is for the Court, not the jury, to determine what is “Unlawful Gaming,” *e.g.* whether a particular game of Cards is or is not such Gaming (*R. v. Davies*, cited USE).

*v.* GAMING.

**UNLAWFUL PURPOSE.** — An “Unlawful Purpose” within s. 4, Vagrancy Act, 1824, 5 G. 4, c. 83, means, the intention to commit (as distinguished from having been actually guilty of, *R. v. Simpsou*, 15 J. P. 246, 790) an offence punishable criminally, and as distin-



guished from what is only immoral, *e.g.* fornication (*Hoges v. Stevenson*, 3 L. T. 296; 25 J. P. 39; 9 W. R. 53); but it is immaterial whether that intention is intended to be carried out in the place where the offender is found (*Re Joy*, 22 L. T. O. S. 80). *Vh*, *Kirkin v. Jenkins*, 32 L. J. M. C. 140. *Cp*, UNLAWFULLY.

**UNLAWFULLY.** — “Unlawfully” is used exceptionally in a wide general sense as regards Conspiracy; but its ordinary import is, an act which is “forbidden by some definite law”; and does not embrace that which is merely immoral (per Stephen, J., *R. v. Clarence*, 58 L. J. M. C. 18; 22 Q. B. D. 23; *Va*, *jdgmt of Wills, J.*). But an act which would give a right to a Judicial Separation would be done “unlawfully” (*Ib.*). *Vf*, MALICE, towards end. *Cp*, UNLAWFUL PURPOSE: UNLAWFUL.

The criminal offence of “Unlawfully and Wilfully” killing a House Dove or Pigeon, s. 23, 24 & 25 V. c. 96, is not committed if it be killed in the honest idea of protecting crops, although to do so may be actionable (*Taylor v. Newman*, 32 L. J. M. C. 186; 11 W. R. 752; 4 B. & S. 89; *Vf*, *R. v. Stimpson*, 32 L. J. M. C. 208; 4 B. & S. 301). But in the very next section of the same Act, relating to taking fish, “unlawfully and wilfully” means, “unlawfully and *intentionally*”; for that section creates an offence in the nature of poaching (*Hudson v. McRae*, 33 L. J. M. C. 65; 12 W. R. 80). *V*, WILFUL AND MALICIOUS: WILFULLY.

The criminal offence of “Unlawfully and Maliciously” killing maiming or wounding any Dog, Bird, Beast, or other Animal, s. 41, 24 & 25 V. c. 97, is not committed by placing poisoned flesh in an enclosed garden to kill a dog habitually straying there (*Daniel v. Jones*, 2 C. P. D. 351), nor by shooting fowls which are DAMAGE FEASANT (*Smith v. Williams*, 37 S. J. 11; 59 J. P. 840).

The criminal offence of “unlawfully and maliciously” damaging property, s. 51, 24 & 25 V. c. 97, is not committed unless the act be wilful (*R. v. Pembliton*, 43 L. J. M. C. 91; L. R. 2 C. C. R. 122); but wilfulness is implied if the act is reckless and the damage its natural consequence (*R. v. Welch*, 45 L. J. M. C. 17; 1 Q. B. D. 23; 24 W. R. 280; 40 J. P. 183), or the damage be excessive even if the act be done under a BONÂ FIDE claim of right (*R. v. Clemens*, 1898, 1 Q. B. 556; 67 L. J. Q. B. 482; 78 L. T. 204; 46 W. R. 416).

“Unlawfully and maliciously wound or inflict any grievous bodily harm,” s. 20, 24 & 25 V. c. 100; *V*, WOUND: INFLECT: GRIEVOUS BODILY HARM.

**UNLESS.** — “Unless,” in a clause in a Marine Policy “free from Average unless General,” has the same meaning as “EXCEPT” (*Wilson v. Smith*, 3 Burr. 1556).

*V*, per Esher, M. R., *The Carl XVI*, 61 L. J. P. D. & A. 113; 1892. P. 330.

"Unless" is, probably, of like value as "Except" in creating a Condition Precedent (*V. Re Dickinson, Ex p. Rosenthal*, 51 L. J. Ch. 736).

A Lessee's covenant not to do a thing "unless" he makes a stipulated payment, gives him permission to do the thing on making the payment (per Pollock, C. B., *Legh v. Lillie*, 6 H. & N. 169; 30 L. J. Ex. 27); so, if the word were "UNDER" a stipulated payment, or "except" the payment be made (*S. C.*).

But "unless the Loc Gov Bd otherwise direct," s. 175, P. H. Act, 1875, does not enable the Board to order that land compulsorily acquired under s. 176 be used for a purpose inconsistent with that for which it was acquired; the phrase simply qualifies the exigency of s. 175 in compelling an immediate sale of land not required for the purpose for which it was acquired (*A-G. v. Hanwell*, 1900, 2 Ch. 377; 69 L. J. Ch. 626; 82 L. T. 778; 48 W. R. 690).

"Unless he shall have PAID all such Rates," he shall not be put on the Burgess List, s. 9, 5 & 6 W. 4, c. 76, meant, that the payment must have been the person's own act (*R. v. Bridgnorth*, 8 L. J. M. C. 86; 10 A. & E. 66; 2 P. & D. 317).

"Unless" the Bishop shall be of a contrary OPINION; *V.* per Esher, M. R., *R. v. London, Bp.*, 24 Q. B. D. 213; 59 L. J. Q. B. 172.

**UNLICENSED.** — "Unlicensed Premises," quâ Licensing Act, 1872, "means, premises in respect of which a license, as defined by this Act, has not been granted or is not in force" (s. 74: *Va*, s. 77). *V.* LICENSED PREMISES.

**UNLIMITED.** — "Unlimited Civil Jurisdiction"; *V.* JURISDICTION.

An Unlimited Company, is a Co "having no limit placed on the liability of its members" (s. 10, Comp Act, 1862).

*V.* LIMITED.

**UNLIQUIDATED DAMAGES.** — *V.* LIQUIDATED DAMAGES: CREDITOR.

**UNLOAD.** — *V.* LOAD.

**UNMARRIED.** — The primary meaning of "unmarried" is, "never having been married," or "without ever having been married" (*Clarke v. Colls*, 9 H. L. Ca. 601; *Dalrymple v. Hall*, 50 L. J. Ch. 302; 16 Ch. D. 715; *Re Sergeant*, 54 L. J. Ch. 159; 26 Ch. D. 575); but it is a word of flexible meaning, and "slight circumstances, no doubt, will be sufficient to give the word its other meaning" of, "not having a husband, or wife, at the time in question" (per Pearson, J., *Re Sergeant*, sup), so as to exclude only the marital right. In *Re Lesingham* (53 L. J. Ch. 333; 24 Ch. D. 703) this secondary meaning was attached to the word as used thus, "upon trust to pay unto J. H., spinster, if she be

then *sole and unmarried*." So, of the phrase "sole and intestate" (*Hardwick v. Thurston*, 4 Russ. 380).

The secondary sense was also attached to "Unmarried" in the following cases —

*Clarke v. Colls*, sup:

*Pratt v. Mather*, 25 L. J. Ch. 409, 686; 22 Bea. 328; 8 D. G. M. & G. 522; 27 L. T. O. S. 74, 267:

*Re Gratton*, 5 W. R. 795; 3 Jur. N. S. 684:

*Blagrove v. Coore*, 27 Bea. 138:

*Mitchell v. Colls*, 29 L. J. Ch. 403; Johns. 674:

*Day v. Barnard*, 30 L. J. Ch. 220; 1 Dr. & Sm. 351; 3 L. T. 537; 9 W. R. 136:

*Re Sanders*, L. R. 1 Eq. 675, followed in *Re King*, 62 L. T. 789; W. N. (90) 105:

*Re Chant*, 1900, 2 Ch. 345; 69 L. J. Ch. 601; 48 W. R. 646; 83 L. T. 341:

*Maberly v. Strove*, 3 Ves. 452, in *whc Arden*, M. R., dealing with "Unmarried" as used in the Poor Law Settlement Act of 3 & 4 W. & M. c. 11, s. 7, said "the legislature meant by 'unmarried,' 'not having a wife at the time'; but that is not the usual construction of that word in a Will."

But the primary meaning was adhered to in —

*Blundell v. De Falbe*, 57 L. J. Ch. 576; 58 L. T. 621:

*Heywood v. Heywood*, 30 L. J. Ch. 155; 29 Bea. 9:

*Dobrymple v. Hall*, sup:

*Re Sergeant*, sup:

*Norris v. Barber*, W. N. (73) 180:

*Re Thistlethwayte*, 24 L. J. Ch. 712; 3 W. R. 629:

*Bell v. Phyn*, 7 Ves. 458.

*Vf*, as to both meanings, 1 Jarm. 521-523; Watson Eq. 657, 658; Elph. 333-336.

Bequest to A.'s "Next of Kin in Blood, as if A. had died unmarried," means, A.'s nearest of kin (*Halton v. Foster*, cited NEXT OF KIN).

When a legacy is given to a daughter, who at the date of the Will has never been married, and the gift is conditional upon the legatee being "unmarried" at a given time, the word "unmarried" may properly be construed "a spinster," and not "a widow" (Wms. Exs. 952, citing *Re Saunders*, 3 K. & J. 156).

A gift to an "unmarried" person does not mean that he is to remain unmarried (*Jubber v. Jubber*, 9 Sim. 503; *Hall v. Robertson*, 23 L. J. Ch. 241; 4 D. G. M. & G. 781; *Vf*, Wms. Exs. 1141). In *Hall v. Robertson*, it was held that a testamentary gift to A. for life, and, at his death, "to his son and UNMARRIED DAUGHTERS as he may by Will direct," meant, quâ daughters, those who were unmarried at the date of the gift.

"So long as she *continues* unmarried" is not equivalent to "during widowhood," and a divorced woman, if remaining unmarried, continues entitled (*Knox v. Wells*, W. N. (83) 58). A gift to E. (a married woman, but who at the date of his Will and of his death was living with the testator as his wife), "during such time as she should remain unmarried," was held by North, J., to be valid, the words meaning, during such time as she should remain in the same state as she was whilst living with the testator (*Re Burlinson*, 107 Law Times, 82).

*V.* WITHOUT HAVING BEEN MARRIED: FEME: SPINSTER.

**UNMARRIED DAUGHTERS.** — In a gift to a testator's "five Unmarried Daughters," the words "unmarried daughters" are the material words; he only had three daughters in all two of whom were unmarried; those two took to the exclusion of the third who was married (*Re Dutton*, W. N. (93) 65).

**UNMERCHANTABLE.** — *V.* MERCHANTABLE.

**UNNECESSARY.** — *V.* NECESSARY.

**UNNECESSARY INCONVENIENCE.** — A right to pull down a house in such manner and time as not to cause "Unnecessary Inconvenience," s. 85 (3), 18 & 19 V. c. 122, repld s. 90 (3), London Bg Act, 1894, involves no obligation to protect the privacy of rooms exposed by the pulling down (*Thompson v. Hill*, 39 L. J. C. P. 264; L. R. 5 C. P. 564).

*V.* DEMOLISH: TAKE DOWN.

**UNNECESSARY INTERFERENCE.** — Proviso, in a Mining Lease, that the working of the coal should "not be prevented or unnecessarily interfered with"; *V. Monday v. Rutland*, 23 Ch. D. 81.

**UNNECESSARY PROCEEDING.** — *V.* IMPROPER.

**UNOCCUPIED.** — *V. Southend-on-Sea v. White*, cited OCCUPATION, p. 1311.

**UNOPENED.** — "Unopened Mine"; *V.* "Open Mine," sub OPEN, p. 1340.

**UNPAID.** — A covenant to pay interest at a certain rate so long as the principal secured or any part of it remains "unpaid," does not exclusively mean payment in cash; "unpaid," in that connection, means, due under the covenant; and when a judgment has been obtained for the principal, the covenant merges in the judgment and the principal is no longer "unpaid" under the covenant (*Ex p. Fewings, Re Sneyd*, 53 L. J. Ch. 545; 25 Ch. D. 338; 50 L. T. 109; 32 W. R. 352).

*V.* PAYMENT.

**UNPAID SELLER.**—Quia Sale of Goods Act, 1893, an “Unpaid SELLER” of Goods is, “when the whole of the price has not been paid or tendered,” or “when a bill of exchange, or other negotiable instrument, has been received as conditional payment, and the condition on which it was received has not been fulfilled, by reason of the dishonour of the instrument or otherwise” (subs. 1, s. 38).

Vendor’s Lien; *V. LIEN*, at end.

**UNQUALIFIED.**—*V. INFAMOUS CONDUCT: MEDICAL*, *cf. Davies v. Makina*, 54 L. J. Ch. 1148; 29 Ch. D. 596: *PRACTISE: QUALIFIED: SOLICITOR: WILFULLY AND FALSELY*.

**UNREASONABLE.**—Where a statute gives Justices power to determine whether proposed works by a Local Authority are “unreasonable,” they have power to determine that the works ought not to be done at all, as well as to control the mode of doing works which they do not condemn (*Sheffield v. Alexander*, 63 L. J. M. C. 206; *nom. Sheffield v. Anderson*, 64 Ib. 44: *Vf. Mansfield v. Butterworth*, cited INSUFFICIENT).  
*Cp.* APPORTION.

*V. FAIR AND REASONABLE: REASONABLE: UNREASONABLY*.

**UNREASONABLE DELAY.**—“Unreasonable Delay,” s. 31, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85; *V. Beauclerk v. Beauclerk*, 1891, P. 189; 60 L. J. P. D. & A. 20; 1895, P. 220; 64 L. J. P. D. & A. 102; 43 W. R. 655; 64 L. T. 35: *Brougham v. Brougham*, 1895, P. 288; 64 L. J. P. D. & A. 125.

**UNREASONABLE PREFERENCE.**—*V. UNDUE PREFERENCE*.

**UNREASONABLY.**—When a Covenant by a lessee against Assigning or Underletting without consent is qualified by the Condition that such consent shall not be “unreasonably,” or “arbitrarily,” or “vexatiously,” WITHHELD, a breach of such a Condition gives no right of action to the lessee; his remedy is to assign or underlet without consent (*Sear v. House Property Co*, 16 Ch. D. 387; 50 L. J. Ch. 77; 29 W. R. 192; 43 L. T. 531: *Treloar v. Bigge*, L. R. 9 Ex. 151; 43 L. J. Ex. 95; 22 W. R. 843; *Hyde v. Warden*, 47 L. J. Ex. 127). In *Treloar v. Bigge* (where the phrase was “arbitrarily”), the majority of the Court intimated that a refusal grounded on an expectation that the property would shortly be compulsorily taken by a public body, was not arbitrary. So, a license to assign was not withheld “arbitrarily,” nor “without good and sufficient reason,” where the proposed assignee was the Salvation Army “General” Booth, even though he swore that the premises were to be used for offices only (*Bridewell Hospital v. Fawkner*, 8 Times Rep. 637): *Vf. Lepla v. Rogers*, 1893, 1 Q. B. 31; 68 L. T. 584.

A refusal to give a license to assign a PUBLIC HOUSE to a Brewery

Co because the lessor desires it to be kept as a "Free House," is not so unreasonable as that the title (affected by such a refusal) will be forced on a purchaser (*Re Marshall and Salt*, 1900, 2 Ch. 202; 69 L. J. Ch. 542; 83 L. T. 147; 48 W. R. 508).

It is unreasonable to withhold consent "in order to enable the lessor to regain possession of the premises before the termination of the lease," even though he wants the premises for his own use and is willing to give as much for the lessee's interest as the proposed assignee (*Bates v. Donaldson*, 1896, 2 Q. B. 241; 65 L. J. Q. B. 578; 74 L. T. 751; 44 W. R. 659, *whc* settles the question raised, but not decided, in *Lehmann v. McArthur*, 3 Ch. 496; 37 L. J. Ch. 625).

It has been suggested that a refusal unless a pecuniary consideration were paid for the consent, would be unwarranted (*Woodf. 698, n. v*), a suggestion which (except *quà* expense) is now law, unless the contrary be expressed (s. 3, Conv & L. P. Act, 1892).

But CONSENT cannot be withheld at all until it is asked for; and (where there is an appropriate Forfeiture Clause) a forfeiture will be worked by an Assignment or Underlease without the lessor's consent being asked, even though such omission was *per incuriam* and though a refusal would have been "unreasonable," "arbitrary," or "vexatious" (*Barrow v. Isaacs*, 1891, 1 Q. B. 417; 60 L. J. Q. B. 179; 64 L. T. 686; 39 W. R. 338; *Eastern Telegraph Co v. Dent*, 80 L. T. 459; 1899, 1 Q. B. 835; 68 L. J. Q. B. 564).

V. ASSIGN: RESPONSIBLE: UNDERLEASE.

**UNREDEEMED.** — "Unredeemed quota of the LAND TAX,' means, the part of the Land Tax charged against a Land Tax Parish under the Land Tax Acts, which for the time being remains payable" (s. 35, 59 & 60 V. c. 28).

V. REDEEM.

**UNREGISTERED COMPANY.** — "Unregistered Co," s. 199, Comp Act, 1862; *V. Re Torquay Bath Co*, 32 Bea. 581; *Bowes v. Hope Insree*, 11 H. L. Ca. 389; *Re London India-rubber Co*, 35 L. J. Ch. 592; 1 Ch. 329; *Re Bank of London*, 40 L. J. Ch. 562; 6 Ch. 421; Buckl. 465; JOINT STOCK COMPANY.

*V. R. v. Tankard*, 1894, 1 Q. B. 548; 63 L. J. M. C. 61.

**UNREGISTERED LAND.** — *Quà* Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "Unregistered Land,' means, land of which an owner has not been registered under this Act" (s. 95).

**UNREPRESENTED CAPITAL.** — V. CAPITAL.

**UNSAFE.** — Unsafe Port; V. SAFE PORT.

An "Unsafe SHIP," *quà* Mer Shipping Acts, is one which "is by reason of the defective condition of her hull, equipments, or machinery,

or by reason of undermanning, or by reason of overloading or improper loading, unfit to proceed to SEA without SERIOUS danger to human life, having regard to the nature of the service for which she is intended" (s. 459 (1), Mer Shipping Act, 1894, as extended by 60 & 61 V. c. 59).

**UNSATISFIED.** — "Unsatisfied Judgment," s. 98, 9 & 10 V. c. 95; *V. Abley v. Dale*, 20 L. J. C. P. 233; 11 C. B. 378; *Cookman v. Rose*, 3 Jur. N. S. 866.

**UNSEAWORTHY.** — *V. SEAWORTHY.*

**UNSETTLED ESTATE.** — "It cannot be denied that in common parlance the phrase 'Unsettled Estate' means, an estate not put into settlement; and drawing a distinction between its popular meaning and its legal signification, if taken in the former, it would be confined to an estate not put into settlement, while in the latter it is equally open to either interpretation, because it may be either so much of the interest in the settled lands which was not bound by the settlement that was intended to be passed, or the lands which had never been put into settlement. The words in their legal signification will include both." "In all cases the Courts adopt one general rule, whether the words are 'Unsettled,' 'Out of Settlement,' 'Not put into settlement,' or 'Not settled in jointure'; they say, we will give to the devisee whatever interest the testator had the power to dispose of in the lands bound by the settlement or jointure, giving to the words their full legal signification" (per Sugden, C., *Incorporated Society v. Richards*, 4 Ir. Eq. Rep. 192, 194).

*V. NOT SETTLED.*

**UNSHIPPING.** — Merely hiring in England a vessel to carry smuggled goods to Ireland where they were unshipped; held, "not assisting or being otherwise concerned in the unshipping" of the goods, within s. 45, 6 G. 4, c. 108 (*A-G v. Kenifeck*, 2 M. & W. 715; 6 L. J. Ex. 214). *Vf, CONCERNED IN.*

*V. TO SHIP.*

**UNSOUND MIND.** — "'Unsound Mind,' or *Insanæ Memoriae*, which all persons must understand to be a Depravity of Reason, or want of it" (per Hardwicke, C., *Barnsley's Case*, 2 Eq. Ca. Ab. 580; 3 Atk. 184). Mere eccentricity is not such an unsoundness of mind as will amount to testamentary incapacity (*Pilkington v. Gray*, 1899, A. C. 401; 68 L. J. P. C. 63). "There is an important difference between 'Unsoundness of Mind' and 'Dullness of Intellect.' . . . Unsoundness of mind may arise from perversion of the mental powers, and may exhibit itself by means of delusions or strong antipathies, which is called 'Mania'; or it may arise from what may be termed a defect of mind, as where the mind was originally incapable of directing itself to anything requiring

judgment, which is 'Idiocy'; or where a mind, originally strong, has become weakened by illness or age though producing no such insanity as to amount to Mania." Idiocy, "in general, is very easily proved. It is manifested in a variety of ways, — by impropriety or indecency of conduct, dirtiness in the habits, or by vacancy of aspect, though this last test can only be appreciated by those who have seen the party. Another test is by means of numbers, *i.e.* by showing that the party cannot understand the commonest rules of arithmetic" (per Wood, V. C., *Harrod v. Harrod*, 2 W. R. 612; 23 L. T. O. S. 243). *V.* IDIOT.

Quà Trustee Acts "the expression 'Person of Unsound Mind' shall mean, any person, not an Infant, who, not having been found to be a Lunatic, shall be incapable from Infirmary of mind to manage his own affairs" (s. 2, 13 & 14 V. c. 60); that includes an apoplectic person whose mind is thereby weakened (*Re Critchley*, 83 Law Times, 167), or one incapacitated by old age, or by infirmity of mind, *e.g.* from paralysis (*Re Martin*, 34 Ch. D. 618; 56 L. J. Ch. 695, over-ruling *Re Phelps*, 31 Ch. D. 351; 55 L. J. Ch. 465), but the paralysis must be such as to produce mental infirmity (*Re Barber*, 57 L. J. Ch. 756; 39 Ch. D. 187; 58 L. T. 756; 37 W. R. 182). *V.* LUNATIC: *Cp.* INABILITY: UNFIT.

The power which by R. 196, Divorce Court Rules, is given to the Registrar of assigning a guardian ad litem to a person of "Unsound Mind," should only be exercised in the case of a Lunatic so found by Inquisition (*Fry v. Fry*, 34 S. J. 250).

"Person of Weak Mind," quà Lunacy Regulation (1r) Act, 1871, 34 & 35 V. c. 22, means, "any person, from any Temporary Cause or SICKNESS affecting his mental capacity, incapable of managing himself or his affairs" (s. 2).

**UNSOUNDNESS.** — *V.* SOUND.

**UNSTAMPED.** — *V.* STAMPED.

**UNTIL.** — This word may be read either as inclusive or exclusive (*R. v. Stevens*, inf: *Cp.* FROM); it is generally inclusive.

In a memorandum enlarging the time within which an Award may be made, "until" will generally include the whole of the day named (Russ. on Arb., 8 ed., 102, citing *Kerr v. Jeston*, 1 Dowl. N. S. 538: *Knox v. Simmonds*, 3 Bro. C. C. 358. *Vf.* *Pugh v. Leeds*, 2 Cowp. 714). So, "it seems that, as a general rule, the word 'Till' is inclusive of the day to which it is prefixed; so that where a defendant was given 'till' a certain day to plead, judgment signed on such day for want of a plea was bad, as the defendant might have delivered a plea during such day (*Dakius v. Wagner*, 3 Dowl. 535: *Va.* *Kerr v. Jeston*, sup). And the rule is the same in the case of the word 'Until' (*Isaacs v. Royal Insrce*, L. R. 5 Ex. 296; 39 L. J. Ex. 189; 22 L. T. 681; 18 W. R. 982)," Dan. Ch. Pr. 38. So, where a Bankrupt was protected from process "until the



29th July," that protection extended during the whole of that day (*Backhouse*, or *Bellhouse v. Mellor*, 28 L. J. Ex. 141; 4 H. & N. 116; 5 Jur. N. S. 175).

But a plaintiff having obtained a judgment, but with a stay of execution "until" a stated day, was held (in Ireland) entitled to issue his execution on that day if the money was not then paid (*Rogers v. Davis*, 8 Ir. L. R. 399), in *the Burton, J.*, said, "I think 'until' does not mean 'after.'" So, temp. Car. 2. it was held that a release of all trespasses or of all demands "until" a stated date, did not include the day of that date (*Nichols v. Ramsel*, 2 Mod. 280). *V. J. Wicker v. Norris*, Ca. t. Hard. 116.

In an *Indictment*, "until" is either inclusive or exclusive of the day to which it is applied according to the context and subject-matter (*R. v. Stevens*, 5 East, 244).

In a *Lease* "until Michaelmas," that Feast Day is included (3 Leon. 211).

In *Wills*, "the word 'until' is, in general, coupled with a condition or contingency indicating that some change is intended in the disposition of the property, which, up to that time, is given in a particular way. This, however, will not always be the effect of it. Thus, where there was a gift to A. for life, remainder to her children, *until* they should attain 25, then for such children so attaining 25, with a gift over; it was held that A.'s children took vested interests at birth, and that the gift over was void for remoteness (*Hardeastle v. Hardeastle*, 1 H. & M. 405; *V. Bland v. Williams*, 3 My. & K. 411; 3 L. J. Ch. 218). Under a devise to A., not to be of age to receive *until* he attain a particular age, A. takes a vested interest subject to being divested on his dying under that age (*Snow v. Poulden*, 1 Keen, 186)": Watson Eq. 1218-9.

As to the value of "until" in a limitation working a Forfeiture on ALIENATION; *V. per Chitty, J.*, *Dean v. Dean*, 1891, 3 Ch. 155; 60 L. J. Ch. 554; 65 L. T. 65; 39 W. R. 568, *sethe* 36 S. J. 181; *Vh, Brandon v. Robinson*, 18 Ves. 429; 1 Rose, 197; 2 Jarm. 24. In that connection, "until," like "shall become," has, generally, a past as well as a future application, *e.g.* gift to A. for life, then to B. "until," &c: B., during A.'s life, commits the act; thereby forfeiture is worked before B.'s estate begins (*Sharp v. Cosserat*, 20 Bea. 470; 3 W. R. 473). U. QUOUSQUE: TO.

**UNTIL FURTHER ORDER.** — Where an Interim Injunction is granted over a certain day "or, Until further Order," the Injunction is not continued after the day named "until further Order," but may be stayed by Order. before the day named (*Bolton v. London School Board*, 47 L. J. Ch. 461; 7 Ch. D. 766). Injunction "until Defence or Further Order," *semble*, remains in force until discharged by Order, though Defence be delivered (*Ooddeen v. Oakley*, 2 D. G. F. & J. 158).

An Order, in an Administration Action, to pay an Annuity "until further Order" is, notwithstanding the latter phrase, *res judicata*, quâ appeal (*Peareth v. Marriott*, 52 L. J. Ch. 221; 22 Ch. D. 182).

An authority to make periodical payments "until further order" is an ABSOLUTE ASSIGNMENT.

**UNTO.** — *V.* TO: TOWARDS.

"Unto and among"; *V.* AMONG.

To deliver a Notice "unto" a person; *V.* SERVED.

**UNTRUE.** — *V.* CORRECT: TRUE.

A misleading statement in a Prospectus, is "untrue" within s. 3 (1*a*), Directors Liability Act, 1890, even though it may be true in the sense in which it is used by those who issue the Prospectus (*Greenwood v. Leather Shod Wheel Co*, 1900, 1 Ch. 421; 69 L. J. Ch. 131; 81 L. T. 595).

**UNUSUAL.** — A thing which is unusual is not, necessarily, extraordinary (*V. Hill v. Thomas*, cited EXTRAORDINARY TRAFFIC).

*V.* USUAL.

**UNWILLING.** — Referring to the earlier cases on the ordinary clause in *Conditions of Sale* enabling a Vendor to rescind the contract if he should be "unable or unwilling" to answer purchaser's requirements, Turner, L. J., said in *Duddell v. Simpson* (2 Ch. 102; 36 L. J. Ch. 72), "These cases have settled, and I think very wisely settled, that the word 'unwilling,' in a Condition of Sale of this description, is not to be considered as giving an arbitrary power to the vendor to annul the contract." But though that passage was cited to Bacon, V. C., in *Dames to Wood* (53 L. J. Ch. 920; 27 Ch. D. 177), he said, "The word 'unwilling' is as potent as the word 'unable.' Nobody is entitled to ask why he is unwilling; if he refuses to comply with the requisition that is enough" (*Dames to Wood*, affd 54 L. J. Ch. 771; 29 Ch. D. 626; 53 L. T. 177; *Vf*; judgments of Esher, M. R., and Lindley, L. J., *Terry to White*, 32 Ch. D. 14; 55 L. J. Ch. 345). The result seems to be that, though "unwilling" means "reasonably unwilling" and does not justify a vendor in capriciously translating it into "I will not," yet in rescinding the contract he is not bound to give his reason for his unwillingness to complete it, and the onus of proving his caprice or *mala fides* is on the purchaser (*Re Glenton and Saunders*, 53 L. T. 434; *Re Starr-Bowkett Socy*, 58 L. J. Ch. 459. 651; 42 Ch. D. 375; 60 L. T. 811; *Woolcott v. Peggie*, 15 App. Ca. 42; 59 L. J. P. C. 44). *Vf*, WHATSOEVER. *Cp*, INSIST.

*Vh*, Add. C. 471: Sug. V. & P. 39.

*Cp*, WILLINGLY.

**UNWORKABLE.** — *V.* WORKABLE: WORTH THE EXPENSE.

**UNWORTHY.** — To say, even of a Peer, that “he is an Unworthy Man, and acts against law and reason,” is not actionable; for “in respect of God Almighty we are all unworthy, and the subsequent clause explains what Unworthiness the defendant intended, for he infers him to be unworthy because he acts against law and reason,” which latter words are not actionable (per Scroggs, J., *Townsend v. Hughes*, 2 Mod. 159).

**UPHOLD.** — A covenant to “repair, *uphold, sustain, and maintain*,” premises, *semble*, is not enlarged by these italicized words, but is simply one to “REPAIR” (*Lister v. Lane*, 1893, 2 Q. B. 212; 62 L. J. Q. B. 583; 69 L. T. 176; 41 W. R. 626).

**UPON.** — “‘Upon’; This word, in most cases, is used elliptically for ‘Upon Condition of’: as, ‘upon payment of costs’; ‘upon conviction of an offender’” (Dwar. 692); or an appeal “upon” giving a prescribed notice (*R. v. Lancashire Jus.*, 27 L. J. M. C. 161; 8 E. & B. 571).

It also means, “by reason of”; *V. BENEFICIALLY ENTITLED: ACCIDENT*, at end.

“The words ‘on,’ or ‘upon,’ it has been decided, may either mean, *before* the act done to which it relates, or *simultaneously with* the act done, or *after* the act done, according as reason and good sense require, with reference to the context and the subject-matter of the enactment” (per Denman, C. J., *R. v. Arkwright*, 18 L. J. Q. B. 28; 12 Q. B. 970, citing *R. v. Humphery*, 7 L. J. Q. B. 202; 2 P. & D. 691; 10 A. & E. 335, *whle*, for same def, was cited by Bovill, C. J., *Paynter v. James*, L. R. 2 C. P. 354). *Va*, *R. v. Stockton*, cited IN AND FOR: per Coleridge, J., *Scott v. Parker*, 1 Q. B. 813; Add. C. 52.

In *R. v. Humphery*, sup, “upon admission” to public corporate office a person to make a declaration (9 G. 4. c. 17. s. 2), meant that the person could not be called on to declare until *after* admission. So, under s. 10, Lord Mayor’s Court Act (20 & 21 V. c. clvii), an appeal motion may be made “if upon *the trial*,” the judge give leave; this means, at, or within a reasonable time *after*, the trial; and (in construing that Act) the majority of the Court held that 2 days (whilst Brett, J., thought that 4 days) would be such a reasonable time (*Folkard v. Metrop Ry*, 42 L. J. C. P. 163; L. R. 8 C. P. 470). So, the power given (18 & 19 V. c. 43, s. 1) to make a Settlement “upon” *the marriage* of an Infant, means, “in the event of,” or “on the occasion of,” his or her marriage; and a *post-nuptial* Settlement is thereby authorized (*Re Sampson and Wall*, 53 L. J. Ch. 457; 25 Ch. D. 482; *Re Phillips*, 56 L. J. Ch. 337; 34 Ch. D. 467; *Buckmaster v. Buckmaster*, 56 L. J. Ch. 379; 35 Ch. D. 21; *Sv*, *Re Borrowes*, inf); but, *semble*, not if it be long after the marriage (*Re Leigh*, 58 L. J. Ch. 306; 40 Ch. D. 290: *V. CONTEMPLATION*).

“Upon or previously to the marriage”; *V. Re Borrowes*, cited PREVIOUSLY.

But a power to stop up paths "ON notice being given" in the prescribed manner (Church Building Act, 1819, 59 G. 3, c. 134, s. 39), means, that the notice must be given *before* making the Order (*R. v. Arkwright*, sup).

"Payment on DELIVERY," means, that both acts are to be done simultaneously (*Paynter v. James*, L. R. 2 C. P. 348).

The sanction to continue Directors' powers, in a Voluntary Liquidation of a Co, "upon" the appointment of Liquidators (s. 133 (5), Comp Act, 1862), need not be given once and for all immediately on such appointment, but may be given during the Winding-up (*Re Fairbairn Co*, 63 L. J. Ch. 8; 42 W. R. 155).

A power enabling the Court to make an Order vesting the LEGAL ESTATE in lands "upon" making an Order appointing a New Trustee, may be exercised prospectively (*Plomley v. Richardson*, 1894, A. C. 632; 64 L. J. P. C. 18; 71 L. T. 377: *Vf*, *Re Shortridge*, 64 L. J. Ch. 191).

"Upon the Death of any person"; *V. BENEFICIALLY ENTITLED.*

Property which passes "on" Death; *V. PASSING.*

Vehicle passing "upon" a HIGHWAY; *V. PASSING.*

Projection "over or upon" a Pavement; *V. PROJECTION.*

"Upon any Representation or Assurance," s. 6, 9 G. 4, c. 14; *V. Haslock v. Fergusson*, 7 A. & E. 94; *Pearson v. Seligman*, 48 L. T. 842.

*V. BUILT UPON: ON: ON OR BEFORE: ON OR UPON: THEREUPON.*

**UPON CONDITION.** — *V. CONDITION.*

**UPON CONVICTION.** — *V. CONVICTION.*

**UPON THE MERITS.** — *V. MERITS.*

**UPON TRIAL.** — *V. SALE ON TRIAL.*

**UPON TRUST.** — No beneficial interest is taken if property be given or granted "Upon trust," though no trust be declared (Lewin, 160, and cases there cited). But "although the introduction of the words 'Upon trust' may be strong evidence of the intention not to confer on the devisee a beneficial interest (*Hill v. London*, 1 Atk. 620; *Woollett v. Harris*, 5 Mad. 452), yet that construction may be negatived by the context, or the general scope of the instrument (*Dawson v. Clarke*, 15 Ves. 409; 18 Ib. 247, 257; *Coningham v. Mellish*, Pr. Ch. 31; *Cook v. Hutchinson*, 1 Keen, 42; *Hughes v. Evans*, 13 Sim. 496); and in like manner the devisee may be designated as 'Trustee,' but the expression may be explained away, as for instance, if the term be used with reference to one only of two funds, the devisee may still establish his title to the beneficial interest in the other (*Batteley v. Windle*, 2 Bro. C. C. 31; *Pratt v. Sladden*, 14 Ves. 193; *Va. Gibbs v. Rumsey*, 2 V. & B. 294).

On the other hand, there may be a total absence of the word 'Trust' or 'Trustee' throughout the whole Will, and yet the Court may collect an intention that the devisee or legatee should be a Trustee (*Saltmarsh v. Barrett*, 29 Bea. 474; 3 D. G. F. & J. 279; 30 L. J. Ch. 853): Lewin, 161, 162. *Vf*, *Croome v. Croome*, 59 L. T. 582, affd 61 L. T. 814, distd in *Re West*, 1900, 1 Ch. 84; 69 L. J. Ch. 71.

V. IN TRUST: TRUST: TRUSTEE.

**UPON VIEW.** — V. VIEW.

**UPPER BOOK PILOT.** — V. PILOT.

**UPPER PASSENGER DECK.** — V. DECK.

**UPSET PRICE.** — A synonym for Reserved Price; V. WITHOUT RESERVE, at end.

**URBAN.** — "Urban Authority"; Stat. Def., 50 & 51 V. c. 32, s. 1; 51 & 52 V. c. 41, s. 100; 53 & 54 V. c. 59, s. 11; 54 & 55 V. c. 22, s. 14; 55 & 56 V. c. 57, s. 5.

"Urban Sanitary Authority"; V. SANITARY.

"Urban District," "Urban Sanitary District"; V. DISTRICT.

**URGENT.** — "Sudden and Urgent Necessity"; V. SUDDEN.

**URINAL.** — The power to Local Authorities, — *e.g.* s. 88, Metrop Man. Act, 1855; s. 39, P. H. Act, 1875, — to erect "Urinals, Water-closets," &c, does not authorize such erections in such a way as to create a NUISANCE (*Vernon v. St. James, Westminster*, 50 L. J. Ch. 81; 16 Ch. D. 449; 44 L. T. 229; 29 W. R. 222: *Vf*, DAMAGE, p. 456).

*V. Tunbridge Wells v. Baird*, cited IX. p. 925, with which *cp*, *Graham v. Newcastle-upon-Tyne*, cited OPEN. p. 1341.

**USAGE.** — "Usage," is that which is known as a recurring modern practice in a locality or business; and does not require a PRESCRIPTION, as a CUSTOM does (*Finch's Case*, 6 Rep. 65). *Cp*, *A-G. v. Yarmouth*, cited PRACTICE, p. 1527.

**USAGE OF TRADE.** — "The words 'Usage of Trade,' are to be understood as referring to a Particular Usage to be established by evidence; and perfectly distinct from that general custom of merchants, which is the universal established law of the land, to be collected from decisions, legal principles and analogies (not from evidence *in pais*), and the knowledge of which resides in the breasts of the judges" (1 Sm. L. C. 581, 582, and cases there cited). *Cp*, CUSTOM.

V. TRADE.

**USAGES.** — V. LIBERTY.

**USE.** — "If a man walks with a Gun with intent to kill game, he 'uses' the gun for that purpose without firing, within the statute which

makes using a gun, with that intent, penal" (Maxwell, 338, citing 5 Anne, c. 14, s. 4; 1 & 2 W. 4, c. 32, s. 23; *R. v. King*, 1 Sess. Ca. 88; *Va, United States v. Morris*, 14 Peters, 464). So, a Net may be "used in taking" Salmon, 24 & 25 V. c. 109, though no salmon be then actually caught (*Rutter v. Harris*, 45 L. J. M. C. 103; nom. *Ruther v. Harris*, 1 Ex. D. 97). A person "uses" an Engine for killing Game on a Sunday, 1 & 2 W. 4, c. 32, s. 3, who places it on the land prior to, but with the intention for it to remain there during, a Sunday (*Allen v. Thompson*, 39 L. J. M. C. 102; L. R. 5 Q. B. 336; *V. per Lawrence, J., Jones v. Davies*, 67 L. J. Q. B. 296; 1898, 1 Q. B. 405).

A Steam Roller crossing one county in order to do work in another is, whilst passing over highways in its journey, being "used," within s. 32, 41 & 42 V. c. 77 (*London Co. Co. v. Wood*, 1897, 2 Q. B. 482; 66 L. J. Q. B. 712; 77 L. T. 312; 46 W. R. 143; 61 J. P. 567).

An ordinary traveller along a railway in a carriage belonging to the Company, does not "use" the Railway within s. 95, Ry. C. C. Act, 1845, or within enactments of a similar kind (*Brown v. G. W. Ry*, 51 L. J. Q. B. 156, 529; 9 Q. B. D. 744, and cases therein cited).

"Open, keep, or use," a House, Office, Room, or other PLACE, for Betting (*V. BET*), ss. 1 and 3, 16 & 17 V. c. 119; *V. R. v. Cook*, 13 Q. B. D. 377; 51 L. T. 21; 32 W. R. 796; 48 J. P. 694; *Davis v. Stephenson*, 59 L. J. M. C. 73; 24 Q. B. D. 529; 38 W. R. 492; 62 L. T. 436; 54 J. P. 565; 6 Times Rep. 242; *Whitehurst v. Fincher*, 62 L. T. 433; 54 J. P. 565; *Macwilliam v. Dawson*, 56 J. P. 182; *Hornsby v. Raygett*, 1892, 1 Q. B. 20; 61 L. J. M. C. 24; 66 L. T. 21; 40 W. R. 111; 56 J. P. 135; *Boul v. Plumb*, 1894, 1 Q. B. 169; *R. v. Worton*, 1895, 1 Q. B. 227; 64 L. J. M. C. 74; 72 L. T. 29. As to the ambiguous meaning of "use" in this connection, *V. per Halsbury, C., Powell v. Kempton Park Co.* cited PLACE, p. 1486. *Vh. KEEP: RESORT. Cp, PUBLIC SINGING.*

The Gaming House Act, 1854, 17 & 18 V. c. 38, "was intended to suppress COMMON GAMING HOUSES" (per Russell, C. J., *R. v. Davies*, 66 L. J. Q. B. 514); therefore, gambling on an isolated occasion in a private house, is not to "open, keep, or use," the house for UNLAWFUL GAMING within s. 4 (*S. C.*, 1897, 2 Q. B. 199; 66 L. J. Q. B. 513; 76 L. T. 786); *V. KEEP.*

An agreement which, in a passive form, stipulates that the contractor is "not to use" premises for other than a specified trade, has not an active operation compelling him to CARRY ON that trade (*Dæd. Bute v. Guest*, 15 M. & W. 160).

Covenant not to "erect or use" Competing Works; *V. ERECT.*

"Use or EXERCISE" an ART, TRADE, &c. within a City Custom, means, to carry it on "as a Master or Principal" (per Tenterden, C. J., *Clark v. Denton*, 1 B. & Ad. 101).

"Use, exercise, and vend," an INVENTION; *V. VEND: Walton v.*

*Lavater*, 8 C. B. N. S. 162; 29 L. J. C. P. 275. "The first meaning assigned to 'use' in Johnson's Dictionary is, 'to employ to any purpose'; it is, therefore, a word of wide signification. It seems to me that the terms 'use' and 'make use of,' are intended to have a wider application than 'exercise,' and 'put in practice'; and, without saying that no limit is to be placed on the two former expressions in the Patent. I think, on the best consideration that I can give, that they are not confined to the use of a patented article for the purpose for which it is patented" (per Stirling, J., *British Motor Syndicate v. Taylor*, 1900, 1 Ch. 583); that learned judge, accordingly, held that to buy in England an infringing article and then transport it to Paris for sale, was "using," or "making use of," the invention in England, and was an INFRINGEMENT of the patent (1900, 1 Ch. 577; 69 L. J. Ch. 377; 82 L. T. 106; 48 W. R. 345; affd 1901, 1 Ch. 122; 70 L. J. Ch. 21, *who* dealt with the doubts of Ld Herschell, *Badische Anilin und Soda Fabrik v. Basle Works*, 1898, A. C. 208; 67 L. J. Ch. 144). Observe further, "If a person uses an Invention to present his goods for sale and intending the thing exhibited to represent what he is going to sell, and if part of that thing is an article which is an infringement and is serving a useful purpose during that time by being exhibited as part of the machine, I think it is a User of the Invention" (per Alverstone, C. J., *Dunlop Co v. British & Colonial Motor Co*, 18 Pat. Ca. 315). V. NON-USER.

Prior Use of an Invention; V. ANTICIPATION: PUBLIC USE.

To "use" a Trade Description; V. *Budd v. Lucus*, cited TRADE DESCRIPTION.

"I strongly incline to think that everyone 'uses' a DRAIN the sewage from whose house communicates with it" (per Cockburn, C. J., *R. v. Bodkin*, 3 E. & E. 276).

Power of Contractee to "use" *Materials*, &c., of a defaulting Contractor; V. *Hawthorn v. Newcastle Ry*, cited IN OR UPON.

"Take or use" a STREAM; V. TAKE.

"Take or use the Title" of a Profession; V. VETERINARY.

V. OCCUPATION: USE AND OCCUPATION: USED: USING.

Bequest for a person's "Use and Disposal"; V. DISPOSAL.

Bequest of Business with "the use of the Book Debts or Capital": held, an absolute gift (*Terry v. Terry*, 33 Bea. 232; 12 W. R. 66; 9 L. T. 469).

A Structure which, without a license, can be "erected by a BUILDER for use" during operations (proviso to s. 13, Metrop Man. Act, 1882), must be one for the Builder's own use, — one for the temporary carrying on the business of his employer, is not within the proviso (*London Co. v. Candler*, 60 L. J. M. C. 114; 55 J. P. 679).

"The use of the ground as *Building Ground*" which, by s. 5 (6), Land Law (Ir) Act, 1881, will justify a landlord's application for an Order for resumption of a HOLDING, means, actual user, as distinguished from

possible user; the landlord must show that his settled purpose is to use the land as building ground as soon as the Order is made; in other words, "he must satisfy the Court that he requires the land for *use* as building ground, and not merely that he desires to have it in his own hands available for building ground if he receives a sufficiently tempting offer to deal with it as such" (*Re Archbold and Charters*, 1900, 2 I. R. 262).

"In Common Use"; *V. COMMON TO THE TRADE*.

An Inclosure Act which authorized the setting apart quarries "for the repair of roads, and for the use of the INHABITANTS" of A., was construed as giving the Inhabitants a right to stone for repairs of roads, but not for private purposes (*Rylatt v. Marfleet*, 14 L. Ex. 305; 14 M. & W. 233).

An Indorsement of a Bill or Note "to A. or his Order, for MY use," puts persons dealing with it on enquiry to see whether A. is using the document for the Indorser's use, or his own (*Sigourney v. Lloyd*, 8 B. & C. 622). *Vf*, RESTRICTIVE ENDORSEMENT.

"Use for the Purpose of"; *V. PURPOSE: PURPOSES*.

"In relation to the Use or Hire of any Ship"; *V. SHIP*.

Trustee converting property "to his use"; *V. CONVERT*.

"Goods Materials or Provisions for the use of any *Workhouse*, Poor Relief Act, 1815, 55 G. 3, c. 137, s. 6, means, for use *in* the Workhouse, and does not comprise repairs to the fabric (*Barber v. Waite*, 3 L. J. M. C. 101; 1 A. & E. 514; 3 N. & M. 611).

On "Use" as employed in 1 Ric. 3, and on Uses prior to the Statute of Uses, 27 H. 8, c. 10, *V. Sanders* on Uses, ch. 1: on Uses since that Statute, *V. Ib.* ch. 2. *Vf*, *Chudleigh's Case*, 1 Rep. 121 *et seq*: 1 Cru. Dig. Title 11: Wms. R. P. Part 1, ch. 8: Goodeve, ch. 10: Challis, 350-356: 12 Encyc. 386-395: DECLARATION: TRUST. As to the rise of Uses, and the contrast and resemblance between Uses and Trusts, *V. Burgess v. Wheate*, 1 Eden, 177; 1 Bl. W. 123, and *esp* jdgmt of Mansfield, C. J.

*Cestui que Use*; *V. CESTUI*.

*V. CHARITABLE USE: OWN SOLE USE: REASONABLE USE: RESULTING USE: SEPARATE USE: SOLE: SUPERSTITIOUS: USED: USING: USUAL*.

**USE AND BENEFIT.** — *V. OWN USE AND BENEFIT*.

**USE AND DISPOSAL.** — *V. DISPOSAL*.

**USE AND OCCUPATION.** — A. devised to his wife the Income of freeholds at B. and leaseholds at P., and bequeathed to her his furniture and effects in his house at E., and desired that she should "have the Free Use and Occupation of the said house"; held, that she was absolutely entitled to the properties at B. and P., but took only a life interest



in the house at E. (*Coward v. Larkman*, 60 L. T. 1). *V.* OCCUPATION: RESIDE.

**USE OR ENJOYMENT.**—*V.* IMMEDIATE USE OR ENJOYMENT.

**USE OR ORNAMENT.**—Articles of “Household Use or Ornament”; *V.* HOUSEHOLD, p. 899.

**USE OR PERMIT.**—Where a Local Board do not act themselves to create a NUISANCE, and are endeavouring to put in force their powers to effect a perfect system of drainage, it is no ground of action to an individual that the Board do not take proceedings under their Acts to prevent persons from unlawfully draining into their sewers, in consequence of which draining an additional and serious nuisance is caused to that individual; and they cannot be said “to use or permit to be used” the sewers so as to cause a Nuisance, by abstaining from taking such proceedings (*A-G. v. Dorking*, 51 L. J. Ch. 585; 20 Ch. D. 595).

—*V.* PERMIT.

**USED.**—A thing “used” for a particular purpose is not synonymous with its “being used,” or “in use,” for that purpose; for, *semble*, such latter phrases connote, necessarily, an ACTUAL user, which “used” does not. Therefore, a place underground may have been “used” as a BAKEHOUSE at the commencement of the Factory Act, 1895, and so exempt from s. 27 (3) of that Act, if that had previously been its purpose and actual use, though not then actually so used because untenanted, but the landlord of which was seeking to let it to a baker which he afterwards did (*Schwerzerhof v. Wilkins*, 1898, 1 Q. B. 640; 67 L. J. Q. B. 476; 78 L. T. 229; 62 J. P. 247).

Fixtures, &c, “used in” any land, &c, s. 6 (2), Bills of Sale Act, 1882, means, things retained on the premises for use; therefore, a Cab Proprietor’s horses are not “Plant” “used *in*” his Mews, for their sole use is in the Streets where the cabs are hired and the profits of the business are earned. They may be harnessed or unharnessed on the premises, but they are not used, for the purposes of the business, there (per Esher, *M. R., London & Eastern Counties Loan Co v. Creasy*, cited PLANT).  
*V.* BROUGHT UPON.

“Used or enjoyed”; *V.* APPURTENANCES: HELD: WAWS.

“Used or exercised”; *V.* ART: EXERCISE: USE, p. 2148.

“Provided and used”; *V.* PROVIDED.

“Used as an ordinary Agricultural Farm”; *V.* AGRICULTURAL.

“Place used” for Betting, or for Dancing; *V.* PLACE, p. 1486: PUBLIC DANCING.

Boiler “used exclusively for Domestic Purposes”; *V.* DOMESTIC.

Building “used for the Education of the Poor”; *V.* *Hadfield v. Liverpool*, cited EDUCATION.

Ship or Vessel "used in NAVIGATION"; *V. VESSEL: R. v. Southport*, cited SHIP, p. 1866.

"Used for the Purposes of"; *V. PURPOSE: PURPOSES: TRAFFIC: Commrs of Taxation v. St. Mark's*, 1902, A. C. 416; *Tytlecote v. Morton*, 85 L. T. 692.

"Land used only as a Railway"; *V. RAILWAY*, p. 1646.

"Used for Trade"; *V. TRADE*.

"Used as a Trade-Mark"; *V. Richards v. Butcher*, cited TRADE-MARK.

**USELESS.** — "Useless, and be no longer required for the purposes of such Road." s. 57, 4 G. 4, c. 95; *V. R. v. Greenlaw*, 4 Q. B. D. 447; 48 L. J. Q. B. 409.

*V. REQUIRED.*

**USER.** — *V. PRESCRIPTION: USE.*

Area of User; *V. AREA.*

New and unusual User; *V. NUISANCE.*

Prior User; *V. ANTICIPATION: PUBLIC USE.*

*V. NON-USER.*

**USES.** — Statute of Uses, 27 H. 8, c. 10.

**USING.** — Where a Contract for Works, *e.g.* for building a Ship or a House, contains a clause enabling the contractee on default by contractor to complete the works. "using" therein such *Materials* of the latter "as shall be applicable for the purpose"; the property in *Materials* does not, under the word "using," pass to the contractee until he has actually used, or at least has actually begun to use, them in such completion; merely appropriating them for the purpose of so using them will not suffice (*Baker v. Gray*, 25 L. J. C. P. 161; 17 C. B. 462; *Cp, Re Winter*, cited PROPERTY).

Using a Patent; *V. USE.*

"Using" Premises "for the purposes of" Betting, s. 3, Betting Act, 1853; *V. Belton v. Busby*, 1899, 2 Q. B. 380; 68 L. J. Q. B. 859; 81 L. T. 196; 47 W. R. 636; 63 J. P. 709.

Using a *Railway*; "the word 'using' at the end of s. 90, Ry. C. C. Act, 1845, 8 & 9 V. c. 20, signifies using in any sense; and is not confined to using by sending engines and other carriages along the line. The section applies to all Tolls without distinction, and, unless 'using' includes using by sending goods, a distinction not warranted by the Act will be drawn between Tolls for Passengers Engines and Carriages on the one hand, and Tolls for Goods sent in the ordinary way on the other" (per Lindley, L. J., delivering the judgment, *Manchester, S. & L. Ry v. Denaby Main Co.* 54 L. J. Q. B. 110; 14 Q. B. D. 209; 52 L. T. 598; 49 J. P. 181; partly revd in H. L., 11 App. Ca. 47; 55 L. J. Q. B.

181; 54 L. T. 1: *Va, Evershed's Case*, 48 L. J. Q. B. 22; 3 App. Ca. 1029).

To constitute "an Arrangement for using" *Steam Vessels* so as to get a THROUGH TRAFFIC Rate under s. 11, Regn of Railways Act, 1873. the agreement between the Ry Co and the Owner of the vessels must be definite, and contain an obligation on the part of such owner to PLY between the specified ports (*Caledonian Ry v. Greenock & Wemyss Bay Ry*, 4 Ry & Can Traffic Ca., 70: *Vf*; *Agri S. S. Co v. Glasgow & S. W. Ry*, lb. 81).

"Using the *Trade of Merchandize*," in the old Bankry Acts, meant, that such "using" continued so long as the person did not pay his Trade Debts (*Ex p. Bamford*, 15 Ves. 449: per Jessel, M. R., *Ex p. McGeorge*, 51 L. J. Ch. 909; 20 Ch. D. 697). Cp, CARRY ON, pp. 266, 267.

V. USE.

USQUE AD. — *V. QUAMDIU.*

**USUAL.** — To determine whether a Clause, Condition, or Thing, is "Usual" the first enquiry is, — Is the subject-matter before, or within, recent memory?

I. Where the subject-matter is something enacted or created *before* recent memory, almost any kind of traditive experience may be given in proof. A conspicuous example was furnished when the Ornaments Rubric of the Church came in question, and the Courts, in order to ascertain what is now lawful, had to determine what ornaments were "*in use*" by authority of Parliament in the 2nd year of Edward VI. There, the literature of the age of the Reformation and the time immediately subsequent, was received in proof (*Hebbert, or Elphinstone v. Purchas*, L. R. 3 A. & E. 66; 39 L. J. Ecc. 28; L. R. 3 P. C. 245; 40 L. J. Ecc. 33).

II. Where the subject-matter is something enacted or created *within* recent memory the principles by which what is "usual" is to be determined, are not so easy of statement. What is "usual" is a fact; not a conclusion of law (*Hampshire v. Wickens*, 7 Ch. D. 555; 47 L. J. Ch. 243; 26 W. R. 491). But just as the question of fact of what is reasonable notice to quit as between masters and domestic servants has in process of time crystallized into a set formula of a month's notice or a month's wages, so the courts take judicial notice of some clauses as being "usual" and reject others. In those cases, however, where no such judicial conclusion has been arrived at, the question of what is a "usual" clause, condition, or thing, is a fact to be established by proof, having regard to (a) the subject-matter, (b) its locality, (c) its time of arising, and (d), sometimes, its circumstances.

a. The *Subject-Matter* must be considered where it is of a special nature, e.g. leases of property used for particular trades; "as in the case of

leases of public-houses where the brewers have their own forms of leases, and the usual covenants there would mean the covenants *always inserted in the leases of the particular brewer*" (per Jessel, M. R., *Hampshire v. Wickens*, 47 L. J. Ch. 245: Should not the words italicized read, "usually inserted in the leases of brewers in the neighbourhood"? In *Hodgkinson v. Crowe*, 44 L. J. Ch. 681, James, L. J., said, "You cannot by the usage between some landlords and some tenants for 10, 20, or even 50, years make a change in the law"). So, also referring to a lease of a public-house, Tenterden, C. J., in *Bennett v. Wormack* (6 L. J. O. S. K. B. 175; 7 B. & C. 627; 1 M. & R. 644), said, "That which is usual in leases of one description of property may not be so in leases of another."

b. As to *Locality*. In *Wilbraham v. Livesey* (18 Bea. 210) Romilly, M. R., said that in a lease of a house in Grosvenor Square, London, there might be inserted different covenants from those in a lease in a trading locality. So, in *Hodgkinson v. Crowe* (L. R. 19 Eq. 591; 10 Ch. 622; 44 L. J. Ch. 238, 680; 23 W. R. 406) Bacon, V. C., admitted evidence of what clauses were usual in mining leases in the district where the property was situate. So also did Fry, J., in *Strelley v. Pearson* (15 Ch. D. 113; 49 L. J. Ch. 406; 28 W. R. 752; 43 L. T. 155). *Va, Boardman v. Mostyn*, 6 Ves. 467, 471; *Haywood v. Silber*, 30 Ch. D. 404; 34 W. R. 114.

c. As to *Time*. "Usual covenants may vary (in their meaning) in different generations. . . . What is well known in one time may in another cease to be usual" (per Jessel, M. R., *Hampshire v. Wickens*, 47 L. J. Ch. 245; 7 Ch. D. 555).

d. As to *Circumstances*. "I do *not* think that the word 'usual' is in many cases to be read with reference to the surrounding circumstances; but I agree that the Court has a right to know, and is bound to know, all the material facts which were known to the parties at the time when the agreement, deed, document, will, or whatsoever it may be was entered into or made" (per Kay, J., *Hart v. Hart*, 50 L. J. Ch. 704, 705. In the report of this passage in the 18 Ch. D. 692, it runs, "I *do* think," and this would seem the correct reading). But in that case evidence of negotiations preliminary to an agreement for "usual" clauses was rejected. In *Eadie v. Addison* (52 L. J. Ch. 80) the circumstances that an intending lessee was a brewer who lived a long distance from the public-house which was the subject of a demise agreement, and that it was not at all likely that the brewer was going to carry on the business at the public-house himself, was strongly relied on by the Court in rejecting a clause against underletting, the agreement there having stipulated for "proper clauses."

In cases not already judicially determined, the proof of what would be "Usual" clauses, having regard to the special subject, its locality, or circumstances, would as a rule be furnished by the testimony of such living witnesses, whoever they might be, that might happen to have

the information (*Hodgkinson v. Crowe*, sup). But where the question is of a general character the proof of what are "Usual" Clauses may be furnished by, —

1. Considering the provisions of Acts of Parliament, *in pari materia* (*Hodgkinson v. Crowe*, 44 L. J. Ch. 682; 10 Ch. 622):

2. The evidence of conveyancing counsel (*Hart v. Hart*, 50 L. J. Ch. 697; 18 Ch. D. 670), and, possibly, of solicitors as being "the most likely to possess extensive and accurate knowledge on this subject" (27 S. J. 130):

3. Books of conveyancers' forms or text books (*Doe d. Jersey v. Smith*, 7 Price, 281, 282; *Hampshire v. Wickens*, sup; *Hodgkinson v. Crowe*, sup; *Hart v. Hart*, sup). As regards this latter class of evidence it has been thus questioned, "Books of precedents are not conclusive evidence of the general practice. . . . They provide a precedent in the form in which it may be presented by the party who has to prepare the draft. . . . It is impossible to cross-examine a precedent book" (27 S. J. 130). To which it may be added, "'usual covenants' does not mean, universally inserted" (Dwar. 692). *Vf*, inf.

The question as to what are "usual" clauses arises most frequently as regards **Leases**.

The following passage from *Davidson's Precedents*, 3 ed., "Leases," Vol. 5, Part 1, p. 53, was quoted with approval by Jessel, M. R., in *Hampshire v. Wickens*, sup:—"The result of the authorities appears to be that in a case where the agreement is silent as to the particular covenants to be inserted in the lease, and provides merely for the lease containing usual covenants, or, which is the same thing, is an open agreement without any reference to the covenants; and there are no special circumstances justifying the introduction of other covenants, the following are the only clauses which either party can insist upon, viz.:—Covenants by the Lessee;—

"1. To pay rent:

"2. To pay taxes, except such as are expressly payable by the landlord:

"3. To keep and deliver up the premises in repair. And,

"4. To allow the lessor to enter and view the state of repair. A clause for re-entry in default of payment of rent.

