THE

JUDICIAL DICTIONARY.

"Words are wise men's counters, they do but reckon by them; but they are the money of fools."

HOBBES' LEVIATHAN, Pt. 1, ch. 4.

"How necessary it is to know the signification of words."

CO. LITT. 325 a.

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

Per MARTIN, B., *Hills* v. *London Gas Co.*, 27 L. J. Ex. 63.

"Definition is always periculosæ plenum opus aleæ."

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

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

Per KINDERSLEY, V. C., *Barrett* v. *White*, 24 L. J. Ch. 726.

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

Mickle v. *Miles*, 1 Grant's Cases (Pa.), 328.

"Neither is a Dictionary a bad book to read. There is no cant in it, no excess of explanation, and it is full of suggestion."

EMERSON.

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

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

"'The question is,' said Humpty Dumpty,—'which is to be the master? That's all.'"

THROUGH THE LOOKING GLASS, ch. 6.

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

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

THE

Judicial Dictionary,

OF

WORDS AND PHRASES JUDICIALLY INTERPRETED,

TO WHICH HAS BEEN ADDED

STATUTORY DEFINITIONS.

BY

F. STROUD,

OF LINCOLN'S INN, BARRISTER-AT-LAW,

RECORDER OF TEWKESBURY.

SECOND EDITION.

VOL. I.

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To the Cherished Memory of

H. S.,

Friend and Wife,

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

Who took an affectionate interest in this enterprise,

But whose too early death has taken away its charm,

This Book

is reverently and lovingly

Dedicated.

Easter, 1890.

PREFACE

TO THE SECOND EDITION.

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

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

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

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

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

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

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

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

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

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

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

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

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

2, New Court, Lincoln's Inn,
Easter, 1903.

PREFACE

TO THE FIRST EDITION.

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

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

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

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

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

Whenever available, the very words of a judicial exposition have been given. And so, when a convenient definition has been found in a work of repute, — *e.g.* Jarman on Wills; Elphinstone, Norton and Clarke on the Interpretation of Deeds; Mr. Justice Stephen's Digest of the Criminal Law, — such definition has been adopted.

Where a statute is cited as having been interpreted, it must not be assumed that the statute is unrepealed. A judicial interpretation once delivered is a permanent possession; and though its immediate utility will be diminished by the repeal of the statute on which it was founded, it none the less should find a place here, as an authority on the same word when used *in pari materia*, or as furnishing a guide to interpreting similar expressions.

The printing of a word or phrase in SMALL CAPITALS is an indication to refer to such word or phrase in its alphabetical place in the Dictionary.

The references to each case have, since the sheets were in type, been verified by Mr. R. Riches, the Librarian of the Inns of Court Bar Library, Royal Courts of Justice, whose well-known ability and experience will be accepted as a guarantee of accuracy.

For the Tables of Cases and Statutes I am indebted to my son, Mr. Lewis Stroud.

Projected more than twenty years ago, and prosecuted at such intervals as could be obtained from an active professional life, this book will, I fear, offend by omissions, inequalities, and, possibly, worse faults. Yet merely to lay the foundations, search for the materials, and bit by bit build up the Vocabulary, has been, of itself, a task the difficulty and labour of which may well soften criticism and excuse imperfections.

It is, however, impossible to rise from these labours without a deepened admiration for the Judges of our land. It is extraordinary that so many minds, working through so many centuries, and upon such various matters, should have been able so har-

moniously to lay down the law for such an expansive and ever-widening civilization as that of the British Empire. And probably in no sphere of their duties has the work of the Judges been more distinguished than in their dealing with the composite subtleties of English Diction. To study that work, though involving labour, has brought delight; and this attempt to systematize its results will, it is hoped, be useful.

2, New Court, Lincoln's Inn,
7th April, 1890.

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[1] At pp. 149, 204, this case is erroneously printed as *Walker* v. *Lane*.

TABLE OF STATUTES.

[1] This section repld s. 4, Sale of Goods Act, 1893, and by the Sch to that Act it is styled s. 16.

[1] In the Statutes at Large by Pickering, in Chitty's Statutes, and generally, this Act was printed as c. 14, but in the Revised Edition of the Statutes and in the Short Titles Act, 1896, the number is 19.

[1] At this page the Act is erroneously printed as of 1882.

[1] At this page the Act is erroneously printed as the P. H. Scotland Act, 1892.

[1] At this page the Act is erroneously printed as Comp. Act, 1890.

TABLE OF ABBREVIATIONS, SIGNS, &c.

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

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

A.

ABBREVIATIONS.	EXPLANATIONS.	PERIOD.
Abbott	Abbott (afterwards Ld Tenterden, C. J.) on Merchant Ships and Seamen, 13th ed.	
Abb.	Abbott's United States Circuit Court Reports.	
Addams	Addams' Ecclesiastical Reports	1822–1826
Add. C.	Addison on Contracts, 9th ed.	
Add. T.	Addison on Torts, 7th ed.	
Admon	Administration.	
Ads, or Admors	Administrators.	
A. & E.	Adolphus and Ellis	1834–1841
Affd	Affirmed.	
Ala.	Alabama Reports.	
Al. & N.	Alcock and Napier	1831–1838
Aleyn	Aleyn	1646–1649
Allen	Allen's Massachusetts Reports.	
Amb.	Ambler	1737–1783
And.	Anderson	1558–1603
Ann. Co. Co. Pr.	Annual County Court Practice.	
Ann. Pr.	Annual Practice; the reference is usually to the Order and Rule of Court, and is applicable to any Edition.	
Anstr.	Anstruther	1792–1796
App. Ca.	Law Reports, Appeal Cases *Note*, in and since 1891 these Reports are cited by the year, *e.g.* 1891, A. C.	1875–1890
Appurts	Appurtenances.	
Arb Act, 1889	Arbitration Act, 1889, 52 & 53 V. c. 49.	
Arch. Bank.	Archbold on Bankruptcy, 11th ed.	
Arch. Cr.	Archbold's Pleading and Evidence in Criminal Cases, 22nd ed.	
Arch. P. L.	Archbold's Poor Law, 15th ed.	
Arnold	Arnold	1838–1839

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

B.

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

Abbreviations.	Explanations.	Period.
Bl. Com.	Blackstone's Commentaries, the paging being that of the 5th ed.; the edition chiefly used being the 12th by Christian, wherein Blackstone's last paging is preserved in the margin.	
Bl. H.	Blackstone, Henry	1788–1796
Bl. W.	Blackstone, William	1746–1780
Bligh	Bligh's Reports of Cases in the House of Lords	1819–1821
Bligh, N. S.	Bligh, New Series	1827–1837
Bd	Board.	
B. & P.	Bosanquet and Puller	1796–1804
B. & P. N. R.	Bosanquet and Puller, New Reports	1804–1807
Bott	Bott	1768–1827
Brod. & B.	Broderip and Bingham	1819–1822
B. & F.	Brodrick and Fremantle	1840–1865
Bro. C. C.	Brown's Chancery Cases	1778–1794
Brown P. C.	Brown's Parliamentary Cases	1702–1800
Brownl. & Gold.	Brownlow and Goldesborough	1558–1625
Brown. & Lush.	Browning and Lushington	1863–1866
B. & Macn.	Browne and Macnamara; but generally herein cited as Ry & Can Traffic Ca.	1881, & i. p.
Buckl.	Buckley on the Companies Acts, 7th ed.	
Bg	Building.	
Bg Socy Act, 1836	Building Societies Act, 1836, 6 & 7 W. 4, c. 32.	
„ „ 1874	Building Societies Act, 1874, 37 & 38 V. c. 42.	
„ „ 1884	Building Societies Act, 1884, 47 & 48 V. c. 41.	
„ „ 1894	Building Societies Act, 1894, 57 & 58 V. c. 47.	
Bulst.	Bulstrode	1603–1649
Bunb.	Bunbury	1713–1742
Burr.	Burrow	1756–1772
Burr. S. C.	Burrow's Settlement Cases	1732–1776
Byles	Byles on Bills of Exchange and Promissory Notes, 16th ed.	

C.

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

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

Abbreviations.	Explanations.	Period.
Conv Act, 1882	Conveyancing Act, 1882, 45 & 46 V. c. 39.	
Conv & L. P. Act, 1892	Conveyancing and Law of Property Act, 1892, 55 & 56 V. c. 13.	
Cooper C. P.	Cooper, Charles Purton	1837–1838
Cooper t. Brougham	Cooper, Charles Purton, temp. Brougham	1833–1834
Cooper t. Cott.	Cooper, Charles Purton, temp. Cottenham	1846–1848
Cooper G.	Cooper, George	1815, with a few earlier cases in and from 1792.
Coote	Coote on Mortgages, 5th ed.	
Corp	Corporation.	
Co. Co.	County Court, or (especially in names of cases) County Council.	
Co. Co. Act, 1888	County Courts Act, 1888, 51 & 52 V. c. 43.	
Co. Co. R.	County Court Rules, 1889.	
Cowel	Cowel's Interpreter by Tho. Manley, 1672.	
Cowen	Cowen's New York Reports.	
Cowp.	Cowper	1774–1778
Cox Ch.	Cox's Chancery Cases	1745–1797
Cox C. C.	Cox's Criminal Cases	1843, & i. p.
Cr. & Ph.	Craig and Phillip	1840–1841
Cranch	Cranch's United States Supreme Court Reports.	
Cr. & Dix	Crawford and Dix	1839–1846
Cr. & Dix Ab. Ca.	Crawford and Dix, Abridged Notes of Cases	1837–1838
Cr.	Creditor.	
Crim. Ev. Act, 1898	Criminal Evidence Act, 1898, 61 & 62 V. c. 36.	
Cro. Eliz. Cro. Jac. Cro. Car.	Croke, temp. Elizabeth, James I., and Charles I.	1581–1641
Cr. & J.	Crompton and Jervis	1830–1832
Cr. & M.	Crompton and Meeson	1832–1834
Cr. M. & R.	Crompton, Meeson, and Roscoe	1834–1835
Cru. Dig.	Cruise's Digest of the Laws of England respecting Real Property, 4th ed.	
Cunningham	Cunningham's K. B. Cases, 3rd ed.	1734–1735
Curt.	Curteis	1834–1844
Cush.	Cushing's Massachusetts Reports.	
Cp	Compare.	

D.

Daly	Daly's New York Common Pleas Reports.	
Dan. Ch. Pr.	Daniell's Chancery Practice, 7th ed.	
Dart	Dart on Vendors and Purchasers, 6th ed.	
D. & M.	Davison and Merivale	1843–1844
Deacon	Deacon	1835–1840
Dea. & C.	Deacon and Chitty	1832–1835
D. & Sw.	Deane and Swabey	1855–1857
Dears.	Dearsley, Crown Cases	1852–1856
Dears. & B.	Dearsley and Bell	1856–1858
Debtors Act, 1869	Debtors Act, 1869, 32 & 33 V. c. 62.	
Deft	Defendant.	

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

E.

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

F.

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

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

G.

Gale	Gale on Easements, 7th ed.	
G. & D.	Gale and Davison	1841–1843
Gallison	Gallison's United States Circuit Court Reports.	
Georgia	Georgia Reports.	
Giff.	Giffard	1857–1865
Gilb. Eq. Rep.	Gilbert's Equity Reports	1706–1727
Godb.	Godbolt	1575–1642
Goddard	Goddard on Easements, 5th ed.	
Godefroi	Godefroi on Trusts and Trustees, 2nd ed.	
Goodeve	Goodeve on Real Property, 4th ed.	
Gould.	Gouldsborough	1586–1602
Gow	Gow	1818–1820
Gray	Gray's Massachusetts Reports.	
G. N. Ry	Great Northern Railway.	
G. W. Ry	Great Western Railway.	

H.

Hagg. Adm.	Haggard, Admiralty Cases	1822–1838
Hagg. Con.	Haggard, Consistory Cases	1789–1802
Hagg. Ecc.	Haggard, Ecclesiastical Cases	1827–1833
Hale P. C.	Hale's Pleas of the Crown.	
H. & Tw.	Hall and Twells	1849–1850
Hamilton	Hamilton on Company Law, 2nd ed.	
Hard.	Hardres	1655–1660
Hare	Hare	1841–1853
H. & R.	Harrison and Rutherford	1865–1866

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

I.

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

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

J.

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

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

K.

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

L.

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

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

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

Abbreviations.	Explanations.	Period.
Long. & Town.	Longfield and Townsend	1841–1842
Lowndes & Maxwell.	See Bail C. C.	
L. M. & P.	Lowndes, Maxwell, and Pollock	1850–1851
Lush.	Lushington	1859–1862
Lutw.	Lutwyche, Registration Cases	1843–1853
Lutw. E.	Lutwyche, Edward	1688–1704

M.

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

Abbreviations.	Explanations.	Period.
Mer Shipping Act, 1894 .	Merchant Shipping Act, 1894, 57 & 58 V. c. 60.	
Mer.	Merivale	1815–1817
Met.	Metcalfe's Massachusetts Reports.	
Metrop Bg Act, 1855 . .	Metropolitan Building Act, 1855, 18 & 19 V. c. 122.	
Metrop Man. Act, 1855 . .	Metropolis Management Act, 1855, 18 & 19 V. c. 120.	
„ „ 1858 . .	Metropolis Management Amendment Act, 1858, 21 & 22 V. c 104.	
„ „ 1862 . .	Metropolis Management Amendment Act, 1862, 25 & 26 V. c. 102.	
„ „ 1878 . .	Metropolis Management and Building Acts Amendment Act, 1878, 41 & 42 V. c. 32.	
„ „ 1882 . .	Metropolis Management and Building Acts Amendment Act, 1882, 45 & 46 V. c. 14.	
„ „ 1890 . .	Metropolis Management Amendment Act, 1890, 53 & 54 V. c. 66.	
Metrop Ry	Metropolitan Railway.	
Mid. Ry	Midland Railway.	
Mid. G. W. Ry	Midland Great Western Railway of Ireland	
Minn.	Minnesota Reports.	
Miss.	Mississippi Reports.	
Mo.	Missouri Reports.	
Mod.	Modern	1669–1732
Moll.	Molloy	1827–1828
Mont.	Montagu	1829–1832
Mont. & Ayr.	Montagu and Ayrton	1833–1838
Mont. & B.	Montagu and Bligh	1832–1833
Mont. & Chitt.	Montagu and Chitty	1838–1840
Mont. D. & D.	Montagu, Deacon, and De Gex	1840–1844
Mont. & M'A.	Montagu and Macarthur	1826–1830
Moody	Moody's Crown Cases	1824–1844
Moo. & M.	Moody and Malkin	1826–1830
Moo. & R.	Moody and Robinson	1830–1844
Moore	Moore, Francis	1512–1021
Moore C. P.	Moore, J. B., Common Pleas and Exchequer Chamber Cases	1817–1827
Moore Ind. App.	Moore, Indian Appeals	1836–1872
Moore P. C.	Moore, Privy Council Appeals	1836–1862
Moore P. C. N. S.	Moore, Privy Council Appeals, New Series .	1862–1873
Moore & P.	Moore and Payne	1827–1831
Moore & S.	Moore and Scott	1831–1834
Morr.	Morrell, Bankruptcy Cases	1884–1893
Mtgé	Mortgage.	
Mtgee	Mortgagee.	
Mtgor	Mortgagor.	
Moseley	Moseley	1726–1730
Mun Corp Act, 1882 . . .	Municipal Corporations Act, 1882, 45 & 46 V. c. 50.	
„ „ 1883 . . .	Municipal Corporations Act, 1883, 46 & 47 V. c. 18.	
My. & C.	Mylne and Craig	1835–1841
My. & K.	Mylne and Keen	1832–1835

N.

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

O.

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

P.

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

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

Q.

Quà	"As regards," "in relation to," "for the purpose of," or "within the meaning of."	
Q. B.	Queen's Bench Reports	1841–1852
Q. B. D.	Law Reports, Queen's Bench Division	1875–1890
	Note, in and since 1891 these Reports are cited by the year and volume, *e.g.* 1891, 1 Q. B.	

R.

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

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

Abbreviations.	Explanations.	Period.
Russ. & My.	Russell and Mylne	1829–1838
Russ. & Ry.	Russell and Ryan	1800–1823
Ry. & Moo.	Ryan and Moody	1823–1826

S.

Salk.	Salkeld	1689–1712
S. C.	Same Case.	
Saund.	Saunders (*V.* Wms. Saund.)	1666–1672
Savile	Savile	1580–1594
Sayer	Sayer	1751–1756
Sch	Schedule.	
Sch. & Lef.	Schoales and Lefroy	1802–1807
Scot	Scotland.	
Sc.	Scott	1834–1840
Sc. N. R.	Scott, New Reports	1840–1845
Sc. L. R.	Scottish Law Reporter	1865, & i. p.
Scrutton	Scrutton on Charter-Parties and Bills of Lading, 4th ed.	
Selwyn N. P.	Selwyn's Nisi Prius, 12th ed.	
Sess. Ca. 4th Ser.	Sessions Cases, Scotch, 4th Series	1874–1898
Seton	Seton on Decrees, 6th ed.	
S. L. Act, 1882	Settled Land Act, 1882, 45 & 46 V. c. 38.	
„ „ 1884	Settled Land Act, 1884, 47 & 48 V. c. 18.	
„ „ 1887	Settled Land Acts (Amendment) Act, 1887, 50 & 51 V. c. 30.	
„ „ 1890	Settled Land Act, 1890, 53 & 54 V. c. 69.	
Show.	Shower	1678–1694
Sid.	Siderfin	1657–1670
Sim.	Simons	1826–1852
Sim. N. S.	Simons, New Series	1850–1852
Sim. & St.	Simons and Stuart	1822–1826
Skinner	Skinner	1681–1697
Sm. & G.	Smale and Giffard	1852–1858
Sm. L. C.	Smith's Leading Cases, 9th ed.	
Smythe	Smythe	1839–1840
Sneed	Sneed's Tennessee Reports.	
Socy	Society, — chiefly in names of cases.	
Solr	Solicitor.	
Solrs Act, 1843	Solicitors Act, 1843, 6 & 7 V. c. 73.	
„ „ 1860	Solicitors Act, 1860, 23 & 24 V. c. 127.	
„ „ 1870	Attorneys and Solicitors Act, 1870, 33 & 34 V. c. 28.	
Solrs Rem Act, 1881	Solicitors Remuneration Act, 1881, 44 & 45 V. c. 44.	
Solrs Rem Ord	General Order made under Solicitors Remuneration Act, 1881.	
S. J.	Solicitors' Journal.	
S. E. Ry	South Eastern Railway.	
S. W. Ry	South Wales Railway.	
Spelm.	Spelman's Glossarium Archaiologicum.	
Spinks	Spinks, Ecclesiastical and Admiralty	1853–1855

Abbreviations.	Explanations.	Period.
Stat.	Statute.	
Stat. Def.	Statutory definition, or definitions: this abbreviation generally indicates that the word or phrase under consideration has received interpretation by the section cited or stated.	
Starkie	Starkie	1815–1828
Steph. Cr.	Stephen's Digest of the Criminal Law, 3rd ed.	
Stone	Stone's Justices' Manual.	
Story	Story on Equitable Jurisprudence.	
Stra.	Strange	1715–1748
Sty., or Style	Style	1646–1655
Sucn Dy Act, 1853	Succession Duty Act, 1853, 16 & 17 V. c. 51.	
Sug. Pow.	Sugden on Powers, 8th ed.	
Sug. Prop.	Sugden on the Law of Property as administered by the House of Lords.	
Sug. V. & P.	Sugden on Vendors and Purchasers, 14th ed.	
Sum Jur Act, 1848	Summary Jurisdiction Act, 1848, 11 & 12 V. c. 43.	
„ „ 1857	Summary Jurisdiction Act, 1857, 20 & 21 V. c. 43.	
„ „ 1879	Summary Jurisdiction Act, 1879, 42 & 43 V. c. 49.	
„ „ 1881	Summary Jurisdiction (Process) Act, 1881, 44 & 45 V. c. 24.	
„ „ 1884	Summary Jurisdiction Act, 1884, 47 & 48 V. c. 43.	
„ „ 1895	Summary Jurisdiction (Married Women) Act, 1895, 58 & 59 V. c. 39.	
„ „ 1899	Summary Jurisdiction Act, 1899, 62 & 63 V. c. 22.	
„ (Ir) Act, 1851	Summary Jurisdiction (Ireland) Act, 1851, 14 & 15 V. c. 92.	
Sumner	Sumner's United States Circuit Court Reports.	
Swabey	Swabey	1855–1859
Sw. & Tr.	Swabey & Tristram	1858–1865
Swanst.	Swanston	1818–1819
Sthc	But that case.	
Sthlc	But that last, or latter, case.	
Sv	But see, or See however, or But consider, or Compare.	
Svh	But see hereon.	
Svth	But see thereon.	
Svthc	But see that, or as to that or this, case, or those cases.	
Svthlc	But see the, or as to the, last or latter case.	

T.

Taunt.	Taunton	1807–1819
Tax Cases	Cases on Customs and Inland Revenue Acts	1875, & i. p.

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

U.

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

V.

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

Abbreviations.	Explanations.	Period.
Vf	See further.	
Vh	See hereon.	
Vth	See thereon.	
Vthc	See that, or as to that or this, case or those cases.	
Vthlc	See the, or as to the, last or latter case.	

W.

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

Abbreviations.	Explanations.	Period.
Whc	Which case, or cases.	
Whcv	Which case see.	
Whcvf	Which case see further.	
Whl	Which last or latter.	
Whlc	Which last or latter case.	
Whlcv	Which last or latter case see.	
Whv	Which see.	
Whva	Which see also.	
Whvf	Which see further.	
Whvh	Which see hereon.	

Y.

Yate Lee	Yate Lee, on Bankruptcy, 2nd ed.	
Y. B.	Year Books of Reports of Cases	1307–1587
Yelv.	Yelverton	1602–1613
Younge	Younge	1830–1832
Y. & C. Ch.	Younge and Collier, Chancery Cases	1841–1843
Y. & C. Ex.	Younge and Collier, Exchequer Cases	1834–1842
Y. & J.	Younge and Jervis	1826–1830

INTRODUCTORY CHAPTER

ON THE

CONSTRUCTION OF DOCUMENTS.

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

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

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

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

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

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

[1] 26 L. J. Ch. 481; 6 H. L. Ca. 106.
[2] 28 L. J. Ch. 114; 7 H. L. Ca. 114, 115.
[3] 1 Hud. & Bro. 648.

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

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

[4] 12 East, 293.

[5] *Gundry* v. *Pinniger*, 1 D. G. M. & G. 502; 21 L. J. Ch. 405.

[6] 23 L. J. C. P. 108; 14 C. B. 385.

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

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

[9] *Sutherland* v. *Heathcote*, 1892, 1 Ch. 475; 61 L. J. Ch. 248.

[10] Per Ld Blackburn, *Bowen* v. *Lewis*, 54 L. J. Q. B. 67; 9 App. Ca. 913.

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

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

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

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

It may possibly be objected that the first canon here proposed

[11] *V.* Obs of Jessel, M. R., *Shardlow* v. *Cotterill*, 51 L. J. Ch. 356; 20 Ch. D. 93.

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

[13] Per Ld Cairns, *Hill* v. *Crook*, cited Child, p. 303.

[14] Per Wood, V. C., *Holmes* v. *Prescott*, 33 L. J. Ch. 271.

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

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

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

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

[18] Per Parke, B., *Miller* v. *Salomons*, 21 L. J. Ex. 191; 7 Ex. 546.

[19] *Scott* v. *Legg*, 2 Ex. D. 39; 46 L. J. M. C. 267: *Vf*, per Pollock, C. B., and Martin, B., *Nicholson* v. *Fields*, 31 L. J. Ex. 233; 7 H. & N. 810.

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

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

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

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

[20] *Smith* v. *Cooke*, 1891, A. C. 297; 60 L. J. Ch. 607.

[21] *Blackwood* v. *The Queen*, 52 L. J. P. C. 14; 8 App. Ca. 94.

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

[23] *Glynn* v. *Margetson*, 62 L. J. Q. B. 466.

[24] Per Jessel, M. R., *Spencer* v. *Metrop Bd of Works*, 52 L. J. Ch. 255; 22 Ch. D. 167.

[25] *Vf*, per Ld Macnaghten, *Keighley* v. *Durant*, 1901, A. C. 246; 70 L. J. K. B. 665.

It is, perhaps, more to the purpose to say that "Popular language should be expounded popularly."[26] But before that rule can be brought into operation it must be ascertained whether the words in question are popular ones or not. To this end the first canon here stated may, possibly, be useful. Thus, Acts of Parliament, as proceeding from a popular assembly, frequently,[27] and Mercantile Contracts, as employing the language of the market, generally, will be interpreted in a popular sense and in accordance with the trade usage applicable to the particular contract;[28] whilst Deeds, Wills professionally prepared, and such-like solemn and formal documents, are usually couched in the language of conveyancers, and the "Ordinary Sense" of such language would be its technical meaning.

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

In the uncertainty arising from the different meanings of words

[26] Per Pollock, C.B., *Aggs* v. *Nicholson*, 25 L. J. Ex. 350; 1 H. & N. 165.

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

[28] *V.* per Esher, M.R., on Charter-Parties, *Nottebohm* v. *Richter*, 56 L. J. Q. B. 34.

[29] Per Jessel, M.R., *Pigg* v. *Clarke*, 45 L. J. Ch. 850; 3 Ch. D. 674.

[30] *Re Terry*, 19 Bea. 580: Elph. 48.

there is some help frequently to be derived from the rule that, — When it can be seen that a word is clearly used in a particular sense in one part of a document, that will, generally, be its meaning throughout the document.[81] But even this rule is not of universal application; for the same word may be used in different senses in different parts of the same document.[82]

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

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

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

A *Contract*, its date:

A *Deed*, its delivery:[83]

A *Will* "shall be construed, with reference to the Real Estate and Personal Estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the Will."[84]

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

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

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

[83] Co. Litt. 35 b: *Clayton's Case*, 5 Rep. 1: Touch. 72: Elph. 119.

[84] s. 24, 1 V. c. 26, on *whv* CONTRARY INTENTION. Probably, a Will, quà its legal operation is, generally, to be read according to the law existing at its date; *V. Jones* v. *Ogle*, 8 Ch. 195; 42 L. J. Ch. 334: *Re March*, 27 Ch. D. 166; 54 L. J. Ch. 143: *Sv*, on the contrary, *Hasluck* v. *Pedley*, L. R. 19 Eq. 271; 44 L. J. Ch. 143, followed in *Constable* v. *Constable*, 11 Ch. D. 681; 48 L. J. Ch. 621: *Vf*, *Lawrence* v. *Lawrence*, 26 Ch. D. 795; 53 L. J. Ch. 982: *Re Bridger*, 1894, 1 Ch. 297; 63 L. J. Ch. 186. *Vh*, 37 S. J. 42.

its own conclusion in the absence of decision upon the same instrument, or on the same word or phrase.[85]

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

Acts of Parliament.

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

Contracts.

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

Deeds.

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

[85] Per Jessel, M.R., *Athill* v. *Athill*, 50 L. J. Ch. 126; 16 Ch. D. 223, 224.

Wills.

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

Miscellaneous Writings.

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

THE

JUDICIAL DICTIONARY.

A

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

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

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

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

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

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

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

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

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

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

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

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

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

V. AN: EVERY: ONE: THE.

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

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

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

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

Abandon Salvage; *V.* SALVAGE.

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

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

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

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

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

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

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

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

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

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

Cp. RELINQUISH.

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

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

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

ABDICATE. — " 'Abdication,' is a disinheriting, or rather a voluntary act of renouncing, disowning, &c." (Termes de la Ley).

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

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

ABET. — *V.* AID OR ABET.
"Abettor"; *V.* Termes de la Ley: 1 Encyc. 23, 24.

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

ABIDE. — "Abide the Event"; *V.* EVENT: RESULT.
Deposit "to abide the event" of a Wager; *V.* DEPOSIT: COVER.

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

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

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

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

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

"Able, Practical Surveyor, or Valuer"; *V.* SURVEYOR.

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

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

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

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

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

Vf. IN OR ABOUT.

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

"About to suspend payment"; *V.* SUSPEND: NOTICE.

ABOVE. — "At the above *date*"; *V.* ATTEST.

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

"Resident abroad"; *V.* RESIDE, at end.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ABSOLUTION. — *V.* CONFESSION.

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

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

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

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

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

Words of mere abuse are not SLANDER.

V. CRUELTY *to Animals.*

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

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

V. ADJOIN: BOUNDING: FRONTING: FORMING.

&c. — *V.* ET CETERA.

ACCELERATION. — *V.* EXTINCTION.

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

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

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

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

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

Acceptance made; *V.* MADE.

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

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

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

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

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

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

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

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

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

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

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

V. ACTUALLY ENJOYED.

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

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

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

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

V. ACCOMPLICE.

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

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

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

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

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

Cp. MISFORTUNE: ADVENTURE, at end.

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

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

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

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

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

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

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

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

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

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

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

V. INADVERTENCE: INEVITABLE: FATAL: POISON.

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

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

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

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

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

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

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

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

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

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

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

V. Proper Lodging.

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

ACCOMPLICE. — *V.* Accessory.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACCOUNTABLE. — *V.* NOT LIABLE.

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

"Accountable Receipt"; *V.* RECEIPT.

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

V. GOVERNMENT ACCOUNTANT: PUBLIC ACCOUNTANT.

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

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

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

V. ACCOUNT: KEEP ACCOUNTS.

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

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

during the currency of a quarter, or other period, the current rent is apportionable under the Apportionment Act, 1870, and the proportionate part up to the bankry is "Rent *accrued due*, prior to the date of adjudication," for which the landlord, after the expiry of such quarter or other period, may distrain under s. 42 (1), Bankry Act, 1883 (*Re Howell*, 1895, 1 Q. B. 844; 64 L. J. Q. B. 454; 72 L. T. 472; 43 W. R. 447). *Cp. Re Lucas*, cited DUE.

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

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

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

"Accruing Debt"; *V.* DEBT.

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

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

"Rights accrued"; *V.* RIGHTS.

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

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

V. FIRST ACCRUED: *Cp.* ARISE.

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

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

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

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

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

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

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

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

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

ACCUSTOMABLY. — *V.* USUALLY.

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

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

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

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

Vh. Sug. Pow. 793: Farwell, 625.

V. ANCIENT RENT.

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

V. ACKNOWLEDGMENT.

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

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

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

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

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

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

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

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

V. PAYMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Vh. 1 Encyc. 90–96.

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

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

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

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

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

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

"Acquire Qualification"; *V.* QUALIFICATION.

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

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

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

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

ACQUISITION OF GAIN. — *V.* GAIN.

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

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

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

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

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

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

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

ACQUITTED. — *V.* ACQUITTAL.

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

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

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

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

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

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

V. THROUGH.

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

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

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

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

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

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

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

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

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

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

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

V. BY WHOSE: PURPOSES: ACTS: IMMORAL.

ACT JUSTLY. — *V.* PRECATORY TRUST.

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

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

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

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

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

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

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

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

Cp. ACCIDENT: CHANCE: INEVITABLE ACCIDENT.

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

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

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

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

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

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

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

ACT OR PRACTISE. — *V.* PRACTISE.

ACTED. — *V.* INNOCENTLY ACTED.

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

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

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

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

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

Cp. BARE TRUSTEE.

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

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

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

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

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

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

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

V. CAUSE: SUIT: WRIT OF SUMMONS.

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

Action on the Case; *V.* CASE.

Action on Contract; *V.* CONTRACT.

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

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

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

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

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

ACTIVE.—*V.* ON ACTIVE SERVICE.

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

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

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

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

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

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

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

like phrase in s. 74, 6 & 7 V. c. 18). But where a conveyance of a Rent-charge is framed so as to operate under the Statute of Uses, 27 H. 8, c. 10, then for the purposes of the Rep. People Act, the Rent-charge is in "actual possession" of the grantee from the date of the conveyance, because a long course of authority and practice has established that the "possession" into which Uses are converted by that Statute is equivalent to "actual possession" (*Heelis* v. *Blain*, 34 L. J. C. P. 88; 18 C. B. N. S. 90: *Webster* v. *Ashton-under-Lyne*; *Hadfield's Case*, 42 L. J. C. P. 146; L. R. 8 C. P. 306).

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

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

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

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

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

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

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

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

ACTUAL BODILY HARM. — *V.* INFLICT.

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

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

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

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

ACTUAL ENJOYMENT. — *V.* ACTUALLY ENJOYED.

ACTUAL ENTRY. — *V.* ACTUAL: VIOLENT.

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

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

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

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

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

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

Vf. TESTAMENT, last par.

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

V. MILITARY SERVICE: ON ACTIVE SERVICE.

ACTUAL OCCUPIER. — *V.* OCCUPIER.

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

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

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

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

ACTUAL TOTAL LOSS. — *V.* TOTAL LOSS.

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

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

ACTUALLY ARRIVED. — *V.* ACTUAL ARRIVAL.

ACTUALLY CHARGEABLE. — *V.* CHARGEABLE.

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

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

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

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

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

"Valuable Consideration actually paid"; *V.* VALUABLE.

ACTUALLY PENDING. — *V.* PENDING.

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

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

L. J. Ch. 679: *Johnson* v. *Crook*, 48 L. J. Ch. 777; 12 Ch. D. 639: *Bubb* v. *Padwick*, 49 L. J. Ch. 178; 13 Ch. D. 519.

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

V. RECEIVABLE: RECEIVED.

ADAPT. — "Adapted to be inhabited"; *V.* INHABITED.

"Constructed or adapted"; *V.* CONSTRUCTED.

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

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

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

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

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

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

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

ADDRESS. — "Name and Address"; *V.* NAME.

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

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

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

Cp. "Place of Abode," sub PLACE.

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

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

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

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

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

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

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

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

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

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

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

Adjacent and Subjacent support to land; *V.* Rosc. N. P. 798–802.

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

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

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

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

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

ADJOINING LAND. — *V.* OCCUPIER.

ADJOINING OCCUPIER. — Quà London Bg Act, 1894, "Adjoining Occupier," "means the OCCUPIER, or one of the occupiers, of land,

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

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

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

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

V. FRONTING: OCCUPIER: OWNER.

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

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

V. ADJACENT: ADJOIN.

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

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

Vf. 1 Encyc. 129–133.

ADJUDGED. — *V.* SUM ADJUDGED.

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

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

ADJUDICATION. — *V.* ORDER OF ADJUDICATION.

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

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

Cp. DIRECT.

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

V. MEASUREMENT.

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

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

"Administer Poison or other Destructive Thing"; *V.* POISON.

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

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

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

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

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

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

"Management and Administration"; *V.* MANAGEMENT.

"Person acting in the Administration"; *V.* ACTING.

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

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

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

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

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

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

ADMINISTRATORS. — *V.* EXECUTORS.

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

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

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

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

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

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

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

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

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

ADMIT.—*V.* LIABILITY.

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

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

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

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

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

V. FULL INTEREST ADMITTED.

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

V. OTHERWISE: REDUCED BY PAYMENT.

ADMIXTURE.—*V.* DECLARE.

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

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

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

Cp. STATUTE ADULT: FULL AGE: MAJORITY.

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

An article of food is "adulterated" when any substance, other than that which the article purports to be, is mixed with, or added to, or placed upon it, either to increase the bulk or weight or apparent size of the article, or to give it a deceptive appearance (*Fitzpatrick* v. *Kelly*, 42 L. J. M. C. 132; L. R. 8 Q. B. 337: *Roberts* v. *Egerton*, 43 L. J. M. C. 135; L. R. 9 Q. B. 494). But "MILK from which the cream had been

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

V. As Unadulterated: Article demanded: Prejudice of Purchaser: Dilute: 1 Encyc. 153–156.

ADULTERER. — *V.* Alleged.

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

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

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

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

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

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

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

Vf. quà Advance Freight, *Allison* v. *Bristol Mar. Insrce*, 1 App. Ca.

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

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

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

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

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

V. ADVANCEMENT.

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

V. ADVANCE.

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

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

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

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

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

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

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

A Settlement, whether voluntary, or for a *good* consideration (as that of marriage), is an Advancement within the statute (*Edwards* v. *Freeman*, 2 P. Wms. 440: *Phiney* v. *Phiney*, 2 Vern. 638).

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

V. BENEFIT.

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

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

ADVANTAGEOUSLY. — *V.* CONVENIENTLY: EFFICIENTLY.

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

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

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

V. HEREAFTER VALUED AND DECLARED.

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

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

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

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

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

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

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

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

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

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

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

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

ADVERTISEMENT. — *V.* PUBLIC NOTICE.

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

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

V. FOREIGN.

ADVISE. — *V.* PRECATORY TRUST.

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

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

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

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

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

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

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

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

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

"Civil Affairs"; *V.* MANAGEMENT.

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

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

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

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

V. AFFECTED: AFFECTING: DIRECTLY AFFECT: IMPEACHED.

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

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

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

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

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

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

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

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

V. INCUMBRANCES.

AFFIDAVIT.—V. OATH.

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

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

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

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

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

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

AFFOREST. — "'Afforest,' is to turn ground into FOREST" (Termes de la Ley).

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

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

AFLOAT. — *V.* ALWAYS AFLOAT.

AFORE. — "Afore Execution had"; *V.* EXECUTION.

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

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

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

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

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

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

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

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

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

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

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

Vh. 10 Rep. 138, 107; 8 Ib. 47.

For distinction between "*in formâ prædictâ*" and "*in eâdem formâ*"; *V.* Co. Litt. 20 b.

AFT.—*V.* WIND AFT.

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

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

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

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

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

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

"After default"; *V.* DEFAULT.

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

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

"After the fact committed"; *V.* FACT.

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

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

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

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

V. THEREAFTER TO BE BORN.

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

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

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

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

V. BROUGHT AGAINST: PURSUANCE.

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

Age of Nurture; *V.* NURTURE.

AGED. — *V.* SICK.

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

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

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

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

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

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

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

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

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

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

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

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

Agent of Necessity; *V.* NECESSITY.

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

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

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

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

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

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

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

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

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

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

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

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

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

AGGREGATE. — "Corporation Aggregate"; *V.* CORPORATION.

AGGRIEVE. — *V.* INJURE.

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

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

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

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

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

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

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

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

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

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

As to who is "a party aggrieved," within s. 253, *P. H. Act*, 1875, by fabricating voting papers: *V. Verdin* v. *Wray*, 46 L. J. M. C. 170; 2 Q. B. D. 608; 41 J. P. 484. The Clerk to a Local Board, who, fearing dismissal, resigns, is not, within that section, "a party aggrieved" by a disqualified person acting on the Board (*Rochfort* v. *Atherley*, 1 Ex. D. 511). The servant of a Market Association is a "party aggrieved" within that section, quà penalties prescribed in s. 13, *Markets and Fairs Clauses Act*, 1847 (*Ross* v. *Taylerson*, 52 J. P. 181).

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

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

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

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

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

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

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

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

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

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

Vh. 1 Encyc. 204, 205.

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

V. AGREEMENT.

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

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

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

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

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

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

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

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

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

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

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

V. BUY: CONTRACT: COVENANT.

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

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

Agreement for Lease; *V.* LEASE.

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

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

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

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

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

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

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

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

V. FULL AGRICULTURAL RENT.

Quà Agricultural Rates Act, 1896, 59 & 60 V. c. 16, " 'Agricultural LAND,' means any Land used as arable, meadow, or PASTURE ground only, Cottage Gardens exceeding ¼ of an acre, Market Gardens, Nursery Grounds, Orchards, or Allotments;—but does not include land occupied together with a house as a PARK, GARDENS (other than as aforesaid), PLEASURE Grounds, or any land kept or preserved mainly or exclusively for purposes of Sport, or Recreation, or land used as a Race-Course" (s. 9). "Agricultural Land," is in that Act contrasted with "Buildings," and therefore the exemption of one half of the Rates given by the Act applies only to land without any Buildings whatsoever upon it (*Smith* v. *Richmond*, cited MARKET GARDEN).

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

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

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

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

"Workmen in Agriculture"; *V.* AGRICULTURE.

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

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

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

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

AID.— *V.* In Aid.

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

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

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

Cp. Counsel or Procure.

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

AIM.—"With the aim of"; *V.* View.

AIR SPACE.— *V.* Ventilation.

AIT.— *V.* Hath.

ALDERMAN.— *V.* Outgoing Alderman: Senior.

ALE. — *V.* BEER: SPIRITUOUS LIQUORS.

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

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

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

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

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

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

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

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

To "alienate," or "ANTICIPATE," property, within a Clause of Forfeiture on Alienation, does not mean the doing something which will accomplish an ACTUAL alienation, for that is prevented by the thing working a Forfeiture; but it means, the doing that the purport and intent of which is Alienation, and which would effect that object but for the Forfeiture (*Barnett* v. *Blake*, 2 Dr. & Sm. 124; nom. *Blake* v. *Barnett*, 31 L. J. Ch. 901). But if the person be not *sui juris*, — *e.g.* a Married Woman restrained from alienation, — then the execution of a Deed of Alienation works no Forfeiture, because the person has no disposing power over the property at all (*Re Wormald*, 59 L. J. Ch. 404; 43 Ch. D. 630; 38 W. R. 425; 62 L. T. 423).

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

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

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

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

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

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

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

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

ALIMONY. — " 'Alimony,' signifies that allowance which a married woman sues for on separation from her husband " (Cowel).

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

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

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

V. IF ALIVE: LIVING.

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

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

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

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

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

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

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

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

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

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

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

"*All the Rest*"; *V.* REST.

As to the efficacy of "*All the Rest*" to pass lapsed legacies; *V. Re Pringle*, 17 Ch. D. 819; 50 L. J. Ch. 689. *V.* REST.

When "all" is found in conjunction with specified property, — *e.g.* "all my property in the Funds," — the bequest is specific (*Hayes* v. *Hayes*, 5 L. J. Ch. 243; 1 Keen, 97: *Vincent* v. *Newcombe*, Younge, 599); so, of the phrase "all my Shares and Stock" (*Bothamley* v. *Sherson*, cited SPECIFIC).

V. ESTATE AND INTEREST.

"All my PROPERTY, Leasehold and Freehold"; held, to pass all the Personalty, as well as all the Realty (*Re Roberts*, *Kiff* v. *Roberts*, 55 L. J. Ch. 628; 54 L. T. 386; 34 W. R. 626; affd. 55 L. T. 498; 35 W. R. 176). "All my Property, Brewery, &c"; *V. Waite* v. *Morland*, cited BREWERY. *Vf.* PROPERTY: MY.

"All my *Just Debts*"; *V.* DEBTS.

"The question must always be one of intention, but the rule is, — that the presumption is against an intention to charge lands SPECIFICALLY devised, and that a mere CHARGE 'on *all my lands*,' is not sufficient to rebut that presumption" (per Ld Cranworth, *Conron* v. *Conron*, 7 H. L. Ca. 168, cited by Ld Herschell, *Bank of Ireland* v. *McCarthy*, 1898, A. C. 181; 67 L. J. P. C. 13; 77 L. T. 777, his lordship adding that the rule is founded on *Spong* v. *Spong*, 3 Bligh, N. S. 84; 1 Dow & Cl. 365).

"All my Land at S."; *V.* MY.

"All my Moneys"; *V.* MONEY.

As to effect of Revocation of "All Wills, &c"; *V. Re Kingdon*, 55 L. J. Ch. 598; 32 Ch. D. 604: REVOKE.

As to the once held invalidity on account of vagueness through the unqualified use of "All," especially in an Assignment of future things; *V. Belding* v. *Read*, 34 L. J. Ex. 212; 3 H. & C. 955; 11 Jur. N. S. 547: but that case is overruled by *Tailby* v. *Official Receiver*, 58 L. J. Q. B. 75; 13 App. Ca. 523. *Va. Re Clarke*, 56 L. J. Ch. 981; 36 Ch. D. 348: *Re Kelcey*, 1899, 2 Ch. 530; 68 L. J. Ch. 742; 81 L. T. 354; 48 W. R. 59: VAGUE: FUTURE.

A Power of Attorney to receive "all" Debts, does not authorize the endorsement of Negotiable Securities (*Hogg* v. *Snaith*, 1 Taunt. 349: *Murray* v. *East India Co*, 5 B. & Ald. 204), not even if there is added power "to transact all Business" (*Hay* v. *Goldsmidt*, referred to in *Hogg* v. *Snaith*, sup.).

"All other CONDITIONS AS PER CHARTER-PARTY"; *V.* OTHER.

An Agreement by one of several defts to pay the COSTS of "all the defts," means, "of all *or any* of the defts" (*Vesey* v. *Mantell*, 11 L. J. Ex. 99; 9 M. & W. 323).

"All *Notes*," 3 & 4 Anne, c. 9; *V. Milne* v. *Graham*, 1 B. & C. 192.

"All *Powers*" enabling; *V.* ENABLING.

"All PROCEEDINGS" in R. 1, Ord. 65, R. S. C., means all proceedings in respect of which there is an existing jurisdiction as to Costs (*Re Mills*, 56 L. J. Ch. 60).

The generality of "all CRIMINAL PROCEEDINGS," s. 6, Crim. Ev. Act, 1898, over-rides special provisions of prior Acts, and applies all the provisions of the Act to every kind of criminal trial (*Charnock* v. *Merchant*, 1900, 1 Q. B. 474; 69 L. J. Q. B. 221; 82 L. T. 89; 48 W. R. 334; 64 J. P. 183).

"All Purposes"; *V.* PURPOSES.

"All *Rates* made for the relief of the Poor," which are to be paid to qualify for the parliamentary franchise, s. 3 (3), 30 & 31 V. c. 102, means only those made since the 5th January of the year preceding the qualifying year (*Cull* v. *Austin*, *Austin* v. *Cull*, 41 L. J. C. P. 153; L. R. 7 C. P. 227).

An Agreement to pay "all DAMAGES," quà Ships, overrides the limits of damages prescribed by s. 54, 25 & 26 V. c. 63 (*The Satanita*, 1895, P. 248; 64 L. J. P. D. & A. 96; 72 L. T. 316; 43 W. R. 498; affd. in H. L. 1897, A. C. 59; 66 L. J. P. D. & A. 1; 75 L. T. 337).

A stipulation to accept a cargo on receipt of "all the *Shipping Documents*," will be satisfied by production of three, of the five, parts of the Bill of Lading, if the sellers are unable to supply more (*Cederöerg* v. *Borries*, 2 Times Rep. 201).

V. ENGAGEMENT: INTEREST: MONEY: REAL AND PERSONAL ESTATE: WAYS: WHOLE.

ALL AND EVERY. — For an illustration of effect of this phrase, *V. Re Sibley*, 46 L. J. Ch. 387; 5 Ch. D. 494; *Sv.* that decision, as based

on this phrase, criticised by Kay, J., in *Re Webster*, 52 L. J. Ch. 768; 23 Ch. D. 737.

A bequest to A. and after her decease to "all and every her child and children, and his, her and their exs, ads and assigns, for his, her and their own absolute use and benefit"; held, to create a joint tenancy in the children (*Morgan* v. *Britten*, L. R. 13 Eq. 28; 41 L. J. Ch. 70: *Billing* v. *Billing*, 11 Times Rep. 502; nom. *Binning* v. *Binning*, W. N. (95) 116).

A Power to appoint to "all and every" of a CLASS, means, that each member must have a share (*Kemp* v. *Kemp*, 5 Ves. 857, 858). *Va.* AMONG: SUCH.

ALL FAULTS. — *V.* FAULTS.

ALL I AM WORTH. — *V.* WORTH: ALL.

ALL INTENTS AND PURPOSES. — An act disgavelling lands to "all intents and purposes," and declaring that they should be "descendible as lands at Common Law," was held only to disgavel quâ descent (*Wiseman* v. *Cotton*, 1 Lev. 80).

Vh. Railton v. *Wood*, cited DISTRESS.

V. VOID.

ALL MATTERS IN DIFFERENCE. — *V.* CAUSE: CONSENT.

ALL THE ESTATE. — *V.* ESTATE, towards end.

ALL THE REST. — *V.* REST: ALL.

ALL TIMES. — *V.* AT ALL TIMES: AT ALL TIMES OF TIDE.

ALLEGE. — "Alleged *adulterer*," s. 28, Matrimonial Causes Act, 1857; R. 4, Divorce Rules, 1865, — means only the person alleged *by the husband* to be an adulterer with his wife; not a person against whom that allegation has been made (even though by the wife) on evidence which the husband may reasonably regard as insufficient (*Saunders* v. *Saunders*, 1897, P. 89; 66 L. J. P. D. & A. 57; 76 L. T. 330; 45 W. R. 583, overruling *Jones* v. *Jones*, 1896, P. 165; 65 L. J. P. D. & A. 101).

"Alleging himself a Candidate"; *V.* CANDIDATE.

"Alleged CONTRIBUTORY"; Stat. Def., 20 & 21 V. c. 78, s. 15.

"Alleged LUNATIC"; Stat. Def., 34 & 35 V. c. 22, s. 2.

V. AS ALLEGED: SUPPOSED.

ALLEGIANCE. — "'Allegiance' is such natural or legal obedience which every Subject owes to his Prince" (Termes de la Ley).

ALLODIAL. — Allodial, or "Allodian," Lands, "are free lands which pay no Fines or Services" (Cowel). *Vf.* Jacob: 2 Bl. Com. 47, 60: 1 Encyc. 225: ALODIUM.

ALLOT. — 'Set out, allot, and award"; *V.* SET OUT.

ALLOTMENT. — "Allotments from time to time *held* by the Trustees" in a Land Socy; *V. Hill* v. *Crank*, 68 L. T. 551; 62 L. J. Q. B. 145.

"Allotment," quà Inclosure; *V. R.* v. *Pitt*, 5 B. & Ad. 565: *Doe* d. *Harris* v. *Saunder*, 5 A. & E. 664.

For the legislation as to Allotments, *V.* 1 Encyc. 226–231.

Stat. Def. — 50 & 51 V. c. 26, s. 4, c. 48, s. 17; 54 & 55 V. c. 33, s. 2; 56 & 57 V. c. 73, s. 9 (16). — *Scot.* 55 & 56 V. c. 54, s. 16.

"Allotment Trustees"; *V.* 36 & 37 V. c. 19, s. 1.

V. GARDEN: HOLDING: ON ALLOTMENT.

ALLOW. — To "allow" a thing to be done or omitted, there must be some direct, or indirect, sanction of it; — unlike the mere responsibility of an Innkeeper if he "SUFFER" things contrary to the Licensing Acts, an innocent Owner of a Ship does not "allow" her "to be so loaded as to submerge in salt water the centre of the disc," s. 28, 39 & 40 V. c. 80, by the mere fact that the Master knew of such overloading, even though the Master was appointed by the Owner (*Massey* v. *Morriss*, 1894, 2 Q. B. 412; 63 L. J. M. C. 185; 70 L. T. 873; 58 J. P. 673). So, a Surveyor does not "allow" an obstruction on a Highway "to remain there," s. 56, Highway Act, 1835, when he has no knowledge of it, or, at any rate, when he has no means of knowing it (*Hardcastle* v. *Bielby*, 1892, 1 Q. B. 709; 61 L. J. M. C. 101; 66 L. T. 343; 56 J. P. 549). *Vf.* per Cockburn, C. J., *Hipkins* v. *Birmingham Gas Co*, 6 H. & N. 253. *Cp.* PERMIT: SUFFER: OBSTRUCT.

The power to "allow COSTS," s. 116 (2), Co. Co. Act, 1888, "means not only that the Court may give Costs, but may also say on what Scale they are to be" (per Field, J., *Bazett* v. *Morgan*, 59 L. J. Q. B. 44; 24 Q. B. D. 48; 61 L. T. 434; 38 W. R. 108, applying *Neaves* v. *Spooner*, 36 W. R. 257; 58 L. T. 164); and such an Order is unappealable, unless with leave, because it is in the "DISCRETION" of the Court under s. 49, Jud. Act, 1873 (*Bazett* v. *Morgan*).

The provision in s. 118 of that Act, which prohibits a Solr from recovering from his Client Costs in a Co. Co. action "unless they shall have been *allowed on taxation*," does not apply where no application to tax has been made (*Cubison* v. *Mayo*, 1896, 1 Q. B. 246; 65 L. J. Q. B. 267; 44 W. R. 473; 74 L. T. 65: *Vf. Boydell* v. *Millar*, 60 L. J. Q. B. 251; 64 L. T. 299; 39 W. R. 335).

Where an Officer of a Local Authority is to be "allowed," "NOT EXCEEDING" a stated time for a vacation, that does not, necessarily, mean that he is "entitled to" that much time for holiday (*Henry* v. *Antrim*, 1900, 2 I. R. 547).

"First allow my lawful Debts to be paid," in a Will disposing of

Realty and Personalty, creates a CHARGE of the debts on the Realty (*Elliott* v. *Montgomery*, Ir. Rep. 5 Eq. 214).

ALLOWANCE. — A mere "Allowance," agreed to by a Lessor by a memorandum on the lease, does not operate as a reduction of the rent reserved, but only as an independent agreement (*Davies* v. *Stacey*, 9 L. J. Q. B. 393; 12 A. & E. 506; 4 P. & D. 157).

ALLOWANCES. — "Allowances," s. 189, P. H. Act, 1875; *V. Burgess* v. *Clark*, 14 Q. B. D. 735: *Edwards* v. *Salmon*, 58 L. J. Q. B. 571; 23 Q. B. D. 531; 38 W. R. 166: *Whiteley* v. *Barley*, 57 L. J. Q. B. 643; 21 Q. B. D. 154; 36 W. R. 823; 52 J. P. 595: *R.* v. *Ramsgate*, 58 L. J. Q. B. 352; 23 Q. B. D. 66.

V. JUST ALLOWANCES.

ALLOWING. — *V.* BEING.

ALLOWS. — *V.* SO FAR AS.

"Where the Context allows"; *V. Birmingham Breweries* v. *Jameson*, cited SPIRITUOUS LIQUORS.

ALLUVION. — *V.* IMPERCEPTIBLE: INCREASE: 1 Encyc. 231.

ALMANAC. — The Almanac of which the Court has to take notice for determining on which Day of the Week a given day of the month falls (*R.* v. *Dyer*, 6 Mod. 41), or, when a Feast, or SUNDAY, happens (*Harvey* v. *Broad*, Ib. 159, 160, 196), is that which is annexed to the Book of Common Prayer (*Brough* v. *Perkins*, Ib. 80, 81). *Vf.* Calendar (New Style) Act, 1750, 24 G. 2, c. 23: Phil. Ecc. Law, 781: MICHAELMAS.

ALMOIN. — *V.* AUMONE.

ALMS. — The disqualification to be enrolled as a Burgess of an Incorporated Borough arising from the receipt of "parochial relief or *other Alms*" (5 & 6 W. 4, c. 76, s. 9, and now by 32 & 33 V. c. 55, s. 1), applies only to such alms as are parochial (*R.* v. *Lichfield*, 11 L. J. Q. B. 122; 2 Q. B. 693; 2 G. & D. 10). But as regards the Parliamentary franchise, the disqualification arises from the receipt of "parochial relief or other alms, *which by law of parliament now disqualify from voting*" (Rep. People Act, 1832, s. 36); and that amplification differentiates the parliamentary from the municipal disqualification, and alms which will disqualify for the parliamentary franchise are not confined to those that are parochial: but any alms of a precarious tenure to persons so indigent that they are dependent on the charity, will work the latter disqualification (*Smith* v. *Hall*, 33 L. J. C. P. 59; 15 C. B. N. S. 485; 12 W. R. 172: *Harrison v. Carter*, 46 L. J. C. P. 57; 2 C. P. D. 26; 25 W. R. 182: *Baker* v. *Monmouth*, 34 W. R. 64; 53 L. T. 668: *Dix* v. *Kent*, 63 L. T.

641; 7 Times Rep. 46: *Edwards* v. *Lloyd*, 57 L. J. Q. B. 121; 20 Q. B. D. 302; 58 L. T. 409; 52 J. P. 519: *Cowen* v. *Kingston-upon-Hull*, 1897, 1 Q. B. 273; 66 L. J. Q. B. 185; 75 L. T. 593; 45 W. R. 413. *Smith* v. *Hall* and *Cowen* v. *Kingston*, were cases in each of which the charity was held not disqualifying Alms). *Vf.* Rogers, 196–200: PAROCHIAL RELIEF.

Cp. CHARITY: DIVINE SERVICE.

ALMSHOUSE. — *V.* HOSPITAL: 1 Encyc. 233.

ALNETUM. — "A wood of elders" (Touch. 95: *Va.* Co. Litt. 4 b).

ALODIUM. — "In Domesday, *alodium* (in a large sense) signifieth a free mannor, and *alodiarii* or *alodarii*, lords of the same; and *lannemanni* there signifie lords of a mannor, having *socam et sacam de tenentibus et hominibus suis*" (Co. Lit. 5 a). "The old translation of the Saxon laws, useth this word for BOCLAND" (Cowel). *V.* ALLODIAL.

ALONE. — "Alone, or TOGETHER WITH," in Name and Arms clause; *V.* NAME.

ALONG. — *V.* THROUGH.

ALONG WITH. — "Along with any other Persons," R. 11, Ord. 21, R. S. C.; *V. Dear* v. *Sworder*, 4 Ch. D. 482; 46 L. J. Ch. 100: *Vf.* Ann. Pr.

"Along with other Sums" construed "in addition to," not as "including" (*Pilkington* v. *Myers*, 8 L. T. 720).

ALONGSIDE. — Cargo "shall be Brought Alongside" for shipment, in a Charter-party, means that the charterer is to bring the cargo as near to the ship as practicable, and it is for the jury to say whether that has been done (*Holman* v. *Dasnieres*, 2 Times Rep. 480, 607). *Vh. Fletcher* v. *Gillespie*, 3 Bing. 635: *Trindade* v. *Levy*, 2 F. & F. 441: *Stephens* v. *Wintringham*, 3 Com. Ca. 169: *Isis S. S. Co* v. *Bahr*, 1899, 2 Q. B. 364; 68 L. J. Q. B. 930; affd. in H. L. 1900, A. C. 340; 69 L. J. Q. B. 660; 5 Com. Ca. 277: AT: CARGO: *Sv.* Carver, 283.

Consignee to TAKE Cargo "from alongside Ship," means, a joint operation between the Owners and Consignee, and, if either be unready, the other is not called on to begin; but this provision in a Charter-party does not exclude a custom in the Wood Trade in the Port of London which imposes on the ship Owner the obligation to discharge a cargo of Long Lengths of Timber into lighters (*Aktieselkab-Helios* v. *Ekman*, 1897, 2 Q. B. 83; 66 L. J. Q. B. 539; 76 L. T. 537; 2 Com. Ca. 163). But cargo (of Timber) "to be taken from alongside the Steamer, at Charterer's Risk and Expense, any custom of the Port to the contrary notwithstanding," excludes that custom, and the shipowners

perform their duty when they (according to the general meaning of "alongside") deliver the cargo over the ship's rail (*Brenda S. S. Co* v. *Green*, 1900, 1 Q. B. 518; 69 L. J. Q. B. 445; 82 L. T. 66; 48 W. R. 321; 5 Com. Ca. 195).

V. FREE ALONGSIDE.

ALREADY. — "Already," — *e.g.* "already in PRACTICE," s. 14, 55 G. 3, c. 194, — does not mean at some time previously but, means at the time stated and immediately preceding thereto (*Apothecaries Co* v. *Roby*, 5 B. & Ald. 949).

A Second Series of a Co's Debentures made subject to the "Debentures already *issued*, or such of them as are now OUTSTANDING," will be postponed to the whole of the First Series, whenever issued, that are for the time being "outstanding," — *i.e.* not paid off (*Lister* v. *Lister*, 62 L. J. Ch. 568; 68 L. T. 826; 41 W. R. 330).

A Covenant by husband and wife to settle all the wife's after-acquired property "not being already *settled* for her Separate Use," does not bind property subsequently bequeathed to her for her separate use (*Coventry* v. *Coventry*, 32 Bea. 612). *Vf. Kane* v. *Kane*, cited SETTLED: *Va.* SETTLE.

"Already *defined*"; *V. Shanghai Corp.* v. *McMurray*, cited EXTENSION.

"Will, already *made*"; *V.* WILL.

"Already *built*"; Stat. Def., 7 & 8 V. c. 84, s. 2.

ALSO. — "Also," or "And Also," may be (1) the beginning of an entirely independent sentence, or (2) a copulative carrying on the sense of the immediately preceding words into those immediately succeeding. If the latter, the conditions of the preceding words would be read into those succeeding. Thus, "I give Blackacre to C. and his heirs, *and also* Whiteacre," gave C. the fee in Whiteacre (per Levinz, J., 1 Jarm. 497, *n.*: *Vf. Hopewell* v. *Ackland*, 1 Salk. 239: *Willis* v. *Curtois*, 1 Bea. 189; 8 L. J. Ch. 105). Of course no such construction obtains when "Also" is the commencement of an independent sentence (*Doe* d. *Ellam* v. *Westley*, 4 B. & C. 667; 7 D. & R. 112: on *whv* Wms. Exs., 8th Ed., 1087: 1 Jarm. 497).

Words importing a tenancy in common in one bequest will not be extended by implication to another bequest which is merely connected with the former by "also" (2 Jarm. 256, citing *Cookson* v. *Bingham*, 17 Bea. 262; 23 L. J. Ch. 127).

A general description of property introduced by "And also" or the like, and following a particular description, will usually receive an *ejusdem generis* interpretation (Elph. 173 *et seq*).

"Also," s. 8, Clergy Discipline Act, 1892, means that the Bishop may depose the offending Clergyman "in addition to" the original sentence

(per Esher, M. R., *R.* v. *Durham, Bp.*, 1897, 2 Q. B. 414; 66 L. J. Q. B. 826; 77 L. T. 190; 46 W. R. 36).

V. LIKEWISE.

ALTAR. — *V. Faulkner* v. *Litchfield*, 1 Rob. Ecc. 213–230, 243–255: COMMUNION TABLE.

ALTARAGIUM. — "Properly, that which is offered on the altar, and the profit which arises to the priest by reason of the altar; Spelm. It is sometimes said to include all vicarial or small tithes; but this construction will not be adopted unless the word occurs in an old endowment, and is supported by usage; *Franklin* v. *St. Cross*, Bunb. 79" (Elph. 560).

ALTER. — The power to "*alter, modify, or extend*" a plt's claim by his Statement of Claim, R. 4, Ord. 20, R. S. C., does not authorize a totally different case from that set up by the Writ (*Ker* v. *Williams*, 30 S. J. 238: *Cave* v. *Crew*, 41 W. R. 359; 62 L. J. Ch. 530; 68 L. T. 254), or the joining of a cause of action not mentioned in the writ (*United Telephone Co* v. *Tasker*, 59 L. T. 852). *Vf.* DELIVERED: Ann. Pr.

ALTERATION. — *V.* ADDITION: APPARENT: CLEANSE: MATERIAL ALTERATION.

Probably, an Alteration in Premises, which will discharge an Insurer, means, generally, a permanent alteration or user, and not something merely casual and temporary (*Dobson* v. *Sotheby*, Moo. & M. 90: *Shaw* v. *Robberds*, 6 A. & E. 83: *Pim* v. *Reid*, 6 Sc. N. R. 982; 6 M. & G. 1: *Barrett* v. *Jermy*, 3 Ex. 545. *Sv. Glen* v. *Lewis*, 22 L. J. Ex. 228; 8 Ex. 617: *Stokes* v. *Cox*, 26 L. J. Ex. 113; 1 H. & N. 533). *Vh.* Add. C. 732, 733.

Alteration of Status; *V.* STATUS.

The Alteration in *Value* of a heredit, — justifying its insertion in a Metropolitan Provisional List because such Value has been "increased by the Addition to the heredit, or erection thereon, of any building, or is from any CAUSE increased or reduced in value," s. 47, Valuation (Metropolis) Act, 1869, — is not confined to a STRUCTURAL alteration of the heredit, but yet "any Cause," though a wide phrase, is coloured by the words with which it is in association, and the Alteration must be one arising from a definable Cause directly affecting the heredit, and not from general economic change, or from appreciation of the particular class of property to which the heredit belongs (*Camberwell* v. *Ellis*, 1900, A. C. 510; 69 L. J. Q. B. 828; 83 L. T. 201).

Quà Telegraph Act, 1878. 41 & 42 V. c. 76, "'Alteration,' 'Alter,' and 'Altering,' in respect of a Telegraphic Line, include the substitution of any new line, or portion of a line, either in the same place or in some other place; also any removal of, or other dealing with, any telegraphic line, or any part of such line" (s. 2).

ALTERED. — "Altered state" of FOOD, s. 9, Sale of Food and Drugs Act, 1875; *V. Spiers & Pond* v. *Bennett*, cited ABSTRACTION.

V. MATERIALLY ALTERED.

ALTOGETHER. — Sale "altogether out of Court," R. 1 a, Ord. 51, R. S. C.; *V. Cumberland Union Bank* v. *Maryport Co*, 1892, 1 Ch. 92; 61 L. J. Ch. 335; 66 L. T. 103.

"Wound up altogether," s. 161, Companies Act, 1862; *V. Re Hafod Hotel Co*, W. N. (68), 86.

ALWAYS AFLOAT. — "SO NEAR THERETO AS SHE MAY SAFELY GET at all times of tide, *and always afloat*," in a Charter-Party: *V. Dahl* v. *Nelson*, 50 L. J. Ch. 411; 6 App. Ca. 38: *Horsley* v. *Price*, 52 L. J. Q. B. 603; 11 Q. B. D. 244: *Caffarini* v. *Walker*, Ir. Rep. 9 C. L. 431; 10 Ib. 250: *Nielsen* v. *Wait*, 14 Q. B. D. 516: *Carlton S. S. Co* v. *Castle Co*, 1897, 2 Q. B. 485; 1898, A. C. 486; 66 L. J. Q. B. 819; 67 Ib. 795; 47 W. R. 65: *Treglia* v. *Smith's Timber Co*, 1 Com. Ca. 360; 12 Times Rep. 363. In *The Curfew* (1891, P. 131; 60 L. J. P. D. & A. 53; 64 L. T. 330; 39 W. R. 367) evidence was admitted to explain "Always afloat." *Vf.* Carver, 506.

AM. — In a devise, "such an expression as, 'all the lands of which I *am* seized in A.,' must be read as if written just before the testator's death: *Doe* v. *Walker*, 13 L. J. Ex. 153; 12 M. & W. 591" (per Kay, J., *Re Portal to Lamb*, 53 L. J. Ch. 1163). The decision in *thlc* was reversed (54 L. J. Ch. 1012; 30 Ch. D. 50), without, however, affecting the proposition above cited. *Vf.* 1 Jarm. 333, 334: Now.

AMALGAMATE. — A power to a Co to "amalgamate" with any other Co, does not enable the directors to compel a shareholder to become a member of any such other Co (*Re Empire Assrce*, L. R. 4 Eq. 341; 36 L. J. Ch. 663; 15 W. R. 889). *Vh.* 1 Palm. Co. Prec. 1155–1161: *Vf.* next word.

AMALGAMATION. — "Amalgamation" of Ry Companies, quà Part 5, Ry C. Act, 1863, is (by s. 36) "where two or more Ry Companies, respectively incorporated either by or after the passing of this Act, are amalgamated by a Special Act hereafter passed and incorporating this Part of this Act."

Quà Companies incorporated under Comp. Act, 1862, "Amalgamation," signifies the transfer of all or some part of the Assets and Liabilities of one, or more than one, existing Co to another existing Co, — or of two or more existing Cos to a new Co, — of which transferee Co all the members of the transferor Co or Cos become, or have the right of becoming, Members; and, generally, such Amalgamation is accomplished by a Voluntary Winding-up of the transferor Co or Cos (1 Palm. Co. Prec. 1155, adopted in *Hooper* v. *Western Counties & S. W. Telephone*

Co, 41 W. R. 84, wherein "Amalgamation" was contrasted with "RECONSTRUCTION"). To a somewhat similar effect is *Wall* v. *London & Northern Assets Corp* (1898, 2 Ch. 469; 67 L. J. Ch. 596; 79 L. T. 249), in *whc*, however, Lindley, L. J., said, — "There is no very precise meaning to be given to 'AMALGAMATE.' When 'amalgamating' a Co with another Co or persons or firms is spoken of, I am not prepared to put a sharp definition upon it. I have no doubt that it includes the case put by Ld Hatherley in *Higgs' Case* (2 H. & M. 657), and more recently by Ld Davey in *New Zealand & Gold Extraction Co* v. *Peacock* (cited UNDERTAKING). I do not think it, necessarily, involves the formation of a new Co to carry on the business of an old Co, though I have no doubt it includes that. I do not see how a Co, as a business transaction, can practically 'amalgamate' with persons or companies carrying on business unless the Co does, in some way or other, sell its assets as a whole."

AMBASSADOR. — Quâ Foreign Marriage Act, 1892, 55 & 56 V. c. 23, "'Ambassador,' includes a Minister and a Chargé d'Affaires" (s. 24).

AMBIDEXTER. — It is Slander, without special damage, to say of a Solr that he is an "Ambidexter," for that imputes that he takes a fee from both sides and betrays his client's secrets (*Annison* v. *Blofield*, Carter, 214; 1 Rol. Ab. 55).

AMBIGUITY. — *V.* PATENT AMBIGUITY.

AMELIORATING WASTE. — *V.* WASTE.

AMENDMENT. — *V.* CLEANSE.

"Amendment of Rule"; Stat. Def., 38 & 39 V. c. 60, s. 4; 39 & 40 V. c. 45, s. 3; 56 & 57 V. c. 39, s. 79; 59 & 60 V. c. 25, s. 106.

AMERCIAMENT. — "Amerciament, *Amerciamentum*," — in Termes de la Ley and old Charters written "Amercement," — "signifieth the pecuniary punishment of an Offender against the King, or other Lord, in his Court, that is found to be in *misericordia*, that is, to have offended, and to stand at the Mercy of the King, or Lord" (Cowel). Cowel further says that "there *seems* to be a difference between Amerciaments and Fines," obviously basing that difference on the following passage in Termes de la Ley, — "And there is a difference between Amerciaments and Fines (Kitchen, 214), for Fines are punishments certaine which grow expressly from some statute, and Amerciaments are such which are arbitrarily imposed by the Affeerors, the which Master Kitchen seemeth to confirme (fol. 78) in these words, 'The Amerciament is affeered by Equals.' Also it appeareth (Coke, Lib. 8, fol. 39) that a Fine is alwayes imposed and assessed by the Court, but Amerciament, which is called in Latin *misericordia*, is assessed by the Country." The statement that Fines are "punishments *certaine*," *semble*, does not accord with what was held to be a FINE in *Re Nottingham Corp.*, inf. *Cp.* RANSOM.

Amerciament "explained and distinguished from a Fine; *Beecher's*

Case, 8 Rep. 58 a: *Godfrey's Case*, 11 Rep. 42 a; Co. Litt. 126 b, *et seq:* Spelm. gives an explanation differing from that of Coke. The reason why an unsuccessful defendant was said in old time 'to be in mercy, &c,' was that he was liable to be amerced for not having obeyed the King's writ immediately" (Elph. 560, *whv* for further references). So, of an unsuccessful plt, for making a false claim (Select Civil Pleas, Selden Soc. 77).

"There is a manifest diversity between a Ransome and an Amerciament; for ransome is ever when the law inflicteth a corporal punishment by imprisonment (and so is also a Fine); but otherwise it is of an amerciament" (Co. Litt. 127 a).

For examples of Amerciaments, *V.* BOTE: FRANKPLEDGE: WERE: WITE.

A Charter granting "Amercements," does not include money payable on Estreated RECOGNIZANCES (*Re Nottingham Corp.*, 1897, 2 Q. B. 502; 66 L. J. Q. B. 883; 77 L. T. 210; 61 J. P. 725): *V.* BAIL.

"'Amercement *Royal*,' is when a Sheriffe, Coroner, or such like Officer of the King, is amerced by the Justices for his abuse in the Office" (Termes de la Ley).

AMIABLES COMPOSITEURS. — "What is the force and meaning of that expression, 'Amiables Compositeurs,' by Canadian law? We find it in the 1346th Article of the Code of Civil Procedure: 'Arbitrators must hear the parties, and their respective proofs, or establish default against them, and decide according to the rules of law, unless they are dispensed from so doing by the terms of the submission, or unless they have been appointed as Amiables Compositeurs.' That is to say, if they are Amiables Compositeurs, they are to be exempt at all events from the strictness of the obligations expressed in the previous words. Their lordships would, no doubt, hesitate much before they held that to entitle arbitrators named as Amiables Compositeurs to disregard all law, and to be arbitrary in their dealings with the parties; but the distinction must have some reasonable effect given to it, and the least effect which can reasonably be given to the words is, that they dispense with the strict observance of those rules of law the non-observance of which, as applied to awards, results in no more than irregularity" (per Ld Selborne, *Rolland* v. *Cassidy*, 57 L. J. P. C. 100; 13 App. Ca. 770).

AMIDSHIPS. — By (and quà) s. 437, Mer Shipping Act, 1894, "'Amidships,' means the middle of the length of the Load Water-line, as measured from the fore side of the stem to the aft side of the sternpost," — a def adopted from s. 5, 53 & 54 V. c. 9.

AMMUNITION. — The "Ammunition" for a gun, "includes the whole charge (per Esher, M. R., *Armstrong Co* v. *Hotchkiss Co*, 13 Times Rep. 188).

Stat. Def. — 44 & 45 V. c. 5, s. 6; 45 & 46 V. c. 25, s. 35.

AMNESTY. — *V.* PARDON.

AMONG. — A testamentary gift to two or more "among," or "amongst," them creates a tenancy in common (2 Jarm. 257: Hawk. 112). *V.* BETWEEN.

A gift "amongst the CHILDREN of A.," *primâ facie*, means all his children (*Pigott* v. *Wilder*, 26 Bea. 93). So, generally speaking, a Power to appoint "amongst" a Class, means that each member must have a share (*Stolworthy* v. *Sancroft*, 33 L. J. Ch. 708); so, "'to and amongst' have a strict technical sense, and where those words are used, each child must have some share assigned to him" (per Bayley, J., *Doe* d. *Willmett* v. *Alchin*, 2 B. & Ald. 125): but "to and amongst" a Class, "in such parts shares and proportions" as the Donee of the Power shall think proper, gives a power of selection (*Spring* v. *Biles*, 1 T. R. 435, *n.*: *Re Veale*, 46 L. J. Ch. 799; 5 Ch. D. 623). *Cp.* ALL AND EVERY.

AMORTIZATION. — Is to grant lands in MORTMAIN (Cowel: Jacob).

AMOUNT. — "Rated to the amount of"; *V.* RATE.

Covenant to SETTLE a sum or property "not amounting to"; *V.* LESS.

"Amount realized"; *V. Re Christie*, cited REALIZED.

"Amount recovered"; *V.* RECOVER.

"Amount secured," s. 15 (2), Bg Socy Act, 1874, is not confined to principal money; but includes all moneys secured, whether for Principal, Interest, Fines, or otherwise, and also all Instalments secured though not presently payable (per Chitty, J., *Re Neath Bg Socy*, 59 L. J. Ch. 3; 43 Ch. D. 158; 6 Times Rep. 13).

Amount "secured" by a MORTGAGE, quà Stamp Act, may not be the same as a like amount "secured" by a Marketable Security: *e.g.* a Co's Debenture for the sum advanced plus a premium, secures, quà the ad val. stamp, the premium as well as the sum advanced if it is a fixed obligation, as distinct from a mere option to the Co to pay off plus the premium; whereas, if it were a mtge, the ad val. duty would, probably, be only assessable on the sum advanced, — *V.* s. 86, Stamp Act, 1891 (*Rowell* v. *Inl. Rev.*, cited MARKETABLE SECURITY). But even, quà a Debenture, if there be only an option to pay off at a premium, the "amount secured," on which ad val. duty is payable, does not include the premium, because the obligor need never exercise his option (*Knight's Deep* v. *Inl. Rev.*, 1900, 1 Q. B. 217; 69 L. J. Q. B. 66; 81 L. T. 625; 48 W. R. 198).

AMPLE. — "As Full and Ample a manner"; *V.* FULL.

AMPLY. — "Amply secured"; *V.* SECURED.

AMUSEMENT. — *V.* ENTERTAINMENT.

AN. — "An" is sometimes read in the most absolute sense as meaning "ANY, — whatsoever." "I am of opinion that the expression, '*an* Act of Bankruptcy,' s. 5, Bankry Act, 1883, includes everything which by legislative enactment is made to be an act of bankruptcy, whether by this Act itself or by some other Act passed before it came into operation" (per Cotton, L. J., *Ex p. Pratt*, 53 L. J. Ch. 614). *Cp. R.* v. *Snagge*, cited A.

ANANIAS. — To write of a Person that he is an "Ananias" could hardly be other than libellous; *secus*, of a Newspaper, for it may be libellous, or, on the contrary, may import no more than the innocent publication of false news (*Australian Newspaper Co* v. *Bennett*, 1894, A. C. 284; 63 L. J. P. C. 105; 70 L. T. 597; 58 J. P. 604).

ANCESTOR. — "*Ancestor* is derived of the *Latine* word *antecessor*, and in law there is a difference between *antecessor* and *prædecessor*. For *antecessor* is applied to a natural person; but *prædecessor* is applied to a body politique or corporate" (Co. Litt. 78b).

"The word 'Ancestor' does not mean, either etymologically or technically, a lineal ancestor only; in illustration of which proposition I may refer to a passage in Com. Dig., Vol. I., 5th Ed., 705, as to the English writ of 'Mort d'Ancestor'; which (it is said) 'does not lie upon the death of any Ancestor, except a father, mother, brother, sister, uncle, aunt, nephew, or niece; for upon the death of another Ancestor, an *aiel*, *besaiel*, or *cosinage* lies'" (per Selborne, C., *Zetland* v. *Ld Advocate*, 3 App. Ca. 520). And per Ld Hatherley (*Ib.*) the word "Ancestor," as used in the Sucn Dy Act, 1853 (*V.* SUCCESSION), is properly assignable to the person who really preceded in the estate, although that person may not be the progenitor of the Successor.

ANCESTRAL. — "Ancestral Property," does not, necessarily, mean property which has been a long time in a family; it rather means, property derived from the proprietor's father, and, at least, immovable property (*Gossain* v. *Gossain*, 8 W. R. 196, 198).

ANCHOR. — Quà Anchors and Chain Cables Act, 1899, 62 & 63 V. c. 23, "'Anchor,' and 'Chain Cable,' include any shackle attached to, or intended to be used in connexion with, the anchor or chain cable" (s. 19).

V. AT ANCHOR.

ANCHORAGE TOLL. — An Anchorage Toll is a Toll for every anchor — (and sometimes in respect of a vessel having no anchor), — cast in a PORT, or on anchorage ground proved, or legally presumed, to have once formed part of a Port (*Foreman* v. *Free Fishers of Whitstable*, 38 L. J. C. P. 345; L. R. 4 H. L. 266; explaining *Gann* v. *Free Fishers of*

Whitstable, 35 L. J. C. P. 29; 11 H. L. Ca. 192). *Vf.* Hale, De Portibus Maris, Ch. 6.

V. TOLL.

ANCHORITE. — *V.* RECLUSE.

ANCIENT DEMESNE. — "Those lands which were in the possession of Edward the Confessor are called Ancient Demesne, . . . and the Tenants which hold any of those lands are called, Tenants in Ancient Demesne" (Termes de la Ley, *Demaines*). Cowel's def is fuller; he says, "'Ancient Demeasne,' or 'Demayn,' is a certain Tenure whereby all the Mannors belonging to the Crown in the dayes of Saint Edward, or William the Conqueror, were held. The numbers and names of which Mannors, as of all others belonging to common persons, are written in *Doomsday*. And those which by that Book appear to have at that time belonged to the Crown and are contained under the title *Terra Regis*, are called Ancient Demesne." *Vf.* DEMESNE: SOCHEMANS: TALLAGE: Elph. 560: Jacob: 1 Encyc. 252.

ANCIENT DOCUMENT. — It is, probably, impossible to define what is an "Ancient Document" to which the doctrine of *Contemporanea Expositio* may be applied. *Semble*, it should be, at least, "one or two Centuries" old (*V.* per Ld Watson, *Clyde Nav.* v. *Laird*, 8 App. Ca. 673); one 45 years old is much too young (*Hastings* v. *N. E. Ry*, 1899, 1 Ch. 656; 68 L. J. Ch. 315; 80 L. T. 217; affd nom. *N. E. Ry* v. *Hastings*, 1900, A. C. 260; 69 L. J. Ch. 516; 82 L. T. 429). A statute of 1858 is not "ancient" (*Clyde Nav.* v. *Laird*, sup.): *Vf. Doe* d. *Kinglake* v. *Beviss*, 18 L. J. C. P. 128; 7 C. B. 456, and cases there cited. As to the doctrine itself, *V.* Elph. Ch. 5.

ANCIENT INCLOSURE. — Quà Inclosure Act, 1836, 6 & 7 W. 4, c. 15, "Ancient Inclosures," means, "lands which shall have been inclosed from the Open Fields, or any of them, for more than 20 years next preceding the date of the Agreement for Inclosure" (s. 22). *V.* OLD INCLOSURE.

ANCIENT LIGHT. — An Ancient Light is a defined aperture in a BUILDING, through which (as of Right, and not by "Consent or Agreement by Deed or Writing," *V.* IN WRITING) there has been ACTUALLY ENJOYED an ACCESS and use of light "for the full period of 20 years, without INTERRUPTION" (s. 3, 2 & 3 W. 4, c. 71). *Vh.* Gale, Part 3, ch. 2: Goddard on Easements, 5th Ed., 49–57. At p. 51 of latter book, it is pointed out "that the phrase 'Ancient *Window*' is to be found nowhere."

As to construction of a Covenant to rebuild so as to preserve Ancient Lights, *V. Low* v. *Innes*, cited REBUILD.

ANCIENT MEADOW. — Meadow not broken up for 20 years (*Murphy* v. *Daly*, 13 Ir. Ch. Rep. 239): "Ancient PASTURE" is synonymous (*Palmer* v. *M'Cormick*, 25 L. R. Ir. 110). *Note.* Breaking-up Ancient Meadow or Pasture is, *primâ facie*, WASTE (*Simmons* v. *Norton*, 7 Bing. 640: *Sv. St. Alban's* v. *Skipwith*, 8 Bea. 354; 14 L. J. Ch. 247). *V.* MEADOWS.

ANCIENT MONUMENT. — Stat. Def., 45 & 46 V. c. 73, s. 11. *V.* MAINTAIN: MONUMENT.

ANCIENT RENT. — Where a Power of Leasing "is in the form (which, however, is now uncommon), that the 'Ancient Rents' shall be reserved, this would seem to mean, the rent reserved under the latest lease (if any) granted before the creation of the power. But subsequent leases may be looked at; and the question, where the leases vary, is one of fact for the jury" (Watson, Eq. 869, 870, citing *Doe* d. *Douglas* v. *Lock*, 2 A. & E. 705; 4 L. J. K. B. 113; 4 N. & M. 807: *Doe* d. *Egremont* v. *Stephens*, 6 Q. B. 208: *Doe* d. *Biddulph* v. *Hole*, 15 Q. B. 848; 20 L. J. Q. B. 57). But in *thlc* it was held that if the ancient custom is uniform, and the single lease varying therefrom is granted just before the creation of the Power, such exceptional lease cannot be taken as evidence of the custom.

On the construction of "Ancient," "Accustomed," or "Usual" rent, *V.* Sug. Pow. 790: Farwell, 494: 1 Platt, 414–423.

The phrase generally employed now is BEST RENT, *whv.*

ANCIENT ROYALTY. — "Ancient and extended Royalties"; Stat. Def., 24 & 25 V. c. 27, s. 2.

ANCIENT USAGE. — "Warranted by Ancient Usage," s. 95, 5 & 6 W. 4, c. 76, repld s. 110, Mun. Corp. Act, 1882; *V. A.-G.* v. *Yarmouth*, 21 Bea. 625; 3 W. R. 309; 25 L. T. O. S. 5. *Vf.* PRACTICE: RENEWAL.

ANCIENT WINDOW. — *V.* ANCIENT LIGHT.

ANCILLARY. — A work is "ancillary or INCIDENTAL" to a Trade or Business when it is not necessary thereto or a primary part thereof, *e.g.* the business of a Ry Co is primarily that of Carriage of passengers or goods, and it is not responsible (as an "UNDERTAKER," within Workmen's Comp. Act, 1897) for a Contractor it employs to build, repair, and paint its Stations, because such work (within s. 4) is "merely ancillary, or incidental to, and is no part of," its business (*Pearce* v. *Lond. & S. W. Ry*, 1900, 2 Q. B. 100; 69 L. J. Q. B. 683; 82 L. T. 487; 48 W. R. 599). *V.* RAILWAY: INCIDENTAL OR CONDUCIVE.

AND. — "And" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of OR. Sometimes, however, even in such a connection, it is,

by force of a context, read as "Or." Thus where a lessee underlet, with a proviso, on breach of covenant, enabling him *and* his lessor to re-enter; held, that he *or* his lessor might re-enter on breach (*Doe* d. *Bedford* v. *White*, 4 Bing. 276). So, a power to apply corpus of trust money for the "BENEFIT *and* ADVANCEMENT" of a Tenant for Life, "and" may be read "or" (*Re Brittlebank*, 30 W. R. 99). On the other hand, s. 17, 59 G. 3, c. 12, makes "Churchwardens *and* Overseers" a quasi Corporation for holding and dealing with property BELONGING to a Parish; that means that, in order to create such a corp officers of both descriptions must be appointed, and, until that is done, nothing vests (*Woodcock* v. *Gibson*, 4 B. & C. 462). *Vf.* OR READ AS AND, and *vice versâ*.

"And" may be relative as well as copulative (Dwar. 681).

Where there is a string of *adjectives* between the last two of which there is the conjunction "and," each adjective is, generally speaking, independent of its fellows. Thus a bequest for "Benevolent, Charitable, and Religious" purposes, means that it may be applied in either of those ways, and, as some are too indefinite, the bequest is bad (*Williams* v. *Kershaw*, 5 Cl. & F. 111, *n.*). But sometimes the first adjective (especially when there are only two) is the controlling word of the enumeration which is merely qualified by that which follows. Thus in *Re Sutton* (54 L. J. Ch. 613; 28 Ch. D. 464; 33 W. R. 519), Pearson, J., held that a bequest for "Charitable and Deserving" objects was good, because such a collocation only contemplated one class of objects, — "the word 'Charitable' governs the whole sentence." In that case the learned judge gave the following illustration, — "Instead of giving to young persons 'under 21' you might add the words 'and unmarried,' and those words would undoubtedly restrict the meaning of the former words." *Vf. Re Scowcroft*, 1898, 2 Ch. 638; 67 L. J. Ch. 697: CHARITABLE PURPOSE: OR.

"And," sometimes gives a distinct sense to the word it precedes (*Michell* v. *Michell*, cited EFFECTS).

As to the construction and apportionment where charitable and other *ascertained* objects are coupled in a bequest, *V.* 1 Jarm. 217, 218. *Crafton* v. *Frith*, 20 L. J. Ch. 198.

V. EXECUTORS.

AND read as BUT. — For an instance of this, *V.* jdgmt Coleridge, C. J., *R.* v. *Barclay*, 51 L. J. M. C. 48; 8 Q. B. D. 486.

AND read as OR. — *V.* OR.

AND / OR. — Where statements or stipulations are coupled by "and / or" they are "to be read, either disjunctively, or conjunctively" (per Cairns, C., *Stanton* v. *Richardson*, 45 L. J. C. P. 82), *e.g.* "The contract on the face of the Charter-Party was that the parties were to 'load a full and

complete Cargo of sugar, molasses, $\frac{\text{and}}{\text{or}}$ other lawful produce'; so that, according to the contract, the parties were either to load 'a full and complete cargo of sugar and molasses *and* other lawful produce,' — or, 'a full cargo of sugar and molasses, *or* a full cargo of other lawful produce,' leaving it open in every way by reason of the words '$\frac{\text{and}}{\text{or}}$' being introduced into the Charter-Party" (per Alderson, B., *Cuthbert* v. *Cumming*, 24 L. J. Ex. 198; affd Ib. 310; 11 Ex. 405). *Vf. Furness* v. *Tennant*, 8 Times Rep. 336.

AND ALSO. — *V.* ALSO.

ANIMAL. — A Domestic Fowl is an "Animal," within s. 61, 24 & 25 V. c. 100 (*R.* v. *Brown*, 59 L. J. M. C. 47; 24 Q. B. D. 357; 61 L. T. 594; 38 W. R. 95; 54 J. P. 408). *V.* DOMESTIC ANIMAL.

Stat. Def. — 12 & 13 V. c. 92, s. 29; 29 & 30 V. c. 2, s. 3; 32 & 33 V. c. 70, s. 6; 41 & 42 V. c. 74, s. 5; 57 & 58 V. c. 57, s. 59; 63 & 64 V. c. 33, s. 1. — *Scot.* 13 & 14 V. c. 92, s. 11; 58 & 59 V. c. 13, s. 2. — *Ir.* 33 & 34 V. c. 36, s. 11; 39 & 40 V. c. 51, s. 2.

"Noisy Animal"; *V.* NOISY.

ANNATS. — "'Annats or Annates'; the FIRST FRUITS of an ecclesiastical BENEFICE; *V.* 25 H. 8, c. 20; 26 H. 8, c. 3: 12 Rep. 45: Spelm." (Elph. 560). *Va.* Termes de la Ley: Phil. Ecc. Law, 1355.

ANNEX. — "Annexed to the Freehold," connotes fastening; mere juxtaposition to, or the lying of a thing on, the freehold, does not amount to annexation (*Merritt* v. *Judd*, 14 Cal. 64). *Cp.* ADJOIN.

Deed "as an Annex" to a previous Deed; *V.* s. 53, Conv. & L. P. Act, 1881. *Cp.* SUPPLEMENTAL.

Schedule "annexed" to a Will; *V. Watson* v. *Arundel*, Ir. Rep. 10 Eq. 299; 11 Ib. 53.

ANNOY. — *V.* INJURE.

ANNOYANCE. — A covenant against doing anything which may be a "Nuisance or Annoyance" to a neighbourhood, is broken by a Sanatorium for the reception of six boys affected with infectious disease (*Watson* v. *Leamington College*, 25 S. J. 30). In that case, Jessel, M. R., said it might perhaps be difficult to appreciate the difference between "Nuisance" and "Annoyance," but as both words were used, "annoyance," evidently, meant something less than "nuisance." And in *Tod-Heatley* v. *Benham* (58 L. J. Ch. 83; 40 Ch. D. 80), it was held that "Annoyance" has, in this connection, a wider meaning than "Nuisance," though it was there doubted whether it was not too much to say that no "Nuisance" would be within such a covenant, unless it amounts to an indictable nuisance. *V.* NUISANCE: OFFENSIVE.

In *Bramwell* v. *Lacy* (48 L. J. Ch. 339; 10 Ch. D. 691), the words were "Annoyance, Damage, Injury, Prejudice, or Inconvenience"; whilst in *Tod-Heatley* v. *Benham* (sup) they were "Annoyance, Nuisance, Grievance, or Damage"; and in the first of those cases an out-patient Branch of a Hospital for throat and chest diseases was held to be an "Annoyance, Inconvenience, and Injury"; whilst in the latter, a Hospital for throat, nose, ear, skin, and eye diseases, and diseases of the rectum, was held an "Annoyance or Grievance," those two words being, apparently, bracketed as synonymous.

"I think an act which is an interference with the pleasurable enjoyment, in reason, of a house is an 'Annoyance or Grievance.' It is not necessary, in order to bring the case within the words, that the plaintiff should show that any particular man may object to it; but we must be satisfied by argument and by evidence, that reasonable people, having regard to the ordinary use of a house for pleasurable enjoyment, would be annoyed or aggrieved by what is being done there. It is not necessary, in order to show that there has been reasonable ground for annoyance or grievance, to show that, in fact, there is danger or risk of infection. A reasonable apprehension of nuisance from acts done by the defendant will produce such interference with the pleasurable and reasonable enjoyment of the adjoining houses as to come within the words 'Annoyance and Grievance'" (per Cotton, L. J., *Tod-Heatley* v. *Benham*, sup). "The expression 'Annoyance' is wider than 'Nuisance'; and a thing that reasonably troubles the mind and pleasure, — not of a fanciful person or of a skilled person who knows the truth, but, — of the ordinary sensible English inhabitant of a house, seems to me to be an 'Annoyance,' although it may not appear to amount to physical detriment to comfort" (per Bowen, L. J., *Ib.*), — *e.g.* a high trellis-work fence which substantially interferes with one's access of light (*Wood* v. *Cooper*, 1894, 3 Ch. 671; 63 L. J. Ch. 845; 71 L. T. 222; 43 W. R. 201). Intermittent pranks by the boys of a private school (especially when efforts are made to repress them) do not constitute "Annoyance or *Disturbance*" (*Everett* v. *Remington*, Times, 24th May, 1892; 67 L. T. 80: *S. C.* cited ASSIGNS). But "Annoyance" (within a Residential covenant) may be caused by singing, or piano, lessons in an adjoining house (*Eyre* v. *Landi*, Times, 1st June, 1895), and much more by bad practice (*Wilson* v. *Barnes*, Ib.). *V.* DISAGREEABLE.

In *Our Boys Clothing Co* v. *Holborn Viaduct Co* (40 S. J. 561), Romer, J., held that a big, ugly, obtrusive, and vulgar advertisement, announcing "An Eccentric and Startling Stock-taking Sale," was not a breach by a Lessee (even as against his Lessor) of his covenant not to do "anything which might cause Annoyance, or *Inconvenience* to the lessors, or their other tenants, or to their neighbours."

An "Annoyance," &c caused by a business, is none the less within a covenant, because the business is such as would not be prohibited by

accompanying words levelled against certain specified businesses (*Tod-Heatley* v. *Benham*, sup). *Alexander* v. *Wolsey* (Times, 4th Feb. 1891), was a case of that kind, wherein Romer, J., held that the trade of a Fishmonger, as carried on by deft, was "Annoyance and Damage," within lessee's covenant against "Annoyance, Damage, or Disturbance."

Vf. hereon *Davis* v. *Cavey*, 58 L. J. Ch. 143; 40 Ch. D. 601.

A finding by the Court of Session that burning refuse "would cause Material Discomfort, and Annoyance," is one of fact, and not of law, within s. 40, 6 G. 4, c. 120 (*Fleming* v. *Hislop*, 11 App. Ca. 686).

Annoyance to Inhabitants; *V.* INHABITANTS, at end.

"Annoyance or Obstruction in any Thoroughfare"; *V.* OBSTRUCTION.

V. MOLEST.

ANNUAL BALANCE SHEET. — *V.* LAST.

ANNUAL CLOSE SEASON. — Stat. Def., Salmon Fishery Act, 1873, 36 & 37 V. c. 71, s. 4, *whva* for "Weekly Close Season." *V.* CLOSE SEASON.

ANNUAL EMOLUMENT. — Compensation for loss of office calculated on two-thirds of "Annual Emolument," s. 8 (7), 31 & 32 V. c. 110; *V. R.* v. *Postmaster-Gen.*, cited EMOLUMENT.

ANNUAL GENERAL LICENSING MEETING. — *V. R.* v. *Anglesey Jus.*, cited BEFORE.

ANNUAL INCOME. — *V.* ACTUAL ANNUAL INCOME.

ANNUAL LICENSE FEE. — *V.* PASTORAL LEASE.

ANNUAL NET VALUE. — *V.* ANNUAL VALUE: NET.

ANNUAL PAY. — *V.* PAY.

ANNUAL PAYMENT. — "Annual Payment towards the costs of Maintenance and Repair," s. 11 (2), Loc. Gov. Act, 1888, means, a payment to be made annually in respect of the expenditure of the particular year; not a fixed sum ascertained by the average expenditure of a series of years (*Sandgate* v. *Kent Co. Co.*, 79 L. T. 425).

ANNUAL PROCEEDS. — "Rents, Dividends, and Annual Proceeds," held, on the context, equivalent to "Annual Rents, Dividends, and Proceeds" (*Re Green*, 40 Ch. D. 610).

ANNUAL PROFITS. — *V.* PROFITS.

ANNUAL RACK-RENT. — *V.* RACK-RENT.

ANNUAL RENT. — *V. Smith* v. *Birmingham*, 52 L. J. M. C. 81; 11 Q. B. D. 195: ANNUAL VALUE. *Va.* RENTAL.

ANNUAL VALUE. — "Value means NET value" (per Ld Bramwell, *Dobbs* v. *Grand Junc. W. W. Co*, 53 L. J. Q. B. 52). And on the au-

thority of the same noble and learned lord in the same case, and on that of *Re Elwes* (28 L. J. Ex. 46; 3 H. & N. 719), it may be laid down that the general *primâ facie* meaning of "Annual Value" of property is that provided for "Net Annual Value" by s. 1, Parochial Assessments Act, 1836 (6 & 7 W. 4, c. 96, the history of which is traced by Grantham, J., *Walker* v. *Brisley*, inf.) viz. — "The rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the Repairs, Insurance, and other Expenses (if any) NECESSARY to maintain them in a state to command such rent"; and to that def it may now be added that in estimating such lettable value regard is to be had to the worth of the premises as used for the purposes for which, or in the manner in which, they are, for the time being, occupied (*West Middlesex W. W. Co* v. *Coleman*, 54 L. J. M. C. 70; 14 Q. B. D. 529: *Grand Junction W. W. Co* v. *Davies*, 1897, 2 Q. B. 209; 66 L. J. Q. B. 633; 76 L. T. 833; 45 W. R. 687; 61 J. P. 484: *Bradford* v. *White*, 1898, 2 Q. B. 630; 67 L. J. Q. B. 643. As to what "expenses" may be deducted, *V. R.* v. *Gainsborough*, 41 L. J. M. C. 1; L. R. 7 Q. B. 64: *R.* v. *Smith*, 55 L. J. M. C. 49; 54 L. T. 431; 50 J. P. 215: *Stevens* v. *Bishop*, 19 Q. B. D. 442; 56 L. J. Q. B. 454; 57 L. T. 482; 35 W. R. 839). *Cp.* "Net Rent," sub NET.

Quà the valuation of property in the Metropolis the principle of the above def has been adopted, but the phrase is altered to "*Rateable Value*," the precise def of which is, — "The term 'Rateable Value,' means the GROSS Value, after deducting therefrom the probable annual average cost of the Repairs, Insurance, and other Expenses" necessary to maintain the heredit in a state to command the annual rent which a tenant might reasonably be expected to pay (s. 4, 32 & 33 V. c. 67).

V. Arch. P. L., Part 5: Boyle & Davies, Principles of Rating.

The principle above stated is that which the Metropolitan Waterworks Companies must adopt in making their charges on "Annual Value" (*Dobbs* v. *Grand Junc. W. W. Co*, 53 L. J. Q. B. 50; 9 App. Ca. 49; 49 L. T. 541; 32 W. R. 432). But such a phrase may be enlarged by a context, *e.g.* "gross" (*Bristol W. W. Co* v. *Uren*, 54 L. J. M. C. 102; 15 Q. B. D. 637); or "rack-rent" (*Stevens* v. *Barnet Water Co*, 57 L. J. M. C. 82; 36 W. R. 924). *Vf.* RENT.

So, too, where a Waterworks Co are empowered to charge "on the annual value at which the premises are assessed to the Poor-Rate," that means the annual *rateable* value (*Warrington W. W. Co* v. *Longshaw*, 51 L. J. Q. B. 498; 9 Q. B. D. 145).

Note. "Where an Act gives power to a Co to impose a Toll or Rate upon the PUBLIC and it is left ambiguous which of two Tolls they have a right to impose, the Court must decide in favor of that which is the least onerous or burdensome to the public" (per ESHER, M. R., *South*

Staffordshire W. W. Co v. *Barrow*, 61 J. P. 662, citing *Stourbridge Canal Co* v. *Wheeley*, 2 B. & Ad. 792).

In cases of Small Tenements let at weekly rents, — the landlord doing the repairs and paying the rates and taxes, — the proper way of assessing the "annual value" or "annual rent" on which the Water-Rate is to be charged, is to multiply the weekly rent by 52, and deduct from the gross amount so ascertained a fair allowance for the average of empty houses and also the actual amount paid for poor and borough rates (*Smith* v. *Birmingham*, 52 L. J. M. C. 81; 11 Q. B. D. 195); and as to mode of assessing annual value of such tenements for the Poor-Rate; *V. Smith* v. *Birmingham*, 58 L. J. M. C. 33, 161; 22 Q. B. D. 211.

As to *mode of calculating* Annual Value of the buildings of a School Board; *V. R.* v. *West Bromwich School Bd.*, 53 L. J. M. C. 153; 13 Q. B. D. 929: *R.* v. *London School Bd.*, 55 L. J. M. C. 169; 17 Q. B. D. 738; 55 L. T. 384; 34 W. R. 583; 50 J. P. 419: and as to Exemption where the owners and occupiers are prohibited from selling or leasing, — *e.g.* Owen's College, Manchester; *V. Owen's College* v. *Chorlton-upon-Medlock*, 56 L. J. M. C. 29; 18 Q. B. D. 403; 56 L. T. 373; 35 W. R. 236; 51 J. P. 356: *Sv. Burton-on-Trent* v. *Egginton*, 59 L. J. M. C. 1; 24 Q. B. D. 197: *V.* BENEFICIAL. — As to mode of calculating, quà *Docks* and Harbours, *V. Mersey Docks* v. *Birkenhead*, 1900, 1 Q. B. 143; 69 L. J. Q. B. 260; 81 L. T. 798; 48 W. R. 259; 64 J. P. 36. — Quà *Mines*, *V. Brown* v. *Rotherham*, 83 L. T. 193. — Quà Plantations, *V.* PLANTATION. — Quà *Public-houses*, *V. Dodds* v. *South Shields*, 1895, 2 Q. B. 133; 64 L. J. Q. B. 508; 72 L. T. 645; 43 W. R. 532; 59 J. P. 452: *Cartwright* v. *Sculcoates*, 1899, 1 Q. B. 667; 68 L. J. Q. B. 455; 80 L. T. 450; affd in H. L., 1900, A. C. 150; 69 L. J. Q. B. 403; 82 L. T. 157; 48 W. R. 394; 64 J. P. 229. — Quà *Water-Works*, *V. Liverpool* v. *Llanfyllin*, 1899, 2 Q. B. 14; 68 L. J. Q. B. 762; 80 L. T. 667; 63 J. P. 452.

In a case under ss. 21, 22 Sucn Dy Act, 1853, Watson, B., in delivering the judgment of the Court of Exchequer, said, — "The words 'annual value of the land' are not Words of Art; but mean, in common parlance, a rack-rent, *or* the value of the gross produce of the land, *minus* all payments, expenses, interest, labour, and charges on the land or on the tenant" (*Re Elwes*, 28 L. J. Ex. 47).

So also the "Value" "By the Year" of lands, &c, for the purpose of giving County Courts jurisdiction in Ejectment (Co. Co. Act, 1888, s. 59), is the market value of the property, — the convenient mode for ascertaining which is prescribed by s. 1, Parochial Assessments Act, 1836 (*Elston* v. *Rose*, L. R. 4 Q. B. 4; 38 L. J. Q. B. 6: *V.* RENT PAYABLE): but the premises to be valued are those actually in dispute, — *e.g.* if there be a dispute over a party-wall, it is the wall, and not the premises of which it is part, that has to be valued (*Stolworthy* v. *Powell*, 55 L. J. Q. B. 228; *Svthc* per Russell, C. J., *Bassano* v.

Bradley, 1896, 1 Q. B. 645; 65 L. J. Q. B. 479; 74 L. T. 553; 44 W. R. 576).

Rule 1, s. 60, Income Tax Act, 1842, provides that for the purposes of that Act the "Annual Value" of lands, &c, shall be the RACK-RENT; but the subsequent Rules of the Act would seem to bring this definition nearly identical with that in the Parochial Assessments Act, 1836: *Vf. Re Elwes*, sup: *Coltness Co* v. *Black*, 6 App. Ca. 315; 51 L. J. Q. B. 626; 29 W. R. 717; 45 L. T. 145.

The Land Tax "Annual Value" is to be ascertained in the same manner as the Income Tax Annual Value (s. 35, 59 & 60 V. c. 28).

But the def of "Annual Value" provided by the Parochial Assessments Act is not applicable to the Inhabited House Duty payable under the House Tax Act, 1851, 14 & 15 V. c. 36; in that Act the phrase means, the full and just yearly rent which the premises would ordinarily command, and without making any deduction therefrom (*Walker* v. *Brisley*, 1900, 2 Q. B. 735; 69 L. J. Q. B. 875; 83 L. T. 347; 49 W. R. 23; 64 J. P. 709).

The meaning of "Annual Value" of a resigned BENEFICE, as used in s. 8, Incumbents' Resignation Act, 1871 (34 & 35 V. c. 44: *Vh.* s. 11), is its Net Annual Value at the time it is resigned; and the pension based on such value is not subject to diminution because the value of the Benefice afterwards declines (*Robinson* v. *Dand*, 55 L. J. Q. B. 585).

"Clear Yearly Value," Rep. People Act, 1832; *V.* CLEAR.

"Net Annual Value"; *V.* NET.

V. FULL ANNUAL VALUE.

Stat. Def. — *Ir.* 40 & 41 V. c. 56, s. 31; "Annual Value of the Holding," 54 & 55 V. c. 48, s. 42.

ANNUALLY. — "Profits and Gains received annually," 6th case, Sch. D., s. 100, Income Tax Act, 1842, — *i.e.* for the current year; *V. Ryhope Co* v. *Foyer*, 7 Q. B. D. 485; 45 L. T. 404.

V. YEARLY: PER ANNUM.

ANNUITY. — "An annuity is a yearly payment of a certaine summe of money granted to another in fee, for life, or yeares, charging the person of the grantor onely" (Co. Litt. 144 b: *Vf.* Wms. Exs. 718).

The gift of an "Annuity" generally means an annual sum during the life of the annuitant (*Re Taber*, 51 L. J. Ch. 721), "and nothing more" (per Fry, J., *Blight* v. *Hartnoll*, 51 L. J. Ch. 163; 19 Ch. D. 294; affd 52 L. J. Ch. 672; 23 Ch. D. 218: *Vf. Re Foster*, 23 L. R. Ir. 269: *Re Morgan*, 1893, 3 Ch. 222; 62 L. J. Ch. 789); but where there is a direction to purchase an annuity, or a dedication of a fund out of which it is to be purchased, or where the annuity is dealt with as being in existence and operative beyond the life of the first annuitant and no other period can be fixed for such further duration short of making it perpetual, the

annuity will be in perpetuity, — *i.e.* it is a bequest of such a sum as will produce the income intended for the legatee, who may (notwithstanding a direction to the contrary) elect to take that sum or have the annuity; and, in the event of his death before the annuity is purchased, the sum which would have been needed for its purchase will go to his representatives (Wms. Exs. 1061 and cases there cited: *Stokes* v. *Heron*, 2 Dr. & War. 89; 12 Cl. & F. 161: *Ross* v. *Borer*, 31 L. J. Ch. 709; 2 J. & H. 469: *Bent* v. *Cullen*, 40 L. J. Ch. 250; 6 Ch. 235, not followed in *Re Morgan*, sup: *Stokes* v. *Cheek*, 29 L. J. Ch. 922; 28 Bea. 620: *Blight* v. *Hartnoll*, sup: *Hicks* v. *Ross*, 41 L. J. Ch. 677; L. R. 14 Eq. 141: BRITISH FUNDS). That sum is such a sum as, at the price of the day (excluding brokerage), would purchase sufficient 2½ per cent Consols to produce the Annuity (*Hicks* v. *Ross*, 1891, 3 Ch. 499; 60 L. J. Ch. 853; 65 L. T. 200; 40 W. R. 172).

As to the right of an Annuitant to have the Capitalized Value of his *Life* Annuity, instead of the annuity; *V. Re Mabbett*, 1891, 1 Ch. 707; 60 L. J. Ch. 279; 67 L. T. 447; 39 W. R. 537, and cases there cited.

As to an Annuity (charged on a REMAINDER) running during a Life Tenancy; *V. Re Williams*, 64 L. J. Ch. 349; 72 L. T. 324; 43 W. R. 375, following *Jackson* v. *Hamilton*, 9 Ir. Eq. Rep. 430; 3 J. & La T. 702, and distinguishing *Re Bywater*, 18 Ch. D. 17.

As to when charged on Corpus; *V. Re Mason*, 8 Ch. D. 411; 47 L. J. Ch. 660.

"Annuity," s. 8, Legacy Duty Act, 1796, 36 G. 3, c. 52; *V. Crow* v. *Robinson*, 31 L. J. Ch. 516.

V. LEGACY: PECUNIARY LEGACY: GOVERNMENT ANNUITIES: PERPETUAL ANNUITY: PURCHASE ANNUITY: SAVINGS.

"Annuity," s. 175, Bankry Act, 1849; *V. Parker* v. *Ince*, 4 H. & N. 53; 28 L. J. Ex. 189.

"Annuities or Periodical Sums," "Annuity," or Sum payable "at stated periods"; *V.* PERIODICAL.

Stat. Def. — 33 & 34 V. c. 35, s. 5; 36 & 37 V. c. 57, s. 7. — *Scot.* 39 & 40 V. c. 49, s. 3.

Vh. 1 Encyc. 258-262; 10 Ib. 34.

ANNUL. — *V.* NULL.

"Annulling" a Bankry generally includes "superseding" (Bankry Act, 1849, s. 276; Bankry Act, 1861, s. 229; 20 & 21 V. c. 60, s. 4).

ANNUM. — *V.* PER ANNUM.

ANOTHER. — A promise "To answer for Another," s. 4, Statute of Frauds, means that the promise is to be made *to* the original Creditor (*Eastwood* v. *Kenyon*, 9 L. J. Q. B. 409; 11 A. & E. 438; 3 P. & D. 276: *Reader* v. *Kingham*, 32 L. J. C. P. 108; 13 C. B. N. S. 344: *Cripps* v. *Hartnoll*, 32 L. J. Q. B. 381; 4 B. & S. 414), *by* a person having no interest in the transaction. Accordingly, under this latter branch

of the def, the obligation on a DEL CREDERE commission, is not such a promise (*Couturier* v. *Hastie*, 8 Ex. 40, adopting *Wolff* v. *Koppel*, 5 Hill N. Y. Rep. 458: *Wickham* v. *Wickham*, 2 K. & J. 478), nor is an Agreement the office of which is to regulate the terms of the promisor's employment (*Sutton* v. *Grey*, 1894, 1 Q. B. 285; 63 L. J. Q. B. 633; 69 L. T. 673; 42 W. R. 195), or which relates to property in which he is interested (*Fitzgerald* v. *Dressler*, 7 C. B. N. S. 374; 29 L. J. C. P. 113), or which, as distinguished from a GUARANTEE, creates an original INDEMNITY by the promisor (*Re Hoyle*, cited NOTE: *Guild* v. *Conrad*, 1894, 2 Q. B. 885; 63 L. J. Q. B. 721; 71 L. T. 140; 42 W. R. 642). *V.* DEBT DEFAULT OR MISCARRIAGE: I WILL SEE YOU PAID.

A Male Person procuring any Male Person to commit with himself gross indecency, has procured it "with Another Male Person," within s. 11, 48 & 49 V. c. 69; for this phrase is not equivalent to "with Another Male Person other than himself" (*R.* v. *Jones*, 1896, 1 Q. B. 4; 65 L. J. M. C. 28; 44 W. R. 110; 73 L. T. 584; 60 J. P. 89: *Vf. Anon.*, cited PROCURE). *Cp.* APPOINT.

ANSWER. — A certificate of indemnity to which a witness is entitled who shall "answer" questions, means that he shall "truly answer" (*R.* v. *Hulme*, 39 L. J. Q. B. 149; L. R. 5 Q. B. 377). In that case Lush, J., said, "Wherever the legislature speaks of 'answering' questions, it means that which is intended by the words 'true answer,' — 'answer' in the sense in which the word is ordinarily and popularly used."

"A Party who obtains an Order for time 'to answer' (nothing further being specified), is at liberty to plead, whether the matter of the plea be the disability of the plt, or any other head of defence" (per Cottenham, C., *Hunter* v. *Nockolds*, 2 Phill. 543; 17 L. J. Ch. 253).

"'*Presently answer*,' held, in Plowden, only presently become debtor, not presently pay" (Dwar. 690).

"Promise to answer for Another," s. 4, Stat. of Frauds; *V.* ANOTHER.

ANSWERABLE. — *V.* INDEMNIFY.

"Answerable" is an equivalent for "LIABLE" (per Ld Gordon, *Wear Commrs* v. *Adamson*, 2 App. Ca. 775).

"Answerable *in damages*," s. 54, Mer. Shipping Act, 1862; *V. Stoomvart Maatschappy Nederland* v. *P. & O. Nav. Co*, 7 App. Ca. 795; 52 L. J. P. D. & A. 1, over-ruling *Chapman* v. *Royal Netherlands Co*, 48 L. J. Ch. 449; 4 P. D. 157. The first of these cases decides that in a COLLISION where both ships are in fault, only one of them is really "answerable," or, to use the other phrase, "liable" in damages, viz., the one who sustains the lesser damage, "such damages representing the moiety of the difference of the aggregate loss beyond the point at which the one loss balances the other"; there is but one compulsory payment. Therefore, the owner of the ship which suffers the greater loss, cannot

recover on a Protection Policy assuring him against what he may "*become liable* to pay" in respect of a Collision, because he does not become liable to pay anything (*London S. S. Owners Insrce* v. *Grampian S. S. Co*, 59 L. J. Q. B. 549; 24 Q. B. D. 663; 62 L. T. 784; 38 W. R. 651).

ANTECEDENT. — "Antecedent Debt," s. 3, 5 & 6 V. c. 39; *V. Macnee* v. *Gorst*, 15 W. R. 1197.

ANTICIPATE. — Where there is a gift for life to a married woman, subject to a Restraint on Alienation, and on her "anticipating" the same, then over; the gift over will not take effect on her executing during coverture what professes to be a mtge of her life estate, because she has no power to mtge; "anticipating" will not be construed "attempting to anticipate" (*Re Wormald*, cited ALIENATION).

ANTICIPATION. — A restraint on "Anticipation" is equivalent to a restraint on ALIENATION (*Re Currey*, 55 L. J. Ch. 906; 32 Ch. D. 361: *Re Grey*, 56 L. J. Ch. 207).

As to Restraint on Anticipation by a married woman; *V.* Godefroi, 585 *et seq.*: — As to what words will create such Restraint; *V.* RESTRAINT ON ALIENATION: — As to removing such Restraint; *V.* BENEFIT.

There is an Anticipation of an INVENTION, if there has been (1) Prior PUBLICATION; or (2) Prior USE of it: *Vh.* Edmunds on Patents, ch. 4, s. 3: Frost on Patents, ch. 3: as to Prior Use, *Vf. Heath* v. *Smith*, 3 E. & B. 256; 23 L. J. Q. B. 166: *Harwood* v. *G. N. Ry*, 11 H. L. Ca. 654.

ANTIENT. — *V.* ANCIENT.

ANTIQUITY. — *V.* LAW LIBRARY.

ANY. — "Any," is not confined to a plural sense (*Eaton* v. *Lyon*, 3 Ves. 694).

"Any" is a word which excludes limitation or qualification (per Fry, L. J., *Duck* v. *Bates*, 53 L. J. Q. B. 344; 12 Q. B. D. 79); "as wide as possible" (per Chitty, J., *Beckett* v. *Sutton*, 51 L. J. Ch. 433). A remarkable instance of this wide generality is furnished in *Re Farquhar* (4 Notes of Ecc. Cases, 651, 652, cited Wms. Exs. 106), wherein the words "any Soldier," &c, in s. 11, Wills Act, 1837, were construed as including minors, so that soldiers and seamen, within that section, can make NUNCUPATIVE Wills though under age. So, a power in a Lease, enabling the Lessor to resume "possession of any Portion of the premises demised," enables him to resume all (*Liddy* v. *Kennedy*, L. R. 5 H. L. 134). So, a Notice of an Extraordinary Meeting, under s. 70, Comp. C. C. Act, 1845, "to remove any of the present Directors," justifies a Resolution to remove them all (*Isle of Wight Ry* v. *Tahourdin*, 25 Ch.

D. 332; 53 L. J. Ch. 359; 50 L. T. 132; 32 W. R. 297). *Vf.* AN: POPULAR ACTION.

So, "under a Devise to three persons as tenants in common in tail, and in default of such issue 'of *any of them*,' over; Cross Remainders were implied, and 'any,' in effect, read '*all*'" (Watson, Eq. 1410, citing *Powell* v. *Howell*, L. R. 3 Q. B. 654; 37 L. J. Q. B. 294; 9 B. & S. 704: *V. Holmes* v. *Meynell*, Raym. T. 452).

But its generality may be restricted by the subject matter or the context. Thus, "Any ACTION," s. 36, Co. Co. Act, 1856, meant any Co. Co. Action (*Re Copp*, 6 Q. B. D. 607; 50 L. J. Q. B. 233). So, under R. 295, Bankry R. 1870, "any CREDITOR" might oppose registration of resolutions; but that meant "any creditor who had previously proved his debt" (*Ex p. Bayster*, 53 L. J. Ch. 124; 24 Ch. D. 477: *Cp. Wells* v. *Greenhill*, 5 B. & Ald. 869). So, "any other PERSON," in R. 32, Ord. 42, R. S. C., means, by the context, any Officer of a judgment-debtor Corporation (*Irwell* v. *Eden*, 18 Q. B. D. 588; 56 L. J. Q. B. 446; 56 L. T. 620; 35 W. R. 511); and by a context "any person" may mean any eligible person (*Tobacco Pipe Makers* v. *Woodroffe*, 7 B. & C. 838: *Vf. Metrop. Bd. Works* v. *Lond. & N. W. Ry*, 49 L. J. Ch. 355; 14 Ch. D. 521). So, under Romilly's Act, 52 G. 3, c. 101, "any two or more Persons" to present a petition, means persons having an interest (*Re Bedford Charity*, 2 Swanst. 518). *Vf. R.* v. *Comptroller of Patents*, inf.

So, in *Weston* v. *Barton* (6 Taunt. 673) a Bond for all advances made by Bankers (named, and so described) "or any or either of them," was controlled by the context as not securing advances by the survivors after the death of one of them.

But the words "any *Person*," s. 13 (3), Debtors' Act, 1869, is not restricted to cases of bankruptcy, and applies to any person whether bankrupt or not (*R.* v. *Rowlands*, 51 L. J. M. C. 51; 8 Q. B. D. 530). *Va. Ex p. Harper, Re Tait*, 52 L. J. Ch. 117, and *Ex p. Norris, Re Sadler*, 56 L. J. Q. B. 93; 17 Q. B. D. 728; 35 W. R. 19, as to the phrase, "*at any Time*" in the Bankry Act.

As to the phrase "any PARTY," R. S. C.; *V. Shaw* v. *Smith*, 56 L. J. Q. B. 174; 18 Q. B. D. 193; 56 L. T. 40; 35 W. R. 188, explaining *Brown* v. *Watkins*, 55 L. J. Q. B. 126; 16 Q. B. D. 125.

A local Harbour Act which imposed a penalty on "any person" who placed articles "on any *quay, wharf, or landing place*, within 10 feet of the quay head, or on any space of ground immediately adjoining the said haven, within 10 feet from high-water mark," so as to obstruct the free passage, was held inapplicable to private property over which there was no public right of way (*Harrod* v. *Worship*, 30 L. J. M. C. 165; 1 B. & S. 381).

"Any Carriage"; *V.* CARRIAGE, at end.

"Any Cause"; *V.* ALTERATION.

The usual clause in conditions of Sale giving interest, if from "any

Cause whatever" the purchase be delayed, may, *semble*, be modified by the Court, and does not include the vendor's own avoidable default (*Kershaw* v. *Kershaw*, L. R. 9 Eq. 56; 21 L. T. 651; 18 W. R. 477: *Monckton to Gilzean*, 54 L. J. Ch. 257; 27 Ch. D. 555; 51 L. T. 320; 32 W. R. 973: *De Visme* v. *De Visme*, 1 Mac. & G. 336, on *whlcv* per Romilly, M. R., *Vickers* v. *Hand*, 26 Bea. 633, citing *Sherwin* v. *Shakspear*, 5 D. G. M. & G. 517: *Sv.* Dart, 143, 144, 719–723: *Vf. Re Gold and Norton*, W. N. (85) 6; 52 L. T. 321; 33 W. R. 333: *Sthlc* not followed in *Re Riley to Streatfield*, 34 Ch. D. 386). The stringency of such a clause is increased by an exception of "other than the WILFUL DEFAULT of the Vendor" (Dart. 723).

"Any *other Cause* whatever"; *V. Sun Insrce* v. *Hart*, 58 L. J. P. C. 69.

"Any *Company*"; Stat. Def., 31 & 32 V. c. 110, s. 3.

"Any *Court of Record*"; Stat. Def., 41 & 42 V. c. 49, s. 74.

"Any *Damage*"; *V.* FULL COMPENSATION.

"Any DECREE or Order," s. 1, 15 & 16 V. c. 55; *V. Beckett* v. *Sutton*, 19 Ch. D. 646; 46 L. T. 481; 51 L. J. Ch. 432.

"In any Direction"; *V.* DIRECTION.

"Any ESTATE, or Interest," includes an Equitable Estate (per Best, J., *R.* v. *Geddington*, 2 B. & C. 135).

"Any Bird of Game"; *V.* GAME, *Animals.*

"Any *Gaming*," s. 17 (1), 35 & 36 V. c. 94, prohibits a licensed person from allowing even lawful games on his premises, if played for money or money's worth (*Foot* v. *Baker*, 6 Sc. N. R. 306; 5 M. & G. 335; 11 J. P. 444: *Danford* v. *Taylor*, 33 J. P. 277: *Luff* v. *Leaper*, 36 J. P. 54: *R.* v. *Ashton*, 22 L. J. M. C. 1; 1 E. & B. 286: *Bew* v. *Harston*, 47 L. J. M. C. 121; 3 Q. B. D. 454; 26 W. R. 915; 42 J. P. 808: *Dyson* v. *Mason*, 58 L. J. M. C. 55; 22 Q. B. D. 351).

"Any of the Inhabitants"; *V.* INHABITANTS.

"Any *Land*," s. 8, Real Property Limitation Act, 1874, includes only land within the jurisdiction (*Sutton* v. *Sutton*, W. N. (83) 88; *V. S. C.*, cited CHARGED UPON, for "any *Sum* secured by mortgage").

"Any Lawful Purpose"; *V.* LAWFUL PURPOSE.

"In any *Manner* he may think proper," s. 27, Wills Act, 1837; *V.* GENERAL POWER.

"In any *Manner* vest"; *V. Re De Ros*, 31 Ch. D. 81; 55 L. J. Ch. 73; 53 L. T. 524; 34 W. R. 36.

"Any Misdemeanour"; *V.* MISDEMEANOUR.

"On any *Money received*"; *V. Fisher* v. *Drewitt*, W. N. (78) 151.

"Any Officer"; *V.* OFFICER: Stat. Def., 23 & 24 V. c. 114, s. 1.

"Any *One* accident"; *V.* ONE ACCIDENT.

The penalty for an unauthorized representation of "any PART" of a DRAMATIC Piece, s. 2, 3 & 4 W. 4, c. 15, is not incurred unless a material and substantial part of it be given (*Planchè* v. *Braham*, 7 L. J.

C. P. 25; 4 Bing. N. C. 17: *Chatterton* v. *Cave*, 47 L. J. C. P. 545; 3 App. Ca. 483).

A Power of SALE of "any Part" of an Estate would, probably, authorize the sale of the whole of it (*Rendlesham* v. *Meux*, 14 Sim. 249: *Cooke* v. *Farrand*, 7 Taunt. 122); and a Power to Appoint, or a Bequest of, "any Part" of a testator's estate, enables the donee to take or appoint it all (1 Jarm. 361, 362, citing *Cooke* v. *Farrand*, sup: *Arthur* v. *Mackinnon*, 48 L. J. Ch. 534; 11 Ch. D. 385: *Vf.* APPROPRIATE). But the power to sell "any Part" of mortgaged property, s. 19 (1), Conv. & L. P. Act, 1881, means, "a separable part of the mortgaged property in the state in which it was subjected to the mtge" (per Bowen, L. J., *Re Yates, Batcheldor* v. *Yates*, 57 L. J. Ch. 705); and the power does not enable a mtgee to break up, or dismantle, the property, — *e.g.* by selling fixtures separately from the building to which they are affixed (*S. C.*, 57 L. J. Ch. 697; 38 Ch. D. 112; 59 L. T. 47; 36 W. R. 563: *Re Brooke*, 1894, 2 Ch. 600; 64 L. J. Ch. 21); yet it does enable him to sell "any part" so as to carry with it all legal incidents ordinarily accompanying a grant, *e.g.* Rights of Way, or Light (*Born* v. *Turner*, 1900, 2 Ch. 211; 69 L. T. Ch. 593; 83 L. T. 148; 48 W. R. 697).

A Power to LEASE "any Part" of Land, given by Deed or Will, does not authorize a Lease of the land, or any part of it, with a reservation of Sporting Rights or Minerals, — "Part," in such a connection, means, the whole of so much of the land as is divided from the rest vertically, and not horizontally (*Dayrell* v. *Hoare*, 9 L. J. Q. B. 299; 12 A. & E. 356); because, in a private and limited Power of that kind, its donee cannot, whilst exercising it quà one "part" of the property, impose a burden on another part (per Rigby, L. J., *Re Gladstone*, 69 L. J. Ch. 457). But, in any view, *Dayrell* v. *Hoare*, is no authority for the construction of the large general Powers of Leasing given by s. 6, S. L. Act, 1882, or those given by s. 18, Conv. and L. P. Act, 1881, each of which sets of Powers is over "LAND," in the wide meaning of that word which those Acts provide (and which includes "Incorporeal Heredits"); accordingly, a TENANT FOR LIFE has power, under the first of those sections, to grant a BUILDING LEASE of Settled Land with a reservation of Mines and Minerals (*Re Gladstone*, 1900, 2 Ch. 101; 82 L. T. 515; 69 L. J. Ch. 455; 48 W. R. 531, over-ruling *Re Nevill and Newell*, 1900, 1 Ch. 90: *Vf. Re Rutland*, 69 L. J. Ch. 603: s. 17, S. L. Act, 1882); and a Mtgor in Possession has power, under s. 18, Conv. and L. P. Act, 1881, to grant an Occupation Lease of a House and its Furniture, together with Sporting Rights over the land comprised in the mtge, especially if those Rights had been severed from the land before the mtge (*Browne* v. *Peto*, cited OCCUPATION LEASE).

As to effect of "any Part" in a stipulation against sub-letting; *V.* ASSIGN: UNDERLEASE.

"Any Part" of a BOROUGH, within 7 miles of which a man must

reside as a condition of the Parliamentary Franchise, s. 27, Rep. People Act, 1832, means, the *nearest* part (*Oldham Case*, 1 O'M. & H. 158).

Costs of an Uncertificated Solr are not "recoverable in any Action, Suit, or Matter, by any PERSON," s. 12, 37 & 38 V. c. 68; *V.* MAINTAIN.

Deposit in hands of "any Person," s. 18, Gaming Act, 1845; *V.* per Kay, L. J., *Strachan* v. *Universal Stock Exchange* (No. 2), 65 L. J. Q. B. 181: DEPOSIT.

"Any Person," riotous, &c, in a Churchyard, or Burial Ground, s. 2, 23 & 24 V. c. 32, includes a Clergyman (*Vallancey* v. *Fletcher*, 1897, 1 Q. B. 265; 66 L. J. Q. B. 297; 76 L. T. 201; 45 W. R. 367; 61 J. P. 183).

"Any Person," s. 11 (1), Patents, &c, Act, 1883, means, any person having an interest in the particular Patent (*R.* v. *Comptroller of Patents*, 1899, 1 Q. B. 909; 68 L. J. Q. B. 568; 80 L. T. 777). *Vf. Re Bedford Charity*, sup: AGGRIEVED.

"Any other Person," s. 13, 54 & 55 V. c. 37; *V. Pollock* v. *Moses*, 63 L. J. M. C. 116; 70 L. T. 378; 58 J. P. 527.

"Any Person not named as Deft," R. 25, Ord. 12, R. S. C.; *V.* LANDLORD.

Profits accruing to "Any Person . . . from any kind of *Property* whatever," s. 2, Sch. D., Income Tax Act, 1853, 16 & 17 V. c. 34; *V. Colquhoun* v. *Brooks*, 57 L. J. Q. B. 439; 21 Q. B. D. 52; 59 L. T. 661; 36 W. R. 657; affd 59 L. J. Q. B. 53; 14 App. Ca. 493; 61 L. T. 518; 38 W. R. 289.

"Any *Place*"; *V.* PLY: PLACE.

"Any PORT"; *V.* LIBERTY TO CALL.

"Any *Power*," &c, 997, Code of Civil Procedure, Lower Canada; *V. Casgrain* v. *Atlantic & N. W. Ry*, 1895, A. C. 282; 64 L. J. P. C. 88.

"Any other *Purpose*"; *V. Re Norris*, W. N. (83) 35, 65.

Judge to make Note of "any *Question of Law*," s. 120, Co. Co. Act, 1888, means of *each* Question (*R.* v. *Kerr*, 70 L. T. 595).

"Any Settlement"; *V.* SETTLEMENT.

"Any Ship"; *V.* SHIP.

"At any Stage of the Proceedings," R. 11, Ord. 16, R. S. C.; *V.* STAGE.

"Any Time"; *V.* AT ANY TIME.

"Any Trade or Business"; *V.* TRADE.

"Any Trust"; *V.* TRUST.

"In any *Way*"; *V. Mills* v. *Dunham*, cited CUSTOMER.

"Any Woman he may marry"; *V.* WOMAN.

Vf. Harrison v. *Cornwall Minerals Ry*, 51 L. J. Ch. 98; 18 Ch. D. 334: *Fletcher* v. *Hudson*, 49 L. J. Ex. 793; 5 Ex. D. 287; 45 J. P. 5.

V. ONE: PROCEEDING.

ANYTHING. — "If anything remaining"; *V.* DISPOSE OF.

APART. — *V.* LIVING APART: SEPARATE: NEGLECT: SET APART.

APOLOGY. — *V.* FULL APOLOGY.

APOTHECARY. — "An Apothecary is a person who professes to judge of internal disease by its symptoms, and applies himself to cure that disease by medicines" (per Cresswell, J., *Apothecaries Co* v. *Lotinga*, 2 Moo. & R. 499); "a Chymist may prepare and vend, but not prescribe or administer, medicine" (per Best, C. J., *Allison* v. *Haydon*, 4 Bing. 621; *Vf.*, on this distinction, *Apothecaries Co* v. *Greenough*, inf.).

A person advising patients, and compounding and selling his own medicines, but not making up physicians' prescriptions, is acting as an "Apothecary" within s. 20, 55 G. 3, c. 194 (*Apothecaries Co* v. *Allen*, 4 B. & Ad. 625; 1 N. & M. 413: *Ib.* v. *Greenough*, 1 Q. B. 799; 11 L. J. Q. B. 156; 1 G. & D. 378); so, of a Chemist who habitually advises the medicines he sells (*Ib.* v. *Nottingham*, 34 L. T. 76). But acting as a Surgeon or Accoucheur, is not practising as an Apothecary, nor is the supplying of medicines gratis (*Woodward* v. *Ball*, 6 C. & P. 577). *Vf.* *Apothecaries Co* v. *Warburton*, 3 B. & Ald. 43, 44, where it is stated that the "most important part of the duty of an Apothecary is to make up the prescriptions of physicians."

A person acts as an Apothecary within s. 20, if he selects and supplies medicines for the purpose of individual cure, even though he may also be an Herbalist, and, as such, protected by 34 & 35 H. 8, c. 8 (*Apothecaries Co* v. *Welch*, Times, 21st March, 1890).

An "Apothecary," within the late Bankry def of "Trader," included a man (*e.g.* Palmer, the Rugeley murderer) who carried on the business of Surgeon and Apothecary, and made up medicines for his patients, but did not make them up from other persons' prescriptions, or sell drugs to the public (*Ex p. Crabb, Re Palmer*, 25 L. J. Bank. 45; 8 D. G. M. & G. 277).

A bequest to "the Surgeon and Resident Apothecary" of the S. Dispensary "or any who may hold the like situations"; held, to include the two Surgeons to the Dispensary and also the Dispenser, there being no Resident Apothecary (*Ellis* v. *Bartrum*, 25 Bea. 109).

Stat. Def. — 16 & 17 V. c. 97, s. 132.

Note. James I. incorporated the Apothecaries of London (6 & 7 W. 3, c. 4, s. 1); and it has been contended that that statute was the first recognition of the right of Apothecaries to attend patients, as well as to make up and sell medicines, though *Rose* v. *College of Physicians* (5 Brown, P. C. 553) is sometimes cited as having first established such right (1 Q. B. 805, *n*).

V. PRACTICE: SURGEON: CHEMIST: 1 Encyc. 267.

APPAREL. — *V.* TACKLE: WEARING APPAREL: PARAPHERNALIA.

APPARENT. — By s. 64, Bills of Ex. Act, 1882, an alteration in a Bill which is not "apparent" will not affect a HOLDER IN DUE COURSE. "By the word 'apparent' I do not think it is meant that the holder only should not have had the means of detecting the alteration. If *the party sought to be bound* can at once discern by some incongruity on the face of the (Bill or) Note and point out to the holder that it is not what it was — that is to say, that it has been materially and fraudulently altered — I think the alteration is an 'apparent' one, even if it is not an obvious one to all mankind" (per Denman, J., *Leeds Bank* v. *Walker*, 52 L. J. Q. B. 594; 11 Q. B. D. 84: *Vf. Scholfield* v. *Londesborough*, cited ACCEPTANCE).

V. OBVIOUS: APPARENT POSSESSION.

"Apparent," s. 21, Wills Act, 1837, means, apparent on the face of the instrument in the condition in which it is left by the testator (*Re Horsford*, 44 L. J. P. & M. 9; L. R. 3 P. & D. 211); but, though no physical interference with the document is allowable, yet it may be examined with magnifying glasses and held up to the light and the alteration may be framed with an opaque substance so as to exclude superfluous light; and if an expert, after such an examination, can decipher the original words and can satisfy the Court thereof, then they remain "apparent," within the section (*Ffinch* v. *Combe*, 1894, P. 191; 63 L. J. P. D. & A. 113; 70 L. T. 695).

V. HEIR APPARENT.

APPARENT EASEMENT. — Apparent Easements are "not only those which must necessarily be seen, but those which may be seen and known on a careful inspection by a person ordinarily conversant with the subject" (Gale, 21, 139, adopted, *Pyer* v. *Carter*, 26 L. J. Ex. 261; 1 H. & N. 922).

V. NECESSARY.

APPARENT POSSESSION. — Quà Bill of Sale; Stat. Def., 41 & 42 V. c. 31, s. 4; (Ir.) 42 & 43 V. c. 50, s. 4, taken from 17 & 18 V. cc. 36, 55. *V.* POSSESSION.

APPARITOR. — "Apparitors," are officers appointed to execute the proper Orders and Decrees of the Ecclesiastical Court (Phil. Ecc. Law, 951, 952).

APPEAL. — The right of Appeal is only by statute. It is not in itself a necessary part of the procedure in an action, but "is the right of entering a Superior Court and invoking its aid and interposition to redress the error of the Court below. It seems absurd to denominate this paramount right, part of the practice of the inferior tribunal" (per Westbury, C., *A-G.* v. *Sillem*, 33 L. J. Ex. 209; 10 H. L. Ca. 704).

V. PRACTICE: As to the various Appeals, *V.* 1 Encyc. 269–283.

A motion before a Judge in Court to discharge or vary an Order made by him in Chambers is, not an Appeal but, a Re-Hearing (per Cotton, L. J., *Re Giles*, 43 Ch. D. 395; 59 L. J. Ch. 226; 62 L. T. 375; 38 W. R. 273: *Boake* v. *Stevenson*, 1895, 1 Ch. 358; 64 L. J. Ch. 261; 71 L. T. 722; 43 W. R. 189). So, an Application to the Court of Appeal to discharge or vary an Order, made by one of its members under s. 52, Jud. Act, 1873, is not an Appeal within s. 1, Jud. Act, 1894 (*Boyd* v. *Bischoffscheim*, 1895, 1 Ch. 1; 64 L. J. Ch. 148); but an application to vary the Findings of an Official Referee, is such an Appeal (*Daglish* v. *Barton*, 81 L. T. 551; 48 W. R. 50; 68 L. J. Q. B. 1044).

"NOTICE of Appeal," Sch. C. s. 14, Petty Sessions Clerk (Ir) Act, 1858, 21 & 22 V. c. 100, does not include the Notice to be given by the Appellant under s. 24, 14 & 15 V. c. 93 (*R.* v. *Cork Jus.*, 30 L. R. Ir. 679).

Stat. Def. — 53 & 54 V. c. 27, s. 15. — *Ir.* 59 & 60 V. c. 47, s. 22.

"Appeale of felonie" (Litt. s. 500); — "*Appellum* signifieth *accusatio*, an accusation, and therefore to appeale a man is as much as to accuse him; and in ancient bookes he that doth appeale is called *accusator*, and is peculiarly in legall signification applyed to appeales of three sorts," — *i.e.* (1) Wrong to Ancestor; (2) Wrong to Husband; (3) Wrong to self. "The word appellum is derived of *appeller*, to call, because *appellans vocat reum in judicium*, he calleth the defendant to judgment, and the plaintife is called the appellant" (Co. Litt. 287 b).

APPEAL COURT. — *V.* s. 13 (2), Interp. Act, 1889.

APPEAR. — A Condition of a Legacy, that legatee "personally appear before exors" and prove identity, is performed by delivering such proof to two of the exors and to the agent of the third (*Tanner* v. *Tebbutt*, 12 L. J. Ch. 216).

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

A statutory power enabling a Body to "appear" by, *e.g.* their Clerk, does not entitle it *to be heard* in that way (*R.* v. *London Jus.*, 1896, 1 Q. B. 659; 65 L. J. M. C. 120; 74 L. T. 523; 44 W. R. 485; 60 J. P. 420).

A state of things, "made to appear"; *V. Stanley* v. *Fielden*, 5 B. & Ald. 431, 433, 437. *Semble*, the phrase is nearly, if not quite, synonymous with "proved."

But where the phrase is, — *e.g.* s. 36, P. H. Act, 1875, — if a state of things shall "appear" to a Local Authority, "that is obviously for the purpose of making the Local Authority the judge," — *i.e.* it is their opinion, and not the actual fact, which is predicated (per Channell, J., *Robinson* v. *Sunderland*, cited SUFFICIENT CAUSE).

APPEARANCE. — The actual "Appearance" of the parent is not a condition precedent to making an order for Vaccination under s. 31, 30

& 31 V. c. 84 (*R.* v. *Cinque Ports Jus.*, 55 L. J. M. C. 157; 17 Q. B. D. 191: *Dutton* v. *Atkins*, 40 L. J. M. C. 157; L. R. 6 Q. B. 373); and a similar rule was laid down as regards the power, under an old Act, to discharge an Indenture of Apprenticeship "on the Master's appearance" (*Ditton's Case*, 2 Salk. 489).

APPENDAGES AND APPURTENANCES. — An assignment of "all the Appendages and Appurtenances" of a Ship, includes her chronometer (1 Maude & P. 53, citing *Langton* v. *Horton*, 11 L. J. Ch. 299).

"The case upon the ship *Dundee* (1 Hagg. Adm. 121), upon which we have a judgment by Ld Stowell and by Ld Tenterden, has only gone to the extent of establishing that, under 53 G. 3, c. 159, in the expression 'Ship and her appurtenances,' the word '*Appurtenances*' must be construed to extend to anything belonging to the owners which is on board a ship for the *accomplishment* of the object of the voyage and adventure on which she is engaged; but the CARGO itself is the object and purpose of the adventure, and not something provided as a means for the attainment of the object" (per Langdale, M. R., *Langton* v. *Horton*, 11 L. J. Ch. 238; 5 Bea. 9); and it was accordingly there held that a cargo of oil, though acquired by a whaler during her adventure, was not included in an assignment of her "Appurtenances." *V.* APPURTENANCES, at end.

APPENDANT. — "Appendant, is any inheritance belonging to another that is superior or more worthy. In law it is called *pertinens*, *quasi invicem tenens*, holding one another; a word indifferent both to things appendant, and things appurtenant. The quality and nature of the things do make the difference. Appendants are ever by prescription; but appurtenants may be created in some cases at this day" (Co. Litt. 121 b). *V.* APPURTENANCES: INCORPOREAL HEREDIT.

Common Appendant; *V.* COMMON. *Cp.* In Gross, sub GROSS.

Vh. 1 Encyc. 284.

APPERTAINING. — The primary sense of "Appertaining" is much the same as APPURTENANCES, *whv.*

"There is, however, a difference between the devise of a house *and the appurts*, and of a house *with the lands appertaining thereto.* It is clear that by the latter expression *some* lands are intended, and therefore the primary sense of the word 'appertaining' is excluded" (1 Jarm. 782, and cases there cited).

Vf. Williams v. *Phillips*, 51 L. J. Q. B. 102; 8 Q. B. D. 437: *Townsend* v. *Champernown*, 1 Y. & J. 538: BELONGING.

APPLICABLE. — British laws prescribed for a Colony "In so far as applicable"; *V. Jex* v. *McKinney*, 58 L. J. P. C. 67.

Adoption by a Special Act of a General Act, "so far as applicable to, and not inconsistent with, the provisions" of the Special Act; *V. R.* v. *G. W. Ry*, 1 E. & B. 253; 22 L. J. Q. B. 65: *Cp.* EXPRESSLY VARIED.

APPLICATION. — "Application," in R. 15, Ord. 58, R. S. C., includes the hearing of the action as well as an interlocutory proceeding (*International Financial Socy* v. *Moscow Gas Co*, 47 L. J. Ch. 258; 7 Ch. D. 241; 37 L. T. 736; 36 W. R. 272). *Vf.* REFUSAL.

Notice of Motion to set aside an Award, is a commencement of an "Application" under R. 14, Ord. 64, R. S. C. (*Re Gallop and Central Queensland Meat Co*, 59 L. J. Q. B. 460; 25 Q. B. D. 230; 62 L. T. 834; 38 W. R. 621).

"Application," s. 60, Land Law (Ir) Act, 1881; *V. Chaine* v. *Nelson*, 12 L. R. Ir. 272.

"Special Application"; *V.* SPECIAL.

V. UNIVERSAL APPLICATION.

APPLIED. — *V.* PRODUCTIVE CAPITAL.

"Capital Money to be applied," s. 15, S. L. Act, 1890; *V. Re Bristol*, cited CAPITAL MONEY.

Money "to be applied" for Maintenance; *V. Williams* v. *Papworth*, cited MAINTENANCE.

"Appropriated and applied"; *V.* APPROPRIATED.

APPLOT. — Quà Grand Jury (Ir) Act, 1856, 19 & 20 V. c. 63, "'Applot' and 'Applotment,' shall include 'Assess' and 'Assessment'" (s. 19).

APPLY. — Though a discretionary Trust "to PAY TO" A. income which has been forfeited by his bankruptcy, is bad (as being in derogation of the bankruptcy), yet such a Trust "to *apply*" the income for A.'s "BENEFIT during the remainder of his life" is good, and the trustees may spend the whole, or any part, of the income in A.'s MAINTENANCE, in the widest and most general sense of that word (*Re Bullock, Good* v. *Lickorish*, 60 L. J. Ch. 341; 64 L. T. 736; 39 W. R. 472).

"Before he applies"; *V.* BEFORE.

"Applies" a Trade Description to Goods; *V.* TRADE DESCRIPTION.

APPOINT. — A power "to appoint" to such persons as the donee may think fit enables him to appoint to himself or wife (Sug. Pow. 25).

So, under a power "to appoint" an Executor to a Will, the donee may appoint himself (*Re Ryder*, 31 L. J. P. M. & A. 215; 2 Sw. & T. 127): but, *semble*, a person nominated to appoint a New Trustee cannot appoint himself (*Re Skeats*, 58 L. J. Ch. 656; 42 Ch. D. 522: *Re Newen*, 1894, 2 Ch. 297; 63 L. J. Ch. 763; 43 W. R. 58), but in those cases the decision proceeded also on the ground that the power was given to appoint "any *other* person." *Cp.* ANOTHER.

"Appoint," in a general bequest, may be sufficient to execute a Special Power of Appointment (*Pidgely* v. *Pidgely*, 1 Coll. 255: *Sv. Re Richardson*, 17 L. R. Ir. 436).

V. GENERAL POWER: POWER: EXPRESSLY REFER; LIMIT.

Where there is a SINGLE ARBITRATOR, "Notice to appoint an arbitrator," s. 5, Arb. Act, 1889, means, Notice to concur in appointing (per Esher, M. R., *Re Eyre and Leicester*, 1892, 1 Q. B. 136; 61 L. J. Q. B. 438; 65 L. T. 733; 40 W. R. 203).

V. ACKNOWLEDGE.

APPOINTED. — When a statute declares that a Class of persons shall exercise a certain function, — *e.g.* shall be Improvement Commrs, — each member of that class is "appointed" to exercise the function (*Nicholson* v. *Fields*, 31 L. J. Ex. 233; 7 H. & N. 810).

The regular employment of a person in a particular function, is equivalent to his being "appointed" to it, unless some special mode of appointment is prescribed (*Frost* v. *Bolland*, 5 B. & C. 611). *V.* TREASURER: *R.* v. *Slatter*, cited ACCEPTED.

"Appointed Day"; Stat. Def., Loc Gov Act, 1894, s. 84 (4).

APPOINTEE. — "Appointee," s. 1, Real Property Limitation Act, 1833; *V. Re Devon*, 1896, 2 Ch. 562; 65 L. J. Ch. 810; 75 L. T. 178; 45 W. R. 25.

APPOINTMENT. — A Power to appoint "by Will *or Appointment*," to be signed and sealed in the presence of one or more witnesses, may be exercised by Deed (Sug. Pow. 211).

A Clause of Cesser, if no "Appointment" of a specified fund is made, means, if no *part* of the fund is appointed (*Arnott* v. *Tyrrell*, 21 Bea. 49).

As to execution of Power of Appointment; *V.* GENERAL POWER: SPECIAL.

V. APPOINT: APPOINTED.

The "appointment" by a Justice of a Select Vestryman, s. 1, 59 G. 3, c. 12, was merely a ministerial authentication of the latter's nomination and election (*R.* v. *Adams*, 2 A. & E. 413).

Quâ Volunteer Act, 1863, 26 & 27 V. c. 65. "'Appointments,' includes Accoutrements and Equipments of every kind, other than Clothing" (s. 49); — a def adopted for the Naval Artillery Volunteer Act, 1873, 36 & 37 V. c. 77 (s. 43).

APPORTION. — "Apportion signifieth a division or partition of a rent, common, &c, or a making of it into parts" (Co. Litt. 147 b). "This definition seems incomplete. 'Apportionment,' frequently denotes, not division but, distribution; and, in its ordinary technical sense, the distribution of one subject in proportion to another previously distributed" (1 Swanst. 338, *n*). *Cp.* DIVIDE.

"To apportion," — *e.g.* expenses, — does not, *per se*, mean equally to divide; and, therefore, the apportionment of expenses of street-paving, s. 77, Metrop Man Act, 1862, need not be made on any uniform principle, but is in the discretion of the Council, and can only be challenged for *mala fides* (*Stotesbury* v. *St. Giles, Camberwell*, 57 L. J.

M. C. 114; 59 L. T. 473; 53 J. P. 5. *Vh. R.* v. *Marsham*, 1892, 1 Q. B. 371; 61 L. J. M. C. 52: *Derby* v. *Grudgings*, 1894, 2 Q. B. 496; 63 L. J. M. C. 170; 43 W. R. 74: *Metrop. District Ry* v. *Fulham*, 1895, 2 Q. B. 443; 65 L. J. Q. B. 29; 73 L. T. 330; 44 W. R. 53; 59 J. P. 679: *Clacton* v. *Young*, 1895, 1 Q. B. 395; 64 L. J. M. C. 124; 71 L. T. 877; 43 W. R. 219; 59 J. P. 581, *whlc* distinguished *Wakefield* v. *Mander*, 5 C. P. D. 248. *Cp. Sheffield* v. *Anderson*, cited UNREASONABLE). So, when it is said that County Court costs "shall be paid by or *apportioned* between the parties" as the judge shall think just, s. 113, Co. Co. Act, 1888, obviously no equal division is meant. *Vf.* INCURRED.

As to disputing Apportionment under s. 150, P. H. Act, 1875 or, where adopted, 55 & 56 V. c. 57; *V.* DISPUTE.

Note. An Apportionment under Metrop Man Acts, or P. H. Acts, does not, necessarily, preclude the Local Authority from re-considering it and making another apportionment (*Bishop* v. *Wandsworth*, 69 L. J. Q. B. 632; 82 L. T. 766; 64 J. P. 630).

Final apportionment; *V. Stock* v. *Meakin*, cited OUTGOING.

Apportionment Acts; *V.* DUE: FIXED PERIOD: PERIODICAL: DIVIDEND: 1 Encyc. 286–288.

APPRAISEMENT. — An Appraisement, or VALUATION, is in the nature of an Award (*Perkins* v. *Potts*, 2 Chitty, 399); but in some respects differs therefrom (*Leeds* v. *Burrows*, 12 East, 1: *Vf.* ARBITRATION).

Commission of Appraisement, in an Admiralty Action; *V.* Wms. & Bruce, Part 2, ch. 1, s. 8.

APPRAISER. — Quâ Stamp Acts, an "Appraiser is a person who shall value or appraise any estate or property, real or personal, or any interest in possession or reversion, remainder or contingency, in any estate or property, real or personal, — or any goods, merchandize, or effects of whatsoever kind or description the same may be, — for or in expectation of any Hire, Gain, Fee, or Reward, or Valuable Consideration to be therefor paid him" (s. 4, 46 G. 3, c. 43).

V. SWORN APPRAISER.

APPRECIATE. — *V.* INAPPRECIABLE.

APPRECIATION. — *V. Bishop* v. *Smyrna Ry*, cited PROFITS.

APPREHENDED. — "Apprehended Injury," s. 25, W. W. C. Act, 1847; *V.* per Halsbury, C., *Holliday* v. *Wakefield*, cited LAND.

APPREHENSION. — "Apprehension," s. 8, Extradition Act, 1870, 33 & 34 V. c. 52, includes detention (*R.* v. *Weil*, 53 L. J. M. C. 74; 9 Q. B. D. 701; 47 L. T. 630; 31 W. R. 60; 15 Cox, C. C. 189).

"Reasonable Apprehension"; *V.* IMPOSSIBLE.

APPRENTICE. — "In legal acceptation, an Apprentice is a person bound to another for the purpose of learning his TRADE, or CALLING; the contract being of that nature that the master teaches and the other serves the master with the intention of learning" (per Cockburn, C. J., *Clapham* v. *St. Pancras*, 29 L. J. M. C. 143, 144; nom. *St. Pancras* v. *Clapham*, 2 E. & E. 742), *whc* decided that an Articled Clerk to a Solr (then called an Attorney), was an "Apprentice" entitled to gain a Poor Law Settlement under s. 8, 3 W. & M. c. 11. But in *Ex p. Prideaux* (7 L. J. Ch. 202; 3 My. & C. 327) Cottenham, C., held that such an Articled Clerk was not an "Apprentice," within s. 49, 6 G. 4, c. 16, which discharged an Apprentice from his Indentures on his master becoming bankrupt; but at that time a Solr (or Attorney), as such, could not become a bankrupt.

Again, in *R.* v. *Doncaster* (7 B. & C. 630), the question was whether an Articled Clerk to an Attorney had been an Apprentice to a *Trade*, so as to be entitled to the Freedom of the Borough of Doncaster; held, he was not; Tenterden, C. J., saying, — "A person who serves an attorney under Articles of Clerkship can hardly be said to be an 'Apprentice' within the popular meaning of that term. Here, however, the right is confined to such persons as have served an apprenticeship to a Trade. An attorney exercises a Profession, and not a Trade."

If the definition of Cockburn, C. J. (sup), is to be accepted as exact, the word "Calling" must have a wide meaning, for it has been held that a Girl, who bound herself to a Man to learn housewifery business, and such other business as her master should have to do (there being no Art or Trade for her to learn), was an Apprentice (*R.* v. *St. Petrox*, Burr. S. C. 248).

V. 1 Encyc. 289–294: SEAMAN.

Quà 1 V. c. 19, amending Slavery Abolition Act, 1833, 3 & 4 W. 4, c. 73, "Apprentice" and "Apprenticed Labourer," mean "such persons as, having been formerly held in slavery, are now apprentices" subject to the Act of 1833, or any Order in Council, Ordinance, or Act of Assembly thereunder (s. 29, 1 V. c. 19).

APPROACH. — *V.* IMMEDIATE APPROACH: BRIDGE.

"Approaching Ship"; *V. The Franconia*, cited OVERTAKING SHIP.

"Means of Approach," s. 74 (2), London Bg Act, 1894; *V. Carritt* v. *Godson*, cited PART.

APPROBATION. — *V.* CONSENT.

APPROPRIATE. — A power in a Will enabling a person to "Appropriate" or "Select," for his own use, such parts of testator's property as he may desire, has been held to intimate a confidence that a reasonable selection, and not the whole, will be taken; and though the exact extent

to which the donee may go in benefiting himself could not, in the nature of things, be laid down beforehand, yet, possibly, the Court would find a mode of restraining any palpably unreasonable exercise of the power (*Kennedy* v. *Kennedy*, 10 Hare, 438: *Vf. Davis* v. *Davis*, 1 H. & M. 255: *Reid* v. *Reid*, 30 Bea. 388). But where the power extends over only a small class of property, — *e.g.* testator's plate, — and the donee be his widow, she may take the whole of it (*Arthur* v. *Mackinnon*, 48 L. J. Ch. 534; 11 Ch. D. 385; 27 W. R. 704). And even where there were no such circumstances, but the gift empowered the donee "to choose *everything* he might desire" from the Furniture, except some specified articles; the Court of Appeal (hereon affg North, J.) held that he might take all, or as much as he liked, other than the excepted articles (*Re Sharland*, 74 L. T. 664). So, a gift of (say) Wines to A., but with a direction that B. may "consume" as much of them as he "cares to do" during his life, enables B. to consume the whole of them; but, on his death, the unconsumed part will go to A., not indeed by way of succession but, as an independent gift which then becomes ascertained (*Re Colyer*, 55 L. T. 344; W. N. (86) 159: *V.* CONSUMABLE). *Vf.* APPROPRIATION: PART: SUCH: *Liddy* v. *Kennedy*, cited ANY: 1 Jarm. 362.

An executed Parliamentary Power to "*Appropriate and use*" the Subsoil of a Public Roadway for a Ry Tunnel, creates an HEREDIT, not a mere EASEMENT (*Metrop. Ry* v. *Fowler*, 1893, A. C. 416; 62 L. J. Q. B. 553; 69 L. T. 390; 42 W. R. 270; 57 J. P. 756). Under such a power, subsoil under private land cannot be appropriated and used until the Compulsory Purchase Provisions of the Lands C. C. Act, 1845, have been complied with (*Farmer* v. *Waterloo & City Ry*, 1895, 1 Ch. 527; 64 L. J. Ch. 338; 72 L. T. 225; 43 W. R. 363).

"How can you 'appropriate' Under-ground Water?" (per Smith, L. J., *Bradford* v. *Pickles*, 64 L. J. Ch. 103, affd in H. L. 1895, A. C. 587; 64 L. J. Ch. 759).

V. TAKE AND APPROPRIATE.

APPROPRIATED. — In a general testamentary gift of all property of whatever description that testator might die possessed of, to be "appropriated" as donee might think fit, Leach, V. C., thought a criticism founded upon the words "possessed of" and "appropriated" too nice to exclude Realty (*Noel* v. *Hoy*, 5 Mad. 38; stated 1 Jarm. 730).

Property "appropriated and applied," s. 11 (2), Customs and Inl. Rev. Act, 1885, must be actually applied, as well as appropriated, in order to obtain the Exemption thereunder (*Inl. Rev.* v. *Scott*, cited MANNER: *Vf. Re Royal Coll. Surgeons*, cited SCIENCE).

V. LEGALLY APPROPRIATED.

APPROPRIATION. — "The word 'Appropriation' may be understood in different senses. It may mean a selection on the part of the

vendor, where he has a right to choose the article which he has to supply in performance of the contract; and the contract will show when the word is used in that sense. Or, the word may mean that both parties have agreed that certain articles shall be delivered in pursuance of the contract, and yet the property may not pass in either case. 'Appropriation' may also be used in another sense, viz., where both parties agree upon the specific article in which the property is to pass, and nothing remains to be done in order to pass it" (per Parke, B., *Wait* v. *Baker*, 2 Ex. 8, 9; 17 L. J. Ex. 310, 311).

Appropriation of *Goods*; *V.* Blackb. 128, *n*, citing *Laidler* v. *Burlinson*, 2 M. & W. 602; 6 L. J. Ex. 160; *Atkinson* v. *Bell*, 8 B. & C. 277: *Anderson* v. *Morice*, L. R. 10 C. P. 58, 609; 1 App. Ca. 713; 44 L. J. C. P. 10, 341; 46 Ib. 11: *Calcutta* v. *De Mattos*, 32 L. J. Q. B. 322; 33 Ib. 214. *Vf. Colonial Insrce* v. *Adelaide Insrce*, 12 App. Ca. 128.

Appropriation of *Payments*; "Where the purchaser owes more than one debt to the vendor, and makes a payment, it is his right to apply (or in technical language 'appropriate') the payment to whichever debt he pleases" (Benj. 726). *Vh. Clayton's Case*, 1 Mer. 608: *Re Friend*, 1897, 2 Ch. 421; 66 L. J. Ch. 737; 77 L. T. 50; 46 W. R. 139, and cases there cited.

"'Appropriation'; the annexing of an Ecclesiastical Benefice to the proper and perpetual use of a spiritual corporation or college" (Elph. 561; *whv*). *Vf.* per Crampton, J., *Shaw* v. *Woods*, 5 Ir. Com. Law Rep. 165: Termes de la Ley: Cowel: Phil. Ecc. Law, 219, 220: Endowment.

"Special Application or Appropriation"; *V.* Special.

V. Appropriate: Profits.

APPROVAL. — A thing done with the "Approval" of A., means that, and only that, which he has, *with full knowledge*, approved; and, therefore, where the Treasury, under ss. 108, 109, Mun Corp Act, 1882, had approved a conveyance of Corporation Property which (in fact, but without the knowledge of the Treasury) had been sold as part of a Building Scheme; held, that the Treasury had not given "Approval" to the implied Vendor's Conditions arising from such Scheme, and that, accordingly, the Grantee was not entitled to the benefit of such Conditions (*Davis* v. *Leicester*, 1894, 2 Ch. 208; 63 L. J. Ch. 440).

Sale on Approval; *V.* Sale on Trial.

Acts of Vestry Committee needing "Approval" of the Vestry, s. 58, Metrop Man Act, 1855, — *e.g.* Notice under s. 85, — do not need *previous approval*; if Vestry Ratify, that suffices (*Firth* v. *Staines*, 1897, 2 Q. B. 70; 66 L. J. Q. B. 510; 76 L. T. 496; 45 W. R. 575; 61 J. P. 452). *Cp.* Sanction.

V. Subject to.

APPROVE. — A Statutory Direction that the Court is to "refuse to approve," — *e.g.* a Scheme of arrangement, s. 3 (9), Bankry Act, 1890, unless 7*s.* 6*d.* in the £ is secured, — does not mean that the Court is bound to approve if the Condition is complied with, it only means that such compliance is a sine qua non to the matter being considered (*Re Burr*, 1892, 2 Q. B. 467; 61 L. J. Q. B. 591; 66 L. T. 553).

V. APPROVAL: SANCTION.

APPROVED. — When one of the parties to a bargain writes "approved" at the end of the draft of the agreement and adds his signature, he thereby makes the draft a binding contract, and does not merely express approval of its form after the manner of conveyancers (*Brogden* v. *Metrop. Ry*, 2 App. Ca. 666).

APPROVED AGREEMENT. — A sale "subject to an Approved Agreement"; held, not a concluded transaction (per Brett, J., *Harman* v. *Homer*, 32 S. J. 752: *Sv*, per Wright, J., *Chipperfield* v. *Carter:* both cited SUBJECT TO).

APPROVED BILL. — "I think the phrase 'Approved Bill' could only mean a Bill to which no reasonable objection could be made, and which ought to be approved" (per Ellenborough, C. J., *Hodgson* v. *Davies*, 2 Camp. 531: *V.* Benj. 721). *V.* PROVE.

"Approved Bankers' Bill"; *V. Smith* v. *Mercer*, L. R. 3 Ex. 51.

APPROVED PLAN. — An "Approved Plan," by a Local Authority, means, one which the Authority has *lawfully* approved, and not merely one it has actually approved if such approval was in contravention of the General Law or its own Bye Laws (*Yabbicom* v. *King*, 1899, 1 Q. B. 444; 68 L. J. Q. B. 560; 80 L. T. 159; 47 W. R. 318; 63 J. P. 149: *Re McIntosh and Pontypridd Improvement Co*, 61 L. J. Q. B. 164).

APPROVED SECURITIES. — "A power to lend on 'Approved Securities,' though it will justify an investment on an ordinary Mortgage, might not be held to extend to Railway Securities (*Re Simson*, 1 J. & H. 89). And where trustees are empowered to lend 'on such securities *as they may approve*,' they are still bound to make enquiries, and exercise a sound discretion whether the securities are of sufficient value; and if in such a case the trustees lend on any irregular securities, the onus lies on the trustees to show the sufficiency of the security (*Stretton* v. *Ashmall*, 3 Drew. 9; 24 L. J. Ch. 277: *Va Zambaco* v. *Cassavetti*, L. R. 11 Eq. 439: *New London & Brazilian Bank* v. *Brocklebank*, 51 L. J. Ch. 711; 21 Ch. D. 302)." (Lewin, 330).

V. SECURITY.

APPROVED SERVICE. — Stat. Def., Police Act, 1890, 53 & 54 V. c. 45, s. 4 (1).

APPROVEMENT. — An Approvement of a COMMON is an enclosure (*V.* 20 H. 3, c. 4) by a Lord of part of the Waste, or WASTE GROUND, of his Manor, "leaving neverthelesse sufficient Common, with egresse and regresse for the Commoners" (Termes de la Ley). *Vh* Wms. on Rights of Common, 103 *et seq:* Elph. 561: SUFFICIENT PASTURE.

A Custom for the Lord, with consent of the HOMAGE, to enclose, without leaving Sufficient Pasture, is good (*Ramsay* v. *Cruddas*, 1893, 1 Q. B. 228; 62 L. J. Q. B. 269; 68 L. T. 364; 57 J. P. 406).

Note. The consent of the Board of Agriculture is now necessary to the validity of an Enclosure, or Approvement, of any part of a Common (56 & 57 V. c. 57, s. 2).

APPROVER. — "'Approver,' or 'Appellor,' is he who hath committed some FELONY which he confesseth, and now appealeth or approveth; that is to say, accuseth others which were coadjutors or helpers with him in doing the same or other Felonies, which thing he will approve" (Termes de la Ley). *Vf* Cowel: Jacob: INFORMER.

"The 'Kings Approvers,' are those that have the letting of the Kings Demeanes in small Mannors for the Kings greater advantage" (Termes de la Ley).

APPURTENANCES. — "By the grant of a messuage, or a messuage *with the appurtenances*, doth pass no more than the dwellinghouse, barn, dovehouse, and buildings adjoining, orchard, garden, and curtilage, *i.e.* a little garden, yard, field, or piece of void ground, lying near and BELONGING to the messuage, and houses adjoining to the dwellinghouse, and the close upon which the dwellinghouse is built, at the most. And so much also may pass by the grant of a house. So that the quantity of an acre of ground, or thereabouts, in orchard, garden, and out-let, may pass by either of these names, but more than this will not pass by the grant that is made in either of these words, albeit more have been occupied with it, and albeit more be intended to be passed by the grant. And therefore if there be a messuage or dwellinghouse, and divers acres of land thereunto belonging, called altogether by the name of Hedges, and a grant is made by these words of, All that messuage with the appurtenances commonly called by the name Hedges; by this grant nothing shall pass but the messuage, garden, and curtilage, and yet if a manor, or farm, be commonly called by the name of a messuage, there by the grant of a messuage the whole manor, or farm, may pass" (Touch. 94). In this latter case it is not the word "appurts" that has to be construed, but rather the extent and meaning of the *name* of the messuage (*V. Lister* v. *Pickford*, inf).

The Touchstone, after the extract given above, goes on to say, "and by the grant of a messuage, or house, and all lands thereunto *appertaining*, will pass all the land usually occupied THEREWITH." This, however, is incorrect. A thing may be "USED and ENJOYED" or "OCCUPIED" with

something else, without "belonging or appertaining" thereto; and if these latter words, or "with the appurts," only were used they would only cover such things as are appurtenant to and form part of the property which is the principal subject of the instrument (*Buck* v. *Nurton*, 1 B. & P. 53: *Barlow* v. *Rhodes*, 2 L. J. Ex. 91; 1 Cr. & M. 439; 3 Tyr. 280: *Wardle* v. *Brocklehurst*, 29 L. J. Q. B. 145: *Maitland* v. *Mackinnon*, 32 L. J. Ex. 49: *Bolton* v. *Bolton*, and *Peck* v. *London School Bd.*, cited WAYS). *Secus*, where the words are "used," "enjoyed," or "occupied" (*James* v. *Plant*, 6 L. J. Ex. 260; 4 A. & E. 749; 6 N. & M. 282: *Vthc* followed and distd *Worthington* v. *Gimson*, 29 L. J. Q. B. 116). Thus, where there are two tenements in one ownership, there can be no Easement over the one which is "appurtenant" to the other; and even if these tenements were formerly in different ownerships, and, whilst in such different ownerships, the one had acquired an easement against the other, yet, if they become united in ownership, all subordinate rights and easements are extinguished; and if the owner of both devises the tenement which formerly had the easement, with its "appurtenances," the easement does not pass, though its use has continued, — for the Right to it was extinguished by the unity of ownership, and the word "appurtenances" is insufficient to create or renew the right (*Whalley* v. *Tompson*, 1 B. & P. 371); *secus*, had the devise been, "with the easement now *used*" (per Eyre, C. J., *Ib.*).

But the word "appurtenant" may be used in a secondary sense as equivalent to such a phrase as "usually enjoyed with" (Elph. 188: *Bayley* v. *G. W. Ry*, 26 Ch. D. 434; 51 L. T. 337. *Vth*, and generally hereon, Dart, 609, 610). *V.* RIGHT.

Contract to sell land "with the appurts"; *V.* WAYS.

In *Lister* v. *Pickford* (34 L. J. Ch. 582; 34 Bea. 576), Romilly, M. R., said, — "It is settled by the earliest authority, and acted upon and confirmed without contradiction down to the latest, that *Land cannot be appurtenant to Land:* and that the word 'Appurtenances' includes incorporeal hereditaments, such as rights of way, of common, of piscary, and the like; but does not include land to be added to that which was granted": *Vh*, *Hill* v. *Grange*, Plowd. 170: *Buck* v. *Nurton*, sup: per Willes, J., *Simpson* v. *Dendy*, 8 C. B. N. S. 468.

But though *Lister* v. *Pickford*, and *Evans* v. *Angell* (26 Bea. 202), were especially pressed on Kay, J., in *Cuthbert* v. *Robinson* (51 L. J. Ch. 238), he there, after briefly reviewing the authorities, said, — "The law seems to be clearly this: Neither in a Deed nor in a Will does the word 'Appurtenances' include land, if the principal subject of gift is land or a messuage. But if, from the circumstances at the date of the Will and the whole context, it is clear that land is intended to pass as appurtenant, the word 'Appurtenant' is flexible enough to carry it." *Va* Cary, 24, per Bromley, C.: and in the early case of *Hill* v. *Grange* (sup) it was held that "appertaining," as there used, had a wider mean-

ing than its strict signification, and was used, as it is commonly used, in the sense of "occupied with," or "lying to." *Vf*, *Boocher* v. *Samford*, Cro. Eliz. 113: *Ongley* v. *Chambers*, inf.

So, a gift of "my freehold messuage or Mansion-house, with the offices, garden, lawn and Appurtenances thereto, now in my occupation," was held, by force of the word "Appurtenances," to pass meadows without which the house would be no better than a suburban villa (*Leach* v. *Leach*, W. N. (78) 79: *Vf*, *Re Otley and Ilkley*, cited Now). But it may, probably, be affirmed that the burden of proof lies on those who contend for this enlarged meaning (1 Jarm. 781, 782: *Evans* v. *Angell*, sup), and for an example in which the enlarged meaning was not given, *V. Smith* v. *Ridgway*, L. R. 1 Ex. 46.

A Pew in the Aisle of a church, may be prescribed for as "Appurtenant" to a house not situate in the Parish (*Davis* v. *Witts*, Forrest 14).

It is sometimes said that the phrase "with the appurtenances," adds but little, if anything, to the meaning, as the principal carries the accessory (Touch. 89; *Vth*, Elph. 186–189). Still some weight will frequently be attachable to the phrase; and "it is construed more strictly in a Deed than in a Will" (Elph. 189, citing *Ongley* v. *Chambers*, 8 Moore C. P. 665: 1 Bing. 483). In a Conveyance executed since the Conv. and L. P. Act, 1881, the phrase could scarcely add anything to the wide General Words which, by s. 6 of that Act, are implied; on the contrary, it would rather narrow those words (*V.* Ways). In a Lease it is flexible (*Dobbyn* v. *Somers*, 13 L. R. Ir. 592).

In a Testamentary Gift of an Indigo Factory in India, "with the zemindaries, villages, and lands therewith held and used, and the Appurts"; held, that the Outstandings of the factory business did not pass, although they were part of the concern and without the arrangements respecting them the business could not have been carried on (*Finch* v. *Finch*, 35 L. T. 235).

Vf, as to the meaning of "Appurtenances," Woodf. 149, 150: 2 Platt, 33: *Pheysey* v. *Vicary*, 16 M. & W. 484: *Ackroyd* v. *Smith*, 19 L. J. C. P. 315: *Thomas* v. *Owen*, 57 L. J. Q. B. 198; 20 Q. B. D. 225; 58 L. T. 162; 36 W. R. 440; 52 J. P. 516: *Roe* v. *Siddons*, 22 Q. B. D. 224: *Smith* v. *Martin*, 2 Saund. 400 a, on *whlcv* notes in Wms. Saund.

V. Appertaining: Appendages: Appendant.

"Appurtenances" of a Ship, "as used in a Bill of Sale, passes everything belonging to the ship which is necessary for her as a ship; in any other Contract of Sale it would have the same meaning with the addition that if a ship be sold as of a particular Class, or as engaged in or suitable for a particular Employment, everything belonging to her which is necessary for a ship of that class or for that employment passes to the purchaser" (Abbott 27, *Vf* cases there cited).

"Appurtenances" of a Ship must be such things as are appropriated to her exclusively; and do not include such things as she uses indiscrimi-

nately with other ships (*Re Salmon & Woods, Ex p. Gould*, 2 Morr. 137; *Vthc*, also cited SHIP).

APPURTENANT. — *V.* APPENDANT.
Common Appurtenant; *V.* COMMON.

APT. — "Apt and Fit to execute" an Office; *V.* FIT.

AQUA. — *V.* WATERS.
Aquatiles; *V.* FOWL.

ARABANT. — "Are they that held by Tenure of Ploughing or Tilling ground" (Cowel).

ARABLE. — *V.* LAND: MOUNTAIN.
In a Deed, "'arable' does not only mean land actually ploughed up or in tillage, but also land capable or fit to be so" (per Chatterton, V. C. *Palmer* v. *M'Cormick*, 25 L. R. Ir. 119).

ARBITRARILY. — *V.* UNREASONABLY.

ARBITRARY. — "Arbitrary FINE," s. 95, 5 & 6 W. 4, c. 76, repld, s. 110, Mun Corp Act, 1882; *V. A.-G.* v. *Yarmouth*, 21 Bea. 632.
Arbitrary Fine on Copyholds; *V.* Scriven, 6 Ed. 155.

ARBITRATION. — "An arbitration is a reference to the decision of one or more persons, either with or without an umpire, of a particular *matter in difference* between the parties" (per Romilly, M. R., *Collins* v. *Collins*, 28 L. J. Ch. 186; 26 Bea. 309: Termes de la Ley, *Arbitrement*). Accordingly if parties sell and buy, and leave the price or compensation for errors to be fixed by VALUATION, any question that may arise respecting such valuation is not such a difference as will make the case one of "Arbitration" within ss. 11, 12, Com. L. Pro. Act, 1854, or s. 27, Arb Act, 1889 (*Collins* v. *Collins*, 28 L. J. Ch. 184; 26 Bea. 306: *Boss* v. *Helsham*, 36 L. J. Ex. 20; L. R. 2 Ex. 72: *Re Dawdy*, 54 L. J. Q. B. 574; 15 Q. B. D. 426: but though in *Boss* v. *Helsham* the Court rejected the award of an arbitrator on a question of compensation under Conditions of Sale, Jessel, M. R., gave effect to such an award in *Re Turner & Skelton*, 49 L. J. Ch. 114; 13 Ch. D. 130). The object of the valuation in such a case is to *prevent* differences and is a mere APPRAISEMENT valuation. "If," however, "two persons enter into an agreement for the sale of property, and try to settle the terms, but cannot agree, and after dispute and discussion respecting the price, say, we will refer the question of price to A. B., he shall settle it, and they agree that the matter shall be referred to his arbitration, that would appear to be 'Arbitration' in the proper sense of the term within the meaning of the Act" (per Romilly, M. R., *Collins* v. *Collins*, sup). And so, if there be a distinct agreement providing for the appointment of an umpire to deter-

mine differences between valuers, that would be an "Arbitration" (*Re Hopper*, 36 L. J. Q. B. 97; L. R. 2 Q. B. 367: *Re Dawdy*, sup); but the differences must be such as involve the consideration of Evidence, and which differences must be determined judicially; for if all that has to be done is to fix a price by the exercise of personal knowledge and skill, then that is a Valuation, not an Arbitration, and it is not made an Arbitration by reason merely of an umpire being provided for and appointed to adjust the price as between the valuers (*Re Hammond and Waterton*, 62 L. T. 808; explaining *Re Hopper*, and reconciling it with *Re Carus-Wilson and Greene*, 56 L. J. Q. B. 530; 18 Q. B. D. 7; 55 L. T. 846; 35 W. R. 43). *V.* VALUATION.

A reference of possible disputes to a Foreign Court is an agreement for "Arbitration" within the sections cited (*Law* v. *Garrett*, 8 Ch. D. 26).

The sections cited from the Com. L. Pro. Act were repealed, and similar but wider provisions made, by the Arb Act, 1889: *Vth*, DISPUTE: EVERY.

A Clause to arbitrate disputes will not prevent an Action for a completed CAUSE OF ACTION; *secus*, if arbitration is a Condition Precedent to liability (Add. C. 77: *Viney* v. *Norwich Insrce*, cited ENTITLED).

A clause for arbitration, in Partnership Articles, does not include a question of Dissolution (*Joplin* v. *Postlethwaite*, 61 L. T. 629: *Turnell* v. *Sanderson*, 60 L. J. Ch. 703).

An arbitration under Lands C. C. Act, 1845 (*Re Dare Valley Ry*, and *Rhodes* v. *Airedale Co*, cited CONSENT), or under s. 180, P. H. Act, 1875 (*Knowles* v. *Bolton*, 1900, 2 Q. B. 253; 69 L. J. Q. B. 481; 82 L. T. 229; 48 W. R. 433), is subject to the power of the Court to enlarge the time for the Award given by s. 9, Arb Act, 1889.

Whilst the cases cited show the distinction between an Arbitration and a Valuation, we get under the Arb Act, 1889, a decision showing the difference between an Arbitration and a TRIAL: thus, the reference of an action "to be tried" by an Official Referee under s. 14, Arb Act, 1889, is a reference for Trial, and is not a "Compulsory Reference to Arbitration," within s. 8, Jud. Act, 1884 (*Munday* v. *Norton*, 1892, 1 Q. B. 403; 61 L. J. Q. B. 456; 66 L. T. 173; 40 W. R. 355).

So, when a whole cause is referred to a Special Referee under Ord. 36, R. S. C., that is a Trial (*Patten* v. *West of England Iron Co*, 1894, 2 Q. B. 159; 63 L. J. Q. B. 757; 70 L. T. 908; 42 W. R. 522).

An Agreement that disputes shall be referred to "Arbitration," without prescribing the number of arbitrators, is a submission to a *Single* Arbitrator, quâ s. 5, Arb Act, 1889 (*Re Eyre and Leicester*, cited UMPIRE).

V. AWARD: SUBMISSION: EQUIVALENT.

In interp clauses, "Arbitrator" generally includes an Umpire, and "Arbitrators" a single Arbitrator, *e.g.* 11 & 12 V. c. 63, s. 2; Ib. c. 112, s. 147.

ARCHBISHOP. — An Archbishop is a Metropolitan BISHOP, and resembles the Primus in the Scotch Church (Phil. Ecc. Law, 20). He has the general Overseership of the Bishops and Clergy of his Province (1 Bl. Com. 380).

Stat. Def. — 37 & 38 V. c. 77, s. 14. — *Ir* (Archbishop of Armagh; Archbishop of Dublin) 27 & 28 V. c. 54, s. 4.

ARCHDEACON. — An Archdeacon holds a DIGNITY (Phil. Ecc. Law, 128) in the Church of England, working next to a BISHOP. He is usually appointed by a Bishop by COLLATION; but an Archdeaconry may be in the gift of a Layman, who presents his nominee to the Bishop who gives that nominee ADMISSION (Phil. Ecc. Law, 198). *Quare impedit* lies for an Archdeaconry (*Smalwood* v. *Coventry Bp.*, Cro. Eliz. 141, 207). An Archdeacon's function is to assist the Bishop in his Overseership. "In general, the Archdeacon's jurisdiction is founded on Immemorial Custom, in subordination to the Bishop's; and he is to be regulated as to his Dignity, Office, and Power according to the law, usage, and custom of his own Church and Diocese" (Phil. Ecc. Law, 200). *Vh* Phil. Ecc. Law, Part 2, ch. 5, wh contains a statement of the Modern Statutes affecting this Dignity. *Cp.* RURAL DEAN.

Stat. Def. — (Archdeacon) 34 & 35 V. c. 43, s. 3; (Archdeaconry) 55 & 56 V. c. 32, s. 12.

ARE. — "Now are"; *V.* Now.

"Are," will sometimes be read in a future sense (*Re Bayliss*, 17 Sim. 178). *Vf* Is.

AREA. — Quà London Bg Act, 1894, "'Area,' applied to a BUILDING, means the Superficies of a horizontal section thereof made at the point of its greatest surface, inclusive of the EXTERNAL WALLS and of such portions of the PARTY WALLS as belong to the building" (subs. 22, s. 5; adopting the def in Metrop Bg Act, 1855, s. 3, except its concluding words, "but excluding any attached building the height of which does not exceed the height of the ground-story").

Quà Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, "'Area *of Supply*,' means, the Area within which the Undertakers are, for the time being, authorized to supply Energy under the Special Order" (Sch s. 1).

"Area *of User*" of a STREET, by a Public Authority, is the surface, — and also the soil beneath and the space over to such a depth and height as is reasonably necessary to enable such authority to execute and perform its duties (*Fareham* v. *Smith*, and other cases, cited VEST).

"Betterment area"; *V.* TRADE INTEREST.

"Bridge area"; *V.* BRIDGE.

"Exchange Area"; *V.* EXCHANGE.

"Improvement area"; *V.* ABUT.

V. LEASEHOLD AREA: LIGHTHOUSE: LOCAL AREA: HIGHWAY.

"Special areas"; *V.* SPECIAL.

ARGENTUM DEI. — Is "God's Money, — *i.e.* money given in EARNEST upon the making of any bargain" (Cowel).

ARISE. — *V.* BY WHOSE ACT.

The "Matter of COMPLAINT," s. 11, Sum Jur Act, 1848, *arises* when the thing complained of is complete, as distinguished from mere matters of delimination or procedure; *e.g.* the time from which the infringement of a BUILDING LINE is to be reckoned, is the day when the bg is erected above the ground so that the bg projects beyond that Line, and not from the date of the Superintending Architect's Certificate, although the Line must be delimitated by such Certificate and without it proceedings must fail (*London Co. Co.* v. *Cross*, 61 L. J. M. C. 160; 66 L. T. 731, reconciling *Paddington* v. *Snow*, 45 L. T. 475, with *Spackman* v. *Plumstead*, cited GENERAL LINE OF BUILDING). So, of the erection of an Encroachment (*Ranking* v. *Forbes*, 34 J. P. 486), or of a Party Wall contrary to a Bye Law (*Marshall* v. *Smith*, 42 L. J. M. C. 108; L. R. 8 C. P. 416; 28 L. T. 538).

But when a DEMAND has to be made (*Labalmondiere* v. *Addison*, 28 L. J. M. C. 25; 1 E. & E. 41; 23 J. P. 261: *Grece* v. *Hunt*, 46 L. J. M. C. 203; 2 Q. B. D. 389; 41 J. P. 261), or a Time has to expire (*Jacomb* v. *Dodgson*, 32 L. J. M. C. 113; 3 B. & S. 461; 27 J. P. 68: *Mayer* v. *Harding*, L. R. 2 Q. B. 410; 9 B. & S. 27, n. *a*; 17 L. T. 140; 32 J. P. 421), before the thing complained of is complete, the time runs from the demand, or the expiry of the time. *Vf Morant* v. *Taylor*, cited OTHERWISE.

Of course, where the OFFENCE is a continuing one, — *e.g.* a Smoke Nuisance (*Higgins* v. *Northwich*, 22 L. T. 752), or unlawfully detaining a Rate Book (*Mayer* v. *Harding*, sup), the Matter of Complaint also continues, and s. 11 does not apply. *Vf* CONTINUING OFFENCE.

As to what is a Special Limitation of s. 11, *V. Morris* v. *Duncan*, cited RECOVER.

Cp. ACCRUE.

ARISING. — "Arising *from*"; *V.* CAUSED BY.

"TRAFFIC arising and terminating on the Ry," in a Ry Act; held, "Traffic that does not pass over any other Ry" (*Distington Iron Co* v. *Lond. & N. W. Ry*, 6 Ry & Can Traffic Ca. 111).

Loss "Arising *off* their Lines"; *V. Kent* v. *Mid. Ry*, L. R. 10 Q. B. 1.

"Arising *out of* the Bankruptcy," s. 102, Bankry Act, 1883; *V. Re Hawke, Ex p. Scott*, 55 L. J. Q. B. 302; 16 Q. B. D. 503; 54 L. T. 54; 34 W. R. 167.

"Arising out of the Employment"; *V.* EMPLOYMENT.

PROFITS "arising or accruing" in the United Kingdom, s. 2, Sch D., Income Tax Act, 1853, mean Profits coming to the person's hands or received by him in the United Kingdom (*Colquhoun* v. *Brooks*, 59 L. J. Q. B. 53; 14 App. Ca. 493; 61 L. T. 518; 38 W. R. 289; 54 J. P. 277:

Vthe, London Bank of Mexico v. *Apthorpe*, and *San Paulo Ry* v. *Carter*, cited CARRY ON). *Cp.* DERIVE, last par.

"Question arising"; *V.* QUESTION.

Exception in an Accidental Insurance of Death from causes "arising *within the system* of the insured"; *V. Smith* v. *Accident Insrce*, L. R. 5 Ex. 302; 39 L. J. Ex. 211: *Fitton* v. *Accidental Death Insrce*, 34 L. J. C. P. 28; 17 C. B. N. S. 122.

ARM. — "Armed with an Offensive Weapon"; *V.* OFFENSIVE.

"Arm of the Sea"; *V.* CREEK.

V. ARMS: LOADED ARM.

ARMAMENT. — Quà Naval Defence Act, 1889, 52 & 53 V. c. 8, "'Armament,' includes Reserves as well as Outfit" (s. 8).

ARMIGER. — *V.* ESQUIRE.

ARMORIAL BEARINGS. — Quà Revenue Act, 1869, 32 & 33 V. c. 14, and by s. 19 (13) thereof, — "'Armorial Bearings,' means and includes, any Armorial Bearing, Crest, or Ensign, by whatever name the same shall be called, and whether such Armorial Bearing, Crest, or Ensign shall be registered in the College of Arms or not"; but a Public Stage or Hackney Carriage is exempt (subs. 15).

ARMS. — *V.* ARM: FORCE.

"Armour and Arms"; *V.* Jacob.

Name and Arms Clause; *V.* NAME.

Quà Peace Preservation (Ir) Act, 1881, 44 & 45 V. c. 5. "'Arms,' includes any Cannon, Gun, Revolver, Pistol, and any description of Fire Arms; also any Sword, Cutlass, Pike, and Bayonet; also any part of any Arms as so defined" (s. 6), — a def in great part taken from s. 4, 33 & 34 V. c. 9, and adopted for Prevention of Crime (Ir) Act, 1882, 45 & 46 V. c. 25 (s. 35). *Cp.* 6 & 7 V. c. 74, s. 62.

Quà Military Manœuvres Act, 1882, 45 & 46 V. c. 10, "'Arms, Munitions of War, and Stores,' includes, all matters and things required for the use of the Forces to whom this Act applies, or any part thereof, and all Animals and Conveyances used for the conveyance of such matters or things; also all Animals used for the food of the Forces, or any part thereof" (s. 11), adopted from 34 & 35 V. c. 97, s. 11; 35 & 36 V. c. 64, s. 13; 36 & 37 V. c. 58, s. 12.

ARMY. — "Army Chaplain"; Stat. Def., 31 & 32 V. c. 83, s. 2.

"Army Reserve Force"; Stat. Def., 34 & 35 V. c. 86, s. 19; 42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 58, s. 190 (10); 45 & 46 V. c. 48, s. 28.

"Army School"; Stat. Def., 54 & 55 V. c. 16, s. 1.

AROSE. — *V.* ARISE.

AROUND. — "An agreement to furnish granite for a mason to set by delivering it 'on and around the site' of the building, is not performed by delivering it at a corner of the site: *McGowan* v. *United States*, 21 Ct. of Cl. 476; U. S. Dig. 125" (1 Hudson, 138).

ARPENS. — "'Arpens,' or 'Arpen,' — an ACRE" (Cowel).

ARRAIGN. — "'Arraine,' is to put a thing in order, or in his place; as a Prisoner is said to be arraigned when he is indicted and put to his trial" (Termes de la Ley). "No man is said to be arraigned, but merely at the suit of the King, upon an enditement found against him, or other record wherewith he is charged. And there the Arraignment of the prisoner is to take order that he appeare, and, for the certainty of the person, to hold up his hand, and to plead a sufficient plea to the enditement or other record, whereupon they which follow for the King may orderly proceed" (Co. Litt. 263 a). Holding up the hand is now dispensed with: *Vh* 1 Encyc. 327.

ARRANGE. — *V.* NEGOTIATE.

"Arrange Loans"; *V.* LOAN.

ARRANGEMENT. — "The term 'Arrangement' is a very wide and indefinite one" (per Parke, B., *Manning* v. *Eastern Counties Ry*, 13 L. J. Ex. 265; 12 M. & W. 237); in *whc* it was held that a verdict of a jury, on a claim for compensation against a Ry Co and receipt of compensation under such verdict, was an "Arrangement with" the Co.

"Arrangement," identical with Agreement in writing (*Cave* v. *Hastings*, 50 L. J. Q. B. 575; 7 Q. B. D. 125). *V.* BALANCE.

"The natural meaning of 'Arrangement' is, setting in order"; but it comprehends COMPOSITION with Crs (per Jervis, C. J., *Tetley* v. *Taylor*, 1 E. & B. 540).

A testamentary power enabling Trustees to wind-up testator's affairs "and in so doing to make any Sales and Arrangements they shall judge expedient," authorizes them to give a mortgage on the realty (*Re Jones, Dutton* v. *Brookfield*, 59 L. J. Ch. 31; 38 W. R. 90; 61 L. T. 661).

"Arrangement for using, &c, Steam Vessels"; *V.* USING.

V. COMPOSITION: COMPROMISE: SCHEME: FAMILY ARRANGEMENT: DEED.

Stat. Def. — 31 & 32 V. c. 68, s. 2. — *Ir* (Arranging Debtor) 35 & 36 V. c. 58, s. 4.

ARRAY. — "And herein you shall understand, that the jurors' names are ranked in the pannel one under another; which order or ranking the jurie is called the Array, and the verbe, to array the jurie; and so we say in common speech, *battaile array* for the order of the battaile" (Co. Litt. 156 a). *Vf* Termes de la Ley.

ARREARS. — The bequest of "Arrears" of a Debt, will only pass the interest in arrear, and not the principal (Wms. Exs. 1064, citing *Hamilton* v. *Lloyd*, 2 Ves. 416).

Bequest of "Arrears" of Rents, will not pass rents which, at the death, are in the hands of testator's Agent (per Smith, L. J., *Re Cleveland*, 1894, 1 Ch. 172; 63 L. J. Ch. 119).

"Arrears of Rent and Interest"; *V. Hele* v. *Gilbert*, 2 Ves. 430.

ARREST. — "'Arrest,' is when one is taken and restrained from his liberty" (Termes de la Ley). *Vh* 1 Encyc. 328–331.

"Arrest of *Goods*," in a Marine Policy, "is a taking with the intention of restoring them at one time or another" (per Brett, J., *Rodocanachi* v. *Elliott*, L. R. 8 C. P. 659; 42 L. J. C. P. 254: *Vh* 1 Maude & P. 488); and is equivalent to SEIZURE (*Johnston* v. *Hogg*, 52 L. J. Q. B. 343).

Arrest of *Ship*, "is the method of enforcing the Admiralty process *in rem*, whether that process be founded on a Maritime LIEN, or a Claim against the Ship" (1 Encyc. 331). *Vf* Wms. & Bruce, Part 2, ch. 1.

Vessel "*Under* Arrest"; *V. The Normandy*, 18 W. R. 903: *The Northumbria*, Ib. 356; L. R. 3 A. & E. 24; 39 L. J. A. & E. 24; 21 L. T. 683.

V. RESTRAINTS OF KINGS.

An Arrest of a Person, by a duly authorized Officer, is accomplished if the Officer lawfully touch him; the power of effecting actual Capture is not essential (*Sandon* v. *Jervis*, 6 W. R. 690; 31 L. T. O. S. 235).

"To move or plead in *Arrest of Judgment*, is to shew cause why jdgmt should be stayed, though there be a verdict in the case" (Cowel).

"Arresting Authority"; Stat. Def., Mail Ships Act, 1891, 54 & 55 V. c. 31, s. 9.

ARRIVE. — *Condition of Legacy*, that legatee "arrive" at a place; *V. Burgess* v. *Robinson*, cited RETURN.

"It appears on a review of the result of the decisions on *Contracts of Sales* 'to arrive':

"1st. Where the language is that goods are sold 'on arrival' per ship A, or ex ship A, or *to arrive* per ship A, or ex ship A (for these two expressions mean precisely the same thing) it imports a *double Condition Precedent*, viz., that the ship named shall arrive, *and* that the goods sold shall be on board on her arrival.

"2nd. Where the language asserts the goods to be on board of the vessel named, as '1170 bales now on passage, and expected to arrive per ship A,' or other terms of like import, there is a Warranty that the goods are on board, and a *single Condition Precedent*, to wit the arrival of the vessel. *V.* EXPECTED TO ARRIVE.

"3rd. The Condition Precedent that the goods shall arrive by the vessel will not be fulfilled by the arrival of goods answering the description of those sold, but not consigned to the vendor, and with which he did not

affect to deal; but, *semble*, the condition will be fulfilled if the goods which arrive are the same that the vendor intended to sell, in the expectation, which turns out to be unfounded, that they would be consigned to him." (Benj. 566, 567, citing *Neill* v. *Whitworth*, 18 C. B. N. S. 435; 34 L. J. C. P. 155).

"When goods are to be sold on a Condition to take effect at some future time, I agree in thinking that it is more rational to construe the words 'to arrive' in the light of a Condition than as amounting to a Warranty" (per Alderson, B., *Johnson* v. *Macdonald*, 9 M. & W. 606; 12 L. J. Ex. 99).

A Ship is an "*Arrived* SHIP," and "Ready" to discharge, so that LAY DAYS begin to run; — (1) Where the Place named for Discharge is a PORT, — when she is at the usual place of discharge in the Port (*Brereton* v. *Chapman*, 7 Bing. 559: *Kell* v. *Anderson*, 12 L. J. Ex. 101; 10 M. & W. 498): — (2) Where the Place of Discharge is a DOCK, — when she is anywhere in that Dock (*Monsen* v. *Macfarlane*, 1895, 2 Q. B. 562; 65 L. J. Q. B. 57; 73 L. T. 548): — (3) Where she is to discharge from a named *Berth*, or a Berth is to be named by the Charterers *e.g.* "as ordered"; *Vh* ORDER, towards end), — when she reaches such Berth (*Tapscott* v. *Balfour*, 42 L. J. C. P. 16; L. R. 8 C. P. 46: *Dahl* v. *Nelson*, 50 L. J. Ch. 411; 6 App. Ca. 38; 44 L. T. 381; 29 W. R. 543: *Tharsis Co* v. *Morel Co*, 1891, 2 Q. B. 647; 61 L. J. Q. B. 11; 40 W. R. 58: *Sanders* v. *Jenkins*, 1897, 1 Q. B. 93; 66 L. J. Q. B. 40; 2 Com. Ca. 12; 13 Times Rep. 24). *Vf* Abbott, 278 *et seq*: CONVOY: LIVERPOOL.

"On arrival" and "to arrive" mean the same thing (per Parke, B., *Johnson* v. *Macdonald*, 9 M. & W. 601; 12 L. J. Ex. 99).

"After Arrival"; *V. Lindsay* v. *Janson*, 28 L. J. Ex. 315; 4 H. & N. 699: *Lidgett* v. *Secretan*, L. R. 5 C. P. 190; 39 L. J. C. P. 196; L. R. 6 C. P. 616; 40 L. J. C. P. 257.

Vf Blackb. 230, 239: Benj. 560: *Montgomery* v. *Middleton*, 13 Ir. C. L. Rep. 173: NON-ARRIVAL: ACTUAL ARRIVAL.

ARSENIC. — Quà Arsenic Act, 1851, 14 & 15 V. c. 13, "Arsenic" includes "Arsenious Acid and the Arsenites, Arsenic Acid and the Arseniates, and all other colourless, poisonous, preparations of Arsenic" (s. 6).

ARSON. — For a statement of the Stat. Def. of Arson in 24 & 25 V. c. 97, *V.* Steph. Cr. 318 *et seq*. *Vf* Arch. Cr. 616: Rosc. Cr. 248–259: 1 Encyc. 332–334.

V. SET FIRE: INCENDIARISM.

ART. — An "Art, Mystery, or MANUAL OCCUPATION," which, by s. 31, 5 Eliz. c. 4, could not be "used or exercised" without a prior apprenticeship, comprised the TRADE of a Brewer; for though a Brewer was not a HANDICRAFTSMAN, within 22 H. 8, c. 13, yet "'Art, or Mys-

tery,' is more general than 'Handicraft,' for that is restrained to Manufactures," and the intent of 5 Eliz. was "that none should take upon him any Art, Mystery, or Manual Occupation but such in which he had skill and knowledge; and it is very necessary that Brewers should have skill and knowledge in brewing good and wholesome beer, for that doth much conduce to men's health" (*City of London Case*, 8 Rep. 129, 130). But he who baked or brewed &c *for his own use*, did not require apprenticeship, "because every housewife brews for her private use" (*Ib.*). An unapprenticed Sleeping Partner in a Brewery conducted by his apprenticed partner, was not within the Act, because the trade was not "EXERCISED" by him (*Raynard* v. *Chase*, 1 Burr. 2, — a decision always adhered to, *V. n.* to *R.* v. *Kilderby*, 1 Wms. Saund. 312). The work of a Tailor was an "Art" within the Act (*Ipswich Tailors Case*, 11 Rep. 53); *secus*, that of a *Hemp-Dresser* (*R.* v. *Fredland*, Cro. Car. 499). *Note.* By s. 1, 54 G. 3, c. 96, s. 31, 5 Eliz. c. 4, was repealed as from 1st May, 1815. *V.* TRADE: SCIENCE: USE.

ARTICLE. — A horse is an "Article" within s. 25, Llandaff and Canton District Markets Act, 1858, 21 & 22 V. c. cv. (*Llandaff Market Co* v. *Lyndon*, 30 L. J. M. C. 105; 8 C. B. N. S. 515).

Stock in the funds, held not included in a bequest of "every other Article belonging to me both in and out of my house and which may not be herein mentioned" (*Collier* v. *Squire*, 3 Russ. 467).

"Any other Article or Thing," in s. 37, Prison Act, 1865, is not to be read *ejusdem generis* with the preceding enumeration, but means any other Article or Thing of any other kind, sort, or description whatsoever, *e.g.* a crowbar (*R.* v. *Payne*, 35 L. J. M. C. 170; L. R. 1 C. C. R. 27).

Semble, a ship is not an "Article" within the def in s. 3 (7), 30 & 31 V. c. 103, by which "*Manufacturing Process*" is defined to mean any MANUAL LABOUR exercised by way of trade, or for purposes of gain, in or incidental to the *making of any Article*, or part of an article, or in or incidental to the altering, repairing, ornamenting, finishing, or otherwise adapting for sale any Article (*Palmer Shipbuilding Co* v. *Chaytor*, 38 L. J. M. C. 63; 10 B. & S. 177; L. R. 4 Q. B. 209).

Article of *Food*; *V.* ARTICLE DEMANDED: FOOD. Stat. Def., (Article of Food, or Drink) 23 & 24 V. c. 84, s. 14.

"Article of *Manufacture*"; *V. Heywood* v. *Potter*, 22 L. J. Q. B. 133; 1 E. & B. 439: *Gillespie* v. *Cheney*, inf. Stat. Def., 2 & 3 V. c. 17, s. 1.

"Article of *Sculpture*"; Stat. Def., 7 & 8 V. c. 12, s. 20.

"Articles"; *V.* COVENANT.

"Articles of Clerkship"; Stat. Def., 51 & 52 V. c. 65, s. 4.

"Articles of War"; Stat. Def., 30 & 31 V. c. 111, s. 2; 38 & 39 V. c. 69, s. 2.

"Articles, Matters, and Things," in a Lease, "indicate Moveable

Chattels" (per Erle, C. J., *Garton* v. *Gregory*, 31 L. J. Q. B. 302; 3 B. & S. 90).

"*Specified* Article, under its Patent or other Trade Name," proviso to s. 14 (1), Sale of Goods Act, 1893, "does not apply to raw commodities, or materials, but to Manufactured Articles" (per Russell, C. J., *Gillespie* v. *Cheney*, 1896, 2 Q. B. 59; 65 L. J. Q. B. 552; 1 Com. Ca. 373).

ARTICLE DEMANDED. — "The 'Article demanded,' — s. 6, Sale of Food and Drugs Act, 1875, 38 & 39 V. c. 63, — must be held to be, the Article meant by an ordinary purchaser to be obtained, — not in any scientific definition" (*Morton* v. *Green*, 4 Couper's Justiciary Rep. 469: *White* v. *Bywater*, 19 Q. B. D. 582; 51 J. P. 821; 3 Times Rep. 631). But the section is not limited in its application to adulterated articles (*Knight* v. *Bowers*, 14 Q. B. D. 845; 54 L. J. M. C. 108).

Vh. Coffee Case, *Higgins* v. *Hall*, 50 J. P. 788: MILK Case, *Lane* v. *Collins*, 54 L. J. M. C. 76; 14 Q. B. D. 193; 33 W. R. 365; 49 J. P. 88; 52 L. T. 257: Mustard Case, *Horder* v. *Grainger*, 44 J. P. 188: Tincture of Opium Case, *White* v. *Bywater*, sup.

Note. The "Article" to be divided, under s. 14 of the Act cited, must be the very one purchased; the purchaser cannot mix up several lots and divide the aggregate, even though the lots be in small bottles of apparently identical stuff (*Mason* v. *Cowdary*, 1900, 2 Q. B. 419; 69 L. J. Q. B. 667; 82 L. T. 402; 49 W. R. 28; 64 J. P. 662). *V.* SAMPLE.

V. NATURE: PREJUDICE OF PURCHASER.

ARTIFICER. — "An 'Artificer' is a skilled workman" (per Brett, L. J., *Morgan* v. *Lond. Gen. Omnibus Co*, 53 L. J. Q. B. 352; 13 Q. B. D. 832): one who *makes* something, as distinguished from one who only *does* something, *e.g.* a Hairdresser is not an artificer, because he only does something (*Palmer* v. *Snow*, cited TRADE). *V.* HANDICRAFTSMAN: LABOURER: MECHANIC: WORKMAN: MERCHANT.

A designer of patterns for a calico-printer was held an "Artificer" within the repealed statute, 4 G. 4, c. 34, s. 3 (*Ex p. Ormerod*, 13 L. J. M. C. 73; 1 Dowl. & L. 825). In that case Williams, J. (as reported in Dowl. & L.), said, — "I cannot conceive that the word 'Artificer' only applies to persons engaged in such occupations as require *merely* MANUAL LABOUR. The party who makes this application to the court, himself states that he is a 'pattern designer,' a person in fact who makes the drawing of the pattern, which is then engraved on the printing rollers, and, subsequently, transferred in colours to the fabric itself. He is therefore the party who sets all in motion. He contributes in the most material degree to the printing of calico, and may therefore, I think, be properly included under the term 'Artificer.'" As reported in the *Law Journal*, Williams, J., commenced these observations thus: — "I cannot conceive that the term 'Artificer,' used in the statute, is confined to those

instances only in which *great* Manual Labour is required." But whether "merely," or "great," were the word used by that learned judge, there can be little doubt that the personal exercise of some manual labour, and that of a skilled kind, is essential to the term "Artificer." And under the statute last cited, a Journeyman Tailor (*Ex p. Gordon*, 25 L. J. M. C. 12) was an "Artificer." Nor would an "Artificer or Handicraftsman" be less so, under that statute, because at liberty to employ other workmen under him (*Lawrence* v. *Todd*, 32 L. J. M. C. 238; 14 C. B. N. S. 554: *Whiteley* v. *Armitage*, 13 W. R. 144).

But though Erle, J., said (in *Lawrence* v. *Todd*, sup), that the Truck Act, 1831, was *in pari materiâ* with 4 G. 4, c. 34, and though, of course, the kind of work which would make a man an "Artificer" would be the same for the purposes of each Act, yet — (notwithstanding such cases as that of the Butty colliers, *Bowers* v. *Lovekin*, 25 L. J. Q. B. 371; 6 E. & B. 584; 4 W. R. 600; 27 L. T. O. S. 168; or of the Collier having liberty to employ others under him, *Weaver* v. *Floyd*, 21 L. J. Q. B. 151), — the principle of *Lawrence* v. *Todd* is not, generally, applicable to the Truck Act, and an "Artificer," labourer, or other person within that Act must be one who contracts for his own labour exclusively, as distinguished from one who contracts to supply the *result* of the labour of others, or of himself and others (*Ingram* v. *Barnes*, 26 L. J. Q. B. 82, 319; 7 E. & B. 132; 5 W. R. 232, 726; 29 L. T. O. S. 297; 21 J. P. 822: *Sleeman* v. *Barrett*, 33 L. J. Ex. 153; 2 H. & C. 934; 12 W. R. 411; 9 L. T. 834; 28 J. P. 232; establishing *Riley* v. *Warden*, 18 L. J. Ex. 120; 2 Ex. 59; 10 L. T. O. S. 420, and *Sharman* v. *Sanders*, 22 L. J. C. P. 86; 13 C. B. 166; 1 W. R. 152; 20 L. T. O. S. 247: *Vh*, *Chawner* v. *Cummings*, 15 L. J. Q. B. 161; 8 Q. B. 311); but if the contract does not contemplate the sub-employment of others, but enables the employer whenever he chooses to require the employee to devote his own labour to the work, such an employee may be an "Artificer" within the Truck Act though he may have the opportunity (*e.g.* by taking the work home) of being assisted in his work by others (*Pillar* v. *Llynvi Co*, 38 L. J. C. P. 294; L. R. 4 C. P. 752; 17 W. R. 1123; 20 L. T. 923).

"All Workmen, Labourers, and other persons, in any manner engaged in the performance of any Employment, or Operation, of what nature soever, in or about the Hosiery Manufacture, shall be, and be deemed, 'Artificers,'" within the Hosiery Manufacture (Wages) Act, 1874, 37 & 38 V. c. 48 (s. 7).

ARTIFICIAL. — "Artificial raising of temperature"; Stat. Def., 52 & 53 V. c. 62, s. 4.

ARTIZAN. — Is, probably, a synonym for ARTIFICER.

An Estate Agent is not an "Artizan," within s. 25 (10), S. L. Act, 1882 (per Lopes, L. J., *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23).

ARUNDINETUM. — "Where reeds grow" (Co. Litt. 4 b).

AS. — *V.* As and when: When.

This word is sometimes used as an *exempli gratia* (*V.* 1 Jarm. 753, *n*), or, as Ld Coke phrases it, as "similitudinary" (Co. Litt. 43 b); but sometimes it is to be understood positively (Ib. 17 b).

But frequently "as" means, as if something was that which it is not, *e. g.* a Hall or Office shall be subject to House Duty "as," — *i.e.* as if it were, — an Inhabited House, Sch B. R. 5, House Tax Act, 1808 (*Styles* v. *Middle Temple*, cited Hall).

AS A TRADER. — Notwithstanding what Bacon, V. C., is reported to have said in *The Colonial Bank* v. *Whinney* (51 L. T. 354), this phrase is not identical with "in the course of his trade or business" (*Re Jenkinson*, 54 L. J. Q. B. 602).

V. In his Trade or Business.

AS AFORESAID. — *V.* Aforesaid.

AS ALLEGED. — A pleading denying terms of agreement "as alleged" is evasive (*Thorp* v. *Holdsworth*, 3 Ch. D. 637; 45 L. J. Ch. 406).

AS AND WHEN. — Gift to or for Children, to be paid "as and when" attaining 21; — "the words 'as and when' are ambiguous, and are not to be treated, as indeed grammatically they could not be treated, as equivalent to a gift to such of the children as should attain the age of 21 years, in which case the attainment of that age would be made a Condition Precedent to the acquisition of the right to the legacy" (per Romilly, M. R., *Pearman* v. *Pearman*, 33 Bea. 396). But if there be no direct gift to the Children, then "as and when," or "when and as," will, generally, connote a Condition Precedent (*Gardiner* v. *Slater*, 25 Bea. 509).

"'When and as' means 'as soon as,'" quà time for executing a Power (per Monroe, J., *Re Creagh*, 25 L. R. Ir. 142).

AS BEFORE. — *V.* Aforesaid.