"The usual qualified covenant by the Lessor for quiet enjoyment."

*Va*, *Hodgkinson v. Crowe* (sup); and the rule quâ Forfeiture Clause, is not altered by s. 14, Conv & L. P. Act, 1881, although thereunder the Court may relieve against forfeiture for other causes than non-payment of rent (*Re Anderton and Milner*, 59 L. J. Ch. 765; 45 Ch. D. 476; 63 L. T. 332; 39 W. R. 44).

In considering what other clauses may be insisted on as "usual" in Leases the jdgmt in the leading case of *Church v. Brown* (15 Ves. 258) should be kept in view. Lord Eldon there (p. 268) expressed himself as follows:—"The safest rule for property is, that a person shall be taken

to grant the interest in an estate which he proposes to convey, or the lease he proposes to make, and that *nothing which flows out of that interest as an incident, is to be done away by loose expressions*, to be construed by facts more loose; that it is upon the party who has foreborne to insert a covenant for his own benefit to show his title to it; and that it is safer to require the lessor to protect himself by express stipulation, than for Courts of Equity to hold that contracting parties shall insert, not restraints expressed by the contract or implied by law, but such, more or less in number, as individual conveyancers shall from day to day prescribe, as proper to be imposed upon the lessee" (*V.* this passage cited *Hodgkinson v. Crowe*, 44 L. J. Ch. 682).

It would seem that the principles of *Church v. Brown* would prevent a lessor of land from insisting on a reservation of Timber, Minerals, or Game (*See*, GROUND GAME) unless such a reservation were expressly provided by the contract; and in view of those principles it is perhaps permissible to question the practical value of the suggestions of Bacon, V. C., towards the conclusion of his judgment in *Hodgkinson v. Crowe*, as to what clauses are customary in *Mining Leases* (L. R. 19 Eq. 591; 44 L. J. Ch. 238; 23 W. R. 406). The reservation in a Mining Lease of liberty to the lessor and his agents and workmen to enter and examine the workings can be insisted on as usual (*Blakesley v. Whieldon*, 1 Hare, 176; 11 L. J. Ch. 164); and in a Mining Lease, granted under a Power, a power enabling the lessee to build conveniently placed cottages for workmen is "NECESSARY or usual" (*Morris v. Rhydydefed Co.*, 28 L. J. Ex. 119; 3 H. & N. 885).

A clause in a Colliery Lease in Derbyshire (or, *semble*, anywhere else) to entitle the lessee to determine the lease when the mine cannot be worked to a profit, is not usual (*Strelley v. Pearson*, 15 Ch. D. 113; 49 L. J. Ch. 406; 28 W. R. 752; 43 L. T. 155).

A proviso suspending Rent in case of Fire is not "usual" (*Doe d. Ellis v. Sandham*, 1 T. R. 705). Rent is not even suspended where the landlord has received compensation for injury by fire under a policy effected by him with an Insurance Co (*Leeds v. Cheetham*, 1 Sim. 146; *Lofft v. Dennis*, 1 E. & E. 474; 28 L. J. Q. B. 168).

The extract from Davidson above given (*Ta*, Woodf. 128) shows that it is usual for a tenant to covenant to pay *Taxes* "except such as are expressly payable by the landlord"; *e.g.* as included in such exception, landlord's Property Tax (5 & 6 V. c. 35, ss. 73, 103), the proportionate part of Land Tax (38 G. 3, c. 5, s. 17; *Tith*, Woodf. 601), Sewers Rate (Woodf. 604), one half the Cattle Plague Rate (32 & 33 V. c. 70, s. 89), special Paying Rates under Metrop. Man. Acts (*Allum v. Dickinson*, 52 L. J. Q. B. 190; 9 Q. B. D. 632), and Tithe Rent Charge (6 & 7 W. 4, c. 71, s. 80; *Parish v. Sleeman*, 29 L. J. Ch. 96; 1 D. G. F. & J. 326; 6 Jur. N. S. 385). Apt words in the agreement may throw all the foregoing landlord's taxes on the tenant, except the landlord's

Property Tax and Title Rent Charge. *V.* IMPOSED; NET; OUTGOING; TAXES.

As regards the covenant to *Repair*, the lessee is not (under an agreement for "usual" clauses) entitled to have introduced into the covenant the words, "damage by fire or tempest excepted" (*Sharp v. Milligan*, No. 2, 23 Bea. 419; *Kendall v. Hill*, 6 Jur. N. S. 968; Woodf. 128), not even though it be proved that it is the practice in the locality for the landlord to insure (*Thorpe v. Milligan*, 5 W. R. 336); nor, *semble*, to have inserted the words, "reasonable wear and tear excepted" (27 S. J. 177).

Default in payment of rent (qy also Bankry of lessee, *Church v. Brown*, 15 Ves. 268; *Haines v. Burnett*, 27 Bea. 500; but certainly not the words "if any execution should issue against him." *Hyde v. Warden*, 47 L. J. Ex. 128; 3 Ex. D. 72) is the only "Usual" ground of FORFEITURE (*Hodgkinson v. Crowe*, 10 Ch. 622; 44 L. J. Ch. 680; 23 W. R. 885; s. 18 (7), Conv & L. P. Act, 1881); except where the use, or non-use, of the premises for particular purposes is of the essence of the bargain between the parties, *e.g.* a proviso in a lease of a public-house for re-entry in the event of the premises being used for carrying on another business than that of a licensed victualler, which is a "usual" proviso (*Bennett v. Wormack*, 6 L. J. O. S. K. B. 175; 7 B. & C. 627; 1 M. & R. 644; *Vh*, Seton, 2277). *Vf*, inf.

A covenant *against assigning*, or underletting, is not "Usual," not even if the stipulation be offered that the landlord's assent shall not be UNREASONABLY withheld (*Henderson v. Hay*, 3 Bro. C. C. 632; *Church v. Brown*, 15 Ves. 258; *Hodgkinson v. Crowe*, sup; *whc* over-rules *Haines v. Burnett*, 27 Bea. 500; 29 L. J. Ch. 289. *V*, per Jessel, M. R., *Hampshire v. Wickens*, 47 L. J. Ch. 245; 7 Ch. D. 555; *Va*, *Re Lander and Bagley*, 1892. 3 Ch. 41; 61 L. J. Ch. 707; 67 L. T. 521; *Bishop v. Taylor*, 60 L. J. Q. B. 556; 39 W. R. 542; 61 L. T. 529; *Wilcoe v. Redwood*, 49 L. J. Ch. 539; *Buckland v. Papillon*, 2 Ch. 67); nor is it a "usual" clause which requires a lessee of a public-house to give notice to the lessor or his solicitor of an assignment of the lease (*Brookes v. Drysdale*, 3 C. P. D. 52; 26 W. R. 331).

Although the law is thus clear against the usuality of clauses restricting assignment, yet when a clause restricting assignment is in fact inserted in a lease and Forfeiture is prescribed to follow on its breach, that is not a forfeiture against which relief is provided by the Conv & L. P. Act, 1881 (s. 14, subs. 6; on *whc*, *Barrow v. Isaacs*, cited UNREASONABLY). No FINE is to be exacted on a License to Assign, unless expressly provided for in the lease (s. 3, Conv & L. P. Act, 1892).

Exceptionally, a lease may so distinctly indicate the requirement of a personal occupation by the lessee or other person as to imply a Condition against underletting (*Kehoe v. Lansdowne*, 62 L. J. P. C. 101).

A question has been raised (27 S. J. 177) as to whether a covenant

obliging the *Lessee to Insure* could be insisted on as "Usual." The opinion there expressed is that it could: Mr. Davidson says that "probably" it could not (Prec., 3 ed., "Leases," Vol. 5, pt. 1, p. 53); and to that effect is *Wilcox v. Redhead*, sup.

Probably the most difficult question on what "Usual" clauses might be insisted on in leases, would arise as to *Restrictions* prohibiting the absolutely unfettered use and enjoyment of the premises during the term at the free will of the lessee. It is common learning to say that, generally speaking, no such restrictions could be insisted on (*Church v. Brown and Hodgkinson v. Crowe*, sup). But where, as previously suggested, the use, or non-use, of the premises for particular purposes is of the essence of the bargain between the parties, there it would be proper and "usual" to provide for such use, or against such non-use. Such a doctrine would seem to be well within the meaning of "special circumstances" referred to in the extract given above from Davidson and the commentary of the M. R. thereon in *Hampshire v. Wickens*. No doubt the application of the doctrine just enunciated would, in many cases, be difficult. But in *Bennett v. Wormack* (sup) it was held that a lessor of a PUBLIC HOUSE is entitled, as a "usual" clause, to have a proviso forfeiting the lease in case of the premises being used for a business other than that of a licensed victualler; and *à fortiori* he would be entitled to a *covenant* against such a use; and if so, why should he not be entitled to a similar covenant with an accompanying proviso for re-entry for the purpose of ensuring that the business of a licensed victualler shall be carried on uninterruptedly during the whole of the term and the necessary certificates and licenses duly taken out by the lessee? This would be only the completion of the rule of which the other part was established by *Bennett v. Wormack*. Without this further provision a lessee might destroy or imperil that part of the property — its character of monopoly as licensed premises — which is the subject-matter of the lease, and the upholding of which may fairly be regarded as of the essence of the bargain between the parties. But it is not a "usual" covenant, even in a Public House lease, which requires the lessee to reside on the premises and personally conduct the business (*Re Lander and Bayley*, sup).

But besides public-houses, may not there be other property the peculiar characteristics of which would as much be entitled to protection? Thus in *Hyde v. Warden* (47 L. J. 121; 3 Ex. D. 72: *Vth*, *Reeve v. Berridge*, 20 Q. B. D. 523) a covenant not to mow meadow land more than once a year was held not unreasonable or unusual: *Vf*, as to Farming Leases, *Bell v. Barchard*, 16 Bea. 8.

Observe, however, that in *Midgley v. Smith* (W. N. (93) 120) Romer, J., held that covenants by a lessee (1) prohibiting other erections than those standing at the date of the lease, (2) prohibiting user of the house as an asylum, dispensary, or other similar institution, or otherwise than as a private house, (3) for registering assignments with the lessor and paying



a fee, and (1) for rebuilding in case of fire to the satisfaction of the lessor's architect, were unusual and unreasonable covenants in the lease of a detached residence with a garden, situate at Putney.

Conditions in RESTRAINT OF TRADE are, generally speaking, not "usual" (*Propert v. Parker*, 3 My. & K. 280; *Van v. Corpe*, 1b. 269; 6 L. J. Ch. 208; *Wilcox v. Redhead*, 49 L. J. Ch. 539; *Wilbraham v. Livesey*, 18 Bea. 206); but, as was suggested in the last-named case, supposing a house be situate in the most fashionable part of London, with circumstances under which to carry on trade in it would be seriously to diminish its value; would not that be *pro tanto* destroying the thing leased, against which the lessor would be entitled to a covenant and clause of forfeiture as a fair and "usual" term of the contract? So, too, of premises where a business of very long standing has been carried on, and the continuance of which business on the premises demised would be fairly collected as of the essence of the bargain. So, too, perhaps, where premises are specially and exclusively adapted for a special kind of occupation, that kind of occupation ought to be preserved by proper "usual" clauses. So, again, where the continuance of workings goes to the preservation of the thing demised,—*e.g.* pumping water from a mine,—that would seem of the essence of the bargain which the lessor should be able to insist on providing for (*V. Strelley v. Pearson*, 15 Ch. D. 113; 49 L. J. Ch. 406; 28 W. R. 752; 43 L. T. 155).

It may be added that an agreement for a Lease, which stipulates that the lessee is "*not to use*" the premises for other than a specified trade, and providing for all usual covenants, does not warrant the insertion in the Lease of an affirmative covenant by the lessee that he will *carry on* such trade during the term (*Doe d. Bate v. Guest*, 15 M. & W. 160).

*Vf.*, as to usual covenants in Leases, Dart, 191, 192; Woodf. 127-131, 704; Redman, 147-151; Fawcett, 150; COMMON: in *Mining Leases*, MacS. 196, 197.

On an Assignment of a Lease, Usual Covenants by the Assignor are given in s. 7 (*V. subs. 1, B and D*), Conv & L. P. Act. 1881; and by the Assignee, that he will thenceforth pay the rent and fulfil the lessee's covenants thenceforth to be performed or observed, and keep the Assignor and his representatives indemnified and harmless therefrom.

**Leases under Powers.**—Where the Power requires that "the Usual and Reasonable covenants" shall be inserted, the lease must contain such covenants as were contained in leases of the same property at the time of the creation of the Power; otherwise the Power will not be well executed (*Doe d. Egremont v. Stephens*, 13 L. J. Q. B. 350; 6 Q. B. 208); but, there the court "inclined to think" that such words in a Power as "usually so leased," would not prevent the joining in one lease of tenements that had generally been let separately, provided all the tenements were comprised within the Power. *Vf. Doe d. Egremont v. Williams*. 17 L. J. Q. B. 154; 11 Q. B. 688; Woodf. 218, 219.

As to "Usual" clauses in **Underleases**; *V. Williamson v. Williamson*, 43 L. J. Ch. 738; 9 Ch. 729; *Haywood v. Silber*, 30 Ch. D. 404; 34 W. R. 114.

As regards **Deeds** in general; what is "Usual" has (when the point is uncovered by authority) to be determined "according to the practice and customs of conveyancers in such cases" (per Kay, J., *Hart v. Hart*, 50 L. J. Ch. 702; 18 Ch. D. 670; 30 W. R. 8; *Doe d. Jersey v. Smith*, cited ante, p. 2155). In *Hart v. Hart*, it was held that the *dum vasta* clause, in a *Deed of Separation* between husband and wife securing an allowance to the latter, is not "usual" (*Va*, as to practice in Matrimonial Causes, *Gandy v. Gandy*, 51 L. J. P. D. & A. 41; 7 P. D. 168, on *whco*, *Bishop v. Bishop*, 1897, P. 138; 66 L. J. P. D. & A. 69; 76 L. T. 409; *Vf*, *Harrison v. Harrison*, 56 L. J. P. D. & A. 76; 12 P. D. 130; 57 L. T. 119; 35 W. R. 703; *Lander v. Lander*, 1891, P. 161; 60 L. J. P. D. & A. 65; 64 L. T. 120; 39 W. R. 416; *Wood v. Wood*, 1891, P. 272; 60 L. J. P. D. & A. 66; 64 L. T. 586; *Kettlewell v. Kettlewell*, 1898, P. 138; 67 L. J. P. D. & A. 16; 77 L. T. 631; *Smith v. Smith*, 1898, P. 28; 67 L. J. P. D. & A. 54; 78 L. T. 28. *Sc*, *Edwards v. Edwards*, 1894, P. 33; 63 L. J. P. D. & A. 62; 70 L. T. 39); but a clause that a trustee shall be found for the wife "who will enter into such covenants as in such a deed a trustee usually enters into on behalf of the wife with the husband" (*Hart v. Hart*, sup) is "usual." *V. Dum*.

A clause providing for a three months' notice prior to sale is "usual" in a **Mortgage** (*Craddock v. Rogers*, 53 L. J. Ch. 968); *Va*, s. 20, Conv & L. P. Act. 1881.

As to Usual Clauses in **Partnership Articles**; *V. Lindley*, P. 412 *et seq*. The cases there digested, though full of valuable suggestion as to what ought to be inserted in Partnership Articles, hardly lay down rules for determining what clauses would be judicially inserted under an agreement stipulating for "usual" clauses. Still they throw much light even on that difficult question.

The following are Usual **Powers** in **Settlements** pursuant to Articles: — Leasing for 21 years: Sale and Exchange: Maintenance and Advancement (but not **HOCHPOT**): Varying Securities: Appointment of New Trustees: Partition where Property joint: Leasing Mines: Building Leases where the land is fit for building, unless mere occupation Leases for (say) 21 years have been expressly prescribed and then, on the principle *expressio unius exclusio alterius*, building leases would be excluded (Lewin, 137, 138 and cases there cited). Powers to Jointure or other powers to confer personal privileges would *not*, generally speaking, be "usual" (Ib. 137). *Va*, Settled Land Act, 1882, ss. 3, 4, 6 *et seq*; Conv & L. P. Act, 1881, ss. 42, 66; *Vth*, Lewin, 139, 140. *Vf*, Macqueen on Husband and Wife, 3 ed., 240.

In a Re-Settlement of Entailed Estates, *semble*, a Name and Arms Clause (*V. NAME*) is not "usual" (*Cruken v. Yorke*, 101 Law Times, 327).

In an OPEN Contract to sell a Lease, and even where the liability of the lessee to deliver up in good repair is excluded in the case of "Fire," it is not "usual" to further restrict such liability by adding the words "or other Casualty" (*Crosse v. Morgan*, 60 L. T. 703; 37 W. R. 543).

"Usual and Proper" Books of Account; *V. BUSINESS TRANSACTIONS.*  
*V. PROPER: USUALLY.*

**USUAL ACCOUNT.**—Usual Account by. and as against, a Mortgagee in Possession; *V. Mayer v. Murray*, 47 L. J. Ch. 605; 8 Ch. D. 424; Fisher, ss. 1764, 1765.

**USUAL AGENCY TERMS.**—"Usual Agency Terms," as between a Country Solicitor and his London Agent, means, that "the London Agent is entitled to be paid by the Country Solicitor all his disbursements out of pocket. But there are a number of other charges which are known as 'Profit Charges,' and the question has been raised whether the London Agent is entitled to half the profit made by the Country Solicitor, or only to half the 'Profit Charges.' We have consulted Mr. Ryland, the Taxing Master, and he has told us that the London Agent is only entitled to half the 'Profit Charges,' i.e. the charges which do not involve any expenditure by him. and that the London Agent has nothing to do with the profit made by the Country Solicitor" (per Cotton, L. J., *Ward v. Lawson*, 38 W. R. 300; 43 Ch. D. 353; 59 L. J. Ch. 323; *V. 34 S. J. 190, 191.* *Vf, CLIENT.*

**USUAL AND CUSTOMARY MANNER.**—"Where by the terms of a Charter-Party the ship is to *Deliver* the Cargo 'in the Usual and Customary Manner,' the obligation which attaches is only that the merchant and shipowner shall each use REASONABLE despatch in performing his part, and there is no implied contract that the discharge shall *at all events* be performed in the time usually occupied at the particular port. Therefore, where, owing to a threatened bombardment, the authorities at the port of discharge refused for several days to allow the discharge of cargo to proceed, so that during those days neither party to the contract could perform his part of the contract, it was held that the loss from delay must fall on the shipowner" (1 Maude & P. 409, citing *Ford v. Cotesworth*, L. R. 4 Q. B. 127; 5 Ib. 544; 38 L. J. Q. B. 52; 39 Ib. 188; 9 B. & S. 559; 10 Ib. 991; *Cunningham v. Dunn*, 3 C. P. D. 443; 48 L. J. C. P. 62); *Vf, Postlethwaite v. Freeland*, 5 App. Ca. 599; 49 L. J. Ex. 630; *Good v. Isaacs*, 1892, 2 Q. B. 555; 61 L. J. Q. B. 649; 67 L. T. 450; 40 W. R. 629; *The Jaedren*, 1892, P. 351; 61 L. J. P. D. & A. 89; Carver, s. 614.

"Load in the usual and customary manner," seems to apply only to the mode of loading when the vessel has arrived at the loading berth, and to have no reference to a detention outside the loading place (1 Maude & P. 408, citing *Tapscott v. Balfour*, L. R. 8 C. P. 46; 42 L. J. C. P. 16;

per Pollock, C. B., *Lawson v. Burness*, 1 H. & C. 400; per Brett, L. J., *Nelson v. Dahl*, 12 Ch. D. 588; *Va, Kay v. Field*, 8 Q. B. D. 598; 10 Ib. 241; 52 L. J. Q. B. 17; *The Alne Holme*, 1893, P. 173; 62 L. J. P. D. & A. 51; 68 L. T. 862).

*V. CUSTOMARY: DEMURRAGE: S<sub>r</sub>, USUAL DESPATCH.*

**USUAL AND MOST APPROVED WAY.** — A compliance with a covenant to work *Mines* “in the usual and most approved way” will not exonerate from responsibility on other grounds [for letting down the Surface (*Davis v. Treharne*, 6 App. Ca. 460; 50 L. J. Q. B. 665; 29 W. R. 869).

**USUAL APPROACH.** — *V. USUAL STREETS.*

**USUAL BUSINESS.** — As to what is the “Usual Business of an Hotel and Tavern”; *V. Simpson v. Westminster Palace Hotel Co*, 29 L. J. Ch. 561; 2 D. G. F. & J. 141.

**USUAL CERTIFICATE.** — “Usual Certificate,” in a Patent Action; *V. Bovill v. Hadley*, 17 C. B. N. S. 435.

**USUAL COLLIERY GUARANTEE.** — This phrase, in a Charter-Party and as determining the time for the commencement of loading, means, the Guarantee in use at the place where the contract is to be performed (*Shamrock S. S. Co v. Storey*, 81 L. T. 413; 5 Com. Ca. 21); such a COLLIERY GUARANTEE being an engagement by a colliery proprietor as to the time in which and the conditions under which he will load a ship with coal.

**USUAL COVENANTS: CLAUSES.** — *V. USUAL.*

**USUAL DATE.** — In a Merchant’s undertaking to give Acceptances at the “Usual Date,” it was held that 6 months acceptances were not unusual, the jury not having found the contrary (*Laing v. Barclay*, 1 B. & C. 398; 1 L. J. O. S. K. B. 135).

**USUAL DESPATCH.** — “Where Charterers contracted to load a cargo of coals on board ‘with Usual Despatch,’ it was held that they were bound to load the vessel with the usual despatch of persons who have a cargo ready for loading at the port; and that they were liable for a delay caused by a severe frost which rendered unnavigable the canal along which coals were to be brought” (1 Maude & P. 317, citing *Kearon v. Pearson*, 7 H. & N. 386; 31 L. J. Ex. 1; *Va, Adams v. Royal Mail Steam Packet Co*, 5 C. B. N. S. 492; 28 L. J. C. P. 33; 7 W. R. 9). *Sc, USUAL AND CUSTOMARY MANNER: CUSTOMARY.*

“To be loaded with the Usual Despatch of the Port”; *V. Ashcroft v. Crow Co*, 43 L. J. Q. B. 194; L. R. 9 Q. B. 540.

*Vh, Postlethwaite v. Freeland*, 5 App. Ca. 599; 49 L. J. Ex. 630; *Elliott v. Lord*, 52 L. J. P. C. 23; 48 L. T. 542; 5 Asp. 63.

**USUAL HOURS.**—“Usual Hours of Morning and Afternoon Service”; *V.* AFTERNOON.

**USUAL LLOYD'S CONDITIONS.**—*V.* *Id.* v. *Chalmers*, 5 Com. Ca. 212.

**USUAL MEDICAL ATTENDANT.**—In effecting a Life Policy, “Usual Medical Attendant” implies more than one attendance and means, the Medical Man best acquainted by experience with the constitution of the proposed life; therefore, if the person has been attended by a medical man for several years in serious disorders and afterwards takes another who has only seen him once or twice, the giving the name of the latter as his “Usual Medical Attendant,” without mentioning the circumstances under which he was attended by the other, is a wrong answer and will vitiate the policy (*Huckman v. Fernie*, 7 L. J. Ex. 163; 3 M. & W. 505; 2 Jur. 444). *Vf.*, *Morrison v. Muspratt*, 4 Bing. 60.

*V.* MEDICAL: FAMILY PHYSICIAN.

**USUAL PLACE OF ABODE.**—A clause of Forfeiture in case of the devisee not making the mansion-house “his Usual and Common Place of Abode and Residence,” is not void for uncertainty (*Wynne v. Fletcher*, 24 Bea. 430). *V.* RESIDE.

“Last or most Usual Place of Abode,” s. 1, Sum Jur Act, 1848, 11 & 12 V. c. 43; *V. R.* v. *Smith*, L. R. 10 Q. B. 604: LAST.

“Place of Abode”; *V.* PLACE, p. 1489.

**USUAL PLACE OF RELIGIOUS WORSHIP.**—By s. 32, Turnpike Roads Act, 1822, 3 G. 4, c. 126, persons “going to or returning from his, her, or their, Usual Place of Religious Worship, tolerated by law on Sundays,” were exempted from Turnpike Toll; a Primitive Methodist Minister had assigned to him the Sunday and other services of a district comprising the parish of F.; the days on which, and the places at which, he was to attend were fixed at regular quarterly meetings of the Methodists and printed on a “Plan”; according to this Plan the Minister had to preach at F. on three Sundays each quarter, and elsewhere on other Sundays; held, that in going to F., on the Sundays indicated in the Plan, to conduct the Services there, the Minister was going to his “Usual Place of Religious Worship,” within the exemption (*Smith v. Barnett*, L. R. 6 Q. B. 34; 40 L. J. M. C. 15; 23 L. T. 746: *Vf.*, *Lewis v. Hammond*, cited PAROCHIAL CHURCH). The fact of the carriage being driven by another person than the Minister would not, *semble*, subject the carriage to toll (28 J. P. 735: *Layard v. Ovey*, 37 L. J. M. C. 148; L. R. 3 Q. B. 415; 18 L. T. 632; 32 J. P. 293).

*V.* PUBLIC RELIGIOUS WORSHIP.

**USUAL POWERS.**—*V.* USUAL.

USUAL PROFESSIONAL CHARGES. — *V.* PROFESSIONAL CHARGES.

**USUAL RENT.** — “Usual RENT,” generally means, usual with reference to the subject-matter of the demise (*Doe d. Newnham v. Creed*, cited MOST RENT).

*V.* ANCIENT RENT.

**USUAL STREETS.** — “Usual Streets or Ways of Approach,” in a covenant in RESTRAINT OF TRADE; *V. Atkyns v. Kinnier*, cited DISTANCE, at end.

**USUALLY.** — A Power to Lease such lands as “theretofore usually demised,” or “so as such or more rent shall be reserved as the same lands are now let at,” will not as a rule apply to lands not previously leased (Watson Eq. 868). “The words ‘Usually or Accustomably Demised’ may have two senses; the one signifying the frequent or repeated act of leasing; the other, the common continuance of land in lease, though it has not been more than once demised, as in the case of lands leased for 500 years long since. And this is the more common acceptation of the words ‘usually demised’; though, in a literal sense, land once let is not land usually demised. Land twice demised is clearly included in that term” (Platt, 411, 412, citing *Tustian v. Roper*, Jo. T. 27; Vaughn, 28); “though lands let by virtue of a contract from year to year for 3 years, cannot be said to be usually demised, because it is but one lease, though renewable every year” (1 Platt, 411, 412, citing 2 Rol. Ab. 262. pl. 14: *I*f, Sug. Pow. 730-732).

“Upon the construction of the words ‘Usually demised,’ it has been determined that they embrace every species of demise — at will, from year to year, or for years, or lives, and whether granted by parol or by deed, by copy of court-roll, covenant to stand seised, or any other instrument: but whatever the instrument, it must operate as a lease in the sense of the term ‘demise’ in the given power” (Sug. Pow. 730, and cases there cited).

Rights “usually enjoyed”; *V.* PASTURAGE: “Usually held and enjoyed”; *V.* HELD.

“Usually rated,” s. 27, Highway Act, 1835, 5 & 6 W. 4, c. 50, means such premises as have been usually actually rated in the parish for which the Rate is made (*R. v. Rose*, 13 L. J. M. C. 155; 6 Q. B. 153), in *which* “rated” was kept to its literal meaning as distinguished from “rateable.” *V*f, *R. v. Randall*, 4 E. & B. 564.

“Usually sold,” s. 4, Bread Act, 1836, 6 & 7 W. 4, c. 37, refers to the usage at the date of the statute (*Aerated Bread Co v. Grigg*, cited FRENCH BREAD).

**USUFRUCTUARY.** — “One that hath the use and reaps the profit of anything” (Cowel).

**USURPATION.** — “Usurpation hath two significations in the common law: one, when an estranger that no right hath presenteth to a church, and his clerke is admitted and instituted, hee is said to bee an usurper, and the wrongfull act that he hath done is called an usurpation.

“Secondly, when any subject doth use, without lawfull warrant, royal franchises, he is said to usurpe upon the king those franchises” (Co. Litt. 277 b).

*Vh*, Phil. Ecc. Law, 345–350. *Cp*, INTRUSION.

**USURPED POWER.** — “‘Usurped Power,’ may have a great variety of meanings according to the subject-matter” (per Wilmot, C. J., *Drinkwater v. London Assree*, 2 Wils. 363; Park, 961–965): in an Exception to a Fire Policy of “Invasion by Foreign Enemies, or any Military or Usurped Power,” it means, “an invasion of the kingdom by foreign enemies to give laws and usurp the government thereof, or an internal armed force in REBELLION assuming the power of government and making laws and punishing for not obeying those laws” (per Bathurst, J., *ib.*); it was accordingly there held (Gould, J., diss.) that a tumultuous and destructive rising by a mob to reduce the price of provisions, was not a “Usurped Power” within the Exception.

For some American cases hereon, *V*, Bunyon on Fire Insurance, 4 ed., 51, 52.

*Cp*, CIVIL COMMOTION.

**USURY.** — “‘Usury,’ is a gaine of anything above the principall, or that which was lent, exacted only in consideration of the loane whether it bee Corne, Meat, Apparell, Warres, or such like, as Money” (Termes de la Ley, *whc* for remarks on 13 Eliz. c. 8).

The statutes against Usury were repealed by 17 & 18 V. c. 90, which gives a list of them. *Vh*, Bellot & Willis, on Unconscionable Bargains with Money Lenders.

*V*, ASSURANCE. *Vh*, 12 Encyc. 395–397.

**UTENSIL.** — “‘Utensil,’ anything necessary for our use and occupation: Household Stuffe” (Cowel).

“By a devise of all Utensils, it is agreed that plate and jewels do not pass” (Touch. 447, citing *Dame Latimer’s Case*, 1 Dyer, 59 b, pl. 15: *Va*, Wms. Exs. 1051). *Vf*, *Fitzgerald v. Field*, cited *IN OR ABOUT*.

Trade Fixtures (removable if belonging to the tenant, *Elwes v. Maw*, cited *FIXTURES*) demised with a Paper Mill and used in the manufacture of paper, were held not “Utensils” within s. 27, 34 G. 3, c. 20, whereby “the paper . . . and all the Materials and Utensils for the making thereof,” in the custody of a paper maker, became liable to the (abolished) Paper Duty (*A-G. v. Gibbs*, 3 Y. & J. 333).

**UTILITARIAN PURPOSES.** — A bequest to be applied to "Utilitarian Purposes," is void for uncertainty (*Re Woodgate*, 2 Times Rep. 674).

**UTILITY.** — "Utility," in Patent Law, does not mean either abstract utility, or comparative or competitive utility, or commercial utility. It was described by Grove, J., in *Young v. Rosenthal* (1 Pat. Ca. 29, 34), as meaning, an Invention 'better than the preceding knowledge of the trade as to a particular fabric.' I adopt this definition if 'better' be understood as meaning, better in some respects and not, necessarily, better in every respect; so that, *e.g.*, an article which is good though not so good as that previously known but which can be produced more cheaply by another process, is better in that it is better in point of Cost although not so good in point of Quality" (per Buckley, J., *Welsbach Co v. New Incandescent Co.* 1900, 1 Ch. 843; 69 L. J. Ch. 344; 82 L. T. 293; 48 W. R. 362; 17 Pat. Ca. 237).

V. GENERAL UTILITY.

**UTLAND.** — Tenemental land (Elph. 627, citing Spelm. *Inland*: Cowel).

**UTMOST.** — "Utmost Efforts" to obtain payment from Principal Debtor before resort to Surety; *V. Holl v. Hadley*, 4 L. J. K. B. 126; 4 N. & M. 515; 2 A. & E. 758.

"Utmost Endeavours to improve," in a covenant in a Lease; *V. Croft v. Lumley*, 25 L. J. Q. B. 73, 223; 27 Ib. 321; 6 H. L. Ca. 672.

"Utmost endeavours to continue the house open as a Public-House"; *V. Linder v. Pryor*, 8 C. & P. 518, stated Woodf. 713.

"Best endeavours to extend the custom and business" of a Public-House; *V. Moore v. Robinson*, 48 L. J. Q. B. 156, 158.

"Best endeavours" to complete works by a stated time; *V. Vickers v. Overend*, 7 H. & N. 92; 30 L. J. Ex. 388.

"Utmost endeavours" to obtain Renewal of a Lease; *V. Simpson v. Clayton*, 8 L. J. C. P. 59; 4 Bing. N. C. 758; 6 Sc. 469; 1 Arnold, 299.

**UTTER.** — To "utter" a False Document is to part with it, or tender it, or use it in some way, to get money or other benefit by means of it; and it is immaterial who is to have the money or get the benefit (*R. v. Shukard*, Russ. & Ry. 200; *R. v. Radford*, 1 Den. 59; *R. v. Ion*, 21 L. J. M. C. 166; 2 Den. 475). *Vf*, Arch. Cr. 679.

As to uttering Counterfeit, Base, or Foreign, Coin; *V.* 24 & 25 V. c. 99, ss. 9-16, 20-23, 30. The phrase in these sections is "tender, utter, or put off"; but though that seems to show that to "tender" was not to "utter," yet it was always determined that an allegation of "uttering and putting off" was satisfied by evidence of the tender of the coin



(*R. v. Welsh*, T. & M. 409; 2 Den. 78). In *R. v. Page* (8 C. & P. 122) Abinger, C. B., held that to give away counterfeit coin was not a criminal uttering; but that ruling was questioned in *R. v. Anon.* (1 Cox C. C. 250), in *which* the actual decision was that it was a criminal uttering for a man to give counterfeit coin to a woman as her payment for letting him have connexion with her. *Vf*, as to *R. v. Page*, *R. v. Ion*, 2 Den. 484.

V. COUNTERFEIT COIN.

*Vf*, Arch. Cr. 924.

UTTERLY VOID.—V. VOID.

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## VACANCY—VACATE

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**VACANCY.**—*V. CASUAL*: DEFAULT, at end.

Quà Church Patronage (Scot) Act, 1874, 37 & 38 V. c. 82, “ ‘Vacancy’ and ‘Vacant’ shall include and refer to the occasion of the appointment of an Assistant and Successor, as well as the occasion of an ordinary vacancy ” (s. 9).

**VACANT.**—*Bona Vacantia*, are GOODS which belong to the first occupier or finder, being those “in which no one else can claim a property” (1 Bl. Com. 298). *V. BONA*.

The site of old buildings recently pulled down (the rights attaching to which buildings are properly reserved), is not “Vacant Ground” as read into s. 75. Metrop Man. Act, 1862 (*Auckland v. Westminster Bd of Works*, 41 L. J. Ch. 723; 7 Ch. 597; *Vh*, *Barlow v. St. Mary Abbots*, 53 L. J. Ch. 899; 55 *Ib*. 680; 27 Ch. D. 362; 11 App. Ca. 257; 55 L. T. 221; 34 W. R. 521; 50 J. P. 691; *Gilbart v. Wandsworth Bd of Works*, 60 L. T. 149); *secus*. of a Forecourt or Back Garden not part of the actual site of the old buildings which have been pulled down when an intention is shown not to rebuild on their site (*London Co. Co. v. Pryor*, 1896, 1 Q. B. 465; 74 L. T. 234; 65 L. J. M. C. 89; 60 J. P. 292).

*V. EMPTY*: OCCUPATION.

As to what is “Vacant Possession” within R. 9, Ord. 9, R. S. C.; *V. Ann. Pr.*: Woodf. 848: Redman, 557: Fawcett, 524.

“Vacant Possession” to be given on COMPLETION, in a V. & P. Contract, means ACTUAL, or Physical, Possession, as distinguished from merely letting the purchaser into the receipt of the rents and profits: *V. POSSESSION*, p. 1514.

**VACARIA.**—“A void place, or waste ground” (Jacob).

*Cp*, VACCARIA.

**VACATE.**—A Building Socy’s STATUTORY Receipt will “vacate the Mortgage, or Further Charge, or Debt,” s. 43, 37 & 38 V. c. 42, *i.e.* it discharges the security so entirely that (in the absence of fraud, *V. Lloyd’s Bank v. Bullock*, 1896, 2 Ch. 192; 65 L. J. Ch. 680) the Socy cannot re-open the account, even though a good deal too little has been paid by its borrowing member (*Harvey v. Municipal Bg Socy*, 53 L. J. Ch. 1126; 26 Ch. D. 273; 32 W. R. 557; 51 L. T. 408; *London, &c, Bg*

*Socy v. Angell*, 65 L. J. Q. B. 194; *Sr, Farmer v. Smith*, 28 L. J. Ex. 226; 4 H. & N. 196; *Sparrow v. Farmer*, 28 L. J. Ch. 537; 26 Bea. 511).

**VACATING DIRECTORS.** — *V. DIRECTOR.*

Where the Articles of a Co provide that a Director vacates his office if he be ABSENT for a stated period, that does not include an involuntary absence, *e.g.* one caused by illness; the more reasonable construction is that the absence must be voluntary or deliberate (per Wright, J., *Re London & Northern Bank*, W. N. (1900) 114).

**VACATION.** — The statute 28 H. 8, c. 11, s. 3, which gives the profits of every BENEFICE, "during Vacation" to the next Incumbent, meets only "the case of a Living actually vacant, vacated either by death, by resignation, or by deprivation," and does not apply to a Living "voidable and perhaps actually void, yet not in fact vacant, the Rector still continuing in possession" (*Halton v. Cove*, 1 B. & Ad. 538).

"Time of Vacation," quâ the Courts, held to mean, such time as the Court is not sitting (*Walsh v. Grier*, Ir. Rep. 4 Eq. 303; *Blake v. Blake*, 8 Ib. 505). *Vh*, Ord. 63, R. S. C.

Quâ Cambridge University Act, 1856, 19 & 20 V. c. 88, " 'Vacation' shall be taken to include that part of Easter Term which falls after the division of term " (s. 50).

**VACCARIA.** — "By *vaccaria* in law is signified a dairy-house, derived of *vacca*, the cow. In Latin, it is *lactarium*, or *lactitium*; and *vaccarius* is mentioned in Domesday" (Co. Litt. 5 b). Also "a house to keep cows in" (Cowel).

*Cp*, VACARIA.

**VACCINATION.** — *V. REASONABLE EXCUSE.*

**VAGABOND.** — " 'Vagabonds' are idle and unprofitable men " (Termes de la Ley).

"The idea of leading a wandering and vagabond life, is not now at all an ingredient in the description of a ROGUE AND VAGABOND," within the Vagrancy Act, 1824, 5 G. 4, c. 83 (per Cleasby, B., *Monck v. Hilton*, 46 L. J. M. C. 168). It seems to have lost that meaning as long ago as the time of Richard 2 (*V. FAITOUR*); so Cowel says " 'Vagabond' is one that wandreth about, having no certain dwelling; Rogues, Vagabonds, and sturdy Beggars are all one "; they are all classed together in the definition clause, s. 5, 14 Eliz. c. 5.

**VAGUE.** — An Assignment or Contract is not "Vague" merely because it is indefinite, or uncertain, or very wide in its terms; "Vague," in this connection, means that which is incapable of being ascertained when the instrument comes to be enforced.

Language has been used with regard to Assignments of, and Contracts relating to, future property "which tends to confuse the idea of Vagueness in the contract itself, with that sort of necessary uncertainty which, at the time when the contract is made, is more or less involved in the idea of futurity. 'Vagueness' is a misleading term. A contract may be too vague *in itself* to be understood; and on that ground it is enforceable neither at law nor in equity. But in the case of a contract to assign future property when the money has been paid, if, when *at the time of the contract coming to be enforced*, the property has fallen into the possession of the assignor, and is of such a character and is sufficiently ascertained to admit of the contract being enforced in equity, there is no necessary Vagueness" (per Bowen, L. J., *Re Clarke, Coombe v. Carter*, 56 L. J. Ch. 984; 36 Ch. D. 348: *Tf. Tailby v. Official Receiver*, 58 L. J. Q. B. 75; 13 App. Ca. 523, espy jdgmt of Ld Herschell: *Re Kelcey*, cited ALL, p. 69).

V. UNCERTAIN.

VALID. — V. VOID.

If a statute makes a document "valid and BINDING," it is valid and binding in all its parts and no objection can be taken to it on the ground of remoteness or uncertainty (*Manchester Ship Canal Co v. Manchester Racecourse Co*, 1900, 2 Ch. 352). Cp, OBLIGATORY.

VALID CONTRACT. — As to what is a Valid Contract for the Sale of Realty so as to effect a CONVERSION; V. per Jessel, M. R., *Lysaght v. Edwards*, 45 L. J. Ch. 559; 2 Ch. D. 507.

VALIDITY. — V. REGULARITY.

V. & P. Summons on a matter "not being a question affecting the Existence or Validity of the Contract," s. 9, V. & P. Act, 1874; V. *Re Jackson and Woodburn*, 57 L. J. Ch. 243; 37 Ch. D. 44; 57 L. T. 753; 36 W. R. 396: *Re Wallis and Barnard*, 68 L. J. Ch. 753; 1899, 2 Ch. 515; 81 L. T. 382; 48 W. R. 57: *Re Hughes and Ashley*, cited WAYS.

VALUABLE. — A "Valuable CONSIDERATION" may be money or money's worth; and in this connection, "Valuable" means real, as distinguished from a consideration that is merely illusory or nominal; but it does not mean equivalent. A Debt not yet payable may be a Valuable Consideration (*Davies v. Bolton*, 1894, 3 Ch. 678; 63 L. J. Ch. 743; 71 L. T. 336; 43 W. R. 171). Marriage generally is a Valuable Consideration for a Settlement; but not necessarily so if contracted with the settlor's concubine, nor, indeed, in any case where there is evidence of an intent, of which the wife is cognisant, to make the celebration of marriage part of a scheme to protect property against creditors (*Colombine v. Penhull*, 1 Sm. & G. 228: *Bulmer v. Hunter*, 38 L. J. Ch. 543; L. R. 8 Eq. 46: *Re Pennington*, 5 Morr. 216).

As to what is a "Valuable Consideration," within s. 47 (1). Bankry Act, 1883; *V. Re Tetley*, 66 L. J. Q. B. 111; 75 L. T. 166; 3 Manson, 226, 321: *Vh*, VOID.

As to what is a "Valuable Consideration," within 13 Eliz. c. 5, 27 Eliz. c. 4; *V. Good: Bayspoole v. Collins*, 6 Ch. 228; 40 L. J. Ch. 289; 25 L. T. 282; 19 W. R. 363: May on Fraudulent Conveyances, Part 4, ch. 1.

"Good or Valuable Consideration given"; *V. CONTRACT*, p. 391: GOOD.

Marriage is not a "Valuable Consideration in money or money's worth" within s. 17, Suen Dy Act, 1853 (*Floyer v. Bankes*, 3 D. G. J. & S. 306; 33 L. J. Ch. 1). *Vf*, MONEY'S WORTH: PECUNIARY CONSIDERATION.

A Conveyance for a "Valuable Consideration actually PAID," s. 2, Charitable Uses Act, 1735, 9 G. 2. c. 36, connotes that "the consideration must be paid by the person for whose benefit the conveyance is made" (*Doe d. Preece v. Howells*, 2 B. & Ad. 744).

*Quà Bills of Exchange Act*, 1882,

"(1) Valuable Consideration for a Bill, may be constituted by —

"(a) Any consideration sufficient to support a simple contract;

"(b) An antecedent debt or liability. Such a debt or liability is deemed Valuable Consideration whether the Bill is payable on demand, or at a future time.

"(2) Where value has at any time been given for a Bill, the holder is deemed to be a holder for value as regards the Acceptor and all parties to the Bill who became parties prior to such time.

"(3) Where the holder of a Bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien" (s. 27); so, of a Promissory Note (s. 89, *Ib.*).

*V. BONÂ FIDE: GOOD: FURTHER: FULL CONSIDERATION: FRAUDULENT ASSURANCE.*

"Valuable" *Property*, effect of the phrase in Particulars of Sale; *V. Waddell v. Woolfe*, 43 L. J. Q. B. 138; L. R. 9 Q. B. 515.

*Rights or Interests* "subsisting and valuable"; *V. RIGHTS.*

"Valuable SECURITY," *quà* Larceny Act, 1861, 24 & 25 V. c. 96, includes, "any Order, Exchequer Acquittance, or other Security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any Public Stock or Fund (whether of the United Kingdom or of Great Britain or of Ireland or of any Foreign State). or in any Fund of any Body Corporate, Company. or Society (whether within the United Kingdom or in any Foreign State or Country), or to any Deposit in any Bank; and shall also include. any Debenture, Deed, Bond, Bill, Note, Warrant, Order. or other Security whatsoever, for money or for payment of money (whether of the United Kingdom, or of Great Britain or of Ireland, or of any Foreign State), and any Document

of Title to Lands or Goods as hereinbefore defined" (s. 1). As so defined, a "Valuable Security" "is one on which money is payable irrespective of any contingency" (per Cockburn, C. J., *R. v. Tatlock*, 46 L. J. M. C. 11; 2 Q. B. D. 163), and accordingly he, and Kelly, C. B., there held that a Policy of Insurance was not a "Valuable Security" within s. 75; but the converse was held by Amphlett & Bramwell, BB. (46 L. J. M. C. 12, 14; 2 Q. B. D. 166, 169). A Certificate for Shares in a Foreign Railway is such a "Valuable Security" (*R. v. Smith*, Dears. 561); but an Unstamped Cheque, the payment of which for want of the stamp would render the banker liable to a penalty, is not a "Valuable Security" (*R. v. Yates*, 1 Moody, 170). *Vh*, *R. v. Danger*, 5 W. R. 738; 29 L. T. O. S. 268; 7 Cox C. C. 303. As to describing this "Valuable Security" in an Indictment, *V. R. v. Lowrie*, 36 L. J. M. C. 24; L. R. 1 C. C. R. 61.

A Judgment recovered by a pauper, is a "Valuable Security" within s. 16, Poor Law Amendment Act, 1849, 12 & 13 V. c. 103 (*West Ham v. Owens*, 42 L. J. M. C. 29; L. R. 8 Ex. 37).

The definition of "Valuable Security" in the Post Office (Offences) Act, 1837 (s. 47, 1 V. c. 36), is nearly the same as that given in the Larceny Act, sup.

It has been stated that a Railway Ticket is a "Valuable Security" (Maxwell, 344, citing *R. v. Boulton*, 1 Den. 508; 19 L. J. M. C. 67; *R. v. Beecham*, 5 Cox C. C. 181).

#### V. SECURITY: SECURITY FOR MONEY.

"Valuable THING" deposited on a Gaming Contract; *V. DEPOSIT*.

"Other Valuable THINGS." in a Bequest, construed *ejusdem generis* (*Cavendish v. Cavendish*, 1 Cox Ch. 77); so of "Things" (*Stuart v. Bute*, 1 Dow. 73).

**VALUATION.**— "An ARBITRATION is a proceeding conducted according to judicial rules, and the arbitrator hears the parties and their evidence. A Valuation is a proceeding in which a person specially skilled in the subject-matter decides solely by the use of his eyes and his knowledge" (per Esher, M. R., *Re Dawdy and Hartcup*, 54 L. J. Q. B. 575; 15 Q. B. D. 426).

"Valuation"; Stat. Def., Prisons (Scot) Act, 1877, 40 & 41 V. c. 53, s. 71.

"Valuation, imperfect or erroneous"; *V. IMPERFECT*.

#### F. APPRAISEMENT: FAIR VALUATION: PRICE: TRAMWAY.

The valuation of a Life Interest brought into HOTCHPOT, should be an actuarial valuation of it at the time when it first took effect (*Re Heathcote*, W. N. (91) 10).

"Valuation List"; *V.* 25 & 26 V. c. 103, s. 14; 27 & 28 V. c. 39; Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67, s. 6 *et seq*; 59 & 60 V. c. 16, s. 9.

Quà Rating Act, 1874, 37 & 38 V. c. 54, " 'Valuation List,' means, as regards any parish or place for which there is no valuation list, the Poor Rate " (s. 15).

"Valuation Roll"; V. Lands Valuation (Scot) Act, 1854, 17 & 18 V. c. 91, s. 1 *et seq*; 20 & 21 V. c. 58; 23 & 24 V. c. 79, s. 2; 24 & 25 V. c. 83, s. 2; 25 & 26 V. c. 97, s. 2.

**VALUE.**—V. ANNUAL VALUE: CLEAR: FULL VALUE: FREE LAND: GROSS: INVOICE VALUE: MARKET VALUE: MONEY VALUE: NET: PRICE: PRINCIPAL VALUE: PURCHASE FOR VALUE: SHIPPING VALUE: SIMILAR: WORTH.

The "ACTUAL Value" of a Railway, taxable under s. 326, Quebec Towns Corporation General Clauses Act, 1876, 44 V. c. 60 (incorporated by s. 98, Quebec Act, 44 V. c. 62), is only that of the land occupied by the road (*St. John v. Central Vermont Ry*, 59 L. J. P. C. 15; 14 App. Ca. 590).

In covenants to settle *After-acquired Property*, "Where the property to be settled is to be of a named Minimum Value, and the interest accruing is reversionary, the sum named means, the value of the property itself when it falls into possession, not the value of the reversion at the time of settlement" (Elph. 526, citing *Re Mackenzie*, 2 Ch. 345; 36 L. J. Ch. 320; *Cornwell v. Keith*, 3 Ch. D. 767; 45 L. J. Ch. 689; *Re Clinton*, L. R. 13 Eq. 295; 41 L. J. Ch. 191; and *Re Wilstead*, 47 L. T. 331). *Vf*, ONE TIME.

Quà *Bills of Exchange Act*, 1882, " 'Value,' means VALUABLE Consideration" (s. 2), on *who*, *Nash v. De Freville*, 1900, 2 Q. B. 72; 69 L. J. Q. B. 484; 48 W. R. 434; 82 L. T. 642. "Value received," in a Bill of Ex.; *V. Grant v. Da Costa*, 3 M. & S. 351; *Highmore v. Primrose*, 5 M. & S. 65; *Priddy v. Hembrey*, 1 B. & C. 674; in a Promissory Note, "Value received," means, received from the Payee (*Clayton v. Gosling*, 5 B. & C. 360).

The "Value" of a parcel of *Gold* is not sufficiently declared within s. 503, Mer Shipping Act, 1854, repld s. 502, Mer Shipping Act, 1894, by declaring it as so much "Gold Dust" (*Williams v. African S. S. Co.* 1 H. & N. 300).

"Value" of *Qualifying Property*, quà an Objection to or Claim for a Parliamentary Vote, means, "amount of rental" (s. 17. 28 & 29 V. c. 36).

The "Value" of a SECURITY, in a Proof of Debt (R. 10. Sch 1. Bankry Act, 1883; R. 8, Sch 1. Comp Winding-up Act, 1890). means, "a Positive Value; a sum upon payment of which the Trustee can redeem the security" (per Collins, L. J., *Re Piers*, cited INADVERTENCE).

"Value" of a SHIP, s. 504, Mer Shipping Act, 1854. meant, what she would have fetched if sold immediately before the collision, without deducting costs of sale (*Leycester v. Logan*, 4 K. & J. 725; 6 W. R.

849: *Vh, Grainger v. Martin*, 2 B. & S. 456). *Note*: this limitation of a shipowner's liability is now regulated by the Ship's Tonnage (s. 503. Mer Shipping Act, 1894).

V. VALUE OF THE SHIP AND FREIGHT.

"Value of *Straw* sold off to be returned in Manure"; *V. Lowndes v Fountaine*, 11 Ex. 487; 25 L. J. Ex. 49; 4 W. R. 152; 26 L. T. O. S. 151.

The "Value" of a SUCCESSION for the purpose of charging duty thereon under s. 10, Sucn Dy Act, 1853, is to be made by capitalizing its "ANNUAL VALUE" (s. 21, *Ib.*). This annual value "must be determined, once for all, when the succession falls, and cannot be left for future ascertainment" (per Ld Chelmsford, *A-G. v. Sefton*, 34 L. J. Ex. 106), and it means the present actual annual value regardless of a (possible or probable, remote or near) prospective increase or decrease (*A-G. v. Sefton*, 34 L. J. Ex. 98; 11 H. L. Ca. 257; 2 H. & C. 362). But where property, *e.g.* unoccupied land, is not in its existing state yielding or capable of yielding any annual income, but yet is saleable, such property would (probably) be chargeable with Succession Duty; and its annual value would (probably) be a value equal to interest at £3 per cent, on the sum that might be realized if the property were, at once, sold (per Westbury, C. and Ld Chelmsford, *S. C.*; but Ld Wensleydale thought it unnecessary for that case to give any opinion on the point).

Jurisdiction to the County Court where "Value of the *Tenements*" did not "exceed £20 by the year," s. 11, 30 & 31 V. c. 142, meant, the actual marketable value, of which the lettable rent is a fair criterion (*Elstone v. Rose*, L. R. 4 Q. B. 4; 38 L. J. Q. B. 6; 9 B. & S. 509: *Va, Stolworthy v. Powell* and *Bassano v. Bradley*, cited ANNUAL VALUE, pp. 88, 89). *Cp.* QUESTION.

Value of Tramway, &c; V. TRAMWAY.

"Assignee for Value"; V. ASSIGNEE.

Majority "In Value" of Creditors; V. IN VALUE.

**VALUE OF THE SHIP AND FREIGHT.**— "Whatever is on board a ship for the object of the voyage and adventure on which she is engaged, belonging to the owners, constitutes a part of the ship and her appurtenances, within the meaning of 53 G. 3, c. 159, s. 1, whether the object be warfare, the conveyance of passengers or goods, or the fishery" (per Abbott, C. J., *Gale v. Laurie*, 5 B. & C. 164: *Vf, Wilson v. Dickson*, 2 B. & Ald. 2: *Cannan v. Meaburn*, 1 Bing. 465: *Smith v. Kirby*, 1 Q. B. D. 131: *Maude & P. 79, n. h.*)

V. FREIGHT: VALUE.

**VALUE RECEIVED.**—V. VALUE.

**VALUE UNKNOWN.**—V. CONTENTS UNKNOWN.



**VALUED.** — *V.* HEREAFTER VALUED AND DECLARED.

Valued Policy; *V.* POLICY.

“Valued Rent”; Stat. Def., 31 & 32 V. c. 96, s. 1.

“Valued Rent Heritor,” “Real Rent Heritor”; Stat. Def., 63 & 64 V. c. 20, s. 4.

**VALUER.** — *V.* SURVEYOR: *Vf, Re Somerset*, cited BREACH OF TRUST.

Quà Copyhold Act, 1894, 57 & 58 V. c. 46, “‘Valuer,’ includes an UMPIRE” (s. 94).

As to Negligence by a Valuer; *V. Scholes v. Brook*, 63 L. T. 837; 64 lb. 674.

**VAPOUR.** — For the conventional chemical distinction between “Vapour” and “Gas,” *V. Stanley v. Western Insrce*, 37 L. J. Ex. 74.

**VARECTUM.** — *V.* WARECTUM.

**VARIANCE.** — “‘Variance’ signifies an alteration or change of condition after a thing done. It is also used for an alteration of something formerly laid in a Plea” (Cowel). *Cp.* ALTERATION: DEPARTURE.

“No objection shall be taken or allowed to any Information, Complaint, or Summons, . . . for any variance between such Information, Complaint, or Summons, and the Evidence” in support of it, s. 1, Sum Jur Act, 1848, 11 & 12 V. c. 43; “The word ‘Variance’ points at some difference between the allegation in the Summons or Information, and the Evidence adduced in support of it” (per Crompton, J., *Martin v. Pridgeon*, 28 L. J. M. C. 179; 1 E. & E. 778); accordingly, it was there held that when the evidence shows a different offence than that alleged in the Summons, the justices cannot convict; such a difference is not a “Variance” (*Va, Soden v. Cray*, 7 L. T. 324; nom. *Loadman v. Crugg*, 26 J. P. 743). A “Variance” would be, *v.g.* a misdescription, not misleading, of an employer (*Whittle v. Frankland*, 26 J. P. 372), or of an ownership (*Ralph v. Hurrell*, 44 L. J. M. C. 145), or of a date (*Excter v. Heaman*, 37 L. T. 535). *Vf, Rodgers v. Richards*, cited SUBSTANCE.

“At Variance,” s. 25 (9), Jud. Act, 1873; *V. The Bernina*, 55 L. J. P. D. & A. 21; 11 P. D. 33; 34 W. R. 595.

**VARIATION.** — Variation of “Property settled,” s. 5, Matrimonial Causes Act, 1859, 22 & 23 V. c. 61; *V.* PROPERTY, p. 1585.

*V.* VARY.

**VARIED.** — *V.* EXPRESSLY VARIED.

**VARY.** — The power to “vary” Investments given by the concluding words of s. 3, Trust Investment Act, 1889, repld s. 1, Trustee Act, 1893,

extends to all investments whether made under the Act or not (*Hume v. Lopes*, cited TRUST FUNDS).

“Rate of Interest varying with Profits”; *V. RATE*.

**VASSAL.**—In feudal times, the grantor of lands “was called the proprietor, or *lord*; being he who retained the dominion or ultimate property of the feud or fee: and the grantee, who had only the use and possession according to the terms of the grant, was stiled the feudatory or *vasal*, which was only another name for the TENANT or holder of the lands” (2 Bl. Com. 53). *V. VILLEIN*.

Stat. Def., *Scot.* 31 & 32 V. c. 101, s. 3. *Cp.*, SUPERIOR.

**VEGETABLE PRODUCTION.**—*V. R. v. Hodges*, Moo. & M. 341: PRODUCT.

**VEHICLE.**—Generally, “Vehicle” is synonymous with CARRIAGE; it includes a Bicycle (*Ellis v. Nott-Bower*, 13 Times Rep. 35). *Vf.* COACH.

In the exception from License Duty given by s. 19 (6), Revenue Act, 1869, 32 & 33 V. c. 14, for a trade “Waggon, Cart, or other Vehicle,” the word “Vehicle” means such a cart as that which a tradesman uses for sending his goods from place to place (*Speak v. Powell*, cited TRADE). *V. CARRIAGE*.

Quà Weights and Measures Acts, 1878 and 1889, “‘Vehicle,’ means, any carriage, cart, waggon, truck, barrow, or other means of carrying coal by land, in whatever manner the same may be drawn or propelled; but does not include a railway truck or waggon” (s. 35, 52 & 53 V. c. 21).

*V. CART*.

**VEIN or SEAM.**—“‘Vein’ is defined in Webster’s Dictionary as ‘A Seam or Layer of any substance, more or less wide, intersecting a rock or stratum, and not corresponding with the stratification; often limited in the language of miners to such a layer or course of metal or ore’; and in Richardson’s Dictionary as ‘Lineal Tubes which convey the blood in animals; Lineal Streaks in mineral or vegetable bodies.’ The Encyclopædia Britannica thus describes ‘Veins’; ‘These are Fissures or Cracks in the rocks . . . which are filled . . . with materials of quite a different nature from the rocks in which the fissures occur.’ ‘Seam’ is defined in Webster’s Dictionary as ‘a thin Layer or Stratum; a narrow vein between two thicker ones, as a Seam of Coal.’ ‘Vein’ and ‘Seam’ appear, accordingly, to be convertible expressions” (MacS. 1, 2). And a little further on the learned author in contrasting “Mine” and “Vein or Seam” says. “‘Mine’ appears, in its primary sense, to imply openness; and ‘Vein or Seam’ appears, in its primary sense, to exclude that notion.” *Vf.* Ib. 11.

*V. MINE: IRON: PITS AND VEINS.*

**VENARY.** — “Beasts of Chase, or Venary” (2 Bl. Com. 415); *V.* BEASTS.

**VEND.** — “I think the proper meaning to be attached to the word ‘Vend,’ is, the habit of selling” (per Coleridge, J., *Minter v. Williams*, 5 L. J. K. B. 60, 62; 4 A. & E. 251, on *wher*, per Alverstone, C. J., and Williams, L. J., *British Motor Syndicate v. Taylor*, cited USE, p. 2149).

“In order that a sale may be an Infringement of a Patent, some material part of the transaction of sale must be done in England” (per Stirling, J., *British Motor Syndicate v. Taylor*, sup, citing *Badische Anilin und Soda Fabrik v. Basle Works*, cited USE, p. 2149).

*V.* SALE: SELL.