AS COUNSEL SHALL ADVISE. — A covenant for Further Assurance "as Counsel shall advise," refers to the Counsel of the covenantee (*Higginbottom's Case*, 5 Rep. 19), but not the covenantee himself "although he be learned in the law" (*Rosewel's Case*, Ib.): *Vf* Elph. 493, 494.

"A Direction to Settle 'as Counsel shall advise,' affords a strong indication that the trusts are executory" (Elph. 533, citing *White* v. *Carter*, 2 Amb. 670; 2 Eden, 366: *Vh* obs by Sugden, C., *Rochfort* v. *Fitzmaurice*, 2 Dr. & War. 21, quoted Elph. 534).

AS CROW FLIES. — *V.* Distance.

AS CUSTOMARY. — *V.* CUSTOMARY.

AS DESCRIBED. — *V. Noseworthy* v. *Buckland*, 43 L. J. C. P. 27; L. R. 9 C. P. 233: *Hinks* v. *Safety Lighting Co*, 4 Ch. D. 607.
Invention "as *herein* described"; *V. Thomas* v. *Welch*, L. R. 1 C. P. 192.

AS DEVISED. — *V. Cooch* v. *Walden*, 46 L. J. Ch. 639.

AS FAR AS. — *V.* SO FAR AS: APPLICABLE: POSSIBLE.

AS FAST AS. — *V.* CUSTOMARY.

AS FOLLOWS. — *V. Re Hunt and Pennington*, 57 L. T. 874.

AS HELD. — Agreement to sell property "as I hold the same"; *V. Spratt* v. *Jeffery*, 10 B. & C. 249.

AS IF. — "As if this Act had not been made"; *V.* NOTWITHSTANDING.
"As if he had agreed"; *V.* AGREED.
"As if he was naturally dead"; *V.* DEAD.
"As if she were a Feme Sole"; *V.* FEME.

AS IN OTHER CASES. — R. 31, Ord. 16, R. S. C.; *Vh* Ann. Pr.

AS IT STANDS. — A contract to take, *e.g.* a Cargo, "as it stands" (though it specify a quantity), means that the cargo is "to be taken by the purchaser for better for worse, for less or for more" (per Campbell, C. J., *Covas* v. *Bingham*, 23 L. J. Q. B. 29; 2 E. & B. 836; *Vth* Benj. 565).

AS LONG AS. — *V.* QUAMDIU.

AS MAY BE PAID. — *V.* PAID: PAY.

AS NEAR AS. — *V.* SO FAR AS.

AS NEAR THERETO. — *V.* NEAR THERETO AS SHE MAY SAFELY GET.

AS NEARLY AS POSSIBLE. — *V.* NEARLY AS POSSIBLE.

AS OCCUPIED. — *V.* OCCUPATION.

AS OF. — "In, or as of" a Term; *e.g.* in a Warrant of Attorney to sign judgment; *V. Alcock* v. *Sutcliffe*, 16 L. J. Q. B. 129.
"As of Fee"; *V.* Elph. 572, *n.*
"As of Right"; *V.* RIGHT.

AS OFTEN AS. — As to the value of this phrase in a covenant for renewal of a Lease, and as to its inefficiency to give the right to a perpetual renewal; *V. Swinburne* v. *Milburn*, cited RENEWAL.

AS ORDERED. — Deliver cargo "as ordered"; *V. Tapscott* v. *Balfour, Dahl* v. *Nelson,* and *Tharsis Co* v. *Morell Co,* cited ARRIVE: *Dobell* v. *Green,* 1900, 1 Q. B. 526; 69 L. J. Q. B. 454; 82 L. T. 314; 5 Com. Ca. 161. *Vf* ORDER, towards end.

AS PER CHARTER-PARTY. — *V. Smidt* v. *Tiden,* cited FREIGHT, at end.

AS REQUIRED. — "It was held no defence to an action by the buyer for non-delivery 'as REQUIRED,' that he had not requested delivery within a reasonable time" (Benj. 691, citing *Jones* v. *Gibbons,* 8 Ex. 920; 22 L. J. Ex. 347).

AS SECRETARY. — *V.* SECRETARY.

AS SOLICITOR. — An Undertaking in this form, — "We, as solicitors to A, undertake to pay" &c, binds the signatory personally; for many persons will deal with Solrs who will not deal with the Client, and besides Solrs have no power, as Solrs, to pledge the credit of their Clients, and the term "as Solrs" is merely descriptive of the character they fill (*Burrell* v. *Jones,* 3 B. & Ald. 47).

AS SOON AS. — *V.* AS AND WHEN: ABLE: IMMEDIATELY: POSSIBLE: WHEN.

AS SUCH. — Notice of a prejudicial instrument, &c, to counsel, solicitor or agent "as such," s. 3, Conv. Act, 1882, means notice to counsel, &c, in and during the transaction sought to be affected (*Re Cousins,* cited COME TO).

Leaseholds, though specifically bequeathed, "pass to the Exor, *as such,*" ss. 9 (1), 14 (1), Finance Act, 1894; and, therefore, Estate Duty thereon is payable out of Residue, and not by the Specific Legatees (*Re Culverhouse,* 1896, 2 Ch. 251; 65 L. J. Ch. 484; 74 L. T. 347; 45 W. R. 10). An Appointed Fund, though it does not pass to the Exor "as such," will escape the Duty as a "Testamentary Expense" if the Exor is directed to pay such expenses (*Re Treasure,* cited TESTAMENTARY EXPENSES).

V. BY VIRTUE: ECCLESIASTICAL CHARITY.

AS TENANT. — *V.* TENANT.

AS THE CASE REQUIRES. — *V.* per Esher, M. R., *Hanfstaengl* v. *American Tobacco Co,* 1895, 1 Q. B. 347; 64 L. J. Q. B. 280; 71 L. T. 864; 43 W. R. 261: PRODUCED.

V. IN CASE.

AS THE CROW FLIES. — *V.* DISTANCE.

AS THE LAW DIRECTS. — *V. Fielden* v. *Ashworth,* cited RELATIONS.

AS THE QUEEN DIRECTS. — Quà South Africa Act, 1877, 40 & 41 V. c. 47, " 'As the Queen may direct'; means, as Her Majesty may direct by any Order in Council issued in pursuance of s. 3 of this Act, but not otherwise " (s. 61).

AS THEY SHALL THINK FIT. — *V.* IF THEY SHALL THINK FIT.

AS TO. — " As to " does not necessarily mark the commencement of an independent sentence (*Gordon* v. *Gordon*, L. R. 5 H. L. 254).

AS UNADULTERATED. — The offence of selling Food or Drink " *as* unadulterated," s. 2, 35 & 36 V. c. 74, does not need an express representation for its completion; to supply on sale an article, *e.g.* Butter, which ought to be unadulterated, is to sell it " as unadulterated " (*Fitzpatrick* v. *Kelly*, 42 L. J. M. C. 132; L. R. 8 Q. B. 337).

ASCERTAINED. — This word has two meanings, (1) " known," (2) " made certain " (*Sidebottom* v. *Sidebottom*, L. R. 2 P. & D. 365; 41 L. J. P. & M. 23). In that case, as used in a Residuary Clause, it was construed " made certain."

Where money to be paid, or service to be rendered, has " to be ascertained " in a certain way, " the words 'to be ascertained' are very strong words, and they look very like a Condition Precedent " (per Crompton, J., *Braunstein* v. *Accidental Insrce*, 31 L. J. Q. B. 24).

V. CANNOT.

ASHES. — *V.* DUST: RUBBISH: REFUSE.

ASHPIT. — Quà the Public Health Acts for England, " Ashpit," " *includes* any ashtub, or other receptacle for the deposit of ashes, fæcal matter, or refuse " (s. 11 (1), 53 & 54 V. c. 59); quà P. H. (London) Act, 1891, it " *means* any ashpit, dustbin, ashtub, or other receptacle for the deposit of ashes or refuse matter " (s. 141); quà the P. H. (Scotland) Act, 1897, it " means any receptacle for the deposit of ashes or refuse matter " (s. 3).

ASPORTATION. — An Asportation is a carrying away; and is, generally, spoken of the carrying away of goods feloniously taken (4 Bl. Com. 231). *Vf* TAKE AND CARRY AWAY.

ASS. — *V.* BEETLE-HEADED: FOOL.

ASSART. — " Grubbing woods in a man's own lands in a FOREST, so as to make the same arable " (Elph. 561, *whv*).

When Termes de la Ley was written this was a sad business, for there we read, — " This Assart of the Forest, is the greatest Offence or Trespasse of all others that can be done in the Forest to Vert or Venison, containing in it WASTE, or more." *Cp* DISBOSCATIO.

ASSAULT. — "An Assault is (a) an attempt unlawfully to apply any the least actual force to the person of another directly or indirectly; (b) the act of using a gesture towards another, giving him reasonable grounds to believe that the person using that gesture meant to apply such actual force to his person as aforesaid; (c) the act of depriving another of his liberty: in either case, without the consent of the person assaulted, or with such consent if it is obtained by fraud" (Steph. Cr. 177: *Cp* SMITE). But free consent will not always relieve a case of being a criminal assault, for the combatants at a Prize Fight, and all persons aiding or abetting therein, are guilty of an indictable Assault (*R.* v. *Coney*, 51 L. J. M. C. 66; 8 Q. B. D. 534; *whcv* for a very full citation of authorities).

"A *Battery* is an assault whereby any the least actual force is actually applied to the person of another, or to the dress worn by him, directly or indirectly.

"Provided that such Acts as are reasonably necessary for the common intercourse of life, are not Assaults or Batteries, if they are done for the purpose of such intercourse only and with no greater force than the occasion requires. *V.* DISCIPLINE.

"No mere words can in any case amount to an Assault" (Steph. Cr. 177: *Meade's and Belt's Case*, 1 Lewin C. C. 184).

Vf Arch. Cr. 796, 800: Rosc. Cr. 260, 264: INDECENT.

The above definitions are applicable to *Civil* Assaults and Batteries, except that no Civil Action can be maintained if the plt consented. *Vh* Rosc. N. P. 899.

"Assault occasioning Actual Bodily Harm"; *V.* INFLICT.

Vf Cowel: 1 Encyc. 342. "Battery," 2 Encyc. 35, 36: Termes de la Ley.

ASSEMBLE. — The offence of knowingly suffering prostitutes or persons of bad character "to assemble and meet together," or "to assemble," or "to meet together," in an Inn or Beerhouse, means allowing them to be there as prostitutes or in their other evil character; but does not include a case of allowing them to be there merely to get refreshments and for no longer time than reasonably necessary for such refreshments to be consumed (*Greig* v. *Bendeno*, 27 L. J. M. C. 294; E. B. & E. 133; 22 J. P. 816: *Belasco* v. *Hannant*, 31 L. J. M. C. 225; 3 B. & S. 13; 6 L. T. 577: *Vf. Parker* v. *Green*, 6 L. T. 46: *Marshall* v. *Fox*, 24 L. T. 751). *Cp.* s. 14, 35 & 36 V. c. 94.

The deft stood in a street talking to another man, and whilst so talking received a number of packages from several persons; he then entered a house, the other following, to whom he transferred something. Both then came out of the house, and the other went away, but the deft remained in the street and received more packages from more persons. Deft was then arrested and on him were found several packages contain-

ing money and a local newspaper containing the programme of local Races, and a number of slips of paper on which were written the names of horses running that day; held, that this infringed a Bye Law which provided that, "a person shall not together with any other person or persons, *assemble* in any Street or Public Place for the purpose of Betting" (*Godwin* v. *Walker*, 40 S. J. 481; 12 Times Rep. 367). *V.* GAMING.

Cp HARBOUR.

ASSEMBLED. — A power to do anything by a majority of persons "assembled," must be exercised by a majority of those actually present, whether all vote or not (*R.* v. *Christchurch*, 7 E. & B. 409; 27 L. J. M. C. 23). *V.* MEETING.

ASSEMBLEMENT. — Crown Rents in Jersey "by Assemblement," or "par Assemblage"; *V. A-G. Jersey* v. *Le Moignan*, 1892, A. C. 402; 61 L. J. P. C. 53; 66 L. T. 803.

ASSEMBLY. — An "Assembly" of persons would seem to mean three or more; *V.* UNLAWFUL ASSEMBLY: *Cp* MULTITUDE: *Godwin* v. *Walker*, cited ASSEMBLE.

ASSERT. — "Assert against"; *V.* AGAINST.

ASSESSABLE VALUE. — *V.* RATEABLE VALUE: ANNUAL VALUE.

ASSESSED. — As used in a Covenant to pay Rates &c, "'assessed,' means, 'reckoned on the value'" (per Rigby, L. J., *Floyd* v. *Lyons*, 66 L. J. Ch. 353; 1897, 1 Ch. 633; 76 L. T. 251; 45 W. R. 435), and, accordingly, it was there held, that a special Water Rate for trade purposes, *e.g.* a supply of water to a Restaurant, was not a Water Rate "IMPOSED, or assessed" upon the premises, within a Lessor's covenant.

V. CHARGED: RATED OR ASSESSED.

ASSESSMENT. — "Assessments," in the collocation in a lessee's covenant to pay "Taxes, Rates, and Assessments," means, Assessments of a nature similar to that of Taxes and Rates, and does not comprise an exceptional burden imposed by a local authority and ordinarily to be borne by the landlord (*Tidswell* v. *Whitworth*, 36 L. J. C. P. 103; L. R. 2 C. P. 326: *Hartley* v. *Hudson*, 48 L. J. Q. B. 751; 4 C. P. D. 367: *Allum* v. *Dickinson*, 52 L. J. Q. B. 190; 9 Q. B. D. 632: *Wilkinson* v. *Collyer*, 53 L. J. Q. B. 278; 13 Q. B. D. 1: *Baylis* v. *Jiggins*, cited TAXES), nor does it comprise Tithe Rent Charge (*Jeffrey* v. *Neale*, 40 L. J. C. P. 191; L. R. 6 C. P. 240).

V. TAXES: OUTGOING: IMPOSITION: RATED OR ASSESSED: SCOT.

"Assessment Committee"; Stat. Def., Rating Act, 1874, 37 & 38 V. c. 54, s. 15.

ASSESSOR. — Stat. Def., Taxes Management Act, 1880, 43 & 44 V. c. 19, s. 5. — *Scot.*, Lands Valuation (Scot) Act, 1854, 17 & 18 V.

c. 91, s. 42; Burgh Voters Registration (Scot) Act, 1856, 19 & 20 V. c. 58, s. 48; County Voters Registration (Scot) Act, 1861, 24 & 25 V. c. 83, s. 2; Rep. People (Scot) Act, 1868, 31 & 32 V. c. 48, s. 59; 33 & 34 V. c. 92, s. 2; Sporting Lands Rating (Scot) Act, 1886, 49 & 50 V. c. 15, s. 2; Loc Gov (Scot) Act, 1889, 52 & 53 V. c. 50, s. 105.

ASSETS. — "*Assets* in the hands of the executor or administrator, that is, — 'sufficient,' from the French *assez*, to make him chargeable to a creditor, and a legatee or party in distribution, so far as such property extends" (Wms. Exs. 1517; and as to Assets generally, *V.* Ib. Pt. 4, Bk. 1, ch. 1: 1 Encyc. 349–352).

"Assets" of a Partnership, "is a compendious expression for the aggregate of the several items of property belonging to the partnership" (per Stirling, J., *Jennings* v. *Jennings*, 1898, 1 Ch. 378; 67 L. J. Ch. 190; 77 L. T. 786; 46 W. R. 344); therefore, an agreement between partners that one shall have the partnership "Assets," will generally include the Goodwill (*Ib.*). *Cp* Withdraw.

"Assets," R. 176, Stock Exchange Rules, means the whole of the Defaulter's property; and when the Rule comes into operation, there is a cessio bonorum and assignment of all the Defaulter's property to the Official Assignees of the Stock Exchange (*Tomkins* v. *Saffery*, 47 L. J. Bank. 11; 3 App. Ca. 213: *Richardson* v. *Stormont*, 1900, 1 Q. B. 701; 69 L. J. Q. B. 369; 82 L. T. 316; 48 W. R. 451).

"Property, Assets, and Revenues," of a Co; *V.* Revenues.

"Assets," are something in a Liquidation; it is incorrect to speak of the Property of a solvent person or Co as "Assets" (per Chitty, J., *Re Hull, Barnsley & W. Riding Ry*, 37 S. J. 477). *Sv* Undertaking.

"Surplus Assets"; *V.* Surplus.

"Undistributed Assets"; *V.* Undistributed.

"Assets," s. 9, Dividend Duty Act, 1890 (Queensland); *V. Walsh* v. *The Queen*, 1894, A. C. 144; 63 L. J. P. C. 52.

V. Effects.

ASSIGN. — As to when this word is effectual to revive a merged term; *V.* Elph. 45.

"A covenant not to assign or otherwise part with the premises, or any part thereof, for the whole *or any part of the term*, is broken by a sublease (*Doe* d. *Holland* v. *Worsley*, 1 Camp. 20: Cole, Ejec. 435); but a covenant 'not to assign, transfer, set over, or otherwise do or put away the lease or premises' is not (*Crusoe* d. *Blencowe* v. *Bugby*, 2 Bl. W. 766; 3 Wils. 234: *Kinnersley* v. *Orpe*, 1 Doug. 56: *Church* v. *Brown*, 15 Ves. 258). A covenant against sub-letting will restrain an Assignment (*Greenaway* v. *Adams*, 12 Ves. 395: *Svthc, Re Doyle and O'Hara*, 1899, 1 I. R. 113)"; Woodf. 699. *V.* Set.

In *Crusoe* d. *Blencowe* v. *Bugby* (sup) the Court said "'Assign, Transfer, and set over,' are mere words of assignment. 'Otherwise do, or put

away,' signifies any other mode of getting rid of the premises *entirely*"; and, therefore, an Underlease was not prohibited. But an Underlease (as well as an Assignment) is prohibited by a covenant not to "LET, set, or assign over" the premises or any part thereof (*Roe* v. *Harrison*, 2 T. R. 425; 1 Doug. 57, *n*).

V. UNDERLEASE: PUT AWAY.

Semble, a covenant not to "Assign" is not broken by a License to use the premises for a temporary purpose, — *e.g.* a Travelling Show (*Mashiter* v. *Smith*, 3 Times Rep. 673).

"A covenant 'not to alien, sell, assign, transfer, set over, or otherwise part with the lease or premises' was ruled, before the Jud. Act, not to be broken by a Deposit of the Lease as a security for a loan (*Doe* d. *Pitt* v. *Hogg*, 1 C. & P. 160; 4 D. & R. 226; cited and approved in *Greenslade* v. *Tapscott*, 3 L. J. Ex. 328; 1 Cr. M. & R. 59; 4 Tyr. 566); but the effect of s. 24 of that Act would seem to be to alter the law in this respect"; (Woodf. 13 Ed. 660). *Sq.* As to this inference *Va M'Kay* v. *M'Nally* (cited MORTGAGE, at end), *whc* was decided since the Jud. Act.

And it now seems clear that, quà a clause of Forfeiture, the section referred to does not convert a non-legal assignment into a legal one, and that the meaning of a covenant not to assign a Lease "is not to execute a *Legal* Assignment," which a Declaration of Trust is not (*Gentle* v. *Faulkner*, 1900, 2 Q. B. 267; 69 L. J. Q. B. 777; 82 L. T. 708, *V.* espy jdgmt of Smith, L. J., who pointed out that the covenant in *thc* "does not relate to the parting with the possession of the demised premises"). *Cp Matthews* v. *Usher*, cited ASSIGNS: *Re Hughes*, cited CONVEYANCE.

A covenant by *Joint Lessees*, not to assign, is broken if one assigns; for the covenant "means that neither of them shall assign" (per Willes, J., *Varley* v. *Coppard*, L. R. 7 C. P. 505). *Vh* LESSEES: FORFEITURE.

A covenant, or condition, not to assign, is not broken by giving a Warrant of Attorney (*Doe* d. *Mitchinson* v. *Carter*, 8 T. R. 57), unless it be expressly given for the purpose of enabling the judgment creditor to take the term in execution (*Ib.*, 8 T. R. 300; *Vth Croft* v. *Lumley*, 6 H. L. Ca. 739); nor is it broken by a seizure under a judicial process (*R.* v. *Robinson*, Wight. 386), or by passing to a trustee under a bankry (*V.* ALIENATION).

Not "to grant away, assign, or let, charge, or dispose of"; *V. Croft* v. *Lumley*, 25 L. J. Q. B. 73, 223; 27 Ib. 321; 6 H. L. Ca. 672.

Not "to assign, demise, or otherwise part with"; *V. Daly* v. *Edwardes*, 83 L. T. 548; 16 Times Rep. 288. *Cp* SUFFER: PERMIT. *Vf* ASSIGN.

For an exposition of the object of the covenant against Assignment of a Lease, and the DAMAGES recoverable for its breach; *V.* per Hawkins, J., *Lepla* v. *Rogers*, 1893, 1 Q. B. 31; 68 L. T. 584.

S. 14 (6), Conv. & L. P. Act, 1881, which provides that the section shall not extend "to a covenant against the Assigning, Underletting, Parting with the Possession, or DISPOSING OF the land leased," does not

comprise an Assignment for the Benefit of Crs excepting leaseholds but declaring a trust of them; and if such an Assignment &c be the Forfeiture relied on, Notice must be given under the section (*Gentle* v. *Faulkner*, sup).

An Assign is synonymous with ASSIGNEE; *V.* ASSIGNS.

V. NEGOTIATE: UNREASONABLY.

ASSIGNATION. — Quà Transmission of Moveable Property (Scot) Act, 1862, 25 & 26 V. c. 85, "Assignation," includes, "Translations and Retrocessions, and Probative Extracts thereof" (s. 4).

ASSIGNED. — "Legally assigned"; *V.* LEGALLY.

ASSIGNEE. — "When a statute speaks of an 'Assignee,' it is to be intended of such complete Assignee as has all the ceremonies and incidents requisite by the law to such character; not taking away any form or circumstance which the law requires. Therefore, Assignee by Fine shall not, under 32 H. 8, c. 34, take advantage of a Condition without attornment" (Dwar. 683, citing *Mallory's Case*, 5 Rep. 112). *Vf*, on the first sentence of this par, 13 & 14 V. c. 60, s. 2.

The word "Assignee," in the phrase "executor, administrator, or assignee," s. 37, Solrs Act, 1843, is not confined to a person resembling a personal representative of a deceased person; but is equivalent to an "Assign" (*Ingle* v. *McCutchan*, 53 L. J. Q. B. 311; 12 Q. B. D. 518: *Penley* v. *Anstruther*, 52 L. J. Ch. 367. *Vf Re Ward*, 28 Ch. D. 719). *Cp* "Assignee" as used in s. 25 (6), Jud. Act, 1873.

"Assignee *for value*," s. 50 (3), S. L. Act, 1882, s. 4 (1), S. L. Act, 1890; *V. Re Ailesbury*, 62 L. J. Ch. 1012; 69 L. T. 493; 42 W. R. 45.

V. ASSIGNS.

ASSIGNING. — *V.* BEING.

ASSIGNMENT. — *V.* ASSIGN: TRANSFER: UNDERLEASE: CHOSE IN ACTION: PLACE OUT.

A written direction to trustees of a Will by a beneficiary thereunder to pay to a third person money due to the beneficiary, is an "Assignment" of the money within s. 25 (6), Jud. Act, 1873 (*Harding* v. *Harding*, 55 L. J. Q. B. 462; 17 Q. B. D. 442; 34 W. R. 775. *Va Brice* v. *Bannister*, 47 L. J. Q. B. 722; 3 Q. B. D. 569).

Note. As to *Brice* v. *Bannister*, *V. Western Wagon Co* v. *West*, 1892, 1 Ch. 271; 61 L. J. Ch. 244; 66 L. T. 402; 40 W. R. 182, and *Durham* v. *Robertson*, cited ABSOLUTE ASSIGNMENT.

"Conveyance or Assignment"; *V.* CONVEYANCE.

"Assignment," s. 10, Landlord and Tenant Law Amendment Act (Ir) 1860, 23 & 24 V. c. 154, does not include a transmission by Opera-

tion of Law, *e.g.* a Conveyance by a Sheriff (*Kenelly* v. *Enright*, 8 L. R. Ir. 33), or a Deed of Partition by joint tenants (*Foley* v. *Gallagher*, 2 L. R. Ir. 35, 389). *Cp* ALIENATION: ASSIGNS.

"Assignment for Benefit of Crs" is, generally, not a BILL OF SALE; *V. Hadley* v. *Beedon*, 1895, 1 Q. B. 646; 64 L. J. Q. B. 240; 72 L. T. 493; 43 W. R. 218.

The proper mode of assigning a PATENT is by Deed; and, *semble*, an "Assignment" of the legal proprietorship of a Patent, to be registered under s. 87, Patents &c Act, 1883, must be by Deed; but an "Assignment . . . *affecting* the proprietorship," s. 23, may be an EQUITABLE Assignment, which may be registered under R. 65, 68, Patent Rules, 1883 (*Re Casey*, 1892, 1 Ch. 104; 61 L. J. Ch. 61; 66 L. T. 93; 40 W. R. 180).

Quà Land Law (Ir) Act, 1888, 51 & 52 V. c. 13, "'Assignment' shall include an Equitable Assignment" (s. 1).

ASSIGNS. — "Assignee cometh of the verb *assigno*. And note there by assignes in deed, and assignes in law: whereof see more in the Chapter of Warrantie, Sect. 733" (Co. Litt. 8 b: *Vf* Termes de la Ley, *Assignee*). *V.* ASSIGN: ASSIGNEE.

"'Assign,' does not mean 'Heir'; it means a person substituted for another by an act of some kind or other" (per Parke, B., *Doe* d. *Lewis* v. *Lewis*, 9 M. & W. 664). An Heir takes *vi legis*; but every one who takes by an act, — *e.g.* a Deed or Will, — of a prior owner is his Assign (Wms. R. P. 58). An Exor of a Lessee is, however, not his "Assign" of the Term until Entry (*Rendall* v. *Andreæ*, 61 L. J. Q. B. 630).

"Assigns" in a LEASE, means voluntary assigns, and does not comprise assigns by Operation of Law, — *e.g.* a Trustee in Bankry, or persons claiming under him (*Doe* d. *Goodbehere* v. *Bevan*, 3 M. & S. 353: *Va Bailey* v. *De Crespigny*, inf: ASSIGNMENT).

An Appointee is not an Assign (*Skeeles* v. *Shearly*, 8 Sim. 157), nor, generally, is an Under-Tenant (*Bryant* v. *Hancock*, 1898, 1 Q. B. 716; 67 L. J. Q. B. 507; affd in H. L. 1899, A. C. 442; 68 L. J. Q. B. 889); but an Under-Lessee who is in Possession with notice of a covenant, is bound by a covenant in the head-lease (*Hall* v. *Ewin*, cited RUN WITH THE LAND: *John* v. *Holmes*, 1900, 1 Ch. 188: 69 L. J. Ch. 149; 81 L. T. 771; 48 W. R. 236).

A Licensee may justify as an Assign (*Mitcalfe* v. *Westaway*, inf).

The meaning, indeed, of a *Lessee's* Assigns, is, "the person entitled to the Term, as between him and the Lessor, and bound by, and entitled to the benefit of, the covenants entered into by the Lessee and Lessor, respectively, which RUN WITH THE LAND demised" (per Romer, J., *Friary* v. *Singleton*, 1899, 1 Ch. 86; 68 L. J. Ch. 13; 69 L. T. 465; 47 W. R. 93; affd, though conclusion on the facts dissented from, 1899, 2 Ch. 261; 68 L. J. Ch. 622; 81 L. T. 101). In this connection, *Walsh*

v. *Lonsdale* (52 L. J. Ch. 2; 21 Ch. D. 9; 46 L. T. 858; 31 W. R. 109) has no bearing; for a Lessor has no right, even in Equity, to sue an Equitable Lessee on the Lessee's covenants, nor *vice versa* (*Friary* v. *Singleton*, sup, citing *Moore* v. *Greg*, 18 L. J. Ch. 15; 2 D. G. & S. 304: *Cox* v. *Bishop*, 26 L. J. Ch. 389; 8 D. G. M. & G. 815). Accordingly, a merely equitable transferee of a lease cannot insist on an OPTION to purchase the freehold which the lease gives to the lessee his exs, ads, or "assigns" (*Friary* v. *Singleton*, sup); but a lessee holding only under an Agreement for a Lease, is bound, by the terms of such agreement, to the person whom he has acknowledged as his landlord thereunder, *e.g.* to purchase his goods from "the Successors in Business" of the person from whom he took the agreement (*Manchester Brewery Co* v. *Coombs*, 82 L. T. 347, cited SPIRITUOUS LIQUOR).

A Lessor's "Assigns," quà s. 14 (3), Conv. & L. P. Act, 1881, "means Legal Assigns, as ASSIGNMENT was held in *Gentle* v. *Faulkner* (cited ASSIGN) to mean Legal Assignment" (per Smith, L. J., *Matthews* v. *Usher*, 1900, 2 Q. B. 535; 69 L. J. Q. B. 856; 83 L. T. 353; 49 W. R. 40); and, notwithstanding subs. 5, s. 25, Jud. Act, 1873, a Mtgor, or other owner of the Equity of Redemption, is not entitled, as an "Assign" of the Lessor, to give the NOTICE required by the firstly mentioned section (*S. C.*).

"Where a discretionary *legal power* is expressly limited to 'A. *and his assigns*,' the grantee or devisee of A., and even a claimant under him by Operation of Law (as an heir or executor), may exercise the power (*How* v. *Whitfield*, 1 Vent. 338, 339; 1 Freem. 476); but in a *trust*, if an estate be vested in a trustee upon trust that he, his heirs, exors, admors, *or assigns*, shall sell, &c, the introduction of the word 'assigns' will not authorize the trustee to assign the estate to a stranger, nor, if the assignment be made, will a stranger be capable of exercising the power" (Lewin, 717).

Where a trust for sale, or otherwise involving discretion, is limited to a person, his heirs *and assigns*, such trust may be executed by a devisee of the trustee (*Titley* v. *Wolstenholme*, 13 L. J. Ch. 410; 7 Bea. 425: *Hall* v. *May*, 26 L. J. Ch. 791; 3 K. & J. 585; 30 L. T. O. S. 64: *Vf* 1 Jarm. 711: Lewin, 248). But now, since 31st Dec, 1881, *V.* s. 30, Conv. & L. P. Act, 1881, on *whv* HEIRS AND ASSIGNS.

Note. As to omission of "assigns" in a trust or power of sale, *V. Re Osborne and Rowlett*, 13 Ch. D. 774, on *whcv*, *Cooke* v. *Crawford*, and *Re Morton and Hallett*, inf, and *Re Ingleby, &c Co*, 13 L. R. Ir. 326.

As to value of "Assigns" in a Mortgage power of sale; *V. Saloway* v. *Strawbridge*, 24 L. J. Ch. 393; 1 K. & J. 371.

Apart from the Conv. & L. P. Act, 1881, s. 21 (4), a Mtge power of sale is not exerciseable by an Assign if not so expressed (*Re Rumney and Smith*, 1897, 2 Ch. 351; 66 L. J. Ch. 482, 641; 76 L. T. 800; 45 W. R. 678; following *Bradford* v. *Belfield*, 2 Sim. 264, and distinguishing

Cooke v. *Crawford*, 11 L. J. Ch. 406; 13 Sim. 91: *Vthlc*, *Re Morton and Hallett*, 15 Ch. D. 143; 49 L. J. Ch. 559).

Semble, — where in a Will "assigns" is subjoined to "exors and admors," the phrase is always one of limitation, and does not designate next of kin (2 Jarm. 115: LEGAL REPRESENTATIVES); and when the word "assigns" is used in association with "exors and admors," it will not make an interest assignable which otherwise is not transferable (*Gathercole* v. *Smith*, 50 L. J. Ch. 671: 17 Ch. D. 1; 29 W. R. 434).

Covenants relating to land of inheritance and made since 31st Dec, 1881, extend to heirs and assigns though not named (s. 58, Conv. & L. P. Act, 1881).

So, sometimes a contract relating to Leaseholds, — *e.g.* to reduce rent of a public-house, if the liquors therein consumed are bought of the lessor, — will run with the term though the lessee's "assigns" be not named (*White* v. *Southend Hotel Co*, cited SPIRITUOUS LIQUOR).

A covenant incurring liability for one's "Assigns" will not comprise a compulsory assign, — *e.g.* a Railway Company taking under compulsory powers (*Baily* v. *De Crespigny*, 38 L. J. Q. B. 98; 10 B. & S. 1; L. R. 4 Q. B. 180). *Va Doe* d. *Goodbehere* v. *Bevan*, sup.

A limitation to A. "*and his assigns*" for life, "until he make or attempt to make assignment, or charge, or incumber," is not sufficient to render nugatory the clause of forfeiture (*Craven* v. *Brady*, 4 Ch. 296; 38 L. J. Ch. 345; 17 W. R. 505: *Re Kelly*, *West* v. *Turner*, 33 S. J. 234).

"In preparing Covenants which are intended to RUN WITH THE LAND, the 'Assigns' should always be mentioned, for though some covenants will bind them although not mentioned, and others will not bind them although mentioned, yet there is a middle class, in which assignees are bound if mentioned, but not otherwise; and it is prudent to provide for the possibility of a covenant being held to belong to this class" (Woodf. 172: *V.* SPIRITUOUS LIQUOR). And where the owner conveys part of a Building Estate, reserving power to waive Restrictive Covenants, the words of such reservation should be to him "his heirs *or* assigns"; and "assigns," in that connection, means the owner for the time being of the unsold portion of the estate (*Everett* v. *Remington*, 1892, 3 Ch. 148; 61 L. J. Ch. 574; 67 L. T. 80).

V. HEIRS AND ASSIGNS: HUNTING.

"Assigns" in a *Bill of Lading* refers to the Bill itself, not to the goods (*Glyn* v. *E. & W. India Dock Co*, 50 L. J. Q. B. 62; 52 Ib. 156; 6 Q. B. D. 475; 7 App. Ca. 610); and, *semble*, if no such word as, to the Consignee's "Order," or to the Consignee "or his Assigns," be used, the Bill of Lading is not NEGOTIABLE (*Lickbarrow* v. *Mason*, 5 T. R. 685: *Henderson* v. *Comptoir D'Escompte*, 42 L. J. P. C. 62; L. R. 5 P. C. 259, 260).

Vf Mitcalfe v. *Westaway*, 34 L. J. C. P. 113; 17 C. B. N. S. 658 (that "assigns" may include "licensees"): *Saloway* v. *Strawbridge*, 25 L. J. Ch. 121; 7 D. G. M. & G. 594: *Greenaway* v. *Hart*, 23 L. J. C. P. 115; 14 C. B. 340: *Taite* v. *Gosling*, 11 Ch. D. 273; 48 L. J. Ch. 397 (that "assigns" held to include lessee of covenantee): *Svthlc*, *Bryant* v. *Hancock*, sup.

Quà Copyright Act, 1842, 5 & 6 V. c. 45, "'Assigns' shall be construed to mean and include every person in whom the interest of an AUTHOR in Copyright shall be vested, — whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law, or otherwise" (s. 2).

ASSIST. — *V.* UNSHIPPING.

"Liberty to assist"; *V.* LIBERTY TO TOW.

"Assist" in erection or use of Competing Works; *V.* ERECT.

ASSISTANT. — "Assistant Barrister"; Stat. Def., *Ir.* 6 & 7 W. 4, c. 75, s. 63; 7 W. 4 & 1 V. c. 43, s. 8; 9 & 10 V. c. 111, s. 22; 11 & 12 V. c. 28, s. 18; 13 & 14 V. c. 69, s. 117; 14 & 15 V. c. 57, s. 162; 16 & 17 V. c. 107, s. 357; 17 & 18 V. c. 103, s. 1; 27 & 28 V. c. 22, s. 20.

"Assistant Commissioner"; Stat. Def., 8 & 9 V. c. 118, s. 167; 29 & 30 V. c. 122, s. 3.

"Assistant Registrar"; Stat. Def., 56 & 57 V. c. 39, s. 79. — *Scot.* 17 & 18 V. c. 80, s. 76.

"Assistant Teacher in State Schools," as used in the Colony of Victoria; *V. Main* v. *Stark*, 59 L. J. P. C. 68; 15 App. Ca. 385.

Where power is given to a Corp, or other Body, to appoint "Clerks, Treasurers, Collectors, and such other *Officers or* Assistants" as it may think fit, that does not enable it to make a substantive appointment of *e.g.* an Assistant Treasurer; in such a collocation "Officers" and "Assistants" are synonymous (*Hawkings* v. *Newman*, 8 L. J. Ex. 82; 4 M. & W. 613).

ASSISUS. — *Terra Assisa* was land rented or farmed out "for certain assessed rent in money or provisions. *Terra Assisa* was commonly opposed to *Terra Dominica* (*V.* DEMESNE); this last being held in domain, and occupied by the lord, — the other let out to inferior tenants" (Jacob).

ASSIZE. — "*Assisa* properly commeth of the Latin word *assideo*, which is to associate or set together; so as properly assise is an association or sitting together" (Co. Litt. 153 b).

"Court of Assize"; *V.* s. 13 (4), Interp Act, 1889.

"Rent of Assize"; *V.* QUIT RENT.

ASSIZES. — *V.* s. 13 (5), Interp Act, 1889.

Quà Purchase of Land (Ir) Acts, " 'Assizes' includes a Presenting Term " (54 & 55 V. c. 48, s. 42).

For an account of the ancient remedial "Assizes," *V.* Pollock & Maitland's Hist. of Eng. Law.

ASSOCIATE. — A forfeiture of a wife's Annuity, if she shall " associate, continue to keep company with, or cohabit, or criminally correspond with " F., is worked if F. calls at her house and leaves his card like any other visitor, and still more if he is sometimes admitted; the meaning of such a Condition is " that there should be no communication whatever between the parties " (per Mansfield, C. J.), " the receiving a man's visits, whenever he chuses to call, is 'associating with' him " (per Cur. *Dormer* v. *Knight*, 1 Taunt. 417, 418).

Cp COHABITATION.

ASSOCIATION. — *V.* COMPANY.

" Association," for purposes of Booty, must be military; political Association is not within the phrase (*Banda and Kirwee Booty*, cited CO-OPERATION). *Cp* JOINT CAPTORS.

Quà Criminal Law and Procedure (Ir) Act, 1887, 50 & 51 V. c. 20, " 'Association,' includes any Combination of Persons, whether the same be known by any distinctive name or not " (s. 7).

ASSOIL. — " 'Assoile,' comes either from the Latine, *absolvere*, or from the French, *absouldre*, and signifies to deliver or discharge a man of an Excommunication, and so it is used by Staunford in his Pleas of the Crowne, 2nd Bk, 18 ch. 71 b " (Termes de la Ley), or to deliver from one's Sins, as used in 1 H. 4, c. 10, which enacted, that nothing should be adjudged Treason but what was so ordained by the statute of " King Edward the Third, *whom God assoil.*"

ASSUMPSIT. — " 'Assumpsit,' is a voluntary promise made by word, by which a man assumeth and taketh upon him to performe, or pay, anything to another " (Termes de la Ley).

The old " Action of Assumpsit, is an action of trespass on the CASE, whereby a compensation in damages, may be recovered for an injury sustained by the non-performance of a *parol* agreement " (Selwyn, N. P. 42, *whv*). *Cp* COVENANT.

Vh Jacob: 1 Encyc. 364.

ASSURANCE. — " An Assurance is something which operates as a transfer of Property " (per Kay, L. J., *Re Ray*, 65 L. J. Ch. 320; 1896, 1 Ch. 468). In the old Statutes against USURY (13 Eliz. c. 8, s. 3; 21 Jac. 1, c. 17; 12 Car. 2, c. 13; 12 Anne, St. 2, c. 16), " Assurance," in the phrase " all Bonds, Contracts, and Assurances " for payment of

money lent upon Usury, meant an Assurance of LAND, "as is the proper legal signification of it" (per Hardwicke, C. J., *Bush* v. *Gower*, Ca. t. Hard. 237). *Vf Rodger* v. *Harrison*, cited CONVEYANCE.

"Assurance," ss. 40, 41, Fines and Recoveries Act, 1833, 3 & 4 W. 4, c. 74, "does not mean that which constitutes a complete DISPOSITION of property," — "the deed might be either the whole assurance, or the evidence only of the assurance" (per Romilly, M. R., *Re London Dock Act*, 20 Bea. 497, 498; affd 7 D. G. M. & G. 627).

Where, in any given set of circumstances, the only thing which validates a Contract for the Sale of GOODS is an entry in the auctioneer's book, such entry is an "Assurance" of the goods within s. 4, Bills of Sale Act, 1878 (*Re Roberts, Evans* v. *Roberts*, 36 Ch. D. 196; 56 L. J. Ch. 952; 57 L.T. 79; 35 W. R. 684; 51 J. P. 757; 3 Times Rep. 678); but a mere receipt, or other recording document, not intended to contain and not containing the contract between the parties, is not such an Assurance (*Newlove* v. *Shrewsbury*, 57 L. J. Q. B. 476; 21 Q. B. D. 41; 36 W. R. 835: *Grigg* v. *National Guardian Co*, 1891, 3 Ch. 206; 61 L. J. Ch. 11: *London and Yorkshire Bank* v. *White*, 11 Times Rep. 570: *Woodgate* v. *Godfrey*, L. R. 4 Ex. 59, 5 Ib. 24: *Charlesworth* v. *Mills*, 1892, A. C. 231; 61 L. J. Q. B. 830; 66 L. T. 690; 41 W. R. 129; 56 J. P. 628: *Ramsay* v. *Margrett*, 1894, 2 Q. B. 18; 63 L. J. Q. B. 513; 70 L. T. 788. *V.* RECEIPT). A mortgage of Freeholds having Trade Fixtures thereto annexed which pass by such mortgage, is not an "Assurance" of the Fixtures within that section (*Re Yates, Batcheldor* v. *Yates*, 57 L. J. Ch. 697; 38 Ch. D. 112; 59 L. T. 47; 36 W. R. 563: *Re Brooke*, 1894, 2 Ch. 600; 64 L. J. Ch. 21; 71 L. T. 398. *Sv Climpson* v. *Coles*, cited LICENSE).

Vf. Coburn v. *Collins*, 35 Ch. D. 373; 56 L. J. Ch. 504; 56 L. T. 431; 35 W. R. 610, where an Agreement for sale of business effects by trustees, reserving a lien for the purchase money, was held an "Assurance" by the purchaser requiring registration; *Vtho* distinguished from a Hire-Purchase Agreement in *McEntire* v. *Crossley*, 1895, A. C. 457; 64 L. J. P. C. 129; 72 L. T. 731.

V. CONVEYANCE.

"Upon any Representation or Assurance"; *V.* UPON.

Stat. Def. — 47 & 48 V. c. 54, s. 3; 51 & 52 V. c. 42, s. 10; 54 & 55 V. c. 73, s. 4; 55 & 56 V. c. 11, s. 2. — *Ir.* 13 & 14 V. c. 72, s. 64.

ASSURANCE COMPANY. — A Friendly Society is not an "Assurance Co" (*Coppinger* v. *Gubbins*, 3 J. & La T. 397).

Stat. Def. — 7 & 8 V. c. 110, s. 3; 30 & 31 V. c. 144, s. 7.

V. INSURANCE COMPANY.

ASSURANCE MEMBER. — *V. Re Albion Life Assrce*, 18 Ch. D. 639.

ASSURED : HAVE FULL ASSURANCE. — *V.* PRECATORY TRUST.

If in executing a Power of Appointment, the appointor adds that the appointee "will, I am assured" do something outside the limits of the Power, that does not, necessarily, mean that there has been a bargain for that outside thing between appointor and appointee, so as to void the appointment; the phrase may only mean, "I feel certain he will do it" (*Re Crawshay*, 59 L. J. Ch. 395; 43 Ch. D. 615).

"Assured," in a Marine Policy; *V. Gt. Britain Steamship Assn* v. *Wyllie*, 58 L. J. Q. B. 614.

ASTRARIUS. — "*Hæres astrarius*, so called of *astre*, an harth of a house; because the auncestor by conveyance hath set his heire apparent, and his family, in a house and living in his life-time" (Co. Litt. 8 b).

ASYLUM. — "'Asylum,' according to its original derivation and in its widest meaning, simply signifies a Refuge, — a place of retreat and security. In its English acceptation, the word is most commonly used to denote an Establishment for the detention and cure of persons suffering from Mental Disease, — and also a place for the reception and up-bringing of destitute ORPHANS. The fact that *some* of its inmates are to be Orphans, will not impart to the Institution generally the character of an Orphan Asylum" (per Ld Watson, *Dilworth* v. *Commrs of Stamps*, 1899, A. C. 107, 108; 68 L. J. P. C. 4, 5).

Criminal seeking an "Asylum," s. 1, 6 & 7 V. c. 76, means, going to a place where the matter may not be tried (per Crompton, J., *Re Tivnan*, 5 B. & S. 683).

Stat. Def. — 8 & 9 V. c. 100, s. 114, c. 126, s. 84; 16 & 17 V. c. 97, s. 132; 25 & 26 V. c. 111, s. 1; 47 & 48 V. c. 64, s. 16; 53 & 54 V. c. 5, s. 341. — *Ir.* 19 & 20 V. c. 99, s. 2; 31 & 32 V. c. 97, s. 4.

AT. — Where there is a bequest to several in common for life with a gift over "at," or "after," or "from," or "from and after," their decease to their children or other issue, — the gift over is to be read distributively and as a gift of the share of each to his children or other issue RESPECTIVELY (*Arrow* v. *Mellish*, 1 D. G. & S. 355: *Willes* v. *Douglas*, 10 Bea. 47: *Wills* v. *Wills*, 44 L. J. Ch. 582; L. R. 20 Eq. 342: *Turner* v. *Whittaker*, 23 Bea. 196: *Abrey* v. *Newman*, 22 L. J. Ch. 627; 16 Bea. 431: *Alt* v. *Gregory*, 8 D. G. M. & G. 221: *Waldron* v. *Boulter*, 22 Bea. 284: *Re Hutchinson*, 51 L. J. Ch. 924; 21 Ch. D. 811; *Vthlc*, per Ld Davey, *Van Grutten* v. *Foxwell*, 66 L. J. Q. B. 759). *Vf* as to effect of testamentary gift "at" *death*, 2 Jarm. 517, 524: DEATH : ON.

A legacy given "at," "on," or "upon," a particular age or time, confers a contingent interest, such word, in such a context, being equivalent to "if" the event shall happen (*Parker* v. *Hodgson*, 30 L. J. Ch. 590; 1 Dr. & Sm. 568: Wms. Exs. 1093: Watson Eq. 1218).

Power to be executed "at" Marriage; *V. Re Creagh*, cited PREVIOUSLY.

The 38 G. 3, c. 87, s. 1, as extended by 21 & 22 V. c. 95, s. 18, gives power to the Probate Court in cases where the exor or admor to whom probate or administration has been granted is out of the jurisdiction "*at* the EXPIRATION of twelve months" from testator's death, to grant special administration to a creditor, legatee, or next of kin; "At," there, means "at or after" (*Re Ruddy*, 41 L. J. P. & M. 63; L. R. 2 P. & M. 330: *Re Colclough*, 19 L. R. Ir. 235); and a like interpretation applies to such a phrase as "at an interval" of a given period (*Re Railway Sleepers Co*, 54 L. J. Ch. 720; 29 Ch. D. 204: *Vh Re Miller's Dale Co*, 31 Ch. D. 211).

So, in a Charter-Party, "a Statement shall be furnished to the Merchants *at* the Expiration of this Charter," means, within a reasonable time after (*Beard* v. *Rhodes*, 28 L. T. 168).

Where, under Rules of Court, an application to deprive a plaintiff of costs had to be made "at" the Trial, it was held in time when made an hour after the trial was over (*Kynaston* v. *Mackinder*, 47 L. J. Q. B. 76); but an amendment which may be made "at" the Trial means (*semble*) before verdict (*Wickens* v. *Steel*, 26 L. J. C. P. 241; 2 C. B. N. S. 488).

A request to a Co. Co. Judge to take a Note of a Question of Law, has to be made "*at* the Trial," s. 120, Co. Co. Act, 1888, — *i.e.* during, or at the end of, the trial; and a request made an hour and a half after the trial is too late (*Pierpoint* v. *Cartwright*, 5 C. P. D. 139; 28 W. R. 583). Such request is a Condition Precedent to an Appeal (*McGrah* v. *Cartwright*, 58 L. J. Q. B. 331; 23 Q. B. D. 3; 60 L. T. 537; 37 W. R. 619: *Cook* v. *Gordon*, 61 L. J. Q. B. 445).

Under s. 3, 20 & 21 V. c. 43, Recognizances are entered into "at the time of the application" for a Case, if entered into within the 3 days given for applying (*Chapman* v. *Robinson*, 28 L. J. M. C. 30; 1 E. & E. 25).

Under s. 25, Comp Act, 1867, repld s. 7, Comp Act, 1900, a contract for paid-up shares simultaneously issued would have been registered "at" the Issue of the shares, if registered as soon as practically possible after the completion of the transaction (*Re Tunnel Mining Co*, 56 L. J. Ch. 1049; 35 Ch. D. 579; 3 Times Rep. 584: *Re Anglo-Colonial Syndicate*, 65 L. T. 847. *Cp* ACCOMPANY). But a lengthened omission to register might be rectified on terms (*Re Darlington Forge Co*, 56 L. J. Ch. 730; 34 Ch. D. 522: *Re Preservation Syndicate*, 1895, 2 Ch. 768; 64 L. J. Ch. 723; 73 L. T. 341).

As to a requirement that a deposit is to be paid "at *or before*" entering an Appeal; *V. Ex p. Rosenthal, Re Dickinson*, 51 L. J. Ch. 736; 20 Ch. D. 315: *Ex p. Luxon, Re Pidsley*, 51 L. J. Ch. 928; 20 Ch. D. 701.

A statement that the consideration of a Bill of Sale was paid "at or before" its execution (though such a phrase is somewhat elastic) is not

true if not paid till 7 days afterwards (*Ex p. Rolph*, W. N. (81) 136). *Vf* TRULY SET FORTH.

In *Lloyd* v. *Gregory* (Cro. Car. 502) a reversionary lease to commence "at" a stated Feast Day, was construed as "*from*" such day.

V. AFTER: FROM: ON: UPON.

When "at" is used as denoting a PLACE, it refers to some fixed and definite place; *e.g.*, therefore, a Marine Policy on pumps whilst engaged "*at* the wreck" of a vessel, will not cover the loss of the pumps when "on" the vessel after she has been got away from the scene of her wreck, and is moving about from place to place in an endeavour to get her into port (*Difiori* v. *Adams*, 53 L. J. Q. B. 437: *Vf Wingate* v. *Foster*, 47 L. J. Q. B. 525; 3 Q. B. D. 582). "At *as above*" in such a Policy; *V. Joyce* v. *Realm Mar Insrce*, 41 L. J. Q. B. 356; L. R. 7 Q. B. 580.

To unload "at" a stated Wharf, in a Charter-Party, connotes ALONGSIDE (*Bastifele* v. *Lloyd*, cited NEAR THERETO AS SHE MAY SAFELY GET).

When "at" is used in a Will or Deed as descriptive of the situation or locality of property, its meaning is synonymous with IN. But in such a phrase as "*at or within*," the word "at" is rather used in the sense of "near to," or "adjacent to" (*Homer* v. *Homer*, 47 L. J. Ch. 635; 8 Ch. D. 758, cited 1 Jarm. 796: *Sv, Doe* d. *Browne* v. *Greening*, 3 M. & S. 171: *Evans* v. *Angell*, 26 Bea. 202).

"My Property at R.'s Bank"; *V. Re Prater*, cited MY.

"All my Land at S."; *V. Re Portal and Lamb*, cited MY.

An Advowson cannot properly be said to be "at" a place; and, *primâ facie*, a devise of hereditaments "at" a place will not pass an Advowson (*Crompton* v. *Jarratt*, 54 L. J. Ch. 1109; 30 Ch. D. 298). *Cp* IN, *whva* as to Debts.

"*At, in, or near*"; *V.* 1 Jarm. 794: AT OR NEAR.

AT A FAIR VALUATION. — *V.* FAIR VALUATION.

AT ALL TIMES. — A covenant in a Mining Lease to work the Mine "at all Times," is frequently incapable of literal performance (*Abinger* v. *Ashton*, L. R. 17 Eq. 358: *Vth, Strelley* v. *Pearson*, 15 Ch. D. 113).

AT ALL TIMES OF TIDE. — Where a Charter-party provides for delivery of the cargo at a Port or as near thereto as the vessel may safely get "at all times of tide," even though it be added "always afloat," the phrase "at all times of tide" is in relief of the ship-owner, so that when the vessel is as near to the port as she can safely get, though from the state of the tide it is not near enough to unload, the LAY DAYS will begin to run, as the voyage will then be terminated (*Horsley* v. *Price*, 52 L. J. Q. B. 603; 11 Q. B. D. 244). The insertion of this phrase in

a Charter-Party will accordingly materially qualify the usual phrase of, as NEAR THERETO AS SHE MAY SAFELY GET.

AT ANCHOR. — *Semble*, a Vessel held by her anchor is not UNDER-WAY, even though that be in the course of her being towed; and being so held she need only exhibit her Anchor Light (*The Romance*, 83 L. T. 488).

AT AND FROM. — The risk on a Marine Policy begins at, and as soon as the ship is within, the port when the words are "At and From" (*Palmer* v. *Marshall*, 8 Bing. 79, 317: *Haughton* v. *Empire Mar Insrce*, 35 L. J. Ex. 117; L. R. 1 Ex. 206; 4 H. & C. 44: *Foley* v. *United Insrce*, L. R. 5 C. P. 155: *Vf*, *The Copernicus*, 1896, P. 237; 65 L. J. P. D. & A. 108; 74 L. T. 757); but at the commencement of the voyage, when only "FROM" is used (*Small v. Gibson*, 20 L. J. Q. B. 152; 16 Q. B. 156). *Vh*, *Colonial Insrce* v. *Adelaide Insrce* (12 App. Ca. 128; 56 L. J. P. C. 19; 56 L. T. 173; 35 W. R. 636) in which a proposal "at and from," was accepted "from" a port; and in which, on the construction of the Letter of Acceptance, it was held that parties were *ad idem* and the proposal accepted.

Vf, *Wingate* v. *Foster*, 3 Q. B. D. 582; 47 L. J. Q. B. 525: *Hydarnes Co* v. *Indemnity Assrce*, 1895, 1 Q. B. 500; 64 L. J. Q. B. 353; 72 L. T. 103: 8 Encyc. 173–177.

As to meaning when this phrase relates to Time, *V.* FROM: ON.

AT ANY ONE TIME. — *V.* ONE TIME.

AT ANY TIME. — A Power to do a thing, *e.g.* to Revoke Uses, "at any time," is not confined to one execution; the words are equivalent to "FROM TIME TO TIME, as often as the Donee of the Power shall think good" (*Digges' Case*, 1 Rep. 173).

In a *Mining* Lease, a Power to surrender "at any Time," on giving a specified notice, is literally construed as meaning "at any time of any year of the tenancy"; and does not mean that the notice is to expire at the end of any year (*Bridges* v. *Potts*, 33 L. J. C. P. 338; 17 C. B. N. S. 314). *V.* ANY.

Power to Amend "at any time," must have some limitation put on it, but it has a wide meaning (*Ex p. Norris*, 56 L. J. Q. B. 93; 17 Q. B. D. 728: *Re Newton*, 1896, 2 Q. B. 403; 65 L. J. Q. B. 686).

Quâ an agreement in RESTRAINT OF TRADE, "at any time" *primâ facie* connotes the stipulator's life (*Hastings* v. *Whitley*, 2 Ex. 611).

"At any time previously"; *V.* PREVIOUSLY.

V. ONE TIME.

AT DISCRETION. — Where an Officer is removable "at the DISCRETION" of the persons or body appointing him, that justifies an appointment "during the Pleasure" of the Appointors, — "at Discretion" and "during PLEASURE," connoting the same thing (*Delea* v. *Cork*, 19 W. R. 471). *Cp* CONVENIENCE.

AT HIS DEATH. — "At his death," read "from and after his death" (*Thelwall* v. *Finney*, W. N. (68) 313).

AT HIS WILL OR PLEASURE. — *V.* AT DISCRETION: CONVENIENCE.

AT HOME. — As to when property is said to be "at home," and the effect thereof; *V.* Lewin, 720: Watson Eq. 112.

AT INTEREST. — *V.* MONEY OUT AT INTEREST.

AT LARGE. — "Inhabitants at Large"; *V.* REPAIRABLE. "Verdict at Large"; *V.* Litt. ss. 367, 368: Co. Litt. 228 a.

AT LAW. — *V.* RIGHT IN EQUITY: BY LAW.

AT LEAST. — Where time is to be computed as so many days "at least," that means clear days (*R.* v. *Salop*, 7 L. J. M. C. 56; 8 A. & E. 173: *Mitchell* v. *Forster*, 9 Dowl. P. C. 527; 12 A. & E. 472; 9 L. J. M. C. 95: *Young* v. *Higgon*, 9 L. J. M. C. 29; 6 M. & W. 49: *Norton* v. *Salisbury*, 16 L. J. C. P. 9; 4 C. B. 32: *Freeman* v. *Read*, cited CALENDAR MONTH: *Robinson* v. *Robinson*, 30 L. J. P. M. & A. 189: *Howes* v. *Turner*, 45 L. J. C. P. 550; 1 C. P. D. 670: *Mercantile Trust* v. *International Co*, 1893, 1 Ch. 484, *n*, 489: *Cp R.* v. *St. Mary, Warwick*, cited YEAR). But in *Re Ry Sleepers Co* (54 L. J. Ch. 722; 29 Ch. D. 204), Chitty, J., said, "I do not see any distinction between '14 days' and 'at least 14 days.'"

Note. In this computation, a Notice in a Newspaper appears on the Day of its Date, though the newspaper may be partially published previously (*R.* v. *Aberdare Canal Co*, 19 L. J. Q. B. 251; 14 Q. B. 853).

V. CLEAR: INTERVAL: WITHIN.

As to value of "at least" in making a prayer or claim alternative, *V.* *La Banque D'Hochelaga* v. *Murray*, cited NULL.

AT MATURITY. — *V.* MATURE.

AT MERCHANT'S RISK. — *V.* MECHANT'S RISK.

AT ONCE. — A Commercial Traveller whose duty is to remit the moneys he receives "at once," should remit each sum received "by the next post" (per Huddleston, B., *R.* v. *Rogers*, 47 L. J. M. C. 14; 3 Q. B. D. 33).

AT ONE TIME. — *V.* ONE TIME.

AT OR NEAR. — Anchor Light to be carried "at or near the Stern," Art. 11, Regns for the Prevention of Collisions at Sea; *V.* *The Gannet*, 1899, P. 230; 68 L. J. P. D. & A. 99; 1900, A. C. 234; 69 L. J. P. D. & A. 49.

AT OR WITHIN. — *V.* At, towards end.

AT OWNER'S RISK. — *V.* Owner's Risk.

AT SEA. — "In a policy of marine insurance where the vessel was described as 'At Sea' it was held by the Supreme Colony of Victoria that the condition was complied with, as she had then left port, although she was in a navigable river which had at its mouth a bar difficult to cross" (Wood, 241, citing *Fisher* v. *Adelaide Insrce*, 2 Victorian Rep. 90).

"Mariner at Sea"; *V.* Mariner.

AT SHIP'S RISK. — *V.* Ship's Risk.

AT SIGHT. — "A Note payable at Sight, by the terms of the contract, must be shown before action brought: that was the case of *Holmes* v. *Kerrison*, 2 Taunt. 323" (per Parke, B., *Norton* v. *Ellam*, 6 L. J. Ex. 121; 2 M. & W. 461). But *V.* s. 10, Bills of Ex. Act, 1882. *Va*, On Demand.

"Sight" and "Date" of a Bill or Note are not synonymous, — "Sight" connotes when the document is presented (*Sturdy* v. *Henderson*, 4 B. & Ald. 592).

As to what is a "Sight"; *V. Way* v. *Bassett*, 15 L. J. Ch. 1; 5 Hare, 55.

AT THE END. — *V.* End.

AT THE EXPIRATION. — *V.* At: Expiration.

AT THE KING'S PLEASURE. — When a punishment is to be imposed "at the King's pleasure," this is to be done in his Courts and by his Justices (1 Hale, 375: Dwar. 675: Maxwell, 427).

AT THE KING'S WILL. — *V.* Felony.

AT THE LEAST. — *V.* At least.

AT THE PLEASURE. — *V.* Pleasure: At Discretion.

AT THE PRESENT TIME. — "The business at the Present Time returns a net profit of 17% on the capital employed"; *V. Glasier* v. *Rolls*, 58 L. J. Ch. 331.

V. Capital employed.

AT THE RATE OF. — *V.* Rate: Per Annum: Year.

AT THE TIME OF. — *V. Brown* v. *Wilkinson*, 16 L. J. Ex. 34; 15 M. & W. 391.

AT THE TRIAL. — *V.* At.

AT THEIR DEATH. — Bequest to two or more, and "at their death" to their children, read "at their respective deaths" (*Wills* v. *Wills*, L. R. 20 Eq. 342; 44 L. J. Ch. 582).

AT VARIANCE. — *V.* VARIANCE.

AT WAR. — *V.* WAR.

AT WILL. — *V.* TENANT AT WILL.

ATTACH. — "'Attach,' is a taking or apprehending by Command or Writ" (Termes de la Ley).

As to the Writ of Attachment, *V.* Ord. 44, R. S. C. and notes thereon in Ann. Pr.

ATTACHED. — This word does not always mean physically fastened; it may also mean, superincumbent upon. Thus in citing from the jdgmt of Cockburn, C. J., *Laing* v. *Bishopswearmouth* (47 L. J. M. C. 41; 3 Q. B. D. 299), that whatever is "attached" to premises has to be estimated for the purpose of ascertaining its rating value, Esher, M. R., said: —

"Now does the word 'attached' there, mean attached by some physical fastening such as screws or bolts? If it does, a thing weighing tons, which cannot be and never was intended to be lifted, would not be taken into account if not fastened to some part of the building; whereas if it were fastened it would. That, as it seems to my mind, would be a monstrous consequence. I do not think the word 'attached' does there mean 'physically fastened,' so as to determine whether the thing is to be taken into account or not" (*Tyne Boiler Works Co v. Longbenton*, 56 L. J. M. C. 12). It was held in that case that heavy machinery kept *in situ* by its own weight had to be taken into account in assessing the rateable value of the premises.

Shop or Warehouse "attached" to a DWELLINGHOUSE, R. 3, Sch B., House Tax Act, 1808, does not mean, mere contact of some part of the two structures, but means attached for use with the Dwellinghouse (per Ld Brampton, *Grant* v. *Langston*, cited HOUSE).

"Expenses attaching to the Meeting"; *V.* MEETING.

ATTACHES. — "When the liability of the underwriter commences under the contract, the technical mode of expressing this is by saying that 'the policy attaches,' or 'the risk begins to run' from that time" (Arn. 2).

ATTACHMENT. — *V.* ATTACH.

Quà "Execution or Attachment," 2 & 3 V. c. 29, — "Does not 'Attachment' virtually include a Distress? It is a holding of the goods in PLEDGE" (per Tindal, C. J., *Lackington* v. *Elliott*, 7 M. & G. 541).

ATTACHMENT FOR DEBT. — A committal under Debtors' Act, 1869, for non-payment of a Judgment debt, being punitive, though it may be got rid of by payment, is not an "Attachment *for* Debt" within s. 14, Sheriff's Act, 1887, 50 & 51 V. c. 55 (*Mitchell* v.

Simpson, 59 L. J. Q. B. 355; 25 Q. B. D. 183). That section is a re-enactment of s. 1, 32 G. 3, c. 28, under which "Attachment" only applied to persons arrested on Mesne process (*Evans* v. *Atkins*, 4 T. R. 555). Arrest upon Mesne process "in any action" is abolished (s. 6, 32 & 33 V. c. 62); but the same section enacts "in substance a new form of Mesne process" (*V. note* by Fry, L. J., 59 L. J. Q. B. 359), to which, probably, "Attachment for Debt" applies; and "I think it is applicable to Crown Debts and, at all events, to writs *ne exeat regno*" (per Lopes, L. J., *Mitchell* v. *Simpson*, sup).

V. IMPRISONMENT.

ATTACHMENT OF DEBT. — *V.* DEBT.

ATTACHMENT OF PLEAS OF THE CROWN. — *V. Jewison* v. *Dyson*, 9 M. & W. 540; 11 L. J. Ex. 401; 2 M. & R. 377.

ATTACK. — There is a clear difference between an "Attack" on and an "Engagement" with Pirates (s. 2, Piracy Act, 1850, 13 & 14 V. c. 26). "I take an Attack to be, the use of, or the attempt to use, Force or Violence. It is not necessary to constitute an Attack that there should be any resistance or any actual combat or any blood spilt. 'Engagement' is a different word, and seems, necessarily, to imply that there was something of a combat or fight" (per Dr. Lushington, *The Magellan Pirates*, 1 Spink, 87; 18 Jur. 20). Held in *the*, that an Intimidation by a demonstration of force, was an "Attack" within the section cited.

Quà Prevention of Crime (Ir) Act, 1882, 45 & 46 V. c. 25, "'Attack on a DWELLINGHOUSE' means, any crime, cognisable by law, involving the breaking into, firing at, or otherwise assaulting or injuring, a dwellinghouse" (s. 35).

ATTAIN. — A limitation to those "who attain," or "such as attain" a particular age, or marry, creates a Condition Precedent (*Duffield* v. *Duffield*, 3 Bligh, N. S. 260); but, in some cases the estate would vest at once, subject to be divested on the event not happening (*Muskett* v. *Eaton*, 45 L. J. Ch. 22; 1 Ch. D. 435); *V.* the cases cited Watson Eq. 1219. *Vf* WHEN.

Devise to T. for life, remainder to his second son, "*on* his attaining 21, but in default of there being a second son" then over, does not give, to a second son dying under 21, an estate in fee with an executory devise over, but only a remainder contingent on his attaining 21 (*Alexander* v. *Alexander*, 24 L. J. C. P. 150; 16 C. B. 59).

ATTAINDER. — "Is when a man hath committed FELONY, or Treason, and judgment is passed upon him" (Cowel). *Vf* Termes de la Ley: 1 Encyc. 402.

ATTEMPT. — A mere offer to give security on property if it can be effectually done, is not an "attempt" to ANTICIPATE or incumber the

property within a clause of FORFEITURE (*Graham* v. *Lee*, 26 L. J. Ch. 395; 23 Bea. 388; 29 L. T. O. S. 46: *Re Amherst*, L. R. 13 Eq. 468); but an Alienation, by one who is *sui juris*, which is in itself void, is an "attempt" to alienate (*Re Porter*, 1892, 3 Ch. 481; 61 L. J. Ch. 688; 41 W. R. 38). Within such a clause the filing by the beneficiary of a Petition under the old Insolvent Debtors Act, was an "attempt" to sell, or dispose of, his interest (*Martin* v. *Margham*, 14 Sim. 230; approved by Turner, L. J., *Rochford* v. *Hackman*, 9 Hare, 475); *secus*, of a mere Declaration of Insolvency (*Graham* v. *Lee*, sup), or a Seizure under a judicial process (*R.* v. *Robinson*, cited ALIENATION).

Within such a clause, it is an Attempt "to intermeddle or interfere in the management" of the estate, to bring an action against the trustees relating thereto without any "probabilis causa litigandi" (*Powell* v. *Morgan*, 2 Vern. 90), *e.g.* a frivolous action for a Receiver (*Adams* v. *Adams*, 1892, 1 Ch. 369; 61 L. J. Ch. 237; 66 L. T. 98; 40 W. R. 261); so, of "attempting to interfere with the tenants, annoying them, and so on" (per Lindley, L. J., *Ib.*).

"An Attempt to commit a CRIME is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. *Sv*, *R.* v. *Ring*, inf.

"The point at which such a series of acts begins cannot be defined; but depends upon the circumstances of each particular case.

"An act done with INTENT to commit a crime, the commission of which in the manner proposed was, in fact, impossible, is not an attempt to commit that crime.

"The offence of attempting to commit a crime may be committed in cases in which the offender voluntarily desists from the actual commission of the crime itself" (Steph. Cr. 37, 38: *Vf*, *R.* v. *Cheeseman*, L. & C. 140; 31 L. J. M. C. 89).

Attempt to procure *Abortion*; *V.* ADMINISTER.

"Attempt to discharge any kind of Loaded Arms," s. 18, 24 & 25 V. c. 100; *V.* LOADED ARM. Probably, a person cannot "attempt" to discharge a Fire Arm which, in fact, cannot possibly be discharged (*R.* v. *Lewis*, 9 C. & P. 523; *Svthc*, *R.* v. *Brown*, inf); but where A. (who had previously threatened B.) pointed a loaded pistol at B., but, before he could discharge it, his hands were seized and the pistol taken from him, A. was guilty of the "attempt" (*R.* v. *Duckworth*, 1892, 2 Q. B. 83; 40 W. R. 448; 66 L. T. 302, *whc* overrules *R.* v. *St. George*, 9 C. & P. 483).

Attempts to Murder, ss. 11 to 15, 24 & 25 V. c. 100; *V. R.* v. *Brown*, 10 Q. B. D. 381; 52 L. J. M. C. 49; 31 W. R. 460; 48 L. T. 270.

There may be an Attempt at THEFT by feloniously trying to pick an empty pocket (*R.* v. *Ring*, 61 L. J. M. C. 116; 66 L. T. 300; 56 J. P. 552).

ATTENDANCE. — "Attendance" (41 V. c. 16, s. 23) means "attendance of a child at a morning or afternoon meeting of a school during not less than 2 hours of instruction in secular subjects" (Lond. Gaz. 31 Dec 1878).

"Non-attendance"; *V.* ABSENTS.

V. IN ATTENDANCE.

"Ordinary" and "Extraordinary" Attendances by a Solr; *V. Re Mahon and Sayer*, 1893, 1 Ch. 507; 62 L. J. Ch. 65, 448; 41 W. R. 257.

ATTENDANT. — "'Attendant,' is where one oweth a duty or service to another, or, as it were, dependeth upon another" (Termes de la Ley). *Cp* DEPENDANT.

Stat. Def. — 16 & 17 V. c. 96, s. 36.

An Attendant *Term* in Land, is one the original purpose of which is satisfied but which is kept alive to protect the inheritance from incumbrances; the Assignment of such a Term is rendered unnecessary by the Satisfied Terms Act, 1845, 8 & 9 V. c. 112. *Vh* Wms. R. P. Part 4, ch. 1.

ATTENDED TO. — Replying to a letter requesting payment of a debt, the debtor wrote, — "I will see that it is attended to"; held, a sufficient ACKNOWLEDGMENT to take the debt out of the Limitation Act, 1623 (*Bartley* v. *Lees*, Times, 19 Feb 1895). *Cp* I WILL SEE YOU PAID.

But "your Bill *shall have Attention*," is ambiguous and does not amount to an ACCEPTANCE of the Bill (*Rees* v. *Warwick*, 2 B. & Ald. 113).

ATTENDING. — *V.* GOING TO.

Costs "attending"; *V.* COSTS.

"Attending on subpœna before a Court of Record"; Stat. Def., 35 & 36 V. c. 76, s. 73; 38 & 39 V. c. 17, s. 109; 50 & 51 V. c. 58, s. 76.

ATTENTAT. — "An Attentat, in the language of the Civil and Canon Laws, is anything whatsoever wrongfully innovated or attempted in the suit by the Judge *à quo*, pending an Appeal" (1 Addams, 22, *n*).

ATTENTION. — *V.* ATTENDED TO.

ATTEST : ATTESTATION. — Where an INSTRUMENT is required to be "attested," the meaning is, that a witness shall be present at its execution and shall testify on it that it has been executed by the proper person (*Freshfield* v. *Reed*, 11 L. J. Ex. 193; 9 M. & W. 404).

To "attest" an instrument is not merely to subscribe one's name to it as having been present at its execution, but includes also, essentially, the presence, in fact, at its execution of some disinterested person capable of giving evidence as to what took place (*Roberts* v. *Phillips*, 24 L. J. Q. B. 171; 4 E. & B. 450: *Bryan* v. *White*, 2 Rob.

Ecc. 315: *Seal* v. *Claridge*, 7 Q. B. D. 516; 50 L. J. Q. B. 316; 29 W. R. 598; 44 L. T. 501: *Sharp* v. *Birch*, 51 L. J. Q. B. 64; 8 Q. B. D. 111; 30 W. R. 428; 45 L. T. 760: *Ford* v. *Kettle*, 51 L. J. Q. B. 558; 9 Q. B. D. 139; 30 W. R. 741; 46 L. T. 667: *Sv*, as to the two latter cases, *Cooper* v. *Zeffert*, 32 W. R. 402. *Va*, *Wright* v. *Wakeford*, 4 Taunt. 223: *Doe* d. *Spilsbury* v. *Burdett*, 4 A. & E. 1; 9 A. & E. 936; 1 P. & D. 670; 10 Cl. & F. 340). An instrument required to be "witnessed" "at the above date," can only be witnessed by one who is an actual eye-witness (*Body* v. *Halse*, 1892, 1 Q. B. 203; 61 L. J. Q. B. 57; 66 L. T. 499; 40 W. R. 206).

"'To Attest' is to bear witness to a fact. Take a common example: a notary public attests a Protest; he bears witness not to the statements in that protest, but to the fact of the making of those statements; so, I conceive, the witnesses in a Will bear witness to all that the statute requires attesting witnesses to attest, namely that the signature was made or acknowledged in their presence" (per Dr. Lushington, *Hudson* v. *Parker*, 1 Rob. Ecc. 26: *Vf* 1 Jarm. 109).

"Attest and Subscribe" a Will; *V. Griffiths* v. *Griffiths*, L. R. 2 P. & M. 300: *Re Maddock*, 3 Ib. 169: *Roberts* v. *Phillips*, sup.

"The word 'attestation' is there, — *i.e.* in s. 10, Bills of Sale Act, 1878, — used for 'attestation clause'" (per Jessel, M. R., *Ex p. Bolland*, 52 L. J. Ch. 116; 21 Ch. D. 543).

V. SUBSCRIBE: *Cp* SIGNED.

ATTORNEY. — "'*Attorney*' is an ancient English word, and signifieth one that is set in the turne, stead, or place of another; and of these some be private (whereof our author here speaketh, Litt. s. 66), and some be publike, as attorneys at law, whose warrant from his master is, *ponit loco suo talem attornatum suum*, which setteth in his turne or place such a man to be his attorney" (Co. Litt. 51 b). As applied to this second branch of the definition, the title of "Attorney" was abolished by the Jud. Act, 1873, by s. 87 of which "Solicitors, Attorneys, or Proctors" are thenceforth "to be called SOLICITORS of the Supreme Court." *Vf*, as to the title of Solicitor superseding that of Proctor, s. 20, 33 & 34 V. c. 28; s. 17, 40 & 41 V. c. 25.

Attorney "expressly named"; *V.* EXPRESSLY NAMED.

V. POWER OF ATTORNEY: BANKER.

Stat. Def. — 23 & 24 V. c. 127, s. 1; 33 & 34 V. c. 28, s. 3; 61 & 62 V. c. 17, s. 59; (Attorney at Law) 9 & 10 V. c. 95, s. 142. — *Ir.* 24 & 25 V. c. 68, s. 1; 29 & 30 V. c. 84, s. 1.

ATTORNEY GENERAL. — Stat. Def., 16 & 17 V. c. 107, s. 357; 39 & 40 V. c. 36, s. 284; 42 & 43 Vict. c. 22, s. 9; 46 & 47 V. c. 3, s. 9, c. 51, s. 64; 52 & 53 V. c. 52, s. 7; 55 & 56 V. c. 23, s. 24. — *Scot.* 35 & 36 V. c. 76, s. 73; 50 & 51 V. c. 58, s. 76. — *Ir.* 36 & 37 V. c. 69, s. 4; 45 & 46 V. c. 25, s. 35; 50 & 51 V. c. 20, s. 19, c. 58, s. 77.

ATTORNMENT.—" 'Attornment' signifies the Tenant's acknowledgment of a new Lord" (Cowel). " 'Attornment' is an agreement of the tenant to the grant of the seigniorie, or of a rent, or of the donee in tayle, or tenant for life or yeeres, to a grant of a reversion or remainder made to another" (Co. Litt. 309 a: Touch. 253: *Vh*, Woodf. 278: Redman, 13: 1 Encyc. 409–413: Termes de la Ley).

An Attornment Clause in a Mortgage, is an "Attornment" within s. 6, Bills of Sale Act, 1878, and is a BILL OF SALE (*Re Willis, Ex p. Kennedy*, 57 L. J. Q. B. 634; 21 Q. B. D. 384; 36 W. R. 793; over-ruling *Hall* v. *Comfort*, 18 Q. B. D. 11; 56 L. J. Q. B. 185: *V. Green* v. *Marsh*, 1892, 2 Q. B. 330; 61 L. J. Q. B. 442; 66 L. T. 480: DEEMED). But though the mtge be unregistered, the attornment clause is good for the purpose of creating the relationship of Landlord and Tenant (*Mumford* v. *Collier*, 25 Q. B. D. 279; 59 L. J. Q. B. 552; 38 W. R. 716: *Vf Kemp* v. *Lester*, 1896, 2 Q. B. 162; 65 L. J. Q. B. 532: *Sv Scobie* v. *Collins*, 1895, 1 Q. B. 375; 64 L. J. Q. B. 10; 71 L. T. 775).

Vf, AUTHORITY OR LICENSE: NOTICE TO QUIT: EXPIRATION.

ATTRITION.— *V.* CONFESSION.

AUCTION.—Quà Sale of Goods Act, 1893, "a Sale by Auction is complete when the Auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any Bidder may retract his bid" (subs. 2, s. 58): *V.* same section for general rules respecting Auctions. *Vf*, BIDDING: RESERVED BIDDING: WITHOUT RESERVE: RETRACT.

A covenant not to "permit any sale by Public Auction" to take place on the premises, is broken by the covenantor giving a Bill of Sale which enables the grantee, on default, to sell the goods on the premises "by private contract or public auction" (*Toleman* v. *Portbury*, 41 L. J. Q. B. 98; L. R. 7 Q. B. 344; 26 L. T. 292; 20 W. R. 441).

"Public Auction Rooms"; *V. Brown* v. *Arundell*, 10 C. B. 55, 56.

AUCTIONEER.—Quà Sale of Land by Auction Act, 1867, 30 & 31 V. c. 48, " 'Auctioneer' shall mean, any person selling by Public Auction any Land, whether in lots or otherwise" (s. 3).

As to origin of this word, and whether an Auctioneer is a BROKER; *V. Wilkes* v. *Ellis*, 2 Bl. H. 555.

AUDITOR.—Quà Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, " 'Auditor' shall be construed to mean and include every person (other than Justices of the Peace, acting in virtue of their Office) appointed or empowered to audit, controul, examine, allow, or disallow the accounts of any Guardian, Overseer, or Vestryman relating to the receipt or expenditure of the Poor Rate" (s. 109).

AUMONE. — "Tenure by DIVINE SERVICE, as distinguished from FRANKALMOIGNE; Co. Litt. 96 b, 97 a: *V.* 2 Inst. 460: Britton, 164: Cowel" (Elph. 561).

AUSTRALIA. — Insurance on Goods "at and from London to any PORTS OR PLACES in Australia;" *V. Neale* v. *Rose*, 3 Com. Ca. 236.

Quà the Passengers Australian Colonies Act, 24 & 25 V. c. 52, "Australasia" signified and included "New Zealand and Tasmania, as well as Australia proper" (s. 4).

Quà Kidnapping Act, 1872, 35 & 36 V. c. 19, "'Australasian Colonies,' shall mean and include the Colonies of New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, and Western Australia" (s. 2); quà 38 & 39 V. c. 51, the phrase means and includes Fiji (s. 8).

"Australian Colonies"; Stat. Def., 5 & 6 V. c. 36, s. 22. Quà Australian Colonies Duties Act, 1873, 36 & 37 V. c. 22, this latter phrase means, "New South Wales, Victoria, South Australia, Queensland, Western Australia, and Tasmania" (s. 2).

"The Commonwealth of Australia"; *V.* COMMONWEALTH.

AUTHOR. — The Adaptor of a foreign drama who introduces into his version material alterations, is an "Author" of a DRAMATIC Piece, within s. 1, 3 & 4 W. 4, c. 15 (*Tree* v. *Bowkett*, 74 L. T. 77; 12 Times Rep. 181). But a person who employs another to adapt a foreign drama for representation in England and who merely suggests the subject, is not the "Author" of the adaptation within the section (*Shepherd* v. *Conquest*, 25 L. J. C. P. 127; 17 C. B. 427); and to constitute a person a joint author he must co-operate in the production of the drama itself, and merely touching it up so as to make it more attractive on the stage does not constitute a joint authorship (*Levy* v. *Rutley*, 40 L. J. C. P. 244; L. R. 6 C. P. 523). *Vf*, *Hatton* v. *Kean*, 29 L. J. C. P. 20; 7 C. B. N. S. 268: *Wallerstein* v. *Herbert*, 16 L. T. 453.

"Author" of a BOOK, 5 & 6 V. c. 45, includes Alien authors (*Low* v. *Routledge*, 35 L. J. Ch. 114; 1 Ch. 42): under 8 Anne, c. 19, this was not so (*Jefferys* v. *Boosey*, 24 L. J. Ex. 81; 4 H. L. Ca. 815).

Within 5 & 6 V. c. 45, the Reporter of a Speech verbatim is the "Author" of the report, if the speaker claims no rights in the speech (*Walker* v. *Lane*, 1900, A. C. 539; 69 L. J. Ch. 699; 83 L. T. 289; 49 W. R. 95; 16 Times Rep. 27).

Author or Composer of a Musical Composition, 7 V. c. 12; *V. Wood* v. *Boosey*, L. R. 3 Q. B. 223; 37 L. J. Q. B. 84. *Vf* COMPOSE.

Not the PROPRIETOR of the business, as such, but the actual Operator who takes (or superintends the taking of) the negative is the "Author" of a Photograph within Fine Arts Copyright Act, 1862, s. 1 (*Nottage* v. *Jackson*, 52 L. J. Q. B. 760; 11 Q. B. D. 627). To use the language of Brett, M. R., in the last case, the superintending operator is "the

person who effectively is, as near as he can be, the cause of the picture which is produced": *Vf, Kenrick* v. *Lawrence*, 25 Q. B. D. 99; 38 W. R. 779: *Melville* v. *Mirror of Life Co*, 1895, 2 Ch. 531; 65 L. J. Ch. 41. *Note.* — A photographic portrait, taken at a customer's cost, cannot be published without his authority (*Pollard* v. *Photographic Co*, 58 L. J. Ch. 251; 40 Ch. D. 345: *Cp, Ellis* v. *Ogden*, 11 Times Rep. 50). *Vf*, GOOD: FOR: PERSON.

Stat. Def. — International Copyright Act, 1886, 49 & 50 V. c. 33, s. 11.

Quà P. H. (Scot) Act, 1897, "'Author of a NUISANCE,' means the person through whose act or default, the Nuisance is caused, exists, or is continued, — whether he be the Owner or Occupier, or both" (s. 3); a def adopted from 19 & 20 V. c. 103, s. 3; 30 & 31 V. c. 101, s. 3.

AUTHORITY. — *V.* BY AUTHORITY. *Cp*, BURGH: CONFIRMING: CONSERVANCY AUTHORITY: COUNTY AUTHORITY: DIRECT: HARBOUR: HIGHWAY: LICENSING: LIGHTHOUSE: LOCAL AUTHORITY: METROPOLITAN: PILOTAGE: POLICE: PRISON: PUBLIC AUTHORITY: RATING: RIPARIAN: ROAD: RURAL: SANITARY: SAVINGS: SEWER: SPEND: URBAN.

Stat. Def. — 51 & 52 V. c. 41, s. 78. — *Ir.* 61 & 62 V. c. 37, s. 109 (1); 62 & 63 V. c. 50, s. 29 (2).

"Authority acting under the Public Libraries Acts"; Stat. Def., 47 & 48 V. c. 37, s. 4. *V.* LIBRARY.

AUTHORITY OR LICENSE. — An Agreement authorizing a Brewer to distrain for goods supplied to a tied house, is an "Authority or License to take possession of personal chattels as SECURITY FOR DEBT," s. 4, Bills of Sale Act, 1878, and requires registration (*Pulbrook* v. *Ashby*, 56 L. J. Q. B. 376; 35 W. R. 779); "Debt," in that connection, is not confined to a debt existing at the time of the Agreement (*Ib.* and *vthc* approved *Stevens* v. *Marston*, 60 L. J. Q. B. 192; 39 W. R. 129; 64 L. T. 274). But, *semble*, the ruling in those cases does not apply to a power of Distress in a LEASE (and certainly not in a Mining Lease, s. 6) enabling the lessor to distrain elsewhere than on the demised premises (*Re Roundwood Colliery Co*, 1897, 1 Ch. 373; 66 L. J. Ch. 186; 75 L. T. 641; 45 W. R. 324). *Cp* ATTORNMENT. *Vf* LICENSE.

AUTHORITY OR REQUEST. — "Warrant, Order, Authority, or Request," ss. 23, 24, 24 & 25 V. c. 98; — a paper merely describing the goods; — *e.g.* "One quart kettle, James Haywod," — amounts to a "Request" (*R.* v. *Pulbrook*, 9 C. & P. 37); a Deposit Receipt of a Building Society may be a "Warrant, Authority, or Request" (*R.* v. *Kay*, 39 L. J. M. C. 118; L. R. 1 C. C. R. 257; 22 L. T. 557).

Vf, *R.* v. *James*, 8 C. & P. 292: *R.* v. *Taylor*, 1 C. & K. 213.

AUTHORIZE. — Where a Will directs a fund to be appropriated to provide, *e.g.* an Annuity, from such Investments as are "hereby authorized," the investments are confined to those authorized by the Will, and recourse cannot be had to the powers of the Trustee Act, 1893 (*Re Owthwaite*, 1891; 3 Ch. 494; 60 L. J. Ch. 854; 65 L. T. 144; 40 W. R. 38).

"Person making or *authorizing*" an Illegal Payment, s. 12, Loc Gov (Ir) Act, 1871, 34 & 35 V. c. 109; *V. R.* v. *Calvert*, 1898, 2 I. R. 266. *Cp* BY WHOSE.

"Authorize and empower"; *V.* PRECATORY TRUST.

V. REQUIRED.

"Authorized PRISON"; Stat. Def., 42 & 43 V. c. 33, ss. 61, 64; 44 & 45 V. c. 58, ss. 62, 65.

AUTRES HÉRITIERS.—*V.* HÉRITIER.

AUXILIARY.—*V.* COLLATERAL: INCIDENTAL OR CONDUCIVE.

Quà Army Act, 1881, 44 & 45 V. c. 58, "'Auxiliary Forces,' means the Militia, the Yeomanry, and the Volunteers" (subs. 12, s. 190),—a def adopted from 42 & 43 V. c. 33, s. 181. *V.* MILITARY FORCES.

AVAILABLE.—An Act of Bankruptcy "available against him (the bankrupt) for *adjudication*" (s. 94 (3), Bankry Act, 1869) was one which might have been acted upon by anybody at the date of the Order for adjudication (*Hood* v. *Newby*, 52 L. J. Ch. 204; 21 Ch. D. 605: *Re Bedell*, 47 L. J. Bank. 19; 7 Ch. D. 123). "Available" is used in a similar connection in the present Bankry Act, 1883, s. 49 (2); and by s. 168, Ib., "'Available Act of Bankruptcy,' means any act of bankruptcy available for a Bankry Petition at the date of the Presentation of the Petition on which the Receiving Order is made."

S. 198, Bankry Act, 1861, prescribed that after registration of an Arrangement Deed, under s. 192, no process should be "available" against the debtor; held, that "available" meant "put in force,"—*e.g.* that caption, not detention, was meant (per Holroyd, Commr., *Re Chaundy*, 5 L. T. 526), but that case was cited to no purpose in *Marks* v. *Hall* (36 L. J. Q. B. 40; 7 B. & S. 839; L. R. 2 Q. B. 31), where it was ruled that this phrase meant, "shall not have, and shall cease to have, effect against the debtor." *Vf Ewart* v. *Jones*, 15 L. J. Ex. 18; 14 M. & W. 774.

Capital "lost" or "unrepresented by Available ASSETS"; *V.* CAPITAL.

"Available Capital of the Co," is not a true, but is a deceptive, description of capital which may be raised under Borrowing Powers (*Venezuela Ry* v. *Kisch*, 36 L. J. Ch. 849; L. R. 2 H. L. 99).

"PROFITS available for DIVIDEND," in a Co's Mem, mean those which are reasonably applicable for dividend; and where the Articles adopt Art. 74, Table A, or have an equivalent provision, the Directors are justified in setting aside a considerable amount to Reserve, even though that course may disappoint the holders of Founders' Shares who are entitled to dividend after the payment of a prescribed dividend to the Ordinary shareholders (*Fisher* v. *Black & White Co*, 17 Times Rep. 146; 1901, 1 Ch. 174; 70 L. J. Ch. 175; 49 W. R. 310).

"Available *Balance in Hand*," within rules regulating Withdrawal of

Deposits in a Building Socy, means not only "money in the coffers of the Socy, but also money which, without undue loss or undue delay, they could realize, — *e.g.* Consols, or any other Security capable of being readily realized" (per Lopes, L. J., Esher, M. R., concurring, *Brett* v. *Monarch Socy*, 1894, 1 Q. B. 367; 63 L. J. Q. B. 237; 70 L. T. 146; 42 W. R. 209; 58 J. P. 367). *Cp* PROVIDED THE FUNDS PERMIT.

A document merely put into a witness' hands to challenge his recollection, is not thereby made "Available"; and, therefore, an unstamped Bill of Ex., or Promissory Note, may be so used, although s. 38 (1), Stamp Act, 1891, says it shall not be "available *for any purpose whatever*" (*Birchall* v. *Bullough*, 1896, 1 Q. B. 325; 65 L. J. Q. B. 252; 74 L. T. 27; 44 W. R. 300); but it cannot be used as evidence of the receipt of the money (*Ashling* v. *Boon*, 1891, 1 Ch. 568; 60 L. J. Ch. 306; 64 L. T. 193: *Green* v. *Davies*, 3 L. J. O. S. K. B. 185; 4 B. & C. 235). *Cp* *Evans* v. *Prothero*, cited EVIDENCE OF A CONTRACT, at end.

Average available width; *V.* WIDTH.

AVENTURE. — *V.* ADVENTURE.

AVENUE. — "Avenue to a house," 5 & 6 W. 4, c. 5, s. 54; *V.* *Ramsden* v. *Yeates*, 50 L. J. M. C. 135; 6 Q. B. D. 583; 29 W. R. 628; 44 L. T. 612.

AVERA. — *V.* AVERAGE, at end.

AVERAGE. — Quà Shipping Business, "the doctrine of 'Average,' is derived from the Maritime Law of Rhodes" (per Halsbury, C., *Ruabon S. S. Co* v. *London Assrce*, 1900, A. C. 10; 69 L. J. Q. B. 89). "The word 'Average' is from the Italian, 'Averia,' damage" (1 Maude & P. 491). It is used in 32 H. 8, c. 14, and there, and generally, it means the "CONTRIBUTION which Merchants and others pay proportionably towards their losses that have their goods cast out in a tempest for the saving of the Ship, or of the Goods or Lives of them that are therein" (Termes de la Ley). *Vf* Park, ch. 7.

"The word 'Average,' far from being a Term of Art — (except in so far as, according to the evidence, usage may have limited its meaning to loss or damage to the goods themselves), — or a word with a rigid or unchanging signification, necessarily including expenses in the defence or safeguard of the subject-matter insured, is a word used in a great variety of phrases, as applicable to different subject-matters, and not with any fixed or settled application" (per Willes, J., *Kidston* v. *Empire Mar Insrce*, 35 L. J. C. P. 256; L. R. 1 C. P. 535).

As to the meaning of "Average" in the Contract of Affreightment; *V.* 1 Maude & P. 426: Carver, Part 2, ch. 12.

As to the meaning of "Average" in a Marine Insurance; *V.* 1 Maude & P. 491: Arn. 6th Ed. 919–926. Maclachlan on Merchant Shipping: *Kidston* v. *Empire Insrce*, sup.

"Average due on the Salvage"; *V. Broomfield* v. *Southern Insrce*, L. R. 5 Ex. 192; 39 L. J. Ex. 186.

"Warranted free from all Average"; *V. Asfar* v. *Blundell*, cited PROFIT: *General Insrce of Trieste* v. *Royal Ex. Assrce*, 2 Com. Ca. 144: WARRANTED FREE FROM AVERAGE.

An exception in a Marine Time Policy thus, — "'*free from average*' under (say) 3 per cent.," means that the losses are to be settled at the end of each voyage, — and not that the losses on all the voyages made by the ship during the time covered by the Policy are to be added together, — and only the damage exceeding the agreed percentage on each distinct voyage is recoverable under the Policy (*Stewart* v. *Merchants' Mar Insrce*, 55 L. J. Q. B. 81; reversing Stephen, J., 54 L. J. Q. B. 387; 16 Q. B. D. 619, and commenting on *Blackett* v. *Royal Ex. Assrce*, 1 L. J. Ex. 101; 2 Cr. & J. 244, and *Donnell* v. *Columbian Insrce*, 2 Sumner, 366: *Brooks* v. *Oriental Insrce*, 7 Pickering, 258).

Vf, Marine Insrce v. *China Transpacific Co*, 56 L. J. Q. B. 100; 11 App. Ca. 573; 55 L. T. 491; 35 W. R. 169; 6 Asp. 68: *Price* v. *Al. Ships Small Damage Insrce*, 57 L. J. Q. B. 459; 58 Ib. 269: Rosc. N. P. 442: Abbott, Part 3, ch. 8: Lowndes, 21: 1 Encyc. 426–440: GENERAL AVERAGE: PARTICULAR AVERAGE: F. P. A.: PRIMAGE: LIBERTY TO AVERAGE.

"'Average,' *avera, averiæ, averii, affri*; — beasts of burden, oxen, farm horses: *Averagium*, the work done by them; particularly where it was done as a service due to the lord; Spelm. Gloss. *Avera:* 1 Ellis, Introd. Domesday, 263: Seebohm, Eng. Vill. Comm. 67, 297. *Averum* means revenue, effects, goods; Spelm.: Hale, Domesday of St. Paul's (Camd. Soc.), Introd. lxvi" (Elph. 561). "By grant *de omnibus averiis suis*, Deer shall not pass" (14 Vin. Ab. 108, citing 18 E. 4, 14 b). Cowel says, "'Avera' is found in Doomsday Book, and signifies a days-work of a Ploughman, that is eight pence."

AVERAGE ATTENDANCE. — Quà Elementary Education Act, 1891, 54 & 55 V. c. 56, "'Average attendance,' shall, for the purposes of the Fee Grant, mean, average attendance calculated in accordance with the Minutes in force at the commencement of this Act" (s. 10).

AVERAGE QUALITY. — *V.* FAIR AVERAGE QUALITY.

AVERAGE UNION RATE. — S. 5, Poor Law Rating (Ir) Act, 1876, 39 & 40 V. c. 50, prescribes that, quà that section, "Average Union Rate" means "the Poundage Rate upon the several heredits rated to the relief of the poor in such Union which would be necessary for raising the amount then required to defray the Indoor Relief expenses chargeable against the several Electoral Divisions constituting such Union, if the same, instead of being so chargeable as aforesaid, were charged against the whole Union."

AVERAGE WEEKLY EARNINGS. — "EMPLOYMENT," throughout s. 1, Workmen's Comp Act, 1897, means, "Continuous Employment," and, therefore, the "Average Weekly EARNINGS," mentioned in the Sch to the Act have to be calculated on the basis of the weekly earnings during the one period of continuous employment immediately preceding the injury (*Jones v. Ocean Coal Co*, 1899, 2 Q. B. 124; 68 L. J. Q. B. 731; 80 L. T. 582; 47 W. R. 484: *Appleby* v. *Horseley Co*, 1899, 2 Q. B. 521; 68 L. J. Q. B. 892; 80 L. T. 853; 47 W. R. 614). The Court of Appeal unanimously held that there can be no compensation given to a workman who has not been in the employment at least two weeks, for on less than that no weekly "average" can be struck (*Lysons* v. *Knowles*, 1900, 1 Q. B. 780; 69 L. J. Q. B. 449; 82 L. T. 189; 48 W. R. 408: *Stuart* v. *Nixon*, 1900, 2 Q. B. 95; 69 L. J. Q. B. 598); but this ruling was unanimously reversed in H. L., their lordships holding that the idea in this Act of the word "Average" is simply to direct that one week shall be taken with another, not as restrictive of the right of compensation given to all workmen who are within the Act, but only as a guide with respect to Scale and Amount (*Ib.*, 17 Times Rep. 156; 70 L. J. Q. B. 170; 1901, A. C. 79; 84 L. T. 65).

In order to ascertain these "Average Weekly Earnings during the previous 12 months" of a Workman, the total actual amount earned by him during that time should be added together and divided by 52 (*Keast* v. *Barrow Hæmatite Co*, 63 J. P. 56; 15 Times Rep. 141); — the words "if he has been so long employed," in Sch 1 (1 *b*), have nothing to do with employment in different grades, the phrase simply meaning, "employed by the same employer" (*Price* v. *Marsden*, 1899, 1 Q. B. 493; 68 L. J. Q. B. 307; 80 L. T. 15; 47 W. R. 274). S. 2 of the same Sch directs that in fixing the weekly payment to the workman "regard shall be had" to his "Average Weekly Earnings" before, and his average wage-earning power after, the accident; but that does not, as a matter of law, cut down the limit of 50 per cent of his Average Weekly Earnings on the basis of which the weekly payment is to be awarded under s. 1 *b* (*Illingworth* v. *Walmsley*, 1900, 2 Q. B. 142; 69 L. J. Q. B. 519; 82 L. T. 647).

V. DISABLE: EARNINGS: PERSONAL LABOUR.

AVERMENT: AVER. — *V.* Co. Litt. 362 b: Cowel: Elph. 105, *n.*

AVOID. — "To avoid sale," s. 11 (2), Bankry Act, 1890; *V.* UNDER. *V.* VOID.

AVOIDABLE. — Avoidable Damages; *V.* DAMAGE.

AVOIDANCE. — "Is when a BENEFICE becomes void of an Incumbent" (Cowel). *Vh*, Phil. Ecc. Law, Part 2, ch. 12. *V.* NEXT AVOIDANCE. *Cp*, LAPSE.

Plea of Confession and Avoidance, is where the matter alleged is admitted, but some other thing is set up to justify or excuse it: *Vh*, 1 Encyc. 441, 442.

AVOUÉ. — An Avoué, in Canada, can bind his Client (until désaveu) by any PROCEEDING in the Cause, though taken without his client's authority, or even in defiance of his prohibition (*King* v. *Pinsoneault*, L. R. 6 P. C. 245; 44 L. J. P. C. 42; 32 L. T. 174; 23 W. R. 576, *whva* as to *Avocat*). A Canadian Avoué is the equivalent of an English SOLICITOR.

AVOWTERER. — "'Avowterer,' is an adulterer with whom a married woman continues in adultery" (Termes de la Ley).

AWAITING. — By its subs. 4, "awaiting his Trial," in s. 6, Prevention of Crime (Ir) Act, 1882, "means, Committed for Trial, or charged with any Indictable Offence by Indictment or Inquisition."

AWARD. — "Award on a Submission," s. 12, Arb Act, 1889; *V.* ARBITRATION: SUBMISSION.

The finding of an Official Referee to whom an action has been sent for TRIAL, under s. 14, Arb Act, 1889, is not an "Award, or Certificate," within s. 8, Jud. Act, 1884 (per Fry, L. J., *Munday* v. *Norton*, cited ARBITRATION).

"Set out, allot, and award"; *V.* SET OUT.

Stat. Def. — "Award of Coal Mines," "Award of Iron Mines," 34 & 35 V. c. 85, s. 2. "Award of the Land Commrs," 47 & 48 V. c. 54, s. 3.

V. FINAL AWARD.

AWAY. — *V.* LEAD AWAY: TAKE AWAY.

BACCARAT — BAG

BACCARAT. — "Baccarat, as ordinarily understood in England in 1894, comprised Baccarat in both forms," *i.e.* (1) Baccarat *Chemin de Fer*, and (2) Baccarat *Banque*, — and either is a breach of an agreement prohibiting "Baccarat" (*Fairtlough* v. *Whitmore*, 64 L. J. Ch. 386; 72 L. T. 354; 43 W. R. 421).

BACK. — *V.* See Back.

BACKBARE. — An offender against the Forest Laws taken "with the Manner," *e.g.* "Back-Bare," was "where a man hath killed a Wild-Beast in the Forest and is found carrying him away" (Manwood, *Hunting*).

BACK FREIGHT. — *V. The Cargo ex Argos*, L. R. 5 P. C. 134; 42 L. J. Adm. 1. *Vth*, 1 Maude & P. 364, *n* (*c*): *Gunnsstad* v. *Price*, L. R. 10 Ex. 65.

BACK STREET. — *V. Shiel* v. *Sunderland*, 30 L. J. M. C. 215; 6 H. & N. 796.

BACKBERIND. — "'Backberind Theefe,' is a Theefe that is taken with the Manner, *i.e.* having that found upon him (being followed with the Hue and Crie) which he hath stolen, whether it be mony, linnen, woollen, or stuffe" (Termes de la Ley). *Vf*, Cowel.

BACKWARDATION. — The opposite of Continuation.

BACKWARDS. — "Forwards and Backwards"; *V.* Forwards.

BAD. — "When you say a Title is bad, the expression is ambiguous, and must be contrasted with what is called a Good Title. I understand a Good Title to be one which an unwilling purchaser can be compelled to take. Contrasted with that, any Title which an unwilling purchaser cannot be forced to take is a Bad one. But there are Bad Titles and Bad Titles, — Bad Titles which are good holding titles, although they may be open to objections which are not serious, are bad titles in a Conveyancer's point of view but good in a Business Man's point of view. I do not know of any case in which a Court of Equity has decreed Specific Performance and compelled the purchaser to pay his money for nothing at all, when he shows the Court that the title he is asked to have forced on him is bad, in that sense that he can be turned out of possession to-morrow" (per Lindley, L. J., *Scott* v. *Alvarez*, cited Investigating).

BAG. — Quà Hop (Prevention of Frauds) Act, 1866, 29 & 30 V. c. 37, a "Bag," or "Pocket," of Hops, includes "any package used for contain-

ing hops, or in which hops are packed and sent from the grower or producer to any FACTOR, MERCHANT, or BREWER, or other person, either before or after a sale thereof" (s. 1).

BAGGAGE. — Baggage, means such articles of Necessity, or Personal Convenience, as are usually carried by passengers for their personal use (*Boman* v. *Maxwell*, 9 Humph. 624) and is, *semble*, synonymous with PERSONAL LUGGAGE, and, in the United States, is the word generally used for what in England is more frequently called Personal Luggage. "By 'LUGGAGE' we are to understand such articles of Necessity or Personal Convenience as are usually carried by passengers for their personal use; and not merchandize or other valuables, although carried in the trunks of passengers, which are not designed for any such use but for other purposes, such as sale and the like" (Story on Bailments, s. 499, *whv* acutely examined by E. H. Bennett in a note to the 5th Ed., wh note is appended to *Phelps* v. *Lond. & N. W. Ry*, 19 C. B. N. S. 326–330, where and at p. 475 of 9th Ed. of Story the American decisions on "Baggage" will be found).

BAIL. — "'Baile,' is when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by Law baileable, offereth surety to those which have authority to baile him, which Sureties are bound for him to the Kings use in a certaine summe of money, or body for body, that he shall appeare before the Justices of Gaole-delivery at the next Sessions, &c. Then upon the Bonds of these Surties, as is aforesaid, he is bailed, — that is to say, set at liberty untill the day appointed for his appearance.

"Master Manwood (Part 1, of his Forest Law, p. 167), maketh a great difference between Baile and Mainprise, in these words, — 'And note, that there is a great diversity betweene Baile and Mainprise, for hee that is mainprised is alwayes said to be at large and to goe at his owne liberty out of ward, after hee is put to Mainprise, untill the day of his appearance, by reason of common Summons, or otherwise. But it is not so where a man is put to Bayle by foure or two men, . . . for there hee is alwayes accounted by the law to bee in their ward and custody for the time: and they may, if they will, hold him in ward or in prison till that time, or otherwise at their will: so that he that is bayled shall not be said, by the law, to be at large or at his owne liberty'" (Termes de la Ley). *Vf*, 2 Hale's Pleas of the Crown, c. 15. *Cp*, MAINPRIZE.

The foregoing authorities were cited by Pollock, B., in *Re Nottingham Corp* (cited AMERCIAMENT), and he ruled that an Estreated RECOGNIZANCE, being for a Certain Sum and a Debt of Record to the Crown, is not an "Amerciament"; but that that word is "clearly applicable to the case of Mainpernors who fail to produce the body of the person for whom they have made themselves liable."

Note. — An agreement to indemnify one who "bails" another is invalid (*Consolidated Exploration Co* v. *Musgrave*, 1900, 1 Ch. 37; 69 L. J. Ch. 11).

Vh, 1 Encyc. 443–447; and, as to Admiralty Bail, Ib. 447–449. *Cp*, BAILIFF.

Stat. Def. — 32 & 33 V. c. 38, s. 2.

BAILEE. — "Bailee" is the receiver of a BAILMENT. Quà Sale of Goods Act, 1893, "'Bailee,' in Scotland, includes Custodier" (s. 62).

Larceny by Bailee; *V.* cases BAILMENT, 3rd par.

BAILIFF. — "'Baylife,' is an Officer that belongeth to a Manor, to order the husbandrie; and hath authority to pay Quit Rents issuing out of the Manor, fell trees, repair houses, make pales, hedges, distrain beasts doing hurt upon the ground, and divers such like. This Officer is he whom the ancient Saxons called a Reeve" (Termes de la Ley).

"'*To the bailife* (a le baily),' s. 79, Litt. This word bailie, as some say, commeth of the *French* word *baylife*, in *Latin*, *ballivus*; but in truth baily is an old *Saxon* word, and signifieth a safe keeper or protector, and *baile* or *ballium* is safe keeping or protection: and thereupon we say, when a man upon surety is delivered out of prison, *traditur in ballium*, he is delivered into bayle, that is, into their safe keeping or protection from prison: and the sherife that hath *custodiam comitatûs* is called *ballivus*, and the county *balliva sua*" (Co. Litt. 61 b). *V.* BAIL: Cowel: Jacob.

"Bailiff" of a Court, s. 8, 7 & 8 V. c. 19, means, one who receives his appointment from the Judge of the Court (*Tarrant* v. *Baker*, 14 C. B. 199; 23 L. J. C. P. 21).

In another sense, similar to its primary meaning, "Bailiff" means, a person having the care of property and accountable for the uncertain profits thereof (Co. Litt. 172 a: Com. Dig. "Accompt" A 3, E 4).

Bailiff to Distrain for Rent must now be authorized by a Certificate of a Co. Co. Judge (s. 7, 51 & 52 V. c. 21, on *whv Hogarth* v. *Jennings*, 1892, 1 Q. B. 907; 61 L. J. Q. B. 601). *Vf*, A.

Vf, 1 Encyc. 450.

Stat. Def. — Co. Co. Act, 1888, s. 186. — *Ir.* 27 & 28 V. c. 99, s. 3.

BAILMENT. — "'Bailement,' is a DELIVERY of things, whether it be of Writings, Goods, or Stuffe to another, — sometimes to be delivered backe to the baylor, *i.e.* to him that so delivered it, — sometimes to the use of the baylee, *i.e.* of him to whom it is delivered; and sometimes also it is delivered to a third person" (Termes de la Ley).

"When one person delivers, or causes to be delivered, to another any moveable thing in order that it may be kept for the person making the delivery, or that it may be used, gratuitously or otherwise, by the per-

son to whom the delivery is made, or that it may be kept as a pledge by the person to whom delivery is made, or that it may be carried, or that work may be done upon it by the person to whom delivery is made gratuitously or not, and when it is the intention of the parties that the specific thing so delivered, or the article into which it is to be made shall be delivered either to the person making the delivery or to some other person appointed by him to receive it, the person making the delivery is said to bail the thing delivered; the act of delivery is called a Bailment; the person making the delivery is called the Bailor; the person to whom it is made is called the Bailee" (Steph. Cr. 215).

The term "Bailment," according to its ordinary legal sense, "relates to something which is in the hands of a person who is to return it in specie," *e.g.*, quà Larceny, by a Bailee (per Cockburn, C. J., *R.* v. *Hassall*, 30 L. J. M. C. 175; L. & C. 58: *R.* v. *Ashwell*, 16 Q. B. D. 190; 55 L. J. M. C. 65; 53 L. T. 773; 34 W. R. 297; 50 J. P. 181. *Sv*, *R.* v. *Flowers*, 16 Q. B. D. 643; 55 L. J. M. C. 179; 54 L. T. 547; 34 W. R. 367; 50 J. P. 648: *R.* v. *De Banks*, 53 L. J. M. C. 132; 13 Q. B. D. 29: *R.* v. *Holloway*, 66 L. J. Q. B. 830; 77 L. T. 247). *Vh*, Arch. Cr. 418: Rosc. Cr. 560.

As to the distinction between a Bailment and a Sale; *V. South Australian Insrce* v. *Randell*, L. R. 3 P. C. 101.

Vf, *Coggs* v. *Bernard*, 1 Sm. L. C. 201: Add. C. 343–382: 1 Encyc. 451–465.

BAINES' ACTS. — The Criminal Procedure Act, 1848, 11 & 12 V. c. 46:

The Quarter Sessions Act, 1849, 12 & 13 V. c. 45.

BAITING. — Coursing rabbits with dogs in an inclosure from which they cannot escape, is not "Baiting" within s. 3, 12 & 13 V. c. 92 (*Pitts* v. *Millar*, 43 L. J. M. C. 96; L. R. 9 Q. B. 380; 38 J. P. 615). In that case, Cockburn, C. J., said, "The word has usually been understood to apply to the case of an animal which is tied to a stake or peg, or so confined as not to be able to get away."

BAKEHOUSE. — Quà Bakehouse Regn Act, 1863, 26 & 27 V. c. 40, "'Bakehouse,' shall mean any place in which are baked Bread, Biscuits, or Confectionery, from the baking or selling of which a Profit is derived" (s. 2); — a def adopted in Sch 4, Part 2, 41 V. c. 16, and in s. 141, P. H. (London) Act, 1891. *Vh*, 1 Encyc. 465. *Va*, NON TEXTILE FACTORIES: RETAIL BAKEHOUSE: UNDERGROUND.

BAKER. — A Covenant not to carry on the business of a "Baker or Confectioner" on specified premises, is broken by selling bread or confectionery there, though it be not made there (*Hodgson* v. *Coppard*, 30 L. J. Ch. 20; 29 Bea. 4). *Cp*, BUTCHER.

BALANCE. — "Balance," R. 17, Ord. 21, R. S. C.; *Vth*, Ann. Pr.

"Balance," in a letter, held to couple with it a previous receipt, so that both documents constituted a sufficient mem within the Statute of Frauds (*Studds* v. *Watson*, 28 Ch. D. 305). For a similar purpose, "Purchase" was held to mean "Agreement to Purchase" (*Long* v. *Millar*, 4 C. P. D. 450). *Vf*, *Cave* v. *Hastings*, cited ARRANGEMENT.

Cp, "Property purchased," sub PURCHASE.

Where a BILL OF SALE prescribes payment by stated instalments up to a certain date, and "then the Balance is to be paid," that latter phrase accurately describes the amount that would be due at the end of the period (per Kay, L. J., *Edwards* v. *Marston*, cited STIPULATED).

An acceptance of an Order to pay "the Balance" due to A., does not preclude the acceptor from retaining his own claim on the Balance (*Ex p. Garrard, Re Lewer*, 5 Ch. D. 61; 46 L. J. Bank. 70; 25 W. R. 364; 36 L. T. 42).

"Balance of Account"; *V. Pope* v. *Banyard*, 3 M. & W. 424; 7 L. J. Ex. 182: *Townson* v. *Jackson*, 13 M. & W. 374; 14 L. J. Ex. 57: *Belford Union* v. *Pattison*, 11 Ex. 623; 1 H. & N. 523; 26 L. J. Ex. 115: and as to the same phrase in s. 56, Co. Co. Act, 1888, *V. Avards* v. *Rhodes*, 22 L. J. Ex. 106; 8 Ex. 312, 316: Ann. Co. Co. Pr., Part 2, ch. 1.

"Available Balance"; *V.* AVAILABLE.

"Balance in Hand"; *V.* IN HAND.

"Balance *Order*"; *V. Re Sanders*, 1 Morr. 185: *Re Tennant*, 3 Ib. 166: *Westmoreland Slate Co* v. *Feilden*, 1891, 3 Ch. 15; 60 L. J. Ch. 680; *whlc* rules it is not a JUDGMENT. "A Balance Order, is merely an Order for the collection of Assets" (per Lindley, M. R., *Pritchett* v. *English & Colonial Syndicate*, 1899, 2 Q. B. 434). *Vf*, 1 Encyc. 468.

"Last annual Balance *Sheet*"; *V.* LAST.

Bequest of "Balance," *V. Hill* v. *Mason*, 2 Jac. & W. 248; of "Small Balance," *V. Page* v. *Young*, L. R. 19 Eq. 501; 23 W. R. 479.

As to effect of "Balance" in a context to cut down a testamentary gift to Personalty; *V. Coard* v. *Holdernesse*, 20 Bea. 147. *Vh*, REMAIN.

BALE. — "Bale," "is an ambiguous word which may mean many things, and therefore it is for a jury to say what it means in a Mercantile Contract" (per Cresswell, J., *Gorrissen* v. *Perrin*, 27 L. J. C. P. 32); and in that case the jury were supported in finding that a Bale of Gambier, meant a compressed package weighing about 2 cwt. (27 L. J. C. P. 29; 2 C. B. N. S. 681).

"In the Cotton Trade at Alexandria, Surat, and Calcutta, — a Bale means, a compressed bale" (Wood, 369, citing *Taylor* v. *Briggs*, 2 C. & P. 525). "In the cotton trade at Charlestown a 'Round Bale' of cotton means, an uncompressed bale; and a 'Square Bale' a compressed one" (Wood, 372, citing *Benson* v. *Schneider*, 7 Taunt. 271).

BALK. — "The unploughed strip between two *seliones;* Seebohm, Eng. Vill. Comm. 2, 20" (Elph. 562, *whv*).

BALL. — *V.* PUBLIC BALL.

BALLAST. — Stat. Def., Thames Conservancy Act, 1894, s. 3.

BALLASTAGE. — Ballastage of ships, is "a TOLL for liberty to take up Ballast out of the bottom of a PORT" (Hale, De Portibus Maris, ch. 6).

"Ballastage Rates"; Stat. Def., 16 & 17 V. c. 131, s. 1.

BALLET. — Ballets are of two kinds, "(1) Ballets *divertissement,* where there is no train of ideas or story, but only an agreeable entertainment; and (2) Ballet *of Action,* which has a story, and which may contain all the emotions of Tragedy or Comedy" (per Erle, C. J., *Wigan* v. *Strange,* cited STAGE PLAY).

BALTIC. — In a Marine Insurance on a voyage "to any port in the *Baltic,*" evidence is admissible to prove that the Gulf of Finland is within the Baltic, although the two seas are treated as separate and distinct by geographers (*Uhde* v. *Walters,* 3 Camp. 15).

"London Baltic printed Rates"; *V. Southampton Colliery Co* v. *Clarke,* 40 L. J. Ex. 8; L. R. 6 Ex. 53.

"Negligence Clause, as per Baltic *Bill of Lading*"; *V. Serraino* v. *Campbell,* cited CONDITIONS AS PER CHARTER-PARTY.

BANISHMENT. — Banishment and Exilement are synonyms, and import a compulsory loss of one's country; but "no subject can be exiled or banished his country, whereby he shall *perdere patriam,* but by authority of Parliament" (Co. Litt. 133 a: *Newsome* v. *Bowyer,* 3 P. Wms. 38: *Vf,* Cowel: 1 Encyc. 475, 5 Ib. 239, 252–254). *Cp,* ABJURATION.

BANK. — "Bank" of a Canal, includes its towing-paths (*Mon. Ry & Can Co* v. *Hill,* 28 L. J. Ex. 283; 4 H. & N. 421).

"The Bank of the SEA, is the utmost border of dry land" (Callis, 73, *i.e.* it begins where the land side of the SHORE ceases); "and is of the same materials with the grounds wherein and whereon it standeth: it is sometimes Natural and in some places Artificial. Natural, as mountains raised higher than other grounds adjoining; Artificial, when it is cast by man's hand" (Ib.). A Sea WALL differs from a Bank, in that it is Artificial only, and also as to its ownership, for "the ownership and property of a Wall doth appertain to him who is bound to repair the same, though his ground lie not next thereto; but of a Bank, the property and ownership is his whose grounds adjoin thereto" (Callis, 74). *Vf,* FRONTING.

"The Bank," in a modern Act, is generally, by the Act's interp clause, defined as, the BANK OF ENGLAND, or BANK OF IRELAND, as the

case may require; *e.g.* Lands C. C. Act, 1845, s. 3; 8 & 9 V. c. 19, s. 3; 45 & 46 V. c. 51, s. 13 (7); 55 & 56 V. c. 39, s. 9; National Debt Redemption Act, 1893, 56 & 57 V. c. 64, s. 7.

Bequest of property at testator's Bank; *V.* My.

"Bank," or "Bench," as used in the phrases King's Bench, Common Bench; *V.* Co. Litt. 71 b.

V. Local Bank: Savings.

BANK CHARGES. — This phrase, in an action on a Bill of Ex., is equivalent to "Expenses of Noting," and may be specially endorsed as a Liquidated Demand (*Dando* v. *Boden*, 1893, 1 Q. B. 318; 62 L. J. Q. B. 339; 68 L. T. 90; 41 W. R. 285).

BANK HOLIDAYS. — *V.* 34 & 35 V. c. 17; 38 & 39 V. c. 13.

BANK NOTE. — Stat. Def., Bank Charter Act, 1844, 7 & 8 V. c. 32, s. 28; Stamp Act, 1891, s. 29.

"The Bank Notes Acts, 1826 to 1852"; "The Bank Notes (Scot) Acts, 1765 to 1854"; "The Bank Notes (Ir) Acts, 1825 to 1864"; *V.* Sch 2, Short Titles Act, 1896.

Part of a Bank Note; *V.* Part.

BANK OF ENGLAND. — *V.* s. 12 (18), Interp Act, 1889.

"The Bank of England Acts, 1694 to 1892"; *V.* Sch 2, Short Titles Act, 1896.

BANK OF IRELAND. — *V.* s. 12 (19), Interp Act, 1889.

"The Bank of Ireland Acts, 1808 to 1892"; *V.* Sch 2, Short Titles Act, 1896.

BANK STOCK. — Bequest of; *V. Bignall* v. *Rose*, 24 L. J. Ch. 27. In *Drake* v. *Martin* (23 Bea. 89; 26 L. J. Ch. 786) a bequest of "all My Bank Stock," was held to pass the Consols of the testator, he having nothing else that would answer the description: *Sv. Beahan* v. *Beahan*, Ir. Rep. 3 Eq. 427. *V.* Funds: Stock.

BANKER. — "Banking is not strictly a Trade" (per Jessel, M. R., *Smith* v. *Anderson*, 15 Ch. D. 259).

A "Banker," within the late Bankruptcy definition of "Trader," included a person acting as a Banker, though keeping no open banking-house nor usual bankers' books (*Ex p. Wilson*, 1 Atk. 218); also a member of a Joint Stock Banking Co (*Ex p. Hall*, 3 Deacon, 405: *Ex p. Wyndham*, 1 Mont. D. & D. 146: *Sv*, *Ex p. Brundrett*, 2 Deacon, 219): but not an Army or Navy Agent (*Ex p. Wilson*, sup: *Richardson* v. *Bradshaw*, 1 Atk. 129).

It is for the jury to say whether a person is a "Banker, Merchant, Broker, Attorney, or other Agent," within ss. 75, 76, Larceny Act, 1861 (*R.* v. *Bowerman*, cited Security for Money).

Stat. Def. — Bank Charter Act, 1844, 7 & 8 V. c. 32, s. 28; 19 & 20 V. c. 25, s. 3; 21 & 22 V. c. 79, s. 5; Crossed Cheques Act, 1876, 39 & 40 V. c. 81, s. 3; Bankers' Books Evidence Act, 1879, 42 & 43 V. c. 11, s. 9; 45 & 46 V. c. 61, s. 2, c. 72, s. 11 (2); Stamp Act, 1891, s. 29. — Bankers (Ir) Act, 1845, 8 & 9 V. c. 37, s. 32. — Bank Notes (Scot) Act, 1845, 8 & 9 V. c. 38, s. 22.

Vf, as to meaning of "Banker" and his business, *n.* 6 M. & G. 671: *Re Kennedy*, Ir. Rep. 1 Eq. 425: *Copland* v. *Davies*, L. R. 5 H. L. 358: 1 Encyc. 479–482: Grant on Banking.

Quà Bankers' Books Evidence Act, 1879, "'Bankers' *Books*,' include Ledgers, Day Books, Cash Books, Account Books, and all other books used in the ordinary business of the bank" (s. 9). *Cp*, BOOK.

Money &c "at my Bankers"; *V.* MY.

BANKING. — The British North America Act, 1867, s. 91, gives to the Parliament of Canada EXCLUSIVE legislative authority over matters relating to "Banking" in the Dominion; that "expression is wide enough to embrace every transaction coming within the legitimate business of a banker," — *e.g.* lending money on security of goods or documents (*Tennant* v. *Union Bank of Canada*, 1894, A. C. 31; 63 L. J. P. C. 31; 69 L. T. 774).

BANKRUPT. — Quà Bills of Exchange Act, 1882, "'Bankrupt,' includes any person whose estate is vested in a Trustee or Assignee under the law for the time being in force relating to BANKRUPTCY" (s. 2) — a def which, probably, is of general acceptation. *Cp*, INSOLVENT.

Quà Trustee Act, 1893, "Bankrupt," in Ireland, includes Insolvent (s. 50).

Other Stat. Def. — *Ir.* 20 & 21 V. c. 60, s. 4. — *Scot.* 2 & 3 V. c. 41, s. 3; 19 & 20 V. c. 79, s. 4.

BANKRUPTCY. — "Bankruptcy," probably, means the commission of an ACT OF BANKRUPTCY followed by an adjudication (*Ex p. Attwater*, 5 Ch. D. 30: *Va*, BECOME); but quà the Title of a Trustee in Bankry, "Bankruptcy," or even "the Time of the Bankruptcy," means, when the Act of Bankry was committed to which (*V.* s. 43, Bankry Act, 1883) such title may relate back (*Ex p. Attwater*, 5 Ch. D. 27; 46 L. J. Bank. 41; 35 L. T. 917: *Ex p. Payne, Re Cross*, 11 Ch. D. 539; 40 L. T. 563; 27 W. R. 808).

Vh, Wms. Bank: Baldwin: Robson.

Bankry Law; *V.* CRIME.

Bankry Petition; *V.* PETITION.

There is no "bankruptcy," within the meaning of a clause of FORFEITURE, if it be annulled before income is payable (*White* v. *Chitty*, 35 L. J. Ch. 343; L. R. 1 Eq. 372: *Lloyd* v. *Lloyd*, L. R. 2 Eq. 722:

Robins v. *Rose*, 43 L. J. Ch. 334. *Sv, Samuel* v. *Samuel*, 12 Ch. D. 152, in *whc White* v. *Chitty* was questioned: *Va, Smallcombe* v. *Olivier*, 13 L. J. Ex. 305; 13 M. & W. 77). So, a Colonial Bankry, of a person domiciled in England, does not work such forfeiture (*Re Blithman*, 35 L. J. Ch. 255; L. R. 2 Eq. 23: *Re Hayward*, 1897, 1 Ch. 905; 66 L. J. Ch. 392; 76 L. T. 383; 45 W. R. 439).

V. ALIENATION: DEATH: SUFFICIENT CAUSE.

Forfeiture of a LEASE, if "the Lessee his exs ads *or assigns* shall become bankrupt," connotes that a rightful assign takes the same estate as the Lessee, and that the bankry referred to is (before assignment) that of the Lessee his exs or ads, and (after assignment) that of the assign, — in other words the bankry is that of the person for the time being legally entitled to the term (*Smith* v. *Gronow*, 1891, 2 Q. B. 394; 60 L. J. Q. B. 776; 65 L. T. 117; 40 W. R. 46). *V.* BECOME: LIQUIDATION.

Stat. Def. — Conv. & L. P. Act, 1881, s. 2 (xv); Mer Shipping Act, 1894, s. 742; Friendly Societies Act, 1896, s. 35 (2).

"The Bankry Acts, 1883 to 1890"; "The Bankry (Scot) Acts, 1856 to 1881"; *V.* Sch 2, Short Titles Act, 1896.

BANKRUPTCY AND INSOLVENCY. — The British North America Act, 1867, s. 91, gives to the Parliament of Canada EXCLUSIVE legislative authority over matters relating to "Bankruptcy and Insolvency" in the Dominion; that, by a necessary implication, includes power to interfere with "Property and CIVIL RIGHTS," and the "Administration of Justice" (matters reserved to the Provincial Legislatures by s. 92), so far as such matters may be affected by a General Law relating to Bankry and Insolvency (*Cushing* v. *Dupuy*, 49 L. J. P. C. 63; 5 App. Ca. 409). But a Provincial Law affecting assignments and property of Insolvents, is valid because falling within "Property and Civil Rights," and "not within 'Bankry and Insolvency,' in the sense in which those words are used in s. 91" (*A-G. Canada* v. *A-G. Ontario*, cited EXCLUSIVE, stating *A-G. Canada* v. *A-G. Ontario*, 1894, A. C. 189; 63 L. J. P. C. 59).

BANNER. — The primary meaning of "Banner," is, probably, a small flag bearing a device or symbol, and intended to be *carried* (Termes de la Ley, *Banneret*), or to be waved or carried (*Martin* v. *Mackonochie*, L. R. 2 P. C. 387). But canvas, parti-coloured or bearing party words, fixed and stretched across a street, is a "Banner," within s. 16 (1), Corrupt and Illegal Practices Prevention Act, 1883 (*Stepney*, Times, 22 Dec 1892; 4 O'M. & H. 179. *Vf, Pontefract*, Ib. 200); yet it is not illegal, within that section, for a Parliamentary Candidate to accept the gratuitous loan or gift of such a Banner (*Kennington*, 4 O'M. & H. 93). *V.* MARK.

BANNS. —" 'Bans,' signifies a proclamation, or any Publike Notice, that is given of anything " (Termes de la Ley).

" Banns of Marriage "; *V.* Phil. Ecc. Law, 580: 2 Encyc. 1–3.

BANNUM. —" 'Bannum,' or 'Banleuga,' the utmost bounds of Mannor or Town " (Cowel).

BANQUE. —*V.* BACCARAT.

BAPTIZED. —*V.* UNBAPTIZED.

BAR. —" 'Barred' is a word common as well to the English as to the French, of which cometh the nowne, a Bar, *barra.* It signifieth legally a destruction for ever, or taking away for a time of the action of him that right hath " (Co. Litt. 372 a). *Vf*, Termes de la Ley, *Barre:* 2 Encyc. 8.

V. BARRISTER.

BARBED WIRE. — Quà Barbed Wire Act, 1893, 56 & 57 V. c. 32, " 'Barbed Wire,' means, any wire with spikes or jagged projections " (s. 2).

BARCARIA. —*V.* BERCARIA.

BARE TRUSTEE. — A " Bare Trustee " is a TRUSTEE who has no duty to perform, and who, on request, would be compellable to convey or transfer to his cestui que trust (*Christie* v. *Ovington*, 1 Ch. D. 279: *Re Cunningham and Frayling*, 60 L. J. Ch. 591; 1891, 2 Ch. 567; 64 L. T. 558; 39 W. R. 469).

Quà Fines and Recoveries Act, 1833, a husband is not a " Bare Trustee " of lands settled to the Separate Use of his wife (*Keer* v. *Brown*, 28 L. J. Ch. 477; Johns. 152–154).

After a judgment for sale in an action, a married woman trustee, beneficially interested, is a " Bare Trustee," within s. 6, V. & P. Act, 1874, and can convey real estate without Acknowledgment (*Re Docwra*, 54 L. J. Ch. 1121; 29 Ch. D. 693). An unpaid Vendor, or any other person having a beneficial interest, is not a " Bare Trustee " within s. 48, Land Transfer Act, 1875 (*Morgan* v. *Swansea*, 9 Ch. D. 582; 27 W. R. 283: *Svthc*, *Re Cunningham and Frayling*, sup).

An unpaid Vendor of Realty " is something between a Naked, or Bare, Trustee (*i.e.* a person without beneficial interest) and a Mortgagee " (per Jessel, M. R., *Lysaght* v. *Edwards*, 45 L. J. Ch. 559).

" Bare Trustee," s. 16, Trustee Act, 1893, means, " a Trustee without any beneficial interest " (per North, J., *London and County Bank* v. *Goddard*, cited TRUST).

V. ACTING TRUSTEE.

BARGAIN. —" A 'Bargain' is only another name for a 'Contract' " (per Hawkins, J., in delivering jdgmt of the court in *Crossman* v. *The*

Queen, 56 L. J. Q. B. 245); and, as used in s. 17, Statute of Frauds, "Bargain," means the terms on which the parties contract (*Kenworthy* v. *Schofield*, 2 B. & C. 947: *Archer* v. *Baynes*, 20 L. J. Ex. 54; 5 Ex. 625: *Goodman* v. *Griffiths*, 26 L. J. Ex. 145). *V.* AGREEMENT.

As to this word in Sch 2, R. 64, P. H. Act, 1875; *V. Fletcher* v. *Hudson*, 51 L. J. Q. B. 48; 7 Q. B. D. 611: The sale of a shilling's worth of stationery would be within the meaning of the word (per Bramwell, B., *Lewis* v. *Carr*, 46 L. J. Ex. 314; 1 Ex. D. 484). *Sv*, BARGAIN OR CONTRACT.

V. TIME BARGAIN.

BARGAIN AND SALE. — "Bargain and Sale, is when a recompense is given by both the parties to the bargaine: as if one bargain and sell his land to another for money, here the land is a recompense to him for the money, and the money is a recompense to the other for the land" (Termes de la Ley). *Vf*, Jacob: 2 Encyc. 16.

"A 'Bargain and Sale' was an expression of very definite meaning in use in the old forms of pleading; it stands for what is sometimes called an 'Executed Contract,' that is, one where the property has passed" (Blackb. 124: *Va*, Benj. 1).

"Bargain and Sale," 27 H. 8, c. 16, originated the disused form of conveyance of freeholds by Lease and Release: — *Vh*, 4 V. c. 21: Watkins on Conveyancing, *Bargain and Sale:* Wms. R. P. 151.

BARGAIN OR CONTRACT. — "BARGAIN," and "CONTRACT," are convertible terms. Therefore, the "Bargain or Contract" an interest in which disqualifies and penalizes a Member of a Local Board (s. 193, P. H. Act, 1875; R. 64, Sch 2, Ib.) *semble*, means no more than the "Contract" an interest in which disqualifies and penalizes a Municipal Councillor (ss. 12, 41, 45 & 46 V. c. 50).

It has been said, in this connection, that if "a shilling's worth of stationery" were bought by a Mun. Corp of one of its members, "there would be a 'Contract' between the Corp and that Member" (per Bramwell, B., *Lewis* v. *Carr*, 46 L. J. Ex. 315; 1 Ex. D. 484); but it may be gathered from *Nicholson* v. *Fields* (31 L. J. Ex. 233; 7 H. & N. 810), that a mere casual, over-the-counter, dealing would not be such a "Contract." *Vf*, per Bramwell, B., *Woolley* v. *Kay*, 25 L. J. Ex. 351; 1 H. & N. 307. In *Nicholson* v. *Fields*, however, it was held that an invoice addressed to a Local Bd by, and receipted by, one of its Members, charging for goods supplied at four different times, was evidence of a "Contract" between that Member and the Board, although the items were of trifling amount. *Vf*, *Fletcher* v. *Hudson*, cited BARGAIN.

Letting Rooms to a Local Authority by one of its officers is a "Bargain or Contract," within s. 193, P. H. Act, 1875 (*Burgess* v. *Clark*, 14 Q. B. D. 735); *secus*, of a Sale of Land to improve a Street (*Woolley* v. *Kay*, sup).

Supplying materials to a Corporation Contractor, is not being interested in the contract (*Le Feuvre* v. *Lankester*, 23 L. J. Q. B. 254; 3 E. & B. 530).

Vf, *Melliss* v. *Shirley*, 16 Q. B. D. 446; 55 L. J. Q. B. 143: *Whiteley* v. *Barley*, cited ALLOWANCES.

V. CONTRACT: CONCERNED IN: INTERESTED IN.

BARGE. — *V.* SHIP: VESSEL: WHERRY.

BARLEY. — In the Corn Trade "fine" barley is different from, and superior to, "good" barley (*Hutchinson* v. *Bowker*, 5 M. & W. 535; 9 L. J. Ex. 24).

"Seed Barley"; "Chevalier Seed Barley"; *V. Carter* v. *Crick*, 28 L. J. Ex. 238; 4 H. & N. 412.

BARN. — *V.* OUTHOUSE.

BARNARD'S ACT. — 7 G. 2, c. 8.

BARON. — In the old phrase "Baron and Feme," "Baron" means HUSBAND. *Vf*, FEME.

Court Baron; *V.* COURT.

BARONIA. — *V.* Elph. 562.

BARONIAL. — "In the Irish Education Act, 1892, 'Baronial *Council*' shall mean Rural District Council" (61 & 62 V. c. 37, s. 74).

Quà the County Works (Ir) Act, 1846, 9 & 10 V. c. 2, "'Baronial *Sessions*' shall, in the case of a County of a City or County of a Town, mean and include such Extraordinary Presentment Sessions" therefor, "or the adjournment thereof, hereby provided" (s. 23).

BARONY. — "Barony"; *V.* Cowel.

In Ireland, the word means a district: Stat. Def., 12 & 13 V. c. 36, s. 6; 13 & 14 V. c. 1, s. 3, c. 68, s. 24, c. 69, s. 117; 15 & 16 V. c. 63, s. 45; 18 & 19 V. c. 69, s. 2; 20 & 21 V. c. 16, s. 2; 34 & 35 V. c. 65, s. 3; 36 & 37 V. c. 30, s. 6; 46 & 47 V. c. 43, s. 25.

BARRATRY. — "The word 'Barratry' is derived from the Italian *barratrare*, to cheat. Any illegal, fraudulent, or knavish conduct of the master or mariners of a ship by which the freighters or owners are injured, is, by our law, Barratry. . . . In order to constitute Barratry, the act must, generally, be done fraudulently and with a criminal intent; and it is not sufficient that it is merely against the interest of the owner" (1 Maude & P. 145: *Vf*, *Taylor* v. *Liverpool & Gt. Wn. Steam Co*, cited INSURANCE). Negligence in steering, though in breach of a statutory rule, is not Barratry (*Grill* v. *General Iron Screw Collier Co*, 35 L. J. C. P. 321; 37 Ib. 205; L. R. 1 C. P. 600; 3 Ib. 476: *Cp*, WILFUL DEFAULT): but wilful illegal trading involving condemnation of the ship is Barratry, though, if successful, the trading would have been profitable

to the owner (*Havelock* v. *Hancill*, 3 T. R. 277: *Earle* v. *Rowcroft*, 8 East, 126: *Goldschmidt* v. *Whitmore*, 3 Taunt. 508); and so is the carrying of prohibited persons if involving forfeiture of the ship (*Australasian Insrce* v. *Jackson*, 33 L. T. 286).

There may be Barratry by one Co-Owner as against another (*Jones* v. *Nicholson*, 23 L. J. Ex. 330; 10 Ex. 28), or by a Mtgor as against his Mtgee (*Small* v. *United Kingdom Insrce*, 1897, 2 Q. B. 311; 66 L. J. Q. B. 736).

Vf, 1 Maude & P. 146: Abbott, 185: Arn. 838: 2 Encyc. 23 *et seq.*

BARREL. — A Barrel of Beer, "according to the custom of the Brewing Trade, is a vessel holding 36 gallons" (per Pollock, B., *Budd* v. *Lucas*, cited TRADE DESCRIPTION). *Vf*, Cowel.

BARRETOR. — "'*Barrettors.*' A barretor is a common moover and exciter, or maintainer of suits, quarrels, or parts, either in courts, or elsewhere in the countrey" (Co. Litt. 368 a). *Vf*, Jacob.

"'Barretor' is derived of this word (*barret*) which signifieth not only a wrangling suit, but also such brawles and quarrels in the countrey as are aforesaid" (Co. Litt. 368 b: *Sv*, Cowel for other derivations).

BARRISTER. — Quà Indian High Courts Act, 1861, 24 & 25 V. c. 104, "'Barrister,' shall be deemed to include, Barristers of England or Ireland, or Members of the Faculty of Advocates in Scotland" (s. 19); quà Public Worship Regn Act, 1874, 37 & 38 V. c. 85, the word *includes* Advocate, in the Isle of Man (s. 6), and *means* Advocate in Scotland, quà Corrupt and Illegal Practices Prevention Act, 1883 (s. 68).

"Prosecuting Barrister"; *V.* PROSECUTING.

"Revising Barrister"; Stat. Def., 17 & 18 V. c. 102, s. 38. — *Ir.* 48 & 49 V. c. 17, s. 32; 61 & 62 V. c. 37, s. 109 (1).

BARTER. — "This word is used by us for the exchange of wares for wares" (Termes de la Ley: Cowel).

BASE. — Quà London Bg Act, 1894, "'Base,' applied to a WALL, means, the under-side of the course immediately above the footings, if any, or, in the case of a Wall carried by a BRESSUMMER, above such Bressummer" (subs. 10, s. 5): *V.* s. 3, Metrop Bg Act, 1855. *Cp*, FOUNDATION.

A Base FEE, "is a Tenure in Fee at the Will of the Lord, distinguished from Socage free tenure; but Ld Coke says that a Base Fee, or qualified fee, is what may be defeated by limitation, or on entry &c; Co. Litt. 1, 18" (Jacob). Thus, *e.g.*, a Disentailing Deed without the consent of the PROTECTOR OF THE SETTLEMENT (where there is one), gives only a Base Fee; because the Fee thereby created, though good

against the Issue of the Tenant in Tail, is not good against the Remainders and Reversion (s. 34, Fines and Recoveries Act, 1833). *Vf*, Goodeve, 68, 70, 81: 2 Encyc. 28. For a list of Base Fees, *V.* Challis on Real Property, 2nd Ed., 297 *et seq.*

Quà Fines and Recoveries Act, 1833, " 'Base Fee,' shall mean exclusively, that Estate in Fee Simple into which an Estate Tail is converted where the Issue in Tail are barred, but persons claiming Estates by way of Remainder, or otherwise, are not barred " (s. 1).

Vh. Re Drummond and Davies, cited PROPERTY.

" *Bassa tenura*, or Base *Tenure*, was a holding by villenage, or other customary service, opposed to *Alta tenura*, the higher tenure in capite or by military service &c " (Jacob). *Vf*, Cowel, *Base Estate.*

Quà Gold and Silver Wares Act, 1844, 7 & 8 V. c. 22, " 'Base *Metal*' shall mean, any metal whatsoever, other than Gold or Silver of the respective standards required by law " (s. 14).

BASEMENT STOREY. — *V.* STOREY.

BASS' ACT. — The Clerks of the Peace Removal Act, 1864, 27 & 28 V. c. 65.

BASTARD. — A " Bastard " is a person " that be borne out of lawfull marriage " (Co. Litt. 244 a: *Vf*, Termes de la Ley: Cowel: Jacob: 2 Bl. Com. 247). And the husband of a woman being " within the foure seas " (Ib.), is not now conclusive to legitimatize her offspring; proof, positive or presumptive, of non-access may be given (*Pendrell* v. *Pendrell*, 2 Stra. 925: *R.* v. *Luff*, 8 East, 204: *Goodright* d. *Tompson* v. *Saul*, 4 T. R. 356: *Morris* v. *Davies*, 5 Cl. & F. 163: *Hawes* v. *Draeger*, 23 Ch. D. 173; 52 L. J. Ch. 449: *Aylesford Peerage*, 11 App. Ca. 1), even though there has been opportunity of access (*Cope* v. *Cope*, 1 Moo. & R. 269: *R.* v. *Mansfield*, 1 Q. B. 450, 452; 10 L. J. M. C. 97; 1 G. & D. 7: *Bosville* v. *A.-G.*, 12 P. D. 177: *Burnaby* v. *Baillie*, 58 L. J. Ch. 842). But where husband and wife are living together, the presumption of the legitimacy of the wife's offspring is so strong, that it can only be rebutted by evidence absolutely irresistible (*Head* v. *Head*, 1 Sim. & St. 152; T. & R. 138: *Banbury Peerage*, 1 Sim. & St. 153: *Morris* v. *Davies*, sup: *Legge* v. *Edmonds*, 25 L. J. Ch. 125).

If the husband was under the age of procreation (Co. Litt. 243 a), or if his habit of body was such as to make his begetting children an impossibility (*Lomax* v. *Holmden*, 2 Stra. 940), the children of the wife would be bastardized.

Vh, 2 Encyc. 30–33: and, quà Slander, Odgers, 149, 150. *Va*, AFFILIATION.

BATH. — In the frequent clause in the Acts of Water Works Cos excepting (inter alia) " Baths " from being a DOMESTIC Purpose, an ordi-

nary moveable bath is not within such exception (*Weaver* v. *Cardiff*, 48 L. T. 906 : *Bingham* v. *Sheffield W. W. Co*, cited in *Walker* v. *Lambeth W. W. Co*, 63 L. J. Ch. 876). And if the clause excepts "Baths, Wash-houses, or PUBLIC PURPOSES," then "Baths" (read with its context) means Public Baths, and even the ordinary fixed household bath remains a Domestic Purpose (*Weaver* v. *Cardiff*, sup); *secus*, if the phrase is, "Baths, Horses, Cattle, or for washing carriages, or for any Trade or Business whatsoever" (*Walker* v. *Lambeth W. W. Co*, 63 L. J. Ch. 874; 71 L. T. 75; 58 J. P 736).

"The Baths and Wash-houses Acts, 1846 to 1882"; *V.* Sch 2, Short Titles Act, 1896.

BATTALION. — Quà Regn of the Forces Act, 1881, 44 & 45 V. c. 57, "Battalion," in its application to Cavalry, Artillery, or Engineers, means, "Regiment, Brigade, or other Body into which Her Majesty may have been pleased to divide such Cavalry, Artillery, or Engineers" (subs. 2, s. 49).

BATTERY. — *V.* ASSAULT: BEAT.

BATTLE. — Trial by Battle; *V.* 2 Encyc. 37: Termes de la Ley, *Battaile:* Jacob, *Battel:* 3 Bl. Com. 341, 342. Abolished by 59 G. 3, c. 46.

BAWDY HOUSE. — *V.* BROTHEL.

BAY. — *V.* ESTUARY.

BAY WINDOW. — *V.* BUILDING.

BE. — To "be" at a place, is wider than to "RESIDE," *e.g.* in the requirement, s. 27, 43 G. 3, c. 161, to make a Return for Assessed Taxes where the person "shall reside, *or be,*" which latter clearly includes his place of business (*A-G.* v. *McLean*, 1 H. & C. 750; 32 L. J. Ex. 101; 11 W. R. 292; 8 L. T. 113). *V.* BEING.

BEACHING. — Beaching of Fishing Boats in winter; *V.* per Ld O'Hagan, *Aiton* v. *Stephen*, 1 App. Ca. 462.

BEACON. — *V.* BUOY.

BEADLE. — "'Bedell' is derived of the French word *Beadeau*, which signifies a messenger of the court, or under baylife, in *Lutine*, *Bedellus*" (Co. Litt. 234 b). *Vf*, Termes de la Ley: 2 Encyc. 38.

BEADSMAN. — "'Beadsmen,' according to the definitions given by the authors to whom we have been referred, seem to have been in antient times, persons who devoted themselves to Prayer, — not merely on their own account, but for the benefit also of others" (per Cockburn, C. J., *Faulkner* v. *Boddington*, cited OFFICE).

BEAM TRAWL. — Stat. Def., 44 & 45 V. c. 11, s. 9.

BEAR. — The use of "Bear" in collocation with "Pay," — *e.g.* in a tenant's covenant to "bear and pay" taxes, rates, duties, &c — has "the effect of more distinctly developing its very comprehensive character" (per Baggallay, L. J., *Budd* v. *Marshall*, 50 L. J. Q. B. 29). *V.* TAXES.

Semble, there is a difference between a gift to descendants who "bear" a particular NAME, and a gift to Descendants "*of*" such Name (*Re Roberts*, 50 L. J. Ch. 265; *S. C.* on App. 19 Ch. D. 520).

BEARER. — The "Bearer," of a Bill or Note, "means the person in possession of a Bill or Note which is payable to Bearer" (s. 2, Bills of Ex. Act, 1882). *Vth*, *Good* v. *Walker*, 61 L. J. Q. B. 736: *Day* v. *Longhurst*, 62 L. J. Ch. 334; 68 L. T. 17; 41 W. R. 283.

A Debenture payable "to Bearer" is, in effect, a Promissory Note, and passes from hand to hand free from any equities which might have attached to it as between the Company and the original holder (*Re Marseilles Imperial Land Co*, 40 L. J. Ch. 93; L. R. 11 Eq. 478).

Note to "Bearer on Demand"; *V. Cheetham* v. *Butler*, 5 B. & Ad. 837.

V. NEGOTIABLE.

BEARING. — "Bearing Even Date" (Sch 55 G. 3, c. 184, *Bond*), "ties down the operation of that clause of the Sch to the date written on the Instrument" (per Tenterden, C. J., *Wood* v. *Norton*, 9 B. & C. 887).

When a Bill of Ex. or Promissory Note expressly made interest payable, but without defining the date from which interest was to run, — *e.g.* by simply saying "bearing INTEREST," — it carried interest from its date, and not merely from its maturity (*Kennerly* v. *Nash*, 1 Starkie, 452); and is not this still so notwithstanding s. 57, Bills of Ex. Act, 1882? *Sv*, Byles, 440.

BEAST GATE. — *V.* CATTLE GATE.

BEASTS. — "The Beasts of *Parque* or *Chase*, properly extend to the Bucke, the Doe, the Foxe, the Marten, the Roe; but, in a common and legall sense, to all the Beasts of the Forrest" (Co. Litt. 233 a). *V.* PARK: CHASE.

"Beasts of *Forrests* be properly Hart, Hinde, Bucke, Hare, Boar, and Wolfe; but legally all wild beasts of venery" (Ib.). *V.* FOREST.

Beasts of the *Warren* are "Hares, Conies, and Roes" (Ib.). *V.* WARREN. Fowls of the Warren; *V.* FOWL.

Vf, As to all the above, *Barrington's Case*, 8 Rep. 138.

Beasts of the *Plough*; *V.* Co. Litt. 47 a, b: Woodf. 483.

"Beasts that gain his land," 51 H. 3, stat. 4, does not include cart

Colts and young Steers, unbroken to harness or the plough (*Keen* v. *Priest*, 4 H. & N. 236; 28 L. J. Ex. 157).

V. HORSE: CATTLE.

BEAT. — A mere technical Battery (*V.* ASSAULT), is not a "Beating," within s. 29, 7 & 8 G. 4, c. 29; — "unlawfully beat," as there used, connotes a "beating" in the popular sense of that word, which pulling a man to the ground and holding him there is not (per Maule, J., *R.* v. *Hale*, 2 C. & K. 326).

BECOME. — A person "becomes bankrupt," quà the Bankry Laws, when he commits the ACT OF BANKRUPTCY on which his adjudication is founded; not only at Adjudication (*Fawcett* v. *Fearne*, 6 Q. B. 20: *Ex p. Harris*, 44 L. J. Bank. 31; L. R. 19 Eq. 253). *Va*, BANKRUPTCY.

"Become a Bankrupt," s. 7 (2), Bills of Sale Act, 1882; *V. Ex p. Allam, Re Munday*, 14 Q. B. D. 43; 33 W. R. 231.

A Co's Articles disqualifying a Director "if he become bankrupt," does not prevent the election of one who is already an undischarged bankrupt (*Dawson* v. *African &c Co*, 1898, 1 Ch. 6; 67 L. J. Ch. 47; 77 L. T. 392; 46 W. R. 132).

"Become Insolvent"; *V.* HEREAFTER: INSOLVENT.

FORFEITURE if demised premises shall "become vested" in another; *V.* VESTED.

"Becoming after the passing of this Act an Urban Sanitary Authority"; *V. Kennedy* v. *Great Southern & W. Ry*, 30 L. R. Ir. 685.

V. ENTITLED: ELDEST.

BED. — "I will cite a passage from the jdgmt in an American case (*State of Alabama* v. *State of Georgia*, 64 U. S. 505), for it exactly conveys what I understand to be the meaning of 'Bed of a RIVER,' — 'The Bed of the River is that portion of its soil which is alternately covered and left bare, as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average and mean stage during the entire year, without reference to the extraordinary freshets of the Winter or Spring or the extreme droughts of the Summer or Autumn.' This, when applied to a Tidal River, means, without reference to Extraordinary Tides at any time of the year" (per Smith, L. J., *Thames Conservators* v. *Smeed*, 1897, 2 Q. B. 338; 66 L. J. Q. B. 716; 77 L. T. 325; 45 W. R. 691; 61 J. P. 612). In accordance with that def, and on the authority of *Goolden* v. *Thames Conservators* (1891, in H. L., but not reported), it was held, in *Thames Conservators* v. *Smeed*, that "Bed of the THAMES," s. 87, Thames Conservancy Act, 1894, includes the FORESHORE between High and Low Water-Mark at Ordinary Tides, although the soil belongs to private owners. *Vf*, SEVERAL FISHERY, *n*: 2 Encyc. 44–47.

V. IRON.

BEDDING. — "All must agree, I think, that 'Bedding' is used more often than not as describing something which does not include a Bedstead" (per Channell, J., *Davis* v. *Harris*, 1900, 1 Q. B. 729; 69 L. J. Q. B. 232; 81 L. T. 780; 48 W. R. 445; 64 J. P. 136); but in the exception from Execution, s. 147, Co. Co. Act, 1888, "Bedding" means, whatever the Exon Debtor "has for the purposes of sleeping accommodation," — *e.g.* a Mattress laid on the floor, or a Bedstead (*S. C.*). *Note.* The exception in that section applies to a Distress for Rent (s. 4, 51 & 52 V. c. 21).

BEEN. — *V.* HAVE BEEN.

BEER. — Summer's Botanic Beer, manufactured from fermented sugar and water, and flavoured with herbs, is "Beer" within the meaning of the Customs and Inl. Rev. Act, 1885; and to retail it necessitates the holding of an Excise license (*Howorth* v. *Minns*, 56 L. T. 316; 51 J. P. 181). The effect of such a ruling would seem to be that no kind of "Beer" containing over 2 % of Proof Spirit can be sold without a license; *Vf*, inf.

Quà Beerhouse Act, 1830 (*V.* s. 32), and Wine and Beerhouse Act, 1869 (*V.* s. 2), "Beer," includes Ale and Porter.

Quà Inl. Rev. Act, 1880, "'Beer,' includes Ale, Porter, Spruce Beer, and Black Beer, and any other description of Beer" (s. 2), — a def extended to include "any Liquor which is made or sold as a description of Beer, or as a Substitute for beer, and which, on analysis of a sample thereof at any time, shall be found to contain more than 2 % of Proof Spirit" (subs. 1, s. 4, 48 & 49 V. c. 51); and, by subs. 2 of the last section, the meaning of "Beer," as amplified by subs. 1, is applied to all Acts "relating to Excise Licenses for the sale of Beer, unless there is something in the subject or context inconsistent therewith."

Quà Part 3, Inl. Rev. Act, 1880, "'Beer,' includes CIDER" (s. 40).

Stat. Def. — *Ir.* s. 3, 34 & 35 V. c. 111.

V. EXCISEABLE LIQUOR: INTOXICATING LIQUOR: SPIRITS: SPIRITUOUS LIQUOR: WINE.

BEER-HOUSE. — "Beer-house" means a place where beer is sold to be consumed *on* the premises; but a "Beer-shop" means a place where Beer is sold by retail, and it is immaterial whether it is to be consumed on the premises or not (*London and Suburban Land Co* v. *Field*, 50 L. J. Ch. 549; 16 Ch. D. 645; 44 L. T. 444: *Custance* v. *Wilkinson*, 95 Law Times, 157: *Holt* v. *Collyer*, 50 L. J. Ch. 311; 16 Ch. D. 718; 44 L. T. 214; 29 W. R. 502: *St. Alban's* v. *Battersby*, 47 L. J. Q. B. 571; 3 Q. B. D. 359; 26 W. R. 679; 38 L. T. 685: *Nicoll* v. *Fenning*, 51 L. J. Ch. 166; 19 Ch. D. 258; 30 W. R. 95; 45 L. T. 738). Therefore a covenant against a "Beer-*Shop*" will prohibit a "Beer-*House*": not

so, *vice versâ* (*Lond. & N. W. Ry* v. *Garnett*, 39 L. J. Ch. 25; L. R. 9 Eq. 26; 21 L. T. 352; 18 W. R. 246: *Holt* v. *Collyer*, sup). *Vf*, *Devonshire* v. *Simmons* (39 S. J. 60), where the point was raised, but not decided, as to whether the sale of beer in a Private Hotel to Guests only, would make the place a Beer-Shop.

V. ALE-HOUSE: PUBLIC-HOUSE: INN: SHOP.

BEER-SHOP. — *V.* BEER-HOUSE.

BEETLE-HEADED. — It is not Slander, *per se*, to say of a Justice of the Peace that "he is a Fool, an Ass, and a Beetle-headed Justice" (*Bill* v. *Neal*, 1 Lev. 52). Indeed, evil-speaking of Justices may go a long way; *V. Hollis* v. *Briscow*, Cro. Jac. 58: *R.* v. *Farre*, 1 Keble, 629: — "Blood Sucker" seems almost a verbal amenity (*V.* BLOOD).

BEFORE. — "WITHIN 3 months before" the Petition, s. 6 (1 *c*), Bankry Act, 1883; *V. Ex p. Forster*, 35 W. R. 456; 56 L. T. 573: *Ex p. Townend*, 40 W. R. 47; 64 L. T. 743.

"Before," s. 40 (*b*), Bankry Act, 1883, means "NEXT before" (*Re Smith*, 55 L. J. Q. B. 288; 17 Q. B. D. 4; 54 L. T. 307; 34 W. R. 535).

The 21 days notice to be given by Applicant for a License "before he applies," — s. 7, 32 & 33 V. c. 27; s. 40, 35 & 36 V. c. 94, — is not, necessarily, computed from the first day of the Annual General Licensing Meeting, but from the day on which the Application is to be taken (*R.* v. *W. Riding Jus.*, 39 L. J. M. C. 17; L. R. 5 Q. B. 33: *R.* v. *Pownall*, 1893, 2 Q. B. 158; 62 L. J. M. C. 174; 57 J. P. 424). *Cp*, s. 42 (2), 35 & 36 V. c. 94, on *whv R.* v. *Anglesey Jus.*, 1892, 1 Q. B. 850; 61 L. J. M. C. 149; 56 J. P. 440.

"Devolve before"; *V.* DEVOLVE.

V. AFORESAID: AFTER: ACT: NOT BEFORE: ON OR BEFORE: WITHIN.

BEFORE MARRIAGE. — Debts contracted by a Married Woman "before Marriage," — s. 19, M. W. P. Act, 1882, *Va.* s. 13 — "do not mean 'before she was ever married,' but mean, before the marriage existing at the time when the provisions of the sections have to be applied" (per Esher, M. R., *Jay* v. *Robinson*, 59 L. J. Q. B. 367; 25 Q. B. D. 467; 63 L. T. 174; 38 W. R. 550).

BEFORE OR AFTER. — "Dying before or after"; *V. Kendall* v. *Burt*, W. N. (73) 151.

V. THEREAFTER TO BE BORN.

BEFORE PAYABLE. — Gift over "before payable"; *V.* Chitty, Eq. Ind. 7412: "before becoming entitled"; *V.* Ib. 7415.

BEFORE THE PEOPLE. — "Their Lordships are of opinion that the words 'Before the People' (Rubric preceding Prayer of Consecra-

tion in Communion Office) coupled with the direction as to the manual acts, are meant to be equivalent to 'In the Sight of the People.' They have no doubt that the Rubric requires the manual acts to be so done that, in a reasonable and practical sense, the communicants, especially if they are conveniently placed for receiving the Holy Sacrament, as is pre-supposed in the Office, may be witnesses of, *i.e.* may see them. What is ordered to be done 'Before the People,' when it is the subject of the sense, not of hearing, but of sight, cannot be done 'Before' them unless those of them who are properly placed for that purpose can see it. It was contended that 'Before the People,' meant nothing more than 'In the Church,' to guard against an anterior and secret consecration of the elements. But if the words 'Before the People' were absent, the manual acts, and the rest of the Service, could not be performed elsewhere than in the Church and in that sense *coram populo*, nor could the sacrament be distributed except in the place and at the time of its consecration; this argument would, therefore, reduce to silence the words 'Before the People,' which are an emphatic part of the declaration of the purpose for which the preparatory acts are to be done. That declaration applies not to the Service as a whole, nor to the consecration of the elements as a whole, but to the manual acts separately and specifically" (per Cairns, C., delivering jdgmt of P. C. *Ridsdale* v. *Clifton*, 46 L. J. P. C. 61; 2 P. D. 276).

BEG. — *V.* PRECATORY TRUST.

BEGIN. — "Begin to Demolish"; *V.* DEMOLISH.

Person entitled to a Legacy in succession who shall "begin to Enjoy the Benefit thereof," s. 12, Legacy Duty Act, 1796, 36 G. 3, c. 52; *V.* *Kenlis* v. *Hodgson*, 1895, 2 Ch. 458; 64 L. J. Ch. 585; 72 L. T. 866, distinguishing *Re Haygarth*, 22 Ch. D. 545; 52 L. J. Ch. 416.

"Begin to Form a New Street"; *V.* NEW STREET.

"Begin to Keep House"; *V.* KEEP HOUSE.

Where proper Notices and Plans had been given and lodged under s. 72, P. H. Act, 1848, it was a "MATTER or Thing *begun or made*," within s. 9, 21 & 22 V. c. 98, although little or nothing had been done towards the actual work (*Felkin* v. *Berridge*, 15 C. B. N. S. 257: *Vf*, *Heston & Isleworth* v. *Grout*, cited DONE). *Cp*, COMMENCEMENT.

BEGOTTEN. — *V.* Co. Litt. 20 b: BORN: TO BE BORN.

BEHALF. — *V.* IN THAT BEHALF: ON BEHALF: FOR.

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

BEHAVIOUR. — *V.* GOOD BEHAVIOUR.

BEHIND. — As to the phrase "Leaving no Issue *behind him*"; *V.* 2 Jarm. 509.

BEING. — "Being," as used in a sense similar to that of the ablative absolute, has sometimes been translated as, "having been"; but it properly denotes a State or Condition existent at the time when the conclusion of law or fact has to be ascertained.

Thus the phrase, "*being a Trader,*" in the Bankry Act, 1869, meant, "carrying on trade at the time when the act in question is committed" (per Jessel, M. R., *Ex p. McGeorge*, 51 L. J. Ch. 910; 20 Ch. D. 697: *Sv*, CARRY ON, towards end). Therefore a trader who had absolutely ceased trading was not liable to the consequences of a Trader-Debtor's Summons under s. 6 (*b*) of that Act (*Ex p. Schomberg*, 10 Ch. 172; 23 W. R. 204), nor to be adjudicated bankrupt for departing from his dwelling under subs. 3, s. 6 (*Ex p. McGeorge*, sup); but if he had the intention to resume trading he was still a trader (*Ex p. Salaman*, 21 Ch. D. 394; 47 L. T. 495; 31 W. R. 282).

But "any two or more persons *being Partners*" (who may proceed, or be proceeded against, in the partnership name, s. 115, Bankry Act, 1883), does not connote that they must be partners at the time of the proceedings, but rather means, persons "who *have had* the relationship of partners for the purpose of the liability which is sought to be enforced" (per Alverstone, M. R., *Re Wenham*, 69 L. J. Q. B. 807; 1900, 2 Q. B. 698; 83 L. T. 94).

"Being *in England*"; *V.* LIVING.

"Being in advance"; *V.* ADVANCE.

V. BE: ENTERING OR BEING: TIME BEING: IS: PRESENT TENSE.

Machinery, &c, "standing or being"; *V.* ERECTED.

"Being," may create a Covenant, — *e.g.* in a lessee's covenant to repair premises, "the same *being* first put in repair by the lessor," these latter words create a covenant by the lessor (*Cannock* v. *Jones*, 3 Ex. 233; 5 Ib. 713; 18 L. J. Ex. 204); and so, probably, in such a covenant, do the words "being allowed sufficient rough timber" (*Martyn* v. *Clue*, 22 L. J. Q. B. 147; 18 Q. B. 661: *Va*, *Mucklestone* v. *Thomas*, Willes, 146), but in the way *Martyn* v. *Clue* was presented, it was only necessary to regard the phrase as creating a Condition Precedent, on which latter point *Vf*, *Neale* v. *Ratcliffe*, 20 L. J. Q. B. 130; 15 Q. B. 916: *Coward* v. *Gregory*, 36 L. J. C. P. 1; L. R. 2 C. P. 153, 172. So, in such a covenant, lessor "*Finding, Allowing* and *Assigning* timber sufficient" was held to create a Condition Precedent (*Thomas* v. *Cadwallader*, Willes, 496); but "*Having or Taking*" BOTE, was held only to amount to a license to the lessee (*Bristol* v. *Jones*, 28 L. J. Q. B. 201; 1 E. & E. 484). *V.* FINDING.

"Being," may be used in the sense of a direct Averment (per Campbell, C. J., *R.* v. *Waverton*, 17 Q. B. 565, 568).

"Lawfully being"; *V.* LAWFULLY.

BELIEF. — "Best of his Belief"; *V.* BEST BELIEF: BONÂ FIDE.

"In the Full Belief"; *V.* PRECATORY TRUST.

BELLIGERENT. — *V.* 2 Encyc. 52–55.

BELLOWS. — *V.* MECHANICAL MEANS.

BELONG. — An under-bailiff sending unwholesome meat to market, is not a "person to whom the same belongs," within s. 117, P. H. Act, 1875 (*Newton* v. *Monkcom*, 58 L. T. 231; 4 Times Rep. 205); but, *semble*, the phrase includes a FACTOR (*Billing* v. *Prebble*, 66 L. J. Q. B. 180; 45 W. R. 187; 61 J. P. 86, — a case on s. 47 (2), P. H. (London) Act, 1891, which subs. Wills, J., said was "an enlarged edition" of s. 117, P. H. Act, 1875).

BELONGING. — Property "belonging" to a person, has two general meanings, — (1) Ownership; (2) the Absolute Right of User: "A Road may be said, with perfect propriety, to belong to a man who has the right to use it as of Right, although the soil does not belong to him" (per Martin, B., *A.-G.* v. *Oxford &c Ry*, 31 L. J. Ex. 227; 7 H. & N. 840).

By the Poor Relief Act, 1819, 59 G. 3, c. 12, s. 17, Churchwardens AND Overseers are to hold, as a Body Corporate, all buildings &c "belonging" to the PARISH; — That phrase is to be taken in its popular sense (*Doe* v. *Terry*, 5 L. J. M. C. 27; 4 A. & E. 274; 5 N. & M. 556); but it applies only "where the rents are applicable solely to Parochial Purposes which are under the control of the Parish Officers" (per Parke, B., *Uthwatt* v. *Elkins*, 13 M. & W. 777; 14 L. J. Ex. 131). In *Doe* v. *Hiley* (10 B. & C. 885), it was held, that the phrase comprised property the profits of which were to be applied to Church Repair, because that was in aid of the Church Rate (*the* followed in *Alderman* v. *Neate*, 8 L. J. Ex. 89; 4 M. & W. 704; but questioned in *Allison* v. *Stark*, 8 L. J. M. C. 13; 9 A. & E. 255, and *Gouldsworth* v. *Knights*, 12 L. J. Ex. 282; 11 M. & W. 343). Since the Compulsory Church Rate Abolition Act, 1868, 31 & 32 V. c. 109, it may, probably, be said that property the profits of which are to be applied in Church Repair is not within the phrase, for such repair can hardly now be regarded as a PAROCHIAL PURPOSE. Property, though applicable to general parochial purposes, is not within the phrase if the Legal Estate therein be vested in known existing Trustees (*St. Nicholas, Deptford* v. *Sketchley*, 17 L. J. M. C. 17; 8 Q. B. 394; over-ruling *Rumball* v. *Munt*, 15 L. J. Q. B. 180; 8 Q. B. 382). *Vf*, Tudor Char. Trusts, 240–243.

Churchyard "belonging to" a District Church, s. 10, 19 & 20 V. c. 104; *V. Champneys* v. *Arrowsmith*, 36 L. J. C. P. 265; 15 W. R. 1011; 16 L. T. 589.

V. OUTLET.

SALVAGE for saving the lives of "*persons* belonging to" a SHIP, s. 458 (2), Mer Shipping Act, 1854, comprises passengers as well as the crew (*The Fusilier*, 34 L. J. P. M. & A. 25; 3 Moore P. C. N. S. 51). In that case Dr. Lushington said, "I think that nothing is more common

than to say of passengers by a ship, that they are passengers 'belonging' to the ship, and would be included under the expression 'persons.'"

As to the phrase "*Belonging or appertaining*"; *V. Williams* v. *Phillips*, 51 L. J. Q. B. 102; 8 Q. B. D. 437. These "are not Words of Art" (per Pollock, C. B., *Maitland* v. *Mackinnon*, 32 L. J. Ex. 49; 1 H. & C. 607). *Vf*, as to their interpretation, and as to the phrase "*Thereunto Belonging*," *Maitland* v. *Mackinnon*, sup: *Bodenham* v. *Pritchard*, cited ENJOYED: *Doe* d. *Gore* v. *Langton*, 2 B. & Ad. 680: 1 Jarm. 782: 2 Platt, 34: *Kingsmill* v. *Millard*, 11 Ex. 313: COMMON: MILL. "The words 'thereto belonging' may, perhaps, *primâ facie*, be considered to mean something held under the same title as and *occupied* with the subject-matter of the devise to which they are annexed" (Watson Eq. 1322).

"If a man grant his Saddle with all things 'thereunto belonging,' — stirrups, girths, and the like do pass. So, if a man grant his Viol, the strings and bow will pass" (Bac. Ab. *Grant*, I, 4, citing *Price* v. *Braham*, Vaugh. 109). So, a grant of Looms "and other Effects and Things belonging thereto," will pass healds, reeds, weft, and waste cans (*Cort* v. *Sagar*, 27 L. J. Ex. 378; 3 H. & N. 370). But a lease of a "House and PREMISES with the gardens, pleasure-grounds, coach-house, and stabling thereto belonging," will not pass an adjoining meadow (*Minton* v. *Geiger*, 28 L. T. 449).

Bequest of "Effects belonging to the BUSINESS," includes the Fixtures (*Pinder* v. *Pinder*, 18 W. R. 309).

Money or Property "belonging to" a Friendly Socy; *V.* per Esher, M. R., *Re Miller*, cited POSSESSION: PREFERENCE.

Premises "belonging to and OCCUPIED with" a DWELLINGHOUSE, Sch B, R. 2, House Tax Act, 1808, 48 G. 3, c. 55, means, those premises which are adjuncts to the Dwghouse and are used therewith for a common purpose, — *e.g.* the Stables of an Inn, though such stables are separated from the Inn and are let to the innkeeper by separate landlords and at separate rents (*Young* v. *Douglas*, 17 Sc. L. R. 119: *Smith* v. *Petrie*, 29 Ib. 342: *Phillips* v. *Lord Advocate*, 36 Ib. 336: *Swain* v. *Fleming*, 81 L. T. 202), so, Hunt Kennels are adjuncts to the Dwghouse of Hunt Servants (*Cheape* v. *Kinmont*, 16 Sess. Ca., 4th Ser., 144), so, are Horse Trainer's Stables to the Head Lad's house (*Lambton* v. *Kerr*, 1895, 2 Q. B. 233; 64 L. J. Q. B. 749; 43 W. R. 541); but the Chapel, Class-Room, Gymnasium, Racket Courts, and other buildings necessary for the purposes of a Public School, *e.g.* Clifton College, are not adjuncts to the Head Master's house (*Clifton Coll.* v. *Tompson*, 1896, 1 Q. B. 432; 65 L. J. Q. B. 231; 74 L. T. 168; 44 W. R. 410; 60 J. P. 599).

V. APPERTAINING: APPURTENANCES: MILL: PURPOSES.

BELONGINGS. — A testator, at his death, owned and occupied a country house called Torfrey; by his Will he said, — "I give to T. G. M. (my grandson) Torfrey and all the Belongings thereto"; held, by North,

J., that the gift comprised Torfrey as it stood at the testator's death, including the furniture, pictures, and household effects therein, its gardens, green-houses, conservatories, stables, coach-houses, outhouses, and farm buildings, and about 27 acres of land and orchard, together with the horses, carriages, agricultural and other implements, and all the live and dead stock in and about the premises (*Re Gundry*, 28th July, 1898).

BELOVED WIFE. — "A bequest by a husband to his '*beloved* wife,' not mentioning her by name, applies exclusively to the individual who answers the description at the date of the Will, and is not to be extended to an after-taken wife" (Wms. Exs. 960, citing *Garratt* v. *Niblock*, 1 Russ. & My. 629). In the note, however, it is added, "this point cannot arise since the new Wills Act; for the second marriage would revoke the Will. But a similar question may occur in respect of a bequest by a testator to the wife of another person: *V. Boreham* v. *Bignall*, 8 Hare, 131; 19 L. J. Ch. 461: *Re Lyne*, L. R. 8 Eq. 65; 38 L. J. Ch. 471." *Vf*, *Re Morrisson*, W. N. (88) 212.

A bequest to "my dearly beloved," of all testator's property, even though coupled with an appointment of "her" as sole executrix, was held uncertain and did not give the property to the wife (*Sullivan* v. *Sullivan*, 4 Ir. Rep. Eq. 457).

V. WIFE.

BENEFICE. — This word occurs in cap. 14, Magna Carta. It is "a large word, and is taken for any Ecclesiasticall Promotion or Spirituall Living whatsoever" (2 Inst. 29: *Vf*, 3 Ib. 155: Elph. 562). As to what is a "Benefice with Cure," within 13 Eliz. c. 20; *V. M'Bean* v. *Deane*, 30 Ch. D. 520; 55 L. J. Ch. 19; 33 W. R. 924; 1 Times Rep. 624: *Shaw* v. *Woods*, 5 Ir. Com. Law Rep. 156.

It seems doubtful whether a Wesleyan minister holds a "Benefice," within s. 14, Rep. People (Ir) Act, 1850, 13 & 14 V. c. 69 (*Foster* v. *Mulhall*, 10 Ir. Com. Law Rep. 532); but the negative seems clear, quà Rep. People Act, 1832, for though s. 18 (like the Act for Ireland) speaks simply of "Benefice," yet s. 26 amplifies this to "Benefice in a Church."

Quà Ecclesiastical Dilapidations Act, 1871, 34 & 35 V. c. 43, "'Benefice' shall comprehend all Rectories with Cure of Souls, Vicarages, Perpetual Curacies, Donatives, Endowed Public Chapels, and Parochial Chapelries, and Chapelries or Districts belonging or reputed to belong, or annexed or reputed to be annexed, to any Church or Chapel" (s. 3), — a def substantially followed in 34 & 35 V. c. 44, s. 2; 51 & 52 V. c. 20, s. 12; 60 & 61 V. c. 65, s. 15 (4); 61 & 62 V. c. 48, s. 13 (1); 62 & 63 V. c. 17, s. 2 (1 *b*).

Other Stat. Def. — 6 & 7 W. 4, c. 115, s. 56; 1 & 2 V. c. 23, s. 16,

c. 106, s. 124; 2 & 3 V. c. 49, s. 21; 5 & 6 V. c. 27, s. 15, c. 108, s. 31; 20 & 21 V. c. 13, s. 6; 26 & 27 V. c. 120, s. 37.—*Ir.* 10 & 11 V. c. 32, s. 66; 14 & 15 V. c. 73, s. 1; 23 & 24 V. c. 72, s. 2; 32 & 33 V. c. 42, s. 72.

BENEFICIAL.—"Beneficial" and "Profitable" are not convertible terms (Dwar. 683).

To determine whether a Sale of Lands is "more beneficial for the parties interested" than a Division, s. 3, Partition Act, 1868, regard must be had to what in a monetary (and unsentimental) sense will be most profitable to the parties generally (*Drinkwater* v. *Ratcliffe*, L. R. 20 Eq. 533; 44 L. J. Ch. 607: *Fleming* v. *Crouch*, W. N. (84) 111).

A testamentary appointment of all property over which the testator has "any beneficial *Disposing Power*" is not confined to a POWER exercisable for the benefit of the testator or his estate (per Pearson, J., *Von Brockdorff* v. *Malcolm*, 55 L. J. Ch. 121; 30 Ch. D. 172; 53 L. T. 263; 33 W. R. 934); but the contrary was held by Fry, J., in *Ames* v. *Cadogan* (48 L. J. Ch. 762; 12 Ch. D. 868). *Vh*, Theobald, 223.

The "Beneficial *Enjoyment*" of property by a Successor, s. 21, Sucn Dy Act, 1853, "means no more than in his own right, and for his own benefit, not as a trustee for another" (per Ld Wensleydale, *A.-G.* v. *Sefton*, 34 L. J. Ex. 104. *V.* BENEFICIALLY ENTITLED). So, also, "beneficial *Interest*," s. 2, same Act, means "a beneficial enjoyment in contradistinction to holding as trustee" (per Ld Chelmsford, *Ib.* 106).

A direction in a Will that a Solicitor Trustee shall have his profit Costs, is a "beneficial *Gift* or Interest" within s. 15, Wills Act, 1837 (*Re Barber*, 55 L. J. Ch. 373; 31 Ch. D. 665; 54 L. T. 375; 34 W. R. 395: *Re Pooley*, 40 Ch. D. 1).

"Beneficial *Interest*" quà Part 2, Mer Shipping Act, 1894; *V.* s. 57, replacing s. 3, Mer Shipping Act, 1862; *Vth*, 1 Maude & P. 55, 56: *Batthyany* v. *Bouch*, 50 L. J. Q. B. 421.

"Beneficial Interest" in a Telegraph, s. 7, 31 & 32 V. c. 110; *V. R.* v. *Coleridge*, 45 L. J. Q. B. 649.

"Beneficial Interest," s. 2 (1 *d*), Finance Act, 1894; *V. A.-G.* v. *Dobree*, cited PURCHASE.

There must be a "Beneficial OCCUPATION" of a tenement to make the occupier assessable to Poor Rate under the Statute of Elizabeth. The word "beneficial" in that connection is not the same as "profitable" to the person or corporation rated (*V.* per Denman, C. J., *R.* v. *Vange*, 3 Q. B. 254, 255, and the cases hereon collected, 3 Chitt. Stat., 3rd Ed., *Poor*, 1019 *et seq*). The border-line of these cases was set by *Gambier* v. *Lydford* (23 L. J. M. C. 69; 3 E. & B. 346; confirmed by *Martin* v. *West Derby*, 11 Q. B. D. 145; 52 L. J. M. C. 66: *Vf*, *Mersey Docks* v. *Llanelian*, 54 L. J. Q. B. 49; 14 Q. B. D. 770: *Dewsbury W. Works*

Bd v. *Penistone*, 55 L. J. M. C. 121; 50 J. P. 644; 17 Q. B. D. 384; 54 L. T. 592; 34 W. R. 622, and cases there cited). As a general rule, where a tenement is *capable* of beneficial occupation it is rateable, unless occupied by the Crown or its servants for Crown purposes. (*Mersey Docks* v. *Cameron*, alias, *Jones* v. *Mersey Docks*, 11 H. L. Ca. 443; 35 L. J. M. C. 1; 13 W. R. 1069). *Note:* As to what are Crown Purposes, *V. Coomber* v. *Berks Jus.*, 53 L. J. Q. B. 239; 9 App. Ca. 61: *Middlesex Co. Co.* v. *St. George's, Hanover Sq.*, 1897, 1 Q. B. 64; 66 L. J. Q. B. 101: *Worcestershire Co. Co.* v. *Worcester*, 1897, 1 Q. B. 480; 66 L. J. Q. B. 323; 76 L. T. 138; 45 W. R. 309; 61 J. P. 244: *Leicester Co. Co.* v. *Leicester Assessment Committee*, cited POLICE: *St. Margaret's* v. *Hoskins*, 1899, 2 Q. B. 474; 68 L. J. Q. B. 840; 81 L. T. 390; 47 W. R. 649; 63 J. P. 725.

A Reformatory School is rateable (*Tunnicliffe* v. *Birkdale*, 56 L. J. M. C. 109; 20 Q. B. D. 450; 36 W. R. 360; 52 J. P. 452; overruling *Sheppard* v. *Bradford*, 33 L. J. M. C. 182; 16 C. B. N. S. 369; 12 W. R. 867), so, is an Industrial School (*Durham Co. Co.* v. *Chester-le-Street*, 1891, 1 Q. B. 330; 60 L. J. M. C. 9), so, are School Board premises (*R.* v. *West Bromwich*, 53 L. J. M. C. 153; 13 Q. B. D. 929: *R.* v. *London School Bd*, 55 L. J. M. C. 169; 17 Q. B. D. 738; 55 L. T. 384; 34 W. R. 583; 50 J. P. 419), and so is a Sewage Farm worked by a Local Authority (obliged to sewer) and worked by them at an inevitable loss (*Burton-on-Trent* v. *Egginton*, 59 L. J. M. C. 1; 24 Q. B. D. 197; 62 L. T. 412; 38 W. R. 181; 54 J. P. 453: *London Co. Co.* v. *Erith*, 1893, A. C. 562; 63 L. J. M. C. 9; 42 W. R. 330; 69 L. T. 725; 57 J. P. 821: *Va, Metrop Bd of Works* v. *West Ham*, 40 L. J. M. C. 30; L. R. 6 Q. B. 193), even though the tenement cannot be sold or let (*London Co. Co.* v. *Erith*, sup; over-ruling *Owen's College* v. *Chorlton-upon-Medlock*, 56 L. J. M. C. 29; 18 Q. B. D. 403; 56 L. T. 373; 35 W. R. 236; 51 J. P. 356: *Vf, Hull Dock Co* v. *Sculcoates Union*, 1895, A. C. 136; 64 L. J. M. C. 49): — *Secus*, if the tenement, — *e.g.* a Public Park, — is one which the Local Authority is not bound to acquire, and which is maintained at a loss, and which (as a matter of law) cannot be a beneficial occupation (*London Co. Co.* v. *Lambeth*, 1896, 2 Q. B. 25; 65 L. J. M. C. 148; 74 L. T. 605; 44 W. R. 621; 60 J. P. 470; in H. L. nom. *Lambeth* v. *London Co. Co.*, 1897, A. C. 625; 66 L. J. Q. B. 806; 76 L. T. 795; 46 W. R. 79; 61 J. P. 580, adopting *Hare* v. *Putney*, 50 L. J. M. C. 81; 7 Q. B. D. 223). Quâ property of a Co in a Winding-up; *V. Re National Arms Co*, 54 L. J. Ch. 673; 28 Ch. D. 474: *Re Blazer Co*, 1895, 1 Ch. 402; 64 L. J. Ch. 161.

V. EXCLUSIVE OCCUPATION: LEASE: NEW OCCUPIER: SEWER.

"Beneficial OWNER"; *V. Re Roulston*, 21 L. R. Ir. 503.

An Assignment "as Beneficial Owner," does not by the covenants thereby implied (s. 7, Conv. & L. P. Act, 1881), enlarge the subject-matter from a defeasible into an indefeasible interest (*Re Greenwood*,

40 W. R. 357; 66 L. T. 101). *Vf*, As to those implied covenants, *David* v. *Sabin*, cited TITLE.

A BILL OF SALE from the grantor "as Beneficial Owner," is void, because that phrase does imply those covenants (*Re Barber, Ex p. Stanford*, cited IN ACCORDANCE WITH THE FORM).

"Beneficial Owner," s. 1, Larceny Act, 1868, 31 & 32 V. c. 116, "is not a Term of Art. It is a popular expression, and ought to receive a liberal construction" (per Wills, J., *R.* v. *Neat*, 69 L. J. Q. B. 121); therefore, one who has the control of money, or the power of appropriating it to the purposes of enjoyment and amusement in which he only participates to a small degree, is such a "Beneficial Owner" (*S. C.* 69 L. J. Q. B. 118; 81 L. T. 682; 64 J. P. 39).

"Beneficial POWER"; *V.* "Beneficial Disposing Power," sup.

"Beneficial *Winding-up*" of a Co, s. 131, Comp Act, 1862; *V. Hire Purchase Co* v. *Richens*, 20 Q. B. D. 387; 58 L. T. 460; 36 W. R. 365; 4 Times Rep. 184. "Just and Beneficial" application in a Winding-up; *V.* JUST.

BENEFICIALLY ENTITLED. — "Beneficially entitled to possession," s. 2 (5), S. L. Act, 1882, "does not mean entitled and deriving a benefit from possession, but beneficially entitled in the sense of being entitled for one's own benefit, if there is any benefit to be derived from the estate, and not simply as trustee for others" (per Cotton, L. J., *Re Jones*, 53 L. J. Ch. 811; 26 Ch. D. 736). *Vf, Re Clitheroe*, 31 Ch. D. 135: *Re Atkinson*, Ib. 577: *Re Strangways*, 34 Ch. D. 423. A Tenant for Life is "beneficially entitled to possession," although his actual enjoyment is intercepted by a Trust for accumulation to raise a fund to pay debts and legacies (*Annesley* v. *Woodhouse*, 1898, 1 I. R. 69).

Property to which, quà a SUCCESSION, a person becomes "beneficially entitled . . . UPON the death" of another, means, property to which he so becomes entitled by reason only of such death; therefore, a gratuitous Assignee of a Life Policy, who has for years kept up the Policy out of his own moneys, does not become entitled to the policy moneys "upon" the death of the insured, for he gets such moneys by reason, among other things, of his own payments (*Lord Advocate* v. *Fleming*, 1897, A. C. 145; 66 L. J. P. C. 41; 76 L. T. 125; 45 W. R. 674).

V. BENEFICIARY: ENTITLED.

BENEFICIALLY INTERESTED. — "A person having a contingent interest in real estate (*Re Sheppard*, 4 D. G. F. & J. 423; 9 Jur. N. S. 59) is a person 'Beneficially Interested' within s. 37, Trustee Act, 1850; and so is a creditor who has obtained a decree for the administration and sale of real estate (*Re Wragg*, 1 D. G. J. & S. 356); and also, it seems, a purchaser under a decree who has paid his purchase money into Court (*Ayles* v. *Cox*, 17 Bea. 584). The committee of lunatic

cestui que trusts is not a person 'Beneficially Interested' within this section (*Re Bourke*, 2 D. G. J. & S. 426)": Dan. Ch. Pr. 1787.

BENEFICIARY. — A Beneficiary is "one who is BENEFICIALLY ENTITLED to, or interested in, property; *i.e.* entitled to it for his own benefit, and not merely as TRUSTEE, or EXOR, holding it for others. The word is nearly equivalent to 'CESTUI que trust,' which, on account of its cumbersomeness and inexpressiveness, 'Beneficiary' has begun to supersede in modern law" (2 Encyc. 58).

BENEFIT. — A Power to Trustees to make advances for a person's "Benefit," enables them to make advances to set up in business that person's husband (*Re Kershaw*, 37 L. J. Ch. 751; L. R. 6 Eq. 322); or to pay the person's debts (*Lowther* v. *Bentinck*, 44 L. J. Ch. 197; L. R. 19 Eq. 167: *Re Stanger*, cited WHOLE: *Sv*, *Re Price*, 34 Ch. D. 603). *Vf*, *Re Hargreaves*, W. N. (85) 174. "Benefit" is much wider than "ADVANCEMENT"; *V. M'Mahon* v. *Gaussen*, 1896, 1 I. R. 147.

But a discretionary trust to apply income forfeited by bankruptcy, for the "benefit" of the bankrupt beneficiary, would seem to be confined to allowing it to be spent on his MAINTENANCE, in the widest and most general sense of that word (*Re Bullock*, *Good* v. *Lickorish*, cited APPLY).

The "benefit" of a *Married Woman*, justifying the Court in removing a Restraint on ANTICIPATION under s. 39, Conv. & L. P. Act, 1881, is not confined to her pecuniary benefit (*Re Pollard*, 1896, 2 Ch. 552; 65 L. J. Ch. 796; 75 L. T. 116; 45 W. R. 18); it means, such benefit as the Court (on each particular application, *Re Warren*, 52 L. J. Ch. 928) shall cautiously consider to be for her own advantage, having regard to all the circumstances of her case (*Re Currey*, 56 L. J. Ch. 389: *Re Little*, 58 Ib. 233; 40 Ch. D. 418; 37 W. R. 289: *Re Radcliffe*, 1892, 1 Ch. 227; 61 L. J. Ch. 186; 66 L. T. 363; 40 W. R. 323: *Re Somes*, 40 S. J. 210: *Re Wilson-Stewart*, 75 L. T. 381: *Re Pollard*, sup: *Paget* v. *Paget*, 67 L. J. Ch. 1, 266: 1898, 1 Ch. 470). Sometimes a wife's property may be so affected by marital rights that it may be for her "benefit" to remove restraint, so that her husband's creditors may be settled with (*Re Stewart*, 41 S. J. 80). *Note.* A wife's claim to Indemnity from her husband quà the Order, will be prejudiced unless it be expressly given by the Order (*Paget* v. *Paget*, sup).

"Benefit of *Children*"; *V. Re Pocock*, 6 Ch. 445: *Scotney* v. *Lomer*, 29 Ch. D. 535; 31 Ib. 380: *Urquhart* v. *Butterfield*, 36 Ch. D. 55; 37 Ib. 358.

A bequest "for the Benefit of Wife and her Children," *semble*, means to the Wife for life, with remainder to her children; in any case, the children, *inter se*, take as JOINT TENANTS (*Armstrong* v. *Armstrong*, 38 L. J. Ch. 463; L. R. 7 Eq. 518).

A Policy under s. 10, M. W. P. Act, 1870, repld s. 11, M. W. P. Act,

1882, "for the Benefit of the assured's Wife and Children," gives the policy moneys to the Wife and Children as Joint Tenants (*Re Seyton*, 56 L. J. Ch. 775; 34 Ch. D. 511: *Re Davies*, 1892, 1 Ch. 90; 61 L. J. Ch. 650; 66 L. T. 104). *Vh, Re Turnbull*, 1897, 2 Ch. 415; 66 L. J. Ch. 719.

"Benefit," s. 5, 22 & 23 *V.* c. 61; *V. Thomson* v. *Thomson*, cited PARENT.

"Benefit by cesser of interest"; *V.* CESSER.

Where the "Benefit" of a BUSINESS is given up, — *e.g.* under Partnership Articles, — the person giving it up will be restrained from soliciting and obtaining the custom of the business to the detriment of the person taking the business (*Burrows* v. *Foster*, cited *Clark* v. *Leach*, 32 Bea. 23; 32 L. J. Ch. 293). *Vf*, GOODWILL.

Assignment of COPYRIGHT with all "Property and Benefit"; *V. Exp. Hutchins and Romer*, 4 Q. B. D. 90, 483; 48 L. J. Q. B. 505.

Deed for "the Benefit of CREDITORS generally"; *V.* GENERALLY.

"Benefit" to Donor "by Contract or otherwise," s. 11 (1), 52 & 53 V. c. 7; *V. A-G.* v. *Worrall*, 1895, 1 Q. B. 99; 64 L. J. Q. B. 141; 71 L. T. 807.

"Benefit," s. 2 (1 *b*), Finance Act, 1894, is not to be cut down to "Benefit in Income" (per Williams, J., *A-G.* v. *Wood*, 1897, 2 Q. B. 102; 66 L. J. Q. B. 522; 76 L. T. 654; 45 W. R. 663).

"Benefit" of an Ecclesiastical Charity, s. 75, Loc Gov Act, 1894, includes temporal, as well as spiritual or religious, benefit (per Chitty, L. J., *Re Ross* and *Re Perry Almshouses*, cited ECCLESIASTICAL CHARITY).

"Benefit of the Grantor," Mortmain Act, 9 G. 2, c. 36, s. 1, "means, something given collusively, and making the deed inconsistent with that which it professes to be" (per Patteson, J., *Doe* d. *Graham* v. *Hawkins*, cited REVOKE).

BENEFIT OF CLERGY. — "Benefit of Clergy," was a privilege which a Clergyman, or one who could "read as a Clerke in such a booke and place as the Judge" should appoint, had to "pray his Clergie" when arraigned for Felony, and thereupon "to bee delivered to the Ordinary to purge himselfe of the same offence" (Termes de la Ley). The privilege was abolished (except as to Peers) by 7 & 8 G. 4, c. 28, s. 6; and, as to Peers, by 4 & 5 V. c. 22. *Vh*, Jacob, *Clergy*: 2 Encyc. 59–61.

BENEFIT OF SURVIVORSHIP. — "There is a difference between a gift over of the shares of any prior legatees to the survivors, and a gift to several 'with Benefit of Survivorship.' The latter expression is very general, and may without impropriety be held to pervade the whole fund, so as to carry accrued as well as original shares" (2 Jarm. 714, citing *Re Crawhall*, 8 D. G. M. & G. 480: *Sv, Vorley* v. *Richardson*, Ib. 126; 25 L. J. Ch. 335).

As to this phrase giving a Vested Interest; *V. Corneck* v. *Wadman*, L. R. 7 Eq. 80, wherein *Donald* v. *Bryce*, 16 Bea. 581, was doubted: *Va, Daniel* v. *Gosset*, 19 Bea. 478: *Re Smaling*, W. N. (77) 236: *Wiley* v. *Chanteperdrix*, 1894, 1 I. R. 209.

BENERTH. — "*Benerth* signifieth the service of the plough and cart" (Co. Litt. 86 a). "*Ben-erth* was precarious tillage service with horse and cart: *gavel-erth* was tillage service certain: *ben-rip* is a precarious service of reaping: *gavel-rip* was the same service only certain" (Elton, Ten. Kent, 34). *Va*, Spelm.: Cowel: PRECARIÆ.

BENEVOLENCE: BENEVOLENT. — A bequest for objects of "Benevolence and Liberality" (*Morice* v. *Durham, Bp.*, 9 Ves. 399; 10 Ib. 522), or for "Benevolent Purposes" (*James* v. *Allen*, 3 Mer. 17: *Re Jarman*, 47 L. J. Ch. 675; 8 Ch. D. 584) is not good: *Sv, Re Lloyd*, cited RELIGIOUS.

V. CHARITY: PHILANTHROPIC.

"I think there is some fund for providing oysters at one of the Inns of Court for the Benchers. This, however benevolent, would hardly be called charitable" (per Ld Bramwell, *Income Tax Commrs* v. *Pemsel*, cited CHARITABLE PURPOSE).

"Benevolent Asylum"; *V. Dilworth* v. *Commr of Stamps*, cited ASYLUM.

"Benevolent Society"; *V.* FRIENDLY SOCIETY.

BENEWORK. — *V.* PRECARIÆ.

BEN-RIP. — *V.* BENERTH.

Ld Geo. BENTINCK'S ACT. — The Gaming Act, 1845, 8 & 9 V. c. 109.

BEQUEATH. — *V.* DEVISE.

BEQUEATHED. — The word "Bequeathed" (though perhaps not in itself a technical word) is primarily applicable only to property passing under a testamentary disposition (*Re Armstrong*, 49 L. J. Ch. 53; 42 L. T. 823); and would, ordinarily, connote Personal Property; but, on a context, it may easily include Realty (*V.* DEVISE).

"Specifically bequeathed," may be construed, "bequeathed expressly and not by reference" (*Jackson* v. *Hosie*, 27 L. R. Ir. 450).

BERCARIA. — "*Berquarium* or *bercaria*, commeth of *berc*, an old Saxon word, used at this day for barkes and rindes of trees, and signifieth a tan-house, or a heath-house, where barkes or rindes of trees are laid to tan withal: and *berquarii* are mentioned in Domesday. It signifieth also, and more legally, a sheep-cote, of the French word *bergerie*" (Co. Litt. 5 b). *Vf*, Cowel, *Barcaria:* Touch. 95.

BEREWICA. — "*Berewica*, or *berewit*, in Domesday, signifieth a towne" (Co. Litt. 116 a). But it is also said to mean "a manor, or rather a detached member of a manor, a town, a hamlet, a sub-manor, a corn farm" (Elph. 563, citing Spelm.: Cowel, *Berwica:* 1 Ellis, Introd. Domesday, 240).

BERMONEY BOAT. — *V.* NET.

BERTH. — *V.* OFF.

As to the effect of a Berth-Note, *V. Rotherfield S. S. Co* v. *Tweedy*, 2 Com. Ca. 84.

BESEECH. — *V.* PRECATORY TRUST.

BESET. — "Picketing" workmen is, obviously, to "Watch or Beset" them, within s. 7 (4), Conspiracy and Protection of Property Act, 1875, 38 & 39 V. c. 86; but the section provides that "attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, *in order merely to obtain or communicate information*, shall not be deemed a 'Watching or Besetting,' within the meaning of this section." That proviso does not legalise picketing to induce men not to work for, or others not to deal with, the person picketed, — conduct which may be restrained by Injunction (*Lyons* v. *Wilkins*, 1896, 1 Ch. 811; 65 L. J. Ch. 601; 45 W. R. 19; 74 L. T. 358: *S. C.* No. 2, cited MALICE: *Charnock* v. *Court*, 1899, 2 Ch. 35; 68 L. J. Ch. 550; 80 L. T. 564; 47 W. R. 633; 63 J. P. 456: *Walters* v. *Green*, 1899, 2 Ch. 696; 68 L. J. Ch. 730; 81 L. T. 151; 48 W. R. 23; 63 J. P. 742). Those cases show that "House, or other PLACE," in the section, includes "ANY" place where the workman happens to be; and that the "watching or besetting" need not be for any lengthened time. *Vh, Farmer* v. *Wilson*, 82 L. T. 566; 69 L. J. Q. B. 496; 64 J. P. 486.

Cp, INTIMIDATE: MOLEST.

BESIDES. — When provisions are made for children "besides" an eldest son, no children take unless there be a son; *secus*, if the phrase is "OTHER THAN" (*Walcott* v. *Bloomfield*, 4 Dr. & War. 235; 6 Ir. Eq. Rep. 227: *Vthc, Simpson* v. *Frew*, 5 Ir. Ch. 517. On both cases *V. Re Flemyng*, 15 L. R. Ir. 369, 370).

BEST BELIEF. — A person who swears to the "Best of his Belief," "imports that he is entitled to entertain the belief he expresses" (per Pollock, C. B., *Roe* v. *Bradshaw*, L. R. 1 Ex. 108; 35 L. J. Ex. 71). *Cp*, "Information and Belief," sub INFORMATION.

BEST ENDEAVOURS. — *V.* UTMOST.

BEST LUMBER. — "A Contract to erect a building of 'the Best Lumber'; construed to mean the best lumber of which bgs were ordinarily constructed at that place: *McIntire* v. *Barnes*, 4 Col. 285" (Hudson, 138).

BEST OIL. — A contract for "Best Oil" may be explained, by oral evidence, to mean that the contract will be satisfied if the oil delivered contain a substantial portion of "best" oil (*Lucas* v. *Bristow*, 27 L. J. Q. B. 364; E. B. & E. 907).

BEST PRICE. — The "Best Price" that can be gotten for goods distrained, 2 W. & M. c. 5, s. 2, is *primâ facie* evidenced if the goods are sold at their appraised value (*Walter* v. *Rumbal*, 1 Raym. Ld. 55); but that presumption may be rebutted by evidence (*Cook* v. *Corbett*, 24 W. R. 181: *Poynter* v. *Buckley*, 5 C. & P. 512). Restrictive conditions, *e.g.* that the purchaser must consume hay, or unthreshed corn, on the premises, cannot be imposed (*Hawkins* v. *Walrond*, cited PURCHASER).

Best Price to be obtained by Mtgee, when selling; *V.* Coote, 276.

As regards "Best Price" of Settled Land, when *sold* for dwellings of the WORKING CLASSES; *V.* s. 74 (1 *a*), 53 & 54 V. c. 70.

V. FAIR PRICE: PRICE.

BEST RENT. — The "Best Rent" means the most RACK-RENT that can reasonably be gotten for the whole term of the lease to be granted, having regard to the solvency of the proposed tenants and what may fairly be considered for the permanent benefit of the property; and when a Power to grant a lease at the "Best Rent" be exercised fairly and honestly, a reasonable latitude will be allowed to the donee of the power, so that when he has to choose between two or more responsible offers, not widely differing in amount, he is not bound to accept the highest offer (1 Platt, 483–489: Woodf. 415, 416: Farwell, ch. 17: Copinger & Munro, on Rents, 152–154). "Unless otherwise authorised by the Power, a uniform rent must be reserved throughout the term" (Redman, 34, citing *Doe* d. *Sutton* v. *Harvey*, 1 B. & C. 426).

V. s. 18 (6), Conv. & L. P. Act, 1881.

The Settled Land Act, 1882, enabling Tenants for Life to grant Leases, provides (s. 2, subs. 7), that "Every Lease shall reserve the *Best Rent* that can reasonably be obtained, regard being had to any Fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case." The value of a contemporaneously surrendered Lease may be taken into consideration in determining such "Best Rent" (*Re Rawlins*, L. R. 1 Eq. 286); but not Buildings already erected and not part of the transaction (*Re Chawner*, cited CONSIDERATION). As to Inadequacy of the rent reserved, *V. Sutherland* v. *Sutherland*, 1893, 3 Ch. 169; 62 L. J. Ch. 954. When a Tenant for Life takes an undisclosed payment for granting a lease, that is *primâ facie* proof that the "Best Rent" has not been obtained (*Chandler* v.

Bradley, 1897, 1 Ch. 315; 66 L. J. Ch. 214; 75 L. T. 581; 45 W. R. 296). *Vh, Harold* v. *Daly*, 30 L. R. Ir. 697.

As regards "Best Rent" of Settled Land, when *leased* for dwellings of the WORKING CLASSES, *V.* s. 74 (1 *a*), 53 & 54 V. c. 70.

V. ANCIENT RENT.

BEST TITLE. — "The provision that the purchaser is to accept the 'Best Title' that the vendor can give, certainly does not take away the purchaser's right" to insist on having the deeds handed over on Completion (per Romer, J., *Re Duthy and Jesson*, cited INFORMATION).

BET. — Issuing Coupons in connection with a Sporting Newspaper and offering prizes for naming winners of races on such coupons, is not inviting a "Bet, or Wager," within s. 3 (3), 37 V. c. 15 (*Caminada* v. *Hulton*, 60 L. J. M. C. 116; 64 L. T. 572; 39 W. R. 540; 55 J. P. 727: *Sv, R.* v. *Stoddart*, 83 L. T. 538). *Vf*, LOTTERY: WAGER: GAMING CONTRACT.

"To bet," "Betting," ss. 1 and 3, 16 & 17 V. c. 119, does not include the mere payment of a bet that has been made and lost (*Bradford* v. *Dawson*, 1897, 1 Q. B. 307; 66 L. J. Q. B. 191; 76 L. T. 54; 45 W. R. 347; 61 J. P. 134).

Betting, within s. 3, 36 & 37 V. c. 38, must be at, or on, a "Game, or pretended GAME OF CHANCE" (*Ridgeway* v. *Farndale*, 1892, 2 Q. B. 309; 61 L. J. M. C. 199; 67 L. T. 318; 41 W. R. 128; 56 J. P. 697).

BETTERMENT. — *V.* TRADE INTEREST.

BETTING HOUSE. — *V.* COMMON BETTING HOUSE: COMMON GAMING HOUSE.

BETWEEN. — A testamentary gift to two or more "between," or "between or amongst" them, creates a tenancy in common (*Lashbrook* v. *Cock*, 2 Mer. 70: Wms. Exs. 1327: 2 Jarm. 257: *A-G.* v. *Fletcher*, L. R. 13 Eq. 128; 41 L. J. Ch. 167); and so, though the phrase be "jointly and between them" (*Perkins* v. *Baynton*, 1 Bro. C. C. 118: *Richardson* v. *Richardson*, 14 Sim. 526). *V.* AMONG.

It is submitted that where a Time has to elapse, or a Thing is to be done, "between" two Dates, both dates are excluded; herein resembling CLEAR, and INTERVAL. *Vh, Agnew* v. *Fowler*, 1 Ir. Com. Law Rep. 462.

So "between" two Places is exclusive of both (*R.* v. *Fisher*, 8 C. & P. 613).

Quà Post Office (Offences) Act, 1837, 1 V. c. 36, "whenever the term 'between' is used in reference to the transmission of letters, newspapers, parliamentary proceedings, or other things between one place and another, it shall apply equally to the transmission from either place to the other" (s. 47).

As to an agreement and declaration "between and by the parties hereto"; *V.* AGREED AND DECLARED.

"Plies between"; *V.* PLY.

BEYOND. — "Beyond their Control"; *V.* CONTROL.

BEYOND SEAS. — By the Mer Law Amend. Act, 1856, 19 & 20 V. c. 97, s. 12, no part of the UNITED KINGDOM of Great Britain and Ireland, nor the islands of Man, Guernsey, Jersey, Alderney, and Sark, or any islands adjacent to any of them are to be deemed to be "Beyond Seas" within the meaning of the Statute of Limitation, 4 & 5 Anne, c. 16. (Prior to the Act of 1856, Ireland was "beyond seas" quà 4 & 5 Anne, *Lane* v. *Bennett*, 1 M. & W. 70, for "beyond seas" had been held "out of Great Britain," *King* v. *Walker*, 1 Bl. W. 286).

The def in 19 & 20 V. c. 97 was, in substance, the same as that provided for the Com. L. Pro. Act, 1852 (s. 227), and for the Com. L. Pro. Act (Ir), 1853 (s. 4); and afterwards for the Army Discipline and Regn Act, 1879 (s. 181), and Army Act, 1881 (subs. 25, s. 190). Quà 26 V. c. 10, "no part of the United Kingdom," is "beyond seas" (s. 2).

For some purposes, the words "Beyond Seas" are not to be construed literally, but are synonymous with "out of the realm or territories," so that India may not be "beyond seas" (Add. T. 68, citing *Ruckmaboye* v. *Lulloobhoy Mottichund*, 8 Moore P. C. 4). *V.* REALM.

Goods shipped from a Foreign Port under a Through Bill of Lading to Liverpool, landed in London and sent thence to Liverpool in another ship, are IMPORTED into Liverpool "from parts Beyond Seas," within s. 234, Mersey Dock Acts, Consolidation Act, 1858 (*Mersey Dock* v. *Twigge*, 67 L. J. Q. B. 604; 3 Com. Ca. 176). *Vf*, TRADING.

"Offences committed on *Land beyond the Seas*, for which an Indictment may legally be preferred in England or Wales," s. 2, 11 & 12 V. c. 42; *V. R.* v. *Eyre*, 37 L. J. M. C. 159; L. R. 3 Q. B. 487.

Note. "*Absence* beyond seas," s. 16, 3 & 4 W. 4, c. 27, does not, on and since 1st Jan 1879, prevent the Statute of Limitations from running quà Distress or Ejectment (ss. 3 and 12, Real Property Limitation Act, 1874).

BIDDING. —A Bidding Prayer, is when the Minister moves the people to join with him in prayer on topics which he mentions, but for which he provides no form of words. For the Bidding Prayer in the Church of England, *V.* 55th of the Canons Ecclesiastical, 1603.

Vendor's right of bidding at an AUCTION of Goods, is curtailed by s. 58, Sale of Goods Act, 1893.

BIGAMY. — "Every one commits the felony called Bigamy, who, being married, marries any other person during the life of his or her wife or husband.

"The expression 'being married' means, legally married. The word

'marries' means, go through a form of marriage which the law of the place where such form is used recognizes as binding, whether the parties are by that law competent to contract marriage or not, and although, by their fraud, the form employed may, apart from the Bigamy, have been insufficient to constitute a binding marriage.

"Provided that this definition does not extend (a) to a second marriage contracted elsewhere than in England and Ireland by any other than a subject of Her Majesty; nor (b) to any person marrying a second time, whose husband or wife has been continually absent from such person for seven years then last past, and has not been known by such person to be living within that time (or whose husband or wife is reasonably believed to be dead, *R.* v. *Tolson*, 58 L. J. M. C. 97; 23 Q. B. D. 168; 60 L. T. 899); nor (c) to any person who at the time of such second marriage was divorced from the bond of the first marriage, nor to any person whose first marriage has been declared void by the sentence of any Court of competent jurisdiction.

"A *Divorce* à vinculo matrimonii pronounced by a foreign Court between persons who have contracted marriage in England and who continue to be domiciled in England, on grounds which would not justify such a Divorce in England, is not a Divorce within the meaning of this clause" (Steph. Cr. 188, 189, citing 24 & 25 V. c. 100, s. 57, as explained by the authorities there also cited. *V.* espy *R.* v. *Allen*, 41 L. J. M. C. 97; L. R. 1 C. C. R. 367, disapproving *R.* v. *Fanning*, 17 Ir. Rep. C. L. 289; 10 Cox C. C. 411).

Vf, Arch. Cr. 1110–1121: Rosc. Cr. 284–296: 2 Encyc. 73–78.

BILL. — "The word 'Bill' is one of the most general that can be used wherever it is not confined by other terms, *e.g.* a Bill in Parliament, a Bill in Chancery. In every kind of business the word 'Bill' occurs as representing any WRITING, — a Bill of Lading, a Bill of Parcels, a Play Bill, a Bill of Fare, a Bill of Divorcement, and so on" (per Maule, arg. *Bank of England* v. *Anderson*, 3 Bing. N. C. 601).

A Solr's Bill of Costs, not debiting any one by name but enclosed in an envelope addressed to the client, is a good "Bill," within s. 37, 6 & 7 V. c. 73 (*Roberts* v. *Lucas*, 11 Ex. 41; 24 L. J. Ex. 227: *Vf*, *Champ* v. *Stokes*, 6 H. & N. 683; 30 L. J. Ex. 242). Whether items of charge are delivered as a "Bill," within the section, is a question of fact in each particular case (*Re Romer*, 1893, 2 Q. B. 286; 62 L. J. Q. B. 610). Without items, there can be no proper "Bill," even though the Solr delivers his claim as for an agreed gross sum (*Philby* v. *Hazle*, 29 L. J. C. P. 370; 8 C. B. N. S. 647: *Wilkinson* v. *Smart*, 33 L. T. 573; *Vthc*, *Blake* v. *Hummell*, 51 L. T. 430).

"Bill, Placard, or Poster," s. 18, 46 & 47 V. c. 51, s. 14, 47 & 48 V. c. 70; *V. Barstow Case*, 5 Times Rep. 159: *Denbigh and Flint Case*, Ib. 160: *Shrewsbury Case*, Ib. 160.

BILL OF COMPLAINT. — Stat. Def., 15 & 16 V. c. 86, s. 66. — *Ir.* 30 & 31 V. c. 44, s. 2.

BILL OF CREDIT. — "A Letter whereby one person requests another to advance money to a third person named therein for a certain amount, and promises to reimburse the person making the advance. It is more usually termed a Letter of Credit" (2 Encyc. 87). *Vf, Letter of Credit,* 7 Ib. 369: *Circular Note,* 3 Ib. 34.

BILL OF EXCHANGE. — "A Bill of Exchange is an UNCONDITIONAL Order in Writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, ON DEMAND, or at a fixed or DETERMINABLE FUTURE TIME, a SUM CERTAIN in money to, or to the order of, a specified person, or to bearer" (s. 3, Bills of Ex. Act, 1882). That section further provides that,

"An Order to pay out of a particular fund is not Unconditional within the meaning of this section; but an unqualified Order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the Bill, is unconditional." And further that

"A Bill is not invalid by reason —

(a) That it is not dated;

(b) That it does not specify the value given, or that any value has been given therefor;

(c) That it does not specify the place where it is drawn, or the place where it is payable."

Note. The Bills of Ex. Act, 1882, is a Code of Law relating to NEGOTIABLE Instruments, and is to be construed according to the natural meaning of its language, uninfluenced by prior decisions except upon some special ground, *e.g.* where its words are of doubtful import, or have acquired a technical or special meaning (per Ld Herschell, *Bank of England* v. *Vagliano,* 1891, A. C. 107; 60 L. J. Q. B. 164: per Chitty, J., *Re English Bank of River Plate,* 1893, 2 Ch. 438; 62 L. J. Ch. 578; 69 L. T. 14; 41 W. R. 521). A similar rule was applied by the P. C. to the construction of the Civil Code of Lower Canada, in *Robinson* v. *Canadian Pacific Ry,* 1892, A. C. 481; 61 L. J. P. C. 79; 67 L. T. 505.

V. APPROVED BILL: CHEQUE: ORDER, at end: PART. *Cp,* PROMISSORY NOTE.

Vh, Byles: Chalmers: Rosc. N. P. 350: 2 Encyc. 94–109.

Quà Stamp Act, 1891, s. 32: *V.* REMIT.

A promise to deliver up a Bill of Ex., means the whole Set, if drawn in Sets (*Kearney* v. *West Granada Co,* 1 H. & N. 412; 26 L. J. Ex. 15).

A document otherwise in the form of a Bill of Exchange but having no drawer's name to it, is not a Bill of Exchange within s. 22, 24 & 25 V. c. 98 (*R.* v. *Harper,* 50 L. J. M. C. 90; 7 Q. B. D. 78).

BILL OF LADING. — "A Bill of Lading is the written evidence of a Contract for the Carriage and Delivery of goods sent by Sea for certain FREIGHT. The contract, in legal language, is a contract of BAILMENT (2 Raym. Ld. 912). In the usual form of the contract, the undertaking is to deliver to the Order, or Assigns, of the Shipper. By the delivery on board, the Ship-master acquires a *special* property to support that possession which he holds in right of another, and to enable him to perform his undertaking. The *general* property remains with the Shipper of the goods until he has disposed of it by some act, sufficient in law, to transfer property. The Indorsement of the Bill of Lading is simply a direction of the delivery of the goods" (per Loughborough, C. J., *Lickbarrow* v. *Mason*, in Error, *Mason* v. *Lickbarrow*, 1 Bl. H. 359). A Bill of Lading is for a separate parcel or parcels of goods; a CHARTER-PARTY is a contract for the whole ship or some principal part thereof. *Vh*, 2 Encyc. 110–127: Abbott, Part 3, ch. 2: Carver, Part 1, ch. 3, 5: Scrutton on Charter-Parties and Bills of Lading. *V.* CLEAN BILL OF LADING.

Indorsement of; *V.* PASS: THE: SANS RECOURS.

Stat. Def. — Customs Tariff Amendment Act, 1860, 23 & 24 V. c. 22, s. 21.

BILL OF QUANTITIES. — *V.* QUANTITY SURVEYOR.

BILL OF RIGHTS. — 1 W. & M. sess. 2, c. 2, — the full title of which is "An Act declaring the Rights and Liberties of the Subject, and Settling the Succession to the Crown."

Cp, "Petition of Right," sub PETITION. *V.* SETTLEMENT, at end.

BILL OF SALE. — A Bill of Sale is an Assignment of chattels, whereby the property in such chattels is intended to pass, but without possession of them being given (per Esher, M. R., *Johnson* v. *Diprose*, 1893, 1 Q. B. 512; 62 L. J. Q. B. 291; 68 L. T. 485; 41 W. R. 371).

An Agreement for sale of furniture on the ordinary Hire and Purchase System is not a Bill of Sale by the vendee (*Ex p. Crawcour*, 9 Ch. D. 419; nom. *Re Robertson*, 47 L. J. Bank. 94: *Vf*, BUY), unless, on consideration of all the facts, it can be seen that the true nature of the transaction was that the document should be a security for money (*Madell* v. *Thomas*, 1891, 1 Q. B. 230; 60 L. J. Q. B. 227; 64 L. T. 9; 39 W. R. 280: *Re Watson*, 59 L. J. Q. B. 394; 25 Q. B. D. 27). So, a Building Agreement, which provides that all materials brought by the builder on the land shall become the property of the freeholder, is not a Bill of Sale (*Reeves* v. *Barlow*, 12 Q. B. D. 436; 53 L. J. Q. B. 192: *Vf*, RIGHT IN EQUITY: *Re Hall*, *Ex p. Close*, 54 L. J. Q. B. 43; 14 Q. B. D. 386; 51 L. T. 795; 33 W. R. 228: *Church* v. *Sage*, 67 L. T. 800; 41 W. R. 175: *Sv. Climpson* v. *Coles*, cited LICENSE); nor is a Co's DEBENTURE (*Re Standard Manufacturing Co*, 1891, 1 Ch. 627;

60 L. J. Ch. 292: *Richards* v. *Kidderminster*, 1896, 2 Ch. 212; 65 L. J. Ch. 502: *Vf*, COMPANY: *Sv*, now, s. 14, Comp Act, 1900); nor is a "Letter of Hypothecation accompanying a deposit of goods by merchants or factors, or Pawn-Tickets given by pawnbrokers, or in fact any case where the object and effect of the transaction are immediately to transfer the possession from the grantor to the grantee" (per Cave, J., *Re Hall, Ex p. Close*, sup: *Va*, TRANSFER: *Hilton* v. *Tucker*, 57 L. J. Ch. 973; 39 Ch. D. 669; 59 L. T. 172; 36 W. R. 762: *Ex p. Hubbard, Re Hardwick*, 55 L. J. Q. B. 490; 17 Q. B. D. 690; 35 W. R. 2). *Vf*, *Manchester S. & L. Ry* v. *North Central Wagon Co*, 58 L. J. Ch. 219; 13 App. Ca. 554: *Grigg* v. *National Guardian Co*, 1891, 3 Ch. 206; 61 L. J. Ch. 11: *Spencer* v. *Mid. Ry*, 11 Times Rep. 542: *Redhead* v. *Westwood*, 59 L. T. 293: *Re Yarrow, Collins* v. *Weymouth*, 59 L. J. Q. B. 18; 61 L. T. 642; 38 W. R. 175: — And as to when a document is not a Bill of S., but is a PLEDGE, *V. Charlesworth* v. *Mills*, 1892, A. C. 231; 61 L. J. Q. B. 830; 66 L. T. 690; 41 W. R. 129; but *Cp*, *Re Townsend, Ex p. Parsons*, cited LICENSE.

The def of a Bill of Sale, for the purposes of the Bills of S. Acts, 1878 and 1882, is given in s. 4 of the Act of 1878. But whilst this def has been adopted for the Act of 1882 by s. 3 of the latter, that same section provides that the peculiar provisions of the Act of 1882 shall not apply to a Bill of S. *not* given "by way of security for the payment of money."

As to what is an ASSURANCE; AUTHORITY OR LICENSE; LICENSE; RECEIPT; TRANSFER (including Assignment); ASSIGNMENT; ORDINARY COURSE, within that def, or MARRIAGE SETTLEMENT, or VESSEL, within its exception: *V.* those words respectively. But it should always be borne in mind that "the Bills of S. Acts strike, not at Transactions but, at Documents" (per Kekewich, J., *Grigg* v. *National Guardian Co*, sup, and per Russell, C. J., *London & Yorkshire Bank* v. *White*, 11 Times Rep. 570; *Sv*, per North, J., *Jarvis* v. *Jarvis*, 63 L. J. Ch. 10); and a document, not apparently a Bill of S., may, on the circumstances, be treated as one (*Beckett* v. *Tower Assets Co*, 1891, 1 Q. B. 638; 60 L. J. Q. B. 493; 64 L. T. 497; 39 W. R. 438: *Re Watson*, sup).

Attornments are Bills of Sale, s. 6, Act, 1878; *Vth*, *Re Willis*, 67 L. J. Q. B. 634; 21 Q. B. D. 384; 36 W. R. 793: *Mumford* v. *Collier*, 59 L. J. Q. B. 552; 25 Q. B. D. 279; 38 W. R. 716: *Scobie* v. *Collins*, 1895, 1 Q. B. 375; 64 L. J. Q. B. 10; 71 L. T. 775. *Vf*, ATTORNMENT.

Letters of Hypothecation of *imported* goods are exempted from the Act of 1882 (54 & 55 V. c. 35, amending 53 & 54 V. c. 53).

Other Stat. Def. — 17 & 18 V. c. 36, s. 7. — *Ir.* 17 & 18 V. c. 55, s. 7; 42 & 43 V. c. 50, s. 4; 46 & 47 V. c. 7, s. 3.

Vh, IN ACCORDANCE WITH THE FORM: SPECIFIC: SEPARATELY: Reed, 43: Rosc. N. P. 1180: 2 Encyc. 127–147: DEFEASANCE: OCCUPATION.

A "Bill of Sale" of a SHIP, s. 55, 17 & 18 V. c. 104, means an actual TRANSFER, as distinguished from an Agreement to transfer (*Batthyany* v. *Bouch*, 50 L. J. Q. B. 421).

As to "Bill of Sale" in s. 11, Trinidad Ordinance, No. 15, 1884; *V. Tennant* v. *Howatson*, 57 L. J. P. C. 110; 13 App. Ca. 489; 58 L. T. 646.

BILL WITH OPTION OF CASH. — *V.* CASH WITH OPTION OF BILL.

BILLA VERA. — *V.* TRUE BILL.

BIND. — By s. 62, Com. L. Pro. Act, 1854, a Garnishee Order *nisi* shall "bind" the DEBT in the garnishee's hands. That means, "that the debtor, or those claiming under him, shall not have power to convey or do any act as against the right of a party in whose favour the debt is bound; and we construe it as not giving any property in the debt in the nature of a mortgage or lien, but a mere right to have the security enforced" (per Campbell, C. J., in delivering the jdgmt of the Q. B., *Holmes* v. *Tutton*, 24 L. J. Q. B. 351; 5 E. & B. 67; *Vth, Ex p. Joselyne*, 47 L. J. Bank. 91; 8 Ch. D. 327; 26 W. R. 645; 38 L. T. 661: *Rylands* v. *Reardon*, 8 L. R. Ir. 1).

But in construing an obligation whereby a Joint Stock Co did "Bind" themselves and their undertaking, James, L. J., said, — "It seems to me that the word 'Charge,' that the word 'Bind,' and the word 'Oblige' (whatever may be the ordinary use by conveyancers of one or the other of them), in point of English language and of legal language, mean the same. 'To Bind' means 'to Charge,' and 'to Charge' means 'to Bind,' and 'Oblige' means to charge or bind. All these words are in my opinion absolutely synonymous" (*Re Florence Land Co*, 48 L. J. Ch. 145; 10 Ch. D. 530: *Sv*, jdgmt of Jessel, M. R., in *thc*). Yet it seems clear that "to Charge" property is to create a LIEN on it (*V.* CHARGE); whilst in *Holmes* v. *Tutton* (sup) that was held to be a quality which did not inhere in the word "Bind," at least in the section there being construed.

V. BOUND.

BIND OVER. — Where power is given to Justices to "bind over," or to cause a person to do a certain thing, and such person being present, shall refuse to be bound or to do such thing, a power is implied to commit to prison until compliance (Dwar. 672). *Vf, R.* v. *Dunn*, 12 Q. B. 1026; 18 L. J. M. C. 41: 2 Encyc. 148. *Cp*, RECOGNIZANCE.

BINDING. — "Made Binding"; *V.* REQUIRED: OBLIGATORY.

"Binding and Conclusive"; *V.* INCONSISTENT.

"Valid and Binding"; *V.* VALID.

BIRD. — Bird of Game; *V.* GAME, *Animals.*
Bird of Warren; *V.* FOWL.
V. DOMESTIC ANIMAL: WILD BIRD.

BIRTH. — "The Births and Deaths Registration Acts, 1836 to 1874"; "The Births, Deaths, and Marriages (Scot) Acts, 1854 to 1860"; "The Births and Deaths Registration (Ir) Acts, 1863 to 1880"; — *V.* Sch 2, Short Titles Act, 1896.

BISHOP. — "A Bishop, is a minister of God unto whom, with permanent continuance, there is given (not only power of administering the Word and Sacraments which power other Presbyters have, but also) a further power to Ordain ecclesiastical persons, and a power of chiefty in Government over presbyters, as well as laymen, a power to be by way of jurisdiction, — a Pastor even to Pastors themselves. So that this Office, as he is a Presbyter or Pastor, consisteth in those things which are common unto him with other pastors, as in ministering the Word and Sacraments: but those things incident unto his Office which do properly make him a Bishop, cannot be common unto him with other Pastors. Now, even as Pastors, so likewise Bishops, being principal pastors, are either (1) at Large, or (2) with Restraint: — At Large, when the subject of their regiment is undefinite, and not tied to any certain place; Bishops with Restraint, are they whose regiment over the Church is contained with some definite, local compass, beyond which compass their jurisdiction reacheth not. Such, therefore, we alway mean when we speak of that regiment by Bishops, — which we hold a thing most lawful, divine, and holy in the Church of Christ" (Hooker, Ecc. Polity, Bk. vii, cited Phil. Ecc. Law, 22, 23). A Bishop may reform the manners of his People and Clergy by Ecclesiastical Censures; and it is also his business "to institute and direct INDUCTION to all ecclesiastical livings in his diocese" (1 Bl. Com. 382). *Vf*, ORDINARY: *Natal Bp.* v. *Gladstone*, cited DIOCESE: *Merriman* v. *Williams*, 7 App. Ca. 484; 51 L. J. P. C. 95.

"Bishop," in a modern Act is, generally, by the Act's interp clause, made to include ARCHBISHOP, *e.g.* — 3 & 4 V. c. 86, s. 2; 14 & 15 V. c. 97, s. 29; 19 & 20 V. c. 104, s. 33; 33 & 34 V. c. 91, s. 2; 34 & 35 V. c. 44, s. 2; 35 & 36 V. c. 8, s. 2; 37 & 38 V. c. 77, s. 14, c. 85, s. 6; 50 & 51 V. c. 12, s. 2, c. 68, s. 1; 51 & 52 V. c. 20, s. 12. — *Ir.* 14 & 15 V. c. 72, s. 1, c. 73, s. 1; 27 & 28 V. c. 54, s. 4.

"Bishop of the said Church"; Stat. Def., 33 & 34 V. c. 110, s. 4.

BITCH. — In an Indictment for Bestiality, "Bitch" sufficiently denotes a female Dog, though the female of the Fox, the Otter, and other animals is also called a Bitch (*R.* v. *Allen*, 1 C. & K. 495).

BLACK: BLACK-LEG, &c. — It was said by counsel, arg., in *Barnett* v. *Allen* (27 L. J. Ex. 412; 3 H. & N. 376; 31 L. T. O. S. 217),

that the prefix "Black" has always a bad meaning in such terms as "Blackguard," "Black-leg," "Black-sheep." Either word would probably be Libel if written; but neither, probably, would, *per se*, be Slander.

"Black-*leg*": "Black-*sheep*." — In *Barnett* v. *Allen* (sup) the Court was equally divided as to whether calling a man a "Black-*leg*," as meaning a disreputable gambler, was actionable Slander. But to write of a person that he is a "Black-leg," or "Black-sheep," with an innuendo that the phrase imputed that the person was of a bad character, would be Libel (*McGregor* v. *Gregory*, 12 L. J. Ex. 204; 11 M. & W. 289; 2 Dowl. P. C. 769: *O'Brien* v. *Clement*, 16 L. J. Ex. 77; 16 M. & W. 159). In *Barnett* v. *Allen*, Pollock, C. B., said that the sense in which he had always understood "Black-leg" was "a professed gambler, a person who makes a business of betting — not necessarily dishonest, though disreputable." Watson, B., thought the word had no precise signification; but Martin and Bramwell, BB., thought it imputed the indictable offence of cheating at cards, within s. 17, 8 & 9 V. c. 109.

V. CHEAT: PROFESSED GAMBLER.

"Black-leg" is often used by Trade Unionists to signify Non-Unionist workmen who do not conform to the rules of their Union. *Vh*, BESET.

BLACK ACT. — 9 G. 1, c. 22, repealed by one of Peel's Acts, 7 & 8 G. 4, c. 27; "commonly called the Waltham Black Act, occasioned by the devastations committed near Waltham in Hampshire, by persons in disguise or with their faces blacked" (4 Bl. Com. 246).

BLACK BEER. — *V.* BEER.

BLACKMAIL. — "'Blackmaile,' is a word used in 43 Eliz. c. 13, and it signifies a certainty of money, corn, cattell, or other consideration, given by the poore people in the North parts of England, unto men of great name and aliance in those parts, to be by them protected from such as usually robbe and steale there" (Termes de la Ley). "These Robbers are of late years called *Moss-troopers*" (Cowel). *Vf*, 2 Encyc. 164: Jacob.

To impute "blackmailing" is Libel, needing no Innuendo (*Edsall* v. *Brooks*, 2 Robt. N. Y. 29; 3 Ib. 284).

Ld BLANDFORD'S ACT. — New Parishes Act, 1856, 19 & 20 V. c. 104.

BLANKS. — As to Blanks, in Deeds; *V.* Elph. 26: —

In Debentures of a Co; *V. Re Queensland Land Co*, 1894, 3 Ch. 181; 63 L. J. Ch. 810; 71 L. T. 115; 42 W. R. 600: —

In Transfers of Shares &c; *V.* Elph. 28–30: Hamilton, 199–201: *France* v. *Clark*, 53 L. J. Ch. 588; 26 Ch. D. 257: *Colonial Bank* v. *Cady*, 60 L. J. Ch. 131; 15 App. Ca. 267; 63 L. T. 27; 39 W. R. 17:

Fox v. *Martin*, 64 L. J. Ch. 473: *Powell* v. *Lond. & Prov. Bank*, 1893, 2 Ch. 555; 62 L. J. Ch. 795: —

In Wills; *V.* 1 Jarm. 18, 144, 441: Theobald, 33, 241, 271: *Re Harrison*, 55 L. J. Ch. 799; 30 Ch. D. 390: *Illingworth* v. *Cooke*, 20 L. J. Ch. 512; 9 Hare, 37: *Greig* v. *Martin*, 7 W. R. 315: *Gill* v. *Bagshaw*, 35 L. J. Ch. 842; L. R. 2 Eq. 746: *Re White*, 1893, 2 Ch. 41; 62 L. J. Ch. 342; 68 L. T. 187; 41 W. R. 683: *Asten* v. *Asten*, 1894, 3 Ch. 260; 63 L. J. Ch. 834; 71 L. T. 228: *Re Macduff*, 1896, 2 Ch. 451; 65 L. J. Ch. 700; 74 L. T. 706; 45 W. R. 154.

Va, NEXT.

BLASPHEMY. — "Every publication is said to be blasphemous which contains matter relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, intended to wound the feelings of mankind, or to excite contempt and hatred against the Church by law established, or to promote immorality.

"Publications intended in good faith to propagate opinions on religious subjects, which the person who publishes them regards as true, are not blasphemous (within the meaning of this definition) merely because their publication is likely to wound the feelings of those who believe such opinions to be false, or because their general adoption might tend by lawful means to alterations in the constitution of the Church by law established" (Steph. Cr. 108, 109; *whv*, for an alternative and stricter definition, which as there pointed out would probably not be now adopted: *Vf*, Jacob).

Vh, Arch. Cr. 970–972: Rosc. Cr. 595: Odgers, ch. 17: HERETIC: HERETICO COMBURENDO: *Cp*, CHRISTIAN RELIGION.

BLAST FURNACE. — *V.* NON-TEXTILE FACTORIES.

BLEACHING. — "Bleaching Works"; Stat. Def., 23 & 24 V. c. 78, s. 7; 26 & 27 V. c. 38, s. 1; 27 & 28 V. c. 98, s. 1.

"Bleaching and Dyeing Works"; Stat. Def., Sch 4, Part 1, 41 V. c. 16: *Vth*, *Rogers* v. *Manchester Packing Co*, 1898, 1 Q. B. 344; 67 L. J. Q. B. 310. *Vf*, NON-TEXTILE FACTORIES.

BLENCH. — *V.* FEU.

BLIND. — Quà 56 & 57 V. c. 42, "'Blind,' means, too blind to be able to read the ordinary school books used by children" (s. 15).

BLOCKADE. — "A Blockade may be more or less rigorous, either, (1) for the single purpose of watching the military operations of the enemy and preventing the egress of their fleet; or (2) to cut off all access of neutral vessels to the interdicted place: the latter is strictly and properly a Blockade; for the other is, in truth, no Blockade at all as far as neutrals are concerned." The right to impose this latter is "of a severe

nature, and not to be aggravated by mere construction. . . . If the ships stationed on the spot to keep up the Blockade will not use their force for the purpose, it is impossible for a Court of Justice to say there was a Blockade actually existing at that time so as to bind a neutral vessel" (per Ld Stowell, *The Juffrow Maria*, 3 Rob. C. 154, 156). *Vf, The Frederick Molke*, 1 Rob. C. 86, and *The Betsey*, Ib. 93, and notes on *the* Tudor's L. C. M. L. 1011.

Vh, Deane, Law of Blockade: Macqueen: Westlake: Polson.

As to effect of a Blockade on a Contract; *V.* Abbott, 763–769.

BLOOD. — "If a man devise land to a man *et sanguini suo*, that is a FEE SIMPLE; but if it be *semini suo*, it is an Estate TAIL" (Co. Litt. 9 b: *Vf*, 1 Rol. Ab. 834: s. 28, Wills Act, 1837).

"'Blood Relations,' cannot embrace a larger class than 'RELATIONS.' No doubt, all men are Blood Relations of all other men, if they are descended from a Common Ancestor, however remote; and we are told that the nations of the earth are made of 'One Blood.' But, for manifest convenience, the word 'Relations,' in legal import, is limited to Nearest of Kin, and now to NEXT OF KIN under the statute" (per Porter, M. R., *Dunlop* v. *Greer*, 1899, 1 I. R. 335).

"Blood *Sucker*": It is not Slander, per se, to say of a Justice of the Peace, "he is a Blood-Sucker, and sucketh blood," — "for it cannot be intended what blood he sucked" (*Hilliard* v. *Constable*, Cro. Eliz. 306). *Cp*, BEETLE-HEADED.

V. HALF-BLOOD: NAME: IN BLOOD: SPITTING OF BLOOD.

BLOODWIT. — *V.* WITE.

BLOODY HAND. — "'Bloody hand,' is the apprehension of a trespassor in the FOREST against Venison, with his hands, or other parts of him, bloudy, although he be not chasing or hunting" (Termes de la Ley, citing Manwood, c. 18, s. 9, fo. 133 b). *Cp*, "Found committing," sub FOUND: "Taken with the Manner," sub MANNER.

BOARD. — *V.* FIRE ON BOARD: F. O. B.: ON BOARD.

"The Board" in a modern Act, is generally defined by the Act's interp clause, according to the subject-matter of the Act, *e.g.* — 14 & 15 V. c. 34, s. 3; 16 & 17 V. c. 96, s. 36; Public Libraries Act, 1855, 18 & 19 V. c. 70, s. 3; 25 & 26 V. c. 93, s. 3; 32 & 33 V. c. 102, s. 2; 41 & 42 V. c. 29, s. 2; Taxes Management Act, 1880, 43 & 44 V. c. 19, s. 5; 48 & 49 V. c. 72, s. 1 (4 *e*); 54 & 55 V. c. 17, s. 2. — *Scot.* 19 & 20 V. c. 103, s. 3; 20 & 21 V. c. 71, s. 3; Lunacy (Scot) Act, 1862, 25 & 26 V. c. 54, s. 1; Public Libraries Act (Scot), 1867, 30 & 31 V. c. 37, s. 2, c. 101, s. 3; Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, s. 3; Public Libraries Consolidation (Scot) Act, 1887, 50 & 51 V. c. 42, s. 2; P. H. (Scot) Act, 1897, 60 & 61 V. c. 38, s. 3; Poor Law (Scot) Act, 1898, 61 & 62 V. c. 21, s. 9. — *Ir.* 34 & 35 V. c. 100, s. 2.

"Bd of Agriculture"; Stat. Def., 52 & 53 V. c. 30, s. 1.

"Burial Board"; Stat. Def., 19 & 20 V. c. 98, ss. 3, 35; 20 & 21 V. c. 81, s. 28.

"Bd of Control for Lunatic Asylums," in Ireland; Stat. Def., 61 & 62 V. c. 37, s. 109.

Bd of Directors; *V.* DIRECTOR.

"Drainage Bd"; Stat. Def., 51 & 52 V. c. 39, s. 6.

"Bd of Education," in Scotland; Stat. Def., 35 & 36 V. c. 62, s. 1.

"Bd of Guardians"; Stat. Def., Interp Act, 1889, s. 16 (1, 3).

V. CONGESTED: HARBOUR: HIGHWAY.

"Local Board"; Stat. Def., 26 & 27 V. c. 97, s. 2; 28 & 29 V. c. 75, s. 3.

"Local Board of Health"; Stat. Def., 11 & 12 V. c. 63, s. 2.

"Local Government Bd"; Established, constituted, and defined by 34 & 35 V. c. 70. Stat. Def., *Scot.* 49 & 50 V. c. 32, s. 9; 52 & 53 V. c. 72, s. 17; 55 & 56 V. c. 43, s. 25; 61 & 62 V. c. 21, s. 9. — *Ir.* 39 & 40 V. c. 75, s. 22; 42 & 43 V. c. 25, s. 2; 48 & 49 V. c. 41, s. 17; 51 & 52 V. c. 53, s. 2; 52 & 53 V. c. 64, s. 3, c. 72, s. 18; 54 & 55 V. c. 48, s. 42; 57 & 58 V. c. 38, s. 12; 58 & 59 V. c. 2, s. 14.

"Metropolitan Bd"; Stat. Def., 44 & 45 V. c. 34, s. 1.

"Bd of Superintendence"; Stat. Def., 19 & 20 V. c. 68, s. 2.

"Bd of Supervision," in Scotland; Stat. Def., 26 & 27 V. c. 108, s. 30; 38 & 39 V. c. 74, s. 2; 55 & 56 V. c. 55, s. 4.

"Bd of Trade"; Stat. Def., Interp Act, 1889, s. 12 (8).

"Bd of Works," in Ireland, is usually defined as "the Commrs of Public Works in Ireland," *e.g.* 44 & 45 V. c. 49, s. 57; 46 & 47 V. c. 60, s. 21; 54 V. c. 1, s. 13; 55 & 56 V. c. 65, s. 12; 58 & 59 V. c. 2, s. 14.

Cp, COMMISSIONERS.

BOARDER. — A GUEST is a Wayfarer; but a Sojourner in an INN, on a special contract to stay and board, is a Boarder (*Chamberlain* v. *Masterson*, 26 Ala. 377).

BOAT. — "Boat" includes a Steamboat (*Tisdell* v. *Combe*, 7 L. J. M. C. 48; 7 A. & E. 788).

V. FISHING BOAT: HOUSE BOAT: CRAFT: WHERRY: MINE.

A contract to carry a "Boat," may be explained, by a practice, to mean a Boat from which its deck, if it have one, is removed (*Haynes* v. *Halliday*, 9 L. J. O. S. C. P. 179; 7 Bing. 587).

Stat. Def. — 30 & 31 V. c. 82, s. 20; 38 & 39 V. c. 17, s. 108. — *Scot.* 49 & 50 V. c. 53, s. 17.

BOCLAND. — Land held by Deed or Charter (Jacob). *Vf*, CHARTER-LAND: Co. Litt. 6 a, 58 a: Spelm.: 1 Stubbs, Constit. Hist. ch. 5: 1 Ellis, Introd. Domesday, 230 *n.*

BODILY HARM. — *V.* GRIEVOUS BODILY HARM: INFLICT: MAIM: 2 Encyc. 204–206.

BODILY INJURY. — *V.* INVOLVE.

"Other Offence involving Bodily Injury to a Child under 16," Sch., 57 & 58 V. c. 41, applies only when the injured child is under 16 (*R. v. Roberts*, 18 Cox C. C. 530).

BODY. — Heirs of the Body; *V.* HEIRS: HEIRS OF THE BODY: TAIL.

"Body," as indicating a governing body; Stat. Def., 26 & 27 V. c. 112, s. 3: so, of "Body or Person," 14 & 15 V. c. 97, s. 29; 19 & 20 V. c. 104, s. 33. *Vf*, LEGISLATIVE ASSEMBLY: LEGISLATIVE BODY.

BODY CORPORATE. — "Every Body Politic, or Corporate, and person and persons," s. 65, 4 G. 4, c. 95; held to include Parishes (*R.* v. *Barton*, 9 L. J. M. C. 23; 11 A. & E. 343; 3 P. & D. 190).

The entrance fees and subscriptions of a Social Club are not "funds voluntarily contributed to any Body Corporate or Unincorporate" within 48 & 49 V. c. 51, s. 11 (6); and the Club is, therefore, not exempt from the duty imposed by that Act (*Re New University Club*, 18 Q. B. D. 720; 56 L. J. Q. B. 462; 56 L. T. 909; 35 W. R. 774).

For a reading of "Body Corporate" in an Investment Clause; *V. Wood* v. *Middleton*, 79 L. T. 155.

Stat. Def. — Mun. Corp. Ir. Act, 1840, 3 & 4 V. c. 108, s. 215.

BODY UNINCORPORATE. — Stat. Def., Customs and Inl. Rev. Act, 1885, 48 & 49 V. c. 51, s. 12.

BOG. — "Bog" adjudged, temp. Car. 1, to be a well-known term in Ireland (*Mulcarry* v. *Eyres*, Cro. Car. 511). *Vf*, TURF MOSS.

BOILER. — "Boiler" (ss. 3 and 4, 45 & 46 V. c. 22; *Vth*, s. 2, 53 & 54 V. c. 35) includes the boiler proper in which steam is generated, and also the conveying pipe and the receiver, *i.e.* the whole machine in which the steam is held until liberated for some other purpose (*R.* v. *Boiler Explosions Act Commrs*, 1891, 1 Q. B. 703; 60 L. J. Q. B. 544; 64 L. T. 674; 39 W. R. 440). *V.* CLOSED VESSEL: DOMESTIC.

BOILLOURIE. — *V.* SALIVA: Cowel, *Boilary*.

BOLT. — To accuse a man of having "bolted," means, *semble*, to accuse him of leaving the place suddenly with the intention of defrauding his creditors (*O'Brien* v. *Bryant*, 16 L. J. Ex. 77; 16 M. & W. 168).

BONA. — "'Bona *Notabilia*' is where a man dies having goods to the value of £5 in divers diocesses" (Termes de la Ley). *Vh*, Wms. Exs. 237: *Commrs of Stamps* v. *Hope*, 1891, A. C. 476; 60 L. J. P. C. 44; 65 L. T. 268; following *Blackwood* v. *Regina*, cited PERSONAL ESTATE.

Bona *Peritura*; *V.* PERISHABLE.

Bona *Vacantia*; *V.* VACANT.
Bona *Waviata*; *V.* WAIF.

BONÂ FIDE. — The equivalent of this phrase is "honestly" (per Bramwell, L. J., *R.* v. *Holl*, 50 L. J. Q. B. 766; 7 Q. B. D. 575). The correct province of this phrase is, therefore, to qualify things or actions that have relation to the mind or motive of the individual; and it has no meaning when joined to things or actions common to all mankind, though sometimes it is thus used in a figurative, but inaccurate, sense. A fact completely within physical apprehension can neither be *bonâ*, nor *malâ*, *fide:* a mental fact may be either.

Thus the phrase "bonâ fide *Traveller*" in s. 1, 17 & 18 V. c. 79, it is submitted, means the same thing as "Traveller"; for, as Williams, J., asked, "Can a man be said to be a *malâ fide* traveller? The question is, — Was he a traveller?" (*Atkinson.* v. *Sellers*, 28 L. J. M. C. 13; and *Vh*, TRAVELLER). Yet in *Penn* v. *Alexander* (1893, 1 Q. B. 522; 62 L. J. M. C. 65; 68 L. T. 355; 57 J. P. 118; 41 W. R. 392) the majority of a Court of five Judges held, that if a person journeys the prescribed distance of 3 miles, but only *for the purpose* of getting a drink during prohibited hours, he is not a "bonâ fide" traveller; but, it may perhaps be asked, if the journey had been to fetch a bottle of medicine would it not have been "bonâ fide"? and what is there in one drink more than another, that can affect the quality of the journey taken to procure it? *Va*, *Williams* v. *McDonald*, cited TRAVELLER. But *Penn* v. *Alexander* has been adopted in Ireland (*Parker* v. *The Queen*, 1896, 2 I. R. 404).

So, "*bonâ fide*" in the phrase, "the actual and bonâ fide *Occupation*" of lands or tenements in s. 18, Rep. People Act, 1832, would seem surplusage, — for how could an "actual" occupation be *malâ fide*?

"I suppose anybody would have a difficulty in defining the difference between a '*Parishioner*' and a 'bonâ fide Parishioner.' I do not know what difference there is between them" (per Bramwell, B., *Etherington* v. *Wilson*, 45 L. J. Ch. 158; 1 Ch. D. 160).

Nor can there be a malâ fide exercise of a person's Legal Rights in his own land (*Bradford* v. *Pickles*, 1895, A. C. 587; 64 L. J. Ch. 759; 73 L. T. 353; 44 W. R. 190; 60 J. P. 3), or a *malâ fide* Co, duly registered under the Comp Act, 1862 (*Re Salomon*, 1897, A. C. 22; 66 L. J. Ch. 35; 75 L. T. 426; 45 W. R. 193).

But there may be a Bonâ fide Act, Belief, Intention, Claim, Objection, or Mistake; or a person's Conduct may be bonâ fide. Each of these is, so to speak, a mental fact having its origin in the individual.

As to a *Conveyance* being bonâ fide within 13 Eliz. c. 5, or 27 Eliz. c. 4, or the corresponding Irish Statute 10 Car. 1, sess. 2, c. 3; *V. Twyne's Case*, 3 Rep. 81; 1 Sm. L. C. 1: *Wood* v. *Dixie*, 7 Q. B. 892; 9 Jur. 798: *Darvill* v. *Terry*, 30 L. J. Ex. 355; 6 H. & N. 807: *Lynch* v. *Copinger*, 14 W. R. 863: *Re Moroney*, cited FRAUDULENT ASSURANCE: GOOD:

VALUABLE: PURCHASE FOR VALUE. For the cases on "Bonâ fide" as used in the old Bankry Acts, and on "Good Faith" as used in the Act of 1869, *V.* Yate Lee, 436: May on Fraudulent Conveyances.

"Bonâ fide *Charitable Gift*"; *V. Fulham* v. *Thanet*, 7 Q. B. D. 539; 50 L. J. M. C. 42.

Bonâ fide *Charter-Party*; *V. Newberry* v. *Colvin*, 7 Bing. 206.

Debt "bonâ fide *contracted*," s. 2, 48 G. 3, c. 138, is one not collusively contracted (*Robinson* v. *Vale*, 2 B. & C. 762).

Bonâ fide *Interest* in a Life Policy; *V. Moore* v. *Woolsey*, cited SATISFACTORY.

Bonâ fide *Lease*, s. 2, 12 & 13 V. c. 26; *V. Moffett* v. *Gough*, 1 L. R. Ir. 331: by a Tenant for Life, *V. Sutherland* v. *Sutherland*, 1893, 3 Ch. 169; 62 L. J. Ch. 953; 69 L. T. 186; 42 W. R. 13.

Bonâ fide *Payment* of Calls on Directors' Shares; *V. Syke's Case*, L. R. 13 Eq. 255; *Svthc, Re Wood's Co*, 62 L. T. 760. *Cp*, *Gibson* v. *Muskett*, inf.

"Bonâ fide called upon to pay"; *V.* CALLED.

"Bonâ fide *Residence*" of a Selector of Land, within s. 18 (New South Wales) Crown Lands Alienation Act, 1861; *V. Tooth* v. *Power*, 1891, A. C. 284; 60 L. J. P. C. 39; 64 L. T. 698.

V. SUBSCRIBER.

As to the bonâ fide *Belief* that a first wife or husband is dead so as to excuse from BIGAMY; *V. R.* v. *Tolson*, 58 L. J. M. C. 97; 23 Q. B. D. 168; 60 L. T. 899: Steph. Cr. 27, *n.* 4. — Bonâ fide belief by a Constable that an Offence has been committed; *V. Ballinger* v. *Ferris*, 5 L. J. M. C. 133; 1 M. & W. 628. — Bonâ fide belief in statements made in a Co Prospectus; *V. Derry* v. *Peek*, 58 L. J. Ch. 864; 14 App. Ca. 337; 38 W. R. 33; 61 L. T. 265; 5 Times Rep. 625.

"*Payments* really and bonâ fide made," s. 82, 6 G. 4, c. 16, mean payments which the party does not intend to reclaim (*Gibson* v. *Muskett*, 11 L. J. C. P. 225; 3 Sc. N. S. 419).

A "bonâ fide *Purchaser*," s. 26, 3 & 4 W. 4, c. 27 (and as it should seem, as a general phrase), means, one who is "really a purchaser, and not merely a donee taking a gift under the form of a purchase" (per James, L. J., *Vane* v. *Vane*, 42 L. J. Ch. 299; 8 Ch. 383). A Judgment Creditor is not a purchaser within 27 Eliz. c. 4 (*Beavan* v. *Oxford*, cited DISPOSING POWER); nor though he has taken out a garnishee summons is he "a bonâ fide purchaser" within s. 28, 23 & 24 V. c. 127 (*Dallow* v. *Garrold*, 14 Q. B. D. 543; 54 L. J. Q. B. 76; 52 L. T. 240; 33 W. R. 219).

"Bonâ fide Purchaser for Value, without Notice," s. 28, 23 & 24 V. c. 127; *V.* NOTICE.

"Bonâ fide Purchase," s. 3 (1), Finance Act, 1894; *V. A-G.* v. *Dobree*, cited PURCHASE.

"Bonâ fide Rented"; *V.* RENTED.

Party taking beneficially under an instrument "bonâ fide," and for "VALUABLE Consideration," s. 11, 7 V. No. 16 (New South Wales), s. 18; 22 V. No. 1 (Ib.); *V. Sydney Bg Assn* v. *Lyons*, 1894, A. C. 260; 63 L. J. P. C. 108.

The phrase "*bonâ fide*" is employed in several sections of Lord St. Leonards' Law of Property Amendment Act, 1859, 22 & 23 V. c. 35.

As to what will constitute a bonâ fide *Claim of Right* so as to oust the jurisdiction of inferior tribunals; *V. Lovesey* v. *Stallard*, 38 J. P. 391; 30 L. T. 792: *White* v. *Feast*, 41 L. J. M. C. 81; L. R. 7 Q. B. 353: *Cole* v. *Miles*, 57 L. J. M. C. 133; 36 W. R. 784: *Leicester* v. *Holland*, 57 L. J. M. C. 75: *Thompson* v. *Ingham*, 19 L. J. Q. B. 189; 1 L. M. & P. 216: *R.* v. *Cridland*, 27 L. J. M. C. 28; 7 E. & B. 853: *Hudson* v. *McRae*, 33 L. J. M. C. 65; 12 W. R. 80: *Williams* v. *Adams*, 31 L. J. M. C. 109; 2 B. & S. 312: *Scott* v. *Baring*, 64 L. J. M. C. 200; 72 L. T. 495; 11 Times Rep. 175. There can be no such Claim in mere personal matters (*Carter* v. *Thomas*, 1893, 1 Q. B. 673; 62 L. J. M. C. 104; 69 L. T. 436; 41 W. R. 510; 57 J. P. 438). *V.* FAIR AND REASONABLE.

As to what is a bonâ fide *Objection to Church Rates*, within s. 7, 53 G. 3, c. 127, so as to oust justices' jurisdiction; *V. Pease* v. *Chaytor*, 31 L. J. M. C. 1; 1 B. & S. 658: *R.* v. *Blackburn*, 32 L. J. M. C. 41: and as to Quakers under s. 4, 7 & 8 W. 3, c. 34, *Backhouse* v. *Bishopwearmouth*, 30 L. J. M. C. 118.

A "bonâ fide *Mistake*" under R. 2, Ord. 16, R. S. C., includes a mistake of law as well as of fact (*Duckett* v. *Gover*, 46 L. J. Ch. 407; 6 Ch. D. 82; 25 W. R. 455: *Mason* v. *Harris*, 11 Ch. D. 106: *Tryon* v. *National Provident Inst.*, 16 Q. B. D. 678); but it must be a genuine mistake, and not an erroneous view of the law which has been deliberately adopted (*Clowes* v. *Hilliard*, 46 L. J. Ch. 271; 4 Ch. D. 413; 25 W. R. 224). *Vf*, Ann. Pr.

V. MISTAKE.

Execution "bonâ fide executed and levied," 2 & 3 V. c. 29, s. 1, meant "bona fides of the creditor who caused execution to issue and of the sheriff who is his minister" (per Abinger, C. B., *Belcher* v. *Magnay*, 13 L. J. Ex. 52; 12 M. & W. 109: *Vf*, *Hall* v. *Wallace*, 10 L. J. Ex. 133; 7 M. & W. 358).

To take a *Negotiable Instrument* "bonâ fide," means "really and truly for value" (per Cresswell, J., *Raphael* v. *Bank of England*, 17 C. B. 172).

The modern phrase for a bonâ fide holder for value of a *Bill or Note* without notice of any imperfection, is "HOLDER IN DUE COURSE" (s. 29, Bills of Ex. Act, 1882); *Va*, HOLDER FOR VALUE.

As to a bonâ fide holder for value of *Bonds*, &c; *V. London & County Bank* v. *London & River Plate Bank*, 21 Q. B. D. 535; 57 L. J. Q. B. 601.

V. GOOD FAITH.

BOND. — A Bond is an OBLIGATION by DEED. *Vh*, Jacob: Add. C. 189: Leake, 123.

"Bond, Covenant, or Instrument"; *V.* INSTRUMENT: PERIODICAL.

"Bond," s. 8, 8 & 9 W. 3, c. 11; *V. Gerard* v. *Clowes*, 1892, 2 Q. B. 11; 61 L. J. Q. B. 487; 67 L. T. 204: *Strickland* v. *Williams*, 1899, 1 Q. B. 382; 68 L. J. Q. B. 241; 80 L. T. 4.

"Bond"; Stat. Def., *Scot.* 25 & 26 V. c. 85, s. 4; 54 & 55 V. c. 34, s. 4.

Gift of Bonds; *V. Hudleston* v. *Gouldsbury*, 10 Bea. 547: *Mercer* v. *Mercer*, 10 Ir. Ch. 505: *Kent* v. *Tapley*, 11 Jur. 940: *Roberts* v. *Kuffin*, 2 Atk. 112.

"Mtges or Bonds," in an Investment Clause; *V.* MORTGAGE: DEBENTURE.

"Bonds and Specialties"; *V.* SPECIALTY.

BONIS. — Trespass *de bonis asportatis*; *V.* TROVER.

BONUS. — In *Re Eddystone Mar Insrce* (W. N. (94) 30) Stirling, J., adopted the def of "Bonus" as given in the New English Dictionary, viz, "a Boon, or Gift, over and above what is nominally due as remuneration to the receiver, and which is, therefore, something wholly to the good"; and, therefore, that a Certificate for Shares crossed with the word "Bonus," was notice to a Transferee for Value that they had been issued gratis; and, in a Liquidation, he must be settled on the List of Contributories.

"Bonus in money"; *V.* DIVIDEND.

BOOK: BOOKS. — By the Copyright Act, 1842, s. 2, a "Book" is to be construed to mean "every volume, part or division of a volume, pamphlet, SHEET OF LETTER-PRESS, sheet of music, map, chart or plan separately published." *Semble*, this includes a NEWSPAPER (*V. Cox* v. *Land and Water Journal Co*, L. R. 9 Eq. 324; 39 L. J. Ch. 152: *Walter* v. *Howe*, 17 Ch. D. 708: *Cate* v. *Devon & Exeter Newspaper Co*, 40 Ch. D. 500: *Walker* v. *Lane*, cited AUTHOR); *Punch* is such a "Book" (*Bradbury* v. *Hotten*, 42 L. J. Ex. 28; L. R. 8 Ex. 1); so is a Periodical (*Henderson* v. *Maxwell*, 4 Ch. D. 163; 46 L. J. Ch. 59) if actually published at the date of registration (*S. C.* 5 Ch. D. 892; 46 L. J. Ch. 891). A Directory is a "Book" (*Kelly* v. *Morris*, 35 L. J. Ch. 423; L. R. 1 Eq. 697); so, of Trade Lists (*Exchange Telegraph Co* v. *Gregory*, 1896, 1 Q. B. 147; 65 L. J. Q. B. 262: *Trade Auxiliary Co* v. *Middlesborough Assn*, 58 L. J. Ch. 293; 40 Ch. D. 425), or Time Tables (*Leslie* v. *Young*, 1894, A. C. 335), or Law Reports (*Butterworth* v. *Robinson*, 5 Ves. 709: *Sweet* v. *Maugham*, 9 L. J. Ch. 323; 11 Sim. 51: *Hodges* v. *Smith*, 2 Ir. Eq. Rep. 266), or the Head-Notes of Law Cases (*Sweet* v. *Benning*, 24 L. J. C. P. 175; 16 C. B. 459), or Printed Music (*D'Almaine* v. *Boosey*, 1 Y. & C. Ex. 299). Prints of all kinds

(qy, also photographs) published together in a volume, form a "book," whether there be letter-press or not; or "there may be such things as picture-books for those who cannot read letter-press" (per Jessel, M. R., *Maple* v. *Junior Army and Navy Stores*, 52 L. J. Ch. 71; 21 Ch. D. 369; 31 W. R. 70: *Vf*, *Comyns* v. *Hyde*, 43 W. R. 266; 72 L. T. 250; 11 Times Rep. 167: but *cp*, *Schove* v. *Schmincke*, inf); and prints bound in a volume are none the less a "book" entitled to copyright because they are bound up with letter-press or with other prints not so entitled; and so also of bound letter-press, for a "book" includes every part of a book (*Bogue* v. *Houlston*, 5 D. G. & S. 267; 21 L. J. Ch. 470, *whcv* explained in *Maple* v. *Junior A. & N. Stores*, sup); and so also, of each one of a series of literary compositions, if clearly distinguishable, although in one volume and under one general title (*Johnson* v. *Newnes*, 63 L. J. Ch. 786; 43 W. R. 572). Nor is a "book," whether composed of letter-press or prints only, or of both combined, less within the protection of the Copyright Act because it is used as an advertisement distributed gratis, — *e.g.* a Trade Catalogue, whether illustrated or not (*Hotten* v. *Arthur*, 1 H. & M. 603; 32 L. J. Ch. 771: *Grace* v. *Newman*, L. R. 19 Eq. 623; 44 L. J. Ch. 298; *Vthlc*, *Petty* v. *Taylor*, 1897, 1 Ch. 465; 66 L. J. Ch. 209; 75 L. T. 545; 45 W. R. 299: *Maple* v. *Junior A. & N. Stores*, sup, *whlc* definitely overrules *Cobbett* v. *Woodward*, L. R. 14 Eq. 407; 41 L. J. Ch. 656: *Vf*, *Lamb* v. *Evans*, cited LITERARY: *Collis* v. *Carter*, 78 L. T. 613). *V.* PERIODICAL: VOLUME.

But an envelope with the following words printed on the outside, — "Entered at Stationers' Hall. Key enclosed. The Christograph: The Christian's Puzzle. Suitable for all sects and denominations. Every family should have it. Price, with key, 6d.," and containing inside a piece of card-board which, when held up to the light, cast a shadow resembling the well-known picture "Ecce Homo," and a slip of paper on which was printed an extract from Longfellow, was held not to be a "Book" within the Copyright Act (*Cable* v. *Marks*, 52 L. J. Ch. 107); nor is the printed face of a Forecast Barometer such a "book" (*Davis* v. *Committi*, 54 L. J. Ch. 419; 52 L. T. 539; 1 Times Rep. 216); nor a Cricket Scoring Sheet (*Page* v. *Wisden*, 20 L. T. 435); nor an illustrated Album (*Schove* v. *Schmincke*, 55 L. J. Ch. 892; 33 Ch. D. 546; 55 L. T. 212; 34 W. R. 700). *V.* CHART.

A NEW EDITION is a new "Book," if, in substance, it is the result of new labour, as distinguished from a mere reprint (*Black* v. *Murray*, 9 Sess. Ca., 3rd Ser., 341: *Hedderwick* v. *Griffin*, 3 Sess. Ca., 2nd Ser., 383: *Thomas* v. *Turner*, 56 L. J. Ch. 56; 33 Ch. D. 292; 55 L. T. 534; 35 W. R. 177). *Vf*, Copinger on Copyright, 2 ed., 102–105.

Other Stat. Def. — 1 & 2 V. c. 59, s. 16; 7 & 8 V. c. 12, s. 20; 38 & 39 V. c. 53, s. 2.

V. AUTHOR: FIRST PUBLICATION: COPY.

"Book published in Numbers"; Stat. Def., International Copyright Act, 1886, 49 & 50 V. c. 33, s. 11.

Bound Manuscript Notes will sometimes (generally ?) pass under a *Bequest* of "Books" (*Willis* v. *Curtois*, 8 L. J. Ch. 105; 1 Bea. 189: Wms. Exs. 1049, 1065).

"Books of the Bank"; Stat. Def., 32 & 33 V. c. 102, s. 16; 48 & 49 V. c. 50, s. 27. *Cp*, "Bankers' Books," sub BANKER.

TO BOOK. — "To any place to which they book," s. 14, Regn of Railways Act, 1873, *semble*, means, place "to which they quote a Rate" (*Jones* v. *N. E. Ry*, 2 Ry & Can Traffic Ca. 208. *Vf*, *Pelsall Co* v. *Lond. & N. W. Ry*, 7 Ib. 11).

BOOK BINDING WORKS. — *V.* NON-TEXTILE FACTORIES.

BOOK DEBTS. — Include all such debts as, in the ordinary course of carrying on business, would be entered in books, although not actually entered (*Shipley* v. *Marshall*, 32 L. J. C. P. 258; 14 C. B. N. S. 566: *Va*, per Esher, M. R., *Offl. Rec.* v. *Tailby*, 56 L. J. Q. B. 33: *Re Stevens*, W. N. (88) 110, 116).

An Assignment of "all" Book Debts "due and owing or which, during the continuance of this security, may become due and owing" to the grantor, is not too vague to include future debts (*Tailby* v. *Official Rec.*, 58 L. J. Q. B. 75; 13 App. Ca. 523; 60 L. T. 162; 37 W. R. 513, over-ruling *Belding* v. *Read*, 3 H. & C. 955; 34 L. J. Ex. 212; 11 Jur. N. S. 547, and *Tadman* v. *D'Epineuil*, 20 Ch. D. 758).

A Bequest of "Book Debts," held to include the testator's share of trade debts of a Partnership (*Toplis* v. *Vanderheyde*, 9 L. J. Ex. Eq. 27; 4 Y. & C. 173). *Vf*, *Terry* v. *Terry*, 33 Bea. 232; 12 W. R. 66; 9 L. T. 469. On a Sale of "Book Debts," the vendee takes them subject to SET-OFFS (*Chick* v. *Blackmore*, 23 L. J. Ch. 622; 2 Sm. & G. 274; 2 W. R. 488).

BOOK OF ACCOUNTS. — The "Books of Accounts" mentioned in R. 259, Bankry Rules, 1883, repld R. 349, Bankry Rules, 1886, mean such books of account as are usual in the bankrupt's business, and do not extend to "letters, cheques, and vouchers from which books of account can be made up" (per Cave, J., *Re Winslow*, 55 L. J. Q. B. 238; 16 Q. B. D. 696; 54 L. T. 306; 34 W. R. 534; 3 Morr. 60).

BOOK OF ANTIQUITY. — *V.* LAW LIBRARY.

BOOK OF COMMON PRAYER. — Quà Public Worship Regulation Act, 1874 (and, probably, as of general acceptation), the "Book of Common Prayer," means (*V.* s. 6) the Book annexed to 14 Car. 2, c. 4; *Vf*, 35 & 36 V. c. 35, s. 1.

BOOK OF PUBLIC NATURE. — S. 14, 14 & 15 V. c. 99; *V.* PUBLIC BOOK.

BOOKING UP. — *V. Walsh* v. *Walley*, 43 L. J. Q. B. 102; L. R. 9 Q. B. 367.

BOOKLAND. — *V.* BOCLAND.

BOOKMAKER. — *V.* per Esher, M. R., *Powell* v. *Kempton Park Co*, cited PLACE. The business of a Sporting "Bookmaker" is not in itself illegal (*Thwaites* v. *Coulthwaite*, 1896, 1 Ch. 496; 65 L. J. Ch. 238). *Vf*, VOCATION.

BOONS. — In a Power to Lease reserving accustomed "Rents, Boons, Heriots, and Services,"—"Boons" means covenants (*Cardigan* v. *Montague*, Sug. Pow. 832, 918).

BOONWORK. — *V.* PRECARIÆ.

BOOT. — *V.* BOTE.

BOOTY. — "Booty consists in whatever can be seized upon *land* by a Belligerent Force irrespectively of its own requirements, and simply because the object seized is the property of the Enemy. In common use the word is applied to Arms and Munitions in possession of an Enemy Force, which are confiscable as booty although they may be private property; but rightly, the term includes also all property which is susceptible of appropriation" (Hall's International Law, 4 ed., 453. *Cp*, PRIZE. *Vh*, *Banda and Kirwee Booty*, cited CO-OPERATION: IN TRUST.

BORDARII. — "In Domesday there be often named *bordarii seu borduanni*, *cosces*, *coscet*, *cotucami*, *cotarii*, who are all in effect bores or husbandmen, or cottagers, saving that *bordarii*, which commeth of the French word *borde* for a cottage, signifieth there bores holding a little house, with some land of husbandry bigger than a cottage; and *coterelli* are meere cottagers, *qui cotagia et curtilagia tenent*" (Co. Litt. 5 b). *V.* VILLANI.

Cp, COTTAGE.

BORDLANDS. — "'Bordlands,' signifie the DEMESNES, which lords keep in their hands for the maintenance of their Bord or Table" (Cowel). *Vf*, Elph. 563, citing Termes de la Ley, and other authorities.

BORE. — *V.* BORDARII: SEARCH.

BORN. — The word "Born" or "Begotten," in gifts to children as a class, does not exclude after-born children (2 Jarm. 183: *Vf*, Elph. 236: LAWFULLY BEGOTTEN).

In such a connection, the word "Born" or "Living," is synonymous with *procreated*, so as to include a child *en ventre* (2 Jarm. 185). But the fiction, or indulgence, of the law which treats a child *en ventre* as actually born, applies only for the purpose of enabling a child *to take a*

benefit to which if actually born it would have been entitled; in all other cases the word "Born" must have its natural interpretation (*Blasson* v. *Blasson*, 34 L. J. Ch. 18; 2 D. G. J. & S. 665: *Pearce* v. *Carrington*, 42 L. J. Ch. 516, 900; 8 Ch. 969: it seems otherwise, quà "Living"). In *Blasson* v. *Blasson*, the words were "born *and* living"; and "it was necessary there that the child should be both born and living" (per Chitty, J., *Re Burrows*, cited LIVING). *V.* DUE TIME.

Vf, "Born," "To be born," Watson, Eq. 1381–3: TO BE BORN: *Tarbuck* v. *Tarbuck*, 4 L. J. Ch. 129: *Brookman* v. *Smith*, L. R. 6 Ex. 291; 7 Ib. 271; 40 L. J. Ex. 161; 41 Ib. 114.

"If A. shall not *have had* a child," embraces a child *en ventre* (*Pearce* v. *Carrington*, sup).

Quà MURDER, for a child to be "born *alive*" the whole body must be brought into the world alive; it is not sufficient that the child respires in the progress of the birth (per Littledale, J., *R.* v. *Poulton*, 5 C. & P. 330).

BORNE. — "Borne on the Books of one of Her Majesty's Ships in Commission," s. 87, 29 & 30 V. c. 109; *V. Hearson* v. *Churchill*, 1892, 2 Q. B. 144; 61 L. J. Q. B. 569; 66 L. T. 843; 40 W. R. 615; 56 J. P. 820.

BOROUGH. — In very early days "Borough" meant a Castle, or Fortified Town (2 Kemble, Anglo-Saxons in England, 171, 328: *Va*, Burgh-bote, sub BOTE); then it got to mean a TOWN returning a burgess or burgesses to Parliament (Co. Litt. 115 b: Cowel: Jacob), and therefore it was said "Every Borough is a Town, but every Town is not a Borough" (*Linne Regis Case*, 10 Rep. 123 b). *Vf*, 2 Encyc. 213.

In modern times Boroughs are, broadly speaking, divided into (1) Parliamentary Boroughs, *i.e.* returning Members to Parliament; and (2) Municipal Boroughs, *i.e.* urban communities for municipal government, — the latter being subdivided into (a) those having a Commission of the Peace, and (b) those without such a Commission.

For a list of Parliamentary Boroughs, *V.* Rep People Act, 1832, as amended by Rep People Act, 1867, and Redistribution of Seats Act, 1885: For Municipal Boroughs in 1835, *V.* 5 & 6 W. 4, c. 76, which, with much subsequent municipal legislation, was replaced by Mun Corp Act, 1882.

"Borough," has been variously expounded by interp clauses: The Stat. Def. connotes,

Sometimes, a Parliamentary Borough, merely, — *e.g.* 31 & 32 V. c. 125, ss. 3, 58; 38 & 39 V. c. 17, s. 109, c. 63, s. 33:

Sometimes, a Municipal Borough, merely, — *e.g.* 18 & 19 V. c. 57, s. 7; 19 & 20 V. c. 69, s. 30:

Sometimes, a Municipal Borough, or a Town or Place having a separate Police Establishment, — *e.g.* 32 & 33 V. c. 70, s. 7; 41 & 42 V. c. 74, s. 7:

Sometimes, a Municipal Borough in England; any Royal Burgh or Parliamentary Burgh or Town, in Scotland; or, Municipal Corp, in Ireland, — *e.g.* 23 & 24 V. c. 139, s. 37; 25 & 26 V. c. 66, s. 1:

Sometimes, a Borough Town and City Corporate, having a Commission of the Peace, — *e.g.* 16 & 17 V. c. 97, s. 132; *Vth, Faversham* v. *Thanet*, 2 B. & S. 292:

Sometimes, any Borough, not being a County of a City or County of a Town having a Commission of the Peace, *e.g.* 40 & 41 V. c. 56, s. 7:

Sometimes a City, County of a City or Town, and Town Incorporate, — *e.g.* 18 & 19 V. c. 126, s. 23; 36 & 37 V. c. 33, s. 5:

Sometimes, "a County of a City, County of a Town, City, Municipal Borough, Cinque Ports and its Liberties, Town Corporate, or other Place, in which a General Annual Licensing Meeting is held in pursuance of the Intoxicating Liquors (Licensing) Act, 1828, exclusive of a petty sessional division of a county," — *e.g.* 35 & 36 V. c. 94, s. 74.

Other Stat. Def. — 45 & 46 V. c. 50, s. 77; 47 & 48 V. c. 70, s. 35. — *Ir.* 13 & 14 V. c. 69, s. 117; 31 & 32 V. c. 49, s. 25, c. 112, s. 40; 40 & 41 V. c. 56, s. 7.

In all Acts passed after 31st Dec 1889, "Borough," "Parliamentary Borough," and "Municipal Borough" having the meanings prescribed by s. 15, Interp Act, 1889.

Cp, BURGH: CORPORATE: COUNTY BOROUGH: DISTRICT: METROPOLITAN BOROUGHS.

"Borough, or *Place*," s. 31, 11 & 12 V. c. 43, means a place having a Commission of the Peace (*R.* v. *Dale*, 22 L. J. M. C. 44; Dears. 37; 17 J. P. 68: *Winn* v. *Mossman*, 38 L. J. Ex. 200; L. R. 4 Ex. 292; 33 J. P. 743: *Reigate* v. *Hunt*, 37 L. J. M. C. 70; 32 J. P. 342. *Cp*, *R.* v. *Yorkshire Jus.*, cited PLACE, at end). So, "Town Corporate," probably, usually connotes a place having a Commission of the Peace (s. 4, 24 & 25 V. c. 75; s. 246, Mun Corp Act, 1882); but, a Borough may be a "*Town Corporate*," s. 1, 9 G. 4, c. 61, though it has no separate Commission of the Peace (*Brown* v. *Nicholson*, 5 C. B. N. S. 468; 28 L. J. M. C. 49; 7 W. R. 88; 32 L. T. O. S. 160).

"Borough *Business*"; Stat. Def., 17 & 18 V. c. 20, s. 2.

"Borough *Civil Court*"; Stat. Def., 45 & 46 V. c. 50, s. 7.

"Borough *Council*"; Stat. Def., 51 & 52 V. c. 54, s. 14.

"Borough *Justices*"; Stat. Def., 17 & 18 V. c. 20, s. 2.

"Borough *Occupation Franchise*"; Stat. Def., 48 & 49 V. c. 3, s. 7 (7).

"Quarter Sessions Borough"; *V.* QUARTER SESSIONS.

"Borough Rate," or "Borough Fund"; Stat. Def., 8 & 9 V. c. 100, s. 114, c. 126, s. 84; 14 & 15 V. c. 28, s. 2; 16 & 17 V. c. 97, s. 132; 18 & 19 V. c. 57, s. 4, c. 121, s. 2. — *Scot.* 55 & 56 V. c. 43, s. 25; 56 & 57 V. c. 67, s. 3. — *Ir.* 19 & 20 V. c. 98, s. 2; 29 & 30 V. c. 90, s. 57; 35 & 36 V. c. 60, s. 28.

BOROUGH ENGLISH. — "Some Boroughs have such a Custome, that if a man have issue many sonnes and dyeth, the Youngest Son shall inherit all the tenements which were his father's within the same Borough, as Heire unto his father by force of the Custome; the which is called Borough English" (Litt. s. 165); and, failing sons, some Customs give the land to the Youngest Brother (Co. Litt. 110: Cowel). The Custom is called Borough English, "because it was the first (as some hold) in England" (Co. Litt. 110 b: *Sv*, 2 Encyc. 216, 217). *Vh*, Wms. R. P. 107: Goodeve, 3, *n.*

BORROW. — What is "to borrow and raise upon the Credit of the Rates," s. 59, 58 G. 3, c. 45; *V. R.* v. *St. Michael*, 6 E. & B. 807; 25 L. J. Q. B. 379.

A power "to borrow, or take up money at interest," gives power to raise money on any kind of security for its repayment at a future date (*Bank of England* v. *Anderson*, 6 L. J. C. P. 158; 3 Bing. N. C. 589: *Booth* v. *Bank of England*, 7 Cl. & F. 509; 6 Bing. N. C. 415).

V. HEREAFTER BORROW: LOAN.

BOSCUS. — *V.* WOOD.

BOTE. — "Bote," or "'Boot,' is an old word, and signifieth helpe, succour, ayde, or advantage, and is commonly joined with another word whose signification it doth augment" (Termes de la Ley); it is synonymous with ESTOVERS (2 Bl. Com. 35).

"*House-Bote*, is a sufficient allowance of wood to build or repair the house, or to burn in it, which latter is sometimes called *Fire-Bote*. *Plough-Bote* and *Cart-Bote*, are wood to be employed in making and repairing all instruments of husbandry, as ploughs, carts, harrows, rakes, forks, &c. *Hay-Bote* or *Hedge-Bote* is wood for repairing hedges or fences, as pales, stiles, and gates to secure enclosures" (Woodf. 737). "*Common of Estovers*, is the right to cut wood for these purposes in another man's land" (Elph. 564, citing Spelm. *Bota*: *Estovarium*: Wms. on Settlements, 230; Wms. on Rights of Common, *pass.*).

"*Bote* is an ancient Saxon word, and sometimes signifieth AMERCIAMENT or Compensation, as *Theftbote*, *Manbote*; or freedome from the same, as *Brigbote*, *Castlebote*, *Burghbote*" (Co. Litt. 127 a): The following are *Amerciaments*, —

Dolg-bote; "A Recompense made for a scar or wound" (Cowel).

Feud-bote; "A Recompense for engaging in a feud or faction, and the contingent damages: it having been the custome of ancient times for all the kindred to engage in the kinsmans quarrel" (Cowel).

God-bote; "A Fine, or Amerciament for crimes and offences against God; an Ecclesiastical or Church Fine" (Cowel).

Had-bote; "A Recompense made for the violation of Holy-Orders, or violence offer'd to persons in Holy Orders" (Cowel).

Hloth-bote; "A Mulct set on him who is in a Riot" (Jacob).

Mag-bote, or *Moeg-bote*; "A Recompense for the slaying or murder of ones kinsman" (Cowel: *Vf*, Jacob).

Man-bote; "A Compensation or Recompense for homicide; particularly due to the lord for killing his man or vassal" (Jacob: *Vf*, Cowel).

Theft-bote; "Is when a man taketh any goods of a theefe to favour and maintaine him, and not when a man taketh his owne goods that were stollen from him" (Termes de la Ley: *Vf*, Cowel: Jacob). *V.* COMPOUND.

The following are *Freedoms*, or *Quittances*, —

Brig-bote, or *Brug-bote*, or *Bridg-bote*; "Is to be quit of giving ayde to the repairing of Bridges" (Termes de la Ley). Jacob says, it was a Contribution for this purpose: *Va*, Cowel, *Bruck-bote*: but Co. Litt., sup, treats it as a Quittance.

Burgh-bote; "Is to be quit of giving ayde to make a Borough, Castle, Citie, or Walles throwne downe" (Termes de la Ley): Cowel and Jacob say, it was a Contribution for these purposes: but Co. Litt., sup, treats it as a Quittance.

Castle-bote; *V.* preceding par.

Park-bote; "Is to be quit of enclosing a PARK, or any part thereof" (4 Inst. 308).

BOTH. — "Both," as inaccurately used in s. 2, 6 G. 4, c. 57; *V. R.* v. *Tadcaster*, 4 B. & Ad. 703; 2 L. J. M. C. 63.

"Both Eyes"; *V.* SIGHT.

"Both Sides"; *V.* NEPHEW.

V. EITHER.

BOTTOMRY BILL. — Form of, *V.* Abbott, 1246.

BOTTOMRY BOND. — A Bottomry Bond, "is a contract by which, in consideration of money advanced for the NECESSARIES of the Ship to enable it to proceed on its voyage, the keel or bottom of the ship, *pars pro toto*, is made liable for the repayment of the money in the event of the safe arrival of the ship at its destination" (per Ld Stowell, *The Atlas*, 2 Hagg. Adm. 53). "A contract similar to this upon the Cargo of the ship, is called Respondentia, but it is of rare occurrence" (Ib. 57). The Master has no authority to hypothecate the vessel in any other manner (*Stainbank* v. *Fenning*, 11 C. B. 51; 20 L. J. C. P. 226).

Vh, Park, ch. 22: Abbott, 152–179, 882, 1245: Carver, Part 2, ch. 10: Add. C. 760 *et seq*: 2 Encyc. 220–227.

Cp, Maritime Lien, sub LIEN.

BOUGHT. — Where a commission is payable on all goods "bought," it becomes payable on all orders accepted, even though the person accepting is ultimately unable to deliver the goods ordered (*Lockwood* v. *Levick*, 8 C. B. N. S. 603; 29 L. J. C. P. 340). *Cp*, SALE.

Corn "bought," or "purchased," within s. 27 of the Act authorising the importation of Foreign Corn on paying duties in proportion to the price of British Corn (Peel's Sliding Scale Act, 9 G. 4, c. 60), means, corn "bought" in the popular sense of the word, irrespective of the contract therefor being valid in law as being in compliance with the Statute of Frauds or otherwise; because the object of the Returns of Sales required by the section was to ascertain the average price of British corn (*R.* v. *Townrow*, 1 B. & Ad. 465).

Quà Corn Returns Act, 1882, 45 & 46 V. c. 37, "'Bought,' means the agreement to buy; whether made by sale-note or otherwise, and irrespective of actual delivery in pursuance thereof" (s. 18). *Vf*, BRITISH CORN.

An agreement to give drafts against produce "bought *and paid for*," means, actually bought and paid for; — "to be" cannot be read into the expression (*Chartered Bank of India, &c* v. *Macfayden*, 64 L. J. Q. B. 367; 72 L. T. 428; 43 W. R. 397).

"Bought or agreed to buy," s. 9, Factors Act, 1889; *V.* BUY.

"Bought and Sold" Notes; *V.* Add. C. 493: Leake, 226, 227: *Fisenden* v. *Levy*, 3 F. & F. 477.

BOUND. — *V.* BIND.

"To be bound"; *V. Re Frape*, cited IN WRITING.

"Bound to conform"; *V.* CONFORM.

A Treaty provision that the government shall "not be bound" to extradite, implies that they may (*Re Galwey*, 1896, 1 Q. B. 230; 65 L. J. M. C. 38; 73 L. T. 756; 44 W. R. 313; 60 J. P. 87).

"Bound to relinquish"; *V.* RELINQUISH.

A statement (amounting to a Warranty) in a Charter-Party, that the ship is "now in Finland *bound to London*," means, that the ship is in some place in Finland from which place she is under engagement to proceed direct to London; not that she is at liberty to go to some other place in Finland so long as she comes direct from Finland to London without calling at a port in any other country (*Engman* v. *Palgrave*, 4 Com. Ca. 75).

V. LEGALLY BOUND. *Cp*, CONCERNED.

BOUNDARY. — Place having a known, or defined Boundary; *V. R.* v. *Northowram, &c*, cited PLACE.

"Boundary of ANY Lands," s. 45, Tithe Act, 1836, did not enable Tithe Commrs to settle the Boundary of Parishes (*Re Ystradgunlais Commrs*, 8 Q. B. 32).

BOUNDING. — "Bounding or abutting" on a New Street within s. 77, 25 & 26 V. c. 102; *V. Williams* v. *Wandsworth*, 53 L. J. M. C. 187; 13 Q. B. D. 211: *Hackney* v. *G. E. Ry*, 51 L. J. M. C. 57; 52 Ib. 105; 8 App. Ca. 687: *L. B. & S. Ry* v. *St. Giles*, 48 L. J. M. C. 184; 4 Ex. D. 239.

"Bounding or abutting," on a Street where footway made, s. 1, 53 & 54 V. c. 54; *V. Paddington* v. *North Metrop Ry*, 1894, 1 Q. B. 633; 63 L. J. Q. B. 316; 58 J. P. 419.

V. FORMING: FRONTING: ABUT.

BOUNDS. — *V.* BANNUM.

BOURNE. — *V.* STURGES BOURNE'S ACT.

BOVATA TERRÆ. — *V.* OXGANGE.

BOVERIA. — "An Ox-house, or Ox-stall" (Cowel).

BOVILL'S ACTS. — The Petitions of Right Act, 1860, 23 & 24 *V.* c. 34:

The Lunacy Regn Act, 1862, 25 & 26 V. c. 86, repealed by the Lunacy Act, 1890:

To amend law of Partnership, 28 & 29 V. c. 86, replaced by ss. 2 (3), 3, Partnership Act, 1890.

BOW WINDOW. — *V.* BUILDING.

BOX. — *V. Hodgson* v. *Little*, cited FISHERY.

"Boxes," held not to include Rollers in a Patent Specification (*Barber* v. *Grace*, 1 Ex. 339; 17 L. J. Ex. 122).

BOY. — *V.* PUER: GIRL.

Quà Coal Mines Regn Act, 1887, 50 & 51 V. c. 58, "'Boy,' means a male under the age of 16 years" (s. 75).

"Boys on the FOUNDATION," quà Public Schools Act, 1868, 31 & 32 V. c. 118; *V.* s. 4.

BOYCOTT. — To "boycott" a person, is the offence defined in s. 2 (1), Criminal Law and Procedure (Ir) Act, 1887, 50 & 51 V. c. 20, on *whv*, *Re Heaphy*, 22 L. R. Ir. 500. To declare a person "boycotted," or to threaten to "boycott" him, is to excite an Unlawful CONFEDERACY against him, within s. 3, Tumultuous Risings (Ir) Act, 1831, 1 & 2 W. 4, c. 44 (*R.* v. *Barrett*, 18 L. R. Ir. 430); though, possibly, it ought to be left to the jury to say whether the word, as used in the case under trial, bears such meaning (*R.* v. *Coady*, 10 Ib. 205).

To allege of another that he has been guilty of a "Boycott," is Libel (*Pink* v. *Federation of Trades Unions*, 67 L. T. 258: *Trollope* v. *London Bg Trades Federation*, 72 L. T. 342; 11 Times Rep. 280).

Cp, INTIMIDATE.

BRANCH. — Branch of a FRIENDLY SOCIETY; Stat. Def., Friendly Soc. Act, 1896, s. 106.

V. FIRST HEIR MALE: YOUNGER.

BRAND. — "Brand" (introduced into the description of what may be a TRADE-MARK by s. 64, 46 & 47 V. c. 57, repld s. 10, 51 & 52 V. c. 50) does not, necessarily, mean something burnt into an article; and, probably, an incorporation, *e.g.* by a water-mark, would suffice (*Pirie* v. *Goodall*, 1892, 1 Ch. 35; 61 L. J. Ch. 79; 65 L. T. 640; 40 W. R. 81); but it cannot consist of mere words in common use (*S. C.*). *V.* HEADING.

BRANDY. — "Brandy," sold simply as such, must not be reduced more than 25 degrees under proof (Sale of Food and Drugs Act Amendment Act, 1879, 42 & 43 V. c. 30, s. 6). *Sv*, GIN, and the case there cited.

BRAWLING. — *V.* s. 2, 23 & 24 V. c. 32, and *Vth*, *Asher* v. *Calcraft*, 56 L. J. M. C. 57; 18 Q. B. D. 607; 56 L. T. 490; 35 W. R. 651; 51 J. P. 598: *Vallancey* v. *Fletcher*, cited ANY.

"Chiding and Brawling" in Church, 5 & 6 Edw. 6, c. 4; *V. Clinton* v. *Hatchard*, 1 Addams, 96: *Dawe* v. *Williams*, 2 Ib. 138: *Jenkins* v. *Barrett*, 1 Hagg. Ecc. 18.

BREACH OF CONDITION. — *V.* FORFEITURE.

BREACH OF CONTRACT OR DUTY. — These words, in s. 6, Admiralty Court Act, 1861, 24 V. c. 10, "have been held to be limited to a breach of contract contained in a Bill of Lading (*The Pieve Superiore*, L. R. 5 P. C. 482; 43 L. J. Adm. 20), and they do not give jurisdiction in respect of a breach of Charter-Party committed before the goods were put on board (*The Dannebrog*, L. R. 4 A. & E. 386; 44 L. J. Adm. 21)": 1 Maude & P. 400.

Action "founded on" breach of contract; *V.* FOUNDED ON.

BREACH OF COVENANT. — *V. Goodhand* v. *Ayscough*, 52 L. J. Q. B. 97; 10 Q. B. D. 71.

V. PARTICULAR BREACH.

BREACH OF TRUST. — Liability incurred by means of "Fraud or Breach of Trust," s. 49, Bankry Act, 1869; *V. Emma Co* v. *Grant*, 50 L. J. Ch. 449; 17 Ch. D. 122: *Ramskill* v. *Edwards*, 55 L. J. Ch. 81; 31 Ch. D. 100; 53 L. T. 949; 34 W. R. 96. *Note:* The corresponding phrase in s. 30, Bankry Act, 1883, and in s. 28 (3 *h*), Ib. (the latter section repld s. 8 (3 *l*), Bankry Act, 1890) is "Fraud, or *fraudulent* Breach of Trust": Is the sense altered? *Vh*, *Re Smith*, 1893, 2 Ch. 1; 62 L. J. Ch. 336; 68 L. T. 337; 41 W. R. 289; 57 J. P. 516: *Re Parker*, *Ex p. Sheppard*, 19 Q. B. D. 84.

Costs ordered against a Trustee in an action relating to a fraudulent breach of trust, are not incurred "*by means of*" such breach, within s. 30 (1), Bankry Act, 1883, though consequential upon it (*Re Greer*,

1895, 2 Ch. 217; 64 L. J. Ch. 620; 72 L. T. 865; 43 W. R. 547; 59 J. P. 441).

Breach of Trust quâ s. 8 (1), Trustee Act, 1888; *V. Re Swain*, 1891, 3 Ch. 233; 61 L. J. Ch. 20; 65 L. T. 296: *Re Bowden*, cited MONEY.

A "Breach of Trust" which, when done at the INSTIGATION, &c, of a Beneficiary, gives a Trustee a claim to be indemnified under s. 6, Trustee Act, 1888 (repld s. 45, Trustee Act, 1893), must be "some act or omission which is itself a breach of trust, and not some act or omission which only becomes a breach of trust by reason of want of care on the part of the trustees" (per Lindley, L. J., *Re Somerset*, 1894, 1 Ch. 231; 63 L. J. Ch. 41: *Mara* v. *Browne*, 1895, 2 Ch. 69; 64 L. J. Ch. 594; 72 L. T. 765, revd on another point, 1896, 1 Ch. 199; 65 L. J. Ch. 225; 73 L. T. 638). *Note.* As to mode of obtaining this indemnity, *V. Re Holt*, 1897, 2 Ch. 525; 66 L. J. Ch. 734; 76 L. T. 776; 45 W. R. 650: — and as to recoupment by assenting Beneficiary independently of the statute, *V. Raby* v. *Ridehalgh*, 24 L. J. Ch. 528; 7 D. G. M. & G. 104: *Sawyer* v. *Sawyer*, 54 L. J. Ch. 444; 28 Ch. D. 595.

As to Relief or Excusal for Breach of Trust; *V.* REASONABLY.

"Fraud, or Fraudulent Breach of Trust," in 1st Exception to s. 8, Trustee Act, 1888 (enabling Trustees to plead Statute of Limitations), connotes fraud to which a trustee is "party or privy," *i.e.* one in which "he has personally in some way participated" (per Lindley, L. J., *Thorne* v. *Heard*, 63 L. J. Ch. 360; affd 64 Ib. 652; 1895, A. C. 495). *Vf*, *How* v. *Winterton*, 1896, 2 Ch. 626; 65 L. J. Ch. 832; 75 L. T. 40; 45 W. R. 103.

V. TRUST: TRUSTEE.

BREAD. — *V.* FRENCH BREAD.

BREAK. — A burglarious breaking is effected by breaking, or further breaking, any part of a DWELLING-HOUSE, or unloosing or forcing any of its fastenings; or by feloniously obtaining admission by a trick or threat, or by getting down the chimney (for the cases, *V.* Arch. Cr. 600; Rosc. Cr. 314; and for another definition, *V.* Steph. Cr. 248).

BREAK BULK. — To "break bulk" is not now necessary to constitute Larceny by a Bailee (s. 3, 24 & 25 V. c. 96, re-enacting s. 4, 20 & 21 V. c. 54). The cases were very numerous, and turned on nice distinctions, as to what amounted to "breaking bulk" (*V.* 2 Russ. Cr. 131, 153, 320).

BREAK DOWN. — Break-down of Machinery; *V. Hogarth* v. *Miller*, cited EFFICIENT.

BREAK GROUND. — A Ry Co "breaks ground," within an agreement relating to the construction of a line of railway, only when such construction really begins; not when, as preparatory to such construc-

tion, they merely remove some rails to take the angles of certain lines which they will have to cross at a level (*Bristol & Exeter Ry* v. *Somerset & Dorset Ry*, 2 Ry & Can Traffic Ca. 82).

BREAK OUT. — "The expression 'Breaks out' (in the offence of Breaking Prison) means an actual breaking of the place in which the party is confined, whether intentional or not" (Steph. Cr. 102. *Vf*, Rosc. Cr. 373, 392).

"Break Prison"; *V.* PRISON: Jacob, *Gaol and Gaoler*: 10 Encyc. 404.

BREAKAGE. — *V.* LEAKAGE AND BREAKAGE.

"Breakage during removal," in an Exception to a Plate-glass Insrce; *V. Marsden* v. *City and County Assrce*, 35 L. J. C. P. 60; L. R. 1 C. P. 232.

BRED. — As to where Fish are "bred, kept, or preserved," s. 1, 5 G. 3, c. 14; *V. R.* v. *Carradice*, Russ. & Ry. 205.

BRESSUMMER. — Quà London Bg Act, 1894, "'Bressummer,' means a wooden beam, or a metallic girder, which carries a wall" (subs. 7, s. 5). *V.* FOUNDATION: BASE.

BREST. — "Brest, or any Port in Europe north and east of Brest," s. 625, Mer Shipping Act, 1894; *V. The Rutland*, and *The Columbus*, cited TRADING.

BREWER. — "Brewer," generally, connotes a Brewer of BEER, *e.g.* 43 & 44 V. c. 20, s. 2. *Vf*, ART.

BREWERY. — A testamentary option to purchase at ⅔ths its value, all the testator's "Property, Brewery, &c," held, on the context and the circumstances, that "Brewery" included, not only the place where the brewing was done and the business carried on but also, the business connexion, including the Tied Houses (*Waite* v. *Morland*, 14 W. R. 746; 14 L. T. 649).

BRIBERY. — "'Bribery' is a high offence, viz., when any man in Judicial place or any great Officer takes any fee, pension, gift, or reward for doing his Office, save from the King onely" (Cowel): *Vf*, 4 Bl. Com. 139.

As between *Principal and Agent.* — "If a gift be made to a Confidential Agent with the view of inducing the agent to act in favour of the Donor in relation to transactions between the Donor and the agent's Principal, and that gift is secret as between the Donor and the Agent, — *i.e.* is without the knowledge and consent of the Principal, — then the gift is a Bribe in the view of the law. Then these rules apply, — (1) The Court will not enquire into the Donor's motive in giving the bribe,

nor allow evidence to be gone into as to the motive; — (2) The Court will presume, in favour of the Principal and as against the Briber and the agent bribed, that the agent was influenced by the bribe, and this presumption is irrebuttable; — (3) If the Agent be a confidential buyer of goods for his Principal from the Briber, the Court will assume, as against the Briber, that the true price of the goods, as between him and the Purchaser, must be taken to be less than the price paid to or charged by the Briber by, at any rate, the amount or value of the Bribe, but if the Purchaser alleges loss or damage beyond this he must prove it" (per Romer, L. J., *Hovenden* v. *Millhoff*, 83 L. T. 43).

For the def of Bribery at Parliamentary Elections, *V.* Corrupt Practices Prevention Act, 1854, 17 & 18 V. c. 102, ss. 2, 3; Rep People Act, 1867, s. 49; Rep People (Scot) Act, 1868, s. 49; 44 & 45 V. c. 40, s. 2; 46 & 47 V. c. 51, s. 3, and Sch 3, Part 3: — at Municipal Elections, *V.* 47 & 48 V. c. 70, s. 2, and Sch 3, Part 1; 45 & 46 V. c. 50, s. 77; 53 & 54 V. c. 55, s. 2. *Vh*, Leigh & Le Marchant, 4 ed., 3–25: Mattinson & Macaskie, 2 ed., 4–39: Rogers, ch. 11. *Cp*, CORRUPT PRACTICE.

Vf, Arch. Cr. 1187, 1193: Rosc. Cr. 297–303: 2 Encyc. 245–247.

BRICK-BUILT. — "A house described as 'brick-built,' is understood to be brick-built in the ordinary sense of the words; not composed externally partly of brick and partly of timber, and lath and plaster" (Dart. 137, 155, citing *Powell* v. *Doubble*, Sug. V. & P. 29: *Arnold* v. *Arnold*, 14 Ch. D. 270; 42 L. T. 705; 28 W. R. 635: *English* v. *Murray*, 49 L. T. 35; 32 W. R. 84).

BRICKWORK. — *V.* NEW BRICKWORK.

BRIDGE. — As to what is a Bridge and whether an Arch, or a number of Arches, constructed over *stagnant* water may be considered a Bridge; *V. R.* v. *Derbyshire*, 11 L. J. M. C. 51; 2 G. & D. 97.

In *Nottingham Co. Co.* v. *Manchester S. & L. Ry* (71 L. T. 430). "Bridge," held, to include APPROACHES of the length of 180 feet on either side of the bridge in question. So, quà Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, "Bridge," includes "the accesses thereof"; but not any bridge which a person is bound to maintain (s. 3).

"Bridge hereafter to be *erected or built*," s. 5, 43 G. 3, c. 59; *V. R.* v. *Lancashire*, cited ERECTED.

As to the phrase, "Bridge broken in a Highway," Statute of Bridges, 22 H. 8, c. 5; *V. R.* v. *Southampton*, No. 1, 55 L. J. M. C. 158; 17 Q. B. D. 424; 55 L. T. 322; 35 W. R. 10; 50 J. P. 773: *Sv*, *S. C.*, No. 2, 19 Q. B. D. 590; 56 L. J. M. C. 112; 57 L. T. 261: and as to "Bridges" in Statute of Sewers, *V.* Callis, 85 *et seq.*

A Bridge may be a "STREET" (*Beaver* v. *Manchester*, 26 L. J. Q. B. 311).

"Bridge," in s. 46, Ry C. C. Act, 1845, includes the roadway over a bridge as well as the structure of the bridge itself, and therefore the cost

of metalling and paving such roadway is payable by the Railway Company (*Bury* v. *Lancashire & Yorkshire Ry*, 57 L. J. Q. B. 280; 20 Q. B. D. 485; 59 L. T. 193; 36 W. R. 491; 52 J. P. 341; affd in H. L. nom. *Lancashire & Yorkshire Ry* v. *Bury*, 59 L. J. Q. B. 85; 14 App. Ca. 417; 61 L. T. 417; 54 J. P. 197).

The Mutiny Act exemption of soldiers from toll on crossing "Bridges," does not extend to a steam ferry boat, though it be called a floating bridge (*Ward* v. *Gray*, 34 L. J. M. C. 146; 6 B. & S. 345).

Power to open soil of Bridges; *V.* OPEN.

"Bridge *Tax*," "Bridge *Rate*," "Bridge *Area*," quà Loc Gov (Ir) Act, 1898, 61 & 62 V. c. 37; *V.* s. 66 (9).

"The Bridges Acts, 1740 to 1815"; "The Bridges (Ir) Acts, 1813 to 1875"; *V.* Sch. 2, Short Titles Act, 1896.

V. COUNTY BRIDGE: PRIVATE BRIDGE: PUBLIC BRIDGE: OVER.

Vh, Woolrych on Ways, ch. 8.

BRIDLE-PATH. — "A Bridle-path, or Horse-way, is a WAY along which a man has a right to ride or lead a horse, although he owns no estate or interest in the soil. Such right may be either public or private. And, as a rider must occasionally dismount, a Horse-way includes a Foot-way" (2 Encyc. 247, 248). *Cp*, DRIFTWAY: FOOTWAY.

BRIG-BOTE. — *V.* BOTE.

BRINE. — *V.* MINE.

"Brine Pumper," quà 54 & 55 V. c. 40, "means a person or company who pumps or raises brine from shafts, wells, springs, or mines" (s. 52).

BRING FORWARD. — The prohibition against "Bringing Forward" a house or building beyond the front wall of the building on either side of it, s. 156, P. H. Act, 1875, does not apply to a new house or building on a new site (*Williams* v. *Wallasey*, 55 L. J. M. C. 133; 16 Q. B. D. 718; 34 W. R. 517).

BRINGING UP. — Trust for, *V.* MAINTENANCE.

BRITAIN. — *V.* GREAT BRITAIN.

BRITISH COIN. — "British Coin," "British Money"; Stat. Def., 52 & 53 V. c. 42, s. 2 (4).

BRITISH COLONY. — "British Colony"; Stat. Def., 14 & 15 V. c. 99, s. 19.

"British Colony and Possession"; Stat. Def., 31 & 32 V. c. 37, s. 5.

BRITISH COMPOUNDS. — Stat. Def., Spirits Act, 1880, 43 & 44 V. c. 24, s. 3. *Cp*, BRITISH WINE.

BRITISH CONSULAR OFFICER. — Quà Foreign Marriage Act, 1891, 54 & 55 V. c. 74, includes "a Pro-Consul and an Acting Consular Agent" (s. 11).

BRITISH CORN. — Quà Corn Returns Act, 1882, 45 & 46 V. c. 37, "'British Corn,' means Wheat, Barley, and Oats, the produce of the United Kingdom, the Channel Islands, or the Isle of Man" (s. 18).

BRITISH COURT. — "British Court in a Foreign Country"; Stat. Def., 53 & 54 V. c. 37, s. 16; 55 & 56 V. c. 6, s. 6.

BRITISH CUSTOM. — "AVERAGE, if any, to be adjusted according to British Custom," means, that only such General Average contribution is to be made as would be made according to the practice of British adjusters (*Stewart* v. *W. India & Pacific S. S. Co*, L. R. 8 Q. B. 88, 362; 42 L. J. Q. B. 191; 28 L. T. 742; 21 W. R. 953). For the rules regulating such practice, *V.* Abbott, App. 1253.

BRITISH DOMINIONS. — For the purposes of the Copyright Act, 1842, "the words 'British Dominions' shall be construed to mean and include all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the Colonies, Settlements and Possessions of the Crown which now are or hereafter may be acquired" (s. 2). That extends to Canada (*Low* v. *Routledge*, 35 L. J. Ch. 114; 1 Ch. 42).

BRITISH FUNDS. — "British Funds" is a synonym for "FUNDS": — and a direction to purchase an ANNUITY in "the British Funds," means, not that a British Government Annuity is to be purchased for the life of the beneficiary but, that British Funds are to be purchased sufficient to pay the amount annually, and therefore the Annuity is perpetual (*Kerr* v. *Middlesex Hosp.*, 22 L. J. Ch. 355; 17 Jur. 49; 1 W. R. 93; 20 L. T. O. S. 160).

BRITISH INDIA. — In all Acts of Parliament passed after the 31st Dec. 1889, "'British India' shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India" (s. 18 (4), Interp Act, 1889); and,

"'INDIA' shall mean British India together with any territories of any native prince or chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India" (s. 18 (5), Ib.).

BRITISH ISLANDS. — In all Acts of Parliament passed after 31st Dec 1889, "'British Islands,' shall mean the UNITED KINGDOM, the

Channel Islands, and the Isle of Man" (s. 18 (1), Interp Act, 1889). In Lloyd's Signal Stations Act, 1888, 51 & 52 V. c. 29, the phrase, "means the United Kingdom and the Channel Islands" (s. 19).

Cp, def in Bills of Ex. Act, 1882, quà Inland Bills; *V.* INLAND: "British Isles," 5 & 6 V. c. 12, s. 56.

BRITISH LAW. — "British Law," or "Law of Great Britain," in Treaties and Protocols; *V.* Hall on the Foreign Jurisdiction of the British Crown, 165, *n*, 166.

BRITISH LETTER. — Quà Post Office (Offences) Act, 1837, 7 W. 4 & 1 V. c. 36, "'British Letter' shall mean a letter transmitted within the UNITED KINGDOM" (s. 47).

BRITISH NEWSPAPER. — Quà Post Office (Offences) Act, 1837, "'British Newspapers,' shall mean NEWSPAPER printed and published in the UNITED KINGDOM" (s. 47, the additional words as to Stamp Duty not now being operative): quà Post Office (Duties) Act, 1840, 3 & 4 V. c. 96, the phrase means "newspapers printed and published in the UNITED KINGDOM, and also newspapers printed in the Islands of Guernsey, Jersey, Alderney, Sark, or Man" (s. 71).

BRITISH PORT. — Quà Sea Fisheries Act, 1843, 6 & 7 V. c. 79, "British Port," means, any PORT in the United Kingdom or the Channel Islands (s. 18).

BRITISH POSSESSION. — In all Acts of Parliament passed after 31st Dec. 1889, "'British Possession,' shall mean any part of Her Majesty's dominions exclusive of the United Kingdom; and where parts of such dominions are under both a central and local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British Possession" (s. 18 (2), Interp Act, 1889).

Prior Stat. Def. — 26 & 27 V. c. 24, s. 2; 32 & 33 V. c. 11, s. 2; 33 & 34 V. c. 52, s. 26; 45 & 46 V. c. 74, s. 17, c. 76, s. 3; 46 & 47 V. c. 57, s. 117; 47 & 48 V. c. 31, s. 18.

V. BRITISH COLONY: BRITISH SETTLEMENT.

BRITISH POSTAGE. — Stat. Def., 7 W. 4 & 1 V. c. 36, s. 47.

BRITISH SEAMAN. — "'British Seaman,' may mean, one who, whatever his nationality, is serving on board a British ship" (per Blackburn, J., *R.* v. *Anderson*, L. R. 1 C. C. R. 162). *Cp*, ENGLISH MARRIAGE. *V.* SEAMAN.

BRITISH SETTLEMENT. — Quà British Settlements Act, 1887, 50 & 51 V. c. 54, "'British Settlement,' means, any BRITISH POSSESSION which has not been acquired by cession or conquest, and is not for

the time being within the jurisdiction of the Legislature (constituted otherwise than by virtue of this Act, or of any Act repealed by this Act) of any British Possession" (s. 6).

BRITISH SHIP. — The phrase "British" Ships or Vessels, has three meanings: —

1. All ships or vessels, properly so called, according to our Municipal Law;

2. All ships or vessels under the British Flag, though perhaps not strictly entitled thereto, because, by the Law of Nations, the carrying the British Flag stamps on them, as to other nations, the British national character;

3. All ships or vessels, — though this is a much more doubtful point, — under neutral flags, but owned by BRITISH SUBJECTS (per Dr. Lushington, *The Leucade*, 1 Jur. N. S. 553).

"British Ship," quâ Mer Shipping Act, 1894; *V.* s. 1.

A ship built in England for a foreign owner and not registered, or intended to be registered, as a British Ship, is not a British Ship within Mer Shipping Act, 1854, repld Mer Shipping Act, 1894 (*Union Bank of London* v. *Lenanton*, 47 L. J. C. P. 409; 3 C. P. D. 243).

"British Vessel"; Stat. Def., 6 & 7 V. c. 79, s. 18.

V. SHIP: RECOGNIZED BRITISH SHIP.

BRITISH SLAVE COURT. — Stat. Def., Slave Trade Act, 1873, 36 & 37 V. c. 88, s. 2.

BRITISH SPIRITS. — Stat. Def., 32 & 33 V. c. 103, s. 3; 43 & 44 V. c. 24, s. 3. *Cp*, BRITISH WINE.

BRITISH SUBJECT. — "British Subject," s. 2, 24 & 25 V. c. 114, includes a naturalized British subject (*Re Gally*, 45 L. J. P. D. & A. 107; 1 P. D. 438: *Vh*, *Re Keller*, 61 L. J. P. D. & A. 39).

Stat. Def. — Liberated Africans Act, 1853, 16 & 17 V. c. 86, s. 2.

"The British Subjects Acts, 1708 to 1772"; *V.* Sch. 2, Short Titles Act, 1896.

Vh, The Report to Parliament, of the Inter-Departmental Committee on the Naturalization Laws, 24th July 1901 (Cd. 723).

BRITISH WINE. — "British Wine" is synonymous with "MADE WINE"; *V. Harris* v. *Jenns*, cited WINE. *Cp*, BRITISH COMPOUNDS: BRITISH SPIRITS.

BROAD. — *V.* MESH.

BROCAGE. — "The wages or hire of a Broker" (Cowel).

BROKER. — Brokers "are those that contrive, make, and conclude bargains and contracts between merchants and tradesmen, in matters of

money and merchandize, for which they have a fee or reward" (Jacob, cited by Best, C. J., *Gibbons* v. *Rule*, 4 Bing. 306: this def is derived from 1 Jac. 1, c. 21, cited FRIPERER: *Vf*, 8 & 9 W. 3, c. 20, s. 60, where the def is, those who "make or drive" bargains). A Broker is not put into possession of the property to be sold, as a Factor is (*Baring* v. *Corrie*, cited FACTOR). *Vf*, Statuta Civitas London, 13 Edw. 1, stat. 5: Termes de la Ley: Cowel: 2 Encyc. 262–272: Evans, on Agency: Story, on Agency.

As to meaning of "Broker" in 6 Anne, c. 16, and 6 G. 1, c. 18; *V. Wilkes* v. *Ellis*, 2 Bl. H. 555: *Clark* v. *Powell*, 2 L. J. K. B. 145; 4 B. & Ad. 846: *Smith* v. *Lindo*, 27 L. J. C. P. 196, 335; 4 C. B. N. S. 395: *Milford* v. *Hughes*, 16 L. J. Ex. 40; 16 M. & W. 174. In the last case Rolfe, B., said that a case of brokerage "must relate to goods and money, and not merely to personal contracts for work and labour." A Stock-broker is within these enactments (*Janssen* v. *Green*, 4 Burr. 2103). *Cp*, JOBBER.

Note. — As to what is "acting as a Broker," within 57 G. 3, c. lx, *V. Scott* v. *North*, L. R. 2 C. P. 270: *Scott* v. *Cousins*, L. R. 4 C. P. 177; 38 L. J. C. P. 156. If a contracting party merely adds "Broker," and not "*as* Broker," to his signature, he is personally bound (*Hutcheson* v. *Eaton*, 13 Q. B. D. 865; 51 L. T. 846).

"Broker," as used in the late Bankry def of "Trader," included not only barterers of merchandise, but also assurance-brokers (*Ex p. Stevens*, 4 Mad. 256), Bill-brokers (*Ex p. Phipps*, 2 Dea. 487), Pawn-brokers (*Rawlinson* v. *Pearson*, 5 B. & Ald. 124), Ship-brokers (*Pott* v. *Turner*, 4 Moore & P. 551; 6 Bing. 702), and Stock-brokers (Cullen, on Bankry, 12, Note 2, 48).

"Broker" is a sufficient description of a Ship-broker, for the purposes of the Bills of Sale Acts (*Gugen* v. *Sampson*, 4 F. & F. 974); though a Ship-broker is not within the Acts regulating Brokers (*Gibbons* v. *Rule*, sup).

Stat. Def. — *Scot.* 25 & 26 V. c. 101, s. 3; 55 & 56 V. c. 55, s. 4.

V. PASSAGE BROKER: EXCAMBIATOR: BANKER.

BROOD. — *V.* FRY.

BROTHEL. — "Brothel," "Bawdy-house," or "Common Bawdy-house," are synonyms (*Singleton* v. *Ellison*, 1895, 1 Q. B. 607; 64 L. J. M. C. 123; 72 L. T. 236; 43 W. R. 426; 59 J. P. 119).

NUISANCE, or no Nuisance, is not an element in the definition of 'Brothel" (*R.* v. *Holland Jus.*, 46 J. P. 312).

"Brothel," or "Bawdy-house," is "a PLACE where people of opposite sexes are *allowed* to RESORT for prostitution" (per Wills, J., *Singleton* v. *Ellison*, sup).

But the Occupier of the place has the entrée for all purposes, and,

accordingly, does not need to be "allowed" there for any special purpose; therefore, a place occupied by a woman, who permits no other woman but herself to be there for sexual purposes but who herself is accustomed to receive men for such purposes, is not a "Brothel" within s. 13, 48 & 49 V. c. 69 (*Singleton* v. *Ellison*, sup). The *ratio decidendi* of *the* seems to show that if, instead of one, there are two or more women who are joint occupiers of a Place where they (but only they) respectively receive men for sexual intercourse, such place would not be a Brothel. *Vf*, KEEP.

A Brothel involves the idea of a Place of Resort; therefore, the allowance of an isolated act of prostitution, even by strangers to the occupancy, would not make the place a Brothel; but the one proved instance may, itself, prove it to be, not solitary but, one of many instances (*R.* v. *Holland Jus.*, sup).

Cp, "Disorderly House," sub DISORDERLY. *V.* WHORE: ELIGIBLE.

Vh, 1 Encyc. 272 *et seq*: Jacob, *Bawdy-house.*

BROTHER: SISTER. — A gift to "Brothers"; "Sisters," — includes the HALF-BLOOD; "and so with regard to every other degree of relationship" (2 Jarm. 154). "I think that, in general, when a man speaks of his brothers and sisters he speaks of them, not with reference to the definition of the word in the dictionary, but as a class standing in the same relation to *one or both* of his parents in which he himself stands. Though the half-blood are not descended from both the same parents, they are, — as it is said in Termes de la Ley, *Demy Sangue*, — 'after a sort, brothers,' 'brothers by the father's side,' 'brothers by one mother'; and however others might describe them or they might designate themselves, I think that, if required to give a precise description of the nature and degree of the relation subsisting between them, they, in ordinary parlance, would be called and would call themselves, Brothers and Sisters" (per Turner, V. C., *Grieves* v. *Rawley*, 22 L. J. Ch. 625; 10 Hare, 63). But this construction may be varied by a context (*Re Reed*, 57 L. J. Ch. 790; 36 W. R. 682).

The widower of a sister is not a "Brother," nor is the widow of a brother a "Sister," there being no blood relationship (*Hussey* v. *Berkeley*, 2 Eden, 194).

A gift to "Brothers and Sisters," the testator knowing himself to be illegitimate, imports his putative brothers and sisters (*Re Cameron*, 91 Law Times, 176: RELATIONS).

V. NEPHEW.

Lord BROUGHAM'S ACTS. — The Beerhouse Act, 1830, 11 G. 4 & 1 W. 4, c. 64:

For shortening language of Acts, 13 & 14 V. c. 21, repealed and replaced by Interp Act, 1889:

The Evidence Acts, 1845, 8 & 9 V. c. 113; 1851, 14 & 15 V. c. 99; 1853, 16 & 17 V. c. 83:

The Marriage (Scotland) Act, 1856, 19 & 20 V. c. 96.

Vf, Brougham's Acts and Bills, by Eardley Wilmot.

BROUGHT. — An enactment that "no Action shall be brought," *e. g.* s. 4, Statute of Frauds, is not RETROSPECTIVE (*Gillmore* v. *Shooter*, 2 Mod. 310); so, of "brought or maintained" in the Gaming Acts, 1845, 1892 (*Moon* v. *Durden*, 2 Ex. 22: *Knight* v. *Lee*, 1893, 1 Q. B. 41; 62 L. J. Q. B. 28; 67 L. T. 688; 41 W. R. 125; 57 J. P. 117. *Vf*, MAINTAIN).

"Properly brought"; *V.* PROPERLY.

BROUGHT AGAINST. — There is no Action "brought against" a deft against whom no relief is sought; and who might more properly have been made a plt; — the presence of such a deft does not justify an Order for service out of the Jurisdiction under R. 1 (*g*), Ord. 11, R. S. C. (*Deutsche National Bank* v. *Paul*, 1898, 1 Ch. 283; 67 L. J. Ch. 156; 78 L. T. 35; 46 W. R. 243).

V. PURSUANCE.

BROUGHT ALONGSIDE. — *V.* ALONGSIDE.

BROUGHT BEFORE. — A person is sufficiently "brought before" a magistrate, s. 24, 2 & 3 V. c. 71, if he appear in answer to a summons; and it is not necessary that he should have been actually arrested and brought in custody (*Hadley* v. *Perks*, 35 L. J. M. C. 177; L. R. 1 Q. B. 444; 7 B. & S. 375). *Vf*, *R.* v. *Willcox*, 37 W. R. 686.

BROUGHT INTO QUESTION. — *V.* jdgmt of Willes, J., *Cooper* v. *Hubbuck*, 31 L. J. C. P. 326; 12 C. B. N. S. 456. *Vf*, QUESTION.

BROUGHT UPON. — Fixtures, &c, "brought upon" any land, &c, s. 6 (2), Bills of Sale Act, 1882, means, brought upon the premises for the purpose of being USED there (*London & Eastern Counties Loan Co* v. *Creasy*, cited PLANT).

BRUERA. — "A man grants *omnes brueras suas*; the soile where heath doth growe passeth. It is derived from bruyer, a French word for heath; and it is called *ros* in the British tongue" (Co. Litt. 4 b, 5 a: *V.* Touch. 95: JUNCARIA).

South Sea BUBBLE ACT. — 6 G. 1, c. 18.

BUGGERY. — This is synonymous with SODOMY (Jacob, *whv*).

BUILD. — *V.* ERECT: PUT.

A contract to supply stones and marle and burn lime for the "building" of houses, does not include, in that word, the plastering and tile-

pointing of the houses (per Cresswell, J., *Charlton* v. *Gibson*, 1 C. & K. 541).

Covenant not to "build" any Dwellinghouse; *V. Domvile* v. *Colvile*, cited DWELLINGHOUSE.

BUILDER. — A "Builder," within the late Bankry def of "Trader," was one who built houses for sale, whether on land purchased or leased by him for that purpose, or who built for other persons by hire or contract (*Ex p. Neirinckx*, 4 L. J. Bank. 73; 2 Mont. & Ayr. 384). But the purchasing land with unfinished houses thereon and employing persons to complete the houses, was not trading as a "Builder" (*Ex p. Edwards*, 9 L. J. Bank. 11; 4 Jur. 153; 1 Mont. D. & D. 3). *Vf*, *Ex p. Stewart*, 18 L. J. Bank. 14; 13 Jur. 581; 3 Ex. 700; 3 D. G. & S. 557: *Re Fowler*, Fon. B. C. 201.

Structure "erected by a Builder for use"; *V.* USE.

Quà London Bg Act, 1894, "Builder," "means the person who is employed to build, or to execute work on, a BUILDING or STRUCTURE, or (where no person is so employed) the OWNER of the building or structure" (subs. 33, s. 5).

BUILDING. — What is a "Building" must always be a question of degree, and circumstances: its "ordinary and usual meaning is, a block of brick or stone work, covered in by a roof" (per Esher, M. R., *Moir* v. *Williams*, 1892, 1 Q. B. 264; 61 L. J. M. C. 33). *Vf*, STRUCTURE.

"The masonry on the sides of a Canal is not sufficient to constitute it a 'building.' A London street, though paved and faced with stonework, would yet be 'land'; whilst the Holborn Viaduct would be a 'Building'" (per Blackburn, J., *R.* v. *Neath Canal Nav.*, 40 L. J. M. C. 197).

In a Covenant to REPAIR, "the repairing or re-instating of 'Buildings' would include a Garden Wall, or a Wall enclosing or defining some portion of a field" (per James, V. C., *Bowes* v. *Law*, L. R. 9 Eq. 641).

But in a Covenant restricting USER, "Building" does not include a Boundary Wall of reasonable height (*Child* v. *Douglas*, Kay, 560; 5 D. G. M. & G. 739: *Bowes* v. *Law*, L. R. 9 Eq. 636; 39 J. Ch. 483; 22 L. T. 267; 18 W. R. 640): — In *Child* v. *Douglas*, Wood, V. C., thought a Boundary wall 5 ft. high, projecting at right angles to the street beyond the prescribed Building Line, might be doubtful, and that one of 15 ft. was too high; *Svthc* on appeal. In *Bowes* v. *Law*, James, V. C., held that a Front Boundary Wall alongside the road 8 ft. 6 in. high, was not a breach of a covenant that "no Buildings except Dwellinghouses" should be erected, but that it was a breach of that covenant to erect part of that wall to a height of 11 ft., against which was to be a glazed lean-to roof for the purpose of a Vinery. *Vf*, PRIVATE DWELLINGHOUSE.

It may, probably, be said that "Building," by itself, will not include a

WALL (per Parke, B., *R.* v. *Gregory*, 5 B. & Ad. 555); and, à fortiori, when in such a collocation as "House or Building" (*Brown* v. *Holyhead*, 7 L. T. 332). *Vf*, inf.

A Bay or Bow Window is a "Building," and its ADDITION to a house will be a breach of a covenant not to erect "any building" in advance of the house (*Western* v. *M'Dermot*, 36 L. J. Ch. 76; 2 Ch. 72: *Manners* v. *Johnson*, 45 L. J. Ch. 404; 1 Ch. D. 673: *Vth*, *Chitty* v. *Bray*, 48 L. T. 860: *Vf*, *R.* v. *Gregory*, inf); *secus*, of a projection of 2 inches to a height of 1 ft. 6 in. in the front basement wall, or of a projection of 1 foot in a brick porch (*Child* v. *Douglas*, sup).

So, a wooden Advertisement HOARDING is a contravention of a covenant not to erect a "Building or ERECTION" on the premises (per Mathew, J., *Pocock* v. *Gilham*, 1 Cab. & El. 104); but where the covenant was not prohibitive and rather regulative of "any Building" to be erected, and the regulations were inapplicable to an advertisement hoarding, it was held that such a hoarding, though prejudicial, was not prohibited (*Foster* v. *Fraser*, 1893, 3 Ch. 158; 63 L. J. Ch. 91; 69 L. T. 136; 42 W. R. 11; 57 J. P. 646: *Cp*, *Lavy* v. *London Co. Co.*, inf). A Trellis-work Screen has been held a "Building" other than a Stable or Coach-house, within a restrictive covenant (per Romer, J., *Wood* v. *Cooper*, 1894, 3 Ch. 671; 63 L. J. Ch. 845).

A WALL with a covered way on the inside of a Church-yard as a protection from the weather, is not such a "Building" as is prohibited on a Disused BURIAL Ground, by the Disused Burial Grounds Act, 1884, or the Open Spaces Act, 1887 (*St. Botolph, Vicar*, v. *Parishioners of Same*, 1900, P. 69). *Va*, sup.

A Wheel of a Water-Mill is within the phrase "Messuages and Buildings," as used in a Tenant's covenant to repair (*Openshaw* v. *Evans*, 50 L. T. 156).

Where a statute prohibits a "Building," that will, generally, include any ADDITION to a bg, *e.g.* a prohibition against a "building" within a stated distance from a road, will be offended by an open shop thrown out from, and connected by a roof with, a house outside that distance, and so of a portico or shelter (*R.* v. *Gregory*, 5 B. & Ad. 555: *Coburg Hotel* v. *London Co. Co.*, 81 L. T. 450; 63 J. P. 805: *Cp*, *Manners* v. *Johnson*, sup).

"Possibly a 'Silo' may be called a 'Building' within the meaning of S. L. Act, 1882, s. 25 (xi)" (per Cotton, L. J., *Re Broadwater*, 54 L. J. Ch. 1105).

A "Building, STRUCTURE or ERECTION," s. 75, 25 & 26 V. c. 102, must be one on a space theretofore VACANT; and a new building, &c, erected on the site of an old one recently pulled down, is not within the section (*Auckland* v. *Westminster*, 41 L. J. Ch. 723; 7 Ch. 597: *Vf*, *Barlow* v. *St. Mary Abbotts*, 55 L. J. Ch. 680; 11 App. Ca. 257; 55 L. T. 221; 34 W. R. 521; 50 J. P. 691). A magisterial finding that a small

conservatory over a projecting shop-front is not within this section was not over-ruled (*St. George, Hanover Sq.*, v. *Sparrow*, 33 L. J. M. C. 118; 16 C. B. N. S. 209). But though the mere raising an existing Frontage Wall is not within the section, yet it is otherwise if the space between the top of such raised wall and the house it encloses is roofed over (*Clark* v. *St. Pancras*, 34 J. P. 181). A fence, if merely a reasonable delimitation of property, is not within the section; *secus*, if it is (or is made) more than that and has the character of a building, structure, or erection (*Ellis* v. *Plumstead*, 68 L. T. 291; 57 J. P. 359; 41 W. R. 496). A mere WALL, is not a building, structure, or erection, within the section (*Wendon* v. *London Co. Co.*, 1894, 1 Q. B. 812; 63 L. J. M. C. 117; 70 L. T. 440; 42 W. R. 370; 58 J. P. 606); but, even as regards a Wall, it is a question of degree, and if it be used, or intended, for an Advertisement-station, it is within the section (*Lavy* v. *London Co. Co.*, 1895, 2 Q. B. 577; 64 L. J. M. C. 262; 73 L. T. 106; 43 W. R. 677; 59 J. P. 630: *Cp*, *Foster* v. *Fraser*, sup, and *Slaughter* v. *Sunderland*, inf).

A Conservatory which projects from a dwellinghouse is not a "Building" within a Bye-Law under the P. H. Act, 1875 (*Hibbert* v. *Acton*, 5 Times Rep. 274). *Vh*, *Adams* v. *Bromley*, 36 J. P. 743.

"Building," within London Bg Act, 1894, and other Acts relating to the Metropolis; *V. Stevens* v. *Gourley*, 29 L. J. C. P. 1; 7 C. B. N. S. 99: *Hall* v. *Smallpiece*, 59 L. J. M. C. 97: *London Co. Co.* v. *Pearce*, 1892, 2 Q. B. 109; 66 L. T. 685; 40 W. R. 543; 56 J. P. 790: *Coburg Hotel* v. *London Co. Co.*, sup: STRUCTURE.

The Fee given by Part 1, Sch 2, Metrop Bg Act, 1855, to District Surveyors for "EVERY Building," means, for every bg covered in by a roof; therefore, a structure consisting of (say) 14 separate sets of chambers, having a common staircase and covered by one roof, is only one building (not 14), and the Surveyor is only entitled to fees as for one bg only (*Moir* v. *Williams*, 1892, 1 Q. B. 264; 61 L. J. M. C. 33; 66 L. T. 215; 40 W. R. 69; 56 J. P. 197). *Cp*, DISTINCT.

"Building," s. 157, P. H. Act, 1875, means, a structure roofed in and capable of affording protection or shelter; therefore, mere roofless advertisement-hoardings which surround a piece of land, though stayed and tied together, are not a "building" within this section (*Slaughter* v. *Sunderland*, 60 L. J. M. C. 91; 65 L. T. 250; 55 J. P. 519: *Cp. Foster* v. *Fraser*, and *Lavy* v. *London Co. Co.*, sup); *secus*, of a Pig-stye, or Hen-house (*Walker* v. *Baildon*, 37 S. J. 217). *Vf*, *Hibbert* v. *Acton*, sup: NEW BUILDING.

Quà P. H. (London) Act, 1891, "'Building,' and 'House,' respectively, include the CURTILAGE of a building or house, and include a building or house wholly or partly erected under statutory authority" (s. 141).

Quà Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, "'Building' shall include any Structure or Erection of what kind and nature soever, and every part thereof" (subs. 3, s. 4).

A wooden structure (let into the ground by posts) 9 ft. 6 in. long, 3 ft. deep, and 7 ft. high, roofed, glazed in front, and with a door at one end, used only for exhibiting photographs, but with no public approach; held, by the Justices as a "Building" within s. 3, P. H. (Building in Streets) Act, 1888, 51 & 52 V. c. 52, and, per Pollock, B., they were right, and, per Hawkins, J., that it was a question of fact concluded in that case by the Justices' finding (*Leicester* v. *Brown*, 62 L. J. M. C. 22; 67 L. T. 686; 41 W. R. 78).

Though a house is in Separate Flats, all of it that is under the one roof is a "Building," within Rules 28, 29, Dairies, Cowsheds, and Milkshops Order, 1885 (*London Co. Co.* v. *Edwards*, 1898, 2 Q. B. 75; 67 L. J. Q. B. 648; 78 L. T. 558; 62 J. P. 377).

Sheds for protecting Mine Engines, held, within a Local Act authorising a Rate on all "Buildings" (*Brown* v. *Granville*, 10 Bing. 69).

"House, Warehouse, Counting House, Shop, *or other Building*," to confer the franchise under s. 27, Rep People Act, 1832, includes, in its last term, only buildings of a permanent character used for residentiary or commercial purposes (*Pownall* v. *Dawson*, 21 L. J. C. P. 14; 11 C. B. 9); and does not include a tool shed (*Powell* v. *Boraston*, 34 L. J. C. P. 73; 18 C. B. N. S. 175). *Sv*, *Morrish* v. *Harris*, L. R. 1 C. P. 155. Is a Pig-stye such a "Building"? (*Powell* v. *Farmer*, 34 L. J. C. P. 71; 18 C. B. N. S. 168). A Cow-house may be (*Whitmore* v. *Wenlock*, 13 L. J. C. P. 55; 5 M. & G. 9). *Vf*, *Toms* v. *Luckett*, cited LODGER.

"Dwelling-house, Workshop, *or other Building*," s. 3, Prescription Act, 1832, 2 & 3 W. 4, c. 71, means quà "Building," one analogous to those mentioned (*Harris* v. *De Pinna*, 33 Ch. D. 238; 54 L. T. 38), *e.g.* a Green-house (*Clifford* v. *Holt*, 1899, 1 Ch. 698; 68 L. J. Ch. 332; 80 L. T. 48). So, "House, Shop, *or other Building whatever*," s. 38, 57 G. 3, c. 19, does not include a temporary booth, *e.g.* Hustings (*Allen* v. *Ayre*, 1 L. J. O. S. K. B. 204).

"Sewer, Drain, Privy, Cesspool, Ashpit, *Building*," in a Local Act relating to public health, held to include in its last term a Dwelling-house (*Pearson* v. *Kingston*, 35 L. J. M. C. 36; 3 H. & C. 921).

"House or other Bg," s. 92, Lands C. C. Act, 1845; *V.* HOUSE.

An Arch used as a store-house is a "Building" within s. 7, Gas Works Clauses Act, 1847 (*Thompson* v. *Sunderland Gas Co*, 46 L. J. EX. 710; 2 Ex. D. 429).

An unfinished house is a "Building" within s. 6, 24 & 25 V. c. 97 (*R.* v. *Manning*, L. R. 1 C. C. R. 338; 41 L. J. M. C. 11; 25 L. T. 573).

"Corporate Buildings," s. 92, 5 & 6 W. 4, c. 76; *Semble*, a Corporation Pew is within this phrase (*R.* v. *Warwick*, 15 L. J. Q. B. 306; 8 Q. B. 926). *Vf*, NECESSARILY.

"Building, Erection, or Thing," within a Local Act prohibition; *V.* *Colbran* v. *Barnes*, 11 C. B. N. S. 246: THING.

"Building of the Warehouse Class"; *V.* WAREHOUSE.

A BYE-LAW relating to the construction of Cesspools in connection with Buildings, may apply as well to old as to new bgs (*Simmons* v. *Malling*, 1897, 2 Q. B. 433; 66 L. J. Q. B. 585; 77 L. T. 341; 45 W. R. 603; 61 J. P. 502).

" Buildings, Lands, and Heredits "; *V.* HEREDITAMENT.

" Bg, &c, vested in, and in the occupation of, Her Majesty " ; *V.* VESTED.

V. ADDITION: NEW BUILDING: OLD BUILDING: PUBLIC BUILDING: STRUCTURE: DWELLINGHOUSE: HOUSE: ERECT: ERECTION: FACTORY: REBUILDING: CANAL: PROPERTY OTHER THAN LAND: MARKET GARDEN: HEIGHT.

Quà Foreign Enlistment Act, 1870, 33 & 34 V. c. 90, " 'Building,' in relation to a SHIP, shall include the doing any act towards, or incidental to, the construction of a ship " (s. 30).

BUILDING LAND. — " 'Building Land' is a term frequently used for land capable of being built on — land suitable for being built on in the judgment of those who come to that conclusion " (per Hatherley, C., *Lond. & S. W. Ry* v. *Blackmore*, 39 L. J. Ch. 716; L. R. 4 H. L. 610). *Vf*, *Dougherty* v. *Oates*, cited FREEHOLD. *Cp*, BUILDING PURPOSES.

V. Broomfield v. *Williams*, cited CONTRARY INTENTION.

BUILDING LEASE. — A Building LEASE as distinguished from a REPAIRING LEASE, involves the idea of either erecting a building on vacant land, or of pulling down old buildings and erecting new ones on the site (*London* v. *Nash*, 3 Atk. 513, 514). It must contain a covenant by the lessee to build (*Jones* v. *Verney*, Willes, 169: *Re Hallett*, 52 L. J. Ch. 804; 24 Ch. D. 624). *Cp*, OCCUPATION LEASE.

For the purposes of the Conv. & L. P. Act, 1881, a Building Lease " is a Lease for BUILDING PURPOSES, or purposes connected therewith," s. 2 (x). A similar definition is provided for the S. L. Act, 1882; *V.* s. 2 (10, iii). This includes a Lease whereby the lessee covenants to spend a substantial sum on specified repairs; but if the leave of the Court be required, — *e.g.* under s. 63, S. L. Act, 1882, by s. 7, S. L. Act, 1884, — that leave will not be given where the Court thinks the repairs are of such a kind that the Tenant for Life ought to pay for them (*Re Daniell*, 1894, 3 Ch. 503; 64 L. J. Ch. 173; 71 L. T. 563; 43 W. R. 133).

A Building Lease, under S. L. Act, must be in GOOD FAITH (*Sutherland* v. *Sutherland*, 1893, 3 Ch. 169; 62 L. J. Ch. 946; 69 L. T. 186; 42 W. R. 12).

In determining whether a Lease is, or is not, a Building Lease, within the Solrs Rem Ord, regard must be had, — (1) to the circumstances of the contract; (2) the subject-matter of the demise; and (3) the nature and extent of the expenditure to be made; *e.g.* a lease to a Race Committee of 135 acres with a cottage thereon for 99 years at a RACK-RENT, the lessees covenanting to spend £1000 within 12 months in good and

sufficient improvements of a substantial and permanent character, is not a Building Lease, for there is no stipulation, or manifest necessity, that the money is to be spent in building; but a similar lease of a large house with about 1 acre of ground attached, the house being much out of repair, and the lessee covenanting to spend £300 on similar improvements, is a Bg Lease (*Re Hogan*, 1894, 1 I. R. 503). *Vf*, *Re Hall to Sutton*, 1900, 1 I. R. 137.

Quà Part 2, 23 & 24 V. c. 153, "Building Leases" includes "Repairing Leases" (s. 25): *Va*, 21 & 22 V. c. 77, s. 2.

BUILDING LINE. — *V. Barlow* v. *St. Mary Abbotts*, 11 App. Ca. 257; 55 L. J. Ch. 680; 55 L. T. 221; 34 W. R. 521; 50 J. P. 691: *Worley* v. *St. Mary Abbotts*, 1892, 2 Ch. 404; 61 L. J. Ch. 601: *Newhaven Loc. Bd* v. *Newhaven School Bd*, 30 Ch. D. 350.

V. GENERAL LINE OF BUILDINGS: ARISE.

BUILDING OWNER. — Quà London Bg Act, 1894, "Building Owner," "means such one of the OWNERS of adjoining land as is desirous of building, or such one of the Owners of buildings, storeys, or rooms, separated from one another by a party-wall or party-structure, as does, or is desirous of doing, a work affecting that party-wall or party-structure" (subs. 31, s. 5), — this def is an amplification of s. 82, 18 & 19 V. c. 122.

V. ADJOINING OWNER.

BUILDING PURPOSES. — The phrase, land "used for Building Purposes," s. 128, Lands C. C. Act, 1845, does not mean what is ordinarily called "BUILDING LAND"; but means "land actually used for building purposes, not land contemplated to be used for building purposes, or intended to be used for building purposes, or suitable for building purposes" (per Hatherley, C., *Lond. & S. W. Ry* v. *Blackmore*, 39 L. J. Ch. 717; L. R. 4 H. L. 610: *Va*, *Coventry* v. *L. B. & S. Ry*, 37 L. J. Ch. 90; L. R. 5 Eq. 104; 16 W. R. 267: *Carington* v. *Wycombe Ry*, cited TOWN).

Quà Conv & L. P. Act, 1881, "'Building Purposes,' include the erecting, and the improving of, and the adding to, and the repairing of, Buildings" (s. 2, subs. 10): a like def is provided for the S. L. Act, 1882 (s. 2, subs. 10, iii). *Vh*, *Re Daniell*, cited BUILDING LEASE: *Re Ellesmere*, W. N. (98) 18.

BUILDING SOCIETY. — "The Building Societies Acts, 1874 to 1894"; *V.* Sch 2, Short Titles Act, 1896.

Vh, Wurtzburg, on Building Societies.

BUILT. — "Erected or built"; *V.* ERECTED.

A Covenant, in a Conveyance, that "no Hotel, Tavern, Public-house, Beer-house, Shop, or other bg," for the sale of intoxicants, "shall be

built" upon the land conveyed, means that the prohibited businesses "shall not *be*" on the land; and, therefore, the User of any bg on the land for either of such businesses will be restrained, though such user was not in contemplation when the bg was "built" (*Webb* v. *Fagotti*, 79 L. T. 683).

BUILT UPON. — As to this phrase as used in s. 128, Lands C. C. Act, 1845; *V.* jdgmt of Hatherley, C., *Lond. & S. W. Ry* v. *Blackmore*, 39 L. J. Ch. 713; L. R. 4 H. L. 610: *Carington* v. *Wycombe Ry*, cited TOWN.

Vf, *Arnell* v. *Regent's Canal Co*, cited PASSAGE.

BULK. — *V.* BREAK BULK: LEFT.

BULLER'S ACTS. — The Poor Law Acts of 1848, 11 & 12 V. cc. 82, 91, and 110.

BUNGLER. — To say of an ARTIFICER that he is a "Bungler" in his work, is Slander, *per se* (*Redman* v. *Pyne*, 1 Mod. 19). *Cp*, COBBLER.

BUOY. — Quà Mer Shipping Act, 1894, "'Buoys and Beacons,' includes all other marks and signs of the Sea" (s. 742).

BURDEN. — The Exemption from Tolls given by s. 19 (6), 32 & 33 V. c. 14, for vehicles used for the conveyance "of any Goods or *Burden*," does not extend to such things as a travelling show. Neither does "Burden" include persons. "I cannot think that if a tradesman deals in an article, and sends his traveller out in a gig, the gig would be exempt on the ground that the traveller could be said to be a Burden" (per Kelly, C. B., *Speak* v. *Powell*, 43 L. J. M. C. 19; L. R. 9 Ex. 25).

Upon the construction of the Act for establishing a Ferry across the Tyne, "Burthen" held to mean capacity for carrying, not register admeasurement (*North Shields Ferry Co* v. *Barker*, 2 Ex. 136). And, ordinarily speaking, so many Tons Burden connotes a capacity to carry; but in the legislation relating to the Registration of British Vessels prior to Mer Shipping Act, 1894, and in that Act (*V.* ss. 3, 90, 622, 625) "'Tons Burden' is used with a meaning which is the same as that of a Tonnage of a Vessel ascertained in the manner directed by the Act for the time being in force, — *i.e.* the Registered Tonnage" (*The Brunel*, 1899, P. 45; 1900, P. 24; 68 L. J. P. D. & A. 1; 69 Ib. 8; 81 L. T. 500). *Vf*, 53 & 54 V. c. 56, s. 3.

Quà Lessee's Covenant in a LEASE to bear Burdens, it has been said that "perhaps, the most inclusive word is 'Burdens'" (Redman, 300, citing *Sweet* v. *Seager* and *Tidswell* v. *Whitworth*, for *whv* TAXES). *Sr*, OUTGOINGS: IMPOSITIONS.

BURGAGE. — "'Burgage,' is a Tenure proper to Cities, Borows, and Towns, whereby the Burgers, Citizens, or Townsmen hold their lands or

tenements of the King, or other lord, for a certain yearly rent" (Cowel). *Vf*, Co. Litt. 108 b–116 a: Termes de la Ley: Jacob: 2 Encyc. 302.

Note. The right of "Burgage Tenants" "in every City or Town, being a County of itself" to vote for a Member of Parliament, was retained by s. 31, Rep People Act, 1832, on *whv* Rogers, Part 1.

"By Burgage Tenure" "Held Burgage"; Stat. Def., *Scot.* 23 & 24 V. c. 143, s. 2.

BURGESS. — "*Burgensis*, is a man of trade" (Co. Litt. 80 a). — "'Burgesses, *Burgenses*,' are properly the inhabitants of a Borow or Town, driving a trade there" (Cowel). *Vf*, Jacob.

"Burgess" is sometimes used to designate a Registered Parliamentary Voter, but more generally a Registered Municipal Voter: *V.* 31 & 32 V. c. 41, s. 2; 41 & 42 V. c. 26, s. 4; Mun Corp Act, 1882, ss. 7, 9; 47 & 48 V. c. 70, s. 35; 48 & 49 V. c. 9, s. 3. When applied to a City "Burgess" has been made to include "Citizen": *V.* 3 & 4 V. c. 108, s. 215; 12 & 13 V. c. 94, s. 10. *V.* FREEMAN.

V. ENTITLED TO BE ON BURGESS LIST.

BURGH. — "Burgh" in Scotland has affinity to "BOROUGH" in England.

"Burghs," are Parliamentary; — Royal; — Police.

A "*Parliamentary* Burgh" is, probably, generally understood as a TOWN returning, or contributing to return, a Member to Parliament (31 & 32 V. c. 108, s. 2; 55 & 56 V. c. 55, s. 4, subs. 23); but in other Acts it is defined as "a Burgh or Town to which Magistrates and Councils were provided by 3 & 4 W. 4, c. 77" (17 & 18 V. c. 64, s. 1; 25 & 26 V. c. 101, s. 3).

A "*Royal* Burgh" is a Town whose Common Council and Magistrates are elected under 3 & 4 W. 4, c. 76: *V.* 25 & 26 V. c. 101, s. 3. 3 & 4 W. 4, c. 76, divides these Burghs into two classes, *i.e.* Sch C. Edinburgh, Glasgow, Aberdeen, Dundee, Perth, Dunfermline, Dumfries, and Inverness: — Sch F. Dornoch, New Galloway, Culross, Lochmaben, Bervie, Wester Anstruther, Kilreny, Kinghorn, and Kintore.

A "*Police* Burgh" is a Town or POPULOUS PLACE whose Municipal Government is constituted, and the boundaries whereof are fixed, under the General Police Acts for Scotland, or under any Local Police Act: *Vh*, 55 & 56 V. c. 55, s. 4 (25); 58 & 59 V. c. 6, s. 3; 52 & 53 V. c. 50, s. 105; 53 & 54 V. c. 60, s. 6, c. 67, s. 30; 54 & 55 V. c. 32, s. 7; 57 & 58 V. c. 58, s. 54.

As regards Municipal Government, there are also Burghs of Regality, and Burghs of Barony.

Whether all, or only some or one, of the foregoing are included in "Burgh" as used in any one of the many Acts relating to "Burghs" will be ascertained by its interp clause: — *e.g.* quà 55 & 56 V. c. 55, its s. 4 (4) provides that "'Burgh' when used alone (unless otherwise expressed, or inconsistent with the context), shall include Royal Burgh, Parlia-

mentary Burgh, Burgh incorporated by Act of Parliament, Burgh of Regality, Burgh of Barony, and any Populous Place or Police Burgh administered in whole or in part under any General or Local Police Act": — But, quà 52 & 53 V. c. 50, its s. 105 provides that "'Burgh' means, any Royal, or Parliamentary, Burgh."

"Burgh *General Assessment*"; Stat. Def., 50 & 51 V. c. 42, s. 2.

"Burgh *Local Authority*"; Stat. Def., 41 & 42 V. c. 51, s. 3.

"Burgh *School*"; Stat. Def., 24 & 25 V. c. 107, s. 1; 35 & 36 V. c. 62, s. 1.

"Burghal *Parish*," "Burghal Part of a Parish"; Stat. Def., 57 & 58 V. c. 58, s. 54.

BURGH-BOTE. — *V.* BOTE.

BURGLARY. — "Burglary" is a Term of Art (*Holford* v. *Bailey*, 18 L. J. Q. B. 109; 13 Q. B. 426: *R.* v. *Gray*, 33 L. J. M. C. 78; L. & C. 365), and means the breaking and entering by NIGHT of the DWELLING-HOUSE (*Va*, MANSION) of another with intent to commit a felony therein (3 Inst. 63; 4 Bl. Com. 224); "or, being in such dwelling-house, shall commit any felony therein, and shall in either case break out of the said dwelling-house in the night" (24 & 25 V. c. 96, s. 51). *Vf*, Arch. Cr. 591–615; Rosc. Cr. 313–336: Termes de la Ley: 2 Encyc. 304–309: Jacob: BREAK: ENTER.

BURIAL. — Quà P. H. (Scot) Act, 1897, "'Burial,' includes Cremation" (s. 3). *V.* CHRISTIAN BURIAL: INTERMENT.

"The Burial *Acts*, 1852 to 1885"; "The Burial (Ir) Acts, 1824 to 1868"; "The Burial Grounds (Scot) Acts, 1855 to 1886"; *V.* Sch 2, Short Titles Act, 1896.

"Burial Board"; *V.* BOARD.

"Burial *Ground*," s. 1, Metropolitan Open Spaces Act, 1881; ss. 2, 4, Open Spaces Act, 1887; Disused Burial Grounds Act, 1884; — includes ground in which no interment has taken place, and whether consecrated or not, which has been at any time SET APART for the purposes of interment; and "*Disused* Burial Ground," means, such a Burial Ground which is not used for interments, whether or not it is closed for that purpose by an Order in Council or is otherwise disused (*Re Ponsford and Newport School Bd*, 1894, 1 Ch. 454; 63 L. J. Ch. 278; 70 L. T. 502; 42 W. R. 358). *Cp*, CEMETERY. *Vf*, UNDER.

"Burial Ground"; Other Stat. Def., 27 & 28 V. c. 97, s. 7; 30 & 31 V. c. 38, s. 1; 37 & 38 V. c. 85, s. 6.

"New Burial Ground," s. 7, 16 & 17 V. c. 134, s. 12; 20 & 21 V. c. 81, includes an addition to an old one (*R.* v. *Basingstoke*, 41 S. J. 30). *Vh*, PROVIDED.

Burial Ground "of" a Parish; *V.* OF.

"PLACES of Burial," s. 23, 20 & 21 V. c. 81, "are those which may be

called Public Burial Places, and have that permanent impress upon them by reason of their having been devoted (either by Consecration, Trust Deed, or otherwise) to the purpose of interment, and which are kept and taken care of as such" (per Lush, J., *Foster* v. *Dodd*, 7 B. & S. 169).

BURKE'S ACT. — The Civil List and Secret Service Money Act, 1782, 22 G. 3, c. 82.

BURN: BURNING. — The singeing of the cover is not a "burning" of a Will so as to REVOKE it; nor is a fraudulent burning of something else instead of the Will, which the testator has directed to be burnt, a revocation (*Doe* d. *Reed* v. *Harris*, 6 A. & E. 209; 6 L. J. K. B. 84; stated 1 Jarm. 131). "A strong intention to burn is not a burning. There must be, at all events, a partial burning of the instrument itself; I do not say that a quantity of words must be burnt; but there must be a burning of the paper on which the Will is" (per Patteson, J., *Ib.*). Coleridge, J., whilst agreeing that a total destruction was not necessary, added, — "but there should be such a burning as destroys the entirety of the Will, for in such a case the Will of the testator no longer exists as he framed it." (*Vf*, *Doe* d. *Perks* v. *Perks*, cited TEAR). But, *semble*, a slight singeing of the Will itself, is a "burning," if the Will was thrown on the fire by the testator with intent to burn it, although it fell off the fire and was saved from further destruction by a person picking it up and preserving it without the testator's knowledge (*Bibb* v. *Thomas*, 2 Bl. W. 1043). *V.* DESTROY.

So, if a Marine Policy contains a warranty against AVERAGE, "unless the SHIP is stranded, sunk, *or burnt*," the Ship is not "burnt" if she merely receives a small injury by fire, *e.g.* damage to the plating of the bunker (*The Glenlivet*, 1894, P. 48; 63 L. J. P. D. & A. 45; 69 L. T. 706; 42 W. R. 97; 7 Asp. 395). *V.* SINK: STRANDING.

V. FIRE.

Quâ Arson; *V.* SET FIRE.

Burning of Heretics; *V.* HERETICO COMBURENDO.

BURST. — Bursting; *V.* FLOOD.

BURTHEN. — *V.* BURDEN.

BUSHEL. — A Bushel is 8 GALLONS (s. 15, 41 & 42 V. c. 49). As to Lime, Fish, Potatoes, Fruit, or any other Goods and Things which, prior to 9th Sept. 1835, were sold by Heaped Measure; *V.* s. 16, Ib.

"'Bushel,' taken by itself and without reference to any Custom or particular Agreement, means a Statute Bushel" (*Hockin* v. *Cooke*, 4 T. R. 314: *St. Cross Hosp.* v. *Howard de Walden*, 6 Ib. 338).

BUSINESS. — Companies, for the acquisition of gain, of more than 20 persons for "carrying on any other business" (*i.e.* other than BANKING) must be registered (s. 4, Comp Act, 1862).

" 'Business' has a more extensive meaning than the word 'TRADE'" (per Willes, J., *Harris* v. *Amery*, 35 L. J. C. P. 92; L. R. 1 C. P. 148): on the other hand, it has been said that "ordinarily speaking, Business is synonymous with 'Trade'" (per Chatterton, V. C., *Delany* v. *Delany*, 15 L. R. Ir. 67).

In *Smith* v. *Anderson* (50 L. J. Ch. 43; 15 Ch. D. 258), Jessel, M. R., after citing definitions of "Business" from several dictionaries, said, "anything which occupies the time and attention and labour of a man, *for the purpose of profit* (*Sv*, inf), is business." Further on he remarks,—"There are many things which in common colloquial English would not be called a Business, when carried on by a single person, which would be so called when carried on by a number of persons. For instance, a man who is the owner of a house divided into several floors and used for commercial purposes, *e.g.* offices, would not be said to carry on a business because he let the offices as such. But suppose a Company was formed for the purpose of buying a building, or leasing a house, to be divided into offices and to be let out,—should not we say, if that was the object of the Co, that the Co was carrying on business for the purpose of letting offices? The same observation may be made as regards a single individual buying or selling land, with this addition, that he may make it a business, and then it is a question of continuity. When you come to an Association or Company formed for a purpose, you would say at once that it is a business, because there you have that from which you would infer continuity. So in the ordinary case of investments, a man who has money to invest, the object being to obtain his income, invests his money, and he may occasionally sell the investments and buy others, but he is not carrying on a business." The decision, of which the observations just quoted were the preface, was reversed on appeal; without, however, as it would seem, affecting the value of those observations in regard to its use in s. 4 of the Comp Act. Within that section a mutual Marine Insurance Association is a "Business" (*Re Padstow Assrce*, 51 L. J. Ch. 344; 20 Ch. D. 137); so is Farming though it could not properly be called a trade (*Harris* v. *Amery*, sup): and so is a Mutual Benefit Society the object of which is to lend money to its members only (*Shaw* v. *Benson*, 52 L. J. Q. B. 575; 11 Q. B. D. 563); or a Land Society one of whose objects is to win minerals (*Crowther* v. *Thorley*, 31 W. R. 564; 32 Ib. 330; 48 L. T. 644; 50 Ib. 43). Such transactions, however, as were contemplated by the Government and Guaranteed Permanent Trust, or by the Submarine Cables Trust, are not a "Business"; the Trustees being such, in deed as well as in name, and not being agents with power to enter into contracts (*Smith* v. *Anderson*, sup; over-ruling *Sykes* v. *Beadon*, 48 L. J. Ch. 522; 11 Ch. D. 170). So, a Literary Socy is not such a Business (*Re Bristol Athenæum*, cited JOINT STOCK COMPANY).

But though the contemplation of making profit was stated by Jessel,

M. R., in *Smith* v. *Anderson*, to be an ingredient in determining whether a sequence of things done would form a "Business," and though that idea runs through the other cases just cited, yet that portion of the definition would seem to be confined to cases under the Comp Act, or those of a like kind. It is indeed clear law that there may be a "Business" offending against a prohibitory covenant, without pecuniary profit being at all contemplated. In such a connection, especially, "Business" is a very much larger word than "Trade": and the word "Business" is employed in order to include occupations which would not strictly come within the meaning of the word "Trade," — the larger word not being limited by association with the lesser (per Pearson, J., *Rolls* v. *Miller*, 53 L. J. Ch. 101). Therefore, a covenant not to permit the carrying on of any "Trade or Business" is broken by allowing the premises to be used as an Out-Patient Branch of a Hospital (*Bramwell* v. *Lacy*, 48 L. J. Ch. 339; 10 Ch. D. 691; 40 L. T. 361; 27 W. R. 463: *Tod-Heatley* v. *Benham*, 40 Ch. D. 80; 58 L. J. Ch. 83; 37 W. R. 38); or as a Home for working girls. (*Rolls* v. *Miller*, 53 L. J. Ch. 99, 510, 682; 25 Ch. D. 206; 27 Ib. 71). And the Council of Law Reporting carry on (probably) a Trade and certainly a Business within the phrase "Trade or Business" in s. 11 (5), Customs & Inl. Rev. Act, 1885, 48 & 49 V. c. 51 (*Re Law Reporting Council*, 58 L. J. Q. B. 90).

On the other hand there may be a sequence of acts from which profit is anticipated without a "Business" being constituted. Thus where a Barrister, occupying a house and 79 acres of land as a private residence which he had originally taken for pleasure, used some of the land for breeding cattle and horses and raising vegetables, fruits and flowers, which he sold, and he also occasionally bought and sold cattle and horses; it was held, on the evidence, that he did not carry on "Business" within s. 44, Bankry Act, 1883, and therefore that his Trustee was not entitled to claim, as against a Bill of Sale holder, by virtue of that section (*Re Wallis, Exp. Sully*, 14 Q. B. D. 950; 33 W. R. 733; 52 L. T. 625).

Vf, In his Trade or Business.

'But again, and in another view, there may be a "Business" without any sequence of acts, for "if an isolated transaction which, if repeated, would be a transaction in a Business, is proved to have been undertaken with the intent that it should be the first of several transactions in the carrying on a business, then it is a first transaction in an *existing* Business; . . . and if the business is one in which it is proper to keep books, then books ought to be kept from the commencement of the first transaction"; and their non-keeping is a ground for refusing &c a Bankrupt's Order of Discharge, within s. 28 (3 *a*), Bankry Act, 1883 (*Re Griffin*, 60 L. J. Q. B. 235; 39 W. R. 156). *Vf*, Business Transactions.

A Boys-School (*Doe* d. *Bish* v. *Keeling*, 1 M. & S. 95: *Vf*, Disagreeable), or a Girls-School (*Kemp* v. *Sober*, 20 L. J. Ch. 602; 1 Sim. N. S. 517), is a "Business or Calling," or a "Public Trade or Business"

(*Wickenden* v. *Webster*, 25 L. J. Q. B. 264; 6 E. & B. 387; 27 L. T. O. S. 122) within a restrictive covenant. So is a Pay-Hospital (*Portman* v. *Home Hospitals Assn*, 27 Ch. D. 81, *n*; 50 L. T. 599: *Va*, *Bramwell* v. *Lacy* and *Rolls* v. *Miller*, sup). It is questioned whether keeping a Lodging House is a "Business" within such a covenant (Woodf. 706); but surely it is a "Business" (per Lindley, L. J., *Rolls* v. *Miller*, 27 Ch. D. 88), though not a "Trade."

Quâ Partnership Act, 1890, "'Business,' includes every Trade, Occupation, or Profession" (s. 45).

Note. The mere description in a Lease of the demised premises being of a particular Business Character, *e.g.* an Hotel, does not create an implied covenant for carrying on that business (*Grand Canal Co* v. *M'Namee*, 29 L. R. Ir. 131); nor does a covenant that no other than a specified business shall be carried on, imply, affirmatively, that such business shall be carried on (*Doe* v. *Guest*, 15 M. & W. 160).

V. Trade: Calling: Ordinary Calling: Carry on: Profits: Transact Business: Solely: Purposes.

"Business," the conducting of which is punishable under 16 & 17 V. c. 119, ss. 1, 3, does not mean the general, or any part of the, business of a place in which betting may be carried on, but means, "the Business of a Betting-house Keeper" in that place (per Hawkins, J., *R.* v. *Cook*, 13 Q. B. D. 384; 51 L. T. 21; 32 W. R. 796; 48 J. P. 694). *Vf*, *Davis* v. *Stephenson*, cited Use.

It seems that a Patentee is engaged in a "Business" within R. 4, Trades Marks Rules, Feb. 1883, so long as he receives royalties under his patent, even though he does not himself manufacture (*Re Ralph*, 53 L. J. Ch. 188; 25 Ch. D. 194).

Filling up vacancies in a Local Board of Health, is "Business" within Sch 1, Part 1, R. 2, P. H. Act, 1875 (*Newhaven Loc. Bd* v. *Newhaven School Bd*, 30 Ch. D. 350).

"Business *in any Action*," &c, in R. 2, Solrs Rem Ord, does not include conveyancing business (*Re Merchant Taylors' Co*, 54 L. J. Ch. 867; 30 Ch. D. 28: *Vh*, *Re Atkinson*, 24 L. R. Ir. 182). "Business" in R. 6 of the Order means, any part of the business which would be covered by the Scale Fee (*Re Allen*, 56 L. J. Ch. 487; 34 Ch. D. 433; 56 L. T. 6; 35 W. R. 218: *Hester* v. *Hester*, 56 L. J. Ch. 247: 34 Ch. D. 607; 55 L. T. 862; 35 W. R. 233; 51 J. P. 438: *Re Metcalf*, 57 L. J. Ch. 82; 57 L. T. 925; 36 W. R. 137). *V.* Business Conducted with: Undertaking.

"Business of the Co"; *V. Re Foreign & Colonial Government Trust*, cited Conveniently.

"Business *of any Mine*," s. 29, 24 & 25 V. c. 97; *V.* Erection.

V. Out of the Business.

A Bequest of a "Business," does not include a freehold shop in which the Business is carried on (*Re Henton*, 30 W. R. 702).

So, a bequest, by a Corn and Wool Factor, of "my said Business, and the GOODWILL thereof, with the premises in which the same shall be carried on," was held not to pass the testator's Capital in his business, nor his Book-Debts (which were regarded as part of Capital), nor his Stock-in-Trade; but that sacks, horses, and drays, "forming, as it were, part of the implements of trade," did pass (*Delany* v. *Delany*, 15 L. R. Ir. 55: as to Book Debts, *Vf*, *Re Deller*, W. N. (88), 62). Nor does a bequest of "Goodwill and Fixtures," pass the STOCK-IN-TRADE (*Re Presley*, 92 Law Times, 391).

Power to advance to set-up in business; *V.* SET UP.

Contract not to do "Business" for A.'s clients; *V.* CLIENT.

"Place of Business"; *V.* PLACE.

"Similar Business"; *V.* SIMILAR.

BUSINESS CONNECTED WITH. — The negotiations (*Re Field*, 54 L. J. Ch. 661; 29 Ch. D. 608; 33 W. R. 553), and a preliminary agreement (*Re Emanuel and Simmonds*, 55 L. J. Ch. 710; 33 Ch. D. 40; 34 W. R. 613), are "Business connected with" a Lease, within Rule 2, Solrs Rem Ord and as such comprised within the work for which the *ad val.* remuneration is provided by the Order (*Savery* v. *Enfield*, 1893, A. C. 218; 62 L. J. Ch. 674). But abortive negotiations with persons other than the actual lessee is not such Business (*Re Martin*, 41 Ch. D. 381; 5 Times Rep. 426). *Vf*, LEASE.

V. BUSINESS.

BUSINESS DAYS. — "Non-business Days" for the purposes of Bills of Ex. Act, 1882, mean —

"(a) Sunday, Good Friday, Christmas Day:

(b) A Bank Holiday, under the Bank Holidays Act, 1871, or Acts amending it:

(c) A day appointed by Royal Proclamation as a Public Fast or Thanksgiving Day.

Any other day is a Business Day" (s. 92, Bills of Ex. Act, 1882).

BUSINESS HOURS. — If a thing is to be done by A. "during Business Hours," *semble* that means, during A.'s business, and not during the business hours of other persons (*V.* per Smith, L. J., *Re Kent Coalfields Syndicate*, 67 L. J. Q. B. 503).

BUSINESS PREMISES. — As to effect of a description in Particulars of Sale of property as "Business Premises"; *V. Re Davis and Cavey*, 58 L. J. Ch. 143; 40 Ch. D. 601.

BUSINESS PURPOSES. — *Semble*, a remittance to a clerk to be employed for "Business Purposes," is not misapplied if out of it he pays his own salary (*Smith* v. *Thompson*, 8 C. B. 44; 18 L. J. C. P. 314).

BUSINESS TRANSACTIONS. — The "usual and proper" Books of Account sufficiently disclosing a person's "Business Transactions and *Financial Position*" the omission to keep which is a Bankry offence (46 & 47 V. c. 52, s. 28, subs. 3, *a*), need only disclose a Bankrupt's Transactions and Position "in the business carried on by him," and need not disclose matters outside such business, — *e.g.* a building speculation, the Bankrupt not being a builder (*Re Mutton*, 19 Q. B. D. 102; 56 L. J. Q. B. 395; 56 L. T. 802; 35 W. R. 561). *Vf*, *Re Griffin*, cited BUSINESS.

BUT. — "Where gifts are intended to be cut down, the words cutting them down are generally introduced by some stronger word than 'But'; and there must, therefore, be a distinction made between cases where gifts are properly cut down and those where such a result is only to be inferred from imperfect statements of the event on which the testator intended to found the gift over" (per Ld St. Leonards, *Abbott* v. *Middleton*, 28 L. J. Ch. 113; 7 H. L. Ca. 68; *Sc*, jdgmt of Ld Wensleydale in *thc*).

The word "But" following a covenant "suggests a qualification," but is insufficient to create an independent covenant (per Hall, V. C., *Sear* v. *House Property Co*, 50 L. J. Ch. 77; 16 Ch. D. 387), in which case a lessee's covenant not to assign without lessor's consent, was held to be only qualified by the added phrase "but such consent not to be UNREASONABLY withheld," and that such phrase did not amount to a covenant by the lessor on which a breach could be assigned; *Vf*, *Broughton* v. *Conway*, Moore, 58; Dy. 240 a: *Gervis* v. *Peade*, Cro. Eliz. 615; Dy. 240 a: Elph. 469.

"But on the contrary," may render an allegation specific which before was general and uncertain (*Edge* v. *Pemberton*, 12 M. & W. 189); the phrase "should never be used" in a Pleading statement (per Willes, J., *Carpenter* v. *Parker*, 3 C. B. N. S. 243: *Vh*, *Harris* v. *Mantle*, 3 T. R. 307).

BUTCHER. — The business of a "Butcher" is carried on, within the meaning of a restrictive covenant, if raw meat be sold on the premises though the animals be slaughtered elsewhere (*Doe* d. *Gaskell* v. *Spry*, 1 B. & Ald. 617); and so the exposure of pork-meat for sale is carrying on the business of a "Pork-Butcher" (*Doe* d. *Davis* v. *Elsam*, Moo. & M. 189). But in *Cleaver* v. *Bacon* (4 Times Rep. 27), Kekewich, J., cited from the Imperial Dictionary the definition of "Butcher" as, "One who slaughters animals for market; or one whose occupation is to kill animals for the table"; and, the learned judge added, "One who simply sells meat does not seem to enter into that definition"; but that was an *obiter dictum*, yet still the case involved the construction of a restrictive covenant; *V.* OFFENSIVE: BAKER: CARRY ON.

BUTT. — "A piece of land; *e.g.* Register of Worcester Priory, fol. 49 b (Cam. Soc.). Where a selio abruptly meets others, or abuts upon a

boundary at right angles, it is sometimes called a Butt; Seebohm, 6" (Elph. 564). *V.* SELION.

BUTTER. — "Butter," quà Margarine Act, 1887, means, "the substance usually known as Butter, made exclusively from Milk or Cream or both, with or without Salt or other Preservative, and with or without the addition of Colouring Matter" (s. 3). *Vf*, MARGARINE.

BUTTY COLLIER. — "Butty Colliers are two or more working colliers who join together, and enter into an agreement with a mine owner to get coal or iron-stone from the mine at so much a yard or so much a ton, and sometimes at so much a day. They are not allowed to underlet the work or leave it; but they employ other workmen under them; and they are responsible for their wages. They usually work manually themselves; and they may bind themselves to the mine owner to do so; *V. Bowers* v. *Lovekin*, 6 E. & B. 584; 25 L. J. Q. B. 371; 4 W. R. 600; 27 L. T. O. S. 168: *Sleeman* v. *Barrett*, 2 H. & C. 934; 33 L. J. Ex. 153; 12 W. R. 411; 9 L. T. 834"; MacS. 520, *n* 4. *Bowers* v. *Lovekin* laid down that a Butty Collier is an "Artificer" within the Truck Act, 1831; *Sy.* ARTIFICER: — "We cannot take judicial notice of what a Butty-man is; the position may be very different in different collieries" (per Rigby, L. J., *Marrow* v. *Flimby, &c Co*, cited EMPLOYER).

BUY. — A Hire-Purchase agreement is not an agreement to "buy" Goods within s. 9, Factors Act, 1889, 52 & 53 V. c. 45 (*Helby* v. *Matthews*, 1895, A. C. 471; 64 L. J. Q. B. 465; 72 L. T. 841; 43 W. R. 561); unless it contains an obligation whereby the hirer is *bound* to buy (*Lee* v. *Butler*, 1893, 2 Q. B. 318; 62 L. J. Q. B. 591; 69 L. T. 370; 42 W. R. 88: *Hull Ropes Co* v. *Adams*, 73 L. T. 446; 65 L. J. Q. B. 114; 44 W. R. 108). *Vf*, *Shenstone* v. *Hilton*, 1894, 2 Q. B. 452; 63 L. J. Q. B. 584: *McEntire* v. *Crossley*, 1895, A. C. 457; 64 L. J. P. C. 129; 72 L. T. 731.

BUYER. — Quà Sale of Goods Act, 1893, "'Buyer,' means a person who buys, or agrees to buy, Goods" (s. 62).

BY. — An injury or damage is not "*done by*" a person or thing if he or it be impelled thereunto by the ACT OF GOD (*Weir Commrs* v. *Adamson*, 47 L. J. Q. B. 193; 2 App. Ca. 743).

On the other hand, a Commission on an Auction is "*paid by* the Client," R. 11, Sch 1, Part 1, Solrs Rem Ord, if the Purchaser pays a fee to the Auctioneer (*Cholditch* v. *Jones*, 1896, 1 Ch. 42; 65 L. J. Ch. 83; 73 L. T. 528; 44 W. R. 124). *Vf*, CONDUCTING.

A Co "incorporated *by* Act of Parliament," means one which "by" an Act is brought into existence, and does not include a Co incorporated "under" an Act; therefore, a Power to Invest in the shares &c of a Co incorporated "by" Act, does not include the shares &c of a Co registered

under the Comp Act, 1862 (*Re Smith*, 1896, 2 Ch. 590; 65 L. J. Ch. 761; 74 L. T. 810: *Vf, Elve* v. *Boyton*, cited COMPANY).

The difference between "By" and "In" is exemplified in *Edmunds* v. *Waugh* (35 L. J. Ch. 234; L. R. 1 Eq. 418; 14 W. R. 257). There the question arose on the Real Property Limitation Act, 1833, s. 42, which prohibits the recovery of more than six years' arrears of rent or interest "*by any Distress, Action, or Suit.*" In giving judgment, Kindersley, V. C., pointed out that the word was "by" not "in"; and, accordingly, it was held that though a mortgagee's estate is being administered "in" an action, yet the section does not prevent him or his representatives from retaining more than 6 years' arrears of interest out of the proceeds in their hands arising from the sale of the mortgaged property (*Vf, Re Marshfield*, 56 L. J. Ch. 599; 34 Ch. D. 721; 56 L. T. 694; 35 W. R. 491; distinguishing *Mason* v. *Broadbent*, 33 Bea. 296: *V.* RECOVER: CHARGED UPON).

"By, from, or under"; *V.* CLAIMING UNDER.

As to difference between property passing "By" as contrasted with "Under," or "Under or By Virtue of" an Instrument; *V. A-G.* v. *Chapman*, and per Williams, J., *A-G.* v. *Dodington*, cited UNDER.

Easement "enjoyed by" some Consent IN WRITING, s. 2, 2 & 3 W. 4, c. 71; *V. Simpson* v. *Godmanchester*, 1897, A. C. 696; 64 L. J. Ch. 843; 65 lb. 154; 66 lb. 770.

"By whose order"; *V.* EXTRAORDINARY TRAFFIC.

BY AND BETWEEN. — *V.* AGREED AND DECLARED.

BY AUTHORITY. — A GAZETTE which merely purports to be printed "By Authority," does not purport to be printed "by the Queen's Printers," or "by the Queen's Authority" (*R.* v. *Wallace*, 14 W. R. 462).

BY DAY. — Quà Canal Boats Acts, 1877, and 1884, "'By Day,' shall be deemed to include the hours between 6 o'clock in the morning and 9 o'clock at night" (s. 9, 47 & 48 V. c. 75). *V.* DAY.

BY BILL. — Payment to be made "By Bill" does not mean, and parol evidence cannot be received to shew it to mean, "By Approved Bill" (*Hodgson* v. *Davies*, 2 Camp. 530: *V.* Benj. 721). *V.* APPROVED BILL.

BY CONSENT. — *V.* CONSENT.

BY DEED OR WRITING. — *V.* IN WRITING.

BY DEFAULT. — *V.* DEFAULT.

BY DIRECTION OF THE EXECUTORS. — *V.* PROPRIETOR.

BY FORCE. — "By force of the statutes in that case made and provided," in an Indictment, is surplusage (*A-G.* v. *Le Revert*, 9 L. J. Ex. 163; 6 M. & W. 405).

"By Force or Fraud"; *V.* FRAUD.

BY HIMSELF. — *V.* HIMSELF.

BY INHERITANCE. — *V.* INHERITANCE.

BY LAW. — This phrase means, by IMPLICATION of Law, as distinguished from Stipulation by Contract; and therefore on a contract providing a specified notice to quit, s. 33, Agricultural Holdings (England) Act, 1883 (prescribing a year's in lieu of a half-year's notice), has no application (*Barlow* v. *Teal*, 54 L. J. Q. B. 564; 15 Q. B. D. 501; 1 Times Rep. 491). *V.* LEGAL NOTICE: LEGAL DISABILITY: SIX MONTHS.

So, "Debts payable *by law* out of Personal Estate," s. 23, 5 & 6 V. c. 79, means such debts as, in themselves and in their own nature and character, are payable out of personal estate; and has no relation to any testamentary provision (*Percival* v. *The Queen*, 33 L. J. Ex. 289; 3 H. & C. 217).

But, *semble*, "By Law" has no such meaning, but rather a contractual meaning, as used in s. 210, Com. L. Pro. Act, 1852, which relates to proceedings for the forfeiture of a lease when a half-year's rent is in arrear and the landlord "hath Right *by law* to re-enter for the non-payment thereof"; that phrase, by analogy to a similar one in s. 2, 4 G. 2, c. 28, probably, means, "a right to re-enter reserved to the lessor *by the lease*" (*V.* per Mansfield, C. J., *Brewer* v. *Eaton*, 3 Doug. 230: *Doe* d. *Dixon* v. *Roe*, 7 C. B. 134: *Doe* d. *Darke* v. *Bowditch*, 8 Q. B. 973; 15 L. J. Q. B. 266). So, by s. 28, 3 & 4 V. c. 42, Interest on Debts is "payable in all cases in which it is now *payable* by Law," "which includes Interest payable under a contract" (per Chitty, J., *Re Reliance Bg Socy*, 61 L. J. Ch. 455).

Cp, RIGHT IN EQUITY.

Testamentary gift of what "may by Law be given for Charitable Purposes"; *V. Re Bridger*, 1894, 1 Ch. 297; 63 L. J. Ch. 186; 70 L. T. 204; 42 W. R. 179.

"Devolution by Law"; *V.* DEVOLUTION: DISPOSITION.

V. PARTY BY LAW ENABLED TO DECLARE SUCH TRUST.

"By Operation of Law"; *V.* DEVOLUTION: SURRENDER. On a Change of Name, — *e.g.* by a Co, or by a Woman on her marriage, — a registered PROPRIETOR of a TRADE-MARK becomes "entitled by Operation of Law" to be registered in the new name under s. 87, Patents, &c Act, 1883 (*Re New Ormonde Cycle Co*, 1896, 2 Ch. 520; 65 L. J. Ch. 785; 75 L. T. 50).

"Constituted by Law"; *V.* CONSTITUTED.
"Incapacitated by Law"; *V.* INCAPACITATED.
"Prohibited by Law"; *V.* PROHIBITED.
Right or Privilege "by Law or Practice"; *V.* PRACTICE, at end.
V. BYE-LAW.

BY MEANS OF. — *V.* BREACH OF TRUST.

BY NIGHT. — *V.* NIGHT.

BY PAYMENT. — *V.* REDUCED BY PAYMENT.

BY POISON. — *V.* POISON.

BY POST. — Service of a Notice of Objection to a Parliamentary Vote by sending it "by Post" in manner prescribed by s. 100, 6 V. c. 18, is "Sufficient" proof of the service and is Conclusive (*Bishop* v. *Helps*, 2 C. B. 45; 15 L. J. C. P. 43). *Cp*, SUFFICIENT EVIDENCE.

Where an Act passed after 31st Dec 1889, "authorizes or requires any Document to be served 'By Post' (whether the expression 'Serve,' 'Give,' or 'Send,' or any other expression is used) then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, pre-paying, and posting a letter containing the Document, and (unless the contrary is proved) to have been effected at the time at which the letter would be delivered in the ordinary course of post" (s. 26, Interp Act, 1889). *Vh*, ORDINARY COURSE: SEND: SERVE.

Notices under P. H. Act, 1875, may be served "by Post, by a *prepaid Letter*" (s. 267); — proof of posting a Notice which does not show it was by a prepaid letter, is insufficient, although the section, further on, says that, "in proving such service it shall be sufficient to prove that the Notice, Order, or other Document was properly addressed and put into the post" (*Walthamstow* v. *Henwood*, 1897, 1 Ch. 41; 66 L. J. Ch. 31; 75 L. T. 375; 45 W. R. 124).

"It is settled law that an OFFER is to be deemed accepted when the LETTER of acceptance is 'posted'; the reason being that the Post Office is considered the common agent of both parties" (per Cozens-Hardy, J., *Re London & Northern Bank*, 69 L. J. Ch. 26; citing *Re Imperial Land Co of Marseilles*, 41 L. J. Ch. 621; 7 Ch. 587); but handing a letter to a postman for him to post, is not "posting" it; and, consequently, the delivery to him of a Letter of Acceptance of an Application for Shares is not a posting, quâ fixing the time of Acceptance (*Re London & Northern Bank*, 1900, 1 Ch. 220; 69 L. J. Ch. 24; 81 L. T. 512).

"By the Post"; Stat. Def., 3 & 4 V. c. 96, s. 71; 10 & 11 V. c. 85, s. 20.

BY PROMOTION. — *V.* PROMOTION.

BY PURCHASE. — As to the effect of this phrase in a Limitation to prevent application of rule against PERPETUITIES; *V.* Watson, Eq. 245, 246. *V.* PURCHASE.

A covenant to settle such future property as may be acquired "by purchase," will include a subsequently effected Life Policy and the moneys payable thereunder (*Re Turcan*, 58 L. J. Ch. 101; 40 Ch. D. 5).

BY REASON. — "Costs sustained by the defendant by reason of" an Indictment or Information for Libel, s. 8, 6 & 7 V. c. 96, includes the costs of unsuccessfully showing cause against the Rule *nisi* for filing the Information (*R.* v. *Steel*, 45 L. J. Q. B. 391; 1 Q. B. D. 485; disapproving *R.* v. *Cavendish*, 12 Ir. L. R. 230).

V. CONTRACT: COLOUR.

BY RETAIL. — *V.* RETAIL.

BY SEX. — *V.* SEX.

BY THE YEAR. — *V.* PER ANNUM: VALUE.

BY THIS MY WILL. — *V.* HEREIN.

BY VIRTUE. — A Fire Escape built pursuant to s. 7, Factory and Workshop Act, 1891, though an Imposition or OUTGOING within a lessee's covenant, is an expense which the lessor is called upon to pay "by virtue of an Act of Parliament" (*Arding* v. *Economic Printing Co*, 79 L. T. 622, 420).

"By virtue or in pursuance of"; *V.* PURSUANCE: UNDER.

"By virtue of the Statute of Distribution"; *V. Re Sturge and G. W. Ry*, 19 Ch. D. 444.

Money in "his Possession by virtue of his Office"; *V.* OFFICE: COLOUR.

Occupation "by virtue of Service"; *V.* SERVE.

V. AS SUCH: TAKE IN EXECUTION: DUTIES.

BY WAY OF. — "By way of *Advertisement*"; *V.* ADVERTISEMENT.

"By way of *Gaming*"; *V.* GAMING CONTRACT.

"By way of *Jointure*"; *V.* JOINTURE.

"By way of *Mortgage* or Equitable Charge"; *V.* MORTGAGE OR CHARGE.

"Duties incident to an estate conveyed by way of mtge"; *V.* TRUST.

"By way of *Succession*"; *V.* SETTLEMENT: SUCCESSION.

BY WEIGHT. — To sell Bread "By Weight," s. 4, Bread Act, 1836, 6 & 7 W. 4, c. 37, the Bread, after it is baked, must be weighed; it is not enough to weigh the dough before baking and make an allowance for loss of weight in the oven (*Jones* v. *Huxtable*, 36 L. J. M. C. 122; L. R.

2 Q. B. 460; 15 W. R. 900; 31 J. P. 534; 8 B. & S. 433: *Hill* v. *Browning*, L. R. 5 Q. B. 453; 22 L. T. 584; 34 J. P. 774); but, *semble*, if a fair sample of a few loaves from each batch are weighed after the batch has been baked, and as a test of the weight of all the loaves in the batch, that would suffice (*Webb* v. *Manders*, 12 S. J. 1020). The point is, that in some fair way the *baked* Bread must be weighed shortly before sale. "I do not say that it is strictly the duty of the seller to weigh a loaf *at the time of sale*; but unless the loaf were weighed then, or shortly before, that would be evidence of a sale otherwise than 'By Weight'" (per Blackburn, J., *Jones* v. *Huxtable*, sup).

In *Williams* v. *Deggan* (31 J. P. 807) Cockburn, C. J., is reported to have said that a baker ought to weigh his bread in the presence of his customer; and so he ought, and he runs risk if he do not; but there would seem no compulsion that he must (*Jones* v. *Huxtable*, sup: *R.* v. *Kennet*, L. R. 4 Q. B. 565; 33 J. P. 824: *Mitton* v. *Troke*, 20 L. T. 563; 33 J. P. 821).

It is no answer to a charge of not selling "By Weight," that the buyer asked for a loaf of a specified price (*London Co. Co.* v. *Read*, 1900, 1 Q. B. 288; 69 L. J. Q. B. 39; 81 L. T. 452; 48 W. R. 393; 63 J. P. 775).

V. FRENCH BREAD.

Selling Coals by Weight, 1 & 2 W. 4, c. lxxvi, s. 57; *V. Smith* v. *Wood*, 59 L. J. Q. B. 5; 24 Q. B. D. 23; approving *Meredith* v. *Holman*, 16 L. J. Ex. 126; 16 M. & W. 798, *whlc* was on s. 54.

BY WHOSE. — "Person by whose Act, Default, Permission, or Sufferance, the Nuisance arises," s. 12, 18 & 19 V. c. 121, s. 94, P. H. Act, 1875, s. 4, P. H. (London) Act, 1891; *V. Brown* v. *Bussell*, 37 L. J. M. C. 65; 9 B. & S. 1; L. R. 3 Q. B. 251: *Barnett* v. *Laskey*, cited CLEANSE: *Fordom* v. *Parsons*, 1894, 2 Q. B. 780; 64 L. J. M. C. 22; 71 L. T. 428; 58 J. P. 765: *R.* v. *Mead*, 64 L. J. M. C. 169; 59 J. P. 150: PERMISSION. "By whose Order"; *V.* EXTRAORDINARY TRAFFIC.

V. AUTHORIZE.

BY WILL. — *V.* WRITING: PURCHASE.

BY WRITING. — *V.* WRITING.

BYE. — "*Bye* signifieth a dwelling, *bye*, an habitation, and *byan* to dwell" (Co. Litt. 5 b).

BYE LAW. — "Is not a Bye Law, a law governing the Corporate Body, and which they are authorized to make?" (per Alderson, B., *Hopkins* v. *Swansea*, 8 L. J. Ex. 125; 4 M. & W. 621). *Vh* 5 Rep. 63: Termes de la Ley: Cowel, *Bilawes*: *James* v. *Tutney*, Cro. Car. 497, 498: *Collman* v. *Mills*, cited PERMIT: *London Assn of Shipowners* v. *London & India Docks*, 1892, 3 Ch. 242: 67 L. T. 238: PEACE: REGU-

LATE: NEW BUILDING: Selwyn, N. P. 1187–1191: Lumley, on Bye Laws: 2 Encyc. 315–319.

By a Stat. Def., "Bye Law" is sometimes made to include Rule, Order, or Regulation, *e.g.* 25 & 26 V. c. 97, s. 2; 27 & 28 V. c. 113, s. 3; 48 & 49 V. c. 76, s. 29; 49 & 50 V. c. 32, s. 9.

BYRES. — *V.* CATTLE SHED.

C. F. I. — CÆTERIS PARIBUS

C. F. I. — Cost, Freight, and Insurance; *whv.*

C. O. D. — Collect on Delivery, or Cash on Delivery.

CAB. — Quà Dublin Amended Carriage Act, 1854, 17 & 18 V. c. 45 (V. s. 10), " 'Cabriolet' shall include every carriage known as Hansom's Patent Safety Cab; and every carriage constructed with four wheels used for passengers (except a Stage Carriage, or a carriage drawn or impelled by the power of steam) which shall be used for the purpose of standing or plying for Hire in any street or road, or other place within the limits of" the Dublin Carriage Act, 1853. *V.* Ply. *Cp.* Carriage.

Quà London Cab Act, 1896, 59 & 60 V. c. 27 (*V.* s. 3), " 'Cab' shall mean any Hackney Carriage," within 32 & 33 V. c. 115.

CABIN OR OTHER ALLOWANCES. — In *Best* v. *Saunders* (Moo. & M. 268), Lord Tenterden was of opinion these words did not apply to an allowance in the nature of Primage. *Vh* 1 Maude & P. 121, 122.

CABIN PASSENGER. — *V.* Steerage Passenger.

CABLISH. — "Brushwood, or, more properly, windfalls; Spelm.; browsewood; 4 Inst. 308" (Elph. 564). *Vf* Cowel.

CAD. — *V.* Conductor.

CADAVER. — A dead human body, — the word being said to be formed of the first syllables of the words *caro data vermibus* (flesh given to the worms), — "The burial of the *Cadaver* (that is, *caro data vermibus*) is *nullius in bonis*, and belongs to ecclesiastical cognizance" (3 Inst. 203, cited by Holroyd, J., *R.* v. *Coleridge*, 2 B. & Ald. 809). There is no property in a Cadaver (*Williams* v. *Williams*, 51 L. J. Ch. 385; 20 Ch. D. 659, and authorities there cited: *R.* v. *Price*, cited Christian Burial).

CÆTERIS PARIBUS. — A statutory power to appoint to a Living was vested in trustees who were to appoint a fit and proper person duly qualified, provided that in such appointment such person should be preferred, "cæteris paribus," who should belong to a certain class; — held, that "cæteris paribus" referred to the being fit and proper and duly qualified, and not to the general qualifications of a clergyman (*A-G.* v. *Powis*, 24 L. J. Ch. 218; Kay, 186).

CAIRNS' ACTS. — Chancery Amendment Act, 1858, 21 & 22 V. c. 27, repealed by 46 & 47 V. c. 49:
Partition Act, 1868, 31 & 32 V. c. 40.

CALAMITY. — *V.* UNFORESEEN.

CALCEY. — A Calsey, or Calsway, or Causey, 23 H. 8, c. 5, is a FOOTPATH, and "is a passage, made by art of earth gravel stones and such like, on or over some High or Common Way leading through surrounding grounds, for the safe passage of the King's liege people" (Callis, 90). *Vh, Chester Mill Case*, 10 Rep. 137. Cowel gives the word as "Calcetum," or "Calceata," and defines that word as, CAUSEWAY.

CALCULATED TO BENEFIT. — Scheme of Arrangement not "REASONABLE," or "calculated to benefit the general body of Creditors," s. 18 (6), Bankry Act, 1883; *V. Re Aylmer*, 19 Q. B. D. 33; 56 L. J. Q. B. 460; 56 L. T. 801; 35 W R. 532; 20 Q. B. D. 258; 57 L. J. Q. B. 168; 36 W. R. 231: *Re Burr*, cited APPROVE: *Re Thurlow*, 1895, 1 Q. B. 724; 64 L. J. Q. B. 479; 72 L. T. 642.

CALCULATED TO DECEIVE. — Name of Co so nearly resembling that of an already registered Co "as to be calculated to deceive," s. 20, Comp Act, 1862; *V. Manchester Brewery Co* v. *North Cheshire & Manchester Brewery Co*, 1898, 1 Ch. 539; 67 L. J. Ch. 351; 78 L. T. 537; 46 W. R. 515, and cases there cited.

The prohibition in s. 6, Trade Marks Registration Act, 1875, 38 & 39 V. c. 91, against registering, in connection with a trade mark, words "calculated to deceive," refers to deceptiveness inherent in the words themselves, and not as arising from similarity to words comprised in other trade marks (*Re Horsburgh*, 53 L. J. Ch. 237).

As to the same phrase in Patents, Designs and Trade Marks Act, 1883, ss. 72 (2), 73; *V. Re Speer*, W. N. (87) 8; 55 L. T. 880: *Re Australian Wine Importers and Mason*, 58 L. J. Ch. 380; 41 Ch. D. 278: *Eno* v. *Dunn*, 15 App. Ca. 252; 63 L. T. 6; 39 W. R. 161: *Re Smokeless Powder Co*, 1892, 1 Ch. 590; 61 L. J. Ch. 391; 66 L. T. 407; 40 W. R. 507: *Re Dexter*, 1893, 2 Ch. 262; 62 L. J. Ch. 545; 68 L. T. 793: *Paine* v. *Daniell*, 1893, 2 Ch. 567; 62 L. J. Ch. 732; 68 L. T. 801; 42 W. R. 40: *Re Loftus*, 1894, 1 Ch. 193; 63 L. J. Ch. 52; 69 L. T. 690; 42 W. R. 251: *Re Verreries de l'Étoile Socy*, 1894, 2 Ch. 26; 63 L. J. Ch. 381; 70 L. T. 295; 42 W. R. 420: *Re Dewhurst*, 1896, 2 Ch. 137; 65 L. J. Ch. 618; 74 L. T. 388; 44 W. R. 672: *Saxlehner* v. *Apollinaris Co*, 1897, 1 Ch. 893; 66 L. J. Ch. 533; 76 L. T. 617.

As to the Evidence of what is "calculated to deceive," quà an alleged Infringement of a Trade-Mark; *V. Baker* v. *Rawson*, 60 L. J. Ch. 49; 45 Ch. D. 519.

CALCUTTA LINSEED. — *V. Wieler* v. *Schilizzi*, 25 L. J. C. P. 89; 17 C. B. 619.

CALENDAR. — *V.* ALMANACK.

CALENDAR MONTH. — "A 'Calendar Month' is a legal and technical term; and in computing time by calendar months, the time must be reckoned by looking at the calendar and not by counting days" (per Brett, L. J., *Migotti* v. *Colville*, 48 L. J. C. P. 695; 4 C. P. D. 233; 27 W. R. 744; 43 J. P. 620). Therefore, *e.g.*, "one calendar month's Imprisonment is to be calculated from the day of imprisonment to the day numerically corresponding to that day in the following month, less one" (Ib.). When there is no such corresponding day in the last month of the imprisonment, the prisoner's term will be up on the last day of such last month. Thus a prisoner "sentenced to a calendar month's imprisonment will never be imprisoned for a greater number of days than there are in the month in which he was sentenced" (per Cotton, L. J., *Migotti* v. *Colville*, sup). So, as regards the requirement of a calendar month's Notice of Action, — "in considering what is the length of a Calendar month, it is sufficient, when the months are broken whatever be the length of either, to go from one day in one month to the corresponding day in the other" (per Cockburn, C. J., *Freeman* v. *Read*, 11 W. R. 802; 32 L. J. M. C. 226; 8 L. T. 458; 4 B. & S. 184).

So, of a COMPLAINT, which has to be made "WITHIN 1 calendar month after" its cause; and, therefore, where in such a case the alleged Offence be on the 30th May, the complaint is in time on the 30th June (*Radcliffe* v. *Bartholomew*, 1892, 1 Q. B. 161; 61 L. J. M. C. 63; 65 L. T. 677; 40 W. R. 63; 56 J. P. 262). *Vf* TIME.

V. MONTH: SIX MONTHS.

CALL. — A "Call" on a Co's Shares is used in two senses, — (1) the Application to the Shareholders to pay; (2) the Amount to be paid (per Parke, B., *Newry, &c Ry* v. *Edmunds*, 2 Ex. 121).

A Circular to Shareholders informing them that the Directors have resolved on making a "Call" of Capital, constitutes a Call (per Parke, B., *Shaw* v. *Rowley*, 16 M. & W. 810), for "Notice of a thing implies that it exists" (per Coleridge, J., *R.* v. *Londonderry, &c Ry*, 13 Q. B. 1003); but a Call is made, in point of time, when the Resolution is passed, and not when the Notice is given (*S. C.*). *Va* OWING. *Vh* Hamilton, ch. 11.

Instalments by which a Share is payable, are not "Calls" (per Kelly, C. B., *Hubbersty* v. *Manchester S. & L. Ry*, 8 B. & S. 421, 423).

Probably, it is of general acceptation in the Winding-up of a Co, to define a "Call" as, "a demand or requisition upon Contributories of the Co, made or to be made for a CONTRIBUTORY Payment towards the funds or assets thereof, or for or towards the payment or discharge of any of the debts, liabilities, or losses of such Co" (s. 3, 11 & 12 V. c. 45).

"To 'call' at a PORT is a well-known sea-term; it means to call for

the purposes of business, — generally, to take in or unload Cargo, or to receive orders. It must mean that the vessel may stop at the Port of Call for a time, or else the liberty to call would be idle" (per Esher, M. R., *Leduc* v. *Ward*, cited LIBERTY TO CALL).

TOLL for using pier or landing-stage "every Time of Call," s. 165, Thames Conservancy Act, 1894, will not (in the absence of contract) authorise a higher charge than the prescribed toll on the ground of the stay being longer than a mere "Call" would require (*Queen of the River S. S. Co* v. *Thames Conservators*, 47 W. R. 685).

CALL UPON. — An agreement not to "call upon, or directly or indirectly solicit orders from," a person's customers, prohibits only business calls in the way of the trade or business of the person whose customers are referred to (*Mills* v. *Dunham*, cited CUSTOMER).

Arbitrators are "*called on to act*," Sch 1 (*c*), Arb Act, 1889, when called on to do some specific thing connected with the arbitration, *e.g.* if they receive a Notice requiring them to appoint an Umpire (*Baring-Gould* v. *Sharpington Syndicate*, 1899, 2 Ch. 91; 68 L. J. Ch. 434). *Cp*, *Baker* v. *Stephens*, cited ENTER.

A person is "*bonâ fide called upon to pay*" Rates, s. 5, 6 & 7 V. c. 18, if his name is inserted as the rate-payer in the Rate Book (*Cook* v. *Luckett*, 2 C. B. 168; 15 L. J. C. P. 78).

CALLED. — "My estate *called* A." is a general description, not confined to a particular locality, and therefore extrinsic evidence may be given of what is included in such a devise; *secus*, if there were a description of lands "at" or "in" a particular locality (*Ricketts* v. *Turquand*, 1 H. L. Ca. 472; cited 1 Jarm. 427, 428). *V.* OF.

CALLING. — Carrying on a School is a "Calling," within a restrictive covenant (*Doe* d. *Bish* v. *Keeling*, 1 M. & S. 95: *Kemp* v. *Sober*, 20 L. J. Ch. 602; 1 Sim. N. S. 517); and "the Profession of Teaching is a 'Calling,' notwithstanding the fact that that teaching is carried on under the directions of a Society regarded by law as an illegal organization" (per Porter, M. R., *Galwey* v. *Barden*, 1899, 1 I. R. 514), in *whc* it was held that a Member of the Order of Jesuits who was a teacher in a Jesuit College, was entitled to a legacy conditioned on his entering a "Profession, Trade, or Calling," although his appointment in the College involved his being at the service of the Socy, and though there was no doubt that he intended to dedicate the legacy to the use of the Socy. *Vf* BUSINESS.

Cp APPRENTICE: ORDINARY CALLING: VOCATION.

CALSWAY. — *V.* CALCEY.

CALUMNIATOR. — *V.* CHALLENGE.

Lord CAMPBELL'S ACTS. — Libel Act, 1843, 6 & 7 V. c. 96:
Fatal Accidents Act, 1846, 9 & 10 V. c. 93:
Obscene Publications Act, 1857, 20 & 21 V. c. 83:
Vexatious Indictments Act, 1859, 22 & 23 V. c. 17.

CAN. — To engage to do anything "as fast as it *can*" be done, means no more than, as fast as POSSIBLE: *Vh* CUSTOMARY.

"Can be," means, "can reasonably be" (per Knight-Bruce, L. J., *Whicker* v. *Hume*, 21 L. J. Ch. 406; 1 D. G. M. & G. 506; 14 Bea. 509; adopted by P. C. in *Jex* v. *McKinney*, 58 L. J. P. C. 69; 14 App. Ca. 77).

Such sum as "can be procured"; *V. Llewellyn* v. *Rutherford*, cited GOODWILL.

CAN TRANSFER. — *V.* LEFT.

CANADA. — The re-union of Upper and Lower Canada became "Canada" by the British North America Act, 1840, 3 & 4 V. c. 35, by s. 61 of which it was enacted that "the words 'Act of the Legislature of the Province of Canada,' are to be understood to mean, 'Act of Her Majesty her heirs or successors enacted by Her Majesty or by the Governor on behalf of Her Majesty, with the advice and consent of the Legislative Council and Assembly of the Province of Canada.'" In 3 & 4 V. c. 78 (*V.* s. 12) "Province of Canada" was defined, "Canada as constituted under" the Act of 1840.

CANAL. — *Semble*, The River Bourne, at Bournemouth, is canalized so as to be a "Canal," within s. 17, P. H. Act, 1875 (per Lindley, L. J., *Durrant* v. *Branksome*, cited FILTHY WATER).

Quà Ry and Canal Traffic Act, 1854, "'Canal' shall include any NAVIGATION whereon Tolls are levied by authority of Parliament, and also the Wharves and Landing Places of and belonging to such Canal or Navigation and used for the purposes of PUBLIC TRAFFIC" (s. 1), — a def adopted for Regn of Railways Act, 1873 (*V.* s. 3).

Other Stat. Def. — 26 & 27 V. c. 112, s. 3; 38 & 39 V. c. 17, s. 108; 40 & 41 V. c. 60, s. 14.

Building "used for the purposes of a Canal"; *V.* PURPOSES.

"Land used only as a Canal"; *V.* ONLY: RAILWAY.

"Canal *Boat*"; Stat. Def., 40 & 41 V. c. 60, s. 14.

"Canal *Company*"; Stat. Def., Ry & Canal Traffic Act, 1854, s. 1; Regn of Railways Act, 1873, s. 3; 38 & 39 V. c. 17, s. 108; Ry & Canal Traffic Act, 1888, ss. 37, 46; 61 & 62 V. c. 16, s. 8.

"Canal *Interest*"; Stat. Def., Ry & Canal Traffic Act, 1888, s. 42 (3).

CANCEL. — To "cancel" a document, is to put an end to it by drawing lines over it, or over its signatures, "in the form of lattice-work, or *cancelli*; though the phrase is now used, figuratively, for any

manner of obliteration or defacing it" (2 Bl. Com. 308, 309) *e.g.* by tearing the seals off a DEED (*Ward* v. *Lumley*, 29 L. J. Ex. 322; 5 H. & N. 87, *whv* as to utility of document after Cancellation). But an intention to destroy must accompany the act of cancellation (*Raper* v. *Birkbeck*, 15 East, 17: *Wilkinson* v. *Johnson*, 3 B. & C. 428: per Maule, J., *Bamberger* v. *Commercial Credit*, 15 C. B. 693). *Vf* Touch. by Preston, 70, 56, *n.* *Cp* BURN.

But a document may be made void under a power to "cancel" without the manual act of cancellation (*Bamberger* v. *Commercial Credit*, 15 C. B. 676; 24 L. J. C. P. 115).

In a Marine Insrce, or Charter-Party, "Cancel," sometimes means, to become void: — thus a Mem on a Charter-Party provided that the Charter should be "cancelled" on either of certain events happening, and that was held to mean, that if either event happened the Charter should become void (*Adamson* v. *Newcastle S. S. Insrce*, 48 L. J. Q. B. 670; 4 Q. B. D. 462). But where a Policy on Freight provided that "no claim arising from the *cancelling* of any Charter" should be allowed; held, that frustration of the adventure did not amount to cancellation (*Re Jamieson and Newcastle S. S. Insrce*, 1895, 2 Q. B. 90; 64 L. J. Q. B. 560; 72 L. T. 648; 43 W. R. 530).

Not every Tearing of a Will is a Cancellation of it (per Best, J., *Doe* d. *Perkes* v. *Perkes*, cited TEAR).

V. TO BE CANCELLED: DESTROY: REVOKE.

CANDIDATE. — "The correct sense of the word 'Candidate' is, a person offering himself to the suffrages of the people" (per Ld Ellenborough, *Morris* v. *Burdett*, 2 M. & S. 217). But on this the question arises, when does a person so offer himself? This question, according to the purpose for which it is asked, will vary in its answer.

A person who, with his consent, received a parliamentary nomination, but who declined to go to the poll, was not a "Candidate" liable to expenses of polling booths &c, within s. 71, Rep People Act, 1832 (*Muntz* v. *Sturge*, 10 L. J. Ex. 234; 8 M. & W. 302). But a candidate cannot withdraw from nomination, except "during the time appointed for the election" (35 & 36 V. c. 33, s. 1), — *i.e.* the hours for nomination,— or by neglecting, on request, to find security for the returning officer's expenses within one hour afterwards (38 & 39 V. c. 84, s. 3). How far then would *Muntz* v. *Sturge*, be now operative in case no request for security be made within the time prescribed by the section last cited, and yet the candidate, before the expenses of the polling had been incurred, repudiated his candidature and consequent liability? Such a person would not be a "Candidate" within s. 71, Rep People Act, 1832, and on the other hand the returning officer would not have availed himself of s. 3, 38 & 39 V. c. 84. How then could he claim for services repudiated before rendered? If it be said that the time for withdrawing the nomi-

nation being past, the nominee remains a "Candidate" in spite of himself, and all the machinery of an election must go on, and that that would be the nominee's fault; it may be replied, that the fault is equally the returning officer's for not having required the security, which request would have at once settled the matter. It would seem, therefore, that in the case supposed the returning officer would be without remedy (but see a contrary opinion, Cunningham on Elections, 66, 67).

A person who, with his consent, received a parliamentary nomination, but declined to go to the poll, was held to be a "Candidate" within 17 & 18 V. c. 102 (V. s. 38), and the 21 & 22 V. c. 87 (V. s. 3); and as such liable to the fee of £10 to the election auditor, an office abolished by 26 & 27 V. c. 29 (*Edwards* v. *Whitehurst*, 29 L. J. Ex. 329; 5 H. & N. 131).

But the most important aspect in which the question can be put, of when and how a person becomes a Parliamentary Candidate, is as it affects his return or the liability of himself or agents for Corrupt Practices. In this view, the Stat. Def. is given in s. 63, Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, as follows: —

"Candidate at an Election," and "Candidate," mean "unless the context otherwise requires, (1) any person elected to serve in parliament at such election, and (2) any person who is nominated as a candidate at such election, or is declared by himself or by others to be a candidate *on or after the day of the issue of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued.*

"Provided that where a person has been nominated as a candidate or declared to be a candidate, by others, then, —

(*a*) If he was so nominated or declared without his consent, nothing in this Act shall be construed to impose any liability on such person, unless he has afterwards given his assent to such nomination or declaration, or has been elected; and

(*b*) If he was so nominated or declared, either without his consent or in his absence, and he takes no part in the election, he may, if he thinks fit, make the Declaration respecting election expenses contained in the 2nd Part of the 2nd Sch to this Act, and the election agent shall, so far as circumstances admit, comply with the provisions of this Act with respect to expenses incurred on account of or in respect of the conduct or management of the election in like manner as if the candidate had been nominated or declared with his consent."

This definition establishes two classes of candidates: —

1. Successful:
2. Unsuccessful.

1. As regards successful candidates, a person "*elected*" is a candidate, and is responsible for all the acts of himself or his agents for the time

being, that bear upon his election (*Youghal*, 21 L. T. 306; 1 O'M. & H. 291). There is no limitation of time. A successful candidate is a "candidate" as soon as he begins to operate with a view to his election; and thenceforward all the liabilities, disqualifications, and penalties of a "candidate" attach to him (*Boston*, 1874, 2 O'M. & H. 161, was a memorable instance: *Vf, Malcolm* v. *Ingram*, L. R. 10 C. P. 168; 44 L. J. C. P. 121).

2. As regards unsuccessful candidates, the difference is indicated above by italics. An unsuccessful candidate would not be a "candidate," penally responsible, except for acts done on or after the day of the issuing of the writ or after the dissolution or vacancy.

Other Stat. Def. — 31 & 32 V. c. 125, s. 3; 35 & 36 V. c. 60, s. 2; 45 & 46 V. c. 50, s. 77. — *Scot.* 53 & 54 V. c. 55, s. 2.

A person disqualified for Election and therefore disqualified for Nomination, if regularly nominated in point of form for election as a Municipal Councillor, can properly "allege himself to have been a Candidate," s. 88 (1), Mun Corp Act, 1882, and is entitled to petition under that section (*Harford* v. *Lynskey*, 1899, 1 Q. B. 852; 68 L. J. Q. B. 599; 80 L. T. 417; 47 W. R. 653; 63 J. P. 263).

CANDLE. — Quà the Duties imposed by 24 G. 3, c. 11 (repealed), "Candles" did not include small Rush-lights made at home and "only once dipped in, or once drawn through, grease or kitchen stuff, and not at all through any tallow, melted or refined" (s. 5). *Vth, A-G.* v. *Barrell*, 1 Y. & J. 495.

The goods of the East India Co had to be "sold openly and publicly by Inch of Candle" (s. 69, 9 & 10 W. 3, c. 44), on *whv Eagleton* v. *East India Co*, 3 B. & P. 63–66.

CANISTER. — *V.* CASE OR CANISTER.

CANNEL. — *V.* IRON.

Quà Metropolis Gas Act, 1860, 23 & 24 V. c. 125, "Cannel Gas," means, Gas of an Illuminating Power (*V.* s. 25) of "not less than 20 candles" (s. 4).

CANNOT. — "Cannot," includes a legal inability, as well as a physical impossibility (*The Newbattle*, 54 L. J. P. D. & A. 16; 10 P. D. 33).

Where, on an inquiry before Justices, the Settlement of an Insane Person "cannot be *ascertained*," s. 41, 9 G. 4, c. 40, means, "not a permanent and perpetual disability to ascertain it but, only a disability to decide upon it at the time" (per Coleridge, J., *R.* v. *Heyop*, 8 Q. B. 560; 15 L. J. M. C. 70).

Substituted Service of a notice if the person to be served "cannot be FOUND," s. 15 (2), 14 & 15 V. c. 92, means, cannot be found after due

diligence has been used to effect personal service (*Blue* v. *Fullerton*, Ir. Rep. 10 C. L. 233).

CANON. — A Canon of the Church, is a Member of a CHAPTER (2 Bl. Com. 383), who has no Cure of Souls (Phil. Ecc. Law, 140), and whose chief duty is not only to preach, "in his own person, so often as he is bound by law, statute, ordinance, or custom, but shall likewise preach in other churches of the same diocese where he is resident, and especially in those places, whence he or his Church receive any yearly rents or profits" (No. 43, Canons Ecc. 1604). *Vf*, 3 & 4 V. c. 113, s. 93; 35 & 36 V. c. 8, s. 2.

Minor Canon; *V.* 3 & 4 V. c. 113, s. 93.

Vh, *Randolph* v. *Milman*, 38 L. J. C. P. 81; L. R. 4 C. P. 107.

CANONRY. — *V. Walrond* v. *Pollard*, 3 Dy. 294 a: *Ecc. Commrs* v. *Kildare*, 8 Ir. Ch. Rep. 100.

CANTARIA. — *V.* CHAUNTRY.

CANVASSER. — Quà Municipal Elections, a "Canvasser," "means any person who solicits, or persuades, or attempts to persuade, any person to vote, or to abstain from voting, at an Election, or to vote, or to abstain from voting, for any CANDIDATE at an Election" (s. 2, 35 & 36 V. c. 60; s. 77, 45 & 46 V. c. 50).

It is submitted that that def is good for "Canvasser" at any Election.

CAPABLE. — "Capable of being covered by Insrce"; *V.* INSURANCE.

"Capable of taking effect"; *V.* SUBSISTING.

"Capable forthwith of exercising all the functions of an Incorporated Co," s. 18, Comp Act, 1862; — "Those are strong words. The Co attains maturity on its birth" (per Ld Macnaghten, *Re Salomon*, 66 L. J. Ch. 49; 1897, A. C. 22).

A child under 7 is not capable of CRIME; between 7 and 14 there is only a presumption against such capability (1 Bl. Com. 464, 465); but a boy under 14 cannot be guilty of RAPE (1 Hale, P. C. 630: *R.* v. *Groombridge*, 7 C. & P. 583).

V. INCAPABLE.

CAPACITY. — Capacity is "an ability or fitnesse to receive: In law, it signifies when a man or body politick is able to give, or take, lands or other things, or to sue actions" (Cowel). *Vf* Termes de la Ley.

A claim arising in respect of moneys improperly received and retained by a Director of a Building Socy, is not a Dispute "in his Capacity of a Member of the Society" within s. 2, Bg Societies Act, 1884, so that it ought to be referred to arbitration (*Municipal Permanent Bg Socy* v. *Richards*, 39 Ch. D. 372; 58 L. J. Ch. 8: *Cp.* CHARACTER); the phrase refers "to disputes arising out of the social contract that binds the mem-

bers of the Socy together" (per Fry, L. J., *Western Suburban, &c Socy* v. *Martin*, cited DISPUTE).

CAPITA. — *V.* PER CAPITA.

CAPITAL. — The "Capital" of a Joint-Stock Co, "means, the money subscribed pursuant to the Mem of Assn, or what is represented by that money" (per Lindley, L. J., *Verner* v. *Gen. & Commercial Trust*, 1894, 2 Ch. 239; 63 L. J. Ch. 462).

"The word 'Capital' for the purposes of a Joint Stock Co, may have any one of at least three meanings, viz.: —

"(1.) Nominal Capital: — the amount named in the Memorandum of Association, say, £100,000 in 10,000 shares of £10 each.

"(2.) Issued Capital: — say 5,000 shares of £10 each, part of the above nominal capital.

"(3.) Paid-up Capital: — say £25,000, being £5 per share on each of the above 5,000 shares.

"In which one of these meanings it is used in the Acts, it is very difficult to say: probably it is used sometimes in one and sometimes in another. In the *Dronfield Co* (17 Ch. D. 76, 86; 50 L. J. Ch. 387), Jessel, M. R., pointed out that in s. 12 of the Comp Act, 1862, and s. 9 of the Comp Act, 1867, it must mean not merely 'Nominal Capital' but 'Issued Capital' or 'Trading Capital.' By s. 3 of the Comp Act, 1877, the word as used in the Comp Act, 1867, is to 'include' paid-up capital; and looking at s. 5 of the Comp Act, 1877, it must include unissued capital, for that section gives power to reduce capital by cancelling unissued shares. The result, therefore, would seem to be that the Acts of 1867 and 1877 in fact cover all three meanings" (Buckl. 583).

"Available Capital"; *V.* AVAILABLE.

Capital "*lost*," or "unrepresented by *available assets*," s. 3, Comp Act, 1877, does not comprise Capital that has been expended in preliminary expenses (*Re Abstainers Insrce Co*, 1891, 2 Ch. 124; 60 L. J. Ch. 510; 64 L. T. 256; 39 W. R. 574). *Note:* — where Capital is so lost, &c, the Court has jurisdiction to sanction any scheme for Reduction of Capital (*British & American Corp* v. *Couper*, 1894, A. C. 399; 63 L. J. Ch. 425; 70 L. T. 882; 42 W. R. 652: *Re Floating Dock Co*, 1895, 1 Ch. 691; 64 L. J. Ch. 361; 43 W. R. 344: *Re National Dwellings Socy*, 78 L. T. 144).

Outlay out of Capital; *V.* OUTLAY.

Capital "raised" or "issued" from which preliminary expenses to be paid; *V. Nichols* v. *Regent's Canal Co*, 63 L. J. Q. B. 641; 71 L. T. 249.

Bequest of "Capital"; *V. Enohin* v. *Wylie*, 10 H. L. Ca. 1; 31 L. J. Ch. 402.

BOOK DEBTS are part of a Tradesman's Capital (*Delany* v. *Delany*, cited BUSINESS, towards end).

V. INCOME: PROFITS: PRODUCTIVE CAPITAL: UNCALLED CAPITAL: NOMINAL: LOAN.

CAPITAL EMPLOYED. — On the sale of a business, a representation as to the "Capital employed" therein by the vendor, means, "the amount in pounds, shillings, and pence which he has invested therein, and which, if not so invested, might be in his pocket, or otherwise expended on his account" (per Kekewich, J., *Glasier* v. *Rolls*, 58 L. J. Ch. 330; 37 W. R. 430; 60 L. T. 591; revd on a ground not affecting above def, 5 Times Rep. 691; 62 L. T. 133).

"Sum employed as Capital"; Sch D., 1st Case, R. 3, Income Tax Act, 1842; *V. Reid's Brewery Co* v. *Male*, cited PROFITS: *Royal Insrce* v. *Watson*, 1897, A. C. 1; 66 L. J. Q. B. 1; 75 L. T. 334; 61 J. P. 404: — quà Cost-Book Mines, *Morant* v. *Wheal Grenville Co*, 71 L. T. 758; 11 Times Rep. 67.

V. AT THE PRESENT TIME.

CAPITAL LOST. — *V.* CAPITAL.

CAPITAL MONEY. — The def of "Capital Money" in s. 2 (9), S. L. Act, 1882, should be transposed thus, — "Capital Money arising under this Act and receivable for the trusts and purposes of the Settlement, is, in this Act referred to as Capital Money arising under this Act" (per Esher, M. R., *Marlborough* v. *Majoribanks*, 32 Ch. D. 5; 55 L. J. Ch. 339; 34 W. R. 377; 54 L. T. 914). The phrase means, Capital Money capable of being applied, — *i.e.* money in hand, as distinguished from probable future receipts (*Re Bristol*, 1893, 3 Ch. 161; 62 L. J. Ch. 901; 69 L. T. 304; 42 W. R. 46, and cases there cited). *Sv*, *Re Norfolk*, cited IMPROVEMENT.

Proceeds from sale of Heir-looms (*Marlborough* v. *Majoribanks*, sup), a Fine on granting a Lease (s. 4, 47 & 48 V. c. 18), Money required for Enfranchisement or for Equality of Exchange or Partition (s. 18, S. L. Act, 1882), Money in Court, or in the hands of trustees, LIABLE to be laid out in purchase of lands (ss. 32, 33, Ib.: *Re Byron*, 23 Ch. D. 171; 53 L. J. Ch. 152; 48 L. T. 515; 31 W. R. 517: *Ex p. Castle Bytham*, 1895, 1 Ch. 348; 64 L. J. Ch. 116; 43 W. R. 156: *Re Mackenzie*, 23 Ch. D. 759; 52 L. J. Ch. 726; 48 L. T. 936: *Re Tennant*, 58 L. J. Ch. 457: *Re Mundy*, cited OPTION: *Clarke* v. *Thornton*, 35 Ch. D. 314; 56 L. J. Ch. 302; 35 W. R. 603; 56 L. T. 294: *Svthlc, Burke* v. *Gore*, 13 L. R. Ir. 367) are "Capital Money" within the S. L. Act, 1882; but accumulations of surplus rents are not (*Re Newcastle*, 24 Ch. D. 129; 52 L. J. Ch. 645; 48 L. T. 779; 31 W. R. 782).

Money liable to be laid out in the purchase of LAND that may be invested or applied as "Capital Money," s. 33, S. L. Act, 1882, includes

money to be laid out in Freehold Ground Rents having a prescribed relative value and a prescribed term (*Re Thomas*, cited IMPROVEMENT).

"Capital Money," quà s. 69, Loc Gov Act, 1888, is defined in subs. 3 of that section.

Vh Tudor, Char. Trusts, 280, 281.

CAPITAL NOT CALLED UP. — Includes unissued Shares (*English Channel Steamship Co* v. *Rolt*, 17 Ch. D. 715).

CAPITAL WORKS. — Stat. Def., Loc Gov (Scot) Act, 1889, 52 & 53 V. c. 50, s. 18 (7).

CAPITE. — A Tenant *in Capite*, was one who held "immediately of the King, as of his Crowne, be it by Knight's Service or Socage; and not of any Honor, Castle, or Manor" (Termes de la Ley). *Vf* Cowel: Jacob.

CAPTAIN. — Quà Militia (Voluntary Enlistment) Act, 1875, 38 & 39 V. c. 69, "'Captain,' includes any other COMMANDING OFFICER of a company" (s. 2).

"Captain or Commanding Officer"; *V.* 26 & 27 V. c. 116, s. 3.

CAPTIVES. — *V.* PRISONER.

CAPTORS. — *V.* JOINT CAPTORS.

CAPTURE. — Capture is "a Taking, an Arrest, a Seizure, 14 Car. 2, c. 14" (Cowel).

"Capture," in a Marine Insurance, and generally, means a hostile seizure by one country of the Ships or Goods of the subjects of another country with which it is in a state of WAR, with intent to keep or to deprive the owner of the thing seized (Park, ch. 4: *Johnston* v. *Hogg*, 52 L. J. Q. B. 343; 10 Q. B. D. 432, and dicta there cited). In *Cory* v. *Burr* (52 L. J. Q. B. 659; 8 App. Ca. 393), which was also a case on a Marine Policy and contained the usual warranty against "Capture and Seizure," Selborne, C., said, — "I am disposed to agree that if the word 'Capture' had stood alone it might have appeared to point to a *belligerent* capture."

Though a Ship is the more easily captured because she was driven by stress of weather on the shore, that is none the less a Capture (*Green* v. *Elmslie*, Peake, 212); *secus*, if she be a TOTAL LOSS before seizure, for then the loss is already a PERIL OF THE SEA (*Hahn* v. *Corbett*, 2 Bing. 205). *Vf* CONSEQUENCES.

V. SEIZURE: ACTUAL CAPTURE.

CAPUT PORTUS. — *V.* PORT.

CARCASE. — Quà Contagious Diseases (Animals) Act, 1878, 41 & 42 V. c. 74, "'Carcase' means, the carcase of an animal; and includes,

part of a carcase, and the meat, bones, hide, skin, hoofs, horns, offal, or other part of an animal, separately or otherwise, or any portion thereof" (s. 5, subs. 1, vi), — a def which (by s. 59) is adopted for 57 & 58 V. c. 57.

CARDS. — Quà Revenue Act, 1862, 25 & 26 V. c. 22, "Cards," means Playing Cards charged with Stamp Duty; and "Pack of Cards" means "any quantity or number of cards not exceeding 52" (s. 28).

CARDWELL'S ACT. — Ry & Canal Traffic Act, 1854.

CARE: CUSTODY. — "Whether the custody be domestic or not, if a person, — no matter who he is or in what relation he stands, — has the care and custody of a Lunatic, and during the course of that care or custody abuses, ill-treats, or wilfully neglects a lunatic he is within" s. 9, 16 & 17 V. c. 96, and liable to its penalty (per Coleridge, C. J., *Buchannan* v. *Hardy*, 56 L. J. M. C. 45; 18 Q. B. D. 486; 35 W. R. 453; 51 J. P. 741). In that case it was, accordingly, held that a parent is within the section; and the decision in *R.* v. *Rundle* (24 L. J. M. C. 129; 1 Dears. 482), that a husband is not, was adversely criticised. A brother is within the section (*R.* v. *Porter*, 33 L. J. M. C. 126).

"Custody, Charge, or Care" of a CHILD, quà Prevention of Cruelty to Children Act, 1894, 57 & 58 V. c. 41; *V.* s. 23 (3). A woman's paramour is not (as a cohabiting husband is) *ipso facto* within this phrase, because he is not its "PARENT"; to convict him it must be shown that, in fact, he had the custody of, and did neglect, her child (*Ottley* v. *Fenn*, 109 Law Times, 175, 176).

"Care or Management" of a PLACE kept for Betting, ss. 1 and 3, 16 & 17 V. c. 119; *V. R.* v. *Cook*, and *Davis* v. *Stephenson*, cited USE.

"Care, Government, or Management" of a House, &c, s. 2, 21 G. 3, c. 49; *V.* KEEPER.

Servants having "the Care" of property, s. 8, Black Act, 9 G. 1, c. 22, s. 4, 52 G. 3, c. 130; *V. Nesham* v. *Armstrong*, 1 B. & Ald. 146: *Somerset* v. *Mere*, 4 B. & C. 167.

CARELESSLY. — As to effect of a jury's finding that a PRIVILEGED COMMUNICATION was made honestly, but "carelessly"; *V. Pittard* v. *Oliver*, 89 Law Times, 119.

"Carelessly, or Accidentally" break or damage a Street Lamp, s. 207, Metrop Man. Act, 1855; the liability under this section may, under the word "accidentally," be incurred though the damage resulted in great measure through the lamp being in an improper and unsafe position (*Burgess* v. *Morris*, 77 L. T. 97; 61 J. P. 553).

CARE-TAKER. — A "Care-taker" is one whose only business is to guard the premises against injury; and does not include one who may create danger (*Quin* v. *National Assrce*, Jones & Carey, 330); therefore, a carpenter having charge of an unfinished house in which he also carries

on his business as a carpenter, is not properly described as a "Care-taker" quà a Fire Policy (*S. C.*).