**VENDOR.** — In a contract of sale for “the Vendor,” the Vendor is not sufficiently described; *V.* PROPRIETOR.

*Prima facie*, “Lessor or Lessee” is not included in “Vendor or Purchaser”; but as that latter phrase is used at the commencement of s. 9, V. & P. Act, 1874, it includes Lessor or Lessee, because of the relation of the section to s. 2, *Ib.*, the first rule of which applies to Leases (*Re Stephenson and Cox*, 36 S. J. 287; *Vh, Re Anderton and Milner*, 45 Ch. D. 476; 59 L. J. Ch. 765; 63 L. T. 332; 39 W. R. 44; *Jones v. Watts*, cited SALE).

Vendor’s Lien; *V.* LIEN, at end: UNPAID SELLER. Quà Factors (Scot) Act, 1890, 53 & 54 V. c. 40, “‘Vendor’s Lien,’ shall mean and include, any right of retention competent to the original owner or vendor” (s. 1).

**VENEREAL.** — *V.* CONTAGIOUS.

**VENIAL.** — “*De peche est briefe division, car est mortal ou venial solonque coo que appiert es paines.* And that crime is called mortall or corporall: mortall because it deserveth death; and such crimes are called veniall as may be redeemed or satisfied by some other punishment than by death” (Co. Litt. 287 b).

*V.* CRIME. *Cp.*, TRIFLING.

**VENISON.** — *V.* VENARY.

**VENTILATING.** — “Ventilating District”; *V.* DISTRICT.

**VENTILATION.** — “Ventilation,” in clause 13. Privy Council Order, 1885, made under s. 34 (ii), 41 & 42 V. c. 74, includes Air-space; therefore, a Local Authority Regulation defining the air-space for each cow in a cowshed is valid (*Baker v. Williams*, 1898, 1 Q. B. 23; 66 L. J. Q. B. 880; 77 L. T. 495; 46 W. R. 64; 62 J. P. 21).

Ventilation of Factories and Workshops; *V.* s. 7. Factory and Workshop Act, 1901.

*V.* ADEQUATE.

**VENTRE.** — Child *en ventre*; *V.* LIVING: BORN: 5 Encyc. 33.

**VENUE.** — “ ‘Venew’ or ‘Visne.’ is a terme used in the statute of 35 H. 8, c. 6, and often in our bookes, and signifies a place next to that where any thing that comes to be tryed is supposed to be done. And therefore for the better discovery of the truth of the matter in fact upon every tryall, some of the Jury must be of the same Hundred, or sometimes of the same parish in which the thing is supposed to be done, who by intendment may have the best knowledge of the matter. See Coke, 6 Book, 14 a, *Arundel’s Case*” (Termes de la Ley: *Note*: the last sentence is curious as throwing light on the original function of the Jury; but the Venue is now often changed to the locality in which the matter has arisen, not because the Jury may have “the best knowledge” of it, but because each locality should bear its own burdens and because the locality of the subject-matter is the place where the witnesses frequently reside).

*Vh*, R. 1, Ord. 36. R. S. C. and notes thereon Ann. Pr.

As to Venue in Criminal Matters, *V.* Arch. Cr. 33: Rosc. Cr. 217: 12 Encyc. 450, 451.

**VERBAL.** — *V.* PAROL.

**VERDEROR.** — “ ‘Verderor, *Vindarius*,’ is a judicial Officer of the Kings Forest . . . sworn to maintain and keep the Assises of the Forest, and to view receive and enrol the Attachments and Presentments of all manner of Trespasses of Vert and Venison in the Forest, *Manwood*” (Cowel: *Vj*; Termes de la Ley: 3 Bl. Com. 71).

**VERDICT.** — “ ‘*Verdict of 12 men.*’ *Verdictum quasi dictum veritatis*, as *judicium est quasi juris dictum.* *Et sicut ad questionem juris, non respondent juratores sed judices: sic ad questionem facti non respondent judices sed juratores.* For jurors are to try the fact, and the judges ought to judge according to the law that riseth upon the fact, for *ex facto jus oritur*” (Co. Litt. 226 a, b). *V.* JURY.

A Verdict is (1) General, or (2) Special; *General*, when, in Criminal cases, the jury say “Guilty” or “Not Guilty,” or when, in Civil cases, they find generally for the Plaintiff or for the Defendant; *Special*, when the jury find specific facts (as distinguished from the evidence proving such facts), the Court entering the judgment according to law on the facts as so found. *Vh*, Cowel: Jacob: 3 Bl. Com. 377, 378; 4 Ib. 360, 361: 12 Encyc. 452-454.

As to whether “Verdict,” in s. 12, 13 & 14 V. c. 61, is limited to a verdict upon an issue joined; *V.* *Reed v. Shrubsole*, 18 L. J. C. P. 225: *Prew v. Squire*, cited DEFAULT, p. 489.

Where an Agreement for Arbitration of matters involving several items of claim, says that the Award shall be for a sum certain for the claimant

or that it shall be for the respondent, and that it shall be entered as a Verdict, and that the Costs shall "follow the Verdict"; if the award be for the claimant he is entitled to the whole costs although the sum awarded to him be but little more than one fourth of his claim; and the arbitrator cannot be questioned as to which items of claim he allowed and which he disallowed (*O'Rourke v. Commissioner for Railways*, 59 L. J. P. C. 72; 15 App. Ca. 371). *V. EVENT.*

*V. PERVERSE.*

**VERGER.** — "Vergers, *Virgatores*," Are such as carry white wands before the Justices of either Bench, *Fleta*, lib. 2, c. 38. Otherwise called *Portatores Virgæ*" (Cowel).

**VERMIN.** — Rabbits are Vermin in Australia (Vermin Destruction (Victoria) Act, 1890, on *whv*, *King v. Cheyue*, cited SPECIAL, p. 1909); *secus*, as "Vermin" is used in s. 7 (4), Gun License Act, 1870, 33 & 34 V. c. 57 (*Lord Advocate v. Young*, W. N. (99) 190; 25 Rettle, 778; disapproving *Gosling v. Brown*, 5 Rettle, 755). *V. GAME*, p. 795.

**VERT.** — "Whatsoever beareth green leaf, but specially of great and thick coverts" (4 Inst. 317, *whv* for the different kinds of Vert: *Va*, *Termes de la Ley*: Cowel: Elph. 627).

**VERTICAL.** — "Vertical Deviation"; *V. LATERAL.*

**VERTU.** — A bequest of "Objects of Vertu and Taste" (or "Vertu or Taste") will not, *proprio vigore*, comprise PICTURES; especially when those words follow an enumeration such as gold and silver plate, china, &c, and where, in the same Will, there is another gift of "Furniture," a word under which Pictures are aptly included (*Re Londesborough*, 50 L. J. Ch. 9; 43 L. T. 408).

**VESEY-FITZGERALD'S ACT.** — *V. FITZGERALD.*

**VESSEL.** — "Vessel" does not include everything that floats; *e.g.* it does not include a Raft or a WHERRY (*Gapp v. Bond*, 19 Q. B. D. 200; 56 L. J. Q. B. 438; 57 L. T. 437; 35 W. R. 683; 3 Times Rep. 621); but, in a Marine Insrce against Collision, the word may include an Anchor to which a Vessel is fast, for the anchor is a portion of the vessel to which it belongs (*Re Margetts and Ocean Accident Guarantee Corp.*, 1901, 2 K. B. 792; 70 L. J. K. B. 762).

An open Boat 18 feet long; held, within an Act making it penal to set on fire a "Ship or Vessel" (*R. v. Bouryer*, 4 C. & P. 559).

Qua Swansea Harbour Acts, 1854, 1874, "Vessel" "bound from or to any port or place in the United Kingdom," includes a Barge (*Tennant v. Swansea Harbour Trustees*, 3 Times Rep. 128).

A Dumb Barge is a "Vessel" within the exception in s. 4, Bills of Sale Act, 1878, and its assignment does not require registration as a Bill of S. (*Gapp v. Bond*, sup).

"Lighter, Vessel, Barge, or other Craft"; *V. Blandford v. Morrison*, cited CRAFT.

Quà Mer Shipping Act, 1894, " 'Vessel,' includes, any SHIP, or BOAT, or any other description of Vessel, USED in NAVIGATION " (s. 742); *Vf*, s. 532, as to Part 9 of the Act.

Quà Harbours, Docks, and Piers, Clauses Act, 1847, 10 & 11 V. c. 27, "Vessel." includes, "Ship, Boat, Lighter, and Craft of every kind, and whether navigated by steam or otherwise " (s. 3). That def, uncontrolled, includes a Barge propelled by oars only; *secus*, when it is qualified as it is in ss. 100, 101, London & St. Katherine's Docks Company Act, 1864, 27 & 28 V. c. clxxviii (*Hedges v. London Docks Co*, 55 L. J. M. C. 46; 16 Q. B. D. 597; 54 L. T. 427; 34 W. R. 503; 50 J. P. 580; 2 Times Rep. 167).

Quà Fisheries (Ir) Acts, "Vessel." means and includes, "any Ship, Boat, Cot, Coble, or Curragh " (s. 1, 13 & 14 V. c. 88).

Quà Post Office (Offences) Act, 1837, 1 V. c. 36, "Vessel," includes, "any Ship or other Vessel not a Post Office Packet " (s. 47).  
V. PACKER.

Quà Submarine Telegraph Act, 1885, 48 & 49 V. c. 49, " 'Vessel,' means, every description of vessel used in NAVIGATION, in whatever way it is propelled; and any reference to a Vessel shall include a reference to a boat belonging to such vessel " (s. 12).

"Vessel " has also received statutory definition in and for the following Acts;—

Dockyard Ports Regulation Act, 1865, 28 & 29 V. c. 125; *V*. s. 2:

Isle of Man Harbours Act, 1883, 46 & 47 V. c. 9; *V*. s. 8:

Kidnapping Act, 1872, 35 & 36 V. c. 19; *V*. s. 2:

North Sea Fisheries Act, 1893, 56 & 57 V. c. 17; *V*. s. 9:

P. H. London Act, 1891; *V*. s. 141:

Sea Fisheries Regulation Act, 1888, 51 & 52 V. c. 54; *V*. s. 14:

Slave Trade Acts. 36 & 37 V. c. 59, c. 88; *V*. s. 2:

Thames Conservancy Act, 1894; *V*. s. 3.

"Vessel of a FOREIGN State," quà Slave Trade Acts, "means, a Vessel which is justly entitled to claim the protection of the flag of a foreign state, or which would be so entitled if she did not lose such protection by being engaged in the Slave Trade " (s. 2, 36 & 37 V. c. 88).

"Vessel or Property to which the Cause relates." s. 21 (1), Co. Co. Admiralty Jurisdiction Act, 1868, 31 & 32 V. c. 71, means, the *plaintiff's* vessel or property (*The County of Durham*, 1891, P. 1; 60 L. J. P. D. & A. 5; 39 W. R. 303; 64 L. T. 146); and so, in some cases, of "the Owner of the Vessel or Property to which the cause relates " in subs. 2 of the same section (*Pugsley v. Hopkins*, 1892, 2 Q. B. 184; 61 L. J. Q. B.

645; 40 W. R. 596). But in a COLLISION case, the latter phrase means the defendant (*The City of Agra*, 1898, P. 198; 67 L. J. P. D. & A. 81; 79 L. T. 307: *V. AGENT*).

*V. CHARGE OR CONDUCT: FISHERMAN: SAILING VESSEL: SHIP: SHIPS AND VESSELS: STEAM VESSEL: STEAMSHIP.*

**VEST.** — “To ‘vest,’ generally means, to give the property in” (per Brett, L. J., *Coverdale v. Charlton*, 48 L. J. Q. B. 132). “It may be useful to refer to the history of the word ‘vest,’ as it is a word which has acquired a definite meaning, carrying with it definite legal consequences. The word ‘vest’ is found in the Lands C. C. Act, 1845, where it is said, in s. 81, that conveyances ‘shall be effectual to *vest* the lands thereby conveyed in the promoters of the Company’; and there is a proviso to the same effect in s. 100. So the Trustee Act, 1850, 13 & 14 V. c. 60, s. 3 provides that the Chancellor may in certain cases make an Order that ‘such lands be *vested* in’ certain persons. Then again in the Bankry Act, 1869, it is enacted, by s. 17, that ‘on the appointment of a trustee, the property shall forthwith pass to, and *vest* in, the trustee appointed.’ So that it is clear that there is an established meaning in which the word ‘vest’ is employed. I now turn to the P. H. Act, 1875, ss. 12, 13: both contain the word ‘vest,’ and by the operation of those sections, the sewers become vested in the local board. Then, by s. 149, the streets ‘vest in’ the same authority; and that means, I think, that the street must, as a matter of property, pass to the local board. — that is, the SURFACE of the street passes and some property in the soil is vested in the local board for the purposes for which the soil of the street is required by those who have to manage the street” (per Cotton, L. J., *Ib.* 134): that is, the land forming the street does not vest down to the centre of the earth (per Bramwell, L. J., *Ib.* 130) nor *usque ad eorum*; but so much *Depth* passes to the local board as is required for the ordinary purposes of the street, including what may be required for water-pipes, gas mains, and the sewer systems (per Brett, L. J., *Ib.* 133; *S. C.* 4 Q. B. D. 104; 40 L. T. 88; 43 J. P. 268: *Va. Hinde v. Chorlton*, 36 L. J. C. P. 79; L. R. 2 C. P. 104: *Rolls v. St. George, Southwark*, 14 Ch. D. 785), and so much *Height* over the street as is required for the preservation of its ordinary user (*Wandsworth v. United Telephone Co.*, 53 L. J. Q. B. 449; 13 Q. B. D. 904; 51 L. T. 148; 32 W. R. 776: *Fareham v. Smith*, 7 Times Rep. 443; W. N. (91) 76: AREA): *Vf. Finchley Electric Co v. Finchley*, 1902, 1 Ch. 866; 1903, 1 Ch. 437; 71 L. J. Ch. 450; 72 *Ib.* 297.

A power to a Local Authority to ERECT conveniences IN a “Street or Public Place,” does not sanction the construction of such conveniences below its surface (*Tunbridge Wells v. Baird*, cited PUBLIC PLACE: *wher* for disapproval by Ld Herschell of some of the dicta in *Coverdale v. Charlton*, *sup.*).

*Vj, St. Mary, Battersea v. County of London Electric Lighting Co*, 1899, 1 Ch. 474; 68 L. J. Ch. 238; 80 L. T. 31; 63 J. P. 84; *Gibbaltar Commrs v. Orjila*, cited CONTROL; *Salt Union v. Harvey*, cited STREET, p. 1948.

Streets, Sewers, &c. which "vest" in a Local Authority quâ duties to be performed, cease to be so vested when the duties are transferred to another body (*Eastbourne v. Bradford*, 1896, 2 Q. B. 205; 65 L. J. Q. B. 571; 74 L. T. 762; 45 W. R. 31; 60 J. P. 501).

"Property of and in lands," &c, "vested in the Commrs of Sewers within or under whose view, cognizance, or management, such lands," &c, shall be, s. 47, Sewers Act, 1833, 3 & 4 W. 4, c. 22; *V. Stracey v. Nelson*, 13 L. J. Ex. 97; 12 M. & W. 535; *Crossman v. Bristol & S. W. Ry*, 1 H. & M. 531; 11 W. R. 981.

The herbage on Roadside Wastes does not "vest" in a County Council by s. 11 (6) Loc Gov Act, 1888 (*Curtis v. Kesteven Co. Co.*, cited ROADSIDE WASTE).

Property of an Industrial Society "shall vest" in the Society on registration, s. 6, 25 & 26 V. c. 87; *V. Queenshead, or Queensbury Industrial Socy v. Pickles*, 35 L. J. Ex. 1; 3 H. & C. 857; L. R. 1 Ex. 1.

In the language of Conveyancers, "the word 'to Vest' has several senses which it is important to distinguish:—

"I. Originally the word had reference only to REAL ESTATE. As applied to estates in land, 'to Vest' signifies the acquisition of a portion of the actual ownership or feudal possession of the land; the acquisition, not of an estate *in possession*, but of an actual estate. The fee simple being supposed to be carved out into parts or divisions by the creation of particular estates, a grant to any person of one of these portions of the fee vested him with, or vested in him, an estate in the land. Thus 'Vested' is nearly equivalent to 'Possessed.'

"In this, its original sense, 'Vested' has no reference to the absence of *conditional-ness* or contingency. If an estate tail be limited to A., with remainder to B., the estate of B. is a 'vested' remainder, not because the failure of issue of A. is considered an event certain at some time or other to happen, but because such a remainder vests in B. an actual portion of the fee, though the time of its falling into possession is wholly contingent and uncertain. B. is *invested* with a portion of the ownership of the land.

"All remainders, not vested, are in fact contingent, not as being necessarily limited on an uncertain event, but because their taking effect depends on the contingency of their happening to vest during the continuance of the particular estate which supports them, and which may determine at any moment. Thus 'Vested' comes to mean the opposite of 'Contingent' or conditional. But the word itself refers, as has been said, not to contingency but to possession.

"II. The only definition that can be given of the word 'VESTED' in



English law, as applied to future interests other than remainders, is, that it means 'not subject to a Condition Precedent': what amounts to a Condition Precedent the cases only can determine. As applied to remainders in land, the word retains its original sense denoting the actual possession of an *estate* in the land" (Hawk. 221-223: *Vf*, *Ib.* ch. 18). As to when Devises or Bequests are vested or contingent, *V. Re Coppard*, 35 Ch. D. 350; 56 L. J. Ch. 606; 56 L. T. 359; 35 W. R. 473: 1 Jarm. ch. 25: Wms. Exs. 1086 *et seq*: Hawk. ch. 18. As to Vesting of Gifts to Classes, Elph. ch. 25; As to the Vesting of Portions, Elph. ch. 26.

*V.* VESTURE.

Property which shall "COME TO or Vest in" A., *e.g.* as used in a covenant to settle After-acquired property, does not, under the word "vest," connote that the vesting must be indefeasible; property which has become vested in A., though liable to be, but not actually, divested by the exercise of a Power of Appointment, is included in the covenant (*Re Ware*, 59 L. J. Ch. 717; 45 Ch. D. 269). "Vest." in such a connection, is used "in its strict legal sense, which means, vest in Interest and not in Possession" (per Stirling, J., *Ib.*). *Vf*, *Re Jackson*, 49 L. J. Ch. 82; 13 Ch. D. 189; 41 L. T. 494; 28 W. R. 209.

*Vh*, Chitty Eq. Ind. 7427-7431.

*V.* DIVEST.

**VESTED.** — *V.* VEST.

In testamentary gifts referring to death contingently, "the proper legal meaning of the word 'vested' is, vested in point of Interest (*Richardson v. Power*, 19 C. B. N. S. 780; 35 L. J. C. P. 44; 13 W. R. 1104: *Vf*; *Hale v. Hale*, 3 Ch. D. 646); but its natural and etymological meaning is said to be, vested in Possession (*Young v. Robertson*, 4 Macq. H. L. 314; 8 Jur. N. S. 825; nom. *Richardson v. Robertson*, 6 L. T. 77): and there are many cases of gifts over on the death of the legatee before his legacy has become 'vested,' where, upon the context, the word has been held to bear the latter sense" (2 Jarm. 809, *whv et seq* for cases in illustration. *Vf*, *Simpson v. Peach*, 42 L. J. Ch. 816; L. R. 16 Eq. 208; 28 L. T. 731; 21 W. R. 728: *Re Coppard*, cited VEST). (*Cp*, PRESUMPTIVE.

A Vested REMAINDER. is a Remainder vested in Interest, as distinguished from one that is CONTINGENT.

As to when "Vested," in a bequest, may be read as "payable" or "indefeasible"; *V. Armytage v. Wilkinson*, 3 App. Ca. 355; 47 L. J. P. C. 31: *Re Edmonson*, L. R. 5 Eq. 389; *Poole v. Bott*, 1 W. R. 276: *Taylor v. Frobisher*, 5 D. G. & S. 191; 21 L. J. Ch. 605: *Darley v. Perceval*, 1900, 1 L. R. 135: *Creeth v. Wilson*, 9 L. R. Ir. 216: RECEIVABLE: RECEIVED: 1 Jarm. 849, 850, 859: Watson Eq. 1190.

"BUILDING, Structure, or Work, vested in and in the OCCUPATION of

Her Majesty," s. 202. London Bg Act, 1894; *V. Drury v. Rickard*, 63 J. P. 374.

A landlord's right to GROUND GAME "is vested" by lease, &c, pursuant to the saving clause (s. 5) Ground Game Act, 1880, 43 & 44 V. c. 47, even though it be only reserved by an Agreement for a Lease executed before, but not coming into operation till after, the Act (*Allhusen v. Brooking*, 53 L. J. Ch. 520; 26 Ch. D. 559).

Forfeiture of INCOME if suffered to become "vested" in another; *V. Sutton v. Goodrich*, cited SUFFER.

Forfeiture of a LEASE "if the lessee do or suffer any act or thing whereby the premises should become vested" in another, for the whole or part of the term, is incurred by a sub-letting from YEAR TO YEAR, although the covenant in the lease be only against assignment (*Dymock v. Showell's Brewery Co*, 79 L. T. 329).

Lunatic's *Personal Estate* "vested in" a person appointed for the management thereof, s. 134, Lunacy Act, 1890; there, "vested" is used in its wide sense of connoting the right to obtain and deal with the property, and not in its strict legal sense of becoming its actual legal owner (*Re Brown*, 1895, 2 Ch. 666; 64 L. J. Ch. 808; 73 L. T. 375; 44 W. R. 17); *V. Re Knight*, 1898, 1 Ch. 257; 67 L. J. Ch. 136; 77 L. T. 773; 46 W. R. 289.

Property "vested under this Act," s. 310, P. H. Act, 1875, in Improvement Commrs or a Local Board, includes property acquired under the powers given by the Act (*Hyde v. Bank of England*, 51 L. J. Ch. 747; 21 Ch. D. 176).

Property "transferred to or vested in" a Purchaser; *V. DECREE*.

Superfluous Land "vested"; *V. G. W. Ry v. May*, cited SUPERFLUOUS LAND.

Inhabitants and Ratepayers having a right, under a Founder's Deed, to a free education for their children, but having no children whose status is injured by a Scheme, have not a "Vested Interest" within s. 39, Endowed Schools Act, 1869, 32 & 33 V. c. 56 (*Re Shaftoe*, 47 L. J. P. C. 98; 3 App. Ca. 872).

"Vested Interest," s. 7, City of London Parochial Charities Act, 1883, 46 & 47 V. c. 36; *V. Re St. Alphage, London Wall*, 59 L. T. 614; *Re St. Edmund*, 60 L. T. 622.

**VESTING.**—Vesting *Declaration*, on the appointment of a New Trustee; *V. s. 12*, Trustee Act, 1893, on *whv*, *London and County Bank v. Goddard*, cited TRUST.

"Vesting *Order*"; *V. Trustee Act*, 1893, ss. 26–41: Dan. Ch. Pr. 1777–1794; Seton, 1228–1261.

**VESTMENTS.**—*V. Clifton v. Ridsdale, Ridsdale v. Clifton, Elphinstone v. Purchas*, and *Hebbert v. Purchas*, cited ORNAMENT:

*Enraght v. Penzance*, 7 App. Ca. 240; 51 L. J. Q. B. 506. *Vp*,  
 VESTURE.

**VESTRY.** — “The primary meaning of the term ‘Vestry’ is, the place in which the Minister puts on his Vestments”; its secondary meaning is, the room in which the parishioners are entitled to meet for parish purposes (per Erle, J., *Jackson v. Courtenay*, 8 E. & B. 19). *Vf*; Jacob: Phil. Ecc. Law, Part 6, ch. 5: 12 Encyc. 466–468: CHURCH.

“Vestry” has received statutory definition in and for the following Acts; —

Baths and Washhouses Acts, 9 & 10 V. c. 74, 10 & 11 V. c. 61; *V. s. 2*:

Burial Act, 1852, 15 & 16 V. c. 85; *V. s. 52*:

Elementary Education Act, 1870, 33 & 34 V. c. 75; *V. s. 3*:

Loc Gov Act, 1894, 56 & 57 V. c. 73; *V. ss. 7 (3), 75*:

Metrop Man. Act, 1855; *V. s. 67*:

Metropolitan Open Spaces Act, 1881, 44 & 45 V. c. 34; *V. s. 1*:

Parish Constables Act, 1872, 35 & 36 V. c. 92; *V. s. 14*:

Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76; *V. s. 109*:

Poor Rate Assessment and Collection Act, 1869, 32 & 33 V. c. 41; *V. s. 20*.

“The Vestries Acts, 1818 to 1853”; *V. Sch 2*, Short Titles Act, 1896.

Vestry Books, in Ireland; *V. Preamble* to Parochial Records Act, 1876, 39 & 40 V. c. 58.

“Vestry Clerk”; *V. 32 & 33 V. c. 67, s. 4*.

“In Vestry assembled”; *V. PARISHIONER*: hence the persons entitled to meet in vestry are sometimes called “the Vestry.”

**VESTURE.** — *V. HERBAGE*.

“‘Vesture’ signifies a garment; but in the law, metaphorically turned to betoken a Possession, or an admittance to a Possession or Seisin; so it is taken in *Westm. 2*, cap. 25. And in this signification ’tis borrowed of the *Feudists*, with whom *Investitura* signifies a delivery of Possession by a Speare or Staff, and *Vestura* Possession it self” (Cowel).

*V. VEST*, p. 2182.

**VETERINARY.** — To call oneself a “Veterinary Chemist,” in a book or otherwise, in the sense of preparing veterinary medicines for sale, is not to “take or use the title of Veterinary Surgeon or Veterinary Practitioner” within s. 17 (1), 44 & 45 V. c. 62 (*Royal Coll. Vet. Surgeons v. Groves*, 9 Times Rep. 483): *Sc. QUALIFIED. V. TAKE: USE*.

“Veterinary Inspector,” quâ Diseases of Animals Act, 1894, 57 & 58 V. c. 57, “means, an Inspector being a Member of the Royal College of Veterinary Surgeons, or any Veterinary Practitioner qualified as approved by the Board of Agriculture” (s. 59).

“Veterinary Surgeon,” or “Qualified Veterinary Surgeon,” quâ P. H.

Scotland Act, 1897, means, "a Member of the Royal College of Veterinary Surgeons" (s. 3).

"The Royal College of Veterinary Surgeons,' means, the Royal College of Veterinary Surgeons incorporated and regulated by a Charter and two Supplemental Charters granted by Her Majesty in the years 1844, 1876, and 1879, respectively" (s. 2, 44 & 45 V. c. 62).

"Veterinary Surgery,' means, the art and science of Veterinary Surgery and MEDICINE" (s. 2, 44 & 45 V. c. 62).

**VEXATIOUS.**—*V.* FRIVOLOUS: IMPROPER: SCANDALOUS.

*Vexatious Actions*; *V.* Vexatious Actions Act, 1896, 59 & 60 V. c. 51.

The action a "*Vexatious Defence*" to which was a Bankry offence under s. 159, Bankry Act, 1861, was one for a Debt or Liquidated Damages as distinguished from a Tort (*Ex p. Crabtree*, 12 W. R. 768; 33 L. J. Bank. 33; 10 L. T. 361).

*Vexatious Indictments* Act, 1859, 22 & 23 V. c. 17; *Vth*, 12 Encyc. 472, 473; Rose. Cr. 166; Arch. Cr. 6-10.

Vexatious Removal of Indictments into the K. B.; *V. R. v. Manchester*, 7 E. & B. 460.

**VEXATIOUSLY.**—*V.* UNREASONABLY.

**VI, CLAM, PRECARIO.**—AD EASEMENT to be acquired by PRESCRIPTION must be "*nec vi, nec clam, nec precario*"; *Vh*, per Ld Selborne, *Macpherson v. Scottish Recreation Socy*, 13 App. Ca. 749: Gale, Part 2, ch. 3, s. 3.

**VI ET ARMIS.**—*V.* FORCE.

**VICAR.**—"The PRIEST of every parish is called RECTOR, unless the Prædial Tythes be impropriated and then he is called Vicar, *quasi vice fungens rectoris*" (Cowel). The status of a modern Vicar was originated by 4 H. 4, c. 12. *Vf*, Phil. Ecc. Law, 217.

*V.* CLERGYMAN: MINISTER: PARSON.

*Note.* As to the Vicar's rights in church and churchyard, *V.* jdgmt of Blackburn, J., *Greenlade v. Derby*, cited PERPETUAL CURATE.

"The words 'Rectorial' and 'Vicarial' TITHES have no definite signification" (*Note*, to 1 Bl. Com. 387).

**VICAR CHORAL.**—A Vicar Choral, is a minor officer of a Cathedral whose duty is (as a "Singing-man") to assist in the Services (Phil. Ecc. Law, 143), and is, generally, a Corporation Sole, and, as such, his personal representative is liable for DILAPIDATIONS of the house held by him *virtute officii* (*Gleaves v. Parfitt*, 7 C. B. N. S. 838; 29 L. J. C. P. 216).

**VICAR-GENERAL.**—*V.* *Thorpe v. Mansell*, 1 Hagg. Con. 4 n.

**VICARAGE.** — *V.* RECTORY: JACOB.

**VICE.** — The inherent “Vice” of a *Thing*, — damage from which is not included in the implied insurance by a Common Carrier or in a Contract for Sea Carriage, — means, that “which is, necessarily, incidental to the property, rather than occasioned by an adventitious cause such as loss by worms (*Rohl v. Parr*, 1 Esp. 444), or rats (*Hunter v. Potts*, 4 Camp. 203), or the self-ignition of damaged hemp (*Boyd v. Dubois*, 3 Ib. 133)”: Smith’s Mercantile Law, 8 ed., 354, cited and adopted by Willes, J., *G. W. Ry v. Blower*, 41 L. J. C. P. 271; L. R. 7 C. P. 663.

“Vice” in an *Animal*, means, “that sort of vice which by its internal developement tends to the destruction or the injury of the animal or thing to be carried and which is likely to lead to such a result” (per Willes, J., *G. W. Ry v. Blower*, L. R. 7 C. P. 662), *e.g.* restiveness (*S. C.*), or fright, temper, or struggling to keep its legs (per Bramwell, B., *Kendall v. Lond. & S. W. Ry*, L. R. 7 Ex. 373; 41 L. J. Ex. 184; *Vf*, per Mellish, L. J., *Nugent v. Smith*, 45 L. J. C. P. 708; 1 C. P. D. 439).

*V.* SOUND: WARRANTED SOUND.

**VICE-ADMIRALTY COURT.** — *V.* COURT, p. 425.

**VICINAGE.** — “Common pur Cause de Vicinage”; *V.* COMMON, p. 346: *Cape v. Scott*, 43 L. J. Q. B. 65; L. R. 9 Q. B. 269: *Comms of Sewers v. Glasse*, L. R. 19 Eq. 134; 44 L. J. Ch. 129.

**VICTUALLER.** — *V.* PUBLICAN.

**VICTUALLING-HOUSE.** — A Victualling-house is a house where persons are provided with victuals, but without lodging (1 Burn’s *Jus. Peace*, 30 ed., 64). It would be, probably, safe to add that a place could scarcely be called a “Victualling-house” unless licensed under Alehouse Act, 1828, 9 G. 4, c. 61. That technical sense would seem to be impressed on the word by its use in the statute just mentioned in collocation with Inns and Alehouses. Blackstone (3 Com. 164) speaks of an “Innkeeper or other Victualler”; but a Victualling-house is differentiated from an Inn, because a Victualling-house does not provide lodging; but it would seem the exact equivalent of “Alehouse.”

*V.* ALEHOUSE: INN: PUBLIC HOUSE.

**VICTUALS.** — “Victuals” comprises everything that is food for man, and everything which, when mixed with something else, constitutes such food (*R. v. Hodgkinson*, 10 B. & C. 74).

**VIDELICET.** — *V. Dakin’s Case*, 2 Wms. Saund. 678: NAMELY: THAT IS TO SAY.

**VIEW.** —“ ‘View’ is the primary part of ‘Survey’; and Survey is much, but not altogether, directed by View. It is true that View is of great use in the Common Law, and it is to be done and performed in person. . . . In a word, there is a diversity between a View and a Survey, for by the View one is to take notice only by the eye; but to Survey is not only to take notice of a thing by the eye, but also by using other ceremonies and circumstances, as the hand to measure and the foot to pace the distances” (Callis, 105, 106).

In “View” of a Constable, s. 63, Metropolitan Police Act, 1839, 2 & 3 V. c. 47, *semble*, connotes that the Constable actually saw and had view of the offence; the phrase is not equivalent to “found committing” in s. 66 (*Simmons v. Millingen*, cited FOUND).

“View of FRANKPLEDGE” was the office of the Sheriff in his County Court, or the Bayliff in his Hundred, to see that every man was in some PLEDGE (Cowel: *Termes de la Ley*): *Vh*, 4 Bl. Com. 273.

*Vf*, *Termes de la Ley*, *View*: Cowel: Jacob: 12 Encyc. 476: R. 4 and 5, Ord. 50. R. S. C.

“Upon such View,” whereby Justices may order Diversion, &c, of a HIGHWAY, s. 85, 5 & 6 W. 4, c. 50, means, that the Justices making the Order are themselves to have actual and joint inspection of the Highway (*R. v. Downshire*, 5 L. J. M. C. 72; 4 A. & E. 698; 6 N. & M. 92: *R. v. Jones*, 10 L. J. M. C. 5; 12 A. & E. 636: *R. v. Cambridgeshire Jus.*, 5 L. J. M. C. 6; 4 A. & E. 111; 5 N. & M. 440: *R. v. Wallace*, 4 Q. B. D. 641; 40 L. T. 518). A compliance with these conditions would be sufficiently stated, by the Order reciting that “having Upon View found” (*R. v. Cambridgeshire*, *sup*); *scus*, if it said “having particularly viewed,” &c, “and being satisfied,” &c (*R. v. Downshire*, *sup*), or “having viewed,” &c, “and it appearing unto us,” &c (*R. v. Jones*, *sup*).

“With a View” to giving a Creditor a PREFERENCE, means with *the* view (*F. A.*). In deciding that that kind of “View” must be one for the benefit of a creditor, as distinguished from the bankrupt’s own benefit, *e.g.* to avoid the consequences of his own breach of trust, Williams, J., said. — “It is very easy to confuse ‘MOTIVE’ and ‘View.’ In fact, it is so easy to confuse ‘Motive’ and ‘View’ that there are numberless words in the English language which have a double or equivocal meaning, and are sometimes used to express Motive and sometimes to express View. Let me illustrate by an example what I consider to be the difference between the meaning of these two words, and the meaning of ‘View’ in this section. I do not assent to the suggestion that ‘View’ means, the primary result aimed at. If ‘View’ meant the primary result aimed at, every case would fall within s. 48, Bankry Act, 1883, in which it was proved that in fact a creditor was preferred and that the preference of that creditor was the necessary result of the act done by the bankrupt. It seems to me plain that this is not the meaning of the statute. The

word 'View,' as used in this section, is used to express the object aimed at by the bankrupt in bringing about the primary result. Now, although Motive is not the thing that we are to look for but View, it is plain (as was pointed out by *Ld Esher, Ex p. Taylor*, cited A) that ascertaining the Motive will very often assist you in determining what is the View. Suppose a case where the question was, whether a man set fire to his house with the intention to injure his landlord or with the intention to defraud an insurance company. In such case, in my judgment, the setting fire to his house would be the primary object of that which he did, but that would leave open the question, whether he aimed at or effected that object with a view to injure his landlord or with a view to defraud the insurance company. Now, in order to ascertain that, you would be much assisted by ascertaining what his desire was, *i.e.* what the Motive was that induced him to set fire to his house. You would have to take into consideration all the circumstances of the case. If you found that he was over-insured, that would be a strong piece of evidence to show that his View in setting fire to his house was to defraud the insurance company. If, on the other hand, you found that he was not over-insured but that he was angry with his landlord for having given him a notice to quit, that would be a strong piece of evidence to show that his View was not to defraud the insurance company but to injure his landlord. And in the same way, in bankruptcy, you have the payment of the creditor, which is equivalent to the analogous case I have taken of setting fire to the house. With what View did the debtor make the payment to the creditor? Did he make it from a sense of duty, from a sense of favour or kindness towards the creditor? So here, the mere fact that there had been a breach of trust and that therefore it was possible that he should make the payment from a sense of duty is by no means conclusive. There might be other facts, such as his connection in blood with the cestui que trust, which might suggest that the dominant View was, not to repair the wrong done but, to favour one of his relatives" (*New's Trustee v. Hunting*, 66 L. J. Q. B. 559, 560; 1897, 1 Q. B. 616, 617). That exposition seemed too subtle for *Esher, M. R.*, who (whilst agreeing with other members of the Court of Appeal in upholding the actual decision of *Williams, J.*) said, "In my opinion, what the debtor did he did 'With the *Object*,' or 'With the *View*,' or 'For the *Purpose*' (I care not about the particular phrase), not of preferring the particular creditors, but for his own purposes" (*S. C.* 66 L. J. Q. B. 562; 1897, 2 Q. B. 27; 76 L. T. 744; 45 W. R. 579; *affd* in *H. L. nom. Sharp v. Jackson*, 68 L. J. Q. B. 866; 1899, A. C. 419; 80 L. T. 841; 6 *Manson*, 264; *Cp. Re Dodds*, 60 L. J. Q. B. 599; 64 L. T. 476; *Re Blackburn*, 68 L. J. Ch. 764; 1899, 2 Ch. 725; 81 L. T. 520; 48 W. R. 186). *Cp.* INTENT: PURPOSE.

So (*Ex p. Hill, Re Bird*, 23 Ch. D. 704). *Bowen, L. J.*, said that, in nine cases out of ten, "With the View" and "With the Motive" are

synonymous: *Vj*, per the same learned judge, *Ex p. Griffith, Re Wilcoxon*, 52 L. J. Ch. 717; 23 Ch. D. 69.

*Note*: for an example of circumstances showing the View of a debtor when, being in insolvent circumstances, he pays a creditor, *V. ORDINARY COURSE*.

*V. PRESENCE: TREAT AND VIEW.*

**VILL.** — “Vill” was synonymous with TOWN (Co. Litt. 115 b: 1 Bl. Com. 114), and, if of the same name as the Parish, is coterminous with it until the contrary is proved (*Gibson v. Clark*, 1 Jac. & W. 159; *Wray v. Vesper*, Cro. Jac. 263); but there may be two or more Villis in one Parish, and, if one be of the same name as the Parish, a conveyance of lands in a place of that name includes only those in the Vill (*Stork v. For*, Cro. Jac. 120). *Va*, HAM: HAMLET: TOWNSHIP.

As to distinction between “Vill” and “Parish,” as a description of a locality; *V. Elph.* 168, *n*.

*V. VILLAGE: Elph.* 624–626.

**VILLA.** — *V. DENE: TOWN.*

**VILLAGE.** — In Coke’s time “Village” and “TOWN” seem, in law, to have been synonymous (Co. Litt. 115 b; *Va*, Index to Co. Litt. tit. “Village”). So in the *Touchstone* (p. 92), “This word (Village or Town) is of large extent. And by the grant of it, a manor, land, meadow and pasture, and divers such like things may pass.” *V. VILL.*

“Village” was discussed in *Waterpark v. Fennell*, 7 H. L. Ca. 650; 5 Ir. Com. Law Rep. 120; *Va*, *Anon.*, 12 Mod. 546; *R. v. Showler*, 3 Burr. 1391; *R. v. Horton*, 1 T. R. 374.

In the United States, “Village” has been defined as, Any small assemblage of houses for dwellings or business, or both, in the country, whether they are situated upon regularly laid out streets and alleys or not (*Illinois Central Ry v. Williams*, 27 Ill. 49).

**VILLANI.** — “*Villani* in Domesday (often named) are not taken there for bondmen, but had their name *de villis*, because they had fermes, and there did worke of husbandry for the lord: and they were ever named before *bordarii*, &c, and such as are bondmen are called there *servi*” (Co. Litt. 5 b; *Va*, Ib. 116 a: *Vj*, Jacob, *Servi, Villain*). *V. BORDARI: VILLEIN.*

To call a man a “Villain” is not actionable, *per se* (per Pollock, C. B., *Barnett v. Allen*, 27 L. J. Ex. 412; 3 H. & N. 376; 31 L. T. O. S. 217); *Secus*, if you write that of him (*Bell v. Stone*, 1 B. & P. 331). *Cp*, CHEAT.

**VILLEIN.** — A Villein was “a man of servile or base degree,” bound to obey his Lord’s behest, “and whom his lord might put out of his



lands and tenements, goods and chattels, at his will" (Cowel), and whom the lord might "robbe, beat, and chastise, at his will, save onely that he might not maime him" (Termes de la Ley, *Villeinage*). *Vf*, HEREDITAMENT, at end: VASSAL: VILLANI: WAINAGE.

Villeinage was a servile TENURE, whereby the tenant (though not, necessarily, a Villein) "was bound to do all such services as the Lord commanded, or were fit for a Villein to do" (Cowel). *Vf*, Litt. Book 2, ch. 11: Co. Litt. 116 a-141 b: 2 Bl. Com. 92, 93: per *Hargrave*, arg. *Sommersett's Case*, 20 State Trials, 35 *et seq.*

*V. NEIFE.*

Villein Regardant; *V. GROSS*, p. 839: Cowel, *Regardant*.

**VILLIERS' ACTS.** — Public Works (Manufacturing Districts) Act, 1863, 26 & 27 V. c. 70:

Union Chargeability Act, 1865, 28 & 29 V. c. 79.

**VINTNER.** — "Vintner" means, one who sells wine, and a covenant prohibiting the trade of a "Vintner" includes a person selling Wine not to be drunk on the premises (*Wells v. Attenborough*, 24 L. T. 312: 19 W. R. 465); and, by statute, the prohibition, in a Lease, of the business "of a Vintner," will include the sale of Wines to be consumed on the premises under the Refreshment Houses Act, 1860 (23 V. c. 27, s. 44).

**VIOL.** — *V. BELONGING*, p. 178.

**VIOLATE.** — A Bequest to found an Institution will, generally, be valid if it be added "so as not to violate the Mortmain Acts" (*Bisroe v. Jackson*, 35 Ch. D. 460; 56 L. J. Ch. 540; 35 W. R. 554; 56 L. T. 753; 3 Times Rep. 577). *V. FOUND*, p. 759.

**VIOLENT.** — *V. EXTERNAL*.

An Insree against "Theft following upon Actual, Forcible, and Violent, Entry upon the premises"; held, not to include a thieving where the thief only had to turn the shop door-handle and walk in (*George v. Goldsmiths' Insree*, 1899, 1 Q. B. 595; 68 L. J. Q. B. 365; 80 L. T. 248; 47 W. R. 474). In that case Wills, J., said, in the Divisional Court (67 L. J. Q. B. 808), "If the word had been merely 'forcible' then any unauthorized entry in the course of which any degree of force however slight was used would have been enough. That expression would have included turning the door-handle, pushing back a window-catch, or opening a locked door with a skeleton key. What difference does the addition of 'violent' make? Does it mean any more than 'forcible'?" Upon the whole, I think not. Etymologically, the meaning of both words is the same." But that reasoning did not commend itself to the Court of Appeal.

**VIRGATA TERRÆ.** — *V. YARDLAND*.

**VIRTUE.** — *V.* BY VIRTUE.

**VIS MAJOR.** — *V.* ACT OF GOD: IRRESISTIBLE.

**VISIBLE.** — “Visible,” when applied to Lights *quà* Regns for Preventing Collisions at Sea, 1897, means, “visible on a dark night with a clear atmosphere” (Preamble to Art. 1).

“Visible to the purchaser”; *V. Crane v. Lawrence*, cited EXPOSE.

“Visible Means” as used in s. 10, Co. Co. Act, 1867, repld s. 66, Co. Co. Act, 1888, is not (as was laid down by Whiteside, C. J., *Counsel v. Garrie*, Ir. Rep. 5 C. L. 74, 77) to be narrowed so as to be synonymous with “*tangible* means”; but, at the same time, effect is to be given to the word “visible,” and therefore “the words refer to means of paying which are visible to the bodily or mental eye of an attentive observer — means of payment which *the person who makes the affidavit* can fairly ascertain” (per Fry, L. J., *Lea v. Parker*, 54 L. J. Q. B. 41; 13 Q. B. D. 835; 38 W. R. 101).

Possession of moveable chattels, the full value of which would merely suffice to cover the probable amount of defendant’s costs, does not constitute “Visible Means,” within s. 6, 33 & 34 V. c. 109 (*Watson v. McCann*, 6 L. R. Ir. 21), nor does the receipt of a salary of £120 per annum (*Torkington v. Connor*, Ir. Rep. 8 C. L. 340).

“Visible Means” causing Injury; *V.* EXTERNAL.

Visible Waters; *V.* DEFINED CHANNEL.

**VISIT.** — *V.* ASSOCIATE.

**VISITING.** — “Visiting Committee”; Stat Def., Lunacy Act, 1890, 53 & 54 V. c. 5. s. 341.

**VISITOR.** — Of a Grammar School; Stat. Def., 3 & 4 V. c. 77, s. 25.

**VIVARY.** — Vivary, vivarium, is a word of large extent, signifying a place in land or water where living things are kept, *e.g.* parks, warrens, piscaries or fishings (2 Inst. 100), or a stew (Ib. 162). By the grant of a “Vivarye,” “not onely the priviledge, but the land itselfe passes” (Co. Litt. 5 b).

**VIVER.** — “Viver or Vivier:—a Fishpond; 2 Inst. 199” (Elph. 628).

**VIZ.** — *V.* NAMELY: VIDELICET.

**VOCATION.** — Turf “Book-making” is a “Vocation” within the Income Tax Act, 1842 (a legal one, per Hawkins, J.), and as such its profits are assessable (*Partridge v. Mallandaine*, 56 L. J. Q. B. 251; 18 Q. B. D. 276; 56 L. T. 203; 35 W. R. 276). In that case Denman, J., said that even an illegal Vocation would be taxable on its income; as “if a man were to make a systematic business of receiving stolen goods,

and to do nothing else, and were thereby to make a profit of (say) £2,000 a year, the Income Tax Commrs would be quite right in assessing him, if it were, in fact, his Vocation." *V. BOOKMAKER: CALLING: PUBLIC OFFICE.*

**VOICE.** — "Multiply Voices"; *V. Phillpotts v. Phillpotts*, cited *VOID*, p. 2197: *SPLIT*.

**VOID.** — When a Deed or other transaction is "Void" on default of doing or suffering something by one of the parties thereto, this means, Voidable at the election of the party not in default (*Hughes v. Palmer*, 34 L. J. C. P. 279; 19 C. B. N. S. 393; *Molton v. Camroux*, 18 L. J. Ex. 68, 356; 2 Ex. 487; 4 Ex. 17). "In a long series of decisions the Courts have construed Clauses of Forfeiture in Leases, declaring in terms however clear and strong that they shall be void on breach of conditions by the lessees, to mean that they are voidable only at the option of the lessors. The same rule of construction has been applied to other contracts where a party bound by a condition has sought to take advantage of his own breach of it to annul the contract: *Doe d. Bryan v. Bancks*, 4 B. & Ald. 401; *Roberts v. Davey*, 4 B. & Ad. 664: notes to *Dunpor's Case*, 1 Smith's L. C. 54" (per Sir M. E. Smith delivering the judgment *Davenport v. The Queen*, 47 L. J. P. C. 16; 3 App. Ca. 128). *Vf*, *Dakin v. Cope*, 2 Russ. 174, 175; *Malins v. Freeman*, 4 Bing. N. C. 395; *Re Tickle*, 3 Morr. 126; Woodf. 210; Redman, 420; Fawcett, 462. Note. In *Bowser v. Colby* (1 Hare, 130, 131), Wigram, V. C., for the purpose of holding the lease voidable, seems to have relied on the fact that in the clause of forfeiture the right of re-entry preceded the declaration that the lease should be void; but, *semble*, the case he cited (*Arisby v. Woodward*, 6 B. & C. 519), shows that the construction may be the same though the declaration of voidness precedes the right of re-entry.

And so of Statutes: "In general, it would seem, that where the enactment has relation only to the benefit of particular persons, the word 'void' would be understood as 'voidable' only, at the election of the persons for whose protection the enactment was made and who are capable of protecting themselves (*V. Davis v. Bryan*, 6 B. & C. 651, cited by Cotton, L. J., *Re London Celluloid Co*, 39 Ch. D. 203); but that when it relates to persons not capable of protecting themselves, or when it has some object of public policy in view which requires the strict construction, the word receives its natural full force and effect" (Maxwell, 256, 257, citing Bayley, J., *R. v. Hipswell*, 8 B. & C. 471; *Va, Betham v. Gregg*, 10 Bing. 352; 3 L. J. C. P. 121; 4 Moore & S. 230; *Storie v. Winchester*, 17 C. B. 653; *Hyle v. Watts*, cited FORTHWITH. *V.* cases in illustration, Maxwell, 250-257). Thus, the provision that no Apprenticeship provided for by PUBLIC PAROCHIAL FUNDS, should be "valid and effectual" unless approved under "the hands and seals" of two

Justices, s. 11, 56 G. 3, c. 139, rendered absolutely void an Indenture approved by two Justices under their hands only (*R. v. Stoke Damerel*, 7 B. & C. 563). *Op.* ILLEGAL.

"I think it will be found that the cases in which the less strict meaning is allowable may be divided into three classes, —

"1. Where as a matter of construction according to ordinary rules that is the sense of the language used:

"2. Where the strict meaning would defeat the Act itself: and

"3. Where that strict meaning would be inconsistent with some other statute, or some legal principle, which there is no apparent intention to disturb.

"It is for those who support the less strict meaning in any particular case, to prove that it falls within one of these classes; or, as was said by Ld Cairns in *Magdalen Hospital v. Knotts* (inf), 'the onus lies upon those who would cut down or qualify the effect of these words to show some ground, either from the nature of the case or from authority, for doing so'" (per Kekewich, J., *Churcher v. Martin*, 42 Ch. D. 317; 58 L. J. Ch. 588; 61 L. T. 113; 37 W. R. 682).

"If it be doubtful whether a statute declaring an act, instrument, or contract, void, make it voidable only, another clause in the same statute imposing a penalty on such act, instrument, or contract, is a clear test that it is *ipso facto* void" (Dwar. 640). "The penalty makes it illegal" (Maxwell. 256, citing *Gye v. Felton*, 4 Taunt. 876). "*Nota*, every contract made for or about any matter or thing which is prohibited and made unlawful by any statute, is a Void Contract, though the statute itself doth not mention that it shall be so but only inflicts a penalty on the offender; because a Penalty implies a Prohibition though there are no prohibitory words in the statute" (per Holt, C. J., *Bartlett v. Vinor*, Carth. 252), *e.g.* prohibition against Watermen taking Apprentices before being householders, s. 5, 10 G. 2, c. 31 (*R. v. Gravesend*, 1 L. J. M. C. 20; 3 B. & Ad. 240).

When an Act says that anything shall be void "*to all intents and purposes.*" the phrase italicized seems little more than an expletive. If a thing is "void," it is empty, — without force. Can a cistern be more than empty, or a body be more than still? The older authorities seem conformed to this reasoning; and seem to have established that there was no appreciable difference between declaring a thing "void" and declaring it "void to all intents and purposes." Thus, it has been stated, "where Acts of Parliament make a thing void, it shall be void to all intents and have a very violent relation" (Dwar. 653). So that "void" would seem to mean as much without, as with, the added phrase "to all intents and purposes"; whilst the addition of that phrase has not prevented the judicature, as circumstances have justified, from construing the thing as absolutely void in some, and as only voidable in others, of its aspects. Thus by s. 3, 13 Eliz. c. 10, Leases by Spiritual Persons

not made in conformity with that statute "shall be utterly void and of none effect, to all intents constructions and purposes"; yet it has been frequently held that Leases not in such conformity are good during the life of the lessor, and are only voidable by the successor, and even he may confirm them (Woodf. 22). But if the lessor have no beneficial interest, *e.g.* a Hospital, a lease in contravention of this section is altogether void (*Magdalen Hospital v. Knotts*, 48 L. J. Ch. 579; 4 App. Ca. 324; 27 W. R. 602; 40 L. T. 466); so, of a lease in contravention of s. 29, 18 & 19 V. c. 124 (*Bangor, Bp. v. Parry*, 1891; 2 Q. B. 277; 60 L. J. Q. B. 646; 65 L. T. 379; 39 W. R. 541).

The words "utterly void" in 13 Eliz. c. 20, s. 1, and the words "utterly void to all intents and purposes" in the Ship Registry Act (26 G. 3, c. 60, s. 17), did not prevent the Courts from giving partial effect to instruments not in conformity with those statutes (*Mouys v. Leake*, 8 T. R. 411; *Kerrison v. Cole*, 8 East, 234; Dwar. 639. *Vf*, cases as to Warrants of Attorney and Judge's Orders, Maxwell, 390). So, a Bill for a Gaming Debt though "utterly void, frustrate, and of none effect to all intents and purposes whatsoever," s. 1, 9 Anne, c. 14, was good in the hands of an Indorsee for Value (*Edwards v. Dick*, 4 B. & Ald. 212); nor did those words invalidate a Judgment for a Gaming Debt obtained by an innocent plaintiff suing on a Negotiable Security, the debt having full opportunity to defend the action and to set up the illegality of the security as an answer (*Lane v. Chapman*, 11 A. & E. 966; 9 L. J. Q. B. 239). So, a purchaser at an Auction who ought to have paid the (abolished) Auction Duty and did not, could not repudiate his contract, although, failing such payment, his bidding was "null and void to all intents and purposes," s. 8, 17 G. 3, c. 50 (*Malins v. Freeman*, 7 L. J. C. P. 212; 4 Bing. N. C. 395; *Vf*, *Willson v. Curey*, 12 L. J. Ex. 17; 10 M. & W. 641). c

In s. 2, 27 Eliz. c. 4, vacating, in favour of purchasers. Fraudulent Conveyances, the phrase is that they shall be "utterly void, frustrate, and of none effect"; *Vth*, *Gooch's Case*, 5 Rep. 60 b.

The decisions on the 5 Eliz. c. 4, whilst they show how little the Courts refused to consider the word "void" as intensified by super-added phrases, show also that on the same words, in the same statute, an informal Indenture of Apprenticeship would be held void for some purposes, and only voidable for others. The language of the statute (s. 41) is that all Indentures of Apprenticeship, not in conformity thereto, shall be "clearly void in law, to all intents and purposes whatsoever." Yet to enable an Infant Apprentice to gain a parochial settlement, it was held that an apprenticeship indenture not in conformity, was merely voidable between the parties (*R. v. St. Nicholas*, 1 Bott, 530; Burr. S. Ca. 91; 2 Stra. 1066, on *wher*. *R. v. Gravesend*, sup: *R. v. St. Gregory*, 4 L. J. M. C. 9; 2 A. & E. 99; *Gray v. Cookson*, 16 East, 13); but when a Master, citing *R. v. St. Nicholas* and other such like cases, sought to

recover damages for harbouring an apprentice, who had been bound by an indenture not in conformity with the statute, it was held he could not recover (*Gye v. Felton*, 4 Taunt. 876).

So, in an almost undeviating course, run the older authorities, which seem to justify the statement that the phrase "to all intents and purposes," in connection with the word "void," is little more than an expletive. But in *Phillpotts v. Phillpotts* (20 L. J. C. P. 11; 10 C. B. 85) Maule, J., comments on the absence of the phrase in the provision then under consideration; and in *Re Toomer, Ex p. Blaiberg* (52 L. J. Ch. 461; 23 Ch. D. 254) Jessel, M. R., in some measure, leant on its absence in s. 8, Bills of Sale Act, 1878, for the purpose of holding that a Bill of Sale which would have been void against an execution creditor, was not so, under the circumstances, as against a trustee in Bankry; whilst in *Davies v. Rees* (55 L. J. Q. B. 364; 17 Q. B. D. 408; 54 L. T. 813; 34 W. R. 573) Esher, M. R., seems to have read the phrase into s. 9, Bills of Sale Act, 1882, for the purpose of giving the word "void" its most absolute effect. *Note*: s. 8, Bills of S. Act, 1878, only makes an unregistered Bill of S. void as against the persons therein mentioned (*Davies v. Goodman*, 5 C. P. D. 128; 49 L. J. C. P. 344; *Cookson v. Swire*, 54 L. J. Q. B. 249); under s. 8 of the Act of 1882, it is void even as between grantor and grantee (*Davies v. Rees*, sup: per Lindley, L. J., *Re Townsend*, 55 L. J. Q. B. 143; 16 Q. B. D. 532; 53 L. T. 897; 34 W. R. 329), but only, as provided by the concluding words of the section, "in respect of the Personal Chattels comprised therein" (*Heseltine v. Simmons*, 1892, 2 Q. B. 547; 62 L. J. Q. B. 5; 67 L. T. 611; 41 W. R. 67; 57 J. P. 53). If "void" for not being IN ACCORDANCE WITH THE FORM prescribed (s. 9), a Bill of S. is void even as regards its covenants (*Davies v. Rees*, *Re Townsend*, and *Heseltine v. Simmons*, sup), and also quâ personal chattels duly described and granted (*Thomas v. Kelly*, 58 L. J. Q. B. 66; 13 App. Ca. 506); but even this stringency does not make a Bill of S. void quâ property not subject to the Bills of Sale Acts (*Re Burdett*, 20 Q. B. D. 310; 57 L. J. Q. B. 263; *Re Isaacson*, 1895, 1 Q. B. 333; 64 L. J. Q. B. 191; 43 W. R. 278).

The principle of *Davies v. Rees* is applicable to "void" as used in s. 5, Deeds of Arrangement Act, 1887, 50 & 51 V. c. 57 (*Hedges v. Preston*, 80 L. T. 847).

A Conveyance or other Assurance for a CHARITABLE PURPOSE, not made with the statutory requirements, is "void" in the strict sense of that word as employed in s. 3, 9 G. 2, c. 36, repld s. 4, 51 & 52 V. c. 42 (*Doe d. Wellard v. Hawthorn*, 2 B. & Ald. 96; *Doe d. Burdett v. Wrighte*, Ib. 710; *Doe d. Preece v. Howells*, 2 B. & Ad. 744; *Bunting v. Sargent*, 49 L. J. Ch. 109; 13 Ch. D. 330); it is "void" "not merely as regards the trust but also as regards the legal estate given" (per Bayley, J., 2 B. & Ald. 721; *Churcher v. Martin*, sup, p. 2194).

A Deed though declared by statute to be void, may, generally, be bad

in part and good in part; e.g. a personal covenant to pay is good though contained in a Charge on a Benefice which, under 13 Eliz. c. 20, was "utterly void" (*Mouys v. Leake*, 8 T. R. 411; approved by Ellenborough, C. J., *Kerrison v. Cole*, 8 East, 234). So, of a similar covenant in a Bill of Sale transferring a Ship, which, under 26 G. 3, c. 60, s. 17, was "utterly null and void to all intents and purposes" for not truly reciting certificate of registry (*Anon.*, Dwar. 638, 639: *Va.*, Maxwell, 492, 493). But though *Kerrison v. Cole* (sup) and several of the cases cited in Maxwell (sup) were cited in *Davies v. Rees* (sup), yet it was there held that a Bill of Sale, void under s. 9, Bills of S. Act, 1882, because not in the prescribed form, was void altogether even as regards its personal covenant to pay (*Va.*, *Re Townsend*, sup: *Bangor*, *Bp. v. Parry*, sup, p. 2195); but, as already stated, a Bill of Sale void under the Act is good as regards property not within the Act (*Re Burdett* and *Re Isaacson*, sup: *Va.*, *Re Yates*, 57 L. J. Ch. 697; 38 Ch. D. 112). It seems a little difficult to reconcile *Davies v. Rees* with the Anonymous case in Dwaris (sup), or with *Phillpotts v. Phillpotts* (sup, p. 2196), in which a Conveyance "to multiply voices" and therefore "void and of none effect," under 7 & 8 W. 3, c. 25, s. 7, was nevertheless effective to pass the property as between the parties.

Though an agreement to divest an Occupier of his right to kill GROUND GAME is "void" by s. 3, 43 & 44 V. c. 47, yet a reservation of "the Exclusive Right of Sporting" is void only so far as it relates to Ground Game (*Stanton v. Brown*, 1900, 1 Q. B. 671; 69 L. J. Q. B. 301; 48 W. R. 333; 64 J. P. 326).

Though an INFANT'S Contract for money lent, or for goods (other than NECESSARIES), or on account stated, is "absolutely void" by s. 1, 37 & 38 V. c. 62, yet that does not enable him to recover back money paid by him in respect of ordinary goods which he has consumed or used (*Valentini v. Cunali*, 59 L. J. Q. B. 74; 24 Q. B. D. 166).

A LEASE for 3 years which (by the joint operation of the Statute of Frauds and s. 3, 8 & 9 V. c. 106) is "void at law unless made by Deed," is valid as an Agreement for a Lease (*Parker v. Taswell*, 27 L. J. Ch. 812; 2 D. G. & J. 559); and, without any deed being made, the document will constitute the agreement between the parties as regards the occupancy, so that, on its termination, the tenant goes out without notice (*Tress v. Savage*, 23 L. J. Q. B. 339; 4 E. & B. 36), and each party is responsible on his own agreements contained in the document, and his liability thereunder may be enforced against him even after the so-called "term" of the document has expired (*Martin v. Smith*, and other cases, cited TERM). Note: As to the effect of s. 25, Ind. Act, 1873, on s. 3, 8 & 9 V. c. 106, *W. Walsh v. Lonsdale*, 52 L. J. Ch. 2; 21 Ch. D. 9; 46 L. T. 858; 31 W. R. 109, on *wher*, *Coatsworth v. Johnson*, 55 L. J. Q. B. 220; 54 L. T. 520; *Manchester Brewery Co v. Coombs*, cited ASSIGNS, p. 132; *Redman*, 86, 87; *Fawcett*, 118, 119.

A thing "void" as against a specified person or class may be good as against everybody else (*Young v. Billiter*, 8 H. L. Ca. 682; 30 L. J. Q. B. 153). Cp, ILLEGAL.

A Conveyance "void" under 13 Eliz. c. 5, as against Creditors, is good as against the Grantor himself and his representatives (*Hawes v. Leader*, Cro. Jac. 270; *Packman's Case*, 6 Rep. 18 b). Note: for the principles for holding a conveyance void under this statute; *V. Spirett v. Willows*, 34 L. J. Ch. 365; 3 D. G. J. & S. 293; *Freeman v. Pope*, 39 L. J. Ch. 689; 5 Ch. 538; *Ex p. Mercer*, 55 L. J. Q. B. 558; 17 Q. B. D. 290; *Re Lane-Fox*, 1900, 2 Q. B. 508; 69 L. J. Q. B. 722; 83 L. T. 176; 48 W. R. 650.

A *Judge's Order* which, for want of being filed, is "void" under s. 27, Debtor's Act, 1869, is only void as against the Creditors of the person against whom it is made, and not as against the parties to the Order (*Gowan v. Wright*, 56 L. J. Q. B. 131; 18 Q. B. D. 201); but the ruling in that case is not applicable to a statutory requirement of filing or registration of documents affecting whole classes of people under general laws relating to property, e.g. a document regulating Community of Goods between Spouses under ss. 2 and 7, Law of Natal, No. 22 of 1863 (*Taylor v. Sturrock*, 1900, A. C. 225; 69 L. J. P. C. 29; 82 L. T. 97).

A *Voluntary Settlement* "void" under s. 47 (1), Bankry Act, 1883, is only so as against the Donee and those voluntarily claiming under him; but is not void as against a Purchaser for Value in Good Faith (*Ex p. Brown, Re Vansittart*, 1893, 2 Q. B. 377; 62 L. J. Q. B. 279; *Re Brull, Ex p. Norton*, 1893, 2 Q. B. 381; 62 L. J. Q. B. 457; 41 W. R. 623; *Sv, Re Briggs and Spicer*, 1891, 2 Ch. 127; 60 L. J. Ch. 514). Notwithstanding the conflict of those decisions, a title under a Voluntary Settlement, though not 10 years old, will be forced on a purchaser if bankruptcy has not supervened (*Re Carter and Kenderdine*, 1897, 1 Ch. 776; 66 L. J. Ch. 408; 76 L. T. 476; 45 W. R. 484). *Vf*, CLAIMING UNDER. If a Settlement is void under the section, that does not give the trustee in the donor's bankry priority over incumbrancers subsequent to the settlement (*Sanguinetti v. Stuckey's Bank*, 1895, 1 Ch. 176; 64 L. J. Ch. 181; 71 L. T. 872; 43 W. R. 154). *Vf*, *Re Farnham*, 1895, 2 Ch. 799; 64 L. J. Ch. 717; 73 L. T. 231. *V*. SETTLEMENT: VALUABLE: VOLUNTARY PAYMENT: VOLUNTARY SETTLEMENT.

"Make void"; *V*. AFFECT.

**VOID SPACE OF GROUND.** — As to whether a Railway is a "Void Space of Ground" within a Rating Act, *V. Arnell v. Lond. & N. W. Ry*, 12 C. B. 697.

**VOIDABLE.** — "Voidable" is the concluding word of s. 1, Infants Relief Act, 1874, 37 & 38 V. c. 62; and in a case in which it somewhat came in question Kekewich, J., said that, "Voidable" means, that a thing



is valid until repudiated; not that it is invalid until confirmed (*Duncan v. Dixon*, 59 L. J. Ch. 437; 44 Ch. D. 211; 6 Times Rep. 222).

*V.* VOID.

**VOIDANCE.**—*V.* AVOIDANCE: LAPSE.

**VOLUME.**—“Volume” in def of Book, Copyright Act, 1842, 5 & 6 V. c. 45; *V. Cambridge University v. Beyer*, 16 East, 317; *British Museum v. Payne*, 2 Y. & J. 166; 4 Bing. 540; 1 Moore & P. 415.

**VOLUNTARILY.**—If a person, without duress of person or goods, does a thing, *e.g.* appears before a foreign tribunal, he does that thing “voluntarily” (*Voinet v. Barrett*, 55 L. J. Q. B. 39), even though he protest against being called on to do it (*Boissiere v. Brockner*, 6 Times Rep. 85). In *the Cave*, J., said he was unable to supply the reasons for the decisions in *Davies v. Price* (34 L. J. Q. B. 8) and *Ringwood v. Lowndes* (33 L. J. C. P. 337), and declined to extend the application of those decisions.

“Voluntarily,” s. 38 (2 *b*), Customs and Inl. Rev. Act, 1881, 44 & 45 V. c. 12, “is not used in the sense of ‘Without Consideration,’ but in its ordinary sense of ‘Freely,’ ‘Without Compulsion,’ and ‘Not under any Obligation’” (*A-G. v. Ellis*, 1895, 2 Q. B. 466; 64 L. J. Q. B. 813; 73 L. T. 350; 44 W. R. 13; 59 J. P. 774).

*V.* VOLUNTARY CONTRIBUTIONS: VOLUNTARY DISPOSITION: VOLUNTARY PAYMENT.

**VOLUNTARY.**—*V.* CONSENT.

**VOLUNTARY ALLOWANCE.**—*V.* INCOME.

**VOLUNTARY ANNUITY.**—*V.* PECUNIARY CONSIDERATION.

**VOLUNTARY ASSOCIATION.**—*Vh.* *Smith v. Kerr*, cited CHARITY, p. 296, and authorities therein cited: *Brown v. Dale*, 9 Ch. D. 78.

**VOLUNTARY CONFESSION.**—*V.* CONFESSION.

**VOLUNTARY CONTRIBUTIONS.**—“Voluntary Contributions” and “Voluntary Subscriptions” are synonyms (Tudor Char. Trusts, 526).

“Voluntary Contributions” may mean,

(1) That the contributions are not compulsory; or

(2) That they are without consideration

(per Kay, L. J., *Art Union v. Savoy*, 1894, 2 Q. B. 619; 63 L. J. M. C. 260; per Halsbury, C., *Savoy v. Art Union*, 1896, A. C. 305; 65 L. J. M. C. 164).

“Voluntary Contributions,” s. 1. Scientific Societies Act. 1843. 6 & 7

V. c. 36, should be "a gift made from disinterested motives for the benefit of others" (per Campbell, C. J., *Russell Institution v. St. Giles and St. George, Bloomsbury*, 23 L. J. M. C. 65; 3 E. & B. 416), and a Socy, to be exempt from Rates under that section, must receive such contributions as gratuitous offerings, without returning to the contributors any direct advantage; therefore, the Art Union of London is *not* such a Socy (*Savoy v. Art Union*, 1896, A. C. 296; 65 L. J. M. C. 161; 45 W. R. 34; 74 L. T. 497; 60 J. P. 660; 12 Times Rep. 377). V. SCIENCE.

"Voluntary Contributions," s. 62. Charitable Trusts Act, 1853, 16 & 17 V. c. 137, is not confined to annual subscriptions (per Romilly, M. R., *Corp for Relief of Widows and Children of the Clergy v. Sutton*, 27 Bea. 651; 29 L. J. Ch. 393); the phrase is "used in a popular sense, and denotes recurring gifts, repeated annually or otherwise with more or less regularity. Donations or Bequests (which would be included, as well as Subscriptions, in the general term 'Contributions') are dealt with in the following sentence" (*Re Clergy Orphan Corp*, 1894, 3 Ch. 151; 64 L. J. Ch. 73; 71 L. T. 450; 43 W. R. 150). *Vh*, *Re Wilson*, 19 Bea. 594; Tudor Char. Trusts, 525-528.

Institution, &c, "wholly maintained by Voluntary Contributions," s. 62, 16 & 17 V. c. 137, is one "which has no invested ENDOWMENT yielding an income for its support, but is dependent upon the gifts of the benevolent, whether recurrent or occasional and whether *inter vivos* or by Will" (*Re Clergy Orphan Corp*, 1894, 3 Ch. 150).

Exemption from Tax, on "Property acquired by or with funds *voluntarily contributed*," 48 & 49 V. c. 51, s. 11 (6), does not extend, *e.g.*, to the New University Club (*Re New University Club*, 18 Ch. D. 720; 56 L. J. Q. B. 462; 56 L. T. 909; 35 W. R. 774, following *Socy of Writers to the Signet v. Inl. Rev.*, 14 Sess. Ca. 4th Series, 34).

**VOLUNTARY CONVEYANCE.** — V. FRAUDULENT ASSURANCE: GOOD: VALUABLE: VOLUNTEER.

**VOLUNTARY COURTESY.** — "A meer Voluntary Courtesie will not have a CONSIDERATION to uphold an ASSUMPSIT. But if that Courtesie were moved by a Suit or Request of the Party that gives the Assumpsit, it will bind, for the Promise, though it follows, yet it is not naked, but couples it self with the Suit before, and the Merits of the Party procured by that Suit" (*Lampleigh v. Brathwait*, Hob. 106; 1 Sm. L. C. 153).

**VOLUNTARY DISPOSITION.** — "Voluntary Disposition," s. 38 (2 a), Customs and Inl. Rev. Act, 1881, 44 & 45 V. c. 12; V. A-G. v. *Jacobs-Smith*, 1895, 2 Q. B. 341; 64 L. J. Q. B. 605; 72 L. T. 714; 43 W. R. 657; 59 J. P. 468; 11 Times Rep. 411.

V. DISPOSITION: VOLUNTARILY: VOLUNTARY SETTLEMENT: VOLUNTEER.

**VOLUNTARY GIFT.** — *V. GIFT: SETTLEMENT*, pp. 1843, 1844: *Re Glubb*, 1900, 1 Ch. 354; 69 L. J. Ch. 278.

**VOLUNTARY LIQUIDATION.** — *V. LIQUIDATION*.

**VOLUNTARY PAYMENT.** — “A Voluntary Payment, is a PAYMENT simply by the act and will of the party making it; if there is anything to interfere with or control this will, then it is not a voluntary payment. It is said that a payment is voluntary when made as a matter of favour; but it may, nevertheless, not be a voluntary payment. Suppose a person who has done another many favours comes to him and asks in return a favour for a third party and the person asked says, ‘It is against my will, yet, as *you* request the favour, I will grant it’; would that be a voluntary act? It would in one sense, because he has the power to refuse it; but still there is an influence, for he grants the favour upon the solicitation of a person who has a right to ask it” (per Alderson, B., *Strachan v. Barton*, 11 Ex. 650; 25 L. J. Ex. 182). That def was upon what would be a VOID voluntary payment in Bankry, on *wharf, Ex p. Hill, Re Bird*, 23 Ch. D. 695; 52 L. J. Ch. 903: **VIEW: Wms. Bank. 237. Cp, VOLUNTARILY.**

**VOLUNTARY SCHOOL.** — Quà Voluntary Schools Act, 1897, 60 & 61 V. c. 5, “‘Voluntary School,’ means, a Public Elementary Day School, not provided by a School Board” (s. 4); quà Education (Scot) Act, 1897, 60 & 61 V. c. 62, “‘Voluntary School,’ means, a State-aided Day School, not provided by a School Board” (s. 2).

**VOLUNTARY SETTLEMENT.** — “Past or future Voluntary Settlement,” s. 38 (2 c), Customs and Inl. Rev. Act, 1881, 44 & 45 V. c. 12, explained by s. 11, 52 & 53 V. c. 7; *V. A-G. v. Chapman*, 1891, 2 Q. B. 526; 60 L. J. Q. B. 602; 40 W. R. 79; 65 L. T. 119: *A-G. v. Gosling*, 1892, 1 Q. B. 545; 61 L. J. Q. B. 429; 66 L. T. 284: *A-G. v. Wendt*, 65 L. J. Q. B. 54; 43 W. R. 701; 73 L. T. 255. As to the incidence of the Duty hereby imposed, *V. Re Croft*, 1892, 1 Ch. 652; 61 L. J. Ch. 190; 66 L. T. 157; 40 W. R. 425.

*V. SETTLEMENT: VOID: VOLUNTARILY: VOLUNTARY DISPOSITION.*

**VOLUNTARY SUBSCRIPTIONS.** — *V. VOLUNTARY CONTRIBUTIONS.*

**VOLUNTARY SOCIETY.** — *V. VOLUNTARY ASSOCIATION.*

**VOLUNTARY TRANSFER.** — As to what was a “Voluntary Transfer or Delivery” of property within s. 32, 7 G. 4, c. 57; *V. Wainwright v. Clement*, 4 M. & W. 385; 8 L. J. Ex. 25. *V. FRAUDULENT ASSURANCE.*

“Voluntarily” transfer; *V. A-G. v. Ellis*, cited VOLUNTARILY.

**VOLUNTARY TRUSTS.**—*V.* 2 White & Tudor, 835–895: Lewin, ch. 6: Godefroi, ch. 6, 7.

**VOLUNTARY WASTE.**—In *Garth v. Cotton* (3 Atk. 751; 1 Ves. sen. 524, 546; 1 Dick. 183), it was considered that the phrase “Without Impeachment of Waste” was rendered nugatory by adding “except Voluntary Waste.” However, in *Vincent v. Spicer* (25 L. J. Ch. 589; 22 Bea. 280), the words were “Without Impeachment of or for any manner of Waste, except Spoil or Destruction, or Voluntary or PERMISSIVE WASTE, or suffering buildings to go out of repair,” and under those words Romilly, M. R., held that a tenant for life might cut all timber (except ornamental timber), which an owner in fee, who regarded his own interest and the permanent advantage of the estate, would probably cut.

*V.* WASTE: WILFUL WASTE.

**VOLUNTARY WINDING-UP.**—*V.* WINDING-UP.

**VOLUNTEER.**—Every one who, under any disposition, takes a benefit for which neither himself nor any one on his behalf gives any CONSIDERATION, is a Volunteer. *e.g.* the consideration of Marriage, quâ a Marriage Settlement, extends only to the husband and wife and the issue of their marriage (*A-G. v. Jacobs-Smith*, cited VOLUNTARY DISPOSITION; explaining *Newstead v. Searles*, 1 Atk. 265: *Vf. De Mestre v. West*, 1891, A. C. 264; 60 L. J. P. C. 66: Vaisey, 77–82, 113).

So, every one in whose favour an Appointment is made under a General Power, and to whom or in whose favour the appointor is under no obligation to appoint, is a “Volunteer.” “The interest given by a Settlement to. *e.g.*, the children in default of appointment, is one thing; the interest which they take by virtue of the appointment, is another and a very different interest; and though it is true that they are not Volunteers with respect to the former, yet that interest is destroyed by the execution of the Power and the interest which they take under the Appointment they owe to the voluntary act and bounty of the appointor; and in respect of this latter interest they are mere Volunteers, just as much as any strangers would be in whose favour the donee of the Power might have thought fit to exercise it” (per Kindersley, V. C., *Vaughan v. Vanderstegen*, 2 Drew. 178; 2 W. R. 295). *Vh. Re Roper*, 39 Ch. D. 482: *Re De Burgh Lawson*, 41 Ch. D. 568; 58 L. J. Ch. 561; 37 W. R. 797: *Re Parkin*, 1892, 3 Ch. 521.

“Volunteer,” s. 11, 52 & 53 V. c. 7; *V. A-G. v. Jacobs-Smith*, sup: VOLUNTARY SETTLEMENT.

*V.* DONATIO MORTIS CAUSÂ. *Note*: GOOD: PURCHASE: VIEW: VOID.

Quâ Volunteer Act, 1863, 26 & 27 V. c. 65, “‘Volunteer,’ means, a Non-commissioned Officer or Private belonging to a Volunteer Corps,

exclusive of the permanent staff thereof" (s. 49); "Volunteer," in s. 15, does not include a Yeomany Officer (*Humphrey v. Bethel*, cited RIDE).

Quà Naval Artillery Volunteer Act, 1873, 36 & 37 V. c. 77, " 'Volunteer,' means, a Petty Officer or Gunner belonging to a Naval Artillery Volunteer Corps, exclusive of the permanent staff thereof" (s. 43).

Quà Army Act, 1881, " 'Volunteers, and Volunteer FORCES' includes, the Honorable Artillery Company of London" (subs. 14, s. 190).

Quà Electoral Disabilities (Military Service) Removal Act, 1900, 63 & 64 V. c. 8, " 'a Volunteer,' shall include, any person who is enlisted for temporary service only, in connection with any war, as a member of the Regular Forces" (subs. 4, s. 1).

**VOTE.** — " There are two well-known methods of voting, (1) by Show of Hands, and (2) by a Poll; and the essence of the former method is that the hands are held up and counted by decision of the eye" (per Chitty, J., *Ernest v. Loma Co*, 65 L. J. Ch. 851; 1896, 2 Ch. 572). Therefore, though the voting at a Co's Meeting is to be " either Personally or by Proxy," e.g. Art. 48, Table A, Comp Act, 1862, yet proxies ought not to be counted on the Show of Hands (*S. C.*, 1897, 1 Ch. 1; 66 L. J. Ch. 17; 45 W. R. 45, over-ruling *Re Bidwell*, 1893, 1 Ch. 603; 62 L. J. Ch. 549; *Vf*, *Re Horbury Bridge Co*, 48 L. J. Ch. 341; 11 Ch. D. 109; *Re Caloric Co*, 52 L. T. 846). *Vf*, CONCLUSIVE EVIDENCE.

Quà Parliamentary and Municipal Elections, a person applying for a Ballot Paper " shall be deemed 'to Tender his Vote,' or 'to assume to vote'" ; and an application for a Ballot Paper, " or expressions relative thereto, shall be equivalent to 'voting'" (ss. 15, 20, Ballot Act, 1872, 35 & 36 V. c. 33).

*V*. ENTITLED TO VOTE: *Morris v. Beres*, cited NUMBER.

"Vote"; Stat. Def., Bankry (Scot) Act, 1856, 19 & 20 V. c. 79, s. 4.

"Vote of the Conference"; Stat. Def., Primitive Wesleyan Methodist Society of Ireland Act, 1871, 34 & 35 V. c. 40, s. 1.

**VOTER.** — *V*. COUNTY, p. 421: ELECTOR: LOCAL GOVERNMENT ELECTORS: OCCUPATION VOTER: OWNERSHIP: PARLIAMENTARY: PAROCHIAL ELECTOR.

Quà Mun Corp Act, 1882, 45 & 46 V. c. 50, " 'Voter,' means, a BURGESS or a person who votes or claims to vote at a Municipal Election" (s. 77).

Other Stat. Def. — 17 & 18 V. c. 102, s. 38; 35 & 36 V. c. 60, s. 2; 55 & 56 V. c. 53, s. 27; 57 & 58 V. c. 38, s. 12.

**VOTING.** — *V*. POLLING: VOTE.

**VOUCH TO WARRANTY.** — *V*. Co. Litt. 101 b, 102 a.

**VOYAGE.** — A Voyage, is a transit at sea from one terminus to another (*Glaholm v. Hays*, 10 L. J. C. P. 98; 2 Sc. N. R. 471; 2 M. & G.

257: *Valente v. Gibbs*, 28 L. J. C. P. 229; 6 C. B. N. S. 270). "The Word 'Voyage,' standing alone, has an extensive meaning; it means, a passing by water from one place or port to another place or port" (per Byles, J., *Barker v. McAndrew*, 34 L. J. C. P. 194; 18 C. B. N. S. 759). *See*, per Coleridge, C. J., *R. v. Southport*, cited SHIP.

V. LIBERTY TO CALL. *Cp.* PASSAGE.

As to when a Voyage commences and is completed; *V. Dahl v. Nelson*, 12 Ch. D. 568; 6 App. Ca. 38; 50 L. J. Ch. 411: DURING, pp. 587, 588: NAVIGATION: *Re Pyman and Dreyfus*, 24 Q. B. D. 152; 59 L. J. Q. B. 13: 1 Maude & P. 469 *et seq.*: Carver, Part 2, ch. 10.

Vh. NEAR THERETO AS SHE MAY SAFELY GET: NEGLIGENCE OR DEFAULT OF MASTER OR MARINERS.

Quà Mer Shipping Act, 1894, Part 4 (relating to Fishing Boats), "Voyage," means, "a Fishing Trip commencing with a departure from a Port for the purpose of fishing, and ending with the first return to a Port thereafter upon the conclusion of the trip; but a return due to Distress only, shall not be deemed to be a return if it is followed by a resumption of the trip" (s. 370).

V. COLONIAL, at end: FIRST VOYAGE.

"Outward and Homeward Voyages"; *V.* 1 Maude & P. 373.

A Voyage POLICY is one which covers the Risk of a particular voyage; *Vh.* *Gambles v. Ocean Marine Insrce*, 1 Ex. D. 8, 141; 45 L. J. Q. B. 366. *Cp.* TIME POLICY.

"A Voyage *Royall*. is not onely, when the king himselfe goeth to warre, as Littleton here (s. 95) saith, but also when his lieutenant or deputy of his lieutenant goeth. . . . There is also another kind of Voyage *Royall*, viz. when one goeth with the king's daughter beyond sea to be married &c" (Co. Litt. 69b). There is therefore "a Voyage *Royall* of Warre, and a Voyage *Royall* of Peace and Amity" (Ib.). *V.* ESCUAGE.

"*Same Voyage*"; *V. Gether v. Capper*, 15 C. B. 696; 24 L. J. C. P. 69; 25 Ib. 260.

"Seaworthiness . . . for the Voyage"; *V.* SEAWORTHY.

VOYAGER. — *V.* PASSENGER.

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## WADSET — WAGES

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**WADSET.**—Is the Scotch equivalent for an English MORTGAGE (Jacob).

**WAFER.**—Wafer Bread is not “Bread” quâ the Rubric to the office for Holy Communion (*Hebbert v. Purchas*, cited ORNAMENT: *Kidsdale v. Clifton*, cited IT SHALL SUFFICE).

**WAGE.**—“‘Wage,’ is the giving security for the performing of any thing; as to wage Law, and to wage Deliverance” (Termes de la Ley).  
V. PLEDGE.

To wage Battle, or Wager of Battel; V. Jacob, *Battel*: 3 Bl. Com. 337–341: for the form of it, 3 Bl. Com. App. iv: abolished by 59 G. 3, c. 46, the last Wager of Battel being by Abraham Thornton, Nov. 1817, on his second trial for the murder of Mary Ashford. Cp, Trial by Battle, sub BATTLE.

To wage Deliverance; V. Termes de la Ley, *Gager de deliverance*.

To wage Law; V. Termes de la Ley, *Law*: Jacob, *Wager of Law*: Co. Litt. 294 b: 3 Bl. Com. 341–343. Abolished by s. 13, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42.

**WAGER.**—What is a Wager? V. this question discussed 40 J. P. 227.

V. BET: GAMING CONTRACT: SUBSCRIPTION OR CONTRIBUTION.

**WAGERING CONTRACT.**—V. GAMING CONTRACT: TIME BARGAIN.

**WAGERING POLICY.**—Is otherwise called an HONOUR, or P. P. I., Policy.

**WAGES.**—“Though this word might be said to include payment for any services, yet, in general, the word ‘Salary’ is used for payment of services of a higher class, and ‘Wages’ is confined to the earnings of labourers and artizans” (per Grove, J., *Gordon v. Jennings*, 51 L. J. Q. B. 417. *Th*, per Parke, B., *Riley v. Warden*, 18 L. J. Ex. 120; 2 Ex. 59: per Bramwell, B., *Sleeman v. Barrett*, 33 L. J. Ex. 153; 2 H. & C. 934, and in *Ingram v. Barnes*, 26 L. J. Q. B. 322; 7 E. & B.

132). In *thle*, Bramwell, B., said, "Whatever definition one gives to the term 'Wages,' a portion of what the Plaintiff here gets is 'profits,' made and makeable by the employment of other people under him. If a portion is that, the whole is not Wages"; *Vf*, per Cockburn, C. J., *S. C.* It would therefore seem that "Wages," are the *personal* earnings of labourers and artizans.

*I. INCOME: PAYMENT: PERSONAL LABOUR: SALARY: TRUCK ACT.*

Quà Hosiery Manufacture (Wages) Act, 1874, 37 & 38 V. c. 48, "any money or other thing had, or contracted to be paid delivered or given, as a recompense, reward, or remuneration, for any LABOUR done or to be done (whether within a certain time or to a certain amount, or for a time or for an amount uncertain) shall be deemed and taken to be the Wages of such Labour" (s. 7).

Quà Stannaries Act, 1887, 50 & 51 V. c. 43, "'Wages' includes, all EARNINGS by miners arising from any description of Piece or other WORK, or as tributers or otherwise" (s. 2).

Quà Mer Shipping Act, 1894, "'Wages,' includes EMOLUMENTS" (s. 742).

Claim for "Wages," s. 3 (2), County Court Admiralty Jur. Act, 1868, includes a claim for damages for Wrongful Dismissal (*The Blessing*, 3 P. D. 35). *I.* "Maritime Lien," sub LIEN: SEAMAN.

"Wages forfeited for DESERTION," s. 232, Mer Shipping Act, 1894, are the wages due after all proper deductions have been made (*The Parkdale*, cited SLOPS).

Forfeiture of all "Wages due"; *V. Walsh v. Walley*, 43 L. J. Q. B. 102; L. R. 9 Q. B. 367.

The month's wages payable on dismissing a Domestic Servant without notice, are the money wages; board wages are not included (*Gordon v. Potter*, 1 F. & F. 644).

In the United States, "the plaintiffs contracted to grade a Railway for the defendants, part of the terms of the remuneration being that the plts should receive pay for the actual Wages of men and teams employed on the work, and, in addition, 10 per cent of such amount. Such payment of Wages, &c, to be made direct to persons employed. The plts sub-let part of the work to sub-contractors. Payment was made direct by the railway to such sub-contractors as well as to the labourers of the plts. The plts claimed for 10 per cent over what the sub-contractors received; held, that 'Wages' were to be interpreted as 'Compensation paid to a hired person for his services.' This compensation to the labourer might be a specified sum for a given time of service, or a fixed sum for a specified work, *i.e.* payment made by the job. The word 'Wages' does not imply that the compensation is to be determined solely upon the basis of time spent in service; it may be determined by the work done. It means, compensation estimated in either way: *Ford v. St. Louis & N. W. Ry*, 54 Iowa, 273" (1 Hudson, 146).



**WAGGON.** — *V. CART: STAGE WAGGON.*

Quia Locomotives Act, 1898, 61 & 62 V. c. 29, " 'Waggon,' includes, any truck, cart, carriage, or other VEHICLE " (subs. 1, s. 17).

**WAGGON ROAD.** — *V. CART ROAD.*

**WAIF.** — " 'Waife' is when a theefe hath feloniously stollen goods, and being neerly followed with HUE AND CRY, or else overcharged with the burden or trouble of the goods, for his ease sake and more speedy travailing, without Hue and Cry, flyeth away, and leaveth the goods or any part of them behinde him, &c, then the Kings officer, or the Reeve or Baylife to the Lord of the Mannor (within whose jurisdiction or circuit they were left) that by prescription, or grant from the King, hath the franchise of Waife, may seise the goods so waived to their Lords use, who may keepe them as his owne proper goods, except that the owner come with FRESH SUIT after the felon, and sue an appeale, or give in evidence against him at his arraignment upon the indictment, and he bee attainted thereof, &c. In which cases the first owner shall have restitution of his goods so stollen and waived " (Termes de la Ley).

" 'Waifs,' *bona variata*, are goods stollen, and waived or thrown away by the thief in his flight, for fear of being apprehended " (1 Bl. Com. 296).

*Vf*, FUGITIVE GOODS: Cowel: Jacob: 12 Encyc. 498.

*Cp*, WAIVE.

**WAINABLE.** — Terra Wainabilis; *V. TERRA.*

**WAINAGE.** — AMERCIAMENT of a VILLEIN "salvo wainagio suo" (Magna Carta, c. 14), *i.e.* his "team and instruments of husbandry" (4 Bl. Com. 379). " 'Wainagium,' is the contenement or countenance of the villein, wherewith he was to doe villein service, as to carry the dung of the lord out of the seite of the mannor unto the lords land and casting it upon the same, and the like; and it was great reason to save his Wainage, for otherwise the miserable creature was to carry it on his back " (2 Inst. 28).

**WAIT FOR CONVOY.** — *V. CONVOY.*

**WAITING YOUR REPLY.** — *Seemle*, these words at the end of a letter containing a distinct contractual offer, do not make the offer a mere proposal which the writer is at liberty to retract on receiving a reply; therefore, if the receiver of the letter accepts the offer (though only verbally) the writer of it will be bound (*Watts v. Ainsworth*, 31 L. J. Ex. 448; 1 H. & C. 83).

**WAIVE.** — A "Waive" was a woman that was outlawed; "and shee is called 'Waive,' as left out or forsaken of the law, and not an outlaw

as a man is: for women are not sworn in Lectes to the King, nor to the Law, as men are, who therefore are within the Law, whereas women are not, and for that cause they cannot be said outlawed, in so much as they never were within it" (Termes de la Ley: *Vj*, Cowel).

*Cp*, WAIF.

**WAIVED GOODS.** — *V*. FUGITIVE GOODS: WAIF.

**WAIVER.** — A Waiver is "the passing by of a thing, or a declining or refusal to accept it" (Jacob), *i.e.* an ABANDONMENT. *Cp*, RENUNCIATION: "Surrender by Act or Operation of Law," sub SURRENDER: STANDING BY.

Waiver is EXPRESS, or IMPLIED; Express, when the person entitled to anything expressly and in terms gives it up, in which case it nearly resembles a RELEASE (*V. Stackhouse v. Barnston*, 10 Ves. 466); Implied, when the person entitled to anything does or acquiesces (*V*. ACQUIESCENCE) in something else which is inconsistent with that to which he is so entitled, — "Delay, of itself, does not constitute waiver, but it may be such as to amount to evidence of waiver" (per Bowen. L. J., *Selwyn v. Garfit*, 57 L. J. Ch. 615; 38 Ch. D. 284).

Quà BILLS OF EXCHANGE, and PRO. NOTES, Waiver is called RENUNCIATION (s. 62, Bills of Ex. Act, 1882, on *whv* Chalmers, 211); *V*. s. 16 (2), *Ib.*: Waiver of Notice of Dishonour; *V*. s. 50 (2), *Ib.*, on *whv* Chalmers, 164–170: Waiver of Presentment; *V*. s. 46 (2), *Ib.*, on *whv* Chalmers, 151: Waiver of Protest; *V*. s. 51 (9), *Ib.*, on *whv* Chalmers, 175, 176.

Quà *Companies*, the Waiver Clause in a Prospectus was that in which the rights (of applicants for shares) under s. 38, Comp Act, 1867, were waived; *Vh*, *Greenwood v. Leather Shod Wheel Co*, 1900, 1 Ch. 421; 69 L. J. Ch. 131: Hamilton, 440, 441: but that section is replaced and amplified by s. 10, Comp Act, 1900, by subs. 5 of which a Clause waiving its provisions is void: *Va*, s. 4 (5).

Quà CONTRACTS; *V*. Add. C. 129, 154, 895, 1090: Leake, 687, 690, 692, 727; quà a CONDITION Precedent in a Contract, *V*. Add. C. 129: Leake, 580, 753.

Quà *Covenants and Conditions*; *V*. *Gibson v. Doey*, or *Doey*, 27 L. J. Ex. 37; 2 H. & N. 615: *Re Summerson*, 69 L. J. Ch. 57, *n*: *Hepworth v. Pickles*, 1900, 1 Ch. 108; 69 L. J. Ch. 55; 81 L. T. 818; 48 W. R. 184.

Quà *Crown Escheats*; *V*. s. 6, Intestates' Estates Act, 1884, 47 & 48 V. c. 71.

Quà *Landlord and Tenant*, a FORFEITURE is waived, *e.g.*, by acceptance of rent becoming due *after* knowledge of the facts giving rise to the forfeiture (*Goodright d. Walter v. Davids*, Cowp. 803: *Arnsby v. Woodward*, 6 B. & C. 519: *Whitchot v. Fox*, Cro. Jac. 398), *Va*, WHENEVER; a NOTICE TO QUIT, given by a Landlord, is waived, *e.g.*, by acceptance of rent, or (if given by a Tenant) by payment of rent, for a period

after the expiry of the notice (*Keith v. National Telephone Co.*, 1894, 2 Ch. 147; 63 L. J. Ch. 373); *Vf*, Redman, 454: Fawcett, 447: Woodf. 341 *et seq.*

Quà MORTGAGES, Liens, and Sureties; *V. Fisher*, Part 7, ch. 4: Waiver of Mtgor's rights prior to the exercise by Mtgee of Power of Sale; *V. Selwyn v. Garjit*, 57 L. J. Ch. 609; 38 Ch. D. 273; 59 L. T. 233; 36 W. R. 513: *Re Thompson and Holt*, 59 L. J. Ch. 651; 44 Ch. D. 492; 62 L. T. 651; 38 W. R. 524.

Quà TENDER; *V. Douglas v. Patrick*, 3 T. R. 683: Rose. N. P. 703, 704.

Quà TORT, waiver of by claiming proceeds as a debt; *V. Brewer v. Sparrow*, 7 B. & C. 310: *Lythgoe v. Vernon*, 29 L. J. Ex. 164; 5 H. & N. 180: *Burn v. Morris*, 3 L. J. Ex. 193; 2 Cr. & M. 579: *Smith v. Baker*, 42 L. J. C. P. 155; L. R. 8 C. P. 350: *Valpy v. Sanders*, 17 L. J. C. P. 249; 5 C. B. 886: all which cases were referred to in *Rice v. Reed*, 1900, 1 Q. B. 54; 69 L. J. Q. B. 33; 81 L. T. 410: Leake, 75.

Quà TRUSTS, waiver of BREACH OF TRUST by long delay so that a claim founded thereon becomes a STALE Demand; *V. Re Cross*, 51 L. J. Ch. 645; 20 Ch. D. 109: *Vf*, Lewin, 1137: Waiver of Trust for Sale by the ELECTION of the beneficiaries to take the subject of the gift *in specie*; *V. Lewin*, 1166 *et seq.*

*V. 12 Encyc.* 499-506: Chand on Consent, ch. 12.

**WALK.** — A Conviction of a woman that she was guilty of "Walking with a Member" of Cambridge University, is bad; because the phrase does not connote that she was walking with him for an immoral purpose, nor that she was "suspected of evil" within the words of the Charter of the University (*Ex p. Daisy Hopkins*, 61 L. J. Q. B. 240; 56 J. P. 262; 66 L. T. 53). *Cp*, NIGHT-WALKER: STREET WALKER.

"Public Walks and Pleasure Grounds"; *V. PLEASURE.*

**WALL.** — The ordinary sense of the "Walls" of a BUILDING contemplates foundations and a roof (per Cave, J., *Slaughter v. Sunderland*, 60 L. J. M. C. 93).

Probably, a mere Wall is seldom, if ever, included in the word "Building"; *V. BUILDING*, p. 227.

A Wall "is, at any rate, something which will stand by itself" (per Russell, C. J., *Badley v. Cuckfield*, 64 L. J. Q. B. 571; 72 L. T. 775; 43 W. R. 663; 59 J. P. 582); in *which* it was held that an outer part of a new building constructed of thin sheets of galvanized iron next to which was a layer of felt with a match-board lining on the inner side, was not a "Wall" of "Hard and INCOMBUSTIBLE Materials" within a Bye Law relating to New Buildings. *Va*, a similar provision in R. 1, "Preliminary," Sch 1, Metrop Bg Act, 1855, and in R. 1 and 3, "Preliminary,"

Sch 1, London Bg Act, 1894; but there the phrase is "hard and incombustible Substances."

House "with the Walls belonging thereto"; *V. Fox v. Clarke*, L. R. 9 Q. B. 565; 43 L. J. Q. B. 178.

*V. BANK: CROSS: DEAD WALL: EXTERNAL WALL: FRONT MAIN WALL: INCLOSING WALLS: PARTY-WALL: RETAIN, at end: SEA WALL.*

**WALTHAM.** — *V. BLACK ACT.*

**WANDER.** — Animals "wandering"; *V. LOOSE: LYING ABOUT: STRAY.*

**WANT.** — "Does not want"; *V. LEFT.*

"For want of" objects of preceding limitation; *V. DIE WITHOUT ISSUE.*

"In the want of," *e.g.* a Certificate, does not connote that the thing cannot be obtained, or that the person spoken of is bound to obtain it if possible (per Bayley, J., *Suart v. Powell*, 1 B. & Ad. 273).

**WANTING A PILOT.** — "Wanting a Pilot," s. 72, 6 G. 4, c. 125, repld s. 606 (1 *h*), Mer Shipping Act, 1894, is not to be confined to such vessels as are bound to take a pilot, but applies to any vessel the master or owner of which thinks fit to require one (*Lucey v. Ingram*, 6 M. & W. 302; 9 L. J. Ex. 196).

**WANTON.** — " 'Wantonly,' means, not having a reasonable cause. 'Wantonness,' consists in the doing that which will annoy another, and which the party doing it knows will produce no results to himself " (per Willes, J., *Clarke v. Hoggins*, 11 C. B. N. S. 551, 552).

*V. UNREASONABLE.*

**WAPENTAKE.** — "Is all one with that which wee call HUNDRED" (Termes de la Ley: Cowel: 1 Bl. Com. 115). *Vh*, 12 Encyc. 515. *Cp*, RAPE, at end.

**WAR.** — "What constitutes a state of War is well described in Hall's International Law, 4 ed., 63, — 'When differences between States reach a point at which both parties resort to force, or one of them does acts of violence which the other chooses to look upon as a breach of the peace, the relation of War is set up, in which the combatants may use regulated violence against each other until one of the two has been brought to accept such terms as his Enemy is willing to grant'" (per Mathew, J., *Driefontein Mines v. Janson*, 1900, 2 Q. B. 343; 69 L. J. Q. B. 775; 83 L. T. 79; 48 W. R. 619); there is no authority for the supposed doctrine that a subsequent state of War will relate back to a prior SEIZURE so that the latter may be said to have been made whilst there was a state of War (*S. C.*).

"Foreign State at War with any Friendly State," s. 8 (3), Foreign

Enlistment Act, 1870, 33 & 34 V. c. 90; *V. United States v. Pelly*, cited PREVENT.

An alternative stipulation in a Charter-Party if "War" has commenced, does not mean War in any part of the world, but means, War between countries which would render the originally intended voyage unlawful (*Avery v. Bowden*, 5 E. & B. 714; 6 Ib. 953; 25 L. J. Q. B. 49; 26 Ib. 3; 5 W. R. 45).

*Note.* As to the effect of War on a Contract; *V. Ashmore v. Cox*, cited IMPOSSIBLE: Abbott, 754-760.

*Vh*, generally, 12 Encyc. 515-525.

*V. CIVIL WAR: CONTRABAND: LEVY WAR: SHIP*, p. 1868.

**WARD.** — As to Wardship in the old TENURES; *V.* 2 Bl. Com. 67, 87, 97: *Termes de la Ley, Gard, Gardeine*: Cowel, *Gard, Gardeyne*.

As to the modern relationship of GUARDIAN and Ward; *V.* Eversley on Domestic Relations, Part 3: Simpson on Infants, Part 3: 1 White & Tudor, 473-534: 1 Bl. Com. ch. 17: TESTAMENTARY GUARDIAN.

"'Ward of Court,' properly, means, a person under the care of a Guardian appointed by the Court; but the term has been extended to INFANTS who are brought under the authority of the Court by an application to it on their behalf, though no guardian is appointed by the Court: *Brown v. Collins*, 25 Ch. D. 60; 53 L. J. Ch. 370" (Simpson on Infants, 2 ed., 240, *whv* as to how Infants are made Wards of Court: *Va*, Eversley, Part 4, ch. 5).

*V. NURTURE.*

"Casual Ward"; *V. CASUAL.*

Ward HOLDING, in Scotland, abolished and conversion of tenure into Blench or Feu Holding by 20 G. 2, c. 50, ss. 1, 2, 4, 9.

*Municipal Wards*; *V.* Mun Corp Act, 1882, s. 30; Loc Gov (Ir) Act, 1898, s. 104 (1 *k*); Town Councils (Scot) Act, 1900, 63 & 64 V. c. 49, ss. 17-22, s. 111: P. H. Act, 1875, s. 271.

*V. WATCH.*

**WARE.** — Quà Gold and Silver Wares Act, 1844, 7 & 8 V. c. 22, "Ware." means and includes, "any plate, vessel, article, or manufacture, of any metal whatsoever" (s. 14). *V. DEALER.*

*V. GOODS, WARES, AND MERCHANDIZE.*

**WARECTUM.** — "*Warectum*, or *wareccum*, or *warectum*, doth signifie fallow" (Co. Litt. 5 b). *V.* Cowel.

**WAREHOUSE.** — "A 'Warehouse,' in common parlance, certainly means a place where a man stoves or keeps his goods which are not immediately wanted for sale" (per Rolfe, B., *R. v. Hill*, 2 Moo. & R. 459); and it was there held that a Cellar used for such a stowage was a "Warehouse" within s. 15, 7 & 8 G. 4. c. 29, repld s. 56. Larceny Act, 1861. In 1751, on 10 & 11 W. 3. c. 23, it was held that "Warehouses." meant,

"not mere repositories for goods but, such places where merchants and other traders keep their goods for sale in the nature of shops, and whither customers go to view them" (*R. v. Howard*, Foster, 78: *Vf*, *R. v. Gofrey*, Leach, 288).

Quà Customs Consolidation Act, 1876, 39 & 40 V. c. 36, " 'Warehouse,' shall mean, any place in which goods entered to be warehoused may be lodged, kept, and secured" (s. 284: *Vf*, s. 357, 16 & 17 V. c. 107).

"Warehouse," quà Factory and Workshop Act, 1901; *V. per Day*, J., *Rogers v. Manchester Packing Co*, cited BLEACHING: FACTORY.

Quà Part 7, Mer Shipping Act, 1894, " 'Warehouse,' includes, all warehouses, buildings, and premises, in which goods when landed from SHIPS may be lawfully placed" (s. 492). *Cp.* WHARF.

Quà Spirits Act, 1880, 43 & 44 V. c. 24, " 'Warehouse,' means, any warehouse approved or provided for the deposit of SPIRITS" (s. 3).

"Warehouse" or "other Building," s. 27, Rep People Act, 1832; *V. Watson v. Cotton*, 17 L. J. C. P. 68; 5 C. B. 51.

In *R. v. Edmundson* (28 L. J. M. C. 213; 2 E. & E. 77) a Warehouse was included in "other Place" in the phrase "dwelling-house, outhouse, yard, garden, or other place."

"Queen's Warehouse," quà Customs Consolidation Act, 1876, 39 & 40 V. c. 36, means, "any place provided by the Crown, or approved by the Commissioners of Customs, for the deposit of goods for security thereof and of the duties due thereon" (s. 284).

"BUILDING of the Warehouse Class," quà London Bg Act, 1894, "means, a warehouse, factory, manufactory, brewery or distillery, and any other building exceeding in CUBICAL extent 150,000 cubic feet, which is neither a PUBLIC BUILDING nor a DOMESTIC BUILDING" (subs 28, s. 5).

Warehouse Receipts; *V. Tennant v. Union Bank of Canada*, cited BANKING.

Warehouse to Warehouse Clause; *V. RISK*.

*V. EX QUAY OR WAREHOUSE*.

**WAREHOUSEMAN.** — "This is a term well understood in London, and means a person who buys and sells linens, muslins, silks, and woollen goods, by wholesale; and does not, it should seem, include in it every person who owns or keeps a Warehouse" (*Arch. Bank.*, 11 ed., 37: this comment was on "Warehousemen" as contained in the late Bankry definition of "Trader"). *Vf*, *Clark v. Denton*, 1 B. & Ad. 102, 103.

Quà Explosives Act, 1875, 38 & 39 V. c. 17, " 'Warehouseman,' includes, all persons owning or managing any Warehouse, Store, Wharf, or other premises, in which goods are deposited" (s. 108).

Quà Mer Shipping Act, 1894, " 'Warehouseman,' means, the occupier of a 'WAREHOUSE' as" therein defined (s. 492).

**WARES.** — *V.* GOODS, WARES, AND MERCHANDIZE: WARE.

**WARETTUM.** — A synonym for *Wreccum Maris*, **WRECK** (Hale, *De Jure Maris*, ch. 7); but in ch. 6, *Ib.*, Hale speaks of "*Littus Maris*, sometimes called *warettum*, sometimes *warettum*." *Vf*; **MARETTUM**: SHORE.

**WARLIKE.** — Warlike Operations; *V.* CONSEQUENCES.

**WARP.** — " 'Warp,' is a denomination of some kind of thread prepared to be woven and used in manufacture; it is, in itself, something 'prepared for manufacturing goods' " (*R. v. Ashton*, 2 B. & Ad. 756).

**WARRANT.** — "Warrant" has two frequent meanings, —

1. A Document (ordinarily issued by a Magistrate) for the apprehension of an accused person, in order to compel him to appear and answer the charge brought against him (4 Bl. Com. ch. 21), or for the commitment or detention or discharge of an accused person, or to compel the attendance of a witness, &c (11 & 12 V. c. 42; 31 & 32 V. c. 107), or to search for property with respect to which an offence against the Larceny Act is suspected to have been committed (s. 103, 24 & 25 V. c. 96). *Vh*, Stone, tit. *Warrants*.

"Warrant for the Arrest" of a person failing to attend for Public Examination; *V.* R. 76, Comp Winding-up Rules, 1890; R. 13, Comp Winding-up Rules, 1892.

Quà Extradition Act, 1870, 33 & 34 V. c. 52, " 'Warrant,' in the case of any FOREIGN State, includes, any JUDICIAL DOCUMENT authorizing the arrest of a person accused, or convicted, of crime " (s. 26).

2. A document authorizing something to be done, or for the delivery of goods, or for the payment of money.

Warrant of Authority; *V.* Bowstead on Agency, 377 *et seq.*

"Warrant," quà Dividends and Stock Act, 1869, 32 & 33 V. c. 104, includes, "draft, order, cheque, or any other document, used as a medium for payment of dividends " (s. 6): *Vf*; 33 & 34 V. c. 71, s. 3; 36 & 37 V. c. 44, s. 5.

"Warrant for the Delivery of Goods," s. 23, 24 & 25 V. c. 98, includes a Pawnbroker's Ticket (*R. v. Morrison*, 28 L. J. M. C. 210; Bell C. C. 158); *Vf*; AUTHORITY OR REQUEST: Arch. Cr. 468, 700.

"Warrant for Goods"; *V.* Stamp Act, 1891, s. 111.

"Treasury Warrant"; *V.* TREASURY.

*V.* CHEQUE.

"Warrant for the ARREST of Property," in Admiralty actions *in rem*, R. 16, Ord. 5, R. S. C.; on *whc* Ann. Pr.: Wms. & Bruce, Part 2, ch. 1.

A Warrant of Attorney, is a mode of giving a creditor security by his debtor authorizing a Solicitor to confess judgment against the debtor for an amount agreed on; *Vh*, Warrants of Attorney Acts, 1822 and 1843,

3 G. 4, c. 39; 6 & 7 V. c. 66; 32 & 33 V. c. 62, ss. 24-28: *Cook v. Fowler*, 43 L. J. Ch. 855; L. R. 7 H. L. 27. *Cp.*, POWER OF ATTORNEY. "Share Warrant"; *V. SHARE*, at end.

**WARRANTED FREE FROM AVERAGE.** — "Warranted free," means that the insurers are not to be liable for the things to which the warranty applies (*Cory v. Burr*, 8 App. Ca. 393; 52 L. J. Q. B. 657). *V. AVERAGE: STRANDING*, at end: *WARRANTY*.

**WARRANTED HIGHEST RATE.** — As to this phrase in a Lloyd's Policy; *V. Walker v. Uzielli*, 1 Com. Ca. 452, *wher* for "Warranted Same Premiums and Conditions."

**WARRANTED IN PORT.** — This phrase usually means, in the Port from which the Voyage is to commence (*Colby v. Hunter*, Moo. & M. 81; 3 C. & P. 7).

*V. IN PORT.*

**WARRANTED SOUND.** — Horse sold "warranted sound, for one month," means, that the warranty is to continue in force for one month only, and that complaint of unsoundness must therefore be made within one month of the sale (*Chapman v. Gwyther*, 35 L. J. Q. B. 142; L. R. 1 Q. B. 463; 7 B. & S. 417; *Vf.*, *Bywater v. Richardson*, 3 L. J. K. B. 164; 1 A. & E. 508; 3 N. & M. 748).

*V. SOUND: VICE.*

**WARRANTED UNINSURED.** — *V. UNINSURED.*

**WARRANTY.** — "A Warranty is an express, or implied, statement of something which the party undertakes shall be part of a contract, and though part of the contract yet collateral to the express object of it. But in many of the cases, the circumstance of a party selling a particular thing by its proper description has been called a *Warranty* and the breach of such a contract a breach of warranty; but it would be better to distinguish such cases as a *Non-compliance* with a contract which a party has engaged to fulfil, as if a man offers to buy *peas* of another and he sends him *beans*, he does not perform his contract; but that is not a Warranty; there is no *warranty* that he should sell peas; the *contract* is to sell peas and if he sends him anything else in their stead it is non-performance of it" (per Abinger, C. B., *Chanter v. Hopkins*, 4 M. & W. 404; 8 L. J. Ex. 16; quoted by Martin, B., *Azemar v. Casella*, 36 L. J. C. P. 264).

"It was rightly held by Holt, C. J. (*Crosse v. Gardner*, Carth. 90; 3 Mod. 261; *Medina v. Stoughton*, Salk. 210; Raym. Ld. 593), and has been uniformly adopted ever since, that an affirmation *at the time of sale* is a Warranty, provided it appear on evidence to have been so intended"



(per Buller, J., *Pasley v. Freeman*, 3 T. R. 51). *Vf*; *De Lassalle v. Guildford*, 1901, 2 K. B. 215; 70 L. J. K. B. 533.

*Vh*, 7 L. Q. Rev. 342.

Quà Sale of Goods, "Warranty," as regards England and Ireland, means, an agreement with reference to goods which are the subject of a Contract of Sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated: — As regards Scotland, a breach of Warranty, shall be deemed to be, a failure to perform a material part of the contract" (s. 62 (1), Sale of Goods Act, 1893). *Note*: speaking generally, a Sale of Goods implies a Warranty of Title but not of Quality (2 Bl. Com. 451), except, quà Title, where the circumstances negative the implication, or where, quà Quality, the implication arises when there is a stipulated quality or when the goods are supplied for a specified purpose (Rose. N. P. 483 *et seq*: Add. C. 547).

In Charter-Parties and Marine Insurances, "Warranted" or "Warranty" is, and for many years has been, synonymous with "CONDITION" (per Williams, J., *Behn v. Burness*, 32 L. J. Q. B. 205; 3 B. & S. 753; *Vf*, *Barnard v. Faber*, 1893, 1 Q. B. 340; 62 L. J. Q. B. 159; 68 L. T. 179; 41 W. R. 193; 9 Times Rep. 160), strictly binding on the party making it (Park, ch. 18). But a REPRESENTATION, *i.e.* a statement not appearing on the face of the instrument itself, "need only be performed in substance," and an error in a Representation does not vitiate the Policy if made without fraud and not false in a material point, or if the Representation be substantially, though not literally, fulfilled (Park. 663, citing *Pawson v. Watson*, Cowp. 787; *Vf*, *Behn v. Burness*, *sup*: *Quin v. National Assree*, Jones & Carey, 316). *Vh*, 8 Encyc. 164 *et seq*. 153 *et seq*.

*V*. FALSE WARRANTY: WRITTEN WARRANTY.

In regard to real property, "a warrantie is a covenant reall annexed to lands or tenements, whereby a man and his heires are bound to warrant the same" (Co. Litt. 365 a; *Vf*; Cowel: Jacob: Elph. 411).

**WARREN.** — " 'Warren' is a place privileged by prescription or grant of the King for the preservation of Hares, Conies, Partridges, and Pheasants, or any of them " (Termes de la Ley).

A Warren, or Free Warren, is a Franchise to have and keep game within a manor, or other known place (Wms. on Rights of Common, 238, *whc* for Crown Grant of a Free Warren. *Vf*, Elph. 629).

Although Coke says (Co. Litt. 5 b) that by a grant of a Warren not only the privilege but the land itself passes, yet it has been recently held by the H. L. that the grant of a "Warren," *e.g.* "Warren of Conies," does not, *primâ facie*, pass the soil, though it may do so by a context (*Beauchamp v. Winn*, L. R. 6 H. L. 223). *Robinson v. Dhuleep Singh* (11 Ch. D. 798; 48 L. J. Ch. 758) is an instance in which, con-

textually, the word was held (by Fry, J.) to pass the soil. *Vf*, *Note* to next par.

“A Warren is not parcel, nor any Member, of a MANOR; but it may be appertaining, but that is by Prescription” (*Bowlston v. Hardy*, Cro. Eliz. 547); therefore, a grant of a Manor with all its appertaining Franchises and appurts (*Morris v. Dimes*, 3 L. J. K. B. 170; 3 N. & M. 674), or even of a Manor “and all Warrens, &c, thereto appertaining, or accepted and reputed as part” thereof (*Bowlston v. Hardy*, sup), will not pass a Warren in GROSS. *Note*: in *Morris v. Dimes*, Channell arg. said, “A Warren is a realty in land, but is not part or parcel of the land (35 H. 6, fol. 56). Free Warren may be in one, the land in another; and if a party, having both, alien the land, the warren does not pass (8 H. 5, p. 4); and the conveyance of land *cum pertinentibus* will not pass warren.” *Vf*, *Pannell v. Mill*, cited ROYALTIES.

Beasts of Warren; *V*. BEASTS.

Fowl of Warren; *V*. FOWL.

*Cp*, CHASE: PARK: TENEMENT.

**WASH-HOUSE.** — *V*. BATH.

**WASTE.** — Waste is an act, or omission, by the tenant in possession, occasioning the destruction of, or injury to, “houses, gardens, woods, trees, or in lands, meadows, &c, or in exile of men, to the disherison of him in the reversion or remainder. There be two kinds of Waste, viz., Voluntary or Actually, and Permissive” (Co. Litt. 53 a: DO OR MAKE. *Va*, Termes de la Ley, *Wast*: 2 Bl. Com. 281: Add. T. 413: Woodf. 646).

VOLUNTARY WASTE, is “the committing of any spoil or destruction in houses, lands, &c, by tenants, to the damage of the heir or of him in reversion or remainder” (Bacon Abr. tit. “Waste”): “the law will not allow that to be Waste which is not anyways prejudicial to the inheritance” (per Richardson, C.J., *Barret v. Barret*, Hetley, 35). For example, if a Tenant for Life cuts Timber that, generally speaking, is Waste; yet if there are periodical cuttings of Timber which are in accordance with the modern practice on the estate and in the neighbourhood, and in the ordinary course of good forestry for the preservation of the woods and to secure a due succession of timber, such cuttings are not Waste, and the Tenant for Life is entitled to them as part of the annual profits (*Dashwood v. Magniac* and *Honywood v. Honnywood*, cited TIMBER); such a property becomes more or less a TIMBER ESTATE, but that is a conclusion which will require fairly clear proof (*Pardoe v. Pardoe*, 82 L. T. 547).

“The best definition of ‘Waste’ that I have been able to find is in *Darey v. Askwith* (Hob. 234) which is in these words,—‘It is generally true that the Lessee hath no power to *change the nature* of the thing

demised; he cannot turn meadow into arable, nor stub a wood to make it pasture, nor dry up an antient pool or piscary, nor suffer ground to be surrounded, nor decay the pale of park (for then it ceaseth to be a Park); nor he may not destroy or drive away the stock or breed of any thing, because it disherits and takes away the perpetuity of succession, as villains, fish, deer, young spring of woods, the like; but he may better a thing in the same kind, as by digging a meadow to make a drain or sewer to carry away water.' The test, as there laid down, seems to be, Whether the act which the Lessor says is an act of Waste by the Lessee is an act which alters the nature of the thing demised" (per Buckley, J., *West Ham v. East London W. W. Co*, 1900, 1 Ch. 624; 69 L. J. Ch. 262; 82 L. T. 85; 48 W. R. 284, *whcv* for an example).

Voluntary Waste is divisible into (a) Meliorating Waste, and (b) Equitable Waste.

Meliorating Voluntary Waste, is that which betters, and which, *semble*, is not punishable or restrainable unless substantial damage is proved, or some express prohibitive stipulation is broken (*Doherty v. Allman*, 3 App. Ca. 709; 39 L. T. 129; 26 W. R. 513; *Jones v. Chappell*, L. R. 20 Eq. 539; 44 L. J. Ch. 658; *Meux v. Cobley*, 1892, 2 Ch. 253; 61 L. J. Ch. 449; 66 L. T. 86; *Re McIntosh and Pontypridd Improvements Co*, 61 L. J. Q. B. 164). *Smyth v. Carter* (18 Bea. 78) is of but little value hereon (per Ld O'Hagan, *Doherty v. Allman*, sup).

Equitable Voluntary Waste, "is that which a prudent man would not do in the management of his own property" (per Campbell, C., *Turner v. Wright*, 2 D. G. F. & J. 243), and is the creation of Equity, and arises in cases of destructive or WANTON Waste which, at Law, would have been excused by the words "Without impeachment of Waste":— " 'Without impeachment of waste (sauus impeachment de wast),' *Absque impetitione vasti* (that is) without any challenge or impeachment of waste, and by force hereof the lessee may cut down the trees and convert them to his own use" (Co. Litt. 220 a). But now, the words "Without impeachment of waste" will not confer even "any legal right to commit Equitable Waste" (s. 25 (3), Jud. Act, 1873). So that now, both at law and equity, "the term 'Without impeachment of Waste,' contained in a Deed or Will creating a life estate in land, does not enable the life tenant to deal with the property as if he were the absolute owner thereof in fee simple. He may cut down timber and growing trees fit for timber (*Smythe v. Smythe*, 2 Swanst. 251; *Gordon v. Woodford*, 29 L. J. Ch. 222), and convert them to his own use (*Pyne v. Dor*, 1 T. R. 56), and open new mines and work them for his benefit: but he cannot dig and carry off brick-earth, and destroy a field to the prejudice of the inheritance (*London v. Web*, 1 P. Wms. 528); and he will be restrained from committing wanton and malicious waste, such as damaging and destroying buildings, pulling down ancient boundary walls and fences (*Aston v. Aston*, 1 Ves. sen. 265; *Vane v. Barnard*, 2 Vern. 739; 1 T. R.