CARGO. — "The word 'Cargo,' as referred to a Ship, is very intelligible, and must mean the whole LOADING. It may as well be said that the word 'Ship' is uncertain, one being much bigger than another" (per Cur. *Sargent* v. *Reed*, 2 Stra. 1228); "Cargo," and, generally, "FREIGHT," are terms applicable to Goods only (*Lewis* v. *Marshall*, 13 L. J. C. P. 193; 7 M. & G. 729).

"Generally speaking, the term 'Cargo,' unless there is something in the context to give it a different signification, means the entire load of the ship which carries it" (per Mellish, L. J., *Borrowman* v. *Drayton*, 2 Ex. D. 19; 46 L. J. Q. B. 276: for such a context, *V. Caffin* v. *Aldridge*, cited PORT). So when a contract shews that the buyer of a "Cargo" is to have complete control over the destination of the vessel, "Cargo" means the entire ship-load and not a shipment, and the buyer of, *e.g.* "a Cargo of from 2,500 to 3,000 Barrels (seller's option)," may reject a tender of 3,000 Barrels on the ground that other Barrels had been shipped by the same vessel and therefore that a "Cargo" was not tendered (*Borrowman* v. *Drayton*, sup: *Va*, *Kreuger* v. *Blanck*, L. R. 5 Ex. 179; 39 L. J. Ex. 190: *Vf* 1 Maude & P. 313). And, on the other hand, the buyer of a "Cargo," the quantity being mentioned, is bound to take the Cargo, whatever its quantity, unless the contrary is very plainly shewn (*Levi* v. *Berk*, 2 Times Rep. 898). *V.* MORE OR LESS.

Where, however, the question is on a Policy of Insurance, "Cargo" does not necessarily mean the whole loading (*Houghton* v. *Gilbart*, 7 C. & P. 701: *Vthc* contrasted with *Sargent* v. *Reed*, sup, in jdgmt of Cleasby, B., *Kreuger* v. *Blanck*, sup). *Vh*, *Anderson* v. *Morice*, 1 App. Ca. 713; 46 L. J. C. P. 11; 25 W. R. 14; 35 L. T. 566: *Colonial Insrce* v. *Adelaide Insrce*, 12 App. Ca. 128; 56 L. J. P. C. 19; 35 W. R. 636; 56 L. T. 173.

As to the meaning of "*Full and Complete* Cargo"; *V. Southampton Steam Co.* v. *Clarke*, L. R. 4 Ex. 73; 6 Ib. 53; 38 L. J. Ex. 54; 40 Ib. 8: *Duckett* v. *Satterfield*, L. R. 3 C. P. 227; 37 L. J. C. P. 144: *Morris* v. *Levison*, 1 C. P. D. 155; 45 L. J. C. P. 409; 34 L. T. 576; 24 W. R. 517; *Vthlc*, *Carnegie* v. *Conner*, 59 L. J. Q. B. 122; 24 Q. B. D. 45; 61 L. T. 691; 6 Asp. 447: *Miller* v. *Borner*, 1900, 1 Q. B. 691; 69 L. J. Q. B. 429; 82 L. T. 258: *Vf*, *Caffin* v. *Aldridge*, cited PORT: *Heathfield S. S. Co.* v. *Rodenacher*, 2 Com. Ca. 55. And as to the effect of custom on the mode of loading a "full and complete cargo" of Sugar; *V. Cuthbert* v. *Cumming*, 10 Ex. 809; 11 Ib. 405: *Vth* 1 Maude & P. 294. *V.* WET.

"Cargo to be brought to and taken from ALONGSIDE free of expense and risk to the ship"; *V.* 1 Maude & P. 291, citing *Wright* v. *New Zealand Shipping Co*, 4 Ex. D. 165.

"Cargo is to be discharged with all despatch according to the custom of the Port"; *V.* 1 Maude & P. 292, citing *Postlethwaite* v. *Freeland*, 4 Ex. D. 155; 5 App. Ca. 599; 48 L. J. Ex. 353; 49 Ib. 630: CUSTOMARY.

"Cargo expected to arrive"; *V.* EXPECTED TO ARRIVE.

Vh Benj. 684, 688: Blackb. 217, 223.

CARNAL KNOWLEDGE. — In the crime of RAPE, "'Carnal Knowledge,' means the penetration to any the slightest degree of the organ known, by the male organ of generation" (Steph. Cr. 186: s. 63, 24 & 25 V. c. 100). *Vf* Arch. Cr. 862; Rosc. Cr. 767.

CARNO. — Is an Immunity (Termes de la Ley).

CARPENTER. — A "Carpenter," within the late Bankry definition of "Trader," meant "a person who purchases timber and other materials which he works up as a Carpenter, and not a person who merely works at the trade" (Arch. Bankry, 11 ed., 35, citing *Chapman* v. *Lamphire*, 3 Mod. 155; 1 Cooke, B. L. 49).

CARRIAGE. — Speaking generally a "Carriage" includes anything on which men or goods are carried: therefore a Bicycle is a "Carriage" within s. 78, Highway Act, 1835, although bicycles were not in vogue when the Act passed (*Taylor* v. *Goodwin*, 4 Q. B. D. 228; 48 L. J. M. C. 104; 27 W. R. 489; 43 J. P. 653: *M'Kee* v. *M'Grath*, 30 L. R. Ir. 41). "A carriage need not be necessarily on wheels; for instance, it may be drawn as a sledge, so as to facilitate its use on a road" (*Taylor* v. *Goodwin*, sup); and, *semble*, a Wheel-barrow is not a Carriage (*Brunton* v. *Hall*, 1 Q. B. 792; 10 L. J. Q. B. 258; 1 G. & D. 207). "Bicycles, Tricycles, Velocipedes, and other similar Machines," are now expressly declared to be "Carriages" within the Highway Acts (s. 85, Loc Gov Act, 1888); but that section does not incorporate s. 78, Highway Act, 1835, and a Constable has no right, without warrant, to apprehend a Bicyclist travelling at night without a lamp (*Hatton* v. *Treeby*, 1897, 2 Q. B. 452; 66 L. J. Q. B. 729; 77 L. T. 309; 46 W. R. 6; 61 J. P. 586).

But where a private Turnpike Act imposed a toll "for every *Carriage* of whatever description and for whatever purpose which shall be drawn or impelled or set or kept in motion by steam or any other power or agency than being drawn by any horse or beast"; it was held that a Bicycle was *not* included, and that those words applied "only to carriages of a heavy description which both wear the road and are impelled by some mechanical power" (*Williams* v. *Ellis*, 5 Q. B. D. 175; 49 L. J. M. C. 47; 28 W. R. 416; 44 J. P. 394; distinguishing *Taylor* v. *Goodwin*, sup); but *Williams* v. *Ellis* is not of general application, and was cited in vain in *Ellis* v. *Nott Bower* (13 Times Rep. 35); *Va* COACH.

Quà the Revenue Act, 1869, 32 & 33 V. c. 14, and by s. 19 (6) thereof,

"the term 'Carriage,' means and includes, any Vehicle drawn by a horse or mule, or horses or mules; — except a Waggon, Cart, or other Vehicle, used solely for the conveyance of any Goods or BURDEN, in the course of TRADE or Husbandry, and whereon the Christian Name and Surname and Place of Abode or Place of Business of the Owner, or the Name or Style and Principal or only Place of Business of the Co or Firm owning the same, shall be visibly and legibly painted in letters of not less than one inch in length." That def is substantially adopted in s. 4 (3), 51 & 52 V. c. 8, but there a HACKNEY CARRIAGE is excepted, and, on the other hand, the def is enlarged so as to include a Carriage propelled by steam, electricity, or other mechanical power.

Other Stat. Def. — 38 & 39 V. c. 17, s. 108; 44 & 45 V. c. 67, s. 6. — *Scot.* 25 & 26 V. c. 110, s. 3; 55 & 56 V. c. 55, s. 4.

"Any Carriage," in the latter part as well as the first part of s. 45, Town Police Clauses Act, 1847, means, a Hackney Carriage (*Jones* v. *Short*, cited STREET). In ss. 37, 40 to 52, 54, 58, and 60 to 67, of that Act, "Carriage" includes an OMNIBUS (s. 4 (1), 52 & 53 V. c. 14).

V. VEHICLE: STAGE CARRIAGE: WHEELED CARRIAGE: LOCOMOTIVE: LOCOMOTIVE ENGINE: CAB: CART: COACH: JOB.

Carriage Traffic; *V.* TRAFFIC.

CARRIED. — "Goods carried into any Port in England or Wales in any SHIP," s. 6, 24 V. c. 10; *V. Dapueto* v. *Wyllie*, 43 L. J. Adm. 20; L. R. 5 P. C. 482: *The Pieve Superiore*, 43 L. J. Adm. 20; L. R. 5 P. C. 482.

The transfer to the Mersey Docks and Harbour Bd of the Town Dues on all goods "carried *or conveyed* upon, over, or along any part of the Upper Mersey," is to be read in its literal sense and applies to the Dues on goods carried over any part of the river in the ordinary course of a voyage (*Mersey Docks & Harbour Bd* v. *Hunter*, 80 L. T. 96; 4 Com. Ca. 142).

CARRIER. — A "Carrier," 3 Car. 1, c. 1, means a Carrier of *Goods* (per Counsel in *Sandiman* v. *Breach*, 7 B. & C. 97: *Va. Ex p. Middleton*, 3 B. & C. 164).

Quà Carriage and Deposit of Dangerous Goods Act, 1866, 29 & 30 V. c. 69, and by s. 7 thereof, "Carrier," includes "all persons or bodies carrying *Goods or Passengers* for HIRE, by Land or Water": *Cp* 38 & 39 V. c. 17, s. 108.

"Carrier, *or Forwarder*"; Stat. Def., Customs Tariff Amendment Act, 1860, 23 & 24 V. c. 22, s. 24.

V. COMMON CARRIER: NOT AS COMMON CARRIERS.

CARRY. — "To carry" a person, includes putting him in a position to be carried, and therefore placing a debtor on a coach for the purpose of conveying him to prison, was a "carrying" within s. 1, 32 G. 2, c. 28

(*Dewhurst* v. *Pearson*, 2 L. J. Ex. 143; 1 Cr. & M. 365; 3 Tyr. 242; 1 Dowl. 664).

"Carry to sell," as a HAWKER; *V. R.* v. *McKnight*, 10 B. & C. 734.

CARRY AWAY. — *V.* ASPORTATION; TAKE AND CARRY AWAY.

CARRY ON. — "The phrase 'Carrying on' implies a repetition or series of acts" (per Brett, L. J., *Smith* v. *Anderson*, 50 L. J. Ch. 52; 15 Ch. D. 247; *Vthc*, *Re Government's Stock Investment Co*, 60 L. J. Ch. 479: *Vf*, *Re Siddall*, 54 L. J. Ch. 682; 29 Ch. D. 1: *Crowther* v. *Thorley*, 50 L. T. 43; 32 W. R. 350: *Re Thomas*, 14 Q. B. D. 379: *England* v. *Webb*, 1898, A. C. 758; 67 L. J. P. C. 120; 79 L. T. 131: *Re Griffin*, cited BUSINESS.

A Railroad Company "carries on BUSINESS," ss. 60 and 128, 9 & 10 V. c. 95, repld s. 74, Co. Co. Act, 1888, only at its PRINCIPAL OFFICE where the directors meet and the general business of the Co is transacted (*Minor* v. *Lond. & N. W. Ry*, 26 L. J. C. P. 39; 1 C. B. N. S. 325: *Shiels* v. *G. N. Ry*, 30 L. J. Q. B. 331; 9 W. R. 739: *Brown* v. *Lond. & N. W. Ry*, 32 L. J. Q. B. 318; 4 B. & S. 326: *Le Tailleur* v. *S. E. Ry*, 3 C. P. D. 18: *Va* DWELL: RESIDE). So, of a Pier Co (*Aberystwith Pier Co* v. *Cooper*, 35 L. J. Q. B. 44; 14 W. R. 28; 13 L. T. 273). But a Manufacturing Co "dwells and carries on business" at its place of manufacture and sale, and not at its Registered Office (*Keynsham Lime Co* v. *Baker*, 33 L. J. Ex. 41; 2 H. & C. 729; 12 W. R. 156; 9 L. T. 418: *Oldham Co.* v. *Heald*, 33 L. J. Ex. 236; 3 H. & C. 132). A Building Contractor "carries on business" where his general place of business is, and not at the locality where particular contracts are being executed (*Gorslett* v. *Harris*, 29 L. T. O. S. 75). But if the nature of a man's business be such that he must be personally moving about within a particular district, — *e.g.* an Apothecary, — that is carrying on business within that district (*Mitchell* v. *Hender*, 23 L. J. Q. B. 273).

To "carry on" a business, means, primarily, to carry on one's *own* business; therefore, a salaried clerk does not "carry on business" at the office of his employer within s. 12, Mayor's Court Procedure Act, 1857 (*Lewis* v. *Graham*, 20 Q. B. D. 784; 22 Ib. 1; 57 L. J. Q. B. 376; 58 Ib. 117; 36 W. R. 574; 37 Ib. 73; 59 L. T. 35). *Vh*, *Le Tailleur* v. *S. E. Ry* (sup): *Re Sax*, cited CEASE.

A clerk in the Admiralty does not "carry on business" at his office within s. 40, London Small Debts Act, 10 & 11 V. c. lxxi (*Buckley* v. *Hann*, 19 L. J. Ex. 151; 5 Ex. 43); nor does a Deputy Sealer of the Court of Chancery (*Rolfe* v. *Learmouth*, 19 L. J. Q. B. 10; 14 Q. B. 196), nor a clerk in the Privy Council Office (*Sangster* v. *Cave*, 19 L. J. Ex. 313; nom. *Sangster* v. *Kay*, 5 Ex. 386), nor a partner in a mine on the Cost-Book principle, the business of which mine is wholly conducted by an agent (*Mitchell* v. *Hender*, sup), quâ s. 128, 9 & 10 V. c. 95: — for

the principle in these cases would seem to be that neither of the persons carried on "business" at all: *Va, Glennie* v. *Delmar*, 1 L. M. & P. 402.

But as a place where a Debtor's Summons could be served (R. 17, Bankry Rules, 1870), it was held that a clerk "carried on business" at his employer's office (*Re Bowie, Ex p. Breull*, 50 L. J. Ch. 384; 16 Ch. D. 484; 29 W. R. 299).

Having an Agency is not a carrying on business by the Principal (*Corbett* v. *Gen. Steam Nav. Co*, 28 L. J. Ex. 214; 4 H. & N. 482: *Baillie* v. *Goodwin*, 33 Ch. D. 605; 55 L. J. Ch. 849; 55 L. T. 56; 34 W. R. 787: *Grant* v. *Anderson*, 1892, 1 Q. B. 108; 61 L. J. Q. B. 107; 66 L. T. 79; *Cp, Clarke* v. *Watkins*, inf); *secus*, of a Branch business (*Weatherley* v. *Calder*, 61 L. T. 508).

Quà R. S. C., — *e.g.* Ord. 9, R. 8; Ord. 48a, R. 1, 3, — a Foreign Co carries on business in England if it has a place of business there (*Haggin* v. *Comptoir d'Escompte*, 58 L. J. Q. B. 508; 23 Q. B. D. 519; 37 W. R. 703; 61 L. T. 748; *La Bourgogne*, 1899, P. 1; 68 L. J. P. D. & A. 9, 104; 79 L. T. 331); *secus*, of an individual or private firm (*Russell* v. *Cambefort*, 58 L. J. Q. B. 498; 23 Q. B. D. 526; 37 W. R. 701; 61 L. T. 751; *Vthc*, *Grant* v. *Anderson*, sup). *Vf* Ann. Pr.

V. DWELL.

But none of the foregoing cases (except, probably, those in the 2nd par) apply when the question is, where a business is "carried on" so that it may be seen where the PROFITS are earned on which Income Tax is payable under 5 & 6 V. c. 35, s. 100, Case 1, R. 2, and 16 & 17 V. c. 34, s. 2, Sch D. (*Erichsen* v. *Last*, 51 L. J. Q. B. 86; 8 Q. B. D. 414). In that case Jessel, M. R., said in his jdgmt; — "There is no principle of law which decides what 'carrying on' TRADE is — a multitude of circumstances make up what is called 'carrying on' a Trade; for it is a compound fact made up of a variety of things. Now the facts of this case show that this is a Co with stations in this kingdom, with the ends of cables in this kingdom, and these cables are worked from here by the staff of the Co. There is an office in London, and the Co takes messages and sends them to foreign parts. There is, as it appears to me, a perfectly plain case of 'carrying on' trade here. A Co in this country which regularly undertakes the carrying of goods abroad for money as part of its ordinary business, 'carries on' trade in this country, even though the whole of the carriage is done abroad. The mere fact that the Co enters into contracts in this country with English subjects for the right of carriage appears to me to be the same thing as if it made similar contracts for the sale of goods. Whether the contract is for carriage or for the right to transmit messages, makes no difference. So if a Railway Company, with a station at Dover and another at Calais, carries passengers from Dover to Calais as a regular practice, that would be a trading at Dover."

Indeed, in this connection, it may be said that, where the Brain Power is, there (and, *semble*, there only) a Trade or Business is "carried on"

(*San Paulo Ry* v. *Carter*, 1895, 1 Q. B. 580; 1896, A. C. 31; 64 L. J. Q. B. 379; 65 Ib. 161; distinguishing *Colquhoun v. Brooks*, 59 L. J. Q. B. 53; 14 App. Ca. 493, and *Bartholomay Co* v. *Wyatt*, 1893, 2 Q. B. 499; 62 L. J. Q. B. 525, and following *London Bank of Mexico* v. *Apthorpe*, 1891, 2 Q. B. 378; 60 L. J. Q. B. 653: *Va, Sully* v. *A-G.*, 29 L J. Ex. 464; 5 H. & N. 711). It may, probably, be said that *Bartholomay Co* v. *Wyatt* is no longer an authority, for Wright, J. (one of the judges who decided it), has abandoned it, on the ground that its *ratio decidendi* was destroyed by the *San Paulo* decision (*Apthorpe* v. *Peter Schoenhofen Co*, 79 L. T. 98). Those two latter cases, and *St. Louis Breweries* v. *Apthorpe* (79 L. T. 551; 47 W. R. 334; 63 J. P. 135) seem to warrant this remarkable development of the *San Paulo* decision that, —even where all the practical operations of a business are carried on abroad, and the Undertaking and its assets are legally vested in a Foreign Co, yet, if nearly all the shares in such Co are held, and its financial affairs are controlled, by an English Co located in England, the business is "carried on" in England; and Income Tax has to be paid on the whole of its Profits, and not merely on so much of such profits as may be remitted to England. But *Cp, Grainger v. Gough*, 1896, A. C. 325; 65 L. J. Q. B. 410; 74 L. T. 435; 44 W. R. 561.

Vf, Tischler v. *Apthorpe*, 33 W. R. 548; 52 L. T. 814; 1 Times Rep. 344: *Pomeroy* v. *Apthorpe*, 56 L. J. Q. B. 155: *Werle* v. *Colquhoun*, 57 L. J. Q. B. 326; 20 Q. B. D. 753. *V.* ELSEWHERE: RESIDE: RECEIVED. *Cp.* EXERCISE: DERIVE: ARISING.

As to place where a Business is carried on, quâ Probate Duty in Australia; *V. Beaver* v. *Victoria Master in Eq.*, 1895, A. C. 251; 72 L. T. 127; 64 L. J. P. C. 126.

A Cape of Good Hope statute, taxing a Co whose business is "described as to be carried on IN this Colony," does not apply to a Co whose Registered Office is in England and whose object is to carry on business "*in any part of the world*," even though the Co has an Agency in the Colony; for "to say that a business is to be IN a place named is one thing; but to say that it may be carried on anywhere is a totally different thing" (*Marshall* v. *Orpen*, 1895, A. C. 606; 64 L. J. P. C. 177; 72 L. T. 783; approving *Colonial Government* v. *British S. Africa Co*, 9 Juta, 280).

The exemption in s. 7 of the Victorian Income Tax Act, 1895, of Trusts, &c, "not carrying any Trade, or not being engaged in any Trade, for the purposes of GAIN," *semble*, applies only to such Bodies as are localised in the Colony (*England* v. *Webb*, 1898, A. C. 758; 67 L. J. P. C. 120; 79 L. T. 131).

As regards Covenants and Agreements in RESTRAINT OF TRADE, the cases run a little fine.

An Agreement by A. not to "*carry on*" a Business "either in his own name or for his own benefit, or in the name or names, or for the benefit of any person," &c, is not broken by A. becoming an Agent for another

person within the prescribed district (*Clarke* v. *Watkins*, 11 W. R. 319: *Allen* v. *Taylor*, 39 L. J. Ch. 627; 19 W. R. 556; 24 L. T. 249; *Cp*, *Corbett* v. *Gen. Steam Nav. Co*, sup). If, however, the agreement relates to a *Profession*, — *e.g.* a Surgeon's, — the rule would be different, for the word "Profession" is much more emphatic than "Business": carrying on a Trade, implies sharing in the profit or loss, but a person carries on a Profession when only acting as an Assistant to another (per Cotton, L. J., *Palmer* v. *Mallett*, 36 Ch. D. 411; 57 L. J. Ch. 226; 58 L. T. 64; 36 W. R. 460: it is however to be observed that in *thc*, the words were shall not "directly or indirectly, and either alone or in partnership with, *or as assistant of*, any person . . . carry on the profession," &c: *Vf*, *Rawlinson* v. *Clarke*, 14 L. J. Ex. 364; 14 M. & W. 187).

But if instead of, or in addition to, using the words "carry on" the restriction extends to "engage in" (*Rolfe* v. *Rolfe*, 15 Sim. 88: *Vf* ENGAGE IN), or "concerned or interested in" (*Newling* v. *Dobell*, 38 L. J. Ch. 111), or "concerned in" (*Jones* v. *Harrison*, 4 Ch. D. 636), then, though only relating to a Business, it will be broken by the agreeing party acting for another within the prescribed area, either as Assistant or Journeyman, and the same rule would obtain if the words of prohibition are, shall not "*carry on either as master or servant*" (*Proctor* v. *Sargent*, 10 L. J. C. P. 34; 2 M. & G. 20: *Benwell* v. *Inns*, 26 L. J. Ch. 663; 24 Bea. 307). *Vf* CONCERNED IN: INTERESTED IN.

Soliciting and supplying customers, or attending to patients, within the defined district, even without having any place of residence or business therein, is "carrying on" business there within a prohibiting agreement (*Turner* v. *Evans*, 22 L. J. Q. B. 412; 2 E. & B. 512; 2 D. G. M. & G. 740: *Brampton* v. *Beddoes*, 13 C. B. N. S. 538; 11 W. R. 268; 7 L. T. 679: *Mitchell* v. *Hender*, sup: *Vf*, *Palmer* v. *Mallett*, sup). *V.* PRACTISE: SOLICIT: SET UP.

"*Stuart* v. *Diplock* (cited LADIES' OUTFITTER) seems to show that to carry on a PART, is not to carry on the business" (per Channell, J., *Bailey* v. *Skinner*, 42 S. J. 780; 105 Law Times, 473). *Cp* BUTCHER.

Where a Co is in Liquidation and its business is being carried on thereunder with a view to its sale as a going concern, that is not a "carrying on" the business by the Co, within a contract by A., with the Co, that no similar business should be carried on by A. so long as the Co carried on such a business (*Shorthorn Dairy Co* v. *Hall*, 31 S. J. 479). *Svthc*, Matthews on Restraint of Trade, 239.

For the principles on which Injunction is granted for Breach of Agreement not to carry on business, and which involves personal conduct, *V. Robinson* v. *Heuer*, 1898, 2 Ch. 451; 67 L. J. Ch. 644; 79 L. T. 281; 47 W. R. 34.

A Married Woman who *has* traded, is still "carrying on a Trade," s. 1 (5), M. W. P. Act, 1882, so long as any of her Trade Debts remain

undischarged, because till then her trading is not completed (*Re Dagnall*, 1896, 2 Q. B. 407; 65 L. J. Q. B. 666; 75 L. T. 142; 45 W. R. 79; applying *Ex p. Bamford*, cited USING, and distinguishing *McGeorge* and *Ex p. Schomberg*, cited BEING: *Re Dagnall* followed in *Re Worsley*, 17 Times Rep. 122; W. N. (1900) 269). In *Re Dagnall* (65 L. J. Q. B. 667), Glenn, arg., said, but without citing authority, — "Under the P. H. Acts and the Adulteration Acts, it has been held, upon the words 'carrying on' a Trade occurring in those Acts, that a person cannot escape liability to the penalties thereby imposed by ceasing to trade."

"Ceases" to carry on business; *V.* CEASE.

V. BUSINESS: PRACTISE.

CARRY OUT. — The penalty imposed by the Bread Act, 1836, 6 & 7 W. 4, c. 37, s. 7, if any seller of bread shall "*carry out or deliver*" bread without being provided with scales and weights, "refers only to a carrying out or delivery of bread by a person who is therein acting *as* a baker or seller of bread; and not to a carrying out or delivery by a person who, though in fact a baker or seller of bread, is, in carrying out or delivering the bread, acting merely from friendliness or the like, and not as such baker or seller of bread" (per Field, J., *Daniel* v. *Whitfield*, 54 L. J. M. C. 134; 15 Q. B. D. 408; 53 L. T. 471; 33 W. R. 905; 49 J. P. 694; 1 Times Rep. 574).

V. FOR SALE.

CARRY OVER. — To "Carry over" a Stock Exchange transaction is where the buyer, not wishing to pay for what he has bought on the day appointed, gets the settlement "carried over," or adjourned, to a subsequent settling-day; *Vh, Sachs* v. *Speilman*, W. N. (89) 103; 5 Times Rep. 487: *Bongiovanni* v. *La Société Générale*, cited CONTINUATION, of which "Carry over" is a synonym (Brodhurst's Law of Stock Exchange, 16, 17).

CARRYING INTO EXECUTION. — An agreement compromising an action to which a Local Board is Party, is not "a Contract necessary for carrying the Act into execution," within s. 173, P. H. Act, 1875 (*A-G.* v. *Gaskill*, 52 L. J. Ch. 163; 22 Ch. D. 537).

Cp PURSUANCE.

CART. — "Waggon, *Cart*, or other such carriage," s. 7, Highway Act, 1835; — "I think that this is a description of vehicles which carry heavy goods, and go slowly along the road. It cannot, in my opinion, extend to gigs, dog-carts, or gentlemen's carriages" (per Lush, J., *Danby* v. *Hunter*, 49 L. J. M. C. 16; 5 Q. B. D. 20; 44 J. P. 283). In that case it was held that a light spring cart used by the maker of agricultural implements for taking his wares to market, and in which he also drove

out himself and family, and on which he paid tax under s. 18, 32 & 33 V. c. 14, was not a "Cart" within s. 7 of the Highway Act.

Quà Markets and Fairs Clauses Act, 1847, 10 & 11 V. c. 14, and by s. 3 thereof, "'Cart,' shall include Waggon, and also any Carriage used wholly or chiefly for the conveyance of goods."

Other Stat Def. — Dublin Carriage Act, 1853, 16 & 17 V. c. 112, s. 80.

V. LIGHT CART: TAXED CART: CARRIAGE: VEHICLE.

CART-BOTE. — V. BOTE.

CART ROAD. — A. conveyed the surface of lands reserving a "Waggon or Cart Road," 18 feet wide, to be at all times kept in repair at his own cost; held, that this reservation did not authorize A. to lay down a Railroad or Tramway (*Bidder* v. *N. Staffordshire Ry*, 4 Q. B. D. 412).

CARTRIDGE. — "Cartridge Works"; *V.* NON-TEXTILE FACTORIES.

CARUCATA. — "*Carucata terræ*, a ploughland, may containe houses, milles, pasture, medow, wood, &c" (Co. Litt. 86 b; *Va* Ib. 5 a). *V.* CARVE: PLOW-LAND: HIDE: OXGANGE: FAMILIA.

CARVE. — A Carve of land is synonymous with CARUCATA (Cowel, *Carucata:* Termes de la Ley, *Carve de terre*).

CASE. — "Actions upon the Case," s. 3, Limitation Act, 1623, may, probably, be defined as, those in which a plt sues for damages for any wrong or cause of complaint to which the old action of COVENANT or TRESPASS would not apply (Stephen on Pleading, ch. 1), — *e.g.* ASSUMPSIT, LIBEL, SLANDER (specially provided for by the section), Deceit, &c.

As to when an action for money sought to be recovered under a Statute, is an Action on the Case within the Limitation Act, 1623, and not one on a SPECIALTY within s. 3, Civil Procedure Act, 1833; *V. Salford* v. *Lancashire Co. Co.*, 59 L. J. Q. B. 576; 25 Q. B. D. 384.

The action of "Trespass on the Case" (abbreviated to "Case"), "originated in the power given by the Statute of Westminster 2nd to the Clerks of the Chancery to frame new writs *in consimili casu* with writs already known. Under this power they constructed many writs for different injuries which were considered as bearing a certain analogy to a Trespass. The new writs, invented for the cases supposed to bear such analogy, received accordingly the appellation of writs of *Trespass on the Case*, as being founded on the particular circumstances of the case thus requiring a remedy, and to distinguish them from the old writ of Trespass; and the injuries themselves, which are the subject of such writs, were not called *trespasses*, but had the general names of *torts*, *wrongs*, or

grievances. The writs of Trespass on the Case, though invented thus pro re natâ in various forms according to the nature of the different wrongs which respectively called them forth, began nevertheless to be viewed as constituting collectively a new, individual, *form of action;* and this new genus took its place by the name of 'Trespass on the Case' among the more ancient actions of Debt, Covenant, Trespass, &c. Such being the nature of this action, it comprises, of course, many different species. There is one, however, of more frequent use than any other species of this kind of action, which is TROVER" (Stephen on Pleading, ch. 1). Actual damage was a necessary ingredient in Trespass on the Case.

Note. Forms of Action are now discontinued (s. 3, Com. L. Pro. Act, 1852); but most of their names survive as titles of branches of the law, and in statutes and legal phraseology still have practical meanings.

Vf Termes de la Ley, *Casu Consimili*: 3 Bl. Com. 51: 1 Encyc. 109.

"In case of the Death", *V.* DIE.

V. AS THE CASE REQUIRES.

CASE OR CANISTER. — A linen or calico Bag is not "a Case or Canister" within s. 23 (2 *b*), Metalliferous Mines Regn Act, 1872, 35 & 36 V. c. 77 (*Foster* v. *Diphwys Casson Co*, 56 L. J M. C. 21; 18 Q. B. D. 428; 51 J. P. 470; 3 Times Rep. 301). "We should be violating the rules of construction if we were not to say that the words 'Case or Canister' explained one another (*Sv* OR), and that 'Case' meant something in the nature of a 'Canister,' — something that is solid, substantial, covered over, and calculated to prevent the escape of its contents and to resist their accidental ignition. The whole end and object of the Act is to preserve human life, and in placing the construction we do upon the rule in question, and holding that 'Case' must be something in the nature of a 'Canister,' we are construing it in accordance with its manifest intention and giving effect to the spirit of the Act" (per Coleridge, C. J., *Ib.*). "I confess it never occurred to me that 'Case' could mean a Bag. I always thought until the quotation of the definition in Dr. Johnson's Dictionary, that 'Case' meant something solid; but according to that definition a Net might be a 'Case'" (per Grove, J., *Ib.*).

CASH. — This is a stricter term than "Money." In *Beales* v. *Crisford* (13 L. J. Ch. 26; 13 Sim. 592), it was held that neither a Promissory Note payable to order, nor Long Annuities, nor Columbian Bonds came within "Cash or monies so called" (1 Jarm. 769, *n*: *Vf* Wms. Exs. 1052, *n*). Bank of England Notes, and it would seem other Bank Notes, would pass under a bequest of "Cash" (*Miller* v. *Race*, 1 Burr. 452; 1 Sm. L. C. 491: *Sv*, *Francis* v. *Nash*, cited CHOSE IN ACTION).

V. MONEY: IN CASH.

"Net Cash"; *V. Boden* v. *French*, cited NET.

CASH AGAINST BILL OF LADING. — *V. Ogg* v. *Shuter*, 44 L. J. C. P. 161; L. R. 10 C. P. 159.

CASH UNDER THE CONTROL OF THE COURT. — These words, occurring in s. 10, Law of Property Amendment Act, 1860, 23 & 24 V. c. 38, mean cash standing in the name of the Accountant-General in any cause or matter; and therefore include moneys paid into Court under the Lands C. C. Act, 1845, or under the Settled Estates Acts (*Ex p. St. John Baptist College*, 52 L. J. Ch. 268; 22 Ch. D. 93; overruling *Re Boyd*, 42 L. J. Ch. 506; 21 W. R. 667, and *Ex p. Rector of Kirksmeaton*, 51 L. J. Ch. 581; 20 Ch. D. 203: *Vf*, *Re Brown*, 59 L. J. Ch. 530; 38 W. R. 529; 63 L. T. 131); or money paid into Court under a Private Act and invested in Exchequer Bills (*Jackson* v. *Tyas*, 52 L. J. Ch. 830). *Vf*, Dan. Ch. Pr. 1514: *Re Wedderburn*, 47 L. J. Ch. 743; 9 Ch. D. 112; *whlc* not followed in *Re Ovey*, cited SECURITIES: R. 17, Ord. 22, R. S. C.

CASH WITH OPTION OF BILL. — "'Cash less discount at a fixed rate, with option of Bill,' or *vice versâ*, 'Bill, with option of Cash less discount'; — in the former case, the seller can sue for the price of goods sold and delivered immediately on the buyer's refusal to accept at the date fixed. In the latter, the seller cannot sue for the price of the goods sold and delivered until the due date of the bill drawn by him, even although the buyer has refused to accept it; but he may bring a special action against the buyer for non-acceptance of the bill" (Benj. 697, citing *Anderson* v. *Carlisle Horse Clothing Co*, 21 L. T. 760).

CASTA. — *Dum casta* clause; *V.* DUM: USUAL.

CASTAWAY. — *Semble*, a Vessel "castaway" is one lost and irrecoverable by ordinary means (*United States* v. *Johns*, 1 Wash. 372).

V. DERELICT: TOTAL LOSS.

CASTLE. — "By the name of a *castle* one or more manors may be conveyed: *et è converso*, by the name of a manor, &c, a castle may passe" (Co. Litt. 5 a). "A Castle contains land, for in the Castle of Dover, and in some other Castles, there are 4 or 5 acres of land, and land may be parcel of the castle" (*Hill* v. *Grange*, Plowd. 168). "But by a Castle most commonly is signified no more but the house or building, and the parcel of ground inclosed wherein it doth stand" (Touch. 92: *Vf*, 2 Inst. 31: Mad. Baron. Anglic. 17). *V.* MANORS.

Note: — "No subject can build a Castle or house of strength imbattled" without license from the Crown (Co. Litt. 5 a).

CASTLE-BOTE. — *V.* BOTE.

CASUAL. — Quâ 34 & 35 V. c. 108, and by s. 3 thereof, "'Casual *Pauper*,' means, any destitute WAYFARER or Wanderer, applying for, or

receiving, RELIEF"; and "'Casual *Ward*,' means, any ward or wards, building, or premises, set apart or provided for the reception and relief of destitute wayfarers and wanderers."

"Casual *Vacancy*" on the Board, as used in the Articles of a Co, "is any vacancy in the office of Directors arising otherwise than by retirement in rotation" (per Fry, J., *Munster* v. *Cammell Co*, 51 L. J. Ch. 731; 21 Ch. D. 183; 47 L. T. 44; 30 W. R. 812: *Vf*, *Dawson* v. *African*, *&c Co*, cited BECOME). *Note*:—In the marginal note to s. 89, Comp. C. C. Act, 1845, the phrase is "Occasional Vacancies."

CASUALTY. — *V.* FIRE.

"Casualties," are payments to be made on certain successions to Realty in Scotland: Stat. Def., 37 & 38 V. c. 94, s. 3.

CATALOGUE. — *V.* INVENTORY.

CATCH. — It is good evidence that a person has been "catching" fish, s. 11, 41 & 42 V. c. 39, if he is seen fishing and any of that river's fish is found upon him (*Swanwick* v. *Varney*, 30 W. R. 79; 45 L. T. 716).

CATHEDRAL. — "Cathedral"; Stat. Def., 35 & 36 V. c. 35, s. 1.

V. CHAPTER.

"Cathedral *Corporation*"; Stat. Def., Irish Church Act, 1869, 32 & 33 V. c. 42, s. 72.

Quà the Pluralities Act, 1838, 1 & 2 V. c. 106, "Cathedral *Preferment*," unless it otherwise appears from the context, comprehends "every Deanery, Archdeaconry, Prebend, Canonry, office of Minor Canon, Priest Vicar, or Vicar choral, having any prebend or endowment belonging thereto, or belonging to any body corporate consisting of persons holding any such office; and also every Precentorship, Treasurership, Sub-deanery, Chancellorship of the church, and other Dignity and Office in any Cathedral or Collegiate Church, and every Mastership, Wardenship, and Fellowship in any Collegiate Church" (s. 124): *Va* 32 & 33 V. c. 42, s. 72.

"Cathedral" or "Collegiate" *School*, s. 62, 16 & 17 V. c. 137; *V. Re St. John Street Chapel*, 1893, 2 Ch. 631; 62 L. J. Ch. 932: *Re Stockport Schools*, 1898, 2 Ch. 687; 68 L. J. Ch. 41; 47 W. R. 166.

CATTLE. — Bulls, Cows, Oxen, Steers, Bullocks, Heifers, Calves, SHEEP, and Lambs are "Cattle" (*Vh* 14 G. 2, c. 1; 15 G. 2, c. 34). "The Legislature by the last Act says that it was not to be extended to Horses, Pigs, or Goats, although all these are 'Cattle' (*Fletcher* v. *Sondes*, 3 Bing. 581). Yet Horses are 'Cattle' within the Black Act, 9 G. 1, c. 22 (*R.* v. *Paty*, 2 Bl. W. 721); and Bulls are not 'Cattle' within 3 G. 4, c. 71 (*Ex p. Hill*, 3 C. & P. 225)." Dwar. 636.

"Cattle," in s. 1, *Dogs Act*, 1865, 28 & 29 V. c. 60, includes horses

(*Wright* v. *Pearson*, 38 L. J. Q. B. 312; L. R. 4 Q. B. 582; 33 J. P. 534), and, *semble*, pigs (*Child* v. *Hearn*, L. R. 9 Ex. 176; 43 L. J. Ex. 100). The latter case shows that "Cattle," as used in s. 68, 8 V. c. 20, includes pigs; and so of "Cattle" in the Black Act (*R.* v. *Chapple*, Russ. & Ry. 77). *Note.* — The liability under the Dogs Act, is none the less because the Cattle or Sheep may be trespassing (*Grange* v. *Silcock*, 77 L. T. 340; 61 J. P. 709).

Quà *Knackers Act*, 1844, 7 & 8 V. c. 87, "Cattle," includes, "Bull, Ox, Cow, Steer, Heifer, Calf, Ass, Sheep, Lamb, Goat, Pig, or any other DOMESTIC ANIMAL" (s. 10).

Quà *Markets and Fairs Clauses Act*, 1847, 10 & 11 V. c. 14, "Cattle," includes, "Horse, Ass, Mule, Ram, Ewe, Wether, Lamb, Goat, Kid, or Swine" (s. 3).

Quà *Towns Improvement Clauses Act*, 1847, 10 & 11 V. c. 34, "Cattle" includes, "Horses, Asses, Mules, Sheep, Goats, and Swine" (s. 3), — a def adopted for *Town Police Clauses Act*, 1847, 10 & 11 V. c. 89 (*V.* s. 3).

Quà *Metropolitan Market Act*, 1851, 14 & 15 V. c. 61, "Cattle," includes, "Sheep, Lambs, and Swine" (s. 44), — a def adopted for the *Metrop Man Acts* (s. 112, 25 & 26 V. c. 102); but quà P. H. (London) Act, 1891, the def is "Sheep, Goats, and Swine" (s. 141).

Quà P. H. (Scotland) Act, 1897, "'Cattle,' means, Bulls, Cows, Oxen, Heifers, and Calves, and includes Sheep, Goats, and Swine" (s. 3).

Quà *Diseases of Animals Act*, 1894, 57 & 58 V. c. 57, "'Cattle,' means, Bulls, Cows, Oxen, Heifers, and Calves" (s. 59): *Vf* 29 & 30 V. c. 2, s. 3; 32 & 33 V. c. 70, s. 6; 41 & 42 V. c. 74, s. 5; 55 & 56 V. c. 47, s. 3.

Other Stat. Def., 50 & 51 V. c. 27, s. 3; 56 & 57 V. c. 56, s. 8. — *Scot.* 13 & 14 V. c. 33, s. 2; 25 & 26 V. c. 101, s. 3; 55 & 56 V. c. 55, s. 4. — *Ir.* 17 & 18 V. c. 103, s. 1; 33 & 34 V. c. 36, s. 11.

V. KNACKER: SLAUGHTERER.

CATTLE DEALER. — *V.* CATTLE SALESMAN.

CATTLE GATE. — "'Cattlegate,' also called 'Beastgate.' — Sometimes the soil is vested in the owners as tenants in common in fee; *R.* v. *Whixley*, 1 T. R. 137: *Va*, *Mellington* v. *Goodtitle*, And. 106, and on app. nom. *Bennington* v. *Goodtitle*, 2 Stra. 1084; a dictum in *Barnes* v. *Peterson*, 2 Stra. 1063: *R.* v. *Watson*, 5 East, 480; where the beasts were turned out by such burgesses as chose to do so, according to a stint by a leet jury. Sometimes it is a mere right of pasture, the soil remaining in the lord of the manor; *Lonsdale* v. *Rigg*, 11 Ex. 654; 1 H. & N. 923; 25 L. J. Ex. 73; 26 Ib. 196: *V.* Wms., on Rights of Common, 81 *et seq*: Hall, on Profits à Prendre, 23 *et seq*" (Elph. 565).

CATTLE INSURANCE SOCIETY. — *V.* FRIENDLY SOCIETY.

CATTLE PLAGUE. — Quà the Acts relating to Diseases of Animals, "Cattle Plague," means the Rinderpest (29 & 30 V. c. 2, s. 3; 32 & 33 V. c. 70, s. 6).

CATTLE SALESMAN. — A Farmer accustomed, for profit, to buy and sell more sheep than necessary to stock his farm, was held a "Cattle or Sheep Salesman" within the late Bankry definition of "Trader" (*Ex p. Newall*, 3 Deacon, 333). So, in a Bankry Petition a Farmer was held to be sufficiently described as a "Cattle Dealer" (*Ex p. Kirkwood, Re Mason*, 11 Ch. D. 724; 27 W. R. 806; 40 L. T. 566).

CATTLE SHED. — "Cattle Sheds," "Cowhouses," and "Byres"; Stat. Def., 29 & 30 V. c. 17, s. 2.

CAUSA CAUSANS. — Is the "real effective cause of damage" (per Esher, M. R., *Pandorf* v. *Hamilton*, 55 L. J. Q. B. 548). *Vh, Singleton* v. *Williamson*, 31 L. J. Ex. 139. *V.* **To** CAUSE: CAUSED BY.

V. Causa causans contrasted with a *causa sine qua non* by Lindley, L. J., *Cullerne* v. *London & Suburban Bg Socy*, 59 L. J. Q. B. 525; 25 Q. B. D. 485; 39 W. R. 88; 63 L. T. 511.

CAUSE. — "Cause," "is not a technical word signifying one kind or another, it is *causa jurisdictionis*, any suit, action, matter, or other similar proceeding competently brought before, and litigated in, a Court" (per Selborne, C., *Re Green*, 51 L. J. Q. B. 41; nom. *Green* v. *Penzance*, 6 App. Ca. 657); so, of the phrase "Ordinary Civil Cause," s. 10, 31 & 32 V. c. 71 (*The Tynwald*, cited ACTION).

For the purposes of the Jud. Acts, "Cause," includes "any Action, SUIT, or other Original Proceeding between a plaintiff and defendant and any Criminal proceeding by the Crown" (s. 100, Jud. Act, 1873; s. 3, Jud. Act (Ir), 1877).

Other Stat. Def. — 24 & 25 V. c. 10, s. 2; 26 & 27 V. c. 24, s. 2. — *Ir.* 30 & 31 V. c. 114, s. 2. — *Scot.* 19 & 20 V. c. 56, s. 47; 38 & 39 V. c. 62, s. 2.

V. ACTION: *Cp.* DECREE.

A *Rule Nisi* against a Police Magistrate to hear an application for a Summons, is "a Cause or Matter *for Trial or Hearing*" within Sch 52, Order as to Supreme Court Fees, 1884, and therefore the fee of £2 is payable on entering it at the Crown Office (*Ex p. Hasker*, 54 L. J. M. C. 94; 14 Q. B. D. 82); but an Appeal from Chambers is not such a Cause or Matter (*Ex p. Dudley*, 33 W. R. 751).

"Cause or Matter," R. 1, Ord. 31, R. S. C.; *V.* Ann. Pr: — R. 15, Ord. 31, *V. Re Fenner and Lord*, 1897, 1 Q. B. 667; 66 L. J. Q. B. 498; 76 L. T. 376; 45 W. R. 486: — R. 1–4, Ord. 39, *V. Mathews* v. *Ovey*, 53 L. J. Q. B. 439; 13 Q. B. D. 403; 50 L. T. 776: *Mason* v. *Wirral*, 4 Q. B. D. 459.

"Cause or Matter *relating to Real Estate*," R. 1, Ord. 51, R. S. C.; *V. Staines* v. *Staines*, 30 S. J. 502; W. N. (86) 113: *Vf* MATTER.

A REFERENCE by Consent Order, not only of the subject-matter of an action but also, of "all Matters in DIFFERENCE," is not a reference of a "Cause or Matter," within s. 14 or s. 15, Arb Act, 1889 (*Darlington Wagon Co* v. *Harding*, cited EQUIVALENT).

The "Cause" that under s. 83 (4), Bankry Act, 1869, had to be "shown" for the Removal of a Trustee, need not necessarily have amounted to dishonesty; unfitness, in the opinion of the Court, sufficed (*Ex p. Newitt*, 54 L. J. Q. B. 245; 14 Q. B. D. 177; 1 Times Rep. 98); but sexual immorality is not "DUE CAUSE" within s. 93, Comp Act, 1862 (*Re Urmston Grange S. S. Co*, 17 Times Rep. 553).

"Any Cause whatever"; *V.* ANY: ALTERATION.

"Just Cause"; *V.* JUST.

"Lawfull Cawse" to reject from the Communion, 1 Edw. 6, c. 1, s. 8; *V. Jenkins* v. *Cook*, 45 L. J. P. C. 1; 1 P. D. 80.

"Cause," "REASONABLE CAUSE," and "REASONABLE EXCUSE," for Matrimonial Desertion, all mean the same thing (per Barnes, J., *Oldroyd* v. *Oldroyd*, 65 L. J. P. D. & A. 115; referring to *Yeatman* v. *Yeatman*, and adopted in *Synge* v. *Synge*, both cited DESERTION).

V. REASONABLE AND PROBABLE CAUSE: SUFFICIENT CAUSE.

The "Reasonable or Sufficient Cause," s. 1, 27 & 28 V. c. 55, for requiring a Street Musician to move on, must be stated to him (*Shields* v. *Howard*, 1897, 1 Q. B. 84; 66 L. J. Q. B. 105; 45 W. R. 138, 60 J. P. 727).

"Reasonable Cause" is synonymous with "Just Cause" (per Hatherley, C., *Osgood* v. *Nelson*, L. R. 5 H. L. 649; 41 L. J. Q. B. 337).

"For the *Same Cause*," s. 45, 24 & 25 V. c. 100; "The word 'Cause' may undoubtedly mean 'Act,' but it is ambiguous, and it may also, and perhaps with greater propriety, be held to mean 'Cause for the Accusation'" (per Byles, J., *R.* v. *Morris*, 36 L. J. M. C. 84; L. R. 1 C. C. R. 90); and, in accordance with that view, it was there held that a previous summary conviction for an Assault under s. 42, was not for the "Same Cause" as a subsequent indictment for Manslaughter arising from the same assault. So, such a conviction would be no answer to a charge of Rape (per Hawkins, J., *R.* v. *Miles*, 59 L. J. M. C. 56; 24 Q. B. D. 423); but it would be an answer to a charge of Unlawfully and Maliciously Wounding or Inflicting Grievous Bodily Harm (*S. C.*). An action for damages for an assault is for the "Same Cause," — *i.e.* Same Offence, — as a previous conviction for the same assault (*Masper* v. *Brown*, 45 L. J. C. P. 203; 1 C. P. D. 97: *Holden* v. *King*, 46 L. J. Ex. 75).

Notice of Action, "and of the Cause thereof"; *V.* NOTICE.

V. CAUSE OF ACTION: CRIMINAL CAUSE: GOOD CAUSE: LAWFUL CAUSE: SHOW CAUSE.

To CAUSE. — "To Cause" a thing to be done is, it is submitted, the same thing as to be its CAUSA CAUSANS.

"Suppose the case of a keeper of ready-furnished lodgings let to a lodger: the keeper of the house has servants whose duty it is to attend upon the lodger; the lodger gives a dinner party; the dinner is cooked by the cook of the lodging-house keeper, his servants attend at the dinner; plates and the necessary furniture of the table are provided; — but no one could say that the lodging-house keeper either gave the dinner, or 'caused' it to be given" (per Blackburn, J., *Lyon* v. *Knowles*, 32 L. J. Q. B. 74).

"Cause" a Wife "to leave and live separately"; *V.* NEGLECT.

V. INFLICT: CAUSED BY: CAUSE OR PROCURE. *Cp.* COUNSEL OR PROCURE.

To cause Sewage Matter to fall or flow into a Stream; *V.* FALL.

A mere Shareholder does not "cause" any of the acts or omissions of the Co or its Agents (*Macnee* v. *Persian Investment Corp*, cited FOREIGN LOTTERY).

"Cause to be imported"; *V.* IMPORTER.

CAUSE AND EFFECT. — *V.* EFFECT.

CAUSE AND MATTER. — Stating in an Appeal Notice its "Cause and Matter," 49 G. 3, c. 68, s. 5; *V. R.* v. *Oxfordshire Jus.*, 1 B. & C. 279. *Vf* CAUSE.

CAUSE AND PROCURE. — *V.* CAUSE OR PROCURE.

CAUSE OF ACTION. — A "Cause of ACTION" is the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment (per Esher, M. R., *Read* v. *Brown*, 58 L. J. Q. B. 120; 22 Q. B. D. 128).

Therefore, as used in s. 60 of the Act establishing the modern County Courts (9 & 10 V. c. 95) and as used in subsequent Co. Co. Acts, this phrase, according to its natural construction, meant, and means the WHOLE cause of action; *e.g.* the order or other contract for, as well as the delivery of, the goods, in a claim for goods sold and delivered; or the doing of the work, in a claim for work done; or the doing the wrong, in an action of tort (*Borthwick* v. *Walton*, 24 L. J. C. P. 83; 15 C. B. 501; 24 L. T. O. S. 271: *Aris* v. *Orchard*, 30 L. J. Ex. 21; 6 H. & N. 160: *Newcombe* v. *De Roos*, 29 L. J. Q. B. 4; 2 E. & E. 273). *Va, Hernaman* v. *Smith*, 24 L. J. Ex. 175; 10 Ex. 659: (quà Bill of Exchange) *Wilde* v. *Sheridan*, 16 Jur. 426: (quà Contract with Carrier) *Barnes* v. *Marshall*, 21 L. J. Q. B. 388.

In an action by Exors or Admors, Probate or Letters of Administration is an essential part of the "Cause of Action" (*Fuller* v. *Mackay*, 22

L. J. Q. B. 415; 2 E. & B. 573). *Vf, Cary* v. *Stephenson* and cognate cases inf.

A plt must not "DIVIDE any Cause of Action for the purpose of bringing two or more actions" in a Co. Co. (s. 81, Co. Co. Act, 1888); that means, Cause of ONE Action; and whilst it applies to separate items of a continuous and entire demand, *e.g.* an ordinary bill of a tradesman (*Grimbly* v. *Ackroyd*, 17 L. J. Ex. 157; 1 Ex. 479), yet it does not apply to distinctly separate claims although of a kind which might be sued for in one action, *e.g.* a claim for (1) Goods and (2) Money lent (*Brunskill* v. *Powell*, 19 L. J. Ex. 362; 1 L. M. & P. 550: *Kimpton* v. *Willey*, 9 C. B. 719), or (1) Rent and (2) Double Value for holding over (*Wickham* v. *Lee*, 18 L. J. Q. B. 21; 12 Q. B. 521: *Neale* v. *Ellis*, 12 L. J. Q. B. 329; 1 Dowl. & L. 163). So, of damages to (1) Goods and (2) the Person, though occasioned by the same occurrence (*Brunsden* v. *Humphrey*, inf). *Note.* Suing for part only of a Cause of Action (if unobjected to) does not bar the recovery of its residue (*Vines* v. *Arnold*, 19 L. J. C. P. 98; 8 C. B. 632: *Adkin* v. *Friend*, 38 L. T. 393: *Jones* v. *Jones*, 22 W. R. 577).

Vf, Ann. Co. Co. Pr. Part 2, ch. 3, s. 4.

Therefore "PART" of a Cause of Action, s. 74, Co. Co. Act, 1888, means any one of those material things that go to make up the Cause of Action.

So, "Cause of Action" in Mayor's Court Procedure Act, 1857, 20 & 21 V. c. clvii., means the whole Cause of Action (*Cooke* v. *Gill*, L. R. 8 C. P. 107: *Gold* v. *Turner*, 10 Ib. 149). And when the plaintiff is an assignee from the original creditor, the Assignment to him is part of his Cause of Action; therefore, where a debt was entirely contracted outside the City of London, but an assignment of it to the plaintiff had been made in the City, it was held that Part of the Cause of Action arose in the City, and that (under s. 12) the Mayor's Court had jurisdiction (*Read* v. *Brown*, sup). It seems a little difficult to reconcile that decision with a previous decision under the same section, where it was held that the whole Cause of Action on a written agreement under the Statute of Frauds arises as soon as the defendant has signed it (*Alderton* v. *Archer*, 54 L. J. Q. B. 12; 14 Q. B. D. 1). *Vf, Cowan* v. *O'Connor*, 57 L. J. Q. B. 401; 20 Q. B. D. 640; 58 L. T. 857; 36 W. R. 895: *R.* v. *Ld Mayor*, 61 L. J. Q. B. 329.

So, of "Cause of Action," s. 7, Salford Hundred Court of Record Act, 1868 (*Payne* v. *Hogg*, 1900, 2 Q. B. 43; 69 L. J. Q. B. 579; 82 L. T. 584; 48 W. R. 417).

But "Cause of Action" differs materially from "ACTION"; the "Cause" of an Action is that which forms or relates to its basis, a distinct from matter of procedure prior to Action being brought, — *e.g.* a Solr cannot sue his client for his Bill of Costs until one month after its delivery (s. 37, Solrs Act, 1843), but the "Cause" of such an action is

the work done; therefore, the Limitation Act, 1623, s. 3, runs from the date of the conclusion of the work, and not from the expiration of a month after the delivery of the Bill (*Coburn* v. *Colledge*, 1897, 1 Q. B. 702; 66 L. J. Q. B. 462; 76 L. T. 608; 45 W. R. 488). But it requires some thinking entirely to reconcile that ruling with the ruling stated in the next par.

"Cause of Action," s. 3, Limitation Act, 1623 (and, *semble*, s. 3, Civil Procedure Act, 1833), "means the time at which the debt or money might have been recovered by action" (per Lindley, L. J., *Reeves* v. *Butcher*, 1891, 2 Q. B. 509; 60 L. J. Q. B. 619; 65 L. T. 329; 39 W. R. 626; following *Hemp* v. *Garland*, 12 L. J. Q. B. 134; 4 Q. B. 519); therefore, the statute begins to run from the *first* time (where there are more times than one) at which the action might have been brought. Thus where a deft, in an action for Conversion, has committed two acts each of which would sustain the action, the first, and not the second, act must be regarded (*Wilkinson* v. *Verity*, 40 L. J. C. P. 141; L. R. 6 C. P. 206). But where goods or deeds are wrongfully abstracted and get into innocent hands, the action against the latter does not accrue until there has been a Conversion by him, — *i.e.* a demand on and refusal by him (*Spackman* v. *Foster*, 52 L. J. Q. B. 418; 11 Q. B. D. 99: *Miller* v. *Dell*, 1891, 1 Q. B. 468; 60 L. J. Q. B. 404; 63 L. T. 693). *Vf* TROVER.

And so, the "Cause of Action" for an Arbitrary Fine on a Copyhold Admittance is complete on the Admittance; not when the Fine is assessed (*Monckton* v. *Payne*, 1899, 2 Q. B. 603; 68 L. J. Q. B. 951; 81 L. T. 204; 48 W. R. 44).

The Cause of Action under the Directors Liability Act, 1890, arises when the plt's shares are subscribed for (*Thomson* v. *Clanmorris*, cited PENALTY).

A "Cause of Action" does not arise out of a TORT causing damage, or out of a tort not actionable without special damage, until damage done; and accordingly, the Limitation Act, 1623, does not begin to run for such a tort until damage happens; and each recurrence of a distinctly new damage (as distinguished from a development of an old one, *Fetter* v. *Beal*, 1 Raym. Ld. 339; 1 Salk. 11: *Va*, *Clarke* v. *Yorke*, 52 L. J. Ch. 32), gives rise to a fresh cause of action (*Bonomi* v. *Backhouse*, 28 L. J. Q. B. 378; 34 Ib. 181; E. B. & E. 622; 9 H. L. Ca. 503; 9 W. R. 769: *Whitehouse* v. *Fellowes*, 30 L. J. C. P. 305; 10 C. B. N. S. 765; 9 W. R. 556: *Darley Main Colly Co* v. *Mitchell*, 53 L. J. Q. B. 471; 55 Ib. 529; 14 Q. B. D. 125; 11 App. Ca. 127; 32 W. R. 947: from *whlc* it would seem that *Nicklin* v. *Williams*, 10 Ex. 227, is now of but little authority, whilst *Lamb* v. *Walker*, 47 L. J. Q. B. 451; 3 Q. B. D. 389, is over-ruled. *Va* Add. T. 39, 80); yet it is the actual doer of the damage-causing Tort who is liable, — *e.g.* for a Subsidence caused by working a Mine, the action is against him who did that working, and

not against the innocent succeeding owner of the property (*Greenwell* v. *Low Beechburn Co*, 1897, 2 Q. B. 165; 66 L. J. Q. B. 643: *Hall* v. *Norfolk*, 1900, 2 Ch. 493; 69 L. J. Ch. 571; 82 L. T. 836; 48 W. R. 565).

Cp. Markey v. *Tolworth*, cited CONTINUANCE.

Where the owner of a vehicle was himself injured in a Collision, he was held not estopped from bringing an action for his Personal Injuries, by reason of having recovered judgment from the same defendant for the damage the collision had caused to the Vehicle (the personal injuries were unknown at the time action was brought for the damage to the vehicle); for each class of injuries and damage, in such a case, forms, with its common cause, a "Cause of Action" (*Brunsden* v. *Humphrey*, 53 L. J. Q. B. 476; 14 Q. B. D. 141; 51 L. T. 529; 32 W. R. 944).

So, following and explaining the *Darley Main Case*, there is no "accruing" of a Cause of Action, within s. 264, P. H. Act, 1875, until damage happens (*Crumbie* v. *Wallsend*, 1891, 1 Q. B. 503; 60 L. J. Q. B. 392). *V.* ACCRUE.

Semble, to complete a Cause of Action a person capable of suing on it must be in existence; and if such cause is inchoate at the death of the person entitled to the action but becomes consummate after such death, then the Cause of Action is complete only when a Legal Representative of such person is constituted, *e.g.* the time under the Limitation Act, on a Bill of Exchange current at the death of the payee, does not begin to run until Probate of his Will or Letters of Admon be granted (*Cary* v. *Stephenson*, 2 Salk. 421: *Murray* v. *East India Co*, 5 B. & Ald. 214: *Perry* v. *Jenkins*, 1 My. & C. 118: *Pratt* v. *Swaine*, 8 B. & C. 285; 2 M. & R. 350: *Fuller* v. *Mackay*, sup: per Hatherley, C., *Burdick* v. *Garrick*, 5 Ch. 241; 39 L. J. Ch. 372). But, observe, that by s. 6, 3 & 4 W. 4, c. 27, time runs against an *Admor* from the death of the deceased person for the purposes of that Act, and as regards the chattels he is appointed to administer.

The power of issuing a writ for Service out of the Jurisdiction when the "Cause of Action" arose within the Jurisdiction (s. 18, Com. L. Pro. Act, 1852), has been superseded by R. 1 (*e*), Ord. 11, R. 4, Ord. 2, R. S. C.; but it may be useful, as a matter of construction, to observe that after a singular conflict of decision between the old Common Law Courts, the rule laid down by the C. P. in *Jackson* v. *Spittle* (39 L. J. C. P. 321; L. R. 5 C. P. 542; 18 W. R. 1162) was ultimately adopted, — viz. that "Cause of Action," in the section, did *not* mean the *whole* cause of action but meant, "the act on the part of the deft which gave the plt his cause of complaint" (*Vaughan* v. *Weldon*, 44 L. J. C. P. 64; L. R. 10 C. P. 47), or, in other words, the act or omission constituting the violation of duty complained of (per Fitzgerald, J., *Macken* v. *Ellis*, Ir. Rep. 8 C. L. 151).

CAUSE OF APPEAL. — *V.* DECISION.

CAUSE OF COMPLAINT. — *V. R.* v. *Lancashire*, 8 B. & C. 593: *R.* v. *Devon*, 1 M. & S. 411: *R.* v. *Salop*, 2 B. & Ad. 149.

CAUSE OR MATTER. — *V.* CAUSE: CAUSE AND MATTER: MATTER.

CAUSE OR PERMIT. — A proprietor of a music-hall who engages a singer, but does not control what songs are to be sung, nevertheless "causes or permits" the singing of what songs are sung, within s. 20, Copyright Act, 1842 (*Monaghan* v. *Taylor*, 2 Times Rep. 685: *Va*, *Marsh* v. *Conquest*, 17 C. B. N. S. 418; 33 L. J. C. P. 319). *V.* PERMIT.

"Causes to fall or flow, or knowingly permits to fall or flow or to be carried, into any Stream," sewage matter, s. 3, Rivers Pollution Prevention Act, 1876, 39 & 40 V. c. 75; *V. West Riding* v. *Holmfirth*, 1894, 2 Q. B. 842; 63 L. J. Q. B. 485; 71 L. T. 217. *Cp.* WILFULLY SUFFER.

CAUSE OR PROCURE. — The words in a covenant "do and execute, or *cause or procure* to be done or executed," all such acts as may be necessary for vesting property in trustees, "only mean that the covenantor would procure persons who were bound to obey his orders, — *e.g.* trustees, — to do such acts as were necessary" (per Kay, J., *Re De Ros*, 55 L. J. Ch. 75; 31 Ch. D. 81; 53 L. T. 524; 34 W. R. 36).

You "cause or procure" a legal consequence, *e.g.* an Adjudication in bankry, if that consequence follows from your putting the law in motion, even though, on the evidence produced, the consequence could not have been supported (*Farley* v. *Danks*, 4 E. & B. 493: 24 L. J. Q. B. 244).

V. COUNSEL OR PROCURE: PROCURE.

CAUSE OR SUFFER. — *V.* SUFFER

CAUSE SHEWN. — *V.* CAUSE.

CAUSE TO BE APPLIED. — s. 7, 5 & 6 V. c. 100; *V. Mallet* v. *Howitt*, W. N. (79) 107.

CAUSE TO BE IMPORTED. — *V.* IMPORTER.

CAUSE TO BE TAKEN. — A person who supplies a woman with a drug, which is taken and intended to be taken by her in the absence of the person supplying it, "causes it to be taken" within s. 6, 1 V. c. 85, repld s. 58, 24 & 25 V. c. 100 (*R.* v. *Wilson*, 26 L. J. M. C. 18; Dears. & B. 127; followed in *R.* v. *Farrow*, Dears. & B. 164).

V. ADMINISTER.

CAUSED BY. — *In jure non remota causa sed proxima spectatur.* This maxim is paraphrased by Lord Bacon thus, — "It were infinite for the law to judge the causes of causes, and their impulsions one of another: therefore it contenteth itself with the *immediate* cause, and judgeth of acts by that; without looking to any further degree" (Bac. Max. reg. 1: *Vf* Broom's Maxims). Accordingly, a Policy against ACCIDENT other than those "*Caused by or Arising from* natural disease or weakness, or exhaustion consequent upon disease," will cover death by drowning, though the insured's fall into the water was the consequence of an epileptic fit; for the cause of death was drowning, — the fit was at most merely a *causa sine quâ non* (*Winspear* v. *Accident Insrce*, 50 L. J. Q. B. 292; 6 Q. B. D. 42; followed in *Lawrence* v. *Accident Insrce*, 50 L. J. Q. B. 522; 7 Q. B. D. 216, in *whc* the words of exception were "Death arising from FITS, or any disease"). So, in a case on a similar Policy, Huddleston, B., said, "'Caused by Accident,' — that is to say, immediately caused by accident" (*Re Isitt & Railway Passengers' Assrce*, 58 L. J. Q. B. 195; 22 Q. B. D. 504). So, quà a Marine Policy, an injury to a Ship causes her loss if, before that injury can be repaired, she is lost by reason of the existence of that injury (*Reischer* v. *Borwick*, 1894, 2 Q. B. 548; 63 L. J. Q. B. 753; 71 L. T. 238).

So, of the words, "Occasioned by," or, "in Consequence of" (*Walker* v. *London & Provincial Insrce*, 22 L. R. Ir. 572), or damage "Received in," *e.g.* a Collision (*Reischer* v. *Borwick*, sup).

A killing or bodily injury "in Consequence of" want of fence to Machinery, s. 82, Factory and Workshop Act, 1878, is none the less such a Consequence because, in great measure, brought about by the negligence of the injured person (*Blenkinsop* v. *Ogden*, 1898, 1 Q. B. 783; 67 L. J. Q. B. 537; 78 L. T. 554; 46 W. R. 542).

Commission to be paid to A. if sale effected "in Consequence of Mention or Publication" by him; *V. Bayley* v. *Chadwick*, 39 L. T. 429.

V. To CAUSE: CAUSA CAUSANS: CAUSING: DONE BY: OCCASIONED: ARISING. *Cp.* EFFECT.

CAUSEWAY. — "Causeway" seems synonymous with FOOTPATH (*V.* CALCEY); but in s. 24, Highway Act, 1835, provision is made for "*Horse* Causeways and Foot Causeways." That section only applies to such Causeways as are by the *side* of Carriage Ways, and imposes no duty on the Surveyor to fortify the mouth or entrance of a Causeway from violence by carts or carriages (*Ellis* v. *Woodbridge*, 29 L. J. M. C. 183). Probably, it will be correct to say that a Causeway is a Sideway, connoting the same as a Footpath, except when expressed to be a Horse causeway.

"Causeway-*mail*"; Stat. Def., Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, s. 3.

CAUSING. — A Railway Company carrying animals on their road to a place within a district prohibited under the Contagious Diseases (Animals) Act, 1878, with knowledge of their destination, are guilty of "causing the Movement" of the animals, although they do not carry the animals further than a point outside the district, and do no act within it (*Mid. Ry* v. *Freeman*, 53 L. J. M. C. 79; 12 Q. B. D. 629).

V. CAUSED BY.

CAUTION. — Where a testator directed his trustees to use "great caution" in realizing his estate, it was held that the tenant for life was entitled to the income until conversion (*Scholefield* v. *Redfern*, 2 Dr. & Sm. 173: *Va, Mackie* v. *Mackie*, 5 Hare, 70). But where the direction was "to sail my ships for the benefit of the estate until they can be satisfactorily sold," the tenant for life was only entitled to 4 per cent on the estimated value of the ships at the testator's death, the rest of their profits being carried to residue (*Brown* v. *Gellatly*, 2 Ch. 751).

V. RECOGNIZANCE.

CAUTIONARY OBLIGATION. — *V.* ss. 6, 7, Mercantile Law Amendment Act (Scot), 1856, 19 & 20 V. c. 60, on *whv Wallace* v. *Gibson*, 1895, A. C. 354.

CEASE. — "To 'cease,' does not, necessarily, import an act of free will. The East India Co has 'ceased' to employ a military force because it has no longer any necessity for its employment" (per Ld Chelmsford, *Walsh* v. *Secretary for India*, 10 H. L. Ca. 396; 32 L. J. Ch. 598).

"Ceased" is a strictly proper word to apply to the case where the *entire thing* has "ceased to be" — *e.g.* as used in the phrase "any road which has . . . ceased to be a Turnpike Road" in s. 13, 41 & 42 V. c. 77 (*Lancashire Jus.* v. *Rochdale*, 53 L. J. M. C. 5; 8 App. Ca. 494 — and espy jdgmt of Ld Bramwell. *Vf, West Riding Jus.* v. *The Queen*, 53 L. J. M. C. 41; 8 App. Ca. 781: *Newton-in-Makerfield* v. *Lancashire Jus.*, 54 L. J. M. C. 1; 13 Q. B. D. 623; *Derby Co. Co.* v. *Matlock*, 1896, A. C. 315; 65 L. J. Q. B. 419; 74 L. T. 595; 60 J. P. 676). *V.* MAIN ROAD.

"Cease, determine, and be void to all intents and purposes"; *V.* VOID.

Forfeiture if Income "cease to be payable" to donee; *V. Re Brewer*, cited WOULD.

A donee ceases "to CARRY ON" a Business, quà a gift over, if he converts the business into a Co, even though he be its Managing Director and practically own all its shares (*Re Sax*, 68 L. T. 849; 62 L. J. Ch. 688; 41 W. R. 584).

"Cease to carry on the business of a BANKER," s. 12, Bank Charter Act, 1844, 7 & 8 V. c. 32; *V. A-G.* v. *Birkbeck*, 53 L. J. Q. B. 378; 12 Q. B. D. 605; 32 W. R. 905; 51 L. T. 199: *Prescott* v. *Bank of Eng-*

land, 1894, 1 Q. B. 351; 63 L. J. Q. B. 332; 70 L. T. 7: *Capital & Counties Bank v. Same*, 61 L. T. 516.

Where a Co's Articles provide that a Director shall be disqualified if he "cease to HOLD" a stated number of Shares, that "contemplates the case of a Qualification once possessed and subsequently lost; but not the case of qualification never possessed" (per Cozens-Hardy, J., *Salton* v. *New Beeston Co*, 1899, 1 Ch. 775; 68 L. J. Ch. 370; 80 L. T. 521; 47 W. R. 462); "if a Director is named in the Articles and never had a qualification, he cannot be said to 'cease' to hold it" (per Selborne, C., *Forbes' Case*, 8 Ch. 775).

"Cease to INHABIT," in a CONDITION; *V. Doe* d. *Shaw* v. *Steward*, 3 L. J. K. B. 141; 1 A. & E. 300; 3 N. & M. 372.

Quà a Poor Law Settlement, s. 68, 4 & 5 W. 4, c. 76, a person "ceased to inhabit" when his inhabitancy was at an end, whether that was by his own voluntary act or not (*R.* v. *Whissendine*, 11 L. J. M. C. 42; 2 Q. B. 450).

"Charterer's LIABILITY TO CEASE"; — The Cesser Clause in a Charter-Party (if not absolute) is to be construed so as to avoid leaving the Shipowner without remedy for a breach of the Charter (*Clink* v. *Radford*, 1891, 1 Q. B. 625; 60 L. J. Q. B. 388; 64 L. T. 491; 39 W. R. 355: *Hansen* v. *Harrold*, 1894, 1 Q. B. 612; 63 L. J. Q. B. 744; 70 L. T. 475: *Dunlop* v. *Balfour*, cited DEMURRAGE). As to the construction of the Clause, generally, *V.* Carver, s. 645 *et seq*: Abbott, 226 *et seq*.

A Mtgor "ceases to OCCUPY," s. 16, Poor Rate Assessment and Collection Act, 1869, when a Receiver appointed by the Mtgee enters, even though the appointment be under s. 24, Conv. & L. P. Act, 1881, and though the mtge provides that the Receiver shall be deemed the Agent of the Mtgor for all purposes (*Richards* v. *Kidderminster*, 1896, 2 Ch. 212; 65 L. J. Ch. 502; 74 L. T. 483). But a Co in Liquidation does not so "cease to occupy" on the appointment of a Receiver and Manager by an Order which does not direct the Co to give up possession; and on non-payment of the rates made on the Co, the Co will be the "Offender" (s. 4, 43 Eliz. c. 2), whose goods may be distrained notwithstanding that there may be an equitable charge on them in favour of Debentures (*Re Marriage & Co*, 1896, 2 Ch. 663; 65 L. J. Ch. 839; 75 L. T. 169; 45 W. R. 42). *Cp.* NEW OCCUPIER.

Putative father "ceased to RESIDE in England within the 12 months next after the birth," s. 3, 35 & 36 V. c. 65; *V. R.* v. *Evans*, 1896, 1 Q. B. 228; 65 L. J. M. C. 29; 44 W. R. 271; 60 J. P. 39.

V. DETERMINE.

CELEBRATE. — *V. Cope* v. *Barber*, cited DIVINE SERVICE.

CELL: CELLA. — "A monastery appertaining to a larger; Spelm." (Elph. 565).

"Cell Accommodation for a Prisoner"; Stat. Def., 40 & 41 V. c. 21, s. 57. — *Scot.* 40 & 41 V. c. 53, s. 70.

CELLAR. — "Cellar," s. 102, Metrop Man. Act, 1855, means, an underground structure complete in itself, arched over with a roof independently of the pavement; a foot-pavement which also forms the roof of such a structure is not within the enactment (*Hamilton* v. *St. George, Hanover Sq.*, L. R. 9 Q. B. 42; 43 L. J. M. C. 41; 22 W. R. 86; 29 L. T. 428).

CEMETERY. — "'Cemetery,' both in its original meaning and as commonly used, is quite sufficient to comprehend all Christian BURIAL grounds" (per Campbell, C. J., *R.* v. *Manchester*, 5 E. & B. 707).

Stat. Def. — Cemeteries Clauses Act, 1847, 10 & 11 V. c. 65, s. 3.

CENSURE. — *V.* ECCLESIASTICAL CENSURE.

CENTRAL AUTHORITY. — The "Central Authority" quà 44 & 45 V. c. 37, is, in England, the Loc Gov Bd; in Ireland, the Loc Gov Bd for Ir.; in Scotland, the Secretary for Scotland (s. 29); — quà 53 & 54 V. c. 60, it is, in England, the Loc Gov Bd; in Ireland, the Lord Lieutenant; in Scotland, the Secretary for Scotland (s. 6).

CENTRAL CRIMINAL COURT. — Established and the "Central Criminal Court District" delimitated by Central Criminal Court Act, 1834, 4 & 5 W. 4, c. 36: *Vf*, 39 & 40 V. c. 57, s. 6; 44 & 45 V. c. 64, s. 3.

CENTRE. — "Centre of the Roadway"; Stat. Def., Metrop Man. Act, 1878, s. 4; London Bg Act, 1894, s. 5 (4).

CEREMONIES. — *V.* ORNAMENT: RITE.

CERTAIN. — "*Preston* v. *Butcher* (1 Starkie, 3) shows that 'certain' means 'DEFINITE'" (per Jervis, C. J., *Harris* v. *Phillips*, 20 L. J. C. P. 121).

"Definite and Certain Principal Sum," "Definite and Certain Amount of Stock"; *V.* SETTLEMENT.

V. CERTAIN RENT: CERTAIN TIME: SUM CERTAIN: YEAR CERTAIN: TWELVE-MONTH.

CERTAIN RENT. — "'*Certaine rent.*' A tenant holdeth of his lord certaine lands in socage, to pay yearely a paire of gilt spurs or five shillings in money at the feast of *Easter*. In this case the rent is uncertaine, and the tenant may pay which of them he will at the said feast" (Co. Litt. 90 b).

A Rent, the amount of which may fluctuate according to the happening of certain events, is not "uncertain," but is distrainable as RENT,

even in case of bankruptcy (*Ex p. Voisey, Re Knight*, 21 Ch. D. 442; 52 L. J. Ch. 121).

CERTAIN SUM. — *V.* CERTAIN: DEFINITE: SUM CERTAIN.

CERTAIN TIME. — The "Certain Time" from which interest on a SUM CERTAIN may (without DEMAND) be given under s. 28, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42, must be fixed by, or definitely ascertainable from, the written instrument itself, — without reference to any future contingent event the time of which the instrument does not fix (*Juggomohun Ghose* v. *Manickchund*, 7 Moore, Ind. App. 263: *Merchant Shipping Co* v. *Armitage*, L. R. 9 Q. B. 99; 43 L. J. Q. B. 24; 22 W. R. 11: *Harper* v. *Williams*, 4 Q. B. 219; 12 L. J. Q. B. 227: *L. C. & D. Ry* v. *S. E. Ry*, 1893, A. C. 429; 63 L. J. Ch. 93; 69 L. T. 637; 58 J. P. 36; in *whlc* Lindley, L. J., — 1892, 1 Ch. 141, 142; 61 L. J. Ch. 300, — said that *Duncombe* v. *Brighton Club Co*, 44 L. J. Q. B. 216; L. R. 10 Q. B. 371, was incorrectly decided: *Svth* jdgmts in H. L., sup). A sum payable within a definite time after a person's death, is payable at a "Certain Time," because death is not a contingency but a certainty (*Re Horner*, 65 L. J. Ch. 694; 44 W. R. 556: *Knapp* v. *Burnaby*, 9 W. R. 765).

A Petitioning Cr's Debt in bankry, "is a liquidated sum payable either Immediately, or at some Certain Future Time," s. 6 (1 *b*), Bankry Act, 1883; *Vth*, *Re Barr*, 1896, 1 Q. B. 616; 65 L. J. Q. B. 504; 74 L. T. 555; 44 W. R. 586.

Vf, *Mackintosh* v. *G. W. Ry*, 4 Giff. 698: *Re Blackburn Bg Socy*, 30 S. J. 254: INSTRUMENT.

CERTAINTY. — "Certainty is the Mother of Repose, and Incertainty is the Mother of Contention" (per Pollard, arg., *Colthirst* v. *Bejushin*, Plowd. 25).

CERTIFICATE. — "A 'Certificate,' ex vi termini, imports that the party certifying knows the fact that he certifies" (per Kenyon, C. J., *Farmer* v. *Legg*, 7 T. R. 191). *Cp.* CERTIFICATION.

Architect's "Certificate"; *V.* CERTIFY. *Note:* If the Certificate be wrongfully obtained it discharges neither the Contractor nor his Surety (*Kingston* v. *Harding*, 1892, 2 Q. B. 494; 62 L. J. Q. B. 55; 67 L. T. 539; 41 W. R. 19): *Vh*, Add. C., 8 ed., 394: Hudson, 276–333: PROGRESS CERTIFICATE.

A sufficient "Certificate" by a Burial Bd or Churchwarden, s. 18, 18 & 19 V. c. 128, is given by a letter, or requisition in writing, containing a detailed account of the expenses to be paid (*R.* v. *St. Mary, Islington*, cited REPAIR).

Certificate of Dismissal; *V.* HEAR: MERITS.

Stat. Def. — 61 & 62 V. c. 57, s. 11. — *Scot.* 16 & 17 V. c. 67, s. 17;

25 & 26 V. c. 35. s. 37; 50 & 51 V. c. 38, s. 2: *V.* NEW CERTIFICATE. — *Ir.* 28 & 29 V. c. 88, s. 2, c. 101, s. 3.

CERTIFICATED. — "Certificated *Child*"; Stat. Def., 36 & 37 V. c. 67, s. 4.

"Certificated *Teacher*"; Stat. Def., 45 & 46 V. c. 18, s. 2; 61 & 62 V. c. 57, s. 11.

CERTIFICATION. — Certification of Shares in a Co; *V. Shaw* v. *Port Philip Co*, 53 L. J. Q. B. 369; 13 Q. B. D. 103; 50 L. T. 685; 32 W. R. 771: *British Mutual Banking Co* v. *Charnwood Forest Ry*, 56 L. J. Q. B. 449; 18 Q. B. D. 714: *Bishop* v. *Balkis Co*, 59 L. J. Q. B. 565; 25 Q. B. D. 512: *Re Concessions Trust*, 1896, 2 Ch. 757; 65 L. J. Ch. 909; 75 L. T. 298.

"A 'Certification' and a 'CERTIFICATE' are totally different things. A 'Certification' amounts to a representation that the transferor has produced, to the person certifying, such documents as on the face of them show a *primâ facie* title in the Transferor to transfer the shares mentioned in the transfer. He does not warrant the title of the transferor, nor the validity in point of law of the various documents which together establish his title" (per Lindley, L. J., *Bishop* v. *Balkis Co*, sup); but the Co is not estopped by its Secretary's Certification if given quâ Certificates of shares which have not been lodged with him (*Whitechurch Lim.* v. *Cavanagh*, 71 L. J. K. B. 400; 1902, A. C. 117).

Vh. Buckl. 107: Hamilton, 209: Palmer, Co. Prec. 403.

CERTIFIED. — Certified COPY, 14 & 15 V. c. 99; *V. R.* v. *Weaver*, 43 L. J. M. C. 13; L. R. 2 C. C. R. 85: *Reed* v. *Lamb*, 29 L. J. Ex. 452; 6 H. & N. 75; *Vh*, and generally as to Certified Copies, Rosc. N. P. 99–102.

"Certified *Efficient School*"; Stat. Def., 39 & 40 V. c. 79, s. 48; 41 & 42 V. c. 16, ss. 95, 105, 106; 1 Edw. 7, c. 22, s. 159 (1), 160 (1).

"Certified *Industrial School*," s. 7, 29 & 30 V. c. 118; *V. R.* v. *West Derby*, L. R. 10 Q. B. 283; 44 L. J. M. C. 98.

"Certified *Prison*"; Stat. Def., 37 & 38 V. c. 21, s. 3.

"Certified *under the Regulations*," s. 503 (2 *a*), Mer Shipping Act, 1894; *V. The Cathay*, 82 L. T. 823; 69 L. J. P. D. & A. 89.

CERTIFY. — "Power to Certify" amount of Costs; *V.* INCURRED.

"The usual meaning of 'Certify' does not require anything written: otherwise why should parties ever expressly stipulate as to certifying in writing?" (per Byles, J., *Roberts* v. *Watkins*, 32 L. J. C. P. 291; 14 C. B. N. S. 592; 11 W. R. 783; 8 L. T. 460); it was there held that an Architect's Certificate need not be in writing unless so stipulated.

CERTIORARI. — *Certiorari* is a Writ out of the High Court "to an Inferior Court to call up the records of a Cause therein depending, that

conscionable justice may be therein administered" (Cowel: Termes de la Ley). *Vh*, Short & Mellor's Crown Office Practice: 2 Encyc. 421.

CESSER. — Cesser of Life Interest on Alienation, &c; *V.* ALIENATION: BANKRUPTCY: DEATH: SHALL.

Benefit by Cesser of Interest, s. 2 (1 *b*), s. 7 (7), Finance Act, 1894; *V. Re Cowley*, 1898, 1 Q. B. 355; 67 L. J. Q. B. 256; revd in H. L., 1899, A. C. 198; 68 L. J. Q. B. 435; 80 L. T. 361; 47 W. R. 525; 63 J. P. 436.

Cesser Clause in Charter-Party; *V.* CEASE: DEMURRAGE: LOADING: Carver, 739–750.

CESSION. — "Is when an Ecclesiastical Person is created Bishop, or when a Parson taketh another BENEFICE without Dispensation or otherwise not qualified, &c; in both cases their first benefices are become void, and be said to become void, by Cession" (Termes de la Ley).

Cessio Bonorum, is a giving up of his property by a Debtor to his Creditors: *V.* 2 Bl. Com. 472: Story's Conflict of Laws, 8 ed., 483: SCHEME.

CESTUI. — *Cestui que Trust*; *V.* BENEFICIARY. The phrase, "*primâ facie*, includes an implied trust just as much as an express trust," and, as used in the proviso to s. 7, Real Property Limitation Act, 1833, it includes an Implied Trust, because it is not restricted to an EXPRESS Trust as in s. 25 (per Kay, L. J., *Warren* v. *Murray*, 1894, 2 Q. B. 648; 64 L. J. Q. B. 42; 71 L. T. 458; 43 W. R. 3). Therefore, though a person be, at Law, merely a TENANT AT WILL, yet if, in Equity, he holds for his Lessor, or by an agreement under which he can claim a Lease for years from his Lessor, he is a "Cestui que Trust" to his Lessor, within the proviso, and (during the continuance of that relationship) the Statute of Limitation does not run (*Drummond* v. *Sant*, 41 L. J. Q. B. 21; L. R. 6 Q. B. 763: *Warren* v. *Murray*, sup: *Vf*, *Lister* v. *Pickford*, 13 W. R. 827). Nor does the statute run as against the true owner (claiming against one who has received rents in an assumed FIDUCIARY CAPACITY), if, within a reasonable time, having regard to the circumstances, he ratifies the acts of such a receiver as being the acts of his trustee or agent (*Lyell* v. *Kennedy*, cited WRONGFULLY CLAIMING). *Cp*, RATIFICATION. *V.* CREDITOR.

Cestui que Use, is he to whose Use land is held (Jacob). *V.* USE, at end: PERNOR.

Cestui que Vie, is he for whose life land is granted (Jacob).

CHAIN. — A Chain in length is 22 Imperial Standard Yards (s. 11, 41 & 42 V. c. 49). *V.* YARD.

"Chain Cable"; *V.* ANCHOR.

CHAIR. — "Chair of Theology"; Stat. Def., Universities (Scot) Act, 1853, 16 & 17 V. c. 89, s. 6.

CHAIRMAN. — "Chairman"; Stat. Def., 33 & 34 V. c. 61, s. 2; 61 & 62 V. c. 29, s. 17.

Signature of Minutes by Chairman of Directors; *V. Southampton Dock Co* v. *Richards*, 1 M. & G. 448: *West London Ry* v. *Bernard*, 13 L. J. Q. B. 68; 3 Q. B. 873.

"Chairman of Quarter Sessions," in the application of an Act to Scotland, is thereby generally defined to mean "the SHERIFF of the County," *e.g.* 35 & 36 V. c. 76, s. 73, c. 77, s. 42; 38 & 39 V. c. 17, s. 109; 50 & 51 V. c. 58, s. 76.

"Chairman," and "Chairman of Quarter Sessions," in Acts relating to Ireland; Stat. Def., 13 & 14 V. c. 18, s. 51; 23 & 24 V. c. 153, s. 5, c. 154, s. 1; 27 & 28 V. c. 99, s. 3; 35 & 36 V. c. 33, s. 18; 40 & 41 V. c. 56, s. 7; 41 & 42 V. c. 52, s. 2; 50 & 51 V. c. 58, s. 77.

CHALDRON. — Is 36 BUSHELS (s. 15, 41 & 42 V. c. 49), *i.e.* 288 GALLONS. *Vf*, Cowel.

CHALLENGE. — "*Challenge* is a word common as well to the English as to the French, and sometimes signifieth to CLAIME, and the Latine word is *vendicare*; sometime in respect of revenge to challenge into the field, and then it is called in Latine *vindicare* or *provocare*; sometime in respect of partiality or insufficiency, to challenge in court persons returned on a jury. And seeing there is no proper Latin word to signify this particular kind of challenge, they have framed a word anciently written, *chalumniare*, and *columpniare*, and *calumpniare*, and now written *calumniare*; and hath no affinity with the verbe *calumnior*, or *calumnia*, which is derived of that, for that is of a quite other sense, signifying a false accuser, and in that sense Bracton useth *calumniator* to be a false accuser: but it is derived of the old word *caloir* or *chaloir*, which in one signification is to care for or foresee. And for that to challenge jurors is the meane to care for or foresee, that an indifferent triall be had, it is called *calumniare*, to challenge, that is, to except against them that are returned to be jurors; and this is his proper signification" (Co. Litt. 155 b). *Vf*, Termes de la Ley: Arch. Cr. 178: Rose. Cr. 184: 7 Encyc. 149, 150.

CHAMPERTY. — "Champerty is MAINTENANCE in which the motive of the maintainor is an agreement that if the proceeding in which the maintenance takes place succeeds, the subject matter of the suit shall be divided between the plaintiff and the maintainor" (Steph. Cr. 97; *Vf*, Ib. 355, 356: Co. Litt. 368 b: Termes de la Ley: Cowel, *Champarty*: *Guy* v. *Churchill*, 58 L. J. Ch. 345; 40 Ch. D. 481: *James* v. *Kerr*, 58 L. J. Ch. 355; 40 Ch. D. 449).

A contract may be void for Champerty, though not strictly within the criminal offence so called (*Rees* v. *De Bernardy*, 1896, 2 Ch. 437; 65 L. J. Ch. 656; 74 L. T. 585).

CHANCE. — It has been said that, — "Chance, is but the pseudonyme of God, for those particular cases which He does not choose to subscribe openly with His own Sign Manual." *V.* ACT OF GOD: LOTTERY: GAME OF CHANCE: BET.

CHANCELLOR. — Quà Clergy Discipline Act, 1892, 55 & 56 V. c. 32, "'Chancellor,' means the Judge of the Consistory Court, by whatever name known" (s. 12).

"Lord Chancellor"; Stat. Def., s. 12 (1), Interp Act, 1889; 5 & 6 V. c. 84, s. 17; 11 & 12 V. c. 94, s. 46; 12 & 13 V. c. 109, s. 50; 16 & 17 V. c. 70, s. 2; 54 & 55 V. c. 66, s. 95; 61 & 62 V. c. 17, s. 4.

CHANCE-MEDLEY. — "Chance-medley, or *per infortunium*, is when one is slaine casually, and by misadventure, without the will of him that doth the act, whereupon death ensueth" (Co. Litt. 287 b). *Va* Termes de la Ley. Cowel says, "'Chance-medley,' signifies the casual killing of a Man, not altogether without the killer's fault, though without an evil intent." *Vf*, 2 Encyc. 435: MISADVENTURE: HOMICIDE.

CHANCERY. — *V.* COURT OF CHANCERY.

CHANDOS. — The Chandos Clause of the Reform Act; *V.* KNIGHT OF THE SHIRE.

CHANGE. — "A Change of VOYAGE," in a Marine Insrce, "takes place when, either before or after the commencement of the risk, the assured abandons all thought of proceeding to the Port of Destination originally prescribed" (Arn. 456); but, in a clause covering the assured at an extra premium.

"Change of Voyage" only applies where the Policy, having attached by the starting of the goods on the insured voyage, a change of voyage is subsequently made (*Simon* v. *Sedgwick*, 1893, 1 Q. B. 303; 62 L. J. Q. B. 163). *Cp.* DEVIATION.

"Change or Transmission of Interest"; *V.* TRANSMISSION.

CHANNEL ISLANDS. — Quà the Customs, "Channel Islands," means, "the Islands of Guernsey, Jersey, Alderney, and Sark, and their respective dependencies" (s. 284, 39 & 40 V. c. 36, enlarging, by the addition of the last four words, the def in s. 357, 16 & 17 V. c. 107).

V. UNITED KINGDOM: ENGLAND.

CHAPEL. — "The legal meaning of the word 'Chapel' is a chapel of the Church of England" (per Grove, J., *Caiger* v. *St. Mary, Islington*, 50 L. J. M. C. 64; *thc* also cited HOUSE: *Va* 32 & 33 V. c. 94, s. 14). *Vf*, PAROCHIAL CHURCH: PROPRIETARY: *Hornsey* v. *Brewis*, cited INCUMBENT: Cowel: Jacob. *Cp.* CHURCH.

As to diverting funds for purposes of, and trusts for maintaining, a Chapel; *V.* Lewin, 603, 607.

CHAPELRY. — "'Chapelry,' *Capellania*, is the same thing to a Chapel as a Parish is to a Church; 14 Car. 2, c. 9" (Cowel). A Parochial Chapelry must have been co-eval with the Parish, *i.e.* immemorial; but, in the absence of evidence to the contrary, its existence may be inferred from modern usage; "Chapelry," s. 14, Church Building Act, 1831, 1 & 2 W. 4, c. 38, means, a Parochial Chapelry strictly so called, not merely a District recently treated as a Parochial Chapelry (*Carr* v. *Mostyn*, 5 Ex. 69; 19 L. J. Ex. 249).

CHAPTER. — "'Chapter,' in Latine, is defined to be, an Assembly of Clerkes in a Church Cathedral, — conventual, regular, or collegiat; and in another signification, a place wherein common tracts of men collegiat are made. . . . And it may be said that this collegiat companie is termed 'Chapter' metaphorically, the word originally implying, a little head, for this company or corporation is as a head, not onely to rule and govern the Diocesse in the Vacation of the Bishopricke but also, in many things to advise the Bishop when the See is full" (Termes de la Ley).

Vh, Phil. Ecc. Law, Part 2, ch. 4: DEAN.

"Chapter" of Chichester, Exeter, Hereford, Salisbury, and Wells, s. 25, 3 & 4 V. c. 113; *V. R.* v. *Hereford Dean & Chapter*, 39 L. J. Q. B. 97; L. R. 5 Q. B. 196; 10 B. & S. 996: *Re Stockport Schools*, cited CATHEDRAL.

CHARACTER. — Fees and expenses voted to a Director of a Co, is a sum due to him "in his *Character* of a Member" within s. 38 (7), Comp Act, 1862 (*Re Leicester Racecourse Co*, 55 L. J. Ch. 206; 30 Ch. D. 629: *Cp* CAPACITY); *secus*, of a fixed remuneration definitely prescribed by the Articles (*Re New British Iron Co*, 1898, 1 Ch. 324; 67 L. J. Ch. 164; 78 L. T. 155; 46 W. R. 376). A Managing Director's salary would not be within the phrase, nor the Costs of a Solicitor who was also a Director (*Re Dale & Plant*, 59 L. J. Ch. 180; 43 Ch. D. 255).

A Word "having no reference to the Character or Quality" of Goods, quà TRADE-MARK, *semble*, does not include "John Bull" (*Re Paine*, 61 L. J. Ch. 365; 66 L. T. 642; 9 Pat. Ca. 130): *Vh*, *Re Magnolia Metal Co*, cited FANCY WORD. The phrase includes "Typograph," as applied to Metals (*Re Linotype Co*, 42 S. J. 13).

V. GOOD CHARACTER.

CHARGE. — "The word 'Charge' has a wider meaning than the words 'MORTGAGE' or 'LIEN'": *e.g.*, in the definition of a SECURED CREDITOR in the Bankry Act, 1869 (per Cur. *Emanuel* v. *Bridger*, 43 L. J. Q. B. 99; L. R. 9 Q. B. 286; 22 W. R. 404; 30 L. T. 195: *Cp*, corresponding phrase in s. 168, Bankry Act, 1883). To "charge" prop-

erty you must BIND it; therefore, a mere Receivership (at the instance of a Jdgmt Cr) of Goods or a Chose in Action, does not create a "Charge," within that definition (*Re Dickenson, Ex p. Charrington*, and *Re Potts*, cited SECURED CREDITOR). *Cp.* PLEDGE. But "'Incumbrance' is wide enough to include 'Charge and Lien,'" *e.g.* as used in s. 1, Fines and Recoveries Act, 1833 (per Lindley, L. J., *Miller* v. *Collins*, cited INCUMBRANCE). *Vf*, MORTGAGE OR CHARGE.

Quâ Record of Title Act (Ir), 1865, 28 & 29 V. c. 88, "the word 'Charge' or 'Incumber,' shall include any legacy, portion, lien, or other charge, whereby a sum of money is secured to be paid; and also any annual or periodical charge; and also any charge hereafter to be imposed on land under any PUBLIC ACT for promoting Drainage or Land Improvement; and also every other charge upon land which is deemed an Incumbrance in a Court of Equity" (s. 2). *V.* CHARGE OR INCUMBER.

In *Emanuel* v. *Bridger*, sup, it was held that a Garnishee Order absolute was a "Charge" within s. 16 (5), Bankry Act, 1869, repld, s. 168, Bankry Act, 1883; and that was so even if the Order were only *nisi* (*Lowe* v. *Blackmore*, 44 L. J. Q. B. 155; L. R. 10 Q. B. 485; 23 W. R. 856: *Vf*, *Ex p. Jocelyn*, 47 L. J. Bank. 91; 8 Ch. D. 327; 26 W. R. 645; 38 L. T. 661: *Hall* v. *Pritchett*, 47 L. J. Q. B. 15; 3 Q. B. D. 215; 26 W. R. 95: *Re Stanhope Collieries Co*, 48 L. J. Ch. 409; 11 Ch. D. 160; 27 W. R. 561; 40 L. T. 204). But to be now available in bankruptcy, an attachment of a debt must be completed by RECEIPT of the money (s. 45, Bankry Act, 1883). *Vf*, LIEN: MORTGAGE OR CHARGE.

Money paid into Court to ABIDE the event, creates such a "Charge" in favour of the other litigant; *V.* cases cited SECURITY.

"Agreed to charge"; *V.* AGREED.

"Memorandum of Charge"; *V.* CONVEYANCE.

"Priority of Charge"; *V.* PRIORITY.

"Charge *on Premises*," s. 257, P. H. Act, 1875; *V. Sunderland* v. *Alcock*, 51 L. J. Ch. 546: PREMISES: OWNER. This is "a present existing Charge as from the time of the completion of the Works" (per Lindley, L. J., *Hornsey* v. *Monarch Bg Socy*, 59 L. J. Q. B. 107; 24 Q. B. D. 1; citing *Tottenham* v. *Rowell*, 50 L. J. Ch. 99; 15 Ch. D. 378, and *Re Bettesworth and Richer*, 57 L. J. Ch. 749; 37 Ch. D. 535); a rule which applies to a similar "Charge" under s. 13, Private Street Works Act, 1892 (*Stock* v. *Meakin*, cited OUTGOING). This is not a "LAND CHARGE" requiring registration under 51 & 52 V. c. 51, Part IV (*R.* v. *Holt*, 59 L. J. Q. B. 113; 24 Q. B. D. 178; 62 L. T. 117; 38 W. R. 236; 6 Times Rep. 104). *Vf*, CHARGED UPON.

V. ABSOLUTE ASSIGNMENT: CHARGES: TOLL: IN CHARGE: CARE.

"Other Charges"; *V. Willis* v. *Thorp*, cited OTHER.

"To Charge"; *V.* BIND. *Va* ACCUSE.

A *criminal* "Charge" is made when the accused answers an accusation

against him before a competent Court, even though he be informally brought before it (*R.* v. *Hughes*, 48 L. J. M. C. 151; 4 Q. B. D. 614: *Re Maltby*, 50 L. J. Q. B. 420; 7 Q. B. D. 18).

A Coroner's Inquisition is a "Charge" of Murder (*R.* v. *Maynard*, Russ. & Ry. 240).

CHARGE OF DEBTS. — As to what words will create a *Charge of Debts on Real Estate*; *V.* 2 Jarm. 582–601; and as to *Legacies*, Ib., 602–609. *Va*, ALL: DIRECT: IN THE FIRST PLACE.

Charge of Debts, or Legacy, or Specific Sum of money on Realty, for testator's "whole Estate or Interest therein," s. 14, Law of Property Amendment Act, 1859, 22 & 23 V. c. 35; *V. Greville* v. *Browne*, 7 H. L. Ca. 689: *Re Adams and Perry*, 1899, 1 Ch. 551; 68 L. J. Ch. 259; 80 L. T. 149; 47 W. R. 326.

CHARGE OF FRAUD. — A clause in a Building Contract that the Architect's decisions shall not be set aside "for any Pretence, Suggestion, Charge, or Insinuation, of Fraud, Collusion, or Confederacy," is valid, and not against PUBLIC POLICY (*Tullis* v. *Jacson*, 1892, 3 Ch. 441; 61 L. J. Ch. 655; 67 L. T. 340; 41 W. R. 11).

CHARGE OR CONDUCT. — Of a Vessel, 6 G. 4, c. 125, s. 70; *V. Beilby* v. *Scott*, 7 M. & W. 93; 10 L. J. Ex. 149.

CHARGE OR CONTROL. — Person having "the charge or control" of "Points" upon a Ry, s. 1 (5), Employers' Liability Act, 1880, 43 & 44 V. c. 42; *V. Gibbs* v. *G. W. Ry*, 53 L. J. Q. B. 543; 12 Q. B. D. 208: — of "TRAIN"; *V. McCord* v. *Cammell*, 1896, A. C. 57; 65 L. J. Q. B. 202; 73 L. T. 634; 60 J. P. 180.

V. PERSON IN CHARGE: CONTROL.

CHARGE OR INCUMBER. — A covenant or condition not to "Charge or Incumber," prohibits a *direct* Charge or Incumbrance, and does not embrace something, — *e.g.* a Warrant of Attorney, — which may obliquely so operate (*Croft* v. *Lumley*, 25 L. J. Q. B. 73, 223; 27 Ib. 321; 6 H. L. Ca. 672); unless, indeed, that something be a mere contrivance to charge the property, and then it will be within the covenant or condition (*Doe* d. *Mitchinson* v. *Carter*, 8 T. R. 57, 300: *Croft* v. *Lumley*, sup). *Croft* v. *Lumley* was a case on a Lease, and the prohibitive words of the covenant there were, "nor charge or incumber the said theatre . . . by mortgaging the same, or granting any rent-charges or any other incumbrance or incumbrances whatsoever"; and it was held that a *bonâ fide* Warrant of Attorney, on which judgment had been entered up (1 & 2 V. c. 110, ss. 13, 19), was not a breach.

"Charge or Incumber" may sometimes be read "attempt to charge," &c (*Blake* v. *Barnett*, 31 L. J. Ch. 898; nom. *Barnett* v. *Blake*, 2 Dr. &

Sm. 117; cited for this proposition by Fry, J., *Hurst* v. *Hurst*, 51 L. J. Ch. 421, on app, but not on this point, Ib. 729; 21 Ch. D. 278).

V. CHARGE: MORTGAGE OR CHARGE: RESTRAINT ON ALIENATION.

CHARGE OR LIABILITY. — A Legacy "free from any Charge or Liability in respect thereof," is duty free (*Warbrick* v. *Varley*, 30 Bea. 241).

CHARGEABLE. — This word has, quà Rates and Taxes, substantially the same meaning as "payable" (per Hawkins, J., *Direct Spanish Telegraph Co* v. *Shepherd*, 53 L. J. Q. B. 420; 13 Q. B. D. 202).

In a Covenant relating to Rates, "chargeable" has a future meaning (*Scovell* v. *Gardiner*, 16 Ir. C. L. Rep. 318).

A Pauper is "chargeable" to his parish, s. 56, 7 & 8 V. c. 101, as soon as he is entitled to relief therefrom, but not "actually chargeable" till he gets such relief (*R.* v. *St. Clement Danes*, 32 L. J. M. C. 25; 3 B. & S. 143). *Cp*, *Re Morten*, cited ABLE.

ROGUE leaving wife "chargeable," s. 4, 5 G. 4, c. 83; *V. Heath* v. *Heape*, 26 L. J. M. C. 49.

CHARGED. — The power, given by s. 29, 2 & 3 V. c. 71, to order restitution of "goods or money *charged* to be stolen or fraudulently obtained," relates only to goods or money respecting which such a charge has been specifically made (*R.* v. *D'Eyncourt*, 4 Times Rep. 455).

A Charge by a Local Authority for Structural Work, is "taxed, charged, rated, assessed, or imposed," within a covenant in a Lease (*V.* TAXES), as soon as the Authority has formally charged and apportioned the amount in respect of the premises (*Wix* v. *Rutson*, cited TAXES). *Va* CHARGES. *Note.* If the covenant only extends to payments taxed &c "on" the premises, then the liability will depend on the terms of the particular statute and what has been done thereunder.

V. CHARGED UPON: CHARGING ORDER.

CHARGED UPON. — Sums "charged upon" land, s. 1, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; *V. Payne* v. *Esdaile*, 58 L. J. Ch. 299; 13 App. Ca. 613; 37 W. R. 273; 59 L. T. 568: *Purcell* v. *Purcell*, 2 Dr. & War. 217.

Quà same phrase, ss. 42, 40, Ib. (the latter section, repld s. 8, Real Property Limitation Act, 1874); *V. Roddam* v. *Morley*, 1 D. G. & J. 1; 26 L. J. Ch. 438: *Morley* v. *Morley*, 5 D. G. M. & G. 610: *Hornsey* v. *Monarch Bg Socy*, cited PRESENT RIGHT TO RECEIVE: *Sutton* v. *Sutton*, 52 L. J. Ch. 333; 22 Ch. D. 511: *Fearnside* v. *Flint*, 52 L. J. Ch. 479; 22 Ch. D. 579; 31 W. R. 318; 48 L. T. 154: *M'Donnell* v. *Fitzgerald*, 1897, 1 I. R. 556: *Lindsell* v. *Phillips*, 30 Ch. D. 291: *Bowyer* v. *Woodman*, L. R. 3 Eq. 313: *Re Stead*, 2 Ch. D. 713; 45 L. J. Ch. 634: *Re Slater*, 11 Ch. D. 227; 48 L. J. Ch. 473: *Edmunds* v. *Waugh*, L. R.

1 Eq. 418; 35 L. J. Ch. 234: *Re Marshfield*, 34 Ch. D. 721; 56 L. J. Ch. 599: *Smith* v. *Hill*, 47 L. J. Ch. 788; 9 Ch. D. 143: *Re Nugent*, 19 L. R. Ir. 140: *Carroll* v. *Hargrave*, I. R. 5 Eq. 123: *Baldwin* v. *Baldwin*, 4 Ir. Ch. Rep. 501: *M'Carthy* v. *Daunt*, 11 Ir. Eq. Rep. 29: *Carbery* v. *Preston*, 13 Ir. Eq. Rep. 455. *Vf*, ACKNOWLEDGMENT: BY: PAYMENT.

"Sum charged on such property," s. 14 (1), Finance Act, 1894; *V. Re Orford*, 1896, 1 Ch. 257, 65 L. J. Ch. 253; 73 L. T. 681; 44 W. R. 383.

"Charge on Premises"; *V.* CHARGE: CHARGED.

CHARGED WITH. — *V.* SUBJECT TO: CHARGE.

"Charged with the execution of the writ"; *V.* SHERIFF.

CHARGES. — An exceptional burden for Structural Works imposed by a Local Authority and ordinarily borne by the landlord pursuant to the P. H. Act, was held to be comprised in a covenant by a tenant to pay "all rates, taxes, charges, and assessments whatsoever, which now are or may be charged or assessed upon the said premises or any part thereof or upon any person or persons in respect thereof, land tax and property tax excepted" (*Hartley* v. *Hudson*, 48 L. J. Q. B. 751; 4 C. P. D. 367: *Smith* v. *Robinson*, cited TAXES: But *Cp*, *Rawlings* v. *Biggs*, 47 L. J. Q. B. 487; 3 C. P. D. 368). Where, however, the words of the covenant by the lessee were to pay "the sewer and main drainage rates . . . and other district rates and assessments whatsoever whether parliamentary, parochial, or otherwise, which now are or which at any time during the said term shall be taxed, rated, CHARGED, assessed, or imposed upon the said demised premises, or any part thereof, or upon or payable by the occupier or tenant in respect thereof"; — held, that such an exceptional burden made under the Metrop Man. Act was not comprised (*Allum* v. *Dickinson*, 52 L. J. Q. B. 190; 9 Q. B. D. 632). *Hartley* v. *Hudson* was cited in *Allum* v. *Dickinson*, yet in the latter case the same judge (Lindley, L. J.) who decided *Hartley* v. *Hudson* said, that such an exceptional burden was "not a Rate, Charge, or Assessment imposed on the premises or on the occupier or tenant." *Vf*, TAXES: OUTGOINGS.

"Charges or Costs," R. 2 (*a*), Ord. 57, R. S. C.; *V. Attenborough* v. *St. Katharine's Docks*, and *De Rothschild* v. *Morrison*, cited MATTER.

A Freehold of 40*s.* per annum "above all Charges," 8 H. 6, c. 7 (giving the County Franchise), connotes that a Mtge is a "Charge" (*V.* 28 G. 3, c. 36), and monthly payments to a Building Socy in respect of a mtge to it are "Charges" (*Copland* v. *Bartlett*, 18 L. J. C. P. 50; 6 C. B. 26). *Vf*, *Lee* v. *Hutchinson*, 20 L. J. C. P. 4; 8 C. B. 16.

V. COSTS AND CHARGES: PROFESSIONAL CHARGES: TOLL.

CHARGES AND ALLOWANCES. — *V.* 1 Maude & P. 121, *n* (*o*).

CHARGING ORDER.—*V.* ss. 14–16, Jdgmts Act, 1838; s. 1, 3 & 4 V. c. 82: *Brown* v. *Bamford*, 9 M. & W. 42; 11 L. J. Ex. 53; *Fowler* v. *Churchill*, 11 M. & W. 57; 12 L. J. Ex. 230, 233: DISPOSING POWER: AGREED: RECOVERED OR PRESERVED.

CHARIOT.—*V.* COACH.

CHARITABLE CONTRIBUTION.—*V. R.* v. *Manchester*, cited HOSPITAL, towards end.

CHARITABLE PURPOSE.—A bequest for "Charitable" purposes, or for "Charities *and* other Public Purposes," is good (*Re Sutton*, 54 L. J. Ch. 613; 28 Ch. D. 464; 33 W. R. 519: *Dolan* v. *Macdermot*, 3 Ch. 676); but a bequest for "Charitable *or* Benevolent Purposes," or where "Charitable" is disjunctively associated with any other purpose not good as a CHARITY, the gift is bad, because the money may be applied to purposes not legally Charitable (*Re Macduff*, cited PHILANTHROPIC:—*Vf*, AND: OR). A bequest "to be given in Private Charity" is not good (*Ommaney* v. *Butcher*, 1 T. & R. 260). *Vf* Tudor, Char. Trusts.

A bequest to an Anti-Vivisection Socy is a good exercise of a Power to appoint "for some Charitable Purpose" (*Re Foveaux*, 1895, 2 Ch. 501; 64 L. J. Ch. 856; 73 L. T. 202; 43 W. R. 661).

V. CHARITY: DESERVING: HUMANE: PURPOSE.

In all English statutes, where there is no controlling context, "a technical meaning is attached to the word 'CHARITY,'" and synonymous therewith is "the word 'Charitable,' in such expressions as 'CHARITABLE USES,' 'CHARITABLE TRUSTS,' or 'Charitable Purposes'" (per Ld Macnaghten, *Income Tax Commrs* v. *Pemsel*, 1891, A. C. 580; 61 L. J. Q. B. 289). In accordance with that view, it was there held by the majority of the H. L. (Halsbury, C., and Ld Bramwell, diss.) that the Exemption from Income Tax of property devoted to "Charitable Purposes," — Income Tax Act, 1842, s. 61, Sch A, vi, — does not require the ingredient of Poverty in the objects of those Purposes, and that the exemption extends to the income of the property devoted to Moravian Missions (1891, A. C. 531; 61 L. J. Q. B. 265; 55 J. P. 805; 65 L. T. 621).

That the Scotch meaning of "Charitable," in such a connection, connotes the same, or very nearly the same, technical meaning as in England was, in the case just cited, stoutly contended for by Ld Watson and urged by Ld Macnaghten; but whether that be so or not, *semble*, that *Pemsel's Case* over-rules the Scotch decision in *Baird's Trustees* v. *Lord Advocate* (15 Sess. Ca., 4th Ser., 682).

As to whether Poverty is a necessary ingredient in a "Charitable Purpose," even in its popular meaning, *Cp* jdgmts of Lds Watson, Herschell, and Macnaghten with those of Halsbury, C., and Ld Bramwell,

in *Pemsel's Case; Va* the jdgmts in *S. C.* when in the Court of Appeal (58 L. J. Q. B. 200; 22 Q. B. D. 296).

"Charitable Purpose," s. 16, Succ Dy Act, 1853, is used in the technical sense of CHARITY (per Lds Watson and Macnaghten, *Pemsel's Case*, sup).

For an example of "Charitable Purpose" receiving a less extended meaning than its technical one; *V. Inl. Rev.* v. *Scott*, 1892, 2 Q. B. 152; 61 L. J. Q. B. 432; 67 L. T. 173; 40 W. R. 632. That was a decision on "Charitable Purpose," as used in s. 11 (3), Customs and Inl. Rev. Act, 1885, on *whvf*, *Re Linen & Woollen Drapers Institution*, 58 L. T. 949: *Glasgow Tailors* v. *Inl. Rev.*, 24 Scotch L. R. 516; 14 Sess. Ca., 4th Ser., 729.

"Public or Charitable Purpose"; *V.* PUBLIC PURPOSE: PUBLIC CHARITY.

V. GODLY.

CHARITABLE TRUST. — *V. A-G.* v. *Webster*, 44 L. J. Ch. 766; L. R. 20 Eq. 483: *Fell* v. *Official Trustee of Charity Lands*, cited MORTGAGE OR CHARGE.

"Charitable Trusts Acts, 1853 to 1894"; *V.* Sch 2, Short Titles Act, 1896. *Vth* Tudor, Char. Trusts.

CHARITABLE USE. — As to what is a "Charitable Use" within the Mortmain and Charitable Uses Act, 1888, 51 & 52 V. c. 42; *V.* Wms. Exs. 916 *et seq*; Tudor, Char. Trusts, ch. vi. *Cp* SUPERSTITIOUS.

Land demised for a long term of years for the erection of a parish Workhouse, is demised for a "Charitable Use" (*Webster* v. *Southey*, 36 Ch. D. 9; 56 L. J. Ch. 785; 56 L. T. 879; 35 W. R. 622; 3 Times Rep. 628); so, of a Conveyance of land in aid of the Poor Rate (*Doe* d. *Preece* v. *Howells*, cited VALUABLE).

CHARITY. — This "word, in its widest sense, denotes all the good affections men ought to bear towards each other; in its most restricted and common sense, Relief of the Poor. In neither of these senses is it employed in this (Chancery) Court. Here its signification is derived chiefly from the Statute of Elizabeth (43 Eliz. c. 4). Those purposes are considered charitable which that statute enumerates, or which by analogies are deemed within its spirit and intendment" (per Grant, M. R., *Morice* v. *Durham Bp.*, 9 Ves. 405), *e.g.* a bequest for keeping Chimes in repair (*Turner* v. *Ogden*, 1 Cox, Ch. 316), or for the use of a Vegetarian Socy (*Webb* v. *Oldfield*, 1898, 1 I. R. 431), or of a Socy for the protection of animals liable to vivisection (*Re Douglas*, 35 Ch. D. 472; 56 L. J. Ch. 913). The purposes enumerated by the Statute of Eliz. are "reliefe of aged IMPOTENT and POORE people, some for maintenance of sicke and maymed souldiers and marriners, schooles of learninge, free schooles and schollers in universities, some for repaire of bridges,

portes, havens, causwaies, churches, seabankes and highewaies, some for educacōn and pfermente of orphans, some for or towards reliefe stocke or maintenance for howses of correccon, some for mariages of poore maides, some for supportacōn ayde and helpe of younge tradesmen, handiecraftesmen and psons decayed, and others for reliefe or redemption of prisoners or captives, and for aide or ease of any poore inhabitant concninge paymente of fifteenes, settinge out of souldiers (*V.* SET OUT) and other taxes." Though the Act is repealed, this enumeration is continued by the Mortmain Act of 1888 (s. 13 (2), 51 & 52 V. c. 42). It comprises four principal divisions; — (1) Relief of Poverty; (2) Advancement of Education; (3) Promotion of Religion; (4) Other purposes beneficial to the community (per Ld Macnaghten, *Income Tax Commrs* v. *Pemsel*, 1891, A. C. 542; 61 L. J. Q. B. 290: *Re Foveaux*, 1895, 2 Ch. 501; 64 L. J. Ch. 856; 73 L. T. 202; 43 W. R. 661). *Vh*, Tudor, Char. Trusts, 371: 1 Jarm. 205–250: Wms. Exs. 897 *et seq*, for collection of cases hereon: *Va*, *Beaumont* v. *Oliveira*, 38 L. J. Ch. 62, 239; 4 Ch. 309; 20 L. T. 53; 17 W. R. 269: SERVICE OF GOD.

A legacy for mere Sport or Game, is not a good Charity (*Re Nottage*, 1895, 2 Ch. 649; 64 L. J. Ch. 695; 73 L. T. 269; 44 W. R. 22).

It has been said that the Inns of Chancery were all Charities (*A-G.* v. *Bowyer*, 3 Ves. 714); and though "some have been dealt with as private property," yet the conveyance (dated 29th March, 1618) from Ld Clifford of the property called Clifford's Inn, shows that that property is a Charity (*Smith* v. *Kerr*, 1900, 2 Ch. 511; 69 L. J. Ch. 755; 82 L. T. 795).

It has been held that Poverty in the recipient is not necessary to enable him to receive the benefits of a Charity (*Pease* v. *Pattinson*, 55 L. J. Ch. 617; 32 Ch. D. 154; 54 L. T. 209; 34 W. R. 361: *Pemsel's Case*, cited CHARITABLE PURPOSE). *Sv*, *Cunnack* v. *Edwards* and *Re Buck*, cited PUBLIC CHARITY.

Property purchased by a City Ward out of its own moneys and for its own purposes, is not a "Charity" within s. 66, Charitable Trusts Act, 1853 (*Finnis to Forbes*, 53 L. J. Ch. 140, 141; 24 Ch. D. 587; 48 L. T. 813; 32 W. R. 55). But where there *is* a "Charity," it is within this section if its foundation and institution be in England or Wales, although its revenues are applied abroad (*Re Duncan*, 2 Ch. 356; 36 L. J. Ch. 513).

Other Stat. Def. — 18 & 19 V. c. 124, s. 48; 23 & 24 V. c. 134, s. 8.

As to mode of construing a gift for Charitable Purposes; *V. Moggridge* v. *Thackwell*, 7 Ves. 36: *Mills* v. *Farmer*, 19 Ves. 482: *Biscoe* v. *Jackson*, 35 Ch. D. 460; 56 L. J. Ch. 540: *Re White*, 1893, 2 Ch. 41; 62 L. J. Ch. 342: *Re Macduff*, cited PHILANTHROPIC: — And as to such a gift being void for Uncertainty, *V.* OR.

V. ALMS: CHARITABLE PURPOSE: BENEVOLENCE: ENDOWMENT: EVANGELICAL: GENERAL UTILITY: GOSPEL: GREAT BRITAIN: RELIGIOUS: ECCLESIASTICAL CHARITY: PAROCHIAL CHARITY: PRISON: PUBLIC CHARITY.

One who from "Charity" helps another in an action, is not guilty of MAINTENANCE, even though his "charity" be indiscreet; wisdom is not an ingredient of the word (*Harris* v. *Brisco*, 55 L. J. Q. B. 423; 17 Q. B. D. 504; 55 L. T. 14; 34 W. R. 729).

"Charity," in a United States Sunday Act, includes everything which proceeds from a sense of moral duty, or kindness, or humanity, for the relief or comfort of another, and without any regard to one's own benefit or pleasure (*Doyle* v. *L. & B. R. R.*, 118 Mass. 197).

Shaving is not a "Work of Charity," within the English Sunday Observance Acts (*Phillips* v. *Innes*, cited HOLIDAY); like MERCY, there is no Work of "Charity" when the worker's object is gain (*Ib.*).

CHARITY COMMISSIONERS. — Stat. Def., s. 12 (14), Interp Act, 1889.

CHARITY ESTATE. — As to meaning of this phrase in s. 29, Charitable Trusts Amendment Act, 1855, 18 & 19 V. c. 124; *V. Corporation of Sons of Clergy* v. *Sutton*, 29 L. J. Ch. 393, nom. *Corporation for Relief of Widows and Children of Clergy* v. *Sutton*, 27 Bea. 651: *Re Royal Socy and Thompson*, 17 Ch. D. 407; 50 L. J. Ch. 344, 44 L. T. 274; 29 W. R. 838: *Finnis to Forbes*, cited CHARITY.

CHARITY PROPERTY. — The purposes to which, not the source from which, property is derived will determine whether or not it is "Charity Property," either generally, or within ss. 5, 10, 11, City of London Parochial Charities Act, 1883, 46 & 47 V. c. 36 (*Re St. Botolph Without*, 56 L. J. Ch. 691; 35 Ch. D. 142; 56 L. T. 884; 35 W. R. 688; 3 Times Rep. 522, 553: *A-G.* v. *Eastlake*, 11 Hare, 205). An Advowson, or other property not producing income, may be "Charity Property" within those sections (*Re St. Stephen's*, 57 L. J. Ch. 917; 39 Ch. D. 492; 59 L. T. 393; 36 W. R. 837). *Vf*, *Re St. Nicholas Acons*, 60 L. T. 532.

CHARITY SCHOOL. — A "Charity School," is "a SCHOOL primarily intended for the supply of gratuitous education" (per Charles, J., *Southwell* v. *Holloway College*, 1895, 2 Q. B. 487; 64 L. J. Q. B. 791; 73 L. T. 183; 59 J. P. 503): it may, probably, be in some measure self-supporting, but primarily and practically it must be eleemosynary; and, when partly self-supporting, each case — like a PUBLIC SCHOOL — will depend on its own facts. Charterhouse is not a "Charity School," within the Exemption from Inhabited House Duty of "any HOSPITAL, Charity School, or House provided for the reception or relief of Poor Persons," Case 4, Sch B., 48 G. 3, c. 55; s. 2, 14 & 15 V. c. 36 (*Charterhouse School* v. *Lamarque*, 59 L. J. Q. B. 495; 25 Q. B. D. 121; 62 L. T. 907; 38 W. R. 776; 54 J. P. 790), nor is the Royal Holloway College at Egham (*Southwell* v. *Holloway College*, sup).

CHARMS. — *V.* CONJURATION.

CHART. — A special Design for cutting-out the sleeves of ladies' dresses is not a "Map, Chart, or Plan," within the stat. def. of "BOOK," s. 2, Copyright Act, 1842 (*Hollinrake* v. *Truswell*, 1894, 3 Ch. 420; 63 L. J. Ch. 719; 71 L. T. 419). In that case, Davey, L. J., said, — "There may, no doubt, be an anatomical or physiological Plan showing the structure and distribution of the muscles and bones of the human arm, or any other part of the human frame, which would be protected by the Copyright Act."

CHARTER. — Stat. Def., *Scot.* 10 & 11 V. c. 48, s. 22; 31 & 32 V. c. 101, s. 3.

CHARTERED. — "FREIGHT chartered, or as if chartered"; *V. Brankelow S. S. Co* v. *Canton Insrce*, 4 Com. Ca. 239; 68 L. J. Q. B. 811; 1899, 2 Q. B. 178; 81 L. T. 6; 47 W. R. 611.

CHARTER-LAND. — "'Charter-Land,' is such as a man holdeth by Charter, that is to say, by evidence in writing, which otherwise is called FREEHOLD. COPYHOLD Lands, before the Conquest, were, by the Saxons, called Folkeland, and the Charter-lands Bockland" (Termes de la Ley). *Vf*, Cowel: BOCLAND: FOLK-LAND.

CHARTER-PARTY. — "'Charter-Partie,' is an Indenture of Covenants and Agreements made betweene Merchants and Mariners concerning their Sea affaires; and of this you may read in the statute now out of use that was made in 32 H. 8, c. 14" (Termes de la Ley). *Vf* BILL OF LADING.

Vh, Abbott, Part 3, ch. 1: Carver, Part 1, ch. 4: Scrutton, on Charter Parties: 2 Encyc. 475 *et seq.*

Quà Stamp Act, 1891; *V.* s. 49.

V. CONDITIONS AS PER CHARTER-PARTY.

CHASE. — "A Chase differs from a Forest, chiefly in that it is not subject to the forest laws (Chitty, Prerog. 137).

"If the King, seised of a Forest, grants it to another in fee; the grantee has no Forest, because he has not power to create judges or officers to hold forest courts; but he has a Chase (4th Inst. 314).

"By the grant, by a subject, of a Chase in his own land, not only the privilege but the land itself passes (Co. Litt. 5 b: *V.* Wms. on Rights of Commons, 236 *et seq:* Hall on Profits à Prendre, 325: 3 Cruise, Dig. tit. 27, s. 10 *et seq*)." Elph. 565, 566.

A Chase "is of a middle nature betweene a FOREST and a PARK, — being, commonly, lesse than a Forest and not endued with so many Lib-

erties, and yet of a larger compasse, and having greater diversity of keepers and game, than a Park" (Termes de la Ley).

Beasts of Chase; *V.* BEASTS.

CHATTELS. — "'Chattels' is a French word and signifies GOODS, which by a Word of Art we call *catalla*. Now Goods, or Chattels, are either personall or reall. Personall, as horse and other beasts, household stuffe, bowes, weapons, and such like; called personall, because for the most part they belong to the person of a man, or else for that they are to be recovered by personall actions. Reall, because they concerne the reality, as tearmes for yeares of lands or tenements, wardships, the interest of tenant by statute staple, by statute merchant, by elegit and such like" (Co. Litt. 118 b).

Chattels Real, as to what are; *V.* Wms. Exs. 592 *et seq*, Pt. 2, Bk. 2, ch. 1: ESTATE.

Chattels Personal are (1) Chattels Animate, (2) Chattels Vegetable, (3) Chattels Inanimate (Wms. Exs. 617); and *Vth* at length Wms. Exs. 632 *et seq*, Pt. 2, Bk. 2, ch. 2. *V.* PERSONAL CHATTELS.

"If one devise to J. S. all his 'Goods,' or all his 'Chattels,' by either of these is devised as much as by both of them" (Touch. 447: *Vf* Wms. Exs. 1040).

"Chattels," in a Bequest includes Debts (*Ford's Case*, 12 Rep. 1: *Ryall* v. *Rowles*, 1 Ves. sen. 362, 363, 367, 369); *secus*, in an Indictment (*Calye's Case*, 8 Rep. 33 a: *Chanel* v. *Robotham*, Yelv. 68: *R.* v. *Powell*, 2 Den. 403; 21 L. J. M. C. 78; 16 Jur. 177). Kitchen (tit. *Chattels*) says, "MONEY, is not Goods and Chattels," and he is cited for that proposition in Termes de la Ley, *Catals*, and by Cowel, *Catalls*; but, *semble*, the proposition must be accepted, if at all, with much qualification; *V.* GOODS AND CHATTELS.

A bequest of "All other Chattels" may pass the residue (*Re Sharman*, 38 L. J. P. & M. 47; L. R. 1 P. & D. 661). *Vf*, *M'Cormick* v. *Patten*, Ir. Rep. 5 Eq. 295: OTHER.

V. ESTATE: *Cp*, CHOSE IN ACTION.

A Bill of Exchange, is a "Chattel," quà a Fraudulent Transfer by a bankrupt (*Cumming* v. *Baily*, 6 Bing. 363).

A Dog is not a "Chattel," within s. 88, Larceny Act, 1861, because, at Common Law, it is not the subject of Larceny (*R.* v. *Robinson*, 28 L. J. M. C. 58; Bell, C. C. 34: *Vh*, *Ireland* v. *Higgins*, Cro. Eliz. 125); but a dog is "Goods," within s. 40, 2 & 3 V. c. 71 (*R.* v. *Slade*, 21 Q. B. D. 433). *Vf*, s. 18, Larceny Act, 1861.

"Chattel or Valuable Security," s. 75, Larceny Act, 1861; *V.* VALUABLE.

Waste of Metal Ore, piled on the land with the intention that it should again form part of the land, remains part of the land, and is not a Chattel (*Boileau* v. *Heath*, cited IRON).

On the other hand, Machinery, *e.g.* a Switchback Ry erected on land and removable without causing injury to the soil, is a "Chattel," and is within a covenant prohibiting the erection of any "Hut, Tent, Shed, Caravan, House on Wheels, or OTHER Chattel" (*Chamberlayne* v. *Collins*, 70 L. T. 217). *Cp* FIXTURES.

CHAUNTRY: CANTARIA. — "A foundation for the maintenance of priests to say mass for the souls of the founder and his relations; also a chapel or altar endowed for that purpose (*Adams & Lambert's Case*, 4 Rep. 104 b: Ducange: Spelm.). In a grant by Henry 8th to the Earl of Arundel, the words *ecclesia collegiata*, *collegium*, and *cantaria* are used as synonyms; *V. Norfolk* v. *Arbuthnot*, 4 C. P. D. 302; 48 L. J. C. P. 743" (Elph. 566).

CHEAP TRAIN. — "Cheap Train," ss. 6–10, 7 & 8 V. c. 85; *V. North London Ry* v. *A-G.*, 45 L. J. Ex. 315; 1 App. Ca. 148: *A-G.* v. *Metrop. Ry*, 50 L. J. Q. B. 573.

CHEAT. — A Cheat, is a deceitful device for defrauding another of his known right, contrary to the plain rules of common honesty (1 Hawk. P. C. ch. 71, 8 ed., ch. 23: Jacob); *e.g.* passing off a spurious copy as the original painting (*R.* v. *Closs*, 27 L. J. M. C. 54; 6 W. R. 109; 7 Cox, C. C. 494; Dears. & B. 460). *Cp* DECEIT. *Vf* 2 Encyc. 495.

To call a man a "Cheat," "Rascal," "Scoundrel," "SWINDLER," or "Villain," is not actionable, *per se* (per Pollock, C. B., *Barnett* v. *Allen*, 27 L. J. Ex. 412; 3 H. & N. 376; 31 L. T. O. S. 217: *Vf*, *Savile* v. *Jardine*, 2 Bl. H. 531, 532: *Stanhope* v. *Blith*, 4 Rep. 15); but to print of a man that he is a "Swindler" &c, is actionable (*J'Anson* v. *Stuart*, 1 T. R. 748). *Va*, BLACK: PROFESSED GAMBLER.

CHEATING. — "Every one commits the misdemeanor called Cheating, who fraudulently obtains the property of another by any deceitful practice not amounting to felony, which practice is of such a nature that it directly affects, or may directly affect, the public at large. But it is not Cheating, within the meaning of this Article, to deceive any person in any contract or private dealing by lies, unaccompanied by such practices as aforesaid" (Steph. Cr. 272). *Vf*, Arch. Cr. 562–586: Rosc. Cr. 340–342.

CHEESE. — Quà Sale of Food and Drugs Acts, "'Cheese' means, the substance usually known as Cheese, containing no Fat derived otherwise than from Milk" (s. 25, 62 & 63 V. c. 51). *V.* MARGARINE.

Lord CHELMSFORD'S ACTS. — Agricultural Gangs Act, 1867, 30 & 31 V. c. 130:

Promissory Oaths Act, 1868, 31 & 32 V. c. 72.

CHEMIN DE FER. — *V.* BACCARAT.

CHEMIST. — As distinguished from APOTHECARY, "a Chemist is one who sells medicines which are asked for"; he does not select the medicines (per Cresswell, J., *Apothecaries Co* v. *Lotinga*, 2 Moo. & R. 500); "a Chymist may prepare and vend, but not prescribe or administer, medicine" (per Best, C. J., *Allison* v. *Haydon*, 4 Bing. 621).

Quà the Pharmacy Acts, a "Chemist and Druggist," is one who keeps "OPEN shop for the compounding of the prescriptions of duly qualified Medical Practitioners," and who, since the Act of 1868, is duly registered; including registered Assistants and Associates (31 & 32 V. c. 121, s. 3; 61 & 62 V. c. 25, s. 1). *V.* KEEP OPEN.

CHEQUE. — "A Cheque is a BILL OF EXCHANGE drawn on a Banker, payable on demand" (s. 73, Bills of Ex. Act, 1882); so, prior to and independently of that def (*Eyre* v. *Waller*, 29 L. J. Ex. 246; 5 H. & N. 460; *Lynn* v. *Bell*, Ir. Rep. 10 C. L. 487).

The statement that a payment has been made, or an agreement that it is to be made, "by cheque," imports that the cheque was or is to be payable on its DATE, "for every cheque properly purports to be drawn on the day of its date" (*Doe* d. *Church* v. *Pontifex*, 9 C. B. 248).

V. PAYMENT.

A post-dated cheque taken before its date is valid (s. 13 (2), Bills of Ex. Act, 1882: *Royal Bank of Scotland* v. *Tottenham*, 1894, 2 Q. B. 715; 64 L. J. Q B. 99).

"Cheques," s. 12, 1 & 2 V. c. 110; *V. Watts* v. *Jefferyes*, 3 Mac. & G. 373; 20 L. J. Ch. 659: *Courtoy* v. *Vincent*, 21 L. J. Ch. 291; 15 Bea. 486.

Quà Crossed Cheques Act, 1876, 39 & 40 V. c. 81, "'Cheque,' means a Draft or Order on a Banker, payable to bearer or to order on demand; and includes a Warrant for payment of dividend on stock, sent by post by the Governor and Company of the Bank of England, or of Ireland, under the authority of any Act of Parliament for the time being in force" (s. 3).

Lord CHESTERFIELD'S ACT. — The Calendar (New Style) Act, 1750, 24 G. 2, c. 23: *V.* ALMANAC.

CHEVISANCE. — "Dealing by 'Chevisance' was the same thing as the business of a SCRIVENER, so far as a dealing in money was the object of the trade of the Scrivener" (*Re Warren*, 2 Sch. & Lef. 423).

CHICHORY. — *V.* DRIED CHICORY.

CHIDING. — *V.* BRAWLING.

CHIEF. — "Chief *Clerk*"; *V.* CLERK.

"Chief *Constable*"; Stat. Def., 50 & 51 V. c. 9, s. 2. — *Ir.* 17 & 18 V. c. 89, s. 12. *V.* CONSTABLE.

"Chief *Magistrate*"; Stat. Def., *Scot.* 50 & 51 V. c. 42, s. 2; 55 & 56 V. c. 55, s. 4.

"Chief *Medical Officer*"; Stat. Def., Contagious Diseases Act, 1866, 29 & 30 V. c. 35, s. 2.

"Chief *Officer of Customs*," quâ Mer Shipping Act, 1894, "includes the Collector, Superintendent, Principal Coast Officer, or other Chief Officer of Customs at each Port" (s. 742).

"Chief *Officer of Police*"; Stat. Def., 32 & 33 V. c. 99, s. 2; 33 & 34 V. c. 72, s. 3; 34 & 35 V. c. 87, s. 2, c. 96, s. 22, c. 112, s. 20; 38 & 39 V. c. 17, s. 107; 47 & 48 V. c. 58, s. 4; 53 & 54 V. c. 45, s. 33, c. 59, s. 51; 57 & 58 V. c. 27, s. 19, c. 41, s. 25; 60 & 61 V. c. 52, s. 2. — *Scot.* 38 & 39 V. c. 17, s. 109; 53 & 54 V. c. 67, s. 30; 57 & 58 V. c. 41, s. 26. — *Ir.* 33 & 34 V. c. 9, s. 3; 38 & 39 V. c. 17, s. 120; 57 & 58 V. c. 41, s. 27.

"Chief *Remembrancer*"; Stat. Def., 6 & 7 V. c. 56, s. 38.

"Chief *Rent*." — "The phrase 'Chief Rent' is now often, but erroneously, used to denote, not a species of Rent Service but, a RENT-CHARGE, especially in the North of England, where it is customary to grant land in FEE for building purposes subject to the payment of an annual rent in perpetuity" (Copinger & Munro, on Rents, 18). *Vh*, Harrison, on Chief Rents and other Rent-Charges. *Cp*, FEE FARM: QUIT RENT. Stat. Def., *Ir.* 5 & 6 V. c. 89, s. 159; 10 & 11 V. c. 32, s. 66.

"Chief *Secretary*"; Stat. Def., s. 12 (10), Interp Act, 1889.

CHIEFEST AND DISCREETEST. — "Where the election (for a CHARITY) was given to the inhabitants and parishioners, or the major part of the '*chiefest and discreetest* of them,' it was held that, by 'chiefest' was to be understood those who paid the church and poor rates; and by 'discreetest' those who had attained the age of 21" (Lewin, 89, citing *Fearon* v. *Webb*, 14 Ves. 13). *Vf* PARISHIONER.

CHILD, CHILDREN. — A "Child" is ordinarily a synonym for INFANT, a person under the age of 21 years, *e.g.* "Poor Child," 56 G. 3, c. 139 (*R.* v. *St. John, Bedwardine*, 5 B. & Ad. 169). So, "Children" in the Matrimonial Causes Acts (s. 35, 20 & 21 V. c. 85; s. 4, 22 & 23 V. c. 61) means, children until they attain 21; though an Order for Custody (as distinguished from one for Maintenance or Education) would only in very special circumstances be made against the wishes of a child who has attained years of discretion (*Thomasset* v. *Thomasset*, 1894, P. 295; 63 L. J. P. D. & A. 140, cited also MAINTENANCE).

But though the idea that a "Child" is one who has not reached FULL AGE runs through all the statutory definitions, yet, generally, the period of Childhood is made to terminate *before* the age of 21; *e.g.* quâ Factory and Workshop Act, 1901, "'Child' means a person who is under the age

of 14 years, and who has not (being of the age of 13 years) obtained the Certificate of Proficiency or Attendance at School mentioned in Part 3 of this Act" (s. 156).

Other Stat. Def. — 20 & 21 V. c. 48, s. 2; 30 & 31 V. c. 130, s. 3; 35 & 36 V. c. 76, s. 72; 36 & 37 V. c. 67, s. 4; 42 & 43 V. c. 49, s. 49. — *Ir.* 47 & 48 V. c. 19, s. 9; 55 & 56 V. c. 42, s. 18 (5).

V. Boy: Girl: Certificated: Young Person.

"The word 'Child' in an Act of Parliament always applies exclusively to a Legitimate child" (per Pollock, C. B., *Dickinson* v. *N. E. Ry*, 12 W. R. 52; 33 L. J. Ex. 91; 2 H. & C. 735: *Vf*, *R.* v. *Maude*, 6 Jur. 646; 2 Dowl. N. S. 58: *R.* v. *Totley*, 7 Q. B. 598: *Sv*, *R.* v. *Hodnett*, 1 T. R. 96: jdgmt of Cotton, L. J., *Northwich* v. *St. Pancras*, 58 L. J. M. C. 73; 22 Q. B. D. 164).

So in a Will, or Deed (or other document, *R.* v. *Birmingham*, 8 Q. B. 410), Illegitimate children are not included in the word "Children"; unless, when the surrounding facts are ascertained and applied, some repugnancy or inconsistency, and not merely some violation of a moral obligation or of a probable intention, would result from their exclusion (*Dorin* v. *Dorin*, L. R. 7 H. L. 568; 45 L. J. Ch. 652; 23 W. R. 570: *V.* the rule stated in other, but similar, terms, 2 Jarm. 234, and *Vh*, *Cartwright* v. *Vawdry*, 5 Ves. 530: *Godfrey* v. *Davis*, 6 Ves. 43: *Re Ayle*, 1 Ch. D. 282; 45 L. J. Ch. 223: *Ellis* v. *Houston*, 10 Ch. D. 236: *Vthlc* as to the inadmissibility of extrinsic evidence in such cases, which however was admitted in *Gill* v. *Shelley*, 2 Russ. & My. 336; 9 L. J. O. S. Ch. 68: *Re Haseldine*, 31 Ch. D. 511; 34 W. R. 327: in *Swaine* v. *Kennerley*, 1 V. & B. 469, Eldon, C., said, — "the *Will* must prove that Illegitimate children are intended; and extrinsic evidence can be received only for the purpose of collecting who had acquired the reputation of being children of the person named in the Will": *Vf*, *Woodhouselee* v. *Dalrymple*, 2 Mer. 419).

Speaking generally, an Illegitimate child will only be comprised in "Children" when there is a *designatio personæ* (*Beachcroft* v. *Beachcroft*, 1 Mad. 430, stated 2 Jarm. 234: *Wilkinson* v. *Adam*, 1 V. & B. 422; 12 Price, 470: *Re Herbert*, 29 L. J. Ch. 870; 1 J. & H. 121: *Re Humphries*, 24 Ch. D. 691: *Milne* v. *Wood*, 42 L. J. Ch. 545: *Hill* v. *Crook*, Ib. 702; L. R. 6 H. L. 265; 22 W. R. 137: *Re Brown*, 43 L. J. Ch. 84; L. R. 16 Eq. 239: *Megson* v. *Hindle*, 15 Ch. D. 198: *Re Bryon*, 55 L. J. Ch. 30; 30 Ch. D. 110: *Bagley* v. *Mollard*, 1 Russ. & My. 581: *Re Hall*, 35 Ch. D. 551: *Re Parker*, 1897, 2 Ch. 208: *Re Brown*, 58 L. J. Ch. 420). Thus, in the Will of a Bachelor, "children" means his illegitimate children, for he can have no other (*Clifton* v. *Goodbun*, L. R. 6 Eq. 278; *Vth* 2 Jarm. 237: *Vf*, *Woodhouselee* v. *Dalrymple*, sup); so, of Step-children when testator has no child of his own (*Re Jeans*, 72 L. T. 835; W. N. (95) 98); so, if the document furnishes a Dictionary from which an extended meaning of "Child" or "Children" may be

gathered (per Ld Cairns, *Hill* v. *Crook*, sup: *Re Lowe*, 61 L. J. Ch. 415: *Re Walker*, 1897, 2 Ch. 238; 66 L. J. Ch. 622; 77 L. T. 94; 45 W. R. 647: *Re Plant*, 47 W. R. 183: *Re Birks*, cited ISSUE: *Re De Wilton*, cited MARRIAGE). *Vf*, RELATIONS: NEPHEW.

As to *after-born* Illegitimate children the rule was thus stated by Ld Chelmsford in *Hill* v. *Crook* (sup); — "No gift, however express, to unborn illegitimate children is allowed by law; nor under a gift, good as to illegitimate children as a class, will after-born illegitimate children be permitted to take." But in applying that rule there is "the essential distinction between a Deed and a Will for this purpose, in that a Deed operates from its execution and a Will from the death of the testator" (per Mellish, L. J., *Occleston* v. *Fullalove*, 43 L. J. Ch. 310; 9 Ch. 147; 22 W. R. 305); and (dissenting from *Howarth* v. *Mills*, cited LEGITIMATE) it was accordingly held by the majority of the Court in *Occleston* v. *Fullalove* (Selborne, C., diss.), that illegitimate children, sufficiently designated, born between the date of the Will and the death of the testator, could take (*Va*, *Re Horner*, *Eagleton* v. *Horner*, 57 L. J. Ch. 211; 37 Ch. D. 695; 36 W. R. 348; 58 L. T. 103: *Re Harrison*, 1894, 1 Ch. 561; 63 L. J. Ch. 385: *Re Hastie*, 35 Ch. D. 728; 56 L. J. Ch. 792; 57 L. T. 168; 35 W. R. 692: *Sv*, *Re Lowe*, sup, in *whc* North, J., held, that an illegitimate child born after the date of the Will, could not take as a member of a CLASS). The statement of the effect of *Occleston* v. *Fullalove*, by Jessel, M. R., in *Re Goodwin* (43 L. J. Ch. 258; L. R. 17 Eq. 345), is not correct (*Re Bolton*, 55 L. J. Ch. 398; 31 Ch. D. 542; 34 W. R. 325), for "the law is clear that, however a man may wish to provide for illegitimate children he cannot do so by any means which involves an enquiry into the paternity, of which the law accepts no evidence except the fact of marriage" (per Bowen, L. J., *Re Bolton*); and, therefore, it was held in that case that the child of a reputed wife, *en ventre* at the testator's death, could not take under a bequest to his "child or children." So, of a limitation in a Deed containing no better designation than "Child or Children" (*Re Shaw*, 1894, 2 Ch. 573; 63 L. J. Ch. 770; 71 L. T. 79; 43 W. R. 43); but a child *en ventre* has a legal existence, and, though illegitimate, the Will may be so framed as to designate such child as a person to be benefitted (*Crook* v. *Hill*, 46 L. J. Ch. 119; 3 Ch. D. 773; commented on *Re Bolton*, sup). *Vf*, as to testamentary gifts to Illegitimate Children, 2 Jarm. ch. 31: Wms. Exs. 953 *et seq.*

What constitutes legitimacy is, however, rather a question of *status* than of construction. And it would seem to be now "settled that any person legitimate *according to the law of the domicil of his father at his birth*, is legitimate everywhere within the range of international law for the purpose of succeeding to *Personal* property" (per Kay, J., *Re Andros*, 52 L. J. Ch. 794; 24 Ch. D. 637; 32 W. R. 30; *whcv* for discussion of the previous authorities and especially *Boyes* v. *Bedale*, 33

L. J. Ch. 283; 1 H. & M. 798, and *Re Goodman*, 50 L. J. Ch. 425; 17 Ch. D. 266; 29 W. R. 586: *Vf, Re Grey*, 1892, 3 Ch. 88; 61 L. J. Ch. 622; 41 W. R. 60). So also persons who have the legal *status* of children by virtue of a foreign law applicable to their case, are "children" for the purpose of assessment to Legacy Duty (*V.* STRANGERS IN BLOOD). But a foreign status will not aid a person claiming to *inherit* LAND in England (*Doe* d. *Birtwhistle* v. *Vardill*, 4 L. J. O. S. K. B. 190; 5 B. & C. 438; 2 Cl. & F. 571; 7 Ib. 895; 6 Bligh, N. S. 479; 9 Ib. 32; 6 Bing. N. C. 385: *V.* HEIR); on the other hand, a child, legitimated by the law of the domicil of his father, is entitled to participate in a *devise* to "children" of land in England or its proceeds (*Re Grey*, sup).

"The words 'Child or Children' primarily mean, issue in the first generation only — Sons and Daughters — to the exclusion of grandchildren or other remoter descendants" (per Ld Blackburn, *Bowen* v. *Lewis*, 54 L. J. Q. B. 68; 9 App. Ca. 890: *Vf*, *Martin* v. *Lee*, 14 Moore, P. C. 142: *Galliers* v. *Rycroft*, inf: *Radcliffe* v. *Buckley*, 10 Ves. 195: *Oldham Case*, 1 O'M. & H. 160: *Brudenell* v. *Elwes*, 1 East, 442; 7 Ves. 382: *Maund* v. *Mason*, L. R. 9 Q. B. 254; 43 L. J. M. C. 62; 38 J. P. 84, *whcvf* inf: *Moor* v. *Raisbeck*, 12 Sim. 123: *Pride* v. *Fooks*, 28 L. J. Ch. 81; 3 D. G. & J. 252: *Mathews* v. *Gardiner*, 17 Bea. 254: *Loring* v. *Thomas*, 30 L. J. Ch. 789; 1 Dr. & Sm. 497: *Nicholson* v. *Kirk*, 29 S. J. 205: Wms. Exs. 952). But the context may show that these words have been used, by mistake, for "DESCENDANTS," or something else, and so they would sometimes receive another construction than their ordinary one (*Morgan* v. *Thomas*, 51 L. J. Q. B. 556: *Harley* v. *Mitford*, 21 Bea. 280: *Re Smith*, 56 L. J. Ch. 771; 35 Ch. D. 558; 56 L. T. 878; 35 W. R. 663). So, if there be no child, grand-children may take under a bequest to "Children" (*Crooke* v. *Brookeing*, 2 Vern. 108). But the mere fact that the word would be otherwise inoperative is not sufficient to widen its interpretation (*Nicholson* v. *Kirk*, sup); *Vf*, as to testamentary gifts to Children, 2 Jarm. ch. 30: Wms. Exs. 952 *et seq.*

The rule of Roman Law (in force in Natal) is that, — Where a parent has appointed Children (or remoter Descendants) as Heirs, and has directed that, upon their death, their share shall go over to another, such substitution is subject to the tacit condition that a deceased child has left no Issue, the words "si sine liberis" being read into the substitutionary clause as a Condition of it; but that rule is only applicable to cases where the Instituted Heirs are burthened with a *Fidei-commissum* to restore the property to a third person, and does not apply to cases where they take absolutely, if at all. Therefore, a gift in a Natal Will, to a testator's Widow for life, and after her death "to be equally divided among my Children, or such of them as may be then alive," confers no benefit on the wife or issue of a Child who has pre-deceased the Widow (*Galliers* v. *Rycroft*, 69 L. J. P. C. 124; 83 L. T. 179; 16 Times Rep. 482).

"Children," s. 14, M. W. P. Act, 1870, did not include Grand-children (*Coleman* v. *Birmingham*, cited MOTHER: *Cp Maund* v. *Mason*, inf); but that section is replaced by s. 21, M. W. P. Act, 1882, which, in terms, extends the liability of a married woman to "Children *and* Grand-children."

Quâ Fatal Accidents Act, 1846, 9 & 10 V. c. 93, "'Child,' shall include Son and Daughter, and Grand-son and Grand-daughter, and Step-son and Step-daughter" (s. 5).

"Child," or "Children," generally includes a child *en ventre sa mère*: *V.* BORN: LAWFULLY BEGOTTEN: NEPHEW.

Though the word "child" or "children," in its primary sense, is to be read as a word of PURCHASE — as a designation of a person or persons (per Ld Cairns, *Bowen* v. *Lewis*, 54 L. J. Q. B. 63) — and to be confined to issue in the first degree, yet, as regards REAL ESTATE, the context may convert it into a word of LIMITATION and render it equivalent to "heirs of the body" and so create an Entail (*Byng* v. *Byng*, 31 L. J. Ch. 470; 10 H. L. Ca. 171: *Clifford* v. *Koe*, 5 App. Ca. 447: *Broadhurst* v. *Morris*, 2 B. & Ad. 1: *Doe* d. *Jones* v. *Davies*, 4 B. & Ad. 43: *Voller* v. *Carter*, 4 E. & B. 173; 24 L. J. Q. B. 56: *Doe* d. *Blesard* v. *Simpson*, 3 M. & G. 929; 7 L. J. C. P. 156; *whlc* was cited by North, J., in *Pemberton* v. *Barnes*, 1899, 1 Ch. 548; 68 L. J. Ch. 195); and if the devise be to "A. and his children," *he having none at the time of the devise*, the word "children" must be taken as a word of limitation, and A. would take an Entail (*Wild's Case*, 6 Rep. 17; reported also as *Anon.* in Gouldsborough, 139, pl. 47, and as *Richardson* v. *Yardley* in Moore, 397, pl. 519. For collection of cases on and discussion of *the Rule in Wild's Case*; *V.* 2 Jarm. ch. 38: Wms. Exs. 946 *et seq*: Hawk. 198: *Va, Bowen* v. *Lewis*, 54 L. J. Q. B. 55; 9 App. Ca. 890; 52 L. T. 189).

The principle of *Wild's Case* applies even where there is a child of A. *en ventre sa mère* at the death of the testator (*Roper* v. *Roper*, 36 L. J. C. P. 270: 37 Ib. 7: *Sv, Grieve* v. *Grieve*, 36 L. J. Ch. 932; L. R. 4 Eq. 180).

Note. The Rule in *Wild's Case* has no application to PERSONAL ESTATE (*Audsley* v. *Horn*, 1 D. G. F. & J. 226; 29 L. J. Ch. 201).

In *Doe* d. *Smith* v. *Webber* (1 B. & Ald. 713) "Child or Children," was held as synonymous with "ISSUE"; not as creating an Entail but, as giving an Estate in Fee with an Executory Devise over.

"Children," means one child, if there be only one (*Crooke* v. *Brookeing*, 2 Vern. 108); so, if the phrase is "SURVIVING CHILDREN" (*Re Brown*, W. N. (96) 164). *Vf* SURVIVOR.

"Their children"; *V.* THEIR.

"Under a gift of *Personalty* to 'A., and his Children,' the Parent and Children take, *primâ facie*, concurrently as JOINT TENANTS; but slight circumstances have been laid hold of by the Courts as enabling them to come to the conclusion that a gift for Life to A., with Remainder to his

Children, was intended, *V. Newill* v. *Newill*, 7 Ch. 253; 41 L. J. Ch. 432" (per Stirling, J., *Re Wilmot*, 76 L. T. 417; 45 W. R. 493). *Cp* ISSUE.

As to when gifts for Children create a Joint Tenancy; *V.* BENEFIT, towards end.

If property be given to A., if B. (a woman) have no children (so that B.'s possible child is the only person who can prevent A. having the property) the Court will order funds under its control to be paid to A. when satisfied that B. (owing to her age) can have no child; but if the gift be to A., if B. *have* children, A. has an interest in the property during the life of B., though the latter be past child-bearing (*Re Hocking*, 1898, 2 Ch. 567; 67 L. J. Ch. 662). *V.* PRESUMPTION.

A gift to the "Widows and Children" of a Class of persons, is a good CHARITY (*Powell* v. *A-G.*, 3 Mer. 48).

V. ISSUE: OFFSPRING: BORN: POSTHUMOUS CHILD: NATURAL CHILDREN: PARENT.

Note: — Property given to Illegitimate children will be comprised in a *gift over* of property given to "Children" (*Smith* v. *Jobson*, 32 S. J. 662; 59 L. T. 397).

In the Acts relating to Maintenance of Poor Relations (43 Eliz. c. 2, s. 7; 59 G. 3, c. 12, s. 26), "Children" does not include Grandchildren, who, accordingly, are not liable thereunder to maintain their Grand-parents (*Maund* v. *Mason*, sup. *Cp, Coleman* v. *Birmingham*, sup). *Vf* FATHER.

"Child under the age of 16," s. 35, 39 & 40 V. c. 61, means a child under that age at the time his parochial Settlement is being enquired into (*R.* v. *St. Mary, Islington*, 54 L. J. M. C. 110, 146; 15 Q. B. D. 95, 339; following *Madeley* v. *Bridgnorth*, 52 L. J. M. C. 71; 11 Q. B. D. 314: *Va, Reigate* v. *Croydon*, 14 App. Ca. 465; 59 L. J. M. C. 29; 53 J. P. 580; 5 Times Rep. 716: *Bath* v. *Berwick-on-Tweed*, 1892, 1 Q. B. 731; 61 L. J. M. C. 137: *West Derby* v. *Atcham*, 59 L. J. M. C. 17; 24 Q. B. D. 117: *Mitford* v. *Wayland*, 59 L. J. M. C. 86; 25 Q. B. D. 164: *Northwich* v. *St. Pancras*, 58 L. J. M. C. 73; 22 Q. B. D. 164: *St. Pancras* v. *Norwich*, 56 L. J. M. C. 37; 18 Q. B. D. 521; 56 L. T. 311; 35 W. R. 547; 51 J. P. 343: *V.* WIFE). As to the concluding words "and shall retain the Settlement," &c; *V. Dorchester* v. *Poplar*, 57 L. J. M. C. 78; 21 Q. B. D. 88; 59 L. T. 689; 36 W. R. 706; 52 J. P. 435; following *Highworth* v. *Westbury-on-Severn*, 57 L. J. M. C. 33; 20 Q. B. D. 597, and on these words, over-ruling *R.* v. *St. Mary, Islington*, sup: But *Highworth* v. *Westbury-on-Severn* was afterwards reversed by H. L., 59 L. J. M. C. 29; 14 App. Ca. 465; 53 J. P. 580; 5 Times Rep. 716. As to an Illegitimate Pauper, under this section; *V. Plymouth* v. *Axminster*, 1898, A. C. 586; 67 L. J. Q. B. 871; 47 W. R. 33; 62 J. P. 612.

"Child," in s. 60, Offences against the Person Act, 1861, 24 & 25 V.

c. 100, does not include a fœtus not matured enough to be born alive (*R.* v. *Berriman*, 6 Cox, C. C. 388).

"Children," quâ FRIENDLY SOCIETY; *V.* WIDOW: WIFE.

Vh Chitty, Eq. Ind. 7675–7678, 7710.

CHILDREN'S CHILDREN. — "I read the words 'Children's Children' (in Statute of Distribution) as meaning 'Issue of Children'" (per North, J., *Re Natt, Walker* v. *Gammage*, 57 L. J. Ch. 798; 37 Ch. D. 517; 58 L. T. 722; 36 W. R. 548).

In a limitation of Realty; *V. Hampton* v. *Holman*, 5 Ch. D. 183.

CHILDREN OF A. AND B. — *V.* 2 Jarm. 194: Hawk. 113: *Re Featherstone*, 22 Ch. D. 111; 52 L. J. Ch. 75.

"Children of A. and B. respectively"; *V. Fletcher* v. *Fletcher*, 9 L. R. Ir. 301.

CHILDREN OF THE WIFE. — This phrase in a Marriage Settlement of a husband's property, means children of the wife by that husband (*Dafforne* v. *Goodman*, 2 Vern. 362).

CHILD'S SHARE. — *V.* EQUAL.

CHILDWIT. — "'Childwit,' that is, that you may take a fine of your bond woman, defiled and begotten with childe without your license" (Termes de la Ley: *Vf* Cowel). *V.* WITE.

CHIMIN. — Chimin, Chiminage; *V.* WAY.

CHIMNEY SWEEPER. — Quà the Chimney Sweepers and Chimneys Regn Acts, 1840, and 1864, "'Chimney Sweeper,' means a person using the TRADE or BUSINESS of a Chimney Sweeper" (s. 3, 27 & 28 V. c. 37). *Vf*, 38 & 39 V. c. 70; 57 & 58 V. c. 51.

CHINA. — *V.* PLATE.

"Laws of China"; *V.* CRIME.

"Chinese Passenger Ship"; Stat. Def., 18 & 19 V. c. 104, s. 1.

CHIROGRAPH. — *V.* Co. Litt. 143 b, and Hargrave's note thereto.

CHIVALRY. — Chivalry was a Tenure of Land by KNIGHT SERVICE (Termes de la Ley). *Vf* Cowel.

CHOLERA. — Quà Diseases Prevention (Metropolis) Act, 1883, 46 & 47 V. c. 35, "'Cholera' includes Choleraic Diarrhœa" (s. 12).

CHOSE IN ACTION. — *Chose in Action* is the antithesis of *Chose in Possession.*

"'Things in Action,' is when a man hath cause, or may bring an action, for some duty due to him; . . . and because that they are things

whereof a man is not possessed but for recovery of them is driven to his Action, they are called 'Things in Action'" (Termes de la Ley).

"According to my view, all personal things are either in Possession or in Action. The law knows no *tertium quid* between the two. 'No chattel,' says Lord Coke in *Fulwood's Case* (4 Rep. 65 a), 'either in action or possession shall go in succession,' as if the two alternatives were the only possible ones. 'Property in chattels personal,' says Blackstone, 'may be either in possession, which is when a man hath not only the right to enjoy, but hath the actual enjoyment of the thing; or else it is in action, where a man hath only a bare right without any occupation or enjoyment' (2 Com. 396); and so Lord Hardwicke in the great case of *Ryall* v. *Rowles* (1 Atk. 384; 1 Ves. sen. 362), speaks of personal property, whether in possession or action, only as equivalent to all kinds of personal property. The expression *Choses in Suspense* is found in *Brooke's Abr.* in conjunction with *Choses in Action;* but, so far as I can understand, the two expressions are synonymous. It has been suggested that the expression *Choses in Action* was originally only applicable to Debts; and that by a lax usage it has acquired a secondary and wider significance. I am not able to adopt this view. The article '*Choses in Action and Choses in Suspense*' in *Brooke's Abr.*, fo. 140, seems to show that as early as 5 Edw. 4 the expression was held to include the king's right to the marriage of his ward; in 9 Hen. 6, the property in deeds in the hands of a third person was considered as a Chose in Action; and in the 33 Hen. 8, the classification of *Choses in Action* into Real, Personal, and Mixed was recognized" (per Fry, L. J., *Colonial Bank* v. *Whinney*, 55 L. J. Ch. 593; 30 Ch. D. 261, a def adopted by the H. L.). Accordingly, it was held in that case that Shares in a Co are "Things in Actiou" within s. 44 (iii), Bankry Act, 1883 (56 L. J. Ch. 43; 11 App. Ca. 426; 55 L. T. 362; 34 W. R. 705; over-ruling *Ex p. Union Bank of Manchester*, *Re Jackson*, 40 L. J. Bank. 57; L. R. 12 Eq. 354; 19 W. R. 872; and jdgmt of Lindley, L. J., in *Société Générale de Paris* v. *Tramways Co*, 54 L. J. Q. B. 185; 14 Q. B. D. 424). *A fortiori* property in the Funds (*Dundas* v. *Dutens*, 1 Ves. 196: *R.* v. *Capper*, 5 Price, 217, 263), a Life Policy (*Ex p. Ibbetson*, 8 Ch. D. 519), and a Debenture in a Co (*Ex p. Ransberg, Re Pryce*, 4 Ch. D. 685), are Choses in Action; so also is a Hire-Purchase agreement (*Re Isaacson*, 1895, 1 Q. B. 333; 64 L. J. Q. B. 191; 43 W. R. 278); *secus*, of a Hiring of Goods which, on his bankry, ceases to be the property of the lender (*Wilmot* v. *Alton*, 1897, 1 Q. B. 17; 66 L. J. Q. B. 42; 45 W. R. 12, 113). An undivided Share in a Partnership is a Chose in Action (*Ex p. Fletcher*, *Re Bainbridge*, 47 L. J. Bank. 70; 8 Ch. D. 218); so, of a Sweep-Stakes Ticket (*Jones* v. *Carter*, 15 L. J. Q. B. 96; 8 Q. B. 134); and so, in some measure, is a Bank Note (*Francis* v. *Nash*, Cunningham, 86).

"Things in Action," s. 95, Comp Act, 1862, includes Claims by the

Liquidator against Directors for malpractices in reference to the property of a Co (*Re Park Gate Waggon Co*, 17 Ch. D. 234).

An Assignment of "all moneys now *or hereafter* standing to the credit of" A. at his banking account, is an assignment of a "debt or other LEGAL Chose in Action" within s. 25 (6), Jud. Act, 1873 (*Walker* v. *Bradford Bank*, 53 L. J. Q. B. 280; 12 Q. B. D 511). So of a sum payable so many days after demand (*Mercantile Bank of London* v. *Evans*, 43 S. J. 97; *Vthe* revd on another point, 1899, 2 Q. B. 613; 68 L. J. Q. B. 921). But "legal chose in action," being there used in association with "debt," does not include an agreement to lend money, or a right to damages for breach of contract or for a tort (*May* v. *Lane*, 64 L. J. Q. B. 236; 71 L. T. 869; 43 W. R. 193). *Vh*, *King* v. *Victoria Insrce*, 1896, A. C. 250; 65 L. J. P. C. 38; 74 L. T. 206; 44 W. R. 592: *Manchester Brewery Co* v. *Coombs*, cited ASSIGNS.

V. ASSIGNMENT: ABSOLUTE ASSIGNMENT: NOTICE: 1 Encyc. 352–362.

It is submitted that the definition established in *Colonial Bank* v. *Whinney* (sup) may, in some cases and when not otherwise affected by a context, be wide enough to embrace a claim to Damages for a Tort. Such a claim is surely property, — conceivably it may be a very valuable property, *e.g.* an Infringement of a Patent. It is not in possession; and therefore, accepting the postulate in the definition of Fry, L. J., in *Colonial Bank* v. *Whinney*, it must be a Chose in Action. Yet, on the other hand, Blackstone says, "All property in action *depends entirely upon contracts* express or implied; which are the only regular means of acquiring a *Chose in Action*" (2 Com. 397).

Vf, as to the various meanings of "Chose in Action," Elphinstone's Intro. Conv. 2 ed. 200 *et seq*, and *V.* the subject of Choses in Action considered at large, Wms. Exs. 693 *et seq*, Pt. 2, Bk. 3: Warren, on Choses in Action: 10 Law Quarterly, 303: *Va*, POSSESSION: *Cp* CHATTELS.

CHOSE IN SUSPENSE. — *V.* CHOSE IN ACTION.

CHRISTIAN BROTHERS. — Gift for, is a good CHARITY (*Hogan* v. *Byrne*, 13 Ir. Com. Law Rep. 166: *Re Brown*, 1898, 1 I. R. 423: *Sv*, *Murphy* v. *Cheevers*, 17 L. R. Ir. 205, and *Heron* v. *Donellan* therein cited). *Vh* 3 Encyc. 8.

CHRISTIAN BURIAL. — "There appears to be no clear authority as to what is meant by 'Christian Burial'; and as Bowen, J. held there was no evidence to go to the jury, the point was left undecided (Stafford Winter Assizes, 1879-80; 24 S. J. 245)." Stone, 180. *Vh*, per Stephen, J., *R.* v. *Price*, 53 L. J. M. C. 51; 12 Q. B. D. 247, deciding that cremation is lawful: *Sv*, *Williams* v. *Williams*, cited CADAVER.

CHRISTIAN MARRIAGE. — *V.* MARRIAGE.

CHRISTIAN NAME. — Where a document has to be authenticated by the Christian NAME of its signatory, a well known abbreviation, — *e.g.* Wm. for William, — will suffice (*R.* v. *Bradley*, 30 L. J. Q. B. 180; 3 E. & E. 634: *Henry* v. *Armitage*, 53 L. J. Q. B. 111; 12 Q. B. D. 257). In *R.* v. *Bradley*, Hill, J., whilst holding with the rest of the Court that a well-known contraction suffices for a Christian Name, also said, — "I think that an INITIAL cannot be regarded as a Christian Name"; but in *R.* v. *Plenty* (L. R. 4 Q. B. 346; 38 L. J. Q. B. 205; 9 B. & S. 386) it was pointed out that that dictum was not necessary to the decision; still it, probably, remains valid, unless where there is a provision saving such an imperfect form of a Christian Name as being a MISNOMER. *Vf*, *Lindsay* v. *Wells*, 3 Bing. N. C. 777; 4 Sc. 471.

CHRISTIAN RELIGION. — "Christianity is parcel of the Laws of England" (per Hale, C. J., *Taylor's Case*, Vent. 293, a case in which the words as regards our Lord and Saviour Jesus Christ were very gross and shameful, and for which the punishment was, — the Pillory in three several places, a Fine of 1000 Marks, and to find Sureties for Good Behaviour during life). *Vf*, *R.* v. *Woolston*, 2 Stra. 834: per Kelly, C. B., *Cowan* v. *Milbourn*, L. R. 2 Ex. 234; 36 L. J. Ex. 124. In *thlc* it was held that, lectures showing that the character of Christ was defective, His teaching erroneous, and that the Bible is no more inspired than any other book, is "to deny the Christian Religion to be true," and contrary to s. 1, 9 & 10 W. 3, c. 32: *Sv*, per Coleridge, C. J., *R.* v. *Ramsay*, 48 L. T. 733. *V.* BLASPHEMY.

CHRISTIAN SERVICE. — For (and by) s. 6, Burial Laws Amendment Act, 1880, 43 & 44 V. c. 41, "'Christian Service,' shall include every religious service used by any Church, Denomination, or Person, professing to be Christian." *Cp*, DIVINE SERVICE.

CHRISTMAS DAY. — *V.* MICHAELMAS.

CHURCH. — *Semble*, the test as to whether a building is a "Church," is, Is it of Right that the SACRAMENTS are administered there? (Cowel, *Ecclesia*).

"Church," s. 1, 5 G. 4, c. 36, includes the Chancel (*Rippin* v. *Bastin*, L. R. 2 A. & E. 386; 38 L. J. Ecc. 33); and quà s. 50, 24 & 25 V. c. 96, the VESTRY "is as much a part of the Church as the Altar or the Nave" (per Coleridge, J., *R.* v. *Evans*, C. & M. 298).

Stat. Def. — 8 & 9 V. c. 118, s. 167; 14 & 15 V. c. 97, s. 29; 32 & 33 V. c. 94, s. 14; 35 & 36 V. c. 35, s. 1; 37 & 38 V. c. 77, s. 14, c. 85, s. 6. — *Ir.* 32 & 33 V. c. 42, s. 72. — *Scot.* 31 & 32 V. c. 96, s. 1.

V. CHAPEL.

"Whatever legal difficulty there may be in giving a strict legal definition of what constitutes legal *Membership of the Church of England*, —

I think that a person who has been baptized, has been confirmed (or is ready and desirous so to be), and is an actual communicant, does hold the status of a Member of that Church, and would be ordinarily regarded and spoken of as such" (per Stirling, J., *Re Perry Almshouses*, 67 L. J. Ch. 210). An Eleemosynary Charity for persons who are, (1) Regular attendants at the Parish Church, (2) Partakers of the Holy Communion, and (3) have lived "a godly, righteous, and sober, life to the glory of God's Holy Name" (the latter words being taken from the Book of Common Prayer), is an ECCLESIASTICAL CHARITY, within s. 75 (2), Loc Gov Act, 1894; for the recipients are (espy having regard to the 2nd qualification) exclusively Members of a "Particular Church," "as such," — *i.e.* the Church of England (*S. C.* 1898, 1 Ch. 391; 67 L. J. Ch. 206; affd 1899, 1 Ch. 21; 68 L. J. Ch. 66; 79 L. T. 366; 47 W. R. 197; 63 J. P. 52).

"Church," in the phrase "any Particular Church, or Denomination," in the section just cited, "does not mean Building; it means a Religious Society of some sort" (per Smith, L. J., *S. C.*). *Vf*, Phil. Ecc. Law, 1; Ib. Part 6, ch. 2.

So, quà 27 & 28 V. c. 54, "The Church" denotes "the United Church of England and Ireland" (s. 4); and quà Clerical Disabilities Act, 1870, "'Church of England' means the Church of England as by law established."

"*Affairs* of the Church," quà Loc Gov Act, 1894, includes "the Distribution of Offertories or other Collections made in any Church" (s. 75).

Rob a Church; *V.* ROB. "Service of the Church"; *V.* SERVICE.

V. COLLEGIATE CHURCH: DISTRICT: PAROCHIAL CHURCH: INCUMBENT.

CHURCH BUILDING. — "The Church Building Acts, 1818 to 1884"; *V.* Sch 2, Short Titles Act, 1896.

CHURCH OFFICES. — Quà 28 & 29 V. c. 82, "'Church Offices,' shall mean Marriages, Burials, and Churchings" (s. 2).

CHURCH LEASE. — "Church or College Lease"; Stat. Def., 12 & 13 V. c. 77, s. 54.

CHURCH RATE. — *V.* Compulsory Church Rate Abolition Act, 1868, 31 & 32 V. c. 109: Phil. Ecc. Law, 1445.

CHURCHWARDEN. — "'Churchwardens,' are officers yearly chosen by the consent of the Minister and the Parishioners, according to the custome of every severall place, to see to the Church, Churchyard, and such things as belong to both; and to marke the behaviour of the parishioners for such faults as appertain to the jurisdiction or censure of the Ecclesiasticall Court. These are a kinde of Corporation, and are enabled

by law to sue for any thing belonging to their Church or the Poor of the parish" (Termes de la Ley: *Vf* Jacob).

As to the transfer of the powers, duties, and liabilities, of Churchwardens in matters other than Ecclesiastical; *V.* s. 6 (1), Loc Gov Act, 1894: ECCLESIASTICAL CHARITY.

The word "Churchwardens," in modern Acts, is generally defined to include "Chapelwardens, or other persons discharging the duties of Churchwardens," *e.g.* — 9 & 10 V. c. 74, s. 2; 10 & 11 V. c. 38, s. 20; 13 & 14 V. c. 57, s. 10; 14 & 15 V. c. 34, s. 3, c. 97, s. 29; 15 & 16 V. c. 85, s. 52.

Vh, Phil. Ecc. Law, Part 6, ch. 4: Prideaux's Churchwarden's Guide: Shaw's Parish Law: Steer's Parish Law: Grant, on Corporations, 600: 3 Encyc. 16–21.

CHURCHYARD. — Tombs in a churchyard are not within the word "Churchyard" as used in the Church Building Act, 1809, 49 G. 3, c. 108, s. 1; and a bequest for their repair is not saved by that Act (*Re Rigley*, 36 L. J. Ch. 147). *Vh*, *Re Vaughan*, 33 Ch. D. 187; 55 L. T. 547; 39 W. R. 104: Phil. Ecc. Law, Part 6, ch. 2.

CIDER. — If so understood at the place where the Contract is made, "Cider," probably, means the juice of apples as soon as expressed (*Studdy* v. *Sanders*, 5 B. & C. 628).

Quà Beerhouse Acts, and Inl. Rev. License, "Cider" includes Perry (s. 32, Beerhouse Act, 1830; s. 2, 32 & 33 V. c. 27; s. 40, Inl. Rev. Act, 1880).

V. BEER.

CINDERS. — *V.* COAL.

CINQUE PORTS. — The Cinque Ports, are Hastings, Sandwich, Dover, Hythe, and Rye (18 & 19 V. c. 48). "The District of Romney Marsh" is treated as distinct therefrom (s. 2, 27 & 28 V. c. 80).

"The Cinque Ports Acts, 1811 to 1872"; *V.* Sch 2, Short Titles Act, 1896.

Quà 16 & 17 V. c. 129, "'Cinque Port Pilots' shall mean, the Pilots of the Society or Fellowship of the Trinity House of Dover, Deal, and the Isle of Thanet" (s. 26).

CIRCULARS. — "Circulars, Advertisements, or otherwise," s. 32, Patents, Designs, and Trade Marks Act, 1883, 46 & 47 V. c. 57, include a letter (*Driffield Co* v. *Waterloo Mills Co*, 55 L. J. Ch. 391; 31 Ch. D. 638; 54 L. T. 210; 34 W. R. 360: *Barrett* v. *Day*, 59 L. J. Ch. 464; 43 Ch. D. 435; *Skinner* v. *Shew*, 1893, 1 Ch. 413; 62 L. J. Ch. 196; 67 L. T. 696; 41 W. R. 217). *V.* THREAT.

CIRCULATION. — A Bank-note "In Circulation," means, a Note which is passing from hand to hand as a NEGOTIABLE instrument; and

when returned to the Bank (or any of its branches), it ceases to be "In Circulation" or "Outstanding" (*Bank of Africa* v. *Colonial Government*, 57 L. J. P. C. 66; 13 App. Ca. 215; 58 L. T. 427).

CIRCUMSPECTE AGATIS. — "Is the title of a statute made (13 Edw. 1, A. D. 1268), prescribing some cases to the Judges wherein the King's Prohibition lies not" (Termes de la Ley).

CIRCUMSTANCES. — *V.* SAME: SPECIAL: INSOLVENT CIRCUMSTANCES: LIKE.

"As Circumstances may require"; *V.* REQUIRE.

In taxing Costs, the "Other Circumstances" referred to by R. 20, Ord. 50 a, Co. Co. R. 1889, include the insolvency of the estate (*Pain* v. *Bowden*, 1896, 2 Q. B. 301; 65 L. J. Q. B. 530; 75 L. T. 102; 45 W. R. 48).

"When the statute s. 9, Public Worship Regn Act, 1874, prescribes that the Bishop's Opinion is to be formed 'after considering the Whole Circumstances of the case,' I think it must mean that the Bishop is to consider *all* the circumstances which appear to him, honestly exercising his judgment, to bear upon the particular case, and upon the question whether he ought in that case to prevent proceedings being taken. I dissent entirely from the view that it is for the Court, or your Lordships, to determine what are the considerations which ought to govern the Bishop's Opinion" (per Ld Herschell, *Allcroft* v. *London Bp*, cited OPINION). "The enquiry into all the circumstances of the case is one which may justly include considerations of the good to be done by, or the mischief involved in, proceedings which, unless they obtain the Bishop's sanction, cannot proceed" (per Halsbury, C., *Ib.*). *Sv*, per Ld Bramwell, *S. C.*

A similar rule obtains where Justices, or others, have to exercise a general discretion, after enquiring into all the Circumstances of a case (*R.* v. *Mills*, 2 B. & Ad. 578: *R.* v. *Treasury*, 10 A. & E. 179; 8 L. J. Q. B. 249).

CIRCUMSTANTIBUS. — "Is a Word of Art," indicating a supply of Jurors when a TALES is prayed (Termes de la Ley).

CISTERN. — Quà P. H. London Act, 1891, "'Cistern,' includes a Water-butt" (s. 141).

CITY. — "Every borough incorporate, that had a bishop within time of memory, is a citie, albeit the bishopricke be dissolved" (Co. Litt. 109 b). *Vf* Termes de la Ley.

Stat. Def. — *Ir.* 13 & 14 V. c. 68, s. 24, c. 69, s. 117; 31 & 32 V. c. 49, s. 25.

"City or BOROUGH"; Stat. Def., 6 & 7 V. c. 18, s. 101; 17 & 18 V. c. 102, s. 38.

"City or PLACE"; Stat. Def., 26 & 27 V. c. 97, s. 2.
"City of *Dublin*"; Stat. Def., 12 & 13 V. c. 91, s. 89, c. 97, s. 133.
"City of *London*"; *V.* LONDON.
"City of London Police Rate"; Stat. Def., 49 & 50 V. c. 11, s. 7.

CIVIL AFFAIRS. — *V.* MANAGEMENT.

CIVIL CAPACITY. — Stat. Def., 39 & 40 V. c. 43, s. 1.

CIVIL CAUSE. — *V.* CAUSE: CIVIL PROCEEDING: CRIMINAL CAUSE.

CIVIL CODE OF LOWER CANADA. — *V.* BILL OF EXCHANGE, *n.*

CIVIL COMMOTION. — A "Civil Commotion," within an Exception to a Fire Policy, means "an Insurrection of the people for general purposes, though it may not amount to a Rebellion, where there is an Usurped Power" (per Mansfield, C. J., *Langdale* v. *Mason*, Park, 968); agreeably to his lordship's directions, the jury found that the Ld George Gordon Riots of June, 1780, were a "Civil Commotion." But there must be something more than a mere general civil disturbance of a transient character; and, therefore, an Exception of "Civil Commotion," in a Charter-Party, is not established by a general and vague proof of a disturbed state of the Place of Loading which may have interrupted or impeded, but did not actually prevent, the loading of the ship (*The Village Belle*, 2 Asp. 228; 30 L. T. 232).
Cp, CIVIL WAR: RIOT: USURPED POWER: REBELLION: LEVY WAR.

CIVIL CUSTODY. — Stat. Def., 42 & 43 V. c. 33, s. 59; 44 & 45 V. c. 58, s. 60 (5).

CIVIL DEATH. — *V. Bullock* v. *Dodds*, 2 B. & Ald. 275: *Coombes* v. *Queen's Proctor*, 16 Jur. 820.

CIVIL DEBT. — A "Civil Debt" within s. 6, Sum Jur Act, 1879, is "a sum of money claimed to be due" before the commencement of the proceedings to recover it, and does not include a fine or penalty not due to anybody until the magistrate has adjudged its amount (*R.* v. *Paget*, 51 L. J. M. C. 9; 8 Q. B. D. 151. *Vf*, *Mellor* v. *Denham*, 49 L. J. M. C. 89; 5 Q. B. D. 467: *R.* v. *Stewart*, cited SHIP). *V.* CLAIMED. *Cp* JUDGMENT DEBT.

CIVIL ENGINEER. — *V.* jdgmt of Halsbury, C., *Inl. Rev.* v. *Forrest*, 15 App. Ca. 342; 63 L. T. 36; 39 W. R. 33.

CIVIL PRISONER. — Quà 2 & 3 V. c. 42 (to improve prisons in Scotland), "'Civil Prisoner,' shall include all persons imprisoned for CIVIL DEBT, or *ad factum præstandum*, or generally at the instance of

a Creditor for performance of Civil Obligation" (s. 63), — a def expanded by 23 & 24 V. c. 105, s. 4; 40 & 41 V. c. 53, s. 71. *Cp* CRIMINAL PRISONER.

CIVIL PROCEEDING. — Is a process for the recovery of individual right or redress of individual wrong; inclusive, in its proper legal sense, of suits by the Crown (*Bradlaugh* v. *Clarke*, 52 L. J. Q. B. 505; 8 App. Ca. 354).

"Civil Proceeding," s. 1, Bankry Act, 1890, includes everything which can fairly be so called, *e.g.* a Summons for leave to enforce an Award (*Re B, Ex p. Caucasian Trading Corp*, 1896, 1 Q. B. 368; 65 L. J. Q. B. 346; 74 L. T. 47; 44 W. R. 439).

"Civil Proceeding," R. 2, Ord. 68, R. S. C.; *V.* Ann. Pr.

A Quo Warranto is now a "Civil Proceeding" (s. 15, Jud. Act, 1884).

V. ACTION: CAUSE: CRIMINAL CAUSE: CRIMINAL SUIT.

CIVIL RIGHTS. — The "Property and Civil Rights," which by s. 92, British North America Act, 1867, 30 V. c. 3, are to be regulated by the Provincial Legislature, include rights arising from contract, *e.g.* Fire Insurance Policies; and such a contract is not a matter relating to "*Trade or Commerce*" within s. 91, and therefore to be regulated by the Dominion Legislature (*Citizens' Insrce* v. *Parsons*, 51 L. J. P. C. 11; 7 App. Ca. 96: *Vf*, as to "Trade or Commerce," *Severn* v. *The Queen*, 2 Sup. Ct. Can. Ca. 90). But an Act for the regulation of the sale of intoxicants relates to public order, and is not within the phrase "Property and Civil Rights," and is, therefore, within the competency of the Dominion Legislature. Such an Act "has in its legal aspect an obvious and close similarity to laws which place restrictions on the sale or custody of poisonous drugs or of dangerously explosive substances. These things, as well as intoxicating liquors, can, of course, be held as property; but a law placing restrictions on their sale, custody, or removal, on the ground that the free sale or use of them is dangerous to public safety, and making it a criminal offence punishable by fine or imprisonment to violate these restrictions, cannot properly be deemed a law in relation to property in the sense in which those words are used in the 92nd section. . . . Laws which make it a criminal offence for a man wilfully to set fire to his own house on the ground that such an act endangers the public safety, or to over-work his horse on the ground of cruelty to the animal, though affecting in some sense property and the right of a man to do as he pleases with his own, cannot properly be regarded as legislation in relation to Property or to Civil Rights. Nor could a law which prohibited or restricted the sale or exposure of cattle having a contagious disease be so regarded. Laws of this nature designed for the promotion of public order, safety, or morals, and which subject those who contravene them to criminal procedure and punishment, belong to

the subject of Public Wrongs rather than to that of Civil Rights" (*Russell* v. *The Queen*, 51 L. J. P. C. 81; 7 App. Ca. 829). *V.* PEACE. *V.* BANKRUPTCY AND INSOLVENCY: DIRECT TAXATION: RIGHTS.

CIVIL SERVANT. —Quâ SUPERANNUATION Acts, " 'Civil Servant,' means, a person who has served in an established capacity in the Permanent Civil Service of the State, within the meaning of s. 17 of the Superannuation Act, 1859" (50 & 51 V. c. 67, s. 12).

CIVIL WAR. — Civil War is when a Party arises in a State which no longer obeys the Sovereign, and is sufficiently strong to make head against him; or when, in a Republic, the nation is divided into two opposite Factions and both sides take up arms (*Brown* v. *Hiatt*, 1 Dillon, 379). *Cp* CIVIL COMMOTION.

CLAIM. — *V.* DEBT, CLAIM, OR DEMAND: DEMAND: INCUMBRANCE.

" 'Claime,' is a CHALLENGE by any man of the propertie or ownership of a thing which hee hath not in possession, but is withholden from him wrongfully" (Termes de la Ley, which adopts def of Dyer, C. J., *Stowell* v. *Zouch*, Plowd. 359). *Vf* Cowel.

" 'Claim against the Crown for damages or compensation' (Crown Suits, Ordinance, 1876, s. 18, ii), is an apt expression to include Claims arising out of Torts" (*A-G. Straits Settlements* v. *Wemyss*, 57 L. J. P. C. 64; 13 App. Ca. 192; 58 L. T. 358).

R. 5, Ord. 57, R. S. C., does not mean that there should be a vague statement, but the "Claim" therein referred to should be precise and definite (*Hockey* v. *Evans*, 18 Q. B. D. 390; 56 L. J. Q. B. 253).

"Claim for COMPENSATION," s. 2 (1), Workmen's Comp Act, 1897, includes a Notice of Claim, as well as the initiation of proceedings (*Powell* v. *Main Colliery Co*, 1900, A. C. 366; 69 L. J. Q. B. 758; 83 L. T. 85; 49 W. R. 50).

Note. *V. Wright* v. *Bagnall*, 1900, 2 Q. B. 240; 69 L. J. Q. B. 551; 82 L. T. 346; 48 W. R. 533; 64 J. P. 420, as to Waiver of Notice by Conduct: *whc Cp* with *Randall* v. *Hill's Dry Dock Co*, 1900, 2 Q. B. 245; 69 L. J. Q. B. 554; 82 L. T. 521; 48 W. R. 530; 64 J. P. 451.

The Declaration is a part of the statutory "Claim" to the LODGER Franchise (*Ainsley* v. *Nicholson*, 24 Q. B. D. 144; 59 L. J. Q. B. 102).

"Claims of which Exor has NOTICE," s. 29, Ld St. Leonards' Act, 22 & 23 V. c. 35, include those which a Cr has a right to make and which are known to the Exor, as well as those actually sent in; for "Notice" there, means knowledge (*Markwell's Case*, 21 W. R. 135: *Scottish Eq. Assrce* v. *Beatty*, 29 L. R. Ir. 290).

"Claims *and Contingent Liabilities*," against which, under their articles, Directors of a Co have to retain a Reserve Fund, mean, such

things as outstanding debts and possible adverse verdicts, but not possible depreciation of the Co's securities (*Lever* v. *Land Securities Co*, 8 Times Rep. 94).

Claim or Demand in respect of Illness; *V.* ILLNESS.

A Power to recover "Claims or Demands," includes the power to sue for a Libel (*Williams* v. *Beaumont*, 10 Bing. 260).

"Claim indorsed"; *V.* INDORSED.

V. CLAIMED: SUM CLAIMED.

CLAIMANT.—"Creditor or Claimant," s. 22, 14 & 15 V. c. cv., means, only a person having a debt or liquidated demand against the Copper Miners' Co; the phrase does not include a person having a right of action for breach of covenant (*Wood* v. *Copper Miners' Co*, 14 C. B. 428; 23 L. J. C. P. 209).

CLAIMED.—*V.* ADMITTED SET-OFF.

"Claimed or Recoverable," s. 57, Co. Co. Act, 1888; *V. Lovejoy* v. *Cole*, 64 L. J. Q. B. 122; 1894, 2 Q. B. 861; 71 L. T. 374; 43 W. R. 48.

A Cab Fare is "a sum of money *claimed to be due*," and "is recoverable on Complaint to a Court of Summary Jurisdiction," within s. 6, 42 & 43 V. c. 49, and can (apart from fraud, 59 & 60 V. c. 27) only be enforced as a "CIVIL DEBT" under s. 35 (*R.* v. *Kerswill*, 1895, 1 Q. B. 1; 64 L. J. M. C. 70; 71 L. T. 574; 43 W. R. 59; 59 J. P. 342); so, of a weekly sum claimed by Guardians for Maintenance of a pauper father (*Re Gamble*, 1899, 1 Q. B. 305; 68 L. J. Q. B. 195; 79 L. T. 642; 63 J. P. 101); so, of a General District Rate (*Southwark & Vauxhall W. W. Co* v. *Hampton*, 1899, 1 Q. B. 273; 68 L. J. Q. B. 207; 79 L. T. 512; 63 J. P. 100): *Secus*, of a Poor Rate (*Seaman* v. *Burley*, cited CRIMINAL CAUSE), or Costs on an Order to vaccinate (*R.* v. *Burrows*, 77 L. T. 338; 46 W. R. 29; 61 J. P. 724).

CLAIMING RIGHT.—*V.* RIGHT: BONÂ FIDE.

CLAIMING UNDER.—As to who are persons "claiming by, from, THROUGH, or under," a Covenantor; *V.* QUIET ENJOYMENT: Elph. 491, 492: Redman, ch. 5, s. 1: Dart, 884: Woodf. 728: Touch. 170–172: *Stanley* v. *Hayes*, 3 Q. B. 105, approved and applied in *Kelly* v. *Rogers*, 1892, 1 Q. B. 910; 61 L. J. Q. B. 604; 40 W. R. 516: *whlc* distd *Cohen* v. *Tannar*, 1900, 2 Q. B. 609; 69 L. J. Q. B. 904; 83 L. T. 64; 48 W. R. 642.

V. PRETENDING TO CLAIM: UNDER.

Semble, that a Trustee in Bankruptcy is not a person "Claiming through or under" the Bankrupt, within s. 11, Com. L. Pro. Act, 1854 (*Pennell* v. *Walker*, 26 L. J. C. P. 9; 18 C. B. 651: *Piercey* v. *Young*, 14 Ch. D. 200).

Where a person is "Claiming under any MORTGAGE of land," 1 V. c. 28, "the mtge must be a continuing or subsisting mtge" (*Thornton* v. *France*, 66 L. J. Q. B. 711, stating one of the rulings in *Heath* v. *Pugh*, cited FIRST ACCRUED); and *Doe* d. *Baddeley* v. *Massey* (20 L. J. Q. B. 434; 17 Q. B. 373) is, "open to some question as being inconsistent with that jdgmt" (*Ib.*). An owner of an Equity of Redemption whose Equity is barred by s. 24, Real Property Limitation Act, 1833, does not, by paying off the mtge and taking a Conveyance from the mtgee, "claim under the mtge" within the section (*Thornton* v. *France*, 1897, 2 Q. B. 143; 66 L. J. Q. B. 705; 77 L. T. 38; 46 W. R. 56). *Vf*, *Doe* d. *Palmer* v. *Eyre*, 20 L. J. Q. B. 431; 17 Q. B. 366.

"Parties claiming under the SETTLEMENT," s. 47 (1), Bankry Act, 1883, does not include a PURCHASER for Value acquiring title under the Settlement (*Ex p. Brown, Re Vansittart, Re Brall, Ex p. Norton, Re Carter and Kenderdine; Sv, Re Briggs and Spicer*, all cited VOID).

CLAM. — *V.* VI, CLAM, PRECARIO.

CLASS. — "A gift is said to be to a 'Class' of persons when it is to all those who shall come within a certain category or description defined by a general or collective formula, and who, if they take at all, are to take one divisible subject in certain proportionate shares" (per Selborne, C., *Pearks* v. *Moseley*, 5 App. Ca. 723; 50 L. J. Ch. 61).

"A number of persons are popularly said to form a 'Class' when they can be designated by some general name as 'Children,' 'Grand-children,' 'Nephews'; but in legal language the question whether a gift is one to a Class depends not upon these considerations, but upon the mode of gift itself, namely, — that it is a gift of an aggregate sum to a body of persons uncertain in number at the time of the gift, to be ascertained at a future time, and who are all to take in equal, or in some other definite, proportions, the share of each being dependent for its amount upon the ultimate number of persons" (1 Jarm. 268, 269).

If only one person answers the designation, still that one takes as a Class (*Re Harvey*, 1893, 1 Ch. 567; 62 L. J. Ch. 328; 68 L. T. 562; 41 W. R. 293); and, again, a Class may be formed by a named individual together with a body of persons uncertain in number (*Re Moss*, 1899, 2 Ch. 314; 68 L. J. Ch. 598; 81 L. T. 139; 47 W. R. 642).

As to *time for ascertaining* a Class, *V. Andrews* v. *Partington*, 3 Bro. C. C. 403: *Re Knapp*, 1895, 1 Ch. 91; 64 L. J. Ch. 112; 71 L. T. 625; 43 W. R. 279: *Re Mervin*, cited PERPETUITY: 2 Jarm. 159, 160, ch. 49: Hawk. 61, ch. 7. The latter learned writer was cited and approved by Kekewich, J., *Re Powell* (1898, 1 Ch. 227; 67 L. J. Ch. 148; 77 L. T. 649; 46 W. R. 231; distinguishing *Re Wenmoth*, 57 L. J. Ch. 649; 37 Ch. D. 266). The general rule is, — The period indicated for the distribution of a fund, is the period when the

Class to take such fund is to be ascertained; when no such period is indicated, then the Class should be ascertained as early as possible: — Therefore, (1) An unconditioned gift, whether of Corpus or Income, to a defined Class, — *e.g.* Children, Grand-Children, Issue, Brothers, Sisters, Nephews, or Cousins, of the testator, or any other person, — comprises only such persons as answer the description and as are *in existence at the testator's death*, if any such are then living; but (2), If the gift is to each member of the Class on attaining a stated age, or marriage, the time for ascertaining the Class is the time when the first member of it becomes entitled to receive his share. This second rule, however, is not applicable to gifts of Income; and any person answering the class description who at any time complies with the condition of the gift "is entitled to come in and share in the Income" (*Re Wenmoth*, sup), and whether the limitations be legal or equitable (*Re Averill*, 1898, 1 Ch. 523; 67 L. J. Ch. 233; 78 L. T. 320; 46 W. R. 460).

"Class of CREDITORS," s. 2, 33 & 34 V. c. 104; *V. Sovereign Life Assrce* v. *Dodd*, 1892, 2 Q. B. 573; 62 L. J. Q. B. 19; 67 L. T. 396; 41 W. R. 4.

"Class" of Persons having rights in Administrations, and Execution of Trusts, R. 32, Ord. 16, R. S. C.; *V.* Ann. Pr.

"Classes of *Prisoners* for which a Prison is legal"; Stat. Def., 23 & 24 V. c. 105, s. 4.

CLASSED. — Quà National School Teachers (Ir) Act, 1879, 42 & 43 V. c. 74, "'Classed *Teachers*,' means, such principal and assistant teachers of model or ordinary National Schools as receive salaries from, and are classed according to the regulations of, the Commrs of Education" (s. 2).

CLAUSE. — A testator (obit 1836), devised realty to "E. Eley, her heirs and assigns for ever"; subsequently he obliterated "Eley, her heirs and assigns for ever," and re-wrote "Eley": held, a revocation of a "Clause" in the Will within s. 6, Statute of Frauds (*Swinton* v. *Baily*, 48 L. J. Ex. 57; 4 App. Ca. 70).

CLAWA. — "A close, or small measure of land" (Jacob).

CLAY. — *V.* MINE.

CLAY'S ACT. — The Compound Householders Act, 1851, 14 & 15 V. c. 14.

CLEAN BILL OF LADING. — "In *Restitution S. S. Co* v. *Pirie* (6 Asp. N. S. 428; 61 L. T. 330; 6 Times Rep. 50) Cave, J. (adopting a statement in Pollock & Bruce's Law of Mer Shipping, p. 341, 4 ed.), held, that an agreement to give a 'Clean Bill of Lading,' meant, a BILL OF LADING which contained nothing in the Margin qualifying the words

in the Bill of Lading itself. His lordship added, 'But where, for instance, you insert in the Margin the Weight, or Quality, or QUANTITY UNKNOWN, that is not a Clean Bill of Lading; because that contains a qualification. Where, on the other hand, there is no such qualification inserted in the Margin, there the Bill of Lading is a Clean one'" (Abbott, 368). *Vf* CONTENTS UNKNOWN.

Vh, *Stephens* v. *Australasian Insrce*, L. R. 8 C. P. 18; 42 L. J. C. P. 12: *Lishman* v. *Christie*, 56 L. J. Q. B. 538; 19 Q. B. D. 333: (for various Scotch readings) *Arrospe* v. *Barr*, 8 Sess. Ca., 4th Ser., 602; 1 Maude & P. 341.

CLEANSE. — Is a Structural Improvement, a "Cleansing, Alteration, or Amendment," within s. 41 (2), P. H. London Act, 1891? *V.* per Kennedy, J., *Fulham* v. *Solomon*, 1896, 1 Q. B. 198; 65 L. J. M. C. 33.

"The cleansing of Earth-closets, Privies, Ash-pits, and Cess-pools," s. 42, P. H. Act, 1875, "has a wide meaning, and includes removal of all matter which causes a NUISANCE" (per Russell, C. J., *Barnett* v. *Laskey*, 68 L. J. Q. B. 57); and if a Local Authority undertakes a "Cleansing" which does not remove, but which, if properly done, would have removed, the cause of a nuisance, they cannot, under s. 94, get the STRUCTURAL CONVENIENCE abolished and another substituted (*S. C.* 68 L. J. Q. B. 55; 79 L. T. 408; 63 J. P. 5).

CLEAR. — The gift of a "Clear" annuity or legacy exonerates it from *Legacy Duty* (*Louch* v. *Peters*, 1 My. & K. 489; 3 L. J. Ch. 167: *Gude* v. *Mumford*, 2 Y. & C. 448: *Baily* v. *Boult*, 14 Bea. 595: *Lethbridge* v. *Thurlow*, 21 L. J. Ch. 538; 15 Bea. 334: *Haynes* v. *Haynes*, 3 D. G. M. & G. 590: *Banks* v. *Braithwaite*, 32 L. J. Ch. 35; 10 W. R. 612; 7 L. T. 149: *Re Coles*, 22 L. T. 221: *Vf*, 1 Jarm. 187, *n*: Seton, 1636: Watson, Eq. 1345); so, if the words are "Clear of Property Tax, and all EXPENSES attending the same" (*Courtoy* v. *Vincent*, T. & R. 433). And this construction is not altered by a special direction that one annuity is to be "free of legacy duty," which direction is omitted as regards another annuity in the same Will (*Re Robins*, W. N. (88) 41; 32 S. J. 273). And even where an appointment of a residue of a fund would be regarded as a gift of a definite sum, a preceding appointment of part of such fund "of the Clear Value" of so much, will exempt that amount from liability to contribute to probate and legacy duty and testamentary expenses (*Re Currié*, 57 L. J. Ch. 743; 59 L. T. 200; 36 W. R. 752).

But in *Banks* v. *Braithwaite* (sup), the direction was to retain so much consols "as should be sufficient to realize the Clear Yearly Income of £150"; and the V. C. decided that this income was *not* free of Legacy duty; for he said, "the amount (to be retained) having been arrived at, the dividends are then directed to be paid to the petitioner. The word

'clear' does not apply to that direction." *Va, Sanders* v. *Kiddell*, 5 L. J. Ch. 29; 7 Sim. 536: *Pridie* v. *Field*, 19 Bea. 497: — It has, however, been said that "this distinction does not seem to be tenable on principle" (1 Jarm. 187, citing *Wilks* v. *Groom*, 2 Jur. N. S. 798: *Harper* v. *Morley*, 2 Jur. 653. *Va, Re Cole*, L. R. 8 Eq. 271).

Quà *Succession Duty*, *Banks* v. *Braithwaite* was followed by Stirling, J., on similar words, but in which a "NET" sum was to be realized (*Re Saunders*, 1897, 1 Ch. 888; 66 L. J. Ch. 503), that decision, however, was reversed on appeal, and it was held that a direction that so much of the trust property "as should be *sufficient to raise the Net sum* of £2,000" for A., entitled A. to have the Succn Duty on that sum paid out of the unappointed part of the trust property; *Banks* v. *Braithwaite*, was questioned by Lindley, M. R., and Chitty, L. J. (1898, 1 Ch. 17; 67 L. J. Ch. 55; 77 L. T. 450; 46 W. R. 180).

The word "clear," alone, will scarcely exempt even a testamentary annuity from *Income Tax* (*Lethbridge* v. *Thurlow*, sup); but coupled with other apt words (in a Will, but not in a Deed) it would do so. *V.* DEDUCTIONS.

"Clear *Annual Income*," R. 126, Lunacy Rules, 1892; *V. Re Grehan*, 1895, 2 Ch. 12; 64 L. J. Ch. 505; 72 L. T. 383; 43 W. R. 433; 59 J. P. 325.

A V. & P. contract which stipulates that the price for the land shall be paid "Clear of all EXPENSES," means, that the Purchaser is to bear the expense of making out the Vendor's Title, as well as paying for the Conveyance which is an expense the law imposes on him (*Stratford* v. *Bosworth*, 2 V. & B. 241).

V. FREE.

"Clear *Profits*" of a Company; *V. Re Alexandra Palace, Goodson's Case*, 51 L. J. Ch. 655; 21 Ch. D. 149.

"Clear *Sum*"; *V. Re Currie*, W. N. (88) 154; 57 L. J. Ch. 743; 59 L. T. 200; 36 W. R. 752.

"By 'Clear *Yearly Rent*' is understood, a RENT clear of all outgoings, &c usually borne by the tenant; but subject to such (*e.g.* Land Tax) as are borne by the landlord" (Dart, 137, citing *Tyrconnell* v. *Ancaster*, 2 Ves. sen. 500: *Vf, R.* v. *Tomlinson*, cited NET). *V.* YEARLY.

"Fair Clear *Annual Rent*," in lieu of "Net Value" of Tithes, does not exonerate from Highway Rate on such Rent (*R.* v. *Lacy*, 5 B. & C. 702). *Cp, R.* v. *Shaw*, and *Chatfield* v. *Ruston*, cited OUTGOING.

The "Clear *Yearly Value*" of a tenement within s. 27, Rep. People Act, 1832 (repld s. 5, Rep. People Act, 1884), means the annual amount which the tenement would ordinarily let at, deducting such rates, taxes, and charges, as may be payable by the landlord, but which generally are payable by a tenant; but without deducting landlord's insurance or repairs (*Coogan* v. *Luckett*, 15 L. J. C. P. 159; 2 C. B. 182; 1 Lutw. 447: *Colvill* v. *Wood*, 15 L. J. C. P. 160; 2 C. B. 210; 1 Lutw. 487). But for

the purpose of a County Vote the value of a freehold would be lessened by what the landlord would have to pay to keep it in repair under the letting, or in order to obtain a tenant at the amount of the agreed rent (*Hamilton* v. *Bass*, 22 L. J. C. P. 29; 12 C. B. 631). Indeed, in *Dobbs* v. *Grand Junc. W. W. Co* (53 L. J. Q. B. 50), *Colvill* v. *Wood* was treated as an exceptional decision on the particular statute to which it related; and Ld Blackburn there said that as *Colvill* v. *Wood* had been acted upon so long it was too late to cast any doubt upon it. As to the meaning of "Clear Yearly Value" in Scotland and Ireland, quâ electoral qualification; *V.* 48 V. c. 3, s. 11. *Vf*, NET: ANNUAL VALUE.

Freehold County Qualification of the Clear Yearly Value of 40*s.*, "above all Charges"; *V.* CHARGES.

The phrase "Clear *Days*," means that the time is to be reckoned exclusive of both the first and last days (*R.* v. *Herefordshire Jus.*, 3 B. & Ald. 581: *Liffin* v. *Pitcher*, 1 Dowl. N. S. 767: R. 12, Ord. 64, R. S. C.). *V.* AT LEAST: BETWEEN: INTERVAL.

Refreshers to Counsel may be allowed "for every *clear day*" subsequent to the first or other day or days of the trial of 5 hours each (R. 27 (48), Ord. 65, R. S. C.), — that means every clear substantial portion of a day beyond a completed day or days of 5 hours each (per Grantham, J., at Chambers, in *Gibbs* v. *Barrow*, 30 S. J. 538: *Collins* v. *Worley*, 60 L. T. 748: *Wicksteed* v. *Biggs*, 52 L. T. 428; 54 L. J. Ch. 967: *Boswell* v. *Coaks*, 36 Ch. D. 444; 58 L. T. 97; 36 W. R. 209: *The Courier*, 1891, P. 355; 61 L. J. P. D. & A. 11; 66 L. T. 386; 40 W. R. 336: *O'Hara* v. *Elliott*, 1893, 1 Q. B. 362; 62 L. J. Q. B. 317; 68 L. T. 166; 41 W. R. 248: *Sv*, *Walker* v. *Crystal Palace Gas Co*, 1891, 2 Q. B. 300; 60 L. J. Q. B. 781; 65 L. T. 86; 39 W. R. 716).

Vessel to be placed by Shipowner "with Clear *Holds*, at the disposal of the Charterers, they having the whole Reach or Burthen of the vessel"; such a clause in a Charter-Party does not relieve the owner of his ordinary liability to provide Ballast (*Weir* v. *Union S. S. Co*, 1900; 1 Q. B. 28; 69 L. J. Q. B. 193, 809; 83 L. T. 91).

"Clear and *Positive Proof*," means such evidence as leaves no reasonable doubt as to the matter required to be proved (*Gopeekishen Goshamee* v. *Brindabunchunder Sircar Chowdhry*, 19 Sutherland's Weekly Rep. 41).

For (and by) s. 436, Mer Shipping Act, 1894, "Clear *Side*" of a Seagoing Ship, means, "the height from the water to the upper side of the plank of the deck from which the depth of hold as stated in the Register is measured; and the measurement of the Clear Side is to be taken at the lowest part of the Side."

CLEARANCE. — "Clearance" of a Vessel, *e.g.* in a contract for the consignment of goods, "has a well-known and definite meaning. It is a Certificate issued by the Customs showing that the Vessel named in it has complied with the Customs' requirements and is authorised to proceed

to Sea; and the acts which have to be done at the Customs to procure such a Certificate constitute the process of 'Clearing' the Vessel. . . . It is customary to obtain the Clearance before the loading is actually complete, so that there need be no delay in putting out to sea," and the Captain obtains it "as soon as his Cargo is in such a position as to enable him to make out his Manifest for use of the Customs" (per Bigham, J., *Thalmann* v. *Texas Star Flour Mills*, 4 Com. Ca. 265). That meaning is not varied in the United States by the statutory provision there that the Manifest is to be of the Cargo "ON BOARD," for, quà that provision, "the authority treats Cargo 'on Board,' if in fact it is already ALONGSIDE the ship in such circumstances that it must, in the ordinary course of business, find its way on board" (*Ib.*: *Thalmann's Case*, affd 82 L. T. 833; 5 Com. Ca. 321; 16 Times Rep. 460).

CLEARLY. — Where a statute requires that Notice of Action shall "clearly and explicitly" state the CAUSE of action, both time and place of the occurrence must be stated (*Martins* v. *Upcher*, cited NOTICE).

CLERGY. — Quà 33 & 34 V. c. 110, "Clergy and Laity" of the Irish Church, includes "Clergy and Laity in communion with Bishops of the said Church" (s. 4).

Benefit of Clergy; *V.* BENEFIT.

CLERGYMAN. — A clergyman of the Church of England would undoubtedly come within the meaning of the word "Clergyman"; but "there are various authorities to show that a Roman Catholic Priest is, also, a Clergyman in Holy Orders" (per Stephen, J., *R.* v. *Haslehurst*, 53 L. J. M. C. 129; 13 Q. B. D. 253).

"Rector, Vicar, or *Curate*, going to, or returning from, visiting any sick parishioner, or on other his parochial duty, *within his Parish*," quà exemption from Toll, s. 32, Turnpike Roads Act, 1822, 3 G. 4, c. 126, includes a Curate temporarily acting, with the permission of the Bishop, though without his license (*Temple* v. *Dickinson*, 28 L. J. M. C. 10; 1 E. & E. 34); *secus*, if without the Bishop's permission (*Brunskill* v. *Watson*, L. R. 3 Q. B. 418; 37 L. J. M. C. 103; 32 J. P. 324, 692). "*Within his Parish*," defines the ambit of the clergyman's duties, not that of his exemption (*Temple* v. *Dickinson*, sup). The exemption is not lost by the clergyman being accompanied by his wife and daughters (*Layard* v. *Ovey*, 37 L. J. M. C. 148; L. R. 3 Q. B. 415; 32 J. P. 293).