55: Co. Litt. 220 a: *Leeds v. Amherst*, 14 Sim. 357; 15 L. J. Ch. 351; 16 Ib. 5), and cutting down thriving wood unfit for timber, and the felling of which would be destructive to the property (*Chamberlayne v. Dummer*, 1 Bro. C. C. 166; 3 Ib. 549); also from cutting down trees which were either planted, or left standing, for the shelter or ornament of a mansion-house (*Newdigate v. Newdigate*, cited ORNAMENTAL TIMBER: *Micklethwait v. Micklethwait*, 26 L. J. Ch. 721; *Wellesley v. Wellesley*, 6 Sim. 497; *Burges v. Lamb*, 16 Ves. 174; *V. Bubb v. Yelverton*, L. R. 10 Eq. 465; 40 L. J. Ch. 38), but he may cut down such ornamental timber as the Court would sanction for the preservation of the rest, and would be entitled to the proceeds (*Baker v. Sebright*, 13 Ch. D. 179; 49 L. J. Ch. 165). But he is not responsible, although he allows a mansion-house and buildings to go to wreck and ruin for want of timely repairs to the roof and windows (*Powys v. Blagrove*, 4 D. G. M. & G. 448; 24 L. J. Ch. 142; Kay, 495; *Landsowne v. Landsowne*, 1 Jac. & W. 522, overruling *Parteriche v. Powlett*, 2 Atk. 383); nor if he pulls down a ruinous structure, and uses up the materials in rebuilding it (*Morris v. Morris*, 3 D. G. & J. 323; 28 L. J. Ch. 329): Add. T. 417. *Vf*, 2 White & Tudor. 970 *et seq*: Seton, 542-555.

"The words 'Without impeachment of Waste,' as applied to Trustees of a term for special purposes, have, however, a very different sense from the same words annexed to a tenancy for life. The Court will not permit Trustees so holding, to execute their trust by cutting down timber (*Downshire v. Sandys*, 6 Ves. 115)": Add. T. 418: *Va, Campbell v. Allgood*, 17 Bea. 623. *V. WITHOUT IMPEACHMENT OF WASTE.*

As to the powers and rights of a Tenant for Life when he is Unimpeachable for Waste; *Vf*, *Re Medows*, 1898, 1 Ch. 300; 67 L. J. Ch. 145; 78 L. T. 13; 46 W. R. 297; *Cowley v. Wellesley*, L. R. 1 Eq. 656; 35 Bea. 635.

*Vf*, as to Waste, Co. Litt. 52 b-54 b, and tit. "Waste" in Index: Watson Eq. 1247-1255: Woodf. 646-661: Rose. N. P. 343-348: Yool on Waste: Bewes on Waste: 12 Encyc. 533-544: *Dunn v. Bryan*, Ir. Rep. 7 Eq. 143; *Brooke v. Mernagh*, 23 L. R. Ir. 86; *Brooke v. Kavanagh*, Ib. 97. As to when Life Estates limited in pursuance of an Executory Trust are, or are not, to be made Impeachable for Waste, *V. Elph.* 546.

PERMISSIVE WASTE, is damage resulting from the omission to do something which ought to be done, *e.g.* by Non-Repair (Co. Litt. 53); but "it is not Waste at Common Law, either Wilful or Permissive, to leave the land uncultivated" (per Parke, B., *Hutton v. Warren*, 1 M. & W. 472), or (as the same learned judge said in *S. C.* as reported Tyr. & G. 653) "Permissive Waste or ploughing sward are quite different from desisting to cultivate, which does not amount to Waste at Common Law": the dictum to the contrary (5 L. J. Ex. 235), *semble*, is inaccurately reported.

*Note:* In the absence of an express duty or obligation, no action for

Permissive Waste lies by a Remainder-man against the estate of a deceased Tenant for Life (*Re Cartwright, Aris v. Newman*, 58 L. J. Ch. 590; 41 Ch. D. 532; 37 W. R. 612; 60 L. T. 891; *Re Parry and Hopkin*, 1900, 1 Ch. 160; 69 L. J. Ch. 190; 81 L. T. 807; 48 W. R. 345). *Cp.*, KEEPING SAME IN REPAIR.

The King shall keep lands of Lunatics "without Waste or Destruction," 17 Edw. 2, c. 10, is to be construed in the ordinary, and not in the technical, sense (*Oxenden v. Compton*, 2 Ves. 71).

Ecclesiastical Waste and Dilapidations; *V. Phil. Ecc. Law*, Part 5, ch. 5: DILAPIDATION.

*V. DO OR MAKE: WILFUL WASTE.*

"Waste," quâ Fisheries (Ir) Acts, includes and extends to "any and to all uncultivated or unprofitable lands" (s. 1, 13 & 14 V. c. 88; *Vf.*, s. 113, 5 & 6 V. c. 106).

"Waste land of a MANOR," quâ Commons Act, 1876, 39 & 40 V. c. 56, "means and includes, any land consisting of waste land of any manor on which the tenants of such manor have rights of common, or of any land subject to any rights of common which may be exercised at all times of the year for cattle LEVANT AND COUCHANT, or to any rights of common which may be exercised at all times of the year and are not limited by number or STINTS" (s. 37). *V. COMMON LAND: WASTE GROUND.*

"Waste of the Forest"; *V. Commrs of Sewers v. Glosse*, cited VICINAGE.

"Waste land of Epping Forest"; *V. 34 & 35 V. c. 93*, s. 17.

*V. ROADSIDE WASTE.*

**WASTE GROUND.**— "'Wast Ground,' is so called because it lies as *wast*, with little or no profit to the Lord of the Mannor, and to distinguish it from the Demesnes in the Lords hands" (Cowel). *V. WASTE, towards end: DEMESNE: COMMON LAND.*

Grant by the Crown, as Lord of the Manor of Englefield, of "all those Coal Mines found, or to be found, within the Commons, *Waste Grounds* or Marshes within the said lordship of E.," with a proviso that the grant should be construed strictly as against the Crown, and most strictly and beneficially for the grantees; held, to pass Coal lying under the foreshore of the estuary of the Dee, between high and low water marks, and forming part of the Manor (*A-G. v. Hammer*, 27 L. J. Ch. 837).

**WASTE SILK.**—*V. Gardiner v. Gray*, 4 Camp. 144.

**WASTE WATER.**—In the Rochdale Canal Acts (and, probably, in Canal legislation generally), "Waste Water" means, "water not legitimately needed for the statutory purposes of the Canal," and which would, in the ordinary course, pass out of the Canal; and does not mean, such water as the Canal should not have used in any manner (*Manchester Ship Canal Co v. Rochdale Canal Co*, 81 L. T. 472; affd 85 Ib. 585).

**WASTING.**— Wasting Assets or Securities, are those which in their nature are terminating, *e.g.* terminating annuities and leaseholds: *Vh, Howe v. Dartmouth*, cited PRODUCE: Lewin, 322: Godefroi, 311–318.

**WATCH.**— “ Watch or beset ”; *V. BESET*.

In the phrase “ Watch and Ward,” Watch “ is properly applicable to the night only ”; Ward “ is chiefly applied to the daytime ” (1 Bl. Com. 356).

Quà, and by, s. 7, Merchandize Marks Act, 1887, 50 & 51 V. c. 28, “ ‘ Watch ’ means, all that portion of a watch which is not the watch case.”

**WATER.**— “ Open Water ”; *V. OPEN*, p. 1341: FIRST OPEN WATER.

“ Place for Water,” includes a Well (*Hipkins v. Birmingham Gas Co*, 5 H. & N. 74; 8 W. R. 182).

Reservation in a Lease of “ the free running of *Water and Soil* coming from any other buildings and lands *contiguous* to the premises hereby demised, in and through the sewers and watercourses made, or to be made, within through or under the said premises,” extends to Water and Soil coming from contiguous premises, whether arising, in the first instance, on or from such premises, or not; but it does not extend beyond Water, in its natural condition, and such matters as are the product of the ordinary use of land for habitation, and therefore does not give a right of passage for the refuse of tan-pits (*Chadwick v. Marsden*, 36 L. J. Ex. 177; L. R. 2 Ex. 285).

*V. RIVER: SUFFICIENT WATER: SUPPLY: WATERCOURSE: WATERS: WELL SUPPLIED.*

**WATER CLOSET.**—*V. SUFFICIENT PRIVY: URINAL.*

**WATER COMPANY.**— Quà P. H. Act, 1875, “ ‘ Water Company,’ means, any person or body of persons, corporate or unincorporate, supplying or who may hereafter supply water for his or their *OWN PROFIT* ” (s. 4), so, quà P. H. Ireland Act, 1878 (s. 2); probably, that def is of general acceptance. *Vf*, 40 & 41 V. c. 31, s. 10; 62 & 63 V. c. 19, Sch, s. 18 (6).

A Municipal Corporation owning WATERWORKS and supplying water and charging for same, is a “ Water Co ” within s. 52, P. H. Act, 1875 (*Wolverhampton v. Bilston*, 1891, 1 Ch. 315; 39 W. R. 394).

A Co for supplying motive power by hydraulic pressure, is not a Water Co (*London Co. Co. v. London Hydraulic Power Co*, 42 S. J. 362; 62 J. P. 229; 14 Times Rep. 301).

Quà Metropolis Management Acts, “ Water Company,” means and includes, the “ Metropolitan Water Companies ” enumerated in s. 3, 34 & 35 V. c. 113 (*Vf*, s. 5, 60 & 61 V. c. 56), “ and also any other

Company Board or Commission, Association Person or Partnership, corporate or unincorporate, for the time being supplying the METROPOLIS, or any part thereof, with water for DOMESTIC use" (s. 112, 25 & 26 V. c. 102).

#### WATER CONSUMER.—*V.* CONSUMER.

**WATERCOURSE.**—“Without saying that a ‘Watercourse’ may never mean the channel in which water flows, it certainly may mean the stream or flow of the water itself; and whether it means the one or the other in any instrument, will very materially depend on the context” (per Coleridge, J., delivering the judgment, *Doe d. Egremont v. Williams*, 17 L. J. Q. B. 158; 11 Q. B. 700).

“‘Watercourse’ may mean, and perhaps the more natural meaning of it is, a channel in which water flows; and the grant of a right to make a Watercourse, may include the right to fill it with water, and use the water flowing in it when made” (per Lord Davey, delivering the judgment, *Remfry v. Natal*, 1896, A. C. 558; 65 L. J. P. C. 72; 75 L. T. 58).

*Va.*, *Taylor v. St. Helen's*, 46 L. J. Ch. 857; 6 Ch. D. 264; and as to the acquisition of a Right to a Watercourse, *V. Wood v. Waud*, 3 Ex. 748; 18 L. J. Ex. 305; *Rameshur Pershad Navain Singh v. Koonj Behari Pattuk*, 4 App. Ca. 121.

“A Watercourse means, water flowing between banks more or less defined. To constitute a Watercourse in which rights may exist or may be acquired by user or otherwise, the flow of water must possess that unity of character by which the flow on one person's land can be identified with that on his neighbour's land. Water which squanders itself over an indefinite surface is not a Watercourse, nor a proper subject-matter for the acquisition of a right by user (*Briscoe v. Drought*, 11 Ir. Com. Law Rep. 250; *Raewstron v. Taylor*, 11 Ex. 369; 25 L. J. Ex. 33; *Broadbent v. Ramsbottom*, 11 Ex. 602, 615; 25 L. J. Ex. 115). But the moment the water of a spring runs into a definite channel, it constitutes a Watercourse (*Dudden v. Clutton Union*, 1 H. & N. 627; 26 L. J. Ex. 146). All accessions to such stream, from whatever source, form part of it (*Wood v. Waud*, sup). Where the question at the trial is whether there is a Watercourse or not, the judge ought, before he leaves that question to the jury, to instruct them as to what constitutes a ‘Watercourse’ in law (*Briscoe v. Drought*, sup; *Va.*, *Elliott v. South Devon Ry*, 2 Ex. 725; 17 L. J. Ex. 262; *R. v. Cottle*, 16 Q. B. 412; 20 L. J. M. C. 162; *Cashill v. Wright*, 6 E. & B. 891)”: Woodf. 750.

A claim by an owner of a Copper Mine to sink pits on his own land, to fill such pits with iron, and to cover the same with water pumped from the mine (in order to precipitate the copper in the water), and afterwards to let off the water into a watercourse in another's land, is a claim to a “Watercourse” within s. 2, Prescription Act, 1832, 2 & 3 W. 4, c. 71

(*Wright v. Williams*, 1 M. & W. 77; 5 L. J. Ex. 107; *Carlyon v. Lovering*, 1 H. & N. 797).

*Seemle*, a TIDAL RIVER may be included in "Watercourse" (*Somersetshire Drainage Commrs v. Bridgwater*, 81 L. T. 729).

*Vb.* Angell on Watercourses.

Quà Land Drainage Acts, "Watercourse," includes, "all rivers, streams, drains, sewers, and passages, through which water flows" (s. 3, 24 & 25 V. c. 133; s. 3, 26 & 27 V. c. 26).

"*Drains, Trenches, or Watercourses*," s. 97, 14 G. 3, c. 96, applies only to artificial streams made for improving the navigation of the rivers Aire and Calder, mentioned in the Act, and not to natural streams (*Smith v. Barnham*, 1 Ex. D. 419).

*V.* DRAIN: SPRING: STREAM: WATERS.

**WATER EDGE.**—In the grant of a Canadian Water Lot, "the expression 'along the Water's Edge' may either signify, the line which separates the land from the water; or, a water space, of greater or less width, constituting the margin of the river"; it is a phrase "capable of being explained by possession" (*Booth v. Ratté*, 59 L. J. P. C. 41).

**WATER FITTINGS.**—*V.* FITTINGS.

**WATERING PLACE.**—As to whether "Watering Places," in an Enclosure Act, includes Wells; *V. Race v. Ward*, 7 E. & B. 386, 387.

**WATER LIMITS.**—Quà Metropolis Water Acts; Stat. Def., 34 & 35 V. c. 113, s. 3.

**WATERMAN.**—Quà the Watermen and Lightermen of the River Thames, "Waterman," means, "any person navigating, rowing, or working, for HIRE, 'a Passenger Boat'" (s. 3, 22 & 23 V. c. cxxxiii), such a "Boat," meaning, "any Sailing Boat, River Steam Boat, Row Boat, Wherry, or other like Craft, used for carrying PASSENGERS within the limits of this Act, unless there is something in the context inconsistent with such a meaning" (s. 2, *Ib.*). *V.* WHERRY.

Watermen's and Lightermen's Acts, are 22 & 23 V. c. cxxxiii; 56 & 57 V. c. lxxxi: *Va.* Thames Conservancy Act, 1894, Part 6.

"The Watermen's Company," means, The Master, Wardens, and Commonalty, of Watermen and Lightermen of the River Thames, incorporated by 7 & 8 G. 4, c. lxxv (s. 3, Thames Conservancy Act, 1894).

Quà London Hackney Carriages Act, 1843, 6 & 7 V. c. 86, "Waterman," includes, "every person supplying water to the drivers of hackney carriages at the standings or places where hackney carriages usually stand or ply for hire, and every person assisting the drivers at such standings in managing or taking care of the horses or carriages, and



every attendant upon any metropolitan stage carriage at places where such carriages usually stop or ply for passengers" (s. 2).

**WATER-MARK.** — *V.* HIGH WATER: BRAND.

**WATER RATE.** — Quà Waterworks Clauses Act, 1847, 10 & 11 V. c. 17, "Water Rate," includes, "any rent, reward, or payment, to be made to the Undertakers for a supply of water" (s. 3).

A Lessor's covenant "to pay all Rates, Taxes, Assessments, Water Rate, and other Outgoings (except the gas and electric light), now or hereafter to be IMPOSED or ASSESSED upon the said premises, or on the lessor or lessee in respect thereof," includes, quà "Water Rate," the ordinary rate, and not a special water rate for Trade Purposes, *e.g.* a supply of water for a Restaurant (*Floyd v. Lyons*, 1897, 1 Ch. 633; 66 L. J. Ch. 350; 76 L. T. 251; 45 W. R. 435). *V.* DOMESTIC.

**WATERS.** — "If a man grant *aquam suam*, the soile shall not passe, but the pischary within the water passeth therewith" (Co. Litt. 4b). *Cp.* POOL.

As to the effect of general words in a Conveyance granting "Waters, Watercourses"; *V.* *Wardle v. Brocklehurst*, 29 L. J. Q. B. 145; *Sanderson v. Berwick-upon-Tweed*, 53 L. J. Q. B. 559; 13 Q. B. D. 547.

"Waters," in Sch to 52 G. 3, c. 150, as affected by the repeal in s. 20, 3 & 4 W. 4, c. 97; *V.* *A-G. v. Lamplough*, 47 L. J. Ex. 555; 3 Ex. D. 214.

"All other Waters wherein Salmons be taken," 2 Westm. c. 47; the Thames is not included herein (2 Inst. 478).

"Indian Waters"; *V.* INDIAN.

"Inland Waters"; *V.* INLAND.

Subterranean Waters; *V.* DEFINED CHANNEL: *Acton v. Blundell* and *Chasemore v. Richards*, cited INJURY.

*V.* NAVIGABLE: TERRITORIAL WATERS: TIDAL WATER: WATER.

*Vh.* Coulson and Forbes on Waters.

**WATER SUPPLY.** — *V.* SOURCE: SUPPLY.

**WATERWAY.** — *Vh.* 12 Encyc. 561-571.

**WATERWORKS.** — Quà P. H. Act, 1875, "Waterworks," includes, streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery lands buildings and things, for supplying or used for supplying water; also the stock-in-trade of any WATER COMPANY" (s. 4), so quà P. H. Ireland Act, 1878 (s. 2). S. 52, P. H. Act, 1875, which restricts the power of a Local Authority to construct Waterworks, also speaks of the "limits of supply" and the power to "supply" water; therefore, "Waterworks," in the Act including s. 52, means, works for the supply of water to persons

who require it; and does not include works for obtaining water for the use only of a Local Authority, *e.g.* for flushing sewers (*West Surrey Water Co v. Chertsey*, 1894, 3 Ch. 513; 63 L. J. Ch. 806; 71 L. T. 368; 43 W. R. 6): *Vf*, SUPPLY. In s. 52, "Waterworks" means, *New Waterworks*; the section does not apply to additions, or improvements in, existing works (*Cleveland W. W. Co v. Redcar*, 1895, 1 Ch. 168; 64 L. J. Ch. 64), unless the extension be into a new district (*Huddersfield v. Ravensthorpe*, 1897, 2 Ch. 121; 66 L. J. Ch. 581; 76 L. T. 817; 45 W. R. 642; 61 J. P. 596).

Other Stat. Def. — Waterworks Clauses Act, 1847, s. 3.

"Works for the supply of water"; Stat. Def., 40 & 41 V. c. 31, s. 10. *V*. SUPPLY.

**WAVESON.** — "Such goods as, after shipwreck, do appear swimming upon the water" (Jacob). *V*. FLOTSAM.

**WAY.** — "There be three kinde of wayes, whereof you shall reade in our ancient bookes. First a foot way which is called *iter, quod est jus eundi vel ambulandi hominis*; and this was the first way.

"The second is a foot way and horse way, which is called *actus ab agendo*; and this vulgarly is called packe and prime way, because it is both a foot way, which was the first or prime way, and a packe or drift way also.

"The third is *via* or *aditus*, which contains the other two, and also a cart way, &c, for this is *jus eundi, vehendi, et vehiculum et jumentum ducendi*: and this is twofold, *viz.*, *regia via*, the king's highway for all men, *et communis strata*, belonging to a city or towne, or betweene neighbours and neighbours. This is called in our bookes *chimin*, being a French word for a way, whereof cometh *chiminage, chiminagium, or chimmagium*, which signifieth a toll due by custome for having a way through a Forest; and in ancient records it is some time also called *pedagium*" (Co. Litt. 56 a: *who* criticized 2 Encyc. 248). *Vf*, Termes de la Ley, *Chimin*: 3 Cru. Dig. Title 24.

Besides the Ways enumerated by Coke there may be a DRIFTWAY or way for driving cattle, which is not necessarily included in a carriage or horse way (*Ballard v. Dyson*, 1 Taunt. 279: *Vth*, per Pearson, J., *Scriff v. Acton*, 31 Ch. D. 683).

*V*. BRIDLE-PATH: CAUSEWAY: FOOTPATH: HIGHWAY: PUBLIC HIGHWAY: PUBLIC WAY.

Any right of way may exist for certain purposes only (*Cowling v. Higginson*, 7 L. J. Ex. 265; 4 M. & W. 245: *Brunton v. Hall*, cited LEAD AWAY: *Wimbledon Common Conservators v. Dixon*, 45 L. J. Ch. 353; 1 Ch. D. 362: *Bradburn v. Morris*, 3 Ch. D. 812); and, without any express words of restriction, "*primâ facie*, the grant of a right of way, is the grant of a right of way having regard to the nature of the road over which it is granted and the purpose for which it is intended to

be used" (per Jessel, M. R., *Cannon v. Villars*, 8 Ch. D. 421; 47 L. J. Ch. 599).

"A right of way may be created by a covenant by the owner of the servient tenement that the owner of the dominant tenement shall enjoy it" (Elph. 630, citing *Holmes v. Seller*, 3 Lev. 305).

When in a deed relating to *Mines* there is a grant of "a *Free and Convenient Way*" (*Senhouse v. Christian*, 1 T. R. 560), or of a "*Sufficient Wayleave*" (*Dand v. Kingscote*, 9 L. J. Ex. 279; 6 M. & W. 174), or, probably, of a "*Necessary Wayleave*," or the like (*S. C.*), or to "*Convey Coals*" (*Bishop v. North*, 12 L. J. Ex. 362; 11 M. & W. 418), the grantee, *primâ facie*, may for his better accommodation make *Wagon-Roads* or *Tram-Roads* on the site over which such a right of way extends. He may even make a *Rail-Road* if, in the deed, there be a clause requiring him to compensate for damage, and if such a road would not be a nuisance or a source of danger (*Bishop v. North*, sup.). *Vj*, MacS. 357-361.

Under the words "*Sufficient Wayleave*," a party is not confined to such description of way as was in use at the time of the grant (*Dand v. Kingscote*, sup).

Quâ London Bg Act, 1894, "*Way*," "includes, any public road way or footpath not being a *STREET*, and any private road way or footpath which it is proposed to convert into a highway or to form lay out or adapt as a *Street*" (subs. 2, s. 5). *V. ROADWAY*.

A *Way of NECESSITY*, "derives its origin from a Grant," and not otherwise (1 Wms. Saund. 571). If "one sells land, and afterwards the Vendee, by reason thereof, claims a way over part of the Vendor's land, there being no other convenient way adjoining," in such case the vendee has a *Way of Necessity* over the vendor's land, "for otherwise he could not have any profit of his land"; and "*è converso*, if a man hath four closes lying together, and sells three of them, reserving the middle close and hath not any way thereto but through one of those which he sold, although he reserved not any *Way*, yet he shall have it as reserved unto him by the Law" (*Clark v. Cogge*, Cro. Jac. 170). But a *Way of Necessity* does not arise "whenever a man has not another way," e.g. he cannot go *extra viam* because the road he is entitled to use is impassable (*Bullard v. Harrison*, 4 M. & S. 387). *Vj*, *Pinnington v. Gallend*, 22 L. J. Ex. 348; 9 Ex. 1: per Cairns, L. J., *Gayford v. Moffatt*, 4 Ch. 135; *Titchmarsh v. Royston Water Co*, 44 S. J. 101; *Gale 151 et seq*; *Rosc. N. P.* 812.

*Permanent Way*; *V. PERMANENT*.

*V. ABANDONMENT: BY WAY OF: GATEWAY: NON-USER: WAYS.*

**WAYFARER.** — As regards his right to accommodation at an *INN*, and the Innkeeper's rights against him, "*Wayfarer*" seems synonymous with "*TRAVELLER*": *Vh*, judgment of Wills, J., *Orchard v. Bush*, cited *GUEST*.

**WAYLEAVE.** — *V. WAY:* *Whitwham v. Westminster Brymbo Co*, 1896, 2 Ch. 538; 65 L. J. Ch. 741; *N. E. Ry v. Hastings*, 1900, A. C. 260; 69 L. J. Ch. 516.

**WAYS.** — “The words ‘with all Ways thereunto *appertaining*,’ strictly and properly speaking, never carry a right of way over another tenement of the grantor; and for this simple reason, — when a man who is owner of two fields walks over one to get to the other, that walking is attributable to the ownership of the land over which he is walking, and not, necessarily, to the ownership of the land to which he is walking” (per Fry, J., *Bolton v. Bolton*, 11 Ch. D. 970; 48 L. J. Ch. 469, citing *Harding v. Wilson*, 2 B. & C. 96; 3 D. & R. 287; *Barlow v. Rhodes*, 2 L. J. Ex. 91; 1 Cr. & M. 439). And, accordingly, where there is a contract to sell premises “with the APPURTENANCES,” the vendor is entitled to have in the conveyance a limitation of the GENERAL WORDS of s. 6, Conv & L. P. Act, 1881, so as to grant no more than he has bargained to sell (*Bolton v. Bolton*, sup; *Re Peck and London School Bd*, 1893, 2 Ch. 315; 62 L. J. Ch. 598; 68 L. T. 847; 41 W. R. 388); and, generally, he will be entitled to have excluded therefrom the words “reputed” and “enjoyed” (*Re Peck and London School Bd*). *Vf*, *Re Hughes and Ashley*, 1900, 2 Ch. 595; 69 L. J. Ch. 741; 83 L. T. 390; 49 W. R. 67.

But a grant, by the owner of two closes of land, of one of them, “together with all Ways *now used therewith*,” will pass to the grantee a right of way over a clearly defined path, constructed over the other close, and then actually used as the mode of access to the close granted, even though the path did not exist prior to the unity of possession (*Barkshire v. Grubb*, 18 Ch. D. 616; 50 L. J. Ch. 731; 29 W. R. 929; *Vf*, *Thomson v. Waterlow*, L. R. 6 Eq. 36; 37 L. J. Ch. 495; *Langley v. Hammond*, L. R. 3 Ex. 161; 37 L. J. Ex. 118; *Kay v. Orley*, L. R. 10 Q. B. 360; *Bayley v. G. W. Ry*, 26 Ch. D. 434; *Brown v. Alabaster*, 37 Ch. D. 490; 57 L. J. Ch. 255; 36 W. R. 155). *V. THEREWITH.*

Ways “now or *heretofore* held or enjoyed”; *V. Roe v. Siddons*, 22 Q. B. D. 224.

Quæ Employers’ Liability Act, 1880, 43 & 44 V. c. 42, s. 1 (1), “Ways,” means, “all kinds of material things which may be used in, or in connection with, the business of the employer” (per Field, J., *McGiffen v. Palmer’s Shipbuilding Co*, 52 L. J. Q. B. 29; 10 Q. B. D. 5). Planks placed for walking over a hole in ground where machinery is being erected, is such a “Way” (*Bromley v. Cavendish Spinning Co*, 2 Times Rep. 881). But it is not necessary that there should be a defined passage; any vacant space on the premises where the employer’s business is being done which is ordinarily traversed by workmen when engaged on that business, is such a “Way” (*Willets v. Watt*, 1892, 2 Q. B. 92; 61 L. J. Q. B. 540; 66 L. T. 818; 40 W. R. 497). *Vf*, *Wood v. Dorrall*,

2 Times Rep. 550: *McShane v. Baxter*, 7 Times Rep. 58: *Conway v. Clemence*, cited PLANT: WORKS. *Va*, DEFECT.

"Ways" in a Mining Lease; *V. Beaufort v. Bates*, 31 L. J. Ch. 481; 3 D. G. F. & J. 381; 10 W. R. 200; 6 L. T. 82.

"Ways" in a Turnpike Act includes Railways (*Rowe v. Shilson*, 4 B. & Ad. 726).

Stat. Def. — 24 & 25 V. c. 41, s. 1.

**WEAK.** — Weak Mind; *V. UNSOUND MIND.*

**WEAKNESS.** — Accident caused by weakness; *V. CAUSED BY.*

**WEAPON.** — Offensive Weapon; *V. OFFENSIVE.*

**WEAR.** — *V. WEIR.*

**WEAR AND TEAR.** — "These words ('reasonable Wear and Tear') no doubt, include destruction to some extent, — destruction of surfaces by ordinary friction, — but we do not think they include total destruction by a catastrophe which was never contemplated by either party"; even though such catastrophe may have resulted from the reasonable use of the premises demised (per Lindley, J., delivering the judgment, *Manchester Bonding Warehouse Co v. Carr*, 49 L. J. C. P. 809; 5 C. P. D. 507).

"If those words, 'fair Wear and Tear and Damage by Tempest excepted,' were not there, any dilapidations found at any time, or at the end of the term, by reason of the wear and tear, — *e.g.* the wearing out of the walls and floors of a public-house from the constant traffic and so forth, — the lessee would be liable to replace, and if, unfortunately, by a storm his chimney-pot was blown down, or he had his roof broken, he would be bound to put it straight, and restore the place to good and substantial repair" (per Kekewich, J., *Darves v. Darves*, 57 L. J. Ch. 1095; 38 Ch. D. 499; 58 L. T. 514; 36 W. R. 399). *V. WITHOUT IMPEACHMENT OF WASTE.*

The deduction, quâ Income Tax under Sch D, for "Wear and Tear" (s. 12, 41 V. c. 15), may be and, *semble*, should be, not an average annual Wear and Tear of the 3 years on which the profits are estimated but, the Wear and Tear during the year immediately preceding the year of assessment (*Cunard S. S. Co v. Coulson*, 68 L. J. Q. B. 554; 1899, 1 Q. B. 865; 80 L. T. 326). ♪

The case of *Bigge v. Bigge* (9 Jur. 192) illustrates the distinction between "Wear" and "Tear." In that case a testator had, by handling, worn his Will in two, — a very different thing from his having torn it in two, — so there was no revocation by "tearing" within s. 20, Wills Act, 1837. *V. TEAR.*

**WEARING APPAREL.** — Bequest of “all my Goods and Wearing Apparel of what nature and kind soever, except my gold watch”; held, that not only the testatrix's clothes but also her **PERSONAL ORNAMENTS** passed (*Crichton v. Symes*, 3 Atk. 61).

**WEATHER PERMITTING.** — *V.* PERMITTING.

**WEATHER WORKING DAY.** — “Weather Working Day,” means, a day when work is not prevented by the weather; to load so much “per Weather Working Day,” in a Charter-Party, means, that the charterer is to be charged half a day when substantially half a day's work can be done, and a whole day when substantially a full day's work (though not amounting to 12 hours) can be done; less than half a day is not to be considered (per Russell, C. J., *Branckelov S. S. Co v. Lamport*, 1897, 1 Q. B. 570; 66 L. J. Q. B. 382; 2 Com. Ca. 89).

*V.* WORKING DAYS.

**WEEK.** — Though a “Week” usually means any consecutive 7 days, it will sometimes be interpreted to mean the ordinary notion of a week reckoning from Sunday to Sunday (*Bazalgette v. Lowe*, 24 L. J. Ch. 368, 416).

And, probably, a “week” usually means 7 **CLEAR** days: — thus, where a statute provided that Notice of Appeal should be given “within one Week” *before* such appeal was to be heard, and Notice was given on the 22nd for the 29th, it was held that the Notice was insufficient (*R. v. Sweeney*, 2 Ir. L. R. 278). *Cp.* **FORTNIGHT.**

Quà Factory and Workshop Act, 1901, “‘Week,’ means, the period between midnight on Saturday night and midnight on the succeeding Saturday night” (s. 156).

A theatrical engagement to employ at so much “*per week*,” may be shown, by usage, to mean, “per week during every week that the theatre is open” (*Grant v. Maddox*, 16 L. J. Ex. 227).

**WEEK-DAY.** — *V.* **HOLIDAY.**

**WEEKLY.** — As used in a Building Contract, parol evidence is admissible to show that, by the usage of the Building Trade, “Weekly Accounts” of Extras, means accounts of the Day-Work only, and does not extend to work capable of being measured (*Myers v. Sawl*, 3 E. & E. 306; 30 L. J. Q. B. 9).

*V.* **AVERAGE WEEKLY EARNINGS.**

“Weekly Close Season”; *V.* **ANNUAL CLOSE SEASON.**

An Order in execution of a statutory power enabling the order of “Weekly Payments,” may direct that the first payment be made before the expiration of a week from the making of the Order (*R. v. Weston*, Raym. Ld, 1197).

A Weekly *Tenancy* needs a notice to determine it (*Bowen v. Anderson*, 1894, 1 Q. B. 164). *V.* REASONABLE, p. 1665.

**WEIGHING.** — “Weighing Instrument,” quæ *Weights and Measures Acts*, “includes, scales with the weights belonging thereto, scale-beans, balances, spring-balances, steel-yards, weighing machines, and other instruments for weighing” (s. 35, 52 & 53 *V. c.* 21); and “Weighing Machine” includes a Weighing Instrument (*Ib.*).

*V.* WEIGHT: *Cp*, MEASURING.

**WEIGHT.** — *V.* ACTUAL WEIGHT: BY WEIGHT: COIN: CORRECT: DEAD WEIGHT: ENGLISH: STANDARD. *Cp*, MEASURE.

Neither Scales nor Weighing Machines are Weights or Measures (*Thomas v. Stephenson*, 2 E. & B. 108; 22 L. J. Q. B. 258). *V.* WEIGHING: *Cp*, MEASURE.

Goods shipped from abroad to England to be paid for according to “Weight,” connotes the Net English Weight (*Geraldes v. Donison*, Holt, N. P. 346).

“Weight of the Mineral gotten,” s. 17, 35 & 36 *V. c.* 76; *V. Brace v. Abercarn Co*, cited MINERAL GOTTEN.

“Excessive Weight”; *V.* EXTRAORDINARY TRAFFIC.

“Net Weight delivered”; *V.* DELIVERED.

“Weights and Measures Acts, 1878 to 1893”; *V.* Sch 2, Short Titles Act, 1896.

**WEIGHT AND MEASUREMENT.** — A Cargo of so many tons “of Weight and Measurement”; *V. Pust v. Dowie*, 34 L. J. Q. B. 127; 5 B. & S. 33.

**WEIGHT UNKNOWN.** — Where a Master of a Ship signs for goods “Weights unknown,” the instrument is open to explanation (*Geraldes v. Donison*, Holt N. P. 347). *V.* CLEAN BILL OF LADING: CONTENTS UNKNOWN.

“Not responsible for Weight” (*Bradley v. Dunipace*, 31 L. J. Ex. 210; 32 *Ib.* 22; 7 H. & N. 200; 1 H. & C. 521, on *wher*, *Parsons v. New Zealand Co*, cited CONCLUSIVE EVIDENCE), or “Weight unknown” (*The Emilien Marie*, 44 L. J. P. D. & A. 9; 32 L. T. 435), gives the Shipowner, not an absolute but, a qualified exoneration as regards the weight.

**WEIR.** — “‘Weare,’ or ‘Were,’ a stank or great Dam in a River, accommodated for the taking of Fish, or to convey the Stream to a Mill” (Cowel). *V.*, 12 *Encyc.* 579; *Williams v. Wilcox*, 7 L. J. Q. B. 229; 8 A. & E. 314; *Hanbury v. Jenkins*, 1901, 2 Ch. 401; 70 L. J. Ch. 730.

*V.* GURGES: KIDEL: *Cp*, WERE.

An unlegalized erection of a Weir may be restrained (*Barker v. Faulkner*, W. N. (98) 69).

**WELCHER.** — “Welcher,” without special damage, is not Slander (*Blackman v. Bryant*, 27 L. T. 491), unless the jury are satisfied that the word is used in the sense of. “one who takes money from those who make bets with him intending to keep such money for himself and never to part with it again” (*Williams v. Magyer*, Times, March 1, 1883: Odgers, 68).

**WELFARE.** — The Welfare of a Child, — to be considered quâ Custody, — “is not to be measured by money only, nor by physical comfort only. ‘Welfare’ must be taken in its widest sense. The moral and religious welfare of the child must be considered, as well as its physical well-being. Nor can the ties of affection be disregarded” (per Lindley, L. J., *Re McGrath*, 1893, 1 Ch. 143; 62 L. J. Ch. 208; 67 L. T. 636; 41 W. R. 97, cited and adopted in *Re Gynghall*, 62 L. J. Q. B. 564).

**WELL.** — *V.* PUBLIC WELL: SPRING: WATER: WATERING PLACE. Warrant of a Ship being “well”; *V.* SAFETY.

**WELL AND TRULY.** — “Well and truly administer”; *V.* ADMINISTER.

“Well and truly” execute a Building Contract, and liability of Surety thereon; *V. Kingston v. Harding*, 1892, 2 Q. B. 494; 62 L. J. Q. B. 55; 67 L. T. 539; 41 W. R. 19.

**WELL ASSURED.** — *V.* PRECATORY TRUST.

**WELL KNOWN.** — *V.* PRECATORY TRUST.

“‘As the Court well knew’; that is to say, ‘had judicial knowledge’” (per Willes, J., *London v. Cox*, 36 L. J. Ex. 240; L. R. 2 H. L. 277).

**WELL SECURED.** — An Annuity described in Particulars of Sale as “well secured,” *e.g.* on the once existing Waterloo Bridge Tolls, is not thereby represented as being on a good money-value security, but merely that its legal obligation has been effectually perfected (*Coverley v. Burrell*, 2 Starkie, 295). *V.* SECURED: SECURITY.

**WELL SUPPLIED.** — When property is sold under a representation that it is “well supplied with WATER,” that means, that the property is “supplied with water by a spring rising in it, or by a running stream passing through or into it, and so supplied as a matter of right, belonging or incident to the property, without rent or payment of any kind for the water or its use” (per Knight-Bruce, L. J., *Leyland v. Illingworth*, 29 L. J. Ch. 614).

**Lord WENSLEYDALE’S ACT.** — Marriage Confirmation Act, 1860, 23 & 24 V. c. 24: *Va.* PARKE’S ACT.



**WERE.** — “*Were* is an old Saxon word, sometime written *weea*, and signifieth the price of the life of a man, *estimatio capitis*, that is, so much as one paid for the killing of a man” (Co. Litt. 287 b). “*Wera* or *were*, sometimes signifieth AMERCIAEMENT” (Ib. 127 a).

*Cp.*, WEIR.

**Lord WESTBURY'S ACTS.** — Domicile Act, 1861, 24 & 25 V. c. 121:

Bankry Act, 1861, 24 & 25 V. c. 131:

Land Registry Act, 1862, 25 & 26 V. c. 53:

Fine Arts Copyright Act, 1862, 25 & 26 V. c. 68:

Companies Act, 1862, 25 & 26 V. c. 89:

Clerks of the Peace Removal Act, 1864, 27 & 28 V. c. 65:

Improvement of Land Act, 1864, 27 & 28 V. c. 114:

Liquidation Act, 1868, 31 & 32 V. c. 68.

**WESTERN BARGE.** — A Thames “Western Barge”; *V. Tibble v. Beadon*, 24 L. J. M. C. 104; *Doick v. Phelps*, 30 L. J. M. C. 2; 3 E. & E. 244.

**WESTMINSTER.** — The Statutes of Westminster are the Acts passed at the three parliaments of Edward I. held at Westminster, *i.e.* Westm. 1, A. D. 1275, consisting of 51 chapters; Westm. 2, A. D. 1285, consisting of 50 chapters; and Westm. 3, A. D. 1290, consisting of 3 chapters. Of these, c. 1, Westm. 2 (generally now cited as 13 Edw. I., c. 1) is the famous statute *De Donis*, or, more fully, *De Donis Conditionalibus* (those being its commencing words), which is the origin of our law of Estates TAIL, — “Tenant in Fee Tail is by force of the statute of Westm. 2, c. 1, for, before the said statute, all inheritances were Fee Simple” (Litt. s. 13; *Vf. Jordan v. Roach*, 32 Miss. 603; 2 Bl. Com. 109 *et seq.*; Wms. R. P. Part 1, ch. 2; Goodeve ch. 3). *V.* 12 Encyc. 580-582.

*Cp.*, QUIA EMPTORES.

**WET.** — Wet Dock; *V.* LAND COVERED WITH WATER.

Wet Oil; *V. Warde v. Stuart*, 1 C. B. N. S. 88.

Full and Complete CARGO of Wet Woodpulp; *V. Isis S. S. Co. v. Bahr*, 1899, 2 Q. B. 364; 68 L. J. Q. B. 930; *affd* in H. L. 1900, A. C. 340; 69 L. J. Q. B. 660; 5 Com. Ca. 277; 82 L. T. 571.

**WHARF.** — “‘Wharfe’ is a word used in the statute of 1 Eliz. c. 11, and other statutes, and it is a broad place neare to a creek or hithe of water, upon which goods and wares are laid, which are to bee shipt and transported from place to place” (Termes de la Ley). To the same effect are the United States decisions (*Doane v. Broad Street Ass.*, 6 Mass. 334; *Geiger v. Filor*, 8 Florida, 332).

So, “Wharf,” in the def of “FACTORY,” in Workmen’s Comp Act,

1897, is used in its popular sense of, "a place contiguous to water, used for the purpose of loading and unloading goods, and over which goods pass in loading and unloading. It is essential to a Wharf that goods should be in transit over it. The primary idea is that, it is a place used, not for storing goods but, in the process of their transit to or from water" (per Collins, L. J., *Haddock v. Humphrey*, 1900, 1 Q. B. 609; 69 L. J. Q. B. 327; 82 L. T. 72; 48 W. R. 292; 64 J. P. 86). *Vt*he for an example of a yard nearly adjoining but not part of a "Wharf": *Haddock v. Humphrey*, distd in *Kenny v. Harrison*, 1902, 2 K. B. 168; 71 L. J. K. B. 783. *Vf*, *Ellis v. Cory*, 71 L. J. K. B. 72.

Quà Explosives Act, 1875, 38 & 39 V. c. 17, " 'Wharf,' includes, any quay, landing place, siding, or other PLACE, at which goods are landed, loaded, or unloaded " (s. 108).

Quà Part 7, Mer Shipping Act, 1894, " 'Wharf,' includes, all wharves, quays, docks, and premises, in or upon which any goods, when landed from SHIPS, may be lawfully placed " (s. 492, replacing s. 66, 25 & 26 V. c. 63), and " WHARFINGER," means, the Occupier of such a Wharf (Ib.). *Cp*, WAREHOUSE.

"Wharf" quà a Rating Act; *V. R. v. Regent's Canal Co*, 6 B. & C. 720.

Quà Thames Conservancy Act, 1894, " 'Wharf,' includes, any wall and building adjoining the Thames " (s. 3).

*V. DOCK: FACTORY: PUBLIC WHARF: QUAY.*

**WHARFAGE.** — "Wharfage, or Keyage, a duty for the pitching or lodging of goods upon a wharf" (Hale, *De Portibus Maris*, ch. 6).

**WHARFINGER.** — "Is he that owns or keeps a Wharfe, or hath the oversight or management of it" (Cowel). *Vh*, *Chattock v. Bellamy*, 64 L. J. Q. B. 250; *Tredegar Iron Co v. S. S. Calliope*, 1891, A. C. 11; nom. *The Calliope*, 60 L. J. P. D. & A. 28.

Quà Mer Shipping Act, 1894, *V. WHARF.*

Quà Thames Conservancy Act, 1894, " 'Wharfingers,' used in reference to Elections of Conservators, means, occupiers of legal quays and sufferance wharfs on the Thames appointed by the Commissioners of Customs " (s. 3). *V. SUFFERANCE.*

**WHAT IS LEFT.** — Bequest of "What is left, my books and furniture and all other things, I wish to be equally divided amongst the three children"; held, to carry the RESIDUE (*Re Cudge*, 37 L. J. P. & M. 15; L. R. 1 P. & D. 543); so, of the phrase, "my furniture, plate, books, and live stock, or *what else* I may be possessed of at my decease" (*Fleming v. Burrows*, 1 Russ. 276).

"Whatever MONEY is left"; held, to pass Government Funds (*Boardman v. Stanley*, Ir. Rep. 7 Eq. 342).

*V. LEFT: REMAIN: RESIDUE.*

**WHATEVER.** — “Any cause whatever”; *V. ANY*, pp. 93, 94.

“All Expenses whatever”; *V. EXPENSES*.

“Any Purpose whatever”; *V. AVAILABLE*.

“Whatever remains”; *V. REMAIN: WHAT IS LEFT*.

*V. WHATSOEVER*.

**WHATSOEVER.** — “Whatsoever,” as a rule, excludes any limitation or qualification, and implies that the genus to which it relates is to be understood in its utmost generality (per Fry, L. J., *Duck v. Bates*, 53 L. J. Q. B. 344; 13 Q. B. D. 851; 50 L. T. 778; 32 W. R. 813; 48 J. P. 501). The same learned judge (in construing a Reservation in a Conveyance in Fee of “all MINES of Coal, Culm, Iron, and all other Mines and Minerals whatsoever, except Stone Quarries”) said, “Those words are intended to mean that which they express; and where you find the word ‘whatsoever’ following upon certain substantives, it is often intended to repel, and in this case does effectually repel, the implication of the so-called doctrine of *Ejusdem Generis*, which I think has often been urged for the sake of giving, not the true effect to the contracts of parties but, a narrower effect than they were intended to have” (*Jersey v. Neath*, 22 Q. B. D. 565, 566; 58 L. J. Q. B. 578). *If*, per Hardwicke, C., *Tilley v. Simpson*, 2 T. R. 659 *n*: per Williams, J., *Perry v. Davis*, 3 C. B. N. S. 777.

“The insertion of the word ‘whatsoever’ has been held, in several of the cases to which we have been referred, to make a great difference in the interpretation of an Exempting Clause, and to enlarge its operation” (per Cockburn, C. J., *Re v. Kent Jus.*, 2 E. & E. 920, 921; 29 L. J. M. C. 193; 8 W. R. 496).

“I devise all my goods and chattels, moneys, debts, and whatsoever else I have in the world not before disposed of” to A.; held, to pass an estate in fee (*Hopewell v. Ackland*, 1 Salk. 239; 1 Com. 164). So, where the words were “Whatever I may die possessed of” (*Davenport v. Coltman*, 9 M. & W. 481; 11 L. J. Ex. 114; *Evans v. Jones*, 46 L. J. Ex. 280). *Vh*, 1 Jarm. 738, 739.

But sometimes even such a wide phrase as “whatsoever and wheresoever” will receive a restricted meaning; *V. Johnson v. Telford*, 1 Russ. & My. 244; *Maxwell v. Maxwell*, 2 D. G. M. & G. 705; 22 L. J. Ch. 43.

So, if a Condition of Sale enables a vendor to rescind if any Objection be made “in respect of Title or of any other matter or thing whatsoever, which the vendor shall be UNWILLING” to satisfy, that does not apply where the vendor, having only the last remaining month of a term, purports to sell the fee simple (*Bowman v. Hyland*, 47 L. J. Ch. 581; 8 Ch. D. 588; distd *Re Deighton and Harris*, cited *RELATING*).

*V. WHATEVER: WHERESOEVER*.

**WHEEL.** — *V. FLANGE-WHEEL*.

**WHEELED CARRIAGE.**—*V. Radnorshire v. Evans*, 32 L. J. M. C. 100; 3 B. & S. 400: **HACKNEY CARRIAGE.**

**WHEN.**—“When,” usually creates a **CONDITION PRECEDENT** (*Jolly v. Hancock*, 22 L. J. Ex. 38; 7 Ex. 820).

Where there is a testamentary gift to A., “If,” or “When,” or “Provided,” or “In Case,” or “So soon as” (phrases which are synonymous, *Shrimpton v. Shrimpton*, 31 Bea. 425: *Va. Goss v. Nelson*, 1 Burr. 227: *Hanson v. Graham*, 6 Ves. 243), a certain event happens, — e.g. attaining a stated age, — such a gift, standing unaffected by the context, confers only a contingent interest, and requires the happening of the event to give it validity. But with the aid of a context such words may, without difficulty, not defer the vesting of the subject-matter of the gift, but merely refer to the futurity of its possession (1 Jarm. 805, 809, 816, 842, 854, 860: *Borastou’s Case*, 3 Rep. 19 a: *Hanson v. Graham*, 6 Ves. 239: *Phipp’s v. Ackers*, 3 Cl. & F. 703; nom. *Phipp’s v. Williams*, 5 Sim. 44: *Andrew v. Andrew*, cited **FROM AND AFTER: Scotney v. Lomer, 54 L. J. Ch. 558; 55 Ib. 443; 29 Ch. D. 535; 31 Ib. 380: *Re Wrey, Stuart v. Wrey*, 54 L. J. Ch. 1098; 30 Ch. D. 507). It has also been said that “‘When’ cannot be considered as so strongly indicating contingency as ‘Provided’ and ‘If’” (*Watson Eq. 1217*, and cases there cited).**

Where the gift is to a class “*who*,” or “*as*,” shall **ATTAIN** a certain age, the rule (nearly universally applied) is to regard the attainment of the age as part of the description of the beneficiary, and to construe the gift as contingent, “upon the ground that no one could claim who could not predicate of himself that he was of the age required” (per Wigram, V. C., *Bull v. Pritchard*, 16 L. J. Ch. 185; 5 Hare, 567: *Festing v. Allen*, 13 L. J. Ex. 74; 12 M. & W. 279; 5 Hare, 573: *Vf*, 1 Jarm. 817, 818, 854, 860). But even this construction may yield to a context, e.g. “born or **TO BE BORN** in due time” after the decease of the life tenant (*Muskett v. Eaton*, 45 L. J. Ch. 22; 1 Ch. D. 435: *Lambert v. Parker, Cooper, G.*, 143; 1 Jarm. 819, 860, 855–860).

Where a legacy is payable out of a specified fund “when *got in*,” or “when *recovered*,” or “when *received*,” the right to interest on it is not suspended or postponed (*Entwistle v. Markland*, 6 Ves. 528 n: *Sitwell v. Bernard*, 6 Ves. 520: *Wood v. Penoyre*, 13 Ves. 336, 337).

**CAPITAL MONEY** “when received,” s. 21, S. L. Act, 1882, includes, money to arise at a future date (*Re Norfolk*, cited **IMPROVEMENT**).

**V. AS AND WHEN: ON: SO SOON AS.**

**WHENEVER.**—Where a clause in a Lease provides for **FORFEITURE** “if and whenever” rent is in arrear, that means, as often as the rent shall remain in arrear at any moment of time, and the forfeiture is not waived by a distress which does not yield sufficient to satisfy the rent due

(*Shepherd v. Berger*, 1891, 1 Q. B. 597; 60 L. J. Q. B. 395; 64 L. T. 435; 39 W. R. 330). *V. IF.*

As to the comprehensiveness of "whenever," *e.g.* s. 31 (6), Sum Jur Act, 1879; *V. per* Ld Herschell, *Boulter v. Kent Jus.*, cited COURT OF SUMMARY JURISDICTION.

**WHEREAS.** — Notwithstanding the doctrine in Co. Litt. 352 b, that a Recital doth not conclude "because it is no direct affirmation," yet if there be a direct affirmation it is none the less positive, and is as effective to work an ESTOPPEL, though introduced by a "Whereas" (*Bowman v. Taylor* and *Smith v. Scott*, cited INVENTED).

**WHERESOEVER.** — "Wheresoever" points to locality, and therefore, quā a testamentary gift, it is "peculiarly applicable to REAL ESTATE" (per Turner, V. C., *Stokes v. Salomons*, 9 Hare, 79; 20 L. J. Ch. 343).

*V. WHATSOEVER: WHOSOEVER.*

**WHEREUPON.** — *V. THEREUPON.*

**WHERRY.** — "A 'Wherry' and a 'Lighter' are in common parlance, boats plying for hire and carrying passengers or goods" (per Erle, J., *Reed v. Ingham*, 23 L. J. M. C. 156; 3 E. & B. 889); a Steam-tug is not a "Wherry, Lighter, or other CRAFT," within s. 37. Watermen's and Lightermen's Act, 1827, 7 & 8 G. 4, c. lxxv (*S. C.*), nor is a Coal Brig a "Lighter, VESSEL, Barge, or other Craft," within s. 4, 1 & 2 V. c. ci (*Blanford v. Morrison*, 15 Q. B. 724; 19 L. J. Q. B. 533).

**WHETHER.** — "Whether," following a general bequest, is a term of enumeration, and does not enlarge or affect the generality (per Fry, J., *Re Greaves*, 23 Ch. D. 313; 52 L. J. Ch. 753; *Vf, Re Pickup*, 1 J. & H. 389; 30 L. J. Ch. 278; 9 W. R. 251; 4 L. T. 85).

**WHICH.** — *Vh, Miles v. Harrison*, 43 L. J. Ch. 585; 9 Ch. 316.

Read "as," in *Whateley v. Spooner*, 3 K. & J. 542.

**WHILST.** — A grant by Lease of the use of a thing "whilst" the same remains on the premises, reserves to the lessor the right to remove the thing (*Rhodes v. Bullard*, 7 East, 116).

Acts said to have been done "whilst" a Lunatic was in a person's care, *scumble*, does not amount to an averment that he ever was in such care (*R. v. Pelham*, 8 Q. B. 965).

*V. DURING: REMAIN.*

**WHISKY.** — "Whisky," sold simply as such, must not be reduced more than 25 degrees under proof (Sale of Food and Drugs Act Amendment Act, 1879, 42 & 43 V. c. 30, s. 6). *See, GIN.*

**WHITEBOY ACTS.**—The Irish Act, 15 & 16 G. 3, c. 21; and Tumultuous Risings, (Ir) Act, 1831, 1 & 2 W. 4, c. 44.

**WHITESIDE'S ACT.**—Landed Estates Court (Ir) Act, 1858, 21 & 22 V. c. 72.

**WHO.**—*V.* ATTAIN: HAVE: LIVING: WHEN.

**WHOLE.**—“The authorities on the point are in conflict, but the view I take is this, — (1) Where a Legacy is given vesting at a future time, and the *whole* of the Intermediate Interest is given to the legatee in any event, then the entire gift, principal and interest, is absolutely devoted to the legatee's use, and vests *in presenti*: (2) If, on the other hand, the *whole* of the intermediate interest is *not* so given, but only some discretionary portion thereof, it cannot be said that the entire gift, principal and interest, is absolutely devoted to the legatee's use, and in such a case the gift does not vest *in presenti*” (per North, J., *Re Wintle*, 65 L. J. Ch. 867; 1896, 2 Ch. 719). The gift of the intermediate interest may be either direct or in the form of maintenance, provided it be of the whole interest in any event (*Watson v. Hayes*, 9 L. J. Ch. 49; 5 My. & C. 125); but a direction to apply the “whole” of the intermediate interest “or such part as the trustees may think fit” towards, *e.g.*, BENEFIT or MAINTENANCE, gives discretion, and is not a direction to apply the whole intermediate income in any event, and does not effectuate a vesting in the beneficiary (*Leake v. Robinson*, 2 Mer. 363; *Re Grimshaw*, 48 L. J. Ch. 399; 11 Ch. D. 406; *Dewar v. Brooke*, 49 L. J. Ch. 374; 14 Ch. D. 529; *Re Wintle*, *sup.*, dissenting from *Fox v. Fox*, L. R. 19 Eq. 286; *Re Sanderson*, 26 L. J. Ch. 804; 3 K. & J. 497; *Re Stanger*, 60 L. J. Ch. 326; 64 L. T. 693; 39 W. R. 455; 1 Jarm. 844). *Cp.* RENTS AND PROFITS, 2nd par.

“The whole *Act*,” quâ 33 & 34 V. c. 99, “when used in the said Schedule with reference to any Act which has been already in part repealed, means, the whole Act so far as it has not been repealed” (s. 3).

“A Kinsman of the Whole BLOOD, is he that is derived, not only from the same ancestor but, from the same couple of ancestors” (2 Bl. Com. 226). *Cp.* HALF-BLOOD.

Whole Cause of Action; *V.* CAUSE OF ACTION.

“Whole Circumstances”; *V.* CIRCUMSTANCES.

“Whole Currency”; *V.* CURRENCY.

A testamentary declaration that “the Whole INCOME” derived from specified property shall be paid to A. for life, is an Express Stipulation, within s. 7, Apportionment Act, 1870, that no apportionment shall take place (*Re Meredith*, cited EXPRESSLY STIPULATED).

“Whole Reach or Burthen of the VESSEL”; *V.* *Weir v. Union S. S. Co.*, cited CLEAR, p. 323.

In an agreement for personal service, a negative obligation will not be

enforced by Injunction unless there be an express stipulation; not even where the employé contracts to give his "Whole Time" to his employer's service (*Whitwood Co v. Hardman*, 1891, 2 Ch. 416; 60 L. J. Ch. 428; 64 L. T. 716; 39 W. R. 433; over-ruling *Montague v. Flockton*, 42 L. J. Ch. 677; L. R. 16 Eq. 189), or that he will "act EXCLUSIVELY" for his employer (*Mutual Reserve Assn v. New York Insree*, 75 L. T. 528).

Tenement occupied "one Whole YEAR, at the least," s. 2, Poor Relief (Settlement) Act, 1825, 6 G. 4, c. 57; *V. R. v. Ormesby*, 4 B. & Ad. 214; *R. v. Herstmonceaur*, 7 B. & C. 551; *Hastings v. St. James, Clerkenwell*, 6 B. & S. 914; 35 L. J. M. C. 65; L. R. 1 Q. B. 38.

V. WHOLLY.

**WHOLESALE.** — "As a general rule 'Wholesale' merchants deal only with persons who buy to sell again; whilst 'Retail' merchants deal with consumers" (per Bacon, V. C., *Treacher v. Treacher*, W. N. (74) 4).

The sale of 4½ gallons or more of Beer, is a sale "by Wholesale" within s. 72 (9), 35 & 36 V. c. 94 (*R. v. Jenkins*, 65 L. T. 857; 61 L. J. M. C. 57; 40 W. R. 318; 55 J. P. 824). V. RETAIL.

"Wholesale Beer Dealer's License"; Stat. Def., 37 & 38 V. c. 69, s. 37.

**WHOLESOME.** — V. PURE.

**WHOLLY.** — "Wholly or in part matters of mere Account"; V. ACCOUNT.

"Wholly Agricultural," "Wholly Pastoral"; V. AGRICULTURAL: PASTURE.

"Services rendered wholly or in part within *British Waters*"; V. *The Pacific*, cited PART, p. 1412.

"Wholly or in part dependent"; V. DEPENDANT.

"Wholly disabled": A solicitor sprained his ankle, which confined him to his private room, and prevented his going downstairs; some part of his business was stopped, but clerks carried on other parts, and he could write letters, consult law books, and give advice and directions; held, that he was "wholly disabled" "from following his usual business, occupation, or pursuits," within an accident policy (*Hooper v. Accidental Insree*, 29 L. J. Ex. 340, 484; 5 H. & N. 546, 557). Cp, TOTAL Loss.

Policy "wholly" or "partially kept up" for the benefit of a donee. s. 11 (1), 52 V. c. 7, does not include a policy gratuitously assigned, the premiums on which, since the assignment, have been paid by the Assignee (*Lord Advocate v. Fleming*, 1897, A. C. 145; 66 L. J. P. C. 41; 76 L. T. 125; 45 W. R. 674; 61 J. P. 692).

“Wholly *maintained* by voluntary contributions”; *V. SCIENCE: VOLUNTARY CONTRIBUTIONS.*

Money expended “wholly, exclusively, and necessarily, in the *performance of the duties* of his office or employment,” s. 51, Income Tax Act, 1853; *V. Bowers v. Harding*, cited *PUBLIC OFFICE.*

“Wholly for the *purposes of trade*”; *V. PURPOSES: SOLELY.*

*V. WHOLE.*

**WHOMSOEVER.** — A covenant for *QUIET ENJOYMENT* without interruption “by any person or persons whomsoever,” extends even to the unlawful acts of all persons therein named or comprised, but not to the unlawful acts of third persons having no title (*Woodf. 723, 727: Touch. 166, 170, 171*).

“Any other persons whomsoever,” are words extremely wide; they mean everybody, and require a very strong context to restrict them (*R. v. Doubleday, 3 E. & E. 501*).

*V. WHOSOEVER.*

**WHORE.** — A Whore is a woman who practises unlawful commerce with men, particularly one that does so for hire (*Sheehy v. Cokley, 43 Iowa, 185*). *Vh, Ezekiel, ch. xvi.*

By *CUSTOM*, and independently of 54 & 55 V. c. 51, it is actionable to say in the City of London that a woman is a “whore” there, “because a whore is there to suffer the corporal punishment of carting and whipping” (*Hart v. Holmes, Cunningham, 168: Vf, Robertson v. Powell, Selwyn N. P. 1259*).

A woman may be called a “whore” by words of implication, *e.g.* to say she had a Bastard, or by calling her husband a Cuckold (*Hart v. Holmes, sup.*).

*V. BROTHEL: STREET WALKER.*

**WHOSOEVER.** — “‘Whosoever,’ in its proper meaning, comprehends all persons all over the world, natives of whatever country” (*Marleod v. A-G., New South Wales, 1891, A. C. 455; 60 L. J. P. C. 55; 65 L. T. 321*). But even so wide a word may be restricted by the context; and where a Colonial Act provides that “whosoever being married, marries another person during the life of the former husband or wife, *WHERESOEVER* such second marriage takes place,” commits Bigamy, that means, “whosoever, at the time of the offence, is amenable to the jurisdiction of the Colony wheresoever in the Colony the offence is committed” (*Ib.*).

*V. WHOMSOEVER.*

**WHOSOEVER WILL GIVE INFORMATION.** — A party who had been robbed of bank notes put forth a handbill, wherein it was stated that “Whosoever will give Information” whereby the same might be traced, should, on conviction of the parties, receive a reward; held, that



the only person entitled to the reward was he who first gave information by which the notes were recovered (*Lancaster v. Walsh*, 7 L. J. Ex. 209; 4 M. & W. 16: *Vf*; *Smith v. Moore*, 1 C. B. 438: *Lockhart v. Barnard*, 15 L. J. Ex. 1; 14 M. & W. 674).

**WIC.** — “A place upon the sea shore, or upon a river” (C. Litt. 4 b).

**WICKED.** — To say of a Bishop that he is a “Wicked Man” is actionable (per Seroggs, J., *Townsend v. Hughes*, 2 Mod. 160).

**WICKEDNESS.** — Wickedness of Life; *V.* IMMORAL.

**WIDOW.** — A Widow, is a woman who has Survived a man to whom she was lawfully married, and who was his WIFE at the time of his death.

A woman surviving a man with whom she has gone through the ceremony of marriage, but with regard to whom she had obtained a declaration of Nullity of Marriage, is not his “Widow” (*Re Boddington*, 52 L. J. Ch. 239; 53 Ib. 475; 22 Ch. D. 597; 25 Ib. 685). So, a wife divorced who survives her husband, is not his “Widow,” within the Statute of Distribution; *secus*, if only judicially separated (*Rolfe v. Perry*, 32 L. J. Ch. 149). But a reputed wife, taking by a *designatio personæ*, may take as her reputed husband’s “Widow,” and then that word will connote her surviving him (*Re Lowe*, 61 L. J. Ch. 415; 40 W. R. 475). *V.* WIFE.

In a gift over on death of testator’s “Widow,” the use of this word shows that the event was contemplated to happen after testator’s death (*Randfield v. Randfield*, 2 D. G. & J. 57; 4 Drew. 147: *Cp. Taylor v. Stainton*, 2 Jur. N. S. 634, 635).

“Widow,” in a Policy or in the Rules of a FRIENDLY SOCIETY, is not confined to the person who was Wife at the time the policy was taken out or the membership commenced, any more than “Children” is so limited (*Re Atkinson*, 39 S. J. 655).

*V.* HUSBAND: NATURAL REPRESENTATIVES: WIFE.

“Wherever an estate is given to a Widow for life, ‘provided she shall not marry,’ unless there be a devise over immediately it is merely *in terrorem*” (per Ashurst, J., *Doe v. Freeman*, 1 T. R. 392, 393).

A gift to the “Widows” of a place, is a good CHARITY (*Powell v. A-G.*, 3 Mer. 48: *A-G. v. Comber*, 2 Sim. & St. 93, on *whlcc*, *Browne v. King*, 17 L. R. Ir. 453, 454: *Russell v. Kellett*, 3 Sm. & G. 264; 26 L. T. O. S. 193; 2 Jur. N. S. 132: *Thompson v. Corby*, cited SPINSTER).

**WIDOWED MOTHER.** — A widow who has married again, cannot be a “Widowed Mother” within s. 35, Divided Parishes and Poor Law Amendment Act, 1876, 39 & 40 V. c. 61 (*Amersham v. London*, 20 Q. B. D. 103; 36 W. R. 141; 57 L. J. M. C. 6; 58 L. T. 83: *Llanelly*

v. *Neath*, 1893, 2 Q. B. 38; 62 L. J. M. C. 112; 69 L. T. 194; 57 J. P. 694: *See*, *Highworth v. Westbury-on-Severn*, 53 J. P. 580; 5 Times Rep. 716). *V. CHILD*, p. 307: WIFE.

**WIDOWER.** — *V. MARRIED MAN.*

**WIDTH.** — *V. Stringer v. Sykes*, 46 L. J. M. C. 141; 2 Ex. D. 240. "Average Available Width," "Maximum Width," s. 51, Ry. C. C. Act, 1845; *V. R. v. Rigby*, 14 Q. B. 687; 19 L. J. Q. B. 153.

*V. NOT LESS.*

**WIFE.** — "Wife," s. 35, 39 & 40 V. c. 61, includes a Widow (*Reigate v. Croydon* and *Medway v. Bedminster*, 14 App. Ca. 465; 59 L. J. M. C. 29; 61 L. T. 733; 38 W. R. 295; 53 J. P. 580; 5 Times Rep. 716). *V. CHILD*, p. 307: WIDOWED MOTHER: MARRIED MAN.

"Any Wife," s. 27, Matrimonial Causes Act, 1857, "must certainly include any wife being a natural-born English subject" (per Cresswell, J. O., delivering the judgment, *Deck v. Deck*, 29 L. J. P. M. & A. 129; 2 Sw. & Tr. 90: *Va, Bond v. Bond*, 29 L. J. P. M. & A. 143; 2 Sw. & Tr. 93). *Vf*, MARRIAGE.

"Any woman he may marry"; *V. WOMAN.*

A deserting and adulterous wife, is not a "Wife" within s. 4, Vagrancy Act, 1824, 5 G. 4, c. 83, even though the husband has committed adultery since she left him, for by her adultery he is no longer "legally bound to maintain" her within s. 3 (*R. v. Flintan*, 1 B. & Ad. 227). But connivance at a wife's adultery, will preclude a husband from escaping liability for her Necessaries (*Wilson v. Glossop*, 20 Q. B. D. 354; 57 L. J. Q. B. 161; 58 L. T. 707; 36 W. R. 296; 52 J. P. 246).

A divorced wife, is not a "Wife" within a general bequest or limitation (per Kay, J., *Re Morrierson, Hitchins v. Morrierson*, 58 L. J. Ch. 80: 40 Ch. D. 30; 59 L. T. 847, rejecting *Re Bullmore*, cited HUSBAND). So, a woman who has bigamously become a supposed wife, is not comprised in such a bequest or limitation (*Wilkinson v. Joughin*, 35 L. J. Ch. 684; L. R. 2 Eq. 319); *secus*, in the absence of proof of fraud on her part (*Re Potts*, 29 L. J. Ch. 168; 27 Bea. 576). *V. WIDOW.*

"A Wife (*uxor*) is a good name of PURCHASE, without a Christian name" (Co. Litt. 3a).

A woman who is only a reputed wife, may take as "Wife" if, under the circumstances, that word is a clear designation of her (*Dolby v. Powell*, 30 Bea. 534: *Wh, Doe d. Gains v. Rouse*, 5 C. B. 422: *Re Howe*, 33 W. R. 48: *Re Horner*, 57 L. J. Ch. 217; 37 Ch. D. 695: *Re Harrison*, 1894, 1 Ch. 561; 63 L. J. Ch. 385: *Re Loue*, 61 L. J. Ch. 415: *Re Plant*, 47 W. R. 183: *Anderson v. Berkley*, 1902, 1 Ch. 936; 71 L. J. Ch. 444: HUSBAND); but in a bequest to A. for life, remainder to his "Wife" (without more), that must almost always mean A.'s

lawful wife; for A. may marry after the testator's death, and then there would be a person exactly answering the description of A.'s wife (*Re Davenport*, 1 Sm. & G. 126; 1 W. R. 103; 20 L. T. O. S. 165). *Vf*,  
RELATIONS.

Even an intended wife may take under a bequest to the testator's "Wife" if that word, under the circumstances, is a clear designation of her (*Schloss v. Stiebel*, 6 Sim. 1).

As to construing *Testamentary Gifts to a Wife*, "the distinctions deducible from general principles, and the authorities, appear to be the following:—

1. That a devise or bequest to the wife of A., who has a wife at the date of the Will, relates to that person, notwithstanding any change of circumstances which may render the description inapplicable at a subsequent period, and is under *all* circumstances confined to her;

2. If A. have no wife at the date of the Will, the gift embraces the individual sustaining that character at the death of the testator; and

3. If there be no such person, either at the date of the Will or at the death of the testator, it applies to the woman who shall first answer the description of wife at any subsequent period" (1 Jarm. 324).

*Vf*, as to Rule 1, *Re Hancock*, 1896, 2 Ch. 173; 65 L. J. Ch. 690; 74 L. T. 658; 44 W. R. 545; *vthc*, *Foakes v. Jackson*, 69 L. J. Ch. 352. In *Re Drew* (1899, 1 Ch. 336; 68 L. J. Ch. 157; 79 L. T. 656; 47 W. R. 265), Stirling, J., found a context in the Will which enabled him to determine that "Wife" of the testator's son, meant, the lady who was such wife at the son's death, and not her who was the wife at the date of the Will but who had since died: *Vf*, *Longworth v. Bellamy*, 40 L. J. Ch. 513; *Sv*, *Borcham v. Bignall*, cited THEIR, *whc* was followed in *Firth v. Fielden*, 22 W. R. 622; *Re Burrows*, 10 L. T. 184.

The three rules just stated were adopted by Porter, M. R., in *Re Lafan and Downes* (1897, 1 I. R. 469), and he thence deduced the general proposition that, if after a tenancy for life there be a gift over to a person occupying a particular position, *e.g.* a Lady Superioress of a Nunnery, such person, in the absence of controlling words, is to be ascertained at the death of the testator, and not at the death of the tenant for life. *V*. DEATH: DIE.

*V*. BELOVED WIFE: RELATIONS: THEIR.

A wife is not included in a gift to a person's "FAMILY" (*Re Hutchinson and Tennant*, 8 Ch. D. 540), or "Relations," or "Next of Kin" (*Nicholls v. Savage*, cited 18 Ves. 53). *Sv*, NEAR RELATIONS.

A bequest to wife "for her own and the children's benefit," she not to diminish principal; *V*. *Hart v. Tribe*, 23 L. J. Ch. 462; 18 Bea. 215.

Bequest to Wife has no priority; *V*. IMMEDIATELY, at end.

*V*. JOINT TENANCY, at end.

A Stipendiary Magistrate has held that a deceased wife's sister (who has gone through the ceremony of marriage with the husband) and her

children, may be recognized as the "Wife" and "Children" of the man as a member of a FRIENDLY SOCIETY (*Corner v. Odd Fellows Socy*, 46 J. P. 809).

*V. CHILDREN OF THE WIFE: COHABITATION: FEME: HUSBAND: NECESSARIES: WIDOW.*

**WIKE.** — In Essex, a farm (Co. Litt. 5 a); "Wyke," a farm or little village" (Cowel).

**WILD ANIMAL.** — *V. FERÆ NATURÆ: 2 Bl. Com. 390 et seq.*

**WILD BIRD.** — The list of "Sea Birds" comprised in the Act for the preservation of Sea Birds, 32 & 33 V. c. 17, is given in s. 1 thereof. "Wild Bird," quā the Act for the protection of Wild Birds during the breeding season, 35 & 36 V. c. 78 (s. 1), includes the birds specified in the Sch thereof. "Wild Fowl," quā the Act for the preservation of Wild Fowl, 39 & 40 V. c. 29, is defined in its s. 1. all (except Wild Goose) being included in the said list of "Wild Birds." All these Acts were repealed by s. 7, Wild Birds Protection Act, 1880, 43 & 44 V. c. 35, which extends to "all Wild Birds" (s. 2), a list of those specially protected by s. 3 being set out in its Sch, which list does not include Wild Goose but otherwise comprises all the birds defined as "Sea Birds" or as "Wild Fowl" in the Acts mentioned, but omits several that were included in the def of "Wild Bird." By s. 2, 44 & 45 V. c. 51, the Lark is to be inserted in the Sch to 43 & 44 V. c. 35. *Vh*, 57 & 58 V. c. 24; 59 & 60 V. c. 56.

*V. WILDFOWL.*

**WILDFOWL.** — By "Wildfowl," "Pheasants and Partridges are not understood, for they are Fowl of WARREN (Manwood, cap. 4, s. 3, 4 ed., p. 363; F. N. B. 86; Rastal. 585). Wildfowl are known in the law, and described by the statute of 25 H. 8. c. 11, which doth take notice of Wildfowl. The title of the statute is 'against destroying of Wildfowl.' It recites that there hath been within this realm great quantities of Wildfowl, as, Ducks, Mallards, Wigeons, Teals, Wildgeese, and divers other kind of Wildfowl, which is reasonable to be understood of that sort that do get their prey in that manner. The statute of 3 & 4 Edw. 6, c. 7, which repeals that of 25 H. 8, takes notice of Wildfowl, and hath the general word 'Wildfowl,' without coming to particulars. Therefore, when the declaration is of 'Wildfowl,' it is not to be understood that sparrows, wrens, or robin-red-breasts, can be thereby included" (per Holt, C. J., *Keeble v. Hickeringill*, 11 East, 577). *V. FOWL.*

*V. WILD BIRD.*

**WILFUL.** — "Wilful is a word of familiar use in every branch of law, and although in some branches of law it may have a special mean-

ing, it generally, as used in Courts of Law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent" (per Bowen, L. J., *Re Young and Harston*, 31 Ch. D. 174; 53 L. T. 837; 34 W. R. 84; 50 J. P. 245: *Vf*, *Elliott v. Turner* 13 Sim. 485).

Whatever is intentional is wilful (per Day, J., *Gayford v. Chouler*, cited WILFUL AND MALICIOUS).

*F.* WILFUL MISCONDUCT: WILFUL NEGLIGENCE: WILFULLY.

**WILFUL ACT.** — "Wilful Act, Default, or Neglect" of an Inn-keeper, or his servant, which deprives him of the protection as against a claim by a GUEST, given by s. 1, 26 & 27 V. c. 41; *F. Medawar v. Grand Hotel Co*, 1891, 2 Q. B. 11; 60 L. J. Q. B. 209; 64 L. T. 851; 55 J. P. 614: WILFUL DEFAULT. *Cp*, EXPRESSLY FOR SAFE CUSTODY.

**WILFUL AND MALICIOUS.** — In the power which a judge had to give costs to a plaintiff recovering less than 40s. damages, if certificate given "that the trespass or grievance in respect of which the action was brought was *wilful and malicious*" (s. 2, 3 & 4 V. c. 24), the words italicized imported personal malice and ill-will to the plaintiff, as distinguished from that legal malice which is essential to sustain an action for libel (*Foster v. Pointer*, 10 L. J. Ex. 454; 8 M. & W. 395).

"Whoever shall *wilfully* OR *maliciously* commit any *Damage, Injury or Spoil* to, or upon, any Real or Personal Property whatsoever," s. 52, 24 & 25 V. c. 97; to constitute this offence there must be some actual damage to the property itself; merely gathering mushrooms growing in a wild state in a field, is not such damage to the field (*Gardner v. Mansbridge*, 19 Q. B. D. 217; 57 L. T. 265; 35 W. R. 809; 51 J. P. 612, in *which* the Court observed that the words are disjunctive), but a small damage suffices, *e.g.* to the extent of 6*d.* by walking across a grass field (*Gayford v. Chouler*, 1898, 1 Q. B. 316; 67 L. J. Q. B. 404; 78 L. T. 42; 62 J. P. 165). Where a milk-carrier, having accidentally spilt some of the milk that he was taking on his round, added water to conceal the loss, it was held that there was no offence within this section, for there was an absence of *mens rea* to do damage to anybody, and least of all to the master who was prosecuting (*Hall v. Richardson*, 6 Times Rep. 71; 54 J. P. 345); but that case was over-ruled by *Roper v. Knott* (1898, 1 Q. B. 868; 67 L. J. Q. B. 574; 78 L. T. 594; 46 W. R. 636; 62 J. P. 375), where the milk-carrier fraudulently added water to the milk to increase the bulk and himself get the additional price. In *Roper v. Knott* the Court held that the motive in the mind of the milk-carrier was immaterial, because the words are "*wilfully or maliciously*," and, therefore, if the

act be "WILFUL" only, the offence is committed, for "a man does a thing wilfully, (1) if he does the act which causes damage to property with the intention of causing the damage, or (2) knowing that the consequences of the act he does will be to cause the damage," and "an offence is committed against the statute if there be wilful damage to the thing, although it does not cause loss to the owner of the thing" (per Russell, C. J., *Ib.*). A Claim of Right will not take a case of damage out of this section, if the claim be not a reasonable one, of which the Justices are to judge (*White v. Feast*, L. R. 7 Q. B. 353; 41 L. J. M. C. 81: *vs the, Denny v. Thwaites*, 2 Ex. D. 21; 46 L. J. M. C. 141). *V.* REAL OR PERSONAL PROPERTY. *Cp.* UNLAWFULLY.

*V.* MALICE: MALICE AFORETHOUGHT.

**WILFUL BLINDNESS.** — Is the equivalent of Gross Negligence; *V.* GROSS, p. 839.

**WILFUL DEFAULT.** — "WILFUL ACT, Default, or Neglect, of the *Innkeeper*," &c. s. 1, 26 & 27 V. c. 41; in this phrase "Wilful" is only to be read with "Act," and not also with "Default or Neglect" (per Byles, J., *Squire v. Wheeler*, 16 L. T. 93). *Cp.* *Carpenter v. Mason*, cited WILFUL WASTE. As to what is such "Default" or "Neglect," *V.* per Murphy, J., *O'Connor v. Grand International Hotel Co*, 1898, 2 I. R. 96.

"Wilful Default of the person in charge" of a *Ship*, s. 299, Mer Shipping Act, 1854, repld s. 419 (3), Mer Shipping Act, 1894, means, "by the fault" of such person, whether intentional or negligent, and especially so in view of s. 29, 25 & 26 V. c. 63 (*Grill v. General Screw Collier Co*, 35 L. J. C. P. 321; 37 *Ib.* 205; L. R. 1 C. P. 600; 3 *Ib.* 476, *espy* *judgmt* of Willes, J.). *Cp.* WILFUL NEGLECT.

Wilful Default by a *Trustee*, is the Wilfully not doing something which he ought to do, as distinguished from doing something which he ought not to do: *Cp.* BREACH OF TRUST. *Vh.* Lewin, 1109; Godefroi, 789; Seton, 1157-1166: *Ann. Pr.* notes on R. 2, Ord. 33, R. S. C.: *Re Sterens*, 1898, 1 Ch. 162; 67 L. J. Ch. 118; 77 L. T. 508; 46 W. R. 177.

"Wilful Default of the *Vendor*," in Conditions of Sale, means, the not doing what is reasonable under the circumstances, with the knowledge that the omission will probably cause delay (per Bowen, L. J., *Re Young and Harston*, cited WILFUL: *Re Hetling and Merton*, 1893, 3 Ch. 269; 62 L. J. Ch. 783; 69 L. T. 266; 42 W. R. 19: *Re Pelly and Jacob*, 80 L. T. 45: *Re London and Tubbs*, 1894, 2 Ch. 524; 63 L. J. Ch. 580; 70 L. T. 719, in *whic* Lindley, L. J., said, "To make up one's mind not to verify a statement is 'wilful'; but simply not to think about verifying it is not 'wilful'"). Delay by a not unreasonable repudiation of the contract (*North v. Percival*, 1898, 2 Ch. 128; 67 L. J. Ch. 321; 46 W. R.

552; 78 L. T. 615), or by a difficulty in establishing the title (*Williams v. Glenton*, 1 Ch. 200; 35 L. J. Ch. 281), or, *semble*, even by a mistake by the vendor as to his rights if it be *bonâ fide* (*Bennett v. Stone*, 1902, 1 Ch. 226; 1903, 1 Ch. 509; 71 L. J. Ch. 60; 72 lb. 240), is not occasioned by a "Wilful Default." *Vf.*, *Re Wilson and Stephens*, 1894, 3 Ch. 546; 63 L. J. Ch. 863; 71 L. T. 388; 43 W. R. 23; *Smith v. Wallare*, 1895, 1 Ch. 385; 64 L. J. Ch. 240; 71 L. T. 814; 43 W. R. 539; *Re Strafford to Maples*, 1896, 1 Ch. 235; 65 L. J. Ch. 124; 73 L. T. 586; 44 W. R. 259; *Re Woods and Lewis*, cited DEFAULT: Sug. V. & P. 638. *Note*: "Any cause whatever," *V. ANY*, pp. 93, 94.

*V. DEFAULT: NEGLIGENCE: WILFULLY. Cp, WILFUL MISCONDUCT.*

**WILFUL DELAY.** — Delaying the delivery of a Declaration, in an action for Bribery, for eleven months; held, that there was "Wilful Delay" in proceeding with the action, within s. 14, Corrupt Practices Prevention Act, 1854, 17 & 18 V. c. 102, although delivered within the time then allowed by law, and although plaintiff alleged that he could not sooner acquire the evidence and information necessary to allege the specific charges in the Declaration (*Taylor v. Vergette*, 30 L. J. Ex. 400; 7 H. & N. 143; 9 W. R. 791). In that case, Martin, B., said " 'Wilful Delay,' does not mean 'Perverse Delay,' but, delay which the plt cannot account for to the satisfaction of the Court" (7 H. & N. 147). *Vf. Guest v. Cuddivott*, 30 W. R. 122; 45 L. T. 609. *Cp, DUE DILIGENCE: PROSECUTE.*

*Vf.*, WILFUL DEFAULT, last par.

**WILFUL INSULT.** — To interrupt a County Court Judge whilst giving judgment by saying, "That is a most unjust remark," is a "Wilful Insult" to the Judge, within s. 162, Co. Co. Act, 1888, which replaced s. 113, 9 & 10 V. c. 95 (*R. v. Jordan*, 36 W. R. 589, 797; 57 L. J. Q. B. 483).

**WILFUL MISCONDUCT.** — Wrong conduct, wilful in the sense of being intended, but induced by mere honest forgetfulness or genuine mistake, does not amount to "Wilful Misconduct" (*V. jdgmt of Grove, J., Gordon v. G. W. Ry*, 51 L. J. Q. B. 58; 8 Q. B. D. 44). "What is meant by 'Wilful Misconduct' is, misconduct to which the will is a party: it is something opposed to accidental or negligent; the *mis* part of it, not the conduct, must be wilful" (per Bramwell, L. J., *Lewis v. G. W. Ry*, 47 L. J. Q. B. 135; 3 Q. B. D. 195): *Vf.*, *Stercus v. G. W. Ry*, 52 L. T. 324; 49 J. P. 310; 1 Times Rep. 342; *Spittle v. G. W. Ry*, 2 Times Rep. 618; *Haynes v. G. W. Ry*, 41 L. T. 436.

*Cp*, "Wilful Misbehaviour," s. 78, Highway Act, 1835, 5 & 6 W. 4, c. 50: WILFUL DEFAULT: WILFUL NEGLIGENCE.

*V. MISCONDUCT: SERIOUS.*

**WILFUL NEGLECT.** — To “Wilfully neglect to do a thing” is, intentionally or purposely to omit to do it (per Mellor, *J.*, *R. v. Downes*, inf: *V. WILFUL*); and therefore to pray, instead of sending for a doctor, is to “wilfully neglect” to provide medical aid within s. 37, Poor Law Amendment Act, 1868, 31 & 32 V. c. 122 (*R. v. Downes*, 45 L. J. M. C. 8; 1 Q. B. D. 25; 39 J. P. 760: *R. v. Senior*, 1899, 1 Q. B. 283; 68 L. J. Q. B. 175; 79 L. T. 562; 47 W. R. 367; 63 J. P. 8: *Ij*, *R. v. Morby*, 51 L. J. M. C. 85; 8 Q. B. D. 571).

*Op.* NEGLECT: OBSTRUCT: WILFUL ACT: WILFUL DEFAULT.

As to what is “Wilful Neglect or Default of the Vendor,” in Conditions of Sale; *V. WILFUL DEFAULT*, at end.

“Wilful Neglect or Misconduct” conducing to Adultery; *V. CONDUCE*. *Op.* WILFUL MISCONDUCT.

“Wilful Neglect” by a Husband “to provide reasonable Maintenance” for wife or her infant children, s. 4, 58 & 59 V. c. 39, necessarily involves an enquiry as to the husband’s means, or his capability of earning means (*Earnshaw v. Earnshaw*, 1896, P. 160; 65 L. J. P. D. & A. 89; 74 L. T. 560; 60 J. P. 377). *V. DESERTION*, p. 516: IDLE AND DISORDERLY PERSON: NEGLECT, at end: PERSISTENT.

So, the essence of the offence of “wilfully refusing or neglecting” to maintain one’s family, s. 3, Vagrancy Act, 1824, 5 G. 4, c. 83, is the MENS REA; therefore, there is no such offence where a husband gives a wife a *bonâ fide* offer to return to his home (*Flannagan v. Bishopwearmouth*, 27 L. J. M. C. 46; 8 E. & B. 451), or where he refuses to maintain her because he really believes, and has grounds for believing, her to be unchaste (*Morris v. Edmonds*, 77 L. T. 56; 18 Cox C. C. 627). *V. DESERTION*, pp. 515, 516.

**WILFUL OBSTRUCTION.** — “Obstruction” does not involve a resistance by physical force; a householder who refuses to let the scavenger enter into his house to remove refuse, — the scavenger therein duly acting under the orders of the County Council, — “wilfully obstructs” him, within s. 116, P. H. London Act, 1891 (*Borrow v. Howland*, 74 L. T. 787; 60 J. P. 391). *Ij*, OBSTRUCT.

**WILFUL REFUSAL.** — In *Francis v. Steward* (5 Q. B. 998), Denman, C. J., said that, “Wilful” added nothing to “Refusal,” for, he added, “all refusal is wilful.” But it is submitted that a “Wilful Refusal” is, a refusal without adequate cause; therefore, a Trustee has not “wilfully refused” to convey trust lands within s. 2, Trustee Act, 1852, repld s. 26 (vi) Trustee Act, 1893, when his refusal to do so is based on a *bonâ fide* doubt as to the right of the requesting person (*Re Mills*, 40 Ch. D. 14; 37 W. R. 81).

A “Wilful Refusal” to receive money payable by the Promoters of an Undertaking on entering lands, s. 88, Lands C. C. Act, 1845, means,



“a refusal arising from an exercise of mere will or caprice, and not from the exercise of reason” (per Kindersley, V. C., *Re Ryde Commrs*, 26 L. J. Ch. 299, citing and applying *Ex p. Bradshaw*, 17 L. J. Ch. 454; 16 Sim. 174, and *Re Windsor, &c, Ry*, 12 Bea. 522).

V. REFUSAL: WILFUL NEGLECT.

**WILFUL WASTE.** — A tenant for life, sans waste, “further than Wilful Waste,” is entitled to the interest of money produced by sale of decaying timber cut by order of the Court (*Wickham v. Wickham*, 19 Ves. 419).

V. WASTE: WITHOUT IMPEACHMENT OF WASTE.

In the phrase “purloin, embezzle, or Wilfully Waste or Misapply” property, s. 97, 4 & 5 W. 4, c. 76, “Wilfully” applies to “misapply” as well as to “waste” (*Carpenter v. Mason*, 10 L. J. M. C. 1; 12 A. & E. 629; 4 P. & D. 439). Therefore, this offence of “misapplying” is not properly stated without the addition of “wilfully”; for though, probably, “misapply” imports fault, e.g. negligence, yet it does not, of itself, import wilfulness (*Ib.*). Cp, *Squire v. Wheeler*, cited WILFUL DEFAULT.

**WILFULLY.** — It has been said that the legal meaning of “Wilfully” is, purposely, without reference to *bona fides* or collusion (arg. of counsel in *Hutchinson v. Manchester, Bury, & Rossendale Ry*, 15 L. J. Ex. 295; 15 M. & W. 314, citing *R. v. Price*, 11 A. & E. 727; 9 L. J. M. C. 49). “‘Wilfully’ means, deliberately and intentionally” (per Russell, C. J., *R. v. Senior*, cited WILFUL NEGLECT). So, “wilfully” disobeying a Jdgmt or Order, R. 31, Ord. 42, R. S. C., does not involve obstinacy of an obstructive kind; it means, an intentional disobedience (*A-G. v. Walthamstow*, 11 Times Rep. 533). V. UNLAWFULLY.

But “‘Wilfully’ is used in s. 79, 7 & 8 V. c. 84, in a sense denoting *evil intention*, and such is the common use of the word in the English language. Thus Milton:—

“ ‘Thou to me  
Art all things under heav’n, all places thou,  
Who for my *wilful* crime art banish’d hence.’

And Hooker says, ‘So full of wilfulness and self-seeking is our nature’” (per Campbell, C. J., *R. v. Badger*, 25 L. J. M. C. 90; 6 E. & B. 137); and it was held in that case that a Surveyor was not guilty of the offence of “wilfully receiving” a higher fee than he was entitled to, when acting under an honest mistake. *Va, Smith v. Barnham*, 1 Ex. D. 419; 34 L. T. 774, where the words were “shall wilfully throw any soil into” certain rivers, on which Bramwell, B., said, “‘wilfully’ appears to me in this section to mean, ‘wantonly’ or ‘causelessly’”: *Sr*, per Kennedy, J., *High Wycombe v. Thames Conservators*, cited WILFULLY SUFFER.

Where a statutory OFFENCE is for something "wilfully" done or omitted, that word should always be employed in the Indictment: thus, if the offence be for "wilfully and maliciously" doing anything, the Indictment will be bad if it charges that the act was "*unlawfully* and maliciously" done, for a thing may be "unlawfully" done without wilfulness, and "maliciously" does not include "wilfully" where both words are made part of the offence (*R. v. Davis*, 1 Leach, 4 ed., 493). So, an Indictment under s. 34, 5 & 6 W. 4, c. 76, which charged that the deft "falsely and fraudulently" answered the prescribed questions on applying to vote, did not sufficiently state that he had "wilfully" made "false answer," which is the offence defined by the section (*R. v. Bent*, 1 Den. 157; 2 C. & K. 179). But on *R. v. Davis*, *V. Note*, 43 L. J. M. C. 94; *R. v. Pembilton*, cited MALICE. *Cp*, UNLAWFULLY.

"Wilfully" *break* a Street Lamp, s. 206, Metrop. Man. Act, 1855; *V. Burgess v. Morris*, cited CARELESSLY.

Lessee's covenant not to "wilfully *do or suffer*" anything to hinder or prevent the RENEWAL of a License; *V. Bryant v. Hancock*, 1899, A. C. 442; 68 L. J. Q. B. 889.

*V. WILFUL: WILFUL AND MALICIOUS: WILFULLY AND FALSELY: Cp, WILFULLY SUFFER: WILFULLY TRESPASS: KNOWINGLY: WILLINGLY.*

**WILFULLY AND FALSELY.** — "Wilfully and falsely" means, Wilful Falsity, not mere incorrectness (*Ellis v. Kelly*, 30 L. J. M. C. 35; 6 H. & N. 222; 25 J. P. 279). That case was on s. 40, 21 & 22 V. c. 90, which imposes a penalty for "wilfully and falsely" pretending to a Medical Title; and Pollock, C. B., there said, "Now 'wilfully' cannot here mean merely 'intentionally,' as opposed to 'accidentally' (which is the meaning it sometimes has), for a man cannot accidentally call himself a Doctor of Medicine; and, therefore, the section must be read as pointing to Wilful Falsity." *Vh, Andrews v. Styrap*, 26 L. T. 704; *Carpenter v. Hamilton*, 41 J. P. 615; 37 L. T. 157; *Pedgrift v. Chevalier*, 29 L. J. M. C. 225; 8 W. R. 500; 36 L. T. O. S. 360; *Steele v. Hamilton*, 25 J. P. 643; 3 L. T. 322; *R. v. Lewis*, 60 J. P. 392; 12 Times Rep. 415, 433; PHYSICIAN.

*V. WILFULLY.*

**WILFULLY DETAIN.** — *V. Booren v. Fox*, 10 B. & C. 41.

**WILFULLY ENTER.** — "Wilfully enter upon and take possession of" lands, s. 89, Lands C. C. Act, 1845, does not apply to a case where the entry is under a mistaken belief of a right to make it (*Steele v. Mid. Ry*, 21 L. T. 387).

**WILFULLY HOLD OVER.** — Tenant who "shall wilfully hold over" demised premises, Landlord and Tenant Act, 1730, 4 G. 2, c. 28,

s. 1; "The expression in the statute, 'wilfully hold over,' implies, not only a holding over after the term has expired but, a holding over in the absence of a *bonâ fide* belief on the part of the tenant that he is justified by the circumstances in so doing" (per Cockburn, C. J., *Swinfen v. Bacon*, 30 L. J. Ex. 368; 6 H. & N. 846). *Vf*, *Wright v. Smith*, 5 Esp. 203; *Hirst v. Horn*, 6 M. & W. 393; *Rands v. Clark*, 19 W. R. 48.

As to tenant's liability and landlord's rights when a tenant "holds over"; *V*. Redman, 7, ch. 9, s. 5; Pawcett, 514 *et seq*; Woodf. 780 *et seq*.

**WILFULLY NEGLECT.** — *V*. WILFUL NEGLECT.

**WILFULLY OBSTRUCT.** — *V*. OBSTRUCT: WILFUL OBSTRUCTION.

**WILFULLY OR MALICIOUSLY.** — *V*. WILFUL AND MALICIOUS.

**WILFULLY PERMIT.** — *V*. CAUSE OR PERMIT.

**WILFULLY SUFFER.** — To "wilfully suffer" deleterious matter to pass into the Thames, s. 92, Thames Conservancy Act, 1894, there must be more than a mere omission to do something to prevent the evil (*High Wycombe v. Thames Conservators*, 78 L. T. 463); *semble*, the omission must be deliberate and intentional (*R. v. Senior*, cited WILFULLY). *Cp*, "Cause or Suffer," sub SUFFER: CAUSE OR PERMIT.

"Wilfully do or suffer"; *V*. WILFULLY.

**WILFULLY TRESPASS.** — "Wilfully trespass upon any Railway, and shall refuse to quit upon request," s. 16, 3 & 4 V. c. 96; notwithstanding *Jones v. Taylor* (28 L. J. M. C. 204 *n*; 1 E. & E. 20), Blackburn, J., held that a continuing trespass was not, under these words, excused because the offender fancied he had a right to be where he was (*Foulger v. Steadman*, 42 L. J. M. C. 3; L. R. 8 Q. B. 65). *Cp*, WILFULLY: WILFULLY AND FALSELY: UNLAWFULLY.

**WILFULLY WASTE.** — *V*. WILFUL WASTE.

**WILL.** — *V*. TESTAMENT: CODICIL: LAST: MADE: SIGNED: WRITING: NOMINATE.

"The general principle I take to be clear. On the one hand, where a testator in a CODICIL uses the word 'Will' abstractedly from the context, it will refer to all antecedent testamentary dispositions which together make the Will of the testator; and consequently where the testator by a Codicil confirms in general terms his Will or his Last Will and Testament, the Will, together with all the Codicils, is taken to have been confirmed. 'The Will of a man,' said Lord Penzance in *Lemage v. Goodban* (cited TESTAMENT), 'is the aggregate of his testamentary intentions so far as they are manifested in writing duly executed according to the statute.' On the other hand, it is equally clear that the testator may, by apt words, express his intention to revoke any Codicil already made, and

to set up the original Will unaffected by any Codicil" (per Fry, J., *Green v. Tribe*, 9 Ch. D. 234; 47 L. J. Ch. 785), or may revoke his Will without affecting a Codicil thereto (*Farrer v. St. Catherine's College*, L. R. 16 Eq. 19; 42 L. J. Ch. 809). *Vf*, *Green v. Tribe* for a review of the previous authorities.

Quà Wills Act, 1837, " 'Will,' shall extend to a Testament and to a Codicil, and to an Appointment by Will or by Writing in the nature of a Will in exercise of a Power; and also to a disposition by Will and Testament or devise of the custody and tuition of any child by virtue of" 12 Car. 2, c. 24, or by virtue of the Irish Act, 14 & 15 Car. 2, c. 19, "and to any other testamentary disposition" (s. 1: *Va*, 15 & 16 V. c. 24, s. 3).

Quà Court of Probate Act, 1857, 20 & 21 V. c. 77, "Will," comprehends, " 'Testament,' and all other testamentary instruments of which Probate may now be granted" (s. 2: *Va*, s. 2, 20 & 21 V. c. 79).

Quà Finance Acts, " 'Will' includes, any testamentary instrument" (s. 22 (1 *b*), 57 & 58 V. c. 30).

Quà S. L. Acts, " 'Will' includes, Codicil, and other testamentary instrument, and a writing in the nature of a Will" (s. 2 (10, vii), 45 & 46 V. c. 38).

"Will" includes Codicil, quà Conv & L. P. Act, 1881 (s. 2, xii), Mortmain and Charitable Uses Act, 1888 (s. 10, ii), and Yorkshire Registries Act, 1884 (s. 3).

Other Stat. Def. — *Ir*. 13 & 14 V. c. 72, s. 64; 54 & 55 V. c. 66, s. 9c.

"Will *Already made*," Real Estates Charges Act, 1854, 17 & 18 V. c. 113; *V. Rolfe v. Perry*, 32 L. J. Ch. 471; 8 L. T. 441.

Power to a Corporation to *acquire* land "by Will"; *V. PURCHASE*.

A Power to Appoint personalty "by Will" (*Re Price*, 1900, 1 Ch. 442; 69 L. J. Ch. 225; 82 L. T. 79; 48 W. R. 373), or "by Will DULY executed" (*D'Huurt v. Harkness*, 34 L. J. Ch. 311; 34 Bea. 324), "means, any testamentary instrument recognized by the law of England as a Will" (per Stirling, J., *Re Price*, sup), which includes any Will valid according to the law of the testator's DOMICIL at the time of his death (Dicey on the Conflict of Laws, 684. cited and adopted *Re Price*, in *the Re Kirwan*. 52 L. J. Ch. 952; 25 Ch. D. 373, and *Hummel v. Hummel*, 1898, 1 Ch. 642; 67 L. J. Ch. 363, were discussed); ss. 9, 10, Wills Act, 1837, have no application to Wills of persons domiciled abroad, and therefore, in such cases, if the Power requires special solemnities for its execution those requirements must be followed (*Barretto v. Young*, 1900, 2 Ch. 339; 69 L. J. Ch. 605; 83 L. T. 154). The execution of a Power is not affected by the law of Domicil as to the donee's testamentary capacity (*Pouey v. Horder*, 1900, 1 Ch. 492; 69 L. J. Ch. 231; 82 L. T. 51). *If*. WILL ONLY.

*V. TENANT AT WILL*.

**WILL: WILL AND DECLARE: WILL AND DESIRE.**—  
V. PRECATORY TRUST.

**WILL ONLY.**—If a “Power be to Appoint by ‘Will only,’ with remainder over in default of appointment, an immediate disposition cannot be made, and it can only take effect under a Will, and after death” (Watson Eq. 847, citing *Sorkett v. Wray*, 4 Bro. C. C. 483; *Reid v. Shergold*, 10 Ves. 370; *Bradley v. Westcott*, 13 Ib. 445; *Anderson v. Dawson*, 15 Ib. 532). V. WILL, at end.

**WILLING.**—V. READY AND WILLING.

The School “willing to receive” a child, s. 11, Elementary Education Act, 1876, must be named by the complainant (*Thompson v. Rose*, 61 L. J. M. C. 26; 65 L. T. 851; 40 W. R. 155; 56 J. P. 438).

**WILLINGLY.**—“If a wife willingly (sponte) leave her husband and go away and continue with her avowtrer,” she forfeits her dower (13 Edw. 1, St. 1, c. 34); here “Willingly” “is used in contradistinction to a wife being taken away by force by the adulterer” (per Willes, J., *Woodward v. Dowse*, 31 L. J. C. P. 72; 10 C. B. N. S. 722), in which case it was held that a wife driven from her home by her husband’s cruelty and committing adultery, had “willingly” left her husband within the statute. *Vf*, 2 Inst. 434; Co. Litt. 32 a, b; ELOPE.

*Cp*, UNWILLING: WILFULLY: WITTINGLY.

**WILMOT’S ACT.**—Grammar Schools Act, 1840, 3 & 4 V. c. 77.

**WILSON’S ACT.**—Customs Consolidation Act, 1853, 16 & 17 V. c. 107.

**WIMSEY.**—A Wimsey is a windlass fixed in the ground, and worked *by a steam engine* for the purpose of drawing materials from the mine (MacS. 246, n 8, 9; *Cp*, GIN):

**WIN.**—“It has been doubted whether the money, &c, must be actually obtained, or whether winning a Game by a false pretence would be within the word ‘win,’ in s. 17, 8 & 9 V. c. 109, if the loser refused to pay the money” (Steph. Cr. 269, n 5, citing *R. v. Moss*, Dears. & B. 104).

“A covenant to ‘Win’ a *Mineral* means, *primâ facie*, to reach it, and put it in such a condition that it may be continuously worked in the ordinary way” (MacS. 219, citing *Lewis v. Fothergill*, 5 Ch. 106); following which definition the Court of Appeal said in *Rokeby v. Elliot* (49 L. J. Ch. 164; 13 Ch. D. 279; 28 W. R. 282; 41 L. T. 537), “A Coal Field is *won* when full, practicable, available, access is given to the coal-hewers so that they may enter on the practical work of getting the coal.” V. WORKABLE: GET.

**WIND AFT.** — If the wind be at any less angle than 45 degrees with the line of a Vessel's Keel, it is "aft" within Art. 17 (*e*), Regus for Preventing Collisions at Sea, 1897 (*The Privateer*, 9 L. R. Ir. 105).

**WIND AND WATER TIGHT.** — At p. 637, Woodf., it is stated that the obligation on the part of a tenant to keep his tenement "wind and water tight," "ought to be construed strictly in favour of the tenant. To put an example, it would seem that the broken glass of windows need not be replaced by new glass, but that an exclusion of wet by boards or other unsightly modes would be sufficient."

**WIND AND WEATHER PERMITTING.** — *V.* PERMITTING.

**WINDFALL.** — A Windfall is a TIMBER Tree blown down by the wind: the proceeds of Windfalls (as between Tenant for Life and Remainder-man) should be invested as Capital, the annual income generally going to the Tenant for Life, but who will, under some circumstances, be entitled to have his average annual income from the timber plantation made up, if necessary, out of capital, whilst any excess over such average income arising in consequence of the investment of the proceeds of the windfalls may be ordered to be invested as capital (*Re Harrison*, 54 L. J. Ch. 26, 617; 28 Ch. D. 220): *Vf*, *Bateman v. Hotchkin*, 32 L. J. Ch. 6; 31 Bea. 486: *Tooker v. Annesley*, 5 Sim. 235.

As between the Heir and the Executor a Windfall, if severed from the soil, is Personalty, if not, it is Realty; the question of severance being one fact quâ each particular tree (*Re Ainslie*, 30 Ch. D. 485).

**WINDING.** — Winding of Cotton; *V. Haydon v. Taylor*, cited INCIDENT.

**WINDING-UP.** — The Winding-up of the affairs of a Co. registered under Comp Act, 1862, is of three kinds, —

1. *Compulsory*, or by the Court; *Vh*, ss. 79-128, Comp Act, 1862; Comp Winding-up Act, 1890: Buckl. 235-345; 2 Palmer Co. Prec. s. 1.
2. *Voluntary*; *Vh*, ss. 129-146, Comp Act, 1862: Buckl. 345-365; 2 Palmer Co. Prec. s. 2.
3. *Subject to Supervision* of the Court; *Vh*, ss. 147-152, Comp Act, 1862; Comp Winding-up Act, 1890: Buckl. 365-372; 2 Palmer Co. Prec. s. 3.

"Beneficial Winding-up"; *V.* BENEFICIAL, p. 182.

As to construction of Surplus Assets Clause, in a Winding-up; *V. Birch v. Cropper*, 59 L. J. Ch. 122; 14 App. Ca. 525; *Ex p. Maule*, 40 L. J. Ch. 21; 6 Ch. 51; *Re Anglo-Continental Co.* 1898, 1 Ch. 327; 67 L. J. Ch. 179; 78 L. T. 157; 46 W. R. 413; *Re New Transvaal Co.*, cited SURPLUS.

"Winding-up," s. 32 (4), Building Societies Act, 1874, 37 & 38 V.

e. 42, means, winding-up under the Comp Acts, 1862, 1867 (*Re Sunderland By Socy*, 21 Q. B. D. 319; 37 W. R. 95) or the Comp Winding-up Act, 1890 (s. 8, 57 & 58 V. c. 47).

No, in a Bank Charter, though granted before the Comp Act, 1862. "Winding-up the affairs of the Corporation." includes, a Winding-up under the statutory powers for the time being in force, *i.e.* under the Comp Act, 1862, and the Acts amending the same (*Re Oriental Bank*, 54 L. J. Ch. 481).

*V.* LIQUIDATION: ORDERED: SUPERSEDE.

**WINDOW.**—A plate-glass shop-front, fixed with wooden wedges, without screws nails or glue, and removable without injury to the premises (whether or not an "Improvement"), is a "Window" "affixed or belonging" to the premises, within a covenant to deliver up the premises "with all Windows," "Improvements," &c (*Bart v. Haslett*, 18 C. B. 162, 893; 25 L. J. C. P. 201; 27 L. T. O. S. 300). *V.* IMPROVEMENT.

*V.* EXTERNAL PARTS: FIXED AND FASTENED.

**WINE.**—The admixture of a little water with wine, does not prevent its being "Wine," quâ the Rubric to the Communion Office; and, if the mixing be done before the Service, the use of such "Wine" is not unlawful (*Read v. Lincoln, Bp.*, 1892, A. C. 644; 62 L. J. P. C. 1; 67 L. T. 128); but it is illegal to mix water with the wine during the celebration of the Eucharist (*Martin v. Mackonochie*, L. R. 2 A. & E. 116).

"Wine," s. 1, 11 & 12 V. c. 49, included BRITISH WINE (*Harris v. Jenns*, 9 C. B. N. S. 152; 30 L. J. M. C. 183).

Quâ Customs, "'Wine,' includes, Lees of Wine" (s. 1, 49 & 50 V. c. 41; s. 3, 50 & 51 V. c. 5; s. 2, 62 & 63 V. c. 9).

Quâ Inland Revenue, "'Wine,' includes, SWEETS" (s. 40, 43 & 44 V. c. 20).

*V.* FOREIGN: LOW WINES.

"Spirits of Wine"; *V.* SPIRITS.

**WINE CELLARS.**—A covenant in a Lease of Cellars under a Chapel, that they shall be used "as for Wine Cellars only, and not for interment or burial," is broken by the user of the Cellars for the storage and sale of Beer and Spirits (*Turner v. Marriott*, Dart, 873). *V.* ONLY.

**WINE MERCHANT.**—"Wine Merchant" who, by s. 73, Licensing Act, 1872, does not require a License under that Act; *V. Palmer v. Thatcher*, 3 Q. B. D. 346; 47 L. J. M. C. 54; 37 L. T. 784; 26 W. R. 314; 42 J. P. 213.

**WINE SHOP.**—*V. Randell v. Block*, cited OFFICE, p. 1325.

**WINTER ASSIZES.**—"Winter Assizes," means, any Court of Assize, or any Sessions of Oyer and Terminer or Gaol Delivery, held in

September, October, November, December, or January (39 & 40 V. c. 57, s. 6, as amended by 40 & 41 V. c. 46, s. 1).

**WIRE.** — *V.* TELEGRAPH: UNDERGROUND.

**WISDOM.** — “Good Wisdom and Discretion”; *V.* DISCRETION.

**WISH AND DESIRE: WISH AND REQUEST.** — *V.* PRECATORY TRUST.

**WISTA.** — Half a Hide: Great Wista, a Hide (Elph. 630, citing Seebohm. 51; Spelm. *Wista*, where it is said that Wista is sometimes used for VIRGATE).

**WIT.** — “To wit”; *V.* MEMORANDUM: NAMELY: TO WIT.  
*V.* WITE.

**WITCH.** — *V.* CONJURATION.

“Thou art a Witch and a Sorcerer” was formerly Slander, “for if he witcheth men so as they die, it is Felony: and if he use Witchcraft in any other manner, he shall stand upon the Pillory” (per Gawdy, J., *John Rogers v. Gravet*, Cro. Eliz. 571).

“Thou shalt not suffer a Witch to live” (Exodus xxii. 18), which, according to *Rogers v. Gravet*, included a man as well as a woman, but the Revised Version substitutes “Sorceress” for “Witch.”

**WITCHCRAFT.** — *V.* WITCH: 4 Bl. Com. 60 *et seq.*: 12 Encyc. 701-703.

**WITE.** — “*Wite, wita*, is an old *Saxon* word, and signifieth an AMERCIAMENT; as, *fledwite*, an amerciament for fleeing or being a fugitive; and so is *flemiswite*, *blodwite* an amerciament for drawing of blood, *ferdwite* concerning warfare; and so *letherwite*, *childwite*, *wardwite*, and the like. Sometimes it signifieth forfeiture, sometimes freedom, or acquittal” (Co. Litt. 127 a). *Vf.* Termes de la Ley, *Bloodwit*, *Childwit*, *Ferdwit*, *Fledwite*, *Fletwit*, *Hangwit*, *Lotherwit*, *Warwit*.

**WITH.** — “‘With,’ taken to mean ‘and as incident thereto’” (Dwar. 692, citing *Durham Ry v. Walker*, 2 Q. B. 966).

“With,” in a devise of a House “with all the Household Goods therein,” so conjoins the goods with the house that the devisee can have no larger interest in the goods than in the house (*Leeke v. Bennett*, 1 Atk. 470).

*V.* TOGETHER WITH.

**WITH A VIEW.** — *V.* A.

**WITH ALL CONVENIENT SPEED.** — *V.* CONVENIENT SPEED.

**WITH ALL DESPATCH.** — *V.* CUSTOMARY: DESPATCH.



WITH ALL FAULTS. — *V.* FAULTS.

WITH ALL ITS LIGHTS. — *V.* Dart, 136, and note *f.*

WITH ALL LIBERTIES. — An original grant of a FAIR, "With all Liberties," merely, does not include Tolls, for Toll is not incident to a Fair; but when Toll, by grant or prescription, is payable in respect of a Fair, and the Fair becomes forfeited to the Crown by whom it is re-granted "cum omnibus libertatibus ad hujusmodi feriam spectantibus," there Toll passes (*Heddy v. Wheelhouse*, Cro. Eliz. 591).

So a Grant of a MARKET, "with all Liberties and Free Customs to such a market belonging," does not give the right to prevent tradesmen from selling, on market days, marketable articles in shops within the limits of the franchise; though the grantees may acquire such a right by prescription, or, *semble*, it might have been granted by apt words in the charter (*Penryn v. Best*, 48 L. J. Ex. 103; 3 Ex. D. 292).

*V.* CUSTOM: TOLL.

WITH ALL MINES. — "Where a man has unopened Mines within his land, and demises for life or years such land 'With all Mines therein,' the lessee may, *primâ facie*, as between himself and his grantor, dig the unopened Mines and will not, by so doing, commit WASTE (*Saunders' Case*, 5 Rep. 12 a; Co. Litt. 54 b; *Darcy v. Askwith*, Hob. 234; *Clegg v. Rowland*, L. R. 2 Eq. 160; 35 L. J. Ch. 396; 14 W. R. 530; 14 L. T. 217); for otherwise the words 'With all Mines therein' would have no effect (Co. Litt. 54 b)": MacS. 53.

*V. Boileau v. Heath*, cited IRON.

WITH EFFECT. — *V.* EFFECT.

WITH FORCE AND ARMS. — *V.* FORCE.

WITH RESPECT TO. — *V.* IN RESPECT OF.

WITH SERVANTS. — *V.* SERVANTS

WITH THE APPURTS. — *V.* APPURTENANCES: WAYS.

WITHDRAW. — An Agreement by a Partner to "withdraw from the Firm" means, to withdraw at once; and it further means, (1) "that the withdrawing Partner shall make over to the continuing Partners all his interest in the partnership and in the partnership assets, whether there be real or personal estate, whether there be outstanding contracts, or anything of the kind"; (2) "that the continuing Partners shall indemnify the retiring Partners against all the liabilities of the Firm from that time forth. They take the assets, they take the benefit of the contracts, they take the chances of success for the future, and they must keep him indemnified" (per Kekewich, J., *Gray v. Smith*, 58 L. J. Ch. 805; affd

59 Ib. 145; 43 Ch. D. 208); but an agreement to "withdraw" (without more) does not imply that the continuing partner is entitled to continue to use the withdrawing partner's name (*S. C.*). *Cp.* ASSETS. *V.* GOODWILL.

*V.* WITHDRAWN.

**WITHDRAWAL.** — "Withdrawal" Member of a Building Society; *V. Re Norwich & Norfolk Bg Socy*, 45 L. J. Ch. 785; *Vth*, per Selborne, C., *Walton v. Edge*, 10 App. Ca. 39. *Va. Re Sunderland Bg Socy*, 59 L. J. Q. B. 217; 24 Q. B. D. 394. *V.* MEMBER: UNADVANCED.

**WITHDRAWN.** — EXECUTION "withdrawn, satisfied, or stopped," Sheriffs Fees Order, Aug 31, 1888; *V.* per Esher, M. R., *Lee v. Dangor*, 1892, 2 Q. B. 337; 61 L. J. Q. B. 780; 66 L. T. 548; 40 W. R. 469; 56 J. P. 678.

**WITHHELD.** — If a License or Permission is "not to be withheld" if a prescribed condition is complied with, that means that "it shall be given" on such compliance (per Kay, L. J., *Perls v. Saalfeld*, 1892, 2 Ch. 149; 61 L. J. Ch. 414; *See, Treloar v. Bigge*, cited UNREASONABLY).

**WITHHOLD.** — A person having possession of the property of a FRIENDLY SOCIETY does, *prima facie*, "withhold or misapply" it, s. 16 (9), Friendly Socy Act, 1875, repld s. 87 (3), F. S. Act, 1896, if he does not properly account for it (*R. v. Bennett*, 63 L. J. M. C. 181); but the presumption may be rebutted, for the withholding must in some way partake of fraud (per Willes, J., *Barrett v. Markham*, 41 L. J. M. C. 118; L. R. 7 C. P. 405; 27 L. T. 313; *Vf, Scott v. Wilson*, 9 Times Rep. 492).

**WITHIN.** — Where a statute gave power to assess, for expenses of road-repair, all premises "within" certain streets, it was held that a yard — Kent and Essex Yard, Whitechapel — set back from one of such streets, and having other houses between it and the street, but the only access to which was from the street by means of carriage gates and along a private covered way, was "within" the street (*Buddeley v. Gingell*, 17 L. J. Ex. 63; 1 Ex. 319). In that case Alderson, B., said, "You cannot say that any house is literally *within* the street, and we must therefore come to the consideration of what is intended by the expression 'within'"; the yard was held (*V. espy* jdgmt of Parke, B.) to be "within" the street, because its sole communication was by means of the street, and because it *fronted* and *abutted* on, and derived the benefit of the repairs to, the street.

*V.* FORMING: FRONTING: IN: NAVIGATING WITHIN.

Within the Curtilage; *V. Pilbrow v. St. Leonards*, cited CURTILAGE.

Within a stated DISTANCE; *V. R. v. Saffron Walden*, 15 L. J. M. C. 115; 9 Q. B. 76.

Within the Sea Flood; *V. INFRA*.

Salvage of Life "within the limits of the UNITED KINGDOM," s. 458, Mer Shipping Act, 1854, repled s. 544, Mer Shipping Act, 1894; *V. The Johannes*, 30 L. J. P. M. & A. 91; Lush. 182: *The Pacific*, cited PART, p. 1412.

Trade "exercised within the United Kingdom," s. 2, Sch D, Income Tax Act, 1853; *V. per* Ld Herschell, *Grainier v. Gough*, 1896, A. C. 335; 65 L. J. Q. B. 413: CARRY ON: EXERCISE.

"Within" a stated Time; *V. IN: CALENDAR MONTH: MONTH: REASONABLE TIME: TIME: WEEK: YEAR*.

Where something is to be done "within" a stated time "BEFORE" a stated date, that means that it is to be done at some time during the course of the stated time immediately preceding the stated date (*Thomas v. Lambert*, 4 L. J. K. B. 153; 3 A. & E. 61).

"Within" so many DAYS "AFTER" an event, means, days exclusive of the day of the event (*Williams v. Buryess*, 10 L. J. Q. B. 10; 12 A. & E. 635: *Robinson v. Waddington*, 18 L. J. Q. B. 250: *Radcliffe v. Bartholomew*, cited CALENDAR MONTH).

"Within 3 months before the Petition"; *V. BEFORE*.

*Cp.* AT LEAST: CLEAR: INTERVAL.

"Within" two named times; *V. FROM*.

"At or Within"; *V. AT*.

**WITHIN HIS PARISH.** — *V. CLERGYMAN*.

**WITHIN OR UNDER.** — It seems difficult to see how a grant of "Minerals" "*within* or under" land is fuller, and less liable to receive a restricted meaning, than if "under" alone were used; but this suggestion has been made (per Romilly, M. R., *Mid. Ry v. Checkley*, 36 L. J. Ch. 382; L. R. 4 Eq. 25; observed upon by Wickens, V. C., *Hect v. Gill*, 41 L. J. Ch. 295; 7 Ch. 705n: *V. MacS.* 13).

For an example of construction of "UNDER" in such a connection; *V. Chamber Colliery Co v. Rochdale Canal Co*, 1895, A. C. 564; 64 L. J. Q. B. 645; 73 L. T. 258, on *wher.* *New Moss Colliery Co v. Manchester, S. & L. Ry*, 1897, 1 Ch. 725; 66 L. J. Ch. 381; 76 L. T. 231.

**WITHIN THE JURISDICTION.** — "Carrying on Business within the Jurisdiction"; *V. CARRY ON*, p. 264.

Contract which "OUGHT to be performed within the Jurisdiction," R. 1 (*v.*), Ord. 11, R. S. C.; *V. Hassall v. Lawrence*, 4 Times Rep. 23; *Robey v. Snaefell Co*, 57 L. J. Q. B. 134; *Wancke v. Wingren*, 58 lb. 519; *Reynolds v. Coleman*, 56 L. J. Ch. 903; *Fry v. Raggio*, 40 W. R. 120; *Hoerter v. Hanover Caoutchouc Co*, 10 Times Rep. 103; Ann Pr.: MADE: TERMS.

"Within the Jurisdiction," Sch 1, Ord. 11, R. 1, Jud. Act, 1875, means, territorial jurisdiction (*Re Smith*, 1 P. D. 300; 45 L. J. P. D. & A. 92; *The Vicar*, 2 P. D. 29).

Crimes "committed within the Jurisdiction of either of the High Contracting Parties," s. 1, 6 & 7 V. c. 76, means, committed within the peculiar jurisdiction of one of those parties, as distinct from a common jurisdiction (*Re Tienan*, cited PIRACY).

**WITHIN THE REALM.** — *V.* REALM.

**WITHIN THE SYSTEM.** — *V.* ARISING.

**WITHIN THE UNITED KINGDOM.** — *V.* UNITED KINGDOM: WITHIN.

**WITHOUT AFFECTING.** — Power to determine Works Contract "without thereby affecting in any other respects the liability of the Contractor"; *V. Re Yeaton W. W. Co and Binns*, 98 Law Times, 473.

**WITHOUT BEING MARRIED.** — *Seemle*, is synonymous with "UNMARRIED."

*V.* WITHOUT HAVING BEEN MARRIED.

**WITHOUT BENEFIT OF CLERGY.** — Before BENEFIT OF CLERGY was abolished altogether it had for a long time been a frequent practice in statutes to prescribe that the felonies thereby respectively created or defined should be "without benefit of clergy," *i. e.* that the culprit should not be able to "pray his clergy." *Vh*, 4 Bl. Com. ch. 28.