Notwithstanding Disestablishment, a Clergyman of the present Church of Ireland is a "Rector, Vicar, or Curate" who, under s. 65, Marriages (Ir) Act, 1844, 7 & 8 V. c. 81, has to make quarterly Returns of Marriages (*R.* v. *Magee*, 32 L. R. Ir. 87); he is the "SUCCESSOR" to the Minister of the Church prior to its disestablishment (*R.* v. *Runciman*, 28 L. R. Ir. 527).

Quà Clergy Discipline Act, 1892, 55 & 56 V. c. 32, "'Clergyman,' means, a Clergyman, not being a Bishop of a DIOCESE, who is in Holy Orders in the Church of England, or who, though ordained by a Bishop of another Church, is permitted to officiate as a Priest or Deacon of the Church of England" (s. 12).

V. PARSON: PAID OFFICER.

CLERK.—"'*Clarke* (clerke).' *Clericus* is twofold: *ecclesiasticus* (which Littleton here, s. 180, intendeth), and he is either secular or regular, so called because he is *servus et hæreditas domini* (*V.* CLERGYMAN): and *laicus*, and in this sense is signified a pen-man, who getteth his living in some Court or otherwise by the use of his pen" (Co. Litt. 120 a). *Va* Termes de la Ley.

The priority given in Bankruptcy and Winding-up for payment of salary to a "Clerk *or Servant*" (s. 40 (*b*), Bankry Act, 1883; s. 1 (*b*), 51 & 52 V. c. 62: *Vf* 60 & 61 V. c. 19), is not confined to trade clerks; it includes, *e.g.* an Architect's clerk (*Ex p. Gough*, Mont. & B. 417; 3 Dea. & C. 189), but not a Managing Director of a Co (*Re Newspaper Syndicate*, 1900, 2 Ch. 349; 69 L. J. Ch. 578).

A Banker's Clerk is properly described as "Clerk," for the purposes of the Bills of Sale Acts (*Lamb* v. *Bruce*, 45 L. J. Q. B. 538). *V.* GOVERNMENT CLERK.

The London Agent of a foreign Company is not its "Clerk" within R. 8, Ord. 9, R. S. C.; the expression there, "*the* Clerk or Secretary," points to some definite individual whose knowledge may be taken to be the knowledge of the Corporation (*Nutter* v. *Messageries Maritimes*, 54 L. J. Q. B. 527: *The Princess Clementine*, 1897, P. 18; 66 L. J. P. D. & A. 23; 75 L. T. 695). *Vh, La Bourgogne*, 79 L. T. 310, 331, also cited CARRY ON.

"A 'Clerk *or Servant*' (quà Embezzlement), is a person bound either by express contract of service, or by conduct implying such a contract, to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as such clerk or servant to transact" (Steph. Cr. 237, *V.* Ib. to p. 240 for cases in illustration). Hereon a Director of a Co, may be its "Clerk or Servant" (*R.* v. *Stuart*, 1894, 1 Q. B. 310; 63 L. J. M. C. 63; 70 L. T. 44; 42 W. R. 303; 58 J. P. 299). An Assistant Overseer appointed by a Parish Council is the "Servant" of the inhabitants of the parish (*R.* v. *Smallman*, 1897, 1 Q. B. 4; 66 L. J. Q. B. 82; 75 L. T. 394; 61 J. P. 312; 45 W. R. 249). *V.* EMPLOYED.

Whatever called, a Clerk at the head of his department in a Bank, is a "*Chief* Clerk," s. 7, Bank Notes Act, 1828, 9 G. 4, c. 23 (*R.* v. *Greenland*, 36 L. J. M. C. 37; L. R. 1 C. C. R. 65).

An Election Agent's permanent clerk who, without extra emolument, helps such Agent at an Election, *e.g.* by addressing envelopes, is not a

"Clerk" engaged in the election, within Sch 1, Part 1, 46 & 47 V. c. 51 (*Buckrose Case*, 4 O'M. & H. 110).

V. PARISH CLERK: PARTNER.

Sometimes "Clerk," by an Interp Clause, includes Secretary, *e.g.* 10 & 11 V. c. 16, s. 3; 12 & 13 V. c. 93, s. 15; 25 & 26 V. c. 102, s. 112.

Other Stat. Def. — 53 & 54 V. c. 5, s. 341. — *Ir.* 9 & 10 V. c. 87, s. 2; 18 & 19 V. c. 40, s. 3; 21 & 22 V. c. 100, s. 3. — *Scot.* 24 & 25 V. c. 69, s. 2; 25 & 26 V. c. 97, s. 2, c. 101, s. 3; 39 & 40 V. c. 49, s. 3; 41 & 42 V. c. 51, s. 3; 55 & 56 V. c. 55, s. 4; 60 & 61 V. c. 38, s. 3.

"Clerk *of Assize*"; *V.* 32 & 33 V. c. 89, s. 8.

For (and by) s. 78, Loc Gov Act, 1888, "'Clerk *of an Authority*' includes, in relation to any Quarter Sessions or Justices, the Clerk of the Peace or the Clerk to a Justice, as the case requires."

"Clerk *of Court*"; *V.* 27 & 28 V. c. 53, s. 2; 38 & 39 V. c. 62, s. 2; 58 & 59 V. c. 19, s. 17.

"Clerk *of the Crown*"; *V.* 35 & 36 V. c. 33, s. 17, and Sch; 54 & 55 V. c. 66, s. 95.

"Clerk *of the Guardians*"; *V.* 8 & 9 V. c. 126, s. 84; 16 & 17 V. c. 97, s. 132. — *Ir.* 9 & 10 V. c. 110, s. 8; 15 & 16 V. c. 63, s. 45.

"Clerk *of Justiciary*"; *V.* 50 & 51 V. c. 35, s. 1.

"Clerk *of the Licensing Justices*"; *V.* 35 & 36 V. c. 94, ss. 74, 77; 37 & 38 V. c. 69, s. 37; 53 & 54 V. c. 59, ss. 12 (9), 51 (13).

"Clerk *of Local Authority*"; *V.* 29 & 30 V. c. 2, s. 4; 31 & 32 V. c. 130, s. 2; 37 & 38 V. c. 67, s. 12; 38 & 39 V. c. 36, s. 31; 41 & 42 V. c. 63, s. 5; 42 & 43 V. c. 64, s. 2. — *Ir.* 52 & 53 V. c. 72, s. 18; 59 & 60 V. c. 54, s. 23.

"Clerk *of the Peace*"; *V.* 4 & 5 V. c. 30, s. 15; 6 & 7 V. c. 18, s. 101; 7 & 8 V. c. 101, s. 74; 8 & 9 V. c. 18, s. 3, c. 20, s. 3, c. 100, s. 114, c. 126, s. 84; 16 & 17 V. c. 97, s. 132; 27 & 28 V. c. 65, s. 4; 28 & 29 V. c. 126, s. 4; 51 & 52 V. c. 10, s. 14. — *Ir.* 6 & 7 W. 4, c. 75, s. 63; 6 & 7 V. c. 74, s. 62; 13 & 14 V. c. 69, s. 117; 14 & 15 V. c. 57, s. 162; 23 & 24 V. c. 153, s. 4, c. 154, s. 1; 27 & 28 V. c. 22, s. 20, c. 99, s. 3; 33 & 34 V. c. 109, s. 7; 40 & 41 V. c. 56, s. 7; 52 & 53 V. c. 48, s. 19. — *Scot.* 41 & 42 V. c. 16, s. 105.

"Clerk *of Session*"; *V.* 13 & 14 V. c. 36, s. 53; 2 & 3 V. c. 41, s. 3; 19 & 20 V. c. 79, s. 4.

Clerk *of the Signet*; *V.* 27 H. 8, c. 11, repealed by 47 & 48 V. c. 30.

"Clerk *of Supply*"; *V.* 20 & 21 V. c. 72, s. 78.

Management of *Taxes* Clerk; *V.* 43 & 44 V. c. 19, s. 5.

"*War Office* Clerk"; *V.* 41 & 42 V. c. 53, s. 10.

CLIENT. — Quà Solrs Act, 1870, "'Client' includes any person who, as a Principal or on behalf of another person, retains or employs, or

is about to retain or employ, a Solicitor; and any person who is or may be liable to pay the Bill of a Solr, for any services, fees, costs, charges, or disbursements" (s. 3). This does not, quà s. 17, comprise the relationship between Country Solrs and their London Agents (*Ward* v. *Eyre*, 49 L. J. Ch. 657; 15 Ch. D. 130). Generally speaking, however, the Country Solr is the Client of, and liable to, his London Agent, *e.g.* the latter's bill is taxable (*Ostle* v. *Christian*, T. & R. 324: *Jones* v. *Roberts*, 7 L. J. Ch. 156; 8 Sim. 397: *Smith* v. *Dimes*, 19 L. J. Ex. 60; 4 Ex. 32: *Storer* v. *Johnson*, 60 L. J. Ch. 31; 15 App. Ca. 203; 62 L. T. 710; 38 W. R. 756), and he has no claim at all against the lay client (per Cotton, L. J., *Ward* v. *Lawson*, 59 L. J. Ch. 325, 326: *Vf* Rosc. N. P. 505), and the Country Solr is within a covenant not to transact business with the London Agent's "Clients" (*Reid* v. *Burrows*, 1892, 2 Ch. 413; 61 L. J. Ch. 448; 67 L. J. 183; 40 W. R. 620). *Note.* The English custom recognized in *Ward* v. *Lawson* (sup), does not obtain between English and Irish Solrs, and the one instructed by the other may hold the lay client responsible as the principal in the matter (*Hyndham* v. *Ward*, 43 S. J. 246). *V.* ORIGINAL CLIENTS.

Quà Solrs Rem Act, 1881, "'Client' includes any person who, as a principal or on behalf of another, *or as trustee or exor or in any other capacity has power express or implied to retain or employ and*, retains or employs, or is about to retain or employ, a Solr; and any person for the time being liable to pay to a Solr, for his services, any costs, remuneration, charges, expenses, or disbursements" (s. 1). Save as regards the words italicized the def (sup) in the Act of 1870 is substantially followed in this latter def, on *whv Re Palmer*, 59 L. J. Ch. 575; 45 Ch. D. 291; 62 L. T. 778; 38 W. R. 673.

As to Agreements respecting Costs between Solrs and Clients; *V.* IN WRITING: FAIR AND REASONABLE.

Doing business for "Clients," means, acting for them *as a Solr* (*Hayne* v. *Burchell*, 7 Times Rep. 116; 35 S. J. 88). *Vthc* as to interpretation of a Contract "not to take away or do business for 'Clients'": — as to remedy for a Breach, *V. Howard* v. *Woodward*, 34 L. J. Ch. 47.

In R. 6, Solrs Rem Ord, "Client" means, *all* the clients (if more than one) for whom the solicitor is undertaking business (per Stirling, J., obiter, *Re Metcalfe*, 32 S. J. 60; 36 W. R. 137).

In a V. & P. contract, "my Client," or "your Client," does not sufficiently indicate the Vendor: *V.* PROPRIETOR.

CLOCK. — *V.* OF THE CLOCK.

CLOG. — "Clogging the Equity"; *V.* MORTGAGE.

CLOSE. — "Close," in its ordinary sense, denotes an inclosure (*Richardson* v. *Watson*, 4 B. & Ad. 787; 2 L. J. K. B. 134). "Close" is ambiguous, and may mean the quality or description of land, as well as

the land itself (*Heath* v. *Milward*, 4 L. J. C. P. 292; 2 Bing. N. C. 98; 2 Sc. 160). *Vh* F. N. B. 128, *n*.

"Close or Curtilage" of a FACTORY; *V. Taylor* v. *Hickes*, 31 L. J. M. C. 242; 12 C. B. N. S. 152.

"Close," in a Declaration in Trespass, included the subsoil as well as the surface (*Cox* v. *Glue*, 17 L. J. C. P. 162; 5 C. B. 533).

"Close of the Pleadings"; R. 5, Ord. 23, R. 13, Ord. 27, R. S. C.; *V. Robinson* v. *Caldwell*, 1893, 1 Q. B. 519; 62 L. J. Q. B. 252: Ann. Pr.

To close Licensed Premises; *V. R.* v. *Pelly*, cited FOUND: KEEP OPEN.

"The Local Authority may *close* any Communication between a Drain and a Sewer," &c, s. 21, P. H. Act, 1875; *V. Ainley* v. *Kirkheaton*, cited FILTHY WATER.

CLOSE-HAULED. — "'Close-hauled' (in the Regns for Preventing Collisions at Sea, 1879) is not confined to a vessel sailing as close as possible to the wind; it may be applied to a vessel on a wind, although she may be able to luff a point or more without losing steerage-way" (1 Maude & P. 599, 600, citing *Chadwick* v. *Dublin Steam Packet Co*, 6 E. & B. 771). *Vf*, *The Earl Wemyss*, 61 L. T. 289; 6 Asp. 407: *The Privateer*, 9 L. R. Ir. 105: Abbott, 847.

CLOSE SEASON. — The "Close Season," or, in other words, "Close Time," of Fishing or Sporting, is the time during which, for the time being, it is prohibited to fish for, take, or destroy, the particular thing intended to be protected; *Vh*, 8 & 9 V. c. 108, s. 25; 13 & 14 V. c. 88, s. 1; 36 & 37 V. c. 71, s. 4: ANNUAL CLOSE SEASON.

CLOSED VESSEL. — "Closed Vessel used for generating steam," s. 3, 45 & 46 V. c. 22, does not mean a vessel hermetically sealed but means, one so closed that steam explosion might happen (*R.* v. *Boiler Explosions Act Commrs*, 1891, 1 Q. B. 703; 60 L. J. Q. B. 544; 64 L. T. 674; 39 W. R. 440).

CLOSELY ENTAILED. — A devise followed by a direction that the property should be "closely entailed," was cut down to a tenancy for life, remainder to the issue; but the tenant for life was made unimpeachable for waste (*Woolmore* v. *Burrows*, 1 Sim. 512).

V. STRICT SETTLEMENT.

CLOSING ORDER. — Quà Part 2, Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, "'Closing Order,' means, an Order, prohibiting the use of premises for human habitation, made under the enactments set out in the 3rd Sch" of the Act (s. 29).

CLOTHES. — *V.* LINEN.

CLOUGH. — A Valley (Co. Litt. 4 b).

CLUB. — Artiste shall "not perform at any Club"; *V. Kelly* v. *London Pavilion*, cited PERFORM.

A Members' Club, which needs no License for the sale of Intoxicating Liquors, is one composed exclusively of Members, who alone can be supplied and who among themselves have for their common advantage whatever profit is thence derived: it may be just possible that an Incorporated Co may be such a Club (*Newell* v. *Hemingway*, 60 L. T. 544), but the accidents of death &c will, in most cases, soon create a state of things in which the Members of the Co will not be identically the same as the Members of the Club, and then the Co will be no longer a Members' Club but will be a Proprietary Club (*National Sporting Club Co* v. *Cope*, 82 L. T. 352), which must be licensed like an individual (*Bowyer* v. *Percy Supper Club*, 1893, 2 Q. B. 154; 69 L. T. 447; 42 W. R. 29; 57 J. P. 470).

"A stipulation that premises are to be used as a 'Private Club,' is broken by using them for Boxing Contests to which strangers are admitted on payment" (Redman, 268, citing *Seaward* v. *Paterson*, 12 Times Rep. 525; *whc* also cited AID OR ABET).

V. PUBLIC-HOUSE.

COACH. — Is a Cab a "Coach," or "Chariot," within s. 65, Michael Angelo TAYLOR'S ACT? *V. Frost* v. *Williams*, 7 A. & E. 773.

A Tram-car is a "Coach," quà a Bridge Toll under a Local Act of 7 G. 3 (*Plymouth Tramways Co* v. *General Tolls Co*, 13 Times Rep. 74; 14 Ib. 531; 75 L. T. 467); and a Bicycle is a "*Carriage*," within the same Act (*Cannan* v. *Abington*, 1900, 2 Q. B. 66; 69 L. J. Q. B. 517; 82 L. T. 382; 48 W. R. 470).

"Hackney Coach"; *V.* HACKNEY CARRIAGE.

COAL. — Fuel for fire composed of coal dust mixed with pitch and lime, is not "Coal," quà an Import Duty, although its only or chief use is as a substitute for Coal (*London* v. *Parkinson*, 10 C. B. 228).

"Coal is Coal, whether it be large or small, — whether it be round or slack" (per Ld Macnaghten, *Netherseal Co* v. *Bourne*, cited MINERAL GOTTEN).

"Coal," s. 15, 30 & 31 V. c. 134, (or, *semble*, generally) does not include Cinders or Coke (*Fletcher* v. *Fields*, 1891, 1 Q. B. 790; 60 L. J. M. C. 102; 64 L. T. 472; 39 W. R. 655; 55 J. P. 502); but by its interp clause (s. 48) "Coals" includes Cinders and Culm, quà Coal-whippers' (Port of London) Act, 1851, 14 & 15 V. c. 78.

Coal Mines; *V.* MINE: PROPERTY OTHER THAN LAND: 23 & 24 V. c. 151, s. 7.

"Coal Seams, workable as Coal Seams"; *V.* WORKABLE.

"Coals and Coal Mines"; *V.* SUBSOIL.

"Coals and Produce of any other Mines," includes Coke (*Bowes* v. *Ravensworth*, cited PRODUCE OF MINES).

"Coals exported"; *V.* EXPORTED.

Coals, &c to be "sold by Weight, and not by Measure," s. 9, 5 & 6 W. 4 c. 63; *V.* BY WEIGHT.

COAST. — *V.* SEA COAST.

Quà Herring Fisheries (Scot) Act, 1867, 30 & 31 V. c. 52, "'the Coasts of Scotland,' shall mean and include, all Bays, Estuaries, Arms of the Sea, and all Tidal Waters within the distance of 3 miles from the mainland or adjacent islands" (s. 11).

"Coast-Guard"; *V.* 19 & 20 V. c. 83, s. 2.

COASTING SHIP. — "Coasting Ship," s. 142, 39 & 40 V. c. 36, s. 9, 42 & 43 V. c. 21, has the same meaning as "Ship employed in the COASTING TRADE," s. 379 (1), Mer Shipping Act, 1854 (per Bruce, J., *The Winestead*, 1895, P. 170; 64 L. J. P. D. & A. 53; 72 L. T. 91; 11 Times Rep. 220).

COASTING TRADE. — "Ships employed in the *Coasting Trade* of the UNITED KINGDOM" (s. 379, Mer Shipping Act, 1854, repld, s. 625, Mer Shipping Act, 1894), means, ships continually or ordinarily so employed (*The Agricola*, 2 Rob. W. 10: *The Lloyds*, otherwise *The Sea Queen*, 32 L. J. P. M. & A. 197; Brown. & Lush. 359: *Vf*, 1 Maude & P. 277), and which, for the time being, are only so employed and are not partly employed in Foreign Trade (*The Winestead*, cited COASTING SHIP: *The Glanystwyth*, 1899, P. 118; 68 L. J. P. D. & A. 37; 80 L. T. 204; 8 Asp. 513). *Cp*, COASTING VESSEL: TRADING: EUROPE.

As used in the United States; *V. Steamboat Co* v. *Livingstone*, 3 Cowen, 713, 747: *United States* v. *The James Morrison*, 1 Newb. 241: *United States* v. *The William Pope*, Ib. 259.

COASTING VESSEL. — "A 'Coasting Vessel' would seem to mean a vessel that goes along the coast" (per Alderson, B., *Shepherd* v. *Hills*, 25 L. J. Ex. 9). But an Irish vessel trading between Belfast and London is not a Coasting Vessel, within 52 G. 3, c. 39, s. 2 (*Davison* v. *Mekibben*, 6 Moody, 387); nor are vessels trading between England, and Guernsey and Jersey, "Coasting Vessels" within the meaning of the Customs Acts, or of a Harbour Act (*Shepherd* v. *Hills*, 25 L. J. Ex. 6; 11 Ex. 55). *Cp* COASTING TRADE.

COASTWISE. — Goods brought from an Irish port to Bristol, are not brought "Coastwise" (*Battersby* v. *Kirk*, 5 L. J. C. P. 166; 2 Bing. N. C. 584). *Vf*, *San Francisco* v. *Steam Nav. Co*, 10 Cal. 507.

COBBLER. — "I remember a Shoemaker brought an action against a man for saying that he was a 'Cobler': and though a Cobler be a trade of itself yet, held, that the action lay" (per Twisden, J., *Redman* v. *Pyne*, cited BUNGLER).

COBLE. — *V.* NET.

COCK OF HAY. — An Indictment for setting fire to a "Cock" of Hay, held, not sustainable under an Act making it an offence to set fire to a "STACK" of hay. "We know that, popularly, a Cock of Hay, differs from a Rick or Stack. The small conical heap into which hay is formed temporarily in the field, to protect it from rain before it is completely saved, is commonly called a Cock of Hay; and in some districts it is called a lap cock, in others a field cock; while in other places it receives a different name. A Cock of hay may, therefore, be any small heap of hay in the field, saved, or not completely saved; and may differ essentially from a stack or rick. A Stack of hay, on the contrary, means a large heap of hay saved and made up, and protected from the weather, and the term is generally applied to that which has been drawn home from the field. Webster defines a Cock of Hay to be, 'a small conical pile, so shaped for shedding the rain, and called in England a Cop; whilst a Stack is a large conical pile, sometimes covered with thatch'" (per Fitzgerald, J., *R.* v. *M'Keever*, Ir. Rep. 5 C. L. 90, 91).

COCKADE. — A party Card worn and intended to be worn on the hat, is a "Cockade," within s. 16 (1), Corrupt and Illegal Practices Prevention Act, 1883 (*Walsall*, 4 O'M. & H. 123). *V.* MARK.

COCKBURN'S ACT. — The Betting Act, 1853, 16 & 17 V. c. 119.

CODE. — As to construing Codifying Statutes; *V.* BILL OF EXCHANGE, Note towards end.

CODICIL. — A Codicil is "an addition or supplement added unto a Will or Testament after the finishing of it, for the supply of something which the testator had forgotten, or to helpe some defect in the Will" (Termes de la Ley). *Vf*, Cowel: 3 Encyc. 63: *Re Elcom*, cited TESTAMENT: WILL: HEREIN.

COERCION. — *V.* per Ld Watson, *Allen* v. *Flood*, 1898, A. C. 98–105; 67 L. J. Q. B. 171–174: per Cranworth, C., *Boyse* v. *Rossborough*, cited UNDUE INFLUENCE.

COFFEE-HOUSE. — A covenant not to use premises as a "Coffee-house," is broken by carrying on a "Tee-to-tum" of the second class in which cups of tea and coffee and light eatables are supplied, although

such refreshments bear only a small proportion to the sale of dry goods across the counter, and are only auxiliary to the counter trade (*Fitz* v. *Iles*, 1893, 1 Ch. 77; 62 L. J. Ch. 258; 68 L. T. 108: on *whcv Ashby* v. *Wilson*, 1900, 1 Ch. 66; 69 L. J. Ch. 47; 48 W. R. 105; 81 L. T. 480. *Cp*, *Buckle* v. *Fredericks*, cited RETAIL).

COHABITATION. — Cohabitation of Husband and Wife is, their living conjugally; which is usually evidenced by their living under the same roof, but that is not essential to Cohabitation, *e.g.* "married Domestic Servants who cannot live day and night under the same roof, may yet cohabit together in the wider sense of the term"; and a wrongful abandonment by the Husband of such a cohabitation, is "Desertion," within s. 4, 58 & 59 V. c. 39 (*Bradshaw* v. *Bradshaw*, 66 L. J. P. D. & A. 31; 75 L. T. 391; 45 W. R. 142; explaining and distinguishing *Fitzgerald* v. *Fitzgerald* and *R.* v. *Leresche*, cited DESERTION: *Vf*, *Huxtable* v. *Huxtable*, 68 L. J. P. D. & A. 83). *Vf* SEPARATE.

Cp ASSOCIATE.

COIF. — *V.* NIGHTCAP.

COIN. — Quà Bankers (Ir) Act, 1845, 8 & 9 V. c. 37, "Coin," means, "Coin of the Realm" (s. 32); so, quà Bank Notes (Scot) Act, 1845, 8 & 9 V. c. 38 (s. 22). *V.* BRITISH COIN: CURRENT: FALSE COIN.

Quà Weights and Measures Act, 1878, 41 & 42 V. c. 49, "'Coin Weight,' means, a WEIGHT used or intended to be used for weighing Coin" (s. 70). *V.* ILLEGALLY: MONEY.

COKE. — *V.* COAL.

COLEBERTI. — "*Coleberti*, often named in Domesday, signifieth tenants in free socage by free rent; and so it is expounded of record. *Radmans* and *radchemistres* (*rad*, or *rede* signifieth firme and stable) there also often named, these are *liberi tenentes qui arabant et herciebant ad curiam domini, seu falcabant, aut metebant*, because their estates are firme and stable; and they are many times called *sochemans* and *sokemanni*, because of their plough service" (Co. Litt. 5 b). *Vf* SOCHEMANS.

COLLABORATEUR. — *V.* COMMON EMPLOYMENT.

COLLATERAL. — "'Collaterall,' is that which cometh in or adhereth to the side of anything; as Collaterall Assurance, is that which is made over and beside the Deed itselfe" (Termes de la Ley).

The word "Collateral," *e.g.* Collateral Security, means, side by side, "parallel," and, taken by itself, has no such meaning as "secondary," "auxiliary," "subsidiary," or "only to be made use of in aid" (*Early* v. *Early*, 49 L. J. Ch. 826, *n*; 16 Ch. D. 214, *n*: *Athill* v. *Athill*, 49 L. J. Ch. 821; 50 Ib. 123; 16 Ch. D. 211; 43 L. T. 581; 29 W. R. 309: *Bute*

v. *Cunynghame*, 2 Russ. 275: *Leonino* v. *Leonino*, 48 L. J. Ch. 217; 10 Ch. D. 460. *Vh* Dart, 921, 922).

Mtge of Land as "Collateral Security," or held "for the purpose of Re-imbursement and not for Profit," in New South Wales Bank Act, 1864; *V. Bank of N. S. Wales* v. *Campbell*, 55 L. J. P. C. 31; 11 App. Ca. 192.

"Collateral, or Auxiliary, or Additional, or Substituted, Security," in Stamp Act; *V.* SUBSTITUTED.

Collateral PURPOSE; *V.* jdgmt of Alderson, B., *A-G.* v. *Walker*, cited NECESSARY.

For instances of Collateral Agreements between Landlord and Tenant, *V.* Woodf. 93, 170.

COLLATION. — "'Collation,' is, properly, the bestowing of a BENEFICE by the Bishop that hath it in his owne gift or patronage; and differeth from INSTITUTION in this, for that Institution into a Benefice is performed by the Bishop at the motion and PRESENTATION of another who is Patron of the same church, or hath the Patron's right for that time: yet, Collation, is used for Presentation in 25 Edw. 3, stat. 6" (Termes de la Ley). *Vf*, Phil. Ecc. Law, 277: ADMISSION: ADVOWSON.

Collative Advowson, is one of Collation (2 Bl. Com. 22.)

"'*Collatio bonorum*,' is where a Portion, or money advanced by a father to a son or daughter, is brought into HOTCHPOT," under 22 & 23 Car. 2, c. 10, s. 5 (Jacob).

COLLECT. — A direction in a Will to "collect and get in" the property given, is not sufficient to limit the gift to Personalty (*D'Almaine* v. *Moseley*, 1 Drew. 629; 22 L. J. Ch. 971: *Hamilton* v. *Buckmaster*, L. R. 3 Eq. 323; 36 L. J. Ch. 58; 15 W. R. 149; 15 L. T. 177).

COLLECTED. — "Levied or Collected"; *V.* LEVY.

COLLECTOR. — A Cashier who deducts and forwards the contributions of members of a Friendly Society from their wages he has to pay, is a "Collector" of the Contributions within ss. 30, 4, Friendly Soc. Act, 1875 (*Joyce* v. *Northumberland Miners' Socy*, 4 Times Rep. 525).

Stat. Def., quà Collecting Societies &c Act, 59 & 60 V. c. 26; *V.* s. 17: — Excise; 23 & 24 V. c. 114, s. 1: — Inland Revenue; 43 & 44 V. c. 19, s. 5, 53 & 54 V. c. 21, s. 39: — Markets and Fairs Clauses Act, 1847; *V.* s. 3: — Tithe Act, 1891; *V.* s. 6 (4).

"Collector and Comptroller" of Customs; 8 & 9 V. c. 86, s. 127; 16 & 17 V. c. 107, s. 357.

Other Stat. Def. — 10 & 11 V. c. 27, s. 3; 38 & 39 V. c. 60, s. 4; 43 & 44 V. c. 20, s. 2, c. 24, s. 3. — *Scot.* 13 & 14 V. c. 33, s. 2; 25 & 26 V. c. 101, s. 3; 39 & 40 V. c. 49, s. 3; 41 & 42 V. c. 51, s. 3; 49 & 50 V. c. 53, s. 17; 55 & 56 V. c. 55, s. 4. — *Ir.* 9 & 10 V. c. 107, s. 19.

COLLEGE. — A College, "always supposeth a Corporation" (per Holt, C. J., *Philips* v. *Bury*, cited HOSPITAL, *whv*).

"A 'College,' to be such in more than vulgar reputation, must have the 'countenance of a legal commencement'; a lawful erection and foundation. And it should seem that no one can found or incorporate a College within this realm, or assign, or license others to assign, temporal livings to it, but only the King himself. And reputative Colleges which had no lawful foundation, were held not to be given to the King by the Stat. 1 Edw. 6, unless they had the countenance of the King's Letters Patent, or might have had a legal commencement but for some error or imperfection in the penning or proceedings" (Dwar. 683, 684, citing *Adams and Lambert's Case*, 4 Rep. 108). *Vh*, 3 Encyc. 83: UNIVERSITY.

Stat. Def., quà Universities Tests Act, 1871, 34 & 35 V. c. 26; *V.* s. 2: — Universities of Oxford and Cambridge Act, 1877, 40 & 41 V. c. 48; *V.* s. 2: — Universities (Scot) Act, 1889, 52 & 53 V. c. 55; *V.* s. 3.

COLLEGIATE CHURCH. — A "Collegiate CHURCH," "is that which consists of a Dean and Secular Canons; or, more largely, it is a Church built and endowed for a Society or Body Corporate of a Dean, or other President, and Secular Priests, as Canons or Prebendaries in the said Church" (Jacob). *Vf*, Phil. Ecc. Law, 125: 3 Encyc. 84.

COLLEGIATE SCHOOL. — *V.* CATHEDRAL.

COLLIER'S ACTS. — The Debtor's Act, 1869, 32 & 33 V. c. 62: The Bankry Act, 1869, 32 & 33 V. c. 71.

COLLIERY. — Besides its obvious meaning of a place where Coals are dug, "Colliery" "is a word sufficiently wide to include all contiguous and connected veins and seams of coal which are worked as one concern, without regard to the closes and pieces of ground under which they are carried (*V. Hodgson* v. *Field*, 7 East, 620). Indeed, it is apparently wide enough to include the engines and machinery in the contiguous and connected veins, as well as those veins themselves" (MacS. 25).

COLLIERY GUARANTEE. — Cargo of coal to be loaded as Customary, "but subject in all respects to the Colliery Guarantee"; *V. Dobell* v. *Green*, cited AS ORDERED. *Vf* USUAL COLLIERY GUARANTEE.

COLLIERY WORKING DAY. — DEMURRAGE to be payable "per Colliery Working Day," *primâ facie*, does not mean a day upon which the particular Colliery is working but, means, "the ordinary working days in normal times and under normal conditions" (per Russell, C. J., *Saxon S. S. Co* v. *Union S. S. Co*, 68 L. J. Q. B. 58); but, contextually, it may exclude ordinary working days on which work is stopped by a strike (*S. C.* 68 L. J. Q. B. 914; 81 L. T. 246: *Vf*, *Clink* v. *Hickie*,

4 Com. Ca. 292); but in the *Saxon S. S. Co Case*, the H. L. revd the C. A. on the question as to whether, in that case, there was any such context (69 L. J. Q. B. 907; 83 L. T. 106; 5 Com. Ca. 382).

COLLISION.—In a Marine Policy "Collision," or "Risk of Collision, as per clause attached," without more, refers to collision with other *Ships* (per Lindley and Lopes, L.JJ., *Reischer* v. *Borwick*, 1894, 2 Q. B. 548; 63 L. J. Q. B. 753; 71 L. T. 238), or things capable of being navigated (*Chandler* v. *Blogg*, 1898, 1 Q. B. 32; 67 L. J. Q. B. 336; 3 Com. Ca. 18: per Grove, J., *Hough* v. *Head*, 54 L. J. Q. B. 298). But, of course, "Collision with any *Object*" is not so confined; and so, where a Bill of Lading exonerated the ship-owners from damage arising from "Collision and accidents, loss or damage from any act, neglect, or default, whatsoever of the pilots, master or mariners or other servants of the company, in navigating the ship"; it was held that "Collision" meant every collision however caused (*Chartered Bank of India* v. *Netherlands Steam Nav. Co*, 52 L. J. Q. B. 220; 10 Q. B. D. 521).

So, where a Policy insures against "Collision with any other Ship or Vessel, or Ice, or sunken or floating Wreck, or any other floating Substances, or Harbours, or Wharves, or Piers, or Stages, or similar structures," it covers a striking of the upper parts of the ship; "but it would be equally Collision if some portion of the hull below the water-line, or even the keel itself, were to strike something under water" (per Mathew, J., *Union Mar Insrce* v. *Borwick*, 1895, 2 Q. B. 279; 64 L. J. Q. B. 679; 73 L. T. 156). *Vf* CAUSED BY.

V. DAMAGE BY COLLISION: RISK OF COLLISION: ANSWERABLE: 3 Encyc. 85–107.

COLLUSION.—"'Collusion' only signifies, agreeing together" (per Bramwell, B., *Gill* v. *Continental Gas Co*, L. R. 7 Ex. 337). So, of s. 1, c. 51, Consolidated Statutes of British Columbia, which nullifies jdgmts, &c of Insolvents obtained "by Collusion," which means, "by agreement, or acting in concert" (*Edison Co* v. *Westminster, &c Tramway Co*, 1897, A. C. 193; 66 L. J. P. C. 36; 75 L. T. 438; approving *Martin* v. *McAlpine*, 8 Ontario App. 675). So, as regards Interpleader, R. 2 *b*, Ord. 57, R. S. C. "Collusion" does not connote anything morally wrong; the Applicant must not be "playing the same game" as either of the Claimants; that is the literal meaning of "colluding" (per Wills, J., *Murietta* v. *South American Co*, 62 L. J. Q. B. 396: *Vf* Ann. Pr.).

But not infrequently "Collusion" is, "a deceitful agreement, or compact, between two or more, for the one Party to bring an action against the other for some evil purpose" (Cowel). *Va*, Termes de la Ley: Jacob. *Cp* CONFEDERACY.

"Collusion," s. 30, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85, and s. 7, 23 & 24 V. c. 144, is either,—(1) Positive, or (2) Negative.

Positive Collusion, is an agreement between the litigants "to put forward true facts in support of a false case, or false facts in support of a true case" (per Jeune, P., *Churchward* v. *Churchward*, 1895, P. 16; 64 L. J. P. D. & A. 23), *e.g.* "for one to commit, or appear to commit, an act of adultery, in order that the other may obtain a remedy at law as for a real injury" (per Ld Stowell, *Crewe* v. *Crewe*, 3 Hagg. Ecc. 123). *Negative* Collusion means, in its more obvious sense, an agreement between the parties wrongfully to withhold relevant facts from the Court (*Hunt* v. *Hunt*, 47 L. J. P. D. & A. 22; 39 L. T. 45: *Barnes* v. *Barnes*, L. R. 1 P. & D. 507; 37 L. J. P. & M. 4: *Bacon* v. *Bacon*, 25 W. R. 560: *Alexandre* v. *Alexandre*, L. R. 2 P. & D. 164; 39 L. J. P. & M. 84: *Butler* v. *Butler*, 59 L. J. P. D. & A. 25; 15 P. D. 66; 62 L. T. 344; 38 W. R. 390); but it also includes an agreement whereby the initiation of a suit is procured, or its conduct (espy if abstention from defence be a term) is provided for (*Churchward* v. *Churchward*, 1895, P. 7; 64 L. J. P. D. & A. 18; 71 L. T. 782; 43 W. R. 380: *Vf*, *Rogers* v. *Rogers*, 1894, P. 161; 63 L. J. P. D. & A. 97; 70 L. T. 699). *V.* CONNIVANCE.

So, a statement that an Architect neglects to give his Certificate to a Building Contractor "in Collusion, and with the Procurement" of the Building Owner, imports an allegation of fraud (*Batterbury* v. *Vyse*, 32 L. J. Ex. 177; 2 H. & C. 44).

COLONIAL.—Colonial *Court of Admiralty*; *V.* 53 & 54 V. c. 27; Mer Shipping Act, 1894, s. 742.

"Colonial" *Goods*, even in a Colonial Statute or Regulation, *e.g.* "Colonial Wine" in a New South Wales tariff of Railway Rates, means the goods of any Colony (*Commrs of Railways* v. *Hyland*, 56 L. J. P. C. 76; 56 L. T. 896).

Quà 53 & 54 V. c. 27, "'Colonial *Law*,' means, any Act, Ordinance, or other Law, having the force of legislative enactment in a BRITISH POSSESSION, and made by any authority (other than the Imperial Parliament or Her Majesty in Council) competent to make laws for such Possession" (s. 15). Other Stat. Def., 28 & 29 V. c. 63, s. 1.

In all Acts of Parliament passed after the 31st Dec 1889, "the expression 'Colonial *Legislature*,' and the expression 'Legislature,' when used with reference to a BRITISH POSSESSION, shall respectively mean the authority (other than the Imperial Parliament of Her Majesty the Queen in Council) competent to make laws for a British Possession" (s. 18 (7), Interp Act, 1889). Former Stat. Def., 26 & 27 V. c. 84, s. 1; 28 & 29 V. c. 63, s. 1; 31 & 32 V. c. 29, s. 2.

"Colonial *Letter*"; *V.* 7 W. 4 & 1 V. c. 36, s. 47; 7 & 8 V. c. 49, s. 8.

"Colonial *Lights*"; *V.* 61 & 62 V. c. 44, s. 7.

"Colonial *Newspapers*"; *V.* 7 W. 4 & 1 V. c. 36, s. 47.

"Colonial *Postage*"; *V.* 7 & 8 V. c. 49, s. 10.

"Colonial *Secretary*"; *V.* 47 & 48 V. c. 31, s. 18.

"Colonial *Stock*"; *V.* 40 & 41 V. c. 59, s. 26.

Quà Part 3, Mer Shipping Act, 1894, "'a Colonial *Voyage*,' means, a voyage from any Port in a BRITISH POSSESSION (other than British India and Hong Kong) to any Port whatever, where the distance between such Ports exceeds 400 miles, or the duration of the voyage, as determined under this Part of this Act, exceeds 3 days" (s. 270). This def is adapted from 18 & 19 V. c. 119, s. 95.

COLONY. — "The word 'Colonies' in the statute — 5 & 6 V. c. 49, s. 2 — must extend to all Colonies, in the absence of a context to control it; and I can find here no such context" (per Turner, L. J., *Low* v. *Routledge*, 35 L. J. Ch. 116; 1 Ch. 42).

In all Acts of Parliament passed after the 31st Dec 1889, "'Colony' shall mean any part of Her Majesty's Dominions, exclusive of the BRITISH ISLANDS, and of BRITISH INDIA; and where parts of such Dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one Colony" (s. 18 (3), Interp Act, 1889).

This def condenses, and makes more precise, those in 40 & 41 V. c. 59, s. 26; 42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 58, s. 190 (23).

Other Stat. Def. — 23 & 24 V. c. 88, s. 1; 31 & 32 V. c. 29, s. 2; 32 & 33 V. c. 10, s. 2; 37 & 38 V. c. 27, s. 2; 46 & 47 V. c. 30, s. 2.

"Colonies," quà Federal Council of Australasia Act, 1885, 48 & 49 V. c. 60; *V.* s. 1.

V. BRITISH COLONY: CROWN: ISLE OF MAN: MAJESTY: SELF.

Lord COLONSAY'S ACT. — The Writs Registration (Scot) Act, 1868, 31 & 32 V. c. 34.

COLOUR. — "'Colour of OFFICE,' is always taken in the worst part, and signifies an act evill doue by the countenance of an Office, and it bears a dissembling face of the right of the Office, whereas the Office is but a veil to the falshood, and the thing is grounded upon Vice, and the Office is as a shadow to it. But 'BY REASON of the Office' and 'BY VIRTUE of the Office' are taken always in the best part" (Termes de la Ley).

Colour in Pleading; *Vh* Stephen on Pleading, 4 ed. 228: "Express Colour no longer necessary in any pleading" (s. 64, Com. L. Pro. Act, 1852).

COLOURABLE. — Is the reverse of BONÂ FIDE; *V.* jdgmt of James, L. J., *Etherington* v. *Wilson*, 45 L. J. Ch. 156; 1 Ch. D. 160.

COLOURABLY IMITATE. — *V.* COPY.

COLT. — *V.* HORSE.

COMBE.—"*Combe, hope, dene, glyn, hawgh, howgh,* signifieth a valley" (Co. Litt. 5 b): *V.* DENE: HOPCOMBE.

COMBINATION.—"'Combination of Machinery,' which has become a favourite form of words with Patentees, is nothing but an extended expression of the word 'Machine.' It is 'machine' writ large" (per Westbury, C., *Foxwell* v. *Bostock*, 4 D. G. J. & S. 311).

Trade Combination to prevent competition not actionable (*Mogul Co.* v. *McGregor*, cited MALICE). *V.* TRADE UNION: CONSPIRACY.

COMBUSTIBLE.—*V.* INCOMBUSTIBLE.

"Gunpowder or other Combustible Matter," in a Patent Specification; *V. Bickford* v. *Skewes*, 1 Q. B. 938.

COME TO.—An instrument, fact, or thing, does not "Come to the Knowledge" of counsel, &c, within s. 3 (ii), Conv. Act, 1882, simply because he knew it on a former occasion (*Re Cousins*, 55 L. J. Ch. 662; 31 Ch. D. 671; 54 L. T. 376; 34 W. R. 393).

"Come to," as used in a Covenant to Settle after-acquired property, includes property of which the possession is future although the right thereafter to possess it is then vested (per Romilly, M. R., *Exp. Blake*, 16 Bea. 470); and it was there held that the phrase included proceeds of realty taken by a Public Co which realty was vested in remainder at the time of the Settlement. *Vf, Blythe* v. *Granville*, 13 Sim 190, on *whcv* Vaizey, 242, *n*: ENTITLED: VEST.

A legacy to a married woman, unpaid before her DESERTION, "comes to" her after her desertion within s. 25, 20 & 21 V. c. 85 (*Re Coward and Adams*, 44 L. J. Ch. 384; L. R. 20 Eq. 179). *V.* ACQUIRE.

"In case A. should come to *the Possession* of the said estate"; held as not creating a Condition (*Edgeworth* v. *Edgeworth*, L. R. 4 H. L. 35): come to an estate "in Possession," *V. Hill* v. *Broughton*, 3 Bro. C. C. 180. *Vf* POSSESSION.

COMFORT.—In a direction to apply Income for a person's "Comfort," that is a "very large word" (per Wood, V. C., *Re Sanderson*, cited WHOLE). In America it has been held that the word embraces whatever is requisite to give security from want, or furnish reasonable physical, mental, or spiritual, enjoyment (*Forman* v. *Whitney*, 2 Keyes, 168). *Cp* MAINTENANCE.

COMFORTABLE MAINTENANCE.—These words, in a provision by deed for the widows of officers in the East India Company coupled with a restriction on alienation, were held to vest the provision for the SEPARATE USE of the beneficiaries (*Re Peacock*, 48 L. J. Ch. 265; 10 Ch. D. 490). *Vf*, MAINTENANCE: SEPARATE MAINTENANCE.

COMING. — "Coming to settle," 13 & 14 Car. 2, c. 12; *V. R.* v. *Bowness*, 4 M. & S. 210: *R.* v. *Kenardington*, 6 B. & C. 70: *R.* v. *Nacton*, 3 B. & Ad. 543: *R.* v. *Woolpit*, 5 L. J. M. C. 14; 4 A. & E. 205; 5 N. & M. 526: *R.* v. *St. Giles*, 11 L. J. M. C. 18; 2 Q. B. 446.

Moneys "coming to the hands of the Commrs," s. 60, Commrs Clauses Act, 1847, are not confined to moneys actually received, but also include moneys receivable for Toll or Rents (*Batten* v. *Dartmouth Harbour Commrs*, cited COMMISSIONERS).

COMMAND. — A Steamship, though partially disabled yet, able to proceed at 4 or 5 knots an hour, is not within the phrase "not under Command," Art. 5 (*a*), Regns of 1884 for Preventing Collisions at Sea (*P. Caland Owners* v. *Glamorgan S. S. Co*, 1893, A. C. 207; 62 L. J. P. D. & A. 41; 68 L. T. 469).

When that case was in the Court of Appeal, Esher, M. R., said (1892, P. 196), —"Now, looking at the words of the statute, the first part of the clause which speaks of her not being under Command, and the second of her not being under Command so that she can keep out of the way, — taking these two together, it seems to me that the real construction of the rule is, that she must, through some accident, be in such a position that she is not 'under Command' in this sense that she cannot keep out of the way of another vessel coming near her." But "if she can be steered, and if she can be stopped, and can go ahead which is necessary in order that she may be steered, then she is 'under Command'; and the apprehension, however well founded, of her being likely in a few moments to be out of Command, does not show that she is out of Command at the moment spoken of." Quoting that passage, Herschell, C., in the H. L., said, — "I cannot but think that this construction is somewhat too narrow"; but the decision of the Court of Appeal was affd.

A Vessel hard-and-fast aground, is not a Vessel "not under Command," within Art. 4 (*a*), Regns of 1897 for Preventing Collisions at Sea (*The Carlotta*, 1899, P. 223; 68 L. J. P. D. & A. 87; 80 L. T. 664; 47 W. R. 702).

"Under Command," R. 18, Thames Rules, 1880, as amended by Order in Council 29th Dec 1887; *V. The Wega*, 1895, P. 156; 64 L. J. P. D. & A. 68; 72 L. T. 332.

Cp, CONTROL: UNDER-WAY.

COMMANDER IN CHIEF. — Stat. Def., 33 & 34 V. c. 7, s. 103; 42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 58, s. 190.

COMMANDING OFFICER. — Stat. Def., 38 & 39 V. c. 69, s. 2; (of a Corps) 36 & 37 V. c. 77, s. 43.

COMMENCE. — *V.* COMMENCEMENT.

COMMENCED. — An action is "commenced" by Writ or Originating Summons, and as soon as the same is sealed (*Galland* v. *Burton*, 30 Ch. D. 231; 54 L. J. Ch. 1131: *Clarke* v. *Bradlaugh*, 51 L. J. Q. B. 1, 8 Q. B. D. 63).

"Any Action commenced," &c, s. 5, Co. Co. Act, 1867, meant "Any action commenced in the High Court, and which could have been commenced in the County Court" (*Parsons* v. *Tinling*, 46 L. J. C. P. 230; 2 C. P. D. 119).

"Any Court in which the action *might have been* commenced," s. 65, Co. Co. Act, 1888, includes a County Court in which the action might be brought by leave (*Burkill* v. *Thomas*, 1892, 1 Q. B. 99, 312; 61 L. J. Q. B. 322; 66 L. T. 150; 40 W. R. 250).

A clause in a Separation Deed, that "no PROCEEDINGS shall be commenced, or prosecuted" for any prior cause of complaint, is not broken by one of the parties using such prior cause as a *Defence* to a matrimonial suit brought by the other party (*Gooch* v. *Gooch*, 1893, P. 99; 62 L. J. P. D. & A. 73; 68 L. T. 462; 41 W. R. 655). *Note.* A covenant not to sue for a Divorce grounded on *future* misconduct, is, probably, invalid (*Bishop* v. *Bishop*, 66 L. J. P. D. & A. 75). *V.* CONDONATION.

V. SET UP.

COMMENCEMENT. — The "Commencement" of every Act of Parliament, means "the time at which the Act comes into operation" (s. 36 (1), Interp Act, 1889). *Cp* PASSING. *V.* DAY.

"Commencement of the Bankry," s. 42 (1), Bankry Act, 1883, means, the ACT OF BANKRY on which the bankry is founded (*Re Griffith*, 66 L. J. Q. B. 763).

"Commence to form or lay out a STREET," quà Part 2, London Bg Act, 1894; *V.* s. 8. *Vth, London Co. Co.* v. *Dixon*, 1899, 1 Q. B. 496; 68 L. J. Q. B. 526; 80 L. T. 232; 47 W. R. 521; 63 J. P. 390: *Armstrong* v. *London Co. Co.*, 1900, 1 Q. B. 416; 69 L. J. Q. B. 267; 81 L. T. 638; 48 W. R. 367; 64 J. P. 197. *Cp* NEW STREET.

"Commence to execute a Work"; *V.* s. 10 (3), London Bg Act, 1894.

As to the common clause in Railway Acts giving compensation to land-owners out of deposits (when the line is not opened in a certain time) for damages occasioned "by the Commencement, Construction, or Abandonment," of the railway; *V. Re Potteries, Shrewsbury & N. Wales Ry*, 53 L. J. Ch. 556; 25 Ch. D. 251. That case lays it down that this phrase is to be read disjunctively, and that the damages are to be ascertained by comparing the value of the land immediately before such commencement or construction or abandonment, with its value immediately after the happening of any of those three events. *Vf* ABANDONMENT: BEGIN.

An application to tax costs of an Appeal to Quarter Sessions, is not a "Commencement" of Proceedings, within s. 4, 22 & 23 V. c. 49 (*Mid.*

Ry v. *Edmonton*, 1895, A. C. 485; 64 L. J. Q. B. 710; 72 L. T. 811; 60 J. P. 68).

"Commencement" of Prosecution, under s. 5, 48 & 49 V. c. 69; *V. R.* v. *West*, 1898, 1 Q. B. 174; 67 L. J. Q. B. 62; 77 L. T. 536; 46 W. R. 316.

"Commencement of Proof in Writing," Art. 1233 (7), Civil Code of Quebec, so as to let in Proof "by Testimony"; *V. Forget* v. *Baxter*, cited TESTIMONY.

"At the Commencement," s. 2, 23 H. 8, c. 15; *V. Doe* d. *Ellis* v. *Owens*, 11 L. J. Ex. 120; 9 M. & W. 455.

Cp INSTITUTED.

COMMENDAM. — "Is a BENEFICE that being voyde is commended to the care of some sufficient Clerke, to bee supplied untill it may bee conveniently provided of a Pastor" (Termes de la Ley). A Rector by merely accepting another Benefice does not vacate the Rectory; and, continuing to hold it, he does not hold it "In Commendam" (*King* v. *Alston*, 12 Q. B. 971; 18 L. J. Q. B. 59). Bishops may not now hold Commendams (6 & 7 W. 4, c. 77, s. 18).

Vh, *Colt & Glover* v. *Coventry & Lichfield Bp*, Hob. 140: Godolphin's Abr. Ecc. Law, ch. 21: 4 Bl. Com. 107: Phil. Ecc. Law, 380, 503.

COMMENT. — *V.* FAIR COMMENT.

A person charged not becoming a Witness, "shall not be made the subject of any Comment *by the Prosecution*," s. 1 *b*, Criminal Evidence Act, 1898; that does not prevent the presiding Judge or Chairman from making such comment (*R.* v. *Rhodes*, cited STAGE).

COMMERCE. — Commerce is "Traffick, Trade, or Merchandize, in buying and selling of goods. There is a distinction between Commerce and TRADE; the former relates to our dealings with Foreign Nations or our Colonies, &c abroad, — the other to our mutual traffick and dealings among ourselves at Home" (Jacob: *People* v. *Fisher*, 14 Wend. 15: *Va* MERCHANT). But this distinction may be questioned.

"Trade or Commerce"; *V.* CIVIL RIGHTS.

COMMERCIAL. — "Commercial *Causes*," within the Order for prompt trial, includes causes arising out of the ordinary transactions of Merchants and Traders; amongst others, those relating to the Construction of Mercantile Documents, Export or Import of Merchandize, Affreightment, Insurance, Banking, and Mercantile Agency and Usages (par 1, Notice 25th June 1896). A question of International Law as to whether a seizure of goods was justified under a Proclamation by a Foreign Sovereign, is not such a "Commercial Cause" (*Sea Insrce* v. *Carr*, 69 L. J. Q. B. 954; 83 L. T. 517; 49 W. R. 55; 1901, 1 Q. B. 7).

"Wherever Capital is to be laid out on any work and a risk run of

profit or loss, it is a Commercial *Venture*" (per Campbell, C., *McKay* v. *Rutherfurd*, 6 Moore P. C. 425; 13 Jur. 23); accordingly, it was there held that a contract with the Government Commissioner in Canada to supply stone for making a canal, was not a mere Building Contract but, was a "Commercial *Matter*," within the Canadian Act, 25 G. 3, c. 2. Buying and selling Shares by Stock-brokers for a client who is not himself a Dealer, are "Commercial Matters" provable by Testimony, under the Quebec Civil Code (*Forget* v. *Baxter*, cited TESTIMONY).

An Incorporated Canal Co, whose profits arose from Tolls, was held a "Commercial Co," or a Co associated for "Commercial Purposes," and, as such, liable to become bankrupt under s. 1, 7 & 8 V. c. 111 (*Re Warwick & Napton Canal Co*, 7 D. G. M. & G. 199, *n*).

Commercial Traveller; *V.* TRAVELLER.

COMMISSARY. — "Commissary," or "Commissary Clerk," is frequently made to include Commissary Clerk Depute, *e.g.* 16 & 17 V. c. 27, s. 1; 21 & 22 V. c. 56, s. 20; 38 & 39 V. c. 41, s. 6.

COMMISSION. — "'Commission,' is taken for the Warrant or Letters Patents which all men using Jurisdiction, either ordinarie or extraordinarie, have for their power to heare or determine any matter or action" (Termes de la Ley).

"Land Commission"; Stat. Def. (Ir), 48 & 49 V. c. 73, s. 26; 54 & 55 V. c. 66, s. 95.

"The word 'Commission' is one of equivocal meaning. It is used to denote a Trust or Authority exercised, or the Instrument by which the Authority is exercised, or the Persons by whom the Trust or Authority is exercised" (per Abbott, C. J., *R.* v. *Dudman*, 4 B. & C. 854).

"Office, Commission, Place, or Employment"; *V.* OFFICE.

"In Trust, or on Commission"; *V.* IN TRUST.

V. ACCRUING: BRIBERY: CONDUCTING: FREE OF COMMISSION: INTERVENTION: INTRODUCE: SALEABLE COMMISSION.

COMMISSIONER. — Quà Inl. Rev. Regn Act, 1890, 53 & 54 V. c. 21, "'Commissioner,' means Commr of Inl. Rev." (s. 39).

"Debt Commr"; *V.* 41 & 42 V. c. 51, s. 3.

"Commr for Oaths," quà Mer Shipping Act, 1894; *V.* s. 742.

"Commr of Police"; *V.* 30 & 31 V. c. 134, s. 3.

"Commr of Valuation"; *V.* Loc Gov (Ir) Act, 1898, s. 109.

"Lord Commr of Justiciary," in Scotland; *V.* 50 & 51 V. c. 35, s. 1.

"Lord High Commr"; *V.* 23 & 24 V. c. 86, s. 12; 27 & 28 V. c. 77, s. 17.

COMMISSIONERS. — In a modern Act the meaning of "The Commissioners" will generally be ascertained by referring to its Interp Clause, which usually defines the phrase according to the subject-matter

of the Act; *e.g.* quà Finance Act, 1894, "'the Commrs,' means, the Commrs of Inl. Rev." (s. 22).

"Commrs of *Assessed Taxes*"; *V.* 9 & 10 V. c. 56, s. 3.

"*Charity* Commrs"; *V.* s. 12 (14), Interp Act, 1889.

"Commrs of *Customs*"; *V.* 16 & 17 V. c. 107, s. 357; 19 & 20 V. c. 83, s. 2.

V. Ecclesiastical Commissioners.

"Commrs of *Education*," in Ireland; *V.* 38 & 39 V. c. 96, s. 2; 42 & 43 V. c. 74, s. 2.

"*Election* Commrs"; *V.* Election.

"*Endowed Schools* Commrs"; *V.* 37 & 38 V. c. 87, s. 9.

"Commrs of *Excise*"; *V.* 53 & 54 V. c. 21, s. 37.

"*Exhibition* Commrs"; *V.* 26 & 27 V. c. 119, s. 3.

"*Galway Harbour* Commrs"; *V.* 30 & 31 V. c. 56, s. 3.

"*Gas* Commrs," in Scotland; *V.* 53 & 54 V. c. 13, s. 4.

"*General* Commrs," of Taxes; *V.* 43 & 44 V. c. 19, s. 5.

"*Improvement* Commrs"; *V.* 35 & 36 V. c. 79, s. 60; P. H. Act, 1875, s. 4.

"Commrs of *Inland Revenue*"; *V.* 53 & 54 V. c. 21, s. 1.

"*Ipswich Dock* Commrs"; *V.* 26 & 27 V. c. 71, s. 2.

"*Irish Fishery* Commrs"; *V.* 31 & 32 V. c. 45, s. 5.

"Commrs of *Irish Lights*"; *V.* Mer Shipping Act, 1894, s. 742.

"*Land* Commrs"; *V.* Settled Land Act, 1882, s. 2; 51 & 52 V. c. 20, s. 12.

"*Land Tax* Commrs"; *V.* 43 & 44 V. c. 19, s. 5.

"*National Debt* Commrs"; *V.* National Debt.

"Commrs of *Northern Lighthouses*"; *V.* 16 & 17 V. c. 131, s. 1.

"Commrs for *Oaths*"; *V.* Commrs for Oaths Act, 1889, 52 & 53 V. c. 10.

"Commrs for *Offices*"; *V.* 9 & 10 V. c. 56, s. 3.

"*Police* Commrs," in Scotland; *V.* 53 & 54 V. c. 13, s. 4, c. 60, s. 6:—"Commrs of Police," in Ireland; *V.* 5 & 6 V. c. 24, s. 79; 6 & 7 V. c. 56, s. 38; 16 & 17 V. c. 112, s. 80; 22 & 23 V. c. 52, s. 1.

"Commrs of the Police of the Metropolis," when applied to Ireland, means the Dublin Commrs of Police; *V.* 8 & 9 V. c. 109, s. 24; 16 & 17 V. c. 119, s. 18.

"*Poor Law* Commrs"; *V.* Poor Relief (Ir) Act, 1838, 1 & 2 V. c. 56, s. 118.

"Commrs of *Public Works*," in Ireland; *V.* 2 & 3 V. c. 50, s. 10; 6 & 7 V. c. 44, s. 18; 29 & 30 V. c. 44, s. 2; 30 & 31 V. c. 53, s. 3, c. 56, s. 3; 42 & 43 V. c. 25, s. 2.

"Commrs of the *Property and Income Tax*"; *V.* 9 & 10 V. c. 56, s. 3:—"Additional Commrs" and "Special Commrs," of same; *V.* 9 & 10 V. c. 56, s. 3; 43 & 44 V. c. 19, s. 5.

"Metropolitan Commrs of *Sewers*"; *V.* 11 & 12 V. c. 112, s. 3.

"Commrs of *Stamps and Taxes*"; 53 & 54 V. c. 21, s. 37.

"Commrs of *Supply*," in Scotland; *V.* 20 & 21 V. c. 72, s. 78.

"*Town* Commrs"; *V.* 10 & 11 V. c. 17, s. 3. — *Ir.* 9 & 10 V. c. 87, s. 2; 18 & 19 V. c. 40, s. 3; 29 & 30 V. c. 44, s. 2; 46 & 47 V. c. 33, s. 8.

"Commrs of *Woods and Forests*"; *V.* s. 12 (12), Interp Act, 1889.

"Commrs of *Works*"; *V.* 12 (13), Interp Act, 1889.

"Commrs, Trustees, or other Authorities," s. 112, Metrop Man. Act, 1862, does not include TURNPIKE ROAD Trustees but, means Authorities who have the general control of highways within their district (*Davis* v. *Greenwich*, 1895, 2 Q. B. 219; 64 L. J. M. C. 257; 72 L. T. 674; 59 J. P. 517).

"Commrs," entitled to indemnity under s. 60, Commrs Clauses Act, 1847, includes an Incorporated Body as well as individuals (*Batten* v. *Dartmouth Harbour Commrs*, 59 L. J. Ch. 700; 45 Ch. D. 612).

COMMIT. — In dealing with the phrase "commit SUICIDE," Pollock, C. B., in *Clift* v. *Schwabe* (17 L. J. C. P. 14; 3 C. B. 437), said, "The meaning of 'commit' in *Johnson* (with reference to this use of the word) is 'to perpetrate' — to do a fault — to be guilty of a crime"; and "'perpetrate' is to commit, to act, — always in an ill sense." In the same case (p. 9, L. J.), Patteson, J., said, — "The word 'commit' is said always to be used in a bad sense — be it so"; but he proceeded to show that it is not always used in a *criminal* sense, and that view accords with the judgment of the majority of the Ex. Cham. in the case cited: indeed, the state of a person's mind is immaterial, and, therefore, an Insane Person can commit suicide (*Dufaur* v. *Professional Life Assrce*, cited SUICIDE).

Commit Injury; *V.* INJURY.

COMMITS. — This word in the Bankry Act, 1883, is used in the present tense, not in relation to time, but as the present tense of logic, and means "shall have committed" an Act of Bankruptcy (*Ex p. Pratt*, 53 L. J. Ch. 613; 12 Q. B. D. 334; *V.* espy jdgmts by Bowen and Fry, L. JJ.).

COMMITTED: COMMITMENT: COMMITTAL. — The words "commitment," "committed," or "committal to prison," do not mean, as was held by Lush, J., "received into prison"; but mean "when the order is made under which the person is to be kept in prison" (per Ld Blackburn, *Mullins* v. *Surrey*, 51 L. J. Q. B. 149; and per Ld Penzance, Ib. 152); and the words "Period of Committal," s. 57, Prison Act, 1877, 40 & 41 V. c. 21, mean that the expenses which (by the joint operation of that section and s. 4) are to be defrayed out of moneys to be provided by Parliament, are to be so paid from the time of the making out of the Order of Committal (*Mullins* v. *Surrey*, 51 L. J. Q. B. 145;

7 App. Ca. 1: *Mews* v. *The Queen*, 52 L. J. M. C. 57; 8 App. Ca. 339). *V.* IMPRISONMENT: MAINTENANCE.

"Committed" will sometimes include an act of OMISSION, *e.g.* as regards Notice of Action within a certain time "next after the fact committed," s. 109, Highway Act, 1835 (*Holland* v. *Northwich*, 40 J. P. 517; 34 L. T. 137). *Sv* DONE.

COMMITTED FOR TRIAL. — In all Acts of Parliament passed after the 31st Dec 1889, "'Committed for Trial,' used in relation to any person shall, unless the contrary intention appears, *mean*, as respects England and Wales, committed to prison with the view of being tried before a judge and jury, whether the person is committed in pursuance of s. 22 or of s. 25, Indictable Offences Act, 1848, or is committed by a Court, Judge, Coroner, or other authority having power to commit a person to any prison with a view to his trial; and shall *include* a person who is admitted to bail upon a recognizance to appear and take his trial before a judge and jury" (s. 27, Interp Act, 1889).

Other Stat. Def. — 52 & 53 V. c. 44, s. 17. — *Ir.* 45 & 46 V. c. 25, s. 35; 57 & 58 V. c. 27, s. 19, c. 41, s. 27.

"Committed for trial at the Assizes"; *V. R.* v. *Johnson*, 10 A. & E. 740; 8 L. J. M. C. 99; 2 P. & D. 610.

COMMITTED TO PRISON. — *V.* COMMITTED.

COMMITTEE. — "'Committee,' is hee to whom the consideration or ordering of any matter is referred either by some Court, or Consent of the Parties to whom it appertains" (Termes de la Ley).

"The term 'Committee' means an individual, or body to which others have committed or delegated a particular duty, or who have taken on themselves to perform it, in the expectation of their act being confirmed by the body they profess to represent or act for" (per Pollock, C. B., *Reynell* v. *Lewis*, 16 L. J. Ex. 30; 15 M. & W. 526).

"I observed in the argument that, according to one's ordinary idea of the meaning of the word, a 'Committee' consists of more persons than one. But I was not right in saying that; because that is not *ex vi termini* the necessary meaning of the word 'Committee,' which simply means a person or persons to whom anything is committed" (per Kay, J., *Re Scottish Petroleum Co.*, 51 L. J. Ch. 845). *Vf*, *Re Taurine Co*, 25 Ch. D. 118; 53 L. J. Ch. 271.

V. PROVISIONAL COMMITTEE.

Quâ Friendly Soc. Act, 1896. 'Committee" means, "the Committee of Management or other Directing Body of a Society or Branch" (s. 106); omitting "or Branch," a like def is provided for Industrial Societies (56 & 57 V. c. 39, s. 79).

"Committee of Council"; *V.* 46 & 47 V. c. 18, s. 27.

"Committee of Council on Education"; *V.* 32 & 33 V. c. 56, s. 7.

"Committee" of a Public Library in Scotland; *V.* 50 & 51 V. c. 42, s. 2.

"Union Assessment Committee"; *V.* 25 & 26 V. c. 103.

"Committee" of an Idiot or LUNATIC; *V.* 9 & 10 V. c. 75, s. 3.

"Committee Room"; Corrupt and Illegal Practices Prevention Act, 1883, s. 64.

COMMITTING. — "Found committing"; *V.* FOUND.

COMMODITIES. — *V.* ADVANTAGES: GOODS OR COMMODITIES.

COMMON. — "'Common and USUAL' *Covenants*, must mean, Covenants incidental to," *e.g.* a Lease (per Thurlow, C., *Henderson* v. *Hay*, 3 Bro. C. C. 632); but, probably, there is no distinction between "Common" and "Usual" covenants, nor does "INCIDENTAL" furnish an explanation or carry the meaning further (*Church* v. *Brown*, 12 Ves. 260, 264).

"'Common *of Pasture*' — *Communia*, it cometh of the English word common, because it is common to many; and thereupon and accordingly is here (s. 184) called by *Littleton* Common of Pasture, for that the feeding of beasts in the land wherein the common is to be had belongs to many" (Co. Litt. 122 a).

"'Common *in Grosse*,' is where I, by my Deed, grant to another that he shall have Common in my land.

"'Common *Appendant*,' is where a man is seized of certaine land to the which he hath Common in another's ground, and all they that shall bee seized of the land have the said Common onely for those Beasts which compast the land to which it is appendant, excepting Geese, Goats, and Hogges.

"'Common *Appurtenant*,' is in the same manner as Common Appendant. But it is with all manner of Beasts, as well Hogs, Goats, and such like as Horses, Kine, Oxen, Sheepe, and such as compast the ground.

"'Common *pur Cause de Vicinage*,' is where the Tenants of two Lords which be seized of two Townes where one lyeth nigh another, and every of them have used, from the time whereof no minde runneth, to have Common in the other Towne with all manner of Beasts commonable" (Termes de la Ley).

A Grant, by general words in a Conveyance of DEMESNE land from a Lord of a Manor, of "Commons" "belonging to" or "held, used, and enjoyed with," the tenement conveyed, will not create a Right of Common (*Baring* v. *Abingdon*, 1892, 2 Ch. 374; 62 L. J. Ch. 105; 67 L. T. 6; 41 W. R. 22: *Hall* v. *Byron*, 46 L. J. Ch. 297; 4 Ch. D. 667), unless the grantee, from his existing position, *e.g.* as lessee of the grantor, is already in the enjoyment of such a Right (*Doidge* v. *Carpenter*, 6 M. & S. 17). *Note.* Where Common, whether Appendant or Appurtenant,

exists at the time of the grant, then, on the grant of a part of the tenement, there will be a due apportionment of the Right of Common (*Sacheverell* v. *Porter*, Jo. W. 396: *Wyat Wild's Case*, 8 Rep. 78 b). *Vf* BELONGING.

Vh, Elph. 607–615: LEVANT AND COUCHANT: PASTURES: PASTURAGE.

Quà Part 1, Commons Act, 1899, 62 & 63 V. c. 30, "Common" includes, "any land subject to be inclosed under the Inclosure Acts, 1845 to 1882; and any town or village Green" (s. 15; extending def in 39 & 40 V. c. 56, s. 37). This def is adopted for Light Railways Act, 1896 (s. 21).

Quà Metropolitan Commons; *V.* 29 & 30 V. c. 122, s. 3, extended by 32 & 33 V. c. 107, s. 2.

"There be also divers other commons, as of Estovers, of Turbary, of Pischary, of digging for coles, minerals and the like" (Co. Litt. 122 a). *V.* FISHERY.

"Common of Faldage"; *V.* FOLDCOURSE.

The Statute of MERTON, authorising APPROVEMENT of Commons when SUFFICIENT PASTURE is left to satisfy "Common of Pasture," does not give power to enclose against other kinds of Common, *e.g.* Turbary, Estovers (2 Inst. 87: *Fawcett* v. *Strickland*, Willes, 57: *Grant* v. *Gunner*, 1 Taunt. 435), nor as against rights to dig gravel (*Duberley* v. *Page*, 2 T. R. 391); though a CUSTOM to approve against such rights may be valid (*Arlett* v. *Ellis*, 7 B. & C. 346).

Generally as to Commons; *V.* Wms. on Rights of Common: Elton on Commons: 3 Cru. Dig. 65: Add. T. 284–289: Jacob: 3 Encyc. 135–140.

"The word 'Commons' means as often lands where rights of common are exercised, as common unenclosed open land where there are no commonable rights" (per Watson, B., *A-G.* v. *Hanmer*, 27 L. J. Ch. 841).

"Common" land, espy when the word is used in a modern document, may mean simply, land for Public Enjoyment: *V.* PERMANENT.

V. RIGHT OF COMMON.

COMMON AND NOTORIOUS. — A person is not a "Common and Notorious" Depraver of the Common Prayer (Canons, 1603, No. 27), who, at solicitation, sends a friendly and private letter wherein the Common Prayer is depraved (*Jenkins* v. *Cook*, 45 L. J. P. C. 1; 1 P. D. 80). *V.* DEPRAVE: EVIL LIVER.

COMMON BAWDY HOUSE. — *V.* BROTHEL.

Vh, Arch. Cr. 1139: Rosc. Cr. 704.

COMMON BETTING HOUSE. — *V.* 16 & 17 V. c. 119, s. 1, on *whv Caminada* v. *Hulton*, cited BET. Every Common Betting House is a COMMON GAMING HOUSE (Ib. s. 2). *Vf*, Arch. Cr. 1136: 2 Encyc. 67–70.

COMMON CARRIER. — "Any one who undertakes to carry the Goods of all persons indifferently, for Hire, is a Common Carrier" (*Gisbourne* v. *Hurst*, 1 Salk. 249), a definition which may include Hoymen, Bargemen, Lightermen, and Masters of Ships or Vessels (*Morse* v. *Slue*, Ventr. 190, 238: *Ingate* v. *Christie*, 3 C. & K. 61: *Maving* v. *Todd*, 1 Stark. 72: *Rich* v. *Kneeland*, Cro. Jac. 330: *Liver Alkali Co* v. *Johnson*, L. R. 7 Ex. 267; 41 L. J. Ex. 110; 20 W. R. 633; 26 L. T. 805; *Laveroni* v. *Drury*, 8 Ex. 166; 22 L. J. Ex. 2).

"The criterion is, whether he carries for particular persons only, or whether he carries for every one" (per Alderson, B., *Ingate* v. *Christie*, sup) between stated places. Therefore, a Town Carman (*Brind* v. *Dale*, 8 C. & P. 207; 2 Moo. & R. 80), a jobbing Furniture Remover (*Scaife* v. *Farrant*, L. R. 10 Ex. 358; 44 L. J. Ex. 234), a Cab Driver (*Ross* v. *Hill*, 15 L. J. C. P. 182; 2 C. B. 877) are not Common Carriers; as to Lightermen, *V. Chattock* v. *Bellamy*, 64 L. J. Q. B. 250: *Thomas* v. *Brown*, 4 Com. Ca. 186.

A Carrier of Passengers is not, as such, a Common Carrier (*Sharp* v. *Grey*, 9 Bing. 457: *Redhead* v. *Mid Ry*, L. R. 4 Q. B. 379; 38 L. J. Q. B. 169: *Daniel* v. *Metrop Ry*, L. R. 5 H. L. 45: *Pounder* v. *N. E. Ry*, 1892, 1 Q. B. 385; 61 L. J. Q. B. 136; 65 L. T. 679; 40 W. R. 189; 56 J. P. 247: *Cobb* v. *G. W. Ry*, 1894, A. C. 419; 63 L. J. Q. B. 629; 71 L. T. 161; 58 J. P. 636). Where, however, a Carrier of Passengers also holds himself out as a Carrier of Goods (even though he take no specific payment for the latter service) he is a Common Carrier quà the Goods; *e.g.* Hackney Coachmen (*Ross* v. *Hill*, sup: *Case* v. *Storey*, L. R. 4 Ex. 319), Ferrymen (*Willoughby* v. *Horridge*, 12 C. B. 742; 22 L. J. C. P. 90), Railway Companies (8 & 9 V. c. 20, ss. 86, 89: *Johnson* v. *Mid Ry*, 4 Ex. 367; 18 L. J. Ex. 366: *Dickson* v. *G. N. Ry*, 18 Q. B. D. 184).

As to Canal Companies; *V.* 8 & 9 V. c. 42, ss. 5, 6.

Vf, Macnamara on Carriers, ch. 3: Rosc. N. P. 622 Add. C. 931 *et seq*. Carver, 4–8: 2 Encyc. 385–395: Jacob.

V. Not as Common Carriers.

COMMON COUNCIL. — Quà Public Libraries Act, 1892, 55 & 56 V. c. 53 (and, probably, generally) "'Common Council,' means, in relation to the City of London, the Mayor, Commonalty, and Citizens, acting by the Mayor, Aldermen, and Commons, in Common Council assembled" (s. 27).

COMMON EMPLOYMENT. — As to when employees are engaged in a "Common Employment"; *V. Priestly* v. *Fowler*, 3 M. & W. 1; 7 L. J. Ex. 42: *Farwell* v. *Boston Railroad*, 4 Metcalf, 49; 3 Macq. H. L. 316: *Bartonshill Coal Co.* v. *McGuire*, 3 Macq. H. L. 300: *Johnson* v. *Lindsay*, 1891, A. C. 371; 61 L. J. Q. B. 90; 65 L. T. 97;

40 W. R. 405; 55 J. P. 644: *Cameron* v. *Nystrom*, 1893. A. C. 308; 62 L. J. P. C. 85; 68 L. T. 772; 57 J. P. 550: *The Petrel*, 1893, P. 320; 62 L. J. P D. & A. 92; *whlcv* for review of previous authorities. *Vf*, Rosc. N. P. 790: Beven, Bk. 4, ch. 5. The common employees need not both labour with their hands as Collaborateurs (*Johnson* v. *Lindsay*, sup).

COMMON FIELDS. — *V.* Elph. 566, 567.

COMMON FISHERY. — *V.* FISHERY.

COMMON FORM BUSINESS. — Quà Court of Probate Act, 1857, 20 & 21 V. c. 77, "Common Form Business," means "the business of obtaining Probate and Administration where there is no contention as to the right thereto; — including the passing of Probates and Administrations through the Court of Probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the Court in matters of testacy and intestacy not being proceedings in any suit, and also the business of lodging Caveats against the grant of probate or administration" (s. 2). *V.* TESTE.

COMMON FUND. — Stat. Def., 36 & 37 V. c 86, s. 27; 37 & 38 V. c. 88, s. 48; 43 & 44 V. c. 7, s. 2.

"Common Fund of the District"; *V.* 32 & 33 V. c 63, s. 23.

"Common Fund of the Union"; *V.* 59 & 60 V. c. 50, s. 19.

COMMON GAMING HOUSE. — "Is a house in which a large number of persons are invited (whether publicly or privately) habitually to congregate for the purpose of gaming" (per Hawkins, J., *Jenks* v. *Turpin*, 53 L. J. M. C. 166; 13 Q. B. D 505: *Vthc* for a collection of the authorities on this word. As to what is sufficient proof of a Common Gaming House, *V.* s. 2, 8 & 9 V. c. 109). A Betting House "shall be taken and deemed to be a Common Gaming House," within 8 & 9 V. c. 109 (s. 2, 16 & 17 V c. 119). *Vf*, COMMON BETTING HOUSE: USE.

"A Common Gaming House is a house kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which (*a*) a bank is kept by one or more of the players, exclusively of the others; or (*b*) in which any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet" (Steph. Cr. 122, 123). *Vh* 6 Encyc. 52–55.

COMMON GAS. — Quà Metropolis Gas Act, 1860, 23 & 24 V. c. 125, "Common Gas," means, Gas of an Illuminating Power as defined by s. 25, "of not less than 12 Candles" (s. 4). *Cp* CANNEL GAS.

COMMON INFORMER. — *V.* INFORMER.

COMMON INTEREST. — As to what is a "Common Interest" in the subject-matter of an Action justifying its Maintenance, *V. Alabaster* v. *Harness*, cited MAINTENANCE: and what will justify the Joinder of Defts, *V. Temperton* v. *Russell*, cited SAME, sub "Same Interest."

COMMON LAND. — The natural meaning of "Common, or Waste, Land" is, Land belonging to the Lord of the Manor but over which other persons have incorporeal rights; the phrase does not, of itself, include Open Fields, *e.g.* Lammas Lands, over which divers persons have rights in severalty (*Grand Union Canal Co.* v. *Ashby*, 6 H. & N. 394; 30 L. J. Ex. 203).

COMMON LAW. — The Common Law of England is, that Body of Law which has been judicially evolved from the general CUSTOM of the Realm. *Vh*, Termes de la Ley, *Common Ley*: Cowel: Jacob: 3 Encyc. 140–142.

COMMON LODGING HOUSE. — The phrase "Common Lodging House," ss. 76–89, P. H. Act, 1875, held to include a house in which hawkers and other persons of an itinerant character were received at 6*d.* a night, and eating their meals at a common table in the kitchen (*Langdon* v. *Broadbent*, 42 J. P. 56, 67; 37 L. T. 434; 47 L. J. Q. B. 275, *n* 11).

But it has been said that a "Common" Lodging House is one kept for Gain and which all classes of persons may use, — "Common Lodging House," "in its ordinary sense, means, a Lodging House kept for purposes of Profit and open to all comers, whether of a certain class or not" (per Mathew, J., *Booth* v. *Ferrett*, 25 Q. B. D. 89; 59 L. J. M. C. 137); and, accordingly, it was held, that a house kept only for the reception of men, and of such men only, as the Manager might think eligible and some of whom were allowed in at a less rate than the ordinary charge of 4*d.* a night and some of whom were admitted free, and the house was carried on partly with a charitable and religious object, was not a "Common Lodging House," within s. 3, Common Lodging Houses Act, 1853, 16 & 17 V. c. 41 (*S. C.* 25 Q. B. D. 87; 59 L. J. M. C. 136); but that conclusion was over-ruled by *Logsdon* v. *Booth*, 1900, 1 Q. B. 401; 69 L. J. Q. B. 131; 81 L. T. 602; 48 W. R. 266; 64 J. P. 165: *whlc* was followed in *Logsdon* v. *Trotter*, 1900, 1 Q. B. 617; 69 L. J. Q. B. 312; 82 L. T. 151; 48 W. R. 365; 64 J. P. 421.

Quà P. H. Scotland Act, 1897, "'Common Lodging House,' means, a house or part thereof where LODGERS are housed at an amount not exceeding 4*d.* per night, or such other sum as shall be fixed under the provisions of this Act, for each person, whether the same be payable

nightly or weekly or for any period not longer than a fortnight; and shall include any place where Emigrants are lodged, and all boarding-houses for Seamen, irrespective of the rate charged for lodging or boarding" (s. 3). *Cp*, the previous def 19 & 20 V. c. 103, s. 3; 30 & 31 V. c. 101, s. 3.

Quà P. H. Ireland Act, 1878, "'Common Lodging House,' means, a house in which, or in any part of which, persons are harboured or lodged, for HIRE, for a single night, or for less than a week at a time" (s. 2).

V. LODGING HOUSE.

COMMON NUISANCE. — "A Common Nuisance is an act not warranted by law, or an omission to discharge a legal duty, which act or omission obstructs or causes inconvenience or damage to the PUBLIC in the exercise of rights common to all Her Majesty's subjects. It is immaterial whether the act complained of is convenient to a larger number of the public than it inconveniences; but the fact that the act complained of facilitates the lawful exercise of their rights by part of the public, may show that it is not a nuisance to any of the public" (Steph. Cr. ch. 19, *whv* for instances of Common Nuisances). *Vf*, Arch. Cr. 1121-1173: Rosc. Cr. 697.

V. PUBLIC NUISANCE: NUISANCE.

COMMON OF SHACK. — *V.* SHACK.

COMMON PRAYER. — *V.* BOOK OF COMMON PRAYER: COMMON AND NOTORIOUS.

COMMON RECOVERY. — A Common Recovery was a fictitious suit for barring an Entail. It received its first judicial sanction by *Taltarum's Case* (Y. B. 12 Ed. 4, 19), and was only abolished by the Fines and Recoveries Act, 1833. *Vh*, 2 Bl. Com. 357 *et seq*: Wms. R. P. ch. 2: Jacob, *Recovery*.

COMMON SEWER. — *V.* SEWER.

COMMON, Tenancy in. — *V.* TENANCY IN COMMON.

COMMON TO THE TRADE. — This phrase in s. 74 (1 *b*), Patents, Designs, and Trade Marks Act, 1883, means, "Open to the Trade" (*Re Wragg*, 29 Ch. D. 551; 54 L. J. Ch. 391: *Burland* v. *Broxburn Co*, 58 L. J. Ch. 816; 42 Ch. D. 274; 61 L. T. 618; 6 Pat. Ca. 482: *Re Apollinaris Co*, cited AGGRIEVED). "In Common *Use*"; *V.* Ib

V. TRADE-MARK.

COMMON WAY. — *V.* HIGHWAY: CALCEY.

COMMONLY UNDERSTOOD. — "Commonly understood," s. 241, 45 & 46 V. c. 50, means, "Commonly understood by any person

comparing the Nomination Paper and the Burgess Roll" (*Moorhouse* v. *Linney*, 15 Q. B. D. 273: *Vf, R.* v. *Gregory*, 22 L. J. Q. B. 120; 1 E. & B. 600).

COMMONS. — *V.* COMMON: HOUSE OF COMMONS.

In such a phrase as that in *Scales* v. *Pickering* (*V.* FOOTPATH), "Commons" "evidently refers to those small patches of Waste land sometimes lying by the side of a road, the property of which belongs to the Lord of the Manor" (per Best, C. J., *Ib.*).

COMMONWEALTH. — "The Commonwealth of AUSTRALIA," as a phrase, sprang into the Republic of Letters, and itself, as a fact, came into existence, by the Act of 1900, The Commonwealth of Australia Constitution Act, 63 & 64 V. c. 12, *whv* hereon.

COMMOTE or **CONMOTE.** — "A Commote is a great seigniory, and may include one or divers mannors" (Co. Litt. 5 a: *Vf*, Touch. 92: Elph. 567, 568).

COMMOTION. — *V.* CIVIL COMMOTION.

COMMUNICANT. — A "Communicant" of the Church of England is, in its proper and primary meaning, one who actually communes; in its secondary sense, it may mean, every person whom the Church in ancient times regarded as under an obligation to commune (*R.* v. *Hall*, 35 L. J. M. C. 251; L. R. 1 Q. B. 632; 7 B. & S. 642).

COMMUNICATION. — *V.* MESSAGE: OMIT.

"Communication" of State Documents, &c; *V.* Official Secrets Act, 1889, 52 & 53 V. c. 52, s. 8.

COMMUNION. — Holy Communion; *V.* CHURCH: KNEELING.

"Communion *Table*" in the Church of England, — Can it "mean anything but that 'table' at which meals are usually eaten?" (per Sir H. J. Fust, *Faulkner* v. *Litchfield*, 1 Rob. Ecc. 220); an immovable structure is not a Communion Table (*S. C.*), such a "Table" must be one in the ordinary sense of the word, *i.e.* movable, made of wood, flat, and capable of being covered with a cloth, and having no Cross attached (*Liddell* v. *Westerton*, 5 W. R. 470). *Vf, Liddell* v. *Beal*, 14 Moore P. C. 7; 8 W. R. 569; 3 L. T. 218: NORTH SIDE.

COMMUNITY. — *V.* CONVENT.

COMMUTATION. — A "Commutation," *e.g.* of TITHES, s. 42, 6 & 7 W. 4, c. 71, is to substitute one liability for another; therefore, lands which were waste at the time of a Tithe Commutation Award but which were afterwards enclosed and so would have become titheable but for the Award, became liable to the per-acreage Tithe Commutation Rent Charge

fixed by the award (*Trimmer* v. *Walsh*, 32 L. J. Q. B. 364; 4 B. & S. 40). In that case Cockburn, C. J., pointed out that "Commutation" was not to be confounded with "Apportionment," and Blackburn, J., distinguished it from "Compensation." *Cp* COMPOSITION.

COMPANY. — An Obligation given to Trustees for an Unincorporated "Company" is valid; "Company," in that connection, means the fluctuating or successive body of persons who, from time to time, form the Co (*Metcalf* v. *Bruin*, 12 East, 400).

Referring to the phrase "Company, Association, or Partnership," s. 4, Comp Act, 1862, James, L. J., said, "I believe the difference which was meant, as the difference according to the vernacular we use in these things between a Company or Association and an ordinary Partnership, is this: An ordinary *Partnership*, is a partnership composed of definite individuals bound together by contract between themselves to continue for some joint object either during pleasure or during a limited time; but the partnership is essentially composed of the persons originally entering into the contract with one another. A *Company* or *Association* — and I take the terms to be really synonymous — is an arrangement by which parties intend to have a partnership which will be constantly changing, that is to say, to have a succession of partnerships, a partnership to-day consisting of certain members, and to-morrow of some of those members only and some others who have come in; so that there will be a constant shifting of the partnership, a determination of the old and a creation of a new partnership, and always formed with the intention that, so far as they could by agreement between themselves, the new partnership should take upon itself the assets and liabilities of the old partnership — an object which as regards liability could not be effected in point of law by any arrangement between the persons themselves, unless the persons contracting with them by a *novatio* authorised the change, or unless by special provisions in the Acts of Parliament, sanction was given to such an arrangement. That is the sole distinction between Association and Partnership" (*Smith* v. *Anderson*, 50 L. J. Ch. 49; 15 Ch. D. 273; *Sv*, per Brett and Cotton, L.JJ., who suggested distinctions between "Company" and "Association"). *Va, R.* v. *Registrar of Joint Stock Companies*, 1891, 2 Q. B. 598; 61 L. J. Q. B. 3; 65 L. T. 392; 39 W. R. 708; *whlc* was on "Company," s. 180, Comp Act, 1862.

The other "Co" to which a Co's property may be transferred under s. 161, Comp Act, 1862, may be a Foreign Co (*Ex p. Fox*, 40 L. J. Ch. 433; 6 Ch. 176).

"Company" may include a Municipal Corporation (*Wolverhampton* v. *Bilston*, cited WATER COMPANY).

In a Modern Act the meaning of "Company," or "the Company," will generally be ascertained by referring to its Interp Clause, which usually defines the phrase according to the subject-matter of the Act, *e.g.*

quà Forged Transfers Act, 1891, 54 & 55 V. c. 43, "'Company,' shall mean, any Company incorporated by, or in pursuance of, any Act of Parliament, or by Royal Charter" (s. 2).

"Co incorporated *by Act of Parliament,*" within a Trustee's Investment Clause, does not include a Co formed under the Comp Act, 1862, or 1 V. c. 73; but the phrase does include a Co created by a Charter specially authorised by Parliament, and which Charter the Crown could not grant without statutory power (*Elve* v. *Boyton*, 1891, 1 Ch. 501; 60 L. J. Ch. 383: *Vf, Re Smith*, cited By). *Vf* Incorporated.

Debentures of a "Mortgage, Loan, or other Incorporated Co," s. 17, Bills of Sale Act, 1882; in this phrase "*other* Incorporated Co" is not to be read as *ejusdem generis* with the preceding words (*Re Standard Manufacturing Co*, 1891, 1 Ch. 627; 60 L. J. Ch. 292; 39 W. R. 369; over-ruling *Jenkinson* v. *Brandley Co*, 19 Q. B. D. 568; 35 W. R. 834); but even if the rule were applied, any Incorporated Co authorised to raise money on loan or mtge, *i.e.* having Borrowing Powers, is within the section (*Ib.*: *Sv* now s. 14, Comp Act, 1900). But a Debenture by an Industrial and Provident Socy is not within the section, because such a Socy is not a Co at all (*G. N. Ry* v. *Coal Co-operative Socy*, 1896, 1 Ch. 187; 65 L. J. Ch. 214; 73 L. T. 443; 44 W. R. 252). *Vf*, Debenture: Bill of Sale.

"The Companies Acts, 1862 to 1893"; *V.* Sch 2, Short Titles Act, 1896.

"The Companies Clauses Acts, 1845 to 1889"; *V.* Ib.

V. Business: Insurance Company: Joint Stock Company: Railway Company: Trading and other Public Companies.

"Company's Funds"; *V.* Ry and Canal Traffic Act, 1888, s. 42 (3).

Proceedings of a Co; *V.* Proceeding.

COMPASSIONATE ALLOWANCE. — A "Compassionate Allowance" is a voluntary bounty, and not Income (*Re Webber*, *V.* Income).

COMPELLABLE. — An enactment that an accused person shall be "competent, *but not compellable*" to give evidence on the charge against him, does not, even under the latter branch of the phrase, import that the Judge is not to make comments to the Jury on the absence from the witness-box of the accused (*Kops* v. *The Queen*, 1894, A. C. 650; 64 L. J. P. C. 34; 70 L. T. 890; 58 J. P. 668). *Vf, R.* v. *Rhodes*, cited Comment.

COMPENSATION. — "Compensation" in Conditions of Sale; *V. Cordingley* v. *Cheesebrough*, 31 L. J. Ch. 617; 3 Giff. 496.

"Claim for Compensation," s. 9, V. & P. Act, 1874, includes claim for non-delivery of Possession, or for removal of loose chattels (*Re Laitwood*, 36 S. J. 255). *Cp* Question.

"Fair and Reasonable Compensation," "Reasonable Compensation"; *V.* Reasonable.

V. Full Compensation.

"Making Compensation"; *V.* SATISFACTION.

Compensation under Lands C. C. Act, 1845; *V.* HOUSE: HEREDITAMENT: TENEMENT: INJURIOUSLY AFFECTED: *Re Bailey and Isle of Thanet Ry*, 1900, 1 Q. B. 722; 69 L. J. Q. B. 442; 82 L. T. 713; 48 W. R. 589: Browne and Allan on Compensation: Cripps, Ib.

"Compensation *Allowances*"; *V.* Courts of Justice Building Act, 1865, 28 & 29 V. c. 48, s. 2.

"Compensation *for Loss or Damage*," Mer Shipping Act, 1876, s. 10, is not the equivalent of DAMAGES therefor (*Dixon* v. *Calcraft*, 1892, 1 Q. B. 458; 61 L. J. Q. B. 529; 66 L. T. 554; 40 W. R. 598; 56 J. P. 388).

V. COMMUTATION.

COMPETE. — An agreement "not directly or indirectly to enter into Competition" in a business, is not confined to *active* competition; and a physician, having entered into such contract on the sale of his practice, is guilty of a breach if he attend a patient within the prohibited district, even though he was called in without any solicitation on his part, and though he recommended that some one else should be called in, and though it be proved that his vendee would not have been called in (*Rogers* v. *Drury*, 36 W. R. 496; 57 L. J. Ch. 504; 4 Times Rep. 98). *V.* RESTRAINT OF TRADE.

COMPETENT. — "Competent *to dispose* by Will of a Continuing Interest," s. 21, Sucn Dy Act, 1853, means the quantity of the successor's interest in the property subject to duty, and does not refer to his mental capacity (*A-G.* v. *Hallett*, 27 L. J. Ex. 89; 2 H. & N. 368); and the phrase includes the power (if executed) of a Tenant in Tail in possession to enlarge his estate to a Fee Simple (*Lilford* v. *A-G.*, 36 L. J. Ex. 116; L. R. 2 H. L. 63).

"Competent to dispose" of property, quà Finance Act, 1894; *V.* s. 22 (2 *a*): "A Child or other Issue" (of a testator) whose estate becomes entitled to property under s. 33, Wills Act, 1837, is "*at the time of his death* Competent to dispose" of such property, within s. 2 (1 *a*), Finance Act, and, accordingly, it is "property PASSING on the death" of the Child or Issue and liable to Estate Duty (*Re Scott*, 1900, 1 Q. B. 372; 69 L. J. Q. B. 121; affd 70 L. J. Q. B. 66): As used at end of s. 5 (2), Finance Act, *V. A-G.* v. *Hay*, 1899, 2 Q. B. 245; 68 L. J. Q. B. 557; 80 L. T. 712.

Parties "Competent" *to make admissions*, s. 7, 21 & 22 V. c. 27, include Assignees in Bankruptcy, and Married Women (*Churchill* v. *Coller*, 1 N. R. 82); but not Infants (*Wilkinson* v. *Beal*, 4 Mad. 408).

"Competent but not compellable"; *V.* COMPELLABLE.

"Competent COURT," s. 5 (2), Debtors Act, 1869; *V. Washer* v. *Elliott*, 1 C. P. D. 173, 174.

"Competent *Magistrate*" in Scotland, Ireland, and the Channel Islands, quà Indictable Offences Act Amendment Act, 1868, 31 & 32 V. c. 107; *V.* s. 5.

Competent *Surveyor*; *V.* SURVEYOR.

Culprit a Competent *Witness*; *V.* STAGE: COMMENT.

COMPETITION. — *V.* COMPETE.

COMPETITIVE. — "Competitive PLACE"; *V. Distington Iron Co* v. *Lond. & N. W. Ry*, 6 Ry & Can Traffic Ca. 110.

"Competitive STATION"; *V. Mid Ry* v. *G. W. Ry*, 2 Ry & Can Traffic Ca. 88.

COMPLAINANT. — Quà Petty Sessions (Ir) Act, 1851, 14 & 15 V. c. 93, "Complainant" includes "Informant, or Prosecutor" (s. 44).

V. in Scotland, 38 & 39 V. c. 90, s. 14.

COMPLAINT. — Quà Magistrates, "where proceedings are taken by way of 'Information,' or 'Complaint,' which end, or may end, in a CONVICTION or ORDER, there are always two parties, — the person initiating the proceedings, and the person against whom the proceedings are taken" (per Ld Herschell, *Boulter* v. *Kent Jus.*, cited COURT OF SUMMARY JURISDICTION). "'Information' is the initiatory step in proceedings of a Criminal nature which are to be disposed of summarily, — while, I apprehend, the term 'Complaint' designates the initiatory step in summary proceedings of a Civil nature; but equally in both cases there is contemplated the existence of a matter in controversy between two parties" (per Hayes, J., *Re Dillon*, 11 Ir. Com. Law Rep. 238).

An application to justices to settle COMPENSATION under s. 22, Lands C. C. Act, 1845, is not a "Complaint" within Jervis' Act, 11 & 12 V. c. 43 (*R.* v. *Hannay*, 44 L. J. M. C. 27: *R.* v. *Edwards*, 53 L. J. M. C. 149; 13 Q. B. D. 586: *whlc* over-rules *Re Edmundson*, 21 L. J. M. C. 193; 17 Q. B. 67); nor are proceedings for enforcing a Public Rate a "Complaint" (*Sweetman* v. *Guest*, 37 L. J. M. C. 59; L. R. 3 Q. B. 262; 32 J. P. 212: *R.* v. *Price*, 5 Q. B. D. 300; 49 L. J. M. C. 49; 28 W. R. 615; 42 L. T. 539; 44 J. P. 248); but a Justice's Summons for a Water Rate under, s. 74, 10 & 11 V. c. 17, is a "Complaint" (*East London W. W. Co* v. *Charles*, 1894, 2 Q. B. 730; 63 L. J. M. C. 209; 71 L. T. 200; 42 W. R. 702; 58 J. P. 764).

Quà Petty Sessions (Ir) Act, 1851, "Complaint" includes "Information" (s. 44).

V. INFORMATION: ARISE.

The filing an affidavit in support of a notice of motion to set aside an Award is a "Complaint," within 9 & 10 W. 3, c. 15, s. 2 (*Re Huddersfield and Jacomb*, 44 L. J. Ch. 96; 10 Ch. 92: *Smith* v. *Parkside Co*, 50 L. J. Ex. 144; 6 Q. B. D. 67).

"Matter of Complaint"; *V.* DEFACE.

COMPLETE. — *V.* PERFECT.

Complete *Discharge*; *V. Re Molyneux*, cited SOLE.

Complete *Cargo*; *V.* CARGO.

Complete *Contract*; *V.* SUBJECT TO.

Complete *Repair*; *V. Joliffe* v. *Twyford*, cited KEEP: REPAIR.

COMPLETED. — Execution completed; *V.* EXECUTION.

Sales, &c "completed," Ord. 2 (*a*), Solrs Rem Ord, and Sch 1, Part 1, Ib.; *V.* MORTGAGE.

Scale Fee, for Completing Conveyance; *V. Grey* v. *Curtice*, cited CONVEYANCE, at end.

COMPLETION. — Where a contract for sale stipulates that interest on the unpaid purchase money shall be paid until "Completion," that means, that interest shall be payable until the purchase money is paid (*Lewis* v. *S. W. Ry*, 22 L. J. Ch. 209; 10 Hare, 113). In delivering judgment in that case, Turner, V. C., said: — "The question is, what is the meaning of the words 'until the *Completion* of the Purchase'? Those words may no doubt import, and generally perhaps would be construed to refer to, the complete conveyance of the estate and final settlement of the business. But I do not think that is the only or necessary meaning of the words. They may mean, until the completion of the purchase by the purchaser, on whose part the purchase is completed, on the payment of the purchase money by him. . . . Is it reasonable to construe the words as importing that interest is to be paid on the purchase money until the final completion of the purchase, although the purchase money itself might be paid long before? I think it would be unreasonable to put such a construction on the words, the more so when it is considered that interest is the compensation for the delay in the payment of the principal. That an agreement might be so expressed as to make interest on the purchase money payable up to the final completion of the purchase by the conveyance of the estate, although the purchase money itself was sooner paid, need not be denied; but I think very strong words would be required for the purpose, and that the terms of this agreement do not warrant such a construction."

Commission "on Completion of the Purchase," means, completion of the purchase of the whole subject-matter of the contract; failing which the commission will not be payable unless that full completion be hindered by the default of him by whom it is to be paid (*Lott* v. *Outhwaite*, 10 Times Rep. 76).

Where a builder is to be paid on the "Completion" of a Building, such completion is, generally, a question of fact, independent of the Architect's Certificate, unless such certificate is clearly made a Condition Precedent to the payment (*Lewis* v. *Hoare*, 44 L. T. 66: *Vh*, *Scott* v. *Liverpool*, 28 L. J. Ch. 230; 3 D. G. & J. 334: 1 Hudson, 140, 287).

But, generally, in Bg Contracts, when an Architect or Surveyor is employed, it will be found that "Completion," means "Certified Completion" (*Cunliffe* v. *Hampton Wick*, cited SEVERAL).

Where the contract price for a Chattel is to be paid within a stated time from its "Completion," that means, its substantial completion; and the time will not be extended by mere alterations and improvements to the chattel made in the hope of satisfying the purchaser (per Erle, J., *Parsons* v. *Saxter*, 2 C. & K. 266).

Salary of Manager "to commence from Completion" of the contract, by his employer, for the property or business to be managed; *V. Browning* v. *Great Central Mining Co*, 5 H. & N. 856; 29 L. J. Ex. 399.

Commission "on the Completion of the LOADING, or should the Vessel be lost"; *V. Ward* v. *Weir*, 4 Com. Ca. 216; distinguishing *Sibson* v. *Barcraig Co*, 24 Sess. Ca. 4th Ser. 91.

Completion of Works; *V.* WORKS.

COMPOSE. — To "Compose" a BOOK, Copyright Act, 1842, does not mean to "copy or write from dictation, it obviously means, Compose in the sense of being the Author" (*Walter* v. *Lane*, cited AUTHOR).

COMPOSER. — *V.* AUTHOR.

COMPOSITEURS. — *V.* AMIABLES COMPOSITEURS.

COMPOSITION. — A "Composition with *Creditors*" is an ARRANGEMENT between a Debtor and his Creditors (or some of them, *Sharp* v. *Cosserat*, 20 Bea. 470; 3 W. R. 473), whereby the latter agree with the Debtor (and mutually amongst themselves) to receive, and the Debtor agrees to pay, an agreed proportion less than 20*s.* in the £, in satisfaction of the debts due or accruing due from the Debtor to the Creditors. *Cp* COMPOUND.

A *cessio bonorum* is not a "Composition with Creditors" disqualifying a member of a Local Board under R. 5, Sch 2, P. H. Act, 1875 (*R.* v. *Cooban*, 56 L. J. M. C. 33). In that case Denman, J. (obiter), was of opinion that the "Composition" struck at by the Rule was one effected under the Bankry Act, 1869; whilst Hawkins, J., was "inclined to think that this disqualifying Rule would include not only Compositions under the Bankry Act, 1869, but also Private Compositions with Creditors by deed."

A "Composition" of a *Poor Rate* (proviso (1), s. 7, Rep People Act, 1867), includes not only the case of an Owner paying less than the full amount by agreement, but also where he pays a less amount by Vestry Order under the Small Tenements Act (*Trotter* v. *Trevor*, 38 L. J. C. P. 51; L. R. 4 C. P. 502). *Vf*, *Mason* v. *Bennett*, 38 L. J. C. P. 48; L. R. 4 C. P. 502.

Composition for *Tithes*, is an agreement to pay money in lieu of

Tithes: *V.* Jacob, *Composition.* "Compositions for Tithes," "Persons entitled to Compositions for Tithes"; *V.* Tithe Rent Charge (Ir) Act, 1838, 1 & 2 V. c. 109, s. 54. *Cp* COMMUTATION.

"Compositions," in exception to definition of "*Rent*," s. 1, 3 & 4 W. 4, c. 27; *V. Irish Land Commission* v. *Grant*, cited RENT.

COMPOUND. — To "Compound" a DEBT, is to abate a part on receiving the residue (*Haskins* v. *Newcomb*, 2 Johns. 408). "If there is a binding arrangement for discharge of the debt from which neither party can recede and with which the creditor is satisfied, it is a compounding, though something still remains to be done" (per Patteson, J., *Pennell* v. *Rhodes*, 9 Q. B. 129; 15 L. J. Q. B. 355). *Cp*, COMPOSITION: COMPROMISE.

"'Compounding FELONY, or Theft-Bote,' is where the party robbed, not only knows the Felon but also, takes his goods again, or other amends, upon agreement not to prosecute" (Jacob). But it can hardly be correct to say that this Offence is the same as Theft-Bote, for that ancient Offence was not committed where a man took back his own goods (*V.* BOTE, "Theft-Bote").

Compounded DRUG; *V. Beardsley* v. *Walton*, 1900, 2 Q. B. 1; 69 L. J. Q. B. 344; 82 L. T. 119; 64 J. P. 436.

Compound Settlement; *V.* SETTLEMENT.

COMPREHENSIVENESS. — *V.* GENERALITY.

COMPRISE. — *V.* INCLUDE.

Other Claim "Comprised in the same Account," s. 9, 19 & 20 V. c. 97, means, "'that would have been comprehended' in it; *i.e.* that would have been an item in the account demanded" (per Ld Westbury, *Knox* v. *Gye*, L. R. 5 H. L. 673; 42 L. J. Ch. 238).

COMPRISING. — "Comprising" imports interpretation, like NAMELY, or THAT IS TO SAY, *e.g.* "All my farming stock, Comprising," so many horses &c (*Jones* v. *Roberts*, 34 S. J. 254).

COMPROMISE. — "'Compromise,' is a mutual promise of two or more parties that are at controversie" (Termes de la Ley).

"A Compromise takes place when there is a question of doubt, and the parties agree not to try it out but to settle it between themselves by a give-and-take arrangement" (per Kay, L. J., *Huddersfield Bank* v. *Lister*, 1895, 2 Ch. 285).

"Modification or Compromise" of rights; *V.* MODIFICATION: COMPOUND.

"Compromise or ARRANGEMENT," s. 2, 33 & 34 V. c. 104; *Vh* Buckl. 630.

COMPTABLE. — *V. Exchange Bank of Canada* v. *The Queen*, 55 L. J. P. C. 5; 11 App. Ca. 157; 54 L. T. 802.

COMPTROLLER. — Stat. Def., Patents, &c Act, 1883, 46 & 47 V. c. 57, s. 117.

"Comptroller and Auditor General"; *V.* 40 & 41 V. c. 2, s. 2, c. 45, s. 6; 42 & 43 V. c. 45, s. 5.

COMPULSORY POWERS. — "Injury or Loss in consequence of any Compulsory Powers of taking property," s. 1 (1), 55 & 56 V. c. 27, means, in consequence of the EXERCISE of such powers, which a mere Notice to Treat (though followed by a Contract) is not (*Guest* v. *Poole, &c Ry*, 39 L. J. C. P. 329; L. R. 5 C. P. 553: *Re Uxbridge, &c Ry*, 59 L. J. Ch. 409; 43 Ch. D. 536; 62 L. T. 347; 38 W. R. 644); nor are the charges of a landowner's Solr or Surveyor (incurred in consequence of such Notice) "Injury or Loss" within the phrase (*Re Uxbridge, &c Ry*, sup). *Cp* "Reasonable Compensation," sub REASONABLE.

Where a Ry or Canal Co have power, on notice, to take the Mines under the Ry or Canal, but failing the exercise of such power the Owner may work the Mines, provided that in such working "No Injury" be done to the Ry or Canal, — the words "No Injury" are "to be construed with some qualification, and as meaning (1) That the party working the mines is to do no unnecessary damage or injury, or (2) No extraordinary damage or injury by working them out of the ordinary and usual mode" (*Dudley Canal Co* v. *Grazebrook*, 1 B. & Ad. 59; approved in *G. W. Ry* v. *Bennett*, 36 L. J. Q. B. 133; L. R. 2 H. L. 27, and distd in *Knowles* v. *Lanc. & Y. Ry*, 59 L. J. Q. B. 39; 14 App. Ca. 248: on *whlcv*, *Chamber Colliery Co* v. *Rochdale Canal Co*, 1895, A. C. 564; 64 L. J. Q. B. 645, and *New Moss Colliery Co* v. *Manchester S. & L. Ry*, 1897, 1 Ch. 725; 66 L. J. Ch. 381; 76 L. T. 231; 45 W. R. 493). *Vf* DAMAGE.

COMPULSORY REFERENCE. — A reference for Trial to an Official Referee, under R. 7 (*a*), Ord. 36, R. S. C., is not a "Compulsory Reference to Arbitration," within s. 8, Jud. Act, 1884 (*Munday* v. *Norton*, cited ARBITRATION).

CONCEAL. — Quà the Contract of INSURANCE, "'CONCEALMENT,' properly so called, means, Non-disclosure of a fact which it is a man's duty to disclose" (per Jessel, M. R., *London Assrce* v. *Mansel*, 11 Ch. D. 370; 48 L. J. Ch. 334).

CONCEALED FRAUD. — "Concealed Fraud," s. 26, Real Property Limitation Act, 1833, "does not mean the case of a party entering wrongfully into Possession; it means, a case of designed fraud by which a party, knowing to whom the Right belongs, conceals the circumstances giving that right, and, by means of such concealment, enables himself to enter and hold" (per Kindersley, V. C., *Petre* v. *Petre*, 1 Drew. 397: *Vf*, *Vane* v. *Vane*, 8 Ch. 383; 21 W. R. 66; 27 L. T. 534: *Re McCallum*, 49 W. R. 129): — As to what particular acts amount to such

"Concealed Fraud," *V. Sturgis* v. *Morse*, 24 Bea. 541; 3 D. G. & J. 1: *Vane* v. *Vane*, sup: *Trevelyan* v. *Charter*, 11 Cl. & F. 714; 4 L. J. Ch. 209: *Metropolitan Bank* v. *Heiron*, 5 Ex. D. 319; 29 W. R. 370; 43 L. T. 675: *Price* v. *Berrington*, 3 M. & G. 486: *Molton* v. *Camroux*, 2 Ex. 487; 4 Ib. 17: *Lewis* v. *Thomas*, 3 Hare, 26: *Manby* v. *Bewick*, 3 K. & J. 343: *Dartmouth* v. *Spittle*, 19 W. R. 444; 24 L. T. 67: *Dean* v. *Thwaite*, 21 Bea. 621 (on *whlcv Ecclesiastical Commrs* v. *N. E. Ry*, 4 Ch. D. 845; 36 L. T. 174, *Ashton* v. *Stock*, 25 W. R. 862, and *Williams* v. *Raggett*, 46 L. J. Ch. 849): *Trotter* v. *Maclean*, 13 Ch. D. 574; 49 L. J. Ch. 256; 28 W. R. 244; 42 L. T. 118: *Chetham* v. *Hoare*, L. R. 9 Eq. 571; 39 L. J. Ch. 376; 22 L. T. 57: *Willis* v. *Howe*, 1893, 2 Ch. 545; 62 L. J. Ch. 690; 69 L. T. 358; 41 W. R. 433: *Thorne* v. *Heard*, 1895, A. C. 495; 63 L. J. Ch. 356; 64 Ib. 652; 73 L. T. 291; 44 W. R. 155: *Re Lands Allotment Co*, 1894, 1 Ch. 616; 63 L. J. Ch. 291; 70 L. T. 286; 42 W. R. 404: *Re Lacy*, cited A: *Re Astley & Tyldesley Co*, 68 L. J. Q. B. 252, in *whlc Ecclesiastical Commrs* v. *N. E. Ry*, sup, was not followed.

V. REASONABLE DILIGENCE: FRAUD.

CONCEALMENT. — A Policy of Marine Insrce "is always said to be *uberrimæ fidei*" (per Cleasby, B., *Harrower* v. *Hutchinson*, L. R. 5 Q. B. 595). "Concealment," in such a contract, "is the suppression of, or neglect to communicate, a MATERIAL FACT within the knowledge of one of the parties which the other has not the means of knowing, or is not presumed to know. A 'Material Fact,' is one which is calculated, if communicated to the other of the parties, to induce him either to refrain altogether from the contract, or not to enter into it except on more favourable terms" (Arn. 658, citing per Tindal, C. J., *Elton* v. *Larkins*, 5 C. & P. 392: *Vf*, *Carter* v. *Boehm*, 3 Burr. 1909: *Harrower* v. *Hutchinson*, L. R. 5 Q. B. 584; 39 L. J. Q. B. 229; 10 B. & S. 469; 22 L. T. 684). *V.* CONCEAL.

"Suppression or Concealment"; *V.* SUPPRESS.

CONCERN. — "Trade, Manufacture, Adventure, or Concern," Income Tax Act; *V.* TRADE.

CONCERNED. — "Concerned as Officer to prosecute," s. 3, 5 & 6 W. & M. c. 11, does not mean BOUND to prosecute; those are "concerned to prosecute" "whose duty it is to do so, though the duty be only one of imperfect obligation" (per Campbell, C. J., *R.* v. ——, 15 Q. B. 1066), *e.g.* that of Guardians to prosecute for ill-usage of a Child received into their Workhouse. *Vf*, *R.* v. *Waldegrave*, 2 Q. B. 341.

V. PARTY CONCERNED.

CONCERNED IN. — A Shareholder in a Co, which Co has a contract with a Local Authority, would seem *not* to be "concerned in" that

contract within s. 193, P. H. Act, 1875 (per Brett, M. R., *Todd* v. *Robinson*, 54 L. J. Q. B. 47; 14 Q. B. D. 739; 52 L. T. 120; 49 J. P. 278). But to do part of a work, or to supply part of the materials for a work, for another, knowing that that other has contracted with a Local Authority to do the work, is to be "concerned in" the bargain or contract for the work within R. 64, Sch 2, of the Act just cited, or s. 34, 33 & 34 V. c. 75 (*Nutton* v. *Wilson*, 58 L. J. Q. B. 443; 22 Q. B. D. 744; 37 W. R. 522; 53 J. P. 644: *Barnacle* v. *Clark*, 1900, 1 Q. B. 279; 69 L. J. Q. B. 15; 81 L. T. 484; 64 J. P. 87). So, of a Retiring Partner who, notwithstanding his retirement, remains liable on a contract that his firm had entered into with the Local Authority (*Cox* v. *Ambrose*, 60 L. J. Q. B. 114; 55 J. P. 23; 7 Times Rep. 59). *Cp*, INTERESTED IN: ENGAGE IN.

V. BARGAIN OR CONTRACT.

Acting as a salaried servant, is being "concerned in" a business within a Covenant not to be concerned in such a business (*Hill* v. *Hill*, 55 L. T. 769; 35 W. R. 137; 51 J. P. 246; 3 Times Rep. 144: *Jones* v. *Heavens*, 4 Ch. D. 636). *V.* RESTRAINT OF TRADE.

The owner of a vessel who knowingly lets it to be employed in Smuggling, is "concerned in" the illegally unshipping of the goods, within s. 46, 8 & 9 V. c. 87 (*A-G.* v. *Robson*, 20 L. J. Ex. 188; 5 Ex. 790). *V.* UNSHIPPING.

"Concerned in" sale of Steerage Passages; *V.* *Morriss* v. *Howden*, cited PASSAGE BROKER.

V. CARRY ON.

CONCERNING. — *V.* OF AND CONCERNING.

CONCLUSIVE. — *V.* FINAL AND CONCLUSIVE.

"Binding and Conclusive"; *V.* INCONSISTENT.

CONCLUSIVE EVIDENCE. — Anything which is duly prescribed as "Conclusive Evidence" of a fact, is absolute evidence of such fact, as well criminally as civilly, for all purposes for which it is so made evidence (*R.* v. *Levi*, 34 L. J. M. C. 174: *R.* v. *Robinson*, L. R. 1 C. C. R. 80).

The phrase is also used in its large sense in s. 51, Comp Act, 1862, quà the declaration by a Chairman of the result of a voting at a meeting (*Brynmawr Coal Co*, W. N. (77) 45, cited Buckl. 212); and such a declaration cannot be challenged by contradictory evidence (per James, L. J., *Re Gold Co*, 48 L. J. Ch. 286: per Cozens-Hardy, J., *Re Hadleigh Castle Co*, 1900, 2 Ch. 419; 69 L. J. Ch. 631; not following *Young* v. *S. African Co*, 1896, 2 Ch. 268; 65 L. J. Ch. 638; 44 W. R. 509, *whle* is, *semble*, over-ruled by *Arnot* v. *United African Lands*, 1901, 1 Ch. 518. *Vf*, *Re Horbury Bridge Co*, 48 L. J. Ch. 341; 11 Ch. D. 109). *Cp*, *Barraclough* v. *Greenhough*, cited SUFFICIENT EVIDENCE.

By the last sentence of s. 18, Comp Act, 1862, the Certificate of Incorporation of a Co was "Conclusive Evidence" of its due Registration, *i.e.* "that the only evidence of the Incorporation which the Court can receive is the Certificate," a ruling which seems also applicable to the Notice from the Board of Trade of the Abandonment of a Tramway under s. 18, 33 & 34 V. c. 78 (per Kekewich, J., *Re Dudley Trams Co*, 69 L. T. 711; 42 W. R. 126; 63 L. J. Ch. 108). But, *semble*, a Certificate of Incorporation might be challenged (*Re National Debenture Corp*, 1891, 2 Ch. 505; 60 L. J. Ch. 533: *Ladies Dress Assn* v. *Pulbrook*, 68 L. J. Q. B. 871: *Sv, Peel's Case*, 2 Ch. 674; 36 L. J. Ch. 757: *Re Salomon*, cited BONÂ FIDE); *secus*, of a Certificate of the Registration of a resolution for Reduction of Capital, under s. 15, Comp Act, 1867 (*Ladies Dress Assn* v. *Pulbrook*, 1900, 2 Q. B. 376; 69 L. J. Q. B. 705; 49 W. R. 6) *Note*. The last sentence of s. 18, Comp Act, 1862, is repealed by Comp Act, 1890, and is replaced by s. 1 (1) of that latter Act.

Conclusive Evidence of right to Vote at a Co's Meeting; *V. Wall* v. *London & Northern Assets Corp*, 1899, 1 Ch. 550; 68 L. J. Ch. 248; 80 L. T. 70.

A BILL OF LADING is not, under s. 3, 18 & 19 V. c. 111, "Conclusive Evidence" "as to the statement of Marks upon the goods shipped, where those Marks do not affect, or denote, Substance, Quality, or Commercial Value" (per Kennedy, J., *Parsons* v. *New Zealand Co*, 69 L. J. Q. B. 422; 1900, 1 Q. B. 714; 82 L. T. 327).

Cp, PRIMÂ FACIE EVIDENCE: SUFFICIENT EVIDENCE: FINAL AND CONCLUSIVE.

CONCLUSIVE PROOF. — *V.* PROOF: "Clear and Positive Proof," sub CLEAR.

CONCORD. — *Semble*, a Concord is synonymous with an ACCORD (*V.* Termes de la Ley, *Concord*). It also specially indicated the agreement on levying a FINE, "as to how and in what manner the lands should be passed" (Ib.).

CONDEMNATION. — "A Ship warranted 'free from American Condemnation,' was driven on the American shore, and there seized and condemned; held, the Underwriters were discharged" (Park, 137, citing *Livie* v. *Janson*, 12 East, 648). *Cp*, CAPTURE: CONSEQUENCES.

CONDITION. — "'Condition,' is a restraint or bridle annexed and joyned to a thing, so that by the not performance or not doing thereof the partie to the condition shall receive prejudice and losse, and, by the performance and doing of the same, commoditie and advantage" (Termes de la Ley). All Conditions are, (1) Conditions *in Deed*, *i.e.* actual and expressed; or (2) Conditions *in Law*, *i. e.* implied: and, again, all Conditions are (*a*) Conditions *Precedent*, *i.e.* the *sine qua non* to getting the

thing; or (*b*) Conditions *Subsequent*, which keep and continue the thing (Ib., *whv*). *Vf*, Jacob, *Condition*: 2 Cru. Dig. Title 14: 3 Encyc. 250. As to when Conditions are Precedent or Subsequent, *V.* 30 Law Jour. 686: *Porter* v. *Shephard*, 6 T. R. 665: *Morton* v. *Lamb*, 7 Ib. 125: *London Guarantie Co* v. *Fearnley*, 5 App. Ca. 911; 43 L. T. 390; 28 W. R. 893; 45 J. P. 4: *Cooper* v. *L. B. & S. Ry*, 48 L. J. Ex. 434; 4 Ex. D. 88: *Barnard* v. *Faber*, cited WARRANTY: IF.

"A Condition is a clause of restraint in a deed, or a bridle annexed and joined to an estate," — or transaction, — "staying and suspending the same, and making it uncertain whether it shall take effect or no" (Touch. 81, 117: *Colthirst* v. *Bejushin*, Plowd. 32 *a*, 33 *a*), and it may be by parol. Thus an antecedent, — or, as it would seem, a contemporaneous, — parol agreement to repay by instalments a loan secured by a BILL OF SALE, and thereby made otherwise payable, is a "Condition" within the words "Defeasance, Condition, or Declaration of Trust" in the Bills of S. Acts (s. 2, Act 1854, s. 10 (3), Act 1878), and as such must be written on the same paper or parchment as the Bill of Sale and registered with it (*Ex p. Southam*, 43 L. J. Bank. 39; L. R. 17 Eq. 578). So, of a collateral document which shows that the true and entire bargain (with its rights, liabilities, and consequences) is not expressed by the Bill of S. (*Counsell* v. *London & Westminster Loan Co*, 56 L. J. Q. B. 622; 19 Q. B. D. 512: *Edwards* v. *Marcus*, 1894, 1 Q. B. 587; 63 L. J. Q. B. 363; 70 L. T. 182; 1 Manson, 70; disapproving *Ex p. Collins*, 44 L. J. Bank. 78; 10 Ch. 367. *Vf*, *Linfoot* v. *Pockett*, 1895, 2 Ch. 835; 64 L. J. Ch. 752; 73 L. T. 197; 44 W. R. 66).

But an agreement not to register, is not such a "Condition" (*Ex p. Popplewell*, 52 L. J. Ch. 39; 21 Ch. D. 73); nor, *semble*, a contemporary agreement letting on hire the goods to the grantor (*Ex p. McShane*, 29 S. J. 70); nor an understanding that the grantor is to pay off forthwith a Bill of S. which the grantee already holds (*Thomas* v. *Searles*, cited TRUE OWNER).

A Condition Repugnant, can hardly be called a Condition at all, because it is void. *Vh*, *Bradley* v. *Peixoto*, 3 Ves. 324: *Re Dugdale*, 57 L. J. Ch. 634; 38 Ch. D. 176.

V. DEFEASANCE: RESERVATION: PROVIDED ALWAYS.

Condition in a CHARTER-PARTY; *V.* WARRANTY: "Now in the Port of A.," sub NOW: Carver, 160–172.

As to Devises and Bequests, on Condition; *V.* 2 Jarm. ch. 27: Wms. Exs. 1122 *et seq.*

Sometimes a Devise upon an "EXPRESS Condition" may connote no more than a Trust enforceable against the devisee, and not a Condition the breach of which the heir may take advantage of by way of FORFEITURE (*Wright* v. *Wilkin*, 31 L. J. Q. B. 196; 2 B. & S. 259).

As to Estates upon Condition; *V.* Co. Litt. l. 3, ch. 5: Touch. ch. 6: IF. Apt words may create both a Condition and a Covenant (*Doe* d.

Henniker v. *Watt*, 8 B. & C. 308, and authorities there cited). *Vf*, PROVIDED ALWAYS: STIPULATED.

As to Conditions in Deeds; *V.* Elph. ch. 29.

In a gift for a CHARITY, little use can be made of "Condition"; it may mean, "Intent and Purpose," and as creating a Trust and nothing more (*A-G.* v. *Wax Chandlers Co*, L. R. 6 H. L. 1; 42 L. J. Ch. 425; 28 L. T. 681; 21 W. R. 361).

A Lease "upon Condition that" the lessee shall do certain things, amounts to a covenant by the lessee to do them (Elph. 411). "Conditions are most properly created by using the word 'Condition,' or the words 'On Condition'; but the word commonly and as effectually made use of, is, that of 'provided' (Touch. 122: Co. Litt. 146 b: *V.* PROVISO). The words 'Covenant' and 'Condition,' when used in an agreement, do not necessarily mean a Covenant under seal, or a Condition in the strict legal sense of the word, but may, in order to effectuate the intention of the parties, be construed to mean, 'Contract or Stipulation'" (Woodf. 192, citing *Hayne* v. *Cummings*, 16 C. B. N. S. 421). *Cp* COVENANT.

Condition excusing non-performance of Contract; *V.* DEMURRAGE, at end.

"Condition," of House as reasonably fit for Habitation, Housing of the Working Classes Act, 1885, 48 & 49 V. c. 72, s. 12; *V. Walker* v. *Hobbs*, 59 L. J. Q. B. 93; 23 Q. B. D. 458; 38 W. R. 63; 61 L. T. 688; 54 J. P. 199. *Cp*, GOOD CONDITION.

"Condition" of Machinery; *V.* DEFECT.

CONDITIONAL. — Conditional ACCEPTANCE, is one "which makes payment by the Acceptor dependent on the fulfilment of a Condition therein stated" (s. 19 (2 *a*), Bills of Exchange Act, 1882): *e.g. Smith* v. *Vertue*, 30 L. J. C. P. 56.

Conditional *Will*; *V.* TESTAMENT.

CONDITIONS. — "Privileges and Conditions"; *V.* PRIVILEGE.

Reasonable Conditions; *V.* REASONABLE.

Conditions of Sale; for examples of, Stringent ones, *V. Corrall* v. *Cattell*, 8 L. J. Ex. 225; 4 M. & W. 734: *Scott* v. *Alvarez*, cited INVESTIGATING: — Misleading ones, *V. Rhodes* v. *Ibbetson*, 23 L. J. Ch. 459; 4 D. G. M. & G. 787: *Cruse* v. *Nowell*, 25 L. J. Ch. 709: *Heywood* v. *Mallalieu*, 53 L. J. Ch. 492; 25 Ch. D. 357: *Re Marsh and Granville*, 53 L. J. Ch. 81; 24 Ch. D. 11: *Nottingham Brick Co.* v. *Butler*, 55 L. J. Q. B. 280; 16 Q. B. D. 778: *Re Sandbach and Edmondson*, 1891, 1 Ch. 99; 60 L. J. Ch. 60. *Vh*, Webster, on Conditions of Sale: 3 Encyc. 256–263.

CONDITIONS AS PER CHARTER-PARTY. — "Other Conditions as per Charter-Party": This phrase in a Bill of Lading does not

bring in those clauses of the Charter-Party which are inconsistent with the Bill of Lading (*Gardner* v. *Trechmann*, 15 Q. B. D. 154; 54 L. J. Q. B. 515). The effect of the phrase, "Freight and other Conditions, as per Charter-Party" "has been considered more than once: it has been considered in *Serraino* v. *Campbell* (1891, 1 Q. B. 283; 60 L. J. Q. B. 303), and also in *Fry* v. *Chartered Mercantile Bank of India* (35 L. J. C. P. 306; L. R. 1 C. P. 689); and the effect of the reference is to incorporate so much of the Charter-Party as relates to the payment of freight and other conditions to be performed on the delivery of the cargo. But there is no authority whatever for incorporating more than that" (per Lindley, L. J., *Manchester Trust* v. *Furness*, 1895, 2 Q. B. 545; 64 L. J. Q. B. 769, 770, cited and adopted by Smith, L. J., *Diederichsen* v. *Farquharson*, 1898, 1 Q. B. 150; 2 Com. Ca. 87; 67 L. J. Q. B. 103; 77 L. T. 543; 46 W. R. 162), *e.g.* the phrase does not throw on the Consignee a liability for Demurrage at the Port of Loading over which he had no control (*County of Lancaster S. S.* v. *Sharpe*, 59 L. J. Q. B. 22; 24 Q. B. D. 158: *Smith* v. *Sieveking*, 5 E. & B. 589); *secus*, "for Demurrage accruing from his own delay in the Port of Discharge" (per Jervis, C. J., *Smith* v. *Sieveking*, referring to *Jesson* v. *Solly*, 4 Taunt. 52, and *Wegener* v. *Smith*, 24 L. J. C. P. 25; 15 C. B. 285). *Vf*, "Paying Freight," sub PAYING: OTHER: Abbott, 347–349.

CONDONATION.—"Condonation," is a conclusion of fact, not of law; and means the complete forgiveness and blotting out (even to the extent of surrendering all claim for damages against the adulterer, *Bernstein* v. *B.*, inf) of a conjugal offence, followed by COHABITATION,—the whole being done with the full knowledge of all the circumstances of the particular offence forgiven (*Peacock* v. *Peacock*, 27 L. J. P. & M. 71; 1 Sw. & Tr. 184: *Keats* v. *Keats*, 28 L. J. P. & M. 57: *Seller* v. *Seller*, Ib. 99);—an unknown conjugal offence, neither affects nor is affected by such a Condonation (*Bernstein* v. *Bernstein*, 1893, P. 292; 63 L. J. P. D. & A. 3; 69 L. T. 513). Once accomplished, it has been said that Condonation is final (*Gandy* v. *Gandy*, 51 L. J. P. D. & A. 41; 7 P. D. 168: *Rose* v. *Rose*, 52 L. J. P. D. & A. 25; 8 P. D. 98; *Vthlc, Dowling* v. *Dowling*, 1898, P. 228; 68 L. J. P. D. & A. 8). In *Rose* v. *Rose*, Jessel, M. R., said,—"I think that the notion of bygones being bygones is as important between husband and wife as between any other persons"; and he scouted what he called "the old monkish doctrine" of Condonation being conditional on future fidelity; but, almost simultaneously, the President of the P. D. & A. Div. laid it down that "the legal definition of Condonation is Forgiveness upon Condition that no matrimonial offence shall be committed in the future" (*Blandford* v. *Blandford*, 52 L. J. P. D. & A. 17; 8 P. D. 19: *Vf*, *Curtis* v. *Curtis*, 28 L. J. P. & M. 55; 1 Sw. & Tr. 192; 31 L. T. O. S. 272: *Norris* v. *Norris*, 30 L. J. P. & M. 111: *Dent* v. *Dent*, 34 L. J. P. & M. 118; 4 Sw. &

Tr. 105: *Moore* v. *Moore*, 1892, P. 382; 62 L. J. P. D. & A. 10: *Rogers* v. *Rogers*, 63 L. J. P. D. & A. 103: *Armstrong* v. *Armstrong*, 32 Miss. 289).

Husband and Wife sleeping together in the same bed is strong evidence of, but of itself does not constitute, Condonation; the real fact to be got at is, Forgiveness, — which may be absent although the parties sleep together (*Hall* v. *Hall*, 1891, P. 302; 60 L. J. P. D. & A. 73).

For clause in *Separation Deed* giving Condonation, *V. Rose* v. *Rose*, sup: *Cp*, *Gooch* v. *Gooch*, cited COMMENCED.

However precise the Condonation, it does not prevent the forgiven act from being set up as a *Defence* to the Court granting a claimed relief; for though the parties "may contract themselves out of their rights, they cannot contract the Court out of its duty" (per Jeune, P., *Gooch* v. *Gooch*, sup); therefore, Condonation is no answer to the King's Proctor's intervention (*Goode* v. *Goode*, 30 L. J. P. M. & A. 105; 2 Sw. & Tr. 253: *McCord* v. *McCord*, 44 L. J. P. & M. 38; L. R. 3 P. & D. 237: *Boucher* v. *Boucher*, 9 Times Rep. 70).

CONDUCE. — "According to the received meaning of the word 'conduce,' I think that what has conduced an effect must in some sense have caused it, or contributed to it; and the conducing cause must be such as, if not directly at least indirectly, might at the time be contemplated as likely somehow to contribute to" that effect (per Campbell, C. J., *Cummington* v. *Cummington*, 28 L. J. P. & M. 102; 1 Sw. & Tr. 475); and, accordingly, it was held in that case that "WILFUL NEGLECT or Misconduct" conducing to adultery, s. 31, Matrimonial Causes Act, 1857, means, marital neglect or misconduct, and not such compulsory absence as is occasioned by a term of imprisonment. It means also such neglect or misconduct as has led up to the respondent's fall from virtue, — *i.e.* the first lapse (*St. Paul* v. *St. Paul*, 38 J. L. P. & M. 57; L. R. 1 P. & D. 739: *Millard* v. *Millard*, 78 L. T. 471).

Vf, on the phrase cited, *Allen* v. *Allen*, 28 L. J. P. & M. 81: *Badcock* v. *Badcock*, 31 L. T. O. S. 268: *Proctor* v. *Proctor*, 34 L. J. P. & M. 99: *Dering* v. *Dering*, L. R. 1 P. & D. 531: *Davies* v. *Davies*, 32 L. J. P. & M. 111: *Hawkins* v. *Hawkins*, 54 L. J. P. D. & A. 94; 10 P. D. 177: *Synge* v. *Synge*, cited DESERTION: *Burdon* v. *Burdon*, 69 L. J. P. D. & A. 118. As to the exercise by the Court of the discretion given by the section, *V. Starbuck* v. *Starbuck*, 59 L. J. P. D. & A. 20: *Parry* v. *Parry*, 1896, P. 37; 65 L. J. P. D. & A. 35; 73 L. T. 759: *Symons* v. *Symons*, 1897, P. 167; 66 L. J. P. D. & A. 81; 77 L. T. 142.

CONDUCIVE. — *V.* INCIDENTAL: INCIDENTAL OR CONDUCIVE.

CONDUCT. — The "Conduct" of a Bankrupt which, under s. 28, Bankry Act, 1883, repld s. 8, Bankry Act, 1890, has to be considered on his application for an Order of Discharge, is such as has had something

to do with producing his bankry; therefore, his refusal to be medically examined, in order that a policy might be effected on his life so as to add value to a reversionary contingent interest dependent on his life, is not "Conduct" which can be so considered (*Re Betts*, 56 L. J. Q. B. 370; 19 Q. B. D. 39; 35 W. R. 530), for the Court has no power to order him to submit to such an examination (*Re Garnett*, 55 L. J. Q. B. 77), and "the word 'Conduct' in s. 28 does not include general misconduct, not, for example, immoral conduct such as a breach of promise of marriage" (per Lopes, L. J., *Re Betts*, sup), unless such conduct, *e.g.* damages in an action for Breach of Promise of Marriage, has caused the bankry (*Re Betts*, nom. *Board of Trade* v. *Block*, affd in H. L., 58 L. J. Q. B. 113; 13 App. Ca. 570; 4 Times Rep. 770: *Re Barker*, 59 L. J. Q. B. 331; 25 Q. B. D. 285; 38 W. R. 609). *Vf* AFFAIRS.

But s. 32, Bankry Act, 1883, which provides for the removal of a Bankrupt's Disqualifications, is not affected by ss. 24, 28; and in order to obtain a certificate that his bankruptcy "was caused by *misfortune*, without any *misconduct* on his part," the Bankrupt must show that it was caused by "misfortune," — *i.e.* something unforeseen which could not ordinarily be guarded against; and was not attributable to "misconduct," — *i.e.* conduct either legally or morally blameworthy (*Re Burgess*, 35 W. R. 702; 57 L. T. 200). In that case the bankruptcy had arisen through the bankrupt having been convicted of Libel, and sentenced to 3 months' imprisonment and to pay the costs of the prosecution.

"Conduct," s. 17 (1), Bankry Act, 1883, relates to matters referred to in s. 28 (per Russell, C. J., *R.* v. *Erdheim*, 1896, 2 Q. B. 260; 65 L. J. M. C. 179; 74 L. T. 734; 44 W. R. 607). The phrase in that section is, "Conduct, DEALINGS, and Property," and, "unless 'Conduct' and 'Dealings' mean exactly the same thing, 'Dealings' are matters connected with the debtor's bankry and 'Conduct' is the man's general conduct; and there seems to be nothing at all improper or unfair in saying, that a man of good character who becomes a bankrupt may be dealt with by the Court in one way, and that a man of bad character, guilty of long antecedent fraud and so forth, may be treated very differently. The word 'Conduct' seems to me to be used with great accuracy to enlarge the scope of the enquiry and to make the General Conduct of a bankrupt a part of the materials which are before the Court when the Court has to consider what, upon the whole, is the just way of dealing with the bankrupt after the adjudication proceedings" (per Coleridge, C. J., *Re Sankey*, 59 L. J. Q. B. 243; 25 Q. B. D. 25).

"Conduct" *complained of*, s. 88 (2), 45 & 46 V. c. 50, means, Misconduct; an honest decision of a RETURNING OFFICER, though erroneous, is not "Conduct" justifying the joining him as a Respondent in an Election Petition (*Harmon* v. *Park*, 50 L. J. Q. B. 227; 6 Q. B. D. 323).

"Conduct conducing"; *V.* CONDUCE.

"Conduct or MANAGEMENT" of an Election, ss. 8, 28, Corrupt and Illegal Practices Prevention Act, 1883, does not include payment for mere Registration purposes, nor the cost of founding and carrying on a newspaper to advocate party views (*Kennington*, 4 O'M. & H. 93).

V. IMMORAL: IMPROPER: INFAMOUS CONDUCT: MISCONDUCT: SHAMEFUL CONDUCT: WILFUL MISCONDUCT: CONDUCTING: IN THE CONDUCT OF A SUIT: CHARGE OR CONDUCT.

CONDUCTED.—*V.* PEACEABLE.

"By whose order conducted"; *V.* EXTRAORDINARY TRAFFIC.

CONDUCTING.—The Scale Fee to a Solr for "Conducting" a sale by Public Auction, Sch 1, Part 1, Solrs Rem Ord, is only payable where he does, or provides for doing, *all* the work (*Re Wilson*, 55 L. J. Ch. 627; 29 Ch. D. 790; *Re Sykes*, 56 L. J. Ch. 238: *Re Faulkner*, 56 L. J. Ch. 1011: *Newbould* v. *Bailward*, *Parker* v. *Blenkhorn*, 14 App. Ca. 1; 58 L. J. Q. B. 209; 37 W. R. 401; 59 L. T. 906: *Mawdsley* v. *Beesley*, 36 S. J. 63). A lump sum, or fixed fee, paid to an Auctioneer for actually selling, is as much a "Commission" to him, under R. 11, of that Sch as a pro ratâ payment (*Newbould* v. *Bailward*, sup: *Burd* v. *Burd*, 58 L. J. Ch. 170; 40 Ch. D. 628; 37 W. R. 428; 60 L. T. 228: *Drielsma* v. *Manifold*, 1894, 3 Ch. 100; 63 L. J. Ch. 653; 71 L. T. 62; 42 W. R. 578), though, under the Conditions of Sale, such fixed fee be paid by the purchaser; for, indirectly, the burden of such a payment is on the vendor (*Cholditch* v. *Jones*, 1896, 1 Ch. 42; 65 L. J. Ch. 83; 73 L. T. 528; 44 W. R. 124. *Vf* BY). So, a Commission to an Agent in a Negotiation for a Private Contract, is not less a Commission under the Rule by being partly a remuneration for other services (*Re Withall*, 1891, 3 Ch. 8; 61 L. J. Ch. 14; 64 L. T. 704; 39 W. R. 529); but a mere Valuation Fee is not such a Commission (*Re MacGowan*, 1891, 1 Ch. 105; 60 L. J. Ch. 118; 39 W. R. 227; 63 L. T. 793). *V.* NEGOTIATE. *Note:* Where the Auction comprises more lots than one and they are all sold, the Fee is to be calculated on the aggregate of the purchase moneys (*Re Onward Bg Socy*, 1893, 1 Q. B. 16; 62 L. J. Q. B. 80; 68 L. T. 443; 41 W. R. 107).

Extra Costs beyond Salary to a Town Clerk for "conducting Actions or Suits, &c," are payable for services for warding off threatened litigation, whether litigation in fact results or not (*R.* v. *Prest*, 20 L. J. Q. B. 17; 16 Q. B. 44).

Conveying calves in a van, is not "Conducting *or Driving*" them, within the prohibition against doing so on the Lord's Day contained in the Islington Parish Act (*Triggs* v. *Lester*, L. R. 1 Q. B. 259: *V.* DRIVING).

"Managing or Conducting" an ENTERTAINMENT; *V.* KEEPER.

Conducting a PUBLIC HOUSE; *V.* PEACEABLE.

CONDUCTOR. — Quà London Hackney Carriages, "Conductor" included "every director, cad, or other person (except the driver) who shall be attendant upon or with any metropolitan Stage Carriage" (1 & 2 V. c. 79, s. 1), — a def replaced by that in s. 2, London Hackney Carriages Act, 1843, 6 & 7 V. c. 86, which is substantially the same, except that "cad" is dropped out.

CONFECTIONER. — *V.* BAKER.

CONFEDERACY. — "'Confederacie,' is when two or more men confederate themselves to doe any hurt or damage to another, or to doe any unlawfull thing" (Termes de la Ley), *e.g.* to BOYCOTT. *Vf*, Cowel: Jacob. *Cp*, COLLUSION: CONJURATION: CONSPIRACY.

CONFERENCE. — "Conference" of the Primitive Wesleyan Methodists of Ireland; *V.* 34 & 35 V. c. 40, s. 1.

CONFESSION. — A Judge's Order by consent, held to be a judgment by "Confession" within the proviso to 6 G. 4, c. 16, s. 108 (*Andrews* v. *Deeks*, 20 L. J. Ex. 127).

Plea of Confession and Avoidance; *V.* AVOIDANCE.

Free and Voluntary Confession, Admissible in Evidence; *V. R.* v. *Thompson*, 62 L. J. M. C. 93; 1893, 2 Q. B. 12; 69 L. T. 22; 41 W. R. 525; 57 J. P. 312.

"The sorrow for the consequences of sin which divines call Attrition, is distinct from the sorrow for the sin itself which they call Contrition. This latter penitence naturally leads to Confession, and thence or thereby to Reconciliation with God, which Reconciliation the Church pronounces by the sentence called Absolution" (Phil. Ecc. Law, 538). *Vh* 3 Encyc. 265.

CONFIDE: CONFIDENCE. — *V.* PRECATORY TRUST.

"Trust or Confidence"; *V.* TRUST.

CONFIGURATION. — *V.* SHAPE: DESIGN.

CONFINE. — *V.* IMPOUND.

CONFIRM. — To "confirm" a WILL is an apt word for its revival, "and expresses the meaning, and has the operation of, the word 'revive,'" as used in the Revised Statutes of Nova Scotia, 5th Series, c. 89, which provision is copied from s. 22, Wills Act, 1837 (*McLeod* v. *McNab*, 1891, A. C. 471; 60 L. J. P. C. 70). For an example of the vigour of "confirm" to revive a revoked Will, *V. Re Van Cutsem*, 63 L. T. 252.

So, *semble*, to "confirm" a Document will frequently mean, to give it life which previously it never had, *e.g.* if the document is invalid, either intrinsically or extrinsically, and is subsequently "confirmed" by another document which would have validly accomplished the objects of the

prior document, such prior document will be vivified and its professed objects will be made effectual (*Carver* v. *Richards*, 29 L. J. Ch. 357; 1 D. G. F. & J. 548: *Morgan* v. *Gronow*, 42 L. J. Ch. 410; L. R. 16 Eq. 1).

But, generally, "a 'Confirmation' is the conveyance of an estate or right that one hath in or unto lands or tenements to another that hath the possession thereof, or some estate therein; whereby a Voidable estate is made sure and unavoidable, or whereby a Particular estate is increased and inlarged" (Touch. 311, citing Termes de la Ley, and Co. Litt. 295 b, in which latter place it is said, "a Confirmation doth not strengthen a void estate"). *Vf* Jacob.

Sometimes, "confirm" "means merely 'verify': it is commonly used in that sense at the meetings of public bodies who 'confirm' the Minutes of their last meeting, not meaning thereby that they give them force, but merely that they declare them accurate" (per Campbell, C. J., *R.* v. *York*, 1 E. & B. 594).

Sometimes "confirm" means "approve," and involves a discretional act and not one merely ministerial, *e.g.* in s. 38, 7 W. 4 & 1 V. c. 78 (*S. C.*).

Vf RATIFY.

CONFIRMATION. — *V.* CONFIRM: LETTER.

"'Confirmation' is the Rite of the Church whereby the faith of the baptized person is confirmed, and grace given to him to remain steadfast in that faith" (Phil. Ecc. Law, 515).

Confirmation is one of the tests of Membership in the Church of England (*Re Perry Almshouses*, cited CHURCH).

CONFIRMED. — *V.* OBLIGATORY: REQUIRED.

CONFIRMING. — "Confirming Act," "Confirming Authority"; Stat. Def., 59 & 60 V. c. 53, s. 3 (2), c. 54, s. 8 (2); "Confirming Authority," 47 & 48 V. c. 12, s. 2.

CONFISCATION. — "Confiscation must be an act done in some way on the part of the government of the country where it takes place, and in some way beneficial to that government; though the proceeds may not, strictly speaking, be brought into its treasury" (per Ellenborough, C. J., *Levin* v. *Allnutt*, 15 East, 269). *Vf*, Termes de la Ley, *Confiscate*: Cowel: 3 Encyc. 266.

CONFLICT. — It seems that a difference between the provisions of a Settlement and those of the Settled Land Act, 1882, with respect to the person who is to exercise a particular power, is not a "Conflict" between the provisions of the Settlement and those of the Act, within s. 56 (2) of the Act (*Re Newcastle*, 52 L. J. Ch. 645; 24 Ch. D. 138).

Note, this subs. relates to the exercise of Powers, and not to the results of such exercise (*Lonsdale* v. *Crawfurd*, cited IN EXERCISE).

"Conflicting Claims"; *V.* OPPOSING.

CONFORM. — Person "to whose orders . . . Workman was bound to Conform," s. 1 (3), Employers' Liability Act, 1880, "means, that the relative position of the parties was such that the one owed obedience to the other, and that the order was such that it could not be declined without contumacy" (per Ld Young, *McManus* v. *Hay*, 9 Rettie, 429), in other words, the orderer must be a person who had authority, within the area of his employment, to give the order; he must have received the mandate of his employer for that purpose; and the workman ordered must have been, by reason of his employment contract, bound to obey (per Mathew, J., *Hooper* v. *Holme*, 40 S. J. 742, 743; 12 Times Rep. 537; affd 13 Times Rep. 6). It is immaterial whether the person authorised to give the order occupied a high or a humble position in the Works (per Ld Craighill, *Dolan* v. *Anderson*, 12 Rettie, 808). *Vf*, *Bunker* v. *Mid Ry*, 31 W. R. 231; 47 L. T. 476: *Snowden* v. *Baynes*, 59 L. J. Q. B. 325; 25 Q. B. D. 193; 38 W. R. 744: *Wild* v. *Waygood*, 1892, 1 Q. B. 783; 61 L. J. Q. B. 391; 66 L. T. 309; 40 W. R. 501; 56 J. P. 389: Beven, 853. *Cp* SUPERINTENDENCE.

CONFORMITY. — Scheme "in Conformity with" Endowed Schools Acts, s. 39 (3), 32 & 33 V. c. 56; *V. Re Christ's Hospital* (Appeals B and D), cited EDUCATIONAL ENDOWMENT.

CONGESTED. — "Congested District," quà Congested Districts (Scot) Act, 1897, 60 & 61 V. c. 53; *V.* s. 10.

"The Congested Districts Board (Ir) Acts"; *V.* Sch 2, Short Titles Act, 1896.

CONGREGATION. — *V.* PUBLIC READING.

Quà Church Patronage (Scot) Act, 1874, 37 & 38 V. c. 82; *V.* s. 9.

CONJOINTLY. — By a Canadian Will there was a devise to A. for life, remainder to B., C., and D. "*conjointly and in equal shares*, to be enjoyed by them during their natural life, and after their decease to their children"; — "the word 'conjointly' is not inapplicable to a gift of property in equal shares, so long as the property remains undivided. It might, perhaps, be inferred, from the use of the word in the gift to the three, and its absence in the gift to their children, that the testator desired to indicate that there was to be no partition before the property reached its final destination. However that may be, the word 'conjointly' cannot neutralize or control the plain meaning of the words 'in equal shares' by which it is immediately followed" (per Ld Macnaghten, in delivering jdgmt of P. C., *De Hertel* v. *Goddard*, 66 L. J. P. C. 90; 77 L. T. 113). *Vf*, EQUALLY: JOINTLY.

CONJUNCTION. —*V.* RUN.

CONJURATION. —" 'Conjuration,' is a compact or plot made by men combining themselves together by oath or promise to doe any publike harme. But it is more commonly used for such as have personall conference with the Devill or Evill Spirit to know any secret or to effect any purpose, 5 Eliz. c. 16. And the difference betweene Conjuration and Witchcraft may be said to be this, because that the one seemeth, by prayers and invocation upon the powerful name of God, to compel the Devill to say or doe what hee commandeth, and the other doth rather, by a friendly and voluntarie conference or agreement betweene him or her and the Devill or Familiar, to have his or her desires and purposes effected, in stead of bloud or other gift offered unto him, especially of his or her soule: And both these differ from Enchantments or Sorceries, because that they are personall conferences with the Devill, as is said; but these are but medicines and ceremonial formes of words, commonly called charmes, without apparition" (Termes de la Ley). *Cp* EXORCIST.

" 'Conjurors,' are those, who, by force of certain magic words endeavour to raise the Devil and oblige him to execute their commands; 'Witches' are such who, by way of conference, bargain with an Evil Spirit to do what they desire of him; and 'Sorcerers' are those who, by the use of certain superstitious words, or by the means of images, &c, are said to produce strange effects above the ordinary course of nature" (Jacob, *Conjuration*, citing Hawk. P. C. lib. 1, ch. 3). *Vf* SORCERY.

Note. All these offenders might formerly be condemned to the Pillory, or be otherwise dealt with by the Church. The statutes (33 H. 8, c. 8; 1 Jac. 1, c. 12), against Witchcraft, &c, were repealed by 9 G. 2, c. 5. The successor to the legal Conjuror and Witch is a ROGUE AND VAGABOND: *V.* FORTUNES: WITCH.

Cp, CONFEDERACY: CONSPIRACY.

CONMOTE. —*V.* COMMOTE.

CONNECTED WITH. —*V.* BUSINESS CONNECTED WITH.

" Connected with " " the business of the employer," s. 1 (1), Employers' Liability Act, 1880; *V. Bradley* v. *Gas Light & Coke Co*, 36 S. J. 526.

" In connection with "; *V. Lawson* v. *Wallasey*, 52 L. J. Q. B. 302; 11 Q. B. D. 229; affd 48 L. T. 507. *Cp* USED.

Misdemeanour or Felony " connected with " a debtor's Bankry, s. 8 (2), Bankry Act, 1890, must be such as " brought about, or resulted in, or committed in view of, bankry " (per Williams, J., *Re Hedley*, 1895, 1 Q. B. 923; 64 L. J. Q. B. 460; 72 L. T. 470; 43 W. R. 464).

Chargeable Services rendered by a Ry Co, " at, or in connection with, SIDINGS not belonging to the Co," may be such as are involved in the delivery of goods, and which the trader could not himself perform (*Manchester S. & L. Ry* v. *Pidcock*, cited CONVEYANCE).

In a Railway Arrangement Act, "any Ry connected with" those therein mentioned; held, to mean, connected for the purposes of management or working, and not merely physically connected (*G. W. Ry* v. *Central Wales Ry*, 5 Ry & Can Traffic Ca. 1).

Tramways "worked in connection therewith"; *V. Edinburgh Tramways Co.* v. *Torbain*, 3 App. Ca. 58; 37 L. T. 288.

Works "contracted for, and connected with" contract works; *V. Goodyear* v. *Weymouth*, 35 L. J. C. P. 12; H. & R. 67: *Connor* v. *Belfast Water Commrs*, Ir. Rep. 5 C. L. 55. *Cp*, IMMEDIATELY CONNECTED.

CONNIVANCE. — "Connivance," s. 30, 20 & 21 V. c. 85, is the willing consent to a conjugal offence (in the sense of being an ACCESSORY before the fact), or a culpable ACQUIESCENCE in a course of conduct reasonably likely to lead to the offence being committed (*Phillips* v. *Phillips*, 1 Rob. Ecc. 157–164: *Allen* v. *Allen*, 30 L. J. P. M. & A. 2: *Glennie* v. *Glennie*, 32 L. J. P. M. & A. 17: *Boulting* v. *Boulting*, 3 Sw. & Tr. 329; 12 W. R. 389: *Gipps* v. *Gipps*, 33 L. J. P. M. & A. 161; 11 H. L. Ca. 1). *Vh*, Brown on Divorce, 3 ed., 88: Dixon on Divorce, 181. *V.* ACCESSORY: COLLUSION: CONDUCE.

CONQUEST. — "Conquest," when used as a verb active and not as a noun, has a wide and flexible signification. Where a lady, by antenuptial Settlement, had conveyed to trustees whatever she might "conquest or acquire" during her marriage; held, that those words passed property of every kind which came to her during the marriage by succession (*Diggens* v. *Gordon*, L. R. 1 H. L. Sc. 136). *V.* ACQUIRE.

CONSANGUINITY. — This word imports the same as KINDRED (*Leigh* v. *Leigh*, 15 Ves. 107).

CONSCIENCE. — *V.* EQUITY.

CONSECRATION. — "This term is employed in relation to both persons and things, and means, the setting apart for sacred purposes" (3 Encyc. 275).

CONSENT. — "'Consent,' is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side" (Story, s. 222).

Where an act is to be done by A. with the "Consent" of B., the act is A.'s which B. may prevent by withholding Consent, but which he cannot compel A. to do, *e.g.* when a Co's Articles provide that the Chairman with "consent" of a Meeting may adjourn, the Meeting cannot compel its own adjournment (*Salisbury Co* v. *Hathorn*, 1897, A. C. 268; 66 L. J. P. C. 62; 76 L. T. 212; 45 W. R. 591).

"Every 'Consent' to an act, involves a SUBMISSION; but it by no means follows that a mere Submission involves Consent," *e.g.* the mere

submission of a girl to a carnal assault, she being in the power of a strong man, is not Consent (per Coleridge, J., *R.* v. *Day*, 9 C. & P. 724). *Vf* RAPE.

"Consent *or Agreement* by Deed or Writing," ss. 2 and 3, 2 & 3 W. 4, c. 71, "Consent in Writing"; *V.* IN WRITING: OWN CONSENT.

A Reference under the Lands C. C. Act, 1845, is, *semble*, not a reference by "Consent" within s. 5, or s. 17, Com. L. Pro. Act, 1854 (*Ex p. Harper*, L. R. 18 Eq. 539: *Re Dare Valley Ry*, 4 Ch. 554: *Rhodes* v. *Airedale Drainage Co*, 43 L. J. C. P. 323; 45 Ib. 861; L. R. 9 C. P. 508; 1 C. P. D. 402: *Re Harper and G. E. Ry*, L. R. 20 Eq. 39: *Bexley* v. *W. Kent Sewerage Bd*, 51 L. J. Q. B. 456; 9 Q. B. D. 518).

Vf, as to what is a Reference by "Consent," *Galatti* v. *Wakefield*, 48 L. J. Q. B. 70; 4 Ex. D. 249: *Street* v. *Street*, cited REFERENCE: ARBITRATION.

A Reference by Consent Order not only of a "CAUSE or Matter" but also of "all Matters in Difference," is not a Reference within either s. 14, or s. 15, Arb Act, 1889 (*Darlington Wagon Co* v. *Harding*, cited EQUIVALENT).

"It seems to be clear, that approbation subsequent to a marriage is not, in general, a sufficient compliance with a Condition requiring 'Consent'; but Ld Hardwicke, in *Burleton* v. *Humfrey* (Amb. 256), took a distinction between the words 'Consent' and 'Approbation,' holding the latter to admit subsequent approval, where coupled with the former disjunctively; but he decided the case principally on another ground;—and in regard to the admission of subsequent consent the authority of the case has been questioned. *V. Clarke* v. *Parker*, 19 Ves. 21" (2 Jarm. 55; *Vf* Watson Eq. 1239). "Consent of PARENTS" means, parents *if any* (Ib.: *Sv*, where Consent of Guardian to an Infant's Marriage is required, *Re Brown*, 50 L. J. Ch. 507). In this connection, however, "where a Consent is given substantially, the Court does not look very minutely into the form in which it is given" (per Stirling, J., *Re Smith*, 59 L. J. Ch. 284; 44 Ch. D. 654); and, where no formalities are prescribed, Consent will be implied if the persons whose consent is required express no disapproval of, and by their conduct induce, the marriage (*Daley* v. *Desbouverie*, 2 Atk. 261: *Berkley* v. *Ryder*, 2 Ves. sen. 533: *Clarke* v. *Parker*, sup, last par of jdgmt: *Re Smith*, sup). *Note:* As to when such a Condition as to Consent is operative, *V. Re Nourse*, 79 L. T. 376; 47 W. R. 116, and cases there cited.

Where there is a direction or agreement for the Conversion of Money into Land, and the Uses are exclusively applicable to realty, "the direction or agreement will be regarded as imperative though the Settlement require the purchase to be made *at the Request* of a person; for the insertion of such a clause has been taken to mean, not that a conversion may not be effected *before*, but that it shall certainly be effected *after*, request. And the construction is the same, though the purchase be directed to be

made with a person's *Consent* and *Approbation*" (Lewin, 1159, 1160, and cases there cited).

V. INSTIGATION.

"Consent" of a TRUE OWNER to the possession of goods by a REPUTED OWNER, is none the less "Consent" by reason of the retention of the goods by such latter owner being consistent with a BILL OF SALE given by him (*Spackman* v. *Miller*, 31 L. J. C. P. 309; 12 C. B. N. S. 659: *Re Ginger*, 1897, 2 Q. B. 461; 66 L. J. Q. B. 777; 76 L. T. 808; 46 W. R. 144). Such "Consent" is given as regards a CHOSE IN ACTION so long as no Notice is given to the payer (*Bartlett* v. *Bartlett*, 26 L. J. Ch. 577; 1 D. G. & J. 127: *Rutter* v. *Everett*, 1895, 2 Ch. 872; 64 L. J. Ch. 845: *Re Goetz*, 1898, 1 Q. B. 787; 67 L. J. Q. B. 577; 78 L. T. 399; 46 W. R. 469); but, *semble*, the mere posting of Notice is enough to put an end to such Consent (*Re Hickey*, Ir. Rep. 10 Eq. 117). Consent cannot be given if the True Owner be under disability, *e.g.* by Infancy (*Re Mills*, 1895, 2 Ch. 564; 64 L. J. Ch. 708). *Vf* POSSESSION ORDER OR DISPOSITION.

Possession of Goods or Documents of Title to Goods, "with the Consent of the SELLER," s. 25 (2), Sale of Goods Act, 1893; *V. Cahn* v. *Pocketts Co*, 68 L. J. Q. B. 515; 1899, 1 Q. B. 643; 80 L. T. 269; 47 W. R. 422.

As to the like phrase in s. 9, Factors Act, 1889; *V. Robinson* v. *Restell*, 12 Times Rep. 174.

The "*Free and Voluntary* Consent" (32 G. 2, c. 28, s. 1), necessary to authorise a Sheriff, &c, to carry a debtor to a tavern, &c, must have been an active consent, as distinguished from that consent which is said to be implied by silence (*Dewhurst* v. *Pearson*, 2 L. J. Ex. 143; 1 C. & M. 365; 3 Tyr. 242; 1 Dowl. 664); and where the officer was illegally carrying a debtor to gaol, and the debtor, to avoid being taken to gaol, consented to go to a tavern and there drew up a discharge agreement, the "Consent" so obtained was not "free and voluntary" (*Barsham* v. *Bullock*, 10 A. & E. 23; 2 P. & D. 241). *V.* VOLUNTARILY.

Covenant by Lessor not to "consent" to a certain trade on his other property; *V. Stuart* v. *Diplock*, 43 Ch. D. 343; 59 L. J. Ch. 142; 38 W. R. 223.

Mere silent acquiescence by a Lessor respecting a trade forbidden by the Lease, raises no inference that he has given "Consent" to the Lessee's carrying on any other forbidden trade (*Macher* v. *Foundling Hosp*, 1 V. & B. 188).

"Consent" to Assigning or Underletting not to be "unreasonably" or "vexatiously" withheld; *V.* UNREASONABLY.

Auction on demised premises not to be "without Consent"; *V. Toleman* v. *Portbury*, cited AUCTION.

An adult who "consents to be dealt with summarily," s. 12, Sum

Jur Act, 1879, thereby deprives himself of power to appeal (*R.* v. *London Jus.*, cited PAST).

Stat. Def. — 37 & 38 V. c. 89, s. 57; 48 & 49 V. c. 76, s. 29.

V. WRITTEN CONSENT: IN WRITING: OWN CONSENT: SANCTION.

CONSEQUENCE. — "In consequence of"; *V.* CAUSED BY.

"In consequence of whose order"; *V.* EXTRAORDINARY TRAFFIC, towards end.

CONSEQUENCES. — The phrase in a Marine Insurance "Warranted free from all Consequences" of, *e.g.* Hostilities or Warlike Operations, extends only to the direct consequences of the excepted causes (*Ionides* v. *Universal Marine Insrce*, 32 L. J. C. P. 170; 14 C. B. N. S. 259: *Nickels* v. *London & Prov. Mar Insrce*, 17 Times Rep. 54; 70 L. J. Q. B. 29). *Cp* CAPTURE.

CONSEQUENT. — "Consequent," means, traceable to, directly or indirectly: "Damage consequent upon COLLISION," in a Marine Policy, means, damage immediately consequent upon collision, or leakage caused by collision; therefore, the damage to lemons and oranges occasioned by delay in transit and by an unloading and re-loading necessitated by a collision, is not "consequent" upon the collision, because the collision is not the proximate cause of the damage (*Pink* v. *Fleming*, 59 L. J. Q. B. 559; 25 Q. B. D. 396; 63 L. T. 413). *Sv*, *The City of Lincoln*, 59 L. J. P. D. & A. 1; 15 P. D. 15; 62 L. T. 49; 38 W. R. 345. *Vf* DAMAGE BY COLLISION.

Claim "Consequent on Loss of Time"; *V.* LOSS.

Costs "Consequent"; *V.* COSTS.

CONSERVANCY AUTHORITY. — Quâ Mer Shipping Act, 1894, "'Conservancy Authority,' includes all persons or bodies of persons, corporate or unincorporate, intrusted with the duty, or invested with the power, of conserving, maintaining, or improving, the navigation of a TIDAL WATER" (s. 742).

For other but similar def, *V.* 40 & 41 V. c. 16, s. 3; 51 & 52 V. c. 25, s. 55; 54 & 55 V. c. 43, s. 4.

Thames Conservancy; *V.* CONSERVATOR.

CONSERVATIVE. — A gift for the furtherance of "Conservative Principles and Religious and Mental Improvement" is a good CHARITY (*Re Scowcroft*, cited AND).

CONSERVATOR. — "Conservators of the River THAMES"; as to their name, establishment, and powers, *V.* Thames Conservancy Acts of 1857, 1864, 1878, and 1894, Thames Navigation Acts, 1866 and 1870, Thames Act, 1883, and Thames Preservation Act, 1885, 48 & 49 V. c. 76.

"Salmon Conservators"; Stat. Def., 51 & 52 V. c. 54, s. 14.

CONSIDERATION. — " 'Consideration' is the materiall cause of a CONTRACT, without the which no contract can binde the partie. This Consideration is either Expressed, as when a man bargaineth to give 20*s.* for a horse, — or, is Implyed, as when the Law it selfe enforceth a Consideration, as if a man comes into a Common Inne and, there staying some time, takes meat or lodging or either for himselfe or for his horse, the Law presumeth that he intendeth to pay for both, notwithstanding that nothing bee further covenanted betweene him and his host" (Termes de la Ley).

"The definition of 'Consideration' given in Selwyn, N. P., 8 ed., 47, which is cited and adopted by Tindal, C. J., in *Laythoarp* v. *Bryant* (3 Sc. 250; 2 Bing. N. C. 735; 5 L. J. C. P. 220), is, — 'Any act of the plt from which the deft derives a benefit or advantage, or any labour, detriment, or inconvenience, sustained by the plt, provided such act is performed, or such inconvenience suffered, by the plt with the CONSENT, either express or implied, of the deft'" (per Bowen, L. J., *Carlill* v. *Carbolic Smoke Ball Co*, 1893, 1 Q. B. 271; 62 L. J. Q. B. 264). In the 12 ed. of Selwyn, p. 43, the def is, — "Any act of the plt from which the deft derives (or expects to derive, *Haigh* v. *Brooks*, 10 A. & E. 309) a benefit or advantage, or any labour, detriment, or inconvenience, sustained by the plt, *however small the benefit or inconvenience may be*, is a sufficient Consideration, if such act is performed, or such inconvenience suffered, by the plt *at the request*, or with the consent, either express or implied, of the deft."

"A VALUABLE Consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit, accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other. — Com. Dig. *Action on the Case, Assumpsit*, B. 1-15" (per Lush, J., *Currie* v. *Misa*, 44 L. J. Ex. 99; L. R. 10 Ex. 153; affd 45 L. J. Ex. 852; 1 App. Ca. 554: cited and adopted, *Fleming* v. *New Zealand Bank*, 1900, A. C. 577; 69 L. J. P.C. 120; 83 L. T. 1).

Vf, *Thomas* v. *Thomas*, 2 Q. B. 851; 11 L. J. Q. B. 104.

"In Consideration"; *V.* PRECATORY TRUST: PREMISES.

"In Consideration," s. 8 (1), Settled Land Act, 1882, has the technical legal meaning of a present inducement for a present transaction, and will not permit of a past voluntary expenditure being considered in granting a Bg Lease under the section (*Re Chawner*, 1892, 2 Ch. 192; 61 L. J. Ch. 331).

"Contract made," or "Consideration given"; *V.* CONTRACT.

V. GOOD: VALUABLE: FULL CONSIDERATION: TRULY SET FORTH.

CONSIGN. — *V. Phillipps* v. *Briard*, 25 L. J. Ex. 235, 236.

To "consign," ordinarily means, to send or transmit goods to a Merchant, or Factor, for sale (*Gillespie* v. *Winberg*, 4 Daly, Com. Pl. 320).

CONSIGNATION. — Stat. Def., 56 & 57 V. c. 44, s. 2; 58 & 59 V. c. 19, s. 2.

CONSIGNEE. — A Consignee of Cargo, "is a person residing at the Port of Delivery to whom the goods are to be delivered when they arrive there" (per Buller, J., *Wolff* v. *Horncastle*, 1 B. & P. 322).

CONSIGNEE PAYS CARRIAGE. — These words in a Consignment Note, do not relieve the consignor from his liability to the Carrier which the circumstances show he had contracted (*G. W. Ry* v. *Bagge*, 54 L. J. Q. B. 599; 15 Q. B. D. 625).

CONSIGNMENT. — "A 'Consignment,' is a species of Mercantile Conveyance operating upon the particular effects consigned, which, though it may be defeasible, may operate in the meantime and enable the Consignee by his acts to bind the Consignor" (per Chambre, J., *Lucena* v. *Craufurd*, 2 B. & P. N. S. 299).

CONSIMILI CASU. — *V.* CASE.

CONSISTING. — This word in s. 4, Comp Act, 1862, means, "for the time being consisting" (*Re Thomas, Ex p. Poppleton*, 54 L. J. Q. B. 336; 14 Q. B. D. 379).

"Consisting of more than 7 MEMBERS," s. 199, Ib., means, consisting of, &c, "at the time when the Court is asked to make the Winding-up Order" (per Lindley, L. J., *Re Bowling and Wilby*, 1895, 1 Ch. 663; 64 L. J. Ch. 430).

"Consisting of"; *V.* THAT IS TO SAY.

CONSISTORIAL ACTION. — Stat. Def., 24 & 25 V. c. 86, s. 19.

CONSOLIDATE. — Actions "may be consolidated," R. 8, Ord. 48, R. S. C.; *Vh* Ann. Pr.

"Consolidated Annuities"; Stat. Def., 54 & 55 V. c. 48, s. 42.

"Consolidated Fund," usually means, the Consolidated Fund of the UNITED KINGDOM, *V.* 33 & 34 V. c. 71, s. 3; 38 & 39 V. c. 45, s. 9; 51 & 52 V. c. 32, s. 11; 52 & 53 V. c. 8, s. 8; 54 & 55 V c. 48, s. 42.

Consolidation of Mortgages; *V.* s. 17, Conv & L. P. Act, 1881: Fisher, 1210–1225: Coote, ch. 68.

CONSOLS. — A Bequest of "Consols" will pass Three per Cents, if testator had no Consols (*Burbey* v. *Burbey*, 15 W. R. 479: *V. Rowlatt* v. *Easton*, 11 W. R. 767). *V.* FUNDS.

CONSPICUOUS PLACE. — *V.* PUBLIC PLACE: PUBLIC SITUATION.

CONSPIRACY. — "When two or more persons agree to commit any CRIME, they are guilty of the misdemeanour called Conspiracy whether

the crime is committed or not" (Steph. Cr. 37: *Vf*, Termes de la Ley: Jacob: Arch. Cr. 1208–1223: Rosc. Cr. 367–385: Wright on Conspiracy: 3 Encyc. 289–301: *R.* v. *Whitechurch*, cited ADMINISTER. That def, accurate as far as it goes, is hardly wide enough, for "It is sufficient to constitute a Conspiracy if two or more persons combine by fraud and false pretences to INJURE another. It is not necessary, in order to constitute a Conspiracy, that the acts agreed to be done should be acts which, if done, would be criminal. It is enough if the acts agreed to be done, although not criminal, are wrongful, *i.e.* amount to a Civil Wrong" (per Cockburn, C. J., *R.* v. *Warburton*, L. R. 1 C. C. R. 276; 40 L. J. M. C. 24: *Vf*, *Kearney* v. *Lloyd*, 26 L. R. Ir. 268: *Huttley* v. *Simmons*, 1898, 1 Q. B. 181; 67 L. J. Q. B. 213: *Allen* v. *Flood*, cited MALICE). In view of these late decisions, some of the older cases could hardly be supported now, *e.g.* that a combination "to steal the person of a lady for the sake of her fortune" (per Eldon, C., *Wade* v. *Broughton*, 3 V. & B. 173: *Va*, *R.* v. *Thorp*, 5 Mod. 221), or to get a woman to become a man's kept mistress (*R.* v. *Delaval*, 3 Burr. 1438, 1439; 1 Bl. W. 439), is an indictable Conspiracy.

Cp, COMBINATION: CONFEDERACY: TRADE UNION.

CONSTABLE. — "A constable is often taken in the law for a warder or keeper, as *Constabularius castri de Dover et 5 portuum*" (Co. Litt. 234 a, b). *Vf* 3 Encyc. 301–303.

In modern times and modern Acts, "Constable" has some such meaning as that given in s. 29, Cruelty to Animals Act, 1849, 12 & 13 V. c. 92, viz. — "Headborough, Parish Beadle, Peace Officer, Special Constable, or any person belonging to the City of London Police Forces or any Constabulary Force in any part of the United Kingdom": *V.* 5 & 6 V. c. 12, s. 56; 7 & 8 V. c. 87, s. 10; 14 & 15 V. c. 38, s. 4; 31 & 32 V. c. 107, s. 5; 35 & 36 V. c. 92, s. 14, c. 93, s. 5; 42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 58, s. 190 (38), c. 69, s. 39; 50 & 51 V. c. 9, s. 2. — *Scot.* 13 & 14 V. c. 92, s. 11; 20 & 21 V. c. 72, s. 78; 25 & 26 V. c. 35, s. 37; 53 & 54 V. c. 67, s. 30. — *Ir.* 10 & 11 V. c. 84, s. 8; 12 & 13 V. c. 91, s. 89; 35 & 36 V. c. 94, s. 77.

"Constables of the Aided Force"; *V.* PURPOSES.

"Constable of the Metropolitan Force"; *V.* 25 & 26 V. c. 64, s. 3.

"Chief Constable"; *V.* CHIEF.

"High Constable"; *V.* 24 & 25 V. c. 75, s. 4; 32 & 33 V. c. 47, s. 1; 45 & 46 V. c. 50, s. 246. — *Ir.* 13 & 14 V. c. 69, s. 117; 61 & 62 V. c. 37, s. 109 (1).

V. POLICE.

CONSTABULARY. — Quâ Constabulary (Ir) Act, 1874, 37 & 38 V. c. 80, "'Constabulary Force' means, the Royal Irish Constabulary" (s. 1). *Vf*, MEMBER.

Quà the Peace Preservation (Ir) Acts, "Constabulary" or "Royal Irish Constabulary," includes the Dublin Metropolitan Police (33 & 34 V. c. 9, s. 3).

"The Constabulary (Ir) Acts, 1836 to 1885"; *V.* Sch 2, Short Titles Act, 1896.

"Constabulary Station"; *V.* 32 & 33 V. c. 99, s. 13.

CONSTANTLY. — Means, CONTINUOUSLY, *V.* WORKED.

CONSTITUTED. — If a Company, having a statutory constitution, has conferred on it, either by its special or a subsequent Act or series of Acts, power of constructing or working a railway, it is "a Company *constituted* by Act of Parliament . . . for the PURPOSE of constructing . . . a Railway" within s. 3, Ry Comp Act, 1867, although the Ry made by the Co was not one of its fundamental objects and forms but a very small portion of its undertaking (*Re East and West India Dock Co*, 57 L. J. Ch. 1053; 38 Ch. D. 576; 59 L. T. 237; 36 W. R. 849). *V.* MAIN PURPOSE: RAILWAY COMPANY.

Company "DULY constituted BY LAW," s. 180, Comp Act, 1862; *V. R.* v. *Registrar of Joint Stock Cos*, cited COMPANY.

"Constitution of a Co"; *V.* 11 & 12 V. c. 45, s. 3.

CONSTRUCT. — "Construct Water Works," s. 52, P. H. Act, 1875; *V.* WATER WORKS.

CONSTRUCTED. — Works "constructed," mean, Works really constructed so as to be of use (*Bull* v. *Ventnor Harbour Co*, W. N. (69) 12).

Buildings "constructed *or adapted*" to be in one OCCUPATION, s. 77, London Bg Act, 1894; *V. Woodthorp* v. *Spencer*, 63 J. P. 246.

A Building already constructed and not needing repair and which is merely being altered or added to, *e.g.* by adding girders and stays to prevent vibration, is, nevertheless, being "constructed *or repaired*," within s. 7 (1), Workmen's Comp Act, 1897 (*Hoddinott* v. *Newton*, 1901, A. C. 49; 70 L. J. Q. B. 150); so, the ordinary painting of a house is a repairing within the section (*Dredge* v. *Conway*, cited REPAIR). Where there is such a Construction or REPAIR, it continues until the SCAFFOLDING is removed (*Frid* v. *Fenton*, 69 L. J. Q. B. 436; 82 L. T. 193).

CONSTRUCTION. — Of a NEW STREET; *V. Hendon* v. *Pounce*, 42 Ch. D. 602; 61 L. T. 465: *Vthe, Bromley* v. *Lloyd*, 66 L. T. 462; 56 J. P. 278.

Construction of a RAILWAY, may include works made after the line is opened (*Sadd* v. *Maldon Ry*, 6 Ex. 143; 20 L. J. Ex. 102). *V.* COMMENCEMENT.

"Construction and Maintenance of a *Telegraphic Line* along a Street"; *V.* 55 & 56 V. c. 59, s. 9.

CONSTRUCTIVE. — "Constructive Corruption"; *V.* CORRUPTION.

Constructive CRIME; *V.* 3 Encyc. 306.

Constructive Notice; *V.* NOTICE: COME TO.

Constructive Occupation; *V.* OCCUPATION.

The phrase "Constructive RESIDENCE" is, probably, not different in meaning from "Residence." "When a person is physically absent from his place of residence for a time, if he has *animus revertendi*, his residence continues" (per Blackburn, J., *R.* v. *Abingdon*, L. R. 5 Q. B. 409).

Constructive Total Loss; *V.* TOTAL LOSS.

A "'Constructive TRUST' is raised by a Court of Equity wherever a person clothed with a Fiduciary Character, gains some personal advantage by availing himself of his situation as Trustee" (LEWIN, ch. 10). *Vf* Godefroi, ch. 13.

CONSUETUDO. — *V.* CUSTOM.

CONSUL. — Quà Foreign Marriage Act, 1892, 55 & 56 V. c. 23, "'Consul,' means, a Consul-General, Consul, Vice-Consul, Pro-Consul, or Consular Agent" (s. 24).

CONSULAR OFFICER. — *V.* s. 12 (20), Interp Act, 1889.

Quà Mer Shipping Act, 1894, "'Consular Officer,' when used in relation to a Foreign Country, means, the Officer recognized by Her Majesty as a Consular Officer of that Foreign Country" (s. 742).

CONSUMABLE. — "Consumable Stores"; — The doctrine that things *quæ ipso usu consumuntur* cannot be limited in succession and therefore that a gift of them for life confers an absolute interest, applies only to those things which are for personal use and exhausted by their personal use (per Wood, V. C., *Groves* v. *Wright*, 2 K. & J. 351), *e.g.* Food, Wines (*Phillips* v. *Beal*, 32 Bea. 25) and other Drink, Coals, and such like; "and there was a case in which Carriage Horses were held to come within the same rule; but there the tenant for life had actually used them" (per Wood, V. C., *Groves* v. *Wright*). Wearing apparel is not such Consumable Stores (per Wood, V. C., *Re Hall*, 1 Jur. N. S. 974). Consumable Articles, *e.g.* Farming Stock, or a Wine Merchant's Stock, are not within the rule when given in connection with a business, if they are such as are necessary for carrying it on (*Groves* v. *Wright*, sup: *Cockayne* v. *Harrison*, 41 L. J. Ch. 509; L R. 13 Eq. 432; 20 W. R. 504: *Sv*, *Breton* v. *Mockett*, 47 L. J. Ch. 754; 9 Ch. D. 95; 26 W. R. 850, *whlc* turned on a special direction). *Vh* 44 S. J. 324.

CONSUME. — Power to "consume" as much as A. "cares to do"; *V.* APPROPRIATE. *Cp* "Make use of," sub MAKE.

CONSUMED. — *V.* ON THE PREMISES.

CONSUMER. — Quà Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, " 'Consumer,' means, any body or person supplied, or entitled to be supplied, with Energy by the Undertakers" (s. 1, Sch; *whva* for " Consumer's Terminals," *Va* TERMINAL).

A " Consumer " of Gas, quà Metropolis Gas Act, 1860, 23 & 24 V. c. 125, " means, a person receiving, or entitled in accordance with this Act to receive, a supply of gas from any Gas Company " (s. 4).

A " Consumer of Water," quà a Water Works Act, is " a person who either actually enjoys or is consuming water, or is entitled so to do and has intimated his intention so to do " (per Cotton, L. J., *Cooke* v. *New River Co*, 57 L. J. Ch. 386; 38 Ch. D. 56; 58 L. T. 830; affd H. L. 14 App. Ca. 698; 59 L. J. Ch. 333).

" Water Consumer," quà Metropolis Water Act, 1897, 60 & 61 V. c. 56; *V.* s. 5.

CONTAGIOUS. — Quà Contagious Diseases Act, 1866, 29 & 30 V. c. 35, " 'Contagious Disease,' means, Venereal Disease, including Gonorrhœa " (s. 2). *Cp* INFECTIOUS.

" Contagious, or Infectious Disease," of Animals; *V.* 32 & 33 V. c 70, s. 6 — *Ir.* 33 & 34 V. c. 36, s. 12. *V.* CATTLE PLAGUE.

CONTAINING. — " The word 'containing' may easily admit of being construed as meaning 'inclusive of'; and not as in diminution of a general bequest " (*Henfrey* v. *Henfrey*, 6 Jur 356; 2 Curt. 468; 4 Moore, P. C. 29; stated 1 Jarm. 175).

CONTANGO. — *V. Bongiovanni* v. *La Société Générale*, cited CONTINUATION, the payment for which accommodation is called a " Contango." *Cp* BACKWARDATION.

CONTEMPLATION. — " A Settlement in 'Contemplation' of marriage, is obviously an ante-nuptial Settlement " (per Selborne, C., *Re Sampson and Wall*, 53 L. J. Ch. 460; 25 Ch. D. 482: *Va*, *Re Leigh*, 58 L. J. Ch. 306; 40 Ch. D. 290). *V.* UPON.

CONTEMPT. — A charter granting " Contempts," does not include money payable on Estreated RECOGNIZANCES (*R.* v. *Dover*, 4 L. J. Ex. 94; 1 Cr. M. & R. 726).

CONTEMPT OF COURT. — *V.* per Blackburn, J., *Skipwith's Case*, L. R. 9 Q. B. 232: CRIMINAL CAUSE: CRIMINAL PRISONER: Oswald on Contempt of Court.

CONTENTIOUS. — Contentious Business, is the opposite of COMMON FORM BUSINESS.

CONTENTS. — A legacy of the " Contents of my house " is equivalent to a legacy of the goods " *in* my house." *V.* IN.

As regards CHOSES IN ACTION (and, probably, also of small valuables, *e.g.* jewellery) there is an obvious distinction between a gift of the "Contents" of a House and one of the "Contents" of a Desk or Box; people do not, ordinarily, speak of keeping such things in a House (*Re Miller*, 61 L. T. 365), but they keep, and speak of keeping, their securities and valuables in a Desk or Box: accordingly, a bequest of the "Contents" of a House will, generally, pass only the Household Furniture and Effects, and not Choses in Action; but a bequest of the "Contents" of a DESK, or Box, will pass Choses in Action in such Desk or Box, *e.g.* Banker's Deposit Receipts, Cheques, Bills, and Notes, though unindorsed, — but not the accessories of other property, *e.g.* the key of another box, or title deeds (*Re Robson*, 1891, 2 Ch. 559; 60 L. J. Ch. 851; 65 L. T. 173). *Cp*, EFFECTS: LOCALLY SITUATE.

CONTENTS UNKNOWN. — "When there is a closed package and a representation as to its contents, the shipowner may accept the Bill of Lading, or may alter it, and if he adds, '*Contents Unknown*,' then, according to *Parsons on Shipping* (p. 198), the cases there cited, and *Jessel* v. *Bath* (36 L. J. Ex. 149; L. R. 2 Ex. 267), the meaning is, that he declines to accept the representation, and merely accepts the package as it appears on the outside, but not the statement as to what is inside, — and he contracts to carry what really is inside" (per Brett, J., *Lebeau* v. *Gen. Steam Nav.*, 42 L. J. C. P. 1; L. R. 8 C. P. 88: *Vf*, *The Peter der Grosse*, 1 P. D. 414; 34 L. T. 749). The usual phrase in such a case is, "Weight, Contents, and Value Unknown." *Va*, CLEAN BILL OF LADING: QUALITY AND QUANTITY UNKNOWN: WEIGHT UNKNOWN. *Vh* 1 Maude & P. 153, 154, 341, 342.

Cp GOOD ORDER.

CONTESTED ELECTION. — "When a poll is demanded, the election commences with it, as being the regular mode of popular election; the show of hands being only a rude and imperfect declaration of the sentiments of the electors" (per Sir Wm. Scott, *Anthony* v. *Seger*, 1 Hagg. Con. 13). The phrase "contested election" in s. 68, Rep People Act, 1832, also means an election carried to a poll (*Muntz* v. *Sturge*, 10 L. J. Ex. 234; 8 M. & W. 302). But now, for parliamentary or municipal honours, the hours appointed for the nomination are the time for the "election"; which election is adjourned for a poll when more candidates are nominated than there are vacancies to be filled (35 & 36 V. c. 33, s. 1; Sch 1, Part 1, Rule 1).

Vh, Rogers, 415: 4 Encyc. 442–473: ELECTION.

CONTEXT. — "Where the Context allows"; *V. Birmingham Breweries* v. *Jameson*, cited SPIRITUOUS LIQUOR.

"Unless the Context otherwise requires, 'Court,' in this section, means, the Court within the jurisdiction of which the Debtor resided,

or carried on business, for the greater part of the 6 months immediately prior to his decease" (subs. 10, s. 125, Bankry Act, 1883);—"Context" there, is not limited to the section but embraces the whole Act: therefore, if a Debtor, a domiciled Englishman, was not resident in England at the time of his death but had resided for the greater part of the preceding 6 months abroad, a Bankry Administration under the section may be ordered by the High Court (*i.e.* the Bankry Court) under s. 95 (*Re Evans*, 1891, 1 Q. B. 143; 60 L. J. Q. B. 143; 64 L. T. 242; 39 W. R. 98).

CONTIGUOUS.—"Contiguous," means, touching, and is as nearly as possible the synonym of "ADJOINING." Therefore, where a Lease reserves power to the lessor to do certain acts on any premises "adjoining or contiguous," that means, "adjoining or *near to*," so as to give "contiguous" a cognate, but not identical, meaning with "adjoining" (*Haynes* v. *King*, 1893, 3 Ch. 439; 63 L. J. Ch. 21; 69 L. T. 855; 42 W. R. 56). In that case, however, it was further held that two houses opposite to one another and a street going between them, are strictly "contiguous," because each would include the soil of the street *ad medium filum*. *Vf*, *Micklethwait* v. *Newlay Bridge Co*, 33 Ch. D. 133, on *whcv Re White's Charities*, 1898, 1 Ch. 659; 67 L. J. Ch. 430; 78 L. T. 550; 46 W. R. 479.

V. WATER AND SOIL.

CONTINGENCY.—Liability on a Contingency; *V.* LIABILITY.

"Contingency" of a Building Socy; *V. Durham, &c Bg Socy* v. *Davidson*, 61 L. J. Q. B. 473; 67 L. T. 269; 56 J. P. 660.

"Event or Contingency"; *V.* EVENT.

"Contingency with a Double Aspect"; *V. Egerton* v. *Massey*, 3 C. B. N. S. 351: *Doe* d. *Davy* v. *Burnsall*, 6 T. R. 30: *Crump* v. *Norwood*, 7 Taunt. 372, 373: *Evers* v. *Challis*, 7 H. L. Ca. 531, on *whlcv Watson* v. *Young*, 28 Ch. D. 436, and *Re Bence*, 1891, 3 Ch. 242; 60 L. J. Ch. 636; 65 L. T. 530.

CONTINGENT.—Anything is "Contingent" when it is liable to failure on the happening or non-happening of an event, condition, or state of things, *e.g.* a Contingent Gift, on *whv* Theobald, 576.

A Contingent DEBT, is one the time for the payment of which may or may not arrive; a Debt payable after notice, is not contingent, for it is to be supposed that it will be payable at some time (per Abbott, C. J., *Clayton* v. *Gosling*, 5 B. & C. 362). "A 'Contingent Debt' refers to a case where there is a doubt if there will be any debt at all" (per Mellish, L. J., *Ex p. Ruffle*, 8 Ch. 1001). "The term 'Contingent Debt,' or Debt payable on a Contingency, has been long in common use. In the Bankry Act, 6 G. 4, c. 16, 'Contingent Debts' upon which a value

can be set are made the subject of Proof; and we think that 'any Mtge, or other Debt,' s. 10, 16 & 17 V. c. 59, includes contingent debts as well as absolute ones" (*Mortimore* v. *Inl. Rev.*, cited DEFINITE). *Vf* LIABILITY.

"A Contingent REMAINDER, is a Remainder limited so as to depend on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate" (Fearne, Cont. Rem. 3). *Vh*, Wms. R. P., Part 2, ch. 2: Goodeve, 241: 3 Encyc. 320–328. *Note.* Every Contingent Remainder (created by an Instrument executed after 2nd Aug 1877) which would fail through the particular estate determining before it vests, shall "be capable of taking effect in all respects as if the Contingent Remainder had originally been created as a SPRINGING or Shifting Use, or EXECUTORY Devise, or other Executory Limitation" (40 & 41 V. c. 33). As to such a construction, quà Instruments before the Act, *V. Blackman* v. *Fysh*, 60 L. J. Ch. 666; 64 L. T. 590; 39 W. R. 520. *Cp* "Contingent Use," inf.

V. VEST: THEREAFTER TO BE BORN.

Quà Trustee Act, 1893, "'Contingent RIGHT,' as applied to Land, includes a Contingent or Executory Interest, a Possibility coupled with an Interest (whether the object of the gift or limitation of the Interest or Possibility is, or is not, ascertained); also a Right of Entry, whether immediate or future and whether vested or contingent" (s. 50); — a def applied to the Lunacy Laws (53 & 54 V. c. 5, s. 341), and taken from s. 2, Trustee Act, 1850.

"In a note at p. 219, Watkins on Conveyancing, 8 ed., it is said in effect that there are two classes of Possibilities, — (1) Possibilities coupled with an Interest, *e.g.* 'Contingent Remainders, Executory Devises, Springing or Shifting Uses; (2) Bare or Naked Possibilities, *e.g.* the hope of inheritance entertained by the Heir.' . . . 'The former class may, perhaps, with more propriety be denominated Contingent Interests, and the latter mere Expectancies; for a Possibility coupled with an Interest, is more than a Possibility, — it is a present Interest and may be devised (*Perry* v. *Phelips*, 17 Ves. 173, 182). On the other hand the Expectancy of an Heir Apparent during the lifetime of his ancestor, is less than a possibility, being but a mere hope or anticipation'" (per Kay, J., *Re Parsons*, 59 L. J. Ch. 666; 45 Ch. D. 51). Adopting this dictum, it was there held that a bequest to "Next of Kin," — as contradistinguished from one to "Children," or "Nephews," or even "Kindred," — after an Estate for Life is, during the life of the tenant for life, only a *spes successionis*, and is not a "Contingent TITLE," within s. 5, M. W. P. Act, 1882. Citing the same dictum, and adopting its second clause, and considering *Re Parsons*, North, J., held that an Interest under the Will of a living person is "Property in EXPECTANCY," — at least, as that phrase is used in s. 1, Infant Settlements

Act, 1855 (*Re Johnson*, 1891, 3 Ch. 48; 60 L. J. Ch. 499; 64 L. T. 696; 39 W. R. 509). *V.* INTEREST: POSSIBILITY.

A Contingent *Use*, "is such a Use as, by the limitation, may or may not happen to vest" (Cowel). *Cp* "Springing Use," sup.

"Claims and Contingent Liabilities"; *V.* CLAIM: LIABILITY.

CONTINUAL CLAIM.—"Is a Claim made from time to time within every year and day to Land, or other Thing, which in some respect we cannot attain without danger" (Cowel: *Vf* Termes de la Ley). "No continual, or other, claim upon or near any land shall preserve any right of making an ENTRY or DISTRESS or of bringing an ACTION" (s. 11, 3 & 4 W. 4, c. 27).

CONTINUANCE.—"The continuance of INJURY, or Damage" which will extend the time within which an action may be brought for something done by a Public Body, s. 1 (*a*), 56 & 57 V. c. 61, means, the continuance of the Cause of Injury or Damage, and not the continuance of the injurious Result of a completed Cause (*Markey* v. *Tolworth*, 1900, 2 Q. B. 454; 69 L. J. Q. B. 738; 83 L. T. 28; 64 J. P. 647): "*Darley Main Co* v. *Mitchell*, and *Crumbie* v. *Wallsend* (cited CAUSE) are inapplicable, except as showing that if (say) a Drug had been negligently given and had been a slow poison, the fatal or otherwise injurious effects of which had not occurred for some time afterwards, the time for bringing the action would have commenced to run, not on the giving of the drug but, on the occurrence of its injurious effects" (per Darling, J., *Ib.*). *Cp* CONTINUING CAUSE OF ACTION.

Power to Lease, reserving rent "during the Continuance of the TERM," enables the Donee of the Power to reserve the last quarter's rent in advance (*Rutland* v. *Doe*, cited YEARLY).

"If a power be given to trustees to be exercised 'during the continuance of the TRUST,' it cannot be exercised after the time when the trust *ought* to have been completed, though, from the delay of the trustees, it happens that the trust has not in fact been executed" (Lewin, 719, citing *Wood* v. *White*, 2 Keen, 664; 4 My. & C. 460; 7 L. J. Ch. 203; 8 Ib. 209: *V.* 2 Jarm. 299: and *Vf* Lewin, 719, as to this word).

As to the divesting effect of the phrase, if Legatee "shall die during the Continuance of the Trusts hereinbefore declared"; *V. Re Teale*, 34 W. R. 248.

CONTINUATION.—This word is used in a technical sense on the Stock Exchange. It means to sell and to agree to re-buy the same amount of Stock at a future day at the same price, plus a sum for the accommodation. It is not a loan; but is a sale and an agreement for repurchase. The original seller may perform his contract to re-buy, and if the Stock be not delivered to him he is entitled to damages for such non-delivery. On the other hand, he may make default, and then would

be liable for such breach; but if the Stock has gone up in value there would be no damages; if, however, the value has gone down, the measure of damages would be the difference between the market value of the Stock at the time when the original seller ought to have re-bought it and the price at which, at the time of the sale, he agreed to re-buy it. In all these transactions the Stock remains the property of the original buyer until the original seller has completed the agreed re-purchase (*Bongiovanni* v. *La Société Générale*, 54 L. T. 320; 2 Times Rep. 247: *Bentinck* v. *London Joint Stock Bank*, 1893, 2 Ch. 120; 62 L. J. Ch. 358; 42 W. R. 140; 68 L. T. 315). *Vf*, *Re Overweg*, 1900, 1 Ch. 209; 69 L. J. Ch. 255; 81 L. T. 776: CONTANGO. *Cp* CARRY OVER.

CONTINUE. — SLAUGHTERHOUSE "used . . . and continued to be USED," s. 126, Towns Improvement Clauses Act, 1847; *V. Hides* v. *Littlejohn*, 74 L. T. 24.

"Provided the INTEREST of the Lessor in the premises should so long continue," occurring in a Lease made by a lessor holding under a College Lease for years renewable by custom, is to be taken as intending to guard against the risk of non-renewal, and not to limit the lessee's interest to the term of the lessor's life (*Re Conolly*, Ir. Rep. 3 Eq. 339). The "Interest," however, is not to be extended by the subsequent acquisition by the lessor of some larger interest than that which he had or anticipated when granting the Lease (*Re O'Brien*, Ib. 77).

To "Continue," in Stock Exchange phraseology; *V.* CONTINUATION.

"Continue" as an equivalent of "Tarry"; *V.* ELOPE.

CONTINUE IN OFFICE. — An Officer "continues in Office," quâ a Bond for the due discharge of his duties, if his functions and duties are continued, though the tenure by which he holds office may be changed (*Oswald* v. *Berwick-upon-Tweed*, 5 H. L. Ca. 856; 25 L. J. Q. B. 383; 4 W. R. 738).

CONTINUE TO HOLD. — "Where trustees are authorised to 'continue to hold' special Investments, the power must, *primâ facie*, be held to apply to such of the trusts as are continuous; and the trustees may appropriate to a special continuous trust any of the investments which the settlor has authorised to be held" (Lewin, 368, citing *Fraser* v. *Murdoch*, 6 App. Ca. 855).

CONTINUING CAUSE OF ACTION. — R. 58, Ord. 36, R. S. C.; *V. Hole* v. *Chard*, 1894, 1 Ch. 293; 63 L. J. Ch. 469; 70 L. T. 52.

Cp CONTINUANCE.

CONTINUING GUARANTEE. — *V.* 1 Key & Elphinstone, Precedents, 6 ed., 40: De Colyar, on Guarantees, 2 ed., 210–246: *Hitchcock* v. *Humfrey*, 12 L. J. C. P. 235; 5 M. & G. 559: *Ellis* v.

Emanuel, 46 L. J. Ex. 25; 1 Ex. D. 157: *Parr's Bank* v. *Yates*, 1898, 2 Q. B. 460; 67 L. J. Q. B. 851: GUARANTEE: ACCOUNT: CREDIT: MADE.

CONTINUING INTEREST. — "Continuing Interest," "Continuing charge on such Interest," s. 21, Sucn Dy Act, 1853; *V. Lilford* v. *A-G.*, 36 L. J. Ex. 116; L. R. 2 H. L. 63.

CONTINUING OFFENCE. — "Continuing Offence," s. 115, P. H. Act, 1848, means only, an OFFENCE which is from its nature susceptible of continuance (*Marshall* v. *Smith*, 42 L. J. M. C. 108; L. R. 8 C. P. 416; 28 L. T. 538).

"Continuing Offence," ss. 85, 107, Metrop Man. Act, 1862; *V. London Co. Co.* v. *Worley*, 1894, 2 Q. B. 826; 63 L. J. M. C. 218: *Vf*, *R.* v. *Slade*, 64 L. J. M. C. 232; 1895, 2 Q. B. 247.

Vh, *R.* v. *Portsmouth* or *Pink*, 1892, 1 Q. B. 491; 61 L. J. M. C. 126: *Daw* v. *London Co. Co.*, cited NEW STREET: *Heard* v. *Heard*, cited DESERTED: 3 Encyc. 328, 329.

CONTINUING POLICY. — *V. Stokell* v. *Heywood*, 74 L. T. 781; 65 L. J. Ch. 721.

CONTINUING TRUSTEE. — This is a phrase the meaning of which is hardly settled. Bacon, V. C., decided that the term "Continuing Trustee" is not confined to one who remains after another has retired; but includes one who has made up his mind to retire, but who has not, as yet, executed a Deed evidencing his retirement (*Re Glenny*, 53 L. J. Ch. 417; 25 Ch. D. 611; 32 W. R. 457). But in so deciding, the decision of Kindersley, V. C., in *Travis* v. *Illingworth* (34 L. J. Ch. 665; 2 Dr. & Sm. 344), was dissented from; a decision, however, which, notwithstanding *Re Glenny*, was adhered to by Pearson, J., in *Allen* v. *Norris* (53 L. J. Ch. 913; 27 Ch. D. 333), and per North, J., *Re Coates to Parsons* (56 L. J. Ch. 242: *Va* Lewin, 779, 785). The weight of judicial authority would, therefore, seem to be in favour of the proposition, that a retiring trustee is not a continuing trustee: *Vf*, *Stones* v. *Rowton*, 17 Bea. 308; 22 L. J. Ch. 975. But *Vh*, s. 31 (6), Conv & L. P. Act, 1881, repld s. 10 (4), Trustee Act, 1893; but even under that enactment a retiring trustee is not a "continuing" trustee unless it is shown that he is competent and willing to act within its provisions (*Re Coates to Parsons*, sup).

A trustee who has never acted and has declined to act is not a "surviving or continuing" trustee (*Nicholson* v. *Wright*, 26 L. J. Ch. 312; 5 W. R. 431). But it has been said that the decision in that case was a "narrow construction" (Sug. Pow. 886); and in *Pell* v. *De Winton*, (2 D. G. & J. 13) Ld Cranworth said he was not prepared to follow it. In *Re Glenny*, sup, however, it was cited by Bacon, V. C., apparently

with approval. *Cp*, ACTING TRUSTEE: DECLINING TRUSTEE: SURVIVING TRUSTEE.

V. LAST: TRUSTEE.

CONTINUOUS OCCUPATION. — *V. Timmis* v. *Albiston*, 1895, 2 Q. B. 58; 64 L. J. Q. B. 564; 59 J. P. 663.

CONTINUOUSLY. — To discharge a Vessel "continuously," means, "no more than the merchant binds himself to do his work in a REASONABLE time and with a reasonable amount of exertion" (per Mathew, J., *Maclay* v. *Baker*, 16 Times Rep. 401).

V. CONSTANTLY.

CONTRABAND. — "'Contrabanded Goods' are such as are prohibited by Act of Parliament, or Proclamation, to be imported into, or exported out of, this into other nations" (Cowel).

"Contraband of War," it is submitted, means, all those things which by International Law (or, as in practice it would seem, by a Belligerent Power, when it is strong enough) may be deemed, directly or indirectly, useful to an Enemy for the purposes of an existing War: *Vh*, 3 Encyc. 330–334: *The Jonge Margaretha*, 1 Rob. C. 189, and notes thereon: Tudor, L. C. M. L., 3 ed., 981.

CONTRACT. — *V.* AGREEMENT.

"In every Contract there must be *quid pro quo*, for *contractus est quasi actus contra actum*" (Co. Litt. 47 b). "A Contract is a deliberate engagement between competent parties, upon a legal CONSIDERATION, to do or to abstain from doing some act" (Story on Contracts, s. 1, cited by Brett, L. J., *Wilson* v. *Bury*, 50 L. J. Q. B. 98; 5 Q. B. D. 518). *Vf*, Add. C. ch. 1, s. 1: Leake, 1: 3 Encyc. 335–351: PROMISE: EVIDENCE OF A CONTRACT.

An enabling Act of Parliament, — *e.g.* a Railway, or Local, Act, — is not a Contract (*York & N. Mid Ry* v. *The Queen*, 1 E. & B. 864; 22 L. J. Q. B. 230: *R.* v. *New Sarum*, 2 E. & B. 654: *Vf* MAY). *Cp*, *Rothes* v. *Kirkcaldy W. W.*, inf.

As to what was a sufficient "Contract," within s. 25, Comp Act, 1867, repld s. 7, Comp Act, 1900; *V. Hartley's Case*, 44 L. J. Ch. 240; 10 Ch. 157; 32 L. T. 106; 23 W. R. 203: per Mellish, L. J., *Crickmers' Case*, 10 Ch. 614; 46 L. J. Ch. 870; 24 W. R. 219: *Anderson's Case*, 7 Ch. D. 104; 47 L. J. Ch. 273; 37 L. T. 560; 26 W. R. 442: *Pritchard's Case*, 8 Ch. 956; 42 L. J. Ch. 768; 29 L. T. 363: *Melhado* v. *Porto Alegre Ry*, 43 L. J. C. P. 253; L. R. 9 C. P. 503; 31 L. T. 57; 23 W. R. 57: *Re Hereford Waggon Co*, 2 Ch. D. 621; 45 L. J. Ch. 461; 33 L. T. 40; 24 W. R. 953: *Eley* v. *Positive Assrce*, 45 L. J. Ex. 451; 1 Ex. D. 88; 34 L. T. 190; 24 W. R. 338: *Firmstone's Case*, 44 L. J. Ch. 617; L. R. 20 Eq. 524: *Re Kharaskhoma Syndicate*, 1897, 2 Ch. 451; 66

L. J. Ch. 675; 46 W. R. 37: *Re Maynards*, 1898, 1 Ch. 515; 67 L. J. Ch. 186, *sthle* not followed in *Re Frost*, 1898, 2 Ch. 556; 68 L. J. Ch. 544; 47 W. R. 27: *Re African Gold Co*, 1899, 2 Ch. 480; 68 L. J. Ch. 215, 724: *Re Watson*, 68 L. J. Ch. 660, distinguishing *Re Frost*, sup: *Re Jackson*, cited INADVERTENCE: *Re Transvaal Exploring Co*, 1899, 2 Ch. 370; 48 W. R. 108; 68 L. J. Ch. 670: IN WRITING: OTHERWISE. *Vh*, Buckl. 605: Hamilton, 180. On a similar provision in a Colonial Statute, *V. Smith* v. *Brown*, 1896, A. C. 614; 65 L. J. P. C. 89.

Note. By Comp Act, 1898, the Court was empowered to grant relief for non-compliance with s. 25, Comp Act, 1867; *Vth*, *Re May's Syndicate*, 68 L. J. Ch. 46; 79 L. T. 663: *Re Northern Creosoting Co*, 79 L. T. 407: INADVERTENCE.

As to what contracts must be disclosed in a Company Prospectus so as to satisfy s. 38, Comp Act, 1867; *V.* notes on the section in Buckl. 617: Palmer, Co. Prec. 125. *Va* s. 10 Comp Act, 1900.

V. BARGAIN OR CONTRACT: CONDITION: COVENANT.

The "Contract made," or the GOOD or VALUABLE Consideration given" which will preserve *Church Rates* enacted by a Private Act, s. 5, 31 & 32 V. c. 109, must be found in, or gathered from, the Act (*R.* v. *St. Marylebone*, 1895, 1 Q. B. 771; 64 L. J. Q. B. 622; 72 L. T. 11).

"Contract" for BUILDING, s. 212, London Bg Act, 1894, is not limited to a specific bg or bgs but, includes a contract for the erection of a number of unspecified bgs many of which were not to be commenced until after the Act came into operation (*Tanner* v. *Oldham*, 1896, 1 Q. B. 60; 65 L. J. M. C. 10; 73 L. T. 404).

"Contract for sale of Equitable Estate or Interest"; *V.* EQUITABLE.

"Contract, *Dealing, or Transaction*," s. 49 (*d*), Bankry Act, 1883; *V. Turquand* v. *Vanderplank*, 10 M. & W. 180: *Graham* v. *Furber*, 14 C. B. 134; 23 L. J. C. P. 10: *Brewin* v. *Short*, 24 L. J. Q. B. 297; 5 E. & B. 227; 1 Jur. N. S. 798: *Krehl* v. *Great Central Gas Co*, 39 L. J. Ex. 197; L. R. 5 Ex. 289: *Ex p. Arnold, Re Wright*, 45 L. J. Bank. 130; 3 Ch. D. 71: *Stansfield* v. *Cubitt*, 27 L. J. Ch. 266; 2 D. G. & J. 222: *Re Curtoys*, 50 L. J. Ch. 691; 17 Ch. D. 653; 44 L. T. 691: *Hance* v. *Harding*, 57 L. J. Q. B. 403; 20 Q. B. D. 732; 59 L. T. 659; 36 W. R. 629: *Re O'Shea*, 1895, 1 Ch. 325; 64 L. J. Ch. 263; 71 L. T. 827; 43 W. R. 232: *Wild* v. *Southwood*, 1897, 1 Q. B. 317; 66 L. J. Q. B. 166; 75 L. T. 388: *Re Seaman*, 1896, 1 Q. B. 412; 65 L. J. Q. B. 348: *Shears* v. *Goddard*, 1896, 1 Q. B. 406; 65 L. J. Q. B. 151. In *Lackington* v. *Elliott* (7 M. & G. 538; 13 L. J. C. P. 153), the question was raised, but not determined, as to whether a DISTRESS was a "Transaction" within this phrase. *Vh* Wms. Bank. 245.

"Contract, *Promise, or Agreement*," s. 204, Bankry Act, 1849, included a Bond (*Kidson* v. *Turner*, 3 H. & N. 581; 27 L. J. Ex. 492).

A "Contract or EMPLOYMENT," with a Mun Corp (disqualifying a Councillor, s. 28, Mun Corp Act, 1835), includes a Lease from the

Corporation to a Councillor, the generality of "Contract," not, in this connection, being restricted by its association with "Employment" (*R.* v. *York*, 2 Q. B. 847; 11 L. J. Q. B. 127; 2 G. & D. 105). Such a contract is none the less disqualifying though, not being under Seal, it is not enforceable against the Corp (*R.* v. *Francis*, 21 L. J. Q. B. 304; 18 Q. B. 526). *Vf* OFFICE.

"Demands . . . arising otherwise than BY REASON of a contract," s. 31, Bankry Act, 1869, includes a sum found due from a Promoter of a Co, in respect of a secret profit (*Emma Co* v. *Grant*, 50 L. J. Ch. 449; 17 Ch. D. 122: *Vf*, *Re Parkers*, 19 Q. B. D. 84).

"Action FOUNDED ON *Contract*," s. 5, Co. Co. Act, 1867, repld s. 116, Co. Co. Act, 1888; — an action is "founded on contract" when not arising out of a breach of a general duty, and when there would be no liability but for a contract (*Legge* v. *Tucker*, 26 L. J. Ex. 71; 1 H. & N. 500), and when it is directly, and not remotely, founded on such contract (*Pontifex* v. *Mid Ry*, 47 L. J. Q. B. 28; 3 Q. B. D. 23). Therefore, an action against a Carrier for negligent loss of goods is "founded on Contract" (*Fleming* v. *Manchester, S. & L. Ry*, 4 Q. B. D. 81; disapproving *Tattan* v. *G. W. Ry*, 29 L. J. Q. B. 184; 2 E. & E. 844: *Sv*, *Turner* v. *Stallibrass*, cited TORT); but an action against a Carrier for delivering goods to an insolvent consignee after notice of a stoppage *in transitu*, is founded on Tort and not on Contract, because the stoppage had put an end to the original contract of carrying (*Pontifex* v. *Mid Ry*, sup); and so of an action for Personal Injuries to his passenger occasioned by Negligence (*Taylor* v. *Manchester, S. & L. Ry*, 1895, 1 Q. B. 134; 64 L. J. Q. B. 6; 43 W. R. 120; 71 L. T. 596: *Kelly* v. *Metrop Ry*, 1895, 1 Q. B. 944; 64 L. J. Q. B. 568; 72 L. T. 551; 43 W. R. 497). But negligent loss by a Cabman of his fare's luggage (*Baylis* v. *Lintott*, 42 L. J. C. P. 119; L. R. 8 C. P. 345), or negligent treatment of his customer's horse by a Livery-stable keeper (*Legge* v. *Tucker*, sup), gives right to an action "founded on Contract." *Cp* TORT.