**WITHOUT BENEFIT OF SALVAGE.** — A policy on profits is within Marine Insurance Act, 1745, 19 G. 2, c. 37, s. 1; and if made "Without Benefit of Salvage," although "free from Average," it is avoided (*De Mattos v. North*, L. R. 3 Ex. 185; 37 L. J. Ex. 116, following *Smith v. Reynolds*, 25 L. J. Ex. 337; 1 H. & N. 221; *V.* FULL INTEREST ADMITTED).

A Policy "Without Benefit of Salvage," omitting the words "to the Insurers," is within the prohibition of the Act (*Atkins v. Jope*, 46 L. J. C. P. 824; 2 C. P. D. 375).

**WITHOUT CHILDREN.** — *V.* DIE WITHOUT CHILDREN.

**WITHOUT DAY.** — "To be dismissed Without Day, is to be finally discharged the Court" (Cowel, *Day*, citing Kitchen, fol. 193). "To be discontinued and to be put Without Day, is all one" (*Termes de la Ley, Discontinuance*). But this seems too broadly stated, and, *seemle*, to be dismissed Without Day, means, to be dismissed without any time being named to appear again. Thus, in *Goddard v. Smith* (6 Mod. 261), Holt, C. J., said, "the entering a *Nolle Prosequi* was only putting the defend-

ant *sine die*, and, so far from discharging him from the offence, that it did not discharge any further prosecution upon that very indictment, but that, notwithstanding, new process might be made out upon it."

**WITHOUT DELAY.** — *V.* PROSECUTE.

**WITHOUT DISPUTE.** — An agreement to accept a title "Without dispute," or "such as the vendor has," will preclude Objections (Dart, 169); *secus*, if the vendor has no title at all, for he must, at least, show a *bonâ fide* title (*Keyse v. Hayden*, 20 L. T. O. S. 244).

**WITHOUT HAVING BEEN MARRIED.** — This phrase, as frequently employed, excludes the husband, but not the descendants of the woman spoken of (*Wilson v. Atkinson*, 33 Bea. 536; 4 D. G. J. & S. 455; 33 L. J. Ch. 576; *Re Bull*, 48 L. J. Ch. 279; 11 Ch. D. 270; *Upton v. Brown*, 48 L. J. Ch. 756; 12 Ch. D. 872; 28 W. R. 38; *Re Arden*, 35 S. J. 70; W. N. (90) 204; *Stoddart v. Savile*, 1894, 1 Ch. 480; 63 L. J. Ch. 467; 70 L. T. 552; 42 W. R. 361; *Re Forbes*, W. N. (99) 6). But the contrary was held by Jessel, M. R., who said that the phrase is unambiguous and means, as if the woman had died a **SPINSTER** (*Emmins v. Bradford*, 49 L. J. Ch. 222; 13 Ch. D. 493; 28 W. R. 531; *Id.*, *Re Watson*, 55 L. T. 316). Note, the Court of Appeal has very recently approved *Emmins v. Bradford*, saying that the cases here previously cited went upon the context (*Re Brydone*, W. N. (1903) 81).

There seems no doubt that "Without *being* married," means, without having a husband at the time spoken of (*Re Norman*, 3 D. G. M. & G. 965; 22 L. J. Ch. 720).

*Vh.* *Hardman v. Maffett*, 13 L. R. Ir. 499; *Re Deane*, 1900, 1 I. R. 333, *whc* followed *Hardman v. Maffett*, and distd *Stoddart v. Savile*, *sup.*

For an elaborate and carefully reasoned treatment by Mr. Vaizey of the phrase, "As if she had died Intestate and Without Having Been Married"; *V.* 47 S. J. 64, 85, and 105.

Instead of "without having been married," it is suggested that the phrase should be "without leaving a husband her surviving."

*Cp.* **UNMARRIED.**

**WITHOUT IMPEACHMENT OF WASTE.** — Where a term, life interest, or other qualified ownership, is "Without Impeachment of Waste," such an owner is not liable for **WASTE**, and may do **WASTE** (other than **Equitable Waste**) and convert it at his own pleasure (*Bowles' Case*, 11 Rep. 79).

Leases under s. 46, Settled Estates Act, 1877, must "be not made Without Impeachment of Waste": such a Lease requiring the lessee to deliver up the premises in good repair, "fair Wear and Tear and damage by tempest excepted," offends against that condition and is invalid; be-

cause a tenant for years, in the absence of stipulation, is liable even for Permissive Waste (*Yellowly v. Gower*, inf), from which such an exemption would exempt him (per Kekewich, J., *Davies v. Davies*, 57 L. J. Ch. 1093; 38 Ch. D. 499; 58 L. T. 514; 36 W. R. 399, adopting *Yellowly v. Gower*, 24 L. J. Ex. 289; 11 Ex. 274, notwithstanding that in *Woodhouse v. Walker*, 5 Q. B. D. 407; 49 L. J. Q. B. 611, the point decided in *Yellowly v. Gower* was treated as an open one; *Va, Burnes v. Dowling*, 44 L. T. 809. In Woodf. 651, *Yellowly v. Gower* is spoken of "as having been too long accepted to be now overruled").

*Vh. Downshire v. Sandys*, 6 Ves. 107: *Termes de la Ley, Impeachment of Wast.*

*V. FULL AND ABSOLUTE: IMPEACHABLE: IMPEACHMENT: STRICT SETTLEMENT: WEAR AND TEAR.*

**WITHOUT INJUSTICE.** — *V. INJUSTICE.*

**WITHOUT INTENT TO DEFRAUD.** — *V. INTENT: INNOCENTLY ACTED: KNOWINGLY.*

**WITHOUT INTERRUPTION.** — *V. INTERRUPTION.*

**WITHOUT ISSUE.** — *V. DIE WITHOUT ISSUE: LEAVING.*

**WITHOUT LEAVING.** — *V. DIE WITHOUT ISSUE: LEAVING.*

**WITHOUT PREJUDICE.** — A letter "Without Prejudice" cannot be treated "as an admission of right"; and though Kindersley, V. C., said, "the party writing it, can use it against the other on the question of costs" (*Williams v. Thomas*, 31 L. J. Ch. 676; 2 Dr. & Sm. 29; 7 L. T. 184; *Va, Jones v. Forall*, 21 L. J. Ch. 725; 15 Bea. 388), yet it was afterwards held by the Court of Appeal (questioning *Williams v. Thomas*), that a letter written "Without Prejudice" cannot be looked at as furnishing GOOD CAUSE for depriving a successful litigant of costs (*Walker v. Wilsher*, 23 Q. B. D. 335; 58 L. J. Q. B. 501; 37 W. R. 723; 5 Times Rep. 649). This, in effect, seems to establish the principle that a letter "Without Prejudice" cannot be read without the consent of both parties (*Vh. 34 S. J. 56*). It cannot be used as an ACKNOWLEDGMENT of a Debt, within the Limitation Act, 1623, or such like enactment (*Cory v. Bretton*, 4 C. & P. 462: *Re River Steamer Co*, 6 Ch. 822).

But, even as regards the rights between the parties, a letter "Without Prejudice" is only inadmissible so long as it relates to a negotiation; when the negotiation is closed by an agreement, the privilege ceases (*Holdsworth v. Dimsdale*, 19 W. R. 798). *Vf, Hoghton v. Hoghton*, 15 Bea. 278: *Pudlock v. Forrester*, 3 M. & G. 903.

The whole of a negotiation is covered if its commencement is "Without Prejudice" (*Ex p. Harris*, 44 L. J. Bank. 33; 10 Ch. 264: *Thomson v. Austen*, 2 D. & R. 361).

As to effect of "Without Prejudice" in a reply to a Requisition on Title; *V. Morley v. Cook*, 2 Hare, 106.

Threat of Legal Proceedings, s. 32, Patents, Designs, and Trade Marks, Act, 1883, "Without Prejudice"; *V. Kurtz v. Spence*, cited THREAT.

A Notice of Suspension of Payment (*V. NOTICE*, p. 1291), is admissible as an Act of Bankry, although given "Without Prejudice" (*Ex p. Holt, Re Daintrey*, 1893, 2 Q. B. 116; 62 L. J. Q. B. 511; 69 L. T. 257; 41 W. R. 590).

In a power in a Charter-Party to give Bills of Lading, "the meaning of 'Without Prejudice to the Charter-Party' has been settled by *Shand v. Sanderson* (28 L. J. Ex. 278) and *Gledstones v. Allen* (12 C. B. 202), and is that, notwithstanding any engagements made by the Bills of Lading, the contract between the parties to the Charter is to stand unaltered" (per Esher, M. R., *Hansen v. Harrold*, 1894, 1 Q. B. 612; 63 L. J. Q. B. 744; 70 L. T. 475). *Vf*, *Reynolds v. Sex*, 7 B. & S. 86; 34 L. J. Q. B. 251; *The Canada*, 13 Times Rep. 238.

A CONSENT Order "Without Prejudice to any Question between the parties," leaves all legal claims and disputes *in statu quo* (*Peruvian Guano Co v. Dreyfus*, 1892, A. C. 166; 61 L. J. Ch. 749; 66 L. T. 536).

*V. WITHOUT AFFECTING.*

#### WITHOUT RECOURSE. — *V. SANS RECOURS.*

**WITHOUT RESERVE.** — When an auction is advertised as being made "Without Reserve," the vendor cannot bid; and if he bids, or employs any one to bid, the sale is void at the election of the purchaser (*Meadows v. Tanner*, 5 Mad. 34; *Thornett v. Haines*, 15 L. J. Ex. 230; 15 M. & W. 367; *Robinson v. Wall*, 16 L. J. Ch. 401; *Warlow v. Harrison*, 29 L. J. Q. B. 14; 1 E. & E. 295; 32 L. T. O. S. 222; 7 W. R. 133; s. 4, 30 & 31 V. c. 48); and when land is the subject of such an auction, it is unlawful for the vendor "to employ any person to bid" (s. 5, 30 & 31 V. c. 48). *Note*: As to the conflicting rules in Equity and at Law hereon prior to 30 & 31 V. c. 48; *V. Dart*, 126.

But in *Warlow v. Harrison* (sup) the majority of the Court (Martin and Watson, BB., and Byles, J.) went further, and held that an Auctioneer who puts up property for sale "Without Reserve," "pledges himself that the sale shall be without reserve, or (in other words) contracts that it shall be so; and that this contract is made with the highest *bonâ fide* bidder, and in case of a breach of it that he has a right of action against the Auctioneer." But, though this was a decision of the Ex. Cham., Blackburn, J., in delivering the judgment of the Q. B. in *Mainprize v. Westley* (34 L. J. Q. B. 229; 6 B. & S. 420), pointed out that the ultimate decision in *Warlow v. Harrison* turned rather on a matter of

pleading, and said, "We do not think, therefore, that we are precluded by it as a judgment of a Court of Error": and accordingly in *Mainprize v. Westley* the Court, without saying whether or not the vendor would be liable *as for a breach of contract* if he authorized biddings in a "peremptory" sale, held, that the auctioneer at such sale would not be liable when acting without deceit and professedly only as an agent.

The authority of *Warlow v. Harrison*, on the question whether a "Peremptory" sale, or a sale "Without Reserve," gives positive contractual rights, was further impaired by *Harris v. Nickerson* (42 L. J. Q. B. 171; L. R. 8 Q. B. 286), in which it was held, that an advertisement of an intended auction gives no contractual rights to persons who are put to expense in travelling to attend the auction, and who are disappointed by reason of the sale being at the last moment withdrawn (Add. C. 12). In that case Quain, J., said, "*Warlow v. Harrison* has not been considered a satisfactory decision." If no contractual rights arise by reason of the withdrawal of an auction, it seems difficult to see how the case is altered, in favour of the highest *bonâ fide* bidder who must be unknown at the commencement of the sale, by the sale being advertised as "Peremptory," or "Without Reserve." A sale "without reserve" might, it seems clear, be withdrawn altogether. If it proceeds, why may it not be withdrawn at any time until an actual contract is made? And if it may be so withdrawn, how can contractual rights arise in favour of one of what may be a large company when all that can be said is that his bidding is prevented from being the highest, and he himself is prevented from being a contracting party, by the intervention of the intending vendor? *See*, Add. C. 445.

Sale to "Highest Bidder": *V. HIGHEST.*

*Semble*, unless a sale is expressed to be "Without Reserve" it is implied that there will be a Reserve Price (*Mortimer v. Bell*, 13 W. R. 569; 34 L. J. Ch. 360; 12 L. T. 260).

By s. 58 (4), Sale of Goods Act, 1893, an AUCTION of Goods "may be notified to be subject to a Reserved or Upset Price"; but, *semble*, a Reserved Price unnotified is not prohibited or penalized, nor are the cases cited above on "Without Reserve" affected.

*V. RESERVED BIDDING.*

**WITHOUT RISK.** — Where a Lighter was let out, "Without Risk of Craft" and the goods on board were damaged by sea-water, the owner was held not liable for the loss (*Webster v. Bond*, Cab. & El. 339). In that case Mathew, J., said, "I think the words 'Without Risk of Craft,' mean, without risk or liability to the owner of the craft." *V. RISK.*

Investments to be made "Without Risk to the Trustees"; *V. Rochfort v. Seaton*, 1896. 1 I. R. 18.

**WITHOUT SUFFICIENT CAUSE.** — *V. SUFFICIENT CAUSE.*



**WITNESS.**—The Witness to an instrument requiring attestation, must not be a party thereto (*Seal v. Claridge*, 50 L. J. Q. B. 316; 7 Q. B. D. 516; 29 W. R. 508; 44 L. T. 501; *Re Parrot, Ex p. Cullen*, 60 L. J. Q. B. 567; 1891, 2 Q. B. 151; 61 L. T. 801; 39 W. R. 543).

“On the oath of One Witness”; *V. ONE.*

“To witness”; *V. ATTEST.*

*V. COMPELLABLE: COMPETENT: CREDIBLE WITNESS.*

**WITTINGLY.**—Where a statutory OFFENCE is for something done “wittingly, WILLINGLY, or KNOWINGLY,” those words denote that the act must be “done with a conscious mind that the party is doing wrong” (per Tenterden, C. J., *Meirelles v. Banning*, 2 B. & Ad. 909).

**WOMAN.**—*V. FEME: GIRL: MAN: LEGAL INCAPACITY: NEIFE: PROHIBITED: WAIVE.*

Quà Coal Mines Regn Act, 1887, 50 & 51 V. c. 58, “‘Woman,’ means, a female of the age of 16 years or upwards” (s. 75); but quà Agricultural Gangs Act, 1867, 30 & 31 V. c. 130, “Woman,” means, “a female of the age of 18 years or upwards” (s. 3), and so of Factory and Workshop Act, 1901 (subs. 1, s. 156). *Cp. YOUNG PERSON.*

A Power to A. of Jointuring “ANY woman he may marry,” may be exercised in favour of a woman married to him during his divorced first wife’s lifetime, although he had already appointed a jointure to such first wife (*Marlborough v. Marlborough*, 70 L. J. Ch. 244; 1901, 1 Ch. 165; 83 L. T. 578; 49 W. R. 275; 17 Times Rep. 137).

“Married Woman”; *V. MARRY.*

When woman presumed past childbearing; *V. PRESUMPTION.*

**WOMEN’S WORKSHOP.**—*V. WORKSHOP.*

**WOOD: WOODS.**—“Wood, *boscus*, contains timber or hautboys and underwood or subboscus. Both the trees and the soil on which they stand pass by the grant of a Wood or Boscus (Co. Litt. 4 b: *Th. Doe d. Kinglake v. Beriss*, 18 L. J. C. P. 128; 7 C. B. 456: SEA GROUNDS). In like manner by an exception, in a Lease, of the Woods and Underwoods growing or being on the property demised, the soil itself on which they grow is excepted (*Ire’s Case*, 5 Rep. 11 a: *Hild v. Whistler*, Pop. 146: *Whistler v. Paslowe*, Cro. Jac. 487). On the other hand, by an exception of ‘Trees’ (*Liford’s Case*, 11 Rep. 46 b), ‘SALEABLE UNDERWOODS’ now growing on the premises (*Pincombe v. Thomas*, Cro. Jac. 524), the soil itself is not excepted. *V. Glover v. Andrew*, 1 And. 7” (Elph. 631). But in *Legh v. Heald* (1 B. & Ad. 622) it was pointed out that in *Whistler v. Paslowe* (sup) the lease was of a Manor, and (referring to the proposition for which *Liford’s Case* is above cited) it was held in *Legh v. Heald* that, where the leading words of the clause were “Timber

and other *Trees*” which were followed by “Wood and UNDERWOODS,” the soil was not included in the latter phrase.

*Vf*, TREES: SEASONABLE WOOD: TOUCH. 94, 95: *Stanley v. White*, 14 East, 332.

Lease of “Woods, Groves, Hedgerows, and Springs,” by a Chapter, that had no right to fell Timber except for repairs, gave lessee no right to fell Timber (*Herring v. St. Paul's*, 3 Swaust. 492; 2 Wils. 1). *Vf*, TIMBER.

By a Lease of “Woods and Underwoods” upon premises demised, with the right to cut down and carry away the same, Hedgerows pass (4 Leon. 36).

Wood or Plantation; *V*. PLANTATION.

*Vh*, Craig on Trees and Woods.

“Commissioners of Woods and Forests”; *V*. s. 12 (12), Interp Act, 1889.

**WOOD GOODS.** — *V*. s. 451 (3), Mer Shipping Act, 1894.

**WOODEN.** — Wooden Pavement; *V*. PAVEMENT.

“Wooden Structure or Erection”; *V*. STRUCTURE.

**WOODGELD.** — “‘Woodgeld’ seemeth to bee the gathering or cutting of wood within the Forrest, or money payd for the same to the Forresters. And the immunity from this by the Kings grant is, by Crompt. f. 197, called Woodgeld” (Termes de la Ley).

**WOOLLEN.** — *V*. MATERIALS.

**WORD.** — “Word,” s. 64 (*v*), Patents, Designs, and Trade Marks, Act, amended by s. 10, 51 & 52 V. c. 50, includes words in Foreign characters, *e.g.* Burmese (*Re Dewhurst*, 1896, 2 Ch. 137; 65 L. J. Ch. 618; 74 L. T. 388; 44 W. R. 672), or the NAME of an imaginary person, *e.g.* Trilby (*Re Holt*, 1896, 1 Ch. 711; 65 L. J. Ch. 410; 74 L. T. 225; 44 W. R. 369, diss. Kay, L. J.). *V*. DISTINCTIVE: FANCY WORD: INDIVIDUAL: SPECIAL: TRADE MARK.

**WORDS.** — “Action upon the CASE for Words,” s. 3, Limitation Act, 1623, relates to ordinary SLANDER *per se*, and does not comprise an action for LIBEL or for Slander of Title (*Law v. Harwood*, Cro. Car. 141), nor for a slander sustainable only when there is Special Damage (*Saunders v. Edwards*, 1 Sid. 95; Raym. T. 61).

“By Words only”; *V*. ONLY.

*V*. GENERAL WORDS.

**WORDS OF ART.** — “Words of Art,” are those words which have a definite and fixed legal meaning, and for which so-called equivalents are seldom admitted, and which are only with difficulty controlled by the

context, *e.g.* BURGLARY: FELONY: MURDER: RAPE: RAVISH: REAL ESTATE: REMAINDER: SEIZED: SEIZIN: SEPARATE COVENANT: TAKE AND CARRY AWAY: TRUE BILL.

**WORK.** — *V.* LABOUR: WAGES.

It is, probably, impossible to define what is "Work" by a CHILD, YOUNG PERSON, or WOMAN, within the Factory and Workshop Act, 1901, because a thing — *e.g.* oiling machinery — though ordinarily "Work" may, under some circumstances, not be so considered; the nearest approach to a practical definition is, *semble*, the doing something which the doer would have to do if working under orders, and it is none the less "Work" because done for self-amusement (*Prior v. Slaithwaite Co*, 1898, 1 Q. B. 881; 67 L. J. Q. B. 615; 78 L. T. 532; 46 W. R. 488; 62 J. P. 358).

"Work," quâ Railway Rolling Stock Protection Act, 1872, 35 & 36 V. c. 50, "includes, any colliery, quarry, mine, manufactory, warehouse, wharf, pier, or jetty, in or on which is any Railway SIDING" (s. 2), *i.e.*, as used in s. 3, any Establishment or Place (used for the purpose of Trade or Manufacture) connected with a line of railway by sidings along which the Rolling Stock may be propelled (*Easton Estate Co v. Western Waggon Co*, 54 L. T. 735). In this connection, it will be observed that "Work" has a meaning similar to "WORKS."

"Work," quâ Telegraph Acts, "includes, telegraphs and posts" (s. 3, 26 & 27 V. c. 112).

"Work of Charity"; *V.* CHARITY.

Literary Work; *V.* LITERARY: PERIODICAL.

"Work of Mercy"; *V.* MERCY.

Necessary Work; *V.* NECESSARY.

"Work of Necessity"; *V.* NECESSITY.

"Sanitary Work"; *V.* SANITARY.

"Work and Maintain" a Railway; *V.* MAINTAIN.

"'Manufacture' and 'Work'"; *V.* MANUFACTURE.

"Structure or Work"; *V.* STRUCTURE.

*V.* FROM HIS WORK: PUBLIC WORK: WORKS: WORLDLY LABOUR.

**WORKABLE.** — "An agreement to work a MINE as long as it is 'fairly workable,' does not oblige the tenant to work it at a dead loss (*Jones v. Shears*, 7 C. & P. 346); nor does a covenant to 'get the demised clay to the fullest practicable extent consistent with the means of sale of bricks and tiles to be derived therefrom,' although a means of sale at an unremunerative rate might be found (per Denman, J., *Newton v. Nock*, 43 L. T. 197); but an agreement to work 'in the most proper and effective manner' is broken by a cessation from working, although the dead rent be paid (*Kinsman v. Jackson*, 42 L. T. 80, 558; 28 W. R. 337. The dictum of Malins, V. C., *Wheatley v. Westminster Brynbo Coal Co.* L. R. 9 Eq. 538; 39 L. J. Ch. 175; 22 L. T. 7, that it is enough if the

dead rent be paid, would seem not to be law; *V. per Jessel, M. R.*, 42 L. T. 558). ‘Coal Seams *workable as Coal Seams*,’ means, workable at a profit, including the coal and fire clay, &c. to which the tenant is entitled (*Carr v. Benson*, 3 Ch. 524): Woodf. 712.

As to construction of Covenants to work Mines; *Vf, R. v. Bedworth*, 8 East, 387; *Bate v. Thompson*, 14 L. J. Ex. 95; 13 M. & W. 487; *Clifford v. Watts*, L. R. 5 C. P. 577; *Jercis v. Tomkinson*, 26 L. J. Ex. 41; 1 H. & N. 195; *Foley v. Addenbrooke*, 14 L. J. Ex. 169; 13 M. & W. 174; *Quarrington v. Arthur*, 11 L. J. Ex. 418; 10 M. & W. 335; *Doe d. Bryan v. Bancks*, 4 B. & Ald. 401; *Cartwright v. Forman*, 7 B. & S. 243; Woodf. 411, 712, 713; MacS. 219, 229, 230; WIN: WORTH THE EXPENSE.

*Cp.* WROUGHT.

**WORKED.** — Vessels “*rowed or worked*” may be propelled by steam (per Littledale, J., *Tisdell v. Combe*, 7 A. & E. 796).

So, a barge, having no motive power of its own, but which is towed by a steamer, is being “*worked and navigated*” within s. 66, Watermen’s and Lightermen’s Amendment Act, 1859, 22 & 23 V. c. cxxxiii. (*Elmore v. Hunter*, 47 L. J. M. C. 8; 3 C. P. D. 116).

But attaching a steamboat to 31 barges, which had been collected about 100 yards from Victoria Dock, and so taking them altogether into the Dock, was held not a “*navigating*” of the steamboat “*on the River*” within a Bye Law under the Act just mentioned which prohibited any person “*navigating any steamboat on the River*” to tow more than six craft (*Rolles v. Newell*, 59 L. J. Q. B. 423; 25 Q. B. D. 335; 63 L. T. 384; 39 W. R. 96; 55 J. P. 70).

By the Rules under s. 4, 18 & 19 V. c. 108, an adequate ventilation was required to be “*constantly*” produced at all Collieries, and s. 11 imposed a penalty if any Colliery was “*worked*” contrary to Rules; held, that a Colliery in full operation on week-days was also being “*worked*” during the suspension of actual work between Saturday and Monday morning (*Knowles v. Dickinson*, 2 E. & E. 705; 29 L. J. M. C. 135).

*V.* CONNECTED WITH.

**WORKER.** — “*Worker or Maker*” of goods; *V.* MAKER.

**WORKHOUSE.** — “*Workhouse*,” quâ Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, includes, “*any house in which the Poor of any Parish or Union shall be lodged and maintained; or any house or building purchased erected hired or used, at the expense of the Poor Rate by any parish vestry guardian or overseer, for the reception, employment, classification, or relief, of any poor person therein at the expense of such parish*” (s. 109); “*United Workhouse*,” means and includes, “*any Workhouse of a Union*” (ib.).

Other Stat. Def. — Lunacy Act. 1890, s. 341. — *Scot.* 52 & 53 V. c. 44, s. 17; 57 & 58 V. c. 41, s. 26.

**WORKING.** — *V.* ENGAGED IN WORKING: LIBERTY OF WORKING. Working for Hire; *V.* EMPLOYMENT.

**WORKING CLASSES.** — “Working Classes,” s. 11, 48 & 49 *V.* c. 72, repld s. 74, 53 & 54 *V.* c. 70, includes, “all classes of persons who earn their LIVELIHOOD BY WAGES OR SALARIES” (s. 18, 53 & 54 *V.* c. 69).

*V.* INHABITED: LETTING. *C/p*, LABOURING CLASSES: WORKING MEN'S DWELLINGS.

**WORKING DAYS.** — “‘Working Days’ in a Charter-Party will vary in different ports. If by the custom of the port certain days in the year are HOLIDAYS, so that no work is done in that port on those days, then ‘Working Days’ do not include those holidays. ‘Working Days,’ in an English Charter-Party, if there is nothing to show a contrary intention, do not include Christmas-Day, and some other days which are well known to be holidays. Therefore ‘Working Days’ mean, days on which, at the port according to the custom of the port, work is done in loading and unloading ships, and the phrase does not include Sundays” (per Esher, M. R., *Nielsen v. Wait*, 16 Q. B. D. 71). *Wh. Steaker v. Kidd*, 47 L. J. Q. B. 365; 3 Q. B. D. 223.

“Working Days,” unqualified by some such phrase as “WEATHER PERMITTING” or “WEATHER WORKING DAY,” are not made Non-Working Days by bad weather (*Tiis v. Byers*, cited DEMURRAGE: *See, Harper v. McCarthy*, cited DAY).

Charterers “to be allowed 350 tons per Working Day of 24 hours for loading and discharging,” means, that the charterers are to have 24 working hours to load or discharge each 350 tons (*Rhymney S. S. Co v. Iberian Co*, 8 Asp. 438; 79 L. T. 240; affd in H. L. nom. *Forest S. S. Co v. Iberian Co*, 81 L. T. 563; 5 Com. Ca. 83); the phrase means, “that 24 hours in which work is usually done at the Port of Loading or Discharging, as the case may be, are to elapse before a Day can be reckoned against the charterers” (per Bigham, J. *ib.*).

*V.* COLLIERY WORKING DAY: DAYS: DEMURRAGE: LAY DAYS: RUNNING DAYS: WEATHER WORKING DAY.

Quà, and by, s. 1, Notice of Accidents Act, 1894, 57 & 58 *V.* c. 28. “Working Day,” means, “a day on which the person injured would, but for the injury, be employed in his ordinary work.”

**WORKING EXPENSES.** — “Working Expenses of the Railway and other Proper Outgoings,” s. 4, Ry. Comp. Act, 1867, 30 & 31 *V.* c. 127; *V. Re Eastern & Midlands Ry*, 45 Ch. D. 367; 63 L. T. 181, 604; *Profjitt v. Wye Valley Ry*, 64 L. T. 669; *Re Wrexham, &c. Ry*, 80 L. T. 648; 1900, 1 Ch. 261; 1900, 2 Ch. 436; 69 L. J. Ch. 291, 671. The expenses of promoting a Bill to substitute Electricity for Steam Power,

are not "Working Expenses," or "other Proper Outgoings," within the section (*Re Mersey Ry*, 64 L. J. Ch. 623; 72 L. T. 535).

*Vj*, quà "Working Expenses" in the section, *Re Manchester & Milford Ry*, 66 L. J. Ch. 141.

"Expenses of the MANAGEMENT and Working" of a Tramway, s. 4, 46 & 47 V. c. 43, includes, damages recovered against the Co for injuries arising from Negligence or Default in the conduct of its business (*R. v. Cork*, 24 L. R. Ir. 415; *Re Tralee & Dingle Ry*, 1894, 2 I. R. 115).

#### V. EXPENSES.

#### WORKING MEN'S CLUB. — *V. FRIENDLY SOCIETY.*

**WORKING MEN'S DWELLINGS.** — Quà Working Men's Dwellings Act, 1874 (repealed by 45 & 46 V. c. 50, by s. 111 of which its provisions are replaced), "Working Men's Dwellings," meant, "buildings suitable for the habitation of persons employed in MANUAL LABOUR and their families" (s. 3). *Cp*, WORKING CLASSES.

*Vh*, Housing of the Working Classes Acts, 1890, 1893, 1894, 1896, and 1900, 53 & 54 V. c. 70; 56 & 57 V. c. 33; 57 & 58 V. c. 55; 59 & 60 V. cc. 11 and 31; 63 & 64 V. c. 59; "Housing of the Working Classes Acts, 1890 to 1900," *V. s.* 8, 63 & 64 V. c. 59. *Vj*, Loc Gov Act, 1894, s. 6 (2); Loc Gov (Scot) Act, 1894, s. 24 (6); London Gov Act, 1899, s. 5 (2), Sch 2, Part 2.

#### WORKING MEN'S TRAINS. — *V. WORKMEN'S TRAINS.*

#### WORKING MINER. — *V. PRACTICAL.*

**WORKING SHAFT.** — A "Working Shaft," s. 23 (10), 35 & 36 V. c. 77, is one which is being used and in which men are working for the purposes of a MINE, whether such purposes are for getting ore or not (*Foster v. North Hendre Co*, 1891, 1 Q. B. 71; 60 L. J. M. C. 6; 63 L. T. 458; 55 J. P. 103).

**WORKMAN.** — Quà Employers and Workmen Act, 1875, 38 & 39 V. c. 90, a "Workman" "does not include a Domestic or MENTAL SERVANT; but, save as aforesaid, means, any person, who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in MANUAL LABOUR, whether under the age of 21 years or above that age, has entered into or works UNDER a contract with an EMPLOYER, whether the contract be EXPRESS or IMPLIED, oral or in writing, and be a contract of service or a contract personally to execute any WORK or LABOUR" (s. 10); but not including "Seamen or Apprentices to the sea service" (s. 13), — on which exception, *V. Hanrahan v. Limerick S. S. Co*, 18 L. R. Ir. 137; MARINER.

That would seem a good definition of "Workman" for general pur-

poses. With the addition of "a Railway Servant," it has been adopted as the definition of "Workman" quâ Employers' Liability Act, 1880, 43 & 44 V. c. 42 (s. 8).

A Driver of a Wharfinger's Cart, whose duty is to load and unload goods, is such a "Workman" (*Yarmouth v. France*, cited PLANT), so, generally, of a Stevedore (per Brett, M. R., *Morgan v. London Gen. Omnibus Co*, inf); but neither an Omnibus Conductor nor a Driver of a Tramcar, is such a "Workman," for the duties of neither involve labour, and those of a Conductor, at least, could not be regarded as manual (*Morgan v. London Gen. Omnibus Co*, 53 L. J. Q. B. 352; 13 Q. B. D. 832; 32 W. R. 759; 48 J. P. 503, dissenting from *Wilson v. Glasgow Tramways Co*, 5 Sess. Ca. 4th Ser. 981; *Cook v. North Metrop Trams Co*, 18 Q. B. D. 683; 56 L. J. Q. B. 309; 56 L. T. 448; 57 lb. 476; 35 W. R. 577). VJ; LABOUR.

Nor is a Designer of Patterns (*Jackson v. Hill*, 13 Q. B. D. 618; 48 J. P. 489), nor a Grocer's Assistant (*Bound v. Lawrence*, 1892, 1 Q. B. 226; 61 L. J. M. C. 21; 65 L. T. 844; 40 W. R. 1; 56 J. P. 118), such a "Workman." Nor is a Potman at a Public House such a "Workman," if his position is that of a "Domestic or Menial Servant" (*Pearee v. Lonsdowne*, 69 L. T. 316; 62 L. J. Q. B. 441; 57 J. P. 760). So, a Hairdresser is not a "Workman" within the Sunday Observance Act, 1677, 29 Car. 2, c. 7 (*Palmer v. Snow*, cited TRADE), nor is he within Employers and Workmen Act, 1875 (*R. v. Louth Jus.*, 1900, 2 I. R. 714).

But one who has to labour manually is not less a "Workman" because he has to employ other manual labour to assist him (*Grainger v. Aynsley*, 50 L. J. M. C. 48; 6 Q. B. D. 182; 29 W. R. 242; 45 J. P. 142); and in like manner one, a substantial part of whose time is taken up in manual labour, is a "Workman" within the Acts mentioned, although he is an Overlooker of others (*Leech v. Gartside*, 1 Times Rep. 391; *see*, if he only occasionally labours, *Dennis v. Forbes*, 41 S. J. 144); and so a Miner working under a "butty" man is a "Workman" (*Brown v. Butterley Co*, 53 L. T. 964; 50 J. P. 230; 2 Times Rep. 159).

As to what is an EMPLOYMENT of a Workman quâ the above-mentioned Acts: *V. Wild v. Waygood*, 1892, 1 Q. B. 783; 66 L. T. 309; 40 W. R. 501; 56 J. P. 389; 61 L. J. Q. B. 391: EMPLOYER.

Quâ Workmen's Compensation Act, 1897, 60 & 61 V. c. 37, " 'Workman,' includes, every person who is engaged in an EMPLOYMENT to which this Act applies, whether by way of MANUAL LABOUR or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or IMPLIED, is oral or in writing" (subs. 2, s. 7).

Quâ Payment of Wages in Public-houses Prohibition Act, 1883, 46 & 47 V. c. 31, the def in s. 2 is nearly like that in the Employers and Workmen Act, 1875.

*Sem*ble, that Post Office Letter Sorters and Postmen are "Workmen" within s. 3 (1 b), Cheap Trains Act, 1883, 46 & 47 V. c. 34 (*Re Fawcett*

*Assn and L. B. & S. Ry.* 10 Ry & Can Traffic Ca. 299). *V.* WORKMEN'S TRAINS.

Other Stat. Def. — 8 & 9 V. c. 77, s. 9.

*V.* ARTIFICER: IN OR ABOUT: LABOURER: PERSONAL LABOUR: SERVANT: UNDER.

**WORKMANLIKE.** — *V.* PROPER AND WORKMANLIKE.

**WORKMEN'S TRAINS.** — Workmen's Trains as provided for by the Cheap Trains Act, 1883, 46 & 47 V. c. 34 (*V.* s. 3), are trains which Railway Companies have to provide at a low third class rate between the hours of 6 P. M. and 8 A. M., for the reasonable accommodation of working people; and a train is not less a "Workman's Train" because the Ry Co choose, for their own convenience, to run first and second class carriages with it (*Re Metropolitan Ry*, cited REASONABLE, p. 1665).

*V.* WORKING CLASSES: WORKING MEN'S DWELLINGS: WORKMAN.

**WORK PLACE.** — A Cab Proprietor's yard to which Cab Drivers go as hirers of cabs, is a "Workplace" within s. 38, P. H. London Act, 1891 (*Bennett v. Harding*, 1900, 2 Q. B. 397; 69 L. J. Q. B. 701; 83 L. T. 51; 48 W. R. 647; 64 J. P. 676).

*V.* IN ATTENDANCE.

**WORKS.** — Pit-pans and Levels, held to be "Works," within a License to get China-clay (*Martyn v. Williams*, 26 L. J. Ex. 117; 1 H. & N. 817); but Tram-plates fastened to sleepers, not let into but resting on the ground, are not "Works," within a Mining Lease (*Beaufort v. Bates*, 31 L. J. Ch. 481; 3 D. G. F. & J. 381; 10 W. R. 200; 6 L. T. 82; *Sv, Mansfield v. Blackburne*, 6 Bing. N. C. 426; 10 L. J. C. P. 178).

There are "Works" within s. 1 (1), Employers' Liability Act, 1880, 43 & 44 V. c. 42, wherever the EMPLOYER is doing work, though it be but temporary, *e.g.* pulling down a wall (*Brannigan v. Robinson*, 1892, 1 Q. B. 344; 61 L. J. Q. B. 202; 66 L. T. 647; 56 J. P. 328); but Works contracted for are not those of the contractee until he takes them over (*Howe v. Finch*, 17 Q. B. D. 187). *V.* DEFECT: WAYS.

"Works," in a Guarantee, construed as Works already ordered (*Plastic Co v. Massey-Mainwaring*, 11 Times Rep. 205).

"Works and Buildings" in a Rating Act; *V. R. v. Mid. Ry*, 3 W. R. 415; 25 L. T. O. S. 114.

Stat. Def. — Electric Lighting Act, 1882, 45 & 46 V. c. 56, s. 32; General Pier and Harbour Act, 1861, 24 & 25 V. c. 45, s. 2; Lands C. C. Acts, 1845, 8 & 9 V. cc. 18 and 19, s. 2. *V.* NON-TEXTILE FACTORIES.

Accommodation Works; *V.* ACCOMMODATION.

"Board of Works"; *V.* BOARD.

"Commissioners of Works"; *V.* s. 12 (13), Interp Act, 1889.



The *Completion* of "Works" under s. 133, Lands C. C. Act, 1845, includes, — *e.g.* in the case of land speculatively taken by a Local Authority for street improvement, — the disposal, by sale or otherwise, of all the land so acquired; and, therefore, until the completion of the street and the disposal of all the land, the Local Authority is liable, under the section, to make good any deficiency of Land Tax and Poor Rate in respect of the lands taken (*Bristol Guardians v. Bristol Corp.* 18 Q. B. D. 549; 56 L. J. Q. B. 320; 56 L. T. 641; 35 W. R. 619; 51 J. P. 676; 3 Times Rep. 271); and such deficiency (whether payable by a Local Authority or a Co) is not to be calculated on the basis of the promoters making good any loss, for if the property were unoccupied there would be no deficiency to be made good; the section provides the basis of calculation, *viz.*, "the Rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the Special Act" (*Putney v. Lond. & S. W. Ry.* 1891, 1 Q. B. 182, 440; 60 L. J. Q. B. 18, 438; 64 L. T. 280; 39 W. R. 291; 55 J. P. 422; *St. Leonard, Shoreditch v. London Co. Co.*, 1895, 2 Q. B. 104; 64 L. J. Q. B. 615; 72 L. T. 802; 43 W. R. 598).

"Completion of Works"; *V. Stock v. Meakin*, cited OUTGOING, p. 1379.

Works of *Maintenance*; *V. MAINTAIN*.

Works *Necessary*; *V. NECESSARY*, pp. 1254, 1255: SUPPLY.

"Permanent Works"; *V. PERMANENT*.

"Proper Works"; *V. CONVENIENCE*.

Works "for Sewage Purposes"; *V. SEWAGE*.

*V. CONNECTED WITH*: IMMEDIATELY CONNECTED: STREET WORKS: SUBSTANTIALLY: WATERWORKS: WORK.

**WORKSHOP.** — A room in which children were taught, and were engaged in, straw-plaiting, by and under the superintendence of a person who had no interest in the work done or the proceeds of it; held, a "Workshop" within s. 4, Workshop Regulation Act, 1867, 30 & 31 V. c. 146 (*Beadon v. Parrott*, 40 L. J. M. C. 200; L. R. 6 Q. B. 718).

Qua Factory and Workshop Act, 1901, "the expression 'Workshop,' means —

"(a) any premises or places named in Part 2, of the Sixth Sch to this Act, which are not a FACTORY; and

"(b) any premises room or place, not being a Factory, in which premises room or place, or within the close or CURTILAGE or precincts of which premises, any MANUAL LABOUR is exercised, by way of TRADE or for purposes of GAIN in or incidental to any of the following purposes, namely —

"(i) the making of any article or of part of any article; or

"(ii) the altering, repairing, ornamenting, or finishing, of any article; or

"(iii) the adapting for SALE of any article.

"and to or over which premises room or place the EMPLOYER of the persons working therein has the right of access or control :

"The expression 'Workshop,' includes a 'Tenement Workshop,' which means, "any WORKPLACE in which, with the permission of or under agreement with the owner or occupier, two or more persons CARRY ON any work which would constitute the workplace a Workshop if the persons working therein were in the employment of the owner or occupier" (s. 149. *whof* hereon).

"Men's Workshops." are "Workshops conducted on the system of not employing any WOMAN, YOUNG PERSON, or CHILD, therein" (s. 157, *Ib.*).

"Women's Workshops," are Workshops "conducted on the system of not employing therein either Children or Young Persons" (s. 29 (1), *Ib.*).

Qua above defs, *V. Fullers v. Squire*, 1901, 2 K. B. 209; 70 L. J. K. B. 689; 85 L. T. 249; 49 W. R. 683; 65 J. P. 660.

A building planned and adapted for a Laundry is a "Workshop," within a Restrictive Covenant (*Meredith v. Wilson*, 69 L. T. 336).

"Dwelling-house, Workshop, or other Bg"; *I. BUILDING*, p. 228.

**WORLD.**—To say of a person that he holds himself out "to the world" in any capacity, "is a loose expression" (per Parke, B., *Dickeson v. Valpy*, 10 B. & C. 140). *I. HOLD OUT.*

Devise, in remainder, "to the Next Heir of the name of Leach, as long as the World stands," is a limitation; and not a devise to the next heir of the name of Leach as *persona designata* (*Re Catling*, 34 S. J. 364).

A Co whose business is to be carried on "in any part of the World" has no defined locality (*Marshall v. Orpen*, cited CARRY ON, p. 265).

**WORLDLY ESTATE.**—When a man speaks of his "Worldly Estate," that, probably, means all his property, so that the phrase is synonymous with SUBSTANCE (*Muddle v. Fry*, 6 Mad. 270; *Gall v. Eslaile*, 1 L. J. C. P. 95; 8 Bing. 323; 1 Moore & S. 466; *Doe v. Grillim*, 2 L. J. K. B. 194; 5 B. & Ad. 122; 2 N. & M. 247; *Lloyd v. Jackson*, L. R. 1 Q. B. 571; 2 *Ib.* 269). *Cp.* WORLDLY GOODS: WORLDLY PROPERTY.

*I. TEMPORAL.*

**WORLDLY GOODS: WORLDLY SUBSTANCE.**—"The phrase 'Worldly Goods' is properly applicable only to personal estate" (1 *Jarm.* 747); but "'Worldly Substance' includes every property a man has" (per Mansfield, C. J., *Hogan v. Jackson*, 1 *Cowp.* 307). Even "Worldly Goods" may be controlled by a context to include realty (*Wright v. Shelton*, 18 *Jur.* 445, cited 1 *Jarm.* 747). *Cp.* WORLDLY ESTATE.

**WORLDLY LABOUR.**—"Worldly Labour, Business, or Work." Sunday Observance Act, 1677, 29 *Car.* 2. c. 7; "The expression 'any

Worldly Labour' cannot be confined to a man's ordinary calling; but applies to any business he may carry on, whether in his ordinary calling or not" (per Park, J., *Smith v. Sparrow*, 4 Bing. 89). *I. ORDINARY CALLING.* But the Act only relates to an ARTIFICER, LABOURER, or WORKMAN, or to a TRADESMAN.

**WORLDLY PROPERTY.** — "Worldly Property," in a testamentary gift, is synonymous with "WORLDLY ESTATE" (*Roberts v. Simpson*, 1 Irish Jurist, N. S. 364).

**WORN OUT.** — *V. SICK.*

**WORSHIP.** — The meaning of the word "Worship" in our Anglican Marriage Service — "with my body I thee worship" — is "honour." The Puritans always objected to the word; and in 1661 it was agreed that "honour" should be substituted, the alteration being made by Sancroft in Bishop Cosin's revised Prayer Book, instead of the change suggested by Cosin himself. But, either by accident or through a change of mind on the part of the Revision Committee, the old word was allowed to remain. The more exclusive use of this word in connection with Divine Service is of comparatively modern date. In the *Liber Festivalis*, printed by Caxton in 1483, an Easter homily calls every gentleman's house "a place of worship," and in the same century a prayer begins, "God that commandest to worship fadir and modir." This secular use of it is still continued in the title "your Worship," by which magistrates are addressed, and in the appellation "Worshipful Companies." The expression "with my body I thee worship," or "honour," is equivalent to a bestowal of the man's own self upon the woman, in the same manner in which she is delivered to him by the Church from the hands of her father (*Blunt's Annotated Book of Common Prayer*, 6 ed., 269: *Va*, for a collection of authorities on "Worship," *Mant's Book of Common Prayer*, 492, 493).

Place of Worship; *V. PLACE*, p. 1490: PUBLIC RELIGIOUS WORSHIP: USUAL PLACE OF RELIGIOUS WORSHIP.

*V. DIVINE SERVICE: RELIGIOUS.*

**WORSHIP OF GOD.** — *V. GODLY LEARNING.*

**Lord WORSLEY'S ACT.** — Inclosure Act, 1836. 6 & 7 W. 4. c. 115.

**WORTH.** — A testamentary gift of "all I am worth," includes the realty (*Huxstep v. Brooman*, 1 Bro. C. C. 437; *Vth*, 1 Jarm. 738, 739: *Va*, ALL).

An agreement for so many pounds "worth" of Shares in a Co, does not mean shares to that nominal amount but, means the number of shares which, at their MARKET VALUE, would be purchased by the sum named

(*McIlquham v. Taylor*, 1895, 1 Ch. 53; 64 L. J. Ch. 296; 71 L. T. 679).  
*Vf*, SHARE.

“Worth and VALUE.” how arrived at: *V. R. v. Hull Dock Co*, 3 B. & C. 516.

*V. Ex.*

**WORTH THE EXPENSE.** — “Where a Scotch Lease (of Mines) gave liberty to determine if the Minerals became ‘not worth the expense of working,’ and they became so through a fall in the market price, the lessees were held entitled to determine” (MacS. 244, *n* 4, citing *Shotts Co v. Deas*, 8 Sess. Ca. 4th Ser. 530).

*V. WORKABLE.*

**WOULD.** — In a clause of FORFEITURE of a life interest if the beneficiary shall assign or become bankrupt, “or do or suffer anything whereby the income, if payable to him absolutely, would become VESTED in any other person,” “would” does not mean “might,” but means “will”; therefore, neither the filing of a Bankry Petition, nor the execution of a Composition Deed by the beneficiary, will work a forfeiture: if the words were “*may* become vested,” the case might be different (per Cave, J., *Ex p. Dawes, Re Moon*, 17 Q. B. D. 282). If such a clause provides for forfeiture if anything is *done or suffered* whereby the income “would become PAYABLE” to any other person, it will be operative on a Bankry Receiving Order being made against the beneficiary, though nothing further be done in such bankry (*Re Sartoris*, 1892, 1 Ch. 11; 61 L. J. Ch. 1; 65 L. T. 544; 40 W. R. 82; *vtic, Re Brewer*, 1896, 2 Ch. 503; 65 L. J. Ch. 821; 75 L. T. 177; 45 W. R. 8). *V. ALIENATION: ASSIGN: SUFFER: TRANSFER.*

A. had a Power of Appointment by writing over a Life Policy; in a memorandum he wrote, “the money from the Equitable Insurance Office I *would have* equally divided between my daughters”; held, a good execution of the Power (*Proby v. Landor*, 30 L. J. Ch. 593). In that case Romilly, M. R., said, “the word ‘would’ must be taken to mean ‘wish.’”

**WOUND.** — “‘To wound’ means, to divide the surface of the body, whether it be an internal, — *e.g.* the inside of the mouth, — or an external surface” (Steph. Cr. 171, citing *R. v. Leonard Smith*, 8 C. & P. 173; 3 Russ. Cr. 679). Wounding may be done with the hand (*R. v. Bullock*, 37 L. J. M. C. 47; L. R. 1 C. C. R. 115). To break a bone, without breaking the skin, *semble*, is not to wound (*R. v. Wood*, 4 C. & P. 381). *Vf*, *R. v. Owens*, 1 Moody, 205; *R. v. Hughes*, 2 C. & P. 420; Arch. Cr. 805.

In the collocation “Stab, Cut, or Wound,” 9 G. 4, c. 31, ss. 11, 12, a Wounding had to be accomplished by an instrument, because “wound” was there associated with “stab, cut,” and as a stab or cut must be made

by an instrument, so it was held that "wound" meant an injury (other than a "stab" or "cut") made by an instrument (per Alderson, B., *R. v. Jennings*, 2 Lewin C. C. 130, explaining *R. v. Stevens*, 1 Moody, 409; *R. v. Harris*, 7 C. & P. 446).

*Vh, R. v. Waulby*, 1895, 2 Q. B. 482; 64 L. J. M. C. 251; 73 L. T. 352; 44 W. R. 64.

*Cp, MAIM.*

**WRAPPER.** — Quà Revenue Act, 1862, 25 & 26 V. c. 22. " 'Wrapper,' shall mean, a paper wrapper, label, or inclosure, provided by the Commrs of Inland Revenue for containing, inclosing, or covering, a Pack of CARDS, and denoting the duty in respect thereof" (s. 28).

*V. PAPER WRAPPER.*

**WRECK.** — " 'Wrecke,' or 'Varech' (as the Normans, from whom it came, call it) is where a Ship is perished on the Sea, and no man escapeth alive out of the same, and the Ship or part of the Ship so perished, or the goods of the Ship come to the Land of any Lord, the Lord shall have that as a Wrecke of the Sea. But if a man, or a dog, or a cat, escape alive, so that the party to whom the goods belong, come within a yeare and a day, and prove the goods to be his, he shall have them againe, by provision of the statute of Westm. 1, c. 4, made in King Ed. I. dayes, who therein followed the decree of H. I. before whose dayes, if a Ship had been cast on shore, torne with tempest, and were not repaired by such as escaped alive within a certaine time, that then this was taken for Wrecke" (Termes de la Ley).

*Cp, Doctor and Student*, Di. 2, ch. 51: Hale, *De Jure Maris*, ch. 6: 1 Bl. Com. 290 *et seq*: DERELICT: *Vh, Dunwich v. Sterry*, 1 B. & Ad. 831.

"De wreck de mere" (3 Edw. 1, c. 4), — "Wrecke or Shipwrecke, is an English word, in French *Naufrage*, in ancient French, *Varech*, in Latine, *Naufragium*, legally *Wreccum Maris*, Wrecke of the Sea in legal understanding, is applied to such goods as after shipwreck at sea are by the sea cast upon the land; and therefore the jurisdiction thereof pertaineth not to the lord admirall but to the common law. Although this statute speaketh onely of Wrecke, yet this statute extendeth to FLOTSAM, Jetsam, and Lagan" (2 Inst. 167, citing *Constable's Case*, 5 Rep. 106 a).

The Mer Shipping Act, 1894, s. 510, replacing s. 2, Mer Shipping Act, 1854, preserves the definition as laid down by *Constable's Case* thus, " 'Wreck,' includes, Jetsam, Flotsam, Lagan, and Derelict, found in or on the SHORES of the Sea or any TIDAL WATER" (*Vf*, s. 21, 31 & 32 V. c. 45. *Vh, The Zeta*, 44 L. J. Adm. 22; L. R. 4 A. & E. 460). "Timber found floating at sea, without an apparent owner, having drifted from its moorings, is not 'Wreck' within the meaning of the Act" (1 Maude &

P. 643, *n(j)*, citing *Palmer v. Rouse*, 3 H. & N. 505; 27 L. J. Ex. 437; *Va. Legge v. Boyd*, 14 L. J. C. P. 138; 1 C. B. 92; *Barry v. Arnaud*, 10 A. & E. 646; 9 L. J. Q. B. 226; 2 P. & D. 633).

*Vf. The Gas Float Whitton*, 1896, P. 42; 65 L. J. P. D. & A. 17; 73 L. T. 698; 44 W. R. 263; 12 Times Rep. 109; *affd* in H. L., 1897, A. C. 337; 66 L. J. P. D. & A. 99; 76 L. T. 663; 13 Times Rep. 422; 1 Maude & P. 643, 675, 677, 679.

As to whether CARGO can be included in "Wrecks of Vessels," *V. Vician v. Mersey Docks*, 39 L. J. C. P. 3; L. R. 5 C. P. 19.

*V. OWNER, towards end: SUNKEN WRECK.*

**WRIT.**—A Writ is the PROCESS by which Civil Proceedings in the High Court are, generally, commenced; *V. ACTION: WRIT OF SUMMONS. Cp. PLAINT: PLEADING: SUMMONS.* There are many other kinds of Writ, *e.g.* Writ of Execution, Writ of Error, Writ for the Election of a Member of Parliament, &c, issued in the name of the reigning monarch, for the doing, or not doing, of some act or thing.

Quà Sheriffs Act, 1887, 50 & 51 V. c. 55, " 'Writ,' includes any PROCESS" (s. 38).

Quà Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, "the word 'Charter' and the word 'Writ,' shall each extend to and include all Crown Writs, and all Charters, Precepts, and Writs, from Subject Superiors"; " 'Crown Writ,' shall extend to and include all Charters, Precepts, and Writs, from Her Majesty and from the Prince" (s. 3). *Vf.* 31 & 32 V. c. 64, s. 2.

**WRIT OF ERROR.**—"Writs of Error upon any Judgment"; held to include Judgments on Writs of Error, as well as original judgments (*Nisbit v. Rishton*, 9 A. & E. 426; 9 L. J. Ex. 333; 2 P. & D. 706).

*V. ERROR, at end: RECORD.*

**WRIT OF EXECUTION.**—"The term 'Writ of Execution' includes, writs of *feri facias, capias, elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto" (Dan. Ch. Pr. 654).

*V. EXECUTION.*

**WRIT OF POSSESSION.**—Quà Criminal Law and Procedure (Ir) Act, 1887, 50 & 51 V. c. 20, " 'Writ of Possession,' includes, any Decree, Warrant, Order, or other document, issued from any Court directing possession to be given, or authorizing possession to be taken, of any house or land" (s. 19); a def which, *semble*, is of general acceptance.

Other Stat. Def.—50 & 51 V. c. 33, s. 34.

**WRIT OF SUMMONS.**—Though an Originating Summons is an ACTION, yet it is not a "Writ of Summons" within R. 1, Ord. 11,

R. S. C., and no Order to serve it out of the jurisdiction can be granted (*Re Busfield*, 55 L. J. Ch. 467; 32 Ch. D. 123; 54 L. T. 220; 34 W. R. 372). From the judgment of Cotton, L. J., in that case, it may be stated that a like rule applies to Interpleaders, Petitions, and Applications to tax Solicitors' Costs, wherever an Order is sought against the person out of the jurisdiction. *Va*, that judgment for review and explanation of *Credits Gerundense v. Van Weede*, 53 L. J. Q. B. 142; 12 Q. B. D. 171; *Weldon v. Gounod*, 15 Q. B. D. 622; *Re Haney*, 44 L. J. Ch. 272; 10 Ch. 275; *Re Bonelli's Co*, 43 L. J. Ch. 720; L. R. 18 Eq. 655; *Re Naylor*, 28 L. T. 18; *Re Maugham*, 22 W. R. 748; *Re Mewburn*, W. N. (74) 156. *Vf*, *Re Cliff*, 1895, 2 Ch. 21; 64 L. J. Ch. 423; 72 L. T. 440; 43 W. R. 436; *Re Jellard*, 39 Ch. D. 424; *Re Anglo-African Steamship Co*, 32 Ch. D. 348; *Re Nathun Newman & Co*, 35 Ch. D. 1; *Re Liebig*, 59 L. T. 315.

#### V. PLAINTIFF.

#### WRITER.—V. SOLICITOR.

**WRITING.**—In Acts of Parliament, “expressions referring to Writing shall, unless the contrary intention appears, be construed as including references to Printing, Lithography, Photography, and other modes of representing or reproducing words in a visible form” (s. 20, Interp Act, 1889).

*Va*, Bills of Ex. Act, 1882, s. 2; Loc Gov Act, 1888, s. 99.

Prior to these statutory defs it had been held that a *lithographed* Memorial of a Middlesex Deed, was a good compliance with s. 5, 7 Anne, c. 20, which required Memorials to be “put into Writing, in vellum or parchment” (*R. v. Middlesex Registry*, 7 Q. B. 156). So, the printed name of a party to a contract may be a good signature by him; *V. SIGNED*, p. 1882.

The foregoing are departures from the literal and old meaning of a “Writing,” for Coke, speaking of a Bargain and Sale, says, “It must be by Writing, and not by Print or Stamp” (2 Inst. 672).

A Pencil Writing has always been a sufficient compliance with a statutory or other requirement that the thing to be done shall be *IX WRITING* (*Geary v. Physic*, 7 D. & R. 653).

#### V. PRINT.

A *WILL* is a “Writing” within the meaning of a Power to Appoint “By Writing” (*Lisle v. Lisle*, 1 Bro. C. C. 533; *Orange v. Pickford*, 27 L. J. Ch. 808; 4 Drew. 363). “If a Power be created to be executed by a Deed, or Instrument in Writing, although the words seem to indicate instruments *inter vivos* only, yet it is settled that it may be well executed by Will” (per Westbury, C., *Taylor v. Meads*, 34 L. J. Ch. 206; 4 D. G. J. & S. 597; *Vh. Sug. Pow.* 214, where it is stated that the leading case on this doctrine is *Kibbet v. Lee*, Hob. 312; nom. *Hüb-*

*hard's Case*, Litt. Rep. 218). But if such a Power goes on to prescribe special solemnities for its execution, *e.g.* that the Writing is to be "under SEAL," such requirements must be followed; and unless the Power is, *in terms*, a Power to appoint "by Will," a noncompliance with its requirements will not be cured by s. 10, Wills Act, 1837 (*Taylor v. Meads*, *sup.*, which over-ruled *Buckell v. Blenkhorn*, 5 Hare, 131, and established the dicta of the L. J. J. in *Collard v. Sampson*, 22 L. J. Ch. 729; 4 D. G. M. & G. 224, and the decision of Wood, V. C., in *West v. Ray*, 23 L. J. Ch. 447; Kay, 385; *Vh.*, 1 Jarm. 31, *n* (*u*): *Watson Eq.* 888).  
*V.* SIGNED, SEALED, AND DELIVERED. *Cp.* WILL.

In *Re Parker* (1894, 1 Ch. 707; 63 L. J. Ch. 316; 70 L. T. 165), Kekewich, J., held that the power to appoint New Trustees "By Writing" given by s. 31 (1), Conv & L. P. Act, 1881, repld s. 10 (1), Trustee Act, 1893, is not exerciseable by Will.

A Deed or other Writing (except a Will) speaks from its EXECUTION (*V.* FROM HENCEFORTH); a Will, from the death of testator (*V.* TESTAMENT, at end).

An Author's MS. is a "Writing" within the Carriers Act, 1830, 11 G. 4 & 1 W. 4, c. 68, s. 1 (per Stonor, Co. Co. Judge, *Lawson v. Lond. & S. W. Ry.*, 73 Law Times, 147).

"Writing under his hand"; *V.* HIS HAND.

"Writing Obligatory"; *V.* *R. v. Morton*, cited DEED, p. 486.

*V.* IN WRITING: INSTRUMENT IN WRITING: MEMORANDUM: NOTE.

**WRITINGS.**—*V.* *Watson v. McLean*, E. B. & E. 75.

**WRITTEN.**—*V.* WRITING.

**WRITTEN AGREEMENT.**—*V.* IN WRITING: NOTE: SUBMISSION.

**WRITTEN BY.**—"Written by," appearing on the title page of a song set to music, refers only to the words of the song and do not mean "written and composed by" (*Barnard v. Pillow*, W. N. (68) 94).

**WRITTEN CONSENT.**—As to what is a sufficient "Written Consent" to an Assignment of a Lease; *V.* *West v. Dobb*, 39 L. J. Q. B. 190; L. R. 5 Q. B. 460). *Vh.* UNREASONABLY.