A Mtgee's action claiming a Charge on property, for Foreclosure, for Account and Enquiries, and other relief, is not "founded on any Breach of Contract," within R. 1 (*e*), Ord. 11, R. S. C. (*Deutsche National Bank* v. *Paul*, cited BROUGHT AGAINST).

A Penalty under a Bye Law of a Co founded by Charter under the Great Seal, is a "Debt *grounded upon* a Contract without SPECIALTY," within s. 3, Limitation Act, 1623; for the liability thereto springs out of the Member's implied consent to obey the Bye Laws, which is, in effect, a Contract independent of the Charter (*Tobacco Pipe Co* v. *Loder*, 20 L. J. Q. B. 414; 16 Q. B. 765).

It has been said that, frequently, "statutory provisions, occurring in a Local and Personal Act, must be regarded as a Contract between the parties, whether made by their mutual agreement or forced upon them by the Legislature" (per Ld Watson, *Rothes* v. *Kirkcaldy W. W.*, 7 App.

Ca. 707: *Sv, York & N. Mid Ry* v. *The Queen*, sup) but, probably, that does not mean that even such enactments constitute Contracts for all purposes (*V.* per Stirling, J., *Re Manchester & Milford Ry*, 1897, 1 Ch. 276; 66 L. J. Ch. 142; 75 L. T. 416; 45 W. R. 331), in which case it was held that an arrangement made by three Ry Companies as to constructing and maintaining Ry Works, does not give rise to an "*Action on a Contract*," within s. 4, Ry Comp Act, 1867. In that case the learned judge also said, that "under the terms 'Action on a Contract' and 'Action not on a Contract,' as used in that section, every kind of action is included."

"All Contracts" by an INFANT, s. 1, Infants Relief Act, 1874, 37 & 38 V. c. 62, does not extend to Marriage Settlements; therefore, a Marriage Settlement by an Infant remains only voidable and is not void (*Duncan* v. *Dixon*, 44 Ch. D. 211; 59 L. J. Ch. 437; 62 L. T. 319; 38 W. R. 700). Notwithstanding this wide generality of "ALL Contracts," *semble*, this Act only relates to (1) Contracts for the repayment of money lent; (2) Contracts for goods supplied; and (3) Accounts stated (*Ib.*).

"Contract," quà Hosiery Manufacture (Wages) Act, 1874, 37 & 38 V. c. 48; *V.* s. 7.

"Contract," quà M. W. P. Act, 1882; *V.* s. 24.

"Contract," s. 3, Partnership Act, 1890, is not confined to a Contract in writing (*Re Fort*, 1897, 2 Q. B. 495; 66 L. J. Q. B. 824; 77 L. T. 274; 46 W. R. 147).

"Complete," or "Formal," Contract, and making contract by correspondence; *V.* SUBJECT TO.

Notice of a Contract; *V.* NOTICE.

"To contract a Marriage," read, "to marry" (*Re M'Loughlin*, 1 L. R. Ir. 421).

V. RESTRAINT OF TRADE: MADE.

CONTRACT IN WRITING. — *V.* IN WRITING.

CONTRACT NOTE. — Quà Customs and Inl. Rev. Acts; *V.* s. 17 (1), 51 & 52 V. c. 8, on *whv*, *Learoyd* v. *Bracken*, 1894, 1 Q. B. 114; 63 L. J. Q. B. 96.

Quà Stamp Act, 1891; *V.* s. 52.

CONTRACT OF SALE. — Quà Sale of Goods Act, 1893, "'Contract of Sale,' includes an Agreement to sell as well as a Sale" (subs. 1, s. 62).

CONTRACT OF SERVICE. — "Contract of Service, or a Contract personally to execute any *Work* or *Labour*," s. 10, Employers and Workmen Act, 1875, 38 & 39 V. c. 90; — "I should say that the former employment would apply to the case of an employment for a certain *time*, and the latter to an employment for the performance of some

specific *work*" (per Lopes, J., *Granger* v. *Aynsley*, 50 L. J. M. C. 51; 6 Q. B. D. 182; 29 W. R. 242; 45 J. P. 142).

CONTRACT OF TENANCY. — *V.* YEAR TO YEAR.

CONTRACT TO SUPPLY. — An employer who retains out of his employees' wages so much a week for club-money, in consideration of which he is to supply MEDICINE and medical attendance to his employees, "contracts to supply" such medicine, &c, within s. 23, Truck Act, 1831 (*Cutts* v. *Ward*, 36 L. J. Q. B. 161; L. R. 2 Q. B. 357; 15 W. R. 445; 15 L. T. 614: *Lamb* v. *G. N. Ry*, 1891, 2 Q. B. 281; 60 L. J. Q. B. 489; 65 L. T. 225; 39 W. R. 475; 56 J. P. 22). *Vh* Add. C. 105.

CONTRACTED. — A DEBT is "contracted" when the liability thereto *in posse* is undertaken, though the actual obligation therefor *in esse* arises at a subsequent time, *e.g.* the liability to a CALL on a Share in a Co is not "contracted" when the Call is made, but when the Contract for the Share is completed (*Williams* v. *Harding*, L. R. 1 H. L. 9; 35 L. J. Bank. 25). *Vf*, *Re Marquess*, Ir. Rep. 9 Eq. 93: *Conlon* v. *Moore*, Ir. Rep. 9 C. L. 190: *Parker* v. *McHugo*, Ib. 265: *Kirby* v. *Smyth*, Ir. Rep. 10 Eq. 417.

CONTRACTED TO SELL. — A devise of an estate "which I have lately contracted to sell," has been held to pass merely the legal estate so as to enable the devisee to carry out the contract, but not to pass the purchase-money (*Knollys* v. *Shepherd*, 1 Jarm. 692). In view, however, of s. 30, Conv & L. P. Act, 1881, it would be difficult to see how that ruling could be now supported; because the testator-vendor would, it is submitted, hold the estate as a trustee for the vendee, and if so the legal estate would, under the section cited, pass to the personal representatives of the vendor; and if that be so, then such a devise as that in *Knollys* v. *Shepherd* would now have no operation unless it be held to pass the vendor's beneficial interest in the contract, and with it the purchase-money.

CONTRACTOR. — A "Contractor" is a person who, in the pursuit of an independent business, undertakes to do specific jobs of work for other persons, without submitting himself to their control in respect to the details of the work (*Iron Co* v. *Dodson*, 7 Lea, 373).

As a description of Occupation quâ Bills of Sale Act; *V. Sharp* v. *McHenry*, 38 Ch. D. 428; 57 L. J. Ch. 961; 57 L. T. 606.

V. GENERAL CONTRACTORS.

CONTRARY. — "But on the contrary"; *V.* BUT.

"Agreement to the contrary"; *V.* AGREEMENT.

A conviction for doing something "contrary to the Bye Laws," is bad

for uncertainty (*Cotterill* v. *Lempriere*, 59 L. J. M. C. 133; 24 Q. B. D. 634; 62 L. T. 695; 54 J. P. 583).

CONTRARY INTENTION. — Many modern Acts provide certain rules of construction unless a "Contrary Intention" be expressed.

V. as to this phrase: —

In s. 2, Arb Act, 1889, *Re Wilson and Eastern Counties Nav Co*, cited SUBMISSION: *Re Stephens and Liverpool, &c Insrce*, 36 S. J. 464:

In s. 43, Conv & L. P. Act, 1881, jdgmt of Fry, L. J., *Re Dickson, Hill* v. *Grant*, 29 Ch. D. 331; 54 L. J. Ch. 510; 52 L. T. 707; 33 W. R. 511: *Re Thatcher*, 53 L. J. Ch. 1050; 26 Ch. D. 426; 32 W. R. 679: *Re Wells*, 59 L. J. Ch. 113; 43 Ch. D. 281: *Re Humphreys*, 1893, 3 Ch. 1; 62 L. J. Ch. 498; 41 W. R. 519. In s. 6 (4), same Act, *Broomfield* v. *Williams*, 1897, 1 Ch. 602; 66 L. J. Ch. 305. In s. 31 (7), same Act, repld s. 10 (5), Trustee Act, 1893, *Cecil* v. *Langdon*, 54 L. J. Ch. 313; 28 Ch. D. 1:

In s. 2 (1), Interp Act, 1889, *St. Helen's Tramways Co* v. *Wood*, 56 J. P. 71. In s. 38, same Act, *Ex p. Raison*, 60 L. J. Q. B. 206:

In LOCKE KING'S ACTS, Dart, 922, 923: *Eno* v. *Tatham*, 3 D. G. J. & S. 443; 32 L. J. Ch. 311: *Coote* v. *Lowndes*, L. R. 10 Eq. 376: *Re Newmarch*, 9 Ch. D. 12; 48 L. J. Ch. 28: *Buckley* v. *Buckley*, 19 L. R. Ir. 544: *Rawson* v. *M'Causland*, Ir. Rep. 8 Eq. 617: *Corballis* v *Corballis*, 9 L. R. Ir. 309: *Reynolds* v. *M'Gloughlin*, Ib. 405: *Given* v. *Massey*, 31 L. R. Ir. 126: *Re Fleck, Colton* v. *Roberts*, 57 L. J. Ch. 943; 37 Ch. D. 677; 58 L. T. 624; 36 W. R. 663: *Re Nevill*, 59 L. J. Ch. 511: *Re Hooper*, W. N. (92) 151: *Re Campbell*, 1893, 2 Ch. 206; 62 L. J. Ch. 594: *Lewis* v. *Lewis*, 41 L. J. Ch. 195; L. R. 13 Eq. 218, on *whlcv*, *Re Bennett*, 1899, 1 Ch. 316; 68 L. J. Ch. 104; 47 W. R. 406:

In M. W. P. Act, 1882, *Harrison* v. *Harrison*, 58 L. J. P. D. & A. 28:

In s. 24, Wills Act, 1837, *Murphy* v. *Cheevers*, 17 L. R. Ir. 205: *Re Portal to Lamb*, 54 L. J. Ch. 1012; 30 Ch. D. 50; 33 W. R. 71, 859: *Re Wells*, 42 Ch. D. 646: *Doyle* v. *Coyle*, 1895, 1 I. R. 205. In s. 26, same Act, *Wilson* v. *Eden*, 21 L. J. Q. B. 385; 5 Ex. 752, espy jdgmt of Campbell, C. J.: *Anon.*, 41 S. J. 75. In s. 27, same Act, *Re Marsh*, 57 L. J. Ch. 639; 38 Ch. D. 630; 59 L. T. 595; 37 W. R. 10: *Re Phillips*, 41 Ch. D. 417: *Re Tarrant*, W. N. (89) 146: *Phillips* v. *Cayley*, 43 Ch. D. 222; 59 L. J. Ch. 177: *Doyle* v. *Coyle*, sup. In s. 28, same Act, *Quarm* v. *Quarm*, cited SURVIVOR: *Martin* v. *Martin*, 19 L. R. Ir. 72. In s. 29, same Act, *Steen* v. *Steen*, Ir. Rep. 6 C. L. 8: *Re Chinnery*, 1 L. R. Ir. 296: *Neville* v. *Thacker*, 23 L. R. Ir. 359. *Vf*, quà this Act generally, note to Introductory Chap. ante, towards end: MY: NOW: HAVE.

V. FEMALE.

CONTRIBUTE. — Preference Shareholders "shall not be liable to contribute to the Expenses or Losses of the Socy"; *V. Re Reliance Bg Socy*, 61 L. J. Ch. 453.

CONTRIBUTING. — "Inhabitants contributing" to a Rate, "does not mean only those who have contributed or already are assessed to a Rate already made but, includes all who are liable to be assessed to a Rate if one were now made" (per Campbell, C. J., *R.* v. *Kershaw*, 6 E. & B. 1005; 26 L. J. M. C. 21).

CONTRIBUTION. — *V.* SUBSCRIPTION OR CONTRIBUTION: VOLUNTARY CONTRIBUTIONS: INDEMNIFY: INDEMNITY.

"The principle established in *Dering* v. *Winchelsea* (1 Cox, 318; 2 B. & P. 270; 2 White & Tudor, 535) is universal, that the right and duty of Contribution is founded in doctrines of Equity; it does not depend upon contract. If several persons are indebted and one makes the payment, the Creditor is bound, in conscience if not by contract, to give to the party paying the debt all his remedies against the other Debtors. The cases of AVERAGE, in Equity, rest upon the same principle. . . . So, in the case of land descending to Co-Parceners subject to a debt, if the creditor proceeds against one of the co-parceners, the others must contribute. If the creditor discharges one of the co-parceners, he cannot proceed for the whole debt against the others; at the most, they are only bound to pay their proportions" (per Ld Redesdale, *Stirling* v. *Forrester*, 3 Bligh, 590, 591, cited by Halsbury, C., *Ruabon S. S. Co* v. *London Assrce*, 1900, A. C. 11, 12; 69 L. J. Q. B. 90; 81 L. T. 585; 48 W. R. 225; 9 Asp. 2).

Generally there is no right of Contribution between Wrong-doers (*Merryweather* v. *Nixan*, 8 T. R. 186: *Palmer* v. *Wick S. S. Co*, 1894, A. C. 318). *Vh*, *Burrows* v. *Rhodes*, 1899, 1 Q. B. 816; 68 L. J. Q. B. 545.

CONTRIBUTORY. — Quà Comp Act, 1862, "Contributory" means, "every person liable to contribute to the assets of a Co, under this Act, in the event of the same being wound-up" (s. 74, which refers to s. 38). A holder of fully paid-up Shares is within that def and may petition for a Winding-up under s. 82 (*Re Anglesea Colliery Co*, 1 Ch. 555; 35 L. J. Ch. 809: *Re National Savings Bank Assn*, 1 Ch. 547; 35 L. J. Ch. 808). For a discussion as to this def *V.* Buckl. 224. *Vf*, *Re Macdonald*, 1894, 1 Ch. 89; 63 L. J. Q. B. 193: *Norris* v. *Cottle*, 2 H. L. Ca. 647: *Bright* v. *Hutton*, 3 Ib. 341.

Contributory Mortgage; *V.* MORTGAGE.

Contributory Negligence; *V.* NEGLIGENCE.

"Contributory PLACE" quà P. H. Act, 1875; *V.* s. 229, on *whv Horn* v. *Sleaford*, 1898, 2 Q. B. 358; 67 L. J. Q. B. 724; 78 L. T. 722; 46 W. R. 555; 62 J. P. 502. The phrase has the same meaning as in that

section quà Isolation Hospitals Act, 1893, 56 & 57 V. c. 68 (s. 26); and (in England) quà Housing of Working Classes Act, 1890, 53 & 54 V. c. 70 (s. 93), but (in Scotland) it "means a Parish" (subs. 9, s. 96).

"Contributory Union"; Stat. Def., 38 & 39 V. c. 96, s. 2.

CONTRITION. — *V.* CONFESSION.

CONTRIVANCE. — A "Contrivance" to obstruct an Election, s. 21, Metrop Man. Act, 1855, includes an open and violent obstruction by one person, if it be intentional (*Buckmaster* v. *Reynolds*, 13 C. B. N. S. 62).

CONTROL. — To give or refuse assent to a certain proposed course, is to exercise a "Control," within s. 33, Tramways Act, 1870, 33 & 34 V. c. 78 (per Esher, M. R., *R.* v. *Croydon Tramways Co*, 56 L. J. Q. B. 125; 18 Q. B. D. 39; 56 L. T. 78; 35 W. R. 299; 51 J. P. 420; 3 Times Rep. 32). "Control," s. 41, Regn Ry Act, 1868, "is confined to the control of the proceedings in the issue so long as they are actually going on, and does not extend to proceedings after judgment" (per Denman, J., *Birmingham Land Co* v. *Lond. & N. W. Ry*, 58 L. J. Q. B. 588).

Local Authority having "Control of the STREETS," s. 57, P. H. Act, 1875; *V. Hill* v. *Wallasey*, 1894, 1 Ch. 133; 63 L. J. Ch. 1; 69 L. T. 641; 42 W. R. 81.

LAND under the "Control" of a Local Authority; *V. Baird* v. *Tunbridge Wells*, 1896, A. C. 434; 64 L. J. Q. B. 145; 65 Ib. 451.

The power given to the Sanitary Commrs of Gibraltar by s. 160, Order in Council, 19 July 1883, to "*control, manage, and maintain*, the Public Highways, and also all such culverts and water-channels as may be necessary to carry off the surface water therefrom, and also all walls, retaining-walls, parapet-walls situate thereon or pertaining thereto and which are necessary for their support or for the safety of passengers or ordinary traffic," does not VEST the property in the Highways, &c in the Commrs, for the Government remains the principal, and the Commrs are only an administrative body (*Gibraltar Sanitary Commrs* v. *Orfila*, 59 L. J. P. C. 95).

A Lease of a house together with "the Control of the Plantation on the other side of the water, for the purpose of preventing trespassers thereon"; held, to mean that what was then a Plantation should continue a Plantation, and that the Lessor could not cut it down (*Nicholson* v. *Rose*, 4 D. G. & J. 10).

A TRAIN is not "under the Control" of the Ry Co running it, if in the matter complained of the Co are prevented by *vis major*, *e.g.* the Postmaster General acting under statutory powers (*Phillips* v. *G. W. Ry*, 7 Ch. 409; 41 L. J. Ch. 614). *V.* CHARGE OR CONTROL. *Cp* Vessel "under Command," sub COMMAND.

Whether a DOG is "under the control of any person" within the Dogs

Act, 1871, 34 & 35 V. c. 56, is a question of fact to be determined in each case by the justices; but as a general rule a dog is not under such control unless muzzled or led (*Wren* v. *Pocock*, 34 L. T. 697: *Re Hay*, 31 S. J. 29; 3 Times Rep. 24).

"Under Proper Control or Destroyed," s. 2, Dogs Act, 1871: under this a dangerous dog may be ordered to be destroyed (*Pickering* v. *Marsh*, 43 L. J. M. C. 143).

Money under Trustee's "Control"; *V.* POSSESSION.

"Control or Management of Partnership Business," R. 3, Ord. 48 (*a*), R. S. C.; *V. Grant* v. *Anderson*, 1892, 1 Q. B. 108; 61 L. J. Q. B. 107; 66 L. T. 79.

A Receiver appointed by the Court is not a person having "the Control or MANAGEMENT" of a Partnership Business, within R. 260, Bankry Rules, 1886 (*Re Flowers*, 1897, 1 Q. B. 14; 65 L. J. Q. B. 679; 75 L. T. 306; 45 W. R. 118).

An Exception in a Charter-Party of "Causes *beyond* their Control" is to be read *ejusdem generis* with those that precede it, and does not cover "a want of business capacity" in the person to whom the Exception relates, *e.g.* the Charterer's Agent (in his own interest) dismissing his men so that when wanted there are not enough to properly load the ship (*Re Richardsons and Samuel*, 1898, 1 Q. B. 261; 66 L. J. Q. B. 579, 868; 77 L. T. 479), or by "chancing it" and not taking proper precautions in advance to have cargo ready so that when wanted it cannot be got by reason of a Strike (*Gardiner* v. *Macfarlane*, 20 Sess. Ca. 4th Ser. 427). *Cp* "Unavoidable Hindrance," sub UNAVOIDABLE.

V. CHARGE OR CONTROL: CUSTODY: NAME.

CONTROVERSIES. — *V.* QUARRELS.

CONVENE. — "There is an obvious difference between 'convened' and 'summoned' . . . 'convened' is applied, properly, not to individuals but, to aggregate bodies. A Board is 'convened'; an Assembly is 'convened'; a Senate is 'convened': but A. is not 'convened,' he is 'summoned, warned, or noticed'" (*R.* v. *Smith*, 1 Jebb & Sy. 634).

CONVENIENCE. — A contract to pay at a person's "Convenience," means that the obligation to pay arises when he or his representatives are reasonably able to pay; the phrase is not equivalent to "at his will" or "pleasure" (*Crayshay* v. *Hornstedt*, 3 Times Rep. 426). *Cp* AT DISCRETION.

A contract to do a thing, *e.g.* exhibit Advertising Frames in an Hotel, at the contractor's "Convenience," does not mean within a reasonable time; it only means that he is to exhibit the frames whilst he is alive and remains the occupier of the hotel (*Hotel & Gen. Advertising Co* v. *Wickenden*, 14 Times Rep. 480; 15 Ib. 302).

A Corn Exchange is a "Convenience" proper for a MARKET (*A-G.* v. *Cambridge*, L. R. 6 H. L. 316).

"Proper Works and Conveniences" connected with a Tramway; *V. Rapier* v. *London Tramways Co*, 1893, 2 Ch. 588; 63 L. J. Ch. 36; 69 L. T. 361; 42 W. R. 21.

"Sanitary Convenience"; *V.* SANITARY.

"Temporary Convenience"; *V.* TEMPORARY.

CONVENIENT. — "Convenient," as employed in the rubric at the end of the Anglican Marriage Service, should be construed in its strict and primary sense of "fit" or "proper," — the secondary sense being a more modern one (*Blunt's Annotated Book of Common Prayer*, 6 ed., 274: *Va, Mant's Prayer Book*, 468: 7 M. & G. 41). *Cp, R.* v. *Sharp*, cited CONVENIENTLY.

"Any *Court* convenient thereto," s. 65, Co. Co. Act, 1888, does not mean one that must be *near* to the Court of the district in which the defendant dwells, &c, but one which is "convenient" having regard to its facility to the parties (*Parsons* v. *Lakenheath School Bd*, 58 L. J. Q. B. 371; 87 L. T. 71; 5 Times Rep. 497: *Burkill* v. *Thomas*, 1892, 1 Q. B. 99, 312; 61 L. J. Q. B. 322; 66 L. T. 150; 40 W. R. 250). *V.* COMMENCED.

A power to Governors of a Hospital to remove INMATES "so often as it shall seem *convenient* to them," confers a wide discretion on the Governors, preventing the Inmates from taking an Estate for Life in the property enjoyed by them as Inmates (*Davis* v. *Waddington*, 14 L. J. C. P. 45; 7 M. & G. 37).

A power to do things which are "necessary and/or convenient" for a stated object, is well exercised if done in such a way as a person of reasonable and ordinary skill might have chosen, though it be not the ideally best way (*Abson* v. *Fenton*, 1 B. & C. 195). *Vf, Harris* v. *Lond. & S. W. Ry*, cited NECESSARY.

V. JUST: SUBSTANTIAL.

CONVENIENT PLACE. — A place where the works of one person are carried on which cause an actionable injury to another is not a "Convenient Place" (*St. Helen's Smelting Co* v. *Tipping*, 11 H. L. Ca. 642; 35 L. J. Q. B. 66).

CONVENIENT SPEED. — Trustees for sale are allowed a reasonable time for selling the property; "and though the instrument creating the trust, direct them to sell '*with all convenient speed*,' that is no more than is implied by law, and does not render an immediate sale imperative" (Lewin, 485, citing *Buxton* v. *Buxton*, 1 My. & C. 80: *Garrett* v. *Noble*, 3 L. J. Ch. 159; 6 Sim. 504: *Fry* v. *Fry*, 28 L. J. Ch. 591; 27 Bea. 144: *Va, Fitzgerald* v. *Jervoise*, 5 Mad. 25: *Vickers* v. *Scott*, 3 My. & K. 500: *Sculthorpe* v. *Tipper*, 41 L. J. Ch. 266; L. R. 13 Eq. 232: *Turner* v. *Buck*, 43 L. J. Ch. 583; L. R. 18 Eq. 301, on

whlcv Re Waters, 42 Ch. D. 517): and the construction is not different if the direction be to sell "with all convenient speed, *and within 5 years*," — the direction in the words italicised being directory only (Lewin, 486, citing *Pearce* v. *Gardner*, 10 Hare, 287: *Va, Cuff* v. *Hall*, 1 Jur. N. S. 973: *De La Salle* v. *Moorat*, 40 L. J. Ch. 44; L. R. 11 Eq. 8: *Edwards* v. *Edmunds*, 34 L. T. 522). But trustees directed to sell "with all convenient speed," or "so soon as conveniently may be," are not arbitrarily to postpone the sale for an indefinite period (Dart, 63: *Vh, Grayburn* v. *Clarkson*, 15 L. T. 559). Where property was directed to be sold "with all convenient speed," and proceeds to be paid to A., and no sale took place for 7 years, and A. had done acts of ownership in respect of the property; held, that A. had elected to take it as real estate (*Re Davidson, Martin* v. *Trimmer*, 11 Ch. D. 341).

A Charter-Party contained a clause that the ship should "with all Convenient Speed (on being ready), having liberty to take an outward cargo for owners' benefit direct or on the way, proceed to E., and there load a full cargo of cotton." The ship deviated to C. and arrived at E. a few days later than she would have done if she had gone there direct. The ship had not been taken up for any particular cargo, and a small loss in freight was the only result of this delay; held, in an action against the freighter for not loading a Cargo, that the above clause was a Stipulation and not a Condition Precedent, and that the delay afforded no justification to the freighter for refusing to load a cargo (*MacAndrew* v. *Chapple*, L. R. 1 C. P. 643; 35 L. J. C. P. 281; H. & R. 745). "It seems to be now settled that delay by deviation is the same as a delay in starting; and it is also settled, at any rate in this Court, that a delay or deviation which, as it has been said, goes to the whole root of the matter, deprives the charterer of the whole benefit of the contract, or entirely frustrates the object of the charterer in chartering the ship, is an answer to an action for not loading a cargo; but that loss, delay, or deviation, short of that, gives an action for damages, but does not defeat the charter" (per Willes, J., *S. C.*, L. R. 1 C. P. 648). *Vf* ON OR BEFORE.

V. IMMEDIATELY.

CONVENIENT TIME. — Where, under a Lease, the lessor is at iberty to view the premises at "Convenient Times," "I think he ought to give notice that he is coming; and if he does not give notice, it is not to be considered a 'Convenient Time,' as it cannot be expected that where any business is carried on, they can allow the landlord to go all over the premises without they have previous notice of his coming" (per Denman, C. J., *Doe* d. *Wetherell* v. *Bird*, 6 C. & P. 200).

CONVENIENT WAY. — *V.* WAY.

CONVENIENTLY. — Where a Company has to erect, *e.g.* an Arch in a Street at a particular angle, "Conveniently," that does not mean

merely the Convenience of the Co but pre-eminently that of the public (per Alderson, B., *R.* v. *Sharp*, cited 2 Q. B. 573). *Cp* CONVENIENT.

As to what, in a Co's Mem of Assn, will enable it to carry on some BUSINESS, "which, under existing circumstances, may Conveniently or advantageously be combined with THE business of the Co," s. 1 (5, *d*) Comp Mem of Assn Act, 1890; *V. Re Foreign and Colonial Government Trust*, 1891, 2 Ch. 395: *Re Governments Stock Investment Co*, cited EFFICIENTLY: *Re Alliance Marine Insrce*, 1892, 1 Ch. 300; 61 L. J. Ch. 176; 65 L. T. 554; 40 W. R. 329.

CONVENT. — A bequest in trust "for the Community of the Convent" at A., is one for the Members for the time being of that Convent, and is not a PERPETUITY (*Bradshaw* v. *Jackman*, 21 L. R. Ir. 12).

CONVENTICLE. — "Conventicle" is "A private assembly of a few folks under pretence of exercise of Religion; first given to the meetings of Wickliffe in this nation above 200 years past, but now applyed to the illegal meetings of the present Non-conformists. It is mentioned 1 H. 6, c. 3" (Cowel).

The Statutes against Conventicles (16 Car. 2, c. 4; 22 Car. 2, c. 1; 10 Anne, c. 2) and the one exempting PROTESTANT Dissenters (1 W. & M. c. 18), were repealed by 52 G. 3, c. 155. *Vf* 3 Encyc. 359, 360.

CONVENTION. — "Convention Posts" are "Posts established by the Postmaster General under agreements with the inhabitants of any places" (1 V. c. 36, s. 47).

CONVENTIONARY. — "Conventionary Tenements," "Conventionary Tenants," of the ancient Assessionable Manors of the Duchy of Cornwall; *V.* 7 & 8 V. c. 105, passim, and s. 92.

CONVERSION. — As to what words work a constructive conversion of Property; *V.* 1 Jarm. 584–597: 1 White & Tudor, 327–389: 3 Encyc. 362–365: VALID CONTRACT.

Conversion of Goods; *V.* TROVER.

CONVERT. — It is stated that "a covenant not 'to convert' a Dwelling-house into a Shop, means a structural conversion, and not merely exposing goods for sale" (Woodf. 708–709, citing *Wilkinson* v. *Rogers*, 2 D. G. J. & S. 62; 12 W. R. 119, 284). But it would seem that that case supports the reverse of the proposition stated in Woodfall. It is only reported on an application for an interim injunction; and in dissolving an injunction which had been granted by the M. R., the L. JJ. expressly reserved an actual decision till the hearing; but they also intimated their opinion that the conversion into a shop might be effected without any structural change. Turner, L. J., said, "I think the prem-

ises may be 'converted' either by user, or by an alteration of structure." *V.* SHOP.

"Converted into Arable Ground or Meadow"; *V.* IMPROVE.

Trust Property by Trustee "converted to his Use," s. 8 (1), Trustee Act, 1888, does not include property which, *bonâ fide*, he has parted with, though in parting with it he may have acted negligently (*Thorne* v. *Heard*, 1895, A. C. 495; 64 L. J. Ch. 652), or without strict lawful authority (*Re Page*, 1893, 1 Ch. 304; 62 L. J. Ch. 592; 41 W. R. 357). *Vf*, STILL.

CONVEY.—A devise to A. to "sell," or "convey," gives A. the LEGAL ESTATE; *secus*, if the direction be unaccompanied by words of devise (2 Jarm. 295: *Vth*, per Esher, M. R., *Richardson* v. *Harrison*, 16 Q. B. D. 85; 55 L. J. Q. B. 60). *Cp* PERMIT.

"The case of *Ex p. Shorland*, 7 Ves. 88, decided that a mere *gift by way of Advancement* to a son, was not void by 1 Jac. 1, c. 15, s. 5, where the words used are, 'convey, or procure or cause to be conveyed'" (per Cave, J., *Re Player*, No. 2, 54 L. J. Q. B. 556).

V. CONVEYANCE: HAVE OR CONVEY.

Goods "carried or conveyed"; *V.* CARRIED.

The Postmaster General's "Exclusive Privilege" of "conveying" Letters, s. 2, 1 V. c. 33, does not prevent a person from carrying his own letter to its destination (*A-G.* v. *Edison Telephone Co*, 50 L. J. Q. B. 153; 6 Q. B. D. 244).

Convey Coals; *V.* WAY.

CONVEYANCE.—By 2 & 3 Anne, c. 4, 5 & 6 Anne, c. 18 (quà West Riding), 6 Anne, c. 35 (quà East Riding), and 8 G. 2, c. 6 (quà North Riding), Registries were established for Deeds, *Conveyances*, and Wills relating to lands in Yorkshire; and by 7 Anne, c. 20, a Register was established for Deeds, *Conveyances*, and Wills relating to lands in Middlesex, which latter Registry was (by 54 & 55 V. c. 64) transferred to the Land Registry. A simple *deposit of deeds* for the purpose of creating a charge, there being no writing at all accompanying, was not a "Conveyance" within these provisions (*Sumpter* v. *Cooper*, 9 L. J. O. S. K. B. 226; 2 B. & Ad. 223: *Svthc* LIEN); because there was "nothing to register" (per Wood, V. C., *Neve* v. *Pennell*, 33 L. J. Ch. 23); so, of a Vendor's Lien for unpaid purchase-money (*Kettlewell* v. *Watson*, 53 L. J. Ch. 717; 26 Ch. D. 501). As to the Yorkshire Registry, *Vf*, inf.

But an Agreement to execute a MORTGAGE, is a "Conveyance" within these provisions (*Re Wight's Mortgage Trust*, 43 L. J. Ch. 66; L. R. 16 Eq. 41: *Neve* v. *Pennell*, 33 L. J. Ch. 19; 2 H. & M. 170); and so also is a Further Charge, though not under seal and though ancillary to a legal mortgage duly registered (*Moore* v. *Culverhouse*, 29 L. J. Ch. 419; 27 Bea. 639: *Credland* v. *Potter*, 44 L. J. Ch. 169; 10 Ch. 8). In the last

named case, Cairns, C., in giving judgment, said, — "There is no magic in the word 'Conveyance.' It means an Instrument conveying from one person to another person an interest in land. By a FURTHER CHARGE an interest is conveyed from one person to another. It gives the person who already has a mortgage a further interest in the land. Therefore a Further Charge is a Conveyance within the meaning of the Act." But an Order under s. 121, Bankry Act, 1883, vesting a small bankry estate in the Official Receiver, is not such a "Conveyance" (*Re Calcott and Elvin*, 1898, 2 Ch. 460; 67 L. J. Ch. 553); *secus*, of a Certificate of Appointment of a Trustee under s. 54 (4) of the same Act (*Ib.*). An Enfranchisement Deed is not a Conveyance of Copyholds, within the exception in s. 17, 7 Anne, and ought, if of copyholds in Middlesex, to be registered (*R.* v. *Truro*, 57 L. J. Q. B. 577; 21 Q. B. D. 555; 59 L. T. 242; 36 W. R. 775). As to a Vesting Declaration on the Appointment of a New Trustee, *V.* s. 12 (4), Trustee Act, 1893. As to a FORECLOSURE Order, *V. Burrows* v. *Holley*, cited JUDGMENT.

All the Yorkshire Registry Acts were repealed and consolidated by the Yorkshire Registries Act, 1884, 47 & 48 V. c. 54, under which all ASSURANCES and WILLS affecting land in Yorkshire are to be registered as from 31st Dec 1884; by s. 3 "Assurance" includes (int. al.) "Conveyance . . . Memorandum or Charge"; neither "Assurance," nor "Conveyance," nor "Memorandum or Charge" (as therein defined) includes an Agreement by which (in consideration of a present payment by A.) the owner of land agrees to finish certain buildings in course of erection thereon, and on their completion A. agrees to buy the land and buildings at a price less the present payment (*Rodger* v. *Harrison*, 1893, 1 Q. B. 161; 62 L. J. Q. B. 213; 68 L. T. 66; 41 W. R. 291). *Vf* ASSURANCE. *Sv*, quà Lien, *Battison* v. *Hobson*, cited LIEN.

A "Conveyance or ASSIGNMENT" by a Debtor of his PROPERTY, within s. 4 (1 *a*), Bankry Act, 1883, must be by DEED; a Declaration of Trust, or a mere Agreement, is not within the section (*Re Spackman*, 24 Q. B. D. 728; 59 L. J. Q. B. 306; 38 W. R. 497). But if there be a Deed, and it deals with the different classes of all the debtor's property in the appropriate way, — *e.g.* grants his freeholds, covenants to surrender his copyholds, assigns his unonerous personalty, and contains a trust or covenant binding his leaseholds, shares liable to calls, and other onerous personalty, — such a Deed would be a "Conveyance or Assignment" within the section (*Re Hughes*, 1893, 1 Q. B. 595; 62 L. J. Q. B. 358; 68 L. T. 629; 41 W. R. 466). *Cp*, *Gentle* v. *Faulkner*, cited ASSIGN.

By s. 6 (2), Bankry Act, 1869, a fraudulent "*Conveyance, Gift, Delivery, or Transfer*," by a debtor of his property was an act of bankry; — a verbal charge on goods which are already in the hands of the chargee was not within either of these words (*Philps* v. *Hornstedt*, 42 L. J. Ex. 12; L. R. 8 Ex. 26; 1 Ex. D. 62); but if the charge were accomplished by a Deed (or other writing ?) it would be within them (*Woodhouse* v. *Mur-*

ray, 36 L. J. Q. B. 289; 38 Ib. 28; L. R. 2 Q. B. 634; 4 Ib. 27; 8 B. & S. 466; 9 Ib. 720). *V.* FRAUDULENT ASSURANCE.

"Conveyance," Sch 1, Part 2, Solrs Rem Ord. means, "Conveyance in FEE, or for any other FREEHOLD estate" (*V.* heading of Scale 2, of Sch); A sale of Leaseholds, effected by an Under-lease, is not a "Conveyance," neither is it a "Lease" within R. 5, Part 2 of the Sch (*Re Webb*, 1897, 1 Ch. 144; 66 L. J. Ch. 163; 75 L. T. 478; 45 W. R. 170). *V.* PROPERTY. The Scale Fee, in Part 1 of the Sch, to a Purchaser's Solr for "preparing and completing Conveyance," includes his trouble in registering it, where the property is in a Register County (*Grey* v. *Curtice*, 1899, 1 Ch. 121; 68 L. J. Ch. 60; 79 L. T. 713; 47 W. R. 294).

V. COST OF CONVEYANCE.

As to what "Conveyance" and "Convey" mean for the purposes of the Conv & L. P. Acts; *V.* s. 2 (v), Act, 1881. A Declaration vesting a Trust Estate is, for purposes of registration, a Conveyance (s. 34 (4), Ib., repld, s. 12 (4), Trustee Act, 1893).

"Convey," "Conveyance," in Trustee Acts; *V.* Trustee Act, 1850, s. 2, adopted with small emendations in s. 50, Trustee Act, 1893.

Other Stat. Def.—33 & 34 V. c. 34, s. 3; 38 & 39 V. c. 89, s. 51; 53 & 54 V. c. 5, s. 341; 56 & 57 V. c. 21, s. 4.—*Scot.* 31 & 32 V. c. 101, s. 3; 37 & 38 V. c. 94, s. 3; 57 & 58 V. c. 44, s. 18; 25 & 26 V. c. 85, s. 4.—*Ir.* 34 & 35 V. c. 22, s. 2; 54 & 55 V. c. 66, s. 95.

For meaning of "Conveyance *on Sale*," or "Conveyance," quâ *Stamp Duty*; *V.* ss. 54, 59, Stamp Act, 1891; s. 6, 61 & 62 V. c. 10, on *whv*, *Christie* v. *Inl. Rev.*, L. R. 2 Ex. 46; 36 L. J. Ex. 11: and *Phillips* v. *Inl. Rev.*, L. R. 2 Ex. 399; 36 L. J. Ex. 199, distd in *McLeod* v. *Inl. Rev.*, 12 Sess. Ca. 4th Ser. 1045: *Thames Conservators* v. *Inl. Rev.*, 56 L. J. Q. B. 181; 18 Q. B. D. 279; 56 L. T. 198; 35 W. R. 274: *Inl. Rev.* v. *Angus*, 23 Q. B. D. 579; 5 Times Rep. 697: *Lewis* v. *Inl. Rev.*, 37 W. R. 509: *Foster* v. *Inl. Rev.*, 1894, 1 Q. B. 516; 63 L. J. Q. B. 173: *G. N. Ry* v. *Inl. Rev.*, 68 L. J. Q. B. 978; 48 W. R. 170: *G. W. Ry* v. *Inl. Rev.*, 1894, 1 Q. B. 507; 63 L. J. Q. B. 405; 70 L. T. 86; 42 W. R. 211: *Huntington* v. *Inl. Rev.*, 1896, 1 Q. B. 422; 65 L. J. Q. B. 297; 44 W. R. 300; 74 L. T. 28: *Coats* v. *Inl. Rev.*, 1897, 2 Q. B. 423; 66 L. J. Q. B. 434, 732; 77 L. T. 270; 46 W. R. 1: *Mersey Docks* v. *Inl. Rev.*, 1897, 2 Q. B. 316; 66 L. J. Q. B. 480, 697; 77 L. T. 120: *Scottish Equitable Assrce* v. *Inl. Rev.*, 22 Rettie, 85. *Cp* EXCHANGE. Where there is a Declaration of Trust which effects a TRANSFER of a right to property, that is within s. 54, and is a "Conveyance on Sale" (per Wills, J., *Chesterfield Brewery Co* v. *Inl. Rev.*, 1899, 2 Q. B. 7; 68 L. J. Q. B. 204; 79 L. T. 559; 47 W. R. 320). *Vf* RELEASE.

Note.—That a Family Arrangement is not a "Sale" requiring payment of ad val. Stamp Duty, though there be a money consideration (*Doe* d. *Manifold* v. *Diamond*, 4 B. & C. 243; 6 D. & R. 328: *Massy* v. *Nanny*,

3 Bing. N. C. 478: *Wigram* v. *Joyce*, 13 Ir. L. R. 164). Nor is a Partition such a Sale (*Henniker* v. *Henniker*, 22 L. J. Q. B. 94; 1 E. & B. 54); nor a Redemption, pursuant to a prescribed option, of a Ground Annual or Feu Duty, or, *semble*, of a Fee Farm Rent (*Belch* v. *Inl. Rev.*, 4 Rettie, 4th Ser. 592: *Gibb* v. *Inl. Rev.*, 8 Ib. 120).

"Conveyance on Sale," quà Land Transfer Act, 1897, "means, an Instrument executed *on Sale*, by virtue whereof there is conferred, or completed, a Title under which an Application for Registration as First Proprietor of Land may be made under" the Land Transfer Act, 1875 (s. 20 (2), L. T. Act, 1897); extended to Leaseholds by R. 60, Land Transfer Rules, 1898.

"Deed or Conveyance"; *V.* DEED.

V. GRANT.

As used in the Ry Companies Rates and Charges Order Confirmation Acts, "Conveyance" of GOODS, means, "Conveyance by Merchandize Train, and this will include any work which is incidental to such conveyance and for the performance of which it is reasonable to use the Train Engine, *e.g.* (when, at a Junction with the Main Line of either a Station Siding or a Private Siding, the Train has to pick up or throw off trucks) the work of hauling or shunting the trucks over the points at the junction and over so much of the siding as the keeping of the main line clear of obstruction may require. But conveyance other than this off the Main Line would be giving the word 'Conveyance' a meaning beyond its ordinary sense in the language of Ry Acts according to *Hall* v. *L. B. & S. Ry* (cited INCIDENTAL), where it was defined, as comprehending such work only as, in the early days of Railways, was performed by a Ry Co acting as Conveyers only (and not as Carriers as well), and as was capable of being measured by a reference to distance travelled" (*Manchester S. & L. Ry* v. *Pidcock*, 10 Ry & Can Traffic Ca. 157, 158: *Vf*, *Pelsall Coal Co* v. *Lond. & N. W. Ry*, 7 Ib. 1).

CONVEYANCING.—"Sales, Purchases, Leases, Mortgages, Settlements, and other Matters of Conveyancing," s. 2, Solrs Rem Act, 1881; *Vth* "Other Documents," sub OTHER, *ejusdem generis*.

"The Conveyancing Acts, 1881 to 1892"; *V.* Sch 2, Short Titles Act, 1896.

CONVICT.—Quà Forfeiture Act, 1870, 33 & 34 V. c. 23, a "Convict," "shall be deemed to mean any person against whom, after the passing of this Act, judgment of Death or of Penal Servitude shall have been pronounced or recorded by any COURT of competent jurisdiction in England, Wales, or Ireland, upon any charge of Treason or Felony" (s. 6).

"Convict PRISON"; *V.* 40 & 41 V. c. 49, s. 3.

CONVICTED.—The word "convicted," or the "conviction" of a person accused, is equivocal. "In common parlance no doubt it is taken to mean, the verdict at the time of trial; but in strict legal sense it is

used to denote the judgment of the Court" (per Tindal, C. J., *Burgess* v. *Boetefeur*, cited ACQUITTAL), and, accordingly, it was there held that a person who pleaded guilty to keeping a brothel, on an indictment instituted under s. 5, 25 G. 2, c. 36, and who at a subsequent Sessions came up for judgment, was not "convicted" when he pleaded, but when judgment was pronounced. But if, under the same section, the plea of guilty be followed by an Order that defendant enter into recognizances to come up for judgment if called upon, he is then "convicted" (per Stephen, J., *Jephson* v. *Barker*, 3 Times Rep. 40); and that is a ruling of general application (*R.* v. *Blaby*, 1894, 2 Q. B. 170; 63 L. J. M. C. 133; 70 L. T. 879; 42 W. R. 511; 58 J. P. 576). Jacob, tit. *Convict*, says, "Judgment amounts to Conviction"; but in an earlier time a wider meaning was given to the word, for it was said that "Conviction" is either when a man is outlawed, or appeareth and confesseth, or else is found guilty by the inquest (Crompton, Justice of the Peace, 9 a, citing Dyer, 275 b, pl. 48). *Vf*, *Sutton* v. *Bishop*, 1 Bl. W. 665; 4 Burr. 2283: *Lee* v. *Gansel*, Cowp. 1: CRIME.

"'Convicted' has been often, according to many cases in the books, taken for 'attainted,' and therefore extends to a judgment upon demurrer; which in *Foster's Case* was held to be a 'Conviction' within 23 Eliz." (Dwar. 683, citing *Foster's Case*, 11 Rep. 59).

"Upon Conviction," s. 91, Elementary Education Act, 1870, 33 & 34 V. c. 75, means, "upon Summary Conviction" (*R.* v. *Gaunt*, 50 L. J. M. C. 32; 29 W. R. 289; 45 J. P. 222).

"*Convicted of Felony*," s. 14, 33 & 34 V. c. 29; this expression describes a class of persons against whom the public ought to be guarded, and who ought not to be licensed to sell intoxicants, and means, a person who shall be, or shall have been, "Convicted of Felony," and is equivalent to "Convicted Felon" (*R.* v. *Vine*, 44 L. J. M. C. 60; L. R. 10 Q. B. 195; nom. *Vine* v. *Leeds*, 39 J. P. 130, 213. *Sv* FELON). A FREE PARDON purges the Conviction, and after it the man is no longer "Convicted of Felony," within this section (*Hay* v. *Tower Jus.*, 59 L. J. M. C. 79; 24 Q. B. D. 561; 62 L. T. 290; 38 W. R. 414; 54 J. P. 500). *Cp* PROHIBITED.

A person against whom a penalty has been recovered under s. 193, P. H. Act, 1875, is not a "Convicted *Offender*" within 22 V. c. 32 (*Todd* v. *Robinson*, 53 L. J. Q. B. 251; 12 Q. B. D. 530).

"Convicted," "Conviction," quà Extradition Act, 1870, 33 & 34 V. c. 52; *V.* s. 26.

CONVICTION. — *V.* ORDER: CONVICTED: DETERMINATION.

"On Conviction"; *V.* RECOVERY.

"Under the firm Conviction"; *V.* PRECATORY TRUST.

CONVOCATION. — "'Convocation,' is commonly taken for the Assembly of all the Clergie to consult of ecclesiasticall matters, in time

of Parliament: and, as there are two Houses of Parliament, so there are two places called Convocation Houses, — the one called, the Higher Convocation House, where the Archbishops and Bishops sit severally by themselves; the other, the Lower Convocation House, where all the rest of the Clergie are bestowed" (Termes de la Ley). *Vh* 3 Encyc. 375–377.

CONVOY. — "A Convoy is a naval force, appointed by the Government, or by the commander of a station, to escort and protect merchant ships proceeding to certain parts" (1 Maude & P. 502 *et seq* as to the phrase "To Sail with Convoy"). *Vf*, Park, ch. 18, 693–713: Arn. 752.

"*Depart* with Convoy," means to sail with Convoy throughout the whole voyage unless prevented by stress of weather (*Jeffery* v. *Legender*, 3 Lev. 321: *Lilly* v. *Ewer*, Doug. 72. *Va*, *Warwick* v. *Scott*, 4 Camp. 62), or, unless there be a usage to the contrary and Convoy for only part of the distance be provided (*D'Eguino* v. *Bewicke*, 2 Bl. H. 551).

"Sails with Convoy *and arrives*"; means that the ship is bound to sail with Convoy, but not to arrive with Convoy; and it is sufficient if the goods arrive, although they do not arrive safely, there being no warranty as to their condition. "Arrived" means "at the ultimate port of Destination" (1 Maude & P. 559, citing *Kellner* v. *Le Mesurier*, 4 East, 396: *Va*, *Dalgleish* v. *Brooke*, 15 East, 295: *Leevin* v. *Cormac*, 4 Taunt. 483). *V.* ARRIVE.

"*Wait* for Convoy"; — "Where a ship was to sail with convoy, and demurrage was to be paid for every day beyond a certain number of days that she should 'wait for Convoy,' this was construed to mean that it was to be paid until the convoy was ready to sail, and not that the freighter was to be discharged on the arrival of the convoy at the port where the ship lay" (1 Maude & P. 409, citing *Lannoy* v. *Werry*, 4 Brown P. C. 630).

Vf Abbott, 397–405.

COOPATURA. — "A thicket of wood; 4 Inst. 307: Spelm. *Coopertum*" (Elph. 568).

CO-OPERATION. — "Co-operation," which will give a title to BOOTY, must directly tend to produce the Capture in question (*Banda and Kirwee Booty*, L. R. 1 A. & E. 109; 35 L. J. Adm. 17; *V.* these references for plan of the Operations). *Cp*, ASSOCIATION: JOINT CAPTORS.

COPARCENERS. — *V.* PARCENERS.

COPARTNERSHIP. — "Lord Hale and older writers use 'Copartnership' in the sense of 'Co-ownership,' but this is no longer customary" (Lindley, P. 25). "Copartnership" is now synonymous with

PARTNERSHIP; and therefore a member of an association which contemplates spiritual benefits, and not a division of profits, cannot be convicted, under s. 1, 31 & 32 V. c. 116, of embezzling the funds of a "Copartnership" (*R.* v. *Robson*, 55 L. J. M. C. 55; 16 Q. B. D. 137; 34 W. R. 276; 50 J. P. 488; 53 L. T. 823).

COPE. — *V.* HOWE: LOT AND COPE.

COPPER. — "'Copper' applied to Coin, includes bronze or mixed metal, and every other kind of coin inferior in value to silver" (Steph. Cr. 310, stating s. 1, 24 & 25 V. c. 99).

Vf Arch. Cr. 911.

COPPICE. — "Coppice," has, probably the same meaning as UNDERWOOD. "Properly speaking, it means Oak, Ash, or other wood, cut at intervals of less than 20 years so that it springs again from the same stool, or stub" (per Kay, L. J., *Dashwood* v. *Magniac*, cited TIMBER). When that case was before Chitty, J., he said, — "Etymologically, 'Coppice' is derived from the French word *couper*, to cut" (60 L. J. Ch. 215).

COPROLITES. — *V.* MINE.

COPY. — A served copy of the old writ of *Capias* which omitted the description of the defendant contained in the writ, was not a "Copy" of the writ within 2 W. 4, c. 39, s. 4 (*Cooke* v. *Vaughan*, 7 L. J. Ex. 219; 4 M. & W. 69).

The unintentional omission of the word "act" after "wilful" in an Innkeeper's copy of s. 1, 26 & 27 V. c. 41, renders it not a "copy" of that section, and its exhibition does not protect the innkeeper (*Spice* v. *Bacon*, 46 L. J. Ex. 713; 2 Ex. D. 463). *Semble*, an immaterial clerical error would be excused (*Ib.*).

Copy of a BOOK, s. 2, Copyright Act, 1842; *V. Warne* v. *Seebohm*, 57 L. J. Ch. 689; 39 Ch. D. 73; 58 L. T. 928; 36 W. R. 686, and cases there cited.

Copy of Court Roll; *V.* COPYHOLD.

Copy of a DOCUMENT, quà a Solr's charge therefor; *V.* PRINT.

A copy of a *Pictorial Work* "is that which comes so near to the original as to give to every person seeing it the idea created by the original" (per Bayley, J., *West* v. *Francis*, 5 B. & Ald. 743, adopted by all the L. JJ. in *Hanfstaengl* v. *Empire Palace*, 1894, 3 Ch. 109; 63 L. J. Ch. 681; 70 L. T. 854; 42 W. R. 681; affd in H. L. 1895, A. C. 20; 64 L. J. Ch. 81; 72 L. T. 1).

A Photograph is a copy of an *Engraving* within 8 G. 2, c. 13; 7 G. 3, c. 38; 17 G. 3, c. 57 (*Gambart* v. *Ball*, 32 L. J. C. P 166; 14 C. B. N. S. 306: *Graves* v. *Ashford*, 36 L. J. C. P. 139; L. R. 2 C. P. 410); but a Pattern for Woolwork, though taken closely from, is not a copy of

an Engraving within those statutes (*Dicks* v. *Brooks*, 49 L. Ch. 812; 15 Ch. D. 22).

"Copy or Colourably imitate" any PAINTING, *Drawing, or* PHOTOGRAPH, s. 6, Fine Arts Copyright Act, 1862; this includes a Photograph of an Engraving of a painting (*Ex p. Beal*, 37 L. J. Q. B. 161; L. R. 3 Q. B. 387; 9 B. & S. 395), or, a copy of a picture taken from any other Representation, — *e.g.* a living group, — which itself is not an infringement (*Hanfstaengl* v. *Empire Palace*, sup); but, in determining what is a "Copy," the absence of an intention to copy, and the impossibility of injury by competition, are material elements in doubtful cases (*Ib.*), — "the amusing sketches in *Punch* of the pictures in the Royal Academy are not infringements of the copyrights in those pictures, although probably made from the pictures themselves" (per Lindley, L. J., *Ib.*). *Vf*, *Bolton* v. *Aldin*, 65 L. J. Q. B. 120: MULTIPLY: REPRODUCTION. *Cp*, EXACT.

Copy of "*Sheet of Music*," s. 2, Copyright Act, 1842; *V. Boosey* v. *Whight*, 1900, 1 Ch. 122; 69 L. J. Ch. 66; 81 L. T. 571; 48 W. R. 228. *V.* DUPLICATE: OFFICE: TRUE COPY: PRINT.

COPYHOLD. — *V.* CHARTER-LAND.

"'Copyhold,' is a Tenure for which the Tenant hath nothing but the Copies of the Rolles made by the Steward of his Lord's Court" (Termes de la Ley). *Vh*, Litt. ss. 73–84: Co. Litt. 57 b–63 a: 1 Cru. Dig. Title 10: Wms. R. P. Part 3: Goodeve, 320: Scriven on Copyholds, 14: Elton on Copyholds, 1: 3 Encyc. 379–392.

A devise of "Copyholds" will pass CUSTOMARY FREEHOLDS (*Roe* d. *Conolly* v. *Vernon*, 5 East, 83: *Doe* d. *Cook* v. *Danvers*, 7 East, 299: 1 Jarm. 798).

It has been held a fatal misdescription in a V. & P. Contract to describe Freeholds as "Copyhold" (*Ayles* v. *Cox*, 16 Bea. 23; 20 L. T. O. S. 4: *Sv*, *Twining* v. *Morrice*, 2 Bro. C. C. 331: Webster on Conditions of Sale, 106). *V.* FREEHOLD.

The provision in the Middlesex Registry Act, 1708, 7 Anne, c. 20, s. 17, that it shall not extend to "any Copyhold Estates" does not extend to an Enfranchisement of Copyholds (*R.* v. *Truro*, 57 L. J. Q. B. 577; 21 Q. B. D. 555; 59 L. T. 242; 36 W. R. 775).

"Copyhold Ground Rent"; *V.* GROUND RENT.

COPYRIGHT. — "Copyright," is "the sole and exclusive liberty of printing, or otherwise multiplying copies" of an Original Work or Composition (s. 2, 5 & 6 V. c. 45: per Parke, B., *Jefferys* v. *Boosey*, 4 H. L. Ca. 920), and consequently of preventing others from so doing (*Chappell* v. *Purday*, 14 M. & W. 316), even gratuitously (*Novello* v. *Sudlow*, 21 L. J. C. P. 169; 12 C. B. 177). *Vf*, per Mansfield, C. J., *Millar* v. *Taylor*, 4 Burr. 2396. *V.* AUTHOR: COPY.

Quà the Canada Copyright Act, 1875, 38 & 39 V. c. 53, and by s. 2 thereof, "BOOK" and "Copyright," have the same meanings as in 5 & 6 V. c. 45.

"Copyright," — herein distinguished from a PATENT, — "does not extend to ideas, or schemes, or systems, or methods; it is confined to their expression" (per Lindley, L. J., *Hollinrake* v. *Truswell*, 1894, 3 Ch. 420; 63 L. J. Ch. 722); therefore, there can be no Copyright in a Single Word, even though it be the name of a book, or other work (*Maxwell* v. *Hogg*, 36 L. J. Ch. 433; 2 Ch. 307).

But quà Patents, Designs, and Trade Marks Act, 1883, "'Copyright,' means, the exclusive right to apply a DESIGN to any article of manufacture, or to any such substance as aforesaid, in the class or classes in which the Design is registered" (s. 60).

"The Copyright Acts, 1734 to 1888"; *V.* Sch 2, Short Titles Act, 1896.

V. INTERNATIONAL.

Vh, Copinger on Copyright: Scrutton Ib.: 3 Encyc. 392–408.

CORN. — "It has been held that the word 'Corn,' in the Memorandum of a Policy of Marine Insurance, includes Malt, and also Peas and Beans, but not Rice" (1 Maude & P. 492: *V. Moody* v. *Surridge*, 2 Esp. 633: *Scott* v. *Bourdillion*, 2 B. & P. N. R. 213).

Agricultural Seeds are not included in "Corn or GRAIN," within a Ry Co's Act relating to Tolls (*Sowerby* v. *G. N. Ry*, 65 L. T. 546; 7 Ry & Can Traffic Ca. 158, 159, 166, 167).

"Corn, Grain, Meal, and Flour, and articles of the like character"; *V.* s. 4, Revenue Act, 1869.

V. BRITISH CORN.

CORNAGE. — "Is a kinde of Grand SERJEANTIE, the Service of which Tenure is to blow an Horn when any invasion of the Northerne Enemie is perceived" (Termes de la Ley). *Vf* HEIR-LOOM. *Cp* ESCUAGE.

CORONER. — *V. Davis* v. *Pembrokeshire Jus.*, 7 Q. B. D. 513.

"The Coroners (Ir) Acts, 1829 to 1881"; *V.* Sch 2, Short Titles Act, 1896.

V. FRANCHISE.

CORPORATE. — *V.* CORPORATION.

"Corporate BOROUGH," quà modern Acts, has been defined to "mean any Corporate Borough mentioned in the Schedules annexed to 5 & 6 W. 4, c. 76, intituled 'An Act for the Regulation of Municipal Corporations in England and Wales'; and any Borough incorporated by Charter granted, or to be granted, in pursuance of that, or any subsequent Act" (11 & 12 V. c. 63, s. 2: *Vf*, 12 & 13 V. c. 94, s. 10; 21 & 22 V. c. 98, s. 2).

Corporate Buildings; *V.* BUILDING.

"Corporate DISTRICT"; *V.* 11 & 12 V. c. 63, s. 2.

"Corporate LAND," quà Municipal Corporations, "means, land belonging to, or held in trust for, a Municipal Corporation" (Mun Corp Act, 1882, s. 7).

"Corporate OFFICE"; *V.* Mun Corp Act, 1882, s. 7; 47 & 48 V. c. 70, s. 35 (1). — *Scot.* 53 & 54 V. c. 55, s. 2.

"'Corporate Seal,' means, the Common Seal of a Municipal Corporation" (Mun Corp Act, 1882, s. 7).

Corporate TOWN; *V.* BOROUGH OR PLACE.

V. INCORPORATED.

CORPORATION. — "'Corporation,' is that which the Civilians call *Universitatem*, or *Collegium*, and is a Body Politick authorised to take and grant, having a Common Seal, &c. These are constituted either by PRESCRIPTION, by Letters Patent, or by Act of Parliament" (Cowel: *Vf.* Termes de la Ley: Jacob). They are either (1) Spiritual, *e.g.* Bishops, Deans with their Chapters, Parsons and Vicars; or (2) Temporal, *e.g.* Municipal Corporations, and Companies incorporated by Charter or Act of Parliament; or (3) Mixed, *i.e.* composed of Spiritual and Temporal Persons, as in some Colleges and Hospitals. Again, they are either (1) Sole, *e.g.* Bishops, Parsons, and Vicars; or (2) Aggregate, *e.g.* Deans with their Chapters, Municipal Corporations, and Incorporated Railway, Water, Gas, or Trading, Companies.

Vh, Grant on Corporations: 3 Encyc. 436–438: 4 Ib. 387.

"Corporation," defined according to the subject-matter of the Act; *V.* 6 & 7 W. 4, c. 79, s. 64; 30 & 31 V. c. 38, s. 1; 37 & 38 V. c. 59, s. 3; 44 & 45 V. c. 34, s. 1. — *Ir.* 24 & 25 V. c. 26, s. 3.

"Corporation *Aggregate*," R. 8, Ord. 9, R. S. C., includes a Corporation established by Foreign law but having a residence in England (*Haggin* v. *Comptoir d'Escompte*, 58 L. J. Q. B. 508; 23 Q. B. D. 523); the Governor and Government of New Zealand are not such a Corp (*Sloman* v. *New Zealand*, 1 C. P. D. 563; 46 L. J. C. P. 185; 35 L. T. 454; 25 W. R. 86). *V.* FOREIGN CORPORATION.

CORPOREAL. — "'Corporeal Hereditaments,' consist wholly of substantial and permanent objects, all which may be comprehended under the general denomination of LAND only" (2 Bl. Com. 17: *Vh*, Wms. R. P., Part 1: Goodeve, 12).

"Corporeal Heredit," s. 56, Co. Co. Act, 1888; *V. Williams* v. *Jones*, 15 W. R. 133: HEREDITAMENT.

"Equitable Interest in Corporeal Heredit"; *V.* EQUITABLE.

Cp, INCORPOREAL HEREDITAMENT.

CORPS. — Army "Corps"; Stat. Def., 35 & 36 V. c. 3, s. 104; 42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 57, s. 49, c. 58, s. 190.

"Corps of Volunteer Artillery"; *V.* 25 & 26 V. c. 41, s. 1.

CORRECT. — A Weight, &c "Incorrect, or otherwise Unjust," s. 28, 5 & 6 W. 4, c. 63, "need not be morally wrong"; the words are satisfied if the thing does not, of itself and without making pre-ordered allowances, perform its function correctly (*G. W. Ry* v. *Bailie*, 5 B. & S. 928; 34 L. J. M. C. 31).

A Coal Ticket which erroneously states the weight, yet if the error is in favour of the purchaser, states the "Correct Weight," within s. 22 (2), 52 & 53 V. c. 21 (*Knowles* v. *Sinclair*, 1898, 1 Q. B. 170; 67 L. J. Q. B. 67; 77 L. T. 624; 62 J. P. 102). *Vf* ON OR NEAR.

Declaration that statements for a Life Policy are "correct and true," and if "untrue," the Policy to be void; *V. Fowkes* v. *Manchester Assrce*, 3 B. & S. 917; 32 L. J. Q. B. 153: TRUE.

Certifying an Account as "correct and satisfactory"; held, not a RATIFICATION of an Infant's debt (*Rowe* v. *Hopwood*, 38 L. J. Q. B. 1; L. R. 4 Q. B. 1).

CORRECTION. — What is an amendment of a Patent Specification "by way of Correction or Explanation," s. 18 (1), Patents, Designs, and Trade Marks Act, 1883; *V. Kelly* v. *Heathman*, 60 L. J. Ch. 22: *Vf*, *Re Owen*, cited DISCLAIMER.

CORRESPOND. — Property was directed to be settled "in a Course of Entail to *correspond*, as far as may be practicable" with the limitations of a newly created Peerage; "'To correspond' does not, usually or properly, mean, 'to be identical with,' but 'to harmonize with,' or 'to be suitable to'; and the words 'as far as may be PRACTICABLE,' although they may include a reference to the difference to be observed in the limitation of Real and Leasehold or Personal Property, appear to me to find their much fuller and more appropriate explanation when read as a recognition of the difference which must always exist in substance, between the limitation of a Dignity and the limitation of Property of any and every tenure" (per Ld Cairns, *Sackville-West* v. *Holmesdale*, 39 L. J. Ch. 520; L. R. 4 H. L. 576; *Sv*, on "correspond," per Hatherley, C., *S. C.* 39 L. J. Ch. 509; L. R. 4 H. L. 557). *Cp* LIKE.

V. ASSOCIATE.

CORRESPONDENCE. — As to Contract by Correspondence; *V.* SUBJECT TO.

CORRESPONDING. — *V.* CORRESPOND.

"Corresponding Expenses of leaving" a ship's place of loading; *V.* LEAVING, at end.

CORROBORATED. — "Corroborated in some Material Particular," s. 4, Bastardy Laws Amendment Act, 1872, 35 & 36 V. c. 65: In an application in Bastardy the evidence of the mother is so corroborated if, by other evidence than hers, it is proved that the putative father was silent when taxed with the paternity, or said, that rather than pay he

would go to America (*R.* v. *Piercey*, 18 L. T. O. S. 238), or if it is so proved that there had been acts of familiarity even though long antecedent, and having no direct relation to the actual begetting of the child (*Cole* v. *Manning*, 46 L. J. M. C. 175; 2 Q. B. D. 611; 41 J. P. 469), or that admissions had been made or money paid for the child by the putative father (*R.* v. *Berry*, 23 J. P. 81, 86).

Promise of Marriage to be corroborated; *V.* MATERIAL EVIDENCE.

Child's Evidence to be corroborated by "some other Material Evidence"; *V.* s. 15, Prevention of Cruelty to Children Act, 1894, 57 & 58 V. c. 41.

Witness is to be corroborated "in some Material Particular" in cases under ss. 2, 3, 4, Criminal Law Amendment Act, 1885.

Cp "Essential Particular," sub ESSENTIAL. *Vf* 3 Encyc. 447–449.

CORRODY. — *V.* 3 Encyc. 410.

CORRUPT, CORRUPTLY. — "To corrupt" a voter within the meaning of 2 G. 2, c. 24, meant to do an act of BRIBERY which was completed by acceptance of the bribe, whether subsequently the voter voted or not (*Henslow* v. *Fawcett*, 3 A. & E. 51; 4 L. J. K. B. 147; 4 N. & M. 585).

To "corruptly" treat or do any other thing contrary to the Corrupt Practices Prevention Act, 1854, 17 & 18 V. c. 102, does not mean to do it "wickedly, or immorally, or dishonestly, or anything of that sort, but with the object and intention of doing that which the legislature plainly means to forbid" (per Blackburn, J., *Bewdley*, 1 O'M. & H. 19; 19 L. T. 676: *Vh* 2 Rogers, 299 *et seq*).

As to what is a Simoniacally "corrupt" bargain, 31 Eliz. c. 6, s. 5; *V. Young* v. *Jones*, 3 Doug. 97: *Fletcher* v. *Sondes*, 3 Bing. 501: *Barret* v. *Glubb*, 2 Bl. W. 1053: *Mosse* v. *Killick*, 50 L. J. C. P. 300: *Newman* v. *Newman*, 4 M. & S. 66. *Vh* IMMORAL.

CORRUPT PRACTICE. — For def of Corrupt Practices:

(*a*) At Parliamentary Elections, *V.* Parl Elec Act, 1868, 31 & 32 V. c. 125, s. 3; Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, ss. 3 and 33 (7), Sch 3, Part 3.

(*b*) At Municipal Elections, *V.* Municipal Elections (C. & I. P.) Act, 1884, 47 & 48 V. c. 70, s. 2, Sch 3, Part 1. — *Scot.* 53 & 54 V. c. 55, s. 2.

Vh, Leigh & Le Marchant, ch. 1: Mattinson & Macaskie, on Corrupt Practices, 2 ed.: Arch. Cr. 1187: Rosc. Cr. 297: 3 Encyc. 449–467.

A "Corrupt Practice," in an Order under s. 28 (5), 47 & 48 V. c. 70, directing a prosecution, may be construed as, a Repetition of corrupt actions constituting a corrupt habit or course of conduct (*R.* v. *Riley*, 59 L. J. M. C. 122; 63 L. T. 119). *Vh* EVIDENCE.

V. CORRUPT. *Cp* BRIBERY.

CORRUPTION. — "Corruption" in an Arbitrator, — *e.g.* 9 & 10 W. 3, c. 15; s. 25, Scotch Act of Regulations, 1695, — means, moral obliquity; it is a false and misleading metaphor to speak of an Arbitrator's honest mistake, whether it be of excess or defect, as "Constructive Corruption" (*Adams* v. *Great North of Scotland Ry*, 1891, A. C. 31).

"Corruption of Blood"; *V.* 4 Bl. Com. 388, 389.

COSCES. — *V.* BORDARII.

COSENING. — "Is an Offence unnamed, whereby any thing is done guilefully, in or out of Contracts, which cannot be fitly termed by any special name" (Cowel). *Cp* DECEIT.

COST BOOK. — "Cost Book," quà the Stannaries of Devon and Cornwall; *V.* 32 & 33 V. c. 19, s. 2; 50 & 51 V. c. 43, s. 2.

COST FREIGHT AND INSURANCE. — "The terms at a price 'to cover Cost, Freight, and Insurance,' payment by acceptance 'on receiving shipping documents,' are very usual, and are perfectly well understood in practice. The invoice is made out debiting the consignee with the agreed price (or the actual cost and commission, with the premiums of insurance, and the freight, as the case may be) and giving him credit for the amount of the freight which he will have to pay to the shipowner on actual delivery, and for the balance a draft is drawn on the consignee, which he is bound to accept (if the shipment be in conformity with his contract) on having handed to him the charter-party, bill of lading and policy of insurance. Should the ship arrive with the goods on board he will have to pay the freight, which will make up the amount he has engaged to pay. Should the goods not be delivered in consequence of a PERIL OF THE SEA, he is not called on to pay the freight and he will recover the amount of his interest in the goods under the policy. If the non-delivery is, in consequence of some misconduct on the part of the master or mariners, not covered by the policy, he will recover it from the shipowner. In substance, therefore, the consignee pays, though in a different manner, the same price as if the goods had been brought and shipped to him in the ordinary way" (per Blackburn, J., *Ireland* v. *Livingston*, L. R. 5 H. L. 406; 41 L. J. Q. B. 204). *Vf*, *Delaurier* v. *Wyllie*, 17 Sess. Ca. 4th Ser. 167.

Under a C. F. I. contract there is an absolute duty on the Vendor to procure the shipment of the goods under such a Bill of Lading as will, subject to its Exceptions, ensure their delivery at the Port of Destination (*Lecky* v. *Ogilvy*, 3 Com. Ca. 29).

A price C. F. I. does not necessarily include everything up to delivery; and if the contract stipulates that the goods are "to be shipped," those are important words to show that the goods are at the buyer's risk

as soon as placed on board, even though the price be quoted C. F. I. (*Wancke* v. *Wingren*, 58 L. J. Q. B. 519).

COST OF RELIEF.—"Cost of the Relief of the Wife," s. 33, 31 & 32 V. c. 122; *V. Dinning* v. *South Shields*, 13 Q. B. D. 25; 53 L. J. M. C. 90; 50 L. T. 446.

COSTS.—*V.* TAXED COSTS: DAMAGES.

Neither "Costs ONLY," s. 49, Jud. Act, 1873, nor its synonym "Costs of and incident to all proceedings," R. 1, Ord. 65, R. S. C., includes Costs to which a person is entitled, as of right, by virtue of a contract or relationship; *e.g.* Mtgee or Trustee Costs (*Cotterell* v. *Stratton*, 8 Ch. 295; 42 L. J. Ch. 417; 28 L. T. 218; 21 W. R. 234: *Turner* v. *Hancock*, 20 Ch. D. 303; 51 L. J. Ch. 517; 46 L. T. 750; 30 W. R. 480: *Re Chennell*, 8 Ch. D. 492; 47 L. J. Ch. 583; 38 L. T. 494; 26 W. R. 595: *Ex p. Wainwright*, 19 Ch. D. 140, 153; 51 L. J. Ch. 67; 45 L. T. 562; 30 W. R. 125: *Re Beddoes*, 1893, 1 Ch. 547; 62 L. J. Ch. 233 68 L. T. 595: *Re Isaac*, 1897, 1 Ch. 251; 66 L. J. Ch. 160). Such Costs are not, properly speaking, Costs at all; they are Charges and Expenses, and can only be forfeited by misconduct, and their allowance or disallowance is appealable (*Re Chennell*, sup: *Re Beddoes*, sup: *whlc* explains *Charles* v. *Jones*, 33 Ch. D. 80; 56 L. J. Ch. 161; 55 L. T. 331; 35 W. R. 88. *Vf*, as to *Charles* v. *Jones* and *Re Chennell*, *Bew* v. *Bew*, 1899, 2 Ch. 467; 68 L. J. Ch. 657). *V.* PROPERLY: Ann. Pr. sub R. 1, Ord. 65. *Sv* NO ORDER.

"All PROPER Costs and Charges incident to and recoverable under" a Petition, means, Party and Party costs (*Re Grundy*, 17 Ch. D. 108; 50 L. J. Ch. 467; 44 L. T. 541; 29 W. R. 581). *Vf* FULL COSTS.

Costs, as between Solr and Client, to Local Authorities; *V.* PURSUANCE.

An Agreement as to "Costs" of proceedings before the Irish Land Judges, includes the expenses of Survey (*Re Orme*, 25 L. R. Ir. 104).

Quà Corrupt and Illegal Practices Prevention Act, 1883, "'Costs,' includes Costs, Charges, and Expenses" (s. 64); so, quà Loc Gov Act, 1888, "'Costs,' includes Charges and Expenses" (s. 100), and in Loc Gov (Scot) Act, 1889, it "includes Expenses" (s. 105).

Costs "ATTENDING" Application under s. 2, 5 & 6 W. 4, c. 69, held, to include the costs attending the re-investment of the purchase-money which was the subject-matter of the application (*Re Byron*, 4 D. G. M. & G. 694); "but it was on the peculiar circumstances, and the L. JJ. strained the words to meet that case" (per Kindersley, V. C., *Re Eastern Counties Ry*, 6 W. R. 492). In that latter case it was held that Costs "CONSEQUENT" on a Conveyance of land compulsorily taken, did not include Fines on Copyholds which had to be purchased for the re-investment of the money paid on the conveyance.

Costs to abide (or follow) the Event; *V.* EVENT.

"Judgment with Costs"; *V.* JUDGMENT.

"Costs and all other Matters"; *V.* MATTER.

"Costs of Assizes and of Quarter and Petty Sessions"; *V.* Loc Gov Act, 1888, s. 100.

"Costs of Maintenance," of Criminal Lunatic; *V.* 47 & 48 V. c. 64, s. 16.

V. as to Costs generally Ord. 65, R. S. C., on *whv* Ann. Pr.: Chitty's Practice, ch. 23: Ann. Co. Co. Pr. Part 5, ch. 4: Morgan & Wurtzburg on Costs: Gray on Costs: Cordery on Solicitors, 259: Incorporated Law Society's Digest of Decisions and Opinions under Solicitors Remuneration Order, 1898: 3 Encyc. 468–517.

COSTS AND CHARGES. — The "Costs and Charges of executing" a Will, do not include Fines payable by devisees of copyholds (*Cole* v. *Jealous*, 5 Hare, 51).

In the phrase "Costs, Charges, and Expenses," "Charges and Expenses" are obviously wider than technical "Costs": — As the phrase is used in ss. 21 (10), 46 (6), Settled Land Act, 1882; *V. Re Smith*, 1891, 3 Ch. 65; 60 L. J. Ch. 613; 64 L. T. 821; 39 W. R. 590: — As to what is included in the phrase generally; *V. Harvey* v. *Olliver*, 57 L. T. 239: *Re Mansel*, 33 W. R. 727; 54 L. J. Ch. 883; 52 L. T. 806: *Re Bennett*, 1896, 1 Ch. 778; 65 L. J. Ch. 422; 74 L. T. 157; 44 W. R. 419.

V. COSTS: MONEY, COSTS, CHARGES, AND EXPENSES: INCIDENTAL: PROPERLY: IN THE CONDUCT OF A SUIT: PROFESSIONAL CHARGES.

COSTS IN THE CAUSE. — "'Costs in the Cause,' properly so called, are those costs only which the successful party in the suit would be entitled to on taxation in the absence of an Order to the contrary in the particular proceeding; and this, necessarily, excludes costs incurred subsequently to final jdgmt" (*Thompson* v. *Parish*, 5 C. B. N. S. 691, *n*).

Vf, *Pugh* v. *Kerr*, 6 M. & W. 17; 9 L. J. Ex. 255: COSTS OF THE CAUSE.

COSTS OF CONVEYANCE. — "Costs of Conveyances," s. 82, Lands C. C. Act, 1845, includes the costs of registering the Vendor's title pursuant to the Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66 (*Re Belfast & N. Counties Ry*, 1895, 1 I. R. 297).

COSTS OF EXECUTION. — *V.* EXECUTION.

COSTS OF LEASE. — The Lessor's Solr prepares the Lease, and the Lessee pays for it (*Grissell* v. *Robinson*, 3 Sc. 329; 5 L. J. C. P. 313; 3 Bing. N. C. 10). But neither on that general custom, nor on a

specific agreement by the lessee to pay the costs of the lease, is the lessee liable for the costs of the Counterpart, because that is "for the security of the lessor" (*Jennings* v. *Major*, 8 C. & P. 61). But, would the ruling in the latter case apply to the Counterpart of a lease by a Tenant for Life under s. 6, Settled Land Act, 1882, seeing that by subs. 4 "a counterpart of every lease *shall* be executed by the lessee and delivered to the tenant for life"?

COSTS OF REALIZATION.—*V.* REALIZATION.

COSTS OF SUIT.—*V.* SUIT.

COSTS OF SUMMONING JURY.—"Costs of summoning jury and expenses of witnesses" to be payable by a Railway on a Compensation Assessment, *semble*, does not include the general costs of the enquiry (*R.* v. *Gardner*, 6 L. J. K. B. 130; 6 A. & E. 112; 1 N. & P. 308).

COSTS OF THE CAUSE.—*V. Rigby* v. *Okell*, 7 B. & C. 57; *Baines* v. *Bromley*, 50 L. J. Q. B. 465; 6 Q. B. D. 691; 44 L. T. 915; 29 W. R. 706: *Sparrow* v. *Hill*, 29 W. R. 705; 44 L. T. 917: COSTS IN THE CAUSE.

COSTS OF THE REFERENCE.—*V.* REFERENCE.

COSTS ONLY.—S. 49, Jud. Act, 1873; *V.* COSTS: Ann. Pr., Ord. 65, R. 1.

COTTAGE.—"'Cottage,' is a little house for habitation of poore men, without any land belonging unto it; whereof mention is made in 4 Edw. 1, c. 1" (Termes de la Ley). "Cottage, *cotagium*, is a little house without land to it" (Co. Litt. 56 b). "By the grant of a cottage, doth pass a little DWELLING-HOUSE that hath no land belonging to it" (Touch. 94); with which agrees the definition in *Doe* v. *Sotheron* (2 B. & Ad. 638), that, "A cottage is a small dwelling-house." *Cp* BORDARII. In *Doe* d. *Hubbard* v. *Hubbard* (20 L. J. Q. B. 61; 15 Q. B. 227), it was held that the word "Cottage" was satisfied by a tenement partitioned off from a larger cottage and having a separate entrance, though not including an upper room under the same roof (1 Jarm. 781).

Devise of "Cottage with the Garden"; *V.* GARDEN.

By 31 Eliz. c. 7, a lawful cottage must have had 4 acres of land attached to it, consequently Levancy and Couchancy was well alleged of a "Cottage," without more (*Emerton* v. *Selby*, 2 Ld Raym. 1015; Salk. 169: *Vth*, *Scholes* v. *Hargreaves*, 5 T. R. 46). But that statute was repealed by 15 G. 3, c. 32.

Quà Part 3, Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, "'Cottage' may include a Garden of not more than half an acre,

provided that the estimated ANNUAL VALUE of such garden shall not exceed £3" (s. 53 (2), replacing a similar def in s. 13, 48 & 49 V. c. 72).

Quà Agricultural Rates Act, 1896, 59 & 60 V. c. 16, "'Cottage,' means, a house occupied as a Dwelling by a person of the LABOURING CLASSES" (s. 9). *V.* WORKING CLASSES.

COTTAGE GARDEN.—Quà Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 V. c. 26, "'Cottage Garden' means, an Allotment attached to a COTTAGE" (s. 4). *V.* GARDEN.

COTTAR.—Quà Crofter's Holdings (Scot) Act, 1886, 49 & 50 V. c. 29; *V.* s. 34. *Cp* CROFTER.

Lord COTTENHAM'S ACTS.—10 & 11 V. c. 96; 12 & 13 V. c. 74: repealed and replaced by the Trustee Act, 1893.

COTTON.—"Cotton Cloth Factory"; Stat. Def., 52 & 53 V. c. 62, s. 4.

Cotton Fabric; *V. Whymper* v. *Harney*, 18 C. B. N. S. 243; 34 L. J. M. C. 113.

COTUCAMI: COTARII: COTERELLI.—*V.* BORDARII.

COUCHANCY.—*V.* LEVANT AND COUCHANT.

COUGH.—"Cough," in a Life Insrce Proposal, means, "a Cough proceeding from the Lungs" (per Alderson, B., *Geach* v. *Ingall*, 14 M. & W. 101).

COULD.—Action which "could have been commenced in a County Court," s. 116, Co. Co. Act, 1888; *V.* ss. 56–60 Ib., on *whv* PERSONAL ACTION: DEBT: DAMAGE: TITLE: TOLL: FAIR: FRANCHISE: LIBEL: ADMITTED SET OFF: CLAIMED: LEGACY: ANNUAL VALUE: VALUE: RENT: Ann. Pr., sub Co. Co. Act, 1888: Ann. Co. Co. Pr., Part 2, ch. 1. The words mean, "could have been *properly* commenced, both as regards Quality and Amount," irrespective of the plt's Indorsement on his Writ (*Solomon* v. *Mulliner*, 83 L. T. 493).

COUNCIL.—"Council" defined according to the subject-matter of the Act; *V.* 7 & 8 V. c. 31, s. 36; 18 & 19 V. c. 57, s. 4, c. 121, s. 2; 29 & 30 V. c. 90, s. 57; 48 & 49 V. c. 60, s. 1; 53 & 54 V. c. 66, s. 2. — *Scot.* 15 & 16 V. c. 32, s. 1. — *Ir.* 15 & 16 V. c. 30, s. 14; 19 & 20 V. c. 98, s. 2; 29 & 30 V. c. 44, s. 2; 53 & 54 V. c. 48, s. 3.

"The Council of a BOROUGH," in s. 310, P. H. Act, 1875, as in other sections of the Act, means, "The Mayor, Aldermen, and Burgesses acting by the Council" (*Hyde* v. *Bank of Eng.*, 51 L. J. Ch. 747; 21 Ch. D. 176). *Vf*, *R.* v. *York*, 2 Q. B. 850; 11 L. J. Q. B. 127; 2 G. & D.

105. Stat. Def., 20 & 21 V. c. 81, s. 29.—*Ir.* 35 & 36 V. c. 33, Sch; 51 & 52 V. c. 25, s. 55.

"Council of a COUNTY"; "County Council," *V.* 61 & 62 V. c. 29, s. 17. *Note*: County Councils were established by Loc Gov Act, 1888.

"Council of a County, or Borough"; *V.* 55 & 56 V. c. 43, s. 25; 56 & 57 V. c. 67, s. 3.

"Council of any County Borough"; *V.* 56 & 57 V. c. 56, s. 9.

"Council of DISTRICT"; *V.* 60 & 61 V. c. 43, s. 8.

V. GENERAL COUNCIL: PARISH COUNCIL.

COUNCILLOR. — In some Acts relating to Ireland, "Councillor" is made to include an Alderman, *e.g.* 42 & 43 V. c. 53, s. 2; 47 & 48 V. c. 34, s. 2.

COUNSEL. —*V.* AS COUNSEL SHALL ADVISE.

Quà Criminal Procedure Act, 1865, 28 & 29 V. c. 18, "'Counsel' shall be construed to apply to ATTORNEYS in all cases where attorneys are allowed by law, or by the practice of any Court, to appear as advocates" (s. 9).

V. BARRISTER.

COUNSEL OR PROCURE. — "Fagin (ch. 47, *Oliver Twist*) after getting Sikes to say he would murder any one who should betray him, wakes up Noah Claypole and makes him tell Sikes that the girl Nancy had betrayed him, and, as Sikes rushes out in a passion, says, 'You won't be too violent, Bill; I mean not too violent for safety.' I think that the whole conversation taken together would be evidence to go to a jury, that Fagin did 'counsel' or 'procure' the murder committed by Sikes, which would make him an ACCESSORY before the Fact; but if he had confined himself to merely telling Sikes what Claypole said he had heard, it would not have been enough" (Steph. Cr. 152, *n*). *Vf, Howells* v. *Wynne*, 32 L. J. M. C. 241; 15 C. B. N. S. 3: Arch. Cr. 15–18.

"Aid, abet, counsel, or procure" an Offence, s. 5, Sum Jur Act, 1848; *V. Benford* v. *Sims*, 1898, 2 Q. B. 641; 67 L. J. Q. B. 655; 47 W. R. 46; 78 L. T. 718. In that case Ridley, J., said that, probably, that phrase was used in a less strict sense than "CAUSE, or procure" in s. 2, Cruelty to Animals Act, 1849. *Vf* CAUSE OR PROCURE. "There may be an Offence which would justify the use of all those four words" (per Channell, B., *Re Smith*, 3 H. & N. 238).

Cp AID OR ABET.

COUNT. — "Count, *i.e. narratio*, cometh of the French word *conte*, which in *Latyne* is *narratio*, and is vulgarly called a declaration" (Co. Litt. 17 a). *Vf*, Termes de la Ley: *Gell* v. *Burgess*, 18 L. J. C. P. 153; 7 C. B. 16.

COUNTER-CLAIM. — *V.* SET-OFF.

COUNTERFEIT COIN. — "'Counterfeit COIN' means coin not genuine, but resembling or apparently intended to resemble, or pass for genuine coin; and includes genuine coin prepared or altered so as to resemble or pass for a coin of a higher denomination" (Steph. Cr. 310, stating the definition in s. 1, 24 & 25 V. c. 99). A genuine coin, fraudulently reduced in weight by the removal of the milling and which has received a new milling in order to restore its appearance, is a counterfeit coin (*R.* v. *Hermann*, 48 L. J. M. C. 106; 4 Q. B. D. 284; 27 W. R. 475; 40 L. T. 263). *Vf*, Arch. Cr. 914: FALSE COIN.

COUNTERPART. — *V.* DUPLICATE: COSTS OF LEASE.

COUNTING-HOUSE. — A Solr's Office is a "Counting-House," within s. 9, 5 & 6 W. 4, c. 76 (*Re Creek*, 3 B. & S. 459; 32 L. J. Q. B. 89; 11 W. R. 234). *Cp*, OFFICE.

A "Counting-House," to qualify for the Parliamentary Franchise, s. 27, Rep People Act, 1832, need not be an entire building, or be structurally severed from the rest of the building of which it forms part (*Piercy* v. *Maclean*, L. R. 5 C. P. 252; 39 L. J. C. P. 115). But "I should be inclined to confine the operation of the word to places used as such by Mercantile Men" (per Pennefather, B., *Re Armstrong*, 1 Cr. & Dix, 274, 275, on the word as used in s. 5, Rep People (Ir) Act, 1832). *Note*: s. 27, Rep People Act, 1832, repealed by 48 & 49 V. c. 3.

COUNTRY. — "Foreign Country"; *V.* FOREIGN.

"Country of Origin"; *V.* PRODUCED.

"Country," defined according to the subject-matter of the Act; *V.* 36 & 37 V. c. 22, s. 2; 38 & 39 V. c. 60, s. 4; 39 & 40 V. c. 22, s. 6, c. 45, s. 3.

COUNTY. — "*Countie* is fetched from the French, and *shire* from the Saxon. For *scyran* in the *Saxon* tongue signifieth *partiri*, because everie countie or shire is divided and parted by certaine metes and bounds from another, and in *Latine* is called *comitatus à comitando*, for accompanying together" (Co. Litt. 50 a). *Vf* Termes de la Ley, *Countie*, *Hundred*.

In Acts of Parliament passed after 1850 and before 1st Jan 1890, "'County' shall, unless the contrary intention appears, be construed as including a County of a City, and a County of a Town" (s. 4, Interp Act, 1889; *Vf* s. 4, 13 & 14 V. c. 21). "County" has this extended meaning in s. 38, 4 & 5 W. 4, c. 76 (*R.* v. *Pearce*, 49 L. J. M. C. 81; 5 Q. B. D. 386).

In every Act relating to Scotland, "Shire" or "County" includes a Stewartry (s. 7, Interp Act, 1889).

The word "County" is used in s. 13, Highways and Locomotives Amendment Act, 1878, 41 & 42 V. c. 77, in its ordinary geographical sense; and is not narrowed by the definition of "County" in s. 2, Highway Act, 1862, 25 & 26 V. c. 61 (*Over Darwen* v. *Lancashire*, 54 L. J. M. C. 51; 15 Q. B. D. 20; 51 L. T. 739). "County," s. 51, 15 & 16 V. c. 81; *V. R.* v. *East Looe*, 31 L. J. M. C. 245; 3 B. & S. 20.

"Counties, Ridings, and Divisions"; *V. Evans* v. *Stevens*, 4 T. R. 459: *R.* v. *Isle of Ely*, 15 Q. B. 827; 19 L. J. M. C. 223.

Notwithstanding the general def of "County" in s. 4, 13 & 14 V. c. 21, verbally varied and concluded by the Interp Act, 1889, as above stated, the statutory definitions of the word are very numerous. The particular def will generally be found in the Interp Clause of the Act in which the word occurs and varying according to the subject-matter of the Act. The definitions vary widely: thus, in the Geological Survey Act, 1845, 8 & 9 V. c. 63, "'County' shall be taken to include Hundred, City, Borough, Town, Town-land, Parish, Burghs, Royal Parliamentary Burghs, Burghs of Regality and Barony, Extra-parochial and other Places, Districts, and Divisions, by whatsoever denomination the same respectively shall be known or called" (s. 6); on the other hand in the Licensing Act, 1872, "'County,' does *not* include a County of a City or a County of a Town but, means any County. Riding, Parts, Division, or Liberty of a County, having a separate Commission of the Peace and a separate Court of Quarter Sessions" (s. 74).

"Administrative County"; *V.* ADMINISTRATIVE.

"County, City, Borough, or Place"; *V.* 3 & 4 V. c. 54, s. 8.

"County COUNCIL"; *V.* 51 & 52 V. c. 54, s. 14; 52 & 53 V. c. 40, s. 16; 54 & 55 V. c. 40, s. 52, c. 76, s. 141; 55 & 56 V. c. 31, s. 20; 56 & 57 V. c. 73, s. 75; 58 & 59 V. c. 32, s. 1 (2); 60 & 61 V. c. 65, s. 20 (11); 61 & 62 V. c. 29, s. 17 (1), c. 37; 62 & 63 V. c. 19, Sch.

"County DISTRICT"; *V.* Loc Gov Act, 1888, s. 100; Loc Gov Act, 1894, s. 21 (3); Loc Gov (Ir) Act, 1898, s. 22 (3).

"County ELECTOR"; *V.* 53 & 54 V. c. 68, s. 10; 55 & 56 V. c. 31, s. 20. — *Scot.* 55 & 56 V. c. 31, s. 21, c. 54, s. 16. *Cp*, PARLIAMENTARY.

"County *Fund*"; *V.* 61 & 62 V. c. 29, s. 17 (1). — *Scot.* 55 & 56 V. c. 43, s. 25; 56 & 57 V. c. 67, s. 3.

"County *Gaol*"; *V.* 19 & 20 V. c. 68, s. 2.

County *Infirmary*; — "The County Infirmaries (Ir) Acts, 1805 to 1833"; *V.* Sch 2, Short Titles Act, 1896.

"County *Lunatic Asylum*"; *V.* Loc Gov Act, 1888, s. 86 (5).

"County *Occupation Franchise*"; *V.* Rep People Act, 1884, s. 7 (6): *Cp*, OCCUPATION VOTER.

"County of a CITY," "County of a TOWN"; *Ir.* 13 & 14 V. c. 69, s. 117; 31 & 32 V. c. 49, s. 25.

"County of *Cornwall*"; *V.* 21 & 22 V. c. 109, s. 8.

"County of *Dublin*"; *V.* 7 & 8 V. c. 106, s. 156.

"County of *Durham*"; *V.* 21 & 22 V. c. 45, s. 1.

"County of LONDON"; *V.* 53 & 54 V. c. 70, s. 93.

"County OFFICER"; 36 & 37 V. c. 35, s. 3. — *Scot.* 23 & 24 V. c. 45, s. 9.

"County *Palatine Court*"; *V.* 13 & 14 V. c. 43, s. 36.

"County PETTY SESSIONAL Division"; *V.* 48 & 49 V. c. 23, s. 23.

"County Purpose"; *V.* GENERAL COUNTY PURPOSE.

"County *Quarter Sessional Area*"; *V.* 48 & 49 V. c. 15, s. 19.

"County RATES"; *V.* 8 & 9 V. c. 100, s. 114, c. 111, s. 24, c. 126, s. 84; 16 & 17 V. c. 97, s. 132; 34 & 35 V. c. 105, s. 2; 36 & 37 V. c. 35, s. 3; 47 & 48 V. c. 54, s. 3; 55 & 56 V. c. 31, s. 20. — *Scot.* 45 & 46 V. c. 49, s. 52; 55 & 56 V. c. 31, s. 21. — *Ir.* 20 & 21 V. c. 16, s. 2.

"County Cess and Rates"; *V.* 20 & 21 V. c. 11, s. 2.

"County Surveyor"; *Ir.* 11 & 12 V. c. 1, s. 21; 14 & 15 V. c. 92, s. 25; 39 & 40 V. c. 65, s. 6.

"County Treasurer"; *Ir.* 54 & 55 V. c. 48, s. 42.

Vf, COUNTY AUTHORITY: COUNTY BOROUGH: COUNTY BRIDGE: COUNTY COURT: COUNTY SOLICITOR: PARLIAMENTARY: SPECIAL.

V. Glen on County Government.

COUNTY AUTHORITY. — The Recorder of a Borough when in session, is the "County Authority" over the roads extending from the County into the Borough, within s. 13, 41 & 42 V. c. 77 (*R.* v. *Dover*, 32 W. R. 876; 49 J. P. 86).

Prior to the Loc Gov Act, 1888, "County Authority," was generally defined as, the Justices of a County in General or Quarter Sessions assembled; *V.* 36 & 37 V. c. 35, s. 3; 41 & 42 V. c. 77, s. 38; 44 & 45 V. c. 14, s. 6; 47 & 48 V. c. 54, s. 3. Since the Loc Gov Act, 1888, and by virtue of s. 3 thereof, the phrase means, the County Council.

COUNTY BOROUGH. — Quâ Loc Gov Act, 1888, a "County Borough" is one of those mentioned in Sch 3 of the Act, if, on 1st June 1888, it "either had a population of not less than 50,000, or was a COUNTY of itself"; and it is an "ADMINISTRATIVE County" (s. 31). Boroughs not mentioned in that Sch "having a population of not less than 50,000" may be constituted a County Borough by a Provisional Order of Loc Gov Board, confirmed by Parliament (subss. 1, 3, s. 54).

Other Stat. Def. — Lunacy Act, 1890, s. 341.

COUNTY BRIDGE. — "'County Bridge' is not a legal term"; "in reality it is only a compendious term for a PUBLIC BRIDGE" (per

Bovill, C. J., *R.* v. *Chart*, 39 L. J. M. C. 109; L. R. 1 C. C. R. 237): *Vf*, Glen on Highways, 2 ed., 111: Woolrych on Ways, 2 ed., 341–346: BRIDGE.

COUNTY COURT. — " 'County Court,' *Curia Comitatus*, by Lambert is otherwise called *Conventus*, in his Explication of Saxon words, and divided into two sorts; one retaining the general name as the County Court, held every moneth by the Sheriff, or his deputy the Under-sheriff, whereof you may read in Cromp. Juris. fol. 231: the other called the Turn, held twice every year" (Cowel). *Vf*, *Re Flint*, cited "Court of Law," sub COURT. In Acts of Parliament passed since 1846, "the expression 'County Court' shall, unless the contrary intention appears, mean, *as respects England and Wales*, a Court under the County Courts Act, 1888" (s. 6, Interp Act, 1889).

In all Acts passed after the 31st Dec 1889, "'County Court,' shall, *as respects Ireland*, mean a Civil Bill Court within the meaning of the County Officers and Courts (Ireland) Act, 1877" (s. 29, Ib.); prior to that date, *V.* 35 & 36 V. c. 33, Sch s. 66; c. 60, s. 28; 38 & 39 V. c. 90, s. 15.

"County Court," as used in s. 36, Solrs Act, 1843, means, the ancient County Court (*R.* v. *Brompton Co. Co. Judge*, 1893, 2 Q. B. 195; 62 L. J. Q. B. 606).

But usually in modern Acts "County Court" is defined to mean the modern Co. Co., including also the City of London Court, and the Judge and Registrar of the Court; *V.* Co. Co. Act, 1888, s. 186; 46 & 47 V. c. 61, s. 61; 30 & 31 V. c. 142, s. 35. In Scotland it, usually, means the Sheriff Court; *V.* 35 & 36 V. c. 33, Sch s. 65; 38 & 39 V. c. 60, s. 4, c. 90, s. 14; 39 & 40 V. c. 45, s. 3, c. 75, s. 21; 41 & 42 V. c. 16, s. 105; 59 & 60 V. c. 25, s. 102. *Vf* COURT.

"The County Courts (Ir) *Acts*, 1851 to 1889"; *V.* Sch 2, Short Titles Act, 1896.

"County Court *Judge*," quà the Army Discipline Acts, means, in Scotland, the Sheriff or Sheriff Substitute; in Ireland, the Judge of the Civil Bill Court (42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 58, s. 190, subs. 37). *Vf*, quà Scotland, 39 & 40 V. c. 80, s. 41; 50 & 51 V. c. 58, s. 76; Mer Shipping Act, 1894, s. 487 (6): — quà Ireland, Mer Shipping Act, 1894, s. 610 (9); 39 & 40 V. c. 75, s. 22: — quà Isle of Man, Mer Shipping Act, 1894, s. 487 (8). *Vf* JUDGE.

"County Court *Registrar*"; V. quà Scotland, Mer Shipping Act, 1894, s. 487 (6); 39 & 40 V. c. 80, s. 41; 50 & 51 V. c. 58, s. 76: — quà Ireland, 36 & 37 V. c. 52, s. 7; 39 & 40 V. c. 80, s. 42; 50 & 51 V. c. 58, s. 77.

COUNTY SOLICITOR. — There is no official in Ireland who is called the "County Solicitor"; but that phrase is used in s. 115, Loc

Gov (Ir) Act, 1898 (taken from s. 118 (13), Loc Gov Act, 1888), and there it means, the Solr for the Grand Jury of a County (*R.* v. *Wicklow Co. Co.*, 1900, 2 I. R. 351).

COURSE.—"Of course legatee will give"; *V.* PRECATORY TRUST.

"In a Course of Entail to CORRESPOND"; *V. Sackville-West* v. *Holmesdale*, L. R. 4 H. L. 543; 39 L. J. Ch. 505.

V. IN THE COURSE.

"Keep her Course," Art. 22, Sailing Rules, refers to the direction of the vessel's head, and not to her speed (*The Beryl*, 9 P. D. 4; 53 L. J. P. D. & A. 75: *Vthc, The Oporto*, 1897, P. 249; 66 L. J. P. D. & A. 49): *Vf*, Abbott, 856, 857. As to "Keep her Course" in a winding River, *V. The Velocity*, 39 L. J. Adm. 20; L. R. 3 P. C. 44; 21 L. T. 686; 18 W. R. 264.

COURT.—"*Curia*, Court, is a place where justice is *judicially* ministered, and is derived *à cura, quia in curiis publicis curas gerebant*" (Co. Litt. 58 a); therefore, Justices at a Licensing Meeting are not a "Court" at all (*Boulter* v. *Kent Jus.*, 1897, A. C. 556; 66 L. J. Q. B. 787; 77 L. T. 288; 61 J. P. 532; 46 W. R. 114). *Vf* LEGAL PROCEEDINGS. A Poor Rate Assessment Committee is not a "Court" and cannot refuse to hear the Agent of a ratepayer (*R.* v. *St. Mary Abbots*, 1891, 1 Q. B. 378; 60 L. J. M. C. 52; 64 L. T. 240; 55 J. P. 502: *Cp*, HIMSELF). Is a Borough Court, established by Charter for recovery of debts and damages in personal actions and for ejectments, a "Court" within 7 & 8 V. c. 19?—*V. Tarrant* v. *Baker*, 14 C. B. 199; 23 L. J. C. P. 21.

Quà the Absolute Privilege for Slander, "Court" is not confined to "a Place where justice is judicially ministered." "A Court may perform various functions. The Court of Parliament is a Court, although many of its functions are not judicial. The Members are, however, entitled to absolute immunity for words there spoken. There are other Courts which are not Courts of Justice, but which are rather Courts of Investigation, *e.g.* a Coroner's Court. The question does not, therefore, depend upon whether the TRIBUNAL is a Court of Justice, but upon whether it is a Court. If it is a Court, the absolute immunity exists" (per Fry, L. J., *Royal Aquarium* v. *Parkinson*, 1892, 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. 513; 40 W. R. 450; 56 J. P. 404). The London County Council, when hearing applications for Music and Dancing Licenses (and, *semble*, Justices when dealing with merely administrative business) are not a Court, quà this privilege (*S. C.*); but a Court Martial is such a Court (*Dawkins* v. *Rokeby*, 45 L. J. Q. B. 8; L. R. 7 H. L. 744). *Vf* JUDICIAL PROCEEDING.

Court *Baron*; *V.* 4 Rep. 26: 2 Bl. Com. 90: Court Leet; *V.* LEET.

A power appertaining to the High Court and which is exerciseable only

by "the Court," must be exercised by the Court in Banc, and not by a Judge at Chambers (*Baker* v. *Oakes*, cited COURT OR JUDGE).

The "Court," quà Building Societies Acts, is (in England), the County Court; in Scotland, the Sheriff's Court; in Ireland, the Civil Bill Court (s. 4, 37 & 38 V. c. 42). The "Court," quà the Dissolution of Industrial and Provident Societies, is the Co. Co. (s. 17 (1), 39 & 40 V. c. 45). In neither case is there any power to remove the proceedings to the High Court (*Re Real Estates Co*, 1893, 1 Ch. 398; 62 L. J. Ch. 213; 68 L. T. 24; 41 W. R. 157: *Re London & Suburban Bank*, 1892, 1 Ch. 604; 61 L. J. Ch. 316; 66 L. T. 716; 40 W. R. 326).

"Court" to which Transfer may be made of a Co's Winding-up, s. 3 (1), 53 & 54 V. c. 63, "must, necessarily, mean, a Court having jurisdiction under the Act to wind-up" (per Williams, J., *Re Real Estates Co*, sup). *Vf* PROCEEDING.

"Court," s. 125, Bankry Act, 1883; *V.* CONTEXT.

"Court," s. 7 (5), Comp Act, 1880; *V. Re City Lands Corp*, W. N. (97) 162.

The Justices' "Court," to which application is to be made for a Special Case, s. 33, Sum Jur Act, 1879, means, all the Justices who took part in the decision to be questioned (*South Staffordshire W. W. Co* v. *Stone*, *Lockhart* v. *St. Albans*, and *Westmore* v. *Paine*, all cited COURT OF SUMMARY JURISDICTION).

The "Court," as defined in s. 4, Parliamentary Elections (Returning Officers) Act, 1875, 38 & 39 V. c. 84, does not exclusively mean the Judge, but includes also the Registrar, or other proper officer in daily attendance, whose duty it is to bring the matter before the Judge (*R.* v. *Bloomsbury Co. Co.*, 55 L. J. Q. B. 443; 17 Q. B. D. 788; 54 L. T. 616).

In the Victorian Acts there are upwards of 80 definitions of "The Court," each being in accordance with the subject-matter of the Act, and each, in almost all cases, to be found in the Act's Interp Clause, — *e.g.* "'The Court,' means, the Court having jurisdiction in Bankruptcy under this Act" (s. 168, Bankry Act, 1883); "'The Court,' means, the Court, Judge, Arbitrator, Persons or Person, before whom a Legal proceeding is held or taken" (s. 10, Bankers' Books Evidence Act, 1879, 42 & 43 V. c. 11); "'The Court,' in relation to any Proceeding, includes any Magistrate, or Justice, having jurisdiction in the matter to which the Proceeding relates" (s. 742, Mer Shipping Act, 1894).

"Court *of Admiralty*"; *V.* 26 & 27 V. c. 116, s. 3; 32 & 33 V. c. 91, s. 3; 33 & 34 V. c. 90, s. 30. — *Ir.* 30 & 31 V. c. 114, s. 2. "Vice-Admiralty Court," 17 & 18 V. c. 18, s. 3, c. 19, s. 3; 26 & 27 V. c. 24, s. 2; 36 & 37 V. c. 88, s. 2. "Vice-Admiralty Prize Court," 27 & 28 V. c. 25, s. 3.

"Court *of Appeal*"; *V.* Interp Act, 1889, s. 13 (2).

"Court *of Appeal in Chancery*"; *V.* Jud. Act, 1873, s. 100; Land Transfer Act, 1875, 38 & 39 V. c. 87, s. 4.

"Court *of Assize*"; *V.* Interp Act, 1889, s. 13 (4).

"Court *of Bankruptcy*"; *V.* sup. — *Ir.* 40 & 41 V. c. 57, s. 3; 51 & 52 V. c. 44, s. 3.

"*British Slave* Court"; *V.* 36 & 37 V. c. 88, s. 2.

Court *of Chancery*; *V.* 11 & 12 V. c. 94, s. 46; 12 & 13 V. c. 109, s. 50; 16 & 17 V. c. 137, s. 27; 23 & 24 V. c. 83, s. 1; 30 & 31 V. c. 127, s. 3; 32 & 33 V. c. 91, s. 3; 33 & 34 V. c. 71, s. 3; 35 & 36 V. c. 44, s. 3; 38 & 39 V. c. 87, s. 4. — *Ir.* 20 & 21 V. c. 79, s. 2; 25 & 26 V. c. 46, s. 2; 40 & 41 V. c. 56, s. 7: *Re McClintock*, 10 Ir. Ch. Rep. 469.

"*Civil* Court," quâ Army Acts, "means, with respect to any Crime or Offence, a Court of ordinary Criminal jurisdiction, and includes a Court of Summary Jurisdiction" (s. 190 (31), 44 & 45 V. c. 58; s. 181, 42 & 43 V. c. 33).

"*Civil Bill* Court"; *Ir.* 27 & 28 V. c. 99, s. 3; 40 & 41 V. c. 56, s. 7. *Vf*, COUNTY COURT.

"Court *of Common Pleas*"; *Ir.* 40 & 41 V. c. 57, s. 3.

"Court *of Competent Jurisdiction*"; *V.* 34 & 35 V. c. 41, s. 4; 42 & 43 V. c. 64, s. 9. *Vf* COMPETENT.

V. COUNTY COURT: ECCLESIASTICAL COURT: ELECTION.

"Court *of Exchequer*"; *Ir.* 40 & 41 V. c. 57, s. 3.

"Court *of Justice*"; *V.* 33 & 34 V. c. 49, s. 1.

"*Landed Estates* Court"; *Ir.* 40 & 41 V. c. 57, s. 3.

"Court *of Law*"; *V.* Army Act, 1881, s. 190 (3). The Ancient County Court was a "Court of Law or Equity," within s. 9, 12 G. 2, c. 13 (*Re Flint*, 1 B. & C. 254).

"Court *for Matrimonial Causes*"; *Ir.* 40 & 41 V. c. 57, s. 3.

"*Prerogative* Court"; *Ir.* 20 & 21 V. c. 79, s. 2.

"Court *of Probate*"; *V.* 55 & 56 V. c. 6, s. 6. — *Ir.* 36 & 37 V. c. 52, s. 7; 40 & 41 V. c. 57, s. 3.

"Court of Quarter Sessions"; *V.* QUARTER SESSIONS.

"Court *of Queen's Bench*"; *V.* 20 & 21 V. c. 43, s. 1. — *Ir.* 40 & 41 V. c. 57, s. 3.

"Court *for Relief of Insolvent Debtors*"; *V.* Indian Insolvency Act, 1848, 11 & 12 V. c. 21, s. 92.

"Court *of Session*"; *Scot.* 9 & 10 V. c. 101, s. 49; 16 & 17 V. c. 94, s. 25; 25 & 26 V. c. 63, s. 51; 30 & 31 V. c. 126, s. 3; 31 & 32 V. c. 84, s. 2; 38 & 39 V. c. 49, s. 30; 40 & 41 V. c. 22, s. 3; 41 & 42 V. c. 8, s. 27; 45 & 46 V. c. 59, s. 1; 49 & 50 V. c. 27, s. 9; 55 & 56 V. c. 55, s. 4.

"Court of Session Acts, 1808 to 1895"; *V.* Sch 2, Short Titles Act, 1896.

"*Sheriffs Small Debt* Court"; *Scot.* 40 & 41 V. c. 28, s. 3.

"Court *of Superior Jurisdiction*"; *V.* Army Acts, 42 & 43 V. c. 33, s. 181; 44 & 45 V. c. 58, s. 190 (30).

"Court *of Teinds*"; *Scot.* 39 & 40 V. c. 11, s. 2.

"Court *House*"; *Scot.* 23 & 24 V. c. 79, s. 2. *V.* OCCASIONAL.

Vf. COURT OF RECORD: COURT OF SUMMARY JURISDICTION: COURT OR JUDGE: HIGH COURT: INFERIOR COURT: STANNARIES: SUPERIOR COURT: SUPREME COURT: JUDGE: CONVENIENT.

COURT OF RECORD.—"When a case is made triable, or a penalty recoverable in a 'Court of Record,' the Supreme Court of Judicature alone, but not the Quarter Sessions, is intended" (Maxwell, 427, citing *Gregory's Case*, 6 Rep. 19 b; 2 Hale, 29; Jenk. 228: *Vf*, Co. Litt. 117 b, 118 a, 260 a: 11 Encyc. 109).

As to what makes a Court of Record; *V. Kemp* v. *Neville*, 31 L. J. C. P. 158; 10 C. B. N. S. 523.

V. RECORD.

COURT OF SUMMARY JURISDICTION.—"The Court of Summary Jurisdiction" to whom (s. 52 (2), Licensing Act, 1872) Notice of Appeal to Quarter Sessions had to be given, meant the Convicting Justices; and a Notice directed to the Justices of the Division collectively, and served on their Clerk at his private residence, was not a compliance (*Ex p. Curtis*, 47 L. J. M. C. 35; 3 Q. B. D. 13); and the principle of that case is still applicable to a Demand for a Special Case under s. 33 (1), Sum Jur Act, 1879, and the Rule thereunder (*South Staffordshire W. W. Co* v. *Stone*, 56 L. J. M. C. 122; 19 Q. B. D. 168; 57 L. T. 368; 36 W. R. 76; 51 J. P. 662: *Lockhart* v. *St. Albans*, 57 L. J. M. C. 118; 21 Q. B. D. 188; 36 W. R. 800; 52 J. P. 420: *Westmore* v. *Paine*, 1891, 1 Q. B. 482; 60 L. J. M. C. 89). *Note*, that, generally, Notice of Appeal (other than from Licensing Justices, *Boulter* v. *Kent Jus.*, cited COURT, over-ruling *R.* v. *Glamorganshire Jus.*, 1892, 1 Q. B. 621; 61 L. J. M. C. 169) is now to be served on the Clerk to the Justices (s. 31 (2), Sum Jur Act, 1879; s. 6, Sum Jur Act, 1884), and on the "Other PARTY"; but the service on the Other Party need not be personal (*R.* v. *Somersetshire Jus.*, 64 J. P. 341; 69 L. J. Q. B. 311).

For Stat. Def., *V.* Interp Act, 1889, s. 13 (11), consolidating, s. 50, Sum Jur Act, 1879, as amended by s. 7, Sum Jur Act, 1884:—Licensing Justices are not a "Court of Sum Jur" within this def (*Boulter* v. *Kent Jus.*, cited COURT). *Vf*, *Leicester Freemen* v. *Hewitt*, 62 L. J. M. C. 51; 68 L. T. 201; 57 J. P. 344.

Observe that the def in the Interp Act does not embrace Scotland, as regards which country, *V.* the following definitions: 38 & 39 V. c. 17, s. 109, c. 90, s. 14; 39 & 40 V. c. 45, s. 3; 41 & 42 V. c. 16, s. 105; 48 & 49 V. c. 36, s. 7; 50 & 51 V. c. 28, s. 21; 52 & 53 V. c. 44, s. 17; 53 & 54 V. c. 70, s. 96; 55 & 56 V. c. 43, s. 25, c. 64, s. 6; 56 & 57 V. c. 15, s. 3, c. 32, s. 2, c. 48, s. 3; 57 & 58 V. c. 28, s. 7, c. 41, s. 26; 59 & 60 V. c. 25, s. 102.

Vh, SUMMARY JURISDICTION: COMPLAINT: INFORMATION: CONVICTION: ORDER: ACT.

COURT OR JUDGE.—"When the R. S. C. say 'the Court or a Judge,' it is understood that 'the Court' means, a Judge or Judges in Open Court, and 'a Judge' means, a Judge sitting in Chambers" (per Kay, L. J., *Re Bathe*, 1892, 1 Ch. 463; 61 L. J. Ch. 446). "It is well recognized that that phrase always includes a Judge at Chambers, unless there is some express enactment limiting the meaning of the phrase" (per Brett, M. R., *Dallow* v. *Garrold*, 54 L. J. Q. B. 78; 14 Q. B. D. 543: *Vf*, *Baker* v. *Oakes*, 46 L. J. Q. B. 246; 2 Q. B. D. 171; 35 L. T. 832; 25 W. R. 220: *Ex p. Norris*, 17 Q. B. D. 731: *Freason* v. *Loe*, 26 W. R. 138); but the phrase does not *per se* include a Master or District Registrar (*Lambton* v. *Parkinson*, 35 W. R. 545: *Sv*, R. 12 and 12 a, Ord. 54, R. S. C., and *Lloyd's Bank* v. *Princess Royal Co*, 82 L. T. 559; 48 W. R. 427, on R. 1, Ord. 26), or a Judge at *Nisi Prius* (*Robson* v. *Lees*, 30 L. J. Ex. 235; 6 H. & N. 258); for, in this connection, "'Judge' must mean one who in himself constitutes the Court, and not a Judge sitting at *Nisi Prius*" (per Bramwell, B., *Wilson* v. *Hood*, 3 H. & C. 152; 33 L. J. Ex. 204).

Though by virtue of R. 12, Ord. 54, R. S. C., a Master may exercise the function of "the Court or a Judge" and decide an Interpleader in a summary manner under R. 8, Ord. 57; yet a Master is not included in the phrase "Court or a Judge" in R. 11 of the same Order (57), and accordingly there is an appeal from his decision under R. 21, Ord. 54 (*Bryant* v. *Reading*, 55 L. J. Q. B. 253; 17 Q. B. D. 128; 54 L. T. 524: *Webb* v. *Shaw*, 55 L. J. Q. B. 249; 16 Q. B. D. 658: *Cp*, *Re Bathe*, sup).

The "Court or Judge" to make a Charging Order on property Recovered or Preserved, s. 28, Solrs Act, 1860, includes any Judge of the Division in which the property has been recovered or preserved (*Dallow* v. *Garrold*, sup); and, *semble*, a Judge sitting in Bankry (*Re Deakin*, 1900, 2 Q. B. 489; 69 L. J. Q. B. 725; 82 L. T. 776; 48 W. R. 678).

"Court or Judge," ss. 8, 10, Solrs Act, 1870, means, the High Court or a Judge thereof, even if the agreement as to Costs relates to matters done in Petty, or Quarter, Sessions (*Re Jones*, 1896, 1 Ch. 222; 65 L. J. Ch. 191; 73 L. T. 543; 44 W. R. 146; 60 J. P. 7).

Quà Deeds of Arrangement Act, 1887, 50 & 51 V. c. 57, "'Court, or a Judge,' means, the High Court of Justice, and any Judge thereof" (s. 19).

V. Court: Judge.

COURT OR PERSON.—*V.* Person.

COURSE.—*V.* In Course.

COUSIN.—The word "Cousin," without a controlling context, means First Cousin (*Stoddart* v. *Nelson*, 25 L. J. Ch. 116; 6 D. G. M. & G. 68: *Stevenson* v. *Abingdon*, 31 Bea. 305: *Burbey* v. *Burbey*, 6 L. T.

573: 2 Jarm. 152: Wms. Exs. 964). In *Caldecott* v. *Harrison* (9 L. J. Ch. 331; 9 Sim. 457), Shadwell, V. C., said, "I am quite willing to admit that the word 'Cousins' is sufficiently extensive to comprehend Cousins of every description, whether they are first cousins of any degree, or second cousins, or third cousins. That is the general meaning of the word 'Cousin.'" But that dictum was *obiter;* and the actual decision in the case was that on the construction of the Will then before the Court, only first cousins were comprehended under the word "Cousins." It is therefore submitted that in view of the decisions in *Stoddart* v. *Nelson* and *Stevenson* v. *Abingdon*, sup, the dictum of V. C. Shadwell cannot be relied on: *Va*, obs. of Kay, J., *Wilks* v. *Bannister*, 54 L. J. Ch. 1141; 30 Ch. D. 512.

"Cousin," imports consanguinity. Yet, in a secondary sense, "Cousin" is often used to designate the husband or wife of a cousin (*Re Taylor, Cloak* v. *Hammond*, 56 L. J. Ch. 173; 34 Ch. D. 255; 55 L. T. 649; 35 W. R. 186; *Cp* NEPHEW). And as to the degree of kindred, *V.* Wms. Exs. 355.

For a context on which "Cousins" included those illegitimate as well as legitimate; *V. Seale-Hayne* v. *Jodrell*, cited RELATIONS.

V. SECOND COUSIN.

COUSIN GERMAN. — This is a synonym for FIRST COUSIN (*Saunderson* v. *Bailey*, 8 L. J. Ch. 18; 4 My. & C. 56).

COVENANT. — A "Covenant" is an Agreement by DEED between two or more persons to do one or more thing or things, or to do, or give, or to prevent, or refrain from somewhat; and it is either, (1) a Covenant *in Law* implied from the terms employed; or, (2) a Covenant *in Fact*, *i.e.* that which is expressly agreed between the parties (Termes de la Ley · Cowel: *Noke's Case*, 4 Rep. 80 b: *Spencer's Case*, 5 Rep. 17 a). "Although the word 'Covenant,' in its strict sense, means an Agreement *under seal*, that something has or has not already been done, or shall or shall not be done hereafter (Touch. 160, 162); it is sometimes, especially in Agreements, applied to any promise or stipulation, whether under seal or not (*Hayne* v. *Cummings*, 16 C. B. N. S. 421; 10 L. T. 341: *Va*, *Brookes* v. *Drysdale*, 3 C. P. D. 52, where the word 'Covenant,' in an Agreement, was held to include a Proviso: *Severn and Clerke's Case*, 1 Leon. 122, where 'Covenants, Articles, and Agreements,' in a Bond, included a Recital)" Elph. 407, 408: *Vf*, *Holles* v. *Carr*, 3 Swanst. 647. *Cp* CONDITION.

The old Action of Covenant lay "where a party claimed damages for breach of Covenant, *i.e.* of a promise under seal" (Stephen on Pleading, ch. 1). *Cp* ASSUMPSIT.

"The words 'Covenant, Grant, and Agree' that A. should have the land for so many years, are apt words to make a Lease for years, and

enure as a Lease" (*Whitlock* v. *Horton*, Cro. Jac. 91); so the word "Covenant" will of itself have a like effect (*Richards* v. *Sely*, 2 Mod. 80).

In the phrase, "Covenant, Grant, and Agree," the covenantor "covenants and agrees" for the thing he "grants" (per Ld Wensleydale, *Monypenny* v. *Monypenny*, 9 H. L. Ca. 147: *Sv*, per Ld St. Leonards, Ib. 137).

"Bond, Covenant, or Instrument"; *V.* INSTRUMENT.

Covenant not to sue; *V.* RELEASE.

V. COMMON: USUAL: DECLARE: JOINTLY AND SEVERALLY: SEPARATE COVENANT: SIMILAR: RUN WITH THE LAND.

COVENTRY ACT.—22 & 23 Car. 2, c. 1 (repealed, 9 G. 4, c. 31)—so called "from the circumstance of its having passed on the occasion of an assault made on Sir John Coventry in the street, and slitting his nose, by persons who lay in wait for him for that purpose; in revenge (as was supposed) for some obnoxious words uttered by him in Parliament" (East P. C. 394: *Vf* 4 Bl. Com. 207). *V.* SLIT.

COVER.—"Cover," according to its usually accepted meaning in Stock Exchange dealings, "is a DEPOSIT made with a Broker to secure him from being out of pocket in the event of the Stocks falling against his client and the client not paying the difference" (per Smith, L. J., *Re Cronmire*, 67 L. J. Q. B. 623; 1898, 2 Q. B. 383); it is not deposited "to Abide the Event" of a Wager (s. 18, 8 & 9 V. c. 109), but as Security against a Debt which may arise from a GAMING CONTRACT (*Universal Stock Exchange* v. *Strachan*, 1896, A. C. 166; 65 L. J. Q. B. 429, *V.* jdgmt of Ld Herschell), and may be recovered back, if unappropriated (*Re Cronmire*, sup). *Vf*, *Mundella* v. *Shaw*, 4 Times Rep. 253.

V. OPEN: INFAMOUS CONDUCT.

COVERED.—*V.* LAND COVERED WITH WATER.

Covered Space; *V.* SPACE.

"Covered Swimming Bath," quà 41 & 42 V. c. 14, means, "a swimming bath protected by a roof, or other covering, from the weather" (s. 1).

COVERING.—Quà Merchandize Marks Act, 1887, 50 & 51 V. c. 28, "'Covering,' includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper" (s. 5, subs. 2).

Covering *Deed*; *V.* DEBENTURE.

"Covering *Note*" is a phrase sometimes applied to a SLIP.

COVERS.—In a Clause in a Railway Act enabling the Co to charge "for providing Covers for minerals, goods, articles, or animals," "pro-

viding covers" includes not only the supply of sheets, but the cost of the labour of covering the waggons with them (*Coxon* v. *N. E. Ry*, 4 B. & Macn. 284). *Vf*, *Hall* v. *L. B. & S. Ry*, cited INCIDENTAL.

COVERT.—Feme Covert; *V.* FEME: COVERTURE.
V. POUND: OVERT.

COVERTURE.—"'Coverture' is when a man and a woman are married together; now whatsoever is done concerning the Wife in the time of the continuance of this marriage betweene them is said to be done 'during the Coverture,' and the Wife is called, a Woman Covert" (Termes de la Ley). *Vh*, *Hooker* v. *Boggs*, 63 Ill. 162.
V. DURING: DISCOVERT: FEME.

COVINE.—"'Covine,' *covina*, commeth of the French word, *convine*, and is a secret assent determined in the hearts of two or more to the defrauding and prejudice of another" (Co. Litt. 357 a, b: *Vf*, Termes de la Ley: *Wimbish* v. *Tailbois*, Plowd. 54: *Girdlestone* v. *Brighton Aquarium*, 3 Ex D. 142; 4 Ib. 107; 48 L. J. Ex. 373). *Cp* DECEIT.
"Fraudulent, or Covinous," Conveyance, within Statutes of Eliz.; *V.* GOOD: VALUABLE.

COWHOUSE.—*V.* CATTLE-SHED.

COWKEEPER.—A. had a farm of 104 acres cultivated so that no live stock was required to be kept by him on it; he kept 4 cows solely for the purpose of making a profit by their milk and calves; held, he was not a "Cowkeeper" within the late Bankruptcy definition of "Trader" (*Ex p. Dering, Re Cramp*, 16 L. J. Bank. 3; 1 D. G. 398: *Vf*, *Bell* v. *Young*, 24 L. J. C. P. 66; 15 C. B. 524). *V.* DAIRY.

CRAFT.—*V. Tisdell* v. *Combe*, 7 L. J. M. C. 48; 7 A. & E. 788: *Blanford* v. *Morrison*, 15 Q. B. 724; 19 L. J. Q. B. 533: *Reed* v. *Ingham*, 23 L. J. M. C. 156; 3 E. & B. 889: *Russell & Erwin Co* v. *Lodge*, 6 Times Rep. 353.
V. BOAT: WHERRY: RISK OF CRAFT.

CRANAGE.—Is a customary due "for the taking up or lading on a Ship any goods or merchandize by" a Crane (Hale, de Portibus Maris, ch. 6). *Vf* Termes de la Ley.

Lord CRANWORTH'S ACTS.—Court of Probate Act, 1857, 20 & 21 V. c. 77:
Endowed Schools Act, 1860, 23 V. c. 11:
For giving powers to Trustees and Mtgees, 23 & 24 V. c. 145, repealed and replaced, as to Parts 2 and 3, by Conv & L. P. Act, 1881, and, as to Parts 1 and 4, by S. L. Act, 1882.

CRAVE LEAVE TO REFER. — A Pleading which "craves leave to refer" to a document when produced, *semble*, does not admit the document (*Barnard* v. *Wieland*, 30 W. R. 947: *Vh*, *Smith* v. *Buchan*, 36 W. R. 631).

CREATE. — An INSTRUMENT may "create" a Trust without conveying the corpus of the trust to the trustee (*R.* v. *Fletcher*, L. & C. 193, 199, 205).

The "Creation" of Debenture Stock, s. 30, Comp C. Act, 1863, occurs when the Resolution authorising its issue and prescribing its conditions is passed; not at the time of its actual issue (*Re Burry Port Ry*, 54 L. J. Ch. 710; 33 W. R. 741; 52 L. T. 842).

CREDIBLE WITNESS. — The person to whom a bail-bond was assigned was not a "Credible Witness" of the assignment within 4 & 5 Anne, c. 16, s. 20 (*White* v. *Barrack*, 5 L. J. Ex. 167; 1 M. & W. 424).

A person to whom an estate is appointed, even though by way of Remainder; held, not a "Credible Witness" to the execution of the appointment (*Doe* d. *Daniel* v. *Keir*, 4 M. & R. 101: *Vf*, *Smith* v. *Blackham*, 1 Salk. 283); but a person who is appointed Guardian, is a "Credible Witness" to the appointment, within s. 8, 12 Car. 2, c. 24 (*Morgan* v. *Hatchell*, 24 L. J. Ch. 135; 19 Bea. 86; 3 W. R. 126; 24 L. T. O. S. 167).

As to who was a "Credible Witness" to the alteration of a Will within the Statute of Frauds; *V. Hilliard* v. *Jennings*, Raym. Ld. 505: *Holdfast* v. *Dowsing*, 2 Stra. 1253: *Wyndham* v. *Chetwynd*, 1 Bl. W. 95.

V. WITNESS.

CREDIT. — A Guarantee that "if you give A. *credit*, we will be responsible that his payments shall be *regularly made*," is a CONTINUING GUARANTEE, and means, "if you trust" him, the "credit" to be given him is to be a fair and reasonable credit as between the parties, and not such as is merely customary in the trade (*Simpson* v. *Manley*, 2 Cr. & J. 12), in *whc* Bolland, J., said that the Guarantee was for "the payment for such goods as should be advanced on credit"; "regularly made" means, "regularly made according to the terms to be agreed upon, and not according to the terms of the trade" (per Lyndhurst, C. B., *Ib.*).

Vf, *Martin* v. *Wright*, 6 Q. B. 917; 14 L. J. Q. B. 142: GIVEN.

The chief ingredient in the offence of a Bankrupt who "has obtained any property on Credit, and has not paid for the same," s. 11 (13), Debtors Act, 1869, is obtaining the property; for though the subs. provides that it is to be "by False Representation, or other Fraud," yet (per Wills, J.) such False Representation or other Fraud is "a mere piece of the evidence necessary to constitute the offence"; and, whether that be so or no, it is not necessary that the false representation or fraud should have been made or done within the jurisdiction (*R.* v. *Ellis*, 1899, 1 Q. B.

230; 68 L. J. Q. B. 103; 79 L. T. 532; 47 W. R. 188; 62 J. P. 838). *Vf*, s. 13 (1) of same Act, on *whv* inf.

An undischarged bankrupt "Obtains Credit" for goods, within s. 31, Bankry Act, 1883, when he obtains them and does not pay their price; although nothing may be said about credit, or any term of credit, at the time of the transaction (*R.* v. *Peters*, 55 L. J. M. C. 173; 16 Q. B. D. 636; 54 L. T. 545; 34 W. R. 399; 50 J. P. 631; 16 Cox, C. C. 36: *R.* v. *Juby*, 3 Times Rep. 211). The intent to defraud is immaterial (*R.* v. *Dyson*, 1894, 2 Q. B. 176; 63 L. J. M. C. 124).

So, a customer at a Restaurant who having had his meal is without money to pay for it, does not obtain the meal by a FALSE PRETENCE, but, if there be fraud, he "has obtained Credit under False Pretences," within s. 13 (1), Debtors Act, 1869 (*R.* v. *Jones*, 1898. 1 Q. B. 119; 67 L. J. Q. B. 41; 77 L. T. 503: 46 W. R. 191: *Vf*, *R.* v. *Edwards*, 42 S. J. 472).

"Amount Standing to the Credit" of a Member in a Building Socy; *V. Durham, &c Bg Socy* v. *Davidson*, 61 L. J. Q. B. 473.

Mutual Credits; *V.* MUTUAL.

V. ABILITY: BILL OF CREDIT.

CREDIT IN CASH. — "The words 'Credit in Cash,' mean 'hold at his command,' or 'pay to him'" (per Wilde, C. J., *Eddison* v. *Collingridge*, 19 L. J. C. P. 268).

CREDITOR. — "'Creditor' signifies him that trusts another with any Debt, bee it money, wares, or other things" (Termes de la Ley); but now it is, probably, more correct to say that the general meaning of "Creditor" is, a person to whom a DEBT is payable.

In Bankry, "Creditor," generally, means a person entitled to prove in the bankry (*Grace* v. *Bishop*, 25 L. J. Ex. 58; 11 Ex. 424: *Re Poland*, 35 L. J. Bank. 19; 1 Ch. 356: *Woods* v. *De Mattos*, 35 L. J. Ex. 64; L. R. 1 Ex. 91: *Svthe*, *Hoggarth* v. *Taylor*, 36 L. J. Ex. 61; L. R. 2 Ex. 105); and does not include a mere Receiver (*Re Sacker*, 58 L. J. Q. B. 4; 22 Q. B. D. 179); *secus*, of a Sequestrator (*Re Hastings*, inf), or of a Divorce Petitioner to whom damages from a Co-Respondent have been given, although such damages may be subject to appropriation by the Court (*Re O'Gorman*, 1899, 2 Q. B. 62; 68 L. J. Q. B. 650; 80 L. T. 501; 47 W. R. 543). *Vf*, DEBT OR LIABILITY: FRAUDULENT PREFERENCE; SECURED CREDITOR.

A person claiming Unliquidated Damages was not a "Creditor," within ss. 192, 197, Bankry Act, 1861 (*Ex p. Wilmot*, *Re Thompson*, 2 Ch. 795; 36 L. J. Bank. 17: *Vf*, *R.* v. *Hopkins*, inf).

"His Crs generally," s. 4 (*a*), Bankry Act, 1883; *V.* GENERALLY, at end.

"The word 'Creditor,' as used in s. 4 (*g*), Bankry Act, 1883, is not

confined to persons who are creditors before they begin their action, but means Judgment Creditors" (per Selborne, C., *Re Faithfull, Ex p. Moore*, 54 L. J. Q. B. 190; 14 Q. B. D. 627). An Executor of the Judgment Creditor (who has obtained leave to issue execution) may serve a Bankry Notice under that section (*Re Woodall*, 53 L. J. Ch. 966; 13 Q. B. D. 479). *Vf* OBTAINED. By s. 1, Bankry Act, 1890, "any person who is, for the time being, entitled to ENFORCE a Final Jdgmt" is a "Creditor" within s. 4, just cited, on *whv Re Clements*, 45 S. J. 81; 70 L. J. Q. B. 58.

A mere Equitable Assignment of a jdgmt debt does not prevent the Jdgmt Cr from issuing the Notice (*Re Palmer*, 1898, 1 Q. B. 419; 67 L. J. Q. B. 316; 77 L. T. 709; 46 W. R. 342). *Vf* FINAL JUDGMENT.

A Sequestrator is a "Creditor" within s. 9, Bankry Act, 1883 (*Re Hastings*, 61 L. J. Q. B. 654; 67 L. T. 234).

"Creditor," who has completed his Execution or Attachment, s. 45, Bankry Act, 1883; *V.* EXECUTION.

In s. 48, Bankry Act, 1883, "Creditor" includes, any person who, at the date of the preferential act, would have had to come in and prove and rank with the other Crs in the bankry of the person making the preference, *e.g.* the latter's surety (*Re Paine*, 1897, 1 Q. B. 122; 66 L. J. Q. B. 71; 75 L. T. 316; 45 W. R. 190); but that conclusion was not followed in *Re Warren* (cited FRAUDULENT PREFERENCE, *whv*).

A plt in an action for Damages, is not a "Creditor," within s. 13 (2), Debtors Act, 1869, until jdgmt is signed (*R.* v. *Hopkins*, 1896, 1 Q. B. 652; 65 L. J. M. C. 125: *Vf, Ex p. Wilmot*, sup). *V.* JUDGMENT CREDITOR.

"A *cestui que trust* is not a Creditor of his trustee, nor is a Trustee a creditor of his Co-trustee" (per Lindley, L. J., *Re Goldsmid, Ex p. Taylor*, 56 L. J. Q. B. 197; 18 Q. B. D. 295; 35 W. R. 148; citing *Re Wilkinson, Ex p. Stubbins*, 50 L. J. Ch. 547; 17 Ch. D. 58, and *Sinclair* v. *Wilson*, 24 L. J. Ch. 537; 20 Bea. 324).

The assignee of a debt rightfully using the name of his assignor is (*semble*) a "Creditor" for the purpose of presenting a petition for Winding-up a Co under s. 82, Comp Act, 1862 (*Re Lond. & Birmn. Flint Glass & Alkali Co*, 28 L. J. Bank. 17; 1 D. G. F. & J. 257: *Re Paris Skating Rink Co*, 5 Ch. D. 959).

But a person whose debt is secured by a Bill not mature, though he have notice that it will not be met (*Re Powell*, W. N. (92) 94), or whose debt has been attached, is not a "Creditor" within such section (*Re European Bankg Co, Ex p. Baylis*, 35 L. J. Ch. 690; L. R. 2 Eq. 521); nor is a garnishee (*Re Combined Weighing Co*, 59 L. J. Ch. 26; 43 Ch. D. 99); nor is a claimant for unliquidated damages (*Re Pen-y-van Colly Co*, 46 L. J. Ch. 390; 6 Ch. D. 477); nor an unpaid vendor of land, compulsorily taken, whose title remains unaccepted (*Re Milford Docks Co, Ex p. Lister*, 52 L. J. Ch. 774; 23 Ch. D. 292); nor will the un-

taxed costs of an arbitration constitute such a vendor a "Creditor" (*Ib.*). *Note.* The holder of a current Life Policy can petition under this section (ss. 2, 21, 33 & 34 V. c. 61). *Vf* Buckl. 250.

A Lessor, quà *future* rent under his lease, is a "Creditor" within ss. 13, 14, Comp Act, 1867, and, as such, entitled to object to a proposal for reducing a Co's Capital (*Re Telegraph Construction Co*, L. R. 10 Eq. 384; 18 W. R. 729; 22 L. T. 649).

"Creditor," s. 2, Joint Stock Companies Arrangement Act, 1870, 33 & 34 V. c. 104, which enlarges ss. 159, 160, Comp Act, 1862, means, any person having any pecuniary claim against a Co (*Re Midland Coal Co*, 1895, 1 Ch. 267; 64 L. J. Ch. 279; 71 L. T. 705; 43 W. R. 244), *e.g.* Debenture holders (*Re Alabama, &c Ry*, 1891, 1 Ch. 213; 60 L. J. Ch. 221; approving *Re Empire Mining Co*, 44 Ch. D. 402; 59 L. J. Ch. 345).

"Creditors *and others*," 13 Eliz. c. 5; — "It is conceived that the words 'creditors and others' are wide enough to include any person who has a *legal* demand against the settlor, so that he may rank as a Creditor, although at the date of the settlement he may have no legal right to enforce it. The character of the claim, so long as it is a legal one, seems immaterial" (May on Fraudulent Conv., 2 ed., 163). A mortgagee, fully secured, is not such creditor (*Lister* v. *Turner*, 5 Hare, 281: *Dolphin* v. *Aylward*, L. R. 4 H. L. 486; 23 L. T. 636), unless he relinquish (*Lister* v. *Turner*, sup); but he is such creditor as regards so much of his debt as the mortgage does not cover (*Harman* v. *Richards*, 10 Hare, 81). *Vf*, May on Fraudulent Conv. Part 2, ch. 8.

Since the Parliamentary Deposits and Bonds Act, 1892, 55 & 56 V. c. 27, the distinction between Meritorious and Non-meritorious Crs, quà sharing in a Parliamentary Deposit, has ceased; "Creditors," s. 1 (2) of the Act, means, all Crs, and is not limited to those of the particular abandoned Undertaking (*Ex p. Bradford Trams*, 1893, 3 Ch. 463; 62 L. J. Ch. 668; 69 L. T. 131).

"Creditor or Claimant"; *V.* CLAIMANT.

Stat. Def. — 11 & 12 V. c. 45, s. 3; Bankry Act, 1861, s. 229. — *Scot.* 2 & 3 V. c. 41, s. 3; 8 & 9 V. c. 31, s. 12; 10 & 11 V. c. 50, s. 14; 11 & 12 V. c. 36, s. 52; 19 & 20 V. c. 79, s. 4; 31 & 32 V. c. 101, s. 3; 38 & 39 V. c. 61, s. 3; 57 & 58 V. c. 44, s. 18. — *Ir.* 12 & 13 V. c. 107, s. 118; 20 & 21 V. c. 60, s. 4; 21 & 22 V. c. 105, s. 3.

CREDITS. — *V.* RIGHTS AND CREDITS: MUTUAL.

CREEK. — "A Creek is of two kinds, viz. Creeks of the Sea, and Creeks of Ports. The former sort are such little inlets of the SEA, whether within the precinct or extent of a PORT or without, which are narrow little passages, and have SHORE of either side of them. Creeks of Ports, are by a kind of civil denomination such. They are such that, though possibly for their extent and situation they might be Ports yet,

they are either members of, or dependent upon, other Ports" (Hale, de Portibus Maris, ch. 2).

An Arm or Creek of the Sea is "where the Sea flows and reflows, and so far only as the Sea so flows and reflows; so that the River of Thames above Kingston, and the River of Severn above Tewkesbury, &c, though there they are Public Rivers yet, are not Arms of the Sea. But it seems that, although the water be fresh at high-water yet, the denomination of an Arm of the Sea continues if it flow and reflow, as in Thames above the Bridge" (Hale, de Jure Maris, ch. 4). *Vf*, Callis, 56, where an "Arm of the Sea" is used not quite synonymously with "Creek of the Sea."

V. HAVEN.

CREMATION. — *V.* BURIAL: CHRISTIAN BURIAL.

CREW. — "The Crew" does not always mean the whole crew (*Frazer* v. *Hatton*, 2 C. B. N. S. 512; 26 L. J. C. P. 227).

The Cattle-men of a Cargo Owner are not part of the "Crew," though they may help to work the ship (*Anglo-Argentine Agency* v. *Temperley Co*, cited GENERAL AVERAGE). *Cp* SEAMAN. *V.* OFFICER.

CRIME. — "A Crime or Misdemesnor is an act committed, or omitted, in violation of a Public Law either forbidding or commanding it. This general definition comprehends both Crimes and Misdemesnors which, properly speaking, are mere synonymous terms; though, in common usage, the word 'Crimes' is made to denote such offences are of a deeper and more atrocious dye; while smaller faults and omissions of less consequence are comprised under the gentler names of 'Misdemesnors' only" (4 Bl. Com. 5: *Va*, per Bayley, J., *Mann* v. *Owen*, 9 B. & C. 599, 600: per Bowen, L. J., *R.* v. *Tyler*, 1891, 2 Q. B. 594). *Cp* MISDEMEANOR.

"A Crime I would define as an Offence against the Crown *for which an Indictment will lie*" (per Day, J., *Conybeare* v. *London School Bd*, 1891, 1 Q. B. 118; 60 L. J. Q. B. 44); but an Offence punishable by Indictment, — *e.g.* a Conspiracy to interfere with the administration of Justice, — is none the less a Crime because a statute is passed whereby it may be punished SUMMARILY; and a person so "punished with imprisonment" for such a "Crime," is disqualified for being a Member of a School Board, under 33 & 34 V. c. 75, Sch 2, Part 1, R. 14 (*S. C.*). On the general meaning of "Crime" it is submitted that the words italicised are too narrowing, and that the general interpretation of "Crime" is, an Offence against the Crown punishable by Fine or Imprisonment. Thus, a power to a Colonial Governor to pardon any offender "CONVICTED of any Crime," and to "remit any Fines, Penalties, or Forfeitures," enables him to pardon Contempt of Court and to remit its punishment (*Re Moseley*, 1893, A. C. 138; 62 L. J. P. C. 79).

On the other hand, an act or omission, — *e.g.* an Overseer not paying over moneys in his hands for which he may be charged by the Auditor, s. 32, 7 & 8 V. c. 101, — may be indictable without being a Crime (*R.* v. *Tucker*, 5 M. & S. 508: *R.* v. *Master*, cited OFFENCE: in *thlc*, Mellor, J., said, " In *Bancroft* v. *Mitchell*, L. R. 2 Q. B. 549, that an Indictment would lie, was said not to be the test whether the act was criminal or not ").

Quà Prevention of Crimes Act, 1871, 34 & 35 V. c. 112, " Crime " " means, *in England and Ireland*, any FELONY, or the offence of Uttering False or Counterfeit Coin, or of possessing Counterfeit Gold or Silver Coin, or the offence of Obtaining Goods or Money by False Pretences, or the offence of Conspiracy to defraud, or any Misdemeanor under s. 58, 24 & 25 V. c. 96; and, *in Scotland*, any of the Pleas of the Crown, any Theft which (in respect of any aggravation, or of the amount in value of the money, goods, or thing stolen) may be punished with Penal Servitude, any Forgery, and any Uttering of any Forged Writing, Falsehood, Fraud and Wilful Imposition, Uttering Base Coin, or the possession of such Coin with intent to utter the same " (s. 20).

Other Stat. Def. — *Scot.* 35 & 36 V. c. 33, s. 16, c. 38, s. 14; 50 & 51 V. c. 35, s. 1; 51 & 52 V. c. 36, s. 9. — *Ir.* 45 & 46 V. c. 25, s. 34; 50 & 51 V. c. 20, s. 6.

V. OFFENCE.

" Crimes by bankrupts *against Bankry Law*," in an Extradition Treaty, connotes such crimes by the bankrupt, and does not include an accomplice (*Re Counhaye*, L. R. 8 Q. B. 410; 42 L. J. Q. B. 217: *Sc*, *Ex p. Terraz*, 4 Ex. D. 63; 48 L. J. Ex. 214).

" Crimes and Offences *against the Laws of China*"; *V. A-G. of Hong Kong* v. *Kwok-a-Sing*, 42 L. J. P. C. 64; L. R. 5 P. C. 179.

CRIMINAL CAUSE. — A Judgment in a " Criminal Cause or Matter," means " any decision by way of judicial determination of any question with regard to proceedings the subject-matter of which is criminal, at whatever stage it arises " (per Esher, M. R., *Re Woodhall*, inf), *e.g.* proceedings before Justices which *may* terminate in the imprisonment of defendant (*Seaman* v. *Burley*, 1896, 2 Q. B. 344; 65 L. J. M. C. 208; 45 W. R. 1; 75 L. T. 91).

A Commission of Rebellion for Contempt, is not a " Criminal Matter," within s. 9, Habeas Corpus Act, 31 Car. 2, c. 2 (*Cobbett* v. *Slowman*, 9 Ex. 633; 23 L. J. Ex. 144).

A Certiorari to quash a conviction for trespassing in pursuit of game on the ground that the justices' jurisdiction was ousted by a *bonâ fide* Claim of Right, *is* a " Criminal Cause or Matter " within s. 47, Jud. Act, 1873 (*R.* v. *Fletcher*, 46 L. J. M. C. 4; 2 Q. B. D. 43; 35 L. T. 538); so is a Conviction under a Bye-Law which is alleged to be *ultra vires* (*Burnett* v. *Berry*, 12 Times Rep. 464); so is an Order discharging a rule nisi

for a Certiorari to bring up an Order, under s. 100, Larceny Act, 1861, to RESTORE property (*R.* v. *Central Crim. Court*, 56 L. J. M. C. 25; 18 Q. B. D. 314); so is an application for a Mandamus to Justices to state a Case on a Criminal INFORMATION (*Brosman* v. *Roche*, 22 L. R. Ir. 334: *Ex p. Schofield*, 1891, 2 Q. B. 428; 60 L. J. M. C. 157; 39 W. R. 580; 56 J. P. 4: *R.* v. *Tyler*, 1891, 2 Q. B. 588; 61 L. J. M. C. 38), or to hear a Summons in a Criminal Cause (*R.* v. *Young*, 61 L. J. M. C. 42; 66 L. T. 16); so is an Order for a Criminal Prosecution for Libel, under s. 8, 51 & 52 V. c. 64 (*Ex p. Pulbrook*, 1892, 1 Q. B. 86; 61 L. J. M. C. 91; 66 L. T. 159; 40 W. R. 175; 56 J. P. 293), or a Q. B. D. Order attaching a constable for refusing to aid a sheriff in the execution of a writ (*A-G.* v. *Kissane*, inf); so is a Taxation of the Costs of a successful defendant in a criminal information for Libel (*R.* v. *Steel*, 46 L. J. M. C. 1; 2 Q. B. D. 37; 25 W. R. 34; 35 L. T. 534); or proceedings to enforce Poor Rate (*Seaman* v. *Burley*, sup: but *Cp*, *Southwark & Vauxhall W. W. Co* v. *Hampton*, cited CLAIMED); or an Information for contravening Bye-Laws of a School Board (*Mellor* v. *Denham*, 49 L. J. M. C. 89; 5 Q. B. D. 467; 42 L. T. 493); or an Order to abate Nuisance under P. H. Act, 1875 (*Ex p. Whitchurch*, 50 L. J. M. C. 99; 7 Q. B. D. 534); and so, generally, of a Justices' Order disobedience to which may afterwards be enforced by a penalty (*Payne* v. *Wright*, 61 L. J. M. C. 114; 66 L. T. 148; 56 J. P. 564), *secus*, if the Order does not result in either Fine or Imprisonment (*Loughborough* v. *Curzon*, 55 L. J. M. C. 122; 17 Q. B. D. 344; 55 L. T. 50; 34 W. R. 621; 50 J. P. 788). The proceedings, if against a Corporation, are none the less a "Criminal Cause or Matter" if a penalty is sought thereby, or if imprisonment might follow if they were against an individual (*Southport* v. *Birkdale*, 76 L. T. 318; 18 Cox, C. C. 537). A refusal of Bail is a "Criminal Cause or Matter" (*R.* v. *Foote*, 52 L. J. Q. B. 528; 10 Q. B. D. 378); or an application for a Certiorari under s. 3, Palmer Act, 19 & 20 V. c. 16 (*R.* v. *Rudge*, 55 L. J. M. C. 112; 16 Q. B. D. 459; 34 W. R. 207); or, *à fortiori*, an Information for keeping a dog without a License (*R.* v. *Sullivan*, 8 Ir. Rep. C. L. 404; 19 S. J. 235). *Vf*, *Cattel* v. *Ireson*, 27 L. J. M. C. 167; E. B. & E. 91: *Parker* v. *Green*, 31 L. J. M. C. 133; 2 B. & S. 299: *R.* v. *Hawkhurst*, 26 J P. 772; 7 L. T. 268: *Blake* v. *Beech*, 45 L. J. M. C. 111; 2 Ex. D. 335: *Re Dean of York*, 2 Q. B. 1.

But an application for a *mandamus* to Election Commissioners to grant a witness a Certificate of Indemnity is *not* a "Criminal Cause" within s. 47, Jud. Act, 1873 (*R.* v. *Holl*, 7 Q. B. D. 575; 50 L. J. Q. B. 763); nor is an application for Excusal from an electoral Illegal Practice (*Ex p. Walker*, 58 L. J. Q. B. 190; 22 Q. B. D. 384); nor a *habeas corpus* in an Ecclesiastical Suit (*Cox* v. *Hakes*, 15 App. Ca. 506; 60 L. J. Q. B. 89; 63 L. T. 392; 39 W. R. 145; 54 J. P. 820), *secus*, if the subject-matter of the proceedings against the prisoner be criminal

(*Re Woodhall*, 57 L. J. M. C. 71; 20 Q. B. D. 832; 36 W. R. 655: *Sv, Re Keller*, 22 L. R. Ir. 158). A committal to prison for non-payment of Poor, or Highway, Rates is a civil, and not a criminal, process (*R.* v. *Whitecross Street Prison*, 34 L. J. M. C. 193; 6 B. & S. 371). An application to strike a Solicitor off the Rolls on the ground of misconduct is not a "Criminal Cause or Matter" (*Re Hardwick*, 53 L. J. Q. B. 64; 12 Q. B. D. 148; 32 W. R. 191: *Re Eede*, 59 L. J. Q. B. 376; 25 Q. B. D. 228; 38 W. R. 683. *Vh* CRIMINAL PRISONER), *secus*, of an imprisonment of an unqualified person for acting as a Solicitor (*Re Wall*, 32 S. J. 693). An Information for penalties on the revenue side of the old Court of Exchequer was not a "Criminal Cause" (*A-G.* v. *Radloff*, 23 L. J. Ex. 240; 10 Ex. 84: 28 & 29 V. c. 104: per Brett, M. R., *A-G.* v. *Bradlaugh*, 54 L. J. Q. B. 215; 14 Q. B. D. 690: *Vf*, *Howes* v. *Inl. Rev.*, 1 Ex. D. 385; 46 L. J. M. C. 15: *A-G.* v. *Moore*, 3 Ex. D. 276; 47 L. J. M. C. 103); nor is an action to recover a penalty under 1 G. 1, st. 2, c. 13, s. 17, for voting in parliament without having taken the oath (*Miller* v. *Salomons*, 21 L. J. Ex. 161; 22 Ib. 169; 7 Ex. 475; 8 Ib. 778); nor an Information by the Attorney-General to recover penalties under the Parliamentary Oaths Act, 1866 (*A-G.* v. *Bradlaugh*, 54 L. J. Q. B. 205; 14 Q. B. D. 667). *Vf*, CIVIL DEBT: CLAIMED.

An appeal lies to the Court of Appeal against an Order of the High Court committing a Bankrupt under s. 24 (4), Bankry Act, 1883, for wilfully failing to deliver up possession of his property, not because it is not a "Criminal Cause or Matter" but, because s. 104 (2), Ib. (which, note, is subsequent in date to Jud. Act, 1873), gives the appeal from Bankry Orders (*Re Ashwin*, 59 L. J. Q. B. 417; 25 Q. B. D. 271).

Cp, CRIMINAL SUIT: OFFENCE: FORFEIT.

By s. 15, Jud. Act, 1884, *Quo Warranto* is a Civil proceeding, "whether for purposes of appeal or otherwise."

Contempt of Court in doing or not doing something in a Civil Action, is not a "Criminal Cause or Matter" (*Re Evans*, 1893, 1 Ch. 252; 62 L. J. Ch. 413: *R.* v. *Bernardo*, 58 L. J. Q. B. 553; 23 Q. B. D. 305; 61 L. T. 547; 37 W. R. 789: *Vf*, Ann. Pr. under s. 47, Jud. Act, 1873); *secus*, where the contempt is of a criminal nature, *e.g.* publishing comments calculated to prejudice a trial (*O'Shea* v. *O'Shea*, 59 L. J. P. D. & A. 47; 15 P. D. 59; 62 L. T. 713; 38 W. R. 374), or a constable refusing to aid a sheriff (*A-G.* v. *Kissane*, 32 L. R. Ir. 220).

CRIMINAL LETTER. — *V.* INDICTMENT, towards end.

CRIMINAL LUNATIC. — *V.* LUNATIC.

CRIMINAL PRISONER. — A person summarily committed to prison for acting as a SOLICITOR without being qualified (s. 32, 6 & 7 V. c. 73), is a "Criminal Prisoner" within s. 4, Prison Act, 1865; and is not a person "imprisoned under any Rule, Order, or Attachment,

for *Contempt of Court*" within s. 41, Prison Act, 1877 (*Osborne* v. *Milman*, 56 L. J. Q. B. 263; 18 Q. B. D. 471; 56 L. T. 808; 35 W. R. 397; 51 J. P. 437; 3 Times Rep. 452).

Note. The present County Court has no power to commit as for "Contempt of Court" (s. 36, 6 & 7 V. c. 73; s. 26, 23 & 24 V. c. 127) an unqualified person who practises in such Co. Co. as a Solr (*R.* v. *Brompton Co. Co. Judge*, 1893, 2 Q. B. 195; 62 L. J. Q. B. 604; 68 L. T. 829; 41 W. R. 648; 57 J. P. 648); nor, indeed, for any other cause than those specified in ss. 162, 167, Co. Co. Act, 1888 (*R.* v. *Lefroy, Ex p. Jolliffe*, 42 L. J. Q. B. 121; L. R. 8 Q. B. 134), and in those cases where Orders may be enforced by Attachment.

V. CRIME: OFFENCE. *Cp*, CIVIL PRISONER: PRISONER.

Stat. Def. — *Scot.* 2 & 3 V. c. 42, s. 63; 23 & 24 V. c. 105, s. 4; 40 & 41 V. c. 53, s. 71.

CRIMINAL PROCEEDING. — *V.* PROCEEDING: PROSECUTION: CRIMINAL CAUSE: CRIMINAL SUIT.

CRIMINAL PROSECUTION. — *V.* PROSECUTION.

CRIMINAL SUIT. — A proceeding to recover penalties for Non-Residence (under 1 & 2 V. c. 106, ss. 32, 114) is not a "Criminal Suit" within the Church Discipline Act, 1840, 3 & 4 V. c. 86, s. 23 (*Rackham* v. *Bluck*, 16 L. J. Q. B. 82; 9 Q. B. 691); nor is a proceeding under the Public Worship Act, 1874 (*Harris* v. *Perkins*, 51 L. J. P. C. 83; 7 P. D. 31, 161): *Secus*, as regards proceedings to examine the proofs of an ecclesiastical offence, for the purpose of deprivation (*Re Dean of York*, 2 Q. B. 1). *Cp* CRIMINAL CAUSE.

CROFT. — "A Croft is a little close, or pightle, adjoining to a house, used either for pasture or arable, as the owner pleases. In many places such close is called a Ham" (Preston's addns. to p. 95, Touch.). *Va* Termes de la Ley.

CROFTER. — Quà Crofters Holdings (Scot) Act, 1886, 49 & 50 V. c. 29, "'Crofter,' means, any person who, at the passing of this Act, is tenant of a HOLDING from year to year, who resides on his holding the annual rent of which does not exceed £30 in money, and which is situate in a CROFTING PARISH; and the successors of such person in the holding being his heirs or legatees" (s. 34: *Va* 60 & 61 V. c. 53, s. 10). *Cp* COTTAR.

CROFTING PARISH. — Quà same Act, "'Crofting Parish,' means, a Parish in which there are, at the commencement of this Act, or have been within eighty years prior thereto, Holdings consisting of arable land held with a right of pasturage in common with others, and in which there still are tenants of holdings from year to year who reside on their

holdings, the annual rent of which respectively does not exceed £30 in money, at the commencement of this Act" (s. 34: *Va*, 60 & 61 V. c. 53, s. 10).

CROP. — "Crops," s. 5 (*a*), 50 & 51 V. c. 26; *V. Cooper* v. *Pearse*, 1896, 1 Q. B. 562; 65 L. J. M. C. 95; 74 L. T. 495; 44 W. R. 494; 60 J. P. 282.

Quà Game Laws Amendment (Scot) Act, 1877, 40 & 41 V. c. 28, "'Crop,' shall include Grass, whether intended for hay or pasture, except where grown upon Muirlands" (s. 3).

CROSS. — "Cross Cause"; *V.* PRINCIPAL CAUSE.

Cross *Remainders*; "When lands are given in undivided shares to two or more for Particular Estates, so as that, upon the determination of the particular estates in any of those shares, they remain over to the other grantees, — and the Reversioner or Remainder-man is not let in till the determination of all the Particular Estates, — the grantees take their original shares as Tenants in Common, and the Remainders limited among them on the failure of the particular estates are known by the appellation of 'Cross Remainders'" (Butler's *n*, Co. Litt. 195 b). *Vh*, Elph. 289–294: Jarm. ch. 42: Theobald, 649: 4 Encyc. 42, 43. *Cp* REMAINDER.

Quà London Bg Act, 1894, "Cross WALL," "means a Wall used, or constructed to be used, in any part of its height as an Inner wall of a BUILDING for separation of one part from another part of the building, that building being wholly in, or being constructed or adapted to be wholly in, one occupation" (subs. 17, s. 5, expanding def in Metrop Bg Act, 1855, s. 3).

CROSSING. — "Crossing" a CHEQUE generally and specially; *V.* ss. 76, 77, 78, Bills of Ex. Act, 1882: NOT NEGOTIABLE. *Vf*, 19 & 20 V. c. 25; 21 & 22 V. c. 79, ss. 1, 3.

"Crossing of ROADS, or other interference therewith," Preamble to ss. 46–62, Ry C. C. Act, 1845; *Vh*, *Tanner* v. *South Wales Ry*, 5 E. & B. 618; 25 L. J. Q. B. 7.

SHIPS "Crossing," Sailing Rules, No. 14, repld Regns for Preventing Collisions at Sea, 1884, Art. 16; *V. Gen. Steam Nav. Co* v. *Hedley*, 39 L. J. Adm. 20; L. R. 3 P. C. 44: *The Molière*, 1893, P. 217; 62 L. J. P. D. & A. 102; 69 L. T. 263: *The Leverington*, 55 L. J. P. D. & A. 78; 11 P. D. 117: *The Pekin*, 1897, A. C. 532; 66 L. J. P. C. 97; 77 L. T. 443: OVERTAKING SHIP. It is a question of fact in each case whether a Steamer turning round in the River Thames is, or is not, a "Steam Vessel crossing from one side of the river towards the other," within No. 48, Thames Bye Laws (*The John Holloway*, 1900, P. 37; 69 L. J. P. D. & A. 15; 81 L. T. 726; 48 W. R. 416: *Vf*, *The River Derwent*, 62 L. T. 45; 7 Asp. 37).

CROWN. — In every Act of Parliament, "references to the Sovereign reigning at the time of the passing of the Act or to *the Crown* shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being; and this Act shall be binding on the Crown" (s. 30, Interp Act, 1889). *V.* QUEEN.

Other Stat. Def. — 31 & 32 V. c. 101, s. 3.

Note. The PREROGATIVE of the Crown is as extensive in the Colonies as in Great Britain (*Maritime Bank of Canada* v. *Receiver-Gen. New Brunswick*, 1892, A. C. 437; 61 L. J. P. C. 75; 67 L. T. 126).

"Crown or Government"; *V.* GOVERNMENT.

"Crown *Cases Reserved*," quà Jud. Acts, means, "such questions of law reserved in Criminal Trials as are mentioned in" 11 & 12 V. c. 78 (Jud. Act, 1873, s. 100; Jud. Act (Ir), 1877, s. 3).

"Crown COLONY," quà Federal Council of Australia Act, 1885, 48 & 49 V. c. 60, means, "any Colony in which the control of Public Officers is retained by" the Imperial Government (s. 1): that def is, probably, of general acceptation.

"Crown *Lands*," quà Queensland Goldfields Act, 1874; *V. Osborne* v. *Morgan*, 57 L. J. P. C. 52; 13 App. Ca. 227: — quà New South Wales Crown Lands Act, 1884; *V. Tearle* v. *Edols*, 57 L. J. P. C. 58; 13 App. Ca. 183.

"The Crown *Lands Acts*, 1829 to 1894"; *V.* Sch 2, Short Titles Act, 1896.

"'Crown OFFICE,' means, the Office of the Clerk of the Crown in Chancery" (s. 7, 40 & 41 V. c. 41).

Crown *Prosecutor*; *V.* PROSECUTING.

Crown *Purposes*; *V.* "Beneficial Occupation," sub BENEFICIAL.

"Crown *Writ*"; *Scot.* 31 & 32 V. c. 101, s. 3.

V. CLAIM.

CRUELLY. — "Cruelly ill-treat"; *V.* CRUELTY, *to Animals.*

CRUELTY. — *Matrimonial Cruelty*: "Lord Stowell's judgment in *Evans* v. *Evans* (1 Hagg. Con. 35) is the great authority on questions of legal cruelty. That very eminent judge, whom I may in some sense consider as a predecessor of my own, remarks on the mischiefs which would ensue from giving the sanction of law to the separation of man and wife too easily, or on the mere disinclination of one or both of the parties to live together. 'When people,' he continues, 'understand that they must live together, except for a very few reasons known to the law, they learn to soften by mutual accommodation that yoke which they know they cannot shake off; they become good husbands and good wives from the necessity of remaining husbands and wives; for necessity is a powerful master in teaching the duties which it imposes.' Lord Stowell refused to give any strict definition of cruelty. The causes which

warrant separation 'must be grave and weighty, and such as show an absolute impossibility that the duties of the married life can be discharged. In a state of personal danger no duties can be discharged, for the duties of self-preservation must take place before the duties of marriage. What merely wounds the mental feelings is in few cases to be admitted, where it is not accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, if they do not threaten bodily harm, do not amount to legal cruelty; they are high moral offences in the marriage state undoubtedly, not innocent surely in any state of life, but still they are not that cruelty against which the law can relieve. Under such misconduct of either of the parties, for it may exist on one side as well as on the other, the suffering party must bear in some degree the consequences of an injudicious connection, must subdue by decent resistance, or by prudent conciliation, and if this cannot be done, both must suffer in silence. In the older cases of this sort, which I have had an opportunity of looking into, I have observed that the danger of life, limb, or health is usually inserted as the ground upon which the Court has proceeded to a separation. The Court has never been driven off this ground; it has always been jealous of the inconvenience of departing from it, and I have heard no one case cited in which the Court has granted a divorce without proof given of a reasonable apprehension of bodily hurt. I say an apprehension, because assuredly the Court is not to wait till the hurt is actually done; but the apprehension must be reasonable, it must not be an apprehension arising merely from an exquisite or diseased sensibility of mind.' Danger of life, limb, or health has continued in substance the rule upon which the Courts have acted; the phrase has sometimes been varied. Sir John Nicholl has used the expression, 'injury to person or to health'; which I am inclined to take in conjunction with Lord Stowell's expression, for there might be a great deal of suffering and brutal usage without coming strictly within the terms of the latter. There must, however, be bodily hurt (not trifling or temporary pain), or a reasonable apprehension of bodily hurt" (per Cresswell, J. O., *Tomkins* v. *Tomkins*, 1 Sw. & Tr. 170).

Referring firstly and chiefly to *Evans* v. *Evans* (sup) but also on a full review of the subsequent cases, Lopes and Lindley, L.JJ., in *Russell* v. *Russell* (1895, P. 315; 64 L. J. P. D. & A. 108; affd in H. L. 1897, A. C. 395; 66 L. J. P. D. & A. 122) defined Matrimonial Cruelty thus, —"There must be danger to life, limb, or health, bodily or mental, or a reasonable apprehension of it, to constitute legal cruelty": *Vth* IMPOSSIBLE. So, in the United States (*Gordon* v. *Gordon*, 48 Penn. St. 238).

The following are acts of matrimonial cruelty: — Duress, or threats, or habitual insult and studied unkindness, tending to injury to health

(*Kelly* v. *Kelly*, 39 L. J. P. & M. 28; L. R. 2 P. & D. 59; 21 L. T. 564: *Bethune* v. *Bethune*, 1891, P. 205; 60 L. J. P. D. & A. 18: *Vf*, *Beauclerk* v. *Beauclerk*, 1891, P. 189; 60 L. J. P. D. & A. 20; 64 L. T. 35); or terrifying a wife into immorality (*Coleman* v. *Coleman*, 35 L. J. P. & M. 37); publicly outraging a wife's feelings by insulting language and assaulting her, even though no personal injury be inflicted (*Milner* v. *Milner*, 31 L. J. P. & M. 159); a violently intended, but futile, assault, or spitting on a wife (*D'Aguilar* v. *D'Aguilar*, 1 Hagg. Ecc. Supp. 776); habitual insult and violence of temper, inducing quarrels and producing physical suffering (*Knight* v. *Knight*, 34 L. J. P. & M. 112); knowingly or recklessly imparting a venereal disease (*Boardman* v. *Boardman*, L. R. 1 P. & D. 233: *Brown* v. *Brown*, Ib. 46; 35 L. J. P. & M. 13; as to cutaneous disease, *V. Chesnutt* v. *Chesnutt*, 1 Spinks, 205); unreasonable denial of usual necessaries and comforts so as to affect health (*Dysart* v. *Dysart*, 3 N. C. 340: *Orme* v. *Orme*, 2 Addams, 382); cruelty to children in the mother's presence, in order to wound her feelings, and to such an extent as probably to be injurious to her health (*Suggate* v. *Suggate*, 28 L. J. P. & M. 46: *Birch* v. *Birch*, 42 L. J. P. & M. 23).

But the following are *not* acts of Matrimonial Cruelty:

Drunkenness (*Scott* v. *Scott*, 29 L. J. P. & M. 64); debauching household servants (*Cousen* v. *Cousen*, 34 L. J. P. & M. 139); bad language (*Dysart* v. *Dysart*, sup), even to the extent of falsely, maliciously, and persistently accusing the spouse of an unnatural offence (*Russell* v. *Russell*, sup); debarring a wife from intercourse with her family (*Neeld* v. *Neeld*, 4 Hagg. Ecc. 269); sleeping in a separate bed (*D'Aguilar* v. *D'Aguilar*, sup).

Vf, Dixon on Divorce, 98 *et seq*: Browne & Powles on Divorce, 129.

Cruelty is not excused by drunkenness or *delirium tremens* (*Marsh* v. *Marsh*, 28 L. J. P. & M. 13; 1 Sw. & Tr. 312; 7 W. R. 129); or ungovernable passion (*Curtis* v. *Curtis*, 27 L. J. P. & M. 73; 1 Sw. & Tr. 192): but insanity excuses (*Hall* v. *Hall*, 33 L. J. P. & M. 65; 3 Sw. & Tr. 349: *White* v. *White*, 1 Sw. & Tr. 591).

"Cruelty or Neglect," causing a Wife to leave, s. 4, 58 & 59 V. c. 39; *V.* NEGLECT.

"Persistent Cruelty"; *V.* PERSISTENT.

Cruelty to Children: *V.* 4 Encyc. 53–56.

Cruelty to Animals: If any person "cruelly beat, ill-treat, over drive, abuse, or torture," any DOMESTIC AMIMAL, that is an offence under s. 2, 12 & 13 V. c. 92. The cruelty under that section means, unreasonably inflicting unnecessary pain; and, therefore, involving a guilty knowledge that pain will be inflicted (*Elliott* v. *Osborn*, 65 L. T. 378). Incensing Cocks to fight (*Bridge* v. *Parsons*, 32 L. J. M. C. 95; 3 B. & S. 382; 11 W. R. 424; 7 L. T. 784; 25 W. R. 540; 27 J. P. 117, 231), or cutting a Cock's comb in order to exhibit him as a Gamecock (*Murphy* v.

Manning, 46 L. J. M. C. 211; 2 Ex. D. 311; 41 J. P. 130) is such cruelty, and so of docking a Horse's tail (40 S. J. 473, 474); and so it may be such cruelty to turn an animal, which is already suffering, into a field to graze when it can only do so by giving itself additional pain (*Everitt* v. *Davies*, 26 W. R. 332; 42 J. P. 248; 38 L. T. 360). But the mere omission to kill a suffering animal is not such cruelty (*Ib.*); nor does the section include the merely unlawful killing an animal, or shooting it intending to kill it but leaving it to die in pain (*Powell* v. *Knight*, 26 W. R. 721; 42 J. P. 597; 38 L. T. 607), nor the sending parrots a ten-hours' railway journey without water (*Swan* v. *Sanders*, 50 L. J. M. C. 67; 29 W. R. 538; 45 J. P. 522; 44 L. T. 424), nor a painful operation *bonâ fide* believed to be proper, *e.g.* spaying sows, as they do in Sussex, to improve the flesh as human food (*Lewis* v. *Fermor*, 56 L. J. M. C. 45; 18 Q. B. D. 532; 56 L. T. 236; 35 W. R. 378; 51 J. P. 371). But in *Ford* v. *Wiley* (58 L. J. M. C. 145; 23 Q. B. D. 203) the principle of *Lewis* v. *Fermor* was questioned, and it was held that dishorning cattle was within the section, although it might prevent them from goring each other, and make them graze better and fatten more quickly; but the Scotch and Irish Courts refuse to follow *Ford* v. *Wiley*; —*V. R.* v. *M'Donagh*, 28 L. R. Ir. 204, and cases there cited.

What a person intends to do is no part of the offence of Cruelty under s. 2, 12 & 13 V. c. 92; the simple question is, Was there cruelty in fact? (*Duncan* v. *Pope*, 80 L. T. 120).

CRY. —*V.* HUE AND CRY.

CUBIC. — Cubic Feet; *V.* DELIVERED.
Cubic Yard; *V.* YARD.

CUBICAL. — Quà London Bg Act, 1894, "'Cubical Extent,' applied to the measurement of a BUILDING, means, the space contained within the external surfaces of its walls and roof and the upper surface of the floor of its lowest STOREY" (subs. 24, s. 5).

CUBICLE. — *V. Barnett* v. *Hickmott*, cited DWELLING-HOUSE.

CUCKING-STOOL. — Was the same as, and was in old times called, a TUMBRELL (Termes de la Ley).

CUCKOLD. —*V.* WHORE.

CUL DE SAC. —*V.* HIGHWAY: STREET.

CULPABLE. — Culpable Negligence; *V.* GROSS.

CULPRIT. —Is a person on his trial for a criminal offence (4 Bl. Com. 339).

CULTIVATION. — *V.* AGRICULTURE.

CUM DIV. — *V.* DIVIDEND.

CUMULATIVE. — A Preference Dividend is, *primâ facie*, cumulative; so that failure of profits wherewith to pay it in any one year will be made good out of any profits that may be made in a subsequent year (*V.* DIVIDEND); and if a "*Cumulative* Preference Dividend" is prescribed, doubt hereon is avoided (*Vh*, *Webb* v. *Earle*, L. R. 20 Eq. 557; 44 L. J. Ch. 608; 24 W. R. 46: Palmer Co. Prec. 359, 482). But a Pref. Div. payable out of the profits "of EACH year" is non-cumulative (*Staples* v. *Eastman Co*, 1896, 2 Ch. 303; 65 L. J. Ch. 682; 74 L. T. 479).

LEGACIES of equal amount, given by the same instrument to the same person, are merely Repetitions: of equal, less, or greater, amount, given by different instruments, *e.g.* Will and Codicil to the same person, are, *primâ facie*, Cumulative; but the one by the later instrument may, contextually, be Substitutional (Theobald, ch. 16).

CURATE. — A Curate is "he who represents the Incumbent of a Church, Parson, or Vicar, and takes care of Divine Service in his stead" (Jacob). *Vh* Phil. Ecc. Law, Part 2, ch. 10.

Quâ Irish Church Act, 1869, 32 & 33 V. c. 42, "Curate" includes "Residentiary Preacher or Reader" (s. 72).

V. CLERGYMAN: PERPETUAL CURATE: DEACON.

CURRENCY. — A clause in a Time Marine Policy for return of part of premium if the ship should be employed in *e.g.* "the Eastern Trade during the whole currency of the policy," becomes operative not only if she is actually so employed, but also if she is lost, during the period over which the policy extends; for then the risk no longer exists, "the Policy is no longer in any sense CURRENT" (per Bigham, J., *Gorsedd S S Co* v. *Forbes*, 5 Com. Ca. 413; 16 Times Rep. 566).

CURRENT. — "'Current' applied to COIN, means, coin coined in any of Her Majesty's mints, or lawfully current by virtue of any proclamation, or otherwise, in any part of Her Majesty's dominions, whether within the United Kingdom or without" (Steph. Cr. 310, abridging the def in s. 1, 24 & 25 V. c. 99). *Vf*, 46 & 47 V. c. 45, s. 3: Arch. Cr. 911: FALSE COIN. *Note*: Current Coin may be treated as a curiosity (*Moss* v. *Hancock*, cited MONEY).

"Current Coin," in Truck Act, 1831; *V.* PAYMENT.

"Current *Financial Year*"; *V.* FINANCIAL YEAR.

"Current *Outgoings*," quâ Government Annuities Act, 1882, 45 & 46 V. c. 51; *V.* s. 13 (6).

The "Current *Rate*" of INTEREST payable under s. 28, 3 & 4 W. 4, c. 42 (*V.* DEMAND), though frequently assessed at 5 per cent is not,

necessarily, that rate, and may be the current rate for the time being (*L. C. & D. Ry* v. *S. E. Ry*, 1892, 1 Ch. 120), either, as it would seem, more or less than 5. In *Re Horner* (1896, 2 Ch. 188; 65 L. J. Ch. 694) 5 per cent was allowed. *Note*: Interest against Trustees guilty of Breach of Trust, and cognate matters, has in recent years been allowed at 3 per cent (*Re Goodenough*, 1895, 2 Ch. 537; 65 L. J. Ch. 71: *Re Cleveland*, 1895, 2 Ch. 542; 65 L. J. Ch. 29: *Re Lambert*, 1897, 2 Ch. 169; 66 L. J. Ch. 624); so, quà the rule in *Re Chesterfield* (52 L. J. Ch. 958; 24 Ch. D. 643) in apportioning a fund between a Tenant for Life and Remainder-man (*Rowlls* v. *Bebb*, cited PRODUCE).

"Current *Year*"; *V. Doe* d. *Robinson* v. *Dobell*, 1 Q. B. 806; 10 L. J. Q. B. 242: *Doe* d. *Richmond* v. *Morphett*, 7 Q. B. 578; 14 L. J. Q. B. 345: *Wride* v. *Dyer*, 1900, 1 Q. B. 23; 69 L. J. Q. B. 17; 81 L. T. 453; 48 W. R. 73; 64 J. P. 118.

CURRY. — "Curry or solicit" custom; *V.* SOLICIT.

CURTESY. — "Tenant by the Curtesy of England, is where a man marries a woman seized of an Estate of Inheritance, — *i.e.* lands or tenements in Fee Simple or Fee Tail, — and has by her issue born alive which was capable of inheriting her estate. In this case he shall, on the death of his wife, hold the lands or tenements for his life as Tenant by the Curtesy of England" (2 Bl. Com. 125). *Vf*, Litt. s. 35: Co. Litt. 29 a–30 a: Termes de la Ley: Jacob: 1 Cru. Dig. 139–150: Wms. R. P., Part 1, ch. 11: Goodeve, 141: 4 Encyc. 58–60. The right exists in New South Wales (*Plomley* v. *Shepherd*, 1891, A. C. 244; 60 L. J. P. C. 18).

The M. W. P. Act, 1882, has not affected this right quà the wife's undisposed-of realty (*Hope* v. *Hope*, 1892, 2 Ch. 336; 61 L. J. Ch. 441).

Quà S. L. Act, 1882, "the estate of a Tenant by the Curtesy is to be deemed an estate arising under a SETTLEMENT made by his wife" (s. 8, S. L. Act, 1884).

CURTILAGE. — "A garden, yard, field, or peece of voide ground, lying neare and belonging to the messuage" (Termes de la Ley). *Vf*, Touch. 94: Cowel: Jacob.

"'A little croft or court or place of easement to put in cattle for a time, or to lay in wood, coal, or timber, or such other things necessary for household' (Fitzherbert on Surveying, ch. 1). Spelman considers it to be 'the yard not the garden'; *see Curtilagium*, *Curtillum*; though it *may* be used for garden, he says: *V.* per Fairfax, 21 Edw. 4, 52, pl. 15; and per Frowike, Keilw. 57, pl. 7" (Elph. 569).

For an example of what, in modern times, has been held to be part of the Curtilage of a house, *V. Marson* v. *L. C. & D. Ry*, 37 L. J. Ch. 483; L. R. 6 Eq. 101. *Va*, on this word, in s. 7, 33 & 34 V. c. 57, *Commrs Inl. Rev.* v. *Goodfellow*, 45 J. P. 588; — in def of DRAIN, s. 250,

Metrop Man. Act, 1855, and s. 4, P. H. Act, 1875, *Pilbrow* v. *St. Leonard, Shoreditch*, 1895, 1 Q. B. 33, 433; 64 L. J. M. C. 29, 130; 59 J. P. 68; 72 L. T. 135; 43 W. R. 342: *St. Martin's in the Fields* v. *Bird*, 1895, 1 Q. B. 428; 64 L. J. Q. B. 230; 71 L. T. 868; 43 W. R. 194.

Vf, Arch. Cr. 589, 590, 614: Rosc. Cr. 313, 317. *V.* CLOSE.

Note. "We do not use that expression, — 'Curtilage,' — in Scotland" (per Ld Watson, *Caledonian Ry* v. *Turcan*, 67 L. J. P. C. 73).

CUSTODY. — "Custody or Control," s. 2, 36 V. c. 12, is large enough to enable the Court to commit the Religious Education of an Infant to the mother (*Condon* v. *Vollum*, 31 S. J. 575; 57 L. T. 154).

"Custody or Control" of Documents; *V. London & Yorksh. Bank* v. *Cooper*, 54 L. J. Q. B. 495; 15 Q. B. D. 7.

"Custody or Possession" of any matter, quâ Coinage Offences Act, 1861, 24 & 25 V. c. 99, "includes, not only the having of it by himself in his personal custody or possession but also, the KNOWINGLY and WILFULLY having it in the actual custody or possession of any other person, and also the knowingly and wilfully having it in any Dwelling-house or other Building, Lodging, Apartment, Field, or other Place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or benefit or for that of any other person" (s. 1).

V. CARE: CONTROL: POSSESSION: ACTUAL CUSTODY: CIVIL CUSTODY: MILITARY CUSTODY: PROPER CUSTODY: SAFE CUSTODY.

CUSTOM. — "'Custome' may be defined to be a Law or Right not written, which, being established by long use and the consent of our ancestors, hath bin and daily is put in practice" (Termes de la Ley). *Vf*, Cowel: Jacob: 4 Encyc. 61–72.

"*Consuetudo* is one of the maine triangles of the lawes of England; those lawes being divided into Common Law, Statute Law, and Custome" (Co. Litt. 110 b, 115 b). "The phrase 'By the Custom of the Realm' is, in truth, only a paraphrase for 'By the Common Law'" (per Brett, J., *Nugent* v. *Smith*, 1 C. P. D. 23).

"'This word *consuetudo* hath in law divers significations; 1. For the Common Law, as *consuetudo Angliæ*; 2. For Statute Law, as *contra consuetudinem communi concilio regni edit.*; 3. For Particular Customs, as Gavelkind, Borough English, and the like; 4. For Rents, Services, &c, due to the Lord, as *consuetudines et servitia*; 5. For Customs, Tributes, or Impositions, &c, as *de novis consuetudinibus levatis in regno sive in terrâ sive in aquâ*; 6. Subsidies or Customs granted by common consent, that is, by authority of Parliament *pro bono publico*' (2 Inst. 58). *Consuetudo* signifies also Tolls, Murage, Frontage, Paviage, and such like

newly granted by the King (Co. Litt. 58 b). *V.* on this latter point, *Egremont* v. *Saul*, 6 A. & E. 924; 6 L. J. K. B. 205, and the cases there cited" (Elph. 569). In *Egremont* v. *Saul*, though the above passage from Co. Litt. was cited, it was held that "consuetudo" does not necessarily, or it should seem *primâ facie*, signify toll: *V.* TOLL.

"A Custom is Local Common Law. It is Common Law because it is not Statute Law; it is Local Law because it is the law of a particular place, as distinguished from the general Common Law. Local Common Law is the law of the country (*i.e.* particular place) as it existed before the time of legal MEMORY" (per Jessel, M. R., *Hammerton* v. *Honey*, 24 W. R. 603). "'Custom,' is something that has the effect of Local Law" (per Cleasby, B., *Hall* v. *Nottingham*, 1 Ex. D. 3; 45 L. J. Ex. 52). *Vf*, *Fitch* v. *Rawling*, 2 Bl. H. 394.

A legal origin will be presumed in favour of an uninterrupted practice for a long series of years, even though it be shown that such practice began in modern times (*Lond. & N. W. Ry* v. *Fobbing Levels Commrs*, 75 L. T. 629; 66 L. J. Q. B. 127).

As to *Particular* Customs; *V.* 1 Bl. Com. 74: Browne's Law of Usages and Customs. In *Lanchbury* v. *Bode* (1898, 2 Ch. 120; 67 L. J. Ch. 196), the Custom was for the owner of the Rectorial Tithes to provide a Common Bull and a Common Boar for the parish: the reporter in the L. J. adds this note, —"A similar Custom is stated in Vin. Ab., 2 ed., Vol. 7, p. 181, and alluded to in *King Henry IV.*, Part 2, Act 2, Scene 2, and in Sterne's *Tristram Shandy*, ch. xciii." *Vf* WHORE.

As to *Manorial* Customs; *V.* Elton on Copyholds: Williams on Rights of Common: FREEBENCH.

V. BRITISH CUSTOM: LAW MERCHANT.

A *Trade* Custom, sufficient to displace the Bankry doctrine of Reputed Ownership, must be notorious to traders generally (*Re Goetz*, cited CONSENT). So, generally, in Business Matters, — *e.g.* the length of a Notice of Dismissal, — a Custom must be "a uniform and universal Practice so well-defined and recognized that contracting parties must be assumed to have had it in their minds when they contracted. The fact that in a large percentage of cases there are special agreements, shows that no such universal Custom exists": a PRACTICE is less stringent in its connotation (per Russell, C. J., *Fox-Bourne* v. *Vernon*, 10 Times Rep. 649).

V. PRESCRIPTION: USAGE: USAGE OF TRADE.

"In 22 Edw. 1, 364 (Record Publ.) Customs are distinguished from Services as follows: — 'Customs are things which are done, and demanded by reason of bodily service; Services are things which are demanded of the tenant by reason of the tenement which he holds of the demandant, to wit, rent, and things of that kind, or suit demanded by reason of the tenement'" (Elph. 569). *V.* SERVICE.

The word "Custom" in s. 2, Municipal Corporations Act, 5 & 6 W. 4, c. 76, is not used in a technical sense, but is there equivalent to "Usage" (*Prestney* v. *Colchester*, 51 L. J. Ch. 805; 21 Ch. D. 111). *Vf* PRACTICE.

CUSTOM OF THE COUNTRY. — "The word 'Custom' as here used, does not mean a CUSTOM in the strict legal signification of it; for that must be taken with reference to some defined limit or space, which is essential to every custom properly so called; but which does not exist here. What shall be considered in farming as a good and husbandlike manner must vary exceedingly according to soil, climate, and situation. And, therefore, the 'Custom of the Country,' with reference to good husbandry, must be applied to the approved habits of husbandry in the neighbourhood, under circumstances of the like nature" (2 Platt, 279, citing *Legh* v. *Hewitt*, 4 East, 154). *Vf*, *Meux* v. *Cobley*, 1892, 2 Ch. 253; 61 L. J. Ch. 449: Woodf. 646, 795 *et seq.*

CUSTOM OF THE PORT. — In a Charter-Party, "Custom of the Port," means, the settled Practice of the Port (*Postlethwaite* v. *Freeland*, cited REASONABLE). *Va* BRITISH CUSTOM.

CUSTOMARY. — Discharge of Cargo "as fast as steamer can deliver, as Customary," or "as fast as she can deliver," means, as fast as reasonably POSSIBLE, in a business sense (*Wyllie* v. *Harrison*, 13 Sess. Ca. 4th Ser. 92: *Good* v. *Isaacs*, 1892, 2 Q. B. 555; 61 L. J. Q. B. 649; 67 L. T. 450; 40 W. R. 629: *The Jaederen*, 1892, P. 351; 61 L. J. P. D. & A. 89). *Vf* ACCORDING.

"To be discharged with all DESPATCH, as Customary," means, REASONABLE despatch having regard to the actual circumstances, *e.g.* a STRIKE, at the time of the discharge, and the custom of the Port of Discharge (*Castlegate S. S. Co* v. *Dempsey*, 1892, 1 Q. B. 854; 61 L. J. Q. B. 620: *Lyle Co* v. *Cardiff Corp*, 1900, 2 Q. B. 638; 69 L. J. Q. B. 889; 83 L. T. 329); and that reasonable despatch "the Consignee is bound to satisfy *de die in diem*: he cannot, by working extra hard on one day, entitle himself to idle on another day; and, if he has done more than an average quantity at the beginning, he cannot relax the measure of reasonable diligence towards the end" (per FitzGibbon, L. J., *The Benwick*, cited and repeated in *The Gairloch*, 1899, 2 I. R. 13). *Vf* USUAL AND CUSTOMARY MANNER.

"To be loaded as Customary, as per Guarantee" incorporates the Guarantee (*Monsen* v. *Macfarlane*, 1895, 2 Q. B. 562; 65 L. J. Q. B. 57; 73 L. T. 548).

By themselves, "the words 'to be loaded as Customary,' refer only to the mode, and not to the time, of loading" (per Fry, L. J., *Dunlop* v. *Balfour*, cited DEMURRAGE).

CUSTOMARY EMPLOYMENT. — What is a person's "Customary Employment," quà a Friendly Society's Rules; *V. Manchester Law Clerks Society* v. *Wilson*, 4 Times Rep. 465; 52 J. P. 276.

CUSTOMARY FINES. — "Customary Fines, Fees, and other Dues and Payments," s. 20 (3), Settled Land Act, 1882; *V. Re Naylor and Spendla*, 34 Ch. D. 217; 56 L. J. Ch. 453; 56 L. T. 132; 35 W. R. 219.

CUSTOMARY FREEHOLD. — Where lands are held "by the Custom of the Manor only, and not at the Will of the Lord, it is, properly, Customary Freehold" (*Lingwood* v. *Gyde*, 15 W. R. 313; 36 L. J. C. P. 15; L. R. 2 C. P. 78; 16 L. T. 229). *Vh*, *Easton* v. *Penny*, 67 L. T. 290; 41 W. R. 72. *V.* COPYHOLD: FREEHOLD.

CUSTOMARY MANNER. — *V.* USUAL AND CUSTOMARY MANNER.

CUSTOMARY MEASURE. — *V.* MEASURE.

CUSTOMARY RENT. — "I understand a 'Customary Rent' to mean, a RENT which, by force of legal CUSTOM, enables the tenant to hold the land at a fixed rent" (per Fry, J., *Vivian* v. *Moat*, 50 L. J. Ch. 332; 16 Ch. D. 733).

CUSTOMARY RIGHTS. — A reservation in an agreement for a Lease of "all Customary Rights and Reservations" does not render the agreement void for uncertainty (*Parker* v. *Taswell*, 2 D. G. & J. 559; 6 W. R. 608; 31 L. T. O. S. 226).

CUSTOMARY TENANTS. — Copyholders (Cowel). *V.* COPYHOLD.

CUSTOMER. — A business "Customer" is one who has the use and habit of resorting to the same person or place to do business; therefore, a stranger who goes into a Bank to get a cheque collected, is not a "Customer" of the Bank, within s. 82, Bills of Ex. Act, 1882 (*Mathews* v. *Brown*, 63 L. J. Q. B. 494; 10 Times Rep. 386: *La Cave* v. *Credit Lyonnais*, 1897, 1 Q. B. 148; 66 L. J. Q. B. 226; 75 L. T. 514; 13 Times Rep. 60). *Vf*, as to the section, *Clarke* v. *London and County Bank*, cited PAYMENT: *G. W. Ry* v. *London and County Bank*, 1900, 2 Q. B. 464; 69 L. J. Q. B. 741; 82 L. T. 746; 48 W. R. 662.

A contract restraining the contracting party from "in any way dealing, or transacting business, with the Customers" of the contractee, means, dealing or business "of the same, or a similar, kind to that which has been carried on by" the contractee (per Chitty, J., *Mills* v. *Dunham*, 1891, 1 Ch. 576; 60 L. J. Ch. 362; 64 L. T. 712; 39 W. R. 289: *Sv*, per Kay, L. J., *S. C.*).

Vf, *McLean* v. *Dunn*, 39 Upper Canada Rep. Q. B. 551: TRADERS.

CUSTOMS. — H. M. Customs; *V.* 4 Encyc. 72–89.

Customs and Services; *V.* CUSTOM: SERVICE.

"Customs Warehouse"; Stat. Def., 32 & 33 V. c. 103, s. 3; 43 & 44 V. c. 24, s. 3.

CUT. — *V.* SLIT: TEAR: WOUND.

It was not the less a "Cutting" within 43 G. 3, c. 58, because inflicted with an instrument not ordinarily used for cutting (*R.* v. *Hayward*, Russ. & Ry. 78: *R.* v. *Atkinson*, Ib. 104); but a stab was not a "cut," because the Act uses the words "stab or cut" so as to distinguish between them (*R.* v. *McDermot*, Ib. 356).

"Cut as Underwood"; *V. Dashwood* v. *Magniac*, cited TIMBER.

Maliciously to "*cut down, or otherwise destroy,*" any tree, s. 2, 9 G. 1, c. 22, was an offence that was committed by cutting down without totally destroying the tree (*R.* v. *Taylor*, Russ. & Ry. 373).

The Water Supply to an Inhabited Dwelling-house is not "*cut off,*" s. 49, P. H. London Act, 1891, by the water being temporarily stopped from flowing into the house, if this be done for good cause, *e.g.* a leak in the service-pipe (*Young* v. *Southwark and Vauxhall W. W. Co*, 37 S. J. 509).

CWT. — "A Hundredweight shall consist of 8 STONES" (s. 14, 41 & 42 V. c. 49), *i.e.* 112 lbs.

V. HUNDRED, PER: PER CWT.

CY-PRÈS. — The *Cy-près* doctrine is one of construction, and is this, — Where there is a gift or trust for a CHARITY which can be substantially, but not literally, fulfilled it will be effectuated by moulding it so that, as nearly as practicable, the intention of the benefactor may be carried out.

"I consider it now established, that, — although the mode in which a legacy is to take effect is, in many cases with regard to an individual legatee, considered as of the substance of the legacy, — where a legacy is given so as to denote that CHARITY is the legatee, the Court does not hold that the mode is of the substance of the legacy; but will effectuate the gift to Charity, as the substance, providing a mode for that legatee to take, which is not provided for any other legatee" (per Eldon, C., *Mills* v. *Farmer*, 19 Ves. 486). "As to the doctrine of Cy-près as applied to Charities, this sensible distinction has prevailed: The Court will not decree execution of a trust to a Charity in a manner different from that intended, except so far as they see that the intention cannot be executed literally; but another mode may be adopted, consistent with his general intention, so as to execute it, although not in mode, in substance. If the mode becomes by subsequent circumstances impossible, the general object is not to be defeated if it can be attained" (per Arden,

M. R., *A-G.* v. *Boultbee*, 2 Ves. 387). Both these cases were cited and applied by KAY, J., in *Biscoe* v. *Jackson*, 56 L. J. Ch. 95.

Vh, 1 Jarm. 243–250: Theobald, 333.

Speaking strictly, the rule is, probably, peculiar to gifts to a Charity (1 Jarm. 243), but "in many cases, limitations of Real Estate, in themselves void for PERPETUITY, have been made good by the application of the so-called doctrine of *Cy-près*" (Theobald, 532, *whv* for cases in illustration: *Vf*, 1 Jarm. 297–302).

DAILY LABOUR—DAMAGE

DAILY LABOUR.—*V.* PERSONAL LABOUR: JOURNEYMAN: WAGES.

DAILY PENALTY.—Quà the Public Health Acts, "'Daily Penalty,' means, a Penalty for each day on which any Offence is continued after CONVICTION therefor" (s. 11 (3), 53 & 54 V. c. 59); so, quà Electric Lighting Clauses Act, 1899, 62 & 63 V. c. 19 (Sch s. 1), and Thames Conservancy Act, 1894 (s. 3).

DAIRY.—Quà Infectious Disease (Prevention) Act, 1890, 53 & 54 V. c. 34, "Dairy," "includes any farm, farmhouse, cowshed, milk-store, milk-shop, or other place from which milk is supplied, or in which milk is kept, for purposes of sale" (s. 2); so, quà P. H. London Act, 1891 (s. 141), and P. H. Scotland Act, 1897 (s. 3).

"*Dairyman*," quà the same Acts and by the same sections, "includes any cowkeeper, purveyor of milk, or occupier of a Dairy." A FARMER who keeps cows as incidental to his farming business, is not a "Cowkeeper" within that def (*Umfreville* v. *London Co. Co.*, 66 L. J. Q. B. 177; 75 L. T. 550; 61 J. P. 84; 13 Times Rep. 109). In that case Wills, J., adopted a dictionary def of "Cowkeeper" as, "one whose business it is to keep cows," and added, "the business of a COWKEEPER is a special business of its own."

Lord DALHOUSIE'S ACT.—9 & 10 V. c. 28.

DAM.—Quà SALMON Fisheries Acts, "Dam," "means all weirs, and other fixed obstructions, used for the purpose of damming up water" (s. 4, 24 & 25 V. c. 109). *Cp* FIXED ENGINE.

DAMAGE.—"Neither in common parlance, nor in legal phraseology, is the word 'Damage' used as applicable to injuries done to the *person*; but solely as applicable to mischief done to *property*. We speak indeed of 'damages' as compensation for injury done to the person; but the term 'damages' is not employed interchangeably with the term 'injury' with reference to mischief wrongfully occasioned to the person" (per Cockburn, C. J., *Smith* v. *Brown*, 40 L. J. Q. B. 218). This definition, which reads so simple and clear, is nothing more than the central bone of contention in a series of cases distinguished by a remarkable conflict of judicial opinion, the last word in which has, at last, been spoken.

That conflict was over the very short words of s. 7, Admiralty Court Act, 1861, 24 V. c. 10, which says,—"The High Court of Admiralty shall have jurisdiction over *any claim for Damage* done by any Ship."

The question as to the meaning of "damage," unembarrassed by context, could hardly be presented in a more absolute way.

The Common Law Courts persistently (Blackburn, J., *hesitantly*) held that "Damage" in the section just quoted did not include injury to the person, or, still less, claims by surviving relatives for loss of life (*Smith* v. *Brown*, 40 L. J. Q. B. 214; L. R. 6 Q. B. 729: *James* v. *Lond. & S. W. Ry*, 41 L. J. Ex. 89, 186; L. R. 7 Ex. 187, 287: *Simpson* v. *Blues*, 41 L. J. C. P. 128; L. R. 7 C. P. 290).

The exact contrary was, as persistently, held by the Admiralty Court and Privy Council (*The Sylph*, 37 L. J. Adm. 14; L. R. 2 A. & E. 24: *The Guldfaxe*, 38 L. J. Adm. 12; L. R. 2 A. & E. 325: *The Beta*, 38 L. J. Adm. 50; L. R. 2 P. C. 447: *The Explorer*, 40 L. J. Adm. 41; L. R. 3 A. & E. 289: *The Franconia*, 46 L. J. P. D. & A. 71; 2 P. D. 8).

When the point came before the Court of Appeal, the Equity members of the Court (James and Baggallay, L. JJ.) held that "Damage" did include personal injury and claims for loss of life; whilst their two brethren (Bramwell and Brett, L. JJ.), whose experience was at the Common Law Bar, went the other way (*Jeffrey* v. *Franconia*, 46 L. J. P. D. & A. 33; 2 P. D. 163: *Vf, The Alina*, 5 Ex. D. 227, on *whcv* per Esher, M. R., *Pugsley* v. *Ropkins*, 1892, 2 Q. B. 192; 61 L. J. Q. B. 647).

But the definition at the commencement of this article has now been authoritatively established by the House of Lords,—their lordships holding that a claim for loss of life under Lord Campbell's Act, is *not* a claim for "Damage" within s. 7, Admiralty Court Act, 1861 (*Seward* v. *The Vera Cruz*, 54 L. J. P. D. & A. 9; 10 App. Ca. 59). *Note:* in view of that decision it seems difficult to justify the first part of the jdgmt of Bruce, J., in *The Theta*, 1894, P. 280; 63 L. J. P. D. & A. 160; 71 L. T. 25; 43 W. R. 160.

It may perhaps be added that "Damage" did, at one time at any rate, in common parlance, include injury to the person; for St. Paul when on his voyage to carry his Appeal to Cæsar said,—"Sirs, I perceive that this voyage will be with hurt, and much *Damage*, not only of the lading and ship, *but also of our lives*" (Acts, xxvii. 10).

"Compensation for any Loss or Damage" sustained by Detention or Survey of a Ship, s. 10, Mer Shipping Act, 1876, does not include injury to the reputation of the shipowner by reason of a ship's seizure (*Dixon* v. *Calcraft*, 1892, 1 Q. B. 458; 61 L. J. Q. B. 529; 66 L. T. 554; 40 W. R. 598; 56 J. P. 388).

"Damage" may be controlled by the context and "*can* certainly mean Personal Injury"; and, therefore, where a packet company issued a passenger's ticket containing a special provision respecting loss, damage, or detention of luggage, and then, by a separate clause dealing with passengers personally, obtained exemption for "Loss or Damage" from certain specified causes; it was held that that included injury to

limb or life from the causes enumerated (*Haigh* v. *Royal Mail Steam Packet Co*, 52 L. J. Q. B. 395; Ib. 640).

"Damage *done* by any SHIP," s. 7, Admiralty Act (sup), means, "Damage done by some one, with a Ship as the noxious instrument" (per Bowen, L. J., *The Vera Cruz*, 53 L. J. P. D. & A. 41: *Vf, The Theta*, 63 L. J. P. D. & A. 160).

"Damage done BY" Vessel or Float of Timber, s. 74, Harbours, Docks, and Piers, Clauses Act, 1847, 10 & 11 V. c. 27, does not include damage caused by the ACT OF GOD dashing a Vessel against the thing damaged (*Weir Commrs* v. *Adamson*, 47 L. J. Q. B. 193; 2 App. Ca. 743).

"Damage" deductible from FREIGHT; *V. The Barcore*, 1896, P. 294; 65 L. J. P. D. & A. 97; 75 L. T. 168.

V. DAMAGE BY COLLISION: DAMAGES TO CARGO: DAMAGE TO GOODS.

"ANY Damage"; *V.* FULL COMPENSATION.

"Damage" occasioned by the erection of a Urinal, &c, s. 88, Metrop Man. Act, 1855, means only direct damage caused by the structure itself; not consequential damage by reason of its being so erected as to cause a NUISANCE (*Vernon* v. *St. James, Westminster*, cited URINAL).

"*Making good all Damage*," s. 83 (6), Metrop Bg Act, 1855, provides for, and therefore only empowers, *structural* damage, not the invasion of a right of light (*Crofts* v. *Haldane*, 36 L. J. Q. B. 85; 8 B. & S. 194; L. R. 2 Q. B. 194). *Cp* FULL COMPENSATION.

"Satisfaction for all Damage"; *V.* SATISFACTION.

"The feeling of anxiety is Damage" (per Cranworth, V. C.) in reference to a covenant quà user (*Kemp* v. *Sober*, 1 Sim. N. S. 520); and so is invasion of privacy (*Manners* v. *Johnson*, 45 L. J. Ch. 404; 1 Ch. D. 673), or the deprivation of the power of user, though such power has not theretofore been of one farthing benefit (*Trent-Stoughton* v. *Barbados Water Co*, 1893, A. C. 502; 62 L. J. P. C. 123; 69 L. T. 164, in *whc* the words were "Damage or Loss"). *V.* ANNOYANCE.

The "Damage" for which compensation is to be given under s. 68, Lands C. C. Act, 1845, for lands "INJURIOUSLY AFFECTED," is such damage as would have given a right of compensation independently of that statute (*Caledonian Ry* v. *Ogilvy*, 2 Macq. 229); and so of a Private Act incorporating the Lands C. C. Act (*Rhodes* v. *Airedale Commrs*, 45 L. J. C. P. 861; 1 C. P. D. 402); and a similar construction was placed on the word "Damage" as used in s. 144, P. H. Act, 1848 (*Hall* v. *Bristol*, 36 L. J. C. P. 110; L. R. 2 C. P. 322).

As to this word in ss. 6, 16, Ry C. C. Act, 1845; *V.* per Fry, L. J., *R.* v. *Poulter*, 57 L. J. Q. B. 138; 20 Q. B. D. 132; 58 L. T. 534; 36 W. R. 117; 52 J. P. 244: and as used in s. 308, P. H. Act, 1875; *V.* per Selborne, C., *Brierley Hill* v. *Pearsall*, 54 L. J. Q. B. 25; 9 App. Ca. 595: FULL COMPENSATION.

"Damage," in an Enclosure Act giving compensation for the Working

of Mines, includes damage caused by subsidence (*Bell* v. *Dudley*, 1895, 1 Ch. 182; 64 L. J. Ch. 291; 72 L. T. 14; 43 W. R. 122; 59 J. P. 199).

Working Mines so as "to *endanger or damage* the further working"; *V. Knowles* v. *Lanc. & Y. Ry*, 59 L. J. Q. B. 39; 14 App. Ca. 248: *Chamber Colliery Co* v. *Rochdale Canal Co*, 1895, A. C. 564; 64 L. J. Q. B. 645; 73 L. T. 258: *New Moss Colliery Co* v. *Manchester S. & L. Ry*, 1897, 1 Ch. 725; 66 L. J. Ch. 381; 76 L. T. 231; 45 W. R. 493. *Vf* COMPULSORY POWERS.

"Damage . . . to the Road or Highway," s. 27, 41 & 42 V. c. 77, is not confined to "damage measurable in money"; nominal damages, — *e.g.* for subsidence creating no actual damage, — may be recovered under the phrase (per Collins, J., *A-G.* v. *Conduit Co*, 1895, 1 Q. B. 301; 64 L. J. Q. B. 213; 71 L. T. 771; 43 W. R. 366; 59 J. P. 70).

"Damage," s. 32, 24 & 25 V. c. 96, means direct, not consequential, injury (*R.* v. *Whiteman*, 23 L. J. M. C. 120).

You "damage" a thing if you render it imperfect or inoperative, *e.g.* a frame was "damaged," within s. 4, 28 G. 3, c. 55, by taking away a necessary part of it, although that part was not injured and if replaced the frame would be perfect (*R.* v. *Tacey*, Russ. & Ry. 452). So, if a steam-engine is rendered temporarily useless, by, *e.g.* a plugging (though removable) of one of its pipes, that is to "damage with intent to destroy or to render useless" the engine, within s. 15, 24 & 25 V. c. 97 (*R.* v. *Fisher*, 35 L. J. M. C. 57; L. R. 1 C. C. R. 7). You also "damage" a thing, *e.g.* a steam-engine, if you wrongfully set it going whereby it works its own injury (*R.* v. *Norris*, 9 C. & P. 241).

"Damage" is often used in contracts of Guarantee, *e.g.* where one undertakes to shield another against the "costs, *damages*, and expenses" of actions that may be brought by third parties. If the verb of the guarantee is appropriate, an action may be brought on the guarantee before actual payment, for a liability to pay is, generally speaking, "damage" (*Spark* v. *Heslop*, 28 L. J. Q. B. 197; 1 E. & E. 563: *Randall* v. *Roper*, 27 L. J. Q. B. 266; E. B. & E. 84). *V.* DAMAGES: INDEMNIFY.

The phrase "*as little Damage as can be*" in the working clause of the Ry C. C. Act, 1845, applies not to what is done, but to the manner of doing it — the *modus operandi* (*R.* v. *E. & W. India Docks Co*, 22 L. J. Q. B. 384: 2 E. & B. 474: *Fenwick* v. *E. Lond. Ry*, 44 L. J. Ch. 602; L. R. 20 Eq. 544: *Biscoe* v. *G. E. Ry*, L. R. 16 Eq. 636: *Pugh* v. *Golden Valley Ry*, 12 Ch. D. 274). *Vf* COMPULSORY POWERS.

"Doing no *Avoidable* Damage"; *V. Elliot* v. *N. E. Ry*, 32 L. J. Ch. 402; 10 H. L. Ca. 333.

"Continuance of Injury or Damage"; *V.* CONTINUANCE.

"Special Damage"; *V.* SPECIAL.

V. INJURY: LOSS: DAMAGE BY COLLISION: WILFUL AND MALICIOUS.

DAMAGE BY COLLISION. — The jurisdiction given to County Courts, by Co. Co. Admiralty Jurisdiction Act, 1868, s. 3 (3), as extended by 32 & 33 V. c. 51, s. 4, in cases of "Damage by Collision or otherwise," includes damage by a ship coming into contact with a Fixed Object, as well as damage by collision of Ships (*Mersey Docks* v. *Turner*, 1893, A. C. 468; 63 L. J. P. D. & A. 17; 69 L. T. 630; 57 J. P. 660; overruling *Everard* v. *Kendall*, 39 L. J. C. P. 234; L. R. 5 C. P. 428, and *Robson* v. *Owners of "Kate,"* 57 L. J. Q. B. 546; 21 Q. B. D. 13; 59 L. T. 557; 36 W. R. 910). *Va*, COLLISION: ADMIRALTY CAUSE: DAMAGE.

Damages to be paid by the owner of one vessel to the owner of another vessel injured by a Collision, include Loss of Profit through detention for repairs, as well in respect of a specific engagement of the vessel as of its user generally (*The Argentino*, 59 L. J. P. D. & A. 17; 14 App. Ca. 519). Not so as regards an Insrce against "Loss or Damage by reason of Collision"; for the loss of profits is a consequence of the repairs rather than of the collision, and especially would this be the reading if the Policy goes on to say that the insurer "may make good the loss or damage instead of paying the amount thereof," for that shows that "Loss or Damage" is confined to the injury done to the vessel (*Shelbourne* v. *Law Investment Corp*, 1898, 2 Q. B. 626; 67 L. J. Q. B. 944; 79 L. T. 278). So, damage to fruit by its unloading, so that repairs to the vessel might be effected, and by its reloading, after the repairs were effected, is not "damage consequent upon Collision," within a policy on the fruit (*Pink* v. *Fleming*, cited CONSEQUENT). *Vf, Heard* v. *Holman*, cited SHIP.

As to the Measure of Damages by Collision; *V. The Mediana*, 1900, A. C. 113; 69 L. J. P. D. & A. 35; 82 L. T. 95; 48 W. R. 398.

DAMAGE BY FIRE EXCEPTED. — *V.* REPAIR.

DAMAGE FEASANT. — "'Damage Feasant,' is when a stranger's beasts are in another man's ground, without lawfull authority or license of the tenant of the ground, and there doe feed, tread, or otherwise spoile, the Corn, Grasse, Woods, or such like: In which case the tenant, whom they hurt, may therefore take, distraine, and impound them, as well in the night as in the day" (Termes de la Ley). *Vh*, Bullen on Distress, 2 ed., 257–276: *Boden* v. *Roscoe*, 1894, 1 Q. B. 608; 63 L. J. Q. B. 767. *Va* DISTRESS.

DAMAGE IN FACT. — *V.* "Special Damage," sub SPECIAL.

DAMAGE TO CARGO. — "The words 'Damage to Cargo,' s. 3 (3), 32 & 33 V. c. 51, I think, obviously refer to cargo damaged whilst on board ship" (per Grantham, J., *Robson* v. *Owners of "Kate,"* cited DAMAGE BY COLLISION).

DAMAGE TO GOODS. — "Damage to any goods which is capable of being covered by Insurance," in an Exception in a Bill of Lading, includes a total loss or destruction, but not an abstraction, of the goods (*Taylor* v. *Liverpool & Gt. Wn. Steam Co*, cited INSURANCE).

DAMAGE TO LANDS. — "Damage to Lands" by Military Manœuvres; Stat. Def., 34 & 35 V. c. 97, s. 11; 35 & 36 V. c. 64, s. 13; 36 & 37 V. c. 58, s. 12; 45 & 46 V. c. 10, s. 11.

DAMAGES. — "'*Dammages.*' *Damna* in the common law hath a speciall signification for the recompense that is given by the jury to the plaintife or defendant (qy, demandant? *V.* Ritso's Intr. 119), for the wrong the defendant hath done unto him" (Co. Litt. 257 a: *Vf*, Jacob: 4 Encyc. 93–109). Costs are parcel of the Damages (Co. Litt. 257 a: *O'Loughlin* v. *Fogarty*, 5 Ir. L. R. 54).

Compensation under the Lands C. C. Act, 1845, for lands INJURIOUSLY AFFECTED is not "Damages" within s. 140, Ry C. C. Act, 1845 (*R.* v. *Edwards*, 53 L. J. M. C. 149; 13 Q. B. D. 586). *V.* COMPENSATION.

A Patentee's right to an Account of Profits made by an Infringer, is not one for "Damages," *e.g.* under s. 37, Bankry Act, 1883; it is "more like an equitable claim for Money had and received": *secus*, of Damages caused by the infringement (*Watson* v. *Holliday*, 52 L. J. Ch. 543; 31 W. R. 536; 43 L. T. 545; 20 Ch. D. 780). *Vf* LIQUIDATED DAMAGES.

Damages to "Party Grieved," s. 3, Civil Procedure Act, 1833; *V.* PENAL. *Cp*, *Adams* v. *Batley*, cited OFFENCE.

"All Damages," quâ Ships; *V. The Satanita*, cited ALL.

V. DAMAGE: CREDITOR: DEBTS: *Vh*, Mayne on Damages: Sedgwick on the Measure of Damages.

DAMNUM ABSQUE INJURIA. *V.* INJURY.

DANCING. — *V.* PUBLIC DANCING.

DANGER. — A lessee's covenant, in a Lease of a Public-house, that he will not do or suffer anything whereby the License "may be *in any Danger* of being suspended, discontinued, or forfeited," is not broken by his being convicted of selling drink after hours, if the conviction is not endorsed on the License (per Charles, J., *Fleetwood* v. *Hull*, 58 L. J. Q. B. 341; 23 Q. B. D. 35): the learned judge added,—"If the conviction had been endorsed on the License, a question might have arisen whether the License was or was not endangered. If two convictions had been endorsed, then the Licensee would no doubt have been in danger, because a third conviction would, by s. 30, Licensing Act, 1872, forfeit the License."

V. AFFECT: IMPERIL. For a Form for this covenant, *V.* 1 Key & Elph. Precedents, 6 ed., 750. *Cp* "Liable to be deprived," sub LIABLE.

V. DANGERS: DAMAGE: IMPOSSIBLE.

DANGEROUS. — *V.* OFFENSIVE: EXTRAORDINARILY.

"Dangerous," ss. 69, 72, 73, Metrop Bg Act, 1855, applies to all Structures which are in a dangerous state; the word is not confined to structures which are dangerous to Passengers using a public way (*R.* v. *Herring*, 63 L. J. M. C. 230).

Vf, STRUCTURE.

Quâ Part 5, Mer Shipping Act, 1894, "'Dangerous *Goods*,' means, aqua fortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitroglycerine, petroleum, any EXPLOSIVES within the meaning of the Explosives Act, 1875, and any other goods which are of a dangerous nature" (s. 446).

"All dangerous *Parts of the Machinery*," s. 6 (2), 54 & 55 V. c. 75, is to be read unrestrictedly, and not *ejusdem generis* with s. 5, 41 V. c. 16 (*Redgrave* v. *Lloyd*, 1895, 1 Q. B. 876; 64 L. J. M. C. 155; 72 L. T. 565; 43 W. R. 527; 59 J. P. 293); the phrase is not confined to Parts which are in themselves dangerous, but applies to all Machinery from which, in the ordinary course of working it, danger may be reasonably anticipated, although such danger may arise only through careless working or external causes (*Birtwhistle* v. *Hindle*, 1897, 1 Q. B. 192; 66 L. J. Q. B. 173; 76 L. T. 159; 45 W. R. 207; 61 J. P. 70).

"Dangerous LUNATIC"; *V. R.* v. *Barnsley*, 12 Q. B. 198.

Dangerous Performances Acts, 1879 and 1897, 42 & 43 V. c. 34, 60 & 61 V. c. 52.

DANGERS. — "It has been held long ago that the words 'Dangers *of the Seas*' are synonymous with PERILS OF THE SEAS" (per Esher, M. R., *Pandorf* v. *Hamilton*, 55 L. J. Q. B. 548). "'Dangers *and Accidents* of the Sea' cannot have a narrower interpretation than 'Perils of the Sea'" (per Ld Herschell, *Wilson* v. *The Xantho*, 56 L. J. P. D. & A. 118; 12 App. Ca. 506; 57 L. T. 701; 36 W. R. 353; 6 Asp. 207).

The clause in a Charter-party excepting "Dangers and Accidents of the Sea," &c, applies only to the voyage and not to the whole Charter-party (*Smith* v. *Dart*, 54 L. J. Q. B. 121; 14 Q. B. D. 105; 52 L. T. 218; 33 W. R. 455). — Such an exception in a Bill of Lading does not limit the owner's implied warranty of seaworthiness (*The Glenfruin*, 54 L. J. P. D. & A. 49; 10 P. D. 103; 52 L. T. 769; 33 W. R. 826). *Vf*, SEAWORTHY: 1 Maude & P. 353.

V. NAVIGATION: RISKS OF THE SEA.

In a Contract of Affreightment, "the Court said that the words '*Dangers of Roads*' might be explained, by the context, to refer to Marine Roads where vessels lie at anchor, but that even supposing them to extend to roads on land, they could apply to such dangers only as were immediately caused by the condition of the roads; such for instance as the over-turning of carriages" (1 Maude & P. 353, citing *Rothschild* v. *Royal Mail Steam Packet Co*, 7 Ex. 734; 21 L. J. Ex. 273).

DATE. — "Where a deed bears no date, or an impossible date, and in the deed reference is made to the 'Date,' that word must be construed 'DELIVERY'; but if the deed bears a sensible date, the word 'Date,' occurring in the deed, means the Day of the Date, and not that of the delivery" (Elph. 123, citing *Styles* v. *Wardle*, 4 B. & C. 908; 7 D. & R. 507: *Vf*, HABENDUM: LAST PAST: Co. Litt. 46 b and Hargrave's note (8) thereon: Woodf. 160).

"Date," though sometimes used as the shortened form of "Day of the Date," is not its synonym; but means, the particular time on which an instrument is given, executed, or delivered (*Howard's Case*, 1 Raym. Ld. 480; 2 Salk. 625: *Armitt* v. *Breame*, 2 Raym. Ld. 1076: *Pewtress* v. *Annan*, 9 Dowl. 828, 834, 835). *Sv*, FROM THE DAY OF THE DATE.

The "date" of a Bill of Ex., or Note, is the date expressed on its face; not the time when it is actually issued (*Williams* v. *Jarrett*, 5 B. & Ad. 32). *Vf* AT SIGHT.

DAUGHTER. — May be construed as a word of limitation; *V.* 2 Jarm. 400 *et seq.*

"It cannot be said that the word 'Daughters' is at all more appropriate to describe illegitimate daughters, than the word 'Children' would be to describe illegitimate children" (per Wood, V. C., *Re Herbert*, 29 L. J. Ch. 870; 1 J. & H. 123). And though in *Laker* v. *Hordern* (45 L. J. Ch. 315; 1 Ch. D. 644) Bacon, V. C., held that a gift to "my daughters" meant existing illegitimate daughters, inasmuch as testator had always treated them as his daughters and had no legitimate children; yet it has been submitted that that case cannot be supported and is undistinguishable from *Dorin* v. *Dorin* (2 Jarm. 234, *n* (*o*): *Va*, *Kelly* v. *Hammond*, 26 Bea. 36. For *Dorin* v. *Dorin*, *V.* CHILDREN). *V.* SON: NEPHEW.

V. GRAND-DAUGHTER: OTHER DAUGHTERS.

DAY. — "The *Jewes*, the *Chaldeans*, and *Babylonians*, begin the day at the rising of the sun; the *Athenians* at the fall; the *Umbri* in *Italy* beginne at midday; the *Ægyptians* and *Romanes* from midnight; and so doth the law of *England* in many cases" (Co. Litt. 135 a; *Vf*, Ib. 134 b). The English Day begins as soon as the clock begins to strike twelve P. M. of the preceding day (*Williams* v. *Nash*, 28 L. J. Ch. 886; 28 Bea. 93: s. 36 (2), Interp Act, 1889). *Sv*, LAY DAYS: RUNNING DAYS.

Quà s. 9 and by its subs. 4, Housing of the Working Classes Act, 1885, "'Day,' means, the period between 6 A. M. and the succeeding 9 P. M."; so, of P. H. London Act, 1891 (s. 141); but quà P. H. Scotland Act, 1897, "'Day' and 'Daytime,' mean between 9 A. M. and 6 P. M." (s. 3).

Sometimes "Day" is defined as from 6 A. M. to 10 P. M. (8 & 9 V. c. 29, s. 2).

Vh 4 Encyc. 111.

"Daytime, within which DISTRESS for Rent must be made, is from Sunrise to Sunset (*Tutton* v. *Darke*, 5 H. & N. 647; 29 L. J. Ex. 271; 36 L. T. O. S. 361); but the Court declined to define "Sunrise" or "SUNSET"; *Svth* obs of Pollock, C. B., 5 H. & N. 654. *Vf*, BY DAY: NIGHT.

A legal day sometimes comprehends several natural days, — *e.g.* an Assize Day, Quarter Sessions Day, Term Day, Session Day of Parliament (*Doe* d. *Wrangham* v. *Hersey*, 3 Wils. 274: *Whitaker* v. *Wisbey*, 12 C. B. 44; 21 L. J. C. P. 116; 16 Jur. 411). *Vf* Beerhouse Act, 1830, s. 32.

Though, generally, Fractions of a day are not regarded (*Marks* v. *Frogley*, cited SOLDIER), yet for some purposes this may be done; *V.* *Combe* v. *Pitt*, 3 Burr. 1434: *Thomas* v. *Desanges*, 2 B. & Ald. 586: *Godson* v. *Sanctuary*, 4 B. & Ad. 263, 264: *Chick* v. *Smith*, 8 Dowl. 340: *Campbell* v. *Strangeways*, 3 C. P. D. 105; 47 L. J. M. C. 6: *Clarke* v. *Bradlaugh*, 50 L. J. Q. B. 678; 7 Q. B. D. 151.

A contract to receive a Cargo, *e.g.* of Coals, at the rate of so much "*per Day*," does not connote a greater exigency than WORKING DAY (*Harper* v. *McCarthy*, 2 B. & P. N. R. 258); but in that case a wet day was excluded from computation.

V. CLEAR: DAYS: NIGHT: LAWFUL DAY: ONE DAY: TIME: WITHOUT DAY: PASSING: PEREMPTORY.

DAY OF DATE. — *V.* DATE: FROM THE DAY OF THE DATE.

DAY OF HEARING. — This phrase in R. 104, Co. Co. Rules, 1867, which formerly regulated a demand for a jury, meant the day originally appointed for the hearing (*Fletcher* v. *Baker*, 43 L. J. Q. B. 112; L. R. 9 Q. B. 370: *R.* v. *Leeds Co. Co.*, 16 Q. B. D. 691).

V. RETURN DAY.

DAY OF NOMINATION. — "In relation to the election of County Councillors, the 'Day of Nomination' shall be deemed to be the day on which the names of the persons nominated are fixed on the Town Hall, or other conspicuous place" (Loc Gov Act, 1888, s. 100).

DAYS. — "The general rule of law is, that 'Days' mean, consecutive days, *except Sunday is the first or last day*; but in mercantile cases it is sometimes otherwise, because mercantile contracts are to be construed with reference to mercantile usage" (per Alderson, B., *Brown* v. *Johnson*, C. & M. 444). *Vf*, *Morris* v. *Barrett*, 29 L. J. C. P. 102; 7 C. B. N. S. 139: *R.* v. *Middlesex Jus.*, 17 L. J. M. C. 111.

"Where a certain number of days is to be allowed for the delivery of goods under a *Contract of Sale*, they are to be counted as consecutive days and *include Sundays*, unless the contrary be expressed, or an usage to that effect be shown. Extra day in Leap Year counts by itself and is not reckoned as one with the previous day: 42 & 43 V. c. 59" (Benj. 674, citing *Brown* v. *Johnson*, 10 M. & W. 331; 11 L. J. Ex. 373:

Cochran v. *Retberg*, 3 Esp. 121: *Vf, Hodgins* v. *Hancock*, 14 M. & W. 121. *Note.* — The statute cited repeals 40 H. 3, which provided that the extra day in Leap Year *and the day preceding* should be reckoned as one day).

There is no absolute rule, — except where the phrase is "CLEAR Days," — in computing time *from* an act or event that the day is to be inclusive or exclusive; it depends on the reason of the thing according to circumstances (*Lester* v. *Garland*, 15 Ves. 248); but the general rule may, probably, be stated to be that where anything is to be done so many days before or after something else, one day is reckoned inclusively and one exclusively (*R.* v. *West Riding Jus.*, 4 B. & Ad. 685). *Cp* FROM.

An Act of Bankry by goods seized under a *fi. fa.* being "held by the sheriff for 21 days," s. 1, Bankry Act, 1890, means, 21 whole days, and the day of seizure is excluded (*Re North*, 1895, 2 Q. B. 264; 64 L. J. Q. B. 694; 72 L. T. 854).

Application for a Case, s. 2, 20 & 21 V. c. 43, had to be made "within 3 days" after the Justices' decision (now 7 days, by the Rules under s. 33, Sum Jur Act, 1879); in that matter, though the last day is a Sunday it has to be counted (*Peacock* v. *The Queen*, 27 L. J. C. P. 224; 4 C. B. N. S. 264: — does the rule in *the* apply to the Transmission of the case? *V.* TRANSMIT). So, where Recognizance had to be entered into "within 2 days" after Notice of Appeal, Sunday, though the last day, was counted (*Ex p. Simpkin*, 29 L. J. M. C. 23). *Sv, Wynne* v. *Ronaldson*, 12 L. T. 711: *R.* v. *Middlesex Jus.*, 17 L. J. M. C. 111; 7 Jur. 396: WITHIN.

V. AT LEAST: CLEAR.

When Sunday, Christmas-day, &c are to be "excluded," — *e.g.* Parliamentary Elections Act, 1868, s. 49; Corrupt and Illegal Prac. Prev. Act, 1883, s. 40 (5); R. 3, Addl. Gen. Rules (Parliamentary), 1875, — all the Sundays, &c of a prescribed sequence of days are to be eliminated in computing them (*Southampton Case, Pegler* v. *Gurney*, 19 L. T. 647; L. R. 4 C. P. 237, 238). So, of Municipal Elections (*Howes* v. *Turner*, 45 L. J. C. P. 550; 1 C. P. D. 670).

Where by the Bills of Ex. Act, 1882, "the time limited for doing any act or thing is less than 3 days, Non-business days are excluded" (s. 92). *V.* BUSINESS DAYS.

In a Charter-Party providing for Lay-days, "the word 'Days' alone, would mean days as reckoned in each particular port" (per Esher, M. R., *Neilson* v. *Wait*, 55 L. J. Q. B. 89; 16 Q. B. D. 70). *V.* DEMURRAGE DAYS: LAY DAYS: RUNNING DAYS: WORKING DAY: WEATHER WORKING DAY.

DAYS OF GRACE. — "Where a Bill (of Exchange) is not payable On Demand the day on which it falls due is determined as follows:

(1) Three days, called *Days of Grace*, are, in every case where the Bill itself does not otherwise provide, added to the time of payment

as fixed by the Bill, and the Bill is due and payable on the last Day of Grace: Provided that

(a) When the last Day of Grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a Public Fast or Thanksgiving Day, the Bill is, except in the case hereinafter provided for, due and payable on the preceding business day;

(b) When the last Day of Grace is a Bank Holiday (other than Christmas Day or Good Friday), under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last Day of Grace is a Sunday and the second Day of Grace is a Bank Holiday, the Bill is due and payable on the succeeding business day.

(2) Where a Bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3) Where a Bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the Bill be accepted, and from the date of noting or protest if the Bill be noted or protested for non-acceptance, or for non-delivery."

(s. 14, Bills of Ex. Act, 1882): these provisions as to "Days of Grace" relate also to Promissory Notes (s. 89, Ib.).

A Right of Action does not accrue until after the expiration of the whole of the last Day of Grace, although a right to PROTEST and to give Notice of Dishonour accrues immediately on refusal of payment (*Kennedy* v. *Thomas*, 1894, 2 Q. B. 759; 63 L. J. Q. B. 761; 71 L. T. 144; 42 W. R. 641). *V.* DISHONOURED.

DAYTIME. *V.* DAY.

DE BENE ESSE. — "To take or do a thing *de bene esse*, is to allow or accept for the present till it comes to be more fully examined, and then to stand or fall according to the merit of the thing in its own nature, so that *valeat quantum valere potest*" (Cowel).

DE DONIS. — Statute de Donis; *V.* WESTMINSTER.

DE INJURIÂ. — The Replication *De Injuriâ* (more fully, *De injuriâ suâ propriâ absque tali causâ*, — "of his own wrong, and without the cause in the said last-mentioned plea alleged"), was a General Replication putting in issue, in general terms, all the material averments of the Plea. *Vh*, and as to its use, *Crogate's Case*, 8 Rep. 66 b, and notes thereto by Fraser, in his edition of the Reports, 1826: *Selby* v.

Bardons, 3 B. & Ad. 2: for an example of the Replication, *V.* Stephen on Pleading, 3 ed., 162–164.

This Replication has become obsolete since s. 79, Com. L. Pro. Act, 1852, and its utility is now supplied by the Joinder of Issue.

DEACON. — "It appertaineth to the office of a Deacon (in the Church where he shall be appointed to serve) to assist the Priest in Divine Service, and specially when he ministereth the Holy Communion and to help him in the distribution thereof, and to read Holy Scriptures and Homilies in the church; and to instruct the youth in the Catechism; in the absence of the Priest, to baptize infants; and to preach if he be admitted thereto by the Bishop. And furthermore, it is his office (where provision is so made) to search for the Sick, Poor, and Impotent people of the parish, and to intimate their estates, names, and places where they dwell unto the CURATE, that by his exhortation they may be relieved with the alms of the parishioners or others" (Church of Eng., Ordination Service): "Curate" here means the Rector, or Vicar, who has the Cure of Souls (Phil. Ecc. Law, 109, *whvf* hereon). *Cp* SUBDEACON.

DEAD. — Where there is a gift over to a prescribed CLASS on the death of a Tenant for Life, and that is followed by a gift over to the same Class — on the bankruptcy of the tenant for life "in the same manner as if he was *naturally* dead," — this divesting would, it seems, rather apply to the Tenant for Life than to the Class, so that the period for ascertaining the Class would not be accelerated, and members of the Class coming into being after the bankruptcy would be entitled to participate (*Re Bedson*, 54 L. J. Ch. 644; 28 Ch. D. 523: *Vthc, Blackman* v. *Fysh*, 60 L. J. Ch. 671).

V. DEATH: DIE: DECEASED.

DEAD BODY. — Leaving a living child in a secret place to die from exposure or want, is not a "SECRET DISPOSITION of the *Dead Body*" of the Child within s. 60, 24 & 25 V. c. 100 (*R.* v. *May*, 31 J. P. 356). *V.* DISPOSE OF, at end.

V. CADAVER.

DEAD FREIGHT. — "The term 'Dead FREIGHT' denotes an agreed sum to be paid in respect of space not filled according to charter, or damages provided for by a charter, in the event of the freighter not loading a full cargo" (1 Maude & P. 389, citing *Birley* v. *Gladstone*, 3 M. & S. 205: *Phillips* v. *Rodie*, 15 East, 547: *Pearson* v. *Göschen*, 17 C. B. N. S. 352; 33 L. J. C. P. 265: *Vf, McLean* v. *Fleming*, L. R. 2 Sc. & D. App. 128, considered in, *Gray* v. *Carr*, 40 L. J. Q. B. 257; L. R. 6 Q. B. 522: *Clink* v. *Radford*, cited CEASE).

DEAD RENT. — Dead RENT in a mining lease is "a rent payable whether the mines be worked or not" (Woodf. 411). *Vf* Copinger & Munro on Rents, 19, 20.

DEAD STOCK. — *V.* LIVE AND DEAD STOCK.

DEAD WALL. — "Where a WALL is without any house or building behind it and is merely intended to fence off or separate the road from the space of ground by the side of it having no windows or doors, that, I think, is a 'Dead Wall,' within the meaning of the Act" (per Maule, J., *Arnell* v. *Lond. & N. W. Ry*, 12 C. B. 718; the Act was a Local Paving Act in which "Dead Wall" was scarcely, if at all, affected by its context).

DEAD WEIGHT. — A guarantee by a Shipowner of a Ship's carrying capacity being so much "Dead WEIGHT," is a guarantee of the vessel's carrying capacity with reference to the contemplated VOYAGE, and the description of the CARGO proposed to be shipped, so far as that description was made known to the owner" (per Ld Macnaghten, *Mackill* v. *Wright*, 14 App. Ca. 120: *Sv, Carnegie* v. *Conner*, cited CARGO).

Oral evidence may be received to show the force of this phrase (*Cunningham* v. *Dunn*, 3 C. P. D. 443; 48 L. J. C. P. 62).

DEAD YEAR. — *V.* YEAR.

DEAF. — Quâ Elementary Education (Blind and Deaf Children) Act, 1893, 56 & 57 V. c. 42, "'Deaf,' means, too deaf to be taught in a class of hearing children in an elementary school" (s. 15).

DEAL IN. — "Shall have dealt in"; *V.* PREVIOUSLY.

DEAL WITH. — Where Tonnage was imposed upon coals brought into a district and was payable before the owner "sells, delivers, or *deals with*," them; held, that coals brought into the district for the owner's own use were liable to the tax (*N. E. Ry* v. *Kingston-upon-Hull*, 55 J. P. 518; 7 Times Rep. 302; following *Wilson* v. *Kingston-upon-Hull*, 14 W. R. 638).

"In any way deal, or transact business, with"; *V. Mills* v. *Dunham*, cited CUSTOMER.

Where a consequence follows on an alleged Offence being "dealt with" by a competent tribunal, that provision does not only apply when there has been a Conviction, it equally applies if the charge is dismissed (*Ex p. Brown*, 37 S. J. 27). *V.* SUMMARILY.

DEALER. — *V.* DEALING.

"Dealer in Gold, or Silver, Wares"; Stat. Def., s. 14, 7 & 8 V. c. 22.

"Dealer in Marine Stores," "Dealer in Old Metals"; *V.* s. 3, 25 & 26 V. c. 64; s. 3, 27 & 28 V. c. 91; s. 3, 30 & 31 V. c. 119; s. 3, 30 &

31 V. c. 128. The first def of "Dealer in Old Metals" is given in s. 3, Old Metal Dealers Act, 1861, 24 & 25 V. c. 110, to which the subsequent defs refer, and which also defines "Old Metals" as the articles therein enumerated. *Vf*, s. 538, Mer Shipping Act, 1894.

"Dealer in Tobacco"; *V.* RETAILER.

DEALING. — "I take it that the strict definition of 'dealing' is 'distributing.' A Dealer is one who distributes" (per Alderson, B., *Allen* v. *Sharp*, 17 L. J. Ex. 212), or, in other words, one who trades, buys, or sells (*Berks* v. *Bertolet*, 13 Penn. St. 524).

Any person on unlicensed premises "for the purpose of *illegally dealing in* Intoxicating Liquor," s. 17, 37 & 38 V. c. 49, includes a Buyer as well as a Seller (*McKenzie* v. *Day*, 1893, 1 Q. B. 289; 62 L. J. M. C. 49; 68 L. T. 345; 41 W. R. 384; 57 J. P. 216).

"Conduct, Dealings, and Property"; *V.* CONDUCT.

V. CONTRACT: TRADE: MUTUAL: ORDINARY COURSE.

DEAN. — A Dean holds a DIGNITY in the Church without Cure of Souls, and may sometimes be a Corporation Sole (1 Bl. Com. 469): he is generally the head of a Corporation Aggregate with a CHAPTER (Ib.). "A Dean and Chapter are the council of the Bishop, to assist him with their advice in the affairs of religion, and also in the temporal concerns of his See" (Ib. 382). *Vf*, Phil. Ecc. Law, Part 2, ch. 4: Grant on Corporations, 581. *Cp* RURAL DEAN.

Stat. Def., 35 & 36 V. c. 8, s. 2.

"Dean and Chapter of Truro"; *V.* 50 & 51 V. c. 12, s. 2.

"Dean of Guild"; *Scot.* 18 & 19 V. c. 88, s. 36.

DEAR: DEARLY-BELOVED. — As to the value of these expressions in devises, for the purpose of preventing a Resulting Trust to the heir; *V.* 1 Jarm. 570.

V. BELOVED WIFE.

DEAR SIR. — "Dear Sir," at the commencement of a letter sent to one of the contracting parties and which letter contains the terms of a Contract, will be read as the Name of that party so as to be a good NOTE of the Contract if the letter is enclosed in an envelope addressed to such party (*Pearce* v. *Gardner*, 1897, 1 Q. B. 688; 66 L. J. Q. B. 457; 76 L. T. 441; 45 W. R. 518).

DEATH. — Where a life interest is to cease on the re-marriage or re-cohabitation, or bankry, of the Tenant for Life, or other event, and there is a gift over which (by an imperfection of language) is expressed to take effect on the happening of one or more of those events, the gift over is read as taking effect at the termination of the life interest by either event, or by the death of the tenant for life (*Luxford* v. *Cheeke*, 3 Lev.

125: *Jones* v. *Westcomb*, 1 Eq. Ca. Ab. 245; Pr. Ch. 316: *Bainbridge* v. *Cream*, 16 Bea. 25: *Joel* v. *Mills*, 3 K. & J. 467: *Brown* v. *Hammond*, Johns. 210: *Wardroper* v. *Cutfield*, 33 L. J. Ch. 605; 12 W. R. 458: *Eaton* v. *Hewitt*, 2 Dr. & Sm. 184; 7 L. T. 496: *Underhill* v. *Roden*, 45 L. J. Ch. 266; 2 Ch. D. 494: *Re Stanford*, 56 L. J. Ch. 273; 34 Ch. D. 362; 55 L. T. 765; 35 W. R. 191: 1 Jarm. 802–804). *Note.* — These cases were followed doubtingly by Stirling, J., in *Re Tucker*, 56 L. J. Ch. 449; 56 L. T. 118; 35 W. R. 344; and, willingly, by Kay, J., in *Re Dear*, 58 L. J. Ch. 659, and *Re Cane*, 60 L. J. Ch. 36: — *Semble*, the application of the rule (itself a strong step originally) depends on each context, *V. Re Tredwell*, 1891, 2 Ch. 640; 60 L. J. Ch. 657; 65 L. T. 399; *Svthc, Jackson* v. *Battley*, 36 S. J. 516, 521. *Vf, Re Akeroyd*, 1893, 3 Ch. 363; 63 L. J. Ch. 32. *Scarborough* v. *Scarborough* (58 L. T. 851) shows that *Pile* v. *Salter* (5 Sim. 411) is now of very little authority.

V. WIDOW.

A gift to two or more equally for life and "*on their deaths*," over; means, that the gift over does not take effect till the death of the survivor of the life beneficiaries; and that, on the death of either of them, the income thereby set free goes to the survivors or survivor until the death of the last survivor (*Re Buller*, 74 L. T. 406: *Pearce* v. *Edmeades*, 3 Y. & C. 246).

Presumption of Death; *V.* PRESUMPTION.

"In case of death"; *V.* Chitty, Eq. Ind. 8055, 8056.

Death "by Poison"; *V.* POISON.

V. DEAD: DIE: DIE WITHOUT ISSUE: AT: AT HIS DEATH: AT THEIR DEATH: CIVIL DEATH: MORTALITY: PASSING: VENIAL.

DEATH DUTIES. — Stat. Def., Finance Act, 1894, s. 13 (3).

DEBATES. — *V.* QUARRELS.

DEBENTURE. — This word seems to have originated from "Debentur mihi," with which various old forms of Acknowledgments commenced (per Chitty, J., *Levy* v. *Abercorris Co*, 57 L. J. Ch. 204; 37 Ch. D. 260; 36 W. R. 411). In a previous case (*Edmonds* v. *Blaina Co*, 56 L. J. Ch. 817; 36 Ch. D. 215; 57 L. T. 139; 35 W. R. 798), the same learned judge said, "So far as I am aware, the term 'Debenture' has never received any precise legal definition. It is, comparatively speaking, a new term. I do not mean a new term in the English language, because there is a passage in Swift (quoted in Latham's Dictionary), where the term 'Debenture' is used." "Debenters" were, on the 24th Dec 1647, ordered to be given to the "Souldiery" of the Parliament for the arrears of their pay (cap. 113, Ordinances of the Long Parliament, printed in Scobell's Collection, p. 148, where, in the *Title* to the Ordinance, the word is spelt "Debentures"). "Debenture" is also used in the Act of Oblivion, 12 Car. 2, c. 11, s. 15, and in 41 G. 3, c. 75,

s. 7. *Vf*, for still earlier use of this word, Palmer Co. Prec. Part 3, p. 1 *et seq.*

"No one seems to know exactly what 'Debenture' means" (Buckl. 192, citing *British India Steam Nav. Co* v. *Inl. Rev.*, 50 L. J. Q. B. 517; 7 Q. B. D. 165, in *whc* Grove, J., said, —this is "a word which has no definite signification in the present state of the English language": *Re Florence Land Co, Ex p. Moor*, 48 L. J. Ch. 137; 10 Ch. D. 530). It should rather be said that no one has yet laid down an exhaustive definition of a Debenture. The *British India Steam Nav. Co's* case shows that it is not true to say that a Debenture is necessarily an obligation under seal, or a charge on any property. *Faute de mieux*, it is suggested that, a Debenture is a written Obligation or Acknowledgment in an impersonal form, and with conditions more elaborate than those of a Promissory Note, given by or for a Corporation or a Company to secure a sum of money. Thus, in the *British India Steam Nav. Co's* case, Lindley, J., said, —"Now, what the exact meaning of 'Debenture' is I do not know. I do not find any particular definition of it, and we know that there are various classes of instruments called 'Debentures.' You may have Mortgage Debentures, which are charges of some kind on property; you may have Debentures which are Bonds; you may have a Debenture which is nothing more than an Acknowledgment of debt; you may have an instrument, like this, which is something more — it is a statement by two Directors that a Company will pay. I think any instruments of that sort may be Debentures." So, in *Brown* v. *Inl. Rev.* (64 L. J. M. C. 211), Charles, J., said, —"A Debenture, though never, I believe, legally defined, is included under one or other of the three descriptions laid down by Bowen, L. J., in *English & Scottish Trust* v. *Brunton* (1892, 2 Q. B. 700; 62 L. J. Q. B. 136), as, —'(1) a simple Acknowledgment under Seal of the debt; (2) an Instrument acknowledging the debt and charging the property of the Co with repayment; (3) an Instrument acknowledging the debt, charging the property of the Co with repayment, and further restricting the Co from giving any prior charge.'"

A Covering Deed by a Co would seem to be a "Debenture" within the exception in s. 17, Bills of Sale Act, 1882 (per Kay, J., *Ross* v. *Army & Navy Hotel Co*, 55 L. J. Ch. 697; 34 Ch. D. 43; 35 W. R. 40: dissenting from decision of Field, J., in *Brocklehurst* v. *Railway Printing Co*, W. N. (84) 71: *Va*, per North, J., *Richards* v. *Kidderminster*, 1896, 2 Ch. 212; 65 L. J. Ch. 502; 44 W. R. 505); and the Debentures based on such a deed would be within the section (*Ross* v. *A. & N. H. Co*, sup). An Agreement charging *the Undertaking* in favour of certain therein-named persons *pari passu* (*Edmonds* v. *Blaina Co*, 56 L. J. Ch. 815; 36 Ch. D. 215; 35 W. R. 798), or in favour of an individual (*Levy* v. *Abercorris Co*, 57 L. J. Ch 202; 37 Ch. D. 260; 36 W. R. 411), is within the exception. *Edmonds* v. *Blaina Co* and *Levy* v. *Abercorris*

Co were approved in *Re Standard Manufacturing Co* (1891, 1 Ch. 627; 60 L. J. Ch. 292), which also over-ruled *Jenkinson* v. *Brandley Co* (19 Q. B. D. 568), and determined that s. 17, Bills of S. Act, 1882, is not restricted to Debentures of a Co *ejusdem generis* with "Mortgage, or Loan" Companies, but includes the Debentures of any Incorporated Co. *Va, Welsted* v. *Swansea Bank*, 5 Times Rep. 332: *Read* v. *Joannon*, 59 L. J. Q. B. 544; 25 Q. B. D. 500. A Charge on specific goods is not a Debenture (*Re Cunningham*, 28 Ch. D. 682; 33 W. R. 387).

Vf, Topham v. *Greenside Co*, 57 L. J. Ch. 583; 36 W. R. 464; 37 Ch. D. 281; 58 L. T. 274: BILL OF SALE: COMPANY.

Note. For present provisions as to registration of a Co's Debentures, *V.* Comp Act, 1900, s. 14.

Quà Land Debentures (Ir) Act, 1865, 28 & 29 V. c. 101, "'Debenture,' means, a Debenture charged upon land under this Act" (s. 3).

Vh, Manson on Debentures: Cavanagh on Money Securities, ch. 27: 4 Encyc. 142–153: INTEREST IN LAND.

In Ireland it has been held that a Policy on the life of a debtor would pass, under a Will, as a "Debenture" (*Phillips* v. *Eastwood*, L. & G. t. Sug. 270; 1 Jarm. 770); but, in England, Debenture Stock (into which Debentures had, since the Will, been converted) was held not to pass under bequest of "all MY Debentures in the A. Ry" (*Re Lane*, 49 L. J. Ch. 768; 14 Ch. D. 856; cited with approval by Kay, J., *Re Gray*, 36 Ch. D. 210; but not regarded as satisfactory by FitzGibbon, L. J., in *Dillon* v. *Arkins*, 17 L. R. Ir. 639). *Vf* SHARE.

A Trustee's Power of Investment in "Debentures or Debenture Stock" of any Ry or other Co, includes "any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875" (s. 5 (3), Trustee Act, 1893). By subs. 5 of that section, a Power of Investment in the "Shares, Stock, Mortgages, Bonds, or Debentures," of any Incorporated Co, includes Mortgage Debentures "duly issued under, and in accordance with, the provisions of the Mortgage Debenture Act, 1865." *V.* MORTGAGE.

DEBENTURE STOCK. — *V.* Part III., Comp C. Act, 1863, 26 & 27 V. c. 118: *Vh*, per James, L. J., *Attree* v. *Hawe*, 47 L. J. Ch. 866; 9 Ch. D. 349, explained *Re Bodman*, 1891, 3 Ch. 135; 61 L. J. Ch. 31; 65 L. T. 522; 40 W. R. 60: *Re Mersey Ry*, 1895, 2 Ch. 287; 64 L. J. Ch. 625; 72 L. T. 735.

Quà Ry Comp Securities Act, 1866, 29 & 30 V. c. 108, "'Debenture Stock,' includes, Mortgage Preference Stock and Funded Debt, and any Stock or Shares representing Loan Capital of a Ry Co, by whatever name called" (s. 2).

Under a bequest of "Debenture Stock or Shares" in a Co, Debentures will pass if the testator has no Debenture Stock (*Re Nottage*, 1895, 2 Ch. 657; 64 L. J. Ch. 695; 73 L. T. 265; 44 W. R. 22).

V. SHARE: STOCK.

DEBT. — A "Debt" is a sum payable in respect of a Liquidated Money Demand, recoverable by action (*Rawley* v. *Rawley*, 1 Q. B. D. 460; 45 L. J. Q. B. 675): the word can but seldom be construed to include Damages for Breach of Covenant (*Wilson* v. *Knubley*, cited SPECIALTY: *Sv*, *Varlo* v. *Faden*, cited DEBTS: *Westcott* v. *Hodges*, 5 B. & Ald. 12). *V.* LIQUIDATED DEMAND.

But in s. 4, Bills of Sale Act, 1878, "Debt" is not confined to an existing debt; *V.* AUTHORITY OR LICENSE. So, a CONTINGENT Debt may be included in the word "debt" (*Mortimore* v. *Inl. Rev.*, cited DEFINITE).

A JDGMT DEBT "is the highest of all Debts" (per Watson, B., *Hodsoll* v. *Baxter*, E. B. & E. 885), and may be specially indorsed on a Writ (*Grant* v. *Easton*, 13 Q. B. D. 302; 53 L. J. Q. B. 68).

Money payable under an Order of the Court of Chancery, was held a "Debt," within s. 113, Bankry Act, 1849 (*Lees* v. *Newton*, L. R. 1 C. P. 658; 35 L. J. C. P. 285).

A Married Woman's "debts contracted by her BEFORE MARRIAGE," s. 19, M. W. P. Act, 1882, are not confined to Common Law debts but, include debts contracted by her during a previous coverture, and for which only her then Separate Estate was liable (*Jay* v. *Robinson*, 59 L. J. Q. B. 367; 25 Q. B. D. 467; 63 L. T. 174; 38 W. R. 550).

A CALL on Shares is not a Debt until actually made (*Re Kershaw*, 45 Ch. D. 320; 60 L. J. Ch. 9; 63 L. T. 203; 39 W. R. 23).

A DIVIDEND declared by a Co, is, after its due date, a Debt from the Co to the Shareholder (*Re Severn, &c Ry*, 1896, 1 Ch. 559; 65 L. J. Ch. 400; 74 L. T. 219; 44 W. R. 347).

Interest which could only be given by way of Damages, is not a "Debt" within s. 92, 1 & 2 V. c. 110 (*Ex p. Charman*, W. N. (87) 184: *Sv*, *Bermingham* v. *Burke*, 9 Ir. Eq. Rep. 86).

Costs of Execution are not part of "the Debt *owing*" within s. 6 (1 *a*), Bankry Act, 1883 (*Salisbury* v. *Ray*, 8 C. B. N. S. 193; 29 L. J. C. P. 225: *Re Long*, 57 L. J. Q. B. 360; 20 Q. B. D. 316; 58 L. T. 664; 36 W. R. 346).

"Debts due, or growing due, to the bankrupt IN THE COURSE of his Trade or Business," s. 44 (2, iii), Bankry Act, 1883; *V. Wilmot* v. *Alton*, cited DEBTS DUE.

"Debt *provable* in Bankruptcy"; *V. Hardy* v. *Fothergill*, 13 App. Ca. 351; 58 L. J. Q. B. 44; 37 W. R. 177; 59 L. T. 273; *Vthc*, *Re Midland Coal Co*, 1895; 1 Ch. 267; 64 L. J. Ch. 279; 71 L. T. 705; 43 W. R. 244: *Seaton* v. *Deerhurst*, 1895, 1 Q. B. 853; 64 L. J. Q. B. 430; 72 L. T. 453; 43 W. R. 436. *Vh*, *Buckwell* v. *Norman*, 1898, 1 Q. B. 622; 67 L. J. Q. B. 435; 78 L. T. 248; 46 W. R. 339: DEBT OR LIABILITY: LIABILITY: CERTAIN TIME: Bankry Act, 1883, s. 168.

"All Debts *Owing or Accruing*," s. 61, Com. L. Pro. Act, 1854, — R. 1, Ord. 45, R. S. C.; — to obtain a Garnishee Order under this phrase

there must be (1) a "Debt"; but (2) it may be either "Owing *or* Accruing."

1. *Johnson* v. *Diamond* (24 L. J. Ex. 217; 11 Ex. 73) is the first case on this phrase; and it was there held that money that might become payable under a Bond of Indemnity is not a "Debt." This case well illustrates the principle of what is a "Debt" within the phrase, viz. a liquidated money obligation for which, speaking generally, an action will lie (*Webster* v. *Webster*, 31 Bea. 393), but which obligation may be either legal or equitable (per Lindley, L. J., *Webb* v. *Stenton*, 52 L. J. Q. B. 588; 11 Q. B. D. 518; 48 L. T. 268); but for a Debt to be garnished it must be due to the judgment debtor alone, and not to him jointly with some other person (*Macdonald* v. *Tacquah Co*, 53 L. J. Q. B. 376; 13 Q. B. D. 535; 32 W. R. 760).

Therefore, neither of the following is a "Debt" within the phrase; — Damages, though after verdict, until judgment obtained (*Jones* v. *Thompson*, 27 L. J. Q. B. 234; E. B. & E. 63): verdict on a Marine Policy (*Dresser* v. *Johns*, 28 L. J. C. P. 281; 6 C. B. N. S. 429): amount of a Presentment allowed by a Grand Jury in Ireland (*Cassin* v. *Shortall*, Ir. Rep. 11 C. L. 157): unascertained claim on a Fire Policy (*Randall* v. *Lithgow*, 53 L. J. Q. B. 518; 12 Q. B. D. 525), or on a Notice to Treat under Lands C. C. Act, 1845 (*Richardson* v. *Elmit*, 2 C. P. D. 9): Moneys in the hands of a County Court Registrar (*Dolphin* v. *Layton*, 48 L. J. C. P. 426; 4 C. P. D. 130), or of a Clerk of the Peace (*D'Arcy* v. *Carragher*, 18 L. R. Ir. 317: *Sv*, 20 Ib. 189), or of the Police (*Jervis* v. *Peel*, 1 Times Rep. 206), or of a Trustee in Bankruptcy (*Boyse* v. *Simpson*, 8 Ir. Com. Law Rep. 523: *Hunter* v. *Greensill*, 42 L. J. C. P. 55; L. R. 8 C. P. 24), or of a Trustee for the benefit of the debtor's Crs (*Roberts* v. *Jones*, 61 L. J. Q. B. 523; 66 L. T. 617; 40 W. R. 573), or of a Liquidator (*Mack* v. *Ward*, W. N. (84) 16), or of a Mortgagee as the surplus of a sale of the mortgaged property (*Chatterton* v. *Watney*, 50 L. J. Ch. 535; 17 Ch. D. 259; 44 L. T. 391): Moneys payable on a contingency (*Howell* v. *Metrop. Dist. Ry*, 51 L. J. Ch. 158; 19 Ch. D. 508; 45 L. T. 707: *Richardson* v. *Elmit*, sup): Rent, or instalments of an Annuity, not yet due (*Jones* v. *Thompson*, sup; *Sv*, as to Annuities, *Nash* v. *Pease*, 47 L. J. Q. B. 766): Trust income not in the hands of the Trustees (*Webb* v. *Stenton*, sup: *V.* espy jdgmt Lindley, L. J., over-ruling *Re Cowan*, 49 L. J. Ch. 402; 14 Ch. D. 638): an Apportioned Part of current Rent (*Barnett* v. *Eastman*, 67 L. J. Q. B. 517): Salary or Pension not yet payable (*Hall* v. *Pritchett*, 47 L. J. Q. B. 15; 3 Q. B. D. 215: *Booth* v. *Trail*, 53 L. J. Q. B. 24; 12 Q. B. D. 8; 49 L. T. 471; 32 W. R. 122). The Half-pay of an Army Officer (*Birch* v. *Birch*, 52 L. J. P. D. & A. 88; 8 P. D. 163: *Lucas* v. *Harris*, 18 Q. B. D. 127), or an Annual Gratuity from the East India Company under s. 93, 53 G. 3, c. 155 (*Innes* v. *East India Co*, 25 L. J. C. P. 154; 17 C. B. 351), or a Custom-house or Revenue Officer's Superannuation (45 & 46 V. c. 72, s. 3), or the Wages of Seamen (17 &

18 V. c. 104, s. 233), or Workmen (33 & 34 V. c. 30), are not attachable at all; nor are moneys held for a married woman who is restrained from anticipation (*Chapman* v. *Biggs*, W. N. (83) 92).

But, speaking generally, "money in the hands of a man who cannot refuse to pay it somehow or another, is a 'Debt,' and if so, it can be attached" (per Coleridge, C. J., *Booth* v. *Trail*, sup). Therefore, the over-due Superannuation allowance of a retired Police Constable (*Booth* v. *Trail*), or County Court Judge (*Willcock* v. *Terrell*, 3 Ex. D. 323), or Civil Servant (*Sansom* v. *Sansom*, 48 L. J. P. D. & A. 25; 4 P. D. 69), or a commutation of a pension (*Crowe* v. *Price*, 22 Q. B. D. 429), are "Debts" and attachable. So is over-due Rent (*Mitchell* v. *Lee*, 36 L. J. Q. B. 154; L. R. 2 Q. B. 259); or an ascertained amount due on a Guarantee (*Bouch* v. *Sevenoaks, &c Ry*, 48 L. J. Ex. 338; 4 Ex. D. 138); or proceeds of a Call on Shareholders, when made to provide for a debt due to the judgment debtor (*Ex p. Turner*, 2 D. G. F. & J. 354). So, money deposited for a special purpose is, after the death of the depositor, a Debt owing to his exors, even though the depositee have an independent cross-claim against the depositor (*Stumore* v. *Campbell*, 1892, 1 Q. B. 314; 61 L. J. Q. B. 463; 66 L. T. 218; 40 W. R. 101).

But a Garnishee Order does not make the Garnishor a "Creditor" of the Garnishee (*Re Combined Weighing Co*, cited CREDITOR), and therefore the amount garnished is not a "Debt" due to the garnishor which, in his hands, may be garnished (*Cooper* v. *Lawson*, 6 Times Rep. 34).

As to whether a Legacy can be attached, *V. Vyse* v. *Brown*, 13 Q. B. D. 199; Chitty's Arch., 14 ed., 929; and *V.* Ib. 930 as to whether money in the hands of a Sheriff can be attached, but *Cp, Dolphin* v. *Layton*, sup. As to when cheque has been given for the debt sought to be attached, *V. Cohen* v. *Hale*, 3 Q. B. D. 371; 47 L. J. Q. B. 496: *Elwell* v. *Jackson*, 1 Times Rep. 454.

2. The phrase an "Accruing" Debt, was much discussed in *Webb* v. *Stenton* (sup: *V.* espy jdgmt Brett, M. R.). That case and *Jones* v. *Thompson*, much referred to in it, show that an "Accruing" does not mean a future debt, or one that very probably will soon arise. "It must be something which the law recognizes as a 'Debt'" (per Brett, M. R., *Webb* v. *Stenton*). It must therefore be "debitum in præsenti"; but it may be "solvendum in futuro," and then it is an "Accruing" debt. Accordingly an actually existing debt, payable by instalments, not yet due, is an "Accruing Debt" and attachable (*Tapp* v. *Jones*, 44 L. J. Q. B. 127; L. R. 10 Q. B. 591). It seems a little difficult to reconcile with the reasoning of that case, the Irish decision that money secured by a current Promissory Note is not attachable as an "Accruing Debt" (*Pyne* v. *Kinna*, 11 Ir. Rep. C. L. 40).

Vh, Ann. Pr.: 1 Encyc. 398–400.

"*Action for the recovery* of any Debt," s. 6, 7 & 8 V. c. 96; *V. Thomas* v. *Hudson*, 14 L. J. Ex. 283; 14 M. & W. 353.

"Debt or Incumbrance AFFECTING the land," in respect of which money paid in under s. 69, Lands C. C. Act, 1845; *V. Re Derby Municipal Estates*, 3 Ch. D. 289.

"Debt contracted after the PASSING" of the Act; *V.* CONTRACTED. Stat. Def., Debtors Act (Ir), 1872, 35 & 36 V. c. 57, s. 4, *whva* for "Debt contracted before the Passing."

"Debt incurred by Fraud or Breach of Trust"; *V.* BREACH OF TRUST.

"Debt of Honour"; *V.* HONOUR.

V. DEBTS: DEBTS DUE: DUE: SUM CERTAIN: CERTAIN TIME: ATTACHMENT FOR DEBT: AUTHORITY OR LICENSE: INCOME: CREDITOR: CIVIL DEBT: OFFENCE.

DEBT, CLAIM, OR DEMAND.—S. 1, 22 & 23 V. c. 49; *V. R.* v. *Stepney*, 43 L. J. M. C. 145; L. R. 9 Q. B. 383: *West Ham* v. *St. Matthew, Bethnal Green*, 1896, A. C. 477; 65 L. J. M. C. 201: *Manchester S. & L. Ry* v. *Doncaster*, 1897, 1 Q. B. 117; 66 L. J. Q. B. 75; 75 L. T. 472; 45 W. R. 82; 62 J. P. 819:—S. 4, Ib., *V.* COMMENCEMENT.

A Receipt for any "Debt, Account, Claim, or Demand," quâ Stamp Act, 1815, did not include a legal claim for Unliquidated Damages (*Boyle* v. *Brandon*, 13 M. & W. 738).

DEBT, DEFAULT, OR MISCARRIAGE.—A special promise "to answer for the Debt, Default, or Miscarriage, of ANOTHER," to be binding, has to be in writing (s. 4, Statute of Frauds). It is submitted that these words, "(1) Debt, (2) Default, or (3) Miscarriage," mean, (1) Actual Present Debt, (2) Default in the performance of a present or future Duty, whether contractual or otherwise, or (3) Wrongful Act, entailing civil responsibility.

1. "Debt," means, a DEBT already contracted (*Read* v. *Nash*, 1 Wils. 305: per Ellenborough, C. J., *Castling* v. *Aubert*, 2 East, 330, 331) by the other person.

2. "Default," means, Default in the performance of a present or future Duty, whether contractual or otherwise. "If there was a contract with reference to a liability,—not existing at the time by reason of the debt not being due at the time but being payable *in futuro*,—that would come under the word 'Default,' and there would be no difficulty about that" (per Willes, J., *Mountstephen* v. *Lakeman*, L. R. 7 Q. B. 202; 41 L. J. Q. B. 75; on app. L. R. 7 H. L. 17; 43 L. J. Q. B. 188). But "default," in the section, also applies "to a promise to answer for another with respect to the non-performance of a Duty, though not founded upon a contract" (per Holroyd, J., *Kirkham* v. *Marter*, 2 B. & Ald. 617), *e.g.* a promise to indemnify one who has become bail for a third person (*Green* v. *Cresswell*, 10 A. & E. 453; 9 L. J. Q. B. 63):

Va, Birkmyr v. *Darnell*, 1 Salk. 27; 1 Sm. L. C. 334; nom. *Bourkmire* v. *Darnell*, 3 Salk. 15; nom. *Buckmyr* v. *Darnall*, 2 Raym. Ld. 1085; nom. *Burkmire* v. *Darnel*, Holt, 606; nom. *Burkmire* v. *Darnell*, 6 Mod., 5 ed., 248: DEFAULT.

3. "Miscarriage," means, a Wrongful Act, entailing civil responsibility. In the extract from the jdgmt of Holroyd, J., in *Kirkham* v. *Marter* (sup) he classed "Miscarriage" with "Default"; but it is submitted that that reading tends to make "Miscarriage" redundant, whereas the full phrase seems to appropriate each of its three substantives to its separate meaning. This is brought out in the jdgmt of Abbott, C. J., in *Kirkham* v. *Marter*, as follows, — "The word 'Miscarriage' has not the same meaning as the word 'Debt' or 'Default'; it seems to me to comprehend that species of wrongful act for the consequence of which the law would make the party civilly responsible. The wrongful riding the horse of another without his leave and thereby causing its death, is clearly an act for which the party is responsible in damages; and, therefore, in my judgment falls within the meaning of 'Miscarriage.'"

Vh, generally, 1 Sm. L. C. 334: De Colyar on Guarantees, ch. 2: Add. C. Book 2, ch. 4, s. 1: Chitty on Contracts, ch. 17: Leake, 209: Rosc. N. P. 476–482: GUARANTEE: I WILL SEE YOU PAID.

DEBT OR LIABILITY. — Alimony is not a "Debt or Liability" within s. 37, Bankry Act, 1883 (*Linton* v. *Linton*, 54 L. J. Q. B. 529; 15 Q. B. D. 239: *Re Hawkins*, 1894, 1 Q. B. 25). *Vf*, DEBT: LIABILITY: CREDITOR.

Giving a Bill or Note for an existing debt, or giving a new Bill or Note for an old one, is "incurring" a "Debt or Liability" within s. 13 (1), Debtors Act, 1869 (*R.* v. *Pierce*, 56 L. J. M. C. 85; 56 L. T. 532; 51 J. P. 790).

Married Woman's "Debts and other Liabilities," s. 4, M. W. P. Act, 1882; *V. Re Ann*, 1894, 1 Ch. 549; 63 L. J. Ch. 334; *Vthc*, per Kekewich, J., *Re Hughes*, cited FEME.

V. INCAPABLE.

DEBT UPON RECORD. — Crown Dues recoverable "as a Debt upon Record," *e.g.* Assessed Taxes under 5 & 6 W. 4, c. 20, s. 13, must be recovered by Scire Facias, Extent, or Information; not in a popular action of Debt (*A-G.* v. *Sewell*, 4 M. & W. 77; 7 L. J. Ex. 245).

DEBTOR. — The power to examine a "Debtor" as to what debts were due to him (s. 60, Com. L. Pro. Act, 1854) did not extend to a Corporation, to which, obviously, an oath could not be administered (*Dickson* v. *Neath & Brecon Ry*, 38 L. J. Ex. 57; L. R. 4 Ex. 87. But now, *V.* R. 32, Ord. 42, R. S. C.).

"Debtor," s. 4, Bankry Act, 1883; *V. Exp. Blain*, 5 Morr. 111: *Re Pearson*, 1892, 2 Q. B. 263; 61 L. J. Q. B. 585; 67 L. T. 367: *Re A. B. & Co*, 1900, 1 Q. B. 541; 69 L. J. Q. B. 375; 82 L. T. 169; affd in H. L. nom. *Cooke* v. *Vogeler*, 70 L. J. Q. B. 181: *Re Clark*, 1896, 2 Q. B. 476; 65 L. J. Q. B. 684: Wms. Bank. 2. Probably, not only quà that section but throughout the Act, "Debtor," means, a Debtor subject to the Bankry Laws in England. Thus, neither the doctrine of Reputed Ownership (*Gorringe* v. *Irwell Works*, 56 L. J. Ch. 85; 34 Ch. D. 128), nor the direction in s. 46 (2), that the Sheriff is to retain the proceeds of a *fi. fa.* for fourteen days (*Re Withernsea Brickworks*, 50 L. J. Ch. 185; 16 Ch. D. 337; 43 L. T. 713: *Cp* PUT IN FORCE), is applicable to a Co incorporated under Comp Act, 1862.

"Debtor," R. 52, Ord. 25, Co. Co. Rules, 1889, includes a married woman (*Aylesford* v. *G. W. Ry*, 1892, 2 Q. B. 626; 41 W. R. 42).

Stat. Def. — Judgments Act, 1864, 27 & 28 V. c. 112, s. 2. — *Scot.* 2 & 3 V. c. 41, s. 3; 10 & 11 V. c. 50, s. 14; 19 & 20 V. c. 79, s. 4; 31 & 32 V. c. 101, s. 3; 57 & 58 V. c. 44, s. 18.

"Deceased Debtor's Estate"; *V.* DECEASED.

"GOODS of a Debtor" taken in execution, s. 11, Bankry Act, 1890, does not include the goods of a debtor which, by s. 1, Landlord and Tenant Act, 1709, 8 Anne, c. 18, are impounded until the landlord is paid, and whose claim the sheriff is justified in paying (*Re Mackenzie*, 1899, 2 Q. B. 566; 68 L. J. Q. B. 1003; 81 L. T. 214).

DEBTS. — "The expression in a Will, 'all my *just* Debts,' includes all the testator's debts whenever and wherever contracted, and therefore includes a debt contracted by him after the making of the Will, and contracted in a country other than that of his domicil, and secured upon property in that country" (Wms. Exs. 1584, citing *Maxwell* v. *Maxwell*, L. R. 4 H. L. 506; 39 L. J. Ch. 698). It also includes all Liabilities which the testator's personal estate would be liable to discharge (*V. Lomas* v. *Wright*, 2 My. & K. 769; 3 L. J. Ch. 68: *Stone* v. *Parker*, 1 Dr. & Sm. 212; 29 L. J. Ch. 874: *Alsop* v. *Bell*, 24 Bea. 469), including unliquidated damages for a breach of covenant (*Bermingham* v. *Burke*, 9 Ir. Eq. Rep. 86). And would not the construction be the same if the word "just" were omitted?

"Debts," directed by a testator to be paid out of Residue, do not include rent of, or damages for dilapidations to, Leaseholds specifically bequeathed (*Hawkins* v. *Hawkins*, 13 Ch. D. 470).

"Just Debts," in a Will of a woman married before M. W. P. Act, 1882; *V. Re De Burgh Lawson*, 41 Ch. D. 568; 58 L. J. Ch. 561; 37 W. R. 797.

The term "Debts," or "Just Debts," includes a Mortgage Debt; and therefore a testamentary direction to pay "Debts," or "Just Debts,"

would include a mortgage debt in exoneration of the mortgaged property but for s. 1, 30 & 31 V. c. 69, which section has entirely done away with that reasoning (*Re Newmarch*, 48 L. J. Ch. 28; 9 Ch. D. 12, espy jdgmt of Jessel, M. R.). *V.* SUBJECT TO.

"Debts," in Finance Act, 1894; *V.* MONEY'S WORTH.

Under a bequest of "Debts," a Bank Balance, and a Bill of Exchange deposited at the bankers, will pass (*Carr* v. *Carr*, 1 Mer. 541, *n*: *Parker* v. *Marchant*, 12 L. J. Ch. 387; 1 Phill. 356); and so will an unascertained residuary personal estate to which the testator may be entitled at his decease (*Bainbridge* v. *Bainbridge*, 7 L. J. Ch. 4; 9 Sim. 16). The reasoning of the last case would seem to support the statement, that a share of a residuary estate, or a legacy, to which a testator may be entitled at his decease, would pass under a bequest by him of "Debts." The bequest of a debt due on a particular security will pass only the principal, not arrears of interest (*Hamilton* v. *Lloyd*, 2 Ves. 416). *Vf* Wms. Exs. 1064.

Although Damages recovered for breach of covenant are not a DEBT, within 3 & 4 W. & M. c. 14 (*Wilson* v. *Knubley*, 7 East, 128), yet such damages are within a testamentary charge of "Debts" on Realty (*Morse* v. *Tucker*, 5 Hare, 79; 15 L. J. Ch. 162). So, the liability to such damages has to be provided for in an Administration Action (*Fletcher* v. *Stevenson*, 3 Hare, 360; 13 L. J. Ch. 202), and such a liability is within 3 & 4 W. 4, c. 104, charging realty of a deceased person with his "Debts" (*Ex p. Hamer*, 2 D. G. M. & G. 366; 21 L. J. Ch. 832), and is also within the exception from the Accumulations Act, 1800, 39 & 40 G. 3, c. 98, by s. 2 whereof Accumulations may be made for payment of "Debts" (*Varlo* v. *Faden*, 1 D. G. F. & J. 211; 29 L. J. Ch. 230; 27 Bea. 255), and which exception applies as well to the debts of the grantor as to those of third persons (*Barrington* v. *Liddell*, 2 D. G. M. & G. 480; 22 L. J. Ch. 1).

"The expression 'Debts *due*' is sometimes used in bankry proceedings to include all demands which can be proved against a bankrupt's estate, although some of them may not be strictly debts at all" (per Mellish, L. J., *Ex p. Kempe*, 43 L. J. Bank. 52; 9 Ch. 383). *V.* DEBTS DUE: IN THE COURSE.

The Preferential payments in Bankry over "all other Debts," s. 1, 51 & 52 V. c. 62, have not priority over a bankrupt's property comprised in a security, because the security prevents the property from being assets in the bankry until the creditor's claim thereon has been satisfied (*Richards* v. *Kidderminster*, 1896, 2 Ch. 212; 65 L. J. Ch. 502; 74 L. T. 483; 44 W. R. 505).

"Debts," s. 97, Administration and Probate Act (Victoria), 1890; *V.* *Master in Equity, Victoria* v. *Pearson*, 13 Times Rep. 105: REAL ESTATE, last par.

V. BOOK DEBTS: DEBT: MUTUAL.

DEBTS DUE. — This phrase in s. 18 (1, 8), Bankry Act, 1883, means, all claims to which a debtor is liable and which are provable in his bankry (*Flint* v. *Barnard*, 58 L. J. Q. B. 53; 22 Q. B. D. 90: *Vh, Ex p. Kempe*, 9 Ch. 383; 43 L. J. Bank. 50). *V.* DEBTS: LIABILITY: FAIRLY ESTIMATED.

"Debts due, or growing due," s. 44 (iii), Bankry Act, 1883, do not include a Claim which is not yet a DEBT but may become a debt (per Russell, C. J., *Wilmot* v. *Alton*, 45 W. R. 12, 113; 65 L. J. Q. B. 669; 66 Ib. 42; 1896, 2 Q. B. 254; 1897, 1 Q. B. 17).

Bequest of "Debts Due"; *V. Essington* v. *Vashon*, 3 Mer. 434: *Williams* v. *Williams*, 2 Bro. C. C. 87: *Devaynes* v. *Noble*, 1 Mer. 541: *Maybery* v. *Brooking*, 25 L. J. Ch. 87; 7 D. G. M. & G. 673; 4 W. R. 155: Theobald, 179.

Sale of "Debts due"; *V.* PAYMENT.

V. DUE: PAYABLE.

DECEASE. — *V.* DIE.

DECEASED. — "Deceased person," or "The deceased," quà Part 1, Finance Act, 1894, means, a person dying after 1st Aug 1894 (ss. 22 (1 *a*), 24). "The deceased," s. 19, Finance Act, 1896, means the same as "deceased person" in s. 24, *i.e.* a person dying after 1st July 1896 (*Re Gibbs*, 1898, 1 Ch. 625; 67 L. J. Ch. 282; 78 L. T. 289; 46 W. R. 477).

A "Deceased *Debtor's Estate*," s. 125 (5), Bankry Act, 1883, comprises only such property as was his at the time of his death; therefore, it does not comprise property which the debtor has voluntarily settled and which, if he were a living bankrupt, might be avoided under s. 47 (*Re Gould*, 56 L. J. Q. B. 333; 19 Q. B. D. 92), nor the proceeds of an execution retained by the sheriff under s. 11 (2), Bankry Act, 1890 (*Watkins* v. *Barnard*, 1897, 2 Q. B. 521; 66 L. J. Q. B. 771; 46 W. R. 156); nor does s. 45, Bankry Act, 1883, apply to aid such an Estate (*Hasluck* v. *Clark*, 1899, 1 Q. B. 699; 68 L. J. Q. B. 486; 80 L. T. 454; 47 W. R. 471).

V. DEAD.

DECEIT. — "'Deceit,' *deceptio, fraus, dolus*, Is a subtle, wily shift or device, having no other name: hereto may be drawn all manner of craft, subtilly, guile, fraud, wiliuesse, slight, cunning, covin, collusion, practice, and offence used to deceive another man by any means, which hath none other proper or particular name but OFFENCE" (Cowel: *Vf, Pasley* v. *Freeman*, cited NAKED). *Cp*, COSENING: COVINE: FRAUD: CHEAT.

DECEIVE. — It is hardly possible for any one now-a-days, to tell FORTUNES for money, without also intending "to *deceive or impose*,"

within s. 4, 5 G. 4, c. 83 (*Penny* v. *Hanson*, 18 Q. B. D. 478; 56 L. J. M. C. 41; 56 L. T. 235; 35 W. R. 379; 51 J. P. 167; 16 Cox C. C. 173; 3 Times Rep. 409).

V. CALCULATED TO DECEIVE.

DECERN. — A Scotch equivalent for "DECREE" (30 & 31 V. c. 101, s. 3; 60 & 61 V. c. 38, s. 3).

DECIDE. — "If my Trustees shall decide" to sell; *V. Minors* v. *Battison*, 1 App. Ca. 428; 46 L. J. Ch. 2.

An Appeal may be "decided," quà an Order for Costs, though dismissed for want of jurisdiction (*R.* v. *Padwick*, 8 E. & B. 704; 27 L. J. M. C. 113).

"To be decided"; *V.* GENERAL LINE OF BUILDINGS.

Party "decided against"; *V. Tobin* v. *Cleary*, Ir. Rep. 8 C. L. 366.

DECISION. — The "Decision" of a Local Authority, referred to in s. 268, P. H. Act, 1875, means its demand for payment of the expenses therein referred to (*R.* v. *Loc Gov Bd*, 52 L. J. M. C. 4; 10 Q. B. D. 309). *Vf*, as to this section, Note to 2nd par. DISPUTE.

"Cause of Appeal," s. 269 (2), P. H. Act, 1875, has the same meaning as "Decision *of the Court*" in subs. 1 of the same section (*R.* v. *Barnet*, 45 L. J. M. C. 105; 1 Q. B. D. 558).

"Decision *or Order*" of a Co. Co. in Bankry, R. 143, Bankry Rules, 1870, was perfect, quà Appeal, when pronounced (*Ex p. Hookey*, 4 D. G. F. & J. 456: *Ex p. Whitton, Re Greaves*, 13 Ch. D. 881; 49 L. J. Bank. 31).

"Decision" is a popular, and not a technical, word, and means little more than a concluded opinion. It does not, by itself, amount to JUDGMENT, or ORDER (s. 19, Jud. Act, 1873); as used in s. 29, Loc Gov Act, 1888, a "Decision" is an exercise of a consultative jurisdiction, and is not appealable (*Re Dover and Kent Co. Co.*, 1891, 1 Q. B. 725; 60 L. J. Q. B. 435; 65 L. T. 213; 39 W. R. 465; 55 J. P. 647).

A decision by Friendly Socy Arbitrators, until set aside, remains a "Decision" within s. 22 (*d*), 38 & 39 V. c. 60, notwithstanding misconduct by the arbitrators (*Bache* v. *Billingham*, 1894, 1 Q. B. 107; 63 L. J. M. C. 1; 69 L. T. 648; 42 W. R. 217; 58 J. P. 181). *V.* DISPUTE.

DECK. — *V.* FROM THE DECK.

"Deck Cargo at Merchant's Risk"; *V. Diederichsen* v. *Farquharson*, cited CONDITIONS AS PER CHARTER-PARTY.

Quà Part 3, Mer Shipping Act, 1894 (unless the context otherwise requires), "'*Upper* Passenger Deck,' shall mean and include, the Deck immediately beneath the Upper Deck, or the Poop or Round-house and Deck-house when the number of passengers, whether cabin or

STEERAGE PASSENGERS, carried in the Poop Round-house or Deck-house exceeds one third of the total number of steerage passengers which the ship can lawfully carry on the deck next below; and

" '*Lower* Passenger Deck,' shall mean and include, the Deck next beneath the Upper Passenger Deck, not being an Orlop Deck " (s. 268, subss. 5, 6).

DECLARATION. — In all Acts of Parliament, " '*Statutory* Declaration,' shall, unless the contrary intention appears, mean a Declaration made by virtue of the Statutory Declarations Act, 1835 " (s. 21, Interp Act, 1889). *Cp*, OATH.

" Declarations," s. 3 (6), Conv & L. P. Act, 1881, means, Statutory Declarations (per Kay, L. J., *Re Stuart and Seadon*, 1896, 2 Ch. 328; 65 L. J. Ch. 576).

" Declaration," quà Drainage (Ir) Act, 1846, 9 & 10 V. c. 4, means, " the declaration required to be made by the Commrs previously to the commencement of any Works under " 5 & 6 V. c. 89, 8 & 9 V. c. 69, or that Act (s. 44). *V.* DRAINAGE.

" Declaration of TRUST," " is usually taken to include any form of words, — whether spoken or written, and, if written, whether under hand only or under seal, — whereby an intention is effectually manifested, by the person or persons entitled to give effect to such intention, that certain specified property, whether real or personal, shall be held and used or applied by the person or persons in whom the title thereto at Law is vested, for the benefit, — either simply and absolutely, or in a specified and restricted manner, — of some other person or persons " (4 Encyc. 158). *Cp*, DISPOSITION: GIFT.

" Declaration of USE," " in its common acceptation, differs in two respects from the closely analogous phrase 'Declaration of Trust': (1) The word 'Use' is restricted to refer only to Real Estate, whereas 'Trust' is extended to all kinds of property; and (2) 'Use' was of common occurrence in times when there existed no method by which the moral rights and claims of the CESTUI que Use could be enforced, whereas the word 'Trust,' when employed *in pari materiâ* with 'Use,' has always contained within it a necessary implication that the rights and claims of the Cestui que Trust would be enforced in Courts of Equity, and now, since the coming into operation of the Jud. Act, 1873, in Courts of Law also. Moreover, since the Statute of Uses, the word 'Use' has been commonly restricted to denote Uses which are capable of being executed into Legal Estates by the statute " (4 Encyc. 159, 160). *Vf* 4 Cru. Dig. 118.

DECLARE. — In order to " declare such Admixture," s. 3, 35 & 36 V. c. 74, it is sufficient to state that the article, *e.g.* mustard, is not sold as pure; it is not necessary to specify the nature and proportion of

the substances admixed (*Pope* v. *Tearle*, 43 L. J. M. C. 129; L. R. 9 C. P. 499).

"Where a person by deed 'declares' that he will do a thing, it amounts to a covenant by him to do it" (Elph. 426, citing *Richardson* v. *Jenkins*, 1 Drew. 477).

Where a Co's Articles prohibit a Director from being INTERESTED IN a contract unless he "declare *his* interest" therein, that means, that he must declare, "not merely the existence of *an* interest but, the nature of that interest" (per Ld Chelmsford, *Imperial Credit Assn* v. *Coleman*, L. R. 6 H. L. 200; 42 L. J. Ch. 644).

V. AGREED AND DECLARED: ACKNOWLEDGE: PRECATORY TRUST.

DECLARED. — *V.* HEREAFTER VALUED AND DECLARED: HEREIN.

DECLARING THE RIGHTS. — "Judgment or Order Declaring the Rights," R. 2 (1), Ord. 55, R. S. C.; — *V. Rolls* v. *Rolls*, 30 S. J. 201: *Re Brandram*, 25 Ch. D. 369; 53 L. J. Ch. 331: *Re Rhodes*, 31 Ch. D. 499: *Bates* v. *Moore*, 38 Ch. D. 381: *Re Evans*, 54 L. T. 527.

DECLINING TRUSTEE. — A person may be a "Declining Trustee" as well after having acted as if he has never accepted the trust (*Travis* v. *Illingworth*, 34 L. J. Ch. 664; 2 Dr. & Sm. 344: *Vh* Lewin, 777). And the better opinion is that the phrase "if any Trustee shall *refuse* or *decline*" includes also one who disclaims (Lewin, 777; *Sv* Ib. 766, 767). *Cp* CONTINUING TRUSTEE.

It has been held that a payment of the trust money into Court under the Trustee Relief Act, stamps the trustee with the character of a "Refusing or Declining Trustee" (Lewin, 777, citing *Re Williams*, 4 K. & J. 87); *Va* RETIRING TRUSTEE.

DECORATION. — *V.* MILITARY DECORATION.

DECORATIVE REPAIR. — *V.* TENANTABLE REPAIR.

DECREE. — A Decree is the final ORDER of a Court in a Suit, *e.g.* prior to the Jud. Act, 1873, a Chancery Decree. "Decree" closely resembles, but is not identical with, "JUDGMENT." "The final decision of a Divorce proceeding is termed a 'Decree'; the proceeding itself is usually styled a 'CAUSE,' or 'SUIT.'" . . . "In strict language the Decree is not called a 'Judgment,' nor is the Suit called an 'ACTION'" (per Kay, L. J., *Re Binstead*, cited FINAL JUDGMENT). *Vf* 4 Encyc. 167–171.

Stat. Def. — *Scot.* 19 & 20 V. c. 56, s. 47; 30 & 31 V. c. 126, s. 3; 55 & 56 V. c. 17, s. 3; 60 & 61 V. c. 38, s. 3. — *Ir.* 11 & 12 V. c. 28, s. 18; 27 & 28 V. c. 99, s. 3.

"Decree or Order" whereby property, "upon the SALE thereof, is

transferred to, or vested in, a Purchaser," — and therefore liable to *ad val.* Duty "as a CONVEYANCE on Sale," s. 54, Stamp Act, 1891, — includes an Extract of Decree, within s. 8, Heritable Securities (Scot) Act, 1894, 57 & 58 V. c. 44, because such a Decree transfers or vests the property irredeemably in the Creditor having security thereon; and it does so in the prescribed mode which is equivalent to a Sale (*Inl. Rev.* v. *Tod*, 1898, A. C. 399; 67 L. J. P. C. 42; 78 L. T. 571). In that case counsel stated that *ad val.* Duty on a Foreclosure Decree had never been demanded, but Ld Macnaghten replied that there was no analogy between an English Foreclosure Decree and a Scotch Extract of Decree, and added, in his jdgmt, "I think it better, at present, to say nothing about it." Now, by s. 6, Finance Act, 1898, "Conveyance on Sale" includes a Foreclosure Order, the *ad val.* Duty being on the value of the property as stated in the Order.

No Appeal unless amount "decreed or ordered" exceeds £50, s. 31, 31 & 32 V. c. 71; *V. The Fyenoord*, 34 L. T. 918.

DEDICATION. — As to what is a sufficient Dedication of a HIGHWAY; *V. R.* v. *Hawkhurst*, 7 L. T. 268; 26 J. P. 724.

DEDUCE. — "If we are to examine the word critically, it is quite clear that when you speak of deducing a TITLE, as meaning to express either the delivery of the abstract or showing the deeds, it is not altogether an appropriate expression or strictly correct. *The deducing the Title*; — the appropriate use of that expression would be this: I deduce my title from my great-grandfather; I do not deduce my title by sending you a document or by showing you the deeds. By sending you the abstract and showing you the deeds, I show you *how* I deduce my title; but according to the strict meaning of the words 'Deducing the Title,' it is stating from whom or from what source the party draws forth his Title" (per Kindersley, V.C., *Oakden* v. *Pike*, 34 L. J. Ch. 622; 13 W. R. 673). But the practical meaning of the phrase is, to draw out and exhibit the Title by an abstract, and to prove the abstract by showing the documents (*Southby* v. *Hutt*, 2 My. & C. 213). *V.* ABSTRACT.

The *ad val.* fee to Solicitors for "Deducing Title," and perusing and completing conveyance (Sch 1, Part 1, Solrs Rem Ord) is payable if those three things are done, although the Solicitor may not have prepared the contract (per Fry, L. J., *Re Lacey*, 53 L. J. Ch. 289; 25 Ch. D. 301; 32 W. R. 233; 49 L. T. 755: *Vf, Re Read*, 1894, 3 Ch. 238; 63 L. J. Ch. 831; 71 L. T. 189; 42 W. R. 601). There is no "Deducing Title" where purchaser gives notice that he requires no Abstract and accepts the vendor's title (*Re Lacey*, sup), or where in fact no title is shown to the purchaser (*Re Harris, Powell* v. *Goodale*, 56 L. T. 477; 31 S. J. 365); *e.g.* where, on a sale of Leaseholds by the original lessee, there is a short statement of the dates and particulars of the leases with

a reference to a general form containing the covenants (*Welby* v. *Still*, 1894, 3 Ch. 641; 63 L. J. Ch. 931; 71 L. T. 426; 43 W. R. 73).

Cp INVESTIGATING TITLE.

DEDUCTION. — "The Court always holds that *Income Tax* is not a Deduction" (per Wood, V. C., *Turner* v. *Mullineux*, 1 J. & H. 334). In a contract touching the payment of taxes charged on premises, the incidence of the Income Tax cannot be shifted, not even in the case of an annuity which is payable "clear of all taxes and assessments" (ss. 73, 103, Income Tax Act, 1842: *A-G.* v. *Shield*, 28 L. J. Ex. 49; 3 H. & N. 834). But Wills are not mentioned in the sections just mentioned; and therefore in a Will it is competent, by apt words, to exonerate income from Income Tax (*Festing* v. *Taylor*, 32 L. J. Q. B. 41). *Note.* By some such cumbersome machinery as that indicated by Kekewich, J., *Re Parker-Jervis* (1898, 2 Ch. 652; 67 L. J. Ch. 686), provision, even in a Settlement, may be made for an Annuity to be paid clear of Income Tax.

There are 2 classes of cases in reference to the question as to when a phrase in a Will, or an Act of Parliament, giving an annuity without "deduction," will exonerate the annuitant from Income Tax: —

1. When the word "Deduction" is associated and construed with the word "Taxes":

2. When not.

1. A devise of a life interest in real estate accompanied with a direction to the Trustees "to pay and defray all taxes, parliamentary, parochial, or otherwise, affecting" the same; held, that the Trustees were bound to pay the Income Tax (*Lovat* v. *Leeds*, 31 L. J. Ch. 503; 2 Dr. & Sm. 62). *V.* AFFECTING.

So a rent-charge payable to A. B. "without any deduction or abatement whatsoever on account of any taxes, charges, or assessments, already or to be hereafter taxed, charged, assessed, or imposed on the hereditaments or the said rent-charge, or the said A. B. in respect thereof by the authority of Parliament or otherwise however," is payable free of Income Tax (*Festing* v. *Taylor*, 3 B. & S. 217, 235; 31 L. J. Q. B. 36; 32 Ib. 41; 10 W. R. 246; 11 Ib. 70).

So too ot an annuity or CLEAR yearly sum given "free from all deductions in respect of any present or future taxes, charges, assessments, or impositions, or other matter, cause, or thing, whatsoever" (*Re Bannerman*, 51 L. J. Ch. 449; 21 Ch. D. 105).

So, too, Bacon, V. C., held that a testamentary gift of "a clear annual income" from which "no deduction shall be made for the legacy tax or any other matter, cause, or thing, whatsoever," was payable free of Income Tax (*Peareth* v. *Marriott*, 51 L. J. Ch. 821: *Sythe* considered inf).

Yet, where a Charity was incorporated by a special Act at a time when

Income Tax was not payable, which Act directed an annual salary to be paid to the Chaplain "without deduction or abatement for taxes," Byrne, J., held that the Wardens of the Charity were bound to deduct the Income Tax subsequently imposed by the Income Tax Act, 1842 (*Lund* v. *Liverpool School for Indigent Blind*, 1898, 2 Ch. 669; 67 L. J. Ch. 680; 79 L. T. 68; 47 W. R. 6; 62 J. P. 728).

2. But as was observed by Kay, J., in *Gleadow* v. *Leetham* (inf), in all the three first named cases "the word 'deduction' was construed by the word 'taxes' which was associated with it." It is difficult to understand how that principle, or the case of *Wall* v. *Wall* (inf) can be reconciled with *Peareth* v. *Marriott*, (sup); for the only mention of taxes in *Peareth* v. *Marriott* was "Legacy Tax," which is scarcely *ejusdem generis* with Income Tax, and was moreover there used in reference not only to the annuity but also to ordinary legacies; whilst in *Wall* v. *Wall*, "Taxes" was the controlling word in the clause. With the exception, however, of *Peareth* v. *Marriott*, the cases on this subject seem well to branch out into the two classes laid down in *Gleadow* v. *Leetham*. When *Peareth* v. *Marriott* went before the Court of Appeal on another point, the determination of which precluded the necessity of deciding the point now under discussion, at the end of his judgment Jessel, M. R., threw out a dictum from which it may be gathered that he considered the words in the Will in that case did *not* exonerate from income tax (52 L. J. Ch. 221; 22 Ch. D. 182). Assuming that dictum to be correct, *Peareth* v. *Marriott* would no longer form an exception, but would range amongst the cases here grouped in Class 2.

In *Wall* v. *Wall* (15 Sim. 513; 16 L. J. Ch. 305) a gift of an annuity to testator's widow "CLEAR of all taxes and deductions," was held not exonerated from income tax, the maxim of the V. C. being "the thing that is given is the thing that is to pay the tax."

So, too, of an annuity to testator's widow "free from legacy duty and other deductions" (*Sadler* v. *Rickards*, 4 K. & J. 302).

So, too, of an annuity "clear of every deduction," or "clear of legacy duty and every other deduction whatsoever," or "without any deduction for legacy duty or otherwise" (*Lethbridge* v. *Thurlow*, 15 Bea. 334; 21 L. J. Ch. 538).

So, too, of an annuity "payable without any deduction whatsoever" (*Abadam* v. *Abadam*, 33 Bea. 475; 33 L. J. Ch. 593; 12 W. R. 615).

So, too, of an annuity to testator's widow of a "clear yearly sum," "to be paid free from all deductions and abatements whatsoever" (*Gleadow* v. *Leetham*, 22 Ch. D. 269; 52 L. J. Ch. 102).

But an exception to the principle of the cases in Class 2 is where the testator has used the word "deduction," or a similar expression, with an obvious meaning that it should include and exonerate an annuitant from Income Tax, in which case the annuity would be exonerated (*Turner* v. *Mullineux*, sup; *whcv* explained in *Gleadow* v. *Leetham*, sup: *Vf*, *Re*

Buckle, 1894, 1 Ch. 286; 63 L. J. Ch. 330; 70 L. T. 115; 42 W. R. 229).

Legacy Duty is a Deduction (36 G. 3, c. 52, s. 6: *Barksdale* v. *Gilliat*, 1 Swanst. 562: *Smith* v. *Anderson*, 4 Russ. 352; 6 L. J. O. S. Ch. 105: *Vf*, *Stow* v. *Davenport*, 5 B. & Ad. 359: *Re De Hoghton*, 1896, 1 Ch. 855; 64 L. J. Ch. 590; 65 Ib. 528), and so is a rateable part of ESTATE DUTY under s. 14 (1), Finance Act, 1894 (*Re Parker-Jervis*, 1898, 2 Ch. 643; 67 L. J. Ch. 682; 79 L. T. 403: *Re Maryon-Wilson*, 1900, 1 Ch. 565; 69 L. J. Ch. 310; 82 L. T. 171; 48 W. R. 338): but

Succession Duty is not. And therefore where a person covenanted to pay, within twelve months after his death, £10,000 "free from all deductions whatsoever," only that sum was payable, and the payees, if any one, had to provide for the Succession Duty (*Re Higgins*, 55 L. J. Ch. 235; 31 Ch. D. 142; 54 L. T. 199; 34 W. R. 81). *V.* FREE FROM INCUMBRANCES.

As to what expressions will exempt Legatees from payment of Legacy Duty, *Vf*, CLEAR: *n* (*p*), 1 Jarm. 186, 187: Watson Eq. 1345, 1346.

A JOINTURE "free from all Taxes and Deductions, except Property Tax and Legacy or Succession Duty," exempts the Jointuress from an apportionment of Estate Duty under s. 14, Finance Act, 1894, — the phrase being an "EXPRESS Provision" exonerating her within that section, for it contains an exhaustive description of the taxes and deductions to which the jointure would be liable (*Fitzhardinge* v. *Jenkinson*, 80 L. T. 376); and the same conclusion was reached where a Settlement (dated 1861) provided for a Jointure "without any deduction whatsoever, except in respect of Income Tax" (*Re Parker-Jervis*, sup).

"Free from all Deductions whatsoever, except Land Tax," in an Inclosure Act, did not include Corn Rent (*Mitchell* v. *Fordham*, 6 B. & C. 274: *Sv*, *Chatfield* v. *Ruston*, cited OUTGOING).

What are allowable "Deductions" under s. 17, Coal Mines Regn Act, 1872, 35 & 36 V. c. 76; *V. Bourne* v. *Netherseal Co*, 57 L. J. Q. B. 306; 20 Q. B. D. 606; 36 W. R. 405; 52 J. P. 453; affd 14 App. Ca. 228.

Reducing a Seaman's wages because he has been disrated for misconduct, is not a "Deduction" within s. 171, Mer Shipping Act, 1854, repld s. 132, Mer S. Act, 1894 (*The Highland Chief*, 1892, P. 76; 61 L. J. P. D. & A. 51; 66 L. T. 468).

Deductions from Wages, quà the Truck Acts; *V.* PAYMENT: MATERIALS: CONTRACT TO SUPPLY: *Willis* v. *Thorp*, cited OTHER: and hereon, Truck Act, 1896, ss. 1, 2, 3.

V. TAXES: OUTGOING: LEGACY: SPECIFIC: INCUMBRANCE.

DEED. — "'*A Deed*,' *factum*. This word (deed) in the understanding of the Common Law is an instrument written in parchment or paper, whereunto ten things are necessarily incident, viz. First, writing. Secondly, in parchment or paper. Thirdly, a person able to contract.

Fourthly, by a sufficient name. Fifthly, a person able to be contracted with. Sixthly, by a sufficient name. Seventhly, a thing to be contracted for. Eighthly, apt words required by law. Ninthly, sealing. And tenthly, DELIVERY. A deed cannot be written upon wood, leather, cloath, or the like, but onely upon parchment or paper, for the writing upon them can be least vitiated, altered, or corrupted" (Co. Litt. 35 b). As to the 9th of the above requirements (Sealing) it would seem that wax or a wafer must be used (*Vh, National Prov. Bank of England* v. *Jackson*, 33 Ch. D. 1); a mere circle enclosing the words "L. S." (place for Seal) is insufficient (*Re Balkis Co*, 36 W. R. 392; 58 L. T. 300; 4 Times Rep. 204). To a Deed Poll, the 5th and 6th of the above requirements would not be applicable; indeed in *Goddard's Case* (2 Rep. 5) it is laid down that "there are but three things of the essence and substance of a Deed, — (1) Writing, on paper or parchment, (2) Sealing, and (3) Delivery" (*Va* Termes de la Ley, *Fait*). And so in old Pleading "Deed" "implies the ensealing and delivery" (*Maidwell* v. *Andrews*, 1 Leon. 310). A Deed imports a CONSIDERATION; *V.* Broom's Maxims, 7 ed., 570.

A Contract is not essential to a Deed; and, therefore, a Power of Attorney under Seal to transfer government stock is a "Deed" within 2 G. 2, c. 25 (*R.* v. *Lyon*, 2 Russ. Cr. 745: *R.* v. *Fauntleroy*, 2 Bing. 413). "Deed" "is clearly not confined to Contracts" (per Bovill, C. J., *R.* v. *Morton*, L. R. 2 C. C. R. 27); but, observe, that in that case, and on the same page of the report, Blackburn, J., said, "The definition of a Deed cited from Spelman seems to me the best," *i.e.* "*Scriptum solemne quo firmatur donum, concessio, pactum, contractus, et hujusmodi*" (Spelm. *Factum*). At any rate, where the phrase is "any Deed, Bond, or Writing Obligatory," s. 20, Forgery Act, 1861, it does not include a Letter of Orders under the seal of a Bishop, but is limited to something which passes a pecuniary interest (*S. C.* L. R. 2 C. C. R. 22; 42 L. J. M. C. 58; 21 W. R. 629; 28 L. T. 452).

As to the difference between an INDENTURE and a Deed POLL, *V.* Co. Litt. 229 a, *Vth*, 2 Bl. Com. 295: Wms. R. P. 125: 8 & 9 V. c. 106, s. 5.

Vh, 4 Cru. Dig.: 4 Encyc. 171–175. *Cp*, INSTRUMENT.

"Deed," in Scotch Conveyancing; Stat. Def., 8 & 9 V. c. 35, s. 10; 21 & 22 V. c. 76, s. 36; 23 & 24 V. c. 143, s. 2; 31 & 32 V. c. 101, s. 3; 37 & 38 V. c. 94, s. 3.

"*Deed or Conveyance*," *e.g.* in a clause prescribing mode of transfer of shares, is probably a synonym for the same thing, so that the transfer would have to be effected by deed (*Hibblewhite* v. *M'Morine*, 6 M. & W. 200; 9 L. J. Ex. 217: *Société Générale de Paris* v. *Walker*, 13 App. Ca. 20).

Deed "*not otherwise charged*"; *V. Clayton* v. *Burtenshaw*, 5 B. & C. 41; 7 D. & R. 800: *Wilson* v. *Smith*, 12 M. & W. 401; 13 L. J. Ex. 113.

"Deed *or Writing*," "Deed, or Note in Writing"; *V.* IN WRITING: INSTRUMENT IN WRITING.

"Deed of *Arrangement*"; Stat. Def., Deeds of Arrangement Act, 1887, 50 & 51 V. c. 57, s. 4; 51 & 52 V. c. 51, s. 4; 53 & 54 V. c. 24, s. 4.

Cp SCHEME.

"Deed *of Entail*"; *Scot.* 31 & 32 V. c. 101, s. 3.

"Deed *of Settlement*," quà Comp (Mem of Assn) Act, 1890, "includes any Contract of Copartnery, or other instrument, constituting or regulating the company, and not being an Act of Parliament, a Royal Charter, or Letters Patent" (s. 3). A Deed of Settlement constituting a Co, though modified by Act of Parliament, remains an instrument "not being an Act of Parliament" within that def (*Re Reversionary Interest Socy*, 1892, 1 Ch. 615; 61 L. J. Ch. 379; 66 L. T. 460; 40 W. R. 389).

Note. — A Deed or other Writing, except a TESTAMENT, speaks from its EXECUTION (*V.* FROM HENCEFORTH).

DEEMED. — *V. De Beauvoir* v. *Welch*, 7 B. & C. 278.

Chairman's declaration of result of voting "shall be deemed" conclusive, s. 51, Comp Act, 1862; *V. Young* v. *S. African Co*, cited CONCLUSIVE EVIDENCE.

When a thing is to be "deemed" something else, it is to be treated as that something else with the attendant consequences, but it is not that something else (per Cave, J., *R.* v. *Norfolk Co. Co.*, 60 L. J. Q. B. 380); therefore, an ATTORNMENT, within s. 6, Bills of Sale Act, 1878, and which thereby "shall be deemed to be a BILL OF SALE," requires registration to perfect its validity as though it were a Bill of S., but it is not a Bill of S. and, therefore, need not be (indeed it could not be) IN ACCORDANCE WITH THE FORM prescribed by s. 9, Bills of S. Act, 1882 (*Green* v. *Marsh*, 1892, 2 Q. B. 330; 61 L. J. Q. B. 442; 66 L. T. 480; 40 W. R. 449; 56 J. P. 839).

"Deemed to be Liquidated Damages"; *V. Lawrence* v. *Willcocks*, cited LIQUIDATED DAMAGES.

"When a statute enacts that something should be 'deemed' *to have been done* which, in fact and truth, was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to" (per James, L. J., *Ex p. Walton*, 50 L. J. Ch. 662; 17 Ch. D. 756); and, therefore, where s. 23, Bankry Act, 1869, provided that on Disclaimer in bankry of an ONEROUS Lease it should "be DEEMED TO HAVE BEEN SURRENDERED," the meaning was that, such "deemed surrender" was only operative as between the Lessor and the Bankrupt and his estate, without prejudice to the Lessor's rights against any other person under or by virtue of the Lease (*S. C.*).

DEEMED TO BELONG. — *V.* jdgmt of Coleridge, C. J., *Milnes* v. *Huddersfield*, 53 L. J. Q. B. 12; 12 Q. B. D. 443.

DEEMED TO HAVE BEEN SURRENDERED. — S. 23, Bankry Act, 1869; *V.* DEEMED: *Hill* v. *E. & W. India Dock Co*, 9 App. Ca. 448; 53 L. J. Ch. 842; 51 L. T. 163; 32 W. R. 925; 48 J. P. 788; *Vth*, *Re Cock, Ex p. Shilson*, 20 Q. B. D. 346.

DEEMED TO PASS. — *V.* PASSING.

DEFACE. — If a cab-driver's employer (or any one else) writes on the driver's License anything, whether true or false, other than the particulars required by s. 8, 6 & 7 V. c. 86, he "defaces" the license within that section (*Hurrell* v. *Ellis*, 15 L. J. C. P. 18; 2 C. B. 295: *Rogers* v. *Macnamara*, 23 L. J. C. P. 1; 14 C. B. 27: *Norris* v. *Birch*, 1895, 1 Q. B. 639; 64 L. J. M. C. 91; 72 L. T. 491; 43 W. R. 271; 11 Times Rep. 172); and, if prejudicial and done by the employer, it is a "Matter of Complaint" within s. 22 (*Norris* v. *Birch*, sup).

DEFAMATION. — *V.* LIBEL: SLANDER.

Note. The jurisdiction of the Ecclesiastical Courts in suits for Defamation was taken away by PHILLIMORE'S ACT.

DEFAULT. — "*Default* is a French word, and *defalta* is legally taken for non-appearance in Court" (Co. Litt. 259 b). *Vf*, DEPARTURE.

"I do not know a larger or looser word than 'Default.' Abstracted from other words, What does it mean? In the expressions 'Judgment by Default,' and 'a Juror making Default,' we understand it differently. In its largest and most general sense it seems to mean, 'Failing'" (per Eyre, C. J., *Doe* d. *Dacre* v. *Dacre*, 1 B. & P. 258, in *whc* that large sense was adopted quà "In default of such SONS," on *whv*, *Andrew* v. *Andrew*, inf).

"'Default' would seem to embrace every failure by the defendant to perform his contract unless prevented by superior force over which he had no control, such as stress of weather" (per Fitzgerald, J., *Caffarini* v. *Walker*, 9 Ir. Rep. C. L. 437), or unless hindered by the plaintiff's non-performance of some condition precedent (*Randall* v. *Thorn*, W. N. (78) 150), or unless there has been a waiver of performance, which waiver (in the case of an obligation to pay money) may be by parol though the obligation be under seal (*Albert* v. *Grosvenor Investment Co*, 37 L. J. Q. B. 24; L. R. 3 Q. B. 123; 8 B. & S. 664; *Svthc*, *Williams* v. *Stern*, cited DEFAULT IN PAYMENT. As to other cases, *V. Littler* v. *Holland*, 3 T. R. 590: *Gwynne* v. *Davy*, 1 Mac. & G. 857).

"Default, is a purely relative term, just like Negligence. It means nothing more, nothing less, than not doing what is reasonable under the circumstances; — not doing something which you ought to do, having regard to the relations which you occupy towards the other persons interested in the transaction" (per Bowen, L. J., *Re Young and Harston*, 31 Ch. D. 174; 53 L. T. 837; 34 W. R. 84; 50 J. P. 245; approved by

Collins, L. J., *Re Woods and Lewis*, 1898, 2 Ch. 211; 67 L. J. Ch. 475). There is, therefore, no "default" in a Vendor if delay in COMPLETION arises through an obscure blot on his Title (*Re Woods and Lewis*, sup); nor is there any longer a "default," by a Trustee in Bankry (s. 102 (5), Bankry Act, 1883) in paying money found due from him, if and when the money is paid, even though it be paid for him by a third party (*Re Tatum, Ex p. Harker*, 5 Times Rep. 574).

"Default by a Trustee," &c, s. 4 (3), Debtors Act, 1869; *V.* FIDUCIARY CAPACITY: POSSESSION.

"Make default *in performance*"; *V. Doe* d. *Palk* v. *Marchetti*, cited DONE.

V. DEBT, DEFAULT, OR MISCARRIAGE: WILFUL DEFAULT.

"Act, Default, Permission, or Sufferance"; *V.* PERMISSION: BY WHOSE.

JUDGMENT "by Default," means, one obtained by non-resistance (per Jervis, C. J., *Prew* v. *Squire*, 10 C. B. 915); therefore, a Jdgmt on Demurrer was not by Default (*Taylor* v. *Rolf*, 5 Q. B. 337; 13 L. J. Q. B. 39: *Prew* v. *Squire*, 10 C. B. 912; 20 L. J. C. P. 175).

"*Wrongful Act or Default*," s. 242, Mer Shipping Act, 1854, does not include a mere error in judgment (*The Famenoth*, 7 P. D. 207).

A Covenant by a mortgagor for Quiet Enjoyment "*after* Default," means only that, *before* default, the mortgagee is to rest on his own title as against strangers; and the Statute of Limitations runs as against the mortgagee from the date of the mortgage (*Doe* d. *Roylance* v. *Lightfoot*, 11 L. J. Ex. 151; 8 M. & W. 553).

"A Covenant for Quiet Enjoyment against persons claiming '*by or* THROUGH his Default,' would, it appears, be broken by an entry by parties whose title he had it in his own power to bar; — *e.g.* if he were tenant in tail in possession, and the entry were made by remainderman (*Cavan* v. *Pulteney*, 2 Ves. 544); — and such a covenant has been held to extend to claims in respect of arrears of Quit Rent, although they accrued due before he acquired the estate (*V. Howes* v. *Brushfield*, 3 East, 491): the decision, however, is disapproved by Ld St. Leonards (Sug. 602). But the omission by the covenantor to acquire from other parties a valid title, although he knew the defect, is not a 'Neglect or Default' within the meaning of such a covenant (*V. Woodhouse* v. *Jenkins*, 9 Bing. 431; 2 Moore & S. 599: *Ireland* v. *Bircham*, 2 Sc. 207; 2 Bing. N. C. 90)." Dart, 885: *Va*, Elph. 488–490: 2 Platt, 311: *Vf* NEGLECT OR DEFAULT.

"Negligence and Default," in a Bill of Lading or Contract for Towage; *V.* NEGLECT OR DEFAULT: NEGLIGENCE.

"For," or "In," "Default of Issue," or "In Default of" objects of preceding limitation; *V. Doe* d. *Dacre* v. *Dacre*, sup: *Biddulph* v. *Lees*, 28 L. J. Q. B. 211; E. B. & E. 289: DIE WITHOUT ISSUE.

"The words 'in default of his having a SON,' or words of precisely the same import, have been uniformly held to mean this, — That the estates are not to go over so long as there is any Male Issue, and that the estates are by NECESSARY Implication to go to the male issue in regular course of hereditary descent so long as there should be any left. To effectuate this purpose an Estate Tail is by Necessary Implication deemed to be given to the person whose Issue are so to take" (per James, L. J., *Andrew* v. *Andrew*, 45 L. J. Ch. 234; 1 Ch. D. 417).

"No Default of Election, or Vacancy," in a Committee of Management, to prevent continuing members from acting; *V. Lane* v. *Norman*, 66 L. T. 83; 61 L. J. Ch. 149; 40 W. R. 268.

V. IN DEFAULT: MAKING DEFAULT: FAILURE.

DEFAULT IN PAYMENT. — This phrase means, non-payment at the due time and place (*Williams* v. *Stern*, 49 L. J. Q. B. 663; 5 Q. B. D. 409: *Thorn* v. *City Rice Mills*, 58 L. J. Ch. 297; 40 Ch. D. 357; 5 Times Rep. 172). *V.* PAYMENT: FIDUCIARY CAPACITY: SOLICITOR.

DEFEASANCE. — "'*Defeasance*,' *Defeisantia*, is fetched from the French word *defaire*, *i.e.* to defeat or undoe" (Co. Litt. 236 *b*). "A Defeasance is a CONDITION relating to a deed, or to an obligation, recognizance, statute, or the like, which being performed by the obligor, or recognisor, the act is disabled and made void as if it had never been done; which differeth from a Condition only in this, that this (a Condition) is always made at the same time and annexed to or inserted in the same deed; but that (a Defeasance) is always made in a deed by itself, and for the most part made after the deed whereunto it hath relation" (Touch. 396: *Vf*, 2 Bl. Com. 327, 342: Termes de la Ley: 4 Cru. Dig. 89, 90, 96: *Colthirst* v. *Bejushin*, Plowd. 33 a). "As I have always understood, a 'Defeasance' is something which defeats the operation of a deed or document. If it is contained in the same deed, it is called a 'Condition'" (per Jessel, M. R., *Re Storey*, *Ex p. Popplewell*, 52 L. J. Ch. 42; 21 Ch. D. 73; cited with approval by Esher, M. R., *Blaiberg* v. *Beckett*, 56 L. J. Q. B. 36; 18 Q. B. D. 96; 55 L. T. 876; 35 W. R. 34).

Read strictly, the extracts just given from the *Touchstone* and from the jdgmt of Sir Geo. Jessel, would seem to show that a Defeasance differs only from a Condition in the mode and manner of its creation. But that can hardly be so. A Defeasance defeats or puts an end to an instrument; a Condition restrains or qualifies it. And thus in the case cited, *Ex p. Popplewell*, Lindley, L. J., said: "The agreement, — *i.e.* a parol agreement not to register a Bill of Sale, — was obviously not a Defeasance. Was it a Condition?" A Defeasance therefore may, in the language of the *Touchstone*, be said to be a Condition; but it is a Condition of a special sort, — drastic but narrow in its operation.

A Policy deposited as a collateral security to a Bill of Sale, is not a "Defeasance or Condition" requiring registration under s. 10 (3), Bills of S. Act, 1878 (*Carpenter* v. *Deen*, 23 Q. B. D. 566).

"Defeasance," in the prescribed form of a BILL OF SALE (s. 9, Bills of S. Act, 1882), means, the putting an end to the security by realizing the goods for the benefit of the mortgagee, — *e.g.* powers of lawful seizure and sale and reasonable appropriation of the proceeds (*Consolidated Credit Corp* v. *Gosney*, 55 L. J. Q. B. 61; 16 Q. B. D. 24: *Lumley* v. *Simmons*, 55 L. J. Ch. 759; 34 W. R. 759). It "is not strictly a Defeasance, because the stipulation is in the same deed; it means a Condition in the nature of a Defeasance" (per Esher, M. R., *Blaiberg* v. *Beckett*, sup, *whv*). But a security is not defeated by payment of the debt; and, therefore, an agreement to exhaust all other remedies before enforcing a Bill of S. is not a "Defeasance" (*Heseltine* v. *Simmons*, 1892, 2 Q. B. 547; 62 L. J. Q. B. 5; 67 L. T. 611; 41 W. R. 67). *Cp* MAINTENANCE, at end.

The *Touchstone*, in the passage already cited, says that a Defeasance "is always made *in a Deed* by itself." But it would seem that a Defeasance may be made without a deed. The Defeasance endorsed on a Warrant of Attorney to enter up judgment was generally under hand only (Chitty's Forms, 9 ed., 490). But it would seem that there cannot be a Defeasance without a separate document (per Esher, M. R., *Blaiberg* v. *Beckett*, sup). And so in *Ex p. Popplewell* (sup), the Master of the Rolls said: "The agreement in question was a parol agreement. It cannot therefore be a Defeasance." But a Condition may be by parol (*Ex p. Southam*, 43 L. J. Bank. 39; L. R. 17 Eq. 578).

Estate in "Defeasance of" an ESTATE TAIL, s. 15, Fines and Recoveries Act, 1833; *V. Milbank* v. *Vane*, 1893, 3 Ch. 79; 62 L. J. Ch. 629; 68 L. T. 735.

V. CONDITION: FORFEITURE.

DEFEAT. — Intent to defeat or delay Creditors; *V.* INTENT: *Morris* v. *Cook's Estate*, 1895, A. C. 625; 64 L. J. P. C. 136: Vaizey, ch. 21, s. 4: Wms. Bank. 19.

DEFECT. — "'Defect,' means a lack or absence of something essential to completeness" (per Bruce, J., *Tate* v. *Latham*, 66 L. J. Q. B. 351).

"Defects in an Estate may be either —

a. *Patent*, — that is, such as may be discovered by ordinary vigilance on the part of a purchaser; *e.g.* the existence of an open footpath over the property (*Bowles* v. *Round*, 5 Ves. 508), or the ruinous state of buildings (*Grant* v. *Munt*, Cooper, G. 177: *Keates* v. *Cadogan*, 10 C. B. 591; 20 L. J. C. P. 76; 16 L. T. O. S. 367); or,

b. *Latent*, — that is, such as the greatest attention (Sug. 333) would not enable him to discover; *e.g.* the existence of defects in a ship's bottom when sold afloat (*V. Mellish* v. *Motteux*, Peake, 156)." Dart, 101, 102.

Unfitness or inadequacy for the purpose for which it is used, is a "*Defect* in the Condition" of MACHINERY within s. 1, Employers' Liability Act, 1880, 43 & 44 V. c. 42, though the machinery may be, in itself, perfect (*Heske* v. *Samuelson*, 53 L. J. Q. B. 45; 12 Q. B. D. 30; 49 L. T. 474), *e.g.* if, being dangerous, it is unguarded (*Morgan* v. *Hutchins*, 59 L. J. Q. B. 197; 6 Times Rep. 219: *Tate* v. *Latham*, 1897, 1 Q. B. 502; 66 L. J. Q. B. 349; 76 L. T. 336; 45 W. R. 400). So is an unsound combination of sound PLANT (*Cripps* v. *Judge*, 51 L. T. 182; 33 W. R. 35; 53 L. J. Q. B. 517; 13 Q. B. D. 583: *Weblin* v. *Ballard*, 55 L. J. Q. B. 395; 17 Q. B. D. 122; 54 L. T. 532; 34 W. R. 455; 50 J. P. 597), or a negligent system or mode of using, or want of proper safeguards in using, sound machinery (*Smith* v. *Baker*, 1891, A. C. 325; 60 L. J. Q. B. 683; 40 W. R. 392; 65 L. T. 467; 55 J. P. 660: *Stanton* v. *Scrutton*, 62 L. J. Q. B. 405). But not a mere temporary obstruction, *e.g.* a substance negligently placed on a roadway (*McGiffen* v. *Palmer's Ship Building Co*, 52 L. J. Q. B. 25; 10 Q. B. D. 5: *Thomas* v. *Quartermaine*, 55 L. J. Q. B. 439; 17 Q. B. D. 414; 55 L. T. 360; 34 W. R. 741: *Pegram* v. *Dixon*, 55 L. J. Q. B. 447); nor mere dangerousness when not used with ordinary care (*Walsh* v. *Whiteley*, 57 L. J. Q. B. 586; 21 Q. B. D. 371; 36 W. R. 876), nor dangerousness caused by the unauthorised and unknown removal of a sufficient protection, such as a removable trap-door or cover (*Penton* v. *Cosh*, Times, 4th Feb 1891), or the removal of such a protection in and for carrying on the business (*Willetts* v. *Watts*, 1892, 2 Q. B. 92; 61 L. J. Q. B. 540; 66 L. T. 818; 40 W. R. 497; 56 J. P. 772: *svthc*, *Tate* v. *Latham*, sup); nor insufficient packing of goods on a trolly (*Corcoran* v. *East Surrey Ironworks Co*, 58 L. J. Q. B. 145). *Vh*, WAYS: WORKS.

The omission of the date of an accident from Notice of injury under the Employers' Liability Act, 1880, is a "defect *or inaccuracy*" within s. 7 (*Carter* v. *Drysdale*, 53 L. J. Q. B. 557; 12 Q. B. D. 91; 32 W. R. 171), so also is the omission to state the cause of the injury if such omission be not misleading (*Stone* v. *Hyde*, 51 L. J. Q. B. 452; 9 Q. B. D. 76).

As to construction of a Co's Article validating acts of Directors notwithstanding "defect" in their Appointment; *V. Dawson* v. *African, &c Co*, 1898, 1 Ch. 6; 67 L. J. Ch. 47; 77 L. T. 392; 46 W. R. 132.

"Defects latent on beginning of VOYAGE, or otherwise"; *V. Waikato* v. *New Zealand Shipping Co*, cited OTHERWISE.

Latent Defect in an Exception limiting warranty that a Ship is SEA-

WORTHY; *V. The Cargo ex Laertes*, 56 L. J. P. D. & A. 108; 12 P. D. 187; 57 L. T. 502; 36 W. R. 111.

"Defect in Substance"; V. SUBSTANCE.

V. FORMAL: FAULTS: HOLDER IN DUE COURSE.

DEFENCE.—"'*Defence*' commeth of the word *defendo*" (Co. Litt. 127 b); and as applied to a PLEADING it does not mean a "JUSTIFICATION," which is the ordinary signification, but a "denial" (3 Bl. Com. 296, cited in Hargrave's note to Co. Litt. 127 b). *Vf, R.* v. *Rhodes*, cited STAGE.

"Any Defence," s. 1, 31 & 32 V. c. 86; *V. Pellas* v. *Neptune Mar. Insrce*, 48 L. J. C. P. 370; 5 C. P. D. 34.

"Last Defence"; *V.* LAST.

"Statutory Defence"; *V.* STATUTORY.

"The Defence Acts, 1842 to 1873"; *V.* Sch 2, Short Titles Act, 1896.

DEFEND.—"'Defend,' signifies, in our ancient laws and statutes, as much as to forbid and prohibit" (Cowel). *V.* SUE.

DEFENDANT.—Notwithstanding that s. 100, Jud. Act, 1873, enacts that "Defendant," includes a person "served with notice of, or entitled to attend, any PROCEEDINGS,"—the word does not include a person merely brought in as a Third-Party (*Eden* v. *Weardale Co*, 54 L. J. Ch. 384; 28 Ch. D. 333; 33 W. R. 241: *Street* v. *Gover*, 46 L. J. Q. B. 582; 2 Q. B. D. 498). But when the Third-Party has been treated as an "Opposite Party" and has been ordered, at plaintiff's instance, to answer Interrogatories, he becomes a Defendant and entitled to an Order to interrogate the Plaintiff under R. 1, Ord. 31 (*Eden* v. *Weardale Co*, 35 Ch. D. 287): *V.* OPPOSITE PARTY.

Other Stat. Defs., generally, define "Defendant," as a person against whom Proceedings are instituted, or directed, *V.* 6 & 7 W. 4, c. 106, s. 44; 26 & 27 V. c. 119, s. 3; 45 & 46 V. c. 31, s. 2.

Quà Scotland, the def is, DEFENDER or Respondent, *V.* 38 & 39 V. c. 17, s. 109, c. 63, s. 33; 41 & 42 V. c. 16, s. 105, c. 49, s. 74, c. 74, s. 74; 45 & 46 V. c. 49, s. 52; 53 & 54 V. c. 21, s. 39; or, more fully, quà Sale of Goods Act, 1893 (s. 62), "Defender, Respondent, and Claimant in a Multiplepoinding," or, in criminal matters, "Panel, Respondent, or person charged," 57 & 58 V. c. 27, s. 21, c. 41, s. 26.

Quà Jud. Act (Ir) 1877, "Defendant" includes "every person served with any Writ of Summons or Process, or served with notice of, or entitled to attend, any Proceedings" (s. 3); quà 27 & 28 V. c. 99, "Defendant," means, "also the person or party whose body, goods, or chattels, may be liable to be taken under any decree, dismiss, renewal, or order, of the Civil Bill Courts" (s. 3).

DEFENDER.—Is the Scotch equivalent for DEFENDANT, and, generally, includes a Respondent; *V.* 13 & 14 V. c. 36, s. 53; 31 & 32 V.

c. 100, s. 2. Quà Citation Amendment (Scot) Act, 34 & 35 V. c. 42, the word "means and includes, the person or persons named in, and called upon to answer, any summons, complaint, decree, and warrant, or other order or writ or proceeding, in the Small Debt Courts" (s. 5).

DEFICIENCY. — As used in s. 133, Lands C. C. Act, 1845; *V.* WORKS.

DEFINED BOUNDARY. — *V. R.* v. *Northowram*, cited PLACE.

DEFINED CHANNEL. — Subterranean waters can only be the subject of riparian rights when flowing in Defined and Known Channels. "Defined," means a contracted and bounded channel, although the course of the stream may be undefined by human knowledge. "Known" means the Knowledge, by reasonable inference, from existing and observed facts in the natural or pre-existing condition of the surface of the ground. "Known" in this rule of law is not synonymous with "Visible," nor is it restricted to knowledge derived from exposure of the channel by excavation (*Black* v. *Ballymena Commrs*, 17 L. R. Ir. 459).

Vf, As to Subterranean Waters, *Acton* v. *Blundell*, 12 M. & W. 324; 13 L. J. Ex. 289: *Chasemore* v. *Richards*, 29 L. J. Ex. 81; 7 H. L. Ca. 349, 389: *Bradford* v. *Pickles*, cited ILLEGALLY.

DEFINITE. — "Definite and Certain Principal Sum," "Definite and Certain amount of Stock"; *V.* SETTLEMENT. *Cp*, CERTAIN: SUM CERTAIN.

"Definite and Certain Sum of Money," quà *ad val.* Stamp on Mtge, means, moneys numbered; it has no relation to certainty or uncertainty of obligation. Therefore, a security to pay £100 if something happens, is for the "definite and certain" sum of £100, though it is only payable on a contingency (*Mortimore* v. *Inl. Rev.*, 2 H. & C. 838; 33 L. J. Ex. 263; 10 L. T. 655); so, a security to pay £100 if something happens or £200 if something else happens, is one for £200 (*Maxwell* v. *Inl. Rev.*, 4 Rettie, 1121); so, of a security indemnifying a surety, though he may never be called upon to pay (*Canning* v. *Raper*, 22 L. J. Q. B. 87; 1 E. & B. 164). But *none of the following* are included in the phrase, — Interest (*Barker* v. *Smark*, 10 L. J. Ex. 200; 7 M. & W. 590); Expenses, not even though for the purpose of obtaining a renewal of a lease (*Doe* d. *Scrutton* v. *Snaith*, 8 Bing. 146: *Wroughton* v. *Turtle*, 13 L. J. Ex. 57; 11 M. & W. 561); Costs (*Lysaght* v. *Warren*, 10 Ir. L. R. 269); Banker's Commission (*Frith* v. *Rotherham*, 15 L. J. Ex. 133); Policy Premiums (*Lawrence* v. *Boston*, 21 L. J. Ex. 49; 7 Ex. 28).

DEFINITION. — *V.* MEAN.

DEFINITIVE. — "Definitive *Publication*" of an Order of the Charity Commrs, s. 8, 23 & 24 V. c. 136; *V. Ex p. Nicholls*, 34 L. J. Ch. 169.

"Definitive *Sentence*"; *V. Esnouf* v. *A-G. Jersey*, 52 L. J. P. C. 26; 8 App. Ca. 304.

DEFORCEMENT. — "'*By wrong him deforces.*' *Deforciare* is a Word of Art, and cannot be expressed by any other word; for it signifieth, to withhold lands or tenements from the right owner" (Co. Litt. 331 b; *Va*, Ib. 277 b: Jacob: 3 Bl. Com. 172). *Vf* DEFORCEOR. *Cp*, DISSEISIN: INTRUSION.

DEFORCEOR. — "Is hee that overcommeth and casteth out with force; and he differeth from a Disseisor, first, in this, that a man may disseise another without force, which act is called simple DISSEISIN, Britton, cap. 53; — then because a man may deforce another that never was in possession, as if many have right to lands as common heires and one keepeth them out, the law saith, that he deforceth them, although that he never disseised them. . . . And a Deforceor differeth from an Intrudor, because that a deforceor keeps out the right heire as aforesaid, and a man is made an intrudor by a wrongfull entrie onely in lands or tenements void of a possessor" (Termes de la Ley). *Vf* DEFORCEMENT.

DEFRAUD. — *V.* INTENT.

DEGRADE. — *V.* DISGRADE.

DEGREE. — Quà Customs, "Degree" of Proof Spirit, "does not include a fraction of the next higher Degree" (62 & 63 V. c. 9, s. 2, c. 39, s. 1).

DE JURE. — De jure, — De facto; *V. A-G.* v. *Ewelme Hosp.*, 17 Bea. 388, 389; 22 L. J. Ch. 854, 855.

DEL CREDERE. — "A *Del Credere* Agent, like any other AGENT, is to sell according to the instructions of his Principal, and to make such contracts as he is authorised to make for his Principal; and he is distinguished from other agents simply in this, — That he guarantees that those persons to whom he sells shall perform the contracts which he makes with them; and, therefore, if he sells at the price at which he is authorised by his Principal to sell, and upon the credit which he is authorized by his Principal to give, and the customer pays him according to his contract, then, no doubt, he is bound, like any other agent, as soon as he receives the money, to hand it over to the Principal" (per Mellish, L. J., *Ex p. White, Re Nevill*, 6 Ch. 403; 40 L. J. Bank. 73; 24 L. T. 45; 19 W. R. 488). Notwithstanding the decision of Mansfield, C. J., in *Grove* v. *Dubois* (1 T. R. 112), and what, on that authority, was said in *Houghton* v. *Matthews* (3 B. & P. 489), it is now settled that a Del Credere Agent is not responsible to his Principal for the customers *in the first instance*; his special liability only imports, that if the customer does not pay he (the agent) will (*Hornby* v. *Lacy*, 6 M. & S. 166: *Morris* v. *Cleasby*, 4 Ib. 574, 575: *Bramwell* v. *Spiller*, 21 L. T. 672, espy jdgmt of Smith, J.). This last case shows that the Agent

cannot, in his own name, sue the customer, merely because he has assumed special liability to his principal.

Vh, Add. C. 869: Leake, 441: 4 Encyc. 200.

DELAY. — Intent to defeat or delay Creditors; *V.* DEFEAT.

"Prosecute without delay"; *V.* PROSECUTE.

Where a Shareholder has a right to have a Transfer of his Shares registered "*without* Delay," he cannot call for such registration if there be an unpaid Call on the Shares disentitling him to transfer (*Re Phœnix Insrce*, 7 W. R. 440).

V. UNREASONABLE DELAY: WILFUL DELAY.

DELAY IN TRANSIT. — A delay by a carrier in not starting goods on their destination, is a "delay in transit" (*Brown* v. *Manchester S. & L. Ry*, 51 L. J. Q. B. 599; 53 Ib. 124; 9 Q. B. D. 230; 8 App. Ca. 703: *Vh*, *Sheridan* v. *Mid. G. W. Ry*, 24 L. R. Ir. 146). *Cp* OWNER'S RISK.

DELEGATE. — To "delegate" to another, is not to denude yourself. "In my opinion the word, in its general sense and as generally used, does not imply, or point to, a giving up of authority, but rather the conferring of authority upon some one else" (per Wills, J., *Huth* v. *Clarke*, 59 L. J. M. C. 120; 25 Q. B. D. 391, referring also to the use of the word in s. 201, P. H. Act, 1875).

DELEGATION. — *V.* SUBROGATION.

DELF. — "'Delfe,' is a QUARRY or Mine where Stone or Coal is digged" (Cowel); but Cowel adds that, "Camden mentions a Charter of Edw. 4 wherein mention is made of a Mine or Delfe of Copper."

"The word 'Delfs' probably means open pits or diggings" (*A-G. Isle of Man* v. *Mylchreest*, 48 L. J. P. C. 44; 4 App. Ca. 308).

V. ORDELF.

DELINEATED. — In *Dowling* v. *Pontypool Ry* (43 L. J. Ch. 761; L. R. 18 Eq. 714) the words "lands delineated upon the Deposited Plans," in the usual clause for compulsory acquirement of land, were considered at great length; and it was held that they were not limited to lands surrounded by lines on every side, but included lands so sketched, represented, or shown, that the owners would have notice that their property might be taken: *Vthc*, approved *Finck* v. *Lond. & S. W. Ry*, 59 L. J. Ch. 458; 44 Ch. D. 330. But the interpretation of "delineated" given by Hall, V. C., in *Dowling* v. *Pontypool Ry* was "as wide as it could possibly bear" (per Fry, L. J., *Protheroe* v. *Tottenham Ry*, 1891, 3 Ch. 290), in *whlc* it was held that when a Co seek to obtain power to acquire a limited portion only of land not broken up into closes, they must clearly "delineate," *i.e.* show on their plans, the portion they mean to acquire.

DELIVER. — *V.* DELIVERY: CARRY OUT: SET UP.

"An Award may be 'delivered' without being in writing" (*Blundell* v. *Brettargh*, 17 Ves. 240); "for a man is said to *deliver* a message as well as a letter, and there is an oral, as well as a manual, tradition" (*Oates* v. *Bromil*, 1 Salk. 75; 6 Mod. 160). In the latter case the words were, so that the Award should be "made and *ready to be delivered* to the parties," and yet (herein following *Cocks* v. *Macclefield*, Dyer, 218, pl. 5) the Court held that the Award might be by parol. *Cp* SERVED. *Vh* Russell on Arb., 7 ed., 248.

"Deliver Notice *unto*" a person; *V.* SERVED.

"Send out, deliver," &c Spirits; *V.* SEND.

When a passenger has to "*deliver up*" his ticket on demand, or pay his fare, he is not released from that duty by having inadvertently torn up his ticket (*Hanks* v. *Bridgman*, 1896, 1 Q. B. 253; 65 L. J. M. C. 41; 74 L. T. 26).

DELIVERABLE STATE. — Quà Sale of Goods Act, 1893, "Goods are in a 'Deliverable State,' when they are in such a state that the Buyer would, under the contract, be bound to take Delivery of them" (subs. 4, s. 62).

DELIVERANCE. — Quà Scotch Bankry Acts, "Deliverance," includes "any Order, Warrant, Jdgmt, Decision, Interlocutor, or Decree" (19 & 20 V. c. 79, s. 4).

DELIVERED. — FREIGHT, on goods, *e.g.* cotton, at so much per cubic feet "delivered," is to be calculated on the measurement of the goods as put on board, and not when unloaded (*Gibson* v. *Sturge*, 10 Ex. 622; 24 L. J. Ex. 121: *Buckle* v. *Knoop*, 36 L. J. Ex. 223; L. R. 2 Ex. 333); *semble*, otherwise where the phrase is "Net Weight delivered" (*Coulthurst* v. *Sweet*, L. R. 1 C. P. 649).

"Whenever a Statement of Claim is delivered," R. 4, Ord. 20, R. S. C., — that means, where Statement of Claim is *actually* delivered, as distinguished from being filed under R. 10, Ord. 19 (per North, J., *Gee* v. *Bell*, 35 Ch. D. 160; 56 L. J. Ch. 718; 56 L. T. 305; 35 W. R. 805: *Kingdon* v. *Kirk*, 37 Ch. D. 141: 57 L. J. Ch. 328; 58 L. T. 383; 36 W. R. 430: *Vh* Ann. Pr.). *V.* ALTER.

DELIVERED IN EXECUTION. — Land is "actually delivered in execution," within s. 1, 27 & 28 V. c. 112, as soon as a sheriff under an *elegit* delivers it to the execution creditor (*Re Hobson*, 55 L. J. Ch. 754; 33 Ch. D. 493; 55 L. T. 255; 34 W. R. 786: *Vf*, *Champneys* v. *Burland*, 19 W. R. 148; 23 L. T. 584), or as soon as a Receiver is appointed (*Hatton* v. *Haywood*, 43 L. J. Ch. 372; 9 Ch. 229; 30 L. T. 279; 22 W. R. 356: *Anglo-Italian Bank* v. *Davies*, 47 L. J. Ch. 833; 9 Ch. D. 275; 27 W. R. 3; 39 L. T. 244: *Ex p. Evans*, *Re Watkins*, 49 L. J.

Bank. 7; 13 Ch. D. 252; 41 L. T. 565; 28 W. R. 127: *Re Pope*, 55 L. J. Q. B. 522; 17 Q. B. D. 743; 55 L. T. 369; 34 W. R. 654, 693), or a Sequestrator is in the receipt of the rents and profits (*Re Rush*, 39 L. J. Ch. 759; L. R. 10 Eq. 442). *V.* SEIZURE.

A REVERSION, or REMAINDER, though legal, cannot be "delivered in exon" so as to authorise an Order for Sale (*Re Harrison and Bottomley*, 1899, 1 Ch. 465; 68 L. J. Ch. 208; 80 L. T. 29; 47 W. R. 307).

An Equitable Leasehold Interest cannot be "actually delivered in exon" (*Re Newcastle*, L. R. 8 Eq. 700).

A Judgment entered up under s. 13, 1 & 2 V. c. 110, creates no Charge on land until the land has been "actually delivered in exon" (*Hood-Barrs* v. *Cathcart*, 1895, 2 Ch. 411; 64 L. J. Ch. 461; 43 W. R. 586).

Vh, Dan. Ch. Pr. 745: Fisher, 486.

DELIVERY. — The "Delivery" of an ABSTRACT of Title does not need, to make it complete, any offer of the deeds for examination. "An abstract is delivered whenever a number of sheets of paper (call it what you will) is delivered to the purchaser, which contains, with sufficient clearness and sufficient fulness, the effect of every instrument which constitutes part of the title of the vendor" (per Kindersley, V. C., *Oakden* v. *Pike*, 34 L. J. Ch. 622; 13 W. R. 673).

Delivery of a BILL OF EXCHANGE; *V.* s. 21, Bills of Ex. Act, 1882, and (of a Note) ss. 84, 89, Ib. Speaking generally, "Delivery," of a Bill or Note, "means transfer of possession, actual or constructive, from one person to another" (s. 2, Ib.).

Fraudulent "Conveyance, Gift, Delivery, or Transfer"; *V.* CONVEYANCE.

"As a DEED may be delivered to the partie without words, so may a Deed be delivered by words without any act of deliverie, — as if the writing sealed lyeth upon the table and the Feoffor or Obligor saith to the Feoffee or Obligee 'Goe and take up the said writing, it is sufficient for you,' or 'it will serve the turne,' or, 'Take it as my Deed,' or the like words, — it is a sufficient delivery" (Co. Litt. 36 a; *Vth*, Hargrave's note: Touch. 58, 59). "The mere affixing the seal does not render the document a Deed; but as soon as there are acts or words sufficient to show that it is intended by the party to be executed as his deed presently binding on him, it is sufficient. The most apt and expressive mode of indicating such an intention is to hand it over, saying, 'I deliver this as my Deed'; but any other words, or acts, that sufficiently show that it was intended to be finally executed will do as well" (per Blackburn, J., *Xenos* v. *Wickham*, L. R. 2 H. L. 312; 36 L. J. C. P. 313; 16 L. T. 800; 16 W. R. 38). *Note:* As to what is a good Delivery of a Deed, or evidence of it, *Vf*, *Doe* d. *Garnons* v. *Knight*, 5 B. & C. 671: *Hudson* v. *Revett*, 7 L. J. O. S. C. P. 145; 5 Bing. 368: *Tupper* v. *Foulkes*, 30 L. J. C. P. 214; 9 C. B. N. S. 809: *R.* v. *Longnor*, 2 L. J. M. C.

62; 4 B. & Ad. 647: — On the contrary, *V. Grendit* v. *Baker*, Yelv. 7: *Powell* v. *Lond. & Prov. Bank*, 37 S. J. 476. In *Goodright* v. *Straphan* (Cowp. 201), mere acknowledgment of the rights of the parties under the deed was held sufficient.

Delivery of a Deed as an *Escrow*, is where a Deed is delivered on a CONDITION; if the CONDITION is performed, the Deed becomes absolute; but until then it is an Escrow, *i.e.* in suspense (*Watkins* v. *Nash*, 44 L. J. Ch. 505; L. R. 20 Eq. 262, and cases there cited). *Vf*, Touch. 58, 59: Co. Litt. 36 a: 4 Cru. Dig. 29–31: per St. Leonards, C., *Nash* v. *Flyn*, 1 J. & La T. 175: per Williams, J., *Kidner* v. *Keith*, 15 C. B. N. S. 43: *Whelan* v. *Palmer*, 39 Ch. D. 655, 656; 57 L. J. Ch. 787: *London Freehold Co* v. *Suffield*, 1897, 2 Ch. 621; 66 L. J. Ch. 790; 77 L. T. 445; 46 W. R. 102.

Deposit of Shares "*in Escrow*"; *V. Spitzel* v. *Chinese Corp*, 80 L. T. 349, 351.

Delivery of GOODS to a tradesman so as to be exempt from DISTRESS; *V. Clarke* v. *Milwall Dock Co*, 55 L. J. Q. B. 378; 17 Q. B. D. 494; 54 L. T. 814; 34 W. R. 698: and as to what is "Delivery" of goods on a Contract for Sale, *V.* Add. C. 522–525: Rosc. N. P. 547–564: what to perfect a gift, *V.* GIFT.

Quà Sale of Goods, the rule, — ever since the elaborate jdgmt of Parke, J., in *Dixon* v. *Yates* (5 B. & Ad. 339) — is "that the delivery of a part may be a delivery of the whole if it is so intended; but that it is not such a delivery unless it is so intended, and I rather think that the onus is upon those who say it was so intended" (per Ld Blackburn, *Kemp* v. *Falk*, 7 App. Ca. 586; 52 L. J. Ch. 174). *V.* ACCEPTANCE.

Quà Sale of Goods Act, 1893, "'Delivery,' means, voluntary transfer of possession from one person to another" (subs. 1, s. 62).

"Delivery or Transfer . . . of Goods or Documents of Title," s. 25 (1), Sale of Goods Act, 1893, connotes an actual, physical, transfer, as distinguished from a mere continuance in possession (*Nicholson* v. *Harper*, 1895, 2 Ch. 415; 64 L. J. Ch. 672; 73 L. T. 19; 43 W. R. 550). So, of the same expression in s. 9, Factors Act, 1889 (*Kitto* v. *Bilbie*, 72 L. T. 266; 11 Times Rep. 214; on which latter section, *Vf*, *Shenstone* v. *Hilton*, cited BUY: *Hull Ropes Co* v. *Adams*, 73 L. T. 446; 44 W. R. 108; 65 L. J. Q. B. 114).

Delivery of LANDS; *V.* LIVERY.

"Delivery ORDER," quà Stamp Act, 1891; *V.* s. 69.

"Delivery which is essential to a PLEDGE may be effected without a physical change of possession" (per Kekewich, J., *Grigg* v. *National Guardian Co*, 1891, 3 Ch. 206; 61 L. J. Ch. 13, citing *Mills* v. *Charlesworth*, 59 L. J. Q. B. 530; 25 Q. B. D. 421; revd in H. L. nom. *Charlesworth* v. *Mills*, 1892, A. C. 231; 61 L. J. Q. B. 830, without affecting this point). *Vf* ACTUAL.

"Personal Delivery" of Voting Papers; *V.* PERSONAL DELIVERY.

"The PLACE of Delivery" of MILK, s. 3, 42 & 43 V. c. 30, is where the seller delivers, or has agreed to deliver, it, even though it be sent from a distance and the purchaser has agreed to pay all the carriage (*Filshie* v. *Evington*, 1892, 2 Q. B. 200; 66 L. T. 199; 40 W. R. 380; 56 J. P. 312; 8 Times Rep. 306).

"Delivery of a WILL, means the same as PUBLICATION; and consists in executing it in the presence of two witnesses, and declaring it to be your Will. That is sufficient for the execution (by Will) of a Power requiring an instrument '*delivered*'" (per Romilly, M. R., *Smith* v. *Adkins*, 41 L. J. Ch. 628; L. R. 14 Eq. 402: *Va, Mason* v. *Heywood*, 7 L. J. Ch. 145: *Curteis* v. *Kenrick*, 7 L. J. Ex. 169; 3 M. & W. 461: *Mackinley* v. *Sison*, 8 Sim. 568). *V.* SIGNED, SEALED, AND DELIVERED. *V.* DELIVER.

DEMAND.—"If a man release to another all maner of demands, this is the best release to him to whom the release is made, that he can have" (Litt. s. 508; *Vth*, Termes de la Ley, *Demaund*).

"'*Demand*,' *Demandum*, is a Word of Art, and in the understanding of the Common Law is of so large an extent, as no other one word in the law is, unlesse it be *clameum*, whereof Littleton maketh mention, Sect. 445" (Co. Litt. 291 b). But in *Parkins* v. *Hinde* (Cro. Eliz. 161), it was held that a lease by a parson at a rent to include "all Exactions and Demands" did not preclude the lessor from recovering his tithes; and the Court said, "that the words shall discharge the lessee of all rents and services, but not of suit at court, or such things as are not then in demand." *Vf, Stiles* v. *Miller*, Owen, 39; 1 Leon. 300: Jacob.

Mere delivery of a Solicitor's Bill is a sufficient "Demand," entitling him to Interest thereon under R. 7, Solrs Rem Ord (*Blair* v. *Cordner*, 56 L. J. Q. B. 642; 19 Q. B. D. 516); but it must be to the "Person LIABLE," which a person who has merely the conduct of an action for the Administration of the client's estate is not,—the "Person Liable" to pay a deceased client's Bill of Costs is his Personal Representative (*Re McMurdo*, 1897, 1 Ch. 119; 66 L. J. Ch. 67; 75 L. T. 576; 45 W. R. 244).

A Demand "IN WRITING" for a SUM CERTAIN, under the latter part of s. 28, 3 & 4 W. 4, c. 42 (or, *semble*, under R. 20, Sch 2, Bankry Act, 1883), need not be in any particular form, or specify the exact sum due, so long as it contains a distinct demand of payment (*Mowatt* v. *Londesborough*, 4 E. & B. 1; 23 L. J. Q. B. 38, 177: *Geake* v. *Ross*, 44 L. J. C. P. 315: *semble, thle* over-rules hereon *Hill* v. *South Staffordshire Ry*, 43 L. J. Ch. 556; L. R. 8 Eq. 154, although approved by Jessel, M. R., *Ward* v. *Eyre*, 49 L. J. Ch. 659). But a general notice on an Invoice of goods that interest on the price will be charged after a stated period, is not a "Demand" within the section (*Williams* v. *Trench*, 61 L. J. Ch. 22: *Vf, L. C. & D. Ry* v. *S. E. Ry*, 1893, A. C. 429; 63 L. J. Ch. 93; 69

L. T. 637: *Tautz* v. *Archdale*, 11 Times Rep. 452: INSTRUMENT). A claim for interest which is made for the first time on a Writ, is not such a Demand (*Rhymney Ry* v. *Rhymney Iron Co*, 59 L. J. Q. B. 414; 25 Q. B. D. 146). *Vf* CURRENT.

V. CLAIM: DEBT, CLAIM, OR DEMAND: INCUMBRANCE: ON DEMAND; TAKE OR DEMAND.

A "Demand" of Money, &c, within the BLACK ACT (and, *semble*, within the Acts replacing it, *e.g.* s. 45, 24 & 25 V. c. 96), "must be something more than asking: it is a requisition in the shape of forcing" (per Eyre, C. J., *R.* v. *Robinson*, East P. C. 1114), or, as one of the other judges in that case said, "Holding out a threat at the same time to enforce it," or, as was held in *R.* v. *Walton* (32 L. J. M. C. 79), something to unsettle the mind, and take away the free will of the demandee. But, *semble*, if money is demanded which the demander knows the demandee does not possess, there is no such criminal "Demand" (*R.* v. *Edwards*, 6 C. & P. 515).

"Demand" of RENT, in a Re-Entry Clause in a Lease, or of Rates; *V.* LAWFULLY DEMANDED.

DEMERIT. — A power to punish according to a person's "Demerit," imports only that he shall be punished in the ordinary course of justice, by Indictment (4 Inst. 171: Dwar. 673).

DEMESNE. — "'Demains, according to the common speech, are the Lord's chief MANOR place with the lands thereto belonging; *terræ dominicales*, which he and his ancestors have from time to time kept in their own manual occupation for the maintenance of themselves and their families; and all the parts of a Manor, except what is in the hands of freeholders, are said to be demains. Copyhold lands have been accounted *demains*, because they that are the tenants hereof are judged in law to have no other estate but at the will of the lord; so that it is still reputed to be, in a manner, in the lord's hands; but this word is oftentimes used for a distinction between those lands that the lord of the manor hath in his own hands, or in the hands of his lessees demised at a rack-rent, and such other land appertaining to the Manor which belongeth to free or copyholders; Bract. lib. 4, tract. 3, c. 9: Fleta, lib. 5, c. 5' (Jacob, where it is said to be derived from *dominium*, and not, as some have supposed, from *de manu*. *Cp* the Eng., 'in hand,' and Lat. *in manu* as used in the Civil Law). *Cp* 'Terra Assisa,' sub ASSISSUS.

"Britton, 205 b (Bk. III. ch. 15), says, 'Demeyne proprement est tenement qe chescun tient severalment en fee.'

"The Demesnes pass by a conveyance of the Manor of which they form part (Touch. 92). It is therefore of importance on the sale of a Manor to except any lands belonging to the vendor within the Manor, which are not intended to be sold, as they may be demesne land.

"Kelham, Dict., gives *Demeigne, demenie, demeine,* meaning 'own,' a sense in which the word *demesne* (or some other form of the same word) is frequently used in the Year Books and other early documents. Prof. Skeat (Etym. Eng. Dict.) connects it with *dominium,* and says '*demesne*' is a false spelling, probably due to confusion with old Fr. *mesnee,* or *maisnie,* a household" (Elph. 570, 571). *Vf,* Termes de la Ley, *Demaines*: Cowel, *Demaine.*

"Demesne Lands," properly signifies, lands of a Manor which the lord either has, or potentially may have, *in propriis manibus* (*A-G.* v. *Parsons,* 1 L. J. Ex. 103; 2 Cr. & J. 279). *Vh, Carnarvon* v. *Villebois,* 14 L. J. Ex. 233; 13 M. & W. 313.

An Exception, in a Power to Lease, of the Demesnes of a Manor, includes its Copyholds (*Winter* v. *Loveday,* Carth. 428: *Vth,* Sug. Pow. 736).

"Tenant in Demesne," s. 1, 32 H. 8, c. 37, means only, Tenant in Occupation (per Burrough, J., *Meriton* v. *Gilbee,* 8 Taunt. 162).

"Demesne Land," in Ireland and especially quà s. 58 (2), Land Law (Ir) Act, 1881; *V. Griffin* v. *Taylor,* 16 L. R. Ir. 197: *Re Moore and Batt,* 32 Ib. 68: *Re Magner and Hawkes,* 32 Ib. 285: *Re Hewson and Listowel,* 32 Ib. 700.

"Land which when first demised was Demesne," s. 5 (1 *b,* ii), 59 & 60 V. c. 47; *V. Re Magner and Hawkes,* 1900, 2 I. R. 465.

"*In his demesne as of fee*"; as to the force of this expression, *V.* Co. Litt. 17 a.

V. Ancient Demesne.

"Son Assault demesne," is a justifying Defence to an action for Assault, whereby the deft alleges that the assault was the plaintiff's "own," "de son tort demesne"; *V.* Cowel.

DEMISE. — "Here," Westm. 2, c. 48, "as in many other places, 'demise' is applyed either to an estate in Fee Simple, Fee Tail, or for Term of Life, and so commonly it is taken in many writs" (2 Inst. 483; continuing, Coke uses "Demise" and "Conveyance" as synonymous). Referring thereto counsel (*Greenaway* v. *Adams,* 12 Ves. 397) said, — "The strict technical import of 'Demise,' from the verb '*dimitto,*' is any transfer or conveyance; though by habit it is generally used to denote a partial transfer by way of lease."

"By the word 'demise' everything is inferred that is necessary to constitute an actual demise" (per Perrin, J., *Knox* v. *Gildea,* 11 Ir. L. R. 482).

This word in a Lease implies a covenant by the Lessor for Title and one for Quiet Enjoyment, unless there be an express qualifying covenant (Touch. 165: per Ld St. Leonards, *Monypenny* v. *Monypenny,* 9 H. L. Ca. 139: *Line* v. *Stephenson,* 5 Bing. N. C. 183; 7 L. J. C. P. 263: *Williams* v. *Burrell,* 14 L. J. C. P. 98; 1 C. B. 402: Add. C. 603: Woodf. 183: Dart, 636: Elph. 422, 424). So also even of a Parol

Tenancy quà the covenant for Quiet Enjoyment (*Bandy* v. *Cartwright*, 22 L. J. Ex. 285; 8 Ex. 913: *Hall* v. *London Brewery*, 31 L. J. Q. B. 257; 2 B. & S. 737: *Baynes* v. *Lloyd*, 1895, 1 Q. B. 820; 64 L. J. Q. B. 411; *Svthlc*, on app., 1895, 2 Q. B. 610; 64 L. J. Q. B. 787).

But, at least in the case of a lease or letting of Leaseholds, this implied covenant for Quiet Enjoyment is limited to the duration of the Lessor's interest (*Swan* v. *Stransham*, Dyer, 257 a: *Adams* v. *Gibney*, 6 Bing. 656: *Penfold* v. *Abbot*, 32 L. J. Q. B. 67; 11 W. R. 169: *Schwartz* v. *Locket*, 34 S. J. 80, 73: *Baynes* v. *Lloyd*, sup).

As regards the implied covenant for Title, this word "imports *a* Power of letting" (*Holder* v. *Taylor*, Hob. 12); *i.e.* it is distinct from the covenant for Quiet Enjoyment (per Russell, C. J., *Baynes* v. *Lloyd*, sup), and means only that the Lessor can grant *some* lease under which the Lessee can enter (*Vh* 39 S. J. 444). But the authorities are in conflict as to whether this covenant for Title can be implied by any other word than "demise," still less under a mere parol tenancy. "*Hart* v. *Windsor* (12 M. & W. 68, 85) is an authority that the word 'let' has the same effect as 'demise'; and that any other equivalent word would have the same effect" (per Brett, J., *Mostyn* v. *West Mostyn Coal Co*, 1 C. P. D. 152; 45 L. J. C. P. 405): but a directly contrary opinion was expressed by Russell, C. J., in *Baynes* v. *Lloyd*, and therein, *semble*, he was supported by the Court of Appeal, though their actual decision was that, assuming a covenant in the absence of the word "demise" yet, it would be limited to the duration of the Lessor's interest. *Vf* LET.

"On the demise of a brewery, with the exclusive privilege of supplying ale, it would seem that no covenant can be implied with respect to such a privilege from the word 'demise'" (Woodf. 187, citing *Hinde* v. *Gray*, 1 M. & G. 195; 1 Sc. N. R. 123; 9 L. J. C. P. 253).

An instrument is not a Demise or Lease, although it contain the usual words of demise, if its contents show that such was not the intention of the parties (*Taylor* v. *Caldwell*, 32 L. J. Q. B. 164; 3 B. & S. 826); and, on the other hand, an Agreement only may sometimes be a Lease (*V.* LEASE).

DEMISED. — A covenant to repair "the demised," or "the said," Buildings, does not extend to buildings subsequently erected (*Cornish* v. *Cleife*, 34 L. J. Ex. 19; 3 H. & C. 446).

DEMOLISH. — "Demolish or Pull Down or Destroy, or Begin to demolish pull down or destroy," s. 11, 24 & 25 V. c. 97; — this phrase means a total destruction, "or the commencement of a demolition or destruction, the purpose being to effect a complete demolition and destruction if there is no interruption" (per Lindley, J., *Drake* v. *Foottit*, 50 L. J. M. C. 143; 7 Q. B. D. 201, citing *R.* v. *Thomas*, 4 C. & P. 237: *R.* v. *Price*, 5 Ib. 510: *R.* v. *Batt*, 6 Ib. 329: *R.* v.

Howell, 9 Ib. 437: *R.* v. *Adams*, C. & M. 299). And a like meaning is to be given to "feloniously demolished pulled down or destroyed, wholly or in part," in s. 2, 7 & 8 G. 4, c. 31 (*Drake* v. *Foottit*, sup). A substantial destruction is a demolition, even though a small part of the building be left uninjured (*R.* v. *Langford*, C. & M. 602); and that it was effected by fire is immaterial (*R.* v. *Harris*, Ib. 661).

S. 11, 24 & 25 V. c. 97 amplifies, and takes the place of, s. 2, 52 G. 3, c. 130, where the offence prescribed is if any one "shall unlawfully and with force demolish or pull down, or begin to demolish or pull down, any Erection and Building or Engine" used in any Trade or Manufactory; on which it was held that "Engine" must there be held as *ejusdem generis* with "Erection and Building," and that "demolish or pull down" could only hyperbolically be applied to minute things, *e.g.* factory frames, and that "*begin* to demolish or pull down" "denotes that, to complete the act would require a continuance of force operating upon the subject-matter" (per Abbott, J., *Orgill* v. *Smith*, cited ENGINE).

V. DESTROY: TAKE DOWN: UNNECESSARY INCONVENIENCE.

DEMONSTRATIVE. — A Demonstrative Legacy, is General in its phrase but SPECIFIC in its fund, *e.g.* £10 out of a Bank balance, or 10 lambs of a named flock (Wms. Exs. 1021: Theobald, 15).

DEMURRAGE. — The strict meaning of "Demurrage" is the agreed amount to be paid by the Charterer of a Ship for each day taken in loading or discharging beyond the respective times fixed for those operations: "the word 'Demurrage' appears to me to be more applicable to delay in time after the expiration of a *fixed* time than to delay after the expiration of a reasonable time. That is the principle which underlies the authorities; it is that upon which *Lockhart* v. *Falk* (44 L. J. Ex. 105; L. R. 10 Ex. 132) proceeded; and it appears to me to be a reasonable one. I do not think that the term can be easily applied to time after the expiration of a reasonable time" (per Fry, L. J., *Dunlop* v. *Balfour*, 1892, 1 Q. B. 507; 61 L. J. Q. B. 363), *e.g.* where the Loading or Discharge is to be "in the CUSTOMARY manner." But sometimes, — *e.g.* where a CESSER Clause (exonerating the Charterer) is accompanied by a Lien on Cargo for "freight, dead freight, *demurrage*, and average," or such like, — "Demurrage" will include DETENTION other than that which is technically demurrage (*V.* per Brett, J., *Kish* v. *Cory*, L. R. 10 Q. B. 559, 560; 44 L. J. Q. B. 207; 32 L. T. 670; 23 W. R. 880: per Bowen, L. J., *Clink* v. *Radford*, cited CEASE: Carver, ss. 648, 649). On the other hand, where the lien is not coextensive with the Charterer's liability, the Cesser Clause will not, under "Demurrage," include damages for a Detention not covered by the lien (*Lockhart* v. *Falk*, *Dunlop* v. *Balfour*, sup).

"A Demurrage Contract in which the days are fixed, is a contract by the Freighter that if the ship is detained beyond the specified number of days allowed as RUNNING DAYS and DEMURRAGE DAYS, he will pay demurrage in respect of any days during which the ship is detained over and above the days mentioned. The only CONDITION which is to exist before the freighter is bound to pay demurrage is that the days allowed," *e.g.* for the Discharge of the Cargo, "should have commenced to run and should have run out" (per Esher, M. R., *Budgett* v. *Binnington*, 1891, 1 Q. B. 35; 60 L. J. Q. B. 1: *Vf, Tiis* v. *Byers*, 45 L. J. Q. B. 511; 1 Q. B. D. 244: *Porteous* v. *Watney*, 47 L. J. Q. B. 643; 3 Q. B. D. 543: *Straker* v. *Kidd*, 47 L. J. Q. B. 365; 3 Q. B. D. 223). Anything to excuse the Freighter after the Days have run out must be by way of Confession and Avoidance; and he cannot avoid his liability unless he proves that the delay arose from the Shipowner's fault, — *i.e.* fault by himself or his servants, or by circumstances over which he had CONTROL (*Budgett* v. *Binnington*, sup). That principle is applicable for determining what is a sufficient excusal to a Contractor for the non-performance by him of his contractual obligation under every kind of contract (per Lindley, L. J., *Ib.*).

Vh, Abbott, 268–307: Carver, ss. 608–651: 4 Encyc. 205–213: DAYS: LAY DAYS: RUNNING DAYS: WORKING DAY: TURN: USUAL AND CUSTOMARY MANNER.

DEMURRAGE DAYS. — "Days are sometimes given in favour of the charterer which are called 'Demurrage Days.' Those are days beyond the 'Lay Days,' but during which the amount that he has to pay for the use of the ship is a fixed sum" (per Esher, M. R., *Neilsen* v. *Wait*, 16 Q. B. D. 70; 55 L. J. Q. B. 89).

V. DEMURRAGE: DAYS.

DEMURRANT. — Means, residing; *V.* ROYAL PALACE.

DEMURRER. — "'Demurrer,' is when any Action is brought and the Defendant pleadeth a plee to which the plaintife answereth That hee will not answer for that it is not a sufficient plee in the law, and the defendant saith to the contrary That it is a sufficient plee; and thereupon both parties doe submit the cause to the judgement of the Court, — then it is called a Demurrer, for that they goe not forward in pleading, but abide upon the judgement of that point, and is said, in the Latine used in the Records, *Moratur in Lege*" (Termes de la Ley). *Vf*, Jacob: 4 Encyc. 213.

Note. Demurrers in the High Court were abolished and proceedings in lieu thereof provided by Ord. 25, R. S. C.: *V.* ISSUE OF FACT.

DEMY SANGUE. — Demy Sanke, or Demy Sangue; *V.* HALF-BLOOD.

DENARIATA TERRÆ. — An acre (Elph. 572, citing Spelm. *Fardella*); *Sv*, Elph. 598.

DENE. — "Some say that *dene* or *denne*, whereof *dena* commeth, is properly a valley or dale. *Dena silvæ*, and the like, as *drofden*, or *drufden*, or *druden*, signifieth a thicket of wood in a valley; for *druf*, or *dru*, signifieth a thicket of wood, and is often mentioned in Domesday. And sometimes *dena* or *denna* signifieth, as *villa* and *denne*, a Towne" (Co. Litt. 4 b: *V.* COMBE).

DENIZEN. — "'Denizen,' or 'Donaison,' is where an ALIEN borne becommeth the Kings subject, and obtaineth the Kings Letters Patent for to enjoy all priviledges as an Englishman" (Termes de la Ley). *Vf*, Co. Litt. 129 a: *Calvin's Case*, 7 Rep. 25: *Collingwood* v. *Pace*, 1 Ventr. 422: *Anthony* v. *Seger*, 1 Hagg. Con. 9: Cowel: NATURALIZATION.

DENMAN. — Lord Denman's Acts, — The Chimney Sweepers and Chimneys Regulation Act, 1840, 3 & 4 V. c. 85: The Evidence Act, 1843, 6 & 7 V. c. 85.

Mr. Denman's Acts, — The Criminal Procedure Act, 1865, 28 & 29 V. c. 18: The Evidence Further Amendment Act, 1869, 32 & 33 V. c. 68.

DENOMINATIONAL FOUNDATION. — An ENDOWED school, having no instrument of foundation or statutes or written regulations, is not a Denominational Foundation within 32 & 33 V. c. 56, s. 19, or 36 & 37 V. c. 87, s. 7 (*St. Leonards' Trustees* v. *Charity Commrs*, 54 L. J. P. C. 30; 10 App. Ca. 304).

DENY. — *V.* CHRISTIAN RELIGION.

DEODAND. — "'Whatever personal chattel is the immediate occasion of the death of any reasonable creature, which is forfeited to the King, to be applied to pious uses, and distributed in alms by his high almoner' (Jacob: *V.* Spelm.: Chitty, Prerog. 153: 3rd Inst. cap. 9). For two curious examples in which a horse and a tree were deodands, *V.* Y. B. 30 & 31 Edw. I.; Record Publ. App. II, 528, 529" (Elph. 572). *Vf*, *R.* v. *Brownlow*, 11 A. & E. 119: *R.* v. *Eastern Counties Ry*, 10 M. & W. 58: 1 Bl. Com. 300–302: Termes de la Ley. Cowel says, "'Deodand' is a thing given, or rather forfeited as it were, to God for the pacification of his wrath, in case of Misadventure whereby any Christian man cometh to a violent end, without the fault of any reasonable creature."

Deodands were abolished by 9 & 10 V. c. 62.

DEODORIZE. — Quà Metrop Man. Act, 1858, 21 & 22 V. c. 104, "deodorize" includes "any process whereby the solid suspended matters in SEWAGE may be precipitated, or separated, from the liquid before the discharge thereof, — or whereby the noxious or offensive properties of Sewage may be neutralized" (s. 32).

DEPART. — "To Depart," in a Marine Insurance, means that "the ship should not only have broken ground on the day named, but that she should then be out of the port, or at sea" (1 Maude & P. 502, citing *Moir* v. *Royal Exchange Assrce*, 4 Camp. 84; 3 M. & S. 461; 6 Taunt. 241). In *Van Baggen* v. *Baines* (23 L. J. Ex. 213; 9 Ex. 523), the case just cited was contrasted with that then under consideration in which the word used was "LEAVE." *Vf*, SAIL.: FINAL SAILING: DESPATCH.

"Depart with Convoy"; *V.* CONVOY.

"Departs *out of England*," s. 4 (*d*), Bankry Act, 1883; *V.* Yate Lee, 44, 45: Wms. Bank. 19: Robson, 135: Baldwin, 83. *Cp*, ABSCOND: ABSENT.

"Departs *from his dwelling-house*," s. 4 (*d*), Bankry Act, 1883; *V.* Yate Lee, 46: Wms. Bank. 19: Robson, 136: Baldwin, 83.

V. DEPARTING UNITED KINGDOM.

DEPART THIS LIFE. — *V.* DIE.

DEPARTING UNITED KINGDOM. — A disqualification of Trustees on "departing the UNITED KINGDOM from whatever cause or motive, or under whatsoever circumstances," does not apply to a *temporary* absence abroad (*Re Moravian Socy*, 26 Bea. 101; 4 Jur. N. S. 703).

DEPARTURE. — "A Departure in Pleading is said to be when the second plea containeth matter not pursuant to his former, and which fortifieth not the same, and thereupon it is called *decessus*, because he departeth from his former plea" (Co. Litt. 304 a). *Vf* Termes de la Ley.

This Departure is now provided against by R. 16, Ord. 19, R. S. C., on *whv* Ann. Pr.

"Departure in despight of the Court"; *V.* Termes de la Ley: DEFAULT.

DEPENDANT. — Quà Workmen's Comp Act, 1897, "'Dependants,' means (in England and Ireland) such members of the workman's family, specified in the Fatal Accidents Act, 1846, 9 & 10 V. c. 93, as were wholly, or *in part*, dependent upon the earnings of the workman at the time of his death; and (in Scotland) such of the persons, entitled according to the law of Scotland to sue the Employer for damages or solatium in respect of the death of the Workman, as were wholly, or in part, dependent upon the earnings of the workman at the time of his death" (subs. 2, s. 7). As to who is so "dependent" is a question of fact for the jury (*Simmons* v. *White*, 1899, 1 Q. B. 1005; 68 L. J. Q. B. 507; 80 L. T. 344; 47 W. R. 513). A father is "in part" dependent on his child, however young, if the wages of the child form part of the common fund for keeping up, and are a help to maintain, the Home (*S.C.*: *Davies* v. *Main Colliery Co*, 80 L. T. 674; affd in H. L. nom. *Main Colliery Co*

v. *Davies*, 1900, A. C. 358; 69 L. J. Q. B. 755; 83 L. T. 83; 16 Times Rep. 460); but the Dependants "must be 'Dependants' in the proper sense of the word, and not merely persons who derive a benefit from the earnings of the deceased" (per Romer, L. J., *Simmons* v. *White*, sup). *Cp* ATTENDANT. *V.* CHILD, p. 306: PARENT.

Note: As to the Judge's power to apportion the Compensation, *V. Daniel* v. *Ocean Coal Co*, 1900, 2 Q. B. 250; 69 L. J. Q. B. 567; 82 L. T. 523; 48 W. R. 467.

DEPENDENCY. — *V.* REVENUE.

DEPENDENT. — "The doctrine of *Dependent Relative Revocation*, is based on the principle that all acts by which a Testator may physically destroy or mutilate a Testamentary Instrument are, in their nature, equivocal. They may be the result of accident, or, if intentional, of various intentions. It is, therefore, necessary in each case to study the act done by the light of the circumstances under which it occurred and the declarations of the testator with which it may have been accompanied; for unless it be done *animo revocandi* it is no Revocation. What, then, if the act of destruction be done with the sole intention of setting up and establishing some other Testamentary Paper for which the destruction of the Paper in question was only designed to make way? It is clear that, in such a case, the *animus revocandi* had only a conditional existence, the Condition being the validity of the Paper intended to be substituted" (per Wilde, J. O., *Powell* v. *Powell*, cited DESTROY). *V.* REVOKE.

DEPENDING. — *V.* PENDING.

DEPOSIT. — A "Deposit" is equivalent to an EARNEST, and is forfeited on breach by depositor of his agreement; even when the word is found in the following common collocation, — "as a Deposit and in part payment of the purchase money"; so that, on the contract going off, by reason of such breach, the deposit cannot be recovered back, unless there be circumstances which render it inequitable for the deposit to be retained by the depositee (*Howe* v. *Smith*, 53 L. J. Ch. 1055; 27 Ch. D. 89, *whc*—together with *Cornwall* v. *Henson*, 1899, 2 Ch. 710; 68 L. J. Ch. 749; 81 L. T. 113; 48 W. R. 42, revd on the facts, 1900, 2 Ch. 298; 69 L. J. Ch. 581 — leaves *Palmer* v. *Temple*, 8 L. J. Q. B. 179; 9 A. & E. 508, of but little practical value. *Vf*, *Soper* v. *Arnold*, 14 App. Ca. 429: FORFEIT). *Note*: *V.* jdgmt of Fry, L. J., *Howe* v. *Smith*, sup, for history and meaning of "Deposit."

An incurably BAD Title, precluding Specific Performance, will not entitle a Purchaser to recover his deposit, if the Conditions of Sale are such that the Vendor has committed no breach of contract (*Corrall* v. *Cattell*, 8 L. J. Ex. 225; 4 M. & W. 734: *Scott* v. *Alvarez*, 1895, 2 Ch. 603; 64 L. J. Ch. 821; 73 L. T. 43; 43 W. R. 694). *Note*: No action

lies against the Vendor's Solicitor to recover Deposit paid to him (*Ellis* v. *Goulton*, 1893, 1 Q. B. 350; 62 L. J. Q. B. 232). *V.* INVESTIGATING.

Money, or VALUABLE Thing, "deposited" "to abide the EVENT" of a GAMING CONTRACT, s. 18, 8 & 9 V. c. 109, means, Money, &c, won or lost on such a contract; therefore, a Depositor may repudiate and recover back his own deposit at any time before it has been actually appropriated to the contract (*Varney* v. *Hickman*, 5 C. B. 271; 17 L. J. C. P. 102: *Martin* v. *Hewson*, 10 Ex. 737; 24 L. J. Ex. 174), even though the Event has gone against him (*Hastelow* v. *Jackson*, 8 B. & C. 221: *Hampden* v. *Walsh*, 1 Q. B. D. 189; 45 L. J. Q. B. 238: *Diggle* v. *Higgs*, 2 Ex. D. 422; 46 L. J. Ex. 721: *Trimble* v. *Hill*, 5 App. Ca. 342; 49 L. J. P. C. 49: *Universal Stock Exchange* v. *Strachan*, 1896, A. C. 166; 65 L. J. Q. B. 429; 74 L. T. 468; 44 W. R. 497; 60 J. P. 468). But MONEY deposited with one of the parties to a Wager becomes appropriated immediately after the Event, and is irrecoverable whatever be the Event (*Strachan* v. *Universal Stock Exchange No. 2*, 1895, 2 Q. B. 697; 65 L. J. Q. B. 178: *Sv* COVER). *V.* ILLEGAL: *R.* v. *Hobbs*, cited EVENT.

V. LOAN: PLEDGE.

A statutory power authorizing a Trustee Company to "deposit" moneys in its control with any Banking Co, does not authorize a permanent deposit by way of investment (*Perpetual Exors Assn* v. *Swan*, 1898, A. C. 763; 67 L. J. P. C. 141).

A mere deposit of Deeds is not a CONVEYANCE.

"Accumulation or Deposit"; *V.* ACCUMULATION.

"Deposit" Offensive Matter; *V. L. B. & S. Ry* v. *Hayward's Heath*, 80 L. T. 266.

DEPOSITED. — *V.* DEPOSIT: EXPOSE.

V. EXPRESSLY FOR SAFE CUSTODY.

"Deposited Map"; Stat. Def., 62 & 63 V. c. 19, Sch s. 1. *V.* DELINEATED: PLAN.

DEPOSITION. — Quâ Fugitive Offenders Act, 1881, 44 & 45 V. c. 69; V. s. 39.

DEPRAVE. — "Common and notorious Depravers of the Book of Common Prayer," Canons 1603, No. 27; "The terms 'deprave or depraver,' in their more ancient signification, are now little used; but their meaning in the 16th century may be well collected from 1 Edw. 6, c. 1, where we find these expressions applied to the sacrament of the Holy Communion: — 'Whatever person shall deprave, dispise, or contempne, the saide moste blessed Sacrament by any contemptuouse wordes, or by anny wordes of depravinge dispisinge or reviling, shall suffer imprisonment'" (per Cairns, C., delivering jdgmt of P. C. in *Jenkins* v. *Cook*, 45 L. J. P. C. 8; 1 P. D. 80). It was in that case held that a person who had published "Selections from the Old and New Testa-

ment" (omitting chapters and parts of chapters), as appropriate for family devotions, was not a "Depraver" of the Common Prayer within the Canon. *V.* COMMON AND NOTORIOUS.

DEPRECIATION. — *V. Bishop* v. *Smyrna Ry,* cited PROFITS.

DEPRIVATION. — "'Deprivation,' is when a Bishop, Parson, Vicar, Prebend, &c, is deprived or deposed from his Preferment for any matter in fact or in law" (Termes de la Ley). *Vf,* Jacob: Phil. Ecc. Law, 838, 1082: per Cockburn, C. J., *Martin* v. *Mackonochie,* 3 Q. B. D. 751. *Cp* DISGRADE.

DEPRIVED. — *V.* RELINQUISH.
"Liable to be deprived"; *V.* LIABLE.

DEPUTY. — "'Deputie,' is hee that occupieth in another mans right, whether it bee OFFICE or any other thing; and his forfeiture or misdemeanour shall cause the Officer, or him whose Deputy he is, to lose his Office or thing" (Termes de la Ley). *Vf,* Cowel: Jacob.

DERELICT. — Derelict GOODS; *V.* FUGITIVE GOODS.
Derelict LAND; *V.* IMPERCEPTIBLE.
Derelict SHIP, is a Ship abandoned (*The Aquila,* 1 Rob. C. 40, 41): and where the Master and Crew leave a ship to save their lives, her legal character of Derelict is not affected by their intention, if they can, to obtain assistance to save her (*The Coromandel,* Swabey, 205). *Vh, The Magdalen,* 31 L. J. P. M. & A. 22: *The Amerique,* L. R. 6 P. C. 468: *The Cleopatra,* 47 L. J. P. D. & A. 72; 3 P. D. 145. *Vf,* 4 Encyc. 223–226: CASTAWAY: Derelict Vessels (Report) Act, 1896.
"Derelict becomes Wreck of the Sea when it is cast by the sea upon the land" (Maclachlan on Merchant Shipping, 3 ed., 640). *Note,* that "Derelict" is included in the definition of "WRECK" quà Merchant Shipping Acts.
That a ship is "Derelict," generally increases the SALVAGE (*The Janet Court,* 1897, P. 59; 66 L. J. P. D. & A. 34).

DERIVATIVE. — *V.* PRIMARY.

DERIVATIVE LEASE. — As to whether "Derivative Lease" and "Underlease" are convertible terms; *V. Brumfit* v. *Morton,* 3 Jur. N. S. 1198; 30 L. T. O. S. 98. *V.* UNDERLEASE.

DERIVE. — In determining that the Sucn Dy Act, 1853 (*V.* SUCCESSION) does not apply to a *bonâ fide* sale, the vendor not being a Predecessor from whom the interest of the purchaser "is derived" (*V.* s. 2), Jessel, M. R., said: — "How can you say that the interest of the purchaser is 'derived from' the vendor? He does not derive his interest from the vendor; he derives it from his own money which bought

the property. You would not say, if you were talking of a horse you had bought, that you derived your interest in that horse from the horse-dealer. You would say you bought it with your money" (*Fryer* v. *Morland*, 45 L. J. Ch. 820; 3 Ch. D. 675). In *Zetland* v. *Ld Advocate* (3 App. Ca. 515), Ld Hatherley said that "derived," in the section cited, "has somewhat of a metaphorical aspect. You have to say that the donor points to so many fountain heads, but he leaves it to the law to say which is to 'derive' the title to the interest under the settlement."

INCOME is "derived from lands of the Crown, held under Lease or License," s. 15 (iii), New South Wales Land and Income Tax Assessment Act, 1895, if either of the processes whereby the ultimate money income is made is derived from the lands, *e.g.* the extraction of ore from the soil (*Commrs of Taxation* v. *Kirk*, 1900, A. C. 588; 69 L. J. P. C. 87; 83 L. T. 4; over-ruling *Re Tindal*, 18 (N. S. W.) L. R. 378). In *Kirk's* case, the P. C. said, their lordships "attach no special meaning to the word 'derived,' which they treat as synonymous with 'ARISING or accruing.'" On the other hand, the cases on "CARRY ON" or "EXERCISE" a Business were distinguished.

"Derive a Revenue"; *V.* REVENUE.

DESCEND. — A devise of Fee Simple estates to testator's sons A. and B. equally, "*to descend* to the heirs of A. and B. for ever, but in the event of both dying without issue, then to be equally divided between my daughters"; held, that "descend" aptly controlled the devolution to the *lineal* heirs or descendants of A. and B., and therefore that A. and B. took Estates Tail with cross remainders between them, and not estates in fee with executory devises over (*Fay* v. *Fay*, 5 L. R. Ir. 274).

V. DESCENT.

DESCENDANTS. — "'Descendants' mean children and their children and their children to any degree, and it is difficult to conceive any context by which the word 'Descendants' could be limited to mean children only" (per James, L. J., *Ralph* v. *Carrick*, 48 L. J. Ch. 808; 11 Ch. D. 873); and per Brett, L. J., in the same case, — "The *primâ facie* meaning of 'Descendants,' in ordinary parlance, is all descendants of any degree, and not only children, and I know of no authority for saying that in any legal document the word 'Descendants' is, merely because it is in collocation with the word 'parent,' to have any other meaning than it has in ordinary parlance." "Descendants" is, therefore, not in all respects an exact equivalent for ISSUE; though, generally speaking and when unaffected by the context, it is so (2 Jarm. 101: *Va, Re Eyton*, W. N. (76) 142: OFFSPRING).

Notwithstanding the strong observation of James, L. J., just quoted, it had been previously held, under a bequest to "Descendants" of A. "in such proportions as each may be entitled," under the Statute of

Distributions, that a child of A. took in exclusion of grand-children, "descendants" being there controlled by a context, a thing of which the L. J. thought it difficult to conceive (*Smith* v. *Pepper*, 27 Bea. 86, *whc* was not cited in *Ralph* v. *Carrick*. *Va*, *Craik* v. *Lamb*, 14 L. J. Ch. 84; 1 Coll. 489: PERSONAL REPRESENTATIVES).

Vf, 2 Jarm. 98–100: Wms. Exs. 976: FAMILY: NAME: NEXT OF KIN.

In the absence of a controlling context,—"Where there is a gift to A. for life, remainder to the Descendants of A., it is clear that, if Real Estate, it is an Estate Tail; if Personal Estate, it gives him the absolute interest" (per Kindersley, V. C., *Bird* v. *Webster*, 1 Drew. 340; 22 L. J. Ch. 484). *Vf* ISSUE.

Under the circumstances in *Best* v. *Stonehewer* (34 L. J. Ch. 26, 349; 34 Bea. 66; 2 D. G. J. & S. 537) it was held (Knight-Bruce, L. J., diss.) that "Descendants" meant Collateral Descendants. *Cp* LINEAL.

DESCENDIBLE FREEHOLD.—This phrase suffices to include estates PUR AUTRE VIE (*Carroll* v. *Cooke*, 1 Jebb & Sy. 33).

DESCENT.—"'*Discents.*' This word commeth of the Latine word *discendere*, *id est*, *ex loco superiore in inferiorem movere*; and in legall understanding it is taken when land, &c, after the death of the ancestor, is cast by course of law upon the heire, which the law calleth a discent" (Co. Litt. 237 a; *Vf* Ib. 13 b).

Note. For the Rules of Descent of lands in FEE SIMPLE prior to 1834, *V.* 2 Bl. Com. ch. 14: Jacob, *Descent*:—In and since 1834, *V.* Inheritance Act, 1833, 3 & 4 W. 4, c. 106: Wms. R. P., Part 1, ch. 4: Goodeve, ch. 5: Challis on Real Property, ch. 16: 11 Encyc. 74. To these Rules, BOROUGH ENGLISH, and GAVELKIND, were and are exceptions. Consider also the effect of the establishment of the REAL REPRESENTATIVE.

"Descent" is not always used in its strict legal sense; it may mean "a single step in the scale of genealogy" (*Bickley* v. *Bickley*, L. R. 4 Eq. 216; 36 L. J. Ch. 817).

V. DESCEND: DEVOLUTION: PEDIGREE.

DESCRIBE.—A Provisional Specification of a Patent "must describe the NATURE of the Invention," s. 5 (3), Patents, &c Act, 1883, but the complete specification "must *particularly* describe and ascertain the Nature of the Invention" (subs. 4, Ib.);—"It is obvious that the former may be much more general and less detailed in its terms than the latter" (per Ld Herschell, *Vickers* v. *Siddell*, 60 L. J. Ch. 105; 15 App. Ca. 496).

DESCRIBED.—*V.* AS DESCRIBED: SET FORTH.

DESCRIPTION.—*V.* LIKE: NATURE: TRADE DESCRIPTION.

"Every acknowledged dictionary in the English language would sanction as an accurate definition of 'Description,'—a representation that

gives to another a view of the thing intended to be represented" (per Miller, J., *Re Fitzpatrick*, 19 L. R. Ir. 210). From that premiss the learned judge reasoned to the conclusion that, every OCCUPATION of the Grantor of a Bill of Sale must be stated.

The "Description" of a person is that which tells what he is; and where a statute requires that the name, place of abode, and description, of a person be given, and only the name and place of abode are given, there is a total omission of the "description," not an "inaccurate description" (*R.* v. *Tugwell*, L. R. 3 Q. B. 704; 37 L. J. Q. B. 275; 9 B. & S. 367); such an omission by an Attesting Witness to a Bill of Sale invalidates the document (*Sims* v. *Trollope*, 1897, 1 Q. B. 24; 66 L. J. Q. B. 11; 75 L. T. 351; 45 W. R. 97).

A grantee, whether under a Bill of Sale or any other document, may be described in any way which is capable of subsequent ascertainment (*Maughan* v. *Sharpe*, 34 L. J. C. P. 19; 17 C. B. N. S. 443: *Simmons* v. *Woodward*, 1892, A. C. 100; 61 L. J. Ch. 252). *Vf*, ADDRESS: RESIDENCE: ADDITION.

Note. The Bills of S. Act, 1878, has no provision requiring the name of the Grantor to be stated (*Central Bank of London* v. *Hawkins*, 62 L. T. 901: *Stokes* v. *Spencer*, 1900, 2 Q. B. 483; 69 L. J. Q. B. 792; 83 L. T. 199; 49 W. R. 13); nor, where there is nothing to mislead, does the Bills of S. Act, 1882, require the full statement of the Grantor's Christian name (*Downs* v. *Salmon*, 57 L. J. Q. B. 454; 20 Q. B. D. 775).

As to the Description of the Vendor in a V. & P. contract, *V.* PROPRIETOR: — of the subject-matter, *V.* ET CETERA: MY: NOTE: THE.

"To limit description of his Workmen"; *V.* THREAT.

The "Description" of the "SITUATION" of the house or shop, quà Notice under s. 7, Wine and Beerhouse Act, 1869, 32 & 33 V. c. 27, will suffice if it be given in such a way that the premises can be identified; it is very much a question of fact for the Justices. That particularity which is needed where the premises are in a large town, is not applicable to a small village (*R.* v. *Penkridge Jus.*, 61 L. J. M. C. 132; 66 L. T. 371; 56 J. P. 87).

The implied Condition (as distinct from a Collateral Warranty) on a "Sale of Goods by Description," s. 13, Sale of Goods Act, 1893, "applies in all cases where the purchaser has not seen the article sold, and relies on the description given to him by the vendor. I think it would most frequently apply to unascertained goods, but it does not follow that it may not, in some cases, apply to specific goods" (per Channell, J., *Varley* v. *Whipp*, 1900, 1 Q. B. 513; 69 L. J. Q. B. 333; 48 W. R. 363).

DESCRIPTIVE. — Descriptive Name; *V.* FANCY WORD.

DESERTED: DESERTION: DESERT. — These words in the Matrimonial Causes Act, 1857 (20 & 21 V. c. 85: and *V.* ss. 16, 27, 31),

mean continual absence from Cohabitation (or, *semble*, not commencing cohabitation, *De Laubenque* v. *De Laubenque*, 1899, P. 42; 68 L. J. P. D. & A. 20), contrary to the will, or without the consent, of the party charging it, and without reasonable CAUSE (*Ward* v. *Ward*, 27 L. J. P. & M. 63; 1 Sw. & Tr. 185: *Cudlipp* v. *Cudlipp*, 27 L. J. P. & M. 64: *Thompson* v. *Thompson*, Ib. 65: *Haviland* v. *Haviland*, 32 L. J. P. M. & A. 65: *Williams* v. *Williams*, 33 L. J. P. M. & A. 172; 3 Sw. & Tr. 547: *Yeatman* v. *Yeatman*, 37 L. J. P. M. & A. 37; L. R. 1 P. & D. 489): and there is no such consent if the separation be caused by ill-treatment (*Graves* v. *Graves*, 33 L. J. P. M. & A. 66; 3 Sw. & Tr. 350: *Mackenzie* v. *Mackenzie*, cited REASONABLE CAUSE), or the false and persistent accusation of an unnatural offence (*Russell* v. *Russell*, 1895, P. 315; 64 L. J. P. D. & A. 105; 73 L. T. 295; 44 W. R. 213), or adultery (*Farmer* v. *Farmer*, 53 L. J. P. D. & A. 113; 9 P. D. 245: *Garcia* v. *Garcia*, 57 L. J. P. D. & A. 101; 13 P. D. 216; 59 L. T. 524; 52 J. P. 584: *Edwards* v. *Edwards*, 62 L. J. P. D. & A. 33), or be obtained by fraud (*Crabb* v. *Crabb*, 37 L. J. P. & M. 42; L. R. 1 P. & D. 601; 16 W. R. 650); but merely living with another woman and introducing her as wife, but without ceasing cohabitation with the real wife, is not desertion by a husband (*Ward* v. *Ward*, sup: *Farmer* v. *Farmer*, sup); *secus*, if there is a separation caused by the husband's refusal to give up an adulterous liaison (*Pizzala* v. *Pizzala*, 68 L. J. P. D. & A. 91, *n*; 12 Times Rep. 451: *Koch* v. *Koch*, 1899, P. 221; 68 L. J. P. D. & A. 90; 81 L. T. 61). So absconding, with the wife's consent, to escape a criminal prosecution or other trouble, is not Desertion (*Townsend* v. *Townsend*, 42 L. J. P. & M. 71; L. R. 9 P. & D. 129); *secus*, where there is no such consent (*Drew* v. *Drew*, 57 L. J. P. D. & A. 64; 13 P. D. 97; 58 L. T. 923; 36 W. R. 927: *Wynne* v. *Wynne*, 1898, P. 18; 67 L. J. P. D. & A. 5). *Vf*, *Fitzgerald* v. *Fitzgerald*, L. R. 1 P. & D. 694; 38 L. J. P. & M. 14; 17 W. R. 264.

"'Desertion' is not to be tested by merely ascertaining which party left the matrimonial home first. The party who intends to bring the COHABITATION to an end and whose conduct in reality causes its termination, commits the act of Desertion; *e.g.* there is no substantial difference between the case of a husband who intends to put an end to the state of Cohabitation and does so by leaving his wife, and that of a husband who, with the like intent, obliges his wife to separate from him" (per Barnes, J., *Sickert* v. *Sickert*, 1899, P. 278; 68 L. J. P. D. & A. 114; 81 L. T. 495: *Vf*, *Mellows* v. *Mellows*, 31 L. J. N. C. 441).

When husband and wife are living separate under an agreement to separate, there is no Desertion (*Crabb* v. *Crabb*, sup: *Buckmaster* v. *Buckmaster*, 38 L. J. P. & M. 73; L. R. 1 P. & D. 713: *Parkinson* v. *Parkinson*, 39 L. J. P. & M. 14; L. R. 2 P. & D. 25); but it must be a perfected agreement (*Nott* v. *Nott*, 36 L. J. P. & M. 10; L. R. 1 P. & D. 251), and with the real concurrence of the wife, and with some justifica-

tion (*Dagg* v. *Dagg*, 51 L. J. P. D. & A. 19; 7 P. D. 17; 30 W. R. 431). Non-payment of an allowance under such an agreement will not convert separation into desertion (*Pape* v. *Pape*, 20 Q. B. D. 76; 57 L. J. M. C. 3; 36 W. R. 125). This last case was on "deserted," as used in s. 1, 49 & 50 V. c. 52; and Stephen, J., said:—"'Desertion,' at any rate, implies that the parties were living together at the time when the desertion took place."

Non-compliance with decree for Restitution of Conjugal Rights constitutes Desertion (47 & 48 V. c. 68: *Vth*, *Bigwood* v. *Bigwood*, 57 L. J. P. D. & A. 80; 13 P. D. 89; 58 L. T. 642; 36 W. R. 928: *Russell* v. *Russell*, sup).

A wife who, without a justifying cause, refuses sexual intercourse, and refuses to live with her husband unless he will undertake to refrain therefrom, is guilty of Desertion (*Synge* v. *Synge*, 1900, P. 180; 69 L. J. P. D. & A. 106; 83 L. T. 224; affd, 1901, P. 317; 70 L. J. P. D. & A. 97; 85 L. T. 83). *V.* REASONABLE EXCUSE.

A *bonâ fide* offer to resume cohabitation will put an end to "Desertion," if made before the statutory two years have expired, otherwise not (*Cargill* v. *Cargill*, 27 L. J. P. & M. 69: *Harris* v. *Harris*, 31 Ib. 6; 15 L. T. 448: *Basing* v. *Basing*, 33 L. J. P. M. & A. 150; 3 Sw. & Tr. 516); but such an offer is nugatory if the husband be actually cohabiting with another woman (*Edwards* v. *Edwards*, sup), *secus*, if such cohabiting has been discontinued (*Lodge* v. *Lodge*, 59 L. J. P. D. & A. 84; 15 P. D. 159). *Vf*, *Martin* v. *Martin*, 78 L. T. 568.

It was at one time suggested that "deserted," in s. 31, 20 & 21 V. c. 85, meant something equivalent to leaving the other party destitute (*Haswell* v. *Haswell*, 29 L. J. P. & M. 21; 1 Sw. & Tr. 502). That, quà a conjugal offence, was obviously unsound, and has not been supported (*Yeatman* v. *Yeatman*, sup).

Note. *Semble*, "Desertion" by a Petitioner is no bar to his or her obtaining Judicial Separation (*Duplany* v. *Duplany*, 1892, P. 53; 61 L. J. P. D. & A. 49: *Synge* v. *Synge*, sup).

By s. 21, 20 & 21 V. c. 85, "a wife deserted," in order to obtain a Protection Order, was one who "is maintaining herself by her own industry or property." Desertion, in that connection, means "not only that the husband has absented himself, but has left his wife unprovided for, and such desertion must continue at the time of making the Order; and a *bonâ fide* offer of the husband to return and provide for his wife, would take away her right to have such an Order made" (per J. O., in *Cargill* v. *Cargill*, sup: *Jones* v. *Jones*, 43 W. R. 424; 11 Times Rep. 317), even (as it should seem) though the separation had been caused by the husband's cruelty (*Vf*, *Henty* v. *Henty*, 33 L. T. 263: *Stickland* v. *Stickland*, 25 W. R. 114). That ruling is, *semble*, applicable to "Desertion" in s. 1, 49 & 50 V. c. 52, repld s. 4, 58 & 59 V. c. 39. To these sections the doctrine of *Crabb* v. *Crabb* and *Pape* v. *Pape* (sup), is ap-

plicable (*R.* v. *Leresche*, 1891, 2 Q. B. 418; 60 L. J. M. C. 153; 40 W. R. 2; 65 L. T. 602: *Sv, Bradshaw* v. *Bradshaw*, cited COHABITATION). But if there has been an agreed temporary separation, — *e.g.* for the wife's confinement, — and afterwards the husband refuses cohabitation and support, that is "Desertion" within these sections (*Chudley* v. *Chudley*, 62 L. J. M. C. 97); *secus*, if the husband has offered such cohabitation as is within his means for the time being (*Jones* v. *Jones*, sup). *Note:* It is not necessary to fix the actual date when the Desertion began (*Wilkinson* v. *Wilkinson*, 58 J. P. 415); and, so long as it continues, it is a CONTINUING OFFENCE, and the time for making the Complaint does not run from the day the husband left (*Heard* v. *Heard*, 1896, P. 188; 65 L. J. P. D. & A. 111; 60 J. P. 426). *V.* RUNNING AWAY: *Cp* PERSISTENT.

"Desertion," s. 1, 49 & 50 V. c. 52, is a question of fact for the Justices, having regard to the legal meaning of "Desertion" (*R.* v. *Birwistle*, 58 L. J. M. C. 158); who must enquire into all the facts, and not, *e.g.* accept proof of a husband's refusal to take in and provide for his wife, and shut out proof of previous facts (*Wassell* v. *Wassell*, 81 L. T. 496; 68 L. J. P. D. & A. 127).

"Desertion" of a wife, in the statutes relating to Poor Law Removal, means no more than living apart. The meaning of the word in s. 3, 24 & 25 V. c. 55, "is that where the wife has been residing in a different place from her husband for a prolonged period, she shall be considered for Poor Law purposes as not being bound by the marriage tie, and as living apart" (per Cockburn, C. J., *R.* v. *Maidstone*, 49 L. J. M. C. 26; 5 Q. B. D. 31). Accordingly a married woman is none the less "deserted" by her husband within that section, because he allows and pays her 2*s.* 6*d.* a week (*R.* v. *St. Mary, Islington*, 39 L. J. M. C. 137; L. R. 5 Q. B. 445; 34 J. P. 646); nor even if the separation be caused by the wife's adultery (*R.* v. *Maidstone*, sup), unless she take herself off in her husband's absence and without his consent (*R.* v. *Cookham*, 9 Q. B. D. 522).

Cp LIVING APART.

Abandonment or Desertion of a Child; *V.* ABANDONMENT.

To "desert" a Ship "is used in the statute (s. 9, 7 & 8 V. c. 112) in a bad sense, and means abandoning the service without sufficient cause" (per Crompton, J., *Edward* v. *Trevellick*, 24 L. J. Q. B. 12; 4 E. & B. 59). So, if a MARINER has permission to leave but refuses to return, that is a Desertion (*The Bulmer*, 1 Hagg. Adm. 163). *Vf, McDonald* v. *Jopling*, 7 L. J. Ex. 220; 4 M. & W. 285: *The Pearl*, 5 Rob. C. 224: *Neave* v. *Pratt*, 2 B. & P. N. R. 408: Abbott, 797–804. *V.* WAGES.

Military or Naval Desertion; *V.* 4 Encyc. 228–230.

DESERVING. — A bequest to "Deserving" objects is bad, as being too indefinite; but one to "Charitable and Deserving" objects is good,

the sentence being governed by "Charitable" (*Re Sutton*, 54 L. J. Ch. 613; 28 Ch. D. 464; 33 W. R. 519). *Vf*, as to "Deserving," *Re Wall, Pomeroy* v. *Willway*, 42 Ch. D. 510; 59 L. J. Ch. 172; 61 L. T. 357.

V. RELATIONS.

DESIGN. — Quà Patents, Designs, and Trade Marks Act, 1883, "'Design,' means, any Design applicable to any article of manufacture, or to any substance (artificial or natural, or partly artificial and partly natural), whether the Design is applicable for the PATTERN, or for the SHAPE or Configuration, or for the Ornament, thereof, or for any two or more of such purposes,—and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined: — not being a Design for a Sculpture or other thing within the protection of the Sculpture Copyright Act of the year 1814, 54 G. 3, c. 56" (s. 60). "The object of that Interpretation Clause was to make the word 'Design' as extensive as it reasonably ought to be. It was not intended to draw a hard-and-fast distinction between the Design being 'applicable for the Pattern,' or 'for the Shape, or Configuration,' or 'for the Ornament.' I do not think you can say that 'Pattern' as it is used in that section, necessarily and always, excluded the 'Shape' or 'Configuration,' and that nothing could be included in 'Shape' or 'Configuration' which might not fail to be considered under 'Pattern'; or, again, that the 'Ornament thereof' might not be part of the Pattern and included under the word 'Pattern.' The words have not a sharply defined meaning, but the intention is to include 'any Design' applicable to any class of goods, and whether 'applicable for a Pattern,' or 'for the Shape, or Configuration, or Ornament,' or some or all of them" (per Ld Herschell, *Heath* v. *Rollason*, 1898, A. C. 499; 67 L. J. Ch. 565; 79 L. T. 1).

V. NEW DESIGN.

DESIGNATION. — "Designation of a Landlord"; *V. Gough* v. *Gough*, cited LANDLORD.

DESIRABLE. — *V.* OPINION.

The statement by a Vendor that the property offered for sale is let to a "Desirable Tenant," is "not a guarantee that the tenant will go on paying his rent, but it is a guarantee of a different sort and amounts, at least, to an assertion, as a specific fact, that nothing has occurred in the relations between the landlord and the tenant which can be considered to make the tenant an unsatisfactory one. A tenant who had paid his last quarter's rent by dribblets under pressure, must be regarded as an undesirable tenant" (per Bowen, L. J., *Smith* v. *Land, &c Corp*, 28 Ch. D. 15, 16; 51 L. T. 718; 49 J. P. 182).

DESIRE. — *V.* PRECATORY TRUST: APPROPRIATE.

Bequest of a fund to be distributed among Charitable Institutions, "*but I desire* that A. and B. shall benefit most largely"; the effect is that neither A. nor B. can be left out of the distribution, and that each must have more than any other of the Institutions, — though it is not necessary that A. and B. should have equal amounts (*Armitage* v. *Gordon*, 15 Times Rep. 453).

If a contracting party "shall desire" to terminate contract; *V. Sun Insrce* v. *Hart*, 58 L. J. P. C. 69.

V. VIEW.

DESIROUS OF BEING DISCHARGED. — Trustees who have paid their trust fund into Court thereby retire (*V.* RETIRING TRUSTEE), and cannot afterwards be treated as "desirous of being discharged," so as to execute a power of appointing new Trustees (*Re Bailey*, 3 W. R. 31).

DESIROUS OF WORKING. — An owner "desirous of working" minerals, s. 78, Ry C. C. Act, 1845, means, one who is really so desirous (*Mid. Ry* v. *Robinson*, cited MINE).

DESK. — In *Re Robson* (7 Times Rep. 512), it was conceded, without argument, that a bequest of "My old mahogany Desk," passed the testator's Bureau. *Vf* CONTENTS.

DESPATCH. — *V.* POSSIBLE: PROMPT DESPATCH: CUSTOMARY: USUAL DESPATCH: DUE DILIGENCE.

"Despatch Money," means, "Money earned by the use of greater promptitude than the contract provided for" (per Kennedy, J., *Maccoy* v. *West*, 15 Times Rep. 84).

Despatch Money at so much per hour "for all time saved," or "for every hour saved," in a Discharge Clause of a Charter-Party; *V. Laing* v. *Holloway*, 47 L. J. Q. B. 512; 3 Q. B. D. 437; 26 W. R. 769: *The Glendevon*, 1893, P. 269; 62 L. J. P. D. & A. 123.

DESPATCHED. — "The Ship shall be despatched from" A.; — "despatched," means, "really sailing on the voyage" (per Martin, B., *Sharp* v. *Gibbs*, 1 H. & N. 806). *Vf*, SAIL: DEPART.

DESTINATION. — "Now what is meant by sending goods 'to their Destination'? It seems to me that it means sending them to a particular place, to a particular person who is to receive them there; and not, sending them to a particular place without saying to whom" (per Brett, M. R., *Ex p. Miles*, 15 Q. B. D. 43).

Ship's "Place of Destination"; *V. Attwood* v. *Case*, 45 L. J. M. C. 20; 1 Q. B. D. 134.

DESTITUTE. — A man is not "destitute," in the sense of being entitled to Poor Law Relief, simply because he has no food or money, if he is able-bodied and physically well and can get a sufficiency of work for his maintenance, — but will not work because he is on Strike (*A-G.* v. *Merthyr Tydvil*, cited IDLE AND DISORDERLY PERSON).

DESTROY: DESTROYING. — The phrase "otherwise destroying" a Will so as to revoke it, s. 20, Wills Act, 1837, has to be read as *ejusdem generis* with the words immediately preceding it, — "burning, tearing," — that is, there must be "destruction, in the proper sense of the word, of the substance or contents of the Will, or, at least, *complete* effacement of the writing, *e.g.* by pasting over it a blank paper; and not a 'destroying' in a secondary sense, as by cancelling or incomplete obliteration. These, unless they prevent the words, as originally written, from being apparent, — that is, apparent by looking at the Will itself, — are plainly excluded by the statute. Glasses have been used for discovering what the words attempted to be obliterated originally were" (1 Jarm. 142. *Vh*, *Cheese* v. *Lovejoy*, cited REVOKE: *Margary* v. *Robinson*, 56 L. J. P. D. & A. 44; 12 P. D. 8). *V.* TEAR: *Cp* CANCEL.

When a Will is executed in Duplicate, the destruction of one of them *animo revocandi*, is a destruction of both; but evidence of declarations by the testator that he has so destroyed one part is inadmissible (*Atkinson* v. *Morris*, 1897, P. 40; 66 L. J. P. D. & A. 17; 45 W. R. 293; 75 L. T. 440).

A Destruction by Mistake, may be cured by admitting the draft of the Will to probate (*Beardsley* v. *Lacey*, 78 L. T. 25; 67 L. J. P. D. & A. 35).

A Destruction solely with the view to REVIVE a previous Will, is not a Revocation of the Will destroyed (*Powell* v. *Powell*, 35 L. J. P. & M. 100; L. R. 1 P. & D. 209: *Cossey* v. *Cossey*, 82 L. T. 203; 69 L. J. P. D. & A. 17). *V.* DEPENDENT.

V. DEMOLISH: SPOIL: CUT DOWN.

DESTRUCTION. — To take ESTOVERS "without Destruction," must have a "reasonable exposition," so that the grantee may take Estovers conveniently and sufficiently for his necessary use (*Stampe* v. *Burgesse*, 2 Rolle, 73, 74).

"Waste and Destruction"; *V.* WASTE.

V. DESTROY.

DESTRUCTIVE. — Boiling Water held to be "Destructive *Matter*" within s. 5, 1 V. c. 85, repealed (*R.* v. *Crawford*, 2 C. & K. 129); but not a "Destructive *Substance*" within s. 29, 24 & 25 V. c. 100 (*R.* v. *Martin*, 62 Law Times, 372).

"Poison, or other Destructive *Thing*"; *V. R.* v. *Cluderoy*, cited POISON.

DETAIL. — *V.* NATURE.

DETAIN. — "Detain"; in DETINUE, means that the defendant withholds the goods, and prevents plaintiff from having possession of them (*Clements* v. *Flight*, 16 M. & W. 42; 16 L. J. Ex. 11).

V. LAWFULLY DETAINED.

DETAINER. — *V.* FORCIBLE DETAINER.

DETAINMENTS. — *V.* RESTRAINTS OF KINGS.

DETENTION. — Hostile "Detention," in a Marine Insurance, is equivalent to SEIZURE (*Johnston* v. *Hogg*, 52 L. J. Q. B. 343; 10 Q. B. D. 432).

Where a contract for carriage exempts the carrier from damage by reason of "detention" of the goods, that means something which prevents the carrier from delivering at the proper time; and does not cover a wrongful detention by him (*Gordon* v. *G. W. Ry*, 51 L. J. Q. B. 58; 8 Q. B. D. 44).

"Reasonable and Probable Cause" for detaining a Ship; *V.* REASONABLE CAUSE.

V. DETINUE: APPREHENSION: DEMURRAGE.

DETENTION BY DEFAULT. — *V.* DEFAULT.

DETENTION BY ICE, FROST, &c. — "Detention by Ice not to be reckoned as Laying Days," in a Charter-Party, means prevention of "access to the ship by reason of ice from any one of the storing places from which merchandize is to be conveyed direct to the ship" (per Willes, J., and adopted by Ex. Cham. in *Hudson* v. *Ede*, L. R. 3 Q. B. 415); and, therefore, where a ship was to proceed to Sulinah and there load grain or seed with a provision as to laying days for loading, "Detention by Ice not to be reckoned as laying days," and the port itself and sea immediately outside were free from ice, yet the River Danube, down which the grain had to be brought, was impeded with ice; it was held that there was a "Detention by Ice" within the meaning of the Exception (*Hudson* v. *Ede*, 36 L. J. Q. B. 273; 37 Ib. 166; 8 B. & S. 639; 9 Ib. 480; L. R. 3 Q. B. 412; "it is no use to say that that was a very strong decision, — it has been recognized in H. L.," per Esher, M. R., *Smith* v. *Rosario Nitrate Co*, 1894, 1 Q. B. 178: *Va*, *Furness* v. *Forwood*, cited ACCIDENT). But *Hudson* v. *Ede* rather lays down an exception than a general rule; for the general rule is, that the conveyance of goods to the place of loading is no part of the loading. Accordingly where a ship had to proceed to Cardiff East Bute Dock, and there load, "Detention by Frost," &c, not to be reckoned as lay days; and the freighters' agents were prevented from getting the goods to the East Bute Dock by reason of the freezing over of the canal from their wharf

to that dock, it was held that this time was to be reckoned as lay days (*Kay* v. *Field*, 52 L. J. Q. B. 17; 10 Q. B. D. 241: *Va, Grant* v. *Coverdale*, 53 L. J. Q. B. 462; 9 App. Ca. 470: *The Alne Holme*, 1893, P. 173; 62 L. J. P. D. & A. 51; 68 L. T. 862; 41 W. R. 572). *Cp* STRIKE.

V. ICE-BOUND.

DETENTION BY RAILWAYS.—An Exception in a Charter-Party of "Detention by Railways," connotes simply, whether, in point of fact, there has been such a Detention; its cause is immaterial, *e.g.* if it were imposed on the Charterer by a Ry Co as a legitimate punishment for his having kept unloaded at his works more of the Company's trucks than their rules allowed (*Letricheux* v. *Dunlop*, 19 Sess. Ca. 4th Ser. 209).

DETERIORATE.—"Affect or deteriorate" Water; *V.* FILTHY WATER.

DETERMINABLE.—A DEMISE for, say, 3 years "determinable" on a prescribed Notice, means, that such notice may be given so as to expire at the end of any year of the tenancy; but if it be added "otherwise the tenancy to continue from year to year until the term shall cease by Notice to Quit at the usual times," that connotes a demise for 3 years certain, determinable then or at the end of some subsequent year by the prescribed notice (*Jones* v. *Nixon*, 31 L. J. Ex. 505; 1 H. & C. 48).

Determinable at 7, 14, or 21 years; *V.* OR.

DETERMINABLE FUTURE TIME.—A Bill of Ex. (s. 11), or Promissory Note (s. 89), is payable at a "Determinable Future Time," within the Bills of Ex. Act, 1882, "which is expressed to be payable—

(1) At a fixed period after date or sight.

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain."

DETERMINATION.—"Determination" of an ACTION; *V. Burnaby* v. *Earle*, 43 L. J. Q. B. 209; L. R. 9 Q. B. 490.

"Determination" of a COMPLAINT, s. 3, 20 & 21 V. c. 43; *V. Diss* v. *Aldrich*, 46 L. J. M. C. 183; 2 Q. B. D. 179; 41 J. P. 132: *West* v. *Potts*, 34 J. P. 760. *Vf*, Summary Jur Act, 1879, 42 & 43 V. c. 49, s. 33.

An Acquittal by Justices is not an "Order, Conviction, Judgment, or Determination" from which a "person who shall think himself AGGRIEVED" thereby can appeal to Quarter Sessions, under s. 105, Highway Act, 1835 (*R.* v. *London Jus.*, 59 L. J. M. C. 146; 25 Q. B. D. 357).

A Letter from the Charity Commrs, to a parish Council, giving their

Opinion on a question submitted under s. 70 (2), Loc Gov Act, 1894, is a "Determination" by them under that provision (*A-G.* v. *Hughes*, 81 L. T. 679).

The "Determination" of a *Term or Estate* is the same thing as its "Termination"; and does not only mean premature extinction, but the coming to an end in any way whatever (*St. Aubyn* v. *St. Aubyn*, 30 L. J. Ch. 920; 1 Dr. & Sm. 611). To the same effect is the statutory interpretation of "Determination of Tenancy" for the purposes of the Agricultural Holdings (England) Act, 1882, which by s. 61, "means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause"; and where a custom authorizes the retention of part of the land of a farm for a period beyond the prescribed term of letting, the "Determination of the Tenancy," quà that Act, is not accomplished till that further period has expired (*R.* v. *Maconochie*, 34 S. J. 64: *Re Paul*, 59 L. J. Q. B. 30; 24 Q. B. D. 247; 61 L. T. 835; 54 J. P. 644): But where such a custom only extends to the farm-house and buildings, the time for the Determination of the Tenancy under that Act is not extended (*Black* v. *Clay*, 1894, A. C. 368; 71 L. T. 446: *Morley* v. *Carter*, 1898, 1 Q. B. 8; 66 L. J. Q. B. 843; 77 L. T. 337; 46 W. R. 77). *Vh*, *Beavan* v. *Delahay*, 1 Bl. H. 5: *Knight* v. *Bennett*, 3 Bing. 366, 367. *V.* END: EXPIRATION.

"Determination of Tenancy"; Other Stat. Def., 50 & 51 V. c. 26, s. 4. — *Scot.* 46 & 47 V. c. 62, s. 42.

"Sooner Determination," rejected as insensible; *V.* TERM.

DETERMINE. — *V.* DETERMINATION: HEAR.

Notice of the death of the Obligor to a running GUARANTEE, is not a notice to "determine" the obligation, within a proviso enabling its determination (*Re Silvester*, 1895, 1 Ch. 573; 64 L. J. Ch. 390; 72 L. T. 283; 43 W. R. 443).

As to what is a sufficient Notice to determine a LEASE; *V. Bury* v. *Thompson*, 1895, 1 Q. B. 696; 64 L. J. Q. B. 500; 72 L. T. 187; 43 W. R. 338; 11 Times Rep. 267: and what sufficient quà a mere Tenancy, *V. Farrance* v. *Elkington*, 2 Camp. 591: *Gardner* v. *Ingram*, 61 L. T. 729: *General Assrce* v. *Worsley*, 64 L. J. Q. B. 253; 72 L. T. 358: Redman, 384–386.

V. CEASE.

DETINUE. — Detinue (now generally phrased, Detention of Goods) is an Action "that lies against him who having goods and chattels delivered to him to keep, refuses to re-deliver them: Fitz. Nat. Brev. 138" (Termes de la Ley). *V.* DETAIN.

Vh Rosc. N. P. 981–984. *Cp* TROVER.

V. DETENTION.

DETRIMENT. — *V.* MATERIAL DETRIMENT.

DETRIMENTAL. — Carrying on a BUSINESS which is only dangerous, is not a breach of a Lessee's covenant against carrying on a business which is "Detrimental or a NUISANCE to surrounding occupiers" (per Hawkins, J., *Lepla* v. *Rogers*, 37 S. J. 11).

DEVASTAVIT. — A Devastavit is a Mismanagement of the Estate of a deceased person by his LEGAL REPRESENTATIVES "in squandering and misapplying the ASSETS, contrary to the duty imposed on them; for which they shall answer out of their own pockets as far as they had, or might have had, Assets of the deceased" (Wms. Exs. 1690 *et seq*, *whv*).

DEVELOP. — Development of TRAFFIC; *V. Beman* v. *Rufford*, 1 Sim. N. S. 570.

"Convey Traffic in a proper and convenient manner, and so as fairly to develop the TRAFFIC of the District," in a contract between two Ry Companies; *V. Clonmel Traders* v. *Waterford & Limerick Ry*, 4 Ry & Can Traffic Ca. 92: *Mid. G. W. Ry* v. *Dublin & Meath Ry*, Ib. 145.

DEVIATE. — To "deviate in any respect" from the Certified PLAN of an old domestic building, s. 43 (ii), London Bg Act, 1894, is not confined to the Ground-plan of the building but includes any alteration in the character or outline of the building, and any alteration which will impose a greater burden upon anybody who is affected by the building, — *e.g.* an alteration of the height of the building, or of the cubic space or dimensions of its rooms (*Paynter* v. *Watson*, 1898, 2 Q. B. 31; 67 L. J. Q. B. 640; 46 W. R. 655; 62 J. P. 467).

"*Deviation*," as used in Railway Acts, means, shifting the work in its integrity from one site to another which may be deemed more suitable; it does not imply a right, not only to alter the situation of the work but in doing so, to dispense with a half or two-thirds of it (*Herron* v. *Rathmines Commrs*, 1892, A. C. 498). *V.* LATERAL.

Line of "Deviation," quà Ry Acts, "and particularly 8 & 9 V. c. 20, s. 15, is to be taken with reference to the Line of Railway only, *i.e.* that the Line of Ry actually laid down shall not deviate more than 100 yards from the line laid down and DELINEATED in the parliamentary plans, — the *medium filum viæ* of each being the commencement and termination in measuring those 100 yards" (*Doe* d. *Armistead* v. *N. Staffordshire Ry*, 16 Q. B. 537; 20 L. J. Q. B. 253, condensing and giving force to jdgmt of Alderson, B., in *Doe* d. *Payne* v. *Bristol & Exeter Ry*, 6 M. & W. 345, 346).

In a Marine Insurance, or Charter Party, "Deviation" is any unexcused departure from the usual course of proceeding towards the terminus of the voyage (1 Arn. 452); or, in other words, "a voluntary departure, without necessity or any reasonable cause, from the regular and usual course of the specific voyage" (Park, ch. 17). *Vh, Hammond*

v. *Reid*, 4 B. & Ald. 73, on *whcv*, *Gambles* v. *Ocean Insrce*, 1 Ex. D. 8, 141; 45 L. J. Ex. 366: *Solly* v. *Whitmore*, 5 B. & Ald. 45: *Harrower* v. *Hutchinson*, 10 B. & S. 469; 39 L. J. Q. B. 229; L. R. 5 Q. B. 584; 22 L. T. 684: *Glynn* v. *Margetson* and *Caffin* v. *Aldridge* cited LIBERTY TO CALL: *The Dunbeth*, 1897, P. 133; 66 L. J. P. D. & A. 66: *Hyderabad Co* v. *Willoughby*, 1899, 2 Q. B. 530; 68 L. J. Q. B. 862: *Phelps* v. *Hill*, 1891, 1 Q. B. 605; 60 L. J. Q. B. 382: Abbott, 406–410: 4 Encyc. 243–247.

CHANGE of Voyage and Deviation, contrasted; *V.* 8 Encyc. 178.

DEVICE. — To catch fish; *V.* To PLACE: ROD AND LINE. *V.* DISTINCTIVE.

DEVISE. — "The words 'Devise' and 'Bequeath' are terms of known use in our law, the former from Glanville's time and earlier. In their ordinary sense they signify the declaration of a man's will concerning the succession to *his own property* after his death. Such a 'devise' or 'bequest' operates (on subjects which either by common, or statute, law or custom can so be disposed of) by virtue of the Will, and of that alone. On the other hand, an Appointment under a *Limited* Power operates by virtue of the instrument creating the Power; the execution, when valid, is read into, and derives its force from, that instrument. If the execution of the Power must, or may, be by Will, it must be a Will duly executed and attested as such according to law, and the word 'Will' in the statute (Wills Act, 1837) extends to such a testamentary appointment. But, that condition being complied with, the execution operates in the same way after the death of the appointor as if the instrument were not testamentary. Before the Wills Act, the law as to *General* Powers was the same. 'A mere general devise or bequest, however unlimited in terms, would not comprehend the subject of the power unless it referred to the subject or the power itself, or generally to any power vested in the testator (1 Sug. Pow., 6 ed., 385).'

"It follows, we think, legitimately from these premises that the words 'devise or bequest' when used in the Wills Act without any indication of any intention that they should apply to Appointments under Powers, ought, *primâ facie*, to be understood in their ordinary sense, namely, as referring to a gift by Will of the testator's *own* property and nothing else" (per Selborne, C., in delivering the jdgmt of the Court of App. in *Holyland* v. *Lewin*, 53 L. J. Ch. 530; 26 Ch. D. 266). It was accordingly held in that case (in approval of the rule in *Griffiths* v. *Gale*, 13 L. J. Ch. 286; 12 Sim. 354) that a testamentary exercise of a Limited Power of Appointment was not saved, by s. 33, Wills Act, 1837, from lapsing as regards children or issue of the appointor dying in his or her lifetime; but the Court pointed out that the case would have been different had the power been a general one, because s. 27 of the Wills Act

makes the subject of a testamentary execution of a General Power part of the property of the testator. *Vf, Eccles* v. *Cheyne*, 2 K. & J. 676: *Freme* v. *Clement*, 50 L. J. Ch. 801; 18 Ch. D. 499: but *Freme* v. *Clement* was disapproved in *Holyland* v. *Lewin*, 26 Ch. D. 266.

A " 'Devise' is where a man in his testament giveth or bequeatheth his goods or his lands to another after his decease " (Termes de la Ley). " A Devise, or LEGACY, is where a man in his testament doth give anything to another; the first of these terms is properly applied to the gift of lands and the last to the gift of goods or chattels; and therefore a devise strictly is said to be where a man in his testament doth give his lands to another after his decease; and a legacy is said to be where a man in his testament doth give any chattel to another to have after the death of the testator; but the word is promiscuously applied to the one and to the other " (Touch. 400. *Note*: The word " Bequeath " does not seem to have been in use when the Touchstone was written; and where we should now write " Bequest," the Touchstone gives the word " Legacy "). It is still true that " Devise " and " Bequeath " may be used promiscuously, and that if a testator " Devise " goods they will pass, and so he may " Bequeath " lands or houses: that is to say, where the property dealt with is clear, the intention will not be defeated because the wrong verb is used (*V. Whicker* v. *Hume*, 14 Bea. 518; 1 D. G. M. & G. 506; 21 L. J. Ch. 406: *Gyett* v. *Williams*, 2 J. & H. 436: *Barrington* v. *Liddell*, 2 D. G. M. & G. 500: *O'Toole* v. *Browne*, cited ESTATE: *Jackson* v. *Hosie*, 27 L. R. Ir. 450). But when the subject of the gift is expressed ambiguously the meaning will be aided by the verb. Thus, where a testator " gave, *devised*, and bequeathed " everything to A. for life, and after her death " *gave, devised*, and bequeathed the whole of his EFFECTS which might be then remaining " to B., it was held that the realty passed (*Phillips* v. *Beal*, 25 Bea. 25: *Hall* v. *Hall*, 1892, 1 Ch. 361; 61 L. J. Ch. 289; 40 W. R. 277. *Sv, Camfield* v. *Gilbert*, 3 East, 516: *Re Williams, Williams* v. *Acton*, 35 S. J. 24). And on the other hand, where the testator " gave, *bequeathed*, and disposed of " all his residuary " estate, effects, and property, " — words large enough to comprise realty, — yet there it was held that the realty did not pass, and in arriving at that conclusion the Court (*int. al.*) strongly relied on the absence of the word " devise " from the operative words (*Coard* v. *Holderness*, 24 L. J. Ch. 388; 20 Bea. 147: *V.* 1 Jarm. 736, 737).