**WRITTEN INSTRUMENT.**—*V.* INSTRUMENT: INSTRUMENT IN WRITING: WRITING.

**WRITTEN WARRANTY.**—A written description of the quality of goods sold, is not a "Written Warranty" of them within s. 25, Sale of Food and Drugs Act, 1875, 38 & 39 V. c. 63 (*Rook v. Hopley*, 47 L. J. M. C. 118; 3 Ex. D. 209; *Jiorns v. Van Tromp*, 72 L. T. 499; 64 L. J. M. C. 171; 59 J. P. 246); nor is a written contract for the *future* supply of goods in their pure state such a Warranty, for the



Warranty under the statute must accompany each delivery of goods (*Harris v. May*, 53 L. J. M. C. 39; 12 Q. B. D. 97: *svthe, Elliot v. Pilcher*, 1901, 2 K. B. 817; 70 L. J. K. B. 795), or, if there be such a contract, then it must be shown that the particular delivery in question was connected therewith and covered thereby (*Robertson v. Hurris*, 1900, 2 Q. B. 117; 69 L. J. Q. B. 526; 82 L. T. 536; 48 W. R. 571; 64 J. P. 565: *svthe, Elliot v. Pilcher*, sup). But the section does not require that the word "Warranty" should be used, and whatever amounts in law to a Warranty is sufficient if it is in writing, e.g. a sale contract of the "pure" article, or an accompanying invoice wherein the article is called "pure" (*Laidlaw v. Willson*, 1894, 1 Q. B. 74; 63 L. J. M. C. 35; 42 W. R. 78; 58 J. P. 58). So, if the vessel containing the article is labelled with a warranty of quality, that suffices (*Farmers Dairy Co v. Stevenson*, 60 L. J. M. C. 70: *Lindsay v. Rook*, 63 L. J. M. C. 231; 58 J. P. 735), but in such cases there must, in the first instance, be a written warranty between the parties (*Jiorns v. Van Tromp*, sup).

V. FALSE WARRANTY: FOOD: WARRANTY. Cp, REPRESENT.

**WRONG.** — V. TORT.

**WRONGFUL.** — "Wrongful"; V. per Bowen, L. J., *Mogul Co v. McGregor*, cited MALICE: IMPROPER: INJURE.

"Wrongful Act or Default"; V. DEFAULT.

**WRONGFULLY.** — In a Pleading in Trespass, "Wrongfully" does not put the Title in issue (*Frankum v. Falmouth*, 2 A. & E. 452).

**WRONGFULLY AFFECTED.** — V. INJURIOUSLY AFFECTED.

**WRONGFULLY CLAIMING.** — "Wrongfully claiming," s. 9. Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; V. *Williams v. Pott*, 40 L. J. Ch. 775; L. R. 12 Eq. 149. "Under that section, a Lessee for Years paying rent to a person 'wrongfully claiming to be entitled,' is supposed to be in possession; and a title can only be acquired against the true owner by a wrongful receipt of rents. The same words are not elsewhere used; but I am of opinion that what was said by the learned judge (in *Shaw v. Keighron*, Ir. Rep. 3 Eq. 574) is equally true of any other case in which the statute is set up as a bar to the true owner by virtue only of the receipt of rent from tenants in possession. I think that such receipt of rent, in order to exclude the true owner, must always be by a person 'wrongfully claiming,' — and not receiving, or claiming a right to receive, on behalf of the true owner. When the true owner can and does ratify an agency undertaken on his behalf, though without his antecedent authority, the case is the same as if he had himself received the rents" (per Selborne, C., *Lyell v. Kennedy*, 59 L. J. Q. B. 278; 14 App. (a. 460). V. "Cestui que Trust," sub CESTUI: REPRESENTATIVE.

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**WROUGHT.** — A proviso in a Coal Mining Lease, ceasing rent on the Coal being worked out “so far as the same can be Fairly Wrought,” “relates to the possibility of obtaining coal by fair working” (per Pollock, C. B.), and the question of working at a profit has no bearing (*Griffiths v. Rigby*, 25 L. J. Ex. 284; 1 H. & N. 237).

*Cp.* WORKABLE.

**WYDRAUGHT.** — “A water passage, gutter, or watering place” (Jacob).

**WYKE.** — *V.* WIKE.

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## YAIR — YARDLAND

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**YAIR.** — In the old statutes against the use of Yairs and Cruffis in “fresh waters where the sea flows and ebbs,” “Yairs” includes Stake-nets (per Eldon, C. *Dulgleish v. Athol*, 5 Dow, 291: *vtbc*, *Horne v. Mackenzie*, cited RIVER).

**YARD.** — A large yard for bonding foreign timber, in which there were a deal shed and two buildings, with saw-pits; held, on the context, not to be a “Yard” within a clause, in a Railway Act, enabling an owner to insist on the whole being taken if any part of it was required (*Stowe v. Commercial Ry.*, 9 Sim. 621).

**Cubic Yard.** — “Where one party agrees to build an Embankment for a certain sum per Cubic Yard, at such places as he shall be directed by another, and the place selected by the other is such that there is a natural settling of the foundation while the embankment is building, and a consequent waste and shrinkage of the embankment, any system of measurement which does not allow for the embankment which supplies the place of the settling is not a correct one: *Clark v. United States*, 2 Wall. (U. S.), 543” (1 Hudson, 146).

**Lineal Yard.** — “A. contracted with B. to do certain pitching at the rate of 1s. 6d. per Lineal Yard. There was nothing on the face of the contract to show the breadth of the work to be done, but the evidence showed that the work was of a uniform breadth of 18 feet, but the plans were not produced; held, that there was no latent ambiguity in the contract, and that ‘Lineal Yard’ meant, one yard in length by 18 feet in breadth; and not Square Yard: *Ford v. Oamaru*, 1 N. Z. L. R. S. C. 97” (1 Hudson, 146).

The length of the “Imperial Standard Yard” is regulated by s. 10, 41 & 42 V. c. 49.

How Lineal Yard measured: *V. DISTANCE.*

*V. SUPERFICIAL YARD: YARDS.*

**YARDLAND.** — “*Una virgata terra*, a yard-land, is in some countries 10, in some 20, in some 24, in some 30, &c” (Co. Litt. 5a: the “&c” here means “acres,” Touch. 93). “By the grant therefore of *virgatum terra*, or a yard-land, will pass that quantity of land, meadow and pasture, that is called by this name. And so by the grant of half a yard, or a quarter of a yard land” (Touch. 93). *J7; Cowel: Jacob: Elph.* 567, 631.

**YARDS.**— The parcels in a conveyance were described by reference to coloured parts of a plan. A yard, delineated but not coloured in the plan, was held to pass under the general word “Yards” (*Willis v. Watney*, 51 L. J. Ch. 181). *V. GENERAL WORDS.*

**YARN.**— Quà Textile Manufactures (Ir) Act, 1867, 30 & 31 V. c. 60. “Yarn,” extends to and includes, “Flax, Hemp, Jute, Cotton, Silk, and Wool, which shall have been subjected to any manipulation or process to which such materials, respectively, are subjected by manufacturers, unless there be something in the subject or context inconsistent with such meaning” (s. 1).

**YEAR.**— “A Year is the time wherein the sun goes around his compass through the twelve signs, viz., 365 days and about 6 hours. But in Leap Year the statute, 24 G. 2, c. 25, enacts that the year shall consist of 366 days; so that in *R. v. Woringall* (6 M. & S. 350), upon a question of yearly hiring, Ld Ellenborough said, ‘In those years which consist of 366 days, a hiring and service for a year, must be for that same number of days, in like manner as when the year was 365 days, it must have continuance during that number’ (Dwar. 693: *Vf*, Jacob). In *Hiring and Service*, quà 8 & 9 W. 3, c. 30, s. 4, a hiring on one day to the day next before its anniversary, was a “Year” of 365 days, for the fraction of a day at the beginning and also that at the end of the term counted as a day; a rule which was applied to a Pauper Settlement by occupation of a tenement “for one whole year, AT LEAST,” under s. 1, 1 W. 4, c. 18 (*R. v. St. Mary, Warwick*, 1 E. & B. 816; 22 L. J. M. C. 109; 1 W. R. 307; 21 L. T. O. S. 74).

An “Agreement not to be performed within the space of one year from the making thereof,” s. 4, Statute of Frauds, means, within 12 Calendar Months from that date (*Bracegirdle v. Heald*, 1 B. & Ald. 722: *Snelling v. Huntingfield*, 1 Cr. M. & R. 20). *Vf*, NOT TO BE: EXCEEDS.

Quà, and by, s. 104, Loc Gov Act, 1888, “Year,” means Calendar Year.

Quà Valuation (Metropolis) Act, 1869, “‘Year,’ means, the twelve months commencing with the 6th of April and ending with the succeeding 5th of April” (s. 4).

Quà Agricultural Rates Act, 1896, “‘Year’ means, the LOCAL FINANCIAL YEAR, *i.e.* the twelve months beginning on the 1st day of April, or, where the spending Authority do not make up their accounts to that day, on the nearest day thereto to which they do make up their accounts, or on any other prescribed day” (s. 9).

Under the Companies Act, 1862, the Annual List of Members (s. 26), and the General Meetings (s. 49), which are to be sent, or held, “once at least in EVERY Year,” the word “Year” means, the period of time from 1st January to 31st December, not a period of 12 calendar months

calculated from the registration of the Co (*Gibson v. Barton*, 44 L. J. M. C. 81; L. R. 10 Q. B. 329; *Edmonds v. Foster*, 33 L. T. 690).

Where a Co's Articles give the Directors a stated sum "by way of remuneration in EACH year," nothing can be claimed except for a complete year; *secus*, if the phrase were "at the RATE of" so much for each year (*Salton v. New Beeston Co*, 1899, 1 Ch. 775; 68 L. J. Ch. 370; 80 L. T. 521; 47 W. R. 462); and so, if the words are so much "PER ANNUM" there must be services for a complete year (*Re Central De Kaap Co*, 69 L. J. Ch. 18; W. N. (99) 216).

In a Corporation Charter, "Year" has been held to mean, a Mayoralty, though less than a year (*R. v. Surger*, 10 B. & C. 486).

In a Theatrical Engagement, "Year" means "Season" (*Grant v. Maddox*, 16 L. J. Ex. 227; 15 M. & W. 737). In that case Alderson, B., said, "The contract is, that the plaintiff is to be paid for 3 years, at a salary of £5, £6, and £7, per week in those years; that means, according to the universal understanding amongst actors, that she is to be paid so much per week, during every week that the theatre is open."

A covenant in a Lease not to assign or underlet "for a longer period than a Year," is not broken by a sublease for a year commencing at a future date (*Croft v. Lumley*, 6 H. L. Ca. 672; 27 L. J. Q. B. 321); but, *semble*, a lease under a Power must take effect at once (*Ib.* 6 H. L. Ca. 737; 27 L. J. Q. B. 343).

V. TWELVEMONTH.

"By the year"; V. VALUE.

Condition of establishing title "Within one year"; V. *Re Hartley*, 34 Ch. D. 742; 56 L. J. Ch. 564; 56 L. T. 565; 35 W. R. 624.

"Space of one whole year," s. 58, Pluralities Act, 1838, 1 & 2 V. c. 106; V. *Bartlett v. Kirwood*, 23 L. J. Q. B. 9; 2 E. & B. 771: WHOLE.

"One Year's Stipend"; V. ONE, at end.

"Current Year"; V. CURRENT.

*Dead Year*, is the year from the death of a deceased for winding-up his estate, during which time his exor or admor cannot be sued for a legacy or a share (*Wood v. Penoyre*, 13 Ves. 333; *Benson v. Maude*, 6 Mad. 15).

"Financial Year"; V. FINANCIAL.

"Savings Bank Year"; V. SAVINGS.

"School Year"; V. SCHOOL.

Commencement of Year; V. MICHAELMAS.

V. HALF A YEAR: QUARTER OF A YEAR: SUCCEEDING: TENANT FOR YEARS: YEAR TO YEAR.

**YEAR AND A DAY.**—In computing a Year and a Day after an event, the day on which the event happens is counted as the first day (Co. Litt. 255 a; Steph. Cr. 155). *Th.* (Cowel; Jacob, *Year*).

**YEAR CERTAIN.** — A tenancy for Years, determinable on Lives, is not for "any term or number of years certain," within s. 1, 1 G. 4, c. 87 (*Doe d. Pemberton v. Roe*, cited **TERM CERTAIN**).

Letting for "One Year Certain, and so on from year to year"; *V. YEAR TO YEAR*.

**YEAR, DAY, AND WASTE.** — *V. Cowel: Jacob. Year: Termes de la Ley, An, jour, and wast.*

**YEAR TO YEAR.** — "Where parties agree for a tenancy '*from year to year*,' and possession is taken, such a tenancy is thereby created, and may be determined at the end of the first or any subsequent year of the tenancy by a regular notice to quit (*Doe d. Clarke v. Smaridge*, 7 Q. B. 957; 14 L. J. Q. B. 327; *Doe d. Plumer v. Mainby*, 10 Q. B. 473; 16 L. J. Q. B. 303). But where a tenancy is created '*for one year certain, and so on from year to year*,' it enures as a tenancy for two years at the least, and cannot be determined at the end of the first year (*Doe d. Chadborn v. Green*, 9 A. & E. 658; 8 L. J. Q. B. 100; 1 P. & D. 454; *Canon Brewery v. Nash*, 77 L. T. 648; *R. v. Chawton*, 1 Q. B. 247; 10 L. J. M. C. 55; *Vf, Lutterel v. Weston*, Cro. Jac. 308); though it may be determined by notice to quit at the end of the second or any subsequent year of the tenancy. A demise '*for a year*,' or '*for one year certain*,' does not create a tenancy from year to year, nor require any notice to quit at the end of the year (*Cobb v. Stokes*, 8 East, 358, 361; *Wilson v. Abbott*, 3 B. & C. 88; *Johnstone v. Hullestone*, 4 B. & C. 937"): Woodf. 231.

"Person having no greater interest than as Tenant for a Year, or from Year to Year," s. 121, Lands C. C. Act, 1845; *V. R. v. Kennedy*, 1893, 1 Q. B. 533; 62 L. J. M. C. 168; 68 L. T. 454; 41 W. R. 380; 57 J. P. 346.

"Less than a tenancy from year to year"; *V. LESS*.

A "Contract of Tenancy" quâ Agricultural Holdings (England) Act, 1883 (*V. s. 61*), and Market Gardeners Compensation Act, 1895 (*V. s. 1*), "means, a letting of or agreement for the letting LAND for a term of years, or for lives, or for lives and years, or from Year to Year." Within that def a yearly letting is "from year to year" notwithstanding that it may be determined by a short notice on any day of the year (*King v. Eversfield*, 1897, 2 Q. B. 475; 66 L. J. Q. B. 809; 77 L. T. 195; 46 W. R. 51; 61 J. P. 740). *Note*: for other Stat. Def. of "Contract of Tenancy. *V. 50 & 51 V. c. 26, s. 4. — Tr. 44 & 45 V. c. 49, s. 57.*

**YEARLING.** — "If a breeder of horses should bequeath 'his Yearlings,' and survive into the next year, the Yearlings of the latter year, and not those of the former (now two-year-olds), would probably be held to pass": 1 Jarm. 331, *u (y)*.

**YEARLY.** — “ ‘Yearly,’ is only a word of calculation ” (per Campbell, C. J., *Doe d. King v. Grafton*, 18 Q. B. 501).

Where the agreement is to pay so much a year, whether it be for rent or services, and nothing is said as to shorter payments, then nothing becomes due till the end of each year of the agreement; and, if the agreement be in writing, evidence cannot be given of an oral agreement to pay the payments quarterly or in some other mode (*Giraud v. Richmond*, 15 L. J. C. P. 180; 2 C. B. 835, and cases there cited by Byles arg. : *Sv*, as to the latter part of this proposition, *Ridgway v. Hungerford Market Co*, 3 A. & E. 171). *Cp*, QUARTERLY. *Vf*, *Salton v. New Beeston Co*, cited YEAR.

“ If a man has a Power to make Leases, reserving the Ancient Yearly Rent ‘*annually*,’ yet if it were reserved upon a day before the year was up (as if the year ended at Christmas and it was reserved at Michaelmas) it would be well, pursuant to the Power ” (per Powell, J., *R. v. Weston*, Raym. Ld, 1198; adopted and applied in H. L., *Rutland v. Doe*, 12 M. & W. 397, 400; 10 Cl. & F. 468, 470, in *whle* Ld Campbell doubted whether a reservation of rent at the beginning of each year would be good, because that would tend to a lesser rent being paid).

“ The usual ‘ Yearly ’ rent means, the yearly rent of so many half-yearly or quarterly payments in the year ” (per Abbott, C. J., *Doe d. Shrewsbury v. Wilson*, 5 B. & Ald. 382). And the better opinion seems to be that in executing a Power of Leasing which requires the reservation of “ Yearly ” rents, the days of payment, how many and what, are immaterial so long as the rent is a yearly one (*Doe d. Douglas v. Lock*, 4 L. J. K. B. 117, 119; 2 A. & E. 705: but in *thc*, after an elaborate review of the somewhat conflicting authorities hereon, the Court refrained from deciding this point and disposed of the case on other grounds). *Vh*, Sug. Pow. 793-795.

In *Doe d. Shrewsbury v. Wilson* (sup), the words “ made payable yearly ” were considered the same as if the words had been “ payable every year. ” “ In common parlance the word ‘ yearly ’ in such Powers, means, not a payment of rent once a year but, that the same is to be paid *in or during* every year. In one sense a rent reserved half-yearly is payable yearly, because it is payable during the year ” (Sug. Pow. 795).

V. ANNUALLY: HALF-YEARLY: PER ANNUM: QUARTERLY.

**YEARLY INTEREST.** — Interest upon a loan by a banker to a customer for a period less than a year, is not within “ any yearly Interest of Money, or any Annuity, or other Annual Payment, ” within s. 40. 16 & 17 V. c. 34; therefore, the customer is not entitled to deduct Income Tax from such interest (*Goslings v. Blake*, 23 Q. B. D. 324; 58 L. J. Q. B. 446; 5 Times Rep. 605, distinguishing *Bebb v. Bunny*. 1 K. & J. 216 and *Dinning v. Henderson*, 3 D. G. & S. 702; 19 L. J. Ch. 273).

So, interest included in the periodical payments of a member of a Building Socy and not without difficulty distinguishable, is not "Yearly Interest of Money" within s. 102, Income Tax Act, 1842; but it is "Interest of Money" for which the Socy is assessable under par 3, Sch D, s. 2, 16 & 17 V. c. 34 (*Leeds By Socy v. Mallandaine*, 1897, 2 Q. B. 402; 66 L. J. Q. B. 467, 813; 77 L. T. 122; 61 J. P. 675), and that latter rule applies to Interest on a Bank Deposit (*Clerical Med. & Gen. Life Assree v. Carter*, 58 L. J. Q. B. 224; 22 Q. B. D. 444; 37 W. R. 346).

**YEARLY PRODUCE.**—*V.* PRODUCE.

**YEARLY RENT.**—*V.* CLEAR.

**YEARLY VALUE.**—*V.* ANNUAL VALUE: CLEAR: FREE LAND: VALUE.

**YEARS.**—When successive, *V.* TERM.

**YELVERTON'S ACT.**—For extending to Ireland much of the statute law of England, 21 & 22 G. 3, c. 48, amended by s. 1, 7 & 8 G. 4, c. 68. *Vf*, POYNING'S ACTS.

**YEOMAN.**—("Camden placeth Yeomen next in order to Gentlemen" (Jacob). If that be so, and as it seems a GENTLEMAN is "one who has nothing to do," then Camden's def of Yeoman is a little vague. Still the word has for centuries been used as an ADDITION to a person's name (*Termes de la Ley, Additions*). Blackstone says, "a Yeoman is he that hath free land of 40s. by the year; who was antiently thereby qualified to serve on juries, vote for knights of the shire, and do any other act where the law requires one that is *probus et legalis homo*" (1 Bl. Com. 406, 407, citing 2 Inst. 668).

**YEOMANRY.**—"The Yeomanry Acts, 1802 to 1826"; *V.* Sch 2, Short Titles Act, 1896.

*V.* ACTUAL MILITARY SERVICE: SOLDIER: VOLUNTEER.

**YEW TREES.**—*V.* NUISANCE, p. 1300.

**YIELD.**—"Remove from, or yield up, the possession" of an Inn, s. 14, Alchouse Act, 1828, 9 G. 4, c. 61; *V. R. v. Wiltshire Jus.*, 57 J. P. 454.

**YIELDING AND PAYING.**—These words, with which the redendum clause in a lease is usually commenced, create, by their own vigour, a Covenant by the lessee to pay the rent reserved (*Hellier v. Casbard*, 1 Sid. 266; *Porter v. Sweetnam*, Style, 406; *Bower v. Hodges*, 22 L. J. C. P. 194; 13 C. B. 765, 774. *Vf*, Elph. 419, 420). But they do not create a CONDITION Precedent (*V.* PAYING).

**YOKE.**—Used for YARDLAND in Kent (Elph. 631).



**YORK.** — *V.* Bp of ELY'S ACT.

**YORKSHIRE.** — Yorkshire Registry; *V.* ACTUAL FRAUD: CONVEYANCE. p. 403: ENLARGE: EXISTING: GRANT: RIDING.

**YOU.** — "You," as a Description of a Lessee in an agreement to grant a lease, is good; it is as good as PROPRIETOR, for a vendor, in a *V.* & *P.* contract (per Farwell, J., *Caer v. Lynch*, 1900, 1 Ch. 613; 69 L. J. Ch. 345; 82 L. T. 381; 48 W. R. 616).

"You," in a writ to several defendants, is construed distributively (*Engleheart v. Eyre*, 2 Dowl. 145).

**YOUNG PERSON.** — Quà Factory and Workshop Act, 1901, " 'Young Person,' means, a person who has ceased to be a CHILD (pp. 302, 303), and is under the age of 18 years " (s. 156).

Quà Agriculture Gangs Act, 1867, 30 & 31 V. c. 130. "Young Person," means, "a person of the age of 13 years and under the age of 18 years" (s. 3).

Quà Shop Hours Acts, " 'Young Person,' means, a person under the age of 18 years " (s. 9, 55 & 56 V. c. 62). *Note*, "the Shop Hours Acts, 1892 to 1895," are 55 & 56 V. c. 62; 56 & 57 V. c. 67; 58 & 59 V. c. 5 (s. 2, 58 & 59 V. c. 5). *Vh*, SHOP, p. 1874.

Quà Sum Jur Act, 1879, 42 & 43 V. c. 49, " 'Young Person,' means, a person who, in the opinion of the Court before whom he is brought, is of the age of 12 years and under the age of 16 years " (s. 49); *Vf*, 47 & 48 V. c. 19, s. 9.

*V.* BOY: CHILD: GIRL: INFANT: WOMAN: YOUTH.

**YOUNG SALMON.** — "Young of Salmon," quà Salmon and Fresh-water Fisheries Acts, includes, "all young of the salmon species, whether known by the names of fry, samlet, smolt, smelt, skirling or skarling, par, spawn, pink, last spring, hepper, last brood, gravelling, shed, sead, blue fin, black tip, fingerling, brandling, brondling, or by any other name local or otherwise" (s. 4, 24 & 25 V. c. 109).

*V.* FRY: SALMON.

**YOUNGER: YOUNGEST.** — *Primâ facie* "Younger" or "Youngest" has reference to the order of birth (2 Jarm. 213: *Bootle v. Scarisbrick*, 1 H. L. Ca. 167).

An *only* child would take under a bequest to a person's "*youngest* child" (*Emery v. England*, 3 Ves. 232).

As to gifts to children "when the *youngest* attains 21"; *V.* 2 Jarm. 165-167.

"*Younger Branches*" of a family; *V.* *Doe* d. *Smith v. Fleming*, 2 Cr. M. & R. 638; 5 L. J. Ex. 74; 2 Jarm. 98.

"*Younger Children*," are those which were such at the death of the

intestate or heir in possession (per Hatherley, C., *Cutton v. Mackenzie*, L. R. 2 H. L. Sc. & D. App. 203). *Vf*, *Mason v. Westoby*, 42 Ch. D. 590; *Re Prytherch*, *Ib.* 591.

“Where the estate is settled on the ELDEST son, and, subject to that, a Power is given of appointing portions to the younger children, a Younger Child who becomes the Eldest before receiving his portion, is not within the Power (*Chadwick v. Doleman*, 2 Vern. 528; *Teynham v. Webb*, 2 Ves. sen. 198; *Va*, *Lincoln v. Pelham*, *Bowles v. Bowles*, *Leake v. Leake*, 10 Ves. 166, 177, 477; *Savage v. Carroll*, 1 Ball & Beatty, 265; *Matthews v. Paul*, 3 Swanst. 328; *Peacock v. Pares*, 2 Keen, 689); but he must become an Eldest or Only Son in the sense of the Settlement, although not fully expressed, to exclude him from a portion; that is, he must take the estate provided by the Settlement for the Eldest or Only Son (*Spencer v. Spencer*, 8 Sim. 87; *V. Tennison v. Moore*, 13 Ir. Eq. Rep. 424), and this even where the Settlement expressly provides that the portion of a Younger Son becoming the Eldest Son in the lifetime of his father shall accrue to the survivors; therefore, if the father and his eldest son bar the estate tail and remainders, and dispose otherwise of the estate, the second son, although he may become, by his brother's death without issue in his father's lifetime, the eldest son entitled according to the Settlement, will still be entitled to his portion as a Younger Son (*Macoubrey v. Jones*, 2 K. & J. 684; *Vf*, *Re Fitzgerald*, *inf.*). This is the exception; but as to the general rule, where a Power was given to appoint a sum amongst Younger Children, provided that the eldest son, or the *son* possessing the estate should have no share of it, and an appointment was made, *nominatim*, to Anthony, the second son, and the other *younger* children, and, after the appointment, Anthony became the eldest son by the death of his elder brother, and the estate descended upon him, Ld Thurlow held that Anthony could not take any part of the fund, although the appointment was not revoked (*Broadmead v. Wood*, 1 Bro. C. C. 77)”: Sug. Pow. 678, 679. *Vf*, *Ib.* 620, 693: Elph. ch. 24: ELDEST.

On the other hand, the representatives of the Eldest Son ordinarily become entitled to a Younger Son's portion if he dies before the time fixed by the Settlement for the distribution of the portions fund; but they are not so entitled if, as remainder-man in tail, the Eldest Son has joined in a Disentailing Deed, and in raising money by mortgage of the estate out of which money he has received a substantial sum for himself, for then, in effect, he would be taking a Double Portion (*Collingwood v. Stanhope*, 38 L. J. Ch. 421; L. R. 4 H. L. 43; 17 W. R. 537; *Re Fitzgerald*, 1891, 3 Ch. 394; 60 L. J. Ch. 624; 65 L. T. 242; 40 W. R. 29).

#### I. ENTITLED IN POSSESSION.

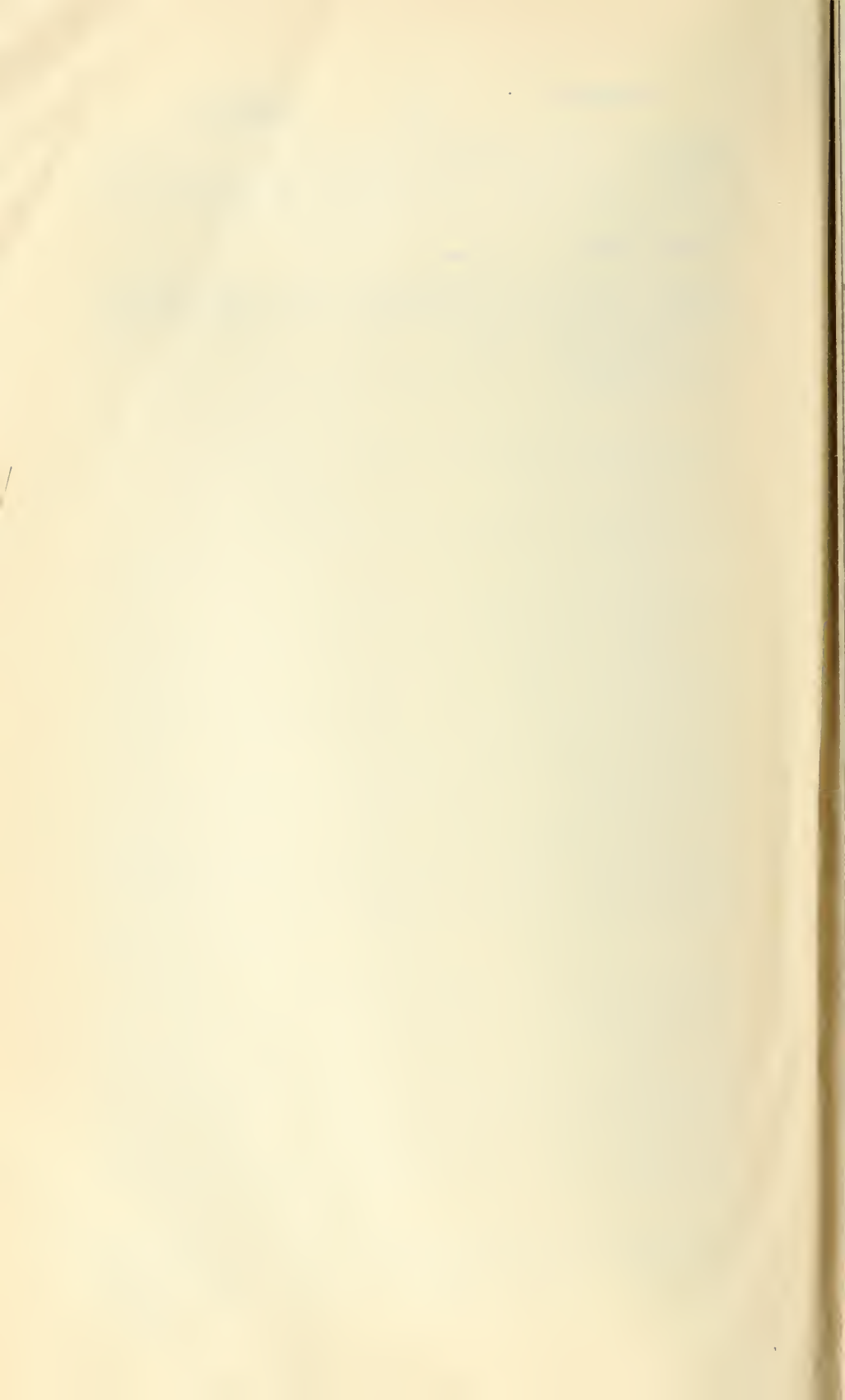
As a general rule and where there is no special direction, the Class of Younger Children “cannot be ascertained till the period of distribution” (per Romilly, M. R., *Re Bailey*, 39 L. J. Ch. 388; L. R. 9 Eq. 491).

**YOUR.** — As to effect of contract for “your” wool, or other specified commodity; *V. Macdonald v. Longbottom*, 28 L. J. Q. B. 293; 29 lb. 256; 1 E. & E. 977, 987.

**YOUR CLIENT.** — *V. CLIENT.*

**YOUTH.** — Quia one of the repealed Acts relating to Lace Factories, a “Youth” was defined “to mean, a male of 16 and under 18 years of age” (s. 4, 24 & 25 V. c. 117).

*V. YOUNG PERSON.*



# APPENDIX.

## INTERPRETATION ACT, 1889.

(52 & 53 VICT. c. 63.)

### ARRANGEMENT OF SECTIONS.

#### *Re-enactment of existing Rules.*

##### Sections.

1. Rules as to gender and number.
2. Application of penal Acts to bodies corporate.
3. Meanings of certain words in Acts since 1850.
4. Meaning of "county" in past Acts.
5. " " "parish."
6. " " "county court."
7. " " "sheriff clerk," &c., in Scotch Acts.
8. Sections to be substantive enactments.
9. Acts to be Public Acts.
10. Amendment or repeal of Acts in same session.
11. Effect of repeal in Acts passed since 1850.

#### *New General Rules of Construction.*

12. Official definitions in past and future Acts.
13. Judicial definitions in past and future Acts.
14. Meaning of "rules of court."
15. " " borough.
16. " " guardians and union.
17. Definitions relating to elections.
18. Geographical and Colonial definitions in future Acts.
19. Meaning of "person" in future Acts.
20. " " "writing" in past and future Acts.
21. " " "statutory declaration" in past and future Acts.
22. " " "financial year" in future Acts.
23. Definition of Lands Clauses Acts.
24. Meaning of "Irish Valuation Acts."
25. " " "ordnance map."
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27. " " "committed for trial."
28. Meanings of "sheriff," "felony," and "misdemeanour," in future Scotch Acts.
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30. References to the Crown.
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An Act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament. [30th August 1889.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

*Re-enactment of existing Rules.*

1. — (1.) In this Act and in every Act passed *after* the year 1850, whether before or after the commencement of this Act, unless the contrary intention appears, —

Rules as to gender and number.

- (a) words importing the masculine gender shall include females; and
- (b) words in the singular shall include the plural, and words in the plural shall include the singular.

(2.) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an Act passed *in or before* the year 1850.

2. — (1.) In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed *before or after the commencement of this Act*, the expression "person" shall, unless the contrary intention appears, include a body corporate. *Cp, s. 19.*

Application of penal Acts to bodies corporate.

(2.) Where under any Act, whether passed *before or after the commencement of this Act*, any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.

3. In every Act passed *after* the year 1850, whether before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely, —

Meanings of certain words in Acts since 1850.

- The expression "month" shall mean calendar month:
- The expression "land" shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure:
- The expressions "oath" and "affidavit" shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression "swear" shall, in the like case, include affirm and declare.

4. In every Act passed *after* the year 1850 and *before the commencement of this Act* the expression "county" shall, unless the contrary intention appears, be construed as including a county of a city and a county of a town.

Meaning of "county" in past Acts.

5. In every Act passed *after* the year 1866, whether before or after the commencement of this Act, the expression "parish" shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.

Meaning of "parish."

6. In this Act, and in every Act and Order of Council passed or made *after* the year 1846, whether before or after the commencement of this Act, the expression "county court" shall, unless the contrary intention

Meaning of "county court."

51 & 52 Vict.  
c. 43.

Meaning of  
"sheriff  
clerk," &c., in  
Scotch Acts.

Sections to be  
substantive  
enactments.

Acts to be  
Public Acts.

Amendment  
or repeal of  
Acts in same  
session.

Effect of repeal  
in Acts passed  
since 1850.

Official defini-  
tions in past  
and future  
Acts.

appears, mean as respects England and Wales a court under the County Courts Act, 1888. *Cp.*, s. 29.

7. In every Act relating to Scotland, whether passed *before or after the commencement of this Act*, unless the contrary intention appears —

The expression "sheriff clerk" shall include steward clerk;  
The expressions "shire," "sheriffdom," and "county" shall include any stewardry in Scotland.

8. Every section of an Act shall have effect as a substantive enactment without introductory words.

9. Every Act passed *after* the year 1850, whether before or after the commencement of this Act, shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act.

10. Any Act may be altered, amended, or repealed in the same session of Parliament.

11. — (1.) Where an Act passed *after* the year 1850, whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment.

(2.) Where an Act passed *after* the year 1850, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

#### *New General Rules of Construction.*

12. In this Act, and in every other Act whether passed *before or after the commencement of this Act*, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(1.) The expression "the Lord Chancellor" shall, except when used with reference to Ireland only, mean the Lord High Chancellor of Great Britain for the time being, and when used with reference to Ireland only, shall mean the Lord Chancellor of Ireland for the time being.

(2.) The expression "the Treasury" shall mean the Lord High Treasurer for the time being or the Commissioners for the time being of Her Majesty's Treasury.

(3.) The expression "Secretary of State" shall mean one of Her Majesty's Principal Secretaries of State for the time being.

(4.) The expression "the Admiralty" shall mean the Lord High Admiral of the United Kingdom for the time being, or the Commissioners for the time being for executing the office of Lord High Admiral of the United Kingdom.

(5.) The expression "the Privy Council" shall, except when used with reference to Ireland only, mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council, and when used with reference to Ireland only, shall mean the Privy Council of Ireland for the time being.

(6.) The expression "the Education Department" shall mean the Lords of the Committee for the time being of the Privy Council appointed for Education.

(7.) The expression "the Scotch Education Department" shall mean the Lords of the Committee for the time being of the Privy Council appointed for Education in Scotland.

(8.) The expression "the Board of Trade" shall mean the Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

(9.) The expression "Lord Lieutenant," when used with reference to Ireland, shall mean the Lord Lieutenant of Ireland or other Chief Governors or Governor of Ireland for the time being.



(10.) The expression "Chief Secretary," when used with reference to Ireland, shall mean the Chief Secretary to the Lord Lieutenant for the time being.

(11.) The expression "Postmaster General" shall mean Her Majesty's Postmaster General for the time being.

(12.) The expression "Commissioners of Woods" or "Commissioners of Woods and Forests" shall mean the Commissioners of Her Majesty's Woods, Forests, and Land Revenues for the time being.

(13.) The expression "Commissioners of Works" shall mean the Commissioners of Her Majesty's Works and Public Buildings for the time being.

(14.) The expression "Charity Commissioners" shall mean the Charity Commissioners for England and Wales for the time being.

(15.) The expression "Ecclesiastical Commissioners" shall mean the Ecclesiastical Commissioners for England for the time being.

(16.) The expression "Queen Anne's Bounty" shall mean the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy.

(17.) The expression "National Debt Commissioners" shall mean the Commissioners for the time being for the Reduction of the National Debt.

(18.) The expression "the Bank of England" shall mean, as circumstances require, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England.

(19.) The expression "the Bank of Ireland" shall mean, as circumstances require, the Governor and Company of the Bank of Ireland or the bank of the Governor and Company of the Bank of Ireland.

(20.) The expression "consular officer" shall include consul-general, consul, vice-consul, consular agent, and any person for the time authorized to discharge the duties of consul-general, consul, or vice-consul.

13. In this Act and in every other Act whether passed *before or after the commencement of this Act*, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

Judicial definitions in past and future Acts.

(1.) The expression "Supreme Court," when used with reference to England or Ireland, shall mean the Supreme Court of Judicature in England or Ireland, as the case may be, or either branch thereof.

(2.) The expression "Court of Appeal," when used with reference to England or Ireland, shall mean Her Majesty's Court of Appeal in England or Ireland, as the case may be.

(3.) The expression "High Court," when used with reference to England or Ireland, shall mean Her Majesty's High Court of Justice in England or Ireland, as the case may be.

(4.) The expression "court of assize" shall, as respects England, Wales, and Ireland, mean a court of assize, a court of oyer and terminer, and a court of gaol delivery, or any of them, and shall, as respects England and Wales, include the Central Criminal Court.

(5.) The expression "assizes," as respects England, Wales, and Ireland, shall mean the courts of assize usually held in every year, and shall include the sessions of the Central Criminal Court, but shall not include any court of assize held by virtue of any special commission, or, as respects Ireland, any court held by virtue of the powers conferred by section sixty-three of the Supreme Court of Judicature Act (Ireland), 1877.

40 & 41 Vict. c. 57.

(6.) The expression "the Summary Jurisdiction Act, 1848," shall mean the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders."

(7.) The expression "the Summary Jurisdiction (England) Acts" and the expression "the Summary Jurisdiction (English) Acts" shall respectively mean the Summary Jurisdiction Act, 1848, and the Summary

11 & 12 Vict. c. 43.

42 & 43 Vict.  
c. 49.

Jurisdiction Act, 1879, and any Act, past or future, amending those Acts or either of them.

27 & 28 Vict.  
c. 53.

(8.) The expression "the Summary Jurisdiction (Scotland) Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Act, past or future, amending those Acts or either of them.

44 & 45 Vict.  
c. 33.

(9.) The expression "the Summary Jurisdiction (Ireland) Acts" shall mean, as respects the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace or of the police of that district, and as respects any other part of Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act, past or future, amending the same.

14 & 15 Vict.  
c. 93.

(10.) The expression "the Summary Jurisdiction Acts" when used in relation to England or Wales shall mean the Summary Jurisdiction (England) Acts, and when used in relation to Scotland the Summary Jurisdiction (Scotland) Acts, and when used in relation to Ireland the Summary Jurisdiction (Ireland) Acts.

(11.) The expression "court of summary jurisdiction" shall mean any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorized to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law.

(12.) The expression "petty sessional court" shall, as respects England or Wales, mean a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house, and shall include the Lord Mayor of the city of London, and any alderman of that city, and any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a court-house or place at which he is authorized by law to do alone any act authorized to be done by more than one justice of the peace.

(13.) The expression "petty sessional court-house" shall, as respects England or Wales, mean a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such a court-house or place, and where the justices are accustomed to assemble for either special or petty sessions at more than one court-house or place in a petty sessional division, shall mean any such court-house or place. The expression shall also include any court-house or place at which the Lord Mayor of the city of London or any alderman of that city, or any metropolitan or borough police magistrate or other stipendiary magistrate is authorized by law to do alone any act authorized to be done by more than one justice of the peace.

(14.) The expression "court of quarter sessions" shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or quarter sessions assembled, and shall include the court of the recorder of a municipal borough having a separate court of quarter sessions.

Meaning of  
"rules of  
court."

14. In every Act passed *after the commencement of this Act*, unless the contrary intention appears, the expression "rules of court" when used in relation to any court shall mean rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court, and as regards Scotland shall include acts of adjournal and acts of sederunt.

The power of the said authority to make rules of court as above defined shall include a power to make rules of court for the purpose of any Act passed after the commencement of this Act, and directing or authorizing anything to be done by rules of court.

Meaning of  
borough.

15. In this Act and in every Act passed *after the commencement of this Act* the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(1.) The expression "municipal borough" shall mean, as respects England and Wales, any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city, and any reference to the powers, duties, liabilities, or property of the council of a borough shall be construed as a reference to the powers, duties, liabilities, or property of the mayor, aldermen, and burgesses of the borough acting by the council.

45 & 46 Vict.  
c. 50.

(2.) The expression "municipal borough" shall mean, as respects Ireland, any place for the time being subject to the Act of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, intituled "An Act for the regulation of municipal corporations in Ireland."

(3.) The expression "parliamentary borough" shall mean any borough, burgh, place or combination of places returning a member or members to serve in Parliament, and not being either a county or division of a county, or a university, or a combination of universities.

(4.) The expression "borough" when used in relation to local government shall mean a municipal borough as above defined, and when used in relation to parliamentary elections or the registration of parliamentary electors shall mean a parliamentary borough as above defined.

16. In this Act and in every Act passed *after* the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

Meaning of  
guardians and  
union.

(1.) The expression "board of guardians" shall, as respects England and Wales, mean a board of guardians elected under the Poor Law Amendment Act, 1834, and the Acts amending the same, and shall include a board of guardians or other body of persons performing under any local Act the like functions to a board of guardians under the Poor Law Amendment Act, 1834.

4 & 5 Will. 4.  
c. 76.

(2.) The expression "poor law union" shall, as respects England and Wales, mean any parish or union of parishes for which there is a separate board of guardians.

(3.) The expression "board of guardians" shall, as respects Ireland, mean a board of guardians elected under the Act of the Session of the first and second years of the reign of Her present Majesty, chapter fifty-six, intituled "An Act for the more effectual relief of the destitute poor in Ireland," and the Acts amending the same, and shall include any body of persons appointed by the Local Government Board for Ireland to carry into execution the provisions of those Acts.

(4.) The expression "poor law union" shall, as respects Ireland, mean any townland or place or union, or townlands or places, for which there is a separate board of guardians.

17. In every Act passed *after* the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

Definitions  
relating to  
elections.

(1.) The expression "parliamentary election" shall mean the election of a member or members to serve in Parliament for a county or division of a county, or parliamentary borough or division of a parliamentary borough, or for a university or combination of universities.

(2.) The expression "parliamentary register of electors" shall mean a register of persons entitled to vote at any parliamentary election.

(3.) The expression "local government register of electors" shall mean as respects an administrative county in England or Wales other than a county borough, the county register, and as respects a county borough or other municipal borough, the burgess roll.

18. In this Act, and in every Act passed *after* the commencement of this Act, the following expressions shall, unless the contrary intention

Geographical  
and colonial  
definitions in  
future Acts.

appears, have the meanings hereby respectively assigned to them, namely:—

(1.) The expression "British Islands" shall mean the United Kingdom, the Channel Islands, and the Isle of Man.

(2.) The expression "British possession" shall mean any part of Her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession.

(3.) The expression "colony" shall mean any part of Her Majesty's dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony.

(4.) The expression "British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India.

(5.) The expression "India" shall mean British India together with any territories of any native prince or chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India.

(6.) The expression "Governor" shall, as respects Canada and India, mean the Governor-General, and include any person who for the time being has the powers of the Governor-General, and as respects any other British possession, shall include the officer for the time being administering the government of that possession.

(7.) The expression "colonial legislature" and the expression "legislature," when used with reference to a British possession, shall respectively mean the authority, other than the Imperial Parliament or Her Majesty the Queen in Council, competent to make laws for a British possession.

Meaning of "person" in future Acts.

19. In this Act and in every Act passed *after* the commencement of this Act the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or unincorporate. (*Cp*, s. 2 (1).

Meaning of "writing" in past and future Acts.

20. In this Act and in every other Act whether passed *before or after* the commencement of this Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Meaning of "statutory declaration" in past and future Acts.  
5 & 6 Will. 4, c. 62.

21. In this Act, and in every other Act whether passed *before or after* the commencement of this Act, the expression "statutory declaration" shall, unless the contrary intention appears, mean a declaration made by virtue of the Statutory Declarations Act, 1835.

Meaning of "financial year" in future Acts.

22. In this Act and in every Act passed *after* the commencement of this Act the expression "financial year" shall, unless the contrary intention appears, mean as respects any matters relating to the Consolidated Fund or moneys provided by Parliament, or to the Exchequer, or to Imperial taxes or finance, the twelve months ending the thirty-first day of March.

Definition of Lands Clauses Acts.

23. In any Act passed *after* the commencement of this Act, unless the contrary intention appears,—

The expression "Lands Clauses Acts" shall mean—

8 & 9 Vict. c. 18.  
23 & 24 Vict.  
c. 106.  
32 & 33 Vict.  
c. 18.

(a) as respects England and Wales, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, and the Lands

- Clauses (Umpire) Act, 1883, and any Acts for the time being in force amending the same; and
- (b) as respects Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and any Acts for the time being in force amending the same; and
- (c) as respects Ireland, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railways Traverse Act, and any Acts for the time being in force amending the same.
24. In any Act passed *before or after* the commencement of this Act the expression "Irish Valuation Acts" shall mean the Acts relating to the valuation of rateable property in Ireland.
25. In this Act and in every other Act, whether passed *before or after* the commencement of this Act, the expression "ordnance map" shall, unless the contrary intention appears, mean a map made under the powers conferred by the Survey (Great Britain) Acts, 1841 to 1870, or by the Survey (Ireland) Acts, 1825 to 1870, and the Acts amending the same respectively.
26. Where an Act passed *after* the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve," or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.
27. In every Act passed *after* the commencement of this Act, the expression "committed for trial" used in relation to any person shall, unless the contrary intention appears, mean, as respects England and Wales, committed to prison with the view of being tried before a judge and jury, whether the person is committed in pursuance of section twenty-two or of section twenty-five of the Indictable Offences Act, 1848, or is committed by a court, judge, coroner, or other authority having power to commit a person to any prison with a view to his trial, and shall include a person who is admitted to bail upon a recognizance to appear and take his trial before a judge and jury.
28. In this Act and in every Act passed *after* the commencement of this Act, unless the contrary intention appears—  
 The expression "sheriff" shall, as respects Scotland, include a sheriff substitute:  
 The expression "felony" shall, as respects Scotland, mean a high crime and offence:  
 The expression "misdemeanour" shall, as respects Scotland, mean an offence.
29. In every Act passed *after* the commencement of this Act, unless the contrary intention appears, the expression "county court" shall, as respects Ireland, mean a civil bill court within the meaning of the County Officers and Courts (Ireland) Act, 1877. *Cp.*, s. 6.
30. In this Act and in every other Act, whether passed *before or after* the commencement of this Act, references to the Sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the sovereign for the time being, and this Act shall be binding on the Crown.
31. Where any Act, whether passed *before or after* the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent,

46 & 47 Viet. c. 15.

8 & 9 Viet. c. 19.  
23 & 24 Viet. c. 106.

8 & 9 Viet. c. 18.  
23 & 24 Viet. c. 97.  
14 & 15 Viet. c. 70.  
27 & 28 Viet. c. 71.  
31 & 32 Viet. c. 70.

Meaning of Irish Valuation Acts.

Meaning of "ordnance map."

Meaning of service by post.

Meaning of "committed for trial."

11 & 12 Viet. c. 42.

Meanings of "sheriff," "felony," and "misdemeanour" in future Scotch Acts.

Meaning of "county court" in future Irish Acts.  
40 & 41 Viet. c. 56

References to the Crown.

Construction of statutory rules, &c.

rules, regulations, or byelaws, expressions used in the instrument, *if it is made after the commencement of this Act*, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

Construction of provisions as to exercise of powers and duties.

32. — (1.) Where an Act passed *after* the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2.) Where an Act passed *after* the commencement of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

(3.) Where an Act passed *after* the commencement of this Act confers a power to make any rules, regulations, or byelaws, the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or byelaws.

Provisions as to offences under two or more laws.

33. Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether any such Act was passed *before or after* the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence.

Measurement of distances.

34. In the measurement of any distance for the purposes of any Act passed *after* the commencement of this Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Citation of Acts.

35. — (1.) In any Act, instrument, or document, an Act may be cited by reference to the short title, if any, of the Act, either with or without a reference to the chapter, or by reference to the regnal year in which the Act was passed, and where there are more statutes or sessions than one in the same regnal year, by reference to the statute or the session, as the case may require, and where there are more chapters than one, by reference to the chapter, and any enactment may be cited by reference to the section or sub-section of the Act in which the enactment is contained.

(2.) Where any act passed *after* the commencement of this Act contains such reference as aforesaid, the reference shall, unless a contrary intention appears, be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority, to that edition, and in the case of statutes not so included, and passed before the reign of King George the First, to the edition prepared under the direction of the Record Commission; and in other cases to the copies of the statutes purporting to be printed by the Queen's Printer, or under the superintendence or authority of Her Majesty's Stationery Office.

(3.) In any Act passed *after* the commencement of this Act a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

"Commencement."

36. — (1.) In this Act, and in every Act passed either *before or after* the commencement of this Act, the expression "commencement," when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2.) Where an Act passed *after* the commencement of this Act, or any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

37. Where an Act passed *after* the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

Exercise of statutory powers between passing and commencement of Act.

38. — (1.) Where this Act or any Act passed *after* the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

Effect of repeal in future Acts.

(2.) Where this Act or any Act passed *after* the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not —

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or,
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

*Supplemental.*

39. In this Act the expression "Act" shall include a local and personal Act and a private Act.

Definition of "Act" in this Act. Saving for past Acts.

40. The provisions of this Act respecting the construction of Acts passed *after* the commencement of this Act shall not affect the construction of any Act passed before the commencement of this Act, although it is continued or amended by an Act passed after such commencement.

41. The Acts described in the Schedule to this Act are hereby repealed to the extent appearing in the third column of the Schedule.

Repeal.

42. This Act shall come into operation on the first day of January one thousand eight hundred and ninety.

Commencement of Act.

43. This Act may be cited as the Interpretation Act, 1889.

Short title.

## SCHEDULE.

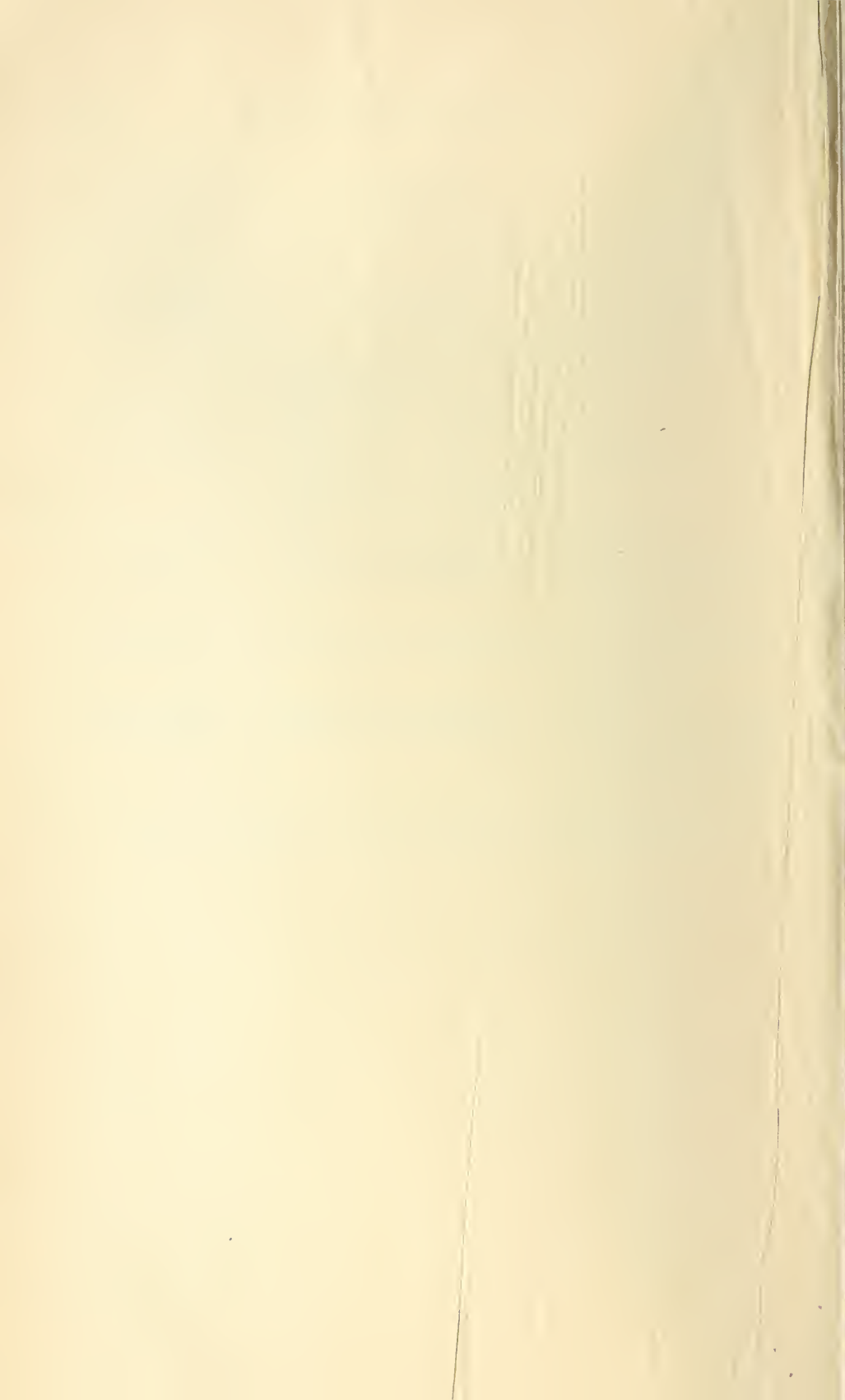
## ENACTMENTS REPEALED.

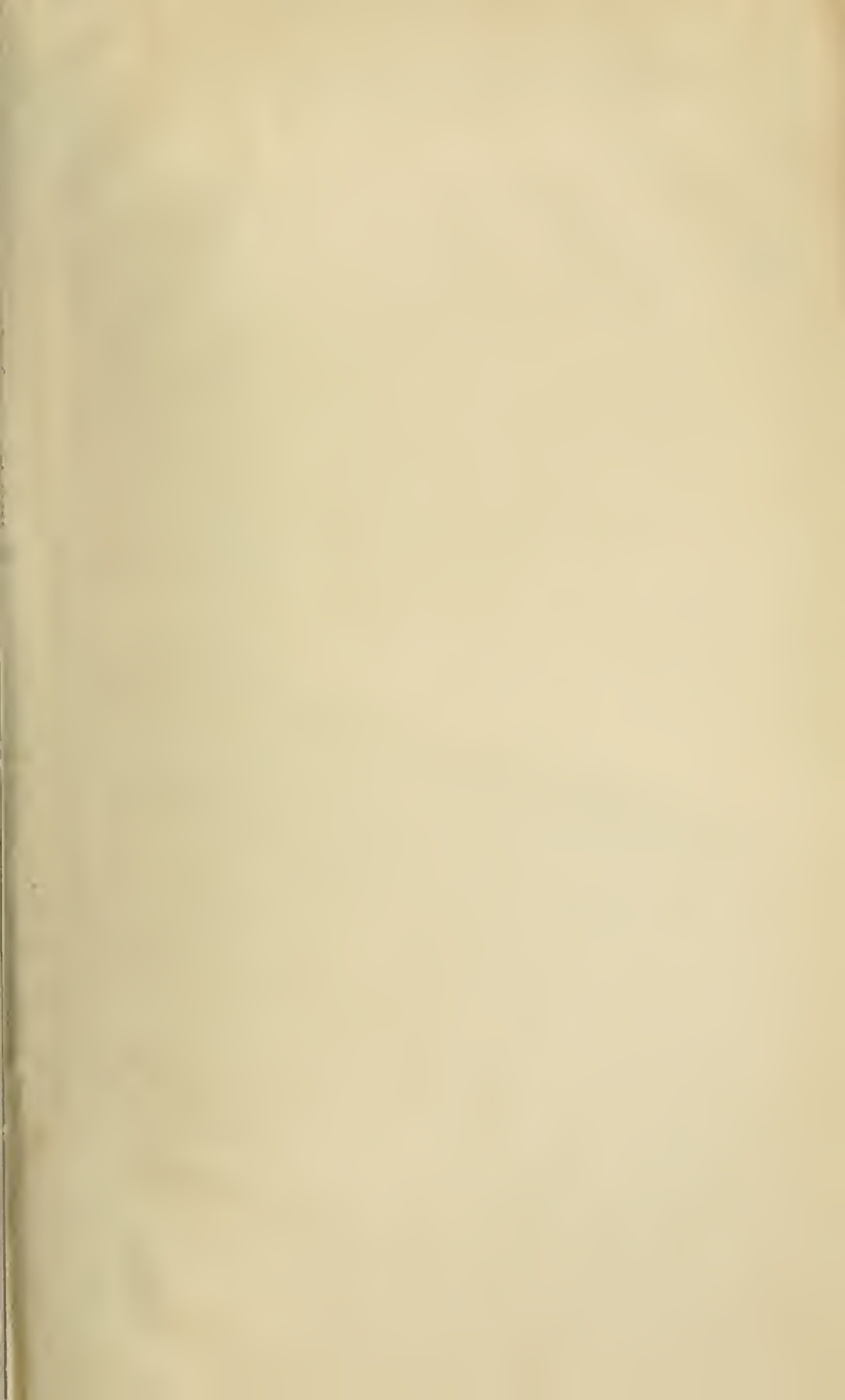
Session and Chapter.	Title or Short Title.	Extent of Repeal.
7 & 8 Geo. 4 c. 28 . . . . .	An Act for further improving the administration of justice in criminal cases in England.	Section fourteen.
9 Geo. 4 c. 54 . . . . .	An Act for improving the administration of justice in criminal cases in Ireland.	Section thirty-five.
7 Will. 4 & 1 Vict. c. 39 . . . . .	An Act to interpret the word "sheriff," "sheriff clerk," "shire," "sheriffdom," and "county," occurring in Acts of Parliament relating to Scotland.	The whole Act.
13 & 14 Vict. c. 21 . . . . .	An Act for shortening the language used in Acts of Parliament.	The whole Act.
29 & 30 Vict. c. 113 . . . . .	The Poor Law Amendment Act of 1866.	Section eighteen, from the beginning to "can be appointed, and."
42 & 43 Vict. c. 49 . . . . .	The Summary Jurisdiction Act, 1879	In section twenty the sub-sections numbered (3) and (6). Section fifty.
47 & 48 Vict. c. 43 . . . . .	The Summary Jurisdiction Act, 1884	Section seven.
51 & 52 Vict. c. 43 . . . . .	The County Courts Act, 1888 . . . . .	Section one hundred and eighty-seven, from the beginning to "is meant, and."

NOTE.— The punctuation of this Act is as given in the Queen's Printer's copy.









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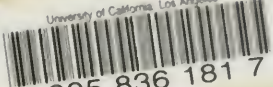
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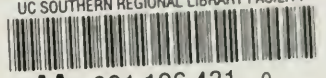
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