V. BEQUEATHED.

Quà Small Holdings Act, 1892, 55 & 56 V. c. 31, " Devise," in Scotland, " means, Mortis causa disposition " (s. 21).

DEVISED. — *V.* AS DEVISED.

DEVISEE. — Ordinarily, a Devisee is one to whom Realty is given by Will; and LEGATEE is one to whom Personalty is so given.

Quà Trustee Act, 1850, " 'Devisee' shall, in addition to its ordinary signification, mean the heir of a devisee, and the devisee of an heir, and generally any person claiming an interest in the lands of a deceased person, not as heir of such deceased person but, by a title dependent solely upon the operation of the laws concerning Devise and Descent " (s. 2).

Quà Trustee Act, 1893, " 'Devisee' includes the heir of a devisee, and the devisee of an heir, and any person who may claim right by devolution of title of a similar description " (s. 50).

DEVOIRE. — " 'Devoire,' is as much to say as a DUTY " (Termes de la Ley, referring to its use in 2 Rich. 2, c. 3).

DEVOLUTION. — " Devolution of estate by operation of law," R. 2, Ord. 17, R. S. C.; *V. Wallis* v. *Smith*, 51 L. J. Ch. 577; 46 L. T. 473.

" Devolution by Law," in Sucn Dy Act, 1853; *V.* DISPOSITION.

V. DEVOLVE: DESCENT.

DEVOLVE. — " To 'devolve' means to pass from a person dying to a person living; the etymology of the word shews its meaning " (per Leach, M. R., *Parr* v. *Parr*, 1 My. & K. 648; 2 L. J. Ch. 167). *Vh, Swan* v. *Holmes*, 19 Bea. 476: *Fazakerley* v. *Ford*, 1 A. & E. 897; 2 L. J. O. S. K. B. 111; 4 Sim. 390: *Cope* v. *De la Warr*, 42 L. J. Ch. 870; 8 Ch. 982.

" To devolve to her ISSUE at her death "; *V. Stonor* v. *Curwen*, 5 Sim. 264.

A Bankrupt's discharge was suspended until he had paid the Trustee enough to pay his Crs 5*s.* in the £, on which being done his Discharge to become operative; before such payment he, as a residuary legatee, became entitled to a sum more than enough to pay the balance then unpaid of the composition; held, that the Trustee was entitled to the whole of such sum for the benefit of the Crs, because even that portion of it which was in excess of the balance of the composition had " devolved " upon the bankrupt " *before* his Discharge," within s. 44 (i), Bankry Act, 1883 (*Re Hawkins*, 1892, 1 Q. B. 890; 61 L. J. Q. B. 458; 66 L. T. 737; 40 W. R. 484, Fry, L. J., diss.).

V. DEVOLUTION.

" Devolve upon "; *V.* ACQUIRE.

DIAGONAL. — " Diagonal Line "; *V.* s. 41, London Bg Act, 1894.

DICTIONARY. — As to a document furnishing its own dictionary, *V. Hill* v. *Crook*, and other cases, cited CHILD.

DIE. — In the leading case of *Edwards* v. *Edwards* (21 L. J. Ch. 324; 15 Bea. 357), Romilly, M. R., propounded, from the prior decisions, four rules of construction for determining the meaning of a gift over in case of death: —

1. Where there is an immediate gift, — (as to a future gift, *V.* 2 Jarm. 756), — to A., and if he shall die, then to B., — that means, if A. shall die during the life of the testator (*Va, Re Luddy*, 53 L. J. Ch. 21; 25 Ch. D. 394: *Re Ross*, 32 S. J. 289): and the consequence is, that on surviving the testator, A. will take an absolute interest, and not a life interest with remainder to B.

2. Where there is a gift to A., and if he shall die *without leaving a child* or *without leaving issue* (as the case may be) then to B., — that means, if *at any time*, whether before or after the death of the testator, A. shall die without leaving a child, &c, the gift over to B. will take effect.

3. Where there is a gift to A. for life, and after his decease to B., and if B. shall die, then to C., — that means, if B. shall die before the death of A., the tenant for life, the gift over to C. will take effect, otherwise not: and if the tenant for life and B. should have died in testator's life-time, then it would seem to follow that the gift over to C. will take effect on the death of the testator.

4. Where there is a gift to A. for life, and after his decease to B., and if B. shall die *without leaving a child*, or *without leaving issue* (as the case may be) then to C., — that also means, if B. shall die before the death of A., the tenant for life, the gift over to C. will take effect, otherwise not.

These canons of construction, after having been followed for upwards of 20 years in a number of cases and pronounced by so high an authority as Lord Justice James as "very simple, intelligible, and beneficial," came under review in the H. L. in *O'Mahoney* v. *Burdett* (44 L. J. Ch. 56 *n*; L. R. 7 H. L. 388), and in *Ingram* v. *Soutten* (44 L. J. Ch. 55; L. R. 7 H. L. 408). Their Lordships practically confirmed the first three propositions of *Edwards* v. *Edwards*, but disapproved of the fourth. Lord Hatherley in *O'Mahoney* v. *Burdett*, said, — "It seems to me that there is no reason for distinguishing the fourth rule from the second." That sentence, when the reasoning is closely followed, seems to sum up the *ratio decidendi* of the two cases in the House of Lords, with the result that the 2nd and 4th Rules of *Edwards* v. *Edwards* should be blended together into the following proposition: —

Where there is a gift to A. (whether preceded or not by a life estate) and if he shall die *without leaving a child* or *without leaving issue* (as the case may be), then to B., — that means, if, *at any time*, A. should die without leaving a child, &c, the gift over to B. will take effect.

Vf, Die Without Issue: *Olivant* v. *Wright*, 1 Ch. D. 346: *Besant* v. *Cox*, 6 Ch. D. 604: *Re Hayward*, 51 L. J. Ch. 513; 19 Ch. D. 470: *Re Parry*, 55 L. J. Ch. 237; 31 Ch. D. 130; 54 L. T. 229; 34 W. R. 353: and as to Rule No. 1, *Re Elliott*, 22 Ch. D. 236; 52 L. J. Ch. 222: Wms. Exs. 1125: 2 Jarm. ch. 48: and as to the Rules relating to

words referring to Death coupled with a contingency, 2 Jarm. ch. 49. *Cp* PAYABLE.

As to supplying the complement to such elliptical phrases as "If I die," "If A. dies," or "In the event of A. dying"; *V. Abbott* v. *Middleton*, 28 L. J. Ch. 110; 7 H. L. Ca. 68; 21 Bea. 143: *Eastwood* v. *Lockwood*, 36 L. J. Ch. 573; L. R. 3 Eq. 487: 1 Jarm. 488; 2 Ib. 21.

Annuity to wife, and "in the event of her death" to be continued to the children; the wife died in testator's lifetime; held, that the phrase did not only provide against a lapse, but also that the annuity was payable to the children, — *i.e.* the phrase meant, "if she shall be dead at my decease, or on her death afterwards" (*Wilkins* v. *Jodrell*, cited MAINTENANCE).

In the event of A. (a woman) "*not marrying or dying*," means if she shall die unmarried (*Hawkins* v. *Hawkins*, 4 L. J. Ch. 9).

"Dying," held not to import futurity; *secus*, of "shall die" (*Coulthurst* v. *Carter*, 15 Bea. 421; 21 L. J. Ch. 555).

V. DEAD: DEATH.

As to what is a "Die," quà Gold and Silver Wares Act, 1844; 7 & 8 V. c. 22, *V.* s. 14; — quà Stamp Duties Management Act, 1891, 54 & 55 V. c. 38, *V.* s. 27.

DIE BY HIS OWN HANDS. — A life policy contained a proviso avoiding it (*int. al.*) in case the assured should "die by his own hands." The assured threw himself into the Thames and was drowned. The jury found that he intended to destroy his life and knew that he should thereby do so, but that, at the time of committing the act, he was not capable of judging between right and wrong; held, that he had died by his own hands, and that the policy was avoided (*Borrodaile* v. *Hunter*, 12 L. J. C. P. 225; 5 M. & G. 639).

V. SUICIDE.

DIE WITHOUT CHILDREN. — Read "without *having had* a child" (*Re Hambleton*, W. N. (84) 157); but in *Re Booth* (1900, 1 Ch. 768; 69 L. J. Ch. 474; 48 W. R. 566) a gift to a married woman "for her own absolute use, but should she die *without* child or children," then over; "without" was construed "without LEAVING," so that, the devisee, instead of taking absolutely on her giving birth to a child, took absolutely subject to the Executory Gift over, in the event of her not having any child who should survive her or (*V.* s. 10 (1), Conv Act, 1882) who should attain 21 in her lifetime. *Vf* DIE WITHOUT ISSUE.

DIE WITHOUT HAVING BEEN MARRIED. — *V.* WITHOUT HAVING BEEN MARRIED.

DIE WITHOUT ISSUE. — "In any Devise, or Bequest, of Real or Personal Estate the words '*Die without Issue*,' or '*Die without leav-*

ing Issue,' or '*Have no Issue*,' or any other words which may import either a want, or failure, of Issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to *mean a want or failure of issue in the lifetime or at the time of the death of such person*; and not an indefinite failure of his issue, unless a contrary intention shall appear by the Will, by reason of such person having a prior estate tail, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: Provided that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue" (s. 29, Wills Act, 1837, which Act came into operation on 1st Jan 1838).

"Thus, if (in a Will since 1837) Real Estate be devised to A. and his heirs, or to A. indefinitely, with a limitation over to take effect on the death of A. without issue, or without having or leaving issue, — A. will not (as before) take an estate tail with remainder over, but an estate in fee, with an executory devise over in the event of his death without issue *living at his death*.

"So, if the devise be to A. for life, with a limitation over on his death without issue, — A. will not (as before) take an estate tail but an estate for life only, with the like executory devise over.

"Again, if Personal Estate be given to A., with a bequest over to B. upon the death of A. without issue, — the gift over will not (as before) be void for remoteness, but will take effect as a contingent executory bequest upon the death of A. without issue living at his death" (Hawk. 215; *V.* p. 216, Ib., as to whether such expressions as "In *Default*," or "On *Failure* of Issue" are within s. 29, Wills Act: *Va*, *Neville* v. *Thacker*, 23 L. R. Ir. 344, 359. *Vf*, as to effect of the section, 2 Jarm. 493–496, 532–535).

S. 29 of the Wills Act includes the phrase "die without leaving MALE ISSUE" (*Upton* v. *Hardman*, Ir. Rep. 9 Eq. 157: *Re Edwards*, 1894, 3 Ch. 644; 64 L. J. Ch. 179; 43 W. R. 169: *Vh* Theobald, 620).

Prior to the Wills Act, just cited, the words "Die without issue" did not for all purposes mean the same as "Die without *leaving* issue." As applied to *Real Estate* these phrases were synonymous; and imported an indefinite failure of issue (Hawk. 205, 213, and cases there cited), and were "exactly equivalent to 'on the extinction of the heirs of his body,' and that is held by implication to express an intention that the heirs of the body of the devisee for life shall take, and therefore these words give the devisee for life an Estate Tail" (per Ld Blackburn, *Bowen* v. *Lewis*, 54 L. J. Q. B. 68; 9 App. Ca. 890, *whv* as to the susceptibility of this construction to contextual variation, and for an application of such rule of construction). *Vf*, *Andrew* v. *Andrew*, cited DEFAULT.

But in regard to *Personal Estate* a wide practical difference obtains, in Wills made prior to the Wills Act, as regards the phrases under consideration. Thus if in such a Will, Personalty be given to A. with a limitation over in the event of A. dying "Without Issue," that would mean an indefinite failure of issue, and A. would take the absolute interest, the gift over being void for remoteness (*Candy* v. *Campbell*, 2 Cl. & F. 421: 8 Bligh, N. S. 469: Hawk. 206); whilst if the words were "without *leaving* Issue" they would import a failure of issue *at the death of the person spoken of* and A. would take, subject to a contingent executory bequest over in the event of his dying without issue living at his death (*Forth* v. *Chapman*, 1 P. Wms. 663, and notes thereon, Tudor, L. C. R. P., 3 ed., 682).

For a minute discussion of the construction of words importing failure of issue; *V.* Jarm. chs. 40, 41: Theobald, chs. 41, 42. *Va* Watson Eq. 1400.

V. DIE: DIE WITHOUT CHILDREN: LEAVING: ON.

"Where a *Remainder* is limited in 'default,' or 'for want' of the object or objects of the preceding limitation, these words mean, 'on the failure or determination of the prior estate or estates'; and do not (as literally construed they would) render the ulterior estate contingent on the event of such prior object or objects not coming into existence. In short they signify all that is comprehended in the word 'Remainder,'—being merely an expression employed by the testator in carrying on the series of limitations" (1 Jarm. 800).

Observe that s. 29, Wills Act, stated at length at the commencement of this definition, relates only to *Wills*. As regards *Deeds*, and documents other than Wills, the following are the rules, —

1. "The words 'Die without Issue' are construed to mean, the death of the Propositus, and the failure of his Issue, *at any time, either before, at, or after his death*": —

2. "A limitation 'to A. and his heirs,' followed by a gift over if A. dies 'without Issue,' or 'without Heirs of his Body,' confers an ESTATE TAIL on A.": —

3. "An estate in FEE SIMPLE is not cut down to an Estate Tail by a gift over 'in default of such Issue,' or 'without LEAVING Issue'" (Elph. 247–250, *whv* for the authorities: *Va*, *Arthur* v. *Walker*, 1897, 1 I. R. 83, where the last two rules are adopted, and the last one applied).

Vh. Chitty Eq. Ind. 8056–8077.

DIFFERENCE. — A "Difference," in a contract, is a contention over a question of truth or fact or law, as distinguished from a non-agreement over a question of valuation (*Collins* v. *Collins*, 28 L. J. Ch. 184; 26 Bea. 306: *Boss* v. *Helsham*, 36 L. J. Ex. 20; L. R. 2 Ex. 72; 4 H. & C. 645: *V.* ARBITRATION: ADJUSTMENT).

A question of construction is a "Difference," within Arb Act, 1889

(*Van Eeghen* v. *Jones*, Times, 22nd Feb 1890). So, a refusal *in toto* to pay a Ry Co's charge on the ground that it is unjust, is a "Difference," within an Arbitration clause (*Lond. & N. W. Ry* v. *Donellan*, 1898, 2 Q. B. 7; 67 L. J. Q. B. 681; 78 L. T. 575: *Mid. Ry* v. *Loseby*, 1899, A. C. 133; 68 L. J. Q. B. 326; 80 L. T. 93); but in order to oust the jurisdiction of the Court to enforce such a charge, there must have been a real dispute before action brought (*Lond. & N. W. Ry* v. *Billington*, 1899, A. C. 79; 68 L. J. Q. B. 162; 79 L. T. 503). *Vf*, REQUIRED.

"Differences," s. 11, Com L. Pro Act, 1854, includes a question of law (*Randegger* v. *Holmes*, L. R. 1 C. P. 679: *Seligman* v. *Le Boutillier*, Ib. 681). *Vh*, *Randell* v. *Thompson*, 1 Q. B. D. 748; 45 L. J. Q. B. 713: *Deutsche Springsteff Gesellschaft* v. *Briscoe*, 57 L. J. Q. B. 4.

Consent Order of Reference of "all Matters in Difference"; *V. Darlington Wagon Co* v. *Harding*, cited EQUIVALENT.

Vf, CAUSE: CONSENT.

"Difference," s. 33, Tramways Act, 1870, 33 & 34 V. c. 78; *V. R.* v. *Croydon Tramways Co*, 56 L. J. Q. B. 125; 18 Q. B. D. 39; 56 L. T. 78; 35 W. R. 299; 51 J. P. 420; 3 Times Rep. 32: *Bristol Trams Co* v. *Bristol*, 59 L. J. Q. B. 441; 25 Q. B. D. 427; 63 L. T. 177; 38 W. R. 693; 55 J. P. 53.

"Difference" whereby the making an Award is "hindered"; *V.* HINDER.

"Difference . . . or any other Question"; *V.* QUESTION.

V. DISPUTE.

Stock Exchange "Differences"; *V.* GAMING CONTRACT.

DIFFERENT.—"Different Tenements"; *V.* DIVIDE.

DIFFERENTIAL DUES.—Harbour "Differential Dues" are defined by s. 2, 24 & 25 V. c. 47; by s. 10 Ib. they were abolished on and after 1st January 1862.

DIFFICULT.—*V.* INEXPEDIENT: IMPARTIALITY.

"Difficult point of law," s. 119, Co. Co. Act, 1888; *V. Hunt* v. *Goldby*, 40 S. J. 405.

DIFFICULTY.—"In case any difficulty shall arise in the execution" of a Resolution for an Insolvent's Arrangement with Creditors, s. 351, 20 & 21 V. c. 60;—such a clause does not include an Impossibility, *e.g.* where a proposal for arrangement is rendered abortive by the death of the Insolvent (*Re M.*, Ir. Rep. 11 Eq. 46).

"Financial Difficulty"; *V.* Notice of Suspension, sub NOTICE.

DIG.—*V.* SEARCH.

DIGNITY.—Dignity means, "Honour and Authority: reputation, &c. Dignities may be divided into Superior and Inferior: as the titles

of Duke, Earl, Baron, &c, are the highest names of dignity; and those of Baronet, Knight, Serjeant at Law, &c, the lowest" (Jacob). *Vh*, 3 Cru. Dig. Title 26: Cruise on Dignities.

An hereditary dignity is an INCORPOREAL HEREDITAMENT. *V.* HONOUR.

A Dignity in the Church is where a Spiritual Person hath a Function which hath also a Jurisdiction, *e.g.* Bishop, Dean, &c (*Boughton* v. *Gousley*, Cro. Eliz. 663). Therefore, neither a Parson, Vicar, Chaplain, Provost, Precentor, or a Gospeller holds a Dignity (*Ib.*). In that case it was said that "an Archdeacon is not a name of Dignity": *Sv* ARCHDEACON.

V. TENEMENT.

DILAPIDATION. — Dilapidation is "a wastful destroying, or letting of Building run to ruine and decay, for want of reparation" (Cowel).

An Ecclesiastical Dilapidation "is where an Incumbent of a BENEFICE suffers the Parsonage House or Outhouses to fall down, or be in decay, for want of necessary reparation; or, it is the pulling down, or destroying, any of the houses or buildings belonging to a Spiritual Living, or destroying of the Woods, trees, &c, appertaining to the same; for it is said to extend to the committing, or suffering, any WILFUL WASTE in or upon the Inheritance of the Church" (Jacob, citing Degge's Parson's Counsellor, 89). *Vh*, Phil. Ecc. Law, Part 5, ch. 5: Cripps Law of the Church and Clergy, Book 2, ch. 1, s. 7: 4 Encyc. 249–251.

Dilapidations as between Landlord and Tenant; *V.* Woodf. ch. 16, s. 9: Gibbons on Dilapidations.

DILIGENCE. — *V.* DUE DILIGENCE: REASONABLE DILIGENCE.

DILIGENTLY. — *V.* FAIRLY.

DILUTE. — To "dilute" a drink means to make it less strong, whether by adding thereto a weaker drink or by adding water; and therefore a Beer Retailer is (under s. 8 (2), 48 & 49 V. c. 51) guilty of "diluting" strong beer by mixing therewith a weaker beer (*Crofts* v. *Taylor*, 56 L. J. M. C. 137; 19 Q. B. D. 524; 57 L. T. 310; 36 W. R. 47: 51 J. P. 532, 789). *Cp.* ADULTERATION.

DINNER. — "Public Dinner"; *V.* PUBLIC BALL.

DIOCESE. — A Diocese is the limited territorial space assigned to a BISHOP, as especially that in which he is to exercise his functions: "probably, the word 'See' has strictly a more confined meaning than 'Diocese.' The primary reason why a Diocese, — in other words, a limited territorial space, — was originally assigned to a Bishop was, not because his functions or duties were confined to that space but, because as the superintendence of the Bishop was found to be more effectual when exercised principally over a limited extent, a territorial district (termed

a Diocese) was assigned to him as the limits within which he should principally exercise his authority" (per Romilly, M. R., *Natal Bp.* v. *Gladstone*, L. R. 3 Eq. 30; nom. *Colenso* v. *Gladstone*, 36 L. J. Ch. 16).

Stat. Def. — Church Discipline Act, 1840, 3 & 4 V. c. 86, s. 2 (on *whv R.* v. *Canterbury, Archbp.*, 25 L. J. Q. B. 346; 6 E. & B. 546); Church Building Act, 1851, 14 & 15 V. c. 97, s. 29; 33 & 34 V. c. 91, s. 2; Public Worship Regn Act, 1874, 37 & 38 V. c. 85, s. 6.

DIPLOMA. — Medical "Diploma"; Stat. Def., 49 & 50 V. c. 48, s. 27.

DIRECT. — *V.* PRECATORY TRUST.

"Where a testator *directs* his debts to be paid, that imposes upon his Exors or Trustees a Duty to pay them, which enables them to sell the Real Estate for that purpose" (per Cotton, L. J., *Re Head and Macdonald*, 59 L. J. Ch. 606, 607); *secus*, if the words are "to adjust and pay all claims made upon my estate" (*S. C.* 59 L. J. Ch. 604; 45 Ch. D. 310; 63 L. T. 21; 38 W. R. 657). *Vf*, CHARGE OF DEBTS.

A limitation to A., her heirs, exs, ads, and assigns "for her own use and benefit, or *otherwise as she shall direct*," does not give A., a Power of appointment distinct from the ordinary power of disposition incidental to ownership (*Foxwell* v. *Van Grutten*, 44 S. J. 377). *Vf*, *Crockett* v. *Crockett*, 5 Hare, 326: 2 Phill. 553: *Goodtitle* v. *Otway*, 2 Wils. K. B. 6.

By s. 18, Transfer of Land Act, 1874 (Western Australia), the Commr of Titles, on an application, "shall direct" the Registrar to register a Certificate of Title if he (the Commr) finds no transaction affecting the land on the Register, and thereupon s. 19, provides that the Commr "shall direct" Notice of Application to be advertised, and, if there be no Caveat within the time prescribed in the advertisement, the land is to be brought under the operation of the Act; — Admittedly, under s. 18, the Commr must have some power of enquiry respecting, and some discretion as to accepting or rejecting, an Application; a similar rule applies as to s. 19, for the Commr is "not a mere Machine, as the literal force of the words would make him" (*Manning* v. *Commr of Titles*, 59 L. J. P. C. 59; 15 App. Ca. 195). *Vf*, SHALL.

DIRECT COMMUNICATION. — The question whether a proposed NEW STREET will "afford Direct Communication" between two streets, s. 9 (4), London Bg Act, 1894, is one of fact for the London County Council whose determination, unless perverse, will not be overruled (*Woodham* v. *London Co. Co.*, 1898, 1 Q. B. 863; 67 L. J. Q. B. 707; 78 L. T. 553; 62 J. P. 342).

DIRECT TAXATION. — If, at the time of payment, the ultimate incidence of a tax is uncertain, the imposition is not "direct," but indi-

rect taxation; and therefore a Stamp Duty on exhibits to be used in an action, is not "Direct Taxation" within s. 92 (2), British North America Act, 1867, and its imposition, by Act of Quebec, 44 V. c. 9, is *ultra vires* (*A-G. Quebec* v. *Reed*, 54 L. J. P. C. 12; 10 App. Ca. 141). But a tax on Banks and Insurance Companies situate out of, but carrying on business in, the Province, is "Direct Taxation" (*Toronto Bank* v. *Lambe*, 12 App. Ca. 575; 56 L. J. P. C. 87); so, of a License Fee on Brewers or Distillers (*Brewers Assn.* v. *A-G. Ontario*, 1897, A. C. 231; 66 L. J. P. C. 34; 76 L. T. 61; 13 Times Rep. 197). In the two latter cases the P. C. adopted the following definition by John Stuart Mill, — "A *Direct* Tax, is one which is demanded from the very person who it is intended or desired should pay it. *Indirect* Taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another; such as the Excise, or Customs."

V. CIVIL RIGHTS.

DIRECTED. — "Directed and required"; *V.* REQUIRED.

"Duly directed"; *V.* DULY.

DIRECTION. — "By his direction"; *V.* REFUSAL.

Quà Notice of Action, a Contractor executing works under, and having to Conform to, the orders of a Surveyor to a Local Authority, is "acting under the Direction" of such Authority (*Newton* v. *Ellis*, 24 L. J. Q. B. 337; 5 E. & B. 115).

"Special Directions"; *V.* SPECIAL.

Policy on Ship to "sail to and touch and stay at any Ports in *any* Direction"; *V. Leathly* v. *Hunter*, 7 Bing. 517; 9 L. J. O. S. Ex. 118. *Cp*, LIBERTY TO CALL.

DIRECTION IN WRITING. — As used in s. 75, 24 & 25 V. c. 96; *V. R.* v. *Christian*, 43 L. J. M. C. 1; L. R. 2 C. C. R. 94: *R.* v. *Brownlow*, 39 L. T. 479. *Note*: the section is repealed by Larceny Act, 1901.

DIRECTLY. — This word, as applied to the time of doing an act, would seem synonymous with IMMEDIATELY; — "It does not mean *instanter*" (per Cresswell, J., *Duncan* v. *Topham*, 8 C. B. 231; 18 L. J. C. P. 310; but "'directly' clearly means something different from a contract to be performed within a reasonable time" (per Coltman, J., *Ib.*, 8 C. B. 230). *Va*, Add. C. 125: Benj. 678: Blackb. 226: FORTHWITH: POSSIBLE.

The addition or omission of the words "Directly or Indirectly," to the offence of an Officer of a Corporation being "INTERESTED IN" a contract with his Corporation, seems to be immaterial (*Todd* v. *Robinson*, 54 L. J. Q. B. 47; 14 Q. B. D. 739).

"Directly or Indirectly" carry on Business; *V.* CARRY ON.

DIRECTLY AFFECT. — An Agreement "not to trade, act, or deal in any way, so as either directly or indirectly to affect" A., is personal to A. and cannot be assigned (*Davies* v. *Davies*, 36 Ch. D. 359; 56 L. J. Ch. 962; 36 W. R. 86).

"Parties directly affected by the Appeal," R. 2, Ord. 58, R. S. C.; *V. Re Salmon, Priest* v. *Uppleby*, 42 Ch. D. 351; 61 L. T. 146; 38 W. R. 150; 5 Times Rep. 478. It is doubtful whether an Official Receiver is a party "directly affected" by a Bankry Appeal (*Re Webber*, 59 L. J. Q. B. 581; 24 Q. B. D. 313; 62 L. T. 485; 38 W. R. 195).

Person or Body Corporate "directly affected" who may appeal under s. 39, Endowed Schools Act, 1869, 32 & 33 V. c. 56: *V. Re Shaftoe's Charity*, 3 App. Ca. 872; 47 L. J. P. C. 98; 38 L. T. 793: *Re Haydon Bridge School*, 3 App. Ca. 872: *Re Sutton Coldfield Grammar School*, 7 App. Ca. 91; 51 L. J. P. C. 8; 45 L. T. 631; 30 W. R. 341: *Re Hemsworth Grammar School*, 12 App. Ca. 444; 56 L. T. 212; 35 W. R. 418; 3 Times Rep. 439: *Re Christ's Hosp.*, 15 App. Ca. 172; 59 L. J. P. C. 52: *Re Colchester Grammar School*, 1898, A. C. 477; 67 L. J. P. C. 86; 78 L. T. 509. *Vf*, Tudor Char. Trusts, 628–630: EDUCATIONAL ENDOWMENT.

V. AFFECT.

DIRECTOR. —The Directors of a Co, are "the persons having the direction, conduct, management, or superintendence," of its affairs (7 & 8 V. c. 110, s. 3). "The term 'Board' has two meanings: — the 'Board' consisting of all the members; or, a 'Board' consisting of a Quorum" (*Barker* v. *Allan*, 5 H. & N. 72). In *Norman* v. *Mitchell* (2 W. R. 447) "Board of Directors" was held to include a provisional board.

"A Director is simply a person appointed to act as one of a Board, with power to bind the Co when acting as a Board, — but having otherwise no power to bind them" (per Mellish, L. J., *Re Marseilles Extension Ry*, 41 L. J. Ch. 348; 7 Ch. 161; 25 L. T. 858; 20 W. R. 254). Therefore a Company's Articles, providing that "*the Directors*, whenever they may think fit, may call an extraordinary general meeting," do not authorise any of the directors, of their own authority, to call such a meeting; but mean that the Directors at a Board Meeting may do so (*Browne* v. *La Trinidad*, 57 L. J. Ch. 292; 37 Ch. D. 1; 58 L. T. 137; 36 W. R. 289: *Vf*, *Re Haycraft Co*, 1900, 2 Ch. 230; 69 L. J. Ch. 497; 83 L. T. 166; following *D'Arcy* v. *Tamar Ry*, 36 L. J. Ex. 37; L. R. 2 Ex. 158; 4 H. & C. 463). *V.* QUORUM.

As to a Co being estopped from saying that transactions were not done by the "Board"; *V. Bargate* v. *Shortridge*, 5 H. L. Ca. 297.

A Promissory Note by "We, the Directors," &c, binds the makers personally (*Dutton* v. *Marsh*, L. R. 6 Q. B. 361; 40 L. J. Q. B. 175); so

of a Building Society Deposit Note (*Richardson* v. *Williamson*, L. R. 6 Q. B. 276; 40 L. J. Q. B. 145). *Cp*, SECRETARY.

A Director is hardly a TRUSTEE; *V.* TRUST.

"Director," s. 7, Comp Winding-up Act, 1890; *V. Re New Par Consols*, 1898, 1 Q. B. 573; 67 L. J. Q. B. 595.

"Any Directors"; *V. Isle of Wight Ry* v. *Tahourdin*, cited ANY.

"Vacating Directors," Art. 62, Table A, Comp Act, 1862, refers to Directors validly appointed, as distinguished from merely *de facto* Directors (*John Morley Bg Co* v. *Barras*, 1891, 2 Ch. 386; 60 L. J. Ch. 496; 64 L. T. 856; 39 W. R. 619). *V.* CASUAL.

Stat. Def. — Comp C. C. Act, 1845, s. 3; 30 & 31 V. c. 108, s. 1; 46 & 47 V. c. 47, s. 2. — *Scot.* 8 & 9 V. c. 17, s. 3.

DISABILITY. — "'Disabilitie' is when a man by any act or thing, by himself or his ancestor done or committed, or for or by any other cause, is disabled or made incapable to doe, to inherit, or to take benefit or advantage of, a thing which otherwise he might have had or done" (Termes de la Ley). *Vf*, Cowel: Jacob: LEGAL DISABILITY: CANNOT.

Quà Naturalization Act, 1870, 33 & 34 V. c. 14, "Disability," means, "the status of being an Infant, Lunatic, Idiot, or Married Woman" (s. 17).

DISABLE. — In an indictment for shooting, wounding, &c, "with intent to MAIM, disfigure, or disable," "'disable' is to do something which creates a permanent disability, and not merely a temporary injury" (Arch. Cr. 806: *R.* v. *Boyce*, 1 Moody, 29). *Cp*, DISFIGURE.

"Wholly disabled"; *V.* WHOLLY.

"Injury which does not disable" Workman from earning *Full Wages*, s. 1 (2 *a*), Workmen's Comp Act, 1897; *V. Chandler* v. *Smith*, 1899, 2 Q. B. 506; 68 L. J. Q. B. 909; 81 L. T. 317; 47 W. R. 677: *Pomphrey* v. *Southwark Press*, cited PARTIAL INCAPACITY.

DISABLED FROM ACTING. — A Member of a Local Board who ceases to be a Member for either of the causes mentioned in R. 64, Sch 2, P. H. Act, 1875, will, until his re-election, remain "disabled from acting," within R. 70 of the same Sch (*Fletcher* v. *Hudson*, 51 L. J. Q. B. 48; 7 Q. B. D. 611).

But acting after becoming "disqualified" (s. 53, Mun Corp Act, 1835; s. 41, Mun Corp Act, 1882), does not comprise a case where a Member had been concerned in a contract with his Board but which Contract has come to an end at the time of his acting (*Lewis* v. *Carr*, 46 L. J. Ex. 314; 1 Ex. D. 484; herein, *semble*, over-ruling *Nicholson* v. *Fields*, 31 L. J. Ex. 233; 7 H. & N. 810, — *V.* jdgmt Bramwell, L. J., *Fletcher* v. *Hudson*, sup). *Lewis* v. *Carr* seems, however, one of those cases which when cited are distinguished; *V. Fletcher* v. *Hudson*.

V. DISQUALIFIED. *Cp*, INCAPABLE: INCAPACITATED.

DISADVANTAGE. — *V.* UNDUE PREFERENCE.

DISAFFOREST. — To disafforest is to deprive a FOREST of its peculiar character and privileges. *Vh.* 4 Encyc. 265.

DISAGREEABLE. — A Boys' School is likely to cause a "disagreeable" noise, even if not an "injurious or offensive" noise or a NUISANCE, within a restrictive covenant as to user (*Wauton* v. *Coppard*, 1899, 1 Ch. 92; 68 L. J. Ch. 8; 79 L. T. 467; 47 W. R. 72). *Vf*, *Doe* d. *Bish* v. *Keeling*, cited BUSINESS: ANNOYANCE.

DISBOSCATIO. — "A conversion of Wood Grounds into Arable or Pasture; an Assarting" (Cowel). *V.* ASSART.

DISBURSEMENTS. — An unpaid liability, for NECESSARIES, incurred by a master of a *Ship*, is a "Disbursement" within s. 10, Admiralty Court Act, 1861, 24 V. c. 10 (*The Fairport*, 52 L. J. P. D. & A. 21; 8 P. D. 48); for which "Disbursement" he had no maritime LIEN (*The Sara*, 58 L. J. P. D. & A. 57; 14 App. Ca. 209; over-ruling *The Mary Ann*, 35 L. J. Adm. 6; L. R. 1 A. & E. 8, and the cases following it), but that ruling was rectified by s. 1, Mer Shipping Act, 1889, on *vhw*, *Morgan* v. *Castlegate S. S. Co*, cited LIEN, sub "Maritime Lien."

The Disbursements referred to in s. 1, Mer Shipping Act, 1889, 52 & 53 V. c. 46 (repld s. 167, Mer Shipping Act, 1894), mean, "Disbursements which the Master makes in respect of things necessary for the ship for the purpose of the Voyage which he as Master is bound to carry out, where the owner is not present and cannot be communicated with, and which the Master therefore is, necessarily, himself obliged to procure in order to discharge his duty" (per Esher, M. R., *The Orienta*, 1895, P. 49; 64 L. J. P. D. & A. 33; 71 L. T. 711; 7 Asp. 529: *Vh*, *Morgan* v. *Castlegate S. S. Co*, sup: *The Ripon City*, 1897, P. 226; 66 L. J. P. D. & A. 110; 77 L. T. 98).

"Disbursements" in a Marine Policy, frequently means, OUTFIT (*Roddick* v. *Indemnity Insrce*, 1895, 2 Q. B. 380; 64 L. J. Q. B. 733; 72 L. T. 860). "'Disbursements,' is well understood at Lloyd's to be a compendious term used to describe any interest which is outside the ordinary and well-known interests of 'Hull,' 'Machinery,' 'Cargo,' and 'Freight'" (per Bigham, J., *Buchanan* v. *Faber*, 4 Com. Ca. 226, 227).

"Disbursements warranted free from all AVERAGE"; *V. Lawther* v. *Black*, 17 Times Rep. 8.

A payment of Probate Duty, and *à fortiori* one of Estate Duty, is not a "Disbursement" by a SOLICITOR within s. 37, Solrs Act, 1843 (*Re Kingdon & Wilson*, 46 S. J. 502, over-ruling *Re Lamb*, 23 Q. B. D. 5; 58 L. J. Q. B. 455); but a payment as an agent, — *e.g.* hostile Costs, — is not (*Re Remnant*, 11 Bea. 603; 18 L. J. Ch. 374). The principles for determining what are a Solicitor's "Disbursements" were admirably laid

down in the joint certificate of the Taxing Masters in *Re Remnant* (sup), as follows: —

1. "Such payments as the Solicitor, in due discharge of the duty that he has undertaken, is bound to make so long as he continues to act as Solicitor, whether his client furnishes him with money for the purpose or with money on account, or not, as, — *e.g.* Fees of the Officers of the Court, Fees of Counsel, Expenses of Witnesses, — And also such payments in general business, not in suits, as the Solicitor is looked upon as the person bound by custom and practice to make, as, — *e.g.* Counsel's Fees on Abstracts and Conveyances, Payments for Registers in proving pedigree, Stamp Duty on Conveyances and Mortgages, Charges of Agents, Stationers or Printers employed by him — are by practice, and we think properly, introduced into the Solicitor's Bill of Fees and Disbursements.

2. "But payments which the Solicitor is not either by law bound to make, or by custom looked upon as the person to make, as, — *e.g.* Purchase-Moneys, or Interest thereon, Moneys paid into Court, Damages or Costs paid to Opponent parties, Bills due to the Solicitors of Trustees Mortgagees or other parties, Legacy or Residuary Duties (*Va, Re Haigh*, 12 Bea. 307; 19 L. J. Ch. 79), — or other payments of a like description, which the Solicitor makes *as Agent* on the order of the client and not in discharge of his own duty or liability *as Solicitor*, are by practice, and we think properly, charged in the Cash Account.

3. "We also think that the question, whether such payments are Professional Disbursements or otherwise, is not affected by the state of the cash account between the solicitor and the client, and that, for instance, Counsel's Fees would not the less properly be introduced into the Bill of Costs as a Professional Disbursement, because the client may have given money expressly for paying them; and that Purchase-Money or Damages would not be properly so introduced, notwithstanding the Solicitor may have advanced the money out of his own funds."

The charges of a Country Solr's *London* Agent for work done in London are not Disbursements; quà the client, the work done by the London Agent is as though it was done by the Country Solicitor himself, and must be set forth in detail in the Bill (*Re Pomeroy and Tanner*, 1897, 1 Ch. 284; 66 L. J. Ch. 158; 75 L. T. 625; 45 W. R. 245).

V. Actual Costs and Expenses.

DISCENT. — *V.* Descent.

DISCHARGE. — Master or Mistress is not, without Justices' consent, to Put away or "in any way to *discharge*" a Parish Apprentice, s. 9, 56 G. 3, c. 139; but a mere agreement to discharge the Indentures on payment of a sum of money, is not a "Discharge" within the section,

until actual payment (*R.* v. *Gwinear*, 3 L. J. M. C. 81; 1 A. & E. 152; 3 N. & M. 297).

"In Discharge"; *V.* FOR: IN DISCHARGE.

Discharge of CARGO; *V.* Carver, Part 3, ch. 13: CUSTOMARY.

Port of Discharge; *V.* PORT: FINAL PORT.

"Discharge of Duties"; *V.* ACCIDENT.

"Attempt to discharge LOADED ARMS"; *V.* ATTEMPT.

V. RELEASE: PREVENT: FULL DISCHARGE.

DISCHARGED. — Seaman "discharged," s. 167, Mer Shipping Act, 1854, repld s. 162, Mer Shipping Act, 1894; *V. Tindle* v. *Davison*, 61 L. J. M. C. 107; 66 L. T. 372.

Quà s. 10, Militia Act, 1882, 45 & 46 V. c. 49 (by its subs. 3), "'*discharged with Disgrace*,' means, discharged with ignominy, discharged as incorrigible and worthless, or discharged on account of a conviction for felony or a sentence of penal servitude."

DISCHARGING. — *V.* LOAD.

DISCIPLINE. — The discipline of School Children is not confined to school hours; therefore, a schoolmaster's delegated power to administer reasonable corporal punishment, extends to act done by a pupil out of school (*Cleary* v. *Booth*, 1893, 1 Q. B. 465; 62 L. J. M. C. 87; 68 L. T. 349; 41 W. R. 39). *V.* ASSAULT.

Quà Grammar Schools Act, 1840, 3 & 4 V. c. 77, "'Discipline' or 'Management' of a School, shall mean and include, all matters respecting the conduct of the Masters or Scholars, the method and times of Teaching, the Examination into the proficiency of the Scholars, of any school; and the ordering of Returns or Reports with reference to such particulars, or any of them" (s. 25).

DISCLAIMER. — "*Disclaime, disclamare*, is compounded of *de* and *clamo*, and signifieth utterly to renounce" (Co. Litt. 102 a): *Vf*, Termes de la Ley: *Doe* d. *Gray* v. *Stanion*, 5 L. J. Ex. 253; 1 M. & W. 695.

The conduct of the parties may (even quà the LEGAL ESTATE in realty) work a Disclaimer, though a Deed is, generally, desirable (*Re Gordon*, 46 L. J. Ch. 794; 6 Ch. D. 531: *Re Birchall*, 40 Ch. D. 436); so of a release though it could not convey any interest (*Wellesley* v. *Withers*, cited RELEASE).

A Trustee's Disclaimer cannot be partial, — he must accept for all in all or not at all; *e.g.* he cannot accept quà land in America and disclaim quà land in England (*Re Lord and Fullerton*, 1896, 1 Ch. 228; 65 L. J. Ch. 184).

To amend Specification of a Patent "by way of Disclaimer," connotes its renunciation; therefore, in an action for Infringement or Revocation of a Patent, there cannot be a "CORRECTION or Explanation" by way

of Disclaimer, for those words (which are in subs. 1, s. 18) are absent from s. 19, Patents, &c Act, 1883, which, quà such an action, is the section applicable (*Re Owen*, 1899, 1 Ch. 157; 68 L. J. Ch. 63; 79 L. T. 458; 47 W. R. 180).

Vh. 4 Encyc. 272–275.

DISCLOSE: DISCLOSURE.—To "disclose" an Offence, s. 6, 5 & 6 V. c. 39, is not to state it or confess to it; but to make the offence known for the first time (*R.* v. *Skeen*, 28 L. J. M. C. 91; Bell, C. C. 97: *R.* v. *Gunnell*, 16 Cox, C. C. 157; 55 L. T. 786; 51 J. P. 279).

"Disclose a Defence upon the merits," s. 27, Com. L. Pro. Act, 1852, means not merely to say there is a Defence, but to show what the nature of it is (*Whiley* v. *Wiley*, 27 L. J. C. P. 305; 4 C. B. N. S. 653: *Warrington* v. *Leake*, 25 L. J. Ex. 27; 11 Ex. 304).

V. FULL DISCLOSURE.

"A Disclosure of the Alteration" in an article of FOOD, s. 9, Sale of Food and Drugs Act, 1875, need not "disclose the precise character or extent of the alteration" (per Russell, C. J., *Spiers & Pond* v. *Bennett*, 1896, 2 Q. B. 65; 65 L. J. M. C. 144; 74 L. T. 697; 44 W. R. 510; 60 J. P. 437: *Vthc*, for an example of a sufficient Disclosure). *V.* ABSTRACTION: SKIMMED MILK.

DISCOMFORT.—A covenant against doing anything to the "Discomfort" of a neighbourhood, *semble*, connotes the same as "ANNOYANCE": *V.* per O'Brien, C. J., *Pembroke* v. *Warren*, cited OFFENSIVE.

DISCONTINUE.—Lessee's covenant to afford no ground for "discontinuing" the License of the premises; *V. Bryant* v. *Hancock*, 1899, A. C. 442; 68 L. J. Q. B. 889.

DISCONTINUANCE.—"'Discontinuance' is an ancient word in the law" (Litt. s. 592). "A discontinuance of estates in lands or tenements is properly (in legall understanding) an alienation made or suffered by tenant in taile, or by any that is seized in *auter droit*, whereby the issue in taile, or the heire or successor, or those in reversion or remainder, are driven to their action, and cannot enter" (Co. Litt. 325 a). *Vf*, Termes de la Ley: 3 Bl. Com. 171.

"Discontinuance" of an ACTION, had, at one time, a much more limited meaning than as used in Ord. 26, R. S. C., where the word is used in a broad sense; under R. 1 of that Ord. a plt is not entitled, as of right, to take a NON-SUIT at any time before verdict, but must "discontinue" as there provided, and, if he goes to trial, he will have to submit to jdgmt against him, and can only bring a new action by leave of the Judge (*Fox* v. *Star Newspaper*, 1898, 1 Q. B. 636; 67 L. J. Q. B. 454; 78 L. T. 311; 46 W. R. 340; affd in H. L., 1900, A. C. 19; 69 L. J. Q. B. 117; 81 L. T. 562; 48 W. R. 321). *V.* WITHOUT DAY.

Note: That in the County Court it is in the power of the Judge to direct a Non-suit (ss. 88, 90, 93, Co. Co. Act, 1888).

"Discontinuance of Possession," s. 3, 3 & 4 W. 4, c. 27; *V. Leigh* v. *Jack*, 5 Ex. D. 264; 49 L. J. Ex. 220: *Littledale* v. *Liverpool College*, 1900, 1 Ch. 19; 69 L. J. Ch. 87; 81 L. T. 564; 48 W. R. 177.

V. Dispossession.

DISCOUNT. — In an agreement to "underwrite" Shares at so much "Discount," "Discount" means "Commission," and the agreement does not mean that the shares are to be issued at a discount (*Re Licensed Victuallers' Assn.*, 58 L. J. Ch. 467; 42 Ch. D. 1; 5 Times Rep. 369).

V. Underwrite: Otherwise.

A Commercial arrangement to accept a pre-payment "under Discount" at so much per cent per annum, means a rebate of Interest at that rate, and not a true or mathematical discount (*Re Lands Securities Co*, 1896, 2 Ch. 320; 65 L. J. Ch. 587; 44 W. R. 514; 74 L. T. 400).

DISCOVERED. — "Discovered or Opened," in a Lease of Mines; *V. Quarrington* v. *Arthur*, 11 L. J. Ex. 418; 10 M. & W. 335.

DISCOVERT. — For the purposes of the Statute of Limitations respecting a personal tort, married women became "discovert" (s. 7, 21 Jac. 1, c. 16) by the operation of the M. W. P. Act, 1882 (*Lowe* v. *Fox*, 15 Q. B. D. 667; 54 L. J. Q. B. 561; affd 12 App. Ca. 206; 56 L. J. Q. B. 480). *Vf*, as to the effect of this word as used in that section, *Richards* v. *Richards*, 2 B. & Ad. 447.

V. Coverture.

DISCOVERY. — *V.* Offence.

Discovery of Documents, in the possession of the Opposite Party to an Action; *Vh*, Ord. 31, R. S. C., on *whv* Ann. Pr.: Bray on Discovery: 4 Encyc. 275–279.

DISCREET. — An "honest Discreet Person" for Weigh-master, s. 3, 4 Anne (Ir), c. 14, "means a person come to years of Discretion, in the legal sense of the term" (*Honan* v. *Vereker*, 10 Ir. L. R. 74).

DISCREETEST. — *V.* Chiefest and Discreetest.

DISCRETION. — "Discretion, is the herb of grace that I could wish every Commissioner of Sewers well stored withal. But note that" (in 23 H. 8, c. 5) "the word 'Wisdom' is coupled with it, and the word 'Good' is annexed to them both, as best shewing of what pure metal they should be made of, — *after your good wisdom and discretion.* There be several degrees of Discretion, — *Discretio generalis, Discretio legalis, Discretio specialis*, —

"*Discretio generalis*, is required of every one in everything that he is to do, or attempt;

"*Legalis Discretio*, is that which Sir E. Coke meaneth and setteth forth in *Rooke's* and *Keighley's Cases* (inf), and this is merely to administer justice according to the prescribed rules of the law;

"The third Discretion is where the laws have given no certain rule . . . and herein Discretion is the absolute judge of the cause, and gives the rule" (Callis, 112, 113).

"Discretion," as to the Fines under 23 H. 8, c. 5, is *Discretio legalis* (*Hetley* v. *Boyer*, 2 Bulst. 197, 198; Cro. Jac. 336).

"Where something is left to be done according to the Discretion of the authority on whom the power of doing it is conferred, the discretion must be exercised honestly and in the spirit of the statute, otherwise the act done would not fall within the statute. 'According to his Discretion,' means, it is said, according to the rules of reason and justice, not private opinion (*Rooke's Case*, 5 Rep. 100 a: *Keighley's Case*, 10 Rep. 140 b: *Eastwick* v. *City of London*, Style, 42, 43: per Willes, J., *Lee* v. *Bude Ry*, L. R. 6 C. P. 576; 40 L. J. C. P. 288); according to law and not humour; it is to be not arbitrary, vague, and fanciful, but legal and regular (per Ld Mansfield, *R.* v. *Wilkes*, 4 Burr. 2839); to be exercised not capriciously, but on judicial grounds and for substantial reasons (per Jessel, M. R., *Re Taylor*, 4 Ch. D. 160; 46 L. J. Ch. 400; and per Ld Blackburn, *Doherty* v. *Allman*, 3 App. Ca. 728). And it must be exercised within the limits to which an honest man competent to the discharge of his office ought to confine himself (per Ld Kenyon, *Wilson* v. *Rastall*, 4 T. R. 757); that is within the limits and for the objects intended by the legislature" (Maxwell, 147, 148, *whv* to 151 for cases in illustration). *V.* MAY: OPINION.

You cannot lay down a hard-and-fast rule as to the exercise of Judicial Discretion, for the moment you do that "the discretion of the Judge is fettered" (per Brett, M. R., *The Friedeberg*, 54 L. J. P. D. & A. 75; 10 P. D. 112: *Vf*, per Bowen, L. J., *Jones* v. *Curling*, 53 L. J. Q. B. 373; 13 Q. B. D. 262).

The wide "Discretion" as to *Costs* given by R. 1, Ord. 65, R. S. C., and to the Ry Commrs by s. 28, 36 & 37 V. c. 48, does not authorise an Order on the defendant to pay any part of the plaintiff's costs when the defendant has succeeded absolutely (*Foster* v. *G. W. Ry*, 51 L. J. Q. B. 233; 8 Q. B. D. 515: *Dicks* v. *Yates*, 50 L. J. Ch. 809; 18 Ch. D. 76: *Witt* v. *Corcoran*, 45 L. J. Ch. 603; 2 Ch. D. 69: *Vh*, notes to R. 1, Ord. 65, Ann. Pr.).

An Order to "allow Costs," under s. 116 (2), Co. Co. Act, 1888, is one which is "left to the Discretion of the Court," within s. 49, Jud. Act, 1873 (*Bazett* v. *Morgan*, cited ALLOW).

The "free and unqualified discretion" to refuse or grant *Licenses*, which is given to Justices by the Beer Dealers Retail Licences (Amend-

ment) Act, 1882, 45 & 46 V. c. 34, is absolute as well as regards the renewal of an old, as the grant of a new, license (*R.* v. *Kay*, 52 L. J. M. C. 90; 10 Q. B. D. 213); so of their "discretion" under the Alehouse Act, 1828, 9 G. 4, c. 61, s. 1 (*Sharpe* v. *Wakefield*, 1891, A. C. 173; 60 L. J. M. C. 73; 64 L. T. 180; 39 W. R. 561; 55 J. P. 197). *Vf*, LEGAL PROCEEDINGS.

V. AT DISCRETION: PLEASURE.

The Court will not, in the absence of misconduct, interfere with a "discretion" given to Trustees, as regards the mode of *Investment of Trust Funds* (*Brophy* v. *Bellamy*, 43 L. J. Ch. 183; 8 Ch. 798, and cases there cited: Lewin, 728); but during actual administration by the Court it may exercise a control (*Bethel* v. *Abraham*, 43 L. J. Ch. 180; L. R. 17 Eq. 24: *Brophy* v. *Bellamy*, sup: *Re Gadd*, 52 L. J. Ch. 396; 23 Ch. D. 134).

A mere "discretion" as to investments will not authorise an investment on personal security (*Pocock* v. *Reddington*, 5 Ves. 794: *Potts* v. *Britton*, L. R. 11 Eq. 433: *Bethel* v. *Abraham*, sup; Lewin, 335). Nor, *semble*, will a mere "discretion" justify Trustees in investing in unauthorised securities (*Bethel* v. *Abraham*, sup); *secus*, if the power were exercisable in their "*uncontrolled* discretion" (*Re Brown*, 54 L. J. Ch. 1134; 29 Ch. D. 889). Where the words authorised investments "in such stock, funds, or shares, as the trustees in their *absolute* discretion may think fit," the Court, acting for the protection of infants, refused to sanction an appropriation of securities for the satisfaction of a legacy, such securities being partly in Preference Stocks which were liable to be paid off, and were accordingly not of a permanent character (*Stewart* v. *Sanderson*, 39 L. J. Ch. 337; L. R. 10 Eq. 26).

Income, to be applied by Trustees, "in their *uncontrolled and irresponsible* discretion," for the Maintenance of a husband or wife, or one of them, may, in the absence of *mala fides*, be all paid by them to the husband, though the wife is unable to live with him in consequence of his intemperate habits (*Tabor* v. *Brooks*, 48 L. J. Ch. 130; 10 Ch. D. 273). So, where income was to be applied by trustees, "in their discretion, and *of their uncontrollable authority*," to or for the benefit of the testator's lunatic wife, the H. L. held that, in the absence of *mala fides*, the trustees had an absolute discretion as to whether or not they would so apply any, and if any what, part of the income; and that the Court could not interfere with, and ought not to express any opinion on, the exercise of such discretion (*Gisborne* v. *Gisborne*, 46 L. J. Ch. 556; 2 App. Ca. 300). *Vf*, *Re Bullock*, cited APPLY.

Cp, THINK FIT.

A direction to Trustees to sell "at their *absolute and unfettered* discretion" "is not equivalent to a direction that the trustees may sell, or not, at their absolute discretion. In the first case, the time and mode of sale are in their discretion; but it is not open to them to take into consideration

the reduction in income of the Tenants for Life and to decide that the will abstain from following the directions, because the tenants for life will then get a better income" (per North, J., *Re Atkins*, 81 L. T. 21).

"A *Devise* of property *to the discretion* of A. passes the fee, and does not merely confer a power; so a devise *at the disposition* of A. carries the fee. It is equivalent to a devise to A. *to give and sell at his pleasure.* There is no difference between a devise that A. shall do with the land *at* his discretion, and a devise of the land to A. *to do with it at* his discretion" (Sug. Pow. 104).

"The Age of Discretion, is called the age of 14 yeares; for at this age the Infant which is married within such age to a woman may agree, or disagree, to such marriage" (Litt. s. 104).

V. DISCREET.

DISEASE. — For the purpose of furnishing an excuse for what would otherwise be a crime, "Voluntary Drunkenness is not regarded as a Disease affecting the mind; but Involuntary Drunkenness, and diseases caused by voluntary drunkenness, fall, so far as they affect the mind, within that term" (Steph. Cr. 22).

V. ILL: INFIRMITY: INJURY: SICKNESS: CONTAGIOUS: INFECTIOUS: CAUSED BY.

Stat. Def. — Diseases of Animals Act, 1894, 57 & 58 V. c. 57, s. 59.

DISFIGURE. — In an indictment for an assault (24 & 25 V. c. 100, s. 18), to "disfigure" is to do some external injury which may detract from the personal appearance (Arch. Cr. 804).

Cp, DISABLE: MAIM.

DISFRANCHISEMENT. — "'Disfranchisement,' signifies taking a FRANCHISE from a man for some reasonable cause" (per Mansfield, C. J., *Symmers* v. *The King*, 2 Cowp. 502).

DISGRACE. — "Discharged with disgrace"; *V.* DISCHARGED.

DISGRADE. — "'Disgrading,' is when a man having taken upon him a DIGNITY, Temporall or Spirituall, is afterwards thereof deprived" (Termes de la Ley). *Vh*, Phil. Ecc. Law, 1086. *Cp*, DEPRIVATION.

DISHERISON. — This is an old synonym for Disinheriting (Cowel: Jacob).

DISHONESTY. — *V.* FRAUD.

DISHONOURED. — A BILL OF EXCHANGE is dishonoured by *Non-Acceptance* —

"(*a*) When it is duly presented for Acceptance, and such an Acceptance as is prescribed by this Act is refused, or cannot be obtained; or

(*b*) When presentment for Acceptance is excused, and the Bill is not accepted"

(s. 43, Bills of Ex. Act, 1882).

A Bill, or Note, is dishonoured by *Non-Payment* —

"(*a*) When it is duly presented for payment, and payment is refused or cannot be obtained: or

(*b*) When presentment is excused and the Bill (or Note) is overdue and unpaid"

(ss. 47, 89, Ib.).

In a Notice of Dishonour to say that a Bill of Exchange has been "dishonoured," implies a due presentment and that it has not been paid by the Acceptor (*Lewis* v. *Gompertz*, 9 L. J. Ex. 182; 6 M. & W. 399: *Shelton* v. *Braithwaite*, 7 M. & W. 438). *Cp*, HONOURED.

For the Rules as to Notice of Dishonour; *V.* ss. 48, 49, 50, Bills of Ex. Act, 1882; and as to s. 49 (12 *b*), *V. Fielding* v. *Corry*, 1898, 1 Q. B. 268; 67 L. J. Q. B. 7; 77 L. T. 453; 46 W. R. 97.

V. DAYS OF GRACE.

DISMES. — "Dismes are Tithes" (Elph. 573).

DISORDERLY. — Disorderly *Houses*; — "The following houses are Disorderly Houses, that is to say, common bawdy houses, common gaming houses, common betting houses, disorderly places of entertainment" (Steph. Cr. 122). A house kept as a BROTHEL is none the less a Disorderly House because no indecency or disorderly conduct is perceptible from its exterior (*R.* v. *Rice*, 35 L. J. M. C. 93; L. R. 1 C. C. R. 21). *Vf*, Arch. Cr. 1138, 1139. *Vh.* ELIGIBLE.

In a Notice of Objection to the Renewal of an Alehouse License, "Disorderly House" refers to the character that has attached to the house, and not to that of the applicant who, if a new tenant, may be irreproachable (*R.* v. *Miskin Higher Jus.*, 1893, 1 Q. B. 275; 67 L. T. 680; 41 W. R. 252; 57 J. P. 263); and it is good proof that a house is of a "Disorderly" character that there are against it three convictions of former occupiers (*R.* v. *Glamorganshire Jus.*, 9 Times Rep. 81).

Disorderly *Inn*; — "A Disorderly Inn is an Inn kept in a disorderly manner and suffered to be resorted to by persons of bad character for any improper purpose" (Steph. Cr. 125). *Vf*, Rosc. Cr. 702.

Disorderly *Person*; *V.* IDLE AND DISORDERLY PERSON.

Disorderly *Places of Entertainment*; *V.* 25 G. 2, c. 36, ss. 2, 4; 21 G. 3, c. 49, ss. 1, 2; stated Steph. Cr. 124, 125.

DISPARAGEMENT. — *Vh*, Co. Litt. 80 a; Termes de la Ley.

DISPATCH. — *V.* DESPATCH: DESPATCHED.

DISPENSARY. — "The main purpose of a 'Dispensary' is the distribution of MEDICINE" (per Ld Watson, *Dilworth* v. *Commr of Stamps*, 1899, A. C. 107; 68 L. J. P. C. 4). *V.* HOSPITAL.

Quà Dispensary Houses (Ir) Act, 1879, 42 & 43 V. c. 25, " 'Dispensary,' means, a dispensary house for the Medical Officer of any Dispensary District appointed under the Medical Charities Acts "; and " 'Dispensary Residence,' means, a dwellinghouse for any such Medical Officer " (s. 2).

DISPENSE. — Medicine dispensed; *V.* MEDICINE.

DISPLACE. — If a master agrees to make compensation if he " displace " his servant, he will be liable thereon if he voluntarily does anything that puts it out of his power to continue the employment, — *e.g.* transfers his business (*Stirling* v. *Maitland*, 34 L. J. Q. B. 1; 5 B. & S. 840).

DISPONE. — As to the importance of " dispone " in the operative words of a Scotch Conveyance; *V. Alexander* v. *Kirkpatrick*, L. R. 2 H. L. Sc. 397.

In the prohibitory clause of a Scotch Entail " dispone " has the same meaning as " alienate " (*Re Queensberry Leases*, 1 Bligh, 339). *V.* ALIENATION.

DISPONEE. — Stat. Def., *Scot.* 10 & 11 V. c. 48, s. 22; 31 & 32 V. c. 101, s. 3.

DISPONER. — *V.* SETTLOR.

Stat. Def. — *Scot.* 10 & 11 V. c. 48, s. 22, c. 49, s. 12; 31 & 32 V. c. 101, s. 3.

DISPOSAL. — " Disposal " frequently, if not generally, is used in the sense of regulating, ordering, conducting, and government (*Baggett* v. *Meux*, 13 L. J. Ch. 232).

A direction that a fund is to be at the " Disposal " of its donee, will generally negative the notion of a trust which might otherwise be gathered from the terms of the Will (*Lambe* v. *Eames*, 40 L. J. Ch. 447; 6 Ch. 597: *Re Adams and Kensington*, 54 L. J. Ch. 87; 27 Ch. D. 394: *Morrin* v. *Morrin*, 19 L. R. Ir. 37: but see these cases distinguished in *Re Haly*, 23 L. R. Ir. 130: *Vh*, 1 Jarm. 402). *Vf*, PRECATORY TRUST.

So, this word will sometimes cut down, or help to cut down, what, without it, might be an absolute gift. Thus where a testator gave his residue to his wife " for her own absolute use and benefit *and disposal*," with a gift over of what should " remain undisposed of " by her; it was held that the wife took a life interest with power of disposal by act *inter vivos* (*Re Pounder*, 56 L. J. Ch. 113; 56 L. T. 104). In the course of his jdgmt in that case, Kay, J., said, " If he meant her to take absolutely there was no use in referring to 'Disposal.'" But in *Re Jones* (1898, 1 Ch. 438; 67 L. J. Ch. 211; 78 L. T. 74; 46 W. R. 313), Byrne, J., distinguished the gift there from that in *Re Pounder*, and held, that a gift to a wife " for her absolute use and benefit, *so that*, during her lifetime for the purpose of her maintenance and support, she shall have the fullest

power to sell and dispose of my said estate absolutely," with a gift over of "such parts of my said estate as she shall not have disposed of, as aforesaid," was an absolute gift, and that the gift over failed. But can the two cases be distinguished? *Vf, Espinasse* v. *Luffingham*, 3 J. & La T. 186: *Anon.*, Kelynge, W. 6: DISPOSE OF: DISPOSITION: LEFT.

A bequest to a wife "to and for her own absolute use and disposal *during her life*," is an absolute gift and not one merely for life (*Re Bush*, W. N. (85) 61).

V. SOLE.

The "Disposal" of Chattels may be perfected by gift and manual delivery (*Farington* v. *Parker*, L. R. 4 Eq. 116).

DISPOSE OF. — A devise to A. "to dispose of," or "give," at pleasure passes the fee (*Jennor and Hardies' Case*, 1 Leon. 283: *Timewell* v. *Perkins*, 2 Atk. 103: *Bridgewater* v. *Bolton*, 6 Mod. 111: *Doe* d. *Herbert* v. *Thomas*, 3 A. & E. 123).

A Power enabling a woman "to dispose of" property "as she thinks fit," when following a life interest to her which she is restrained from alienating, would seem only exercisable by Will and not by writing *inter vivos* (*Archibald* v. *Wright*, 7 L. J. Ch. 120; 9 Sim. 161). *V.* LEAVE.

But a gift of real and personal estate to a wife, "for the term of her natural life, *to be disposed of* as she may think proper for her own use and benefit, according to the nature and quality thereof," and "in the event of her decease, *should there be anything remaining* of the said property or any part thereof," then, as to "the said part or parts thereof," over; held, that the wife had no power of disposition by Will; and that on her death the gift over took effect: the Court of Appeal also expressed a strong opinion that the wife took only a life estate in the property, with the power of enjoying the property in specie (*Re Thomson, Herring* v. *Barrow*, 49 L. J. Ch. 622; 14 Ch. D. 263: *Sv, Re Mortlock*, 26 L. J. Ch. 671; 3 K. & J. 456; 30 L. T. O. S. 90).

Where there is a gift in fee, but in case the donee shall die "and shall not have disposed of *and parted with*" the property, then over; the limitation over is valid and will take effect in opposition to any testamentary disposition by the donee, because those words connote a conveyance that would have its complete effect and operation in his lifetime: — that would be so if "parted with" were the sole phrase used, and its apposition to "dispose of" colours that latter phrase which, probably, without such colouring, would mean, a perfect disposition in the donee's lifetime, especially when the phrase is "shall not have disposed of," which, *semble*, means "shall not *already* have disposed of" (*Doe* d. *Stevenson* v. *Glover*, 14 L. J. C. P. 169; 1 C. B. 448).

"Dispose of" lands, ss. 127, 128, Lands C. C. Act, 1845, means "TRANSFER"; and does not relate to the mere application of the lands

to a purpose other than that for which they were acquired (*Astley* v. *Manchester, S. & L. Ry*, 27 L. J. Ch. 478; 2 D. G. & J. 453).

V. NEGOTIATE.

Not "to grant away, *assign*, or let, charge, or dispose of," in a covenant in a Lease; *V. Croft* v. *Lumley*, 25 L. J. Q. B. 73, 223, 27 Ib. 321; 6 H. L. Ca. 672.

"Assigning . . . or disposing of the land leased"; *V.* ASSIGN.

"Absolutely sell and dispose of"; *V.* ABSOLUTELY SELL.

V. ALIENATION: DISPOSITION: HEREINBEFORE: TRANSFER.

Hiding the DEAD BODY of a child between the bed and the mattress, was to "dispose of" it, within s. 14, 9 G. 4, c. 31 (*R.* v. *Goldthorpe*, 2 Moody, 244).

Attempt to sell or dispose of; *V.* ATTEMPT.

DISPOSING POWER. — Where an obligation is CHARGED on property over which a person, *e.g.* a Jdgmt Debtor, has "any Disposing Power," (s. 13, Judgments Act, 1838), the meaning is that the property to be charged is confined to such as the person could honestly, and without breach of duty, have charged (*Kinderley* v. *Jervis*, 25 L. J. Ch. 538; 22 Bea. 1: *Beavan* v. *Oxford*, 25 L. J. Ch. 299; 6 D. G. M. & G. 492: per Kay, L. J., *Re Leavesley*, 1891, 2 Ch. 1; 60 L. J. Ch. 385; approving jdgmt of Erle, J., *Watts* v. *Porter*, 23 L. J. Q. B. 345; 3 E. & B. 743). Therefore, a CHARGING ORDER under the section cited "puts the Creditor who has obtained it precisely in the position of an ordinary Execution Cr, as defined in *Whitworth* v. *Gaugain*," 13 L. J. Ch. 288; 15 Ib. 433; 3 Hare, 416; 1 Phill. 728 (per Kay, L. J., *Re Leavesley*, sup), and his priority is not displaced by want of Notice to trustees or other holders of the property (*Beavan* v. *Oxford*, sup: *Kinderley* v. *Jervis*, sup: *Pickering* v. *Ilfracombe Ry*, 37 L. J. C. P. 118; L. R. 3 C. P. 235); nor is the Order invalidated by the lunacy of the person against whom it is obtained (*Re Leavesley*, sup).

The power which a settlor had to defeat his voluntary settlement by a sale, 27 Eliz. c. 4, was not a "Disposing Power" (*Beavan* v. *Oxford*, sup); such a power was taken away by 56 & 57 V. c. 21.

V. AGREED.

DISPOSITION. — "A devise *at the disposition* of A. carries the fee" (Sug. Pow. 104: *Vf* DISCRETION).

"Sale, Mortgage, or other Disposition" of heritable estate, so as to attract Legacy Duty under 48 G. 3, c. 149, Sch, Part 3; *V. A-G.* v. *Wyndham*, 1 H. & C. 563; 32 L. J. Ex. 1: *Cp, Denn* v. *Diamond*, cited SALE.

"Sale, Pledge, or other Disposition," s. 9, Factor's Act, 1889; *V. Kitto* v. *Bilbie*, cited DELIVERY: *Taylor* v. *Kymer*, 3 B. & Ad. 320: *Shenstone* v. *Hilton*, cited BUY.

A mere DECLARATION of Trust is not a "Disposition" within s. 40, Fines and Recoveries Act, 1833 (*Green* v. *Paterson*, 32 Ch. D. 95; 56 L. J. Ch. 181; 54 L. T. 738; 34 W. R. 724), because by that section a Disposition to bar an Entail must be one "effectual to pass a LEGAL ESTATE in fee simple" (per Stirling, J., *Carter* v. *Carter*, 65 L. J. Ch. 90; 1896, 1 Ch. 62). But a Declaration of Trust by a Married Woman, by deed acknowledged and her husband joining, is a sufficient Disposition to give her a Separate Estate in her Freeholds (*Pride* v. *Bubb*, 41 L. J. Ch. 105; 7 Ch. 64; 25 L. T. 890; 20 W. R. 220), and such a Declaration is a valid Disposition, in Equity, of Copyholds, under s. 77, Fines and Recoveries Act, 1833 (*Carter* v. *Carter*, sup).

Generally, a Declaration of Trust is a Disposition of property, at least in Equity (per Jessel, M. R., *Richards* v. *Delbridge*, 43 L. J. Ch. 459; L. R. 18 Eq. 11). *V.* DISPOSITIONS.

"Disposition" and "Devolution by Law" are contrasted in s. 2, Succn Dy Act, 1853 (*V.* SUCCESSION), and the Predecessor is determined by considering whether the Succession is by "Disposition" or by "Devolution by Law" (*Zetland* v. *Ld Advocate*, 3 App. Ca. 505), in which case (p. 520) Selborne, C., said, that "*Devolution by Law*, takes place whenever the title is such that an heir takes under it by descent from an 'Ancestor' according to the rules of law applicable to the descent of heritable estates." *Vf*, on "Disposition," *A-G.* v. *Sibthorp*, 28 L. J. Ex. 9: *Braybrooke* v. *A-G.*, 9 H. L. Ca. 150; 31 L. J. Ex. 177: *A-G.* v. *Montefiore*, 21 Q. B. D. 461; 59 L. T. 534; 4 Times Rep. 658.

"Disposition," s. 21 (1), Finance Act, 1894; *V. A-G.* v. *Dodington*, cited SETTLEMENT.

"Disposition of Property"; *V.* DISPOSITIONS: EVASION.

"Disposition" of Realty, s. 4, 6 Anne (Ir), c. 2; *V. Re O'Byrne*, 15 L. R. Ir. 189, 373.

Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "'Disposition,' includes, Transfer and Charge" (s. 95).

V. VOLUNTARY DISPOSITION: POSSESSION, ORDER, OR DISPOSITION.

DISPOSITIONS. — As to meaning of "Dispositions" of property within s. 153, Comp Act, 1862; *V. Re Oriental Bank*, 54 L. J. Ch. 322; 28 Ch. D. 634; 52 L. T. 167.

"Dispositions of Lands," s. 47, Fines and Recoveries Act, 1833; *V. Bankes* v. *Small*, 36 Ch. D. 716; 56 L. J. Ch. 832; 57 L. T. 292; 35 W. R. 765; 3 Times Rep. 740: DISPOSITION.

DISPOSSESSION. — "Dispossession, or Discontinuance of Possession," s. 3, Real Property Limitation Act, 1833, means the ABANDONMENT of possession by one entitled to it (*Rimington* v. *Cannon*, 22 L. J. C. P. 153; 12 C. B. 18), followed by actual possession by another (*Smith* v. *Lloyd*, 23 L. J. Ex. 194; 9 Ex. 562: *McDonnell* v. *McKinty*, 10 Ir.

L. R. 514); ignorance on the part of the rightful owner that such adverse possession has been taken making no difference (*Rains* v. *Buxton*, 49 L. J. Ch. 473; 14 Ch. D. 537; 28 W. R. 954).

Acts of user which do not interfere, and are consistent, with the purpose to which the owner intends to devote the land, do not amount to Discontinuance of Possession by him (*Leigh* v. *Jack*, 5 Ex. D. 264; 49 L. J. Ex. 220); Dispossession "involves an *animus possidendi* with the intention of excluding the owner as well as other people" (per Lindley, M. R., *Littledale* v. *Liverpool College*, 69 L. J. Ch. 89, cited DISCONTINUANCE).

Small acts by the rightful owner will disprove "Dispossession or Discontinuance," — *e.g.* small repairs (*Leigh* v. *Jack*, sup), or, as regards a boundary wall, an inscription claiming it (*Phillipson* v. *Gibbon*, 40 L. J. Ch. 406; 6 Ch. 428).

Vh, Watson, Eq. 574, 575; and for a full examination of the cases on "Dispossession" and "Discontinuance," *V.* 35 S. J. 715, 742, 750.

V. DISSEISIN: DISCONTINUANCE.

DISPUTE. — A clause providing for an ARBITRATION "should any Dispute arise," includes Disputes of law as well as of fact (*Forwood* v. *Watney*, 49 L. J. Q. B. 447); and also a non-feasance, *e.g.* the withholding a certificate (*Re Hohenzollern Co*, 54 L. T. 596; 2 Times Rep. 294, 470). So, in a contract of services, quà a claim for wrongful dismissal (*Renshaw* v. *Queen Anne Mansions Co*, 1897, 1 Q. B. 662; 66 L. J. Q. B. 496; 76 L. T. 611; 45 W. R. 487; explaining *Davis* v. *Starr*, 58 L. J. Ch. 808; 41 Ch. D. 242: *Renshaw* v. *Q. A. M.*, followed in *Parry* v. *Liverpool Malt Co*, 1900, 1 Q. B. 339; 69 L. J. Q. B. 161; 81 L. T. 621). *Vh*, s. 4, Arb Act, 1889.

So, the recovery by a Local Authority of Expenses summarily, "or (*in case of dispute*) by Arbitration," s. 150, P. H. Act, 1875, means that if there is a dispute *of any kind* (and it is duly notified) the Local Authority must go to arbitration and cannot otherwise recover the expenses (*Sandgate* v. *Keene*, 1892, 1 Q. B. 831; 61 L. J. Q. B. 775: *Vthc*, *West Hartlepool* v. *Robinson*, 77 L. T. 387; 46 W. R. 218; 62 J. P. 35); and the amount of the Award must be recovered summarily under s. 150, or (if under £50) in the Co. Co. under s. 261 (*Re Willesden and Wright*, 1896, 2 Q. B. 412; 65 L. J. Q. B. 567; 75 L. T. 13; 44 W. R. 676; 60 J. P. 708). *Note*: As to what is a sufficient written Notice of such Dispute, under s. 257, *V. Folkestone* v. *Brooks*, *Same* v. *Ladd*, 1893, 3 Ch. 22; 62 L. J. Ch. 863; 69 L. T. 403. S. 268, P. H. Act, 1875, gives Appeal against these Expenses to the Loc Gov Board, and thereon, and as to that being the only Appeal, *V. Derby* v. *Grudgings*, cited APPORTION: *Walthamstow* v. *Staines*, 1891, 2 Ch. 606; 60 L. J. Ch. 738; 65 L. T. 430.

A claim based on a non-agreement, as well as one based on an actual conflict *ad idem*, is a "Dispute" (*Clemson* v. *Hubbard*, 45 L. J. M. C.

69; 24 W. R. 312; 40 J. P. 725; followed in *Charles* v. *Plymouth Works Mtgees*, inf: *Grainger* v. *Aynsley*, 50 L. J. M. C. 51; 6 Q. B. D. 182; 29 W. R. 242; 45 J. P. 142: decided on ss. 3 and 4, 38 & 39 V. c. 90). Where such a "Dispute" relates to a WORKMAN absenting himself, the whole absence up to proceedings brought is but one Dispute and cannot be split up so as to recover before Justices two amounts of damages (*James* v. *Evans*, 1897, 2 Q. B. 180; 66 L. J. Q. B. 742; 77 L. T. 78; 45 W. R. 654; 61 J. P. 631).

As to meaning of "Dispute" for the purpose of the *Building Societies* Acts; *V.* 47 & 48 V. c. 41, s. 2, interpreted by *Western Suburban and Notting Hill Bg Socy* v. *Martin*, 55 L. J. Q. B. 382; 17 Q. B. D. 609, 54 L. T. 822; 34 W. R. 630; 2 Times Rep. 672: *Municipal Permanent Bg Socy* v. *Richards*, 39 Ch. D. 381; 58 L. J. Ch. 8. *V.* CAPACITY.

For the Building Society cases apart from legislative interpretation; *V.* as regards Societies *Incorporated* under the Act of 1874, *Wright* v. *Monarch Bg Socy*, 46 L. J. Ch. 649; 5 Ch. D. 726: *Hack* v. *London Prov. Bg Socy*, 52 L. J. Ch. 541; 23 Ch. D. 106; 31 W. R. 392: *Municipal Bg Socy* v. *Kent*, 53 L. J. Q. B. 290; 9 App. Ca. 260: and, as regards *Unincorporated* Societies, *Mulkern* v. *Lord*, 48 L. J. Ch. 745; 4 App. Ca. 182; 27 W. R. 510: *Morrison* v. *Glover*, 19 L. J. Ex. 20; 4 Ex. 430: *R.* v. *Trafford*, 24 L. J. M. C. 20; 4 E. & B. 122: *Farmer* v. *Giles*, 30 L. J. Ex. 65; 5 H. & N. 753.

A "Dispute," within those Acts or the Friendly Societies Acts and a Society's Rules, must be one relating to the internal affairs of a Society arising between the Officers and its Members; and, therefore, does not include a controversy as to whether a person is a Member or not (*Prentice* v. *London*, L. R. 10 C. P. 679; 44 L. J. C. P. 353; 33 L. T. 251: *Willis* v. *Wells*, 1892, 2 Q. B. 225; 61 L. J. Q. B. 606; 67 L. T. 316; 41 W. R. 64; 56 J. P. 775: *Vthc*, *Stone* v. *Liverpool Marine Socy*, 63 L. J. Q. B. 471); in this respect s. 10 (1), Friendly Soc Act, 1895, repld s. 68, Friendly Soc Act, 1896, makes no difference (*Palliser* v. *Dale*, 1897, 1 Q. B. 257; 66 L. J. Q. B. 236; 76 L. T. 14; 45 W. R. 291).

"Dispute" seems not to have received any statutory interpretation for the purposes of the *Friendly Societies* Acts: *Vh*, *Re United Patriots Socy*, 48 L. J. M. C. 55; 4 Q. B. D. 29; 27 W. R. 339; 39 L. T. 622: *Huckle* v. *Wilson*, 2 C. P. D. 410; 26 W. R. 98: *Ex p. Wooldridge*, 26 J. P. 469: *Jones* v. *Slee*, 32 Ch. D. 585; 55 L. J. Ch. 908; 55 L. T. 129; 34 W. R. 692; 2 Times Rep. 625: *Stone* v. *Liverpool Marine Socy*, sup: *R.* v. *Richardson*, 1894, 2 Q. B. 323; 63 L. J. M. C. 212; 58 J. P. 640.

"Dispute," ss. 3, 4, Employers and Workmen's Act, 1875, 38 & 39 V. c. 90; *V. Charles* v. *Plymouth Works Mtgees*, 60 L. J. M. C. 20; 64 L. T. 466; 39 W. R. 122; 55 J. P. 469.

"Dispute," s. 48, *Savings Bank* Act, 1863, 26 & 27 V. c. 87; *V. Re Cardiff Savings Bank*, 4 Times Rep. 10.

"Sum in Dispute"; *V.* SUM CLAIMED.

V. DIFFERENCE: DECISION.

DISPUTE AS TO THE AMOUNT. — A statutory direction to refer to arbitration any "Dispute as to the Amount," will be confined to questions of amount only, and will not embrace a case where the liability is in dispute (*R.* v. *Metropolitan Commrs of Sewers*, 22 L. J. Q. B. 234; 1 E. & B. 694: *Bradby* v. *Southampton*, 24 L. J. Q. B. 239; 4 E. & B. 1014: *R.* v. *Burslem*, 29 L. J. Q. B. 242; 1 E. & E. 1077: and *V.* per Willes, J., in *thlo* for obs on *Bradford* v. *Hopwood*, 6 W. R. 818).

DISQUALIFICATION. — *V.* HOUSE OF COMMONS.

V. QUALIFICATION.

DISQUALIFIED. — A person is "disqualified" for an Office if personally ineligible, or he may be so disqualified if some condition precedent to his election or appointment has not been fulfilled (*Howes* v. *Turner*, 45 L. J. C. P. 550; 1 C. P. D. 670).

"Become disqualified"; *V.* DISABLED FROM ACTING.

The Disqualifications of Municipal Councillors are prescribed by ss. 12 and 39, 45 & 46 V. c. 50; and as to Penalty, *V.* s. 41, Ib. A person disqualified for Election is Disqualified for Nomination (*Harford* v. *Lynskey*, cited CANDIDATE).

"Disqualified by Sex"; *V.* SEX.

V. QUALIFIED TO ELECT: DULY.

DISRAELI'S ACT. — The Representation of the People Act, 1867, 30 & 31 V. c. 102.

DISSEISIN. — "*Disseisina* is a putting out of a man out of seisin, and ever implyeth a wrong. But dispossessing or ejectment, is a putting out of possession, and may be by right or by wrong" (Co. Litt. 153 b; *Va*, Ib. 181 a: 3 Bl. Com. 169: *Taylor* v. *Horde*, 1 Burr. 108–111: *Doe* d. *Atkyns* v. *Horde*, 2 Cowp. 701).

"Re-Disseisin" is a repetition of the offence (Cowel).

Cp, DEFORCEMENT: DISPOSSESSION: OUSTER: ABATE. *V.* RESTITUTION.

DISSENT. — Notice of Dissent, s. 161, Comp Act, 1862; *V.* NOTICE.

DISSENTER. — *V.* RECUSANT: PROTESTANT.

DISSOLUTE. — Dissolute Person; *V.* INFERIOR TRADESMAN.

DISSOLUTION. — *V.* INSTRUMENT OF DISSOLUTION.

DISTANCE. — By the Parliamentary Voters Registration Act, 1843, 6 V. c. 18, s. 76, distances for the purposes of that Act are to be "measured

in a straight line on the horizontal plane." That rule is now applicable to all Acts of Parliament passed since the 31st Dec 1889 (s. 34, Interp Act, 1889). Indeed, without enactment, it would seem a universal rule for all Acts, without distinction (*Lake* v. *Butler*, 24 L. J. Q. B. 273; 25 L. T. O. S. 128; 19 J. P. 692: *Jewell* v. *Stead*, 25 L. J. Q. B. 294; 6 E. & B. 350).

A similar, though more amplified, rule obtains for the general measuring of distance. This rule was laid down by the Exchequer Chamber in *Mouflet* v. *Cole* (42 L. J. Ex. 8; L. R. 8 Ex. 32), wherein the prior authorities, somewhat conflicting, were cited; and it is now established that, where there are no special controlling words, distance is not to be measured by the nearest available mode of access, but "as the crow flies," *i.e.* by the shortest line that can be drawn from one place to another on a map without regard to the curvature or inequalities of the surface of the earth; and where the distance is to be ascertained between houses, the measurement is to be taken from the nearest point of the one house to the nearest point of the other, without regard to where the doors are situated. *Vf*, *Duignan* v. *Walker*, 28 L. J. Ch. 867; Johns. 446. *Sv*, *Myers* v. *Lond. & S. W. Ry*, cited MILE.

So, quà an Agreement not to practise as a Solicitor within a stated distance of a Town, the measurement has to be taken from the stipulator's office to the nearest part of the town, and not to its centre (*Cattle* v. *Thorpe*, W. N. (1900) 83).

Where, in order to secure proper Ventilation of Buildings, a Distance from buildings is prescribed which is to be left clear, that means that every part of each bg must have that distance left clear, although in some other way an open space which might be regarded as sufficient may have been provided (*Anderton* v. *Birkenhead*, 32 L. J. M. C. 137; 13 C. B. N. S. 603).

For an example of a special provision for measuring distance; *V.* *Atkyns* v. *Kinnier*, 19 L. J. Ex. 132; 4 Ex. 776: TRAVELLER.

V. PRESCRIBED.

DISTILLER. — Stat. Def., Spirits Act, 1880, s. 3: "'Distiller's Warehouse,' means an approved WAREHOUSE on the premises of a Distiller" (Ib.).

DISTINCT. — "Distinct *Properties*," quà Inhabited House Duty; *V.* *A-G.* v. *Westminster Chambers Assn*, cited HOUSE. Each Flat separately used as a dwelling, is a "Separate Dwelling" within the exemption provided by s. 26 (2), 53 & 54 V. c. 8, though its access is by a common front door, entrance hall, and staircase (*Seaman* v. *Lee*, 68 L. J. Q. B. 593; 63 J. P. 499). *Vf*, *Lee* v. *Gunsel*, Cowp. 8: *Yorkshire Insrce* v. *Clayton*, cited DIVIDE.

"Distinct" *Trusts*, s. 5, Conv Act, 1882; *V. Re Hetherington*, 56 L. J. Ch. 174; 34 Ch. D. 211; 55 L. T. 806; 35 W. R. 285.

"*Separate* and Distinct *Building*," 59 G. 3, c. 50; *V. R.* v. *Henley-upon-Thames*, 6 L. J. M. C. 76; 6 A. & E. 294; 1 N. & P. 445. *Cp*, "Every Building," sub BUILDING.

"Separate and Distinct *Dwelling-House*," quà Pauper Settlement, 6 G. 4, c. 57, s. 2; *V. R.* v. *Usworth*, 5 L. J. M. C. 139; 5 A. & E. 261; 6 N. & M. 811: *R.* v. *Wootton*, 3 L. J. M. C. 98; 1 A. & E. 232: *R.* v. *Ripon*, 14 L. J. M. C. 102; 7 Q. B. 225: *R.* v. *Husthwaite*, 21 L. J. M. C. 189: *R.* v. *Caverswall*, 8 L. J. M. C. 57; 10 A. & E. 270: *R.* v. *St. Lawrence*, 14 L. J. M. C. 56; 6 Q. B. 842: *R.* v. *Elswick*, 3 E. & E. 437; 30 L. J. M. C. 66.

"As a distinct Covenant"; *V.* SEPARATE COVENANT.

"Distinct Occasions," s. 503 (3), Mer Shipping Act, 1894; *V. The Schwan*, cited INEVITABLE.

DISTINCTION.—*V.* MARK.

DISTINCTIVE.—A "Distinctive" *Device*, Mark, &c, to constitute a TRADE-MARK (s. 10, Trade Marks Registration Act, 1875, 38 & 39 V. c. 91; *V.* now Patents, Designs and Trade Marks Act, 1883, ss. 64, 67, but s. 64 is amended by s. 10, 51 & 52 V. c. 50) "must be a Mark or Device of such kind as, in case of infringement, it shall be clear what it is that is being infringed, and that the mark is something distinct from all other marks used in the same class of goods" (per Lopes, L. J., *James* v. *Parry*, 55 L. J. Ch. 915; 33 Ch. D. 392; 55 L. T. 415; 35 W. R. 67); and that case establishes that a device or mark is none the less distinctive because it is a pictorial representation of the article; but Colour alone will not make a device "distinctive" (*Re Hanson*, 57 L. J. Ch. 173; 37 Ch. D. 112; 57 L. T. 859; 36 W. R. 134). So, a portrait of the owner of a Trade-Mark is "distinctive" (*Rowland* v. *Michell*, 1897, 1 Ch. 71; 66 L. J. Ch. 110); but a Word or combination of Letters is not a "Device" (*Ex p. Stephens*, cited FIGURES). *Vf*, *Re Anderson*, 54 L. J. Ch. 1084; 26 Ch. D. 409: *Re Hudson*, 55 L. J. Ch. 531; 32 Ch. D. 311: *Re Bryant and May*, 59 L. J. Ch. 763: *Re Wright & Co*, 1900, 2 Ch. 218; 69 L. J. Ch. 589; 83 L. T. 150.

"SPECIAL and Distinctive *Word*" in same sections; *V. Re Palmer*, 21 Ch. D. 47; 24 Ib. 504; 51 L. J. Ch. 673: *Re Leonard and Ellis*, 26 Ch. D. 288; 53 L. J. Ch. 603; 32 W. R. 530: *Re Wood*, 32 Ch. D. 247; 55 L. J. Ch. 377: *Burland* v. *Broxburn Co*, 58 L. J. Ch. 816; 42 Ch. D. 274; 61 L. T. 618; 6 Pat. Ca. 482: *Bodega Co* v. *Owens*, 23 L. R. Ir. 371: per Lds Halsbury and Morris, *Perry-Davis* v. *Harbord*, 15 App. Ca. 316; 60 L. J. Ch. 16: *Richards* v. *Butcher*, 1891, 2 Ch. 522; 60 L. J. Ch. 530: *Re Hopkinson*, 1892, 2 Ch. 116; 61 L. J. Ch. 387: *Re Smokeless Powder Co*, 1892, 1 Ch. 590; 61 L. J. Ch. 391; 40 W. R. 507.

V. FANCY WORD: WORD: NAME: INDIVIDUAL.

Name printed, &c "in some Particular and Distinctive MANNER,"

s. 64 (1 *a*), Patents, &c Act, 1883, amended as above, does not connote that it is to be done in a precise and distinct manner; the manner indicated is one that is distinctively peculiar (*Re Holt*, 1896, 1 Ch. 711; 65 L. J. Ch. 142, 410; 74 L. T. 225; 44 W. R. 369).

DISTRESS.—"A distress is one of the most ancient and effectual remedies for the recovery of rent. It is the taking, without legal process, cattle or goods as a pledge to compel the satisfaction of a demand, the performance of a duty, or the redress of an injury. The act of taking, the thing taken, and the remedy generally, having been called a Distress; an inaccuracy which the older text-writers usually avoided" (Woodf. 442): *Vh*, Bullen on Distress: Redman ch. 6: Fawcett 217 *et seq*: 4 Encyc. 290–309: DAMAGE FEASANT: DAY: LEVY: OUTER DOOR.

A power in gross (apart from statute) to recover interest, gas rent, or other sum by "Distress" will not confer the peculiar powers of a Landlord's Distress, which, in bargains *inter partes*, must be based on a tenancy (*Jolly* v. *Arbuthnot*, 28 L. J. Ch. 547; 4 D. G. & J. 224). And if a statute merely gives power to levy, *e.g.* gas or water rent, by "Distress," that will not give a Landlord's Distress (*Ex p. Hill*, 46 L. J. Bank. 116; 6 Ch. D. 63); *secus*, if the statutory power is to levy "by the same means as landlords may recover rent in arrear" (*Ex p. Birmingham and Staffordshire Gas Co*, 40 L. J. Bank. 52; L. R. 11 Eq. 615: *Re Peake*, 53 L. J. Ch. 977; 13 Q. B. D. 753), or if a like phrase is made applicable to a RENT CHARGE (*Johnson* v. *Faulkner*, 2 Q. B. 925; 11 L. J. Q. B. 193).

In the power to levy for Poor Rate "by *Distress* and sale of the offender's goods" (43 Eliz. c. 2, s. 4), "Distress" means "Execution"; and accordingly Beasts of the Plough may be taken thereunder (*Hutchins* v. *Chambers*, 1 Burr. 579); but the postponement of a Bill of Sale to a "Distress under a warrant for the recovery of TAXES, and Poor and other PAROCHIAL RATES," s. 14, Bills of S. Act, 1882, does not apply to an Execution under a jdgmt for a General District Rate, *e.g.* under s. 261, P. H. Act, 1875 (*Wimbledon* v. *Underwood*, 1892, 1 Q. B. 836; 61 L. J. Q. B. 484; 67 L. T. 55; 40 W. R. 640; 56 J. P. 633).

The bailiff, and not the landlord, is the "*person making* any Distress" within s. 49, Agricultural Holdings (England) Act, 1883, 46 & 47 V. c. 61, and is therefore entitled to the percentage prescribed by the statute (*Phillips* v. *Rees*, 59 L. J. Q. B. 1; 24 Q. B. D. 17; 38 W. R. 53; overruling *Coode* v. *Johns*, 55 L. J. Q. B. 475; 17 Q. B. D. 714; 55 L. T. 290; 35 W. R. 47). *V.* AGIST.

"By any Distress, *Action, or Suit*," s. 42, 3 & 4 W. 4, c. 27; *V.* BY.

The power to recover Tithe Rent Charge under a contract made prior to the Tithe Act, 1891, "by Distress and *not otherwise*" (subs. 3, s. 1), is by distress alone; no action therefor can be maintained (*Church* v. *Maxsted*, 67 L. J. Q. B. 823).

The New South Wales statute, 5 V. No. 17, s. 41, which provides that "no Distress for rent shall be made, or levied, or proceeded in," after an Insolvency Order or Sequestration, only applies quà the assets in the Insolvency, and not to goods belonging to third parties, *e.g.* goods in a Bill of Sale given by the Insolvent and claimed by the Holder (*Railton* v. *Wood*, 59 L. J. P. C. 84; 15 App. Ca. 363; over-ruling *Cohen* v. *Slade*, 12 New S. Wales Rep. 88). *Cp.* ALL INTENTS AND PURPOSES.

V. PUBLIC TRADE: SUFFICIENT DISTRESS.

Stat. Def. — *Scot.* 37 & 38 V. c. 15, s. 4. — *Ir.* 51 & 52 V. c. 47, s. 3; 56 & 57 V. c. 36, s. 3.

DISTRESSED. — Where the rules of a FRIENDLY SOCIETY limit its benefits to members who are in "Distressed CIRCUMSTANCES," that phrase, though capable of many interpretations, means, that a recipient must be one who has no sufficient independent means of livelihood (*Re Buck*, 1896, 2 Ch. 727; 65 L. J. Ch. 884; 75 L. T. 312; 45 W. R. 106). *Vf* PUBLIC CHARITY.

"Distressed *Seamen*"; *V.* PASSENGER.

DISTRIBUTE. — "Amount distributed in DIVIDEND," s. 72 (1), Bankry Act, 1883, *semble*, means, the amount distributed in dividend out of Assets realized by the trustee (per Wright, J., *Re Christie*, cited REALIZED).

"Distributing MAIN"; Stat. Def., Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, Sch s. 1.

DISTRIBUTION. — Period of Distribution; *V.* CLASS.

Statute of Distribution, 22 & 23 Car. 2, c. 10.

DISTRICT. — *V. Re Holton*, 31 L. T. O. S. 187: *Blackpool* v. *Bennett*, *V.* PLY.

"District," in a Pleading alleging a CUSTOM; *V. Edwards* v. *Jenkins*, 1896. 1 Ch. 308; 65 L. J. Ch. 222.

"District" in which Notices are to be posted pursuant to s. 7 (1), Land Law (Ir) Act, 1887, 50 & 51 V. c. 33, includes, but is not confined to, the Civil-Bill District (*Bermingham* v. *Turner*, 24 L. R. Ir. 336).

"District" in an Agreement between Railway Cos; — "We understand the word 'District,' — in the expressions 'Each Co's own District,' and 'the District of the other Co,' — to mean, the district adjacent to a Line from which Traffic is drawn to that line; and if both Cos draw a traffic from the same district, such a district belongs to them both, and is as much the district of one as it is of the other" (*Caledonian Ry* v. *N. B. Ry*, 2 Ry & Can Traffic Ca. 289, 290).

V. PARISH.

Stat. Def. — 12 & 13 V. c. 50, s. 10; 13 & 14 V. c. 52, s. 76; Metropolis Gas Act, 1860, 23 & 24 V. c. 125, s. 4; 28 & 29 V. c. 42, s. 2;

29 & 30 V. c. 2, s. 4; 33 & 34 V. c. 70, s. 2, c. 78, s. 3; Metropolis Water Act, 1871, 34 & 35 V. c. 113, s. 3; 48 & 49 V. c. 23, s. 23, c. 72, s. 1 (4); 53 & 54 V. c. 70, s. 92; 54 & 55 V. c. 22, s. 14; 55 & 56 V. c. 57, s. 5; 57 & 58 V. c. 57, s. 59. — *Scot.* 26 & 27 V. c. 108, s. 30; 30 & 31 V. c. 37, s. 2; 41 & 42 V. c. 43, s. 1; Criminal Procedure (Scot) Act, 1887, 50 & 51 V. c. 35, s. 1; 55 & 56 V. c. 54, s. 16; 60 & 61 V. c. 38, s. 3. — *Ir.* 26 & 27 V. c. 88, s. 3; 30 & 31 V. c. 94, s. 2; 45 & 46 V. c. 25, s. 20; 51 & 52 V. c. 53, s. 2; 52 & 53 V. c. 72, s. 18.

"District ASSESSMENT"; Stat. Def., *Scot.* 25 & 26 V. c. 101, s. 3. — *Ir.* 17 & 18 V. c. 103, s. 1.

"District ASYLUM"; Stat. Def., Lunacy Act, 1890, s. 341. — *Scot.* 20 & 21 V. c. 71, s. 3. — *Ir.* 38 & 39 V. c. 67, s. 2. *V.* LUNATIC.

District *Auditor*; *V.* District Auditors Act, 1879, 42 V. c. 6; 50 & 51 V. c. 72, s. 2.

"District AUTHORITY"; Stat. Def., 53 & 54 V. c. 68, s. 10.

"District BOROUGH"; Stat. Def., 31 & 32 V. c. 46, s. 3; 35 & 36 V. c. 33, Sch.

V. CENTRAL CRIMINAL COURT.

"District CHURCH"; Stat. Def., 28 & 29 V. c. 42, s. 2.

"District COMMITTEE"; Stat. Def., *Scot.* 41 & 42 V. c. 51, s. 3; Loc Gov (Scot) Act, 1889, ss. 77–82; 55 & 56 V. c. 54, s. 16; 60 & 61 V. c. 38, s. 3.

Corporate District; *V.* CORPORATE.

"District COUNCIL"; Stat. Def., Loc Gov Act, 1888, s. 100. — *Scot.* 60 & 61 V. c. 43, s. 8. — *Ir.* 61 & 62 V. c. 37, s. 22 (3).

"County District"; *V.* COUNTY.

"District *of England*"; Wales is such, quà the Endowed Schools Act, 1869 (*Re Meyricke*, 41 L. J. Ch. 187, 553; L. R. 13 Eq. 269; 7 Ch. 500). *V.* ENGLAND.

English Channel District; *V.* ENGLISH.

"HIGHWAY District"; Stat. Def., 25 & 26 V. c. 61, s. 3; 41 & 42 V. c. 77, s. 38.

"*Improvement Act* District"; Stat. Def., 35 & 36 V. c. 79, s. 60, c. 94, s. 74; 38 & 39 V. c. 55, s. 4; 39 & 40 V. c. 56, s. 37.

"LIBRARY District"; Stat. Def., 53 & 54 V. c. 68, s. 10.

V. LICENSING.

Local Government District; *V. R.* v. *Barnes*, 13 Times Rep. 25: *Middlesex Co. Co.* v. *Willesden*, 12 Ib. 437. Stat. Def., P. H. Act, 1875, s. 4; 39 & 40 V. c. 56, s. 37; 48 & 49 V. c. 23, s. 23.

V. LONDON DISTRICT: METROPOLITAN: MUNICIPAL.

"*Non-Corporate* District"; Stat. Def., 11 & 12 V. c. 63, s. 2.

"District *Office*," and "District *Registrar*," of Probate, in Ireland; *V.* 20 & 21 V. c. 79, s. 2.

V. PARLIAMENTARY: PETTY SESSIONS: POLICE: POLLING: PORT, at end: PRESCRIBED.

"*Proclaimed* District"; Stat. Def., *Ir.* 33 & 34 V. c. 9, s. 4.

"*Riparian Nuisance* District"; Stat. Def., *Ir.* 36 & 37 V. c. 78, s. 4, repld Part 1, P. H. Ireland Act, 1878, *V.* s. 8.

"*Rural* District"; Stat. Def., 50 & 51 V. c. 48, s. 17; 51 & 52 V. c. 10, s. 14.

"*Rural Sanitary* District"; Stat. Def., P. H. Act, 1875, s. 5; 41 & 42 V. c. 77, s. 38; 50 & 51 V. c. 32, s. 1; 53 & 54 V. c. 59, s. 11 (3); 55 & 56 V. c. 57, s. 5. — *Ir.* 46 & 47 V. c. 60, s. 21.

"SANITARY District"; Stat. Def., 48 & 49 V. c. 72, s. 13; 53 & 54 V. c. 70, s. 93. — *Ir.* 47 & 48 V. c. 59, s. 9; 48 & 49 V. c. 39, s. 9; 56 & 57 V. c. 13, s. 7.

District SURVEYOR; *V.* Part 13, London Bg Act, 1894.

"URBAN District"; Stat. Def., 50 & 51 V. c. 48, s. 17; 51 & 52 V. c. 10, s. 14; 55 & 56 V. c. 53, s. 27. — *Ir.* 57 & 58 V. c. 38, s. 12.

"*Urban Sanitary* District"; Stat. Def., 38 & 39 V. c. 17, s. 108; P. H. Act, 1875, s. 5; 41 & 42 V. c. 77, s. 38; 50 & 51 V. c. 32, s. 1; 53 & 54 V. c. 59, s. 11 (3); 55 & 56 V. c. 57, s. 5, c. 59, s. 9. — *Ir.* 37 & 38 V. c. 93, ss. 2, 3; 57 & 58 V. c. 38, s. 12.

"*Ventilating* District"; Stat. Def., Coal Mines Regn Act, 1887, s. 49, R. 12 (*k*).

DISTRINGAS. — *V.* Stop Order, sub STOP.

DISTURB. — *V.* MOLEST.

DISTURBANCE. — The "Disturbance" of a Right, *e.g.* of FISHERY, or of MARKET, "is a very general phrase," and may be effected "either by Trespass or by Nuisance, or in any other substantial manner" (per Rigby, L. J., *Fitzgerald* v. *Firbank*, 1897, 2 Ch. 96; 66 L. J. Ch. 529). *Vf*, *Holford* v. *Pritchard*, 18 L. J. Ex. 315; 3 Ex. 793.

V. INTERRUPTION: ANNOYANCE: POLITICAL.

DISUSED BURIAL GROUND. — *V.* BURIAL.

DITCH. — *V.* DRAIN: POND: POOL.

As used in 23 H. 8, c. 5, *semble*, a Ditch "is a kind of current of waters *in infimo gradu*," useable for small boats in winter, but generally dry in summer (Callis, 81). *Cp*, POND: POOL. *Vh*, FENCE: 4 Encyc. 319.

As to the ownership of ditches between fields; *V.* Redman, 240, 241: Woodf. 655: *Marshall* v. *Taylor*, 1895, 1 Ch. 641; 64 L. J. Ch. 416.

DIVERT. — *V.* ILLEGALLY.

DIVES' COSTS. — These were costs paid voluntarily by a successful plt suing *in formâ pauperis*, and which he was allowed to tax against his defeated opponent (*Carson* v. *Pickersgill*, 54 L. J. Q. B. 484; 14 Q. B. D. 859). Pauper Costs are now substituted: on *whv* R. 31, Ord. 16, R. S. C.

DIVEST. — "'Devest,' is a word contrary to 'INVEST'; for as an Invest signifieth to deliver the possession of a thing, so Devest signifieth the taking away of the possession" (Termes de la Ley). But, probably, it is more accurate to say that "Divest" is the antithesis of "VEST" when that latter word is used in the sense primarily of giving the property in the subject-matter, — such vesting attracting the possession, or, at least, the right of possession of the subject-matter; the change of possession, even coupled with the right to possession, not necessarily working a divesting. Thus, when a Sheriff seizes goods under a *fi. fa.*, the property in the goods remains in the Execution Debtor though the possession of them is held by the Sheriff; so, of a BAILMENT (per Ld Tenterden, *Giles* v. *Grover*, 9 Bing. 280); those observations being prefaced by this remark, — "Property cannot be divested out of one person without being vested in another."

As to what is an Agreement to "divest or alienate" the right of the OCCUPIER to kill GROUND GAME, or to give him an "Advantage" for forbearing to exercise the right, s. 3, 43 & 44 V. c. 47; *V. Sherrard* v. *Gascoigne*, 1900, 2 Q. B. 279; 69 L. J. Q. B. 720; 82 L. T. 850; 48 W. R. 557: VOID, towards end.

DIVIDE: DIVIDED. — A testamentary gift "to be divided" between two or more, means an equal division and creates a Tenancy in Common (*Chapman* v. *Peat*, 1 Ves. sen. 542: *Ackerman* v. *Burrows*, 3 V. & B. 54), *à fortiori* of the phrase "EQUALLY to be divided" (*Rigden* v. *Vallier*, 2 Ves. sen. 252; 3 Atk. 731). The word "Divide" is so strong in this connection that where the direction was "to pay, assign, and divide" a sum to certain legatees "*as joint tenants*," yet Stuart, V. C., held that a tenancy in common was created (*Booth* v. *Alington*, 27 L. J. Ch. 117; 5 W. R. 811). But for a consideration of the cases where the word "Divide" or "Divided" has itself been otherwise controlled by a context, *V.* 2 Jarm. 260–262. To be "divided" amongst CHARITIES, "by no means, necessarily, infers equality" (per Eldon, C., *Mills* v. *Farmer*, 19 Ves. 490).

"To be divided," is of no value as a context to prevent "EFFECTS" from including Realty (per Kay, L. J., *Hall* v. *Hall*, 61 L. J. Ch. 293; 1892, 1 Ch. 361).

A testamentary direction to "divide" realty, does not *per se* give an implied power of sale (*Cornick* v. *Pearce*, 7 Hare, 477).

"To pay and divide"; *V.* PAY.

Shall not "divide any Cause of Action," s. 81, Co. Co. Act, 1888; *V.* CAUSE OF ACTION.

"Divided PARISH"; *V. Roberts* v. *Aulton*, 2 H. & N. 432; nom. *Aulton* v. *Roberts*, 26 L. J. Ex. 380.

The qualified exemption from Inhabited House Duty, given by s. 13 (1), 41 V. c. 15, where a house is "divided into and let in different tene-

ments," only applies where the house is structurally divided (*A-G.* v. *Westminster Chambers Assn*, on *whv Grant* v. *Langston*, both cases cited HOUSE: *Yorkshire Insrce* v. *Clayton*, 51 L. J. Q. B. 82; 8 Q. B. D. 421); but, *semble*, "a carpenter's division may be just as effectual as a bricklayer's" (per Wright, J., *Hoddinott* v. *Home & Colonial Stores*, 1896, 1 Q. B. 169; 65 L. J. Q. B. 294; 74 L. T. 79; 44 W. R. 285). The decision, however, in *thlc* was that "*let* in different tenements," means, wholly so let, and that the exemption does not apply where part of the house is retained by the general lessor for his own use, and certainly not to the part so retained. *V.* DWELLING-HOUSE: HOUSE.

DIVIDEND. — "'Dividend,' is a word used in the Statute of Rutland, 10 Edw. 1, where it is provided that the Chamberlaines of the Exchequer shall not make to the Sheriffes, or any of their Baylifes, Dividends, — unlesse they first receive of them particulars, in which particulars he would have such Dividends parted" (Termes de la Ley).

"The word 'Dividend' carries no spell with it. Applicable to various subjects, it is not intelligible without knowing the matter to which it is meant as referring"; but its ordinary meaning is, share of profits (per Knight-Bruce, L. J., *Henry* v. *G. N. Ry*, 27 L. J. Ch. 1; 1 D. G. & J. 606). A "Preference" Dividend is substantially interest, to this extent, that the failure of profits wherewith to pay it in one year will *primâ facie* be made good out of any profits that may be made in a subsequent year (*Henry* v. *G. N. Ry*, sup.: *Sturge* v. *Eastern Union Ry*, 7 D. G. M. & G. 158: *Crawford* v. *N. E. Ry*, 3 K. & J. 723: *Matthews* v. *G. N. Ry*, 28 L. J. Ch. 375; 5 Jur. N. S. 284; 7 W. R. 233; 32 L. T. O. S. 355: *Webb* v. *Earle*, L. R. 20 Eq. 556; 44 L. J. Ch. 608). *V.* CUMULATIVE: PROFITS.

Profits in a *private* trading partnership, the deed of which provides that "Dividends" shall be made from time to time as the managing partners shall direct, are not "Dividends" within the *Apportionment Act*, 1870, 33 & 34 V. c. 35, s. 5 (*Jones* v. *Ogle*, 42 L. J. Ch. 334; 8 Ch. 192; 21 W. R. 239). From the language of the L. C. in that case, it would seem that no profits, except those arising in respect of a PUBLIC COMPANY, can be "Dividends" within the meaning of the Act, or otherwise apportionable thereunder. *Vh*, the obs of Malins, V. C., in *Capron* v. *Capron*, 43 L. J. Ch. 677; L. R. 17 Eq. 288: *Va*, *Re Cox*, 47 L. J. Ch. 735; 9 Ch. D. 159: *Pollock* v. *Pollock*, 44 L. J. Ch. 168; L. R. 18 Eq. 329, correcting *Whitehead* v. *Whitehead*, L. R. 16 Eq. 528. Bonuses in a Public Co are "Dividends" within the Act, though only occasional and not strictly periodical (*Re Griffith*, 12 Ch. D. 655). Where on death of a Tenant for Life, Stock is sold "*Cum Div*," generally, there is no apportionment; to effect that, there must be special circumstances (*Bulkeley* v. *Stephens*,

1896, 2 Ch. 241; 65 L. J. Ch. 597; 74 L. T. 409; 44 W. R. 490). *Vf*, FIXED PERIOD: PERIODICAL: ACCRUE.

Stat. Def. — 32 & 33 V. c. 102, s. 46; 35 & 36 V. c. 44, s. 3; Lunacy Act, 1890, s. 341. — *Ir.* 34 & 35 V. c. 22, s. 2.

"Dividends"; *V.* ANNUAL PROCEEDS: RENTS AND PROFITS.

"An *indefinite* gift (by Will) of the Dividends, gives the absolute property of the Stock" (Wms. Exs, 1058, citing *Page* v. *Leapingwell*, 18 Ves. 463: *Haig* v. *Swiney*, 1 Sim. & St. 487, 490: *Southouse* v. *Bate*, 16 Bea. 132).

A Bequest, for life, of "Dividends" will not pass unreceived Dividends (*Shore* v. *Weekly*, 3 D. G. & Sm. 467; 18 L. J. Ch. 403: *Constable* v. *Bull*, 18 L. J. Ch. 302; 3 D. G. & S. 411); nor will "Dividends" pass capitalized Dividends (*Ricketts* v. *Harling*, 23 L. T. 760). *Vf*, *Archibald* v. *Hartley*, 21 L. J. Ch. 399.

Societies not making to its members "any Dividend, GIFT, Division, or BONUS in Money," s. 1, 6 & 7 V. c. 36; *V. Royal Coll. of Music* v. *Westminster*, cited SCIENCE.

DIVINE SERVICE. — "Here note, that the almes and reliefe of poor people, being a worke of charity, is accounted in law divine service; for what herein is done to the poor for God's sake, is done to God himself" (Co. Litt. 96 b). *Cp*, ALMS: AUMONE: CHRISTIAN SERVICE.

But the Collection of the Offertory in Church, is not a "Divine Service, RITE, or Office," for disturbing a Clergyman in which a person is punishable under s. 2, 23 & 24 V. c. 32 (*Cope* v. *Barber*, 41 L. J. M. C. 137; L. R. 7 C. P. 393; 26 L. T. 891).

DIVISION. — Stat. Def., 34 & 35 V. c. 88, s. 2; 43 & 44 V. c. 19, s. 5. — *Ir.* 2 & 3 V. c. 74, s. 4; 21 & 22 V. c. 100, s. 3.

"County, Riding or *Division*"; *V. Evans* v. *Stevens*, 4 T. R. 224, 459.

"Division of a COUNTY," "Divisions of Lincolnshire"; Stat. Def., Loc Gov Act, 1888, s. 100.

"Division of MANCHESTER"; Stat. Def., 17 & 18 V. c. 20, s. 2.

"Division or PLACE"; Stat. Def., Beerhouse Act, 1830, s. 32; Mun Corp Act, 1882, s. 246.

Gift over in case of death "before the division of my estate"; *V. Re Collison*, 12 Ch. D. 834; 48 L. J. Ch. 720.

V. DIVIDEND: PETTY SESSIONS.

DIVISIONAL. — "Provisional BUSINESS"; Stat. Def., 17 & 18 V. c. 20, s. 2.

"Divisional Justice"; *V.* 5 & 6 V. c. 24, s. 79; 6 & 7 V. c. 56, s. 38.

DIVORCE. — Divorce was (1) *à Vinculo*, or (2) *à Mensa et Thoro*: 1 Bl. Com. 440. Since 20 & 21 V. c. 85, these are called (1) Divorce, or (2) JUDICIAL SEPARATION. *V.* BIGAMY.

DO. — *V.* DONE: PUT.

DO AWAY. — *V.* ASSIGN.

DO OR MAKE. — The words "Do or make WASTE," Statute of Marlbridge, 52 H. 3, c. 23, s. 2, in legal understanding in this place, as well as in the Statute of Gloucester, 6 Edw. 1, c. 5, includes as well permissive Waste, which is waste by reason of omission or not doing, as Waste by reason of commission, as to cut down timber, trees, or prostrate houses, and the like; for he that suffereth a house to decay, which he ought to repair, doth the Waste (2 Inst. 300, cited *Woodhouse* v. *Walker*, 49 L. J. Q. B. 611; 5 Q. B. D. 404). *Cp*, DONE.

V. WITHOUT IMPEACHMENT OF WASTE.

DO OR SUFFER. — *V.* PERMIT.

DO THE NEEDFUL. — As to the authority conferred by these words; *V. Dawson* v. *Lawley*, 4 Esp. 65.

DOCK. — Was a Workman engaged "IN OR ABOUT" a "Dock" (within the def of "FACTORY," s. 23, 58 & 59 V. c. 37; s. 7, Workmen's Comp Act, 1897) if employed upon a Vessel in a Dock? *V. Flowers* v. *Chambers*, 1899, 2 Q. B. 142; 68 L. J. Q. B. 648; with *whc Cp Merrill* v. *Wilson*, 1901, 1 K. B. 35; 70 L. J. K. B. 97: *Raine* v. *Jobson*, 1901, A. C. 404; 70 L. J. K. B. 771. *Semble*, the question is now answered in the affirmative by s. 104, 1 Edw. 7, c. 22.

He is so engaged if he be unloading a Vessel on to the Quay of a Dock (*Woodham* v. *Atlantic Transport Co*, 1899, 1 Q. B. 15; 68 L. J. Q. B. 17; 79 L. T. 395; 47 W. R. 106: *Lawson* v. *Atlantic Transport Co*, 82 L. T. 77: *Merrill* v. *Wilson*, sup). *Semble*, it should be borne in mind that "Dock, Wharf, QUAY, WAREHOUSE" (in the def of "Factory" in Workmen's Comp Act, 1897) only includes a locality of that kind which (not being, *per se*, a Factory) is affected by some of the provisions of the Factory Acts (*Hall* v. *Snowden*, 1899, 2 Q. B. 136; 68 L. J. Q. B. 645; 80 L. T. 554; 47 W. R. 486), *e.g.* one having dangerous machinery upon it (*Ib.*). Quà all those Acts, "Dock," includes the land bounding the water, as well as the water itself (*Hennessy* v. *McCabe*, 1900, 1 Q. B. 491; 69 L. J. Q. B. 173; 81 L. T. 575; 48 W. R. 231; 64 J. P. 4). *Cp*, WHARF.

Quà the limitation of liability of a Harbour Conservancy Authority, "Dock," includes, "wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing-places, and jetties" (s. 2 (4), 63 & 64 V. c. 32).

Running Powers over "Docks"; held, not to be a definition of the terminus *ad quem* but, as giving the right to run over and use the whole

of the railways in the Docks and all the appurtenances thereto (*G. N. Ry* v. *G. Central Ry*, 10 Ry & Can Traffic Ca. 266).

Building "used for the purposes" of a Dock; *V.* PURPOSES.

Arrival in Dock; *V.* ACTUAL ARRIVAL.

DOCKYARD PORT. — Stat. Def., 28 & 29 V. c. 125, s. 2.

DOCUMENT. — A Ledger, — including a Partnership Ledger, — is a "Document," within R. 191, Divorce Court Rules (*Carew* v. *Carew*, 1891, P. 360; 61 L. J. P. D. & A. 24; 65 L. T. 167).

An avouchment, whether written or printed, of the character or quality of a Chattel, is not a Document which, if false, would be a Forgery, — *e.g.* the false signature of an artist's name to a picture (*R.* v. *Cross*, Dears. & B. 460), or enclosing spurious goods in a wrapper imitating a trade-mark (*R.* v. *Smith*, 27 L. J. M. C. 225; Dears. & B. 566).

"Other Documents," Sch 2, Solrs Rem Ord; "Notice, Order, or other Document," s. 128, P. H. London Act, 1891; *V.* OTHER, sub *Ejusdem Generis*.

A Tithe Apportionment and Parish Map, are "Documents directed by Law to be kept with the public books, writings, and papers" of a Parish, within s. 17 (8), Loc Gov Act, 1894 (*Lewis* v. *Poole*, 1898, 1 Q. B. 164; 67 L. J. Q. B. 73).

Quà *Factors Act*, 1889, "Document of Title" is defined in s. 1 (4).

A PLEDGE of "Documents of Title to Goods," to be operative under s. 3, Factors Act, 1889, must be by a "Mercantile Agent" (*Inglis* v. *Robertson*, cited MERCANTILE AGENT).

Quà *Sale of Goods Act*, 1893, "'Document of Title to Goods' has the same meaning as it has in the Factors Acts" (subs. 1, s. 62).

Quà *Larceny Act*, 1861, "Document of Title to Goods," and "Document of Title to Lands," are defined in s. 1.

As to "PERFECT" Documents of Title; *V. Re Salomon and Naudszus*, 81 L. T. 325.

V. PUBLIC DOCUMENT: SHIPPING DOCUMENTS.

DOG. — *V.* GREYHOUND: SETTING DOG: CHATTELS: GOODS: CONTROL.

To write of a person that he is a "Dog in the Manger," is, probably, actionable (per Denman, C. J., *Hoare* v. *Silverlock*, 12 Q. B. 628).

DOG-DRAW. — "Is an apparent deprehension of an Offender against Venison in the FOREST . . . . where any man hath stricken or wounded a wild Beast by shooting at him either with Cross-bow, Long-bow, or otherwise, and is found with a hound, or other dog, drawing after him to recover the same" (Cowel, citing Manwood, c. 18).

DOING. — "Doing" may create a covenant, — *e.g.* "Doing suit" (*Vyvyan* v. *Arthur*, 1 B. & C. 410), so of the phrase "Doing, Fulfilling, and Performing" (*Boone* v. *Eyre*, 2 Bl. W. 1312).

DOLE. — " 'Dole,' a Saxon word signifying as much as *Pars*, or *Portio*, in Latine: it hath of old been attributed to a Meadow, and still so called as 'Dole-Meadow,' 4 Jac. c. 11, because divers persons had shares in it" (Cowel). Again, "Dole" is defined as, "The share of any man in a lot meadow, or common meadow which is divided yearly and distributed by lots among the owners; *V.* Co. Litt. 4 a: Spelm., *Dolae*: *Pratt* v. *Groome*, 15 East, 235: Elton on Commons, 31: Wms. on Rights of Commons, 90. The owner of a dole may have a freehold in the soil (Co. Litt. 4 a, 343 b); or he may have only vestura terræ (*Tenants of Owning's Case*, 4 Leon. 43). *Va*, as to lot meads, Wms. R. P., App. C" (Elph. 573).

"Doles" for the poor are a CHARITY, but the old administration of which is very liable to be varied by a Charity Commissioners' Scheme; for they tend "to demoralize the poor, and benefit no one. The extension of Doles is simply the extension of mischief" (per Jessel, M. R., *Re Campden Charities*, 50 L. J. Ch. 650; 18 Ch. D. 327).

DOLG-BOTE. — *V.* BOTE.

DOLI CAPAX. — *V.* CAPABLE.

DOMAIN. — *V.* DEMESNE.

DOMESTIC. — A "Domestic" is one who resides in the house with the master he serves (*Wakefield* v. *The State*, 41 Texas, 558). *Cp*, DOMESTIC SERVANT: MENIAL SERVANT: SERVANT: WORKMAN.

Books are articles of "domestic *Use and Enjoyment*" (*Cornwall* v. *Cornwall*, 10 L. J. Ch. 364; 12 Sim. 303). Articles of "Domestic *Use or Ornament*"; *V.* HOUSEHOLD, towards end.

Watering private horses, or washing private carriages, is using the water for a "domestic *Use or Purpose*," within a Water Rating Act (*Busby* v. *Chesterfield W. W. Co*, 27 L. J. M. C. 174; E. B. & E. 176). Indeed it may be broadly laid down that "water used for the amenities of the house, — *e.g.* watering a pleasure-garden attached to and occupied with the house, — may be legitimately held to be used for domestic purposes," within the meaning of such an Act (per Smith, J., in delivering the jdgmt of the Court, *Bristol W. W. Co* v. *Uren*, 54 L. J. M. C. 103; 15 Q. B. D. 637: *Vf*, *Cooke* v. *New River Co*, 14 App. Ca. 698; 59 L. J. Ch. 333: *Walker* v. *Lambeth W. W. Co*, 63 L. J. Ch. 874; 71 L. T. 75; 58 J. P. 736: *West Middlesex W. W. Co* v. *Coleman*, and *Grand Junction W. W. Co* v. *Davies*, cited ANNUAL VALUE).

V. BATH: WATER RATE.

BOILER "used EXCLUSIVELY for Domestic Purposes," s. 4, 45 & 46 V. c. 22, s. 2; 53 & 54 V. c. 35, includes one used partly for heating the Office of a non-resident merchant and partly for the Household Purposes of a resident care-taker (*Smith* v. *Muller*, 1894, 1 Q. B. 192; 70 L. T. 170; 58 J. P. 167).

DOMESTIC ANIMAL. — An ANIMAL (whether a quadruped or not, 17 & 18 V. c. 60, s. 3, and not absolutely *feræ naturæ*) which either by habit or special training lives in association with man, is a "Domestic Animal." Thus, linnets trained as decoy birds are domestic animals (*Colam* v. *Pagett*, 53 L. J. M. C. 64; 12 Q. B. D. 66; 48 J. P. 263; 32 W. R. 289), and so is a cock (*Bridge* v. *Parsons*, 32 L. J. M. C. 95; 3 B. & S. 382; 11 W. R. 424; 7 L. T. 784; 27 J. P. 231: *Bates* v. *McCormick*, 9 L. T. 175). Parrots may become, but young unacclimatized parrots are not, "Domestic Animals" (*Swan* v. *Sanders*, 50 L. J. M. C. 67; 29 W. R. 538; 45 J. P. 522; 44 L. T. 424); nor, *semble*, is a performing bear a "Domestic Animal" (28 S. J. 746). Neither a performing elephant (*Filburn* v. *People's Palace Co*, 59 L. J. Q. B. 471; 25 Q. B. D. 258), nor a caged lion (*Harper* v. *Marcks*, 1894, 2 Q. B. 319; 63 L. J. M. C. 167; 42 W. R. 605; 70 L. T. 804; 58 J. P. 527), nor a bagged fox, or a rat, kept for the purpose of being destroyed, nor wild rabbits caught for coursing and confined and fed for 5 or 6 days before the coursing meeting (*Aplin* v. *Porritt*, 1893, 2 Q. B. 57; 62 L. J. M. C. 144; 69 L. T. 433; 42 W. R. 95; 57 J. P. 456), nor a tame sea-gull, used in a photographer's business (*Yates* v. *Higgins*, 1896, 1 Q. B. 166; 65 L. J. M. C. 31; 44 W. R. 335; 60 J. P. 88), is a "Domestic Animal." Is a monkey a "Domestic Animal"? *Vh*, *May* v. *Burdett*, 16 L. J. Q. B. 64; 9 Q. B. 101.

V. Wild Animals in Captivity Protection Act, 1900, 63 & 64 V. c. 33.

DOMESTIC BUILDING. — Quà London Bg Act, 1894, "Domestic Building" "includes a DWELLING-HOUSE, and any other BUILDING not being a PUBLIC BUILDING or of the WAREHOUSE class" (subs. 26, s. 5). *Cp*, s. 39, Ib., quà Part 5 of the Act.

V. INHABITED.

DOMESTIC ESTABLISHMENT. — *V.* SERVANT.

DOMESTIC FACTORY. — "Domestic FACTORY" and "Domestic Workshop"; Stat. Def., Factory and Workshop Act, 1901, s. 115.

DOMESTIC PURPOSES. — *V.* DOMESTIC.

DOMESTIC REFUSE. — *V.* REFUSE.

DOMESTIC SERVANT. — A "Domestic Servant" (*Vaughan* v. *Booth*, 16 Jur. 808), or a Servant on testator's "Domestic Establishment" (*Ogle* v. *Morgan*, 14 Jur. 801; 16 Ib. 277; 1 D. G. M. & G. 359), is one who sleeps in the dwelling-house of his master; in other words, an Indoor Servant: a Gardener who gives his whole time to, and whose separate house and the furniture therein and whose house services are provided by, his master is *not* a Domestic Servant (*Ib.*). *Vf* HOUSEHOLD SERVANT.

An Hotel Page-boy, whose business is dusting the reception-rooms in the morning but who is principally employed as a messenger and in sending off telegrams and messages for the guests, is not "WHOLLY employed as a Domestic Servant," within s. 10, 55 & 56 V. c. 62 (*Savoy Hotel Co* v. *London Co. Co.*, cited SHOP).

A Custom-house Land Waiter, who is sometimes employed by an Ambassador as his messenger, is not "the Domestic, or Domestic Servant" of such Ambassador, within s. 3, Diplomatic Privileges Act, 1708, 7 Anne, c. 12 (*Masters* v. *Manby*, 1 Burr. 401).

A CONDITION, in defeasance of a gift, if the donee marries a Domestic Servant, is good (*Jenner* v. *Turner*, 50 L. J. Ch. 161; 16 Ch. D. 188; 43 L. T. 468; 29 W. R. 99; 45 J. P. 124).

V. DOMESTIC: MENIAL SERVANT: SERVANT: WORKMAN.

DOMESTIC WORKSHOP.—*V.* DOMESTIC FACTORY: WORKSHOP.

DOMICIL: DOMICILED.—A person's "Domicil" means, generally speaking, the place where he has his permanent home (*Whicker* v. *Hume*, 28 L. J. Ch. 396, 400; 7 H. L. Ca. 124: *A-G.* v. *Rowe*, 31 L. J. Ex. 314, 320; 1 H. & C. 31); and in that aspect "the Roman law still holds good that 'it is not by naked assertion but by deeds and acts that a Domicil is established'" (per P. C., *McMullen* v. *Wadsworth*, inf).

But "the word 'Domicil' has many meanings, according as it is used with reference to Succession, or for determining Rights of Belligerents, or ascertaining Trading Privileges" (per J. O., *Yelverton* v. *Yelverton*, 29 L. J. P. & M. 40; 1 Sw. & Tr. 574): *Vh*, Dicey on Domicil, App. Notes 1, 2, and 3: Phillimore on Domicil: Foote on Private International Jurisprudence, ch. 2: Westlake on Private International Law, ch. 14: 4 Encyc. 339–345: *Re Craignish*, 1892, 3 Ch. 180: *De Nicols* v. *Curlier*, 1900, A. C. 21; 69 L. J. Ch. 109: *Re Martin*, 1900, P. 211; 69 L. J. P. D. & A. 75.

"I would venture to suggest that the definition of an *acquired* Domicile might stand thus:—'That place is properly the domicile of a person in which he has voluntarily fixed the habitation of himself and his family, not for a mere special and temporary purpose, but with a present intention of making it his permanent home, unless and until something (which is unexpected, or the happening of which is uncertain) shall occur to induce him to adopt some other permanent home'" (per Kindersley, V. C., *Lord* v. *Colvin*, 4 Drew. 376; 28 L. J. Ch. 366: *Vf*, per same learned judge, *Cockrell* v. *Cockrell*, 25 L. J. Ch. 732, cited by Stirling, J., *Re Grove*, 40 Ch. D. 226; 58 L. J. Ch. 60).

Art. 63, Civil Code of Lower Canada provides that a Marriage shall be solemnized at the place of the "Domicil," of one of the parties, to be established by a six months' residence; there "Domicil," means RESIDENCE, and does not refer to International Domicil (*McMullen* v. *Wadsworth*, 59 L. J. P. C. 7; 14 App. Ca. 631).

As to Domicil of an INFANT; *V. Potinger* v. *Wightman*, 3 Mer. 67: *Re Beaumont*, 1893, 3 Ch. 490; 62 L. J. Ch. 923.

The words "Domiciled *in England*," s. 6 (1 *d*), Bankry Act, 1883, mean, domiciled in England as distinguished from Scotland or Ireland as well as from foreign countries (*Ex p. Cunningham, Re Mitchell*, 53 L. J. Ch. 1067). *Vf*, ORDINARY RESIDENCE.

A Joint-Stock Company is only "Domiciled or ordinarily RESIDENT within the jurisdiction," R. 1, Ord. 11, R. S. C., where its head office is (*Jones* v. *Scottish Acc. Insrce*, 55 L. J. Q. B. 415; 17 Q. B. D. 421). *Vf*, RESIDE. As to the Domicil of a Co, generally; *V. A-G.* v. *Jewish Colonization Assn*, 1900, 2 Q. B. 556; 69 L. J. Q. B. 692; affd 70 L. J. Q. B. 101.

DOMINANT. — Dominant Tenement; *V.* EASEMENT.

DOMINICALES TERRÆ. — *V.* DEMESNE.

DOMINIONS. — *V.* BRITISH DOMINIONS.

DOMUS. — *V.* HOUSE.

DON. — By the law of Quebec no gift beyond "Dons Modiques" is sustained from a Husband to a Wife. The Q. B. in Quebec held that gifts of jewels, and like personal matters, amounting in value to between $5000 and $6000 are "modest" ones when referable to a married life of more than 40 years' duration, and attended for a large portion of that time by great prosperity; — the P. C. refused to dissent from that conclusion, reached as it was by "those who dwell in the society which the law affects" (*Eddy* v. *Eddy*, 1900, A. C. 299; 69 L. J. P. C. 58).

DONATIO MORTIS CAUSÂ. — "A *Donatio Mortis Causâ* is thus defined in the Civil Law from which both the doctrine and the denomination are borrowed: — Mortis causâ donatio est, quæ propter mortis fit suspicionem; cum quis ita donat, ut si quid humanitùs ei contigisset, haberet is, qui accepit; sin autem supervixisset is, qui donavit, reciperet; vel si eum donationis pœnituisset; aut prior decesserit is, cui donatum sit" (Wms. Exs. 681, citing Inst. lib. 10, tit. 7); or, in other words, "Where a man lies in extremity, or being surprised with sickness, and not having an opportunity of making his Will, but, lest he should die before he could make it, he gives with his own hands his goods to his friends about him; — this, if he dies, shall operate as a legacy, but, if he recovers, then does the property thereof revert to him" (per Cowper, C., *Hedges* v. *Hedges*, Pr. Ch. 269).

Observe, (1) The Donor must be in his last illness (*Meredith* v. *Watson*, 23 L. J. Ch. 221): (2) The Gift must be (*a*) conditional on the donor's death by his existing disorder, (*b*) of GOODS, (*c*) delivered.

2 (*b*) The Goods which may be so given comprise, of course, ordinary CHATTELS; but the phrase, in this connection, also includes a Bank Note (*Ashton* v. *Dawson*, 2 Coll. 363, *n*), a Bond (*Ib.*: *Snellgrove* v. *Baily*, 3 Atk. 214: *Meredith* v. *Watson*, sup), an acknowledgment of indebtedness (*Moore* v. *Darton*, 20 L. J. Ch. 626; 4 D. G. & S. 517), a Mortgage Deed (*Duffield* v. *Elwes*, 1 Bligh, N. S. 497), a Life Policy (*Witt* v. *Amiss*, 30 L. J. Q. B. 318; 1 B. & S. 109), a Promissory Note, though not endorsed (*Veal* v. *Veal*, 29 L. J. Ch. 321; 27 Bea. 303), a Banker's Deposit Note (*Re Taylor*, 56 L. J. Ch. 597: *Re Farman*, 57 L. J. Ch. 637), even though such Note purports to be "not transferable" and the deposit has to be drawn by a cheque which is not presented until after the donor's death (*Re Dillon*, 59 L. J. Ch. 420; 44 Ch. D. 76; 38 W. R. 369; 62 L. T. 614). In *thlc* Lindley, L. J., said, "I think it may some day require consideration whether a man cannot make such a gift of his own cheque": *Vth*, *Bromley* v. *Brunton*, 37 L. J. Ch. 902; L. R. 6 Eq. 275; 16 W. R. 1006: *Re Beaumont*, 50 W. R. 389: 46 S. J. 446.

2 (*c*) The Delivery may be antecedent to the gift (*Cain* v. *Moon*, 1896, 2 Q. B. 283; 74 L. T. 728; 65 L. J. Q. B. 587). But "there must be an actual tradition, or delivery, of the thing to the Donee himself, or to some one else for the Donee's use" (Wms. Exs. 684). Thus, a delivery to A. of the keys of a dressing-case with directions that, on donor's death, the keys and case are to be delivered to B., is not such a delivery as is required to make a Donatio Mortis Causâ (*Powell* v. *Hellicar*, 28 L. J. Ch. 355; 26 Bea. 261). Yet, *semble*, that there may be symbolic delivery where the thing is not capable of immediate actual delivery (*V.* GIFT: *Mustapha* v. *Wedlake*, W. N. (91) 201). Still the delivery must not be of a kind as really to amount to a NUNCUPATIVE WILL (*Hills* v. *Hills*, 8 M. & W. 401; 10 L. J. Ex. 440: *Treasury Solr* v. *Lewis*, 69 L. J. Ch. 833; 1900, 2 Ch. 812; 48 W. R. 694).

Note. — Where there *is* a Donatio Mortis Causâ, the Real and Personal Representatives of the Donor are trustees for the Donee, and bound to complete the gift (*Duffield* v. *Elwes*, sup); "no doubt that is anomalous and would not be so in the case of a voluntary gift *inter vivos*. The Court does not give any assistance to mere volunteers in such latter cases, and would not compel either the donor or his representatives to perfect" an imperfect gift other than a Donatio Mortis Causâ (per Cotton, L. J., *Re Dillon*, sup). *V.* VOLUNTEER.

Vf, Wms. Exs., Pt. 11, Bk. 11, ch. 11, s. 4: 1 White & Tudor, 390–413: 4 Encyc. 347.

DONATION. — *V.* VOLUNTARY CONTRIBUTIONS.

DONATIVE. — "'Donative,' is a BENEFICE meerly given and collated by the Patron to a man without either a Presentation to the Ordi-

nary, or Institution by his Ordinary, or Induction by his Commandment, F. N. B. 35 c." (Termes de la Ley). *Vf* Jacob.

"A Donative, is a Spiritual Preferment, — be it Church, Chapel, or Vicarage, — which is in the free gift, or collation, of the Patron, without making any Presentation to the Bishop; and without Admission, Institution, or Induction by any mandate from the Bishop, or other; but the donee may (by the Patron, or other authorised by him) be put into possession" (Phil. Ecc. Law, 252, 253: *Vf* Co. Litt. 344 a). *Vh*, *R.* v. *Foley*, 15 L. J. C. P. 108; 2 C. B. 664. *Cp* PRESENTATIVE.

DONE. — "Act Done," s. 2, 35 G. 3, c. 101; *V. R.* v. *St. John, Hackney*, 4 L. J. M. C. 51; 4 N. & M. 336; 2 A. & E. 548.

The rejection of a Proof of Debt by a trustee in Bankry, is an "act done" by him, within s. 35 (2), Bankry Act, 1883, and, if unappealed, will bind the claimant even though, before the rejection, he have obtained a jdgmt for the amount of his claim (*Brandon* v. *McHenry*, 1891, 1 Q. B. 538; 60 L. J. Q. B. 448).

An omission to do something which ought to be done in order to complete performance of a duty imposed upon a public body under an Act of Parliament, or the continuing to leave any such duty unperformed, amounts to "an act done or intended to be done" within the meaning of a clause requiring a Notice of Action (*Jolliffe* v. *Wallasey*, 43 L. J. C. P. 41; L. R. 9 C. P. 62; cited by Privy Council as laying down above def, in *R.* v. *Williams*, 53 L. J. P. C. 71: *Va*, *Butler* v. *Bray*, Ir. Rep. 11 C. L. 181: *Wilson* v. *Halifax*, L. R. 3 Ex. 114; 37 L. J. Ex. 44: per Coleridge, J., *Newton* v. *Ellis*, 5 E. & B. 123; 24 L. J. Q. B. 337). *Sv*, ACT: *Cp*, DO OR MAKE.

The distinction seems fine, but when a statute prescribes Notice of Action "for anything *done*" and that the action is to be brought within a stated time "*after the fact committed*" or (as in s. 8, 11 & 12 V. c. 44) "after the act complained of shall have been committed," then an action founded on an OMISSION to do something does not require previous Notice, "there must be some positive act done" to necessitate that (*Umphelby* v. *McLean*, 1 B. & Ald. 42: *Royal Aquarium* v. *Parkinson*, 1892, 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. 513; 40 W. R. 450: 56 J. P. 404). *Sv* COMMITTED.

Slanderous words are not "anything *done*" within such provisions (*Royal Aquarium* v. *Parkinson*, sup).

Observe, that the rule in *Jolliffe* v. *Wallasey* (sup) is not applicable to a clause of Forfeiture in a Lease; therefore, an OMISSION by a Lessee to repair, is not "an Act, Matter, or Thing done, or caused to be done," by him, within such a clause (*Doe* d. *Abdy* v. *Stevens*, 3 B. & Ad. 299); nor will the non-observance of negative covenants work a Forfeiture under the words "make default in PERFORMANCE" (*Doe* d. *Palk* v. *Marchetti*, 1 B. & Ad. 715; 9 L. J. O. S. K. B. 126).

A thing "done *or suffered*," working Forfeiture; *V.* WOULD.

As to what is "done or intended to be done" under P. H. Act, 1875, s. 264; *V. Ongley* v. *Chatham*, 3 Times Rep. 706; 4 Ib. 6:—under s. 106, Metrop Man. Act, 1862; *V. Edwards* v. *St. Mary, Islington*, 58 L. J. Q. B. 165.

Notice and proceedings by a Local Authority under s. 150, P. H. Act, 1875, to make-up a street, &c, is something "DULY done or suffered" under that enactment, within s. 38 (2 *b*), Interp Act, 1889, even though no actual work have been done on the land by the Authority who, notwithstanding s. 25, 55 & 56 V. c. 57, may proceed with the work and recover the expenses under s. 150 (*Heston & Isleworth* v. *Grout*, 1897, 2 Ch. 306; 66 L. J. Ch. 647; 77 L. T. 118; 45 W. R. 697). *V.* BEGIN. *V.* PURSUANCE.

DONE BY.— An act to be "done by" a person is, in general, well done by his agent (*R.* v. *Middlesex*, 20 L. J. M. C. 42; 1 L. M. & P. 621: *Charles* v. *Blackwell*, 46 L. J. C. P. 368; 2 C. P. D. 151), unless it has to be done by HIMSELF.

V. BY: CAUSED BY: DAMAGE.

DONEC.— *V.* QUAMDIU.

DONEE.— Is a person to whom property is given; Donor, the giver. "Donee," s. 11 (1), 52 & 53 V. c. 7; *V.* per Channell, J., *A-G.* v. *Dobree*, cited PURCHASE.

DOSSER.— *V. Logsdon* v. *Trotter*, cited COMMON LODGING-HOUSE.

DOUBLE.— Double COSTS; *V. Hasker* v. *Wood*, cited INDEMNITY.

In pre-Rowland Hill days when the use of envelopes for postal letters was costly, a "Double *Letter*," meant a letter consisting of two pieces of paper, *e.g.* "Double letters bring cash for the box" (Hood's *Miss Kilmansegg*); and so in 1 V. c. 36, s. 47, it is defined as "a Letter having one enclosure."

Double *Portions*; *V.* PORTION: LOCO PARENTIS.

Double RENT, s. 18, 11 G. 2, c. 19; *V.* Redman, 500: Fawcett, 517, 518.

Double VALUE, s. 1, 4 G. 2, c. 28; *V.* Redman, 498–500: Fawcett, 514–516.

DOUBT.— "I do not doubt"; *V.* PRECATORY TRUST.

DOWAGER.— "A Widow endowed: but chiefly an ADDITION, applyed in general to the Widows of Princes, Dukes, Earls, and Persons of Honour" (Cowel).

DOWER.— "Tenant in Dower, is where a man is SEIZED of certaine lands or tenements in Fee Simple, Fee Taile Generall, or as Heire in

Speciall Taile, and taketh a wife and dieth, — the Wife, after the decease of her husband, shall be endowed of the third part of such lands and tenements as were her husband's at any time during the Coverture, for terme of her life, whether she hath issue by her husband or no, and of what age soever the wife be, so as she be past the age of 9 yeares at the time of the decease of her husband" (Litt. s. 36). *Vth*, Co. Litt. 30 b–41 a: per Lindley, M. R., *Re Hocking*, 1898, 2 Ch. 567; 67 L. J. Ch. 664: *Vf*, Wms. R. P. ch. 11: Goodeve, 135–141.

By s. 3, Dower Act, 1833, Seizin is not now necessary to give title to Dower, and, by s. 2, a Widow is dowable out of Equitable estates; but by s. 4 she is only dowable out of lands not "absolutely disposed of by her husband in his lifetime, or by his Will."

Note. As to how Dower might have been barred or prevented, *V.* 2 Bl. Com. 136: and for the Conveyancing device of Uses to Bar Dower, *V.* Wms. R. P. 252, 253.

V. FREEBENCH: ELOPE: JOINTURE.

DOWN. — *V.* DUNUM: TAKE DOWN.

DRAIN. — The power which a Highway Authority has, under s. 67, 5 & 6 W. 4, c. 50, to make and cleanse "Ditches, Gutters, *Drains, or Watercourses,*" does not extend to a dumbwell or shaft into which surface-water is conducted by pipes, and from which it percolates away through the subsoil (*Croft* v. *Rickmansworth*, 58 L. J. Ch. 14; 39 Ch. D. 272; 4 Times Rep. 706). It was there conceded that such a dumbwell was not a "Ditch" or "Gutter"; but the contention was that it was a "Drain or Watercourse"; but in deciding in the negative Cotton, L. J., said, "I do not think the verb 'to drain' has anything to do with it." Fry, L. J., said, "I think 'a Drain or Watercourse' is applied to that sort of conveyance by which you direct the course of the water, and where you can follow the course of the water, and where you can correct any mischief which arises from an impediment to a flow of the water, where you can do the repairs"; and Lopes, L. J., said, "I understand by a 'Drain' something conducting liquid away, and into and through which liquid may continuously pass"; *Vf*, *Croysdale* v. *Sunbury-on-Thames*, cited OWN PROFIT. *V.* WATERCOURSE.

Broadly speaking, "Drain," as contrasted with "SEWER," means, the duct that drains only one house; "Sewer" means the duct that serves more houses than one (*Holland* v. *Lazarus*, 66 L. J. Q. B. 285; 61 J. P. 262: *Green* v. *Newington*, 1898, 2 Q. B. 1; 67 L. J. Q. B. 557; 46 W. R. 624; 62 J. P. 564).

The definitions (adopted from the P. H. Act, 1848, s. 2) of the P. H. Act, 1875 (V. s. 4), are; —

"'Drain,' means, any drain of, and used for the drainage of, one building only, or premises within the same CURTILAGE, and made merely

for the purpose of communicating therefrom with a cess-pool, or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises, occupied by different persons, is conveyed: —

"'Sewer,' includes, sewers and drains of every description, except drains to which the word 'Drain' (interpreted as aforesaid) applies, and except drains vested (*V.* VEST) in or under the control of any Authority having the management of roads and not being a Local Authority under this Act."

Vh, Acton v. *Batten*, 54 L. J. Ch. 251; 28 Ch. D. 283; 52 L. T. 17; 49 J. P. 357: *Ferrand* v. *Hallas Bg Co*, 1893, 2 Q. B. 135; 62 L. J. Q. B. 479; 69 L. T. 8; 41 W. R. 580; 57 J. P. 692: *Travis* v. *Utley*, 1894, 1 Q. B. 233; 63 L. J. M. C. 48; 70 L. T. 242; 42 W. R. 461; 58 J. P. 85: *Lond. & N. W. Ry* v. *Runcorn*, 1898, 1 Ch. 561; 67 L. J. Ch. 28, 324; 78 L. T. 343; 46 W. R. 484; 62 J. P. 643.

For a DISTRICT which has adopted s. 19, P. H. Act, 1890, that section provides, —

"(1) Where two or more houses, *belonging to different owners*, are connected with a Public Sewer by a *Single Private Drain*, an application may be made under s. 41 of the P. H. Act, 1875 (relating to complaints as to nuisances from drains) and the Local Authority" may recover the expenses from the owner:

"(3) For the purposes of this section, the expression 'Drain' includes, a drain used for the drainage of more than one building."

This alteration only applies to cases under s. 41, P. H. Act, 1875, "relating to complaints as to nuisances from drains" which arise in respect of houses "belonging to *different* owners" (*Eastbourne* v. *Bradford*, 1896, 2 Q. B. 205; 65 L. J. Q. B. 571; 74 L. T. 762; 45 W. R. 31; 60 J. P. 501: *n* 64 L. J. Q. B. 220). Where that state of things exists a "Single Private Drain," means, one that does not serve the PUBLIC generally, and each of the "different owners" is liable to rectify nuisances arising from the drains to his house up to their junction with a Public Sewer (*Eastbourne* v. *Bradford*, sup; approving *Self* v. *Hove*, 1895, 1 Q. B. 685; 64 L. J. Q. B. 217; 72 L. T. 234; 43 W. R. 300; 59 J. P. 103, and disapproving *Hill* v. *Hair*, 1895, 1 Q. B. 906; 64 L. J. M. C. 164; 72 L. T. 629; 43 W. R. 651; 59 J. P. 374: *V.* these cases cited *R.* v. *Hastings*, 1897, 1 Q. B. 46; 66 L. J. Q. B. 80; 75 L. T. 377; 45 W. R. 109; 60 J. P. 759. In *Seal* v. *Merthyr Tydfil*, 1897, 2 Q. B. 543; 67 L. J. Q. B. 37; 77 L. T. 303; 61 J. P. 551, Cave, J., the senior judge who decided *Hill* v. *Hair*, practically abandoned it). *Note:* The Notice may be to the owners jointly (*Lancaster* v *Barnes*, 1898, 1 Q. B. 855; 67 L. J. Q. B. 744; 78 L. T. 355; 46 W. R. 623; 62 J. P. 405).

With a slight addition to "Drain," "Drain" and "Sewer" are defined in s. 250, Metrop Man. Act, 1855, in the same way as in s. 4, P. H. Act,

1875; *Vth, Bateman* v. *Poplar*, 56 L. J. Ch. 149; 33 Ch. D. 360; 55 L. T. 374: *Ferrand* v. *Hallas Bg Co*, sup: *Pilbrow* v. *St. Leonard, Shoreditch*, 1895, 1 Q. B. 33, 433; 64 L. J. M. C. 29, 130; 72 L. T. 135; 43 W. R. 342; 59 J. P. 68: *St. Martin in the Fields* v. *Bird*, 1895, 1 Q. B. 428; 64 L. J. Q. B. 230; 71 L. T. 868; 43 W. R. 194. As used in this section, "Drain" includes a rain-water pipe (*Holland* v. *Lazarus*, sup).

"Drain," s. 2 (1 *b*), P. H. London Act, 1891, does not include a Public Sewer (*Fulham* v. *Lond. Co. Co*, cited NUISANCE).

Other Stat. Def. — Metrop Man. Act, 1862, s. 112; P. H. Act, 1890, ss. 11 (3), 19; 55 & 56 V. c. 57, s. 5. — *Ir.* 41 & 42 V. c. 52, s. 2.

V. PUBLIC DRAIN: SEWER: MAKE.

DRAINAGE. — "The Drainage and Improvement of Lands (Ir) Acts, 1863 to 1892," "The Drainage and Navigation (Ir) Acts, 1842 to 1857"; *V.* Sch 2, Short Titles Act, 1896.

"Drainage BOARD"; Stat. Def., 51 & 52 V. c. 39, s. 6 (4).

"Drainage CHARGE"; Stat. Def., 51 & 52 V. c. 39, s. 6 (4); Land Law (Ir) Act, 1887, 50 & 51 V. c. 33, s. 34; 54 & 55 V. c. 66, s. 95.

DRAM. — A Dram, Avoirdupois, is $\frac{1}{16}$th of an OUNCE (s. 14, 41 & 42 V. c. 49).

DRAMATIC. — By s. 2, Copyright Act, 1842, a "Dramatic *Piece*" means, "every tragedy, comedy, play, opera, farce, or other scenic, musical or dramatic entertainment." "These words comprehend any piece which could be called dramatic in its widest sense; any piece which, on being presented by any performer to an audience, would produce the emotions which are the purpose of the regular drama, and which constitute the entertainment of the audience" (per Denman, C. J., *Russell* v. *Smith*, 17 L. J. Q. B. 225; 12 Q. B. 217). Scenes and dresses are, perhaps, not absolutely essential to a "dramatic piece"; and such a composition as Mackay's Song of "The Ship on Fire" when sung with considerable expression was, in the case quoted, held to be a "dramatic piece." But in *Wall* v. *Taylor*, a composition called "Will o' the Wisp," the part of which that was called "dramatic" being a verse in which the performer departs from ordinary melody, and, in the words of the composition, "laughs, ha! ha! and laughs, ho! ho!" at which parts of the song some risibility by the performer ought to be indulged in, the learned judge (Day, J.), said that whether it was a "Dramatic Piece" was a question for the jury, but that that phrase would probably not include a performance where the performer merely exerted his vocal powers and did not resort to gesture or facial expression to endeavour to move the emotions of his audience: — there the jury found that "Will o' the Wisp" was not a "dramatic piece" (*Times*, 10 June 1882): But it was obviously a "MUSICAL COMPOSITION," and, being copyright, its unauthor-

ised performance gave a right to the penalty provided by s. 2, 3 & 4 W. 4, c. 15, though it was not performed at a "place of Dramatic Entertainment"; for that condition attaches only to the representation of a dramatic piece and not to the performance of a musical composition (*Wall* v. *Taylor*, 51 L. J. Q. B. 547; 52 Ib. 558; 11 Q. B. D. 102: *Duck* v. *Bates*, 53 L. J. Q. B. 97, 338; 12 Q. B. D. 79).

A *Song*, as generally understood, can, indeed, hardly ever be a "Dramatic Piece." In *Clark* v. *Bishop* (25 L. T. 908), "Come to Peckham Rye" was held a dramatic piece; and so in *Roberts* v. *Bignell* (3 Times Rep. 552) of "Oh! Jenny Dear." But in *Fuller* v. *Blackpool Winter Gardens Co* (1895, 2 Q. B. 429; 64 L. J. Q. B. 699; 73 L. T. 242), Kay, L. J., said, he could scarcely believe that the report of *Roberts* v. *Bignell* was accurate, and Smith, L. J., threw doubts on both *Clark* v. *Bishop* and *Roberts* v. *Bignell*. In *Fuller* v. *Blackpool Co* the Court of Appeal decided that "Daisy Bell" was *not* a dramatic piece, but was only a MUSICAL COMPOSITION, — Esher, M. R., observing that a thing may be "Dramatic" without being a "Dramatic Piece"; and said that if a Song is to be a "dramatic piece" it must, at its publication, be made dramatic by its author, and that that character cannot be given to it "by the mode in which the particular performer deals with it." The Song must be inherently "dramatic," — "I think that to constitute a Song a 'Dramatic Piece' it must be such a song as, for its proper representation, acting and, possibly, scenery form a necessary ingredient; and that if neither of these be requisite to the efficient representation of the song, it is not a 'dramatic piece.' It is an entire misnomer to call a mere common, ordinary, Music Hall Song, a 'dramatic piece'" (per Smith, L. J., *Ib.*).

"An *Opera* is a MUSICAL COMPOSITION, and is also a 'Dramatic Piece'" (per Esher, M. R., *Fuller* v. *Blackpool Co*, sup). It is, however (by s. 4), excluded from 51 & 52 V. c. 17.

A *Pantomime* is a "Dramatic *Entertainment*" within s. 2, 3 & 4 W. 4, c. 15 (*Lee* v. *Simpson*, 16 L. J. C. P. 105; 3 C. B. 871; 4 Dowl. & L. 666).

V. PLACE: ENTERTAINMENT: STAGE PLAY: PART.

DRAPER. — *V.* HOSIER; LADIES' OUTFITTER.

DRAW OVER THE COUNTER. — *V. Modlen* v. *Snowball*, 4 D. G. F. & J. 145; 31 L. J. Ch. 44.

DRAWBACK. — Quà Customs Consolidation Act, 1876, 39 & 40 V. c. 36, "Drawback," includes Bounty (s. 284).

DRAWER. — Drawer of a Bill of Exchange; *V.* BILL OF EXCHANGE: and as to the liability of a Drawer, *V.* s. 55 (1), Bills of Ex. Act, 1882.

DRAWING. — "A 'Drawing' (quà a Debenture Sinking Fund), properly so called, can only take place among several debentures of even date" (per Charles, J., *Finlay* v. *Mexican Investment Corp*, 1897, 1 Q. B. 517; 66 L. J. Q. B. 151; 76 L. T. 257).

Drawings; *V.* BOOK: PROBATIONARY DRAWINGS.

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

DREDGE. — "Dredge," s. 87, Thames Conservancy Act, 1894, "necessarily involves raising the gravel, sand, and other matter, dredged, — for otherwise, what is the use of dredging?" (per Smith, L. J., *Thames Conservators* v. *Smeed*, 66 L. J. Q. B. 721). *Cp* GET.

DRENCH. — "Drenchs," in Domesday, "signifieth free tenants of a mannor" (Co. Litt. 5 b).

DRIED CHICORY. — Quà Excise Act, 1860, 23 & 24 V. c. 113, "'*Dried Chicory*,' shall be construed to mean, Chicory which shall have been kiln-dried, or dried by any other means whatever, and not completely roasted to a state fit for grinding to powder; '*Roasted Chicory*,' shall be construed to mean, Chicory which shall have been completely roasted to such state as last mentioned, whether the same shall have been ground or reduced to powder or not; '*Dryer of Chicory*,' shall be construed to mean and include, Any person who shall kiln-dry, or dry by any other means, any Chicory, or other such vegetable matter as aforesaid; '*Roaster of Chicory*,' shall be construed to mean and include, Any person who shall carry on, or continue, the process of drying Chicory, or other vegetable matter, to a state in which it shall be fit for grinding to powder" (s. 21).

DRIFT. — "'Drift of the FOREST,' is an exact view, — taken once, twice, or oftener, in a yeare as occasion shall require, — what Beasts there are in the Forest; to the intent that the Common in the Forest bee not overcharged, that the Beasts of Forreyners that have no Common there may bee avoided, and that Beasts that are not commonable may bee put out" (Termes de la Ley, citing 32 H. 8, c. 35; Manwood, c. 15).

Drift, or Hang, Net; *V.* NET.

DRIFTWAY. — A Drift Way is "a Right of Way, restricted to foot passengers, or restricted to foot passengers and horsemen or cattle" (per Jessel, M. R., *Cannon* v. *Villars*, 8 Ch. D. 421). *Vf*, WAY: BRIDLE-PATH.

DRINK. — "Article of Food or Drink"; *V.* FOOD: ARTICLE.

DRIVE: DRIVER: DRIVING. — To "drive" means "to make move"; *e.g.* to drive an ox, a steam-engine, or a nail (per arg. of counsel in *Taylor* v. *Goodwin*, inf), or a train (*McCord* v. *Cammell*, cited CHARGE OR CONTROL).

A "Rider" of a horse or beast is included in the word "Driver," in the penal clause of the Highway Act, 1835, s. 78 (*Williams* v. *Evans*, 1 Ex. D. 277; 41 J. P. 151; 35 L. T. 864: over-ruling *R.* v. *Bacon*, 11 Cox C. C. 540). *Cp*, RIDE: OVER-DRIVE.

The propulsion of a Bicycle by a person seated on, and carried by it, is "driving a Carriage" within the same section (*Taylor* v. *Goodwin*, 4 Q. B. D. 228; 48 L. J. M. C. 104; 27 W. R. 489; 43 J. P. 653).

Driving Cattle; *V.* CONDUCTING.

Quà Markets and Fairs Clauses Act, 1847, "Driver," includes "the Carter, or other person having the care of any CART" (s. 3).

Quà Town Police Clauses Act, 1847, "Driver," or "Drivers," includes "every Conductor of any OMNIBUS" (s. 4 (2), 52 & 53 V. c. 14).

Quà Dublin Carriage Act, 1853, 16 & 17 V. c. 112, "Driver," includes "PROPRIETOR or any person engaged at the time in driving a Hackney, Job, Stage Carriage, Cart or Job Horse" (s. 80).

DRIVE AWAY. — *V.* TAKE AND CARRY AWAY.

DROG. — Drog Fishing; *V.* *Aberdeen Arctic Co* v. *Sutter*, cited FAST AND LOOSE.

DROITS. — To constitute WRECK of the Sea, goods must have touched the ground though they need not have been left dry; goods afloat on the high sea (though within low water mark) if they have not touched the ground are Droits (*R.* v. *Forty-Nine Casks of Brandy*, 3 Hagg. Adm. 257: *Vf*, *R.* v. *Two Casks of Tallow*, Ib. 294). *Vf* SEA-COAST.

DROUGHT. — "It has been held in America that an Exception of 'Drought,' in a Charter-Party for a Timber Cargo, does not excuse a charterer who has been prevented by want of water from bringing his timber down to the usual place of storage" (Carver, 292, 293, citing *Sorensen* v. *Keyser*, 52 Fed. Rep. 163).

DROVER. — A Drover, not only signifies a FACTOR of Cattle but, includes one who buys and sells cattle for himself (*Mills* v. *Hughes*, Willes, 588).

DRUF, or DRU. — *V.* DENE.

DRUG. — What is a "Drug," within s. 6, Sale of Food and Drugs Act, 1875, is, to a great extent, a question of the circumstances, — *e.g.* Beeswax is sometimes used in the preparation of medicines, but when sold by a small country grocer, not as a drug but, in the ordinary way

or his trade, it is not a "drug" within the section (*Fowle* v. *Fowle*, 75 L. T. 514; 60 J. P. 758; 13 Times Rep. 12). By s. 2 of the Act "'Drug,' shall include Medicine for internal or external use." *Cp*, POISON.

Compounded Drug; *V.* COMPOUND.

DRUGGIST. — Chemist and Druggist; *V.* APOTHECARY: CHEMIST.

DRUMMER. — Quà 38 & 39 V. c. 69, "'Drummer,' includes a Musician of any kind receiving pay in the Militia" (s. 2).

DRUNK. — *V.* DRUNKEN PERSON: ON THE PREMISES.

"Found drunk"; *V.* FOUND.

Drunkenness in a Sailor, justifying a forfeiture of wages, does not mean being on one or two occasions the worse for liquor but, means intoxication so repeated or in such excess as to disqualify him from the discharge of his duties (*The Lady Campbell*, 2 Hagg. Adm. 5: *The Roebuck*, 31 L. T. 274: *The Macleod*, 50 L. J. P. D. & A. 6; 5 P. D. 254: *Vh*, Abbott, 806: *The Highland Chief*, 1892, P. 76; 61 L. J. P. D. & A. 51).

DRUNKEN PERSON. — The offence of selling intoxicants to a "drunken person" under s. 13, Licensing Act, 1872, is committed by a sale to a person who is drunk, although he show no indications of inobriety, and neither the license-holder nor his servants notice that he is drunk (*Cundy* v. *Le Cocq*, 53 L. J. M. C. 125; 13 Q. B. D. 207; 32 W. R. 769; 51 L. T. 265; 48 J. P. 599: *Sv*, *Somerset* v. *Wade*, cited SUFFER); and, quà this offence, a publican is responsible for his barman, even though he have no knowledge of it and the barman has been expressly ordered not to sell to a drunken person (*Metrop Police* v. *Cartman*, 1896, 1 Q. B. 655; 65 L. J. M. C. 113; 44 W. R. 637; 74 L. T. 726; 60 J. P. 357). *Vf* KNOWINGLY.

Where two, — one sober and one drunk, — enter LICENSED PREMISES together and the sober man orders and pays for intoxicants for both, that is a SALE to a "drunken person," within the section (*Scatchard* v. *Johnson*, 57 L. J. M. C. 41; 52 J. P. 389).

"Habitual Drunkard"; *V.* HABITUAL.

DRY. — "Dry," *e.g.* "Dry Arsenic Acid," in a Patent Specification; *V. Simpson* v. *Holliday*, 5 N. R. 340; L. R. 1 H. L. 315; 35 L. J. Ch. 811.

"Dry Cleaning Works"; *V.* NON-TEXTILE FACTORIES.

DRYER. — "Dryer of Chicory"; *V.* DRIED CHICORY.

DUBLIN. — *V.* COUNTY.

Dublin Mean Time; *V.* TIME.

"Port of Dublin Corporation"; *V.* PORT, towards end.

DUE. — A DEBT is "due" when it is payable (per James, V. C., *Re European Life Assrce*, 39 L. J. Ch. 326; L. R. 9 Eq. 122).

A debt is still "due" notwithstanding that the Statute of Limitations may have run against it, for that statute only bars the remedy and does not extinguish the debt; and in an Account asked for by the debtor he cannot avail himself of the statute (*Ex p. Cawley*, 34 S. J. 29).

Notwithstanding the Apportionment Act, 1870, 33 & 34 V. c. 35, s. 2, a testamentary direction to forgive a tenant "all rent or arrears of rent which may be due *and owing* from him at the time of my decease," only extends to the rent due at the quarter-day immediately preceding the testator's death (*Re Lucas*, 55 L. J. Ch. 101; 54 L. T. 30). *Cp, Re Howell*, cited ACCRUE.

Gift over in event of death before a Share becomes "due *and payable*"; *V. Re Willmott*, 38 L. J. Ch. 275; L. R. 7 Eq. 532.

On a weekly hiring, wages are not "due" to a child, young person, or woman, within s. 11, Employers and Workmen Act, 1875, until the end of the week; *secus*, of piece-work to be paid for weekly: "due" in this section means "earned" (*Warburton* v. *Heyworth*, 50 L. J. Q. B. 137; 6 Q. B. D. 1; distinguishing *Gregson* v. *Watson*, 34 L. T. 143).

But where Articles give a Company a lien upon a shareholder's shares for any moneys "due" from him, that means "presently payable," and gives no lien for a current Bill (*Re Stockton Iron Co*, 45 L. J. Ch. 168; 2 Ch. D. 101); so the right to refuse transfer if shareholder is "*indebted*" to the Co, cannot be exercised quâ a Call made after the receipt by the Co of the transfer instrument (*Re Cawley & Co*, 58 L. J. Ch. 633; 42 Ch. D. 209).

Policy insuring principal money "due under the Debentures" of a Co; *V. Finlay* v. *Mexican Investment Corp*, cited DRAWING.

RENT is "due" "at the beginning of the day on which it is payable, though the tenant has the whole of that day in which to pay it" (per Erle, J., *Dibble* v. *Bowater*, 2 E. & B. 570); therefore, a seizure by a landlord on that day to prevent a fraudulent removal of goods to avoid a Distress, is justified by s. 1, 11 G. 2, c. 19, because there is then rent "*reserved or due*," although not then in arrear (*S. C.* 2 E. & B. 564; 22 L. J. Q. B. 396).

Rent "due and payable in advance, if required"; *V.* ADVANCE.

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

V. DEBT: DEBTS DUE: FOUND: MONEY DUE: OWING: PAYABLE: FINAL DISCHARGE: DUES: NOW.

DUE ATTESTATION. — *V.* ATTEST.

DUE ALLOWANCE. — An Agreement to make "a Due Allowance," from interest on a loan, if there should be a deficiency of profits in the trade for which the loan is made, is so vague that it is inoperative

as a contract for "a Rate of Interest varying with the Profits," s. 1, 28 & 29 V. c. 86, repld s. 2 (3 *d*), Partnership Act, 1890; and the Lender is not to be postponed to the other creditors of the Borrower (*Re Vince*, 1892, 2 Q. B. 478; 61 L. J. Q. B. 836; 67 L. T. 70; 41 W. R. 138).

DUE CAUSE. — The "Due Cause" which has to be shown for the removal of an Official Liquidator (s. 93, Comp Act, 1862), is not *confined* to objections personal to the liquidator, but extends to any cause which renders it desirable, in the interest of the Company or the creditors, that the liquidator should be removed and another person substituted; and, therefore, a duly secured offer by a disputed creditor to pay in full the undisputed creditors of an insolvent Co if his nominee be appointed official liquidator, is "due cause" for removing an official liquidator already appointed, and appointing such nominee instead (*Re Adam Eyton, Lim.*, 36 Ch. D. 299; 57 L. J. Ch. 127; 3 Times Rep. 738: *Re British Nation Assrce*, 20 W. R. 651).

And, probably, that rule would be applied to the interpretation of "due cause" as used in s. 141 of the same Act. No doubt *Sir John Moore Co.* (12 Ch. D. 325; 28 W. R. 203) decided that, under the latter section, "due cause shown" was not equivalent to "if the Court shall think," and pointed to some unfitness of the liquidator to be removed thereunder; yet the Court there said that they used the word "unfitness" "in a wide sense of the term." And as it seems difficult to read "due cause" differently in s. 141 from the way in which it is used in s. 93, it would seem that there would be an unfitness — a personal unfitness, — in retaining a liquidator under s. 141 if so doing would be inimical to the interests of the Co or its creditors. In that way, it is submitted, the two cases cited will stand together, and that both are applicable for determining what is "due cause" under each of the sections referred to (*Sv* Buckl. 358). *V. Re Sunlight Incandescent Co*, 69 L. J. Ch. 873; 1900, 2 Ch. 728.

V. CAUSE: GOOD CAUSE: SPECIAL.

DUE COURSE.—*V.* HOLDER IN DUE COURSE: PAYMENT IN DUE COURSE.

DUE COURSE OF ADMINISTRATION. — A direction in a Will that on the death of a life tenant without children, a fund is to be disposed of "in a Due Course of Administration" does not, on the event happening, give the fund to the next-of-kin according to the statute, but the fund falls into the residue (*Scott* v. *Moore*, 13 L. J. Ch. 283; 14 Sim. 35: Wms. Exs. 988, 989).

DUE DILIGENCE. — A covenant to do a thing "with all due and reasonable Diligence and Despatch," is not excused from performance if it can be done; even though the jury find that it cannot be done by

any reasonable application of labour, diligence, skill, money, or other means (*Jervis* v. *Tomkinson*, 26 L. J. Ex. 41; 1 H. & N. 195).

There is no general time rule as to what is "Due Diligence" in "commencing" litigation after a THREAT respecting a Patent, within the proviso to s. 32, 46 & 47 V. c. 57; each case will depend on its own circumstances (*Barrett* v. *Day*, 43 Ch. D. 435; 38 W. R. 362: *Colley* v. *Hart*, 59 L. J. Ch. 308; 44 Ch. D. 179; 62 L. T. 424; 38 W. R. 501); but an action is not commenced with "due diligence," within that proviso, if not commenced till 9 months after the threat (*Johnson* v. *Edge*, 1892, 2 Ch. 1; 61 L. J. Ch. 262; 66 L. T. 44; 40 W. R. 437). *V.* PROSECUTE.

"Shall with Due Diligence prosecute" proceedings to jdgmt, s. 4, Poor Law (Payment of Debts) Act, 1859, 22 & 23 V. c. 49; *V. Rhodes* v. *Pateley Bridge*, 51 L. T. 235; 48 J. P. 168.

"Due Diligence" by owner to make ship SEAWORTHY, connotes the obligation, not only on the owner, but also on his agents (*Dobell* v. *Rossmore Co*, 1895, 2 Q. B. 408; 64 L. J. Q. B. 777; 73 L. T. 74; 44 W. R. 37).

"Due Diligence" in transshipping, quà a Bill of Lading; *V. Carali* v. *Xenos*, 2 F. & F. 740.

V. REASONABLE DILIGENCE.

DUE INQUIRY. — *V.* INQUIRY.

DUE NOTICE. — Quà Thames Preservation Act, 1885, 48 & 49 V. c. 76, "'Due Notice,' means, a Notice IN WRITING given by the Conservators, or any person duly authorised in Writing by them to act in their behalf" (s. 29).

V. NOTICE.

DUE REGARD. — "Due Regard" to educational interests of persons entitled to privileges, ss. 11, 39 (4), Endowed Schools Act, 1869, 32 & 33 V. c. 56; *V. Re Sutton Coldfield Grammar School*, 7 App. Ca. 91; 51 L. J. P. C. 8; 45 L. T. 631; 30 W. R. 341: *Re Hodgson's School*, 3 App. Ca. 857; 47 L. J. P. C. 101; 38 L. T. 790: *Ross* v. *Charity Commrs*, 7 App. Ca. 463; 51 L. J. P. C. 106; 47 L. T. 172: *Re Hemsworth Grammar School*, 12 App. Ca. 444; 56 L. T. 212; 35 W. R. 418; 3 Times Rep. 439: *Re Christ's Hospital*, cited EDUCATIONAL ENDOWMENT. *Vf*, Tudor Char. Trusts, 605, 606.

DUE TIME. — After consecration of the Elements and before and during their Reception (in the Communion Office), is a "Due Time" for singing a Hymn, within s. 7, 2 & 3 Edw. 6, c. 1 (*Read* v. *Lincoln Bp.*, 1892, A. C. 644; 62 L. J. P. C. 1; 67 L. T. 128).

Bequest to such of testator's Nephews and Nieces as should be living at his decease, "or BORN in Due Time thereafter, as and when they shall

severally attain the age of 21 years"; held, by Kay, J., that those to take were all his nephews and nieces (attaining 21) who were living at his decease, or should be born thereafter before any of them attained 21; and that, this being a case of a gift to children of third persons, "due" could not refer to the period of gestation, but had reference to the terms of the gift, and meant "born in time to participate in its benefit" (*Re Wass*, W. N. (82) 158).

DUES. — In a Lessee's covenant "Dues" has, probably, the same meaning as "DUTIES"; thus, where a lessee covenanted "to pay all Rates, Taxes, and Dues, whatsoever," he was held liable to the expense of curing defective drainage under P. H. London Act, 1891 (per Stonor, Co. Co. J., *Waggett* v. *Armytage*, 100 Law Times, 40). *Vf* TAXES.

Quà, and by, s. 7, Rating Act, 1874, 37 & 38 V. c. 54, "'Dues,' means, Dues, Royalty, or Toll, either in Money or partly in Money and partly in Kind; and the amount of Dues which are reserved in Kind, means the Value of such dues."

Shipping Dues; Stat. Def., 30 & 31 V. c. 15, s. 3. *V.* PILOTAGE.

DUFFING. — To charge a Pawnbroker with "Duffing," *i.e.* replenishing or doing up damaged pledges, and re-pledging them, — is actionable (*Hickinbotham* v. *Leach*, 11 L. J. Ex. 341; 10 M. & W. 361; 2 Dowl. N. S. 270).

DULLNESS. — "Dullness of Intellect"; *V.* UNSOUND MIND.

DULY. — The addition of the adverb "duly" to a verb will not, generally speaking, supply the omission of a material fact which ought to be stated, and which may or may not exist independently of that which is averred to be "duly" done (*R.* v. *Lyme Regis*, 1 Doug. 79: *Everard* v. *Paterson*, 6 Taunt. 645; 2 Marsh. 304: *Williams* v. *Germaine*, 7 B. & C. 468: *Brazier* v. *Jones*, 8 Ib. 124); but it does signify that the action has been done legally, in due course, and according to the provisions of the law (*Nightingale* v. *Wilcoxson*, 10 B. & C. 202: *Dudlow* v. *Watchorn*, 16 East, 42).

"Duly *administered*"; *V.* PERJURY.

"Duly and legally *appointed*"; *V. R.* v. *Anderson*, cited SERVED.

Sheriff "duly *Arrested*," means that the Sheriff duly acted under authority enabling him, and was not a trespasser (*Butcher* v. *Steuart*, 12 L. J. Ex. 391; 11 M. & W. 857).

"Duly *attested*"; *V.* ATTEST.

Company "duly *constituted*"; *V.* CONSTITUTED.

"When the statute, 6 V. c. 18, s. 100, speaks of a Document to be transmitted by the Post 'duly *directed*' to the person to whom it is to be sent, it can only contemplate a direction in the ordinary way, *i.e.*

written on the outside" (per Coltman, J., *Birch* v. *Edwards*, cited DUPLICATE).

"Things duly *done*," within a saving clause of a repealing Act; *V. R.* v. *West Riding Jus.*, 45 L. J. M. C. 97; 1 Q. B. D. 220: DONE.

Will "duly EXECUTED"; *V.* WRITING.

A clause in a Lease provided for its forfeiture if the lessee should be "duly *found and declared a bankrupt*"; the lessee committed an act of bankruptcy and was found and declared a bankrupt, but the petitioning creditors were A. and B., whereas they should have been A., B., and C.; held, by Pollock, C. B., and Platt, B. (Parke, B., diss.), that the lessee was not "duly" found and declared bankrupt (*Doe* d. *Lloyd* v. *Ingleby*, 15 M. & W. 465).

"Duly *honoured*"; *V.* HONOURED.

Rents "duly *In Charge*"; *V.* IN CHARGE.

Person "duly *licensed*"; *V.* LICENSED PERSON: RENEWAL.

"Having first duly *paid* rent and *performed* covenants"; *V.* HAVING.

"Duly *paid*," is not the equivalent of "PUNCTUALLY paid"; the first phrase is satisfied if the payment is made soon enough to amount to a SATISFACTION (*Benabo* v. *James*, 109 Law Times, 408).

An applicant for an Off License under s. 8, 32 & 33 V. c. 27, need not reside in the premises and personally conduct the business there, in order that the house be "duly *qualified* as by law is required" within subs. 4, Ib. (*R.* v. *De Rutzen*, 1 Q. B. D. 55; 45 L. J. M. C. 57; 24 W. R. 343; 33 L. T. 726; 40 J. P. 150).

"Duly qualified"; *V.* QUALIFIED: INFAMOUS CONDUCT.

Apprentice to "duly and truly *serve*"; *V.* SERVE.

A Cheque is not "duly *stamped*," s. 54, Stamp Act, 1870, repld s. 30, Stamp Act, 1891, unless it is stamped when drawn; and if that be not done, no one else, except the Banker, can affix an adhesive stamp on it (*Hobbs* v. *Cathie*, 6 Times Rep. 292). "Properly stamped"; *V.* PROPERLY.

A Coroner's Inquisition "duly *taken*," s. 2, 25 G. 2, c. 29, "implies, not only care and diligence in the taking but, the taking under such circumstances as make it proper that it should be taken" (per Denman, C. J., *R.* v. *Carmarthenshire Jus.*, 10 Q. B. 800: *R.* v. *Gloucestershire Jus.*, 7 E. & B. 805; 27 L. J. M. C. 15).

DUM.—"*Dum* also maketh a limitation; as if a lease be made, *dum sola fuerit*, or *dum sola et casta vixerit*. *Dummodo* is also a word of limitation; as *dummodo solveret talem redditum*" (Co. Litt. 234 b).

As to the insertion, or not, of the *Dum sola et casta* Clause in Separation Deeds, or in an Order for Permanent Alimony in Divorce Proceedings; *V.* USUAL, towards end: *Wasteneys* v. *Wasteneys*, 1900, A. C. 446; 69 L. J. P. C. 83.

DUNCE. — To say of a lawyer that "he is a Dunce, and will get little by the Law," is SLANDER; for "'Dunce,' in common intendment and speech, is taken for one of dull capacity and apprehension, and not fit for a Lawyer" (*Peard* v. *Johnes*, Cro. Car. 382).

DUNUM. — "*Dunum* or *duna* signifieth a hill or higher ground, and therefore commonly the townes that end in *dum*, have hills or higher grounds in them which we call downs. It commeth of the old French word *dun*" (Co. Litt. 4 b). *Vf* Cowel.

DUPLICATE. — A "Duplicate" is a document which is essentially the same as some other document, having precisely the like operation and effect (*Toms* v. *Cuming*, 7 M. & G. 88; 14 L. J. C. P. 67, espy jdgmt of Maule, J.); it was, accordingly, there held that an Examined Copy of a Notice of Objection to a Voter was not a "Duplicate" of the Notice, within s. 100, 6 V. c. 18. There is no Duplicate Notice within that section if it has not the external address of the person objected to (*Birch* v. *Edwards*, 5 C. B. 45; 17 L. J. C. P. 32: *Vf*, *Lewis* v. *Roberts*, 11 C. B. N. S. 29; 31 L. J. C. P. 52).

"The *Counterparts*, or Counterpanes, of an Indenture, are the two pieces of one entire parchment (or paper) on which the contract between the parties is engrossed *in duplicate*, — the piece sealed by one party being delivered to the other. The two parts put, or considered as put, together constitute the contract by deed. In common parlance, however, the Counterpart or Counterpane, sealed by the party from whom the estate, &c, moves, is called the Original, and the Counterpart or Counterpane, sealed by the party accepting the estate, &c, is called the Counterpart. When both Counterparts, or Counterpanes, are sealed and delivered by each party (which of late years has been frequently done) they are commonly spoken of as 'Duplicate Originals'" (2 M. & G. 518, *n* b). *Vf* 3 Encyc. 521.

In the Schs to the Stamp Acts of 1870 and 1891, "Duplicate or Counterpart" of an Instrument is used as distinguished from the "Original."

DURESS. — As to what is Duress at Common Law; *V. Cummings* v. *Ince*, 17 L. J. Q. B. 105; 11 Q. B. 117, and authorities there cited: *Edward* v. *Trevellick*, 4 E. & B. 63: *Biffin* v. *Bignell*, 31 L. J. Ex. 189; 7 H. & N. 877: *Williams* v. *Bayley*, L. R. 1 H. L. 200; 14 L. T. 802: 2 Inst. 482: Termes de La Ley: Jacob: 1 Bl. Com. 131: Dart, 1175. *Cp* INTIMIDATE: PRESSURE.

The Duress that will invalidate a Maritime SALVAGE Agreement is less than the Duress required at Common Law to Invalidate an ordinary agreement; if the remuneration demanded is so exorbitant as to be inequitable, that will be Duress sufficient to invalidate a Salvage agreement (*The Rialto*, 1891, P. 175; 60 L. J. P. D. & A. 71: *The Mark*

Lane, 15 P. D. 135: *The Medina*, 45 L. J. P. D. & A. 81; 1 P. D. 272: *The Silesia*, 50 L. J. P. D. & A. 9; 1 P. D. 177).

Marriage under Force, Fear, Terror, or Duress; *V. Clarke* v. *Clarke*, 65 L. J. P. D. & A. 13; 1896, P. 1; 73 L. T. 632: *Scott* v. *Sebright*, 56 L. J. P. D. & A. 11; 12 P. D. 21; 35 W. R. 258: *Cooper* v. *Crane*, 1891, P. 369; 61 L. J. P. D. & A. 35; 40 W. R. 127: *Rice* v. *Rice*, 72 L. T. 122.

DURHAM. — "The Durham County Palatine Acts, 1836 to 1889"; *V.* Sch 2, Short Titles Act, 1896.

DURING. — A contract for goods to be shipped "during" specified months, implies a continuous act of shipping (per Ld Hatherley, *Bowes* v. *Shand*, 46 L. J. Q. B. 561; 2 App. Ca. 455).

"If both or either of the parties happen during" the 6 months for commencing proceedings to be out of the Jurisdiction, s. 525 (1), Mer Shipping Act, 1854, repld s. 683 (2), Mer Shipping Act, 1894, "cannot mean during the whole of the time but, means, *during the currency of the 6 months*" (per Blackburn, J., *Austin* v. *Olsen*, 9 B. & S. 52; 37 L. J. M. C. 34); and "Parties" means, "the person committing the offence, and the person aggrieved" (*Ib.*).

As to meaning of "during" in s. 28, Municipal Corp Act, 5 & 6 W. 4, c. 76; *V.* jdgmt of Bramwell, B., *Lewis* v. *Carr*, 46 L. J. Ex. 314; 1 Ex. D. 484.

"During Business Hours"; *V.* BUSINESS HOURS.

"During the Continuance"; *V.* CONTINUANCE.

"'During the COVERTURE': That is, during the continuance of the marriage. For to cover in *English* is *tegere* in *Latine*; and it is so called, for that the wife is *sub potestate viri*" (Co. Litt. 112 a; *Va* Ib. 32 a; 234 b). A consideration of this reason seems to establish the proposition that coverture does not necessarily, and always, continue during the period that a wife retains her status of a married woman. She is only under Coverture whilst she is *sub potestate viri*. Thus a covenant to settle a wife's property acquired "during the Coverture" is not operative upon property acquired after a Judicial Separation (*Re Insole*, 35 L. J. Ch. 177; L. R. 1 Eq. 470: *Re Coward and Adams*, 44 L. J. Ch. 384; L. R. 20 Eq. 179: *Dawes* v. *Creyke*, 54 L. J. Ch. 1096; 30 Ch. D. 500; 53 L. T. 292; 33 W. R. 869: *Waite* v. *Morland*, 38 Ch. D. 135; 57 L. J. Ch. 655; 59 L. T. 185; 36 W. R. 484); and on such a separation a restraint on alienation ceases, quà property acquired after it, but not quà property acquired before it (*Munt* v. *Glynes*, 41 L. J. Ch. 639; 20 W. R. 823: *Waite* v. *Morland*, sup), and the wife's *choses in action*, unreduced into possession, revert to her (*Johnson* v. *Lander*, 38 L. J. Ch. 229; L. R. 7 Eq. 228). Similar results follow whilst a Protection Order, under s. 21, Matrimonial Causes Act,

1857, is in operation (*Cooke* v. *Fuller*, 26 Bea. 99; on *whcv*, *Waite* v. *Morland*, sup. *Vf*, *Hill* v. *Cooper*, 1893, 2 Q. B. 85; 62 L. J. Q. B. 423). But it may be said that the results of the cases cited in this paragraph flow from the language employed in ss. 21, 25, Matrimonial Causes Act, 1857. *Vf* FEME.

There is frequently great difficulty in construing the words "*during the Coverture*" when those words occur in a covenant to settle contained in an ante-nuptial Marriage Settlement and the wife, *at the time of the marriage*, is possessed of other property than that mentioned in the Settlement. The question whether such other property is or is not comprised in the words is one the determination of which depends very much on the circumstances of each case and especially on the context. "The authorities seem to be such, upon the whole, as tend to show that the Settlement should be taken to apply only to property which should come *in futuro* to the wife, and not to that which was hers before" (per Ld Blackburn, *Williams* v. *Mercier*, 54 L. J. Q. B. 154; and his lordship there points out how easily a word or two may make all the difference). But in the same case (p. 152, Ib.) Selborne, C., makes the following observations: "Then — *i.e.* where the covenant comprises property which the husband shall become entitled to 'in her right' — the question would be, whether the words, 'at any time during her now intended coverture' would apply. Surely you cannot exclude from the duration of the coverture the first moment of its inception any more than you can the last moment of its continuance. The moment that the marriage is complete by the performance of that which makes the parties husband and wife, that moment the Coverture begins; and if at that moment he becomes entitled as her husband, in her right, I am totally unable to say that it is not *during* the intended coverture in a sense which the words will rightly, grammatically, and reasonably bear" (*Williams* v. *Mercier*, 54 L. J. Q. B. 148; 10 App. Ca. 1; 52 L. T. 662; 33 W. R. 373; 49 J. P. 484, *whv* for a discussion of the cases on this point; *V. Williams* v. *Mercier* distinguished, *Re Garnett*, 33 Ch. D. 300. *Vf*, *Re D'Estampes*, 53 L. J. Ch. 1117).

In *Re Edwards* (9 Ch. 97; 43 L. J. Ch. 265: *Va*, *Re Coghlan*, 1894, 3 Ch. 76; 63 L. J. Ch. 671; 71 L. T. 186; 42 W. R. 634) the phrase "during the said intended Coverture" was read into a covenant contained in a Marriage Settlement to settle all property to which the wife should become entitled after the marriage; herein adopting *Dickinson* v. *Dillwyn* (39 L. J. Ch. 266; L. R. 8 Eq. 546) and *Carter* v. *Carter* (39 L. J. Ch. 268; L. R. 8 Eq. 551), and over-ruling *Stevens* v. *Van Voorst* (17 Bea. 305).

"During ANY Coverture"; *V. Re Harrison*, 1894, 1 Ch. 561; 63 L. J. Ch. 385; 70 L. T. 868.

It is very difficult for a context to control "during *their Joint Lives*" to mean, "during the intended Coverture," in a Covenant to Settle

future property contained in a Marriage Settlement (*Hamilton* v. *Hamilton*, 1892, 1 Ch. 396; 61 L. J. Ch. 220; 66 L. T. 112; 40 W. R. 312, applying the principle of *Re Tredwell*, cited DEATH).

V. ENTITLED.

WILL "made during Coverture"; *V.* MADE.

It has been said that "a *Lease* to one generally *during the Coverture of* A. and B., would create but a tenancy at will, by reason of the uncertainty of the duration of the coverture" (Woodf. 167, citing Bac. Abr., *Leases*, L. 3: *Sq.*).

"During the *Engagement*"; *V. Kelly* v. *London Pavilion*, cited ENGAGEMENT.

"During *her Life*"; Where on a *Separation* Arrangement, property is settled on, or an allowance is made to, the Wife "during her life," that means, generally, during her life if the separation shall last so long (*Nicol* v. *Nicol*, 54 L. J. Ch. 1042; 55 Ib. 437; 31 Ch. D. 524; 54 L. T. 470; 34 W. R. 283; 50 J. P. 468; 2 Times Rep. 280; *whv* for a review of the previous cases, and especially for those in which the context has shown that the wife was to take during the whole period of her natural life, whether co-habitation be resumed or not). So of a Separation Order under s. 4, 41 & 42 V. c. 19 (*Haddon* v. *Haddon*, 18 Q. B. D. 778). But no such condition will be implied quà a Separation Arrangement between a man and his Concubine (*Re Abdy*, 1895, 1 Ch. 455; 64 L. J. Ch. 465; 72 L. T. 178; 43 W. R. 323); and if such a condition were there expressed it would, probably, be void (*Ex p. Naden*, 43 L. J. Bank. 121; 9 Ch. 670).

A bequest to a wife "during such time as she may *live apart* from her husband" is void altogether; for the words quoted are part of the limitation of the gift and fixes its duration in an illegal way (*Re Moore*, 57 L. J. Ch. 936; 39 Ch. D. 116; 59 L. T. 681; 37 W. R. 83).

"During *their Lives*"; The bequest of an annuity to more than one "During their natural lives" is joint, and does not LAPSE by the death of one in the lifetime of the testator, and the survivor will take the annuity for his own life (*Alder* v. *Lawless*, 32 Bea. 72: *Vf* JOINT LIVES).

A devise to "A. and his heirs, *during their Lives*," gives A. the Fee Simple, the words italicised being repugnant (*Doe* d. *Cotton* v. *Stenlake*, 12 East, 515).

A gift of Income of Residuary Estate "during the Lives of my Children"; construed as "so long as any of my children are alive" (per Kekewich, J., *Re Clayden*, 43 S. J. 76).

"During the *Pleasure*"; *V.* At DISCRETION.

Distress "during the *Possession of the Tenant*," where he holds over, s. 7, 8 Anne, c. 18; *V. Wilkinson* v. *Peel*, 1895, 1 Q. B. 516; 64 L. J. Q. B. 178; 72 L. T. 151; 43 W. R. 302; distinguishing *Nuttall* v. *Staunton*, 4 B. & C. 51.

Shipment "during the *Season*"; *V.* SHIPMENT.

"During *the Term*," *V.* 2 Platt, 91–95; Woodf. 627, 722, 167. In a covenant in a Lease, "'During the said term' means, during the whole term expressed to be granted, and not merely during the actual continuance of the term (*Evans* v. *Vaughan*, 4 B. & C. 261; 3 L. J. O. S. K. B. 213; 6 D. & R. 349: *Williams* v. *Burrell*, 1 C. B. 402; 14 L. J. C. P. 98; 9 Jur. 282); although it is otherwise where the covenant is implied by law" (Woodf. 722).

An Annuity, charged on the testator's Leaseholds "during the Term of the said Lease," extends to, and is charged upon, every Renewal obtained by the legatee of the leaseholds (*Winslow* v. *Tighe*, 2 Ball & Beatty, 195); for "whoever has a Lease has an interest in the Renewal; and though the Lessors are not bound to renew yet, when done, it is a continuation of the old lease" (per Bathurst, C., *Rawe* v. *Chichester*, Amb. 719).

A covenant that lessee shall "during the Term" hold discharged from tithes and to recoup him if same "recovered against him during the term," covers tithes for which action is brought against the lessee *after* the term (*Lanning* v. *Lovering*, Cro. Eliz. 916).

Where Partnership Articles prescribe for events happening "during the Term," or "during the Partnership," that means, during the specified term, or (generally) during the time the partners may continue in partnership without coming to any fresh agreement (s. 27, Partnership Act, 1890: *Essex* v. *Essex*, 20 Bea. 442: *Neilson* v. *Mossend Iron Co.*, 11 App. Ca. 298: *Cox* v. *Willoughby*, 13 Ch. D. 863; 49 L. J. Ch. 237: *Vh*, *Clark* v. *Leach*, 32 Bea. 14; 32 L. J. Ch. 290: Lindley, P. 412). So, of something to be done within a specified time *after* the Expiration of the Partnership, if that thing be not inconsistent with a Partnership at Will (*Daw* v. *Herring*, 1892, 1 Ch. 284; 61 L. J. Ch. 5; 65 L. T. 782; 40 W. R. 61). But where the partnership has expired and is only continued for winding-up purposes, a clause providing for the purchase of a deceased partner's share is no longer binding (*Myers* v. *Myers*, 60 L. J. Ch. 311).

A statement that a person has SERVED an OFFICE, or resided in a PLACE, "during" a stated *Time*, does not mean that he has served or resided "in the course of" that time but, means "in strict legal language, 'throughout the whole'" time (per Denman, C. J., *R.* v. *Anderson*, 16 L. J. M. C. 26; 9 Q. B. 663).

During Vacation; *V.* VACATION.

An Exception in a Charter-Party of Restraint, &c, "during the said *Voyage*," was held not to apply at the *Loading* Port (*Crow* v. *Falk*, 15 L. J. Q. B. 183; 8 Q. B. 467); but that case was disapproved in *Bruce* v. *Nicolopulo* (24 L. J. Ex. 321; 11 Ex. 134), and, probably, it is now settled that, quà the Exception, a Ship's Voyage begins when she starts from her Berth to go to the Loading Port and continues during her pre-

liminary transit thither and whilst loading there (*The Carron Park*, 59 L. J. P. D. & A. 74; 15 P. D. 203), but, *semble*, does not continue whilst she is engaged in discharging her cargo (*The Accomac*, cited NAVIGATION). *Vf* VOYAGE.

DUST. — A power to make a Bye Law for the removal of "Dust, Ashes, Rubbish, Filth, Manure, Dung, and Soil," does not extend to untrodden and unsunned Snow (*R.* v. *Wood*, 5 E. & B. 49). *Semble*, that Snow may be "Filth" (*Ib.*). *Vf* RUBBISH.

DUTCH TERMS. — *V.* ON DUTCH TERMS.

DUTIES. — Where a lessee covenants to bear and pay all "Duties" respecting the premises demised, that word will comprise the expense of curing defective drainage, and such like work, under s. 96, P. H. Act, 1875 (*Thompson* v. *Lapworth*, *Budd* v. *Marshall*, and *Brett* v. *Rogers*, all cited TAXES). *Cp*, DUES: RATE: TAXES.

A direction in a Will to pay "all Estate and other Duties, other than Settlement Estate Duties," includes only Duties on Property passing under the Will; and does not include the duty on a gift made by a testator within twelve months of his death (*Re Baxter*, 42 S. J. 611).

The right to make Deduction from Income of "Duties, or other sums, payable or chargeable on the same BY VIRTUE of any Act of Parliament," s. 146, Sch E, R. 1, Income Tax Act, 1842, includes compulsory annual contributions to a Superannuation Fund under ss. 12 and 13, 59 & 60 V. c. 50 (*Beaumont* v. *Bowers*, 1900, 2 Q. B. 204; 69 L. J. Q. B. 600; 83 L. T. 126; 48 W. R. 557; 64 J. P. 552).

"If A. be accountable to B. and B. releaseth him all his Duties, this is no barre in an action of Account, for duties extend to things certaine, and what shall fall out upon the account is incertaine; and albeit the Latine word is *debita*, yet duties doe extend to all things due that are certaine, and therefore dischargeth judgments in personall actions, and executions also" (Co. Litt. 291 a).

"Duties," quà Taxes Management Act, 1880, 43 & 44 V. c. 19; *V.* s. 5.

Quà Loc Gov Act, 1888, "'Duties,' includes Responsibilities and Obligations" (s. 100), — a def adopted for the London Gov Act, 1899 (*V.* s. 34), for Loc Gov (Ir) Act, 1898 (*V.* s. 109), for 62 & 63 V. c. 50 (*V.* s. 30), and for Loc Gov (Scot) Act, 1889 (*V.* s. 105). *Cp*, POWER.

"Ecclesiastical Duties"; Stat. Def., 61 & 62 V. c. 48, s. 13 (2, 3).

V. DUTY.

DUTY. — "Duty," s. 22 (2), Coroner's Act, 1887, is not confined to a strict legal Duty; it also comprises a Duty of imperfect obligation, *e.g.* that of an Honorary Medical Officer (*Horner* v. *Lewis*, cited PUBLIC HOSPITAL).

V. STRICT DUTY: ACCIDENT.

Quâ Stamp Duties Management Act, 1891, 54 & 55 V. c. 38, "'Duty,' means, any Stamp Duty for the time being chargeable by law" (s. 27).

V. ESTATE DUTY: PROBATE DUTY: DUTIES.

DWELL. — To "dwell," "dwelling," are expressions nearly, but not quite, equivalent to "RESIDE," "RESIDENCE"; for to "dwell" connotes, more definitely than "reside," a place where a person lives and sleeps (*V.* per Pollock, C. B., *A-G.* v. *McLean*, 1 H. & C. 761).

A person may "dwell" in two or more places (*Butler* v. *Ablewhite*, 28 L. J. C. P. 292); and a member of parliament residing in London for about 3 months in the year would "dwell" there, as well as at his country seat (*Bailey* v. *Bryant*, 28 L. J. Q. B. 86; 1 E. & E. 340). A man can, however, scarcely be said to "dwell" at his place of business (*Kerr* v. *Haynes*, 29 L. J. Q. B. 70: *Shields* v. *Rait*, 18 L. J. C. P. 120; 7 C. B. 116); still less in a prison in which he may be temporarily incarcerated (*Dunston* v. *Paterson*, 28 L. J. C. P. 97; 5 C. B. N. S. 267). But a Corporation can only "dwell" where it carries on business (*Taylor* v. *Crowland Gas Co*, 24 L. J. Ex. 233; 11 Ex. 1; 3 W. R. 368); but that means the *principal* place where the business of the Corporation is carried on, — *e.g.* the Great Western Ry Co "dwells" at Paddington, and not at every station on its lines of railway (*Adams* v. *G. W. Ry*, 30 L. J. Ex. 124; 6 H. & N. 404; 9 W. R. 254. *Va, Shiels* v. *G. N. Ry*, 30 L. J. Q. B. 331; 9 W. R. 739: CARRY ON); so, of a Pier Co (*Aberystwith Pier Co* v. *Cooper*, 35 L. J. Q. B. 44; 14 W. R. 28; 13 L. T. 273). But a *manufacturing* joint-stock Company "dwells and carries on business" within s. 74, Co. Co. Act, 1888, at its place of manufacture and sale, and not at the registered office of the company (*Keynsham Lime Co* v. *Baker*, 33 L. J. Ex. 41; 2 H. & C. 729: *Baillie* v. *Goodwin*, 33 Ch. D. 605; 55 L. J. Ch. 849; 55 L. T. 56; 34 W. R. 787).

A person having no permanent place of abode "dwells," within the section just cited, at the place where he may temporarily be (*Alexander* v. *Jones*, 35 L. J. Ex. 78; L. R. 1 Ex. 133).

V. DWELLING-HOUSE: CARRY ON: INHABIT.

DWELLING. — "Occupied as a Dwelling"; *V.* DWELLING-HOUSE.

DWELLING-HOUSE. — A "Dwelling-house" is obviously a HOUSE with the super-added requirement that it is dwelt in or the dwellers in which are absent only temporarily, having *animus revertendi* and the legal ability to return (*Ford* v. *Barnes*, 55 L. J. Q. B. 24: *Vf* OUTER DOOR). "House" and "Dwelling-house" are used in their respective meanings in the Acts conferring the parliamentary franchise, — "House" in s. 27, Rep People Act, 1832, and "Dwelling-house" in s. 3 (2), Rep People Act, 1867. The latter Act gives the franchise to one who for the prescribed time has been an "inhabitant occupier, as owner or tenant, of

any Dwelling-house." The word "Inhabitant" here would seem to bring out more fully the meaning of the word "dwelling-house."

The difficulties experienced in determining the meaning of "Dwelling-house" as used in the Rep People Act, 1867 (*Ellis* v. *Burch*, *Thompson* v. *Ward*, 40 L. J. C. P. 169; L. R. 6 C. P. 327: *Boon* v. *Howard*, 43 L. J. C. P. 115; 9 C. P. 277), are now, to some extent at least, set at rest by s. 5 (2), 41 & 42 V. c. 26, which provides that "'Dwelling-house,' shall include, any Part of a House where that part is SEPARATELY occupied as a Dwelling." But even that does not include a Cubicle, — *e.g.* in a Police Station, — not completely severed from a Common Dormitory, and sharing in the light, air, warmth, or ventilation thereof (*Barnett* v. *Hickmott*, 1895, 1 Q. B. 691; 64 L. J. Q. B. 407; 72 L. T. 236; 43 W. R. 284; 59 J. P. 230). In that case Russell, C. J. (in opposition to *Stribling* v. *Halse*, 55 L. J. Q. B. 15; 16 Q. B. D. 246), said, he shared the doubt of Esher, M. R., as to "whether a person could be said to *separately* occupy a Bedroom as a Dwelling-house where he dwelt partly in the bedroom and partly in other rooms for recreation, for meals, and other purposes, in common." The learned C. J. also significantly remarked on the dissent to *Stribling* v. *Halse* expressed in the Irish case of *Hasson* v. *Chambers* (18 L. R. Ir. 68). *Barnett* v. *Hickmott* was affd by Esher, M. R., and Lopes, L. J. (Rigby, L. J., diss.), in *Clutterbuck* v. *Taylor* (1896, 1 Q. B. 395; 65 L. J. Q. B. 314; 74 L. T. 177; 44 W. R. 531; 60 J. P. 278), *whlc* was followed and applied to the case of Nuns in a Convent in *Bannon* v. *Hanrahan* (1900, 2 I. R. 455).

Premises used as a Corn-store and Kiln but in which the occupier occasionally slept and where he always kept a bed; held, to be a "Dwelling-house," within s. 25, Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, although the occupier's usual residence was just outside the boundary of the town (*Lawson* v. *Fraser*, 8 L. R. Ir. 55). *Cp*, *R.* v. *Exeter*, cited INHABITANT.

"One Messuage or Dwelling-house"; *V. Rogers* v. *Hosegood*, cited HOUSE: — "A Private Dwelling-house"; *V.* A.

A Covenant prohibiting user otherwise than as a "*private* dwelling-house," would be broken by keeping the premises as an hotel or lodging-house; because although either would be a dwelling-house after a fashion, neither would be private (*Rolls* v. *Miller*, 53 L. J. Ch. 682, espy jdgmt of Lindley, L. J.). *V.* PRIVATE DWELLING-HOUSE.

Substantially to add to an existing dwelling-house, is a breach of a lessee's covenant not to build any dwelling-house, edifice, cabin, farm, or other building (*Domvile* v. *Colville*, Ir. Rep. 7 C. L. 68).

In BURGLARY, a "Dwelling-house," means a permanent building in which the owner, or the tenant or any member of the family, habitually sleeps at night" (Steph. Cr. 247; for the cases, *V.* Arch. Cr. 593–596: *Va.* 24 & 25 V. c. 96, s. 53). Lord Coke thought that Burglary might be committed in a church, "for ecclesia est domus mansionalis omnipo-

tentis Dei " (3 Inst. 64) ; but Lord Hale thought—(he might possibly have spoken more decidedly) — that that opinion was only a quaint turn without any argument (1 Hale P. C. 556: *V.* SACRILEGE). *Vf* MANSION.

" Dwelling-house " in s. 9, 18 & 19 V. c. 128, means, the *building*, so that the 100 yards therein mentioned have to be measured from the walls of the dwelling-house itself (*Wright* v. *Wallasey*, 53 L. J. Q. B. 259; 18 Q. B. D. 783; 52 J. P. 4; 3 Times Rep. 525).

A Public-house in which a man has taken up his temporary abode (he having no other place of abode) is, *semble*, his " Dwelling-house " within s. 6 (1 *d*), Bankry Act, 1883 (*Holroyd* v. *Gwynne*, 2 Taunt. 176), and certainly, for the purpose of this section, a " Dwelling-house " need not be an entire house, or a dwelling self-contained, or on a vertical plane as distinguished from a horizontal ; — rooms which furnish a separate dwelling and are not mere lodgings, will suffice (*Re Hecquard*, 24 Q. B. D. 71). But if a man has abandoned his house as his residence, it is no longer his Dwelling-house (*Re Nordenfelt*, 1895, 1 Q. B. 151; 64 L. J. Q. B. 182). *Cp* DWELL.

In a case of old-fashioned Pleading, proof that plaintiff was a lodger occupying two rooms in a house, was held not to support the averment that he was possessed of a " Dwelling-house " (*Monks* v. *Dykes*, 4 M. & W. 567 ; 8 L. J. Ex. 73).

In Rule 1, to the First and Second Cases of s. 100, Income Tax Act, 1842, " Dwelling-house " means, a house in which the person liable to pay Income Tax personally dwells; and therefore though a servant, — *e.g.* a Bank Manager, — for the purposes of a business, lives in a part of the business premises, nevertheless the value of the whole premises may be deducted in ascertaining the profits of the business liable to tax (*Russell* v. *Town & County Bank*, 58 L. J. P. C. 8; 13 App. Ca. 418: *Vf*, *Tennant* v. *Smith*, cited INCOME). *V.* PROFITS.

But a Bank having a Care-Taker living in it, is an " *Inhabited* Dwelling-house " quà House Duty, s. 1, 14 & 15 V. c. 36; s. 11, 32 & 33 V. c. 14; 48 G. 3, c. 55 (*Chartered Mercantile Bank of India* v. *Wilson*, 47 L. J. Ex. 153; nom. *Bank of India* v. *Wilson*, 3 Ex. D. 108); *secus*, of a Club not slept in at night (*Riley* v. *Read*, 48 L. J. Ex. 437; 4 Ex. D. 100), and so of School Buildings (*Clifton College* v. *Thompson*, 1896, 1 Q. B. 432; 65 L. J. Q. B. 231; 74 L. T. 168; 44 W. R. 410; 60 J. P. 599; disagreeing with *Glasgow* v. *Inl. Rev.*, 18 Sc. L. R. 1). *Clifton College* case was followed in *Charterhouse* v. *Gayler* (1896, 1 Q. B. 437; 65 L. J. Q. B. 233; 74 L. T. 171).

V. HOUSE: COTTAGE: DIVIDE: SERVANT, at end: OCCUPIED.

Quà London Bg Act, 1894, " Dwelling-house," " means, a BUILDING used or constructed, or adapted to be used, WHOLLY or principally for HUMAN Habitation " (subs. 25, s. 5).

" Dwelling-house to be inhabited by the WORKING CLASS " ; *V.* INHABITED.

"Dwelling-house" in New River Co's Act, 1852, s. 35, means "any house which is so far adapted for the purposes which a dwelling-house is usually adapted to, as to require water for domestic purposes; and it is not necessary that all the house should be so adapted" (per Cotton, L. J., *Cooke* v. *New River Co*, 57 L. J. Ch. 385; 38 Ch. D. 56; 58 L. T. 830; affd in H. L. 14 App. Ca. 698).

Goods of a LODGER may, quà an Insurance, be stated as in his "Dwelling-house" (*Friedlander* v. *London Assrce*, 1 Moo. & R. 171).

"Dwelling-house, Workshop, or other Building"; *V.* BUILDING.

V. DWELL: LIVE IN.

"Dwelling-house," quà the last Census Act, *V.* 63 V. c. 4, s. 4 (4); quà Housing of the Working Classes, *V.* 53 & 54 V. c. 70, s. 29: — quà Rep. of People, in Scotland, *V.* 48 & 49 V. c. 3, s. 7 (4): — quà Land Law (Ir) Act, 1896, *V.* s. 48.

Other Stat. Def. — *Scot.* 44 & 45 V. c. 22, s. 13. — *Ir.* 29 & 30 V. c. 44, s. 2.

DWELLING PLACE. — "Own Dwelling-place or Shop," s. 13, Markets and Fairs Clauses Act, 1847, 10 V. c. 14; *V. Llandaff Co* v. *Lyndon*, 30 L. J. M. C. 105; 8 C. B. N. S. 515: *Ashworth* v. *Heyworth*, L. R. 4 Q. B. 316; 38 L. J. M. C. 91: *Fearon* v. *Mitchell*, 41 L. J. M. C. 170; L. R. 7 Q. B. 690: *McHole* v. *Davies*, 45 L. J. M. C. 30; 1 Q. B. D. 59: *Hooper* v. *Kenshole*, 46 L. J. M. C. 160; 2 Q. B. D. 127. *V.* SHOP.

DYE. — "'To dye Seeds,' means, to give to seeds, by any process of colouring, dyeing, sulphur-smoking, or other artificial means, the appearance of seeds of another *kind*" (s. 2, 32 & 33 V. c. 112); but that does not include sulphur-smoking old clover seeds so as to make them look like young clover seeds, for the seeds do not thereby resemble another "kind" of seeds: *secus*, had the expression been "quality," or "kind, or sort" (*Francis* v. *Maas*, 47 L. J. M. C. 83; 3 Q. B. D. 341). *V.* ADULTERATION: NATURE.

DYEING. — "Bleaching and Dyeing Works"; *V.* BLEACHING.

DYING. — *V.* DIE and following phrases: DEATH.

"Dying after the passing of this Act," s. 9, Mortmain Act, 1891, makes the Act applicable to a Will made before the Act if the testator's death is after the Act (*Re Bridger*, 1894, 1 Ch. 297; 63 L. J. Ch. 186; 70 L. T. 204; 42 W. R. 179).

"Dying Intestate," s. 13, 23 & 24 V. c. 38; *V. Re Johnson*, cited PRESENT RIGHT TO RECEIVE.